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# CITY OF NEWTON, MASSACHUSETTS

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Setti D. Warren  
Mayor

## ZONING BOARD OF APPEALS

Diane Vezeau, Board Clerk

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David A. Olson, City Clerk  
Newton, MA 02459

### Detailed Record of Proceeding and Decision

Neal Kenslea and Kathleen Kenslea, of 20 Kingston Road, Newton, Massachusetts, 02461 for the subject property, 20 Kingston Road, Newton, Massachusetts, requesting a variance from Section 30-15, Table 1 of the Newton Zoning Ordinances, which establishes a maximum of 2.5 stories for single dwelling units, to allow a two-story addition at the rear of the home, resulting in 3.5 stories. The property is located in a Single Residence 2 District.


53148-242

The Zoning Board of Appeals for the City of Newton held a public hearing on the above entitled proceeding on Tuesday, February 24, 2015 at 7:00 pm in the Aldermanic Chambers at City Hall, Newton, Massachusetts.

owner: Kathleen R Kenslea TR  
Neal P Kenslea TR  
20 Kingston Road Realty Trust

The following Board Members were present:

- Brooke K. Lipsitt (Chairman)
- William M. McLaughlin
- Barbara Huggins
- Michael Quinn
- Michael Rossi



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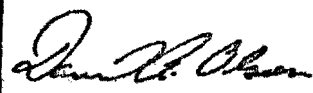
The Petition was filed on December 5, 2014.

This matter was originally scheduled to be heard on January 27, 2015 but was cancelled and rescheduled due to the impending snow emergency. 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 November 5 and 12, 2014. Notice was given on the City of Newton website on January 26, 2015 to cancel the January 27, 2015 meeting due to the impending snow emergency, and notice was additionally posted at "please post" with the City of Newton to provide notice of the rescheduled hearing date of February 24, 2015.

Accompanying the request for Variance were the following exhibits:

1. Building Permit Refusal Form, dated November 19, 2014;
2. Petition Letter, signed November 19, 2014;
3. Photo Record, five (5) pages;
4. Ram and Shuba Srinivasan, 16 Kingston Road, Newton, MA, 02461; Letter of Support, dated November 10, 2014;

Kathleen Kenslea  
20 Kingston Rd  
Newton, MA 02461

A True Copy  
Attest  
  
City Clerk of Newton, Mass.

5. Martin and Julie Kay, 26 Kingston Road, Newton, MA, 02461; Letter of Support, dated November 10, 2014;
6. Plan of Land – Middlesex Registry of Deeds, South District, dated, May 27, 1926;
7. Plan of Land Survey – Proposed Alterations, Everett M. Brooks Co., dated October 14, 2014;
8. Plan of Land – Proposed Additions, Everett M. Brooks Co., dated October 14, 2014;
9. Construction Document – North Elevation, Austin Design, Inc., dated July 24, 2014;
10. Construction Document 1.1 – Notes and Schedules, Austin Design, Inc., dated August 13, 2014;
11. Construction Document 2.1 – Site, Austin Design, Inc., dated August 13, 2014;
12. Construction Document 3.0 – Foundation Plan, Austin Design, Inc., dated August 13, 2014;
13. Construction Document 3.1 - Basement Plans, Austin Design, Inc., dated August 13, 2014;
13. Construction Document 3.2 - 1<sup>st</sup> Floor Plans, Austin Design, Inc., dated August 13, 2014;
14. Construction Document 3.3 – 2<sup>nd</sup> & 3<sup>rd</sup> Floor Plans, Austin Design, Inc., dated August 13, 2014;
15. Construction Document 4.1 – North Exterior Elevation, Austin Design, Inc., dated August 13, 2014;
16. Construction Document 4.2 – East Exterior Elevation, Austin Design, Inc., dated August 13, 2014;
17. Construction Document 4.3 – South Exterior Elevation, Austin Design, Inc., dated August 13, 2014;
18. Construction Document 5.1 – Building Sections, Austin Design, Inc., dated August 13, 2014; and
19. Construction Document 6.1 – Basement & 1<sup>st</sup> Floor Framing Plans, Austin Design, Inc., dated August 13, 2014.

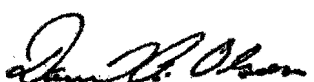
**FACTS:**

The subject site is located at 20 Kingston Road, Newton, in a Single Residence 2 District.

The petitioners were represented by Neal Kenslea, the owner of the property.

