



Ruthanne Fuller  
Mayor

# CITY OF NEWTON, MASSACHUSETTS

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ZONING BOARD OF APPEALS  
Brenda Belsanti, Board Clerk

CITY CLERK  
NEWTON, MA. 02459

#06-22

## DETAILED RECORD OF PROCEEDING AND DECISION

Petition #06-22 Ed Zielinski requesting to amend variances #1-80 and #10-08 to allow a reduced side setback. The subject property is located at 128 Gibbs Street within a Single-Residence 2 (SR-2) zoning district and consists of a 9,555 square foot lot.

The Zoning Board of Appeals for the City of Newton (the "Board") held a virtual public hearing via Zoom on Wednesday, June 22, 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 Herald*, a newspaper of general circulation in Newton, Massachusetts, on June 08, 2022 and June 15, 2022.

The following members of the Board were present:

Brooke K. Lipsitt (Chair)  
Michael Rossi  
Treff LaFleche  
William McLaughlin  
Betsy Sweet

The following documents were submitted to Board and/or entered into the record at the public hearing: 128 Gibbs Street Variance Application, received June 1, 2022 and previous variance documents received on June 15, 2022.

## THE PUBLIC HEARING

1. A variance was granted in 1980 modifying the minimum lot area and minimum lot width to allow for the subdivision of the lot. A condition of the variance required that the lot maintains a side yard setback of at least 15 feet from each lot line, which is also required under the Newton Zoning Ordinance. An amendment to the 1980 variance was granted in 2008 to allow for the construction of one trellis-like parking structure in the 15-foot side yard setback. This variance stated that the amendment applied only to the trellis structure as proposed and not to any other use, structure, building, modification or addition.
2. Petitioners Ed Zielinski and Lisa Hines own and reside at the subject property. The Petitioners presented their petition to the Board, requesting to allow a reduced side setback to create a two-story side addition.

3. Mr. Zielinski is an architect and spoke of the design submitted for an addition on the west side of the house. The addition would consist of a two-story internal staircase to connect the floors so that an accessory apartment could be constructed. The addition would create a second form of egress with minimal internal construction. Mr. Zielinski also explained the previous variance was for a carport and the additional staircase would go behind the carport.
4. Mr. Zielinski argued that he was supporting the city directive to include more multi-housing units and multi-generational housing. The proposal is centered around taking a large house and creating two smaller units. This cannot be done on any other portion of the site the way it is constructed.
5. Mr. Zielinski argued that the variance being requested would be within the scope of the variance that was granted in 2008 since it does not go further into the side setback than the trellis structure. In 2008 the side setback requirement was reduced to 5.2 feet for the trellis structure, and the staircase addition would require the side setback requirement be reduced to 9.2 feet.
6. Mr. Zielinski argued that a substantial hardship exists because a staircase providing egress to the second floor cannot be built in any location without violating a setback requirement and because building the staircase in any other location would require extensive renovations to the interior configuration of the house.
7. There were no comments from the public.
8. A motion was made by Treff LaFleche to close the public hearing, seconded by Michael Rossi. 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 and substantial hardship in light of the previously granted variance and the conditions included in that variance. Specifically, Board members discussed that they believe there were potentially other locations where the staircase could be built without violating any setback requirements. Additionally, Board members discussed that any reliance on the 2008 variance amendment would be misplaced because it applied only to the trellis structure as proposed and not to any other structure and because the hardship upon which that amendment was based was not applicable to the current proposed amendment.

### 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 no 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 or topography that justifies granting the requested relief to amend the conditions of the 1980 and 2008 variances and reduce the setback requirements of the Newton Zoning Ordinance.

- 2. *A literal enforcement of the Newton Zoning Ordinance and the conditions of the 1980 and 2008 variances would not result in substantial hardship.* The petitioner failed to demonstrate any substantial hardship. The inability to construct a staircase to allow egress to an accessory apartment in the Petitioners' desired location does not constitute 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 Betsy Sweet, to deny the requested amendment to the variance. The motion passed five in favor, none opposed. Therefore, the request for a variance is denied.

AYES: Brooke K. Lipsitt  
 Michael Rossi  
 Treff LaFleche  
 William McLaughlin  
 Betsy Sweet

NAYS:

  
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 Brooke K. Lipsitt, Chairperson

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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