



TOWN OF NORTHBOROUGH Zoning Board of Appeals

Town Hall Offices • 63 Main Street • Northborough, MA 01532 • 508-393-5019 • 508-393-6996 Fax

DECISION

ZBA CASE NO. 13-13

PROPERTY LOCATION: 15 Patriot Drive

PETITIONER & PROPERTY OWNER: James Murphy

RECORDED WITH WORCESTER DISTRICT REGISTRY OF DEEDS: Bk: 24841 Pg: 386

RECEIVED
NORTHBOROUGH TOWN CLERK
2013 SEP -9 PM 1:43

This document is the **DECISION** of the Northborough Zoning Board of Appeals on the petition of James Murphy for a **VARIANCE** to allow a 10-foot high retaining wall to be located within the side and rear yard setbacks of the site to support the foundation of an attached garage on the property located at 15 Patriot Drive, Map 63, Parcel 28.

APPLICATION

1. On July 25, 2013, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a **VARIANCE** from Section 7-06-030, Table 2., Table of Density & Dimensional Regulations, to allow a retaining wall with a maximum height of 10 feet to be constructed within the side and rear yard setbacks of the property in order to raise the grade outside the foundation of an attached garage on the property located at 15 Patriot Drive.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on August 12, 2013 and August 19, 2013, and was mailed to abutters and other parties in interest on August 6, 2013.

EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

Application for Hearing before the Zoning Board of Appeals including:

- a. A Quitclaim Deed for 15 Patriot Drive, Northboro, recorded at the Worcester District Registry of Deeds on September 18, 2011, Book 24841, Page 386;
- b. A certified abutters list for parcels 300 feet from 15 Patriot Drive, including a cover sheet signed by Mary E. Carey, for the Town of Northborough Board of Assessors, dated July 9, 2013 and a Northborough, MA GIS Viewer map entitled "15 Patriot Drive, Northborough", dated 7/9/13;
- c. A plan entitled "Foundation Location Plan" for Moss Development, Lot 30, Patriot Drive, House #15, dated February 21, 1997, prepared by Thompson-Liston Associates, Inc., stamped and signed by Robert Nunnemacher, Registered Professional Land Surveyor on 2-21-97; and
- d. A plan showing Lot #30, Patriot Drive and identifying the location of a retaining wall, a foundation, a 10-foot wide utility easement and a 10-foot wide access easement.

HEARING

Applicant James Murphy presented the Application at a duly noticed public hearing of the Board on August 27, 2013, in Conference Room B of the Northborough Town Office, 63 Main Street, Northborough, MA 01532. Voting members Fran Bakstran, Richard Rand, Dick Kane, Robert Berger, Mark Rutan and non-voting alternate member Jeffrey Cayer were present throughout the proceedings.

Mr. Murphy stated his lot at 15 Patriot Drive slopes downward from the street to the rear of the property. The poured concrete foundation under the attached garage is exposed approximately 1.5 feet at the front of the structure and approximately 6 feet in the rear. The foundation has cracked from the sill to the ground at the rear corner and is starting to move apart at the top as the fill under the garage slab pushes on it. If left untreated, the foundation wall at the rear of the garage will collapse. He stated he needs to construct a retaining wall with a maximum height of 10 feet along the side and rear of the property to raise the grade and equalize the pressure on that wall to stop it from moving any more. In order to gain sufficient mass of fill (24 feet) between the retaining wall and the foundation, the wall must be built as far from the rear of the foundation wall as the depth of the garage, and as far from the sidewall as possible, which requires a Variance. The proposed retaining wall will be constructed of block, not poured concrete. Mr. Murphy stated he doesn't have any definitive plan for the retaining wall yet, but a structural engineer will be hired to design the retaining wall if the Variance is granted.

Mr. Murphy noted he believes the foundation cracked because rebar was not used when the house was constructed. In addition, he believes the fill underneath the garage may be pushing on the foundation because stormwater from Patriot Drive flows onto his property.

No one present spoke in opposition to the project and the Board did not receive any letters of opposition to the project.

The hearing was closed on August 27, 2013.

FINDINGS OF FACT

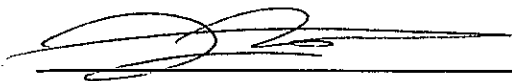
1. The subject property at 15 Patriot Drive is located in the General Residential District.
2. The foundation of the attached garage on the back of the single-family home on the subject property is cracked from the sill to the ground at the rear corner and is starting to move apart at the top as fill under the garage slab pushes on it. If left untreated the foundation wall at the rear of the garage will collapse.
3. The Applicant proposes to construct a retaining wall, with a maximum height of 10 feet, along the side and rear of the home in the area of the attached garage to raise the grade outside the cracked foundation, equalize the pressure on that foundation wall, stop it from moving and prevent the garage from collapsing. The proposed retaining wall will be 10 feet high on the back corner of the lot. It will be constructed with cement blocks and will be designed by a structural engineer.
4. The Applicant proposes to locate the subject retaining wall 2.9 feet from the rear property line and 6.8 feet from the side of the southerly property line. In the General Residential District, the minimum required distance of a structure from a side property line is 15 feet, and the minimum allowed distance from a rear property line is 25 feet. Therefore, a Variance is required from Section 7-06-030, Table 2. Table of Density & Dimensional Regulations, of the Northborough Zoning Bylaw, to allow the retaining wall to be located less than the required distance from the rear and side setbacks.
5. The subject property slopes from the street to the rear of the property, exposing almost 6 feet of the foundation at the rear of the attached garage. From the rear wall of the garage to the back of the property, the ground falls off another 4 feet. The foundation has a crack at the rear corner of the structure where it is most exposed. If the foundation wall continues to move, the garage will collapse.

6. The subject lot is at the end of the cul-de-sac on Patriot Drive. The retaining wall will not be seen from the front yards of the other lots on the street. The proposed fill will be level with the 10-foot retaining wall in the back corner of the lot and fencing will be installed along the top.
7. Due to circumstances relating to the topography of the subject site, which slopes downward approximately 10 feet from the front to the rear of the lot, and onto which water from the street flows to the back of the lot, affecting the subject lot but not necessarily other lots in the zoning district, a literal enforcement of the application of the Zoning Bylaw would involve substantial hardship for the Applicant.
8. The Applicant will not change the use, size or shape of the existing single-family home, but will secure what is already built on the lot by preventing the collapse of the attached garage. Therefore, the relief sought may be given without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw and the proposed retaining wall will not cause any detriment to the surrounding area or to the public good.

DECISION

1. On August 27, 2013, after due consideration of the Application, the Board voted unanimously to **GRANT** a **VARIANCE** from Section 7-06-030, Table 2. Table of Density & Dimensional Regulations, of the Northborough Zoning Bylaw, to allow a retaining wall with a maximum height of 10 feet to be constructed within the south side and rear setbacks in order to raise the grade outside the cracked foundation of an attached garage and prevent the garage from collapsing on the property located at 15 Patriot Drive.
2. The **VARIANCE** shall not take effect until a copy of the decision bearing the certificate of the Town Clerk is recorded with the Worcester District Registry of Deeds in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 11 and 15 stating that "twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or if such appeal has been filed it has been dismissed or denied."
3. If the rights authorized by the **VARIANCE** are not exercised within one year from the time of granting, it shall lapse in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 10.

**TOWN OF NORTHBOROUGH, MASSACHUSETTS
ZONING BOARD OF APPEALS**



FRAN BAKSTRAN, CHAIRMAN