



City of Newton, Massachusetts

Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

617-796-1120

Ruthanne Fuller
Mayor

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

DATE: July 18, 2024

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning
Alyssa Sandoval, Deputy Chief Planner for Current Planning

SUBJECT: **Working Session Memo for Petition #257-24** for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit #176-19 to allow for changes to the approved site plan and for additional relief to allow a garage exceeding 700 square feet, to exceed FAR and a retaining wall exceeding four feet in height.

The Land Use Committee heard this item at this June 18, 2024 meeting but requested additional review including from the Engineering Department, which is summarized in this memorandum and attached Engineering Memo.

Background

The site is governed by Special Permit #176-19 granted in 2019 to allow the construction of a new single-family dwelling with associated zoning relief. Most recently, at the stage of occupancy review, it was discovered that the petitioners had made many changes to site from both the Special Permit-approved plans as well as building permit approved plans. The changes, described in greater detail in both the Planning Memo attached (dated June 13, 2024) and Zoning Review Memorandum, require both an amendment to the special permit as well as additional relief related to the changes in the approved plans.

The Land Use Committee heard the petition at the June 18, 2024 hearing. At that time, the committee requested formal Engineering review, which is provided in the attached Engineering memo. In addition, the Land Use Committee members requested summary of relief and recommendations from Planning as well as follow up with a neighbor on filing code enforcement complaints.

Updates from June 18, 2024 Hearing

- Planning staff followed up with the neighbor on the process for requesting code enforcement and provides an outline of changes and recommendations on relief needed below.
- Associate City Engineer wrote an Engineering memorandum with recommendations and site visit summary (see Attachment A)
- Petitioner provided a site plan stamped by a Professional Engineer
- Petitioner trimmed tree at southwestern corner of site to comply with original special permit conditions

Engineering Review

On June 10, 2024, Associate City Engineer John Daghlian performed a site visit to review the proposed improvements that had been completed including the retaining walls. Mr. Daghlian found the site and abutting properties to appear stable and there was no evidence of any washout or unstable slopes. Site photos were taken of all retaining walls and are provided in the Attached Engineering memo. The petitioner provided an updated site plan stamped by a professional engineer. They will also need to provide an as built site plan with notations required by Engineering (see Engineering Memo) as part of their Building permit.

The Associate Engineer recommended an after-the-fact affidavit indicating that the walls were installed as designed and certifying their stability. This is included in the proposed order of conditions for when the time is appropriate.

Summary of Changes/Relief

As proposed, the changes from the approved plans include the following and are described in greater detail in the Planning Memorandum, dated June 13, 2024.

I. Garage

The original special permit-approved plans allowed for a two-car garage with two garage doors of approximately 600 square feet. The plans have been revised since and approved by a consistency ruling to include a 908-square-foot garage due to the removal of doors to expand the space to allow for three cars but the required relief was not formally requested or granted. Both Planning and DPW did not originally support the enlarged garage from Chestnut Street because of the reduced setback from Chestnut Street (Planning Memo dated June 14, 2019), which could create safety issues due to limited visibility. A member of the committee suggested the tandem parking in the garage created by the additional space could create safety issues with backing in and out of spaces onto Chestnut Street. Planning also notes the petitioner has additional parking at the driveway from Indiana Court.

Recommendation: Planning does not recommend granting relief for an enlarged garage over 700 square feet and recommends incorporating a partition or doors within internal garage so

that it accommodates only two cars similar to what was approved in the original special permit.

II. Retaining Walls

The property has a steep slope that makes building on the site difficult. Planning observed the use of retaining walls along the north side of Chestnut Street for residential homes. The Newton Zoning Ordinance requires a special permit for any retaining walls or a combination of retaining walls with a height of four feet or greater anywhere on the site. The original 2019 Special Permit plans included existing and proposed retaining walls on all sides of the property but indicated they were to be less than 4 feet in height. The retaining walls requiring relief include:

- Two retaining walls along the eastern side lot line: one has a maximum height of 4.0 feet at the rear right corner of the dwelling, and an interior retaining wall running parallel along the patio with a maximum height of 4.4 feet. The two walls have a maximum combined height of 8.4 feet.
- A 4-foot-high retaining wall in the front left corner of dwelling to construct a walkway and landing. The retaining wall connects to a landing and stairs to the rear of the dwelling.

Recommendation: Planning does not have specific concerns related to the approximately four-foot high retaining walls and defers to the recommendations of the Engineering Department on the stability and construction of the retaining walls and required documentation. Engineering review did not see visible issues after performing a site visit. Engineering review/sign off will be required before Certificate of Occupancy is granted.

III. FAR

The approved special permit plans indicated an FAR of .56, which is the maximum allowed in the district per section 3.1.3 and 3.1.9. The building permit was approved with a reduced FAR of .53, however subsequent changes to the building result in an increased FAR of .57. Small additional square footages appear to be at basement level and the first and second stories. The maximum allowable FAR for the MR-1 is .56, which requires relief. Planning notes that the additional FAR relief (0.01) requested is fairly minimal.

Recommendation: Planning recommends granting the additional FAR as part of the amendment since it is a minimal change.

ATTACHMENTS:

- Attachment A:** Engineering Memorandum
- Attachment B:** Compiled Land Use Memorandum dated June 13, 2024
- Attachment C:** Zoning Review Memorandum
- Attachment D:** DRAFT Council Order

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 – 1188 Chestnut Street

Date: June 26, 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:

PROPOSED SITE PLAN

LOCATED AT
1188 CHESTNUT STREET
NEWTON, MA



Prepared by: DESIGNING AND MANAGING YOUR DREAM

Dated: April 29, 2024

Executive Summary:

The submitted plans were not stamped by a Professional Engineer.

On June 10th I performed a site visit, the proposed improvements had been completed. The site and abutting properties looked stable and there was no evidence of any washout or unstable slopes.

Walls over four (4) feet require a safety fence along its alignment. The applicant's engineer or design team needs to submit a written & stamped affidavit to Inspectional Services Department

~ ISD by a Professional Engineer certifying that the walls over four feet in height were designed and constructed in accordance with the manufacturers design requirements and specifications.

