

Case No.: 2020-29
October 27, 2020

BOARD OF APPEALS
OF THE
CITY OF WALTHAM

MEMORANDUM
OF
DANIEL LEBLANC

I. INTRODUCTION

The Petitioner Daniel LeBlanc (“Petitioner”), is a manager of NADD4-205, LLC, owner of the property located at 205 Hammond Street, Waltham, Massachusetts (f/k/a 201-207 Hammond Street, Waltham, MA) (the “Locus”). The Locus consists of approximately 15,492+/- square feet and is situated entirely within the Residence A-4 Zoning District.

Petitioner intends to convert, use and maintain 1,252 square feet of unfinished basement space into additional living space for Petitioner’s family. The Petitioner is not proposing any additional units in the structure. In addition, Petitioner is seeking to enlarge the existing two-car garage to a four-car garage so that each unit receives its own parking space in the proposed garage. Art. III, § 3.7222 allows, by special permit, an enlargement of a nonconforming use provided that the enlargement does not exceed 10% of the land used on the Locus, however Petitioner here is seeking an increase of 18.2%. Therefore, in order to complete the project, Petitioner is required to obtain a variance from the 10% requirement under Art. III, § 3.7222 as well as the Special Permit to convert the basement space to livable space for his family. Finally, Petitioner requires a variance under Art. IV, § 4.11 from the maximum lot coverage for the proposed expanded garage.

II. JURISDICTION

Massachusetts General Laws, c. 40A, §§ 9 10 and 14 provide that this Board of Appeals has the power to grant variances as long as they are not a use prohibited by the Zoning Ordinance of the City of Waltham (the “Ordinance”).

G.L. c. 40A, § 6 allows a special permit granting authority to authorize an extension of a nonconforming structure or use provided a finding is made that such extension is not substantially more detrimental than the existing use to the neighborhood. Art. III, §3.7222 of the Ordinance grants this Board of Appeals the power to grant a special permit to alter or enlarge a nonconforming structure to an extent not exceeding ten percent (“10%”) of the area of land used.

Art. VII, §7.2 of the Ordinance authorizes this 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 special permit and variance, 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

Petitioner seeks variances from both the 10% limit for increasing a non-conforming use and maximum lot coverage. The variances sought are both dimensional, specifically:

Rights of Non-Conforming Structures (Altered or Enlarged in that Use): In accordance with Art. III, § 3.7222, a non-conforming use may be altered or enlarged in that use to an extent not exceeding 10% of the ground floor area of the building or area of land used. Here, Petitioner seeks an alteration and enlargement of 18.2%; and

Maximum Lot Coverage: In accordance the with Art. IV, § 4.11, the maximum lot coverage shall be twenty-five percent (25%). The Locus presently has a lot coverage of 30.7%. Here, due the addition of the proposed extension to the garage, not the conversion of the basement space, Petitioner proposed a lot coverage of 35.4%.

1. Topography and Pre-existing Structure

In this instance, it is both the topography of the Locus as well as the pre-existing nature of the structure that is unique and affecting this locus but not affecting generally the zoning district in which it is located. First, the topography of the lot is sloped. As you move from the street to the rear of the property there is a slight gradual decrease in grade and as you approach the rear the property, the grade drops considerably. From the Street to the rear of the Locus there is a total drop in grade just under 7'. In addition, the structure is a pre-existing structure constructed for a four-unit use within a single-family residential zone. This results in an oversized structure that sits within both the front yard and side-yard setbacks. Without any garage, the structure itself exceeds the maximum lot coverage in the Residence A-4 Zone. Therefore, as a result of the topography and pre-existing nature and location of the structure on the Locus present circumstances affecting this land and structures, but not affecting the zoning district generally.

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 use of the structure, would create a substantial hardship for the Petitioner. Here, because the of the Locus' use as a four-family building in a Residential A zoning district, Petitioner cannot convert the existing unfinished basement space to additional living space for his family. In fact, were the use of the structure as a single-family residential building, the alteration of the basement space would be by-right. To comply with zoning, the current use would have to be abandoned at substantial financial cost. Similarly, to comply with the maximum lot coverage, the Petitioner would have to remove significant portions of the structure to create covered parking for Petitioner and his tenants. 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 desired relief does not nullify or substantially derogate from the intent or purpose of the by-law as Petitioner is seeking to alter the unfinished basement space to

additional livable space for Petitioner and his family. The Petitioner is proposing no additional units and the proposed living space will only result in one additional bedroom and will have no impact on parking as there are more than the required number of spaces provided. As a result, the alteration of the basement space will have no impact on the neighborhood as there will be no additional units and entirely invisible from the exterior.

