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Candace Havens  
Director

**PUBLIC HEARING MEMORANDUM**

Public Hearing Date: September 10, 2013  
Land Use Action Date: September 24, 2013  
Board of Aldermen Action Date: November 18, 2013  
90-Day Expiration Date: December 2, 2013

DATE: September 6, 2013

TO: Board of Aldermen

FROM: Candace Havens, Director of Planning and Development  
Alexandra Ananth, Chief Planner for Current Planning  
Daniel Sexton, Senior Planner

SUBJECT: **Petition #141-13(2)**, ZION YEHOASHUA & NIKZUN GORDON, for a SPECIAL PERMIT/SITE PLAN APPROVAL to re-grade an existing driveway to make it less steep by rebuilding existing retaining walls within the setback at a maximum height of 12-feet and to provide 2 parking spaces within the front setback at 74 NEWTONVILLE AVENUE, Newton, Ward 1, on land known as SBL 12, 21, 25 containing approx. 10,021 square feet of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec 30-24, 30-23, 30-19(g)(1), 30-19(m), 30-5(b)(4) 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.



**74 Newtonville Ave**

## EXECUTIVE SUMMARY

The property at 74 Newtonville Avenue consists of a 10,021 square foot lot improved with a two-story single-family residence, which was constructed in 1973. The existing house contains an attached two-car garage, which is accessed by a driveway with a significant slope up from the street to the garage, causing a hazardous situation for vehicular maneuverability and pedestrians. The petitioner is proposing to reconstruct the driveway with a reduced slope. To achieve the desired grade, the petitioner is proposing to demolish and reconstruct the retaining walls surrounding the driveway within the setback and with a maximum height of 12 feet. The proposed driveway and retaining walls will eliminate access to the existing two-car garage, rendering it useless for the parking of vehicles, and will create two side-by-side parking stalls in the front yard setback.

The petitioner began working on this project without a building permit and received a stop work order from the Inspectional Services Department. Since this project as designed requires the petitioner to obtain relief from the Newton Zoning Ordinance, the petitioner is seeking a Special Permit/Site Plan Approval to allow the project to proceed. The petitioner withdrew the initial special permit application, heard at the public hearing on May 13, 2013, because the requested height of the retaining wall had been improperly noticed.

The Department of Planning and Development is concerned about allowing the construction of the proposed retaining wall with a maximum height of 12 feet, and suggests the petitioner consider the alternative of developing the driveway with a slope so that the wall does not exceed 8 feet, which would be safer for vehicles and pedestrians. The petitioner is also encouraged to consider developing the driveway with pavers and treating the retaining wall surface with a stone veneer or use colored concrete to improve the streetscape.

### I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Board should consider whether:

- The proposed retaining walls will not adversely affect the neighborhood and all runoff will be contained on site.
- The proposed exceptions to the parking requirements are appropriate, as literal compliance is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest.
- The proposed parking stalls and retaining wall in the front yard setback will not be a nuisance or serious hazard to vehicles or pedestrians in the neighborhood.

### II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

#### A. Neighborhood and Zoning

The property is located on the south side of Newtonville Avenue near the intersection with Summit Street. The houses along Newtonville Avenue consist

mostly of single-family homes, although some properties to the south and west of the subject property have been developed as condominiums. The property is located in an area zoned Single Residence 3, but is flanked to the north and south by properties zoned Multi-Residence 1.

B. Site

The property consists of 10,021 square feet of land and is improved with a two-story single-family residence and attached garage. The attached garage is constructed as part of the homes basement, and is accessed by a bituminous driveway with a significant slope on the north side of the site.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The property will remain a single-family residence.

B. Building and Site Design

The petitioner is proposing to reduce the slope of the driveway to create two side-by-side parking stalls in the front yard setback. The proposed retaining walls, which will be 12 feet at the highest point, will cut off access to the existing two-car garage, rendering it useless for the parking of vehicles. According to a conceptual rendering of the driveway and front façade (**ATTACHMENT A**), the petitioner appears to be converting the existing garage into living space.

The significant slope present on the subject property, which also impacts other nearby properties, is a constraint limiting the ways in which development of on-site parking stalls can be accommodated. However, no other houses in the neighborhood with similar attached garages appear to have chosen to redevelop their attached garage in favor of at-grade parking in the front setback.

