



Setti D. Warren
Mayor

CITY OF NEWTON, MASSACHUSETTS

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ZONING BOARD OF APPEALS

Sherri A. Lougee, Board Clerk

#2-10

Detailed Record of Proceeding and Decision

Petition of Herrick Road Realty Trust, c/o First Cambridge Realty, Inc., 907 Massachusetts Avenue, Cambridge, MA.

For a variance from the front yard setback requirement of the Newton Revised Zoning Ordinances to erect a three-story, mixed-use building on a lot that is currently being used for parking and abuts the MBTA Green Line. The proposed use consists of first floor commercial space with four multi-family dwelling units above on the second and third floors and 20-car parking garage below.

The Zoning Board of Appeals for the City of Newton held a public hearing on the above entitled proceeding on Tuesday, February 23, 2010 at 7:00 p.m. in the Aldermanic Chambers at City Hall, Newton, Massachusetts.

The following members of the Board were present:

- Brooke K. Lipsitt, Vice Chairman
- Joseph G. Cosgrove
- James H. Mitchell
- Thomas J. Phillips
- Jonathan S. Sales



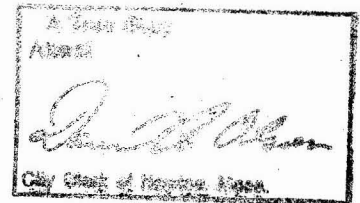
2010 00124764
Bk: 55066 Pg: 62 Doc: DECIS
Page: 1 of 3 07/29/2010 09:21 AM

The petition was filed on January 22, 2010.

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 Newton Tab, a newspaper of general circulation in Newton, Massachusetts, on February 3 and 10, 2010.

Accompanying the petition were plans titled "Topographic Site Plan Showing Existing Conditions at Herrick Road" dated March 28, 2002; "Topographic Site Plan Showing Proposed Conditions at Herrick Road" dated November 12, 2008 revised to December 8, 2009; "Area Plan of Land Newton, Massachusetts at Herrick Road" dated November 4, 2008, all by Joseph R. Porter, Land Surveyor, VTP Associates, Inc., 132 Adams Street, 2nd Floor Suite 3, Newton, MA; and elevations titled, "Herrick Road Residences - Building Front & Rear Elevations - A4" and floor plans titled "Herrick Road Residences, A2", dated 06-14-08 with revisions to 10-27-09, by Khalsa Design, Inc., Architect, 17 Ivaloo Street, Somerville, MA.

BK 2698
PG 377



39 Herrick Road, Newton

FACTS:

The petitioner was represented by Attorney Terrence Morris, 57 Elm Road, Newton, MA.

The subject site is located at 31 Herrick Road, Newton Centre, MA, Ward 6, Section 65, Block 19, Lot 22 containing approximately 12,780 square feet of lot area in a Business 1 District.

Petitioner requests a 10' variance from the 10' front yard setback requirement set forth in the dimensional controls in *Section 30-15, Table 3* of the Newton Rev. Ordinances, resulting in a setback of 0' (zero) feet. The locus is burdened by a 10' wide easement taken by the city in 1951 for use as a public footway. That footway runs along the southern lot line shared with the MBTA land. Plans submitted to the Board of Aldermen site the building along the edge of the public footpath.

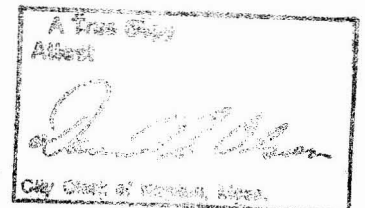
Petitioner explained that the proposed building is set back 20.9 feet from Herrick Road, which under normal circumstances would be where the frontage is established. However, since the lot lacks the requisite 80' frontage on Herrick Road, the petitioner obtained special permit relief from the Board of Aldermen 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 that southerly lot line. Petitioner argued that a literal application of the zoning ordinance would discount the tangible effect on the ground, i.e., that the 10' wide public footway meets the intent of the ordinance and objective of the setback requirement by providing the spatial and visual relief sought. This is especially true when one considers that the subject lot abuts the large open expanse of the MBTA property.

Petitioner stated that the unique circumstances of the site create a substantial hardship, financial and otherwise, for anyone seeking to make economic use of the land. Due to its irregular, polygonal shape and the existence of the public footpath easement it is the only lot in the subject block with diminished frontage. Both the shape of the lot and steep gradient of the adjacent MBTA land severely complicate the siting and construction of the building and layout of the subsurface parking thereby contributing to inordinate development costs.

No one spoke in opposition.

