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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: July 9, 2019
Land Use Action Date: September 9, 2019
City Council Action Date: September 16, 2019
90-Day Expiration Date: October 7, 2019

DATE: July 5, 2019

TO: City Council

FROM: Barney Heath, Director of Planning and Development
Jennifer Caira, Chief Planner
Katie Whewell, Planning Associate

SUBJECT: **Petition #200-19**, petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a parking stall within the front setback and five feet of the street at 30 JACOBS TERRACE, Newton Centre, Ward 8, on land known as SBL 82, 25, 23 containing approx. 18,110 sf of land in a district zoned SINGLE RESIDENCE 1. Ref: Sec. 5.1.7.A, 5.1.13, 7.3.3, 7.4 of Chapter 30 of the City of Newton Rev Ord, 2017.

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.



30 Jacobs Terrace

EXECUTIVE SUMMARY

The property at 30 Jacobs Terrace consists of a 18,110 square foot lot in a Single Residence 1 (SR-1) zone improved with a single-family residence constructed 1958. The site is located off Jacobs Terrace, a cul-de-sac street that splits from Hartman Road in Newton Centre. In 1984, Variance #45-83 (**Attachment A**) was granted for a two-car garage within the front setback due to the steep topography of the site. The Variance also found that a hardship exists due to the steep slope of the site. The petitioner is seeking to open a second 12-foot-wide curb cut to allow for the construction of a parking space adjacent to the existing garage. Due to the proposed space being in the front setback as well as within five feet of the street, a special permit is required to construct the proposed parking stall in the proposed location.

Variance #45-83 granted the existing two car garage due to the steep slope of the site, and as the slope of the site has not changed since the Variance was granted, the Planning Department is unconcerned with the petition to construct a parking stall within the front setback and within five feet of the street. Additionally, the site is located on a cul-de-sac, and the proposed parking stall would have a minimal impact and would also be screened by the existing garage when driving down Jacobs Terrace towards the cul-de-sac.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Council should consider:

- Whether literal compliance with the requirement that no parking stalls be located within five feet of a street (§5.1.7.A) 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, or in the interest of safety, or protection of environmental features. (§5.1.13)
- Whether literal compliance with the requirement that no parking stalls be located within a front setback (§5.1.7.A) 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, or in the interest of safety, or protection of environmental features. (§5.1.13)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The site and surrounding properties on Jacobs Terrace are in the SR- 1 zone. There are Single Residence 2 zones on Hartman and Sycamore Roads, to the southwest of the site (**Attachment B**). The properties in the immediate area are all single family residential (**Attachment C**). Jacobs Terrace is a cul-de-sac; therefore, the proposed

parking space would only be seen by four properties.

B. Site

The site consists of an 18,110 square foot lot improved with a single-family dwelling and two-car garage; the garage being in the front setback that was granted by Variance #45-83. The site slopes downwards from the front to the rear of the lot, a grade change of about 20 feet from the existing garage to the rear of the site. The existing two-car garage is located at the front property line resulting in a front setback of .5 feet. The variance described the site as “abnormally steep” and that an alternative driveway would be dangerously steep and other solutions would be excessively costly.

The site has one curb cut in front of the existing garage. The property maintains nonconforming setbacks, the .5 foot front setback, where 25 feet is required for an accessory building in the SR-1 zone. The rear setback is also nonconforming and requires a 25-foot setback where 20.6 feet exists for the principal dwelling. All other setbacks are conforming. The existing lot coverage is 11.5% and open space is 85.9%.