C. Parking and Circulation

The proposed development will alter the parking configuration for the property. The current parking configuration includes an attached two-car garage, which has limited usability due to the significant slope of the driveway, and a stacked one-car parking stall in the driveway. The proposed configuration will render the attached two-car garage unusable as a garage, in favor of two side-by-side parking stalls below the natural grade in the front setback.

Although the Department of Planning and Development is concerned with the development of two parking stalls located in the front yard setback, which detracts from the streetscape, similar conditions exist on some neighboring properties. Alternatively, the Department of Planning and Development suggests the driveway be sloped so that the site is safer for vehicles and pedestrians, which could be achieved by constructing the retaining walls so they do not exceed 8 feet. The petitioner should also consider surfacing the driveway with pavers and to treat the

surface of the retaining walls with a stone veneer or colored concrete in order to improve the streetscape.

D. Landscape Screening

No landscaping plan was required for this petition. The petitioner is proposing to install a 42-inch metal railing on top of the concrete walls for safety purposes.

IV. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance): The Zoning Review Memorandum, (**ATTACHMENT B**), provides an analysis of the proposal with regard to zoning. The petitioners are requesting a special permit to allow retaining walls of greater than four feet in height within a front yard setback, and to provide two required parking stalls within the front setback.

B. Engineering Review The Associate City Engineer, submitted an Engineering Review Memorandum (**ATTACHMENT C**), providing an analysis of the proposal with regard to engineering issues. According to the memorandum, the Engineering Division has some concerns regarding how runoff from the driveway and water from behind the retaining wall will be infiltrated on site. The petitioner will be required to comply with all the recommendations put forth in the memorandum prior to issuance of a Building Permit.

V. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum, the petitioner is seeking a Special Permit/Site Plan Approval for the following reliefs:

1. Section 30-5(b)(4), to locate retaining walls greater than four feet within a front yard setback.
2. Sections 30-19(g)(1) and 30-19(m), to permit two required parking spaces within the front setback.

VI. PETITIONERS' RESPONSIBILITIES

The petition is considered complete at this time.

**ATTACHMENTS:**

- Attachment A:** Conceptual Rendering of Driveway and Front Elevation  
**Attachment B:** Zoning Review Memorandum  
**Attachment C:** Engineering Review Memorandum  
**Attachment D:** Zoning Map  
**Attachment E:** Land Use Map

Attachment A



Submitted on 6/19/13



Setti D. Warren  
Mayor

**ATTACHMENT B**

**City of Newton, Massachusetts**  
Department of Planning and Development  
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Candace Havens  
Director

**ZONING REVIEW MEMORANDUM**

Date: March 21, 2013

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Eve Tapper, Chief Planner for Current Planning

ET

Cc: Zion Yehoshua, Applicant  
Candace Havens, Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Request to re-grade an existing driveway and to rebuild existing retaining walls to a maximum height of six (6) feet and to allow for two required parking spaces within the front and side setbacks.**

Applicant: Zion Yehoshua	
Site: 74 Newtonville Ave	SBL: 12021 0025C
Zoning: SR3	Lot Area: 10,021 square feet
Current use: Single-family residence	Proposed use: No Change

**BACKGROUND:**

The property at 74 Newtonville Ave consists of a 10,021 square foot lot improved with a single-family residence constructed in 1973 and several retaining walls. The driveway on the property has a significant slope from the house to the street, and the applicant wishes to re-grade the driveway to make it less steep due to safety concerns. To achieve the desired grade, the applicant proposes to rebuild existing retaining walls within the setback at a maximum height of six (6) feet.

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

- Zoning Review Application, prepared by Zion Yehoshua, owner, submitted 12/11/2012
- As-Built Plot Plan, signed and stamped by James Herrick, Engineer, dated 1/4/13
- Engineering plans for retaining walls, signed and stamped by James Herrick, Engineer, submitted 12/11/12
- Proposed profiles, plan and sections, created by James Herrick, Engineer, submitted 2/19/13

**ADMINISTRATIVE DETERMINATIONS:**

1. The proposed retaining walls will reach a maximum height of six (6) feet from the street to where it meets the house. Section 30-5(b)(4) requires a special permit to place retaining walls greater than four feet within a setback.
2. Lowering the grade of the driveway according to the proposed plan will render the garage useless for the purposes of parking and meeting parking requirements for a single-family home. Section 30-19(d)(1) requires a single-family dwelling to provide two parking stalls. Section 30-19(g)(1) states that only one parking stall may be located within any required setback distances from a street or sideline for a single-family dwelling. Without the use of the garage, the two required stalls are now proposed to be located in the front yard setback. Section 30-19(m) requires a special permit to allow this parking configuration.

