



Ruthanne Fuller  
Mayor

# CITY OF NEWTON, MASSACHUSETTS

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## ZONING BOARD OF APPEALS Brenda Belsanti, Zoning Board Clerk

### MEETING MINUTES

**Wednesday, April 26, 2023.**

**7:00 p.m.**

**Hybrid – in person and via ZOOM**

**Board Members Present:** Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet (remote), Stuart Snyder, William McLaughlin, and Denise Chicoine (alternate)

**Staff Present:** Brenda Belsanti, ZBA Clerk; Jennifer Wilson, Assistant City Solicitor; Barney Heath, Director of Planning; and Michael Gleba, Senior Planner

**A public hearing of the Newton Zoning Board of Appeals was held as a hybrid meeting in person and virtually via Zoom on Wednesday, April 26, 2023, at 7:00 p.m. on the following petitions:**

1. **#02-23** Akinobu Itoh and Naoko Ono of 46 Valley Spring Road, Newton, are requesting a variance from Section 7.6 of the Newton Zoning Ordinance to allow a height of 36.4 feet where a height of 36 feet is required. The petitioners seek to raze and construct a two-story attached garage, resulting in an increase in building height to 36.4 feet from the existing conforming height of 35.3 feet. The subject property is located at 46 Valley Spring Road within a Single Residence 2 (SR-2) zoning district and consists of a 10,000 square foot lot.
2. **#09-22** Northland 160 Charlemont, LLC, requesting a Comprehensive Permit, pursuant to M.G.L. Chapter 40B, to construct a nine-story mixed-use development with 410 residential units and approximately 10,689 square feet of ground floor commercial space on 6.98 acres of land located at 160 Charlemont Street and 56 Christina Street in the Mixed Use 1 Zoning District. The proposal includes 103 affordable units and 486 parking stalls.
3. Review and approval of minutes for February 22, 2023 and March 22, 2023 meetings.



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**Agenda Item 1:** #02-23 – Akinobu Itoh and Naoko Ono of 46 Valley Spring Road, Newton. Sitting Members: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet, William McLaughlin, and Stuart Snyder.

### Documents Submitted:

1. Variance Application dated March 16, 2023.

### Testimony:

Jay Walter, AIA, Entasis PC, 83 Pembroke Street, Newton representing Akinobu Itoh and Naoko Ono of 46 Valley Spring Road, Newton presented a PowerPoint illustrating the current state of the property and requested changes. The presentation demonstrated the slope of the property and driveway to the garage, which is a full story below the first story of the existing home. Mr. Walter stated that moving the garage up the driveway and attaching it to the house it would make the proposed garage in line with the existing house and decrease the slope of the driveway. The existing grading in front of the house would be maintained. If the garage is attached to the house, the mean grade elevation would be included across the entire length of the back of the addition in the calculations, but the additional lower elevation increases the calculated height of the entire house. The proposed addition is 1 ½ stories on a 2 ½ story house and is clearly positioned below the roof.

Ms. Lipsitt asked what would need to be changed on the elevation of the garage to make the elevation conforming, such that a variance would not be necessary.

Mr. Walter responded that they would not be able to lower the garage elevation but would have to raise the grade in the back of the property so it would not be the natural grade. It would have to be raised a few feet for the calculation to work. The perimeter of the garage is enough to change the calculation and by connecting the garage to the house would tip it over the allowable height.

Ms. Lipsitt asked if there was a feasible solution rather than seeking a variance.

Mr. Walter responded that he had looked, but would have to change the grade in the back and



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install retaining walls to artificially change the grade to meet the allowable calculation because it is the mean grade calculation that is the problem.

Ms. Lipsitt responded that she understood the problem, but asked if other solutions were considered.

Mr. Walter responded no.

Mr. Snyder stated that there are certain criteria the Board must consider for a variance on the question of hardship and that he was not sure if the hardship had been addressed.

Mr. Walter stated that the purpose of the project was to attach a detached garage and that the slope of the driveway is unsafe especially in winter. Conformity would disturb the existing natural grade. He believes that the owners are complying with the intent of the bylaw because they are not increasing the height of the house. Visually the look of the house will appear lower. It is very site specific due to the steepness of the grade and the developer put the garage in the back corner of the property.

Mr. Snyder stated it seemed the hardship was the grade of the site and the way building height is calculated, and asked if there were other houses in the neighborhood that were similarly situated.

Mr. Walter stated there were no other similarly situated houses in the area. The house was built about 20 years ago and the homes around it were built in the 1950's.

Chair Rossi asked if the owners resided at the property and if so for how long.

Mr. Walter responded that they have lived at the property for four or five years.

Chair Rossi asked if Mr. Walter or the owners had reached out and spoken to any of the neighbors regarding the project.

Mr. Walter responded that the owners have spoken to the neighbors, and he was unaware if anyone



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objected to the proposed renovation.

There were no further questions from the Board.

