

**Town of Hopedale
Decision of the Hopedale Zoning Board of Appeals
July 20, 2022**

Case: 3-2022

Applicant(s):	Nicholas Valente and Amber Valente
Property Owner:	Nicholas Valente and Amber Valente
Property:	176 Hopedale Street, Hopedale, MA 01747
Application Filed:	May 26, 2022
Hearing Dates:	July 20, 2022

Relief Sought: Applicants are seeking a variance from rear set back, side set back, and open space limits to construct a new deck.

Decision: Following the closing of the public hearing on July 20, 2022, the Zoning Board of Appeals voted unanimously to issue a variance reducing the rear yard set-back requirement to 8 feet, the right yard set-back requirement to 2 feet, and the 75% open space requirement to an amount that is consistent with the deck sketch provided by the applicants and attached to this decision.

Certification

This is to certify that the above action was taken in compliance with the statutory requirements as set forth in Chapter 40A of General Laws, and that copies of this decision and plans referred to in this decision, if any, were filed with the Town Clerk on _____, 2022.

Special Permit or Variance is not in effect until the decision is recorded with the Worcester County Registry of Deeds and the building permit will not be issued until proof of recording is presented.

APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PERSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING THIS DECISION IN THE OFFICE OF THE TOWN CLERK.



Christopher P. Hodgins, Chairman

**Record of Proceedings and Summary of Findings and Decision
Hopedale Zoning Board of Appeals**

Case: 3-2022

<u>Applicant(s):</u>	Nicholas Valente and Amber Valente
Property Owner:	Nicholas Valente and Amber Valente
<u>Property:</u>	176 Hopedale Street, Hopedale, MA 01747

Hearing Proceedings

On June 3, 2022, Nicholas Valente and Amber Valente filed an application for a variance from rear set back, side set back, and open space limits to construct a new deck. The Zoning Board of Appeals (ZBA) scheduled a public hearing for July 20, 2022, and notified the Town Clerk, abutters and other interested parties, and requested publication of the notice in the Milford Daily News.

The Town Clerk posted the hearing notice on June 15, 2022. The Milford Daily News published the first notice on June 24, 2022, and published the second notice on July 1, 2022.

Public Hearing July 20, 2022

On July 20, 2022, the ZBA opened a public hearing on the application. Four members of the ZBA were present with one member (Louis Costanza) absent. Chairman Hodgens opened the public hearing, explained the process, and outlined the procedural posture of the application. Mr. Hodgens invited the applicants to make a presentation.

Mr. Valente said that they intend to demolish the existing deck and provide better access from the side yard to a staircase. Nicholas Alexander referenced the sketch provided with the application and asked for clarification of the deck and staircase location. Ms. Valente added that they are seeking extra space for a toddler. She added that it is a great neighborhood, and they have the best neighbors.

The applicants submitted a petition with comments from their neighbors. Mr. Hodgens said that they read his mind because the first question he was going to ask is whether they had discussed the project with their neighbors. Mr. Hodgens read the petition into the record as follows:

“Lisa and Michael Pedroli have no objections to Amber and Nick putting a deck on the back of their house. We think it will be a nice addition to the back of their yard. 184 Hopedale Street.”

“Michelle and Terry Alves of 164 Hopedale Street have no objection to the residents of 176 Hopedale Street building a deck.”

“Scott Vanbuskirk and Maddie Parsons 9 Nelson Street. We are perfectly fine with Amber and Nick building a deck.”

“Larry and Teri Fremault 10 Nelson Street are OK with Nick and Amber building a deck.”

“Madeline and George Parker 188 Hopedale Street. We have no issue with a deck for Nick and Amber!”

“Mike and Cathy Julian 2 Cook Street have no problem with them building a deck.”

“Janice Doyle at 178 Hopedale Street has no objection to the Valente family building a deck at 176 Hopedale Street.”

“Ashley Metz 170 Hopedale Street, Hopedale, MA 01747. I don’t disagree with them having a deck.”

Mr. Hodgens clarified that the property is directly across the street from Sacred Heart Church. Mr. Hodgens asked the applicants to identify the owners of the surrounding properties. The applicants described the closest neighbors. Looking at the property to the right would be Ashley Metz, and to the left would be Janice Doyle. Scott Vanbuskirk and Maddie Parsons are to the rear right, and Larry and Teri Fremault are to the rear left.

