



TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

BOARD OF APPEALS CASE NO. 17-22

PETITION OF 82 CONCORD STREET, LLC

DATE OF DECISION: JUNE 20, 2017

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TOWN CLERK
FRAMINGHAM

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of 82 CONCORD STREET, LLC (hereinafter the Applicant), for property located at 82 Concord Street. This Decision is in response to a Petition for a Variance for Floor Area Ratio and a Finding for expansion of a nonconforming structure as required by the Zoning By-Law (hereinafter the Application).

2. Property Owner and Applicant

82 Concord Street, LLC
70 Porter Street
Westwood, MA 02090

3. Location

Property is located at 82 CONCORD STREET and identified by Assessors' Parcel ID 128-86-5494-000 (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 June 20, 2017 the Board voted to GRANT the requested VARIANCE and 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
SUSAN CRAIGHEAD	YES
STEPHEN MELTZER	YES

5. Proceedings

The Application was received by the Board on May 19, 2017 pursuant to MGL, Ch. 40A, §10, 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 June 13, 2017 at 7:15 P.M. in the Blumer Community Room of the Memorial Building. The hearing was subsequently continued to June 20, 2017 at 7:00 PM, at which point a decision was made. Board Members Philip R. Ottaviani, Jr., Susan Craighead, Stephen Meltzer, and Alternate Joseph Norton were present throughout the proceedings. Mr. Meltzer, sitting on the case, was absent for the hearing on June 20, and Mr. Norton, the appointed alternate, served as a voting member. 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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At the June 13 meeting, Attorney Peter R. Barbieri was present with the property owner, Marc Federico. Mr. Barbieri explained the proposal to convert the existing commercially used second, third, and fourth floors into three two-bedroom units and six one-bedroom units. He stated that the lot is nonconforming because – as the structure had been existing since the 1800-1900's – the lot is under-sized at approximately 4,330 square feet, the existing structure is 3,450 square feet, establishing a lot coverage of 81%, and no landscaped open space exists on-site. Mr. Barbieri explained that the site had always been entirely impervious and would not change as a result of this proposal. The access stairway would be approximately 126 square feet, would extend from the first floor to the fourth floor, and be constructed above the existing first floor. The proposed secondary entrance would access the stairway through the rear of the first floor and would be approximately 33 square feet. The proposed access stairway and separate residential entry would add approximately 160 square feet, establishing a Floor Area Ratio of 3.11 and increasing the nonconformity. Mr. Barbieri stated that in addition to the 160 square feet, the Planning Board (PB) has requested the installation of a utility bicycle room to accommodate nine lockers, one for each unit. The proposed bicycle room would be located off the first floor landing and increase the Applicant's original request by 139 square feet. The total square footage would increase by 298 square feet, establishing a total FAR of 3.14.

Mr. Meltzer asked if tenants would be required to carry their bikes up a flight of stairs to reach the bicycle room and when the floors had last been occupied. Mr. Ottaviani asked for clarification regarding the handicap accessible parking space. Ms. Craighead asked which tenants exist on the first floor. Mr. Snider commented that commercial and residential buildings were not a bad proposal and gave the example of the successful North End in Boston, MA. Attorney Barbieri and Mr. Federico responded that tenants would have to carry their bikes up the stairs to reach the bicycle locker utility room. Mr. Federico stated that there was one existing residential unit on the fourth floor, the third floor has been unoccupied for roughly nine months, and the second floor has been unoccupied for over a year. He commented that there would be one handicap accessible parking space located in the rear of the building and stated that the Architect was working with the Building Department on making the units as handicap accessible as possible due to the natural conditions. Mr. Federico commented that a café and Zumba studio existed on the first floor. Ms. Cynthia Laurora (TMM 11) asked if developers were required to contribute anything to the downtown. The Board voted to continue the hearing to June 20 in order to conduct a site visit.

At the June 20 meeting, Mr. Ottaviani commented that the nature of the building limited its potential. He stated that parking was crucial due to the conditions of the downtown and lack of transportation. Mr. Barbieri responded that parking was an issue that would be addressed by the PB. He commented that parking could be made available through a private lease, the municipal lot, and the spaces available at the train station. Mr. Ottaviani stated that he would be more comfortable if a lease agreement was provided. He commented that the Board would send a letter to the PB suggesting the Applicant retrieve a lease agreement for parking. Ms. Craighead voiced concern regarding parking and stated that although parking is before the PB, the Zoning Board had the authority to determine whether Special Permit requirements had been met. Mr. Norton spoke in favor of the proposal but voiced concern regarding parking.

The Board agreed that the Applicant should secure a total of nine parking spaces, one for each unit, not including the handicap accessible space.

