



Town of Boxborough, Massachusetts
Planning Department
Staff Report – Special Permit Amendment

Prepared by: Simon Corson, Town Planner

April 23, 2021

Site: 97 Pine Hill Road

Applicant: Peter Richardson

Owner Name: Claire Gauthier

Applicant: 53 Old Bay Road, Bolton, MA 01740

Owner Address: 97 Pine Hill Road, Boxborough, MA 01719

Legal Notice: Pursuant to MGL Chapter 40A and Sections 4200, 9100, and 9200 of the Boxborough Zoning Bylaw, a public hearing will be held before the Boxborough Zoning Board of Appeals on April 20, 2021 at 7:30 p.m. to consider the application received from Peter Richardson requesting an Amendment to Zoning Board of Appeals Special Permit 2017-09 to alter a pre-existing, nonconforming structure with a deck addition.

The subject property, located at 97 Pine Hill Road, Assessor Map 15-127-000, is owned by Claire Gauthier.

Based on current COVID-19 circumstances, this public hearing will be held in the Town Hall, 29 Middle Road, **or otherwise** will be held via Zoom videoconferencing. All details will be made available on the Zoning Board of Appeals agenda when posted, a minimum of 48 hours prior to the meeting on the town website at www.boxborough-ma.gov.

For questions, please call the Zoning Board of Appeals Office at the Boxborough Town Hall at 978-264-1722.

Zoning District(s): Agricultural-Residential

Zoning Approval Sought: Amendment to a Special Permit under Section 4200 to alter a pre-existing, nonconforming structure

Date of Application: March 18, 2021

Date(s) of Public Hearing: April 20, 2021, April 27, 2021

I. Project Description

1. **Subject Property:** The subject property consists of an approximately 0.66 acre (28,750 square foot) parcel on the north side of Pine Hill Road, just west of the intersection of Pine Hill Road and Stonehedge Place. The property is located in the Agricultural-Residential Zoning District. The parcel has 142 feet of frontage and contains a 1190 gross square feet, one-story, single-family dwelling. This existing building is nonconforming with respect to the front and right side yard setbacks for the zoning district. The lot is nonconforming with regard to the minimum lot size and frontage for the zoning district. The property has no wetlands and only a very small portion of wetland buffer area in the northwestern

corner. In November of 2017, the Applicant/Owner was granted a Special Permit Amendment to construct an approximately 595 square foot addition onto the existing building.

2. Proposal: The Applicant/Owner is seeking to modify the approved plans from the 2017-09 Special Permit decision, and the subsequent 2018-19 Special Permit Amendment with an approximately 250 square foot addition to a pre-existing nonconforming, 1190 gross square foot, single-family dwelling on the subject property. The proposed changes to the approved plan set are as follows:

- Back (Rear) Build a deck that would be approximately 16-foot-wide by 14-foot-deep. An outdoor shower is proposed to be 5-foot by 5-foot, and would be attached to the deck.

3. Nature of Application: In November of 2017, the Applicant/Owner was awarded a Special Permit to construct an approximately 595 square foot addition onto the existing building at the subject property. Condition 2 of this Special Permit decision indicates that “any changes or modifications now or in the future to the approved plans shall require approval of the Zoning Board of Appeals.” As such, the Applicant/Owner applied to the Zoning Board of Appeals to modify the approved plan set in December of 2018 with following proposed changes to the approved plan set:

- Front Façade: Install one window instead of two side-by-side windows, change a small rectangular opening to an octagonal opening, and remove one proposed sky light.
- Left Hand (Western) Façade: Install an octagonal vent instead of a window, replace a sliding glass door with two, small, sliding glass windows, and relocate the opening to the crawl space.
- Right Hand (Eastern) Portion of Addition: Reduce the number of internal openings between the existing house and the addition from two to one.
- Back (Rear) Elevation: Install two new skylights; install a set of side-by-side windows and a set of three side-by-side-by-side windows instead of three sets of side-by-side windows; and install three, small, double-hung windows on the crawl space level.

The Applicant/Owner’s current application to the Zoning Board of Appeals also relates to Condition 2 of the 2017-09 Special Permit decision, “any changes or modifications now or in the future to the approved plans shall require approval of the Zoning Board of Appeals.” As such, the applicant is applying to construct a 250 square foot addition to a pre-existing nonconforming structure.

4. Surrounding Neighborhood: The subject property is located in the Agricultural-Residential Zoning District on Pine Hill Road in southeastern Boxborough, near the intersection of Pine Hill Road and Stonehedge Place. The surrounding area primarily consists of one- and two-story, single-family dwellings on parcels which are 1.0 to 1.5 acres in size.

II. Compliance with Section 4202

This section of the Zoning Bylaw indicates that no Special Permit will be granted unless the Zoning Board of Appeals shall have found that such proposed change, alteration, or extension shall not be substantially more detrimental to the neighborhood than the existing nonconforming use. The proposed change to the approved plan set for Special Permit decision 2017-09 would alter size and shape of the structure resulting in an increase in gross square footage. The most significant changes to the approved plan set will be occurring at the rear portion of the structure which has limited visibility from Pine Hill Road. The Town Planner would like to see detailed plans showing how this proposed addition would be integrated into the existing structure, as well as to understand how the proposed addition would relate to the neighborhood.

