



**City of Marlborough
Zoning Board of Appeals**

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

ZBA Case **1494-2022**
Location: **42 Devens St.**

Date: September 23, 2022

Special Permit Denial

The Board of Appeals of the City of Marlborough, MA hereby certifies that the Special Permit request has been DENIED:

To: Juan Sosa c/o Atty. Flood, Law Offices of Flood & Favata, 14 Winthrop
St. Marlborough, MA 01752

Address: 42 Devens St.


City: Marlborough, MA 01752

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

42 Devens St. Map 70 Parcel 42

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision has been filed with the City Clerk.

Ralph Loftin
Ralph Loftin - Chairman


Susan Brown - Secretary

Submitted to the City Clerks' Office on **September 23, 2022.**



City of Marlborough Zoning Board of Appeals

140 Main Street
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Tel. (508) 460-3768 Facsimile (508) 460-3747

Special Permit Request

Zoning Board of Appeals Case # 1494-2022

Applicant: Juan Sosa

Date of Appeal: July 27, 2022

Location of Subject Property: 42 Devens St. Map 70 Parcel 42
Zoning District Residence B

Petition: Special Permit Request – To renovate and convert a legal pre-existing, non-conforming single-family to a two-family residence at 42 Devens St. Located in Zoning District Residence B, the proposed additions and renovation do not conform with Chapter 650 Article 41 “Table of Lot Area, Yards and Height of Structures” of the City Code of Marlborough. The pre-existing non-conforming lot coverage of 46% is increased by 5% to 51%; the existing Rear Yard setback of 7.4 ft. is decreased by plus or minus 6 inches.

Meeting date: September 13, 2022

Roll call of members present: Ralph Loftin-Chairman, Robert Levine, Thomas Pope, Thomas Golden and Paul Giunta who arrived at 7:05 PM. Also present were:

- Susan Brown – secretary
- Tin Htway – Building Commissioner
- Lily Cabrera Serrano – from the Building Dept.
- Atty. Christopher Flood – applicant's representative
- Applicants were present and introduced – they did not speak

Documents in Board file:

- The application with narrative and filing fee
- Zoning Determination letter – dated June 29, 2022
- Plan entitled: Building Permit Plot Plan, two family dwelling, 42 Devens St. Marlborough, MA, prepared by Guerriere & Halnon, Inc., stamped by Jeffrey Stepanik.
- Architectural plans prepared by Rosa Design & Construction dated 3/17/2022.
 - Police Chief Giorgi – letter of opposition - dated Sept. 12, 2022
 - Fire Chief Breen – e-mail of opposition - dated Sept. 13, 2022

It was noted to the audience that the Board is hearing a Special Permit request.

General Findings:

1. This is a Special Permit request to convert a legal pre-existing non-conforming single-family home into a two-family residence.
2. Five paved off-street parking spaces on the lot will remain after the proposed renovations are complete
3. The existing single-family home was built in the 1900's.
4. The lot is flat at street level, with a considerable slope to the rear.
5. The neighborhood consists of single family, two family and three family residences.
6. The existing lot area is 4,366 sq. ft. which is similar to other lots in the neighborhood.
7. Devens Street is one-way, very narrow and has parking permitted only on one side of the street.
8. A winter parking ban goes into effect every year.

Specific Findings:

Details of the property located in Zoning District Residence B.

Lot Area	Zoning District RB	Required 8,000 sq. ft.	Existing 4,366 sq. ft.		
Chapter 650, Article 41 – Table of Lot Area, Yards, and Height of structures	Lot Coverage	Required 30%	Existing 46%	Increase 5% = Propose 51%	
Chapter 650, Article 41 – Table of Lot Area, Yards, and Height of structures	Front yard setback	Required 20 ft.	Existing 2.5 ft.	Propose 3.6 ft.	
Chapter 650, Article 41 – Table of Lot Area, Yards, and Height of structures	Rear yard setback	Required 30 ft.	Existing 7.4. ft.	Propose +/- 6.9 ft.	+/- 6 inches

