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NewGov - Newton, MA

08/19/2022

ZBA-22-6

Zoning Board of Appeals Application

RECEIVED
By City Clerk at 3:40 pm, Aug 19, 2022

Status: Active

Date Created: Aug 19, 2022

Applicant

Josh Ehrenfried
putt4birdie@yahoo.com
78 Winston Road
Newton Center, MA 02459
6179352567

Primary Location

140 BRANDEIS RD
NEWTON CENTRE, MA 02459

Owner:

CITY OF NEWTON SCHOOL DEPT-NEWTON
SOUTH HIGH
1000 COMM AVE NEWTON, MA 02459

Applicant Information

The individual submitting this application is the
Petitioner

Do you have a representative who should be associated with this application?
Yes

Is the property owner a company, corporation, or other entity?
Yes

Representative Information

Name
Brian Hurley

Address
One Federal Street, 20th Floor

City
Boston

State
MA

Zip Code
02110

Telephone Number
6173092600

Email

bhurley@verrill-law.com

Please list all the names and addresses of the principals, officers, and/or managers

Name	Address
Jon & Jill Bovarnick	62 Winston Road
City	State
Newton	MA
Zip Code	
02459	

Name	Address
Denys & Marina Glushkov	54 Winston Road
City	State
Newton	MA
Zip Code	
02459	

Name	Address
Josh & Dahlia Ehrenfried	78 Winston Road
City	State
Newton	MA
Zip Code	
02459	

Name	Address
Matthew Theall	91 Winston Road
City	State
Newton	MA
Zip Code	
02459	

Name	Address
Mikhail & Marina Turestsky	94 Winston Road

City

Newton

State

MA

Zip Code

02459

Name

Babak Allabadi & Leila Jalinous

Address

77 Winston Road

City

Newton

State

MA

Zip Code

02459

Name

Leonid & Olga Gorelik

Address

69 Winston Road

City

Newton

State

MA

Zip Code

02459

Name

Tamar Frankel & Ray Atkins

Address

61 Winston Road

City

Newton

State

MA

Zip Code

02459

Name

Galina Elbert

Address

86 Winston Road

City

Newton

State

MA

Zip Code

02459

Appeal Information

Relationship to Subject Property (i.e. owner, abutter, etc.)

Abutter

What decision are you appealing--is it an inability to obtain a building permit, the issuance of a building permit, an order or decision of the Commission of Inspectional Services or a zoning violation?

Issuance of a building permit

Date of Decision/Order/Permit/Notice you are appealing

07/22/2022

State the basis or grounds for contesting the decision, providing any information that you feel will aid the Board in its review of your appeal:

On October 4, 2021 with no notice to residents, the Mayor announced plans to light Brandeis Field. This caught us by surprise then and since for the following reasons: (a) In a public meeting 3.5 years ago, the City promised not to put lights on this (Brandeis) field when they voted to light the Winkler stadium field 1000 feet away, (b) Parks & Rec [PRC] offered 3 reasons to justify this project but we can prove that they are either wholly untrue or extremely misleading and exaggerated--this project meets only one need: Lighting ~1 hour of extra M-TH practice in October and early November exclusively for freshman and sophomore student athletes (varsity sports has practices at Winkler Field) for no more than 50-75 hours annually, all at a cost of ~\$700,000 using COVID-relief funding from Federal taxpayers, (c) current needs could alternatively be met by purchasing \$30,000 mobile, LED, battery powered lighting rather than the proposed, permanent \$700,000 lighting (d) Public memos from the Mayor's office falsely declare that resident feedback was solicited and residents have accepted protocols though feedback was never actively solicited or regarded, no protocols have been agreed upon as abutters have been and remain strongly opposed, and over 150 residents within 1/4 mile (nearly everyone) have signed a petition opposed to this project, (e) abutters are concerned this is proceeding without protocols agreed upon and with PRC having broken protocols previously agreed upon at the recently lit Winkler Field and tennis courts, (f) the declining grade of the terrain from abutter's homes to Brandeis field and proximity and direction of these lights presents serious concerns and potential dangers to abutter's well-being (the PRC Commissioner herself once suggested the effects of these lights will be like pointing car headlights into our homes), (g) to mitigate these effects, PRC is literally doing nothing, (h) to mitigate abutter concerns and hazards, abutters offered 25 suggestions to PRC, which promptly and wholly rebuffed every one of the 25 suggestions, (i) the Sunshine Protection Act was unanimously approved by the Senate and awaits House approval and would make daylight savings permanent so that in fall 2023, NSHS sports would regain the hour of daylight lost when they pushed back the school start time that initiated NSHS AD Gonzalez's request to simply have lights for October practices, thereby rendering this project without any singular basis to proceed, (j) No public hearing was conducted for this project and nor have abutters received any public forum to air their grievances in a way similar to what is written here, (k) under City Ordinance 21-2, the School Committee (not PRC or the mayor) is in charge of the "control," "use," and "layout" of their fields while PRC's duty is limited to "management, care and maintenance" (on a recorded webinar this summer, the School Committee appeared unanimously concerned that they were hearing about this project only for the first time and appeared alarmed about it's justifications, source of funding, and that it has proceeded in spite of strongly opposed neighbors with legitimate concerns). In spite of this City Ordinance, the School Committee's proper jurisdiction of this project was promptly obfuscated after this webinar. Since the "use" of this field WILL change from a daytime field only (for 60 years since NSHS was built) to a daytime and nighttime field if this project proceeds, the School Committee has jurisdiction, not PRC. (l)

