



ZONING BOARD OF APPEALS

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ZBA 2017-48

Petition of Scott & Elizabeth Lubker
14 Oakland Circle

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, May 4, 2017, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Scott and Elizabeth Lubker requesting a Variance and/or a Special Permit/Finding pursuant to the provisions of Section XVII, Section XIX, Section XXIV-D and Section XXV of the Zoning Bylaw for construction of a two-story addition and entry porch with less than required side yard setbacks and a second story addition with less than required front and side yard setbacks, installation of an air conditioning condenser with less than required front yard setbacks, and relocation of an existing nonconforming shed with less than required side yard setbacks to a new location with less than required side yard setbacks, on a corner lot, in a 10,000 square foot Single Residence District, at 14 Oakland Circle, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Presenting the case at the hearing were Les Shea, Esq., Paul Griffin, 35 Standish Circle, and Glen Hoffman, Architect.

Mr. Shea said that the house is approximately 125 years old and is closer to the street on the north and east sides than current zoning would allow.

Mr. Shea said that Mr. Lubker was previously before this Board and it was suggested to him that he file a new petition, which has been done. The Chairman said that the Board was not fully informed about the history of the lot at last month's meeting. He said that he has since learned that there are two prior variances that were granted to this property. He said that the Board will hear this as two separate amendments to a variance. He said that one amendment will address the air conditioning condensers on the northern end of the property and the other variance will address the other items in the construction that do not conform to the Zoning Bylaw.

Mr. Shea said that as a result of some of the concerns of the neighborhood at the last meeting, he met with Mr. Lubker and the Architect, who substantially lessened the impact of the previously proposed unit. He said that lot coverage has been reduced from 20 percent to 15.1 percent. He said that the architect took 573 square feet off by eliminating the wrap around porch with a roof over it and four feet off of the right side of the house. He said that the architect moved the front steps that were previously proposed on the west side of the house to the east side where he created a covered entry. He said that asked the architect to make the entry 25 square feet or less to meet the side yard exemption. He said that although the revised

plans shows the entry on the east side at 29 square feet, it will be reduced to 25 square feet. He said that the setback will be no worse than it currently is.

Mr. Shea said that there is currently an air conditioning condenser on the north side of the building. He said that the previously proposed air conditioning condenser on the east side could be moved to the north side where there are no neighbors and there is a gully that goes down. He said that noise would not impact anyone. He said that the house to the right at #10 is a rental at this time. The Chairman said that he did not see anywhere that the existing unit was permitted. He said that the Board will only have to deal with one variance if the units are moved to the southern end of the property. He said that he did not think that they belong so close to the road. Mr. Shea said that they can put the units on the southern end of the property.

The Chairman said that, for the record, the property has two prior variances, ZBA 89-19 and another variance that is dated January 16, 1970. He said that it has been this Board's practice to treat previously granted variances as being determinative and it does not revisit whether or not the previous Board made the right decision at the time.

The Chairman said that one of the previously granted variances permitted a deck on the northeast side of the house. He said that deck is no longer there. He said that it has been down for some time. He said that it cannot be rebuilt. Mr. Shea said that is acceptable. Mr. Griffin said that the deck came down prior to Mr. Lubker's purchase of the house.

The Chairman said that the lot conforms size-wise. He asked if any thought was given to relocating the structure on the lot to make it fully conforming. Mr. Griffin said that would be a cost issue.

Stanley Brooks, Esq., said that he was representing Tom and Alison Fields, the abutters at 15 Oakland Circle. He said that the original variance, ZBA 69-75, was granted as a special exemption. He said that in 1989 there was a variance granted to incorporate the deck that was removed in the early 1990's.