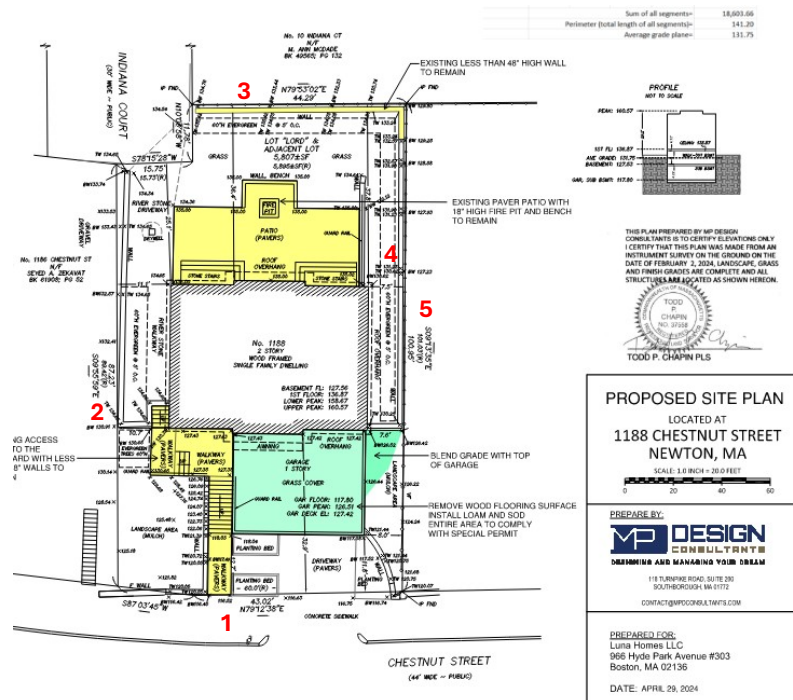
Walls over four feet are “structures” and require a Building Permit from ISD; the Engineering Division does not have jurisdiction on these walls or on retaining wall construction.

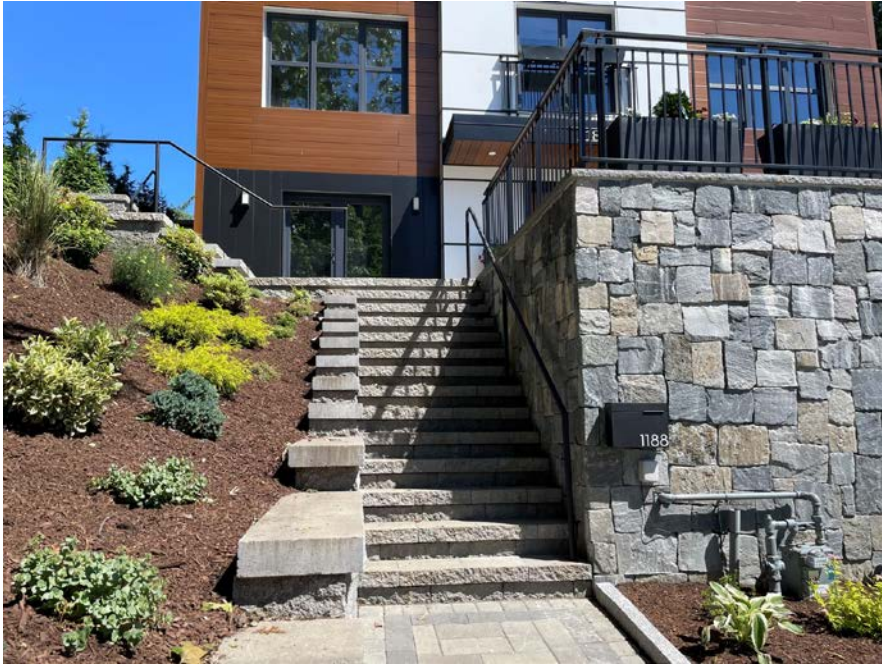
The following are photos taken during the site visit indicated on the site plan.



Photos Taken
June 10, 2024

- 1 Front Stairs
- 2 Westerly wall
- 3 Rear Wall
- 4 Patio Wall
- 5 Eastern Wall





1 Looking North

2



2. Westerly wall

3



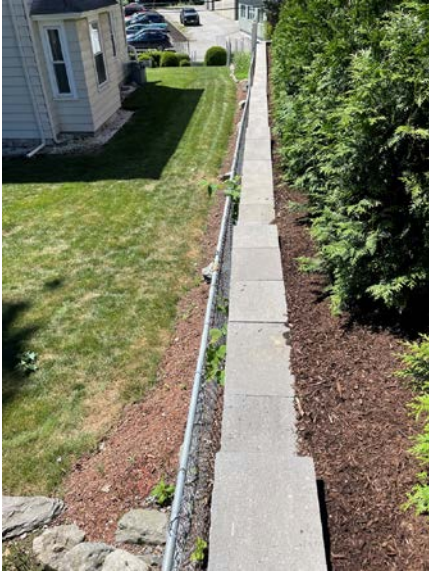
3. Rear Wall ~ extra blocks laying on top

4



4. Patio Wall

5



5. Eastern Wall ~ As this wall is over 4 feet in height it will need a safety fence along its length.

The applicant should submit an affidavit from the engineer of record to attest that walls over 4 feet have been constructed in accordance with the manufacturers specification to ensure safety. This should be submitted to ISD as wall over four feet in height are considered structures.

6

General:

1. The contractor of record is responsible for contacting the Engineering Division and scheduling an appointment 48-hours prior to the date when the 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.*
2. The applicant shall apply for a Building Permit with the Inspectional Services Department prior to **ANY** construction.
3. 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.*

4. 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.*
5. The contractor of record shall obtain a Sidewalk Crossing, Trench Utility Connection permits with DPW prior to any construction. *This note shall be on the final approved plans.*
6. 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.
7. *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.



City of Newton, Massachusetts

Department of Planning and Development

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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
Alyssa Sandoval, Deputy Chief Planner for Current Planning

SUBJECT: **Petition #257-24**, for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit #176-19 to allow for changes to the approved site plan and for additional relief to allow a garage exceeding 700 square feet, to exceed FAR and a retaining wall exceeding four feet in height

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.



1188 Chestnut Street

I. Project Description

Use: Single family dwelling

Zoning: Multi Residence 1 (MR-1)

Lot size: 5,807 square feet

Background:

The site is governed by Special Permit #176-19 granted in 2019 to allow the construction of a new single-family dwelling with associated zoning relief. Most recently, at the stage of occupancy review, it was discovered that the petitioners had made many changes to site from both the Special Permit-approved plans as well as building permit approved plans. The changes, which will be described in greater detail throughout this memorandum, requires both an amendment to the special permit as well as additional relief related to the changes in the approved plans.

Analysis: The petitioners have made many changes to the approved special permit site plan, although they state that the changes were necessary due to issues encountered during the construction of the structure (See [Letter](#) from applicant dated December 11, 2023). There is additional zoning relief associated with the changes made to the property, these include requests to allow a garage over 700 square feet, to exceed the maximum floor area ratio (FAR), and to allow retaining walls over four feet in height. The additional square footage added to the garage was added through the removal of interior doors.

Planning does note neighbor concerns with the retaining walls that have been constructed, particularly the series of two walls along the eastern property line. The property has a steep slope as well as two frontages (Chestnut Street and Indiana Terrace) that makes building on the site difficult, requiring the use of retaining walls. The grade of the lot (pre-development) sloped upwards significantly from the front (south) of the lot to the rear (north) such that the rear of the site lies approximately 14 feet above the grade of Chestnut Street. Planning notes there is challenging topography of the site, and retaining walls allow the petitioners to better utilize the site.

