



Ruthanne Fuller
Mayor

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

Petition: #82-24
Public Hearing:
02/06/24

Barney Heath
Director

PUBLIC HEARING MEMORANDUM

DATE: February 1, 2024

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 #82-24**, for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a retaining wall exceeding four feet in height in the front setback, to vertically extend a nonconforming detached garage, to further increase nonconforming lot coverage and to allow two parking stalls within the front set back

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.



19 Waban Hill Road

I. Project Description

Use: Single family dwelling

Zoning: Single-Residence 2 (SR-2)

Lot size: 8,303 square feet

Site constraints: Located on corner lot, irregular lot shape, sloped terrain

Proposal: The petitioner proposes the following alterations to the site: to replace the roof of the existing detached garage with a roof deck, to add retaining walls to the interior of the property, and the extend the existing driveway accessed from Waban Hill Road. The proposed work requires special permit relief.

Analysis: The Planning Department is unconcerned with the petition as proposed. The subject property was constructed in 1900, predating the zoning requirements for setbacks and lot coverage. The site is also constrained by its triangular shape and location on a corner lot and thus subject to two front setbacks, which limits the ability to locate retaining walls and parking on the site in a way that responds to the sloped topography without requiring setback relief.

II. Zoning Relief Requested:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§5.4.2.B	Request to allow a retaining wall exceeding four feet within a setback	S.P. per §7.3.3
§3.1.3 §3.4.3.A.1	Request to alter and extend a nonconforming front setback of a detached garage	S.P. per §7.3.3
§3.1.3 §7.8.2.C.2	Request to further increase nonconforming lot coverage	S.P. per §7.3.3
§5.1.7.A §5.1.13	Request to allow two parking stalls within the front setback	S.P. per §7.3.3

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

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

- The site is an appropriate location for the proposed project that requires relief to allow a retaining wall exceeding four feet within a setback and to allow two parking stalls within a front setback (7.3.3.C.1)
- The proposed project that requires relief to allow a retaining wall exceeding four feet within a setback and to allow two parking stalls within a front setback will not adversely affect the neighborhood (§7.3.3.C.2)

- The proposed project that requires relief to allow a retaining wall exceeding four feet within a setback and to allow two parking stalls within a front setback 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)
- The proposed project which will further extend the nonconforming front setback and lot coverage will be substantially more detrimental than the existing nonconforming structure is to the neighborhood (§7.8.2.C.2)
- Literal compliance with the requirement that parking stalls not be located within a front setback is impracticable due to the nature of the use, 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)

IV. Site Characteristics and Project Proposal

The subject parcel is on a triangular, corner lot with frontage on both Waban Hill Road and Algonquin Road with the dwelling's entrance on Waban Hill Road. The site has two curb cuts, one on each frontage. A curb cut leading to a concrete driveway is located at the northwest corner of the site along Waban Hill Road at the side of the dwelling. The second curb cut is located at the northeast corner of the site, which provides access from Algonquin Road to an approximately 300 square foot detached garage with no setback from the sidewalk. The site has a pronounced slope from the northwest on Waban Hill Road down to the southeast on Algonquin Road. The site also features shrubs, vegetation.

A retaining wall with a maximum height of 2.5 feet are located along the frontage on Algonquin Road. The petitioner proposes to construct two new retaining walls parallel to that on the interior of the site. One of these walls will have a maximum height of 3.2 feet, and the next will have a maximum height of two feet. Taken together, this wall system constitutes a terraced combination of walls. When a terraced combination of walls is placed within a setback, a wall series exceeding four feet requires relief. The series of walls proposed will create an overall height of 7.7 feet within 7.8 feet of the front lot line on Algonquin Road, which requires relief.

