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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

Special Permit

***Joseph Audette, MA, MD and Allison Bailey, MD, applicants
920 South Street
Map 205, Parcel 70***

July 15, 2021

920 South Street –Joseph Audette, MA, MD and Allison Bailey, MD, applicants, applied to the Board of Appeals for a Special Permit under Sections 3.2.1, 5.1.1.5, 5.1.2, 5.1.3, 7.5.2 and any other applicable Sections of the By-Law to allow the waiving of strict adherence with the off-street parking requirements, parking plan and design associated with the renovation and repurpose of an existing three-story building for use as a professional educational center by the Source Point Foundation. The property is located at 920 South Street, Needham, MA in the Rural Residence Conservation (RRC) District. A public hearing was held on Zoom, June 17, 2021 at 7:45 pm

Documents of Record:

- Application for Hearing, Clerk stamped June 21, 2021.
- Letter prepared by George Giunta, Jr., Attorney, dated June 21, 2021.
- Memorandum of Support, Exhibits A-B, prepared by George Giunta, Jr., Attorney, dated July 6, 2021.
- Plan of Land, prepared by Greater Boston Surveying and Engineering, and stamped by Paul J. Tyrell, professional land surveyor, dated June 6, 2021.
- Design Plans, A0.0-.4; A-1.1-1.8, A-2.1-2.8, A-2.0 prepared by Derek Rufinoff Architect, stamped by Derek A. Rubinoff, registered architect, dated June 18, 2021.
- -2, A1.1-2, A2.1-2 prepared by Bee Howes Architect dated May 23, 2021.
- Letter from Dave Roche, Building Commissioner, dated July 7, 2021.
- Email from Thomas A. Ryder, Assistant Town Engineer, dated July 7, 2021.
- Letter from Lee Newman, Director of Planning and Community Development, dated July 2, 2021.
- Email from Chief Dennis Condon, Fire Department, dated June 25, 2021
- Email from Tara Gurge, Assistant Public Health Director, dated July 7, 2021.
- Memo from Serguei Aliev, dated July 15, 2021
- Letter from Bob and Erna Place et. al, dated July 15, 2021

July 15, 2021

The Board included Jon D. Schneider, Chair; Kathy Lind Berardi, Associate Member and Peter Friedenbergl, Associate Member. Mr. Schneider opened the hearing at 7:45p.m. by reading the public notice.

George Giunta, Jr., attorney representing the applicants, reported that the property is the location of the former hospice known as the Stanley Tippetl House. The site contains approximately 5.6 acres of land with 177.65 feet of frontage. The three-story, 22 room structure on the property was built in 1908 and has been a hospice house since 1993 for up to 15 hospice residents, live-in staff, home health aides and visitors. Because of its use as a hospice, the structure has been a mixture of residential and commercial uses.

The applicants propose to repurpose the existing structure for professional, educational services. They intend to preserve the structure.

The purpose of Source Point Foundation is to combat burn-out experienced by the medical community like programs developed by Stanford University and the Mayo Clinic. There will be multiple types of offerings through workshops and seminars to help restore and support the medical community, first-responders and others.

Classes are anticipated to be offered three to four times a week for three to four hours. There will be some evening and remote classes. Some courses will grant Continuing Medical Education (CME) credits. There will be a maximum of 10 students at any given time. This maximum number will be rare.

There will be up to four conferences a year where 20 to 40 participants are expected. All conference attendants will be required to house off-site and will be shuttled to the conference. No on-site parking will be required for them during the conferences. The four-day conferences will run for from 8:00 a.m. to 8:00 p.m. for two days and 8:00 a.m. to 8:30 pm for two days.

Mr. Giunta argued that the proposed educational use falls under the Dover Amendment (MGL c. 40A, sec. 3) as interpreted by the case law. The proposed use is a small-scale educational activity with a residential component: a single-unit housing unit for the applicants primarily on the third floor with the kitchen on the lower floor. The kitchen will support the residential and the educational uses. The applicants will be overseeing, creating, and offering the program.

No material changes are proposed to the structure. There are some cosmetic changes to the backside façade. There will be no additions, extensions or outbuildings proposed. The footprint, driveway, parking and walkways will remain as they are currently.

