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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

Special Permit

***Silva Development, LLC, applicant
646 Webster Street
Map 54, Parcel 63***

November 18, 2021

Silva Development, LLC, applicant, has made application to the Board of Appeals for a Special Permit under Sections 1.4.7.4, 3.5.2 and any other applicable Sections of the By-Law to allow the demolition, extension, alteration, enlargement and reconstruction of the lawful, pre-existing, non-conforming two-family dwelling and garage located at 646 Webster Street and replacing it with a new two-family dwelling with two new single-car detached garages. The property is located at 646 Webster Street, Needham, MA in the Single Residence B (SRB) District. A public hearing was held remotely on Zoom, on Thursday, November 18, 2021 at 7:30 p.m.

Documents of Record:

- Application for Hearing, Clerk stamped October 26, 2021.
- Letter prepared by George Giunta, Jr., dated October 25, 2021.
- Existing and Proposed Site Plan prepared by Field Resources, Inc., stamped by Bradley Simonelli, Professional Land Surveyor and dated October 19, 2021.
- Plans, prepared by McKay Architects, A-1.1-2, A-2.1-2; stamped by Michael L. McKay, Registered Architect, October 21, 2021.
- Memorandum of Support, Exhibits A-M, prepared by George Giunta, Jr., dated November 8, 2021.
- Letter from Lee Newman, Director of Planning and Community Development, dated November 3, 2021.
- Letter from Dave Roche, Building Commissioner, dated November 9, 2021.
- Letter from Thomas A. Ryder, Assistant Town Engineer, dated November 9, 2021.
- Email from Chief Dennis Condon, Fire Department, dated October 27, 2021
- Email from Chief John Schlittler, Police Department, dated October 26, 2021.
- Email from Tara Gurge, Assistant Public Health Director, November 9, 2021.

- Letter prepared by George Giunta, Jr. dated December 15, 2021.
- Revised Plans prepared by McKay Architects, A-1.1-2, A-2.1-2; stamped by Michael L. McKay, Registered Architect, November 30, 2021.
- Letter prepared by George Giunta Jr. dated January 18, 2022.
- Affidavit of Marnetto A. Lampedecchio, Jr., dated January 18, 2022.
- Affidavit Suzanne L. Dandanza, dated January 20, 2022.

November 18, 2021

The Board included Jon D. Schneider, Chair; Jonathan D. Tamkin, Vice-Chair; and Howard S. 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., represented the applicant, noted that this property is the last of a row of two-families that have been demolished and reconstructed. The two-family, two-story structure with a detached two-car garage was built in 1920 on a pre-existing, non-conforming 7,726 square foot lot with a 71.5' frontage. Built prior to the adoption of the Zoning By-Law, the house also has non-conforming side setbacks; and the detached garage's side and back setbacks are non-conforming as well.

The structure was originally numbered 632 Webster Street. In the 1940's, the location was re-numbered as 646 Webster Street.

Mr. Giunta referred to documentation identifying the property as a 2-family including the 1940-1942 Assessor Field Card; utility bills; building permits; and the 1930-1940 Census. He noted that information collected pre-2000s verifying two-family use came from census records, street lists, and poll tax records. Before 2000 there is good evidence of occupancy because of good participation in the preparation of street lists. The information from 2000-2017 is not as strong. The prior owner is hesitant to participate but indicated that he lived in one unit and his sons lived in the other unit between 2005-2010. He further indicated that the second unit was used for family visitors, similar to an AirBB, between 2011 and 2017. He lived in the other unit until the property was sold in 2017.

Mr. Tamkin thought the two-family use may have been abandoned. He requested support information such as an affidavit and utility bills to support the continuous two-family use.

Mr. Goldman noted the record of the two-family occupancy was also an issue in 1997-1998 and 2008-2009 when only a single tenant was identified.

Mr. Friedenberg agreed that more substantiation was needed to establish the continuous use as a two-family. He asked if there were abutters who could verify occupancy. Mr. Giunta responded that it was challenging to collect the information as the neighboring structures have been demolished and rebuilt and new occupants were unfamiliar with the past history.

The determination of a continuous two-family use was tabled until further documentation can be provided. Mr. Giunta was asked to describe the proposed project.

