

THE COMMONWEALTH OF MASSACHUSETTS

4-N

Newton

BOARD OF ALDERMEN

December 14, 1990

NOTICE OF VARIANCE

Conditional or Limited Variance or Special Permit
(General Laws Chapter 40A, Section 1B as amended)

Notice is hereby given that a Conditional or Limited Variance or Special Permit has been granted

To John T. & Carol W. Curry
Owner or Petitioner

Address 410 Newtonville Ave.

City Newtonville, Massachusetts, on land known as Section 22, Block 5,

Lot 14, containing approximately 14,546 square feet of land.
Identify Land Affected

by the City of Newton Board of Aldermen affecting the rights of the owner with respect to the use of premises ~~xxx~~ for 3 residential units at

410 Newtonville Avenue Newton

the record title standing in the name of Carol W. Curry

whose address is 20 Oakland Avenue Newton Massachusetts 02166
Street City State

by a deed duly recorded in the Middlesex North County Registry of Deeds in Book 13864 Page 56 Registry District of the Land Court

Certificate No. Book Page

The decision of said Board is on file with the papers in Decision or Case No. 43-90

in the office of the City Clerk

Signed this 14 day of December 1990

Board of Aldermen

VERNE J. JONES JR. President
[Signature] Clerk
Board of Aldermen

19 at o'clock and minutes M.

Received and entered with the Register of Deeds in the County of

Book Page

ATTEST

Register of Deeds

Notice to be recorded by [Redacted] Land Owner.

MSD 12/14/90 03:18:50 670 13.00

#557.90

O.C.



City of Newton, Massachusetts

Founded 1630 Incorporated a City 1873

City Hall

1000 Commonwealth Avenue, Newton Centre 59

ZONING BOARD OF APPEALS

#43-90

Detailed Record of Proceeding and Decision

Petition of John and Carol Curry of 20 Oakland Street, Newton, MA.

For a variance from lot density requirement to convert a two-family dwelling to a three-family dwelling at 410 Newtonville Avenue, Newton, MA.

The Zoning Board of Appeals for the City of Newton held a public hearing on the above entitled proceeding on October 30, 1990, at 6:30 P.M. in the Aldermanic Chamber at City Hall, Newton, Massachusetts.

The following members of the Board were present:

- Anthony Summers, Acting Chairman
- Edna Travis
- John Kaitz
- Robert Brauneis
- Renee Chow

The petition was filed on August 15, 1990.

Due notice of the hearing was given by mail, postage prepaid, to all persons deemed to be affected thereby as shown on the most recent tax list and by publication in the News Tribune a newspaper of general circulation in Newton, Massachusetts.

Accompanying the petition were plans entitled "Plan of Land to Accompany the Petition of Carol W. Curry" dated April 3, 1989 by Apex Associates, Land Surveyors.

FACTS:

The petitioners were represented by Attorney Peter Harrington of 505 Waltham Street, Newton, MA.

The subject site is located at 410 Newtonville Avenue, Ward 2, Section 22, Block 5, Lot 14 containing approximately 14,546 square feet in a Multi-Residence 1 District.

1990 NOV 23 PM 1:36
CITY CLERK
NEWTON, MA 02459

The petitioner stated that the site was used as a residential dwelling for four families. The existing structure contains more than 3,755 Square feet of living space and has been assessed by the City of Newton as a five-family residential dwelling since 1963. The petitioner stated that at least four families have resided on the premises since 1945.

The petitioner stated that a Special Permit has been granted by the Board of Aldermen to convert to a 3-family dwelling subject to a variance being granted by the Zoning Board of Appeals for minimum lot area per unit. Section 30-15 requires a lot size of 15,000 sq. ft. and the petitioner's lot contains 14,547 sq. ft. or 463 sq. ft. below the requirement.

No one spoke in opposition.

FINDINGS AND DETERMINATION:

1. The site is unique due to its narrow configuration.
2. A hardship exists in that the site's existing Victorian character cannot be preserved if the site remains in a two-family use.
3. No substantial detriment to the public would occur since the three family would be in conformity with the neighborhood.
4. Granting the variance would not derogate from the spirit and intent of the Zoning Ordinance in that the departure from the Zoning Ordinance requirement would not change the character of the surrounding area.

