



**City of Marlborough  
Zoning Board of Appeals**

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

**FILE COPY**

ZBA Case 1441-2016  
Location: 185 Cullinane Dr.

Date: September 7, 2016

**Withdraw Without Prejudice  
(General Laws Chapter 40A, Section 16)**

To: Shawn McCarthy  
Address: 185 Cullinane Dr.  
City: Marlborough, MA 01752

affecting the rights of the owner with respect to land or buildings at:

**185 Cullinane Dr. Map 6, Parcel 95**

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

Any person aggrieved by a decision of the Board of Appeals or any special permit granting authority or by the failure of the Board of Appeals to take final action concerning any appeal, application or petition within the required time or by the failure of any special permit granting authority to take final action concerning any application for a special permit within the required time, whether or not previously a party to the proceeding, or any municipal officer or board may appeal to the superior court department in which the land concerned is situated.....by bringing an action within twenty (20) days after the decision has been filed in the Office of the City or Town Clerk. (Reference: Mass General Law Chapter 40A, Section 17)

Paul Giunta - Chairman

Susan Brown - Secretary

Submitted to the City Clerks' Office on **September 7, 2016.**



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Case # 1441-2016  
Name: Shawn McCarthy  
Location: 185 Cullinane Dr.

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## DECISION

### Zoning Board of Appeal Withdraw Without Prejudice Chapter 40A, Section 16

The Zoning Board of Appeals, acting under the Marlborough Zoning Ordinance and Mass. General Laws, Chapter 40A, Section 16, as amended, and after a public meeting held on July 26, 2016 with a continuation date of August 24, 2016 voted 4-0 to allow the applicant to **Withdraw Without Prejudice** the below mentioned petition:

**Members present:** Paul Giunta – Chairman, Theodore Scott, Thomas Golden and Ralph Loftin.

**Petition:** Shawn McCarthy proposes to construct an attached garage which will be at its closest point 7 ft. to the side lot line at one corner and 9 ft. at another corner vs. the 10 ft. minimum required - (structure built prior to 1969). The property in question is located at 185 Cullinane Dr. being Map 6, Parcel 95 of the Assessor's Maps. (Zoning District A-3)

In accordance to Chapter 40A, Section 16, the Board gave the applicant the option to go back to the drawing board to re-design the location of his proposal for an attached two car garage. The applicant agreed to "Withdraw Without Prejudice" his petition. The Board voted 4-0 to allow the applicant to "Withdraw Without Prejudice".

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

  
\_\_\_\_\_  
Paul Giunta- Chairman

Submitted to the City Clerks' Office on September 7, 2016.



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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 July 26, 2016 with a continuation meeting date of August 24, 2016.

**Board Members present were:** Paul Giunta – Chairman, Thomas Golden, Ralph Loftin and Theodore Scott.

Proceedings:

1. **Date of Appeal:** June 15, 2016
2. **Name and Address of Applicant:** Shawn McCarthy, 185 Cullinane Dr. 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:** Shawn McCarthy proposes to construct an attached garage which will be at its closest point 7 ft. to the side lot line at one corner and 9 ft. at another corner vs. the 10 ft. minimum required - (structure built prior to 1969). The property in question is located at 185 Cullinane Dr. being Map 6, Parcel 95 of the Assessor's Maps. (Zoning District A-3)
6. **Section of the Zoning Ordinance involved:** Chapter 650 Attachment 2 (Table of lot area, yards, and height of structures).
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:**

1F. The property in question is located in Zoning District A-3, being Map 6, Parcel 95 of the Assessor's Maps. The existing street line of the lot is a 90° angle rather than a radius causing the front lot corner to be located into the lot. The topography is very steep extending from the patio area to the shore of Ft. Meadow Reservoir. The lot contains some 14,885 ± sq. ft.

2F. The majority of the abutting lots in the neighborhood are smaller in area. 185 Cullinane is one of the largest lots in the area with a larger lot #181 Cullinane containing some 17,000 ± sq. ft. All other lots in the area contain 5,000 ± sq. ft.

3F. **Petition:** The applicant is proposing to construct an attached 2 car garage (22 ft. x 26 ft.) with a 6.6 ft. breezeway. The proposed garage (corner) is some 2.0 ft. from the corner of the existing house. The proposed garage will be 15 ft. from the front lot line vs. the 20 ft. minimum required. The proposed side lot line setback will be 7 ft. at its' closest point. (built prior to 1969) The applicant is seeking a variance in accordance to Mass General Law Chapter 40A §10.

