

Land Use Committee Report

City of Newton In City Council

Tuesday, July 28, 2020

Present: Councilors Lipof (Chair), Kelley, Greenberg, Auchincloss, Markiewicz, Downs, Bowman, Laredo

Also Present: Councilors Albright, Wright, Malakie, Krintzman, Gentile, Crossley

City Staff Present: Chief Planner Neil Cronin, Associate City Solicitor Jonah Temple

All Special Permit Plans, Plan Memoranda and Application Materials can be found at http://www.newtonma.gov/gov/aldermen/special permits/current special permits.asp. Presentations for each project can be found at the end of this report.

#282-20 Petition to extend the nonconforming residential use at 17 Shamrock Street

<u>CLIFF JEWETT</u> petition for <u>SPECIAL PERMIT/SITE PLAN APPROVAL</u> to construct additions to the garage which increase the height and footprint, extending the nonconforming residential use in the BU1 district at in the 17 Shamrock Street, Ward 1, Newton, on land known as Section 14 Block 20 Lot 01, containing approximately 7,972 sq. ft. of land in a district zoned BUSINESS USE 1. Ref: Sec. 7.3.3, 7.4, 4.4.1, 7.8.2.C.2 of Chapter 30 of the City

of Newton Rev Zoning Ord, 2017.

Action: <u>Land Use Approved 8-0; Public Hearing Closed 07/</u>28/2020

Note: Attorney Terry Morris, with law offices at 57 Elm Road, represented the petitioner, Mr. Cliff Jewett. Atty. Morris presented the request to construct a two-story addition to the existing garage at 17 Shamrock Street. Atty. Morris explained that the first floor will be used to store classic cars and parts for restoration. The second floor will be used for storage. Atty. Morris noted that the car restoration is performed off-site. Because the proposed construction is in a residential building in a district zoned BU1, the addition is an extension of the nonconforming residential use.

Planning Associate Katie Whewell presented the requested relief, criteria for consideration, land use, zoning and proposed plans as shown on the attached presentation. Ms. Whewell noted that the site is accessed by two driveways; one off of Clinton Street leading to the detached garage and the second off of Shamrock Street. It was noted that the Shamrock Street curb cut is used by tenants at the site. Ms. Whewell stated that the proposed plans include demolishing a portion of the garage which encroaches onto the abutting property. The addition will have an increase of 1065 sq. ft. In response to a question from the Committee, Atty. Morris confirmed that the second story is not intended to be used as dwelling space and there will be no water service. He stated that the second story is intended to be used for storage. Ms. Whewell confirmed that the plans for the proposed addition were administratively approved by the City's Chief Preservation Planner.

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The Public Hearing was Opened. Seeing no member of the public who wished to speak, Councilor Greenberg motioned to close the public hearing which carried unanimously. Councilor Greenberg moved approval of the petition. Committee members reviewed the draft findings and conditions as shown on the attached presentation. The Committee expressed no concerns relative to the request and voted 8-0 in favor of approval.

#283-20 Petition to allow more than one garage at 103 Cabot Street

AMY KLOEMPKEN AND MATTHEW MUGHERINI petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a detached two-car garage, creating more than one garage, garage space with more than three vehicles and garage space in excess of 700 sq. ft. at 103 Cabot Street, Ward 2, Newton, on land known as Section 12 Block 09 Lot 01, containing approximately 12,960 sq. ft. in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 3.4.2.B.1, 3.4.3.A.4.a, 3.4.3.A.4.b, 3.4.3.A.4.c of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: <u>Land Use Approved 8-0; Public Hearing Closed 07/28/2020</u>

Note: Architect Stacey Oliva, Eso Design Collective, 19 Depot Street, Uxbridge, represented the petitioners Amy Kloempken and Matthew Mugherini. Ms. Oliva presented the request to construct a detached two-car garage; which creates a second garage and more than 700 sq. ft. of garage space at 103 Cabot Street. Ms. Oliva explained that the existing garage has 6' doors and a pole in the middle and noted that it is not suitable for modern day cars. She noted that the proposed garage will be accessed from the rear and built into the existing grade to minimize the height and impact. The petitioners confirmed that the existing garage will be used for storage and to store their third vehicle.

Senior Planner Michael Gleba presented the requested relief, criteria for consideration, land use, zoning and renderings of the proposed garage as shown on the attached presentation. Mr. Gleba noted that when the Planning Department Memorandum was issued, no engineering memo had been received. An Engineering memo was subsequently submitted. The petitioner will be making stormwater improvements and a drainage report will be needed for review and approval. Mr. Gleba noted that the plans include the replacement of a large portion of the driveway with a pervious paver system. As the Engineering Department does not give credit for pervious pavers, the petitioner will still need to account for the driveway. Ms. Oliva stated that the material for the pavers has not been selected but noted that the petitioners are carefully considering the paver and substrate materials.