The Board felt that the amount of the variance was de minimis and that preservation of the Victorian structure was of import. Accordingly, a motion was made by Mr. Kaitz and duly seconded by Ms. Travis to grant the petition which motion passed, five in favor and none opposed. Therefore, the variance is granted subject to the following conditions:

1. That this variance must be exercised within twelve months from the date of its filing with the City Clerk or the variance lapses.
2. That this variance must be recorded with the Middlesex Registry of Deeds within six months from the date of its filing with the City Clerk or the variance lapses.


Anthony Summers, Acting Chairman

AYES: Anthony Summers
Edna Travis
Renee Chow
John Kaitz
Robert Brauneis

Copies of this decision and all plans referred to in this decision have been filed with the Planning and Development Board and the City Clerk.

The decision was filed with the City Clerk on **NOVEMBER 23, 1990**

The City Clerk certified that all statutory requirements for the issuance of this VARIANCE 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 has been filed.


Edward English, City Clerk

I, Pam Hough, am the Clerk of the Zoning Board of Appeals and the Keeper of its records. This is a true copy of its decision.


Pam Hough

1990 NOV 23 PM 1:36
CITY CLERK
NEWTON, MA. 02159

PRESERVATION AGREEMENT

MSD 02/25/91 11:56:45 303 10.00

The parties to this agreement are the CITY OF NEWTON, by and through the NEWTON HISTORICAL COMMISSION, which has an office at Newton City Hall, Newton Centre, Massachusetts 02159, hereinafter referred to as the Commission, and Carol W. Curry, of 20 Oakland Avenue, Newton, Massachusetts, 02166, hereinafter referred to as the Grantor.

For good and valuable consideration, the Grantor grants to the City of Newton in perpetuity the following preservation restriction which shall affect those premises known as 410 Newtonville Avenue, Newton and described in a certain deed to the Grantor, recorded with the Middlesex South District Registry of Deeds in Book 13864, Page 56 (the "Premises").

These preservation restrictions are set forth so as to ensure the preservation of the historic integrity of the Premises and the architectural features and details of the building located thereon. The key features of the building are that it is of Italianate Style with Queen Anne additions, including a turret and porch.

MARGINAL REFERENCE REQUESTED
BOOK 13864 PAGE 56

PRESERVATION RESTRICTIONS

1. Maintenance of Premises: The Grantor agrees to assume the total cost of, and to undertake, continued maintenance and repair of the Premises so as to preserve the historic integrity of the Premises and the architectural features, details, materials and workmanship of the building located thereon for a period in perpetuity from the date of execution of this instrument in a manner satisfactory to the Commission. Nothing herein shall prohibit the Grantor from seeking financial

assistance to carry out these obligations from any sources available to her.

2. Inspection: The Grantor agrees that the Commission may inspect the Premises from time to time to ensure that the Grantor is in compliance with her obligations to maintain and repair the Premises in a reasonable manner.

3. Alteration: The Grantor agrees that no exterior alterations shall be made to the Premises or to the building located thereon which would destroy the historic or architectural integrity thereof. The Grantor further agrees that the only exterior alterations which may be made to the Premises and to the building located thereon are those which are (i) consistent with the architectural style and character of the building currently located on the Premises; and (ii) approved in writing by the Commission and any other governmental body having jurisdiction over the matter.

4. No Public Easement: Notwithstanding anything contained herein to the contrary, it is not intended by the Grantor to convey or otherwise establish, for the benefit of any person, commission, association or corporation, any easement of access to enter the Premises other than as may be reasonably required by the Grantee, its agents or assigns, to inspect the Premises, enforce the foregoing preservation restrictions and remedy any violations thereof.

5. Other Provisions: The burden of these preservation restrictions, enumerated in paragraphs 1 through 5 inclusive, shall run with the land and be binding upon future owners of any interest therein. The right of enforcement of these restrictions shall be as provided in Massachusetts General Laws, Chapter 184, Section 32 as it may be amended from time to time.

