

23Z-17



BOARD OF APPEALS
TOWN OF FOXBOROUGH

40 SOUTH STREET
MASSACHUSETTS
02035

RECEIVED
TOWN CLERK

2023 OCT -5 A 10: 29

FOXBOROUGH, MA 02035

APPLICATION FOR BOARD OF APPEALS HEARING

Beverly Kristenson Helton

Name of Applicant: John Thearon Helton Tel# _____

Mailing Address: 310 Cocasset St., Foxborough, MA 02035

Location of Property Subject of the Hearing: 310 Cocasset Street

Assessors Map #: 097 Parcel #: 002 Zoning District: R-40

Is the property located in any zoning overlay district? No XX Yes ____ If yes, please identify overlay district _____

Owner of Subject Property (if different than applicant): Same

Address of Owner (if different than applicant's address): Same

Were previous decisions rendered on the subject property?: No ____ Yes XX . If yes, please

Provide copy of decision(s). Case No. 22-03

***NATURE OF APPLICATION (complete appropriate hearing request):**

1. Request for a **SPECIAL PERMIT** under Section 5.4.2. of the Zoning By-Laws to allow See Attached

2. Request for a **VARIANCE** from Section _____ of the Zoning By-Laws to allow

3. An **ADMINISTRATIVE APPEAL** in accordance with Section 10.2.2 of the Zoning By-Laws (explain): _____

4. **OTHER** (i.e. Comprehensive Permit, Finding or Sign Bylaw - Chapter 213 Signs)

Explain: See Attached

*If necessary, attach additional description page(s).

Board of Appeals
TOWN OF FOXBOROUGH

Attachment To
APPLICATION FOR BOARD OF APPEALS HEARING

Name of Applicant: John Thearon Helton & Beverly Kristenson Helton
Mailing Address: 310 Cocasset Street
Foxborough, MA 02035

Location of Property Subject of the Hearing: 310 Cocasset Street
Assessors: Map 097 Parcel 002 Zoning District: R-40

Owners and Address of Subject Property: Same as Applicant

NATURE OF APPLICATION:

1. Request for a SPECIAL PERMIT from Section 5.4.2. to allow the alteration to a preexisting nonconforming lot with 12,015 square feet of area where 40,000 square feet is required and 115.76 feet of frontage where 200 feet is required and contains a preexisting nonconforming single family dwelling with a front yard of 26.9 feet where 35 feet is required so that the altered lot contains 12,015 square feet of area, 115.76 feet of frontage, a front yard of 26.9 feet, and meets all other yard requirements.
4. OTHER Explain: Any other required special permit(s), finding(s), and/or variance(s) to allow the preexisting nonconforming lot to be altered.

I, JOHN TREARON HELTON as applicant, hereby request a hearing before the Foxborough Zoning Board of Appeals as referenced in the above application.

Applicant's Signature: [Signature] Date: 09/19/2023

***If applicant is other than owner of subject property, owner must sign authorization below.**

I, _____ as owner of subject property, hereby authorize the applicant, _____, to act on matters before the Foxborough Zoning Board of Appeals as referenced in the above application.

Subject Property Owner's Signature: _____ Date: _____

Official Use Only

Tax Collector's Release

The above referenced applicant is applying for a permit from the Zoning Board of Appeals and is in good standing with respect to any taxes, fees, assessments, betterments or other municipal charges as recorded with the Treasurer's Office.

Tax Collector or Agent's Signature: [Signature] Date: 9/19/23

Town Clerk Receipt

The above referenced application has been received and recorded with the Town Clerk.

Town Clerk or Agent's Signature: [Signature] Date: October 5, 2023

INSTRUCTIONS FOR APPLICATION FILING: INCLUDE EIGHT (8) COPIES EACH.

