



# City of Marlborough Zoning Board of Appeals

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

**ZBA Case # 1469-2020**  
**Location: 192 Reservoir St.**

**Date: December 4, 2020**

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

**And**

**Special Permit – Floodplain and Wetland Protection District**

**To: David Dowd, dba KDG Deals, LLC**

**Address: 157 Cullinane Dr.**

**City: Marlborough, MA 01752**

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

**192 Reservoir St. Map 5, Parcel 15**

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 4, 2020.

**City of Marlborough  
Zoning Board of Appeals**

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

**DECISION  
Grant of a Special Permit  
Floodplain and Wetland Protection District**

ZBA Case #1469-2020 Special Permit – Floodplain and Wetland Protection District  
Applicant: David Dowd, dba KDG Deals, LLC  
Property Owners: The Simarano Family Trust, Nancy L. Carey, Trustee, Victoria Simarano Trustee.  
Location: 192 Reservoir St. Map 5, Parcel 15 – Zoning District A3

**Nature & Basis of Application:** 192 Reservoir St. is located in Zoning District Residence A3.

1. Variance request - The proposal does not comply with Chapter 650-41 & 650-23 City code of Marlborough. 650-41, the Table of Lot Area, Yards and Height of Structures. Minimum front yards setback for an A-3 Zoning District is 20 ft. vs, the proposed 15.5 ft.
2. **Special Permit – The proposed structure will require a Special Permit under 650-23 Floodplain and Wetland Protection District.**

The Zoning Board of Appeals of the City of Marlborough hereby **GRANTS a Special Permit under the Floodplain and Wetland Protection District** on Application of David Dowd, dba KDG Deals, LLC with a mailing address of 157 Cullinane Dr. Marlborough, MA 01752 as provided in the DECISION and subject to the Findings of Fact and Conditions contained therein.

Decision date: November 17, 2020

The Decision of the Zoning Board of Appeals was **filed** in the Office of the City Clerk of the City of Marlborough on December 4, 2020.

**APPEALS**

Appeals, if any shall be made pursuant to Massachusetts General Laws, Chapter 40A, Section 17 and shall be filed within twenty (20) days after the date of the filing of this Notice of Decision in the Office of the City Clerk of the City of Marlborough, MA.

  
Paul Giunta  
Chairman

**City of Marlborough  
Zoning Board of Appeals**

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

**Decision  
Grant of a Variance**

ZBA Case #1469-2020 (Variance)  
Applicant: David Dowd, dba KDG Deals, LLC  
Property Owners: The Simarano Family Trust, Nancy L. Carey, Trustee, Victoria Simarano Trustee.  
Location: 192 Reservoir St. Map 5, Parcel 15 – Zoning District A3

**Nature & Basis of Application:** 192 Reservoir St. is located in Zoning District Residence A3.

1. **Variance request - The proposal does not comply with chapter 650-41 & 650-23 City code of Marlborough. 650-41, the Table of Lot Area, Yards and Height of Structures. Minimum front yards setback for an A-3 Zoning District is 20 ft. vs, the proposed 15.5 ft.**
2. Special Permit – The proposed structure will require a Special Permit under 650-23 Floodplain and Wetland Protection District.

The Zoning Board of Appeals of the City of Marlborough hereby **GRANTS a variance** on the Application of David Dowd, dba KDG Deals, LLC with a mailing address of 157 Cullinane Dr. Marlborough, MA 01752 as provided in the DECISION and subject to the Findings of Fact and Conditions contained therein.

Decision date: November 17, 2020

The Decision of the ZBA was **filed** in the Office of the City Clerk of the City of Marlborough on December 4, 2020.

**APPEALS**

Appeals, if any shall be made pursuant to Massachusetts General Laws, Chapter 40A, Section 17 and shall be filed within twenty (20) days after the date of the filing of this Notice of Decision in the Office of the City Clerk of the City of Marlborough, MA.

