



**City of Marlborough  
Zoning Board of Appeals**

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

**ZBA Case # 1454-2019 SP**  
**Location: 144 Chestnut Street**

**Date: August 13, 2019**

**(General Laws Chapter 40A, Section 16)  
Special Permit**

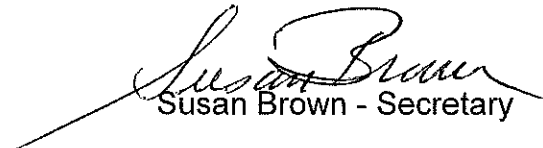
**To: Matt Jackson**  
**Address: 180 Gates Pond Rd.**  
**City: Berlin, MA 01503**

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

**144 Chestnut Street Map 68 Parcel 194**

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 August 13, 2019.



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Date: August 13, 2019

Applicant: Matt Jackson  
Location: 144 Chestnut St.  
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### Zoning Board of Appeals Decision Special Permit

The Zoning Board of Appeals of the City of Marlborough held a meeting on July 9, 2019 with a continuation meeting on July 30, 2019. The Board hereby **GRANTS** the applicant a Special Permit to reconstruct a fire destroyed 2 family structure at 144 Chestnut St. back to a 2-family structure subject to the following Findings of Fact and Conditions.

**Board Members present:** Paul Giunta-Chairman, Ralph Loftin, Thomas Pope, and Robert Levine. Note: Thomas Golden recuse himself because he sometimes does business with the applicant.

**Nature & Basis of Appeal:** To demolish the fire destroyed two stories, two family dwelling and construct a new three stories, two family dwelling structure at 144 Chestnut St. located in Zoning District B (RB). Being Map 68, Parcel 194.

#### Finding of Fact:

1. The Board finds that the expansion and re-building of the fire destroyed family structure is not any more detrimental to the neighborhood than what existed prior to the fire. It was a 2 family structure and it will remain as such.
2. The proposal is an appropriate use to this Zoning District Residence B (RB) and is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough.
3. The Board finds that the Application for the Special Permit does not derogate from the intent or purpose the Zoning Ordinance of the City of Marlborough.

4. The Board finds by increasing the non-conforming nature of this structure and use, "does" create a new non-conformity. This new conformity is not a detriment to the neighborhood.

On a motion by Ralph Loftin, seconded by Paul Giunta to grant a Special Permit. The Board voted 4-0 to grant a Special Permit with the following conditions:

**Conditions:**

1. The applicant agrees to conform with the 30% Lot Coverage and conform to Height of Structure of 2 ½ stories in accordance to Chapter 650-41 Table of Lot Area, Yards and Height of Structure.
2. Before a building permit can be issued, revised stamped plans reflecting the above changes will be presented to the Building Department for review and approval. The Zoning Board of Appeals will get a copy of the revised stamped plans for their file.
3. The only zoning relief granted (variance) is for the 4.1 ft. side line setback for the propose driveway vs. the 5 ft. minimum required. Thus, a deviation of .9 ft.
4. Recording of Special Permit – The applicant at their expense shall record this Special Permit in the Middlesex South District Registry of Deeds after the City Clerk has certified that the 20-day appeal period has elapsed with no appeal having been filed and before the applicant shall apply to the Building Dept. for a building permit.
5. Applicant shall provide a copy of the recorded Special Permit to the Building Dept. and to the Zoning Board of Appeals.

  
Paul Giunta  
Chairman  
Zoning Board of Appeals



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ZBA Case # 1454-2019 SP  
Name: Matt Jackson  
Location: 144 Chestnut Street

Date: August 13, 2019

## **Special Permit 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 July 9, 2019 with a continuation meeting on July 30, 2019.

**Board Members present were:** Paul Giunta-Chairman, Ralph Loftin, Thomas Pope, Robert Levine and Thomas Golden. **Note: Thomas Golden recuse himself because he sometimes does business with the applicant.** Also present was Ethan Lippett, city's code enforcement officer on July 9<sup>th</sup>.

### Proceedings:

1. **Date of Appeal:** May 14, 2019.
2. **Name and Address of Applicant:** Matt Jackson, 180 Gates Pond Rd., Berlin, MA 01503
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:** To demolish the existing two stories, two family dwelling and construct a new three stories, two family dwelling structure at 144 Chestnut St., located in Zoning District B (RB). Being Map 68, Parcel 194.

