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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

Variance

***Corbin Petro and Jessica Gelman, Owners
320 Grove Street
Map 220, Parcel 3***

December 14, 2023

Corbin Petro and Jessica Gelman, owners, applied to the Board of Appeals for a Variance under MGL 40A, Section 10, and Section 7.5.3 and any other applicable section of the Needham By-Law to seek zoning relief to allow side setbacks of no less than 15 feet where 25 feet are allowed due to unusual soil, shape or topography of the land. This request is associated with the demolition of an existing non-conforming single-family home and the reconstruction of a new single-family home. A public hearing was held in the Charles River Room, Public Services Administration Building, 500 Dedham Avenue on Thursday, December 14, 2023 at 7:45 p.m. The meeting was livestreamed on Zoom.

Documents of Record:

- Application for Hearing, Clerk stamped November 15, 2023.
- Revised Application for Hearing, Clerk stamped November 28, 2023.
- Letter prepared by Corbin Petro and Jessica Gelman, dated November 21, 2023.
- Plan of Land, prepared by Field Resources, Inc, stamped and signed by Bradley J. Simonelli, Professional Land Surveyor, dated November 10, 2023.
- Plans, T-1.1, A-1.1-A-1.4, A-2.1-A-2.4, S-1.1 prepared by McKay Architects, stamped and signed by Michael L. McKay, Registered Architect, dated February 23, 2023.
- Letter from Lee Newman, Director of Planning and Community Development, dated October 3, 2023.
- Letter from Joseph Prondak, Building Commissioner, December 5, 2023.
- Letter from Thomas A. Ryder, Assistant Town Engineer, December 5, 2023.
- Letter from Debbie Anderson, Director of Conservation, December 5, 2023 and Order of Conditions, DEP File #234-908, July 27, 2023.
- Email from Chief Tom Conroy, Fire Department, December 5, 2023.
- Email from Chief John Schlittler, Police Department, December 5, 2023.
- Email from Tara Gurge, Assistant Public Health Director, December 5, 2023.

December 16, 2023

The Board included Jonathan D. Tamkin, Chair; Howard S. Goldman, Vice-Chair; and Nikolaos M. Ligris, Member. Also in attendance were Peter Friedenberg, Associate Member; and Valentina Elzon, Associate Member. Mr. Tamkin opened the hearing at 7:52 p.m. by reading the notice of hearing.

Paul Beaulieu, Project Manager of Field Resources, Inc., reported that 320 Grove Street is an unusual lot as it is located in both Needham and Wellesley with no frontage in Needham. In addition, the lot is very narrow in Needham and then widens out into wetlands and environmental resource area with the bulk of the land across an intermittent stream that contains wildlife habitat. Mr. Beaulieu highlighted the unusual wedge shape lot with a current residence that has a 15' side setback on the north side and a 20'7" side setback on the south side. With the rear setback abutting the 25' no alteration zone.

In order for the project to comply with wetlands requirements, the applicant went before the Conservation Commission four times to obtain authorization to build on this sensitive site. To protect the wetlands, the proposed project was pushed forward away from the wetlands to the rear of the property, which results in a 17.5' side setback on the north side and a 15.3" side setback on the south side. The current side setback requirement in the SRA district is 25 feet. Because this project is new construction, the current pre-existing non-conforming setbacks are no longer protected and the 25-foot setbacks are required. Because of the unusual shape of the property and the soil conditions the owners are seeking relief for the side setbacks through the granting of a Variance.

Jessica Gelman, owner, said they have owned the property since 2013. This property is for their long-term residential use, intending to raise their family and caretake their aging parents at the location. They appreciate the nature that surrounds their property. They have experienced flooding and ponding around their home. However, in June 2021 the flooding breached into their home resulting in six inches of standing water in their basement. Both Wellesley and Needham Fire Department provided emergency assistance to deal with the flooding. This flooding created concerns over mold remediation issues.

In consultation with engineers to address the flooding issues and the Conservation Commission's habitat and resource protection concerns, they determined that the best course of action would be to design a new home using the best technology, design and property siting location. Corbin Petro, owner, added that they have invested considerably in their current home and do not consider it a tear down were they not forced to consider it because of the flooding and mold issues.

Mr. Friedenberg thought this proposal did not require a Variance and that a Special Permit would be sufficient since there are preexisting non-conforming side setbacks and no new non-conformities were being proposed. Ms. Corbin noted that the prior Building Inspector identified it as requiring only a Special Permit as well. Mr. Beaulieu said that since a demolition was involved it was not clear a Special Permit path was available. Mr. Friedenberg noted that under MGL 40A, Section 6 and Section 1.4.6 of the By-Law a single-family residence may be

reconstructed with a Special Permit as long as it was not substantially more detrimental to the neighborhood than the existing non-conforming structure.

The legal notice specified a Variance request. Town Counsel has advised that legal ads are limited to the type of request sought and it would have to be readvertised if seeking a different type of decision.