Ms. Kloempken confirmed that the petitioners have communicated plans to the neighbors who have expressed their support for the plans. The Public Hearing was Opened. Seeing no member of the public who wished to speak, Councilor Markiewicz motioned to close the public hearing which carried unanimously. Councilor Markiewicz motioned to approve the petition. The Committee reviewed the draft findings and conditions as shown on the attached presentation. The Committee expressed no concerns relative to the petition and voted 8-0 in favor of approval.

#26-20 Request to Rezone Approximately 4.4 acres to MU-3 to Create a Contiguous MU-3 Zone

MD 399 GROVE OWNER, LLC/RAMIREZ CONCORD, LLC/BH NORMANDY RIVERSIDE,

LLC/MASSACHUSETTS BAY TRANSPORTATION AUTHORITY petition for a change of zone to

Mixed Use 3/Transit Oriented District for portions of land located at 355 Grove Street

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(currently zoned BU-2) and 399 Grove Street (currently zoned BU-5), also identified as Section 42, Block 11, Lots 3, 4, and 4A, abutting the existing MU-3 Zone.

Action: Land Use Held 8-0; Public Hearing Continued

#27-20 Petition to allow Mixed Use Transit Oriented Development at Riverside Station

MD 399 GROVE OWNER, LLC/RAMIREZ CONCORD, LLC/BH NORMANDY RIVERSIDE, LLC/MASSACHUSETTS BAY TRANSPORTATION AUTHORITY petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a mixed use, transit-oriented development of residential units, office, retail, personal services, restaurant, hotel, and related commercial uses not to exceed 1,025,000 square feet of gross floor area, with residential uses comprising not less than 60% of the total gross floor area with a residential density of not less than 800 square feet per unit with not less than 560 units nor more than 620 units with special permit relief and/or waivers as follows: as to dimensional standards, a development of more than 20,000 square feet of gross floor area, building height of up to 170 feet, buildings up to 11 stories, Floor Area Ratio of up to 2.5, beneficial open space of not less than 15%, increase of height of certain buildings with the Grove Street Area Corridor (to the extent necessary), and reduction in setback from Grove Street for certain buildings within the Grove Street Corridor Area (to the extent necessary); as to design standards, waiver of the sustainable development design standards and placement of a retaining wall greater than 4 feet in height located in a setback; as to uses, for-profit educational use, retail sales of over 5,000 square feet, restaurant with more than 5,000 square feet of gross floor area, personal service use of over 5,000 square feet, place of amusement, health club on ground floor, animal services, hotel, bank up to and over 5,000 square feet, theatre/hall, laboratory/research facility, parking facility, accessory, multilevel, parking facility, non-accessory, single level; as to parking, reduction of the residential parking requirement to 1.25 stalls per unit, reduction of the overall commercial parking requirement by 1/3, and waiver of parking stalls not to exceed 685 stalls, above and beyond the reductions specified above; as to parking facilities, waivers of the parking stall dimension requirements, the end stall maneuvering space requirements, the driveway entrance and exit requirements, the 5% interior landscaping requirements, the interior planting area requirements, the tree requirements, the bumper overhang requirements, the one-foot candle lighting requirement, the parking stall striping requirements (to the extent necessary), the curbing, wheel stop, guard rail, or bollard requirements, and the number of off-street loading facilities requirements; and as to signage, waiver of the number, size, type, location, and design requirements, all at 355 and 399 GROVE STREET on land known as Section 42, Block 11, Lots 3, 4 and 4A, containing approximately 13.05 acres of land in districts zoned Mixed Use 3 Transit Oriented (MU3), BU2 (a portion to be rezoned to MU3), BU5 (to be rezoned to MU3). Ref: Sec. 4.2.2.B.1, 4.2.2.B.3, 4.2.3, 4.2.4, 4.2.4.A.4, 4.2.4.B.3, 4.2.4.G.2, 4.4.1, 5.1.4, 5.1.4.A, 5.1.4.C, 5.1.8.B.1, 5.1.8.B.2, 5.1.8.B.4, 5.1.8.B.6, 5.1.8.D.1, 5.1.8.D.2, 5.1.9.B.1, 5.1.9.B.2, 5.1.9.B.3, 5.1.9.B.4, 5.1.10.A.1, 5.1.10.B.3, 5.1.10.B.5, 5.1.12, 5.1.12.B.4, 5.1.13, 5.2, 5.2.13, 5.4.2.B, 5.12, 6.4.29.C.5, 7.3.3, 7.3.5, 7.4 of the City of Newton Revised Zoning Ordinance, 2017. Additionally, as to infiltration and inflow mitigation, an abatement of the infiltration/inflow mitigation fee pursuant to Section 29-170 of the City of Newton Revised Zoning Ordinance, 2017.

Action: <u>Land Use Held 8-0; Public Hearing Continued</u>

Note: Associate City Solicitor Jonah Temple reviewed changes to the draft Council Order as a result of the meeting on July 14, 2020. A summary of the changes to conditions is shown below.