SR3 Zone	Required/Allowed	Existing	Proposed
Lot Size	10,000 square feet	10,021 square feet	No change
Frontage	80 feet	85 feet	No change
Setbacks for existing structure			
• Front	30 feet	32.1	No change
• Side	10 feet	20 feet on right 21 feet on left	No change
Max. Lot Coverage	30 %	23.4 %	No change
Min. Open Space	50 %	76.6 %	No change

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§30-5(b)(4)	Locate a retaining wall of four (4) feet or more within a setback	S.P. per §30-24
§30-19(g)(1) §30-19(m)	Provide two required parking spaces within the front setback	S.P. per §30-24

**CITY OF NEWTON  
ENGINEERING DIVISION**

**MEMORANDUM**

To: Alderman Ted Hess-Mahan, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – 74 Newtonville Avenue

Date: August 19, 2013

CC: Lou Taverna, PE City Engineer  
Linda Finucane, Associate City Clerk  
Alexandria Ananth, Chief Planner  
Daniel Sexton, Sr. Planner

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

*Partial Site Plan  
74 Newtonville (AKA #72)  
Proposed Changes to Driveway  
Newton, MA  
Prepared by: Herrick Consulting  
James A. Herrick, P.E.  
Dated: August 1, 2013*

*Executive Summary:*

This project involves the regarding of an existing driveway and new retaining walls. The existing driveway is very steep and has uncontrolled runoff from the site and onto Newtonville Avenue, the design will incorporate a trench drain to capture runoff from the driveway and from behind the proposed retaining walls and infiltrate the runoff underground.

Prior to issuing Building Permit, the engineer of record will have to perform an on-site soil evaluation to verify the design of the stormwater collection system. A test pit and percolation test is required to confirm the design.

Newtonville Avenue was paved this season; the contractor of record will have to exercise great care to ensure that the new pavement is not damaged. Any damaged caused as a



result of the driveway, drainage system, and retain wall construction shall be repaired at their expense.

Drainage:

1. An Operations and Maintenance (O&M) plan for Stormwater Management Facilities needs to be 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.
2. 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 Homeowner.

General:

1. As of January 1, 2009, all trench excavation contractors shall comply with Massachusetts General Laws Chapter 82A, Trench Excavation Safety Requirements, to protect the general public from unauthorized access to unattended trenches. Trench Excavation Permit required. This applies to all trenches on public and private property. *This note shall be incorporated onto the plans*
2. All tree removal shall comply with the City's Tree Ordinance.
3. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of water services, sewer service, and drainage system installation. The utility in question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval. *This note should be incorporated onto the plans*
4. The applicant will have to apply for Sidewalk Crossing permit with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*
5. The applicant will have to apply for a Building Permits with the Department of Inspectional Service prior to any construction.

6. Prior to Occupancy Permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading. *This note must be incorporated onto the site plan.*
7. All site work shall be completed before a Certificate of Occupancy is issued. *This note must be incorporated onto the site plan.*

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.

# Zoning Map

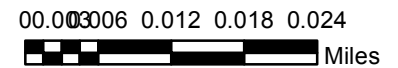
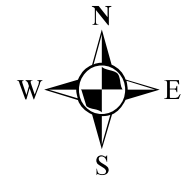
## 74 Newtonville Avenue

