



Ruthanne Fuller
Mayor

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

Petition: #254-24
Public Hearing:
6/18/24

Barney Heath
Director

PUBLIC HEARING MEMORANDUM

DATE: June 13, 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 #254-24** for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a series of constructed retaining walls exceeding four feet at 6 Brush Hill Road

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.



6 Brush Hill Road

I. Project Description

Use: Single family dwelling

Zoning: Single-Residence 2 (SR-2)

Lot size: 16,701 square feet

Site constraints: Located on a corner lot

Proposal: In 2022, a building permit allowing additions and interior renovations was granted for the dwelling on this property. However, the owner of the property also constructed a system of retaining walls exceeding four feet within a setback which was not included in the scope of the building permit. The petitioner seeks relief to legitimize the existing noncompliant retaining wall system on the site.

Analysis: The Planning Department is not concerned with the request to allow the existing retaining wall system. The site is sloped, as is the case for many parcels in this neighborhood, and retaining walls are fairly common in the area. Though the system of walls as a whole exceeds seven feet in height, the impact of the wall height is broken up over two different wall systems which helps mitigate their visual impact.

II. Zoning Relief Requested:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§5.4.2.B	Request to allow a system of retaining walls exceeding four feet	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 system of retaining walls (7.3.3.C.1)
- The proposed system of retaining walls will not adversely affect the neighborhood (§7.3.3.C.2)
- The proposed system of retaining walls 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 lot presents challenging topography which limits the use of the property, such that it could not be improved without the implementation of the two retaining walls over four feet in height (§5.4.2c)

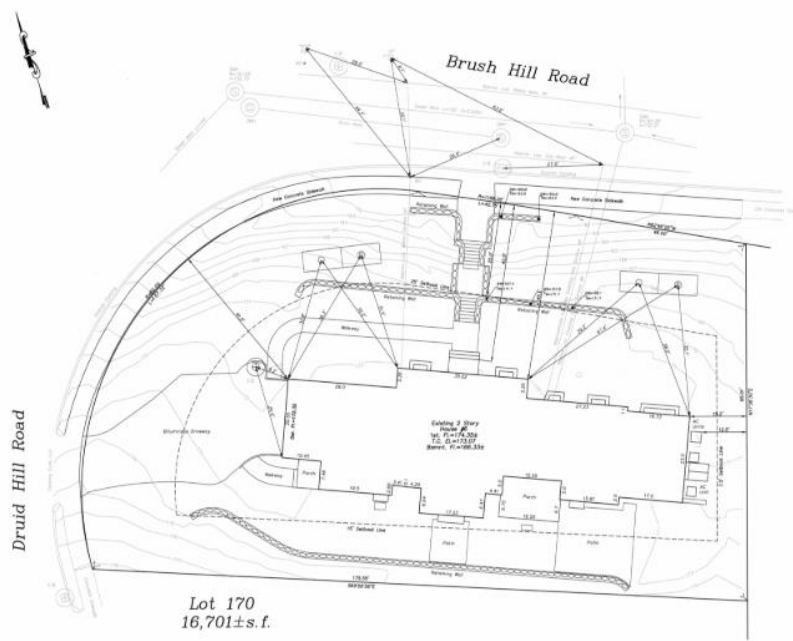
- The proposed retaining walls over four feet in height will not adversely impact adjacent property, the neighborhood, or the public (§5.4.2c)
- The proposed retaining walls over four feet in height is the minimum structure necessary to allow a subject property to be reasonably utilized (§5.4.2c).

IV. Project Proposal and Site Characteristics

The property at 6 Brush Hill Road is a 16,701 square foot lot on the corner of Brush Hill Road and Druid Hill Road that is improved with a single-family dwelling constructed in 1945. The property is sloped, with the tallest point at the dwelling sloping down approximately ten feet down to the street.

