



## Zoning Board of Appeals

Town Office Building  
195 Main Street  
Maynard, MA 01754

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MAYNARD TOWN CLERK

### FINDINGS AND DECISION

**Petition No:** ZBA 22-01  
**Type:** Variance and Special Permit Request  
**Property Owner/Applicant:** James Gattuso  
Smart Sell Realty LLC  
135 Seaport Blvd. Unit 1703  
Boston, MA 02210  
**Project Location:** 128 Parker Street  
**Current Zoning:** Single Residence District 1 (S-1)  
**Lot Size:** 16,559 square feet  
**Application Date:** January 31, 2022

#### I. Description of Request:

The Applicant wishes to make improvements to a pre-existing non-conforming and non-compliant residential structure located at 128 Parker Street. The conditions required sequencing of permits to allow the proposed construction to proceed:

1. Per Section 5.1.4 of the Zoning By-laws (ZBL) a Variance is required because a portion of the home (master bedroom) was constructed and exacerbated the non-conformity by moving closer to the property line from 10' to 8.85'. There are no Town records of a Variance or Special Permit when the work was performed; therefore, this portion of the home is non-compliant. The purpose of the Variances is to bring this area of the home into compliance and allow improvements to the subject property.
2. Per Section 5.1.5 of the, ZBL a Special Permit is necessary to allow the alteration of the pre-existing non-conforming structure (single or two family). The structure is currently pre-existing non-conforming based on left side setbacks (see Table 1) and inadequate frontage (88.97' provided, 100' required). The second story addition will not exacerbate the current non-conformity.

*Table 1: Dimensional Requirements & Proposed Conditions*

	Existing	Required by Bylaw	Proposed
Min Lot Size in SQFT	16,559	10,000	n/a
Setbacks SIDE RIGHT	37'	15'	37'
Setbacks SIDE LEFT	8.85'	15'	8.85'
Setbacks FRONT	34.4'	25'	28.5' <sup>1</sup>
Setbacks REAR	125.6'	30'	125.6'
Frontage	88.97'	100'	88.97'

<sup>1</sup> Decrease of existing non-conformity that will occur with this proposal.

## **II. Procedural History**

1. Pursuant to Massachusetts General Law Chapter 40A, Section 10, an application for a Variance and Special Permit from the ZBL was submitted by the above-referenced owner and filed with the Zoning Board of Appeals (ZBA).
2. The applications were accompanied by a plan and survey (Exhibit "A").
3. A public hearing on the applications was held on February 28, 2022.
4. The application documentation and other submitted material were reviewed by Town Staff. There were no staff objections to the application.
5. At the public hearing, there were no public comments against the application.

## **III. Variance Criteria**

Chapter 40A, Section 10 of the Massachusetts General Laws (MGL) require that before granting a Variance, the Board must make a determination (finding) that three conditions exist on the subject property:

1. The uniqueness 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. That a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant.
3. That desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

## **IV. Special Permit Criteria**

Per Section 5.1.5 the Zoning Board of Appeals may grant a Special Permit to allow such reconstruction, extension, alteration, or change where it determines that the proposed modification shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

## **V. Findings of the Board and Decisions**

1. The ZBA deliberated and determined that the Variance request meets the criteria as detailed above in Section III. Specifically, the ZBA determined:
  - a. There is a uniqueness to the lot shape and angle of the lot sideline that is atypical for the district.
  - b. Without the requested relief, the applicant is subject to a financial hardship by preventing modification to the residence that will bring the subject property more in aesthetic, scale, and functional harmony with the surrounding neighborhood.
  - c. The relief requested in this application is to allow a further set back reduction from 10' to 8.85'. The board determined this request has *de minimis* impact. Therefore, the requested relief does not substantially derogate from the intent or purpose of the ZBL.

A motion was made by Leslie Bryant and seconded by Jerry Culbert to grant a Variance from the ZBL to grant relief to the existing non-compliant section of the structure (side yard setback) that will bring the subject property into compliance

and allowing the structure to be altered in such a manner that does not exacerbate the nonconformity.

The Board voted as follows:

Paul Scheiner (Chair)	<u>Y</u>
Leslie Bryant	<u>Y</u>
John Courville	<u>Y</u>
Jerry Culbert	<u>Y</u>
Page Czepiga	<u>Y</u>

2. The ZBA deliberated and determined that the Special Permit request meets the criteria as detailed above in Section IV. Specifically, the ZBA determined: the proposed alteration is not substantially more detrimental than the existing nonconforming structure to the neighborhood.

A motion was made by Leslie Bryant and seconded by John Courville to grant a Special Permit from the ZBL to allow the construction of a second-floor addition on a non-conforming structure.

The Board voted as follows:

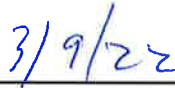
Paul Scheiner (Chair)	<u>Y</u>
Leslie Bryant	<u>Y</u>
John Courville	<u>Y</u>
Jerry Culbert	<u>Y</u>
Page Czepiga	<u>Y</u>

By a 5-0 vote, the ZBA approves the Variance as requested.

By a 5-0 vote, the ZBA approves the Special Permit as requested.



Paul Scheiner, Chair  
For the Zoning Board of Appeals



Date

**\*\*NOT VALID UNTIL CERTIFIED BY THE TOWN CLERK OF MAYNARD\*\***

In accordance with Sec. 11 of Ch. 40A of Massachusetts General Law, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Maynard Town Clerk, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Attest: \_\_\_\_\_

Date: \_\_\_\_\_

Joanna Bilotta, Town Clerk

