



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

James Freas
Acting Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: October 14, 2014
Land Use Action Date: November 18, 2014
Board of Aldermen Action Date: December 15, 2014
90-Day Expiration Date: January 5, 2015

DATE: October 10, 2014

TO: Board of Aldermen

FROM: James Freas, Acting Director of Planning and Development
Alexandra Ananth, Chief Planner for Current Planning
Daniel Sexton, Senior Planner

SUBJECT: **Petition #319-14**, LEOPOLDO BUTERA, for a SPECIAL PERMIT/SITE PLAN APPROVAL for an existing garage exceeding 700 square feet of ground floor area at 26 ELM STREET, Ward 3, West Newton, on land known as SBL 33, 24, 10, containing approximately 8,250 sf of land in a district zoned MULTI RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-15(m)(c)5) 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.



26 Elm Street

EXECUTIVE SUMMARY

The property located at 26 Elm Street consists of an 8,520 square foot lot and is improved with a single-family residence and accessory building, used as a garage. According to Building Permit #1314-99, the garage was permitted as a 1½-story building with a ground floor of 960 square feet. The petitioner, however, did not build the garage according to the approved plans or obtain permits authorizing the dimensionally noncompliant structure. The construction of the garage is now protected under the ten-year statute of limitations found in Massachusetts General Law (MGL), Chapter 40A, section 7. Subsequently, the petitioner constructed an open-air carport addition of approximately 518 square feet onto the south side of the garage without a building permit. This addition does not benefit from the aforementioned protections and was therefore unlawfully constructed. In order to allow the addition to be maintained, the petitioner is seeking a special permit to allow the ground floor area of the accessory building to exceed the allowable 700 square foot limit.

The petitioner must also obtain variances from the City's Zoning Board of Appeals to exceed the maximum allowed height and number of stories for an accessory structure, to exceed the maximum allowable lot coverage, and to decrease the minimum allowable open space. If approved, these variances would legalize the noncompliant nature of the accessory building and the resulting site conditions. Although the Planning Department has encouraged the petitioner to remove the carport or to seek the aforementioned variances first, the petitioner has chosen to seek the special permit first.

The petitioner was noticed by the City's Inspectional Services Department (ISD) after a complaint was received from an abutter. ISD cited the petitioner for operating a landscaping business, enlarging a noncompliant accessory structure, exceeding the allowable lot coverage, and reducing the minimum amount of open space. The issue of the landscaping business has been resolved; however the noncompliant nature of the structure and site conditions are still an open enforcement case. According to ISD, it appears the petitioner knowingly violated the ordinance.

The Planning Department is concerned about the issuance of a special permit after the fact for an addition that was built without obtaining permits. Although the petitioner is seeking variances to legalize the noncompliant structure and site conditions, the Department is troubled that the expansion of a noncompliant structure, if approved, will further decrease the already substandard amount of open space and increase the building lot coverage on the site. Furthermore, this project, as proposed, will not include an in-filtration system to manage on-site drainage. As an alternative, the petitioner could remove the addition and not need to seek this special permit or the variances.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Board should consider whether:

- The site is an appropriate location for the proposed addition to the accessory structure. (§30-15(m)(c)(5) and §30-24(d)(1))
- The proposed addition, consisting of approximately 518 square feet, to the already noncompliant accessory structure will adversely affect the neighborhood. (§30-15(m)(2) and (3), and §30-24(d)(2))

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Development History

The property in question was improved with a single-family residence in 1955. The petitioner acquired the parcel in 1964 and has lived there continuously since. In 1999, the petitioner obtained Building Permit #1314-99, which authorized the razing of the existing accessory building and construction of a new 1½-story detached garage. The petitioner did not construct the garage according to the issued building permit, and was later found to be unlawfully constructed. In 2000, the petitioner appears to have paved the driveway and a portion of the rear yard. While a permit was not required for this work, the combination of the structures and the expanded driveway decreased the available open space on the site to 44%, where 50% is the minimum allowed by the Newton Zoning Ordinance. Subsequently, the petitioner constructed, without a permit, an open-air carport addition onto the south side of the noncompliant detached garage. As a result of the addition, the available open space on the site was further decreased to 32% and the building lot coverage increased to 36%, where 30% is allowed by the Newton Zoning Ordinance.

