

**Case No.: 2020-22  
September 15, 2020**

**BOARD OF APPEALS  
OF THE  
CITY OF WALTHAM**

**MEMORANDUM  
OF  
MATTHEW LYONS**

## **I. INTRODUCTION**

The Petitioner Matthew Lyons (“Petitioner”), is owner of a single-family residential home located at 74 Oakley Lane, Waltham, Massachusetts (the “Locus”). The locus consists of approximately 13,326+/- square feet and is situated entirely within the Residential A-3 Zoning District.

Petitioner intends to construct, use and maintain an addition in the form of a second floor to the structure that will result in approximately 1,796 square feet of additional livable space. In the Residence A-3 zoning district residential structures are allowed two and a half (2.5) stories and a maximum height of thirty-five (35’). Here, Petitioner proposes a second floor that will consist of only 2 stories and a proposed height of 33.4’, both below the by-right limits. Petitioner proposes a second floor that will not extend beyond the existing footprint, however due to the pre-existing location of the structure in the front of the lot, Petitioner is required to obtain a variance for the second floor addition that would otherwise be as of right.

## **II. JURISDICTION**

Massachusetts General Laws, c. 40A, §§ 9 10 and 14 provide that this Board of Appeals has the power to grant variances if they are not a use prohibited by the Zoning Ordinance of the City of Waltham (the “Ordinance”).

Art. VII, §7.2 of the Ordinance authorizes this Board of Appeals to utilize all 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 variances, the Petitioner respectfully requests that his Petition be granted.

### **III. VARIANCES**

M.G.L. c. 40A, § 10 states in pertinent part that “the permit granting authority shall have the power . . . to grant upon appeal . . . a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that [i] owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, [ii] a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner . . . and that [iii] the desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.”

#### Variances Requested.

The variances sought are all dimensional and contained in Art. IV, §4.11, specifically:

Front-Yard Setback: In accordance with Art. IV, § 4.11, the front-yard setback shall be twenty-five feet (25'). Presently the front-yard setback is 21.12'. Petitioner proposes no change to the front-yard setback.

#### 1. Location of Swamp and Topography of the Locus.

In this instance, it is the location of a swamp in the rear-yard of the Locus, the declining topography as you move from the front of the lot towards the rear, and lastly its designation within a flood zone that present circumstances affecting the location of the structure upon the Locus. As a result of the location of the swamp and natural declining topography, the single-family home, built circa 1953, was logically constructed towards

the front of lot, within the front-yard setback so as to keep the structure on the highest ground possible, but unfortunately, 4' into that setback.

Therefore, it is the distinctive features of the Locus that drove the construction of the single-family home in the location that it sits which present characteristics which are generally not found in the zoning district in which it is located.

2. A literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the Petitioner

In addition to the circumstances that especially affect this Locus, a literal enforcement of the provision of the ordinance in regards to the pre-existing nonconforming setbacks of the structure, would create a substantial financial hardship for the Petitioner. To complete the project and comply with the zoning ordinance, Petitioner would have to tear down and remove approximately 3.8' from the front of the structure and garage at a substantial cost, thus satisfying the second requirement of G.L. c. 40A, § 10. Further, as a result of the unique features of the Locus, the Petitioner is prohibited from building in the rear of the structure. Therefore, a literal enforcement of the ordinance would involve a substantial hardship to Petitioner, both financial and otherwise.

Because of the conditions affecting this single-family home, but not affecting generally the zoning district in which it is located, Petitioner seeks a variance from the front-yard required setback, for the construction and use of a second floor.

3. That the desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

The final statutory requirement of G.L. c. 40A, § 10 requires that the desirable relief be granted without substantial detriment to the public good and without nullifying or

substantially derogating from the intent or purpose of such ordinance or by-law. The criteria does not require zero derogation from the intent or purpose of the ordinances, as “[s]ome derogation from the [Ordinance’s] purpose is anticipated by every variance . . .” Cavanaugh v. DiFlumera, 9 Mass.App.Ct. 396 (1982). The Court further stated that “. . . 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 . . .”

Here, the desired relief does not nullify or substantially derogate from the intent or purpose of the by-law as Petitioner is seeking relief for an addition in the form of a second floor which is otherwise allowed in the zoning district and therefore could not reasonably be found to unduly increase the non-conforming nature of the structure.

## **V. CONCLUSION**

In sum, Petitioner proposes to construct, use and maintain an addition in the form of a second floor to the structure. The addition will result in approximately 1,796 +/- square feet of livable space.

The Petitioner Matthew Lyons thanks you for your attention to this matter, welcomes your suggestions and look forward to completing this project in a manner amicable to the City of Waltham.

Respectfully Submitted,

Matthew Lyons,  
By his attorney,

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