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MILLBURY, MASS

MILLBURY BOARD OF APPEALS

MINUTES

DATE: 2/26/14

TIME: 7:30 p.m.

Present: Chairman R.Valentino, P. Nigosian, H. Proodian, A. Lewandowski, R. Simmarano

Petition for Joseph K. & Ann Marie Samara (trust)

For 8 Ward Ave., Millbury, MA for variance

Having complied with the provisions of Chapter 40A of the General Laws of the Commonwealth of Massachusetts, relative to advertising and notifying abutters, the Meeting was declared open by Chairman Richard Valentino.

Attorney Peter Keenan—representing petitioner, (brief attached).

D. Augustine—Very irrate abutter—I am at the top of the hill overlooking the roof. The buildings on Ward Ave. are not the ones that are elevated. I look directly over the roof. This is a non-permitted use of that building. He moved a motorcycle repair shop into that building. Did he have a permit to do that? We are now here, and all the signs are gone. Are we operating those two businesses that are there now without permits?

Attorney Keenan—The petitioner sold his auto sales business in August. Months before that he came into the town hall and spoke with the Building Insp. He told them that he was going to be moving his business, and would he need any further permits. He was told that he did not. I think that because there was a variance granted all ready, but not for auto work, the building insp. Told him he would not need anything else. He then found out in April that he could not do this. He came to see me, and I told him to take down the signs, and then we came to you. We are now requesting a variance.

R. Valentino—It is my understanding that when he first got the variance, it was for his own personnel use. There was a variance given to build the building for his own personal storage. Then I understood that there was a business in there. Now you want another business?

Attorney Keenan—I have a copy of the original variance. It states that there was a variance granted for this property for the construction of the building for lettering and signage of autos and for a motor home to be stored and used. It is his son operating the motorcycle repair business. This variance was not specific for him, it is for the property.

P. Nigosian—We gave him a variance to build the building for storage and auto detailing and lettering. Now you want to put an addition on and give him the right to repair motorcycles and vehicles.

Samara

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Attorney Keenan—Yes. The variance for the addition is only for that use. There are no dimensional issues.

R. Valentino—Are there three different businesses in there, or only one?

J. Samara—Basically one business.

R. Valentino—Are you repairing autos or just motorcycles? Do you have licenses?

J. Samara—No, I do not. I had a Worcester license.

A. Lewandowski—You were not covered for this building, and you have no license for it.

J. Samara—No I do not.

R. Valentino—Doesn't he need a used car license?

Attorney Keenan—Yes, if you grant this, there would be an application to the Board of Selectmen for a repair license, and the Planning Board for site plan review. We are not asking for a license to sell. We are trying to let Joe Samara's business be operated in the correct way. We want to do the right thing.

D. Augustine—I have a problem with this. We moved two businesses that were not permitted there, and now we are asking for a variance for an addition and operating those businesses without proper license. He repairs motorcycles now, and it is very loud. He had dyno testing there, and it was awful. My house would shake. He is coming closer to my property, and I am concerned with him devaluing my property. I was concerned with gravel and tree removal. The trees are at least a buffer. Also, there are vent pipes next to the septic system. These are issues that I have with this.

Attorney Keenan—That dyno machine is a machine that the petitioner had once, and it was used for three hours then never used again. I think that Mr. Augustine told him to stop, and he did. The septic system in the back of the property will be removed if the variance is granted. If you grant the variance, and he is granted the additional permit to do this, then he will be happy to construct a fence between him and Mr. Augustine so that he will not see anything there.

H. Proodian—There will be no storage outside, like vehicles? And nothing behind the back of the building?

Attorney Keenan—The existing storage facilities will be removed. The property is all ready paved.

G. Moriarty—They run a great business, and they are good people. He works on a lot of people's cars in Millbury.

P. Nigosian—Would a fence help with any of these issues. You are also getting noise from Grafton Street. That building should also add more sound proofing.

Donna Augustine—I spoke to Mr. Samara, and I was assured that this would be just for storage, and not for commercial use. There is significant noise, and I am against this.

J. Samara

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H. Proodian—What will the addition be used for?

