



**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 # 1461-2019

Date: December 11, 2019

Location: 17 Beauregard Circle

**(General Laws Chapter 40A, Section 16)
Zoning Relief (variance)**

To: Thomas Potter

Address: 17 Beauregard Circle

City: Marlborough, MA 01752

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

17 Beauregard Circle Map18 Parcel 154

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 December 11, 2019.



**City of Marlborough
Zoning Board of Appeals
140 Main Street
Marlborough, Massachusetts 01752
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Record of Proceeding and Decision

Zoning Board Case # 1461-2019

Applicant: Thomas Potter

Date of Appeal: Sept. 20, 2019

Location of Subject Property: 17 Beauregard Circle

Zoning relief requested: Thomas Potter desires to construct a 16 ft. x 15 ft. covered porch and a 14.5 ft. x 15 ft. deck at the rear of his house. And to expand his current driveway at 17 Beauregard Circle. Map 18, Parcel 154, located in Zoning District A-2. The proposal does not comply with Chapter 650-41 Table of Lot Area, Yards and Height of Structures", Chapter 650-48 "Off Street Parking" and Chapter 650-49 "Driveways and curb cuts" as follows:

1. Total required maximum Lot Coverage is 30% vs. the proposed 35.9%
2. Expanded driveway, Chapter 650-48C(5b-1) Required minimum setback of 5 ft. vs. proposed rear right side setback .8 ft.
3. Proposed driveway expansion attached to the right side of the house. Chapter 650-49(2c) no driveway shall be located within 5 ft. of a building, except for driveway intended for drive-up window service.

Meeting: The Zoning Board of Appeals held a public hearing on the above-entitled proceeding on October 22, 2019 at 7:30 PM at Marlborough City Hall, 3rd Floor-Memorial Hall, with a continuation meeting on November 26, 2019 and December 10, 2019.

Members present: Paul Giunta-Chairman, Ralph Lofton, Thomas Pope, Thomas Golden and Robert Levine.

Also, present: Thomas Potter, applicant.

Notice of the hearing was given by Certificate of Mailing to all persons to be affected, as shown on the most recent tax list and by publication in the Main Street Journal, a newspaper of general circulation in Marlborough, MA, on Oct. 5, 2019 and Oct. 19, 2019.

Documents Submitted in this Appeal:

- Packet submitted to the Board includes: Zoning Board Applicant, Denial letter from the Building Department dated August 22, 2019.
- Plan submitted entitled: Plot Plan in Marlborough, MA, Prepared by: P.N. Associates, Inc. Dated revised July 22, 2019. Scale: 1"=20'.
- Revise Plan entitled: Plot Plan in Marlborough, MA Prepared by: P.N. Associates, Inc. Dated Revised Nov. 25, 2019. Scale 1"=20'.

Public Hearing:

The property in question is located at 17 Beauregard Circle, Map18, Parcel 154 of the Assessor's Map.

Thomas Potter, applicant was present. Mr. Potter stated he would like to construct a 16 ft. x 15 ft. screen in porch and a 14.5 ft. x 15 ft. deck at the rear of his house. Also, to expand his current driveway requires a minimum of 5 ft. vs. the proposed .8 ft. to the side lot line and the proposed expansion of driveway should have a minimum of 5 ft. vs. 0 ft. proposed from the house. The applicant also exceeds the maximum 30% Lot Coverage, applicant is proposing 35.9%.

Mr. Potter stated when he bought the house, the garage floor was jacked up by the previous owners, creating the existing driveway to curl to the right. Thus, water pools to the right of the existing garage. He plans to install a catch basin to collect the water where the proposed expansion is located. He also mentioned his neighbor on that side of the house had no objections to his proposal to contain the water runoff.

Hardship stated by applicant: The lot is oddly shaped, being narrow at the front and fanning out towards the rear, thus creating the only feasible location for his proposed additions to the lot. The lot is located in an Open Space Subdivision, where lot size is smaller, lot coverage and setback requirements are less than a conventional size lot in a residential area. In an Open Space Subdivision, every structure and open patio are factored into lot coverage. In a conventional residential lot, open patios are not considered into lot coverage. If his proposal was located in a conventional lot, he would probably meet lot coverage. The proposed driveway expansion is to help divert water runoff from his house, but he is willing to eliminate this request.

