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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

***Variance Interpretation
Needham Enterprise, LLC, owners
277 Brookline Street
Map 55, Parcel 4***

July 18, 2024

Needham Enterprise, LLC, owner, applied to the Board of Appeals for a Variance under Section 3.2.1 and any other applicable section of the Needham Zoning By-Law to seek a Plan Substitution and or further relief pursuant to a Variance issued January 18, 1951 for two-family use and any and all other relief necessary and appropriate to permit the demolition of an existing two-family dwelling and replacement with a new two-family structure. The property is located in Single Residence B (SRB) District. A public hearing was held in the Charles River Room, Public Services Administration Building, 500 Dedham Avenue on Thursday, July 18, 2024 at 7:45 p.m. and continued on 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.
- Cover Letter prepared and signed by George Giunta, Jr., dated June 24, 2024.
- Memorandum of Support Exhibit A-D, prepared and signed by George Giunta, dated June 24, 2024.
- Plan of Land, prepared by Field Resources, Inc., Bradley Simonelli, Professional Land Surveyor, stamped and dated June 21, 2024.
- Architectural Plans A-1-A-7, prepared by Scott Melching Architect, LLC, stamped and signed by Scott H. Melching Professional Architect dated June 21, 2024.
- Cover Letter from George Giunta, Jr. dated June 26, 2024.
- 277 Brookline – Floor Area Calculations, prepared by Scott Melching Architect, LLC, stamped and signed by Scott H. Melching Professional Architect dated June 21, 2024.
- 277 Brookline Avenue – ZBA Variance – January 18, 1951.
- 460 Central Avenue – ZBA Interpretation of Variance – January 21, 2021.
- 114 Hillside Avenue – ZBA Decision – March 23, 2024.
- 70-72 Marshall Street – ZBA Decision – February 28, 2008.

- Cover Letter from George Giunta, Jr. dated August 6, 2024.
- Revised Plan of Land, prepared by Field Resources, Inc., Bradley Simonelli, Professional Land Surveyor, stamped and dated July 29, 2024.
- Revised Architectural Plans A-1-A-7, prepared by Scott Melching Architect, LLC, stamped and signed by Scott H. Melching Professional Architect dated August 5, 2024.
- Letter from Lee Newman, Director of Planning and Community Development, dated March 19, 2024.
- Letter from Joseph Prondak, Building Commissioner, dated April 2, 2024(sic); received by email on June 28, 2024.
- Letter from Thomas A. Ryder, Assistant Town Engineer, dated July 9, 2024.
- Email from Chief Tom Conroy, Fire Department, dated June 27, 2024.
- Email from Chief John Schlittler, Police Department, dated June 28, 2024.
- Email from Tara Gurge, Assistant Public Health Director, dated July 9, 2024.
- Email from Joe Prondak, Building Commissioner, August 9, 2024.
- Plot Plan of Current and Proposed Conditions, Building Permit 8828, signed by C. Frazetti, Civil Engineer, dated March 23, 1951

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. The meeting opened at 8:02 p.m.

George Giunta, Jr., attorney representing the applicant, reported that the application was for a request for a Plan Substitution to an existing Variance issued on January 18, 1951 (“*1951 Variance*”) similar to three prior cases that have appeared before the Board.

Mr. Giunta noted that the property consists of 13,560 square feet of land area with 146.04 feet of frontage on Brookline Street. The property is occupied by a two and one-half story, two-family residential structure. The structure appears to have been built in 1915 and expanded in 1951 and 1959. The existing structure consists of 2,460 square feet of interior space on the first and second floors.

The use of the Premises as a two-family dwelling was permitted by the Board by the *1951 Variance*. On March 23, 1951 Building Permit 8828 was issued to expand the house and convert the then single-family house into a two-family dwelling. In 1959, Building Permit 3059 was issued to enclose the two existing porches; and in 1980, Building Permit 2436 was issued for the installation of two boilers and two water heaters.

