

**Case No.: 2020-20
September 15, 2020**

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

**MEMORANDUM
OF
GEORGE & ELIZABETH STEINHUBEL**

I. INTRODUCTION

The Petitioners George & Elizabeth Steinhubel (“Petitioners”), are a married couple and owners of a single-family home located at 21 Arcadia Ave., Waltham, Massachusetts (the “Locus”). The Locus is situated within the Residence A-4 Zoning District and consists of a pre-existing legally non-conforming vacant corner lot and is comprised of 3,976+/- sq. ft. The property was part of (but not directly affected by) a Zoning Board of Appeals Decision dated May 23, 1961 subdividing and combining portions of two of the four (4) lots involved. As a result, lots 102 and the Locus (Lot 103) retained and were recently granted old lot status.

Petitioners intend to construct a modest single-family home thereon that meets all dimensional zoning requirements, but for the one of the two front-yard setbacks as a result of being situated on a corner lot. The single-family home will be located in the center of the lot and with parking thereon. In order to complete the project, Petitioners seek one (1) variance for a front-yard setback of 10.3’. Were this not a corner lot, the setback would be considered a side-yard setback and, pursuant to the old lot status, would be by-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”). Neither variance sought is for any change in use.

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.”

Variance Requested.

The variance sought is dimensional, specifically:

Front-Yard Setback: In accordance with Art. IV, § 4.11, the minimum front-yard setback shall be twenty-five feet (25’). Petitioners propose a single-family home with one front-yard setback of 10.3’.

1. The Corner Lot.

In this instance, there are a couple factors that affect this Locus making it unique. First, there is the fact that the lot here is a corner lot which results in two (2) front yard setbacks rather than two (2) side-yard setbacks which by their nature are less restrictive. Here, despite the undersized lot and two front-yard setback requirement, Petitioners designed the proposed single-family structure to otherwise meet all zoning requirements

(including lot coverage), but for the one front-yard which in-fact prohibits any construction whatsoever. The Locus qualified for old/small lot status and were the lot not a corner lot, the Petitioners' proposed single-family structure would be by-right as the proposed setback is no closer to the lot line than what is allowed by the status. The corner lot, when combined with its undersize and two-front-yard requirement, present circumstances that make this Locus unique and that affect this Locus and the proposed structure.

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 regard to the pre-existing nonconforming setbacks of the structure, would create a substantial hardship for the Petitioners. Without the variance, Petitioners cannot construct the single-family home on any area of the lot due to the two (2) front-yard setback requirements. Despite being proposed in the center of the lot and within the maximum lot coverage (no reduction in lot coverage would make the Locus comply with the front-yard setback), no single-family home can be built on the lot thereby rendering the lot unbuildable. The proposed single-family home in any location will require front-yard setback relief.

Therefore, a literal enforcement of the ordinance would involve a substantial hardship to Petitioner, both financial and otherwise in that the more recent setback requirements render the pre-existing lot unbuildable. The Petitioners are seeking to construct a single-family home in the center of the corner lot, but that a literal enforcement of the ordinance would result in the impossibility of construction on the lot. There are exceptional circumstances present...which alone may justify relaxation in

peculiar cases of the restrictions imposed by the statute. Rodenstein & another v. Board of Appeal of Boston, 337 Mass. 333, 336 (1958).

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 Petitioners are seeking to construct a modest single-family home on a preexisting legally non-conforming corner lot with required parking and will meet all other dimensional requirements. Further, were the Locus not a corner lot, the size and location of the structure would be by-right pursuant to current zoning and the old/small lot status. The proposed location will have as minimal effect on any abutter as possible since all other setbacks are met but for the setback abutting the street. The rear, side-yard and other front-yard setbacks are being met and the proposed construction meets all other zoning requirements. The proposed structure cannot reasonably be found to derogate from the intent and purpose of the ordinances.

IV. CONCLUSION

In sum, Petitioners propose to construct, maintain and use a single-story addition on a buildable corner vacant lot that will encroach into one of the two required minimum front-yard setbacks. To accomplish the proposed single-family home, Petitioners require a variance for the front-yard deficiency. The Petitioners George & Elizabeth Steinhubel thank you for your attention to this matter, welcome your suggestions and look forward to completing this project in a manner amicable to the City of Waltham.

Respectfully Submitted,
George & Elizabeth Steinhubel,
By their attorney,

Bret Francis, Esq.
BBO # 658761
Scafidi Juliano, LLP
10 Hammer Street
Waltham, MA 02453
T: 781-210-4710
F: 781-210-4711

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