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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

Special Permit

***Eric Carr, Owner
69 High Street
Map 64, Parcel 47***

November 17, 2022

Eric Carr, owner, applied to the Board of Appeals for Special Permits under Sections 1.4.6, 3.2.1 and 3.15, and any other applicable Sections of the By-Law to allow change, extension, alteration and enlargement of a lawful, pre-existing non-conforming structure and the addition of an Accessory Dwelling Unit (ADU) thereto. The property is located at 69 High Street, Needham, MA in the Single Residence B (SR-B) District. A public hearing was held remotely on Zoom, on Thursday, November 17, 2022 at 7:30 p.m.

Documents of Record:

- Application for Hearing, Clerk stamped October 21, 2022.
 - ADU – ZBA Special Permit Application.
 - Plot Plan Existing Conditions, prepared by Cheney Engineering Co., Inc. stamped and signed by Stephen E. Davis, professional land surveyor, dated October 6, 2021.
 - Plot Plan Proposed Addition, prepared by Cheney Engineering Co., Inc. stamped and signed by Stephen E. Davis, professional land surveyor, dated October 17, 2022; Revised October 10, 2022.
 - Plans DD1-DD3, prepared by CME Architects, Inc., dated October 17, 2022.
 - Plot Plan, dated May 2, 1984.
 - Letter from John C. Rosenfeld, Inspector of Buildings, dated January 3, 1985.
 - Plan of Land, September 10, 1949.
 - Photo of 14 Burnside Road, 1949.
 - Footprint of Proposed Addition.
 - Pre-1993 Assessors Real Property Record.
 - Photos of Property July 1985.
- Memorandum of Support, prepared by George Giunta, Jr. dated November 8, 2022.
- Letter from Dave Roche, Building Commissioner, dated November 9, 2022.

- Email from Tara Gurge, Assistant Public Health Director, November 8, 2022.
- Letter from Lee Newman, Director of Planning and Community Development, dated November 2, 2022.
- Letter from Thomas Ryder, Town Engineer dated November 7, 2022.
- Emails from Mark and Sue Ennis, 77 High Street; Brett Weisman and Zach Rachins, 59 High Street; and Greg and Val Gorman, 13 Burnside Road dated November 17, 2022.

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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, Associated Member. Mr. Schneider opened the hearing at 7:40 p.m. by reading the public notice.

George Giunta, Jr., attorney representing the Owner, reported that the Owner and his family live in the two and a half story single house. He is proposing to make changes to expand the house and adding an ADU to accommodate his parents.

The house was built in either 1888 or 1907 which pre-dates zoning. The house was altered in 1983/1984 by enclosing an existing porch and the construction of an addition on the easterly side. On the south side, a former detached garage was attached to the house with less than the required ten feet side setback. Mr. Giunta spoke with the previous owner, who lived at the property between 1978 and 1988, who asserted that they had attached the garage. This was confirmed by the contractor who did the work with a permit. Mr. Giunta provided images of the garage in 1949 and in 1985 showing the garage doors removed and windows in their place as it exists today.

Since this non-conformity has been in existence from 1985, Mr. Giunta noted that under MGL 40A, Section 7 a non-conformity that has been in existence for ten years or more without notice or action the alteration is deemed a legally non-conforming structure. The proposed first and second story addition to the south side does not have the ten feet required side setback at 9.4', nor the second-floor extension above the legal non-conforming first floor at 5.2' from the lot line which will require a Special Permit under 1.4.6.

The proposed ADU is 849 square feet on two floors. It has an open living area, full bath, kitchen, and bedroom. There are two exits: one on the Burnside Road side and another on the South side. There is parking on the curve driveway on High Street and on the bituminous drive off Burnside Road.

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 - compliant;
- 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 are 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 be an interior door between units –compliant; 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.

