



Ruthanne Fuller
Mayor

CITY OF NEWTON, MASSACHUSETTS

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ZONING BOARD OF APPEALS Heather Zaring, Interim Board Clerk

MEETING MINUTES

Wednesday, January 26, 2022

7:00 p.m.

Virtually via Zoom

Board Members Present: Brooke Lipsitt (Chair), Michael Rossi, Stuart Snyder, Denise Chicoine, Elizabeth Sweet, Treff LaFleche, William McLaughlin (all participated remotely)

Staff Present: Heather Zaring, Interim ZBA Clerk; Jonah Temple, Assistant City Solicitor

A public hearing of the Newton Zoning Board of Appeals was held virtually via Zoom on Wednesday, January 26, 2022, at 7:00 p.m. on the following petitions:

1. Elections; discuss and/or adopt changes to the City of Newton Rules of the Zoning Board of Appeals, effective January 1, 2019; any necessary briefing from the Law Department about items in litigation.
2. **#09-21** David and Suzanne Wakefield of 229 Bellevue Street, Newton, Massachusetts, requesting to amend two previously granted variances (#87291 and #9-11) to allow a 3.6 foot front setback for a detached structure. The petitioner seeks to raze and reconstruct a detached garage. The subject property is located at 229 Bellevue Street within a Multi-Residence 1 (MR-1) zoning district and consists of a 9,700 square foot lot improved with a single family dwelling.
3. **#10-21** Jeff and Jane Freedman of 14 Crystal Street, Newton, Massachusetts, requesting a variance from Section 3.1.3 & Section 3.4.4.C.3 of the Newton Zoning Ordinance to reduce the required side setback to 3.4 feet where 7.5 feet is required and to allow an 18-foot wide double garage door on a front facing garage. The petitioner seeks to raze and reconstruct an existing attached garage. The subject property is located at 14 Crystal Street within a Single-Residence 2 (SR-2) zoning district and consists of a 11,640 square foot lot improved with a single family dwelling.



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4. **#01-20** CPC Land Acquisition Company, LLC requesting to change the details of the Comprehensive Permit previously granted to the applicant on June 17, 2020, for a project located at 15 Riverdale Avenue in Newton, Massachusetts that consists of 51 affordable housing units. The applicant proposes to make minor elevation and material changes and to modify its Transportation Demand Management Plan. Pursuant to 760 CMR 56.05(11), this item will be heard for the purpose of determining whether the proposed change is substantial or insubstantial.

5. Review and approval of minutes for November 17, 2021 meeting.

Agenda Item 1: Elections; discuss and/or adopt changes to the City of Newton Rules of the Zoning Board of Appeals, effective January 1, 2019; any necessary briefing from the Law Department about items in litigation. Sitting Members: Brooke Lipsitt (Chair), Michael Rossi, Stuart Snyder, Treff LaFleche, Denise Chicoine, Betsy Sweet, and William McLaughlin

Discussion:

Agenda Item 1 was the formal organizational meeting for the year regarding elections of the Zoning Board of Appeals chair, vice chair, and clerk. As the Zoning Board of Appeals clerk position was vacated at the end of September 2021, Heather Zaring has been filling in as the acting clerk and once the position is filled at City Hall, the Board will officially appoint a new clerk at that time.

Michael Rossi nominated Brooke Lipsitt as chair. Treff LaFleche seconded the nomination. No other nominations were made for chair. No discussion was made on the nomination. Brooke Lipsitt formally declared herself chair.

William McLaughlin formally stepped down as vice chair and nominated Michael Rossi in his



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stead. Stuart Snyder seconded the nomination. No other nominations were made for vice chair. No discussion was made on the nomination. Chair Lipsitt declared Michael Rossi as vice chair.

There were no proposed changes to the Zoning Board of Appeals rules, so the rules remain as written.

Mr. McLaughlin suggested that the Board should have annual executive sessions to do a self-evaluation of how the Board has handled items previously and if there are ways the Board can improve.

