

**Town of Hopedale  
Decision of the Hopedale Zoning Board of Appeals  
September 28, 2022**

**Case: 9-2022**

Applicant(s):                    Keating Caretaker, LLC  
Property Owner:                Keating Caretaker, LLC  
Property:                         43-45 Bancroft Park, Hopedale, MA 01747  
Application Filed:              August 4, 2022  
Hearing Dates:                 September 28, 2022

Relief Sought: Applicant is seeking a special permit to construct a 126 square foot addition to a duplex.

Decision: Following the closing of the public hearing on September 28, 2022, the Zoning Board of Appeals voted unanimously to issue a special permit for the construction of a 126 square foot addition to a duplex located at 43-45 Bancroft Park.

**Certification**

This is to certify that the above action was taken in compliance with the statutory requirements as set forth in Chapter 40A of General Laws, and that copies of this decision and plans referred to in this decision, if any, were filed with the Town Clerk on \_\_\_\_\_, 2022.

Special Permit or Variance is not in effect until the decision is recorded with the Worcester County Registry of Deeds and the building permit will not be issued until proof of recording is presented.

**APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PERSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING THIS DECISION IN THE OFFICE OF THE TOWN CLERK.**



\_\_\_\_\_  
**Christopher P. Hodgins, Chairman**

**Record of Proceedings and Summary of Findings and Decision  
Hopedale Zoning Board of Appeals**

**Case: 9-2022**

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Property Owner:	Keating Caretaker, LLC
<u>Property:</u>	43-45 Bancroft Park Hopedale, MA 01747

**Hearing Proceedings**

On August 4, 2022, Keating Caretaker, LLC, filed an application for a special permit to construct a 126 square foot addition to a duplex located at 43-45 Bancroft Park. The Zoning Board of Appeals (ZBA) scheduled a public hearing for September 28, 2022, and notified the Town Clerk, abutters and other interested parties, and requested publication of the notice in the Milford Daily News.

The Milford Daily News published the first notice on September 14, 2022, and published the second notice on September 21, 2022. The Town Clerk posted the hearing notice on September 15, 2022.

Public Hearing

On September 28, 2022, the ZBA opened a public hearing on the application. Four members of the ZBA were present with one member (Louis Costanza) absent. Nicholas Alexander attended via zoom. Chairman Christopher Hodgens opened the public hearing, declared a quorum existed, explained the process, and outlined the procedural posture of the application. Mr. Hodgens said that the application was necessary because the subject property is a non-conforming use. The property pre-dated the adoption of the zoning by-laws and the requirements for frontage, side yard set-back, rear yard set-back, and open space. The property is legal, but non-conforming to the existing by-law requirements. Under section 4.1 of the Hopedale Zoning By-Laws, a non-conforming one, two, or three-family structure may be extended as of right if it is within the existing footprint of the structure. To exceed the existing structural footprint, a special permit is required. Mr. Hodgens said that the applicant seeks to exceed the footprint of the existing structure. Therefore, a special permit is required.

Mr. Hodgens invited the applicant to make a presentation. Robert Duff, of Guerriere and Halnon Engineering and Land Surveying, agreed with the summary of Mr. Hodgens. He said the applicant is seeking a special permit for a 126 square foot addition to the rear of the property for a bathroom. The added bathroom is for the convenience of the homeowner. There will be a slight increase in the non-conforming nature of the structure. Only 18 to 20 square feet of the addition will encroach on the side yard set-back requirement.

Laurie Keating, homeowner of the subject property, said that she wants to move into the residence. She has owned it since 2009. She now wants to move in to be closer to family members. Medical issues necessitate the addition because the stairs to the laundry in the

cellar present a hardship. The addition off the dining room is the only logical place to locate the added floor space.

Mr. Hodgens welcomed Ms. Keating to Hopedale and asked if any members of the ZBA had any comments or questions. Scott Savage said that his only question has been answered. He said that he was interested in the scope of the encroachment, but he is now satisfied.