6. Exhibits

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

- 6.1. Application filed with the Building Official for a permit to convert floors to residential use, dated April 24, 2017.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on May 19, 2017.
- 6.3. Filing fee in the amount of \$500.00.
- 6.4. Memorandum in support, prepared by Attorney Peter R. Barbieri, stamped "Received" by ZBA staff May 19, 2017.
- 6.5. Plan set entitled "82 Concord Renovation", showing Cover Sheet (A0), Basement and First Floor (A1), Second, Third, and Fourth plans (A1.1), Apartment Area Analysis (A1.2), Elevations (A2), Gross Building Area Analysis (A3), stamped "Received" by ZBA staff on May 19, 2017, and prepared by Clinton Design Architects, P.O. Box 6587, Holliston, MA 01746.
- 6.6. Site Plan entitled "Site Plan No. 82 Concord Street Framingham, Mass", dated April 11, 2017 and prepared by Drake Associates Inc., 25 Wellesley Avenue, Wellesley, MA.

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 Central Business (CB) zoning district.
- 7.2. On April 24, 2017, the Building Official denied the Application for a permit to convert floors to residential use, pursuant to Section IV.E.2 and Section I.D.8.b of the Zoning By-Law.
- 7.3. On May 19, 2017, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a Variance and Finding from the Zoning By-Law.
- 7.4. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on May 29 and June 5, 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. The Applicant is seeking a Variance for Floor Area Ratio and a Finding under M.G.L. c. 40A, Section 6, for expansion of a nonconforming structure. The structure was built before the Zoning Bylaw was enacted, and is therefore pre-existing nonconforming for Floor Area Ratio, meaning that any increase in floor area requires a variance. The plans submitted to the Board do not show a substantial increase in floor area. The increase is due to the addition of an enclosed rear egress. The Applicant explained to the Board that, in addition to what was shown on the Plans, they would also be adding a small bicycle storage area on the second floor to satisfy the Town's bicycle parking requirements, per request of the Planning Board.

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- 7.6. The Variance standard established by the G.L. c. 40A §10 and the Framingham Zoning By-Law is a demanding criterion. The Board must find that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures, which especially affect such land or structures but do not affect generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Also, the circumstances under which a Variance may be granted are not unlimited.
- 7.7. There are circumstances relating to the soil conditions, shape, or topography of the land or structures for which the Variance is being sought. *The Board finds that the lot is unique because the structure occupies a small lot with a high lot coverage ratio. There is very little space for improvements, parking, or landscaped open space.* Such circumstances especially affect such land or structures but do not affect generally the zoning district in which the land or structures are located.
- 7.8. Owing to such circumstances, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner. *Due to the constrained nature of the site and the old age of the building, the owner has had difficulty finding tenants, and the upper floors are vacant. An upgraded rear entrance and egress is necessary in order for the building to be converted to a viable residential use on the upper floors. The structure is pre-existing nonconforming for Floor Area Ratio, requiring a Variance for any increase in floor area, no matter how small.*
- 7.9. The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the By-Law or from the intent of the district in which the Variance is being sought. *The Central Business (CB) zoning district is intended to promote a mixture of uses typical of a downtown, and was amended in 2015 specifically to encourage more residences in the downtown. This development is consistent with the intent of the Bylaw, and the requested relief is a minor change to the Floor Area Ratio that will not have adverse impacts to the neighborhood or substantially derogate from the purpose of the Bylaw.*
- 7.10. A Finding is necessary because the property is lawfully pre-existing non-conforming with respect to lot area and minimum open space coverage. The proposed first floor addition, secondary entrance will not have an impact upon the lot size and open space provision. The footprint will be unchanged. The site has been one hundred percent impervious since construction and will remain in the same condition.
- 7.11. 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 expansion 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.*
- 7.12. The Board grants this Finding and Variance with the following conditions:
- 7.12.1. The additions and improvements shall be located and constructed as shown on the Plans. The Board understands that improvements will also include a bicycle storage

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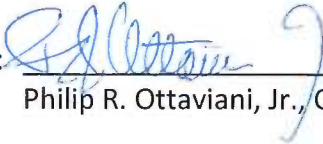
area, as approved by the Planning Board, and that such additional floor area is acceptable. The final plans approved by the Planning Board shall be submitted to the ZBA office.

- 7.12.2. The Applicant shall use best efforts to secure the required minimum number of parking spaces off-site.
- 7.13. This Decision applies only to the requested Variance. 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.
- 7.14. If the rights authorized by this Variance are not exercised within one year of the date of grant of such Variance, such rights shall lapse. The Applicant may request an extension to the one-year period by submitting a written Application for extension prior to expiration of the one-year period. However, it is solely within the discretion of the Board to grant such an extension. An extension shall be for a period not to exceed six (6) months. If the Board fails to act on the request for extension within thirty days of the date of the requested extension, all rights authorized by this Variance shall lapse at the expiration of the one-year period. If the Variance lapses, such rights pertaining to the Variance may only be reestablished after notice and a new hearing pursuant to G.L. c. 40A, §10.
- 7.15. 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.
- 7.16. 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.
- 7.17. 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
- 7.18. 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

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