

TOWN OF WELLESLEY



MASSACHUSETTS

## ZONING BOARD OF APPEALS

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ZBA 2017-08  
Petition of Trillium Development LLC  
7 Bemis Road

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, February 2, 2017, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Trillium Development LLC requesting a Variance pursuant to the provisions of Section XIX and Section XXIV of the Zoning Bylaw for demolition of an existing structure and garage and construction of a new two-story structure with optional living space in the basement and the attic, with less than required side yard setbacks, on an existing nonconforming lot with less than required front yard width and frontage, at 7 Bemis Road, in a 10,000 square foot Single Residence District.

On January 3, 2017, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

### DISMISSED WITHOUT PREJUDICE

Presenting the case at the hearing was Victor Corda, Trillium Development LLC, the Petitioner. He said that the request is to raze an existing house and replace it with a new structure on a pre-existing nonconforming 10,000 square foot lot.

A Board member said that the Petitioner is seeking relief for one element that could be curable, namely, the front yard setback. Mr. Corda said that the structure itself sits within the setback but the front landing is a few feet into setback. He said that they designed the house thinking that it was more of a front yard. He said that only the front and side landings will not conform.

A Board member said that the front yard setback is 30 feet. Mr. Corda said that he was advised that the setback would be 20 feet. The Executive Secretary said that Michael Grant, Building Inspector, said that the driveway is what he considered to be the front yard and everything else would be side yards.

A Board member said that the Board previously granted a variance for the build factor. He questioned why the petition was before the Board. Mr. Corda said that two landings will exceed 25 square feet in what is being called side yard setbacks. He said that they designed the structure to be under the 3,600 square foot Total Living Area plus Garage (TLAG) threshold. He said that TLAG will be 3,162 square feet. He said that they did option out a third floor and some living space in the basement. He said that it is a very difficult lot to design a house for.

The Board said that the lot is located in a 10,000 square foot Single Residence District and complies with the size requirements. The Board said that the question is where the front yard is located. The Board

discussed the 10 foot wide, 180 foot long access. Mr. Corda said that it is part of the parcel and is the only access to the parcel. The Board said that it is included in the square footage of the lot.

The Board discussed the side yard setbacks. A Board member said that 20 feet is required at the rear of the lot because it backs up to the side yard of an abutting property. The Board said that the determination about the side yards is within Mr. Grant's purview and if somebody objected, they could bring it before the Board for deliberation.

Mr. Corda said that his issue was to get a reasonable landing outside of the front door. He said that the landing would have conformed if this was a front yard. The Chairman said that everything that is protruding out from the house that encroaches is less than 50 square feet. Mr. Corda said that the exception for a landing in the side yard is 25 square feet.

A Board member said that his concern was that, although the side wings are much lower in height, the center is going to be 10 to 12 feet taller than the existing building. Mr. Corda said that the existing building is tall. He said that it has a finished third floor and a full walkout. The Board said that at least one of the abutting buildings is three stories.

A Board member said that this is clearly an unusual lot. He said that the shape of the lot fulfills the variance requirement. He questioned whether it is a substantial hardship for the Petitioner. He said that question is how a house can be built there. A Board member said that if it is a side yard, the only thing that needs relief is the size of the landings and he did not see that as a hardship.

The Board said that the variance that was granted did not relate to physical things but was related to principles in the Zoning Bylaw for build factor. The Board said that variance did not deal with the shape of the lot.

The Board said that there would not be problem if the size of the house was reduced slightly and the landings were reduced to 25 square feet. The Board said that the proposed house is large. Mr. Corda said that it is smaller than it could be. He said that he can make the landing on the back corner smaller. He said that it probably should be smaller coming off of the slider. He said that 25 square feet is small for a front landing. The Board asked about the hardship for not having a bigger landing. Mr. Corda said that it could be a safety issue. He said that it is a very difficult lot to design a house on. The Board said that the fact that it is a difficult design does not tell the Board why it should grant relief. Mr. Corda said that the lot configuration with a 10 foot wide front yard should count for something. The Board said that an exception was granted for the build factor requirements.

The Board said that if the size of the house is reduced slightly, it eliminates the problem. The Board said that the door is at the left end of the 12 foot front landing. The Board said that the extra space on the landing only serves the window in the front.

Mr. Corda asked if he needs a variance to tear the house down. The Board said that the variance for build factor granted relief, saying that the ten foot by 80 foot pork chop is sufficient. A Board member said that the Board has allowed people with nonconforming lots with insufficient size to seek a special permit to tear down an existing house and build a new structure that would fully comply with setback requirements. The Board said that if the landings are reduced to 25 square feet, there is no reason to grant a variance.

Mr. Corda confirmed that a variance is not needed for him to tear the house down. The Chairman said that the Board is talking about what Mr. Corda wants to build before the existing structure is torn down. He discussed allowing the petition to be withdrawn without prejudice and having Mr. Corda go back to the Building Inspector to ask him if a special permit or variance is needed if the landings are reduced to 25 square feet. He said that he did not think that either is needed. He said that the Building Inspector is the Zoning Enforcement Officer and if he says that it is not needed, Mr. Corda does not need relief from the Zoning Board.

The Board said that the lot has a complicated history that involves transfers of properties and recordings at the Registry of Deeds.

Mr. Corda confirmed that it is the Board's opinion that if the landings conform, a variance is not needed. The Chairman said that it appears to the Board that there is no further Zoning relief needed but only the Building Inspector can confirm that. Mr. Corda said that the Building Inspector implied that this had to come to ZBA when he started the project and before he drafted plans for the house. He said that there was some gray area as to what the Building Inspector and what Mr. Corda considered to be the front yard.

The Board discussed the exception in the Zoning Bylaw for a 50 square foot landing in the front yard. A Board member said that there is nothing in the bylaw that gives anybody a right to a 50 square foot landing. He said that it is an exception but not a right to have a 50 square foot landing.

The Chairman said that proposed lot coverage is almost at the maximum at 19.43 percent. A Board member said that the coverage is distorted because of the extra piece that you cannot build on.

The Chairman suggested that Mr. Corda revise the plans so that all of the landings are 25 square feet or less, go back to the Building Inspector and ask for a building permit. He said that if the application is denied, Mr. Corda can take an appeal to the ZBA. He said that, at this point, he did not see a reason for the Board to grant relief for a hardship. He said that this solution should satisfy the Building Inspector's interpretation of the front and side yards.

The Board discussed continuing the petition to March 2, 2017. Mr. Corda said that he will speak with the Building Inspector tomorrow. He said that if the size of the landings is the only issue, he will change them. A Board member said that the thought that the Board put out there was predicated on the Building Inspector's judgment that it is a side yard not a front yard. Mr. Corda said that he had been under the impression that he had to appear before the Board to tear down regardless of the size of the landings. The Chairman said that Mr. Corda should not tear the house down until the issue is resolved. He said that the Board is unanimous in its findings and Mr. Corda can let Mr. Grant know that.

The Board voted unanimously to continue the petition to March 2, 2017.

There was no one present at the public hearing on March 2, 2017 who wished to speak to the petition.

### **March 5, 2020**

The Chairman said that the issues were resolved with the Building Inspector.

The Board voted unanimously to dismiss the petition without prejudice.