Mr. Hodgens asked if any members of the public had any comments or questions. Two people present introduced themselves as neighbors of Ms. Keating -- Nadine Tarmy and Bill Redden of 19-21 Bancroft Park. Mr. Redden welcomed Ms. Keating to the neighborhood. He said that the addition is positive. His only concern is the right of way behind the residences. Mr. Redden wanted an assurance that the right of way would be maintained and kept clear. He said that he had a private conversation with the applicant on the subject, and the applicant assured him that the right of way would be so maintained. Mr. Redden is satisfied. Ms. Tarmy said that her only concern was the right of way as expressed in the deed to the property. She said the right of way must remain open to vehicles, and it must remain free of debris during construction. Mr. Redden said that they park cars on the right of way to avoid parking on the street in front of the house.

Mr. Hodgens clarified that the discussion is about a private right of way behind the residences and not about the public road. Mr. Redden said that is correct. The properties split ownership of the right of way. Mr. Hodgens said that arrangement requires a friendly relationship among the neighbors. Mr. Keating said that is true, and the right of way has recently been paved.

Mr. Hodgens noted that there have been no objections from any abutters. He added that he checked the mail before the meeting, and there have been no written objections. Sandra Biagetti said that she saw Tim Watson from the Water and Sewer Department on the zoom call. She wondered if he had anything to add. Mr. Hodgens invited any public official to speak but added that they were not required to do so. No one offered any comments. Mr. Hodgens closed the public hearing.

Mr. Hodgens then read through the criteria for issuing a special permit. He asked any members of the ZBA to speak up if there was any question about any of the criteria. Mr. Hodgens noted the following: the proposed structure is in harmony with the zoning by-laws; all requirements of the zoning by-laws have been met; the benefits of the proposal outweigh any potential detrimental effects; the master plan is not a factor; there is no danger to public safety; there is sufficient off-street parking; the addition is adequately served by municipal water and sewer; surface water runoff will not be adversely impacted; and the ground water supply will not be contaminated. No one raised any objections. Mr. Hodgens said the proposal satisfies the special permit criteria. He said that it does not appear that any special conditions are required, but he would open the issue up to discussion. No one offered any discussion on conditions.

Mr. Hodgens said that he would entertain a motion to approve the special permit application. Mr. Savage moved to approve the application for the 126 square foot addition, and Ms. Biagetti seconded the motion. Mr. Hodgens added that the motion would include reference to the application materials, especially the plan (dated July 27, 2022) prepared by Jeffrey Stafanik, Registered Professional Land Surveyor, of Guerriere

and Halnon. Mr. Hodgens asked if anyone wished to discuss the motion. No one offered any comments.

A roll call vote followed on the motion:

Scott Savage	yes
Sandra Biagetti	yes
Nicholas Alexander	yes
Christopher Hodgens	yes

Mr. Hodgens declared the motion had passed unanimously, and a special permit would issue because the requisite four out of five votes had been achieved.

### Summary of Findings and Decision

The subject property at 43-45 Bancroft Park consists of approximately .196 acres with a two-family, wood-frame structure built in 1893. The property is in a RA district (Residential A) under the Hopedale Zoning By-Laws. The applicant seeks to add a 126 square foot addition that exceeds the existing footprint of the structure. As the attached plan prepared by Guerriere and Halnon indicates, the existing structure (predating the adoption of the Hopedale Zoning By-Laws) does not presently conform to the dimensional requirements of the RA district. The RA district has the following requirements: 15,000 square feet minimum lot area, 125 feet minimum lot frontage, 20 feet minimum front yard set-back, 10 feet minimum side yard set-back, 30 feet minimum rear yard set-back, and 60% open space. Hopedale Zoning By-Laws § 13. Because the subject property does not satisfy all of these dimensional requirements, the existing structure is non-conforming. Extensions of non-conforming structures beyond an existing footprint are available only with a special permit issued by the ZBA. Hopedale Zoning By-Laws § 4.1.

An applicant does not have “an absolute right to a special permit.” MacGibbon v. Board of Appeals of Duxbury, 356 Mass. 635, 638, 639 (1970). The decision to grant or deny “special permits is within the discretion of the board.” ACW Realty Management, Inc. v. Planning Board of Westfield, 40 Mass. App. Ct. 242, 246 (1996). “Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law, and shall be subject to general or specific provisions set forth therein; and such permits may also impose conditions, safeguards and limitations on time or use.” G.L. c. 40A, § 9. Conditions may consider “protection of the neighborhood, the Town, and the natural environment” and may include limitations and restrictions designed to address specific features of the proposed use or structure. Hopedale Zoning By-Laws § 10.6(e). Based upon the governing standard, the Hopedale Zoning By-Laws, and the facts presented at the hearings in the instant case, the ZBA exercises its discretion in favor of issuing a special permit.

