



City of Marlborough Zoning Board of Appeals

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

ZBA Case # 1475-2021
Location: 21 Patten Dr.

Date: March 29, 2021

(General Laws Chapter 40A, Section 16)
Withdraw Without Prejudice

To: Thomas Coder c/o Atty. Bergeron

Address: 100 Front Street

City: Worcester, MA 01608-1477

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

21 Patten Dr. Map 5 Parcel 0

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.


Ralph Loftin - Chairman *as*


Susan Brown - Secretary

Submitted to the City Clerks' office on March 29, 2021.



**City of Marlborough
Zoning Board of Appeals
140 Main Street
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**Record of Proceeding and Decision
Virtual meeting thru Microsoft Teams
VARIANCE RELIEF and SPECIAL PERMIT**

Location: 21 Patten Dr. Map 5 Parcel 80 – Zoning District A3

Zoning Board Case # 1475-2021

Applicant: Thomas Coder, 2 Atwood Street, Southborough, MA 01772

Date of Appeal: February 5, 2021

Meeting Date: March 16, 2021

Zoning relief requested: Special Permit - The reconstruction of a single family home granted by Special Permit thru City Council does not meet the three conditions of the Special Permit: The structure is larger than approved on all four sides; the structure is higher than approved; Lot coverage increased beyond approved; concrete pavers were installed for approximately 10 ft. of the city's right of way 650-49B(4) Paving materials (a) and Driveway width expanded without prior approval.

Variances - request under (Chapter 650-58(B)(2) and Chapter 650-58(B)(3)(c) for rear setback and lot coverage.

Roll call of members present: Meeting in city hall, 3rd floor-Memorial Hall were Board Members: Paul Giunta-Chairman, Thomas Pope, Ralph Loftin and Robert Levine. Also, Susan Brown-Secretary. Meeting virtually was Thomas Golden.

Also, present virtually was the applicant Thomas Coder and his representative, Atty. Brian Falk.

Notice of the hearing was given by Certified Mail to all persons to be affected, as shown on the most recent tax list and by publication in the Marlborough Enterprise Weekly, a newspaper of general circulation in Marlborough, MA.

Documents Submitted in this Appeal:

- A packet submitted to the Board included:
 - Application for a Variance. Filing fee of \$130.00
 - Application for a Special Permit. Filing fee of \$300.00
 - A denial letter from the Building Commissioner, dated Jan. 12, 2021
 - Certified list of abutters
 - Plans: Exhibit Plan, dated Feb. 17, 2021 and As-Built Plan, dated Jan. 21, 2021. Prepared by Connorstone Engineering, Inc., stamped by.....

Public Hearing:

1. The property in question is located in Zoning District A3, being Map 5, Parcel 80 of the Assessor's maps. Also known as 21 Patten Dr.
2. This meeting was held virtually on Microsoft Teams. It was stated the meeting was being recorded.
3. Applicant Thomas Coder and his representative Atty. Brian Falk attended virtually.
4. Board Member Thomas Pope read into the file the following correspondence which was placed on file:
 - a. E-mail from Thomas DiPersio, City Engineer, dated March 12, 2021
 - b. Letters of support from: Frank Silka of 27 Patten Dr., Janis Bergstrom of 132 Second Rd. and Abiud and Natalia Chacon of 22 Patten Dr.
 - c. E-mail from Jeffrey Cooke, Building Commission, dated March 16, 2021
 - d. Letter from Councilor Navin, dated March 12, 2021
5. Atty. Brian Falk made his presentation in accordance with his two letters: One dated January 4, 2021 RE: Variance Application – 21 Patten Dr. (Thomas Coder) and the other letter dated February 4, 2021 RE: Special Permit Application – 21 Patten Dr. (Thomas Coder).
6. **Variance Requests -- Rear Setback and Lot Coverage:**
 - a. Atty. Falk presented a power point slide show (attached in file)
 - b. Atty. Falk stated existing lot is a legal pre-existing non-conforming lot with 50 ft. frontage and an area of 5,000 sq. ft. which had a one story, single family home.
 - c. Currently existing on the lot is a new, more than a 2 ½ story house.
 - d. Applicant is seeking variances for Rear Setback and Lot Coverage. These are new non-conformities.