The applicant, Matt Jackson, is seeking the following:

1. **Special Permit** - As a pre-existing, non-conforming lot, the construction of a new structure requires a "Special Permit" issued by the Marlborough Zoning Board of Appeals. The construction of a new structure creates a new non-conformity.
6. **Section of the Zoning Ordinance involved:** Chapter 650-12

7. Notice was sent Certified Mail by the applicant 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 400 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:**

- 1F. The Board informed the audience that there are two processes to this petition. One is for zoning relief (variances) and the second for a Special Permit. Zoning Relief was heard first. (both are under the same ZBA Case #)
- 2F. The property is located in Zoning District Residence B, being Map 68, Parcel 194 of the Assessors Maps.
- 3F. This pre-existing non-conforming lot contains 8,205 sq. ft. ± with 51.15 ft. of frontage. The lot narrows slightly to the rear property line.
- 4F. Lots in the area are similar in size, shape and topography.
- 5F. The makeup to the neighborhood is single family homes, 2 family homes and multi-family homes.
- 6F. The applicant, Matt Jackson was present and represented himself.
- 7F. The Building Commissioner determined that the fire destroyed two-family dwelling was a legal pre-existing nonconforming structure with respect to lot size and setbacks and that the proposed two-family dwelling would increase or intensify the non-conformity of the fire destroyed structure.
- 8F. **Proposal:** The applicant proposes to construct a new 3 story, two family structure with 4 parking spaces at the rear of the house. Each unit will have 3 bedrooms, totaling 6 bedrooms.
- 9F. **Existing before the fire:** 2 family structure, 2 bedrooms in each unit, 2 story, no parking in the rear and a dirt or gravel driveway.
- 10F. **Plans:** The applicant provided plans entitled:
  - Certified Plot Plan, 144 Chestnut St., Marlborough, MA (existing conditions) Dated: Jan. 8, 2019, Prepared by: Farland Corp. and stamped by Brian Murphy.

- Certified Plot Plan, 144 Chestnut St., Marlborough, MA (propose plan) Dated: March 5, 2019 Prepared by: Ducharme & Dillis and **not** stamped.

11F. List of exhibits received:

- The list of plans as mentioned above.
- A letter from Edgar Vigil, dated July 11, 2019. Delivered to the Board by a friend. Stating her opposition.
- Thru the Building Dept. denial letter, dated April 26, 2019, the estimated construction costs of \$260,000 exceeds 75% of the value before the structure fire, assessors have the value as \$153,800. Thus, to rebuild on this pre-existing non-conforming lot would have to meet current zoning codes.

12F. According to Chapter 650-12(B)(3) states: In case the use is destroyed or damaged by fire, explosion or other catastrophe to not greater than 75% of the fair market value of the building or structure, exclusive of foundation, based upon replacement cost immediately prior to such damage, the structure or use may be restored or rebuilt at the same location and used as previously, provided that: The building, structure or use of land as restored or rebuilt shall be no greater in floor or land area than the maximum permitted under this section.

13. The applicant, Matt Jackson stated the following:

- He is planning to purchase the lot.
- 144 Chestnut St. was destroyed by fire.
- The proposed structure will be placed on a different footprint than the original footprint.
- Before the fire, it was a 2 story, 2 family structure with 2 bedrooms in each unit. It had limited parking.
- Proposing 3 story with 3 bedrooms in each unit. Proposing 4 parking spaces at the rear of the lot.

14. The Board discussed the following;

- The Board felt 4 spaces at the rear of the lot is not enough for a 2-family unit with a total of 6 bedrooms.
- The Board talked about permeable and impermeable surface as parking material. Ethan Lippett, Code Enforcement Officer, stated that driveways must be of dustless, of impermeable material. According to Chapter 650-49 (B)(4) states: **Outside street** - All driveways shall have a durable, dustless, all-weather surface suitable for year-round use, such as bituminous concrete or cement concrete or pavers or other approved impervious material. Driveways to commercial, industrial and multifamily residential units shall in all cases

be paved. Alternatives for single- and two-family houses must be approved by the Building Commissioner and City Engineer.  
[Amended 10-6-2014 by Ord. No. 14-1005921A]

15. **Special Permit** - The Board opened up the public hearing on July 30, 2019 for the Special Permit process. A motion was made by Paul Giunta and seconded by Robert Levin to continue the special permit process to July 30, 2019 at 7:00 PM. The Board voted 4-0 to continue the public hearing for the Special Permit request to July 30, 2019 at 7:00 PM. in order to seek information from the Building Commission and/or City Solicitor.

