

TOWN OF WELLESLEY



MASSACHUSETTS

## ZONING BOARD OF APPEALS

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ZBA 2017-92

Petition of Olimpiu Dejeu, Olga Boric & Frederick & Margaret Klingmeyer  
28, 30 & 32 River Ridge

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, December 7, 2017, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Olimpiu Dejeu, Olga Boric & Frederick & Margaret Klingmeyer requesting Variances pursuant to the provisions of Section XVIII and Section XIX of the Zoning Bylaw to reconfigure the lot lines for the existing lots, and thereafter submit ANR plans to the Planning Board. The primary objectives are to remove existing encroachments from 30 River Ridge to 32 River Ridge, to reallocate the existing frontage in front of 28 and 30 River Ridge Road, and to remove a section of the rear yard of 30 River Ridge, adding it to 28 River Ridge, in order to raze the existing home at 28 River Ridge and construct a new single family residence in the rear of 28 River Ridge. The properties are located at 28 River Ridge, 30 River Ridge and 32 River Ridge, in a 10,000 square foot Single Residence District and a Water Supply Protection District.

On November 16, 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. and Olimpiu Dejeu, Petitioner.

Mr. Himmelberger said that the subject properties are located at the corner of River Ridge. He said that all of the existing homes at 28, 30 and 32 River Ridge are nonconforming. He said that the Petitioners are seeking a number of variances to eliminate a current encroachment issue in which a portion of 30 River Ridge continues to encroach on 32 River Ridge despite prior efforts to correct that issue. He said that to balance the nonconforming frontages at 28 and 30 River Ridge where currently the frontage is 10 feet for 30 River Ridge and 45 feet for 28 River Ridge, the Petitioners propose 24 feet of frontage for 30 River Ridge and 31 feet of frontage for 28 River Ridge. He said that the last variance would be to take a portion of the rear of 30 River Ridge and add it to 28 River Ridge for the purpose of coming back in the future to build a home within a buildable envelope at the rear of 28 River Ridge, outside of the 200 foot River Front Protection Area.

Mr. Himmelberger said that there is a building overhang over the property line noted on the plan. He said that moving the property line slightly by 1.29 feet will eliminate that encroachment and in exchange for that make the rear shed conforming and add some land to 32 River Ridge, which is the smallest of the parcels at 3,784 square feet. He said that the Planning Staff correctly pointed out that the proposed changes will create new lots that are subject to Table 3, Section XIX of the Zoning Bylaw. He said that the Petitioners are seeking variances from requirements for lot size and frontage. He said that between 32 and 30 River Ridge they are seeking to remove an overhang encroachment and add land to 32 River

Ridge. He said that the second request to change the frontages at 28 and 30 River Ridge to 31 and 24 feet instead of 45 and 10 feet. He said that will give more frontage to 30 and will reduce frontage for 28 River Ridge, albeit with the understanding that the 31 feet of frontage will only be used for the driveway that will go to the rear of 28 River Ridge. He said that by better balancing the two frontages they will remove some nonconformities. He said that 30 River Ridge currently does not have a conforming side yard setback. He said that the setback will increase to 24 feet to the proposed lot line. He said that the existing structure at 28 River Ridge will be razed and removed. He said that they will seek permission in a variance to remove a rear section of 30 River Ridge and add it to 28. He said that 28 River Ridge will become a flag or pork chop lot. He said that a prior owner had come before the Board on numerous occasions trying to do something with the property at 28 River Ridge. He said that given the grossly inadequate side yard setbacks and the fact that the lot was so narrow at 45 feet, that was an impossibility. He said that the Petitioners are looking to reconfigure 28 by adding a rear portion of 30 River Ridge, with the intention of constructing a single family dwelling within the building envelope and outside of the 200 foot buffer in the future.

A Board member said that after looking through the materials that were submitted, it appears that the Petitioners are asking for property conveyances. Mr. Himmelberger said that the Petitioners are seeking permission to reconfigure the property lines so that when they go to the Planning Board for an ANR or subdivision, the Planning Board can approve it because the reconfigured lot lines will be legal. He said that it is predicate to going to Planning Board to get permission to record new plans at Registry of Deeds.

The Chairman said that what is proposed makes a great deal of sense and will be good for the neighborhood.

Mr. Himmelberger submitted letters of support from neighbors at 34, 38, 39, 41, and 42 River Ridge.

The Chairman asked about the 10 foot right of way that passes through the lots. Mr. Himmelberger said that it is an old MDC right of way that was the subject of a prior zoning action in which it was confirmed that the MDC had no interest in that parcel. He said that it dates back to 1994. Mr. Dejeu said that he had submitted a letter that stated that the MDC abandoned the right of way. The Chairman said that the Petitioners may want to show a note on the plans that the right of way has been abandoned.