III. Compliance with Section 4203

Section 4203 reads as follows:

“No change, alteration, or extension of any nonconforming use or structure shall result in an extension of the structure or an increase in the use to more than one hundred percent in excess of

the gross floor area of the structure or of the total area of the use existing or begun when this Bylaw was adopted.”

The pre-existing nonconforming single-family dwelling at the subject property contained 595 gross square feet prior to the Zoning Board of Appeals granting a Special Permit in 2017 for an addition containing exactly 594.3 gross square feet (previously referred to as ‘approximately 595 gross square feet’). The proposed addition would increase the gross square footage of the structure by 250 gross square feet, clearly exceeding the remaining .7 gross square feet of potentially increasable gross floor area. As such, the Town Planner finds the proposed changes to the addition do **not** comply with Section 4203 of the Zoning Bylaw. This leaves the Applicant/Owner with an option to apply for variance from Section 4203 of the Zoning Bylaw.

IV. Compliance with Section 9204 Decision

No application for a Special Permit shall be granted unless the Special Permit Granting Authority shall find that the structure(s) and/or use(s) proposed shall not have adverse effects which outweigh its benefits on either the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. The determination shall include consideration of each of the following:

1. Social and community needs which are served by the proposal.

The proposed modifications to the approved plans for the addition to the pre-existing nonconforming structure are consistent with the surrounding neighborhood and its uses, most of which consist of single-family dwellings. The proposed changes to the approved plan set will enhance the overall character of the property and the neighborhood. Furthermore, when the project is completed, the value of the property will be increased and, in turn, will increase the tax contribution of the property to the Town. As such, the Town Planner finds social and community needs are served by the proposal.

2. Traffic flow and safety.

Vehicular traffic to and from the property over the last few years has been fairly minimal. The proposed modifications to the approved plan set will not change the traffic generated by the property and it will remain consistent with the other properties in the surrounding neighborhood. No changes are being proposed to the driveway or existing access to the property as part of this application. Therefore, the Town Planner finds the proposed modifications will not have an adverse impact to the safety or traffic environment on Pine Hill Road.

3. Adequacy of utilities and other public or private services, including storage or disposal of sewage, refuse or other wastes, and drainage and/or retention of surface water.

The proposed use of the subject property would remain a single-family dwelling and, as such, the existing utilities and services for the property should be sufficient. As such, the Town Planner finds the utilities and other public or private services for the property will be adequate for the modifications to the approved plan set for the addition to the pre-existing single-family dwelling.

4. Density of population, intensity of use, neighborhood character and social structures.

The proposed continued use of the property as a single-family dwelling is consistent with the use intensity and neighborhood character of the surrounding area. Additionally, the proposed modifications to the approved plan set will not increase the density of the area as the parcel has always been used as a single-family dwelling. Therefore, the Town Planner finds the proposed amendments to the approved plan set will not adversely impact the population density, intensity of the use of the property, or the neighborhood character.

5. Impacts on the natural environment.

The proposed amendments to the approved plan set will all be occurring outside of the wetlands and their 100-foot buffer areas. Little, if any, vegetation around the existing structure will need to be removed to access the building for construction. The proposed addition should not have a significant impact on the property's ability to drain water. The Town Planner finds there will be no adverse impact on the natural environment.

6. Impacts on health.

The proposed amendments to the approved plan set for the addition to the existing structure will not have an adverse impact on either the health of the neighborhood or the town. The utilities and other public or private services for the property will be adequate for the proposed addition to the pre-existing single-family dwelling. As such, the Town Planner finds the proposed modifications to the approved plan set will not have any adverse health impacts on the immediate area or the community.

7. Potential fiscal impact, including tax contribution, diminution or enhancement of neighboring property values, and creation of new employment opportunities.

The proposed amendments to the addition to the pre-existing nonconforming structure will have a positive impact on the property's tax base contribution because the proposed changes will enhance the property's value and increase its tax contribution to the Town. The proposed addition and continued use of the property as a single-family dwelling will most likely slightly enhance the values of abutting properties as well. Additionally, the project will create some new, temporary, construction jobs in the community. Therefore, the Town Planner finds the proposed amendments to the project will result in a positive fiscal impact to the community.

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Town of Boxborough



ZONING BOARD OF APPEALS



Decision No. 2017-09

Dated: November 21, 2017

Decision of the Zoning Board of Appeals (Board) pursuant to MGL Chapter 40A and Boxborough Zoning Bylaw Sections 4200 and 9200 on the application submitted by the Applicant, Sergey Finehouse, Trustee of 97 Pine Hill Trust ("Sergey Finehouse" or "Applicant").