Based on the parking section of the By-Law, the closest category is "Colleges, vocational and high schools" which requires parking spaces for one half of expected enrollment. With an enrollment of 10 students, the parking required would be five parking spaces plus two for the instructors. Since this parking category doesn't exactly match the proposed use, the Building

Commissioner recommended 12 spaces, one for each student and one per instructor. Currently there are 15 spaces at the site. The three extra spaces would be available for adjunct staff if needed. The striping of the parking spaces has deteriorated, and they will be restriped.

When conferences are scheduled, classes will not be in session and the parking spaces will not be used by conference goers who will be shuttled in. During conferences, the 15 spaces will be used by the two applicants, any adjunct conference instructors and the caterers who may need two spaces. There is ample parking to serve the parking needs during conferences.

The parking proposed does not comply with all the design requirements of the By-Law and will need waivers for the following:

- Illumination – the required one foot candle is too bright given that the activities end at 8:00 p.m., and the property is in a residential area. No illumination is proposed for the parking area.
- Parallel Parking – parallel parking requires a length of 22 feet, the current space length of the spaces along the driveway is 18' feet.
- Width Maneuvering Aisle – the maneuvering aisle requires a 24 feet width. Seven spaces by the shed have less than the required 24 feet maneuvering aisle. This aisle has been in existence since 1993.

Dr. Joseph Audette said he and Dr. Allison Bailey have over 25 years' experience teaching. The classes will have an attendance of four to five students with a maximum enrollment of ten students. A typical session is for three to four hours. Subjects may include such topics as the art and science of acupuncture, healthy eating, exercise, lifestyle, stress reduction and sleep hygiene. These courses are intended to provide renewed energy for the participants. The course includes information on the subject with the scientific back-up; some practical experience; a question/answer session; and a brief discussion. The participants may apply the modalities learned to their patients. Some participants will receive CME credits. Virtual content will be available to participants after the course. These mind/body strategies and physical activities have been tested successfully by Stanford University and the Mayo Clinic as restoring burn out by physicians.

Dr. Bailey reported that the virtual content will be available to a larger community and to the local community.

Mr. Giunta said that Drs. Audette and Bailey met with a group of neighbors who have submitted a letter to the Board regarding concerns and issues. Drs. Audette and Bailey have read the letter and were in agreement with the neighbor's requests. They do not agree with the issues raised in the letter submitted by Serguei Aliev.

Mr. Giunta addressed the concern of the Planning Board that the residential use may be in violation of the By-Law which prohibits "more than one non-residential use on a lot." He argued that, since the apartment is a residential use, it is not covered by that provision. In addition, he maintained that the case of Watros vs. Greater Lynn Mental Health and Retardation Association, Inc. determined that there can be a mixture of educational and residential use on the same property under the Dover Amendment. Mr. Giunta thought this application was compelling as

the residential component is occupied by the people who create, direct and run the educational program. It is both a separate and an accessory use to the educational use. The apartment will not be a standalone rental apartment. Mr. Giunta argued that the residential use is a permissible activity under the Dover Amendment.

Comments received:

- Planning Board wants to be assured that the educational use is within the meaning of the Dover Amendment; and was concerned that the residential and educational use may be in violation of the By-Law stating, “no more than one non-residential use is allowed on a lot.” Mr. Schneider understood that under the By-Law two uses were not allowed nor was there authority to issue a Special Permit allowing it. The residential use would have to be an accessory use.
- Engineering Department had no issues.
- Building Department noted the parking design waivers were needed and that he had worked with the applicant on the parking number calculations. He requested that no parking related to the program operation be allowed on South Street or any public way abutting the property. Mr. Schneider concurred with this condition and would like to see a limitation of no more than 15 cars be allowed to park at the site.
- The Fire Department was satisfied with the proposal.
- The Police Department had no concerns.
- The Health Department noted that if there were pest concerns as a result of the extensive work, a certified pest control service be hired; and that a Health Division Food Permit Plan Review Packet will be filled out online prior to any food services on site.

Mr. Schneider agreed that the program described was educational in nature. Under the Dover Amendment the use must be educational; he recommended a condition prohibiting the practicing of medicine or psychiatry and that the use be limited to teaching.

Mr. Schneider was uncomfortable with the location being the principal residence of the applicants especially since it took more than a third of the facility. He did not think the case law addressed the issue and that the By-Law requires that an accessory use be subordinate and customary. Mr. Schneider requested that Mr. Giunta address how the residential use is subordinate and customary.