The proposal is to demolish the existing two-family house and replace it with a new two- and one-half story, two-family structure. The replacement will comply with all of the dimensional and density requirements of Section 1.4.7 of the Zoning By-Law. The replacement structure would have a front setback of 21.1 feet versus 20 feet is required; the side yard setbacks of 14.3 feet and 28.4 feet where 14 feet are required; a 44.4 feet rear setback where 20 feet is required; a lot coverage of 20.5% where a maximum of 25% is permitted under Sections 4.2.3 of the By-Law, or 17.7% where a maximum of 18% is permitted under Section 1.4.7.4 (b); and a FAR of 4,472 square feet where a maximum of 4,881.6 square feet is allowed.

Mr. Giunta noted that the proposed reconstruction project is smaller than the maximum size allowable for a single-family residence on this lot.

Mr. Giunta argued that there are three prior cases – *460 Central Avenue – ZBA Interpretation of Variance – January 21, 2021*, *114 Hillside Avenue – ZBA Decision – March 23, 2024* and *70-72 Marshall Street – ZBA Decision – February 28, 2008* – where the Board found that each of the proposed new two-family structures were consistent with the two-family use permitted under the earlier subject Variances. In each of these cases, the Variance decision did not include ties, conditions, or restrictions associated with a specific plan or house. The issues in all of these cases were 1) was the proposed replacement consistent with the use Variance granted, and 2) was the proposed structure not more detrimental than the existing two-family and use, such that it would not overburden the Variance and is in harmony with the general purposes and intent of the By-Law. Mr. Giunta reasoned that the proposal is consistent with the *1951 Variance* and it is not more detrimental than the existing two-family as it complies with the density and dimensional requirements of the current Zoning By-Law.

The proposal would replace an older two-family structure with a new residence that will meet contemporary standards and will include a new detached two-car garage with on-site surface parking for an additional two cars in the driveway in front of the garage. Mr. Giunta added that from a design perspective the single entrance of the proposed house looks like a single-family and is congruent with the neighboring homes.

Mr. Giunta reported that, excluding the basement area, Front Unit A will have a total of 2,742 square feet and Rear Unit B will have a total 2,954 square feet. The attic space, included in the area totals, will be livable space.

Comments received:

- The Police Department had no issues.
- The Planning Board had no comment.
- The Engineering Department had no comment or objection.
- The Fire Department had no issue.
- The Health Department noted that a complete application for an online Demolition Review is required; and on-going pest control must be conducted during demolition and on-going during construction.
- The Building Department noted the following: a) the *1951 Variance* allowed the conversion of a single-family dwelling to a two-family dwelling in a Single Residence Zoning District where, at that time, two-family dwellings were not normally allowed; b) the *1951 Variance* effectively varied the terms of the Zoning By-Law, thereby allowing a two-family use in the Single Residence Zoning District, specific only to this property; c) variances are considered to run with the land/property; d) the *1951 Variance* contained no conditions which further limited the disposition of the structure; and e) the proposal shows that the new structure will comply with the terms of the current By-Law. The Building Commissioner believed the Board could also decide to take no action and that the applicant can proceed through the normal Building Permit process. However, he would consider differing opinions from the Board.

Mr. Tamkin asked why the applicant didn't just seek a Building Permit. Mr. Giunta responded that under the two prior Building Commissioners he was instructed to seek a Board determination and approval for new buildings under existing zoning relief. Though he appreciates the new Commissioner's interpretation, the Board has established a precedent with the three prior cases. Mr. Giunta agrees that the Variance use runs with the land and the two-family use cannot be eliminated. However, the By-Law requires review for two-family uses in single-family zones, although the standard by which the Board is to review such applications is unclear from the By-Law.

Mr. Goldman agreed that a Variance for a two-family use in the single-family area makes the use conforming. However, he disagreed with the Building Commissioner, and he concurred with the previous Building Commissioners that a public hearing and Board review was appropriate.

Mr. Tamkin stated that the Board has convened a public hearing. Based on the prior cases the Board can hold a public hearing and would continue with the public hearing. The Board will make a determination as to whether the proposal complies with the context of the *1951 Variance*, whether it can be expanded and modified, and if there are any conditions.

Mr. Tamkin opened the public hearing for comments from the public.

