



TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

BOARD OF APPEALS CASE NO. 16-36

PETITION OF FABRICIO LOPES DE FARIA

DATE OF DECISION: OCTOBER 24, 2016

2016 NOV - 7 P 4: 32

TOWN CLERK
FRAMINGHAM

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of FABRICIO LOPES DE FARIA (hereinafter the Applicant), for property located at 53-55 GILBERT ST. This Decision is in response to a Petition for a Finding for an addition to the third floor level within the minimum required front and side set-backs to a pre-existing non-conforming residential two-family structure as required by the Zoning By-Law (hereinafter the Application).

2. Applicant & Property Owner

Fabricio Lopes de Faria
99 Pilgrim Road
Holliston, MA 01746

3. Location

Property is located at 53-55 Gilbert Street and identified by Assessors' Parcel ID 140-72-4771-000 (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 October 24, 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 September 26, 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 October 24, 2016 at 7:30 P.M. in the Ablondi Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Stephen Meltzer, Susan Craighead, and Alternate Bob Snider 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.

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The Applicant Fabricio Lopes de Faria, was present and explained that he recently purchased the property and wishes to completely renovate the inside and out. He explained that the current condition of the property is poor and would like to raise the roof on the pre-existing third floor, making it more accessible and useable. Mr. Faria explained that the property footprint will not be altered. Mr. Ottaviani confirmed that the proposed addition will conform with height requirements. Abutters voiced concerns on the possibility that the Applicant will convert the property into a three family unit. Mr. Faria confirmed that the property will remain a two-family unit, and that the third floor will simply be more usable with higher ceilings.

6. Exhibits

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

- 6.1. Letter from the Building Official in response to the Applicant's plans for renovations to a pre-existing, non-conforming residential two family structure, dated September 15, 2016.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on September 30, 2016.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Treasurer comments dated 9/30/16.
- 6.5. Site plan entitled "Proposed Addition Plot Plan", dated August 15, 2016, and prepared by Land Planning, Inc., 167 Hartford Ave., Bellingham, MA 02019.
- 6.6. Plan set entitled "Faria Residence Addition & Renovation" dated June 18, 2016, prepared by OoDD Architects, P.O. Box 66001, Auburndale, MA 02466, displaying Existing Basement Demolition Plan, Existing 1st Floor Demolition Plan, Existing 2nd Floor Demolition Plan, Existing Attic Demolition Plan (A0.1), Basement Plan, 1st Floor Plan, 2nd Floor Plan (A1.1), 3rd Floor Plan, Roof Plan (A1.2), Basement Reflected Ceiling Plan, 1st Floor Reflected Ceiling Plan, and 2nd Floor Reflected Ceiling Plan (A2.1), Rear Stairs Section, 2nd/1st Floor Rear Stairs Plan, 1st Floor/Basement Rear Stairs Plan, 3rd Floor Reflected Ceiling Plan, 3rd/2nd Floor Front Stairs Plan (A2.2), East Street Elevation, South Elevation, and West Elevation (A3.1), North Elevation, Building Section, Floor Joist Detail (A3.2), 2nd Floor Framing Plan, 1st Floor Framing Plan, Foundation Plan (A4.1), and 3rd Floor Framing Plan, Roof Framing Plan (A4.2).

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:

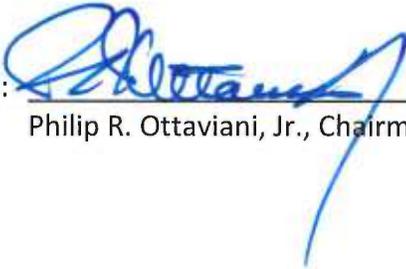
- 7.1. The property is located within the General Residence (G) zoning district.
- 7.2. On September 15, 2016 the Deputy Building Commissioner notified the Applicant that a Finding was required for the proposed third floor addition within the minimum required front and side set-backs under §I.D.5.b and §IV.E.2 of the Zoning By-Law.
- 7.3. On September 30, 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 October 9 and October 16, 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. A Finding is necessary because the property is lawfully pre-existing non-conforming with respect to lot area and setbacks. The proposed addition of a third floor level is within the minimum required front and side set-backs but will not extend closer to the lot lines than the existing structure. The footprint will be unchanged, and only additional height is being added. The Applicant declared that any additional usable living space on the third floor will serve only to enlarge the unit occupying the second and third floors. The plans show a bathroom and bedrooms on the third floor but no kitchen.
- 7.6. 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 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.*
- 7.7. The Board grants this Application with the following condition:
- 7.7.1. The addition shall be located and constructed as shown on the Plans.
- 7.8. 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.
- 7.9. 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.
- 7.10. 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