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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

Special Permit

***Roger N. Squire III and Quinby Y. Squire, owners
84 Fair Oaks Park
Map 49, Parcel 8***

October 20, 2022

Roger N. Squire III and Quinby Y. Squire, owners, applied to the Board of Appeals for a Special Permit under Sections 1.4.3, 3.15 4.2.1, and any other applicable Sections of the By-Law, to demolish an existing garage and construct a new two-story structure with a garage with an Accessory Dwelling Unit (ADU) on the second floor. An open breezeway connecting the principal unit and ADU shall also be constructed. The property is located at 84 Fair Oaks Park, Needham, MA in the Single Residence B (SR-B) District. A public hearing was held remotely on Zoom, on Thursday, October 20, 2022 at 7:30 p.m.

Documents of Record:

- Application for Hearing, Clerk stamped September 20, 2022.
- ADU-ZBA Special Permit Application, stamped September 20, 2022.
- Existing Conditions Plan, prepared and stamped by John R. Hamel, Professional Land Surveyor, dated August 26, 2022.
- Building Permit Plan, prepared and stamped by John R. Hamel, Professional Land Surveyor, dated August 26, 2022.
- Plans, Elevations, Renderings and photos, pages 2, 5-15, prepared by Studio Troika, dated September 23, 2022.
- Letter from Dave Roche, Building Commissioner, dated October 11, 2022.
- Email from Chief John Schlittler, Police Department, dated September 29, 2022.
- Email from Tara Gurge, Assistant Public Health Director, October 11, 2022.
- Letter from Lee Newman, Director of Planning and Community Development, dated October 5, 2022.
- Email from Thomas Ryder, Town Engineer dated October 11, 2022.

October 20, 2022

The Board included Jon D. Schneider, Chair; Jonathan D. Tamkin, Vice-Chair; and Howard S. Goldman, Member. Also participating were Peter Friedenberg, Associate Member, and Nik Ligris, Associate Member. Mr. Schneider opened the hearing at 7:45 p.m. by reading the public notice.

Michael Samra, Jill Hopkins and John Peterson, architects from Studio Troika, represented the owners. Two years ago, Troika Studios designed a rear addition to the kitchen, dining and living room area at the residence. They are seeking a special permit for an Accessory Dwelling Unit (ADU) to accommodate a member of the family.

Currently there is an existing non-conforming detached garage. They are proposing to demolish the existing garage and construct a new two-car garage with an ADU on the second floor which conforms with current setbacks. The garage and ADU will be located facing the rear of the house and not be visible from the street. This location will create an exterior courtyard connecting the main house with the garage and ADU. The ADU will be connected by a breezeway which is covered on the ground level and uncovered on the second floor. Architectural details from the main house are featured on the addition to complement the main house. The exterior courtyard space is designed to be a family gathering space for outdoor entertainment. The Applicant presented a virtual video walk through the project, specifically how they believe the ADU is contained within, and is part of the existing home and thus why they believe it is one structure.

The ADU has a separate entrance through an interior staircase.

Comments received:

- Engineering Department noted that the proposed new structure requires erosion control measures and the plans should be revised to reflect them prior to receiving a building permit.
- Health Department noted that prior to demolition an online Demolition Review was required with the appropriate pest controls and asbestos sampling. Ongoing pest control must be conducted during demolition and on-going throughout construction.
- Police Department has no issue.
- Building Department found that the breezeway connection would meet the requirements of an attached structure and the Building Code. Because the garage and connecting deck would require building permits, he believed it should be considered an addition to the existing home and not an accessory structure.
- Planning Board found the proposed ADU not to be compliant with the By-Law because it is not contained within the primary residential structure and is in fact located in a second detached structure above the garage. The Planning Board did not find the breezeway connection between the primary residential dwelling unit and the detached garage/accessory dwelling unit to be sufficient to meet the By-Law requirement and underlying intent as relates to the provision for accessory dwelling units to be placed in the primary residential structure. Accordingly, the Board recommends that the application be denied

Mr. Schneider directed that the discussion be focused on addressing the diverging positions of the Planning Board and the Building Commissioner on whether the proposal involved situating the ADU in an accessory structure or not. The By-Law Section 3.15.3 states that an "...ADU shall be located in the single-family detached dwelling and not an accessory building." He noted that the Board has a history of interpreting structures as one house when accessory buildings are attached: 32 Mark Tree Way; 34 Grosvenor Road; and the former Red Cross Building located at the corner of School and Webster Streets.

Based on the rendering, Mr. Goldman thought the addition by design felt connected to the house.

Mr. Friedenberg argued that an ADU is to be fully integrated in the single-family house as reflected by Section 3.15.3(a) and 3.15.3(g) which states: "An interior door shall be provided between each living unit..." He agreed with the Planning Board's position.

Mr. Tamkin thought it was a beautiful project. However, he believed the garage and ADU looked like an accessory structure connected by a breezeway. He wanted to review previous Decisions where the Board treated structures as one structure when connected.

