



Ruthanne Fuller
Mayor

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

Petition: #363-24
Public Hearing:
10/22/24

Barney Heath
Director

PUBLIC HEARING MEMORANDUM

DATE: October 17, 2024

TO: City Council

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

SUBJECT: **Petition #363-24, Request to allow parking in the front setback and within five feet of the front lot line at 140 Derby Street** for SPECIAL PERMIT/SITE PLAN APPROVAL to convert the existing attached garage into living space, requiring construction of a second parking stall in the driveway, resulting in two parking stalls within the front setback and an additional stall within five feet of the front lot line at 140 Derby Street, Ward 3, West Newton, on land known as Section 34 Block 35 Lot 03, containing approximately 5,000 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 7.3.3, 5.1.7.A, 5.1.13, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017

Project Materials: <https://newtonma.viewpointcloud.com/records/844166>

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.



140 Derby Street

I. Project Description

Use: Single family dwelling

Zoning: Single Residence 3 (SR-3)

Lot size: 5,000 square feet

Existing Nonconformities:

- Lot size of 5,000 square feet where 7,000 square feet is required
- Frontage of 50 feet where 70 feet is required
- Front setback of 21.4 feet where 25 feet is required

The site has an eight-foot grade change from the front to the rear of the lot.

Proposal: The petitioner proposes to create living space within the garage, eliminating one required parking stall. As a result, the petitioner is seeking to accommodate two parking stalls in a side-by-side configuration within the existing driveway. As only one parking stall is allowed within the front setback, they are seeking zoning relief to locate a second parking stall within the front setback. As the driveway already exists, the configuration also requires zoning relief to further extend nonconforming parking to allow an additional parking stall within five feet of the front lot line.

Analysis: As the driveway and nonconforming parking configuration exists today, Planning is unconcerned with the request to locate the additional parking stall at the front of the site. The undersized lot with nonconforming frontage and lot size presents challenges in locating parking elsewhere as the side setbacks would prohibit a vehicle to pass to the rear of the site for additional parking and result in additional paving. Allowing the second required parking stall within the front setback would also eliminate the need for additional, unnecessary paving on site. The property is located across from the Franklin School, as such, there are not as many single-family home properties to look to for context. However, properties further east on Derby Street feature double wide parking configurations. Properties further west have driveways that lead to parking at a lower grade in the rear.

II. Zoning Relief Requested:

Zoning Relief Required		
Ordinance		Action Required
§5.1.7.A §5.1.13	To allow two parking stalls within the front setback	S.P. per §7.3.3
§5.1.7.A §5.1.13 §7.8.2.C.2	To further extend nonconforming parking to allow an additional parking stall within five feet of the front lot line	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 additional parking stall in the front setback (7.3.3.C.1)
- The additional parking stall in the front setback will not adversely affect the neighborhood (§7.3.3.C.2)
- The additional parking stall in the front setback 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)
- Literal compliance with the city's parking regulations which limit single family homes to only one parking stall in the front setback is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features. (§5.1.13)
- The proposed extension of the nonconforming parking within five feet of the front lot line is not substantially more detrimental than the existing parking configuration. (§7.8.2.C.2)

IV. Project Proposal and Site Characteristics

A. Site

The 5,000 square foot lot slopes downward approximately eight feet from the front to the rear of the lot and is improved with a single-family dwelling constructed circa 1955. There are nonconforming aspects to the site including the front setback of 21.4 feet, where 25 feet is required, as well as frontage and lot size.

There is an existing driveway between the dwelling and the front property line. Due to the configuration of the dwelling on the lot, neither side setback provides ample room for a driveway that would allow for rear access for a parking area in the wider rear portion of the lot.

B. Proposed Design

The petitioner proposes to create habitable space within the existing garage, which eliminates one of the two required parking stalls within the garage. To accommodate the required two parking stalls, the petitioners are seeking to locate an additional parking stall in the driveway between the dwelling and front property line.

The driveway dimensions of 23.1 feet long x 19.2 feet wide demonstrate the ability to park two 9 feet x19 feet parking stalls at the front of the property with additional relief. Due to the driveway length of 23.1 feet, this places the parking stalls within five feet of the street, requiring additional relief. However, the existing driveway/parking is within five feet of the street and is an existing nonconforming aspect of the site.

The petitioners are also proposing to construct a by-right rear deck measuring approximately eight feet by 18 feet. This deck does not require any zoning relief and may be constructed as of right.

C. Analysis

As the driveway and nonconforming parking configuration exists today, Planning is unconcerned with the request to locate the additional parking stall at the front of the site. The undersized site with nonconforming frontage and lot size presents challenges in locating parking elsewhere as the side setbacks would not allow a vehicle to pass through to the rear of the site for parking. The site also has a downwards slope of approximately eight feet from the front to the rear of the site. The property is located across from the Franklin School, and as such, there are not many single families home properties to look to for context. However, properties further east on Derby Street have side-by-side parking configurations. Properties further west have driveways that lead to parking at a lower grade in the rear.

