



TOWN OF FRAMINGHAM  
ZONING BOARD OF APPEALS

150 Concord Street B2  
Framingham, MA 01702

2016 AUG 23 A 10:58

TOWN CLERK  
FRAMINGHAM

BOARD OF APPEALS CASE NO. 16-25

PETITION OF JOSEPH T. EVERETT

DATE OF DECISION: AUGUST 09, 2016

**1. Application**

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of JOSEPH T. EVERETT (hereinafter the Applicant), for property located at 12 NIPMUC ROAD. This Decision is in response to a Petition for a Finding for the reconstruction of a pre-existing nonconforming single-family dwelling within the required setback, wetland buffer zone, and floodplain district as required by the Zoning By-Law (hereinafter the Application).

**2. Applicant & Property Owner**

Joseph T. Everett  
81 W. Central Street  
Natick, MA 01760

**3. Location**

Property is located at 12 Nipmuc Street and identified by Assessors' Parcel ID 145-71-4887-000 (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 August 9, 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
SUSAN S. CRAIGHEAD	YES

**5. Proceedings**

The Application was received by the Board on July 8, 2016 pursuant to MGL, Ch. 40A, §6, and the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on August 09, 2016 at 7:45 P.M. in the Blumer Community Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Stephen Meltzer, Susan Craighead, and Alternate Joseph Norton 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.

The Applicant, Joseph T. Everett, was present and accompanied by his architect, Aaron Socrat, and his builder, Dan Hatwell. He explained that the existing house is not habitable and wants to rebuild it. Mr. Ottaviani read a letter from the Conservation Administrator. He asked why it was not possible to meet the required side setbacks. Mr. Socrat stated that there needed to be access on one side, and that there is no way to meet the setbacks on both sides. He said the new house would be slab-on-grade, with no crawlspace as the present house sits on. Board members and members of the audience expressed no concerns.

## **6. Exhibits**

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

- 6.1. Application filed with the Building Official for a permit for the reconstruction of a pre-existing nonconforming single-family dwelling within the required side setback, wetland buffer zone, and floodplain district, dated June 23, 2016.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on July 15, 2016.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Conservation Commission comments dated July 20, 2016.
- 6.5. Site plan entitled "Proposed House Location Plan of Land in Framingham, Mass", dated June 3, 2016, revised July 7 and 22, 2016 and prepared by Sullivan Surveying Company LLC, 209 West Central St. Natick, MA 01760.
- 6.6. Plan set dated June 23, 2016 containing proposed elevations entitled "Front Elevation", "Rear Elevation", "Left Side Elevation", and "Right Side Elevation", and floor plans entitled "1<sup>st</sup> Floor" and "2<sup>nd</sup> Floor".

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 General Residence (G) zoning district.
- 7.2. On July 6, 2016, the Building Official denied the Application for a permit to build an addition to a nonconforming structure pursuant to Sections I.D.5.a and III.A.2.b of the Zoning Bylaw.
- 7.3. On July 15, 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 July 25 and August 1, 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.

- 7.6. G.L. c. 40A, §6 applies to pre-existing, nonconforming uses or structures and requires a Finding when the nonconforming structure is reconstructed, extended or altered in such a way that the change does not at all affect the nonconformity. The Board finds that the proposed 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. *The reconstructed house will be more conforming with respect to the nonconforming side setbacks. The current house is in a dilapidated state and the reconstructed house will be a significant improvement to the character of the neighborhood.*
- 7.7. Section III.A.2.b of the Framingham Zoning Bylaw requires that the Board issue a special permit for construction in a Floodplain district. On the plans originally filed with the ZBA, dated July 7, 2016, the side of the house facing Waushakum Pond was shown encroaching on the Floodplain district, defined as the 100-year base flood elevation. In the process of permitting through the Conservation Commission, the Applicant agreed to move the structure out of the Floodplain district, as shown on the site plan revised July 22, 2016. Therefore, no special permit from the ZBA is required.
- 7.8. The Board grants this Application with the following condition:
- 7.8.1. The proposed structure shall be located and constructed as shown on the Plans.
- 7.9. 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.
- 7.10. 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.
- 7.11. 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.
- 7.12. 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