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Docket No. 3840 - 29 Hemlock St.

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DECISION OF THE ZONING BOARD OF APPEALS
TOWN OF ARLINGTON MASSASCHUSETTS

Docket No.	3840
Address of Property:	29 Hemlock St.
Location of Property:	Morningside
Applicant(s)	Kathryn Bender
Date of Application	March 4, 2025
Hearing Date(s)	April 22, 2025
Decision Date:	May 13, 2025

Summary

The applicant, owner of a dwelling at 29 Hemlock Street, sought to add an addition of 241 square feet to said dwelling in the front yard setback, which is allowed with a special permit under § 5.3.9.D of the Zoning Bylaw. The addition would provide the owner with the space to add an elevator for accessibility purposes. The Board found that the proposed addition met the requirements of § 3.3.3 of the Zoning Bylaw and granted a special permit with conditions.

The applicant, Kathryn Bender, owns a dwelling on 29 Hemlock Street. Ms. Bender proposes adding more living space to that dwelling. This addition would be in the property's front yard setback. The aim is to accommodate the installation of an elevator in the dwelling, which would grant Ms. Bender greater accessibility to, and mobility within, the structure as she ages. Because this proposal involves enclosing and expanding an existing deck to create a porch, it would require a special permit under § 5.3.9.D of the Zoning Bylaw.[1]

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[1] This application evolved over the hearing in three ways worth mentioning at the outset. *First*, the applicant originally proposed including a bump out in the addition to the dwelling's second floor that would have measured 1 foot and 11 inches in depth. Section 5.3.9.C, however, does not provide the Board with authority to grant a special permit for such a second-floor addition that extends "more than one foot beyond the existing building wall." This part of the project would have required a variance under G. L. c. 40A § 10. Consequently, the applicant verbally amended the proposal during the hearing. The second floor bump out will now not extend beyond 1 foot. (The opinion discusses this further in the "Discussion of the Board" section below.) Because that modification moots the need for a variance here, the Board's decision does not address that aspect of the application.

Second, the applicant had framed their application as seeking to create a "large addition" to the dwelling and sought a special permit under § 5.4.2.B(6). But as discussed during the hearing, this addition is small enough (241 square feet) as not to require a special permit under § 5.4.2.B(6). (The opinion discusses this further in the "Presentation of Applicant" section below.) Therefore, the Board's decision does not address that part of the application either.

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The subject property is in the R1 Zoning District and is used as a single-family dwelling. The lot is accessible from Hemlock Street and surrounded by abutters on three sides. The property has four nonconformities. First, the lot is non-conforming with respect to frontage (50 feet, 60 feet required). The lot is also nonconforming with respect to its size (3,768 square feet, 6,000 square feet required). So too is the right side yard setback nonconforming (7.2 feet, 10 feet required). Finally, the front yard depth is nonconforming (17.6 feet, 20 feet required). The proposed addition will reduce this depth further (from 17.6 feet to 12.6 feet).

These four nonconformities will not be increased by the proposed addition, and no new nonconformities will be created.

I. SUMMARY OF THE HEARING

The Chair called the public hearing on Docket No. 3840, 29 Hemlock Street to order. The members of the Board present were the Chair (Mr. Klein), Mr. DuPont, Mr. Hanlon, Mr. LeBlanc, and Mr. Baranowski. Mr. Holi was absent.

A. Presentation of Applicant

The Chair recognized the applicant and asked them to explain what they proposed to do.

Ms. Bender introduced herself as the applicant. She proposed to build an addition to the front of her home. The goal of the proposed addition was to answer the question of how she could safely remain in her home as she ages.

As Ms. Bender explained, this addition would amount to expanding the dwelling by 241 square feet into the front yard setback. The addition would allow Ms. Bender to add an interior elevator that would go from her basement to her first floor and to her second floor. The additional space would also address other accessibility concerns by accommodating for future walker or wheelchair use. Beyond expanding the front of the dwelling into the front yard setback, the addition would make the entrance to the dwelling more "user friendly" and add a door from the front exterior into the basement.

