

CITY OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

CITY OF FRAMINGHAM
CITY CLERK'S OFFICE

2018 DEC 21 A 9 44

BOARD OF APPEALS CASE NO. 18-31

PETITION OF AREVIK MELKONYAN

DATE OF DECISION: DECEMBER 11, 2018

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of AREVIK MELKONYAN (hereinafter the Applicant), for property located at 1191 CONCORD STREET. This Decision is in response to a Petition for a Variance to retain a pre-existing structure within the required side setback provided by the Zoning By-Law (hereinafter the Application).

2. Property Owner and Applicant

Arevik Melkonyan
1191 Concord St.
Framingham, MA 01701

3. Location

Property is located at 1191 Concord Street and identified by Assessors' Parcel ID 071-28-7408-000 (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 December 11, 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
STEPHEN MELTZER	YES

5. Proceedings

The Application was received by the Board on September 18, 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 November 13, 2018 at 7:15 P.M. in the Ablondi Room of the Memorial Building. The case was subsequently continued to December 11th at which point a decision was made. Board Members Philip R. Ottaviani, Jr., Susan S. Craighead, Stephen Meltzer, and Alternates Joseph Norton and Rick McKenna 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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At the November 13 meeting, the Applicant was present with her boyfriend who was involved in the project. They explained that they had installed an elaborate outdoor oven and barbeque with a wall exceeding the height of the neighbor's fence, without realizing that there was a 10-foot side setback requirement.

Mr. James Sullivan (12 Emily Rd.) explained he was a direct abutter and originally complained to the City. He noted that the structure was higher than his fence and he was unhappy with the height. He explained that he didn't object to the structure in principle but wanted the rear to be completely finished. Board expressed a desire to do a site visit, and encouraged the Applicant and her neighbor to meet and agree on the final appearance of the structure. The case was therefore continued to December 11.

At the December 11 hearing, the Applicant presented photographs showing that the back side of the barbeque appeared to be a completed brick wall. The abutter made no further objection. The Board members voiced no concerns and moved to approve as presented.

6. Exhibits

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

- 6.1. Nuisance and Zoning Violation notice from the Building Department dated September 6, 2018.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on October 5, 2018.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Letter in support signed by an abutter and dated 11/12/18.
- 6.5. Photographs depicting existing outdoor oven submitted by the Applicant via email on December 11, 2018.
- 6.6. "Plot Plan" prepared by DesLauriers & Associates, Inc., 420 Fortune Blvd, Milford, MA 01757, with Applicant's hand notations, submitted with the Application filed October 5, 2018.

Exhibit 6.6 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 Residence (R-1) zoning district.
- 7.2. On September 6, 2018, the Building Official issued a Nuisance and Zoning Violation for an outdoor oven constructed within the side setback under Section IV.E.2 of the Zoning By-Law.
- 7.3. On October 5, 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 October 29 and November 5, 2018 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11.
- 7.5. The Applicant constructed an outdoor oven and barbeque integrated into a brick wall. It is not a structure providing shelter for anything, but is rather an accessory structure for the residents' outdoor enjoyment. The applicant did not realize she needed a building permit. While it is two feet from the neighbor's property line, and the required setback is 10 feet, no neighbors have objected to the issuance of the requested Variance, and most neighbors have complimented the appearance of the structure.
- 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 structure was installed without a building permit.* 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. *Requiring the Applicant to remove or move the structure would be cost prohibitive and unnecessary.*
- 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. *No neighbors have objected. The structure more closely resembles a brick wall with a barbeque built in and is not designed to provide shelter. Allowing the structure to remain will not substantially derogate from the intent of the Zoning By-law.*
- 7.10. The Board grants this Variance with the following condition:
- 7.10.1. The outdoor oven shall be located as shown on the Plan, and shall be permitted as shown in the photos provided.
- 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