



Land Use Committee Report

City of Newton In City Council

Tuesday, July 23, 2024

Present: Councilors Kelley (Chair), Block, Downs, Farrell, Laredo, Leary, Lobovits and Lucas;

Also Present: Councilor Getz and Malakie

City Staff Present: Chief Planner Katie Whewell, Senior Planner Cat Kemmett, Deputy Chief Planner Alyssa Sandoval, Assistant City Solicitor Jonah Temple, and Senior Planner Joe Iadonisi

All Special Permit Plans, Designs, Plan Memoranda and Application Materials, both past and present, can be found at the following link: [NewGov - City of Newton Land Use Committee Special Permit Search](#).

The full video of the July 23, 2024, Land Use Meeting can be found at the following link: [July 23, 2024 Land Use Meeting](#)

Note: *The Committee will review a request for a consistency ruling for 298-304 Elliot Street. The petitioner is seeking a consistency ruling from the Commissioner of Inspectional Services due to changes between the approved plans and as built plans. These changes include the addition and configuration of retaining walls, a patio, and a minor increase in the footprint of an accessory building. The Commissioner is seeking the opinion of the Land Use Committee on the matter.*

Note: Senior Planner Joe Iadonisi presented the attached presentation regarding 298-304 Elliot Street. The Commissioner of Inspectional Services is seeking the opinion of the Land Use Committee concerning the changes between the approved plans and as built plans. These changes include the addition and configuration of retaining walls, a patio, and a minor increase in the footprint of an accessory building. Additional back-up material is available at the following link: [Record CR-24-14 - ViewPoint Cloud](#). Ms. Whewell noted there are three retaining walls at the southwest corner of the lot that were constructed that were not shown on the plans for the special permit. They are currently over 4 feet, but the petitioner noted they would be under 4 feet and comply with the ordinance once they are complete. There is also a rock retaining wall on the western boundary of the property line that was not shown on the special permit plans. The garage had an increase of 11 square feet.

Councilors questioned why the retaining walls were installed and the construction quality and location of the western rock retaining wall.

Councilors noted they felt the changes to the patio and garages are consistent. Ms. Whewell noted it is difficult to tell from the plans if the retaining wall was built on the neighboring property or on the petitioner's property.

A councilor inquired about the grade changes along the retaining wall on the Western lot boundary. Ms. Whewell noted there would be a more natural slope at this location if the wall was not there.

Antonio Smargiassi, the petitioner, noted units 1 and 2 are done, and units 3 and 4 are in the process of being finished. He noted architect Christie Dennis would be showing where the retaining walls were shown on the engineer drawings for the special permit. He noted they were not fully labeled, but he feels they were there in the drawings.

Christie Dennis, architect for the petitioner, noted that the plans submitted to the Historic Commission and Land Use showed two patios with the intention of creating the stepping of the retaining walls.

Antonio Smargiassi noted that the contractor raised the issue of erosion due to the 5-foot grade change between the two properties on the western lot line. Embedding rocks in the existing grade was done to stabilize the site and reinforce the wall. He noted they did not go beyond their property line. He noted the intention of the three retaining walls in the rear of the carriage house was done to better align with the plans that were shown to the historic commission.

A councilor questioned why an amendment to the special permit was not being sought for retaining walls being within 25 feet of one another and being over 4 feet in height when added together. Ms. Whewell noted that Commissioner Ciccarello of ISD did not feel this was a combination of retaining walls. Ms. Dennis stated once the grading is complete, she believes the retaining walls will not be over 4 feet.

A councilor noted the retaining walls do not appear to be consistent with the original special permit.

A councilor stated that the carriage house would be difficult to preserve without supporting it on the western side of the property, and the retaining wall provides that support. Noted that if the petitioners came before the Land Use Committee with what they are asking for in this consistency ruling, this councilor would vote yes.

Councilors expressed concern with the impact that the retaining wall on the western side of the property had on the abutter's trees.

A councilor questioned if any alternatives to the retaining wall were considered to help prevent erosion.

Antonio Smargiassi noted they tried to install the retaining wall with the least impact on the surrounding trees.

A councilor questioned if the project used a landscape architect, which Mr. Smargiassi noted they used just a civil engineer.

Councilors expressed concern about stormwater runoff concerns with the retaining wall.

Todd Healy, 44 Erie Avenue noted that when working with an arborist often they look at if a tree is old growth trees, or if they are an invasive species.

Councilors expressed a desire for the petitioner to seek guidance on alternative solutions for the retaining walls.

#291-24 Request to allow a dormer exceeding 50% and to allow a dormer with an uninterrupted wall plane at 44 Erie Avenue

TOD AND JOHANNA HEALY petition for SPECIAL PERMIT/SITE PLAN APPROVAL to remove portions of an old addition, remodel the interior and construct an oversized dormer allowing for attic access at 44 Erie Avenue, Ward 6, Newton Highlands, on land known as Section 52 Block 43 Lot 38, containing approximately 13,032 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 1.5.4.G.2.b of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved 7-0 (Councilor Farrell Not Voting); Public Hearing Closed 7-0 (Councilor Farrell Not Voting)

Note: Joe Iadonisi, Senior Planner presented the request to allow a dormer exceeding 50% and to allow a dormer with an uninterrupted wall plane at 44 Erie Avenue. The presentation is attached, and additional back-up can be found at the following link:

<https://newtonma.viewpointcloud.com/records/831953>. Mr. Iadonisi noted several buildings in the areas with dormers that are close to or exceeding the 50% of the wall below. This work will enable the petitioners to widen the stairs and give enough height clearance at the top of the stairs making it in compliance with the building code.

Robert Fizek, Robert Fizek Architects, on behalf of the petitioner noted that the dormer at the top of the stairs was the only location they could find to add the extra space.

The public hearing was opened. No member of the public was available to speak on the project.

Councilors voiced support for the project, which would enable the petitioner to have extra usable space in their home.

The public hearing was closed.

The committee discussed the draft council order, and Councilor Lobovits motioned to approve, which passed 7-0 (Councilor Farrell Not Voting).

#292-24 Request to alter/extend the nonconforming side setback and to further reduce nonconforming open space at 16 Braeland Avenue

ELISA VAN DAM petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a one-story attached two-car garage which will further extend the nonconforming side setback and further reduce the nonconforming open space at 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 in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 3.2.3, 7.8.2.C.2, of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved 7-0 (Councilor Farrell Not Voting); Public Hearing Closed 7-0 (Councilor Farrell Not Voting)

Note: Cat Kemmett, Senior Planner presented the request to alter/extend the nonconforming side setback and to further reduce nonconforming open space at 16 Braeland Avenue. The presentation is attached, and additional back-up can be found at the following link:

<https://newtonma.viewpointcloud.com/records/833038> . Ms. Kemmett noted that the driveway on the right side of the dwelling will be removed, with grass and plantings added in its place. A new curb cut, and driveway will be added to the left side of the dwelling, which will connect to the new attached garage. Ms. Kemmett noted that it is common for historic homes in the area to have similar nonconforming elements.

Elisa Van Dam, the petitioner, noted she was available to answer any questions Councilors may have.

Keri Murray, architect, for the petitioner, noted that they looked to keep the massing of the new proposed garage minimal, and preserve a lot of elements of the existing house.

The public hearing was opened. No member of the public was present to speak on the project.

Councilors asked about the reduction of the side setback and how that would impact their neighbor, which Ms. Van Dam noted that neighbor wrote a letter of support for their project.

