



**City of Marlborough
Zoning Board of Appeals**

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

ZBA Case # 1487-2022 SP
Location: 57 Preston St.

Date: March 21, 2022


SPECIAL PERMIT

To: Shaun McAndrews
Address: 57 Preston St.
City: Marlborough, MA 01752

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

57 Preston St. Map 55 Parcel 164

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
Zoning Board of Appeals


Susan Brown - secretary

Submitted to the City Clerks' office on March 21, 2022.



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Special Permit Request

Zoning Board of Appeals Case # 1487-2022 SP

Date submitted: March 21, 2022

Applicant: Shaun McAndrews

Date of Appeal: February 14, 2022

Location of Subject Property: 57 Preston St. (Map 55 Parcel 164)
Zoning District Residence B (RB)

Petition: The proposed addition would extend the non-conforming front yard setback on the Mountain Ave. side from the existing 15.3 ft. to the proposed 15.2 ft. (Minimum front yard setback is 20 ft. for this Zoning District) The Building Dept. considers this an extension of the non-conformity of an additional 0.1 ft. and not an aggravation of the non-conformity. **Note:** According to the revised denial letter dated Feb. 23, 2022, variance relief is not needed because this is one whole lot vs. three separate lots as shown on their plan. Only a Special Permit is needed.

Meeting date: March 8, 2022

Roll call of members present: Ralph Loftin-Chairman, Robert Levine, Thomas Pope, Thomas Golden and Paul Giunta. Also present were:

- Susan Brown – secretary
- Shawn McAndrews – applicant
- Tin Htway – Building Commissioner
- William Paynton – Building Inspector

Documents

- The application and filing fee
- Denial letter dated Jan. 20, 2022 and a revised denial letter dated Feb. 23, 2022
- Plan entitled: Building Permit Plan of Land located in the Town of Marlborough, MA, dated July 23, 2020 Prepared by: Dunn – McKenzie, Inc. Signed by: James W. Nieva Sheet 1 of 1.
- Photos were provided by the applicant. (In Board's file)

It was noted to the audience that the Board is hearing a Special Permit request. The audience was made aware that the public meeting was being recorded.

Record

1. Shaun McAndrews (applicant) was present.
2. This is a Special Permit request.
3. This is a corner lot with 2 frontages and 2 side yard setbacks.
4. Ralph Loftin (chairman) stated that the original denial letter, dated Jan. 20, 2022 from the Building Department no longer applies to this petition. In the original denial letter, it stated the applicant needed variance relief and a special permit. The Building Dept. has issued a revised the denial letter, dated Feb. 23, 2022 stating in part, "based on the Assessor's records, in fiscal year 2019, lots 164, 165, and 166 were merged." Under the "merger theory" substandard building lots must be combined to form one lot that will meet or more closely approximate the minimum lot area and frontage requirements of a local zoning bylaw. In this case the interior lot lines are eliminated; thus, the applicant requires only a Special Permit.
5. During his presentation, the applicant handed out color photos of the deteriorated section of the building. (Photos in Boards file)
6. The applicant's stated hardship:
 - a. He has owned the property for some 5 yrs.
 - b. Would like to remove an existing portion of a dangerous heavily deteriorated rear deck egress structure and rebuild to code.
 - c. According to the revised denial letter, the deviation from the existing front yard setback of 15.3 ft. vs. the proposed 15.2 ft. is a difference of 0.1 ft.
7. There were no questions from the audience.
8. There was no one speaking in favor of the petition.
9. There was no one speaking in opposition of the petition.
10. There was some discussion between the Building Commissioner's "merger theory" and Board Member, Paul Giunta concerning the proper way to eliminate the interior lot lines. Mr. Giunta felt the interior lot lines should be eliminated by

going before the Planning Board with an ANR plan (approval not required plan) so it will be clear that there are no interior lot lines and that the property is just one whole parcel. The Board felt the revised letter from Tin Htway was sufficient that the three existing lots as shown on their plan were combined into one lot because of the "merger theory."

11. A motion was made by Thomas Golden and seconded by Robert Levine to close the public hearing. By a vote of 5-0, the public hearing was closed.

Finding of Facts:

1. The lot in question is a corner lot, with Mountain Ave. and Preston St. as frontages.
2. This corner lot has two frontages and two side yards. There is no rear yard.
3. The lot is compatible in size with other lots in the neighborhood.
4. Due to the "merger" theory as presented by Tin Htway; this is considered as one whole lot vs. three separate lots as shown on their plan and on their deed, thus variance relief is not needed; only a special permit is needed.
5. The increase in non-conformity will not be any more detrimental than the existing non-conforming structure to the neighborhood.
6. The proposal will not have an impact on neighboring properties.
7. The proposal will keep with the existing character of the neighborhood and will continue to be used as a two-family structure.
8. The topography of the lot is flat.

DECISION

Based on the above findings, a motion was made by Thomas Golden and seconded by Robert Levine to grant a special permit. Ralph Loftin, Thomas Pope, Thomas Golden and Robert Levine voted in the affirmative. Paul Giunta voted in the negative. By a vote of 4-1 the Board granted a special permit.

CONDITIONS

1. The applicant will construct the addition according to plans presented. Plan entitled: Building Permit Plan of Land located in the Town of Marlborough, MA,

dated July 23, 2020 Prepared by: Dunn – McKenzie, Inc. Signed by: James W Nieva Sheet 1 of 1. It should be noted that this is one whole lot, not three separate lots as shown on their plan and deed, thus Variance relief is not needed, only a Special Permit is needed.

2. No Building Permit can be issued until such time as the applicant presents to the Building Commissioner evidence that said Special Permit with its conditions has been filed with the Registry of Deeds or Land Court as applicable.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (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 (20) 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.

No Special Permit, or any extension, modification, or renewal thereof, can take effect until a copy of the decision, bearing the certification of the city clerk is recorded in the registry of deeds. The fee for recording or registering shall be paid by the owner or applicant. Special Permit will lapse within two years of grant of such Special Permit.

Respectfully submitted,


Ralph Loftin – Chairman
Zoning Board of Appeals



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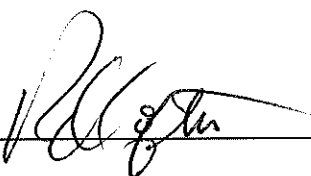
ZBA Case # 1487-2022
Location: 57 Preston St.

Applicant: Shaun McAndrews

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
