

feet and both side yards of 19.05 feet. The applicant is asking for a variance of 1.28 feet in minimum side yard setback and 0.95 feet in both side yards setback.

The applicant stated that the house is about thirty years old and the deficiency was unknown until the survey was completed earlier this year. The applicant further stated that to meet the requirements of the Zoning Law without a variance would require the removal of either a portion of the garage or of the house.

The Board is of the opinion that the removal of a portion of the structure would create a practical difficulty for the applicant for which a variance from the strict application of the Zoning Law is a proper remedy.

The application is granted.

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RAYMOND D'ALVIA, ATTORNEY FOR BRUCE AND LESLIE FRITCHARD--80 MORNINGSIDE DRIVE--RA-9, SECTION 7, BLOCK 126, LOTS 33, ~~34~~ & 39--VARIANCE FROM THE REQUIREMENTS FOR MINIMUM SIDE YARD SETBACK FOR AN EXISTING DWELLING.

This house has been there since approximately 1933. Practical difficulty is in order to go from 6.62 and 6.84 to the required 12, you would have to remove 5 plus feet from the left side of the house. It has been there over 50 years. Obviated only by variance or taking the building down.

Question asked as to whether this came about because of the sale? Applicant replied that there are all kinds of C.O.'s for things that were done later. It wasn't picked up during the sale. It came up now because there is an application before the Planning Board for an accessory apartment building. It should have been taken care of by previous owners before the sale to the Fritchard's. When they purchased the house they thought everything was in good order.

Thomas Abinanti, an attorney for some neighbors on the street and retained by the Kocybala's spoke in opposition. The reason application is before the Board is that no one has determined that there is a problem to continue use as a one-family dwelling. It has been sold many times. Present owners can continue to use it as a single-family dwelling. No violations, no problem. They have another application to increase the use of the dwelling and that law says you have to be in conformity with all of the code requirements. It should not be before this Board because there has been no violation from which they have to take an appeal. There are many legal reasons not to grant the application. 9.2.3. The Board has power to authorize upon appeal to grant the variance. There is no appeal here, so this is not properly before the Board. Practical difficulty or unnecessary hardship--the people are living there and thus there is no hardship. When you take a look at what is happening you would be taking a radical departure in allowing the variance for a two-family house in a one-family neighborhood.

Richard Barbuto, 45 Radnor Avenue, speaking as a private citizen stated that this is an application to make possible what is not now possible; it cannot be used as an accessory apartment. Going along with this type of application would be going against the spirit and intent of the law. Population density would not increase if the Zoning Board does not act. If you allow the variance, then you allow the Planning Board to go ahead and grant the accessory apartment use. It is clearly being used as an effort to allow the Planning Board to approve it. This moves the application for an accessory apartment closer to reality.

Board replied that we are only dealing here with the fact that the side yard does not meet the code.

Small technical deficiency has been here for over 50 years.

Mr. Abinanti stated that on the survey submitted to the Board of the building on the premises and northern most property line there is a concrete embankment; it is not 6 feet. It comes right up against the property line, according to the survey it looks like .8 feet.

MOTION BY DICKEY AND SECOND BY SANTANA TO GRANT APPLICATION AS REQUESTED.

VOTE: UNANIMOUS

RESOLUTION: SECTION 7, BLOCK 126, LOTS 33, 38, & 39

This is an application by Raymond D'Alvia, attorney for Bruce and Leslie Pritchard, for a variance from the requirements for minimum side yard setback for an existing dwelling. The property, at 80 Morningside Drive, is located in an RA-9 District and is designated on the Tax Maps of the Village as Section 7, Block 126, Lots 33, 38, & 39.

The Zoning Ordinance requires a minimum side yard of 12 feet and total side yards of 30 feet. The property in question has the required total side yards, but the side yard on the north side of the property is between 6.62 and 6.84 feet.

The applicants' practical difficulty is that in order to conform to the Ordinance they would have to remove in excess of five feet from the side of their house, which was constructed during the 1930's.

Opponents to the application raised the question of the Board's jurisdiction to entertain the application in that there has been no determination that the applicants are in violation from which they have to take an appeal. They point out that there is an application pending before the Planning Board, by these applicants, for approval of an accessory apartment in the subject premises. Letters were received and read which opposed the granting of this variance as well as the special permit required for an accessory apartment.

The Board is of the opinion that it has jurisdiction insofar as the applicants were informed by the Village Engineer that a variance was required before their application for an accessory apartment could be

entertained by the Planning Board.

The Board also feels that all discussion as to the merits of the application for an accessory apartment is irrelevant to the pending application for a variance. It's decision in this matter should in no way be construed as approval or disapproval of the matter before the Planning Board.

The Board feels that since this condition of an inadequate sideyard has existed since the construction of the house 50 or more years ago, and since requiring the applicants to remove a portion of their home would constitute an unnecessary hardship, the interests of justice necessitate the granting of the variance.

The application for a variance is approved.

RAYMOND D'ALVIA FOR RAYMOND D'ALVIA AND FRANK FARANDA--17 PALMER AVENUE--RA-5, SECTION 32, BLOCK 215, LOT 5A--VARIANCE FROM THE REQUIREMENTS OF THE ZONING LAW FOR MINIMUM SIDE YARD SETBACK AND TOTAL MINIMUM SIDE YARDS TO PERMIT THE CONSTRUCTION OF A DECK.

Slope doesn't allow deck in any other location.

Mrs. D'Alvia across the street has no objection.

If it is allowed, it will not increase population or change density of neighborhood. Lay of particular land almost requires where the deck be placed in order to get any use out of it. End of deck would be four feet from the end of the property line on the one side. House itself is in complete conformity.

Mr. and Mrs. Sowa of 21 Palmer Avenue who also own 19 Palmer are owners of the house next door. They stated that machinery removed enormous section of land years ago. Gradually, more and more dirt was falling into that hole. Some kind of retaining wall should be placed to hold up that hill--slope is straight up and down. The deck doesn't bother us, we would love to see something there. Fence is 5 feet inside the property line.

James Dolon of 34 Palmer Avenue expressed concern with safety of children living on the street. He is also concerned with the dirt and slope and the need for a retaining wall.

Lot has 90 foot depth--it is an existing small lot. It was owned by John Milano before Mrs. D'Alvia. The lot was established and owned separately and individually previous to 1962. The deck would not be in conformity and that is why they are here.

MOTION BY SANTANA AND SECOND BY DICKEY TO APPROVE APPLICATION AS REQUESTED.

VOTE: UNANIMOUS