Chair Lipsitt was in favor of the suggestion and asked Attorney Temple to think it over and possibly give a recommendation to the Board at a future meeting.

Attorney Temple stated that he would like to make sure that is a proper purpose of an executive session before making a recommendation.

Chair Lipsitt believed that a conversation regarding how the Board has handled items in the past and how they could improve could be done at a regularly scheduled meeting where there is no other item on the agenda, but she would like Attorney Temple to investigate it.

Mr. Snyder suggested that the Board should make a requirement that documentation be presented for 40B proposals with issues requiring the applicant to provide funds to mitigate issues like wastewater inflow and infiltration (I&I). He finds that making a decision about a certain dollar amount a bit disquieting when there is no evidence supporting that dollar amount currently beside taking interested parties at their word regarding the costs.



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Chair Lipsitt supported that request and stated that the Board can ask the Engineering Department to provide documentation supporting the costs if a 40B proposal has issues with their I&I as the Board has previously done with some 40B proposals.

Attorney Temple provided a litigation update on the outstanding cases involving the Board's decisions. He stated that the parties representing 129 Grasmere Street and the City have come to a tentative agreement. The agreement will resolve the issue of the illegal three-unit dwelling, remedying the building code issues and changing the use of the property to conform to zoning by eliminating the third unit and making the second unit an accessory apartment. Attorney Temple hopes that the agreement will be finalized, and the case can be settled so the litigation can be dismissed. He continued to discuss the case regarding 115 Lowell Avenue, where the violation of the sign ordinance was rescinded by Inspectional Services Commissioner John Lojek and the Board found the appeal to be moot. The Planning and Law Departments are working on revising the sign ordinance and it is Attorney Temple's understanding that once the ordinance is revised the litigation will be dismissed. Attorney Temple concluded his overview of the pending litigation cases by giving an update on 45 Old England Road, which was from last term, involving whether an electric box constitutes a building, which the Board determined it did. The judge is currently reviewing the Board's decision and will determine whether they agree with the Board's interpretation or not. Attorney Temple expects the discovery period to end in April and hopefully get a decision soon thereafter.

Agenda Item 2: #09-21 ---229 Bellevue Street. Sitting Members: Brooke Lipsitt (Chair), Michael Rossi, Stuart Snyder, Denise Chicoine, and Betsy Sweet



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Documents Submitted:

1. 229 Bellevue Street Variance Application

Testimony:

David Wakefield, owner of 229 Bellevue Street, illustrated via visuals his proposal to raze the existing detached two car garage that was built under a variance from 1945 and construct a new garage that will accommodate a modern vehicle and provide extra safety measures. Mr. Wakefield also mentioned that he had received a special permit in December 2021 to vertically extend a nonconforming side setback, allow an accessory building with a ground floor of more than 700 square feet, allow retaining walls exceeding four feet in height, and allow a garage for more than three vehicles. The existing garage is along the front property line, built into a hill with no existing safety barrier, and is not wide enough for a modern vehicle to pull in and let more than the driver out of the vehicle. The property is on the corner of a dead-end road that overlooks Interstate 90, and the dwelling sits approximately 17 feet higher than street level and the existing garage entrance. Mr. Wakefield stated that there is no existing driveway due to the garage structure being built into the hill so adding two additional parking stalls underground will help remove cars that would otherwise have to park on the street. He discussed how his proposal represents the best way to modernize and make his family's garage safer as they will use the existing footprint and extend it further back and install safety barriers on top of the new proposed garage which currently has open access down to street level. They also plan to build stairs inside the garage that will lead up to the house instead of walking outside up non-weatherized stairs. The proposal does not require a new curb cut be installed, which would impact the neighbors as there is limited parking on the street already nor take away any more open space from the already limited lot. Furthermore, the extended garage would allow the applicant to remove an existing shed from a less than ideal



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location and use the space above as storage and a landing for internal stairs. Mr. Wakefield concluded his presentation by stating that his proposal will also include adding more natural screening along the property line and make it align more aesthetically with other houses in the neighborhood.

