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March 18, 2024

Via Hand-Delivery

Robert Rosa, Chair
Zoning Board of Appeals
Rockland Town Hall
242 Union Street
Rockland, MA 02370



**Re: Application for Variance and Special Permit
 421 Forest Street, Rockland, MA**

Dear Chair Rosa and Members:

This office represents Melissa McInnis and Dennis S. Benoit (collectively, the “Applicants” or “McInnis”), owners of the property at 421 Forest Street, in Rockland (the “Property”). The Applicants request that the Zoning Board of Appeals (the “Board”) grant zoning variances, pursuant to § 415.89.1 of the Town of Rockland Zoning Bylaw (the “Bylaw”), and a Special Permit under § 415-29 of the Bylaw (Number of buildings on single lot), to the extent required, and/or such other relief that may be necessary, to maintain the existing 758± s.f. single-family dwelling and construct a 2,250± s.f. warehouse/storage building, with accessory parking, at the Property (the “Project”).

I. Background Facts

The Property is a dual access lot with frontage on Forest Street and VFW Parkway. The Applicants hold title to the Property by virtue of deed dated October 22, 2018, recorded with the Plymouth County Registry of Deeds at Book 50431, Page 48. A copy of the deed is attached as Attachment 1. The property was subdivided in 1953. Per the operative Deed and referenced subdivision plan (from 1953), the deeded property is 1.31± acres (53,916 square feet). In 1960, a portion of the deeded property was taken for the relocation of the State Highway (VFW Parkway). As a result of the Order of Taking for the parkway, the deeded property consists of 29,500± square feet of land that has frontage on Forest Street and VFW Parkway, and an additional 21,000± square feet of unimproved land on the opposite side of VFW Parkway.¹ The Property is located in both the R-2 and I-1 Districts.

¹ The 29,500± s.f. portion of the deeded property that has frontage on Forest Street and VFW Parkway is hereafter referred to as the “Property.”

The Property is irregularly shaped, as it is long and narrow – having 79± linear feet of frontage on Forest Street and 82± linear feet of frontage on VFW Parkway, and a depth of 359± linear feet on the easterly lot line and 380± linear feet on the westerly lot line. The Property is improved with a 758± square foot single-family dwelling constructed in 1954. The dwelling is setback 24± linear feet from the Forest Street front lot line, and 18± linear feet from the easterly side lot line and 26± linear feet from the westerly side lot line. The Bylaw was subsequently adopted on March 4, 1958 and effective on April 8, 1958. Accordingly, the Property is a preexisting, non-conforming lot with a pre-existing non-conforming dwelling.

II. The Proposed Project

The Applicants seek relief from the Board to maintain the existing 758± s.f. single-family dwelling and to construct a 2,250± s.f. garage/warehouse building, with accessory parking, on the Property. The modest size warehouse/storage building will be used for the Applicant's business, D.S. Benoit, to store site construction materials for use offsite. The proposed warehouse/storage structure is proposed to be sited entirely within the I-1 portion to the Property, and is sited to maintain a minimum 27-foot side yard setback, as required by 415-34 of the Bylaw. The existing dwelling is within the R-2 portion of the lot.

The proposed warehouse/storage building will be accessed via an existing gated, gravel driveway off of VFW Parkway. The existing dwelling will retain its driveway access off of Forest Street. An existing stockade fence provides separation between the existing house and proposed warehouse/storage structure. Additionally, fifteen (15) Thuja Plicata (Giant Green Arborvitae), each of 8'-10' in height, are proposed to be planted in two (2) rows, in order to further enhance the buffer and separations between the existing dwelling and proposed structure. See Attachment 2.

In furtherance of the proposed project, the Applicants seek variance from the Board, pursuant to § 415.89.1 of the Bylaw, from § 415-29 (Number of buildings on single lot) of the Bylaw, as well as a Special Permit under § 415-29. Specifically, pursuant to § 415-29 (Number of buildings on single lot) of the Bylaw, only one principal residential building shall be allowed on a single lot; however, more than one principal structure is allowed on a lot in the Industrial 1 District upon the granting of a Special Permit from the Zoning Board of Appeals. A single family residence is a permitted use in the R-2 district under § 415-9.A(1), and a warehouse is a permitted use in the I-1 district under § 415-15.A(4).² Thus, the Applicants seek relief in order to retain the existing residential dwelling within the R-2 portion of the lot, and to construct the proposed

² Additionally, storage operations that are not offensive by reason of the emission of odor, fumes, dust, smoke, noise and/or vibration, or that would have a negative impact on the environment or living conditions within the Town or adjacent towns are permitted by Special Permit in the I-1 district under § 415-15.C(5).

warehouse/storage building on the I-1 portion of the lot – with access to the existing residential dwelling to remain via Forest Street and access for the proposed warehouse/storage building via VFW Parkway. Thus, in order to allow for more than one buildings on single lot the Applicant seeks variance from and a Special Permit under § 415-29.

