

# City of Marlborough

**Zoning Board of Appeals**

140 Main Street

Marlborough, Massachusetts 01752

Tel. (508) 460-3768

**Minutes**

**September 13, 2022**

Zoning Board of Appeals Case # 1494-2022 (Special Permit)

**Applicant:** Juan Sosa

**Date of Appeal:** July 27, 2022

**Location of Subject Property:** 42 Devens St. Map 70 Parcel 42

Zoning District Residence B

**Petition:** Special Permit Request – To renovate and convert a legal pre-existing, non-conforming single-family to a two-family residence at 42 Devens St. Located in Zoning District Residence B, the proposed additions and renovation do not conform with Chapter 650 Article 41 “Table of Lot Area, Yards and Height of Structures” of the City Code of Marlborough. The pre-existing non-conforming lot coverage of 46% is increased by 5% to 51%; the existing Rear Yard setback of 7.4 ft. is decreased by plus or minus 6 inches.

**Meeting date:** September 13, 2022

Roll call of members present: Ralph Loftin-Chairman, Robert Levine, Thomas Pope, Thomas Golden and Paul Giunta who arrived at 7:05 PM. Also present were:

* Susan Brown – secretary
* Tin Htway – Building Commissioner
* Lily Cabrera Serrano – from the Building Dept.
* Atty. Christopher Flood – applicant’s representative
* Applicants were present and introduced – they did not speak

**Documents in Board file:**

* The application with narrative and filing fee
* Zoning Determination letter – dated June 29, 2022
* Plan entitled: Building Permit Plot Plan, two family dwelling, 42 Devens St. Marlborough, MA, prepared by Guerriere & Halnon, Inc., stamped by Jeffrey Stepanik.
* Architectural plans prepared by Rosa Design & Construction dated 3/17/2022.
  + Police Chief Giorgi – letter of opposition - dated Sept. 12, 2022
  + Fire Chief Breen – e-mail of opposition - dated Sept. 13, 2022

This is a Special Permit request to convert a legal pre-existing non-conforming single-family home into a two-family residence with five paved off-street parking spaces on the lot will remain after the proposed renovations are complete. The existing single-family home was built in the 1900’s in a neighborhood consisting single family, two and three family residences. The lot is flat at street level, with a considerable slope to the rear. The existing lot area is 4,366 sq. ft. which is similar to other lots in the neighborhood.

Devens Street is one-way, very narrow and has parking permitted only on one side of the street. A winter parking ban goes into effect every year.

**Specific Findings:**

Details of the property located in Zoning District Residence B.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Lot Area | Zoning District RB | Required 8,000 sq. ft. | Existing 4,366 sq. ft. |  |  |
| Chapter 650, Article 41 – Table of Lot Area, Yards, and Height of structures | Lot Coverage | Required 30% | Existing 46% | Increase 5% = Propose 51% |  |
| Chapter 650, Article 41 – Table of Lot Area, Yards, and Height of structures | Front yard setback | Required 20 ft. | Existing 2.5 ft. | Propose 3.6 ft. |  |
| Chapter 650, Article 41 – Table of Lot Area, Yards, and Height of structures | Rear yard setback | Required 30 ft. | Existing 7.4. ft. | Propose +/- 6.9 ft. | +/- 6 inches |

The applicants were present, being represented by Atty. Christopher Flood, Law Offices of Flood & Favata, P.C. 14 Winthrop St. Marlborough, MA

Atty. Flood, stated the following:

* The house was built around the 1900’s.
* Due to the current building code the proposed staircase to the second-floor unit will be located inside the left (east) side of the house, causing an additional 5% lot coverage
* Allowing this single-family home to be converted into a two-family home will secure the zoning intent, as stated in Section 200-2 “purpose of the Zoning Ordinance.”
* Single- and two-family homes are allowed by right in this Zoning District.
* The structure is located in a residential neighborhood with similar homes including two family and three family homes on the same street.
* There is significant greenspace coverage on this lot and sufficient parking.
* Existing on the lot are five paved parking spaces, two spaces for the first floor, two spaces for the second floor and one space for guests.