the City Council's voice has also been obfuscated by the mayor's funding this project with Federal taxpayer COVID-relief money that is explicitly not intended for recreational purposes but that she has exercised authoritarian domain over, (m) when an independent study was requested of PRC by abutters and PRC promised to comply, PRC furnished a one-page document that is not a study nor independent as it was authored by a non-profit that appears to have been founded by and funded by the same light company they contracted to do the Brandeis lights installation.

State all sections of the Newton Zoning Ordinance implicated in the appeal

Newton City Ordinance 21-2, Zoning Sec. 1.2, Sec. 2.1.2E & F, Sec. 6.3.14, Sec. 7.3, Sec. 7.4, Sec. 7.5.2, Sec. 7.8.2

Link to Zoning Ordinance:

<https://www.newtonma.gov/home/showpublisheddocument/29823/637444168451970000>

(<https://www.newtonma.gov/home/showpublisheddocument/29823/637444168451970000>)

Explain why you are aggrieved by the decision/order/permit/notice being appealed:

Newton City Ordinance 21-2 dictates that the School Committee should govern here, not PRC. Yet, the School Committee's control has been obfuscated after they demonstrated serious concerns about this project as already noted above.

Per Sec. 1.2, this project has moved quickly and does not encourage the most appropriate use of land nor has consideration of the comprehensive plan adopted by the Planning Board and the City Council.

Per Sec. 2.1.2E, PRC offered no plan to create a meaningful buffer to mitigate the light pollution or noise that this project will create in the dark and dead of night (i.e. after-dark) and after children's and senior's bedtimes.

Per Sec. 2.1.2F, this project creates multiple hazards for the "general health, safety, and welfare" of taxpaying, home owners including abutters and other concerned residents nearby.

Per Sec. 6.3.14, to our knowledge this project has not proceeded with the required "Administrative Site Plan Review" nor a "Special Permit."

Per 7.3, a special permit has not been filed nor reviewed by City Council and the Department of Planning and Development. Only "building" and "electrical" permits have been filed, which we are appealing here.

Per 7.4, the City aims to "protect the health, safety, convenience and general welfare of the inhabitants of the City" but as noted above and due to the grave proximity and angles and land grading between abutting homes and this field and lack of any meaningful mitigation from PRC, this project puts abutters "health and safety" at great risk while providing clear benefit only for < 100 hours for 13-15 year old NSHS student athletes in only October and early November and for practices, not games and at great cost. Note that abutters of the tennis courts have recently complained to PRC that their families cannot sleep and are getting headaches due to PRC extended the lighting of this area past the longstanding "off" time of 8pm until 930pm without



INSPECTIONAL SERVICES DEPARTMENT
CITY OF NEWTON
1000 COMMONWEALTH AVENUE
NEWTON, MA 02459-1449
617-796-1060

BUILDING PERMIT

J O B W E A T H E R C A R D

PERMIT # BP-22-5147	APPLICANT
Date Issued: August 18, 2022 Permit Fee: \$0.00 District Inspector: Paul Gilbert	Nicholas D'Angelo 5 Wesley St Chelsea MA 02150-1418 617-466-0920
PROPERTY	OWNER
Location: 140 BRANDEIS RD NEWTON CENTRE MA 02459 Zoning District: PUB SBL: 81051 0047	Same Same Same

PURPOSE
Newton South High School: Install foundations for new Musco sports field lighting. Install new pad for equipment enclosure. Estimated Cost: \$181,920 Approved By: Anthony Ciccariello Inspectional Services Department

This permit conveys no right to occupy any street, alley or sidewalk or any part thereof, either temporarily or permanently. Encroachments on public property, not specifically permitted under the Building Code, must be approved by the jurisdiction. Street or alley grades as well as depth and location of public sewers must be obtained from the Department of Public Works. The issuance of this permit does not release the applicant from the conditions of any applicable sub-division restrictions.