The petitioners should work to address any issues raised by the neighbor at 1192 Chestnut Street. The City Engineer, John Daghlian, conducted a site visit on June 10, 2024 and inspected all the constructed walls on the property, including the wall along the side property line of 1192 Chestnut Street. Mr. Daghlian noted that all walls appeared to be stable and did not observe any issues on adjoining properties with washout. Should this petition be approved, the petitioner should coordinate with Inspectional Services and Engineering to close out the building permit in accordance with the standards and regulations of each department. Planning has incorporated recommended conditions from Engineering in the proposed Council Order related to the retaining walls should the petition be approved.

II. Zoning Relief Requested:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
	Request to amend Special Permit #176-19	
§3.4.4.E §3.4.4.H.1	Request to allow a garage in excess of 700 square feet	S.P. per §7.3.3
§3.1.3 §3.1.9	Request to exceed maximum FAR	S.P. per §7.3.3
§5.4.2.B	Request to allow a retaining wall with four feet in height	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 amendment to Council Order #176-19 and additions which require relief. (7.3.3.C.1)
- The proposed garage in excess of 700 square feet will not adversely affect the neighborhood. (§7.3.3.C.2)
- The proposed garage 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 increase in FAR is not substantially more detrimental than the existing structure is to the neighborhood. (§3.1.5 and §3.1.9)
- 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 petitioners were granted Special Permit #176-19 which granted relief to extend the existing nonconforming front setback on Chestnut Street and allowed an additional parking stall in the front setback from Indiana Court. The then Commissioner of Inspectional Services granted a consistency ruling after approval by the Council for changes to the building and site including

front and rear bump-outs and retaining wall height and configuration, as well as the layout of the sub-basement, garage, and garage doors. Over the course of construction, numerous changes and deviations from the approved site plan that now require either additional special permit relief and/or amendments to the approved site plan.

The 2019 special permit approved plans included a sub-basement level of 1,170 square feet of storage space and a two-car garage of approximately 600 square feet with two garage doors. The petitioner submitted revised plans for a consistency ruling to the then-Commissioner. The Commissioner sent the plans to City Council for their opinion on the consistency request, as it was determined that the changes were beyond the scope of an administrative approval. The Council believed the revised plans were consistent with the original special permit, however, the plans included the removal of the wall between the storage area and the garage, resulting in 908 square feet of garage space, with accommodation for three vehicles (two in a tandem configuration). Per sections 3.4.4.E and 3.4.4.H.1, a special permit is required to allow a garage in excess of 700 square feet in a detached single-family dwelling. That relief was neither requested nor granted at that time, however that relief is now requested in this amendment to the 2019 special permit.

The approved special permit plans indicated an FAR of .56, which is the maximum allowed by right in the district per section 3.1.3 and 3.1.9. The building permit was approved with a reduced FAR of .53, however subsequent changes to the building result in an increased FAR of .57. A special permit for relief to exceed FAR is required per section 3.1.9.A.2.

The Newton Zoning Ordinance requires a special permit for any retaining walls or a combination of retaining walls with a height of four feet or greater anywhere on the site. The original 2019 Special Permit plans included existing and proposed retaining walls on all sides of the property but indicated they were to be less than 4 feet in height. As built, the retaining wall along the eastern side lot line reaches a maximum height of four feet at the rear right corner of the dwelling, with an interior retaining wall running parallel along the patio with a maximum height of 4.16 feet within eight feet of the outer wall, for a maximum combined height of 8.16 feet for the two walls.

Additionally, the petitioners differed from the approved plan to construct a walkway and stairs along the front left corner of the dwelling, resulting in a four-foot-high retaining wall in this location as well. The retaining wall connects to a landing and stairs to the rear of the dwelling. A special permit is required for this retaining wall and the two related retaining walls over four feet in height on the rear right side of the property.

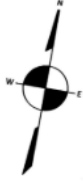
In addition to the changes to the project plans that require additional or different relief, the petitioners also made numerous changes to the project since the special permit plans that did not require additional relief. While these changes do not require zoning relief, they are summarized below to provide context to the overall changes related to the project and noted on the site plan.

- Increase in height from approved site plan with revised roofline from 26.1 feet to 29.2 feet
- Minor changes in the approved site plan setbacks from the project resulting in slight

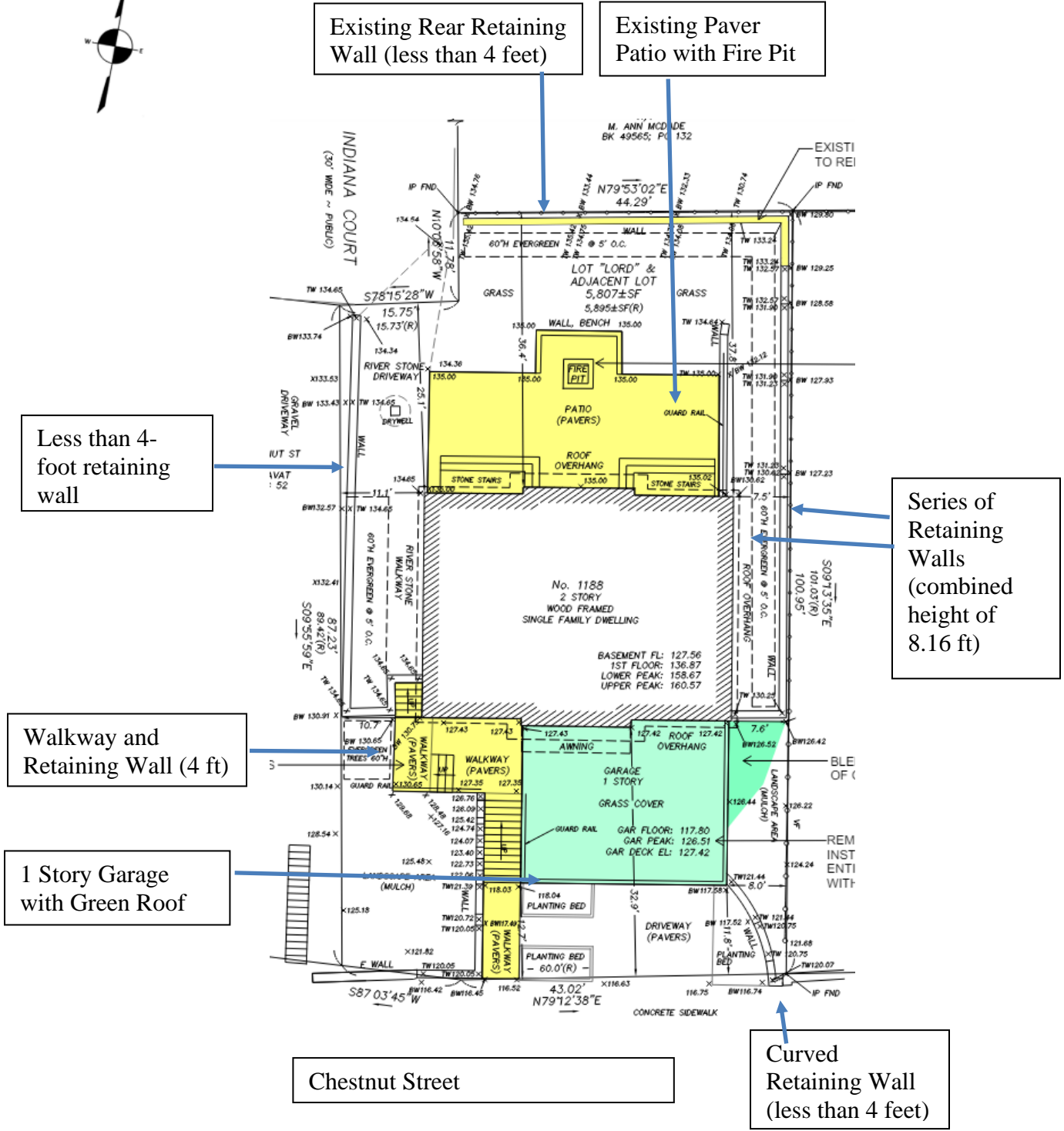
reductions in required setbacks but still in conformance with zoning