Elena Choy, 283 Brookline Street, the direct abutter to the left of the property, wanted clarification about the two-family use allowed under the *1951 Variance*. She wanted to know whether the variance use is tied to the land, the *1951 Variance* holders, the structure or with tenant residency within the units.

Mr. Tamkin clarified that occupancy of the units is not relevant to a two-family use established by the *1951 Variance*. The *1951 Variance* tied the two-family use with the land.

Ms. Choy had concerns with the new design being sited four feet closer to her property than the previously existing structure, especially when the property frontage could accommodate a wider setback. In addition, the right yard side setback which abuts a Town forest would not impact a residential neighbor. She was also concerned about the massing of the structure so close to her property. She noted, in contrast, that there was 20 feet between the proposed house and garage.

Mr. Goldman asked if plantings would help to buffer the massing. She affirmed that they would.

Ms. Choy was also concerned about the wide surface parking in front of the proposed garage, which is adjacent to the sidewalk, especially since the sidewalk is in a pedestrian school zone. She had aesthetic and safety concerns.

Additional concerns raised by Ms. Choy were the nearby wetlands; the location of the glass sliding doors facing her property and its lack of privacy; and the slope flooding/drainage of the property. Mr. Tamkin noted that wetlands and stormwater regulations exist if there are wetlands and runoff issues.

Mr. Tamkin asked the applicant if there were opportunities to address the abutter's concerns. Mr. Giunta said that opportunities exist but the shape of the property and the ten foot required minimum between structures may limit the options.

Eric Gravelin, 283 Brookline Street, requested that the proposed project be sited further away from his property. He was also concerned about the larger structure and the increased drainage and water runoff. Mr. Tamkin informed Mr. Gravelin that there are mechanisms in place to manage water runoff and flooding concerns. The Town's Engineering Department and Building Department will be reviewing the plans for compliance. In addition, he will be suggesting to the Board a continuance of this hearing to allow the applicant to work with the neighbors to address their concerns.

Mr. Gravelin indicated that there is more usable open space on the property than is apparent from the plot plan as the property abuts open space. Mr. Tamkin responded that that land is not in play or considered because it is outside the property bounds and is owned by the Town.

Mr. Gravelin asked that care be taken to protect the mature trees and plantings along their property. Mr. Tamkin thought preservation of plants and plantings was an area for the neighbors and applicant to discuss. Mr. Gravelin asked if a fence had been considered. Mr. Goldman asked if he wanted one. Mr. Gravelin said he wasn't certain where he stood regarding fencing, but he'd like to discuss it. He preferred natural screening.

Dan Valle, 304 Brookline Street, a registered civil engineer working for the City of Cambridge, was concerned about the increase in the footprint of the building and the increase in impervious area. He found the drywell recharge capacity for a 1" storm to be insufficient. He requested that the infiltration system collect all the runoff on site. Mr. Giunta responded that the Town has a Stormwater By-Law and all the run-off water on the site has to infiltrate on site. Mr. Valle asked for a plan with all the details. Mr. Giunta said that no building permit is issued without a filed compliant stormwater mitigation plan.

Mr. Tamkin asked if the stormwater mitigation plan could be accelerated to address the concerns raised.

Mr. Goldman asked about the slope of the property. Mr. Gravelin said that the whole street slopes approximately three feet per property. Mr. Giunta noted that there is a two and half foot change in elevation over ten feet.

Mr. Valle supported moving the proposed building away from the abutting property at 283 Brookline Street, especially since there is twenty feet between the proposed structure and the garage and the By-Law requires only ten feet. He said that he would like to see the mature 30-foot oak tree between the properties be protected with a wider side setback.

Amy Cicala, 293 Brookline Street, expressed concern with water drainage especially with the slope and ledge on the property. She asked if there would be any blasting associated with the project. Mr. Giunta did not know. She was also concerned about the one-inch capacity of the infiltration system as rain events are bigger.

Mr. Tamkin noted that the By-Law allows for a larger single-family structure on this site than the proposed two-family. The public hearing regarding a change to the Variance is allowing an opportunity for abutters to share their concerns with the applicant and to find opportunities to consider modifications.

