

W 6
A True Copy

Attest Robin Phelan

5 NE
2022
Town Clerk
Boxford, Massachusetts



SO. ESSEX #205 Bk: 41120 Pg: 31
08/09/2022 01:10 DCSN Pg 1/6

TOWN OF BOXFORD
ZONING BOARD OF APPEALS
NOTICE OF DECISION
ON VARIANCE, SPECIAL PERMIT, OR APPEAL

Applicant: 363 Main Street Realty Trust, Barbara Grant Trustee

Date: July 7, 2022

Owners: 363 Main Street Realty Trust, Barbara Grant Trustee

Case No. 1026

Premises Affected 363 Main Street
Assessors Map 17, Block 02, Lot 25

RECEIVED
2022 JUL -7 AM 10:29
ROBIN PHELAN
BOXFORD TOWN CLERK
638630 (75069) TrnID: 1414820
Southern Essex District ROD
8/12/2022 11:16 AM PERMIT Pg: 1/6

Members of Board who sat on hearing: Paula Lia Fitzsimmons, Steve Merriam, Ralph Nay

Alternates Present: David Valzania

Referring to the above application so as to permit a Special Permit to construct an addition to an existing non-conforming structure pursuant to Article V, Section 196-6(B) of the zoning bylaws at the Affected Premises. After a virtual public hearing on June 23, 2022 the Zoning Board of Appeals voted to Grant Special Permit subject to the following conditions, safeguards and limitations on time use, if any: (see attached).

Vote of Individual Members:

NAME	VOTE
<u>Paula Lia Fitzsimmons</u>	<u>YES</u>
<u>Steve Merriam</u>	<u>YES</u>
<u>Ralph Nay</u>	<u>YES</u>

This decision of the Zoning Board of Appeals shall not be recorded at the Registry of Deeds until Certified by the Town Clerk.
In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws,
I, Clerk of the Town of Boxford, Massachusetts, hereby certify that twenty days have elapsed since this decision was filed in the Town Clerk's office, and that no appeal of the decision has been filed, that it has been dismissed or denied.
Attest: Robin Phelan
Date: 8-8-22

APPEAL: You are hereby notified that you have the right to appeal the above decision to the Court and any appeal must be made pursuant to Massachusetts General Laws Chapter 40A, Section 17, as amended, and must be filed within 20 days after the date of filing this decision with the Town Clerk.
RECORDING: Any applicant who receives a special permit or variance is required by Massachusetts General Law 40A to have the decision recorded or registered at the Essex South District Registry of Deeds. A copy of the recorded document shall be forwarded to the Boxford Zoning Board of Appeals Office.

DECISION OF THE ZONING BOARD OF APPEALS UNDER ZONING BYLAW TOWN OF BOXFORD,
MASSACHUSETTS UPON THE PETITION OF 363 REALTY TRUST, BARBARA GRANT, TRUSTEE

Re: Case No. 1026
Applicant: 363 Main Street Realty Trust, Barbara Grant, Trustee
Property: 363 Main Street
Property Owner: 363 Main Street Realty Trust, Barbara Grant, Trustee
Title Reference: Essex South District Registry of Deeds
Registered Land Certificate number 75069 dated 9/12/2002
Registered Land Plan number 42325A filed 9/30/2002
Map/Block/Lot: 17/2/25
Relief Sought: Special Permit for an addition to a non-conforming structure
pursuant to ZBL 196-6(B)

Board Members who sat on hearing:
Paula Lia Fitzsimmons, Chair
Steve Merriam, Vice Chair
Ralph Nay, Clerk

Also Present:
David Valzania, Alternate

Others present during one or more hearings:
Bob and Barbara Grant, applicants
Peter Delaney, Building Inspector

A True Copy

Attest *Ralph Nay*
Town Clerk
Boxford, Massachusetts

A. INTRODUCTION

Pursuant to notice duly published, posted and sent to all interested parties under the provisions of Massachusetts General Laws, a Zoom public hearing was held on April 28, 2022 and continued to a Zoom public hearing on May 26, 2022 and continued to a Zoom public hearing on June 23, 2022 on the petition of 363 Main Street Realty Trust, Barbara Grant, Trustee initially for relief under Boxford Zoning by-law 196-24 E.1, then revised to a Special Permit for an addition to a non-conforming structure pursuant to Boxford Zoning by-law 196-6(B).

