

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

RICHARD L. SEEDEL, CHAIRMAN
J. RANDOLPH BECKER, VICE CHAIRMAN
DAVID G. SHEFFIELD

LENORE R. MAHONEY
EXECUTIVE SECRETARY
TELEPHONE
(781) 431-1019 EXT. 2208
web: www.wellesleyma.gov

ROBERT W. LEVY
WALTER B. ADAMS
DEREK B. REDGATE

ZBA 2017-64
Petition of Glen Magpiong
89 Russell Road

12011 AUG 24 2017
WELLESLEY, MASSACHUSETTS

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, July 13, 2017, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Glen Magpiong requesting a Variance and/or a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII, Section XIX, Section XXIV-D and Section XXV of the Zoning Bylaw that demolition of an existing nonconforming structure with less than required left and right side yard setbacks and construction of a new structure with less than required front yard, left and right side yard setbacks, and installation of air conditioning condensers with less than required left side yard setbacks, in a 10,000 square foot Single Residence District, in a Water Supply Protection District, at 89 Russell Road, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On June 7, 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.

Presenting the case at the hearing were David Himmelberger, Esq., Mark Iacocca, Architect, and Glen and Jane Magpiong, the Petitioner.

Mr. Himmelberger said that the request is for a special permit and variances to raze and reconstruct a 1962 ranch house at 89 Russell Road. He said that the variances are to allow for a front yard setback of 17.4 feet and to permit air conditioning condensers in the side yard setback. He said that the special permit is for pre-existing nonconforming side yard setbacks that will be improved with the new construction but still noncompliant.

Mr. Himmelberger said that the houses at this end of Russell Road are only on the pond side of the road. He said that this property has a 38 percent slope from Russell Road to the pond, for a 46 foot drop. He said that the existing home has two terraced sections at the rear that the proposed construction will stay forward of so as to not require additional engineering work in that area. He said that, given the topographical challenges and the costs of building a house back to a 30 foot setback, the Petitioners have sought a 17.4 foot front yard setback, which is consistent with the house next door at 81 Russell Road that was recently granted relief by this Board to build at a 17 foot front yard setback and a similar one at 77 Russell Road to build at a 17 foot front yard setback. He said that the abutter to the left received a variance where the Board recommended that the house be moved forward from 30 feet to 24 feet to fit in better with the neighborhood. He said that the average front yard setback on this section of Russell Road is 13.74 feet. He said that the house will sit so that rear remains shy of the rear facades of 93 and 81

Russell Road, the direct neighbors. He said that all but one house is subject to a variance on this section of Russell Road.

Mr. Himmelberger said that the house has been designed to present beautifully at the street. He said that it will be 21 feet tall at street level. He said that the Planning Board, while giving some favorable consideration to this proposal, ultimately declined to recommend approval, raising concerns about the scale of the home as impacting the neighbors to the right and left, and the scale as might be seen from Morses Pond. He said that he submitted letters of support from the direct neighbors. He said that the homes to the immediate right and left have been designed to take advantage of pond views and have not been designed with significant side facing windows. He said that all of the orientation is towards the pond. He said that the house will have eight arbor vitae screening on the left side and ten arbor vitae screening on the right side. He submitted copies of photos that were taken from the pond. He said that the photos dramatically underscore the fact that there is substantial screening between the pond and the proposed house. He said that the project has been approved by the Wetlands Protection Committee (WPC). He said that because of the substantial screening, the concerns of the Planning Board do not exist, where the abutters support the project and it is difficult, if not impossible, to see the site from the pond. He said that the Planning Board did concede that the design and scale of the house is consistent with the accepted style of the neighborhood.

Mr. Himmelberger said that Total Living Area plus Garage (TLAG) will be 4,804 square feet that is due to a basement that is larger because of the slope. The Board said that it is usable space. Mr. Himmelberger said that TLAG is typically used as a measure of massing as perceived by people who can see it. He said that the impact of how it is situated on the lot undercuts concerns about TLAG.

Mr. Himmelberger said that a variance is warranted as literal enforcement of the Zoning Bylaws would involve substantial hardship owing to topography, will not affect the zoning district in which the lot is located, the hardship has not been self-created, and that 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.

Mr. Himmelberger said that a special permit is warranted as the proposed side yard setbacks will not be substantially more detrimental than the existing structure is to the neighborhood.

A Board member said that there is a severe topography issue here but the lot is fully compliant. He said that they could easily design a house that would comply. He said that he did not have a problem with the front setback but he was concerned about the side setbacks. He questioned why the design was not a little narrower and deeper into the lot. He said that this house would not even comply with the 15,000 square foot TLAG threshold. He said that he was uncomfortable with approving such a large house.

