

TOWN OF WELLESLEY



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ZONING BOARD OF APPEALS

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ZBA 2022-48
Petition of John & Loraine O'Hanlon
38 Cypress Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, July 7, 2022, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of John & Loraine O'Hanlon requesting a Variance pursuant to the provisions of Section 19 and Section 24 of the Zoning Bylaw for construction of a one story addition with less than required right side yard setbacks, on an existing conforming structure, at 38 Cypress Road, in a 20,000 square Single Residence District.

On June 9, 2022, 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WITHDRAWN WITHOUT PREJUDICE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 at the public hearing were David Himmelberger, Esq., and John and Loraine O'Hanlon, the Petitioner.

Mr. Himmelberger said that the request is for a variance to build a 7.5 foot by 13 foot one story addition with a right side yard setback of 14.5 feet. He said that previously, in ZBA 2021-21, ZBA 2021-29 and ZBA 2021-46, his client unsuccessfully sought Zoning relief to change the common lot line between 38 and 44 Cypress Road, which are both owned by his client. He said that they initially sought a special permit and the Board concluded that it did not have jurisdiction to make a Section 6 Finding to increase a build factor that was in excess of 20 and would go to 24. He said that they came back and sought a variance for the build factor and the Board concluded that it did not have jurisdiction, as there was no modification being sought for a building. He said that current request is for a variance to allow construction of a small addition to allow for additional work space to be built onto his clients' son's bedroom area. He said that their son is physically disabled and is confined to a wheelchair. He said that due to his condition, and the fact that he has been working from home during the pandemic, this small work space that they seek to build would result in about 50 square feet of encroachment in the side yard setback, with the side yard setback running anywhere from 14.5 feet to 17.2 feet. He said that the area

where the addition is sought to be built abuts the rear yard of the property at 44 Cypress Road, which is subject to a recorded no build deed restriction. He said that as grounds for the variance, the Applicant notes the irregular shape of the lot, not generally affecting other lots in the Zoning District and that literal enforcement of the Zoning Bylaw would result in substantial hardship to the Applicants due to their son's need for accessible work space at home, and for which the irregularly shaped lot was not created, as it was created by ANR in 1954. He requested that the Board grant a variance to allow construction of this one story addition.

The Chairman confirmed that the addition will be on the first floor. He said that this is probably one of the largest lots in the town. He said that the lot is substantially larger than any others in the neighborhood.

Mr. Himmelberger said that if the bedroom that the Applicant's son occupies was located elsewhere, the variance for the addition would not be needed. A Board member asked if the addition could go on the rear wall of the son's bedroom. Ms. O'Hanlon said that putting it there would obscure the family room, leaving windows on only one side. She said that the family room opens to outdoor patio space. She said that they would lose the windows on the right side of the family room. Mr. Himmelberger said that at the lower level, there is a window egress for the basement, as shown on Plan A1.0.

The Chairman confirmed that the purpose of the addition is for a work area. Ms. O'Hanlon said that when they built the house, it was pre-pandemic and their son was a High School student. She said that he has now graduated from college and works full time. She said that he spends 8 to 9 hours at a desk in a wheelchair.

The Chairman said that a home office with a door that leads into the son's bedroom is shown on Plan A1.1. Ms. O'Hanlon said that is part of the kitchen and hallway from the mudroom. She said that it is for a desk and telephone.

The Chairman said that this is a conforming lot and house. He said that the Applicant is asking for a variance to create a nonconforming appendage to the house. He said that it seems like there are other solutions, either at the rear of the bedroom or in some of the interior space. Mr. Himmelberger said that it cannot be on the rear because of the egress. He said that it abuts a no-build zone on the rear of 44 Cypress Road and it is an irregularly shaped lot. The Chairman said that it is a very large lot.

The Chairman discussed hardship. Ms. O'Hanlon said that their son has to be on the first floor because of the wheelchair. She said that he has nursing and other medical equipment in the bedroom. She said that it would be more difficult for his caregivers if they moved his work space to the opposite side of the house. She said that they specifically intended to have his care centralized in the bedroom area.

The Chairman said that it looks like two-thirds of the addition is outside of the setback. He asked if the Applicant considered putting the addition in the setback. He said that it would only be 25 percent smaller. Ms. O'Hanlon said that they tried to make it as small as possible but they need a five foot radius for the wheelchair. She said that the addition will be 7 feet deep, with 2 feet for desk/work space and 5 feet radius to be able to turn around. The Chairman said that the radius appears to be outside of the setback. Mr. Himmelberger said that the desk area is in the setback. The Chairman said that the desk could be

moved to the front or the rear of the house instead of toward the right side yard setback. Mr. O'Hanlon questioned whether that would allow for enough room to turn around.

The Chairman asked why the desk could not be moved to the area that is labeled, "open below." Mr. O'Hanlon said that would not work. He said that would give their son three feet to enter the room and would basically be too narrow.

The Chairman asked about coming closer to the front of the house, along the back of the bathroom. Mr. O'Hanlon said that is where the utilities and air conditioning condensers are located at grade.

