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3845 – 319 Appleton Street

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DECISION OF THE ZONING BOARD OF APPEALS
TOWN OF ARLINGTON, MASSACHUSETTS

Docket No.	3845
Address of Property:	319 Appleton Street
RDG Neighborhood:	Arlington Heights
Applicant(s):	Nicholas and Christina Donofrio
Date of Application:	March 25, 2025
Hearing Date(s):	April 22, 2025
Decision Date:	May 13, 2025

Summary

The applicant sought a special permit to construct a roof over a new front yard deck as allowed by § 5.3.9.D by the granting of a special permit.

The Board found, in accordance with § 3.3.3 of the Bylaw, that any adverse effects of the proposed roof would not outweigh their beneficial impacts. Accordingly, the Board granted the request for a special permit, subject to conditions.

The applicants, Nicholas and Christina Donofrio sought a special permit in accordance with § 5.3.9.D of the Zoning Bylaw. The applicants proposed to construct a roof over a new deck in the required front yard setback as well as a small, cantilevered roof over the garage door. The area of the proposed deck would be approximately 135 square feet.

The subject property is in the R-1 Zoning District. It is nonconforming with respect to four dimensional requirements of the Zoning Bylaw: minimum lot area, minimum lot frontage, minimum right side yard depth and minimum front yard depth. The current front deck on the house is the primary entrance for the residents. The applicants propose to build a roof over a larger front deck to provide a protected area at the main entrance to the home from the elements. The applicants' proposal to build a roof over a deck is allowed by special permit.

Summary of the Hearing

The members and associate members of the Board present were the Chair (Mr. Klein), Mr. DuPont, Mr. Hanlon, Mr. LeBlanc, and Mr. Baranowski (Associate). Mr. Holi was not present for this portion of the hearing.

The Chair opened the public hearing and invited the applicant to tell the Board what they proposed to do.

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Nicholas Donofrio introduced himself and his Architect Kelly Boucher.[1] The applicants currently live in Belmont and have recently purchased the property at 319 Appleton Street and are performing renovations at the property prior to occupying it. They are looking to construct a roof over a new front deck within the front yard setback[2]. They need a special permit since it is within the front yard setback.

Kelly Boucher the applicants Architect, displayed the submitted drawings and reviewed the front deck design with the Board. Ms. Boucher noted the proposed front deck has already been permitted as of right and the special permit is for the roof over the deck.

The Chair asked to review the maximum lot coverage to clarify what was initially included in the application. The Architect Kelly Boucher reviewed updated calculations with the board which put the existing lot coverage at 17.9 percent and the proposed condition at 21.1 percent which is still within the limits of the zoning by-law. Ms. Boucher noted the error was a miscalculation when previously calculating the lot coverage number. The applicants displayed the requested drawing. The Chair accepted the revised lot coverage calculation.

The Chair also asked the applicants about the amount of usable open space. Ms. Boucher reviewed the provided site plan in the application documentation to show the site has slopes in excess of 8% in the rear yard, which does not allow it to be counted in the usable open space. Attention was brought to the front yard which contains the usable open space. The Chair noted for the applicant that as defined in the Zoning By-law usable open space shall have a minimum dimension of twenty-five feet by twenty-five feet and therefore there is no usable open space. However, the Chair noted this is an existing non-conformity and is not an issue for this application.

The Chair asked if there were any questions from the Board. No members of the Board offered any questions.

The Chair opened the hearing for public comment. Steve Moore (Piedmont St) asked if the Arlington Residential Design Guidelines were used in order to produce the design of this application. The applicants noted that they were not necessarily referenced for this design. Mr. Moore noted that regardless, the renovation proposed here appears to be fitting of the neighborhood character, and he is appreciative of this consideration. Mr. Moore also asked how the deck will be supported. The applicant noted the deck will be supported on concrete pier foundations and is not planned to be enclosed at any time. Mr. Moore also noted he would like to see the Board help bring properties into conformance with the Zoning By-law and gave an example of the current driveway and its lack of a vegetative buffer which the by-law requires. No

[1] The owner of the property is listed as Nicholas and Christina Donofrio, and the application was filed by David Paul.

[2] Per the Zoning Bylaw, a deck is a "roofless outdoor space built as an above-ground platform..." and a porch is a "covered, unenclosed and open to the elements..." Constructing a roof over a deck makes it a porch

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other members of the public had any other questions and the Chair closed the public comment period for this application.

The Chair stated the Board had before it an application for a special permit under § 5.3.9.D of the Zoning Bylaw, which requires a special permit for building upon a permitted but unconstructed deck in a required setback. The intent of the applicant is to construct a roof over a permitted deck.

The Chair reviewed the application, noting that there were no additional nonconformities[3] beyond those originally noted: minimum lot area, minimum lot frontage, minimum right side yard depth and minimum front yard depth. The application is fairly straight forward. He noted that § 5.3.9.D does not have any special findings related to it. The findings required for approval of a special permit under that section are simply the ones required in special permit cases generally by § 3.3.3 of the Zoning Bylaw. There were no further questions or comments from the Board.

The overall required finding is that the adverse effects of the proposed use will not outweigh its beneficial impacts. The Chair reviewed the specific subsidiary findings under that section, and asked if any members of the Board had any questions in regard to the proposed findings. (These are expanded upon in the following section.)

The Chair proceeded to discuss potential conditions. He presumed that the Board would wish to include the standard conditions imposed by the Board in special permits. These are conditions 1-3 in the Board's decision in this case.[4]

The Chair asked Mr. Hanlon if he or his designee would be willing to draft a written decision in favor of approval. Mr. Hanlon said that he'd be pleased to do so.

