

**ZONING BOARD OF APPEALS**

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ZBA 2009-70
Petition of Kenneth Der
38 Lincoln Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, November 5, 2009, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of KENNETH DER requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of a 15 foot by 24 foot two-story addition, on an existing nonconforming structure with less than required right side yard setbacks, in a 20,000 square foot Single Residence District, at 38 LINCOLN ROAD, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On September 21, 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 were Mauricio Meyer and Kenneth Der (the "Petitioner"). Mr. Meyer said that Mr. Der had an addition built approximately 10 years ago. He said that, at the time, everything appeared to be in order. He said that the land was recently re-surveyed and it was found that the addition was located in the setback area approximately 3.5 feet.

Mr. Meyer said that the proposed addition will be at the back side of the property. He said that it will be 50 feet from the 20 foot side yard setback.

Mr. Meyer said that the property has two garages. He said that one was built about ten years ago and the other one was probably built when the house was built.

The Board said that the plans and the elevations of the proposed addition do not match. The windows are reversed on the second floor.

The Board said that the existing plot plan shows the addition centered on the back. The architectural drawings show that the addition is right out to the eastern edge of the structure and not centered. Mr. Der said that the intent was to bring it to the edge.

The Board said that it will need to see corrected plans, including a corrected plot plan, elevations and construction drawings. The Board said that the existing plans have no labels, so it is difficult to figure out what is new construction versus what is existing. The Board said that those plans should be corrected. The Board said that the plot plan that was submitted is listed as "Existing" even though it shows the

proposed addition. The Board said that the shading should be adjusted on the plot plan so that it is easier to distinguish the new construction from the existing construction.

Natalie Starr, 42 Lincoln Road, said that she is the neighbor on the east side. She said that a huge addition was put on the house ten years ago that greatly diminished the attractiveness of their property. She said that the addition looms over their house and yard. She said that she was upset to hear that the addition is nonconforming. She requested that if further additions are made to the building, that the nonconforming setback be corrected.

The Board said that when a property is built with a Building Permit from the Town, even though there may have been a mistake made by the owner or the Town, after five years, the property is grandfathered. The Board said that this is now a valid nonconforming structure.

Ms. Starr said that there is a history of this type of thing with this particular house. She said that when they first moved in they found the neighbors cutting back the bushes on the Starr's property.

Ms. Starr asked about the height of the addition. Mr. Meyer said that the addition will be the same height as the house. Ms. Starr said that the house is on top of a hill. She asked if any fill will be brought in. Mr. Meyer said that there will not be any fill brought in.

The Board said that although the roofline is being extended, it will be for a hip roof, so the apparent size will be smaller at the rear.

Brooke Asnis, 30 Lincoln Road, said that they just had the land surveyed on their side of the property. She said that the driveway on the side where the old garage is infringes on their property by approximately five feet. She said that they are working with a landscape architect to define that side of their property. Mr. Der said that he had not moved the driveway. The Board said that the plot plan shows the encroachment of the driveway.

The Board said that there are no bounds shown on the plot plan. The Board said that a condition for granting a Special Permit will be that bounds be put in at all corners of the plot plan by a registered land surveyor and that any encroachments be removed from the abutting properties. The Board said that the plot plan must have dimensions on it.

The Board voted unanimously to continue the petition to November 5, 2009.

November 5, 2009

Presenting the case at the hearing was Mauricio Meyer. He submitted a photograph of the portion of the driveway that had encroached on the neighbor's property. The photograph showed that the encroachment had been removed. He said that the neighbors will be doing landscape work there.

The Board said that the petition was being heard "de novo." Mr. Meyer gave a project overview. He said that the plan is to construct an addition at the back side of the house that consists of a 15 foot by 24 foot playroom on the first floor with a full foundation and basement. He said that there will be a closet and bathroom on the second floor of the addition.

Mr. Meyer said that the height of the structure will not be changed.

Mr. Meyer said that the small addition will increase lot coverage from 5.8% to 5.92%.

The Board said that dimensions were added to the Plot Plan. Mr. Meyer said that monuments are shown on the corners of the lot on the Plot Plan.

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 38 Lincoln Road, on a 39,229 square foot lot in a 20,000 square foot Single Residence District, with a minimum right side yard setback of 16.5 feet.

The Petitioner is requesting a Special Permit/Finding that construction of a 15 foot by 24 foot two-story addition, on an existing nonconforming structure with less than required right side yard setbacks shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated 2/23/09, stamped by Martin F. Rooney, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 3/15/09, prepared by Residential Engineers, Inc., and photographs were submitted.

On October 7, 2009, the Planning Board reviewed the petition and had no objection to granting the request.

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 construction of a 15 foot by 24 foot two-story addition, on an existing nonconforming structure with less than required right side yard setbacks shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure as it shall neither increase an existing nonconformity nor shall it create a new nonconformity.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing for construction of a 15 foot by 24 foot two-story addition on an existing nonconforming structure with less than required right side 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 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.

Richard L. Seegel, Chairman

J. Randolph Becker

David L. Grissino

cc: Planning Board
Inspector of Buildings
lrm