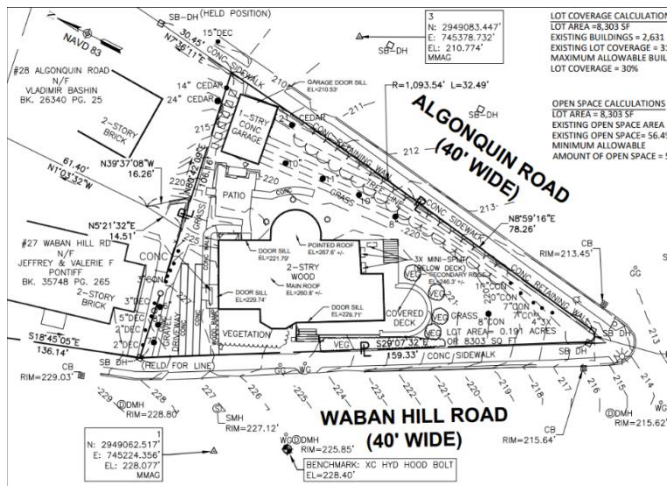
The detached garage is built partially into the sloped frontage on Algonquin Road directly on the lot line. Because there is no setback where a 25-foot front setback is required by-right, the garage is nonconforming. The petitioner proposes to replace the hipped roof of this garage with a flat roof that will be usable as a roof deck. They also propose to add a below-grade garage extension. The eastern wall of this extension will be visible from the street and present as part of the retaining wall system already in place. An at-grade deck is proposed on top of this extended recreational area. This work will create a vertical extension of the nonconforming front setback and requires special permit relief.

The site currently has one parking stall located within the front setback on Waban Hill Road. The

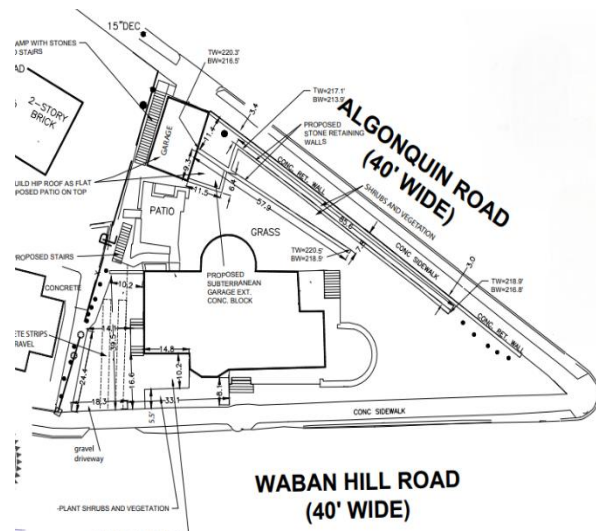
petitioner proposes to remove the concrete driveway and replace it with gravel, extending the driveway further into the property to accommodate a second parking stall. This second stall will be 20.5 feet from the front lot line where the required setback is 25 feet. Because only one parking stall associated with a single-family dwelling may be located within a front setback, this additional parking stall requires relief to be located within the front setback.

The site in its current state has a nonconforming lot coverage of 31.7% where the maximum allowed by right is 30%. The work proposed in this petition will increase the nonconforming lot coverage to 32.9% which requires relief to extend the nonconforming lot coverage.

Existing Site Plan



Proposed Site Plan



VI. Interdepartmental Review

Review from other departments is not required at this time.

VII. Petitioner's Responsibilities

The petition is complete.

ATTACHMENTS:

- ATTACHMENT A:** Zoning Review Memorandum
- ATTACHMENT B:** DRAFT Council Order



Ruthanne Fuller
Mayor

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: October 1, 2023

To: Anthony Ciccariello, Commissioner of Inspectional Services

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

Cc: Mark and Amy Nichols, Applicants
Barney S. Heath, Director of Planning and Development
Jonah Temple, Deputy City Solicitor

RE: Request allow a retaining wall exceeding four feet in height in the front setback, to vertically extend a nonconforming detached garage, to further increase nonconforming lot coverage and to allow two parking stalls within the front setback

Applicant: Mark and Amy Nichols	
Site: 19 Waban Hill Road	SBL: 63002 0007
Zoning: SR2	Lot Area: 8,303 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 19 Waban Hill Road consists of an 8,303 square foot corner lot improved with a single-family dwelling constructed circa 1900 and a detached one-car garage. The petitioners propose to raze the existing hip roof of the detached garage, replacing it with a flat roof to be used as a deck. Retaining walls will be added to the interior of the property, parallel with the existing wall along the Algonquin Street frontage. Additionally, the petitioners intend to extend the existing driveway from Waban Hill Road. The proposed work requires special permit relief.