J. Samara—The trailer will go in there, and the stalls for repair for my motor home.

H. Proodian—Did the inspection station move with you?

J. Samara—Yes it moved with me.

A. Lewandowski—I think they should also go through the Earth Removal Board.

Motion was made by H. Proodian and seconded by P. Nigosian to close the public hearing, unanimous.

R. Valentino—If we grant this, we can put down restrictions. We can also state that it will be inspected at certain intervals.

P. Nigosian—I think the main concern of the neighbor is the noise from the motorcycle.

H. Proodian—I know motorcycles make noise, but I am concerned with the trucks. I do not know how often trucks would come in there.

J. Samara—I mean like pick-up trucks, and RVs not tractor trailers.

A. Lewandowski—I do not have a problem. I like the fact that they do not access onto Ward St. As long as the inspections are done inside the building. This variance is just for the building.

Statement of reasons for action of Board of Appeals: A motion was made by P. Nigosian and seconded by R. Simmarano to grant the Variance at 8 Ward Ave., Millbury, MA, to construct an addition to the existing 50'x100' commercial building. The addition will be constructed on the West Side of the existing bldg. The addition will be 20'x75'. The petitioner desires to use the addition and existing structure for automobile, motorcycle, and RV and truck service. Motion was made with the stated conditions and the attached Findings of Fact in support of the Board's decision. The Board voted unanimously in favor of this motion.

Approval subject to the following conditions: 1. For used car repair only.

2. No traffic onto Ward Avenue.

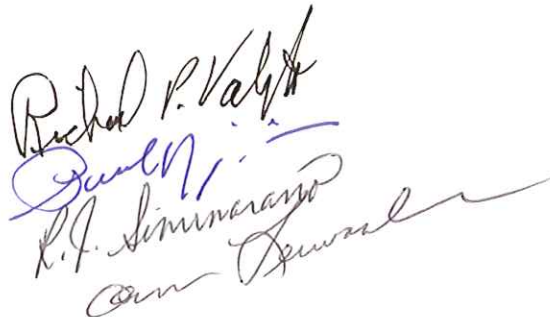
3. Hours of operation will be 8:00 a.m. to 6:00 p.m. Monday through Friday, 8:00 a.m. to 3:00 p.m.

On Saturday and closed on Sunday.

4. Fence to be constructed along property line.

5. No outdoor storage.

6. No tractor-trailer repair.



Richard P. Valby
R.F. Simmarano
Dan Dewar

**COMMONWEALTH OF MASSACHUSETTS
TOWN OF MILLBURY
BEFORE THE BOARD OF APPEALS**

In The Matter Of:

JOSEPH K. SAMARA and MARIE SAMARA, TRUSTEES
OF JOE-RIE REALTY INVESTMENT TRUST, DATED
AUGUST 22, 1984 RECORDED IN WORCESTER DISTRICT
REGISTRY OF DEEDS BOOK 8645 PAGE 16

Property situated at)
8 Ward Avenue)
Millbury, Massachusetts)
the premises described in a deed recorded)
in the Worcester District Registry of Deeds)
Book 11913, Page 276)
and shown as Parcel 49 on)
Town of Millbury Assessor's Map 2)

**MEMORANDUM ON BEHALF
OF THE PETITIONER**

Introduction

The Petitioner seeks a variance relative to the premises situated at 8 Ward Avenue, Millbury, Massachusetts. The premises are found in the Residential II Zoning District. The Petitioner desires to construct an addition to an existing commercial building located on the premises. While the structure will comply with the dimensional requirements of the Town of Millbury Zoning By-Law, the proposed uses are not permitted in the zoning district; therefore, a variance is required.

The Petitioner desires to construct an addition to the existing fifty (50) by one hundred (100) foot commercial building. The addition will be constructed on the westerly side of the existing building and will be twenty (20) foot by seventy-five (75) foot. The Petitioner desires to use the addition and the existing commercial building for automobile, motorcycle, RV and truck service and repairs.

