



**City of Marlborough
Zoning Board of Appeals**

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

FILE COPY

ZBA Case # 1431-2014

Date: October 23, 2014

Location: 512 Hemenway St.

(General Laws Chapter 40A, Section 16)

WITHDRAW WITHOUT PREJUDICE

To: Stephen Demers

Address: 512 Hemenway St.

City: Marlborough, MA 01752

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

512 Hemenway St. Map 35, Parcel 26

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.


Paul Giunta - Chairman


Susan Brown - Secretary

Submitted to the City Clerks' office on October 23, 2014.



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ZBA Case # 1431-2014
Name: Stephen Demers
Location: 512 Hemenway St.

Date: October 23, 2014

DECISION Zoning Board of Appeal Withdraw Without Prejudice

The Zoning Board of Appeals, acting under the Marlborough Zoning Ordinance and Mass. General Laws, Chapter 40A, Section 16, as amended, and after a public meeting held on September 16, 2014 with a continuation meeting date of October 14, 2014 voted 5-0 to grant Stephen Demers, the applicant(s) to **Withdraw Without Prejudice** the below mentioned petition:

Members present: Paul Giunta-Chairman, Theodore Scott, Ralph Loftin, Thomas Golden and Robert Levine.

Petition: The applicant is requesting a road opening permit thru the Dept. of Public Works. The proposal will deviate from Section 650.48(5)(a) of the City of Marlborough Zoning Code states that only one driveway opening is allowed for any parcel with less than 200 ft. of frontage. And Section 650.49.B(2)(a) states that off street parking shall not be permitted in the area between the front lot line and the prescribed minimum front yard setback line. Property is located in Zoning District Residential A-1, being Map 35, Parcel 26 of the Assessors' Maps. Also known as 512 Hemenway St.

And the said Board of Appeals further certifies that the decision hereto is a true and correct copy of its decision has been filed with the City Clerk.



Paul Giunta - Chairman

Submitted to the City Clerks' Office on October 23, 2014.



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ZBA Case # 1431-2014

Date: October 23, 2014

Name: Stephen and Durvalina Demers

Location: 512 Hemenway St.

Zoning Board of Appeals Record

The Zoning Board of Appeals, acting under the Marlborough Zoning Ordinance and General Laws, Chapter 40A, as amended, a meeting was held on September 16, 2014 with a continuation meeting on October 14, 2014.

Board Members present were: Paul Giunta-Chairman, Theodore Scott, Ralph Loftin, Thomas Golden and Robert Levine.

Proceedings:

1. **Date of Appeal:** August 1, 2014.
2. **Name and Address of Applicant:** Stephen and Durvalina Demers, 512 Hemenway St.
3. Administrative body from whose decision or order of appeal was taken: Building Dept.
4. Appeal filed with: Zoning Board of Appeals and City Clerks' Office
5. **Nature & Basis of Appeal:** The applicant is requesting a road opening permit thru the Dept. of Public Works. The proposal will deviate from Section 650.48(5)(a) of the City of Marlborough Zoning Code states that only one driveway opening is allowed for any parcel with less than 200 ft. of frontage. And Section 650.49.B(2)(a) states that off street parking shall not be permitted in the area between the front lot line and the prescribed minimum front yard setback line. Property is located in Zoning District Residential A-1, being Map 35, Parcel 26 of the Assessors' Maps. Also known as 512 Hemenway St.
6. **Section of the Zoning Ordinance involved:** See above #5.
7. Notice was sent by Certificate of Mailing to parties in interest, including the petitioner, abutters, owners of land directly opposite on any public or private street or way, owners of land within 300 feet of the property lines, including owners of land in another municipality, all as they appear on the most recent applicable tax lists.
8. Original documents are on file with the Board of Appeals and the City Clerks' Office.

9. **Findings of Fact/Minutes:**

1F. The property is located in Zoning District A-1. Being Map 35, Parcel 26 of the Assessor's Maps. Also known as 512 Hemenway St. The topography of the lot slopes from the front of the lot to the back. The shape of the lot is fairly rectangular.

2F. Present this evening were the applicants, Stephen and Durvalina Demers.

3F. The abutting lots are similar in shape and size to the lot in questions.

4F. **Petition:** The applicant is requesting a road opening permit thru the Dept. of Public Works. The proposal will deviate from Section 650.48(5)(a) of the City of Marlborough Zoning Code states that only one driveway opening is allowed for any parcel with less than 200 ft. of frontage. And Section 650.49.B(2)(a) states that off street parking shall not be permitted in the area between the front lot line and the prescribed minimum front yard setback line. Property is located in Zoning District Residential A-1, being Map 35, Parcel 26 of the Assessors' Maps. Also known as 512 Hemenway St.

