

**COMMONWEALTH OF MASSACHUSETTS
CITY OF BROCKTON
ZONING BOARD OF APPEALS**

ZONING BOARD OF APPEALS held a meeting in the Council Chambers, City Hall, Brockton, Massachusetts, on Tuesday, July 13, 2010 at 7:00 pm.

Request for an Extension:

IN RE: 09-18 The Petition of **MALKIAT SINGH GILL**, 85 E. Main Street, Avon, for a Variance from Sec. 27-54, to allow an addition for a retail store with relief from parking requirements in a C-2 Zone, located at **144 HOWARD STREET**.

PETITIONER'S STATEMENT: The petitioner presented a letter seeking permission for an extension.

OPPOSITION: None

DECISION: 6 month extension granted unanimously

BASIS: As per zoning by-laws, a six month extension may be granted upon petition.

VOTE:

Motion to Grant by: Stephen Bernard
Seconded by: Richard Francis

IN FAVOR: (5)

Atty. Anthony Eonas, Chairman	_____
Vahan Boyajian	_____
Stephen Bernard	_____
Richard Francis	_____
Paul Merian	_____

OPPOSED: (0)

James M. Casieri., Clerk

A true copy. Attest:

Anthony Zeoli, City Clerk

**COMMONWEALTH OF MASSACHUSETTS
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ZONING BOARD OF APPEALS held a meeting in the Council Chambers, City Hall, Brockton, Massachusetts, on Tuesday, July 13, 2010 at 7:00 pm.

IN RE: 10-24 Petition of **MICHAEL JULIANO**, 1324 Belmont Street, Suite 207, Brockton, MA, for a Variance from Art. III, Sec. 27-9, lot frontage, & lot area, side setback requirements & Art. III, Sec. 27-13A, lot width, to demolish existing dwelling in disrepair and construct a single family dwelling in an R-I B Zone, located at **747 ASH STREET**.

PETITIONER'S STATEMENT: The petition is postponed until August 10, 2010 at the request of the petitioner prior to being heard.

OPPOSITION:

DECISION:

BASIS: [Allowed as per meeting rules.](#)

VOTE:

Motion to Grant by:

Seconded by:

IN FAVOR: (5)

Atty. Anthony Eonas, Chairman

Vahan Boyajian

Stephen Bernard

Richard Francis

Paul Merian

OPPOSED: (0)

James M. Casieri., Clerk

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Anthony Zeoli, City Clerk

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ZONING BOARD OF APPEALS held a meeting in the Council Chambers, City Hall, Brockton, Massachusetts, on Tuesday, July 13, 2010 at 7:00 pm.

IN RE: 10-32 Petition of **CITY OF BROCKTON, SCHOOL DEPARTMENT**, 43 Crescent Street, Brockton, MA, for a Special Permit, from Sec. 27-25(3)(b), 27-38(b), 27-20, & 27-9, to install and operate a public utility installation consisting of a wireless telecommunications facility with antennas in an R-1-C Zone, located at **900 ASH STREET**.

PETITIONER'S STATEMENT:

OPPOSITION:

DECISION: Withdrawn

BASIS: The petition is withdrawn prior to the meeting as a matter of right.

VOTE:

Motion to Grant by:

Seconded by:

IN FAVOR: (5)

Atty. Anthony Eonas, Chairman

Vahan Boyajian

Stephen Bernard

Richard Francis

Paul Merian

OPPOSED: (0)

James M. Casieri., Clerk

A true copy. Attest:

Anthony Zeoli, City Clerk

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ZONING BOARD OF APPEALS held a meeting in the Council Chambers, City Hall, Brockton, Massachusetts, on Tuesday, July 13, 2010 at 7:00 pm.

IN RE: 10-33 Petition of **CITY OF BROCKTON, SCHOOL DEPARTMENT**, 43 Crescent Street, Brockton, MA, for a Special Permit, from Sec. 27-25(3)(b), 27-38(b), 27-20, & 27-9, to install and operate a public utility installation consisting of a wireless telecommunications facility with antennas in an R-1-C Zone, located at **PLOT 49 QUINCY STREET**.

PETITIONER'S STATEMENT:

OPPOSITION:

DECISION: Withdrawn

BASIS: The petition is withdrawn prior to the meeting as a matter of right.

VOTE:

Motion to Grant by:
Seconded by:

IN FAVOR: (5)

Atty. Anthony Eonas, Chairman

Vahan Boyajian

Stephen Bernard

Richard Francis

Paul Merian

OPPOSED: (0)

James M. Casieri., Clerk

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**COMMONWEALTH OF MASSACHUSETTS
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IN RE: 10-34 Petition of **ROBERT M. ASACK**, 96 Sachem Rock Avenue, East Bridgewater, MA, for a Variance from Sec. 27-26, 27-9, & 27-13A, to raze existing structure and construct a single family dwelling lacking lot frontage and width requirements in an R-2 Zone, located at **49 LYMAN STREET**.