Mr. Giunta responded that the residential use is only one third of the structure and was accessory to the predominant use. In addition, the residents are part of the predominant use further making it accessory to the predominant use. He noted it is not uncommon for educational facilities to have a superintendent or instructors residing on the premises making the residential unit customary. Mr. Giunta stated that the hospice house also had a staff residing at the facility. He felt that the residential unit was a good fit within the definition of accessory and subordinate and customary. There was the additional benefit that as owner-occupants the applicants will be accountable to the neighbors.

Mr. Giunta did not agree with Mr. Schneider’s interpretation of the By-Law that it does not allow two uses in the RRC district. He reasoned that the SJC interpretation in Watros vs. Greater Lynn allowing more than one use offers the rationale for the residential use.

Mr. Friedenberg disagreed with Mr. Schneider's interpretation of the language in Section 3.2.1 of the By-Law prohibiting "More than one non-residential building or use on a lot..." Mr. Friedenberg state that he interpreted this provision as prohibiting more than one non-residential building or *more than one-residential use* on a lot, so that one-residential use and one residential use would be permissible here. However, if Mr. Schneider's interpretation was correct, he concurred that the residential use was subordinate and customary.

Mr. Friedenberg inquired if Source Point Foundation, Inc. intends to qualify as a 501 3(c) non-profit organization under the federal tax code. Mr. Giunta responded that it did.

Mr. Friedenberg asked how an organization qualifies to teach CME credits. Dr. Audette responded that not-for-profits contract with medical schools to issue CMEs and they have a long-standing relationship with a medical school.

Mr. Friedenberg would like to expand the parking limits requested by the neighbors to include any private way.

Mr. Friedenberg wanted Mr. Giunta to explain why he was seeking eligibility through the Dover Amendment. Mr. Giunta said that the school uses allowed under the By-Law tend to be for-profit and for crafts instructions. He felt that the program proposed fits more appropriately under the Dover Amendment and the issue of the multiple uses (residential and educational) is less of an issue under the Dover Amendment.

Bob Place, 914 South Street, spoke on behalf of a group of neighbors who met with the applicants and had submitted a group letter. The issues of concern were noise, traffic, lighting, signage, crowds and after-hours events. They requested a number of conditions, which the applicants agreed with, such as: 1) no major additional building constructed on the site, 2) no trash pick-up before 8:00 a.m., 3) the educational purpose use be granted to this applicant only and to be non-transferable; 4) the driveway lights be consistent with residential lighting and be turned off after 11:00 p.m.; 5) a clear reasonably-sized house number sign be required on South Street identifying the address; 6) no parking for events on public and private ways in addition to 15 parking spaces; 7) a shuttle bus will be required for events that exceed the use of the 15 existing parking spaces and 8) no subdivision of the property by the applicants. They neighbors were satisfied that the use was educational and not medical.

Janice Hunt, 969 South Street, did not support the proposal. She thought the use would add to the traffic on South Street which was a scenic road. She was not convinced that an educational use was an appropriate use for the site and was suspicious of the educational use being proposed. She was sad to see the hospice no longer in use.

Mr. Schneider said that the Board must decide based on the use the applicants have represented in the documentation and presentation. The Board may prohibit any medical or psychiatric treatment at the premises. If the applicants violate the educational use, the neighbors may bring their concerns to the Building Inspector who can take enforcement action. Mr. Schneider noted that he lived on South Street. He believed that ten cars per day would not materially affect the

existing traffic on South Street.

Margaret Pantridge and Nick King, 945 South Street, sympathized with Ms. Hunt and her preference that the property be used as a single-family. Given that it has been used for an institutional use for the past 30 years, she thought that the next best thing was an institutional use that respects neighborhood residential patterns. She supports and welcomes the applicants who are proposing to preserve the house and the open space without subdividing it.

Mr. Schneider provided a brief background of the property to the Board. In 1992, the VNA applied for a Special Permit to allow a hospice house. The By-Law, however, did not allow the use and the Board denied the request. Following the denial, an amendment to the By-Law was adopted that allowed the use of a Residential Hospice House which is how the hospice operated.

Sergei Aliev, 31 Marant Drive, supports the proposal. He noted that many of the concerns he raised in his letter were addressed in the presentation. However, he wanted to know how the applicants were planning to use the exterior of the house during the large conferences. Dr. Audette responded that the conferences are spent indoors for eight hours a day. They may use the patio for group photo opportunities. Their intention is to preserve the outdoor grounds. The agreement with the neighbors is to preserve the grounds and not subdivide the land.