B. Neighborhood and Zoning

The site is located along Elm Street, near the intersection of Elm Street and River Street. While the subject property is surrounded by mostly single- and multi-family residential land uses, a couple proximate parcels are used for commercial, mixed use, and open space (**ATTACHMENT A**). The site is zoning Multi-Residence 1, but there are other parcels in the immediate area that are zoning Single Residence 1, Multi-Residence 2, Business 1, and Public Use (**ATTACHMENT B**).

C. Site

The property in question consists of 8,520 square feet of land and is improved with a single-family residence and a detached accessory building, used as a garage. The site and surrounding neighborhood are largely flat, with no significant topographical

formations. On the north and south sides of the property, the petitioner has installed a significant amount of landscaping, consisting of trees and shrubs. While the north side of the property is essentially paved, the petitioner owns the adjacent parcel at 22 Elm Street. The site, which contains the detached garage, is visible from the abutting properties to the east.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The site consists of a single-family dwelling and will continue to be used as a single-family residence. The landscaping business that previously occupied the site has since closed.

The petitioner should be prepared to speak to the maintenance and storage of commercial vehicles on the site even after the operation of the commercial business has terminated.

B. Building and Site Design

The petitioner is seeking this special permit to allow the addition of an open-area carport, which has already been constructed, onto a noncompliant detached garage. The addition has been constructed with wood. As proposed, the addition will increase the ground floor area of the garage by approximately 518 square feet, which already has a ground floor area of 1,184 square feet. While the proposed addition will not impact the other noncompliant aspects of the structure, the accessory building is considered a two-story structure and has a height of 29 feet under the current Newton Zoning Ordinance.

The petitioner must also obtain variances from the City's Zoning Board of Appeals to exceed the maximum allowed height and number of stories for an accessory structure, to exceed the maximum allowable lot coverage, and to decrease the minimum allowable open space. If approved, these variances would legalize the noncompliant nature of the detached garage and the resulting substandard site conditions.

As an alternative, the Planning Department has encouraged the petitioner to remove the addition. This would eliminate the need for the petitioner to obtain this special permit or the variances.

C. Parking and Circulation

No changes to the site's parking or circulation patterns will occur as a result of this request.

D. Landscape Screening

The site has some landscape plantings, consisting of trees and shrubs, on the south and west sides of the parcel. While these plants minimize the visibility of the detached accessory building and its addition from the street, the structure is visible from the abutting properties to the north and east. Based on the existing building setbacks there is limited opportunity for the petitioner to provide additional screening.

The Planning Department believes that a sight-obscuring fence could be erected along the eastern property line and would partially screen the structure from abutting properties.

IV. TECHNICAL REVIEW

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

The Zoning Review Memorandum (**ATTACHMENT C**) provides an analysis of the proposal with regard to zoning. Based on this review, the petitioner is seeking a Special Permit/Site Plan Approval for the following relief:

- §30-15(m)(c)(5), to exceed 700 square feet of ground floor area in a accessory building used as a garage.

In order to legalize the noncompliant structure, the petitioner is also seeking Variances from the Zoning Board of Appeals for the following provisions of the Newton Zoning Ordinance:

- §30-15(m)(2), to exceed the maximum allowed height for an accessory structure.
- §30-15(m)(3), to exceed the maximum allowed stories for an accessory structure.
- §30-15, Table 1, to exceed the maximum allowable building lot coverage.
- §30-15, Table 1, to further decrease the minimum open space.

B. Engineering Review

The Associate City Engineer, submitted an Engineering Review Memorandum (**ATTACHMENT D**), providing an analysis of the proposal with regard to engineering issues. According to the memorandum, the Engineering Division has some concerns regarding on-site drainage and the utility services to the garage. Prior to scheduling another public hearing or working session, the petitioner should provide additional information and acceptable plans to the Engineering Division of Public Works and the Planning Department for review.

V. PETITIONER'S RESPONSIBILITIES

The petitioner should consider the Planning Department's recommendation to remove the addition, which would eliminate the need to obtain this special permit or the variances. In the alternative, the petitioner should consider the comments raised by the Planning Department and Engineering Division of Public Works.