Mr. Himmelberger said that a 30 foot wide house is narrow, particularly when one is trying to take advantage of the pond view. He said that this Board has consistently found that variances are appropriate for all of the homes on this street.

The Chairman said that he did not have an issue with a variance for the front setback. He said that TLAG is a concern. He said that there were some things in the design that could have been done to make it compliant with at least a portion of the regulations. He asked about other designs that were considered

before coming before the Board. Mr. Iacocca said that to maintain the amount of area that clients wanted in the home, they could make it more narrow but that would push it further back. He said that because the grade drops off steeply down to the pond, it lowers the average existing grade. He said that they would run into an issue with exceeding the height limit of the home. The Chairman asked why the upper level is above the garage at the street. Mr. Iacocca said that it was the preference of the client to not have a reverse living situation. He said that they considered a flat roof early in the process but they wanted something more traditional. He said that they were using the neighbors' setbacks as a guide to make the design work. He said that a front facing garage at 24 feet wide does not leave a lot of width for the entry and spaces off to the side. He said that they tried to utilize as much width as they could get.

Mr. Himmelberger said that 81 Russell Road is same width at 70 feet. He said that the Board granted a variance for a 12 foot side yard setback on the side that is closest to 89 Russell Road.

Mr. Iacocca asked if the Board members had seen the two tier landing at the back. He said that right now the basement walks out to the first tier. He said that there is a retaining wall that drops eight to nine feet. He said that they wanted to stay back as much as they could from that. He said that the basement ceiling height is pretty high already. He said that a narrow house that goes further into the lot would be more visible from the neighbors' space. He said that the plan is to preserve and repair the existing retaining wall.

The Chairman said that rather than changing dimensions to reconfigure the living space, the Board is saying that the living area is too big. He said that it is one-third greater than the threshold in the Large House Review (LHR) bylaw for a 10,000 square foot lot and would be above the threshold for a lot in a 15,000 square foot district. Mr. Himmelberger said that it will not be viewed by anybody. He said that the abutters say that they will not view it because they face out to the pond and it cannot be seen from the pond. The Chairman said that it is more than simply seeing. He said that they will be filling up the lot and that is part of what LHR is about as well. Mr. Himmelberger said that the lot coverage is satisfactory.

The Board said that it does not want to see a wall of building that fills up the lot. The Board said that it is a public road and a beautiful place to walk. Mr. Himmelberger said that from the street it is a modest structure. He said that there will not be much difference in the aperture around the façade from 81 Russell Road. The Board said that 81 Russell Road has a wider side yard. Mr. Himmelberger said that you will not see it walking up the street or from the pond. He said that the idea of TLAG is to help minimize the appearance of largeness. He said that there are no vantage points here to see the largeness.

A Board Member asked if there will be a view of the pond from the house. Mr. Himmelberger said that you can see it from the inside out but a normal pond user will not see it. He said that they will not be taking any trees down except for a small tree that is leaning. He said that the trees are protected by Wetlands Regulations.

The Chairman said that the LHR bylaw does not talk about largeness that you cannot see. He said that this Board is cognizant of the fact that the WPC makes detailed findings to minimize any impacts to the site from construction. He said that the neighbors are supportive of the project. He said that the side setbacks are fairly routine up and down the street because of the way that the houses were built and the size of the lots. He said that the lot is 70 feet across and is not wide. He said that they will be improving the setbacks and do not believe it will be substantially more detrimental than the pre-existing structure. He

said that they see this as a house that is consistent with what is being built on the street and what will be built on the street.

Mr. Iacocca said that on the TLAG Calculation Plan, Basement Area 1 Floor Plan, areas N and O are all air. He said that it is open down to below and is not usable square footage. He said that is almost 1,000 square feet. A Board Member said that there is floor at that level. Mr. Iacocca said that if they design a narrower house, they will still have the issue with the grade dropping off. The Chairman said that the Board recognizes that the lots in this area of Russell Road are tough in terms of size, shape and topography but this would be the largest house on the street.

A Board Member said that the house is almost 42 feet high on the rear elevation. Mr. Iacocca said that looking at the house to the right if you are facing 89 Russell Road, this will be inches below that. He said that the height will also be below the house to the left. He said that they could go back more into the lot but they would be looking at a reverse living situation or a flat roof.

