



Meeting Minutes of the Lexington Board of Appeals Conducted Virtually, Via Zoom April 25, 2024, 7:00 pm

Board Members: Chair – Ralph D. Clifford, Nyles N. Barnert, Norman P. Cohen, Martha C. Wood, and James A. Osten

Alternate Member: Patricia Nelson

Administrative Staff: Jim Kelly, Building Commissioner, Julie Krakauer Moore, Zoning Administrator, and Olivia Lawler, Administrative Clerk

Address: 43 Blossomcrest Road (ZBA-24-16)

The petitioner is requesting an APPEAL OF THE BUILDING COMMISSIONER DETERMINATION DATED MARCH 7, 2024 in accordance with Z the Zoning By-Law (Chapter 135 of the Code of Lexington) section(s) 135.9.2.2(3) to appeal a determination of the Building Commissioner regarding a request for enforcement.

The petitioner submitted the following information with the application: Nature and Justification, Certified Plot Plan, and Appeal Package – Hosmer House dated 3-22-2024.

Prior to the meeting, the petitions and supporting data were reviewed by the Building Commissioner, Conservation Administrator, Town Engineer, Board of Selectmen, the Planning Director, the Historic District Commission Clerk, Historical Commission, Economic Development, and the Zoning Administrator. Comments were received from the Zoning Administrator, Building Commissioner, and Historical Commission.

The Hearing was opened at 7:08 PM.

Petitioner: Susan Bennett and Robert Rotberg on behalf of the Lexington Historical Commission

Susan Bennet and Robert Rotberg presented the petition. Ms. Bennett began the presentation. She gave a review of the legal requirements governing the relocation of the Hosmer House and why the Historical Commission (HC) believes enforcement action is warranted and necessary. She stated these legal requirements have three (3) elements: the Zoning Bylaw, the original Request for Proposal (RFP) and the original Special Permit (SP). She gave an overview of zoning bylaw 135-6.2 and the HC's involvement in the relocation of the Hosmer House. She stated their relocation approval was based on plans submitted, assurances from town officials, RFP, and the Zoning Bylaw. She gave a summary of the original SP and RFP and highlighted words and phrases the HC finds most important and relevant to their request. Spoke of the clapboard siding, windows, and trim needing to be retained based on these original documents/agreements. Emphasized legal commitment by owners. RFP stated its purpose is to ensure that exterior architecture, and historic and cultural features of the building would be retained.

Ms. Bennett quoted the RFP stating "it is very important that prospective purchasers view the property prior to submitting a proposal...no exceptions for errors or omissions resulting from the proposers not being familiar with existing conditions" and highlighting that the applicant would be responsible for costs of relocation and that the Carrolls accepted these conditions.

Photographs of the Hosmer House before the relocation, during the time when the second floor was removed, and after the move during the addition construction phase were shared. Ms. Bennet noted how much of the original house was no longer in existence and stated the home was stripped of historical features that were crucial to preserving it, which was required through the SP and RFP.

The HC believes that the town was supposed to benefit from this sale and having this historical home preserved but instead only the new owners benefitted being allowed to make a non-conforming lot buildable while neglecting certain requirements of the SP and RFP.

Ms. Bennett stated that when the HC became aware of the Hosmer House demolition in February 2023, they alerted the Board of Appeals Chair, Town Manager, Building Commissioner, and Town Counsel. She quoted an email response from Town Counsel stating “it seems really incongruous, with what the Carrolls knew the deal was, for the Hosmer House to be destroyed.” And emphasized the HC’s agreement with this statement.

Mr. Rotberg stated the Carrolls directly and purposefully neglected to honor the conditions and legal requirements of the SP and RFP. The HC believe the legal and binding contracts between the Town, Town boards, and the Carrolls needed to be abided by and that they were not and therefore the HC asks the BC to impose the maximum fine of \$300/day. The HC does not want the house removed or demolished but insists that enforcement action in the form of fines be instilled. He stated that it is crucial for promises that were made to the town to be kept and requests that until all rights in this matter are addressed and answered the Certificate of Occupancy be withheld.

