



**City of Marlborough
Zoning Board of Appeals
140 Main Street
Marlborough, Massachusetts 01752**

Tel. (508) 460-3768

**Minutes
January 7, 2020**

67 Florence St. - Special Permit request - ZBA Case # 1463-2019
Applicant-Jaime Vargas representing Olga Guispe Castro of 67 Florence St.

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

Thomas Pope recused himself because he is serving as treasurer to the Fraternal Order of Eagles at 56 Florence St. which is an abutter to the property in question this evening. Robert Levine signed a "Disclosure of Appearance of Conflict of Interest Form, as required by G.L.c.268A, §23(b)((3), Mr. Levine is a member of the Fraternal Order of Eagles. (form is in Board's file and one was submitted to the City Clerk's Office on 1/8/2020.)

Proposal: The applicant filed an appeal on November 20, 2019. The Nature of the Appeal is the following: According to Chapter 650, Article 41, Table of Lot Area, Yards, and Height of Structures, a **Special Permit** is required for the increase of a pre-existing non-conforming structure by adding a first and second level addition. The propose Lot Coverage will be 36% vs. the existing 34%, required maximum 30%. Front yard setback – existing 18.8 ft. vs. the proposed 18.0 ft., required minimum of 50 ft. Property located at 67 Florence St.

The property is located in Zoning District Business. The lot in question contains 9,372 sq. ft. The lot is rectangular in shape having 66.0 ft. of frontage and extending approximately 142.0 ft. to the rear lot line. The bulk of the lots in the area are similar in size, shape and topography. Most of the lots on the street side of 67 Florence St. have easements located halfway into their lots.

The makeup of the neighborhood is a mixed of single- and two-family homes, with a couple of businesses located near the lot in question. Also, the lot in question is located within a mix of Zoning Districts, i.e. Residence C, Business and Marlboro Village District (MV).

The applicant presented **plans entitled:**

- Plot Plan, 67 Florence St. Marlborough, MA... Contractor Jaime Vargas, Owner-Olga Guispe Castro, 67 Florence St. Marlborough, MA, Prepared and stamped by Bruce Saluk. Dated: Oct. 15, 2019.
- A Renovation and Addition Single Family detached home, Existing and Proposed Basement Level and 1st Floor plans. Dated 9/4/2019 Sheet A-1. Prepared by Viacad, LLC, Design Build, construction Management & Consulting Services.

The Building Commissioner determined thru his denial letter dated Oct. 28, 2019 the existing single-family dwelling is a legal “pre-existing non-conforming structure” with respect to lot size and setbacks, and that the proposed 2 story addition would increase or intensify the non-conformities of said existing structure. The proposed 2 story addition to the existing home would conform to requirements of the City of Marlborough Zoning Code in all respects except for the front yard setback requirement which the existing structure is 18.8 ft. vs. the proposed addition being 18.0 ft. By adding a first and second floor to the proposed addition, they will be increasing the non-conformity.

The applicant, Jaime Vargas, stated the following:

- Would like to modify the existing main structure. Continue using as a single-family house.
- The proposed 2 story addition will be located where the existing bump out is at the left of the house. The proposed 2 story addition will continue to abut the existing driveway as it does now. He would like to just square off the proposed 2 story addition against the existing house.
- The owner of the property is proposing to have her daughter live with her, thus needing more room.
- The existing lot coverage is 34% vs. the proposed 36%. Maximum allowed is 30%. A minimal increase in Lot Coverage.
- There is already an existing driveway on the lot, which becomes a gravel driveway as it extends to the rear of the lot.
- There should be ample off-street parking for the single-family home.
- The proposed 1st floor will contain 1 bedroom, kitchen, bath, family room and dining room. The proposed 2nd floor will contain 4 bedrooms and bath.

The Board discussed the following:

- Lot coverage is increased by 2%. From the existing 34% to the proposed 36%. The Board felt this was a minimal increase.
- The proposed addition will not be any more detrimental to the neighborhood than what already exists.
- The proposed front yard setback of the proposed 2-story addition will be a little less than the existing house.
- Compatibility of the size of the proposed 2-story addition with neighboring properties is very similar.
- The proposed 2-story addition will increase the non-conforming nature of the existing structure, but the improvements to the structure will be esthetically pleasing to the neighborhood.

