



**Town of Sandisfield
Select Board
(413) 258-4711 Ext. 3**

Notice of Decision – Special Permit

Hearing Date: July 10, 2023

Applicant: Patricia Creem

Property: 158 New Hartford Road, Sandisfield, MA 01255 (Map 417, Lot 22)

Request:

On May 17, 2023, Patricia Creem (the “Applicant”) submitted an application to the Town of Sandisfield Select Board (the “Board”) for a special permit under Section 5 of the Town of Sandisfield Zoning Bylaws (the “Zoning Bylaws”). The Applicant seeks a special permit to alter and extend a pre-existing, non-conforming residential structure at 158 New Hartford Road (the “Property”). The structure on the Property is non-conforming as to the front yard setback.

Specifically, the Applicant seeks to “add attached garage to enter original non-conforming structure for safety reasons in snow [and] ice.” The Applicant represents that the proposed work “cannot attach at back of home – water live from well in there” [sic] and that “septic system on other side of home” [sic].

Standard of Review

In order to grant a special permit under Section 5(b) of the Zoning Bylaws, the Board must determine that a proposed change, extension, or alterations to a pre-existing non-conforming structure is not substantially more detrimental than the existing non-conforming use to the surrounding neighborhood.

Furthermore, Section 10(d) of the Zoning Bylaws requires the Board to determine that the proposed use is (1) in compliance with all provisions and requirements of the Zoning Bylaw and in harmony with its general intent and purpose; (2) is essential or desirable to the public convenience or welfare at the proposed location; (3) will not be detrimental to adjacent uses or to the established or future character of the neighborhood; (4) will not create undue traffic congestion or unduly impair pedestrian safety; and (5) will not overload any public water, drainage or sewer system or any other municipal facility to such extent that the proposed use or any existing use in the immediate area of the Town will be unduly subjected to hazards affecting the public health, safety or general welfare.

Procedural History

On July 10, 2023, at 6:30 p.m., the Board held a public hearing to review the Application. Prior to the hearing and after receipt of the Application, the Board notified the Board of Health and the Planning Board of the Application. As required under Section 10(c) of the Zoning Bylaws, the Planning Board submitted its written report on May 18, 2023, and the Board of Health submitted its written report on June 7, 2023.

In a letter dated July 2, 2023, the Applicant submitted additional arguments to the Board in support of the Application. At the public hearing, one opponent to the Application rose to speak. He expressed concerns that the proposed construction is both detrimental to the neighborhood and not in harmony with the general intent of the Zoning Bylaw. The opponent stated that all residents are required to build at a 30-foot setback and that by allowing the proposed setback of 24 feet, the structure would not conform to the Zoning Bylaw. The opponent further stated that no other homes in the area are as large or as close to the road. The Applicant responded by pointing out that the 24-foot setback was as far back as she could go while still being able to connect the basement of the old structure to the new structure.

No other parties sought to speak in favor, or in opposition, to the Application.

The Board then began its deliberations. The Board noted that under G.L. c. 40A, § 6, it is authorized to approve an extension or alteration to a pre-existing non-conforming structure so long as “such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood” When reviewing an application for a special permit under Section 5(b) of the Zoning Bylaws, the Board is required to make a similar finding:

“Pre-existing nonconforming structures or uses may be extended, alter, or changed to another nonconforming use by special permit from the Board of Selectmen provided that the Board finds that such change, extension, or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.”

Findings of Fact

With that standard in mind, and with the evidence before it in the form of the Application, letters from the Applicant, written reports from the Planning Board and the Board of Health, and a statement from one (1) opponent made at the public hearing, the Board makes the following findings:

The current pre-existing non-conforming residential structure on the Property has a 7-foot front yard setback from New Hartford Road. The proposed garage structure would be an extension of that structure and be located twenty-four (24) feet from New Hartford Road. The Board does not see and did not hear any arguments as to why the garage, as proposed, would be any more detrimental to the neighborhood as the existing use at the Property.

Furthermore, the Board finds that the Application meets the standards set forth in Section 10(d) of the Zoning Bylaws. This is an older house that has been abandoned for some time. It

would be beneficial to the Town to see it be occupied once again. The Board finds that the proposed construction would locate the structure at a 24-foot front yard setback and that because the current pre-existing non-conforming structure is located at a 7-foot front yard setback, this proposed change or alteration would not be substantially more detrimentally to the character of the neighborhood or be any more non-conforming. See Section 10(d)(3). The purpose of the structure would be to aid the residents in taking cover and having safe passage from their home to their vehicles in the winter months. See Section 10(d)(2). The proposed structure would not create any undue traffic congestion and can be authorized under Section 5(b) of the Zoning Bylaw Section 5(b). See Sections 10(d)(1) and 10(d)(4). Lastly, considerations related to the overload that the proposed structure would have on any public water, drainage or sewer system or any other municipal facility were not applicable to this application. See Section 10(d)(5).

Ultimately, the Board finds that it has granted special permits for similar work in the past. From its review of the materials before it, it is the Board's opinion that the proposed alteration and addition of a garage to the pre-existing non-conforming residential structure is in harmony with G.L. c. 40A, § 6, and Section 5(b) of the Zoning Bylaws, and will not be substantially more detrimental than the existing nonconforming use to the surrounding neighborhood.

Decision

Therefore, the Board unanimously **GRANTS** the Application for a Special Permit, pursuant to Section 5(b) of the Zoning Bylaws, to alter and extend the pre-existing non-conforming residential structure on the Property by adding an attached garage structure.

Conditions

- (1) The Applicant may not deviate from the Building Permit Site Plan submitted with her Application, which is entitled "Building Permit Site Plan Prepared for Creem Family Nominee Trust," dated March 2023, by Kelly, Granger, Parsons & Associates, Inc.
- (2) The proposed garage structure must be constructed in accordance with the Building Permit Site Plan so that the line of the addition and garage mirror the setback values provided, which reflect there is no increase in the current existing non-conformities.
- (3) Upon completion of construction, Applicant shall submit an As-Built Plan to the Building Commissioner, who shall confirm that construction was completed in accordance with the approved plans. If the As-Built Plan deviates from the plans approved herein, the Building Commissioner shall notify and refer the matter to the Select Board.
- (4) The Applicant shall record a copy of this decision with the Berkshire South Registry of Deeds in accordance with G.L. c. 40A, § 11.

Except for good cause shown, a special permit shall lapse in two (2) years if substantial use or construction has not begun under the special permit by such date. See Section 10(e) of the Zoning Bylaws.

Any person aggrieved by this Decision may file an appeal in accordance with G.L. c. 40A, § 17, to a court of competent jurisdiction within twenty (20) days of the date this Decision was filed with the office of the Town Clerk.

Steven Seddon, Chair

John Field

Robert Fedell

I, Douglas Miner, Town Clerk of the Town of Sandisfield, hereby certify that twenty (20) days have elapsed from the date this Decision was filed in the Town Clerk's Office, and that no appeal has been filed.

Douglas Miner, Town Clerk

Date