

Ruthanne Fuller
Mayor

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

DATE: June 9, 2023

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning
Michael Gleba, Senior Planner

SUBJECT: **Petition #203-23** for SPECIAL PERMIT/SITE PLAN APPROVAL amends Special Permit #32-21 allowing for a larger driveway entrance width that exceeds the maximum allowed at **63-65 Broadway**, Ward 1, Newtonville, on land known as Section 13 Block 31 Lot 06, containing approximately 18,000 square feet of land in a district approved to be zoned MULTI RESIDENCE 1. Ref: 7.3.3, 5.1.7.C, 5.1.13 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis which may be useful in the special permit decision making process of the City Council. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the City Council will want to consider in its discussion at a subsequent Working Session.



63-65 Broadway

Project Description

Background

The subject property at 63-65 Broadway consists of an 18,000 square foot lot in a Multi Residence 1 (MR1) zoning district improved with three single-family attached dwellings allowed by Special Permit #32-21 (**Attachment A**) which was granted in 2021. The petitioner seeks to amend the site plan associated with that special permit to reflect the as built conditions of the site. This requires a special permit to allow a driveway with a width of 25.3 feet, which is excess of both the 14 feet indicated in the special permit and the maximum 20-foot width established by Section 5.1.7.C of the Newton Zoning Ordinance (NZO).

Also, with the increased driveway width increases the amount of impervious surface and therefore open space as well from the special permit-approved 56.4% to 51.6%. While this change would not require additional zoning relief (as the open space would exceed the 50% minimum) it would require the amendment of the special permit approved site plan to reflect this change.

The properties immediately to the north, south, and east of the property are similarly zoned MR1 while a Single Residence 3 (SR3) district abuts the site to the west.

Need for Special Permit

The as-constructed driveway requires a special permit to amend Special Permit #32-21 and a special permit per Section 5.1.13 to allow a driveway entrance width in excess of 20 feet to reflect the as built conditions of the site.

Analysis and Recommendations

Planning notes that the plans submitted with the initial project approval showed a driveway width of 14 feet and associated curb cut of 16 feet. Much attention was given at the public hearing to the parking configuration of the site. The discussion resulted in a Condition #4 requiring the petitioner to relocate two parking stalls within the front yard to the side property line, which was ultimately satisfied. If the proposed driveway width were presented with the prior petition, Planning Staff would not have supported the 25-foot-wide driveway. Staff believes the petitioner should comply with the plans submitted that allowed a more intense use of the site with the approval of the three single family attached dwellings in an effort to provide more open space and a reduced driveway opening, creating a more pedestrian friendly environment in this compact, walkable neighborhood.

I. ZONING RELIEF REQUESTED:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
	Request to amend Special Permit #32-21	
§5.1.7.C §5.1.13	Request to waive the maximum driveway entrance width	S.P. per §7.3.3

For more details regarding the zoning analysis please refer to **Attachment B**.

II. CRITERIA FOR CONSIDERATION PER §7.3.3. AND/OR §7.8.2.C.2:

When reviewing this request, the Council should consider whether:

1. The specific site is an appropriate location for the proposed 25.3 foot wide driveway as designed. (§7.3.3.C.1)
2. The proposed 25.3 foot wide driveway as developed and operated will not adversely affect the neighborhood. (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
5. Literal compliance the requirement that a driveway’s width be no greater than is 20 feet is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features. (§5.1.13)

III. PROJECT PROPOSAL AND SITE CHARACTERISTICS:

A. Site - Existing Conditions

The subject property at 63-65 Broadway consists of a relatively level 18,000 square foot lot improved with three single-family attached dwellings. Vehicular access and parking are provided by a curb cut and driveway on the right side of the parcel.

