



City of Marlborough Zoning Board of Appeals

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3768 Facsimile (508) 460-3747

Case # 1435-2014
Name: Glaucia V. Reis
Location: 12 Gates Ave.

Date: June 15, 2015

DECISION

Zoning Board of Appeal Withdraw Without Prejudice

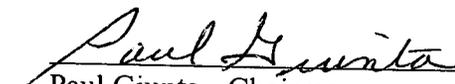
The Zoning Board of Appeals, acting under the Marlborough Zoning Ordinance and Mass. General Laws, Chapter 40A, Section 16, as amended, and after public meetings held on December 2, 2014, January 6, 2015 and June 2, 2015.

Members present: Paul Giunta-Chairman, Theodore Scott, Thomas Golden and Robert Levine.
Absent: Ralph Loftin

Petition: To install a driveway which will exceed the maximum 30% (724 sq. ft.) Lot Coverage (Chapter 650 §41 – Table of Lot Area, yards and Height Structures) for Zoning District Residence B. Proposed Lot Coverage is 842 sq. ft. with a deviation of 118 sq. ft. Also the proposal violates the 30% driveway grade (Chapter 650 §49B(3). Being Map 57, Parcel 151.

Due to the difficulty in finding an engineer to draw up plans as requested by the Board, the engineer she found needed more time to produce the plans. The Board voted 4-0 on June 2, 2015 to allow the applicant to Withdraw Without Prejudice the above mentioned petition.

And the said Board of Appeals further certifies that the decision hereto is a true and correct copy of its decision had been filed with the City Clerk.


Paul Giunta - Chairman *ss*

Submitted to the City Clerks' Office on June 15, 2015.



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Zoning Board of Appeals Record

The Zoning Board of Appeals, acting under the Marlborough Zoning Ordinance and General Laws, Chapter 40A, as amended, a meeting was held on December 2, 2014 with continuation dates of January 6, 2015 and June 2, 2015.

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

Proceedings:

1. **Date of Appeal:** October 14, 2014
2. **Name and Address of Applicant:** Glaucia V. Reis, 12 Gates Ave.
Marlborough, MA 01752
3. Administrative body from whose decision or order of appeal was taken:
Building Dept.
4. Appeal filed with: Zoning Board of Appeals and City Clerks' Office
5. **Nature & Basis of Appeal:** To install a driveway which will exceed the maximum 30% (724 sq. ft.) Lot Coverage (Chapter 650 §41 - Table of Lot Area, yards and Height Structures) for Zoning District Residence B. Proposed Lot Coverage is 842 sq. ft. with a deviation of 118 sq. ft. Also the proposal violates the 30% driveway grade (Chapter 650§49B(3). Being Map 57, Parcel 151.
6. **Section of the Zoning Ordinance involved:** See above #5
7. Notice was sent by Certificate of Mailing to parties in interest, including the petitioner, abutters, owners of land directly opposite on any public or private street or way, owners of land within 300 feet of the property lines, including owners of land in another municipality, all as they appear on the most recent applicable tax lists.
8. Original documents are on file with the Board of Appeals and the City Clerks' Office.

9. **Findings of Fact/Minutes**

1F. **Description of lot:** The lot area is 2,414 sq. ft. The lot is located at a dead end street, also known as 12 Gates Ave. The lot slopes from the rear down towards the front. It was mentioned that there is ledge on the lot in question and also on neighboring lots. It was not clear how the existing easement located between 11A Gates Ave. and 11 Gates Ave. functions for the 2 properties. There is a deteriorating stone wall at the front and side of the house. The stone wall with a stockade fence on top is located at the side property line (the applicant stated it marks the side property line).

2F. It appears that the neighboring properties are similar in size. The abutting lots do not sit on a slope. Most of the lots on Gates Ave. have driveways which provides them with off-street parking, especially during the winter parking ban.

3F. The applicant desires to construct a 11 ft. wide x 17 ft. bituminous driveway with a proposed retaining wall at the head of the proposed driveway. The existing stone wall with the stockade fence will remain and the existing stone wall at the front will be removed.

4F. List of plans and exhibits:

- Proposed Driveway Plot Plan of Land in Marlborough, MA Prepared by Atlas Land Surveying, Stamped by Todd P. Chapin, Land Surveyor. Dated 11/14/2005 Scale: 1" = 20'.
- Proposed Driveway, 12 Gates Ave. Marlborough, MA Dated: 9/30/2014 Scale: 1" = 20'. (notes handwritten on the plan)

6F. Specific Findings:

- In Board's file, there is a past case (ZBA Case #1336-2005) in which 12 Gates Ave received a variance for an 11 ft. x 29 ft. driveway. Variance was granted on Nov. 22, 2005 and has expired.
- Gates Ave. is a dead end street
- The applicant has owned the house for approximately 1 ½ yrs.
- Gates Ave. is very limited on off street parking spaces during the winter months. Homeowners without off street parking and sometimes their visitors, park at the Hildreth School parking lot.
- The applicant stated she has parked at the Hildreth School parking lot, but was told they cannot park there. Some of the neighbors stated they had no problems parking there long term.
- Snow removal on Gates Ave. has been an issue for homeowners for many years. Snow is usually plowed to the dead end street.

