



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

Ruthanne Fuller
Mayor

Barney Heath
Director

PUBLIC HEARING MEMORANDUM

DATE: March 29, 2024*

TO: City Council

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

SUBJECT: **Petition #160-24**, for SPECIAL PERMIT/SITE PLAN APPROVAL to allow retaining walls along the sides and rear of the dwelling exceeding four feet in height within the side setbacks at 54-56 Indiana Terrace, Ward 5, Newton Upper Falls, on land known as Section 51 Block 40 Lot 06, containing approximately 7,760 sq. ft. of land in a district zoned Multi Residence 1. Ref: Sec. 7.3.3, 5.4.2.B, 3.2.3, 3.2.10 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.



54-56 Indiana Terrace

*As of March 28, 2024, in response to comment from the Planning Department that the submitted architectural plans did not match the what the Planning Department observed on site, the petitioners indicated their intent to request a continuance until they could produce updated architectural plans. This memorandum reflects Planning's reviews of the proposed project based on the plans submitted prior to March 28, 2024. Planning will publish a working session memorandum covering any updates to the forthcoming memorandum that come with new architectural plans.

I. Project Description

Use – two-family dwelling

Zone – Multi-Residence 1 (MR1)

Lot size – 7,760 square feet

Existing Nonconformities - none.

Proposal- The petitioner is seeking to add retaining walls to the rear and sides of the property. These retaining walls reach a maximum height of 7.4 feet and are within the northern or right side setback. The construction of these retaining walls will also change the grade of the dwelling, making the lower-level area count towards the Floor Area Ratio (FAR), exceeding the maximum FAR for the MR1 zone.

Analysis

The requested relief for the construction of additional retaining walls entails no work on the dwelling itself according to the submitted site plan. The increase in the FAR for the dwelling is not accompanied by any increase in building height or size and therefore will not result in visual impacts to neighboring properties. The proposed retaining walls in excess of four feet along the right or northern lot line are located where there is a significant slope, dropping approximately 20 feet in elevation over the length of the lot line which is about 80 feet long. These retaining walls likely will create more level space for the residents of the dwelling. Prior to obtaining a building permit, the petitioner must provide the Engineering Department with all required documents to demonstrate that the walls are structurally sound and comply with the City’s Stormwater Ordinance.

II. Zoning Relief Requested:

Zoning Relief Required		
Ordinance		Action Required
§5.4.2.B	Request to allow a retaining wall exceeding four feet within the side setback	S.P. per §7.3.3
§3.2.3 §3.2.10	Request to exceed FAR	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 series of retaining walls exceeding four feet in the side setback and resulting in a Floor Area Ratio greater than allowed by right. (§7.3.3.C.1)
- The proposed construction of a series of retaining walls exceeding four feet in the side setback and resulting in a Floor Area Ratio greater than allowed by right as developed

and operated will not adversely affect the neighborhood. (§7.3.3.C.2)

- The proposed construction of a series of retaining walls exceeding four feet in the side setback and resulting in a Floor Area Ratio greater than allowed by right will be no 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 for the proposed construction of a series of retaining walls exceeding four feet in the side setback and resulting in a Floor Area Ratio greater than allowed by right. (§7.3.3.C.4)

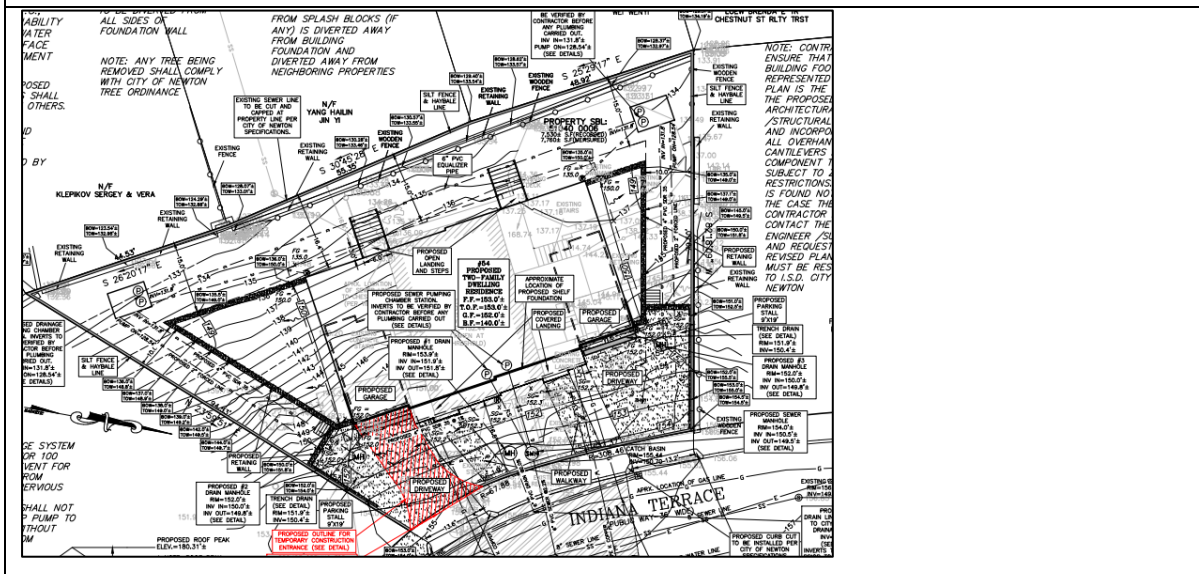
IV. Project Proposal and Site Characteristics