IV. PROJECT DESCRIPTION AND ANALYSIS:

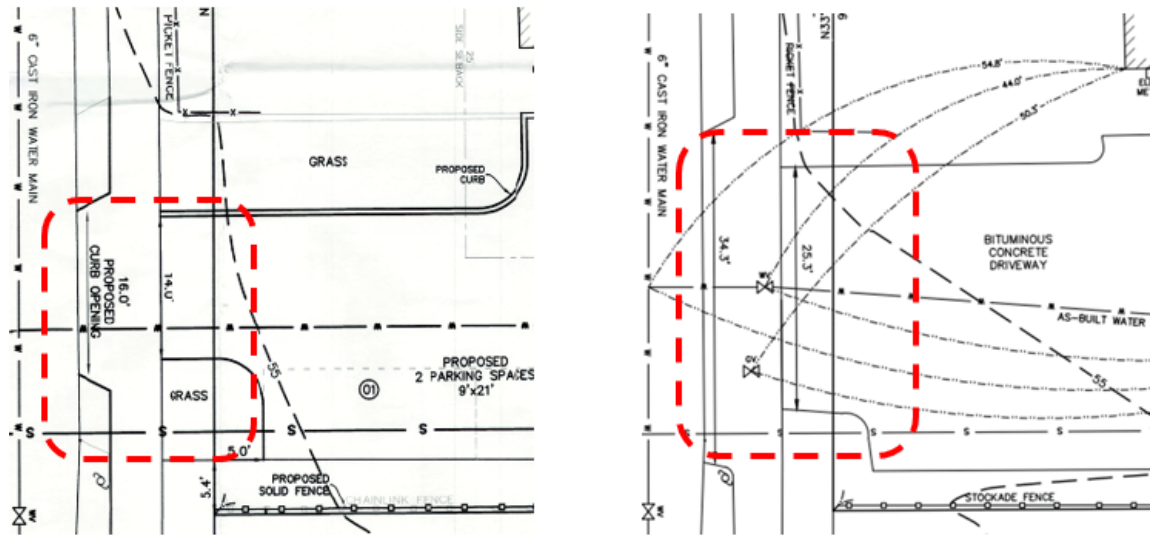
A. Land Use

The use would remain three attached single-family dwellings.

B. Site and Building Design

No changes to the existing structures are contemplated by the petition.

That said, the site design would be altered from that depicted in the building permit site plan (which satisfied Condition 4) to increase the allowed driveway width (as discussed below). The as built conditions increase the amount of impervious surface on the lot, reducing the open space from the approved 56.4% to 51.6% of the area of the lot, remaining above the minimum 50% required.



Site plan detail: building permit (left) and as built (right) driveway widths

C. Parking and Circulation

The driveway and associated curb cut serve two, two-car garages and provide space for additional outdoor parking. The petitioner seeks to amend the site plan associated with the previous special permit to allow an already constructed driveway with a width of 25.3 feet, which is in excess of both the 14 feet indicated in the special permit and the maximum 20 foot width established by Section 5.1.7.C

of the Newton Zoning Ordinance (NZO). The Planning Department notes that associated curb cut would retain the exiting width of 34.3 feet, which would be well in excess of the 16 feet indicated in the special permit-approved site plan.

The Planning Department is unclear as to why the approved driveway width cannot be in conformance with the special permit-approved dimensions.

D. Landscaping

A landscape plan was not provided with this petition.

V. INTERDEPARTMENTAL REVIEW:

- **Engineering Review:** Review of this petition by the Engineering Division is not required at this time.
- **Newton Historical Commission:** Review by Newton Historical Commission is not required.

VI. PETITIONER'S RESPONSIBILITIES:

The petition is considered complete at this time.