  
Paul Giunta  
Chairman

**City of Marlborough  
Zoning Board of Appeals**

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

ZBA Case     #1469-2020  
Name:         David Dowd, dba KDG Deals, LLC  
Location:     192 Reservoir St.

**Zoning Board of Appeals  
RECORD AND DECISION ON A SPECIAL PERMIT  
Floodplain and Wetland Protection District**

**Nature & Basis of Application:** 192 Reservoir St. is located in Zoning District Residence A3.

1. Variance request - The proposal does not comply with chapter 650-41 & 650-23 City code of Marlborough. 650-41, the Table of Lot Area, Yards and Height of Structures. Minimum front yards setback for an A-3 Zoning District is 20 ft. vs, the proposed 15.5 ft.
2. **Special Permit – The proposed structure will require a Special Permit under 650-23 Floodplain and Wetland Protection District.**

**Members** meeting in City Hall: Paul Giunta-Chairman, Robert Levine and Thomas Pope.  
Meeting remotely: Ralph Loftin and Thomas Golden

**Vote: Special Permit – Floodplain and Wetland Protection District** - After due consideration to the subject matter of the petition, the Board, Paul Giunta-Chairman, Ralph Loftin, Robert Levine, Thomas Golden and Thomas Pope voted to grant the Special Permit. A roll call vote was taken: Paul Giunta-yea, Robert Levine-yea, Ralph Loftin-yea, Thomas Pope-yea and Thomas Golden-yea. Vote 5-0 carries that a Special Permit is granted under the Floodplain and Wetland Protection District.

**Proceedings:**

The Zoning Board of Appeals, acting under the City of Marlborough Zoning Ordinance and General Laws, Chapter 40A, as amended opened the public hearing on October 20, 2020 with a continuation hearing on November 17, 2020. Said meeting being held at Marlborough City Hall, 140 Main St. The public hearing was conducted by remote participation, allowing the Board, members of the public, and the Applicant to participate in the hearing through real-time audio conferencing, telephone access and live internet streaming in accordance with Section 17(d) of Chapter 53 of the Acts of 2020 and “An Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, § 20” issued by Governor Charles D. Baker on March 12, 2020.

1. **Date of Application:** September 8, 2020.
2. **Name and Address of Applicant:** David Dowd, dba KDG Deals, LLC, 157 Cullinane Dr. Marlborough, MA 01752
3. Application filed with: Zoning Board of Appeals and City Clerks' Office on September 8, 2020.
4. **Project Site:** 192 Reservoir St. Map 5, Parcel 15. Zoning District A-3.
5. 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 400 feet of the property lines, including owners of land in another municipality, all as they appear on the most recent applicable tax lists.
6. Original documents are on file with the Zoning Board of Appeals and the City Clerks' Office.
7. **History of the site:**
  - According to Timothy Collins, Assistant City Engineer, investigation and memo dated October 15, 2020 the following was discovered as stated in part:
    - 1958 – Vincent Simarano purchased 186 Reservoir St. Map 17 Parcel 12.
    - 1962 – two properties. Map 17 Parcels 11 & 12, being held in common ownership, were used to apply for and receive a building permit to construct a single-family house – 186 Reservoir St.
    - 1963 – Vincent Simarano purchased 192 Reservoir St. Map 17 Parcel 11.
    - 1990 – Reservoir St. was reconstructed and widen. No land was taken for this project.
    - 1996 - July 24, 1996 – Plan submitted for 192 Reservoir St. to the engineering dept. for a proposed house which conformed to the zoning setbacks
    - 1997 - 196 Reservoir St., shown on the city's Assessor's Maps as 5-15, was granted a Special Permit by the ZBA (Case # 1199-97).
    - 1998 - Foundation was poured at 192 Reservoir St. and then covered, and no additional construction on this property has taken place, as purported by the applicant. Two alterations were made to the foundation: the garage door constructed on the southwest side of the foundation and a bump out for a front entry. No permit was obtained for the bump-out.
    - The two properties #186 and #192 Reservoir St. were never located on the same property. 192 Reservoir St. is a non-conforming lot because the previous owner created a violation in the front yard setback.
8. The meeting was opened with the reading of the legal ad by Board Member, Thomas Pope