It is further agreed that the Commission in no way assumes any obligation for maintaining, repairing, or administering the Premises.

This Preservation Agreement shall be recorded with Middlesex South District Registry of Deeds and filed with the Public Restriction Tract Index for the City of Newton.

IN WITNESS WHEREOF, the Grantor has hereunto set her hand and seal this 31st day of January ~~21~~, 1991.

by Carol W. Curry
Carol W. Curry

WITNESS the hand and seal of the Newton Historical Commission by its duly authorized Chairman, Barbara Thibault, this 8 day of February, 1991. Subscribed and sworn to before me

this 8 day of Feb. 1991
Barbara Thibault
Barbara Thibault, Chairman
Newton Historical Commission
Jessie M. Tomlin
Notary Public
My Commission Expires May 20, 1994

WITNESS the hand and seal of the Massachusetts Historical Commission by Judith McDonough, Executive Director and Secretary this 14th day of February, 1991.

Judith B. McDonough
Judith McDonough
Executive Director and Secretary
Massachusetts Historical Commission

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

January 31, 1991

Then personally appeared the above named Carol W. Curry and acknowledged the foregoing instrument to be her free act and deed, before me.

Peter F. Harrington
Peter F. Harrington
Notary Public
My commission expires: 10-17-91

~~COMMONWEALTH OF MASSACHUSETTS~~

~~MIDDLESEX, SS.~~

~~February __, 1991~~

~~Then personally appeared the above named Barbara Thibault, Chairman of the Newton Historical Commission and acknowledged the foregoing instrument to be her free act and deed, before me.~~

~~Notary Public
My commission expires: _____~~

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

February 14, 1991

Then personally appeared the above named Judith McDonough, Executive Director and Secretary of Massachusetts Historical Commission and acknowledged the foregoing instrument to be her free act and deed, before me.

Elsa W. Fitzgerald

Notary Public
My commission expires: 10/18/96

THE COMMONWEALTH OF MASSACHUSETTS
NEWTON
CITY

BOARD OF ALDERMEN

June 9, 1990

NOTICE OF VARIANCE

Conditional or Limited Variance or Special Permit

(General Laws Chapter 40A, Section 18, as amended)

/SITE PLAN APPROVAL

Notice is hereby given that a ~~Conditional or Limited Variance or Special Permit~~ has been granted

To John T. & Carol W. Curry
Owner or Petitioner

Address 410 Newtonville Avenue

City Newtonville, Massachusetts, on land known as Section 22, Block 5,
Lot 14, containing approximately 14,546 square feet of land.

Identify Land Affected

by the City of Newton Board of Aldermen affecting the
rights of the owner with respect to the use of premises for 3 residential units at

410 Newtonville Avenue Newton
Street City

the record title standing in the name of
John T. & Carol W. Curry

whose address is 20 Oakland Avenue Newton Massachusetts 02166
Street City State

by a deed duly recorded in the Middlesex No. County Registry of Deeds in Book
13864 Page 55 Registry District of the Land Court

Certificate No. Book Page

The decision of said Board is on file with the papers in Decision or Case No. 608-89
Dated June 18, 1990

in the office of the City Clerk of Newton

Signed this 9th day of June 1990

Board of Aldermen
Verne W. Vance, Jr. President
Delores Alvin Clerk
Board of Aldermen
Delores Alvin, Acting Clerk of the Board

19 at o'clock and minutes M.

Received and entered with the Register of Deeds in the County of

Book Page

ATTEST

Register of Deeds

Notice to be recorded by Land Owner.