- Retaining wall on rear lot line (noted as existing but not included on prior approved plans)
- Patio in rear of property now included instead of a deck included originally
- A retaining wall at the front eastern (right) corner of the lot was constructed in a curved rather at a right angle shown in the approved site plan
- A retaining wall constructed directly along the western (left) side lot line angled slightly into the property from south to north

It also should be noted that the roof of the garage is shown as a green roof. The addition of the green roof helps the project to increase the open space. The required open space for the MR-1 district is 50% and with the proposed green roof on the garage, the proposed site plan note that the open space will be 67.3%. This is an increase from 58.9% of open space in the original special permit-approved plans because of the inclusion of the green roof.



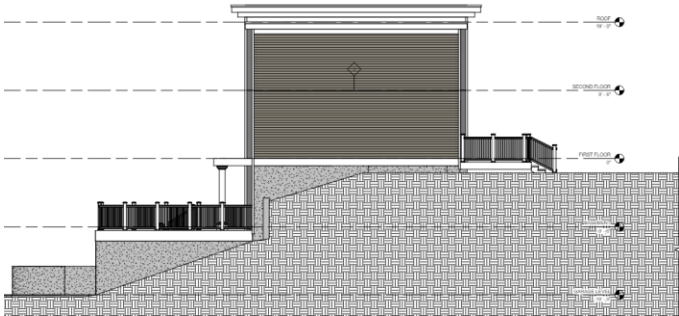
As Built Site Plan



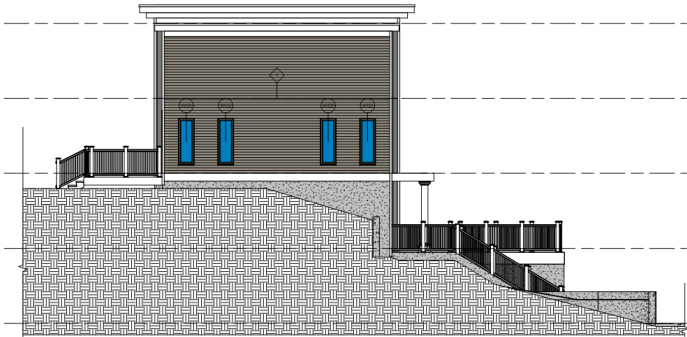
Front (south) Elevation



East (side) Elevation



West (side) Elevation



Rear (north) Elevation



V. Garage

In the Planning Memo dated June 14, 2019 for the original special permit request, Planning did not support the enlarged garage from Chestnut Street because of the short setback from Chestnut Street, which could create safety issues due to limited visibility. Planning suggested the parking be located on Indiana Court. Staff also noted overgrown shrubbery on abutting properties that might hinder visibility. The petitioners have noted that they will be working with the neighbor to trim hedges on their property.

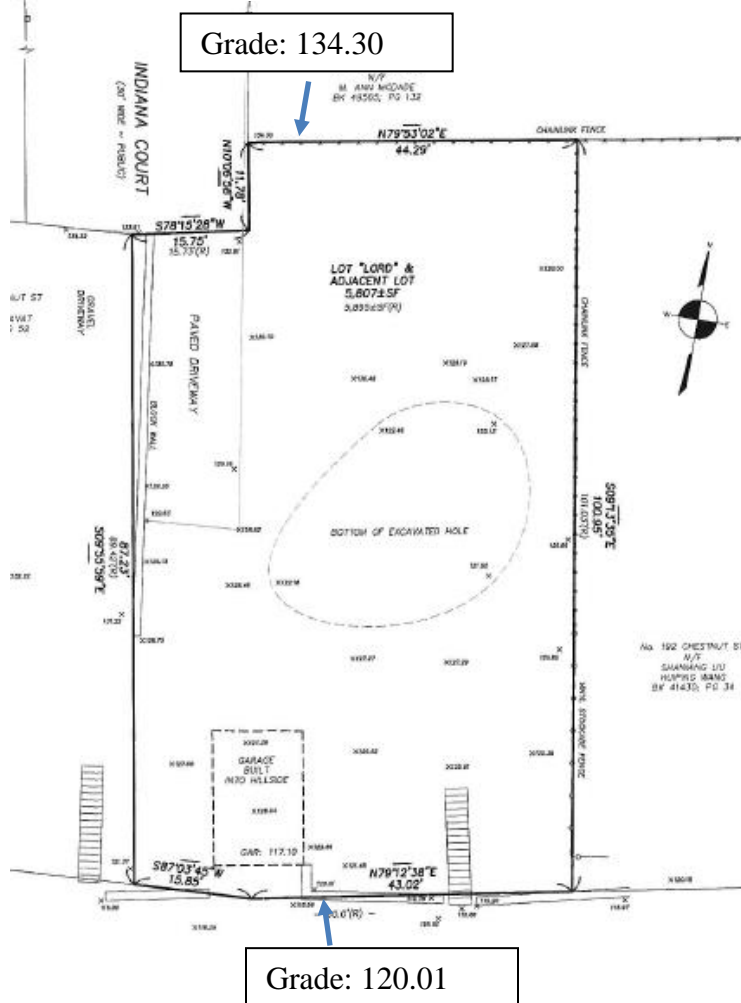
The site plan was approved by City Council in 2019 with the garage on Chestnut Street with relief for the garage to be located within the front yard setback, extending the prior nonconformity. As the constructed garage has only a subterranean connection to the main dwelling, it is treated as a detached structure. The original special permit-approved plans allowed for a two-car garage with two garage doors of approximately 600 square feet. The plans have been revised since and approved by a consistency ruling to include a 908-square-foot garage due to the removal of doors to expand the space to allow for three cars. The issue here is for the City Council to decide whether to approve the relief for the expanded garage over 700 square feet, which was not previously requested or approved.