Ms. Bender then introduced her architect, Shira Lion, who provided further details about the addition. Ms. Lion walked the Board through the plot plan and proposal.

From Hemlock Street, three levels of Ms. Bender's house are visible: an at-grade, basement-level garage; a first floor; and a second floor. As Ms. Lion explained, the front door to the dwelling, which enters the structure on the first floor, requires climbing approximately 15 risers to reach. To allow for easier entrance into the house, the proposal would add a door to the

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Third, the applicant also requested a special permit from § 8.1.3.B. But during the hearing, the Board determined that the proposed addition could be evaluated solely under § 5.3.9.D. (The opinion discusses this further in the "Presentation of Applicant" section below.) Because this mooted the application's request under § 8.1.3.B, the Board's decision does not address it.

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basement next to the garage door. This would allow Ms. Bender to be able to drive her car up to her garage, enter the house through the new door, and access her elevator in the basement.

The proposal contains no buildout at grade, but rather only a series of columns to support the addition on the structure's first floor. The driveway remains the same size. Ms. Lion and Ms. Bender are working with a landscape architect to remodel the exterior stairs to make them more accessible.

Next, Ms. Lion discussed the proposed addition. On the first floor, the addition will extend the house's living space 5 feet into the front yard setback and run the full 26-foot-and-5-inch width of the house. This would allow for an entryway with a 36-inch exterior front door and space to move into the rest of the house. On the second floor, the addition would mirror the first floor's 5-foot-deep, 26-foot-and-5-inch-wide extension. It would also create a 1-foot-and-10-inch deep by 10-foot-and-11-and-3/4-inch-wide bump out on top of this extension. The purpose of this extra space is to accommodate Ms. Bender's art projects. The plan also includes adding three small awning windows to the art room on the south side of the building.

In terms of design, Ms. Lion explained that the proposal creates a bay with a gabled roof out of the bump out on the second floor. The siding on this bay will be vertical board and batten while the siding on the rest of the house is horizontal. The plan will also improve the site lighting.

The Chair addressed the following matters. First, this is an undersized lot (3,768 square feet, 6,000 square feet required), which is an existing nonconformity. The frontage is also less than is required for the district (50 feet, 60 feet required), which is a second nonconformity. The lot coverage percentage is in conformity. The front yard depth (17.6 feet, 20 feet required) and the right yard depths (7.2 feet, 10 feet required) are existing nonconformities. Finally, the left side and rear depths are in conformity.

The Chair next addressed several dimensional questions concerning the application. First, the Chair confirmed that the property already had no usable open space because the rear yard sloped greater than 8%. Second, to determine whether the lowest level was a story, the Chair asked what the difference between the average grade of lot and the underside of the ceiling in the basement was. Ms. Lion confirmed that the lowest level was not a story. Specifically, the difference is a matter of inches at the dwelling's rear. At the front, the difference is approximately 51-and-1/2 inches. The differences on the sides are 16-and-1/4 inches and 25 inches.

The Chair then noted that the application is under § 5.3.9.C-D of the Zoning Bylaw, which governs projections into minimum yards. Additionally, the Chair confirmed that a person could step into the second-story bump out. Because the second-floor bump out extended beyond the one-foot allowed by § 5.3.9.C, that aspect of the project would require a variance. Mr. DuPont concurred in this assessment.

The Chair invited questions from the Board.

Mr. Hanlon asked two questions about which provisions of the Zoning Bylaw were implicated by the proposal. First, Mr. Hanlon asked whether this qualified as a large addition

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under § 5.4.2.B(6). The Chair confirmed that the gross floor area is not proposed to be extended by 750 square feet. Therefore, the project did not require a special permit under § 5.4.2.B(6).

Second, Mr. Hanlon also asked where the Board stood on § 8.1.3.B. Specifically, Mr. Hanlon believed that the project could be accomplished under § 5.3.9.C & D and therefore there was no need to consider anything further under § 8.1.3.B. The Chair responded that under § 5.3.9.C, the second-story bump as proposed would require a variance because it extends beyond 12 inches from the house. Additionally, the Chair stated that § 5.3.9.D would allow building upon the existing steps and extending the front of the house by special permit. This mooted the consideration of § 8.1.3.B.