*City of Newton,  
Massachusetts*

**ATTACHMENT D**

**Legend**

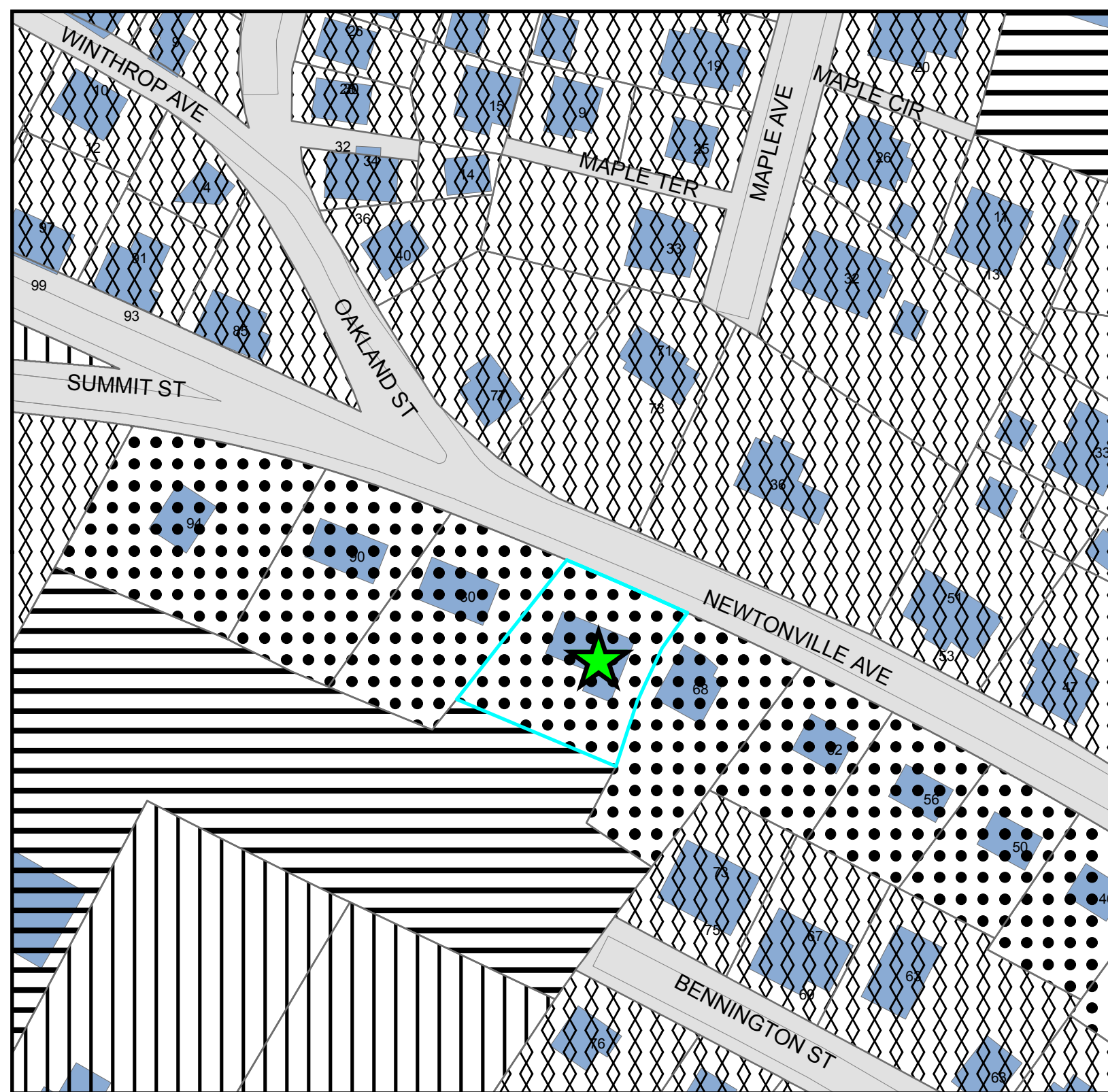
- Streets - Pavement Edge
- Single Residence 1
- Single Residence 2
- Single Residence 3
- Multi-Residence 1
- Multi-Residence 2
- Building Outlines
- Property Boundaries



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 - Setti D. Warren  
GIS Administrator - Douglas Greenfield

Map Date: August 27, 2013



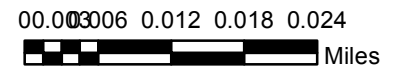
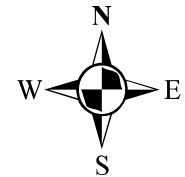
# Land Use Map 74 Newtonville Avenue

*City of Newton,  
Massachusetts*

**ATTACHMENT E**

**Legend**

- Streets - Pavement Edge
- Land Use**
  - Single Family Residential
  - Multi-Family Residential
  - Commercial
  - Open Space
  - Nonprofit Organizations
  - Vacant Land
  - Building Outlines
  - Property Boundaries



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