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CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
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August 13, 2021

Louis A. DePasquale
City Manager
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Special Permit for 48 Pearl Street, Case No. PB-380

Dear Mr. DePasquale:

I am submitting this opinion in response to the Planning Board's (the "Board") request for a legal opinion concerning the above-referenced case. Specifically, the Board requested a legal opinion as to whether it has authority to grant a special permit for an increase in the height of the preexisting, nonconforming structure located at 48 Pearl Street (the "Property") pursuant to Cambridge Zoning Ordinance (the "Zoning Ordinance") Section 8.22.2(d), or whether the change to the height requires a variance from the Board of Zoning Appeal ("BZA"). As explained below, the increase in the height at the Property requires a variance from the BZA.

The Property is a semi-detached dwelling or row house located on the block of Pearl Street between Green Street and Franklin Street. The entire block on that side of the street is comprised of row houses. Pursuant to the Applicants' application materials, the Property is used as a residence for one family. Also, the Property is located in the Residence C-2A District and the Central Square Overlay District.

The Applicants have applied to the Board for special permits for a reduction in the required open space, for setback relief and for an increase in the height of the structure. The special permits are sought to expand the portion of the structure that connects the residential structure to the garage in order to allow access to the basement, first floor and garage from the "connector structure", and to replace the head-house on the roof in order to reconstruct the access stair. The Board has not requested an opinion concerning the setback and open space special permits.

Pursuant to Section 20.304.2(1)(b) of the Zoning Ordinance, the maximum height allowed in the Central Square Overlay District for properties that are in the Residence C-2A base district is forty-five feet. The Property has a preexisting nonconforming height of 47.1' and the Applicants seek a special permit to increase the height to 48.2'.

The Applicants' initial application sought a special permit pursuant to Zoning Ordinance Section 20.304.2(2)(a), which allows for an increase in height in the Central Square Overlay District by special permit. On July 15, 2021, the Applicants amended the application to request that the Board grant the special permit for an increase in height pursuant to Zoning Ordinance Section 8.22.2(d).

The Property does not qualify for a special permit to increase the height pursuant to either Section 20.304.2(2)(a) or Section 8.22.2(d) of the Zoning Ordinance. Although Section 20.304.2(2)(a) of the Zoning Ordinance does allow for an increase in height in the Central Square Overlay District by special permit, that provision is not available for properties that are also located in the Residence C-2A District, such as the Property. Section 20.304.2(1)(b) of the Zoning Ordinance states: “[w]here the Residence C-2A district serves as the base district, the maximum height shall be forty-five feet. No additional height shall be permitted in this district notwithstanding any provision in Paragraph 2 below [which is Section 20.304.2(2)(a)].” Accordingly, because the Property is in the Residence C-2A District as the base district, the Planning Board cannot grant a special permit pursuant to Section 20.304.2(2)(a) to increase the height.

The Property also does not qualify for a special permit pursuant to Section 8.22.2(d) of the Zoning Ordinance. That section allows for a special permit to authorize the alteration or enlargement of a “preexisting dimensionally nonconforming detached single-family dwelling or two-family dwelling” provided that the alteration or enlargement only increases an existing nonconformity and does not create a new nonconformity. To qualify for that relief a property must be a “preexisting dimensionally nonconforming detached single-family dwelling or two-family dwelling.” However, the Property is not a detached single-family dwelling or two-family dwelling, and instead is a semi-detached dwelling.

Article 2.000 of the Zoning Ordinance defines a semi-detached dwelling as:

Dwelling, semi-detached (or Townhouse or Row House). One of a series of buildings with a party wall or walls, common to adjoining buildings, which is constructed so that two opposite building faces, or in the case of corner units two adjoining faces, (applicable to the building as a whole and for each unit contained therein) have full outside exposure and so that each has separate entrances from the outside, and each building of which is arranged, intended or designed as the home or residence of one or two families.

Semi-detached dwellings are separate and distinct from detached single-family dwellings and two-family dwellings that are defined as follows in Article 2.000 of the Zoning Ordinance:

Dwelling, detached. A dwelling with no party wall or walls arranged, intended or designed as the home or residence of one family.

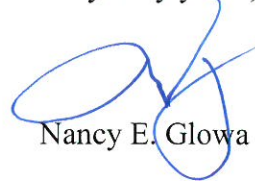
Dwelling, two-family. A dwelling arranged, intended or designed as the home or residence of two families, each family occupying a single dwelling unit.

See also Van Arsdale v. Town of Provincetown, 344 Mass. 146 (1962).

The provisions of Section 8.22.2(d) of the Zoning Ordinance are consistent with the protection of preexisting nonconforming single- and two-family structures set forth in G.L. c.40A, §6. Additionally, Section 8.22.2(d)'s application to only detached single- and two-family dwellings is consistent with the Court's classification of dwellings joined by a party wall. The Supreme Judicial Court has held that when a structure is attached to another structure by a party wall, the structures are classified by the total number of dwellings that comprise the structures attached by the party wall, rather than the number of dwellings on either side of the party wall. Van Arsdale v. Town of Provincetown, 344 Mass. 146 (1962). Specifically, in the Van Arsdale case the Court held that where there are two, two-family structures that are attached by a party wall that runs from cellar to roof, the entire structure is a four-family structure, and each side does not fall under the definition of a two-family structure. Accordingly, although the Property is arranged, intended or designed as the home or residence of one family, it does not fall under the Zoning Ordinance's definition of a "detached dwelling" and it instead falls under the definition of a "semi-detached dwelling (or Townhouse or Row House)" and the provisions of Section 8.22.2(d) are not applicable to the Property.

Therefore, the Planning Board may not grant a special permit to allow the increase in the height at the Property, and the Applicants will need to apply to the BZA for a variance for that relief. I am available to discuss this further with the Board if the Board has any questions.

Very truly yours,



Nancy E. Glowa