9. The Project site has an existing foundation since 1998 to construct a house. A house was never built, and the foundation served as a garage for the adjacent property (186 Reservoir St.) when the two lots were under common ownership. The property is now two separate lots.
10. The Project Site has frontage on Reservoir St. and abuts Ft. Meadow Reservoir at the rear.
11. **Project:** The Applicant proposes to conduct certain work in the rear of the existing foundation to add a narrow walkway and two decks on helical piers. The land disturbance will be minimized. A small retaining wall will help to ensure that the slopes will be stable, and a narrow walkway provides access to the rear of the house. A small section (41 sq. ft.) of the walkway near the shoreline will be within the 100-year floodplain elevation. As proposed, the walkway will be at or below the existing grades, therefore there will be no impact to the flood storage capacity of the project. The conservation commission feels that if the owner follows the Order of Conditions, protection of the adjacent lake should be ensured.
12. **Site Plan:** The Applicant submitted a plan entitled "Site Plan, 192 Reservoir St. Marlborough, MA. Prepared by: Bruce Saluk & Assoc. Inc. dated: 8/12/2020 Last revised date: 10/28/2020 Sheet C1 (1 of 2)
13. According to the Marlborough City Code, Chapter 650-23(E) Floodplain and Wetland Protection District, the proposed Special Permit Application was distributed to the Board of Health, Planning, Engineering Department and the Conservation Commission for comments. Conservation issued an Order of Conditions (212-1233) and the city's engineering department produced a memo dated Oct. 15, 2020.
14. The Applicant submitted an executive summary with his Zoning Board of Appeals filing. (In Board's file)
15. At the public hearing, the Applicant, David Dowd, gave testimony in favor of the project.
16. Speaking in Favor – None
17. Speaking in opposition - None
18. The Board received a memorandum, dated November 13, 2020 from Conservation Agent Priscilla Ryder, on behalf of the Conservation Commission, finding that the project meets the criteria of the Floodplain District. The Commission issued an Order of Conditions (DEP 212-1233) (memo is in Board's file).
19. The Board received a memorandum dated October 15, 2020 from Assistant City Engineer, Timothy Collins. (memo is in Board's file)

20. In accordance with Section 650-23G of the Floodplain and Wetland Protection District Ordinance, the Board finds that:
- According to the Order of Conditions issued by the Conservation Commission, a small section, (41 sq. ft.) of the walkway near the shoreline will be within the 100-year floodplain elevation. As proposed the walkway will be at or below the existing grades, therefore there will be no impact to the flood storage capacity of the project. The proposed petition will not derogate from the intent and purpose of the Floodplain District nor endanger the health and safety of the public nor the legitimate use of other land in the City.
21. The Applicant will need to meet the requirements of the Building Department and the Conservation Dept. (Order of Conditions-DEP 212-1233).
22. The Board was concerned about the contours of the lot and the impact of the proposal may have to Ft. Meadow Reservoir.
23. A motion was made by Robert Levine and seconded by Thomas Pope to close the public hearing. A vote was taken: Paul Giunta-yea, Robert Levine-yea, Ralph Loftin-yea, Thomas Golden-yea and Thomas Pope-yea. Vote 5-0 carries to close the public hearing.
24. A motion was made by Paul Giunta and seconded by Ralph Loftin to GRANT a Special Permit under the Floodplain and Wetland Protection District with conditions. A vote was taken: Paul Giunta-yea, Robert Levine-yea, Ralph Loftin-yea, Thomas Golden-yea and Thomas Pope-yea. Vote 5-0 carries to GRANT a Special Permit with Conditions.
25. List of correspondence in Board's file:
1. Letter of denial from Jeffrey Cooke – dated August 19, 2020
  2. Letter from Timothy Collins, Assistant City Engineer, date Oct. 15, 2020
  3. Memo from Conservation Commission – dated Nov. 13, 2020