PERSONS CONTRACTING WITH UNREGISTERED CONTRACTORS CAN NOT ACCESS TO THE GUARANTY FUND

<ul style="list-style-type: none">-Work shall not proceed until the inspector has approved the various stages of construction.-Permit will become null and void if construction work is not started within six months of the permit Issue Date as noted above.	<ul style="list-style-type: none">-Approved plans must be retained on job and job card kept posted until final inspection has been made. Where a certificate of occupancy is required, such building shall not be occupied until final inspection has been made and CO received.-Where applicable separate permits are required for Electrical, Plumbing & Mechanical installations.
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BUILDING INSPECTION APPROVALS	PLUMBING INSPECTION APPROVALS	ELECTRICAL INSPECTION APPROVALS
1.	1.	1.
2.	2.	2.
3.	3.	3.
OTHER	HEALTH DEPARTMENT APPROVAL 617-796-1420	FIRE DEPARTMENT APPROVAL 617-796-2230

Inspections indicated on this card can be arranged by telephone or written notification.
It is the responsibility of the individual that obtains the permit to make arrangements for all inspections.

POST THIS CARD SO IT IS VISIBLE FROM THE STREET

REQUIRED INSPECTIONS FOR CONSTRUCTION

All plans approved and stamped by the City of Newton MUST be on site and accessible during all inspections. If these plans are not on site, inspections will not take place and a re-inspection fee will be assessed.

1) **EXCAVATION** (New House/Addition Only)

- BOTTOM OF HOLE
- NO FOOTINGS OR CRUSHED STONE

2) **FOOTINGS** (New House/Addition Only)

- BEFORE WALL IS POURED
- FOOTINGS FOR DECK

3) **PRIOR TO BACKFILL** (New House/Addition Only)

- FOUNDATION POURED AND COATED IF REQUIRED (AS-BUILT MAY BE REQUESTED)
- REMOVAL OF ALL ORGANIC MATERIAL (SLAB ON GRADE OR CRAWL SPACE)
- ELECTRICAL BONDING INSPECTION (IF REQUIRED)

4) **ROUGH** ****IN ORDER TO SCHEDULE A ROUGH INSPECTION, THE FOLLOWING ITEMS MUST BE COMPLETE****

- JOB MUST BE WEATHER TIGHT
- PLUMBING AND ELECTRICAL ROUGH INSPECTIONS (CARD SIGNED)
- ORIGINAL AFFIDAVIT FOR ANY ENGINEERED LUMBER OR STEEL (BASED ON A SITE VISIT FROM THE DESIGN ENGINEER)
- ORIGINAL AS-BUILT FROM LAND SURVEYOR (BASED ON A SITE VISIT)
- ALL FIRESTOPPING MUST BE COMPLETE
- F.A.R. CALCULATION AND/OR 1/2 STORY CALCULATION FROM ARCHITECT OR ENGINEER

5) **INSULATION**

- ALL INSULATION COMPLETE AND VAPOR BARRIER INSTALLED
- ALL VENTING MUST BE COMPLETE

6) **FINAL** ****IN ORDER TO SCHEDULE A FINAL INSPECTION, THE FOLLOWING ITEMS MUST BE COMPLETE****

- PLUMBING AND ELECTRICAL FINAL INSPECTIONS (CARD SIGNED)
- FIRE DEPARTMENT FINAL INSPECTION, WHEN REQUIRED (CARD SIGNED)
- FINAL SIGN-OFF FROM ENGINEERING, PLANNING, CONSERVATION, HISTORIC AND HEALTH DEPARTMENT (WHEN REQUIRED)

****A FINAL INSPECTION IS REQUIRED FOR ALL BUILDING PERMITS****

SCHEDULING - WHEN READY, CALL THE DISTRICT INSPECTOR DIRECTLY THE DAY THE INSPECTION IS NEEDED BEFORE 8:00 A.M. TO SCHEDULE AN INSPECTION TIME.

ALAN GIFFORD	(617) 796-1066
BUDDY LAMPLOUGH	(617) 796-1069
PAUL NELSON	(617) 796-1068
PAUL GILBERT	(617) 796-1088

Note: All mechanical equipment, (i.e.) A/C compressors, pool equipment or back-up generators are NOT allowed to be in the required setback for your property.

