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BOARD OF APPEALS CASE NO. 18-21

PETITION OF REFAB CAPITAL MANAGEMENT

DATE OF DECISION: AUGUST 14, 2018

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of REFAB CAPITAL MANAGEMENT (hereinafter the Applicant), for property located at 101 POND STREET. This Decision is in response to a Petition for Variances for the reconstruction and enlargement of a single family dwelling within the side and front setbacks, as required by the Zoning By-Law (hereinafter the Application).

2. Property Owner and Applicant

ReFab Capital Management (William and Anna Agnatuech)
307 Chestnut Street
Hudson, MA 01749

3. Location

Property is located at 101 Pond Street and identified by Assessors' Parcel ID 122-18-1123-000 (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 August 14, 2018 the Board voted to GRANT the requested VARIANCES 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
STEPHEN MELTZER	YES

5. Proceedings

The Application was received by the Board on July 23, 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 August 14, 2018 at 7:15 P.M. in the Ablondi Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Susan S. Craighead, Stephen Meltzer, and Alternates Rick McKenna, Edward "Ted" Cosgrove, and 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.

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Mr. William Agnatuech introduced himself and explained the proposal to rehab the existing nonconforming single-family structure. He stated, the required side setback is 10-feet; 7-feet currently exists. He noted, the required front setback is 30-feet; existing dimensions are 29.2-feet from one corner and 21.2-feet from the second corner, because of the existing bump out. The intention is to replace the existing structure but preserve the foundation and extend it 14-feet to the rear. This will change the property from a 672 sq. ft. single-story structure to a 2,170 sq. ft. two-story structure.

Mr. James Rizoli (94 Pond Street) spoke in favor of the proposal. Mr. Ottaviani read comments from the Conservation Administrator and noted that the Applicant would need to connect with the Department of Public Works. 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 to demolish existing structure and construct/expand new structure, dated July 20, 2018.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on July 23, 2018.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Conservation Commission comments dated July 31, 2018.
- 6.5. Plan set entitled "Project: (New Construction) Single Family Home" containing title sheet (T-1), proposed plans and notes (A-1), proposed plans and notes (A-1.1), and exterior elevations and notes (A-2), prepared by Vina Design, Inc., 99 May Street, Worcester, MA, 01602, dated July 12, 2018.
- 6.6. Site plan entitled "Plot Plan Proposed Addition", prepared by Hawk Consulting, Inc., 3 Wedgewood Lane, Millbury, MA 01527, dated July 9, 2018 and revised July 20, 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 General Residence (G) zoning district.
- 7.2. On July 20, 2018, the Building Official denied the Application for the reconstruction and enlargement of a single-family dwelling within the side and front setbacks, pursuant to Section IV.E.2 of the Zoning By-Law.
- 7.3. On July 23, 2018, the Applicant filed with the City Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining Variances from the Zoning By-Law.
- 7.4. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on July 30 and August 6, 2018 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11.
- 7.5. The required side setback in the G zoning district is 10 feet. The addition will increase the encroachment into the side yard setback, from 7.0 to 6.9 feet. The proposed second floor addition will extend the height of the structure within the nonconforming setbacks;

therefore, a variance is required. The required front setback is 30 feet and the existing and proposed structures are 21.2 feet from the street.

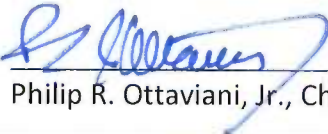
- 7.6. The Variance standard established by the G.L. c. 40A §10 and the Framingham Zoning By-Law is a demanding criterion. The Board must find that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures, which especially affect such land or structures 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 slight increase in nonconformity of the side setback is due to the existing structure being slightly out of parallel with the property line; extending the structure to the back at an angle results in the increased nonconformity. The existing house is nonconforming for front setback and requires a variance to raise the height.* 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 variances are minor. The resulting height of the structure (30.7 feet) would be compliant with the Zoning Bylaw, and the side setback would change by only 0.1 feet. No abutters have spoken against.*
- 7.10. The Board grants these Variances with the following condition:
 - 7.10.1. The proposed project 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

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