Mr. Brooks said that his clients are not opposed to development of this lot. He said that it needs to be done in a manner that is appropriate for the neighborhood and does not overwhelm it. He said that the Chairman made a comment about the building envelope that does allow for a fully conforming structure to be built. He distributed a proposed plot plan with a structure with a 1,400 square foot footprint that could be built without requiring any Zoning relief. He said that it was expressed to Mr. Fields that was the Applicant's preference. The Board said that the Applicant has already explained the hardship to tear down the existing house and construct a new one. The Board said that two other residents on Oakland Circle submitted letters of support for what is before the Board tonight. Mr. Brooks said that those letters support the idea that reconstruction would add value to their properties. He said that they do not address any of the concerns, requirements or standards for either a variance or a special permit.

Mr. Brooks said that the proposed structure on the May 1, 2017 plan is over 3,000 square feet, which will dwarf the immediately abutting properties. He said that 10 Oakland Circle is a one and a half story cottage style house with 798 square feet. He said that 14 Oakland Circle currently has a total living area of 1,232 square feet. He displayed the existing elevation drawing as seen from the Fields' property. He said that the height of the peak is 21 feet. He said that a 20 foot long section is 13 feet high. He said that the proposed structure will be 29 feet high.

The Chairman asked Mr. Fields about the height of his home. Mr. Fields said that his home is approximately 22 feet at the peak. He said that the addition that he put on the house was at the back, away from the street. He said his addition is two stories and is probably 21 feet high. The Chairman said that it looks much taller as you drive by. Mr. Brooks said that Mr. Fields' house may look larger because of its proximity to the street. He said that Oakland Circle is a 10 foot wide right of way. He said that Mr. Fields' house is located approximately 11 feet from the street. He said that 14 Oakland Circle is about 8 feet from the street at its closest point.

Mr. Brooks said that the Board has described this neighborhood in prior decisions as small, cottage-style older homes. He said that the proposed house will be 30 feet away from front door to front door. He said that he did not see any setbacks from Oakland Circle on the May 1 plans. He said that they appreciated that the air conditioning units will be relocated and the size of the covered entry reduced. He said that the entry way onto Oakland Circle is also noncompliant because it is closer than 25 feet to the street and it projects more than five feet from the face of the building. The Board said that the balance of the existing house is already closer than that to Oakland Circle. Mr. Brooks said that it is a term of the bylaw and requires a variance at that point.

Mr. Brooks asked if the Board is working off of the 1969 or the 1989 Zoning Bylaw standards. He said that soil conditions, topography or shape of the lot were not addressed. He said that the house can be fully compliant. He said that his client currently has sunlight and trees when he walks out his front door. He said that now he will just be looking at building. He said that there is no landscaping or other shielding that could be done because you cannot hide 29 feet. The Board asked if the sun rises to the right of Mr. Fields' property over the empty part of the 14 Oakland Circle lot. Mr. Fields said that it does rise there but questioned whether it will be blocked by the 29 foot high structure. The Board said that there is no easement to light in the State.

Mr. Brooks said that the mass and bulk of this structure will be significant. He said that this property will overwhelm the abutters at 10, 15 and 22 Oakland Circle. He said that there are also drainage issues involved here because there is nothing in the plans that addresses containing the roof or the surface runoff on the lot. He said that there is currently a sump pump on the property which they think is not permitted. He said that it dumps onto the street. He said that because of the slope of the street, all of the water in both directions feeds down into Mr. Fields' lot. He said that there needs to be some accommodation or condition that all surface water and runoff be contained on site so that it does not adversely affect neighbors. The Chairman said that is a reasonable condition.