1. Completed application with all signatures affixed.
2. Copy of assessor's map showing parcel subject to hearing.
3. Plot Plan, certified by land surveyor or civil engineer showing proposed work (Mortgage survey plans will not be accepted).
4. Construction plans showing building elevations with dimensions (if applicable).
5. If an administrative appeal, include denial letter or zoning determination from the Building Commissioner or other Town Official (if applicable).
6. Abutter's List (within 300 feet of subject property), certified by the Town Assessor.
7. Any additional documentation relevant to the hearing.
8. Appropriate fees (See Fee Schedule)



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TOWN OF FOXBOROUGH
40 SOUTH STREET
FOXBOROUGH, MASSACHUSETTS 02035

PAID

(508) 543-1215

Fax: (508) 543-6278

CERTIFICATION OF ABUTTERS

PROPERTY OWNER: John Thearon Helton & Beverly Kristensen Helton

MAILING ADDRESS: 310 Cocasset Street, Foxborough, MA 02035

PROPERTY LOCATION: 310 Cocasset Street

ASSESSORS MAP/PARCEL: Map 097 Parcel 002

APPLICANT: Frank Spillane PHONE: 508-543-0100 x312
closings@spillaneandspillane.com

AUTHORITY REQUESTING LIST: Attorney

DATE SUBMITTED: 9/14/2023

LIST REQUESTED: 500 FT 300 FT 100FT ABUTTER TO ABUTTER

I, Anna Helton, acting as a custodian of assessment records, do hereby certify that the attached documents contain true and complete information from the most recent tax list of the Town of Foxborough, Massachusetts.

I further state that these documents include the names and addresses of abutters to the abutters Map 097 lot 002

Date: September 14, 2023

**BOARD OF ASSESSORS
FOXBOROUGH MASSACHUSETTS**

Massachusetts General Law c. 40A, s.11, "The assessors maintaining any applicable tax list shall certify to the permit granting authority or special permit granting authority the names and addresses of parties in interest and such certification shall be conclusive for all purposes."

The Assessors Office will complete the abutters list within 7-10 business days. There is a \$25.00 fee for an abutters list.

"The applicant is solely responsible for requesting the appropriate abutters list required by the applicable Mass General Law."



300 feet Abutters List Report

Foxborough, MA
September 15, 2023

Subject Property:

Parcel Number: 097-002-000
CAMA Number: 097-002-000
Property Address: 310 COCASSET STREET

Mailing Address: HELTON JOHN THEARON & BEVERLY
KRISTENSON TE
310 COCASSET STREET
FOXBOROUGH, MA 02035

Abutters:

Parcel Number: 083-018-000
CAMA Number: 083-018-000
Property Address: 3 FAIRBANKS ROAD

Mailing Address: FULLER RAYMOND R & TERESA D TE
3 FAIRBANKS ROAD
FOXBORO, MA 02035

Parcel Number: 084-060-000
CAMA Number: 084-060-000
Property Address: FAIRBANKS RD

Mailing Address: BISANTI ROBERT C. & BISANTI JOHN ET
AL
6 TOAD ISLAND ROAD
NORTON, MA 02766

Parcel Number: 096-009-000
CAMA Number: 096-009-000
Property Address: 305 COCASSET STREET

Mailing Address: SAVAGE HELENE D & MICHAEL D TE
305 COCASSET STREET
FOXBOROUGH, MA 02035

Parcel Number: 097-001-000
CAMA Number: 097-001-000
Property Address: 308 COCASSET STREET

Mailing Address: BLAIS RICHARD & CAROL
308 COCASSET STREET
FOXBOROUGH, MA 02035-0000

Parcel Number: 097-003-000
CAMA Number: 097-003-000
Property Address: 1 STOCKBRIDGE ROAD

Mailing Address: LINNEHAN DANIEL L & STEPHANIE L TE
1 STOCKBRIDGE ROAD
FOXBOROUGH, MA 02035-0000

Parcel Number: 097-004-000
CAMA Number: 097-004-000
Property Address: 3 STOCKBRIDGE ROAD

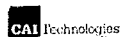
Mailing Address: COURTNEY NICHOLAS P & HARMONY M
TE
3 STOCKBRIDGE ROAD
FOXBOROUGH, MA 02035

Parcel Number: 097-064-000
CAMA Number: 097-064-000
Property Address: 16 MORSE STREET