This is an application for a Special Permit to alter a pre-existing, nonconforming structure with an approximately 595 square foot addition. The subject property is 97 Pine Hill Road, Assessor's Parcel #15-127-000, owned by Sergey Finehouse, Trustee, 97 Pine Hill Trust.

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After causing notice of the time and place of its public hearing and of the subject matter thereof to be published, posted, and mailed to the petitioner, abutters, Planning Board, Board of Selectmen, Board of Health, Building Inspector, Conservation Commission, and Town Clerk as required by law, Tom Gorman, Acting Chair of the Zoning Board of Appeals, called the hearing to order at 7:20 PM on November 21, 2017. Zoning Board of Appeals members Lonnie Weil, Mark White, and Stefano Caprara were also present throughout the proceedings. The Applicant, Sergey Finehouse, was also present.

The hearing was closed on November 21, 2017.

The record of the proceedings and the submissions on which the Decision is based may be referred to in the Office of the Town Clerk.

The following were tendered as exhibits:

Exhibit A: Zoning Board of Appeals Special Permit Application with a Zoning Board of Appeals date stamp of October 19, 2017.

Exhibit B: Building Permit issued by the Building Department dated June 8, 2017

Exhibit C: Cease and Desist Order from the Building Department dated July 26, 2017.

Exhibit D: "Certified Plot Plan Of Land In Boxborough, Mass" (with edits showing a 27'-0" wide addition) prepared by Colonial Surveying Co, Inc. dated April 4, 2017 with a Zoning Board of Appeals date stamp of November 14, 2017.

Exhibit E: Building Permit Application Plan Set (Front, Left Hand Side, Right Hand Side, and Back Elevations; Floor Plan; Section A-A; Floor Framing Plan; Roof Framing Plan; and Foundation Plan) prepared by Stanislav Berdichevsky with Zoning Board of Appeals date stamps of November 14, 2017.

The hearing was conducted and closed, and the Board deliberated on the proceedings on November 21, 2017. After due consideration of the application, the record of the proceedings, the exhibits, and the Town Planner's report, the Board makes the following findings of fact:

FINDINGS OF FACT

1. The subject property is located at 97 Pine Hill Road in Boxborough, Massachusetts in an Agricultural-Residential Zoning District.
2. The subject property contains an existing 595 gross square foot single-family dwelling which is nonconforming with regard to the front and right (east) side yard setbacks for the zoning district, and sits on a lot which is nonconforming with regard to lot size and frontage.
3. On June 8, 2017, the Applicant/Owner received a Building Permit from the Building Department to begin construction on a proposed addition.
4. On July 26, 2017, the Applicant/Owner received a Cease and Desist Order from the Building Department and immediately terminated all construction activity at the property.
5. On August 7, 2017, the Applicant/Owner submitted an application to the Zoning Board of Appeals seeking a Variance from Section 4203 regarding the maximum allowable size of an extension to a pre-existing, nonconforming structure. This Variance request was denied.
6. On October 19, 2017, the Applicant/Owner submitted an application to the Zoning Board of Appeals seeking a Special Permit to alter the pre-existing, nonconforming structure at the property by constructing an addition.
7. The size of the proposed addition is approximately 595 gross square feet with a new kitchen, breakfast area, and bedroom with an attached full bathroom and closet. Beneath the entire proposed addition would be a crawl space (5 feet in height or less).
8. On November 21, 2017, the Zoning Board of Appeals conducted the public hearing.

COMPLIANCE WITH SECTION 4202

This section of the Zoning Bylaw indicates that no Special Permit will be granted unless the Zoning Board of Appeals shall have found that such proposed change, alteration, or extension shall not be substantially more detrimental to the neighborhood than the existing nonconforming use. The proposed alterations to the pre-existing nonconforming structure would add

approximately 595 gross square feet to the existing 595 gross square foot single-family dwelling. This would increase the size of the single-family dwelling to approximately 1,190 gross square feet. The lot immediately abutting the subject property to the west is smaller than the Applicant/Owner's property (only 0.57 acres) and contains a single-family dwelling which has 4,858 gross square feet. To the east, the immediate abutting lot (0.92 acres) has a single-family dwelling with 2,424 gross square feet. Directly across Pine Hill Road to the south are six single-family dwellings on lots of approximately 0.95 acres, all which have over 2,600 gross square feet. The same is true of many lots north of the subject property and even beyond the immediate abutters in the surrounding area on roads such as Stonehedge Place, Summer Road, Kendall Road, or Burroughs Road. Most of the lots in this part of Boxborough contain single-family dwellings which are more than double the proposed total gross square footage of the Applicant/Owner's proposed project.

The proposed addition would extend 27 feet to the west towards the interior of the subject property and comply with all dimensional requirements for the Agricultural-Residential Zoning District. The overall height of the proposed addition at its tallest point would increase the height of the existing building no more than 4 feet at its highest point. At 19 feet in the front and 20 feet in the rear, the proposed addition would be well within compliance of the 45 foot height requirement for the zoning district. Therefore, based on the above, the Board finds the proposed addition to the pre-existing nonconforming structure is not substantially more detrimental to the neighborhood than the existing nonconforming use.

