



**City of Marlborough
Zoning Board of Appeals**

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

ZBA Case # 1433-2014
Location: 2 Labelle St.

Date: December 1, 2014

**General Laws Chapter 40A
Granted – with Conditions**

To: Duque Suellen
Address: 2 Labelle St.
City: Marlborough, MA 01752

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

2 Labelle St. Map 42, Parcel 25

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 *es*


Susan Brown - Secretary

Submitted to the City Clerks' office on December 1, 2014.



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Date: December 1, 2014

Name: Duque Suellen

Location: 2 Labelle St.

**Zoning Board of Appeals
Notice of Decision**

The Zoning Board of Appeals, acting under the Zoning Ordinance of the City of Marlborough and the Zoning Enabling Act of the Commonwealth of Massachusetts, after a public hearing held at the Marlborough City Hall, 140 Main St. on October 14, 2014 with a continuation date of November 18, 2014.

Petition: On a newly constructed roof over the front steps which is in violation of the front yard setback which is 7 ft. (grandfathered) vs. 20 ft. minimum required for Zoning District A-3. In accordance to Chapter 650-41 of the Zoning Ordinance. Property is located at 2 LaBelle St., being Map 42, Parcel 25 of the Assessor's Maps.

Members Present: Paul Giunta-Chairman, Ralph Loftin, Theodore Scott, Mitchell Gorka and Thomas Golden.

After due consideration to the subject matter of the petition, the Board voted 5-0 to (GRANT) a variance, on the ground that a literal enforcement of the Ordinance would involve substantial hardship to the petitioner and that desirable relief may be granted without substantially derogating from the intent or purpose of the Zoning Ordinance.

The Board makes the following findings:

The existing single family house is a non-conforming structure with a 6 foot front yard setback from Labelle Street in Zoning District Residence A-3 that requires a minimum 20 foot front yard setback.

The 6 foot setback was taken from the submitted Certified Plot Plan entitled: Plan Showing Proposed Platform, 2 Labelle St. Marlborough, MA Middlesex County, Prepared and Stamped by Dennis O'Brien of D. O'Brien, Land Surveying, dated 9/17/2014, Scale: 1:20, and is measured from property line along Labelle Street to the projection of the bay window roof.

The new entrance to the house will face Labelle Street and will have new steps with an overhead awning. The original architectural exterior elevation sketch showed the awning extending to within 4 feet of the property line. The entrance could not be moved to the south perpendicular side wall because the utility company required the new gas service to be located there and operable windows and doors cannot be located adjacent to a gas service. The entrance could not be moved to the north perpendicular side wall because the existing non-conforming side yard setback does not allow enough room for the steps. After discussion with the board the applicant agreed to reduce the depth of the awning, so that it would have a setback of 5.3 feet. A set back of 5.3 feet results in the non-conformity being increased by .7 feet at the new awning projection. Thus, a variance is required for the front yard setback.

The extremely small non-conforming front yard and side yard setbacks along with the required location of the new gas service causes a substantial hardship with regards to locating the entrance, steps, and awning.

The desired front yard setback variance will not be detrimental to the public good or abutting property. The look and value of the property will be greatly improved by the planned renovation. Several abutters attended the public hearing to speak in favor of the renovation including the awning over the new entrance because they believed the awning would add visual appeal to the house.

The desired minimal localized variance to an already existing small non-conforming front yard setback complies with the purpose and intent of the Zoning Ordinance.

Therefore, the Board voted 5-0 to grant a variance on the following terms and conditions:

- 1. The applicant will resubmit a stamped copy of the Certified Plot Plan presented as mentioned above for the Board's file. (The applicant did provide a stamped copy the next day)**
- 2. The awning location shall conform to the certified plot plan submitted. Specifically the awning shall not have a front yard setback of less than 5.3 feet.**
- 3. No Building Permits can be issued until such time as the applicant presents to the Building Inspector evidence that said variance with its restrictions and the approved Certified Plot Plan has been filed with the Registry of Deeds or Land Court as applicable.**

End

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section II (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the city clerk that twenty days have elapsed after the decision has been filed in the office of the city clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the Registry of Deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

If the rights authorized by a variance are not exercised within one (1) year of the date of grant of such variance, such rights shall lapse; provided however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six (6) months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period.

Respectfully submitted,


Zoning Board of Appeals
Paul Giunta – Chairman

Submitted to the City Clerk's office on December 1, 2014.



City of Marlborough Zoning Board of Appeals

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ZBA Case # 1433-2014
Name: Duque Suellen
Location: 2 LaBelle St.

Date: December 1, 2014

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 October 14, 2014 with a continuation date of November 18, 2014.

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

Proceedings:

1. **Date of Appeal:** September 16, 2014
2. **Name and Address of Applicant:** Duque Suellen, 2 Labelle St., Marlborough, MA 01752
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:** On a newly constructed roof over the front steps which is in violation of the front yard setback which is 7 ft. (grandfathered) vs. 20 ft. minimum required for Zoning District A-3. In accordance to Chapter 650-41 of the Zoning Ordinance. Property is located at 2 LaBelle St., being Map 42, Parcel 25 of the Assessor's Maps.
6. **Section of the Zoning Ordinance involved:** Chapter 650-41
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/Minutes:**
 - 1F. The lot in question is fairly flat. Almost rectangular in shape. This is a "corner" lot with 2 front yard setbacks and 2 side yard setbacks with no rear

setbacks. The lot is located at the corner of Labelle St. and Hunter Ave. The existing house sits close to the front lot line and to the northerly side lot line. The lot contains 13,459 sq. ft.

2F. The abutting lots are similar in size and some of the abutting homes are set close to the front yard setback.

