



BOARD OF APPEALS  
**TOWN OF FOXBOROUGH**  
40 SOUTH STREET  
MASSACHUSETTS  
02035

**Foxborough Zoning Board of Appeals Minutes  
February 18, 2021**

Members present in person: Members Barney Ovrut, David Brown, Kim Mellen and Associate Members Lorraine Brue and Kurt Yeghian

This meeting was held entirely virtually via the Zoom video platform. Chairman Ovrut opened the meeting by reading a statement explaining how comments would be addressed during the meeting and to state that the meeting is also being broadcast on Foxboro Cable Access. It was also noted that all votes would be taken by roll call and if there are any technical difficulties that cannot be resolved, the item would be continued to the next ZBA meeting.

**7:00 p.m. Jeffrey Vito seeks a Special Permit pursuant to Section 4.2.5 and 5.4.2. of the Code of the Town of Foxborough, Massachusetts, Chapter 275: Zoning, to allow the construction of an attached two-car garage addition with a front yard setback of 16.3 feet where 35 feet is required. The property, located at 5 Harlow Road, is in the R-40 Residential and Agricultural District and is not located in any restrictive overlay district.**

Jeffrey and Laura Vito were both present representing themselves. Mr. Ovrut noted the application asked for a Special Permit under Section 5.2 of the Zoning Bylaws which was corrected to Sections 4.2.5 and 5.4.2. Mr. Vito explained that their house is located within the front yard setback and the new garage they would like to construct would be approximately 16.3 feet from the sidewalk, their house is approximately 25 feet from the front yard setback which makes it a pre-existing non-conforming structure. They would like to add a 1 1/2 story two-car garage for personal use and necessity. Mr. Vito provided Google Earth pictures of the property and a list of all the neighbors that are agreeable to their petition. Mr. Vito explained that his Father-In-Law is moving into their home so that is why the garage is wider (30' x 30'); they need an internal handicap ramp for him. The proposed garage will be attached to the existing home.

Ms. Mellen asked if they would have two driveways, Mr. Vito replied that they would be connecting the driveways and planting grass when the old driveway is moved. Mr. Yeghian asked if the external look would match the existing home. Yes they would use the same materials as are on their house. Mr. Yeghian also noted the curb may need to be moved for the driveway. Building Commissioner Barry Ringler stated that the curb location would need to be confirmed with the DPW but he has no objections to the proposed width of the driveway.

Ms. Mellen asked if the applicants would be proposing any commercial uses in the garage, Mr. Vito stated that it is just for him and his wife, they have lived in the neighborhood for 24 years and raised their family there. They would just have standard outlets and lighting in the garage, no running water is needed.

Mr. Ovrut read the neighborhood petition into the record. Mr. Brown asked if any neighbors declined to sign the petition, Mr. Vito stated that all 30 of the neighbors signed in favor of the petition.

A motion to close the Public Hearing was made by Mr. Brown and seconded by Ms. Mellen. Roll call vote: David Brown - yes, Kim Mellen - yes, Barney Ovrut – yes, motion passed.

Mr. Ovrut stated that in order to grant a Special Permit under Section 5.4.2., the Board must find that the proposed re-construction, extension or alteration shall not be substantially more detrimental to the neighborhood than the existing non-conformity. Due to the neighborhood support he feels confident in stating that the new garage would not be substantially more detrimental. This project is similar to one that was constructed on another street in the neighborhood in the past two years (Hallowell Road). The neighborhood has curvy streets which make the homes hard to locate within in the required setbacks.

Mr. Ovrut proposes conditions that: the proposed garage be a 1-½ story, two-car structure that shall be constructed in accordance with the submitted plans; the location of the proposed garage shall be as shown on the zoning plan with a front yard setback of no less than 16.3 feet; the external materials used for the proposed garage shall match the current structure; the proposed garage shall not be used for commercial purposes; any curb cut matters shall be addressed with the Town Highway Department.

A motion to grant the requested Special Permit for a 1 ½ story two-car attached garage at 5 Harlow Road with the conditions as noted this evening was made by Mr. Brown and seconded by Ms. Mellen. Roll call vote: David Brown - yes, Kim Mellen - yes, Barney Ovrut – yes, motion passed.

**7:10 p.m. Lucas C. Schurman seeks a Variance pursuant to Section 4.1.1., Table 4-1 of the Code of the Town of Foxborough, Massachusetts, Chapter 275: Zoning, to allow a side yard setback of 20 feet where 25 feet is required and a Modification to Case #89-27 to eliminate or modify Condition #1 to allow the footprint of an existing four-family dwelling to be expanded with the addition of a fifth dwelling unit. The property, located at 41 Sherman Street, is in the R-15 Residential and Agricultural District and is not located in any restrictive overlay district.** Mr. Lucas was present as well as his Attorney Frank Spillane. Atty. Spillane explained that this property is located in the R-15 district and the lot has approximately 48,300 sq. ft. with 133 feet of frontage. The existing structure dates from 1945 with a front yard setback of 25.9 feet and a side yard setback of 15.4 feet. The structure is currently being used as a four family house which was allowed under ZBA Case 89-27. In the 1989 case, the side yard setback was noted as 11.4 feet, it has been measured and it is actually 15.4 feet so Atty. Spillane is not sure what the error was at that time. The 1989 decision considered the structure a pre-existing non-conforming structure due to the side yard setback; they determined the multifamily use was not substantially more detrimental to the neighborhood in that case.