COMPLIANCE WITH SECTION 4203

Section 4203 reads as follows:

"No change, alteration, or extension of any nonconforming use or structure shall result in an extension of the structure or an increase in the use to more than one hundred percent in excess of the structure or use existing or begun when this Bylaw was adopted."

The pre-existing nonconforming single-family dwelling at the subject property contains 595 gross square feet. The proposed addition to the pre-existing building would contain 594.3 gross square feet. As such, the Board finds the proposed addition complies with Section 4203 of the Zoning Bylaw.

COMPLIANCE WITH SECTION 9204 DECISION

No application for a Special Permit shall be granted unless the Special Permit Granting Authority shall find that the structure(s) and/or use(s) proposed shall not have adverse effects which outweigh its benefits on either the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. The determination shall include consideration of each of the following:

1. Social and community needs which are served by the proposal.

The proposed addition to the pre-existing nonconforming structure is consistent with the surrounding neighborhood and its uses, most of which consist of single-family dwellings. The proposed project will expand an existing single-family dwelling to a size which starts to become more comparable to the size of dwellings in the immediate surrounding area. The addition and renovations to the existing building will enhance the overall character of the property and the neighborhood. Furthermore, when the project is completed, the value of the property will be increased and, in turn, will increase the tax contribution of the property to the Town. As such, the Board finds social and community needs are served by the proposal.

2. Traffic flow and safety.

While vehicular traffic to and from the property over the last few years has been fairly minimal, the traffic generated by the renovations to the existing single-family dwelling will be consistent with the other properties in the surrounding neighborhood. No changes are being proposed to the driveway or existing access to the property. Therefore, the Board finds the proposed project will not have an adverse impact to the safety or traffic environment on Pine Hill Road.

3. Adequacy of utilities and other public or private services, including storage or disposal of sewage, refuse or other wastes, and drainage and/or retention of surface water.

The proposed use of the subject property would remain a single-family dwelling and, as such, the existing utilities and services for the property should be sufficient. The proposed addition would add one additional bedroom to the existing building and should not require any adjustments to the wastewater system. However, the Board has included a condition which requires the property's well, septic system, and other associated items all obtain Board of Health approval/sign-off prior to the addition being occupied to ensure compliance with these requirements. Additionally, the proposed addition should not significantly alter the drainage or surface water runoff at the property as the vast majority of the lot will remain undisturbed. As such, the Board finds the utilities and other public or private services for the property will be adequate for the proposed addition to the pre-existing single-family dwelling.

4. Density of population, intensity of use, neighborhood character and social structures.

The proposed continued use of the property as a single-family dwelling is consistent with the use intensity and neighborhood character of the surrounding area. Additionally, the project will not increase the density of the area as the parcel has always been used as a single-family dwelling. Therefore, the Board finds the proposed addition and renovations of the existing structure will not adversely impact the population density, intensity of the use of the property, or the neighborhood character.

5. Impacts on the natural environment.

The proposed addition and renovations will all be occurring outside of the wetlands and their 100 foot buffer areas. Little, if any, vegetation around the existing structure will need to be removed to access the building for construction, but the rear of the property will remain completely undisturbed. Some new impervious area will be created at the property due to the expansion of the existing building, but

this new impervious square footage should be minimal when compared to the remaining pervious area on the lot. The proposed addition should not have a significant impact on the property's ability to drain water. Based on the above, the Board finds there will be no adverse impact on the natural environment.

6. Impacts on health.

The proposed addition and renovations to the existing structure will not have an adverse impact on either the health of the neighborhood or the town. The Board has included a condition which requires the property's well, septic system, and other associated items all obtain Board of Health approval/sign-off prior to the addition being occupied to ensure compliance with these requirements. The utilities and other public or private services for the property will be adequate for the proposed addition to the pre-existing single-family dwelling. As such, the Board finds the proposed project will not have any adverse health impacts on the immediate area or the community.

7. Potential fiscal impact, including tax contribution, diminution or enhancement of neighboring property values, and creation of new employment opportunities.

The proposed addition to the pre-existing nonconforming structure will have a positive impact on the property's tax base contribution because the proposed changes will enhance the property's value and increase its tax contribution to the Town. The proposed addition and continued use of the property as a single-family dwelling will most likely slightly enhance the values of abutting properties as well. Additionally, the project will create some new, temporary, construction jobs in the community. Therefore, the Board finds the proposed project will result in a positive fiscal impact to the community.

CONCLUSION

The Applicant/Owner, in its submission, has met the intent of the Zoning Bylaw requirements for a Special Permit pursuant to Sections 4200 and 9200 to alter a pre-existing, nonconforming structure with an approximately 595 square foot addition.

