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BOARD OF APPEALS CASE NO. 18-14

PETITION OF RUTE A. DELIMA

DATE OF DECISION: MAY 15, 2018

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of RUTE A. DELIMA (hereinafter the Applicant), for property located at 429 OLD CONNECTICUT PATH. This Decision is in response to a Petition for a Variance for a deck within the required side yard setback as specified in the Zoning By-Law (hereinafter the Application).

2. Property Owner/Applicant

Rute A. Delima
429 Old Connecticut Path
Framingham, MA 01701

3. Location

Property is located at 429 OLD CONNECTICUT PATH and identified by Assessors' Parcel ID 072-48-7226-000 (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 May 15, 2018 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:

SUSAN S. CRAIGHEAD	YES
STEPHEN MELTZER	YES
EDWARD COSGROVE	YES

5. Proceedings

The Application was received by the Board on April 20, 2018 pursuant to MGL, Ch. 40A, §10, and the Framingham Zoning By-Law. The Board considered the Application at a duly noticed public hearing on May 15, 2018 at 8:00 P.M. in the Ablondi Room of the Memorial Building. Board Members Susan S. Craighead, Stephen Meltzer, Edward "Ted" Cosgrove, and Alternates Joseph Norton and Rick McKenna were present throughout the proceedings. Due to potential imminent changes to the makeup of the Board, Ms. Craighead appointed multiple alternates. 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, Ms. Rute Delima, was present and explained that she had purchased the property in 2016. She stated that two decomposing decks existed, one to the rear and one to the side of the property. After beginning the remodeling process and deciding to connect the two structures, she was notified by Code Enforcement that permitting was never obtained by the original owner. Board members voiced no concerns to the proposal.

6. Exhibits

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

- 6.1. Application filed with the Building Official to connect and replace an existing deck, denied on April 18, 2018.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on April 23, 2018.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Three letters of support including: Rosemary Chouinard, 419 Old Connecticut Path; Saurabh Ambulkar, 433 Old Connecticut Path; Yeiguer Contreras, 423 Old Connecticut Path.
- 6.5. Memorandum prepared by the Applicant submitted with the application April 20, 2018.
- 6.6. Mortgage Inspection Plan with hand notations, prepared by Reney, Moran, & Tivnan, 75 Hammond Street, Floor 2, Worcester, MA 01610, and dated October 12, 2016.
- 6.7. Site plan entitled "Plan Showing Existing Conditions", prepared by D. O'Brien, 31 Hayward Street Unit 3-G, Franklin, MA 02038, and dated March 23, 2018.

Exhibits 6.7 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 Family Residence (R-1) zoning district.
- 7.2. On March 18, 2018, the Building Official denied the Application for a side deck addition, pursuant to Section IV.E.2 of the Zoning Bylaw.
- 7.3. On April 23, 2018, the Applicant filed with the City 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 April 30 and May 7, 2018 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11.
- 7.5. The required side setback in the R-1 zoning district is 10 feet. The new existing deck, for which the variance is sought, is 4.4 feet from the side lot line at the closest point.
- 7.6. The Board is satisfied that no direct abutters came forward to object to the proposed addition. The Applicant made a case that the proposed location would be most accessible and non-detrimental to the neighborhood.

- 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 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, and cause the Applicant to remove the deck, 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 not be visually obtrusive to the neighborhood.*
- 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

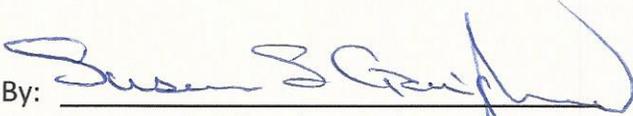
recording, including recording information, shall be furnished to the Board and the Building Official

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 City 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 City Clerk.

ZONING BOARD OF APPEALS

By: 
Susan S. Craighead, Vice Chair