



# TOWN OF HINGHAM

## Board of Appeals

### NOTICE OF DECISION VARIANCE

#### **IN THE MATTER OF:**

Applicant: Alison Hurley  
163 Prospect Street  
Hingham, MA 02043

Owner: Daniel F. Hurley III and Alison M. Hurley  
163 Prospect Street  
Hingham, MA 02043

Property: 163 Prospect Street, Hingham, MA 02043

Deed Reference: Certificate of Title No. 93055 issued by the Plymouth County Registry District of the Land Court

Plan References: "Retaining Wall Reconstruction," prepared by AJA Engineering, 475 School Street, Marshfield, MA, dated July 8, 2021 (9 Sheets)

#### **SUMMARY OF PROCEEDINGS**

This matter came before the Board of Appeals (the "Board") on the application of Alison Hurley (the "Applicant") for a Variance from § IV-A of the Zoning By-Law (the "By-Law") and such other relief as necessary to reconstruct a retaining wall and fence in the required west 20' side yard setback at 163 Prospect Street in Residence District C.

The Board opened a duly noticed public hearing on the application during a meeting at Hingham Town Hall on June 15, 2021. A subsequent session was held remotely on July 20, 2021 via Zoom as an alternative means of public access pursuant to an Order issued by the Governor of Massachusetts, dated March 12, 2020, Suspending Certain Provisions of the Open Meeting Law. The Board panel consisted of its regular members Robyn S. Maguire, Chair, and Paul K. Healey, and associate member Joseph Ruccio. The owners of the property appeared to present the application to the Board. At the conclusion of the hearing, the Board voted unanimously to approve the requested relief, with conditions set forth below.

Throughout its deliberations, the Board has been mindful of the statements of the Applicant and the comments of the general public, all as made or received at the public hearing.

## **BACKGROUND AND DISCUSSION**

The subject property consists of approximately 1.7 acres of land bounded by Prospect Street at its front and Accord Brook at its rear. Wetlands, floodplain, and floodway affect the back 2/3rds of the lot. The front of the lot is improved by a single family dwelling (ca. 1983) and an in ground pool. An existing retaining wall, which is approximately 10' in height, runs parallel to Prospect Street from the northwest front corner of the dwelling, through the side yard setback, and onto the neighboring property at 155 Prospect Street. A fence is located on top of the wall, resulting in a structure that appears to be 6' in height from the front of the property, but 16' in height from the rear of the property. The applicant represented that the existing wall requires reconstruction. The proposed plan calls for replacement of the wall in the same location. No work is proposed to the portion of the wall on the adjoining property. The abutter submitted a letter of support for the application.

During the initial hearing, the Board requested documentation to support the applicant's claim that unusual soil and topographical conditions affect the property. The onsite wastewater disposal system is located at the front of the lot. The location, as approved by the Board of Health in the 1980s, was intended to separate the system to the greatest extent possible from the wetlands and brook at the rear of the property. The Board of Health imposed a condition in its approval that the developer construct a retaining wall to prevent any breakout from the system from entering the down gradient resource areas. Meeting minutes from both the Board of Health and Conservation Commission describe the particular soil and topography conditions that necessitated construction of the existing wall.

The applicant also submitted revised plans in response to the Board's concern about the originally proposed height of the reconstructed wall. The current proposal would maintain the existing height of the structure at 9'-8" (11' was initially proposed).

The Board noted during the hearing that it rarely grants variances, but added that the particular lot and circumstances differ from any other lot in the district, aside from the adjoining property at 155 Prospect Street.

## **FINDINGS**

Based upon the information submitted and received at the hearing, and the deliberations and discussions of members during the meeting, the Board has determined that:

1. **Circumstances related to soil, shape, or topography especially affect the land or structures in question:** Unusual soil and topography conditions distinguish the property from most others in Residence District C. The front of the lot is improved by a single-family dwelling and related improvements, including a wastewater disposal system and nonconforming wall/fence structure. The wall serves as a barrier between the suitable soils for effluent discharge at the front of the dwelling and the down gradient wetlands, floodplain, and floodway associated with Accord Brook at the rear of the property. These circumstances especially affect the subject property and not generally the zoning district.
2. **The literal enforcement of the By-Laws would involve substantial hardship financial or**

**otherwise.** Literal enforcement of the 20' side yard setback would prevent the applicant from reconstructing an existing wall in poor condition that protects wetland resource areas from potential contamination associated with the onsite wastewater disposal system. A grant of a variance in this instance will allow for the reasonable improvement of the existing wall on the property.

3. **A Variance may be granted without substantial detriment to the public good.** There will be no adverse effects on the neighborhood and there will be no harm to the public good resulting from the proposed wall reconstruction. Conversely, the wall serves to protect public health and safety.
4. **A Variance may be granted without nullifying or substantially derogating from the intent or purposes of the By-Law.** The granting of a dimensional variance will permit the reconstruction of an existing nonconforming wall and installation of a fence. Relief will not substantially derogate from the purposes of the By-Law, which include the conservation of health and natural resources.

### **DECISION**

Upon a motion made by Paul K. Healey and seconded by Joseph Ruccio, the Board voted unanimously to grant the requested Variance from § IV-A the By-Law and such other relief as necessary to reconstruct a retaining wall and fence in excess of 6' in height within the required west 20' side yard setback at 163 Prospect Street in Residence District C, subject to the following condition:

1. The proposed work shall be completed in a manner consistent with the approved plans and the representations made at the hearings before the Board such that reconstructed wall shall be no greater in height than 9'-8".

For the Board of Appeals,



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Robyn S. Maguire, Chair

August 11, 2021

This decision shall not take effect until a copy of the decision bearing the certification of the Town Clerk, that twenty (20) days have elapsed since the decision has been filed in the office of the Town Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded with the Plymouth Registry of Deeds and/or the Plymouth County Land Court Registry, and indexed in the grantor index under the name of the record owner or is recorded and noted on the owner's certificate of title.