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

On a motion by Thomas Golden and seconded by Robert Levine to grant a Special Permit with conditions. Reference ZBA Case # 1463-2019.

After much discussion, the Board voted 4-0 to grant the Special Permit with conditions.

1. The Board finds that the proposed 2 story addition is not any more detrimental to the neighborhood than the existing structure. The house will remain as a single-family home.

2. The proposal is an appropriate use of this lot located in Zoning District Business and is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough. The lot in question is located near several Zoning Districts, i.e. Business, Residential C and Marlborough Village District (MV).
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. The single-family home is located in a Business Zone. Surrounded by residential, business and MV.
4. The neighborhood appears to be of single- and two-family homes with a few businesses in the area. Also, a large area is zoned Marlborough Village District.
5. The Board finds that the proposed use, residential, located in a Business Zone, is in tune with the rest of the neighborhood.

The Board votes 4-0 to issue a Special Permit with the below conditions:

Conditions:

1. **Plans:** The above petition will be constructed according to the plans presented entitled:
(A) Plot Plan, 67 Florence St. Marlborough, MA... Contractor Jaime Vargas, Owner-Olga Guispe Castro, 67 Florence St. Marlborough, MA, Prepared and stamped by Bruce Saluk. Dated: Oct. 15, 2019.
(B) A Renovation and Addition Single Family detached home, Existing and Proposed Basement Level and 1st Floor plans. Dated 9/4/2019 Sheet A-1. Prepared by Viacad, LLC, Design Build, construction Management & Consulting Services.
2. Any modifications to the approved plans will be subject to review and approval by the Building Dept.
3. Recording of Special Permit – In accordance with the provisions of Mass. General Laws c.40A, Section 11, the applicant at her expense shall record this Special Permit in the Middlesex South District Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing the Special Permit has elapsed with no appeal having been filed, and before the Applicant shall apply to the Building Commissioner for a building permit concerning the proposed addition. Applicant shall provide a copy of the recorded Special Permit to the Zoning Board of Appeals' office and to the Building Department.
End of Conditions

30 Maple St. – variance(s) request - ZBA Case #1462-2019
Applicant - Pigs & Coconuts, LLC

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

The applicant, Shawn Fitzgibbons (the applicant)-owner was present and his attorney, Philip C. Jack of Wise & Jack, LLC, 85 Speen St. Suite 202, Framingham, MA 01701.

It was mentioned there is another owner, Krispen Hopkins, who did not attend. He mentioned the property is in a trust.

Also present were Pam Wilderman-Code Enforcement Officer, and Jeffrey Cooke-Building Commissioner.

30 Maple St. is located in Zoning District Residence C. Map 70, Parcel 453.

Proposal: Variance or variances, or an administrative appeal of the Zoning Denial letter issued by the Building Commissioner dated Sept. 24, 2019, relative to a request to use the existing structures at 30 Maple St. Marlborough, MA (Assessor Map 70, Parcel 453). Zoning District: Residence C, as a five-unit multifamily. Applicant seeks to appeal, to the extent relief is not granted by variance, on the basis of either a pre-existing, non-conformity or not applicable.

Atty. Jack gave a brief history of the past owners of the lot in question:

- According to Atty. Jack currently on the lot is the house containing 2 units and his client is proposing to add a studio apartment creating 3 units in the house. A garage structure is located at the rear of the house which did contain 2 units (an up-stairs and down-stairs unit). Because there were no permits (building, plumbing and electrical) pulled to convert this garage into living units, the Building Dept. ordered the units to be vacated. There is also a dilapidated barn structure located at the rear right corner of the lot, which probably needs to be torn down.
- His clients have not produced a “definitive” plan because the applicant felt the Board/City could weigh in on what they felt would be the best lay out for this lot.

Mr. Fitzgibbons stated the following:

- He would like to work with the neighbors in making improvements to the lot.
- He has walked the neighborhood asking abutters their concerns about screening (i.e. fencing) and about parking.
- He stated there is currently no one living in the garage units. The person the city thinks is living there is currently going thru a divorce and just has his possessions stored in one of the units in the garage. But the Board felt that the garage unit is occupied, even though a person is not actually living there. He also stated he has spent some \$85,000 in renovations.
- He has presented to the Board 2 potential parking plans. In each of the 2 plans, parking and lot coverage cannot be met together.
- It has taken him 2 ½ yrs. to come before the Zoning Board of Appeals. (the Board did not understand what he meant).