A special permit may not issue unless the ZBA finds that “all of the requirements” of the Hopedale Zoning special permit criteria under Hopedale Zoning By-Laws §§ 10.6(d)(1)-(8) are satisfied. Based upon the information available at the public hearing, the ZBA concludes that the special permit criteria are satisfied: the proposed structure is in harmony with the zoning by-laws; all requirements of the zoning by-laws have been met; the benefits of the proposal outweigh any potential detrimental effects; the master plan is not a factor; there is no danger to public safety; there is sufficient off-street parking; the

addition is adequately served by municipal water and sewer; surface water runoff will not be adversely impacted; and the ground water supply will not be contaminated. Hopedale Zoning By-Laws §§ 10.6(d)(1)-(8).

The proposed addition is modest and will be unobtrusive to the neighborhood. Bancroft Park is a densely settled, oval roadway with similar two-family residences bearing unique architectural accents. Other properties in the area are similarly non-conforming structures. Although the lots are not large, the neighborhood is arranged to provide adequate space between properties. The subject property is one of the larger lots in the area. The lots have ample natural cover from trees and shrubs. The subject property has maintained a “wooded” portion that partially conceals the entrance to a narrow, paved right of way that passes behind the residences. Small driveways provide additional parking along a 40-foot wide roadway with sidewalks on both sides. The proposed encroachment to the existing side yard set-back is quite minimal (about 18 to 20 square feet). As indicated by the one-page plan submitted and the comments of Mr. Duff, the applicant has clearly tried to locate the addition in such a way as to minimize the encroachment on the set-back restrictions. Notably, there were no objections raised by any abutters, members of the public, or local officials. Two abutters spoke with enthusiastic support for the addition which they view as a positive improvement to the property. Based upon the foregoing facts, the ZBA is satisfied that the proposed addition is entirely consistent with the purposes of the Hopedale Zoning By-Laws, especially as the by-laws relate to the requirements for non-conforming structures and special permits. Hopedale Zoning By-Laws §§ 4.1 and 10.6(1)-(8). The ZBA specifically finds that “the proposed extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.” Hopedale Zoning By-Laws § 4.1.

The ZBA hereby allows the application for a special permit for the construction of a 126 square foot addition as set forth in the one-page plan submitted with the application and attached to this decision.

Copies of this decision will be filed with the Town Clerk and sent to the applicant, Building Commissioner, and Tax Assessor.

PLAN BOOK 206

47-49 BANCROFT PARK  
CONDOMINIUM  
SEE DEED BOOK 9122 PAGE 337)

23 & 25 BANCROFT PARK  
CONDOMINIUM  
(SEE PLAN BOOK 664 PLAN 69)

PROPOSED 9x14  
BATHROOM ADDITION  
(126 SQ FT)

N44°53'05"E  
94.79'

8.9'

PAVEMENT

28.9'

GRASS

AC

CHIMNEY

MAP 11 LOT 193  
N/F  
KEATING CARETAKER, LLC  
BOOK 61195 PAGE 144  
AREA=8,253 SF  
(0.19 ACRES)  
43-45 BANCROFT PARK  
(BUILT 1893)

BUILDING SETBACK

BH

S33°33'05"E  
128.74'

RIGHT OF WAY  
SEE BOOK 3685 PAGE 535

PAVEMENT

PAVEMENT

BUILDING SETBACK

GRASS

PAVEMENT

R=150.00'  
L=91.46'  
Δ=34°56'08"

PAVEMENT

GRASS

SIDEWALK

50.69'  
N80°32'05"W

WOODED

R=25.00'  
L=18.00'  
Δ=41°15'

BANCROFT PARK  
(PUBLIC-40' WIDE-ONE WAY))



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OWNER

KEATING CARETAKER LLC  
745 WILLOW ST  
S. YARMOUTH MA 02664

NO.	DATE	INITIAL	SUBMITTAL	INIT

SPECIAL PERMIT  
PLAN OF LAND

43-45 BANCROFT PARK  
IN  
HOPEDALE, MA