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By Brenda Belsanti, ZBA Clerk at 1:07 pm, Apr 27, 2023



Ruthanne Fuller  
Mayor

## CITY OF NEWTON, MASSACHUSETTS

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### ZONING BOARD OF APPEALS

Brenda Belsanti, Board Clerk

**RECEIVED**

By City Clerk at 2:54 pm, Apr 27, 2023

#01-23

### DETAILED RECORD OF PROCEEDING AND DECISION

Petition #01-23 Maria Konstantopoulos of 10-12 Craigie Terrace, Newton, requesting a variance from Section 3.2.3 of the Newton Zoning Ordinance to reduce the side setback requirement of 7.5 feet to 6.8 feet. A building permit was issued that allowed the reconstruction of the existing first and second story rear decks and to add a third story deck in the same footprint. The decks were not constructed in accordance with the approved building permit and require a variance from the side setback requirement. The subject property is located at 10-12 Craigie Terrace within a Multi-Residence 1 (MR-1) zoning district and consists of a 7,917 square foot lot.

The Zoning Board of Appeals for the City of Newton (the "Board") held a hybrid public hearing via Zoom on Wednesday, March 22, 2023, 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 March 08, 2023, and March 15, 2023.

The following members of the Board were present:

Michael Rossi (Chair)  
Brooke K. Lipsitt  
Lei Reilley  
William McLaughlin  
Betsy Sweet

The following documents were submitted to Board and/or entered into the record at the public hearing: 10-12 Craigie Terrace Variance Application, received January 19, 2023.

### THE PUBLIC HEARING

1. Petitioner Maria Konstantopoulos of 10-12 Craigie Terrace, Newton is requesting to allow a reduced side setback to allow the reconstructed deck that was not constructed in accordance with the approved building permit to remain.
2. Ms. Konstantopoulos spoke of the unusual shape of the lot and the existence of boulders that impacted where the footings of the deck were placed.

3. Ms. Konstantopoulos argued that the shape and topography of the lot create a substantial hardship and that this is the minimum and only change needed to have reasonable use of the structure.
4. Ms. Konstantopoulos argued that it would be in harmony with the Newton Zoning Ordinance because the deck does not cause any issues or harm to anyone, it is not detrimental to the neighborhood or public welfare, and it adds a more aesthetic appealing look to the neighborhood.
5. The Board heard comments from members of the public.
6. A motion was made by Brooke Lipsitt to close the public hearing, seconded by Betsy Sweet. The motion passed 5-0 and the public hearing was closed
7. 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 and whether alternatives could be achieved without zoning relief.

#### **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:

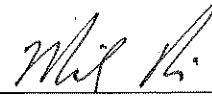
1. *There are no special circumstances related to the soil conditions, shape or topography of the land or structures which affect it but do not generally affect other properties in the zoning district.* The petitioner failed to demonstrate any uniqueness related to the land's shape or topography that justify granting the requested relief to reduce the side setback requirement to 6.8 feet.
2. *A literal enforcement of the Newton Zoning Ordinance would not result in substantial hardship.* The petitioner failed to demonstrate any substantial hardship. The inability to construct a deck 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 Lei Reilley, duly seconded by Brooke Lipsitt, 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:           Michael Rossi  
                       Brooke K. Lipsitt  
                       Lei Reilley  
                       William McLaughlin

Betsy Sweet

NAYS: None



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Michael Rossi, 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