



TOWN OF HINGHAM

Board of Appeals

NOTICE OF DECISION

IN THE MATTER OF:

Applicant/Owner: Donald and Martha Sprague
29 Pine Street
Hingham, MA 02043

Subject Property: 29 Pine Street, Hingham, MA 02043

Deed Reference: Certificate of Title No. 128106 issued by the Plymouth County Registry District of the Land Court

Plan References: Site plan including proposed garage addition mark-up entitled, "Certified Plot Plan, 29 Pine Street, Hingham, Massachusetts," prepared by O'Driscoll Land Surveying, Inc., 46 Cottage Medway, MA, dated Received October 22, 2021 (1 Sheet)

SUMMARY OF PROCEEDINGS:

This matter came before the Board of Appeals (the "Board") on the applications of Donald and Martha Sprague (collectively, the "Applicant") to modify plans approved in connection with a Variance from § IV-A of the Zoning By-Law (the "By-Law"), issued on January 5, 2005 and modified on December 9, 2020, and a Finding under MGL c. 40A, s. 6 to construct a conforming (8'x7') addition to improve access between the existing dwelling and approved garage while maintaining the dwelling's nonconforming front yard setback at 29 Pine Street in Residence District C.

The Board heard the applications concurrently 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 modifications.

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:

The subject property consists of 16,720 SF of land and maintains approximately 134' of frontage on the northern side of Pine Street. The previous owners constructed a single-family dwelling on the undersized lot pursuant to a variance issued by the Board in 2005 that granted relief from the lot area and frontage requirements in Residence District C (40,000 SF and 150' respectively). The variance decision included the following condition: "The residential structure and plot plan must be in substantial conformance with the plans submitted with the application, which limit the house size to 2,600 square feet of living area." Nonetheless, the subsequent construction did not conform to the plans approved by the Board. Additionally, the house was to be located 52' from the front property line, but an as built confirms that it is located instead just 48' from the front property line. Porches, which are not depicted on the 2005 foundation as built plan, extend even further into the required setback (37' where 50' is required). Finally, according to the assessor's field card, the house includes approx. 3,000 SF of living space, which exceeds the 2,600 SF limitation imposed by the Board.

The 2005 approved plans also proposed a 28' x 28' attached garage, which the prior owners did not construct. In 2020, the Applicant sought and attained a modification of the plans approved in connection with the previously-issued variance in order to construct an attached, two-car garage. The then proposed garage would be slightly smaller than the originally proposed (28' x 26' vs. 28' x 28') and be located on the opposite side of the house (east vs. west). The proposed garage addition complied with (and exceeded) all current setback requirements.

In the past, a variance was required to extend a noncompliant structure. However, Governor Baker signed H3611, an Act relative to noncompliant structures, in August 2016. The Act amends c. 40A, § 7, which addresses the circumstances under which zoning violations can be enforced. Prior to the passage of this bill, the law prevented a municipality from taking enforcement action against unlawful structures after seven to ten years elapsed from the date of the violation. If the relevant number of years passed, then the building or structure would be protected from enforcement action; however, alteration, extension, or reconstruction was not permitted absent a variance. H3611 amended the statute by granting legal status, subject to the provisions of c. 40A, § 6, as well as the local By-Law, to nonconforming structures that survive the applicable statute of limitations.

MGL c. 40A, § 6 provides that:

a zoning ordinance or bylaw... shall apply... to any reconstruction, extension or structural change of such structure...except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure.

The Board considered whether an addition, consisting of a two-car attached garage, would increase the nonconforming nature of the existing single-family dwelling. Members noted that

this type of extension would not be considered an extension of a nonconformity under § III-I, 2 of the Zoning By-Law, the so-called Hatfield Amendment; however, the Hatfield exemption only applies to dwellings that “conformed in all respects to the Zoning By-Law in existence at the time of its initial construction” and the existing single-family did not conform to the front yard setback requirements in effect when the building permit was issued in 2005. Nonetheless, the proposed plan will not result in any new nonconformities (nonconforming front yard setback will not be affected; noncompliant conditions associated with the 2005 area/frontage variance remain unchanged; and the addition itself complies with all setback requirements).

The Applicant now seeks approval of a small (56 SF) addition to the side/rear of the garage in order to improve access between the single-family dwelling and attached garage. The addition, like the garage, would conform to all applicable setback requirements.

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, pursuant to M.G.L. c. 40A, § 6, the proposed 8’x7’ addition will not intensify the nonconforming nature of the single-family dwelling since it conforms to all setback requirements of the By-Law, including the nonconforming front yard setback associated with the single-family dwelling and attached front porch;
- (2) To find that the revised plans do not materially affect the findings made in connection with the original variance decision, dated January 5, 2005, as modified on December 9, 2020; and
- (3) To grant the Applicant’s request to modify plans approved in connection with a Variance from § IV-A of the Zoning By-Law, issued on January 5, 2005 and modified on December 9, 2020, and a Finding under MGL c. 40A, s. 6 to construct a conforming (8’x7’) addition to improve access between the existing dwelling and approved garage while maintaining the dwelling’s nonconforming front yard setback at 29 Pine Street in Residence District C.

For the Board of Appeals,

Robyn S. Maguire, Chair
January 6, 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.