Seeing no more questions from the Board, the Chair opened the hearing for public comment.

B. Public Comment

Beth Martin and David Martin (33 Hemlock St.), abutters, stated that they had a variance request that they would be submitting for the property line to clarify the line between the applicant's property and their own. They inquired about whether the proposed special permit for the project would affect their request. Additionally, they noted that they were not opposed to the project.

The Chair noted that the variance is occurring on the side of 29 Hemlock St. that is currently compliant with the side yard setback and will remain compliant with the side yard setback, meaning that it should not have an impact. However, because the Martins' application had not been filed yet, the Chair stated that the Board would need to wait to assess it to exercise its judgment independently of the application before the Board.

The Chair summarized this information for Suzanne Leone (attorney for the Martins), who had been having connection issues.

Ms. Leone then noted that the lot size in the pending application was the size of the lot as if the land transfer had already taken place between her clients and Ms. Bender. Ms. Lion stated that the plot plan in the pending application does have the current conditions of the plot. The Chair noted that the Board would base its decision on the plan in the application before it.

There were no additional public comments, and so the Chair closed the public comment period.

C. Discussion by the Board

The Chair first summarized the matter before the Board.

As the Chair explained, the application is for a special permit under and for a variance. He noted that the special permit would be under § 5.3.9 D, which provides that porches decks steps and landings in the required setback are not considered within the foundation wall and may

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not be enclosed extended or built upon except by special permit. This is what the board would be acting on.

As the Chair further explained, under § 5.3.9 C which states the second story additions within the required front yard setback may not extend more than 1 foot beyond the existing building wall. A variance would be necessary under the applicant's proposal because the proposed second story bump out is 1 foot 10 inches.

The Chair then asked the applicant whether the dimensions for the second story bump out were set in stone. After the Chair explained the elements of a variance to Ms. Bender, she amended her application such that the bump out will not extend beyond the 1-foot limit under § 5.3.9 C. This meant that the proposal was in compliance, thus mooting the variance request.

The Chair then redirected discussion to § 5.3.9 D and asked whether the Board had any questions about what was being proposed. At this point, the special permit request under this section was all that was before the Board. The Board had no questions about the proposal.

Consequently, the Chair turned to the legal standards to be applied. He explained that § 5.3.9.D authorizes the Board to approve the proposed decrease of the amount of the front yard setback on the property as a special permit under § 3.3.3 of the Bylaw. That section spells out the findings that the Board needs to make to approve a special permit. The Chair then reviewed the specific findings required by § 3.3.3 of the Zoning Bylaw. These findings are discussed in more detail in the next section.

At this point, Mr. Hanlon noted that this case differed from other cases when applicants proposed extending living space into the front yard. Specifically, there was no sense that this application was based on pretext and what was really going on was an attempt to extend the living space into the front yard. Rather, the reasoning behind the extension and the balance of public convenience and necessity outweigh the impairments. Mr. Hanlon expressed support for the proposed findings.

No one expressed reluctance to make the findings outlined by the Chair.

The Chair then reviewed the Standard Conditions for special permits.[2] The Chair proposed an additional condition that the second-story addition shall comply with § 5.3.9.C and not exceed 12 inches in depth. No member of the Board proposed any additional conditions.

The Chair asked Mr. Hanlon, the Vice Chair, if he would be willing to coordinate a decision in favor of approval of the application. Mr. Hanlon replied that he would be pleased to do that.

The Chair then moved that the public hearing on docket number 3840 – 29 Hemlock Street be closed. Mr. Hanlon seconded the motion, which was approved unanimously by the Board. The

[2] The Standard Conditions are set forth and briefly explained in Appendix C.

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members voting were Mr. DuPont, Mr. Hanlon, Mr. LeBlanc, Mr. Baranowski, and Mr. Klein, the Chair

II. THE BOARD'S FINDINGS AND CONCLUSIONS

1. The applicant is the owner of a property at 29 Hemlock Street, in the R1 zoning district. The lot, which occupies a steep piece of land that slopes down to Hemlock Street, is nonconforming with respect to size; it is only 3,768 square feet while 6,000 square feet is required. The lot is also currently non-conforming with respect to frontage; it is 50 feet wide while 60 feet is required.