Condition 3/4 – clarified that either issuance of a City or state building permit will vest the zone change. Atty. Temple noted that this distinction is important because the garage will be permitted by the state, not the City.

Condition 4 – exercise of the permit has been changed to commencement of construction from issuance of a building permit.

Condition 5 – the deadline to pull all building permits has been changed to 8 years.

Conditions 8-11 – revisions have been made to the review structure. The petitioner has the option to combine schematic and design review stages for one review (the "expanded schematic stage") with review by UDC and Planning followed by a final review of construction documents by Planning prior to issuance of a building permit.

- Addition of the requirement that copies of submissions are given to the liaison committee at each stage
- Addition of the requirement that 14-day notice of UDC meetings is provided to liaison committee
- Addition of the language that the petitioner cannot proceed without favorable consistency opinions from UDC and Director of Planning

Condition 12

Subsection C

- Revised to allow flexibility in the total number of residential units by 4%
- Revised to allow flexibility in number of parking stalls by 4%

Subsection E

- Adding changes in # of units greater than 4%
- Changes to parking greater than 2% unless a grocer is added
- Eliminations of the language relative to 1,025,000 sq. ft. as that is the maximum allowed by the MU3/TOD Zoning Ordinance

Condition 13

Subsection A

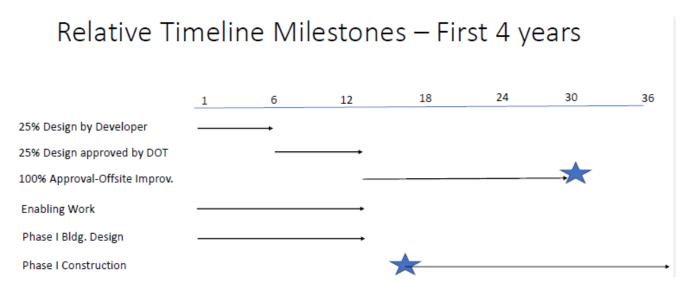
- addresses progress toward MassDOT approval prior to pulling building permits. There is new language clarifying that the comments must allow the petitioner to move forward to the next stage after the completion and submission of 25% design to MassDOT and receipt of comments.
- Language added requiring copies of all MassDOT submissions to be provided to the liaison Committee.
- Updated plan reference

Off-site improvements on Grove Street

- A. Describes the improvements changes and reorganization
- B. Requiring MassDOT approval of the signal
- C. New plan reference
- Addition of language requiring the petitioner to request approval by Traffic Council to prohibit the left turn on Grove Street
- Language added requiring the petitioner to maintain the infrastructure and enter into a license and indemnification agreement with the City. The petitioner will be responsible for long-term maintenance of bicycle and pedestrian infrastructure along the project frontage.

Some concern was expressed relative to the duration of construction for the project. It was noted that allowing the petitioner 8 years to pull building permits can result in up to ten years of construction. The Committee questioned whether the petitioner should be given a maximum of five years to pull all building permits for the project. It was noted that the petitioner has up to five years to pull a building permit in order to keep the permit vested. Mr. Korff noted that the review process and various approvals (by the City, MassDOT and the MBTA) will take some time. He stated that if a building permit is pulled close to the end of the third year, it would not be possible to pull permits for the remaining buildings by the end of year five. He reiterated the intent to complete the work as soon as possible, while maintaining that up to eight years may be necessary. The Committee took a straw vote 6-2 in favor of allowing up to eight years to pull all of the building permits.

The Committee emphasized the importance of ensuring that the off-site improvements are completed, understanding their importance to success of the project. Atty. Temple noted that as drafted, the City may withhold Certificates of Occupancy pending the off-site construction. The Committee expressed concerns relative to the choice a future Council might have to make if the on-site construction is completed and the off-site construction has been stalled. The Committee discussed requiring the off-site construction to be completed at a point sooner than prior to issuance of the last Certificate of Occupancy. Councilor Markiewicz provided the below timeline, based on conversations with the petitioner to outline which stages could impact the progress of the project.



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Councilor Markiewicz explained that the first three milestones are related to obtaining approvals for the off-site improvements (ramps, roundabout, etc.). It was noted that requiring the petitioner to wait until approval of 100% design will put more security behind ensuring the off-site improvements can and will be constructed but can result in a significant delay in beginning Phase I of construction on-site (which can begin at the 25% submission point). The Committee questioned whether the petitioner should be required to post a performance bond for the cost of the off-site improvements in the event that final approval from Federal Highway and/or MassDOT is not granted.

Randy Hart explained that there are three stages that the state will review the plans (25%, 75% and 100%). He stated that most of the comments relative to design will be given at the 25% design stage and noted that once the plans have been submitted, the review period can vary significantly. Mr. Cronin noted that the City's peer reviewer estimates that the entire design process will take approximately two years and the first year will be through 25% design.

