
Re: 99 Preston Lane [IMAN-ACTIVE.FID2821443]

From fenbois@aol.com <fenbois@aol.com>

Date Tue 1/7/2025 3:22 PM

To Andres, Charles R. <candres@barclaydamon.com>; fayshyer@aol.com <fayshyer@aol.com>; Marty Whalen <fergiezip@comcast.net>; Bob Riva <briva@me.com>; Allen Cockerline <a.cockerline@gmail.com>; Beth Wells <bethwells@gmail.com>; Danella Schiffer <danella.schiffer@gmail.com>

Cc Land Use <landuse@salisburyct.us>; Miles Todaro <mtodaro@salisburyct.us>; Hackett Pat <prh@prhackett.com>

Yes, Chuck I saw that after I sent the email. I can confirm that the intent of the regulation concerning vertical expansion of a non-conforming use was about buildings--it was the Haubrich and Nonkin issue on Lakeville Lake that was the genesis of this. It was always the intent of adding a second story to a non-conforming section of a building. Not using a deck to "launch" a first and possibly a second story non-conforming addition.

There was a robust debate about volumetric nonconformity as opposed to just the setback line. In short, if a building existed with a portion intruding into a setback, the second story could be considered an increase in volumetric--bulk--nonconformity. As each case is different, the special permit allows the commission to assess each individual application. For someone without a neighbor abutting adding a second story would be a *de minimus* action--and we had such as case on the Twin Lakes. In the case of the properties on Lakeville Lake, the second story expansion would have impacted both the privacy and viewshed of the abutting neighbor.

Clearly there is some ambiguity in the regulations--which is why our next task (Abby and I) will try to sort all of these inconsistencies out of the regulations.

I believe the applicant can achieve their goals through a conventional addition to their house subject to the typical reviews including LPOD calculations.

Ideally the non-conforming portions of the decks could be removed as part of the renovation, thereby decreasing nonconformity. However, there is no obligation on the part of to the applicant to remove them--they just can't use them in the manner they have planned--at least that is my opinion/interpretation.

I also believe when Abby briefly discussed this with me--I was under the impression that one of the decks was a screened porch with a roof. That indeed is akin more to a building.

Michael

On Tuesday, January 7, 2025 at 02:31:59 PM EST, Andres, Charles R. <candres@barclaydamon.com> wrote:

Michael –

Just a note that I don't think the issue is 100% clear – hence my inclusion of the “That said...” discussion in the second half of my email. In that part, I state that the term “building” is defined to *include* attached decks and other structures -- so that if the deck is attached to the building (as I believe it is in the Preston Lane application), that deck is considered part of the “building” -- and since it is part of the “building”, that section arguably *would* be eligible for a vertical expansion under Section 503.2. I am not sure if that was the intent when section 503.2 was adopted – but this interpretation is plausible based on the way the term “building” is defined in the regulations.

Chuck

From: fenbois@aol.com <fenbois@aol.com>
Sent: Tuesday, January 7, 2025 12:49 PM
To: fayshyer@aol.com; Marty Whalen <fergiezip@comcast.net>; Allen Cockerline <a.cockerline@gmail.com>; Bob Riva <briva@me.com>; Beth Wells <bethwellsg@gmail.com>; Danella Schiffer <danella.schiffer@gmail.com>
Cc: Miles Todaro <mtodaro@salisburyct.us>; Land Use <landuse@salisburyct.us>; Hackett Pat <prh@prhackett.com>; Andres, Charles R. <CAndres@barclaydamon.com>
Subject: Fw: 99 Preston Lane [IMAN-ACTIVE.FID2821443]

Good morning, colleagues:

Please find and email chain between Chuck Andres and me concerning 99 Preston Lane.

Miles, please upload to the file on this matter and send copies to the applicant.

I think Chuck's memo is quite clear.

Developing (expanding the building) into the deck area would be subject to the same standard considerations in the LPOD of any building footprint expansion that conforms with zoning setbacks.

