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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

Special Permit

***Amit Schwartz and Neta Levin Schwartz, owners
20 Alder Brook Lane
Map 202, Parcel 16***

July 18, 2024

Amit Schwartz and Neta Levin Schwartz, applicants, applied to the Board of Appeals for a Special Permit under section 1.4.6 and any other section of the Zoning By-Law to allow the change, extension, alteration and enlargement of a lawful, pre-existing, non-conforming structure for relief of a right and left setback from the lot lines. This request is associated with the addition and alterations to an existing single-family home. The property is located at 20 Alder Brook Lane, Needham, MA in the Single Residence B (SRB) zoning district. A public hearing was held in the Charles River Room, Public Services Administration Building, 500 Dedham Avenue on Thursday, July 18, 2024 at 7:30 p.m. and continued to Thursday, August 15, 2024. The meeting was also livestreamed on Zoom and broadcast on Needham Cable.

Documents of Record:

- Application for Hearing, Clerk stamped June 24, 2024.
- Addition and Alteration Plans, G001-02, AS101-103, AD101, A101-04, A201-4, A 303-308 prepared by Neh-Koo-Dah, signed and stamped by Benyamin Ber, Registered Architect, dated June 24, 2024.
- Existing Plot Plan prepared by Peter J. Nolan, Professional Land Surveyor, stamped; and dated June 26, 2023.
- Proposed Addition Plot Plan prepared and stamped by Peter J. Nolan, Professional Land Surveyor, and by Edmund Spruhan, Spruhan Engineering, PC., dated June 21, 2024.
- Memorandum of Support, prepared by Bernie Ber, architect, dated June 24, 2024.
- Revised Application Materials submitted July 8, 2024
- Letter from Lee Newman, Director of Planning and Community Development, dated March 19, 2024.
- Letter from Joseph Prondak, Building Commissioner, dated July 9, 2024.
- Letter from Thomas A. Ryder, Assistant Town Engineer, dated July 9, 2024.

- Email from Chief Tom Conroy, Fire Department, dated July 1, 2024.
- Email from Chief John Schlittler, Police Department, dated July 9, 2024.
- Email from Tara Gurge, Assistant Public Health Director, dated July 9, 2024.
- Email from Clay Hutchinson, Conservation Specialist, dated July 10, 2024.
- Revised Application and Attachments, dated July 8, 2024.
- Power Point Presentation Handout, prepared by Neh-Koo-Dah, July 18, 2024.
- Letter from Joseph Prondak, Building Commissioner, dated August 5, 2024.
- Revised Proposed Addition Plot Plan prepared and stamped by Peter J. Nolan, Professional Land Surveyor, and by Edmund Spruhan, Spruhan Engineering, PC., dated June 21, 2024, revised July 26, 2024.

July 18, 2024

The Board included Jonathan D. Tamkin, Chair; Howard Goldman, Vice-Chair; and Valentina Elzon, Associate Member. Mr. Tamkin read the public notice.

Benjamin Ber and Varda Koemer, of Neh Koo Dah Architects of Boston, represented the applicants. Mr. Ber noted that the project had changed since their previous applications before the Board in March (*20 Alder Brook Ln - ZBA Variance - 3-21-2024 – Denied; and a Special Permit which was withdrawn without prejudice*). Mr. Ber presented a power point presentation, noting that the property is a single-family structure with surface parking on the right side of the property. Mr. Ber presented a February 19, 1951 plot plan of the property and a Subdivision Plan dated February 13, 1951 with a different trapezoidal lot configuration. A plot plan dated April 20, 1976 shows the property being divided into two lots leaving the current property in a triangular shape with two sides and one front.

Mr. Ber noted that the property is adjacent to riverfront, bordering vegetated wetlands and contains a water and sewer easement. Mr. Ber said that the project was reviewed and permitted by the Conservation Commission. Any approved modifications will be brought to the Conservation Commission for review.

Mr. Ber stated that the existing right side setback at 9.6 feet and the left side setback at 11 feet are non-conforming as a 14 foot side set back is required.

The right side setback non-conformity will be enlarged to accommodate a new one-car garage on the first floor and a one-bedroom suite above. The addition, as part of stairs to the second-floor bedroom above the garage, will encroach into the right-side setback.

The garage will have a 25-foot front setback but the second floor will extend to the allowable 20 foot front setback.

A canopy will be added to the front door and will extend into the left side setback at 9.9 feet setback.

