



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.ci.newton.ma.us

Ruthanne Fuller
Mayor

2019 AUG 28 AM 9:29

ZONING BOARD OF APPEALS

Adrianna Henriquez, Board Clerk

Handwritten notes and stamps

#04-19

DETAILED RECORD OF PROCEEDING AND DECISION

Petition #04-19 Herrick Road Realty Trust, 907 Massachusetts Avenue, Cambridge, Massachusetts, requesting a variance from the front yard setback requirement of the Newton Zoning Ordinance, Section 4.1.3, to construct a three-story, nine-unit residential building at 39 Herrick Road. The subject property is located in the Business 1 zoning district.

The Zoning Board of Appeals for the City of Newton (the "Board") held a public hearing on Wednesday, June 26, 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 June 12, 2019 and June 19, 2019.

The following members of the Board were present:

- William McLaughlin (Vice-Chair)
- Stuart Snyder
- Barbara Huggins Carboni
- Michael Rossi
- 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 plans, Zoning Review Memorandum and other supporting documents, dated June 3, 2019.

FACTS

The subject property is located at 39 Herrick Road and consists of a polygonal shaped 11,638 square foot lot. The property has only 27.55 feet of frontage on Herrick Road, where 80 feet is required. The property also abuts a public footway that was created pursuant to a taking by the City in 1951. The public footway, in turn, abuts MBTA land. The property is currently used for parking for the tenants and guests of the adjacent apartment building at 17-31 Herrick Road. The petitioner proposes to construct a three-story multi-family dwelling that will include nine residential units. The petitioner recently received a special permit from the City Council authorizing construction of the project (#564-18(2)). Because the property is located on a street and a public footway, the special permit authorizes

the required lot frontage to be measured along the public footway that runs along the southern lot line, which provides adequate frontage.

The petitioner requests a variance from the 10 foot front yard setback requirement set forth in Section 4.1.2 and 4.1.3 of the Newton Zoning Ordinance to allow the proposed building to be constructed within 10 feet of the southern lot line. Obtaining the requested variance is a condition of the current special permit.

The petitioner was represented by Terry Morris, 57 Elm Road, Newton. Attorney Morris explained that the proposed building is setback 20.9 feet from Herrick Road, which under normal circumstances would be where the frontage is established; however since the lot lacks the requisite 80 foot frontage on Herrick Road, the petitioner obtained special permit relief from the City Council to measure the frontage along the public footway. When such relief was granted, it meant that the front yard setback would then have to be measured from its southerly lot line, which runs adjacent to the footway. Petitioner argued that a literal application of the zoning ordinance would discount the tangible effect on the ground because the 10 foot wide public footway meets the intent of the ordinance and objective of the setback requirement by providing the spatial and visual relief sought, especially where the subject lot and adjacent footway abuts the large open expanse of the MBTA property.

Attorney Morris noted that this is the third time in ten years this petitioner has requested the same variance from the front setback requirement to allow the construction of a three-story structure directly abutting the footway. The required variance was granted in 2010 and again in 2015, but neither variance was exercised within the requisite time period.

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

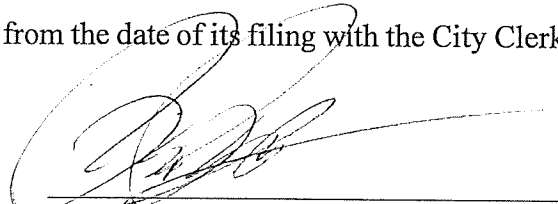
FINDINGS, DETERMINATION & CONDITIONS

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 lot is unique due to its irregular, polygonal shape, the existence of the public footpath and diminished frontage, which conditions affect only the subject property and no other lots in the area.
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 shape of the lot and steep gradient of the adjacent footpath and MBTA land severely complicate the siting and construction of the building, and the variance is the minimum change necessary to allow the reasonable use of the lot.
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.* No substantial detriment to the public will occur in that the departure from the Zoning Ordinance requirement would not change the character of the surrounding area. Granting the variance requested would not derogate from the spirit and intent of the Zoning Ordinance since the building has sufficient setback from Herrick Road and the land owned by the MBTA.

requested would not derogate from the spirit and intent of the Zoning Ordinance since the building has sufficient setback from Herrick Road and the land owned by the MBTA.

Accordingly, a motion was made by Michael Quinn, duly seconded by Michael Rossi, to approve the requested variance. The motion passed five in favor, zero opposed. Therefore, a variance of 10 feet from the front yard setback requirements is granted subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this Variance shall be located and constructed consistent with the plans submitted with Petitioner's application.
2. No building permit shall be issued pursuant to this Variance until the Petitioner has:
 - a. Recorded a certified copy of the Variance with the Registry of Deeds for the Southern District of Middlesex County; and
 - b. Filed a copy of such recorded Variance with the Clerk of the Zoning Board of Appeals, the Department of Inspectional Services, and the Department of Planning and Development.
3. This Variance must be exercised within one year from the date of its filing with the City Clerk or the variance lapses.



William McLaughlin, Vice-Chairperson

AYES: William McLaughlin (Vice-Chair)
 Barbara Huggins Carboni
 Michael Rossi
 Michael Quinn
 Stuart Snyder

NAYS: None

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