



**City of Marlborough
Zoning Board of Appeals**

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

ZBA Case # 1457-2019
Location: 18 Chestnut St.

Date: October 15, 2019

**(General Laws Chapter 40A, Section 16)
Zoning Relief (variance)**

To: Osanir De Oliveira
Address: 133 Lincoln St.
City: Marlborough, MA 01752

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

18 Chestnut St. Map 69 Parcel 301

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision and of all plans referred to in the decision, have been filed with the City Clerk.


Paul Giunta - Chairman


Susan Brown - Secretary

Submitted to the City Clerks' office on October 15, 2019.



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Name: Osanir De Oliveira
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Zoning Board of Appeals Decision Zoning Relief

The Zoning Board of Appeals, acting under the Zoning Ordinance of the City of Marlborough and the Zoning Enabling Act of the Commonwealth of Massachusetts a public hearing held at the Marlborough City Hall, 140 Main St. on August 27, 2019. With a continuation date of September 10, 2019 and October 1, 2019.

Members Present: Paul Giunta-Chairman, Thomas Pope, Robert Levine and Thomas Golden.

Nature & Basis of Appeal: Osanir De Oliveira proposes to construct a new duplex (2 family home) at 18 Chestnut St., Map 69, Parcel 301 of the Assessors Maps. Located in Zoning District Residence B (RB). The applicant is applying for the following:

Special Permit for:

- Required Lot Frontage is 100 ft. vs. the existing 82.5 ft. per Marlborough City Code Table 650-41. (Special Permit request will be heard separately.)

Use originally requested requires zoning relief (variances):

- Required maximum Lot Coverage of 30% vs. the proposed 53%. Per Marlborough City Code Table 650-41.
- Required minimum rear yard 30 ft. vs. the proposed bulkhead encroaches into the rear yard approximately 10.7 ft. thus, a deviation of some 19.3 ft.
- Proposing 2 curb cuts and driveways. Only one curb cut is allowed per Marlborough City Code 650-49B(2)(a) There shall be no more than one driveway street connection for lots with less than 200 ft. of frontage.

The Board finds:

- Due to the pre-existing non-conforming nature of the lot having 82.5 ft. of frontage vs. the minimum required 100 ft. has created a narrow lot, thus created the applicant's hardship.
- On Chestnut St. and surrounding neighborhoods, there is a mixture of single- and two-family homes and a few multi-family homes.
- Also, on Chestnut St. and surrounding neighborhood, the house lots are similar in size and shape to the lot in question.
- The lot in question is located in Zoning District Residence B. The bulk of the neighborhood are single- and two-family homes. With a few multi-family homes.
- Desirable relief may be granted without substantially derogating from the intent and purpose of the zoning bylaw because a zoning relief of 33% vs. the maximum

required 30% for Lot Coverage is minimal. The proposed 2 family duplex meets or exceeds all other zoning requirements. This is an old neighborhood in Marlborough, and a considerable number of lots in the area do not conform to the city's current zoning codes concerning lot coverage, setbacks and lot shape.

Therefore, the Board **votes 4-0 to grant a variance for Lot Coverage with the following restrictions:**

1. The only zoning relief granted is for Lot Coverage according to Chapter 650-41 (Marlborough City Code Table). The applicant will reduce their Lot Coverage to 33% vs. the 39% as shown on their revised plan: Dated revised - 9/25/2019, Proposed Conditions Plot Plan 18 Chestnut St. Marlborough, MA Prepared by: Bruce Saluk & Associates, Inc. Stamped by: Bruce Saluk. (By eliminating the 2 open decks at the rear and the front walkway, they were able to reduce Lot Coverage to 33%)
2. The applicant will present a revised plan showing the reduced Lot Coverage of 33% to the Building Department for their review and approval, prior to the issuance of a Building Permit. And provide a copy of the revised approved plan to the Zoning Board of Appeals.
3. No Building Permit can be issued until such time as the applicant presents to the Building Inspector evidence that said variance with its restrictions has been filed with the Registry of Deeds or Land Court as applicable.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section II (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the city clerk that twenty days have elapsed after the decision has been filed in the office of the city clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the Registry of Deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

If the rights authorized by a variance are not exercised within one (1) year of the date of grant of such variance, such rights shall lapse; provided however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six (6) months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period.

Respectfully submitted,


Zoning Board of Appeals
Paul Giunta – Chairman

Submitted to the City Clerk's office on October 15, 2019.



