

ZBA Case # 1455-2019
Location: 26 Frye Street

Applicant: Michael Crane

Zoning Board of Appeals Minutes

The Zoning Board of Appeals, acting under the Marlborough Zoning Ordinance and General Laws, Chapter 40A, as amended, a meeting was held on July 9, 2019.

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

Proceedings:

Date of Appeal: May 16, 2019

Name and Address of Applicant: Michael Crane, 26 Frye Street, Marlborough, MA 01752

Administrative body from whose decision or order of appeal was taken: Building Dept.

Appeal filed with: Zoning Board of Appeals and City Clerks' Office.

Nature & Basis of Appeal: Michael Crane of 26 Frye Street, proposes to create a second driveway connection to Jonas Ct. According to Subsection 650-49(2) "(not more than one driveway opening with less than 200 ft. of frontage is allowed)" Subsection 650-49(4) All driveways shall have a durable dustless, all-weather surface suitable for year-round use. Property is located in Zoning District A3 being Map 68 Parcel 403 of the Assessor's Maps.

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

Notice was sent by Certificate of Mailing 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 300 feet of the property lines, including owners of land in another municipality, all as they appear on the most recent applicable tax lists.

Findings of Fact:

- 1F. The property is located in Zoning District A3, being Map 68 Parcel 403 of the Assessors' Maps. Also known as 26 Frye Street.
- 2F. The lot contains some 12,500 sq. ft. in area according to the certified plot plan presented.
- 3F. The shape of the lot is a "pork chop" shaped lot. It is narrow in the front and opens up towards the rear. According to the Certified Plot Plan presented.
- 4F. The lots in the area are similar in size and in frontage width. According to the GIS maps of the City of Marlborough.

- 5F. The topography of the lot in question is fairly flat. According to the GIS maps of the City of Marlborough.
- 6F. In attendance at the hearing:
- Michael Crane – applicant – represented himself
 - Ethan Lippitt – City's Code enforcement officer
- 7F. **Proposal:** To create a second driveway connection from Jonas Ct. According to Subsection 650-49(2) "(not more than one driveway opening with less than 200 ft. of frontage is allowed)". Subsection 650-49(4) All driveways shall have a durable dustless, all-weather surface suitable for year-round use.
- 8F. **Plan:** The applicant provided a plan entitled: A Certified Plot Plan, 26 Frye St., Prepared by: Odone Survey & Mapping, Signed by: Glenn D. Odone, Jr. Dated: June 25, 2019. Plan in Board's file.
- 9F. **Exhibits:**
- Letter from abutter Nancy Sawtelle, 10 Jonas Court, dated June 5, 2019 with photos of 26 Frye St. (Letter in Board's file)
 - Denial letter from the Building Dept. Ethan Lippitt, dated April 18, 2019 RE: Property issue – Illegal driveway on Jonas Court.
10. The applicant stated the following:
- He purchased the house in 2009 with the understanding that the structure (garage) at the rear was accessible via Jonas Court. The existing garage cannot be accessible from Frye Street.
 - Currently there is a stockade fence at the rear of 26 Frye St. and the applicant stated he removed a portion of the stockade fence (the swing gate) at the rear to gain access to Jonas Court as a travel way from the rear of his property.
 - Being a fireman, using Jonas Court as an access travel way is good for quick access in and out of his lot.
 - Have used Jonas Ct. for almost 10 yrs. without incidents, i.e. regarding safety and violations.
 - It would be an advantage to the city and surrounding home owners to keep the access opened in case of fire.
 - The lot is oddly shaped. He feels his lot borders 2 public streets, Frye St. and Jonas Ct.
 - Board member, Paul Giunta asked if he did any research before he purchased the house? Applicant stated he had a lawyer who told him everything was in order.
 - **Hardship** - A denial by the Zoning Board of Appeals would bring his property value down. He would not be able to access the garage at the rear of his lot from Frye Street, because the lot is narrow at the front and opens out at the rear of the property.