B. APPLICATION MATERIALS

The following materials were submitted:

1. Application – including postage worksheet, authorization, and legal notice
2. Certified abutters list
3. Proposed Additions Plan prepared by Donohoe Survey, Inc dated 2/24/22.
4. Proposed Elevation and Floor Plans sheets A-1, A-2, A-3, A-4 dated 1/18/22 by Vesta Architecture
5. Historic photographs and newspaper articles describing history of the house, fire damage and rock wall construction along Main Street in front of house
6. Planning Board recommendation 5/18/2022

7. Revised Proposed Elevation and Floor Plans sheets A-1 through A-9 dated 5/4/22 by Vesta Architecture
8. Revised Proposed Additions Plan prepared by Donohoe Survey, Inc dated 5/2/22
9. Plot Plan prepared by Donohoe Survey, Inc dated 5/5/22 showing existing conditions

During the public hearings before the Board of Appeals, Robert and Barbara Grant presented oral testimony.

The Board received from the Boxford Planning Board a recommendation dated 5/18/22 with a unanimous vote recommending 1) that MGL 40A section 6 controls in this case and that the Boxford By-law 196-6(B) and 196-5(A) are preempted by the statute in accordance with the case of Gale v. Gloucester and Bellalta v. Brookline; 2) that the project would intensify existing non-conformity, i.e., the front yard setback; 3) that there would be no detriment to the neighborhood by allowing the project to go forward; and 4) no variance is required. The Planning Board recommends that the ZBA make similar findings.

C. THE PROPOSAL

The Applicants request a special permit to build a one-story addition over an existing root cellar and modifications to allow the front door to be centered resulting in the footprint expanding into the front lot line setback.

A True Copy

Attest Adam Phelan

Town Clerk

Boxford, Massachusetts

D. HEARINGS

April 28, 2022

7:15:00 pm

Mr. Nay, clerk, read the notice for case 1026.

Bob Grant provided background on the house including a 1940's fire which destroyed a front section of the house. The foundation of that section was left and a concrete cap was installed above it to create the so-called "root cellar." The Grants covered the cap with a cobblestone patio years ago, but now are seeking to build a new addition over the foundation to expand their existing living room and create a new front entrance properly centered on the house. Mr. Grant indicated they may need relief from the front lot setback.

Mr. Merriam asked if the markings on the plan indicate that the proposed structure would be further from the front lot line, but Mr. Grant indicated that a portion of proposed entryway/portico extends about a foot beyond the existing foundation in the direction of the front lot line. Mr. Grant further described the point on the proposed elevation plans that determines the minimum setback. Mr. Nay recommended that the proposed plans show the location of the front step posts or bases to clarify the setback location.

Mr. Grant further explained the status of the existing cobblestone patio and that a portion of the patio marked "proposed" was actually in existence. The Board then discussed the historic practice to determine the minimum setback based on covered structures.

Chair Fitzsimmons asked about the front lot line. Mr. Grant indicated the lot line did not change when the Town of Boxford sought to change the location of Main Street and the Grants offered a section of land to the Town unrelated to the front lot line.

Mr. Grant also explained that, prior to the 1940's fire, the house included a structure above the foundation and therefore established the setback at 18.1 feet. Chair Fitzsimmons questioned that if the portion of the house lost in the fire was not used since zoning began, the 18.1 feet might not be a valid grandfathered setback. She stated that the application may not require a variance from front line setback, but instead may only require relief under ZBL 196-6(B).

Mr. Nay asked if the space under the capped foundation was in use. Mr. Grant stated that they used it for multiple purposes during their ownership and that it was accessible from within the main house. Mr. Nay recommended that a roof plan be provided that better identifies the overhang so the Board can determine setbacks.