Scott Savage asked about the lot lines because the sketch did not indicate the location. Ms. Valente said there is a wall between the property to the right. Mr. Valente said that they also own the empty lot in the rear of their property. Mr. Hodgens noted there is a tree line between the front lot and the rear lot. The applicants said the tree line would remain.

Mr. Savage asked about the lot line on the left side of the property. Mr. Valente said they have a garage and shed on that side of the property. Nicholas Alexander noted that the deck would only be close to the right side of the property (Ashley Metz). The applicants agreed.

Mr. Hodgens said that he was inclined to grant relief, but for the purposes of writing up the variance and providing direction to the Building Commissioner, dimensions would have to be noted with specificity. Mr. Hodgens then outlined the set-back requirements of the Hopedale Zoning By-Laws: 15 feet for side set back and 35 feet for rear set back. Mr. Valente said that they would like relief for the full amount. Mr. Hodgens said that he was not sure that would be advisable to build right up to the property line and suggested a 3-foot set back. Mr. Valente asked about a 2-foot set back. The applicants said that Ashley Metz did not have a problem with building close to the line, and they said that the Metz residence is actually on the other side of that lot. Sandra Biagetti confirmed that the neighboring residence was not in close proximity to the Valente property line.

Mr. Hodgens emphasized that the focus on the set back is not designed to make the project more difficult. Instead, the focus is to help the Building Commissioner understand where the structure can be placed on the property. The applicants said they understood.

Mr. Alexander noted that the deck calls for 14 feet by 14 feet at its maximum. He suggested perhaps the applicants could shorten the dimensions. Ms. Biagetti emphasized that the dimensions need to be accurate, or there may be problems later. Mr. Savage asked about the proximity to the sidewalk. Ms. Valente explained the layout of the

residence in connection to the deck. Mr. Valente added that they are looking to extend the deck about 3 feet from the side of the residence so that access can be gained by means of stairs and a gate.

Mr. Hodgens asked if a variance of 2 feet on the right side would be sufficient to achieve what the applicants are trying to accomplish. The applicants said that would be sufficient on that side. Ms. Biagetti asked about the dimension in the rear. The applicants did not have an exact dimension. Mr. Savage asked if 8 feet on the rear would be sufficient. The applicants said that it would be sufficient. Mr. Hodgens added once again that the need for specificity is not designed to give anyone a hard time, but is intended to assist the Building Commissioner in determining whether there is compliance with the variance. He also said that some level of specificity is needed because the variance that issues is going to reference the sketch provided by the applicants. The applicants said they understood. Mr. Hodgens summarized that relief would be granted for a variance up to 2 feet on the right and 8 feet in the rear. He asked the applicants if that would work, and Mr. Valente said that it would. Mr. Hodgens asked about the left side, but the applicants said they did not need relief on that side due to ample space. Mr. Alexander suggested that if the applicants find the estimates are off by a small amount, the simple solution is to just reduce the size of the deck by that small amount. Mr. Hodgens said that the variance provides only a maximum. If the applicants find during the course of construction that they do not need to build up to the maximum, they are not required to do so. Mr. Hodgens said relief will also be required for the 75% open space requirement. He said that he will not require the applicants to estimate that amount in the absence of a precise, scaled drawing. Mr. Hodgens asked if all the ZBA members agreed with that. All agreed.

Ms. Biagetti inquired about the person building the deck. The applicants said the work would be done by Mike Pedroli

Mr. Hodgens then read from the Hopedale Zoning By-Laws regarding the requirements for a variance. Mr. Hodgens said that the ZBA will make a specific finding that “owing to circumstances relating to 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 this by-law would involve substantial hardship, financial or otherwise, to the petitioner, 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 this by-law.” All ZBA members expressed satisfaction with that finding.

Mr. Hodgens asked if anyone wished to be heard further. No one expressed an interest in being heard.

Mr. Hodgens entertained a motion with respect to the application.

Mr. Savage moved to approve the application and grant a variance for the right set back at 2 feet, the rear set back at 8 feet, and a corresponding variance for the 75% open space requirement. Mr. Alexander seconded the motion.

Mr. Hodgens once again asked if any member of the public or town official had any comment. No one expressed any interest in being heard. Mr. Savage tested the Zoom

connection by asking someone to respond if the Zoom connection was working. A person on the Zoom connection responded that it was working.