The petitioner proposes to legitimize the existing system of retaining walls on the front yard of the property. Two wall systems were constructed, with the wall closest to the frontage on Brush Hill road reaching a maximum height of three feet and the interior wall with a maximum height of 4.3 feet. According to the as-built plans provided by the petitioner, the wall system has a combined height of 7.3 feet, and the two walls are located approximately 22 feet apart. Because the zoning ordinance requires a special permit for a system of retaining walls that meet or exceed four feet in height in total within 25 feet of each other, this system requires special permit relief.

Site Plan



V. Interdepartmental Review

Engineering Review

The Associate City Engineer submitted an Engineering Review Memorandum (**ATTACHMENT B**), providing an analysis of the proposal with regard to engineering issues. No significant structural issues were raised in this memo. The petitioner will be required to provide a recorded, stamped, and signed Operation and Maintenance plan for the drainage work on the site in addition to any other materials required by the Engineering department prior to receiving a Certificate of Occupancy.

Review from other departments is not required at this time.

VI. Petitioner's Responsibilities

The petition is complete.

ATTACHMENTS:

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



Ruthanne Fuller
Mayor

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: May 9, 2024

To: Anthony Ciccariello, Commissioner of Inspectional Services

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

Cc: Louis Franchi, Applicant
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

Applicant: Louis Franchi	
Site: 6 Brush Hill Road	SBL: 83026 0001
Zoning: SR2	Lot Area: 16,701 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 6 Brush Hill Road consists of a 16,701 square foot lot at the corner of Brush Hill Road and Druid Hill Road. The site is improved with a single-family residence constructed circa 1945. A 2022 building permit permitted only additions and interior renovations to the dwelling, however a system of retaining walls were constructed in the slope from Brush Hill Road. Upon completion, a portion of the rear wall was found to be within the required front setback. Prior to April 16, 2024, only retaining walls exceeding four feet in height within a setback required a special permit. The amended regulations now require that any retaining wall, or system of retaining walls exceeding four feet in height requires a special permit. As the combined height of the walls inside and outside of the front setback exceeds the four feet maximum allowed, a special permit is required.

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

- Zoning Review Application, prepared Louis Franchi, applicant, dated 4/1/2024
- Special Permit Wall Plan, signed and stamped by Verne T. Porter, surveyor, dated 3/28/2024

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner constructed a system of retaining walls in the front yard of the Brush Hill Road frontage. The wall along the frontage reaches a maximum height of 3 feet and the interior wall has a maximum height of 4.3 feet. The as-built plan prepared for the final inspection for the certificate of occupancy indicates that the system of walls reaches a maximum combined height of 7.3 feet. The regulations relative to retaining walls were amended in April 2024 and now require that a system of retaining walls with four feet in height or greater within 25 feet of each other anywhere on the property requires a special permit. As the walls are approximately 22 feet apart, a special permit per section 5.4.2.B is required to allow the system of walls with a maximum combined height of 7.3 feet.

See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§5.4.2.B	Request to allow a system of retaining walls exceeding four feet	S.P. per §7.3.3

CITY OF NEWTON
Department of Public Works
ENGINEERING DIVISION

MEMORANDUM

To: Council Andrea Kelly, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – 6 Brush Hill Road

Date: May 22, 2024

CC: Lou Taverna, PE City Engineer
Barney Heath, Director of Planning
Jennifer Caira, Deputy Director
Katie Whewell, Chief Planner
Alyssa Sandoval, Deputy Chief Planner

In reference to the above site, I have the following comments for a plan entitled:

As Built Plan
Special Permit Wall Plan
Prepared by: Verne T. Porter, Jr., PLS
Dated: March 28, 2024

Executive Summary:

The special permit appears to be an after the fact filing. Based on a site visit the walls are completed and landscape crews were planting various plantings. The engineer of record has designed a stormwater collection system for the City's 100-year storm event which shows two infiltration systems in the front yard.