The Committee questioned whether the City has required posting of a performance bond for off-site work for other projects. Mr. Korff noted that MassDOT will require a bond from the contractor, and they might be willing to allow the City to be named as insured with them. He expressed concern relative to a condition requiring posting of a performance bond noting that it is atypical for a project of the proposed size and stated that it may make it more difficult to obtain financing. The Committee noted that requiring posting of a performance bond could make it overly difficult for the developer to a point that the project could fail. The Committee took a straw vote 6-2 in favor of not requiring posting of a performance bond for the off-site improvements. The Committee asked that the Law Department and Planning Department reach out to bonding companies to provide some information on whether other developers have been required to post performance bonds and if it could be an option to consider. The Committee took a straw vote 6-2 in favor of allowing commencement of construction to begin upon return of the comments from MassDOT.

It was noted that the conditions currently require the petitioner to request prohibition of the left turn on Grove Street from the Traffic Council. Councilors questioned whether the Council can prohibit the left turn through the Council Order and without the Traffic Council process. Atty. Temple confirmed that the traffic movement must go through the Traffic Council process. The Committee noted that Traffic Council is likely to approve the request, unless it is determined to be unsafe. The Committee asked that the concerns raised by the Transportation Advisory Group are addressed.

Conditions related to Mitigation

The Committee discussed the \$1.5 million dollars included in the mitigation package (totaling \$7.98 million dollars) for the Williams School. It was noted that during the course of the Northland special permit process, the Mayor requested that the Council consider some mitigation funds for the Countryside School. The School Department has informed the Council in recent years that enrollment is decreasing, and the Riverside project should not impact capacity needs at the Williams School. The Committee expressed concern to allocating the funds to the school, noting that the project will not be built for several years and enrollment projections do not exist yet. The Committee questioned whether the \$1.5 million dollars should be reallocated for other neighborhood improvements. Chief Operations Officer Jonathan Yeo confirmed that there could be a need for 1-2 classrooms, which is typical on large projects. It was

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noted that the enrollment figures as presented by the demographer indicated an increase at the Williams School.

The Committee questioned whether the \$1.3 million dollars for off-site improvements includes an extension from Quinobequin Road to Washington Street. It was noted that those funds would be allocated to a neighborhood fund who would make a recommendation on how the funds might be spent.

Regarding the trail work, Atty. Temple explained that if the petitioner and/or the Newton Conservators cannot get DCR approval, the funds will return to the City. The Committee requested that if the funds are returned to the City, they should be used for the park and/or park access. Relative to maintenance of the property, Mr. Ted Chapman explained that the Newton Conservators did not want responsibility over care of the trails. He noted that the Newton Conservators believe that a better option would be the DCR Urban Parks Trust fund. Mr. Chapman explained that the \$50,000 through the Newton Conservators is earmarked to support ongoing maintenance of the trails as a supplement to DCR. The Committee emphasized that the funds for the trails should be reserved for the trails. Mr. Korff confirmed that it is the intent to begin and complete the trail work as soon as possible. The Committee asked that the Council Order states that the petitioner will begin the trail work immediately after applying for funding, irrespective of how far along they are on other portions of the project. With that, the Committee voted 8-0 in favor of a motion to hold items #26-20 and #27-20 from Councilor Markiewicz. The Committee adjourned at 10:20 pm.

Respectfully Submitted,

Richard Lipof, Chair

Department of Planning and Development



PETITION #282-20 17 SHAMROCK STREET

SPECIAL PERMIT/SITE PLAN
APPROVAL TO EXTEND THE
NONCONFORMING RESIDENTIAL
USE IN A BUSINESS 1 ZONE



JULY 28, 2020

Requested Relief

Special Permit per §7.8.2.C.2 and §7.3.3 of the NZO to:

Further extend the nonconforming residential use in the Business 1 zone (§4.4.1).

