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

***Donald W. Hollings, owner
1 Wellesley Avenue, Needham, MA
Map 106, Parcels 45 and 49
and
323 Oakland Avenue, Wellesley, MA
Map 17, Parcel 1***

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

November 19, 2020

Donald W. Hollings, applicant, applied to the Board of Appeals for a Special Permit under Sections 1.4.7, 7.5.2 and any other applicable Sections of the By-Law as well as a Finding pursuant to Section 6 of M.G.L Chapter 40A to permit the demolition, extension, alteration, enlargement and reconstruction of the lawful, pre-existing, non-conforming two-family dwelling and multiple accessory buildings to a new two-family dwelling with an accessory garage. The property is located at **1 Wellesley Avenue**, Needham, MA in the Single Residential B District. The property is numbered as 323 Oakland Street, Wellesley, MA. A public hearing was held remotely on Zoom Meeting ID Number 810071960660, on Thursday, November 19, 2020 at 8:00 p.m. at which time all persons interested may attend and be heard.

Documents of Record:

- Application for Hearing, Clerk stamped October 26, 2020.
- Letter from George Giunta, Jr., dated October 26, 2020.
- Site Development Plan, prepared by Jillson Company, Inc., stamped and signed by Kevin E. O'Leary, Registered Professional Engineer, dated October 23, 2020.
- Stormwater Report, prepared by Jillson Company, Inc., stamped and signed by Kevin E. O'Leary, Registered Professional Engineer, dated October 23, 2020.
- Duplex Design A102-A103, A301-303; Detached Garage A102, A302 prepared by Joseph Tatone & Associates, LLC, stamped and signed by Joseph E. Tatone, Registered Architect, dated September 30, 2020.
- Memorandum of Support, prepared by George Giunta, Jr., dated November 10, 2020.
- Email from Dave Roche, Building Commissioner, dated September 8, 2020.
- Letter from Thomas A. Ryder, Assistant Town Engineer, dated November 12, 2020.
- Letter from Lee Newman, Director of Planning and Community Development, dated November 18, 2020.
- Email from Fire Chief Dennis Condon, dated October 29, 2020.

- Email from Chief of Police John Schlittler, dated October 29, 2020.
- Email from Tara Gurge, Assistant Public Health Director, dated November 5, 2020.
- Letter from Andy and Trish Mirsky, 309 Oakland Street, dated October 13, 2020.
- Letter from Esel Shemmeri, 11 Wellesley Avenue, dated October 19, 2020.
- Letter from Pamela A. Reid and Steve B. Pitschke, 313 Oakland Street, dated October 13, 2020.
- Letter from Jude and Martha Castro, 319 Oakland Street, dated October 8, 2020.
- Letter from Robin S. Williams, 15 August Way, undated.
- Letter from Clint and Carolyn Clements, 74 Hunnewell Street, Wellesley Avenue, dated October 5, 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 Tamkin, Vice-Chair; Howard Goldman, Member. Also participating was Kathy Lind Berardi, Associate Member; and Peter Friedenberg, Associate Member. Mr. Schneider opened the hearing at 8:45 p.m. by reading the public notice.

George Giunta, attorney representing the applicant, noted that 1 Wellesley Avenue is also located at 323 Oakland Avenue in Wellesley. It consists of 36,912 square feet with a frontage of 110.78 feet on Wellesley Avenue and Oakland Street.

The property is occupied by a one-story, bungalow style, two-family dwelling as well as several detached commercial accessory structures.

The two-family structure has one unit on the first-floor and a separate second-unit located in the basement floor.

Mr. Giunta reported that this case was challenging because of the lack of records on the two-family structure in Needham or Wellesley. There are plenty of records, however, on the accessory structures. Mr. Giunta speculated that, since the front door of the two-family is in Wellesley, it was treated as a Wellesley house.

Researching the records in Wellesley, he found no tax records on the house from 1900 to circa 1930. In 1935, the property is identified as a two-family by the Assessor Department. Based on department’s records and a letter from the Wellesley Building Inspector, the use of the house as a two-family would consider the dwelling a pre-existing non-conforming use.

There is almost no information in the files in Needham that addressed the historic use of the house, except for two building permits in 1961 for a carport and 1964, for an addition to the rear. Both permits identify the house with two addresses, implying two units with two addresses, one in Needham and one in Wellesley.

There were other sources that indicated that the house appears to have been built prior to 1925. Upon reviewing the title records at the Registry of Deeds there is a plan from 1931 that shows the house existing. In addition, in 1910 there is a tax taking recorded with the Registry of Deeds for a piece of property that included a dwelling in Wellesley. A search of the title of the property from 1909 revealed the same owner of the property as the one in the tax taking.

Based on these records, Mr. Giunta concludes that the house was in existence as in 1931 and very likely as early as 1909.

