



Town of Provincetown
Zoning Board of Appeals
Town Hall, Provincetown, MA 02657

October 1, 2020

Findings and Decision of the Zoning Board of Appeals

Case Number: ZBA 20-2003
Applicant/Owner: Adam Rogers
Property Address: 10-12 West Vine Street, Unit 3
Assessor's ID: 6-2-48-003
Deed Reference: Book 29253, Page 35
Zoning District: Residential District 2 (Res2)
Board Members: Erik Borg
Jeremy Callahan
Peter H. Okun
Steven Latasa-Nicks
Daniel Wagner

I. Introduction

The Applicant is petitioning the Zoning Board of Appeals seeking a Special Permit pursuant to Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish and rebuild a structure on a new foundation on the property located at 10-12 West Vine Street, Unit 3 (Residential 2 Zone). The construction portion of the Project was previously approved under ZBA 20-10 issued on October 17, 2019 as an Article 3, Section 3110, Change, Extensions or Alterations to convert the garage to an art studio, adding a half story up and along pre-existing, non-conforming setbacks. Based on a structural review of the garage, it was determined that the existing materials were insufficient to support the previously approved modification and this application is for demolition and reconstruction.

II. Decision

The Zoning Board of Appeals hereby grants Special Permit relief pursuant to the Zoning By-Law, Article 3, Section 3115, Demolition and Reconstruction by vote of 5 in favor, 0 opposed, and 0 abstaining.

III. General Findings

1. The Property is located at 10-12 West Vine Street, Provincetown, Massachusetts, is known by the Assessor's Office as Parcel ID: 6-2-48-003, and is recorded land in Book 29253, Page 35 at the Barnstable County Registry of Deeds.
2. The Property is located in the Residential District 2 (Res2) zoning district.
3. The Property is a corner lot located on the south corner of the intersection of Tremont Street and West Vine Street that is 4,107± sq. ft. in size and developed with two residential structures.
4. The Property is pre-existing non-conforming with respect to area (4,107± sq. ft. where a minimum of 5,000 sq. ft. is required).
5. The southernmost building within the property is a lawfully located residential structure that is pre-existing non-conforming with respect to the minimum side yard setbacks (2.3 ft. and 2.6 ft. where a minimum of 6 ft. is required).
6. The proposed Project includes demolishing and rebuilding the southernmost structure on a new foundation within the Property.
7. The abutting properties are predominantly residential. The Res2 District provides for high-density residential development in the east and west sections of town adjacent to the downtown waterfront area.
8. The project proposes to demolish the southernmost garage building and construct a new foundation within the same footprint for the previously approved art studio, adding a half story up and along pre-existing, non-conforming side yard setbacks.
9. The construction portion of the Project was previously approved under ZBA 20-10 issued on October 17, 2019 as an Article 3, Section 3110, Change, Extensions or Alterations to convert the garage to an art studio.
10. The Board held one public hearing on this matter on September 3, 2020. Note that the hearing was held virtually in accordance with Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, March 23, 2020 Order imposing strict limitation on the number of people that may gather in one place, and Chapter 53 of the Acts of 2020. Adam Rogers presented the Project and the Board provided an opportunity for all those attending the public hearing to be heard.
11. The Applicant submitted a letter from Massachusetts Registered Structural Engineer Daniel W. Webb, PE No. 40752 of Webb Structural Services, Inc. (WSS) dated April 6, 2020 stating that "The concrete block foundation...needs to be completely replaced" and "...it is practically infeasible to reuse any part of the existing structure as part of this project. It is the opinion of WSS that the building should be demolished in its entirety."
12. The applicant submitted plans and renderings of the Project and the Board members had sufficient time to review these prior to the hearing. These included:
 - a. Plan entitled "Plot Plan for Adam Rogers" prepared by Warwick & Associates, Inc., dated October 4, 2019, certified by Gary S. Labrie, PLS No. 40039 at a scale of 1" = 10' in 1 sheet.
 - b. Architectural plan set lacking cover sheet and uncertified for "10-12 West Vine Street, Provincetown, Massachusetts" prepared by Ted Smith Architect, LLC, in 15 sheets (11x17), labeled E1.1; E2.1; E2.2; E2.3; E2.4; A1.1; A1.2; A1.3; A3.1; A3.2; A2.2; A2.3; A2.4 dated July 29, 2019; and A2.1; A2.2 dated September 9, 2019.

IV. Applicable Law and Decision Criteria:

1. Massachusetts General Laws Chapter 40A, Section 6 (Existing structures, uses, or permits):
...Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood...
2. Section 3115 of the Zoning By-Law:
A nonconforming structure and/or use may be demolished and reconstructed, and/or reestablished by Special Permit and in accordance with the following provisions:
 1. *Reconstruction of said premises shall commence within two years after such demolition.*
 2. *Structures(s) as reconstructed shall be located within the same footprint as the original nonconforming structure and shall be only as great in building scale or area as the original nonconforming structure, unless as approved under Section 3110.*
 3. *The use of said premises shall be reestablished within one year of the issuance of the certificate of occupancy.*
3. Section 5330 of the Zoning By-Law:
Special Permits (other than those specified in Section 3420) shall be granted by the Special Permit Granting Authority only upon its written determination that the social, economic or other benefits of the proposal for the neighborhood or town outweigh any adverse effects such as hazard, congestion or environmental degradation.

V. Specific Findings:

The Zoning Board of Appeals hereby finds the following:

1. There were no public comment letters in favor or opposed to the proposed project.
2. That the Project proposes to maintain the existing footprint under the southernmost pre-existing non-conforming building that encroaches into the side yard setbacks, extending the structure as was previously approved under ZBA 20-10 issued on October 17, 2019 as an Article 3, Section 3110, Change, Extensions or Alterations to convert the garage to an artist studio.
3. That a Registered Structural Engineer determined that the building should be demolished in its entirety.
4. That the project will maintain the residential uses within the pre-existing nonconforming building and property.
5. As a result of the above (Sections III - V), the Board finds that the social, economic or other benefits of the Project for the neighborhood or Town outweigh any adverse effects such as hazard, congestion or environmental degradation.

- A. Waivers. No waivers were requested as part of the Application.

VI. Vote

ZBA 20-2003:

Motion by Steven Latasa-Nicks to grant a Special Permit pursuant to Article 3, Section 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish and rebuild the northernmost structure on a new foundation on the property located at 10-12 West Vine Street, Unit 3. The Motion was seconded by Erik Borg.

VOTE: By 5 in favor, 0 opposed, and 0 abstaining the Zoning Board of Appeals Approved this application.

SIGNED BY:

DATE OF FILING:

A copy of the application in this matter, bearing the stamp of this Board, the signatures of the sitting members or the designee, and the date of this decision, will be on file in the Provincetown Department of Community Development. The applicant is hereby put on notice that any deviation from the above referenced application shall invalidate this Decision and shall require further review by this Board. Furthermore, the Decision issued hereunder shall not be valid until recorded at the Registry of Deeds in Barnstable as provided in the Provincetown Zoning By-Law and G.L. ch. 40A.

Important: Any appeal from the decision of the Zoning Board of Appeals can be made only to the Court and must be made pursuant to MGL ch. 40A, § 17, as amended, and must be filed within twenty (20) days after the date of filing of the decision with the Town Clerk.

Note: or as such timeframes are suspended and extended pursuant to Section 17 of Chapter 53 of the Acts of 2020.