Mr. Rossi inquired whether Mr. Wakefield had discussed his proposal with his neighbors and gotten feedback from them.

Mr. Wakefield stated that yes, several the abutting neighbors are aware of the proposal and support it as it will help remove cars from a crowded dead-end street.

Chair Lipsitt asked for confirmation that the applicant was not asking for any additional relief in terms of setbacks but rather just looking to amend the previous variance from 1945 to allow four cars instead of two.

Mr. Wakefield confirmed what Chair Lipsitt asked was correct and that he was trying to leverage the existing setback that the 1945 variance allowed to construct the garage and enable him to use the same space to reconstruct the garage.

Public Comment:

Heather Mehra, 217 Bellevue Street stated that she is an abutter, and she is in favor of the applicant's proposal after reviewing it due to it is reducing the number of cars parked on the street. Numerous families in the area do not have enough parking on their lots.

Michael Manzella, 224 Newtonville Avenue spoke in favor of the applicant's petition due to the



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amount of traffic there is on the street and having less cars on the street limits the potential for accidents.

A motion was made by Stuart Snyder to close the public hearing. The motion was duly seconded by Betsy Sweet. The motion passed 5-0 to close the public hearing

Deliberation:

Mr. Snyder inquired whether the issuance of a prior variance satisfies some of the hardship conditions that the Board would otherwise have to investigate and that the Board was not looking at the variance request as a new variance.

Attorney Temple replied that the Board does need to make three findings again to grant the variance amendment. The Board can rely on the findings from the original variance except in this case, there are no findings listed in the original variance from 1945 so the Board was essentially looking at the variance petition as if it is a new submission.

Mr. Snyder asked the petitioners what hardship warranted their needing a variance.

Mr. Wakefield explained that the topography of his lot is unique in the sense that Bellevue Street slopes toward Interstate 90 and the house sits approximately 17 feet above street level unlike surrounding properties so adhering to the current zoning ordinance while trying to improve his home is not possible. In addition, his petition would benefit the neighborhood as it will improve the safety for everyone living and travelling Bellevue Street as there is no driveway space associated with the property and there is no practical way to remove cars from the street that would adhere to current zoning. He concluded his comments by stating that the current garage is so small that it



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does not accommodate modern cars, a passenger cannot get out of the car, the roof of the car hits the top of the garage and sideview mirrors have to be moved so they do not break off when trying to enter the garage.

Ms. Sweet inquired about the danger of the flat roof of the garage and why it needs to be mitigated.

Mr. Wakefield explained that the house is about 17 feet above street level and the top of the current garage is level with the house so people can walk onto the roof of the garage and a person or pet could potentially walk straight off the edge and drop straight down to the street currently. He does not want anyone to get injured so installing a safety barrier is the only way to mitigate the danger.

Mr. Rossi shared his belief that the purchasers of a property are entitled to rely on the previously approved variance that allowed a garage within 2 feet of the front setback back in 1945 and the current Board should not deprive the present owners of the opportunity to rebuild the deteriorating structure and replace it with an improved structure that would benefit the owners and the neighborhood. He concluded his comments by stating that he puts a lot of weight into the fact that a variance was previously granted and that the current petition is not asking for more than a few feet that does not go against the spirit of the original variance.

Mr. Snyder echoed Mr. Rossi's comments regarding how a property owner should be able to enjoy the benefits of having bought a property with a previous variance but remarked that the applicant's request was more of an extension of the use of the existing variance. There are other property owners who have similar kinds of hardships to that of the applicant but do not have existing variances and would be in a different position than the applicant would be if a similar request came in as a new variance petition.



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Ms. Chicoine commented that she was impressed by the benefits to the public with the petition including the applicant's stating that they were willing to work with the city to lessen the grade and slope of the sidewalk.

