



City of Marlborough Zoning Board of Appeals

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

ZBA Case 1483-2022
Location: 61 Emmett St.

Date: April 11, 2022

Denial

The Board of Appeals of the City of Marlborough, MA hereby certifies that the appeal has been DENIED:

To: Sergio Dearaujo

Address: 61 Emmett St.

City: Marlborough, MA 01752

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

61 Emmett St. Map 81 Parcel 126

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.

Ralph Loftin - Chairman

Susan Brown - Secretary

Submitted to the City Clerks' Office on **April 11, 2022.**



City of Marlborough
Zoning Board of Appeals
140 Main Street
Marlborough, Massachusetts 01752
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Record and Decision
Variance Request

Zoning Board of Appeals Case # 1483-2022

Applicant: Sergio Dearaujo

Date of Appeal: December 17, 2021

Location of Subject Property: 61 Emmett St.

Petition: This petition involves three variance requests: (1) To demolish an existing retaining wall and construct a new retaining wall. Relief sought: Chapter 650-41 of the City Code of Marlborough, existing Lot Coverage is 34.4% vs. the proposed 45.8%. (2) Chapter 650-48 Driveway modification does not conform to off street parking. Relief sought: Existing driveway width is ± 34 ft. vs. the proposed ± 62 ft. (3) Chapter 65048C(5)(a)(1) off-street parking shall not be permitted in the area between the front lot line and the prescribed minimum front yard. Relief sought: Chapter 48C(5)(b)(1) Parking side and rear yard, proposing 4 ft. vs. required 5 ft. Property is located at 61 Emmett St. being Map 81 Parcel 126, located in Zoning District Residence C (RC).

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: Sergio Dearaujo
- Two members of the public: abutters at 159 W. Main St. and 49 Emmett St.

Documents in Board's file:

- ZBA applicant form with filing fee of \$130.00
- Denial letter from building department dated December 9, 2021
- Drawings entitled: Certified Plot Plan showing Proposed retaining wall, prepared by Hogan Surveying, Dated 12/2/2021
- Letter from Thomas DiPersio, City Engineer, dated 12/30/2021 Re: Fence in public way-61 Emmett St.
- Color photos of the property.
- A document that addresses the retaining wall easement for 58 Emmett St.

- Extension Permit granted on Jan. 17, 2022 to extend opening of hearing to April 5, 2022.

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.

Public Hearing:

1. The applicant described his proposal to create additional off-street parking.
2. The applicant stated hardships were:
 - This is a single-family house with 3 people residing at this location. The existing driveway will only accommodate two cars. He also has a cargo van. There is a garage, but it is used for storage.
 - It is difficult during the winter parking ban to park vehicles in his driveway.
 - The applicant also desires an additional parking space for his son who will have a car in the future.
 - He also pointed out that his proposal would be an asset to the neighborhood in keeping additional cars off the street.
3. Questions from the audience:
 - An abutter from 159 West Main St. had some questions regarding the location of 61 Emmett St. to his property. After some discussion, they realized they will not be impacted by this petition.
4. Speaking in favor of the petition:
 - An abutter from 49 Emmett St. stated she is in favor of the petition. She stated that Emmett St. is a very busy street. For the applicant to create more parking on his lot will mean fewer cars to park on the street during the winter parking ban. Her concern is that if a variance was granted, she wanted to be assured that this will not create any additional silt or water run-off from 61 Emmett St.
5. Speaking in opposition – None
6. A motion was made by Paul Giunta, seconded by Thomas Pope to close the public portion of the hearing. By a vote of 5-0, the public portion of the hearing was closed.
7. Some of the Board Members felt that the applicant's stated hardship was not sufficient to grant a variance.
8. The Board discussed whether if variances were granted, the applicant would go before the Site Plan Review Committee with their petition, as the denial letter states. It was noted that one- and two-family structures are exempted from this process. The Board can make this a condition if a variance is granted.
9. There is a document in Board's file that addresses the retaining wall easement at 58 Emmett St. (located to the left of 61 Emmett St.) but not the other retaining wall portion (located at the right of 61 Emmett St.) that is on the city's property ROW.

FINDING OF FACTS:

1. The neighborhood is a congested area with many cars and homes.
2. 61 Emmett St. is at the end of a dead-end street; sloping slightly towards the street.
3. The street is narrow with parking permitted on both sides of the street.
4. Off street parking in the neighborhood is difficult to find during the city's winter parking ban.
5. The city's GIS map shows other lots in the area that are similar in area and shape.
6. Facing 61 Emmett St. to the left is a retaining wall easement on 58 Emmett St. the other retaining wall portion (located to the right) is on city property/ROW (according to the Grant of Easement in Board's file provided in an e-mail from Tin Htway, Building Commissioner).

DECISION

A motion was made by Thomas Golden and seconded by Thomas Pope to grant the variance for Lot Coverage. By a vote of 3-2 the vote did not carry. Because the vote did not carry, the other 2 variance requests became moot. Thus, the petition was denied.

The Board felt the hardship as stated by the applicant does not arise from the soil conditions, shape, or topography of the land, thus is not a hardship according to Mass. General Law Chapter 40A Section 10.

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, applicant 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)

Respectfully submitted,



Ralph Loftin – Chairman
Zoning Board of Appeals



**City of Marlborough
Zoning Board of Appeals**

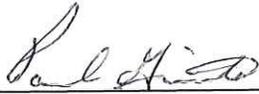
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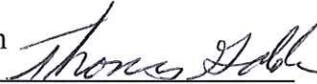
Applicant: Sergio Dearaujo

**VOTE OF THE BOARD
Signature Sheet**

IN FAVOR

Paul Giunta 

Ralph Loftin

Thomas Golden 

Thomas Pope 

Robert Levine

IN OPPOSITION

Paul Giunta

Ralph Loftin 

Thomas Golden

Thomas Pope

Robert Levine 