Mr. Hodgens closed the public hearing.

Mr. Hodgens restated the motion as made and seconded for a variance for the 8 foot rear yard set-back, 2 foot right yard set-back, and a variance from the 75% open space requirement, all for the purpose of constructing a deck in according with the sketch provided by the applicants.

A roll call vote on the motion followed:

Scott Savage	yes
Nicholas Alexander	yes
Sandra Biagetti	yes
Christopher Hodgens	yes

Mr. Hodgens declared the motion had passed unanimously, and the variance would issue.

Summary of Findings and Decision

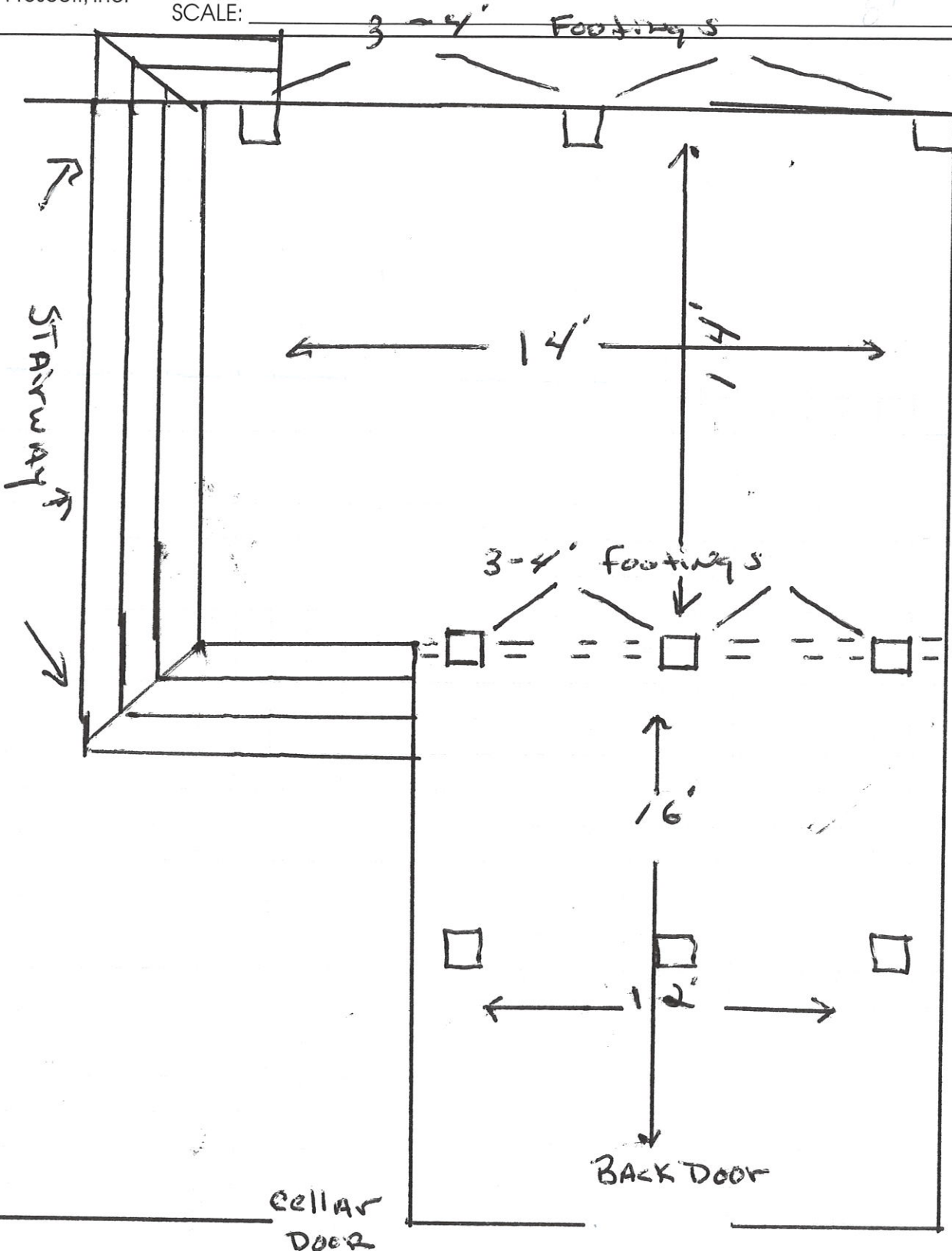
The subject property at 176 Hopedale Street consists of approximately .115 acres with a single-family wood frame structure (approximately 1828 square feet) built around 1939 and detached garage. The property is in a “Residential B” zone under the Hopedale Zoning By-Laws. This zone requires a minimum side yard set-back of 15 feet, and minimum rear yard set-back of 35 feet, and minimum open space of 75%. Hopedale Zoning By-Laws § 13. The applicants seek a variance from these dimensions for the construction of a deck in the rear of the residence.