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

- Zoning Review Application, prepared Mark Nichols, applicant, dated 9/5/2023
- Plot Plan of Land, prepared by A-Plus Construction Services Corporation, surveyor, dated 8/31/2023, revised 9/7/2023, 9/21/2023, 9/25/2023

ADMINISTRATIVE DETERMINATIONS:

1. There is an existing retaining wall along the Algonquin Road frontage reaching a maximum height of 2.5 feet. The petitioners propose to construct two additional retaining walls running parallel with the existing within the property; one reaching a maximum height of 3.2 feet and the next reaching a maximum height of 2 feet. The series of three walls result in an overall height of 7.7 feet within 7.8 feet of the front lot line on Algonquin Road. For a terraced combination of retaining walls, the height is measured from the foot of the lowest wall to the top of the highest wall. Per section 5.4.2.B, a special permit is required for the series of retaining walls exceeding four feet within a setback.
2. There is an existing detached garage on the Algonquin Road frontage which is built partially into the slope. The petitioners proposed to raze the hip roof of the garage and replace it with a flat roof to be used as a deck. Additionally, they intend to build a subterranean garage extension with the eastern wall exposed and appearing as part of the retaining wall system. An at-grade deck will sit atop this extension as well. The existing garage is situated directly on the front lot line where a 25-foot setback is required per sections 3.1.3 and 3.4.3.A.1. The recreational deck space is a vertical extension of the nonconforming front setback, requiring a special permit per section 7.8.2.C.2.
3. The property has an existing nonconforming lot coverage of 31.7%, where the maximum allowed is 30% per section 3.1.3. The proposed construction further increases the nonconforming lot coverage to 32.9%, requiring a special permit per section 7.8.2.C.2.
4. There is an existing parking stall within the front setback from Waban Hill Road. The petitioners propose to extend the driveway into the property to accommodate a second vehicle. Per section 5.1.7.A, only one parking stall associated with a single-family dwelling may be located within the front setback. The second vehicle will be 20.5 feet from the front lot line, where the required front setback is 25 feet, requiring a special permit per section 5.1.13.

See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§5.4.2.B	Request to allow a retaining wall exceeding four feet within a setback	S.P. per §7.3.3
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§5.1.7.A §5.1.13	Request to allow two parking stalls within the front setback	S.P. per §7.3.3

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 allow the proposed project that requires relief to allow a series of retaining walls exceeding four feet within a setback, to alter and extend a nonconforming front setback of a detached garage, to further increase nonconforming lot coverage, and to allow two parking stalls within a front setback, for the use as recommended by the Land Use Committee for the reasons given by the Committee, through its Chair, Councilor Andrea Kelley:

1. The specific site in the Single-Residence 2 (SR-2) district is an appropriate location for the proposed project that requires relief to allow a series of retaining walls exceeding four feet within a setback and to allow two parking stalls within a front setback because the residence and garage predate the zoning code and exhibit existing nonconformities typical of other parcels in the neighborhood. (§7.3.3.C.1)
2. The project as proposed will not adversely affect the neighborhood because the use of the site will remain the same and the site already has existing nonconformities. (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians because the existing curb cuts and driveway location will be maintained. (§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 requirement that parking stalls not be located within a front setback is impracticable due to the shape of the lot because it is constrained by its triangular shape and location on a corner lot as well as the steep grade of the site, which limits alternative options for on-site parking. (§5. 1.13)

PETITION NUMBER: #82-24

PETITIONER: Mark and Amy Nichols

LOCATION: 19 Waban Hill Road, Ward 7, Chestnut Hill, on land known as Section 63 Block 02 Lot 07, containing approximately 8,303 sq. ft. of land

OWNER: Mark and Amy Nichols

ADDRESS OF OWNER: 19 Waban Hill Road
Chestnut Hill, MA 02467

TO BE USED FOR: Single family dwelling

RELIEF GRANTED: Special Permit relief to allow a retaining wall exceeding four feet within a setback, to alter and extend a nonconforming front setback of a detached garage, to further increase nonconforming lot coverage, and to allow two parking stalls within a front setback (§3.1.3, §3.4.3.A.1, §5.1.7.A, §5.1.13, §5.4.2.B, §7.8.2.C.2)

ZONING: Single-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. Plot plan prepared A-Plus Construction Services Corporation, signed and stamped by Michael A. Coleman, Professional Land Surveyor, dated August 31, 2023
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.