Myriam Spiegel, 46 River Ridge, said that she has concerns and doubts that a fair judgment will not be deliverable today because Mr. Walter Adams is a resident on River Ridge. She said that he lives probably no more than 200 feet from the Petitioners and is a member of the Zoning Board. She said that there is a blatant conflict of interest and a high possibility of abuse of powers. She said that she believes that Mr. Adams, who is part of this Board, has already drawn a conclusion and does not intend to be swayed by any arguments presented tonight. She said that it seems that there is a habit in River Ridge for certain residents to abuse Zoning variances concerning the laws of setback, open space and maximum footprint allowed per lot. She asked to kindly remind the ZBA that they hold the position that they have in order to make sure that the laws are respected and any kinds of undue influences are against the law and contrary to their duty towards the town and the community as a whole.

Ms. Spiegel said that there a lot of problems on River Ridge. She said that Mr. Adams seems to favor people to break the law by asking for variances. The Chairman said that Mr. Adams is not sitting on this case. He said that Mr. Adams is an associate member of the Board. He said that the Board varies who

sits on cases to make sure that they do not have conflicts of interest. He said that Mr. Adams is not telling this Board how to vote and he has not spoken to the Board about what he likes or does not like.

The Chairman asked if Ms. Spiegel has a specific objection to what the Petitioners are proposing to do with their property. Ms. Spiegel said that the case presented today is a perfect example of the consequences of disregarding Zoning and Building Codes, including minimum setbacks, minimum open space and maximum footprint allowed per lot. She said that she welcomes some aspects of the requested variances today, as they reduce the mess and burden that crowded structures create. She said that the 30 River Ridge west side setback is increased from a nonconforming 11 feet to 21 feet, which leaves only one nonconforming setback on the east side. She said that she also welcomes the one foot setback on the east side of that same house from zero to what looks like one foot. She said that, unfortunately, that is not enough but it is better than it is now, as part of 30 River Ridge is currently on 32 River Ridge's land.

Ms. Spiegel said that regarding the other aspects of the requested variance, she cannot support it unless some clarifications and modifications are met. She said that she needs to know the square footage of the house that might be built at 28 River Ridge. She requested a complete guarantee that the newly built house at 28 River Ridge will conform to all Zoning standard requirements with the exception of the 90 foot frontage. She said that it should have a rear setback of least 20 feet, a side setback of at least 20 feet on both sides and a front setback of at least 30 feet and an open space of at least 15,230 square feet.

Ms. Spiegel said that the newly built house at 28 River Ridge must have adequate parking on the premises to accommodate the size of the new house plus at least two extra parking spaces for their guests. She said that the reason for the request is to try to remedy the parking chaos that plagues 28 to 38 River Ridge. She said that the past neighbors at 28 and 30 River Ridge and the current neighbor at 32 River Ridge fought among themselves because of parking spaces. She said that 36 River Ridge, the house of Mr. Adams, does not have enough open space to accommodate a driveway. She said that part of Mr. Adams' driveway belongs to his neighbor at 38 River Ridge, which caused the previous neighbor at 38 River Ridge to lose a potential buyer.

Ms. Spiegel said that for the ones that have children and grandchildren from 28 to 38 River Ridge, because the laws of setback, open space and maximum footprint allowed per lot have been butchered and grossly disrespected, they have almost no lawn for children to play, so the street has become their common playground. She said that they are often seen playing football, baseball and everything else. She said that it is dangerous.

Ms. Spiegel said that regarding 30 River Ridge, she would like assurance that the footprint will not be modified unless the house razed and a new one is built at the back of 30 River Ridge that respects all the laws regarding setback, open space and maximum footprint allowed for this lot, without any Zoning and building variances except for the 90 foot frontage.

Ms. Spiegel said that the houses from 28 to 40 River Ridge are close to each other like sardines because 28, 30, 32, 34 36 and 38 River Ridge have enlarged their houses by abusing Zoning requirements and seeking variances regarding setback and open space. She said that 42 River Ridge, her primary abutter, is at his minimum open space and its maximum footprint allowed by law and some of the setbacks are nonconforming. She said that part of 42 River Ridge's shed is on 38 River Ridge's land. She said that the narrow channels between the houses restrict first responders and firefighters, increasing the threat of

spreading fire house to house, endangering her family, the people in those houses, and the forest that abuts all the homes, the beautiful fauna and flora and the gorgeous hawks that fly so happily in the sky. She said that it is a gross negligence.

Ms. Spiegel said that variances exist only to be used sparingly and definitely not at will just for the sake of having a bigger house and because of connections to this Zoning Board, thinking that this is a done deal. She said that there is no such thing as a done deal when it concerns her family's safety.