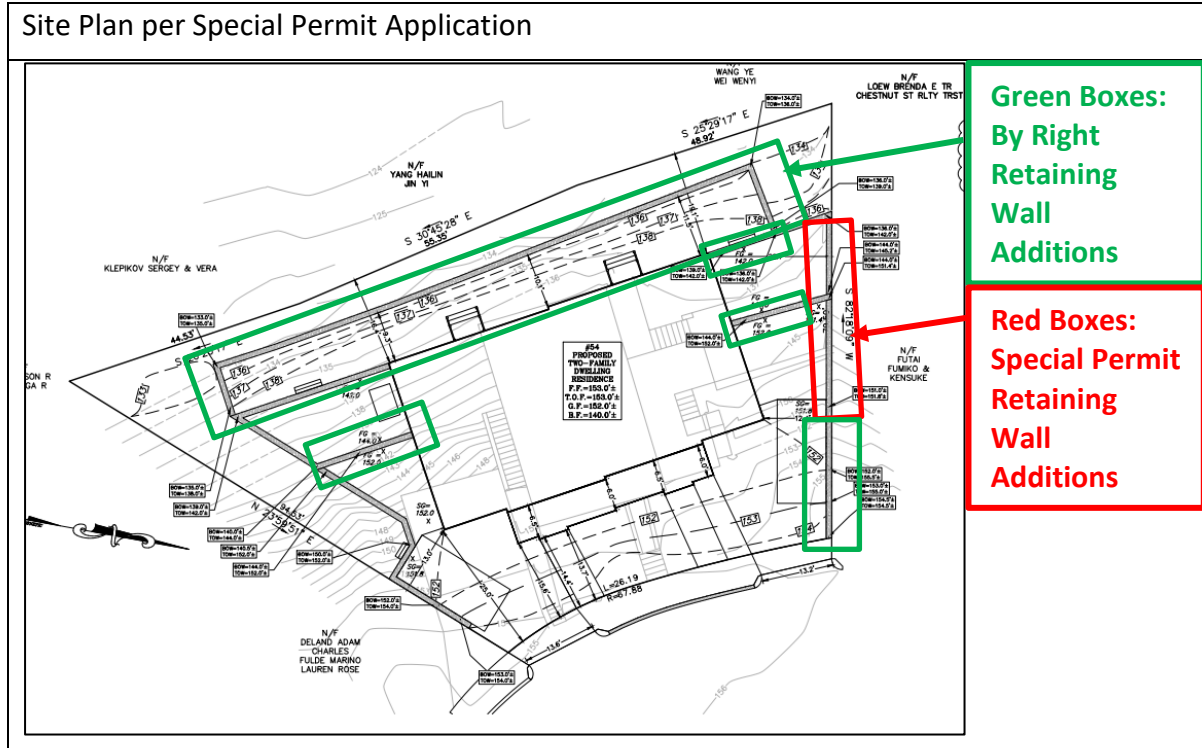
The proposed project, according to the submitted plans, does not entail any work on the dwelling and only consists of the construction of retaining walls. The petitioner has a separate building permit for the by right construction of a two-family dwelling and retaining walls outside of the setbacks. The only work proposed for this project is the addition of retaining walls in excess of four feet in the right side setback. The retaining walls requiring relief begin at the northeastern front corner of the lot and continue along the right or northern lot line for about 60 feet. There are two retaining walls in total along the right lot line, the first section beginning at the front right corner or northeast corner of the lot and continuing about 45 feet before turning left towards the dwelling, parallel to and about midway between the front and rear facades. This first section requires relief for the entirety of the wall that is along the lot line and for the first 7.5 feet of the wall that is within the setback as it reaches a height of 7.4 feet at the corner. The second section of the wall continues along the lot line from the corner of the first wall and continues along the lot line for about 20 feet before creating a corner and continuing about 30 feet to connect to the rear right or northwestern corner of the dwelling. This second section requires relief as the corner and 7.5 feet of the wall connecting to the corner of the dwelling within the setback is six feet in height.

