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Barney Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date:	March 6, 2018
Land Use Action Date:	May 8, 2018
City Council Date:	May 21, 2018
90-Day Expiration Date:	June 4, 2018

DATE: March 2, 2018

TO: City Council

FROM: Barney Heath, Director of Planning and Development
Jennifer Caira, Chief Planner for Current Planning
Michael Gleba, Senior Planner

SUBJECT: **Petition #92-18** for a SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit Board Order #131-16 to alter an existing nonconforming front and side setback at **37 Westbourne Road**, Ward 7, Chestnut Hill on land known as Section 73 Block 45 Lot 09 containing approximately 8,090 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 3.1.3, 7.8.2.C.2, 7.3.3, 7.4 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 conducted by the Planning Department. The Planning Department's intention is to provide a balanced review of the proposed project based on information it has at the time of the public hearing. Additional information about the project may be presented at or after the public hearing for consideration at a subsequent working session by the Land Use Committee of the City Council.



EXECUTIVE SUMMARY

The property at 37 Westbourne Road consists of an 8,090 square foot lot improved with a single-family residence constructed in 1896 and a detached one-car garage constructed in 1929. The lot has two frontages; 82 feet on Westbourne Street and approximately 90 feet on Francis Street; the house and garage face Westbourne Road. The existing garage is located 4.8 feet from the front setback on Francis Street and approximately 2.5 feet from the side setback.

In 2016 Special Permit # 131-16 was granted to allow an extension of already nonconforming FAR from 0.52 to 0.59, where 0.41 is the maximum allowed by right to allow an approximately 348 square foot addition to the home that would include a new attached single-car garage accessed from Francis Street, additional kitchen space and an interior stairway with a chair lift and a 210 square foot (14.9 foot by 13.4 foot) one-car carport on a section of the existing driveway which would also be connected to the expanded kitchen by way of the proposed stairway and chair lift that would make the home accessible.

A deck constructed on the property in 1985 was built connected to both the dwelling and the garage, thereby making the detached garage an attached garage. Since so attaching the garage to the house increased the setback requirements, it rendered the garage's front (Francis St.) and side setbacks of 4.8 feet and +/-2.5 feet non-compliant. Therefore, at the time of the granting of Special Permit #131-16 the proposed construction required a variance to allow for the legitimization of noncompliant setbacks.

However, the recent change to M.G.L. ch. 40A, sect. 7 now allows for those noncompliant setbacks to be legitimized by a Section 6 finding as extension of pre-existing nonconformities. The petitioner is seeking an amendment to the existing special permit to include the Section 6 finding that the proposed front setback of 5.4 feet, and the proposed side setback of 2.1 feet shown on the approved plans is not more detrimental than the existing nonconforming setbacks of 4.8 and +/- 2.5 feet respectively.

The plans and configurations approved by Special Permit #131-16 are the same plans proposed by this application.

Furthermore, Special Permit #131-16 was granted on May 16, 2016. Section 7.3.2.E of the Newton Zoning Ordinance allows the City Council to grant a one-year extension to exercise the rights of a special permit. The extension is valid for the one year after the expiration. As the special permit expired on May 17, 2017, the extension will be valid to May 17, 2018. The petitioner may request one more one-year extension upon the expiration of the initial extension to May 17, 2019.

As with the 2016 special permit petition, the Planning Department is generally not concerned with the project as the proposed addition would replace an existing garage of similar scale in the same location and it sensitively addresses the issue of access to the home.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Council should consider whether:

- The proposed nonconforming front and side setbacks are substantially more detrimental than the existing nonconforming front and side setbacks the neighborhood

I. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The surrounding area is a mix of similarly scaled one- two- and three- family dwellings (**Attachment A**), with the properties along Westbourne Road zoned Single Residence 2 and those to the rear along Francis Street and Garner Street zoned Multi-Residence 1 (**Attachment B**).

B. Site

The property at 37 Westbourne Road consists of an 8,090 square foot lot improved with a 4,185 square foot single-family residence constructed in 1896 and a detached 268 square foot garage constructed in 1929. The lot has two frontages: 82 feet on Westbourne Street to the front, and approximately 90 feet on Francis Street to the rear. The existing detached garage is located 4.8 feet from the front setback on Francis Street and approximately 2.5 feet from the side setback.

The site is flat and vehicular access is provided by an existing driveway and curb cut from Westbourne Road on the north side of the dwelling.

II. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site will remain a single-family residence, enlarged with the addition that includes an attached garage and carport.

B. Building and Site Design

There are no proposed changes to the building and site design from what was granted in May 2016. The petitioners are proposing to demolish the existing detached garage and construct a 348 square foot addition to the home that includes a new, attached garage, additional kitchen space and an interior stairway with a chair lift. The petitioners are also proposing to construct an attached 210 square foot (14.9 foot by 13.4 foot) carport above a portion of the existing driveway that would also be connected to the expanded kitchen by way of the proposed stairway and chair lift.

The Planning Department is generally not concerned with the above changes as the resulting proposed front (Francis St.) setback of 5.4 feet, and side setback of 2.1 feet

shown on the submitted plans is not more detrimental than the existing nonconforming setbacks of 4.8 and +/- 2.5 feet respectively given that the attached garage would be largely in the same location as the existing garage, and the changes would be minimal (and, in the case of the nonconforming front setback, slightly improved).

C. Parking and Circulation

There are no changes from the previously approved special permit proposed to the site's parking and circulation.

D. Landscaping

There are no changes from the previously approved special permit proposed to the site's landscaping.

III. TECHNICAL REVIEW

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

The Zoning Review Memorandum provides an analysis of the proposal with regard to zoning (**Attachment C**). Based on the completed Zoning Review Memorandum, the petitioner is seeking the following relief:

- amend Special Permit #131-16 to grant a one-year extension to May 17, 2018
- Special permit per §7.3 to alter nonconforming front and side setbacks (§3.1.3, §7.8.2.C.2)

B. Engineering Review

No engineering review is required at this time. The Engineering Division of Public Works will review this project for conformance with the City of Newton Engineering Standards prior to the issuance of a building permit for the proposed addition should this project be approved.

IV. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:

- Attachment A:** Land Use Map
Attachment B: Zoning Map
Attachment C: Zoning Review Memorandum
Attachment D: Draft Order

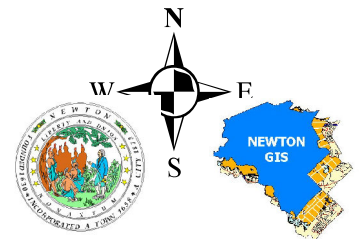
ATTACHMENT A

Land Use

37 Westbourne Rd.

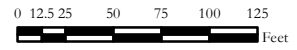
*City of Newton,
Massachusetts*

- Land Use**
-  Single Family Residential
 -  Multi-Family Residential
 -  Commercial
 -  Mixed Use
 -  Open Space
 -  Nonprofit Organizations
 -  Vacant Land

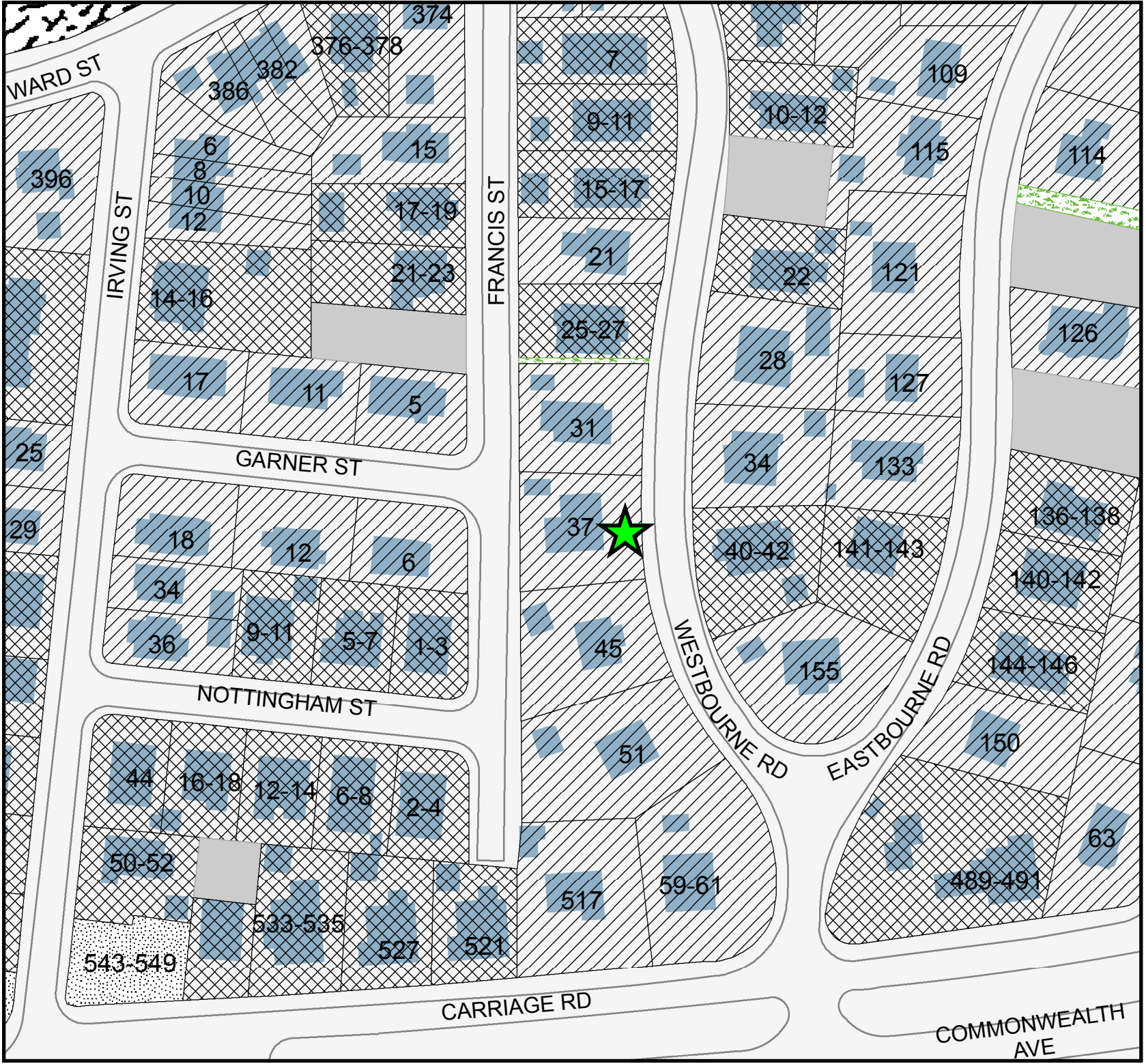


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas Greenfield



Map Date: February 28, 2018





ATTACHMENT B

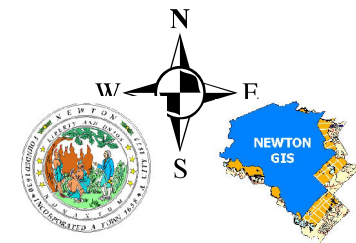
Zoning

37 Westbourne Rd.

*City of Newton,
Massachusetts*

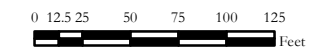
Legend

-  Single Residence 2
-  Multi-Residence 1

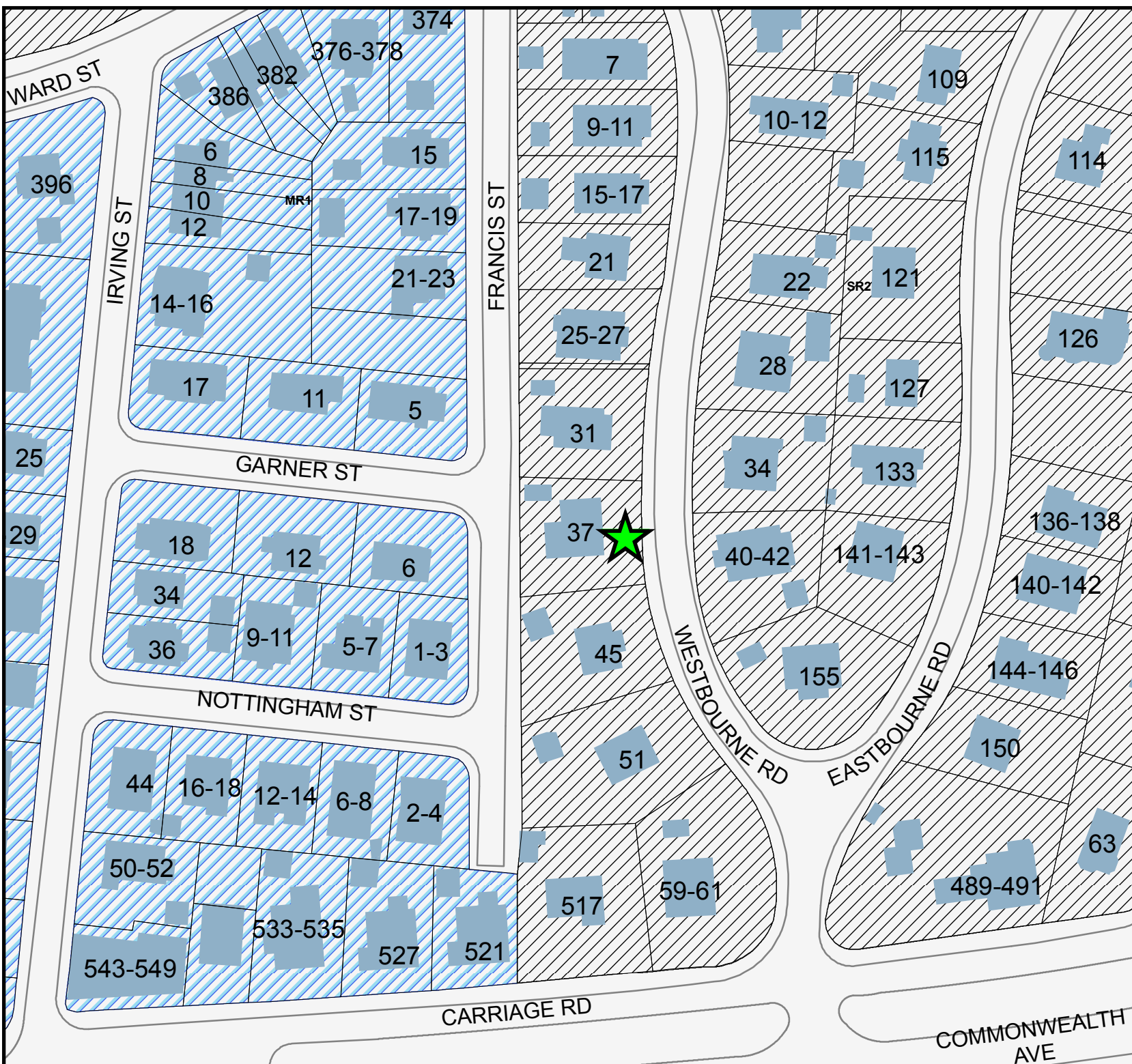


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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: January 25, 2018

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Joyce Zakim, Applicant
Laurance Lee, Attorney
Barney S. Heath, Director of Planning and Development
Ouida Young, Acting City Solicitor

RE: Request for a section 6 finding to extend an existing nonconforming front and side setback, and to amend and extend Special Permit #131-16

Applicant: Joyce Zakim	
Site: 37 Westbourne Road	SBL: 73045 0009
Zoning: SR2	Lot Area: 8,090 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 37 Westbourne Road consists of an 8,090 square foot lot improved with a single-family residence constructed in 1896 and a detached garage constructed in 1929. The lot has two frontages; 82 feet on Westbourne Street to the front, and approximately 90 feet on Francis Street to the rear. The existing garage is located 4.8 feet from the front setback on Francis Street and approximately 2.5 feet from the side setback. A building permit was issued in 1985 for the construction of a deck on the property with a notation that it was not to be connected to the garage. The deck was built connected to both the dwelling and the garage, thereby making the detached garage an attached garage. Attaching the garage to the house increased the setback requirements and at that time, rendering the garage non-compliant.

The petitioner sought and was granted Special Permit #131-16 in 2016 to allow for the construction of an attached garage, carport and some living space to provide a handicapped accessible entrance into the dwelling which further increased the already nonconforming FAR. Due to the existing non-compliant front and side setbacks, the proposed setbacks required variances to construct the

addition as proposed. Just prior to the petitioner filing for the variances, a 2016 change to Section 7 of MGL Chapter 40A (The Zoning Act) was adopted allowing 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. As the deck addition that created the noncompliant setbacks for the (now attached) garage was built in 1985, the project is eligible for a special permit with a Section 6 finding that the proposed construction will not be detrimental.