Therefore, after due consideration of the foregoing, the exhibits presented at the hearing, and the Town Planner's report, the Zoning Board of Appeals on November 21, 2017 voted **4 to 0 to GRANT the Special Permit** to alter a pre-existing, nonconforming structure with an approximately 595 square foot addition subject to the following conditions:

1. Approval is based upon the following Plans and Documents:
 - a. "Certified Plot Plan Of Land In Boxborough, Mass" (with edits showing a 27'-0" wide addition) prepared by Colonial Surveying Co, Inc. dated April 4, 2017 with a Zoning Board of Appeals date stamp of November 14, 2017.
 - b. Building Permit Application Plan Set (Front, Left Hand Side, Right Hand Side, and Back Elevations; Floor Plan; Section A-A; Floor Framing Plan; Roof Framing Plan; and Foundation Plan) prepared by Stanislav Berdichevsky with Zoning Board of Appeals date stamps of November 14, 2017.

2. Any changes or modifications now or in the future to the approved plans shall require approval of the Zoning Board of Appeals.
3. As long as Section 4203 of the Zoning Bylaw remains in effect and is not amended, there shall be no further expansion to the existing building at the subject property without a Variance from the Zoning Board of Appeals.
4. **Prior to the issuance of a Certificate of Occupancy**, the Applicant/Owner shall record the Decision with the Middlesex South Registry of Deeds and provide verification of the recording to the Town Planner and Building Inspector.
5. **Prior to the issuance of a Certificate of Occupancy**, the Applicant/Owner shall receive all necessary approvals/sign-offs from the Board of Health for the property's well, septic system, and other associated items.
6. **Prior to a final sign off on the Building Permit**, the Applicant/Owner shall provide a minimum of two (2) parking spaces at the subject property.
7. To the extent possible, all exterior lighting must be confined to the subject property, cast light downward, and must not intrude, interfere or spill onto neighboring properties.
8. The Applicant/Owner shall pay all outstanding fees incurred for the Board's consultants including Town Counsel and the Board's Consulting Engineer, for the performance of any of the review and inspection services contemplated herein, and including any such fees incurred prior to the date of this Decision.
9. Violation of any of the conditions of this Decision shall be grounds for revocation of this Decision, or of any building or occupancy permit granted hereunder. In case of any violation of the continuing obligations of this Decision, the Town will notify the owner of such violation and give the owner reasonable time, not to exceed thirty (30) days or such additional time as may be reasonably necessary as determined by the Zoning Board of Appeals, to correct the violation and to enforce the conditions of this Decision. The Town may enforce compliance with the conditions of this Decision by any action of injunctive relief before any court of competent jurisdiction.

The foregoing restrictions have been spelled out for the purpose of emphasizing their importance, but are not intended to be all-inclusive or to negate the remainder of the Boxborough Zoning By-Law.

The Board shall have the power to modify or amend the terms and conditions of the Special Permit or an amendment thereto on the application of the owner, lessee, or mortgagee of the premises or upon its own motion. All the provisions of this paragraph applicable to approval shall, where apt, be applicable to such modification or amendment.

This Special Permit shall not be valid until recorded with the Middlesex South District Registry of Deeds and evidence of such recording provided to the Inspector of Buildings.

This Special Permit will expire on November 21, 2019 if a substantial use thereof has not been commenced except for good cause. Any further request for extension of time set forth herein must be made in writing to the Board at least thirty (30) days prior to November 21, 2019 and the Board herein reserves the right and power to grant or deny such extension without a public hearing. The Board shall not grant any extension of said permit unless it finds good cause for the use of the property in question or for construction on the site not having begun and proceeding in a timely manner.

Appeals, if any, shall be made pursuant to Section 17 of the Massachusetts General Laws, Chapter 40A and shall be filed within twenty (20) days after the date of filing of the above referenced Decision with the Town Clerk.

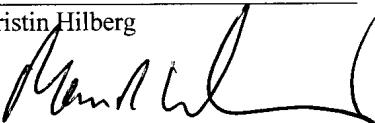
Witness our hands this 21st day of November, 2017:

BOXBOROUGH ZONING BOARD OF APPEALS



Thomas Gorman

Kristin Hilberg



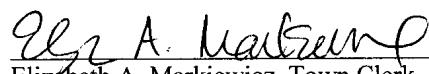
Lonnie Weil, Clerk

Mark White



Stefano Caprara (Alternate)

I, Elizabeth A. Markiewicz, hereby do certify this is a true copy of the above Zoning Board of Appeals Decision # 2017-09.



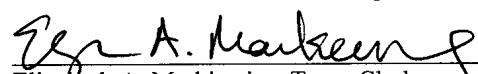
Elizabeth A. Markiewicz, Town Clerk

Nov. 22, 2017

Date Filed

TO WHOM IT MAY CONCERN

I, Elizabeth A. Markiewicz, hereby certify that the 20-day appeal period on this Decision has expired, and no appeals have been filed with this office.