City of Marlborough Zoning Board of Appeals

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Name: Osanir De Oliveira
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Zoning Board of Appeals Zoning Relief (Variance) Record

The Zoning Board of Appeals, acting under the Marlborough Zoning Ordinance and General Laws, Chapter 40A, as amended, a meeting was held on August 27, 2019. With a continuation date of September 10, 2019 and October 1, 2019.

Board Members present were: Paul Giunta-Chairman, Thomas Pope, Robert Levine and Thomas Golden.

Proceedings:

1. **Date of Appeal:** July 25, 2019
2. **Name and Address of Applicant:** Osanir De Oliveira, 133 Lincoln St. 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:** Osanir De Oliveira proposes to construct a new duplex (2 family home) at 18 Chestnut St., Map 69, Parcel 301 of the Assessors Maps. Located in Zoning District Residence B (RB). The applicant is applying for the following:

Special Permit for:

- Required Lot Frontage is 100 ft. vs. the existing 82.5 ft. per Marlborough City Code Table 650-41. (Special Permit request will be heard separately.)

Use requested requires zoning relief (variances):

- Required maximum Lot Coverage of 30% vs. the proposed 53%. Per Marlborough City Code Table 650-41.

- Required minimum rear yard 30 ft. vs. the proposed bulkhead encroaches into the rear yard approximately 10.7 ft. thus, a deviation of some 19.3 ft.
- Proposing 2 curb cuts and driveways. Only one curb cut is allowed per Marlborough City Code 650-49B(2)(a) There shall be no more than one driveway street connection for lots with less than 200 ft. of frontage.

6. Section of the Zoning Ordinance involved: See above #5

7. Notice was sent by Certified Mail by the applicant 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. A re-notification to abutters were mailed out Certificate of Mailing on August 23, 2019 to ensure that abutters were notified. The initial notices to abutters were not properly done by the applicant.

8. Original documents are on file with the Board of Appeals and the City Clerks' Office.

9. **Findings – Zoning Relief (variance)**

The public hearing was opened on August 27th, 2019 but was continued to Sept. 10th, 2019 in order for abutters to be notified properly.

1F. The Board informed the audience that there are two processes to this petition. One is for zoning relief (variances) and the second for a Special Permit. Zoning Relief will be heard first.

2F. The Board opened the public hearing with the reading of the legal notice for **zoning relief** on the below 3 items:

- Required maximum Lot Coverage of 30% vs. the proposed 53%. Per Marlborough City Code Table 650-41.
- Required minimum rear yard 30 ft. vs. the proposed bulkhead encroaches into the rear yard approximately 10.7 ft. thus, a deviation of some 19.3 ft.
- Proposing 2 curb cuts and driveways. Only one curb cut is allowed per Marlborough City Code 650-49B(2)(a) There shall be no more than one driveway street connection for lots with less than 200 ft. of frontage.

3F. The property is located in Zoning District Residence B (RB), being Map 69, Parcel 301 of the Assessors Maps.

4F. The lot contains 8,162 sq. ft. according to applicant's plot plan. The Assessor's Map show 9,014 sq. ft.

5F. Lots in the area are similar in size, shape and topography.

6F. The applicant, Osanir De Oliveira, was present. Also, her architect, Jose Cuzman of Lifetime Architecture, 15 Maple Tree Ln. Franklin, MA 02038 Tel 617-448-7506.

7F. **Proposal:** The applicant proposes to construct a new duplex, 2 story structure. Each unit will have 2 bedrooms, totaling 4 bedrooms.

8F. **Existing before demolition and proposed:** A single family structure with one curb opening for a driveway. Square footage of this single-family structure according to assessor's data was 1,604 sq. ft. The proposed square footage will be some 1,601 sq. ft.

9F. The applicant provided **plans** entitled:

- Plot Plan, 18 Chestnut St. Marlborough, MA Prepared by Bruce Saluk & Associates, Inc. dated June 14, 2019 Scale 1" = 20' .
- Plans entitled: Two Unit Townhouse, 18 Chestnut St. Marlborough, MA Prepared by: LifeTime Architecture, 15 Maple Tree Lane, Franklin, MA Sheets 1 thru 8.

10F. Exhibits: The applicant provided to the Board a few names that were in favor to the petition. The Board read the names to the audience. (names placed in Board's file)

11. The applicant, Osanir De Oliveira stated the following:

- She would like to construct a duplex in place of the single family which she demolished that was in poor condition.
- She and husband with her children and her sister and husband with her children will be living in this duplex. (total of 8 people) The duplex is a way for her and her sister to share living costs.
- She will also replace the foundation.

