



CITY OF NEWTON, MASSACHUSETTS

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Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Adrianna Henriquez, Board Clerk

#05-21

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DETAILED RECORD OF PROCEEDING AND DECISION

Petitioner #05-21 Daniel L. Jackson and Martina T. Jackson of 115 Lowell Avenue, Newton, Massachusetts, pursuant to M.G.L. c. 40A, § 8, and 15, appealing the June 28, 2021 Notice of Violation issued by the Commissioner of Inspectional Services for a sign in violation of Section 5.2.6.7 of the Newton Zoning Ordinance at 115 Lowell Avenue, Newton, Massachusetts. The subject property consists of a 7,651 square foot lot located at 115 Lowell Avenue, Newton, Massachusetts within a Multi-Residence 1 (MR-1) zoning district.

The Zoning Board of Appeals for the City of Newton (the "Board") held a virtual public hearing via Zoom on Wednesday, September 22, 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 September 8, 2021 and September 15, 2021.

The following members of the Board were present:

- Brooke Lipsitt (Chairperson)
- Michael Rossi
- Stuart Snyder
- Treff LaFleche
- Michael Quinn

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

1. 115 Lowell Avenue Appeal, with attachments, received July 28, 2021
2. Letter from Commissioner John Lojek, dated August 6, 2021, rescinding the June 28, 2021 Notice of Violation
3. Letter in support of Appeal from Attorney Peter Harrington, dated August 12, 2021

DISCUSSION

At the start of the hearing, Chairperson Lipsitt noted that the zoning violation that is the subject of the appeal was rescinded by the Commissioner of Inspectional Services on August 6, 2021. She explained that as a result the appeal is now moot and does not require any further action by the Board. Chairperson Lipsitt asked the Petitioners to address the question of mootness.

Attorney Peter Harrington, Harrington & Martins, 505 Waltham Street, Newton, Massachusetts, spoke on behalf of the Petitioners. Attorney Harrington stated that the Commissioner of Inspectional Service does not have the authority to dismiss this appeal, that the Commissioner made a decision that there was a zoning violation, and that the Petitioners have a right to appeal that decision and have their names cleared. He said that the Commissioner’s rescission of the violation notice simply amounts to a temporary suspension of enforcement and that the violation could always be reinstated.

The Board members then discussed and deliberated whether the appeal is moot as a result of the Commissioner’s rescission of the violation notice. The Board sought input from Assistant City Solicitor Jonah Temple, who concurred with Chairperson Lipsitt’s interpretation and treatment of the rescind letter. Board members agreed that there is no longer any violation notice for the Board to either uphold or reverse, that the Board cannot take any action because there is no longer any relief needed, and that as a result the Petitioners do not have standing and the case is moot.

Accordingly, a motion was made by Mr. Rossi that the Petitioners no longer have standing to pursue the appeal as the appeal is now moot, seconded by Mr. Snyder. The motion passed five in favor and none opposed.

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 zoning violation notice that is the subject of the appeal was rescinded by the Commissioner of Inspectional Services on August 6, 2021.
2. Because the harm and aggrievement alleged by the Petitioners has been mitigated and no longer exists, the appeal is now moot. As a result, the Board has no basis to hear the merits of the appeal based on mootness, lack of standing, and lack of jurisdiction, and the appeal is dismissed.

AYES: Brooke Lipsitt
 Stuart Snyder
 Michael Rossi
 Treff LaFleche
 Michael Quinn

NAYS: None

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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 has been filed.

City Clerk