Ms. Cicala asked that the catch basin be increased to contain more runoff as she is two properties downslope from the applicant. She reported that a new larger house down slope from her has added to the flooding of their downslope neighbors. Mr. Goldman asked if the four car impervious surface parking could be improved.

Mr. Giunta informed that all roof runoff will be contained on the property by the new infiltration system. Though the surface parking is impervious there will be an overall improvement of water containment on the site.

Matt Borrelli, owner of the property, shared that he originally planned on placing the garage to the rear of the property but the associated longer impervious driveway made it less desirable. The current proposed garage was an improvement. As required for a Building Permit, a Stormwater Mitigation Plan will be submitted with all runoff captured on site. He thought there was room to move the proposed structure away from the neighbors and closer to the garage while considering the usable yard/patio space for the units.

Ms. Cicala asked if there was ledge on the property. Mr. Borrelli said he did not know, and that additional information would be gained once excavation began, and that regardless of the soil condition, drainage will need to be mitigated and addressed.

Mr. Tamkin identified the areas to be discussed and a continued hearing to address screening, trees/plantings, tree removal, location of the on-site surface parking, slope, size of retention system, and siting.

Neil Alper, 245 Brookline Street, was concerned with the width of the on-site surface parking adjacent to the sidewalk and the safety of the Mitchell School pedestrians. There are few double wide driveways on the street. He was concerned about the sight lines as cars exit onto a busy street where there is a curve. He thought a narrower driveway would be safer.

Clare Franks, 304 Brookline Street, reported that she has lived at her home since 1992 where she has experienced a wet basement.

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 16, 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. The meeting opened at 7:40 p.m.

Mr. Giunta reported that as a result of the concerns raised at the last meeting the plans were modified as follows:

- The new two-family house has been moved 7.5 feet away from the left side property line. The original plan had a 14 foot left yard side setback. The modified plan has a 21.8 foot left side yard setback.
- The structure will be moved forward 2-3 feet. (This modification is not shown in the Proposed Site Plan dated July 29, 2024).
- The back unit has been flipped horizontally. The patio and exit door are now located on the right side, providing privacy to the abutters to the left.
- The garage was pushed back. There is now a 26.7 foot front setback versus the 25.3 feet in the original proposal. In addition, a paved section to the right of the driveway was added. This was done to reconfigure the driveway so that two cars can park side by side and allow them to maneuver on-site so that they can exit safely headfirst, increasing visibility and sight lines. They opted not to narrow the driveway as suggested since it would require more pavement for maneuverability.
- Landscaping will be provided on the left side. The specific plantings will be worked out during construction. Possible plantings may be Arborvitae to provide a living fence and screening, in particular between the front unit's patio area and the abutters on the left.
- Existing impervious area is 4,336 square feet, the proposed impervious area is 3,966 square feet.
- The rainwater from the house and garage roofs will be put into the storm water infiltration system. The Stormwater By-law requires that only the roof runoff from the house be captured. The detail of the connections will be provided in the Stormwater Mitigation Plan submitted with the Building Permit application. If the soil does not allow for the location of the storm water infiltration system, the Town allows connecting to the Town's drain system under the Stormwater By-Law.

Ms. Elzon asked how the parking spaces are allocated for the units. Mr. Giunta said each unit will have a garage space and a surface space. The main surface area will be a no-parking area.

Mr. Giunta noted that based on the previous Variance Decisions the question is whether the proposal is within the scope of approved Variance. If it is, does the proposal conform with the By-Law. The *1951 Variance* approved the use of the property for two-family use. Mr. Giunta noted that the proposal generally complies with the two-family and single-family sections of the By-Law.

There was discussion as to the type of variance –whether this was an amendment to a variance, an interpretation of a variance, a consistency with the variance determination or a plan substitution. Mr. Tamkin did not believe that a plan substitution was adequate since there will be conditions. Mr. Goldman thought a plan substitution with commentary would be appropriate.

Comments:

- The Building Department had no additional comments.
- The Planning Board had no comment.

