

# The City of Revere, Massachusetts



## City Hall

281 Broadway  
Revere, MA 02151  
(781) 286-8160  
(781) 286-8206 FAX

**John J. Henry**  
ZBA Clerk

Office of the City Clerk

To: Applicants for Special Permits, Variances, and Appeals to the Revere Zoning Board of Appeals  
From: John J. Henry, Clerk, Zoning Board of Appeals  
RE: Application Procedure

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The City of Revere Zoning Board of Appeals (ZBA) requires all applicants seeking a special permit, variance or an appeal to the ZBA to submit the following documents:

1. An application for a special permit, variance, or an appeal to the ZBA.
2. A Building Inspector's or Site Plan Review Committee denial form stating the reasons for the denial of a building permit.
3. A certified plot plan stamped by a registered engineer or land surveyor illustrating the special permit requested. Any application presented to the ZBA without a certified plot plan, stamped by a registered engineer or land surveyor illustrating the special permit requested, will be denied a hearing and tabled until such plot plan is submitted with application for hearing.
4. Applicant is required to secure a certified list of abutters and abutters to the abutter as required by Chapter 40A, Section 11 of the Massachusetts General Laws from the City of Revere Board of Assessors and the Board of Assessors of neighboring cities and towns if required, and submit said certified list(s) to the City Clerk's Office with the completed application and separate checks listed on the next page. (The Board of Assessors shall provide a hard copy of the certified list(s) and two (2) sets of mailing labels to facilitate the mailing of first notices and decision notices.)
5. The required fees for submission of an appeal to the ZBA.
6. Photos of the site and or structures.

Please note that applications for a special permit or variances or appeals will not be accepted unless the applicant fulfills all of the application requirements of the ZBA.

A document describing the time schedule for hearings and decisions is attached for the information of the application.

10/28/88  
10/10/02  
7/21/05  
5/24/11

City of Revere, Massachusetts  
Schedule of Fees  
for Public Hearing  
for Licenses, Permits, Zoning Amendment, Board of Appeals

**Applicant is required to secure a certified list of abutters and abutters to the abutter as required by Chapter 40A, Section 11 of the Massachusetts General Laws from the City of Revere Board of Assessors and the Board of Assessors of neighboring cities and towns if required, and submit said certified list(s) to the City Clerk's Office with the completed application and separate checks listed below.**

**(The Board of Assessors shall provide a hard copy of the certified list(s) and two (2) sets of mailing labels to facilitate the mailing of first notices and decision notices.)**

**City of Revere – Postage Account \$80.00**

For mailing of notices to abutters  
and mailing of decision notices.

**City of Revere \$180.00**

For administrative expenses  
of the Zoning Board of Appeals.

**Revere Journal \$120.00**

Legal advertising expenses  
relative to variance public hearing

3/18/91  
3/27/92  
2/2/94  
9/7/94  
12/5/96  
7/21/05  
5/24/11

**City of Revere, Massachusetts  
Zoning Board of Appeals  
Application For Special Permit or  
Variance or Appeal from  
the Decision of the Building Inspector**

All parts of this application and the attached documents shall be completed and submitted under the pains and penalties of perjury. Incomplete filings may be rejected.

The applicant must be prepared to present data that tends to indicate that the public convenience and welfare will be substantially served by granting the exception or permission requested. That the exception or permission requested will not tend to impair the status of the neighborhood; that the exception or permission requested will be in harmony with the general purposes and intent of the Revised Ordinances of the City of Revere.

I hereby request a hearing before the Revere Zoning Board of Appeals for the following:

- A. Application for Variance Title 17, Chapter 17.52, Section 17.52.020, M.G.L. Chapter 40A, Section 10. (answer questions 1 thru 15 only)
- B. Application for Appeal from the Decision of the Inspector of Buildings, Title 17, Chapter 17.52, Section 17.52.020 M.G.L. Chapter 40A, Section 7 (Procedures Section 15, Chapter 40A)

All parts of this application and the attached documents shall be completed and submitted under the pains and penalties of perjury. Incomplete filings may be rejected.

The applicant must be prepared to present data that tends to indicate that the public convenience and welfare will be substantially served by granting the permission requested. That the permission requested will not tend to impair the status of the neighborhood; that the permission requested will be in harmony with the general purposes and intent of the Revised Ordinances of the City of Revere, and that the proposed alteration of the structure will not be substantially more detrimental to the neighborhood than the existing structure.

