Board of Appeal meeting duly called in accordance with the City of Malden Ordinances and its by-laws was held Wednesday, October 16, 2019 at 6:30 pm in the John and Christina Markey Senior Community Center, 7 Washington Street, Malden, MA

Members present: Chair James O’Brien, Assistant Fire Chief William Sullivan, Adam Sherwin, John King, Kathryn Pakenham Bilgen

Meeting called to order 6:30

Chair O’Brien made the announcement regarding MATV is recording this meeting and if anyone will be recording to advise the Board and provide their name and address.

Chair O’Brien read the following petition into the meeting record

PETITION OF:

Petition 19-013 by Patrick P. MacDonald, Esq on behalf of Robert Scarpaci, Trustee, for a variance of Section 400.1.2.1 Chapter 12, of the Revised Ordinances of 1991 as Amended of the City of Malden, Namely Dimensional Controls – Side, Rear and Front Setback Requirements – As per plans #COO-030994-2019 at the property known as and numbered 10 Dianes View, Malden, MA and also known by City Assessor’s Parcel ID #152-570-013.

All statutory requirements have been met and this Petition is properly before the board.

This petition is being represented by Atty Patrick MacDonald of 477 Eastern Avenue, Malden, MA

The petitioner Mr. Scarpaci is in the process of selling his home. While a mortgage inspection was being performed, it was discovered that there were setback violations.

The petitioner’s representative Atty. Patrick MacDonald believes that the original plot plan was zoning compliant at the time of the build. A Certificate of Occupancy was issued in 2003 and the property also meets the statutory requirements due to:

a. Unique Property – The Home sits on top of a cliff
b. Significant Hardship – non compliant but had building permits
c. Relief does not derogate from the abutting properties as the side and rear yard are cliffs
errors were made by the builders but a certificate of occupancy was issued.
The Building Commissioner denied a Certificate of Occupancy due to – front, rear and side setbacks.
However, zoning in 2003 for the front set back from the structure to property line does not include the porch and a variance is not needed for the front set back requirement. The side and rear setback relief is still necessary due to the deck and stairs.

This is a pre fabricated home

Member King noted that papers filed with the Registry of Deeds include sidewalks. This requirement was not met. Dianes View is a “not accepted” street.

Mr. Scarparci noted Dianes View is a narrow street and they have slanted sidewalks
Atty. MacDonald noted that the City released its Bond (from Building), the tax issue has been cleared up, Dianes View is not a public way. All city departments have signed off – although there is no proof of the sign off.

Chair O’Brien stated and asked Attorney to MacDonald to acknowledge and correct his statement above “All city departments have signed off” that for whatever reason the final process of having the roadway accepted as a public street by the City did not take place thus, not all departments have signed off.

Chair O’Brien noted that presently Dianes View is a private way and will continue to be taxed as such until such time that it is accepted by the City as a public street.

Chair O’Brien read the statement from City Treasurer Jonathan Davis stating that the taxes for the private road have been paid and the lien has been taken off the property, taxes are current on the roadway/private way but will continue to accrue going forward.

Building Commissioner: petitioner has been denied a current Certificate of Occupancy.

The proposed preconstruction foundation had conforming setbacks
Construction of the property resulted in side and rear setback violations
The front setback was conforming due to the Zoning Ordinances of 2003- steps and landings were not included. The added deck must comply. The Occupancy does not legalize foundations.

Member Bilgen-referred to the plot plan lot areas being different – depends on how measured new technology vs. 1998

Atty. MacDonald - construction began in Feb 98, as built June 98, COO issued in 2003 – It took 4 years to build the house and homes in the area

Atty MacDonald noted all other homes have been sold with no issues

Member Sherwin - “What flagged this?”
Atty. MacDonald - the lender had the land surveyed to check the dimensional controls. The deck was constructed with the house as a second egress

Open to public:
In Favor – none
Opposed – none
Closed to public

Member King noted there is a lack of paperwork with regards to the deck

Motion:
John King grant with conditions

Approve front setback,
Approve Side setback but all parts of the deck brought into conformity
Rear setback – no part of the deck may be closer than 20 feet from the rear lot line

Second by Kathryn Bilgen – House and foundations stay but the deck must come into compliance
5 to 0 granted with conditions

Next Meeting: November 20, 2019

Petition & plans available for public review in Office of Assessor, 110 Pleasant St., 3rd floor. Malden MA or online at www.cityofmalden.org or https://permits.cityofmalden.org/EnerGov_Prod/SelfService