5F. **List of exhibits:**

- Plan entitled: Demers Residence, dated 6/15/2014 - Parking driveway variance.
- Letter dated August 1, 2014, RE: Driveway Expansion, 512 Hemenway St. from Pamela Wilderman-Code Enforcement Officer.
- Application for Street Opening Permit – from the Dept. of Public Works with attached hand drawn plan

6F. The applicant stated the following:

- There is a blind corner on a hill just to the south of their house. There is a 20 miles per hour sign posted nearby. As stated by the applicant, "regardless of the sign, there are people who will not slow down." As a safety issue, the applicants would like to install this horse shoe style driveway at the front of their house.
- The applicant has a 2 car garage with an additional 2 car parking area at the head of the driveway. They could park up to 5 cars in their driveway.
- The applicant owns 3 vehicles.
- The applicants have 3 children living at home. They and the children have many friends (some of which are physically challenged) that come to visit. With the drop off and pick up of friends, it creates a "safety" issue to visitors who park on the street. Exiting from their driveway is dangerous, because of the sight distance onto Hemenway St.
- The house has an existing 25 ft. Front Yard Setback vs. the 30 ft. minimum required. The applicant stated it is not understood

how the house was built with this deviation in the Front Yard Setback.

- The applicants are opened to any solutions the Board may have.
- They purchased this house in 2011.
- They have gone to the city's engineering department regarding a "street opening permit" and this is when they learned they needed a variance.

7F. Board member, Paul Giunta, stated:

- He did not see any evidence of other homes in the area that have a "horse shoe" shape driveway at the front of their house.
- The applicant will have to consider drainage issues. One cannot have water run-off onto the street.
- With the city's right of way at the front of their home, the city may in the future widen the street, add sidewalks and curbing.
- The Board does not want to create a domino effect with other lots in the neighborhood requesting his type of driveway.

8F. The Board asked that the applicant prepare a plan done by a land surveyor to show the topography of the lot, the setbacks of the existing house to the lot lines.

9F. Board Member, Theodor Scott stated the following:

- A "hardship" cannot be personal.
- The applicant has to look at their lot concerning topography, shape and structure(s) on the lot and how their lot separates them from their neighboring lots.
- The applicant has to make their case.
- Hardship has to be proven by the applicant.

10F. Board Member, Robert Levine stated that a hardship cannot be an "inconvenience".

11F. **Hardship** as stated by applicant:

- A "safety" factor is their main concern. There is a "blind" corner on a hill just to the south of their house. A Board member stated that many people have this problem, but does it qualify as a hardship?
- They can't move the house back to give them more room at the front.
- They can't widen the existing driveway because of a utility pole on one side and a tree on the other.

12F. The Board asked the applicant:

- To re-think your hardship and how you may qualify for a variance.
- Is the hardship related to the building or land
- Come back with a certified plot plan.

- Could vehicles park on the street? Answer-yes.
- Could they extend the existing driveway back? Answer-yes.

13F. The Board asked the applicant if they wanted to continue the hearing until such time they can produce a Certified Plot Plan of their lot, to address drainage and to investigate further their criteria(s) for a variance as related to "hardship". The applicants agreed to continue the public hearing.

14F. There was no one in the audience to speak in favor or in opposition to the petition.

15F. On a motion by Ralph Loftin and seconded by Theodore Scott, the Board voted 5-0 to continue the public hearing to Oct. 14, 2014 at 7:00 PM.

16F. **October 4, 2014** – The hearing was continued at 7:00 PM.

17F. Members present: Paul Giunta-Chairman, Theodore Scott, Ralph Loftin, Thomas Golden and Robert Levine.

18F. Also present this evening were Mr. and Mrs. Demers (applicants).

19F. **List of Exhibits:**

The applicant presented a write up thru an e-mail to our secretary on Oct. 14, 2014 with an alternate plan entitled "512 Hemenway St. Variance Request (alternative) did on a GIS map. (in Board's file)

20F. The alternate plan as described by the applicant was to pave, at their expense, the city's right of way to park 3-4 cars at the front of their front property line. The Board stated they do not have the authorization to grant such a request. The Board mentioned it would be the city's department of public works to have this dialog with.

21F. After much discussion concerning the applicant's safety concerns and possible water run-off issues of the two plans, the Board felt there was no evidence of a "hardship" according to Mass. General Law Chapter 40A. The hardship as presented to the Board by the applicant is a personal hardship. The applicants wanting more parking on their lot, thus creating a safe and convenient area for their visitors. The Board also felt that if they granted this variance, they would be setting a precedent to other home owners in the area.

22F. There was no one in the audience to speak in favor or in opposition to the petition.

23F. The applicant requested to "Withdraw Without Prejudice" his petition before the Board.

24F. Ralph Loftin made a motion and seconded by Theodore Scott to allow the applicant to "Withdraw Without Prejudice".

25F. The Board voted 5-0 to grant the applicant to "Withdraw Without Prejudice".

26F. On a motion by Paul Giunta and seconded by Robert Levine, the public hearing was closed. The Board voted 5-0 to close the public hearing.



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Location: 512 Hemenway St.

VOTE OF THE BOARD
Signature Sheet

In Favor
To Withdraw Without Prejudice

In Opposition

Paul Giunta *Paul Giunta*

Paul Giunta _____

Theodore Scott *Theodore Scott*

Theodore Scott _____

Ralph Loftin *Ralph Loftin*

Ralph Loftin _____

Thomas Golden *Thomas Golden*

Thomas Golden _____

Mitchell Gorka _____

Mitchell Gorka _____

Robert Levine *Robert Levine*

Robert Levine _____