



City of Marlborough Zoning Board of Appeals

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

ZBA Case # 1448-2018
Name: Angelo Cruz
Location: 21 Helen Dr.

Date: September 19, 2018

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 a public hearing was held at the Marlborough City Hall, 140 Main St. on August 7, 2018 (the applicant arrived late), continued to August 28, 2018 (did not have a quorum), and continued to Sept. 11, 2018.

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

Vote: Paul Giunta-Chairman, Robert Levine, Thomas Pope and Ralph Loftin voted 4-0 to grant a variance.

Proposal: Angelo Cruz proposes to construct an attached 2 car garage at the left of the existing house. The proposed side setback will be 10.5' \pm versus the maximum required 15' for Zoning District A-3.

After due consideration to the subject matter of the petition, the Board voted 4-0 to (GRANT) a variance for the side yard setback. The Board finds the proposed attach 2 car garage will not have a negative impact on the appearance of the neighborhood and no substantial detriment to the public good. And would not substantially derogate from the intent and purpose of the zoning ordinance as there are similar additions and structures in the area that do not have the required 15 ft. from the side lot line. Also, the deviation is minor.

Therefore, the Board **voted** 4-0 voting in the affirmative to grant a variance with the following **restrictions:**

1. The proposed attached 2 car garage cannot be any closer than 10.5 ft. from the side property line, thus a deviation of 4.5 ft. If the deviation is greater than 4.5 ft. the applicant will re-file with the Zoning Board of Appeals for a new public hearing.
2. There will not be any living space above the proposed garage.
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 has been filed with the Registry of Deeds or Land Court as applicable.
4. Approved plan: Proposed Plot Plan in Marlborough, MA for Cruz, Scale 1" = 40', dated May 9, 2018. Prepared by Stamski and McNary, Inc., 1000 Main St. Acton, MA.

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 September 19, 2018.



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Date: September 19, 2018

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 August 7, 2018 (the applicant arrived late), continued to August 28, 2018 (did not have a quorum), and continued to Sept. 11, 2018.

Board Members present were: Paul Giunta – Chairman, Thomas Pope, Ralph Loftin and Robert Levine.

Proceedings:

1. **Date of Appeal:** June 27, 2018.
2. **Name and Address of Applicant:** Angelo Cruz, 21 Helen Dr.
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:** Angelo Cruz proposes to construct an attached 2 car garage at the left of the existing house. The proposed side setback will be 10.5' \pm versus the maximum required 15' for Zoning District A-3.
6. **Section of the Zoning Ordinance involved:** Chapter 650-41, Table of Lot Area, Yards and Height of Structures.
7. Notice was sent by Certified Mail 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.

Findings/minutes:

1. The property is in Zoning District A-3.
2. The lot contains some 23,313 sq. ft. area.
3. The shape of the lot is rectangular. The lot is fairly flat. There is a pool located at the rear of the lot. There are a few abutting lots similar in shape and size.
4. The applicant stated the following:
 - a. The house was built in 1959.
 - b. Some of the neighboring houses are similar in design.
 - c. The abutting neighbor at 29 Helen Dr. received a building permit to construct an attached 2 car garage around 5 months ago. (In the file is a copy of a plan for the neighbor's attached 2 car garage which is 10.2 ft. from the side lot line) The garage at 29 Helen Dr. is similar to Ms. Cruz's petition before the Board this evening. The neighbor, at 29 Helen Dr. did not have to go through the variance process.
 - d. She stated that the former Building Commissioner, prior to current Building Commissioner, Jeffrey Cooke was going to issue a building permit for her attached 2 car garage, but had to ask the city's legal department for clarification of a section of the **City of Marlborough's Table of Lot Area, Yards and Height of Structures (§ 650-41) specifically the foot note for Residence A-3, Minimum Side Yard. (Foot Note reads: Applies to all buildings erected on or after January 27, 1969; all others, 10 feet)** The applicant felt the rules were different for her, because she must go before the Zoning Board of Appeals for a variance.
 - e. The applicant also stated, the former Building Commissioner asked for additional paper work before a building permit could be issued and by the time she could gather up the requested paper work, a new Building Commissioner was on board.
 - f. The new Building Commissioner interpreted the above code differently. His interpretation is evident by his denial letter, dated June 18, 2018 to the applicant. (note there is an error in the denial letter. (1) "the existing structure has a left side yard setback of +/-23.5 ft. (it should be corrected to read: according to the certified plot plan 25.3 ft.)
 - g. There will be no living area above the garage.

- h. The placement of the proposed attach 2 car garage at the left of the house is the only feasible location, because the existing driveway and curb opening is located at the left of the house.
 - i. The applicant did not have any paper work to back up her above testimony.
- 5. No one was present to speak in favor or in opposition to the petition.
- 6. With no other testimony taken or given the public hearing was closed.
- 7. The Board finds the proposed attach 2 car garage will not have a negative impact on the appearance of the neighborhood and no substantial detriment to the public good. And would not substantially derogate from the intent and purpose of the zoning ordinance as there are similar additions in the area that do not the required 15 ft. from the side lot line.
- 8. A letter from the applicant to the Board, dated July 13, 2018, making the Board aware that a building permit was issued to an abutting lot at 29 Helen Dr. for a similar petition as her petition this evening. It was this earlier valid building permit to 29 Helen Dr. that the Board took into consideration in their decision of this case. (letter in Board's file)
- 9. A motion was made by Robert Levine and seconded by Thomas Pope to grant a variance.
- 10. After much discussion, the Board voted 4-0 to grant a variance with conditions.
- 11. The Board requested the secretary, Susan Brown, ask our legal department for an interpretation of the code as mentioned in #4 (d) above and to go into the Building file to see if there is a building permit for 29 Helen Dr. for an attached garage.
- 12. With no other testimony taken or given, the public hearing was closed.

Plans: Proposed Plot Plan in Marlborough, MA for Cruz, Scale 1" = 40', dated May 9, 2018. Prepared by Stamski and McNary, Inc., 1000 Main St. Acton, MA .



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VOTE OF THE BOARD
Signature Sheet

In Favor

Paul Giunta

Ralph Loftin

Thomas Golden

Thomas Pope

Robert Levine

In Opposition

Paul Giunta

Ralph Loftin

Thomas Golden

Thomas Pope

Robert Levine