**Case No.: 2020-35**

**November 17, 2020**

**BOARD OF APPEALS**

**OF THE**

**CITY OF WALTHAM**

**MEMORANDUM**

**OF**

**DANIEL ARONE**

# **I. INTRODUCTION**

The Petitioner Daniel Arone (“Petitioner”), is a manager of Azalea Development, LLC, owner of the property located at 45 Azalea Road, Waltham, Massachusetts (the “Locus”). The Locus consists of a single lot with 16,220+/- square feet of land and a single-family residential structure thereon and is situated entirely within the Residential A-2 Zoning District.

Petitioner intends to (i) raze the rear enclosed terrace, (ii) raze the front yard two-story covered deck and replace it with a smaller single story covered deck, and (iii) to construct maintain and use a second-floor addition in the form of a dormer that will have no impact on the two non-conforming front-yard setbacks. As a result of the project, the lot coverage will decrease from a non-conforming 21.7% to a conforming 14.0% and brings the overall Locus closer to conformity.

In the Residence A-2 zoning district, the rear-yard setback shall be forty feet (40’) and the front-yard setback shall be forty feet (40’). Here, Petitioner proposes to raze portions of the house that will increase the non-conforming rear-yard setback from 20.40’ to 32.40’ and increase the non-conforming front-yard setback from 31.10’ to 33.70’. Lastly, the second-floor addition in the form of a dormer, will have no impact on the non-conforming front-yard setbacks

To accomplish the goal of razing portions of the structure and to construction of the addition, Petitioner is required to obtain variances for the pre-existing non-conforming setbacks.

**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:

Rear-Yard Setback: In accordance with Art. IV, § 4.11, the rear-yard setback shall be forty feet (40’). Presently the front-yard setback is 20.40’. Petitioner proposes a rear-yard setback of 32.40’; and

Front-Yard Setback: In accordance with Art. IV, § 4.11, the front-yard setback shall be forty feet (40’). Presently the front-yard setbacks are 31.10’ and 39.60’. Petitioner proposes no change to the 39.60’ front-yard setback and proposed to increase the 31.10’ setback to 33.70’.

1. The Corner Lot and Existing Structure.

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. Second, the single-family structure thereon was built circa 1969 pursuant to a zoning board of appeals decision, however the plans filed did not proposed a second floor above the garage even though it two and a half stories are permitted in the zoning board. Because the proposed dormer sits within the non-conforming setbacks, variances are required for the proposed addition. The other front yard setback and rear yard setback are decreasing the non-conformity and therefore the relief is essentially to “clean up” the non-conformities. As a result of the existence and location of the proposed dormers in the front-yard setbacks requires relief.

In sum, the circumstances of this corner lot combined with the pre-existing structures thereon, present distinctive circumstances that generally are not found in the neighborhood or 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 regard to the pre-existing nonconforming setbacks of the structure, create a substantial financial hardship for the Petitioner. To complete the project and comply with the zoning ordinance, Petitioner is required to obtain relief to bring the property closer to conformity. Petitioner would have to tear down and remove more certain portions of the garage in the rear and front yard setbacks in order to construct maintain and use the addition in the form of dormers. This will result in substantial cost in order to bring the property closer to conformity, thus satisfying the second requirement of G.L. c. 40A, § 10. Therefore, a literal enforcement of the ordinance would involve a substantial hardship to Petitioner, both financial and otherwise.

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 to raze portions of the structure that were not permitted and to replace the two-story covered front deck with a smaller single-story covered front deck. The project allows for the construction of a second-floor addition in the form of dormers where 2 and half stories are allowed in the district. Lastly, this project does not substantially increase the nonconforming nature of said structure.

**V. CONCLUSION**

In sum, Petitioner proposes to (i) raze the rear enclosed rear terrace, (ii) raze the front yard two-story covered deck and replace it with a smaller single story covered deck, and (iii) to construct maintain and use a second-floor addition in the form of a dormer that will have no impact on any setback.

The Petitioner Daniel Arone 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,

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By his attorney,

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