Mr. Merriam recommended the Planning Board be notified that relief should be requested under 196-6(B) instead of 196-24 E.1 as shown in the application. Chair Fitzsimmons indicated she would contact Ross Povenmire, Planning Board Administrator, to discuss the issue.

A True Copy

7:50:40 pm

Case continued to May 27. All in favor.

Attest Rodney Phelan

Town Clerk

Boxford, Massachusetts

May 27, 2022

7:02:20pm

Case continued to June 23 at the request of the applicant. All in favor.

June 23, 2022

7:04:30pm

Mr. Nay, clerk, read the Planning Board recommendation into the record.

7:06:15pm

Mr. Grant offered to discuss updated plans with the board. Mr. Merriam asked for clarification of existing and proposed conditions shown on the revised plans to determine setbacks. Chair Fitzsimmons reviewed the definition of building vs structure in the bylaws and offered that the "root" cellar would be a "structure" under the bylaw as it is permanent. Mr. Merriam added that bylaw 196-24(I) implies that steps and unroofed porches are not to be included in the setback measurements.

Discussion ensued regarding the Planning Board recommendation where the decision in Gale vs Gloucester indicated that Massachusetts G.L. c. 40A, § 6, first paragraph provided that a pre-existing non-conforming structure can be extended or altered provided the Board finds that the extension or alteration is not a detriment to the neighborhood. Chair Fitzsimmons stated that this language is tracked in Boxford Bylaw 196-6(B).

Mr. Nay indicated that the application is consistent with recent decisions referencing 196-6(B) and that the proposed addition is not a detriment. He stated that as-built plans should be a condition

of the permit. Building Inspector Peter Delaney requested that, as a special permit condition, as-built plans be submitted to the Inspector of Buildings prior to the final inspection.

Chair Fitzsimmons asked for further comment/questions from the Board, public or applicants.

7:26:00pm

Moved to close evidence. All in favor by roll-call vote.

7:26:20pm

Mr. Merriam made the following motion:

That the ZBA grant a special permit to construct an addition to an existing non-conforming structure under Article V, Section 196-6(B) of the Bylaw for case 1026, applicant 363 Main Street Realty Trust, for the property at 363 Main Street in accordance with the most recent plans submitted having found that the proposed addition will not be substantially more detrimental to the neighborhood than the existing nonconforming use subject to the following condition:

The applicant shall provide as-built plans to the Inspector of Buildings prior to the final inspection.

Mr. Nay seconded the motion

Roll Call Vote

Mr. Nay Yes

Mr. Merriam Yes

Chair Fitzsimmons Yes

A True Copy

Attest Rdum Phelan

Town Clerk

Boxford, Massachusetts

E. DECISION:

On June 23 at 7:26:20pm, on a motion made by Mr. Merriam and seconded by Mr. Nay, the Zoning Board of Appeals voted to GRANT a Special Permit for an addition to an existing non-conforming structure pursuant to Article V, Section 196-6(B) of the bylaw for the property located at 363 Main Street. The Zoning Board of Appeals voted on the motion by a vote of 3-0.

The documents listed in section B, Application Materials, shall be incorporated herein by reference. Should there be a conflict between the documents listed in section B, then this decision shall control.

Appeal: You are hereby notified that you have the right to appeal the above decision to the Court and any appeal must be made pursuant to Massachusetts General Laws Chapter 40A, Section 17, as amended, and must be filed within 20 days after the date of filing this decision with the Town Clerk.

Recording: Any applicant who receives a special permit or variance is required by Massachusetts General Law 40A to have the decision recorded or registered at the Essex South District Registry of Deeds. A copy of the recorded document shall be forwarded to the Boxford Zoning Board of Appeals office.

Document: 632530

PERMIT

Southern Essex District R00

RECEIVED FOR REGISTRATION

On: 8/12/2022 11:16 AM

Noted on Cert: 75069 BOOK: 402