



TOWN OF HINGHAM

Board of Appeals

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Town Clerk
Hingham, MA

NOTICE OF DECISION

IN THE MATTER OF:

Applicant/Owner: Tucker and Megan Hansen
c/o Sally Weston
222 North Street
Hingham, MA 02043

Subject Property: 28 Fearing Road, Hingham, MA 02043

Deed Reference: Plymouth County Registry of Deeds, Book 45909, Page 313

Plan Reference: Plans set entitled "Hansen Garage," prepared by Sally Weston Associates, 222 North Street, Hingham, MA, received September 30, 2021 (12 Sheets)

SUMMARY OF PROCEEDINGS:

This matter came before the Board of Appeals (the "Board") on the application of Tucker and Megan Hansen (collectively "the Applicants") for a Finding under M.G.L. c. 40A, § 6 and § III-I, C of the Zoning By-Law (the "By-Law") and such other relief as necessary, to demolish half of the existing nonconforming 1-story garage and add a 2-story addition outside of the required 15' setback, maintaining the existing nonconforming 3.3' (southeast) side yard setback at 28 Fearing Road in Residence District A.

The Board heard the application at a duly advertised and noticed public hearing on Tuesday, November 16, 2021 during a meeting held via Zoom as an alternative means of public access pursuant to Chapter 20 of the Acts of 2021 Suspending Certain Provisions of the Open Meeting Law. The Board of Appeals panel consisted of its regular members Robyn S. Maguire, Chairman, and Paul K. Healey, along with associate member Jed Ruccio. The Applicant presented the request. At the conclusion of the hearing, the Board granted the requested Finding, subject to a condition set forth below.

Throughout the hearing, the Board has been mindful of the statements of the Applicant and the comments of the general public, all as made or received at the public hearing.

BACKGROUND AND DISCUSSION:

The subject property consists of 12,397 SF of land located on the west side of Fearing Road. The lot is improved by a single-family dwelling (ca. 1868), detached two-car garage (ca. 1950s), and a recently permitted 16'x34' in ground swimming pool (ca. 2020). The existing garage is nonconforming with respect to its (south) side yard setback at 3.3' from the property line.

At a prior hearing held by the Board on August 17, 2021, the Applicant requested a variance to reconstruct the nonconforming garage. After members and an abutter expressed concern that the application did not meet the statutory approval criteria, the applicant was granted a withdrawal without prejudice.

The present application requests relief to reconstruct the conforming portion of the garage with a two-story addition, while maintaining and modestly decreasing the massing of the nonconforming portion of the garage. The resulting structure would provide accessory garage/storage space and an exercise/sitting room and half bath on the ground floor and an office on the second floor.

The applicant requests a Finding from the Board in order to permit the extension. The protections of M.G.L. c. 40A, § 6, first paragraph, states in part that:

... a zoning ordinance or by-law...shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure ... to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner... Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority . . . that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

When read together, these portions of the statute provide that changes to nonconforming structures may be permitted if (1) the extensions or changes themselves comply with the by-law and (2) the structures as extended or changed are found to be not substantially more detrimental to the neighborhood than the preexisting nonconforming structure.

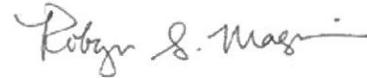
The proposed plan shows that there would be no increase in the extent of the nonconforming structure resulting from the project. The portion of the existing detached garage located within the side yard setback will remain as it presently exists with only a minor alteration in the pitch of the roofline. The reconstructed portion of the structure will comply with the dimensional requirements of the By-Law. Members noted that the proposed extension to the preexisting nonconforming garage would not adversely impact or be a detriment to the neighborhood.

FINDINGS AND DECISION:

Upon a motion made by Paul K. Healey and seconded by Jed Ruccio, the Board voted unanimously as follows:

- (1) To find that the proposed extension and alteration to the pre-existing nonconforming accessory structure will not be substantially more detrimental than the existing nonconforming use to the neighborhood; and
- (2) To grant the requested Finding pursuant to M.G.L. c. 40A, § 6 in connection with the proposed expansion of the existing nonconforming garage located at 28 Fearing Road in Residence District A, subject to the following condition:
 - a. Prior to application for a building permit, the Applicant shall submit a surveyed plan confirming that the nonconforming portion of the garage will remain in its existing form with the exception of a modest decrease in the pitch of the roof.

For the Board of Appeals,



Robyn S. Maguire, Chair
January 19, 2022

This Decision shall not become effective until (i) the Town Clerk has certified on a copy of this decision that twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed or that if such an appeal has been filed, that it has been dismissed or denied, and that (ii): a copy thereof has been duly recorded in the Plymouth County Registry of Deeds and indexed in the grantor index under the name of the owner of record.