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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

Special Permit

***Adam Jacob Pase and Liat Rosen, Applicants
68 Wilshire Park
Map 31, Parcel 47***

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

June 17, 2021

68 Wilshire Park – Adam Jacob Pase and Liat Rosen, applicants, applied to the Board of Appeals for 1) a Variance, pursuant to Section 7.5.3 of the Zoning By-Law and/or M.G.L. 40A, Section 10 from applicable minimum side yard setback requirements of Section 4.2.1 of the Zoning By-Law; 2) a Special Permit, pursuant to Section 1.4.6 of the Zoning By-Law for the change, extension, alteration, and enlargement of a lawful, pre-existing, non-conforming structure; and 3) an Interpretation/Amendment to a prior Variance, dated June 27, 1984; and any other applicable sections of the Zoning By-Law associated with the construction of additions and a new deck to an existing residence. The property is located at 68 Wilshire Park, Needham, MA in the Single Residential B District. A public hearing was held at Powers Hall, Needham Town Hall, 1471 Highland Avenue, Needham, MA, on June 17, 2021 at 8:00pm.

Documents of Record:

- Application for Hearing, Clerk stamped May 18, 2021.
- Letter prepared by George Giunta, Jr., Esquire, dated May 18, 2021.
- Memorandum of Support and Exhibits A-D prepared by George Giunta, Jr., Esquire, dated June 8, 2021.
- Email from George Giunta, Jr., Esquire, dated June 8, 2021.
- Plot Plan prepared by Christopher C. Charlton, professional land surveyor, stamp and dated May 14, 2021.
- Revised Plot Plan prepared by Christopher C. Charlton, professional land surveyor, stamp and dated June 4, 2021.
- Architectural Plans, pages 1-14, prepared by Smook Architecture, stamped by Clay B. Smook, registered architect, dated February 25, 2021, revised February 26, 2021.
- Revised Architectural Plans, pages 1-14, prepared by Smook Architecture, stamped by Clay B. Smook, registered architect, dated June 7, 2021 (the "Revised Building Plans").

- FAR Calculations, prepared by Smook Architecture, stamped by Clay B. Smook, registered architect, dated May 28, 2021.
- Email from Dave Roche, Building Commissioner, dated June 8, 2021.
- Email from Dave Roche, Building Commissioner, dated June 10, 2021.
- Email from Thomas A. Ryder, Assistant Town Engineer, dated June 10, 2021.
- Memo from Clay Hutchinson, Conservation Specialist, dated June 16, 2021.
- Email from Chief John Schlittler, Police Department, dated June 15, 2021.
- Letter from Lee Newman, Director of Planning and Community Development, dated June 14, 2021.
- Letter from Marcus and Jennifer Hughes, 55 Wilshire Park, June 9, 2021.
- Letter from Zachary Wallack, 35 Wilshire Park, June 14, 2021.
- Letter from Kristen and Robert Mabry, 75 Wilshire Park, June 9, 2021.
- Letter from Adam and Laura Raff, 52 Wilshire Park, June 14, 2021.
- Letter from Daniel Keesing and Niko Tracksdorf, 12 Ivy Road, June 9, 2021.
- Letter from Patrick and Kate McKiernan, 69 Wilshire Park, June 11, 2021.
- Letter from Jeremy and Jessica Karlin, 30 Wilshire Park, June 11, 2021.
- Letter and attachment from John Gallo, 298 Brookline Street, June 16, 2021.

June 17, 2021

The Board included Jon D. Schneider, Chair; Howard Goldman, Member; and Peter Friedenberg, Associate Member. Also participating was Kathy Lind Berardi, Associate Member. Mr. Schneider opened the hearing at 8:43 p.m. by reading the public notice.

George Giunta, Jr., attorney representing the applicants, reported that the property is located on a street that was laid out in 1924 with many substandard lots. In 1962, the property was increased by the addition of a bump out on the south side pursuant to an ANR plan signed by the Planning Board. The property contains 7,622 square feet with 67' of frontage. The premises is occupied by a single-family residence originally constructed in 1928.