VI. Retaining Walls

The property has a steep slope that makes building on the site difficult. Planning observed the use of retaining walls along the north side of Chestnut Street for residential homes. The grade of the lot pre-development sloped upwards significantly from the front (south) of the

lot to the rear (north) such that the rear of the site was approximately 14 feet above the grade of Chestnut Street at the front of the lot. Due to this condition, there was a previously existing three-foot tall retaining wall along the Chestnut Street frontage. The existing conditions at the time of the 2019 special permit of the site are provided below with grade highlighted at the front and rear of the property highlighted.

Existing Conditions Site Plan (2019)



As such, Planning notes that the use of retaining walls that are four feet in height at the locations noted may be necessary for new construction due to the challenging topography of the site. The retaining wall at the front left corner of the dwelling allows for a landing and walkway which helps to provide better accessibility to the site.

Planning heard from the abutting neighbor at 1192 Chestnut Street, who noted concerns with washout onto their property from the retaining wall along the side property line

adjoining their property. The City Engineer, John Daghlian, conducted a site visit on June 10, 2024 and inspected all the constructed walls on the property, including the wall along the property of 1192 Chestnut Street. Mr. Daghlian noted that all walls appeared to be stable and did not observe any current issues on adjoining properties with washout. Planning has spoken with the Commissioner Ciccariello and he noted that ISD will coordinate with Engineering to ensure Engineering-approved plans match the approved special permit plans and meet stormwater requirements. ISD may also determine that further Engineering Review is required since the retaining walls are higher and in different locations than what was originally approved during Engineering Review. Planning has incorporated recommended conditions from Engineering in the proposed Council Order related to the retaining walls should the petition be approved.

The petitioner should work to address any issues with the neighbor to meet the special permit criteria of “the proposed retaining walls over four feet in height will not adversely impact adjacent property, the neighborhood, or the public.” Planning notes that due to the challenging topography of the site and the ability to better utilize the site, the other special criteria seem to have been met to grant relief for the use of retaining walls over four feet in height.

In addition, during a recent site visit by Planning staff, it was noted that one of the conditions of the prior special permit needs to be complied with. The petitioners should trim the mature tree on the western corner of the site at the lowest twelve feet to maintain sight lines to the west, in accordance with the City of Newton Tree Manual. Planning noted that the tree had not been maintained/trimmed at the lowest twelve feet and has informed the petitioners that this condition should be complied with.

VII. FAR

The approved special permit plans indicated an FAR of .56, which is the maximum allowed in the district per section 3.1.3 and 3.1.9. The building permit was approved with a reduced FAR of .53, however subsequent changes to the building result in an increased FAR of .57. Small additional square footages appear to be at basement level and the first and second stories. The maximum allowable FAR for the MR-1 is .56, which requires relief. Planning notes that the additional FAR relief (0.01) requested is fairly minimal.

VIII. Petitioner’s Responsibilities

The petition is complete.

ATTACHMENTS:

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



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: June 7, 2024

To: Anthony Ciccariello, Commissioner of Inspectional Services

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

Cc: Patricia and Carlos Ferreira, Applicants
Barney S. Heath, Director of Planning and Development
Jonah Temple, Deputy City Solicitor

RE: Request to amend Special Permit #176-19 to allow for changes to the approved site plan and for additional relief to allow a garage exceeding 700 square feet, to exceed FAR and a retaining wall exceeding four feet in height

Applicant: Patricia and Carlos Ferriera	
Site: 1188 Chestnut Street	SBL: 51040 0022
Zoning: MR1	Lot Area: 5,807 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 1188 Chestnut Street consists of a 5,807 square foot lot subject to Special Permit #176-19 issued in 2019 which allowed for a single-family dwelling to be constructed with relief to extend a nonconforming front setback and additional parking in the front setback. As the proposed garage had only a subterranean connection to the dwelling, it is treated as a detached structure. At occupancy review, it was discovered that the petitioners made substantive changes to site from the approved plans requiring an amendment to the special permit and additional relief.

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

- Zoning Review Application, prepared Patricia Ferriera, applicant, dated 3/13/2024
- Certified Plot Plan, signed and stamped by George C. Collins, surveyor, dated 8/6/2019
- Certified Plot Plan, signed and stamped by George C. Collins, surveyor, dated 12/21/2021
- Certified Plot Plan, signed and stamped by Todd P. Chapin, surveyor, dated 2/22/2024, revised 4/29/2024
- Consistency Ruling, signed by Anthony Ciccariello, ISD Commissioner, dated 3/7/2024
- FAR calculation, signed and stamped by Carlos Ferriera, engineer, submitted 5/10/2024

ADMINISTRATIVE DETERMINATIONS:

1. The petitioners were granted Special Permit #176-19 which granted relief to extend the existing nonconforming front setback from Chestnut Street and allowed an additional parking stall in the front setback from Indiana Court. The then Commissioner of Inspectional Services granted a consistency ruling after approval by the Council for changes to the building and site including front and rear bump-outs and retaining wall height and configuration, as well as the layout of the sub-basement, garage, and garage doors. Over the course of construction, numerous changes and deviations from the approved site plan were made requiring either additional special permit relief and/or amendments to the approved site plan.
2. The 2019 special permit approved plans included a sub-basement level of 1,170 square feet of storage space and a two-car garage of approximately 600 square feet with two garage doors. The petitioner submitted revised plans for a consistency ruling to the then-Commissioner. The Commissioner sent the plans to City Council for their opinion on the consistency request, as it was determined that the changes were beyond the scope of an administrative approval. The Council believed the revised plans were consistent with the original special permit, however, the plans included the removal of the wall between the storage area and the garage, resulting in 908 square feet of garage space, with accommodation for three vehicles (two in a tandem configuration). Per sections 3.4.4.E and 3.4.4.H.1, a special permit is required to allow a garage in excess of 700 square feet in a detached single-family dwelling. That relief was neither requested nor granted at that time, however that relief is now requested in this amendment to the 2019 special permit.
3. The approved special permit plans indicated an FAR of .56, which is the maximum allowed in the district per section 3.1.3 and 3.1.9. The building permit was approved with a reduced FAR of .53, however subsequent changes to the building result in an increased FAR of .57. A special permit for relief to exceed FAR is required per section 3.1.9.A.2.
4. Per section 5.4.2.B retaining walls or a combination of retaining walls with a height of four feet or greater requires a special permit. The 2019 special permit plans included existing and proposed retaining walls on all sides of the property. The originally approved plans indicated all of the retaining walls were to be less than 4 feet in height. One retaining wall with less than four feet in height was proposed along the eastern side lot line with a second wall running parallel but outside of the setback for some of that distance. The plans were changed to include a deck off the rear of the house which eliminated the need for the interior retaining wall. The deck was within the front setback with Indiana Court, so was required to be eliminated. The most recent approved plan includes an at-grade patio off the rear of the dwelling. As built, the retaining wall along the eastern side lot line reaches a maximum height of four feet at the rear right corner of the dwelling, with an interior retaining wall running parallel along the patio with a maximum height of 4.16 feet within eight feet of the outer wall, for a maximum combined height of 8.16 feet for the two walls. Additionally, the petitioners varied from the approved plan to construct a walkway and stair along the front left corner of the dwelling, resulting in a four foot retaining wall in this location as well. Per section 5.4.2.B, a special permit is required for the two retaining walls with four feet in height.

5. The following changes require an amendment to Special Permit #176-19 to update the approved site plan, however no additional zoning relief is required for them.
- a) The dwelling was approved with a flat roof and a height of 26.1 feet. The petitioners constructed additional height in the center of the building, resulting in a change to the roofline configuration and in increase in height to 29.2 feet.
 - b) The dwelling's setbacks have all been altered from the approved plan as referenced in the dimensional table below. The resulting setbacks conform to zoning or reduce the requested relief for existing nonconformities.
 - c) The approved lot coverage was 20.1%. The as-built conditions indicate that the lot coverage has increased to 21.4%.
 - d) The approved open space was 58.9%. There does not appear to be any increase in pervious areas or landscaping from the approved plans, and the as-built dimensions of the dwelling have increased, however the as-built plans indicate that the open space is increasing to 67.3%.
 - e) A retaining wall along the rear lot line is indicated as "existing" in the plan dated 4/29/2024, however is not shown on the approved site plan dated 8/6/2019, the plan submit for consistency in 2022, or the approved engineering site plan dated 1/15/2022.
 - f) The 2022 consistency request included the addition of a 10 X 40 foot deck on the rear of the dwelling. However, it was determined at the building permit that the deck violated the front setback requirement from Indiana Court. A larger patio with a fire pit was constructed in its place. A patio is not considered a structure and may be within the setback.
 - g) A window well was approved along the eastern wall of the dwelling in the 2022 consistency. The well is not indicated in the current 2024 plan.
 - h) The retaining wall at the front right (eastern) corner of the lot was configured with a 90-degree angle open to the street. The wall was constructed with a curve, bowing out from the corner of the garage to the street. The wall reaches a maximum height of 3.9 feet.
 - i) The approved plan indicates a curved retaining wall from the left side of the front lot line to the front left corner of the dwelling with a landing. The retaining wall has been constructed with at a 90-degree angle closed to the street and extending now to a landing with an additional set of stairs and a walkway leading to the rear of the dwelling. The extension of the landing and additional stairs result in the four foot retaining wall referenced in the requested relief in number 3 above.
 - j) The retaining wall along the western (left) side lot line angled slightly into the property from south to north. As constructed, the retaining wall is directly on the side lot line.

MR1 Zone	Required	Approved	As-Built
Lot Size	7,000 square feet	5,807 square feet	No change
Frontage	70 feet	60 feet	No change
Setbacks - Principal <ul style="list-style-type: none"> • Front (Chestnut St) • Side • Side • Front (Indiana Ct) 	25 feet 7.5 feet 7.5 feet 25 feet	33.7 feet 11.2 feet 8 feet 25.5 feet	32.9 feet 10.7 feet 7.5 feet 25.1 feet
Setbacks – Garage <ul style="list-style-type: none"> • Front 	25 feet	12.1 feet	11.8 feet
Height	30 feet (flat roof)	26.1 feet	29.2 feet
Stories	2.5	2	No change
FAR	.56	.56	.57*
Max Lot Coverage	30%	20.1%	21.4%
Min. Open Space	50%	58.9%	67.3%

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
	Request to amend Special Permit #176-19	
§3.4.4.E §3.4.4.H.1	Request to allow a garage in excess of 700 square feet	S.P. per §7.3.3
§3.1.3 §3.1.9	Request to exceed maximum FAR	S.P. per §7.3.3
§5.4.2.B	Request to allow a retaining wall or combination of walls with four feet or more in height	S.P. per §7.3.3

Attachment D

#257-24
1188 Chestnut Street

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 amend Special Permits #176-19 to further extend a nonconforming front setback, to allow additional parking in the front setback, to allow a garage in excess of 700 square feet, exceed maximum floor area ratio (FAR), and to allow a retaining wall or series of retaining walls with over four feet in height, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefore, through its Chair, Andrea Kelley:

1. The proposed extension of the nonconforming front setback is not substantially more detrimental than the existing setback is to the neighborhood because the proposed garage is set farther back from the street than the existing garage, improving the prior existing condition. (§3.1.3 and §7.8.2.C.2)
2. Literal compliance with the requirement that only one parking stall be located within the front setback is impracticable due to the steep grade of the lot. (§3.1.9 and §7.3.3)
3. The site is an appropriate location for the proposed amendment to Council Order #176-19 and additions which require relief because the oversized garage is set further back from the front property line than the previous garage, appears as a detached structure due to the subterranean connection, thus breaking up the massing, and blends with the new single-family home. (7.3.3.C.1)
4. The proposed garage in excess of 700 square feet will not adversely affect the neighborhood as it blends with the newly constructed house and is set further back than the existing garage. (§3.4.4.E, §3.4.4.H.1)
5. The proposed garage will not create a nuisance or serious hazard to vehicles or pedestrians as it is set back from the street compared to the existing garage. (§7.3.3.C.3)
6. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
7. The increase in FAR is not substantially more detrimental than the existing structure is to the neighborhood and only represents a small increase in the allowable FAR. (§3.1.3,

§3.1.9)

8. The lot presents challenging topography with an existing steep grade of the site, which limits the use of the property, such that it could not be improved without the implementation of the retaining walls over four feet in height. (§5.4.2.B)
9. The proposed retaining walls over four feet in height will not adversely impact adjacent property, the neighborhood, or the public because of the location of the property in a hilly area along Chestnut Street where the use of retaining walls is common along this street. (§5.4.2.B)
10. The proposed retaining walls over four feet in height will allow the property to be reasonably utilized because of the steep grade of the existing site. The retaining walls over four feet in height will allow for outdoor space to be utilized as well as walkway areas to accommodate access to the house and rear yard. (§5.4.2.B)

PETITION NUMBER: #257-24

PETITIONER: Patricia and Carlos Ferreira

LOCATION: 1188 Chestnut Street, Ward 5, on land known as Section 51, Block 40, Lot 22, containing approximately 8,807 square feet of land

OWNER: LUNA Homes LLC

ADDRESS OF OWNER: 142 Fisher Street
Westborough, MA 01581

TO BE USED FOR: Single-Family Dwelling and Three-Stall Garage

RELIEF GRANTED: Special Permit per §7.3.3 to:
Amend Special Permit #176-19 to further extend a nonconforming front setback; to allow a parking stall within the front setback (§3.1.3 and §7.8.2.C.2); to allow a garage in excess of 700 square feet (§3.4.4.E, §3.4.4.H.1); to exceed maximum FAR (§3.1.3, §3.1.9); and to allow a retaining wall or combination of walls with four feet or more in height (§5.4.2.B).