Staff offered that the Building Commissioner considered the ADU and main house as one structure because of the substantial connecting breezeway structure and exclusive connection between the ADU and main house through the breezeway like a connecting interior door.

Mr. Ligris thought it was a beautiful project. He saw arguments supporting both interpretations based on the past Decision at 32 Mark Lee Road or Section 3.15.3(a) of the By-Law.

Mr. Friedenberg concurred that the project was beautifully designed. He thought the By-Law was clear on the ADU being "in" the main house, and agreed with the Planning Board's interpretation. He would like to have more information on the Board's previous Decisions interpreting structures as one house when accessory buildings are attached. He wanted to know the distance between the attached structures.

George Giunta, Jr., 281 Chestnut Street, shared that he represented the applicants of the relevant past Decisions. He noted the distance between the structures in those cases was under ten feet and the issue was about setbacks and which setback applied when there was a breezeway connecting the structures. In all cases, the structures were considered one structure when a garage was connected to the house by a breezeway. He felt the ADU By-Law language could be clearer. There would be a lack of consistency if the Board decides when there is a breezeway connection to treat it as one structure for one purpose and separate structures for another purpose.

Mr. Samra noted that the 26-foot breezeway was to provide connection and independent living for the family member. The ADU breezeway connects to the office on the second floor of the main house. If the kitchen in the ADU were removed the structure can be built as of right. Mr. Samra added that working with the Building Commissioner and staff the intent was to create one unit and that the breezeway was a very substantial connection.

Mr. Tamkin was concerned that the proposed the second entrance to the Unit through the first floor garage was not directly aligned or connected to the walkway from the house. Mr. Sarma agreed to move the door to align with the garage walkway to provide additional congruency.

Mr. Schneider reviewed the project against the By-Law requirements:

- the ADU be subordinate to the primary residence - compliant;
- the house maintains a single-family appearance - uncertain;
- the principal unit be occupied by the owner - compliant;
- the occupant of the ADU be a relative or caretaker of the owner living in the principal unit - compliant;
- the ADU is limited to 850 square feet in size - compliant;
- the unit must be self-contained providing living, sleeping, cooking and eating for the resident of the unit – compliant;
- there be parking available for both units – compliant;
- there is adequate provisions for the proper disposal of sewage, waste, and drainage. The project will be connected to Town sewage – compliant;
- there be two means of egress – compliant – there is a means of egress through the garage and a door through the breezeway;
- there be an interior door between units – uncertain; and
- there be an enclosed stairway – compliant;

Mr. Schneider stated that a condition will be imposed that will require the owner, upon written request from the Building Commissioner, to provide evidence that the ADU and principal dwelling are being occupied in accordance with the By-Law. In the event the owner fails to provide such evidence to the Building Commissioner within thirty (30) days of a written request, the Building Commissioner may revoke the Special Permit for the ADU. Any such revocation may be appealed to the Board in accordance with the procedures for the appeal of other decisions of the Building Commissioner.

Mr. Schneider noted that the Special Permit is associated with the Applicant only and is not transferable.

Mr. Schneider identified the remaining issues: whether the ADU was located in the main house; there was a connecting interior door; and the house is a single-house. He indicated that in the previous cases the issue was determining setbacks. The Board determined the setbacks were those of a single-residence and not those for an accessory structure.

Mr. Goldman felt that the Board treats similar situations as one structure when connected and he found the project to be in compliance. He thought it was a beautiful project and thoughtfully designed that took advantage of the siting on the property. He did not consider the breezeway to be an interior door.

Mr. Tamkin thought that the breezeway connection could allow the building to be considered as a single structure and a way to accommodate the project. He considered the ADU to be subordinate to the main structure. However, he was challenged by whether the structure was an accessory building or not. He did not consider the breezeway an interior door. He was supportive

of the project.

Mr. Ligris highlighted Section 3.15.3(g) where it states: *An interior doorway shall be provided between each living unit as a means of access for purposes of emergency response.* His interpretation is that the intention of the door was for access by caretakers as a convenience. He did not see the door as a fatal flaw.

Mr. Tamkin agreed with Mr. Ligris. He also deferred to the Building Commissioner who has analyzed this project and is charged with enforcing the By-Law. Mr. Tamkin was also convinced by the Applicant's presentation and virtual video walk through the project, specifically how it connects and looks and feels like one structure, with the very elaborate breezeway that he believed the project can be treated as a single structure.

Mr. Goldman noted that the published notice described the project as "a detached two-car garage with an ADU." Mr. Schneider noted that the descriptions are created by staff for general information use and should not be binding on the Board's decision.

