

CITY OF FRAMINGHAM
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BOARD OF APPEALS CASE NO. 18-34

PETITION OF COLT REALTY LLC

DATE OF DECISION: NOVEMBER 13, 2018

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of COLT REALTY LLC (hereinafter the Applicant), for property located at 613 PLEASANT STREET. This Decision is in response to a Petition for a Variance from frontage and lot width requirements of the Zoning By-Law (hereinafter the Application) to create a new buildable lot.

2. Property Owner and Applicant

Colt Realty LLC
159 Shawmut Ave
Marlborough, MA 01752

3. Location

Property is located at 613 Pleasant Street and identified by Assessors' Parcel ID 077-66-0301-000 (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 November 13, 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 October 19, 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 7:45 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 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.

At the November 13th hearing, Mr. Bruce Saluk, a civil engineer and land surveyor, represented Mr. Steve Garofalo and Mrs. Elizabeth Garofalo in explaining the request.

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Mr. Meltzer mentioned that the property was subject to an agreement with the City and explained the context.

Mr. Garofalo explained the terms of the agreement and addressed Board members' questions. Mr. Steve Greely, Chair of the Historic District Commission, explained the agreement and that the existing house would become part of a Historic District if a buyer could successfully be found.

Ms. Craighead expressed her concern that the new lot should not be further subdivided in the future and moved to approve the variance with that condition.

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 October 3, 2018.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on October 19, 2018.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Supplemental supporting statement submitted with the application.
- 6.5. Copy of the "Settlement Agreement re 613 Pleasant Street, Framingham, Massachusetts" detailing the agreement between the Applicant and the City's Historical Commission dated 9/5/2018.
- 6.6. "Plot Plan: #629 Pleasant Street, Framingham, MA" (C1), prepared by Bruce Saluk & Assoc., Inc., 576 Boston Post Road East, Marlborough, MA 01752, dated October 1, 2018, and revised November 2, 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-3) zoning district.
- 7.2. On October 3, 2018, the Building Official denied the Application for a permit to build a new house on a new lot pursuant to Section IV.E.2 and IV.E.4.b of the Zoning By-Law.
- 7.3. On October 19, 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 is before the Board as a result of a settlement agreement with the City's Historical Commission, with the intent of saving the existing historically significant house from demolition. The Garofalos intended to demolish the house after the demolition delay

enacted by the Commission expired, prompting the Commission to consider the establishment of a Local Historic District in order to permanently protect the structure. The settlement agreement provides that, if the ZBA grants permission to create a new buildable lot for a second home (Lot 2), and if the remaining lot on which the historic house sits (Lot 1) is sold to a new buyer under the terms of the agreement, then the Applicant will be able to obtain some reasonable return on the overall property while the City moves ahead to establish a historic district. In the event the ZBA were to deny the requested variance, the historic house could be demolished without objection by the City.

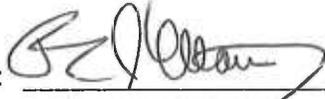
- 7.6. The Applicant is proposing to create a new lot (Lot 2), with 50 feet of frontage where 100 feet are required, and with a lot width of 50 feet where 80 feet are required. Section IV.E.4.b. of the Zoning By-Law requires that the lot width must be a minimum of 80% of the required frontage as the lot extends from the front to the rear, thereby eliminating “pork chop” lots such as the one proposed. The proposed house on Lot 2 would have a long 12-foot driveway and would be situated to the rear of Lot 1.
- 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. *There is a historically significant structure on the property that the applicant intends to demolish without relief from the Zoning By-Law.* 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.
- 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. *The intent of the Zoning By-Law will not be nullified through the granting of this Variance. The two resulting lots will have single-family homes and will have the minimum lot area, respecting the required setbacks. The frontage and lot width, while less than required by the Zoning By-Law, will not cause detriment to the public good. There will be adequate access to both properties.*
- 7.11. The Board grants this Variance with the following conditions:
 - 7.11.1. The proposed addition shall be located as shown on the Plan.
 - 7.11.2. There shall be no further subdivision of Lot #2.

- 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: 
Philip R. Ottaviani, Jr., Chairman

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