11. It was explained to him by the Board, that according to his certified plot plan, his rear lot line abuts a public way. According to a legal term "fee simple", all abutters own the rights to the middle of a public way. The applicant does not have legal rights to Jonas Court, so he does not have rights to the middle of Jonas Court.
12. Speaking in **favor** – none.
13. Speaking in **opposition**:
 - Nancy Sawtelle – 10 Jonas Court, Marlborough, MA - She stated she has submitted a letter to the Board, dated June 5, 2019 (letter in Board's file) - The Board members received a copy of the letter. Ms. Sawtelle stated she also owns the empty lot across the street from her house (10 Jonas Court).
14. Questions from the audience – none
15. With no other testimony taken or given, the public portion of the hearing was closed.
16. The Board discussed that there is no viable hardship according Mass. General Law Chapter 40A, §10. Thru the applicant's testimony his stated hardship is personal in nature in not being able to access the rear of his property via a dead-end street as shown on the city's assessors maps. The current layout of his property is narrow in the front and contains a driveway, but there is not enough area on either side of the house for vehicle access to the rear of the property.
17. The Board briefly discussed the blight condition at the rear of his property thru photos provided by the abutter, Nancy Sawtelle. The Board will have the applicant work with the code enforcement officer to rectify the condition. (photos in Board's file)
18. A motion was made by Robert Levine to deny the petitioner's request for a second driveway to access Jonas Court from the rear of his lot, because there is no substantial hardship according to Mass General Laws Chapter 40A, Section 10. Ralph Loftin seconded the motion. The Board voted 5-0 to deny the applicant zoning relief.
19. The public hearing was closed

ZBA Case # 1454-2019 SP
Location: 144 Chestnut Street

Name: Matt Jackson

Variance and Special Permit

Zoning Board of Appeals

Minutes

The Zoning Board of Appeals, acting under the Marlborough Zoning Ordinance and General Laws, Chapter 40A, as amended, a meeting was held on July 9, 2019 with a continuation meeting on July 30, 2019.

Board Members present were: Paul Giunta-Chairman, Ralph Loftin, Thomas Pope, Robert Levine and Thomas Golden. **Note: Thomas Golden recuse himself because he sometimes does business with the applicant.** Also present was Ethan Lippett, city's code enforcement officer on July 9th.

Proceedings:

Date of Appeal: May 14, 2019.

Name and Address of Applicant: Matt Jackson, 180 Gates Pond Rd., Berlin, MA 01503

Administrative body from whose decision or order of appeal was taken: Building Dept.

Appeal filed with: Zoning Board of Appeals and City Clerks' Office.

Nature & Basis of Appeal: To demolish the existing two stories, two family dwelling and construct a new three stories, two family dwelling structure at 144 Chestnut St., located in Zoning District B (RB). Being Map 68, Parcel 194.

The applicant, Matt Jackson, is seeking the following:

Special Permit - As a pre-existing, non-conforming lot, the construction of a new structure requires a "Special Permit" issued by the Marlborough Zoning Board of Appeals. The construction of a new structure creates a new non-conformity.

Section of the Zoning Ordinance involved: Chapter 650-12

Notice was sent Certified Mail by the applicant 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.

Findings:

- 1F. The Board informed the audience that there are two processes to this petition. One is for zoning relief (variances) and the second for a Special Permit. Zoning Relief was heard first. (both are under the same ZBA Case #1454-2019)
- 2F. The property is located in Zoning District Residence B, being Map 68, Parcel 194 of the Assessors Maps.
- 3F. This pre-existing non-conforming lot contains 8,205 sq. ft. \pm with 51.15 ft. of frontage. The lot narrows slightly to the rear property line.
- 4F. Lots in the area are similar in size, shape and topography.
- 5F. The makeup to the neighborhood is single family homes, 2 family homes and multi-family homes.
- 6F. The applicant, Matt Jackson was present and represented himself.
- 7F. The Building Commissioner determined that the fire destroyed two-family dwelling was a legal pre-existing nonconforming structure with respect to lot size and setbacks and that the proposed two-family dwelling would increase or intensify the non-conformity of the fire destroyed structure.
- 8F. **Proposal:** The applicant proposes to construct a new 3 story, two family structure with 4 parking spaces at the rear of the house. Each unit will have 3 bedrooms, totaling 6 bedrooms.
- 9F. **Existing before the fire:** 2 family structure, 2 bedrooms in each unit, 2 story, no parking in the rear and a dirt or gravel driveway.
- 10F. **Plans:** The applicant provided plans entitled:
 - Certified Plot Plan, 144 Chestnut St., Marlborough, MA (existing conditions) Dated: Jan. 8, 2019, Prepared by: Farland Corp. and stamped by Brian Murphy.
 - Certified Plot Plan, 144 Chestnut St., Marlborough, MA (proposed plan) Dated: March 5, 2019 Prepared by: Ducharme & Dillis and **not** stamped.
- 11F. List of exhibits received:
 - The list of plans as mentioned above.
 - A letter from Edgar Vigil, dated July 11, 2019. Delivered to the Board by a friend. Stating her opposition.

