

**Town of Southborough**  
**BOARD OF APPEALS**

SOUTHBOROUGH, MASSACHUSETTS 01772

17 COMMON STREET  
SOUTHBOROUGH, MASSACHUSETTS 01772-1662  
508-485-0717 ext. 1

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J. DeGale

**Notice of Decision on Special Permit Request - AMENDED**

Property: 5 Hillside Avenue; Map 55 Parcel 5; Recorded Worcester District Registry of Deeds Book 55775 Page 259 ("Premises")

Application Filed: February 27, 2017

Advertisement: The Board advertised the public hearing on March 8, 2017 and March 15, 2017 in the MetroWest Daily News

Public Hearing: The public hearing began on March 22, 2017, and was further continued to April 26, 2017, May 3, 2017, May 17, 2017 and June 7, 2017 in the Public Meeting Room of Southborough Town Hall with regard to the petition for the applicant for the following:

Petition: Special Permit request pursuant to Massachusetts General Laws Chapter 40A section 6 seeking a finding that the reconstruction and addition to the Premises is not substantially more detrimental to the neighborhood than the current structure.

Board: Andrew R. Dennington, Chairperson  
Leo F. Bartolini, Jr.  
Craig Nicholson  
David Williams  
Debbie DeMuria

Applicant: Colt Realty, LLC {Stephen Garofalo, Manager}  
159 Shawmut Avenue  
Marlborough, MA 01752

Sandra R. Austin, Esq. (Attorney)  
Law Office of Sandra Rennie Austin  
40 Mechanic Street, Suite 305  
Marlborough, MA 01752

Bruce Saluk (Engineer)

Bruce Saluk & Associates, Inc.  
576 Boston Post Road  
Marlborough, MA 01752

Procedural History:

1. The application for special permit relief was filed in the Office of the Southborough Building Department on February 27, 2017.
2. The Applicant seeks relief to reconstruct a single family home with an attached two car garage which current single family structure is nonconforming as to front yard setback and lot area. Applicant seeks a determination pursuant to M.G.L. c.40A s.6 as to whether the proposed reconstruction and construction increases the nonconforming nature of the structure and if so then the Applicant seeks a determination that the new single family structure will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.
3. The Owner of the Premises is Colt Realty, LLC. The property is located in the Residence B zone.
4. A public hearing before the Zoning Board of Appeals was duly noticed opened on March 22, 2017, without testimony, and continued to April 26, 2017, and further continued to May 3, 2017, May 17, 2017 and further continued to June 7, 2017, at which time it was closed.

Plans/Documents:

1. A Letter from the Building Commissioner/Zoning Officer Mark Robidoux to the Applicant dated January 31, 2017.
2. The Special Permit Application filed with the Board on February 27, 2017.
3. A plan entitled ("/Proposed Garage 5 Hillside Avenue Southborough, MA prepared for: Colt Really, LLC 159 Shawmut Ave. Marlborough, MA 01752", prepared by Bruce Saluk & Associates, Inc. dated November 3, 2016.
4. A Letter to Mark Robidoux from Attorney Sandra R. Austin dated January 24, 2017 regarding the nonconforming structure.
5. Communications in opposition from abutter, Michele Walker of 11 Lyman Street, Southborough in a letter dated March 22, 2017 and an email dated May 10, 2017.
6. Letter from abutters in opposition, Caitlin and Kevin Black of 9 Lyman Street, Southborough dated May 3, 2017.
7. A Memorandum from Karen Galligan, Superintendent of the Town of Southborough Department of Public Works dated April 27, 2017 regarding the installation of a berm to control storm water on the road.
8. An analysis titled "Storm water management Proposed House 5 Hillside Ave, Southborough, MA" dated, May 17 2017 by Bruce Saluk, showing a decrease in run off from the Premises as a result of the proposed improvements.
9. List of abutters in support submitted by Mr. Steven Garofalo at ZBA meeting May 3, 2017
10. Email from Joe Hubley to Steve Garofalo dated Sept 13, 14 & 28th 2017

11. Opinion Letter to ZBA from Southborough Town Counsel, Attorney Aldo Cipriano, dated May 17, 2017 advising that 50% by-law criteria in Southborough Zoning Code, Section 179-9(E), should not be applied due to Appeals Court's decision in Gale v. Zoning Board of Appeals of Gloucester, 80 Mass. App. Ct. 331 (2011)
12. A Memorandum from Karen Galligan, Superintendent of the Town of Southborough Department of Public Works dated May 30, 2017.