The construction of these retaining walls also alters the average grade, increasing the FAR to 0.57. Under the previous building permit, the petitioner proposed a 0.54 FAR, which is the maximum for MR1 with the allotted 0.02 FAR bonus per Section 3.2.3 of the Zoning Ordinance

The site is significantly graded, with a difference of about 22 feet between the highest and lowest elevations on the lot. The property slopes about 20 feet from the front lot line to the rear lot line, a distance of about 80 feet, resulting in a grade of about 25%. With the proposed series of retaining walls, the petitioner is creating three levels that will be roughly flat, starting with a level from the frontage to the midway point of the house on either side, one level from the midway point of the house to the rear corners of the house, and one level to the rear of the house.

Site Plan per Existing Building Permit





V. Interdepartmental Review

Review from the Engineering Department is required prior to obtaining a building permit.

VI. 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: January 26, 2024

To: Anthony Ciccariello, Commissioner of Inspectional Services

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

Cc: Indiana Terrace LLC, Applicant
G. Michael Peirce, Attorney
Barney S. Heath, Director of Planning and Development
Jonah Temple, Deputy City Solicitor

RE: Request to allow a retaining wall exceeding four feet in height in a setback and to exceed FAR

Applicant: Indiana Terrace LLC	
Site: 54-56 Indiana Terrace	SBL: 51040 0006
Zoning: MR1	Lot Area: 7,760 square feet
Current use: Two-family dwelling	Proposed use: No change

BACKGROUND:

The property at 54-56 Indiana Terrace consists of a 7,760 square foot lot improved with a two-family dwelling currently under construction. Retaining walls are proposed along the sides and rear of the dwelling, with some portions exceeding four feet in height within the side setback, requiring a special permit. Additionally, special permit relief is required to exceed FAR.

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

- Zoning Review Application, prepared G. Michael Peirce, attorney, dated 12/29/2023
- Site Plan of Land, signed and stamped by Peter J. Nolan, surveyor, and Edmond Spruhan, engineer, dated 3/14/2022, revised 10/26/2022, 1/26/2023, 8/29/2023, 9/12/2023, 10/13/2023
- Permitted FAR worksheet, signed and stamped by Richard A. Volkin, submitted 1/22/2024
- Proposed FAR worksheet, signed and stamped by Richard A. Volkin, submitted 12/29/2023

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner proposes to construct retaining walls at the sides and rear of the property. The walls reach a maximum height of 7.4 feet within the northern required side setback of 7.5 feet per section 3.2.3. Per section 5.4.2.B, a special permit is required for retaining walls exceeding four feet within a setback.
2. The petitioner has begun construction on the dwelling with a by-right building permit. The permit utilized the 0.02 FAR bonus by maintaining post-1953 setbacks, allowing for an FAR of .54 where .52 is the maximum allowed per sections 3.2.3 and 3.2.10. The construction of the retaining walls alters the average grade, increasing the square footage below the first story counting towards FAR. This increases the FAR to .57, requiring a special permit.

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 the side setback	S.P. per §7.3.3
§3.2.3 §3.2.10	Request to exceed FAR	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 for retaining walls over four feet in the side setback and a Floor Area Ratio exceeding the maximum allowed for the reasons given by the Committee, through its Chair, Councilor Andrea Kelley:

1. The site is an appropriate location for the proposed series of retaining walls exceeding four feet in the side setback and resulting in a Floor Area Ratio greater than allowed by right as there is currently a significant grade to the site. (§7.3.3.C.1)
2. The proposed construction of a series of retaining walls exceeding four feet in the side setback and resulting in a Floor Area Ratio greater than allowed by right as developed and operated will not adversely affect the neighborhood as the petitioners must demonstrate compliance with the City Stormwater Ordinance and engineering principles prior to obtaining a building permit. (§7.3.3.C.2)
3. The proposed construction of a series of retaining walls exceeding four feet in the side setback and resulting in a Floor Area Ratio greater than allowed by right will be no nuisance or serious hazard to vehicles or pedestrians as no change to parking or circulation is proposed or required. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved for the proposed construction of a series of retaining walls exceeding four feet in the side setback and resulting in a Floor Area Ratio greater than allowed by right as no change to parking or circulation is proposed or required. (§7.3.3.C.4)

PETITION NUMBER: #119-24

PETITIONER: Indiana Terrace LLC

LOCATION: 54-56 Indiana Terrace, Ward 5, Newton Upper Falls, on land known as Section 51 Block 40 Lot 06, containing approximately 7,760 sq. ft. of land

OWNER: Indiana Terrace LLC

ADDRESS OF OWNER: 21 Princeton Rd.
Brookline, MA 02467

TO BE USED FOR: Two-family dwelling

RELIEF GRANTED: Special Permit per §3.2.3, §3.2.10, and §5.4.2.B to construct a series of retaining walls in the rear setback exceeding four feet and to exceed maximum Floor Area Ratio

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 as stamped and signed by Peter Nolan, Professional Land Surveyor, and Edmond Spruhan, Professional Engineer as revised Nov. 13, 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.