



# City of Malden

Massachusetts

Board of Appeal  
110 Pleasant St.  
Malden, Massachusetts 02148

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MALDEN, MASS.

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## BOARD OF APPEAL DECISION

November 28, 2018 Hearing

### Petition of:

Phu Tran seeks a variance of Section 400.1.2.1 Chapter 12, of the Revised Ordinances of 1991 as Amended of the City of Malden, namely, Dwelling, Single Family (Side yard set-back violation), As per plans, at the property known as and numbered 181 Mills Street, Malden, MA and also known by City Assessor's Parcel ID #099-455-514

### Findings of Fact

Petitioner seeks to demolish the existing garage on his single-family residence and replace it with a similar structure. The existing garage presently violates Section 400.1.2.1's setback requirement, and the new proposed building would increase this setback by approximately one inch. During the hearing, Petitioner also acknowledged (which the Building Inspector similarly confirmed) that the total lot coverage would also increase from this proposed structure. The existing home is similarly in violation of the required lot coverage.

No one spoke in favor or in opposition of this request.

### 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).

The Board rejects this variance because Petitioner's proposed building would result in the increase of two existing non-conforming uses. The Board finds that such an outcome

is against the purpose of the City's zoning ordinance, which does not allow a variance for one regulation that will simultaneously violate another.


Conclusion

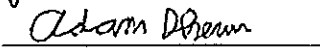
John King made a motion to deny this variance, which was seconded by Jim O'Brien. John King and Jim O'Brien voted against Petitioner's request, with Adam Sherwin, Kathryn Bilgen, and William Sullivan voting in favor.

Phu Tran's variance request for 181 Millis Street is DENIED.

Members of the Board Voting:

James O'Brien  
John King  
William Sullivan  
Kathryn Bilgen  
Adam Sherwin

  
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James O'Brien, Chairman

  
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Adam T. Sherwin, Esq.  
Legal Member