

TOWN OF WELLESLEY



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2021 MAY 20

ZBA 2021-41

Petition of Rajeev & Marcell Bhangoo
12 Princeton Road & 32 Upson Road

Pursuant to due notice, the Special Permit Granting Authority held a Remote Public Hearing on Thursday, May 6, 2021 at 7:30 pm, on the petition of Rajeev & Marcell Bhangoo requesting a Special Permit/Finding pursuant to the provisions of Section 17, Section 19 and Section 25 of the Zoning Bylaw that reconfiguration of the lots at 12 Princeton Road & 32 Upson Road that will result in the lots being subject to Table 3, Section 19 of the Zoning Bylaw, for which conforming frontage is 90 feet and rear setbacks are 18 feet, shall not be substantially more detrimental to the neighborhood than the existing nonconformities. The existing structure at 12 Princeton Road has a nonconforming side yard setback of 18.2 feet. The existing structure at 32 Upson Road has a nonconforming left side yard setback of 6 feet. The nonconforming setback at 32 Upson Road will be eliminated with the reconfigured lot line.

On March 18, 2021, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

WITHDRAWN WITHOUT PREJUDICE

Present on behalf of the petition was David Himmelberger, Esq. and Rajeev Bhangoo, who is the record owner of 12 Princeton Road and 32 Upson Road.

Mr. Himmelberger said that the request is connection with reconfiguration of a common line through the ANR process. He said that 12 Princeton is a nonconforming lot due to insufficient side yard setback of 18.2 feet. He said that a special permit was approved in 2016 for a rear addition. He said that the Bhangoo recently purchased 32 Upson Road, which shares a common lot line. He said that 32 Upson Road is a nonconforming lot, as it received a variance in 1973 to construct a left side addition with a 6 foot setback. He said that they would like to reconfigure the common line between the two properties through an ANR process. He said that through that reconfiguration, 32 Upson Road will become a conforming structure, as the nonconforming left side yard setback will be eliminated. He said that a special permit is required because both lots were created prior to 1985 and are subject to Table 1 and would now be Table 3 for which conforming frontage is 90 feet and rear setbacks are 18 feet, rather than the Table 1 dimensions of 65 feet of frontage and 10 foot rear yard setbacks. He said that currently 12 Princeton Road does not have 90 feet of frontage.

Mr. Himmelberger said that the Board has previously granted on similar matters. He said that the bylaw amendment that gave rise to the Table 3 lots and the increase in dimensional requirements was designed to pertain to newly created lots upon which no prior development had occurred, as opposed to pre-existing lots upon which houses were already located and were compliant with Table 1 dimensions.

Mr. Himmelberger said that by allowing reconfiguration of the lot line, 2,245 square feet will be removed from 12 Princeton and added to 32 Upson, and the existing left side yard setback will be eliminated. He said that 12 Princeton Road remain a nonconforming lot, as it currently exists, with insufficient side yard setback and frontage of 65 feet.

The Chairman asked about the purpose of the subdivision. Mr. Himmelberger said that his client is exploring a range of options that include building on, renovating or building a new house at 32 Upson Road. Mr. Bhangoo said that all of those options are for himself. He said that he would move from 12 Princeton to 32 Upson. Mr. Levy can do that on a nonconforming lot with a Section 6 finding. He discussed the authority of the Board under Section 24 of the Zoning Bylaw. He asked Mr. Himmelberger to point out where in the bylaw the Board as the Special Permit Granting Authority (SPGA) is permitted to authorize a change in lot lines. Mr. Himmelberger said that they will be removing the nonconformity at the left side of 32 Upson Road and creating a new one. He said that there is a pre-existing nonconforming structure at 12 Princeton Road and at 32 Upson Road and by making the change, they will make one of them conforming. The Chairman asked if the request is for the Board to make a Section 6 finding. He said that lot line changes are authorized for approval by the Planning Board.

A Board member said that the applicant should get the lot line changed first and then come back before the Zoning Board. Mr. Himmelberger said that the Board has the authority to grant a special permit for allowing the reconfiguration even though it would not be conforming under Table 3. The Chairman said that there needs to be a place in the bylaw where authority is delegated to the Board to grant special permits for certain delineated circumstances.

A Board member said that the Board reviewed a similar case and concluded that it was a Planning Board issue. Mr. Himmelberger said that in the case that A Board member was referring to, both homes were fully conforming and would remain fully conforming and the lot line reconfiguration. He said that it was the build factor that they were seeking relief for. He said that in this case, both houses are pre-existing nonconforming due to setbacks and therefore, this is different as it eliminates a nonconformity and makes 32 Upson Road a fully conforming lot and structure.

The Chairman read an excerpt from Section 17 of the Zoning Bylaw regarding applications for changes to nonconforming one or two family dwellings. He said that the request before the Board is not to change the dwelling but to change the lot lines.

Mr. Himmelberger asked that the Board find that the change of the frontage impacts the dwelling. He said that it is a pre-existing nonconforming structure that they are seeking to eliminate on one ill at 32 Upson Road and allow 12 Princeton Road to remain unchanged. He said that its existing frontage or side yard setback will not change. The Chairman said that he did not think that the Board has the authority to grant the relief that was asked for.

A Board member asked about the area of each lot and how will it change. Mr. Himmelberger said that each existing lot is slightly 15,000 square feet, and as reconfigured, 2,245 square feet will be removed from 12 Princeton Road and added to 32 Upson Road. He said that 12 Princeton Road would go to 11,543 square feet and 32 Upson Road would go to 18,488 square feet. He said that the Zoning District is SRD 10.

A Board member discussed concerns about the Board's authority and tying the hands of future owners of 12 Princeton Road to do something with the back of the property that they can do today but will not be able to do tomorrow. Mr. Himmelberger said that the area from the rear of 12 Princeton Road coming down to the existing lot line at 32 Upson Road is a slope and not usable back yard space. A Board member said that there is a shed there now. Mr. Bhangoo said that a slope runs north of the shed and goes diagonally across the lot line.

The Chairman said that the property owner can come before the Board for a special permit to do a renovation at 32 Upson Road.

The Chairman read the Planning Board recommendation.

The Chairman said that Board only has the authority to grant special permit under the powers that are delegated to it. Mr. Himmelberger said that by removing the nonconformity at 32 Upson Road, it will make 12 Princeton Road a nonconforming Table 3 lot. The Chairman said that the Board is authorized to grant relief under four matters that are listed in Section 24 of the Zoning Bylaw. Mr. Himmelberger said that none of the Board's powers under Section 17 of the Zoning Bylaw fall within the powers listed in Section 24. B, 1 through 4. He said that the powers are additional. The Chairman said that the Section 17 deals with pre-existing structures. A Board member said that Section does not discuss lots in the body of the text, nor does Chapter 40A, Section 6.

The Chairman asked if any member of the public wished to speak to the petition.

Mr. Himmelberger requested that the Board allow the petition to be withdrawn without prejudice.

Upon a motion duly made and seconded, the Board voted unanimously to allow the petition to be withdrawn without prejudice.

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