



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459
617-796-1120

Petition: #337-23
Public Hearing:
11/14/23

Barney Heath
Director

PUBLIC HEARING MEMORANDUM

DATE: November 9, 2023

TO: City Council

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

SUBJECT: **Petition #337-23**, for SPECIAL PERMIT/SITE PLAN APPROVAL to legalize paving at the rear of the property, resulting in a reduction in the site's open space at 35- 37 William Street in Newton Corner

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.



35-37 William Street

I. Project Description

Use: Two-family dwelling constructed in 1882

Zoning: Multi-residence 2 (MR-2); a portion of the site at the northwest corner is in Watertown

Lot size: 3,906 square feet

Existing Nonconformities:

- Lot size of 3,906 square feet where 10,000 square feet is required
- Frontage of 52 feet where 80 feet is required
- Front setback of 9.8 feet where 25 feet is required
- Side setback (east) of 2.9 feet where 7.5 feet is required
- Lot area per unit of 1,953 square feet where 3,000 square feet is required
- Maximum lot coverage of 37.8% where up to 30% is allowed
- Open space proposed at 20.3% where a minimum of 50% is required

Proposal: The petitioner seeks to legalize an extension of nonconforming reduced open space on the site.

Analysis:

While the Planning Department emphasizes the importance of compliance with open space and lot coverage standards, staff are generally not concerned with the request to legalize the reduced open space on the site due to the many nonconformities of the site. The site is undersized at just under 4,000 square feet and the building takes up approximately 27% of the lot. On-street parking is prohibited on this side of William/Williams Street, thus allowing the petitioner to accommodate parking and subsequent access on site on an already constrained site. If approved, this petition will not add any new impervious surface, but simply legitimize current conditions on the site that have been in place for some time.

II. Zoning Relief Requested:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.4.3.A.1 §7.8.2.C.2	Request to legalize reduced open space	S.P. per §7.3.3

For more details around the zoning analysis please refer to **ATTACHMENT A**.

III. Criteria for Consideration per §7.3.3.C and §7.8.2.C.2:

- The specific site is an appropriate location for the proposed project with reduced

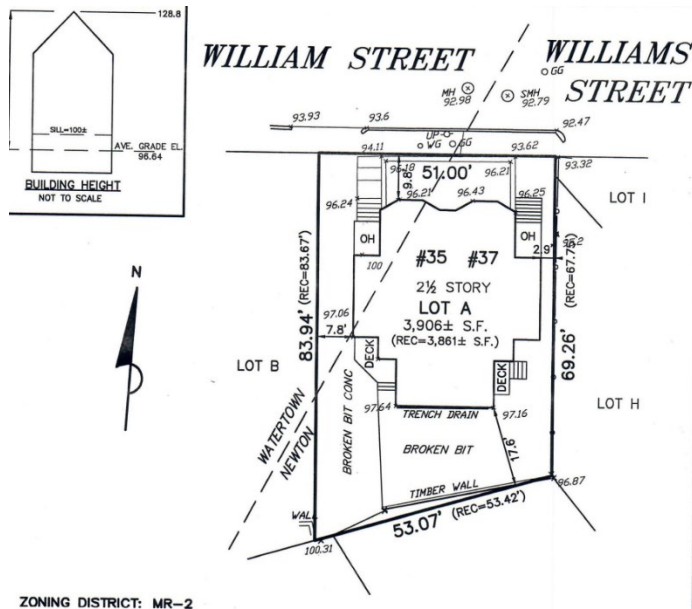
open space (7.3.3.C.1)

- The proposed project that requires relief to allow reduced open space will not adversely affect the neighborhood (§7.3.3.C.2)
- The proposed project that requires relief to allow reduced open space will not create a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)

IV. Project Proposal and Site Characteristics

The petitioner proposes to legalize the existing condition of the site, which needs relief for nonconforming lot coverage. Prior to the purchase of the property in 2018 by the petitioner, the rear of the property had been paved. Due to lack of maintenance, much of that area became overgrown and the paving degraded over time. The current owner replaced the bituminous concrete at the rear with gravel after purchase of the property. The owners were issued a violation notice from the Inspectional Services Department which noted that site failed to meet the minimum open space requirement, which is 50%. While the exact percentage of open space prior to repaving is unknown, the Commissioner of Inspectional Services determined that the open space was already nonconforming and the repaving of the property results in an open space of 20.3%, requiring a special permit. No changes are proposed to the site.

Existing Site Plan



I. Interdepartmental Review

This proposal has been reviewed by John Daghlian, the City's Associate City Engineer. Because no new impervious surfaces will be added, drainage improvements are not required. However, Mr. Daghlian did caution the applicant to be careful with surface runoff so that existing conditions are not exasperated by directing surface runoff to abutters.

II. Petitioner's Responsibilities

The petition is considered complete.

ATTACHMENTS:

ATTACHMENT A: Zoning Review Memorandum

ATTACHMENT B: DRAFT Council Order



Ruthanne Fuller
Mayor

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

Attachment A

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: July 13, 2021

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Neil Cronin, Chief Planner for Current Planning

Cc: Traolach Cahillane, Applicant
Franklin J. Schwarzer, Attorney
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: Request to decrease nonconforming open space

Applicant: Traolach Cahillane	
Site: 35-37 William Street	SBL: 71008 0013
Zoning: MR2	Lot Area: 3,906 square feet
Current use: Two-family dwelling	Proposed use: No change

BACKGROUND:

The property at 35-37 William Street consists of 3,906 square feet, of which 3,040 square feet are located within Newton with the remainder in Watertown. The property is improved with a two-family dwelling constructed circa 1882. The petitioner seeks to legalize paving at the rear of the property which creates a nonconforming situation relative to the open space requirement for the district.