Mailing Address: TOWN OF FOXBOROUGH SCHOOL
DEPT
40 SOUTH STREET
FOXBOROUGH, MA 02035-0000

Parcel Number: 097-065-000
CAMA Number: 097-065-000
Property Address: 311 COCASSET STREET

Mailing Address: GARCIA VALERIE S
311 COCASSET STREET
FOXBOROUGH, MA 02035



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9/15/2023

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2022 MAR -4 A 11: 14
FOXBOROUGH, MA 02035

Record and Decision

February 2022

Case No. 22-03

Name of Applicants:

John Thearon Helton & Beverly Kristenson Helton

Nature of Application:

Request pursuant to Section 4.3.1. of the *Code of the Town of Foxborough, Massachusetts, Chapter 275: Zoning*, for a variance to allow access to the property that is located at 310 Cocasset Street, Foxborough, Massachusetts, not through or across its legal frontage, and any other special permit(s), variance(s) or finding(s) as may be required with respect to the foregoing. The referenced property is in the R-40 Residential and Agricultural District. It is not in any restrictive overlay district.

A public hearing on the referenced Application was held by the Foxborough Zoning Board of Appeals (the "Board") at 7:10 p.m. on February 17, 2022, in the Andrew A. Gala Jr. Meeting Room of the Foxborough Town Hall, 40 South Street, Foxborough, Massachusetts, and remotely by "Zoom" in accordance with Chapter 20 of the Massachusetts Acts of 2021, after notification by publication in *The Foxboro Reporter*, by posting on the Notice Bulletin Board in the Foxborough Town Hall, and by mailing to all parties in interest (as defined by G.L. Chapter 40A, Section 11), all as required by law. Members of the Board present and acting on the Application throughout were:

Barnett D. Ovrut, Chairman
David J. Brown, Member
Kimberly A. Mellen, Member.¹

¹ The referenced Board Members and Associate Member Kurt J. Yeghian attended the hearing in person.

February 2022

This matter concerns a request for a variance pursuant to Section 4.3.1. of the *Code of the Town of Foxborough, Massachusetts, Chapter 275: Zoning* (the "Zoning Bylaw"), to allow Applicants John Thearon Helton and Beverly Kristenson Helton to access the property situated at 310 Cocasset Street, Foxborough, Massachusetts (the "Subject Property"), not through or across that lot's legal frontage, and any other special permit(s), variance(s) and finding(s) as may be required with respect to the foregoing. The Subject Property is located in the R-40 Residential and Agricultural District. It is not in any restrictive overlay district.

Mr. and Mrs. Helton appeared at the hearing together with Francis J. Spillane, their attorney. Mr. Spillane provided information concerning the Subject Property's topography, dimensional features and ownership history, noting in this respect that the Subject Property is a pre-existing nonconforming lot as it contains 12,015 square feet of area where 40,000 square feet is required, 115.76 feet of frontage on Cocasset Street where 200 feet is required, and a lot width of 97 feet where 134 feet is required (100 feet from the street). The property's residential structure is similarly pre-existing and nonconforming as it has a front yard setback of 27 feet where 35 feet is required.

Mr. Spillane further indicated that the original lot with a residential structure thereon dates to May 1923 (the "Original Property"). The Original Property at such time contained 8,625 square feet of area and 75 feet of frontage on Cocasset Street. The property was purchased on July 17, 1987 by Ms. Helton (then known as Beverly Kristenson Jaeger) and her then husband, Bryan Jaeger. What is designated as Parcel B on a plan by Bay Colony Group, Inc. that is dated November 21, 1998 and is entitled PLAN OF LAND IN FOXBOROUGH, MA SUNRISE COURT (the "Sunrise Court Plan"), a copy of which is attached hereto and incorporated herein by reference as Attachment A, was acquired by the Jaegers on January 25, 1999 in connection with the approval of the Sunrise Court Plan by the Town of Foxborough Planning Board. These actions added 3,390 square feet of land and 40.76 feet of frontage on Cocasset Street to the premises, increasing the dimensions of such property to those discussed in the previous paragraph.² They also provided the Jaegers with the right to use the newly-created Stockbridge Road and an easement (the "Access Easement") over the property that is designated as Lot 1A on the Sunrise Court Plan in order to access their lot. Significantly, a portion of Parcel B and the land to its front that borders Stockbridge Road and is part of the aforesaid Lot 1A are subject to a drainage easement (the "Drainage Easement") that is for the benefit of drainage from such roadway. The area of the Drainage Easement is located immediately to the left in front of the Subject Property when one accesses Stockbridge Road from Cocasset Street, as is reflected on the Sunrise Court Plan.