Mr. Brooks said that they requested that the height be brought down. He said that there is a 9 foot 6 inch tall attic. He said that, as proposed, this property will not be in keeping with the neighborhood. He said that it will be an invasive structure, given all of the cottage-style structures that are there. He said that 19 Oakland Circle, which is across the street from this property, has a maximum ridgeline of 24 feet but it is downslope from this structure. He said that there is a three to four foot elevation difference. He said that this structure will be even more imposing because it is upgradient and because the lot is already raised. He said that there are railroad ties that flatten out the lot and keep the grade up. He said that they do not believe that, as proposed, it will be compatible with the surroundings. He said that it will be spatially consequential, will result in a 40 to 80 percent increase in the height over the existing structure, will create mass and bulk that is out of character with the neighborhood, and will have impacts that are not only

invasive but also detrimental to the properties that are down gradient, with a disproportionate impact on Mr. Fields' property. He asked that the Board ask the Applicant to reduce the height of the structure to a maximum of 23 feet. He said that he did not think that there is a need for a 9 foot 6 inch attic. He said that they are concerned about light spillage because of the close nature of the houses.

Tom Fields, 15 Oakland Circle, said that his biggest issue is the height. He said that it will be 40 percent over the current peak. He said that his peak has been the same since 1890. He said that the house across the street is roughly the same age or maybe a little older. He said that he has no problem with people improving their houses or adding to them. He said that he added to his house. He said that in 2002 he rebuilt 19 Oakland Circle, which was in a state of disrepair. He said that he went to great lengths with the architect to keep the peak of the house at 24 feet so that it would match his peak as well as the peaks at 14 and 23 Oakland Circle so that it maintained the character of the house. He said that he is bothered by the huge long mass at the proposed height. He said that he spoke with Mr. Lubker and asked him to reduce the height. He said that Mr. Lubker did not want to re-do the plans. He said that it will be a huge wall right in front of him. He said that the average road is 40 feet wide and the houses have 30 foot front yard setbacks. He said that there is 100 feet between them for a pleasant view. He said that this will be 35 feet against his house looking 30 feet up and that will not be a pleasant view. He said that inside of the house would not be substantially changed if the peak came down. He said that the peak blocks the light for the full length of the house. He said that he told Mr. Lubker that he would support a longer structure but with a lower peak. He said that he gets water all of the time because he is in a low spot. He said that the drainage on the street is bad. He said that there is a sump pump at 14 Oakland Circle that empties at his front door and all of the water from the south leg runs down onto his property. He said that needs to be looked at. He said that he objects to the giant mass 35 feet away from him.

Mr. Hoffman said that the square footage of the proposed house will be 2,839 square feet. The Board said that the TLAG calculations that were submitted show that it will be over 3,000 square feet. Mr. Hoffman said that has been revised. He said that most of the house will be a one and a half stories. He said that Mr. Lubker wanted to take great care to address concerns of the neighborhood regarding the height of the structure. He said that the original plan was for a two-story house. He said that the nine feet that Mr. Brooks referred to is the peak of the house. He said that there will be no livable space in the attic. He said that the face of the house will be well below 29 feet and will be compatible with the neighborhood.

The Chairman said that the street is only 10 feet wide and every property is nonconforming. He asked if there is any way to change the pitch of the roof to lower it. Mr. Hoffman said that they would lose square footage on the inside of the house. He said that if they lowered the roof, the walls would come in. He said that they have to have 6 foot 6 inch walls on the inside. The Board asked how the 12 on 15 slope was selected. Mr. Hoffman said that part of it was design implications and part of it was the need for interior space. He said that Mr. Lubker had gone around different neighborhoods in Wellesley and a few of the houses that he liked had the higher pitched roof. He said that if they lowered the roof, they would probably go to the full two stories which would raise the height of the house.

The Board asked if the dormers are just decorative elements. Mr. Hoffman said that the Nantucket style dormers are not decorative. He said that they act as shed dormers and look nice.

Mr. Shea said that the Petitioner went back to try to reduce the scope of the house to address some of the concerns of the neighbors. He said that the Board could grant relief without substantial detriment to the

public good, and without nullifying or substantially derogating from the intent and purposes of the Zoning Bylaw.

Statement of Facts

The subject property is located at 14 Oakland Circle, on a corner lot in a 10,000 square foot Single Residence District, with a minimum front yard setback of 7.5 feet and a minimum side yard setback of 16.8 feet.