III. PROJECT DESCRIPTION AND ANALYSIS

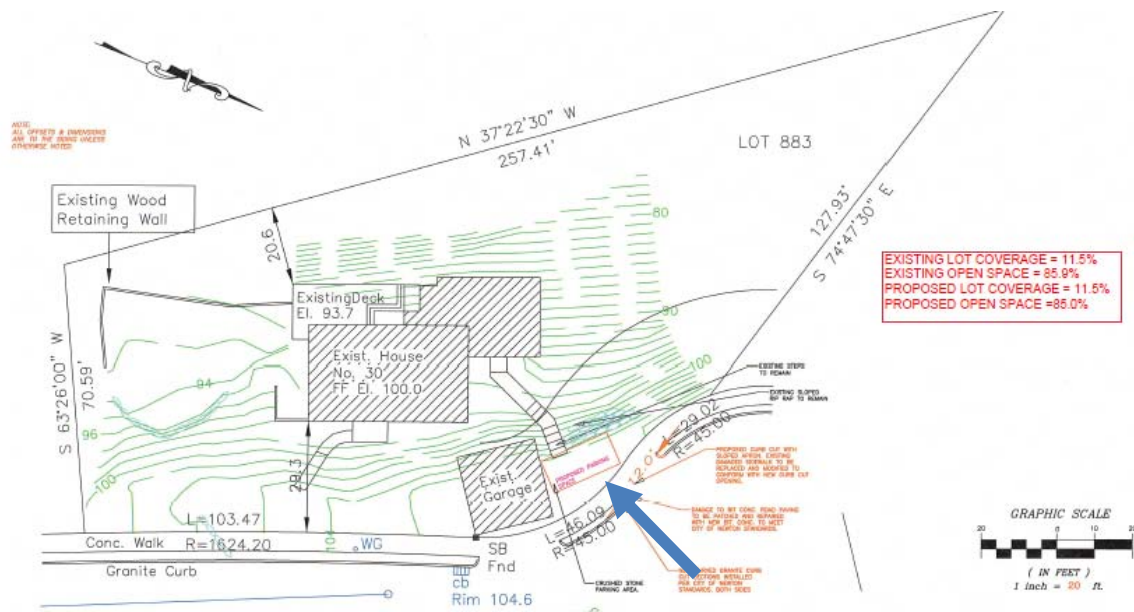
A. Land Use

The principal use of the site will remain a single-family residence.

B. Site Design, Parking, Circulation and Landscaping

The petitioner is proposing to open a second 12 foot wide curb cut and install one surface parking space to the right of the existing garage along the property’s frontage, accessed from Jacobs Terrace. The parking space would be made up of crushed stone. While the proposed stall’s 9 foot by 19-foot dimensions meet the dimensional standards, the space lacks the five foot buffer required by the NZO. Due the site’s steep topography, the petitioners are proposing to locate the parking space within the front setback and within five feet of the street, requiring a special permit.

Planning Staff notes that the space would be located at the end of a cul-de-sac, and there would be limited potential conflict with street traffic. Due to the steep topography of the site and the existing variance that explored the alternatives of the placement of the existing garage, the Planning Department believes that the location of the parking space adjacent to the garage is impractical elsewhere on the site and the space at its proposed location would have minimal impact on the neighborhood due to Jacobs Terrace being a cul-de-sac.



IV. 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 D**). Based on the completed Zoning Review Memorandum, the petitioner is seeking the following relief:

- Special permit per §7.3.3:
 - To allow parking in the front setback, and to park within five feet of a street (§3.1.3, §5.1.7.A, §5.1.13)

B. Engineering Review:

The petition does not meet the minimum threshold for engineering review.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:

- Attachment A:** Variance #45-83
- Attachment B:** Land Use Map
- Attachment C:** Zoning Map
- Attachment D:** Zoning Review Memorandum
- Attachment E:** DRAFT Order



City of Newton, Massachusetts

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City Hall

1000 Commonwealth Avenue, Newton Centre .59

ZONING BOARD OF APPEALS

#45-83

Detailed Record of Proceeding and Decision

Petition of Lloyd J. and Mary E. Williams of 30 Jacobs Terrace,
Newton

For a variance from the street setback requirement

The Zoning Board of Appeals for the City of Newton held a
public hearing on the above entitled proceeding on Tuesday,

November 22, 1983 at 7:45 p.m. in the
Aldermanic Chamber at City Hall, Newton, Massachusetts.

The following members of the board were present:

Maurice Reidy, Jr. Acting Chairman
Robert Corbett
Casper Ferguson
Anthony Summers
Robert Brauneis

The petition was filed on October 15, 1983

Due notice of the hearing was given by mail, postage
prepaid, to all persons deemed to be affected thereby as shown on
the most recent tax list and by publication in the News Tribune,
a newspaper of general circulation in Newton, Massachusetts.