12. Jose Cuzman the architect stated the following:

- He designed the 2 story duplex with basement and attic.
- Each unit will be under 2,000 sq. ft.
- The units will have an open plan with 2 bedrooms in each unit.
- The proposed bulk head will be located at the rear. There is no setback measurement shown on the plans, but in the revised plans, he will add that in.

- The proposed duplex will sit on a new larger foundation.
 - The proposed duplex meets height requirements.
13. The Board discussed the following:
- Having one curb opening. Maybe the one driveway can be wider?
 - Parking at the rear of the parcel not allowed.
 - Parking in front is not allowed.
 - Gravel is not allowed for driveways in order to meet lot coverage.
 - It was mentioned by a Board Members that the proposed driveway on the left side of the proposed house seems to narrow towards the rear of the house. It starts as 5 ft. from the house at the front and as it goes back, it seems to be less. This should be reviewed if the left driveway is to remain.
 - Board members had concerns about the increase of the proposed 53% lot coverage. Existing before the demolition was 16.8%. Zoning District Residence B is a maximum of 30%.
14. **Questions from the Audience:**
- 104 Mechanic St.– Marie Fernald - Issues about parking and being a duplex.
15. **Speaking in opposition:**
- 14 Chestnut St. – Robert Waldron – His house is to the left of the lot in question. His concerns are the proposed duplex and driveway being too close to his house. The lot in question is very small.
 - 19 Norwood St. – Jack Harris – Wants to see a single family with one driveway.
 - 33 Chestnut St. – Terry Dorschner – It will be 3 driveways opposite the current neighbor's driveway.
 - 15 Chestnut St. – woman – She feels there will be a parking problem. There are no sidewalks on that side of the street (18 Chestnut St.) More cars will be parked on her side of the street.
 - 26 Chestnut St. – Dacruz – Would like to see a home built with one driveway.
16. **Speaking in favor:**
- 77 Chestnut St. – Jose Borges – Would like to see something constructed on this empty lot.
 - 105 Lincoln St. – Lee Ann Davis – a realtor. Has lived in this neighborhood for 30 years. Would love to see

improvements to the neighborhood and a new house will be nice.

17. The public portion of the hearing was closed.
18. **Hardship:** As stated by the architect:
This is a non-conforming pre-existing lot with 82.5 ft. of frontage vs. the minimum required 100 ft. This existing frontage creates a narrow lot, which makes it difficult to construct a duplex with enough parking and living space for the owner.

It was stated by a Board Members that the applicant has not address the "hardship" criteria.
20. One Board member felt the proposed bulk head can remain, but must calculate the distance to the rear lot line on a plan
21. The architect agreed to come back to the Board with a revised plan showing the following:
 - Eliminate the left driveway
 - By eliminating the left driveway, re-calculate the lot coverage
 - Show setback numbers for the proposed 2 open deck.
 - Show setback numbers for the proposed bulk head. The architect said he can put the entrances to the basement on the side. That may eliminate asking for a variance at the rear??
 - How many cars will be able to park on the proposed right driveway?
22. The **Special Permit** process did not continue this evening. Once the zoning relief hearing portion is closed, the Board will entertain the Special Permit process.
23. A motion was made by Thomas Pope and seconded by Robert Levine to continue the public hearing to October 1, 2019 at 7:00 PM. On a vote of 4-0, the hearing was continued to October 1, 2019 at 7:00 PM.

October 1, 2019 – Continuation

24. The Board continued the public hearing. Members present were Paul Giunta-Chairman, Thomas Pope, Thomas Golden and Robert Levine.
25. Also present was the applicant and her architect, Mr. Cuzman.
26. Exhibit for the file:

- The Board read into the file an e-mail from the Building Commissioner, Jeffrey Cooke, dated Sept. 30, 2019. E-mail stating in part that the applicant needs a Special Permit to expand from a single to a two family of a pre-existing, non-conforming lot, and zoning relief for the increase over the allowable amount of lot coverage, as this is a new violation.
- **Revise Plan:** Dated 9/25/2019, Proposed Conditions Plot Plan 18 Chestnut St. Marlborough, MA Prepared by: Bruce Saluk & Associates, Inc. Stamped by: Bruce Saluk.

