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BOARD OF APPEALS CASE NO. 18-28

PETITION OF EUGENE FAINI AND JOSEPHINE FAINI LIFE ESTATE

DATE OF DECISION: NOVEMBER 13, 2018

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on an appeal filed by EUGENE FAINI and JOSEPHINE FAINI LIFE ESTATE (hereinafter the Appellants), for property located at 24 WILDE AVENUE. The Appellants filed a Petition to Overturn the Building Commissioner's determination that a Special Permit may not be granted for a new duplex; they also requested a Special Permit for the duplex and Variances for insufficient lot area, lot frontage, lot width, and front and side setbacks (hereinafter the Petition).

2. Applicant

Eugene Faini
2 Rock St.
Framingham, MA 01702

Property Owner

Josephine Faini Life Estate
2 Rock St.
Framingham, MA 01702

3. Location

Property is located at 24 Wilde Avenue and identified by Assessors' Parcel ID 133-44-7211-00 (hereinafter the Site).

4. Board Action

After due consideration of the Petition, the record of proceedings, and based upon the findings set forth below, on November 13, 2018 the Board voted in favor of the requested appeal to OVERTURN the decision of the Building Commissioner and GRANT the Special Permit and Variance for lot width, front and side setbacks by a unanimous vote of three members sitting on the application. The record of the vote is stated as follows:

PHILIP R. OTTAVIANI, JR.	YES
STEPHEN MELTZER	YES
SUSAN S. CRAIGHEAD	YES

5. Proceedings

The Petition was received by the Board on September 4, 2018 pursuant to M.G.L. Chapter 40A, §8, §9, and §10 and the Framingham Zoning Bylaw. The Appellants presented the Petition to the Board at a duly noticed public hearing of the Board on October 9, 2018 at 7:15 PM in the Blumer Room of the Memorial Building. The hearing was subsequently continued to November 13 at which point a decision was made. Board Members Philip R. Ottaviani, Jr., Stephen

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Meltzer, Susan Craighead, and Alternates Joseph Norton and Rick McKenna were present throughout the proceedings. Due to potential imminent changes to the makeup of the Board, Mr. Ottaviani appointed Mr. Cosgrove, Mr. Norton, and Mr. McKenna as alternates. The minutes of the public hearing and submissions on which this Decision is based, which together with this Decision constitute the record of the proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

At the October 9 meeting, Mr. Richard Barbieri introduced himself as the representative and property owners, Mr. Gene and Mrs. Chrissy Faini. He proceeded to explain the request to demolish and replace an existing garage with a two family dwelling, creating a new non-conforming lot.

Mr. Ottaviani read comments submitted by the Conservation Commission, Building Commissioner, and a letter of opposition. Mr. Barbieri addressed Conservation Commission concerns and responded, that parking spaces were preexisting and the removal of the swimming pool would reduce storm water runoff post construction.

Board members voiced concerns about the nonconformities in the proposal and requested to see an Approval Not Required (ANR) plan that would bring the lot in question into greater conformance. Mr. Meltzer asked to see a parking plan, floor plans, and elevations. Mr. Barbieri responded, the applicant did not want to invest money into creating such plans until he received a consensus from the board. Mr. McKenna voiced concerns regarding precedent and the character of the neighborhood.

City Councilor Judith Grove voiced concerns regarding parking, and neighborhood character. Some neighbors expressed concerns about too much density in the neighborhood, while others spoke in support, noting that the project would be similar in character to many houses in the neighborhood.

Mr. Ottaviani requested the Appellant address Ms. Craighead's concerns and mentioned that the board would conduct a site visit.

At the November 13 meeting, the Appellant presented the requested ANR plan and a petition of support from neighborhood residents, with approximately 20 signatures. The Board had no further concerns and moved to approve as presented.

6. Exhibits

Submitted for the Board's deliberation were the following exhibits:

- 6.1. Letter from the Deputy Building Commissioner dated August 31, 2018, denying the application.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on September 4, 2018.
- 6.3. Filing fee in the amount of \$300.00.

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- 6.4. Conservation Administrator comments dated September 17, 2018.
- 6.5. Comments of the Deputy Building Commissioner dated September 17, 2018.
- 6.6. Petition of support from neighbors submitted on November 13, 2018.
- 6.7. Proposed west elevation drawing depicting the duplex as viewed from Wilde Ave., undated and unattributed.
- 6.8. Proposed site plan showing location of proposed new duplex and associated parking, prepared by Ronald R. Turchi, 9 Gilmore Farm Road, Westborough, MA 01581, dated July 27, 2018.
- 6.9. Plan of land showing lot line change for Planning Board endorsement, prepared by Ronald R. Turchi, 9 Gilmore Farm Road, Westborough, MA 01581, dated November 8, 2018.

Exhibits 6.7, 6.8 and 6.9 shall be hereinafter referred to as the “Plans”.

7. Findings and Conclusions

Based upon its review of the Petition, exhibits, and the public hearing thereon, the Board makes the following findings and conclusions:

- 7.1 The property is located within the General Residence (G) zoning district.
- 7.2 On August 31, 2018, the Building Commissioner denied the application to construct a new nonconforming duplex on a nonconforming lot, under §II.B.I.B of the Zoning By-Law. The Zoning Bylaw requires a Special Permit for a duplex in the G zone, and Footnote 8 of the Table of Uses states: *“The Zoning Board of Appeals shall not grant a special permit for a nonconforming lot or structure. The Lot and structure shall conform to the existing area, frontage, width, setback, and lot coverage requirements applicable to the zoning districts in which they are located. Off-street parking shall be provided for both dwelling units in accordance with the requirements set forth in Section IV.B.”*
- 7.3 On September 4, 2018, the Appellant filed with the City Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of overturning the decision of the Building Commissioner and obtaining a Special Permit and Variances.
- 7.4 Notice of the public hearing was duly published in “THE METROWEST DAILY NEWS” on September 24 and October 1, 2018 and mailed to all parties-in-interest, as defined by M.G.L. c. 40A, §11.
- 7.5 The Appellant owns three contiguous lots as shown on the site plan (exhibit 6.8). Lots labeled #16 and #17 on the plan have been merged by the Assessor for tax purposes and are known as 24 Wilde Ave. Lot #27 is identified as 4 Ellis Court and has frontage on the unbuilt portion of that private way. All three lots are in common ownership.
- 7.6 The proposed duplex would be built on Lot #17 and have a side setback of 5 feet on the south side, where 10 feet are required in the G zone. Lot #17 has 50 feet of frontage on Wilde Ave, where 65 feet are required. The duplex would have a front setback of 25 feet where 30 feet are required. Lot #17 has 6,240 sq. ft. of area; 8,000 sq. ft. are required in the G zone. The lot width requirement is 80% of the required frontage requirement; 50

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feet is less than 80% of 65 feet. Therefore, the proposed lot width is also noncompliant as proposed.

7.7 At the October 9, 2018 meeting, the Board asked the Appellant to attempt to redraw the lot lines to make the lots more conforming, noting that Lots 16 and 27 had excess area. At the November 13 meeting, the Appellant presented a new plot plan (Exhibit 6.9) which shows the new duplex on a lot of 8,285 sq. ft., bringing it into compliance. The lot frontage would widen to 65 ft. by taking a sliver of land from the adjacent Lot 16. Variances for front and side setback and lot width would still be necessary in addition to the Special Permit.

7.8 The Board noted that most neighbors were in favor of the plan as presented through a petition, and that no direct abutters would be negatively impacted.

7.9 The Board voted in favor of a motion to approve as presented. The decision of the Building Commissioner is hereby OVERTURNED and a Special Permit and Variances for side setback and lot width are GRANTED.

7.10 Subject to the conditions stated in this Decision, the Board finds that the following conditions of approval of a Special Permit have been met:

7.10.1 The specific site is an appropriate one for such a use or structure. *The property is located in the General Residence zoning district which allows duplexes through a Special Permit. Additionally, other duplexes exist in the neighborhood and the site is currently occupied by a garage.*

7.10.2 Adequate and appropriate facilities will be provided for the proper operation of the proposed use, including adequate off-street parking. *Sufficient parking will be provided for the units.*

7.10.3 The use or structure as developed will not create a hazard to abutters, vehicles, or pedestrians.

7.10.4 The use or structure is consistent with the Intent of the district in which the use is proposed, and with the Purpose and Intent of this By-Law. *The property is located in the General Residence zoning district which allows duplexes through a Special Permit.*

7.10.5 All municipal services necessary to meet the needs of the proposed use must be adequate and sufficient. *All services necessary to meet the needs of the proposed use are adequate and sufficient.*

7.11 The Variance standard established by the G.L. c. 40A §10 and the Framingham Zoning By-Law is a demanding criterion. The Board must find that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures, which especially affect such land or structures but do not affect generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance

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or by-law. Also, the circumstances under which a Variance may be granted are not unlimited.

7.12 There are circumstances relating to the soil conditions, shape, or topography of the land or structures for which the Variance is being sought. *Lot 17 is lawfully pre-existing, undersized, and with less than the required width.* Such circumstances especially affect such land or structures but do not affect generally the zoning district in which the land or structures are located.

7.13 Owing to such circumstances, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner.

7.14 The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the By-Law or from the intent of the district in which the Variance is being sought. *The Variances requested are minor and in keeping with the character of the neighborhood, which has many duplexes with undersized lots.*

7.15 The Board grants this Special Permit and Variances subject to the following conditions:

7.15.1 The proposed duplex shall be developed as shown on the Plans.

7.16 This Decision applies only to the requested Special Permit. Other approvals or permits required by the By-Law, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.

7.17 If the rights authorized by this Special Permit are not exercised within three years of the date of filing of the Decision with the City Clerk, said Special Permit shall lapse; provided, however, that the Board in its discretion and upon written application by the Applicant may extend the time for exercise of such rights. A request for extension shall require a new public hearing pursuant to MGL, Ch. 40A, §9. The Board herewith reserves its rights and powers to grant or deny such extension, and to require any appropriate changes to this approval.

7.18 If the rights authorized by this Variance are not exercised within one year of the date of grant of such Variance, such rights shall lapse. The Applicant may request an extension to the one year period by submitting a written Application for extension prior to expiration of the one year period. However it is solely within the discretion of the Board to grant such an extension. An extension shall be for a period not to exceed six (6) months. If the Board fails to act on the request for extension within thirty days of the date of the requested extension, all rights authorized by this Variance shall lapse at the expiration of the one year period. If the Variance lapses, such rights pertaining to the Variance may only be reestablished after notice and a new hearing pursuant to G.L. c. 40A, §10.

7.19 This Decision shall be recorded at (as appropriate) the Middlesex South District Registry of Deeds or District of the Land Court prior to the issuance of a Building Permit. A copy of the recorded or filed Decision certified by the Registry, and notification by the owner of the recording, including recording information, shall be furnished to the Board and the Building Official.

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7.20 The terms, conditions and provisions of this Decision shall run with the land and shall be binding upon the Applicant, its successors in interest and assigns, and shall be enforceable by the Town of Framingham.

8. Appeals

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, §17 and shall be filed within twenty (20) days after the date of filing this Decision with the City Clerk.

ZONING BOARD OF APPEALS

By:  _____
Philip R. Ottaviani, Jr., Chairman

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