There was no one present to speak in favor or in opposition to the petition.

Paul Giunta, Board Member suggested that the applicant has other options to divert the water runoff. One being to install a grate at the end of the driveway (at the street) install a drywell. The applicant stated his contractor did not think it is a good idea. Or, install a grate at the entrance of his garage to divert the water.

Ralph Loftin, Board Member stated the criteria for a "hardship" according to Mass General Law Chapter 40A § 10 must be related to soil condition, topography and shape of the lot, not an inconvenience to the owners of the lot. And there must be something unique to your lot to

prevent the owners from using their lot as it is zoned (Zoning District A-2, residential) The applicant has other options to correct the water runoff problem on his lot, rather than expanding the existing driveway.

The Board felt that if the applicant took away the proposed driveway expansion, he could probably meet the required maximum Lot Coverage of 30% or close to the 30%.

The applicant asked the applicant if he would like to continue the public hearing until such time that he can revise his plan to remove the proposed expansion of his driveway to see if he can meet the maximum 30% Lot Coverage.

The applicant agreed to continue the hearing. A motion was made by Ralph Loftin to continue the public hearing to November 26, 2019 (Tuesday) at 7:00 PM for the applicant to revise his plan to remove the proposed expansion of the existing driveway at the side of the garage and re-calculate the Lot Coverage. Robert Levine seconded the motion. The Board voted 5-0 to continue the public hearing to November 26, 2019

November 26, 2019 meeting

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

Also, present: Thomas Potter, applicant.

The applicant, Mr. Potter, submitted a revised plan dated Rev. 11/25/2019. (copy in Board's file) On the revised plan, the applicant has eliminated the expansion of the proposed driveway at the side of the garage as suggested by the Board.

As a result, with the elimination of the proposed expansion of the driveway and calculating all existing and proposed structures (including deck) on the lot, Lot Coverage is currently at 32.7% vs. the minimum required 30%. (It should be noted that this house lot is located in an Open Space Subdivision).

Existing on the lot is the house and an existing shed which sits on a slab. Being proposed is an elevated open deck, and a proposed enclosed porch.

The Board stated they would like the Building Department to review this revised plan, dated November 25, 2019 before the Board voted on this petition. With the applicant's consent, the public hearing was continued to December 10, 2019 in order for the Building Department to reviews said revised plan.

There was no one present to speak in favor or in opposition to the petition

A motion was made by Thomas Golden, to continue the public hearing to December 10, 2019 in order for the Building Department to review the revised plan dated November 25, 2019. Ralph Loftin seconded the motion.

The Board voted 5-0 to continue the public hearing to December 10, 2019 in order to vote on said petition and review some draft conditions.

A vote of 5-0 to close the public portion of the hearing.

The public portion of the hearing was closed.

December 20, 2019 meeting

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

No audience was present.

The Board's secretary, Susan Brown, stated the Building Dept. has reviewed his revised plan dated 11/25/2019 and Building has no objections to the revised plan.

A motion was made by Thomas Golden to grant zoning relief (variance) for Lot Coverage of 32.7% and approved the revised plan dated Rev. 11/25/2019 with conditions. Ralph Loftin seconded the motion.

The Board voted 5-0 to grant zoning relief (variance) for Lot Coverage of 32.7% and approve the revised plan dated Rev. 11/25/2019 with conditions.

A motion was made by Paul Giunta seconded by Robert Levine to close the hearing. A vote of 5-0 was made to close the hearing.

Findings and Determination

The Board makes the following findings:

- A. The house lot is located in an Open Space Subdivision in which lot size, lot coverage and setback requirements are less than a conventional residential house lot. Lot coverage in an Open Space Subdivision is calculated with everything proposed and existing on the lot, so the proposed open patio must be factored into lot coverage, which may have caused the increase in lot coverage. In a conventional residential lot, open patios are not factored into lot coverage.
- B. Desirable relief may be granted without substantial detriment to the public good because the proposed lot coverage of 32.7% vs. the maximum required of 30% is very minimal. The proposed additions (open patio and enclosed porch) will be

located at the rear of the house and its "use" will be in compliance within Zoning District Residential A-2.