PLANS

- e. March 7, 2019 plan – This plan was submitted to the city council and it met rear setback and Lot coverage.
- f. August 16, 2019 Plan – submitted this plan with a better design and still did not need variances. The Original house was conforming to rear setback and lot coverage before it was torn down. This plan was approved by Engineering Dept. and City Council.

g. Jan. 21, 2021 – As-built plan – According to the General Notes: Proposed 24 ft. rear setback and proposed 34.5% Lot Coverage, thus creating 2 new non-conformities which needs variance relief.

h. Variances requested:

	Original house	As-built plan	Proposed	Deviation
Variance - Rear setback – minimum required 30 ft.	Original house 40.1 ft.	As-built plan 21.9 ft. to roof overhang	Proposed 24. Ft.	2.1 ft.
		23,9 to foundation	Proposed 24 ft.	.1 ft.
Variance - Lot Coverage – maximum 30%	Original house 24.2%	As-built plan 34.9%	Proposed 34.5%	.4%

7. Shape and topography:

- The lot is narrow in shape, being 50 ft. on the front and rear lot lines and 100 ft. deep along the side lines.
- The lot has a very steep slope, rising in elevation by 24 ft. from front to back.
- Shape and topography not shared with other lots in the area.
- Deck on the side, according to the plan, will not exist.

8. HARDSHIP(S):

- Lot is narrow in shape and the topography is steep – This is a financial hardship in that the lot could not accommodate a home of the size acceptable to modern homebuyers, significantly diminishing the value and viability of the property.
- Would not cause a substantial detriment to the public good or substantial derogation from the intent and purpose of the Zoning Ordinance
 - The rear yard of the property is situated at a higher elevation with views extending over the property.
 - Lot coverage deviation is less than 450 sq. ft. in total. Concentrated in the middle of the lot.
- Homes at the rear of the lot in question are situated higher than the existing house, because of the slope.
- House lots in the area have roof lines that are similar to 21 Patten Dr.
- 21 Patten Dr. is in keeping with other homes in the neighborhood, being a single-family home. The existing foundation is off, so it is off all around.
- These are minor deviations, construction error, according to Atty. Falk

9. There was no one attending virtually who spoke in favor.
10. There was no one attending virtually who spoke in opposition.

SPECIAL PERMIT

11. Atty Falk submitted a packet for the Special Permit process. Included in the packet:
 - a. Violation letter from Jeffrey Cooke, Building Commissioner, dated Jan. 12, 2021
 - b. Letter from Atty. Falk dated Feb. 4, 2021 RE: Narrative on amending a special permit.
 - c. Denial letter dated March 4, 2021 from Jeffrey Cooke
 - d. Plan approved by city council and engineering
 - e. Plans submitted: Exhibit Plan dated Feb. 17, 2021 prepared by Connorstone Engineering and As-built Plan dated Jan. 21, 2021 prepared by Connorstone Engineering.
12. His client, Mr. Coder, desires to amend his City Council June 17, 2019 Special Permit authorizing the alteration, reconstruction, extension or structural change to a lawful pre-existing non-conforming single family dwelling, in accordance with Section 650-12B and Section 650-58B(3)(b) of the Marlborough Zoning Ordinance.
13. Mr. Falk's client was issued a Special Permit dated June 17, 2019. Condition #1 states:

Construction in Accordance with Applicable Laws: Construction of all structures on the Site is to be in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and the Commonwealth of Massachusetts and shall be built according to the Site Plan and Architectural Drawings as maybe subject to minor modification and approval of the Building Commissioner.
14. Atty. Falk's client is seeking to amend Condition #1 of the existing special permit as follows:

Construction in Accordance with Applicable Laws: Construction of all structures on the Site is to be in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and the Commonwealth of Massachusetts and shall be built according to the Site Plan and Architectural Drawings *modified as shown and described on the plan of land entitled "as-built Site Plan of 21 Patten Drive in Marlborough MA prepared by Connorstone Engineering, Inc. and dated January 21, 2021 attached as "Attachment A-1", and* as maybe subject to minor modification and approval of the Building Commissioner.
15. The existing new house currently deviates from the as-built plans and from the plans approved as part of the existing Special Permit. The Building Commissioner determined that these deviations from the approved plans do not qualify as "minor modifications", as may be allowed under the Special Permit.

