

**CITY OF NEWBURYPORT
ZONING BOARD OF APPEALS
MEMORANDUM RE 65 CURZON MILL ROAD**

I. Introduction

Brendon Johnson and Krystina Creel Johnson (“Johnson” or the “Petitioners”) of 65 Curzon Mill Road (the “Premises”) submit this Memorandum in support of their Petition for a Variance. Unfortunately, undersigned counsel cannot appear at the public hearing due to a conflict as the chair of the Swampscott Zoning Board of Appeals and its scheduled public hearing. In lieu of attendance, I submit this Memorandum and request favorable action.

II. Facts

The Premises consist of a dimensionally conforming structure. The home is built at an unusual angle from the front and rear lot lines and setback over 46 feet from the front yard. Because of the structure position, adding a larger garage and additional living space above presents a challenge. Petitioners explored countless alternatives to avoid seeking the Variance relief, but the exercise served to support their hardship. The complying additions would result in an aesthetically unappealing home and substantially less functionality.

The Petitioners request relief from the twenty-foot side yard setback to permit their garage to encroach to a point 16 feet, 6 inches from the side lot line. The reason for the requested relief is to permit a substantially more aesthetic garage addition to be built with a straight line permitting consistent architectural design, functionality (i.e., fitting car in garage addition) and with the approval and support of the abutters.

III. Legal Standard

The Rules and Regulations of the Zoning Board of Appeals (“ZBA”) require that “[a]pplications for a variance must be supported by a legibly written memorandum setting forth in detail all facts relied upon for the Board to consider the grant said application. Criteria for the variance, based on M.G.L. Chapter 40A, Section 10, and the City Zoning Ordinance Section XH.6.A Variances, should be clearly identified and factually supported.”

G.L. c. 40A (the “Zoning Act”) addresses Variances in Section 10.

“§ 10. Variances

The permit granting authority shall have the power after public hearing for which notice has been given by publication and posting as provided in section eleven and by mailing to all parties in interest to grant upon appeal or upon petition **with respect to particular land or structures** a variance from the terms of the applicable zoning ordinance or by-law **where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law...**

The permit granting authority may impose conditions, safeguards and limitations both of time and of use, including the continued existence of any particular structures but excluding any condition, safeguards or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner.

If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period. If the permit granting authority does not grant such extension within thirty days of the date of application therefor, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of this section.” G.L. ch. 40A, § 10 {*emphasis supplied*}.

IV. Argument

This Board may find that owing to circumstances relating to the shape of the Petitioner's land and the existing structure (i.e., the angled siting of the house on the lot), and especially affecting such land and structure but not affecting generally the Petitioner's zoning district (i.e., this siting is unique to this lot and structure), that a literal enforcement of the twenty-foot side yard setback would involve substantial hardship, financial or otherwise, to the Petitioner (i.e., the Petitioner cannot build the garage required to fit their vehicles and provide for the maximum aesthetic architecture for themselves and their neighbors).

The home was sited such that the Petitioners cannot provide the aesthetically pleasing and architecturally consistent addition without the modest relief, which is desirable relief and can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaw. In fact, several properties in the neighborhood have side-yard setback nonconformities.

The setback limitations are designed to protect from development within a certain minimum distance. Here, the trade-off for the reasonable zoning relief is both a pleased petitioner and abutters. The neighborhood will be well served by approval of the Petition and the uniquely sited home and the limitations of the lot provide ample support for the Varaince.

V. Conclusion

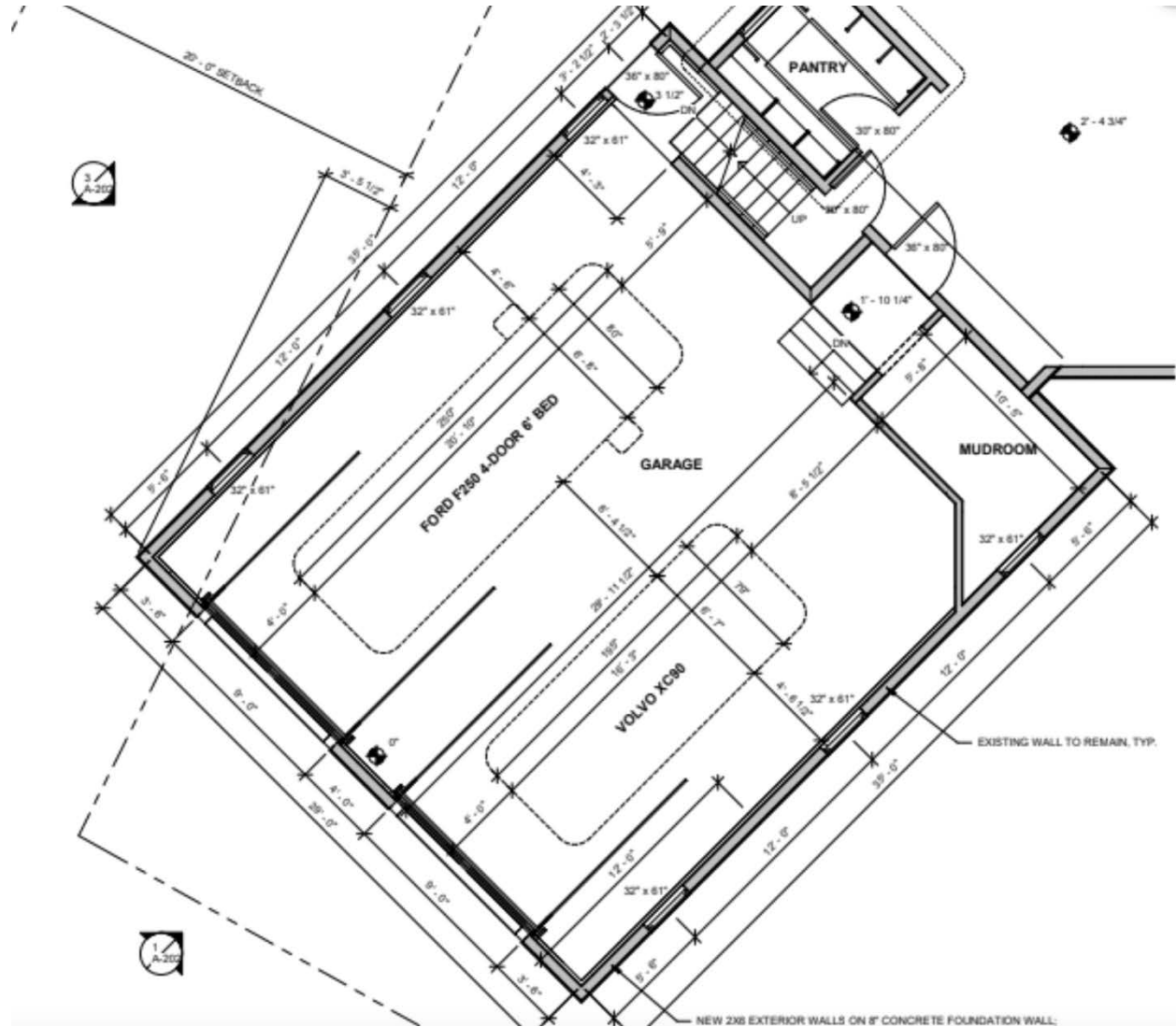
For the reasons asserted herein, the Petitioners respectfully request that this Board grant their requested Variance.

Brendon Johnson and
Krystina Creel Johnson,
By their attorney,

/s/ Marc D. Kornitsky

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Proposed:



Alternative:

