

**ZONING BOARD OF APPEALS**

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ZBA 2021-29

Petition of John & Loraine O'Hanlon
38 & 44 Cypress Road

Pursuant to due notice, the Special Permit Granting Authority held a Remote Public Hearing on Thursday, April 1, 2021 at 7:30 pm, on the petition of John & Loraine O'Hanlon requesting a Special Permit/Finding pursuant to the provisions of Section 17, Section 19 and Section 25 of the Zoning Bylaw that reconfiguration of existing property lines between 38 & 44 Cypress Road that will result in an increase to the existing nonconforming Build Factor of 20.80 to 24.69 at 44 Cypress Road, shall not be substantially more detrimental to the neighborhood than the existing nonconforming lot.

On February 22, 2021, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

WITHDRAWN WITHOUT PREJUDICE

Present at the public hearing was David Himmelberger, Esq., representing John and Loraine O'Hanlon, the Petitioner. He said that the request is for special permit for reconfiguration of an existing property line between the two properties. He said that there is ample frontage for both lots but there is some interpretation that when existing lots are reconfigured and do not comply with Table 3 provisions, it requires a special permit. He said that 44 Cypress Road, as reconfigured, will have a build factor of 24.69, where a maximum of 20 is allowed for lots recorded after January of 1985. He said that 44 Cypress Road currently has a pre-existing nonconforming build factor of 20.80. He said that the lots will comply in all other ways and will be permissible to be re-divided under the ANR process. He said that an additional benefit of the ANR is that the driveway that currently belongs to 38 Cypress Road but services 44 and appears to be part of 44, will move over to 44, and the rear of 44 would move back to 38. He said that this was a single property up until 1954 when it was originally divided in this fashion and 44 was the carriage house for the original home at 38.

A Board member confirmed that both lots are owned by the same owner. Mr. Himmelberger said that there are homes on each property and the lots cannot be merged for Zoning purposes because the result would be two dwellings on one lot.

A Board member questioned whether the Board has authority to grant relief for the request as a Section 6 finding. Mr. Himmelberger said that it is a pre-existing nonconforming lot because it has a build factor in excess of 20. The Chairman said that Chapter 40A, Section 6 and Section 17 of the Zoning Bylaw deal with changes to pre-existing nonconforming structures, not lots. Mr. Himmelberger said that 44 is a nonconforming structure because it is on a nonconforming lot with a build factor in excess of 20. He said that the request is to change the lot. He said that the Board frequently deals with conforming houses on nonconforming lots. The Board further discussed Section 17 of the Zoning Bylaw and Chapter 40A,

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Section 6 of the Massachusetts General Laws. The Board members concluded that the Board is not authorized to grant a special permit in this case.

Mr. Himmelberger requested that the petition be allowed to be withdrawn without prejudice. The Board voted unanimously to allow the petition to be withdrawn without prejudice.