2. The lot is improved with a single-family dwelling. The structure is nonconforming with respect to the right-side setback; that setback is 7.2 feet while 10 feet is required. The front yard depth is also nonconforming; it is 17.6 feet while 20 feet is required. As the applicant's application states, the proposed addition will drop the front yard depth down to 12.6 feet.

3. The applicant's house has an existing one-story porch with steps leading from the porch to the street. The applicants propose to expand the front of the house 5 feet into the front yard setback along the full 26-foot-and-5-inch width of the structure on both the first and second floors of the home. There will be an additional bump out of no more than 1 foot in depth on the second floor.

4. Section 5.3.9.D of the Zoning Bylaw allows porches in a required setback to be enclosed (and landings and steps to be extended) by special permit. That section provides:

   Porches, decks, steps, and landings in the required setback are not considered to be within the foundation wall and may not be enclosed, extended, or built upon except by special permit.

5. Section 5.3.9.D does not contain any special regulations for the issuance of a special permit in the situations with which it deals. The Board must evaluate an application for a special permit under that section applying the general criteria for special permits in § 3.3.3 of the Zoning Bylaw. That section allows the Board to grant a special permit only if it finds, in a written determination, that "**the adverse effects of the proposed use will not outweigh the beneficial impacts to the town or the neighborhood, in view of the characteristics of the site and the proposal in relation to that site.**"

6. To that end, the Board makes this overall finding:

   A. The Board does not discern any adverse impacts from the proposal's decreasing of the front yard setback on the property by extending the home into this space. It will not generate traffic or endanger pedestrian safety. It will not overload the provision of municipal services. It will not adversely affect the environment. It will not detract from the character of the neighborhood. Rather, the expansion will be in keeping with the general front yard setbacks in this district.

B. It is generally to the benefit of the neighborhood and the town if people can use their property in a way that best suits their needs. Here, the proposed modifications of the home would both facilitate the resident's long-term ability to remain in the residence and improve the safety of the front steps of the home. These aims align with long-term goals of the Town to improve its housing stock, allow current residents to age in place, and to create housing that is usable to a larger proportion of the population.

7. In addition, § 3.3.3 requires the Board to find that the following criteria for granting a special permit are met.

A. The use requested is listed as a special permit use in the use regulations for the applicable district or is so designated elsewhere in this Bylaw.

The applicants' proposed addition to the front of the house may be approved under § 5.3.9.D of the Zoning Bylaw provided that it meets the requirements of § 3.3.3.

B. The requested use is essential or desirable to the public convenience or welfare.

It is desirable to make modifications in an orderly fashion in a manner that allows for the continued use of the property by a wider range of people. By allowing the applicant to remain in her residence as she ages, these modifications align with that goal.

C. The requested use will not create undue traffic congestion or unduly impair pedestrian safety.

The front wall of the house is not changing at the level where the vehicle is stored. Nor will the additions of the posts to support the second-story bump out create any impediments to viewing from the sidewalk or street. Therefore, there is no issue under this factor.

D. The requested use will not overload any public water, drainage or sewer system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the Town will be unduly subjected to hazards affecting health, safety, or the general welfare.

The addition will have only a marginal change to the energy use of the house and otherwise will not affect any other public systems.

E. Any special regulations for the use as may be provided in this Bylaw are fulfilled.

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There are no special regulations applicable to the proposal before the Board.

F. The requested use will not impair the integrity or character of the district or adjoining districts, nor be detrimental to the health or welfare.

The addition is well thought out and in keeping with the character of the existing home and is an orderly expansion of said home. Furthermore, the addition is in keeping with the general front yard setbacks that are in the property's district. The Board does not believe that the proposed enclosure would have any adverse impact on the public health or welfare.

G. The requested use will not, by its addition to a neighborhood, cause an excess of the use that could be detrimental to the character of said neighborhood.

This is an extension of an existing single-family home in a single-family district. These are the sort of dwellings that the district was intended to accommodate. Therefore, the addition will not cause any detrimental excess.