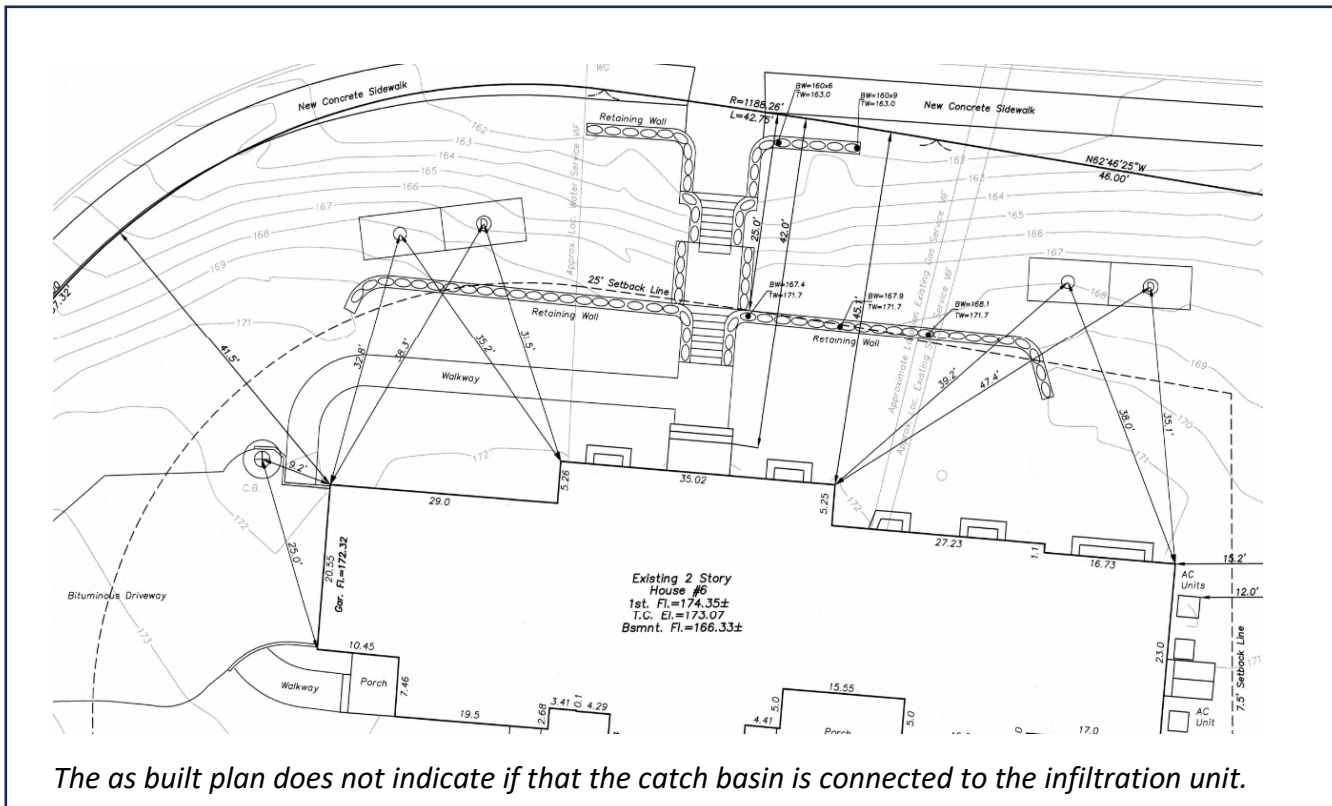
Precast leaching chambers being installed

The Operation and maintenance plan is not stamped by the engineer of record, this should be a stand-alone document and once approved it must be recorded at the registry of deeds and the book and page numbers shall be submitted to the DPW.

Annual inspection logs shall be submitted to the DPW Engineering Division as required to maintain certification of compliance under Newton's NPDES MS4 Permit. It is imperative to note that the ownership, operation, and maintenance of the proposed drainage system and all appurtenances including but not limited to the drywells, catch basins, trench drains, and pipe(s) are the sole responsibility of the property owner(s).



The plans did not have any details for the construction of the wall. The as built plan shows a catch basin in the corner of the driveway however it is unclear if it is connected to the leaching system.



