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CITY COUNCIL
CITY OF NEWTON

CITY CLERK
NEWTON, MA 02459

DOCKET REQUEST FORM

DEADLINE NOTICE: Council Rules require items to be docketed with the Clerk of the Council NO LATER THAN 7:45 P.M. TUESDAY, PRIOR TO THE MONDAY FULL COUNCIL MEETING to be voted to be assigned to Committee(s) that evening.

To: Clerk of the City Council ZAP Committee

Date: July 27, 2022

From (Docketer): Terrence P. Morris, Esq.

Address/phone/email: 57 Elm Road Newton, MA ▪ 617 202-9132 ▪ tpmorris.landuse.law@comcast.net

Additional sponsors:

1. **Please docket the following item (edit if necessary):** Proposed zoning ordinance amendment to section 1.5.2.G.1 Rear Lot, by substituting the word "or" for the words, "which" and "and" as they appear in the 1st sentence of the "Rear Lot" definition.
2. **The purpose and intended outcome of this item is:** Clarification of the intent of the Rear Lot provision in the Zoning Code.
3. **I recommend that this item be assigned to the following committees:** Zoning & Planning or Land Use.
4. **This item should be taken up in committee:** As soon as possible, preferably within a month; see explanation in item #8 below re potential emergency.
5. **I estimate that consideration of this item will require approximately:** Less than one hour
6. **The following people should be notified and asked to attend deliberations on this item. (Please check those with whom you have already discussed the issue, especially relevant Department Heads):**

City Personnel

Citizens (include telephone numbers/email please)

Jane Santosuosso, Chief ZCO

7. **The following background materials and/or drafts should be obtained or prepared by the Clerk's office prior to scheduling the item for discussion:** special permit decision Council Order #49-16 for 103 Court Street (copy attached).

8. **I have provided additional materials and/or undertaken the following research independently prior to scheduling the item for discussion: Zoning Review Application dated March 7, 2020, for rear lot subdivision at 113 Grove Street; excerpt from the zoning ordinance definition for "Rear Lot".**
9. **I would like to discuss this item with the Chairman before any decision is made on how and when to proceed.**
10. **I would like the Clerk's office to confirm that this item has been docketed. My daytime phone number is: 617 202-9132.**
11. **I would like the Clerk's office to notify me when the Chairman has scheduled the item for discussion.**

Thank you.

Terrence P. Morris

Terrence P. Morris, Esq.

G. Rear Lots.

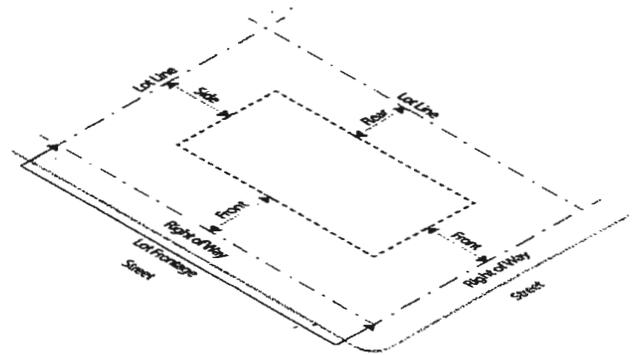
1. A rear lot is defined as a parcel of land not fronting or abutting a street, which does not have the required minimum frontage directly on a street, and which has limited access to a street by either:
 - a. A "flag pole" or "pan-handle" shaped portion of the lot,
 - b. An easement over an adjoining lot possessing frontage directly on the street, or
 - c. A private right-of-way as shown or described in plans or deeds duly recorded with the Registry of Deeds for the Southern District of Middlesex County.

2. Where the Board of Aldermen issues a special permit, a rear lot may satisfy the minimum frontage requirement for the zoning district in which it is located by measuring lot frontage along the rear line of the lot or lots in front of it.

