

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY, MASS.

JUN 8 9 11 AM '86
JMK

STEPHEN S. PORTER, Chairman
JOHN A. DONOVAN, JR.
ROBERT R. CUNNINGHAM

MARY ANN McDOUGALL
Executive Secretary

Telephone
~~335-1664x~~

431-1019

WILLIAM E. POLLETTA
FRANKLIN P. PARKER
SUMNER H. BABCOCK

86-26

Petition of Swan Realty Trust
103 Central Street

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, April 17, 1986 at 8 p.m. in Room 17 of the Town Offices at the Phillips Building, 12 Seaward Road, Wellesley Hills, on the petition of SWAN REALTY TRUST requesting a variance from the terms of Section XIX and Section XVIIIIC of the Zoning Bylaws which will allow the construction of an addition to the commercial building at 103 CENTRAL STREET in a Business District to include a three-level single family residential dwelling, leaving less than the required rear yard and side yard. Petitioner also requests a finding under Section XVII of the Zoning Bylaw regarding the extension of a non-conforming use. Said request is pursuant to Section XXIV-D and Section XI of the Zoning Bylaw.

On March 28, 1986, the petitioner filed a request for a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was William Erickson of Kellogg, Gardner & George, counsel for the petitioner, Stuart Swan of Swan Realty Trust. Mr. and Mrs. Swan were also in attendance. Mr. Erickson described the property in question and the abutting properties. He stated that the building was built in 1839, purchased by Stuart Swan in 1982 after which substantial improvements were made for use as a furniture store. Swan proposes a separate living unit which would be attached to the commercial structure but not be used for commercial use. Mr. Erickson stated that the zoning problems for residential use are the sideyard requirements, lot ratio requirements and floor area ratio requirements. Mr. Erickson requested a finding under Section XVIIIA that this is an expansion of a pre-existing non-conforming use, that it is no more detrimental than the existing use to the neighborhood. He stated that all other buildings in the area cover 100% of the lot and that Mr. Swan's lot is under-utilized. A variance is also requested pursuant to Section XIX for the sideline deficiencies.

Present at the hearing and opposed to the request: David Guberman of Sherin & Lodgen, representing S. Lawrence Schlager, the Trustee of the Realty Trust which owns the abutting property at 95-101 Central Street. Mr. Guberman stated that the petition shows no substantial hardship as defined in the statutes. Mr. Donovan asked Mr. Erickson and Mr. Guberman to set their positions in writing and submit to the ZBA by May 1.

RECEIVED
TOWN CLERK'S OFFICE
WILMINGTON, MASS.

JUN 8 9 11 AM '86

Statement of Facts

The property in question is located at 103 Central Street (Route 135) at the corner of Weston Road, in a Business District, containing approximately 10,945 square feet of land. A wood and concrete building exists on the property with a footprint of approximately 4,563 square feet and a total floor area of 6,715 square feet. The building is used commercially as a furniture store known as Stuart Swan Furniture.

Stuart Swan of Swan Realty Trust, owner of the property, proposes a three-story addition to the commercial building to contain a dwelling unit for him and his family. The proposed new structure would have a footprint of 1,515 square feet and a total floor area of 2,408 square feet. The floor area ratio of the combined existing building and the proposed addition would be .834. The Zoning Bylaw requires a floor area ratio of no more than .50. The total lot coverage including the proposed addition would be .555.

A Plot Plan was submitted, drawn by Paul S. Casey, Registered Land Surveyor, Connorstone, Inc., Ashland, Ma., dated February 12, 1986, updated January 29, 1986. Statistics were presented regarding floor area and lot coverage as were photos. Construction drawings by Day & Ertman, Architects, Waltham, dated December 19, 1985, were submitted.

The Planning Board, at its regular meeting of April 15, 1986, voted to oppose the granting of a variance as outlined in a letter of April 16, 1986.

In response to a request by the Board of Appeals, William W. Erickson, attorney for Swan Realty Trust, submitted a memorandum dated May 1, 1986 in support of the petition. David A. Guberman, attorney representing S. Lawrence Schlager, submitted a memorandum dated May 1, 1986 opposing the petition.

The Wellesley Fire Department reviewed the petition and plans and, in a letter of April 14, 1986, stated it had no objection to the plans provided five conditions were met in addition to the requirements of the State Building Code and other applicable laws and regulations.

Decision

This Authority has made a careful study of the evidence presented. The petitioner is requesting a variance from the terms of Section XIX and Section XVIIIC of the Zoning Bylaw to allow the addition of a single dwelling unit to the commercial building located at 103 Central Street with less than the required rear yard and side yard. The petitioner also requests a finding under Section XVII regarding the extension of a non-conforming use.

This Board was impressed with the concept and design as presented by the petitioner. However, the Board of Appeals does not have the authority to grant variances for requests such as this. We can find no section in our existing bylaw which would

Petition of Swan Realty Trust
103 Central Street

RECEIVED
TOWN CLERK'S OFFICE
NEW BEDFORD, MASS.
JUN 8 9 11 AM '86
JMR

allow the proposed project.

The petitioner requested that the application be treated as a request for a variance on a residential property. Assuming that the Board could consider that request, the Board would have to find hardship as quoted from Section XXIV-D 1. of the Zoning Bylaw:

"1.

- a. Literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant owing to circumstances relating to: i) soil conditions, ii) shape, or iii) topography of such land or structures, especially affecting such land or structures but not generally affecting the zoning district in which it is located; and the hardship shall not have been self-created; and
- b. Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of this Zoning Bylaw."

The Board fails to find any evidence of anything unusual about the soil conditions, shape or topography of the land. There is no evidence brought to this Authority that a "substantial hardship" exists on the property which is zoned for commercial use.

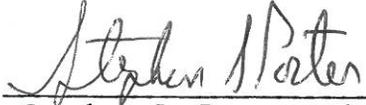
This Authority is of the opinion that the property at 103 Central Street can only be considered as a commercial property in a Business District. All zoning requirements in a Business District must be satisfied, including but not limited to off-street parking requirements, floor area ratio and Site Plan Approval, if it were applicable. A property in a Business District could only be considered for residential use if the entire parcel were used for residential purposes.

This Board is of the opinion that the proposed petition exceeds the zoning requirements for floor area ratio and off-street parking. The existing floor area ratio already violates the Zoning Bylaw which was just recently enacted, and the total floor area proposed is .834, grossly in excess of the allowable ratio of .50. Off-street parking requirements would be 3.2 spaces per 1,000 square feet of floor area of the buildings.

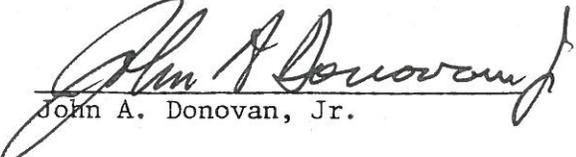
It is the unanimous decision of this Authority that this request for a variance pursuant to Section XIX, Section XVIIIIC and Section XVII of the Zoning Bylaw be denied and this petition is dismissed.

APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN
THE OFFICE OF THE TOWN CLERK.

CC: Planning Board
Inspector of Buildings
mam


Stephen S. Porter, Chairman


William E. Polletta


John A. Donovan, Jr.