ZONING: Multi Residence 1 district

The prior Special Permit/Site Plan Approval governing this property is #176-19. This Special

Permit/Site Plan Approval supersedes #176-19. As such, #176-19 is null and void.

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. Proposed Site Plan, prepared by MP Design Consultants., signed and stamped by Todd P. Chapin, Professional Land Surveyor, dated April 29, 2024.
 - b. Architectural Plans, stamped by Carlos Ferreira, Professional Engineer, dated January 17, 2022:
 - i. Proposed Garage and First Floor Plan, Sheet A-05
 - ii. Proposed South and East Elevations, Sheet A-07
 - iii. Proposed North and West Elevations, Sheet A-08
2. Prior to the issuance of any building permit, the petitioners shall provide a final site plan for review and approval by the Department of Planning and Development, Inspectional Services, and the Engineering Division of Public Works.
3. The petitioners shall maintain the plantings atop the retaining wall at the western boundary to groundcover only to maintain sight lines to the west. Additionally, the petitioners shall also maintain the lowest twelve feet of the mature tree at this location to maintain sight lines to the west, in accordance with the City of Newton Tree Manual.
4. 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 from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
5. 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 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, including the as built FAR.
 - 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.

- d. Filed with the Department of Engineering an affidavit that the retaining walls have been constructed in accordance with manufacturer's standards and obtain Engineering approval that the already constructed retaining walls comply with stormwater management standards.
- e. Filed with the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, fencing and parking areas related to or for the portion of the Project for which a certificate of occupancy is requested.



Ruthanne Fuller
Mayor

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

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Telefax
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(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: June 7, 2024

To: Anthony Ciccariello, Commissioner of Inspectional Services

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

Cc: Patricia and Carlos Ferreira, Applicants
Barney S. Heath, Director of Planning and Development
Jonah Temple, Deputy City Solicitor

RE: Request to amend Special Permit #176-19 to allow for changes to the approved site plan and for additional relief to allow a garage exceeding 700 square feet, to exceed FAR and a retaining wall exceeding four feet in height

Applicant: Patricia and Carlos Ferriera	
Site: 1188 Chestnut Street	SBL: 51040 0022
Zoning: MR1	Lot Area: 5,807 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 1188 Chestnut Street consists of a 5,807 square foot lot subject to Special Permit #176-19 issued in 2019 which allowed for a single-family dwelling to be constructed with relief to extend a nonconforming front setback and additional parking in the front setback. As the proposed garage had only a subterranean connection to the dwelling, it is treated as a detached structure. At occupancy review, it was discovered that the petitioners made substantive changes to site from the approved plans requiring an amendment to the special permit and additional relief.

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

- Zoning Review Application, prepared Patricia Ferriera, applicant, dated 3/13/2024
- Certified Plot Plan, signed and stamped by George C. Collins, surveyor, dated 8/6/2019
- Certified Plot Plan, signed and stamped by George C. Collins, surveyor, dated 12/21/2021
- Certified Plot Plan, signed and stamped by Todd P. Chapin, surveyor, dated 2/22/2024, revised 4/29/2024
- Consistency Ruling, signed by Anthony Ciccariello, ISD Commissioner, dated 3/7/2024
- FAR calculation, signed and stamped by Carlos Ferriera, engineer, submitted 5/10/2024

ADMINISTRATIVE DETERMINATIONS:

1. The petitioners were granted Special Permit #176-19 which granted relief to extend the existing nonconforming front setback from Chestnut Street and allowed an additional parking stall in the front setback from Indiana Court. The then Commissioner of Inspectional Services granted a consistency ruling after approval by the Council for changes to the building and site including front and rear bump-outs and retaining wall height and configuration, as well as the layout of the sub-basement, garage, and garage doors. Over the course of construction, numerous changes and deviations from the approved site plan were made requiring either additional special permit relief and/or amendments to the approved site plan.
2. The 2019 special permit approved plans included a sub-basement level of 1,170 square feet of storage space and a two-car garage of approximately 600 square feet with two garage doors. The petitioner submitted revised plans for a consistency ruling to the then-Commissioner. The Commissioner sent the plans to City Council for their opinion on the consistency request, as it was determined that the changes were beyond the scope of an administrative approval. The Council believed the revised plans were consistent with the original special permit, however, the plans included the removal of the wall between the storage area and the garage, resulting in 908 square feet of garage space, with accommodation for three vehicles (two in a tandem configuration). Per sections 3.4.4.E and 3.4.4.H.1, a special permit is required to allow a garage in excess of 700 square feet in a detached single-family dwelling. That relief was neither requested nor granted at that time, however that relief is now requested in this amendment to the 2019 special permit.
3. The approved special permit plans indicated an FAR of .56, which is the maximum allowed in the district per section 3.1.3 and 3.1.9. The building permit was approved with a reduced FAR of .53, however subsequent changes to the building result in an increased FAR of .57. A special permit for relief to exceed FAR is required per section 3.1.9.A.2.
4. Per section 5.4.2.B retaining walls or a combination of retaining walls with a height of four feet or greater requires a special permit. The 2019 special permit plans included existing and proposed retaining walls on all sides of the property. The originally approved plans indicated all of the retaining walls were to be less than 4 feet in height. One retaining wall with less than four feet in height was proposed along the eastern side lot line with a second wall running parallel but outside of the setback for some of that distance. The plans were changed to include a deck off the rear of the house which eliminated the need for the interior retaining wall. The deck was within the front setback with Indiana Court, so was required to be eliminated. The most recent approved plan includes an at-grade patio off the rear of the dwelling. As built, the retaining wall along the eastern side lot line reaches a maximum height of four feet at the rear right corner of the dwelling, with an interior retaining wall running parallel along the patio with a maximum height of 4.16 feet within eight feet of the outer wall, for a maximum combined height of 8.16 feet for the two walls. Additionally, the petitioners varied from the approved plan to construct a walkway and stair along the front left corner of the dwelling, resulting in a four foot retaining wall in this location as well. Per section 5.4.2.B, a special permit is required for the two retaining walls with four feet in height.