- C. Application for Special Permit for Alteration and Extension of Nonconforming Structure (Revised Ordinances of the City of Revere), Title 17, Chapter 17.40, Section 17.40.040. (answer questions 1 thru 9b and 16 and 17 only)

1. Applicant submitting this application is:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Tel. #: \_\_\_\_\_

2. Applicant is:  Tenant  Licensee  Prospective Purchaser  
 Owner  Other (Describe)

\_\_\_\_\_

3. The following person is hereby designated to represent the applicant in matters arising hereunder:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Tel. #: \_\_\_\_\_

4. The land for which this application is submitted is owned by:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Tel. #: \_\_\_\_\_

5. The land described in this application is recorded in Suffolk County Registry of \_\_\_\_\_,

Book \_\_\_\_\_, Page \_\_\_\_\_. Certificate # (if registered) \_\_\_\_\_,

Book \_\_\_\_\_, Page \_\_\_\_\_.

6. Plans describing and defining the Exception to Use Regulations In Certain Districts, the Special Permit or Special Permit For Alteration and Extension of Nonconforming Uses are included herewith and made a part hereof and are titled and dated:

\_\_\_\_\_

Lot # \_\_\_\_\_ Sq. Ft. \_\_\_\_\_

7. A map describing the land uses of adjacent and nearby properties is included and made a part of this application.

8. A locus map (8½" x 11") copy of City of Revere or USGS topographic sheet with site marked for which permit is requested is included and made a part of this application.

9A. Is the site of this application subject to the Wetland Protection Act (M.G.L., Chapter 131, Sec. 40A or Chapter 130, Sec. 105)?

yes

no

do not know

9B. Is the location of the site of this application within 100 feet of:

\_\_\_\_\_ a coastal beach; \_\_\_\_\_ salt marsh; \_\_\_\_\_ land under the ocean;

\_\_\_\_\_ do not know; \_\_\_\_\_ no.

10. Describe the property for which this application is being submitted (including dimensions of land, existing buildings, if any, availability of utilities, sewer, water, etc.):
11. What is the nature of the appeal or variance requested in this application?
12. Describe the soil conditions, shape or topography especially affecting the land or structure<sup>9s0</sup> in question, but not affecting generally the zoning district in which the land or structure<sup>9s</sup> are located which the appellant to seek this variance:
13. Describe how the enforcement of the provisions of the Zoning Ordinances would involve substantial hardship, financial or otherwise, to the undersigned:
14. Describe how desirable relief may be granted without substantial detriment to the public good:
15. Describe how the variance desired may be granted without nullifying or substantially derogating from the intent or purpose of the Zoning Ordinances:

16. Describe the property for which this application is being submitted (including dimensions of land, existing buildings, if any, availability of utilities, sewer, water, etc.):

17. What is the nature of the exception of special permit requested in this application?

I hereby certify under the pains and penalties of perjury that the foregoing information contained in this application is true and complete.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Designated Representative

\_\_\_\_\_  
Date

Received from above applicant, the sum of \$ \_\_\_\_\_ to apply against administrative and mailing costs.

\_\_\_\_\_

Certification

Pursuant to M.G.L. Chapter 62C, Sec. 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all state tax returns and paid all state taxes required by law.

\_\_\_\_\_  
Signature of Individual or  
Corporate Name

by: \_\_\_\_\_  
Corporate Officer (if applicable)

Certification

Pursuant to M.G.L. Chapter 40, Section 57(a), and Title 3, Chapter 3.04, Section 3.04.020 of the Revised Ordinances of the City of Revere, Massachusetts, I hereby certify, under penalties of perjury, that I have paid all City of Revere real estate taxes, water and sewer assessments and any other municipal charges required under law.