A Councilor questioned if a telephone pole would be in the way of the proposed driveway, which Ms. Murray noted the pole is in front of the neighbor's property.

Councilors spoke in favor of the project.

The public hearing was closed.

The committee discussed the draft council order, and Councilor Lobovits motioned to approve, which passed 7-0 (Councilor Farrell Not Voting).

#290-24 Request to vertically extend nonconforming front setbacks at 224 Adams Avenue
JEAN WONG petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a full second story on the dwelling, vertically extending both nonconforming front setbacks at 224 Adams Avenue, Ward 3, West Newton, on land known as Section 34 Block 35 Lot 08, containing approximately 5,309 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 7.3.3, 3.1.3, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.
Action: Land Use Approved 7-0 (Councilor Farrell Not Voting); Public Hearing Closed 7-0 (Councilor Farrell Not Voting)

Note: Cat Kemmett, Senior Planner presented the request to vertically extend nonconforming front setbacks at 224 Adams Avenue. The presentation is attached, and additional back-up can be found at the following link: <https://newtonma.viewpointcloud.com/records/824165> . Ms. Kemmett noted the addition would be within the structure of the home. The height will increase from 22 feet to 29.5 feet.

Ms. Wong, the petitioner, noted they are seeking to add a second story to make it more livable, and have extra space.

The public hearing was opened.

Alan Sooho, 220 Adams Avenue, voiced support for the project.

Richard Simonelli, 236 Adams Avenue, voiced he was not opposed to the project, and added considerations for the petitioner to think about for the exterior of the building.

The public hearing was closed.

Councilors voiced support for the project.

The committee discussed the draft council order, and Councilor Laredo motioned to approve, which passed 7-0 (Councilor Farrell Not Voting).

#289-24 Request to further extend nonconforming FAR at 29 Trowbridge Avenue
ROBERT OTERI petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a 1,426 square foot, two-story addition which further extends the nonconforming FAR at 29 Trowbridge Avenue, Ward 2, Newtonville, on land known as Section 22 Block 24 Lot 15, containing approximately 8,175 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 3.1.3, 3.1.9, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved 7-0 (Councilor Farrell Not Voting); Public Hearing Closed 7-0 (Councilor Farrell Not Voting)

Note: Cat Kemmett, Senior Planner presented the request to further extend nonconforming FAR at 29 Trowbridge Avenue. The presentation is attached, and additional back-up can be found at the following link: <https://newtonma.viewpointcloud.com/records/830107> . Ms. Kemmett noted that an existing walkway and part of the driveway would be removed to make room for the addition. The driveway would be extended out to the new garage. The impervious coverage on the lot will increase by 354 square feet, with the open space decreasing from 72% to 65%. It was noted that most of the massing will be towards the rear of the structure.

Caroline Lamb-Oteri, the petitioner, noted that they recently bought the house and it is in need of some improvement. She stated they shared the plans with all the neighbors on the street who were supportive of their plans.

Alan Mayer, architect, on behalf of the petitioner, stated they were approved by historic, tried to maintain the original architecture, and is available to answer any questions councilors may have.

The public hearing was opened. No member of the public was present to speak on the item.

Councilors spoke in favor of the project.

The public hearing was closed.

The committee discussed the draft council order, and Councilor Lucas motioned to approve, which passed 7-0 (Councilor Farrell Not Voting).

#257-24 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 retaining walls exceeding four feet in height at 1188 Chestnut Street

PATRICIA AND CARLOS FERRIERA petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit #176-19 to allow for as built changes to the approved site plan, for additional relief to allow a garage exceeding 700 square feet, to exceed FAR, and for retaining walls exceeding four feet in height at 1188 Chestnut Street, Ward 5, Newton Upper Falls, on land known as Section 51 Block 40 Lot 22, containing approximately 5,807 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 3.4.4.E, 3.4.4.H.1, 3.1.3, 3.1.9, 5.4.2.B of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Land Use Held 8-0; Public Hearing Opened on 06/18/2024

Action: Land Use Approved 5-0-2 (Councilors Block and Lobovits Abstained) (Councilor Farrell Not Voting); Public Hearing Closed

Note: Alyssa Sandoval, Senior Planner presented the 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 retaining walls exceeding four feet in height at 1188 Chestnut Street. The presentation is attached, and additional back-up can be found at the following link: <https://newtonma.viewpointcloud.com/records/828255> . Ms. Sandoval noted engineering conducted a site visit and found that the retaining walls were stable and there was no evidence of washout.

Patricia and Carlos Ferriera noted they are here to answer any questions councilors may have. Mr. Ferriera noted that they would build a wall to reduce the size of the garage.

The public hearing was continued.

Marylee Belleville, 136 Warren Street, noted she is not in support of this project, and feels it would be better to limit the petitioner to a two car garage instead of requiring them to build a wall.

A councilor questioned the safety concern associated with the garage. A different councilor noted that it is within the setback, is close to the corner, and has difficult sight lines.

A councilor asked what were the concerns and recommendation that engineering had with the project.

Ms. Sandoval noted that that Associate City Engineer John Daghlian's memo stated that the petitioner's site and abutting properties appear to be stable, and there was no evidence of washout or instable slopes. It was requested that the applicants submit a written and stamped affidavit to ISD certifying the walls that are over 4 feet in height and designed and constructed in accordance with the manufacturer's design requirements and specifications. The applicant will also be required to submit their site plan as part of the building application to be approved by engineering. Ms. Sandoval noted these requirements will be put in the council order in one general condition.

A councilor expressed concerns that this appears not to be consistent with the original plans.

Councilors noted support with the changes to the garage and feels comfortable with the retaining walls since engineering has stated they are appropriate, and the abutting neighbor was given information on submitting a violation to code enforcement if she felt it was necessary.

A councilor expressed concern with runoff from the retaining walls.

The public hearing was closed.

The committee voiced support for the petitioner's offer to reduce the size of the garage to be below 700 square feet with the capacity being a maximum of 2 cars by building an interior wall.

The committee discussed the draft council order. It was noted that the relief for the 700-foot garage was not being granted and Councilor Downs motioned to approve, which passed 5-0-2 (Councilors Block and Lobovits Abstained, and Councilor Farrell Not Voting).

The committee adjourned at 9:20PM.

Respectfully Submitted,

Andrea Kelley, Chair

**Consistency Ruling 298-304 Elliott Street
Special Permit #388-21**

The Committee will review a request for a consistency ruling for 298-304 Elliot Street.

The petitioner is seeking a consistency ruling from the Commissioner of Inspectional Services due to changes between the approved plans and as built plans.

These changes include the addition and configuration of retaining walls, a patio, and a minor increase in the footprint of an accessory building. The Commissioner is seeking the opinion of the Land Use Committee on the matter.



1

Special Permit #388-21 allowed/granted:

- 4 single family attached dwellings in two buildings
 - Reduction of side and rear setback requirements
 - Allow a driveway within 10 feet of the side lot line and parking within 20 feet of a lot line
 - Allow parking within a side setback
 - Allow parking within five feet of a building containing dwelling units
 - Waive parking stall dimensions
 - Reduce driveway width for two-way use
 - Allow tandem parking
 - Allow a continuous wall plane for a dormer and dormer greater than 50% of the wall plane below
-
- Site slopes upwards approx. 10 feet from front right corner to rear left corner of the lot
 - Site is still under construction; applicant seeking Certificates of Occupancy as each unit is completed.



2

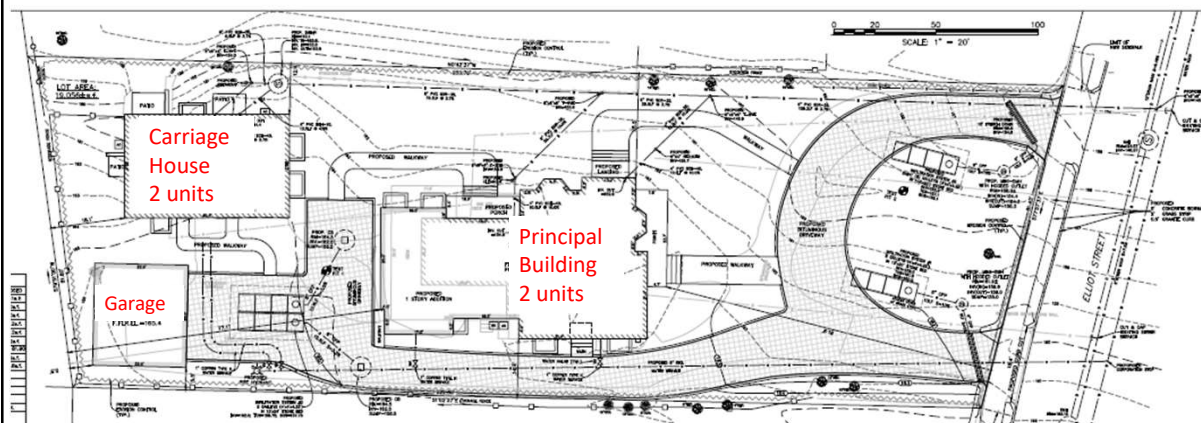
Newton Upper Falls Historic District

- Located in within the Newton Upper Falls Historic District
- Project must comply with the plans approved by the historic commission as well as the City Council approved special permit plans.
- It is the petitioner's responsibility to ensure that the same set of plans are submitted to each governing commission or council.
- Changes to the approved plans also need to be approved by the Upper Falls local historic commission for the project to move forward with occupancy certificates



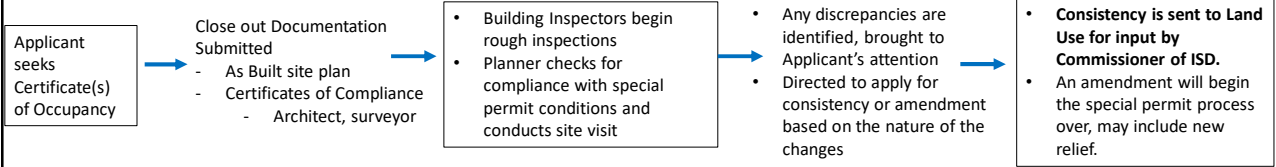
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Special Permit Approved Site Plan



4

Consistency Request Process



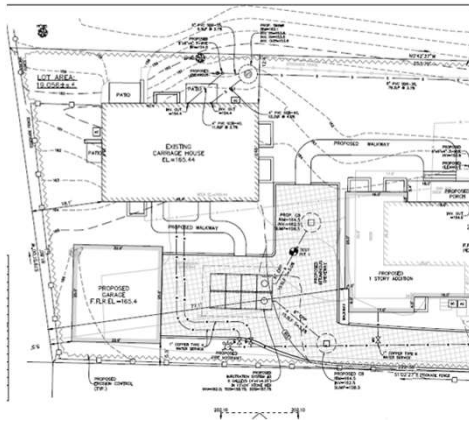
The Commissioner of Inspectional Services is seeking input from the Land Use committee based on the following changes to the site plan:

1. Three retaining walls at the southwest corner of the lot
2. Proposed patio mid-western portion of the lot
3. Reduced garage setbacks

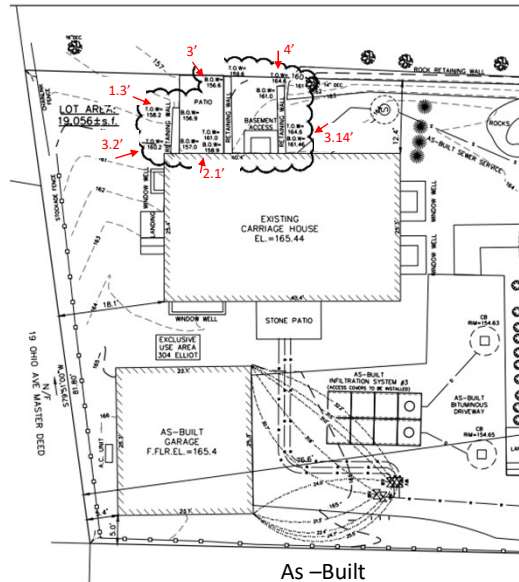
These two changes are likely OK on their own as they do not impact zoning relief, but it is best to include in the consistency ruling to legitimize these changes.

5

Retaining Wall Request



Special Permit Approved Plan
Rear of the lot



As-Built
Rear of the lot

6

Proposed location of patio



May 13 – Patio

July 22– proposed
Patio location



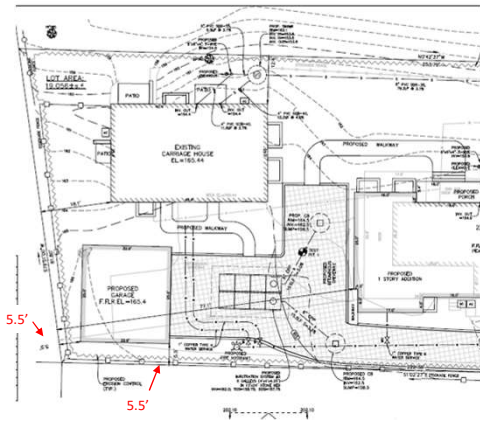
9

Rock Retaining Wall

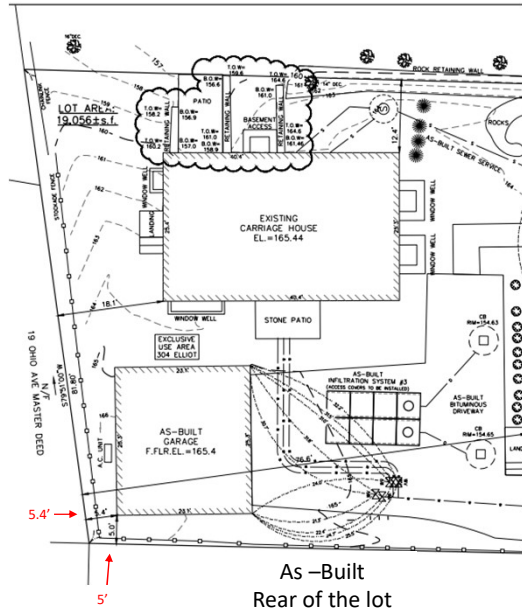


10

Reduced Garage Setbacks



Special Permit Approved Plan
Rear of the lot



As-Built
Rear of the lot

11



12

City of Newton Planning and Development

Petition: #291-24
Special Permit/Site Plan Approval
Construction of a dormer exceeding 50% of the
length of the wall below
July 23, 2024



44 Erie Ave.

Zoning Relief

Zoning Relief Required		
Ordinance		Action Required
§1.5.4.G.2.b	To allow a dormer exceeding 50% of the length of the wall below	S.P. per §7.3.3

