

BOARD OF APPEALS

OF THE

CITY OF WALTHAM

Case No. 2020-08

April 28, 2020

BRIEF

OF

BARBARA ALARIE and LUKE FRENCH

The locus is a residential parcel consisting of approximately 5,902 square feet of land. The locus is known and numbered as 70 School Street. An existing single family residence is situated thereon.

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

The Petitioners and owners of the locus are Barbara Alarie and Luke French. The petitioners intend to alter the existing single family home on its existing footprint. Only the elevations at the back half of the house will change. The Petitioners intend to use and maintain the residence themselves.

Lots in Residence C Zoning District are currently required to have a lot area of 6,000 square feet; frontage of 50 feet; front setback 10 feet; side setback of 10 feet; rear setback of 20 feet; a maximum height of 40 feet. The locus has a lot area of 5,902 square feet with 50.28 feet of frontage. In the proposed work area, it has side yard setbacks of 9.69 feet and 21.35 feet respectively and a rear yard setback of 47.60 feet. The proposed height shall be ± 28.02 feet above the aggregate existing elevation.

In order to construct the proposed alteration to the single family residence, a side yard variance is required.

Variances. 4.11 provides that structures in a Residence C Zoning District shall have a 10 foot side yard setback. Here, the existing side yard setback on the east side of the structure is 9.69

feet. No changes will be made to this setback. We plan to simply continue the nonconformity up in elevation.

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 variance pertains to the side yard setback for a single family home. A single family residence is a permitted use in the Residence C Zoning District. Thus the use is a permitted use in the Zoning District and the variance requested is dimensional.

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 a dimensional variance 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 and especially affecting such land or structure but not affecting generally the zoning district in which it is located..." Massachusetts General Laws, c40A, 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 C Zoning District. In this instance, the existing structure and its placement on the plot of land are unique circumstances which especially affect this locus but do not generally affect other properties in the zoning district.

1. STRUCTURE

The existing single family residence is a unique circumstance affecting this locus but does not generally affect other lots in the zoning district. This single family residence was originally constructed on or about 1775. See accessors database. (Exhibit A).

No work has been done to the property which might change its footprint since at least 1923 when a detached garage was built. See building records. (Exhibit B).

The single family dwelling has been situated on the locus since on or about 1775. It has been in the Alarie family since November 22, 1972. It was transferred to Barbara Alarie September 12, 2001 and subsequently transferred to Barbara Alarie and husband Luke French on June 4th 2019. See Exhibit C. Aside from the aforementioned Garage in 1923 and 4 permits to improve the property no significant structural additions or changes have occurred. The Petitioners contend that the structure and where it is situated on the lot is a unique circumstance to the Petitioners. The existing east side yard setback has been nonconforming since its inception.

In *Johnson vs. Board of Appeals of Wareham*, 360 Mass. 872, the Court found that the unique circumstances and conditions of a structure may support a finding of hardship to support the granting of a variance.

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 Residence C 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 Residence C Zoning District, but these differences create a substantial hardship, financial or otherwise, to the Petitioners.

The Petitioners are seeking to remove a large 16 inch step on the second floor of their home. This step, and the awkward nature of the layout, is a real hazard for the occupants of the home, one of which is legally blind. At the same time, they are taking steps to make all rooms in this zone more updated, habitable, safe, and functional. They will be bringing everything up to current code and creating a space that will serve them for many years to come.

The structure of the locus is situated at the required setbacks except for a lacking of .31 feet on the east side setback. The requirement is 10 feet and they have an existing setback of 9.69 feet. The structure cannot be moved without a significant financial burden on the Petitioners. The proposed alterations shall follow the existing footprint of the existing house.

The elevation at the rear of the house will change thus extending the original and existing nonconformance.

Thus, the Petitioners respectfully contends 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 vs. 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. This existing single family residence has existed on the locus parcel since on or about 1775. The existing single family residence shall have an alteration which will essentially extend upward in height the back half of the house. The alteration will allow the removal of the 16 inch step between front and back of the second floor. It will allow the Petitioners to update their old bedroom and baths, kitchen, and mudroom in that area of the house allowing them to have a safe, comfortable, useable dwelling for many years to come. The Petitioners have lived in the house

for many years, one of them since 1972, and they plan 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 9.69 east side yard setback, a variance of .31 feet beyond the existing setback. All of the existing setbacks will remain unchanged.

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

Barbara Alarie and Luke French
By Their Authorized Agent

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