\_\_\_\_\_  
Signature of Individual or  
Corporate Name

by: \_\_\_\_\_  
Corporate Officer (if applicable)

**Plot Plan Requirements  
Relative to the Submission of  
Variance Application to the Zoning Board of Appeals  
Special Application to the Revere City Council**

1. Applications to the Zoning Board of Appeals must include a plot plan illustrated in black ink on 8½' x 14; mylar suitable for recording in the Suffolk County Registry of Deeds in accordance with Suffolk County Registry of Deeds' standards.
2. The plot plan must illustrate lot or lots for which application is submitted. Multiple lots assembled to form a buildable lot must be illustrated with hash lines between lots to indicate location of multiple lots. Applications for variances for subdivision purposes must include existing lot lines illustrated with hash lines as well as proposed new lot lines illustrated by bold lines. Plot plans submitted for variance for subdivision purposes must include existing as well as proposed lot numbers.
3. The plot plan must illustrate lot dimensions, i.e., lot frontage and lot size. Plan must also illustrate yard dimensions, i.e., front, side and rear yard setbacks.
4. Plot plan must include calculations of percentage of principal building coverage on the lot, usable open space and current and proposed building and/or structure height. (See section 17.24.010 of Revere Zoning Ordinances for reference.)
5. Plot plan must illustrate parking spaces. (See Section 17.28.020 of Revere Zoning Ordinances for requirements.)
6. Plot plan must indicate current zoning designation of lot as well as street address of lot.
7. Plan must illustrate all existing structure, stairs, decks, chimney foundations, swimming pools, sheds, patios, etc.
8. Plan must illustrate the exact distance of structures on direct abutting properties in proximity to the applicant's property.
9. Plan must indicate the names of direct abutters illustrated on their adjoining properties.
10. Plan must illustrate the amount of new increased square footage being requested by this application.
11. Plan must illustrate the proposed number of stories and height of the proposed structure.

10/28/88

12/1/89      amended

1/2/94        amended

3/27/05      amended



THOMAS G. AMBROSINO  
Mayor

# The City of REVERE, MASSACHUSETTS

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT  
FRANK STRINGI • DIRECTOR

281 BROADWAY, REVERE, MA 02151

(781) 286-8181

Fax (781) 286-8180

TO: John Henry, City Clerk  
FROM: — Site Plan Review Committee *FS*  
RE: Variance and Special Permit Applications  
DATE: February 3, 2003

In an effort to eliminate confusion and discrepancy in the interpretation of variance and special permit applications, the Site Plan Review Committee is asking that all applicants seeking a variance or special permit first meet with the Site Plan Review Committee. The Site Plan Review Committee will issue a letter to the applicant outlining the specific sections of the Revised Revere Zoning Ordinances that apply to each application for a variance or special permit. The applicant will use this letter to petition the Board of Appeals for relief of the specific zoning conflicts outlined in the letter.

Please be advised that the Site Plan Review Committee meet every Tuesday afternoon in the Building Department.

# THE CITY OF REVERE, MASSACHUSETTS

281 Broadway  
Revere, MA 02151



OFFICE OF THE CITY SOLICITOR

Robert A. Marra Jr.  
Paul Capizzi

Thomas G. Ambrosino  
Mayor

(781) 286-8166  
(781) 286-8205 (FAX)

TO: Zoning Board of Appeals, City of Revere  
FR: Paul Capizzi, Assistant City Solicitor  
DA: May 20, 2004  
RE: Variance Applications

2004 MAY 20 AM 9:39  
OFFICE CITY CLERK  
REVERE, MASS  
FILED

I am writing to suggest that the attached materials be included with variance applications in order to better educate applicants on the law regarding the granting of variances.

I think it would be prudent for you to require that these document be part of every application so that individuals will be aware of the hurdles they face when applying for a variance. In this way, applicants will be better informed, and ultimately it may save them money if their application is doomed to failure because their circumstances do not meet the legal standard for a variance.

It may be of particular interest to reiterate to the board and the applicant that a hardship based on the lot being too small to qualify as buildable under the ordinance, or too small to achieve exemption under the grandfather clauses applicable to lots created before zoning, is not a hardship as defined by the law. *Mitchel v. Board of Appeals of Revere*, 27 Mass. App. Ct. 1119, 1120 (1989). The ZBA has no authority to grant a variance simply because the lot is undersized. *Id.*

If you have any questions, please feel free to contact me.

Cc: Mayor Thomas Ambrosino

THE CITY OF REVERE, MASSACHUSETTS

REVERE, MASSACHUSETTS  
081 Broadway

Revere, MA 02151  
04 MAY 20 AM 9:33

SOLICITOR

OFFICE OF THE CITY SOLICITOR

Robert A. Marra Jr.