Mr. Tamkin moved to grant a Special Permit under Sections 1.4.3, 3.15, 4.2.1 of the By-Law to demolish an existing garage and to construct a new two-story garage with an ADU on the second floor with an open breezeway connecting the principal dwelling unit with the ADU as shown by the plans, renderings and video presentation filed with the application with all the requirements required under the ADU By-Law; conditioned a) upon written request from the Building Commissioner, to provide evidence that the ADU and principal dwelling are being occupied in accordance with the By-Law. In the event the owner fails to provide such evidence to the Building Commissioner within thirty (30) days of a written request, the Building Commissioner may revoke the Special Permit for the ADU. Any such revocation may be appealed to the Board in accordance with the procedures for the appeal of other decisions of the Building Commissioner; b) that the Special Permit is associated with the Applicant only and is not transferable; and c) the Applicant will provide revised plans relocating the ADU door to align with the garage pathway. Mr. Goldman seconded the motion. The motion was unanimously approved.

The meeting adjourned at 8:36p.m.

Findings:

On the basis of the evidence presented at the hearing, the Board makes the following findings:

1. The Premises is a lot containing 11,872 square feet is currently improved with a single-family house and a detached two car garage at 84 Fair Oaks Park, Needham, MA in the Single Residence B (SR-B) District.
2. The Applicant and owner of the Premises has proposed to demolish the existing detached two car garage and replace the same with a two-story garage and an additional studio apartment on the second floor connected by a breezeway and for use as an Accessory

Dwelling Unit (“ADU”). The ADU to be located on the second floor above the garage would contain 727 square feet.

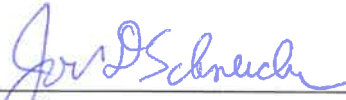
3. Applicant’s adult son will be living in the ADU and the Applicant will occupy the principal dwelling.
4. The ADU will have two entrances/exits: One will be through a door to be located to the front of the garage and will be connected to the Unit by stairs to the second floor, and as relocated per agreement, will now connect to the outdoor walkway from the existing house. The second entrance/exit will be located on the side of the ADU closest to the existing house, and connected by an elaborately designed breezeway which matches the design features of the existing house and new garage/ADU. The ADU and breezeway will be connected to and provide ingress and egress to and from the existing house through a large room the Applicant calls and uses as a home office.
5. There is no more than one ADU unit on the Premises and the proposed ADU will be located in a single-family dwelling and not in an accessory building.
6. The proposed ADU is subordinate in size to the principal dwelling unit and is constructed to maintain the appearance and essential character of the single-family dwelling.
7. One of the units will be occupied by the Applicant/owner and the other will be occupied by a member of the owner’s family.
8. The ADU will have no more than 727 square feet of living space and as a studio apartment will have no more than one bedroom.
9. Parking is provided in the garage for the residents of both units with a minimum of one parking space per dwelling unit and other parking is available in the driveway.
10. Adequate provisions have been made for the proper disposal of sewage, waste and drainage generated by the ADU.
11. The exterior entrances and access ways do not detract from the single-family appearance of the dwelling. The Board has determined that the connected breezeway, with doors on each end, provides access between each living unit as a means of access for purposes of emergency response. All stairways to the upper floors are enclosed within the exterior walls of the structure.

Decision:

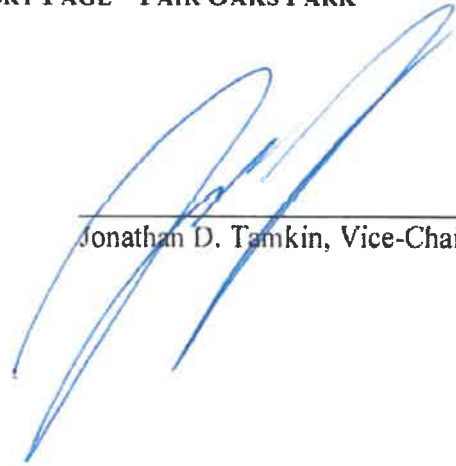
On the basis of the foregoing findings, following due and open deliberation, upon motion duly made and seconded, the Board by unanimous vote, grants the Applicant a Special Permit in accordance with Sections 3.15 and 7.5.2 to permit the construction of an ADU at 84 Fair Oaks Park, Needham, MA in the Single Residence B (SR-B) District, in accordance with the plans filed with the application, subject to the following conditions:

- a) Compliance with all conditions of Section 3.15, including the requirement that the Applicant obtain a new occupancy permit three (3) years after issuance of the original occupancy permit and additional renewals of the occupancy permit after each succeeding three-year period;
- b) No occupancy permit shall be transferable upon a change of ownership or a change of the occupancy of the property;
- c) Upon written request from the Building Commissioner, the Applicant shall provide evidence that the ADU and principal dwelling are being occupied in accordance with the By-law. In the event the Applicant fails to provide such evidence to the Building Commissioner within thirty (30) days of a written request, the Building Commissioner may revoke the Special Permit for the ADU. Any such revocation may be appealed to the Board in accordance the procedures for the appeal of other decisions of the Building Commissioner.
- d) The Applicant will provide revised plans relocating the ADU's ground floor door to the front of the garage in order to directly align with the walkway from the house to the garage and ADU.

SIGNATORY PAGE – 84 FAIR OAKS PARK


Jon D. Schneider, Chair

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Jonathan D. Tamkin, Vice-Chair

SIGNATORY PAGE – 84 FAIR OAKS PARK



Howard S. Goldman, Member