The expanded garage does not nullify or substantially derogate from the intent or purpose of the by-law either as the Petitioner is attempted to provide additional covered parking for himself and tenants. The Locus is a four-family structure and Petitioner is seeking to provide one garage space for each unit. Lastly, due its use as a multi-family dwelling there is no limit on the number of garage spaces. Therefore, the addition of livable space where the space currently exists, but is unfinished space, will not substantially increase the nonconformity use of the structure and, as a matter of law, could not reasonably be found to increase the non-conforming nature of a structure.

IV. SPECIAL PERMIT

Art. III, §3.7222 of the Ordinance states that this Board of Appeals may grant a special permit to alter or enlarge a nonconforming use, structure or land provided that the enlargement does not exceed ten percent (10%) of the ground floor area of the building or of the land used. Petitioners propose an alteration or enlargement of the structure of approximately eighteen percent (18%) of the land used at the locus. Here, using the total land of the Locus (less grassed areas), is appropriate as it is both the structure and the garage (parking) being enlarged at the Locus. M.G.L. c. 40A, § 6 provides that a nonconforming structure may be altered or enlarged when the proposed alteration or

extension is not substantially more detrimental than the existing nonconforming structure to the neighborhood.

In this case, the proposed basement conversion results in no additional space outside the footprint, but rather converts unfinished basement space to livable space.

M.G.L. c. 40A, § 6. The pertinent section of c. 40A, § 6 states as follows:

Pre-existing nonconforming structures or uses may be allowed or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority . . . that such change, extension, or alteration shall not be substantially more detrimental than the existing nonconforming structure or use to the neighborhood.

G.L. c. 40A, § 6.

In Bjorklund v. Zoning Board of Appeals of Norwell, 450 Mass. 357 (2008), the court ruled that any minor improvement to an existing structure on an undersized lot would require a finding that the proposed alteration is not substantially more detrimental to the neighborhood. The Bjorklund case gave examples of what the Court would consider minor improvements not requiring a finding under G.L. c. 40A, § 6. Such examples include “the addition of a dormer; the addition, or enclosure, of a porch or sunroom; the addition of a one-story garage for no more than two motor vehicles; the conversion of a one-story garage for one motor vehicle to a one-story garage for two motor-vehicles; and the addition of small-scale, proportional storage structures, such as sheds used to store gardening and lawn equipment, or sheds used to house swimming pool heaters and equipment.” Bjorklund, 450 Mass. at 362. As a result, the Court ruled that “[b]ecause of their small-scale nature, the improvements mentioned could not reasonably be found to increase the non-conforming nature of a structure, and we

conclude, *as a matter of law*, that they would not constitute intensifications.” Bjorklund, at 362. In the present case, Petitioner’s proposed conversion of a portion of existing unfinished basement space is considered a minor improvement as that term is defined in Bjorklund and, as such, requires no such finding under G.L. c. 40A, § 6. Further, increasing a two-vehicle garage to a four-vehicle garage at a four-unit residential structure, where increase in garage size is actually stated in the case, can hardly be considered more detrimental to the neighborhood. It is clear that proposed addition will not be substantially more detrimental than the existing nonconforming use to the neighborhood.

V. CONCLUSION

In sum, Petitioner proposes to alter the unfinished basement into additional living space and to expand the two-vehicle garage to a four-vehicle garage. The addition within the structure shall consist of 1,252 square feet of additional livable space in the basement as well as 735 square feet of additional garage space thereby increasing the non-conforming use of the Locus by 18.2% and increasing the lot coverage to 35.4%. This request, brought under Art. III, §3.7222 (and Art. IV, § 4.11), is a reasonable and limited expansion of the Locus permitted by special permit. Lastly, Petitioner met with his immediate abutters and presented them with the plans and received no objection to the project.

The Petitioner Daniel LeBlanc thanks you for your attention to this matter, welcomes your suggestions and looks forward to completing this project in a manner amicable to the City of Waltham.

Respectfully Submitted,

Daniel LeBlanc,
By his attorney

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