The Site

The parcel is described in a Deed recorded in the Worcester District Registry of Deeds, Book 11913, Page 276, a copy of which is attached hereto and marked "Exhibit A". The parcel is shown on a plan entitled "Plan of Land in Worcester & Millbury, Mass. owned by Donald & Frances McAvey, Area as shown 1" = 40', 9Jan1973, Kenneth Shaw, Sutton, Mass." recorded in Worcester District Registry of Deeds Book 378 Plan 87, a copy of which is attached hereto and

marked "Exhibit B". Parcel is further depicted on Town of Millbury Assessor's Map 2 and shown as Lot 49, a copy of which is attached hereto and marked "Exhibit C". Also attached hereto is a copy of a plan entitled "Proposed Addition Plan in Millbury, Massachusetts, #8 Ward Avenue", drawn by Quinn Engineering, Inc., P.O. Box 107, Paxton, MA 01612, a copy of which is attached hereto and marked "Exhibit D". "Exhibit D" depicts the parcel, the existing fifty (50) by one hundred (100) foot commercial building and the proposed twenty (20) foot by seventy-five (75) foot addition. In addition, "Exhibit D" depicts the access to the premises which is by way of the right of way leading to Grafton Street, Route 122, Worcester.

Parcel consists of approximately 39,596 square feet. It is an extremely irregular shaped lot. Although the lot fronts on Ward Avenue, access to the premises is by way of a right of way as shown on "Exhibit D" attached hereto. No access to the site is currently made from Ward Avenue nor is any access from Ward Avenue anticipated. The parcel is currently encumbered at the Ward Avenue frontage by a sewer easement and equipment which partially blocks access from the premises to Ward Avenue. All access will continue to be made to the parcel from the right of way leading from Grafton Street, Route 122 in Worcester. The site also contains a significant steep hill leading from the area where the addition will be constructed to the westerly side of the parcel. It is at the westerly side of the parcel that homes are constructed. The significant elevation of the homes together with the vegetation and trees between the homes and the proposed addition impede visibility from the residential homes on the westerly side.

Zoning

The Premises are found partially in the Residential II Zoning District. The Petitioner's proposed use for automobile, motorcycle, RV and truck service and repairs is not a permitted use within the zoning district. Therefore, a Variance pursuant to our provisions of Section 13.22 of the Town of Millbury Zoning By-Law is required.

Argument

The Petition meets the requirement of Chapter 40A, Massachusetts General Laws Section 10 and the provisions of Section 13.22 of the Town of Millbury Zoning By-law. Those provisions give authority to the Board of Appeals to grant a Variance from the terms of the Zoning By-law in cases in which there are particular circumstances applicable to the premises subject to the Variance Petition. The Petitioner submits that this matter conforms to the requirements Section 13.22 of the Town of Millbury Zoning By-law which provides in part the following: "Such Variance shall be granted only in cases where the Board of Appeals finds all of the following:

- (a) A literal enforcement of the provisions of this By-law would involve a substantial hardship, financial or otherwise, to the Petitioner or Appellant.

- (b) The hardship is 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.
- (c) Desirable relief may be granted:
 - (1) Without substantial detriment to the public good; and
 - (2) Without nullifying or substantially derogating from the intent or purpose of this By-law.”

The Petitioner submits that the site in question is extremely unique. The parcel itself is unique in its shape. In addition, all access to the site is currently made by way of a right of way leading to Grafton Street, Route 122 in Worcester. Access to the proposed addition will be by way of the same right of way. Although the parcel has frontage on Ward Avenue in Millbury, no access will be made to or from the parcel from Ward Avenue due to the sewer easement and sewer equipment partially blocking access. The addition to be constructed will be twenty (20) feet wide and seventy-five (75) feet long for a total square footage of 1,500 square feet. Although the addition will not add any additional parking requirements to the site, there is more than ample parking currently available on the parcel. In addition, assuming a favorable decision from this Honorable Board of Appeals, the Petitioner will be filing a Petition with the Town of Millbury Planning Board seeking site plan approval.

The addition to be constructed will be, as shown on “Exhibit D”, constructed parallel to the existing commercial building. The two will share a common wall on the westerly side of the addition.

The proposed use of the parcel will be in harmony with the majority of uses in the neighborhood. Although the address of the premises is Ward Avenue, Millbury, the parcel is truly part of the Grafton Street, Route 122, Worcester commercial neighborhood. It is surrounded by automotive and other commercial uses but for the residential uses to the west in Ward Avenue to the South.

