

CITY OF NEWTON

IN CITY COUNCIL

April 19, 2016

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 EXTEND A NON-CONFORMING STRUCTURE in order to construct a two-car garage on the basement level of an existing single-family attached dwelling which will increase existing nonconformities with respect to the floor area ratio (FAR), front setback and open space requirements, and to allow for a retaining wall in a front setback, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Marc Laredo:

1. The proposed Floor Area Ratio (FAR) of 0.79, where 0.46 is the maximum allowed by right and 0.75 exists, is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood. The existing structure is a nonconforming 2 story attached single-family dwelling on a lot consisting of 3,220 square feet with a gross floor area of 2,933 square feet. The proposed addition will increase the gross floor area by approximately 265 square feet to 3,198 square feet. The structure is located on a very small lot that is well below the minimum lot area of 10,000 square feet required for lots created before 1953. (§3.1.9.A.2 and §7.8.2.C.2)
2. The proposed addition to the nonconforming structure will decrease the nonconforming front setback from 9.42 feet to 7.67 feet. The reduction of the front setback will not be substantially more detrimental than the existing nonconforming structure is to the surrounding neighborhood. (§3.1.3 and §7.8.2.C.2)
3. The proposed addition will increase the footprint of the dwelling, which will reduce the existing nonconforming open space on the site from 38% to 35%. The reduction of open space will not be substantially more detrimental than the existing nonconforming structure is to the surrounding neighborhood. (§3.1.3 and §7.8.2.C.2)
4. The site is an appropriate location for the proposed garage addition and

retaining wall given its sloped topography. (§7.3.3.C.1)

5. The proposed addition and retaining wall will not adversely affect the neighborhood as the addition will be located largely under an existing raised deck and both it and the retaining wall will largely be shielded by the site's sloped topography. (§7.3.3.C.2)
6. There will be no nuisance or serious hazard to vehicles or pedestrians as the width of the existing driveway entrance will remain unchanged and the height of the retaining wall at the driveway entrance will not create a visual obstruction. (§7.3.3.C.3)

PETITION NUMBER: #99-16

PETITIONER: Benyamin Ber

LOCATION: 360 Ward Street, on land known as Section 73, Block 45 Lot 1A, containing approximately 3,220 square feet of land

OWNER: Sasson Shemesh

ADDRESS OF OWNER: 360 Ward Street
Newton, MA

TO BE USED FOR: Attached Single-Family Residence

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.3 and §7.8.C.2 to extend an attached single-family dwelling which is nonconforming due to front setbacks;
§3.1.9. and §7.8.2.C.2., to further increase a nonconforming structure with respect to FAR;
§3.1.3 and §7.8.C.2., to further decrease the nonconforming open space;
§5.4.2.B to allow a retaining wall in excess of 4 feet in a setback.

ZONING: Single Residence 2 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. A set of plans entitled "Alterations and Additions to Shemesh Residence, 360 Ward Street, Newton," prepared by Neh-Koo-Dah, Boston, Massachusetts:
 - i. Cover Sheet (G 001), dated March 15, 2016;
 - ii. Architectural Site Plan (AS 101), dated March 15, 2016;
 - iii. Basement Plan (A 101), dated March 15, 2016;
 - iv. First Floor Plan (A 102), dated March 15, 2016;
 - v. Second Floor Plan (A 103), dated March 15, 2016;
 - vi. Second Floor Plan (A 103), dated March 15, 2016;
 - vii. Roof Plan (A 104), dated March 15, 2016;
 - viii. Elevations (A 201), dated March 15, 2016;
 - ix. Elevations (A 202), dated March 15, 2016.
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. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the final site plan.
 - d. Filed a final Landscape Plan to the Director of Planning and Development for review and approval.
 - e. 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. Filed with the Clerk of the Board, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that improvements authorized by this Order have been constructed to the standards of the City of Newton Engineering Department.
 - c. 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.
 - d. Filed with the City Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, final landscape features and fencing.

4. Notwithstanding the provisions of Condition #3 above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the buildings prior to installation of final landscaping provide that the petitioner shall first have filed a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.
5. The landscaping shown on the approved final Landscape Plan shall be maintained in good condition. The plantings shall be inspected annually and any plant material that becomes diseased or dies shall be replaced in a timely manner with similar material.