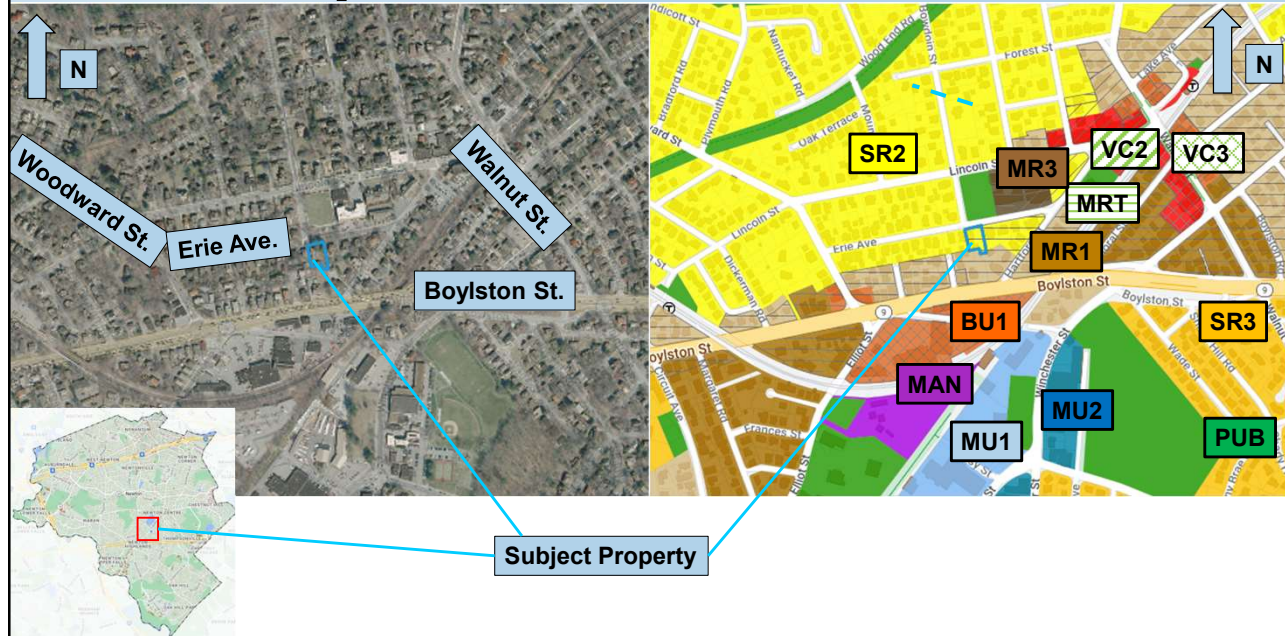
Criteria to Consider

When reviewing this request, the Council should consider:

1. The specific site is an appropriate location for a dormer exceeding 50% of the length of the wall below (§7.3.3.C.1, §3.1.3, §3.1.9).
2. The dormer exceeding 50% of the length of the wall below as developed and operated will not adversely affect the neighborhood (§7.3.3.C.2, §3.1.3, §3.1.9).
3. There will be no nuisance or serious hazard to vehicles or pedestrians created by the dormer exceeding 50% of the length of the wall below (§7.3.3.C.3, §3.1.3, §3.1.9).
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved in the construction of a dormer exceeding 50% of the length of the wall below (§7.3.3.C.4, §3.1.3, §3.1.9).

3

Aerial Map



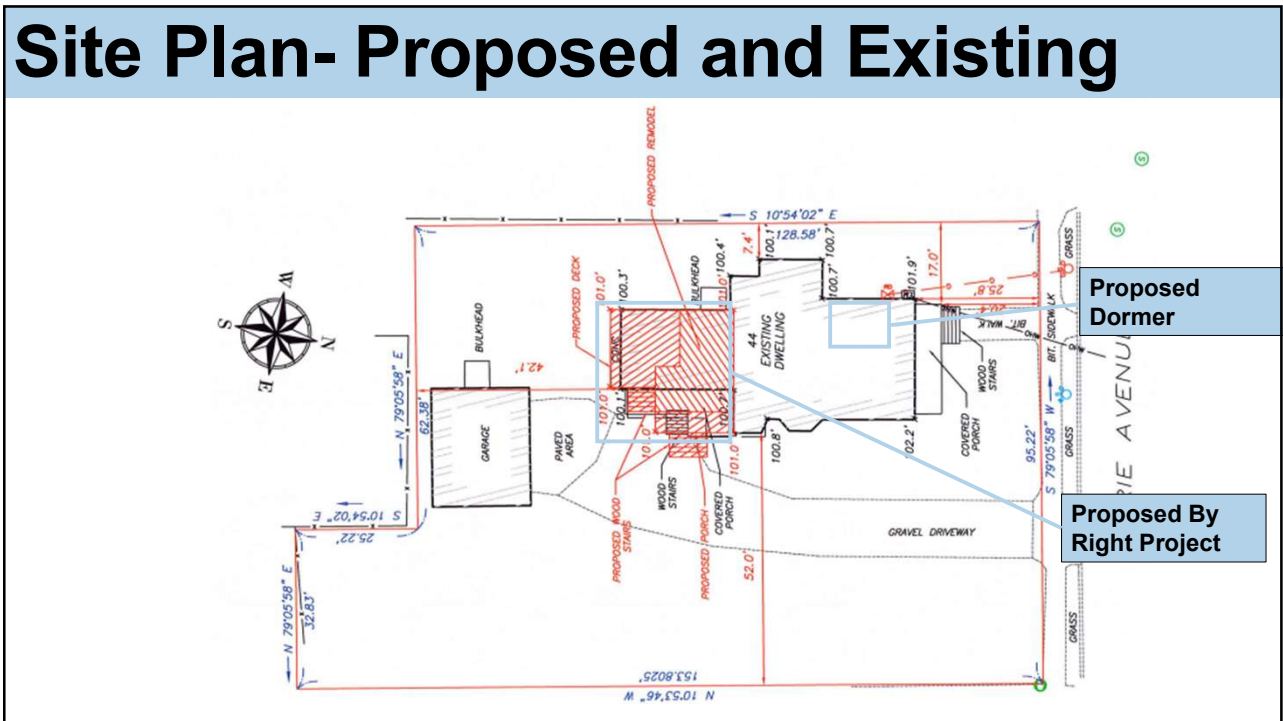
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Area Context- Newton Highlands