Mr. Wakefield replied that the city a few years ago installed truncated dome pads on the corner of Newtonville Avenue and Bellevue Street as safety features for those with accessibility issues. The truncated pads increased the steepness of the grade approximately 18% and 10 degrees, making it steeper than the street. He concluded his remarks by stating that the sidewalk would have to be redone if the variance amendment is granted so he would want to work with the city engineers to hopefully reduce the steep decline.

A motion was made by Stuart Snyder to grant the amendment to the two previous variances. The motion was duly seconded by Michael Rossi. The motion passed 5-0.

Agenda Item 3: #10-21---14 Crystal Street. Sitting Members: Brooke Lipsitt (Chair), Michael Rossi, Stuart Snyder, Denise Chicoine, and Betsy Sweet

Documents Submitted:

1. 14 Crystal Street Variance Application

Testimony:

The applicants requested that their petition be continued until the February 23, 2022 Zoning Board of Appeals hearing as they are currently in the process of pursuing a special permit and would like



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to complete that process first.

Public Comment:

No public comment was made as the item was postponed and the public hearing will occur on February 23, 2022.

A motion was made by Michael Rossi to continue the public hearing until February 23, 2022. The motion was duly seconded by Stuart Snyder. The motion passed 5-0.

Agenda Item 4: #10-20----15 Riverdale Avenue. Sitting Members: Brooke Lipsitt (Chair), Michael Rossi, Stuart Snyder, Denise Chicoine, and Betsy Sweet

Documents Submitted:

1. 15 Riverdale Avenue Insubstantial Change Request
2. Revised pages A200 and A200P from Icon Architecture dated 12/6/21

Testimony:

Katherine Adams, Schlesinger & Buchbinder LLP, 1200 Walnut Street, Newton represented CPC Land Acquisition Company and explained that the applicant has progressed to the construction design stage and has officially applied for a building permit with the Inspectional Services Department. The demolition and foundation permits have already been issued and the applicant was before the Board to request for two insubstantial changes to the building façade and alteration to one of the conditions regarding the transportation demand management plan in the original comprehensive permit. Ms. Adams explained that the applicant ran into an issue when finalizing



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the transportation demand management plan, also known as condition 56 in the decision. The issue was that the condition required the applicant to provide funding to the Watertown Transportation Management Association to either create or maintain a shuttle service along Pleasant Street and/or California Street but neither Watertown nor the Watertown Transportation Management Association has funding to extend the Pleasant Street shuttle into Newton via California Street as was anticipated when the decision was drafted. Ms. Adams proposed that the language of the condition be changed to state that the applicant pay the City of Newton \$100,000 to be used for such transportation purposes as the City deems appropriate including NewMo and be paid in three installments (first on February 1, 2022, second on August 1, 2023, and third on February 1, 2024). She stated that the proposed language change has been reviewed with Planning Department staff and they have found the proposed provision sufficient. Ms. Adams concluded her comments by introducing Nancy Ludwig, project architect, to outline the proposed façade changes.

Nancy Ludwig, Principal at Icon Architecture, 101 Summer Street, Boston illustrated the proposed changes to the buildings via visuals. She explained that the proposed changes are the result of the project moving from the concept stage to building design stage. Changes include adapting the structural grid so the floor plans will be better supported but result in slight layout modifications. Ms. Ludwig also explained how the design of the buildings had to be altered slightly due to supply chain issues like the windows. The original window manufacturer whose designs were used in the original plans are no longer taking orders to fabricate windows due to the company being backed up, so they had to find another manufacturer who uses a different window design. The original palette, materials, and massing that were proposed will remain the same so the overall look will be in line with what was approved initially. Additionally, the building systems have been refined, including altering the window-to-wall ratios to help the buildings meet passive house standards. Chair Lipsitt inquired to the applicant to describe the actual changes between the plans that were



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submitted on January 13, 2022, and the revised plans submitted on January 24, 2022, as the revised plans were hard to read and seemed to have elevation changes.

Ms. Adams stated that an additional mural and kayak rack were added to the back of the building near the river along with the slight modifications that Ms. Ludwig mentioned.

