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# **TOWN OF BELMONT ZONING BOARD OF APPEALS**

2017 OCT 31 PM 12:13

**CASE NO.** 17-21

**APPLICANT:** Anthony L. Carbone

**PROPERTY:** 41R Holt Street  
Belmont, MA



2017 00191235  
Bk: 70284 Pg: 334 Doc: DECIS  
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**DATES OF PUBLIC HEARING:** September 11, 2017  
**CONTINUED:** October 2, 2017

**MEMBERS SITTING:** Nick Iannuzzi (Chairman)  
Faustino Lichauco  
Craig White  
Andrew Plunkett  
Phil Ruggerio (Associate Member)

**MEMBERS VOTING:** Nick Iannuzzi (Chairman)  
Faustino Lichauco  
Craig White  
Andrew Plunkett  
Phil Ruggerio (Associate Member)

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This matter came before the Board of Appeals ("Board") of the Town of Belmont ("Town") acting as Special Permit Granting Authority under the Zoning By-Law of the Town of Belmont, Massachusetts ("By-Law") and Chapter 40A of the Massachusetts General Law ("Zoning Act").

The Applicant, Anthony L. Carbone, seeks a special permit pursuant to a remand by the Land Court of the Zoning Board of Appeals Case #15-35 to replace a previously existing 4-bay garage with storage unit, with a 3-bay garage structure under section 1.5 of the bylaw. The property is located in a General Residence District.

The property is a 17,500sqft lot that abuts several lots in Belmont (34, 35-E, 35-F, 36, 41-A, 41-B) and Watertown (13, 44, B2, C2) as shown on the survey undertaken by Rover Surbey and dated 7/7/2015, provided to the board on 8/25/2017. Approximately 13,515sqft of the lot are in the Town of Belmont, and 3,985 are situated in Watertown.

The property is accessible only via a 100' x 15' driveway, on the south side of the lot (Holt St) and through Lots A and B2 as shown on the survey. On all other sides, the property is encircled by residences, thereby limiting access to only that 15'-wide driveway leading to the property from Holt St. Accordingly, the lot has only a 15' road frontage.

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According to the applicant, the property contained a 4-bay garage with storage unit, approximately 126'W x 30'D x 27'H, that had been constructed in 1905. This building had been in use in support of a plastering business since its creation. Belmont Board of Selectmen's minutes from a January 30, 1961 meeting indicate that the Board determined that the building's use as a storage facility for a General Contractor and Masonry business was permitted as a nonconforming use. At that time, the building had 7 garage-door sized bays and a single dormer on the south side of the building.

According to the applicant, the business had ceased activity upon retirement of the business owner in 2006. By October 2013 the pre-existing building had become unusable, and in December 2013 was demolished in expectation that a similar building would be rebuilt sometime shortly thereafter. The applicant filed an initial application for Special Permit on October 29<sup>th</sup>, 2015 to allow for reconstruction of the building.

Under §4.2.2 of the By-law, the minimum front setback in a General Residence District is 10ft; and the minimum Rear Setback is 12ft (for buildings other than a dwelling). The previously existing building had a non-conforming rear setback of 5'.

Under §3.3 of the ByLaw, a garage is only permitted as an accessory use, and a garage for more than 3 vehicles or containing more than 660sqft of floor area is only permitted by special permit, §4.3.5(b)(1) states that the height of a garage shall not exceed 15'. Under §4.3.5(a)(2) an accessory building is only permitted on the same lot as a principal building to which it an accessory. Therefore, the prior structure was nonconforming to each of these dimensional and use regulations.

### **Proposal**

The applicant seeks to build a new 3-bay garage building, approximately 100'W x 31'D x 27'H. The new building will be relocated eastward from the prior building's location by approximately 30' to a position 32.5' from the easternmost property line, and 67.5' from the westernmost property line. This relocation and reduction in size places the building entirely within the Town of Belmont portion of the Lot, and increases the rear setback from 5' to 7'.

