



Ruthanne Fuller
Mayor

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

Petition: #292-24
Public Hearing:
7/23/2024

Barney Heath
Director

PUBLIC HEARING MEMORANDUM

DATE: July 19, 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 #292-24** for SPECIAL PERMIT/SITE PLAN APPROVAL to alter/extend the nonconforming side setback and to further reduce nonconforming open space

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.



16 Braeland Ave

I. Project Description

Use: Single family dwelling

Zoning: Multi-Residence 1 (MR-1)

Lot size: 5,599

Existing Nonconformities:

- Lot size of 5,599 square feet where 7,000 square feet is required
- Frontage of 64 feet where 70 feet is required
- Front setback of 18.9 feet where 25 feet is required
- Side setback of 6 feet where 7.5 feet is required
- Minimum open space of 44.2% where 50% is the minimum required

Proposal: The petitioner proposes to construct a one-story attached garage. This will further extend the nonconforming side setback and further reduce the nonconforming open space, requiring a special permit. [The project application and plans can be accessed here.](#)

Analysis: The Planning Department is unconcerned with the petition which will further extend the nonconforming side setback and further decrease nonconforming open space. The subject property was constructed in 1894, predating the applicable zoning regulations for setbacks and open space. Many historic homes in this area have similar nonconforming elements including impeding into setbacks and lacking the minimum open space required. For these reasons, staff believe the proposed garage is likely to have a minimal impact on the neighborhood.

II. Zoning Relief Requested:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.2.3 §7.8.2.C.2	Request to further extend a nonconforming side setback	S.P. per §7.3.3
§3.2.3 §7.8.2.C.2	Request to further decrease nonconforming open space	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 proposed addition which will further extend the nonconforming front setback and further decrease nonconforming open space will be substantially more detrimental than the existing nonconforming structure is to the neighborhood (§7.8.2.C.2)

IV. Project Proposal and Site Characteristics

The site currently consists of a single-family dwelling. The lot is sloped slightly upwards from the front to the rear, and a stone wall and wood fence located at the rear of the property. The petitioner proposes to construct a one-story attached garage addition. The existing nonconforming left side setback of six feet will be further reduced to 3.8 feet, which requires relief. The property has an existing nonconforming open space of 44.2%, where 50% is the minimum required, and this work will decrease the already nonconforming open space to 38.2%, which also requires relief.¹ FAR is proposed at .52 where .43 currently exists, and up to .57 is allowed by right.

The existing driveway on the right side of the dwelling will be removed and grass and plantings added in its place. A new curb cut and paved driveway will be constructed on the left side of the building, connecting to the new garage. The front porch and entryway will be slightly reoriented, with the steps moved from the side to the front of the north elevation of the building. A walkway will be added connecting the sidewalk in front of the dwelling to the new front entry stairs.

Proposed north elevation



Proposed east elevation



¹ The proposed construction increases the lot coverage to 38%, where 30% is allowed by right. However, the lot coverage requirement does not apply to the construction of a garage in connection with a single- or two-family dwelling constructed prior to December 27, 1922. Because the dwelling was constructed in 1894, in this instance the maximum lot coverage requirement does not apply, and no relief is needed.

Proposed south elevation



Proposed west elevation



V. Interdepartmental Review

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: DRAFT Council Order



Ruthanne Fuller
Mayor

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

Attachment A

(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: June 24, 2024

To: Anthony Ciccariello, Commissioner of Inspectional Services

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

Cc: Elisa Van Dam, Applicant
Keri Murray, Architect
Barney S. Heath, Director of Planning and Development
Jonah Temple, Deputy City Solicitor

RE: Request to alter/extend the nonconforming side setback and to further reduce nonconforming open space

Applicant: Elisa Van Dam	
Site: 16 Braeland Avenue	SBL: 61037 0020
Zoning: MR1	Lot Area: 5,599 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 16 Braeland Avenue consists of a 5,599 square foot lot improved with a single-family dwelling constructed circa 1894 in the MR1 district. The petitioner proposes to construct a one-story attached two-car garage which will further extend the nonconforming side setback and lot coverage, to further reduce the nonconforming open space, requiring a special permit.