7F. Representing the applicant was Mr. Larent (brother in law to applicant) 157 Second St. Framingham, MA stated:

- He stated he is a skilled wall mason.
- Almost every house in the neighborhood has a driveway. It has become a necessity for the applicant to have a driveway, because

they were told by the police, they cannot park at the Hildreth School parking lot.

- The grade of the proposed driveway was discussed.
- He also mentioned that a variance was granted in the past and has expired.
- There is no curbing or sidewalk in front of 12 Gates Ave.
- He stated the plans presented to the Board are mis-represented. Not a proper representation of where gutter and sidewalks are located.
- The applicant did reduce the proposed driveway from what was approved by the ZBA in 2005. (ZBA Case # 1336-2005)
- Water run off – He stated water runs to a city storm drain. If a variance was granted, he could create a berm to direct the water to the city's storm drain. The Board would like to see a plan for drainage control.
- He is willing to do a perk test.
- He is willing to produce a topo map with grades.
- On a new plan, he will show actual dimensions of the house, walls, etc. on the lot. Also setback measurements.
- He feels the existing front steps are pre-existing non conforming.
- He could not understand how constructing a driveway could be a negative impact to the neighborhood.
- He stated there will not be any blasting on the property.

8F. The Board's concerns:

- The Board did not like the plans presented this evening. It did not show contours, setbacks, easements, etc.
- The Board was not sure if the proposed driveway will go over the existing easement which is located at 11A Gates Ave.
- The Board was not sure if the proposed driveway will be on city property or if vehicles will have to go over city property to enter the proposed driveway.
- The Board would like to see how water run off will be directed if the new driveway as constructed.
- There was some discussion about the existing deck which will be canter livered over the proposed driveway.
- Board Member, Ted Scott discussed Chapter 649-B(3) Grades and Chapter 649-B(4) Paving Material.
- A Board Member, Paul Giunta, suggested that the neighborhood ask their city councilor about the possibility of long term winter parking at the Hildreth School's parking lot.
- Existing side retaining wall can be removed, which will eliminate the safety issue some of the abutters expressed when existing from 11A and 11 Gates Ave. are currently having, thus creating a better visual.
- If a variance was granted, how will snow be removed/stock piled from the proposed driveway.

- If a variance is granted... the applicant must follow rules for removal of ledge. The applicant will contact the building dept and fire dept.
- An abutter was concerned on what types of vehicles will be parked in this proposed driveway. The abutter did not want to see any commercial vehicles parked in the driveway.

9F. **Abutters speaking:**

- 10 Gates Ave. – Paul Skoog stated the existing deck was built approximately 5 yrs. ago.
- 10 Gates Ave. – Kelly Skoog showed some pictures of the lot when it was on the market for sale. He felt that the abutting condo units has a drywell at the rear of the lot and water drains to the center.
- 45A Curtis Ave. – Karen Callahan She is located at the rear. She stated she has concerns about water run off onto her unit. How the lot in question will be graded and what type of vehicles will be parked at this location.

10F. **Abutters speaking in opposition:**

- 11 Gates Ave. – Elnad Headberg She stated she owns the right of way on the driveway. The proposed driveway will go over her existing driveway. The front stonewall will be removed, this is 7 ½ feet from her property. She was concerned about commercial vehicles being parked there.
- 11A Gates Ave. (condo units) – Julie Crawford She stated she owns the driveway into the condo units and it is stated in the deed. Her concerns were the following:
 - A safety issue – to exit out of her driveway, it will be difficult to see cars existing out of the proposed driveway.
 - There is an existing retaining wall which hinders visibility for cars exiting from 11A Gates Ave..
 - The city pushes snow to the dead end street. She would like to know where the snow will be removed from the proposed driveway.
 - The retaining walls on the side and front need some improvements. She stated the retaining wall on the side property line belongs to the applicant (12 Gates Ave.)
 - She also stated that when she parks at the Hildreth School parking lot, it is approximately a 2-3 min. walk to her house.

11F. **Speaking in favor of the petition:**

- Alda Morans – 92 Emer Rd. Marlborough, MA– stating that the proposed driveway will take additional cars off the street.

- 12F. **The Board would like to see on a new plan:**
- How this proposed driveway will be constructed. (the grade, retaining wall(s) if needed and material to be used for the proposed driveway.
 - Existing curbing on Gates Ave.
 - Contours of the lot. (The Board did not want to see spot grades)
 - How the water will run off from the site. Water cannot be directed to neighboring lots or onto city streets or property.
 - On the plan, show an accurate description of what is on the lot, and what is proposed for the lot.
 - Show the existing easements in and around the lot in question.
 - Show the adjacent abutters property lines in relation to 12 Gates Ave. (10 Gates Ave, 11A Gates Ave and 11 Gates Ave.)
 - A letter from the city's engineer about a proposed curb cut.
 - A perk test should be performed. When this test is performed, an independent witness should be present.