Paul Capizzi

(781) 286-8166

(781) 286-8205 (FAX)



Thomas G. Ambrosino  
Mayor

TO: Thomas G. Ambrosino, Mayor  
John Henry, City Clerk  
FR: Paul Capizzi, Assistant City Solicitor  
DA: October 21, 2003  
RE: Variance for Waiver of Revere Revised Ordinance 17.23.030

This office was asked for an opinion in light of the change to Revere Revised Ordinance 17.24.030, which was recently amended to include the following:

“(E) All pre-existing lots . . . which comprise less than 6000 sq. ft. in area, and are located within the boundaries of the 100 year flood plan . . . shall be limited to a single-family dwelling.”

Consequently, an individual who owns a parcel of land located within the boundaries of the 100-year flood plan would like to construct a two-family dwelling. At issue is whether a variance may be granted for this purpose.<sup>1</sup>

Seeking to construct a two-family dwelling in a zone restricted to one-family dwellings may not be accomplished by variance. In order to qualify for a variance there must be something “owing to circumstances relating to the soil conditions, shape or topography of such land . . . but not affecting generally the zoning district in which it is located, [and] a literal enforcement of the . . . by-law would involve substantial hardship . . . to the petitioner . . . [therefore] 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.*” Mass. Gen. Laws ch. 40A, §10 (emphasis added). A variance may not be granted unless all of the statutory factors of §10 have been considered and met. *Planning Bd. of Springfield v. Board of Appeals of Springfield*, 355 Mass. 460 (1969).

A variance represents a waiver of rules adopted by the local legislative body. “It is only in rare instances and under exceptional circumstances that relaxation of the general restrictions . . . ought to be permitted.” *Norcoss v. Board of Appeal of Boston*, 244 Mass. 177, 185 (1926). In order to relax the general restrictions there must be a finding that at least one of the circumstances relating to soil condition, shape or topography exists, even

<sup>1</sup> It should be noted that but for the change in the ordinance, construction of a two-family home would have been permitted in the RB district where this property lies.

in the case of a use variance. Mark Bobrowski, *Handbook of Massachusetts Land Use and Planning Law*, §8.3.1 (1993).

The individual in this case is attempting to construct a dwelling that is simply prohibited under the City ordinance, owing not to the soil condition, shape or topography of the land. Put another way, may someone who owns property in an RB district, zoned for one- and two-family structures seek a variance to build a five-unit structure? The answer is no. The ordinance prohibits the construction of a five-unit structure. Accordingly, a variance is not the proper mechanism for relief.

The facts as presented in this case indicate the desire to build a prohibited structure only, and waiver of the applicable ordinance under these circumstances may not be accomplished by variance. However, any person aggrieved by reason of his or her inability to obtain a permit by the building inspector may appeal to the zoning board of appeals. RRO 17.52.020(B); Mass. Gen. Laws ch. 40A, §§7, 8, 14, and 15; *Kraft v. Board of Appeals of Lynnfield*, 333 Mass. 573 (1956).

The building inspector may deny a building permit "if the building or structure as constructed . . . would be in violation of any zoning ordinance or by-law; and no permit or license shall be granted for a new use of a building, structure or land which use would be in violation of any zoning ordinance or by-law. Mass. Gen. Laws ch. 40A, §7. "Within the zoning context . . . principles of exhaustion require that a person aggrieved by the action of a local zoning administrator (the building inspector in most municipalities) must first attempt to redress the grievance through the local board of appeals . . ." *Quincy v. Planning Board of Tewksbury*, 39 Mass. App. Ct. 17, 20 (1995). Once appealed, the ZBA will decide if the building inspector properly applied the zoning law when deciding to deny, or grant, a permit.

## Variances – May 28, 2003

### Authority to Grant Variance

Massachusetts General Laws ch. 40A, § 10 governs the issuance of variances by the board of appeals. It is important to note that the statute (40A, § 10), not the local ordinance, establishes the prerequisites for the award of a variance. (See attached copy of the statute.)

A variance represents a waiver of rules adopted by the local legislative body. Accordingly, “[i]t is only in rare instances and under exceptional circumstances that relaxation of the general restrictions . . . ought to be permitted.” *Norcoss v. Board of Appeal of Boston*, 244 Mass. 177, 185 (1926).

### Statutory Prerequisites

The decision of the board to award a variance cannot stand unless all of the statutory factors have been considered and met. *Planning Bd. of Springfield v. Board of Appeals of Springfield*, 355 Mass. 460 (1969). The statutory factors, as set out in ch. 40A § 10, are as follows:

- 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.”

