TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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ZBA 94-42
Petition of Three C Realty Trust
23 Avon Road

Pursuant to due notice, the Permit Granting Authority and the Special Permit Granting Authority held a Public Hearing on Thursday, June 30, 1994 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) at the Town Hall, 525 Washington Street, Wellesley, on the petition of THREE C REALTY TRUST requesting a variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow construction of the following at its nonconforming dwelling with less than the front and right side yard setbacks at 23 AVON ROAD, in a Single Residence District:

1. A deck approximately 14.2 feet by 10 feet with less than the required right side yard.

2. A landing and stair approximately 5 feet by 5.5 feet with less than the required front setback.

A Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw is also requested to raise the ridge line of the roof approximately 16 feet to accommodate a second floor addition approximately 49.9 feet by 43.6 feet, with no change in the existing footprint. Said addition would have less than the required front and right side yard setbacks.

On June 13, 1994, the petitioner filed a request for a hearing before this Authority, and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing were Rob and James Cerulle, principals of the Three C Realty Trust. Rob Cerulle said that they had bought the house about 6 months ago, and that the existing floor plan was not well designed. All traffic from the living room must go through the bedroom, which has been converted from a dining room, to reach the kitchen. They have tried to redesign the house in keeping with the height and size of the homes in the neighborhood.

Rob Cerulle submitted pictures of homes on the street, and a fact sheet showing the height, square footage and lot size of 10 properties on Avon Road. Their 10,300 square foot lot is the largest on the street. The ceiling height of the first floor would be 8 feet; the height of the second floor would be 7.9 feet. The roof pitch is 8/12, which is standard. In order to have one roof cover the entire structure, the roof had to be raised a little higher than usual.

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Mr. Cerulle submitted a street plan which indicated that 14 of the 18 property owners were in favor of the petition. Two of the remaining four properties are rentals, and one has recently been sold. The only property owners in opposition are the Gibbs, who are the right side abutters. During a discussion with the Gibbses, Mr. Cerulle had agreed to retain, repair or rebuild the retaining wall on his property, which shores up the Gibbs' property; to delay beginning of construction until 8 a.m.; and to prune or remove trees, according to the Gibbs' wishes.

Mr. Cerulle said that in regard to the setback of the landing, most of the homes on the street have the same setback. He noted that many of the homes on smaller lots were about the same size as the completed house would be, and that there is only one one-story house on the street. The ridge line of the roof would not be higher than that of the Gibbs house.

Peter Gibbs, 21 Avon Road, the right side abutter, expressed opposition to the petition. He said that the proposed addition would increase the height of the building from 13 to 29 feet, which would block the Gibbs' view, even though their home is set above the Cerulle property, because the Cerulle house is sited so close to the property line. Doubling the size of the building will close them in.

Mr. Gibbs submitted a letter summarizing his concerns and photographs of the Cerulle property in relation to his home. In his opinion, the proposed structure is not in keeping with other homes in the neighborhood, and would be better suited to a larger lot in another part of town as it is too grand for the neighborhood. The proposed house is too large for the lot and too close to their home. The addition would overlook their first floor kitchen and den. Mr. Gibbs estimated that the height from the base of the retaining wall to the bottom of the Gibbs' upper story window was about 30 feet. The height of the Cerulle house would be 29 feet. Mr. Gibbs added that he would not be opposed to a small one-story addition at the rear of the Cerulle home, but was strongly opposed to the petition as submitted.

Sharon Kessel, 20 Avon Road, voiced support for the petition.

Statement of Facts

The subject nonconforming dwelling is located at 23 Avon Road, on a 10,280 square foot lot, in a Single Residence District. The property has a minimum right side clearance of 9.2 feet and a minimum front setback of 18.1 feet.

The petitioners are requesting a variance to construct a deck approximately 14.2 feet by 10 feet which would have a minimum right side yard clearance of 12.8 feet from the right rear corner; and a landing and stair approximately 5.5 feet by 5 feet which would have a minimum front yard clearance of 16.5 feet.

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The petitioners are also requesting a Special Permit/Finding that the raising of the ridge line of the roof approximately 16 feet to accommodate a second story addition approximately 49.9 feet by 43.6 feet, which would cover the entire first floor, and which would have a minimum right side clearance of 9.2 feet and a minimum front yard clearance of 18.1 feet, would not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated June 6, 1994, drawn by Paul J. Sawtelle, Registered Land Surveyor; Floor plans and Elevations dated May 25, 1994, drawn by David Phillips; and photographs were submitted.

On June 21, 1994, the Planning Board reviewed the petition and voted to recommend that the special permit/finding be denied as the proposed bulk of the second story addition will render the nonconforming structure substantially more detrimental to the neighborhood. The Planning Board also noted that it did not appear that the statutory conditions for the granting of a variance are present.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. All of the Board members have visited the site. The subject property does not conform to the current Zoning Bylaw as noted in the foregoing Statement of Facts.

It is the opinion of this Authority that the proposed deck conforms to the present lines of the house and does not alter the relationship of the house to the right side lot line.

It is the opinion of this Authority that the increased encroachment of 1.6 feet of the proposed landing and stair on the front property line is not sufficient to be disallowed.

It is the further opinion of this Authority that because of the shape of the lot and the location of the house on the lot, a literal enforcement of the provisions of Section XIX of the Zoning Bylaw would involve a substantial hardship to the petitioner, and that desirable relief may be granted without substantially derogating from the intent or purpose of the Zoning Bylaw.

Therefore, the requested variance is granted to construct both the deck and the landing and stair subject to construction in accordance with the plot plan and construction sketches as submitted.

