

BOARD OF APPEALS

OF THE

CITY OF WALTHAM

**Case No. 2020-36
December 15, 2020**

BRIEF

OF

JOHN BIANCHI and KAREN E. BIANCHI

The locus is a residential parcel consisting of approximately 13,670 square feet of land. The locus is known and numbered as 60 Mountain Road. An existing single family residence is situated thereon.

The locus is situated in a Residence A-2 Zoning District according to the Zoning District Map for the City of Waltham.

The Petitioners and Owners of the locus are John Bianchi and Karen E. Bianchi (the “Bianchis”). The Bianchis intend to construct, use, and maintain a single story addition onto this single family residence. A pool house adjacent to the existing in ground pool is also proposed in the rear yard.

Lots in the Residence A-2 Zoning District are currently required to have a lot area of 15,000 square feet; frontage of 80 feet; setback of 40’ (front), 20 feet (side), 40 feet (rear); and a maximum height of 35 feet. With the proposed addition to the single family residence, it shall have a front yard setback of 22.85 feet , a rear yard setback of 83.38 feet for the residence and 55.05 feet for the pool house and side yard setbacks of 12.65 feet on the south side and 4.30 feet on the north side of the residence. The pool house shall have a south side yard setback of 4.30 feet.

In 2008 The Zoning Board of Appeals granted a prior owner of the property three variances: a variance to allow the existing lot area of 13,670 square feet; a variance to allow for a north side yard setback of 3.8 feet; and a variance to allow for a front yard setback of 24.5 feet.

In order to construct the proposed addition to the single family residence and the proposed pool house side and front yard variances are required.

Variances. (1) §4.11 states that structures in a Residence A-2 Zoning District shall have a front yard setback of forty (40) feet. The 2008 Notice of Decision granted a front yard variance of 24.5 feet. Here, the proposed addition shall have a front yard setback of 22.85 feet.

(2) §4.11 states that structures in a Residence A-2 Zoning District shall have a side yard setback of twenty (20) feet. Here, the proposed side yard setbacks shall be 12.65 feet on the south side of the residence and 4.30 feet on the north side of the residence. The existing side yard setback on the north side yard is 4.30 feet. The 2008 Notice of Decision granted a variance for the north side yard setback of 3.8 feet.

(3) § 4.222 states that swimming pools and all accessory buildings related thereto shall have a side yard setback of 10 feet. Here, the proposed accessory building to the swimming pool shall be 4.30 feet from the south side yard.

(4) § 3.775 that pre-existing nonconforming single-family residential structures may be altered, reconstructed or extended provided such alteration does not increase the nonconforming nature of said structure. The Petitioner seeks relief here as the proposed alteration into the existing nonconforming south side yard setback shall be cured by the variance proposed above.

(5) In Case No. 2008-13, the Board of Appeals granted certain zoning relief to the locus property for lot area, front and side yard setbacks. The Notice of Decision provides at Condition No. 2 that all use of the property shall be substantially in accordance with the plans filed therein, excluding the width of the driveway. The Petitioners request an amendment to said Decision pursuant to § 7.2 so that all construction and use of the locus shall now conform to the plans filed herein in this current petition.

* * * *

JURISDICTION

Massachusetts General Laws, c.40A §10 and §14 authorize the Board of Appeals to grant variances as long as they are not for a use prohibited by the Ordinance. In this instance the requested variances pertain to the front yard and side yard setbacks for a addition to a single family home and a proposed accessory building to a pool. A single family residence is a permitted use in the Residence A-2 Zoning District. An accessory building to a pool is also permitted in the zoning district. Thus the use is a permitted use in the Zoning District and the variances requested are dimensional.

The Board is also authorized to modify a decision, provided the required procedures of the statute are followed. In *Huntington vs. Zoning Board of Appeals of Hadley*, 12 Mass. App. 710, the Court stated, “ The Board may not make a substantive amendment which changes the result of an original deliberate decision, or which grants relief different from that originally granted, without compliance with the relevant notice and hearing requirements.”

