



Ruthanne Fuller
Mayor

CITY OF NEWTON, MASSACHUSETTS

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ZONING BOARD OF APPEALS Brenda Belsanti, Zoning Board Clerk

MEETING MINUTES

Wednesday, March 22, 2023.

7:00 p.m.

Hybrid – in person and via ZOOM

Board Members Present: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet, William McLaughlin (remote), and Lei Reilley

Staff Present: Brenda Belsanti, ZBA Clerk and Katie Whewell, Chief Planner

A public hearing of the Newton Zoning Board of Appeals was held as a hybrid meeting in person and virtually via Zoom on Wednesday, March 22, 2023, at 7:00 p.m. on the following petitions:

1. **#01-23** Maria Konstantopoulos of 10-12 Craigie Terrace, Newton, requesting a variance from Section 3.2.3 of the Newton Zoning Ordinance to reduce the side setback requirement to 6.8 feet. A building permit was issued that allowed the reconstruction of the existing first and second story rear decks and to add a third story deck in the same footprint. The decks were not constructed in accordance with the approved building permit and require a variance from the side setback requirement. The subject property is located at 10-12 Craigie Terrace within a Multi-Residence 1 (MR-1) zoning district and consists of a 7,917 square foot lot.
2. Authorization of peer reviews for upcoming comprehensive permit application at 528 Boylston Street.
3. Review and approval of minutes for January 11, 2023 and January 25, 2023 meetings.

Agenda Item 1: #01-23 – Maria Konstantopoulos, 10-12 Craigie Terrace, Newton. Sitting Members: Michael Rossi (Chair), Brooke Lipsitt Elizabeth Sweet, William McLaughlin, and Lei Reilley.



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Documents Submitted:

1. Application for Variance dated January 19, 2023.

Testimony:

In support of her request for a variance, Ms. Maria Konstantopoulos, 10-12 Craigie Terrace, Newton, stated that the lot it is an odd shape. The topography of the land is another factor. There are big boulders directly behind the house. Given the shape and topography the petitioner had to be strategic on placement of the footings when it came to the setbacks. Unfortunately, it ended up 6.8 feet away instead of the 7.5 feet required so the petitioner is requesting a relief with the setback.

Chair Rossi asked if there was any more to add in terms of the hardship as it pertains to the property and how the zoning ordinance is written and what would happen if the variance were not allowed.

Ms. Konstantopoulos responded that the topography is the issue and that if the variance is granted it would be in harmony with the purpose and the intent of the ordinance. The deck does not harm anyone and is not detrimental to the public welfare and the deck adds a more aesthetic appearance to the neighborhood.

Public Comments:

Matt Brand, 449 Lowell Ave., Newton, stated there have been complaints of noise on that side of the building. He does not want to get in the way of anyone's property rights but has observed that the deck is an enormous "party deck." He is trying to understand if the issue is the deck was built larger than it was supposed to be.

Chair Rossi responded that the application for the variance is required because the deck falls into the required side setback; the ordinance requires 7.5 feet away from the property line and it was built 6.8 feet from the property line.



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Mr. Brand responded that the neighbors are concerned about the size of the deck and the noise from parties and music that has been played. If the petitioner built the deck where it is due to the topography and it's just a few inches into the setback, Mr. Brand is not interested in getting in the way of that, but if the petitioner is just being opportunistic and built an enormous deck and then asked for forgiveness he is not as amenable. All residents on the street have been in trouble with the city at one point or another. If there is a real reason for being a few inches bigger he would understand, but if not, he would like to see it properly sized.

Danilo Santucci, 439 Lowell Ave, Newton, stated that the deck is enormous and towers over the property. He echoes that if this is a need issue due to topography, he won't fight it over a few inches. He referenced the 1953 requirements but is not sure if it is relevant in this case.

There were no further public comments.

Mr. Rossi asked if there were questions from the Board.

Ms. Reilley stated that the ordinance requires substantial hardship. She understands the request, but she has not heard that the topography is a hardship and asked why the approved plan was not followed.

Ms. Konstantopoulos responded that the hardship is the lot is triangular and the lot narrows and there is a steep hill, boulders, and water overflow so the footings had to be placed further back. The plans were given to the builder.

Ms. Reilley asked if the builder followed the plans as submitted.

Ms. Konstantopoulos responded that she believes there is no discrepancy between the plans and the deck as built.

Chair Rossi stated that the proposed plans had the correct setback of 7.5 feet, but the as built plan is 6.8 feet so there is a discrepancy.

Ms. Konstantopoulos responded that if that is what the plans show it must be correct.

Ms. Reilley stated that she is confused as to why the deck on the third floor would be impacted by water. How are the ground conditions impacting the third-floor deck?



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Ms. Konstantopoulos responded that she was referring to the first and second floor footings.

Ms. Reilley asked how the third floor is a hardship.

Ms. Konstantopoulos responded that she meant the footings of the deck.

Mr. Rossi stated that according to the as-built plans the first-floor deck goes into the setback at 7.3 feet and the third-floor deck goes into the setback at 6.8 feet and somehow the second-floor deck is compliant. The third floor encroaches the most, so he asked what the issue with the footing that requires the footing to be where it is.

Ms. Konstantopoulos replied that she was not aware it was just the third floor. She thought it was the whole deck that was in violation.

