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

***Lexington 107 LLC, applicant
107 Lexington Avenue
Map 60, Parcel 34***

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

September 17, 2020

Lexington 107 LLC, applicant, made application to the Board of Appeals for a Special Permit under Sections 6.1.2, 7.5.3 and any other applicable Sections of the By-Law to allow a third car garage associated with the construction of a new single-family residence. The property is located at **107 Lexington Avenue**, Needham, MA in the Single Residential B District. A public hearing was held remotely on Zoom Meeting ID Number 869-6475-7241, on Thursday, September 17, 2020 at 7:30 p.m.

Documents of Record:

- Application for Hearing, Clerk stamped August 24, 2020.
- Cover Letter from George Giunta, Jr., dated August 21, 2020
- Proposed Plot Plan, prepared and stamped by A. Matthew Belski, Jr., professional land surveyor, dated August 7, 2020.
- Front & Rear Elevations, prepared by Cheryl Whitaker Moore Architectural Design Services, stamped by John Spink Registered Engineer, dated August 6, 2020.
- Plan of Land, prepared by Mikhail Deychman, stamped by Richard A. Volkin, professional engineer, dated August 7, 2020.
- Letter from Dave Roche, Building Commissioner, dated September 10, 2020.
- Letter from Thomas A. Ryder, Assistant Town Engineer, dated September 8, 2020.
- Email from Thomas A. Ryder, Assistant Town Engineer, dated September 15, 2020.
- Letter from Lee Newman, Director of Planning and Community Development, dated September 8, 2020.
- Email from John Kalin, 15 Hoover Avenue, dated September 15, 2020.
- Email, photos and video from Mark Pantridge, 102 Lexington Avenue, dated September 8, 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; Howard Goldman, Member; and Kathy Lind Berardi, Associate Member. Also participating was Peter Friedenberg, Associate Member.

Mr. Schneider opened the hearing at 7:30 p.m. by reading the public notice. Mr. Schneider stated that the Building Commissioner would be deciding whether a house can be built at this location and the size of the house. The only issue before the Board was whether there can be a third garage in the house.

Vlad Vilkomir, owner and developer, reported that he was building a new, single-family New England style house. He would like a third garage as shown on the plans filed with the application.

Comments were received from:

- The Building Commissioner had no issues. He noted that any drainage concerns during construction would need to be addressed.
- The Engineering Department had no comment on the third garage. They noted that the stormwater plan submitted met the requirements of the Stormwater Ordinance.
- The Planning Board asked that the Board consider the design and aesthetics on how the third garage fits into the neighborhood.
- Mark Pantridge, 107 Lexington Avenue, was concerned about the stormwater runoff. He provided photos showing water on the street in front of the proposed house.
- John Kalin, 15 Hoover Avenue, was concerned about the water drainage and flooding at the property and requested a moratorium on construction.

Mr. Schneider stated that he did not observe any third garages in the neighborhood when he toured the area. He observed only single and two-garages. Mr. Vilkomir said there was a three-car garage on 101 Tower Avenue.

Mr. Schneider inquired if the third garage was set back. Mr. Vilkomir responded that the third garage was set back from the two-bay garage.

Mr. Goldman was concerned with the garage and wanted to listen to comments from the neighbors.

Ms. Berardi asked the applicant what his plans would be for the space if the third garage was not approved. He was not sure. He thought he might just eliminate it.

Mr. Schneider reported that the Board would be applying the criteria from the By-Law when making the determination for a third garage. The criteria are that the third garage may

- not alter the character of the premises in which it is located;
- not have a material adverse effect on the land, buildings, or structures in the neighborhood;
- not produce noise, odors, or glare observable at the lot lines.

Mark Pantridge, 102 Lexington Avenue, was concerned about the water drainage issues. He supported the project and thought it was attractive. He thought the third car garage was excessive and did not meet the criteria for a third garage.

The current house does not have a garage and is a simple New England cottage. He thought that the new house was so large that there was ample storage and questioned the need for the extra storage provided by the third garage. He thought that the new larger structure would materially alter the bungalow, tree-lined character of the neighborhood.

He noted that the street frequently floods from multiple sources. There are two surface streams that end at his house. The DPW built a barrier in front of his house to prevent water from coming into his yard. He was concerned that, with the proposed third garage and larger structure, the flooding and water drainage issues would be exacerbated and negatively affect the neighbors downstream from the project.ca

Mr. Schneider said that there may be an improvement on storm drainage and runoff with the installation of the drywells at the new house which will capture and retain stormwater on the property. Mr. Pantridge said that the water drainage problems have gotten worst with the increased development. He requested that the water drainage problem of the area be brought to the attention of the Building Commissioner.

Mr. Vilkomir was aware of the problem and has been working with the Building Commissioner to implement the stormwater mitigation plan that meets the Commissioner's requirements and approval. He noted that the abutter at 115 Lexington Avenue was built prior to the adoption of the Stormwater Ordinance without any stormwater retention controls causing stormwater to drain onto the street. Mr. Roche has issued a letter to the owner about the problem and the owner needs to rectify it. Mr. Vilkomir was confident that with the stormwater plan he was implementing there would be an improvement.

