



# CITY OF NEWTON, MASSACHUSETTS

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Ruthanne Fuller  
Mayor

## ZONING BOARD OF APPEALS

Adrianna Henriquez, Board Clerk

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NEWTON, MA, 02459

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#06-21

### DETAILED RECORD OF PROCEEDING AND DECISION

Petition #06-21 Marjorie S. Kern of 43 Philmore Road, Newton, requesting to amend a previously granted variance (#12-02) to further exceed the maximum lot coverage required by Section 3.1.3 of the Newton Zoning Ordinance for the purpose of constructing a rear porch addition. The subject property consists of a 7,407 square foot lot located at 43 Philmore Road, Newton, Massachusetts within a Single-Residence 2 (SR-2) 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 (Chair)  
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. 43 Philmore Road Variance Application
2. Variance Decision #12-02

### DISCUSSION

Architect Mark Landsberg of 72 Pearl Street, Newton, presented on behalf of the Petitioner. Mr. Landsberg explained that prior variance #12-02 was granted to exceed the maximum lot coverage and approved a lot coverage of 30.7%. The Petitioner is seeking to amend that variance to allow an additional increase in lot coverage of 1.7% above the previously approved lot coverage of 30.7%. He stated that the purpose of this amendment was to allow the Petitioner to construct a 11' x 17' three season porch. Mr. Landsberg presented various visuals consisting of site plans, architectural plans,

and photographs to illustrate the Petitioner's request. He stated that the parcel is the smallest lot in the surrounding area, that the contours of the lot have created drainage issues, and that the rear of the home is the only viable place for the proposed three season porch in his opinion. He also stated that twelve of the neighbors are in support of this project, that the Petitioner has lived at the property for approximately thirty years and has plans to age in place, and that the screened porch would allow the Petitioner to utilize the outdoor space.

The Petitioner also spoke to the drainage issues. She explained that enforcement of the maximum lot coverage would create a substantial hardship because she wanted to age in place and that this was the best way to utilize and enjoy the backyard space that is otherwise unusable due to drainage problems.

No members of the public spoke at the hearing.

A motion was made by Mr. Quinn to close the public hearing, seconded by Mr. LaFleche. The motion passed five in favor and none opposed. The Board then discussed, reviewed, and deliberated the merits of the petition, with a focus on whether the petition meets the statutory definition of a substantial hardship and whether alternatives could be achieved without the need for zoning relief.

### **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. *There are not special circumstances related to the soil conditions, shape or topography of the land or structures which affect it but do not generally affect other properties in the zoning district.* The Petitioner failed to demonstrate any uniqueness related to the land's shape, size, or topography that justify granting the relief of the requested variance.
2. *Literal enforcement of the provisions of the Newton Zoning Ordinance would not result in a substantial hardship to the owner.* The Petitioner failed to demonstrate a substantial hardship that would result if construction of the proposed three season porch was not permitted. Construction of the proposed porch does not ameliorate the drainage issues. There are other options to utilize the rear of the property that do not violate the zoning ordinance. The property currently meets the zoning requirements (and exceeds the maximum lot coverage as allowed by a prior variance) and can continue to be used and enjoyed in the same manner as it has been used without the requested relief.
3. *The variance would not be in harmony with the general purpose and intent of the Newton Zoning Ordinance.* The requested variance is not in harmony with the zoning ordinance because there is no substantial hardship or special circumstances unique to the property. The property can continue to be used reasonably and in compliance within the zoning ordinance's dimensional requirements without the requested variance.

Accordingly, a motion was made by Mr. Quinn to approve the amended variance request, seconded by Mr. Snyder. The motion failed two in favor and three opposed. As a result the variance request was denied.

AYES: Stuart Snyder  
Michael Quinn

NAYS: Brooke Lipsitt  
Michael Rossi  
Treff LaFleche

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*Brooke K Lipsitt*  
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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 has been filed.

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City Clerk