3F. The applicant has installed a new front door, facing Labelle St. Along with that door, he has added some steps with a roof overhang which is the subject of this hearing. The overhang roof extends 4 ft. to the front lot line. The roof overhang covers the landing of the steps. The original door entrance was at the left side of the house.

4F. Abutters were notified by the applicant with return receipts as proof.

5F. **List of exhibits:**

- Denial letter from the building department dated August 12, 2014.
- Plans entitled: Proposed House Renovation at 2 Labelle St., dated April 7, 2014, prepared by T Design, LLC Sheets A-8 and A-7.

6F. The applicant, Sullen Duque and Mr. Joel Soares of 56 Davidson Rd., Framingham, MA were present.

7F. Mr. Joel Soares stated the following:

- The entrance to the house was where the enclosed porch is located. He was going to continue using this as his entrance, but in switching to gas, the gas company did not want to install the gas meter where there is a door entrance or a window. Thus, the moving of the door to the front of Labelle St.
- He stated he has done major interior and exterior renovations to the house.
- He stated when his plans were presented to the building department for permits, the architect left out the roof overhang over the steps on the plans. When the building department came out to do some inspections, the roof overhang was in place.
- The building department issued a stop work order on any exterior work until such time as the applicant receives the proper variance for the roof overhang.
- The applicant feels the roof overhang adds to the character of the house.
- He also stated his surveyor is working on the final plans which should be ready in about 2 weeks
- He will be applying for a building permit for a garage in the future.

8F. Speaking in favor of the petition:

- 26 Hunter Ave. – Patricia Zilembo –she stated she was in favor of the petition. The added roof over the steps looks very nice and adds to the house. She also stated that the front door was located at the front of Labelle St. This roof overhand will protect the mailman and their children from the winter weather. She also mentioned the entrance use to be at the front of the house on Labelle St. about 4 yrs. ago.
- 1 Labelle St. – Keith Anderson – he stated he had no opposition to the petition. He feels the roof overhang is a nice addition to the house.

9F. Hardship as stated by the applicant:

- The roof overhang was not shown on the plans when said plans were presented to the building department, an error by their architect. So, when the plans were approved by the building department, he thought the roof overhang was also approved.
- The roof overhang is to protect the step landing from ice and snow. Also, to protect his children while waiting for the school bus.
- There was an entrance on Labelle St. in the past, but no roof overhang.
- The gas company would not allow a gas meter to be located where any door entrance or window was to be located thus, the moving of the door entrance to the front on Labelle St.

10F. There was some discussion of an existing bay window located at the front of the house, which extends into the front yard setback.

11F. The Board stated to the applicant that a Hardship cannot be a personal hardship. It has to do with the shape, topography and soil condition of the lot. Also, the Board felt the applicant has created his own hardship by adding a roof over the new steps. The Board also stated he does not have to move the front door entrance, just remove the roof overhang. The children can wait in the house for the school bus. The Board asked the applicant if any other homes in the area have a similar overhang. Answer – yes.

12F. The Board felt there was no hardship according to Mass General Law Chapter 40A:

- The applicant does not need a roof overhang over the front entrance fronting Labelle St. this is the subject of this variance request.
- There was an entrance fronting Labelle St. in the past, which has moved to the left side of the house.
- The applicant is not making his case concerning the shape, topography and soil conditions of his lot. And in what makes his lot unique from the other surrounding lots.
- The Board finds that this is a “corner” lot.

- The Board stated there is an existing bay window already encroaching into the front yard setback, which is included in the plans. The Board felt that the proposed roof overhang may be allowed by extending the existing non-conformity with the bay window.

13F. The Board gave the applicant the following options:

- The Board would like to see a certified plot plan of the setbacks. The existing bay window maybe “grandfathered”. If so, the roof overhang can be extended as far as the bay window.
- Or the applicant can Withdraw Without Prejudice.

14F. With the applicants’ approval, the hearing is continued to November 18th until such time as the applicants can present a certified plot plan to the Board at least 4 days prior to the hearing date to review the setbacks on the lot.

15F. On a motion by Paul Giunta and seconded by Mitchell Gorka, the hearing was continued to November 18th at 7:00 PM.

16F. The Board voted 5-0 to continue the hearing to November 18, 2014 at 7:00 PM.

17F. **November 18, 2014** - The hearing was continued at 7:00 PM.

18F. Members present: Paul Giunta – Chairman, Theodore Scott, Ralph Loftin, Thomas Golden and Mitchell Gorka.

19F. The applicant, Sullen Duque and Mr. Joel Soares of 56 Davidson Rd., Framingham, MA were present.

20F. There was no one in the audience to speak in favor or in opposition of the petition.

21F. The applicant presented the following plans:

- Plan showing proposed platform, 2 Labelle St. Marlborough, MA Middlesex County, dated 9/17/2014 Scale: 1:20 prepared and signed by D. O’Brien, Land Surveying
- Another plan not stamped by an engineer. (The Board requested that this untitled plan be stamped by an engineer and submit a copy to the Zoning Board’s office.)

22F. There was much discussion about the proposed awning and the existing non-conforming bay window which is 6 ft. to the front lot line. The proposed awning will be 5.3 ft. to the front lot line. Thus a deviation of .7 ft.

23F. A motion was made by Theodore Scott, seconded by Ralph Loftin to grant a variance for the awning shall not have a front yard setback of less than 5.3 ft. The Board voted 5-0 to grant a variance with conditions.

24F. A motion was made by Paul Giunta and seconded by Theodore Scott to close the public hearing.

25F. On a vote of 5-0, the public hearing was closed.



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VOTE OF THE BOARD Signature Sheet

In Favor

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*

Mitchell Gorka _____

Robert Levine _____

Robert Levine _____