

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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Petition of Rajeev & Marcell Bhangoo
32 Upson Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, August 5, 2021 at 7:30 pm, in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Rajeev & Marcell Bhangoo requesting Modification of a Variance (ZBA 73-27) pursuant to the provisions of Section 14E, Section 19 and Section 24 of the Zoning Bylaw for demolition and reconstruction of a two-story structure with less than required left side yard setbacks, at 32 Upson Road, in a 10,000 square foot Single Residence District, in a Water Supply Protection District.

On June 29, 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WITHDRAWN WITHOUT PREJUDICE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 were David Himmelberger, Esq., and Rajeev Bhangoo, the Petitioner.

Mr. Himmelberger said that the request is to modify an existing variance at 32 Upson Road. He said that a variance was granted in 1973 to construct a left side addition with a side yard setback of six feet. He said that the Petitioner wants to raze and rebuild the existing home. He said that the Petitioner previously sought relief to reconfigure the common lot line between 32 Upson Road and 12 Princeton Road. He said that the Board advised that it did not have the jurisdictional power to grant that relief. He said that the Petitioner is now seeking modification of the existing variance in which the proposed new home will have a better nonconforming setback of 9.8 feet and will be compliant in all other ways with the Zoning Bylaws. He said that the height will be 29.9 feet and TLAG will be 5,190 square feet.

Mr. Himmelberger said that the property sits downslope of the side setback line. He said that 12 Princeton Road is upslope of the property.

A Board member questioned whether the variance goes with the existing structure and if once the house is removed, the variance is gone and a new variance has to be applied for. He said that the Board's practice with modification of variances has been to not go to the criteria for granting a variance due to shape of the lot, topography or soil condition, but to accept a prior Board's determination. He said that when this variance was granted, it was a totally different standard that pre-dated the current Zoning Statute. Mr. Himmelberger said that, similar to nonconforming homes where there is a pre-existing nonconforming structure on an otherwise conforming lot, the Board has allowed razing and rebuilding of the

nonconforming structure in a new nonconforming setback. A Board member said that this is not a pre-existing nonconforming house.

A Board member said that typically when the Board permits demolition, the rebuild has to conform with the current Zoning Bylaw. He said that in this instance, there may be a way to meet all of the setback requirements. Mr. Bhangoo said that there is a significant slope at the back. Mr. Himmelberger said that a variance could be based on the trapezoidal shape of the lot or the topography. He said that what is before the Board is a request for a modification of an existing variance. The Board member said that this would have to be a new variance, as the existing variance goes away when the house is torn down.

Mr. Bhangoo said that the house has not been touched since it was built and the neighbors are begging him to tear the house down and do something with it. He said that it sits at the back of his house and they have seen raccoons going into it over the past four years after the person deceased.

The Chairman said that once the house is torn down, anything that is put in its place is self-created. He said that the hardship is that the house that the Petitioner wants to build is wider than the lot can handle. A Board member asked if any effort was made to build a conforming structure. Mr. Himmelberger said that the topography rises approximately six feet at the rear. He said that the problem is to get a garage that meets the 30 foot side yard setback requirements and the 500 Foot Rule at the front. Mr. Bhangoo said that they looked at a lot of options.

The Board further discussed concerns about modification of the variance versus a request for a new variance, and self-creation of a hardship. A Board member said that a determination by the Board that the variance runs with the land would be spot zoning by creating a different setback from every other house in the district. Mr. Himmelberger said that was done in the first instance. The Chairman said that the Zoning regulations were quite different then from what they are today. Mr. Himmelberger said that they could come back with plans to envelope the existing structure at the five foot setback.

A Board member said that not much of the proposed structure would be in the setback. He asked about the size of the house. He said that the Town has made a determination that in a 10,000 square foot district, a house that is greater than 3,600 square feet is considered to be a large house. Mr. Himmelberger said that the Petitioner is prepared to go for Large House Review.

The Chairman confirmed that proposed TLAG will be 5,190 square feet. Mr. Himmelberger said that approximately 1,000 square feet of that is in the attic. A Board member said that the proposed TLAG exceeds the threshold for a 15,000 square foot district.

A Board member said that the house has to be set back from Upson Road because of the 500 Foot Rule. He said that by forcing it back, the lot slopes so much that they cannot fit anything in but a very small house. The Chairman said that there may a stronger case for a variance for the front setback due to the topography. He said that pulling the house forward will give them more side yard setback, which may or may not be conforming. Mr. Himmelberger said that pulling it forward will not eliminate all of the nonconformity on the left side.

Mr. Himmelberger said that the Petitioner initially tried to change the lot line to allow for a fully conforming structure but they were not able to do that under a special permit. He said that the Planning

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Board could not approve an ANR plan because by changing the lot line, 12 Princeton Road would not have enough frontage under Table 3 dimensional requirements. He said that the Planning Board has taken the position that relief is needed if the lot is altered in such a way that it goes from a Table 1 to a Table 3 lot. He said that the Petitioner's first approach was to come to the Board for zoning relief on the lot line.

A Board member said that the Petitioner has an argument to come back before the Board to request a variance from the 500 Foot Rule or for a setback due to the topography or the shape of the lot. He said that the Board does not have the authority to change the lot line. He said that moving the structure 10 feet closer to the street would alleviate the problem to a good degree. He said that effort should be made to try to reduce the size of the house a little bit. Mr. Himmelberger asked about coming in for a new variance versus modifying the existing structure to resemble the proposed structure.

Mr. Himmelberger requested that the petition be withdrawn without prejudice.

The Board voted unanimously to allow the petition to be withdrawn without prejudice.

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