The proposed new structure is a 3-bay garage, with loft storage. The new structure has 3 dormers on each of the north and south sides of the building as shown in plans dated 8/22/17 and provided to the board. The applicant highlighted that the newly proposed building is approximately 20% smaller than that proposed under case #15-35, and presents a lesser degree of nonconformity in terms of rear setback than its predecessor.

During the discussion the Applicant indicated that the building would be used for storage of personal vehicles, and that it would not be suitable, nor would it be used for commercial leasing. The Applicant noted that the interior of the building had no separate units and therefore makes it unsuitable for this type of use. This statement appears to be inconsistent with the plans, though, which show dividing walls. Upon further questioning by the board, the applicant confirmed that the building would not be leased, and that the garage bays would be used for

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storage of personal items, including but not limited to classic cars and other similar equipment. Ordinarily the Board would not take such an active position in the specifics of the use, but given the residential neighborhood and concerns from neighbors, this factors into the determination of neighborhood detriment.

Upon opening to the public for comment, a letter of support was submitted by an individual and another neighbor expressed opposition to the new building, suggesting it was encroaching to her property. In some cases individuals had not yet been made familiar with the proposed changes to the structure since the #15-35 case when a larger 126' x 31' structure was proposed.

### **Decision**

The board deliberated on October 2<sup>nd</sup>, 2017. Initially, the board considered the question of "abandonment" under §1.5.6 of the By-Law and concluded that the use of the garage for storage purposes was neither "abandoned" nor "not used for a period of two years" because there was evidence that the garage had been used for storage until its demolition in October 2013.

With regard to the proposed new structure, the Board noted that the new structure presents a significantly reduced footprint, and a lesser degree of nonconformity with respect to rear setback compared to the prior building. Given the applicant's responses to questions regarding use, the Board felt satisfied that the applicant has no intention of utilizing the individual bays for separate commercial leasing, nor would there be heavy vehicular traffic entering or exiting the lot or the building.

The board also considered the novelty of the case with regard to the lack of a primary structure, for which this building could be accessory. Unlike in case #15-35 where this was noted as a factor in the denial of the Applicant's prior special permit application, the board agreed that it would be infeasible to require the applicant to build a primary or principal building merely for the purposes of having this building be accessory to it, and noted that this nonconformity had been pre-existing for several decades. With regard to the lack of a principal structure, the board relied on the pre-existing nonconformity (i.e. the existing lack of a principal building) to permit the reconstruction of an accessory structure similar in nature to that that had existed prior, with no principal structure.

Considering §1.5.3, the board determined that the proposed new structure satisfies the provision that the proposed reconstruction would "*not exceed the gross volume or floor area of the original nonconforming structure*" and that although the structure was being relocated eastward to be wholly within the Town of Belmont, it would otherwise not have been outside the footprint of the prior building, therefore a special permit could be granted to permit its reconstruction.

After careful consideration and discussion, the Board agreed that given the unique circumstances pertaining to the case, as described herein, and due to both the redesign of the structure and more favorable response by the abutters to this proposal than to case #15-35, the proposed structure would not be more detrimental to the neighborhood than the prior structure.

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Accordingly, upon a motion duly made and seconded, the board voted 5-0 to grant the Special Permit to reconstruct the 3-bay garage structure as requested.

For the Board:

Dated: October 31, 2017

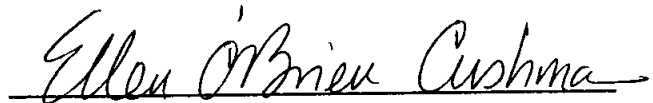


Ara Yogurtian  
Assistant Director  
Office of Community Development

CERTIFICATION

I, Ellen O'Brien Cushman, hereby certify that twenty (20) days have elapsed after the decision was filed in the office of the Belmont Town Clerk on October 31, 2017, and further I certify that no appeal has been filed with regard to the granting of said one (1) Special Permit with zero (0) conditions.

November 22, 2017



Ellen O'Brien Cushman, Town Clerk  
Belmont, MA

Any appeal from this decision must be made pursuant to Ch.40A, S.17, MGL, and must be filed within 20 days after the filing of such notice in the office of the Town Clerk.