



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

## **Notice of Decision – Special Permit**

**Hearing Date:** November 27, 2023

**Applicant:** Leslie Harrison

**Property Owners:** Roy M. Lattin, Jon P. Lattin, and Patricia Lee Lattin

**Property:** 38 West Street, Sandisfield, MA 01255 (Map 407, Lot 26)

**Request:**

On October 11, 2023, Leslie Harrison (the “Applicant”) applied 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 a pre-existing, non-conforming residential structure at 38 West Street, Sandisfield (the “Property”). The Property is non-conforming as to minimum lot size.<sup>1</sup>

Specifically, the Applicant seeks to “raze the existing building and build a new single-family dwelling in its place.” According to the application, the existing structure is irregular in shape and consists of approximately 776 sq. ft. of livable area. Applicant further requests relief to “square off” the structure to its widest dimension, excepting the porch, to create a new building footprint of 22 x 42 feet, or 924 sq. ft.

**Procedural History**

On November 27, 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 Board of Health submitted its written report on October 18, 2023, and the Planning Board submitted its written report on October 31, 2023. Both boards recommended approval of the Application.

At the public hearing, the Board heard from Attorney Lori Robbins of Heller & Robbins, P.C., 36 Cliffwood Street, Lenox, MA 01240, who represented the Applicant. Attorney Robbins

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<sup>1</sup> Per Section 4(b) of the Zoning Bylaws (“Dimensional Requirements”), the minimum lot size is 1 acre. This Property is approximately 0.899 acres in size.

explained that the Property is nonconforming because it is 0.899 acres in size, and thus, less than the required 1-acre minimum lot area. See Section 4(b) of the Zoning Bylaws. Attorney Robbins further explained that the existing residential structure is beyond repair, and that the proposed residential structure will be rebuild almost entirely in the exact footprint, except for “squaring off” the structure due to its current irregular shape. The proposed structure will be one-story and will comply with all other dimensional and setback requirements.

No other parties sought to speak in favor, or 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, an Addendum to the Application, Exhibits to the Application, and a statement from one (1) proponent (Attorney Robbins) made at the public hearing, the Board makes the following findings:

The Property is lawfully pre-existing non-conforming because it is approximately 0.899 acres in size, and thus, less than required 1-acre minimum lot area. See Section 4(b) of the Zoning Bylaws. However, the Property is conforming as to all other dimensional and setback requirements. The current residential structure is dilapidated and beyond repair. 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 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 summer house that has not been used for more than 20 years. It would be beneficial to the Town to see it be renovated and occupied once again. See Section 10(d)(2). The Board finds that the proposed construction, including the “squaring off” of the residential structure, would not be substantially more detrimentally to the character of the neighborhood or be any more non-conforming. 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 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, from its review of the materials before it, it is the Board's opinion that the proposed demolition and reconstruction of the residential structure on the Property 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**

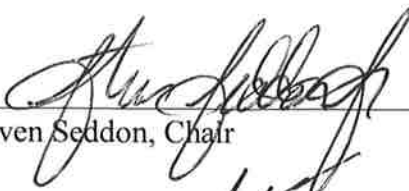
Therefore, the Board unanimously **GRANTS** the Application for a Special Permit, pursuant to Section 5(b) of the Zoning Bylaws, to alter the pre-existing non-conforming residential structure on the Property by demolishing the existing irregularly shaped structure and reconstructing a new "squared off" residential structure with an approximate footprint of 22 x 42 feet, or 924 sq. ft, in the same location as the existing residential structure.

### **Conditions**

- (1) The proposed residential structure must be constructed in accordance with the Zoning Bylaws, and specifically, in conformance with all Dimensional Requirements. 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 must be constructed in accordance with the Application and all plans submitted in support of the Application, including, but not limited to:
  - a. "Special Permit Acquisition Plan Prepared for Roy M., Jon P., & Patricia Lee Lattin," dated September 2023, by Kelly, Granger, Parsons & Associates, Inc. (Exhibit 14).
  - b. Proposed Floor Plan (Exhibit 15).
- (4) 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.
- (5) 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.

  
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Steven Seddon, Chair

12/11/23  
Date

  
\_\_\_\_\_  
John Field

12 Dec. 23  
Date

  
\_\_\_\_\_  
Robert Fedell

12/11/23  
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

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Date