Melissa Mintz, Mintz Development Group, 20 Angelo Lane, Watertown clarified that there were only three façade changes and no elevation changes between the two sets of plans submitted, which were at the suggestion of the Planning Department. Planning had asked for the applicant to add another wall graphic, bringing the total to three and add more outside kayak storage, which may not be needed since the applicant reworked the kayak storage room. The applicant also had changed the materials of the column supporting the bridge from metal to stone to tie in better with the stonework on the front of buildings one and two.

Chair Lipsitt inquired about why the elevations in the approved plan and the revised plan were different and mentioned that an increase of more than 10% would constitute a substantial change, which is not what Ms. Adam's had requested on behalf of the applicant.

Ms. Ludwig remarked that the building heights have not increased but rather that the original data that was used for the survey seemed to be out of date and the revised plans reflect the correct survey numbers.

Ms. Mintz clarified that if you do the math between the base level and roof of the revised plans that the building elevations are basically the same height as the approved plans just shifted up due to the base level being twelve feet higher than on the original survey. She explained how level one is



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at a ten-foot elevation and the roof is at sixty-six feet on the approved plan, which makes the overall building height around fifty-six feet. Since for engineering reasons, what initially was thought to be the basement level is half a level up (approximately twenty-two and a half feet higher). The proposed building elevations are twenty-two and a half feet on the base level and about eighty feet on the roof, which amounts to around fifty-eight feet in total height so both the proposed and approved heights are around the same.

Public Comment:

No public comment was made.

Deliberation:

Mr. Rossi inquired whether the Board should be looking at the proposed changes as a whole and apply the insubstantial changes standards to them all or is the Board supposed to look at each change individually and make a determination regarding if the change is insubstantial or not because the Board typically does not get numerous potential changes in one request.

Attorney Temple stated that it is a general rule that the Board look at them one by one because if the Board looked at each piece in a vacuum, they would not rise to the level of a substantial change. Furthermore, if each of the pieces came in as separate requests at different times to the Board, they would most likely be deemed insubstantial.

Ms. Chicoine remarked that the requests before the Board fit the definition of insubstantial changes. In addition, she commented on how she was impressed that the applicant is making some of the proposed changes to make the buildings more LEED compliant and are making every effort to keep the project in compliance with what was initially granted even though the applicant is



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running into issues due to COVID.

Chair Lipsitt brought up the piece of the request regarding the applicant's contribution to the Watertown Transportation Management Association and stated that when the original condition was drafted there was no expectation that there was necessarily going to be a shuttle on California Street. Chair Lipsitt concluded her comments by stating how wonderful NewMo is, but it is not a shuttle service and wondered how City staff felt about the proposed change.

Nicole Freedman, Director of Transportation Planning for the City, commented that there is a Pleasant Street shuttle that gets around one hundred trips a month while NewMo gets two hundred trips a day. If the goal is to eliminate single occupancy vehicle trips in a city the density of Newton, it is more effective to have a service that goes everywhere in the City rather than a fixed route shuttle. She supported the changes to the Transportation Demand Management condition as the money would help NewMo expand their fleet of hybrid and hopefully one day all electric cars so it could better serve the future residents of the development and residents in the City in general.

Neil Cronin, Chief Planner at the City of Newton, echoed Ms. Freedman's comments about supporting the change to the condition. He also remarked that he is in support of the other proposed changes after reviewing them and appreciated that the applicant applied the suggestions that Planning had given previously.

A motion was made by Betsy Sweet to determine the requested changes as insubstantial. This motion was duly seconded by Stuart Snyder. The motion passed 5-0.

Agenda Item 5: Review and approval of minutes for November 17, 2021 meeting.



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A motion was made by Betsy Sweet to approve the minutes as circulated. This motion was duly seconded by Stuart Snyder. The motion passed 5-0.

Adjourned 8:23 p.m.

ZBA DECISIONS can be found at www.newtonma.gov/ZBA