

City of Malden

Massachusetts

Board of Appeal
215 Pleasant St.
Malden, Massachusetts 02148

Telephone 781-397-7000x2151

BOARD OF APPEAL DECISION

June 16, 2021 Hearing

Petition of:

Petition 21-004 by Joao Pereira and Sheena Bonaventura 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 (side setback for deck) as per Plans RES-033500-2020 at the property known as and numbered 7-9 Loomis St, Malden, MA and also known by City Assessor’s Parcel ID #160-623-323.

Findings of Fact

Petitioners seek a variance to construct a deck on the side of their home. The Board previously tabled this matter at the last two meetings. Petitioners began building a new deck without obtaining a Building Department permit and represent that they were unable to contact the City due to the COVID-19 pandemic. Petitioners originally proposed an 8ft x 32ft deck and presently request a 7ft x 32ft deck. Previously, a landing existed in the location of this proposed deck.

An abutter spoke in opposition to this request and expressed concerns about this deck being located close to her property. She also represented Petitioners could build a deck in the rear of their home.

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).

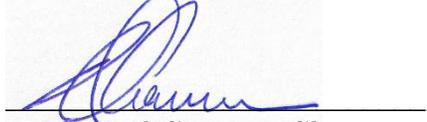
The Board finds that Petitioners have not shown a hardship for this request. Petitioners can—and should—have spoken with the City in advance of constructing this deck. The COVID-19 pandemic is not an excuse to ignore the City’s zoning ordinance.

The Board, nonetheless, will allow Petitioners to construct a landing to match the original size and dimensions that existed before. Petitioners, however, may choose to build steps on either side of this landing and are not limited to where the steps were previously located on the prior landing.

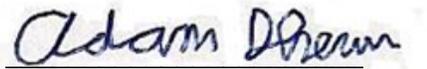
By motion of King, which Sherwin second, the Board voted unanimously to DENY Petitioner’s’ variance but allow the construction of a landing with the conditions listed above.

Members of the Board Voting:

Nathaniel Cramer
William Sullivan
John King
Kathryn Bilgen
Adam Sherwin



Nathaniel Cramer, Chairman



Adam T. Sherwin, Esq.

PURSUANT TO G.L. C. 40A, § 11, A COPY OF THIS DECISION SHALL BE RECORDED
IN THE MIDDLESEX SOUTH REGISTRY OF DEEDS