



TOWN OF BOXBOROUGH

Zoning Board of Appeals

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Mark White, *Chair* • Kristin Hilberg, *Clerk* • Mark Barbadoro • Stefano Caprara • Michael Toups • Shawn McCormack, *Alternate*

APPROVED ON: June 15, 2021

Meeting Minutes

April 27, 2021

7:30 PM

Remote Meeting

Members Present: Mark White (Chair), Mark Barbadoro, Stefano Caprara, Kristin Hillberg [7:35pm]

Also Present: Simon Corson (Town Planner)

Several members of the public were also present: Claire Gauthier, 97 Pine Hill Road, Peter Richardson of Richardson Construction, Old Bay Road in Bolton, David & Maureen Barr, 91 Pine Hill Road.

Mr. White called the meeting to order at 7:30 PM. Mr. White noted that a quorum of the Board was not currently present and that the Special Permit hearing would need to wait to be heard.

Ms. Hilberg entered the meeting at 7:35pm. She noted that she and the applicant both work for the same real estate company, but she is not biased in terms of this application.

7:30 Hearing – 97 Pine Hill Road – *continued from April 20*

Amendment to Special Permit Decision 2017-09, Alteration of Nonconforming Structure

Mr. White read the legal notice and opened the public hearing.

Claire Gauthier stated that Peter Richardson is technically the applicant, but that she will present the case. She explained that the lot is non-conforming due to size and setbacks. The proposed addition does not comply with Section 4203 of the bylaw. She is asking for an amendment to the Special Permit issued on November 21, 2017, and amended on December 4, 2018. She believes that the ZBA can amend it and allow the addition because the proposal will not be more detrimental to the neighborhood than the current use. It does not go against any of the considerations of traffic flow, wetlands, setbacks, etc.; it actually adds to hers and neighboring property values. Since buying the property she has continued to make improvements and beautify it. There are some concerns that it will impact the neighborhood negatively in regard to noise and privacy because it is an addition of outdoor space, but she does not see a difference in noise between a patio and a deck. In terms of privacy, she is proposing an 8' trellis between herself and her nearest neighbor. She is also proposing to add natural elements for additional

privacy. Most of her neighbors have non-conforming lots based on size. Her proposal will still keep her well below most of her neighbors' square footage.

Dave Barr stated that he objects to the proposal. This Special Permit was adjudicated three years ago. As abutters of this property, they should be able to rely on that decision as it was based on the laws that apply to Special Permits. An amendment, in his opinion, is not eligible as it does not meet the criteria. The previous owner would have wanted a deck as part of his original plans but chose to apply the square footage granted to indoor living space.

Maureen Barr stated that the proposed construction is within the setbacks, so she believes a variance would be necessary. The original owner had the same issue and sought a Special Permit instead of a variance. A Special Permit does not allow construction within the setbacks. There is a limit to 100% expansion of the original structure when the Special Permit was made. At the original Special Permit hearing, they were told there would be no further construction. When they noticed a deck was being built, the Town confirmed that nothing should be created beyond the 4' landing for the stairs. They then bought a privacy fence in case a patio went in. Their deck looks right over onto the applicant's property. This is an issue that a fence would not fix. There is also a noise factor that a trellis cannot stop.

There were no other public comments at this time.

In response to a question from Mr. Barbadoro, Ms. Gauthier stated that her proposed deck will be on the side of the house that is adjacent to the Barr's. It will not be closer to the property line than the existing building. It will be approximately 4' from the end of the house. The proposed deck will not meet the required setbacks.

In response to a question from Ms. Hilberg, Ms. Gauthier stated that the deck could go off a different part of the back of her house but is being proposed in this area due to an existing sliding door and an existing landing.

Mr. Barbadoro stated that he does not understand an avenue as to how this could be approved under the current bylaws.

Mr. Caprara stated that the avenue would be a variance.