Accompanying the petition were plans entitled "Plan of land to
accompany the petition of Lloyd J. and Mary E. Williams of 30
Jacobs Terrace, Newton", dated October 7, 1983 by Apex Associates
Land Surveyors and Architectural Details, dated October 15, 1983
by Lloyd J. Williams, AIA.

FACTS

The petitioner represented himself. The subject site is located at 30 Jacobs Terrace, Section 82, Block 25, Lot 23 containing approximately 18,110 square feet in a Single Residence A District.

The petitioner is requesting relief from the strict application of Section 30-14, Setback required at front yard in order to construct a new garage.

The abnormally steep slope of the subject property does not permit construction of a garage within the setback requirements of the Newton Zoning Code without introducing the necessity for either a dangerously steep driveway or an excessively costly raised structure and a connecting bridge. The only alternative location for a garage on the site would effectively block sunlight from the meager lawn area available.

As noted above, the steep slope of the available land precludes construction within the setback requirements of the Newton Zoning Code without incurring excessive cost and locating the proposed garage an inordinate distance from the existing residence. The proposed location is, in fact, the optimum for the garage without disturbing the remainder of the available land or residence.

The Lot in question is located on a cul-de-sac, therefore a reduction in front yard setback should have a minimum effect on the neighborhood. Because the proposed garage is to be constructed from the same materials as the existing house, the visual impact on the abutters will be small. There will be no water service to the garage so there will be no increase in sewer load. The location of the proposed structure is such that no substantial reduction in street sightlines is expected.

Mr. Reidy asked for clarification of the ownership of the abutting lot. Mr. Williams explained that the lot was owned by a trust of himself and other abutters and could not be built on. Mr. Reidy asked how the height of the garage would compare to the existing house. The petitioner answered it would be lower than the house. Mr. Reidy questioned the need to place the garage 6" from the street. The petitioner answered that the steep slope prevented other alternatives.

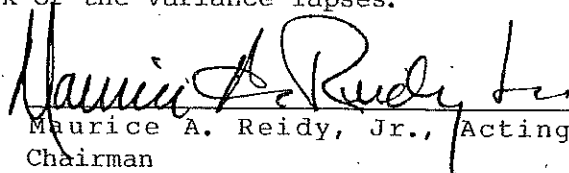
FINDINGS AND DETERMINATIONS


1. A hardship exists in that a steep slope precludes construction within the required setbacks.

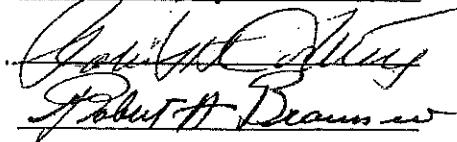
2. No substantial detriment to the public would occur since the site is at the end of a cul de sac and the abutting property is held in a no build trust.
3. Granting the variance would not derogate from the spirit and intent of the zoning Ordinance in that the departure from the Zoning Ordinance requirements would not change the character of the surrounding area.

Accordingly, a motion was made by Mr. Ferguson and duly seconded by Mr. Corbett to grant the petition which motion passed four in favor and one opposed (Mr. Reidy). Therefore, the variance is granted subject to the following conditions:

1. That, the construction of the Garage shall be consistent with the submitted plans.
2. That this variance must be exercised within twelve months from the date of its filing with the City Clerk or the variance lapses.
3. That this variance must be recorded with the Middlesex Registry of Deeds within six months from the date of its filing with the City Clerk or the variance lapses.


Maurice A. Reidy, Jr., Acting
Chairman

Ayes: 



Nay: 

Copies of this decision and all plans referred to in this decision have been filed with Planning and Development Board and the City Clerk.

The decision was filed with the City Clerk on JAN 12 1984

#45-83

The City Clerk certified that all statutory requirements for the issuance of this VARIANCE have been complied with and that 20 days have elapsed since the date of filing of this decision and no appeal, pursuant to Section #17, Chapter 40A has been filed.

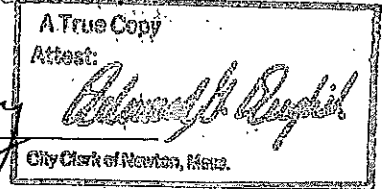
Edward G. English

Edward English, City Clerk

I, Paul Foley, am the Clerk for the Zoning Board of Appeals and the Keeper of its records. This is a true copy of its decision.