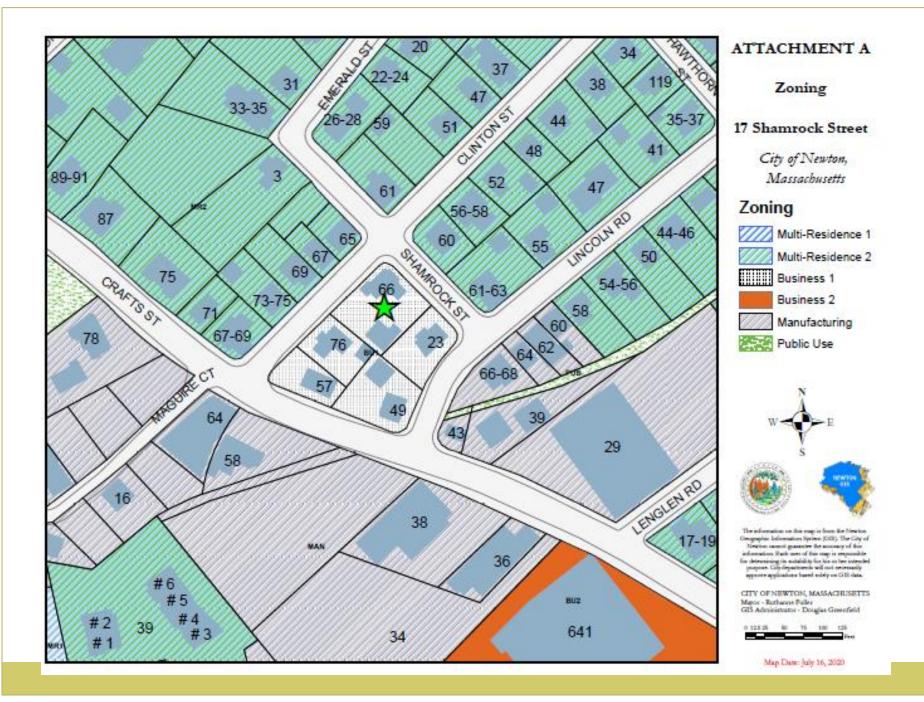
Criteria to Consider

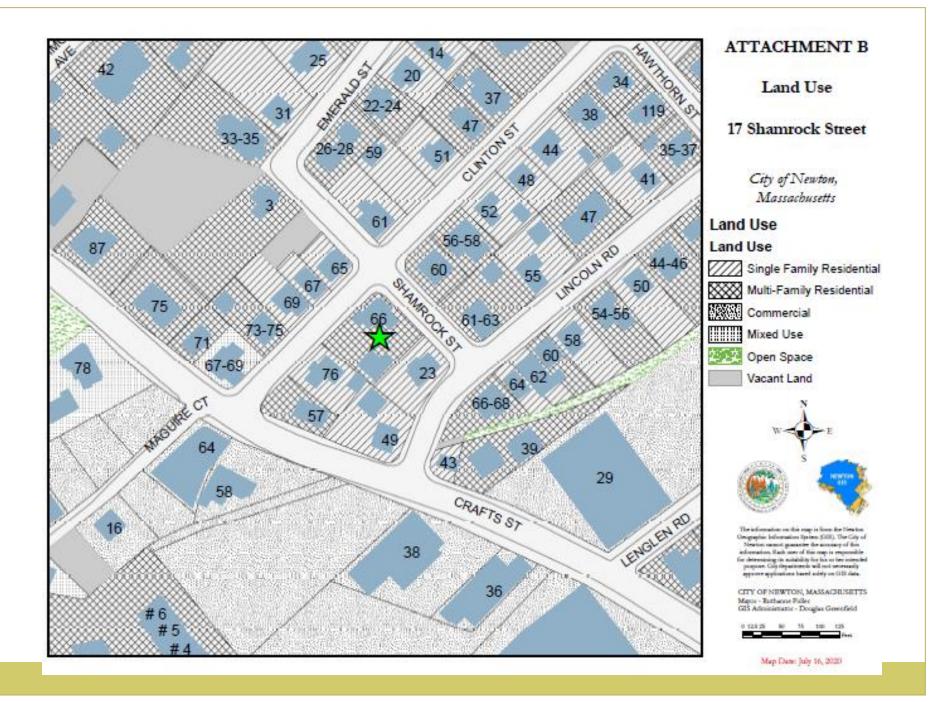
When reviewing this request, the Council should consider whether:

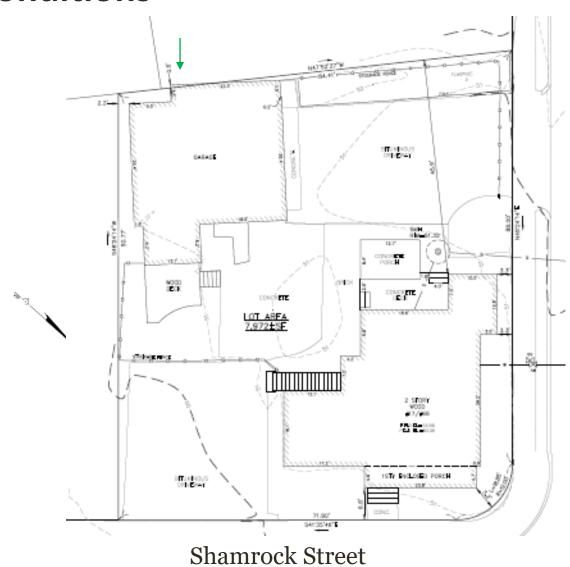
The proposed additions to the garage that extend the nonconforming residential use are not substantially more detrimental than the existing nonconforming residential use. (§4.4.1, §7.8.C.2.C.2)

