

**ZONING BOARD OF APPEALS**

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ZBA 2009-51
Petition of Gordon Saperia
5 Intervale Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, August 6, 2009 at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of GORDON SAPERIA requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of a 13.2 foot by 19.5 foot deck with less than required left side and right side yard setbacks, on a 4,671 square foot lot in a district in which the minimum lot size is 10,000 square feet, at 5 INTERVALE ROAD, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On July 20, 2009 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 was Gordon Saperia (the "Petitioner"), who said that the proposal is to build a new deck at the back of the house.

Mr. Saperia said that the house is nonconforming on the left and right sides. He said that the lot is undersized for the district. The Board said that the front yard setback is also nonconforming, as well as the frontage.

Mr. Saperia said that what is labeled as a porch on the plot plan was a porch when the house was built. He said that it was converted into two front rooms and insulated.

The Board said that the stairs that come down from the deck are closer to the lot line than the back of the house. The Board said that if the stairs were rotated 90 degrees either toward or away from the house, it appears that they would fall within the line of the house and would not create an additional nonconformity.

Mr. Saperia said that multiple options for positioning the stair were discussed with the builder and the Building Inspector.

Mr. Saperia said that he would be willing to rotate the stairs to improve the design. He said that there is a door in the basement at the back of the house that allows for better egress with the stairs in the currently proposed position.

The Board said that it was concerned that eight or nine stair risers might not be enough. The Board said that it was concerned that the stair might have to be longer and closer to the side property line. The Board said that there could be a three foot landing with the stairs rotated 90 degrees.

The Board said that elevation drawings were not submitted. The Board asked for a description of how the deck will look from the back. Mr. Saperia said that the deck will be placed at the level of the first floor, above the back door and the slider. He said that the area under the porch will be open. He said that access to the deck will be through sliders that will replace the existing windows. He said that they will use state-of-the-art synthetic building materials. He said that the deck has been designed to meet all of the Building Code requirements.

Mr. Saperia said that he had spoken with his neighbors about his plans.

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 5 Intervale Road, on a 4,671 square foot lot in a district in which the minimum lot size is 10,000 square feet, with a minimum front yard setback of 28.7 feet, a minimum left side yard setback of 9.5 feet, and a minimum right side yard setback of 11.2 feet.

The Petitioner is requesting a Special Permit/Finding that construction of a 13.2 foot by 19.5 foot deck with less than required left side and right side yard setbacks, on a 4,671 square foot lot in a district in which the minimum lot size is 10,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated 6/29/09, stamped by Antoni Szerszunowicz, Professional Land Surveyor, Existing and Proposed Floor Plans, dated 7/1/09, prepared by D & L. Design, and photographs were submitted.

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 finding of this Authority that although construction of a 13.2 foot by 19.5 foot deck with less than required left side and right side yard setbacks, on a 4,671 square foot lot in a district in which the minimum lot size is 10,000 square feet 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 construction of a 13.2 foot by 19.5 foot deck with less than required left side and right side yard setbacks, subject to the condition that:

- The stair from the deck shall be rotated 90 degrees, such that it does not create a new nonconformity.

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 Special Permit shall expire two years after the date time stamped on this decision.

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

David L. Grissino

cc: Planning Board
Inspector of Buildings
lrm