



TOWN OF FRAMINGHAM  
ZONING BOARD OF APPEALS

150 Concord Street B2  
Framingham, MA 01702

BOARD OF APPEALS CASE NO. 17-14

2017 APR -3 A 9:44

PETITION OF FARIA REALTY TRUST

TOWN CLERK  
FRAMINGHAM

DATE OF DECISION: MARCH 21, 2017

**1. Application**

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of FARIA REALTY TRUST (hereinafter the Applicant), for property located at 304 FRANKLIN STREET. This Decision is in response to a Petition for a Finding to reconstruct a nonconforming multifamily residential structure, as required by the Zoning By-Law (hereinafter the Application).

**2. Applicant and Property Owner**

Faria Realty Trust (Reinaldo Faria)  
3 Glen Street  
Framingham, MA 01702

**3. Location**

Property is located at 304 Franklin Street and identified by Assessors' Parcel ID 120-69-4098-000 (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 21, 2017 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 February 10, 2017 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 March 21, 2017 at 7:15 P.M. in the Blumer Community Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Stephen Meltzer, Susan Craighead, and Alternate Edward "Ted" 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.

The Applicant, Mr. Reinaldo Faria was present with his Architect, Mr. Allen Lemos. Mr. Lemos explained that the triplex at 304 Franklin Street was damaged by a fire last August. He

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explained his request to demolish the existing remaining structure and rebuild a new structure. Ms. Craighead asked if the proposed structure was smaller or larger in comparison to the existing. Mr. Lemos responded that the proposed structure would be larger than the original, but would be compliant with respect to setbacks. He explained that the original structure was oddly divided and that it would be difficult to keep the structure a three-family unit without the expansion. Ms. Bishop (298 Franklin St.) voiced concern regarding construction and clean up. Mr. Faria clarified that the site needed to be cleaned up prior to demolition, and that very minimal work could be done prior to the Board's decision. Mr. Ottaviani commented that the Applicant would need to be considerate of the neighbors with respect to days and hours of construction. He complimented the Applicant on his previous multi-family projects and commented that this would be an improvement to the neighborhood. Board members voiced no concern.

## **6. Exhibits**

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

- 6.1. Application filed with the Building Official to rebuild a nonconforming multi-family structure damaged by fire, dated February 8, 2017.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on February 24, 2017.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Conservation Commission comments dated March 9 and March 10, 2017.
- 6.5. Email communication from Ms. Daisy Medeiros of the Massachusetts Division of Fisheries & Wildlife, in response to Conservation Commission comments, dated March 10, 2017.
- 6.6. Site plan entitled "Existing Conditions Plan", dated February 7, 2017, prepared by Applewood Survey, LLC., 21 Green Street, Holliston, MA 01746.
- 6.7. Site plan entitled "Proposed Site Plan", dated February 7, 2017, prepared by Applewood Survey, LLC., 21 Green Street, Holliston, MA 01746.
- 6.8. Landscaping plan entitled "Planting Plan", stamped "Received" by ZBA staff on March 21, 2017, prepared by Steven G. Cosmos, Registered Landscape Architect.
- 6.9. Plan set entitled "Reinaldo Faria, Three Family Reconstruction Project", including Right Side Elevation (A101), Left Side Elevation (A102), Front and Rear Elevations (A103), Proposed Foundation Layout (A104), Proposed First Floor (A105), and Proposed Second Floor (A106), dated February 7, 2017; and Rendering 1 (R001), Rendering 2 (R002), and Rendering 3 (R003), dated March 21, 2017, prepared by Sovereign Design Associates, 118 Union Avenue, Suite #2, Framingham, MA 01702.

Exhibits 6.7, 6.8 and 6.9 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 February 8, 2017 the Building Commissioner denied the application for reconstruction of a nonconforming three-family structure damaged by fire, under §I.D.8.a of the Zoning By-Law (as amended in October 2016).
- 7.3. On February 24, 2017, 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 March 6 and March 13, 2017 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 for reconstruction of the destroyed three-family residence because the General Residence (G) Zoning District does not allow structures with more than two units. However, the Zoning By-law allows for the reconstruction of lawfully pre-existing multifamily structures. While the proposed reconstruction will result in a larger footprint, the structure will be more conforming with respect to the required setbacks, and the number of units will not increase.
- 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 extension does not at all affect the nonconformity. *The Board finds that the proposed reconstruction 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 proposed structure 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