



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

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Prepared by: Simon Corson, Town Planner

September 3, 2021

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### **Site: 432 Stow Road**

**Applicant and Owner Name:** Rebecca and Stefano Caprara

**Applicant and Owner Address:** 432 Stow Road, Boxborough, MA 01719

**Legal Notice:** Pursuant to MGL Chapter 40A and Sections 4202, 9100, and 9200 of the Boxborough Zoning Bylaw, a public hearing will be held before the Boxborough Zoning Board of Appeals on September 7, 2021 at 7:30 PM to consider the application received from Rebecca and Stefano Caprara, property owners, requesting a Special Permit to alter a pre-existing nonconforming structure at 432 Stow Road.

The subject property is located in the Agricultural-Residential Zoning District and is identified as Assessor's Parcel # 19-136-000.

**Zoning District(s):** Agricultural-Residential

**Zoning Approval Sought:** Special Permit under Sections 4202, and 9200 to alter a pre-existing, nonconforming structure

**Date of Application:** June 21, 2021

**Date(s) of Public Hearing:** September 7, 2021

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### **I. Project Description**

1. **Subject Property:** The subject property consists of an approximately 0.92-acre (40,075 square foot) parcel on the east side of Stow Road, just south of its intersection with Tamarack Lane, bordering Flerra Meadows to the south. The property is located in the Agricultural-Residential Zoning District. The parcel has approximately 170 feet of frontage and contains an approximately 1,885 square foot single-family dwelling. The lot is nonconforming with regard to the required minimum lot size for the zoning district, which makes the entire building pre-existing nonconforming. Additionally, the existing dwelling is nonconforming with regard to the required minimum left side yard setback.

2. **Proposal:** The Applicant/Owner is seeking to add an approximately 1,096 square foot addition to replace the existing breezeway and connect existing garage and existing residence. The existing residence and garage are currently attached via the breezeway. The addition would meet setbacks onto the north side of the pre-existing nonconforming, 1,885 gross square foot, single-family dwelling. The addition would add a bedroom, bathroom, and a living room. The proposed addition would comply with all setback requirements for the zoning district.

3. **Nature of Application:** The subject property is located in the Agricultural-Residential Zoning District where the minimum lot size is 60,000 square feet. The Applicant/Owner's lot is only 40,075

square feet which means the lot is nonconforming with regard to the minimum lot size for the zoning district, and therefore the entire building is pre-existing nonconforming. Section 4202 of the Zoning Bylaw indicates the following:

“A Special Permit must be obtained from the Board of Appeals pursuant to the provisions of Section 9200 before any change, alteration, or extension of a nonconforming use or structure may be made and no such permit will be granted unless the Board of Appeals shall have found that such change, alteration, or extension shall not be substantially more detrimental to the neighborhood than the existing nonconforming use.”

Therefore, since the Applicant/Owner is proposing to increase the size of the pre-existing nonconforming building by constructing an addition near the center of the existing building, they are required to seek Special Permit approval from the Zoning Board of Appeals.

4. Surrounding Neighborhood: The subject property is located in an Agricultural-Residential Zoning District on Stow Road in southcentral Boxborough, just south of its intersection with Tamarack Lane and bordering Flerra Meadows from the south. The surrounding area primarily consists of two-story, single-family dwellings on parcels which are one acre in size.

5. Comments:

*Conservation Commission:* In an email to the Town Planner on July 26, 2021, the Conservation Commission Chair indicated the following:

“The Commission reviewed at our meeting on 7/21/2021 and concluded that the project will likely involve some temporary disturbance in the outer buffer zone at the rear (northerly side) of the existing and proposed house.

An RDA filing is recommended to determine the extent of this work relative to the resource area. Since the area of temporary disturbance will likely be limited to the existing yard area that predate the By-Law, a negative determination with conditions is anticipated.

The Commission noted the possible inaccuracy of the available wetland mapping. A Commission member may make a site visit (by way of our abutting Conservation Land) to better understand the location of the wetland resource area.”

*Board of Health:* In an email to the Town Planner on July 29, 2021 the Board of Health Agent indicated the following:

“I have reviewed the proposal and I have the following comment from the Board of Health.

The sewage disposal system for the house is designed for four bedrooms (the system was upgraded in 1997).

The design flow for a dwelling is based on the of bedrooms/rooms in a home, the definition from Title 5 of the State Environmental Code (septic system regulations) is the guide the Board of Health uses when making these determinations (it's listed below).

#### 310CMR15.002 - Definitions

Bedroom - A room providing privacy, intended primarily for sleeping and consisting of all of the following:

- (a) floor space of no less than 70 square feet;
- (b) for new construction, a ceiling height of no less than seven feet three inches;
- (c) for existing houses and for mobile homes, a ceiling height of no less than seven feet zero inches;

- (d) an electrical service and ventilation; and
- (e) at least one window.