Mr. Snyder made a motion to close the public hearing and Ms. Sweet duly seconded the motion.

### **Public Comments:**

There were no public comments.

### **Deliberation:**

Mr. McLaughlin stated that this issue was an unintended consequence of the bylaw. One would ask how the elevation can increase if one is not making the house taller, but in Newton it can be. He states he empathizes with the petitioner due to the uniqueness and steepness of the lot. The hardship is the steepness, especially in the winter. He feels this is a highly unusual circumstance and a technical issue, and not a situation where someone simply wants to add another story on top of their house.

Ms. Lipsitt stated that she understands the issue and that way the zoning ordinance is written means the proposed change moves this house from a conformity to a non-conformity and would require a variance. She has been rarely in favor of variances that have to do with garages and in this case, there is an existing fully functional garage. Ms. Lipsitt stated she does not see a hardship here and will not be supporting it.

Ms. Chicoine stated that it is a very de-minimis request of 0.4 feet and is consistent with the overall design of the house, in that the applicants are not proposing to alter the height. She also stated that the applicants are making a good faith effort to engage the City to make sure that they are following all the steps to be approved.

Mr. Snyder stated that he shares the view of Mr. McLaughlin that it seems an unfortunate result of the math. The hardship question is not simple, but he can be convinced it exists with the awkwardness of the Zoning Ordinance.

Chair Rossi stated that the Board does look at this strictly but believes the eleven-foot grade



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change on the lot does satisfy the statutory requirement of uniqueness of the lot. The lot does have some different circumstances regarding the topography. Literally enforcing the Ordinance especially when we don't have a change in the actual height of the house would create a hardship. The steepness of the slope creates a hardship so he is inclined to support the variance.

Mr. Rossi asked for a motion on the item.

Accordingly, a motion was made by William McLaughlin, duly seconded by Betsy Sweet, to grant the request for a variance to the applicant. The motion passed four in favor (Rossi, McLaughlin, Sweet, Snyder), and one opposed (Lipsitt). Therefore, the request for a variance was granted.

**Agenda Item 2:** #09-22 – Northland 160 Charlemont, LLC, Newton. This item was opened on October 26, 2022. Sitting Members: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet, William McLaughlin, Stuart Snyder, and Denise Chicoine (alternate).

### **Documents Submitted:**

1. Presentation of a 3D model of revised plan for public view
2. Letter with comments from NBBJ (peer reviewer) dated April 19, 2023.
3. Memorandum with attachments from the Planning Department dated April 19, 2023.

### **Testimony:**

Attorney Steve Buchbinder, Schlessinger & Buchbinder, 1200 Walnut Street, Newton, opened the applicant's presentation and indicated that the applicant would discuss the revised design of the building and site layout.

Attorney Buchbinder stated that the unit count has decreased from 410 units to 370 units.

BK Boley, Senior Design Principal, and Christopher Bridle, Landscape Architect, both with Stantec Architecture, 40 Water Street, Boston, presented a power point overview of the revised site plan and building layout, and responses to the questions raised by the peer reviewers and in the Planning memo at the last meeting. They also walked through the process of the different design iterations they considered and how they reached the final design decision.



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Chair Rossi asked for any comments from the Planning Department.

Mr. Gleba presented NBBJ responses and the steps going forward and timetables for submission of documents needed for a June meeting.

Attorney Buchbinder stated which documents would be available. The stormwater calculations would need to wait until the civil plans are complete.

Chair Rossi asked if there were comments from the public.

### **Public Comments:**

Steve Ayres, 94B Christina Street, Newton, stated that he is still concerned about shadows in the neighborhood especially around the equinox. Another concern is the traffic and parking in the neighborhood.

Diane Prunte, 305 Winchester Street, Newton, also expressed concern about the shadows in the neighborhood. She asked if the stairs will be improved and rebuilt to be less steep, will there be green roofs/community garden, solar panels, and if non-residents will be able to use the shuttle.

Mr. Bridle stated the stairs will be improved, the green roof and solar are being studied, and there is a shadow study is being done.

Mr. Buchbinder stated that the shuttle will be available for non-residents, and they may work with NewMo for transportation.

Matt Lai, 46 Cottage Street, Newton, asked about traffic mitigation and if there were plans to prevent site residents from parking in the neighborhood as overflow parking.

Chair Rossi stated traffic, transportation, and parking issues will be in future meetings when there are more detailed plans.

MaryLee Belleville, 136 Warren Street, Newton, stated she is concerned about using NewMo



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instead of shuttles. Shuttles is paid for by the owners of the property whereas NewMo is subsidized by the taxpayers.

Attorney Buchbinder stated that the developer would contribute to NewMo, but these are just exploratory talks.

Ms. Puente stated she is also concerned and asked if NewMo would adhere to the promised shuttle schedule of every 20 minutes.

Mr. Rossi asked for questions and comments from the Board.

Mr. Snyder asked if the decrease in number of units is affecting the number of affordable units.