1. The hearing was opened with the reading of the legal ad.
2. The applicants were present, being represented by Atty. Christopher Flood, Law Offices of Flood & Favata, P.C. 14 Winthrop St. Marlborough, MA
3. Atty. Flood, stated the following:
 - The house was built around the 1900's.
 - Due to the current building code the proposed staircase to the second-floor unit will be located inside the left (east) side of the house, causing an additional 5% lot coverage
 - Allowing this single-family home to be converted into a two-family home will secure the zoning intent, as stated in Section 200-2 "purpose of the Zoning Ordinance."
 - Single- and two-family homes are allowed by right in this Zoning District.
 - The structure is located in a residential neighborhood with similar homes including two family and three family homes on the same street.
 - There is significant greenspace coverage on this lot and sufficient parking.
 - Existing on the lot are five paved parking spaces, two spaces for the first floor, two spaces for the second floor and one space for guests.
4. The Board read into the file a letter dated September 12, 2022 from Police Chief Giorgi and an e-mail dated September 13, 2022 from Fire Chief Breen stating their opposition to the petition. (Correspondence in Board's file)
5. Police Chief Giorgi's opposition to the petition in part: "focuses on the possibility of adding more residential units to an already congested area....an additional unit at this location would require at least two additional parking (if not more) to satisfy the needs of new tenants. The parking on Devens St. is already very tight as on-street parking is allowed on one side of the roadway. The congestion can negatively affect the ability of emergency vehicles to safely navigate the confines of the roadway."
6. Fire Chief Breen's email states in part: "I do not support issuance of a variance/special permit...."
7. There were no questions from the audience.
8. There was no one speaking in favor of or in opposition to the petition.
9. Board member, Robert Levine felt the proposal is a significant "use" change from a single family to a two family. Thus, creating more non-conformity to a lot that is already non-conforming.

10. Being no other questions from the Board or audience, a motion was made by Thomas Pope and seconded by Robert Levine to close the public portion of the hearing. By a vote of 5-0 the public portion of the hearing was closed.

Decision of the Board:

The Board discussed some of their concerns of the petition:

- There is an increase of lot coverage by 5%, an increase in nonconformity of over 10%.
- A public safety issue - Devens Street is currently one-way and narrow with one side parking allowed. To add more cars to the street would be more detrimental to the neighborhood and would potentially restrict access by emergency vehicles.
- Even though the lot has five parking spaces the question remains whether this will be enough to keep parked cars off the street in an already tight neighborhood, especially during the winter parking ban.
- The proposal would adversely impact the neighborhood by adding to population density in an already crowded area.

DECISION

Denial of Special Permit

The Board finds according to Marlborough Zoning Ordinance Chapter 650-58 (B)(3b) and Mass General Law Chapter 40A §6, the proposed project would be “substantially more detrimental” to the neighborhood.

- The proposed alterations and additions will intensify the pre-existing non-conforming nature of the lot. The proposed two family will create a larger structure (from 23% to 27%) adding to an increase nonconformity of Lot Coverage and Rear Yard setback. Creating a two family will result in more traffic in this neighborhood and will impact on-street parking, especially during the city’s winter parking ban in an already congested neighborhood. Please reference the comments by the Police Chief Giorgi concerning emergency and safety factors.
- Building a larger home on a substandard lot increases the non-conforming nature of the structure.
- To create a two-family structure on an already tight lot with topography constraints (deep slope at the rear) will create a potential issue for emergency vehicles and personnel to access the property.

Based on the above, a motion was made by Robert Levine and seconded by Thomas Golden to DENY a special permit. Ralph Loftin, Thomas Golden, Paul Giunta and Robert

Levine voted to deny a Special Permit; Thomas Pope voted to grant a Special Permit
By a vote of 4-1 the special permit was **DENIED**.

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

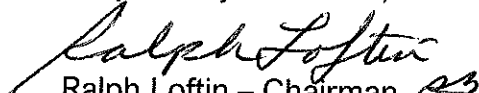
A motion was made by Thomas Pope and seconded by Paul Giunta to adjourn. By a vote of 5-0 the meeting was adjourned.

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 (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 *RL*
Zoning Board of Appeals



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Zoning Board of Appeals**

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ZBA Case # 1494-2022
Location: 42 Devens St.

Applicant: Juan Sosa

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
