

# City of Malden

Massachusetts

Board of Appeal  
110 Pleasant St.  
Malden, Massachusetts 02148

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## BOARD OF APPEAL DECISION

August 15, 2018 Hearing

### Petition of:

Daniel Schiavo requests a variance of Section 400.1.2.1, Chapter 12, of the Revised Ordinances of 1991 as Amended of the City of Malden, dimensional controls for single family dwelling namely, ~~to construct an addition violating side yard setback~~ requirements of single family dwellings as per plans, at the property known as 140 Neal Street, Malden, Massachusetts, and also known by City Assessor's Parcel ID# 151-632-201.

### Findings of Fact

Petitioner is the owner of a single-family residence at 140 Neal Street and wishes to build a two bay garage as an addition to his home. This proposed addition would have a side setback of approximately two and half feet, in violation of Section 400.1.2.1, which requires a minimum side setback of ten feet.

Petitioner represented that this addition was necessary due to the limited storage in his home. Petitioner stated that he sent a letter about this proposed addition to his neighbors and received no response.

No one spoke in favor of this proposal. The Board heard from an abutter who spoke in opposition, solely over concerns about increased flooding to the area that could result from this addition.

### Findings of Law

To grant a variance, the Board must find that (1) 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) 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 (3) desirable relief may be granted without substantial detriment to the public good and (4) without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. G.L. c. 40A, § 10A. "[A] decision of the board of appeals granting a variance cannot stand unless the board specifically finds that each statutory requirement has been met." *Planning Bd. of Springfield v. Bd. of Appeals of Springfield*, 355 Mass. 460, 462 (1969).

Petitioner offered nothing about 140 Neal Street that presented unique conditions justifying a hardship. While the Board is cognizant of Petitioner's desire for increased space in his home, the proposed addition would result in a dwelling that is larger than what the City's zoning ordinances intend for. *Sheppard v. Zoning Bd. of Appeal of Boston*, 81 Mass. App. Ct. 394 (2012) (holding that the desire for a larger home is not a hardship).

Conclusion

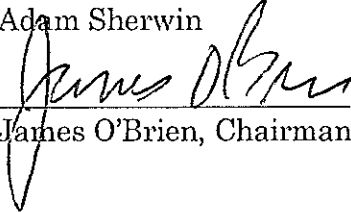
Upon motion by Adam Sherwin, which was seconded by John King, the Board voted unanimously to deny Daniel Schiavo's petition.

Daniel Schiavo's variance request for 140 Neal Street is DENIED.

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Members of the Board Voting<sup>1</sup>:

James O'Brien  
John King  
William Sullivan  
Adam Sherwin

  
James O'Brien, Chairman

  
Adam T. Sherwin, Esq., Legal Member

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<sup>1</sup> Only four members of the Board participated in the August 15, 2018 meeting. Petitioner consented to having his appeal heard without five Board members in attendance.