



**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS
SPECIAL PERMIT**

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***Catalyst Development, LLC, applicant
Laimis Balciunas & Sandra Simanaityte, owners
249 Garden Street***

(Filed during the Municipal Relief Legislation, Chapter 53 of the Acts 2020)

July 16, 2020

Catalyst Development, LLC, applicant, made application to the Board of Appeals for a Special Permit under Sections 1.4.7.4, 3.2, and 7.5.3 to permit the demolition, extension, alteration, enlargement and reconstruction of the lawful, preexisting, non-conforming two-family dwelling to a new two-family dwelling. The property is located at **249 Grant Street**, Needham, MA in the Single Residential B District. A public hearing was held remotely on Zoom Meeting ID Number 869-6475-7241, on Thursday, July 16, 2020 at 7:30 p.m.

Documents of Record:

- Application for Hearing, Clerk stamped June 22, 2020.
- Cover Letter prepared by George Giunta, Jr., Attorney at Law, dated June 22, 2020.
- Memorandum in Support of Application, prepared by George Giunta, Jr. dated July 10, 2020.
- Proposed Plan, prepared by Michael R. Deychman, June 16, 2020, certified stamped by A. Matthew Belski, Jr., Registered Land Surveyor, dated June 18, 2020.
- Architectural Plans T-1.1-1.2; A-1.1-1.2, A-1.4; A-2.1-2.4; prepared by McKay Architects, stamped by Michael L. McKay, Registered Architect, June 17, 2020.
- Drainage Plan and Dry Well Detail, prepared by Michael R. Deychman, July 9, 2020.
- Letter from Lee Newman, Director of Planning and Community Development, July 8, 2020.
- Letter from David A. Roche, Building Commissioner, July 8, 2020.
- Email from Dennis Condon, Chief of Department, Needham Fire Department, July 10, 2020.
- Email from Anthony DelGaizo, Town Engineer, July 10, 2020.
- Email from Tara Gurge, Assistant Public Health Director, July 6, 2020.
- Affidavits from Lynne Claflin, July 15, 2020; David L. Klebanoff, July 15, 2020; Laimis Balciunas and Sandara Simanaityte, July 13, 2020.

The Board held this meeting virtually as allowed under “Order Suspending Certain Provisions

of the Open Meeting Law G.L. c. 30A, S20.”

The Board included Jon D. Schneider, Chair; Jonathan D. Tamkin, Vice-Chair; and Kathy Lind Berardi, Member. Also participating was Peter Friedenberg, Associate Member. Mr. Schneider opened the hearing at 7:43 p.m. by reading the public notice.

George Giunta, Jr. attorney for the applicant, reported that the property consists of 9,385 square feet of land with 73.52 feet of frontage occupied by a two-family residential structure making the property non-conforming as to lot, frontage and use. The current front setback is 17.5 feet and the south side setback is 6.2 feet neither conforming to the current dimensional setbacks. The Town Assessor’s records indicate that the existing dwelling was constructed in 1900 which predates the adoption of the Town Zoning By-Law.

Mr. Giunta provided records and back-up documentation going back to 1910 showing that the property was occupied, maintained and continuously used as a two-family residence. Mr. Giunta’s sources included Poll Tax Lists, US Federal Census records, Assessor’s Departments Field Cards, a Special Permit dated February 18, 1999, Building Department permits and Affidavits. Mr. Giunta acknowledged that there was one two-year period where he was unable to find evidence that more than one family lived at the property, but this was before the current rule that non-use for two years causes the loss of non-conforming status. The Board agreed that the property was a legal, non-conforming two-family house.

There was no comment from the public regarding use.

The applicant proposes to demolish the existing two-family structure and detached garage and replace it with a new side-by-side two-family structure with two detached single-car garages located at the rear of the property. The proposed project will meet all dimensional and density requirements of the By-Law. The new structure will have an 1,800 square feet footprint, a lot coverage of 19.2%, and detached garage space totaling 563 square feet.

Mr. Giunta noted that under Section 1.4.7.4 of the By-Law a proposed two-family structure footprint on a non-conforming lot is allowed up to 1,800 square feet; and that under Section 4.2.1 of the By-Law, lot coverage of up to 25% is allowed.