Board Member, Norman P. Cohen questioned when in the process HC had jurisdiction over the home (during the relocation consideration and plan the HC was consulted. HC agreed to relocation specifically with the understanding that it would historically maintained and preserved.) He asked to confirm that the HC is no longer requesting the home be given back to the town or demolished as they had previously stated at the Board of Appeals hearing on January 11, 2024. (No, they want enforcement action)

Ms. Bennett stated that under the Bylaw pertaining to relocation, the HC is consulted regarding the appropriateness of relocation and whether it will jeopardize the preservation of the historical character of the structure. The HC had a formal meeting and agreed upon the appropriateness of relocation based on the plans submitted to them.

Building Commissioner, James Kelly, emphasized the complicated nature of this application and emphasized that the appeal is for his determination to not take enforcement action in the form of fines, and it is not an appeal of the previously issued Special Permit. Mr. Kelly described that through his review, he determined the property owners are complying with their Special Permit and does not find it necessary to issue fines. He believes the Carrolls have retained the character of the Hosmer House, as is required by their SP. He stated that HC had a right to appeal the Special Permit decision and should have because it seems that that is what they really desire to be appeal. Mr. Kelly stated his belief that the it is out of the Board’s purview to force the BC to issue fines for enforcement. He shared that one condition on the original special permit refers to retaining the character of the home and he believes that the owner’s have successfully accomplished this. He stated it is important to note that the home is still standing and has been recreated well for all to see and enjoy. He emphasized that he is happy to answer any questions to help clarify the situation.

Board Member, James A. Osten questioned the general requirements of obtaining a Certificate of Occupancy. He highlighted how the previous condition that tied the CO to obtaining a Preservation Restriction from the Massachusetts Historical Commission had been removed through a formal Special Permit Modification hearing and decision so the issuance of a CO is no longer tied to any conditions in the SP. (Compliance with multiple departments (zoning, conservation, building, etc.)

Ms. Bennett stated the HC is focusing specifically on the legal requirements that the homeowners have not abided by. She emphasized that the relocation was only to be valid under the RFP and the SP and their conditions, specifically the requirement of preserving the historical character. She stated that although the BC mentioned recreation, recreation is not referred to in the bylaw of the SP. She reiterated that Town Counsel's reaction mentioned earlier perfectly encapsulates the situation and emphasizes the need for enforcement action. She stated there had been no commentary during this hearing that the overarching conditions have been met nor that historic preservation had occurred because the home has been largely demolished.

Mr. Rotberg stated that it is immaterial how the house looks or does not look. The agreement was regarding retaining the historical character and nature of the home and not about the appearance. He stated the home is essentially a new home. He emphasized his belief on how crucial it is for a town like Lexington to ensure promises and agreements are honored and kept. He stated it is unnerving that the Building Commissioner believes the home complies. The one remedy for the situation instead of demolition the HC supports is fining the owners.

No further questions from Board.

Mark Connor, 16 Highland Avenue, is a former Historic District Commission Associate Board Member who resigned following the decision to allow the relocation of the Hosmer House. He stated his support of the appeal and emphasized that it is the Town's responsibility to ensure agreements are abided by. He outlined that the one thing promised with HDC agreeing to the relocation was that the home would be protected and preserved. HDC agreed to help solve the problem with the new police station. He believes the home does not live up to the promises made and does not represent the meaning of the Bylaw. He concluded that Lexington is a historic town and the town needs to help ensure historical structures are protected.

Wendall Kalsow, 25 Summit Road, stated he is a preservation architect by trade. He stated his support for the appeal. He shared his belief that this is a case of basic governance and that since commitments were made, they must be enforced. Mr. Kalsow stated that replication is not preservation.

