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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

Interpretation of a Variance

***East Rock Development, LLC, applicant
132-134 Hillside Avenue
Map 95, Parcel 68***

April 28, 2022

132-134 Hillside Avenue –East Rock Development, LLC, applicant, applied to the Board of Appeals for a Variance 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, Lot at the rear of 136 Hillside Avenue, December 19, 1972* authorizing use of the Premises for two-family purposes; and any and all other relief necessary to permit the demolition of the existing two-family dwelling and to replace it with a new two-family dwelling. The property is located at 132-134 Hillside Avenue, Needham, MA in the Single Residence B (SRB) District. A public hearing was held remotely on Zoom, on Thursday, April 28, 2022 at 8:15 p.m.

Documents of Record:

- Application for Hearing, Clerk stamped April 4, 2022.
- Letter prepared by George Giunta Jr. dated April 4, 2022.
- Memorandum of Support prepared by George Giunta, Jr., dated April 14, 2022.
- Plans A0 – A8 prepared by C. D. Calhoun Associates Inc, stamped by Charles D. Callhoun, Registered Architect dated April 4, 2022.
- Proposed Conditions Site Plan prepared by Verne T. Porter Jr., PLS, stamped by Verne T. Porter, Jr., Professional Land Surveyor, dated April 2, 2022.
- Existing Conditions Site Plan prepared by Verne T. Porter Jr., PLS, stamped by Verne T. Porter, Jr., Professional Land Surveyor, dated April 2, 2022
- Letter from Lee Newman, Director of Planning and Community Development, dated April 19, 2022.
- Email from Dave Roche, Building Commissioner, dated April 15, 2022.
- Email from Thomas A. Ryder, Town Engineer, dated April 20, 2022.
- Email from Tara Gurge, Assistant Public Health Director, April 13, 2022.

- Email from Chief Dennis Condon, Fire Department, dated April 8, 2022.
- Email from Tom Ryder, Town Engineer, dated April 20, 2022

April 28, 2022

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 8:32 p.m. by reading the public notice

George Giunta, Jr., attorney representing the applicant, reported that the applicant is proposing to demolish an existing two-family and reconstructing a new two-family. The two-family use was authorized by a Variance dated December 19, 1972 (“1972 Variance”). The property consists of 17,399 square feet of land and 95.5 feet of frontage. The two-story house, built in 1973, has 2,478 square feet. The building has a total of 10 rooms of living space with four bedrooms and two bathrooms.

The *1972 Variance* did not include any specific plans when allowing the two-family use.

Mr. Giunta noted that the proposed two-family, two and one-half story replacement will meet all dimensional and density requirements of the district. He is requesting a substitution under the *1972 Variance*.

Mr. Giunta characterized the neighborhood as being a densely settled area with many two-family units. The property neighbors a three-family structure; an eight-unit condo complex; and an eight-unit apartment building. Mr. Schneider noted that the two-family use is not an allowed use in the district.

Comments received:

- Planning Board made no comment.
- Building Department had no issue with the application.
- Engineering Department had no comment or objection.
- Health Department indicated that the applicant must apply for Demolition review online and pest control and asbestos sampling reports must be uploaded; on-going pest control must be conducted during demolition and construction.
- Fire Department had no concerns.
- Engineering Department requested that erosion controls be shown on the plans; and calculation that show at least 1-inch of the total impervious area onsite will be infiltrated statically; and an elevation contour be corrected from “101” to “100.”

Pankajumar Shah, 130 Hillside Avenue, reported that nine to ten mature trees had been removed from the property. With the new two-family located closer to his property, he requested that the border trees proposed along the north side be continued all the way to the back of the property and that the trees be 12 to 15 feet tall to provide a buffer between the properties.

Robert Curatola, manager, agreed to planting trees all the way to the end of the property. However, he couldn’t guarantee the height requested because they may not be available. Mr.

Shah was agreeable to ten feet tall specimens. Mr. Curatola proposed a bed to elevate the trees. Mr. Shah did not feel the bed was desirable.