§7.2 of the Ordinance authorizes the Board of Appeals to utilize all of the powers granted to it by the General Laws and the Ordinance.

Therefore, in that this Board of Appeals has both the power and authority to grant dimensional variances and amendments to prior decisions, the Petitioners respectfully request that their Petition be granted for the reasons to follow.

VARIANCE

A. STATUTORY CONDITION FOR A VARIANCE

In order to obtain a variance one must first establish that there are “ . . . circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structure but not affecting generally the zoning district in which it is located . . .” Massachusetts General Laws, c.40A, §10.

Therefore, in order to obtain a variance it must first be shown that there are circumstances relating to soil conditions, shape, topography, or the structure which especially affects the locus, but does not generally affect other properties in the Residence A-2 Zoning District. In this instance, the shape, topography and soil conditions of the locus are unique circumstances which especially affect this locus but do not generally affect other properties in the zoning district.

1. SHAPE

The shape of the locus is also a unique circumstance affecting these Petitioners. The lot is a triangular shape. The locus fronts on Mountain Road with a frontage of 107.32 feet. The opposite boundary or the “rear” lot line is actually comprised of two running lot line; a boundary running N17°43’30”E for 16.60 feet, and a second line running N40°57’00” E for 61.41 feet. The two lines combined are 78.01 feet long which is approximately 30 feet shorter than the line lot fronting on Mountain Road. The angle of the “rear” lot lines are also significantly different than the lot line on Mountain Road. The front line is a curved line running from southeast to northwest, whereas the rear lot line runs significantly to the northeast. The angles of the rear line lines create a triangle shape to the lot. It resembles a wedge or a piece of pie shape. The further one travels from the

front to the rear of the lot the more the lot narrows. It narrows from a lot width of 107.32 feet on Mountain Road to a lot width of about 16 feet at the very rear.

The width of the lot sixty feet back from Mountain Road is about 88 feet across, then narrows to 71 feet across at 120 feet from Mountain Road, than finally narrows to 16.60 feet at the very rear lot line.

2. TOPOGRAPHY

The topography of the locus parcel is a unique circumstance. As shown on the Exhibit Plan attached hereto (Exhibit A), you will see the contour lines sloping from west to east on the locus. Running along the westerly boundary of the locus the contour line indicates an elevation of 265 feet. Contour lines then slope through the locus, from west to east, slopping down from 265 feet on the westerly lot line 255 feet in the middle of the lot and as it fronts on Mountain Road. The locus slopes from west to east as one travels from west to east on the property.

Unusual topographical features support the granting of a variance. In Joseph v. Board of Appeals of Brookline, 362 Mass. 290 (1977), the Court found that the peculiar topography of the locus created a practical and financial hardship for the Petitioner. "The locus is roughly triangular in shape and slopes downward north to south and from west to east. . . ."

3. SOIL CONDITIONS

The soil conditions at the locus are also a unique circumstance affecting these Petitioners. The lot has ledge and rock formations thereon. The existing residence constructed in 1953 has no basement as it was built on ledge, see Building Card attached as Exhibit B. It has a slab foundation.

Unique soil conditions on a lot which may cause financial hardship to a Petition will support a finding of hardship and the granting of a variance, see Wolfman v. Board of Appeals, 15 Mass App 112 (1983).

Thus, the Petitioners contend that they have met the first requirement for the granting of the proposed variances in that there are conditions which especially affect this locus, but which do not generally affect other lots in the Residence A-2 Zoning District.

**A LITERAL ENFORCEMENT OF THE PROVISIONS OF THE ORDINANCE
WOULD INVOLVE SUBSTANTIAL HARDSHIP TO THE PETITIONERS**

Not only does this locus have conditions which especially affect it, which do not generally affect other lots in the Residence A-2 Zoning District, but these differences create a substantial hardship, financial or otherwise, to the Petitioners.