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

- Zoning Review Application, prepared Keri Murray, architect, submitted 5/4/2024
- Existing Conditions Site Plan, prepared by Neponset Valley Survey Assoc, Inc, dated 11/20/2023
- Proposed Conditions Site Plan, signed and stamped by James L. Nabstedt, surveyor, dated 6/11/2024
- Floor Plans and elevations, prepared by Keri Murray Architecture, architect, dated 5/2024
- FAR calculations, submitted 5/4/2024

ADMINISTRATIVE DETERMINATIONS:

1. The dwelling has an existing nonconforming side setback of 6 feet where 7.5 feet is required per section 3.2.3. The petitioner proposes to construct a one-story two-car attached garage addition which further extends the nonconforming setback to 3.8 feet, requiring a special permit per section 7.8.2.C.2.
2. The property has an existing nonconforming open space of 44.2%, where 50% is the minimum required per section 3.2.3. The open space will decrease to 38.2% with the proposed garage addition. To further decrease the nonconforming open space requires a special permit per section 7.8.2.C.2.
3. The property has an existing lot coverage of 29.3%, where the maximum allowed is 30% per section 3.2.3. The proposed construction increases the lot coverage to 38%, however per section 1.5.2.D.2, the lot coverage requirement does not apply to the construction of a garage in connection with a single- or two-family dwelling constructed prior to December 27, 1922. As the dwelling was constructed in 1894, the maximum lot coverage requirement does not apply and no relief is needed.

MR1 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	5,599 square feet	No change
Frontage	70 feet	64 feet	No change
Setbacks			
• Front	25 feet	18.9 feet	No change
• Side	7.5 feet	6 feet	3.8 feet*
• Side	7.5 feet	13.9 feet	No change
• Rear	15 feet	14.3 feet	No change
Height	36 feet	31.4 feet	No change
Stories	2.5	2.5	No change
FAR	.57	.43	.52
Max Lot Coverage	30%	29.3%	38%
Min. Open Space	50%	44.2%	38.2%*

BOLD indicates a nonconformity

*Relief required

1. See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.2.3 §7.8.2.C.2	Request to further extend a nonconforming side setback	S.P. per §7.3.3
§3.2.3 §7.8.2.C.2	Request to further decrease nonconforming open space	S.P. per §7.3.3

#292-24
16 Braeland Avenue

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 alter and extend a nonconforming side setback and to further reduce nonconforming open space as recommended by the Land Use Committee for the reasons given by the Committee, through its Chair, Councilor Andrea Kelley:

1. The proposed alterations of the nonconforming side setback and open space are not substantially more detrimental than the existing nonconforming structure is to the neighborhood because the project adheres to other applicable dimensional regulations such as Floor Area Ratio and height. (§7.8.2.C.2)

PETITION NUMBER: #292-24

PETITIONER: Elisa Van Dam

LOCATION: 16 Braeland Avenue, Ward 6, Newton Centre, on land known as Section 61 Block 37 Lot 20, containing approximately 5,599 sq. ft. of land

OWNER: Elisa Van Dam

ADDRESS OF OWNER: 16 Braeland Avenue
Newton, MA 02459

TO BE USED FOR: Single Family dwelling

RELIEF GRANTED: Special Permit per §3.2.3 and §7.8.2.C.2 to extend a nonconforming side setback and nonconforming lot coverage

ZONING: Multi Residence 1 District

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. A plot plan prepared by Neponset Valley Survey Assoc., Inc. signed and stamped by James L. Nabstedt, surveyor, dated 6/11/2024
 - b. A set of architectural plans, prepared by Keri Murray Architecture, architect, dated 5/2024
 - i. Proposed exterior elevations (Sheet A2.11)
 - ii. Proposed exterior elevations (Sheet A2.12)
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 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.