Greg Beinars confirmed that five additional trees at six to eight feet tall will be planted to the back of the property.

Mr. Schneider commented that he did not see how this could be a plan substitution because there was no plan with the 1972 Variance. However, as it has done in similar situation, the Board could find that the new two-family house was consistent with the 1972 Variance. Since the new two-family was in compliance with the density and dimension requirements of the By-Law, he had no problem with the proposal.

Mr. Goldman thought the proposal was less detrimental and was an improvement to the neighborhood.

Mr. Tamkin was also in support of the project and agreed that it was an improvement.

Mr. Goldman moved to find that demolition of the existing two-family house and replacement with a new two-family house was consistent with the 1972 Variance and to grant any and all other relief necessary to permit the demolition of the existing two-family dwelling and to replace it with a new two-family dwelling at 132-134 Hillside Avenue according to the plans submitted with the following conditions:

- that five additional mature arborvitaes be planted running to the end of the property and that they be at least eight feet tall; and
- that the plans comply with the requirements requested by the Engineering Department.

Mr. Tamkin seconded the motion. The motion was unanimously approved.

The hearing adjourned at 8:30 p.m.

Findings

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

1. The property consists of 17,399 square feet of land and 95.5 feet of frontage. The two-story house, built in 1973, has 2,478 square feet. The two-story house has a total of 10 rooms of living space with four bedrooms and two bathrooms.
2. The two-family use was authorized by a Variance dated December 19, 1972 ("***1972 Variance***").
3. The Applicant is proposing to demolish the existing two-family house and to reconstruct a new two-family house in accordance with those certain Plan submitted to the Board.
4. The proposed two-family, two and one-half story replacement will meet all dimensional and density requirements of the zoning district.

5. The neighborhood is a densely settled area with many two-family houses.
6. The property neighbors a three-family structure; an eight-unit condo complex; and an eight-unit apartment building.
7. If the two-family house were legally non-conforming, the proposed reconstruction would be governed by Section 1.4.7 of the By-Law. Since the two-family use is authorized by the Variance, such two-family use is not non-conforming. However, Section 1.4.7 provides guidance to the Board.
8. Since the proposed two-family house will meet, in all material respects, the dimensional and density requirements of Section 1.4.7, including the lot coverage ratio of 13.98%, the floor area ratio of 24.20%, the proposed 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 two-family house.
9. The use and reconstruction of the proposed two-family house is consistent with the use of the 1972 Variance that runs with the land, will not overburden the 1972 Variance, and is in harmony with the general purposes and intent of the Zoning By-Law.
10. The Applicant has agreed to provide additional screening to its neighbor and shall plant five additional mature arborvitaes running to the end of the property, each of which shall be at least eight feet tall.

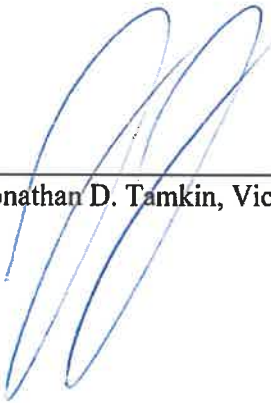
Decision:

On the basis of the evidence presented at the hearing and the foregoing findings, following due and open deliberation, upon motion duly made and seconded, the Board by unanimous vote, determines that the proposed two-family house set forth in the plans submitted with the Applicant's application to the Board may be constructed under the existing 1972 Variance, subject to the condition that the Applicant shall plant five additional mature arborvitaes running to the end of the property, each of which shall be at least eight feet tall to screen the proposed two-family house from the neighbors, and that the construction complies with the requirements requested by the Engineering Department regarding erosion control, total impervious area onsite and correction of an elevation contour.

SIGNATORY PAGE - 132 – 134 HILLSIDE AVENUE


Jon D. Schneider, Chair

SIGNATORY PAGE – 132-134 HILLSIDE AVENUE



Jonathan D. Tamkin, Vice-Chair

SIGNATORY PAGE – 132-134 HILLSIDE AVENUE


Howard D. Goldman, Member