



ZONING BOARD OF APPEALS  
TOWN HALL WELLESLEY, MA 02181

Jul 13 8 25 AM '89

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ZBA 89-35  
Petition of LLOYD and Frances Crounse  
20 Edgemoor Avenue

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, June 29, 1989 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) of the Town Hall, 525 Washington Street, Wellesley on the petition of LLOYD AND FRANCES CROUNSE requesting a variance from the terms of Section XVIII and pursuant to Section XXIV-D of the Zoning Bylaw to allow the property at 24 EDGEMOOR AVENUE, in a Single Residence District, containing 8,249 square feet, as a legal building lot for a single family residence. Said lot has less than the required area in a 10,000 square foot Single Residence District and is not protected under Section XVII of the Zoning Bylaw and/or M.G.L. Chapter 40A, Section 6.

On June 13, the petitioners requested 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 LLOYD Crounse, who was accompanied by his daughter and son-in-law, Christine and Larry Carsman. Mr. Crounse gave a family history and said that his daughter now wishes to move back to Wellesley and build a home on the lot in question.

Mrs. Carsman said that she is seeking to build on an undersized lot which has 120 foot frontage. The lots on the street were originally laid out in 1914 with 20 foot frontages, and the original houses were summer camps. They are small homes sitting on small lots, so that the proposed house would be in keeping with the neighborhood.

Mrs. Carsman said that there is a driveway which extends from the garage on the abutting lot in Natick, which her parents own, across the proposed building lot. This driveway would be closed. The Natick house would have access from Natick.

Mrs. Carsman stated that a house could be built on the proposed lot which would be in compliance with all the other zoning setback requirements. It is only the area of the lot which is a problem.

The Board questioned the ownership of the 608 square foot parcel between the Wellesley and the Natick lots. Mrs. Carsman said that it appeared on the deed to the Natick property. Mr. Crounse said that the parcel on Natick deeds is deeded by to Wellesley, but that Wellesley deeds only go back 71 feet. Mr. Crounse said that he owns the land, but does not pay taxes on it.

Mrs. Carsman read a letter of support signed by 9 of the neighbors. Mr. Joseph McDermott, 40 Edgemoor Avenue, and Joseph Harkins, 26 Overbrook Drive, spoke in favor of the petition. Mr. Harkins added that he had a wedge of land similar to the Crounses situation on which he pays no taxes.

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No other persons present had any comment on the petition.

Statement of Facts

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The property in question is located between 20 and 28 Edgemoor Avenue and comprises a land area of 8,249 square feet, with a frontage of 120 feet, a left side line of 71 feet, a rear line of 120.6 feet and a right side line of 66.5 feet. The property originally consisted of 6 lots which were then combined into two lots of 4,192 square feet and 4,057 square feet. Neither of these lots have protected status under Section XVII (Nonconforming Uses and Structures) of the Zoning Bylaw as neither lot has the required minimum area of 5,000 square feet. Mr. and Mrs. Crouse purchased the two lots in 1970 and are now requesting a variance from Section XVIII (Area Regulations) to allow their lot of 8,249 square feet as an acceptable building lot in a 10,000 square foot district.

A driveway extending from the property in Natick owned by the Crouses, crosses the southeasterly portion of the property in question. The Natick property has a mailbox address of 22 Edgemoor Road, although this address is not recorded in the Assessor's office.

A Plot Plan, dated May 30, 1989, drawn by Ramon E. Luttazi, Registered Land Surveyor; a Plot Plan of the same date and signature, showing the proposed house site; a copy of Owner's Duplicate Certificate, Transfer Certificate of Title; and photographs were submitted.

The Planning Board, on June 20, 1989, voted to oppose the granting of the variance request as the Board believes that the granting of this request would set a precedent and would derogate from the intent and purpose of the Zoning Bylaw. The Planning Board also noted that Edgemoor Avenue is an unaccepted and inadequate way, and consequently is not desirable as the location of an additional building.

Decision

This Authority has made a careful study of the evidence presented. The property in question does not conform to the Area Regulation of 10,000 square feet for the district in which the property is located.

Section XVIII of the Zoning Bylaw states:

"In Single Residence Districts..., there shall be provided for each dwelling or club house, hereafter constructed, a lot containing not less than 10,000 square feet...and hereafter, no dwelling or club house shall be erected or placed on a lot containing less than such minimum area."

The lot in question has an area of 8,249 square feet, which is 1,751 square feet, or more than 15%, less than the minimum requirement of 10,000 square feet.

Section XVIII of the Zoning Bylaw continues:

"Nothing contained in this section shall prevent the construction or placing of any such building on any lot (1) in any of said Ten Thousand Foot... Districts containing a smaller area, if such lot on the effective date of

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the applicable provisions of this Zoning Bylaw originally establishing such districts did not adjoin other land of the same owner available for use in connection with said lot."

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To date, the Crouses have not provided evidence that the lot deserves protected status under this paragraph of Section XVIII.

Variances may only be granted by the Permit Granting Authority once they have found any or all of the following (Section XXIV-D 1. as quoted from 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 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."

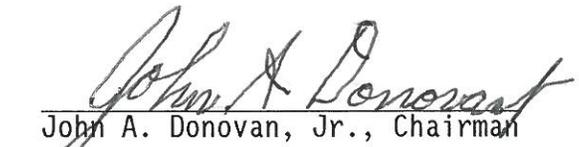
It is the opinion of this Board that there is no substantial hardship due to soil, shape or topography on which to grant a variance; the "hardship" claimed is merely size of the lot. The property in question is adjacent to property presently owned by the petitioner, and therefore can be used by the owner for other than a building lot.

It is the opinion of this Board that the granting of this variance would set a precedent which would substantially derogate from the intent and purpose of this Zoning Bylaw. The deviation from the required square footage is too great even if the grounds for a variance otherwise existed.

For all of the above mentioned reasons, it is the unanimous opinion of this Authority that this request for a variance 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  
edg

  
John A. Donovan, Jr., Chairman

  
Robert R. Cunningham

  
Kendall P. Bates