



TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

2016 APR 26 P 2: 34

TOWN CLERK
FRAMINGHAM

BOARD OF APPEALS CASE NO. 16-07

PETITION OF WARREN FOWLER

DATE OF DECISION: APRIL 12, 2016

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of WARREN FOWLER (hereinafter the Applicant), for property located at 1490 CONCORD ST. This Decision is in response to a Petition for a Special Permit for conversion of an existing nonconforming use on a nonconforming lot to two residential units under §I.D.6 of the Zoning By-Law (hereinafter the Application).

2. Property Owner and Applicant

Warren Fowler
516 Worcester Rd.
Wellesley, MA 02482

3. Location

Property is located at 1490 Concord St and identified by Assessors' Parcel ID 60-31-9942-000 (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 April 12, 2016 the Board voted to GRANT a SPECIAL PERMIT 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
ROBERT SNIDER	YES

5. Proceedings

The Application was received by the Board on February 26, 2016 pursuant to MGL, Ch. 40A, §9, and the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on April 12, 2016 at 7:15 P.M. in the Blumer Community Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Stephen Meltzer, Robert Snider, and Alternate Susan Craighead 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.

Dedicated to excellence in public service.

The Applicant, Mr. Warren Fowler, and his attorney, Peter Barbieri, were present and submitted a memorandum in support of the petition. Mr. Ottaviani read into the record a letter from the Planning Board Administrator regarding noncompliant parking. Mr. Ottaviani also read a letter from abutter Susan Piaget attesting to the constrained parking area to the rear of 1490 Concord St. Attorney Barbieri explained that, even though a special permit had previously been granted by the ZBA, the building permit subsequently granted, and the work completed on the two residential units, a prospective buyer's attorney had raised concerns that said special permit was not procedurally correct, since a footnote in the Zoning By-law Table of Uses prohibits the ZBA from granting a special permit for a two-family dwelling where the lot is nonconforming, which the lot at 1490 Concord Street is. He explained that the proper permit would be for a change of a nonconforming use.

With regard to the parking situation, Mr. Barbieri explained that the three spaces within the front setback are needed because of the constrained space to the rear of the property and the difficulty in turning around. Mr. Meltzer asked if the requested corrected special permit would satisfy the prospective buyer. Mr. Barbieri responded affirmatively.

6. Exhibits

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

- 6.1. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on March 18, 2016.
- 6.2. Filing fee in the amount of \$300.00.
- 6.3. Letter from the Building Official, dated June 3, 2015 and revised February 12, 2016, denying the original building permit.
- 6.4. Letter from the Building Official dated February 5, 2016, attesting to the issuance of the building permit in accordance with prior ZBA decision #15-37.
- 6.5. ZBA Decision #15-37, dated 08/11/15 and filed 08/23/15.
- 6.6. "Memorandum in Support of Petition" by Applicant's attorney, stamped "Received" by the Zoning Board of Appeals on 04/12/16.
- 6.7. Untitled site plan depicting 1490 Concord Street and adjacent parcels with shared driveway, dated 07/29/15, prepared by Studio Bowerbird, Natick, Mass.
- 6.8. Interior floor plans, sheets 3 to 5 of 5, dated 05/14/15, prepared by Studio Bowerbird, Natick, Mass.

Exhibits 6.7 and 6.8 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 Neighborhood Business (B-1) zoning district.
- 7.2. On August 11, 2015, the Zoning Board of Appeals granted a Special Permit for the conversion of a former office structure to a two-unit residential use. The building permit

was issued and final inspection was approved by the Building Department on February 3, 2016.

- 7.3. On March 18, 2016, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a corrected Special Permit pursuant to the Zoning By-Law.
- 7.4. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on March 28 and April 4, 2016 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11. No Town Meeting Members or residents appeared at the hearing.
- 7.5. The Applicant is before the Board for a Special Permit for a change of a nonconforming use.
- 7.6. Subject to the conditions stated in this Decision, the Board finds that the following conditions of approval of a Special Permit have been met:
 - 7.6.1. The specific site is an appropriate one for such a use or structure. *The property has been used for residential purposes and there are adjacent residential uses.*
 - 7.6.2. Adequate and appropriate facilities will be provided for the proper operation of the proposed use, including adequate off-street parking. *Although only four parking spaces are required per the Zoning By-law, the constrained rear area makes it difficult for vehicles to enter and exit. The three existing additional spaces along Concord Street are necessary to avoid congestion in the common drive area.*
 - 7.6.3. The use or structure as developed will not create a hazard to abutters, vehicles, or pedestrians. *The proposed use will not be any more hazardous than the prior office commercial use.*
 - 7.6.4. The use or structure is consistent with the Intent of the district in which the use is proposed, and with the Purpose and Intent of this By-Law. *Two-family dwellings are allowed by Special Permit in the Neighborhood Business (B-1) district.*
 - 7.6.5. All municipal services necessary to meet the needs of the proposed use must be adequate and sufficient. *There are adequate and sufficient municipal services.*
 - 7.6.6. Said change in use is less detrimental to the abutting properties, ways, and the neighborhood than the existing nonconformity. *The residential use is less detrimental than the prior commercial uses as it will generate less commercial truck traffic.*
 - 7.6.7. Sufficient mitigating measures will be implemented as a requirement of the special permit to compensate for any adverse effects noted in reports from town boards; agencies; reports from consultants; and information acquired from public hearings. *With regard to parking, the additional spaces in front are necessary to mitigate abutter concerns about congested parking in the rear of the property.*
- 7.7. The Board grants this Special Permit subject to the following conditions:
 - 7.7.1. The proposed residential units shall be developed as shown on the Plans.

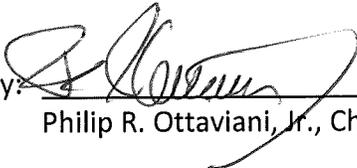
- 7.8. This Decision applies only to the requested Special Permit. Other approvals or permits required by the By-Law, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.
- 7.9. If the rights authorized by this Special Permit are not exercised within two years of the date of filing of the Decision with the Town Clerk, said Special Permit shall lapse; provided, however, that the Board in its discretion and upon written application by the Applicant may extend the time for exercise of such rights for a period not to exceed six (6) months. A request to extend said time limits shall be made in writing to the Board at least 30 days prior to said expiration date. The Board herewith reserves its rights and powers to grant or deny such extension, and to require any appropriate changes to this approval. If the Board does not grant such an extension within thirty days of the date of application therefore, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to MGL, Ch. 40A, §9.
- 7.10. 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.
- 7.11. 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