



BOARD OF APPEAL

GARRETT S. HOAG
JOHN L. HAYDEN
DANA T. LOWELL

KATHARINE E. TOY, CLERK
TELEPHONE
CE. 5-1664

Petition of Mary Casassa

Pursuant to due notice the Board of Appeal held a public hearing in the hearing room on the second floor of the Town Hall at 8:25 p.m. on July 31, 1963, on the petition of Mary Casassa requesting a special exception from the terms of Section XIX of the Zoning By-law which would permit a division of the lot of land appurtenant to house #63 Smith Street into two lots. Said division of the property would reduce the side yard of the existing house to less than the required twenty feet.

Louis Lupo, brother-in-law of the petitioner represented the petitioner at the hearing.

A letter of recommendation that the request be granted was submitted from John K. Brines, M. D., the petitioner's daughter's physician.

A letter favoring the request was also submitted from Theodore F. Lindberg, M. D., Superintendent of Medfield State Hospital, Harding, Mass.

The petitioner submitted a letter favoring the granting of the request signed by four nearby property owners.

The Planning Board opposed the granting of the request in its report.

On July 16, 1963, the petitioner filed her request for a hearing and thereafter due notice of the hearing was given by mailing and publication.

Statement of Facts

The property involved consists of a lot of land containing 23,650 square feet with a dwelling thereon. It is located in a single-residence district requiring a minimum lot area of 10,000 square feet.

The petitioner, a widow with an eleven year old daughter, has recently been released from the Medfield State Mental Hospital and is now on an out-patient basis. The Hospital believes that it is important for the petitioner and her daughter to have the care and security which relatives living nearby provide. The petitioner's sister and her husband are prepared to provide that care and security but to do so effectively they must live near the petitioner.

To make that possible the petitioner seeks permission to divide the property into two lots and submitted a plot plan drawn by Gleason Engineering Company, dated June 10, 1963, showing the proposed division of the property. Said plan showed lot "A", with the petitioner's existing house thereon containing 10,200 square feet and Lot "B", containing 13,450 square feet on which the petitioner's sister and her husband will build if this petition is granted. The proposed division of the property will reduce the side yard of Lot "A" to 13' rather than the required 20'. The proposed Lot "B" will have a frontage

of 40' which width will extend back a depth of 160' and then widen out to a width of 100'.

The daughter's doctor submitted a letter urging the Board to grant the request as the child must rely primarily on her aunt and uncle for emotional support as well as for other personal social needs.

Decision

Messrs. Fraser and Lowell would grant the request for a variance which would permit the parcel of land with a dwelling thereon to be divided into two lots with the side yard of the existing dwelling being reduced to 13' rather than the required 20'. They feel that the proposed division will not in any way prove detrimental to the character of the immediate neighborhood. They feel that there is a real need for the petitioner's relatives to be near to her and that a literal enforcement of the provisions of Section XIX of the Zoning By-law would involve substantial hardship to the petitioner and her daughter, and desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of such by-law.

Mr. Hoag agrees that the need is great and that the willingness of the petitioner's sister and husband to build on and move to Lot "B" to be near the ill petitioner and her daughter is generous and offers a practical and desirable solution. In his opinion, however, the Board does not have the power to grant the request. The conditions precedent to the Board's authority to exercise discretion under either Section XIX of the Zoning By-law or paragraph 3 of Section 15 of Chapter 40A of the General Laws are not present. We can act under Section XIX only if the lots were not under common ownership on or after April 1, 1940. But they are still under common ownership so that we cannot ^{act} under the By-law. We can act under Section 15 only if due to a condition affecting the land or building involved, not the zoning district generally, a literal enforcement would involve substantial hardship to the petitioner. But there is no such condition here which effects the land or building. The condition is that of the petitioner and her daughter. Moreover, however desirable Mr. Hoag believes it would be to make an exception in this case, he cannot find that to grant a variance would not derogate from the intent of the By-law. Therefore, in Mr. Hoag's opinion the Board has no power to act much as it would like to.

Accordingly, the request is denied and the petition dismissed.

Garrett S. Hoag
Garrett S. Hoag

F. Lester Fraser
F. Lester Fraser

Dana T. Lowell
Dana T. Lowell

Filed with Town Clerk _____

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