

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

CITY OF WALTHAM
BOARD OF APPEALS
CASE NO.: 2020-29

In The Matter Of Daniel LeBlanc,

Petitioner.

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PROPOSED DECISION

After hearing and due deliberation, the Board of Appeals of the City of Waltham
voted:

To grant the variances and special permit requested in Case No. 2020-29, and
incorporates by reference the Findings of Fact, and further cites as reasons the following:

VARIANCE

Rights of Non-Conforming Structures (Altered or Enlarged in that Use): In
accordance with Art. III, § 3.7222, a non-conforming use may be altered or enlarged in that
use to an extent not exceeding 10% of the ground floor area of the building or area of land
used. Here, Petitioner seeks an alteration and enlargement of 18.2%; and

Maximum Lot Coverage: In accordance the with Art. IV, § 4.11, the maximum lot
coverage shall be twenty-five percent (25%). The Locus presently has a lot coverage of
30.7%. Here, due the addition of the proposed extension to the garage, not the conversion of
the basement space, Petitioner proposed a lot coverage of 35.4%.

That there are circumstances especially affecting this locus and the structures thereon,
which do not generally affect other lots and structures in the Resident A-4 Zoning District in
which it is located, specifically:

1. It is both the topography of the Locus and the pre-existing nature of the structure thereon that is unique and affecting this locus but not affecting generally the zoning district in which it is located.

2. The topography of the lot significantly slopes down in grade. As one moves from the street to the rear of the Locus there is a slight gradual decrease in grade and as you approach the rear the property, the grade then drops drastically. From the Street to the rear of the Locus there is a total drop in grade just under 7'.

3. The structure is pre-existing, nonconforming and constructed for a four-unit use within a single-family residential zone resulting in an oversized structure that sits within both the front yard and side-yard setbacks exceeding the maximum lot coverage.

4. A literal enforcement of the Zoning Ordinance would involve substantial hardship to the Petitioners, both practically and financially, specifically that: due to the Locus' use as a four-family building in a Residential A-4 (single-family) zoning district, Petitioner cannot convert the existing unfinished basement space to additional living space for his family. Were the use of the structure as a single-family residential building, the alteration of the basement space would be by-right. In order to comply with zoning, the current use would have to be abandoned at substantial financial cost.

5. Similarly, in order to comply with the maximum lot coverage, Petitioner would have to remove significant portions of the structure to create covered parking for Petitioner and his tenants.

6. This Petition may be granted without substantial detriment to the public good or without nullifying or substantially derogating from the intent or the purpose of the Ordinance, specifically that:

The Petitioner is proposing an entirely internal conversion of existing unfinished basement space that will result in no additional units and will have no impact on parking as there are more than the required number of spaces provided. The alteration of the basement space will have no impact on the neighborhood as there will be no additional units and entirely undetectable from the exterior.

The expanded garage does not nullify or substantially derogate from the intent or purpose of the by-law either as the Petitioner is attempted to provide additional covered parking for himself and tenants. The Locus is a four-family structure and Petitioner is seeking to provide one garage space for each unit. Due to the structure's use as a multi-family dwelling there is no limit on the number of garage spaces. As a matter of law, this conversion of the interior space in the structure and expansion of the garage could not reasonably be found to increase the non-conforming nature of a structure and therefore cannot be a substantial detriment to the public good.

SPECIAL PERMIT

1. The proposed conversion and expansion will increase the non-conforming use by eighteen and two tenths percent (18.2%) of the area of land being used.

2. The proposed enlargement is not substantially more detrimental than the existing non-conforming use to the neighborhood pursuant to the Bjorklund case.

The granting of the Variances and Special Permit are subject to the following conditions:

- i. All necessary permits shall be issued and work commenced within one (1) year of the date of the filing of this decision with the City Clerk's office and

work shall be completed within two (2) years of the filing of the decision with the City Clerk; and

- ii. All construction and use of the Premises shall be in substantial accordance with the plan introduced as evidence during the hearing entitled: “Plan To Accompany Petition For a Special Permit and Variance at #205 Hammond Street a/k/a 201-207 Hammond Street, Waltham, MA” dated September 8, 2020 and supplemental “Plan To Accompany Petition For a Special Permit and Variance at #205 Hammond Street a/k/a 201-207 Hammond Street” dated October 4, 2020.