III. The Zoning Board of Appeals Should Grant a Variance.

Under § 415-89.1.A. of the Bylaws and M.G.L. c. 40A, § 10, the Board may authorize a variance for a particular use of a parcel of land or to an existing building thereon from the terms of this bylaw where owing to circumstances relating to the soil conditions, shape or topography of such land, a literal enforcement of the provisions of the Bylaws would involve substantial hardship, financial or otherwise, to the applicant and where relief may be granted without nullifying or substantially derogating from the intent or purpose of the Bylaws.

In order to grant a variance, § 415-89.1.B. requires that the Board find the following conditions to be present:

- (1) Conditions and circumstances unique to the applicant's lot, structure or building and do not apply to the neighboring lands, structures or buildings in the same district.
- (2) Strict application of the provisions of this bylaw would deprive the applicant of reasonable use of the lot, structure or building in a manner equivalent to the use permitted to be made by other owners of their neighborhood lands, structures or buildings in the same district.
- (3) The unique conditions and circumstances are not the result of actions of the applicant taken subsequent to the adoption of this bylaw.
- (4) Relief, if approved, will not cause substantial detriment to the public good or impair the purposes and intent of this bylaw.
- (5) Relief, if approved, will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the district.

See also M.G.L. c. 40A, §10.

1. There are Unique Conditions and Circumstances Supporting a Variance.

The Property is irregularly shaped, as it is long and narrow – having 79± linear feet of frontage on Forest Street and 82± linear feet of frontage on VFW Parkway, and a depth of 359± linear feet on the easterly lot line and 380± linear feet on the westerly lot line. The Property is improved with a 758± square foot single-family dwelling constructed in 1954. The dwelling is setback 24± linear feet from the Forest Street front lot line, and 18± linear feet from the easterly

side lot line and 26± linear feet from the westerly side lot line. The Property is a preexisting, non-conforming lot with a pre-existing non-conforming dwelling.

The surrounding area consists of a mix of residential dwelling along Forest Street and industrial/commercial uses along VFW Parkway. As previously noted, per the operative Deed, the Property is 1.31± acres (53,916 square feet) – but a portion of the Property was taken for the relocation of the State Highway (VFW Parkway) in 1960³ – after the development of Forest Street primarily in 1954. The taking for and relocation of VFW Parkway, after the development of Forest Street, altered the development pattern of the area – with certain lots being redivided in order to create industrial lots with frontage on VFW Parkway and smaller lots with existing single-family dwellings along Forest Street. For example, the five lots numbered as 373 – 399 Forest Street are all identical lots possessing 11,250 s.f. of land area, and improved with modest size homes originally constructed in 1954, and the lots at 406-415 VFW Parkway was created to the rear of these properties and improved in 1973 with a warehouse-style building housing a health club, as well as secondary structure to the rear.⁴ Thus, Forest Street in the area of the Property is characterized by smaller homes built primarily in 1954. The placement of the homes and lot frontage are similar; however, the land area varies – ranging from 10,000± SF to 30,000± – with the Property being one of the largest. VFW Parkway in the area of the Property is characterized by warehouse-style buildings housing industrial, commercial and recreational uses, as well as contractor yards.

The post-taking development pattern results in the Property being the largest dual frontage lot that has accessible frontage on VFW Parkway. Allowing the Applicants to maintain the existing residential dwelling along Forest Street will preserve the existing streetscape, and granting relief for the construction of the modest size warehouse/storage structure along the VFW Parkway portion of the lot – and accessed via VFW Parkway – is consistent with the nature of the neighborhood and promotes the commercial tax base. Moreover, Allowing a modest structure accessed from VFW Parkway yard acknowledges the unique characteristics of the Property and the character of the surrounding neighborhood.

2. The Strict Application Of § 415-29 Would Deprive the Applicants of Reasonable Use of the Property in an Equivalent Manner.

A single family residence is a permitted use in the R-2 district under § 415-9(A)(1), and a warehouse is a permitted use in the I-1 district under § 415-15(4). Pursuant to § 415-29 (Number of buildings on single lot) of the Bylaw, only one principal residential building shall be allowed on a single lot; however, more than one principal structure is allowed on a lot in the Industrial 1 District upon the granting of a Special Permit from the Zoning Board of Appeals.

³ Subsequent to the taking, the Property consists of 29,500± square feet of land that has frontage on Forest Street and VFW Parkway, and an additional 21,000± square feet of unimproved land on the opposite side of VFW Parkway.

⁴ The secondary structure appears to be an apartment.

