



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1120 TDD/TTY: (617) 796-1089 Fax: (617) 796-1086

www.ci.newton.ma.us

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Heather Zaring, Interim Board Clerk

#09-21

DETAILED RECORD OF PROCEEDING AND DECISION

Petition #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 an 9,700 square foot lot improved with a single family dwelling.

The Zoning Board of Appeals for the City of Newton (the "Board") held a virtual public hearing via Zoom on Wednesday, January 26, 2022 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 January 12, 2022 and January 19, 2022.

The following members of the Board were present:

- Brooke K. Lipsitt (Chair)
- Michael Rossi
- Stuart Snyder
- Denise Chicoine
- Betsy Sweet

RECEIVED
 JAN 27 11 41 AM '22
 CITY CLERK
 HEATHER ZARING

The following documents were submitted to the Board and/or entered into the record at the public hearing: 229 Bellevue Street Variance Application, received October 26, 2021.

THE PUBLIC HEARING

1. The Petitioner, David Wakefield, illustrated via visuals his proposal to raze the existing detached two-car garage that currently has a front setback of two feet pursuant to a variance granted in 1945 and construct a new garage that would have a setback of 3.5 feet. Mr. Wakefield explained that he 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. He stated that 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. He explained that the property is at the corner of a dead-end road that overlooks Interstate 90, and the dwelling sits approximately 17 feet higher than street level and the garage entrance. As a result, 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. He does not want anyone to potentially get injured so installing a safety barrier is the only way to mitigate the danger.

2. Mr. Wakefield stated that there is no existing driveway due to the garage structure's being built into the hill and that the proposed garage will add two additional parking stalls that will result in fewer cars parking on the street. He stated that 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. He noted that the proposal would not decrease the availability parking on the street as there won't be any new curb cuts installed. Mr. Wakefield stated that he has discussed the proposed garage with his abutting neighbors and they support the project because it will help remove cars from the crowded street.
3. Mr. Wakefield addressed the variance criteria by explaining the unique topography of the lot that slopes towards Interstate 90 with the dwelling sitting approximately 17 feet above street level, which is unlike surrounding properties. He noted it was not possible to comply with the zoning ordinance given these conditions and that the proposal will benefit the neighborhood by improving the safety for everyone living and travelling on Bellevue Street. He 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.
4. The Board heard comment from the public. Heather Mehra, of 217 Bellevue Street, stated that she is in favor of the proposal because it would reduce the number of cars parked on the street and there is currently not enough parking in the neighborhood. Michael Manzella, of 224 Newtonville Avenue, stated that he was in favor of the petition because it would reduce the number of cars on the street and reduce the potential for accidents.
5. A motion was made by Stuart Snyder to close the public hearing, seconded by Betsy Sweet. The motion passed 5-0 and the public hearing was closed.
6. 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 uniqueness of the lot and substantial hardship in light of the previously granted variance. The Board confirmed that the 1945 variance already allowed a two car garage with a 2 foot setback and the petitioner was only seeking to amend that variance to allow for a four car garage in the same location with a 3.5 foot setback.

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 the topography of the land or structures which affect it but do not generally affect other properties in the zoning district in which it is located.* The subject property already has a variance for a two foot front

setback for a detached garage and the proposed garage, while larger, will have an increased setback of 3.5 feet. The circumstances that warranted the prior variance still exist due to the unique slope and grade of the lot.

2. *A literal enforcement of the provisions of the Newton Zoning Ordinance would result in 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.* The use of the subject lot is constrained due to the slope and grade, which negatively impacts development options and the proposed garage will remedy significant safety hazards that currently exist. As a practical matter, the proposed garage will result in reducing the nonconforming setback of the existing garage.
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.* No substantial detriment to the public will occur because the proposed garage is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood and will increase the safety of the site and the street. Granting the variance requested would not derogate from the spirit and intent of the Zoning Ordinance.

Accordingly, a motion was made by Stuart Snyder, duly seconded by Michael Rossi, to approve the requested amendment to variance #87291 (and to the extent necessary, variance #9-11). The motion passed five in favor, none opposed. 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 Variance shall be located and constructed consistent with the following plans:
 - a. Site Plan entitled "Plan of Land in Newton, MA, 229 Bellevue Street- Proposed Garage & Drive (Preliminary Plan)," dated January 28, 2021, prepared by Everett M. Brooks Co.
 - b. Architectural drawings consisting of two sheets:
 - i. Proposed Side Elevation and Section; Proposed Floor Plan; Proposed Side Elevation and Section; and Proposed Front Elevation
 - ii. Gross square foot diagrams and Proposed Side Elevation and Section
 - c. Floor Area Ratio Worksheet, signed and stamped by Patricia J. Fisher, Registered Architect
2. No building permit shall be issued pursuant to this Variance until the Petitioner has:
 - 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, the Department of Inspectional Services, and the Department of Planning and Development.
3. This Variance must be exercised within one year from the date of its filing with the City Clerk or the variance lapses.

AYES: Brooke K. Lipsitt
Stuart Snyder
Michael Rossi
Denise Chicoine
Betsy Sweet

NAYS:



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.

Carol Moore, City Clerk