

City of Malden

Massachusetts

Board of Appeal
215 Pleasant St.
Malden, Massachusetts 02148

Telephone 781-397-7000x2151

BOARD OF APPEAL DECISION

February 17, 2021 Hearing¹

Petition of:

Petition 21-001 by Christopher De Resende on behalf of Brian Duong Le for a variance of MCC 12.16.010 Chapter 12 of the revised Ordinances of 2020 as amended of the City of Malden - Namely - Dwelling - Single Family Dimensional Controls (rear set back for deck) as per Plans RES-033612-2020 at the property known as and numbered 34 Pamela Circle, Malden, MA and also known by City Assessor's Parcel ID #016-013-368.

Findings of Fact

Petitioner is seeking a variance to construct a deck in the back of the home, which the rear setback requirement presently prohibits. Petitioner represented that a deck existed on the home when he purchased it, and provided a supporting real estate listing and assessors card for this point. Building Commissioner Nelson Miller appeared and represented that any prior deck was constructed in violation of the rear setback requirement.

No one spoke in favor or opposition of this motion.

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, § 10. "[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 there are no unique circumstances to justify this request. While Petitioner may have a small backyard, Petitioner has shown nothing to suggest that this is a circumstance

¹ In accordance with Governor Baker's 3/12/20 Order Suspending Certain Provisions of the Open Meeting Law, G.L.c.30A,ss18, and the Governor's 3/23/20 Revised Guidance on Order by the Governor Prohibiting Assemblage of More than Ten People, this meeting was conducted via remote participation.

unique to this particular property, and not the zoning district as a whole. The Board similarly finds that no hardship exists for this request, as the lack of a deck will not prohibit Petitioner from being able to reasonably use his property.

Upon motion by King, which Bilgen seconded, Cramer, King, and Bilgen voted in favor of this matter, with Sherwin and Sullivan voting in opposition.

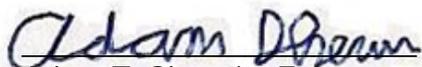
Petitioners request for a variance is DENIED.

Members of the Board Voting:

Nathaniel Cramer
William Sullivan
John King
Kathryn Bilgen
Adam Sherwin



Nathaniel Cramer, Chairman



Adam T. Sherwin, Esq.