Mr. Aliev wanted to know if the classes for yoga and tai chi will be outdoors. Dr. Audette responded that the classes will be indoors. As resident owners they are vested with being good neighbors and being part of the neighborhood. They do not want to disturb the neighborhood.

Mr. Giunta said that there was great interest by potential buyers to subdivide the property. The applicants' interest in preserving the property and grounds make the proposal an especially good fit and an asset to the Town.

The public hearing was closed.

Ms. Berardi thought the proposed use was a good one. She agreed with Mr. Friedenberg's reading under the By-Law regarding the residential and educational use. She was supportive of the neighbors and their request that the applicants live at the property. She thought the educational purpose was clear and there is a need to support the medical community experiencing burn-out. She was pleased that the proposal preserves the house and grounds.

Mr. Freidenberg concurred with Ms. Berardi and was supportive of the proposal preserving the property and house. He had no issue with the combined educational and residential use. He was gratified that the applicants were able to accommodate the neighbors' concerns and issues.

Mr. Schneider agreed with his colleagues. He pointed out that the request before the Board was limited to a waiver of the parking design requirements. There was no request to authorize the use. He was in favor of granting the waivers requested.

Mr. Giunta clarified that a waiver of the number of parking space was needed for the conferences two to four times a year because of the number of people attending.

Mr. Friedenbergr asked if a finding for educational use under the Dover Amendment was being sought. Mr. Giunta confirmed that he would like an acknowledgement that the proposal is an educational use under the Dover Amendment. Ms. Berardi agreed that it was important to condition the Decision on the educational use.

The applicants concurred with the following conditions:

- The applicants will be owner/occupants;
- No medical or psychiatric treatment allowed;
- Classes will be limited to no more than 10 students; and
- There will be no more than 15 parking spaces on site.

Mr. Friedenbergr was concerned about occurrences of more than 15 parked cars in the evening. Mr. Giunta said that if parking violations occurred multiple times the Building Commissioner will take action.

Mr. Friedenbergr inquired if food service issues needed to be addressed in conditions to a special permit here. Mr. Schneider responded that the Board is not allowed to restrict activities under the Dover Amendment and the Health Department has specific food services requirements.

Mr. Friedenbergr moved:

1. to grant a Special Permit under Sections 5.1.1.5, 5.1.2, 5.1.3, and 7.5.2 of the By-Law to allow the waiver of strict adherence with the off-street parking requirements, parking plan and design associated with the renovation and repurpose of the existing three-story building at 920 South Street in in the Rural Residence Conservation (RRC) District to issue the following four waivers:

- The illumination be kept below the one foot candle average minimum required by the By-Law;
- The parking spaces along the driveway be kept at 18 feet, under the 22 feet in length required;
- The maneuvering aisle width around the seven spaces by the shed be less than the required 24 feet; and
- The waiver of the required number of spaces during the attendance of conferences;

subject to the following conditions:

- no additional buildings will be constructed on the site;
- no trash pick-up permitted before 8:00 a.m.;
- the exterior lighting will be consistent with residential use and will be shut-off by 11:00 p.m.;
- a clear and reasonably sized house number will be provided on South Street identifying the property;
- no parking will be permitted on public and private ways in the vicinity of the property;
- no additional parking spaces beyond the 15 existing spaces will be created;
- any parking needed in excess of the 15 spaces provided will be provided by shuttle service to transport the attendees to and off site so they do not park on-site;

- the property will not be subdivided;
 - the Special Permit is personal to the applicants and any entity they own or control and is not transferrable.
 - no more than ten students will be permitted on-site at any time except for the periodic conferences held on-site;
 - no medical offices or medical treatment on site;
 - the owners and the operators of the educational institution must reside on-site and will be on site residents; and
2. that the Board issue a finding that the proposed use described in the application constitutes an educational use for the purposes of the Dover Amendment (MGL c. 40A, sec.3).

Ms. Berardi seconded the motion. The motion was approved by unanimous vote.

The meeting adjourned at 8:55 p.m.