Comments received:

- Engineering Department noted that the plans should be revised to show the calculations that the infiltration system is sized to contain a minimum of one inch of the total impervious area of the site for infiltration.
- Health Department noted that prior to demolition an online Demolition Review was required with the appropriate pest control and asbestos sampling reports.
- Building Department noted that the Owner was seeking to extend a pre-existing non-conformity with the addition at 9.4' instead of 10'; to permit a second-story addition to an existing structure location at 5.2'; and an ADU. He had no issue with the Special Permits.
- Planning Board to consult with the Building Department that the egress/ingress are complaints with Building Code. The Building Department had no issue with the means of egress.
- Emails of support were received from Mark and Sue Ennis; Brett Weisman and Zack Rachins; and Greg and Val Gorman.

There were no comments from the public.

Both Mr. Tamkin and Mr. Schnieder noted that the Owner had established the pre-existing non-conformity and its existence for more than 10 years per MGL 40A, Section 7.

Mr. Goldman moved to grant a Special Permit under Sections 1.4.6, 3.2.1 and 3.15 of the By-Law to allow the addition of an Accessory Dwelling Unit (ADU) and to allow the expansion, addition

to a pre-existing non-conforming structure in accordance with the plans filed with the application, subject to the following conditions:

- a) that the plans be revised to comply with stormwater drainage as requested by the Engineering Department and b) that the extensions, expansions allowed under 1.4.6 be no closer than the pre-existing non-conformity. Mr. Tamkin seconded the motion. The motion was unanimously approved.

The meeting adjourned at 8:06 p.m.

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

1. The Premises are comprised of a lot containing 10,200 square feet of land and a single-family house, located, in the Single Residence B (SR-B) District.
2. The structure is non-conforming with the side set-back requirements of the Zoning By-Law as the structure on the southerly side is 5.2 feet at one point and 9.4 feet at another point from the lot line, compared to the 10- foot side set back required.
3. Based upon the evidence presented at the hearing, the structure on the southerly side is a lawful, pre-existing non-conforming structure.
4. The Applicant has proposed to remove the southerly end of the house and rebuild it with an additional second story no closer to the southerly property line than the existing structure and to add an ADU thereto.
5. The proposed ADU is 849 square feet with an open living area, full bath, kitchen, and bedroom.
6. The ADU will have two entrances/exits: one will be on the southerly side and the other is via an interior doorway between the principal unit and the ADU.
7. 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.
8. 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.
9. The principal dwelling unit will be occupied by the Applicant and his family and the ADU will be occupied by the Applicant's parents.
10. There is ample parking for the Applicant and his family and his parents.
11. Adequate provisions have been made for the proper disposal of sewage, waste and drainage

generated by the ADU.

12. The exterior entrances and access ways do not detract from the single-family appearance of the dwelling.
13. The proposed renovation and addition will not be substantially more detrimental to the neighborhood than the existing one-story structure.

Decision:

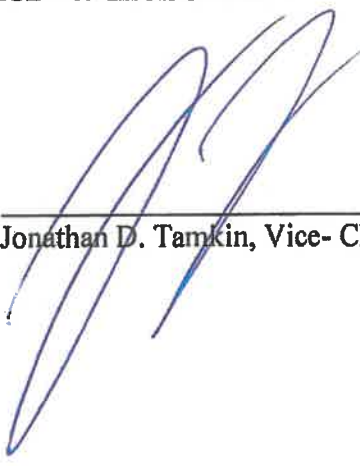
On the basis of the foregoing findings, following due and open deliberation, upon motion duly made and seconded, the Board by unanimous vote, grants the applicant a Special Permit under Section 1.4.6 to construct the additions shown on the plans filed with the application, and a Special Permit under Section 3.15 to permit the construction of an Accessory Dwelling Unit 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 so long as required by Section 3.15;
- b) The Special Permit for the Accessory Dwelling Unit shall not be transferable upon a change of ownership of the property so long as the transfer is prohibited under Section 3.15; and
- 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 proposed addition and renovation allowed under Section 1.4.6 will be built no closer to the property line than the current non-conforming structure; and
- e) The plans shall be revised to comply with stormwater drainage regulations as requested by the Engineering Department

SIGNATORY PAGE –69 HIGH STREET


Jon D. Schneider, Chair

SIGNATORY PAGE – 69 HIGH STREET



Jonathan D. Tamkin, Vice- Chair

SIGNATORY PAGE – 69 HIGH STREET



Howard S. Goldman, Member