16. Atty. Falk feels that the home built is not more detrimental to the neighborhood than the prior pre-existing non-conforming structure and is therefore eligible for an amended special permit thru the ZBA.

17. No one spoke in favor.

18. No one spoke in opposition.

19. Questions and comments from audience:

a. Barbara Allen – 124 Second Rd., Marlborough. The applicant did not comply with the Special Permit that was granted to him. There were rules to follow and now he is seeking relief away from the special permit he was granted. How will something like this be handled for future homeowners wanting to remodel and reconstruct their homes. Mr. Coder, applicant, is a professional, he should have been more careful. Will this type of error in construction be something of the future, people coming in seeking compliance for their errors? The neighborhood has many small lots, and this could happen again. Answer: Mr. Falk responded that this was a “construction error.” Deviations are minor.

b. Paul Goldman – 137 Second Rd., Marlborough, MA - Echoed with what Barbara Allan said. We are in an area of small lots and with many styles of homes. This could become a case study. Answer: Atty. Falk stated that every case is different. This is a unique lot and the relief they are seeking is minor.

20. Board Member, Ralph Loftin asked the following:

- a. When did the applicant know he was deviating from the approved city council plan? Answer: Atty. Falk answered when the as-built plan was prepared.
- b. He cannot understand how the applicant can overlook a deviation of 2 ft. I do not consider this a “construction” error.

21. Board Member, Thomas Pope asked if the existing walkways were included in Lot Coverage?

Other 2 Violations:

22. **Pavers** - Board Member, Paul Giunta asked the following questions:

- a. How will the paver violation be handled? Answer: Falk said that will be corrected, weather permitting and when asphalt companies are operating. Pavers on the lot are **not included** in Lot Coverage. The walkways on the lot are included in Lot Coverage.
- b. Paul Giunta also asked if they can reduce their Lot Coverage? Answer by Atty. Falk: They would rather not.

23. **Widening of the driveway** – the applicant can correct.

24. Patio is not included in Lot Coverage.

Close of Public Hearing

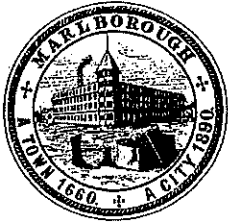
25. Chairman Paul Giunta made a motion to close the public hearing. Seconded by Robert Levine. Vote 5-0 to close the public hearing with all yeas: Paul Giunta, Thomas Golden, Thomas Pope, Ralph Loftin, and Robert Levine.
26. Robert Levine stated regarding the variance request, he did not see any "hardship". The deviations were discovered after the as-built plan was produced. There are many small lots in the area, and the area is on a slope. 21 Patten Dr is not unique to the other lots in the area.
27. Ralph Loftin stated the hardship was created by the applicant. The plan probably can be modified to conform to the Special Permit that was granted to the applicant. He felt this 2 ft. error is way beyond a construction error.
- a. Original plan was conforming to rear, front and lot coverage and met height.
 - b. But side setbacks were always off and never conformed.
 - c. City council requested revised plans, and this showed rear and lot coverage violations, showing 2 variance requests which are new deviations rear setback and lot coverage which was not there with the original house.
28. Robert Levine made a motion to deny the variance request for rear setback and lot coverage. He felt these 2 variance requests could be remedied. Mr. Levine withdrew his motion when Atty. Falk request a continuance.
29. Atty. Falk stated if need be, they will cut back on the impervious areas.
30. Atty. Falk requested of the Board to continue their deliberation to their next meeting, before taking a vote. Atty. Falk understands the public hearing is closed. Mr. Falk requested to have the Board postpone their vote until he had a chance to speak with this client about his options.
31. A motion was made by Paul Giunta to continue the Board's discussion to their March 23rd, 2021 meeting at 7:45 PM. Seconded by Robert Levine. Vote of the Board 5-0 with all yeas to continue to March 23, 2021 at 7:45 PM. Paul Giunta, Ralph Loftin, Robert Levine, Thomas Pope and Thomas Golden.