Kevin Keene, 88 Lexington Avenue, opposed the third garage. He believed that rain was not the problem, but an underground spring in the yard of 107 Lexington Avenue. During the winter there is a constant sheet of ice from water that percolates from the spring. He thought mitigation of rainwater is insufficient.

Ruth McKinnon, 79 Lexington Avenue, supported the comments made by Mr. Pantridge and Mr. Keene. She concurred that there is a stream in the neighborhood and has always understood that the area is on a brook. She lives at the corner of Lexington Avenue and Burnside Road. She noted that Burnside is a Scottish term that means *there is a stream*. The water table of her house is so high that the Town thought there was a watermain break. Whenever there is a rainstorm, her yard floods. The neighborhood is built on ledge and the recent construction has increased the problem. She believed any efforts to displace the water underground will just make matters worse.

John Kalin, 15 Hoover Road, supported comments made by Mr. Pantridge. He did not support the third garage. He supported the land displaced by the third garage be left undisturbed to retain water on the property.

Barry Sullivan, 101 Lexington Avenue, was aware of the water issues in the neighborhood. He noted that the backyard of 107 Lexington Avenue is a swamp even when it is dry. He did a one-mile drive around the neighborhood and found no third garages. The introduction of a third garage would alter the neighborhood. He did not support the granting of a third garage.

Eileen Keene, 88 Lexington Avenue, has lived at the property for 52 years. She has observed that there is always ice in the winter since she walked to school in the 1970s. There is an active stream and she hopes the builder is aware of what he is getting into. She opposed the third car garage as there are no three car garages in the neighborhood. In addition, she thought the need for additional storage could be addressed elsewhere in such a large house.

Mr. Vilkomir was aware there was a water issue on the property. He said that he would be capturing and maintaining the water on the property. He would be planting trees and scrubs to add to the retention and drainage.

Mr. Schneider asked if a soil test was conducted to determine the soil percolation. Mr. Vilkomir responded that a cut and cap of the water and sewer had been conducted. He has hired Michael Shae who will be doing the excavation and installation of the Stormtech system who has direct experience with new construction on Lexington and Hoover Avenues.

Ms. Berardi asked what the plan is if not allowed to build the third garage. Mr. Vilkomir wasn't sure and needed to go back to his architect to redesign his plans. Mr. Vilkomir argued that his house was not as large as other new houses built in the neighborhood. His proposal preserved the side and back yards and added that he was not building out the house to the maximum density allowed.

Mr. Goldman thought the proposal was too large for the neighborhood. He thought the proposal will alter the character of the neighborhood.

Ms. Berardi agreed that the proposal would alter the character of the neighborhood. However, she thought the questions was what will go in the space if the garage is not allowed to be built. Will it be bigger and worse on the neighborhood?

Mr. Friedenberg found the neighbors' comments compelling and was concerned that there are no three car garages in the neighborhood. He didn't think that the Board's decision would change the size of the house. He was troubled that this would be the first third car garage in the neighborhood and thought that it would alter the character of the neighborhood under 6.1.2 (a).

Mr. Schneider did not think the third garage would impact the storm water problem since whatever rain falls on the garage will be captured by the infiltration system. He was concerned about the impact of the proposed design on the neighborhood. However, if denied, the builder could build a much bigger structure.

Mr. Goldman moved that a Special Permit to allow a third car garage associated with the construction of a new single-family residence at 107 Lexington Avenue be denied. Ms. Berardi seconded the motion.

Vote: Ayes-Mr. Goldman. No-Mr. Schneider and Ms. Berardi.

Mr. Schneider concluded that only two members of the Board supported the garage. Since the vote needs to be unanimous, the application is denied.

The meeting adjourned at 8:13 p.m.

Findings:

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

1. The property is owned by the applicant, Lexington 107 LLC, and is situated in a Single Residential B zoning district.

2. The applicant is building a new, single-family home on the property, with three garages. The current house does not have any garages, and the applicant intends to use the third garage for additional storage space.
3. The proposed third garage is not allowed in this zoning district unless the Board of Appeals issues a Special Permit for this proposed additional garage based upon a finding pursuant to Section 6.1.2 of the Zoning By-Law, that the third garage (a) will not alter the character of the premises in which it is located, (b) will not have a material adverse effect on the land, buildings, or structures in the neighborhood, and (c) will not produce noise, odors, or glare observable at the lot lines.
4. Several neighbors testified credibly that the proposed third car garage would materially alter the bungalow, tree-lined character of the neighborhood. The other properties in the neighborhood have one and two-car garages.
5. Based on the foregoing and the Board's consideration of the materials provided to it, the Board does not find that the proposed three-car garage meets the criteria of Section 6.1.2 of the By-Laws.

Decision:

On the basis of the evidence presented at the hearing, following due and open deliberation, upon motion duly made and seconded, the Board failed to achieve a unanimous vote, and therefore denies the applicant a Special Permit under Sections 6.1.2 of the Zoning By-Law to build the third garage.

SIGNATORY PAGE – 107 LEXINGTON AVENUE


Jon D. Schneider, Chair

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Howard S. Goodman, Member

SIGNATORY PAGE – 107 LEXINGTON AVENUE



Kathy Lind Berardi, Associate Member