**Based on the above, the ZBA grants this Special Permit under City Zoning Ord. 650-23, Floodplain and Wetland Protection District, subject to the following CONDITIONS:**

1. The Applicant will comply with the plan presented entitled: "Site Plan, 192 Reservoir St. Marlborough, MA. Prepared by: Bruce Saluk & Assoc. Inc. dated: 8/12/2020 Last revised date: 10/28/2020 Sheet C1 (1 of 2)
2. The Applicant will comply with the Conservation Commission's Order of Conditions (212-1233) issued on November 20, 2020.
3. No Building Permits can be issued until such time as the Applicant presents to the Building Commissioner evidence that this special permit and variance decision has been filed with the Registry of Deeds or Land Court as applicable.

4. Any modifications to the Plan as noted on Condition #1 above, will be reviewed by the Building Commissioner and/or the Conservation Officer to see if it warrants a return to the Zoning Board of Appeals for review.

**End of Conditions**

**Special Permit – Floodplain and Wetland Protection District**



**Zoning Board of Appeals**  
**RECORD AND DECISION FOR GRANT OF A VARIANCE**

1. The proposal is to modify and/or alter in its present use of an existing accessory structure (garage for storing vehicles) to a single-family dwelling and to perform excavation and filling for a patio, with walkway to water's edge and elevated decks.
2. The applicant is requesting relief for an existing 7.7 ft. x 12 ft. bump out for a front yard setback of 15.5 ft. vs. the required minimum 20 ft.
3. According to Jeff Cooke's denial letter dated August 19, 2020 (letter in Board's file) the following was stated in part:
  - There is no evidence of relief for the front setback violation of 15.5 ft. Stating in part "I find no documented evidence of any action taken of the zoning violation in the records. Whether the foundation was built with or without a building permit is a mute fact, as MGL 40A, Section 7 paragraph 2 provides protection after ten (10) years. Thus, this foundation structure has gained protection from enforcement."
  - The lot and structure are not pre-existing, non-conforming. It is not entitled to a special permit and must seek zoning relief. The foundation is protected; however, the addition of another story will intensify the violation.
  - It was held in common ownership with the abutting property (186 Reservoir St.) until approximately 2017. The current foundation would be allowed for an accessory building except for the front setback violation. The structure appears to be only used as an accessory structure for the storage of vehicles.
  - Reference Jeff Cooke's letter for more details.
4. The applicant stated part of the cellar is under the existing bump out. To remove the existing bump out would be costly to the applicant.
5. Thru the applicant's executive summary, the property in question, 192 Reservoir St. is under agreement to be purchased, subject to obtaining a building permit from the city.
6. There was much discussion about the history of the lot. Tim Collins, Assistant City Engineer, wrote a memo giving a detailed history of the lot in question. (Memorandum dated October 15, 2020 is placed in Board's file).
7. **Hardship** as stated by the applicant: The foundation has been in existence for over 20 yrs. It served as a garage for storing vehicle for the former owner of the adjacent lot (186 Reservoir St.) The existing garage was never completed. He would like to correct an eyesore to the neighborhood by constructing a single-family home. The lot has many constraints:
  - Working with an existing foundation with a bump out at the front of the house which creates the violation to front yard setback.
  - The shape of the lot being slightly narrow and rectangular governs what can be added to this existing foundation and lot.

- The topography of the lot having a very steep incline towards Ft. Meadow Reservoir, is a constraint in trying to prevent silt runoff into Ft. Meadow.
- Having Ft. Meadow Reservoir at the rear of the lot and trying not to impact the city's 30 ft. setback code.
- Being subject to the Floodplain and Wetland Protection District. The applicant would like to construct a single-family home on a lot with many constraints being Ft. Meadow Reservoir at the rear of the lot and working with the existing foundation.

**The Board finds:**

1. The existing foundation which served as a garage for some 20 yrs. has been an eyesore to the neighborhood. To finish the construction with the existing foundation in place into a single-family house would benefit the neighborhood.
2. Even though the second story intensifies the violation, as noted in Jeff Cooke's denial letter, it would add to the esthetics of the house lot. A second story is allowed in this A3 Zoning District.

