



## Town of Reading

16 Lowell Street, Reading, MA 01867

### Zoning Board of Appeals

Ph: 781-942-6654 or Fax: 781-942-9071

[readingma.gov/zoning-board-of-appeals](http://readingma.gov/zoning-board-of-appeals)

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### Decision on the Petition of

Colin and Judy McKinnon

### On the Property Located at

10 Plymouth Road, Reading, Massachusetts

### Case No. 22-02

February 3, 2022

The Zoning Board of Appeals (the "Board") opened and held a public hearing on **Thursday, February 3, 2022**, at 7:00 p.m. through remote and online measures, in lieu of meeting in the Select Board's Meeting Room at Town Hall, 16 Lowell Street in Reading, Massachusetts, to hear the petition of **Colin and Judy McKinnon** (The "Petitioner"). The Petitioner sought an appeal of the Building Commissioner Decision under Section 4.5.1.1 and/or a Special Permit under Sections 7.3 and 7.3.2 of the Zoning Bylaws, as may be determined by the Zoning Board, to construct a two-story addition along an existing non-conforming side-yard setback on the dwelling for the property located at **10 Plymouth Road** Reading, Massachusetts (the "Property").

The Property is located in the S-15 residential district of Reading. The existing lot is considered legal non-conforming, due to the fact that it does not meet the current area (15,000 square feet) and frontage (100 linear feet) requirements for the S-15 zoning district it is in. The existing lot maintains approximately 9,700 square feet of area and 73.95 linear feet of frontage along Plymouth Road. The S-15 Zoning District requires setbacks of 15' from the side lot lines and 20' from the front and rear. The existing dwelling (a "Cape" style house, circa 1945) is deemed a legal, non-conforming structure due to less than required minimum side-yard and front-yard setbacks to the property lines. The Petitioner was present at the meeting and is the current homeowner. They were joined by representative William Crowley.

It was stated that the Petitioner is seeking an appeal of the Building Commissioner denial. The Building Commissioner found a Variance to be required due to the complete removal of the existing accessory structure that is proposed to be a two-story structure that adds to the principal dwelling and use. The Petitioner and their representative suggested a Special Permit discussion to be appropriate due to Section 5.5.1.1(d) of the Bylaw. Section 5.5.1.1(d) states, "*Any accessory building or structure, including a garage that is less than 10 feet from a principal structure on the lot shall be considered 'attached to' the principal structure, and shall be subject to the dimensional limits and requirements applicable to a principal structure.*" The existing garage proposed for removal is located 8' from the principal dwelling and is thus considered attached. The Board also found that the Bylaw language under Section 7.3.2 allows for "structural change" of a non-conforming structure and because the garage is considered as part of the principal structure a Special Permit may apply.

***A motion was made and seconded by Board Members, to grant a finding that the proposed plans and changes, as described, may qualify for a Special Permit due to the language of both Bylaw Section 5.5.1.1(d) and 7.3.2 and that no Variance is required for the application.***

The Board then discussed the merits on the issuance of a Special Permit. It was stated that the Petitioner is seeking a Special Permit to construct a two-story addition that would extend the existing non-conforming side-yard setback to the south lot line. The existing dwelling with proposed addition is depicted on a Certified Plot Plan ("the Plot Plan") prepared and certified by Scott M. Cerrato, Professional Surveyor No. 50049, 24 Pleasant View Drive, Exeter, NH 03833, dated December 9, 2021. Architectural layouts and elevations for the proposed addition, consisting of sheets 1 through 6, prepared by Timothy Sheehan Design, 9 Wall Street, Charlestown, MA 02129, were also submitted with the Petitioner's application.

The existing dwelling maintains a pre-existing non-conforming side-yard setback of 7.9' to the southern side-yard lot line. The proposed two-story addition is to be built set in from the existing non-conforming side-yard setback, maintaining an 8.3' setback from the southern lot line. The two-story addition shall maintain a maximum height of 25' to the ridge line, and 22.5' to the midpoint of the gable. The Board discussed the increase to the setback and found such to be a benefit due to the proposed height increase. It was also noted that the plans under review and discussion were approved by the Conservation Commission in August 2021.

Following further discussion with the Petitioner and comment among Board members, the meeting was opened to public comment. A series of support for the Special Permit determination and the proposed plans were presented. With no further input from the public forthcoming, the public comment portion of the hearing was closed.

Section 7.3.2 of the Reading Zoning By-laws states, in relevant part, "For those alterations not eligible for a building permit pursuant to Section 7.3, the Zoning Board of Appeals may grant a Special Permit to reconstruct, extend, alter, or structurally change a nonconforming building or structure upon a finding that such reconstruction, extension, alteration or structural change shall not be substantially more detrimental to the neighborhood than the existing nonconforming building or structure".

***A motion was made and seconded by Board Members that the proposed addition would not be substantially more detrimental to the neighborhood than the existing dwelling and would meet the requirements for Special Permit under Section 7.3.2 of the Reading By-laws for a proposed two-story addition to an existing dwelling. The Board voted in the affirmative (5-0-0) to grant a Special Permit in order to construct the two-story addition as described for the dwelling at 10 Plymouth Road as shown on the previously noted Certified Plot Plan and Architectural plans submitted, with the following conditions attached.***

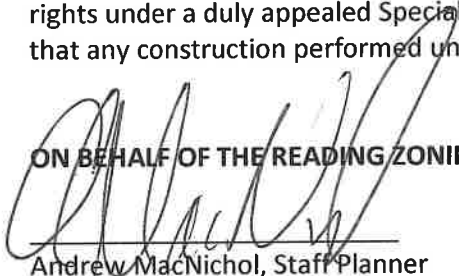
1. The Petitioner shall submit to the Building Inspector a Certified Plot Plan of the proposed construction and proposed foundation plans for the work prior to the issuance of a foundation permit for the work.

2. The Petitioner's final construction plans for the proposed addition shall be submitted to the Building Inspector, along with as-built foundation plans, prior to the issuance of a Building Permit for the work.
3. As-built plans of the completed construction shall be submitted to the Building Inspector immediately after the work is completed and prior to the issuance of an Occupancy Permit.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to M.G.L. c. 40A, § 17, within twenty (20) days after the date of filing this Decision with the Town Clerk. Notice of appeal with a copy of the complaint must also be filed with the Town clerk within twenty (20) days as provided in § 17.

The Special Permit shall not take effect until a copy of this Decision, bearing certification of the Town Clerk that twenty (20) days have elapsed after the Decision was filed in the Office of the Town clerk and no appeal has been filed, or if an appeal has been filed within such time, that it has been dismissed or denied, is recorded in the Middlesex South District Registry of Deeds and indexed in the Grantor's Index under the name of the owner of record, or is recorded and noted on the Owner's Certificate of Title. The fee for recording or registering shall be paid by the Owner or Petitioner. Any person exercising rights under a duly appealed Special Permit does so at the risk that a court may reverse the permit and that any construction performed under the permit may be ordered to be undone.

**ON BEHALF OF THE READING ZONING BOARD OF APPEALS**



Andrew MacNichol, Staff Planner

**Board members sitting and voting on Case No. 22-02**

Hillary Mateev, Cy Caouette, Alex Normandin, Patrick Houghton, Andrew Grasberger