Mr. Barbadoro stated that there is a condition in the original Special Permit that explicitly requires a variance for any expansion of the existing structure. The request is to amend the Special Permit to eliminate that requirement. He asked if a deck and new slider could be put in a different place on the house so that it would be within the setbacks.

Ms. Gauthier stated that she would have to change three windows in her living room to become a slider. In this case it would be within the setbacks.

Mr. Caprara stated that, even if this is proposed within the setbacks, once this proposal goes past the 100% expansion, he believes it would need to be resubmitted as a variance.

Ms. Gauthier explained that she applied for a variance because any changes or modifications would need approval of the ZBA. She thus thought an amendment to the Special Permit could be sought instead.

Mr. Barbadoro stated that, if the gross square footage is proposed to be expanded beyond what is allowed by the original Special Permit, he agrees that an amendment could not derogate from the original requirements. A variance would be required, and the minimum side setback is 30'. A variance to derogate from the bylaw should try to be less impactful to the neighbors, such as by meeting the side setbacks.

Mr. Caprara stated that the variance discussion circled around Section 91012.c. Each case is evaluated individually, but the 100% was based on the intent of the Special Permit required for a pre-existing non-conforming item.

Mr. White added that residents generally depend on the bylaws to protect them as well. The residents use this to determine what is and is not allowed near them. The bylaws state that what is being requested is not allowed. The applicant should have known what she was buying into when purchasing this house, in terms of the applicable bylaws. If the applicant can find a place to put the proposed deck that is not in the setbacks and not a greater impingement on the abutters than what already exists, this might be a possibility. He noted though, that any proposal would be over the 100% gross square footage and a variance application would need to show hardship.

Mr. Caprara stated that the key item is that the house that existed originally on this lot was incredibly small. While the neighborhood might suit the proposal, the issue is with the original size of the house.

Mr. Barbadoro stated that the bylaw to not allow beyond 100% expansion is in recognition that cities and towns have a legitimate right to not eliminate all smaller homes through mansionization. The Supreme Court of MA has upheld this as a legitimate concern and Boxborough is not the only this with this type of bylaw.

Ms. Gauthier noted that she knew all of this going into the purchase of this home. Her reason for this application is that her conversations with Mr. Corson led her to attempt it.

Ms. Barr stated that the fact that this application has made it this far through the Town processes speaks to how hard it is for new homeowners and buyers to know what they can do with their property. The Barr's have tried to head off this request along the way because they knew what the bylaws state.

Mr. Barbadoro noted that the Special Permit with the requirements was recorded and lawyers during real estate transactions have due diligence to release the info to the buyer. He believes that Ms. Gauthier knew the bylaws but was hoping to push forward and make the request anyway.

Mr. Barbadoro moved to close the public hearing. Seconded by Ms. Hilberg.

Roll call: Mark White, Mark Barbadoro, Stefano Caprara, and Kristin Hillberg – all aye. Motion carried unanimously.

Mr. Barbadoro stated that he is unwilling to amend the Special Permit but would reconsider a variance request if one was presented with a deck not closer to the setbacks than any other deck in Boxborough would be placed.

Mr. White noted that a variance request would require a hardship issue, which would be difficult in this case because this information was previously known to the applicant.

Mr. Barbadoro moved to deny the application to amend the Special Permit. Seconded by Mr. Caprara.

Roll call: Mark White, Mark Barbadoro, Stefano Caprara, and Kristin Hillberg – all aye. Motion carried unanimously.

Minutes – none at this time.

New Business

Mr. Caprara suggested a Google Doc to address procedures that can be added to by Board members. Mr. Corson stated that he would consider this option, as it may be considered written deliberations by the Board. Mr. Barbadoro suggested the group could have a work session to review the bylaws as well.

Mr. Barbadoro moved to adjourn the meeting at 8:30pm. Seconded by Ms. Hilberg.

Roll call: Mark White, Mark Barbadoro, Stefano Caprara, and Kristin Hillberg – all aye. Motion carried unanimously.

Join Zoom Meeting

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Meeting ID: 844 3705 0742

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