



ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482

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2021 JUN 17 P 1:26

ZBA 2021-24

Petition of Timothy Eaton & Catherine Dyer
58 Upson Road

Pursuant to due notice, the Special Permit Granting Authority held a Remote Public Hearing on Thursday, April 1, 2021 at 7:30 pm, on the petition of Timothy Eaton & Catherine Dyer requesting a Special Permit/Finding pursuant to the provisions of Section 14E, Section 17 and Section 25 of the Zoning Bylaw that demolition of an existing nonconforming garage and construction of a new nonconforming garage on the same footprint with less than required side yard and rear yard setbacks, and construction of a new attached carport addition with less than required rear yard setbacks, at 58 Upson Road, in a 10,000 square foot Single Residence District, in a Water Supply Protection District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Amended Petition, April 21, 2021

Petition of Timothy Eaton & Catherine Dyer requesting a Variance pursuant to the provisions of Section 19 and Section 24 of the Zoning Bylaw for demolition of an existing nonconforming garage and construction of a new nonconforming garage on the same footprint with an attached carport addition, with less than required side yard and rear yard setbacks, at 58 Upson Road, in a 10,000 square foot Single Residence District, in a Water Supply Protection District.

On February 4, 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.

Present at the public hearing were Timothy Eaton and Catherine Dyer, the Petitioner, and Scott Henderson, Site Civil Engineer. Mr. Henderson said that the request is for a special permit/finding to reconstruct an existing nonconforming structure. He said that the property benefits from the use of easement areas that are part of the abutting parcel to the east, with exclusive rights to use but not construct on them. He said that the existing garage has less than required setbacks of 4.5 feet in the rear yard and 7.2 feet on the right side. He said that the garage is deteriorating and the request is to rebuild it in kind, rotating it to be parallel to the side wall of the home and the street line, resulting in an improved rear setback from 4.5 feet to 5.5 feet. He said that a standard pitched roof will replace the existing gambrel roof at the same height. He said that the proposed new carport on the left side of the garage will be open on three sides and will cover an existing area of crushed stone.

Mr. Henderson said that there is a building permit on file for the garage that was built in 1978. He said that historical research did not show any relief granted for the property.

A Board member questioned whether a garage would get the benefit of a special permit/finding under Chapter 40A, Section 6, M.G.L. or under the Zoning Bylaw, since it is neither a one or two family

dwelling. He said that predicate to finding that the proposed garage will not be substantially more detrimental to the neighborhood, the Board has to find that it is a pre-existing nonconforming structure.

The Board voted unanimously to continue the petition to June 3, 2021.

June 3, 2021 – De Novo

Present at the public hearing were David Himmelberger, Esq., Timothy Eaton and Catherine Dyer. Mr. Himmelberger said that the Petitioner amended the request and is now seeking a variance to permit the demolition of an existing nonconforming garage and replacement with a new garage. He said that when the Board first reviewed this project, it thought that the proposed structure was attractive but did not feel that it had the authority or jurisdiction to grant a special permit.

Mr. Himmelberger said that the Petitioner provided a copy of the building permit for the garage. He said that at the time that the building permit was issued, side yard setback requirements that would have otherwise precluded the construction of the garage in its location were in effect. He said that it is well into safe harbor for structures that were permitted to be built pursuant to a building permit but which are otherwise in violation of Zoning.

Mr. Himmelberger said that the Applicants now seek a variance, based on the shape of the lot. He said that his clients acquired the property in 2011, 34 years after the ANR Plan that created this unusually shaped lot. Ms. Dyer said that the original house was torn down in 2018 and a new home was built.

A Board member said that he lives in the neighborhood and has observed the upgrading of Upson Road over the past 50 years. He said that this will be an improvement.

There was no member of the public who wished to speak to the petition.

Statement of Facts

The subject property is located at 58 Upson Road, in a 10,000 square foot Single Residence District, in a Water Supply Protection District. The detached accessory garage structure has minimum side yard setbacks of 6.1 feet, 7.2 feet, and 7.3 feet where 20 feet is required, and a minimum rear yard setback of 4.5 feet where 10 feet is required.

The Petitioner is requesting a Variance pursuant to the provisions of Section 19 and Section 24 of the Zoning Bylaw for demolition of an existing nonconforming garage and construction of a new nonconforming garage on the same footprint with an attached carport addition, with less than required side yard and rear yard setbacks.

Letter to Zoning Board of Appeals, dated 4/23/21, from David Himmelberger, Esq., with attachments of Building Permit #18409, dated 5/24/78 and Quitclaim Deed, recorded on 10/28/2011, A Site Plan and an Existing Conditions Plan, dated 10/6/20, stamped by Scott D. Cameron, Professional Land Surveyor, Floor Plans and Elevation Drawings dated 1/3/21, prepared by Steven Garafalo, were submitted.

On May 14, 2021, Jason Tobin, Civil Engineer, Town of Wellesley, reviewed the petition and submitted comments.

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On June 2, 2021, the Planning Board reviewed the petition and recommended that a variance be approved.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing.

The Board found that the Design and Operation Standards in Part F are adequately satisfied and not otherwise prohibited in Part D.1, of Section 14E of the Zoning Bylaw for Water Supply Protection Districts.

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 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, the requested Variance from the terms of Section 19 and pursuant to the provisions of Section 24-D of the Zoning Bylaw is granted to allow for demolition of an existing nonconforming garage and construction of a new nonconforming garage on the same footprint with an attached carport addition, with less than required side yard and rear yard setbacks, in accordance with the submitted plot plan and construction drawings.

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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ZONING BOARD OF APPEAL
TOWN OF NEW HAMPSHIRE

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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.

J. Randolph Becker (l.m.)
J. Randolph Becker, Chairman

David G. Sheffield (l.m.)
David G. Sheffield

Walter B. Adams (l.m.)
Walter B. Adams

RECEIVED
TOWN CLERK
WELLESLEY, MASS.
JUN 17 2021
1:26 PM

ZBA 2021-24
Applicant Timothy Eaton & Catherine Dyer
Address 58 Upson Road

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wellesley, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

Cathryn Jane Kato
Town Clerk

cc: Planning Board
Inspector of Buildings
lrm



