



Ruthanne Fuller  
Mayor

# CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1120

TDD/TTY: (617) 796-1089

Fax: (617) 796-1086

www.newtonma.gov

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CITY CLERK  
NEWTON, MA, 02459

## ZONING BOARD OF APPEALS

Brenda Belsanti, Board Clerk

#02-24

### DETAILED RECORD OF PROCEEDING AND DECISION

Petition #02-24 Samuel Chud of 3 Edgefield Road, Chestnut Hill, Massachusetts, pursuant to M.G.L. c. 40A, §§ 8 and 15, appealing the January 26, 2024 issuance of a building permit by the Commissioner of Inspectional Services for the construction of a new single-family home. The subject property is located at 11 Edgefield Road, Newton, Massachusetts within a Single-Residence 2 (SR-2) zoning district.

The Zoning Board of Appeals for the City of Newton (the "Board" or the "ZBA") held a hybrid public hearing in person and via Zoom on Wednesday, March 27, 2024 and Wednesday, April 10, 2024 at 7:00 p.m.

Due notice of the public hearing was given by mail, postage prepaid, to all "parties in interest" in accordance with M.G.L. c. 40A, § 11 and by publication in *The Boston Herald*, a newspaper of general circulation in Newton, Massachusetts, on March 13, 2024 and March 20, 2024.

The following members of the Board were present:

Michael Rossi (Chair)  
Brooke Lipsitt  
Stuart Snyder  
Jennifer Pucci  
Betsy Sweet  
Denise Chicoine (alternate)

The following documents were submitted to the Board and/or entered into the record at the public hearing: 11 Edgefield Road Appeal Application received February 23, 2024, Request for Continuance from Samuel Chud dated March 25, 2024, and Addendum to Appeal with presentation and supporting materials submitted April 8, 2024.

### THE PUBLIC HEARING

1. Appellant Samuel Chud of 3 Edgefield Road, Newton stated he has lived at his property, which abuts the subject property, for 8 years with his wife and two children. Mr. Chud stated that his property is located at the bottom of a steep decrease in elevation. He stated that he has had groundwater problems since purchasing the property.

2. Mr. Chud presented a 2017 ISD violation and subsequent ZBA decision that were issued to the prior owner of the subject property. The 2017 ZBA decision upheld the ISD violation and ordered the prior owner of the subject property to work with the abutters to address the groundwater issues in the area or, if a mutually agreeable solution could not be reached, to remove the berm and return the property to its prior grade. The berm was removed but the fill was not removed, and the grade remains elevated. Mr. Chud presented the steps that he has taken to control stormwater on their property, but groundwater issues still persist.
3. Tom DiPersio, Civil Engineer, 157 Cook Lane, Marlborough, stated that the information Mr. Chud presented was correct and he had working with the property owners since 2019. He stated that the revised mitigation measures proposed by the developer of the subject property will not correct the issue of water running onto 3 Edgefield Road because the subject property will still be above grade and the retaining wall will act as a dam to the natural flow through the area.
4. Mr. Chud presented the building permit issued on December 13, 2023 for 11 Edgefield Road. He contends that the estimate of the high ground water table at 5.5 feet below the surface, upon which the stormwater recharge system design and the building plans were based, is inaccurate and is actually 2.5 feet below the surface. He presented pictures of groundwater filling a 2.5 foot deep hole located adjacent to the boundary of the subject property.
5. Mr. Chud stated that he would like conditions to be met prior to issuance of a building permit such as removal of the retaining wall, re-grading the rear of the property by one foot to remedy the original violation, no subsequent raising of the grade, and installation of a stormwater management system.
6. Anthony Ciccariello, Commissioner of Inspector Services, stated that he is obligated to issue a building permit once plans are approved by the Engineering Department and as long as it meets current zoning and building codes.
7. John Daghlian, Associate City Engineer, stated that the original site plan was approved and then the site plan was modified with intervention from the neighbors and that was also approved. He stated the Engineering Department could go to the Appellant's property to look at the grading issues mentioned and make sure the topographical information is accurate if the Appellant would allow them to do so.
8. Attorney Laurence Lee of Rosenberg, Freedman, & Lee, 246 Walnut Street, Newton, representing the owner of the subject property objected to the timeliness of the appeal. He argued that it is not the building permit being appealed but the Engineering Department's Approval issued December 13, 2023, since stormwater is the subject of appeal here. The time period for appealing that approval has elapsed prior to the filing of this appeal.
9. Attorney Lee stated that the original plan was approved December 13, 2023 and met all the City requirements. Revisions were made that went above and beyond the City regulations, which were approved on March 20, 2024. He stated that 75 days had elapsed since the original building permit was issued and the delay has cost his clients \$25,000. The Appellant has also asked for additional modifications to the plans that are against City regulations.

