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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

Interpretation of Variance

***Needham Enterprises, LLC
460 Central Avenue
Map 96, Parcel 20***

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

January 21, 2021

Needham Enterprises, LLC, applicant, applied to the Board of Appeals for a Variance Amendment under Sections 3.2.1, 7.5.3 and any other applicable Sections of the By-Law to allow the Plan Substitution and/or further relief pursuant to a *ZBA Variance, 460 Central Avenue, July 9, 1963* authorizing use of the Premises for two-family purposes; and any and all other relief necessary for the demolition of the existing two-family dwelling and replace it with a new two-family dwelling. The property is located at 460 Central 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, January 21, 2021 at 7:30 p.m.

Documents of Record:

- Application for Hearing, Clerk stamped December 14, 2020.
- Letter from George Giunta, Jr., Esq., dated December 14, 2020.
- Proposed Plot Plan prepared and stamped by Bradley J. Simonelli, Professional Land Surveyor, dated November 23, 2020.
- Design Plans, G1-0, A1-0-3, A-2-0, A-3-0, prepared and stamped by Mark Gluesing Registered Architect; dated November 12, 2020.
- Memorandum of Support, Exhibits A-E, prepared by George Giunta, Jr., Esq., dated January 12, 2021.
- Email from Dave Roche, Building Commissioner, dated January 12, 2021.
- Email from Tara Gurge, Assistant Public Health Director, dated January 12, 2021.
- Email from Dennis Condon, Chief of Department, Needham Fire Department, dated December 18, 2020.
- Letter from Thomas A. Ryder, Assistant Town Engineer, dated January 21, 2021.
- Letter from Lee Newman, Director of Planning and Community Development, dated January 4, 2021.

January 21, 2021

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 Howard Goldman, Member. Also participating was Peter Friedenberg, Associate Member. Mr. Schneider opened the hearing at 7:30 p.m. by reading the public notice.

George Giunta, Jr., attorney representing the applicant, reported that the property consisted of 11,498 square feet of land with 80 feet of frontage. The premises is currently occupied by a two-story, two-family residential house that is nonconforming as to use, with a detached garage. Built in 1840, the house contains nine rooms, including 4 bedrooms and two full baths. There was an addition in 1950.

The use of the premises as a two-family was authorized by a Variance dated July 9, 1963 (“1963 Variance”). In November of 1963 there was a building permit to add a fire escape and a door. Since 1960 very little work on the house has been done.

The applicant is proposing to demolish the existing house and replacing it with a new two-family structure. The new two-family will comply with all the density and dimension requirements of the By-Law. The lot coverage has been calculated at 17.9% under Section 1.4.7.4 (b) and 22.5% under 4.2.2 (h), below the maximum allowable lot coverage of 18% and 25%, respectively.

Mr. Giunta said that the 1963 Variance granting the two-family use runs with the land there were no conditions to the 1963 Variance limiting the two-family use. The two-family use for the proposed project is consistent with the use granted under the variance.

Mr. Giunta argued that the new two-family house will be less detrimental to the neighborhood, complying with the limits set in Sections 1.4.7.4 of the By-Law. The two-family results in a smaller footprint than what would be allowed for a single-family structure.

Mr. Schneider noted that the key issue is whether the Variance is limited to a specific structure. Reading from the 1963 Variance: “The Building Inspector is authorized to issue a building permit to authorize the alteration of the one-family house located in a single family zone, for two-family use, subject however, to all other applicable regulations pertaining to a two-family use. Mr. Schneider concluded that there were no limitations on the structure.

Comments received were:

- The Building Commissioner made no comment.
- The Engineering Department had no comment or objection.
- The Planning Board had no comment.
- The Fire Department had no comment.
- The Health Department required a Demolition Review and on-going pest control process during construction.

The hearing was open to public comments.

Michael DiMaio, 442 Central Avenue, asked why the lot density was 22.5% when the maximum was 18%. Mr. Giunta responded that there were two different lot coverage calculation. One excludes the garage and, resulting in a coverage of 17.9% which is below the required 18%. The other calculation includes the garage where the coverage is 22.5% below the 25% maximum allowable.

Mr. DiMeo inquired about the side setbacks, particularly the garage. Mark Gluesing, architect, responded that a garage under 15 feet in height must be setback five feet from the side line. The proposed garage has a six-foot side setback. The minimum side setback for structures is 14 feet. The proposed two-family has minimum side setbacks at 14.5'.

Mr. DiMeo asked why the applicant was seeking a Variance instead of a Special Permit. Mr. Giunta responded that Sylvia Hall was granted a variance in 1963 to allow for the single-family house to be used as a two-family. Since the use is pursuant to a variance, it is not non-conforming. If it were non-conforming, relief would be through a special permit.

