



City of Marlborough Zoning Board of Appeals

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3768 Facsimile (508) 460-3747

ZBA Case # 1477-2021
Location: 2 South Bolton St.

Date: June 8, 2021

(General Laws Chapter 40A, Section 16) Granting of a Variance

To: Johannah Realty Management Co. Inc.
c/o Attorney Brian Falk, Mirick O'Connell

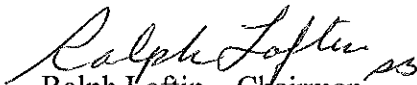
Address: 100 Front Street

City: Worcester, MA 01608

affecting the rights of the owner with respect to land or buildings at:

2 South Bolton St. Map 70 Parcel 218

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision and of all plans referred to in the decision, have been filed with the City Clerk.


Ralph Loftin – Chairman
Zoning Board of Appeals


Susan Brown - secretary

Submitted to the City Clerks' office on June 8, 2021.



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Record of Proceeding and Decision
Held Virtually thru Microsoft Teams and was recorded

Zoning Board Case #: 1477-2021

Applicant: Johannah Realty Management Co., Inc.

Date of Appeal: March 30, 2021

Meeting Date: May 18, 2021

Location of Subject Property: 2 South Bolton St. Shown as a portion of Assessor's Map 70, Parcel 218 (74 Main St.)

Relief requested: Pursuant to G.L. c. 40A § 10 and § 15, To approve a variance exempting the subject parcel from required minimum lot area of 5,000 square feet as required in the Marlborough Village Zoning District.

Roll call of members present in Memorial Hall: Ralph Loftin-Chairman, Paul Giunta, Robert Levine, Thomas Pope and Thomas Golden. Also present was Susan Brown-secretary.

Appearing virtually were:

- Jason Piques - Assistant City Solicitor;
- Patrick Dahlgren - Assistant Building Commissioner;
- Attorney Brian Falk on behalf of prospective buyer Johannah Realty Management Co., Inc.
- Attorney Thomas Farrey of Burns & Farrey located in Worcester, MA; and
- Attorney Sem Aykanian, as Seller and as Trustee of John Cotting Realty Trust.

Notice of the hearing was given by Certified Mail to all persons to be affected, as shown on the most recent tax list and by publication in the Marlborough Enterprise Weekly, a newspaper of general circulation in Marlborough, MA on April 29, 2021 and May 6, 2021.

Documents submitted by applicant in support of this Appeal:

- Application with filing fee, narrative and plans
- Denial letter from the Building Dept. dated March 23, 2021

- Plans entitled:
 - Plan of Land in Marlborough, MA Dated March 1, 1985; Approval under the Subdivision Control Law Not Required (ANR), signed and dated by the Planning Board.
 - Plan entitled Plot Plan #2 South Bolton St., dated Feb. 21, 2021, prepared by Bruce Saluk & Associates, Inc.

Public hearing:

1. Atty. Falk gave a brief history of 2 South Bolton St. (the Property):
 - a. Map 70, Parcel 218 contains 74 Main St. and 2 South Bolton St. according to the city's assessor's maps.
 - b. Applicant is seeking a dimensional variance to have the building on 2 South Bolton St. be considered a stand-alone building on its own separate lot.
 - c. 2 South Bolton St. is recorded as a separate lot at the Registry of Deeds but is not a separate lot for zoning purposes.
 - d. There was a taking of land to realign South Bolton St. which altered the Property where the building at 2 South Bolton St. is currently located.
 - e. 2 South Bolton St. (parcel 22B) was a left-over parcel containing approximately 3,675 square feet owned by the Marlborough Community Development Authority (CDA).
 - f. The CDA conveyed as a vacant parcel in 1985 to Richard Wagner, Jr., former owner of 74 Main Street including a deed restriction stating "Parcel 22B shall be used to erect an accessory building or addition and 22B cannot be transferred as single parcel.
 - g. Shortly after, the accessory office building was constructed.
 - h. Said restriction has been released. (A copy of the Release of Restriction is in Board's file.)
 - i. Sem Aykanian, Trustee, purchased 74 Main St. on or about December 1, 1987.
 - j. 2 South Bolton St. has merged with 74 Main St. for zoning purposes creating two structures on one lot. Map 70 Parcel 218.

