



City of Boston
Mayor Martin J. Walsh
Board of Appeal

NOTICE OF DECISION
CASE NO. BOA 927192
PERMIT # ERT894668

APPEAL SUSTAINED
WITH PROVISOS

In reference to appeal of

Marc LoPilato

concerning premises

1 Rockwood Terrace, Ward 19

to vary the application of the Zoning Act, Ch. 665, Acts of 1956, as amended, in this specific case, I beg to advise that the petition has been granted.

Decision has been filed in the office of the Commissioner of the Inspectional Services Department, 1010 Massachusetts Avenue, fifth floor, Boston, MA 02118, and is open for public inspection. Date of entry of this decision in the Inspectional Services Department was 6/14/2019.

FOR THE BOARD OF APPEAL


Kevin P. O'Connor, Jr.

Kevin P. O'Connor, Jr.

Principal Administrative Assistant



City of Boston
Mayor Martin J. Walsh
Board of Appeal

DECISION OF THE BOARD ON THE APPEAL OF

April 30, 2019
DATE

Marc LoPilato

to vary the terms of the Boston Zoning Code, under Statute 1956, Chapter 665, as amended, Section 8, at premises:

1 Rockwood Terrace, Ward 19

For the terms of the Boston Zoning Code (see Acts of 1956, c. 665) in the following respect: Variance
Article(s): 55(55-9)

Construct a new Single Family Home with a 2 Car Garage on existing 9,008 sq ft Lot.

In his formal appeal, the Appellant states briefly in writing the grounds of and the reasons for his appeal from the refusal of the Building Commissioner, as set forth in papers on file numbered BOA927192 and made a part of this record.

In conformity with the law, the Board mailed reasonable notice of the public hearing to the petitioner and to the owners of all property deemed by the Board to be affected thereby, as they appeared on the then most recent local tax lists, which notice of public hearing was duly advertised in a daily newspaper published in the City of Boston, namely:

THE BOSTON HERALD on Tuesday, April 9, 2019

The Board took a view of the petitioner's land, examined its location, layout and other characteristics.

The Boston Redevelopment Authority was sent notice of the appeal by the Building Department and the legal required period of time was allotted to enable the BRA to render a recommendation to the Board, as prescribed in the Code.

After hearing all the facts and evidence presented at the public hearing held on Tuesday, April 30, 2019 in accordance with notice and advertisement aforementioned, the Board finds as follows:

The Appellant appeals to be relieved of complying with the aforementioned section of the Boston Zoning Code, all as per Application for Permit# ERT894668 and January 15, 2019 plans submitted to the Board at its hearing and now on file in the Building Department.



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This appeal seeks permission to construct a new single-family home with a 2 car garage on the existing 9,008 Sq Ft Lot at 1 Rockwood Terrace in Jamaica Plain (the "Property").

The reason for this appeal is to allow the appellant, Marc Lopilato (the "Appellant"), the ability to reasonably develop the Property to add much needed new housing, thereby improving safety for the residents and abutters. Furthermore, this appeal will allow the Appellant to redevelop the Property in a manner which is consistent with and complimentary to the character of the surrounding Jamaica Plain neighborhood.

The appeal is necessary as the requested relief requires relief from the terms of the Boston Zoning Code (the "Code"). The specific relief required in furtherance of the proposed project is as follows:

- A dimensional variance from Article 55, Section 9 of the Code, Lot Width.

The requested relief will behoove the neighborhood by adding high quality, much needed housing to Jamaica Plain and the City of Boston, furthering the neighborhood's and the City's goals for additional quality housing. The relief granted will benefit the immediate neighbors by adding a newly constructed home that is thoughtfully designed and built by a reputable builder with experience in Jamaica Plain. Additionally, the design will have a robust design review by the BPDA; in fact, the Appellant has already incorporated numerous design changes based on neighborhood feedback.

THE APPELLANT MEETS THE PROVISIONS FOR A VARIANCE AS SET FORTH IN ARTICLE 7, SECTION 7-3 OF THE CODE

As detailed herein, the Appellant submits that the Property is uncharacteristically and exceptionally narrow, which presents a substantial hardship on the Appellant's ability to utilize their property for its highest and best use and supports the grant of the requested Variance, as the minimum relief necessary for the reasonable use of the Property. The relief requested is also consistent with purpose and intent of the Code and not injurious to the neighborhood or detrimental to public welfare, as the proposed project has been thoroughly processed with



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extensive public and administrative review, resulting in the most feasible development of the Property, with high quality residential housing designed for home-owner occupants. Further, the proposed project is appropriately sized and designed, while being able to provide ample residential space throughout the proposed project.

