



# TOWN OF HINGHAM

## Board of Appeals

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Town Clerk  
Hingham, MA

### NOTICE OF DECISION VARIANCE MODIFICATION

#### IN THE MATTER OF:

**Applicant/Owner:** Edward Shaughnessy, Jr. and Jodi Kirkland  
5 Smith Way  
Hingham, MA 02043

**Subject Property:** 5 Smith Way, Hingham, MA 02043

**Deed Reference:** Plymouth County Registry of Deeds, Book 47434, Page 161

**Plan Reference:** Plans entitled, "Existing Conditions Plan, #5 Smith Way", dated June 19, 2024, and prepared by Merrill Engineers and Land Surveyors, 427 Columbia Road, Hanover, MA 02339 (1 Sheet).

**Original Variance** Recorded at the Plymouth County Registry of Deeds, Book 47976, Page 266

#### SUMMARY OF PROCEEDINGS:

This matter came before the Board of Appeals (the "Board") on the application Edward Shaughnessy, Jr. and Jodi Kirkland ("the Applicants") to modify the plans approved in connection with a Variance from §V-A of the Zoning By-Law (the "By-Law") issued on November 29, 2016. The Applicant is requesting to modify the side yard and front setbacks to reflect what was constructed at 5 Smith Way, located in Residence District A.

The Board heard the application at a duly advertised and noticed public hearing on Tuesday, August 13, 2024 during a meeting held via Zoom as an alternate means of public access pursuant to Chapter 2 of the Acts of 2023 and all other applicable laws temporarily amending certain provisions of the Open Meeting Law. The Board of Appeals panel consisted of its regular members Robyn S. Maguire, Chair, Paul K. Healey and Jed Ruccio. The Applicant's representative, Attorney Walter Sullivan of Sullivan & Comerford, P.C., presented the request. At the conclusion of the hearing, the Board granted the requested relief sought, subject to the finding and decision set forth below.

Throughout the hearing, the Board was mindful of the statements of the Applicants and the comments of the general public, all as made or received at the public hearing.

### **BACKGROUND AND DISCUSSION:**

On November 29, 2016, the previous owners of the subject property were granted a Variance to expand a single car garage to 11' from the side yard setback, and 20' from the front yard setback where 15' and 25' are respectively required. They sold the property to the Applicants in 2022.

In May of 2024, the Applicants put their home on the market. The realtor reviewed the building file and was advised by both Building and Zoning Staff that the "2018 as built" plans on file revealed that the constructed garage did not meet the setback as approved in the 2016 Variance. The realtor was advised that in order to obtain a certificate of occupancy, the existing 2016 Variance would need to be amended to reflect the as built filed in 2018. Zoning staff also advised the realtor to engage an engineering firm to provide a stamped plan to confirm the current setbacks and to file the new Site Plan with an application to the ZBA to modify the existing Variance.

### **CURRENT APPLICATION:**

The Applicants engaged Attorney Walter Sullivan of Sullivan & Comerford, P.C who filed the application for a modification, as well as an updated Site Plan prepared by Merrill Engineering and Land Surveyors in July 2024.

The updated Site Plan shows the side setback measuring at 12.3' (where 15' is required and the 2016 Variance allowed for 11'), and the front setback measuring at 18.3' (where 25' is required and the 2016 Variance allowed for 20'). Thus the side setback meets the relief granted by the original Variance, the front setback does not, being 1.7' further into the setback than the Variance allowed for.

### **FINDING AND DECISION:**

Upon a motion made by Paul K. Healey and seconded by Jed Ruccio, the Board voted unanimously as follows:

- (1) To find that the proposed 1.7' increase into the front setback does not materially affect the findings made in connection with the original Variance decision dated November 29, 2016.
- (2) To grant the application to modify the Variance granted for 5 Smith Way on November 29, 2016, to allow a front setback of 18.3' where 20' was previously approved and to allow a side yard setback of 12.3' where 11' was previously approved, all as shown on the "Existing Conditions Plan, #5 Smith Way", dated June 19, 2024, prepared by Merrill Engineers and Land Surveyors.

For the Board of Appeals,



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Robyn S. Maguire, Chair  
August 15, 2024

This Decision shall not become effective until (i) the Town Clerk has certified on a copy of this decision 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 that if such an appeal has been filed, that it has been dismissed or denied, and that (ii): a copy thereof has been duly recorded in the Plymouth County Registry of Deeds and indexed in the grantor index under the name of the owner of record.