



TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

2016 SEP 27 P 3:30

TOWN CLERK
FRAMINGHAM

BOARD OF APPEALS CASE NO. 16-26

PETITION OF ALTIMIRA L. COTTA

DATE OF DECISION: SEPTEMBER 13, 2016

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of ALTIMIRA L. COTTA (hereinafter the Applicant), for property located at 15 ABERDEEN RD. This Decision is in response to a Petition for a Variance to attach garage within side setback of the Zoning By-Law (hereinafter the Application).

2. Property Owner and Applicant

Altimira L. Cotta
15 Aberdeen Rd
Framingham, MA 01702

3. Location

Property is located at 15 Aberdeen Road and identified by Assessors' Parcel ID 103-13-0399-000 (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 September 13, 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
ROBERT SNIDER	YES

5. Proceedings

The Application was received by the Board on August 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 September 13, 2016 at 7:00 P.M. in the Blumer Community Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Susan S. Craighead, Robert Snider, and Alternate Edward "Ted" Cosgrove 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 Attorney, David W. Sacco. Mr. Sacco explained that Ms. Cotta was seeking to attach a two car garage within the side setback. He explained that the

Dedicated to excellence in public service.

three abutting properties have similar garages and that the character of the neighborhood would remain. Mr. Ottaviani accepted a sworn affidavit and explained that the direct abutter supports the project. Ms. Lauren Fernandes (729 Concord St.) expressed concerns about clean up and work remaining on the applicant's property. Ms. Craighead asked the applicant to address the criteria for a variance. Mr. Sacco explained the topography and shape of the land. He also shared that Ms. Cotta has an asthmatic condition and her doctor recommended staying away from the cold. The proposed garage will make it easier for her to walk from her house to the car.

6. Exhibits

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

- 6.1. Application filed with the Building Official for two car garage addition, dated July 19, 2016, denied July 20, 2016.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on August 19, 2016.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Memorandum accompanying the Petition on behalf of the Applicant by Attorney David W. Sacco, dated July 27, 2016.
- 6.5. Sworn affidavit from abutter Keith Rovinelli dated September 13, 2016.
- 6.6. Plans set entitled "Garage Addition Construction, 15 Aberdeen Road, Framingham, MA", dated April 15, 2016, prepared by T Design, LLC., 1248 Randolph Ave., Milton, MA 02186, containing existing and demolition floor plan (A1), proposed floor plan (A2), existing/proposed front elevation view (A3), existing/proposed rear elevation view (A4), existing/proposed left elevation view (A5), garage foundation framing plan (S1), section1/awning detail (S2), garage ceiling framing plan (S3), garage roof framing plan (S4), and garage cross section (S5).
- 6.7. Site plan entitled "Board of Appeals Plan of Land in Framingham, Mass.", dated May 19, 2016, prepared by Sullivan Surveying Company, LLC., 209 West Central S., Natick, MA 01760.

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 Single Family Residence (R-1) zoning district.
- 7.2. On July 20, 2016, the Building Official denied the Application for a permit for two car garage addition, pursuant to Section IV.E.2 of the Zoning Bylaw.
- 7.3. On August 19, 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 August 29 and September 5, 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 zoning district is 10 feet, and the proposed attached garage will be setback 3.1 feet from the side property line.
- 7.6. The Board is satisfied that no direct abutters came forward to object to the proposed garage addition; that the most impacted abutter submitted a signed affidavit consenting to the project; the Applicant's case that there is no other place on the property where a garage could be constructed, due to the presence of an in-ground pool and fence; and that the proposed location would be accessed by the existing driveway.
- 7.7. 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.
- 7.8. 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 constrained by an existing in-ground pool.* Such circumstances especially affect such land or structures but do not affect generally the zoning district in which the land or structures are located.
- 7.9. 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 Applicant has an asthma condition and has been advised by her doctor to avoid the cold. She needs to be able to access her car while avoiding cold outdoor temperatures.*
- 7.10. 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. *Other homes in the neighborhood have similar garages and no neighbors have objected to the proposed project. There will remain sufficient space between the garage and the adjacent home.*
- 7.11. The Board grants this Variance with the following conditions:
- 7.11.1. The proposed garage addition shall be located and constructed as shown on the Plans.
- 7.12. 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.
- 7.13. 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.

7.14. 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

7.15. 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