Elizabeth A. Markiewicz, Town Clerk

December 14, 2017

Date



BOXBOROUGH ZONING BOARD OF APPEALS

29 Middle Road, Boxborough, Massachusetts 01719

Phone: 978.264.1722

www.boxborough-ma.gov

Tom Gorman Kristin Hilberg Lonnie Weil Mark White Alt. Stefano Caprara
Michael Toups, Chairman

December 14, 2017

Sergey Finehouse
97 Pine Hill Road
Boxborough, MA 01719

Dear Mr. Finehouse,

Your original decision has been certified by the Town Clerk.
The 20-day statutory appeal period has elapsed and no appeals were filed.

This original decision shall not be valid until evidence of such recording is provided to the Board. It must be recorded before construction begins.

We suggest you call the registry in advance for details about filing fees, business hours etc.

South Middlesex Registry of Deeds
208 Cambridge Street
Cambridge, MA 02141-0068
(978) 322-9000
<http://www.masslandrecords.com/MiddlesexSouth>

Please call if there are any questions.

Mary O. Nadwarski
Mary O. Nadwarski

Town of Boxborough



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Bk: 74534 Pg: 301 Doc: AMEND
Page: 1 of 7 04/24/2020 01:42 PM

D-ec 68623-58
Decision 70444-39

ZONING BOARD OF APPEALS

Decision No. 2018-19

Dated: December 4, 2018

Decision of the Zoning Board of Appeals (Board) pursuant to MGL Chapter 40A and Boxborough Zoning Bylaw Sections 4200, 9100, and 9200 on the application submitted by the Applicant, Sergey Finehouse, Trustee of 97 Pine Hill Trust ("Sergey Finehouse" or "Applicant").

This is an application for an amendment to a Special Permit to alter a pre-existing, nonconforming structure with an approximately 595 square foot addition. The subject property is 97 Pine Hill Road, Assessor's Parcel #15-127-000, owned by Sergey Finehouse, Trustee, 97 Pine Hill Trust.

After causing notice of the time and place of its public hearing and of the subject matter thereof to be published, posted, and mailed to the petitioner, abutters, Planning Board, Board of Selectmen, Board of Health, Building Inspector, Conservation Commission, and Town Clerk as required by law, Tom Gorman, Acting Chair of the Zoning Board of Appeals, called the hearing to order at 7:30 PM on December 4, 2018. Zoning Board of Appeals members Kristin Hilberg, Lonnie Weil, Mark White, and Stefano Caprara were also present throughout the proceedings. No one was present on behalf of the Applicant.

The hearing was closed on December 4, 2018.

The record of the proceedings and the submissions on which the Decision is based may be referred to in the Office of the Town Clerk.

The following were tendered as exhibits:

Exhibit A: Zoning Board of Appeals Special Permit Amendment Application with a Zoning Board of Appeals date stamp of October 29, 2018.

Exhibit B: Zoning Board of Appeals Decision 2017-09 Approved Plan Set Displaying Changes (Front, Left Hand Side, Right Hand Side, and Back Elevations; Floor Plan; Section A-A; Floor Framing Plan; Roof Framing Plan; and Foundation Plan) with Zoning Board of Appeals Approved stamps dated November 21, 2017 and most recent date stamps of October 29, 2018.

The hearing was conducted and closed, and the Board deliberated on the proceedings on December 4, 2018. After due consideration of the application, the record of the proceedings, the exhibits, and the Town Planner's Staff Report dated November 29, 2018, the Board makes the following findings of fact:

FINDINGS OF FACT

1. The subject property is located at 97 Pine Hill Road in Boxborough, Massachusetts in an Agricultural-Residential Zoning District.
2. The subject property contains an existing 595 gross square foot single-family dwelling which is nonconforming with regard to the front and right (east) side yard setbacks for the zoning district, and sits on a lot which is nonconforming with regard to lot size and frontage.
3. On November 21, 2017, the Applicant/Owner was awarded a Special Permit to construct a 595 square foot addition onto the existing building (Decision 2017-09).
4. The amendments to the approved plan set are as follows:
 - Front Façade: Install one window instead of two side-by-side windows, change a small rectangular opening to an octagonal opening, and remove one proposed skylight.
 - Left Hand (Western) Façade: Install an octagonal vent instead of a window, replace a sliding glass door with two, small, sliding glass windows, and relocate the opening to the crawl space.
 - Right Hand (Eastern) Portion of Addition: Reduce the number of internal openings between the existing house and the addition from two to one.
 - Back (Rear) Elevation: Install two new skylights; install a set of side-by-side windows and a set of three side-by-side-by-side windows instead of three sets of side-by-side windows; and install three, small, double-hung windows on the crawl space level.
5. On December 4, 2018, the Zoning Board of Appeals conducted the public hearing.

COMPLIANCE WITH SECTION 4202

This section of the Zoning Bylaw indicates that no Special Permit will be granted unless the Zoning Board of Appeals shall have found that such proposed change, alteration, or extension shall not be substantially more detrimental to the neighborhood than the existing nonconforming use. The proposed alterations to the approved plan set for Special Permit decision 2017-09 only include changes in the fenestration of the addition. There are no changes being proposed to the gross square footage of the addition. The most significant façade changes to the approved plan set will be occurring at the rear of the addition which is not visible from Pine Hill Road. Therefore, based on the above, the Board finds the proposed modifications to the approved plan set for the addition to the pre-existing nonconforming structure are not substantially more detrimental to the neighborhood than the existing nonconforming use.

