

CITY OF FRAMINGHAM

ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

CITY OF FRAMINGHAM
CITY CLERK'S OFFICE

2018 FEB 27 P 3: 15

BOARD OF APPEALS CASE NO. 18-01

PETITION OF FABIO HOMEN

DATE OF DECISION: FEBRUARY 13, 2018

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of FABIO HOMEN (hereinafter the Applicant), for property located at 67 WILLIS AVENUE. This Decision is in response to a Petition for a Variance for insufficient side yard setback as required by the Zoning By-Law (hereinafter the Application).

2. Property Owner and Applicant

Fabio Homen
67 Willis Avenue
Framingham, MA 01702

3. Location

Property is located at 67 Willis Avenue and identified by Assessors' Parcel ID 145-60-2343-000 (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 February 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:

SUSAN S. CRAIGHEAD	YES
EDWARD COSGROVE	YES
JOSEPH NORTON	YES

5. Proceedings

The Application was received by the Board on January 19, 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 February 13 at 7:00 P.M. in the Ablondi Room of the Memorial Building. Board Members Susan Craighead, Edward "Ted" Cosgrove, Joseph Norton, and Alternate Rick McKenna were present throughout the proceedings. Mr. Ottaviani recused himself and sat in the audience. 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, Mr. Fabio Homen was present with his translator, Mr. Allen Lemos. Mr. Lemos stated that the Applicant had been granted relief by the ZBA in early 2017. Due to an error made by the contractor when pouring the foundation, the house built did not reflect the plans

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approved by the ZBA. ZBA decision #17-02 allowed for a side setback of 10.2 feet but the as-built plans depicted a setback of 9.1 feet on one corner. Mr. Homen acknowledged the mistake and apologized for the issue.

Ms. Craighead asked if there had been any complaints from the neighbors. The Applicant responded no. Mr. Cosgrove commented, it would be unfeasible to make the applicant tear down the structure.

6. Exhibits

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

- 6.1. Application filed with the Building Official to keep dwelling within the required side yard setback, denied on January 18, 2018.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on January 19, 2018.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Treasurer/Collector comments dated January 29, 2018.
- 6.5. Photographs (3) depicting the final construction, submitted with application.
- 6.6. ZBA decision #17-02, originally filed with the City Clerk January 24, 2017.
- 6.7. Site plan approved in ZBA decision #17-02, entitled "Plot Plan of Land, 67 Willis Avenue, Framingham, Mass.", dated November 7, 2016 and prepared by Schofield Brothers LLC, 1071 Worcester Rd., Framingham, MA 01701.
- 6.8. Site plan entitled "As Built Plot Plan of 67 Willis Avenue", dated January 12, 2018, prepared by Schofield Brothers, LLC, 1071 Worcester Road, Framingham, MA 01701.

Exhibit 6.8 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 General Residence (G) zoning district.
- 7.2. On January 18, 2018, the Building Official denied the Application, pursuant to Section IV.E.2 of the Zoning Bylaw.
- 7.3. On January 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 January 29 and February 5, 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 ZBA previously issued a Finding to reconstruct a house on a lot with insufficient lot area and frontage and approved a plan with all corners of the structure located 10.2 feet from the side lot lines.

The as-built plan provided to the Building Department shows the front right corner of the house 9.1 feet from the lot line. The other sides of the house are compliant for setbacks.

- 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 house was built within the side setback by mistake, and the mistake was discovered after the house was completed.* 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. *A literal enforcement of the provisions of the Bylaw would require the demolition and reconstruction of the dwelling, which would cause hardship to the Applicant.*
- 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 house is approximately one foot within the required setback, leaving 9.1 feet to the side lot line. The degree of noncompliance is minimal. No neighbors have objected to the proposed project. The dwelling will not be visually obtrusive to the neighborhood.*
- 7.10. The Board grants this Variance with the following conditions:
 - 7.10.1. The dwelling must be located and constructed as shown on the as-built Plan.
- 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.

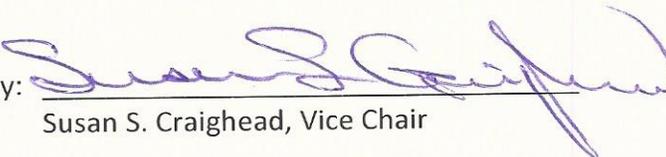
7.13. This Decision shall be recorded at (as appropriate) the Middlesex South District Registry of Deeds or District of the Land Court prior to the issuance of a Building Permit. A copy of the recorded or filed Decision certified by the Registry, and notification by the owner of the recording, including 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: 
Susan S. Craighead, Vice Chair