General:

1. 5 Year Moratorium – if at time of construction the roadway is under a 5-year moratorium, the roadway must be milled and paved gutter-to-gutter for a distance of 25 feet in each direction from the outermost trenches.
2. All trench excavation shall comply with Massachusetts General Law Chapter 82A, Trench Excavation Safety Requirements, and OSHA Standards to protect the general public from unauthorized access to unattended trenches or excavations. Trench Excavation Permit is required prior to any construction. This applies to all trenches on public and private property. *This note shall be incorporated onto the final plans.*
3. All tree removal shall comply with the City's Tree Ordinance.
4. The contractor of record is responsible for contacting the Engineering Division and scheduling an appointment 48-hours prior to the date when the concrete utilities will be made available for an inspection of water services, sewer services and drainage system installation. The utility in question shall be fully exposed for the Inspector to view, backfilling shall only take place when the City Engineer's Inspector has given their approval. *This note shall be incorporated onto the final plans.*

5. The applicant shall apply for a Building Permit with the Inspectional Services Department prior to ANY construction.
6. Before requesting a Certificate of Occupancy, an As Built plan shall be submitted to the Engineering Division in both digital and paper format. The plan shall show all utilities and final grades, any easements and improvements and limits of restoration. The plan shall include profiles of the various new utilities including but not limited to rim & invert elevations (City of Newton Datum), slopes of pipes, pipe materials, and swing ties from permanent building corners. The as built shall be stamped by both a Massachusetts Registered Professional Engineer and Registered Professional Land Surveyor. Once the As built plan is received the Engineering Division shall perform a final site inspection and then make a determination to issue a Certificate of Occupancy. *This note shall be incorporated onto the final plans.*
7. All site work including trench restoration, sidewalk, curb, apron, and loam border (where applicable) shall be completed before a Certificate of Occupancy is issued. *This note shall be incorporated onto the final plans.*
8. If any changes from the final approved design plan that are required due to unforeseen site conditions, the contractor of record shall contact the design engineer of record and submit revised design and stamped full scale plans for review and approval prior to continuing with construction.
9. *The engineer of record shall add the following attestation to the plans when applying for a building permit:*

I certify that the construction so shown was inspected prior to backfill and that all work conforms with the Approved Plan and meets or exceeds the City of Newton Construction Standards.

Signature

Note: If the plans are updated it is the responsibility of the applicant to provide all City Departments [ISD, Conservation Commission, Planning and Engineering] involved in the permitting and approval process with complete and consistent plans.

If you have any questions or concerns, please feel free to contact me at 617-796-1023.

#254-24
6 Brush Hill Road

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 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 series of retaining walls because the walls are placed where there is a steep drop in elevation from dwelling down to the street. (§7.3.3.C.1)
2. The proposed series of retaining walls will not adversely affect the neighborhood because the topography is sloped in much of this area, and retaining walls are a feature on several other dwellings in the neighborhood. (§7.3.3.C.2)
3. The proposed series of retaining walls will not be a nuisance or serious hazard to vehicles or pedestrians because 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. (§7.3.3.C.4)
5. The lot presents challenging topography which limits the use of the property because the steep grade of the front yard could not be improved without the implementation of the system of retaining walls over four feet in height. (§5.4.2.B)
6. The proposed system of retaining walls over four feet in height will not adversely impact adjacent property, the neighborhood, or the public because it is located in a neighborhood that already features several retaining walls. (§5.4.2.B)
7. The proposed system of retaining walls over four feet in is the minimum structure necessary to allow the property to be reasonably utilized because the site as it exists currently has a steep grade. The retaining walls will assist in soil stabilization given the grades of this and adjacent properties. (§5.4.2.B)

PETITION NUMBER: #254-24

PETITIONER: Louis Franchi

LOCATION: 6 Brush Hill Road, Ward 8, Newton Highlands, on land known as Section 83 Block 26 Lot 01, containing approximately 16,701 sq. ft. of land

OWNER: Louis Franchi

ADDRESS OF OWNER: 6 Brush Hill Road
Newton, MA 02461

TO BE USED FOR: Single family dwelling

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

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 signed and stamped by Verne T. Porter Jr., Professional Land Surveyor, dated March 28, 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.