William Dailey Jr., 114 Marrett Road, identified himself as the legal representation for the Carroll Family. He shared his opposition to the appeal and emphasized the need for the Board to focus on the issues before them and not prior decisions that were not appealed. He stated that Mr. Kelly was required to abide by the building code and in so doing he aided the owners with selecting windows that would help preserve the character of the home while also meeting building and energy codes. He noted that the windows and clapboard in the home were not original to the home and were installed sometime in the 1950s, with many being in poor condition when the Carrolls purchased the home. He highlighted multiple materials and characteristics of the home that were not historical in nature when the home was relocated. He stated that the assumption that the BC was derelict is incorrect and he should instead be congratulated and appreciated for his efforts.

Ingrid Klimoff, 18 Bacon Street, is a neighbor to the property. She stated her opposition to the appeal stating that the HC is dragging this on when the Carrolls helped to rescue the home and restore it. She emphasized the need for a Certificate of Occupancy due to the housing shortage in Lexington.

David Kelland, 884 Massachusetts Avenue, a HC member stated his support for the appeal. He stated a rhetorical question asking if the HDC approved demolition of the home and answered "no". He stated the home did not just consist of clapboard and windows and that it could never be reproduced due to the quality and type of materials used on the original house.

Board Chair, Ralph D. Clifford, stated that demolition is not an subject being considered during this hearing.

No further comments or questions from the audience.

Ms. Bennett stated in response to Mr. Dailey that the Historical Structure Report completed between 2010-2013 clearly called out elements of the structure that were well worth preserving that were not preserved by the Carrolls. She clarified that degradation of historic homes over time is inevitable and minor repairs and replacements will take place but what the Carrolls did to the Hosmer House was basically demolition of a historic structure and therefore in violation of their SP and RFP.

Hearing was closed at 7:56 PM (a roll call vote was taken: Ralph D. Clifford– Yes, Norman P. Cohen– Yes, Martha C. Wood – Yes, James A. Osten – Yes and Nyles N. Barnert – Yes)

Mr. Clifford, stated the Board had three (3) matters to decide, the first being if the Historical Commission is an interested party in terms of this appeal.

Board Member, Martha C. Wood, stated it is obvious that the HC is an interested party. There was consensus among the Board that this is correct.

Next, Mr. Clifford questioned what authority the Board has if they find that they disagree with the determination of the Building Commissioners. He stated he disagrees with the Building Commissioner's belief that they have no authority to make him take enforcement action. He proposed the Board should adopt the abuse of discretion review standard for this appeal.

Mr. Cohen emphasized that this is the third time they have had a hearing regarding the Hosmer House. He highlighted that the prior decisions were not appealed even though interested parties had the chance to appeal and therefore these decisions are in effect. He stated that after ample discussion at the second hearing, it was decided to remove the two conditions that were tied to the Certificate of Occupancy.

Board Member, Nyles N. Barnert, asked to clarify the meaning of abuse of discretion.

Mr. Clifford stated the abuse of discretion standard would mean that the determination of the Building Commissioner would stand unless it is found that no Building Commissioner could have made the same determination and that the determination was made in error.

On the merits of the appeal, Mr. Clifford emphasized that throughout all hearings regarding the Hosmer House, the facts have not been laid out well and have been presented differently throughout the course and clarified that this does not affect the course of the decision making for this hearing. He provided an overview of the Zoning Bylaws 135-6.2.4 and 135-6.2.5(2). He emphasized that nowhere in the bylaw does it say a relocated home must be preserved in its original format. Mr. Clifford shared a condition from the original SP in which the word retained was utilized and highlighted how retained does not necessarily mean keeping all of the original aspects of the structure is required. He highlighted that the USS Constitution ship located in Boston only has approximately 10-15% of its original structure due to a plethora of repairs and replacements over time and yet people still view it as a historical structure and believe it to have been historically preserved. Mr. Clifford said that historic preservation is not interpreted as solely locking something in a constant state without any alterations.

Mr. Osten stated it is important to note as Mr. Dailey mentioned that in order to obtain a Certificate of Occupancy, current building codes must be met. He stated that this regulation drives the capacity in which a structure can be preserved and dictates the options available for construction.

