

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

ZONING BOARD OF APPEALS

ARLINGTON, MASSACHUSETTS

In the matter of)
)
83 Palmer Street)
Arlington, Massachusetts) Docket Number:
)
Matthew Ghofrani and Deborah A.)
Ghofrani, Applicants)

ZONING MEMORANDUM OF FACT AND LAW
IN SUPPORT OF
REQUEST FOR SPECIAL PERMIT

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STATEMENT OF FACTS

Applicants seek a determination from the Zoning Board of Appeals as to whether a Zoning Board of Appeals' Decision dated March 11, 1955, which allowed a subdivision combining a lot containing 7,821 square feet with a lot containing 2,269 square feet resulting in two separate lots, one containing 5,507 square feet and the other containing 4,583 square feet resulted in the lot containing 5,507 square feet being deemed a two-family residential lot.

The real estate is and was at the time of the Zoning Decision located in an R2 Zone as defined within the Zoning Bylaw and the question presented for interpretation by the members of the Zoning Board is whether it was the intent on the part of the members of the Zoning Board at the time of the Zoning Decision in 1955, when granting the zoning relief, that the lot containing 5,507 square feet resulted in a two-family lot designation for Lot B as the property was located in a R2 Zone and vacant.

To quote from the Zoning Decision from March 11, 1955: **“The property involved in this appeal is shown on Plot plan #42 as Lots 9 & B extending from Beacon Street to Palmer Street. The series of lots lettered A, B C. etc. are formed from a triangular strip which resulted from a relocation of Palmer Street. These lots, at the end near Warren Street, are of considerable size, lot B having an area of 2,269 sq. ft. However, it is too small to build upon. Lot 9 has an area of 7,821 sq. ft. and is larger than necessary for a house. It is proposed to subdivide lot 9 so that the back part, together with lot B, will comprise 5,507 sq. ft., while the residual of lot 9 will be 4,583 sq. ft. Thus, another lot will be created which will be large enough for practical utilization.”**

“The proposal is quite in keeping with several others already submitted to the Board which pertain to lots in the block between Palmer Street and Beacon Street. The resulting lots would be as large or larger than the average lots in the vicinity.”

At the time of Zoning Decision, the newly created lot containing 4,582 square feet had an existing building on it while the newly created lot B containing 5,507 square feet did not.

It is clear that at the time of the Zoning Decision the zone in which the two lots were located was an R2 zone.

At the time of the Zoning Decision the Decision simply granted relief with respect to the subdivision without indicating whether lot B, the vacant lot, could have a two-family or single-family house built on it, once again, in a neighborhood even then containing mostly two-family homes.

A single-family home presently exists on lot B and it was constructed sometime after the 1955 Zoning Decision.

ARGUMENT OF FACT AND LAW

It is clear from a reading of the Zoning Decision that each of the lots created at the time of the approval of the subdivision plan by the Zoning Board of Appeals did not contain sufficient square feet to comply with the then requirements of the Zoning Bylaw.

Notwithstanding that fact, when the Zoning Board issued its Decision, it did not indicate that the grant of relief was limited to construction of a single-family home.

Indeed, a reading of the last page of the Zoning Decision **“to wit: to subdivide two lots. Said subdivision would create two lots with less than the square foot area required by the Section 14-B of the Zoning Bylaw”** indicates that the members of the Zoning Board were well aware that each of the newly created lots would not comply with the zoning requirements for either a single-family or a two-family home.

It is the Applicants' position that if it was the collective intent on the part of the members of the Zoning Board to limit construction of the new building to be built on lot B to a single-family home, the Decision would have stated that as a condition of the grant of zoning relief which of course it did not.

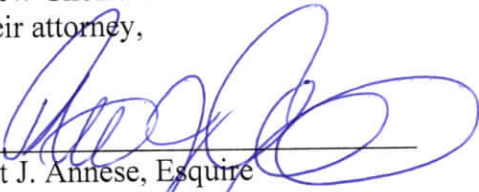
It is also the position of the Applicants that it can reasonably be inferred that the collective intent of the members of the Zoning Board was that the grant of relief did not limit the newly created lot B to a single-family home, but rather allowed construction of a two-family home even though ultimately a two-family home was not constructed on the lot subsequent to the 1955 Zoning Decision.

The Zoning Decision did not state the statutory reasons for the grant of relief for either a Special Permit or a Variance, but it is also clear that the time for an appeal being filed in connection with the Zoning Decision has long passed as the time for raising any defects

in a Notice of a Decision is limited to the 20-day appeal period set forth within the provisions of Chapter 40A. Cappuccio v. Zoning Board of Appeals of Spencer, 398 Mass. 304, 311, (1986).

For all of the above reasons the Applicants request that the Zoning Board issue a Special Permit interpreting the Decision of the Zoning Board dated March 11, 1955 that lot B is a two-family lot, and that the Applicants can proceed to construct a two-family house on lot B.

Applicant
Matthew Ghofrani and Deborah A. Ghofrani,
By their attorney,



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