Findings:

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

1. The premises is a 5.86-acre parcel with 177.65 feet of frontage located in the Rural Residence Conservation District improved with a large three-story structure that has 22 rooms. The structure was built as a single-family home but has served as a hospice facility known as the Tippet House from 1993 until recently.
2. The applicants propose to purchase the property and use it as a professional education center. The educational programs will be provided by Source Point Foundation, a recently organized non-profit entity that intends to qualify as a 501(C) (3) organization for federal tax purposes (the "Foundation"). In addition, the applicants will convert the third floor to a residence that they will occupy as their principal residence.
3. The applicants are both medical doctors who have been involved in physician education for the last 25 years. They will be teaching most of the classes.
4. The classes will be for physicians, healthcare workers and first responders. Some of the courses will provide continuing education credit to physicians. The courses offered will include acupuncture, healthy eating, exercise, lifestyle, stress reduction and sleep hygiene. Typical on-site courses will involve 3 or 4 students and never more than 10. Most classes will be offered during the day, but there will be some evening classes. In addition, the Foundation will offer virtual classes and seminars for off-site students on a remote basis.
5. The Foundation will also offer larger seminar/conferences at the property two to four times each year. These conferences will involve up to 45 students. The participants are expected to stay off-site and be transported to the location by shuttles.

6. The activities described by the applicants qualify for an educational exemption from zoning under the Dover Amendment. The Board may not restrict such educational activities other than with respect to compliance with dimensional requirements of the By-law and parking. The applicants may not provide medical or psychiatric treatment under this exemption since those activities would not be educational and would be prohibited in this District.
7. The use of the third floor as a residence for the applicants who are providing educational instruction is an accessory use. It is subordinate in the sense that they will occupy approximately one-third of the space and customary to have faculty living at an educational institution.
8. There are 15 existing parking spaces. The applicant calculates the By-law requirement as 7 spaces: the closest category in the By-law is “colleges and high school” that requires 1 space for every 2 students. Adding 2 spaces for the residential use, the requirement would be 7. The Building Commissioner calculates the requirement as 12: one for each student and 2 for the residents. In either case, the 15 spaces meet the By-law requirement as to the number of spaces for the classroom operations. The applicant has agreed that the Board may limit parking on the premises to 15 cars.
9. The number of parking spaces would not be adequate for conferences of up to 40 participants. The applicants have agreed that all participants in conferences will stay off-site and transported by shuttle. With these arrangements, the parking on the site will be used only by instructors and caterers.
10. The existing parking spaces do not meet some design requirements. The maneuvering aisle does not meet the requirement for 5 spaces; several parallel spaces are 18 feet long instead of the required 22 feet; and the applicant does not want to meet the illumination requirements. This property is in a residential neighborhood and the neighbors are concerned about lighting. The parking spaces have worked for many years when this property was operated as a hospice. The applicant is not expanding the building. It would be a substantial expense to meet the design requirements. Special circumstances exist for waiving the design requirements. However, the applicants must provide appropriate handicap parking spaces.

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 5.1.1.5 waiving the number of parking spaces required for conferences and the design requirements with respect to the fifteen existing parking spaces, subject to the following:

1. The parking spaces will be re-striped so as to be visible to persons looking to park.
2. The parking spaces will be located as shown on the plan submitted with the application.
3. No more than 15 cars may be parked at the premises at any time.
4. No cars will be parked on South Street or any other public or private way.
5. Classes may have a maximum of 10 students at any one time except for periodic conferences.

6. The participants in any seminar or conference involving more than 10 students must be transported by shuttle to the premises.
7. Lighting will be consistent with residential use and will not spill over to any adjacent parcels. Driveway lights will be shut off at 11:00 pm.
8. Applicants will install and maintain a clear reasonably-sized sign on South Street with the street number of the premises
9. No major additional buildings will be constructed on the site.
10. The property will not be subdivided.
11. The applicants will reside on the premises and provide most of the instruction.
12. The site may not be used for medical offices or to provide psychiatric or medical treatment.
13. Trash pickup is limited to 8:00 am to 8:00 pm.
14. This Special Permit is issued to the applicants and may not be transferred or assigned without the prior consent of the Board after a duly noticed hearing; and

finds that the proposed use described in the application constitutes an educational use for the purposes of the Dover Amendment (MGL c. 40A, sec. 3)

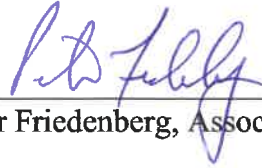
SIGNATORY PAGE – 920 SOUTH STREET


Jon D. Schneider, Chair

SIGNATORY PAGE – 920 SOUTH STREET


Kathy Lind Berardi, Associate Member

SIGNATORY PAGE – 920 SOUTH STREET



Peter Friedenberg, Associate Member