27. The audience were invited up to the table to review the revised plan.

28. The Board stated that according to the revised plan, the proposed structure is smaller by shortening the front of the building, the proposed bulkhead is not encroaching into the rear yard setback, and the left driveway is eliminated.

29. The applicant feels the proposed structure is in keeping with the rest of the neighborhood in size of structure, setbacks, and lot coverage.

30. **Hardship:** The Board asked the applicant to re-state their hardship. The applicant stated that the design of the proposed structure was governed by the shape of the lot. The 82.5 ft. lot frontage created a narrow lot. The applicant stated he cannot make the structure any smaller and conform to the codes on the size of the rooms.

31. Thomas Golden, Board Member, felt that the pre-existing non-conforming nature of the lot, created his hardship.

32. Questions from audience:

- Marie Fernald – 104 Mechanic St. – Asked why not build a structure with a 1st and 2nd Floor. - Answer-that would require exterior stairs for the 2nd Floor, thus creating more lot coverage.

33. Speaking in opposition:

- 14 Chestnut St - Robert Waldron – felt a single-family home is a better fit for the lot and the neighborhood. The applicant is proposing 8 people to live in this structure, and that will mean 4 cars are stacked in the proposed driveway. When the children become of driving age that will mean more cars. There is no room on the street for street parking. If the applicant has visitors, where will they park?
- 19 Norwood St.- Jack Harris – felt a single-family home is a better fit for the lot and neighborhood. The lot is too small. The

applicant will build the proposed structure and may sell in the future, then the property becomes an eyesore. He was also concerned about cars speeding on the street.

34. The applicant, Ms. DeOliveira stated that there are a few multi-family homes in the neighborhood. She did not understand why some of the neighbors were opposed to her petition.

33. The applicant agreed to take out the 2 open decks and the walkway at the front of the house from the plan, thus creating 33% Lot Coverage vs. the proposed 39% on their revised plan.

33. On a motion by Paul Giunta to close the public portion of the hearing. Thomas Pope seconded the motion. On a vote of 4-0, the public portion of the hearing was closed.

34. Discussion:
Paul Giunta -Chairman, stated he was impressed that the applicant has tried to scale down the proposed structure to create less Lot Coverage. Lot Coverage is the only zoning relief requested.

Thomas Pope – Board Member suggested that the proposed driveway be shortened at the rear of the property, which would create less Lot Coverage.

After much discussion with the applicant about Lot Coverage, the applicant was able to scale down Lot Coverage to 33% vs. the required maximum 30%. (On his revised plan, 39% Lot Coverage was proposed)

36. A motion was made by Robert Levine that the Board approve a 33% Lot Coverage and that the applicant presents a revised certified plot plan to the Building Department showing the 33% Lot Coverage prior to the issuance of a Building Permit. Also present the revised plan to the Zoning Board for their file. Thomas Pope seconded the motion. The Board voted 4-0 to approve the motion.

37. The Board finds:

- Due to the pre-existing non-conforming nature of the lot having 82.5 ft. of frontage vs. the minimum required 100 ft. has created a narrow lot, thus created the applicant's hardship.
- On Chestnut St. and surrounding neighborhoods, there is a mixture of single- and two-family homes and a few multi-family homes.

- Also, on Chestnut St. and surrounding neighborhood, the house lots are similar in size and shape to the lot in question.
- The lot in question is located in Zoning District Residence B. The bulk of the neighborhood are single- and two-family homes. With a few multi-family homes.
- Desirable relief may be granted without substantially derogating from the intent and purpose of the zoning bylaw because a zoning relief of 33% vs. the maximum required 30% for Lot Coverage is minimal. This is an old neighborhood in Marlborough, and a considerable number of lots in the area do not conform to the city's current codes concerning lot coverage, setbacks and lot shape.

38. A motion was made by Robert Levine to grant zoning relief for the proposed Lot Coverage of 33%. Motion was seconded by Thomas Pope. A vote of 4-0 to grant zoning relief for the proposed 33% Lot Coverage.

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

40. Following the close of this public hearing, the Special Permit process began.



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Location: 18 Chestnut St.

Applicant: Osanir DeOliveira

VOTE OF THE BOARD
Signature Sheet

IN FAVOR

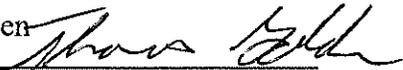
IN OPPOSITION

Paul Giunta 

Paul Giunta

Ralph Loftin

Ralph Loftin

Thomas Golden 

Thomas Golden

Thomas Pope 

Thomas Pope

Robert Levine 

Robert Levine
