

#107.19



Ruthanne Fuller  
Mayor

# CITY OF NEWTON, MASSACHUSETTS

City Hall  
1000 Commonwealth Avenue, Newton, MA 02459-1449  
Telephone: (617) 796-1120 Fax: (617) 796-1086  
www.newtonma.gov

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## ZONING BOARD OF APPEALS

David A. Olson, CMC  
Newton, MA 02459

#12-18

### DETAILED RECORD OF PROCEEDINGS AND DECISION

Petition #12-18, 555 Commonwealth Avenue Realty Trust, owner of 555 Commonwealth Avenue, Newton, Massachusetts, requesting to amend a prior use variance (#18-92) to allow the property to be used for a general real estate office and to amend conditions relative to the operation of the business and use of the site. The subject property consists of a 6,708 square foot lot in a Multi Residence 1 (MR-1) zoning district. The petition was filed on December 26, 2018.

The Zoning Board of Appeals for the City of Newton (the "Board") held a public hearing on Wednesday, January 23, 2019 at 7:00 p.m. in the Council Chambers, Room 207, Newton City Hall, 1000 Commonwealth Avenue, Newton, Massachusetts.

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 *Newton TAB*, a newspaper of general circulation in Newton, Massachusetts, on January 9, 2019 and January 16, 2019.

The following members of the Board were present:

- Brooke K. Lipsitt (Chairperson)
- Stuart Snyder
- Barbara Huggins Carboni
- William McLaughlin
- Michael Quinn

The following documents were submitted to the Board and/or entered into the record at the public hearing:

1. Application for Variance, with accompanying documents, letters in support and plans, dated December 27, 2018.
2. Amended Zoning Review Memorandum, dated January 2, 2019.

## FACTS

The subject property is located at 555 Commonwealth Avenue, Newton and consists of a 6,708 square foot lot in a Multi Residence 1 (MR-1) zoning district. The existing one-story building contains approximately 2,800 square feet of floor area in a first floor and basement and six parking stalls. The building was originally constructed for use as a milk testing laboratory. The Board issued a use variance in 1974 (#44-73) to allow the building and land to be utilized for a real estate office. The Board subsequently issued use variances in 1975 (#26-75) to allow for its use as an accounting business office and in 1992 (#18-92) to allow for the use of the property for the offices of a chiropractor and acupuncturist.

The petitioner seeks to amend the prior use variance to allow the property to be used as a real estate office, and to amend conditions relative to the operation of the business and use of the site. The petitioner was represented by Attorney G. Michael Peirce, 60 Walnut Street, Wellesley. Attorney Peirce noted that the property has always been used for commercial purposes, that the building was not constructed as, nor has it ever been used as, a residential structure and that it would not be economically feasible for the petitioner to change the use of the property from commercial to residential.

Mr. Jack Foster, 130 Clark Street, Newton, operator of Centre Realty Group, said he intends to purchase the subject property and locate a branch of his real estate company there. There was no other public testimony.

A motion was made by William McLaughlin to close the public hearing. This motion was duly seconded by Michael Rossi. The motion passed five in favor and none opposed

## FINDINGS AND DETERMINATION

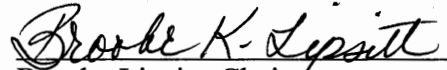
1. *There are special circumstances related to the soil conditions, shape or the topography of the land or structures which affect it but do not generally affect other properties in the zoning district in which it is located. The site is unique due to its small lot size and existing structure, which was built as a commercial building.*
2. *A literal enforcement of the provisions of the Newton Zoning Ordinance would result in substantial hardship to the owner and the variance requested is the minimum change that is necessary to allow reasonable use of the building or land. A hardship exists in that the lot is smaller than the minimum lot size for single-family detached or two-family detached lots in the MR-1 zoning district and because the structure was built as a commercial building and does not lend itself to residential conversion.*
3. *The variance will be in harmony with the general purpose and intent of the Newton Zoning Ordinance and will not be detrimental to the neighborhood or the public welfare. The proposed commercial use of the property will not be significantly more intense than the existing commercial use; no physical alterations of the building or land will take place; the site has been used for commercial purposes since 1914; and the building is part of a cluster of small commercial businesses within immediate proximity of the site.*

Accordingly, a motion was made by William McLaughlin, duly seconded by Stuart Snyder, to grant the amendment to Zoning Board of Appeals Decision #18-92. The motion passed five in favor and none opposed. Therefore, the requested use variance is granted, which shall supersede the previous decision and conditions of Decision #18-92, subject to the following conditions:

1. Use of the site is limited to a real estate office.
2. The basement area will not be used for office space and will be used only for storage and bathroom facilities.
3. The parking area shall not be used for any purpose other than accessory to the approved use. Parking for no more than six (6) vehicles will be allowed on the enclosed paved area. No vehicles shall be parked in the parking area overnight between the hours of 10:00 p.m. and 7:00 a.m.
4. The building may be open to the public for business only from 8:00 a.m. to 7:00 p.m. on Monday through Friday; and from 9:00 a.m. to 5:00 p.m. on Saturday and Sunday.
5. No accessory signs or other advertising devices shall be placed or utilized on the property or within the building so as to be visible to the public outside the building, except for a single non-illuminated wall sign with the dimensions of no more than 16 square feet.
6. No security light of any kind shall shine directly or indirectly on abutters or the public way, and there shall be no internal lights illuminated from 10:00 p.m. to 7:00 a.m. The rear facing windows will be provided with blackout shades.
7. The fence along the rear and side property lines shall be maintained.
8. The petitioner shall landscape the property in accordance with a landscape plan approved by the Director of Planning and Development. Said landscape plan may generally reflect the current landscaping so long as the plan provides a buffer to adjoining residential dwellings and is consistent in appearance with the abutting residential uses to the extent possible. No occupancy certificate (temporary or final) for the use covered by this decision, or other similar certificate from the Department of Inspectional Services, shall be issued until such landscape plan has been approved by the Director of Planning and Development.
9. Landscaping, lawns and the exterior of the building shall be well maintained.
10. Air conditioners, fans, and any other mechanical and electrical devices producing noise external to the building shall have noise levels customarily accompanying a residential use on the site. All such devices, except heating during the cold weather, shall be shut off from 10:00 p.m. to 7:00 a.m. The noise produced by these devices shall comply with the City's Noise Control Ordinance (Newton Revised Ordinances, 2012, Sec. 20-13).

AYES: Brooke K. Lipsitt (Chairperson)  
Barbara Huggins Carboni  
Michael Rossi  
William McLaughlin  
Stuart Snyder

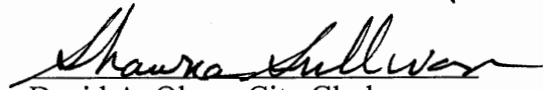
NAYS: None

  
Brooke Lipsitt, Chairperson

Copies of this decision and all plans referenced in this decision have been filed with the City Clerk.

The decision was filed with the City Clerk on March 12, 2019.

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.

  
~~David A. Olson, City Clerk~~  
acting