PETITIONER'S STATEMENT: Attorney Wayne Mathews, Engineer John Holmgren and the petitioners Robert and Denise Asack presented to the board Exhibit A, Variance Plan and Exhibit B, Floor Plans. The Asacks were planning on renovating the original home prior to seeing how bad the condition of the home was in. They are before the board seeking permission to raze the existing structure then construct a new single family home on the combined two (2) lots. The home will have four (4) bedrooms and a two (2) car garage. The hardship is the shape of the land. The petitioners will be living in the new home once complete. Abutter Paul Sedani is in favor as well as Councilors Dennis DeNapoli and Paul Studenski.

OPPOSITION: None

DECISION: Granted unanimously with the stipulation that no more further development of the land.

BASIS: [The shape of the parcel and the existing structure creates a hardship dealing with the locus. Granting would not derogate from the intent of the zoning by laws and will not negatively impact the orderly development of the neighborhood. The above listed stipulations are incorporated by reference herein. All representations in petitioner's statement shall be incorporated by reference as stipulations recorded herewith.](#)

VOTE:

Motion to Grant by: Stephen Bernard
Seconded by: Paul Merian

IN FAVOR: (5)

Atty. Anthony Eonas, Chairman _____
Vahan Boyajian _____
Stephen Bernard _____
Richard Francis _____
Paul Merian _____

OPPOSED: (0)

James M. Casieri., Clerk

A true copy. Attest:

Anthony Zeoli, City Clerk

**COMMONWEALTH OF MASSACHUSETTS
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IN RE: 09-41 Petition of **WILLIAM STEWART**, 76 Foster Street, Brockton, MA, for a Variance from Sec. 27-20, for a previously constructed 12'X24' shed lacking rear setback requirements in an R-2 Zone, located at **76 FOSTER STREET**.

PETITIONER'S STATEMENT: Attorney Richard Wainwright along with the petitioner William Stewart presented to the board Exhibit A, Site Plan. Mr. Stewart came before the board prior but was not heard due to outstanding taxes. Mr. Stewart appealed not being heard the first time in court. The court remanded this petition to be heard before the zoning board. He is now before the board seeking permission to keep an existing shed that was built without a permit. The size of the shed is 12' x 24' on an existing 20 year old foundation. The setback is 4' from the property line and the roof height of the shed is 15'.

Mr. Stewart has in addition to his shed a box trailer on his property for addition storage.

OPPOSITION: David and Susan Moraglia are abutters and are opposed. The shed is huge, an eyesore and when it snows it lands on their fence.

DECISION: Denied unanimously

BASIS: [The petitioner has a truck box utilized for storage on the premises. The petitioner created confusion as to the dimensions presented to the board. No hardship dealing with the locus was found by the board. Granting would derogate from the intent of the zoning by-laws and will negatively impact the orderly development of the neighborhood.](#)

VOTE:

Motion to Grant by:
Seconded by:

Stephen Bernard
Richard Francis

IN FAVOR: (0)

OPPOSED: (5)

Atty. Anthony Eonas, Chairman

Vahan Boyajian

Stephen Bernard

Richard Francis

Paul Merian

James M. Casieri., Clerk

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Anthony Zeoli, City Clerk

**COMMONWEALTH OF MASSACHUSETTS
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IN RE: 10-35 Petition of **BROCKTON POWER COMPANY LLC, c/o JONATHAN WINSLOW**, 31 Milk Street, Suite 1001, Boston, M.G.L. C. 40A, Sec.15 Notice of Appeal Pursuant to G.L. 40A & Sec. 8, from Building Inspector's denial of a building permit for Brockton Power Company LLC, in an I-3 Zone, located at **PLOTS 89 & 90 PLAIN STREET**.

PETITIONER'S STATEMENT: Attorney Barry P. Fogel of Keegan Werlin, LLP is before the board seeking a decision to appeal the superintendents denial of the switch station at the above location. The reason for the denial is that it was not an allowed use. Attorney Fogel stated that it is a public utility so it is an allowed use. National Grid will own this switch station. National Grid has agreement with Brockton Power Company LLC to give the proposed Power Plant its energy if granted. Attorney Fogel read a letter from National Grid agreeing with the appeal for the switch station. The station will be on its own land and not an accessory structure to the proposed power plant as questioned. The switch station will not be built until the power plant is granted. Brockton City Solicitor Phillip Nessralla stated the switch station is an accessory use connected to the power plant due to the fact that it will not be constructed until the power plant is granted. A few Brocktonians are in favor of this petition.

OPPOSITION: Approximately four (4) dozen Brocktonians came out in favor of the Superintendents denial of the original permit application. Representative Christine Canavan, Geraldine Creedon and Michael Brady as well as the Brockton City Council come out in favor of the original denial being upheld.

DECISION: Denied. The Denial of the Building Permit was upheld.