Mr. Himmelberger said that they could agree to put screening in along the sides, horizontal to the street. He said that then one would only see the street facing façade, which would eliminate the concern about seeing down along the house. A Board Member said that is not the concern. He said that there is greater space between the other houses.

The Chairman asked about the three air conditioning units. A Board Member said that the intent of the setbacks of air conditioning units is for sound. The Chairman said that the Board would like to see specifications for noise for the air conditioning units. Mr. Himmelberger said that the units are shown on the left side of the site plan. He said that the plan does not show the eight arbor vitae that will run along the property line. Mr. Iacocca said that the units will be underneath the side entry ramp where the window is. He said that he asked the General Contractor about the noise and was told that it will not be an issue. The Chairman said that one of the things that the Petitioner is asking for is a variance for the air conditioners and the Board has no information on what they are. Mr. Himmelberger said that the abutter has said that he has extra insulation on the sides of his house and has no issue with the units being there. The Chairman said that information is not in any letter that the Board received from abutters. Mr. Himmelberger said that if the units were put at the rear, they would be exposed to the neighbor and his patio area, which is why the neighbor prefers the proposed location. He said that the side yard setbacks will almost be doubled from 6.8 to 12.5 feet. He said that if the Board wanted to have lattice work around the air conditioners in addition to the arbor vitae screening, the Petitioner would be willing to accept that as a condition.

Ed Jacobs, 97 Russell Road, said that he has lived in the neighborhood for 20 years. He said that he does communicate with the neighbors and in general, the neighbors support this project.

A Board Member said that the request before the Board is for two reliefs for a variance and a special permit. He asked why the whole petition is not for a variance. He said that there is a topography issue here and a variance could cover all of the relief. Mr. Himmelberger that the Board issued a variance for front yard setback and a special permit to improve a side yard setback at 81 Russell Road that would still be noncompliant.

A Board Member said that the house is nicely designed but is too bulky. He said that he would need to be convinced that they tried hard enough to comply with the setbacks, at least to better than what is proposed, and maybe bring it closer to the street. He said that the 800 square foot balcony adds to the TLAG and bulk of building. He said that the ramp takes up space in the side yard. Mr. Himmelberger said that these side yards are not physically usable for activity because of the steepness of the slope. The Board said that they let sun and air onto the property as well as provide for fire safety. Mr. Himmelberger said that the Building Code addresses fire safety. He said that the neighbor has a super insulated house because of solar power and does not look out to the side. He said that they can put screening at the front to screen the side from the street. He said that these are unique properties that are focused on the rear view.

A Board Member said that the Board is often confronted with speculative builders who try to fit as much as they can on a lot. Mr. Magpiong said that it is not the builder who is trying to get the most out of it. He said that they moved from California about 15 years ago. He said that they bought a home in California four years ago, thinking that was where they wanted to retire. He said that they found this property on the east side of a body of water and his wife loves sunsets. He said that they decided that this is where they want to be and where they want to have their children and grandchildren visit. He said that this is their dream home. He said that they got input from the neighbors. He said that they did not want to move out into the lot to impact the neighbors' views. He said that they are trying to do the right thing. He said that the slope makes it difficult.

The Chairman discussed the LHR bylaw. He said that if the request is to exceed the limits, it is important for the Board to understand why. He said that he was sympathetic to the fact that there is open space that cannot be used. He said that if the structure had a TLAG of 4,000 or 3,800 square feet, he would not be as concerned but 4,800 square feet is a lot. Mr. Himmelberger said that the standards for LHR review include preservation of landscape. He said that they will preserve the back 50 feet of existing terraces. He said that they will retain all of the trees in the 100 foot buffer except for one leaning tree. He said that they will take out four trees that are outside of the buffer and compensate with replacements of the required caliper. A Board Member said that lot coverage will be increased from 1,339 square feet to 2,495 square feet. Mr. Himmelberger said that the Planning Board conceded that the scale and design is consistent with the neighborhood. He said that there have been no issues raised about lighting. He said that with respect to open space, the house will not be visible from the pond in any significant way. He said that they satisfied drainage requirements through compliance with the WPC Order of Conditions. He said that with respect to circulation, there is no parking on the existing site and the plan is to add a two-car garage with parking in front of it. He said that even if the Board was to apply LHR criteria, it could still find that this is satisfactory and compliant with the goals of LHR. He said that there should be some weight to the immediate abutters and the neighborhood because this is a unique section of street in Wellesley overlooking the pond.

The Chairman said that doubling the footprint takes away open space but they will be treating the remaining open space appropriately. He said that he was struggling with the scale of the building.

