



Setti D. Warren  
Mayor

# City of Newton, Massachusetts

## Department of Planning and Development

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Candace Havens  
Director

Public Hearing Date:	November 13, 2012
Land Use Action Date:	December 4, 2012
Board of Aldermen Action Date:	December 17, 2012
90-Day Expiration Date:	January 7, 2013

DATE: November 9, 2012

TO: Board of Aldermen

FROM: Candace Havens, Director of Planning and Development  
Eve Tapper, Chief Planner for Current Planning ET  
Derek Valentine, Senior Planner

SUBJECT: **Petition #305-12, STEPHEN GUILLETTE** petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NONCONFORMING STRUCTURE by replacing an existing rear deck with a mudroom addition and to locate two dimensionally non-compliant 9'x18' parking stalls in the front setback and closer than five feet to the street at 29 BREWSTER Road, Ward 5, Newton Highlands, on land known as SBL 54, 10, 13, containing approx. 5,176 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-21(b), 30-15 Table 1, 30-19(g)(1) and (2) and 30-19(m) of the City of Newton Rev Zoning Ord, 2012.

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. 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 Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



### EXECUTIVE SUMMARY

The subject property consists of a 5,176 square foot lot improved with a single-family dwelling built in 1918 and a small storage shed at the rear. The property is currently nonconforming and noncompliant in a number of ways. A deck is within the rear setback and appears to have been built without a permit. Since the petitioner is proposing to remove this deck, no action is necessary by the Board. At some point, likely after the permitted demolition of a garage in 2009, a storage shed was erected on the site. This shed is less than five feet from the side and rear property lines and thus is noncompliant and requires a variance from the Zoning Board of Appeals to remain in place. The petitioner created a noncompliant situation by removing the garage parking, placing both parking stalls (which are dimensionally-noncompliant) within the front setback.

The current proposal is to construct a small mudroom addition in the place of the noncompliant rear deck. This addition represents an extension of the nonconforming rear setback. The petitioner is seeking to legalize the parking scenario as well as obtain relief to build the mudroom as proposed.

#### I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Board should consider:

- Whether the proposed extension of a nonconforming structure with regard to rear lot line setback will not be substantially more detrimental to the neighborhood than the existing structure.
- Whether the location of two dimensionally-nonconforming parking stalls within the front setback is appropriate because literal compliance with the requirement is impracticable due to the size and shape of the lot.

#### II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

##### A. Neighborhood and Zoning

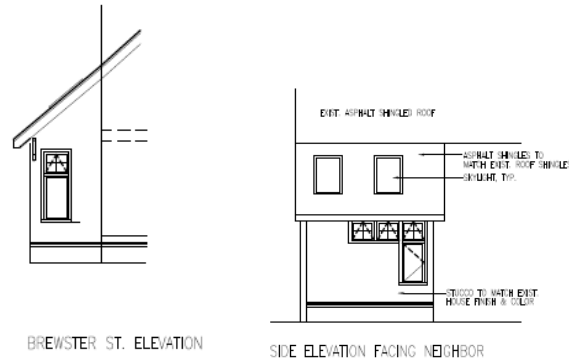
The property is located just north of Route 9 and south of Woodward Street. It is in a large area that is in single-family residential use and is within the Single Residence 2 zone.

##### B. Site

The site consists of 5,176 square feet of land improved with a single-family home and small storage shed with frontage on both Niles Road and Brewster Road. It is noncompliant with respect to side and rear lot lines due to a shed and a deck that were both constructed without a building permit. Two parking stalls are provided

within the front setback along Niles Road.

### III. PROJECT DESCRIPTION AND ANALYSIS



#### A. Land Use

The property is currently used as a single-family residence. This will not change.

#### B. Building and Site Design

The petitioners are proposing a small 5'9" by 11'7" one-story mudroom addition in the location of the current noncompliant deck.

#### C. Parking and Circulation

The current parking is noncompliant as the two stalls are 9' by 18' where 9' by 19' is required and are both within the front setback and are within five feet from the street. The petitioners are not proposing changes to the circulation or parking on site. Instead they have requested waivers from these parking requirements.

### IV. TECHNICAL REVIEW

- A. Technical Considerations (Chapter 30, Newton Zoning Ordinance): The Zoning Review Memorandum, (**SEE ATTACHMENT "C"**), provides an analysis of the proposal with regard to zoning. The petitioner is requesting special permits to allow the mudroom addition within the nonconforming rear setback and to legalize two dimensionally-noncompliant parking stalls within the front setback. The existing shed is within the side and rear setbacks and is within five feet of both of those lot lines. Legalizing this shed requires either a variance from the Zoning Board of Appeals or moving the shed at least five feet away from both the side and rear lot lines.
- B. Comprehensive Plan: The proposed project would help preserve and update the existing structure while meeting the needs of today's families.
- C. Engineering Review: As the petitioners are not increasing the impervious surfaces on site by more than 400 square feet or 4% of the lot area, the Engineering Division

did not review this project.

- D. Newton Historical Commission: The proposed project does not trigger the Demolition Review Ordinance.

V. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum the petitioner is seeking the following approvals or relief:

- Section 30-15 Table 1 and 30-21(b) to allow the extension of an existing nonconforming structure with regard to rear setback.
- Section 30-19(g)(1) and (g)(2) and 30-19(m) to locate two 9'x18' parking stalls in the front setback and closer than five feet to the front property line.

VI. PETITIONERS' RESPONSIBILITIES

The petitioner is considered complete at this time.



