



# CITY OF NEWTON, MASSACHUSETTS

City Hall  
1000 Commonwealth Avenue, Newton, MA 02459-1449  
Telephone: (617) 796-1060 Fax: (617) 796-1086  
[www.newtonma.gov](http://www.newtonma.gov)

Ruthanne Fuller  
Mayor

**ZONING BOARD OF APPEALS**  
Brenda Belsanti, Zoning Board Clerk

## **MEETING MINUTES**

**Wednesday, October 25, 2023.**

**7:00 p.m.**

**HYBRID**

**Board Members Present:** Michael Rossi (Chair), Brooke Lipsitt, William McLaughlin, Elizabeth Sweet, Stuart Snyder, and Denise Chicoine (alternate)

**Staff Present:** Brenda Belsanti, ZBA Clerk; Jonah Temple, Deputy City Solicitor (remote); Jennifer Wilson, City Solicitor; Katie Whewell, Director of Current Planning; Michael Gleba, Senior Planner; Barney Heath, Director of Planning, Josh Ostroff, Director of Transportation – Planning, and Anthony Ciccariello, Commissioner of Inspectional Services.

**A public hearing of the Newton Zoning Board of Appeals was held a hybrid meeting on Wednesday, October 25, 2023, at 7:00 p.m. on the following petitions:**

- 1. #09-22** Northland 160 Charlemont, LLC, requesting a Comprehensive Permit, pursuant to M.G.L. Chapter 40B, to construct a nine-story mixed-use development with 410 residential units and approximately 10,689 square feet of ground floor commercial space on 6.98 acres of land located at 160 Charlemont Street and 56 Christina Street in the Mixed Use 1 Zoning District. The proposal includes 103 affordable units and 486 parking stalls.
- 2. #07-23** Leonard and Lisa Wolin of 409 Crafts Street, Newton, requesting a variance from Sections 3.1.3 and 3.4.3.A.1 of the Newton Zoning Ordinance to reduce the front setback requirement to 5 feet to construct a detached garage. The subject property is located at 409 Crafts Street within a Single-Residence 3 (SR-3) zoning district and consists of a 10,215 square foot lot.
- 3. #09-23** Dennis & Valerie Razis of 88 Adena Road, Newton, requesting an appeal of a decision from the Commissioner of Inspectional Services dated July 11, 2023 regarding the method of calculation of lot coverage resulting in an inability to obtain a certificate of occupancy in reference of Sections 1.5.2.D of the Newton Zoning. The subject property is located at 88 Adena Road within a Single-Residence 3 (SR-3) zoning district and consists of a 8,000 square foot lot.



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4. Approval of meeting minutes for May 24, 2023; July 24, 2023; and July 31, 2023.
- 

**Agenda Item 3:** Dennis & Valerie Razis of 88 Adena Road, Newton, requesting an appeal of a decision from the Commissioner of Inspectional Services dated July 11, 2023 regarding the method of calculation of lot coverage resulting in an inability to obtain a certificate of occupancy in reference of Sections 1.5.2.D of the Newton Zoning. The subject property is located at 88 Adena Road within a Single-Residence 3 (SR-3) zoning district and consists of a 8,000 square foot lot. Sitting Members: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet, Stuart Snyder, William McLaughlin, and Denise Chicoine (alternate)

### **Documents Submitted:**

1. Appeal Application with supporting documents dated September 13, 2023.

### **Testimony:**

Attorney Terrence Morris, 57 Elm Road, Newton, representing the petitioner Dennis & Valerie Razis of 88 Adena Road, Newton. Attorney Morris stated that the applicant is unable to get a certificate of occupancy due to an issue of lot coverage.

Dennis Razis, 88 Adena Road, Newton, stated that he and his wife have lived here for 33 years and raised their children here. The home was built eight years ago with no intention of breaking the rules and this could lead to financial ruin for them if issue not rectified.