**CONTINUATION – July 30, 2019 – 7:00 PM**

16. Members Present: Paul Giunta-Chairman, Ralph Loftin, Thomas Pope and Robert Levine.
17. Also, present the applicant, Matt Jackson.
18. The applicant stated he felt the added parking at the rear of the property would give an overall better appearance to the front of the propose house. Also, with some parking at the rear, it will keep some cars off the street.
19. The Board asked the applicant if he would consider conforming with Lot Coverage, even though the Board would like to see more parking on site and also to conform with the Height of the Structure to 2 ½ stories. **Answer:** The applicant agreed to conform with Lot Coverage of 30% and Height of Structure 2 ½ stories.
20. The applicant will not change the footprint of the house.
21. Ralph Loftin, Board Member, stated the lot is narrow and small for a 2 family. To expand the structure according to his propose design has created a new non-conformity which requires a Special Permit.
22. The Board stated the applicant can re-build on this lot but must conform to all zoning codes pertaining to setbacks, lot coverage and height of structure.
23. Thomas Pope, Board Member, asked if the 2 units will have sprinklers. The applicant did not know if it was required.
24. Speaking in **opposition:**
- Edgar Vigil, 140 Chestnut St., Marlborough, MA – They submitted a letter for the July 9<sup>th</sup> meeting date. This evening

Mr. and Mrs. Vigil were in attendance. They voiced their opposition as follows:

- A 3<sup>rd</sup> floor level would mean more people per unit creating over-crowding in these units.
- The applicant will probably not live in one of these units. What type of tenants will these units attract? The applicant is not sure if he will rent or sell.
- They had no problems with the former owner of the single-family home. They fear that being rentals, tenants may become a problem.
- They fear the new structure will be closer to her house. They stated the fire that destroyed 114 Chestnut St. nearly destroyed their house. One of the Board members showed them the proposed plan and what was existing prior to the fire. The plan showed that the proposed house will not be any closer to their home than the fire destroyed house.
- She did not want to see a larger home being built on this lot.

25. Speaking in favor - None

26. **A motion** was made by Robert Levine, seconded by Ralph Loftin to have the applicant remove the requested zoning relief for Lot Coverage of 36.3% to the required maximum 30% and the Height of Structure to conform with the 2 ½ stories vs. the proposed 3 stories. Chapter 650-41 Table of Lot Area, Yards, & Height of Structures. The applicant agreed to the motion and removed above mentioned zoning relief.

The Board voted 4-0 to remove the requested zoning relief for Lot Coverage of 36.3% to the required maximum 30% and the Height of Structure to conform with the 2 ½ stories vs. the proposed 3 stories.

27. With the removal of the propose Lot Coverage and Height of Structure, the proposed two family would conform to requirements of the City of Marlborough Zoning Code in all respects except for the side setback of the propose driveway.

28. The applicant stated the following:

- The proposed structure is 24 ft. wide vs. the 21 ft. that was existing.
- The proposed structure is similar to what was there before the fire.



- The proposed floor plan is better than what was there before the fire.
  - The proposed house is setback further from the road.
29. Ralph Loftin made a motion to close the public hearing. Seconded by Thomas Pope. The Board voted 4-0 to close the public hearing.



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**Applicant: Matt Jackson**

Special Permit  
VOTE OF THE BOARD  
Signature Sheet

**In Favor**

Paul Giunta



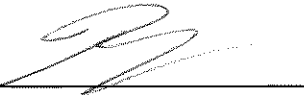
Ralph Loftin



Thomas Golden

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Thomas Pope



Robert Levine



**In Opposition**

Paul Giunta

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Ralph Loftin

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Thomas Golden

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Thomas Pope

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Robert Levine

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