Mr. Guinta reported that a new two-family was being proposed that would meet dimensional and setback requirements. Two single car detached garages are proposed, one for each unit. The Building Commissioner has raised an issue about the side setback and a problem with the proposed bay window. He will discuss the issues with the Building Commissioner. The plans may need to be modified.

Mr. Guinta reported that the proposed garages are under 15' in height and comply with the setback requirements.

Comments received:

- Planning Board had no comment.
- Engineering Department had no comment or objection.
- Building Department noted that there is a violation of the side setback requirements.
- The Fire Department was satisfied with the proposal.
- The Health Department noted that an online Demolition review was required. Pest control reports, asbestos sampling and removal must be uploaded on the online system for review.
- The Police Department noted that, due to the proximity to the High School, any work in the street should not begin until 9:00 a.m. and should be done by dismissal at 2:00 p.m. Off street parking should not be permitted on Webster or Holland Streets during construction.

Ken and Amy Willis, 10 Holland Terrace, were concerned about the two large trees in the back of their lot being negatively impacted by the construction of the garages 5' from the property line. The valuable trees provide privacy and screening. She would like to see the garages moved further away from the property line. She noted that other trees on her property died within two year of a neighbor's construction project.

Paul Beaulieu, engineer representing the applicant, said that the proposed garages have a small footprint and would be on a shallow foundation. They will be located further from the lot line and trees than the present garage. He noted that the health of the trees was taken into consideration. He believed the trees will thrive. He didn't think the left tree will be affected at all. In addition, more of the storm water runoff will be infiltrated on site and there will be more water to feed the trees.

Mr. Goldman asked why two single garages were proposed. Mr. Giunta responded that if the garages were attached, they would become part of the FAR calculations.

Mr. Tamkin moved to continue the public hearing on December 16 at 7:30 p.m.. Mr. Goldman seconded the motion. The motion was unanimously approved.

The meeting adjourned at 8:00 p.m.

December 16, 2021

The Board included Jon D. Schneider, Chair; Jonathan D. Tamkin, Vice-Chair; and Howard S. Goldman, Member. Also participating was Kathy Lind-Berardi, and Peter Friedenberg, Associate Members. Mr. Schneider opened the hearing at 7:30 p.m. by reading the public notice. Mr. Schneider reported that the applicant requested the meeting be continued to next month.

Mr. Tamkin moved to continue the public hearing on January 20, 2022, at 7:30 p.m. Mr. Goldman seconded the motion. The motion was unanimously approved.

January 20, 2022

The Board included Jon D. Schneider, Chair; Jonathan D. Tamkin, Vice-Chair; and Howard S. Goldman, Member. Also participating was Nik Ligris, newly appointed Associate Member. Mr. Schneider opened the hearing at 7:30 p.m. by reading the public notice.

Mr. Schneider recalled that there was an issue with the gap in the two-family tenancy records, the side setback violation created by the walkout window as identified by the Building Commissioner, and concerns by a neighbor about the effect of construction on the health of their trees.

Mr. Giunta noted that there was a gap in the tenancy records between 1999-2017. He obtained an Affidavit from Marnetto A. Lampedecchio, Jr., the former owner, which provided a chronology of the use of the property during his ownership from 1999-2017. Mr. Lampedecchio attested that he lived in one unit until it was sold in 2017, and that the second unit was also occupied and at no time was ever vacant for a period of two years. In addition, Mr. Giunta presented an Affidavit from Suzanne L. Bandaza, the former owner from 2017-2021, who noted that the property was used and occupied as a two-family during her ownership with both units being rented and occupied

Mr. Giunta also provided Building Permits and Assessor's Property Cards which indicate the property as a two-family.

Mr. Giunta noted that he had filed revised plans changing the bay window and side setbacks so the new house will comply with the Building Commission's requirements.

Mr. Tamkin said that the applicant presented a stronger case than what was done in November as to the continuous two-family use. He would have preferred that the cousin who occupied the unit in 2016-2017 be identified. He didn't think the building permits and assessor's cards were helpful as to the occupancy. However, he did think there was enough evidence of two-family use.

Mr. Goldman was convinced by the Affidavits that the property was kept as a two-family.

Mr. Ligris abstained.

Mr. Schneider thought there was a preponderance of evidence that the property was continuously used as a two-family.

Mr. Schneider inquired about the concerns raised by neighbors about the impact of the construction on their trees. Mr. Giunta responded that the proposed garage would be smaller than the current one and would be further away from the property boundaries than the current garage.