The Appellant submits that the proposed project meets the requirements for the granting of a Variance for the subject dimensional violation. In this regard, the Appellant notes that the intent and purpose of the underlying dimensional requirements is to reasonably constrain the size and density of a building on a lot and to keep the size of the structure in an appropriate scale with the surrounding neighborhood. In this case, both the existing conditions of the Property and the scope of the proposed project itself are appropriate for the issuance of the requested Variance from the Code's subject dimensional requirements. The proposed project features the development of the Property to reasonably accommodate the use of the Property for a single-family home with appropriate open space. The reasonable use of the Property is challenged by the uncharacteristically and exceptionally narrow existing parcel of land. Furthermore, the new home is designed to blend in with the neighboring properties and recent new developments and is much better suited to match the style of the neighborhood as it grows, which leads to a much more reasonable use of the land than what currently exists. The proposed project is similar in size and scale to other developments in the near vicinity and will provide a creative solution to utilize the space in this challenged property, with the minimum Variances necessary to reasonably adapt the space for a reasonable residential use.

The proposed project will properly utilize and configure the existing Property, with the minimum Variances necessary to reasonably develop the space. The development of the unique lot in conformity with the Jamaica Plain neighborhood's desire for high quality housing designed for home-ownership, presents a substantial hardship and significant design challenge for the Appellant's proposed development of the Property, thereby necessitating the minimum necessary Variances to allow for the development of the Property. In this regard, the Appellant submits and the Board finds that the proposed project has been specifically designed to reasonably accommodate the residential use, and the proposed project does not negatively impact the Property and the surrounding neighborhood.



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Therefore, the subject premises are especially affected by the circumstances above, and for those reasons the relief requested will not substantially derogate from the intent or purpose of the Code, but will allow for the reasonable use of the Property for a purpose in keeping with the nature of the surrounding community.

As detailed herein and below, and further presented at the public hearing before the Board, the Appellant submits that the proposed project specifically meets the required enumerated findings for the Board's grant of the required Variances.

For these reasons, the requested relief may be granted in harmony with the general purpose and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

At the hearing, a representative of the Mayor's Office of Neighborhood Services spoke in support of the project. The applicant undertook a robust community process in anticipation of their ZBA hearing and designed the project after taking community feedback into consideration. Additionally, a letter of support for the project from a community member was submitted to the Board. Representatives from the offices of City Councilors O'Malley, Essaibi-George and Flaherty, The Garrison Trotter Neighborhood Association, and attorney for an abutter and multiple abutters were recorded in opposition. There are also multiple letters of opposition on file with the Board. In considering all the testimony the Board determined the benefits of the project further supports the Board's finding that the requested relief will have no negative impact on the surrounding area and is in harmony with the general purpose and intent of the Code.

The Board of Appeal finds that all of the following conditions are met:

- (a) That there are special circumstances or conditions, fully described in the findings, applying to the land or structure for which the variance is sought (such as, but not limited to, the exceptional narrowness, shallowness or shape of the lot, or exceptional topographical conditions thereof), which circumstances or conditions are peculiar to such land or structure but not the neighborhood, and that said circumstances or conditions are such that the application of the provisions of this



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Code would deprive the appellant of the reasonable use of such land or structure;
and

- (b) That for reasons of practical difficulty and demonstrable and substantial hardship fully described in the findings, the granting of the variance is necessary for the reasonable use of the land or structure and that the variance as granted by the Board is the minimum variance that will accomplish this purpose; and
- (c) That the granting of the variance will be in harmony with the general purpose and intent of this Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

In determining its findings, the Board of Appeal has taken into account: (1) the number of persons residing or working upon such land or in such structure; (2) the character and use of adjoining lots and those in the neighborhood; and (3) traffic conditions in the neighborhood.

The Board is of the opinion that all conditions required for the granting of a variance under Article 55, Section 9 of the Zoning Code have been met and that the varying of the terms of the Zoning Code as outlined above will not conflict with the intent and spirit of the Zoning Code.



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Therefore, acting under its discretionary power, the Board (the members and/or substitute members sitting on this appeal) voted to grant the requested variance as described above, annuls the refusal of the Building Commissioner and orders him to grant a permit in accordance with this decision, with the following proviso which, if not complied with, shall render this decision null and void.

APPROVED AS TO FORM:


Assistant Corporation Counsel

PROVISO:

1. Subject to design review by BPDA.
2. No work to begin until results of drilling with respect to determination of existence of a ledge are communicated to neighbors and any such ledge not to be removed by blasting.

Signed, June 11, 2019


Mark Fortune Secretary


Mark Erlich - Acting Chair


Bruce Bickerstaff


Craig Galvin


Kerry Walsh Logue


Tyrone Kindell, Jr.