III. DECISION OF THE BOARD

The Board hereby grants the applicant's request for a special permit under § 5.3.9.D of the Zoning Bylaw, to allow enclosure and extension of the applicants' existing porch and related work, subject to the conditions stated below:

1. The final plans and specifications approved by the Board for the permit shall be the final plans and specifications submitted to the Building Inspector of the Town of Arlington in connection with this application for zoning relief. There shall be no deviation during construction from approved plans and specifications without the express written approval of the Arlington Zoning Board of Appeals.

2. The Building Inspector is hereby notified that they are to monitor the site and should proceed with appropriate enforcement procedures at any time they determine that violations are present. The Building Inspector shall proceed under Section 3.1 of the Zoning Bylaw, under the provisions of Chapter 40 Section 21D, and institute non-criminal complaints. If necessary, the Building Inspector may also approve and institute appropriate criminal action, also in accordance with Section 3.1.

3. The Board shall maintain continuing jurisdiction with respect to this special permit grant.

4. The second-story addition shall comply with § 5.3.9.C and not exceed 12 inches in depth.

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SIGNATURE PAGE/CERTIFICATION

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Christian Klein, R.A., Chair

Under the authority granted by the Board in its resolution of July 23, 2024, the Chair signs this decision on behalf of the Board and attests that it was duly adopted by the Board on May 13, 2025, by a vote of 5-0. The members voting were: Christian Klein, Roger Dupont, Patrick Hanlon, Adam LeBlanc, and Bradley Baranowski.

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APPENDIX A: DOCUMENTS BEFORE THE BOARD

1. Legal Advertisement
2. Certified Abutters List and Map
3. Special Permit Application SP-25-6
4. Plot Plan dated March 25, 2025, prepared by Rober Survey Inc.
5. Proposed Landscape Plan dated March 25, 2025, prepared by Weinmayr/Jay Associates
6. Proposal Plans, including detailed existing plans and elevations, dated March 25, 2025

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APPENDIX B: DEFINITIONS

"Applicant" means Kathryn Bender.

"Board" means the Zoning Board of Appeals of the Town of Arlington, Massachusetts.

"Building Inspector" means the Director of ISD or their designee.

"ISD" means the Inspectional Services Department of the Town of Arlington, Massachusetts

"Zoning Bylaw" or "ZBL" means the Zoning Bylaw of the Town of Arlington, Massachusetts, as amended through May 8, 2024.

Note: All terms used in the foregoing decision have the meanings, if any, provided in the Zoning Bylaw. The additional definitions in this opinion are supplemental to and do not modify definitions in the Zoning Bylaw.

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APPENDIX C: STANDARD CONDITIONS

The Zoning Board of Appeals of the Town of Arlington includes certain standard conditions in special permit grants. These conditions and a brief explanation of each one are set forth below.

Final Plans

1. The final plans and specifications approved by the Board for the permit shall be the final plans and specifications submitted to the Building Inspector of the Town of Arlington in connection with this application for zoning relief. There shall be no deviation during construction from approved plans and specifications without the express written approval of the Arlington Zoning Board of Appeals.

This condition ensures that the plans and specification submitted to the Building Inspector are the same as the plans and specifications approved by the Board. Any changes need to receive express written approval by the Board.

Enforcement

2. The Building Inspector is hereby notified that they are to monitor the site and should proceed with appropriate enforcement procedures at any time they determine that violations are present. The Building Inspector shall proceed under Section 3.1 of the Zoning Bylaw, under the provisions of Chapter 40 Section 21D, and institute non-criminal complaints. If necessary, the Building Inspector may also approve and institute appropriate criminal action, also in accordance with Section 3.1.

This condition provides for the effective enforcement of the special permit or variance grant, using the various means that the law provides to the Building Inspector.

Continuing Jurisdiction

3. The Board shall maintain continuing jurisdiction with respect to this special permit [and/or variance] grant.

This condition provides for continuing jurisdiction of the Board to oversee the special permit and or variance granted by the Board. Any changes to the terms of the approval, including all conditions, must receive the Board's approval.