In 1984, the house was expanded by an addition of an attached single car garage with a bedroom above on the north side, an addition off the rear and a deck off the south rear corner. The north side addition encroaches on the side setback at 5'6" allowed by a variance granted by the Board in a decision dated June 27, 1984 ("1984 Variance"). The variance was granted based on hardship created by the narrowness and the severe rear slope of the lot.

The current owners and applicants want to expand the house to accommodate their growing family by creating an open family room. On the north side, the project includes expanding the area above the garage with a front and back dormer for a pantry and bathroom on the first floor and a bedroom and bathroom on the second floor. The footprint will remain the same as authorized in the 1984 Variance. It will not expand beyond the footprint of the existing structure. The request is for an interpretation that this expansion is consistent with the 1984 Variance.

On the south rear corner, the proposal is to create living space in the location of the existing deck, steps and landing. The proposed addition will be no closer to the south side setback than the current structures. This addition includes a family room on the first floor and a fitness room

in the basement level. The request is for a Special Permit under Section 1.4.6 of the Zoning By-Law.

As part of the current plans, a rear deck will be added that is conforming to all dimensional requirements of the Zoning By-Law and can be built by-right. The deck will be cantilevered to adapt to the sloping topography.

Based on comments received from the Building Commissioner dated June 8, 2021, the original plans submitted with the application were revised eliminating a portion of the deck encroaching into the south side setback and eliminating the need for a variance for that portion of the proposed work.

In 1984, the deck added on the south side was 10'7" from the side line which was conforming. Currently the side setback is 12'. The deck is now non-conforming as to side setback. The steps and landing built in 1984 are even closer to the side line and are non-conforming as well. The steps and landing are not indicated in the 1984 plot plan, but Mr. Giunta argued they were likely included. Mr. Giunta reminded the Board that at one time, steps and landings were not considered as structures by the Needham Building Department. Currently these steps and landings are considered as structures. A letter from Mr. John Gallo, the previous owner from 2009 to 2014, attested that the steps and landing were in existence when he purchased the home in 2009. Under MGL 40A, Section 7, if a structure has existed for over ten years without a legal challenge, even if it did not conform to the applicable zoning by-law at the time of its construction, it becomes non-conforming for zoning purposes and can be modified under Section 1.4.6 of the Zoning By-Law.

The proposed addition on the south side of the house, at the basement and first floor levels, will be within the footprint of the deck, landing and steps.

Clay Smook, project architect, stated that the addition on the south side of the house is not a grand addition. It measures 15' by 15'. He described it as a one-story addition with a walk-out at the basement level. The addition is constrained by the precipitous 12' drop near the edge of the current deck. The proposed fitness room at the basement level is located half at grade and half below grade.

Mr. Giunta reasoned that the addition was not substantially more detrimental to the neighborhood and that the enclosed space was less noisy than an open deck. In addition, there were seven letters of support from neighbors, six from neighbors on Wilshire Park and one from an abutter to the rear on Ivy Road.

Comments received:

- Planning Board noted that there was no evidence of pre-existing non-conformity and that it should be provided. Mr. Schneider was satisfied with the evidence provided.
- Engineering Department had no comment or objection.
- Building Department had no issue with the addition on the north side and did not support the use of the landing and stair as the basis for the side setback relief on the south side.

- Conservation Department reviewed the proposal and determined that there may be resource areas within 100 feet of the work area and the proposed work may be subject to the jurisdiction of the Conservation Commission. Mr. Giunta acknowledge the issue and stated that the applicant will seek consultation with a wetlands professional and comply with Conservation Commission requirements, if applicable.
- Marcus and Jennifer Hughes, 55 Wilshire Park, supported the project.
- Zachary Wallack, 35 Wilshire Park, supported the project.
- Kristen and Robert Mabry, 75 Wilshire Park, supported the project.
- Adam and Laura Raff, 52 Wilshire Park, supported the project.
- Daniel Keesing and Niko Tracksdorf, 12 Ivy Road, supported the project.
- Patrick and Kate McKiernan, 69 Wilshire Park, supported the project.
- Jeremy and Jessica Karlin, 30 Wilshire Park, supported the project.