ATTACHMENTS:

Attachment A: Land Use Map

Attachment B: Zoning Map

Attachment C: Zoning Memorandum, dated August 7, 2014

Attachment D: Engineering Division Review, dated October 7, 2014










Land Map 26 Elm Street

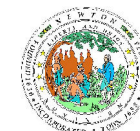
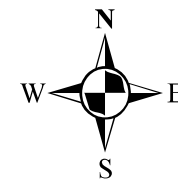
City of Newton,
Massachusetts

ATTACHMENT A

Legend

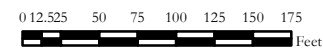
Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Mixed Use
-  Open Space
-  Vacant Land
-  Tax Exempt
-  Property Boundaries
-  Building Outlines

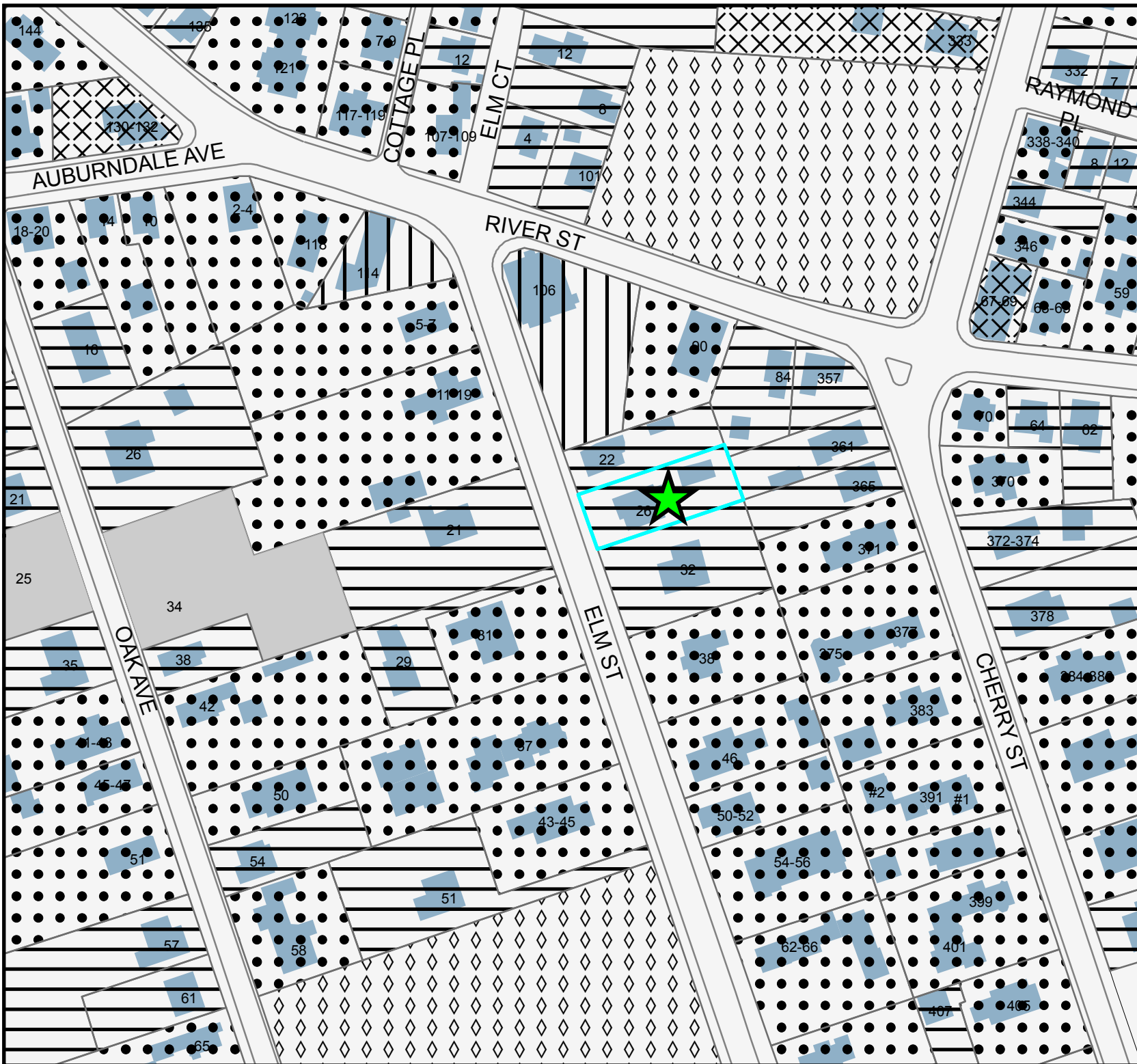


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

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



Map Date: September 26, 2014



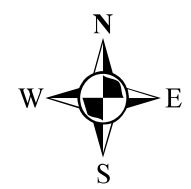
Zoning Map 26 Elm Street

*City of Newton,
Massachusetts*

ATTACHMENT B

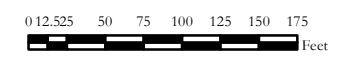
Legend

- Single Residence 3
- Multi-Residence 1
- Multi-Residence 2
- Business 1
- Public Use
- Property Boundaries
- Building Outlines