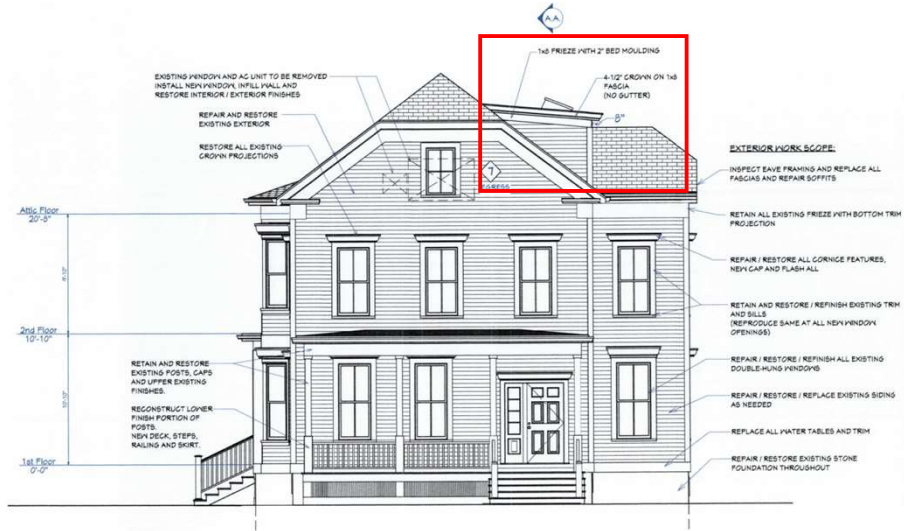
5

Site Plan- Proposed and Existing



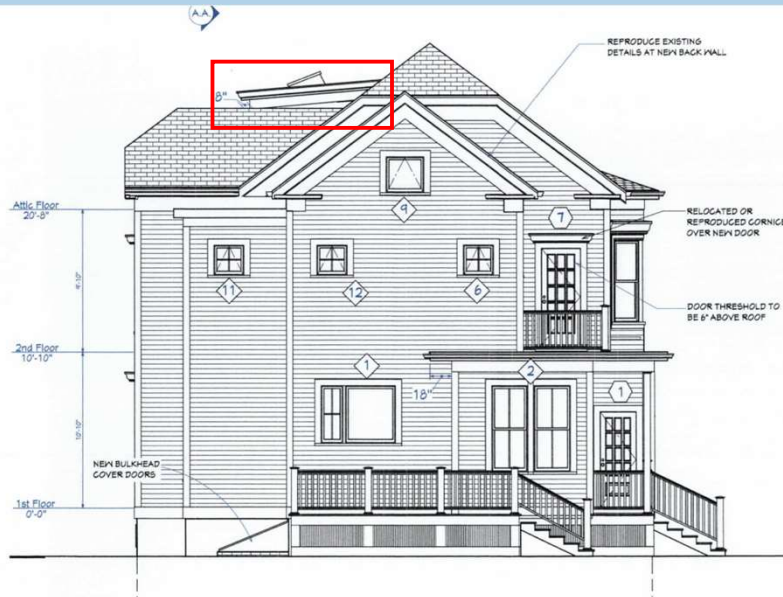
6

Elevations- Front



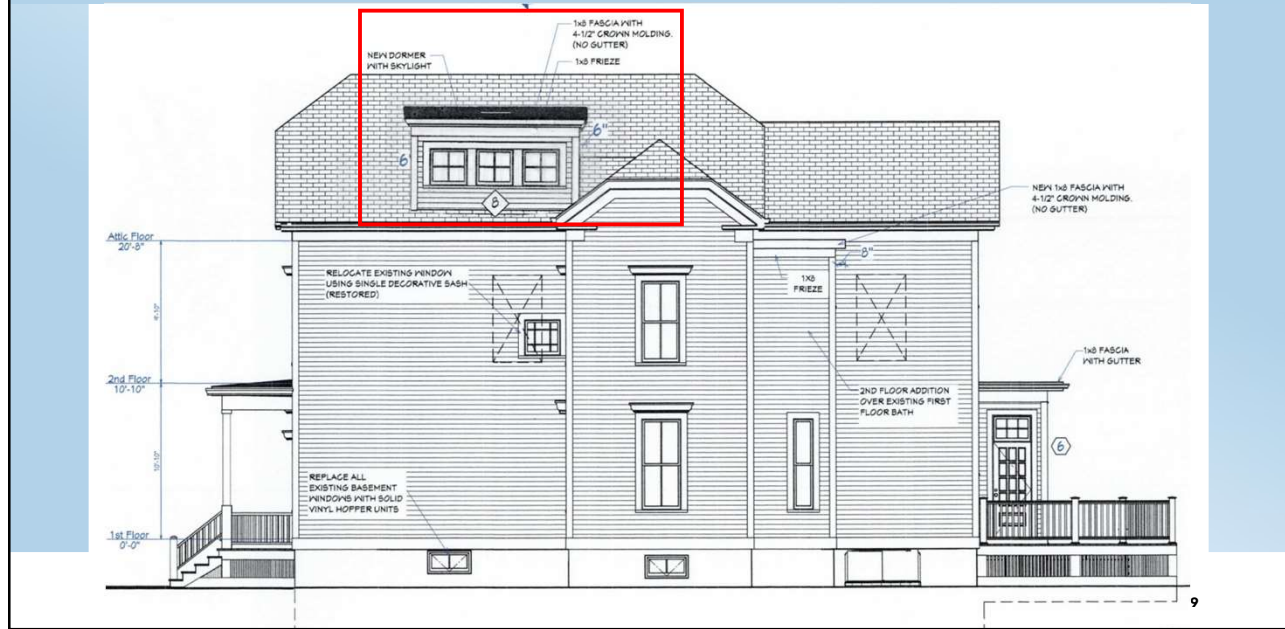
7

Elevations- Rear



8

Elevations- Right/West



9

Elevations- Left/East



10

Bing Streetside and Rendering- Front/Left



11

11

Findings

When reviewing this request, the Council should consider:

1. The specific site is an appropriate location for a dormer exceeding 50% of the length of the wall below as the proposed addition will enable the site to conform with building codes and the dwelling will continue to maintain the appearance and scale of other dwellings built in the late nineteenth century, which are common in the area (§7.3.3.C.1, §3.1.3, §3.1.9).
2. The dormer exceeding 50% of the length of the wall below as developed and operated will not adversely affect the neighborhood as nonconformities are common given the development of most lots predates the Zoning Ordinance (§7.3.3.C.2, §3.1.3, §3.1.9).
3. There will be no nuisance or serious hazard to vehicles or pedestrians created by the dormer exceeding 50% of the length of the wall below as no changes to site circulation or parking will occur (§7.3.3.C.3, §3.1.3, §3.1.9).
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved in the construction of a dormer exceeding 50% of the length of the wall below as the proposed scope of work is similar to that for by-right projects (§7.3.3.C.4, §3.1.3, §3.1.9).

