

TOWN OF READING, MASSACHUSETTS
DECISION OF THE ZONING BOARD OF APPEALS ON THE PETITION OF
MICHAEL AND MARY BELMONTE FOR THE PROPERTY LOCATED AT
172 WASHINGTON STREET, READING, MASSACHUSETTS

April 18, 2013

Case No. 13-04

The Zoning Board of Appeals (the "Board") held a public hearing on Thursday, April 18, 2013, in the Selectmen's Meeting room at Town Hall, 16 Lowell Street in Reading, Massachusetts, to hear the continuation from the original opening of the hearing on April 4, 2013, of the Petition of Michael and Mary Belmonte (the "Petitioners") who sought a Variance from Section 4.2.2 of the Zoning By-Laws in order to demolish an existing legal, non-conforming single-family dwelling in an S-15 zoning district and to construct a new two-family dwelling on the property located at 172 Washington Street in Reading, Massachusetts (the "Property").

The Property (made up of two lots numbered 1 & 2) has 120.00 feet of frontage on Washington Street and a total lot area of 23, 823 square feet which meet the frontage and area requirements for a legal building lot in the S-15 zoning district. The existing single-family dwelling is situated with a 15.0 foot front setback from Washington Street, which does not meet the 20.00 foot front setback required in the S-15 zoning district, thereby creating an existing legal, non-conforming front setback. The Petitioners are requesting a Variance from Section 4.2.2 of the zoning by-laws to demolish the existing single-family dwelling, which is in severe disrepair, and to construct a new two-family dwelling meeting all required setbacks. Section 4.2.2, Table of Uses of the Zoning By-laws, does not allow the construction of a two-family dwelling in the S-15 zoning district. The proposed two-family dwelling is shown on a Certified Plot Plan prepared by Stephen M. Meleschiuc, PLS #39049, 23 Fosters Lane, Wakefield, MA 01880, dated February 20, 2013 and, titled Assessors Map 17 Parcel59, #172 Washington Street, Reading, MA prepared for Michael and Mary Belmonte.

The Board of Appeals may grant a Variance if it finds that the four following conditions have been met: (1) particular circumstances existing relating to soil conditions, shape or topography of the land or structures that are subject to the petition, but do not generally affect the zoning district in which it is located; (2) a literal enforcement of the zoning ordinance would involve a substantial hardship, financial or otherwise; (3) the desirable relief can be granted without

substantial detriment to the public good; and (4) that the Variance does not nullify or substantially derogate from the intent or purpose of the zoning ordinance.

In presenting the Petitioners' case before the Board, Mr. Brad Latham, the Petitioners' attorney stated that the existing Property can be converted to a two-family dwelling as of right under Section 4.3.1.1 of the zoning by-laws which provides that in a Residence or Business A District, a one-family dwelling existing prior to April 1942, which at that time had at least eight(8) finished and habitable principal rooms may be altered into a two-family dwelling, provided that the external appearance of a one-family house is retained. The Building Inspector has made a determination that this dwelling so qualifies to be altered into a two-family dwelling. The existing structure on the lot is in serious disrepair and would require extensive structural and rebuilding work. Because of the poor condition of the existing structure, the Petitioners would like to demolish the existing structure and replace it with a new two-family dwelling which would be centered on the lot, be of attractive design fitting into the neighborhood and, meet all required setbacks.

Atty. Latham then gave explanations to the four criteria required to be met for a Variance and why the Petitioners' request for a Variance is warranted.

There are circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures, but not affecting generally the zoning district in which it is located. It is unusual in Reading for a dwelling to be in such a condition of disrepair as this structure is. The parcel itself is unusual, being larger than any other single-family residential lot on Washington Street and elsewhere within 300 feet. It is also unusual for the principal building on such an oversized lot (more than a half an acre) to be squeezed into the corner of the lot, so as to be too close to two lot lines. The combination of the condition of the structure, the size of the lot and the building's location on the lot is unique and gives rise to the need for the variance.

A literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise. If a variance is not granted, the Petitioners would be forced to expend significant dollars to try to renovate and retrofit the current structure into a two-family dwelling. That creates an economically unviable situation. There would be significant expenditures to restore the structure because of its deteriorated condition. All of those expenditures would only net two modestly sized units. The interior layout of the units would not be optimum. The building would still be non-conforming as to the set-backs, with the dwellings being too close to the lot lines, so the nonconformity remains. The building would be very close to the busy Washington Street.

It is also not a viable alternative to remove the old building and build a single-family dwelling. Destroying a structure that has the legal standing as of right to make it into a two-

family dwelling and then building a new single-family dwelling would not be financially feasible.

Desirable relief may be granted without substantial detriment to the public good. Granting the relief requested will not be substantially detrimental. In fact, granting the relief requested will result in the removal of a dilapidated building, will cause the property to conform to the off-set requirements, and will result in the creation of a new and attractive structure that is centered on the lot. Allowing a two-family dwelling is consistent with the neighborhood. The lot is immediately abutted by three, two family dwellings. In addition, there is a two-family dwelling across the street, so two-family dwellings are normal in the neighborhood.

Relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning by-law. The zoning by-law allows the current building on the lot to be converted to a two family dwelling, so putting a new two-family dwelling on the lot would not derogate from the intent and purpose of the zoning by-law. There would not be any greater density that is allowed as a matter of right on this site. In fact, the granting of relief will effectively merge the two old lots.

Following the Petitioners' presentation, the public session was opened to public comment and discussion by the Board. Public comments were received supporting the proposal, after which the public session of the hearing was closed by the Chair.

The Board reviewed the four criteria necessary for approval of a variance request and concurred with the arguments presented by the Petitioners' attorney for a Variance.

Accordingly, a motion was made and seconded and the Board voted (5-0-0) to grant the Petitioners' request for a Variance from Section 4.2.2 of the Zoning By-Laws in order to demolish the existing single-family dwelling and, to construct a new, two-family dwelling on the lot at 172 Washington Street, Reading, MA, as depicted on the previously referenced Certified Plot Plan, with the condition that the proposed two-family dwelling be located at least 50.00 feet back from Washington Street in order to provide sufficient on-site parking, snow storage and front yard landscaping.

Any person aggrieved by this decision of the Board may appeal to the appropriate court pursuant to M.G. L. c. 40A, §17, within twenty (20) days after the date of filing this Decision with the Town Clerk. Notice of appeal with a copy of the complaint must also be filed with the Town Clerk within twenty (20) days as provided in §17.

This Variance shall not take effect until a copy of this Decision, bearing certification of the Town Clerk that twenty (20) days have elapsed after the Decision was filed in the Office of the town Clerk and no appeal has been filed, or if an appeal has been filed within such time, that is

has been dismissed or denied, is recorded in the Middlesex South District Registry of Deeds and indexed in the Grantor's index under the name of the owner of record, or is recorded and noted on the Owner's Certificate of Title. The fee for recording or registering shall be paid by the Owner or Petitioner. Any person exercising rights under a duly appealed Special Permit does so at the risk that a court may reverse the permit and that any construction performed under the permit may be ordered to be undone.

ON BEHALF OF THE READING ZONING BOARD OF APPEALS



Damase Caouette, Chairman

Zoning Board Members voting on Case # 13-04

Damase Caouette, John Jarema, Kathleen Hackett, David Traniello, Robert Redfern