Mr. Tamkin asked the owners to describe the process that led them to a Variance request. Ms. Corbin said that 13 months ago Metro West Engineering and Michael McKay Architects approached the previous Building Commissioner seeking advice on their plans and his determination about the 15-foot non-conforming side setbacks. The former Commissioner indicated that he was satisfied with 15 feet side setbacks. The owners followed-up, taking their plans and seeking approval from the Conservation Commission regarding the projects impact on wetlands and resource area. The side setbacks were not an issue of concern for the Conservation Commission as their focus is the encroachment of the project into the resource area: 25 foot no alteration zone, 50-foot wetland buffer zone and 100-foot riverfront area.

Mr. Tamkin asked the current Building Commissioner Prondak for his input on the matter. Mr. Prondak reported that when the owners presented their application to the Building Department, he and another building inspector reviewed the application and came to the conclusion that as a demolition under Section 4.2.3 of the By Law under *Structures Created Through New Construction* the minimum required side setback is 25 feet. Because the proposal is a demolition he does not believe that the pre-existing non-conforming side setbacks would still be protected. Mr. Prondak could not find the path forward with a Special Permit arrived at by the previous Commissioner with setbacks less than the required 25 feet. He concluded that the only path forward was through a Variance.

Mr. Ligris asked if the Wellesley abutters were noticed. Ms. Corbin affirmed that they were. Both abutters, 306 and 330 Grove Street, were supportive of the proposal and that the residents at 330 Grove Street weighed in their support at the Conservation Commission public hearings. Mr. Goldman asked if they had to seek any approval from Wellesley boards. Ms. Corbin responded that they did not need to go before any Wellesley boards. Mr. Beaulieu added that since there is no construction in Wellesley they do not have to go before Wellesley for review.

Mr. Friedenberg asked about the height of the retaining wall. The retaining wall is four feet in height, which is permitted as of right under the Zoning By Law.

Comments received:

- The Fire Department had no comment.
- The Police Department has no issues.
- The Health Department noted that the owners must apply for a Demolition review online; and on-going pest control must be conducted during demolition and throughout construction.
- The Building Department noted that as new construction under Section 4.2.3 of the By Law the side setbacks are 25 feet. The owners are proposing a left side setback of 17.5 feet and a right side set back of 15.3-foot set. The applicants have a right to seek relief in

the form of a variance.

- The Planning Board had no comment.
- The Engineering Department strongly advises that the finish basement portion of the project be eliminated because of risk of flooding. The owners must submit stamped engineered storm water plans before the building permit is issued. The proposed plans must show adequate drainage calculations and infiltration system to store/infiltrate 1" of runoff for the proposed impervious area; and the proposed structure requires erosion control measures. The owners will look further into the basement but will pursue a finished basement option. Mr. Beaulieu noted that complete storm water and erosion control plans were prepared for DEP but were not included in the Variance application. They will be included as part of the building permit.
- The Conservation Department noted that owners were issued an Order of Conditions on July 27, 2023 approving the project. The Conservation Commission would not approve of the necessary crossing over the stream to access the wooded/wetland portions of the property for development. Any development is required to leave the natural area untouched.

There were no comments from the public. The public comment portion of the meeting was closed.

Mr. Ligris noted that a variance is a big ask of the Board and there is a reluctance to issue variances. He was satisfied that there was support by abutters. He did not feel a site visit was necessary.

Mr. Goldman was more interested in the determination of shape, topography and soil conditions. The owners offered videos of the flooding at the site. They noted that to move the structure away from the wetlands/resource area, the structure was pushed forward into the narrower portion of the triangle lot.

Mr. Tamkin was supportive. However, he felt there may be insufficient facts from what has been filed for a Variance. He suggested a possible site visit to determine the shape, topography and soil condition of the site as several members who drove to the property did not feel comfortable accessing the property without notice. If a site visit was to be conducted, the public hearing would have to be continued to January. This would delay the decision to March to be available for the building permit application.

Mr. Friedenbergh thought there was sufficient information based on the unusual shape of the lot and that the Conservation Commission Order of Conditions limiting construction west of the bridge because of the intermittent stream was compelling information regarding soil conditions. Mr. Friedenbergh stated that the Board has not seen many triangular lots and he thought it was a rare and unusual shape for the zoning district as well.

Ms. Elzon was supportive of a site visit.

Mr. Ligris was compelled by the unusual shape of the lot.

Mr. Goldman requested that the videos of the flooding and excessive water at the property be submitted as further evidence of the soil condition of the property.

Mr. Tamkin thought Mr. Friedenberg made a valid argument that a Special Permit may be permitted. He however agreed that this is an unusual triangular shaped lot, and that the topography of the site was difficult and messy. He thought the standard for a Variance been met: a) an unusual soil, shape or topography of the land or structure in question; b) as a result of one of those circumstances, literal enforcement of the Zoning By-law would result in a substantial hardship to applicant. Mr. Tamkin felt that by limiting the construction area, the Conservation Commission created an additional hardship for the owners to enjoy their property. He thought the Variance issues were de minimis and if perhaps not for the new construction concern per the opinion of the Building Commissioner, the project could be considered under a Special Permit. He would also be comfortable reaching a decision on this Variance without a site visit.

