



# City of Marlborough Zoning Board of Appeals

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

## Minutes

3<sup>rd</sup> Floor – Memorial Hall  
August 7, 2018

**Board Members present were:** Paul Giunta – Chairman, Ralph Loftin, Robert Levine, Thomas Golden and Thomas Pope.

6:00 PM At the request of the Board, Jeffrey Cooke-Building Commissioner and City Solicitor Donald Rider were present to conduct a question and answering session with the Board. The Board had some questions about the definition of a variance and hardship.

7:00 PM **21 Helen Drive – Angelo Cruz**  
To construct an attached 2 car garage at the left of the existing house. The proposed side setback will be 10.5 ft.  $\pm$  versus the maximum required 15 ft. for Zoning District A-3.

The Board waited for ½ hr. before the 7:30 public hearing was opened. On a motion by Paul Giunta and seconded by Ralph Loftin, the Board voted 5-0 to continue the public hearing to August 28, 2018 at 7:00 PM.

The applicant did appear around 8:15 PM. The Board informed the applicant the hearing was continued to August 28<sup>th</sup> at 7:00 PM

7:30 PM **39 Witherbee St .- 39 Witherbee St. LLC**, Germano Lima, 52 Devens St. Marlborough, MA 01752 c/o Atty. Christopher Flood, 14 Winthrop St. Marlborough, MA 01752

**Nature & Basis of Appeal:** The applicant has expanded his existing driveway which created the following violations:

- 650-41 The "Table of Lot Area, Yards and Height of Structures" states that the maximum Lot Coverage is 30%, your new driveway exceeds the allowable limit at 49%
- 650-49 B(2)b Distance from property line. The edge of the driveway shall be located no closer than the minimum distance governing parking areas as provided for under 650-48C(5). 650-48C(5)(b)[1] one and two family side setback -5 feet. Constructed – less than 5 feet.
- 650-49 B(2)c Distance from building. No driveway shall be located within 5 feet of a building, constructed adjacent to the building on the rear of the structure

Section of the Zoning Ordinance involved: See above item #5.



The property is located in Zoning District Residence C (RC). Being Map 69 Parcel 247 of the Assessor's Maps. The lot contains some 7,622 sq. ft. of area. Existing on the lot is a 2 family dwelling containing 3 bedrooms per unit. According to the city's zoning code 650-48A(7) Off Street Parking – provide one parking space per unit and 1 parking space per bedroom, totaling 8 off street parking spaced.

The lot is rectangular in shape. The lot is essentially level, with the front half sloping slightly to the street. The other lots in the area are similar in shape and topography.

The applicant, Mr. Germano Lima, owner, was present. He was represented by Atty. Christopher Flood, 14 Winthrop Street, Marlborough, MA

Atty. Flood presented a narrative with Exhibit A – Middlesex South Registry of Deeds, Quitclaim Deed; Exhibit B -plan entitled: Plan Showing Existing Conditions, prepared for Germano Lima, 39 Witherbee St. Marlborough, MA 01752 dated May 24, 2018, Scale 1 inch – 20 feet; Exhibit C – Zoning Denial letter, dated June 14, 2018; Exhibit D – Assessor's maps.

In reference to Atty. Flood's narrative, (in Board's file) he stated the following:

- The 2 family structure was built in 1890, which was always a 2 family structure.
- Mr. Lima, owner, has purchased the structure which was in need of repairs. Mr. Lima's paving contractor paved the existing extended driveway and installed a new parking lot at the rear of the house. Mr. Lima has invested a considerable amount of money renovating the structure and tried to provide some off-street parking for his tenants.
- With the parking at the rear, the neighbors will not be affected by the cars' headlights, because there is a fence shielding the rear neighbors.
- Even with the exceeded lot coverage, there is still a considerable amount of green space on the lot.

**HARDSHIP** as stated by Atty. Flood:

- Mr. Lima spent a lot of time and money into renovating the structure and area. Without the variances, he cannot get a full occupancy permit for this 2 family dwelling. He currently has an occupancy permit for one floor.
- Mr. Lima hired a paving company to pave the driveway and add a parking lot at the rear of the house, not knowing the paving company did not get the proper permits thru the city. Mr. Lima has text messages as evidence from him and the paving company stating that the proper permits were issued thru the city.
- According to the old assessor's map (copy in board's file) it appears the driveway was in existence since 1960. The applicant should check with the building inspector or the engineering department to determine if this prior nonconformity can be grandfathered.
- Mr. Lima cannot comply with the city's regulations of providing sufficient off street parking for his tenants.

The Board's concerns:

- With the existing paved area at the rear of the lot, how will that affect water run off? Maybe engineering should weigh in on this. The applicant



did state that the abutting lot at the rear is slightly higher, so water run off would not affect that lot. The Board also had concerns about possible water run off onto the street which may ice up during the winter months.

- The Board stated that the applicant can bring suit against the paving company for not receiving the proper permits before paving.
- It was suggested by the Board that the applicant remove some of the pave material at the rear, which may help bring lot coverage into conformity. Or replace the existing paved area with a pervious material which will not be counted as lot coverage.
- The Board stated that lot size is not a consideration for a variance.

In conclusion, the Board finds:

- The variances the applicant is seeking are due to a self created hardship. The existing pavement violation does not constitute granting variances for relief to the applicant in order for him to get a full occupancy permit thru the Building Dept. to rent the second floor. The applicant already has a partial occupancy permit for one floor.
- Prior to the paving violations, the existing structure is pre-existing non-conforming. With the new pavement, it has created a more non-conforming lot.
- The Board felt the applicant had options to mention a few: of either pulling up the existing pavement which is in violation and replacing it with pervious material, or if possible just pull up enough material in order for lot coverage to conform or take legal action against the paving company for deceiving him about getting the proper permits.
- Prior illegal improvements to the land cannot be used to establish a hardship. The fact pavement has been installed in violation of the zoning code is not "hardship" warranting a variance.

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

The Board gave the applicant the option to continue the hearing with a vote of the Board or to Withdraw Without Prejudice.

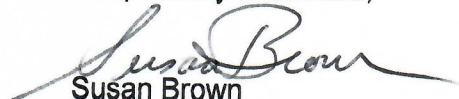
With the advise of his attorney, the applicant Withdrew Without Prejudice.

On a motion by Paul Giunta and seconded by Ralph Loftin, the Board voted 5-0 to allow the applicant to "Withdraw Without Prejudice".

With no other testimony taken or given, the public hearing was closed.

**Adjournment** - There being no other business, the meeting was adjourned.

Respectfully submitted,



Susan Brown  
Secretary to the Zoning Board of Appeals