A variance may not properly be awarded without a finding that at least one (soil, shape, topography) of these circumstances exists (even in the case of a use variance).

- a. Soil condition.

Poor soil conditions have been routinely cited as grounds to support a variance. Among the soil conditions that have earned the court’s sympathies are a pudding stone rock formation, peat deposits, and poor drainage. However, unless the soil conditions are unique to the land in question, the variance must be denied. *Bicknell Realty v. Board of Appeal of Boston*, 330 Mass. 676, 680 (1953). For example, a swampy condition extending to many adjacent parcels could not support a variance petition.

- b. Shape.

The ‘shape’ of a lot is not to be confused with its ‘size.’ *Shafer v. Zongin Bd. Of Appeals of Scituate*, 24 Mass. App. Ct. 966, 967 (1987). Thus, a lot lacking sufficient area is not eligible for a variance based solely on this

circumstance. Where "hardship arises solely from the fact that the lot is too small to qualify as a buildable lot under the zoning ordinance, . . . §10 gives the board of appeal no authority to grant a variance." *Mitchell v. Board of Appeals of Revere*, 27 Mass. App. Ct. 1119, 1120 (1989) (See copy of case attached.)

If it is simply a matter of frontage, for example, the courts have determined that a petition for a lot with 98 feet of frontage in a district requiring 100 feet could not be granted a variance. *Warren v. Zoning Board of Appeals of Amherst*, 383 Mass. 1 (1981). A similar result was reached where the court denied a variance for a lot containing 186 feet of frontage in a district requiring 200 feet. *Arrigo v. Planning Board of Franklin*, 12 Mass. App. Ct. 802 (1981). (However, if a lot is so "uniquely" shaped, whereby the frontage issue is not the only issue with regard to shape, a variance may issue. *Paulding v. Bruins*, 18 Mass. App. Ct. 7607 (1984).)

c. Topography

Few cases address topography.

- 2) "A literal enforcement of the provision of the bylaw would involve substantial hardship, financial or otherwise, to the petitioner."

There has to be a connection between a "circumstance" set forth in the statute, such as soil, shape, topography, and the hardship claimed by the petitioner. *Guiragossian v. Board of Appeals of Watertown*, 21 Mass. App. Ct. 111 (1985). The hardship must relate to the premises for which the variance is sought. *Hurley v. Kolligian*, 333 Mass. 170, 173 (1955).

"The hardship alleged must arise from the shape of the property or one of the other factors specifically referred to in §10. An applicant for a variance must show that the land's shape, alone or in combination with other features of the land, prohibits development consistent with the ordinance. When the applicant makes such a showing, hardship can be found to exist." *Guiragossian v. Board of Appeals of Watertown*, 21 Mass. App. Ct. 111, 118 (1985).

For example, one court stated that personal hardship is not a proper factor for consideration. *Winn v. Board of Appeals of Saugus*, 358 Mass. 804 (1970). Nor is personal financial hardship because of lost profits, prior expenditures, or resale value. *Planning Bd. Of Barnstable v. Board of Appeals of Barnstable*, 358 Mass. 824 (1971).

The proximity of the land or structure to nonconforming uses or the boundary of a particular district is not a statutory hardship. *McLaughlin v. Rockland Zoning Bd. Of Appeals*, 351 Mass. 678, 683 (1966). Losses caused by

government action or regulation do not qualify as hardship. *Kirkwood v. Board of Appeals of Rockport*, 17 Mass. App. Ct. 423, 431 (1984).

Also, a hardship cannot be self-created. Typically, this situation arises when the owner of a large tract of land conveys to another a portion of the land that does not meet the minimum bulk requirements of the then-existing zoning requirements, with the result that the new owner cannot build without relief from the zoning regulations. *Gordon v. Zoning Bd. Of Appeals of Lee*, 22 Mass. App. Ct. 343, 350 (1986).