Edward and Virginia Mullahy, 62 Wilshire Park, stated that they have resided at their property for the past 50 years and were familiar with the 1984 Variance and the changes at the property. They expressed no objection to the proposal.

Mr. Schneider stated that the 1984 Variance for the north side referred to a specific plan. Since the changes proposed are not included in the referenced plan he thought that a new variance would be required. Mr. Giunta said that the plan referred to in the 1984 Variance was simply a plot plan and not a plan of the structure proposed to be constructed at that time. Mr. Friedenberga asked if the new gables are within the box of the existing structure. Mr. Giunta said the gables were within the box area. Mr. Smook noted that there is a minor front eave that will be added to the gambrel roof to match the original house and break up the front wall.

Mr. Schneider requested more information about the plan referenced in the 1984 Variance. Mr. Giunta said the Plot Plan (Exhibit D to his memorandum) prepared by Carmelo Frazetti dated May 21, 1984 was the plan referred to in the 1984 Variance. Mr. Frazetti was an engineer who practiced in Needham and was personally known by Mr. Giunta. Mr. Schneider was satisfied that the 1984 Variance referenced a plot plan and not an architectural plan.

Mr. Friedenberga wanted an explanation why the 1984 plot plan shows the north side setback as six feet and the 2021 plot plan shows it as 5'6". Mr. Giunta responded that the difference can be attributed to the variety of results among surveyors for any given property; the different instruments and or monuments used by different surveyors; or the point of measurement. Mr. Schneider noted that the Zoning By-Law has changed over the years as to whether measurements were to the foundation or another part of the structure.

Ms. Berardi wanted to know what the added square footage would be when the project is completed. Mr. Smook said the current square footage is 2,545 sf. The proposed project will be 2,785 sf, an increase of 240 square feet.

Mr. Friedenberga noted that there were no letters of support from the direct abutters. The Mullahys said they were direct abutters. Mr. Giunta responded that the applicant discussed the plans with the abutters. Mr. Pase said they conveyed support of the plans.

Karen Han, 34 Grosvenor Road, said she was supportive of homeowners who made changes to their current homes to make them work for their needs rather than demolishing them. She wanted to know if a decision would set a precedent. Mr. Schneider responded that every case stands on its own merits. The Board has discretion when making a decision weighing the input from neighbors about the impact a proposal has on their neighborhood. The Board has turned down request due to neighborhood opposition, but generally approves 95% of the applicants' requests.

Mr. Friedenberg moved to grant a Special Permit pursuant to Section 1.4.6 of the Zoning By-Law for the change, extension, alteration, and enlargement of a lawful, pre-existing, non-conforming structure, that being the deck, stairs and landing on the south side of the house, to allow an addition as shown on the plans submitted to the Board dated June 7, 2021; and to issue an Interpretation of a Variance previously issued with respect to a building addition on the north side of the house to allow the alterations as shown on the plans dated June 7, 2021 as consistent with the 1984 Variance. Mr. Goldman seconded the motion. The motion was unanimously approved.

The meeting adjourned at 9:27 p.m.