The Petitioner is requesting a Variance and/or a Special Permit/Finding pursuant to the provisions of Section XVII, Section XIX, Section XXIV-D and Section XXV of the Zoning Bylaw for construction of a two-story addition and entry porch with less than required side yard setbacks and a second story addition with less than required front and side yard setbacks, installation of an air conditioning condenser with less than required front yard setbacks, and relocation of an existing nonconforming shed with less than required side yard setbacks to a new location with less than required side yard setbacks, on a corner lot, in a 10,000 square foot Single Residence District, at 14 Oakland Circle, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan, dated 5/1/17, stamped by Mark J. Guerard, Jr., Professional Land Surveyor, Existing & Proposed Floor Plans & Elevation Drawings, dated 5/1/17, prepared by GPH Design, and photographs were submitted.

On May 2, 2017, the Planning Board reviewed the petition and declined to make a recommendation because it felt that it did not have sufficient time to review the revised plans.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The subject structure does not conform to the current Zoning Bylaw, as noted in the foregoing Statement of Facts.

It is the opinion of this Authority that literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the petitioner owing to circumstances relating to the shape, topography and soil condition of such land, which does not generally affect the zoning district in which it is located, the hardship has not been self-created, and desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

Therefore, a Variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw is granted for construction of a two-story addition and entry porch with less than required side yard setbacks and a second story addition with less than required front and side yard setbacks, and relocation of an existing nonconforming shed with less than required side yard setbacks to a new location with less than required side yard setbacks, all as shown on the site plan dated 5/1/2017, subject to such revisions as are required in the conditions stated below.

In addition, the Authority finds pursuant to Section XVII.B.1 that the applicant's proposal will not be substantially more detrimental than the existing non-conforming structure to the neighborhood, and therefore shall be allowed as a permissible change of a preexisting nonconforming structure. The existing house is already located within the required front (westerly), front (northerly), and side (westerly) setbacks. The applicant's proposed addition will extend the house further to the south, thereby increasing the length of the house that sits within the required front (westerly) and side (easterly) setbacks. The applicant's proposal does not, however, move the structure any closer to the front (westerly) or side (easterly) lot lines, with the exception of the bulkhead and proposed covered entry on the easterly side. The Authority finds that the proposal is appropriate in scope given the size and configuration of the lot, and will have no cognizable negative impacts on the neighborhood.

The grant of relief is subject to the following conditions:

1. The air conditioning condensers shown on the 5/1/2017 site plan as located on the northerly side of the house shall be moved to the southerly side. The applicant shall submit a revised plot plan that shows that the air conditioning condensers are located on the southern end of the property and meet all setback requirements.
2. The covered entry on the east side of the property shall be reduced to 25 square feet.
3. All surface water and runoff shall be contained on site so that it does not adversely affect neighbors.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed construction plans.

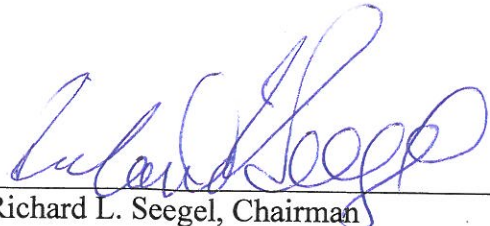
If construction has not commenced, except for good cause, this Variance shall expire one year after the date time stamped on this decision.

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14 Oakland Circle

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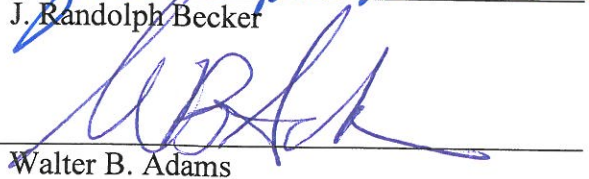
APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.



Richard L. Seegel, Chairman



J. Randolph Becker



Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm