



#290-18

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City of Newton, Massachusetts

Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

Ruthanne Fuller
Mayor

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

| | |
|---------------------------|-------------------|
| Public Hearing Date: | June 5, 2018 |
| Land Use Action Date: | August 14, 2018 |
| City Council Action Date: | August 20, 2018 |
| 90- Day Expiration Date: | September 3, 2018 |

DATE: June 1, 2018

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Jennifer Caira, Chief Planner for Current Planning
Neil Cronin, Senior Planner

SUBJECT: **Petition #290-18**, for SPECIAL PERMIT/SITE PLAN APPROVAL to further increase a nonconforming front setback from 27 feet to 22 feet at **12 Acorn Drive**, Ward 4, Auburndale, on land known as SBL 44, 29, 10, containing approximately 7,610 sq. ft. of land in a district zoned Single Residence 3. Ref. §3.1.3, and §7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

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.



12 Acorn Drive

EXECUTIVE SUMMARY

The subject property at 12 Acorn Drive consists of a 7, 610 square foot lot located in the Single Residence 3 (SR-3) zone in Auburndale. The lot is improved with a Colonial style single-family residence constructed circa 1959. The lot was granted a variance in 1958 from the lot area and frontage requirements of a new lot to allow the construction of the dwelling (**Attachment A**). The structure has a nonconforming front setback of 27 feet, where 30 feet is the minimum allowed. The petitioners are proposing to construct a covered front entrance, reducing the setback from 27 feet to 22 feet; therefore, the petitioners are seeking a special permit to further increase the nonconforming front setback. The Planning Department believes the covered entrance is a di minimis change to the nonconforming front setback and believes it will enhance the appearance of the dwelling from the street by creating a more prominent front entrance. For these reasons, staff believes the increase in the nonconforming front setback will not be substantially more detrimental to the neighborhood than the existing nonconforming front setback.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the City Council should consider whether:

- The proposed increase in the nonconforming front setback will be substantially more detrimental than the existing nonconforming front setback is to the neighborhood (§3.1.3 and §7.8.2.C.2).

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

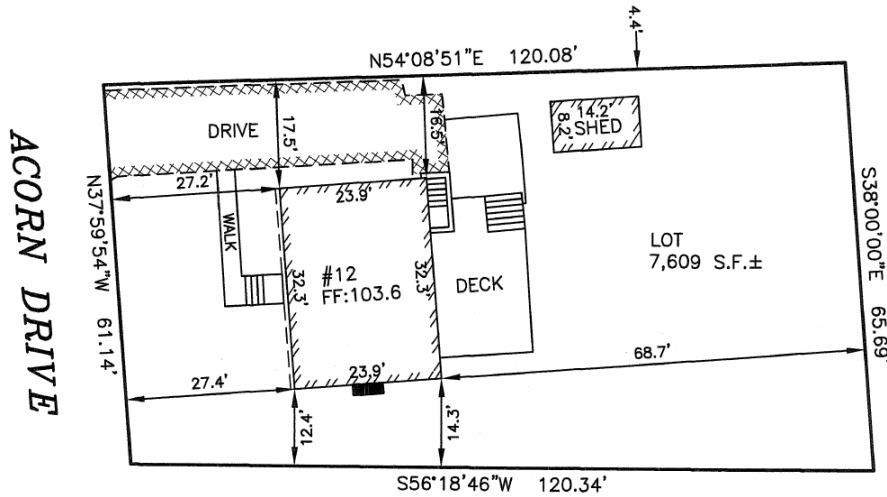
The subject property is located on Acorn Drive in the SR-3 zone in Auburndale. The SR-3 zone encompasses the immediate area. As a result, the neighborhood is comprised predominantly of single-family residences with some nonconforming multi-family uses as well (**Attachments B & C**).

B. Site

The site consists of 7, 610 square feet of land, and is improved with a single-family residence constructed circa 1959. The dwelling has a nonconforming front setback of 27 feet, where 30 feet is the minimum required. There is an approximately 15-foot wide curb cut at the southwestern portion of the site which provides access to a 42-foot long driveway and a surface parking facility. At the end of the driveway lies a shed which has a side setback of 4.4 feet, where five feet is the minimum required. The petitioner received a building permit for this shed in 2015, which required a setback of at least five feet. Staff suggests a condition requiring the petitioner to relocate the shed to comply with the setback prior to the issuance of an occupancy

permit. The lot is generally flat, and the southern and eastern boundaries are enclosed with stockade fencing.

Existing Site Plan



III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site is and will remain a single-family residence.

B. Building and Site Design

The petitioners are proposing to construct a five-foot deep by 11-foot long covered entrance, reducing the front setback from 27 feet, to 22 feet. The covered entry is best described as a portico anchored by two columns. The Planning Department believes the portico is di minis and enhances the appearance of the dwelling from the street by creating a more prominent front entrance.

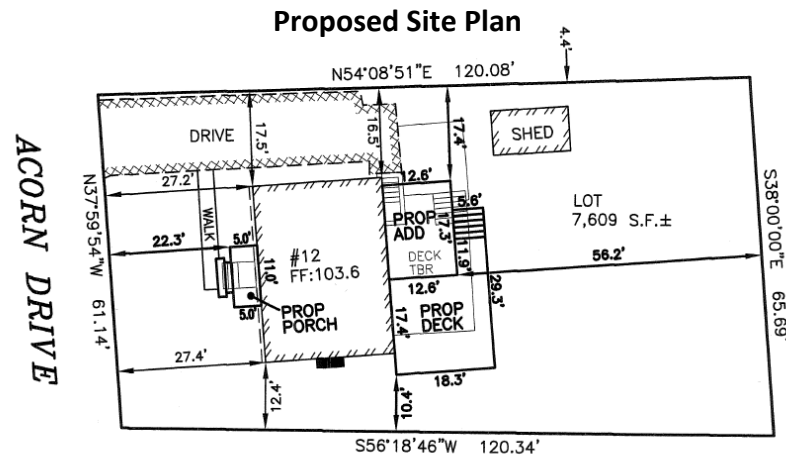
Existing Front Facade



Proposed Front Facade



The petitioners are also seeking to construct a rear ell addition. This addition will demolish an existing deck at the rear of the structure to allow for increased living area on both levels; the deck will be reconstructed per the plans. The addition is subordinate to the existing structure and is as of right.



C. Parking and Circulation

The petitioners are not proposing any changes to either the parking or circulation on site.

D. Landscape Screening

A landscape plan is not required with this petition.

IV. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum provides an analysis of the proposal regarding zoning (**Attachment D**). Based on the Memorandum, the petitioner is seeking the following relief:

- §3.1.3 and §7.8.2.C.2 of Section 30, to increase the nonconforming front setback.

B. Engineering Review

This petition does not meet the minimum threshold for Engineering review.

C. Newton Historical Commission

The proposed covered entrance does not meet the minimum criteria for review by the Newton Historical Commission. The Chief Preservation Planner approved the rear ell addition on May 5, 2018.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:

- Attachment A:** Variance #17-58
- Attachment B:** Zoning Map
- Attachment C:** Land Use Map
- Attachment D:** Zoning Review Memorandum, dated May 14, 2018
- Attachment E:** DRAFT Council Order



City of Newton, Massachusetts

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City Hall

1000 Commonwealth Avenue, Newton Centre 59

ZONING BOARD OF APPEALS

Detailed Record of Proceedings and Decision

Petition of Eva T. and George W. Campbell

No. 17-58

For variance to resubdivide three lots at 274 Auburndale Avenue, Auburndale

The Zoning Board of Appeals for the City of Newton held a public hearing on the above entitled proceeding on Tuesday, May 27, 1958 at 7:45 P.M. in the Aldermanic Chamber at City Hall, Newton, Massachusetts.

The following members of the board were present:

V. Stoddard Bigelow, Chairman
Frederick P. Pagnato, Secretary
W. Cornell Appleton, sitting in place
of Edward B. Murphy, who was unable
to be present
Kenneth W. Newcomb, Member
Maurice A. Reidy, Jr., Member

The petition was filed with the board on April 20, 1958.

Due notice of the hearing was given by mail, postage prepaid, to all persons deemed to be affected thereby as shown on the most recent tax list and by publication in the Newton Villager, a newspaper of general circulation in Newton, Massachusetts.

The petitioners were represented at the hearing by William E. Halliday, Jr., Esq. They also were present at the hearing and were recorded in favor of their petition. Mr. Carten and Mr. Matoian, abutters or close neighbors, appeared in opposition with one or two others.

The petitioners have owned for over thirty years land at 274 Auburndale Avenue in Auburndale consisting of three existing lots. The house occupied by them stands on one of the three lots. By virtue of the provisions of the Zoning Ordinance amended in December of 1953, their ownership of these three contiguous lots requires a resubdivision if the

two vacant lots are to be used for erecting dwellings. The land lies in a private residence district, and although the petitioners' house is a single residence, there are a number of two family houses across the street and in the near vicinity. The petitioners' land represents almost the only remaining area on Auburndale Avenue in this vicinity which has not been developed into either single or two family residences. The lot widths and areas are all consistent with those of the two remaining lots owned by the petitioners. A disproportionate burden must be borne by the petitioners if they are to be limited to a subdivision in accordance with the present Zoning Ordinance which requires 10,000 square feet and 80 foot frontages.

The board on all the evidence finds that substantial hardship to the petitioners is involved and granting the subdivision requested in the petition and shown on the plan accompanying it would not be detrimental nor derogate from the intent and purpose of the Zoning Ordinance. However, the granting of relief is conditioned upon construction being limited to single residences. The board has voted unanimously to grant the variances to resubdivide the petitioners' land into three lots as shown on the plan accompanying the petition on condition that no building which may be constructed thereon shall be designed or used for any purpose other than a dwelling for not more than one family.

ZONING BOARD OF APPEALS

By V. Stoddard Bejelow, Chairman

Record of vote: I vote to grant the petition for the variances as set forth above with the condition noted.

V. Stoddard Bejelow

Maurice A. Reidy Jr.

Fred G. Peguato

Harriet W. Hancock






W. Cornell Appleton

Filed with the City Clerk,
Monte G. Basbas, on June 25, 1958.

Attachment B Zoning Map Acorn Dr., 12

*City of Newton,
Massachusetts*

Legend

-  Single Residence 3
-  Public Use
-  Building Outlines
-  Surface Water
-  Property Boundaries



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller

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Feet

Map Date: June 01, 2018



Attachment C Land Use Map Acorn Dr., 12

*City of Newton,
Massachusetts*



Legend

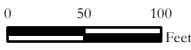
Land Use

- Single Family Residential
- Multi-Family Residential
- Mixed Use
- Open Space
- Vacant Land
- Building Outlines
- Surface Water
- Property Boundaries



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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller



Map Date: June 01, 2018



Ruthanne Fuller
Mayor

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: May 14, 2018

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Jennifer Caira, Chief Planner for Current Planning

Cc: Robert Heinstein, Applicant
Alan Mayer, Architect
Barney S. Heath, Director of Planning and Development
Ouida Young, Acting City Solicitor

RE: Request to further increase nonconforming front setback

| Applicant: Robert Heinstein | |
|-------------------------------------|-----------------------------|
| Site: 12 Acorn Drive | SBL: 44029 0010 |
| Zoning: SR3 | Lot Area: 7,610 square feet |
| Current use: Single-family dwelling | Proposed use: No change |

BACKGROUND:

The property at 12 Acorn Drive consists of a 7,610 square foot new lot improved with a single-family residence constructed in 1959. The lot was granted a variance in 1958 from the lot area and frontage requirements for a new lot to allow the construction of a single-family home. The petitioners propose to construct a by-right two-story rear addition, as well as covered front entry. The existing dwelling is nonconforming with regard to the front setback, and the proposed entry further decreases the nonconforming front setback, requiring a special permit.

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

- Zoning Review Application, prepared by Alan Mayer, architect, dated 3/12/2018
- FAR Worksheet, submitted 3/12/2018
- Variance decision #17-58, dated 6/25/1958
- Existing Plot Plan, signed and stamped by Bruce Bradford, surveyor, dated 4/5/2018
- Proposed Plot Plan, signed and stamped by Bruce Bradford, surveyor, dated 4/5/2018
- Architectural Plans, signed and stamped by Alan Mayer, architect, dated 10/3/2016

ADMINISTRATIVE DETERMINATIONS:

1. The lot was granted a variance in 1958 from the lot area and frontage requirements of a new lot. An approved as-built plan from 1959 in the Inspectional Services file shows the dwelling with a 26 foot front setback, where 30 feet is (and was at the time) required. The survey submitted with this application shows a 27.2 foot front setback, which is still less than that which is (and was) required, rendering the dwelling out of compliance with the Zoning Ordinance.

A 2016 change to Section 7 of MGL Chapter 40A (The Zoning Act) allows for a special permit granting authority to make a finding that a non-compliant structure in existence for ten years without any action being taken for enforcement may be deemed a nonconforming structure and subject instead to a "Section 6" finding rendering it legally nonconforming.

The petitioner proposes to construct a covered front entrance, which would further extend the nonconforming front setback from 27.2 feet to 19.67 feet, where 30 feet is required per section 3.1.3. To extend the nonconforming front setback as proposed, a special permit per section 7.8.2.C.2 is required.

| SR3 Zone | Required/Allowed | Existing | Proposed |
|-----------------------|--------------------|--------------------|------------|
| Lot Size | 10,000 square feet | 7,610 square feet* | No change |
| Frontage | 80 feet | 61 feet* | No change |
| Setbacks | | | |
| • Front | 30 feet | 27.2 feet | 19.67 feet |
| • Side | 10 feet | 12.4 feet | 10.4 feet |
| • Rear | 15 feet | 53.75 feet | 51.17 feet |
| Max Number of Stories | 2.5 | 2.5 | No change |
| FAR | .47 | .21 | .26 |
| Max Lot Coverage | 30% | 11.6% | 15.1% |
| Min. Open Space | 50% | 74% | 70% |

*Allowed by variance #17-58

1. See "Zoning Relief Summary" below:

| Zoning Relief Required | | |
|------------------------|---|-----------------|
| Ordinance | | Action Required |
| §3.1.3, §7.8.2.C.2 | Request to further extend a nonconforming front setback | 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 increase a nonconforming front setback from 27 feet to 22 feet, where 30 feet is the minimum allowed by right, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Gregory Schwartz:

1. The proposed increase in the nonconforming front setback is not substantially more detrimental than the existing setback is to the neighborhood because the covered entrance is in keeping with the architecture of the dwelling and provides a prominent front entrance from the street (§3.1.3 and §7.8.2.C.2).

PETITION NUMBER: #290-18

PETITIONER: Jenifer and Robert Heinstein

LOCATION: 12 Acorn Drive, on land known as Section 44, Block 29, Lot 10, containing approximately 7,610 square feet of land

OWNER: Jenifer and Robert Heinstein

ADDRESS OF OWNER: 12 Acorn Drive
Newton, MA 02466

TO BE USED FOR: Single-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.3 and §7.8.2.C.2 to increase a nonconforming front setback

ZONING: Single Residence 3 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. Site Plan, signed and stamped by Bruce Bradford, Professional Land Surveyor, dated April 11, 2018
 - b. Proposed Elevations, prepared by Mayer + Associates, unsigned and unstamped, dated May 14, 2018.
2. Prior to the issuance of any building permit, the petitioner shall provide a final site plan for review and approval by the Department of Planning and Development.
3. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:
 - a. Recorded a certified copy of this board order for the approved Special Permit/Site plan with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
4. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
 - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by an architect or land surveyor certifying compliance with Condition #1.
 - b. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services final as-built plans in paper and digital format signed and stamped by a licensed land surveyor. Such plan shall show the shed in compliance with the setbacks for accessory structures.