The portions of the existing deck that that intrude into the front and side yard setbacks are not a building, but a structure and therefore not eligible for a vertical expansion by special permit.

The regulations are quite clear here.

The applicant can always seek a variance from the ZBA if they wish to pursue building in the zoning setbacks, but the hardship here is self-created, and therefore by Statute shouldn't receive a variance--but they can always try.

Michael

----- Forwarded Message -----

From: Andres, Charles R. <candres@barclaydamon.com>

To: fenbois@aol.com <fenbois@aol.com>

Sent: Tuesday, January 7, 2025 at 12:27:20 PM EST

Subject: RE: 99 Preston Lane [IMAN-ACTIVE.FID2821443]

Michael – In looking at the regs, it looks like Section 503.2 allows vertical expansion of a nonconforming *building*, but this section does not mention nonconforming *structure*:

503.2 Except as provided below, no non-conforming building or structure shall be altered, enlarged or extended in any way that increases the area or space, including vertical enlargement, of that portion of the building or structure that is non-conforming. For the purposes of this regulation, vertical is defined as enlargement or expansion either upward or downward.

In all zones, except the LA Zone, subject to approval of a Special Permit, the Commission may approve second story additions or other vertical additions to the height or bulk of that portion **of a residential building which is non-conforming in terms of minimum Yard Setback Requirements** provided:

- a. The proposed addition is designed to be compatible with the existing building in terms of architecture, materials and appearance.
- b. The proposed addition does not project into the required minimum yard any further than the existing non-conforming building foundation or building façade.
- c. The Commission determines the application meets the General Standards for Site Plans and Special Permits, particularly sections 801.2, 801.3, 803.2, and 803.3.
- d. In evaluating the application and reaching its decision, the Commission shall take into consideration the degree of the existing non-conformity.

That said, the definition of “building” in the regulations includes decks or other structures attached to the building:

BUILDING. Any structure having a roof, intended for the shelter, housing or enclosure of persons, animals or materials. **Any structure, such as a deck, porch or breezeway, attached to a building shall be deemed to be part of the building.** Any other structure more than eight feet high shall be considered a building for the purposes of these Regulations, including a fence or wall but excluding an electric transmission line or an electric light, telephone or telegraph pole, highway or railroad bridge or flagpole.

So my guess is that was what Abby was referring to in her email. (It’s possible I may have discussed this with Abby at some point – I am not sure.)

Of course, even assuming the existing deck area is eligible for a vertical expansion because it is part of the building, such expansion is not as of right, but subject to the Special Permit Criteria, as set forth in Section 503.2, subsection (a) through (d), quoted above, which includes general special permit criteria in section 803.

Chuck

Charles R. Andres

Partner

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From: fenbois@aol.com <fenbois@aol.com>
Sent: Tuesday, January 7, 2025 11:27 AM
To: Andres, Charles R. <CAndres@barclaydamon.com>
Subject: Fw: 99 Preston Lane

----- Forwarded Message -----

From: Land Use <landuse@salisburyct.us>

To: MICHAEL MICHAEL <fenbois@aol.com>

Sent: Monday, January 6, 2025 at 07:30:14 PM EST

Subject: Fw: 99 Preston Lane

From: Land Use

Sent: Wednesday, July 24, 2024 8:25 AM

To: Alex Reid <alex.m.reid@gmail.com>; Duane Jones <jones.construction2363@gmail.com>; John Allee <john@alleedesign.com>

Subject: 99 Preston Lane

Good Morning,

Duane was in to follow up on possible expansion of the home. Under Section 503 of the Zoning Regulations, you can apply for a Special Permit to vertically expand nonconforming portions of the structure. I confirmed with the Chairman of the Commission that the deck footprint would be eligible for vertical expansion. However, the maximum impervious surface allowed in the zone is 10% so anything you design must comply with that.

-Abby