A motion was made by Ralph Loftin and seconded by Thomas Pope to GRANT a Variance with conditions. A vote was taken: Paul Giunta-yea, Ralph Loftin-yea, Thomas Golden-yea and Thomas Pope-yea. Robert Levine-nay. Vote 4-1 carries to GRANT a Special Permit with Conditions.

**Based on the above, the ZBA grants a variance under City Zoning Ord. Chapter 650-41 & 650-23 City code of Marlborough. 650-41, the Table of Lot Area, Yards and Height of Structures. Minimum front yards setback for an A-3 Zoning District is 20 ft. vs, the proposed 15.5 ft. subject to the following CONDITIONS:**

1. Approved Plan: The Applicant submitted a plan entitled "Site Plan, 192 Reservoir St. Marlborough, MA. Prepared by: Bruce Saluk & Assoc. Inc. dated: 8/12/2020 Last revised date: 10/28/2020 Sheet C1 (1 of 2)
2. This variance is only for the existing 7.7 ft. x 12 ft bump out which cannot be any closer than 15.5 ft. to the front lot line.
3. No Building Permits can be issued until such time as the Applicant presents to the Building Commissioner evidence that this special permit and variance decision has been filed with the Registry of Deeds or Land Court as applicable.
4. Any modifications to the Plan as noted on Condition #1 above, will be reviewed by the Building Commissioner and/or the Conservation Officer to see if it warrants a return to the Zoning Board of Appeals for review.

**End  
Variance Conditions**

A motion was made by Paul Giunta and seconded by Thomas Golden to close the public hearing. A roll call vote was taken: Paul Giunta-yea, Ralph Loftin-yea, Robert Levine-yea, Thomas Pope-yea and Thomas Golden-yea. A vote of 5-0 carries, the public hearing was closed.

A motion was made by Robert Levine to adjourn and second by Thomas Pope. A roll call vote was taken: Paul Giunta-yea, Robert Levine-yea, Ralph Loftin-yea, Thomas Pope-yea and Thomas Golden-yea. A vote of 5-0 carries, the meeting was adjourned.

The Board of Appeals also calls to the attention of the owner or Applicant that General Laws, Chapter 40A, Section 17 (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.

In accordance with General Laws, Chapter 40A, Section 9, and Section 650-59 of the Zoning Ordinance of the City of Marlborough, if the rights authorized by a special permit are not exercised within three (3) years of the date of grant of such special permit, such rights shall lapse.

Respectfully submitted,

  
Zoning Board of Appeals  
Paul Giunta - Chairman

Submitted to the City Clerk's office on December 4, 2020.



**City of Marlborough  
Zoning Board of Appeals**

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

**ZBA Case # 1469-2020**  
**Location: 192 Reservoir St.**

**Applicant: David Dowd, dba KDG Deals, LLC**

**VOTE OF THE BOARD  
Signature Sheet  
SPECIAL PERMIT  
FLOODPLAIN AND WETLAND PROTECTION DISTRICT**


**IN FAVOR**

Paul Giunta 

Ralph Loftin 

Thomas Golden 

Thomas Pope 

Robert Levine 

**IN OPPOSITION**

Paul Giunta \_\_\_\_\_

Ralph Loftin \_\_\_\_\_

Thomas Golden \_\_\_\_\_

Thomas Pope \_\_\_\_\_

Robert Levine \_\_\_\_\_



# City of Marlborough Zoning Board of Appeals

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ZBA Case # 1469-2020  
Location: 192 Reservoir St.

Applicant: David Dowd, dba KDG Deals, LLC

## VOTE OF THE BOARD Signature Sheet VARIANCE

### IN FAVOR

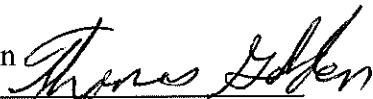
Paul Giunta



Ralph Loftin



Thomas Golden



Thomas Pope



Robert Levine

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### 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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