

Case No.: 2020-19
August 18, 2020

BOARD OF APPEALS
OF THE
CITY OF WALTHAM

MEMORANDUM
OF
JAMES ARNOLD AND SAMANTHA SMITH

I. INTRODUCTION

The Petitioners James Arnold and Samantha Smith (“Petitioners”), are a married couple and owners of the property located at 300 Dale Street, Waltham, Massachusetts (the “Locus”). The locus consists of an irregularly shaped lot with approximately 8,830+/- sq. ft. and situated wholly within the Residence A-4 Zoning District. Petitioners intend to demolish the existing side yard one-story portion of the house and then to construct, maintain and use in its place a two-story addition resulting in an approximately 256.69 square feet of additional livable space in the center of the main portion of the lot. In order to complete the proposed addition, Petitioners seek two variances, specifically (i) for the front-yard setback (the existing setback is 5.8’ and will remain the same) and (ii) for the rear-yard setback (the existing setback is 15.0’ and will remain the same).

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”). None of the variance sought are 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 Petitioners respectfully request their 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, specifically:

Front-Yard Setback: In accordance with Art. IV, § 4.11 the minimum front-yard setback shall be twenty-five (25’). Here, the existing front-yard setback is 5.8’. Petitioners propose no change to the setback; and

Rear-Yard Setback: In accordance with Art. IV, § 4.11, the minimum rear-yard setback shall be thirty feet (30’). The existing rear-yard setback here is 15’. The Petitioners propose no change to the setback.

1. The Shape of the Lot.

In this instance, it is the shape of the locus that is unique and affecting this locus but not affecting generally the zoning district in which it is located. The Locus is an odd pork-chop shaped lot. The Locus sits on the southern side of Dale Street and directly to the rear of 302 Dale Street. The Locus runs south from Dale street 125.14’ then turns at a right angle west 135’ before turning north back towards Dale Street for 55.06. The lot

line then turn east back to the driveway and north again 70.08' back to Dale Street. These dimensions result in a narrow frontage and long driveway before opening up at approximately 70' into the Locus. The pork-chop shaped-lot make this situation unique and affecting this Locus but generally not the zoning district in which it is located. This is illustrated by the City's subsequent ban on these odd-shaped lots. In sum, the circumstances of this Locus require obtaining two variances that will not change and will have minimal effect on any abutter.

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 required relief, Petitioners' are unable to put a second story above an already existing single-story portion of the house despite not moving any closer to either setback that requires relief.

It should be noted that under previous interpretations of front-yard and rear-yard, these setbacks would have been sufficient as side-yard setbacks under an old lot opinion. Here, Petitioners obtained the old-lot opinion, but the Building Department interpreted the front and rear-yards as indicated on the Plan thereby negating the benefits of an old lot opinion. Had the Locus qualified for old lot status, the proposed addition would be "by-right". As a result, the hardship would be that to comply with zoning, the Petitioners would have to remove significant portions of their home. In fact, due to the shape of the lot and interpretations of the front and rear-yard setbacks, no addition or even new structure could be built at the Locus.

Therefore, a literal enforcement of the ordinance would involve a substantial hardship to Petitioner, both financial and otherwise, in that to comply with the provision would prevent the families living together. 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 two variances that will be required regardless of any proposed construction due to the pre-existing location on the Locus. The addition will be a two-story addition where a single-story addition currently exists and will extend beyond the footprint an additional 1.6’ (the extension into the side-yard requires no relief). As a result, the proposed addition will have a minimal effect on any

abutter and cannot reasonably be found to unduly increase the non-conforming nature of the structure or lot, thereby not derogating from the intent and purpose of the ordinances.

V. CONCLUSION

In sum, Petitioners proposes to demolish the existing single-story portion of the home, and then to construct, use and maintain a two-story addition resulting in a net 256.69 square feet of additional living space for their family. The Petitioners James Arnold and Samantha Smith 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,
James Arnold and Samantha Smith,
By their attorney

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