



TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

BOARD OF APPEALS CASE NO. 17-192017 MAY 22 A 9: 53

PETITION OF 56 WHITTIER LLC

TOWN CLERK
FRAMINGHAM

DATE OF DECISION: MAY 8, 2017

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of 56 WHITTIER LLC (hereinafter the Applicant), for property located at 18 DANFORTH STREET. This Decision is in response to a Petition as required by the Zoning By-Law for a Finding to reconstruct a six-unit apartment structure (hereinafter the Application).

2. Applicant

56 Whittier LLC (James E. Regan)
100 Hammond Street
Waltham, MA 02154

3. Location

Property is located at 18 Danforth Street and identified by Assessors' Parcel ID 050-33-5667-000 (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 May 8, 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 March 31, 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 May 8, 2017 at 7:00 PM 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.

Attorney Paul Galvani was present with the owner, Mr. James Regan. Mr. Galvani explained that the property was purchased in 2013 and since then had been renovated to address safety

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issues, electrical wiring, smoke detectors, fire escapes, and room updates. He stated that the property was damaged by a fire. He commented that all of the six units were rendered inhabitable and the repair was estimated at \$400,000. He explained that the proposed reconstruction would not increase the nonconforming nature of the structure, would conform to building code, would consist of regrading, and includes a retention wall for drainage and storm water infiltration. He commented that the proposed structure could be conforming with regards to the 30-foot front setback, but would result in side and front yard parking, and that it would be preferable to have the parking behind the structure. Mr. Galvani stated that the proposal was required to go before the Historical Commission for demolition and the Planning Board for minor site plan approval.

Mr. Steven Weisman (3 Stearns St.) voiced concern regarding demolition and questioned if it was possible to restore the existing façade to enhance the historic background. He urged the Board to deny the request for demolition unless the Applicant demonstrates that the property could not be saved. Mr. Ottaviani asked for clarification regarding the demolition status. Mr. Galvani responded that the Applicant would go before the Historical Commission for approval. Mr. Ottaviani commented that the Historical Commission could delay demolition for up to one year. Mr. Galvani commented that the damage was too significant to restore and that the Architect was asked to design the proposed structure similar to the existing building. Mr. Meltzer asked to see photographs of the conditions. Mr. Galvani presented photographs of the fire damage for the Board's review. Mr. Regan commented that the existing building was in poor condition. He explained that the current building codes require sprinkler system installation, hard wire smoke detectors, and would link to the station alarm. He stated that he agreed with Mr. Weisman but the conditions would not allow for restoration. Mr. Galvani commented that the expanded impervious surface was to address parking regulations.

6. Exhibits

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

- 6.1. Application filed with the Building Official to demolish and reconstruct a multifamily structure, damaged by fire, dated March 30, 2017.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on March 31, 2017.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Memorandum prepared by Attorney Paul V. Galvani, dated April 10, 2017.
- 6.5. Photographs of the fire that damaged the building, stamped "Received" by ZBA staff on May 8, 2017.
- 6.6. Site plan entitled "Existing Conditions Plot Plan", prepared by MetroWest Engineering, Inc., 75 Franklin St., Framingham, MA 01702, dated March 24, 2017.
- 6.7. Site plan entitled "Proposed Z.B.A. Site Plan", prepared by MetroWest Engineering, Inc., 75 Franklin St., Framingham, MA 01702, dated March 29, 2017.
- 6.8. Renderings entitled "James E. Regan, 18-20 Danforth Street, Framingham, MA", stamped "Received" by ZBA staff, March 30, 2017, prepared by Bruce Devlin Design, including Front

Elevation, Right Elevation, Rear Elevation, Left Elevation, Front Floor Units A-B, Second Floor Units C-D, and Third Floor Units E-F.

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 Single Family Residence (R-1) zoning district.
- 7.2. On March 30, 2017 the Building Official denied the application to demolish and reconstruct an existing six-unit apartment building damaged by fire, and determined that a Finding was required under §I.D.8.b of the Zoning By-Law (as amended in October 2016).
- 7.3. On March 31, 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 April 23 and April 30, 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 because the property is lawfully pre-existing non-conforming with respect to front set-back, off-street parking, height, lot area, lot coverage, frontage, and landscaped open space. The proposed structure would be more conforming with respect to front setback, side setback, lot coverage, and off-street parking.
- 7.6. Section I.D.8.a of the Zoning Bylaw states: “A lawful, pre-existing, non-conforming structure or use other than a single or two family structure, which has been destroyed or damaged by fire or other casualty may be re-established, restored or reconstructed within two years of occurrence of the damage or destruction [...] Reconstruction of the pre-existing structure shall only proceed if authorized by a Special Permit granted by the Zoning Board of Appeals.”
- 7.7. The proposed replacement of the six-unit apartment house will have a smaller footprint, and will be less nonconforming except for a minor increase in height above the maximum allowed. The addition of off-street parking will make the property more conforming and reduce on-street congestion. 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 replacement of the fire-damaged structure will not increase the nonconforming nature of the structure, and that it will be less detrimental to the area than the existing structure.*
- 7.8. The Board grants this Application with the following condition:
 - 7.8.1. The six-unit 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