

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
MONDAY, MAY 15, 2006

The Board consisted of:

Stephen M. Richmond, Chairman
Jeffrey P. Klofft, Clerk
Jonathan G. Gossels
Constantine Athanas
Jonas D.L. McCray, Alternate

Notice was published in the Sudbury Town Crier on April 27 and May 4, 2006, posted, mailed and read at this hearing.

Mr. Richmond, Chairman, explained the requirements necessary to substantiate the granting of a variance. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or District Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Attorney Robert Dionisi was present, representing the petitioner, Melissa Martinez, also present, for a Variance to legalize a portion of the dwelling having a front yard setback deficiency of 2 feet \pm at 32 Blackmer Road.

Mr. Dionisi gave a background of the property which was created by subdivision approval in 1955. In 1960 there was a residential structure located on the property. Exhibit A, which was attached to the variance application, shows a 1960 plot plan with a front yard setback of 41 feet from the nearest point of the foundation to the edge of the right of way.

The old structure was demolished and a new structure was constructed three feet further back from Blackmer Road. The Martinez's assumed that their foundation was in compliance. A plot plan of the new structure was required by the Building Inspector and the new plan shows a front yard deficiency of 1.99 feet.

Mr. Dionisi said the property is such that the back yard is particularly wet which would have precluded setting the new structure any further back. Additionally, the wet soil conditions necessitated placement of the septic system and in ground pool so as to further preclude locating the new house in other than its present location.

With regard to derogation from the intent of the Bylaw, the structure that existed for over 40 years was so located apparently in conformance with earlier setback requirements. The new structure was moved back an additional 3 feet.

The hardship that would exist would be financial from the standpoint that the new house already exists. Aside from that, the soil conditions and the existence of an in ground pool prevent relocation any further back.

For the record, Mr. Dionisi submitted letters from three abutters all of whom supported the granting of the variance.

Mr. Dionisi felt the applicants have met the criteria for the granting of a variance and requested this petition be approved.

A brief discussion followed. It appeared that an inadvertent error occurred through no fault of the applicants and that the variance criteria had been met. There were no further comments. No abutters were present. The hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Daniel J. & Melissa E. Martinez, applicants, John E. Martinez & Daniel J. Martinez, owners of property, a Variance from the provisions of Section 2600, Appendix B of the Zoning Bylaws, to legalize a portion of the dwelling having a front yard setback deficiency of 2 feet \pm , property located at 32 Blackmer Road, Residential Zone A-1."

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioners require a variance to legalize a portion of the dwelling having a front yard setback deficiency. The Board finds that the criteria for the granting of a variance has been satisfied. Specifically, with regard to soil, shape or topography, the Board finds that the excessive high water table on the rear portion of the lot would prevent location of the new structure any further back.

As to hardship, the setback deficiency was discovered only after the house was constructed. Removal of that portion which is deficient would cause a severe financial hardship.

The Board finds that this deficiency would cause no substantial detriment to the public good and will not nullify or substantially derogate from the intent of the Bylaw. The amount of deficiency is de minimus, the new structure is set further back than the previous existing structure, and three abutting property owners are on record as supporting the variance.

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Mr. Richmond, Chairman, explained the requirements necessary to substantiate the granting of a special permit. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or District Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Attorney Robert Landry was present representing Jeffrey & Lauren Harrison, also present, in a petition for special permit to construct a porch and second floor bedroom expansion which will result in a front yard setback deficiency of 8 feet at 27 Robert Frost Road. Thomas Buckborough, architect, was also in attendance.

Mr. Landry explained that this petition was previously before the Board as Case 05-41 and was withdrawn without prejudice. The principal concern of the Board at that hearing was whether the addition could be built on the side of the property therefore eliminating the need for a special permit.

Mr. Landry said after that hearing the Harrisons did give consideration to the Board's suggestion and as a result discussed this with himself and Mr. Buckborough coming up with some sketches that would achieve the desired goal which was to increase the size of two very small bedrooms at the front of the house.

During the discussion it was realized that three interior walls would have to be removed in order to build an addition on the side. This would also create a larger footprint and incur additional expense as this would most likely lead to increasing the first floor space as well. In conjunction with that, the septic system is located on that side of the house and there is also an electrical trench there. In addition, there would be conservation issues as well.

Before returning to this Board with a side addition, the Harrisons met informally with the Conservation Commission in January 2006 at which time the Commission informed them that they would have to submit an alternative which would not significantly impact the wetland. After hearing of the history and the original proposal for the addition to be in front, the Commission decided that they could not approve an addition on the side.

The Board was in receipt of a memo dated May 15, 2006 from the Conservation Commission which included the minutes of that January meeting and states that “the Conservation Commission will not approve an addition on the side of the house at 27 Robert Frost Road and would encourage the ZBA to issue a Special Permit to allow the expansion of the structure toward the street.” Mr. Landry pointed out that the addition could not be put on the other side because the garage and driveway are located there.

The applicants have therefore decided to resubmit an application for the front addition. Mr. Landry said the structure was built in 1973 on 35,975 s.f.; however, half of that property is unusable for construction as it drops off steeply towards the rear which leads to 40-foot drain easement area as well as wetlands.

The project would allow two small bedrooms to be increased in size with an increase in the size of the master bedroom as well. All of those bedrooms are located on the front wall of the house.

Mr. Landry felt there to be justification for the granting of a special permit noting it would be consistent with previous actions of the Board in similar situations. Those cases were listed on the application.

For the record, Mr. Landry submitted photographs of the property as well as views of the abutting properties. Also submitted was a petition signed by seven abutters who supported the granting of a special permit.

Discussion followed on whether the addition could possibly be moved back by 6 feet which would make it a smaller addition.

Mr. Buckborough said it would impact the inside of the house, particularly the center bedroom which is the smallest of all and which actually drove the proposed expansion. In addition, he felt the resulting 6-foot porch would not be as usable.

Although the Board preferred there be less encroachment, there was general agreement that the house would be more functional with the added amount. There were no further comments.

The hearing was then closed.

The following motion was placed and seconded:

MOTION: “To grant Jeffrey A. & Lauren B. Harrison, owners of property, a Special Permit under the provisions of Section 2420 of the Zoning Bylaws, to alter and enlarge a nonconforming structure by constructing a porch and second floor bedroom expansion which will result in a front yard setback deficiency of 8 feet \pm , property located at 27 Robert Frost Road, Residential Zone A-1.”

This Special Permit shall lapse if construction has not begun, except for good cause, within 12 months following the filing of the Special Permit approval, plus such time required to pursue or await the determination of an appeal under M.G.L., Chapter 40A, Section 17.

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioners require a Special Permit due to the nonconforming nature of the property. The Board finds that the proposed construction, which will result in a front yard setback deficiency, will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The Board finds that the applicants did due diligence in attempting to provide an alternative design which would relocate the addition to the side of the house; however, the Conservation Commission indicated it would disapprove based on wetland issues.

Although the Board would prefer there be less encroachment, there appears to be no other location other than that which is proposed. While a smaller addition would have minimal effect on the exterior appearance of the structure, the size of the interior rooms for the family members would be impacted. The Board finds that with the house being located on a cul de sac there will be less of a detriment to the neighbors. Further, several neighbors have indicated their support of this petition which they feel would be an enhancement to the neighborhood.

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