



## Zoning Board of Appeals

Town Office Building  
195 Main Street  
Maynard, MA 01754



### FINDINGS AND DECISION

**Re:** Application of Steven and Sara Silva for a Variance  
**Date:** August 05, 2014  
**Petition Number:** ZB14-03

#### *Procedural History*

1. Pursuant to Massachusetts General Law Chapter 40A, Section 10, an application to obtain a variance from Maynard lot dimension specifications, as contained in the Maynard's zoning bylaws, section 4.4.1 Table B, was submitted by the above-referenced owners and filed with the Zoning Board of Appeals (ZBA) on June 09, 2014.
2. A public hearing on the variance application was held on July 28, 2014.
3. The variance request was accompanied by a plan entitled "Petitioners Plan of Land in Maynard, Ma" prepared by Thomas Land Surveyors and Engineering and dated January 10, 2014. The plan depicted revised property lines indicating division of the subject parcel into two lots. The variance request was to allow creation of a lot with a 50 foot width in a zoning district where the minimum allowable lot width is 80 feet.
4. The application documentation and other submitted material was reviewed by the ZBA, The Building Commissioner/Zoning Enforcement Officer (Richard Asmann) the Town Planner (Bill Nemser) and the Town Engineer (Wayne Amico). Throughout its deliberations the ZBA has been mindful of the statements of the applicant and the representatives and the comments of the general public all as made a public hearing.

#### *Findings*

##### *a. General*

1. The subject property is located at 50 Boeske Avenue, Maynard, Map 18-Parcel 185 and is shown on the above-referenced plan submitted with the application. The owners are Steven and Sara Silva, PO Box 12, Wakefield NH, 03830. The property consists of approximately 1.5 acres. Currently

NH, 03830. The property consists of approximately 1.5 acres. Currently there is a residential two family structure on the site. The site abuts a single family residence: 46 Boeske (Anthony and Lee Tyler) to the west and the Town of Maynard Public Works Garage to the east. The property's zoning is Single Residence District 1 (SR1). It is located within the *Maynard Riverfront District* which requires a permit or approval from the Maynard Conservation Commission to build within 200 feet of a river or stream. Taylor Brook abuts the property on the southern portion of the property.

2. The applicant is requesting the variance to subdivide the property into two lots. The variance was required as the proposed subdivision would result in the creation of a lot (the eastern most) having a width of 50 feet rather than the required 80 feet width for residential lots with a SR1 zoning designation as contained in the Maynard Zoning By-Laws, Section 4.1.1 Table B. The applicant stated he wished to construct an additional residential unit in the newly created lot. Each lot can provide the required 25 foot frontage and required access from a proposed cul-de-sac. Were the variance approved, the property would still require Definitive Subdivision approval from the Planning Board.

**b. Variance Criteria**

Chapter 40A, Section 10 of the Massachusetts General Laws (MGL) require that before granting a variance, the Board must make a determination (finding) that three conditions exist on the subject property:

1. The permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located.
2. That a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant.
3. 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.

**c. Specific findings**

To clarify the how the application met, or failed to meet, the necessary criteria as required by G.L. c. 40A, Section 10 for a variance, the Board voted on each required finding as its own item.

1. The Board determined that unusual circumstances affecting land or structures (as further defined by statute) do not exist and further the Applicant created its own hardship as it was creating the new lot. **Condition not met.**
  
2. The applicant maintained that a hardship existed because the property's value was devalued by its proximity to the Public Works garage. The owner attributed that the fluctuation in property values since the property's purchase by the owner on April 9, 2012 were the result of this adjacently. Additionally the applicant stated that he was a patient at Massachusetts General Hospital and needed to be in the area for medical care. The Board's consensus after deliberation was that:
  - a. The garage existed prior to the owner's purchase of the property. The owner was aware of this fact.
  - b. Subdividing the land and creating a non-conforming lot adjacent to the Public Works garage did not relieve a hardship and was in fact a *self-created hardship*.
  - c. Granting a variance for a market conditions (resale value) or personal hardship is not grounds for a hardship as defined in MGL Chapter 40A, Section 10.

The Board determined that a hardship, as defined in the state statutes, did not exist. **Condition not met.**

3. The applicant believed that his improvement of both the existing property and to the proposed lot and structure did not pose a detriment to the public good: the applicant's position was that improvements to both properties would raise property values in the neighborhood and would therefore constitute a benefit. The applicant also maintained that the a variance allowing the proposed 50 foot lot width would not substantially derogating from the intent or purpose of such ordinance or by-law.

The Board determined that granting the variance would result in a substantial detriment to the public good and that granting the variance also would derogate the intent and purpose of the zoning by-law. **Condition not met.**

### ***Decision***

In view of the foregoing and by a 4-0 vote, The Zoning Board of Appeals hereby has determined the conditions as required by ZBA Chapter 40A, Section 10 of the


Massachusetts General Law have not been met and the applicant's request for a variance is denied.


**Record of Vote**

The following members of the Zoning Board of Appeals vote to deny the Application of Steven and Sara Silva for a Variance:

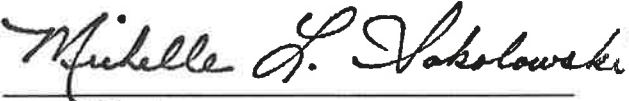
  
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Marilyn Messenger

  
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John Edson

  
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Carlos Perez

  
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Leslie Bryant

Filed with the Town Clerk on: September 3 2014

  
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Town Clerk

CC: Steven and Sara Silva  
Lisa L. Mead, Town Attorney  
Kevin Sweet, Town Administrator  
Andrew Scribner-MacLean, Town Administrator  
Bill Nemser, Town Planner