V. Interdepartmental Review

No further reviews are 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

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: October 2, 2024

To: Anthony Ciccariello, Commissioner of Inspectional Services

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

Cc: Derby Holdings LLC, Applicant
Barney S. Heath, Director of Planning and Development
Jonah Temple, Deputy City Solicitor

RE: Request to allow parking in the front setback and within five feet of the front lot line

Applicant: Derby Holdings LLC

Site: 140 Derby Street	SBL: 34035 0003
Zoning: SR3	Lot Area: 5,000 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 140 Derby Street consists of a 5,000 square foot lot improved with a single-family dwelling constructed circa 1955. The petitioner intends to convert the existing attached garage into living space, requiring a second parking stall in the driveway, resulting in two parking stalls within the front setback and within five feet of the street, requiring a special permit.

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

- Zoning Review Application, prepared Mark Maninelli, applicant, dated 9/23/2024
- Existing Conditions, signed and stamped by Christopher C. Charlton, surveyor, dated 8/23/2024
- Proposed Plot Plan, signed and stamped by Edmond Spruhan, engineer and Christopher C. Charlton, surveyor, dated 8/23/2024

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner intends to convert the attached single-car garage into habitable space, eliminating one of the two required parking stalls per section 5.1.4. To create the second required parking stall, the petitioner proposes to use the existing driveway to accommodate two dimensionally-compliant parking stalls. The existing driveway consists of bituminous paving and an at grade stone walkway. Per section 5.1.7.A only one parking stall may be located in the front setback for use in conjunction with a single-family dwelling. The proposed configuration places a second parking stall within the front setback. A special permit per section 5.1.13 is required to allow the proposed configuration.
2. Per that same section 5.1.7.A, no parking is allowed within five feet of the front lot line. The existing driveway is 23.1 feet to the foundation planting bed (and 25.7 feet to the house). The petitioner seeks to extend this nonconformity by adding a second stall adjacent to the existing, resulting in two parking stalls within five feet of the street, to avoid eliminating the landscape planting bed. A special permit per sections 5.1.13 and 7.8.2.C.2 is required to further extend the nonconforming parking configuration.

See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§5.1.7.A §5.1.13	To allow two parking stalls within the front setback	S.P. per §7.3.3
§5.1.7.A §5.1.13 §7.8.2.C.2	To further extend nonconforming parking to allow an additional parking stall within five feet of the front lot line	S.P. per §7.3.3

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the City Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to allow parking in the front setback and to extend nonconforming parking within five feet of the front lot line as recommended by the Land Use Committee for the reasons given by the Committee, through its Chair, Councilor Andrea Kelley:

1. The site is an appropriate location for the additional parking stall in the front setback because other residential uses have side-by-side parking and similar driveway configurations further east on Derby Street. (7.3.3.C.1)
2. The additional parking stall in the front setback will not adversely affect the neighborhood because other residential uses have side-by-side parking and similar driveway configurations further east on Derby Street (§7.3.3.C.2)
3. The additional parking stall in the front setback will not create a nuisance or serious hazard to vehicles or pedestrians as the driveway exists in its current configuration (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
5. Literal compliance with the city's parking regulations which limit single family homes to only one parking stall in the front setback is impracticable because to locate parking elsewhere is challenging due to topography and placement of the single-family dwelling on site and corresponding setbacks would be impractical for a vehicle to pass. (§5.1.13)
6. The proposed extension of the nonconforming parking within five feet of the front lot line is not substantially more detrimental than the existing parking configuration because the driveway configuration is not changing. (§7.8.2.C.2)

PETITION NUMBER: #363-24

PETITIONER: Joseph Amorosino

LOCATION: 140 Derby Street on land known as Section 34 Block 35 Lot

03, containing approximately 5,000 sq. ft. of land

OWNER: Joseph Amorosino

ADDRESS OF OWNER: 140 Derby Street
Newton, MA 02465

TO BE USED FOR: Single Family dwelling

RELIEF GRANTED: Special Permit to allow a second required parking stall within the front setback (§5.1.7.A, §5.1.13), and to further extend nonconforming parking to allow an additional parking stall within five feet of the front lot line (§7.8.2.C.2)

ZONING: Single Residence 3

Approved, subject to the following conditions:

7. 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 proposed plot plan prepared signed and stamped by Edmond Spruhan, engineer and Christopher C. Charlton, surveyor, dated 8/26/2024, revised 9/23/24
8. 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.
9. 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.
 - b. Submitted final as-built survey plans in digital format, stamped and signed by a professional land surveyor or professional engineer, as applicable.