A Board Member said that his biggest concern is the elevation from the pond. He said that the screening might not be there in perpetuity. He said that the rear elevation will be more than 42 feet high. Mr. Iacocca said that the basement walk out will be at the same elevation as the existing house. The Board Member said that you cannot see the existing house. Mr. Iacocca said that the existing house is

essentially the bottom two floors of the proposed house and they will add 1.5 stories over that. Mr. Himmelberger said that the façade that is closest to the pond is 34 feet, which is consistent with the other houses that are shown in the photos that were submitted. He said that the two dimensional drawing does not fairly depict the massing because the upper floor is recessed.

Catherine Johnson, Planning Board, said that the drivers of LHR that the Planning Board would be looking at are mass and scale. She said that the Town voted to approve new TLAG recommendations at Town Meeting where garage space counts, which is approximately 500 square feet for this house. She said that the Planning Board would also look at drainage and water runoff with respect to the roof runoff, stormwater and where it will go. She said that they do not want the runoff to go down the hill and into the pond. She said that it involves a certain amount of engineering to get into subsurface collection systems. She said that there is not a lot of exterior lighting but there are a lot of beautiful windows. She said that the Planning Board would be concerned about light spillage as viewed from the pond if all of the lights are on.

Ms. Johnson said that her biggest concern is mass and scale and the second is drainage, which is not addressed in the current plan. Mr. Himmelberger said that they reduced runoff to the satisfaction of the WPC. Ms. Johnson said that the Planning Board looks for a review from the Department of Public Works' Engineering Division. Mr. Himmelberger said that Engineering looked at the submittal to WPC. He said that comments from Engineering were incorporated to the satisfaction of the WPC.

A Board Member asked if there would be a hardship to the Petitioner if 1,000 square feet were cut from the building. Ms. Magpiong said that they were building space for their kids to visit, each with their own room with a bath.

The Board discussed granting a variance for the two side yards and the front yard and then having the project go through LHR. Mr. Himmelberger said that the Board has not done that in the past. He said that when there have been pre-existing nonconforming side yard setbacks and a variance is sought for the front yard setbacks, the Board has granted a variance and a special permit.

A Board Member said that this is a big deep house that has a lesser nonconformity. He said that his feeling is that it is too much. He said that he would like to see the Petitioner try to come up with an alternate design with more side yard. He said that the plans may show that it cannot be done another way. He said that they are currently offering 25 feet of horizontal side yard. He said that they may be able to take corners out of the building to reduce the perceived bulk. Mr. Iacocca said that he can scale it back. He said that because of the slope, pulling the sides in will result in an imposing design.

The Chairman said that his concern is about TLAG. He said that if the TLAG could be reduced to near 3,600 square feet with the same setbacks that are proposed, he would not have an issue. He said that the Board looks at TLAG as a measure of whether it is more detrimental to the neighborhood or not.

The Chairman said that the property is located in a Water Supply Protection District (WSPD). He said that a requirement in the bylaw is that they reinject the captured runoff from the new building, which means everything off of the roof. He said that the WPC may have other requirements for once the runoff is captured because they are concerned about sediment going into the pond. He said that the WSPD is concerned about capturing good water and putting it back into the ground.

The Board said that it would like to see information about the air conditioning units, roof runoff, and lighting from the pond view. Mr. Himmelberger said that the bylaw for LHR discusses exterior lighting. He said that they can provide details on exterior lighting. He said that Zoning cannot regulate the interior of homes. He questioned whether light from within a home is capable of being regulated by Zoning. The Chairman said that the closest that the bylaw comes to regulating lighting is requirements relating to spillage off site, which could be criteria for determining whether it would be more detrimental to the neighborhood.

The Board voted unanimously to continue the petition to August 10, 2017.

August 10, 2017

Presenting the case at the hearing were David Himmelberger, Esq., and Jane Magpiong.

