City of Marlborough
Zoning Board of Appeals
November 17, 2020
Minutes
Microsoft Teams Meeting

7:00 PM **Location - 28 Richard Rd.** **ZBA Case # 1470-2020**
Applicant: **Peter Keeping**
Date of Appeal: **Sept. 21, 2020**

Zoning relief requested: Variance Request - To construct a carport at 28 Richard Rd., located in a Residence A-3 Zoning District. This proposal does not comply with Chapter 650-41 of the City Code of Marlborough. The "Table of Lot Area, Yards and Height of Structures" states that the side yard setback minimum is 15 ft. vs. the proposed 10 ft. Being Map 19, Parcel 265.

Meeting date: November 17, 2020

Members present in City Hall: Paul Giunta-Chairman, Robert Levine, and Thomas Pope. Also, Susan Brown-Secretary.
Present remotely: Ralph Loftin and Thomas Golden

A roll call of members present: Paul Giunta-yea, Robert Levine-yea, Thomas Golden-yea, Thomas Pope-yea and Ralph Loftin-yea

Present in City Hall were Paul Giunta, Robert Levine and Thomas Pope.
Members meeting remotely were Ralph Loftin and Thomas Golden

Present remotely were also the applicants - Peter and Irene Keeping.

The hearing was opened with the reading of the legal notice by Thomas Pope.

The applicant, Peter Keeping, started the meeting with his presentation. He stated he would like to construct a carport over the existing driveway. According to the plan presented, the 13.7 ft. x 20.0 ft. carport will be abutting or attached to the house and extended to the edge of the driveway. He does not have any design plans for the carport as of this date, but he felt it would be on columns with a roof.

There are existing bushes at the side lot line which may act as a buffer between the two houses.

The applicants have lived in this house for 25-30 years.

The stated hardship by the applicants:

1. Irene Keeping, the wife, has arthritis. The ailment makes it difficult for her to reach her car from the house during winter months.

2. The topography of the lot slopes upward from the street to the rear of the house. The portion of the driveway that abuts the house, where the proposed carport will be constructed is slightly flat.

The existing driveway is 10 ft. from the side lot line. The propose carport will not go beyond the edge of the existing driveway. This proposal will not be a detriment to the neighborhood. She also stated that considering no one has objected to the petition, she does not see why they can't receive a variance. The proposed carport will not take away from the appearance of the neighborhood.

The Board stated that personal hardship is not a criteria for granting a variance. There is nothing in the above stated hardships that constitutes a hardship according to Mass. General Law Chapter 40A. The Board further stated that:

1. The applicants are not prevented from using their property as it is zoned for.
2. Having a personal medical disability is not a hardship
3. A variance goes with the property and recorded against the property, not to an individual.
4. The Board gave a few examples of a hardship, according to Mass. General Law Chapter 40A.
5. By granting a variance, it would set a precedent to other similar lots in the area.
6. Almost every house lot in the area is square in shape and situated on a slope lot with a slope driveway. The lot in question is not unique to other lots in the area.

Questions from the general public – none.

Speaking in favor or in opposition to the petition – none.

Speaking remotely in favor of the petition:

- Henry Stevenson – 38 Richard Rd. Marlborough, MA – stated he is not opposed to the proposed carport. He would like to see a design of the proposed carport. His concern was that he does not want to see a wall added to the side of the proposed carport, facing his house. The applicant stated that the carport will be constructed with columns.

After much discussion, the applicants requested to "Withdraw Without Prejudice"

A motion was made by Robert Levine and seconded by Thomas Pope to allow the applicant to "Withdraw Without Prejudice". A roll call vote was taken: Paul Giunta-yea, Robert Levine-yea, Ralph Loftin-yea, Thomas Golden-yea and Thomas Pope-yea. Vote 5-0 to allow the applicant to "Withdraw Without Prejudice".

A motion was made by Robert Levine and seconded by Thomas Golden to close the public hearing. A roll call vote was taken: Paul Giunta-yea, Robert Levine, Ralph Loftin-yea, Thomas Golden-yea and Thomas Pope-yea. Vote 5-0 to close the public hearing.

7:30 PM **Location – 192 Reservoir St.** **ZBA Case # 1469-2020**
Applicant: **David Dowd**
Date of Appeal: **September 8, 2020**

Applicant, David Dowd, dba KDG Deals, LLC, 157 Cullinane Dr. Marlborough, MA, was before the Board seeking a Special Permit under the Floodplain and Wetland Protection District and a variance for a 15.5. ft. front yard setback vs. the minimum required 20 ft.

This hearing was opened on Oct. 20, 2020 with a continuation date of Nov. 17, 2020.