As mentioned, the surrounding neighborhood consists of a mix of residential dwelling along Forest Street and industrial/commercial uses along VFW Parkway. The Property is the largest dual frontage lot in the area that has accessible frontage on VFW Parkway. The existing dwelling will retain its driveway access via Forest Street, and the proposed warehouse/storage building will be accessed via the existing gated, gravel driveway off of VFW Parkway – and fencing and buffer plantings are proposed to provide ample separation between the uses on the Property. Allowing the Applicants to maintain the existing residential dwelling along Forest Street and construct a modest size warehouse/storage structure along the VFW Parkway portion of the lot permits a use of the Property in a manner equivalent to the uses permitted by other landowners in the neighborhood.

Given the character of the neighborhood, the Applicants assert that the denial of the requested relief here would deny them a reasonable use of their Property in a manner equivalent to the uses permitted by other land owners in the neighborhood, and would cause them undue hardship, financial and otherwise – as the Applicants alternative if relief is not granted is to demolish the existing single family dwelling in order to utilize the I-1 portion of the Property for storage operations.

3. The Unique Conditions And Circumstances are Not The Result of Actions Of the Applicants Taken Subsequent to the Adoption of the Bylaw.

The unique condition and circumstances are not the result of any actions taken by the Applicants subsequent to the adoption of the Bylaw. As previously outlined, the taking for and relocation of VFW Parkway, after the development of Forest Street, altered the development pattern of the area – with certain lots being redivided in order to create industrial lots with frontage on VFW Parkway and smaller lots with existing single-family dwellings. The Applicants are seeking relief to maintain the existing residential dwelling along Forest Street and construct a modest size warehouse/storage structure along the VFW Parkway portion of the lot – consistent with the neighborhood.

4. The Grant of a Variance Will Not Cause Substantial Detriment To The Public Good Or Impair The Purposes and Intent Of The Bylaw.

A single family residence is a permitted use in the R-2 district under § 415-9(A)(1), and a warehouse is a permitted use in the I-1 district under § 415-15(4). Pursuant to § 415-29 (Number of buildings on single lot) of the Bylaw, only one principal residential building shall be allowed on a single lot; however, more than one principal structure is allowed on a lot in the Industrial 1 District upon the granting of a Special Permit from the Zoning Board of Appeals. The Applicants are seeking relief to maintain the existing residential dwelling along Forest Street and construct a modest size warehouse/storage structure along the VFW Parkway portion of the lot – consistent with previously explained historic development patterns of the neighborhood.

Case law recognizes that “some derogation from the By-Law’s purpose is anticipated by every variance; [o]therwise, the denial of relief on the basis of a slight or insubstantial departure from the goals of the by-law would prohibit the grant of any variance.” Cavanaugh v. DiFlumera, 9 Mass. App. Ct. 396, 400 (1980). The proposed project is designed to conform to the character of the neighborhood and is well-conceived. The surrounding neighborhood consists of a mix of residential dwelling along Forest Street and industrial/commercial uses along VFW Parkway. The Property is the largest dual frontage lot in the area that has accessible frontage on VFW Parkway. The existing dwelling will retain its driveway access via Forest Street, and the proposed warehouse/storage building will be accessed via the existing gated, gravel driveway off of VFW Parkway – and fencing and buffer plantings are proposed to provide ample separation between the uses on the Property. Allowing the Applicants to maintain the existing residential dwelling along Forest Street and construct a modest size warehouse/storage structure along the VFW Parkway portion of the lot permits a use of the Property in a manner equivalent to the uses permitted by other landowners in the neighborhood.

5. The Grant of a Variance Will Not Constitute a Grant of Special Privilege Inconsistent with the Limitations Upon Other Properties in the District.

The Applicants assert that there is no special treatment or privilege being requested here. The Property is the largest dual frontage lot in the area that has accessible frontage on VFW Parkway. Allowing the Applicants to maintain the existing residential dwelling along Forest Street and construct a modest size warehouse/storage structure along the VFW Parkway portion of the lot permits a use of the Property in a manner equivalent to the uses permitted by other landowners in the neighborhood.

IV. Conclusion

Accordingly, the Applicants respectfully request that the Board grant Variance from and a Special Permit under § 415-29 in order to retain the existing residential dwelling within the R-2 portion of the lot, and to construct the proposed warehouse/storage building on the I-1 portion of the lot – with access to the existing residential dwelling to remain via Forest Street and access for the proposed warehouse/storage building via VFW Parkway. The Applicants assert that all conditions of § 415-89 of the Bylaws and the requirements of M.G.L. c. 40A, §10, have been met.

Should you require additional information, please do not hesitate to contact us. Thank you for your consideration.