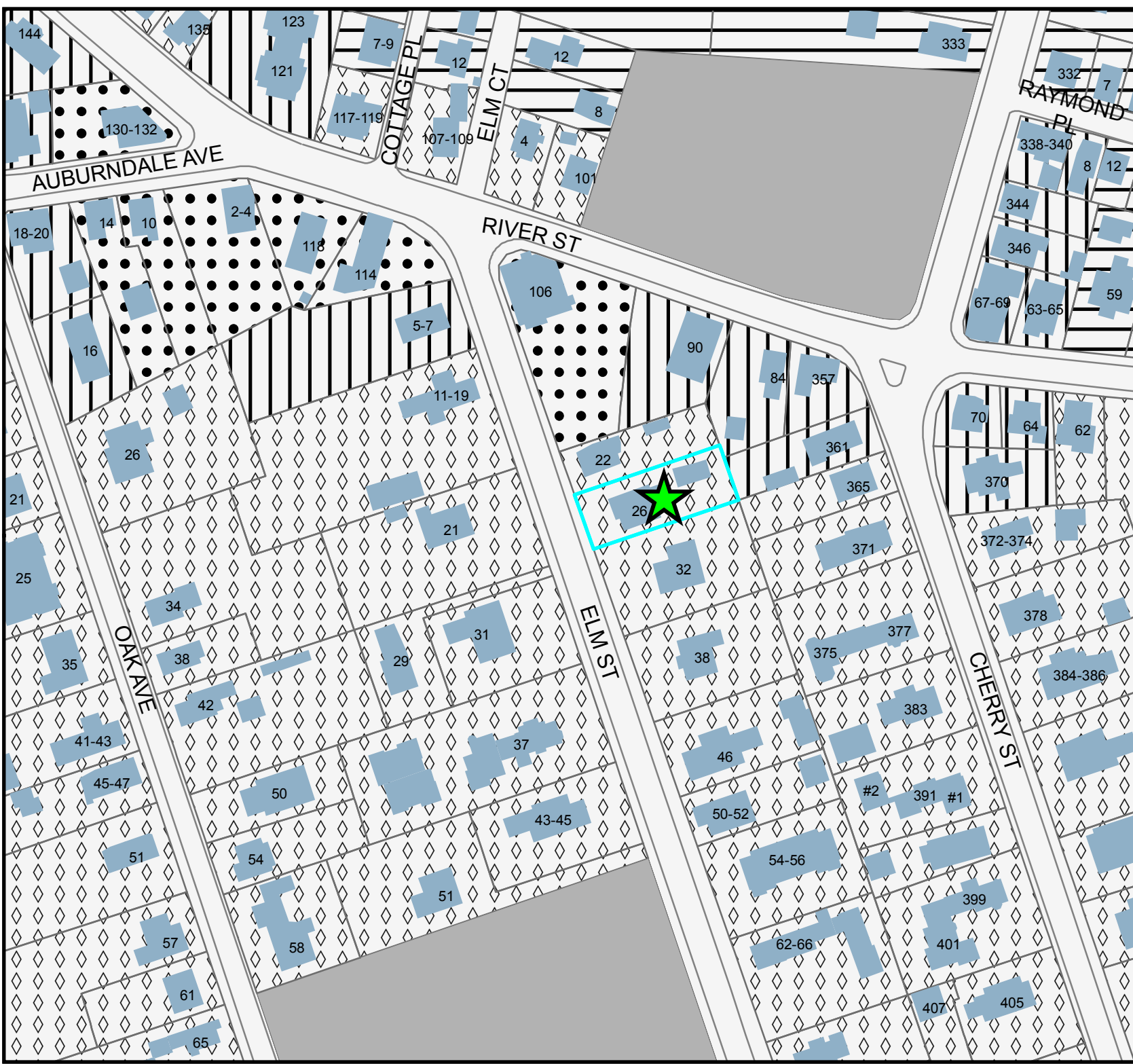


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

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



Map Date: September 26, 2014





Setti D. Warren
Mayor

Attachment C

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Candace Havens
Director

ZONING REVIEW MEMORANDUM

Date: August 7, 2014

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Alexandra Ananth, Chief Planner for Current Planning