Because of the lack of available records on the two-family use, the applicant hired Edward W. Gordon, a historic structure consultant. He concluded that the house existed as a two-family in 1925 because of the layout, age and architectural details. Key to his conclusion was the lack of access to the upper unit. There are no stairs or any indication that stairs existed or were removed connecting the units. In addition, the bathroom was larger than a standard basement unit bathroom and it was located directly below the first-floor unit's bathroom - further indicating that the units were created when the structure was constructed.

Mr. Giunta noted the property had a long history of complaints and violations on file in Needham. Donald Hollings, the applicant, met with all the neighbors regarding the new plans and addressed their concerns. The neighbors are in support of the proposed project as their letters of support attest. The plan is to build a residential duplex close to the street with a landscaping that will improve the appearance of the property and provide a buffer from the neighbors.

Mr. Giunta argued that the 36,912 square foot lot could be subdivided and accommodate two separate single-family dwellings, but that would require asphalted roads and be contrary to the neighbors' desire. The proposed two-family with a detached two-car garage and the comprehensive landscaping and planting was more in keeping with the size, scale and wishes of the neighborhood and not more substantially detrimental than the existing two-family.

Comments received were:

- The Building Commissioner was in favor of the proposal and the overall property improvement it will create.
- The Engineering Department had no objection.
- The Planning Board had no comment.
- The Fire Department had no comment.
- The Police had no comment.
- The Health Department noted that the existing septic will not support the project. The applicant is in the process to connect with Wellesley's water and sewer and must complete a sewer connection approval/process prior to the issuance of the building permit. In addition, an online Demolition Review application must be filled prior to demolition.
- Andy and Trish Mirsky, 309 Oakland Street, support the project.
- Esel Shemmeri, 11 Wellesley Avenue, supports the project.
- Pamela A. Reid and Steve B. Pitschke, 313 Oakland Street, support the project.
- Jude and Martha Castro, 319 Oakland Street, support the project.
- Robin S. Williams, 15 August Way, supports the project.
- Clint and Carolyn Clements, 74 Hunnewell Street, support the project.

There were no comments from the public.

Mr. Schneider asked the Board to consider whether this was a repetitive petition since there was a prior proposal before the Board less than two years ago. Mr. Schneider believed the current proposal was dramatically different. Mr. Goldman and Mr. Tamkin concurred.

Mr. Schneider noted that no information was provided that the property was continuous used as a two-family. Mr. Giunta reported that he searched the Wellesley Historic Society, Wellesley Town records, the online Library of Congress, Census and poll tax records. He was not successful in finding information on the continuous use. Wellesley did not have the poll tax or census data that Needham maintains. Mr. Giunta argued that there were strong data points indicating the property existing as a two-family prior to 1925 and that it was built as a two-family. The consultant's historic structural research identifying the basement as having its own bathroom; no connection between the units; and each unit having its own entrance and exit provides a strong case that the residence was built as a two-family and by inference was used as a two-family.

Mr. Goldman thought it was a good proposal and was impressed by the overwhelming community support. However, he was concerned about the lack of evidence of continuous two-family use. He thought the applicant made a good case about the property being built prior to 1925. Mr. Goldman asked how evidence of continuous use was handled in the prior application.

Mr. Schneider reminded the Board that the prior application was about the replacement of non-conforming uses from commercial to multi-family and that the application fell apart when it was determined that there were two parcels. One parcel was acquired after adoption of zoning and did not have a legal non-conforming commercial use.

Mr. Schneider said this was not a perfect case but given the attractiveness of the proposal and the support from the neighborhood, he was open to ignoring the gap in the continuous use evidence and move forward on the proposal.

Mr. Giunta offered that the Wellesley Building Inspector determining the property to be a pre-existing non-conforming two-family use and the Needham Building Commissioner's rare letter in support to be critical unique determination factors that are unlikely to exist in future decisions.

Mr. Tamkin found it compelling that two Building Inspectors concurred that the structure was a pre-existing non-conforming use and the research on the property existing prior to 1925 solid. He thought the neighbors' support of the project persuasive when compared to their rejection of the previous project.

Ms. Berardi found the case to be unique. She thought the evidence that there was no connection between the units leads to the two-family conclusion.

Mr. Schneider thought providing the expert opinion on the structure's use was convincing.

Mr. Goldman moved to grant a Special Permit under Sections 1.4.7 and 7.5.2 Sections of the By-Law to permit the demolition, extension, alteration, enlargement and reconstruction of the lawful, pre-existing, non-conforming two-family dwelling and multiple accessory buildings to a new two-family dwelling with an accessory garage in accordance to the plans submitted with the application. Mr. Tamkin seconded the motion. The motion was unanimously approved.