10. Vern Porter, Land Surveyor, 354 Elliot Street, Newton, described the stormwater mediation plan and stated that the owner of the subject property has gone above and beyond what is required for the building permit.
11. Ale Kogan, Owner, 11 Edgefield, Newton, stated he has been a resident of Newton for 20 years and is sorry the prior landowner did not resolve the prior issue brought before the ZBA. He states he and his partner have listened to Mr. Chud's problems again and again and that they are trying to solve a problem that has been there for years. They are making it better, but there will be some water because of the location.
12. The board took comments from the public.
13. Mr. Chud responded to Attorney Lee's argument of timeliness of the appeal, stating that he is properly appealing the building permit and that the house being built is the subject of his appeal. He believes the house in its current design should not be built because the grade needs to be raised to accommodate that house.
14. Board members noted the opposing views of the engineers regarding stormwater and asked what standard should be applied to determine if the building permit was properly issued and what recourse the Appellant would have if conditions were to worsen after the build.
15. Attorney Jonah Temple, Deputy City Solicitor for the City of Newton, stated that if the project violates the City Stormwater ordinance and regulations the City Engineering Department would enforce that. The Engineering Department needs to sign-off that all stormwater controls are in place after completion of the project. If the completed project creates or alters runoff it would constitute a zoning violation.
16. Attorney Temple stated that the only question within the jurisdiction of the Board is whether the issuance of the building permit violates Section 5.3.A of the Newton Zoning Ordinance, which states that a change in grade shall not result in the alteration of the runoff of surface water to or from abutting properties. The compliance with the City Stormwater Ordinance is not within the jurisdiction of the Board. To reach their decision, the Board can rely on the expertise of the City Engineering Department that signed off on the project.
17. Board Members asked whether the Engineering Department could recheck the data upon which their approval was based.
18. Mr. Daghlian stated that new information about the grade of the berm at the subject property was presented at the meeting, so the plans may need to be fine-tuned. Mr. Daghlian was not definitive on whether the Engineering Department's prior determination that the plans comply with the Stormwater Ordinance was still accurate considering the new information that was presented.
19. A motion was made by Brooke Lipsitt to close the public hearing, seconded by Stuart Snyder. The motion passed 5-0 and the public hearing was closed.

20. The Board then discussed and deliberated the merits of the petition. Board members focused their discussion on whether the building permit was issued incorrectly by Inspectional Services according to the Newton Zoning Ordinance.

**FINDINGS, DETERMINATION & CONDITIONS**

After careful study of the materials submitted and the information presented at the public hearing, the Board makes the following findings and determination:

1. *The appeal does not set forth a violation of Section 5.3.A of the Newton Zoning Ordinance. Section 5.3.A sets forth the requirement that a change in grade shall not result in the alteration of the runoff of surface water to or from abutting properties.*
2. *Based on the above findings, the January 26, 2024 building permit issued by the Commissioner of Inspectional Services was properly issued and was not in violation of the Newton Zoning Ordinance.*

Accordingly, a motion was made by Brooke Lipsitt, duly seconded by Betsy Sweet, to uphold the building permit with conditions. The motion passed five in favor and zero opposed. Therefore, the request for an appeal is denied and the building permit is upheld subject to the following conditions:

1. Within 30 days of this Decision, an updated version of the required plans are reviewed to the satisfaction of the Engineering Department. If this condition is not satisfied, the Commissioner of the Inspectional Service Department shall take steps to stop further work on the property until the Engineering Department submits an approval to the Inspectional Services Department.

AYES: Michael Rossi  
 Brooke Lipsitt  
 Stuart Snyder  
 Jennifer Pucci  
 Betsy Sweet

NAYS:




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Michael Rossi, Chairperson

The City Clerk certified that all statutory requirements have been complied with and that 20 days have lapsed since the date of filing of this decision and no appeal, pursuant to Section 17, Chapter 40A or Section 21 of Chapter 40B has been filed.

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Carol Moore, City Clerk