



TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

2017 NOV -6 P 3:05

BOARD OF APPEALS CASE NO. 17-34

PETITION OF STEVEN J. AND JO-ANN AGOSTINELLI

TOWN CLERK
FRAMINGHAM

DATE OF DECISION: OCTOBER 23, 2017

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of STEVEN J. AND JO-ANN AGOSTINELLI (hereinafter the Applicant), for property located at 14-18 SEMINOLE AVENUE. This Decision is in response to a Petition for a Special Permit to construct a duplex and Variances from area, frontage, and setback requirements of the Zoning By-Law (hereinafter the Application).

2. Property Owner and Applicant

Steven J. Agostinelli, Revocable Living Trust
1720 J&C Blvd. Suite 6
Naples, FL 34109

3. Location

Property is located at 14-18 Seminole Avenue and identified by Assessors' Parcel ID 133-44-0037-000 (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 23, 2017 the Board voted to GRANT the requested VARIANCES and SPECIAL PERMIT 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:

SUSAN S. CRAIGHEAD	YES
STEPHEN MELTZER	YES
JOSEPH NORTON	YES

5. Proceedings

The Application was received by the Board on August 4, 2017 pursuant to MGL, Ch. 40A, §9 and §10, and the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on September 12, 2017 at 7:15 P.M. in the Blumer Community Room of the Memorial Building. The hearing was subsequently continued to October 23, 2017 at 7:15 P.M., at which point a decision was made. Board Members Susan S. Craighead, Stephen Meltzer, Joseph Norton, and Alternate Edward "Ted" Cosgrove were present throughout the proceedings. Chairman Philip Ottaviani recused himself and sat in the audience. The minutes of the public hearing and submissions on which this Decision is based,

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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.

At the September 12 hearing, the Applicant's attorney, Mr. Roger Dowd, introduced himself and explained the history of the site. He stated, the property was originally one of six lots with twenty-five feet of frontage. The Agostinelli family purchased the property in 1917, but never developed the second lot. He explained the request to subdivide the lot back into two and restore the historic configuration. Restoration of the configuration would require variances for area, frontage, and setbacks. A Special Permit is also required for a duplex.

Mr. Cosgrove stated, the 1911 survey indicated that the Agostinelli family purchased six of these lots, two lots containing three parcels dedicated for single family structures. Mr. Meltzer asked if the current house was owned by the Agostinelli Trust. Mr. Dowd responded, the Trust took title to the property a few years ago. However, up until that time, the property was in the name of one of the Agostinelli family members. Steven Agostinelli became the owner in 1974. Mr. Meltzer stated, in 1974 the zoning was in place and that the property has been the same since then. He asked for clarification on hardship. Mr. Dowd stated, the hardship was the change in zoning which limited the property owner's ability to prevent the change. Ms. Craighead asked, when was the zoning changed. Mr. Dowd responded, 1985.

Ms. Betty Muto (TMM 12) asked for dimensional clarification. Ms. Craighead clarified, the original lot was 10,000 s.f.; each new lot would be roughly 5,000 square feet with twenty-foot setbacks and 60 feet of frontage on each lot. Ms. Muto stated, the proposal would create a nonconforming lot, which is not allowed. Mr. Philip Ottaviani, speaking from the audience as the property owner of 15 Seminole Avenue, stated that the lots were historically checker boarded and that he voiced no objection to the proposal. Mr. Meltzer asked for the dimensions of the proposed house. Mr. Dowd responded, 48-by-28 and roughly 2,000 square feet, and two stories.

At the October 23 meeting, Mr. Frank Demarco (TMM 16) voiced concern regarding off-street parking and setbacks from the street. Ms. Craighead clarified that the proposal depicts four parking spaces and 22-feet of setback from the street. She also clarified that the front setback, while less than the minimum 30 feet, would be the average of neighboring houses, which is allowed by the Zoning Bylaw. Board members voiced no concerns.

6. Exhibits

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

- 6.1. Application filed with the Building Official to construct a duplex, dated August 3, 2017.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on August 4, 2017.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Petition in support signed by twenty-one (21) abutters, with accompanying map indicating signatories, dated October 23, 2017.