- k. According to the ANR plan dated 3/18/1985, 2 South Bolton St. (aka as Parcel 22B containing 3,675 sq. ft.) is shown as a separate lot. The separation of 2 South Bolton St. from 74 Main St. would re-establish the property's boundaries as shown on the Original ANR Plan.
 - l. Johannah Realty Management Co., Inc. is under agreement to purchase 2 South Bolton St. as a separate lot. It is the intention of the applicant to use the site as the new location of their law firm, Burns and Farrey. They plan on having 20 employees.
 - m. To be treated as a separate lot with 3,675 sq. ft. in area vs. the required 5,000 sq. ft. requires a variance thru the Zoning Board of Appeals. The Property will conform to all other zoning requirements of the Marlborough Village District.
 - n. The re-introduction of the lot line as shown on the Original ANR plan would have zero impact on the neighborhood.
 - o. The applicant stated there will be a parking easement from 74 Main St. which will be recorded on their deed.
 - p. The deed shows two separate lots. The building at 2 South Bolton St. was built so close to the lot line because it was one large lot with an imaginary lot line between the structures.
 - q. A literal enforcement of the Zoning Ordinance with respect to lot area would present a substantial financial hardship in that the Property could never be sold separate from 74 Main St., thus depriving the owner of 74 Main St. of significant value.
 - r. Without the requested variance, there would be less incentive to invest in 2 South Bolton St. if the building remains as a commercial rental property rather than being owner-occupied.
 - s. Granting a variance from the lot area requirement of the Zoning Ordinance to accommodate the lot separation would not cause a substantial detriment to the public good or a substantial derogation from the intent and purpose of the Zoning ordinance.
2. Attorney. Falk introduced a slide show of the Property which is on file.

3. Thomas Farrey of the law firm Burns & Farrey stated he would like to purchase 2 South Bolton St. for the headquarters of a law firm which will be operated by his son. The exterior of the building will remain the same; only interior renovations are being proposed.
4. Board Member Ralph Loftin asked if the existing property line to the south of the property can be moved by acquiring land from CDA? Answer: No, CDA is not selling any land.

Mr. Loftin had concerns of creating undersized lots which may set a precedent in this Marlborough Village District (MV). Attorney Brian Falk replied it was his belief it would not set a precedent, because no other lots in this area have the same issues.

5. Board Member Robert Levine asked about the setback requirements for the Marlborough Village District. This appears to be a self-imposed hardship. Attorney Brian Falk replied it was his belief that these are two separate lots as shown on the ANR plan and that for zoning purposes, it is allowed to have two structures on one commercial lot, being Map 70 Parcel 218.
6. Attorney Sem Aykanian appeared virtually. He stated that originally, he thought he did not need permission to separate 2 South Bolton St. from 74 Main St. He thought it was a pre-existing non-conforming lot, but that is not the case. He went through the Mayor's office and the CDA to acquire a "Release of Restriction" imposed by the CDA. He is seeking the variance so that title can be clarified for the prospective buyers of the Property.
7. Jason Piques, Assistant City Solicitor stated that since the Release of Restriction has been lifted, the applicant would like to sell 2 South Bolton St. as a separate lot. He explained that the previously existing two lots merged under common ownership. The owner was allowed to build an accessory structure because the parcel was one large lot (this became 2 South Bolton St.) That is why 2 South Bolton St. was built so close to the lot line, because this was one single lot.

He further noted that variances should be granted sparingly. Hardships, if any, should arise due to shape, soil, and topography of the lot.
8. Patrick Dalhgreen, Assistant Building Inspector, attended virtually. He asked about the total area of Map 70, Parcel 218. Neither the applicant, nor the seller were aware of the total square footage of the merged lot.

