

City of Marlborough
Zoning Board of Appeals
Minutes
September 20, 2018

ZBA Case #1448-2018
Applicant: Angelo Cruz
Location: 21 Helen Drive

The Zoning Board of Appeals, acting under the Marlborough Zoning Ordinance and General Laws, Chapter 40A, as amended, a meeting was held on August 7, 2018 (the applicant arrived late), continued to August 28, 2018 (did not have a quorum), and continued to Sept. 11, 2018.

Applicant, Angelo Cruz, proposes to construct an attached 2 car garage at the left of the existing house. The proposed side setback will be 10.5' \pm versus the maximum required 15' for Zoning District A-3. Chapter 650-41, Table of Lot Area, Yards and Height of Structures.

The property is in Zoning District A-3. The lot contains some 23,313 sq. ft. area. The shape of the lot is rectangular. The lot is fairly flat. There is a pool located at the rear of the lot. There are a few abutting lots similar in shape and size.

The applicant stated the following:

- a. The house was built in 1959.
- b. Some of the neighboring houses are similar in design.
- c. The abutting neighbor at 29 Helen Dr. received a building permit to construct an attached 2 car garage around 5 months ago. (In the file is a copy of a plan for the neighbor's attached 2 car garage which is 10.2 ft. from the side lot line) The garage at 29 Helen Dr. is similar to Ms. Cruz's petition before the Board this evening. The neighbor, at 29 Helen Dr. did not have to go through the variance process.
- d. She stated that the former Building Commissioner, prior to current Building Commissioner, Jeffrey Cooke was going to issue a building permit for her attached 2 car garage, but had to ask the city's legal department for clarification of a section of the **City of Marlborough's Table of Lot Area, Yards and Height of Structures (§ 650-41) specifically the foot note for Residence A-3, Minimum Side Yard. (Foot Note reads: Applies to all buildings erected on or after January 27, 1969; all others, 10 feet)** The applicant felt the rules were different for her, because she must go before the Zoning Board of Appeals for a variance.
- e. The applicant also stated, the former Building Commissioner asked for additional paper work before a building permit could be issued and by the time she could gather up the requested paper work, a new Building Commissioner was on board.
- f. The new Building Commissioner interpreted the above code differently. His interpretation is evident by his denial letter, dated June 18, 2018 to the applicant. (note there is an error in the denial letter. (1) "the existing structure has a left side yard setback of +/-23.5 ft. (it should be corrected to read: according to the certified plot plan 25.3 ft.)

- g. There will be no living area above the garage.
- h. The placement of the proposed attach 2 car garage at the left of the house is the only feasible location, because the existing driveway and curb opening is located at the left of the house.
- i. The applicant did not have any paper work to back up her above testimony.

No one was present to speak in favor or in opposition to the petition.

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

The Board finds the proposed attach 2 car garage will not have a negative impact on the appearance of the neighborhood and no substantial detriment to the public good. And would not substantially derogate from the intent and purpose of the zoning ordinance as there are similar additions in the area that do not the required 15 ft. from the side lot line.

A letter from the applicant to the Board, dated July 13, 2018, making the Board aware that a building permit was issued to an abutting lot at 29 Helen Dr. for a similar petition as her petition this evening. It was this earlier valid building permit to 29 Helen Dr. that the Board took into consideration in their decision of this case. (letter in Board's file)

A motion was made by Robert Levine and seconded by Thomas Pope to grant a variance.

After much discussion, the Board voted 4-0 to grant a variance with conditions.

The Board requested the secretary, Susan Brown, ask our legal department for an interpretation of the code as mentioned in #4 (d) above and to go into the Building file to see if there is a building permit for 29 Helen Dr. for an attached garage.


Conditions being:

- The proposed attached 2 car garage cannot be any closer than 10.5 ft. from the side property line, thus a deviation of 4.5 ft. If the deviation is greater than 4.5 ft. the applicant will re-file with the Zoning Board of Appeals for a new public hearing.
- There will not be any living space above the proposed garage.
- No Building Permits can be issued until such time as the applicant presents to the Building Inspector evidence that said variance with its restrictions has been filed with the Registry of Deeds or Land Court as applicable.

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

Plans: Proposed Plot Plan in Marlborough, MA for Cruz, Scale 1" = 40', dated May 9, 2018. Prepared by Stamski and McNary, Inc., 1000 Main St. Acton, MA .

Respectfully submitted,


Susan Brown – Secretary Zoning Board of Appeals