Very truly yours,

Town of Rockland
Zoning Board of Appeals
March 18, 2024
Page 7


Scott Golding

cc: Melissa McInnis and Dennis S. Benoit (*via email*)

Attachment 1



2018 00088211

Bk: 50431 Pg: 48 Page: 1 of 3

Recorded: 10/22/2018 02:39 PM

ATTEST: John R. Buckley, Jr. Register

Plymouth County Registry of Deeds

CANCELLED

MASSACHUSETTS EXCISE TAX

Plymouth District ROD #11 001

Date: 10/22/2018 02:39 PM

Ctrl# 118851 16314 Doc# 00088211

Fee: \$1,140.00 Cons: \$250,000.00

SL# 180231589
CLIENT# 1458773

After Recording, Return To:

PROPERTY APPRAISAL (TAX/APN) PARCEL IDENTIFICATION NUMBER

14-79-0

14-69-0

QUITCLAIM DEED

CITIBANK N.A., whose mailing address is 1000 Technology Drive, O'Fallon, MS 63368, hereinafter grantor, for \$250,000.00 (Two Hundred Fifty Thousand Dollars and Zero Cents) in consideration paid, grants and quitclaims to MELISSA MCINNIS and DENNIS S. BENOIT, hereinafter grantees, whose tax mailing address is 421 FOREST STREET, ROCKLAND, MA 02370, with Quitclaim Covenants:

* aka Dennis Benoit

A certain, parcel of land with the buildings thereon, situated in Rockland, Plymouth County, Massachusetts, bounded and described as follows: NORTHWESTERLY by Forest Street as shown on plan hereinafter mentioned, 79.000 feet; NORTHEASTERLY by Lot 6 as shown on said plan, 740.81 feet; SOUTHERLY by land now or formerly of Amos S. Reed as shown on said plan, 24.57 feet; and again SOUTHERLY by a portion of Lot 8 as shown on said plan, 62.43 feet; SOUTHWESTERLY by Lot 8 as shown on said plan, 700.12 feet. Containing one acre 13,356 square feet of land more or less according to said plan. Being Lot 7 as shown on "Plan of Land in Rockland Formerly Owned by Lot Phillips Co. Corp. Scale 1" -80' Mar. 2, 1953 N. H. Pope Surveyor Now Owned by Mt. Blue Realty, Inc." recorded Plymouth Deeds Plan #224 of May 6, 1953. Subject to and with the benefit of the rights of way shown on said Plan.

Excepting portion taken Book 2784 Page 352

Property Address is: 421 FOREST STREET, ROCKLAND, MA 02370

SL# 180231589
CLIENT# 1458773

Being the same property transferred in the Foreclosure Deed recorded on 06/11/2018 at Official Records Book 49903, Page 163.

Seller makes no representations or warranties, of any kind or nature whatsoever, other than those set out above, whether expressed, implied, implied by law, or otherwise, concerning the condition of the title of the property prior to the date the seller acquired title.

The real property described above is conveyed subject to and with the benefit of: All easements, covenants, conditions and restrictions of record; in so far as in force applicable.

The real property described above is conveyed subject to the following: All easements, covenants, conditions and restrictions of record; All legal highways; Zoning, building and other laws, ordinances and regulations; Real estate taxes and assessments not yet due and payable; Rights of tenants in possession.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title interest, lien equity and claim whatsoever of the said grantor, either in law or equity, to the only proper use, benefit and behalf of the grantees forever.

SL# 180231589
CLIENT# 1458773

Executed by the undersigned under seal on October 1, 2018:

This conveyance does not constitute the sale or transfer of all or substantially all of the grantor's assets within the Commonwealth of Massachusetts

CITIBANK N.A.

By: [Signature]

Name: EM Robinson

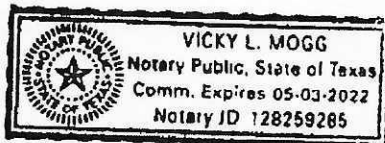
Its: AUP and Recovery Senior Manager

Commonwealth of Massachusetts

STATE of TEXAS

COUNTY of DALLAS

On this 1 day of October, 2018, before me, the undersigned notary public, personally appeared EM Robinson, who proved to me through satisfactory evidence of identification, EM Robinson personally known to be the Assistant Vice President of CITIBANK N.A. the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.



Vicky L. Mogg
Notary Public Vicky L. Mogg
exp 5-3-22

This instrument prepared by:

Nowell Bloomenthal Esq., (Massachusetts Bar Number: 046760), 935 Main Street # 3, Waltham, MA 02451-7437 and Jay A. Rosenberg, Esq., Rosenberg LPA, Attorneys At Law, 3805 Edwards Road, Suite 550, Cincinnati, Ohio 45209, (513) 247-9605 Fax: (866) 611-0170.