



# CITY OF NEWTON, MASSACHUSETTS

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Ruthanne Fuller  
Mayor

## ZONING BOARD OF APPEALS

Adrianna Henriquez, Board Clerk

#07-19

### DETAILED RECORD OF PROCEEDING AND DECISION

Maureen Dowling, Trustee

Petition #07-19 M&D Family Trust, 73 Falmouth Road, Newton, Massachusetts requesting a variance from the rear setback requirement. The petitioner proposes to construct an addition resulting in a rear setback of 7.5 feet, where 15 feet is required pursuant to section 3.1.3 of the Newton Zoning Ordinance. The property consists of a 4,254 square foot corner lot with a single-family residence constructed in 1937 and a detached garage located in a Single-Residence 3 (SR-3) 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

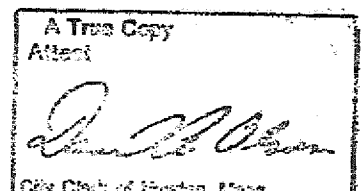
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The following documents were submitted to the Board and/or entered into the record at the public hearing:

1. Application for Variance, with accompanying plans, Zoning Review Memorandum and other supporting documents, dated November 1, 2019.

### FACTS

The subject property is located 73 Falmouth Road and consists of 4,254 square foot lot. The petitioner proposes to construct an addition of 681 square feet to expand the existing 1,621 square foot detached garage structure and attach it to the main dwelling to be used as an accessory apartment. The petitioner recently received a special permit from the City Council (#315-19) to allow the proposed project. The petitioner requests a variance from the 15 foot rear yard setback requirement set forth in Section 3.13.13 of the Newton Zoning Ordinance.



Property Address: 73 Falmouth Road, Newton

The petitioner was represented by Terrence P. Morris, Esq., 57 Elm Road, Newton, who gave an overview of the variance petitioner. Attorney Morris explained that in conjunction with the variance to allow the proposed addition, the petitioner filed for and received a special permit to exceed the allowable FAR. Attorney Morris noted that due to this lot being a corner lot, the property is subjected to different dimensional controls. He stated that the abutters are in support of the project.

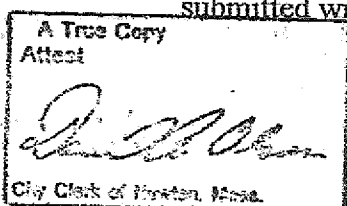
A motion was made by Michael Quinn to close the public hearing. This motion was duly seconded by Stuart Snyder. The motion passed five in favor, zero opposed.

### 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 subject property is corner lot, which impacts its rear lot setback, and it is the smallest lot on the block and the second smallest lot of the 125 lots shown on the neighborhood plan submitted by the petitioner.
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 use of the subject lot is constrained due to the unique setback requirements applicable to corner lots, which negatively impacts development options in comparison to typical properties in the area. While the zoning ordinance classifies this portion of the lot as a rear setback, the area acts more as a side setback in accordance with the houses to the west on the northern side of Falmouth Street. As a practical matter, the proposed addition will result in increasing the existing six foot setback of the existing garage.
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 will not change the character of the surrounding area as the addition is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood. Granting the variance requested would not derogate from the spirit and intent of the Zoning Ordinance. A special permit has been issued approving this project and the project represents a good example of utilizing the accessory apartment provisions of the zoning ordinance.

Accordingly, a motion was made by Barbara Huggins Carboni, duly seconded by Michael Quinn, to approve the requested variance. The motion passed five in favor, zero opposed. Therefore, a variance to have a rear yard setback of 7.5 feet, where 15 feet is required, 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.

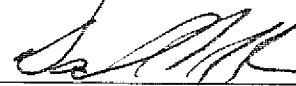
AYES: William McLaughlin (Vice-Chair)  
Barbara Huggins Carboni  
Michael Rossi  
Michael Quinn  
Stuart Snyder

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

