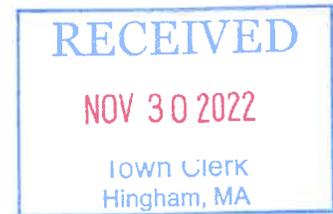




TOWN OF HINGHAM

Board of Appeals



NOTICE OF DECISION FINDING

IN THE MATTER OF:

Applicant/Owner: Albert and Fatiola Spahiu
501 Farmer's Drive, Apt. 3315
Braintree, MA 02184

CSubject Property: 265 Gardner Street, Hingham, MA 02043

Deed Reference: Plymouth County Registry of Deeds, Book 56836, Page 171

Plan Reference: Plan set entitled "Single-Family Residence, 295 Gardner Street," prepared by Glen P. Hoffman, of GPH design, LLC, One Adams Street at Lower Mills, Milton, MA 02186, final set dated October 4, 2022 (19 Sheets);

Site Plan entitled "Proposed Modifications 295 Gardner Street, Hingham, MA 02043," prepared by Hoyt Land Surveying, 1287 Washington Street, Weymouth, MA 02189 (1 Sheet)

SUMMARY OF PROCEEDINGS:

This matter came before the Board of Appeals (the "Board") on the application of Albert and Fatiola Spahiu (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 construct and attach a conforming mudroom and rear deck addition to a pre-existing non-conforming single-family home and attach it to a pre-existing non-conforming detached garage.

The Board heard the application at a duly advertised and noticed public hearing on Thursday, November 17, 2022, during a meeting held remotely via Zoom as an alternate means of public access pursuant to Chapter 107 of the Acts of 2022 and all other applicable laws temporarily amending certain provisions of the Open Meeting Law. The Board of Appeals panel consisted of Paul K. Healey, as Acting Chair, along with Member, Jed Ruccio and Associate Member, Michael Mercurio. The Applicant's representative, Glen P. Hoffman of GPH design, LLC, 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 was 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 36,867 SF of land located at 295 Gardner Street in the Residence B District. The lot is conforming in area, but nonconforming in regard to frontage. It is improved by a single family dwelling (ca. 1938), a detached two-car garage (ca. 1960), and a pool and shed (ca. 1975). The existing single-family home is nonconforming with respect to its front setback, located 16.8' from the front setback where 35' is required. The applicants plan to raze and rebuild the single-family home, maintaining the 16.8' front setback (the single-family home is not before the Board).

The two-car garage is also nonconforming with regard to the front setback at 28.1' (where 35' is required) and also with respect to its (west) side setback which is 10.3' from the setback (where 20' is required).

The applicants propose to construct a mudroom and rear deck that would attach the dwelling to the garage. The addition will conform to the required 35' front setback and the side yard setback, however relief is required because they are attaching the proposed addition to the nonconforming garage. The garage will remain in the same location; none of its current dimensions will be altered.

The applicant requests a Finding from the Board in order to permit the construction of a conforming addition, attaching the single-family home to the garage. 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 alteration of the nonconforming garage resulting from the project. The portion of the existing detached garage located within the side yard setback will remain as it presently exists. As noted above, the proposed new construction (the mudroom and deck) will conform to the dimensional requirements of the Zoning By-Law. The proposed construction to the single-family home would fall under III.1.2, the so called "Hatfield Amendment".

FINDINGS AND DECISION:

Upon a motion made by Michael Mercurio and seconded by Jed Ruccio, the Board voted unanimously as follows:

- (1) To find that the proposed addition to attach the pre-existing nonconforming single-family home 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 single-family home, attaching it by the constructing of a conforming addition to the pre-existing nonconforming accessory structure, located at 295 Gardner Street Residence District B subject to the following condition:
 - a. That the nonconforming garage use, footprint, setbacks and height may not be increased, extended or altered without seeking a Variance from the Zoning Board of Appeals.

For the Board of Appeals,



Paul K. Healey

Acting Chair

November 30, 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.