- 6.5. Recorded subdivision plan entitled “Waverly Terrace, South Framingham Mass.,” prepared by Westcott, Engineer, North Attleborough, MA., and dated April 20, 1911.
- 6.6. Memorandum in support prepared by Attorney Roger Dowd, stamped “Received” by ZBA staff August 22, 2017.
- 6.7. Elevation drawings showing front, left, right, and rear elevations, prepared by Laura’s Drafting and Design, 220 Taylor Street, Granby, Mass., undated (submitted with application).
- 6.8. Site plan entitled “ZBA Approval Plan for 14 Seminole Ave, Framingham, MA 01702”, prepared by Existing Grade Inc., PO Box 612, Dennisport, MA 02639, and dated August 2, 2017.

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 General Residence (G) zoning district.
- 7.2. On August 3, 2017, the Building Official denied the Application for a permit to construct a duplex on a parcel with insufficient area, frontage, and setback requirements under §IV.E.2 and §II.B.I.B of the Zoning By-Law.
- 7.3. On August 4, 2017, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a Special Permit and Variances from the Zoning By-Law.
- 7.4. Notice of the public hearing was duly published in “THE METROWEST DAILY NEWS” on August 28 and September 4, 2017 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11. No Town Meeting Members from the affected precinct were present.
- 7.5. The G zoning district requires 65-feet of frontage, 8,000 minimum lot area, 30-foot front setback, and 10-foot side setback. Two-family residences are permitted by special permit.
- 7.6. There are many two-family residences in the neighborhood that are nonconforming for front and side setbacks, frontage, and area. The neighborhood was laid out prior to the establishment of current dimensional regulations. The Applicant’s property consists of six of the original narrow lots, enough to construct two houses under the old 5,000-square-foot minimum lot size.
- 7.7. Subject to the conditions stated in this Decision, the Board finds that the following conditions of approval of a Special Permit have been met:
 - 7.7.1. The specific site is an appropriate one for such a use or structure. *The property is located in the General Residence zoning district which allows duplexes through a Special Permit. Additionally, other duplexes exist in the neighborhood with similar dimensions.*
 - 7.7.2. Adequate and appropriate facilities will be provided for the proper operation of the proposed use, including adequate off-street parking. *Sufficient parking will be provided for the two units, with four parking spaces total.*

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- 7.7.3. The use or structure as developed will not create a hazard to abutters, vehicles, or pedestrians. *The grading of the site will not result in increased drainage onto abutting properties.*
- 7.7.4. The use or structure is consistent with the Intent of the district in which the use is proposed, and with the Purpose and Intent of this By-Law. *The property is located in the General Residence zoning district which allows duplexes through a Special Permit.*
- 7.7.5. All municipal services necessary to meet the needs of the proposed use must be adequate and sufficient. *All services necessary to meet the needs of the proposed use are adequate and sufficient.*
- 7.8. The Board grants this Special Permit subject to the following conditions:
- 7.8.1. The proposed duplex shall be developed as shown on the Plans.
- 7.9. 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.
- 7.10. There are circumstances relating to the soil conditions, shape, or topography of the land or structures for which the Variances are being sought. *The Board finds that this parcel is unique, in that the lot shape and existing structures on the property limit where a duplex may be placed.* Such circumstances especially affect such land or structures but do not affect generally the zoning district in which the land or structures are located.
- 7.11. Owing to such circumstances, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner.
- 7.12. 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. *There were no objections from the abutters. The use of the property remains consistent with the intent of the zoning district, which is single and multi-family residential. Therefore, the requested relief would not substantially derogate from the intent and purpose of the Bylaw. The proposed lot area, frontage, and setbacks are still reasonable and consistent with the neighborhood character.*
- 7.13. The Board grants these Variances for frontage, lot area, and setbacks with the following condition:
- 7.13.1. The duplex shall be constructed as shown on the Plans.

- 7.14. This Decision applies only to the requested Special Permit and 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.
- 7.15. If the rights authorized by this Special Permit are not exercised within two years of the date of filing of the Decision with the Town Clerk, said Special Permit shall lapse; provided, however, that the Board in its discretion and upon written application by the Applicant may extend the time for exercise of such rights for a period not to exceed six (6) months. A request to extend said time limits shall be made in writing to the Board at least 30 days prior to said expiration date. The Board herewith reserves its rights and powers to grant or deny such extension, and to require any appropriate changes to this approval. If the Board does not grant such an extension within thirty days of the date of application therefore, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to MGL, Ch. 40A, §9.
- 7.16. 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.
- 7.17. 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: 

Susan S. Craighead, Vice Chair

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