Ms. Spiegel said that she is mainly for the petition because it remedies some exceptions that were allowed in the past. She submitted her presentation for the Board's record.

Ben Spiegel, 46 River Ridge, said that there are open questions about the size of the building proposed at 28 River Ridge and what can be done to reduce the congestion at that corner of the street. He said that adjusting the frontage to give a little bit less to 28 and a bit more to 30 River Ridge and to reduce overlap of one building over another person's property are all benefits but they should be done only as required whereas currently most of the houses in that section of the street are on nonconforming lots that are far below 10,000 square feet and built above open space requirements.

Ms. Spiegel said that the reason that she and Mr. Spiegel are here today is because they have been told that it is a done deal and they are concerned about what is going to be built. The Chairman said that nothing about this Board is a done deal. He said that all of this property was developed prior to Zoning in Wellesley. He said that there are other parts in Wellesley where similar or worse situations exist. He said that these homeowners still have a right to use their property in a way they think they would like so long as it reasonably complies with Zoning. He said that the Board's job is to examine it and see if it makes sense. He said that the Board members have viewed this property and read all of the documents. He said that nothing voted on tonight will authorize construction of a house. He said that the Board is approving some real estate property lines being varied. Ms. Spiegel said that it is heartbreaking to see the neighbors ganging up in that corner to enlarge their houses, disrespecting everything. A Board member said that this Board will do what is appropriate under the Zoning bylaw to protect the neighborhood.

Mr. Himmelberger said that Ms. Spiegel's concerns are already addressed within the proposal. He said that she stated that she does not have a problem with correcting the encroachment at 32 and 30 River Ridge. He said that it is a good outcome to remove nonconformities and encroachments. He said that balancing the frontage between 28 and 30 River Ridge will allow 30 River Ridge to have a better driveway and more ability for parking on lot 30. He said that it is not contemplated to build a house at the rear of 28 River Ridge and leave vehicles out at the corner.

A Board member asked if the sole purpose of Parcel 2, the 68 square foot triangle, is to move the property line off the shed. Mr. Himmelberger said that it was more to offer consideration for 32 losing land, even though they will get more than what will be taken. He said that it is more of a quid pro quo. The Board member said that some things will get better and some things will be worse but in the future perhaps some of the things that are worse may get better. Mr. Himmelberger said that the motivation for the wedge was the consideration to the Klingmeyers, who own 32 River Ridge, in order for them to convey the small strip to remove the encroachment from 30 River Ridge. He said that they asked for the wedge that has the benefit of making the shed no longer straddling the property line.

The Chairman said that any house to be built at 28 River Ridge will have to come before the Board. Mr. Himmelberger said that the proposed building envelope indicates that it will only be built within the appropriate setbacks. He said that frontage on River Ridge will be insufficient.

A Board member said that the best that the Petitioners could do would be to add all of the parcels together and then divide by three. He said that they would end up with three lots that have sufficient area but still have other issues such as frontage. Mr. Himmelberger said that, of the three lots, two of them have more than sufficient area that will remain. He said that 32 River Ridge's area will increase slightly to 3,784 square feet. He said that the number of nonconformities will be significantly reduced, just with the removal of the nonconforming structure at 28 River Ridge. He said that the house that will be sought to be placed at 28 River Ridge in the future will be fully conforming. He said that they are not simply rearranging nonconformities but eliminating some of them and in the process are able to construct a home at the rear of 28 that will be dimensionally compliant setback wise. He said that the existing house at 28 River Ridge is not dimensionally compliant and there is no way to make that a meaningful structure given the fact that it is a 45 foot wide lot. He said that the goal is to build a conforming structure at the rear of 28 that is fully conforming with the single exception of inadequate frontage. A Board member said that it will be a larger house. He asked if anyone had looked at building at the rear of 30 River Ridge. Mr. Himmelberger said that the Riverfront Protection Area setback does not allow for much at 30 River Ridge. He said that 30 has been improved over the years in its interior. He said that it is nowhere as deficient as 28 River Ridge is.

The Board voted unanimously to close the public hearing and schedule a public meeting for December 15, 2017.

December 15, 2017

A Board member said that the background is to help 28 become a real property that benefits 30 because of the side yard increase and 32 removes a nonconformity. He said that it does not change the marketability for 32 but does for the others. He said that it straightens out existing problems where there may not be other ways to straighten them out.

A Board member said that relief for 28 River Ridge will be for 31 feet of frontage where 90 feet is required. He said that the existing house will be razed. He said that relief for 30 River Ridge is for 24 feet of frontage, with a front yard setback of 23.4 feet and a right side yard setback of 1.62 feet. He said relief for 32 River Ridge is for a 3,784 square foot lot with 15 feet of frontage, a 3.7 foot right side yard setback and a 5.1 foot rear yard setback. He said that the existing sheds will be conforming if they are 100 square feet or less.