- 3) **“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 bylaw.”**

This requires the board to consider whether the use permitted by this variance is a detriment to the public good or whether the use derogates, or detracts, from the intent and purpose of the zoning by-law. This deviation must be *substantial*, and that, unless the use significantly detracts from the zoning plan for the district, the local discretionary grant of the variance (all the other statutory elements having been satisfied) must be upheld. The requirement of substantial derogation recognizes that the "effect of a variance is to give a landowner a license or permit to use his property in a manner otherwise violative of the zoning ordinance," (3 Rathkopf, *Zoning and Planning* § 38.06, at 38-63 [4th ed. 1979]), and that a use variance in particular "permits a use which the ordinance prohibits." *Id.*, § 38.01, at 38-1. Because of this, some derogation from the by-law's purpose is anticipated by every variance. Otherwise, the denial of relief on the basis of a slight or insubstantial departure from the goals of the by-law would prohibit the grant of any variance, and would, in cases such as this one, approach confiscation by depriving a property owner of virtually all practical use of his property. *Cavanaugh v. DiFlumera*, 9 Mass. App. Ct. 396, 399 (1980)

derogate

### **Additional Considerations**

Two important legal concepts to remember when considering a variance under chapter 40A § 10:

- 1) No person has a legal right to a variance in the Commonwealth of Massachusetts and variances are to be granted sparingly. *Guiragassian v. Board of Appeals of Watertown*, 21 Mass. App. Ct. 111, 115 (1985).

- 2) If a landowner could have used adjoining land to avoid or diminish a zoning nonconformity, that landowner will not be entitled to a variance based on that . . . nonconformity.

*ALM GL ch. 40A, § 10*

ANNOTATED LAWS OF MASSACHUSETTS  
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\*\*\* THIS DOCUMENT IS CURRENT THROUGH CHAPTER 16, 5/8/03 \*\*\*

PART I. ADMINISTRATION OF THE GOVERNMENT  
TITLE VII. CITIES, TOWNS AND DISTRICTS  
CHAPTER 40A. ZONING

♦ [GO TO MASSACHUSETTS CODE ARCHIVE DIRECTORY](#)

ALM GL ch. 40A, § 10 (2003)

§ 10. Variances.

The permit granting authority shall have the power after public hearing for which notice has been given by publication and posting as provided in section eleven and by mailing to all parties in interest to grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that 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, 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 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. Except where local ordinances or by-laws shall expressly permit variances for use, no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located; provided, however, that such variances properly granted prior to January first, nineteen hundred and seventy-six but limited in time, may be extended on the same terms and conditions that were in effect for such variance upon said effective date.

The permit granting authority may impose conditions, safeguards and limitations both of time and of use, including the continued existence of any particular structures but excluding any condition, safeguards or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner.

If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period. If the permit granting authority does not grant such extension within thirty days of the date of application therefor, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of this section.

**HISTORY:**

LEXSEE 27 Mass. App. Ct. 1119

JOHN MITCHELL & another n1 v. BOARD OF APPEALS OF REVERE &  
another n2

n1 Edward Wall.

n2 Michael Solomons.

No. 88-P-1010

Appeals Court of Massachusetts

27 Mass. App. Ct. 1119; 537 N.E.2d 595; 1989 Mass. App. LEXIS 244

April 3, 1989 May 2, 1989

**SUBSEQUENT HISTORY:**

[\*\*\*1] Review denied June 28, 1989

**DISPOSITION:**

*So ordered.*

**CASE SUMMARY**

**PROCEDURAL POSTURE:** Plaintiff neighbors appealed from a judgment of trial court (Massachusetts) that affirmed the grant of a variance to defendant property owner by defendant city board of appeals so that the property owner could build a house on his small beachfront lot.

**OVERVIEW:** The property owner bought a small lot of oceanfront property, but the lot was too small to qualify as a buildable lot under the zoning ordinance or to achieve exemption under the grandfather clauses applicable to lots created before zoning. Over opposition of the neighbors, the board of appeals granted the variances due to the hardship of the property owner. The trial court found that, except as a locus for a single family home, the lot was useless. The court found that the judgment that affirmed the decision of the board of appeals could not be sustained. The court held that the hardship in this case was not the hardship to topography as noted in *Mass. Gen. Laws ch. 40A, § 10*, but the hardship was that the lot was too small to qualify as a buildable lot. The court found that § 10 gave the board of appeal no authority to grant a variance.

**OUTCOME:** The court reversed the judgment that affirmed a decision of the board of appeals to grant the

property owner a variance so he could build a house on his small lot. The court annulled the decision of the board of appeals.