Paul Apkarian, architect, stated that the exterior siding of the home should not have been calculated into the lot coverage. He cited his letter dated July 11, 2023, as reasons not to include exterior siding. The project was designed and approved correctly and during construction some issues happened that were not realized until after construction. The siding does not touch the ground so just the foundation should be counted. Decks and the roof overhang do not count towards the lot coverage and neither should siding.



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Vern Porter, civil engineer, 354 Eliot Street, Newton, stated the as-is complied and it is now off by one inch around the entire structure. If it is calculated by the foundation itself, it will work. The siding is rather thick and is putting us over.

Attorney Morris stated that everyone has the utmost respect for the Commissioner and that the code could be open to interpretation for method of calculation. He states that the ZBA can play a role in the interpretation of the code. There are exemptions for things like roof overhangs and it is intuitive to think that we could measure the foundation. Asking that to make a determination to not include the siding into lot coverage. There is some ambiguity in interpretation. The City of Newton has the power to make it clear as can be and since there is ambiguity, we would like you to make an interpretation.

Anthony Ciccariello, Commissioner, stated ISD has always done the entire building itself not just the footprint. Unfortunately, in Newton people are trying to build right to the parameter with no room for error and things like this can happen. He does not have the authority to issue a certificate of occupancy due to this issue.

Mr. McLaughlin asked why this is happening now when this was built back in 2015. Asked for clarification of what Attorney Morris is asking us to do. Asking for a variance or rewrite the code?

Mr. Ciccariello stated that there was never a certificate of occupancy.

Chair Rossi stated that the applicant did not apply for a variance but filed an appeal of a decision from ISD.

Attorney Morris stated it is not a variance because it does not meet the criteria for one. We are relying on Section 7.71a that states any person aggrieved by the inability to retain a permit or enforcement action – in this case a permit – from any administrative officer (Commissioner) under the provision MGL 40a. We believe the ZBA has the authority to grant a certificate of occupancy under this ordinance. This is an empathetic case. It can be done without contradicting the method of calculation that the Commissioner has used while still giving relief to the applicant.



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Chair Rossi asked if Attorney Morris was asking them not to compel them to issue a certificate of occupancy, but to rewrite the ordinance. You are asking us to change the way ISD interprets the provision not for this project, but in total.

Attorney Morris stated that the argument has been framed that way but the literal provisions in the ordinance itself says we don't have the ability to obtain a certificate of occupancy so it is our reading of this that ZBA does have the authority to issue the certificate of occupancy not to compel the Commissioner to do it.

Brooke Lipsitt stated that she understands that the Commissioner stated that current builds have been building to the limits that are permitted and errors happen, and this is an innovative explanation of why the ZBA should consider this error not an error. If we should grant the applicants appeal we would be giving every future build in the City license to go outside the rules. This does not seem like the job of the ZBA. If the rules are to be changed that should be up to the City Council and regulatory authorities and not this Board.

Attorney Morris respectively disagreed. This case would not be a precedent. Everything would be on a case-by-case basis. We are talking about a matter of 23.8 square feet. Giving a certificate for something so de minimis is not going to set a precedent for people to go wild. This was a simple oversight and asking to give us equitable relief and grant the COO.

Ms. Lipsitt stated that the argument is the way ISD is reading the ordinance is incorrect and that it should be measured before the siding, corner boards, and sheathing is put on the building.

Attorney Morris stated that he is trying to give two courses for the Board to deal with this issue. One option is the interpretation of the ordinance could be made differently. Another option could be to issue the permit at your discretion without having the Commissioner of ISD change the interpretation.

Chair Rossi asked Attorney Temple and Attorney Wilson to weigh in on Attorney Morris' argument that the Board is not being asked if ISD applied the ordinance correctly, but that the Board has a right to compel the issuance of a COO on equitable grounds. Is that relief that we can



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grant?

Attorney Temple stated that the Board can grant the relief and issue the permit, but to do so you need to grant the appeal, determine that the Commissioners determination is incorrect, and that the ordinance needs to be interpreted in a different manner. So yes, you can grant it, but you need to decide on the merits of this particular case and it will have far-ranging implications and require the Commissioner to change his interpretation for all properties in the City.