Findings:

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

1. The property situated in the Single Residence B zoning district and contains approximately 7,622 sf with approximately 67' of frontage on Wilshire Park.
2. The property is currently improved with a single-family dwelling containing approximately 2,545 sf of living space on the first and second floors. The north wall of the existing house is situated approximately 5'6" from the property line. This encroachment into the required 10' setback was authorized by this Board pursuant to the Variance Decision issued to Carolyn J. Walsh dated June 27, 1984 in connection with the construction of a 2-story addition at that location (the "1984 Variance").
3. There currently exists an unenclosed deck on the south side of the existing house, which was added pursuant to a building permit issued in 1984. The deck is situated approximately 10' from the side lot line. Stairs and a landing have been constructed on the south side of the deck nearest the south lot line, which extend to approximately 7.8' from the lot line. The landing and stairs are not shown on the plot plan submitted to this Board in connection with its hearing on the application for the 1984 Variance. It appears that the landing and the stairs were constructed as part of the deck addition in 1984, but they are not described in the building permit application. The Board notes that at different points in time, extension of stairs and landings into required setbacks were not considered to be violations of the Zoning By-Law.
4. With respect to the proposed addition on the north side of the house, the Board finds that the proposed addition will be constructed within the footprint of the existing addition, which footprint was authorized by the 1984 Variance as shown on the plot plan

referenced in that decision. In the absence of any mention of any other plans being considered by the Board at the time of its issuance of the 1984 Variance, the Board concludes that the appropriate interpretation of the 1984 Variance is that it permits permit construction of any building addition within that footprint, not a specific building addition which was brought before the Board in 1984. Consequently, so long as the building addition proposed by the applicant to be constructed on the north side of the house is located within the footprint shown on the plot plan referenced in the 1984 Variance the Board interprets the 1984 Variance to permit such construction without the necessity of amending the 1984 Variance,

5. With respect to the proposed addition on the south side of the house, the Board finds that at the time of the construction of the deck, the required side setback was 10' and the deck complied with that setback. The landing and stairs, which appear to have been constructed at the same time as the deck, encroach into the 10' setback and are located approximately 7.8' from the side lot line. The required side setback has since been increased to 12', rendering the deck legally non-confirming, and the landing and stairs further non-confirming.
6. The Board finds that more than 10 years have passed since the construction of the deck, the landing and the stairs, and that no legal challenge has been commenced claiming that they violate the Zoning By-Law. Accordingly, pursuant to M.G.L. c. 40A, sec. 7 (as most recently amended), the deck, landing and stairs are legally non-confirming structures for purposes of the Zoning By-Law. Section 1.4.6 of the Zoning By-Law would permit the applicant to alter, enlarge or reconstruct these legally non-confirming structures provided that the requirements of that Section are met.
7. The Board finds that the reconstruction of the deck, landing and stairs as an enclosed building addition which will not extend further into the required setback than the existing deck, landing and stairs would not be substantially more detrimental to the neighborhood than the existing non-confirming use as an unenclosed deck. Among other things, the amount of outside noise generated so close to the side lot line would be reduced.
8. The Board further finds that granting a special permit pursuant to Section 1.4.6 of the Zoning By-Law to permit the construction of the proposed addition on the south side of the house will be consistent with the general purposes of the Zoning By-Law and will not have a demonstrable adverse impact on the abutting residential properties.

Decision:

On the basis of the foregoing findings, following due and open deliberation, upon motion duly made and seconded, the Board by unanimous vote, (i) interprets the 1984 Variance to permit the construction of the proposed addition to the north side of the existing house as shown on the Revised Building Plans provided that the proposed addition remains within the footprint shown on the plot plan which is referenced in the 1984 Variance, and (ii) grants the applicant a Special Permit under Sections 1.4.6 and 7.5.2 of the Zoning By-Law to permit the alteration, enlargement and reconstruction of a non-confirming structure to permit the construction of the

proposed addition to the south side of the house in the location of the existing deck, landing and stairs, all as shown on the Revised Building Plans, provided that the proposed addition does not extend further into the required side setback than the existing deck, landing and stairs.

SIGNATORY PAGE – 68 WILSHIRE PARK



Jon D. Schneider, Chair

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Howard S. Goldman, Member

SIGNATORY PAGE – 68 WILSHIRE PARK



Peter Friedenberg, Associate Member