Living rooms, dining rooms, kitchens, halls, bathrooms, unfinished cellars and unheated storage areas over garages are not considered bedrooms. Single family dwellings shall be presumed to have at least three bedrooms. Where the total number of rooms for single family dwellings exceeds eight, not including bathrooms, hallways, unfinished cellars and unheated storage areas, the number of bedrooms presumed shall be calculated by dividing the total number of rooms by two then rounding down to the next lowest whole number. The applicant may design a system using design flows for a smaller number of bedrooms than are presumed in this definition by granting to the Approving Authority a deed restriction limiting the number of bedrooms to the smaller number.

Based on the plans submitted, there appears to be five bedrooms and potentially 10 rooms (if the storage area is heated) in the proposal. The Board of Health could not endorse a building permit for this site based on the plan submitted.”

## **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 alterations to the pre-existing nonconforming building would add an approximately 1,096 square foot addition on the center of the pre-existing nonconforming, 1,885 gross square foot, single-family dwelling. This would increase the size of the single-family dwelling to approximately 2,981 gross square feet. The lots nearby the subject property on Stow Road and Chester Road are between 0.88 and 2.2 acres in size with single-family dwellings ranging from 1,300 to 2,628 gross square feet. While slightly larger than the neighboring dwellings, the proposed addition to the existing building would maintain a size consistent with the other dwellings in the surrounding neighborhood.

The proposed addition replacing the existing breezeway would extend the building to the north while maintaining the side and rear yard setbacks toward the abutting property lines and comply with all other dimensional requirements for the Agricultural-Residential Zoning District. Therefore, based on the above, the Town Planner finds the proposed addition to the pre-existing nonconforming building is not substantially more detrimental to the neighborhood than the existing nonconforming use.

## **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 contains approximately 1,885 gross square feet. The proposed addition would increase the existing building by approximately 1,096 gross square feet. As such, the Town Planner finds the proposed addition complies with 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 addition for the pre-existing nonconforming building 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 is still comparable to the size of dwellings in the immediate surrounding area. The addition on 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 Town Planner finds social and community needs are served by the proposal.

2. Traffic flow and safety.

The proposed project will not change the nature or intensity of the use of the subject property as a single-family dwelling and 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 Town Planner finds the proposed project will not have an adverse impact to the safety or traffic environment on Stow Road or the surrounding area.

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 Town Planner has proposed a condition which requires the property's well, septic system, and other associated items all obtain Board of Health approval/sign-off 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 Town Planner finds the utilities and other public or private services for the property will be adequate for the proposed addition to the pre-existing nonconforming 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 Town Planner finds the proposed addition to 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 construction of the addition could be occurring near, or within a wetlands' 100-foot buffer area. As such, the Town Planner is recommending a condition requiring the Applicant/Property Owner to file a Request for Determination of Applicability with the Conservation Commission. Little, if any, vegetation around the existing structure will need to be removed to access the building for construction and the vast majority of the property will remain completely undisturbed. Some new impervious area will be created at the property due to the creation of the addition, 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 Town Planner finds there will be no adverse impact on the natural environment.

6. Impacts on health.

The proposed addition to the existing building will not have an adverse impact on either the health of the neighborhood or the town. The Town Planner has proposed a condition which requires the property's well, septic system, and other associated items all obtain Board of Health approval/sign-off 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 Town Planner 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 the 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 project will result in a positive fiscal impact to the community.

**V. Recommendation**

**Special Permit for Alterations to a Nonconforming Structure under Sections 4201, 4202, and 9200**

Based upon the above findings and subject to the following conditions, the Town Planner recommends **CONDITIONAL APPROVAL** of the requested **SPECIAL PERMIT**.

This recommendation is based upon a technical analysis of the application materials by the Town Planner, the required findings of the Boxborough Zoning Bylaw, and only upon information submitted prior to the public hearing. This report may be revised or updated with new recommendations, findings, and/or conditions based upon additional information provided to the Town Planner during the public hearing process.

1. Approval is based upon the following Plans and Documents:
  - a. "Mortgage Inspection Plan, Boxborough, Mass." prepared by John R. Snelling dated February 22, 1986.
  - b. Floor Plan and Elevations for Proposed Addition prepared by Colonial Home Design dated May 21, 2021, and comprised of six pages in total.
2. Any changes or modifications now or in the future to the approved plans shall require approval of the Zoning Board of Appeals.
3. **Prior to the issuance of a Building Permit**, 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.
4. 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.
5. The Applicant/Owner shall submit a Request for Determination of Applicability to the Conservation Commission.

6. All exterior lighting must be confined to the subject property, cast light downward, and must not intrude, interfere or spill onto neighboring properties. Exterior lighting shall be dark sky complaint with a continuous white light.
7. As-Built drawings shall be submitted to the Building Department for the foundation once it has been completed, as well as for the entire project once it has been completed.
8. 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.