5. The following changes require an amendment to Special Permit #176-19 to update the approved site plan, however no additional zoning relief is required for them.
- a) The dwelling was approved with a flat roof and a height of 26.1 feet. The petitioners constructed additional height in the center of the building, resulting in a change to the roofline configuration and in increase in height to 29.2 feet.
 - b) The dwelling's setbacks have all been altered from the approved plan as referenced in the dimensional table below. The resulting setbacks conform to zoning or reduce the requested relief for existing nonconformities.
 - c) The approved lot coverage was 20.1%. The as-built conditions indicate that the lot coverage has increased to 21.4%.
 - d) The approved open space was 58.9%. There does not appear to be any increase in pervious areas or landscaping from the approved plans, and the as-built dimensions of the dwelling have increased, however the as-built plans indicate that the open space is increasing to 67.3%.
 - e) A retaining wall along the rear lot line is indicated as "existing" in the plan dated 4/29/2024, however is not shown on the approved site plan dated 8/6/2019, the plan submit for consistency in 2022, or the approved engineering site plan dated 1/15/2022.
 - f) The 2022 consistency request included the addition of a 10 X 40 foot deck on the rear of the dwelling. However, it was determined at the building permit that the deck violated the front setback requirement from Indiana Court. A larger patio with a fire pit was constructed in its place. A patio is not considered a structure and may be within the setback.
 - g) A window well was approved along the eastern wall of the dwelling in the 2022 consistency. The well is not indicated in the current 2024 plan.
 - h) The retaining wall at the front right (eastern) corner of the lot was configured with a 90-degree angle open to the street. The wall was constructed with a curve, bowing out from the corner of the garage to the street. The wall reaches a maximum height of 3.9 feet.
 - i) The approved plan indicates a curved retaining wall from the left side of the front lot line to the front left corner of the dwelling with a landing. The retaining wall has been constructed with at a 90-degree angle closed to the street and extending now to a landing with an additional set of stairs and a walkway leading to the rear of the dwelling. The extension of the landing and additional stairs result in the four foot retaining wall referenced in the requested relief in number 3 above.
 - j) The retaining wall along the western (left) side lot line angled slightly into the property from south to north. As constructed, the retaining wall is directly on the side lot line.

MR1 Zone	Required	Approved	As-Built
Lot Size	7,000 square feet	5,807 square feet	No change
Frontage	70 feet	60 feet	No change
Setbacks - Principal			
• Front (Chestnut St)	25 feet	33.7 feet	32.9 feet
• Side	7.5 feet	11.2 feet	10.7 feet
• Side	7.5 feet	8 feet	7.5 feet
• Front (Indiana Ct)	25 feet	25.5 feet	25.1 feet
Setbacks – Garage			
• Front	25 feet	12.1 feet	11.8 feet
Height	30 feet (flat roof)	26.1 feet	29.2 feet
Stories	2.5	2	No change
FAR	.56	.56	.57*
Max Lot Coverage	30%	20.1%	21.4%
Min. Open Space	50%	58.9%	67.3%

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
	Request to amend Special Permit #176-19	
§3.4.4.E §3.4.4.H.1	Request to allow a garage in excess of 700 square feet	S.P. per §7.3.3
§3.1.3 §3.1.9	Request to exceed maximum FAR	S.P. per §7.3.3
§5.4.2.B	Request to allow a retaining wall or combination of walls with four feet or more in height	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 amend Special Permits #176-19 to further extend a nonconforming front setback, to allow additional parking in the front setback, to allow a garage in excess of 700 square feet, exceed maximum floor area ratio (FAR), and to allow a retaining wall or series of retaining walls with over four feet in height, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefore, through its Chair, Andrea Kelley:

1. The proposed extension of the nonconforming front setback is not substantially more detrimental than the existing setback is to the neighborhood because the proposed garage is set farther back from the street than the existing garage, improving the prior existing condition. (§3.1.3 and §7.8.2.C.2)
2. Literal compliance with the requirement that only one parking stall be located within the front setback is impracticable due to the steep grade of the lot. (§3.1.9 and §7.3.3)
3. The site is an appropriate location for the proposed amendment to Council Order #176-19 and additions which require relief because the oversized garage is set further back from the front property line than the previous garage, appears as a detached structure due to the subterranean connection, thus breaking up the massing, and blends with the new single-family home. (7.3.3.C.1)
4. The proposed garage in excess of 700 square feet will not adversely affect the neighborhood as it blends with the newly constructed house and is set further back than the existing garage. (§3.4.4.E, §3.4.4.H.1)
5. The proposed garage will not create a nuisance or serious hazard to vehicles or pedestrians as it is set back from the street compared to the existing garage. (§7.3.3.C.3)
6. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
7. The increase in FAR is not substantially more detrimental than the existing structure is to the neighborhood and only represents a small increase in the allowable FAR. (§3.1.3,

§3.1.9)

8. The lot presents challenging topography with an existing steep grade of the site, which limits the use of the property, such that it could not be improved without the implementation of the retaining walls over four feet in height. (§5.4.2.B)
9. The proposed retaining walls over four feet in height will not adversely impact adjacent property, the neighborhood, or the public because of the location of the property in a hilly area along Chestnut Street where the use of retaining walls is common along this street. (§5.4.2.B)
10. The proposed retaining walls over four feet in height will allow the property to be reasonably utilized because of the steep grade of the existing site. The retaining walls over four feet in height will allow for outdoor space to be utilized as well as walkway areas to accommodate access to the house and rear yard. (§5.4.2.B)

PETITION NUMBER: #257-24

PETITIONER: Patricia and Carlos Ferreira

LOCATION: 1188 Chestnut Street, Ward 5, on land known as Section 51, Block 40, Lot 22, containing approximately 8,807 square feet of land

OWNER: LUNA Homes LLC

ADDRESS OF OWNER: 142 Fisher Street
Westborough, MA 01581

TO BE USED FOR: Single-Family Dwelling and Three-Stall Garage

RELIEF GRANTED: Special Permit per §7.3.3 to:
Amend Special Permit #176-19 to further extend a nonconforming front setback; to allow a parking stall within the front setback (§3.1.3 and §7.8.2.C.2); to allow a garage in excess of 700 square feet (§3.4.4.E, §3.4.4.H.1); to exceed maximum FAR (§3.1.3, §3.1.9); and to allow a retaining wall or combination of walls with four feet or more in height (§5.4.2.B).

ZONING: Multi Residence 1 district

The prior Special Permit/Site Plan Approval governing this property is #176-19. This Special

Permit/Site Plan Approval supersedes #176-19. As such, #176-19 is null and void.

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. Proposed Site Plan, prepared by MP Design Consultants., signed and stamped by Todd P. Chapin, Professional Land Surveyor, dated June 3, 2024.
 - b. Architectural Plans, stamped by Carlos Ferreira, Professional Engineer, dated January 17, 2022:
 - i. Proposed Garage and First Floor Plan, Sheet A-05
 - ii. Proposed South and East Elevations, Sheet A-07
 - iii. Proposed North and West Elevations, Sheet A-08
2. Prior to the issuance of any building permit, the petitioners shall provide a final site plan for review and approval by the Department of Planning and Development, Inspectional Services, and the Engineering Division of Public Works.
3. The petitioners shall maintain the plantings atop the retaining wall at the western boundary to groundcover only to maintain sight lines to the west. Additionally, the petitioners shall also maintain the lowest twelve feet of the mature tree at this location to maintain sight lines to the west, in accordance with the City of Newton Tree Manual.
4. 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 from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
5. 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 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, including the as built FAR.
 - 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.

- d. Filed with the Department of Inspectional Services and Department of Engineering an affidavit from a Professional Engineer certifying that the walls over four feet in height were designed and constructed in accordance with the manufacturers design requirements and specifications.
- e. Filed with the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, fencing and parking areas related to or for the portion of the Project for which a certificate of occupancy is requested.