



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

Notice of Decision – Special Permit

Hearing Date: January 24, 2024

Applicants: Kurt Will and Aviva Will

Property Owner: South Branch Farm LLC

Attorney for Applicants/Owner: Alexandra H. Glover, Esq., Lazan, Glover & Puciloski, LLP,
785 Main Street, Great Barrington, MA 01230

Property: 40 Viets Road, Sandisfield, MA 01255 (Map 44, Lot 45.2)

Request:

On November 21, 2023, Kurt and Aviva Will (the “Applicant”) applied to the Town of Sandisfield Select Board (the “Board”) for a special permit pursuant to General Laws Chapter 40A, Section 6, and Section 5(b) of the Town of Sandisfield Zoning Bylaws (the “Zoning Bylaws”). The Applicant seeks a special permit to alter a pre-existing, non-conforming residential structure at 40 Viets Road, Sandisfield (the “Property”). The Property is non-conforming as to front yard setback.

Specifically, the Applicant seeks to “replace the small portion of the existing house and porch with new construction on the existing [footprint], and to add an unenclosed porch along the front of the house. The new porch would extend an additional nine feet into the setback.” According to the Application, the existing structure has approximately 25.1 feet of front yard setback. The proposed reconstructed residence and porch would have approximately 16.1 feet of front yard setback. Pursuant to Section 4(b) of the Zoning Bylaws, the required front yard setback is 30 feet.

Procedural History

On January 24, 2025, at 5:00 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 December 12, 2023, and the Board of Health submitted its written report on December 13, 2023. The Planning Board formally recommended that the Board deny the special permit application because the “plans call for an increase to the non-conformity of the building by encroaching further on the setbacks.” The Board of Health reported that it did not have any health-related concerns so long as the applicants continued to comply with applicable well and septic requirements.

At the public hearing, the Board heard from Attorney Alexandra H. Glover, who represented the Applicants. Attorney Glover explained that the Applicants are seeking, in connection with the reconstruction of the existing residence, to build a porch nine (9) feet further into the front yard setback. The porch would be open, unenclosed, and have no additional lighting. Attorney Glover further explained that the Property is abutted by woods and farmland, and there are very few homes in the vicinity. Those who do have homes in the vicinity have indicated their support of the Application.

L. Chapin Fish (32 Viets Road), an abutter, spoke in favor of the Application. Mr. Fish reported that neither he, nor anyone else on the road has any issue with the proposed scope of work, and that adding a porch to this home would be an improvement to the neighborhood.

Barbara Cormier, Chair of the Planning Board, noted that she would like the Select Board to follow the Zoning Bylaws.

No other party spoke in favor, or against, the Application. The Board is also in receipt of the following letters of support:

- Katherin Hein (7 Viets Road) dated December 6, 2023;
- Benjamin Hein (0 Viets Road) dated December 6, 2023;
- Emily Melchior (66 Fox Road & 10 New Hartford Road) dated December 8, 2023;
- Steve Stollerman (26 Viets Road) dated December 10, 2023; and
- L. Chapin Fish (32 Viets Road) dated January 24, 2024;

The Board did not receive any letters in opposition to the Application.

The Board then closed the public hearing and began its deliberations.

Standard of Review

Pursuant to G.L. c. 40A, § 6, the Board 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, Exhibits A – F to the Application, statements made by Attorney Glover, Mr. Fish, and Chair Cormier at the public hearing, and five (5) letters of support, the Board makes the following findings:

The Property is pre-existing non-conforming because the existing structure has approximately 25.1 feet of front yard setback, and a minimum of 30 feet is required. See Section 4(b) of the Zoning Bylaws. The proposed construction of a porch nine (9) feet further into the front yard setback constitutes an extension of the pre-existing non-conforming nature of the structure. However, the Property is conforming as to all other dimensional and setback requirements. Furthermore, the Board does not see and did not hear any arguments as to why reconstructing the residential structure on the Property, as proposed, would be any more detrimental to the neighborhood as compared to the existing structure at the Property. This was also supported by the fact that there are no plans for the Town to repair Viets Road.

In addition, the Board finds that the Application meets the standards set forth in Section 10(d) of the Zoning Bylaws. The Board finds that the proposed reconstruction of the residence and extension of the porch into the front yard setback would not be substantially more detrimentally to the character of the neighborhood than the existing residence. See Section 10(d)(3). The proposed structure would not create any undue traffic congestion and can be authorized under Section 5(b) of the Zoning Bylaws. See Sections 10(d)(1) and 10(d)(4). Lastly, considerations related to public convenience and 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 Sections 10(d)(2) and 10(d)(5).

Ultimately, from its review of the materials before it, it is the Board’s opinion that the proposed reconstruction of the residential structure on the Property, with an extension of the porch nine (9) feet into the front yard setback (new Front Yard Setback = 16.1’), 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 structure to the surrounding neighborhood.

Decision

Therefore, the Board unanimously **GRANTS** the Application for a Special Permit, pursuant to G.L. c. 40A, § 6, and Section 5(b) of the Zoning Bylaws, to reconstruct the pre-existing non-conforming residential structure on the Property on the same footprint as the existing residential structure, except for the front porch, which will extend nine (9) feet further into the front yard setback towards Viets Road (new Front Yard Setback = 16.1’).

Conditions

- (1) The proposed residential structure and porch shall be constructed in accordance with the Zoning Bylaws and all Dimensional Requirements, except Front Yard Setback, which is authorized herein to be no less than 16.1 feet. See Section 4 of the Zoning Bylaws.
- (2) Applicant must obtain all required federal, state, and local permits and licenses, including, but not limited to, a Building Permit under the State Building Code and a Septic Permit under Title V and Board of Health regulations.
- (3) The proposed residential structure and porch shall be constructed in accordance with the Application and all plans submitted in support of the Application, including, but not limited to the Architectural Plans attached to the Application as Exhibit B, and prepared by Crisp Architects, 16 Washington Avenue, Millbrook, NY 12545.
- (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

2/3/24

Date



John Field

5 Feb 2024

Date



Robert Fedell

2/5/24

Date

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