Noise Ordinance: Construction activity must comply with the City's Noise Ordinance. In general, construction noise may be generated only during the hours listed below. Refer to Newton Revised Ordinances, 2017, Sec. 20-13 (<https://www.newtonma.gov/government/law/city-ordinances-and-charter/-folder-460>) for additional details and restrictions.

Monday - Friday	7 AM - 7 PM
Saturday	8 AM - 7 PM
Sunday & Holidays	Not permitted except by permit approved by the Mayor



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney Heath
Director

Property Owner Authorization

Date: 08/19/22 _____

Property Location: 140 Brandeis Road

Number

Street Address

Property Owner: Newton Public Schools

Name

Contact Number

Current Mailing Address: _____

Number

Street Name

City/Town

State

Zip Code

I am (we are) the owner(s) of the property subject to this application and I (we) consent as follows:

1. This application for a land use permit or administrative approval for development on my (our) property is made with my permission.
2. I (we) grant permission for officials and employees of the City of Newton to access my property for the purposes of this application.

NOTICE: The City of Newton's staff may need access to the subject property during regular business hours and will attempt to contact the applicant/agent prior to any visit. Further, members of a regulatory authority of the City may visit the property as well.

The undersigned "Property Owner" assumes full responsibility for compliance with applicable codes, ordinances, regulations, and the City of Newton codes, procedures, and requirements.

I (we) give our permission for the applicant to submit this application as my agent (see Page 2).

NOTICE: The applicant/agent is the primary contact and may be any individual representing the establishment or property owner. The applicant/agent must also be legally authorized to make decisions on behalf of the property owner(s) regarding the application.

Property Owner/Owner Representative Signature:

ONLY FILL OUT IF YOU ARE NOT THE PROPERTY OWNER OF RECORD

Applicant/Agent Information

Applicant/Agent: _____



Name

Applicant/Agent Address:

78 Winston Road

Number	Street Name
Newton	MA
City/Town	State
	Zip Code

Applicant/Agent Signature:



This application is also being filed by no less than the following abutters:

- 54 Winston Road: Denys & Marina Glushkov**
- 62 Winston Road: Jon & Jill Bovarnick**
- 78 Winston Road: Josh & Dahlia Ehrenfried**
- 86 Winston Road: Galina Elbert**
- 94 Winston Road: Mikhail & Marina Turetsky**
- 91 Winston Road: Matthew Theall**
- 77 Winston Road: Babak Allabadi & Leila Jalinous**
- 69 Winston Road: Leonid & Olga Gorelik**
- 61 Winston Road: Tamar Frankel & Ray Atkins**

Should you require their signatures, please advise and we will obtain them at your request.



CITY OF NEWTON, MASSACHUSETTS

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Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS
Brenda Belsanti, Zoning Board Clerk

MEETING MINUTES

Wednesday, June 22, 2022

7:00 p.m.

Virtually via Zoom

Board Members Present: Brooke Lipsitt (Chair), Michael Rossi, Elizabeth Sweet, Treff LaFleche, and William McLaughlin (all participated remotely)

Staff Present: Brenda Belsanti, ZBA Clerk, Jennifer Wilson, Assistant City Solicitor, and Jonah Temple, Assistant City Solicitor

A public hearing of the Newton Zoning Board of Appeals was held virtually via Zoom on Wednesday, June 22, 2022, at 7:00 p.m. on the following petitions:

1. **#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
2. Review and approval of minutes for May 25, 2022 meeting.

Agenda Item 1: #06-22 – Ed Zielinski for 128 Gibbs Street Sitting Members: Brooke Lipsitt (Chair), Michael Rossi, Elizabeth Sweet, Treff LaFleche, and William McLaughlin

Documents Submitted:

1. 128 Gibbs Street stamped application dated June 1, 2022.
2. Copies of two previous variances submitted June 15, 2022.

Testimony:

The petitioners, Ed Zielinski and Lisa Hines, of 128 Gibbs Steet, requested to allow a reduced side setback to create an accessory apartment in the residence to have their daughter and grandchild move in and live as a multigenerational household.

Mr. Zielinski is an architect and spoke of the design submitted for a modest addition of a two-story



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ZONING BOARD OF APPEALS Brenda Belsanti, Zoning Board Clerk

internal staircase to connect the basement through third floors on the west side of the house, subdivide the house and to create a second form of egress with minimal internal construction. The proposed design is to minimize internal construction within the home and takes into account where the pre-existing plumbing is located in the home. Mr. Zielinski also explained that the previous variance in 2008 was for a carport and the additional staircase would go behind the carport. The addition would only be seen from two other properties.

