



Ruthanne Fuller  
Mayor

# CITY OF NEWTON, MASSACHUSETTS

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**RECEIVED**  
By City Clerk at 9:51 am, Jun 08, 2021

## ZONING BOARD OF APPEALS

Adrianna Henriquez, Board Clerk

**RECEIVED**  
By Clerk of the Zoning Board of Appeals at 10:09 am, Jun 08, 2021

#01-21

### DETAILED RECORD OF PROCEEDING AND DECISION

Petition #01-21 Benjamin S. & Anna H. Moll of 11 Isabella Street, Boston, Massachusetts, requesting a variance from Section 3.1.3 & Section 7.6 of the Newton Zoning Ordinance to amend a previously granted variance and to exceed the maximum lot coverage. The subject property consists of an 11,879 square foot lot located at 266 Highland Avenue, Newton, Massachusetts and is located in a Single-Residence 1 (SR-1) District.

The Zoning Board of Appeals for the City of Newton (the "Board") held a virtual public hearing via Zoom on Wednesday, April 28, 2021 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 *Newton Tab*, a newspaper of general circulation in Newton, Massachusetts, on April 14, 2021 and April 21, 2021.

The following members of the Board were present:

Brooke Lipsitt (Chair)  
William McLaughlin  
Michael Rossi  
Stuart Snyder  
Elizabeth Sweet

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

1. 266 Highland Avenue Variance Application, dated March 3, 2021

### THE PUBLIC HEARING

1. Attorney Terrence P. Morris, of 57 Elm Road, Newton, spoke on behalf of the Petitioners. Mr. Morris provided a complete history of the subject property located at 266 Highland Avenue (the "Property") and the previously granted variances. He explained why the current relief was being requested by the Petitioners: that the plans associated with the 1998 variance are changing and thus the variance must be amended and that the proposed lot coverage of 16.4% exceeds the 15% requirement for post-1953 lots. Mr. Morris explained that the lot coverage would not be needed for a pre-1953 lot. He also noted that the Petitioners have already obtained a special permit from the City Council regarding their increased floor area ratio.

2. Attorney Morris expressed disagreement with the determination made by the Commissioner of Inspectional Services that this was a new lot. To Mr. Morris, the central issue was the intent of the zoning board in 1957. He made the argument that when the first variance was created in 1957 reducing the size of the lot, the lot was already undersized and did not conform to the lot size requirements at that time. Mr. Morris asserted that the zoning board did not intend to create a new lot subject to the new lot dimensional standards, including lot coverage, which is an element of this petition.
3. Attorney Morris stated that, in part, the hardship is due to the fact that the property consists of a home constructed in 1900 yet considered to be built on a new lot. He also stated the lot is unique due to the fact that three variances have been granted, two of which were granted after 1975 and met the hardship requirement. Had the lot not been reconfigured or subjected to new lot coverage requirements, the property would not require a variance. He also stated that the petition seeks the minimum relief necessary to allow reasonable use of the structure.
4. Attorney Morris also noted that while the second variance, which was issued in 1977 and enabled construction of the deck, had the effect of reducing the rear setback, the current petition seeks relief which would increase that same setback and therefore ameliorate the situation. He noted that three variances were previously granted and further noted that the use and nature of the structure has evolved such that certain changes are necessary so that it will be functional for a larger family.
5. Petitioner Benjamin Moll, 11 Isabella Street, Boston, spoke on behalf of himself and Anna Moll at the public hearing. He explained they are working to maintain the charm of the home and to keep it within the character of the neighborhood. He stated that they believed the property was an old lot but learned after conferring with the Planning Department that the property is one of the few pre-1920 homes in Newton that is considered to be built on a new lot. Mr. Moll then explained that they intend to make two very minor additions. He noted that there are three or four staircases in the house at various elevations and that they are trying to combine them into one and also render them code compliant. He then stated the result of that effort is the small additions and the creation of a family room.
6. The Board heard comments from the public. Peter McKelvey, of 272 Highland Avenue, spoke and stated that he lives immediately adjacent to the subject property, that the Petitioners would be a great addition to the neighborhood, which needs young new families to come in and revitalize it, and that the proposed project is in character with the neighborhood. He noted that the house has not received much capital investment in 20-30 years and the Petitioners' proposal would really improve the neighborhood. He had no objections and fully supports the petition.
7. The Petitioners' Architect, David Boronkay of Slocum Hall Design Group, 600 Pleasant Street, Watertown, spoke. He noted the many deficiencies of the property, including neglect, and the design which was not made for a growing young family. The house had no mudroom and the garage was falling down. The design was driven by those deficiencies as well as the topography. He stated that the side of the property with the driveway is level but the property falls away at the other side, which does affect lot coverage. He noted it would be detrimental to reduce the lot coverage of the plans because the lot coverage is necessary to render the home functional for a young family.

8. The Petitioner' civil engineer, Verne Porter, 354 Elliott Street, Newton, spoke. He explained the deck is considered open space and is not counted toward lot coverage. He also noted that for hardship, the Board should consider the actual size of the lot and the fact that this lot is considered a new lot. The lot is very small and is located in a zone that requires large lots. The lot is so small and therefore unique because prior owners increased the nonconformity.
9. A motion was made by Ms. Sweet to close the public hearing, seconded by Mr. Rossi. The motion passed 5-0 and the public hearing was closed.
10. The Board then discussed and deliberated the merits of the petition. Board members focused their discussion on whether the petition meets the statutory standard for a substantial hardship.

### **FINDINGS, DETERMINATION & CONDITIONS**

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

1. *There are special circumstances related to the soil conditions, shape, or topography of the land or structures which effect it but do not generally affect other properties in the zoning district.* The site is unique because of its irregular configuration and topography. The shape of the lot was created by a variance in 1957, which reduced its lot size and frontage.
2. *Literal enforcement of the provisions of the Newton Zoning Ordinance would result in a 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 Literal enforcement of the Newton Zoning Ordinance would result in substantial hardship.* Given the unique history of the property, including the subdivision of the property in the 1950's that rendered it a much smaller lot than would ordinarily be found in the area, as well as the prior variances granted, a hardship exists due to the topography of the land and the configuration of the lot. The existing structure and narrow lot configuration and topography limit alternative locations for the proposed renovations.
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.* Granting the amendment to the variance requested would not derogate from the spirit and intent of the Newton Zoning Ordinance in that the departure from the ordinance requirements would not change the character of the surrounding area. In addition, granting the Petitioners' request will not result in a substantial detriment to either the neighborhood or the public welfare.

Accordingly, a motion was made by Mr. McLaughlin to grant the Variance, seconded by Mr. Rossi. This motion passed 4-1. Therefore, the request for a variance is granted subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with the plans and documents submitted with the Petitioners' variance application.
2. No Final Inspection/Occupancy Permit shall be issued pursuant to this Variance until Petitioners have:

- 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 and the Department of Inspectional Services.
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  
Stuart Snyder  
Michael Rossi  
Elizabeth Sweet

NAYS: Brooke Lipsitt (Chair)

  
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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.

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City Clerk