

BOARD OF APPEALS CASE NO. 18-35

PETITION OF JAMES AND JUDY CARON

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 JAMES AND JUDY CARON (hereinafter the Applicant), for property located at 5 HARRISON PLACE. This Decision is in response to a Petition for a Variance from front setback requirements of the Zoning By-Law (hereinafter the Application) to build an addition.

2. Property Owner and Applicant

James and Judy Caron
5 Harrison Pl.
Framingham, MA 01702

3. Location

Property is located at 5 Harrison Place and identified by Assessors' Parcel ID 113-11-3197-000 (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 22, 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 Edward "Ted" Cosgrove, 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 public hearing, Mr. James and Mrs. Judy Caron presented their proposal before the Board, to construct a one-story attached addition within the front setback. Mr. Meltzer noted that it was an odd-shaped lot. Board members noted the supporting statement from abutters.

Alex Carlock (92 Hartford Street) appeared and spoke in favor of the proposal. No other members of the public commented.

Board members voiced no concerns and Mr. Meltzer moved to approve as presented.

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 18, 2018.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on October 22, 2018.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Memorandum of support submitted with application.
- 6.5. Four (4) photos submitted with the application.
- 6.6. Google Maps aerial view printout illustrating location and two dead end streets, submitted with application.
- 6.7. "Abutters approval" with four signatures of neighbors dated October 21, 2018.
- 6.8. "Plot Plan for Proposed Addition", prepared by Framingham Survey Consultants Inc., PO Box 1190, Framingham, MA 01701, dated June 13, 2018.

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 Single Residence (R-1) zoning district.
- 7.2. On October 18, 2018, the Building Official denied the Application for a permit to build an addition within the front setback pursuant to Section IV.E.2 of the Zoning By-Law.
- 7.3. On October 22, 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 required front setback in the R-1 zoning district is 30 feet. The Board noted that the petitioner's property is situated at the ends of two dead-end streets, Harrison Place and Thelma Road. This is a condition unique to the lot in question and not the neighborhood in

general. The two dead-ends result in the lot having two front yards. The proposed one-story addition would be located on the north side of the existing house, 15.1 feet from the Thelma Road front lot line. In practical terms, this is the side of the house, as the front and access are off Harrison Place. The required side setback in the R-1 zone is 10 feet.


- 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 shape of the lot is unique in that it has frontage on two dead-ends, but only has access off Harrison Place.* 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 proposed location of the addition is to the side of the petitioner's house, not in the front yard. Allowing such an addition does not derogate from the intent of the By-Law, 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 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:  _____
Philip R. Ottaviani, Jr., Chairman

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