



TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

2016 APR 26 P 2:34

BOARD OF APPEALS CASE NO. 16-08

TOWN CLERK
FRAMINGHAM

PETITION OF DONNA EIBYE

DATE OF DECISION: APRIL 12, 2016

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of DONNA EIBYE (hereinafter the Applicant), for property located at 1036 CONCORD STREET. This Decision is in response to a Petition for a Variance from side setback requirements of the Zoning By-Law (hereinafter the Application) to install an 8' x 8' shed.

2. Property Owner and Applicant

Donna Eibye
1036 Concord St.
Framingham, MA 01701

3. Location

Property is located at 1036 Concord Street and identified by Assessors' Parcel ID 082-27-4202-000 (hereinafter the Site).

4. Board Action

After due consideration of the Application, the record of proceedings, and based upon the findings set forth below, on April 12, 2016 the Board voted to GRANT the requested VARIANCE by a unanimous vote in favor of the petition of three (3) members sitting on the Application. The record of the vote is stated as follows:

PHILIP R. OTTAVIANI, JR.	YES
SUSAN S. CRAIGHEAD	YES
STEPHEN MELTZER	YES

5. Proceedings

The Application was received by the Board on March 4, 2016 pursuant to MGL, Ch. 40A, §10, and the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on April 12, 2016 at 7:15 P.M. in the Blumer Community Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Susan S. Craighead, Stephen Meltzer, and Alternate Joseph Norton were present throughout the proceedings. The minutes of the public hearing and submissions on which this Decision is based, which together with this Decision constitute the record of the proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

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The Applicant was present and stated the purpose of the Application was to get a Variance to be able to replace an existing 7' x 7' shed in the northwest corner of her property. Mr. Ottaviani noted that the lot is pie-shaped, which limits the Applicant's options for placement. Ms. Craighead noted that there is no immediate neighbor to the rear of the house. When asked if she wanted a bigger size (the maximum for a limited accessory structure being 120 square feet), Ms. Eibye responded that she didn't think space would permit a bigger shed.

6. Exhibits

Submitted for the Board's deliberation were the following exhibits:

- 6.1. Application filed with the Building Official for a permit for an 8' x 8' shed within the setback, dated 2/26/2016.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on March 18, 2016.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Letters of support from abutters dated March 19 and April 1, 2016.
- 6.5. Photographs depicting existing 7' x 7' shed and proximity to rear embankment and abutter fence, as well as the proposed shed.
- 6.6. "Plot Plan" dated February 8, 1952, with hand-drawn 8' x 8' shed as proposed.

Exhibit 6.6 shall be hereinafter referred to as the "Plan."

7. Findings and Conclusions

Based upon its review of the Application, exhibits, and the public hearing thereon, the Board makes the following findings and conclusions:

- 7.1. The property is located within the Single Residence (R-1) zoning district.
- 7.2. On February 26, 2016, the Building Official denied the Application for a permit to place an 8' x 8' shed within the setback under Section IV.E.2 of the Zoning By-Law.
- 7.3. On March 18, 2016, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a Variance from the Zoning By-Law.
- 7.4. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on March 28 and April 4, 2016 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11. No Town Meeting Members or residents appeared at the hearing.
- 7.5. The required side setback in the R-1 zoning district is 10 feet, and the shed will be located approximately three feet from the side lot line and one foot from the rear lot line. A variance is needed as the proposed placement is less than 50% of the required side setback.
- 7.6. The Variance standard established by the G.L. c. 40A §10 and the Framingham Zoning By-Law is a demanding criterion. The Board must find that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures, which especially affect such land or structures but do not affect generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve

substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Also, the circumstances under which a Variance may be granted are not unlimited.

- 7.7. There are circumstances relating to the soil conditions, shape, or topography of the land or structures for which the Variance is being sought. *The Board finds that this parcel is unique, in that the lot is triangular and narrow, limiting the potential placement of a limited accessory structure.* Such circumstances especially affect such land or structures but do not affect generally the zoning district in which the land or structures are located.
- 7.8. Owing to such circumstances, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner. *The narrow triangular shape of the lot, combined with the existing footprint of the main house, limits the potential placement of a shed.*
- 7.9. The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the By-Law or from the intent of the district in which the Variance is being sought. *The shed will be located in the same location as the existing one and will be similarly sized. It is hardly visible from the roadway, and neighbors have expressed support for the proposal.*
- 7.10. The Board grants this Variance with the following condition:
- 7.10.1. The proposed shed shall be located as shown on the Plan.
- 7.11. This Decision applies only to the requested Variance. Other approvals or permits required by the By-Law, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.
- 7.12. If the rights authorized by this Variance are not exercised within one year of the date of grant of such Variance, such rights shall lapse. The Applicant may request an extension to the one year period by submitting a written Application for extension prior to expiration of the one year period. However it is solely within the discretion of the Board to grant such an extension. An extension shall be for a period not to exceed six (6) months. If the Board fails to act on the request for extension within thirty days of the date of the requested extension, all rights authorized by this Variance shall lapse at the expiration of the one year period. If the Variance lapses, such rights pertaining to the Variance may only be reestablished after notice and a new hearing pursuant to G.L. c. 40A, §10.
- 7.13. This Decision shall be recorded at (as appropriate) the Middlesex South District Registry of Deeds or District of the Land Court prior to the issuance of a Building Permit. A copy of the recorded or filed Decision certified by the Registry, and notification by the owner of the recording, including recording information, shall be furnished to the Board and the Building Official
- 7.14. The terms, conditions and provisions of this Decision shall run with the land and shall be binding upon the Applicant, its successors in interest and assigns, and shall be enforceable by the Town of Framingham.

8. Appeals

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, §17 and shall be filed within twenty (20) days after the date of filing this Decision with the Town Clerk.

ZONING BOARD OF APPEALS

By:  _____
Philip R. Ottaviani, Jr., Chairman