The petitioners reside in a single family home and are requesting a variance from the maximum 2.5 stories permitted as of right in Section 30-15 Table 1 of the Zoning Ordinance to allow 3.5 stories. Mr. Kenslea stated that the petitioners seek to construct a modest addition consisting of two stories and a bump-out behind their kitchen in order to create a kitchen/family room and a finished area on the lower level. Mr. Kenslea stated that this addition will be undetectable from the street.

The petitioners stated that the existing house has 2.5 stories and a building height of 34.9 feet, but because the house is constructed on a lot that slopes steeply from the front to the rear, more than one-half of the distance between the floor of the proposed basement level addition and the ceiling next above it will be above the average grade plane adjacent to the building. The basement level addition therefore is not a “basement” as defined in Section 30-1 of the Zoning Ordinance but rather is considered a “story” as defined in Section 30-1, according to the petitioners. Without the steeply sloping grade, the basement level addition would not be a “story” for purposes of the Zoning Ordinance and the number of stories would fall within the zoning requirements. After the addition, the house will be considered to have 3.5 stories and a building height of 35.9 feet,

According to the  
Attest  
  
City Clerk of Newton, Mass.

petitioners.

**Substantial Hardship:**

The petitioners state that a hardship exists as a result of both the exceedingly steep slope of the topography and the unstable soil conditions, which affect the property but which do not affect generally the zoning district in which the property is located.

**No Substantial Detriment:**

The petitioners state that granting the requested variance would not nullify or derogate from the intent of the Zoning Ordinance. There will be no physical change to the number of stories or the height of the house at street level. The addition will not be visible from the front of the house. The addition is modest in keeping with similar additions in the neighborhood, and is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood, according to the petitioners.

The petitioners state that the neighborhood consists of Tudor and colonial homes similar in character and scale to the existing house.

Tom Chalmers, of Austin Design, Inc., 16 Call Road, Colrain, Mass., designer for the project stated that the project will increase the gross floor area, and that the basement will now be considered a "story".

John Conroy of 10 Kingston Road, Newton spoke in favor of the project and stated that he represented other neighbors who also supported the proposed variance.

No one spoke in opposition to the petition.

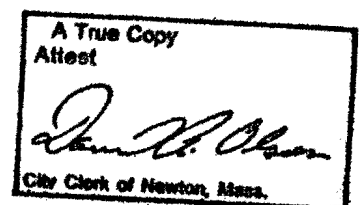
**ADDITIONAL CONSIDERATIONS:**

Petitioners are aware that if this variance is granted they will also require a Special Permit to proceed with their plans. Mr. Kenslea noted that the petitioners were advised by the Planning and Development Department to seek a variance prior to seeking the Special Permit.

William McLaughlin made a motion to close the hearing, which motion was duly seconded, by Michael Rossi . The motion passed five in favor, zero opposed.

**DISCUSSION**

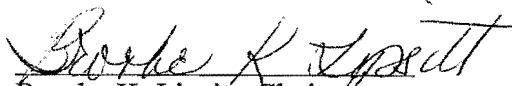
Mr. McLaughlin stated this is an example of a 'Catch 22' in the Zoning Ordinance, an unintended consequence of the bylaw, both with respect to the height calculation and the Floor Area Ratio (FAR). The hardship here lies in the topography of the land. Mr. Rossi expressed his agreement, and indicated that topography is one of the criteria for hardship that may be considered by the Board.



DETERMINATIONS:

- 1) The circumstances related to the steeply sloping topography are unique to the site and especially affect the land and structures, but do not generally affect the zoning district.
- 2) A hardship exists due to the topography of the land in that it slopes downward at the back of the property, and as a result, the proposed addition now requires relief from the Newton Zoning Ordinance that would not otherwise be required absent the steeply sloping topography.
- 3) No substantial detriment to the public good would occur in granting the variance.
- 4) Granting the variance would not derogate from the spirit and intent of the Zoning Ordinance.

Mr. Quinn made a motion to approve the variance due to a hardship related to the topography of the land. Said motion was duly seconded by Ms. Huggins. The motion passed five in favor, zero opposed. Therefore the variance is granted.

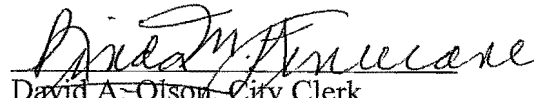
  
Brooke K. Lipsitt, Chairman

AYES: Brooke K. Lipsitt (Chairman)  
William M. McLaughlin  
Barbara Huggins  
Michael Quinn  
Michael Rossi


Copies of this decision and all plans referenced in this decision have been filed with the Planning and Development Department, the ZBA and the City Clerk.

The decision was filed with the City Clerk on March 9, 2015.

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  
*date*

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

  
Diane Vezeau

