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ZONING BOARD OF APPEALS

Adrianna Henriquez, Board Clerk

#06-20

DETAILED RECORD OF PROCEEDING AND DECISION

Petition #06-20 Newton Partners Group, LLC, owner of 47 Carleton Street, Newton, Massachusetts, requesting a variance from Section 3.2.3 of the Newton Zoning Ordinance to reduce the lot area per unit to 3,467 square feet, where 3,500 square feet of lot area is the minimum required. The subject property consists of a 6,934 square foot lot within a Multi-Residence 2 (MR-2) zoning district.

The Zoning Board of Appeals for the City of Newton (the "Board") held a virtual public hearing via Zoom on Wednesday, December 2, 2020 at 7:00 p.m.

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 *Boston Globe*, a newspaper of general circulation in Newton, Massachusetts, on November 18, 2020 and November 25, 2020.

The following members of the Board were present:

Brooke Lipsitt (Chairperson)
William McLaughlin
Barbara Huggins Carboni
Michael Rossi
Stuart Snyder

The following documents were submitted to the Board and/or entered into the record at the public hearing: Application for Variance at 47 Carleton Street, with accompanying documents, dated November 2, 2020.

DISCUSSION

Attorney Terry Morris, of 57 Elm Road, Newton, spoke on behalf of the Petitioner. Mr. Morris gave a brief explanation of the variance requested and provided a history of the subject property located at 47 Carleton Street (the "Property"), as well as a history of the applicable zoning provisions. He stated that the Property was purchased by the Petitioner in 2019, and that the Petitioner is proposing to erect a new two-family home on the Property which currently contains a single-family home.

Mr. Morris explained why he believed the petition meets the statutory requirements for the requested variance. He answered questions from the Board concerning the alleged substantial hardship. He stated that the Petitioner believed that a two-family home could be built on Property at time it was purchased in 2019 and paid a purchase price commensurate with a two-family use. He contended that

this constituted a financial hardship. He also noted that the variance requested only seeks minimal relief from the zoning requirement for lot area per unit.

Alena Shulakova, Manager of the Petitioner, also spoke in support of the variance petition, and the Petitioner's architectural team presented the details of the proposed project.

The Board heard comments from the public. Guive Mirfendereski, of 24 Carleton Street, spoke and raised questions concerning the design of the proposed project and the parking requirements.

A motion was made by Mr. Rossi to close the public hearing, seconded by Ms. Carboni. The motion passed five in favor and none opposed. The Board then discussed and reviewed the merits of the petition. Board members focused their discussion on whether the petition meets the statutory standard for a substantial hardship.

FINDINGS & DETERMINATION

After careful study of the materials submitted and the information presented at the hearing, the Board makes the following findings and determination:

1. The Property is located in a Multi Residence 2 (MR-2) zoning district.
2. The Property consists of a 6,934 square foot lot. There is an existing single-family home located on the property.
3. Section 3.2.3 of the Newton Zoning Ordinance requires a minimum lot area per unit of 3,500 square feet in an MR-2 zoning district. To construct a two-family home on the Property as proposed, the Petitioner requires a variance from the lot area per unit requirement.
4. Literal enforcement of the Newton Zoning Ordinance will not result in a substantial hardship to the owner because the zoning ordinance stills allows for the reasonable use of the Property. There does not currently exist a substantial hardship related to use of the Property with a single-family home. The Property can continue to be used in the same manner as it has for decades without any hardship. Therefore, the Property can be used for a use permitted by the zoning ordinance without any variance.
5. The Petitioner's inability to redevelop the Property with a two-family home does not constitute a substantial hardship. The Petitioner did not identify any substantial hardship arising from the unique conditions of the land. Nor did the Petitioner identify any financial hardship that would constitute a substantial hardship as the existing use of the property is economically feasible and deprivation of a potential economic advantage does not qualify as a substantial hardship.
6. As a result, the hardship to the Petitioner is not sufficient to meet the statutory requirements warranting a variance.

Accordingly, a motion was made by Mr. Snyder to grant the Variance, seconded by Mr. McLaughlin. The motion failed, two in favor and three opposed. As a result, in accordance with G. L. c. 40A, the variance petition is denied.

AYES: William McLaughlin
Stuart Snyder

NAYS: Brooke Lipsitt (Chair)
Barbara Huggins Carboni
Michael Rossi

/s/ Brooke K. Lipsitt
Brooke K. Lipsitt, 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.

City Clerk