Various transactions that were effected in 2007 and 2021 have resulted in the transfer of the Original Property, Parcel B and the right to use Stockbridge Road and the Access Easement to John Thearon Helton and Beverly Kristenson Helton. A new easement (the "Driveway Easement") was granted on November 7, 2021 to the Heltons by Daniel Linnehan and Stephanie Linnehan, the owners of 1 Stockbridge Road (the premises designated as Lot 1A on the Sunrise Court Plan). The Driveway Easement provides the Heltons with the right to access the Subject Property over the Linnehans' property, as the same is shown on the plan by Bay Colony Group,

² The Original Property and Parcel B together constitute the Subject Property.

Inc. that is dated September 25, 2020 and is entitled DRIVEWAY EASEMENT PLAN OF LAND FOR 310 COCASSET STREET FOXBOROUGH, MA (the "Driveway Easement Plan"), that is attached hereto and incorporated herein by reference as Attachment B.³ The Driveway Easement was required because of an error with respect to the driveway's location as shown on the Access Easement and because that instrument terminated with the sale of Parcel B. As indicated both by the Sunrise Court Plan and the Driveway Easement Plan, the land over which the Driveway Easement crosses is part of the frontage for the Linnehans' property.

Access to the Subject Property prior to construction of Stockbridge Road and the grant of the Access Easement was by means of a no-longer existent driveway off of Cocasset Street. That driveway essentially is at the current location of Stockbridge Road. Notwithstanding the fact that the Subject Property is designated with an address on Cocasset Street, the front of the property's residential structure faces Stockbridge Road and has faced in that direction for the entirety of its existence.⁴ However, as is shown on the Sunrise Court Plan, the Subject Property's easterly boundary ends where it abuts the Drain Easement on Lot 1A. Because the latter parcel requires that property's area and its frontage on Stockbridge Road in order to conform with applicable requirements of the *Zoning Bylaw*, it cannot be conveyed to the Heltons. As such, the Subject Property is without any ability to have frontage along Stockbridge Road, with access to the premises from that roadway accomplished by means of the Driveway Easement over land that does not constitute the lot's legal frontage.

Section 4.3.1. of the *Zoning Bylaw* in pertinent part provides that "access to all lots shall only be through or across its legal frontage." This requirement is repeated in the definition of "frontage" that is set forth in Section 11.1. of the *Zoning Bylaw*, which definition additionally states that frontage is the "distance along a lot line which abuts a street or streets." The variance from Section 4.3.1. has been requested in order to allow the Heltons to access the Subject Property by means of the Driveway Easement over land that is not the Subject Property's frontage.

The requirements for a variance are set forth in Section 10.2.2 of the *Zoning Bylaw*. As provided therein, the Board is authorized to grant a variance if (i) the Board specifically finds that circumstances relating to soil conditions, shape or topography of such land and especially affecting that land but not affecting generally the zoning district in which it is located would, if the *Zoning Bylaw* were literally enforced, involve substantial financial or other hardship to the applicant, and (ii) the Board finds that the desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purposes of the *Zoning Bylaw*.

To determine that a specific variance is justified, the Board must find evidence demonstrating compliance with each of these prerequisites. The Board is constrained by the criteria of Section 10.2.2 in its considerations. Accordingly, the Board may grant a variance *only* if it concludes that literal enforcement of applicable provisions of the *Zoning Bylaw* will result in a situation of *substantial* hardship to a property owner by reason of circumstances relating to the soil

³ The reference in the Driveway Easement Plan to "Exhibit A" reflects the fact that this instrument was Exhibit A to the Driveway easement Agreement by and between the Heltons and Linnehans.