Mr. Himmelberger said that the Board expressed concerns about the size of the structure at the previous hearing. He said that they took the Board's concerns into consideration and revisited the design. He said that they reduced the side yard width by four feet to increase the side yard setbacks to 14.5 feet. He said that by changing the interior design, they were able to reduce the TLAG to 3,589 square feet, which is well over 1,000 square feet less than what was originally proposed. He said that the side elevations have benefitted by removal of dormers as well as the elimination of the ramp access on the left. He said that the greatest impact of the redesign affects the rear elevation. He said that it is now a traditional roof with gables. He said that they eliminated a larger covered dormer, roof deck and covered roof deck for a significant reduction in massing. He said that they opened about half of the basement to a covered patio. He said that significant amounts of glass were reduced, which also serves to reduce the sense of massing. He said that the Board wanted more detail for the lighting. He said that they submitted a plan that shows the location, wattage and lumens for each light. He said that all of the sconce lights are dark sky compliant and the majority of the lights are recessed can down lights. He said that the Board had a question about the overall stormwater management system. He said that they had gone through WPC review and submitted a letter from Anthony Stella, Professional Engineer, confirming that the original design for a TLAG of 4,804 square feet captured and recharged virtually all of the stormwater generated on site. He said that the system was sized for a 100 year storm. He said that with reduced TLAG in the redesign, the system will be more than adequate. He said that the Board had concerns about the nature of the air conditioning condensers and asked for specifications. He said that they reduced the number of units from three to two and they have the lowest possible decibel rating at 56 decibels. He said that they spoke with the abutter on that side who supports the project and he said that the condensers will line up with an area of his house that he does not frequently use.

Mr. Himmelberger said that, based upon the proposed redesign of the home, they are renewing their request for a variance for the front yard setback and special permits for the right and left side yard setbacks and a finding that the proposed structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. A Board Member said that a variance is needed for the air conditioning condensers.

The Chairman said that the revised plans responded to Board's concerns in a fairly creative way.

A Board Member asked if the Petitioner looked to see if there was any other place else to put the air conditioners. Mr. Himmelberger said that the issue is that to put them at the rear of the structure in a conforming location would put them more in line with the neighbors' views on either side. He said that the focus of the neighbors and the Petitioners is to use the outdoor space. He said that a neighbor expressed a preference that the condensers not be visible at the rear. He said that they reduced the number from three to two. Ms. Magpiong said that the neighbor's bedroom is at the pond side. She said that having the condensers half way up will not bother them but moving them to the rear will. Mr. Himmelberger said that proposed planting of a line of arbor vitae along the property line is shown on the plot plan.

The Board said that topography and soil conditions are issues here.

There was no one present at the public hearing who wished to speak to the petition.

Statement of Facts

The subject property is located at 89 Russell Road, in a 10,000 square foot Single Residence District, in a Water Supply Protection District, with a minimum left side yard setback of 6.9 feet and a minimum right side yard setback of 6.8 feet.

The Petitioner is requesting a Variance and/or a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII, Section XIX, Section XXIV-D and Section XXV of the Zoning Bylaw that demolition of an existing nonconforming structure with less than required left and right side yard setbacks and construction of a new structure with less than required front yard, left and right side yard setbacks, and installation of air conditioning condensers with less than required left side yard setbacks, 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.

Letters to Zoning Board of Appeals, dated 6/2/17 and 8/2/17, from David J. Himmelberger, Esq., a Plot Plan, dated 5/22/17, revised 5/31/17 & 8/3/17, stamped by Bradley J. Simonelli, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 5/25/17, revised 8/3/17, and letter to Zoning Board of Appeals, dated 8/3/17, prepared by Mark Iacocca, letter to Zoning Board of Appeals, dated 7/28/17, from Anthony Stella, P.E., Site Engineering Consultants, Inc., Specifications for Evolution Variable-Speed Air Conditioner Model 189BNV, and photographs were submitted.

On July 5, 2017, the Planning Board reviewed the petition and recommended that the Variance and Special Permit be denied.

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 topography and soil conditions of the lot, 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 is granted for demolition of an existing nonconforming structure with less than required left and right side yard setbacks and construction of a new structure with less than required front yard setbacks, in accordance with the revised plot plan and construction drawings.

Therefore, a Variance is granted for installation of two air conditioning condensers with less than required left side yard setbacks, in accordance with the revised plot plan and construction drawings.

It is the opinion of this Authority that although demolition of an existing nonconforming structure with less than required left and right side yard setbacks and construction of a new structure with less than required left and right side yard setbacks is increasing a nonconformity, such increase shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for demolition of an existing nonconforming structure with less than required left and right side yard setbacks and construction of a new structure with less than required left and right side yard setbacks, in accordance with the revised 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, the Variances shall expire one year after the date time stamped on this decision.

If construction has not commenced, except for good cause, the Special Permit shall expire two years after the date time stamped on this decision.

1201 AUG 24 A 11:55
2017

ZBA 2017-64
Petition of Glen Magpiong
89 Russell Road

Planning Board
Planning Board
Planning Board
1501 AUG 24 A.M. 56

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, Acting Chairman


Robert W. Levy


Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm

