



TOWN OF FRAMINGHAM  
ZONING BOARD OF APPEALS

150 Concord Street B2  
Framingham, MA 01702

2016 JUL 26 P 3:36

TOWN CLERK  
FRAMINGHAM

**BOARD OF APPEALS CASE NO. 16-20**

**PETITION OF DONALD GENTILI**

**DATE OF DECISION: JULY 12, 2016**

**1. Application**

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of DONALD GENTILI (hereinafter the Applicant), for property located at 9 DENNISON AVENUE. This Decision is in response to a Petition for a Variance from the front and side setback requirements of the Zoning By-Law (hereinafter the Application) for a fence 8 feet in height.

**2. Property Owner and Applicant**

Donald Gentili  
35 Farmington Circle  
Marlborough, MA 01752

**3. Location**

Property is located at 9 Dennison Avenue and identified by Assessors' Parcel ID 121-98-7612-000 (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 July 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
STEPHEN MELTZER	YES
JOSEPH NORTON	YES

**5. Proceedings**

The Application was received by the Board on June 8, 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 July 12, 2016 at 7:45 P.M. in the Blumer Community Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Stephen Meltzer, Joseph Norton, 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.

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The Applicant was present and explained that he had previously secured a Variance for the proposed fence but he did not act upon it in time and it expired. There were delays with surveying and other necessary landscaping. An unnamed gentleman from Primus Property Group, representing the abutting property, questioned exactly where the fence would go. Mr. Gentili explained that he wanted permission to run the fence along the entire property line, but that he might stop at the corner of the garage. He added that the existing fence is actually on the abutter's property according to the survey. Mr. Ottaviani asked that the survey be correct and that the new fence be on the Applicant's property.

## **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' fence within the side/rear/front setbacks, dated 3/24/2016.
  - 6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on June 17, 2016.
  - 6.3. Filing fee in the amount of \$300.00.
  - 6.4. Decision of the ZBA in case #14-39, filed July 22, 2014, granting the Variance for the 8-foot fence.
  - 6.5. Eight (8) color photographs depicting the condition of the existing fence, the subject property, and the abutting property.
  - 6.6. A site plan from the Assessor Department identifying the proposed fence location along the easterly side lot line stamped "Received" by the Zoning Board office on June 20, 2014.
- 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 March 24, 2016, the Building Official denied the Application for a permit to place an 8-foot-tall fence within the side, rear, and front setbacks pursuant to Section IV.E.2 of the Zoning By-Law.
- 7.3. On June 17, 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 June 27 and July 4, 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 setback in the R-1 District is 10 feet and the required front setback is 30 feet. Fences up to 6 feet in height may be located within the required setbacks. Since the proposed fence is 8 feet, a variance is necessary. The Board previously granted the requested relief, and the Applicant is simply seeking to renew.

- 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 the lot is uniquely abutted by two commercial properties.* 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 unique circumstances relating to this parcel cause the 6' maximum fence height requirement to create a particular hardship. The Board finds that it would be a substantial hardship to insist on the literal enforcement of the By-Law because an 8' fence is needed to screen the property from the commercial property abutting the property on Dennison Ave.*
- 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 fence would be in keeping with the character of the neighborhood and would not create a negative effect on the aesthetics of the neighborhood.*
- 7.10. The Board grants this Variance with the following condition:
- 7.10.1. The proposed 8' fence 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

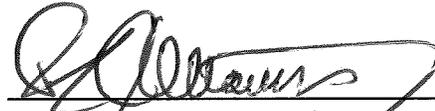
7.14. The terms, conditions and provisions of this Decision shall run with the land and shall be binding upon the Applicant, its successors in interest and assigns, and shall be enforceable by the Town of Framingham.

**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