



TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

2017 NOV -6 P 3:05
TOWN CLERK
FRAMINGHAM

BOARD OF APPEALS CASE NO. 17-43
PETITION OF HELEN AND STUART SLAVID
DATE OF DECISION: OCTOBER 23, 2017

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of HELEN AND STUART SLAVID (hereinafter the Applicant), for property located at 9 GRYZBOSKA CIRCLE. This Decision is in response to a Petition for a Variance for a deck within the required rear setback as specified in the Zoning By-Law (hereinafter the Application).

2. Property Owner and Applicant

Helen and Stuart Slavid
9 Gryzboska Circle
Framingham, MA 01701

3. Location

Property is located at 9 Gryzboska Circle and identified by Assessors' Parcel ID 108-81-2645-000 (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 October 23, 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
ROBERT SNIDER	YES

5. Proceedings

The Application was received by the Board on September 8, 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 October 23, 2017 at 7:30 P.M. in the Blumer Community Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Stephen Meltzer, 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.

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The Applicant, Ms. Helen Slavid, was present and explained the existing unsafe raised brick patio. She explained, the request was to extend the patio four feet to enhance the value and increase safety. Mr. Ottaviani asked for clarification to whether the structure was considered a deck or patio. Ms. Slavid explained that the Bylaw fails to define a patio and raised patio. Mr. Meltzer asked if only the existing structure would be expanded. Ms. Slavid clarified, a different material would be used but would look similar to a deck rather than a patio. Mr. Snider asked how high from the ground would the deck be raised. Ms. Slavid responded, one step above grade level. Board members voiced no objections.

6. Exhibits

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

- 6.1. Application filed with the Building Official for a 40'-by-20' deck, denied on August 16, 2017.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on September 22, 2017.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Photographs depicting existing patio conditions submitted with application, September 8, 2017.
- 6.5. Hand-drawn structural diagram indicating materials and construction methods, submitted with application, September 8, 2017.
- 6.6. Site plan entitled "Certified Plot Plan in No.9 Gryzboska Circle Framingham Mass ", dated August 16, 2017, prepared by Drake Associates Inc., 25 Wellesley Ave., Wellesley, MA.

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 Single Family Residence (R-4) zoning district.
- 7.2. On August 16, 2017, the Building Official denied the Application for a permit for a 40'-by-20' deck composite addition, pursuant to Section IV.E.2 of the Zoning Bylaw.
- 7.3. On September 22, 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 October 8 and October 15, 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 rear setback in the R-4 zoning district is 30 feet. The proposed deck would be 16.4 feet from the rear property line.
- 7.6. The Board is satisfied that no direct abutters came forward to object to the proposed deck expansion. The Applicant made a case that there is no other place on the property where a deck could be constructed, due to the unique shape of the lot and existing patio

conditions; and that the proposed location would be most accessible and non-detrimental to the neighborhood. The Zoning Bylaw does not define the words “patio” and “deck”. While a deck is a raised structure and a patio sits directly on the ground, the proposed “deck” is essentially an extension of the existing patio, raised only inches off the ground. In terms of neighborhood impacts, it is most similar to a patio, which is not subject to the Zoning Bylaw.

- 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 and cannot accommodate a deck anywhere else.* 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. *A literal enforcement of the provisions of the Bylaw would prevent a deck from being constructed on the property, which would cause hardship to the Applicant.*
- 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. *No neighbors have objected to the proposed project. The proposed deck will appear as a patio and not be visually obtrusive to the neighborhood. Although technically a deck because it involves structural elements, the Zoning Bylaw does not apply to patios.*
- 7.11. The Board grants this Variance with the following conditions:
 - 7.11.1. The proposed deck 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