Continuation of Public Discussion – March 23, 2021 – 7:45 PM

32. Roll call was taken of members present in Memorial Hall: Ralph Loftin-Chairman, Paul Giunta, Robert Levine, Thomas Pope and Thomas Golden. Also, Susan Brown – Secretary
33. Atty. Falk was present remotely. He presented a letter dated March 22, 2021 to the Zoning Board RE: Request to Withdraw Application – 21 Patten Dr. (Thomas Coder) stating in

part: I request leave to withdraw without prejudice Mr. Coder's application for an amended special permit and a variance for the property located at 21 Patten Dr. Based upon technical and audio issues that impacted the March 16 public hearing...and.... Mr. Coder's desire to submit additional information to the Board....(letter was read and placed on file)

34. Board Member Robert Levine made a motion to allow the applicant to Withdraw Without Prejudice, seconded by Paul Giunta. A roll call vote of the Board 5-0 to allow the applicant to Withdraw Without Prejudice.
35. A motion was made by Ralph Loftin, seconded by Thomas Pope to close this Discussion Item. A roll call vote of 5-0 to close this discussion item.



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Vote of the Board Withdraw Without Prejudice

Location: 21 Patten Dr.
Applicant: Thomas Coder
Meeting Date: March 23, 2021

ZBA Case #1475-2021

1. Roll call was taken of members present in Memorial Hall: Ralph Loftin-Chairman, Paul Giunta, Robert Levine, Thomas Pope and Thomas Golden. Also, Susan Brown – Secretary
2. Atty. Falk was present remotely. He presented a letter dated March 22, 2021 to the Zoning Board RE: Request to Withdraw Application – 21 Patten Dr. (Thomas Coder) stating in part: I request leave to withdraw without prejudice Mr. Coder's application for an amended special permit and a variance for the property located at 21 Patten Dr. Based upon technical and audio issues that impacted the March 16 public hearing...and.... Mr. Coder's desire to submit additional information to the Board....(letter was read and placed on file)
3. Board Member Robert Levine made a motion to allow the applicant to Withdraw Without Prejudice, seconded by Paul Giunta. A roll call vote of the Board 5-0 to allow the applicant to Withdraw Without Prejudice.
4. A motion was made by Ralph Loftin, seconded by Thomas Pope to close this Discussion Item. A roll call vote of 5-0 to close this discussion item.

Ralph Loftin
Chairman
Zoning Board of Appeals



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ZBA Case # 1475-2021
Location: 21 Patten Dr.

Applicant: Thomas Coder

VOTE OF THE BOARD
Signature Sheet
Variance
To Withdraw Without Prejudice

In Favor
To Withdraw Without Prejudice

In Opposition
To Withdraw Without Prejudice

Paul Giunta

Paul Giunta

Ralph Loftin

Ralph Loftin

Thomas Golden

Thomas Golden

Thomas Pope

Thomas Pope

Robert Levine

Robert Levine



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ZBA Case # 1475-2021 S.P.
Location: 21 Patten Dr.

Applicant: Thomas Coder

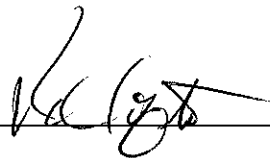
VOTE OF THE BOARD
Signature Sheet
Special Permit
To Withdraw Without Prejudice

In Favor
To Withdraw Without Prejudice

In Opposition
To Withdraw Without Prejudice

Paul Giunta 

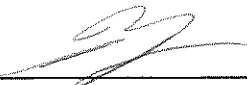
Paul Giunta _____

Ralph Loftin 

Ralph Loftin _____

Thomas Golden 

Thomas Golden _____

Thomas Pope 

Thomas Pope _____

Robert Levine 

Robert Levine _____