



**City of Marlborough**  
**Zoning Board of Appeals**  
**140 Main Street**  
**Marlborough, Massachusetts 01752**  
**Tel. (508) 460-3768**

**Minutes**  
**April 26, 2022**

**Variance Request**  
**Zoning Board of Appeals Case # 1488-2022**

**Applicant:** Lourival Santos

**Date of Appeal:** March 1, 2022

**Location of Subject Property:** 16 Clinton St.

**Petition:** To construct a new single-family dwelling at 16 Clinton St. located in Zoning District Residence B (RB). The proposal does not comply with Chapter 650 Article 41, "Table of Lot Area, Yards and Height of Structures" of the City Code of Marlborough. Required minimum side setback is 15 ft. vs. the proposed sides of 13.77 ft. and 13.75 ft. plus or minus.

**Meeting date:** April 5, 2022

Roll call of members present: Ralph Loftin-Chairman, Robert Levine, Thomas Pope, Thomas Golden and Paul Giunta. Also present were:

- Susan Brown- Secretary
- Tin Htway – Building Commissioner
- William Paynton – Building Inspector
- Applicant: Lourival Santos
- Representative: Atty. David Scimone, Esq. of Hornung & Scimone P.C., 5 Commonwealth Rd. 4<sup>th</sup> floor, Natick, MA 01760
- Abutter: Harold Dunn – 24 Clinton St. Marlborough, MA 01752 (speaking in favor of the petition)

It was noted to the audience that the Board is hearing a variance request. The audience was made aware that the public meeting was being recorded.

Atty. Scimone started the presentation at the opening of the public hearing. Mr. Santos, applicant arrived at 8:00 PM.

It should be noted that the Building Commissioner's denial letter dated Feb. 2, 2022 stated in part, "The proposed cantilevers for the second-floor framing, shown on the architectural plans were not included on the plot plan. These proposed cantilevers with the building wall lines are to be within the building setback and are not considered an allowable projection as per §650-40F(5)"

The shape of the lot is long and narrow, containing 6,470 sq. ft. with 55.8 ft. of frontage. Mr. Santos bought this lot from the City of Marlborough, with hopes that a variance would be granted again as with the “old” 2013 ZBA case.

Mr. Santos purchased 16 Clinton St. On July 26, 2017. He feels his proposal before the Board this evening is similar to what was granted in 2013. Instead of a 3 ft. deviation on one side, the applicant is proposed a 1 ½ ft. on each side yard setbacks.

The vote of 3-2 to deny the variance request.

On April 27, 2022, the day after the hearing date of April 26<sup>th</sup>. Atty. Scimone asked if the Board would rescind their denial vote to a “withdraw without prejudice”. After the secretary, Susan Brown, spoke with the city’s legal department, it was determined that as long as the decision was not filed with the city clerk’s office and the decision has not gone out to abutters, the Board could rescind their denial vote to a “withdraw without prejudice”.

At the Board’s May 10, 2022 meeting, the Board voted 4-0 to rescind their denial vote and allowed the applicant to “withdraw without prejudice”.

See ZBA Case #1488-2022 for further details.

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### **Variance Request**

### **Zoning Board of Appeals Case # 1489-2022**

**Applicant:** Gabriele Luzzi

**Date of Appeal:** March 4, 2022

**Location of Subject Property:** 60 Harvard St.

**Petition:** To provide a new 18 ft. x 18 ft. parking area located at 60 Harvard St. Map 82 Parel 11, Zoning District Residence B (RB) does not comply with Chapter 650, Article 41, Table of Lot Area, Yards and Height of Structures” of the City Code of Marlborough. The existing Lot Coverage to this legal pre-existing, non-conforming two family is 34.64% vs. the proposed 37.98% an increase of 3.34%.

**Meeting date:** April 26, 2022

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

- Susan Brown- Secretary
- Tin Htway – Building Commissioner
- William Paynton – Building Inspector
- Applicant: Gabriele Luzzi, 60 Harvard St., Marlborough, MA 01752
- Representative – Atty. Christopher Flood, Law Offices of Flood & Favata PC, 14 Winthrop St. Marlborough, MA 01752



Mr. Luzzi, applicant and his representative Atty. Flood were present.

Description of lot:

- This is a pre-existing non-conforming two-family structure
- House was construct in 1855
- As you face the house, along the right side there is a gravel driveway where 2 cars can park one in front of the other.
- The applicant would like to create an additional 2 spaces side by side on the left front portion of the lot.
- Existing Lot Coverage is 34.64% vs. the proposed 37.98%. A deviation of 3.34.%
- Shape – almost square shaped, similar to other lots in the area.
- Topography – slopes up on the west side of the property
- Contains 5,416 sq. ft. in area with 69.45 ft. of frontage

The stated **hardships** were:

- The topography of the lot slope uphill towards the rear. Cannot create additional parking spaces to the rear of the lot.
- The two-family structure needs additional parking for his tenants. Some of his tenants will park downtown or he would rent a spot for them on a neighboring lot.
- Difficult to keep cars off the street during winter snow ban.
- Adding two additional parking spaces will not be a detriment to the public good.
- Applicant is willing to create additional green space in another area on his lot to replace the greenery he will be removing for the parking spaces.
- It would be to the public's benefit to keep cars off the street.
- He had a photo of the area where the additional parking will be located. (Photo in board's file)

Ralph Loftin asked about rules for off street parking for single and 2 family structures. Tin Htway stated there are no rules/codes for the number of spaces for single- and two-family structures.

Robert Levine, Board Member, ask if a permit is necessary for another curb opening. Harvard St. has a sidewalk but no curbing. Answer: It was determined that if a variance was granted the applicant will go to the Engineering Dept. to see if a permit is needed for a second opening. It was also noted that this issue of a second opening was not addressed in the denial letter issued by the building department.

Ralph Loftin, Chairman, explained to the applicant that there are 3 factors the Board must consider before a variance can be granted. First, the property should be unique from others in the area in terms of shape, topography, or soil conditions; second, the hardship experienced by the applicant must arise from these unique features of the property; third, whether the variance can be granted without detriment to the public good. The Board must view the hardship as interfering with or preventing the use of the property as zoned if not relieved by the requested variance.

There were no questions from the audience.

Speaking in favor of the petition:

- 2 e-mails were read into the file: Christian Pinto, 261 Church St. Marlborough, MA, and Klaus Rangel, 79 Harvard St. Marlborough, MA

Speaking in opposition – None

Ralph Loftin explained to the applicant they may “withdraw without prejudice” or continue with a vote by the Board.

A motion was made by Robert Levine and seconded by Thomas Pope to close the public portion of the hearing. By a vote of 5-0 the public hearing was closed.

A motion was made by Robert Levine and seconded by Thomas Golden to grant the variance for a Lot Coverage deviation of 3.34%. By a vote of 5-0 the variance was granted with conditions.

A motion was made by Thomas Golden and seconded by Robert Levine to close the public hearing. By a vote of 5-0 the public hearing was closed.

There being no other business before the Board, a motion to adjourn was made by Thomas Pope and seconded by Robert Levine. By a vote of 5-0 the meeting was adjourned.

See ZBA Case # 1489-2022 for further details.

Respectfully submitted,

  
Susan Brown

Secretary – Zoning Board of Appeals