Cc: Peter Harrington, Attorney for the applicant
Leopoldo Butera, Applicant
Candace Havens, Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request for Variances from maximum height of an accessory building, maximum lot coverage, minimum open space, and special permits to allow for a detached garage with a ground floor area greater than 700 square feet

Applicant: Leopoldo Butera	
Site: 26 Elm Street	SBL: 33024 0010
Zoning: MR-1	Lot Area: 8,250 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 26 Elm Street consists of a 8,250 square foot lot improved with a single-family residence constructed in 1955. The applicant received a building permit in 1999 to raze a detached garage structure and construct a new 1½-story detached garage. The garage appears to not have been built according to the approved building permit, and several zoning violations exist. The owner constructed a carport on the right side of the garage structure without the benefit of a building permit some time after 1999. This application seeks to legitimize the structures as they currently exist.

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

- Zoning Review Application, prepared by Peter Harrington, attorney, submitted 5/14/2014
- Existing Site Plan, prepared by Frank Iebba, Essex Engineering and Survey, dated 7/20/2014

ADMINISTRATIVE DETERMINATIONS:

1. MGL Chapter 40A, section 7 provides statutes of limitations for enforcement action on zoning violations. First, where property has been improved and used in accordance with the terms of the original building permit, a six-year statute of limitations on enforcement applies. Second, where structures have been built or improved in violation of zoning regulations or in violation of the terms of a valid building permit, a ten year statute of limitation on enforcement applies.
2. A building permit was issued in 1999 for the demolition of an existing detached garage and construction of a new detached garage structure. Plans attached to the permit show a building height of 26.17 feet, which violated the height limitation of 22 feet found in Section 30-15(m)(2) of the Newton Zoning Ordinance. The building however, was built to a height of 29 feet, not in accordance with the building permit. The 10-year statute of limitations on enforcement of a violation built with the benefit of a building permit, though not in accordance with that which the permit allowed is applicable in this case. The structure was constructed 15 years ago, and therefore may remain noncompliant, but the new addition of the carport does not have the benefit of that protection, as it was never issued a building permit, and must be removed. Should the applicant wish to maintain the carport, a variance from Section 30-15(m)(2) is required to legalize the current height.
3. The 1999 building permit required that the accessory structure be 1½ stories, in accordance with Section 30-15(m)(3) of the Newton Zoning Ordinance. The structure was built with two stories, not in accordance with the building permit. The ten-year statute of limitations in MGL Chapter 40A, section 7 applies to the number of stories as well as the height. The structure was constructed 15 years ago, and therefore may remain noncompliant, but the new addition of the carport does not have the benefit of that protection and must be removed. Should the applicant wish to maintain the carport, a variance from Section 30-15(m)(3) is required to legalize the current number of stories.
4. A garage with a ground floor area in excess of 700 square feet requires a special permit pursuant to Newton Zoning Ordinance Section 30-15(m)(5)c). The 1999 building permit has a notation requiring that garage not exceed 700 square feet in accordance with the local provision, however the plans submitted for the garage showed a ground floor area of 1060 square feet. The garage was not built in accordance with the building permit with regard to the ground floor area, and therefore is protected under the ten-year statute of limitations found in MGL Chapter 40A, section 7. The structure was constructed 15 years ago, and therefore may remain noncompliant, but the new addition of the carport does not have the benefit of that protection and must be removed. However, should the applicant wish to maintain the carport, a special permit per Section 30-15(m)(5)c) is required to legalize the current ground floor area.
5. The maximum lot coverage allowed in the MR1 district is 30%. As permitted by the 1999 building permit, the property had a compliant lot coverage of 29%. The addition of the carport creates a lot coverage of 36%, which is in violation of the building permit and Section 30-15, Table 1 of the Newton Zoning Ordinance. Removal of the carport would put the property back in compliance. Should the applicant wish to maintain the carport, a variance from Section 30-15, Table 1 is required to legalize the current lot coverage.