A Board member questioned the need for the window egress. He asked if there will be more than 50 people in the gym space. He said that it is not a requirement of the Building Code. Mr. O'Hanlon said that it is the one window in the gym space. He said that the addition would also block the windows in the family eating area.

Ms. O'Hanlon said that there is no bulkhead out of the basement. A Board member said that you need two egresses out of the building. He said that you need one way out of every space unless the space is going to have more than 50 people in it. He said that this house has at least three or four exits out of the house.

Mr. O'Hanlon said that the purpose of the setback is to avoid infringing on a neighbor. He said that no one at 44 Cypress Road will see this addition when there are leaves on the trees. He said that it is about the least obtrusive addition that you could come across. He said that they spoke with the neighbor on the other side of 44 Cypress and she had no objection. He said that they spoke with the neighbor across the street and she has no objection. He said that no one is going to see this addition. He said that he did not understand the concern about intrusion into the setback when you cannot build on the back of 44 Cypress Road.

A Board member asked about changing the lot lines since the Applicant owns 44 Cypress Road. Ms. O'Hanlon said that was how they started out. Mr. Himmelberger said that the Board could not issue a finding for that because it did not involve a change to a structure. He said that when they came back and sought a variance, the Board said that it did not have jurisdiction to issue a variance. The Chairman asked about going to the Planning Board to do an ANR plan. He asked about merging the lots. Mr. Himmelberger said that there is a house at 44 Cypress Road. He said that you cannot get an ANR if it results in a Zoning violation. He said that it would be a Zoning violation, based upon the build factor being greater than 20. He said that it is already in excess of 20 but is grandfathered.

A Board member said that it is hard to meet the standards of a variance. Mr. Himmelberger said that this meets the criteria of shape of the lot. The Board member said that this is a two acre lot with a lot of alternatives. The Chairman said that building the house was a self-imposed hardship. Ms. O'Hanlon said that if they knew that there was going to be a pandemic, they would have built a home office for their son. She said that they did not know that he would be working up to 10 hours a day from home.

Mr. Himmelberger said that the hardship is the irregular shape of the lot. He said that it was not self-created, as it was created by an ANR plan in 1954.

The Chairman said that the house was built to the maximum setbacks. He asked about the size of the house. Ms. O'Hanlon said that it is approximately 5,900 square feet. Mr. O'Hanlon said that it is within the allowed TLAG for the district.

A Board member said that the hardship that the Applicant described to the Board is the loss of views out of the family room and the loss of a window in the basement. He asked if the addition will decrease the number of windows in their son's bedroom. Ms. O'Hanlon said that one window will become a door and the other window will become interior.

The Chairman said that if the concern is about turning radius, they could make the bedroom a little smaller. Ms. O'Hanlon said that they have a ceiling lift system. She said that it looks like a large bedroom but their son uses a 42 inch long wheelchair, a ceiling lift and ventilator. She said that nursing staff has to fit in there with him. He said that a nurse has to sit with him all the time. She said that with the office space, he could have a bit of privacy from the nurse. She said that they had not envisioned him having to work full-time in that bedroom.

The Chairman asked if the home office station could be reconfigured or reused. Ms. O'Hanlon said that area is open to the kitchen, so there would be no privacy for phone calls. She said that they would not want to block access from the mudroom with a wall. She said that the area is more of a kitchen desk in a hallway.

A Board member said that he was not convinced that enough creativity was placed on trying to figure out how to get extra space for their son without having to encroach into the setback. Mr. O'Hanlon said that it does not seem that the purpose of the setback will be violated. Ms. O'Hanlon said that they cannot just locate it anywhere. She said that their other two children worked from home during the pandemic, upstairs in their bedrooms but this son's nurse is downstairs.

Mr. Himmelberger said that this does not derogate from the bylaw. He said that there is a 30 year deed restriction that was imposed by the seller of the property, when the O'Hanlons bought the property from the neighbor beyond 44 Cypress Road. He said that 44 Cypress Road was always a separate lot. He said that when the owner of 42 Cypress Road sold 44 Cypress Road, she did not want building in the rear. She said that they agreed to impose a deed restriction setback. Ms. O'Hanlon said that they purchased 44 Cypress Road after they owned 38 Cypress Road. She said that 44 Cypress Road is a very wooded lot that they love. She said that they tried to move the property line to create space for the office addition for their son and to lop off some of the woods in the back to preserve the woods so that someone would not tear it all out and build a sideways mcmansion. She said that they were unsuccessful in changing the property line.

The Chairman asked about shifting the office towards the front of the house. Mr. O'Hanlon said that they would have to move all the utilities and condensers.

The Chairman said that the Board's charge is to try to make houses as conforming as possible, not to create houses with nonconformities. He said that the pandemic created a situation that is hopefully a passing event and not a permanent event.

A Board member said that the family room has a lot of windows that could be reconfigured. The Chairman said that three-quarters of the addition would be conforming. The Board member said that they could build a 3.5 foot by 12 foot bump out to pick up 75 square feet.

Mr. Himmelberger said that the proposal is for a 50 square foot intrusion in the setback. A Board member said that it is not necessary.

No member of the public wished to speak to the petition.

Mr. Himmelberger requested that the Board allow the petition to be withdrawn without prejudice.

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