FINDINGS AND DETERMINATION:

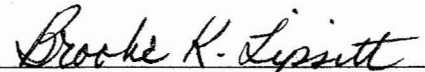
1. The site is unique due to its irregular, polygonal shape, the existence of the public footpath easement and diminished frontage, all of which conditions affect only the subject property and not other lots in the area.
2. A hardship exists in that the shape of the lot and steep gradient of the adjacent MBTA land severely complicate the siting and construction of the building.
3. No substantial detriment to the public would occur in that the departure from the Zoning Ordinance requirement would not change the character of the surrounding area.



4. Granting the variance would not derogate from the spirit and intent of the Zoning Ordinance since the building has sufficient setback from Herrick Road and the nearest abutting land owned by the MBTA.
5. The existence of the 10' wide public footpath serves as a necessary visual and spatial buffer and accomplishes the objective of a setback requirement.

Accordingly, a motion was made by Mr. Cosgrove and duly seconded by Mr. Mitchell to grant the petition, which motion passed, five in favor and none opposed. Therefore, a variance of 10 feet from the front yard setback requirements of the Newton Rev. Zoning Ordinances, Section 30-15, Table 3 is granted subject to the following conditions:

1. That the building be constructed in accordance with plans submitted with petitioner's application.
2. That this variance must be recorded with the Middlesex Registry of Deeds within one year from the date of its filing with the City Clerk or the variance lapses.
3. That this variance must be exercised within one year from the date of its filing with the City Clerk or the variance lapses.

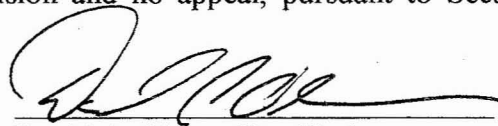

Brooke K. Lipsitt, Vice Chairman

AYES: Brooke K. Lipsitt, Vice Chairman
Joseph G. Cosgrove
James H. Mitchell
Thomas J. Phillips
Jonathan S. Sales

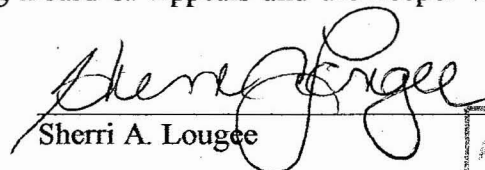
Copies of this decision and all plans referred to in this decision have been filed with the Planning and Development Board and the City Clerk.

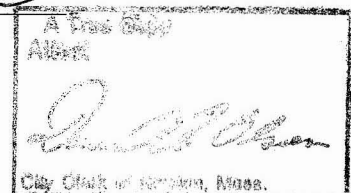
This decision was filed with the City Clerk on *April 14, 2010*.

The City Clerk certified that all statutory requirements have been complied with and that 20 days have elapsed since the date of filing of this decision and no appeal, pursuant to Section 17 of Chapter 40A has been filed.


David A. Olson, City Clerk

I, Sherri A. Lougee, am the Clerk of the Zoning Board of Appeals and the keeper of its records. This is a true copy of its decision.


Sherri A. Lougee



Middlesex South Registry of Deeds
Electronically Recorded Document

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Recording Fee	: \$75.00

Middlesex South Registry of Deeds
Maria C. Curtatone, Register
208 Cambridge Street
Cambridge, MA 02141
617-679-6300
www.cambridgedeeds.com



Setti D. Warren
Mayor

CITY OF NEWTON, MASSACHUSETTS ⁸⁰⁻¹⁷

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2015 NOV 13 PM 3:13
#10-15

ZONING BOARD OF APPEALS

Detailed Record of Proceeding and Decision

Petition # 10-15 of Herrick Road Realty Trust, c/o First Cambridge Realty, Inc., 907 Massachusetts Avenue, Cambridge, Mass. 02138 applying for a variance from the front yard setback requirement of the Newton Revised Zoning Ordinances to erect a three-story, mixed-use building at 31 Herrick Road. The proposed use consists of first-floor commercial space with four dwelling units above on the second and third floors and a 20-car parking garage below.

The Zoning Board of Appeals held a public hearing on the above entitled proceeding on Thursday, September 29, 2015 at 7:00 p.m., continued to October 27, 2015 in the Aldermanic Chambers at City Hall, Newton, Massachusetts.

The following members of the Board were present:

- Brooke K. Lipsitt, Chairman
- Treff LaFleche
- Vincent Farina
- Harvey A. Creem
- Barbara Huggins

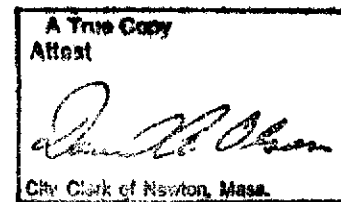
The petition was filed on August 24, 2015.

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 Newton TAB, a newspaper of general circulation in Newton, Massachusetts, on September 4 and 11, 2015.

