



BOARD OF APPEAL

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KATHARINE E. TOY
 Administrative Secretary
 Telephone
 235-1664

Petition of Robert C. and Jean N. Berry

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 8:05 p.m. on August 5, 1976, on the petition of Robert C. and Jean N. Berry, requesting an exception from the terms of Section XIX of the Zoning By-law. Said exception would allow the construction of an addition on the rear of the dwelling at 14 Damien Road with a side yard less than the required thirty feet. Said request was made under the provisions of Section XIX of the Zoning By-law.

On July 16, 1976, the petitioners filed their request for a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Robert C. Berry spoke in support of the request at the hearing.

A letter was submitted by Jean Berry, which listed the names of eighteen persons in the neighborhood who, it stated in the letter, had been questioned about the proposed addition to the house involved and had given their oral approval of the construction.

Leman W. Trefry, 35 Hunting Street, strongly opposed the granting of the request. He felt that as the other houses on the street were set back thirty feet from Hunting Street, to allow the requested exception, would depreciate his property as well as others on the street.

Statement of Facts

The dwelling involved which is located on a corner lot containing 9,310 square feet, is within a Single-residence District requiring a minimum lot area of 10,000 square feet.

The petitioners seek permission to construct an octagon shaped addition on the rear of their dwelling 17.0' from Hunting Street and 20.0' from the rear lot line. The proposed addition, if built, will provide a sunroom which is needed to better accommodate the needs of the petitioners' family. It was stated that other plans have been considered, but the proposed location appears to be the most feasible, and one which will best serve the interests of the family as well as the neighborhood. It was also pointed out that although the proposed addition will be only seventeen feet from Hunting Street, that section of the street is an unpaved deadend with little traffic. The lot is small, it was stated, which makes it almost impossible to construct an addition of useable size which would conform to the requirements of the Zoning By-law, and not radically alter the traffic pattern in the house.

A plot plan was submitted which showed the location of the house on the lot as well as the proposed addition. Said plan was drawn by Everett M. Brooks Co., Newtonville, dated July 9, 1976.

The Board denies the requested variance and the petition is dismissed.

Under General Laws, Chapter 40A, Section 15, Clause 3, there are four prerequisites that must be satisfied before a Board of Appeal may grant a variance. They are (paraphrased) as follows:

First, there must be conditions especially affecting the parcel or building but not affecting generally the zoning district in which it is located.

Second, because of these conditions, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise.

Third, desirable relief may be granted without substantial detriment to the public good.

Fourth, such relief may be granted without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

As to these four prerequisite, "a failure to establish any one of them is fatal": Blackman vs. Board of Appeal of Barnstable, 334 Mass 446, 450 (1956)

We do find some hardship. We find that desirable relief may be granted without substantial detriment to the public good and that such relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning by-law. However, we do not find conditions especially affecting the parcel or building which do not affect generally the zoning district.

CONDITIONS ESPECIALLY AFFECTING THE PARCEL OR BUILDING

Number 14 Damien Road is in a neighborhood of modest sized houselots, many of which contain areas of fewer than the presently required 10,000 square feet. The petitioners' lot is non-conforming in this respect. It contains 9,310 square feet. The houses along Damien Road are all in a row. Some of the lots are somewhat smaller than the petitioners' lot; some are somewhat larger.

We do not find from the evidence offered at the hearing that the 14 Damien Road lot has conditions especially affecting it and not the other lots in the area. We have no evidence of any physical feature unique to the land comprising the petitioners' lot.

In the case of Rodenstein vs. Board of Appeal of Boston, 337 Mass. (1958), there was evidence that under the surface of the lot in question there were large quantities of "pudding stone" so that the lot could not reasonably be developed for residential purposes. The Court upheld a variance to permit the use of the lot as a parking lot. In Dion vs. Board of Appeals of Waltham, 344 Mass. 547 (1962), the Court upheld a variance permitting a business use of a lot in a single residence district where there was evidence of conditions especially affecting the lot but not generally the district, namely: a high tension power line, a gas transmission pipe easement, the substreet level of the land, its proximity to an industrial plant, and the presence of peat deposits.

Decision

We find no such special conditions affecting 14 Damien Road.

In Coolidge vs. Zoning Board of Appeals of Framingham, 343 Mass. 742 (1962), the petitioners owned residentially zoned land abutting a business zone and demonstrated that it was financially impossible to develop it residentially. The Framingham Board's grant of a variance was reversed because there was no showing that such financial factors were unique to the petitioners' particular lot. See also Bouchard vs. Ramos, 346 Mass. 423 (1963).

OTHER PREREQUISITES UNDER CHAPTER 40A, SECTION 15

Since the Board has not found in evidence any conditions especially affecting the petitioners' property, it cannot grant the variance. Therefore, this decision will not discuss the Board's findings as to the other prerequisites.

The members of the Board sitting for this hearing were F. Lester Fraser, William O. Hewett and Henry H. Thayer, all of whom voted in accordance with this decision.

Henry H. Thayer
Henry H. Thayer

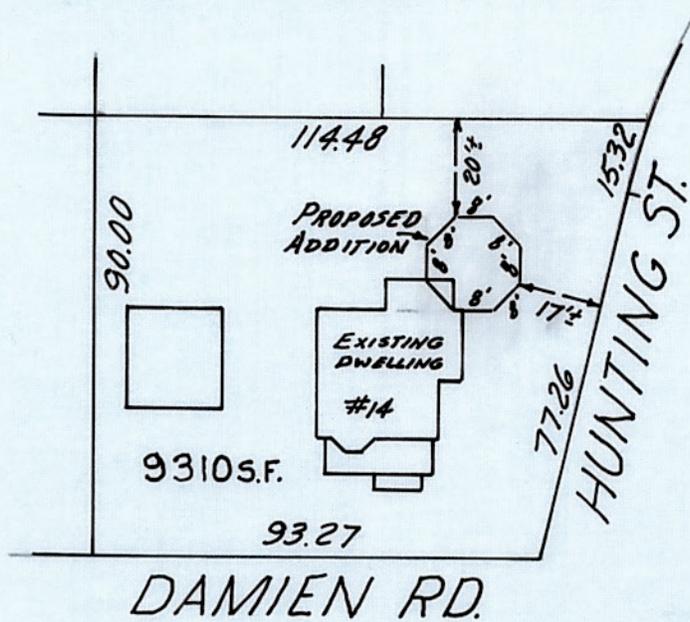
F. Lester Fraser
F. Lester Fraser

William O. Hewett
William O. Hewett

Filed with Town Clerk _____

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Charles D. Thompson

PLOT PLAN OF LAND

IN

WELLESLEY 0 MASS.

SCALE: 1 IN. = 40 FT.

EVERETT M. BROOKS CO.
 NEWTONVILLE

JULY 9, 1976

CIVIL ENGRS.
 MASS.