Mr. Barnert stated that at the last hearing there was not clear evidence presented to prove that the original house would have qualified for a preservation restriction through the Massachusetts Historical Commission. He shared that this is the main reason that he voted to approve the SP modification.

Ms. Wood stated that it is evident that there had been no attempt by the town in earlier years to preserve the home so much of the historical character had already been diminished or lost. Prior changes made it difficult for the Carrolls to preserve the home and they did not have many choices in her opinion because the preservation piece was already missing before they owned the home.

Mr. Cohen highlighted the state of disrepair that the home was in for many years where it previously sat. He stated he does not believe the Board has jurisdiction to control the BC and force him to issue fines.

Associate Board Member, Patricia Nelson, stated her belief that there was no abuse of discretion by the BC in making his determination and shared that she is leaning towards supporting his determination in question.

No further discussion from Board.

The Board of Appeals voted five (5) in favor, zero (0) opposed, and zero (0) in abstention to determine the Historical Commission is an interested party for the purpose of this appeal (a roll call vote was taken: Ralph D. Clifford– Yes, Norman P. Cohen– Yes, James A. Osten – Yes, Martha C. Wood – Yes and Nyles N. Barnert – Yes).

The Board of Appeals voted five (5) in favor, zero (0) opposed, and zero (0) in abstention to confirm that a decision on the appeal of the Building Commissioner Determination will be decided through the abuse of discretion review standard. (a roll call vote was taken: Ralph D. Clifford– Yes, Norman P. Cohen– Yes, James A. Osten – Yes, Martha C. Wood – Yes and Nyles N. Barnert – Yes).

The Board of Appeals voted zero (0) in favor, five (5) opposed, and zero (0) in abstention to grant an APPEAL OF THE BUILDING COMMISSIONER DETERMINATION DATED MARCH 7, 2024 in accordance with the Zoning By-Law (Chapter 135 of the Code of Lexington) section(s) 135.9.2.2(3) to appeal a determination of the Building Commissioner regarding a request for enforcement. Therefore, the appeal was denied and the determination was upheld. (a roll call vote was taken: Ralph D. Clifford– No, Norman P. Cohen– No, James A. Osten – No, Martha C. Wood – No and Nyles N. Barnert – No).

Mr. Clifford emphasized that multiple comments were shared in appreciation that the house is still standing and community members are able to see it how it once looked before deterioration and that this outcome is more beneficial than demolition would have been.

Meeting Minutes of the Lexington Board of Appeals
Conducted Virtually, Via Zoom
April 25, 2024, 7:00 pm

Board Members: Chair – Ralph D. Clifford, Nyles N. Barnert, Norman P. Cohen, Martha C. Wood, and James A. Osten

Alternate Member: Patricia Nelson

Administrative Staff: Jim Kelly, Building Commissioner, Julie Krakauer Moore, Zoning Administrator, and Olivia Lawler, Administrative Clerk

Other Business:

1. Minutes from the April 25, 2024 meeting

Zoning Administrator, Julie Krakauer Moore announced her departure from the Zoning Administrator position. She expressed gratitude for her experience in Lexington and working with the Board of Appeals.

Mr. Kelly emphasized his appreciation for Ms. Krakauer Moore and her wealth of knowledge that she shared throughout her time. He stated her departure will be noticeable and Town staff and the Board of Appeals will miss working alongside her.

The Board unanimously recognized Ms. Krakauer Moore for her dedication to and intelligence in zoning matters in Lexington and to the Board of Appeals and all of its applicants.

The Board of Appeals voted five (5) in favor, zero (0) opposed, and zero (0) in abstention to approve the minutes from the April 25, 2024 meeting (a roll call vote was taken: Ralph D. Clifford– Yes, Norman P. Cohen– Yes, James A. Osten – Yes, Martha C. Wood – Yes and Nyles N. Barnert – Yes).

The Board voted to Adjourn at 8:22 PM (a roll call vote was taken: Ralph D. Clifford– Yes, Norman P. Cohen– Yes, Martha C. Wood – Yes, James A. Osten – Yes and Nyles N. Barnert – Yes).