Mr. Snyder asked Attorney Temple if the decision would set a precedent since other variance decisions are not precedent setting. Are you stating that in this case if we were to grant the COO it would create a precedent and have far ranging implications and require ISD to interpret this differently?

Attorney Temple stated yes and that it is not about a variance or anything particular to this property. It is about how the provision of the ordinance is interpreted.

Mr. Snyder asked if the Board could fashion the decision if the Board decided to grant the appeal to state that this is not to have any precedential value.

Attorney Temple responded no because the Commissioner has to interpret the ordinance the same for all properties.

Attorney Morris stated that Attorney Temple's assertion that this is not about this particular property is wrong and that this is completely about this particular property and the details of what happened to this property. It is certainly only applicable to this property. I believe the Board does have the right to exercise equitable relief here by granting the COO without making a decision on the Commissioners interpretation.

Ms. Sweet stated over the years past decisions have come up by other applicants wanting the same decision granted for themselves. If the decisions are not precedent setting how does it keep coming up again and again.

Chair Rossi stated that his opinion is that this is not a variance application it is an appeal of a



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decision of ISD application and the Board is being asked to opine on the interpretation of the ordinance which would apply equally not to just this property but to all properties in the City.

Ms. Sweet stated she was concerned that a decision made on this appeal would come up again so anything the Board does could be precedent setting.

Mr. McLaughlin stated as he is doing the math with the numbers given in the appeal application that 0.78% of an 8000 square foot lot is not 23 feet but it is 65 feet. If the house is roughly a 2000 square foot home the foundation is off by a significant amount. This is not just the sheathing and the siding. If Mr. Porter could re-survey the site at the foundation and have it be below the 30% it is likely that he would have done so. He believes the foundation even measured at grade based on the math is non-compliant. If this was only an error of interpretation it would be one thing but the building is bigger than it should be at the foundation and maybe Mr. Porter can speak to that in case he is wrong.

Mr. Snyder stated he is also curious about the circumstances are that has led this to the Board at this time.

Attorney Morris responded that Mr. McLaughlin's math is correct and it is 62.4 feet. Part of the issue was the front porch was covered so that represented about 40 square feet and that can be removed to reduce this down to about 20 square feet.

Mr. Porter stated that Mr. McLaughlin's math is correct and a front porch added without permit that can be removed to eliminate 40 square feet which would leave the 24 square feet that is not fixable. The square footage around the house is 200 feet around the perimeter so 24 square feet comes out to about 1 ¼ inch all the way around. So Mr. McLaughlin is absolutely correct.

Chair Rossi asked Mr. Porter when surveyed this property did he apply the same means and methods that he typically does with his work.

Mr. Porter stated that he did.



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## **Public Comments:**

There were no public comments.

Ms. Lipsitt moved that that the public hearing be closed and the motion was seconded by Mr. Snyder. The motion passed unanimously 5-0.

## **Deliberation:**

Mr. Rossi asked for a motion on the item.

Accordingly, a motion was made by Stuart Snyder, duly seconded by Brooke Lipsitt, to deny the appeal and uphold the decision of Inspectional Services. The motion passed five in favor, and none opposed. Therefore, the request for an appeal was denied.

**Agenda Item 2:** Leonard and Lisa Wolin of 409 Crafts Street, Newton, requesting a variance from Sections 3.1.3 and 3.4.3.A.1 of the Newton Zoning Ordinance to reduce the front setback requirement to 5 feet to construct a detached garage. The subject property is located at 409 Crafts Street within a Single-Residence 3 (SR-3) zoning district and consists of a 10,215 square foot lot. Sitting Members: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet, Stuart Snyder, William McLaughlin, and Denise Chicoine (alternate)

## **Documents Submitted:**

1. Email from Mr. Josh Ostroff, Director Transportation Planning dated October 23, 2023.

## **Testimony:**

Attorney Morris presented a PowerPoint of the site plans, uniqueness of the lot lines, and future plans for the traffic patterns and closures of Crafts Street and Albemarle Road.

Mr. Wolin continued the presentation to answer some of the questions that had been raised in the previous meeting such as garage plans, entering/exiting of driveway, site lines of garage plans, the traffic designation of Crafts Street as a safety zone, the notification history and timing of the





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closing of Albemarle Road to the applicant. He states that he understands the reasons for the street closure, but the burden of meeting all of the City's objectives for pedestrian and bicycle lanes should not come as a hardship to them and limit their ability to use their property. The hardship is if the City was not closing Albemarle Street they would be able to build a garage by-right. Three factors are creating hardship – principle of fairness of not being able to build a garage due to changes Newton is doing, Newton's legal regulatory change is impacting them to be able to build a garage, and a safety component that the reason for the closure is to make it safer for pedestrians, bicyclists, and drivers.

Attorney Morris stated that the case of Furlong vs the Zoning Board of Appeals Salem 2016 a safety issue can give raise to a substantial hardship for a variance standard. The case involved a set-back variance the court agreed "that where a variance diminishes the risk of an existing harm or where it prevents a greater risk that would result from compliance with zoning ordinance such a hardship may merit a variance". The closing of Albemarle is solely for the safety for the general public and creates the hardship. Speaking to the Newton Transportation Committee Coordinator the closing is for safety and we want to create the link of the safety issue and the hardship that flows from it.

Josh Ostroff, Director of Transportation Planning, stated that this case after the September meeting regarding placement of the driveway and he has no quarrel with Attorney Morris' presentation of the facts. The intersection will close Albemarle as part of the plan to improve safety. It is in the public interest and it would have already been closed permanently, but we were waiting on this case to finish. This intersection is scheduled to be signalized and should be done 2025-2026 by state design and funding. This will make it less of a challenge for this driveway to have access to Crafts Street. The request for variance does not pose a safety concern or interfere with public use of the road on Crafts Street, but we do not support a driveway on Albemarle.

Attorney Morris stated that the Board can grant relief without detriment for the public good a Mr. Ostroff's comments state and without nullifying the intent of the ordinance.

Mr. McLaughlin asked Mr. Ostroff to clarifying the future signalization.





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Mr. Ostroff clarified where signalization will be placed and the safety reasons why.

Ms. Chicoine asked if there were any process for design of placement of garage and where the setback would be.

Chair Rossi stated it would be between ISD and the applicant.

Attorney Morris stated the plans were in the original application.

Chair Rossi asked Mr. Ostroff when the barriers were first installed at Albemarle and Crafts. What is the process a resident would go through to have a curb cut installed if Albemarle had remained open and the applicant had built the garage by-right.

Mr. Wolin stated there previously was a curb cut and a driveway there prior to the construction of the house.

Chair Rossi asked if prior to purchasing the property were the planters/barriers installed.

Mr. Wolin stated that there were barriers blocking access at Crafts Street, but not North Street so they could enter one way to the street. Discussions with builder and developer stated that they would be able to build the garage by-right on the Albemarle side and have access just for their house through the Albemarle side. During the build there was access to the house from the North Street side and cars and construction vehicles were parked on the street. Cars were using the road so they had no expectation that they would not be able to use the road when they moved in since they were the only house on the road. This barriers were a trial.

Chair Rossi understands that was the applicant's expectation, but at the time there was not two-way access to the property.

Mr. Ostroff stated that the approval for closure was late May or early June, 2022.

Ms. Lipsitt asked for clarification.



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Mr. Ostroff stated it was just informational.

Attorney Morris stated there are traffic trials everywhere for safety concerns and the fact that there were barriers at the time does not mean that they would be expected to be permanent.

### **Public Comments:**

There were no public comments.

Ms. Lipsitt moved that that the public hearing be closed and the motion was seconded by Ms. Sweet. The motion passed unanimously 5-0.

### **Deliberation:**

Mr. McLaughlin stated he is still sympathetic to the applicants.

Ms. Lipsitt stated she is still not sympathetic and has pushed for vehicle access for this one house, but that will not happen. Safety is not an issue because the driveway is now pre-existing. The shape of the lot doesn't matter because it is a corner lot. She does not believe the lack of a garage is a hardship and purchased the house without a garage. She does not believe there is a hardship to grant the variance.