The Chair then asked for a motion to close the public hearing. The motion was moved by Mr. Klein (the Chair), seconded by Mr. Hanlon, and approved unanimously by the Board. The members voting were Mr. Klein (the Chair), Mr. DuPont, Mr. Hanlon, Mr. LeBlanc, and Mr. Baranowski (Associate). Mr. Holi was not present during this portion of the hearing.

The Board's Findings

1. The applicants own[5] and reside in a single family home in the Arlington Heights neighborhood in the R1 Zoning District. The property does not conform to the requirements of the Zoning Bylaw in five respects: minimum lot area, minimum lot frontage, minimum right side yard depth, minimum front yard depth and usable open space. The applicants' proposal will add a roof over a permitted but not yet constructed front yard deck as well as a small, cantilevered roof over the garage door.

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[3] During the meeting it was discovered the existing site has no usable open space and is considered an additional nonconformity.

[4] The Board's standard conditions are set forth and briefly explained in Appendix C.

[5] Refer to footnote #1.

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2. The applicants currently have a deck within the front yard setback that is permitted but not yet constructed. The applicants wish to construct a hip roof over the permitted deck as well as a hipped cantilevered roof over the garage door. What the applicants seek from the Board is a special permit under § 5.3.9.D allowing them to build upon the permitted front yard deck to create a porch.

3. Section 5.3.9.D of the Zoning Bylaw provides as follows:

   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.

4. The applicants' proposal would require them to "build upon" an open deck located in the required minimum front yard. Under § 5.3.9.D, doing so requires a special permit. Section 5.3.9.D does not impose any special requirements for the granting of a special permit for building upon decks in a required setback. Thus, the Board must evaluate this special permit request under the provisions of § 3.3.3 of the Zoning Bylaw.

5. Section 3.3 of the Zoning Bylaw provides as follows, with emphasis added:

   Unless otherwise specified herein, special permits shall be granted by the Special Permit Granting Authority only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the characteristics of the site and of the proposal in relation to that site. The determination shall include findings that all of the following criteria for granting a special permit are met: (emphasis added)

   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.

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

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

   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.

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

   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.

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.

6. The Board finds that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the characteristics of the site and of the proposal in relation to that site. The applicants are proposing a covered front deck that will enable the entire family to have better, safer, and more convenient access to their home. It also increases the value of the property which is of benefit to the town. The Board does not discern any adverse impact on the town or neighborhood from this proposal.

7. The Board makes the following findings on the specific criteria in § 3.3.3 A-G:

A. Special Permit use. Section 5.3.9.D of the Zoning Bylaw authorizes the Board to grant a special permit allowing decks in otherwise required minimum yards to be expanded and built upon and mudrooms constructed by special permit if the requirements of § 3.3.3 of the Zoning Bylaw are met.

B. Public convenience or welfare. The applicants' proposal is desirable to the public convenience or welfare, because it would provide more convenient access to the home. It provides an appropriate way for the applicants to fully enjoy their home. While this is an individual benefit for the applicants, the added value to the home is a benefit for the greater community. There is also an additional benefit of an improved visual appearance of the home for the greater community.

C. Traffic congestion and pedestrian safety. The applicant's proposed addition will not generate any additional traffic or alter sight lines in a way that might compromise pedestrian safety.

D. Public services. The applicants' proposal would not significantly increase the demand for any public services, including water, sewage, and draining, and would not subject any area of the town to hazards affecting health, safety, or the general welfare.

E. Special regulations. Section 5.3.9.D of the Zoning Bylaw does not provide any special regulations beyond the requirements of § 3.3.3.

F. Integrity, character, health, and welfare. The applicants' proposal would not impair the character or integrity of the zoning district. The covered deck maintains the character of a front deck while also improving the visual curb appeal of the property.

G. Detrimental excess. The applicants do not propose to change the single-family residential use of their property. This is a normal use envisioned for the R1 zoning district, and there cannot be a detrimental excess of this use. Thus, Subparagraph G does not apply to this use.

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8. For the foregoing reasons, the Board determines that this application for a special permit should be granted subject to the conditions set forth below.

Decision of the Board

The Board hereby grants the applicants' request for a special permit subject to the five 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.

The Board hereby makes a detailed record of all its proceedings relative to this appeal; sets forth the reasons for its decision and finding; directs that this record be filed in the office of the Redevelopment Board and in the office of the Town Clerk and shall be a public record, and that notice of this decision be made forthwith to each party in interest. Appeals to this decision, if any, shall be made pursuant to § 17 of the Zoning Act (Massachusetts General Laws, Chapter 40A), and shall be filed within twenty days after the date of filing of such decision in the Office of the Town Clerk.

Signature Page

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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 6-0. 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 Ad – 319 Appleton Street
2. Special Permit Application dated 03/25/2025
3. Site Survey dated 09/06/2024
4. Design Drawings dated 03/25/2025
5. Abutter List and Map dated 03/25/2025

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Appendix B: Definitions

"Applicants" means Madeline Hickman and Jeremy Sylvan.

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

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

"Deck" means a roofless outdoor space built as an above-ground platform projecting from the wall of a building and connected by structural supports at grade or adjacent to the building structure.

"ISD" or "building department" means the Inspectional Services Department of the Town of Arlington, Massachusetts.

"Mudroom" means an enclosed entrance or vestibule leading into a dwelling unit.

"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 grant.

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