Jeff Cooke, Building Commissioner, stated that the back building, the garage, do not have any permits to convert the structure into living units. And also, no occupancy permits were issued for the garage units. Jeff stated the plumbing and electrical were disconnected, but it appears it got re-connected.

Jeff also stated he had enough information, in the plans presented to him for review, to create a “denial” letter to the applicant. It is up to the Board to decide if they need more information on a plan to make an informed decision. It is not the Board's responsibility to design it for them. There are issues on their lot like i.e. type of fencing and the parking issues in which the applicant can remedy on their own.

Jeff calculated that the applicant would need a total of 15 parking spaces for a proposed 5 units with 10 bedrooms. (One space for each unit and one space for each bedroom). It was not clear how many bedrooms were being proposed.

Pam Wilderman stated the following:

- The previous owner, Mr. Wagner bought said lot for their son.
- Plumbing and electrical were installed in the (garage) with no permits and was being used as residential living space.
- She got a search warrant to go onto the site to inspect what was on the site. She went this route, because she got no response from the owners to come onto the property.
- This is a small lot and Maple St. is a very busy street.

There were several abutters present who spoke in opposition to the petition:

- Oliver Bisson – 19 Warren Ave. – He thought the city is lax about inspecting certain properties that do not meet code. He feels the applicant is just into making money off his rentals.
- Mariela & Luis Velasquez – 11 Maddox Rd. – We have lived in this house for 20 yrs. We have 2 children. The rear barn is falling onto our property. We have tried calling the owners of 30 Maple St., but never heard from them. There is a pit bull running freely at 30 Maple St. We are worried when our children are out playing. We had to repair the fence because the owners of 30 Maple St. did not do it. We have made complaints about noise, parking and the dilapidated barn, and these concerns were never addressed by the owners. The lot has been cleaned up a little, and the owner has called us back. We would like to see some type of screening between our lot and the lot in question. It would be nice to see the barn taken down.
- Mr. Trainer – 11 Warren Ave. – The lot should go back into being a 2-family house. The applicant purchased the lot knowing it is a 2-family. The owner is just looking to make more money out of rentals by adding more units. What is currently existing at 30 Maple St. has diminish the looks of the neighborhood. I will generate a petition against the owners if they are proposing 5 units.

There was no one to speak in favor of the petition.

Paul Giunta, chairman, stated that the problem he has with this case is that there are many issues and violations which have not been resolved with the Building Dept. and he feels the Board cannot move forward in hearing this petition until all these issues and violations with the Building Dept. have been resolved. Until such time as the Building Dept. is satisfied with their concerns about the property and a “definitive” plan is

presented to the Building Dept. for their review is when the Board feels comfortable in going forward with this case.

Atty. Jack stated that they can do up a "definitive" plan as requested. But we cannot meet parking and lot coverage together.

The Board stated that the applicant has to draw up one "definitive" plan showing what the applicant is proposing and present it to the Building Dept. for their review. On that note, the Board made a motion to continue the public hearing to a future date.

A motion was made by Paul Giunta and seconded by Ralph Loftin to continue the public hearing to Feb. 25th, 2020 at 7:00 PM.

The Board voted 4-0 to continue to Feb. 25th, 2020 at 7:00 PM.

Because Feb. 25, 2020 goes beyond the maximum required 100 days for the Board to vote, the Board had the applicant sign a "Time Limit Extension Agreement form". The extension of time for a vote/decision is Feb. 28th, 2020. (form is in Board's file).

The Board would like the following to happen before the Feb. 25th hearing date:

- The applicant will work along with the Building Dept. to satisfy their issues/violations at 30 Maple St.
- A "definitive" plan will be presented to the Building Dept. for their review, prior to returning to the Zoning Board of Appeals. The number of proposed units and bedrooms will be marked clearly on a plan and the applicant will clearly state what the petitioner is seeking before the Board.

Hearing is continued to Feb. 25, 2020.

Adjournment

Respectfully submitted,


Paul Giunta – Chairman
Zoning Board of Appeals