

2018 DEC 21 A 9 44

**BOARD OF APPEALS CASE NO. 18-32**

**PETITION OF ROGERIO LIMA**

**DATE OF DECISION: DECEMBER 11, 2018**

**1. Application**

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on an appeal filed by ROGERIO LIMA (hereinafter the Appellants), for property located at 30 WILSON ST. The Appellant filed a Petition to Overturn the Building Commissioner's determination that a Special Permit may not be granted for a new duplex; he also requested a Special Permit for the duplex as required by the Zoning Bylaw (hereinafter the Petition).

**2. Appellant and Property Owner**

Rogerio Lima  
30 Wilson St  
Framingham, MA 01702

**3. Location**

Property is located at 30 Wilson St and identified by Assessors' Parcel ID 113-70-9082-000 (hereinafter the Site).

**4. Board Action**

After due consideration of the Petition, the record of proceedings, and based upon the findings set forth below, on December 11, 2018 the Board voted in favor of the requested appeal to OVERTURN the decision of the Building Commissioner and GRANT the Special Permit by a unanimous vote of three 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 Petition was received by the Board on September 24, 2018 pursuant to M.G.L. Chapter 40A, §8 and §9, and the Framingham Zoning Bylaw. The Appellant presented the Petition to the Board at a duly noticed public hearing of the Board on November 13, 2018 at 7:30 PM in the Ablondi Room of the Memorial Building. The hearing was subsequently continued to December 11 at which point a decision was made. Board Members Philip R. Ottaviani, Jr.,

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Stephen Meltzer, Susan Craighead, and Alternates Joseph Norton and Rick McKenna 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.

At the November 13 meeting, the Applicant was present with his designer, Carlos Ferreira, who explained the proposal to add a second residential unit to the property, located in a two-family zone. Several neighbors voiced concern about the appearance of the addition, which was designed to look like a second house connected only by a breezeway. Members of the Board also noted that the design was not in keeping with the character of the neighborhood. They requested a modified design and asked for a calculation of the average front setback within 200 feet of the property to determine whether the front setback could be considered conforming. The case was therefore continued to December 11.

At the December 11 continued hearing, the Appellant presented an alternative design. Board members and members of the audience voiced no objection. The Board noted that the front setback was compliant with the average setback, as estimated by ZBA staff. They moved to overturn the Building Commissioner on the grounds that the front setback was conforming; and moved to grant the requested Special Permit.

## **6. Exhibits**

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

- 6.1. Letter from the Deputy Building Commissioner dated August 3, 2018, denying the application.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on October 5, 2018.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Plan set entitled "New Construction: 30 Wilson Street Framingham, MA" prepared by M F Engineering & Designs Inc., submitted with the application, and including the following: Title Sheet, Drawing List, & Building Description; Notes; Foundation & Basement Plan and Roof Plan; First Floor Plan; Second Plan; Cross Sections; Building Elevations; Elevation and Schedule; Framing Plan; Connection; and Details.
- 6.5. ZBA staff estimate of average front setback of properties within 200 feet of 30 Wilson Street.
- 6.6. A Google aerial image with setback lines superimposed, submitted by the Applicant, and stamped "Received" by the ZBA office on December 11, 2018.
- 6.7. "Plot Plan" prepared by M F Engineering LLC, 142 Fisher St, Westborough, MA 01581 and dated September 19, 2018, revised December 10, 2018.

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6.8. Plan set entitled “30 Wilson Street Framingham – MA CONCEPT” containing six sheets and stamped “Received” by the ZBA office on December 11, 2018.

Exhibits 6.7 and 6.8 shall be hereinafter referred to as the “Plans”.

## 7. Findings and Conclusions

Based upon its review of the Petition, 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, 2018, the Building Commissioner denied the application to construct an addition adding a second residential unit onto an existing pre-existing nonconforming single-family house, under §II.B.I.B of the Zoning By-Law. The Zoning Bylaw requires a Special Permit for a duplex in the G zone, and Footnote 8 of the Table of Uses states: *“The Zoning Board of Appeals shall not grant a special permit for a nonconforming lot or structure. The Lot and structure shall conform to the existing area, frontage, width, setback, and lot coverage requirements applicable to the zoning districts in which they are located. Off-street parking shall be provided for both dwelling units in accordance with the requirements set forth in Section IV.B.”*

7.3 On October 5, 2018, the Appellant filed with the City Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of overturning the decision of the Building Commissioner and obtaining a Special Permit for a duplex.

7.4 Notice of the public hearing was duly published in “THE METROWEST DAILY NEWS” on October 29 and November 5, 2018 and mailed to all parties-in-interest, as defined by M.G.L. c. 40A, §11.

7.5 The original plans showed a proposed new house connected to the existing single-family house by only a small breezeway. Board members and neighbors expressed concern that this design did not reflect the intent of the Zoning By-law. Typically, two-family homes are attached side-by-side, as flats, or otherwise constructed to look like a single house. The Appellant presented revised plans that show the addition fully attached to the rear of the house, creating an “L” shape. The Board and neighbors were more comfortable that this design fit into the neighborhood.

7.6 With respect to the Appeal of the Building Official’s determination, the Board notes that the existing front setback of the house is greater than the average of homes within 200 feet of the subject property. ZBA staff calculated that the average setback is approximately 18.47 feet, compared to approximately 19.55 feet for the existing house. Section IV.E.5.f of the Zoning By-law states:

*“In Single Residence, General Residence and Office and Professional Districts, if the alignment of existing principal buildings on adjacent lots on each side of a lot fronting the same street in the same district is nearer to the street line than the required front setback, the average of the existing alignments of all such buildings within 200 feet of said lot shall be the required front setback.”*

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Accordingly, the Board finds that the front setback can be considered conforming with the Zoning By-law, and therefore a Special Permit for duplex may be granted.

7.7 The Board voted in favor of a motion to approve as presented. The decision of the Building Commissioner is hereby OVERTURNED and a Special Permit for a duplex is GRANTED.

7.8 Subject to the conditions stated in this Decision, the Board finds that the following conditions of approval of a Special Permit have been met:

7.8.1 The specific site is an appropriate one for such a use or structure. *The General Residence zone allows for two-family residences subject to a Special Permit. There are many others in the vicinity, and the lot is twice as large as a typical lot in the neighborhood, over 16,000 sq. ft.*

7.8.2 Adequate and appropriate facilities will be provided for the proper operation of the proposed use, including adequate off-street parking. *The additional unit will have its own two-car garage and driveway large enough for more than two vehicles to park.*

7.8.3 The use or structure as developed will not create a hazard to abutters, vehicles, or pedestrians.

7.8.4 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 General Residence district allows for two-family residences.*

7.8.5 All municipal services necessary to meet the needs of the proposed use must be adequate and sufficient.

7.9 The Board grants this Special Permit subject to the following condition:

7.9.1 The proposed duplex shall be developed as shown on the Plans.

7.9.2 If there is a utility pole located at the proposed driveway, it must be relocated.

7.10 This Decision applies only to the requested Special Permit. 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.

7.11 If the rights authorized by this Special Permit are not exercised within three years of the date of filing of the Decision with the City 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. A request for extension shall require a new public hearing pursuant to MGL, Ch. 40A, §9. The Board herewith reserves its rights and powers to grant or deny such extension, and to require any appropriate changes to this approval.

7.12 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

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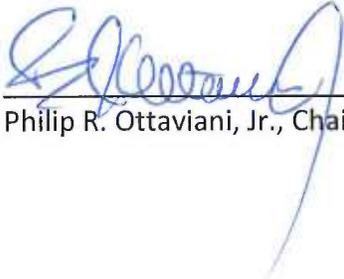
recording, including recording information, shall be furnished to the Board and the Building Official.

7.13 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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