



City of Marlborough Zoning Board of Appeals

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

ZBA Case 1488-2022
Location: 16 Clinton St.

Date: May 11, 2022

Withdraw Without Prejudice

The Board of Appeals of the City of Marlborough, MA hereby certifies that the variance request has been **withdrawn without prejudice**:

To: Lourival Santos Represented by: Atty. David Scimone, Esq. of Hornung
Scimone P.C. – 5 Commonwealth Rd. 4th Floor, Natick, MA 01760

Address: 24 Hager St.

City: Marlborough, MA 01752

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

16 Clinton St. Map 58 Parcel 7

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.

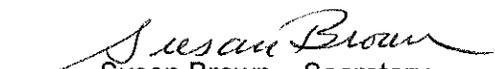
DECISION

Petition: To construct a new single-family dwelling at 16 Clinton St. Map 58 Parcel 7. 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.

At the May 10, 2022 hearing date, at the request of the applicant's attorney, the Board voted 4-0 to rescind their "denial" vote from the April 26, 2022 hearing date, to allow the applicant to "withdraw without prejudice".

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)


Ralph Loftin - Chairman


Susan Brown – Secretary

Submitted to the City Clerk's office on May 11, 2022.



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Zoning Board of Appeals

140 Main Street
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Record and Decision
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. (Map 58 Parcel 7)

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 26, 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 (arrived at 8:00 PM)
- Representative – Atty. David Scimone, Esq. of Hornung & Scimone P.C. 5 Commonwealth Rd. 4th floor, Natick, MA 01760
- Abutter – Harold Dunn-24 Clinton St. Marlborough, MA

Documents in Board's file:

- ZBA applicant form with filing fee of \$130.00
- Denial letter from building department dated Feb. 2, 2022
- Plan entitled: Residential Site Plan, dated 1/24/2022, 1-1. Prepared by hs&t group, Inc.
- List of Drawings entitled 16 Clinton St. New Construction A-1 thru A-8

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. Atty. Scimone started the presentation at the opening of the public hearing at 7:00 PM, noting that his client, Lourival Santos, applicant, will be arriving late. Atty. Scimone stated that Mr. Santos will answer any questions concerning architectural designs when he arrives. Atty. Scimone stated that he and his client would appreciate the Board waiting for Mr.

Santos's arrival before hearing the case. The Board agreed to delay until after the scheduled 7:30 hearing and hear the 16 Clinton St. appeal when Mr. Santos arrives. The Board and applicant agreed.

2. 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)."
3. Atty. Scimone's presentation:
 - This is an empty lot. The proposal is to construct a new single-family Garrison style home with 3 bedrooms. The second level will cantilever out 1 ½ ft on each side. The second level requires variances for side yard setbacks. The first floor is conforming to side yard setbacks.
 - 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.
 - History of the lot
 - 16 Clinton St. came before the Zoning Board of Appeals on June 13, 2013 ZBA Case #1416-2013. The applicant was Marlborough Community Development Authority. A variance was granted for one side yard setback of 12 ft. vs. the minimum required of 15 ft., a deviation of 3 ft. The variance expired after one year. Plans were not submitted at that time because the city did not want to incur the expense of creating plans if a variance was denied.
 - Mr. Santos, applicant, 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 proposing a 1 ½ ft on each side yard setbacks. There was some discussion about the "old" ZBA Case 1416-2013 and what the hardship was at that time.
4. Robert Levine, Board Member, stated if a variance was not granted, the applicant would not be prevented from using the property as it is zoned, Residence B. This is an empty lot; the size of the house could be adjusted to fit on the lot without the need for variance relief.
5. Paul Giunta, Board Member, stated that if the cantilever was eliminated, there would be no need for variances. "I do not see a hardship."
6. The Board asked the attorney if he would like to continue to a date certain rather than wait for Mr. Santos to appear. The Board with the consent of the attorney decided to recess until Mr. Santos arrives, after the scheduled 7:30 hearing.
7. The Board proceeded to hear the scheduled 7:30 PM appeal for 60 Harvard St.

8. **At 8:12 PM** the Board continued with Mr. Santos present. It appeared the recording stopped. Scott Parmenter from IT was called, and he stated it was still recording. But in viewing the recording the next morning, it appears the recording did stop when the Board resumed hearing 16 Clinton St.

9. **Hardship** as stated by Mr. Santos and Atty. Scimone:

- If a smaller house is proposed for this lot, the applicant would not be able to build a functional residential dwelling with a functional floor plan.
- Mr. Santos stated that the prior building commissioner, Doug Scott, suggested that he buy 16 Clinton St. Mr. Santos, feeling comfortable that since a variance was granted back in 2013 and his proposal is similar to the 2013 case, a variance would be re-issued. Mr. Santos has no documentation of the conversation he had with the prior building commissioner.
- This is a very narrow lot. The second floor requires variances for side yard setbacks. The first floor is in compliance with side yard setbacks.
- The extra footage granted with a variance would create a better-looking house for the neighborhood with larger rooms in the proposed house.

