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**BOARD OF APPEALS CASE NO. 18-20**

**PETITION OF J. DENNIS MORGAN, TRUSTEE OF NEVINS REALTY TRUST**

**DATE OF DECISION: SEPTEMBER 12, 2018**

**1. Application**

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of J. DENNIS MORGAN, TRUSTEE OF NEVINS REALTY TRUST (hereinafter the Applicant), for property located at 340 WINTER STREET. This Decision is in response to a Petition for Variances for side setback, lot coverage, building height, and parking aisle width as required by the Zoning By-Law (hereinafter the Application).

**2. Property Owner and Applicant**

J. Dennis Morgan, Trustee of Nevins Realty Trust  
342 Winter Street  
Framingham, MA 01702

**3. Location**

Property is located at 340 Winter Street and identified by Assessors' Parcel ID 109-10-8046-000 (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 September 12, 2018 the Board voted to GRANT the requested VARIANCES for side yard setback and height, and to WITHDRAW without prejudice the requested VARIANCE for lot coverage, 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 S. CRAIGHEAD	YES
STEPHEN MELTZER	YES

**5. Proceedings**

The Application was received by the Board on July 23, 2018 pursuant to MGL, Ch. 40A, §10, and the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on August 14, 2018 at 7:00 P.M. in the Ablondi Room of the Memorial Building. The hearing was subsequently continued to September 12, at which point, three of the Variances were acted on. Board Members Philip R. Ottaviani, Jr., Susan S. Craighead, Stephen Meltzer, and Alternates Joseph Norton, Rick McKenna, and 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.

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At the August 14 meeting, Attorney Angelo Catanzaro introduced himself and the property owner, Dennis Morgan. Mr. Catanzaro explained, the structure was determined to have historical and architectural significance by the Historic Commission in December 2017 and qualifies for a Special Permit from the Historic Reuse Bylaw. The Historic Reuse Bylaw allows for the rehabilitation of and addition to existing historic structures. The Variances requested are for side yard setback, lot coverage, parking aisle width, and building height.

Attorney Catanzaro stated that presently the portico sits within the required side yard setback, and preserving this feature would require zoning relief. The bylaw allows a maximum of 15% lot coverage, while the proposed lot coverage would be 16.4%, 700 sq. ft. above the allowed. A Variance is necessary to maintain the height of 43.2 ft. A recent easement adoption granted circular entry into the facility. The parking aisle requirement is 24 feet and only 17 feet would be provided.

Mr. Jay Sanicki (332 Winter St.), Mr. Robert Amara (49 Long Ave.), Ms. Anne Jones (51 Long Ave.), and Ms. Judy Leerer (395 Winter St.), voiced concern regarding size, privacy, and the character of the neighborhood.

Ms. Craighead pointed out that the addition was not necessarily part of the historic structure, and would be an addition to the rear. She voiced concern regarding a self-created hardship. Mr. Meltzer agreed and pointed out that the height and setback variances preserve the historic structure. He commented that lot coverage and parking aisle width relief would address the new addition. The board voted to continue the hearing to September 12 and agreed to visit the site prior to that meeting.

At the September 12 meeting, the Applicant presented new plans with a reduction in footprint from 9,296 sq. ft. to 8,486 sq. ft., eliminating the need for a Variance for lot coverage. Mr. Catanzaro proceeded to explain the Variances for side setback and height only apply to the existing historic structure and not the expansion. In regards to the parking aisle width, there was confusion related to the driveway being located on 342 Winter Street, not on 340 Winter Street. He explained, the parking aisle could be compliant but a Variance would allow a more attractive lot with landscaping and a sidewalk.

Mr. Catanzaro stated that there is an easement from 342 to 340 Winter Street, allowing for access across both sites. He explained that the parking is entirely on 340 but the backup lane is almost entirely on 342, and not part of the parking.

Mr. Dennis Morgan explained, the 17-foot driveway easement is on 342 but the 17 feet for parking would be on 340 Winter Street. Mr. Meltzer clarified and added that the parking aisle, which is part of the parking, is on 342, not 340. He questioned whether the case for parking aisle width should be re-advertise to include the 342 Winter Street property and ensure the Variance is unassailable.

Mr. Catanzaro asked the case be continued for the parking aisle width to allow the applicant to decide whether they would like to continue on their own risk, or re-advertise to include both

addresses. He asked that the Board withdraw the Variance for lot coverage without prejudice, and close the public hearing on the two other variances with a determination.

The Board voted to close the public hearing, voted to approve the side yard setback and height Variances, withdraw the Variance for lot coverage without prejudice, and continue the Variance for parking aisle width to October 9, 2018.