MSD 07/10/99 03:17:14 546 12.00

CITY OF NEWTON
IN BOARD OF ALDERMEN

June 18, 1990

ORDERED:

That the Board finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, the following SPECIAL PERMIT/SITE PLAN APPROVAL is hereby granted in accordance with the recommendation of the Land Use Committee and based upon the following specific findings, facts and conclusions, and the reasons given by the Committee therefor through its Chairman, Susan M. Basham:

Petition number: 608-89

Petitioner: John T. and Carol W. Curry

Location: 410 Newtonville Avenue

Owner: John T. and Carol W. Curry

Address of Owner: 20 Oakland Avenue
Auburndale, MA 02166

To be used for: 3 residential units

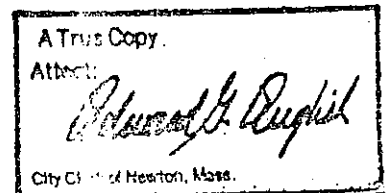
Construction: Wood frame

Explanatory note: Section 30-24 allows the Board of Aldermen to grant a SPECIAL PERMIT to convert a structure in existence on May 7, 1979 to occupancy by more than two families.

Land referred to is in: Multi Residence 1 District

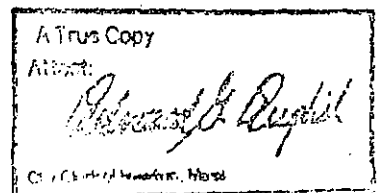
Approved, subject to the following conditions:

1. That, except as amended below, the building, parking stalls, driveways, maneuvering aisles, landscaping and other site features be constructed and located as indicated on plans entitled "C-1 Plan of proposed

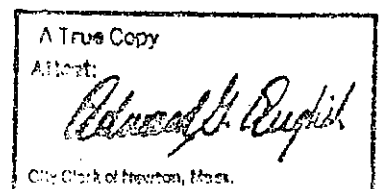


landscaping and parking dated August 8, 1986 and revised to September 7, 1989; C-2 Plans of proposed alterations to existing Curry apartment building for 410 Newtonville Avenue dated August 4, 1986 revised to January 13, 1988" by Dooling Architects, Inc., submitted by the petitioner.

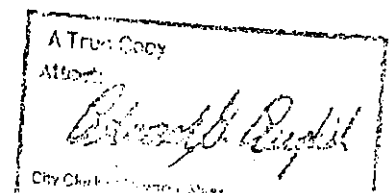
2. That the front porch be repaired and all materials and profiles match the existing ones.
3. That the anti-pigeon screening be removed and replaced with less visible "Nix-O-Lite" or a similar product.
4. That a preservation restriction be executed with the Newton Historical Commission and be recorded at the Registry of Deeds as specified in Condition 11, g through h.
5. That a shed or fenced common area for trash be constructed with the location, design and landscape screening to be reviewed and approved by the Director of Planning and Development.
6. That if at anytime after the date of this Special Permit the utility service(s) is changed, upgraded or a new service is installed, all utilities will be installed underground from the street line at that time.
7. That the basement not be used for residential purposes except storage.
8. That the Petitioner receive a variance from the Newton Zoning board of Appeals for lot area.
9. That no parking be permitted in the required front setback other than as permitted by this special permit.
10. That the building and property shall be maintained in good condition.
11. That no building permit shall be issued in pursuance of the SPECIAL PERMIT/SITE PLAN APPROVAL until:
 - a. The Director of Planning and Development shall have reviewed and approved plans for the location of the parking area and driveway and trash enclosure location and materials, and a statement certifying such approval shall have been filed with the City Clerk and Inspectional Services Department.



- b. A final landscape plan including lighting and fixture design indicating the location, number, size and type of landscaping and landscape materials to be installed, including a 3' high evergreen screen along the driveway and parking area and a fence at the property edges, shall have been submitted to and approved by the Director of Planning and Development and a statement certifying such approval shall have been filed with the City Clerk and the Inspectional Services Department.
- c. Condition 4 has been complied with and a statement by the Newton Historical Commission certifying such compliance shall have been filed with the City Clerk and the Inspectional Services Department.
- d. The Newton Historical Commission shall have reviewed and approved architectural plans including the facade, porch and roof materials and colors of the building and a statement certifying such approval shall have been filed with the City Clerk and the Inspectional Services Department.
- e. The City Engineer shall have reviewed and approved the plans for site grading and storm and sewer drainage, sidewalk improvements to meet City standards as determined by the City Engineer, water service, and a statement by the City Engineer certifying such approval shall have been filed with the City Clerk, the Inspectional Services Department, and the Department of Planning and Development.
- f. The Fire Department shall review and approve the stamped Site Plan as to consistency of emergency access and a statement by the Fire Chief certifying such approval shall have been filed with the City Clerk, the Inspectional Services Department and the Department of Planning and Development.
- g. The Petitioner shall have recorded with the Registry of Deeds for the Southern District of Middlesex County a certified copies of this Board Order granting this SPECIAL PERMIT/SITE PLAN APPROVAL and Preservation Restriction in Condition 4 with appropriate reference to the book and page of the recording of the Petitioner's title deed.
- h. Certified copies of such recorded notices shall have been filed with the City Clerk, the Inspectional Services Department and the Department of Planning and Development.