COMPLIANCE WITH SECTION 4203

Section 4203 reads as follows:

“No change, alteration, or extension of any nonconforming use or structure shall result in an extension of the structure or an increase in the use to more than one hundred percent in excess of the gross floor area of the structure or of the total area of the use existing or begun when this Bylaw was adopted.”

The pre-existing nonconforming single-family dwelling at the subject property contains 595 gross square feet. The proposed addition to the pre-existing building would contain 594.3 gross square feet and the proposed alterations to the approved plans do not alter the proposed additional gross square footage in any manner. As such, the Board finds the proposed changes to the addition comply with Section 4203 of the Zoning Bylaw.

COMPLIANCE WITH SECTION 9204 DECISION

No application for a Special Permit shall be granted unless the Special Permit Granting Authority shall find that the structure(s) and/or use(s) proposed shall not have adverse effects which outweigh its benefits on either the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. The determination shall include consideration of each of the following:

1. Social and community needs which are served by the proposal.

The proposed modifications to the approved plans for the addition to the pre-existing nonconforming structure are consistent with the surrounding neighborhood and its uses, most of which consist of single-family dwellings. The proposed project will expand an existing single-family dwelling to a size which starts to become more comparable to the size of dwellings in the immediate surrounding area, and the proposed modifications to the approved plan set do not change this. The proposed changes to the approved plan set will enhance the overall character of the property and the neighborhood. Furthermore, when the project is completed, the value of the property will be increased and, in turn, will increase the tax contribution of the property to the Town. As such, the Board finds social and community needs are served by the proposal.

2. Traffic flow and safety.

Vehicular traffic to and from the property over the last few years has been fairly minimal. The proposed modifications to the approved plan set will not change the traffic generated by the property and it will remain consistent with the other properties in the surrounding neighborhood. No changes are being proposed to the driveway or existing access to the property as part of this application. Therefore, the Board finds the proposed plan set modifications will not have an adverse impact to the safety or traffic environment on Pine Hill Road.

3. Adequacy of utilities and other public or private services, including storage or disposal of sewage, refuse or other wastes, and drainage and/or retention of surface water.

The proposed use of the subject property would remain a single-family dwelling and, as such, the existing utilities and services for the property should be sufficient. The addition would add one additional bedroom to the existing building and should not require any adjustments to the wastewater system. However, the Board has retained all conditions from the 2017-09 Special Permit decision which requires the property's well, septic system, and other associated items all obtain Board of Health approval/sign-off prior to the addition being occupied to ensure compliance with these requirements. Additionally, the proposed changes to the approved plan set should not significantly alter the drainage or surface water runoff at the property as the vast majority of the lot will remain undisturbed. As such, the Board finds the utilities and other public or private services for the property will be adequate for the modifications to the approved plan set for the addition to the pre-existing single-family dwelling.

4. Density of population, intensity of use, neighborhood character and social structures.

The proposed continued use of the property as a single-family dwelling is consistent with the use intensity and neighborhood character of the surrounding area. Additionally, the proposed modifications to the approved plan set will not increase the density of the area as the parcel has always been used as a single-family dwelling. Therefore, the Board finds the proposed amendments to the approved plan set will not adversely impact the population density, intensity of the use of the property, or the neighborhood character.

5. Impacts on the natural environment.

The proposed amendments to the approved plan set will all be occurring outside of the wetlands and their 100 foot buffer areas. Little, if any, vegetation around the existing structure will need to be removed to access the building for construction, but the rear of the property will remain completely undisturbed. No new impervious area will be created at the property due to the proposed amendments to the approved plans for the addition. The proposed plan modifications should not have a significant impact on the property's ability to drain water. Based on the above, the Board finds there will be no adverse impact on the natural environment.

6. Impacts on health.

The proposed amendments to the approved plan set for the addition to the existing structure will not have an adverse impact on either the health of the neighborhood or the town. The Board has retained a condition which requires the property's well, septic system, and other associated items all obtain Board of Health approval/sign-off prior to the addition being occupied to ensure compliance with these requirements. The utilities and other public or private services for the property will be adequate for the proposed addition to the pre-existing single-family dwelling. Additionally, the extra windows proposed for the rear elevation should only improve the health aspects of the dwelling via additional lighting and fresh air. As such, the Board finds the proposed modifications to the approved plan set will not have any adverse health impacts on the immediate area or the community.

7. Potential fiscal impact, including tax contribution, diminution or enhancement of neighboring property values, and creation of new employment opportunities.