Findings:

1. The current storm water runoff from the Premises includes a significant amount runoff from Hillside Avenue as well as other abutting properties which affects abutters located at both 9 and 11 Lyman Street.
2. The current single family structure is nonconforming with current zoning for the Town as to lot area and front yard setback.
3. In a memo to ZBA dated April 27, 2017, DPW Superintendent Karen Galligan indicated that the DPW will have a contractor install an asphalt berm along the southern edge of Hillside Avenue in front of the subject property, and carried beyond the property line around the corner of Lyman Street and Hillside Avenue to the driveway of 11 Lyman Street, during its paving contract. Ms. Galligan indicated, however, that DPW could not commit to a timeline for the work.
4. Applicant's engineer, Bruce Saluk presented improvements to the Premises which will decrease the current run off from the Premises and off site areas to the abutters. Those improvements include altering the pitch of the driveway from a current 5% pitch away from the road to a 3% pitch toward the road, and directing the front roofs from roof ridgeline such that drainage shall be towards the road where the storm water will be directed to the existing storm drains on Lyman Street.
5. As a result of the proposed improvements on the Premises and the proposed berm construction along Hillside Avenue and Lyman Street, the storm water runoff problem will be improved with the reconstruction of the Premises.
6. The proposed reconstruction and construction increases the nonconforming nature of the structure as to zoning pursuant to M.G.L. c.40A s.6.
7. The new single family structure will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.



Conditions:

1. Construction shall be in substantial compliance with the Plan titled "Proposed Garage - 5 Hillside Avenue" dated November 3, 2016 (revised May 25, 2017).
2. Applicant shall construct the roof and drainage for both the home and garage such that the front roofs face Hillside Avenue and the gutters are directed toward the driveway such that water shall flow onto Hillside Avenue.
3. The driveway shall have curbing along the west side to direct the water toward Hillside Avenue.
4. The Applicant shall file this Decision with the Worcester District Registry of Deeds and provide evidence of the same to the Zoning Board of Appeals and the Building Commissioner prior to the issuance of a building permit for the construction related to this Special Permit.
5. The Applicant shall plant a vegetative screen along the Lyman Street side of the property, with trees planted in accordance with any applicable rules and regulations of the Town of Southborough.
6. Developer will work with Southborough DPW to install curbing along the southern edge of Hillside Avenue in front of the subject property, and carried beyond the property line around the corner of Lyman Street and Hillside Avenue to the driveway of 11 Lyman Street. If DPW cannot for any reason complete the construction in a timeframe prior to completion of construction of the house, developer will install the curbing at its own cost. Developer may petition the DPW for a reimbursement agreement for completed curbing work done to DPW standards. Approval of the reimbursement agreement is at the sole discretion of the DPW and/or necessary town administration.
7. The Applicant shall obtain written permission from the abutter at 18 East Main Street prior to grading on their land.

Decision and Vote of the Board:

At its meeting on June 7, 2017, the Zoning Board of Appeals voted 5-0 to approve the request of the Applicant to reconstruct a single family home with an attached two car garage and issue a special permit pursuant to M.G.L. c.40A s.6.

After review of all evidence and facts presented at this hearing, and after deliberation on the same, the Board voted 5-0 on a motion made by Mr. Bartolini and seconded by Mr. Williams, with members voting as follows for the Special Permit request:

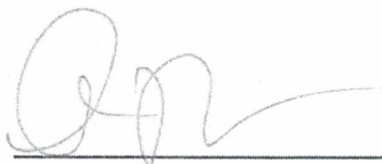
Andrew R. Dennington- APPROVE WITH CONDITIONS

Leo F. Bartolini, Jr. - APPROVE WITH CONDITIONS

Craig Nicholson - APPROVE WITH CONDITIONS

David Williams - APPROVE WITH CONDITIONS

Debbie DeMuria -APPROVE WITH CONDITIONS



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Andrew R. Dennington, Chairperson  
Town of Southborough Zoning Board of Appeals

**Certification**

In accordance with Section 11 of chapter 40A of Massachusetts General Laws, I hereby certify that twenty {20} days have elapsed after the within decision was filed in the office of the Southborough Town Clerk, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Attest: \_\_\_\_\_

James F. Hegarty, Town Clerk  
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Date