



Ruthanne Fuller  
Mayor

## 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.newtonma.gov](http://www.newtonma.gov)

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### ZONING BOARD OF APPEALS

Brenda Belsanti, Board Clerk

CITY CLERK  
NEWTON, MA. 02459

#07-22

### DETAILED RECORD OF PROCEEDING AND DECISION

Petition #07-22 Pouya Hezaveh of 60 Hope Ave Unit 320, Waltham, MA requesting a variance from Section 3.1.3 of the Newton Zoning Ordinance to allow 64.8 feet of frontage where 70 feet of frontage is required. The subject property is located at 0 Moody Street within a Single-Residence 3 (SR-3) zoning district and consists of a 7,535 square foot lot.

The Zoning Board of Appeals for the City of Newton (the "Board") held a hybrid public hearing in person and via Zoom on Wednesday, September 28, 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 September 14, 2022 and September 21, 2022.

The following members of the Board were present:

Brooke K. Lipsitt (Chair)  
Michael Rossi  
Stuart Snyder  
William McLaughlin  
Elizabeth Sweet

The following documents were submitted to Board and/or entered into the record at the public hearing: 0 Moody Street Variance Application, received July 26, 2022, ARC, LLC certificate of organization received September 19, 2022, and site pictures received September 28, 2022.

### THE PUBLIC HEARING

1. Petitioner Pouya Hezaveh of 60 Hope Ave Unit 320, Waltham, MA requesting a variance from Section 3.1.3 of the Newton Zoning Ordinance to allow 64.8 feet of frontage where 70 feet of frontage is required to build a single-family home.
2. Attorney Terrence Morris of 57 Elm Street, Newton, represented the property owner. He stated that the subject property was located at the end of a subdivision created in 1932 prior to the frontage requirement. The other lots are fairly uniform and rectangular in shape.
3. Attorney Morris reviewed the assessor's map, topographical map and existing conditions plan showing the shape of lot and steepness of the grade. He also reviewed the photographs

submitted regarding the severe outcropping of ledge and steep changes in topography. The shape of the lot was dictated by topography.

4. Attorney Morris stated that in 1932, when the lot was created, one other lot in the subdivision did not meet the 70 feet frontage requirement. The other lot measured 63.55 feet and the subject lot is 64.81 feet of frontage. The subject lot is 7,573 square feet making it the second largest lot on the street, which has an average lot size of 7,523 square feet.
5. Attorney Morris argued that the variance request should be granted since the application meets all three criteria – soil conditions, shape of lot, and topography of the land make the lot unique and adversely affect the subject lot and none of the other 16 lots on the street where homes have been built; a hardship would exist without a variance because no other productive use of the land would be possible; and the variance would not derogate from the spirit and intent of the Newton Zoning Ordinance.
6. There were no comments from the public.
7. A motion was made by Michael Rossi to close the public hearing, seconded by Elizabeth Sweet. 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 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 topography of the land or structures which affect it but do not generally affect other properties in the zoning district.* The petitioner was able to demonstrate uniqueness related to the land's shape and topography that justify granting the requested relief. The slope and grade of the land as well as the shape of the lot uniquely affect the subject property.
2. *A literal enforcement of the Newton Zoning Ordinance would result in substantial hardship.* The petitioner was able to demonstrate substantial hardship. Without the requested variance, no productive use of the land would be possible.
3. *The variance would be in harmony with the general purpose and intent of the Newton Zoning Ordinance.* 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.

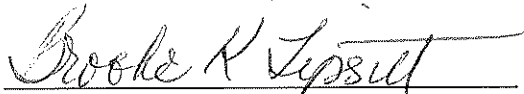
Accordingly, a motion was made by Michael Rossi, duly seconded by Elizabeth Sweet, to approve the requested amendment to the variance with the condition that the road be brought up to the city

standard at the owner's expense. The motion passed five in favor, none opposed. Therefore, the request for a variance is approved subject to the following conditions:

1. The paved roadway (Moody Street) shall be extended from where the existing roadway ends through the length of the entire frontage of the subject property and shall be constructed in conformance with the specifications set forth in Article II. Construction of Streets and Ways of Chapter 26 of the City Ordinances.
2. 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 "Proposed Plot Plan Lot 20 Moody Street in Newton, MA", dated May 10, 2022 and prepared by Rober Survey.
  - b. Architectural drawings entitled "New Residence at Mood Street Lot 20, Newton MA", dated May 23, 2022 and prepared by Nordesign & Build LLC Architects.
3. No building permit shall be issued 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.
4. 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  
 Michael Rossi  
 Stuart Snyder  
 William McLaughlin  
 Elizabeth 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 has been filed.

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 Carol Moore, City Clerk