A variance “furnish[es] relief from otherwise applicable requirements of the zoning by-law.” Rosenfeld v. Zoning Bd. of Appeals of Mendon, 78 Mass. App. Ct. 677, 679, *rev. denied*, 459 Mass. 1109 (2011). The ZBA “shall have the power” to grant “a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds [1] 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, [2] 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 [3] that desirable relief may be granted without substantial detriment to the public good and [4] without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.” G.L. c. 40A, § 10; Hopedale Zoning By-Laws § 10.4(b). “This requirement for specific findings and a detailed record of the board’s proceedings and the reason or reasons for its decision ‘is not satisfied by a mere repetition of the statutory words.’” Warren v. Board of Appeals of Amherst, 383 Mass. 1, 10 (1981) (quoting Brackett v. Board of Appeal of the Building Dept. of Boston, 311 Mass. 52, 54 (1942)). “The statutory criteria for a variance set out in G.L. c. 40A, § 10, are demanding, and variances are difficult to obtain.” Mendes v. Board of Appeals of Barnstable, 28 Mass. App. Ct. 527, 531 (1990). If variances “are granted with undue frequency or liberality, and without strict compliance with the prescribed statutory criteria, zoning regulations can become a matter of administrative whim.” Damaskos v. Board of Appeal of Boston, 359 Mass. 55, 62 (1971). There is no “legal right to a variance.” Sheppard v. Zoning Bd. of Appeal of Boston, 81 Mass. App. Ct. 394, 398 (2012).

Based upon the governing standards, the Hopedale Zoning By-Laws, and the facts presented at the hearing in the instant case, the ZBA exercises its discretion in favor of granting a variance. The subject property is unique in the neighborhood for several reasons. First, the lot size is small compared with surrounding lots. The subject property is approximately 5000 square feet, and the lots on either side are substantially larger at approximately 15,000 square feet. Second, unlike some of the other properties in the area, the residence located on the subject property is not centered on the lot. Instead, the residence is constructed very close to the right lot line (looking at the front of the property) and well within the 15 foot set-back requirement. Third, the applicants not only own the subject property, but they also own the lot to the rear with frontage on Nelson Street that runs parallel to Hopedale Street. Fourth, while there are two distinct lots for tax purposes, the two lots owned by the applicants give the appearance of being a single lot with a large rear yard. The garage on the Hopedale Street lot actually seems to encroach on the Nelson Street lot. Without a variance from the 15 foot side yard set-back requirement, the 35 foot rear yard set-back requirement, and the 75% open space requirement, the applicants would be unable to construct a rear deck of any size due to the literal enforcement of the Hopedale Zoning By-Laws. Thus, the ZBA is satisfied that a substantial hardship would result if relief were not granted. The ZBA is also satisfied that relief would not be detrimental to any of the surrounding properties. To the contrary, the applicants presented a petition from neighbors that clearly expresses agreement with the modest project that will enhance rather than derogate from the subject property. A variance in these circumstances is precisely the sort of relief contemplated by the Hopedale Zoning By-Laws because it obviates a substantial hardship and allows homeowners greater use and enjoyment of their property without diminishing the value of neighboring properties.

Based upon the foregoing, the ZBA hereby allows the application for a variance and reduces the rear yard set-back requirement to 8 feet, the right yard set-back requirement to 2 feet, and the 75% open space requirement to an amount that is consistent with the deck sketch provided by the applicants and attached to this decision.

Copies of this decision will be filed with the Town Clerk and sent to the applicant, Building Commissioner, and Tax Assessor.



EXISTING HOUSE

Serving
The Northwest
Region