**ATTACHMENTS**

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

305-12  
**29 Brewster Rd.**  
**Land Use**  
*City of Newton,  
 Massachusetts*

**Legend**

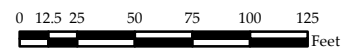
**Land Use**

-  Single Family Residential
-  Multi-Family Residential



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




**Attachment A**



305-12  
**29 Brewster Rd.**  
**Zoning**  
*City of Newton,  
 Massachusetts*



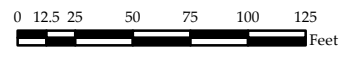
**Legend**

 Single Residence 2



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CITY OF NEWTON, MASSACHUSETTS  
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**Attachment B**



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## ZONING REVIEW MEMORANDUM

Date: September 20, 2012

To: John Lojek, Commissioner of Inspectional Services

From: Seth Zeren, Chief Zoning Code Official  
Eve Tapper, Chief Planner for Current Planning

ET

Cc: Stephen J. Guillette and Frances O'Brien, applicants  
Candace Havens, Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Request to allow an addition to the rear of a single-family house that will extend an existing nonconforming rear setback and to legalize an existing noncompliant shed and parking configuration**

Applicant: Stephen J. Guillette and Frances O'Brien	
Site: 29 Brewster Road	SBL: 54010 0013
Zoning: SR2	Lot Area: 5,176 square feet
Current use: Single-family dwelling	Proposed use: Single-family dwelling

### BACKGROUND:

The property at 29 Brewster Road consists of a 5,176 square foot lot improved with a single-family dwelling constructed in 1918 and a small shed. The applicant has proposed to replace an existing rear deck with a mudroom addition.

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

- Architectural plans, two pages showing existing and proposed floor plans and elevations, signed and stamped by Margaret Schiff, Registered Architect, dated 7/26/12
- Existing site plan, signed and stamped by Michael A. Coleman, Professional Land Surveyor, dated 4/27/12
- Proposed site plan, signed and stamped by Michael A. Coleman, Professional Land Surveyor, dated 4/27/12
- FAR calculations, signed by Margaret Schiff, Registered Architect, dated 7/26/12
- Average grade plan calculations, signed by Margaret Schiff, Registered Architect, dated 7/26/12



**ADMINISTRATIVE DETERMINATIONS:**

1. The property is in the SR2 zone and must comply with the dimensional standards of Section 30-15, Table 1 for a pre-1953 lot (see chart below).

SR2 Zone	Required/Allowed	Existing	Proposed
Lot Size	10,000 square feet	<b>5,176 square feet</b>	<b>No change</b>
Frontage	80 feet	80 feet	No change
Setbacks			
• Front	25 feet	<b>18.1 feet</b>	<b>No change</b>
• Side	7.5 feet	38.1 feet	No change
• Rear	15 feet	<b>8.8 feet</b>	<b>3.0 feet</b>
FAR	.46	.41*	.42*
Building Height	36 feet	Not provided**	No change
Maximum Stories	2.5	2	No change
Max. Lot Coverage	30%	28.2%	28.7%
Min. Open Space	50%	59%	58.9%

\* Calculated in error on the applicant's submission as .61 and .62

\*\* Not required as no change is proposed

2. The applicant's site plan shows a number of noncompliant features. The rear deck appears to have been built without permits. As the applicant proposes to demolish this feature, no further zoning relief is required. A permit was issued for the removal of the previous garage in 2009 but there was no mention of the shed in the west corner of the lot. The property file contains no record of a building permit for the shed, which is located closer than five feet to the side and rear property lines, as allowed per Section 30-15(m). The applicant must either relocate the shed to comply with the setback requirements or obtain a variance from the Zoning Board of Appeals per Section 30-27.
3. The applicant's plans show a new addition off the rear of the existing structure to replace the existing noncompliant deck. This addition represents an extension of the existing nonconforming rear setback. The applicant may not take advantage of the *de minimus* rules of Section 30-21(c) because the addition will extend closer than five feet to the lot line. Therefore, to construct the addition as proposed, the applicant must obtain a special permit from the Board of Aldermen, per Section 30-21(b).
4. Per Section 30-15(u), a maximum Floor Area Ratio (FAR) of .46 is permitted on a 5,176 square foot lot in the SR2 zone. The applicant has provided calculations showing an existing FAR of .61 and a proposed FAR of .62. However, these calculations are incorrect; the existing FAR is actually .41 and the proposed addition will increase the FAR to .42, in conformity with the requirements of Section 30-15(u). No further zoning relief is required.
5. Section 30-19(g)(1) allows up to one parking stall within the front setback and requires that parking stalls be set back at least five feet from the front property line. However, the applicant's plan shows two existing parking stalls, as required by Section 30-19(d)(1), located within the front setback and set back zero feet from the property line. Since the building file in the Inspectional Services Department contains a 2009 demolition permit for a garage, which until it was demolished likely fulfilled the property's parking requirements, the existing parking configuration cannot be



considered pre-existing nonconforming and is therefore noncompliant. The applicants plans and communications with the surveyor show that the existing parking stalls are each only 9'x18' where 9'x19' is required per Section 30-19(g)(2). To legalize the existing parking stalls in their current configuration, the applicant must obtain a special permit, per Section 30-19(m), to waive dimensional requirements for parking stalls and to allow two stalls within the front setback.

6. See "Zoning Relief Summary" below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>	<i>Site</i>	<i>Action Required</i>
§30-15 Table 1; §30-21(b);	Allow the extension of an existing nonconforming structure with regard to the rear setback	S.P. per §30-24
§30-15(m)	Locate an accessory structure within a required side and rear setback distance	Variance per §30-27
§30-19(g)(1) and (g)(2); §30-19(m)	Locate two 9'x18' parking stalls in the front setback and closer than five feet to the front property line where 9'x19' is required and a maximum of one stall in the front setback, located at least five feet from the street, is permitted	S.P. per §30-24