It is the opinion of this Authority that the proposed second story addition does intensify the existing nonconformance, but does not create additional nonconformances as there will be no change in the footprint. This Authority finds that the proposed construction will not be

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substantially more detrimental to the neighborhood than the existing nonconforming structure for the reasons discussed below. The subject dwelling occupies the largest lot on the street, and the resulting structure would be in keeping with the size of the lot. The proposed two-story home would also be in keeping with other homes in the neighborhood as all but one of the homes on the street are two story structures. Although the right side abutter is opposed to the petition, the height of the proposed addition would be lower than the height of the abutter's dwelling. Finally, the neighborhood at large is in favor of the petition, and does not feel that the resulting structure would be a detriment.

The Inspector of Buildings is hereby authorized to issue a permit for construction of the deck, the landing and stair, and the second story addition which requires raising the ridge line of the roof approximately 16 feet, upon receipt and approval of a building application and detailed construction plans.

APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS PETITION IN THE THE OFFICE OF THE TOWN CLERK.

John A. Donovan, Jr., Chairman

Franklin P. Parker

William E. Polletta

cc: Planning Board
Inspector of Buildings
edg

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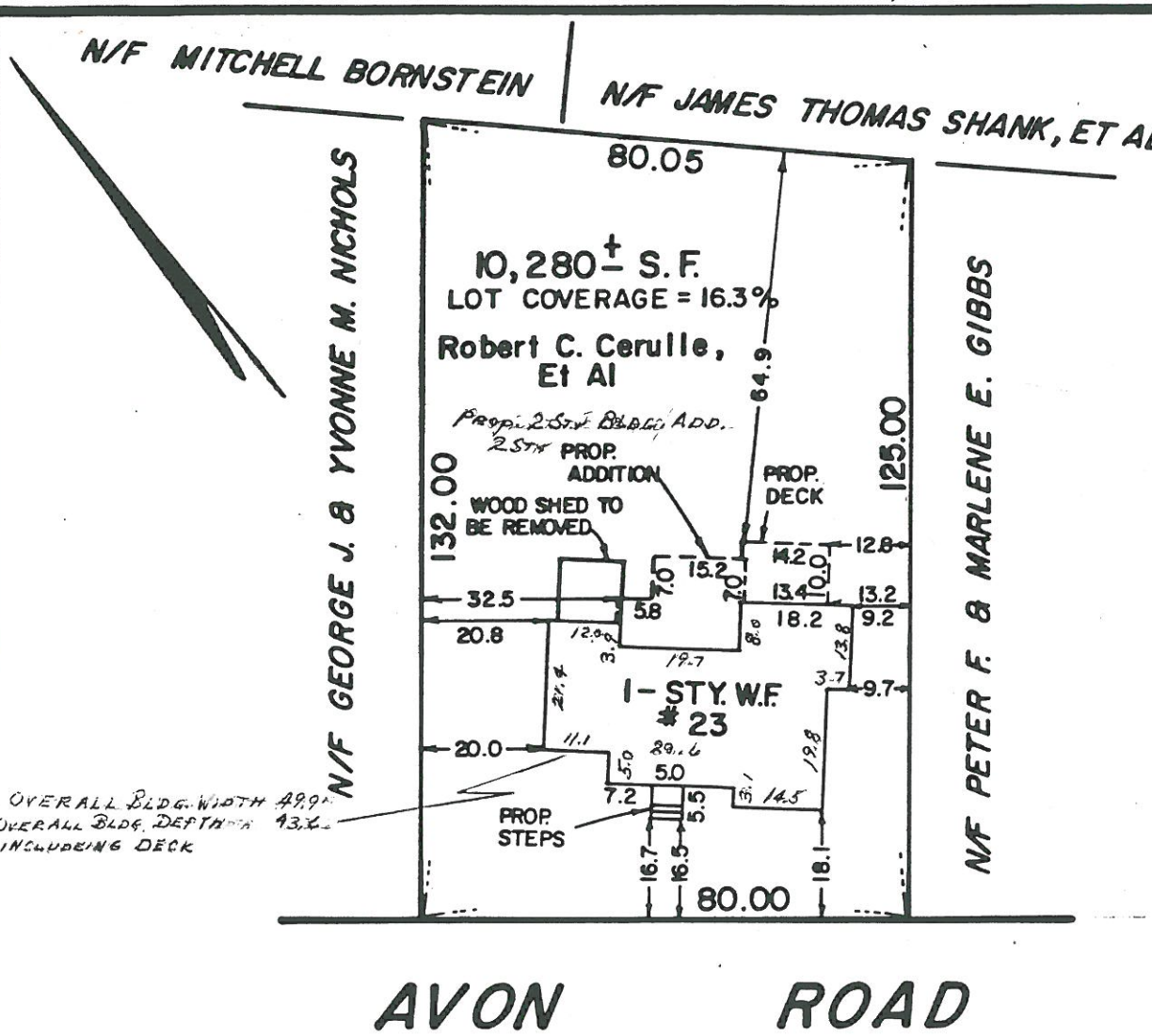

AVON ROAD

BUILDING ZONE :
SINGLE FAMILY 10,000 S.F.

ASSESSORS REFERENCE :
MAP 149 , ROUTE 039

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COMMONWEALTH OF MASSACHUSETTS
PAUL J. SAWTELLE
23747
REGISTERED
LAND SURVEYOR

Paul Sawtelle

PLAN OF LAND IN WELLESLEY, MASS.

SCALE : 1" = 30'
MASS BAY SURVEY, INC.

JUNE 6, 1994
NEWTON, MASS.