12. That no building or structure or portion thereof subject to this SPECIAL PERMIT/SITE PLAN APPROVAL shall be occupied until:
- a. The Petitioner shall have filed with the City Clerk, the Inspectional Services Department and the Department of Planning and Development a statement by a registered architect or registered engineer certifying that Condition 1 has been complied with.
 - b. There shall have been filed with the City Clerk, the Inspectional Services Department and the Department of Planning and Development a statement by the City Engineer certifying that the finished grades and final construction details of the driveways, parking areas, drainage systems, sidewalks, and utility installations have been constructed to the standards of the City of Newton Engineering Department.
 - c. There shall have been filed with the City Clerk and the Inspectional Services Department a statement by the Director of Planning and Development approving the final location, number and type of plant materials, final landscape features, parking areas, fences, and lighting installation, and certifying that conditions 2-5 have been complied with.
 - d. There shall have been filed with the City Clerk and the Inspectional Services Department a statement by the Chairman of the Newton Historical Commission that conditions 2-4 have been complied with.
 - e. Notwithstanding the provisions of Sections a-c, hereof, the Commissioner of Inspectional Services may issue one or more certificates for temporary occupancy of all or portions of the buildings prior to installation of final landscaping provided that the Petitioner shall have first filed with the Director of Planning and Development a bond, letter of credit, cash or other security in a form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.
 - f. A statement by the Inspectional Services Department that it intends to issue the Certificate of Occupancy which documents the compliance of the building with the State of Massachusetts Building Code, including any permits issued by said Department, and that the premises are suitable for occupancy shall have been filed with the City Clerk and the Department of Planning and Development.

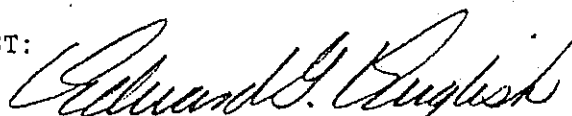


- g. A statement shall be filed by the Chairman of the Newton Community Development Authority with the Inspectional Services Department that the Petitioner has conveyed a cash contribution to the Authority's subsidized housing fund (a.k.a. 10% Account) Section 30-24(d)(5)(f) of the Zoning Ordinance. Said cash contribution shall be determined by the following formula: Average sales price of the three (3) units x .15 x .125 (as determined by signed Purchase and Sales agreements).
- h. A statement by the Director of the Newton Housing Authority that there has been full compliance with the low-income requirement of Section 30-24(d)(5) of the Zoning Ordinance shall have been filed with the City Clerk and the Department of Planning and Development.

Under Suspension of Rules
 Readings Waived and Approved
 16 yeas 5 nays (Ald. Baker,
 Bauckman, Bryson, Kraus and
 Robinson) 3 absent (Ald. Balser,
 Bullwinkle and Creem)

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT and SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on June 18, 1990. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT and SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the Planning and Development Board and the City Clerk.

ATTEST:



(SGD) EDWARD G. ENGLISH, City Clerk
 Clerk of the Board of Aldermen

I, Edward G. English as the Clerk of the Board of Aldermen and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON hereby certifies that Twenty days have elapsed since the filing of the foregoing decision of the Board of Aldermen in the Office of the City Clerk on June 18, 1990 and that NO APPEAL to said decision pursuant to M.G.Laws Chapter 40, Section 17 has been filed thereto.

ATTEST

Edward G. English
~~EDWARD G. ENGLISH, City Clerk~~
 acting