12

12

Conditions

1. Plan referencing
2. Standard building permit conditions
3. Standard occupancy conditions

City of Newton Planning and Development

Petition: #292-24

Special Permit/Site Plan Approval

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

July 23, 2024



16 Braeland Ave

Zoning Relief

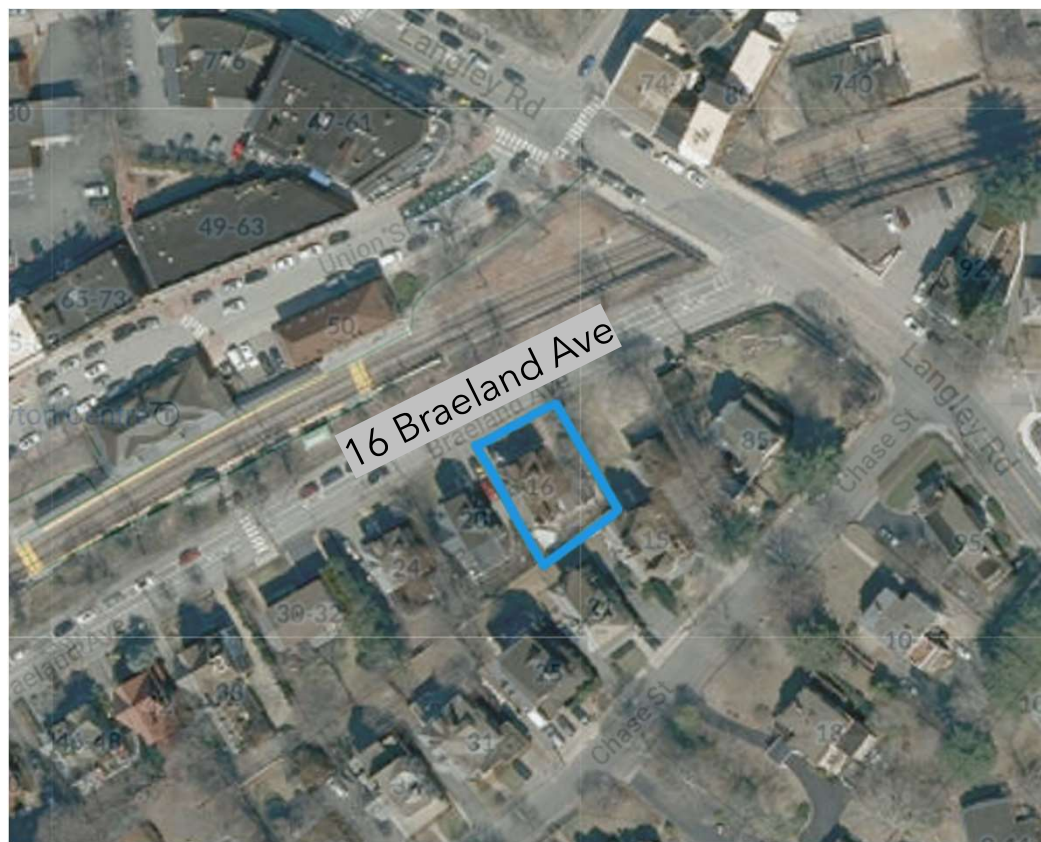
Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.2.3 §7.8.2.C.2	Request to further extend a nonconforming side setback	S.P. per §7.3.3
§3.2.3 §7.8.2.C.2	Request to further decrease nonconforming open space	S.P. per §7.3.3

Criteria to Consider

When reviewing this request, the Council should consider:

- 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)

Aerial Map



North elevation



East elevation



4 PROPOSED EAST ELEVATION
SCALE: 1/4" = 1'-0"

South elevation



3 PROPOSED SOUTH ELEVATION
SCALE: 1/4" = 1'-0"

West elevation



2 PROPOSED WEST ELEVATION
SCALE: 1/4" = 1'-0"

Findings

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)

Conditions

1. Plan referencing
2. Standard building permit conditions
3. Standard occupancy conditions

City of Newton Planning and Development

Petition: #290-24

Special Permit/Site Plan Approval
to extend front setbacks



July 23, 2024

224 Adams Avenue

Zoning Relief

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.3 §7.8.2.C.2	To vertically extend two nonconforming front setbacks	S.P. per §7.3.3

Criteria to Consider

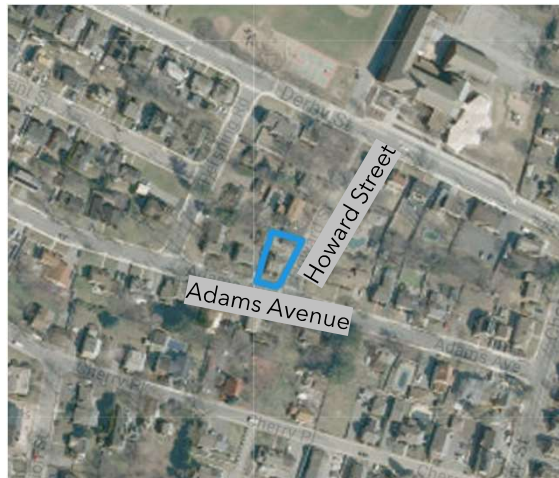
When reviewing this request, the Council should consider:

- The proposed extensions of the nonconforming setbacks from Adams Ave and Howard Street are substantially more detrimental than the existing nonconforming structure is to the neighborhood (§7.8.2.C.2)

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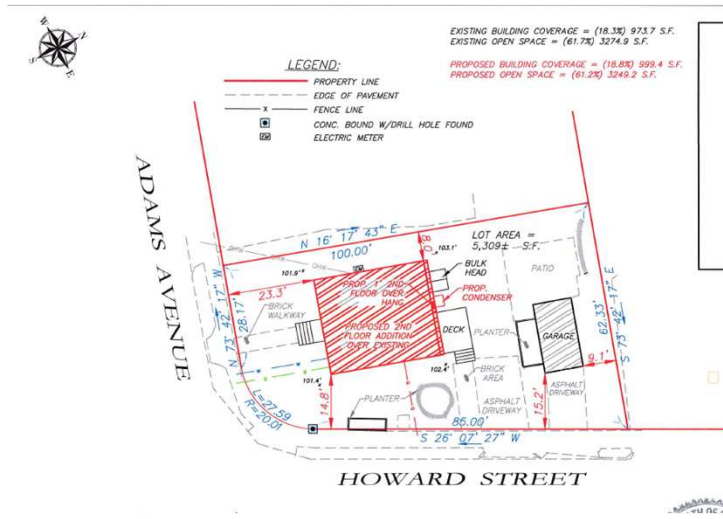
Aerial Map



4

4

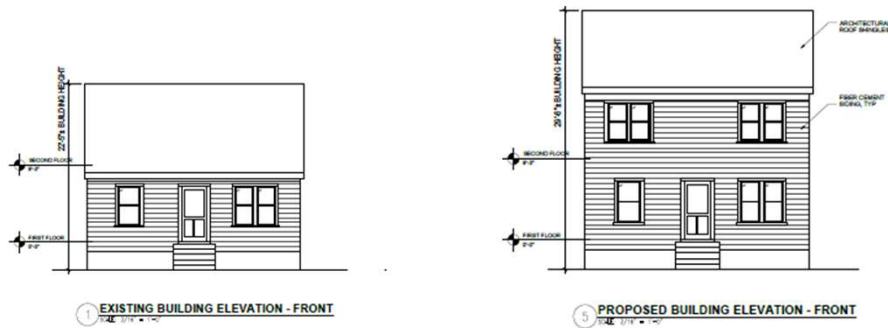
Site plan -proposed



5

5

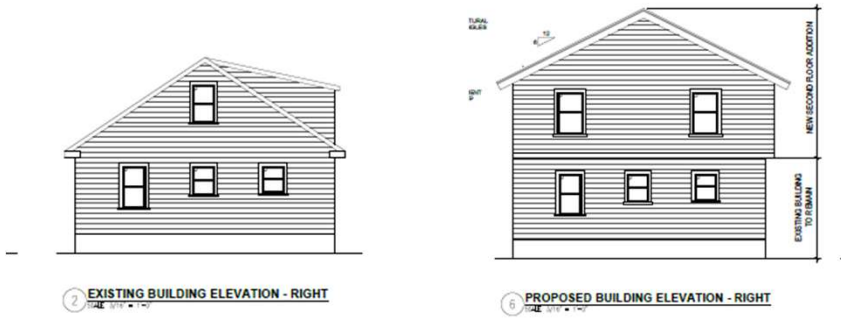
Front elevation (Adams Ave)



6

6

Side elevation-right (Howard St.)