Mr. Schneider asked whether the construction would disturb the trees. Mr. Giunta said that there would not be much construction in the back of the property.

Mr. Goldman questioned whether there would be a poured foundation for the garages. Leonardo Da Silva, the property owner, answered that there would be a four- to five-foot-deep new foundation for the garages and that a small excavation machine would be used.

Ms. Willis was concerned about the new garage on the north side. She requested that the garage on the north side be moved forward away from the property. Mr. Giunta offered to move the garages two to three feet forward, making them seven or eight feet away from the property line. Ms. Willis was agreeable with this modification.

Mr. Goldman moved to grant Special Permit under Sections 1.4.7.4, and 3.5.2 of the By-Law to allow the demolition, extension, alteration, enlargement and reconstruction of the lawful, pre-existing, non-conforming two-family dwelling and garage located at 646 Webster Street and replacing it with a new two-family dwelling with two new single-car detached garages according to the revised plans submitted, subject to the condition that the detached garages be moved forward so that they are not less than eight feet from the rear property line. Mr. Tamkin seconded the motion. The motion was unanimously approved.

The meeting adjourned at 7:56 p.m.

Findings:

Based upon the evidence presented at the hearing, the Board finds as follows:

1. The premises is a 7,726 square foot lot improved with a two-family house and detached two-car garage located in the Single Residence B District. The lot is non-conforming in that it has less than the required 10,000 square feet and 71.5 feet of frontage as contrasted with the requirement of 80 feet. The house and garage do not comply with current setback requirements.
2. The two-family house was built in 1920 prior to the adoption of zoning. The house has always been identified as a two family in assessor's records and building permits issued for repairs. The applicant provided extensive information concerning the occupancy of two units since 1925 including information from poll taxes, street lists and affidavits of former owners. While there are some gaps, the Board finds that the preponderance of the evidence shows that the two-family use has not been abandoned. The two-family use is a legal non-conforming use. Since the lot was created prior to the adoption of zoning, it is a legal non-conforming lot.

3. The applicant proposes to demolish the existing structures and build a new two-family house with two detached garages to the rear of the lot. The new house and garages will comply with all dimensional requirements of the current By-Law.
4. Several two-family houses adjacent to this property have been redeveloped in a similar manner over the past few years.
5. Neighbors to the rear expressed concern that two large trees on their property may be harmed by construction of the garages. In response, the applicant agreed to move the garages at least 8 feet off the property line (as contrasted with the required 5 feet) and to exercise caution in digging the foundations for the garages. There was no opposition to the project.
6. Under Section 1.4.7.4, the Board may issue a Special Permit for the reconstruction of a two-family house on a non-conforming lot subject to certain conditions. The footprint of the new two-family house will not exceed 1800 square feet as required by Section 1.4.7.4(a) and will comply with all current dimensional requirements. The new two-family house is appropriate in scale and mass for the neighborhood and will not be substantially more detrimental to the neighborhood than the existing non- conforming structure.

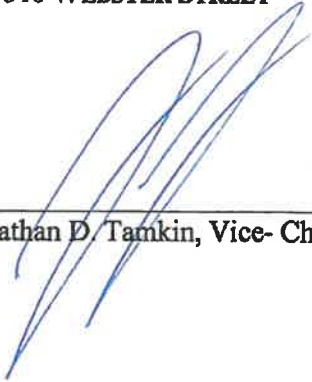
Decision:

Upon the basis of the foregoing, by unanimous vote after a motion duly made and seconded, the Board issues a Special Permit under Section 1.4.7.4 for the demolition of the non-conforming two-family house and non-conforming garage and the reconstruction of the two-family house with two detached garages in accordance with the plans submitted as revised November 29, 2021, provided that the two garages will be no closer than 8 feet to the rear lot line. No parking of construction vehicles is allowed on Webster Street or Holland Street. Any work in the streets must be done after the commencement of classes and before the dismissal of classes at Needham High School.

SIGNATORY PAGE - 646 WEBSTER STREET

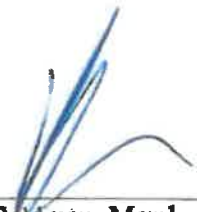

Jon D. Schneider, Chair

SIGNATORY PAGE – 646 WEBSTER STREET



Jonathan D. Tamkin, Vice- Chair

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Howard S. Goldman, Member