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

- Zoning Review Application, prepared by Franklin Schwarzer, attorney, submitted 9/2/2020
- Certified Plot Plan, signed and stamped by Clifford E. Rober, surveyor, dated 4/23/2019
- Proposed Plot Plan, signed and stamped by Clifford E. Rober, surveyor, dated 4/23/2019
- Affidavit of Patty Walsh Greene, dated 9/14/2019
- Affidavit of Steve and Karen Waller, dated 9/21/2019
- Photos of site, submitted 9/2/2020

ADMINISTRATIVE DETERMINATIONS:

- Based on affidavits from neighbors, Google Earth photographs from 2008 and 2009 and historic photographs, the rear of the property has been paved for many years prior to that time. Prior to the current owner's purchase of the property in 2018, the rear of the property had been paved but allowed to become overgrown due to lack of maintenance. The current owner replaced the bituminous concrete with gravel after purchase and was issued a violation notice from the Inspectional Services Department in part for violating the minimum open space requirement of 50% per section 3.2.3. While the exact percentage of open space prior to repaving is unknown, the Commissioner of Inspectional Services determined that the open space was already nonconforming and the repaving of the property results in an open space of 20.3%, requiring a special permit per sections 3.2.3 and 7.8.2.C.2.

MR2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	3,906 square feet	No change
Frontage	80 feet	51 feet	No change
Setbacks – Principal <ul style="list-style-type: none"> • Front • Side • Rear 	25 feet 7.5 feet 15 feet	9.8 feet 2.9 feet 17.6 feet	No change No change No change
Lot Area Per Unit	3,000 square feet	1,953 square feet	No change
Max Lot Coverage	30%	37.8%	37.8%
Min. Open Space	50%	Not available	20.3%

- See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.4.3.A.1 §7.8.2.C.2	Request to legalize reduced open space	S.P. per §7.3.3

Next Steps

Please contact a Planner by calling 617.796.1120 to obtain a copy of the Special Permit Application. If there have been any changes made to the plans since receipt of your Zoning Review Memorandum you must inform the Zoning Code Official to ensure additional relief is not required. You will need an appointment with a Planner to file your Special Permit Application. **Incomplete applications will not be accepted.**

The following must be included when filing a Special Permit Application:

2. Two (2) copies of the completed Special Permit Application (signed by property owner)
3. Filing Fee (see Special Permit Application)
4. Two (2) copies of the Zoning Review Memorandum
5. Plans (Thirteen sets signed and stamped by a design professional). Each set shall contain:
 - Site Plans showing existing and proposed conditions (including topography as applicable)
 - Architectural plans showing existing and proposed conditions (including façade materials)
 - Landscape plan (as applicable)
6. One (1) Floor Area Ratio (FAR) Worksheet, (signed and stamped by a design professional)
7. One (1) copy of any previous special permits or variances on the property (as applicable)
8. One (1) copy of any other review/sign-off (Historic, Conservation, Tree Removal, etc. as applicable)
9. Two (2) electronic copies of the application with all above attachments (USB or CD)

Copies of all plans shall either be 8.5 x 11 or 11 x 17, except as requested by staff

Special Permit Sign (\$20 fee)

Incomplete applications will delay the intake and review of your project.

Depending on the complexity of the project additional information may be requested to facilitate a full review of the application.

Has the proposed project been presented to and discussed with abutting property owners? Y/N

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

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 legalize an extension of nonconforming reduced open space on the site as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The site is an appropriate location for the proposed project with reduced open space because the majority of the paving is located at the rear of the dwelling and has a minimal impact from the street. (§7.3.3.C.1)
2. The proposed project that requires relief to allow reduced open space will not adversely affect the neighborhood because no additional impervious space will be added beyond what currently exists on the site. Also, in replacing the broken asphalt that was previously on the site, the repaved area is an improvement in terms of safety and visual impact to neighbors. (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians because all parking will be provided on site and the access to the site is not changing. (§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)

PETITION NUMBER: #337-23

PETITIONER: Traolach Cahillane Revocable Living Trust

LOCATION: 35-37 William Street, Ward 1, Newton, on land known as Section 71 Block 08 Lot 13, containing approximately 3,906 sq. ft. of land

OWNER: Traolach Cahillane Revocable Living Trust

ADDRESS OF OWNER: 188 Palfrey Street
Watertown, MA 02472

TO BE USED FOR: Two single family dwellings on one lot

RELIEF GRANTED: Special Permit per §7.8.2.C.2 and §7.3.3 to legalize reduced open space (§3.4.3.A.1)

ZONING: Multi Residence 2

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 plot prepared by Rober Survey, signed and stamped by Clifford E. Rober Professional Land Surveyor, dated April 23, 2019
2. No building permit (other than a demolition permit) and unless otherwise specified shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:
 - a. Recorded a certified copy of this Special Permit/Site Plan Approval at the Middlesex South Registry of Deeds and filed proof of such recording with the City Clerk and submitted a copy with the building permit application.
 - b. Obtained a written statement/sign off from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1 including all dimensional requirements.
3. No certificate of occupancy (temporary or final) shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with for the portion of the project for which occupancy is requested and the Petitioner has:

- a. Filed with the building permit record statements by a registered architect (or professional engineer) and a professional land surveyor (or professional engineer) certifying compliance with Condition #1.
- b. Submitted final as-built survey plans in digital format, stamped and signed by a professional land surveyor or professional engineer, as applicable.