Mr. Snyder stated that he has become less sympathetic to needing a garage but is sympathetic for the petition because of the position they have been put in due to the City. He does not feel the ask of the applicants is extreme.

Chair Rossi stated that he looks at the criteria strictly. The corner lot is not unique. The hardship is can one make reasonable use of the property without a garage and the answer is yes. The Board has never voted to allow a garage as a hardship. The only way to be fair is to stick to the language of the ordinances and to apply the facts we have here no matter the difficulty given the circumstances. The closing of the street is difficult. Not inclined to support the position.



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Mr. McLaughlin stated the uniqueness is it is not often there are two frontages and can't use one. There are two streets and can't make it work by-right on one side and you can on the other, but now it's being shut down. The timing is a little suspect and if he was buying real estate he would be more skeptical, buyer beware, but at the same time with a corner lot if you can't use one then you can use the other. The City has denied them so that is a unique hardship.

Ms. Sweet stated that the explanation is Crafts is actually the side street because Albemarle is the front of the house.

Ms. Lipsitt stated that corner lots have two frontages the way the ordinance is written

Mr. Rossi asked for a motion on the item.

Accordingly, a motion was made by William McLaughlin, duly seconded by Stuart Snyder, to approve the variance. The motion did not pass two in favor and three opposed. Therefore, the request for a variance was denied.

**Agenda Item 1:** 1. #09-22 Northland 160 Charlemont, LLC, requesting a Comprehensive Permit, pursuant to M.G.L. Chapter 40B, to construct a nine-story mixed-use development with 410 residential units and approximately 10,689 square feet of ground floor commercial space on 6.98 acres of land located at 160 Charlemont Street and 56 Christina Street in the Mixed Use 1 Zoning District. The proposal includes 103 affordable units and 486 parking stalls. Sitting Members: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet, Stuart Snyder, William McLaughlin, and Denise Chicoine (alternate).

### **Documents Submitted:**

1. Letter from Attorney Adams dated October 12, 2023.
2. ZBA Planning Memo dated October 18, 2023.

### **Testimony:**

Attorney Stephen Buchbinder, Schlessinger & Buchbinder, 1200 Walnut Street, Newton,



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representing the petitioner Northland 160 Charlemont, LLC. for a potential development at 160 Charlemont Street, Newton pursuant to M.G.L Chapter 40B reviewed the documents submitted.

James Gray, Stantec Architecture, 40 Water Street, Boston, presented an updated signage plan and views from the abutting neighborhood.

Michael Gleba, Senior Planner, presented updates since the last hearing including TDM, signage plan, shuttle, Charlemont Street improvements and mitigation.

### **Public Comments:**

Paul Pavone, Local 560, 681 Main Street, Waltham, representing 800 construction workers in support of the Northland project as it will provide many jobs for our local members.

Lucie Chansky, 259 Jackson Street, Newton Center, who has a son that attends Price Center across from the project and is concerned about the layout of Christina and Charlemont Streets will meet. She also feels the height of the building is too high and concerned of the shadows on the Price Center.

### **Deliberation:**

Mr. Snyder asked for clarification on the changes to the signage.

Attorney Buchbinder stated that the signage would be on the curvature of the planter.

Mr. Snyder asked how the bridge will be addressed.

Mr. Heath stated that the City is working on funding for the bridge and some funding has been earmarked for part of the project. Applied to the State Transportation Improvement Program for consideration for funding. They are becoming increasingly confident about funding the bridge in short order. There is also some funding in the mitigation package of \$1.5 million.



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Mr. Snyder stated that there was a change in the transportation plan of \$100,000 available to the residents for five years. How was it calculated and how would it be used?

Ms. Whewell stated that the City has been working with the applicant to strengthen the TDM package overall. The fund committal came from the applicant and Planning is supporting it with some annual data of usage.

Mr. Heath stated that the Planning liked that the applicant opened up the transit subsidy to all the residents.