4F. **Submittals:**

- The applicant submitted a plan entitled: Certified Plot Plan in Marlborough, MA 185 Cullinane Dr. Prepared by Savello & Associates, 32 Pearl St. Marlborough, MA dated: April 19, 2016 (Rev. June 10, 2016) – in Board's file.
- A statement letter from the applicant, dated July 26, 2016 (in Board's file) which was read by the applicant.
- The applicant submitted to the Board for their file a few photos of lots in the area being built with structures that do not conform to current setbacks. (photos in Board's file)

5F. Present this evening was the applicant Shawn McCarthy and his wife, their representative – Karen Keegan of Guarantee Builders. Also in the audience was Virginia Daluise owner of 181 Cullinane Dr.

6F. **Site specifics:**

- On the lot is a shed at the rear of the property.
- At the side of the house where the proposed garage will be constructed, is a side egress and a bulk head.

- At the rear of the lot is Ft. Meadow Reservoir.
- This is a pre-existing non-conforming lot.
- Most of the lots in this area are pre-existing non-conforming. (Built prior to 1969)
- The shape of the lot is pie shape, flaring outward and slopes to the rear down to Ft. Meadow Reservoir. Similar lots located on this side of Cullinane Dr. slopes down to Ft. Meadow Reservoir.
- The front lot line is joined to create a 90° angle.
- The existing house is 18.8 ft. to the front lot line.
- The other side of the house has a considerable slope with less area to construct.

7F. The stated **hardship** by the applicant are as follows:

- The topography of the lot – having a steep drop at the rear of the lot, leaves less level land to construct any structure.
- The 90° angle as the front lot line, adds to the difficulty of positioning an attached two car garage.
- The location of the existing side egress and the bulk head further adds to their limited options for this garage.
- To locate this proposed 2 car garage in another location on the lot would impede his and his neighbors' view of the lake.
- Environmentally, he felt it would be better to located his proposed two car garage further away from Ft. Meadow Reservoir, thus creating less of an impact to the lake.
- He could remove the existing shed at the back, and move the proposed garage toward that location, but the back wall of the garage may have to be 10 ft. tall due to the slope of the lot.
- Cannot remove the bulk head because of the cellar configuration. The cellar is only under the middle third of the house
- To move the proposed garage closer to the side of the house, would result in having to relocate their side egress and bulk head. They would have to reconfigure the kitchen (which will be costly).

8F. Appearing in **favor** of the petition:

- Virginia Daluise – 181 Cullinane Dr. She was in favor of the proposed petition. She commended the applicant for locating the proposed 2 car garage in an area of the lot which will not block the neighbors' view of the lake.

9F. No one appeared in opposition.

10F. The Board determined:

- The proposed attached two car garage could be a one car garage, thus not needing a variance for side yard setback.
- It could be a detached garage.
- Eliminate the proposed breezeway and move the side egress and bulkhead, so a variance for side setback is not needed.
- Some Board members felt that the front yard setback was legitimate criteria for a variance.
- Lacking insufficient lot area, being an inconvenience, or being financially feasible to the applicant, does not constitute a hardship.
- The applicant's testimony did not meet the criteria for a variance as quoted in Mass. General Law Chapter 40A §10.

11F. The Board gave the applicant the option to Withdraw Without Prejudice, so he can go back to drawing board to see if he can come up with a better plan. The Board explained to the applicant that there are 4 members present, and in order to receive a variance he must get 4 affirmative votes. If he received a denial, he can't come back to the Board with the same plan for 2 years.

12F. After much discussion and hoping the Board would recognize his good intentions to improve his lot and not to impede his neighbors' view of the lake, the applicant requested to "Withdrawn Without Prejudice".

13F. On a motion by Theodore Scott and seconded by Paul Giunta, and with a vote of 4-0, granted the applicant to Withdraw Without Prejudice.

14F. With no other testimony taken or given, the public hearing was closed.



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**Location: 185 Cullinane Dr.**

**Applicant: Shawn McCarthy**

**VOTE OF THE BOARD**  
**Signature Sheet**

**In Favor**

**In Opposition**

*To withdraw ~~without~~  
without prejudice*

Paul Giunta

*Paul Giunta*

Paul Giunta

Theodore Scott

*Theodore Scott*

Theodore Scott

Ralph Loftin

*Ralph Loftin*

Ralph Loftin

Thomas Golden

*Thomas Golden*

Thomas Golden

Robert Levine

Robert Levine