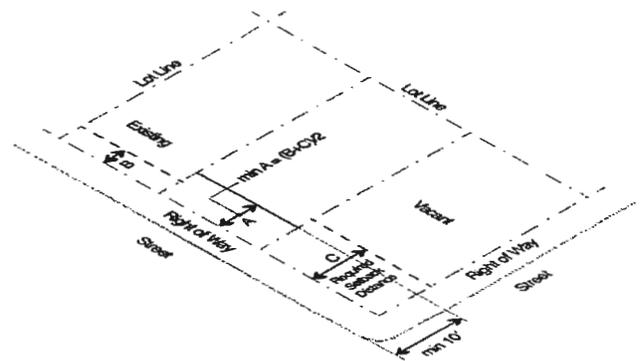
(Rev. Ords. 1973 §24-1; Ord. No. S-260, 08/03/87; Ord. No. S-288, 12/07/07; Ord. No. T-173, 09/16/91; Ord. No. V-92, 10/21/96; Ord. No. X-123, 12/06/04)

1.5.3. Setback

- A. Defined. A line equidistant from the lot line which establishes the nearest point to the lot line at which the nearest point of a structure may be erected. In the case of a corner lot, the rear lot line shall be the lot line opposite the street on which the main entrance is located.



- B. No building need be set back more than the average of the setbacks of the buildings on the nearest lot on either side, a vacant lot or a lot occupied by a building set back more than the required distance for its district to be counted as though occupied by a building set back such required distance. Averaging applies only to the front setback. In no case shall any part of a building in a residence district extend nearer the street line than 10 feet.





Ruthanne Fuller
Mayor

City of Newton, Massachusetts

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1000 Commonwealth Avenue Newton, Massachusetts 02459

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Barney Heath
Director

ZONING REVIEW APPLICATION

Date Submitted: March 7, 2020

Project Address: 113 Grove Street

Zone: SR-3

Project Information

Current Use: Single-family dwelling

Proposed Use: Rear Lot Subdivision for Two 1F dwellings

Project Description (Briefly describe the project below):

Petition for real lot subdivision of a 23,063 sq. ft. lot to erect a new single-family dwelling on a new 12,897 sf lot per NZO Sections 3.1.5 and 3.1.10. The project requires a special permit under Section 3.1.10.A. The existing single-family dwelling on the front lot will have an FAR of .26, with .41 is the maximum allowed for a 10,015 sq. ft. lot. The dwelling on the rear lot will have an FAR of .23 where .24 is the maximum allowed. Neither structure requires FAR relief.

In all other respects the petition meets the dimensional requirements (frontage, setbacks, lot coverage, open space, vehicular access and building height) for a rear lot subdivision. However, section 1.5.2.G.1 defines a rear lot "as a parcel of land not fronting or abutting a street...". Since the proposed rear lot abuts Lasell Street for a distance of 30' arguably it may not qualify for rear lot treatment even though in 2016 the Council granted a rear lot subdivision for property at 103 Court Street with secondary frontage on and access from Wilton Road.

Accordingly, **this application also involves clarification of the rear lot definition by changing the words, "which" and "and" as they appear in the 1st sentence to the word, "or".**

Site Information

Describe the Current and Past Uses, Site and/or Structure information as it relates this application:

The 23,063 sf lot contains a dwelling originally constructed as a single-family dwelling circa 1860.

Project Plans Should Include the Following Site Information in Current and Proposed Conditions:

REQUIRED SUBMITTAL CHECKLIST					
X	Lot Size	X	Front Setback	X	Lot Coverage
X	Lot Frontage	X	Side Setbacks	X	Open Space
X	Building Height	X	Rear Setback	X	Floor Area Ratio
X	Lot Area per Unit	X	Number of Stories	X	Parking

(All plans MUST be signed, stamped, dated, drawn to scale, and clearly labeled. An inaccurate or incomplete application will NOT be accepted. As necessary, the additional information may be requested. Please review the reverse of this form for additional information.)

NOTE: This Application MUST be accompanied by a General Permit Application.

Middlesex South Registry of Deeds
Electronically Recorded Document

This is the first page of the document - Do not remove

Recording Information

Document Number	: 73017
Document Type	: DECIS
Recorded Date	: May 11, 2016
Recorded Time	: 09:49:47 AM
Recorded Book and Page	: 67231 / 33
Number of Pages(including cover sheet)	: 7
Receipt Number	: 1941032
Recording Fee	: \$75.00

Middlesex South Registry of Deeds
Maria C. Curtatone, Register
208 Cambridge Street
Cambridge, MA 02141
617-679-6300
www.middlesexsouthregistry.com

#49-16
103 Court Street

CITY OF NEWTON

IN CITY COUNCIL

April 4, 2016

ORDERED:

That the 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 for a rear lot subdivision to construct a new two two-family dwelling and to allow the frontage of the rear lot to be measured along the rear lot line of the lot in front, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Marc Laredo:

1. The site is an appropriate location for the proposed use and structure as the proposed new rear lot will be in keeping with surrounding lot sizes. (§7.3.3.C.1.)
2. The proposed two-family dwelling is designed in such a manner so that its massing and scale will be in character and consistent with adjacent residential structures in the surrounding Multi Residential 1 zoning district. (§7.3.4.B.2.)
3. The proposed height of the ridgeline for the rear lot dwelling, approximately 31.49 feet, does not exceed the allowed 36 feet and is in keeping with the ridge elevations of adjacent residential structures. (§7.3.4.B.1.)
4. The proposed lighting will be residential in character and will not impact abutting properties. (§7.3.4.B.9.)
5. The orientation of the driveways and siting of the new two-family dwelling, which meets the dimensional controls, are appropriate for the site and neighborhood. (§7.3.4.B.5.)
6. The existing shared 10 foot wide shared driveway along the east property line will be widened to 12 ft. and will service the existing two-family house and one of the two proposed rear units.
7. As per Sec. 3.2.12.B.1, vehicular access to one of the units in the proposed rear two-family dwelling will be provided by a 20 foot wide driveway off Wilton Road.

Property Address: 103 Court Street, Newton

2016 APR -6 PM
City of Newton, Massachusetts

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

8. The proposed landscape plan entails fencing and the planting of trees that will screen the new dwelling from abutting properties. (§7.3.4.B.4.)
9. The proposed retaining walls and site drainage systems are designed to ensure that there will be no off-site drainage impacts on abutting properties. (§7.3.4.B.3.)

PETITION NUMBER: #49-16

PETITIONER: Alan W. and Barbara Quebec

LOCATION: 103 Court Street, Ward 2, Newtonville, on land known as Section 23 Block 16 Lot 36, containing approx. 22,723 square feet of land

OWNER: Alan W. and Barbara Quebec

ADDRESS OF OWNER: 103 Court Street, Newton, MA 02460

TO BE USED FOR: Rear lot subdivision and construction of a new two-family dwelling on a 12,084 square foot lot while maintaining the existing two-family dwelling on a 10,699 square foot lot.

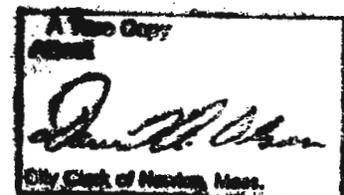
CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.2.12 to allow a rear-lot subdivision with the frontage of the rear lot measured along the rear line of the front lot.

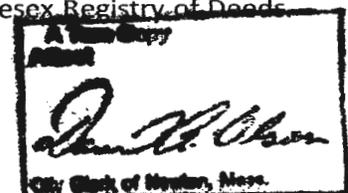
ZONING: Multi Residence 1 District

Approved subject to the following conditions:

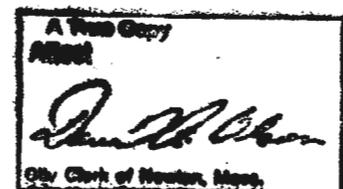
1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
 - a. A set of site plan drawings, "Showing Proposed Conditions at #103 Court Street" prepared by VTP Associates Inc., stamped and signed by Joseph R. Porter, Land Surveyor, dated February 9, 2016, including:
 - i. "Topographic Site Plan," Sheet 1 of 3;
 - ii. "Detail-1," Sheet 2 of 3;
 - "Detail-2," Sheet 3 of 3.



