



Ruthanne Fuller  
Mayor

## CITY OF NEWTON, MASSACHUSETTS

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### ZONING BOARD OF APPEALS

Adrianna Henriquez, Board Clerk

#01-19

### DETAILED RECORD OF PROCEEDING AND DECISION

Petition #01-19, Donna and Marc Heimlich, 96 Hawthorne Avenue, Newton, Massachusetts, requesting a variance to increase the lot coverage to 21.75%, where 20% is the maximum allowed per Section 3.1.3 of the Newton Zoning Ordinance, in order to (1) construct a roof over the front porch and (2) further enlarge a proposed kitchen addition by 55 square feet. The subject property consists of a 6,905 square foot lot in a Single Residence 1 (SR-1) zoning district.

The Zoning Board of Appeals for the City of Newton (the "Board") held a public hearing on entitled Wednesday, February 27, 2019 at 7:00 p.m. in the Council Chambers, Room 207, Newton City Hall, 1000 Commonwealth Avenue, Newton, Massachusetts.

The following members of the Board were present:

Brooke K. Lipsitt, Chairperson  
Stuart Snyder  
Barbara Huggins Carboni  
William McLaughlin  
Michael Rossi

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2019 MAY 14 AM 10:20  
Brooke K. Lipsitt, Chair  
Newton, MA 02459

Due notice of the 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 February 13, and 20, 2019.

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, dated January 23, 2019;
2. Supplemental documentation from petitioners, submitted February 21, 2019;
3. Supplemental documentation from petitioners, submitted February 27, 2019;
4. Email from Kelly Robinson, 107 Hawthorne Avenue, submitted February 27, 2019.

### FACTS

The subject property is located at 96 Hawthorne Avenue, Newton and consists of a 6,905 square foot lot in a Single Residence 1 (SR-1) zoning district. The petitioners are planning to construct a one-

story side addition with a small front porch, a two-story rear addition and a detached garage. The petitioners are requesting a variance to increase the lot coverage to 21.75%, where 20% is the maximum allowed per Section 3.1.3 of the Newton Zoning Ordinance, in order to allow them to construct a roof over the proposed front porch and include an additional 55 square feet to their proposed rear addition.

Alan Mayer, Mayer and Associates, 1647 Beacon Street, Suite 1, Waban, spoke on behalf of the petitioners. Mr. Mayer gave a brief explanation of the variance requested and provided a history of the property. He explained that the lot was substandard and that the petitioners are seeking to maintain the design of the house and intend to decrease the size of the garage and add it to the square footage of the home. He noted that the petitioners currently have a building permit to demolish the existing front porch, one-story sun room at the rear of the home, and the detached garage; and that the building permit also includes construction of a two-story addition at the rear of the home, a one story addition to the side of the home with a new front stairway and landing. Mr. Mayer stated that the variance, if granted, would allow the petitioners to amend the plans to add a roof of the proposed porch and to add an extra 55 square feet to the proposed kitchen. He noted that a hardship exists because the petitioners need a house to fit a family of five. He expressed to the Board that the home is unique, that the petitioners are limited in the height as there is no attic, and the revised design of the house seeks to keep the roof low in accordance with the request of the Newton Historic Commission.

Christopher Barton, 98 Hawthorne Avenue, spoke in support of the petitioners. He stated that this project will not negatively affect him. There was no other public testimony.

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

### **FINDINGS AND DETERMINATION**

The Board addressed separately the two proposed building features for which the petitioners seek a variance, as each proposed feature would independently require a variance from the maximum lot coverage of 20%.

#### **Petition for Variance to Exceed Maximum Lot Coverage to Add 55 Square Feet to Proposed Addition.**

After a review and discussion of the merits of the petition, a motion was made by Stuart Snyder to grant this portion of the variance requested. Said motion was duly seconded by William McLaughlin. In total, three members of the Board voted in favor of the motion. Two members of the Board did not vote in favor of the motion, finding that there was no hardship because the addition could be built without the extra 55 square foot kitchen space sought and still allow for reasonable use of the property. As a result, in accordance with M.G.L. c. 40A, section 15, the motion failed to carry, three in favor, two opposed. Therefore, the portion of the variance petition to add a 55 square feet to the proposed addition is denied.

AYES:           Michael Rossi  
                     William McLaughlin  
                     Stuart Snyder

NAYS: Brooke Lipsitt (Chair)  
Barbara Huggins Carboni

**Petition for Variance to Exceed Maximum Lot Coverage to Add Roof Over Front Porch.**

After a review and discussion of the merits of the petition, a motion was made by Stuart Snyder to grant this portion of the variance requested. Said motion was duly seconded by William McLaughlin. The motion passed, four in favor and one opposed. Therefore, a variance to exceed the maximum lot coverage is granted for the purpose of constructing a roof over the proposed front porch addition, subject to the conditions set forth herein.

Findings

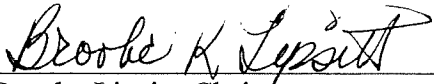
1. *There are special circumstances related to the soil conditions, shape or the topography of the land or structures which affect it but do not generally affect other properties in the zoning district in which it is located.* Due to the undersized lot, location of the home on the lot, and historic nature of the home, the site is unique, making proposed placement of the covered front porch the only logical and practical solution.
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 without the covered porch, it would pose a safety concern for the petitioners.
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 addition of a covered porch is a minor change that will not reduce open space and thus will not be detrimental to the neighborhood or the public welfare.

Conditions

1. The covered front porch shall be constructed in accordance with the plans and documents submitted with the petitioners' application.
2. This variance shall not take effect until a copy of the decision certified by the City Clerk that twenty days have elapsed since its filing and no appeal has been filed or with the City Clerk's certification that any appeal has been dismissed or denied has been recorded with the Middlesex Registry of Deeds.
3. This variance shall lapse if the rights hereunder granted have not been exercised within one year from the date the variance is filed with the City Clerk's office.

AYES: Barbara Huggins Carboni  
Michael Rossi  
William McLaughlin  
Stuart Snyder

NAYS: Brooke Lipsitt (Chair)

  
\_\_\_\_\_  
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 \_\_\_\_\_.

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