13F. With the applicant's approval, the hearing was continued to January 6, 2015 at 7:00 PM. The meeting was adjourned.

January 6, 2015 - The hearing was continued at 7:00 PM

14F. Members present: Paul Giunta-Chairman, Theodore Scott, Thomas Golden and Robert Levine. Absent was Ralph Loftin.

15F. Present this evening was the applicant, Glaucia V. Reis. (a woman speaking for the petitioner at times was Alda Morans – 92 Emer Rd. Marlborough, MA from our Dec. 2nd meeting.

16F. The petitioner did not present any plans or information as noted in # 10F above.

- 17F. The stated "**hardship**" by the applicant:
- The walk to and from the parking lot at Hildreth School every day during the winter parking ban is very tiring.
 - The city does not allow parking at the Hildreth School parking lot on a daily basis.
 - I had to move my parked car from the Hildreth School parking lot by 3:00 AM.
 - I tried to get new plans as the Board requested from the Dec. 2, 2015 meeting, but could not find anyone to draw up plans because of the holidays.

18F. The Board re-iterated that they needed engineered signed plans in order to make an informed decision. They explained to the applicant that a "hardship" must pertain to the soil conditions, topography or shape of the lot. A parking issue as stated above is not a "hardship".

19F. The Board gave the applicant the following options:

- To Withdraw without Prejudice (and the Board explained what that meant)
- To continue this evening with a vote, and if it is denied the petitioner cannot come back for 2 years with the same plan. (the Board explained what that meant)

20F. The Board read into the file an e-mail from Chris LaFreniere, dated December 10, 2014 RE: 12 Gates Ave. driveway variance. Stating in part: "she would have to submit a modified plan showing all proposed changes before our office could re-evaluate the matter".

21F. The applicant stated she would like to construct a permeable paved driveway. She also stated she understood that water run-off issues must be addressed. The applicant did not understand why her proposal of a driveway would bother anyone.

22F. Board Member, Robert Levine stated when the petitioner purchased the house, she should have had knowledge that there was be a parking problem for this lot.

23F. The Board explained to the applicant that even if they go into the expense of having new plans drawn up, they have to make their case to the Board and hopefully, the new plans will help the Board decide and evaluate the petition. The Board stated with the revised plans, the Board may or may not grant them a variance. The applicant understood.

24F. The applicant requested an "extension" of time for a decision to be made by the Board. (Note: The Board's decision shall be made within 100 days after the date of the filing of an appeal.) The "extension" of time will give her ample time to get the new plans drawn up vs. getting Denied or to Withdraw without Prejudice when the whole process basically starts from step 1.

25F. The applicant agreed that June 2nd, 2015 will be ample time to have new plans drawn up.

26F. On a motion by Thomas Golden and second by Theodore Scott, the Board voted 4-0 to grant the applicant an "extension" of time for a decision to be made by the Board to June 2, 2016.

27F. The Board voted 4-0 to continue the hearing to June 2, 2015 at 7:00 PM.

June 2, 2015 – The hearing was continued at 7:00 PM

28F. **Members Present:** Paul Giunta-Chairman, Theodore Scott, Thomas Golden and Robert Levine.

Absent: Ralph Loftin

29F. **History:** This is a continuation meeting from December 2, 2014 and January 6, 2015.

30F. Present this evening was the applicant Glauca V. Reis. Also present was Alda Morans, a friend.

31F. Ms. Reis requested to “Withdraw Without Prejudice” her petition before the Board. She stated that she had difficulty trying to find an engineer to draw up the plans that was requested of the Board from the January 6th meeting. She also stated she has contracted Bruce Saluk to do the engineering plans, but he needed more time to finish the plans, so no plans were presented this evening.

32F. After some discussion about why the Board wanted to see a survey plan of her lot, Paul Giunta made a motion to allow the applicant to “Withdraw Without Prejudice”. Motion seconded by Ted Scott. The Board voted 4-0 to allow the applicant to Withdraw Without Prejudice”

33F. A motion was made by Paul Giunta to close the public hearing, seconded by Robert Levine. A vote of 4-0 to close the public hearing.

34F. A motion was made by Paul Giunta to adjourn the meeting, seconded by Thomas Golden. A vote of 4-0 to adjourned the meeting.



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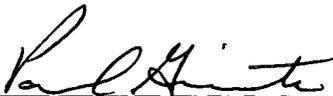
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Location: 12 Gates Ave.

VOTE OF THE BOARD Signature Sheet

In Favor

To Withdraw without Prejudice

In Opposition

Paul Giunta 

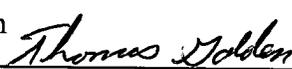
Paul Giunta

Theodore Scott 

Theodore Scott

Ralph Loftin

Ralph Loftin

Thomas Golden 

Thomas Golden

Mitchell Gorka

Mitchell Gorka

Robert Levine 

Robert Levine