- Thru the Building Dept. denial letter, dated April 26, 2019, the estimated construction costs of \$260,000 exceeds 75% of the value before the structure fire, assessors have the value as \$153,800. Thus, to rebuild on this pre-existing non-conforming lot would have to meet current zoning codes.
- 12F. According to Chapter 650-12(B)(3) states: In case the use is destroyed or damaged by fire, explosion or other catastrophe to not greater than 75% of the fair market value of the building or structure, exclusive of foundation, based upon replacement cost immediately prior to such damage, the structure or use may be restored or rebuilt at the same location and used as previously, provided that: The building, structure or use of land as restored or rebuilt shall be no greater in floor or land area than the maximum permitted under this section.
13. The applicant, Matt Jackson stated the following:
- He is planning to purchase the lot.
 - 144 Chestnut St. was destroyed by fire.
 - The proposed structure will be placed on a different footprint than the original footprint.
 - Before the fire, it was a 2 story, 2 family structure with 2 bedrooms in each unit. It had limited parking.
 - Proposing 3 story with 3 bedrooms in each unit. Proposing 4 parking spaces at the rear of the lot.
14. The Board discussed the following;
- The Board felt 4 spaces at the rear of the lot is not enough for a 2-family unit with a total of 6 bedrooms.
 - The Board talked about permeable and impermeable surface as parking material. Ethan Lippett, Code Enforcement Officer, stated that driveways must be of dustless, of impermeable material. According to Chapter 650-49 (B)(4) states: **Outside street** - All driveways shall have a durable, dustless, all-weather surface suitable for year-round use, such as bituminous concrete or cement concrete or pavers or other approved impervious material. Driveways to commercial, industrial and multifamily residential units shall in all cases be paved. Alternatives for single- and two-family houses must be approved by the Building Commissioner and City Engineer.
[Amended 10-6-2014 by Ord. No. 14-1005921A]
- Vote:** The Board voted 4-0 to grant a variance of 4.1 ft. vs. the minimum 5 ft. for the proposed driveway to the side lot line. The other two variance request for Lot Coverage and height of structure the applicant agreed to comply with the regulations.
15. **Special Permit** - The Board opened up the public hearing on July 30, 2019 for the Special Permit process. A motion was made by Paul Giunta

and seconded by Robert Levin to continue the special permit process to July 30, 2019 at 7:00 PM.

The Board voted 4-0 to continue the public hearing for the Special Permit request to July 30, 2019 at 7:00 PM. in order to seek information from the Building Commission and/or City Solicitor.

CONTINUATION – Special Permit Request - July 30, 2019 – 7:00 PM

16. Members Present: Paul Giunta-Chairman, Ralph Loftin, Thomas Pope and Robert Levine.
17. Also, present the applicant, Matt Jackson.
18. The applicant stated he felt the added parking at the rear of the property would give an overall better appearance to the front of the propose house. Also, with some parking at the rear, it will keep some cars off the street.
19. The Board asked the applicant if he would consider conforming with Lot Coverage, even though the Board would like to see more parking on site and also to conform with the Height of the Structure to 2 ½ stories.
Answer: The applicant agreed to conform with Lot Coverage of 30% and Height of Structure 2 ½ stories.
20. The applicant will not change the footprint of the house.
21. Ralph Loftin, Board Member, stated the lot is narrow and small for a 2 family. To expand the structure according to his propose design has created a new non-conformity which requires a Special Permit.
22. The Board stated the applicant can re-build on this lot but must conform to all zoning codes pertaining to setbacks, lot coverage and height of structure.
23. Thomas Pope, Board Member, asked if the 2 units will have sprinklers. The applicant did not know if it was required.
24. Speaking in **opposition:**
 - Edgar Vigil, 140 Chestnut St., Marlborough, MA – They submitted a letter for the July 9th meeting date. This evening Mr. and Mrs. Vigil were in attendance. They voiced their opposition as follows:
 - A 3rd floor level would mean more people per unit creating over-crowding in these units.

- The applicant will probably not live in one of these units. What type of tenants will these units attract? The applicant is not sure if he will rent or sell.
- They had no problems with the former owner of the single-family home. They fear that being rentals, tenants may become a problem.
- They fear the new structure will be closer to her house. They stated the fire that destroyed 114 Chestnut St. nearly destroyed their house. One of the Board members showed them the proposed plan and what was existing prior to the fire. The plan showed that the proposed house will not be any closer to their home than the fire destroyed house.
- She did not want to see a larger home being built on this lot.