**LexisNexis(TM) HEADNOTES - Core Concepts**

*Real & Personal Property Law > Zoning & Land Use > Conditional Use Permits & Variances*

[HN1] *Mass. Gen. Laws ch. 40A, § 10* requires, as one of several essential prerequisites to the grant of a variance, that owing to circumstances relating to the soil conditions, shape, or topography of such land and especially affecting such land but not affecting generally the zoning district in which it is located, a literal enforcement of the zoning ordinance would involve substantial hardship, financial or otherwise, to the applicant.

**HEADNOTES:**

*Zoning, Variance.*

**COUNSEL:**

*Carole A. Z. Root* for the plaintiffs.

*Merle Ruth Hass* for Michael Solomons.

*Ira H. Zaleznik* for the Board of Appeals of Revere.

**JUDGES:**

Present: Greaney, C.J., Armstrong, & Kass, JJ.

**OPINION:**

[\*1119] [\*\*596] The defendant Solomons is the owner of a small, roughly rectangular, ocean-view parcel of land in Revere which is zoned "RB". In the RB district the uses permitted of right are one- and two-family dwellings, churches, schools, hospitals, and pumping stations. To be buildable a lot must contain 6,000 square feet, have a frontage of 60 feet, and have front and side yards of 15 feet and a rear yard of 20 feet. Solomons' lot is sandwiched between Winthrop Parkway on the east (frontage 67.53 feet) and Endicott Avenue on the west (frontage 60.00 feet). The sidelines are 46.50 feet and 35.91 feet, leaving the lot with an area (2,556 square feet) too small to qualify for protection as a house lot under the "grandfather" provisions of *G. L. c. 40A*, § 6, 4th par. (requiring 5,000 square feet) or § 17.24.030(B) of the Revere zoning ordinance (requiring 3,000 square feet).

Solomons, who purchased the lot for \$ 50,000 knowing that [\*\*\*2] it was not buildable of right, applied for variances to build a house 28 feet wide by 30 feet deep, fronting on Endicott Avenue, with a front yard of two feet and a rear yard (back to Winthrop Parkway) of four to seven feet. Over the opposition of neighbors the board of appeals granted the variances, finding "hardship as [Solomons] wants to move closer to his work" and "hardship on the land as the topography of the land slopes from the front (Endicott Avenue) down to approximately, more or less, a 12 feet drop in the rear to Winthrop Parkway." Expanding on that finding, a judge of the [\*1120] Superior Court found that "[t]he slope of the lot is approximately twenty feet from the highest point on Endicott Avenue to the lowest point adjacent to Winthrop [Parkway]. This severe slope exists along this one strip of land, but does not exist throughout the neighborhood." Acknowledging that Solomons' proposed house "will cause some obstruction to the neighbor's views," he observed that "it will not cut off all of the views from the surrounding houses" and concluded that

it would not constitute a substantial detriment to the public good or derogate from the intent or purpose of the zoning [\*\*\*3] ordinance. Except as a locus for a single family home, the judge found, the lot is useless. He affirmed the grant of a variance.

The resulting judgment cannot be sustained. [HN1] General Laws c. 40A, § 10, as [\*\*597] amended through St. 1984, c. 195, requires, as one of several essential prerequisites to the grant of a variance, "that owing to circumstances relating to the soil conditions, shape, or topography of such land ... and especially affecting such land ... but not affecting generally the zoning district in which it is located, a literal enforcement of the [zoning ordinance] would involve substantial hardship, financial or otherwise, to the [applicant] ...." The hardship in this case is not "owing to the topography" of the land. The slope does not prevent the erection of a house. Rather, the hardship arises solely from the fact that the lot is too small to qualify as a buildable lot under the zoning ordinance or to achieve exemption under the grandfather clauses applicable to lots created before zoning. In these circumstances § 10 gives the board of appeal no authority to grant a variance. *Guiragossian v. Board of Appeals of Watertown*, 21 Mass. App. Ct. 111, 116 (1985). [\*\*\*4] *Gordon v. Zoning Bd. of Appeals of Lee*, 22 Mass. App. Ct. 343, 350 (1986). *Shafer v. Zoning Bd. of Appeals of Scituate*, 24 Mass. App. Ct. 966, 967 (1987). Contrast *Paulding v. Bruins*, 18 Mass. App. Ct. 707, 710 (1984), in which the hardship was found to be owing in large measure to the unique and peculiar shape of the lot.

The judgment is reversed. A new judgment is to be entered that the decision of the board of appeals was in excess of its authority and is annulled.

*So ordered.*