



# CITY OF NEWTON, MASSACHUSETTS

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Ruthanne Fuller  
Mayor

## ZONING BOARD OF APPEALS

Brenda Belsanti, Board Clerk

### DETAILED RECORD OF PROCEEDING AND DECISION

Petition #04-22 John Realty Inc. requesting a variance from Section 3.2.3 of the Newton Zoning Ordinance to reduce the required lot area to 8,880 square feet. The subject property is located at 34 John Street within a Multi-Residence 1 (MR-1) zoning district and consists of an 8,800 square foot lot.

The Zoning Board of Appeals for the City of Newton (the "Board") held a virtual public hearing via Zoom on Wednesday, May 25, 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 Boston Globe*, a newspaper of general circulation in Newton, Massachusetts, on May 11, 2022 and May 18, 2022.

The following members of the Board were present:

Brooke K. Lipsitt (Chair)  
Michael Rossi  
Stuart Snyder  
Lei Reilly  
Betsy Sweet

The following documents were submitted to the Board and/or entered into the record at the public hearing: 34 John Street Variance Application, received April 6, 2022; a supplemental revised Zoning Review Memorandum, received May 19, 2022; and a supplemental memorandum submitted by Peter Harrington received May 25, 2022.

### THE PUBLIC HEARING

1. Attorney Peter Harrington, of Harrington & Harrington, 505 Waltham St., West Newton, spoke on behalf of the Petitioner. Attorney Harrington stated that the subject property originally consisted of two lots that were each 4,400 square feet, and that the lots were officially combined into one lot in 2021. He explained that the requested variance is necessary to allow the petitioner to construct a two-family home on the property as demolition of the existing single-family home would trigger new lot dimensional requirements and the property would not meet the lot size requirements for new lots.
2. Attorney Harrington then explained in detail the issue of the merger of the lots and why the variance was needed based on the City's interpretation of the zoning ordinance. He stated that

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the two original lots should have merged by common law in 1953 given the common ownership and that, as a result, the petitioner could have been allowed to build a two-family home on the merged lot without a variance prior to the official combination of the lots in 2021.

3. Attorney Harrington stated this property is located in a MR-1 zoning district where two-family homes are allowed by right and therefore there is no need for a use variance here. He noted that the property is located on a dead-end street, that the neighborhood consists of single and two-family homes, and that the proposed project would be in keeping with the current uses in the neighborhood.
4. Attorney Harrington argued that the existing condition of the current structure creates a hardship that necessitates the variance. He noted that a civil engineer found there are no footings for the cement foundation of the current structure, that no addition can be added without a large expenditure of money, that safety would still not be guaranteed due to potential shifting of the foundation, and that legal problems may also arise when selling the house if the latent defect is not disclosed to buyer. He stated that any changes to the existing house would require re-digging the foundation while retaining a percentage of the existing house and the sides, installing new footings, and putting in a new foundation either under the old foundation or leaving the old foundation as a façade. He argued that connecting the new and old structures would create safety issues, is a financial hardship, and would create issues relating to the preservation of the property.
5. Attorney Harrington also argued that there is a hardship based on the size and shape of land. He noted that the Board granted a variance in 2019 for a property at 34 Morton Street for a similar problem, where the owners had divided lots and the shape of the lot was a hardship due to it not being big enough on its own when the other parcel was sold. He contended that the separation of land had happened when there were no restrictions and that at one time the land met the requirements to build a two-family house, but due to changes in the law it had eliminated their right and the petitioner was looking to get the right reestablished.
6. The Petitioner's representative, Olivia Zhou, of 10 Woodbury Drive, Westwood, stated that someone from the City's Inspectional Services Department advised her to officially merge the lots to build a two-family house. She noted that the existing dwelling is not historical per review with Newton Historical Commission and they gave approval to demolish the existing house if the property owner chooses to do so. Ms. Zhou also stated her belief that she could build a two-family house on the subject property without a variance as long as less than 50 percent of the existing dwelling is demolished. Mr. Temple, Deputy City Solicitor, responded that Ms. Zhou was not correct and that any conversion from a single-family dwelling to a two-family dwelling would trigger the new lot dimensional requirements and requires a variance in this instance.
7. There was no comment from the public.
8. A motion was made by Betsy Sweet to close the public hearing, seconded by Stuart Snyder. The motion passed 5-0 and the public hearing was closed

9. 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.
10. In making its findings and determinations, the Board considered this application as two separate variance requests. The Board determined that even though Petitioner had applied for one variance to reduce the required lot area to 8,800 feet, because the Petitioner proposed to build a two-family dwelling, a second variance would be needed to reduce the required lot area per unit to 4,400 square feet.

### 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 as to the variance to allow a reduced lot area:

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 structure on the property was built without footings to support the cement foundation, creating a unique condition.
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.* Retaining the existing dwelling presents significant safety hazards and financial difficulties that present a substantial hardship. Without the requested variance for a reduction in lot size, the existing dwelling cannot be demolished and rebuilt.
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.* Granting the variance requested would not derogate from the spirit and intent of the Newton Zoning Ordinance in that the departure from the ordinance requirements would not change the character of the surrounding area. In addition, granting the Petitioner's request will not result in a substantial detriment to either the neighborhood or the public welfare.

Accordingly, a motion was made by Michael Rossi, duly seconded by Betsy Sweet, to approve the requested variance reducing the minimum lot size to 8,800 sf from 10,000 sf as required by the zoning ordinance. The motion passed five in favor, none opposed. Therefore, the request for a variance to allow a reduced lot area is granted subject to the following condition:

1. No Final Inspection/Occupancy Permit shall be issued pursuant to this Variance until Petitioners have:
  - 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 and the Department of Inspectional Services.
2. 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  
                      Lei Reilly  
                      Betsy Sweet

NAYS:

After careful study of the materials submitted and the information presented at the public hearing, the Board makes the following findings and determination as to the variance to allow a reduced lot area per unit:

1. *There are not 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 petitioner failed to demonstrate any uniqueness related to the land's shape or topography that justifies granting the relief of a variance. An undersized lot does not fall under special circumstances.
2. *A literal enforcement of the provisions of the Newton Zoning Ordinance would not result in substantial hardship to the owner and the variance requested is not the minimum change that is necessary to allow reasonable use of the building or land.* The petitioners failed to demonstrate a substantial hardship. The inability to construct a multi-family dwelling on the property is not a substantial hardship.
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 and without the requested variance.

Accordingly, a motion was made by Michael Rossi, duly seconded by Stuart Snyder, to deny the requested variance reducing the required lot area per unit to 4,400 sf from 5,000 sf. The motion passed five in favor, none opposed. Therefore, the request for a variance to allow a reduced lot area per unit is denied.

AYES:            Brooke K. Lipsitt  
                      Stuart Snyder

Michael Rossi  
Lei Reilly  
Betsy Sweet

NAYS:

  
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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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Carol Moore, City Clerk