10. Ralph Loftin, Chairman, stated he sat on the 2013 ZBA case and had voted in favor of a variance. Since then, having learned more about the definition of “hardships,” he applies a more rigorous test than simple inconvenience. Variances should be difficult to achieve. There is nothing unique about this lot compared to some other lots in the neighborhood. Being an empty lot, a new house can be built to fit into this lot without variances. Another style of house, instead of a Garrison may be more appropriate for the lot. The need for a variance is self-imposed. It is the house plan that gives rise to the need for a variance, not the shape, topography, or soil conditions of the lot.

11. Ralph Loftin, Chairman, explained the options available to the applicant as the Board discusses the case. The board may approve the appeal and grant the variance, deny the appeal (in which case the same plan cannot be resubmitted within 2 years), or withdraw without prejudice.

12. There were **no questions** from the audience.

13. Speaking in **favor** of the petition:

- Harold Dunn – 24 Clinton St. – asked about the front yard setback and the proposed 2 car garage. He noted how the lot slopes upward to the proposed house and asked if there will be any grading? Answer-slight grading. Will there be just back stairs and no deck? Answer-correct.

14. Speaking in **opposition** – None

15. Robert Levine, Board Member, stated he felt the applicant has stated a legitimate hardship. The topography being on a slight slope and the narrow shape of the lot. To create a functional dwelling, a variance would be needed. But a smaller house could be built.

16. A motion was made by Robert Levine, seconded by Paul Giunta to close the public portion of the hearing. By a vote of 5-0 the public hearing was closed.

Discussion:

- Robert Levine felt the applicant has met the requirements to approve the petition. The topography and shape of the lot are unique. And the Zoning Board of Appeals did issue a variance back in 2013 with similar hardships.
- Thomas Golden felt that the shape of the lot is unique. And the Zoning Board of Appeals did issue a variance back in 2013.
- Ralph Loftin felt that there are other narrow lots in the area that are similar to the property in question. That when he sat on the 2013 case and granted the variance, he now realizes it was a mistake on the part of the Board. He also felt the applicant can build a style of house that would fit on the lot without the need for variances. The proposed plan is the hardship, and the hardships are self-inflicted.

17. A motion was made by Robert Levine and seconded by Thomas Golden to grant variances for side yard setback. Robert Levine, Thomas Golden and Thomas Pope voted in the affirmative. Ralph Loftin and Paul Giunta voted in the negative. By a vote of 3-2 the variance request was denied.

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

19. 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.

DECISION

According to Chapter 40A Section 10, the Board felt that the applicant's stated hardship was not sufficient to grant a variance. The applicant's hardship is self-created in purchasing a lot that has constraints and designing a house that will require variances. The applicant does have options in the style of house to build or to create a smaller house that would fit on the lot.

20. May 10, 2022 – hearing date

Board Member present: Ralph Loftin-Chairman, Robert Levine, Paul Giunta and Thomas Golden. Absent-Thomas Pope

- The applicant's attorney called the day after the close of the public hearing on April 26, 2022 requesting the Board to "withdraw without prejudice" their petition from a "denial" vote on April 26, 2022.
- The Board's secretary informed Attorney Scimone that she will ask for a legal opinion thru the city's legal department.
- After speaking with the City Solicitor, Jason Grossfield, on May 4, 2022, it was determined that the applicant can request the Board to reconsider their "denial" vote to a "withdrawal without prejudice". As long as the "denial" was not filed, and the decision has not gone beyond the 100 days for a decision. (Which has not for both)

- This item was placed on the ZBA's May 10, 2022 agenda under "Discussion" in which a vote of the Board will be taken.
- With a brief discussion, on a motion by Robert Levine and seconded by Ralph Loftin to rescind the "denial" vote of April 26, 2022 and grant a "withdrawal without prejudice". By a vote of 4-0 to rescind the "denial" vote and granted the applicant to "withdraw without prejudice."

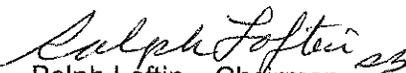
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Respectfully submitted,


Ralph Loftin – Chairman
Zoning Board of Appeals

Submitted to City Clerk's office on May 11, 2022.



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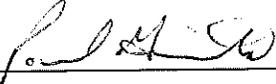
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Applicant: Lourival Santos

VOTE OF THE BOARD
 Signature Sheet

In Favor
To Withdraw Without Prejudice

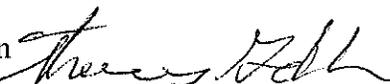
In Opposition
To Withdraw Without Prejudice

Paul Giunta 

Paul Giunta _____

Ralph Loftin 

Ralph Loftin _____

Thomas Golden 

Thomas Golden _____

Thomas Pope _____

Thomas Pope _____

Robert Levine 

Robert Levine _____