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Zoning Board of Appeals

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Decision on the Petition of

David & Emily O'Donnell

On the Property Located at

700 Haverhill Street, Reading, Massachusetts

Case No. 21-12

July 29, 2021

The Zoning Board of Appeals (the "Board") opened a public hearing via Zoom virtual meeting, in lieu of meeting in the Selectman's Meeting Room at Town Hall, 16 Lowell Street in Reading, Massachusetts, on **Thursday, July 29, 2021** at 7:00PM to hear the petition of **David & Emily O'Donnell** (the "Petitioner"). The Petitioner sought a Special Permit under Sections 7.3 and 7.3.2 of the Zoning By-laws to create a one-story deck that **extends an existing non-conforming side-yard setback** on the dwelling on the property located at **700 Haverhill Street** in Reading, Massachusetts (the "Property").

The Property is located in the **S-20** Zoning District of Reading. The existing lot is considered legal non-conforming, due to the fact that it does not meet the current area (20,000sf) or frontage (120') requirements for the zoning district it is in. It currently maintains 16,516sf of area and 80' of frontage along Haverhill Street. The existing dwelling (a "Cape" style house, circa 1951) is deemed a legal, non-conforming structure due to a **less than required minimum side-yard setback** to the northern/side property line. The Petitioner was present at the meeting, along with the project architect Diane Miller. It was stated that the Petitioner is seeking a Special Permit for a deck at the western/rear side of the existing dwelling that would extend into the side-yard setback requirements. The existing dwelling with proposed deck is depicted on a Certified Plot Plan ("the Plot Plan") prepared and certified by John D. Sullivan III, Professional Surveyor No. 41586, P.O Box 2004, Woburn, MA 01888, dated April 26, 2021. Architectural layouts and elevations for the proposed addition, consisting of sheets 1 through 4, dated February 8, 2021, prepared by Miller Design, LLC, 80 Clark Street, Belmont, MA 02478, were also submitted with the Petitioner's application.

The existing dwelling maintains a 4' X 7.8' stair and landing at the northern/side of the property. A discussion was held questioning if this structure was exempt from dimensional zoning requirements. It was found that generally stairs with a landing of 4' X 4' or smaller would be exempt from dimensional requirements within the Bylaw, based on Section 6.2.2 of the Bylaw and building code interpretation. Due to the existing structures landing being over the 4' X 4' it was not a typical stair and landing; thus, it was deemed a pre-existing non-conforming structure, thus extension of such non-conformity was determined eligible under the issuance of a Special Permit.

The existing structure maintains a 12.8' side-yard setback and the proposed deck would be built to the same setback, extending about approximately 24' in length to the west and along the non-conforming setback. It was also found that prominent landscaping existed on the abutter's lot along the northern

property line that would act as screening to the proposed deck. The Applicant stated that they were willing to add additional landscape screening where appropriate.

Section 7.3.2 of the Reading Zoning By-laws states, in relevant part, "For those alterations not eligible for a building permit pursuant to Section 7.3, the Zoning Board of Appeals may grant a Special Permit to reconstruct, extend, alter, or structurally change a nonconforming building or structure upon a finding that such reconstruction, extension, alteration or structural change shall not be substantially more detrimental to the neighborhood than the existing nonconforming building or structure". Following discussion with the Petitioner and comment among Board members, the meeting was opened to public comment. Multiple public comment letters and input received were considered and discussed by Board members. Further discussion on screening and access was held between the Board, Applicant and the northern abutter. The Board determined the application appropriate under the condition that additional landscaped screening be added to the side property line.

A motion was made and seconded by Board Members that the proposed deck would not be substantially more detrimental to the neighborhood than the existing dwelling and, would meet the requirements for Special Permit under Section 7.3.2 of the Reading By-laws. The Board voted in the affirmative (4-0-0) to grant a Special Permit in order to construct a deck to the dwelling at **700 Haverhill Street** as shown on the previously noted Certified Plot Plan and Architectural plans submitted, with the following conditions attached.

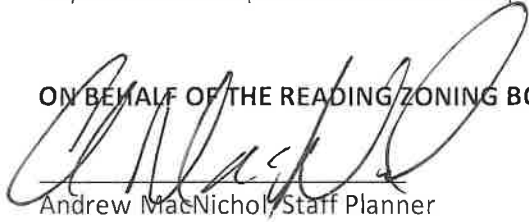
1. The Petitioner shall submit to the Building Inspector a Certified Plot Plan of the proposed construction and proposed foundation plans for the work prior to the issuance of a foundation permit for the work.
2. The Petitioner's final construction plans for the proposed addition shall be submitted to the Building Inspector, along with as-built foundation plans, prior to the issuance of a Building Permit for the work.
3. As-built plans of the completed construction shall be submitted to the Building Inspector immediately after the work is completed and prior to the issuance of an Occupancy Permit.
4. In coordination with the abutter, the Applicant shall install additional landscaped screening at the northern/side property line and within their property.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to M.G.L. c. 40A, § 17, within twenty (20) days after the date of filing this Decision with the Town Clerk. Notice of appeal with a copy of the complaint must also be filed with the Town clerk within twenty (20) days as provided in § 17.

This Special Permit shall not take effect until a copy of this Decision, bearing certification of the Town Clerk that twenty (20) days have elapsed after the Decision was filed in the Office of the Town clerk and no appeal has been filed, or if an appeal has been filed within such time, that it has been dismissed or denied, is recorded in the Middlesex South District Registry of Deeds and indexed in the Grantor's Index under the name of the owner of record, or is recorded and noted on the Owner's Certificate of Title. The

fee for recording or registering shall be paid by the Owner or Petitioner. Any person exercising rights under a duly appealed Special Permit does so at the risk that a court may reverse the permit and that any construction performed under the permit may be ordered to be undone.

ON BEHALF OF THE READING ZONING BOARD OF APPEALS

A handwritten signature in black ink, appearing to read 'Andrew MacNichol', is written over a horizontal line. The signature is cursive and somewhat stylized.

Andrew MacNichol, Staff Planner

Board members sitting and voting on Case No. 21-12

Hillary Mateev, Cynde Hartman, Jamie Maughan, Alex Normandin