⁴ The Foxborough office of the United States Postal Service in 1998 or 1999 authorized the mail box for the premises to be moved from Cocasset Street to Stockbridge Road.

conditions, shape or topography of the property at issue. It is necessary in this respect that such hardship must arise from the property's soil conditions, shape or topography. Similarly, a variance is permitted only in the absence of *substantial* detriment to the public good and *substantial* derogation or nullification of the intent or purpose of the *Zoning Bylaw*. Though every variance in-and-of itself in some manner will derogate from the intent or purpose of the *Zoning Bylaw*, the Board may grant a variance *only* if it determines that the variance would not result in *substantial* derogation of such intent or purpose.

Mr. Spillane in support of the requested variance stated that literal enforcement of Section 4.3.1. would cause substantial hardship to the Heltons by potentially requiring them to relocate access to the Subject Property from Cocasset Street and incurring costs to construct a driveway from that point and to remove the property's current driveway. He further indicated that accessing and exiting the premises from and onto Cocasset Street would constitute a safety issue in view of the nature of that roadway and the speeds of vehicles traveling on it. Mr. Spillane expressed that such hardships are the direct result of the Subject Property's shape and the existence of the drainage easement on a portion of the premises. Finally, he noted that granting the desired relief would neither be substantially detrimental to the public good nor substantially derogate from the *Zoning Bylaw's* intent or purpose as it would avoid the traffic and safety issues that otherwise might result from vehicles accessing and exiting the Subject Property from and onto Cocasset Street.

The consensus of the Board after discussion was that the requested variance was warranted. This position is based on the following:

- The existence of the Drainage Easement on the portion of the Subject Property that is designated as Parcel B on the Sunrise Court Plan is a topographical feature that is unique to the R-40 Residential and Agricultural District. The Drainage Easement dictates that access to the premises be restricted either to Cocasset Street or, as has been the case since 1999, to Stockbridge Road previously by means of the Access Easement and currently by means of the Driveway Easement.
- Requiring that the Subject Property be accessed across its legal frontage on Cocasset Street would constitute a substantial hardship as it would present the safety issues that Mr. Spillane expressed and that members of the Board recognize and understand from personal experience. That requirement similarly would require potentially substantial financial expenditures by the Heltons that otherwise can be avoided by granting the variance. These hardships exist only by reason of the factors discussed in the previous paragraph.
- In view of the fact that no opposition to the Application was presented to the Board, the fact that the variance would provide authorization under the *Zoning Bylaw* for a situation that has been in existence for a number of years (i.e., access to the premises other than across its legal frontage), and because the ability to access the Subject Property from Stockbridge Road addresses the safety issues that would be presented were such access to be required from Cocasset Street, the Board is of the belief that granting the requested variance neither would be substantially detrimental to the public good nor would it substantially derogate from the intent and purpose of the *Zoning Bylaw*.

Based upon the above, the Board voted unanimously (3-0) on motion duly made and seconded to approve the requested variance.

This Decision shall be of no effect until recorded in the Norfolk County Registry of Deeds after certification by the Foxborough Town Clerk as required by G.L. Chapter 40A, Section 11. Any appeals from this Decision shall be made pursuant to G.L. Chapter 40A, Section 17, and shall be filed within twenty (20) days after this Decision has been filed with the Foxborough Town Clerk.

The foregoing is a true copy of Decision No. 22-03 issued by the Board of Appeals of Foxborough, Massachusetts. Original counterpart copies of this Decision have been filed with the Foxborough Town Clerk and the Foxborough Planning Board.

**FOXBOROUGH ZONING BOARD
OF APPEALS**

Dated:

Mar 4, 2022

Barnett D. Ovrut
Barnett D. Ovrut

David J. Brown
David J. Brown

Kimberly A. Mellen
Kimberly A. Mellen