- b. A plan entitled "Topographic Site Plan, Newton, Massachusetts, Showing Existing Conditions at #103 Court Street," prepared by VTP Associates Inc., stamped and signed by Joseph R. Porter, Land Surveyor, dated August 24, 2015.
- c. A set of architectural drawings for the proposed new two-family residence on proposed Lot B and the proposed attached garage proposed on proposed Lot A at 103 Court Street, prepared by Ronald F. Jarek, Architect, dated Nov. 26, 2015 and revised on Feb. 5, 2016, entitled: "Project: Proposed 2 Family Residence 103 Court Street, Newtonville, MA 02460," including:
 - i. "Title Sheet," Sheet A-0;
 - ii. "Notes & Materials," Sheet A-1;
 - iii. "Proposed Basement Plan," Sheet A-2;
 - iv. "Proposed First Floor Plan," Sheet A-3;
 - v. "Proposed Second Floor Plan," Sheet A-4;
 - vi. "Proposed Attic Plan," Sheet A-5;
 - vii. "Proposed Roof Plan," Sheet A-6;
 - viii. "Proposed Front Elevation," Sheet A-7;
 - ix. "Proposed Right Side Elevation," Sheet A-8;
 - x. "Proposed Left Side Elevation," Sheet A-9;
 - xi. "Proposed Rear Elevation," Sheet A-10;
 - xii. "Proposed Section A-A," Sheet A-11;
 - xiii. "Proposed Wall Sections," Sheet A-12;
 - xiv. "Proposed Sections & Details," Sheet A-13;
 - xv. "Proposed Parcel "A" Garage Drawings," Sheet A-14;
 - xvi. "Proposed Foundation Plan," Sheet F-1;
 - xvii. "Proposed First Floor Framing Plan," Sheet F-2;
 - xviii. "Proposed Second Floor Framing Plan," Sheet F-3;
 - xix. "Proposed Attic Framing Plan," Sheet F-4;
 - xx. "Proposed Roof Framing Plan," Sheet F-5;
 - xxi. "Typical Sections & Details," Sheet F-6.
 - xxii. "Landscape Plan," Sheet LA-1.
- 2. The petitioner shall comply with the Tree Preservation Ordinance.
- 3. All utilities shall be located underground from the property line.
- 4. All lighting fixtures shall be residential in scale.
- 5. Prior to the issuance of any Building Permit, the petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be adopted by applicant, incorporated into the deeds; and recorded at the Middlesex Registry of Deeds.



- A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.
6. 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.
 7. Prior to the issuance of any Building Permits, the petitioner shall provide a final Landscape Plan showing compliance with the Tree Preservation Ordinance and all new plantings, for review and approval by the Director of Planning and Development.
 8. Prior to the issuance of any Building Permit, the petitioner shall submit a final Construction Management Plan (CMP) to the Commissioner of Inspectional Services, the Director of Urban Forestry, the Engineering Division of Public Works, the Director of the Department of Planning and Development, the Newton Fire Department and Newton Police Department, which plan should include at a minimum:
 - a. 24-hour contact information for the general contractor of the project.
 - b. Hours of construction: construction shall be limited to between the hours of 7:00 a.m. and 5:00 p.m. on weekdays, and between the hours of 8:00 a.m. and 5:00 p.m. on Saturdays. No construction is permitted on Sundays or holidays except in emergencies, and only with prior approval from the Commissioner of Inspectional Services.
 - c. Proposed methods for dust control including, but not limited to: covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
 - d. A tree preservation plan to define the proposed method for protection of existing trees to remain on the site and on abutting properties during construction.
 - e. A plan for rodent control during construction.
 - f. If blasting of on-site ledge is required, the petitioner shall obtain a Blasting Permit from the Newton Fire Department.
 - g. To ensure emergency vehicle access there shall be no parking in the common driveway.
 9. No Building Permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
 - a. Received final approval from the Director of Planning and Development for the Construction Management Plan.
 - b. Recorded a certified copy of this Order for the approved Special Permit/Site Plan Approval with the Registry of Deeds for the Southern District of Middlesex County.
 - c. Filed a copy of such recorded Order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.



- d. Obtained a written statement from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1.
 - e. Obtain a written statement from the Engineering Division of Public Works that confirms the receipt of a certified copy of the recorded O&M in accordance with Condition #5.
 - f. Filed a final Landscape Plan to the Director of Planning and Development for review and approval.
10. No occupancy permit for the houses constructed pursuant to this Special Permit/Site Plan Approval shall be issued until the petitioner has:
- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect certifying compliance with Condition #1.
 - b. Submitted to the Department of Inspectional Services, and the Department of Planning and Development a final as-built survey plan in digital format.
 - c. Filed with the City Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, final landscape features and fencing.
11. Notwithstanding the provisions of Condition #10 above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the buildings prior to installation of final landscaping provide that the petitioner shall first have filed a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.

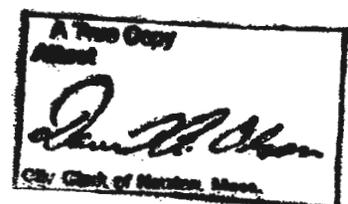
Under Suspension of Rules
 Readings Waived and Approved
 23 yeas 0 nays 1 absent (Councilor Harney)

The undersigned hereby certifies that the foregoing copy of the decision of the 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 April 6, 2016. 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
 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 City Council in the Office of the City Clerk on 4/6 and that NO APPEAL to said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:



(SGD) DAVID A. OLSON, City Clerk
Clerk of the City Council