The Petitioners are seeking to add a master bedroom and bath and to expand the family and living areas on the first floor. Only two bedrooms exist in the six room home presently.

Because of the varied elevation grades at the locus, especially toward the rear of the residence, any construction in that area will be problematic. The Petitioners are hoping to add additional living space for a young family. Constructing an addition to the rear of the structure would require removing an existing patio and pool area which is impractical and a financial burden.

The narrow shape of the rear lot area and its topography makes constructing in the rear yard a practical and financial problem. Any construction in the front yard or side yard is into a required setback. The only area to construct without a variance is the rear

yard to the north, but that area is where the patio and pool are located. The extreme topography in the rear area also makes construction there problematic.

The soil conditions on the locus, rocks and ledge throughout the parcel, make new excavations on the locus problematic. Constructing adjacent to the existing residence and away from the slope in the rear yard may reduce this issue.

Thus, the Petitioners respectfully contend that all of the above represent substantial hardships, financial or otherwise, to them.

The final issue is whether the granting of the variances will result in a substantial detriment to the public good or nullify or substantially derogate from the intent or purpose of the Ordinance.

The statute states that there must be a substantial detriment to the public good, or the Ordinance must be nullified or substantially derogated from.

The cases follow *Cavanagh v. DiFlumera*, 9 Mass. App. Ct. 396 (1980), wherein the Court stated “ . . . unless the (granting of the variance) significantly detracts from the zoning plan for the district, the local discretionary grant of the variance . . . must be upheld, some derogation from the (Ordinance’s) . . . purpose is anticipated by every variance.”

This Petition does not present a substantial detriment to the public good. The existing single family residence has existed on the locus parcel since 1953. The existing single story residence shall have a 14 foot by 24 foot single story addition added onto its existing footprint which shall add a master bedroom and master bathroom and expand the living areas for the family. The Petitioners have lived in this neighborhood for a couple of

years and wish to continue to live in this neighborhood. This is a benefit to the neighborhood and the public good.

The requested relief here will not nullify or substantially derogate from the intent or purpose of the Ordinance. The Ordinance is not nullified or substantially derogated from because the variances requested will allow for a 22.85 foot front yard setback, a variance of 1.65 feet from the variance permitted in 2008. The north side yard setback shall remain unchanged and the south side setback is shall be 12.65 feet, a variance of 7.35 feet from the required 20 foot side yard setback. It is interesting to note however that the existing shed sits approximately 4 feet from the side lot line. The proposed addition shall increase the setback here as the shed will be removed.

The proposed pool house shall be 4.3 feet from the south side lot line where a 10 feet side yard setback is required. This is a variance of 5.7 feet. A solid six foot fence is situated on the lot line which blocks any view of the pool house from adjacent properties.

A purpose of the Ordinance is to prevent overcrowding of land. With the Petitioners' proposed additions including the pool house, they shall have lot coverage of 18 % where 20% is permitted under the Ordinance. They shall remain below the maximum lot coverage allowed in the zoning district.

Massachusetts General Laws, Chapter 40A, §10, provides that "...The permit granting authority may impose conditions, safeguards and limitations of both time and use, . . .". As with most approved Zoning Board of Appeals decisions, the Board imposed a condition in Case No. 2008-13 that all construction and use of the property be in accordance with the plan filed in the Case No. 2008-13 (Exhibit C, Notice of Decision). We are asking that this condition be amended so that all construction and use of the property shall now conform to the plans filed herein in this petition.

As required by any Zoning Board of Appeals case, this petition has been advertised and noticed to all abutters within 300 feet of the property, as well as posted on municipal posting boards.

Thus, the Petitioners, having met all the legal requirements for the granting of the variance requested, respectfully request that their Petition be granted.

John Bianchi and Karen E. Bianchi
By their Attorney,

Joseph M. Connors, Jr.
Law Office of Joseph M. Connors, Jr., P.C.
404 Main Street
Waltham, Massachusetts 02452
(781) 893-8200