The meeting adjourned at 8:56 p.m.

Findings:

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

1. The premises is a 36,912+/- square foot parcel located mostly in Needham and with a small portion in Wellesley. The Needham portion consists of two lots and is located in the Single Residence B District. The property is improved with a house, two greenhouses and two sheds.
2. The Needham Assessor records show a parcel owned by the applicant at One Wellesley Ave. containing 0.67 acres (29,185 square feet) classified as commercial with a user code of 318 (commercial greenhouse) and a parcel at Zero Wellesley Ave. containing 0.14 acres (6098 square feet) classified as residential with a user code of 132 (undeveloped land). The Wellesley Assessor record show a parcel at 323 Oakland Ave. containing 3254 square feet with a user code of 104 (two-family residential). The assessor's records indicate that the three parcels contain an aggregate of 38,537 square feet. The plan provided with the application indicates that the parcel contains only 36,912 square feet.
3. The house on the premises is split between Needham and Wellesley. The front door of the house is in Wellesley and the house bears a Wellesley address. All the other structures are in Needham.
4. The house has approximately 976 square feet of interior finished living space on the first floor with 315 square feet in an enclosed porch. There is approximately 676 square feet of finished space in the basement. The house has two living units: one on the first floor and a second in the basement.
5. There is very little information concerning the house in the official records in Needham. There are two plot plans in the records of the Building Department relating to building permits for the construction of a carport in 1961 and for the construction of an addition in 1964. Both plot plans indicate that the house has two street numbers implying there were two units.
6. There are no historical records in Wellesley for the early part of the 20th century. The house is listed in the current assessor's records as a two family and taxed as a two-family house. The Building Inspector for the Town of Wellesley issued a letter stating that he considered the house to be a two-family dwelling which is a preexisting nonconforming use.
7. The applicant engaged the services of Edward W. Gordon, a historian who consults on status of properties. Mr. Gordon expressed the opinion in a letter dated October 17, 2020 that the structure existed as a two-family dwelling prior to 1925 (when zoning was first adopted in Needham).
8. The Board finds that the use of the existing dwelling as a two-family house is a legally

non-conforming use.

9. The applicant proposes to demolish all of the structures on the parcel and build a new two-family house with an accessory garage in accordance with the plans submitted. The new structures will be entirely in Needham.
10. The premises has a long history of complaints regarding commercial uses of the property. The two greenhouses and two sheds as well as the dwelling are in disrepair. The new two-family house with landscaping will be an improvement to the neighborhood.
11. Under Section 1.4.7.4 the Board may authorize the construction of a new two-family house to replace a non-conforming two-family house upon certain findings. The new two-family house meets all current dimensional and density requirements.
12. Several neighbors have submitted letters supporting the proposal. No one has submitted a letter in opposition, nor did anyone appear at the hearing to oppose the proposal. Many of the neighbors vigorously opposed a previous proposal by the applicant in 2018 to develop the property but appear unanimously supportive of the current proposal.
13. The Needham Building Inspector has submitted a letter supporting the proposal stating that "Getting this property cleaned up and a new owner-occupied residential building replacing the deteriorating buildings on the site is a win for the town and the abutters from both towns."
14. The proposed new two-family house and accessory garage are appropriate in scale and mass for the neighborhood and will not be substantially more detrimental than the existing non-conforming buildings.

Decision:

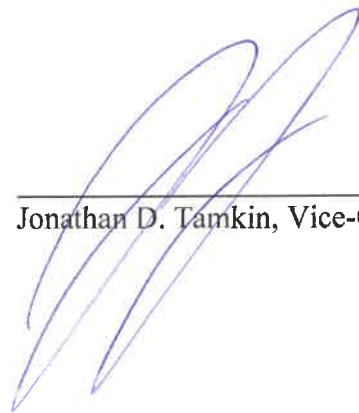
On the basis of the foregoing findings, following due and open deliberation, upon motion duly made and seconded, the Board by unanimous vote, issues a Special Permit to permit the demolition of the existing non-conforming two-family dwelling and reconstruction of a new two family house and accessory garage pursuant to Sections 1.4.7 and 7.5.2 and in accordance with the plans presented with the application, subject to the condition that all the existing structures on the premises shall be demolished and removed and the property landscaped substantially in accordance with the plans presented with the application.

SIGNATORY PAGE – 1 WELLESLEY AVENUE



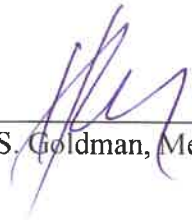
Jon D. Schneider, Chair

SIGNATORY PAGE – 1 WELLESLEY AVENUE



Jonathan D. Tamkin, Vice-Chair

SIGNATORY PAGE – 1 WELLESLEY AVENUE


Howard S. Goldman, Member