



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: 827 Massachusetts Avenue**

**Applicant and Owner Name:** Rohner Oliveria

**Applicant and Owner Address:** 827 Massachusetts Avenue, 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 7:45 PM to consider the application received from Rohner Oliveria, property owner, requesting a Special Permit to alter a pre-existing nonconforming structure at 827 Massachusetts Avenue.

The subject property is located in the Business Zoning District and is identified as Assessor's Parcel #14-199-000.

Zoning District(s): Business

Zoning Approval Sought: Special Permit under Sections 4201, 4202, and 9200 to alter a pre-existing, nonconforming structure

Date of Application: August 12, 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 0.95-acre (41,215 square foot) parcel on the north side of Massachusetts Avenue. The property is located in the Business Zoning District. The parcel has 150 feet of frontage and contains an approximately 2,550 square foot single-family dwelling. The lot is nonconforming with regard residential use in the Business Zoning District, which makes the entire building pre-existing nonconforming. The property contains no wetlands or wetland buffer areas.

2. Proposal: The Applicant/Owner is seeking to add an approximately 180 square foot mudroom onto the north side of the pre-existing nonconforming, 2,550 gross square foot, single-family dwelling. The proposed mudroom would extend just over 12 feet off the back of the residence and would be approximately 15 feet long. The proposed mudroom would replace the existing 108 gross square foot enclosed porch and would add approximately 90 gross square feet to the existing structure. The proposed mudroom addition would comply with all setback requirements for the zoning district.

3. Nature of Application: The subject property is located in the Business Zoning District where single-family dwellings are not allowed, which means the structure is 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 adding a mudroom to the rear of the dwelling, they are required to seek Special Permit approval from the Zoning Board of Appeals.

4. Surrounding Neighborhood: The subject property is located in a Business Zoning District on Massachusetts Avenue. To the north, the property abuts a 3,962 gross square foot single-family dwelling that is a cape style building. There is a mix of businesses and residential uses in this area.

## **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 90 square foot mudroom on the north side of the pre-existing nonconforming, 2,550 gross square foot, single-family dwelling. This would increase the size of the single-family dwelling to approximately 2,640 gross square feet. The lots surrounding the subject property on Massachusetts Avenue are between 0.96 and 13.2 acres in size with single-family dwellings ranging from 2,352 to 3,962 gross square feet. The proposed mudroom addition to the existing building would maintain a size consistent with the other dwellings in the surrounding neighborhood.

The proposed mudroom addition to the rear of the garage would extend 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 Business Zoning District. Therefore, based on the above, the Town Planner finds the proposed mudroom 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 2,550 gross square feet. The proposed mudroom addition would increase the existing building by approximately 90 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 mudroom addition for the pre-existing nonconforming building is consistent with the surrounding neighborhood and its uses. 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 of the mudroom 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 Massachusetts Avenue 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. This alteration to the pre-existing nonconforming building should not require any adjustments to the property's wastewater system. Additionally, the proposed mudroom 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. Therefore, the Town Planner finds the proposed addition of a mudroom 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 mudroom addition will be occurring outside of any 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 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 mudroom, but this new impervious square footage should be minimal when compared to the remaining pervious area on the lot. The proposed mudroom 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 mudroom addition to the existing building 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 mudroom 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 mudroom 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 of the mudroom 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. "Approval under the Subdivision Control Law Not Required" prepared by John R. Snelling dated April 28, 1986 with a Zoning Board of Appeals date stamp of August 12, 2021.
  - b. Floor Plan for Proposed "TV/Mud Room Addition" by Heights General Construction, Inc. dated July 1, 2021 with a Zoning Board of Appeals date stamp of August 12, 2021.
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. 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.
5. 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.

6. 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.