6. The minimum open space allowed in the MR1 district is 50%. As permitted by the 1999 building permit, the property had a non-compliant open space of 44%. The addition of the carport left 32% open space, which is further in violation. The garage was not built in accordance with the building permit, but is protected under the ten-year statute of limitations found in MGL Chapter 40A, section 7. The structure was constructed 15 years ago, and therefore may remain noncompliant, but the new addition of the carport does not have the benefit of that protection and must be removed. However, should the applicant wish to maintain the carport, a variance from Section 30-15, Table 1 is required to legalize the current open space.

MR1 Zone	Required	Per 1999 Building Permit	Existing
Lot Size	10,000 square feet	8,250 square feet	No change
Frontage	80 feet	55 feet	No change
Setbacks for the accessory structure			
• Front	30 feet	115 feet	No change
• Side	5 feet	5 feet (left)	No change
	5 feet	21.4 feet (right)	6.4 feet
• Rear	5 feet	5.9 feet	No change
Height	22 feet	26.17 feet	29 feet
Number of Stories	1½	1½	2
FAR	.51		.294*
Max Lot Coverage	30%	29%	36%
Min. Open Space	50%	44%	32%

*The surveyor calculated the FAR using only the ground floor areas of the structures on the site and did not include the space in the second floor of the garage, or any basement space which may be included in the main dwelling. Because a correct calculation is not likely to reach the .51 limit, I have completed the review while waiting for an accurate calculation.

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§30-15(m)(2)	To exceed maximum allowed height for an accessory structure	Variance
§30-15(m)(3)	To exceed maximum allowed stories for an accessory structure	Variance
§30-15(m)(c)5), 30-24	To exceed 700 square feet of ground floor area in a garage	S.P. per §30-24
§30-15, Table 1	To exceed maximum lot coverage	Variance
§30-15, Table 1	To further decrease minimum open space	Variance

**CITY OF NEWTON
DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION**

MEMORANDUM

To: Alderman Mark Laredo, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – 26 Elm Street

Date: October 7, 2014

CC: Lou Taverna, PE City Engineer
Frank Nicholas, PE Special Projects
Linda Finucane, Associate City Clerk
Alexandria Ananth, Chief Planner
Dan Sexton, Sr. Planner

In reference to the above site, I have the following comments for a plan entitled:

*Existing House
26 Elm Street
Newton, MA
Prepared by: Essex Engineering & Survey
Dated: July 20, 2014*

Executive Summary:

The plan submitted lacks compass bearings on the property lines and a City stone bound at the northwest corner of the property is not shown; this stone bound is an important monument that delineates the limit of the Elm Street right of way and must be shown on the plan.

Based upon a site visit today, almost the entire lot is impervious except for a front lawn and an 8-foot wide strip of grass & planting area along the southerly property line; there appears to be no on-site drainage system for any of the impervious surfaces. The plan

lacks any topography features such as contours, trees, fences and vegetation. The plan is not stamped by a Professional Engineer as require.

Drainage:

1. A drainage analysis needs to be performed based on the City of Newton's 100-year storm event of 6-inches over a 24-hour period. All runoff from impervious areas need to be infiltrated on site, for the project. The design of on site drainage system needs to comply with the MassDEP Stormwater Regulations and City Ordinances.
2. An on-site soil evaluation needs to be performed to obtain the seasonal high groundwater elevation, percolation rate in accordance to Title V. This information must be submitted with the drainage study. The locations of these tests need to be shown on the site plan and must be performed within 20-feet of a proposed system.
3. An Operations and Maintenance (O&M) plan for Stormwater Management Facilities needs to drafted and submitted for review. Once approved the O&M must be adopted by applicant, incorporated into the deeds; and recorded at the Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.
4. It is imperative to note that the ownership, operation, and maintenance of the proposed drainage system and all appurtenances including but not limited to the drywells, catch basins, and pipes are the sole responsibility of the property owner(s).

Environmental:

1. Has a 21E investigation & report been performed on the site, if so copies of the report should be submitted the Newton Board of Health and the Engineering Division.
2. Are there any existing underground oil or fuel tanks, are they to be removed, if they have been evidence should be submitted to the Newton Fire Department, and Newton Board of Health.

Sewer & Water:

It is unknown if the garage has domestic water & sanitary sewer services. If the utilities are connected, the City has no records.

Note: If the plans are updated it is the responsibility of the Applicant to provide all City Departments [Conservation Commission, ISD, and Engineering] involved in the permitting and approval process with complete and consistent plans.

If you have any questions or concerns please feel free to contact me @ 617-796-1023.