

City of Malden

Massachusetts

Board of Appeal
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Malden, Massachusetts 02148

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BOARD OF APPEAL DECISION

February 19, 2020 Hearing

Petition of:

Petition 20-002 by Giannelli Management & Development Corp 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, Dwelling - Single Family Dimensional Controls of Lot Size as per Plans RES-032353-2020 at the property presently known as and numbered 65 Central Ave, Malden, MA and also known by City Assessor's Parcel ID # 156-571-102 and 156-571-107.

Findings of Fact

Petitioner is the owner of a residential home (65 Central Avenue) and a parcel of property adjacent to this home (Lot 264). On the other side of 65 Central Avenue is a paper street, known as Winchester Street. Prior to filing this variance request, Petitioner obtained a Land Court judgment (17 MISC 000597) that it was entitled to ownership of this paper street up to the street's center line. Petitioner did so for the purpose of obtaining the minimum lot size required for a single-family home (7,500 square feet) on 65 Central Avenue. In January 2020, the Planning Board endorsed Petitioner's plan to subdivide 65 Central Avenue and create Lot 264, consisting of 5,000 square feet.

Petitioner seeks a variance on the minimum lot size for constructing a single-family home on Lot 264. Section 400.1.2.1 requires such a property to have a minimum lot size of 7,500 square feet; Lot 264 only has 5,000 square feet. Petitioner seeks to build a residential home on this lot and sell it, and represents that it will suffer a financial hardship if this relief is not allowed.

Petitioner complied with each of the required publication notices. Two abutters spoke about this proposal, and expressed concerns about limited parking in this neighborhood.

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).

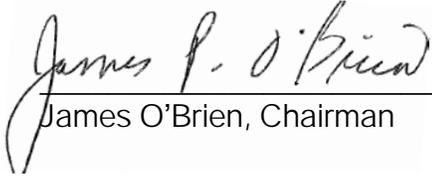
The Board finds that Petitioner does not have a hardship. Here, Petitioner’s grounds for a hardship are self-created, which is insufficient for satisfying this criterion. *Lamb v. Zoning Bd. of Appeals of Taunton*, 76 Mass. App. Ct. 513, 515-16, (2010) (“A property owner cannot obtain a variance by creating his own hardship.”).

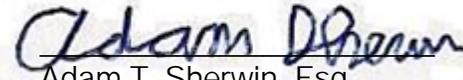
Upon motion by Sherwin, which was seconded by King, the Board voted 4-1 to DENY Petitioner’s request, with O’Brien voting in favor of the request.

Petitioner’s variance is DENIED.

Members of the Board Voting:

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


James O’Brien, Chairman


Adam T. Sherwin, Esq.
Legal Member