Maureen DiMeo, 422 Central Avenue, was concerned about the close proximity of the garage to their house.

Michael Goulde, 468 Central Avenue, wondered whether the new two-family house will continue as a rental or will be townhouses. Mr. Giunta responded that the developer will be selling the units as condominiums, but that the owner of a condominium could rent the unit.

Mr. Goulde was not concerned about the proximity of the garage to their property as they have no windows on that side of their house.

Mr. Tamkin inquired if the garage could be shifted. Paul Beaulieu, surveyor, responded that the garage was sited to accommodate the DiMeo's concerns and had a 9.3' setback on their side. The other side setback has a six-foot setback.

Mr. Friedenberg found the 1963 Variance noteworthy for its lack of conditions. Mr. Friedenberg asked if variances can lapse. Mr. Giunta responded that a variance had to be affirmatively abandoned. There is no expiration period.

Mr. Schneider inquired whether Mr. Giunta had considered Chapter 40A, Section 7 which says that a property in existence for 10 years should be treated as non-conforming. Mr. Giunta thought, since the use was established in a variance, it is not the type of situation contemplated by Section 7.

Mr. Tamkin noted that the form of a variance was rare for Needham but not necessarily in other communities. He concurred that the two-family use was not tied to a structure or by a set of plans. He was supportive of the proposal because of the improvement of the property; it was not a detriment to the neighborhood; the proposal conformed to the By-Law; the applicant addressed the concerns by the neighbors regarding the garage proximity; the Building Commissioner didn't have any concerns; and there were no objections from the neighbors.

Mr. Goldman asked if a vegetative screening could be provided to buffer the garage for the

DiMeos. The DiMeos were supportive of a screening. Mr. Giunta said a buffer is being provided for the neighbor to the back and the DiMeos could be included. He agreed that something like arborvitaes could be planted to provide a thick, green natural fence.

Rena Freedman, 468 Central Avenue, asked how far the garage was from their property. Mr. Beaulieu shared the proposed plot plan and showed that the two-car garage will be located in the back of the property, six feet from their property. He highlighted all the setbacks of the proposal.

Mr. Schneider understood that the Board was not amending the variance but was making a finding that the proposed new house is consistent with two-family use established in the variance. Mr. Giunta concurred that a plan substitution was consistent with the variance. Mr. Schneider didn't think it should be a plan substitution as there is no plan associated with the variance.

Mr. Tamkin moved to find that the plans submitted for the demolition of an existing two-family dwelling and its replacement with a new two-family dwelling with a detached two-family garage was consistent with the Board's 1963 Variance, conditioned on appropriate vegetative screening along the garage adjacent to 442 Central Avenue and the rear of the property. Mr. Goldman seconded the motion. The motion was unanimously approved.

Mr. Schneider asked that the applicant be sensitive to the neighbors regarding hours of construction and employee parking, and to discuss with the DeMeos the details of the screening.

The meeting adjourned at 8:10 p.m.

Findings:

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

1. The premises is an 11,498 square foot lot improved with a two family house and detached garage located in the Single Residence B District. Two family use is not permitted in the District.
2. The current house has approximately 2,280 square feet of finished living area on two floors and 900 square feet in an unfinished basement. There are 9 rooms including 4 bedrooms and 2 full baths. The house appears to have been built around 1840.
3. The present two-family use is allowed pursuant to 1963 Variance. The 1963 Variance did not specify or apply nor any particular structure. The variance authorized the "alteration of the one-family house in a single-family zone, for two family-use, subject however, to all other applicable regulations pertaining to two-family use."
4. The applicant proposes to demolish the existing house and replace it with a new two family house as shown on the plans filed with the application, and that complies with all density and dimensional requirements of the current By-Law.
5. 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 a 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 of Section 1.4.7 including the lot coverage ratio of 18%. 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.

6. One of the neighbors has requested plantings to screen the garage and the applicant has agreed.

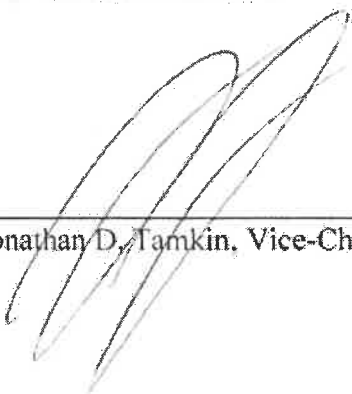
Decision:

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 may be constructed under the existing 1963 Variance, subject to the condition that the applicant will plant evergreen bushes or trees to the rear and north side of the new detached garage to screen the garage from the neighbors.



Jon D. Schneider, Chair

SIGNATORY PAGE – 460 CENTRAL AVENUE



Jonathan D. Tamkin, Vice-Chair

SIGNATORY PAGE – 460 CENTRAL AVENUE


Howard S. Goldman, Member