Ms. Lipsitt asked if the plans were drawn up by an architect and if a civil engineer was used.

Ms. Konstantopoulos responded that the plans were drawn up by a designer and that she retained a structural engineer, but he was not a civil engineer.

Ms. Lipsitt stated that generally plans signed off by the Planning Department have an architect's stamp on them, but the designer's plans were sufficient to get a permit from the city.

Ms. Konstantopoulos stated that the designer's plans were sufficient.

Ms. Lipsitt asked if the designer handled the construction or if there was a separate contractor.

Ms. Konstantopoulos responded that she hired a builder.

Ms. Lipsitt asked if the builder failed to follow the designer's plans.

Ms. Konstantopoulos responded that it appears so.

Ms. Lipsitt asked if the builder did not follow the plans because there was an issue with the condition of the land.

Ms. Konstantopoulos responded that it was because of the topography.



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Ms. Lipsitt asked if the designer took that into consideration.

Ms. Konstantopoulos responded not to her understanding.

Ms. Lipsitt stated that the petitioner's recourse should be with the designer and the builder and not with the Board. She is struck that the third floor is more out of compliance and that seems illogical and is a problem the builder had. Had the applicant come to the Board prior to building the deck she does not see a circumstance where the Board would have granted the variance and it does not seem now that it is built with mistakes that it is the Board's place to make the petitioner whole. The issue is with the designer and the builder. Ms. Lipsitt asked if the applicant has reached out to them.

Ms. Konstantopoulos responded that she had not reached out to them yet.
Chair Rossi asked who lived at the property currently.

Ms. Konstantopoulos responded that it is a multi-family. Renters live on the first floor, while she and her husband live on the second and third floor.

There were no further questions from the Board.

Mr. Rossi asked for a motion to close the public hearing.

Accordingly, a motion was made by Lei Reilley, duly seconded by Mr. Rossi, to close the public hearing.

Deliberation:

The Board then discussed and deliberated the merits of the petition. Board members focused their discussion on whether the petition meets the statutory standard for uniqueness of the lot and substantial hardship. The Board members agreed unanimously that it did not.

Accordingly, a motion was made by Lei Reilley, duly seconded by Brooke Lipsitt, to deny the request for a reduced setback. The motion passed five in favor, and none opposed. Therefore, the request for a variance was denied.

Agenda Item 2: Authorization of peer reviews for upcoming comprehensive permit application at 528 Boylston Street, Newton. Sitting Members: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth



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Sweet, William McLaughlin, and Lei Reilley.

Documents Submitted:

None

Testimony:

Katie Whewell, Chief Planner, City of Newton, explained that this is a timing issue. The Planning Department is looking for permission to engage with the consultants, so as to be ready when the petition is filed. When a comprehensive permit is filed a hearing needs to be opened within 30 days. Due to this the City's analysis of a comprehensive permit is often delayed for the first hearing due to the authorization of the consultants. When reviewing the on-call reviewers and consultants are an extension of city staff. When the 30-day period wait for work to be authorized it leads to delays. Once authorized the consultants have large lead times for that first memorandum analysis generally 6-8 weeks. This is mainly just for time built in for that first public hearing. For 528 Boylston, the City is seeking authorization for a consultant team with expertise in the subject matters of site design, stormwater, transportation, and building design, to be retained prior to the first public hearing (once the application is filed) so review and analysis can occur between the City, on-call consultants, and development team.

Chair Rossi stated that a public hearing has not been opened on this matter but would still hear from Attorney Winters on any comments she would like to make.

Attorney Kathy Winters, Schlessinger & Buchbinder, 1200 Walnut Street, Newton, representing Toll Brothers Inc. stated that the applicant anticipated filing earlier this month and was hoping to file end of the month. The application is undergoing final review.

Chair Rossi asked if there were questions or comments from the Board.

Ms. Lipsitt stated that the rules say that the request for peer review authorizations can be made after the application has been filed and the application has not been filed yet so this does not seem in order.



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Ms. Sweet asked if there were such rules written somewhere.

Chair Rossi stated that the rule did exist is in Section 5, Paragraph A, Outside Consultants, if after receiving an application the Board determines that in order to review the application it requires technical advice that is unavailable with City Staff in such areas in civil engineering, transportation, and so forth it may employ outside consultants at the expense of the applicant.

Ms. Sweet stated that it seems clear that the Board can't do this until after the application is submitted.

Mr. McLaughlin stated that it seems clear it would require a rule change to accommodate this.

Mr. Rossi stated that he agrees and appreciates the work the Planning Department does and does not take the recommendation lightly and understands that this would be helpful, but the rule could not be clearer in his opinion and the Board does not have the authority to do this.

Public Comments:

There were no public comments.

Deliberation:

A motion was made by Betsy Sweet, duly seconded by Brooke Lipsitt, to deny the request to authorize the peer reviews. The motion passed five in favor, and none opposed. Therefore, the peer reviews are not authorized.

Agenda Item 4: Review and approval of minutes for January 11, 2023 and January 25, 2023 meetings.

A motion was made by Brooke Lipsitt to approve the minutes as circulated. This motion was duly seconded by Bill McLaughlin. The motion passed 5-0.



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Mr. Rossi concluded the meeting.

Adjourned 7:50 p.m.

ZBA DECISIONS can be found at www.newtonma.gov/ZBA