



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: April 19, 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 #202-24**, for SPECIAL PERMIT/SITE PLAN APPROVAL to reconstruct the series of walls which exceed four feet in height within the side and rear setbacks at 21 Oakland Street, Unit 2, Ward 1, Newton, on land known as Section 12 Block 17 Lot 3A, containing approximately 9,489 sq. ft. of land in a district zoned Multi Residence 1. Ref: Sec. 7.3.3, 5.4.2.B 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.



21 Oakland St.

I. Project Description

Use -- two family dwelling

Zone – Multi-Residence 1 (MR1)

Lot size – 9,489 square feet

Existing Nonconformities – retaining wall exceeding four feet in height in the rear and side setbacks

Proposal -- the petitioners propose to reconstruct a series of retaining walls to the rear of the dwelling.

Analysis

The proposed reconstruction requires a Special Permit as the previous owners neglected to obtain a Special Permit for the original 1987 construction or 2021 replacement of the retaining walls. According to the petitioner and provided site plan, the existing retaining walls have failed. The proposed walls will replace these walls in kind and do not extend the height or size of the retaining wall and will not change the grade of the site.

Planning believes the proposed retaining walls that replace existing retaining walls are appropriate for the site. Should the special permit be approved, the proposed walls will be reviewed by the Engineering Division of Public Works prior to the issuance of a building permit for the walls. The site is relatively narrow, with side setbacks of 14.7 feet to the left/north and 12.5 feet to the right/south from the rear corners of the house, where the retaining walls are located. Given the narrow right/south side setback and an approximately 60-degree grade on the south/right side of the terrain, the retaining walls are important to ensuring access to the rear of the property and create some usable space to the rear and right of the property. Additionally, the petitioner has provided plans that show drainage, and the Engineering Division will review the project prior to issuance of a building permit. While the previous plans were not reviewed because the walls were constructed without a building permit, the proposed project will be required to demonstrate compliance with the stormwater management ordinance.

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 the rear 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:

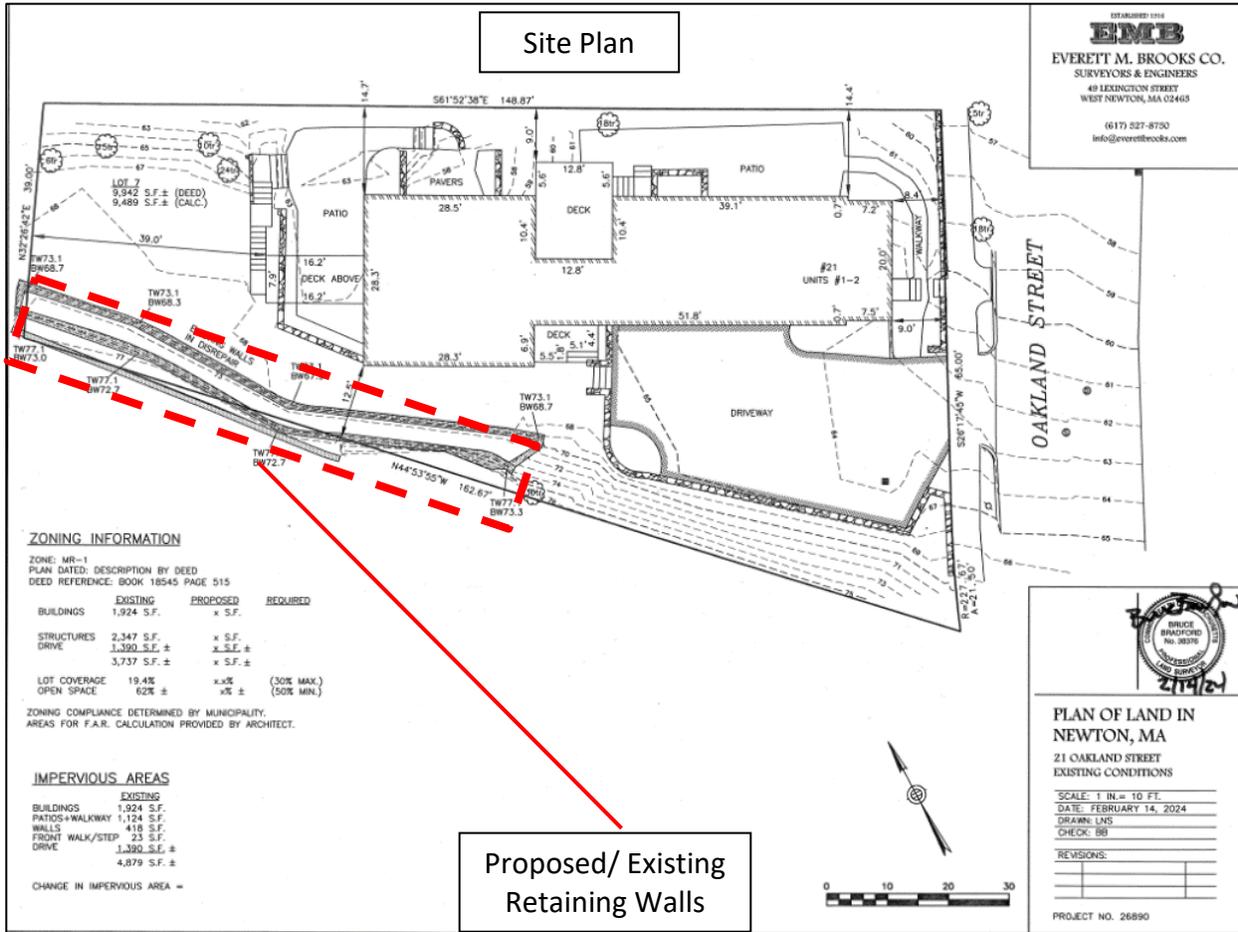
- The site is an appropriate location for the reconstruction of a series of retaining walls exceeding four feet in the rear and side setbacks. (§7.3.3.C.1)
- The proposed reconstruction of a series of retaining walls exceeding four feet in the rear and side setbacks as developed and operated will not adversely affect the neighborhood. (§7.3.3.C.2)
- The proposed reconstruction of a series of retaining walls exceeding four feet in the rear and side setbacks 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. (§7.3.3.C.4)

IV. Project Proposal and Site Characteristics

The petitioner is proposing reconstruction of two retaining walls to the rear/west and side/south of the dwelling. No additional work is proposed. The height of the first/lower wall is 5.2 feet and the height of the second/upper wall is 4.4 feet, creating a cumulative height of 9.2 feet given the difference in height between the top of the upper wall and bottom of the lower wall. The walls are approximately 85 feet in length. Both proposed walls are to be constructed from Allan Block Concrete.

The site has a significant grade change with an upwards slope of eight feet from the retained earth above the driveway to the southern property line. The natural grading of this site, as it exists on the front/east half of the left/southern property line, is increasingly inconvenient to the usability of the site if it were to continue to the rear/west of the property. As the lot narrows and the southwest/rear-right corner of the dwelling is set back 12.5 feet from the lot line, the grade would make it exceedingly difficult to access the rear of the property. The original 1987 retaining walls were likely constructed to create more usable space and more conveniently and safely access the rear of the property. No changes to the location or size of the walls or site grading are proposed, so there will continue to be usable and level space to the rear/right or southwest side of the lot.

The site is located on a hillside neighborhood to the southwest of Newton Corner where retaining walls are common due to the grade. Both the abutting properties to the left and to the right have retaining walls as do the properties across the street. Oakland Street has a dead-end heading south as it meets Winthrop Ave. with a retaining wall that is approximately twelve feet in height. The steep upwards grade continues to the south, as over the next 400 feet to the southwest of 21 Oakland Street, the terrain rises approximately 90 feet. Because of overall topography of the neighborhood, retaining walls are very common in the area.