Mr. Tamkin asked Mr. Ber to respond to the Building Commissioner's letter as the dimensions

identified by the Building Commissioner and Mr. Ber appear to be different. He asked that the exact relief requested for the right and left side setbacks be identified.

Mr. Goldman thought the proposal was attractive. He also asked for clarification on the dimension of the relief requested. He asked that Mr. Ber identify on the plan projected on the screen.

Mr. Ber said the existing non-conforming side setback is established by the setback for the existing deck at 6.4¼ feet (as identified in *Architectural Site Plan ASI01*). The proposed plans are to expand the deck along its current setback.

Mr. Goldman again asked for the dimension of the increased encroachment into the side setbacks be identified.

Mr. Ber said that the Building Commissioner was unclear whether the non-conforming right setback is established by the side setback of the deck at 6.4 feet or from the structure at 9.5 feet. However, based on the Site Plan the proposed right side setback from the building will be increased to 8.11 feet from the current side setback of 9.5 feet. Mr. Ber suggested that if the non-conforming side setback is 6.4 feet, then there is no increase in the proposed non-conformity. Mr. Tamkin noted however that alternatively, if the non-conforming side setback is established from the building at 9.5 feet, then the new right setback is being increased to 8.11 feet.

Mr. Tamkin asked if the Building Commissioner has rendered an opinion on whether the right side setback is established from the deck or the structure. Mr. Ber said the Building Commissioner had not rendered an opinion.

Mr. Goldman thought the increase of the right-side building setback from 9.5 feet to 8.11 feet was not significant.

Based on the *Proposed Addition Plot Plan dated 6/2/1/24*, Mr. Ber identified the current non-conforming left side yard setback at 11 feet, where 14 feet is required. The applicant is seeking relief for the support for the front door canopy to be located at 9.9 feet from the left side yard setback.

Mr. Tamkin requested clarification from the Building Commissioner on whether the side setback is established from the structure or the deck; and that the applicant provide clear plans highlighting the two non-conformities that are being expanded. He found the project to be attractive.

Mr. Goldman too was seeking clarification on the relief sought since there were conflicting measurements. He would like to see plans highlighting the sections where relief is sought as well as the Commissioner's position in writing.

Mr. Ber agreed to meet with the Building Commissioner to seek his input and clarification.

Ms. Elzon also requested clarification between the Building Commissioner's memo and what was presented.

Comments received:

- The Police Department had no issues.
- The Planning Board had no comment.
- The Engineering Department had no comment or objection.
- The Building Department noted that existing home enjoys existing setback non-conformities along both the left and right-side property lines, 6.4 feet and 9.9 feet respectively, when 14 feet are normally required. The second-floor cantilever has a small portion of the cantilever that will be set back from the right-side line 11.5 feet. The expanded mudroom will be setback 9.5 feet. The deck will be expanded along its current setback of 6.4 feet. The unenclosed entry canopy extends along the existing 9.9 feet left side setback. The proposal does increase the non-conforming nature of the premises and can only be permitted upon the issuance of a Special Permit by the Zoning Board of Appeals pursuant to section 1.4.6 of the Zoning Bylaw.
- The Fire Department had no issue.
- The Health Department had no comments.
- The Conservation Department noted that the Conservation Commission issued an Order of Conditions for the work. The revised plans may require the applicant to come back to revise their calculations on the permit. The changes appear to be di minimis and not to warrant new commentary under the Wetlands Protection Act.

There were no comments from the public.

Mr. Goldman moved to continue the Public Hearing to August 15, 2024, 7:30 p.m. in the Charles River Room, Public Services Administration Building, Needham, MA 02492. Ms. Elzon seconded the motion. The motion was unanimously approved.

The meeting adjourned at 8:02 p.m.

August 15, 2024

The Board included Jonathan D. Tamkin, Chair; Howard Goldman, Vice-Chair; and Valentina Elzon, Associate Member. Peter Friedenberg, Associate Member, was also in attendance. Mr. Tamkin read the public notice.

Mr. Ber noted that the Building Commissioner has determined that the existing non-confirming right side setback is 6.7 feet off the rear deck. This is consistent with the *Proposed Addition Plot Plan* revised on July 26, 2024. The deck will be extended along the 6.7 feet setback.

On the left side, the non-conforming side set back is currently 11 feet from the lot line. The applicant proposes to locate a supporting post for the front entrance canopy at 9.9 feet from the left side lot line.