BASIS:

VOTE:

Motion to Grant by:

Paul Merian

Seconded by:

Stephen Bernard

IN FAVOR: (2)

Atty. Anthony Eonas, Chairman

Stephen Bernard

OPPOSED: (3)

Vahan Boyajian

Richard Francis

Paul Merian

James M. Casieri., Clerk

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Anthony Zeoli, City Clerk

**COMMONWEALTH OF MASSACHUSETTS
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IN RE: 10-36 Petition of **LAURINDA TEIXEIRA MONTERIO**, 135 Chestnut Farm Way, Raynham, MA, for a Variance from Sec. 27-9, to construct a single family dwelling lacking lot area, frontage, and side line requirements & Sec. 27-13A lacking lot width in an R-1-C Zone, located at **PLOT 2 LITCHFIELD STREET**.

PETITIONER'S STATEMENT: Attorney Linda Davidson, Land Surveyor Bruce Malcom and the petitioner Laurinda Teixeira Monterio presented to the board Exhibit A, Site Plan and Exhibit B, Floor & Elevation Plans. Ms. Monterio bought the above named address along with the abutting home back in 1979. She then subdivided the lots and sold the home in 1989 offering to sell the vacant land to the new homeowners. The home is over the vacant land lot line. She is before the board seeking permission to construct a new ~~home~~-Colonial Style home on Plot 2 to live with her family. The sq.ft is 6,240 and Attorney Davidson has admitted this is a man made hardship but this makes it difficult to make use of the land. The home will have proper design drainage. Some of the abutting neighbors are in favor stating that Ms. Monterio was a good neighbor and it would be nice having her back.

OPPOSITION: Neighbors came out stating flooding is an issue as well as the size of the proposed home. [Allowing would increase the density of the locus.](#)

DECISION: Denied unanimously.

BASIS: [Miss Monterio bought the above named address along with abutting home back in 1979, she then subdivided the lots and sold the home in 1989 offering to sell the vacant land to the new homeowners. The home is over the vacant lot line. Applicant created her own hardship. Complainant provided no facts regarding the unique condition of her land due to soil, shape, or topography. A substantial hardship MUST be created as the result of the unique soil conditions, shape, or topography of the land or structures. Petitioner created her own hardship by subdividing land without approval and selling the lot. If any hardship did in fact exist, it was self-imposed by the Complainant when she previously divided her land into two parcels. It is well-established that a property-owner's self-imposed hardship cannot serve as the basis for granting a variance. Property owners cannot circumvent frontage and area requirements of zoning ordinances by dividing property which was originally large enough to support dwelling into vacant full-size parcel and developed an undersized parcel. Additionally, Petitioner is able to make reasonable use of land, as a residence already exists on the lot. Petitioner's inability to realize a greater financial gain is NOT a valid hardship. Granting requested relief would result in the derogation of the ordinance. The purpose of the applicable zoning requirement is to maintain adequate space between dwellings and preserve a certain aesthetic. Subdivision of the existing lot into two substandard lots would derogate from the purpose of the ordinance. Granting requested relief would result in substantial detriment to the public good. Subdivision of ot would result in overcrowding and insufficient space between the residences. Subdivision would also compromise the aesthetic standards of the area. Overcrowding would result and increased traffic on an already busy street would create public safety concerns. An easement exists on the lot that prevents and/or aids the blocking of the variance.](#)

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VOTE:

Motion to Grant by:

Vahan Boyajian

Seconded by:

Stephen Bernard

IN FAVOR: (5)

Atty. Anthony Eonas, Chairman

Vahan Boyajian

Stephen Bernard

Richard Francis

Paul Merian

OPPOSED: (0)

James M. Casieri., Clerk

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IN RE: 10-38 Petition of **MARSHALL & MARY PAPINEAU**, 78 Malvern Road, Brockton, MA, for a Variance from Art. IV, Sec. 27-25, Art. III, Sec. 27-25, Art. III, Sec. 27-9, Art. III, Sec. 27-13A, to recognize a lot as a grandfathered existing lot of record or to subdivide lot into two lots and construct a single family dwelling on newly created lot; lacking frontage, area and lot width requirements in an R-1-C Zone, located at **78 MALVERN ROAD**.

PETITIONER'S STATEMENT: The petitioners Marshall and Mary Papineau presented to the board Exhibit A, Site Plan and Exhibit B, Floor Plans. They are before the board seeking permission to construct a single family home on an existing grandfathered lot. The home will be a New England style home which will fit nicely on the lot. Councilors Timothy Cruise and Robert Sullivan are in favor.

OPPOSITION: None

DECISION: Granted unanimously

BASIS: [Granting would not derogate from the intent of the zoning by-laws and will not negatively impact the orderly development of the neighborhood. All representatives in petitioner's statement shall be incorporated by reference as stipulations recorded herewith.](#)

VOTE:

Motion to Grant by:

Paul Merian

Seconded by:

Richard Francis

IN FAVOR: (5)

Atty. Anthony Eonas, Chairman

Vahan Boyajian

Stephen Bernard

Richard Francis

Paul Merian

OPPOSED: (0)

James M. Casieri., Clerk

A true copy. Attest:

Anthony Zeoli, City Clerk