25. Speaking in favor - None

26. **A motion** was made by Robert Levine, seconded by Ralph Loftin to have the applicant remove the requested zoning relief for Lot Coverage of 36.3% to the required maximum 30% and the Height of Structure to conform with the 2 ½ stories vs. the proposed 3 stories. Chapter 650-41 Table of Lot Area, Yards, & Height of Structures. The applicant agreed to the motion and removed above mentioned zoning relief.

The Board voted 4-0 to remove the requested zoning relief for Lot Coverage of 36.3% to the required maximum 30% and the Height of Structure to conform with the 2 ½ stories vs. the proposed 3 stories.

27. With the removal of the propose Lot Coverage and Height of Structure, the proposed two family would conform to requirements of the City of Marlborough Zoning Code in all respects except for the side setback of the propose driveway.

28. The applicant stated the following:

- The proposed structure is 24 ft. wide vs. the 21 ft. that was existing.
- The proposed structure is similar to what was there before the fire.
- The proposed floor plan is better than what was there before the fire.
- The proposed house is setback further from the road.

29. Ralph Loftin made a motion to close the public hearing. Seconded by Thomas Pope. The Board voted 4-0 to close the public hearing.

Decision for Variance request:

After due consideration to the subject matter of the petition, the Board finds due to circumstances relating to soil conditions, shape and topography of the land; the lot being a pre-existing non-conforming lot and due to the shape of the lot being long and narrow from the front to the rear, it would be difficult to construct a driveway to conform to the side setback of 5 ft. and to conform to the distance from the house of 5 ft.

Vote: The Board voted 4-0 to grant zoning relief (variance) for the propose driveway setback of 4.1 ft. vs. the minimum required 5 ft. for Zoning District Residence B (RB).

Vote: The Board voted 4-0 (and the applicant agreed) to conform with Lot Coverage of 30% and to conform with Height of Structure of 2 ½ stories in accordance to Chapter 650-41 Table of Lot Area, Yards and Height of Structure.

CONDITIONS for Variance request:

1. Before a building permit can be issued, revised stamped plans reflecting the above changes of conforming to Lot Coverage of 30% and conforming to Height of Structure 2 ½ stories will be presented to the Building Department for review and approval. The Zoning Board of Appeals will get a copy of the revised stamped plans for their file.
2. The only zoning relief granted (variance) is for the 4.1 ft. side line setback for the propose driveway vs. the 5 ft. minimum required. Thus, a deviation of .9 ft.
3. Recording of the variance – The applicant at their expense shall record this variance in the Middlesex South District Registry of Deeds after the City Clerk has certified that the 20-day appeal period has elapsed with no appeal having been filed and before the applicant shall apply to the Building Dept. for a building permit.
4. Applicant shall provide a copy of the recorded variance to the Building Dept. and to the Zoning Board of Appeals.

Decision – Special Permit request:

1. The Board finds that the expansion and re-building of the fire destroyed family structure is not any more detrimental to the neighborhood than what existed prior to the fire. It was a 2 family structure and it will remain as such.
2. The proposal is an appropriate use to this Zoning District Residence B (RB) and is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough.

3. The Board finds that the Application for the Special Permit does not derogate from the intent or purpose the Zoning Ordinance of the City of Marlborough.
4. The Board finds by increasing the non-conforming nature of this structure and use, "does" create a new non-conformity. This new conformity is not a detriment to the neighborhood.

On a motion by Ralph Loftin, seconded by Paul Giunta to grant a Special Permit. The Board voted 4-0 to grant a Special Permit with the following conditions:

Conditions for Special Permit request:

1. The applicant agrees to conform with the 30% Lot Coverage and conform to Height of Structure of 2 ½ stories in accordance to Chapter 650-41 Table of Lot Area, Yards and Height of Structure.
2. Before a building permit can be issued, revised stamped plans reflecting the above changes will be presented to the Building Department for review and approval. The Zoning Board of Appeals will get a copy of the revised stamped plans for their file.
3. The only zoning relief granted (variance) is for the 4.1 ft. side line setback for the propose driveway vs. the 5 ft. minimum required. Thus, a deviation of .9 ft.
4. Recording of Special Permit – The applicant at their expense shall record this Special Permit in the Middlesex South District Registry of Deeds after the City Clerk has certified that the 20-day appeal period has elapsed with no appeal having been filed and before the applicant shall apply to the Building Dept. for a building permit.
5. Applicant shall provide a copy of the recorded Special Permit to the Building Dept. and to the Zoning Board of Appeals.