Under this application the structure is not a pre-existing non-conforming structure as the side yard setback is actually compliant. This petition is to add an additional fifth unit making the four-family a five-family, a Variance is being asked for as the side setback of the proposed addition is 20 feet where 25 feet is required. The addition will be a one floor two-bedroom in-law unit with an attached garage and contain approximately 2,100 sq. ft.; the proposed garage would contain approximately 294 sq. ft. There is a condition in the 1989 decision which stated the footprint of the building could not be expanded; Atty. Spillane asks that this condition be modified or eliminated.

The Board members asked if the addition could be moved out of the side setback, if it was moved, the driveway and parking would have to be moved and the addition would not line up with the current structure. Atty. Spillane explained that housing units are in high demand in Foxboro, especially one floor living.

Atty. Spillane feels the lot is an odd shaped lot with the railroad tracks and a commercial development to the rear of the property. They tried to make the shape and location of the addition aesthetically pleasing. They also looked into tearing down and reconstructing but this would be a great financial hardship on the building owner. The Shurman's have owned and lived in the house for many years, Mr. Shurman and his family live in one unit, his father lives in another, a family friend lives in the third and the fourth is rented out. This addition would be for Mr. Shurman's in-laws.

The addition would be connected to the existing building with a 17 foot long connector which would serve as a pantry in the in-law apartment. If a variance is not approved, they would need to make the addition narrower, which would reduce the living space.

The Board noted that Variance criteria requires a hardship or a problem with the soil, shape or topography of the lot. Atty. Spillane feels having to tear down and reconstruct the building is a financial hardship to the owner.

The Board asked if there is enough room for the required parking. Yes, there is plenty of room for the additional parking plus there will be parking available in the garage. This would also need to go before the Planning Board of approval. The Sherman Street neighborhood consists of multi-families and single family homes.

Ms. Mellen asked if the existing outside staircases would remain with the addition. Yes, they are planning on keeping the existing staircases.

Abutter Andrew Ballantyne of 51 Sherman Street asked if there would be any impact to on-street parking. Mr. Shurman stated that all the vehicles can be parked on the property and should not be parking on the street. Atty. Spillane noted that off-street parking is a requirement for multi-family homes.

A motion to close the Public Hearing was made by Mr. Brown and seconded by Ms. Mellen. Roll call vote: David Brown - yes, Kim Mellen - yes, Barney Ovrut – yes, motion passed.

The Board moved immediately into deliberations.

Mr. Brown asked if there were any alternate plans, he is not agreeable to the look of this addition. Ms. Mellen stated that she can appreciate the applicant wanting family close but is having trouble with the financials of demolition/reconstruction being a hardship. Mr. Ovrut does not feel the Variance criteria is being met and the applicant should explore other options. Mr. Yeghian feels the addition is an odd shaped structure that does not sit well on the site. Ms. Brue would rather see one continuous structure.

Atty. Spillane stated that the applicant will have the architect look at reducing the exterior staircases to bring the structure closer to the existing building and asked for a continuance to the next meeting. He also stated that the Board should consider the restructuring of the parking areas as a hardship. The applicant will also grant the Board extended time to render a decision to the end of April, 2021.

A motion to continue the deliberations for 41 Sherman Street to March 18, 2021 with an extension of time to render a decision to April 30, 2021 was made by Mr. Brown and seconded by Ms. Mellen. Roll call vote: David Brown - yes, Kim Mellen - yes, Barney Ovrut – yes, motion passed.

**GENERAL BUSINESS**

The Board reviewed the minutes of January 21, 2021.

A motion to approve the minutes of January 21, 2021 as amended was made by Mr. Brown and seconded by Ms. Mellen. Roll call vote: David Brown - yes, Kim Mellen - yes, Lorraine Brue – yes, Kurt Yeghian – yes, Barney Ovrut – yes, motion passed.

A motion to the meeting was made by Mr. Brown and seconded by Ms. Mellen. Roll call vote: David Brown - yes, Kim Mellen - yes, Lorraine Brue – yes, Kurt Yeghian – yes, Barney Ovrut – yes, motion passed.

The meeting was adjourned at 8:25 p.m.

Respectfully Submitted,

Diana Gray

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Signed on behalf of the Board

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Kim Mellen, Clerk