9. Three letters of support from the following were read into the file:
 - The Vin Bin dated May 5, 2021
 - Rowe Law Office dated April 23, 2021
 - Firehouse Management dated April 27, 2021
10. There was no one present virtually to speak in favor or in opposition to the petition.
11. Board Member Thomas Pope made a motion to close the public hearing, seconded by Thomas Golden. A roll call vote 5-0 with all yeas to close the public hearing.

Findings

The Board makes the following findings:

1. The subject property is located in the Marlborough Village District (MV) being Map 70 Parcel 215 of the Assessor's Map, also known as 2 South Bolton St. (the Property).
2. The subject property is a corner lot having two front setbacks and two side setbacks.
3. 2 South Bolton St. has been in existence since at least 1985.
4. Thru testimony by the applicant, 2 South Bolton St. may have been constructed as an accessory structure to 74 Main St. That is why the structure is built so close to the lot line.
5. Granting a variance from the lot area requirement of the Zoning Ordinance to accommodate the lot separation would not cause a substantial detriment to the public good or a substantial derogation from the intent and purpose of the Zoning ordinance.
6. Separation of 74 Main St. and 2 South Bolton St. will result in no noticeable difference to the neighborhood.
 - a. The buildings and lots would continue to function as they have for decades.

- b. The Property would comply with all other dimensional requirements of the Marlborough Zoning Ordinance and would provide close to $\frac{3}{4}$ of the required lot area.
7. The Property is a roughly rectangular corner lot with no option to increase the lot area by expanding in any direction. The owner will be unable to use the property as zoned unless the variance is granted.

Decision

Board Member Thomas Golden made a motion to approve the variance request that 2 South Bolton St. containing 3,675 sq. ft. vs. the 5,000 sq. ft. required for the Marlborough Village District be considered as a separate lot. Paul Giunta seconded the motion. Vote taken by roll call vote 5-0 with all yeas to approve the variance request.

Conditions:

- 1. Record this variance and plan at the Registry of Deeds. Plan entitled: Plot Plan #2 South Bolton St. Marlborough, MA prepared by Bruce Saluk & Associates, Inc. Dated: February 21, 2021. Said recording will be provided to the Zoning Board of Appeals and the Building Dept. for their file.

End

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section II (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the city clerk that twenty days (20) have elapsed after the decision has been filed in the office of the city clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the Registry of Deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

If the rights authorized by a variance are not exercised within one (1) year of the date of grant of such variance, such rights shall lapse; provided however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six (6) months; and provided, further, that the application for such

extension is filed with such permit granting authority prior to the expiration of such one year period.

No Special Permit, or any extension, modification, or renewal thereof, can take effect until a copy of the decision, bearing the certification of the city clerk is recorded in the registry of deeds. The fee for recording or registering shall be paid by the owner or applicant. Special Permit will lapse within two years of grant of such Special Permit.

Respectfully submitted,


Ralph Loftin – Chairman
Zoning Board of Appeals

Submitted to City Clerk's office on June 8, 2021.



City of Marlborough Zoning Board of Appeals

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Marlborough, Massachusetts 01752
Tel. (508) 460-3768

ZBA Case # 1477-2021

Applicant: Johannah Realty & Management Co. Inc.

Owner: Sem Aykanian, Trustee

Location: 2 South Bolton St.

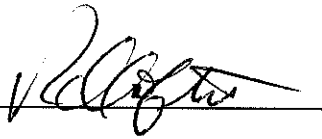
VOTE OF THE BOARD Signature Sheet

IN FAVOR

Paul Giunta



Ralph Loftin



Thomas Golden



Thomas Pope



Robert Levine



IN OPPOSITION

Paul Giunta

Ralph Loftin

Thomas Golden

Thomas Pope

Robert Levine