Decision

Based on the above findings, the Board voted 5-0 to grant zoning relief (variance) with the following conditions:

Petition: Thomas Potter desires to construct a 16 ft. x 15 ft. covered porch and a 14.5 ft. x 15 ft. deck at the rear of his house. And to expand his current driveway at 17 Beauregard Circle. Map 18, Parcel 154, located in Zoning District A-2. The proposal does not comply with Chapter 650-41 Table of Lot Area, Yards and Height of Structures", Chapter 650-48 "Off Street Parking" and Chapter 650-49 "Driveways and curb cuts" as follows:

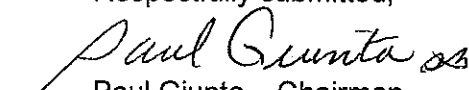
1. Total required maximum Lot Coverage is 30% vs. the proposed 35.9% (Applicant revised his plans and seeking a lot coverage of 32.7%)
2. Expanded driveway, Chapter 650-48C(5b-1) Required minimum setback of 5 ft. vs. proposed rear right side setback .8 ft. (The applicant eliminated the expansion of the proposed driveway.)
3. Proposed driveway expansion attached to the right side of the house. Chapter 650-49(2c) no driveway shall be located within 5 ft. of a building, except for driveway intended for drive-up window service. (The applicant eliminated the expansion of the proposed driveway.)

Conditions:

1. The Board approved the revised plan entitled: Plot Plan in Marlborough, MA, 17 Beauregard Circle, dated Rev. 11/25/2019. The only zoning relief is for Lot Coverage of 32.7%.
2. Prior to the issuance of a Building Permit, the applicant at their expense shall record this zoning relief (variance) 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.

End of Conditions

Respectfully submitted,


Paul Giunta – Chairman
Zoning Board of Appeals



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ZBA Case # 1461-2019

Applicant: Thomas Potter

Location: 17 Beauregard Circle

Decision

The Zoning Board of Appeals held a public hearing on the below petition on October 22, 2019 at 7:30 PM at Marlborough City Hall, 3rd Floor-Memorial Hall, with a continuation meeting on November 26, 2019 and December 10, 2019.

Members present: Paul Giunta-Chairman, Ralph Lofton, Thomas Pope, Thomas Golden and Robert Levine.

Petition: Thomas Potter desires to construct a 16 ft. x 15 ft. covered porch and a 14.5 ft. x 15 ft. deck at the rear of his house. And to expand his current driveway at 17 Beauregard Circle. Map 18, Parcel 154, located in Zoning District A-2. The proposal does not comply with Chapter 650-41 Table of Lot Area, Yards and Height of Structures", Chapter 650-48 "Off Street Parking" and Chapter 650-49 "Driveways and curb cuts" as follows:

1. Total required maximum Lot Coverage is 30% vs. the proposed 35.9% (Applicant revised his plans and seeking a lot coverage of 32.7%)
2. Expanded driveway, Chapter 650-48C(5b-1) Required minimum setback of 5 ft. vs. proposed rear right side setback .8 ft. (The applicant eliminated the expansion of the proposed driveway.)
3. Proposed driveway expansion attached to the right side of the house. Chapter 650-49(2c) no driveway shall be located within 5 ft. of a building, except for driveway intended for drive-up window service. (The applicant eliminated the expansion of the proposed driveway.)

The Board voted 5-0 to grant zoning relief (variance) with the following conditions:

1. The Board approved the revised plan entitled: Plot Plan in Marlborough, MA, 17 Beauregard Circle, dated Rev. 11/25/2019. The only zoning relief is for Lot Coverage of 32.7%.

2. Prior to the issuance of a Building Permit, the applicant at their expense shall record this zoning relief (variance) 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.

End of Conditions

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,


Paul Giunta – Chairman
Zoning Board of Appeals

Submitted to City Clerks Office on December 11, 2019.



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Location: 17 Beauregard Circle

Applicant: Thomas Potter

VOTE OF THE BOARD Signature Sheet

IN FAVOR

Paul Giunta *Paul Giunta*

Ralph Loftin *Ralph Loftin*

Thomas Golden *Thomas Golden*

Thomas Pope *Thomas Pope*

Robert Levine *Robert Levine*

IN OPPOSITION

Paul Giunta _____

Ralph Loftin _____

Thomas Golden _____

Thomas Pope _____

Robert Levine _____