



City of Marlborough
Zoning Board of Appeals
140 Main Street
Marlborough, Massachusetts 01752
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Meeting Minutes

For Meeting Held: December 19, 2023, Memorial Hall, City Hall, 140 Main Street, Marlborough.

Members Present: Ralph Loftin-Chairman, Robert Levine, Thomas Pope, and Thomas Golden.

Members Absent: None.

Items Discussed:

Zoning Board of Appeals Case # 23-1500

Applicant: David and Katherine Mason, represented by Attorney Christopher Flood

Date of Appeal: November 14, 2023

Location of Subject Property – 553 Elm St. Marlborough Map 67 Parcel 17

Petition: This is a request for relief taken under M.G.L Ch. 40A § 10, 13 and 14 to the Zoning determination of the City's Building Commissioner dated November 9, 2023, as said determination affects premises at 553 Elm St. The applicant requested a zoning determination of the Building Commissioner as to whether the proposed 19'x32' addition can be built by right in the Zoning District A2. The Building Commissioner determined that the applicant requires relief from Chapter 650 Article 41, "Table of Lot Area, Yards and Height of Structures", of the City Code of Marlborough. The applicant is seeking relief in the form of a Variance to construct an addition, replacing the existing patio, which exceeds the minimum rear yard setback requirement of 40 feet. The proposed rear yard setback is 32.6 feet.

Also present were:

Priscilla Ryder – Acting Senior Clerk,
David and Katherine Mason- Owner,
Attorney Christopher Flood – owner representative
Tin Htway – Building Commissioner
William Payton – Assistant Building Commissioner
Diana Lopez – abutter 557 Elm St.
Jean Bradly – abutter 537 Elm St.

James Hogan- Neighbor Elm St.

Chairman Loftin called the meeting to order and asked Board Member Levine to read the petition.

Attorney Christopher Flood made his presentation as follows:

- Petitioner Mason is requesting to build an addition on an existing concrete patio.
- The current house has 3 bedrooms, but one room is only 10'x11' with no closet.
- In 1987 the previous owner split the lot into two and created a new lot line with a variance from the ZBA for 50' frontage. The lot lines created were not square making it difficult to add on without a variance.
- They want to change the patio to a livable space. They can't build out front, so the shape of the lot is causing the hardship.
- Because the cost of housing is so high, they are not able to sell and move, so they have requested a variance to allow them to build this addition.

David Mason spoke.

- He explained that he loves this house and neighborhood. They have a growing family and need a new bathroom and bedroom to accommodate their family.

Chairman Loftin asked if anyone in the audience was in favor of the project and invited them to speak.

- Diana Lopes- 557 Elm St. – said she was all for the project and had no objection.
- Jean Bradly – 537 Elm St. – said she has no problem with the addition, no objection.
- James Hogan – 527 Elm St.- said this is a great family, the addition is a great value, and he's hopeful they can get a variance since the lot shape is what is preventing this.

Chairman Loftin asked if anyone was in opposition – no one spoke in opposition.

Chairman Loftin opened it up for discussion.

Mr. Htway explained that the lot was created a while back based on a variance granted to the abutter to the rear. The variance would allow a remedy through a Section 6 finding to the odd lot shape which was created in 1987.

Mr. Levine asked why this lot wouldn't be created now.

Mr. Htway noted that according to the records, in 1987; the hardship noted was that the previous owner didn't want to mow the yard. A variance was granted for this odd, shaped lot. This logic wouldn't hold today, and such a lot would not have been created.

Chairman Loftin noted that:

- A variance is difficult to receive.
- In order to be granted a variance the petitioner must present a case for a hardship, which is something more than an inconvenience. The hardship must arise from the soil conditions, shape or topography of the property.
- He wanted to know what was unique about this lot in relation to others in the neighborhood.

Attorney Flood noted that:

- The other lots are more rectangular, this one has a number of angles which are not quite square. The house was built in 1955, the lot was created in 1987 and is an odd shape and therefore unique to this neighborhood.

Board Member Levine made a motion to close the public portion of the hearing, seconded by Board Member Golden. By vote of 4-0 the public portion of the hearing closed.

Chairman Loftin explained that with only 4 members any decision requires a unanimous vote to carry. He also noted to the applicant that before any vote is taken the applicant has the option to withdraw the petition without prejudice. Board Member Pope explained that if the appeal is denied, the applicant cannot return until 2 years have elapsed.

Discussion:

Board Member Levine:

- Explained that hardship and variance requests don't come easy.
- He doesn't see a big hardship here, as the house is being used as zoned. He asked if there was any option to locate the addition near the pool to avoid a variance request.
- He is having issues figuring out hardship.
- Because of the crazy way this lot shape was created, he may be inclined to support this request.
- The expansion is on the existing concrete patio so not an expansion of the footprint of the house.
- Mr. Htway's comments that the variance couldn't be granted in this world and the lot could not have been configured as shown. Therefore, in his opinion this is a borderline case.

Attorney Flood indicated that several designs were considered but nothing fit.