The proposed amendments to the addition to the pre-existing nonconforming structure will have a positive impact on the property's tax base contribution because the proposed changes will enhance the property's value and increase its tax contribution to the Town. The proposed amendments to the addition and continued use of the property as a single-family dwelling will most likely slightly enhance the values of abutting properties as well. Additionally, the project will create some new, temporary, construction jobs in the community. Therefore, the Board finds the proposed amendments to the project will result in a positive fiscal impact to the community.

CONCLUSION

The Applicant/Owner, in its submission, has met the intent of the Zoning Bylaw requirements to amend a Special Permit pursuant to Sections 4200, 9100, and 9200 to alter a pre-existing, nonconforming structure with an approximately 595 square foot addition.

Therefore, after due consideration of the foregoing, the exhibits presented at the hearing, and the Town Planner's report, the Zoning Board of Appeals on December 4, 2018 voted 5 to 0 to **GRANT the Special Permit Amendment** to alter a pre-existing, nonconforming structure with an approximately 595 square foot addition subject to the following conditions:

1. Approval is based upon the following Plans and Documents:
 - a. Zoning Board of Appeals Decision 2017-09 Approved Plan Set Displaying Changes (Front, Left Hand Side, Right Hand Side, and Back Elevations; Floor Plan; Section A-A; Floor Framing Plan; Roof Framing Plan; and Foundation Plan) with Zoning Board of Appeals Approved stamps dated November 21, 2017 and most recent date stamps of October 29, 2018.
2. Any changes or modifications now or in the future to the approved plans shall require approval of the Zoning Board of Appeals.
3. As long as Section 4203 of the Zoning Bylaw remains in effect and is not amended, there shall be no further expansion to the existing building at the subject property without a Variance from the Zoning Board of Appeals.
4. **Prior to the issuance of a final sign off and Certificate of Occupancy for the addition**, the Applicant/Owner shall record the Decision with the Middlesex South Registry of Deeds and provide verification of the recording to the Town Planner and Building Inspector.
5. **Prior to the issuance of a final sign off and Certificate of Occupancy for the addition**, the Applicant/Owner shall receive all necessary approvals/sign-offs from the Board of Health for the property's well, septic system, and other associated items.

6. **Prior to the issuance of a final sign off and Certificate of Occupancy for the addition**, the Applicant/Owner shall provide a minimum of two (2) parking spaces at the subject property.
7. To the extent possible, all exterior lighting must be confined to the subject property, cast light downward, and must not intrude, interfere or spill onto neighboring properties.
8. The Applicant/Owner shall pay all outstanding fees incurred for the Board's consultants including Town Counsel and the Board's Consulting Engineer, for the performance of any of the review and inspection services contemplated herein, and including any such fees incurred prior to the date of this Decision.
9. Violation of any of the conditions of this Decision, as acknowledge by the permit holder or determined by a court of competent jurisdiction to have occurred, shall be grounds for enforcement of this Decision, or of any Building or Occupancy Permit granted hereunder. The Town may enforce compliance with the conditions of this Decision by any action of injunctive relief before any court of competent jurisdiction.

The foregoing restrictions have been spelled out for the purpose of emphasizing their importance, but are not intended to be all-inclusive or to negate the remainder of the Boxborough Zoning By-Law.

The Board shall have the power to modify or amend the terms and conditions of the Special Permit or an amendment thereto on the application of the owner, lessee, or mortgagee of the premises or upon its own motion. All the provisions of this paragraph applicable to approval shall, where apt, be applicable to such modification or amendment.

This Special Permit shall not be valid until recorded with the Middlesex South District Registry of Deeds and evidence of such recording provided to the Inspector of Buildings.

This Special Permit will expire on December 25, 2020 if a substantial use thereof has not been commenced except for good cause. Any further request for extension of time set forth herein must be made in writing to the Board at least thirty (30) days prior to December 25, 2020 and the Board herein reserves the right and power to grant or deny such extension without a public hearing. The Board shall not grant any extension of said permit unless it finds good cause for the use of the property in question or for construction on the site not having begun and proceeding in a timely manner.

Appeals, if any, shall be made pursuant to Section 17 of the Massachusetts General Laws, Chapter 40A and shall be filed within twenty (20) days after the date of filing of the above referenced Decision with the Town Clerk.

Witness our hands this 4th day of December, 2018:

BOXBOROUGH ZONING BOARD OF APPEALS

Thomas Gorman
Thomas Gorman

Michael Toups

Mark White
Mark White

Kristin Hilberg
Kristin Hilberg

Lonnie Weil
Lonnie Weil

Stefano Caprara
Stefano Caprara

I, Elizabeth A. Markiewicz, hereby do certify this is a true copy of the above Zoning Board of Appeals Decision # 2018-19.

Elizabeth A. Markiewicz
Elizabeth A. Markiewicz, Town Clerk

December 5, 2018
Date Filed

TO WHOM IT MAY CONCERN

I, Elizabeth A. Markiewicz, hereby certify the 20-day appeal period on this Decision has expired, and no appeals have been filed with this office.

Elizabeth A. Markiewicz
Elizabeth A. Markiewicz, Town Clerk

January 2, 2019
Date