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ZONING BOARD OF APPEALS

Adrianna Henriquez, Board Clerk

#08-19

DETAILED RECORD OF PROCEEDING AND DECISION

Petition #08-19 Brendan and Betsy McSheffrey, 34 Morton Road, Newton, Massachusetts requesting a variance from sections 7.8.4.D.4 and 3.1.3 of the Newton Zoning Ordinance to waive the new (post-December 7, 1953) lot dimensional requirements so that the old lot dimensional requirements will apply. Specifically, the petitioners seek to waive the following new lot requirements: lot size, frontage, front and side setbacks, maximum lot coverage and minimum open space. The property consists of a 10,411 square foot lot with a single-family residence constructed in 1910 located in a Single-Residence 2 (SR-2) zoning district.

The Zoning Board of Appeals for the City of Newton (the "Board") held a public hearing on Tuesday, November 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 November 13, 2019 and November 20, 2019.

The following members of the Board were present:

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

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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 November 5, 2019.

FACTS

The subject property is located 34 Morton Road and consists of 10,411 square foot lot. The petitioner is requesting a variance from sections 7.8.4.D.4 and 3.1.3 of the Newton Zoning Ordinance to waive the new (post-December 7, 1953) lot dimensional requirements so that the old lot dimensional requirements will apply after the demolition of the existing single family home and construction of a new single-family home. Specifically, the petitioners seek to waive the following new lot

See Reference: B/L 39865 Pg. 483

Writen Copy
 Attached

 City Clerk of Newton, Mass.

requirements: lot size, frontage, front and side setback, maximum lot coverage and minimum open space.

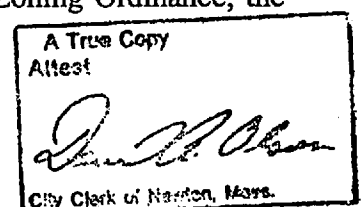
The Petitioners were represented by Laurance Lee of Rosenberg, Freedman and Lee, LLP, 246 Walnut Street, Suite 201, Newton, Massachusetts. Attorney Lee, who presented an overview of the petition to the Board. Attorney Lee explained that the property was subdivided in 2003 prior to the Petitioners' purchase of the property and that they were not aware of the subdivision at time of purchase. Attorney Lee noted that because of subdivision, the proposed substantial renovation will put the property under the jurisdiction of Section 7.8.4 of the Newton Zoning Ordinance. Section 7.8.4.D.4 states that if more than 50 percent of a single or two-family dwelling is demolished, and the size or shape of the lot was changed at any time after January 1, 1995, all of the dimensional requirements for a "new lot" (post December 7, 1953) apply to any subsequent construction, reconstruction, alteration or structural change. Attorney Lee explained that the variances are necessary because the property cannot meet the new lot dimensional requirements and that this petition seeks subject the property to old lot standards rather than new lot dimensional controls. Attorney Lee also noted that the project has already been approved by the Newton Historical Commission.

Architect, Michael McKay of 35 Bryant Street Dedham, Massachusetts spoke on behalf of his clients explaining the challenges of this type of construction. Attorney Lee further explained the seeking a variance is the only option available to the Petitioners because the home was constructed with concrete blocks, which severely limits the ability to renovate or modify the home.

A motion was made by Michael Quinn 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 existing single-family home located on the property was originally constructed, circa 1915, with reinforced concrete-block, making modification of the structure impossible.
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.* The property is currently subject to "old lot" dimensional requirements, but the proposed reconstruction of the home, when combined with the 2003 subdivision of the lot, will trigger the "new lot" dimensional requirements. This constitutes a hardship where the petitioners were not aware of the subdivision and where renovation that does not trigger the "new lot" requirements is impossible given the unique concrete-block construction of the existing home.
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 because the proposed home will still comply with all dimensional requirements for "old lots" under the Newton Zoning Ordinance, the



proposed home is not overly large in scale and is consistent with other homes in the neighborhood, and the project has been approved by the Newton Historical Commission. Accordingly, a motion made by Michael Quinn, duly seconded by Michael Rossi, to grant the following variances from the new lot dimensional requirements of Section 3.1.3 of the Newton Zoning Ordinance:

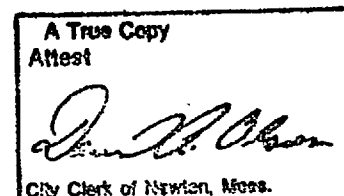
1. variance to have a 10,411 square feet lot, where 15,000 square feet is the minimum required;
2. variance to have 90.23 feet of frontage, where 100 feet is the minimum required;
3. variance to have a front setback of 25.1 feet, where 30 feet is the minimum required;
4. variance to have a side setback on the north lot line of 8 feet and on the south lot line of 12.6 feet, where 15 feet is the minimum required;
5. variance to have lot coverage of 29.5%, where 20% is the maximum allowed;
6. variance to have 59.4% open space, where 65% is the minimum required.

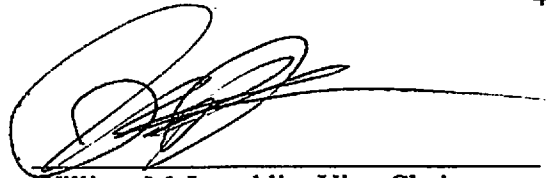
The motion passed five in favor and none opposed. Therefore, the above variances are granted, subject to the following conditions:

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 and documents submitted with Petitioners' 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.

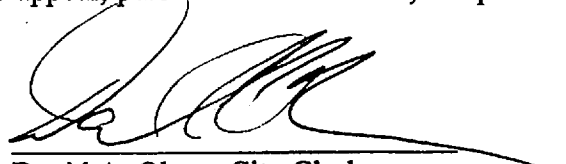
AYES: William McLaughlin (Vice-Chair)
Barbara Huggins Carboni
Michael Rossi
Michael Quinn
Stuart Snyder

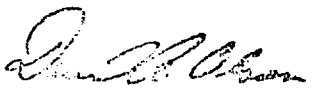
NAYS: None




William McLaughlin, Vice-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.


David A. Olson, City Clerk

A True Copy
Attest

City Clerk of Haverden, Mass.