



BOARD OF APPEAL

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Petition of Leon H. Golay

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 8:00 p.m. on August 22, 1974, on the petition of Leon H. Golay, requesting a variance from the terms of Section XIX of the Zoning By-law which will permit the construction of a dwelling on a lot numbered A-4, adjacent to house No. 15, Cedar Street, with a front yard and frontage less than the required sixty feet. Said petition was made under the provisions of Chapter 40A, Section 15, of the General Laws.

On August 4, 1974, the petitioner filed his request for a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

The petitioner spoke in support of the request at the hearing.

A petition favoring the request, which was signed by six nearby property owners, was submitted at the hearing.

The Planning Board opposed the request in its report as it felt that the granting of the petition could establish a precedent for similar approvals.

Statement of Facts

The lot involved, which contains 15,909 square feet, is located within a Single-residence District requiring a minimum lot area of 10,000 square feet, and has a frontage of 41.73 feet. The adjacent lot on which there is a dwelling house, contains 11,285 square feet, and has a frontage of 61.42 feet.

The petitioner seeks a variance from the terms of Section XIX of the Zoning By-law which will allow the construction of a dwelling on the lot involved with a frontage and front yard of 41.73 feet rather than the required sixty feet. It was stated that in 1959, the petitioner had a parcel of land with a dwelling there-on divided into two lots, thus creating the lot involved. The plan was signed by the Planning Board on May 12, 1959 as, "Approval under the Subdivision Control Law not Required." At that time the frontage and front yard requirement was forty feet, however, in 1964 it was increased to sixty feet, with an exception that the requirement did not apply to any lot having a frontage of forty feet or more and less than sixty feet, if such lot on March 23, 1964, did not adjoin other land of the same owner. The lot involved, however, was held under joint ownership with the adjoining lot on that date, therefore, a variance is required.

The petitioner stated that, in his opinion, there is a substantial hardship involved as he has been paying real estate taxes on the lot for a number of years and feels that a dwelling constructed on it would not prove detrimental to the neighborhood or to the Town. If permission is granted by this Board, he would like to build a six-room ranch type dwelling. While the lot has a frontage of only 41.73 feet on Cedar Street, it abuts a right-of-way

on the westerly side 114.03 feet which is used daily as access to the Town of Wellesley School property at the rear. He, therefore, feels that there are conditions especially affecting his lot which do not affect generally the zoning district in which it is located and that undue hardship will result if a literal enforcement of the zoning By-law is required.

Decision

The Board has viewed the locus and has examined the records at the Norfolk Registry of Deeds relating to this property from the time of its acquisition by the petitioner and his wife in 1947.

It is the unanimous opinion of the Board that the requested variances from the front yard width and frontage requirements of Section XLIX of the Zoning By-law be granted and that the lot may be built upon even though a portion of it has a frontage of 41.73 feet and a front yard width of 40 feet.

While this variance as hereby granted is unconditional, the Board wishes to place upon the record as a memorandum of its decision the following considerations.

The parcel for which these variances are granted is shown on Lot A-4 (containing 15,909 square feet) on a plan dated April 27, 1959 and recorded with Norfolk Deeds on January 21, 1973, in Book 4047, Page 425.

This lot slopes down sharply on the southwest side (rear side from Cedar Street) towards Schofield School. It appears to the Board that this slope will prevent the construction of a dwelling house on the southwesterly part of the lot without considerable, expensive landfill. While this present Board cannot govern the decisions of future Boards, the present Board wishes to make it clear that the only variances it deems appropriate are those of frontage and front yard width. This Board's decision in this case should not be construed as favoring any further variances, such as from side yard setbacks, that might be required by the topography of the lot. The lot was created by the petitioner himself and not by a prior owner. Therefore, the petitioner was on notice of the potential difficulties in building on the lot at the time he had it surveyed.

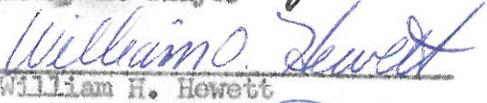
In arriving at its decision to grant the frontage and front yard variances the Board reached the following conclusions:

1. There is a condition especially affecting this parcel, but not generally affecting the zoning district in which the lot is located, namely the narrowness of the front yard which extends for 14.3 feet in from Cedar Street.
2. A literal enforcement of the frontage and front yard provisions of the zoning by-law would involve substantial hardship to the appellant. Without the requested variances he would be required to treat the locus, Lot A-4, and the adjacent lot, Lot A-3 (also shown on the plan referred to above), as a single 27,194 square foot lot in an area zoned for 10,000 square foot lots. Since A-3 already has a ~~building~~ on it, no additional building would be possible.
3. Desirable relief may be granted in this case without substantial detriment to the public good. The locus contains 15,909 square feet or an area over fifty percent greater than the minimum required by the zoning by-law for this neighborhood. On the northwest the lot abuts a private way and on the southwest abuts the land comprising Schofield School. Thus ample open space is assured on at least two sides of the lot.

4. The sought for variances may be granted without nullifying or substantially derogating from the intent or purpose of the zoning by-law. The Board is of the opinion that the primary purpose of the frontage and front yard width requirements of the zoning by-law is to prevent an undesirable side-by-side congestion of buildings all fronting on the same street. In the present case, in view of the zoning by-law's twenty-foot side yard requirement, a building cannot be constructed in the forty-foot wide portion of the lot; but, if it is to be built at all, it must be built in the rear portion of the lot away from the street.

This Board takes note of the Planning Board's apprehension (as expressed in its letter which is on file in this case) that the granting of the variances in this case will serve as a precedent for the approval of oddly shaped lots generally. However, the Board does not believe that the fact that a lot has an odd shape should of itself render the lot unlawful for building purposes.


Henry H. Thayer


William H. Hewett


Franklin P. Parker

Filed with Town Clerk _____

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