



TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

2016 AUG 23 A 10: 58

TOWN CLERK
FRAMINGHAM

BOARD OF APPEALS CASE NO. 16-24

PETITION OF XUESONG GU

DATE OF DECISION: AUGUST 09, 2016

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of XUESONG GU (hereinafter the Applicant), for property located at 6 LEARNED ST. This Decision is in response to a Petition for a Variance for an exterior deck within rear setback of the Zoning By-Law (hereinafter the Application).

2. Property Owner and Applicant

Xuesong Gu
955 Beacon Street
Newton, MA 02459

3. Location

Property is located at 6 Learned Street and identified by Assessors' Parcel ID 120-79-7303-000 (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 August 9, 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 July 7, 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 August 09, 2016 at 7:45 P.M. in the Blumer Community Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Susan S. Craighead, Stephen Meltzer, and Alternate Robert Snider 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.

The Applicant was present with her engineer, Weihua Dong. Mr. Dong explained that Ms. Gu was seeking to renovate the three-family structure, with addresses of 6 and 8 Learned St. He

explained that there are two units at 8 Learned Street, and that the upper unit needs a second means of egress. The best way to do that is to provide stairs exiting from the rear. The new egress would encroach upon the required rear setback. Mr. Ottaviani read comment letters from the Planning Board and Conservation Commission. He expressed concern about where parking would be located. Mr. Dong explained that there currently is no on-site parking, but suggested that 5 spaces could be provided on the left (north) side of the structure, and that the new egress would not interfere with parking or circulation. Mr. Robert Pruyn (22 Learned St.) expressed concerns about work being done without a permit, possible dumping on adjacent property of the Medical Center, and lack of off-street parking. Ms. Craighead asked about plans for the basement, which showed a bathroom with shower and toilet. Mr. Dong described it as a common area for storage and a gym area. Ms. Craighead expressed concern that the basement could possibly turn into living quarters. She also expressed concern that the attic was broken up in to rooms that could possibly be used for bedrooms. Discussion ensued about the layout of the attic. Mr. Cosgrove raised some questions about parking and garbage bins. Discussion ensued about conditions.

6. Exhibits

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

- 6.1. Application filed with the Building Official for a permit for renovations including a deck extending into the required rear setback, dated March 4, 2016.
- 6.2. Planning Board comments dated August 5, 2016.
- 6.3. Conservation Commission comments dated July 20, 2016.
- 6.4. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on July 15, 2016.
- 6.5. Filing fee in the amount of \$300.00.
- 6.6. Plans set entitled "House Renovation at 6-8 Learned Street Framingham, MA 01702", dated May 2, 2016, prepared by WYD LLC, 246 Walnut St, Lynnfield, MA 01940, containing building floor plans for the basement (A1), first floor (A2), second floor (A3), attic (A4), and proposed rear egress (S1).
- 6.7. Site plan entitled "House Location Plan of Land" dated September 24, 2015, prepared by Paul Lindholm, P.E., 80 Tarbox St., Dedham, MA 02026.

Exhibits 6.6 and 6.7 shall be hereinafter referred to as the "Plans."

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 Office and Professional (P) zoning district.
- 7.2. On June 17, 2016, the Building Official denied the Application for a permit for renovations including a deck within the required rear setback, pursuant to Section IV.E.2 of the Zoning Bylaw.

- 7.3. On July 15, 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 July 25 and August 1, 2016 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11. No Town Meeting Members appeared at the hearing.
- 7.5. The required side (rear) setback in the P zoning district is 15 feet, and the proposed egress, including a deck, and stairs, will reach within 10 feet of the rear property line.
- 7.6. The Board is concerned that the proposed bathroom in the basement and the proposed partitioned rooms in the attic could eventually be used as living space by additional residents. As multi-family structures are not allowed in the Office and Professional district, more dwelling units must not be created. The Applicant has assured the Board that the basement and attic will not be used for living space.
- 7.7. The property provides no off-street parking for residents, which may lead to congestion on neighborhood streets. The Applicant has proposed that five off-street parking spaces be provided to the left of the structure as viewed from the street.
- 7.8. 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.
- 7.9. 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 pre-existing nonconforming three-unit structure lacks the required second means of egress for the second-floor unit at 8 Learned Street, and that such egress is not feasible in another location.* Such circumstances especially affect such land or structures but do not affect generally the zoning district in which the land or structures are located.
- 7.10. Owing to such circumstances, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner. *Without the ability to provide a second means of egress, the renovation of the property cannot proceed, and the property would not be compliant with the building code, which would result in a hardship to the petitioner.*
- 7.11. 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 pre-existing nonconforming three-dwelling structure needs the additional means of egress, and*

it will be constructed without nullifying or derogating from the intent and purpose of the Bylaw.

7.12. The Board grants this Variance with the following conditions:

7.12.1. The proposed egress shall be located and constructed as shown on the Plans.

7.12.2. Five off-street parking spaces shall be provided, and a parking plan shall be provided to the ZBA office for administrative review prior to issuance of any building permits. As much of the green space as possible must be preserved.

7.12.3. There shall be no living quarters in the attic or basement, and there shall be no shower or toilet in the basement.

7.13. 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.

7.14. 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.

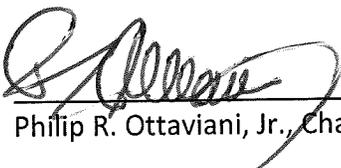
7.15. This Decision shall be recorded at (as appropriate) the Middlesex South District Registry of Deeds or District of the Land Court prior to the issuance of a Building Permit. A copy of the recorded or filed Decision certified by the Registry, and notification by the owner of the recording, including recording information, shall be furnished to the Board and the Building Official

7.16. 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

Dedicated to excellence in public service.