V. Interdepartmental Review

Should this project be approved, the City Engineering Division will review this proposal for compliance with the City Stormwater Ordinance prior to the issuance of 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: March 20, 2024

To: Anthony Ciccariello, Commissioner of Inspectional Services

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

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

RE: Request to allow a series of retaining walls exceeding four feet in height in a setback

Applicant: Neel Joshi	
Site: 21 Oakland Street	SBL: 12017 0003A
Zoning: MR1	Lot Area: 9,489 square feet
Current use: Two-family dwelling	Proposed use: No change

BACKGROUND:

The property at 21 Oakland Street consists of a 9,489 square foot lot improved with a dwelling constructed which was converted to a two-family use with an addition in 1987. A series of retaining walls were constructed by a previous owner three years ago without the benefit of a permit and have failed. The current owner proposes to reconstruct the series of walls which exceed four feet in height within the side and rear setbacks, requiring a special permit.

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

- Zoning Review Application, prepared Neel Joshi, applicant, dated 1/22/2024
- Site Plan of Land, signed and stamped by Bruce Bradford, surveyor, dated 2/14/2024

ADMINISTRATIVE DETERMINATIONS:

1. A series of 4.5-foot timber retaining walls was constructed in the rear and side setbacks in 1987 when the rear addition was made to the dwelling. There was no requirement for a special permit for a retaining wall exceeding four feet in height in the setback at that time. At some point thereafter, the walls were replaced without the benefit of a building permit and failed. The petitioner proposes to reconstruct the series of retaining walls along the southwest lot line within the required 7.5-foot side and 15-foot rear yard setbacks, reaching a maximum cumulative height of 9.2 feet. Per section 5.4.2.B, a special permit is required for a series of retaining walls exceeding four feet within a setback.

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 rear 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 a series of retaining walls exceeding four feet in height in the rear setback as recommended by the Land Use Committee for the reasons given by the Committee, through its Chair, Councilor Andrea Kelley:

1. The site is an appropriate location for the proposed reconstruction of a series of retaining walls exceeding four feet in the rear and side setback, given the walls are placed where there is an approximately a ten-foot drop in elevation over about five feet in distance to the rear left of the dwelling. The site is also narrow and with a 12.5 side setback from the corner of the dwelling, retaining walls create some level space to access the rear of the dwelling. (§7.3.3.C.1)
2. The proposed reconstruction of a series of retaining walls as developed and operated will not adversely affect the neighborhood, given the topography of the properties on Oakland Street and the surrounding neighborhood is steep making retaining walls common. Additionally, the petitioner is replacing the prior walls in kind. (§7.3.3.C.2)
3. The proposed reconstruction of a series of retaining walls will be no nuisance or serious hazard to vehicles or pedestrians as they do not affect site parking or circulation. (§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 reconstruction of a series of retaining walls as the scope of work under this Special Permit is limited to the reconstruction of the retaining walls. (§7.3.3.C.4)

PETITION NUMBER: #202-24

PETITIONER: Neel Joshi

LOCATION: 21 Oakland Street, Unit 2, Ward 1, Newton, on land known as Section 12 Block 17 Lot 3A, containing approximately 9,489 sq. ft. of land

OWNER: Neel Joshi

ADDRESS OF OWNER: 21 Oakland Street, Unit 2
Newton Corner, MA 02458

TO BE USED FOR: Two-family dwelling

RELIEF GRANTED: Special Permit §7.3.3. per §5.4.2.B to construct a series of retaining walls in the rear and side setbacks exceeding four feet

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 signed, stamped, and dated by Bruce Bradford, Professional Land Surveyor, dated February 14, 2024.
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 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.
- c. Obtained approval from the City Engineer certifying that all engineering details for the portion of the Project for which a certificate of occupancy is requested have been constructed to standards of the City of Newton Public Works Department.