ATTACHMENTS:

Attachment A: 2021 Council Order (#33-21), dated February 16, 2021

Attachment B: Zoning Review Memorandum, dated May 12, 2023

(8)
cc
DECIS



2021 01876210
Bk: 01308 Pg: 127 Cert#: 234782
Doc: DECIS 04/08/2021 02:24 PM

ATTACHMENT B

#32-21
63-65 Broadway

CITY OF NEWTON

IN CITY COUNCIL

February 16, 2021

RECEIVED
FEB 18 PM 2:5
DANIEL A. GOSN, CHAO
CITY CLERK
NEWTON, MA 02459

ORDERED:

1306/127

That the City Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to allow three single family attached dwellings, waive the required side setback requirements, to allow parking within the front setback, to allow parking within 20 feet of the side property line and to allow a driveway within 10 feet of the side property line as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The specific site is an appropriate location for the proposed three single-family attached dwellings due to its location with the Multi Residential 1 zoning district. (§7.3.3.C.1)
2. The proposed three single-family attached dwellings as developed and operated will not adversely affect the neighborhood as the one additional dwelling unit will not be visible from the street, is not taller than the existing two family, and complies with the lot area per unit dimensional standard. (§7.3.3.C.2)
3. The proposed three single-family attached dwellings will not create a nuisance or serious hazard to vehicles or pedestrians because parking will be contained on site. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
5. Literal compliance with the dimensional standards for the side setbacks, parking within the front setback, parking with 20 feet for the side lot line and a driveway located within ten feet of the side lot line, is impractical because the waivers reflect the existing conditions of the site and many properties on Broadway have similar parking configurations. (§3.2.4, 56.2.3.B.2)

Current rec owners
Gilbert K Ho
Deborah C Ho

PETITION NUMBER:

#32-21

PETITIONER:

Gilbert and Deborah Ho

A True Copy
Attest
[Signature]
City Clerk of Newton, Mass

234782-1306-127

LOCATION: 63-65 Broadway, on land known as Section 23, Block 6, Lot 19, containing approximately 18,000 square feet of land

OWNER: Gilbert and Deborah Ho

ADDRESS OF OWNER: 63-65 Broadway
Newton, MA 02460

TO BE USED FOR: Three single-family attached dwellings


CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.4.1, §7.3.3 to allow three single family attached dwellings with waivers for the side setback requirements §3.2.4, parking within the front setback §5.1.7.A, §5.1.13, parking within 20 feet of a side setback and a driveway within 10 feet of a side lot line §6.2.3.B.2

ZONING: Multi Residence 1

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
 - a. Plot Plan showing proposed conditions at 63-65 Broadway, signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated June 2, 2020, most recently revised November 20, 2020
 - b. Architectural Plans and Elevations, "Ho Residence", prepared by Peter Sachs, unsigned and unstamped, dated June 5, 2020, most recently revised August 18, 2020, consisting of the following thirteen (13) sheets.
 - i. A-2 Proposed Basement Plan (Unit 3)
 - ii. A-3 Proposed First Floor Plan (Unit 3)
 - iii. A-4 Proposed Second Floor Plan (Unit 3)
 - iv. A-5 Proposed Roof Plan (Unit 3)
 - v. A-6 First Floor and Roof Link Plans
 - vi. A-7 Proposed Front Elevation (Unit 3)
 - vii. A-8 Proposed Right Elevation (Unit 3)
 - viii. A-9 Proposed Back Elevation (Unit 3)
 - ix. A-10 Proposed Left Elevation (Unit 3)
 - x. A-11 Proposed Left Elevation, showing a section of Unit 3
 - xi. A-12 Proposed Left Elevation, showing a section of Unit 3

