

**CITY OF WALTHAM
ZONING BOARD OF APPEALS**

September 18, 2018

The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, September 18, 2018, in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham, MA.

In attendance were Chair Barbara Rando, and members Glenna Gelineau, Sarah Hankins, Mark Hickernell and John Sergi.

Mrs. Rando: Tonight we have two cases before us: Case No. 2018-27, Frank Cosco, 69 Briarwood Road, and that's for variances and Case No. 2018-28, George Michael Barnett, 91 Robbins Street, and that's also for variances and to amend an existing decision.

The first action this evening is for a motion to accept the minutes of September 11, 2018.

On motion of Mr. Sergi, seconded by Ms. Hankins, the board voted to approve the minutes of September 11, 2018.

Will the clerk please read the petition in 69 Briarwood Road, Case 2018-27?

The clerk read the petition of Frank Cosco, Owners: Philip and Melissa Mustone in an application for a variance/Amend Variance. The Petitioner seeks to an enclose upper and lower level 12 foot x 16 foot sunroom and to amend prior ZBA decision in case #1988-26. Location and Zoning District: 69 Briarwood Road; Residence A-3 Zoning District.

Mrs. Rando: May we hear from the Petitioner or the Petitioner's representative, please.

Philip Muscone, 69 Briarwood Road, Waltham came forward. He then read his brief into the record.

Mrs. Rando: You were here how long ago?

Mr. Muscone: This is my first time here.

Mrs. Rando: When did you buy the house?

Mr. Muscone: We just bought the house in June 2018.

Mrs. Rando: Does anyone have any questions about it?

Mr. Sergi: Have you gone around to your neighbors and have you told them what you are going to do?

Mr. Muscone: Yes. We sent out the legal notice, 300 ft. radius from the locus. I became good friends with my neighbors to the side and the rear of me and they are in support as well. And, yes, I haven't met too many people, I've just been there not even two months but, yes.

Mr. Sergi: So you haven't had any complaints.

Mr. Muscone: No complaints, no nothing. No one has said anything, You know, I went around. I went to go meet the people across the street. You know, whatever I could do in the last two months that I've been there.

Mr. Sergi: You are not changing the roof height at all? The roof height remains the same?

Mr. Muscone: Correct.

Mr. Sergi: And you are pretty much using the same decor as the rest of the house.

Mr. Muscone: Absolutely. The proposed structures will have the same look and feel like the rest of the neighborhood.

Mrs. Rando: You won't be covering the deck?

Mr. Muscone: The deck will be open. It's just like a porch.

Mrs. Rando: And that's in the rear yard?

Mr. Muscone: It's in the rear yard. So what we are looking to do is to extend the home in the upper level. So the home is a split, so as you know when you walk in, my stairs go up and down so in the upper level, we are looking to extend that back just to have a little additional living space, It will be open below and just have pavers there. It won't be enclosed down below.

Mrs. Rando: It will be a deck.

Mr. Muscone: Correct.

Mrs. Rando: And what is your variance for? Exactly how many feet do you need?

Mr. Muscone: The structure is already there for the enclosing of the sunroom that's there now. It's already there, all we would like to do is just enclose it.

Mrs. Rando: Does anyone have any other questions?

Mr. Hickernell: Where the board already granted the variance for this setback, I see no reason to disturb that decision other than as requested by the petitioner.

Mrs. Rando: Which of the 1988-26 variance, what was that on?

Mr. Hickernell: Side setback, I think. Rear setback, sorry.

Mrs. Rando: Did they have a certain amount of time to do it?

Mr. Hickernell: They already did it.

Mr. Muscone: So currently it's a three season room. We'd just like to enclose it to make it part of the house.

Ms. Gelineau: And you are adding a deck?

Mr. Muscone: We are adding a deck.

Ms. Gelineau: So you're adding a deck which squares off the room in the back.

Mr. Muscone: Correct and then gives us a set of stairs in the back.

Mrs. Rando: Are there any other questions? (There were none)

Is there anybody in the audience that is in favor

Mr. Wilfred J. Morton, III, 81 Briarwood Road: So I went up to the building department and I looked at the proposed plan and my only question as I looked at it was, how come, so in other words they applied for this and then what's the decision to amend this? Why amend something that was applied for and granted? I don't understand.

Mr. Hickernell: So, typically when we grant a variance, one of the conditions is that the locus be developed in accordance with the plans that were filed at that time. So if you had to change those plans, you need to amend the prior decision.

When I looked at it and from my eye and I'm not educated as you are with this sort of thing, but it looked to me that they weren't making anything closer to my place, so I didn't see any harm in it. So the pad is already. It's a three season. He's just closing it and just adding some deck space. And nothing from the plan that I saw, nothing really makes this structure closer to my house or anything like that. So I was just curious. So they applied and they were granted but he never did anything with it.

Mrs. Rando: Right. And you are in favor?

Mr. Morton: I am in favor.

Mrs. Rando: Is there anyone else in favor that would like to raise their hand and be counted?

(Three people raised their hand in favor.)

Mrs. Rando: Is there anyone in opposition? Seeing none. Is there anyone seeking information or has a question? (Seeing none.)

You may continue with your Proposed Findings of Fact.

Mr. Sergi: This is already on file?

Mr. Muscone: On record, yes.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to waive the reading of the Proposed Findings of Fact since they have been on file in the Law Department.

Mrs. Rando: You may continue with your Proposed Decision.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to waive the reading of the Proposed Decision since it has been on file in the Law Department.

Mrs. Rando: Do I have a motion on the Proposed Findings of Fact?

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted that the Proposed Finding of Fact be adopted by the board.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.

Mrs. Rando: I'll entertain a motion on the decision.

Mr. Hickernell: May I actually propose an amendment to the decision?

At the end of the first sentence, add: “as the petitioner has met the applicable legal standard.”

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted that the Proposed Decision, as amended, becomes the decision of the board.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.

Will the clerk please read the Petition in Case 2018-28, George Michael Barnett.

The clerk then read the Petition of George Michael Barnett, Owner: George Michael Barnett and Martine Kalke in an Appeal/Petition: Variance from yard projection and rear yard setback. Amendment of 1946 zoning decision. Subject Matter: To allow for the construction of an uncovered deck in the rear yard and a single story addition in the rear yard. Location and Zoning District: 91 Robbins Street, Waltham, MA 02453; Residence B District.

Mrs. Rando: May we hear from the Petitioner or the Petitioner’s representative, please?

Bret Francis, Esquire, Scafidi and Juliano, 10 Hammer Street, Waltham came forward and submitted a brief to each member of the board.

Mr. Francis: I am here tonight on behalf of George Michael Barnett who goes by Michael.

(Mr. Francis read his brief into the record.)

Mr. Francis: Just a quick note on that. As I heard when you were introducing the case you said an amendment to the subdivision plan that was granted by the zoning board.

When Mr. Forte, the Building Inspector, called me to let me know that we needed this additional relief, I set up a meeting. We went in and we discussed and I said, it was a subdivision that was approved. We're not changing the subdivision. He agreed after consulting with Attorney McCourt and some other colleagues that what was probably required was the affirmation of the subdivision. So we are not changing the borders of it. The lot lines are not changing, so it would be kind of awkward to call it an amendment when we are not amending it per se.

(Mr. Francis went back to reading his brief.

Ms. Hankins: What does the side yard setback have to do with this?

Mr. Francis: He had the land surveyor inadvertently put fifteen foot rear yard setback. He crossed that out and put thirty, The side remains 10. I'm sorry the side, that should be a rear yard setback. I apologise.

Ms. Hankins: So throughout your rear yard, I wasn't sure you were talking about your side yard or rear yard.

Mr. Francis: I probably said it wrong. I was probably repeating it. My apologies.

Mr. Francis went back to reading the remainder of his brief.

Ms. Hankins: What you have on the plan, it says 80 Orange Street. Is that the rear?

Mr Francis: That is the rear. This is 91 Robbins Street so at the bottom of the plan is the front.

Mr. Hankins: Okay.

Mrs. Rando: Could you explain to me which house it is. Do you have a picture besides the one that is right here?

Mr. Francis: Just the plan. It's set back from the road. It's completely land locked.

Mrs. Rando: Is it a red house?

Mr. Francis: Yes.

Mrs. Rando: I thought that had 89A on i'm not sure I saw 89A. Are you 91? Even when I tried to pull up 91 on my computer, I couldn't get 91.

Mr. Francis: Did you try Assessors? In fact I attached Exhibit A, the Assessors unofficial property card which identifies it as 91 Robbins Street.

Mrs. Rando: And there was one car to the right. It was from out of state. No?

Does the house next to you have a house in back too?

Mr. Francis: Yes, 85 and 85R Robbins Street. That may be the confusion.

So first is was the fact that the lot is land locked. That pretty much makes it unique in this neighborhood.

Mrs. Rando: Not really, because the house next door is the same. It's land locked too.