The Board read into the file a letter dated September 12, 2022 from Police Chief Giorgi and an e-mail dated September 13, 2022 from Fire Chief Breen stating their opposition to the petition. (Correspondence in Board’s file)

Police Chief Giorgi’s opposition to the petition in part: “focuses on the possibility of adding more residential units to an already congested area.…an additional unit at this location would require at least two additional parking (if not more) to satisfy the needs of new tenants. The parking on Devens St. is already very tight as on-street parking is allowed on one side of the roadway. The congestion can negatively affect the ability of emergency vehicles to safely navigate the confines of the roadway.”

Fire Chief Breen’s email states in part: “I do not support issuance a variance/special permit….”

There were no questions from the audience. There was no one speaking in favor of or in opposition to the petition.

Board member, Robert Levine felt the proposal is a significant “use” change from a single family to a two family. Thus, creating more non-conformity to a lot that is already non-conforming.

Being no other questions from the Board or audience, a motion was made by Thomas Pope and seconded by Robert Levine to close the public portion of the hearing. By a vote of 5-0 the public portion of the hearing was closed.

**Decision of the Board:**

The Board discussed some of their concerns of the petition:

* There is an increase of lot coverage by 5%, an increase in nonconformity of over 10%.
* A public safety issue - Devens Street is currently one-way and narrow with one side parking allowed. To add more cars to the street would be more detrimental to the neighborhood and would potentially restrict access by emergency vehicles.
* Even though the lot has five parking spaces the question remains whether this will be enough to keep parked cars off the street in an already tight neighborhood, especially during the winter parking ban.
* The proposal would adversely impact the neighborhood by adding to population density in an already crowded area.

**DECISION**

**Denial of Special Permit**

The Board finds according to Marlborough Zoning Ordinance Chapter 650-58 (B)(3b) and Mass General Law Chapter 40A §6, the proposed project would be “substantially more detrimental” to the neighborhood.

* The proposed alterations and additions will intensify the pre-existing non-conforming nature of the lot. The proposed two family will create a larger structure (from 23% to 27%) adding to an increase nonconformity of Lot Coverage and Rear Yard setback. Creating a two family will result in more traffic in this neighborhood and will impact on-street parking, especially during the city’s winter parking ban in an already congested neighborhood. Please reference the comments by the Police Chief Giorgi concerning emergency and safety factors.
* Building a larger home on a substandard lot increases the non-conforming nature of the structure.
* To create a two-family structure on an already tight lot with topography constraints (deep slope at the rear) will create a potential issue for emergency vehicles and personnel to access the property.

Based on the above, a motion was made by Robert Levine and seconded by Thomas Golden to DENY a special permit. Ralph Loftin, Thomas Golden, Paul Giunta and Robert Levine voted to deny a Special Permit; Thomas Pope voted to grant a Special Permit By a vote of 4-1 the special permit was **DENIED**.

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

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Zoning Board of Appeals Case # 1492 (Appeal the Building Commissioner’s interpretation of Section 650-48A(7) Off-street parking and ZBA Case #1493 (Variance requests)

**Applicant:** Oxbow Urban LLC (represented by Atty. Brian Falk)

**Date of Appeal:** 7/27/2022

**Location of Subject Property:** 80-82 Northboro Rd.

**Petition:** To construct a 30-unit apartment building. The overall lot coverage to 64% and provide new landscaped areas along Northborough Rd. East. This proposal will require variances.

**Meeting date:** September 13, 2022

Roll call of members present: Ralph Loftin-Chairman, Robert Levine, Thomas Pope, Thomas Golden and Paul Giunta who arrived at 7:05 PM. Also present were:

* Susan Brown – secretary
* Tin Htway – Building Commissioner
* Lily Cabrera Serrano – from the Building Dept.
* Atty. Brian Falk (representing applicant)

The Board opened the public hearing. Atty. Falk requested a continuance in order for his client to redesign his plans after receiving feedbacks from abutters.

With no testimony heard or taken and by a vote of 5-0, the Board voted to continue the public hearing to Nov. 1st, 2022 at 7:00 PM.

Atty. Falk requested an Extension of Time to Nov. 30th, 2022 for the Board to vote on a decision. Form was signed by the applicant and placed on file.

By a vote of 5-0, the public meeting was adjourned.

Respectfully submitted,

Susan Brown - Secretary