Chair Lipsitt wanted an explanation of what the hardship would be for this property to justify the requested variance.

Mr. Zielinski argued that he was supporting the city directive to include more multi-housing units and multigenerational housing, and to have two families living in a house instead of one. 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.

Chair Lipsitt referenced the ZBA rules and requirements under Chapter 40A of the state statutes regarding the hardships of topography, shape, soil conditions and asked Mr. Zielinski to explain the hardships this proposal would address.

Mr. Zielinski responded that the modifications could not be done on any other portion of the site/property the way that it is constructed. The relief is not available on the east, north or south side of the property. It can only be accommodated on the west side.

Chair Lipsitt noted that there was an existing exterior stairway to the basement on the south side and asked why that could not be extended to the second floor.

Mr. Zielinski explained that it was a non-conforming stair to the basement. It is a bulkhead with a cap and is not capable of fulfilling the code to be both an egress and an access stair to the second floor.

Chair Lipsitt asked if that could be explained further.



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ZONING BOARD OF APPEALS Brenda Belsanti, Zoning Board Clerk

Mr. Zielinski explained that the stair as it is today is non-conforming so he would have to remove that stair, add an additional stair and due to the roofline would not be able to extend the stair all the way to the second floor.

Mr. LaFleche asked to review the previous variance regarding the carport in 2008. It was granted due to the small area and issues with the site that were listed.

Chair Lipsitt discussed that the previous variances were first to sub-divide the lot because it was too big in 1980 and then the next variance was because the lot was now too small in 2008.

Mr. LaFleche noted that various variances were granted over the history of the City of Newton interpreting the language of the state statute in different ways. Variances in 1980 or 2008 may not prevail in 2022. The Board has become more consistently clear in insuring the uniqueness of the land in relation to the shape, topography, soil of the land and not the improvements on the land. The first filter in evaluating the merits of the variance is to make sure that first threshold is met in terms of the uniqueness and how it leads to some hardship. That is what would make the application worthy of granting. What is the uniqueness of this property that results in hardship that requires this relief?

Mr. Zielinski argued that the area where the variance being requested would be within the envelope of the variance that was granted in 2008. In 2008 the lot line was extended 11 feet, and the addition would be 7 feet wide. Also, if the city is looking for multi-unit housing this would be an opportunity to make an existing structure into multi-unit housing. He believed that his proposal is in the spirit the city is trying to make with multigenerational housing and hopes that would be taken into consideration.

Chair Lipsitt noted that the 2008 decision applies only to the trellis structure as proposed and specifies that it will not grant relief for any other use, structure, building, modification, addition, or any other construction no matter how similar to the current proposal at any time for that carport area.

Mr. LaFleche asked if there was another area that the stairway could be located that would not



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ZONING BOARD OF APPEALS Brenda Belsanti, Zoning Board Clerk

require a variance and could a similar staircase be within the allowed building area rather than into the setback and only require a special permit.

Mr. Zielinski responded no matter where the stairway goes there will be an issue with the setback due to the configuration of the lot.

Chair Lipsitt stated that if construction was located in the rear of the building it would not interfere with the setback line since the southern end of the structure already is going further in the rear beyond the major structure of the house. She stated that something could be done in the allowed building envelope as it exists today and inquired if that was examined.

Mr. Zielinski responded that it was examined and because of the way it would be constructed it would go into the rear yard setback.

Chair Lipsitt suggested that he examine again the basement stair area and see if it was possible to reconstruct a stairway to the second floor to meet the goals of the proposal and provide a second means of egress.

Mr. Zielinski responded that he believes it would still broach the rear yard setback and taking into consideration the existing interior configuration of the house it would make it very difficult to reconfigure the interior of the house.

There was no comment from the public.

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.

Deliberation:

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.



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Accordingly, a motion was made by Michael Rossi, duly seconded by Betsy Sweet, to deny the request to allow a reduced setback. The motion passed five in favor and none opposed. Therefore, the request for a variance is denied.

Agenda Item 2: Review and approval of minutes for May 25, 2022, meeting.

A motion was made by Michael Rossi to approve the minutes as circulated. This motion was duly seconded by Treff LaFleche. The motion passed 5-0.

Adjourned 7:32 p.m.

ZBA DECISIONS can be found at www.newtonma.gov/ZBA