Mr. Ligris moved to grant a Variance under MGL 40A, Section 10, and Sections 4.2.3, 7.5.3 and any other applicable section of the Needham By-Law for the purposes of permitting side setbacks of no less than 15 feet where 25 feet are required, due to unusual soil, shape topography of the land and as a result of one of those circumstances, literal enforcement of the Zoning By-law would result in a substantial hardship to the owners. The Variance is associated with the demolition and reconstruction of an existing non-conforming single-family home located at 320 Grove Street in accordance with the plans submitted conditioned on the following:

- submission of videos and photos substantiating the flooding conditions at the property;
- submission of stormwater and erosion control plans as requested by the Engineering Department; and
- submission of the demolition review online and on-going pest control measures during demolition and throughout construction as requested by the Health Department

Mr. Goldman seconded the motion. The motion was unanimously approved.

The meeting adjourned at 8:30 p.m.

Findings:

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

1. The premises is a 204,803 square feet (4.5 acres) lot improved by a two-story single-family brick colonial house, with a two-car attached garage, in the Single Residence A District. The property is located in both Needham and Wellesley and has no frontage in Needham. The 79.42-foot frontage is in Wellesley and is accessed through a driveway located in Wellesley.
2. Built in 1981, the house has a left side setback of 15 feet and a right setback of 20.7 feet and was conforming to the established dimensional requirements at that time. With the adoption of the Big House zoning amendment of 2017, the side setbacks for the district were amended to 25 feet, rendering the house a lawful nonconforming structure.

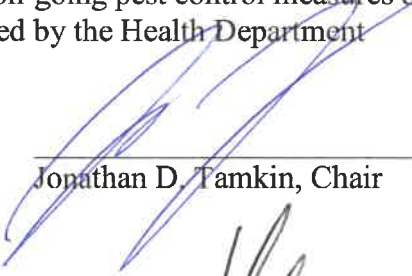
3. The existing house has been plagued by water flooding into the basement due to drainage issues created from rain incidents and water flow from the intermittent stream. The flooding has created a health hazard due to mold.
4. The owners propose to demolish the current home and construct a new two- and-a-half-story home with an attached three-car garage with subsurface stormwater infiltration system, supporting utilities and mitigation plantings.
5. The proposed residence has a left side setback of 17.5 feet and a right-side setback of 15.3 feet. Due to demolition and building of a new structure on the premises, there is a question whether the provisions of Section 1.4.6 of the By-law to maintain the non-conforming setback protection remains which would allow the applicant to seek a Special Permit. Under section 4.2.3 of the By-law the required side setback for the SRA district is 25 feet and the owners seek zoning relief in the form of a Variance under Chapter 40A, Section 10 and section 7.5.3 of the By-laws.
6. The proposed project is within the 100-foot buffer zone of bordering vegetative wetlands and the bank of an intermittent stream. The owners were required to seek approval from the Conservation Commission who issued an Order of Conditions which restricted the work and the project's siting in order to leave the natural area untouched and protect the interests of the MA Wetlands Protection Act and Needham Wetlands Protection By-law.
7. The property features a highly irregular shape and topography not found generally within the SRA Zoning District and therefore, there exists circumstances relating to the shape and topography of the property that especially affects the property but does not generally other lots in the zoning district which it is located.
8. The majority of the 4.5-acre property contains woodland wetlands, and an intermittent stream creating a unique soil hydrology that is protected and restricted from development as determined by the Conservation Commission and creating a hardship for the full use and enjoyment of the property by the owners.
9. A Variance under section 7.5.3 of the By Law for the property would be appropriate under the circumstances in that the shape of the land is irregular and the soil hydrology is unique and not like other lots in the zoning district, a literal enforcement of the By-laws would involve substantial hardship and may be granted without substantial detriment to the public good.

Decision:

On the basis of the evidence presented at the hearing, upon motion duly made and seconded, the Board by unanimous vote, approves the owner's request for a Variance under Section 7.5.3 of the By-law for the construction of a new single-family home located at 320 Grove Street in accordance with to the plans submitted with the application and subject to the submission of:

- videos and photos substantiating the flooding conditions at the property;

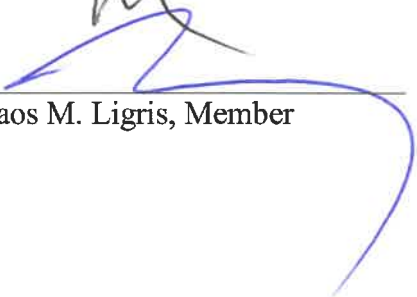
- stormwater and erosion control plans as requested by the Engineering Department; and
- the online Demolition review and on-going pest control measures during demolition and throughout construction as requested by the Health Department



Jonathan D. Tamkin, Chair



Howard S. Goldman, Vice-Chair



Nikolaos M. Ligris, Member