



TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

BOARD OF APPEALS CASE NO. 17-09

2017 FEB 27 P 5:00

PETITION OF JOSEPH KOVALCHIN

TOWN CLERK
FRAMINGHAM

DATE OF DECISION: FEBRUARY 13, 2017

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of JOSEPH KOVALCHIN (hereinafter the Applicant), for property located at 159 SALEM END ROAD. This Decision is in response to a Petition for a Variance from the side and rear setback requirements of the Zoning By-Law (hereinafter the Application) for a fence 8 feet in height.

2. Property Owner and Applicant

Joseph Kovalchin
159 Salem End Road
Framingham, MA 01702

3. Location

Property is located at 159 Salem End Road and identified by Assessors' Parcel ID 099-13-1316-000 (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 February 13, 2017 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 |
| SUSAN CRAIGHEAD | YES |

5. Proceedings

The Application was received by the Board on January 12, 2017 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 February 13, 2017 at 7:00 P.M. in the Blumer Community Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Stephen Meltzer, Susan Craighead, 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.

Dedicated to excellence in public service.

The Applicant was present and explained that his rear property line touches the abutting Hunter Village condominiums. He explained that residents of the condominium have been disposing unwanted material in his yard, trespassing, and disturbing the wetlands on his property. He voiced concern for the safety of his children. Mr. Kovalchin explained that a fence already exists on his property but is requesting to extend and run the fence along his rear property line blocking access from the condos. He commented that the condo manager was in favor of his proposal. Mr. Kovalchin argued that it would be counterproductive to adhere to the 10-foot setback requirement because it would require tree removal within the protected wetlands. Board members voiced no concern.

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 and rear setbacks, dated January 11, 2017.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on January 19, 2017.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Thirteen (13) color photographs depicting site conditions, stamped "Received" by ZBA staff on February 13, 2017.
- 6.5. Packet containing project sketch entitled "Job Sketch", dated May 12, 2016 and stamped "Received" by ZBA staff January 12, 2017, and prepared by Mr. Fence, INC., 64 Mechanic St., Bellingham, MA 02019, and wetlands map from the Conservation Commission identifying abutting wetlands.
- 6.6. Site Plan entitled "Plan of Land 159 Salem End Road, Framingham Mass.", dated December 29, 2016 and prepared by Guerriere & Halnon, INC., 333 West Street, Milford, MA 01757.

Exhibits 6.5 and 6.6 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 Single Residence (R-1) and Business (B) zoning districts.
- 7.2. On January 11, 2017, the Building Official denied the Application for a permit to place an 8-foot-tall fence within the side and rear setbacks pursuant to Section IV.E.2 of the Zoning By-Law.
- 7.3. On January 19, 2017, 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 January 29 and February 5, 2017 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. Fences up to 6 feet in height may be located within the required setbacks. Since the proposed fence is 8 feet, and the proposed fence would be located 3 feet from the side lot line, a variance is necessary.
- 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 unique due to the presence of on-site wetlands and its use by individuals cutting through from Route 9 to the adjacent apartment complex. Some of these individuals have engaged in illegal dumping in wetlands.* 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. *A literal enforcement would cause a hardship due to the high cost of tree removal and associated impacts to the property. An 8-foot fence is necessary to prevent illegal dumping, to provide for adequate safety, and conserve the wetlands on the property.*
- 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. The 8-foot portion of the fence would be located only to the rear of the applicant's house and would not impact the side lot line to the front of the house facing Salem End Road.*
- 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