Ms. Choy appreciated that the applicant was responsive to her concerns.

Mr. Gravlin also appreciated the responsiveness by the applicant. He added that the applicant was agreeable to include the screen plantings to be part of the Decision.

Mr. Goldman asked about the screen plantings details. Mr. Gravlin would like to see the mature plantings - Rose Of Sharon; Lilacs – be preserved. Because the third floor windows overlook their property, tall trees were suggested.

Mr. Gravlin was hopeful that with the new siting of the building the large oak tree will be preserved.

Mr. Valle appreciated the improvements proposed regarding the increased rainwater roof capture and the soil testing. He was reassured that soil testing will determine whether there will be infiltration or town drainage. He asked that they be careful with the large oak tree. Mr. Giunta agreed to notify Mr. Valle when the Building Permit is submitted so he can view the Stormwater Mitigation Plan.

Mr. Friedenberg asked about the height of the garage as the plan did not identify the height. Mr. Giunta said it was no taller than 15 feet.

Ms. Choy would prefer that tall trees be considered instead of arborvitaes.

Mr. Friedenberg was concerned about determining whether the proposal is consistent with the original variance. The *1951 Variance* references specific work to be done to convert the single-family house to a two-family dwelling as permitted by that decision. This is different from the situation in 460 Central Avenue – *Interpretation of a Variance – 1-21-2021*, where there was no reference to a design in the original variance allowing the two-family use. He also noted that in prior Variance decisions the Board did not allow further exterior changes without going to the Board. He also was concerned about adding conditions.

Mr. Goldman offered that a Plan Substitution with Conditions be considered. The successful cooperation between the applicant and neighbors in arriving at an agreeable plan, conditioned on screening on the left side, provided him the reassurance to consider a plan that differs from the original plan associated with the *1951 Variance*.

Ms. Elzon concurred that the process worked in arriving at an agreeable plan between the applicant and neighbors.

Mr. Friedenberg also was happy that there is agreement between the developer and neighbors. However, he remained concerned that the proposal did not fit within the scope of the *1951 Variance* as it specified a plan.

Mr. Tamkin thought the proposal was nice and that the applicant responded to the Board's request to work with the neighbors. However, he too concurred that there was no ambiguity that there were specific plans associated with the *1951 Variance*. Mr. Tamkin suggested that the Board Interpret the Variance, similar to the 460 Central Avenue decision in 2021, that the proposed plans are consistent with the *1951 Variance* with conditions/stipulations.

Mr. Giunta argued that the *1951 Variance* did not specify a plan, as other Variances of that period did. He interpreted the *1951 Variance* to not be specific to a plan but to the two-family use. As for form, he suggested, that conditions/stipulations would make the proposal consistent with the *1951 Variance* granted. He believed the *1951 Variance* is not limited only to the plan but also includes the agreed upon conditions consistent with the spirit, language and intent of the Variance.

Mr. Tamkin suggested that the Board determine that the proposal is consistent with the *1951 Variance* with the following conditions:

- That the applicant will work with the neighbors to select appropriate plantings of a height and nature that that will provide adequate screening;
- The submission of revised plans regarding the Stormwater Mitigation Plan illustrating the drainage infiltration system or, if required by the Town, the connection to the municipal drain system;
- Use reasonable efforts to protect the Oak tree located in the front of the property;
- With input from the neighbors and in the field, to the extent possible, the mature plantings will be maintained and or replaced with aggregable plantings.

Ms. Elzon moved to find that the plans and revisions submitted for the demolition of an existing two-family dwelling and its replacement with a new two-family dwelling with a detached two-car garage are consistent with the Variance issued January 18, 1951, conditioned that:

- the applicant will use reasonable efforts to protect the Oak tree located in the front of the property;
- the submission of a planting plan, developed with input from the neighbors, of appropriate plantings of a height and nature that that will provide adequate screening; and to the extent possible, maintain the mature plantings and or replace with new plantings on the left side of the property;
- the submission of an approved Stormwater Mitigation Plan illustrating the drainage infiltration system or, if required by the Town, the connection to the municipal drain system; and
- no future changes (from the approved plans referred to above) to the exterior of the structure and detached garage shall be allowed, and no new accessory structures can be built, without first obtaining the written approval of the Board, after such notice and hearing, as the Board, in its sole discretion, shall deem appropriate.

