



TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

2016 MAR 22 P 3:34
TOWN CLERK
FRAMINGHAM

BOARD OF APPEALS CASE NO. 16-06

PETITION OF VICTOR HERNANDEZ

DATE OF DECISION: MARCH 8, 2016

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of VICTOR HERNANDEZ (hereinafter the Applicant), for property located at 725 CONCORD STREET. This Decision is in response to a Petition for a Finding for an addition to a pre-existing, non-conforming structure as required by the Zoning By-Law (hereinafter the Application).

2. Applicant

Victor Hernandez
22 Vincent Road
Mendon, MA 01756

Property Owner

Hilda Aponte
725 Concord Street
Framingham, MA 01702

3. Location

Property is located at 725 Concord Street and identified by Assessors' Parcel ID 102-03-9360-000 (hereinafter the Site).

4. Board Action

After due consideration of the Application, the record of proceedings, and based upon the findings set forth below, on March 8, 2016 the Board voted to GRANT the requested FINDING by a unanimous vote in favor of the petition of three (3) members sitting on the Application. The record of the vote is stated as follows:

PHILIP R. OTTAVIANI, JR.	YES
STEPHEN MELTZER	YES
JOSEPH NORTON	YES

5. Proceedings

The Application was received by the Board on January 28, 2016 pursuant to MGL, Ch. 40A, §10, and the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on March 8, 2016 at 7:15 P.M. in the Blumer Community Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Stephen Meltzer, Joseph Norton, and Alternate Edward Cosgrove were present throughout the proceedings. The minutes of the public hearing and submissions on which this Decision is based, which together with this Decision constitute the record of the proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

6. Exhibits

Submitted for the Board's deliberation were the following exhibits:

- 6.1. Application filed with the Building Official for a permit for a one-bedroom, one-bathroom addition to a pre-existing nonconforming two-family structure dated December 30, 2015.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on February 16, 2016.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Photograph depicting the south side of the existing structure, stamped "Received" by the Zoning Board on February 16, 2016.
- 6.5. Hand-drawn house plans numbered 1 to 6 showing proposed floor plans and elevations, stamped "Received" by the Zoning Board on February 16, 2015.
- 6.6. Site plan entitled "Existing Conditions Plan, 725 Concord Street", dated December 4, 2015, prepared by Thompson Farland, Inc., New Bedford, Mass.

Exhibits 6.5 and 6.6 shall be hereinafter referred to as the "Plans."

7. Findings and Conclusions

Based upon its review of the Application, exhibits, and the public hearing thereon, the Board makes the following findings and conclusions:

- 7.1. The property is located within the Single Residence (R-1) zoning district.
- 7.2. On December 30, 2015, the Building Official denied the Application for a permit to build an addition to a nonconforming structure under Section I.D.5.b of the Zoning By-Law.
- 7.3. On February 16, 2016, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a Finding pursuant to the By-law and M.G.L. c. 40A, §6.
- 7.4. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on February 21 and February 28, 2016 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11. No Town Meeting Members appeared at the hearing.
- 7.5. The Applicant was present and explained his need to build an additional bedroom on the lower level of the structure. He explained that his sister recently moved in to take care of his mother, and that the existing dwelling unit has only one bedroom. The addition would extend into the back yard.
- 7.6. Mr. Ottaviani explained that a Finding was necessary because the existing structure is encroaching in the required front and side setbacks. However, because the proposed addition would be more than the required 10 feet from the property line, there would be no increase in nonconformity.
- 7.7. G.L. c. 40A, §6 applies to pre-existing, nonconforming uses or structures and requires a Finding when the nonconforming structure is extended or altered in such a way that the extension does not at all affect the nonconformity. *The Board finds that the proposed bedroom addition will not increase the nonconforming nature of the structure, and that it will not be substantially more detrimental to the area than the existing structure.*

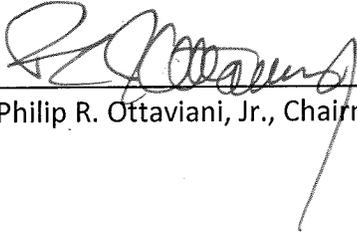
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- 7.8. There are circumstances relating to the soil conditions, shape, or topography of the land or structures for which the Variance is being sought. *The Board finds that this parcel is unique. It is narrow with a wide house and the property does not currently have the required two off-street parking spaces.*
- 7.9. Owing to such circumstances, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner. *Bringing the property into compliance for off-street parking without the requested variance would require a more complicated addition to the rear of the house, or a detached garage in the middle of the back yard, which would reduce the value and enjoyment of the property.*
- 7.10. The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the By-Law or from the intent of the district in which the Variance is being sought. *The proposed garage addition will extend only 2.5 feet into the required 15-foot side setback. It will not nullify or substantially derogate from the intent and purpose of the By-law's provisions for the R-3 district. Furthermore, there has been no opposition expressed from neighbors.*
- 7.11. The Board grants this Application with the following condition:
- 7.11.1. The addition shall be located and constructed as shown on the Plan.
- 7.12. This Decision applies only to the requested Finding. Other approvals or permits required by the By-Law, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.
- 7.13. If the rights authorized by this Finding are not exercised within two years of the date of the filing of this Decision with the Town Clerk, said Finding shall lapse. If construction or substantial use has not commenced within this two-year period, the Applicant may request an extension by submitting a written Application to the Board which contains an explanation of good cause for the failure to exercise the rights of this Finding. A written request for an extension must be submitted to the Board at least 30 days prior to the expiration of the two-year period.
- 7.14. This Decision shall be recorded at (as appropriate) the Middlesex South District Registry of Deeds or District of the Land Court prior to the issuance of a Building Permit. A copy of the recorded or filed Decision certified by the Registry, and notification by the owner of the recording, including recording information, shall be furnished to the Board and the Building Official.
- 7.15. The terms, conditions and provisions of this Decision shall run with the land and shall be binding upon the Applicant, its successors in interest and assigns, and shall be enforceable by the Town of Framingham.

8. Appeals

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, §17 and shall be filed within twenty (20) days after the date of filing this Decision with the Town Clerk.

ZONING BOARD OF APPEALS

By: 
Philip R. Ottaviani, Jr., Chairman