Aerial/GIS Map

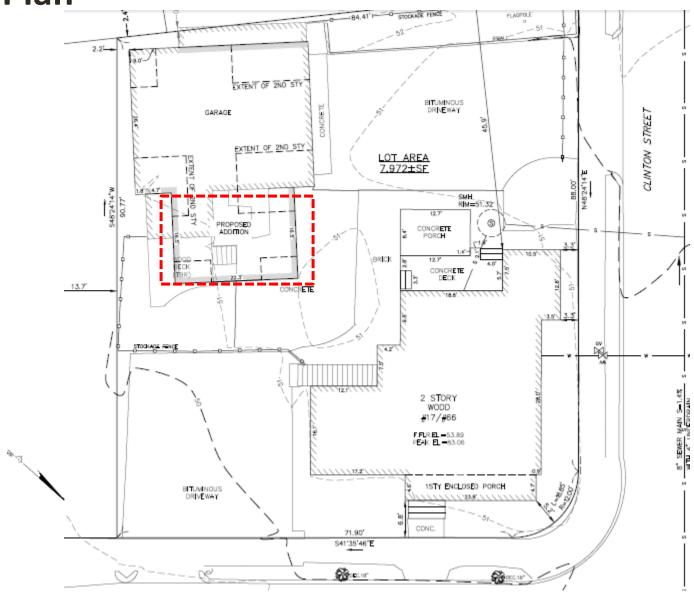








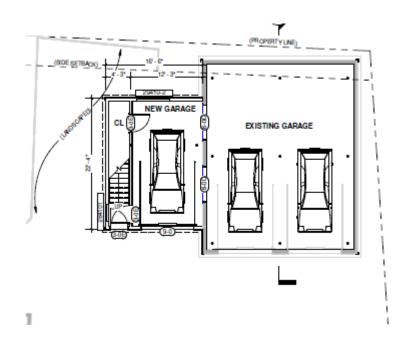
Site Plan



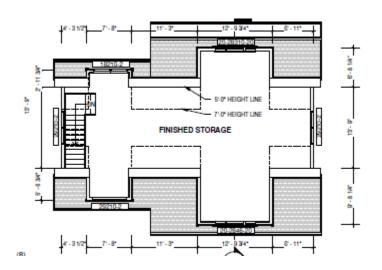
Proposed Elevations



Proposed Floorplans







Second Floor

Proposed Findings

The proposed additions to the garage that extend the nonconforming residential use is not substantially more detrimental than the existing nonconforming residential use as the alterations to the garage improve an existing nonconforming setback from -.6 feet to 2.4 feet. (§4.4.1, §7.8.C.2.C.2)

Proposed Conditions

- 1. Plan Referencing Condition.
- 2. Standard Building Permit Condition.
- 3. Standard Final Inspection/Certificate of Occupancy Condition.

Department of Planning and Development



PETITION #283-20 103 CABOT STREET

SPECIAL PERMIT/SITE PLAN APPROVAL TO CONSTRUCT A DETACHED TWO-CAR GARAGE, CREATING MORE THAN ONE GARAGE, GARAGE SPACE WITH MORE THAN THREE VEHICLES AND GARAGE SPACE IN EXCESS OF 700 SQ. FT. AT 103 CABOT STREET, WARD 2, NEWTON, ON LAND KNOWN AS SECTION 12 BLOCK 09 LOT 01, CONTAINING APPROXIMATELY 12,960 SQ. FT. IN A DISTRICT ZONED SINGLE RESIDENCE 2. REF: SEC. 7.3.3, 7.4, 3.4.2.B.1,3.4.3.A.4.A, 3.4.3.A.4.B, 3.4.3.A.4.C OF CHAPTER 30 OF THE CITY OF NEWTON REV ZONING ORD, 2017.



JULY 28, 2020

Requested Relief

Special permit per §7.3.3 to:

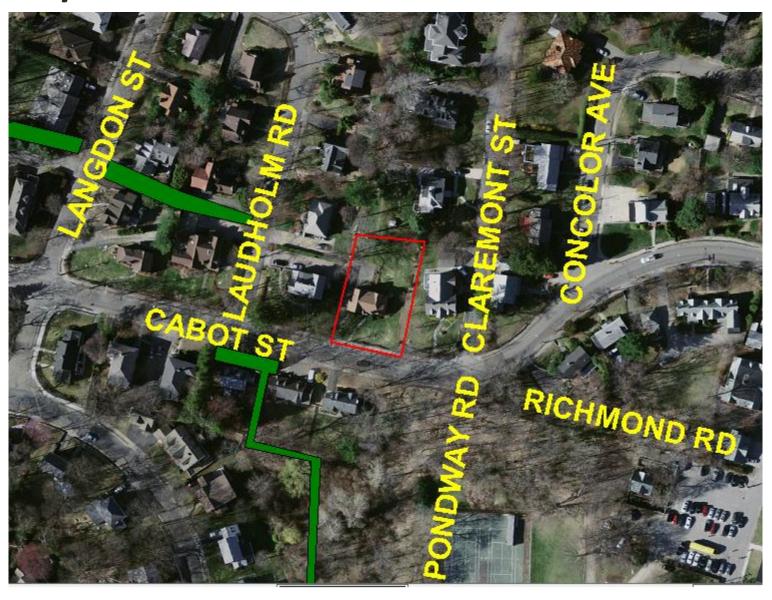
- allow more than one garage (§3.4.2.B.1 §3.4.3.A.4.a)
- allow a garage providing parking for more than three vehicles (§3.4.2.B.1, §3.4.3.A.4.b)
- allow for garage space exceeding 700 square feet (§3.4.2.B.1 §3.4.3.A.4.c)