Ms. Lipsitt asked for clarification on the transit subsidies. What is the plan on how they will be used?

Ms. Whewell stated it will be used by both employees and residents of the property. There is no plan in place, but to make the funds available no matter date of move in. The applicant can use the funding as they see fit.

Ms. Lipsitt wants to see the funds utilized and not just sit in the bank.

Ms. Lipsitt asked about the shuttle for this site and wanted to know how the other project will incorporate a shuttle for both properties. What is the prospective time frame for both these sites being built?

Attorney Buchbinder stated that they will be working with Planning on how best to utilize the TDM plan. The shuttle will go into effect at the very beginning of the build across the street.

Peter Standish, 50 Washington Street, Newton, stated the shuttle is a requirement for the Northland project across the street and after stabilization of the entire project depending on the utilization the plan can be modified. The plan is that one stop will be at the new development on Charleton. The timing of the project across the street is close to going to a building permit and the first building could come online 2 ½ -3 years out and this project maybe 6 years out.



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Mr. Snyder stated that there seemed to be more of a commitment to the bridge renovations at the beginning of this project. He would like to see more commitment in the Board order and would like some direction from colleagues and Planning. Is what is on the table sufficient?

Mr. Heath stated that there is hope that the bridge gets done before the project is completed. If there is a shortfall of funds we could take from the mitigation funds, but at this point we do not see a shortfall.

Attorney Buchbinder clarified for the public comment that the light on Christina Street will be for the crosswalk that leads from the project to the bridge.

Ms. Lipsitt stated that very early on in discussions there was a concern that someone could obtain a public way across the parking lot of Price Center to gain access to the bridge.

Mr. Grey stated they have been in discussions with the Center regarding traffic patterns and circulation, planning, and City planning.

Mr. Heath stated there have been very agreeable conversations with the Price Center.

There were no further questions from the Board.

Chair Rossi asked if there was a motion from the Board to close the public hearing.

Accordingly, a motion was made by Brooke Lipsitt to close the public hearing, duly seconded by Stuart Snyder. The motion passed unanimously.

Accordingly, a motion was made by Brooke Lipsitt, duly seconded by Elizabeth Sweet, to approve the comprehensive permit based on conditions and findings to be determined.

Chair Rossi asked for a reading of the findings.



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Ms. Whewell displayed the findings and Chair Rossi reviewed and deliberated with the Board.

James Grey stated that he believes they will reach full Passive House certification.

Ms. Lipsitt asked for a finding for crosswalks, lights, and public safety in the decision.

Mr. Snyder stated that he is appreciative of the process and council from applicant, City staff, Board members, and public since the beginning for making this a better project over time.

Mr. McLaughlin stated that he wanted to recognize the City staff to make sure they received all information needed for them to make the best decisions.

Ms. Whewell displayed the conditions and Chair Rossi reviewed and deliberated with the Board.

Ms. Lipsitt stated she would like to have the distribution of the number of each unit type for each level of affordability.

Ms. Lipsitt asked for language to be added for a shuttle schedule.

Chair Rossi asked for a reading of the waivers.

Ms. Whewell displayed the waivers and Chair Rossi reviewed and deliberated with the Board.

Mr. McLaughlin asked for a correction to the parking ratio math.

Ms. Lipsitt asked for clarification on signage verbiage.

Chair Rossi commended the applicant and team for the thorough proposal and responsiveness to Board questions and to the Planning Department.

Chair Rossi asked for a vote on the pending motion.





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The motion passed five in favor, and none opposed. Therefore, the request for an a comprehensive permit was approved.

**Agenda Item 4:** Approval of Meeting Minutes for May 24, 2023; July 24, 2023; and July 31, 2023.

Accordingly, a motion was made by Stuart Snyder, duly seconded by William McLaughlin, to approve the meeting minutes as distributed. The motion was unanimously approved.

Mr. Rossi concluded the meeting.

Adjourned 10:54 p.m.

**ZBA DECISIONS can be found at [www.newtonma.gov/ZBA](http://www.newtonma.gov/ZBA)**