

**Case No.: 2020-32  
November 17, 2020**

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

**MEMORANDUM  
OF  
JOHN J. AIELLO**

## **I. INTRODUCTION**

The Petitioner John J. Aiello (“Petitioner”), is the administrator of the Estate of John P. Aiello. John P. Aiello, recently deceased, was the former owner of the single-family residential home located at 122 Dale Street, Waltham, Massachusetts (the “Locus”). The Locus consists of two lots with a total of approximately 5,072+/- square feet and is situated entirely within the Residential A-4 Zoning District.

Petitioner intends to raze an illegal portion of the structure (grandfathered) that will result in a side-yard setback of 2.37’ where no side-yard setback currently exists. As a result, the lot coverage will reduce from 32.5% to 31.1%. In addition to the foregoing, Petitioner seeks one variance to confirm the pre-existing non-conforming one of the front-yard setbacks and two (2) variances to confirm the pre-existing non-conforming setbacks of the garage. Petitioner proposes no change to the front-yard setback, no change to the garage and all relief requested will bring the Locus closer to conformity.

In the Residence A-4 zoning district side-yard setbacks shall be fifteen feet (15’) from any lot line and a front-yard setback of twenty-five feet (25’) Further, a garage must be both three feet (3’) from any lot line and twenty five feet (25’) from the front-yard setback. Here, Petitioner proposes to raze an illegal addition to the house that will result in a 2.37’ setback where none exists, a reduction of lot coverage and no changes to the front-yard setback or the existing garage. To accomplish the goal of razing an illegal portion of the structure 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:

Side-Yard Setback: In accordance with Art. IV, § 4.11, the side-yard setback shall be fifteen feet (15'). Presently the side-yard setback is 0'. Petitioner proposes a setback that will increase the non-conforming setback to 2.37';

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 8.72'. Petitioner proposes no change to the front-yard setback;

Lot Coverage: In accordance with Art. IV, § 4.11, the maximum lot coverage shall be twenty-five percent (25%). Presently the lot coverage is 32.5%. Petitioner proposes a reduction in the lot coverage to 31.1%;

Garage: In accordance with Art. IV, § 4.11, a garage must be 3 feet (3') from any lot line and twenty-five feet (25') from the front-yard setback. The pre-existing garage sits 1.25' from a lot line and 3.19 from the front-yard setback. Petitioner proposes no change to either.

1. The Corner Lot and Existing Structures.

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. In addition, the lot is long and narrow resulting in a lot width of 39.83' in the rear. Second, the single-family structure thereon was built circa 1916 and is set along the westerly end of the property and only 8.72' from the front lot line and, as is, encroaches into both front-yard setbacks. Due to its narrowness, any structure built on the lot will require dimensional relief. Lastly, the location of the existing garage sits only 1.25' from the lot line and 3.19' from the street (access is only from Dale Street and not Hazel Street). The corner lot, when combined with the existing structure thereon that pre-dates zoning and thereby encroaches into existing setbacks, the location of the pre-existing garage and driveway which prevents construction in the center of the lot make this Locus unique. As a result of the existence and location of the structure and garage, the property is legally pre-existing and nonconforming.

In sum, the circumstances of this corner lot combined with its narrowness and 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 would have to tear down and remove more than the illegal (grandfathered) addition, but significant portions of the house as well as relocate the pre-existing garage all in order to bring the property closer to conformity. This will result in substantial cost and an impractical structure thereon, 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 a portion of the structure that encroaches over the lot line. The project brings the Locus closer to conformity and confirms the other pre-existing non-conforming setbacks.

## **V. CONCLUSION**

In sum, Petitioner proposes to raze an illegal portion of the structure and then to confirm all the pre-existing non-conforming setbacks and lot coverage.

The Petitioner John P. Aiello 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,

John J. Aiello,  
By his attorney,

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