Special Permit – Chapter 650-23

- The Board and the applicant discussed the history of this lot as follows:
  According to Timothy Collins, Assistant City Engineer, investigation and memo dated October 15, 2020 the following was discovered as stated in part:
  - 1958 – Vincent Simarano purchased 186 Reservoir St. Map 17 Parcel 12.
  - 1962 – two properties. Map 17 Parcels 11 & 12, being held in common ownership, were used to apply for and receive a building permit to construct a single-family house – 186 Reservoir St.
  - 1963 – Vincent Simarano purchased 192 Reservoir St. Map 17 Parcel 11.
  - 1990 – Reservoir St. was reconstructed and widen. No land was taken for this project.
  - 1996 - July 24, 1996 – Plan submitted for 192 Reservoir St. to the engineering dept. for a proposed house which conformed to the zoning setbacks
  - 1997 - 196 Reservoir St., shown on the city's Assessor's Maps as 5-15, was granted a Special Permit by the ZBA (Case # 1199-97).
  - 1998 - Foundation was poured at 192 Reservoir St. and then covered, and no additional construction on this property has taken place, as purported by the applicant. Two alterations were made to the foundation: the garage door constructed on the southwest side of the foundation and a bump out for a front entry. No permit was obtained for the bump-out.
  - The two properties #186 and #192 Reservoir St. were never located on the same property. 192 Reservoir St. is a non-conforming lot because the previous owner created a violation in the front yard setback.

The Project site has an existing foundation since 1998 to construct a house. A house was never built, and the foundation served as a garage for the adjacent property (186 Reservoir St.) when the two lots were under common ownership. The property is now two separate lots.

The Project Site has frontage on Reservoir St. and abuts Ft. Meadow Reservoir at the rear.

Project: The Applicant proposes to conduct certain work in the rear of the existing foundation to add a narrow walkway and two decks on helical piers. The land disturbance will be minimized. A small retaining wall will help to ensure that the slopes will be stable, and a narrow walkway provides access to the rear of the house. A small section (41 sq. ft.) of the walkway near the shoreline will be within the 100-year floodplain elevation. As proposed, the walkway will be at or below the existing grades, therefore there will be no impact to the flood storage capacity of the

project. The conservation commission feels that if the owner follows the Order of Conditions, protection of the adjacent lake should be ensured.

Site Plan: The Applicant submitted a plan entitled "Site Plan, 192 Reservoir St. Marlborough, MA. Prepared by: Bruce Saluk & Assoc. Inc. dated: 8/12/2020 Last revised date: 10/28/2020 Sheet C1 (1 of 2)

According to the Marlborough City Code, Chapter 650-23(E) Floodplain and Wetland Protection District, the proposed Special Permit Application was distributed to the Board of Health, Planning, Engineering Department and the Conservation Commission for comments. Conservation issued an Order of Conditions (212-1233) and the city's engineering department produced a memo dated Oct. 15, 2020.

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

The Board received a memorandum, dated November 13, 2020 from Conservation Agent Priscilla Ryder, on behalf of the Conservation Commission, finding that the project meets the criteria of the Floodplain District. The Commission issued an Order of Conditions (DEP 212-1233 - memo is in Board's file).

The Board received a memorandum dated October 15, 2020 from Assistant City Engineer, Timothy Collins. (memo is in Board's file)

In accordance with Section 650-23G of the Floodplain and Wetland Protection District Ordinance, the Board finds that:

According to the Order of Conditions issued by the Conservation Commission, a small section, (41 sq. ft.) of the walkway near the shoreline will be within the 100-year floodplain elevation. As proposed the walkway will be at or below the existing grades, therefore there will be no impact to the flood storage capacity of the project. The proposed petition will not derogate from the intent and purpose of the Floodplain District nor endanger the health and safety of the public nor the legitimate use of other land in the City.

The Applicant will need to meet the requirements of the Building Department and the Conservation Dept. (Order of Conditions-DEP 212-1233).

The Board was concerned about the contours of the lot and the impact of the proposal may have to Ft. Meadow Reservoir.

A motion was made by Robert Levine and seconded by Thomas Pope to close the public hearing. A vote was taken: Paul Giunta-yea, Robert Levine-yea, Ralph Loftin-yea, Thomas Golden-yea and Thomas Pope-yea. Vote 5-0 carries to close the public hearing.

A motion was made by Paul Giunta and seconded by Ralph Loftin to GRANT a Special Permit under the Floodplain and Wetland Protection District with conditions. A vote was taken: Paul Giunta-yea, Robert Levine-yea, Ralph Loftin-yea, Thomas Golden-yea and Thomas Pope-yea. Vote 5-0 carries to GRANT a Special Permit with Conditions.

List of correspondence in Board's file:

1. Letter of denial from Jeffrey Cooke – dated August 19, 2020
2. Letter from Timothy Collins, Assistant City Engineer, date Oct. 15, 2020
3. Memo from Conservation Commission – dated Nov. 13, 2020

Based on the above, the ZBA **grants** this Special Permit under City Zoning Ord. 650-23, Floodplain and Wetland Protection District, subject to the following CONDITIONS:

1. The Applicant will comply with the plan presented entitled: "Site Plan, 192 Reservoir St. Marlborough, MA. Prepared by: Bruce Saluk & Assoc. Inc. dated: 8/12/2020 Last revised date: 10/28/2020 Sheet C1 (1 of 2)

2. The Applicant will comply with the Conservation Commission's Order of Conditions (212-1233) issued on November 20, 2020.

3. No Building Permits can be issued until such time as the Applicant presents to the Building Commissioner evidence that this special permit and variance decision has been filed with the Registry of Deeds or Land Court as applicable.

4. Any modifications to the Plan as noted on Condition #1 above, will be reviewed by the Building Commissioner and/or the Conservation Officer to see if it warrants a return to the Zoning Board of Appeals for review.

Respectfully submitted,

Paul Giunta
Chairman