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

- Zoning Review Application, prepared by Laurance Lee, attorney, submitted 1/24/2017

ADMINISTRATIVE DETERMINATIONS:

1. Special permit # 131-16 was granted in 2016 to allow an extension of already nonconforming FAR in the same configuration proposed in this petition. The plans approved by the special permit are the same plans proposed by this application. However, at the time the special permit was granted, the proposed construction required a variance to allow for the legitimization of noncompliant setbacks. The change to MGL 40A, section 7 now allows for those noncompliant setbacks to be legitimized by a Section 6 finding as extension of pre-existing nonconformities. The petitioner is seeking an amendment to the existing special permit to include the Section 6 finding that the proposed front setback of 5.4 feet, and the proposed side setback of 2.1 feet shown on the approved plans is not more detrimental than the existing nonconforming setbacks.
2. Special permit #131-16 was granted on May 16, 2016. Section 7.3.2.E allows the City Council to grant a one-year extension to exercise the rights of a special permit. The extension is valid for the one year after the expiration. As the special permit expired on May 17, 2017, the extension will be valid to May 17, 2018. The petitioner may request one more one-year extension upon the expiration of the initial extension to May 17, 2019.

SR3 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	8,090 square feet	No change
Frontage	80 feet	82 feet	No change
Setbacks for existing structure <ul style="list-style-type: none"> • Front (Westbourne) • Front (Francis) • Side 	25 feet 25 feet 7.5 feet	22 feet 4.8 feet +/- 2.5 feet	No change 5.4 feet 2.1 feet
Max. Lot Coverage	30%	23.4%	25.5%
Min. Open Space	50%	57%	58%
FAR	.41	.52	.59

Zoning Relief Required

<i>Ordinance</i>		<i>Action Required</i>
	To amend Special Permit #131-16	
§3.1.3 §7.8.2.C.2	To alter nonconforming front and side setbacks	S.P. per §7.3

DRAFT #92-18
37 Westbourne Road

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the City Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to alter an existing nonconforming front and side setback, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Gregory Schwartz:

1. The extension of the nonconforming structure with the proposed addition will not be substantially more detrimental than the existing nonconforming structure as it will largely occupy the location of an existing, similarly sized garage. (§3.2.3. and 7.8.2.C.2.)
2. The site in a Single Residence 2 zoning district is an appropriate location for the proposed addition and carport as they are consistent with the residential use of the property. (§7.3.3.C.1)
3. The expanded structure will not adversely affect the neighborhood as the addition will be located largely at the location of an existing garage and outdoor deck which shall be removed and the carport will be setback approximately 40 feet from Westbourne Road and be largely shielded by existing fencing and vegetation. (§7.3.3.C.2)
4. Neither the addition nor the carport will create a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3).

PETITION NUMBER: #92-18

PETITIONER: Joyce Zakim

LOCATION: 37 Westbourne Road, on land known as Section 73, Block 45, Lot 9, containing approximately 8,090 square feet of land

OWNER: Joyce Zakim

ADDRESS OF OWNER: 37 Westbourne Road
Newton, MA 02459

TO BE USED FOR: Single-Family Residence

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.3. and §7.8.2.C.2., to alter a nonconforming front and side setback; and amend Council Order #131-16.

ZONING: Single Residence 2 district

This special permit supersedes, consolidates, and restates provisions of prior special permits to the extent that those provisions are still in full force and effect. Any conditions in prior special permits not set forth in this special permit #92-18 are null and void.

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. Plan of Land, 37 Westbourne Road, Proposed Conditions, signed and stamped by Bruce Bradford, surveyor, dated 2/18/2014
 - b. Architectural drawings, entitled "Renovations to 37 Westbourne Road, Newton, MA 02459- Special Permit Set," prepared by Kessler, McGuinness & Associates, LLC, dated March 8, 2016:
 - i. Proposed First Floor Plan (A1.1);
 - ii. Existing First Floor (X1.1);
 - iii. Demolition Plan First Floor (D1.1)
 - iv. Proposed Elevations (A2.1);
 - v. Existing Elevations (X2.1).
2. 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 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 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.
3. 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 a registered architect and 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.