Mr. Tamkin noted that the letter from Mr. Prondak, the Building Commissioner, dated August 5,

2024, was consistent with Mr. Ber's description and that it also confirmed the relief sought by the applicant. In addition, there was a letter from the Planning Board stating that they had no comment.

There was no comment from the public. The Chair closed the public portion of the hearing.

Mr. Goldman thought the project was attractive. He noted that under Section 1.4.6 of the By-Law a change, alteration, enlargement or reconstruction may be granted by the Board if it is not substantially more detrimental to the neighborhood than the existing non-conforming structure. With the clarification and consistent measurements provided and there being no comments from the public in opposition, he was in favor of granting the relief.

Ms. Elzon and Mr. Friedenberg had no comments.

Mr. Goldman moved to grant a Special Permit under Section 1.4.6 to allow the change, extension, alteration and enlargement of a lawful, pre-existing, non-conforming structure to allow the requested relief to the right side yard setback and left side yard setback as presented in the revised plans submitted. Ms. Elzon seconded the motion. The motion was unanimously approved.

The meeting adjourned at 7:40 p.m.

Findings

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

1. The premises is a 10,280 square foot property located in the Single Residence B (SRB) Zoning District improved with a one-story structure over a basement, three bedroom and two bathroom, single-family residence totaling 2,025 square feet built in 1929, with an addition constructed in 1976.
2. In 1951-1952, the structure was relocated to its current location to a 19,634 square foot rectangular corner lot.
3. In a Plot Plan for Building Permit #4173 dated March 6, 1976 the lot had been subdivided to its reduced triangular shape of 10,280 square feet. As a corner triangular lot, the premises has two side yards and one long front yard along the street. The house is non-conforming in that it has a left side set back of 11 feet and a right side set back of 6.7 feet where 14 feet are required. All other setbacks and other Zoning By-Law requirements are compliant. Since the non-conformity has existed for more than 10 years without challenge, MGL Chapter 40A, Section 7 provides that the structure is considered to be legally non-conforming.
4. The applicants propose to:
 - a) add to the existing structure a one-car garage with a mudroom and staircase at grade and a primary bedroom suite above the garage. The proposed enclosed

mudroom/staircase will be 9.1 feet from the side yard setback; and the cantilevered second floor will be 11.5 feet from the side yard setback;

b) expand the existing rear deck to be along the 6.7 foot right side yard setback and will not encroach beyond it; and

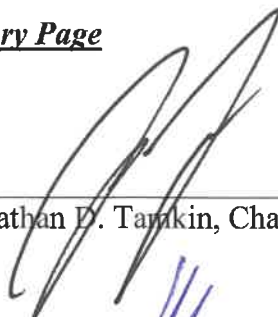
c) add an unenclosed canopy over the front door along Alder Brook Road with a support post located in the left side yard setback at 9.9 feet.

5. The proposed additions will increase the existing residence from 2,025 square feet to 2,532 square feet.
6. The premises contains a water and sewer easement and is located in proximity to vegetative wetlands and riverfront area. The project is subject to the Conservation Commission review and approval and was granted an Order of Conditions on March 14, 2024. This proposal has been modified and may require the applicants to provide the Conservation Commission with calculation revisions.
7. Pursuant to Section 1.4.6 of the By-Law, a lawful pre-existing non-conforming building may be structurally altered, enlarged or reconstructed by Special Permit issued by the Board.
8. Based on the evidence submitted to the Board during the hearing, the Board finds that the existing structure is a lawful pre-existing non-conforming structure and that the proposed addition will only modestly increase the existing nonconformities of the structure along the right and left setbacks. The proposed addition will not result in a structure that is substantially more detrimental to the neighborhood than the existing non-conforming structure. The Board further finds that the proposed addition is a design that is compatible with the existing natural features of the site and is compatible with the characteristics of the surrounding area. The issuance of a special permit in accordance with the criteria set forth at Section 7.5.2 of the Zoning By-Law.

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 applicants a Special Permit under Sections 1.4.6 and 7.5.2 of the Zoning By-Law to allow the proposed addition to 20 Alder Brook Lane according to the updated plans submitted, provided the applicants obtain the necessary approvals from the Conservation Commission regarding any changes or amendments for the proposed addition.

Signatory Page



Jonathan D. Tarkin, Chair



Howard S. Goldman, Vice-Chair



Valentina Elzon, Associate Member