## **6. Exhibits**

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

- 6.1. Application filed with the Building Official to convert and expand an existing single-family dwelling into a 15-unit multi-family dwelling, dated July 2, 2018.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on July 23, 2018.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Fire department comments dated July 25, 2018.
- 6.5. Conservation Commission comments dated July 31, 2018.
- 6.6. Historical Commission comments dated August 9, 2018, including Determination of Significance issued by the City of Framingham Historical Commission, December 14, 2017, and case file.
- 6.7. Abutter comments dated August 8, 2018, August 12, 2018, and August 13, 2018.
- 6.8. Fire Protection Plan dated June 12, 2018.
- 6.9. Access, Utility and common Drive Grant of Easement, dated July 9, 2018.
- 6.10. Submittal entitled "Nevins Realty Trust – 340 Winter Street, Framingham", prepared by Law Office of David Click, 100 Waverly Street, Suite 1, Ashland, MA 01721, and dated August 28, 2018, including sketch of revised floor plan
- 6.11. Plan set including, Existing Basement Floor Plan (EX01), Existing First Floor Plan (EX02), Existing Second Floor Plan (EX03), Existing Third Floor Plan (EX04), Existing Exterior Elevations (EX05), and Existing Exterior Elevations (EX06), prepared by Existing Conditions Surveys Inc., 398 Columbus Avenue #334, Boston, MA 02116 and dated March 15, 2018. Existing Floor Plans (EX 1.0) and Existing Elevations (EX 1.1), prepared by Patterson Architects, Inc., 100 Monroe Drive, Holliston, MA 01746, and dated July 12, 2018.
- 6.12. Site Plan entitled "Z.B.A. Plot Plan", prepared by MetroWest Engineering, Inc., 75 Franklin Street, Framingham, MA 01702, and dated June 12, 2018, revised July 24, 2018 and September 10, 2018 and stamped "Received" by ZBA staff September 11, 2018.
- 6.13. Plan set entitled "340 Winter Street" containing Proposed Basement Plan (A1.0), Proposed First Floor Plan (A1.1), Proposed Second Floor Plan (A1.2), Proposed Third Floor Plan (A1.3), Proposed Roof Plan (A1.4), Proposed Building Elevations (A1.6), prepared by Patterson Architects, Inc., 100 Monroe Drive, Holliston, MA 01746, dated June 1, 2018.

6.14. Submittal entitled “340 Winter Street Footprint Area Reductions” stamped received by ZBA staff September 10, 2018, including reduced footprint plan, “Proposed First Floor Plan” (A1.1) prepared by Patterson Architects, Inc., 100 Monroe Drive, Holliston, MA 01746, dated September 5, 2018.

Exhibits 6.13 and 6.14 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 Residence (R-1) zoning district.
- 7.2. On July 2, 2018, the Building Official denied the Application for a permit to convert and expand an existing single-family dwelling into a 15-unit multi-family dwelling pursuant to §IV.E.2 and §IV.B.2.a of the Zoning By-Law.
- 7.3. On July 23, 2018, the Applicant filed with the City Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining Variances from the Zoning By-Law.
- 7.4. Notice of the public hearing was duly published in “THE METROWEST DAILY NEWS” on July 30 and August 6, 2018 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11.
- 7.5. The required side setback in the R-1 zoning district is 30 feet for structures other than single-family. The Applicant proposes to retain the existing porte-cochere as part of the historic structure, which is set back 4 feet from the side lot line. The Building Commissioner determined that a Variance was required.
- 7.6. The maximum height within the R-1 zoning district is 3 stories or 35 feet; 43.2 feet is proposed to maintain the existing structure, requiring a Variance.
- 7.7. Original plans depicted a proposed footprint of 9,296 sq. ft., 810 sq. ft. over the allowable footprint. After the first meeting with the Board, the Applicant proposed a reduction of 849 sq. ft., eliminating the need for the Variance for insufficient lot coverage.
- 7.8. The petition presented to the Board also included a request for a Variance for parking aisle width. The Board did not vote on that request at the September 12 meeting because it was determined that the parking aisle in question was located on the adjacent 342 Winter Street property, which was not listed on the application or the hearing notice. The Applicant requested and the Board voted to delay the vote so that the hearing could be readvertised with the correct address.
- 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 Variance is being sought. *The multi-sided irregularly shaped parcel, located adjacent to an existing nursing home, contains a run-down historical residential structure with architecturally significant features. The structure is situated on the right front portion of the property and is noncompliant with side yard setback and height requirements. The 340 Winter Street property has vehicular access via an easement on the 342 Winter Street property, with the porte-cochere being accessed from the 342 Winter Street driveway.* Such circumstances especially affect such land or structures but do not affect generally the zoning district in which the land or structures are located. *Existing structure has been determined to be of historical significance by the Historical Commission in December 14, 2017 decision.*
- 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. *Literal compliance with the dimensional requirements of the Zoning By-Law would prevent the petitioner from maintaining architectural features found significant by Historical Commission while otherwise developing the parcel as contemplated and allowed by the Bylaw.*
- 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. *The proposed residential use is within the residential zone and advances the intent and purpose of the Historic Reuse Bylaw. The non-conforming features requiring Variances are part of the existing structure and the nonconformities will not be extended.*
- 7.13. The Board grants this Variance with the following condition:
- 7.13.1. The proposed addition shall be located as shown on the Plans.
- 7.14. 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.
- 7.15. 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.
- 7.16. 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

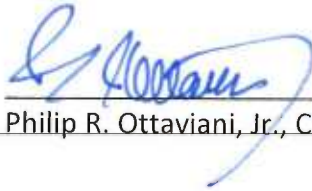
recording, including recording information, shall be furnished to the Board and the Building Official

7.17. 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 City 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 City Clerk.

ZONING BOARD OF APPEALS

By:  \_\_\_\_\_  
Philip R. Ottaviani, Jr., Chairman

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