Attorney Buchbinder responded it would stand at 25% of the total units which would decrease the number of affordable units to 93.

Mr. Snyder asked what they would be doing to beautify the retaining wall and whether that wall comes right up to the property line of the site.

Mr. Bridle responded that it does come right up to the property line, and it is their understanding that they will be able to work on the wall.

Mr. Snyder asked if the sidewalk on Christina can be extended to Needham Street on the side of the property.

Mr. Bridle responded that they are still proposing to cross the street to join the sidewalk on the other side of Christina and safety measures will have to be installed.

Mr. Snyder asked about a traffic light install at Charlemont and Needham Streets.

Mr. Bridle responded that Mass. DOT is designing the traffic lights.



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Mr. Curt Quitzau, Civil Engineer, VHB, responded that the DOT is constructing the intersection with signalization, sidewalks, and crosswalks.

Ms. Sweet stated that she would like to see community gardens and appreciates the changes that have been made to the design.

Ms. Chicoine stated she appreciates that the green space has remained as a buffer to the adjoining neighborhood. She asked what the current parking ratios are now with the new number of units.

Mr. Boley stated the parking ratio is at 1.4 spaces per unit.

Ms. Chicoine asked if the terraces with open to all residents or just certain units.

Mr. Boley stated that the one closest to the river that is 30 feet would probably be an amenity for all residents of the building and the other terraces that are 10-15 feet on the other end of the building we are not sure yet.

Mr. McLaughlin stated he appreciated the efforts make to walk Board members through the design process. He asked how big the courtyards are for each building.

Mr. Boley responded that one courtyard is wider than the other. The one where the pool is located is wider and is about 180 feet and the other about 160 feet.

Ms. Lipsitt stated that she feels there also needs to be an entrance on the courtyard side of the south building not just the Christina Street side.

Ms. Lipsitt stated she does not understand the rationale for the roundabout being so large or the multi-use path on the north side of Charlemont and asked who had control of that abutting property.

Attorney Buchbinder stated that the property on the north side is basically a right-of-way and would need to be developed in conjunction with the city and the owner of the strip mall.



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Mr. Randy Hart, VHB, stated the dimensions of the roundabout can be looked at and that the roundabout does not need to be all hardscape. The roundabout is to prevent u-turns so it is functionally necessary since from the project includes head-in parking to parallel parking. He stated they did not anticipate a lot of volume using the roundabout.

Ms. Lipsitt asked what would be wrong with an occasional U-turn if the applicant does not expect much demand for the roundabout.

Mr. Hart responded that it is their obligation to give people a way to access the parking spaces.

Ms. Lipsitt asked if the dimensions could be smaller.

Mr. Hart responded that it was just a concept at this point and he will work with the Stantec team.

Mr. Buchbinder stated that it would be a perfect place for the shuttle buses to be able to turn around.

Ms. Lipsitt stated that the shuttle could come into the complex from Charlemont, pick people up front of the buildings, and exit onto Christina.

Mr. Snyder stated that he believed they had wanted to push people to utilize Charlemont to alleviate traffic on Christina.

Ms. Lipsitt stated that if they want to encourage people to use the shuttle busses instead of cars, they should be mindful that residents would be less likely to use the shuttle if the pick-up location was down the street instead of in front of the building, especially in cold or rainy weather.

Mr. McLaughlin stated that Mr. Snyder is correct that Christina is a difficult street on which to make a left turn, and feels that the roundabout needs to be improved.

Mr. Rossi asked for clarification on the height of the building.



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Mr. Boley stated it was nine stories prior to the redesign. On the Charlemont side it was eight stories and on the Christina Street side it was nine stories. Now that it has split into two buildings, they are seven stories each. The building on Christina Street is approximately 89 feet above grade and on Charlemont it is 91.8 feet. Grading is still being finalized for average grade. Prior it was about 14 feet taller.

Mr. Rossi asked about the unit mix of the units that were cut and those that remain.

Mr. Boley stated that the three-bedrooms remained at 10% of the total, the two-bedrooms decreased from 50% to 47.6%, one-bedrooms are 33%, and studios are 8.9%. There was a slight adjustment. Overall units went from 1344 gross square feet to 1258 gross square feet.

Chair Rossi continued the hearing until June 22, 2023 to allow enough time for the applicant to submit materials and the Planning Department and peer reviewers to review the materials submitted. Future meetings will include more details and discussion on transportation, parking, stormwater, and sustainability.

The next hearing for this project will be June 22, 2023.

**Agenda Item 3:** Review and approval of minutes for February 22, 2023 and March 22, 2023, meetings.

A motion was made by Brooke Lipsitt to approve the minutes as circulated. This motion was duly seconded by Elizabeth Sweet. The motion passed 5-0.

Mr. Rossi concluded the meeting.

Adjourned 8:35 p.m.

**ZBA DECISIONS can be found at [www.newtonma.gov/ZBA](http://www.newtonma.gov/ZBA)**