Accompanying the petition were plans entitled:

1. "Grade Change Plan Showing Proposed Conditions at Herrick Road" dated November 12, 2008, by Joseph R. Porter, Land Surveyor, VTP Associates, Inc., 132 Adams Street, Newton, MA; and,
2. Architectural Plan Set titled, "Herrick Road Residences – consisting of the following sheets: Rendering – A-01; Landscape Plan – L-1; Garage and 1st Floor Plans – A-2; Building Front & Rear Elevations – A-4; Building Side Elevation - A-5; Site Section A-6, dated 6-14-08, by Khalsa Design, Inc., Architect, 17 Ivaloo Street, Somerville, MA .

Property Address: 39 (aka 31) Herrick Road, Newton



FACTS:

Attorney Terrence P. Morris, 57 Elm Road, Newton, represented the Petitioner. He explained that the site is located at 31 Herrick Road, Ward 6, Section 65, Block 19, Lot 22, containing approximately 12,780 square feet of lot area in a Business 1 District.

This matter first came before the Zoning Board of Appeals and the Board of Aldermen for a variance and special permit respectively, in 2010. The Petitioner failed to exercise the permits granted within the requisite time period causing the special permit and variance to lapse. The Petitioner has reapplied and been granted a special permit from the Board of Aldermen to construct the mixed use project. Obtaining the requested variance is a condition of the special permit.

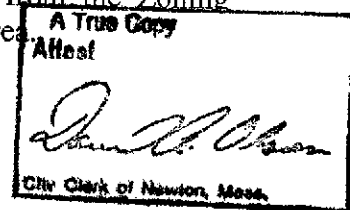
The locus is burdened by a ten-foot wide easement taken by the city in 1951 for use as a public footway. That footway runs along the southern lot line shared with the MBTA. The petition requests a ten foot variance from the ten-foot front yard setback requirement set forth in the dimensional controls in *Section 30-15, Table 3* of the Newton Revised Zoning Ordinances, resulting in a setback of 0' (zero) feet. Plans submitted to the Board of Aldermen show the building located along the edge of the public footway.

Mr. Morris explained that the proposed building is set back 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 Board of Aldermen 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 that southerly lot line. Petitioner argued that a literal application of the zoning ordinance would discount the tangible effect on the ground, i.e., that the 10-foot wide public footpath meets the intent of the ordinance and objective of the setback requirement by providing the spatial and visual relief sought. This is especially true when one considers that the subject lot abuts the large open expanse of the MBTA property.

Simon French, 47 Glen Avenue, expressed his concerns regarding the landscaping and lighting of the public footpath.

FINDINGS AND DETERMINATION:

1. The site is unique due to its irregular, polygonal shape, the existence of the public footpath easement and diminished frontage, which conditions affect only the subject property and not other lots in the area.
2. A hardship exists in that the shape of the lot and steep gradient of the adjacent MBTA land severely complicate the siting and construction of the building.
3. 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.



- 4. 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 nearest abutting land owned by the MBTA.

Accordingly, a motion was made by Treff LaFleche and seconded by Barbara Huggins to grant a ten foot front setback on the condition that the decision filed with the City Clerk is also submitted by the Petitioner to the City of Newton Assessors' Office so that the Assessors' Office will have the correct information regarding the lot size. Therefore, a variance of 10 feet from the front yard setback requirements of the Newton Revised Zoning Ordinances, Sec. 30-15, Table 3 is granted subject to the following conditions:

- 1. That the building be constructed in accordance with plans submitted with Petitioner's application.
- 2. That the Petitioner submits the variance to the Assessors' Office so that the Assessors' records may accurately reflect the lot size as shown on the Petitioner's plans.
- 3. That this variance must be recorded with the Middlesex Registry of Deeds within one year from the date of its filing with the City Clerk or the variance lapses.
- 4. That this variance must be exercised within one year from the date of its filing with the City Clerk or the variance lapses.

Brooke K. Lipsitt

 Brooke K. Lipsitt, Chairman

November 13, 2015

AYES: Brooke K. Lipsitt
 Treff LaFleche
 Vincent Farina
 Harvey A. Creem
 Barbara Huggins

NAYS: None


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.

This decision was filed with the City Clerk on *November 13, 2015*

The City Clerk certified that all statutory requirements have been complied with and that 20 days have elapsed since the date of filing of this decision and no appeal, pursuant to Section 17 of Chapter 40A has been filed.


A True Copy
 Attest
John W. Olson


 City Clerk of Newton, Mass.



David A. Olson, City Clerk

I, _____, am the Clerk of the Zoning Board of Appeals and the keeper of its records. This is a true copy of its decision.



A True Copy
Affixed

City Clerk of Nantux, Mass.