7

7

Side elevation-left



8

8

Rear elevation



3 EXISTING BUILDING ELEVATION - REAR
SCALE: 1/8" = 1'-0"



7 PROPOSED BUILDING ELEVATION - REAR
SCALE: 1/8" = 1'-0"

9

9

Findings

1. The proposed alterations of the nonconforming front setbacks are not substantially more detrimental than the existing nonconforming structure because the project adheres to other applicable dimensional regulations and the work is limited to the existing footprint (§7.8.2.C.2)

10

Conditions

1. Plan referencing
2. Standard building permit conditions
3. Standard occupancy conditions

City of Newton Planning and Development

Petition: #289-24

Special Permit/Site Plan Approval
to further extend nonconforming FAR

July 23, 2024



29 Trowbridge Ave

Zoning Relief

Zoning Relief Required		
Ordinance		Action Required
§3.1.3 §3.1.9 §7.8.2.C.2	Request to further increase nonconforming FAR	S.P. per §7.3.3

Criteria to Consider

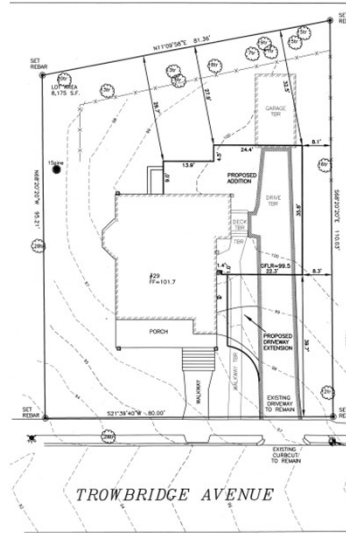
When reviewing this request, the Council should consider:

- The proposed increase of the nonconforming FAR is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood. (§3.1.9.A.2)
- The proposed increase of the nonconforming FAR will not be substantially more detrimental than the existing nonconforming structure to the neighborhood (§7.8.2.C.2)

Aerial Map



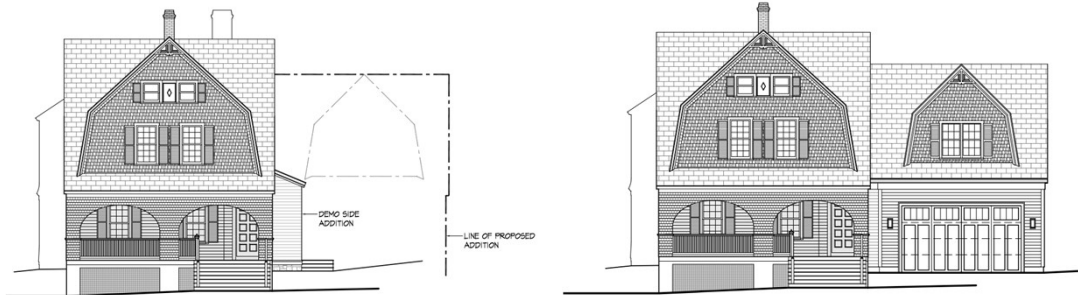
Site plan -proposed



5

5

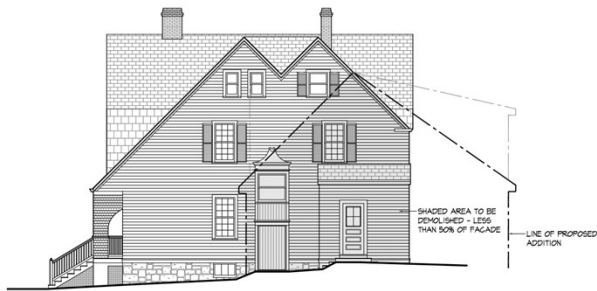
Front elevation



6

6

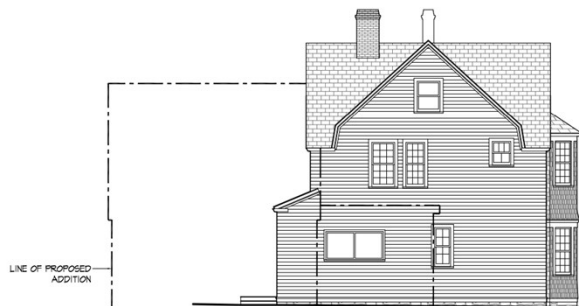
Side elevation (right)



7

7

Rear elevation



8

8

Side elevation (left)



9

Findings

1. The proposed expanded structure with an increased nonconforming FAR of 0.59, where .41 is the maximum allowed by-right is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood given there are other dwellings with a comparable size and scale in the neighborhood. (§3.1.9.A.2)
2. The proposed increase of the nonconforming FAR to 0.59 where 0.41 is the maximum allowed by right will not be substantially more detrimental than the existing nonconforming structure to the neighborhood because the massing is focused towards the rear of the dwelling, mitigating the visual impact from the street. (§7.8.2.C.2)

10

Conditions

1. Plan referencing
2. Standard building permit conditions
3. Standard occupancy conditions

City of Newton Planning and Development

Petition: #257-24

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

June 23, 2024



1188 Chestnut Street

Zoning Relief

#257-24

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

Background

- 2019: Special Permit #176-19 granted in 2019 to allow the construction of a new single-family dwelling with associated zoning relief
- 2022: Changes to site plan approved through consistency review in 2022 and supported by Land Use Committee
- 2024: Subsequent additional changes to plan during construction and found at stage of occupancy review

Criteria to Consider

#257-24

When reviewing this request, the Council should consider:

- 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)

NEW RETAINING WALL ORDINANCE FINDINGS FOR WALLS OVER 4 FEET

- 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).

