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BOARD OF APPEALS CASE NO. 18-19

PETITION OF REIDER SILVA

DATE OF DECISION: JULY 10, 2018

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of REIDER SILVA (hereinafter the Applicant), for property located at 56 JODIE ROAD. This Decision is in response to a Petition for a Variance from side setback requirements of the Zoning By-Law (hereinafter the Application) to build an addition.

2. Property Owner and Applicant

Reider Silva
56 Jodie Rd.
Framingham, MA 01702

3. Location

Property is located at 56 Jodie Road and identified by Assessors' Parcel ID 125-96-3459-000 (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 10, 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:

PHILIP R. OTTAVIANI, JR.	YES
SUSAN S. CRAIGHEAD	YES
EDWARD COSGROVE	YES

5. Proceedings

The Application was received by the Board on June 13, 2018 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 10, 2018 at 7:00 P.M. in the Ablondi Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Susan S. Craighead, Edward "Ted" Cosgrove, 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.

At the hearing, Mr. Ottaviani read a letter from Mr. Meltzer (10 Duggan Drive), an abutter to the petitioner, in support of the application. He also read a comment from Mr. Michael Tusino, the Building Commissioner, proposing a condition that the addition be used for personal use

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only. Mr. Reider Silva was present with Robert Boietta, a consultant and translator for the applicant, and Derly Morais, the contractor. Mr. Silva explained the need for a master bedroom and additional garage space on the property.

Ms. Craighead asked for clarification on the details of the plan. She and Mr. Ottaviani noted the irregularly shaped lot. No members of the public appeared for comment. Board members voiced no concerns.

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 addition, dated June 7, 2018.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on June 18, 2018.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Letters of support from abutter dated July 10, 2018.
- 6.5. Plan set entitled "Proposed House Addition" containing floor plans, elevation drawings, and technical detail (pages A-1 through A-8 and S-1 through S-4), prepared by T Design, LLC, 1248 Randolph Ave., Milton, Mass., dated April 25, 2018.
- 6.6. Site plan entitled "Existing Conditions Plan", prepared by A.S. Elliott Associates, PO Box 85, Hopedale, Mass., dated May 28, 2018.

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-4) zoning district.
- 7.2. On June 7, 2018, the Building Official denied the Application for a permit to build an addition within the side setback pursuant to Section IV.E.2 of the Zoning By-Law.
- 7.3. On June 18, 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 June 25 and July 2, 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-4 zoning district is 30 feet, and the addition will be located 23.5 feet from the side lot line at the nearest corner. Therefore, a variance is required. The Board noted, the lot was irregularly shaped, such that it would difficult to locate an addition elsewhere on the property. The only
- 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 lot is an irregular shape.* 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.
- 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 variance is a small one and no abutters have objected.*
- 7.10. The Board grants this Variance with the following condition:
 - 7.10.1. The proposed addition shall be located as shown on the Plans.
- 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 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:  _____
Philip R. Ottaviani, Jr., Chairman