The Board said that the decision as to whether the Petitioner will have to come back before the Board to construct a new conforming dwelling on the property at 28 River Ridge will be subject to a determination by the Building Inspector.

Statement of Facts

The subject properties are located at 28, 30 and 32 River Ridge, in a 10,000 square foot Single Residence District and a Water Supply Protection District.

28 River Ridge was built in 1883 and consists of 13,041 square feet, with a minimum frontage of 45 feet, a width of 45 feet over the entirety of the lot, a minimum front yard setback of 21 feet, and a minimum side yard setback of 11.4 feet.

30 River Ridge was built in 1909 and consists of 18,524 square feet, with a minimum frontage of 10 feet, a minimum front yard setback of 23.4 feet and a minimum side yard setback of -.33 feet.

32 River Ridge was built in 1909 and consists of 3,758 square feet, with a minimum frontage of 15 feet, a front yard setback of 38.4 feet, a minimum side yard setback of 3.7 feet and a minimum rear yard setback of 5.1 feet.

The Petitioner is requesting variances pursuant to the provisions of Section XVIII and Section XIX of the Zoning Bylaw to reconfigure the lot lines for the existing lots, and thereafter submit ANR or Subdivision plans to the Planning Board. The primary objectives are to remove existing encroachments from 30 River Ridge to 32 River Ridge, to reallocate the existing frontage in front of 28 and 30 River Ridge, and to remove a section of the rear yard of 30 River Ridge, adding it to 28 River Ridge, in order to raze the existing home at 28 River Ridge and construct a new single family residence in the rear of 28 River Ridge in the future.

Letters to Zoning Board of Appeals with enclosures, dated 10/30/17, 10/31/17 & 12/10/17, from David J. Himmelberger, Esq., re: Request for Variances, 28, 30, 32 River Ridge Road, Wellesley, Plan of Land, dated 10/25/17, stamped by David W. Humphrey, Professional Land Surveyor, and photographs were submitted.

On November 29, 2017, Joshua Van Houten, Wellesley Department of Public Works, Engineering Division, reviewed the petition and submitted comments.

On December 5, 2017, the Planning Board reviewed the petition and recommended that the variances be granted.

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 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 XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw is granted for the property at 28 River Ridge to decrease the existing frontage of 45 feet to 31 feet where 90 feet is required, subject to the following condition:

- The existing nonconforming structure shall be razed, effective upon recording of an ANR or Subdivision Plan that has been approved by the Planning Department.

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 XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw is granted for the property at 30 River Ridge to increase the existing frontage of 10 feet to 24 feet where 90 feet is required, to maintain the existing front yard setback of 23.4 feet where 30 feet is required and increase the existing side yard setback of -.33 feet to 1.62 feet where 20 feet is required.

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 XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw is granted for the property at 32 River Ridge to increase existing lot size of 3,758 square feet to 3,784 square feet in a district in which the minimum lot size is 10,000 square feet, to maintain existing frontage of 15 feet where 90 feet is required, maintain an existing right side yard setback of 3.7 feet where 20 feet is required and maintain a rear yard setback of 5.1 where 18 feet is required.

These Variances shall expire one year after the date time stamped on this decision.

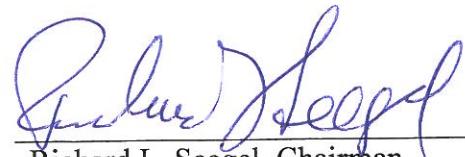
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ZBA 2017-92

Petition of Olimpiu Dejeu, Olga Boric, Frederick Klingmeyer  
28, 30 & 32 River Ridge

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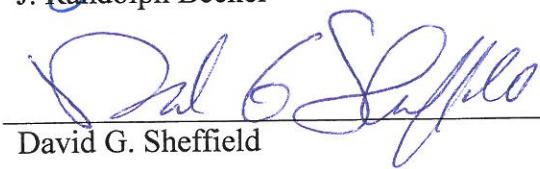
APPEALS FROM THIS DECISION,  
IF ANY, SHALL BE MADE PURSUANT  
TO GENERAL LAWS, CHAPTER 40A,  
SECTION 17, AND SHALL BE FILED  
WITHIN 20 DAYS AFTER THE DATE  
OF FILING OF THIS DECISION IN THE  
OFFICE OF THE TOWN CLERK.



Richard L. Seegel, Chairman



J. Randolph Becker



David G. Sheffield

cc: Planning Board  
Inspector of Buildings  
lrm

