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ZONING BOARD OF APPEALS
DECISION ON THE PETITION OF JOSEPH AND MARIE FIELD
FOR THE PROPERTY LOCATED AT
63 WHITTIER ROAD, READING, MASSACHUSETTS

2013 DEC 16 P 2:53

December 5, 2013
Case No. 13-22

The Zoning Board of Appeals (the "Board") held a public hearing on Thursday, December 5, 2013 at 7:00 p.m. in the Selectman's Meeting Room at Town Hall, 16 Lowell Street in Reading, Massachusetts to hear the petition of Joseph and Marie Field (The "Petitioners"). The Petitioners sought a Variance/Special Permit under Section(s) 4.3.2.8.2a/6.3.8.1b of the zoning by-laws in order to demolish an existing single family dwelling and propose to construct a new single family dwelling with an accessory apartment on the property located at 63 Whittier Road in Reading, Massachusetts (the "Property").

The Property, located in an S-15 district, is a legal, non-conforming lot due to the fact that the property has an area of 8,680 square feet instead of the required 15,000 square feet and a frontage of 70 feet instead of the required minimum of 100 feet. Rex Ingram (hereinafter, Mr. Ingram), Registered Architect, made the presentation on behalf of the Petitioners and stated that although the proposed dwelling will be larger than the existing dwelling, the proposed single family dwelling conforms with all required setbacks and height restrictions and has no new non-conformities. The dwelling is depicted in the Certified Plot Plan ("the Plot Plan") prepared by Edward J. Farrell, 110 Winn Street, Suite 203, Woburn, MA and stamped by Edward J. Farrell, Professional Land Surveyor, dated October 15, 2013.

Section 6.3.8.1b of the Reading Zoning By-Laws states, in relevant part: "In the event that the reconstruction would (a) cause the structure to exceed the volume or area of the original non-conforming structure or (b) cause the structure to be located other than on the original footprint, a special permit shall be required from the Board of Appeals prior to such demolition. The Board of Appeals may, by Special Permit, allow such reconstruction where it determines that the proposed reconstruction will not be substantially more detrimental than the existing nonconforming structure to the neighborhood." Following discussion and comment by Board members and opening the discussion to public discussion, the Board concluded that the proposed dwelling will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

Accordingly, a motion was made and seconded, and the Board voted unanimously (5-0-0) to grant the Petitioners' request for a Special Permit under Section 6.3.8.1b of the zoning by-laws in order to demolish an existing single family dwelling and to construct a new single family dwelling on the property located at 63 Whittier Road in Reading, Massachusetts, as shown on the referenced Plot Plan of Land.

The Special Permit is conditioned upon the following:

1. The Petitioner shall submit to the Building Inspector a Certified Plot Plan of the proposed construction and proposed foundation plans, prior to the issuance of a foundation permit for the work.
2. The Petitioner's final construction plans for the new structure shall be submitted to the Building Inspector, along with the as-built foundation plan(s), prior to the issuance of a Building Permit.

3. As-built plans showing the completed construction of the new structure being submitted to the Building Inspector immediately after the work is completed and prior to the issuance of an Occupancy Permit.

The Petitioners also sought a Variance under Section 4.3.2.8.2a of the zoning by-laws in order to construct a new single family dwelling with an accessory apartment on the Property. Mr. Ingram stated that the Petitioners have met all the requirements of Section 4.3.2.8.2 of the zoning by-laws except 4.3.2.8.2a which states, in relevant part: "The dwelling in which the accessory apartment is to be located was legally occupied prior to August 1, 1982." Mr. Ingram stated that the property and existing home have been owned and occupied for more than forty years by the Petitioners. Mr. Ingram stated that the accessory apartment will be occupied by members of the same family and not rented to tenants.

The Board of Appeals may grant a variance pursuant to the authority contained in M.G.L. Chapter 40A, Section 10, provided the following four criteria are met:

1. Owing to 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:
Mr. Ingram explained that the non-conforming nature of the lot, specifically with regards to area does not provide enough workable space for an accessory apartment within the existing home. He further explained that it is most economically feasible to reconstruct the original home, making it large enough to incorporate the proposed accessory apartment.
2. A literal enforcement of the provisions of the ordinances or bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant:
Mr. Ingram explained that the intent is to provide an environment whereby the Petitioners can live under one roof with their son, his wife and two children. The intent is to pool resources in order to keep ownership of the home within the family, provide care for aging family members who, in turn, can assist with childcare responsibilities. The inability to do this, given the Petitioners' current means, would create considerable financial hardship.
3. Desirable relief may be granted without substantial detriment to the public good:
Mr. Ingram stated that the Petitioners have been residents of the Property for more than forty years. Mr. Ingram explained that the accessory apartment will not be a rented apartment and the dynamics of the street and neighborhood will not change. According to the Plot Plan, the proposed home, while on a non-conforming lot due to area and frontage, meets all restrictions relative to building height, setbacks and building coverage.
4. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of such ordinance or bylaw:
The variance sought relates specifically to 4.3.2.8.2a which states that an accessory apartment may be constructed if the dwelling was legally occupied prior to August 1, 1982. The existing home has been occupied by the current homeowners for more than forty years and the current homeowners will continue to occupy the home following reconstruction. Mr. Ingram stated that the intent is to pass the home, within the family, to the next generation.

A motion was made and seconded and the Board voted unanimously (5-0-0) to approve the petition for a variance under section 4.3.2.8.2a of the zoning by-laws in order to construct a new single family dwelling with an accessory apartment on the property located at 63 Whittier Road in Reading, Massachusetts as reflected and consistent with the Plot Plan and architectural drawings, A0 through A7, prepared by Ingram Architects, 29 Carlton Street, Salem, MA and stamped by Rex W. Ingram, Professional Architect, dated October 15, 2013. A condition of the Board's approval shall be that if there is a change in the occupancy of the accessory apartment, the Board must be notified.

Finally, a motion was made and seconded and the Board voted unanimously (5-0-0) to approve the petition for a Special Permit for an accessory apartment pursuant to the Variance granted by the Board on December 5, 2013, see supra, on the property located at 63 Whittier Road in Reading, Massachusetts.

Any person aggrieved by the 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 and Special Permits 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 it 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 Z. Caouette, Chairman

Zoning Board Members voting on Case # 13-22

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