A True Copy
A2020

City Clerk of Newton, Mass

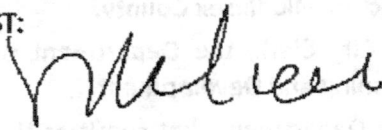
2. Prior to the issuance of any Building Permit, the petitioner shall provide a final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
3. Prior to the issuance of any Building Permit, the plans referenced in Condition 1a shall be updated to reflect the relocation of two parking stalls, currently located five feet from the front property line and 24 feet from the southeastern property line. These stalls shall be relocated along the southeastern boundary. The plans shall also be updated to reflect a six-foot-tall solid fence along the southeastern property line.
4. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:
 - a. Recorded a certified copy of this order for the approved Special Permit/Site plan with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
 - d. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the final site plan.
 - e. The petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management, should such a system be required, to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be recorded by the petitioner at the Middlesex South District Registry of Deeds. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.
5. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
 - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development statements by a registered architect and professional land surveyor certifying compliance with Condition #1, including the as built FAR of the structure.
 - b. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.
 - c. Filed with the Clerk of the Council, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that improvements authorized by this Order have been constructed to the standards of the City of Newton Engineering Department.

A True Copy
Attest
nhbar
City Clerk of Newton, Mass

Under Suspension of Rules
Readings Waived and Approved
22 Yeas 0 Nays 2 Vacancies

The undersigned hereby certifies that the foregoing copy of the decision of the Newton City Council granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the City Clerk on February 18, 2021. The undersigned further certifies that all statutory requirements for the Issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:

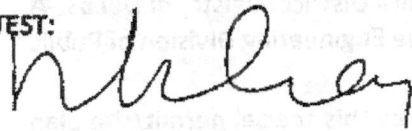


(SGD) DAVID A. OLSON, City Clerk

acting Clerk of the City Council

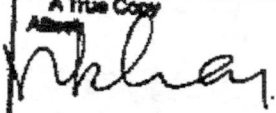
I, David A. Olson, as the Clerk of the City Council and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that twenty days have elapsed since the filing of the foregoing decision of the Newton City Council in the Office of the City Clerk on February 18, 2021 and that NO APPEAL of said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:



(SGD) DAVID A. OLSON, City Clerk

acting Clerk of the Council

A True Copy
Attest:

City Clerk of Newton, Mass

ATTACHMENT B



Ruthanne Fuller
Mayor

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: May 12, 2023

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Katie Whewell, Chief Planner for Current Planning

Cc: Burton Ho, Applicant
Barney S. Heath, Director of Planning and Development
Jonah Temple, Deputy City Solicitor

RE: **Request to amend the site plan associated with Special Permit #32-21 and to allow a curb cut exceeding 20 feet in width**

Applicant: Burton Ho	
Site: 63-65 Broadway	SBL: 13031 0006
Zoning: MR1	Lot Area: 18,000 square feet
Current use: Three single-family attached dwellings	Proposed use: No change

BACKGROUND:

The property at 63-65 Broadway consists of an 18,000 square foot lot in the Multi Residence 1 zoning district. The property is improved with three single-family attached dwellings, allowed by a special permit granted in 2021. The petitioner seeks to amend the site plan associated with the special permit to allow for a larger driveway entrance width that exceeds the maximum allowed as of right, requiring a special permit.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared Burton Ho, applicant, submitted 4/20/2023
- Topographic Site Plan, signed and stamped by Joseph R. Porter, surveyor, dated 6/2/2020, revised 9/24/2020, 2/22/2021
- Topographic Site Plan showing as-built conditions, signed and stamped by Joseph R. Porter, surveyor, dated 10/26/2022
- Special Permit #32-21

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner was granted Special Permit #32-21 in 2021 to allow for three single-family attached dwellings. The site plan associated with the special permit indicated a driveway entrance with 14 feet in width. As constructed, the entrance is 25.3 feet wide. Per section 5.1.7.C, the maximum width allowed is 20 feet. The constructed driveway requires a special permit per section 5.1.13 to allow for the driveway entrance width in excess of 20 feet.
 2. Section 3.2.4 requires a minimum open space of 50%. The increased impervious surface reduces the open space from the approved 56.4% to 51.6%. This change does not trigger zoning relief but would amend and reduce the previously approved amount of open space proposed for the site.
1. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
	Request to amend Special Permit #32-21	
§5.1.7.C §5.1.13	Request to waive the maximum driveway entrance width	S.P. per §7.3.3