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TOWN OF HINGHAM

Board of Appeals

NOTICE OF DECISION SPECIAL PERMIT

IN THE MATTER OF:

Applicant: Lev Yazykov
37 Willard Street
Quincy, MA 02169

Property: 41 Wompatuck Road, Hingham, MA 02043

Deed Reference: Plymouth County Registry of Deeds Book 58160, Page 176

Plan References: Site Plan, Prepared by Michael P. Clancy, dated April 29, 2024 (1 sheet);
Accessory Dwelling U Floor Plan, Prepared by Aprea Design, Inc., dated May 2, 2024 (1 sheet);
Architectural Plans, prepared by Aprea Design, Inc., Revised April 18, 2024 (3 sheets).

SUMMARY OF PROCEEDINGS:

This matter came before the Board of Appeals (the "Board") on the application of Lev Yazykov (the "Applicant") for a Special Permit A1 under § V-K of the Zoning By-Law (the "By-Law") and such other relief as necessary to create an Attached Accessory Dwelling Unit ("ADU") at 41 Wompatuck Road in Residence District A.

The Board heard the application at a duly advertised and noticed public hearing on Monday, June 24, 2024, during a meeting held remotely via Zoom as an alternate means of public access pursuant to Chapter 2 of the Acts of 2023 and all other applicable laws temporarily amending certain provisions of the Open Meeting Law. The Board of Appeals panel consisted of its regular members Robyn S. Maguire, Chair, Paul K. Healey and Jed Ruccio. At the conclusion of the hearing, the Board voted unanimously to grant the requested special permit, subject to the conditions set forth below.

Throughout the hearing, the Board was mindful of the statements of the Applicant and the comments of the general public, all as made or received at the public hearing.

BACKGROUND AND DISCUSSION:

The subject property consists of approximately 18,788± SF of land and is located in the Residence A District. The lot is improved by an approximately 2,700 SF single-family dwelling (ca. 1920), that the applicant will raze and then reconstruct a new 4,649 SF single-family home. The proposed ADU of 867 square feet will be located in the proposed new home and will consist of a kitchen, living room, one bedroom and one bathroom.

During the hearing, the Board reviewed the application in detail to confirm compliance with the eligibility requirements for ADUs. These requirements include the following:

- a. The total number of accessory dwelling units in the Town shall not exceed two and one-half percent (2.5%) of the total single-family dwelling units in the Town. The ADU Cap is determined by a particular formula which is set forth in the bylaw. **Although the Town has allowed ADUs for several years, this is the nineteenth ADU application received by the Board; therefore the Town has not exceeded the ADU Cap of 156 based on the 6,245 single-family dwelling units presently classified in the Hingham assessors' records.**
- b. The applicant, at the time of the special permit request, shall be the owner of the lot and single-family dwelling where the ADU is proposed and has to certify that the owner currently occupies the single-family dwelling or will occupy it. **The applicant owns the property as evidenced by the submitted deed. The applicant also certified pursuant to Section V-K, 3.b that they will continue to reside in the principal dwelling.**
- c. The area of the lot has to be no less than five thousand (5,000) square feet for an accessory dwelling unit within the principal structure or ten thousand (10,000) square feet for an accessory dwelling unit in a detached accessory structure. For new construction, the area of the lot has to comply with the minimum lot size for the single-family zoning district in which the dwelling is proposed. **The lot is located in Residence District A and consists of 18,788± where 20,000 SF is required. The applicant is razing an existing single-family home that was constructed in 1920.**
- d. We need written confirmation from the Board of Health that the requirements of the Massachusetts Title 5 septic system regulations and the Hingham Board of Health Supplemental Rules and Regulations been or can be met. **41 Wompatuck Road is served by Town Sewer. The applicant provided a letter with his application from the office of the Hingham Sewer Commission approving two additional bedrooms to service the expansion of the property and the ADU.**
- e. Only one accessory dwelling unit shall be permitted per lot so that the total number of dwelling units shall not exceed two (2). **The total number will not exceed two (2).**

- f. In Residence District D and in Business Districts A and B accessory dwelling units are only permitted in preexisting nonconforming single-family dwellings. **Not applicable. The property is located in Residence District A.**

The Board may only issue a Special Permit A1 for an accessory dwelling unit that meets the following dimensional and design requirements:

- a. The architectural character of a single-family dwelling shall be maintained. **The proposed single-family dwelling is larger than the existing dwelling on the lot. However, there are many large homes within the neighborhood. The proposed ADU will appear to be a part of the single-family home, keeping the character of the neighborhood.**
- b. All stairways accessing an accessory dwelling unit above the ground floor of a single-family dwelling or detached accessory structure shall be enclosed within the exterior walls of the single-family dwelling; provided, however, that the Board of Appeals may waive this requirement for an unenclosed stairway on the rear of a structure to access an accessory dwelling unit located on the rear of a structure to access an accessory dwelling unit located on the second floor of an existing building. **All stairways are located within the dwelling.**
- c. The maximum area of an accessory dwelling unit shall be the lesser of 875 square feet or 35% of the gross area of the principal dwelling. For this calculation, the gross floor area shall be as defined in Section VI of this By-Law. **The proposed ADU, at 867 square feet, complies with this section of the By-Law. Based on the application, the gross floor area of the dwelling is 4,649+/- square feet. Thirty-five percent of that area would be 2,264+/- square feet, so the 875 square feet limitation applies to this property.**
- d. Notwithstanding the provisions of Section III-I, 2 of the Zoning By-Law, no accessory dwelling unit shall be created by any extension of a non-conforming building dimension, including the front, side or rear yard setback. **The ADU will be located within the proposed reconstruction of a pre-existing non-conforming single-family home. The proposed ADU is not creating an extension of any non-conforming building dimensions.**
- e. Any new entrance for the accessory dwelling unit or principal dwelling shall be located to the side or rear of the single-family dwelling or detached accessory structure. **Two (2) entrances are proposed for this ADU and both are located on the side(s) of the structure.**

- f. Water and sewer utilities serving the accessory dwelling unit shall not be metered separately from the principal dwelling; provided, however, that the Board may waive this requirement for an accessory dwelling unit with a lawfully existing structure which already maintains separately metered utilities, if the request is accompanied by the written approval of the appropriate utility, upon a finding that a waiver advances the purposes of this bylaw. **The utilities will not be metered separately.**
- g. Additional or modified landscaping, fences, or other buffers may be required to protect abutting properties from potential negative visual or auditory impacts of the accessory dwelling unit. **There will be no negative visual or auditory impacts resulting from the ADU that would require mitigation.**
- h. The parking requirement for an accessory dwelling unit is one space per bedroom in addition to the minimum required parking spaces for a single-family dwelling. **The existing single-family home requires two (2) parking spaces. As the proposed ADU has one (1) bedroom, but is an additional unit on the property, and thus two (2) additional parking spaces are required. Based on the plans of land provided with this application, the driveway is sufficient in size to support the combined total of four (4) parking spaces needed.**
- i. An accessory dwelling unit may not have more than two (2) bedrooms. **The proposed ADU will have one (1) bedroom, which is allowed under the By-Law.**

FINDINGS:

Based on the information submitted and presented during the hearing, and the deliberations and discussions of the Board during the hearing, the Board made the following findings in accordance with the Special Permit Approval Criteria under Section I-H, 2 and Section V-K.4.f:

1. Use of the property is in harmony with the general purpose and intent of the Zoning By-Law. **The proposed accessory dwelling unit is in harmony with the general purposes and intent of the By-Law as it provides additional housing that is adequately served by utilities without substantially altering the appearance of this residential property. There will be no harm to public health, safety, or welfare resulting from the creation of the ADU.**
2. The proposed use complies with the purposes and standards of the relevant sections of the By-Law. **The project creates an additional housing unit within a single-family home; the home is larger than what is existing on the lot, however the neighborhood does have larger homes within it. The ADU as proposed does not alter the character the neighborhood, which advances the purposes specified in Section V-K.**

3. The specific site is an appropriate location for the proposed use and is compatible with the characteristics of the surrounding area. **The ADU is being proposed in a reconstruction of single-family home. The portion of the structure where the ADU will be located meets all required building setbacks under Section IV-A of the By-Law.**
4. The use as developed and operated will create positive impacts or the potential adverse impacts will be mitigated. **The ADU will create additional housing with no impact to the neighborhood.**
5. There will be no nuisance or serious hazard to vehicles or pedestrians. **There is sufficient parking available on site to serve both the principal dwelling and accessory dwelling unit. There will be no nuisance or hazard from the creation of the ADU.**
6. Adequate and appropriate facilities exist or will be provided for the proper operation of the proposed use. **The applicant has provided confirmation from the Hingham Sewer Commission that the property will have adequate sewer capacity for both the principal dwelling and the ADU.**
7. The proposal meets accepted design standards and criteria for the functional design of facilities, structures, stormwater management, and site construction. **The proposed ADU will be located within the reconstructed single-family home. The applicant is currently before the appropriate permitting boards that will address the construction of the single-family home.**

DECISION

Upon a motion made by Paul K. Healey and seconded by Jed Ruccio, the Board voted unanimously as follows:

To approve the application filed by Lev Yazykov for a Special Permit A1 under § V-K of the Zoning By-Law to create an Accessory Dwelling Unit (ADU) at 41 Wompatuck Road located in the Residence District A, subject to the following conditions:

1. The work shall be completed in accordance with the approved plans, the requirements of Section V-K, and representations made during the public hearing.
2. In accordance with Section V-K, 6, this special permit is subject to the following general conditions:
 - a. The owner of the single-family dwelling shall occupy either the principal dwelling or the accessory dwelling unit as the owner's primary residence. Temporary absences of the owner for a period of not more than six months in the aggregate

in any twelve month period and active military service of the owner for any length of time shall not be deemed a violation of this requirement.

- b. The owner shall recertify annually by submission of a notarized letter to the Building Commissioner that the owner will continue to occupy either the primary dwelling or the accessory dwelling unit as the owner's primary residence, except for a bona fide temporary absence as provided above in subsection 6.a.
- c. Upon the sale or other conveyance or transfer of a single-family dwelling which has been issued a permit for an accessory dwelling unit, if the new owner wishes to maintain the special permit for the accessory dwelling unit use, such new owner must, within thirty (30) days of such transfer, submit a notarized letter to the Building Commissioner certifying that the new owner will occupy one of the dwelling units as the new owner's primary residence and comply with the other conditions of the accessory dwelling unit use.
- d. Neither the principal dwelling nor the accessory dwelling unit may be sold or otherwise conveyed or transferred separately from the other.
- e. The accessory dwelling unit or the principal dwelling, whichever is not owner-occupied, shall have a minimum occupancy or rental term of 6 months.

For the Board of Appeals,



Robyn S. Maguire, Chair
July 8, 2024

This decision shall not take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed since the decision has been filed in the office of the Town Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded with the Plymouth County Registry of Deeds and/or the Plymouth County Land Court Registry, and indexed in the grantor index under the name of the record owner or is recorded and noted on the owner's certificate of title.