Paul E. Foley

Paul Foley





ATTACHMENT B

Land Use

30 Jacobs Terrace

*City of Newton,
Massachusetts*

Land Use

-  Single Family Residential
-  Vacant Land

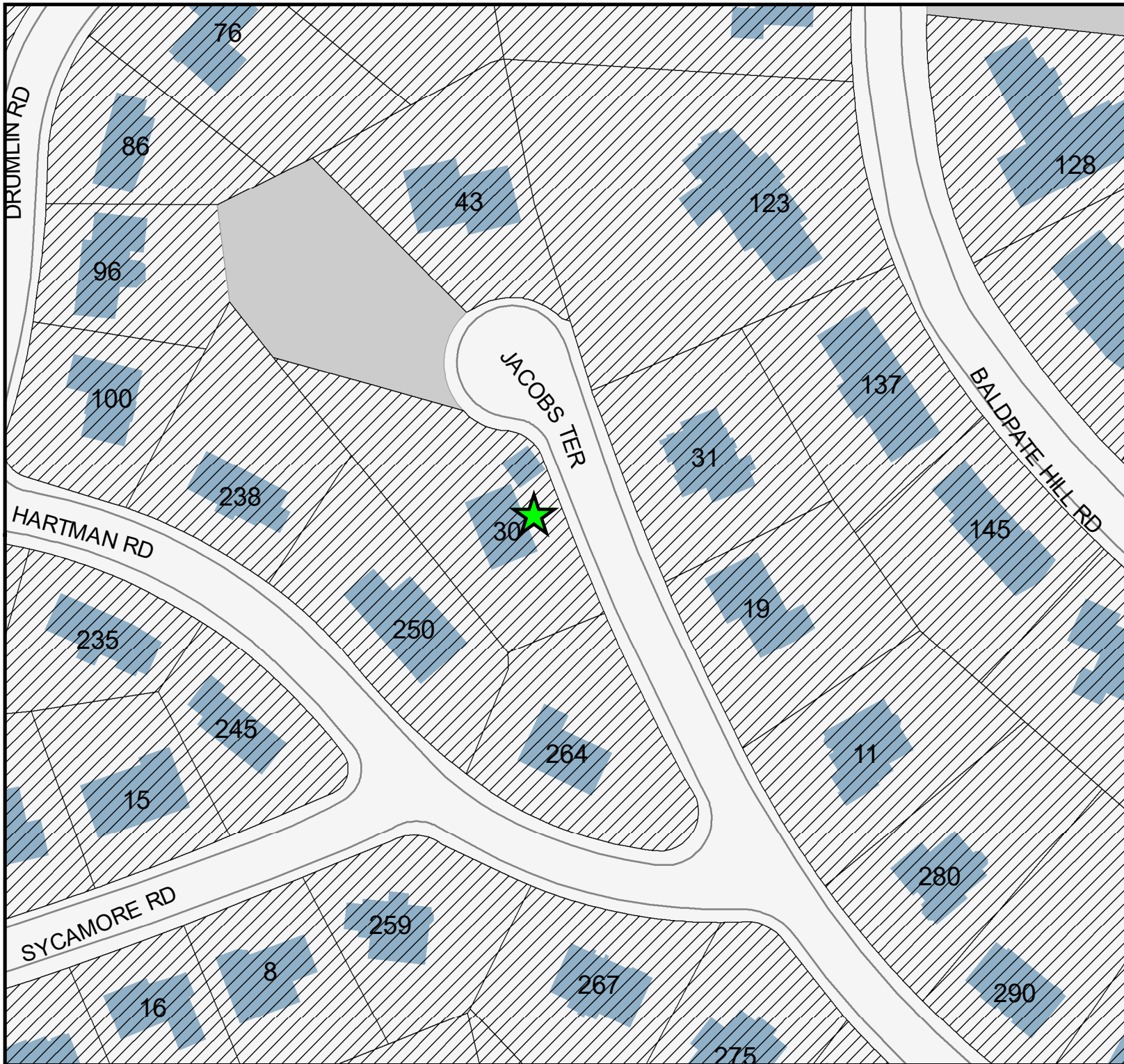


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield

0 12.5 25 50 75 100 125 Feet

Map Date: June 26, 2019





ATTACHMENT 7

Zoning

30 Jacobs Terrace

*City of Newton,
Massachusetts*

Legend

-  Single Residence 1
-  Single Residence 2

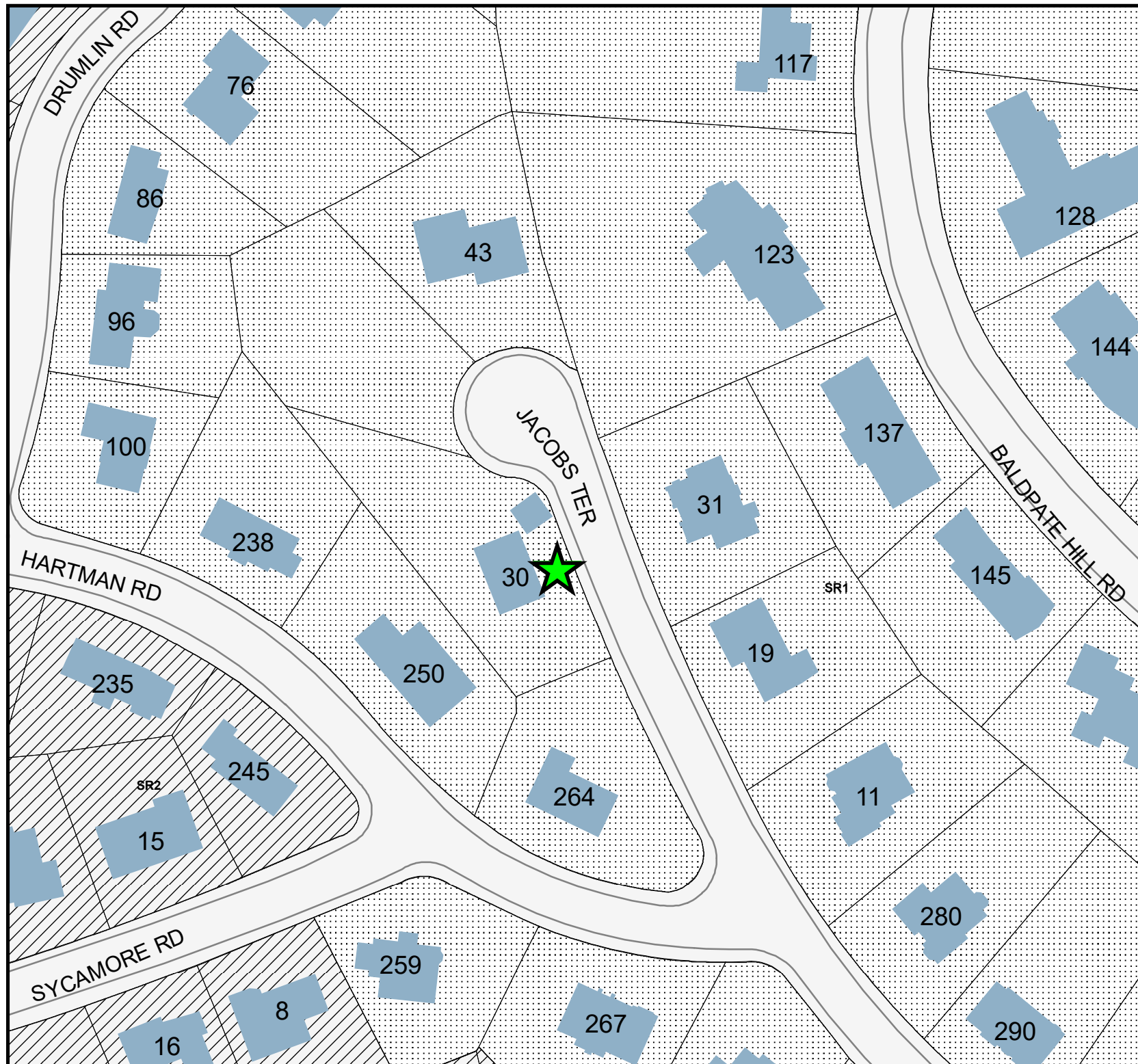


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Feet

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: May 28, 2019

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Richard Levey, Applicant
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: Request to allow parking within the front setback and within five feet of the street

Applicant: Richard Levey	
Site: 30 Jacobs Terrace	SBL: 82025 0023
Zoning: SR1	Lot Area: 18,110 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 30 Jacobs Terrace consists of an 18,110 square foot lot improved with a single-family residence constructed in 1958. The lot is at the curve of a cul de sac and has a significant front to back downward slope. The petitioners seek to construct a parking stall next to an existing two-car garage. The stall will be located within the front setback and within five feet of the street, requiring a special permit.