The meeting adjourned at 8:14 p.m.

Findings:

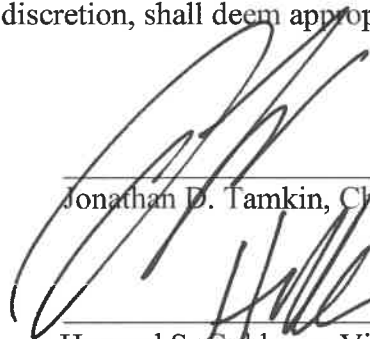
On the basis of the evidence presented at the hearings, the Board makes the following findings:

1. The premises consist of approximately 13,560 square feet of land, with approximately 146.04 feet of frontage on Brookline Street, improved by a two and one-half story, two-family house located in the Single Residence B District. Two-family use is not permitted in the District.
2. The current house, which appears to have been built in 1915 and expanded in 1951 and 1959 consists of approximately 2,460 square feet of interior finished living area on the first and second floor containing 10 rooms, including 5 bedrooms and 2 full baths.
3. The present two-family use is allowed pursuant to the *1951 Variance*. The *1951 Variance* referenced drawings which describe the conversion and extension of the single-family house to a two-family house (Building Permit 8828 – Plot Plan dated March 23, 1951). With the exception of Building Permit 3059 in 1959 to enclose two existing porches, the property has had limited work done and has not been significantly upgraded or modernized since then.
4. The applicant proposes to demolish the existing house and replace it with a new two-family house with a detached two-car garage with associated surface parking that complies with all density and dimensional requirements of the By-Law.
5. As a result of concerns raised by the abutters at the public hearing of July 18, 2024, the applicant submitted revised plans dated July 25, 2024. The revisions, favorably received by the abutters, included a wider left side yard setback; the patio and door of the rear unit was relocated to the right side to provide more privacy; the garage was pushed back and the surface parking was reconfigured to improve maneuverability, visibility and safety exiting onto Brookline Street; the capture of roof runoff infiltration was more generous than required by the Stormwater By-Law by capturing the roof run-off of the garage, and the provision of screening, through preservation of mature plantings or new plantings, on the left side.
6. If the two-family house were legally non-conforming, the reconstruction would be governed by Section 1.4.7 of the By-Law. Since the two-family use is authorized by the *1951 Variance*, the use is not non-conforming. However, Section 1.4.7 provides guidance to the Board. The proposed new two-family will meet the dimensional requirements and lot coverage requirements of Section 1.4.7 of the By-Law. The Board found that the new-two family house will be appropriate in scale and mass for the neighborhood and the proposed reconstruction and enlargement will not be substantially more detrimental than the existing building and is consistent with the *1951 Variance*.

Decision:

On the basis of the foregoing findings, following due and open deliberation, upon motion duly made and seconded, the Board by unanimous vote, determines that the two-family house and detached garage proposed in the plans submitted with the application and revised July 28, 2024 are consistent with the existing *1951 Variance*, and may be constructed thereto, subject to the following conditions:

- that the applicant shall make reasonable efforts to protect the Oak tree located in the front of the property;
- that a planting plan will be submitted, developed with input from the neighbors, of appropriate plantings of a height and nature that that will provide adequate screening; and to the extent possible, maintain the mature plantings and or replace with new plantings on the left side of the property;
- that an approved Stormwater Mitigation Plan illustrating the drainage infiltration system or, if required by the Town, the connection to the municipal drain system will be submitted; and
- that no future changes (from the approved plans referred to above) to the exterior of the structure and detached garage shall be allowed, and no new accessory structures can be built, without first obtaining the written approval of the Board, after such notice and hearing, as the Board, in its sole discretion, shall deem appropriate.



Jonathan D. Tamkin, Chair



Howard S. Goldman, Vice-Chair



Valentina Elzon, Associate Member