Mr. Francis: A lot of them have pork chops. This one does not even have the land that comes down to Robbins Street. This is actually land locked, no driveway of its own. He has a right of way to egress and ingress from his property but it is unique from most of the other lots. I can't conclusively say all of them but it is unique.

Mrs. Rando: You're saying that the position of the house on the lot gives you a hardship?

Mr. Francis: Combined with the fact that the lot was created actually after the fact. That's why the house is where it is. They actually subdivided the lot afterwards to have this lot and the dimensions of it approved. So this is one of the unique at times when the house predates the subdivision. This lot was created after the house was. So, I believe that is your hardship and - - -

Mrs. Rando: He bought it after it was subdivided.

Mr. Francis: Of course. It was subdivided in 1946,

Mrs. Rando: He knew that the house was in that position. And he knew that it had been subdivided.

Mr. Francis: That's correct. It doesn't have to be s surprise for it to be a hardship.

Mrs. Rando: No, but he knew that the house was in that position and he didn't have much space.

Mr. Francis: Well that's why, if you look at the considerably meager, when I look at the considerably, this is forty feet 7.3 by 5 feet 7 inches. This is the smallest addition I've ever done. And the fact of the matter, if you look where it is on the plan, it's completely within the footprint of the house except for inches that it extends. It doesn't seek to go into either side of the set back. In fact, after the first review of the building department, Patrick Powell did not believe that I needed a variance for the addition. He thought that because you were within the footprint and you're not seeking anything outside of it, it should be as of right and I agree. It wasn't until the building inspector, Mr. Forte, took a lot at it that in his wisdom, he said that, because the entire house is located, it's a 34 foot rear yard setback, Eighty percent of the entire house is in the rear yard setback. By definition, anything you are going to do is going to require a variance, I mean, one story, 7'3" by 5'7" is completely within the footprint of his house. I don't see how that could be outside of the realms of what is reasonable in this parcel.

Mrs. Rando: Does the petitioner live in that house?

Mr. Francis: His wife is there and two children are.

Mrs. Rando: Is it a single family house?

Mr. Francis: Just a single family house and he is trying to — if you notice you can see the steps coming down from where that addition is. Rather than have two front entrances, which currently exists which doesn't help in a fire, what he is doing is he's getting rid of that, extending the bathroom, making his bathroom larger, and then with the proposed deck they'll have a step right out. So anyone in the rear of the house doesn't have to run to the front to get out to either one of the two exits that are in the front of the house.

It's a very meager petition. Single story not even going up to the second floor. It is a story of their home.

The petitioner has spoken to the neighbors. He's spoken to 89 as well as the two 85 and 85R Robbins Street. Those are the ones that are impacted obviously. 719 Moody Street, the LaCava Corporation is on the other side. Did you bother to talk to them?

Mr. Barnett: No.

Mr. Francis: Just the ones in the front and on the side where the addition and the proposed deck will be located.

Mr. Francis went back to reading his brief.

Mrs. Rando: Does any board member have any questions?

Mr. Hickernell: It strikes me as the very definition of diminimus. I don't have any questions.

Mrs. Rando: Ms. Hankins do you have any questions?

Ms. Hankins: No questions. I think he's using the sort of end of the property that has the most space. So it seems to make more sense to me. He is definitely putting up a small addition.

Mrs. Rando: Is there anyone in favor of this petition? (The Petitioner raised his hand in favor.)

Mrs. Rando: Is there anyone in opposition? Seeing none. Is there anyone seeking information? Seeing none.

We do have one letter to read into the record.

The clerk read a letter from Wayne F. X. Brasco dated September 5, 2018, in support of this petition.

All right, if there are no other questions, you may continue with your Proposed Findings of Fact.

Mr. Sergi: You need to make a change on Page 2 on the side yard in the findings of fact.

On motion of Mr. Sergi seconded by Mr. Hickernell, the board voted to waive the reading of the Proposed Findings of Fact since they have been on file in the Law Department.

Mrs. Rando: Now, you may read the Proposed Decision.

On motion of Mr. Sergi seconded by Mr. Hickernell, the board voted to waive the reading of the Proposed Decision since it has been on file in the Law Department.

Mrs. Rando: I am ready to entertain a motion on the Proposed Findings of Fact as amended.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to adopt the Proposed Findings of Fact as amended.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.

Mrs. Rando: All right I am ready to entertain a motion on the Proposed Decision.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted that the Proposed Decision, become the decision of the board.

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.

Mrs. Rando: One more motion is in order.

On motion of Mr Sergi, seconded by Mr. Hickernell, the board voted to adjourn at 7:35 P.M.