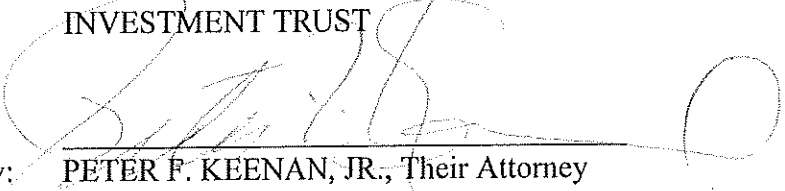
The Petitioner submits that the proposed use is in harmony with the uses in the neighborhood and that due to the irregular and unique shape of the parcel, the significant hill and elevation at the site and the residential abutters and the presence of the sewer easement and equipment that the Petitioner suffers a hardship due to the shape, size and topography of the parcel. Petitioner further submits that since the proposed use is in keeping with the predominant uses in the neighborhood, the Variance can be granted without substantial detriment to the public good and also without nullifying or substantially derogating from the intent or purpose of the By-Law.

The hardship in this case is due to the unique site conditions which affect this land but do not generally affect the zoning district in which it is located. Unique limitations imposing restrictive conditions upon the premises have been held as valid reasons for the granting of variances. Dion vs. Board of Appeals of Waltham, 344 Mass. 547 (1962).

Conclusion

The Petitioner respectfully requests that the variance sought be granted. The Petitioner submits that the statutory and Zoning Bylaw requirements for the issuance of the variance has been met. For the reasons set forth hereinabove and for the further argument to be provided at the hearing in this matter, the Petitioner respectfully requests that the relief be granted.

JOSEPH K. SAMARA and MARIE SAMARA,
TRUSTEES OF JOE-RIE REALTY
INVESTMENT TRUST


By: PETER F. KEENAN, JR., Their Attorney
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Tel. (508) 865-1091
Fax. (508) 865-0311

Dated: January 31, 2014

**COMMONWEALTH OF MASSACHUSETTS
TOWN OF MILLBURY
BEFORE THE BOARD OF APPEALS**

In The Matter Of:

JOSEPH K. SAMARA and MARIE SAMARA, TRUSTEES
OF JOE-RIE REALTY INVESTMENT TRUST, DATED
AUGUST 22, 1984 RECORDED IN WORCESTER DISTRICT
REGISTRY OF DEEDS BOOK 8645 PAGE 16

Property situated at)
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the premises described in a deed recorded)
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and shown as Parcel 49 on)
Town of Millbury Assessor's Map 2)

FINDINGS OF FACT

After consideration of the Petition, Memorandum, various exhibits submitted by the Petitioner, after public hearing and after viewing the Site, the Board of Appeals of the Town of Millbury hereby makes and adopts the following Findings of Fact in support of the Board of Appeals decision grants the variance requested relative to the above-captioned property:

1. The variance relates to property situated at 8 Ward Avenue, Millbury, Massachusetts. Said Premises are described in a Deed recorded in the Worcester District Registry of Deeds, Book 11913, Page 276 and as shown on a Plan recorded in the Worcester District Registry of Deeds, Book 378, Plan 87 and as shown on Town of Millbury Assessor's Map 2 as Lot 49.

2. The variance is granted from the provisions of Section 13.22 of the Town of Millbury Zoning By-law to construct an addition to the existing commercial building. The addition will consist of twenty (20) feet by seventy-five (75) feet and to use the premises for automobile, motorcycle, RV and truck service and repair.

3. The Board finds that the addition will be in keeping with the style of the existing commercial building and in keeping with those commercial buildings in the neighborhood.

4. The Board finds that the use is in harmony with other commercial uses in the neighborhood and that the highest and best use of the parcel is the proposed use. The parcel and many parcels in the neighborhood are unsuitable for residential use.

5. After reviewing the Petition, the Plan submitted by the Petitioner, and all supporting documentation submitted by the Petitioner, the Board finds that the Petition and the submissions of the Petitioner conform to the requirements of the Town of Millbury Zoning Bylaw. The Petitioner has complied with all applicable procedural and notice requirements of Chapter 40A of the Massachusetts General Laws and the Town of Millbury Zoning Bylaws.