Criteria to Consider

When reviewing the requested special permits the Council should consider whether:

- The site in a Single Residence (SR2) district is an appropriate location for the proposed detached two-car garage that would be the second garage on the property, increase the number of spaces on the property above three, and increase the amount of garage space on the property above 700 square feet (§7.3.3.C.1)
- The proposed detached two-car garage that would be the second garage on the property, increase the number of spaces on the property above three, and increase the amount of garage space on the property above 700 square feet, will adversely affect the neighborhood (§7.3.3.C.2)
- The proposed detached two-car garage as designed will 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

AERIAL/GIS MAP



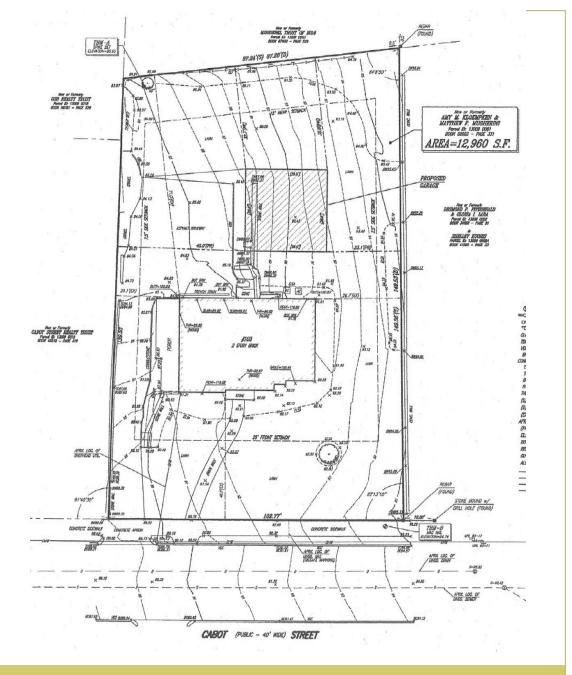
Zoning



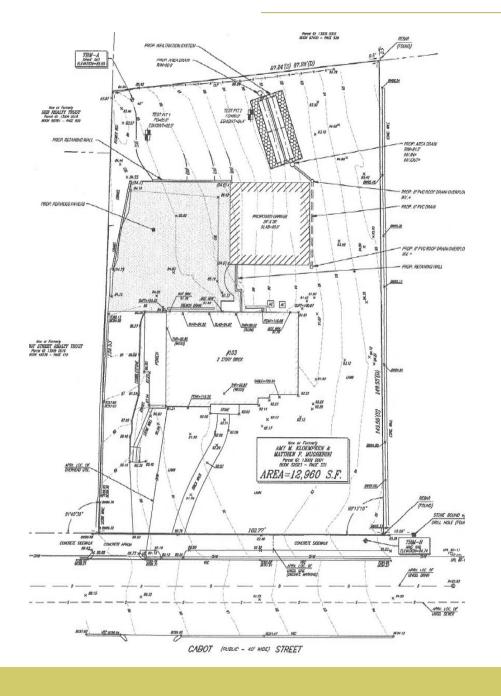
Land Use



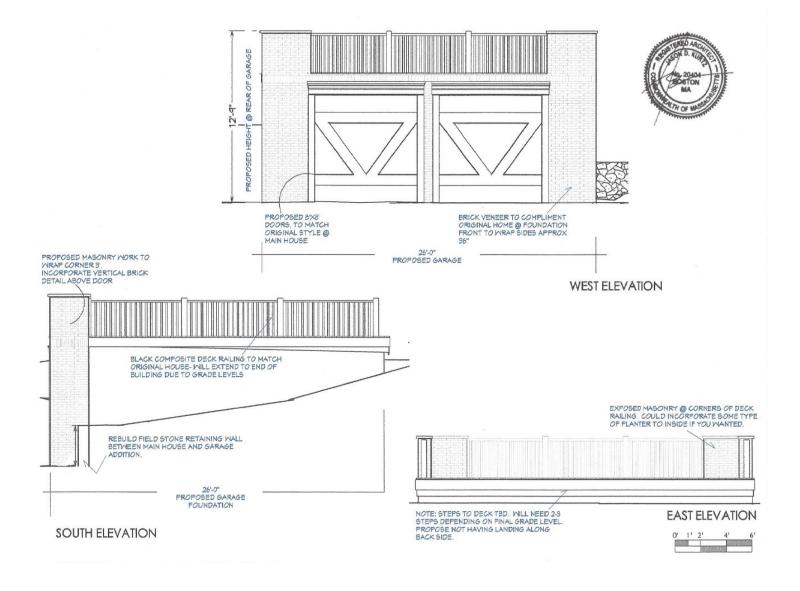
Site Plan- proposed



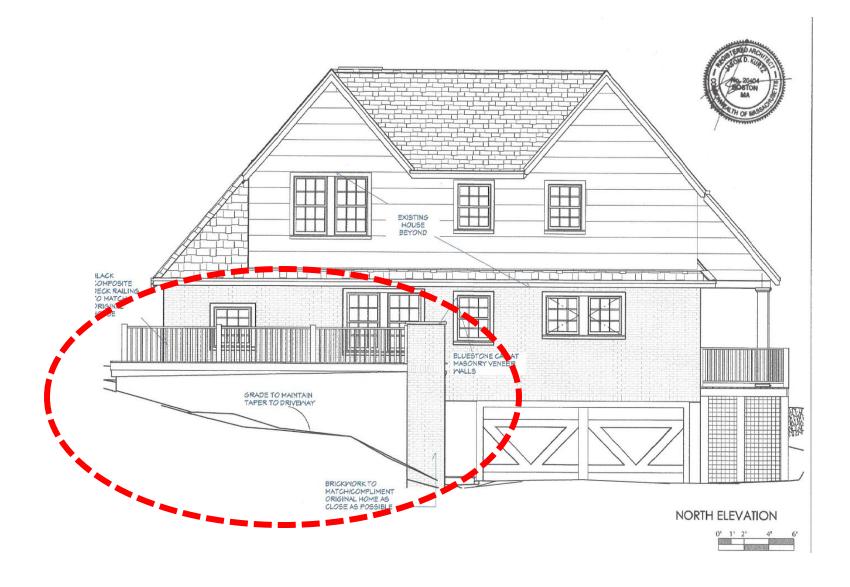
Site Plan- proposed



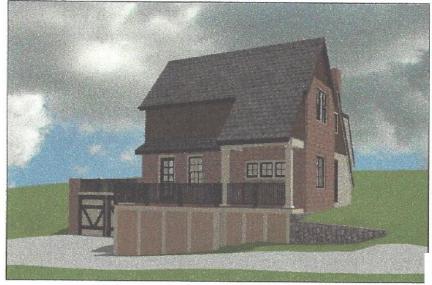
Elevations- West, South & East



Elevations- North (rear)



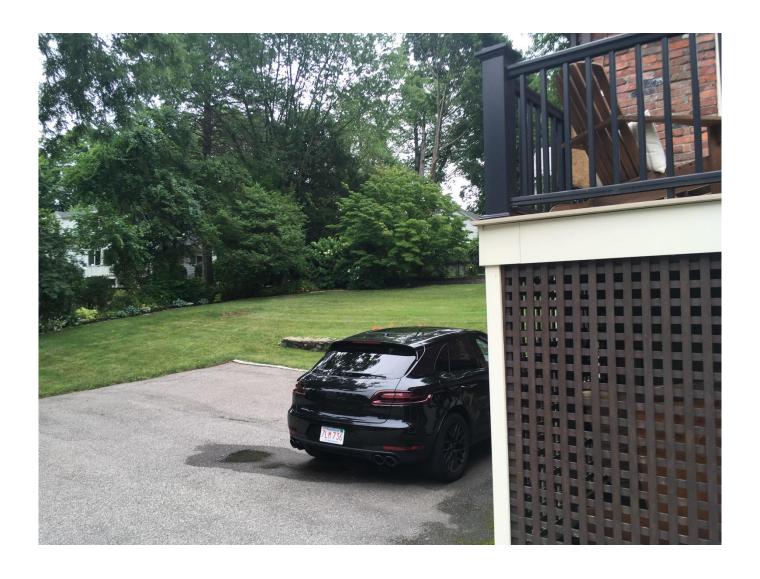
Perspectives











Engineering memo (7/24/2020)

Engineering Division's memo noted:

- proposed stormwater improvements
- drainage report will be needed for review/approval
- DPW does not give 'credit' for removal and replacement of asphalt driveway with a pervious paver system

Proposed Findings

- 1. The site in a Single Residence (SR2) district is an appropriate location for the proposed detached two-car garage as designed as the site's sloping grade will minimize the garage's visual impact on neighboring properties and public ways by allowing it to be constructed partially below grade (§7.3.3.C.1)
- 2. The proposed detached two-car garage as designed, will not adversely affect the neighborhood as it will have limited visual impact on neighboring properties and public ways as the structure will be constructed partially below grade and set back from abutting properties considerably more than the minimum five feet required for accessory structures (§7.3.3.C.2)
- 3. The proposed detached two-car garage as designed will NOT create a nuisance or serious hazard to vehicles or pedestrians (§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)

Proposed Conditions

- 1. Plan Referencing Condition
- 2. Standard Building Permit Condition
 - Submission of Final Site Plan for review and approval by the Engineering Division
- 3. Standard Final Inspection/Certificate of Occupancy Condition