Mr. Giunta stated that the proposed project was in scale, design and massing consistent with the neighborhood noting that the property was across the street from commercial properties, near to a six-unit 40B project and next to a large scaled two-family structure.

The following comments were received:

- The Planning Board had no comment.
- The Fire Department had no issue.
- The Police had no issue.
- The Engineering Department requested a plot plan showing the stormwater and drainage system, and erosion controls; and that the homeowners be informed of their responsibility to maintain the infiltration system once a year.
- The Health Department requires that an online Demolition Form and supplemental documents be submitted.
- The Building Commissioner indicated that the lot coverage is limited to 18% under section 1.4.7.4. Mr. Giunta argued that the 18% maximum lot coverage does not

apply to a non-conforming lot under 1.4.7.4(a) where the only limitation is an 1800 square foot footprint.

The meeting was open to public comment:

Lynn Claflin, 229 Garden Street, was in support of the two-family project.

Mr. Tamkin was satisfied that the applicant documented the historic non-conforming continuous two-family use of the property. He believed the proposal was well designed and appropriate for the neighborhood. He was supportive of the project.

Mr. Tamkin moved to grant a Special Permit to allow the demolition, extension, alteration, enlargement and reconstruction of the lawful, pre-existing, non-conforming two-family dwelling to be replaced by a new two-family structure at 249 Garden Street as depicted in the submitted plans conditioned on the submittal of a Stormwater and Drainage Plan to be approved by the Engineering Department. Ms. Berardi seconded the motion. The motion was unanimously approved.

The meeting adjourned at 8:06 p.m.

Findings:

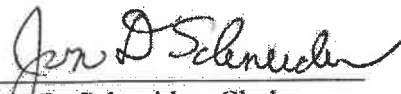
On the basis of the evidence presented at the hearing, the Board makes the following findings:

1. The premises is a 9,365 square foot lot improved with a two-family house and a detached garage located in the Single Residence B District.
2. The lot is non-conforming in that it contains less than the 10,000 square feet required in the District. It also has only 73.52 feet of frontage as contrasted with the current requirement of 80 feet. The lot is a legally non-conforming lot because it was created prior to the adoption of zoning in 1925.
3. Two-family use is not currently allowed in the District. However, the house was constructed approximately in 1900 before the adoption of zoning. The house is listed on the assessor's card created around 1940 as a two-family and apartment. It is currently listed and taxed as a two-family. Various building permits have been issued over the years indicating that the structure is a two-family house. The census from 1910 shows multiple parties living at the house. Occupancy records from 1926 through 1983 show multiple parties living at the house. Affidavits from the last two owners and a neighbor indicate that the premises is used as a two-family house. The use as a two-family house is a legally non-non conforming use.
4. The applicant seeks a Special Permit under Section 1.4.7.4 (a) to demolish the existing structure and build a new two-family house with a footprint of 1800 square feet. The new house will comply with all dimensional requirements of the By-Law. Under Section 1.4.7.4 (a) of the By-Law, there is no limit on lot coverage. The proposed new house will meet the lot coverage limit in Section 4.2.1, footnote k.

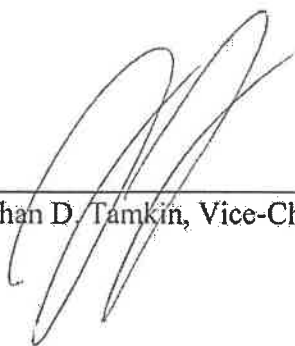
5. The proposed new two-family house and detached two one-car garages are appropriate in scale and mass for the neighborhood and will not be substantially more detrimental than the existing non-conforming building to the neighborhood. The issuance of a Special Permit is consistent with the criteria in Section 7.5.2

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 1.7.4 to demolish the two-family house and garage on the premises and reconstruct a new two-family house with two detached garages in accordance with the plans submitted with the application, subject to approval by the Town Engineering Department of a storm water mitigation plan.


Jory D. Schneider, Chair

SIGNATORY PAGE – 249 GARDEN STREET



Jonathan D. Tamkin, Vice-Chair

WALTON ROAD - 100 GARDENS STREET



Kelly Lind Smith, Applicant