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

- Zoning Review Application, prepared Richard Levey, applicant, submitted 3/4/2019
- Plan Showing Proposed Curb Cut, signed and stamped by Dennis O'Brien, surveyor, dated 6/19/2018, revised 2/27/2019
- Variance #45-83, dated 1/12/1984

ADMINISTRATIVE DETERMINATIONS:

1. A variance was granted in 1984 allowing for the construction of a two-car garage within the front setback due to the steep topography of the site. The petitioner is seeking to open a second, 12-foot wide curb cut to allow for construction of a parking space adjacent to the garage. Per section 5.1.7.A, no more than one parking stall may be located in the front setback, and no parking may be located within five feet of the street. With two existing stalls within the two-car garage, the proposed parking stall is considered a third stall within the setback. The proposed parking stall is also located on the front lot line. To construct the parking stall as proposed within the front setback and five feet of the street requires a special permit per section 5.1.7.A and 5.1.13.

SR1 Zone	Required	Existing	Proposed
Lot Size	15,000 square feet	18,110 square feet	No change
Frontage	100 feet	180 feet	No change
Setbacks - Principal <ul style="list-style-type: none"> • Front • Side • Rear 	25 feet 12.5 feet 25 feet	29.3 feet >40 feet 20.6 feet	No change No change No change
Setbacks – Accessory <ul style="list-style-type: none"> • Front • Side • Rear 	25 feet 5 feet 5 feet	0.5 feet* >75 feet >60 feet	No change* No change No change
Max Lot Coverage	20%	11.5%	No change
Min. Open Space	65%	85.9%	85%

*Allowed by Variance #45-83

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§5.1.7.A §5.1.13	Request to allow parking within the front setback and five feet of the street	S.P. per §7.3.3

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 a SPECIAL PERMIT/SITE PLAN APPROVAL to allow parking within the front setback and to allow parking within five feet of a street, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Gregory Schwartz:

- Literal compliance with the requirement that no parking stalls be located within five feet of a street (§5.1.7.A) is impracticable due to the grade of the lot. (§5.1.13)
- Literal compliance with the requirement that no parking stalls be located within a front setback (§5.1.7.A) is impracticable due to the grade of the lot. (§5.1.13)

PETITION NUMBER: #200-19

PETITIONER: Richard Levey

LOCATION: 30 Jacobs Terrace, on land known as Section 82, Block 25, Lot 23, containing approximately 18,110 square feet of land

OWNER: Richard Levey

ADDRESS OF OWNER: 30 Jacobs Terrace
Newton, MA 02459

TO BE USED FOR: One parking stall within the front setback and within five feet of a street

CONSTRUCTION: N/A

EXPLANATORY NOTES: §5.1.7.A, §5.1.13 for a parking stall to be located within the front setback and within five feet of a street.

ZONING: Single Residence 1

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. Site plan entitled "Proposed Curb Cut 30 Jacobs Terrace" signed and stamped by Daniel O'Brien, Professional Land Surveyor, Dated June 19, 2018; Revised February 27, 2019
2. No Final Inspection and/or Occupancy Permit for the improvements covered by this Special Permit/Site Plan approval shall be issued until the petitioner has:
 - a. Recorded a certified copy of this Order for the approved Special Permit/Site Plan Approval 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 Department of Inspectional Services, and the Department of Planning and Development a statement by a registered land surveyor or engineer certifying compliance with Condition #1.
 - d. Submitted to the Director of Planning and Development, Commissioner of Inspectional Services and City Engineer, final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.
 - e. 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 Board Order have been constructed to the standards of the City of Newton Engineering Department.