



CITY OF NEWTON, MASSACHUSETTS

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Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS
Heather Zaring, Interim Board Clerk

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#08-21

DETAILED RECORD OF PROCEEDING AND DECISION

Petition #08-21 Rachel and Marko Rosenfeldt of 158 Parmenter Road, Newton, Massachusetts, requesting a variance from Section 3.1.3 of the Newton Zoning Ordinance to allow a 5.4-foot side setback and a 4.9 rear setback. The petitioner seeks to construct an attached garage with a home office above. The subject property is located at 158 Parmenter Road within a Single-Residence 3 (SR-3) zoning district and consists of a 4,990 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, November 17, 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 November 3, 2021 and November 10, 2021.

The following members of the Board were present:

- Brooke K. Lipsitt (Chair)
- Treff LaFleche
- Michael Rossi
- Stuart Snyder
- Michael Quinn

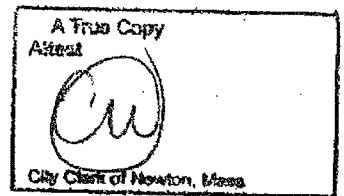
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The following documents were submitted to the Board and/or entered into the record at the public hearing:

1. 158 Parmenter Road Variance Application, received October 20, 2021
2. 158 Parmenter Road Special Permit Order #298-21



THE PUBLIC HEARING

1. Attorney Laurance Lee, of 246 Walnut Street, Newton, represented and spoke on behalf of the petitioners. He used various visuals to illustrate the petitioners' rear and side setback variance request and explained why the petitioner meets the statutory criteria. He stated that the subject property is a corner lot, which technically has two front setbacks that severely limit what a person can do with the lot, making the property unique. He explained that having two front setbacks forces a building towards the back corner of the lot because the depth and length

Property Address: 158 Parmenter Road, Newton, MA
Deed Reference: Book 64643, Page 96

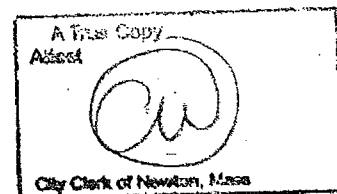
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of the setback requirements make it typically the only viable location for a structure. He also mentioned that because the rear setback is determined by the location of the front door it further limits the available locations to put structures by right. He stated that the lot is under 5,000 square feet making it one of the smallest lots within the area. He explained that the minimum lot size for an old lot SR-3 is 7,000 square feet and the subject property is slightly less than 5,000 square feet. He illustrated via a visual the surrounding lots specifically the other three lots that make up the four-corner intersection that the subject property is part of along with their lot sizes and mentioned that the subject property is on average 1,600 square feet smaller than the surrounding lots.

2. Attorney Lee summarized the proposed project that includes demolition of the existing undersized detached single car garage and construction an attached single car garage with a small office above it. He illustrated via visual that the petitioners are attaching the garage to home via a single-story mudroom connection. He stated that the existing detached garage is 7 feet from the side property line and 5.5 feet from the rear property line when detached accessory structures are both allowed to be 5 feet from the rear or side property lines. The proposed attached garage would be 4.9 feet from the rear property line and 5.4 feet from the side property line when the required rear setback is 15 feet and side setback is 7.5 feet, which is the same as the principal dwelling.
3. Attorney Lee noted that the property has two pre-existing non-conformities regarding floor area ratio and lot coverage and that the petitioners recently received a special permit to further extend the nonconforming FAR and lot coverage in order to construct the proposed attached garage.
4. Attorney Lee explained that having the weather protected connection is critical to his clients as it means that they will be able to move between the garage and the house easily as they age and will assist their family members who are not as mobile navigate from one space to the other without dealing with the elements. He also noted that the Board has previously approved another variance request for an attached accessory apartment at 73 Falmouth Road (within the neighborhood of the subject property) that had similar conditions and reasons for needing a variance such as being a small corner lot with two front setbacks, which attributed to the uniqueness of the site. He remarked that the Board applied the standards of hardship and uniqueness for granting the 73 Falmouth Road variance and the same rationale should be used for this request as the lots are comparable in terms of two front setbacks and substandard lot size.
5. Petitioner Rachel Rosenfeldt, 158 Parmenter Road, explained that it was her family's desire to simply rebuild the garage, but their desire changed to needing to construct a home office above the garage over the past two years for them to work from home. She discussed that the connection between the house and the garage is needed so they can get back and forth to the bathroom during the workday without having to be exposed to the elements as they are not planning to install any plumbing in the garage. She noted that it is her family's intent to age in place and she knows that going through the variance process can be difficult and it not something that should be done lightly.
6. No members of the public spoke at the hearing.



7. A motion was made by Michael Quinn to close the public hearing, seconded by Stuart Snyder. The motion passed 5-0 and the public hearing was closed.
8. 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.

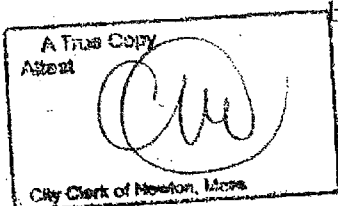
FINDINGS, DETERMINATION & CONDITIONS

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 is corner lot, which impacts its rear lot setback, has a trapezoidal shape, is undersized and one of the smallest lots in the neighborhood.
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 unique setback requirements applicable to corner lots, which negatively impacts development options in comparison to typical properties in the area. As a practical matter, the proposed attached garage will result in increasing the 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 in that the departure from the Zoning Ordinance requirement will not change the character of the surrounding area as the proposed addition is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood. Granting the variance requested would not derogate from the spirit and intent of the Zoning Ordinance.

Accordingly, a motion was made by Michael Quinn, duly seconded by Michael Rossi, to approve the requested variance. The motion passed four in favor, one opposed. Therefore, a variance to have a 5.4 foot side setback and a 4.9 rear setback is granted subject to the following conditions:

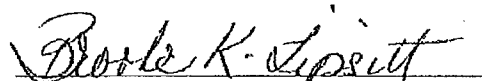
1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this Variance shall be located and constructed consistent with the plans submitted with Petitioner's application.
2. No building permit shall be issued pursuant to this Variance until the Petitioner 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.

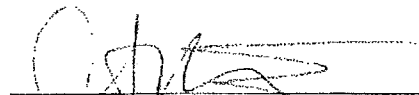
AYES: Stuart Snyder
 Treff LaFleche
 Michael Rossi
 Michael Quinn

NAYS: Brooke K. Lipsitt

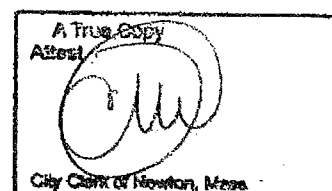


Brooke K. Lipsitt, Chairperson

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 or Section 21 of Chapter 40B has been filed.



Carol Moore, City Clerk



Middlesex South Registry of Deeds
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Middlesex South Registry of Deeds
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www.middlesexsouthregistry.com