Board Member Golden

- Since the lot was created after the house was built, he sees that as a hardship and based on that weird lot shape would be inclined to grant the variance, since this lot shape happened after the fact.
- Board Member Pope
 - But for the previous variance would not be inclined to approve. But given this unique situation he may be inclined to approve.

Chairman Loftin

- He is having a hard time with this, since the current owners bought the lot as it is,
- The lot was as it is, and they purchased it with this odd shape. They may not have anticipated the need to expand, but that doesn't justify a hardship.
- This is not different from the deck case previously reviewed which was denied.
- He is not persuaded that this meets the financial hardship criteria since they bought the property as it is and have been using it as zoned.

Board member Levine made a motion to grant the variance, which was seconded by Board member Pope.

Mr. Mason asked to allow him to consider a withdrawal without prejudice but wanted to ask some questions. He stated:

- He is the only house without a square back yard, everyone else has room to expand.
- They need more space in this single-family house, previous owners moved because it was too small.
- Without a variance they can't stay.

Chairman Loftin explained:

- Needing to expand a house is not a hardship; zoning laws don't support a homeowners need to have a bigger house; the hardship needs to be related to the land. The ZBA is bound by the regulations; a hardship not related to the land doesn't reach the level for a variance.
- The ZBA has denied similar cases.

Board Member Levine explained:

- Hardship is related to three things,
 - Soil, topography, lot shape
 - Hardship can be - financial or otherwise

- Whether there is a detriment to the public good
- This case seems different from the past case because of the unique past problem with the property line create in 1987.

Chairman Loftin asked Mr. Htway his thoughts, since he'd like to be persuaded.

Mr. Htway explained that a Section 6 finding can be used to right a wrong. The use hasn't changed. The setback request is a small change. This lot would not have been allowed to be created today. Based on his review, this addition would have no impact to the neighborhood. There is an existing tree barrier, it's a single-story addition, which couldn't meet zoning without changing the lines. He usually doesn't persuade; his job is to state the facts and be neutral.

Mr. Payton noted that 557 Elm St. is an odd lot, doesn't meet setbacks and not sure why it was placed where it was, and not sure why in 1987 the house behind was allowed.

Attorney Flood noted that it is the shape of the lot that is the root cause of this hardship.

Mr. Mason explained he is asking for a minimum impact to setback. There are no objections from the neighbors, and he thanked the neighbors for their support.

Chairman Loftin explained that he is not unsympathetic. But the owner bought the lot as is, the 1987 change happened before they bought the lot and it has not changed. The variance should not be easy to get and stays with the property in perpetuity. He cannot see the hardship as having to do with the property. The courts say that personal hardship doesn't factor into the decision. The owner has the option to build a second floor, rather than impact the setback.

Board Member Golden indicated that the shape is the constraint on this lot and in his opinion is the hardship and the addition can be built without incurring large expense. He is not opposed to this variance request.

Board Member Pope also concurred and said shape was a strong consideration since if the lines were straight, they would meet the setback requirements.

Attorney Flood and Owner Mr. Mason both noted that the request is for a minimum deviation and if the lot line was straight, they wouldn't need a variance. They asked for clarification from Chairman Loftin what he is looking for.

Chairman Loftin explained that the case law is strict about hardship. It is not subjective, improvements to a home to make it bigger does not create a hardship; it needs to be tied to the land. The ZBA's job is to hear the arguments; they have little discretion if the case doesn't meet the hardship criteria. Financial hardship needs to be tied to the land, like ledge for example if, it would cost too much to blast the ledge.

Mr. Mason asked what is the reasonable limit to financial hardship, what is that number, and what is the pathway to success here?

Chairman Loftin indicated that he would like to explore the notion of financial hardship and will seek to get clarity from the city solicitor.

Board Member Levine withdrew his motion to grant the variance.

Board Member Levine made a motion to continue the hearing to January 16, 2024, Chairman Loftin seconded, on a roll call vote the ZBA voted unanimously 4-0 to continue the hearing to January 16, 2024.

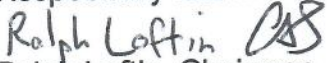
On a motion by Board Member Levine second by Board Member Pope to adjourn, the ZBA voted unanimously 4-0 to adjourn. Meeting was adjourned at 8:23 PM.

Documents Used by ZBA:

- December 19, 2023, Meeting Agenda Posting
- Zoning Determination letter from the Building Commissioner Tin Htway dated Nov. 9, 2023
- Certified Plot Plan titled: Plan of Land n Marlborough MA owned b John E & Marie E. Palaima. Dated January 31, 1987. By George D. White Marlborough Ma. Surveyor.
- Plan Titled: Proposed Addition, Plan of Land in Marlborough MA, dated March 30, 2023; Scale 1"=30'. Owner: David and Katherine Mason, 533 Elm St. Marlborough MA 01752. Prepared by Anthony M. Dellorco of Colonial Engineering Inc. 11 AWL Street, Medway MA

Minutes prepared by
Priscilla Ryder acting Secretary.
Zoning Board of Appeals

Respectfully submitted:


Ralph Loftin, Chairman
Zoning Board of Appeals