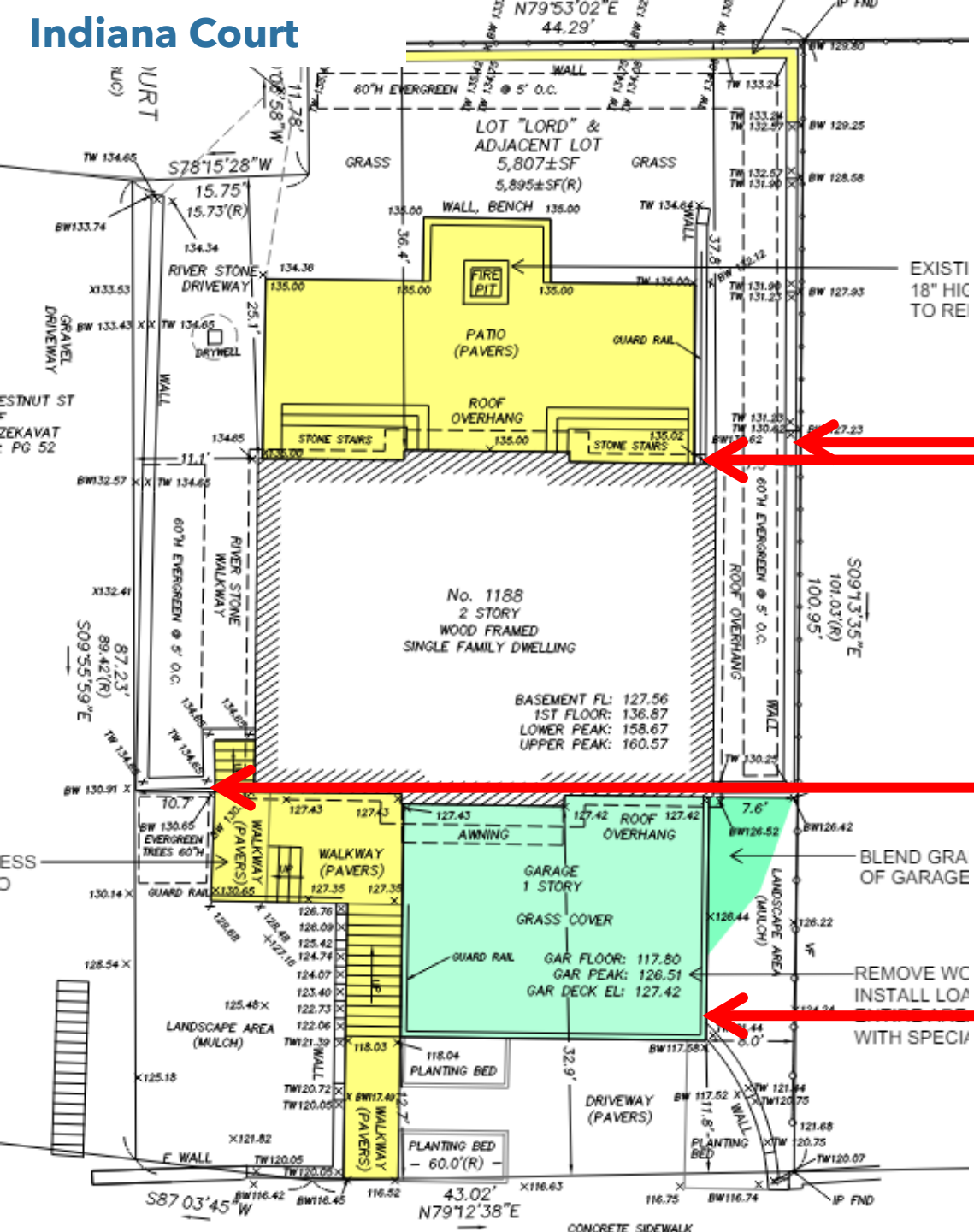
Updates

#257-24

Updates since June 18, 2024 Land Use Committee Public Hearing:

- Planning staff followed up with the neighbor on the process for requesting code enforcement and provided further analysis on relief
- Associate City Engineer wrote an Engineering memorandum with recommendations and site visit summary
- 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

Proposed/As Built² Site Plan (Amendment 2024)



Series of Retaining Walls (maximum height of 4.4 feet and 4.0 feet)

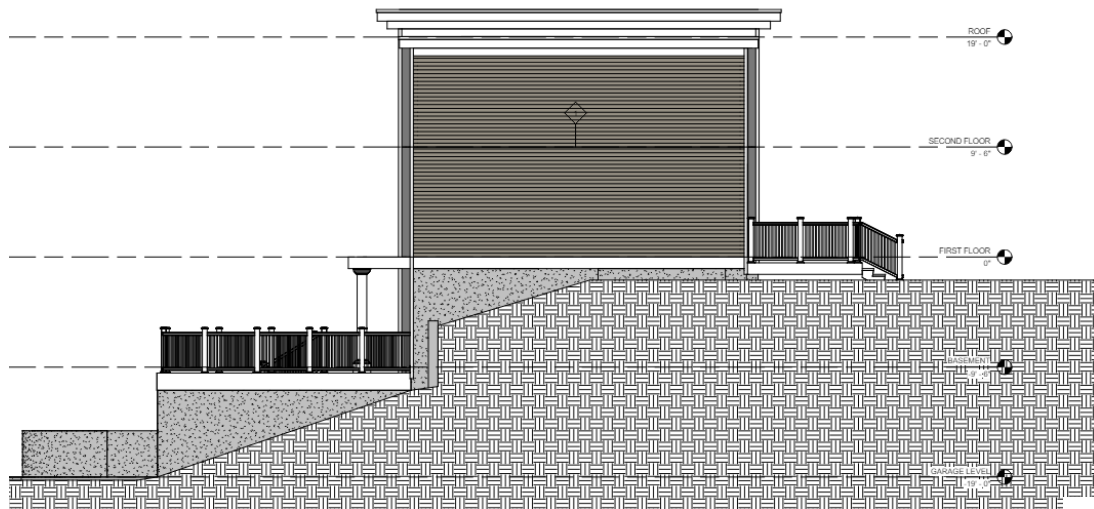
Walkway and Retaining Wall (4 ft)

1 Story Garage

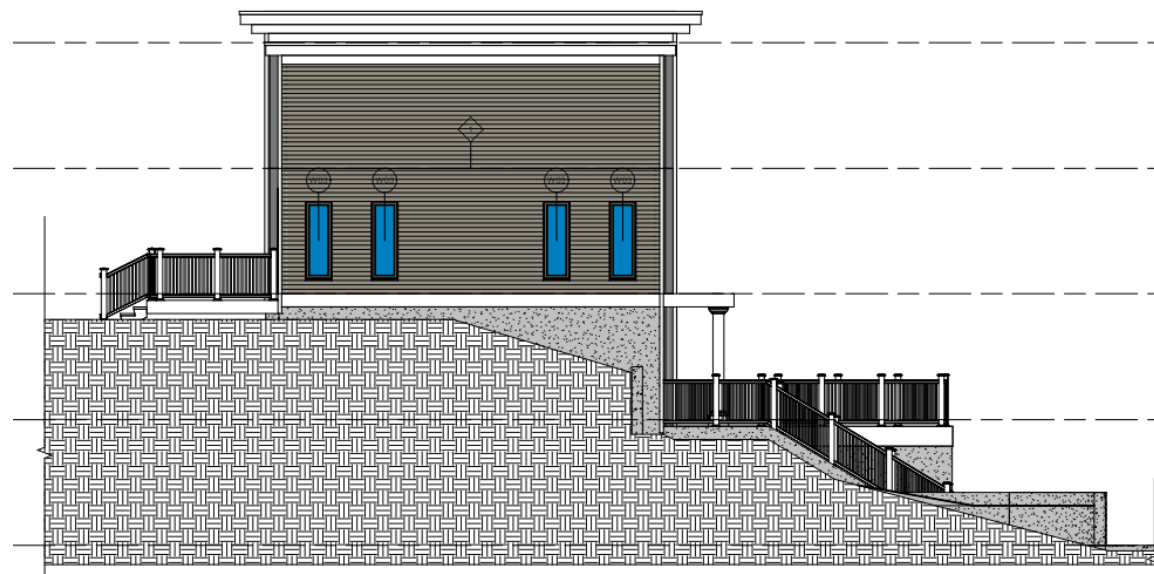
Front (south) Elevation



East (Side) Elevation



West (Side) Elevation



Rear (North) Elevation



Amendment to Prior Special Permit

- + Many changes during construction of project made that were not on special permit-approved site plan from 2019 as well as changes since site plan approved by consistency ruling in 2022.
- + Changes since the 2022 site plan require additional relief, such as FAR, garage, and retaining walls over 4 feet

Garage

- + 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.
- + Relief is for the expanded garage over 700 square feet for 3 cars - expansion through interior modifications
- + Planning did not originally recommend the garage at this location, and does not support the relief for the expanded garage over 700 square feet due to safety challenges backing in and out of driveway with tandem configuration in garage

Retaining Walls

- + Engineering has conducted site visit and recommendations and found the site and retaining walls stable
- + Planning has incorporated conditions from Engineering in the proposed Council Order related to the retaining walls should the petition be approved.
- + Planning defers to Engineering but has no issues with retaining walls of approx. 4 feet in height as they are changes likely needed during construction and site layout

FAR

- + Planning has no issues with the FAR relief since the relief is minimal - maximum allowable FAR for the MR-1 is .56, where .57 is requested

Findings

#257-24

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)

Findings

#257-24

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)

Conditions

#257-24

1. Plan referencing
2. Standard building permit conditions
3. Standard occupancy conditions
4. Filed with ISD/ Department of Engineering an affidavit that the retaining walls have been constructed in accordance with manufacturer's standards
5. Ongoing condition: Maintenance of landscaping on Western Boundary