



Setti D. Warren
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Candace Havens
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: November 12, 2013
Land Use Action Date: November 19, 2013
Board of Aldermen Action Date: December 2, 2013
90-Day Expiration Date: December 16, 2013

DATE: November 8, 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 #331-13**, MANOJ & VAISHALI SHINDE, for a SPECIAL PERMIT/SITE PLAN APPROVAL to construct a ±17-foot retaining wall greater than four feet in height within the front setback at 287 KENRICK STREET, Ward 7, NEWTON, on land known as SBL 72, 37, 18, containing approximately 11,141 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 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.



287 Kenrick Street

EXECUTIVE SUMMARY

The property located at 287 Kenrick Street consists of an 11,141 square foot lot improved with a 2½-story single-family residence, which was constructed in 2013. The petitioner is seeking a special permit, after the fact, to allow a retaining wall more than four feet in height in the front yard setback. The retaining wall, which is 64 inches at its highest point, was not constructed under a building permit.

The petitioner received Building Permit No. 12070957, issued on 09/13/2012, which allowed for the construction of a single-family dwelling that met all zoning requirements. The plans approved by the Inspectional Services Department did not include a retaining wall along the west side of the driveway; however, the petitioner built the retaining wall to retain the slope adjacent to the driveway. In doing so, the petitioner constructed a retaining wall that exceeds the dimensional control for retaining walls in the setback. A Temporary Certificate of Occupancy was issued on 9/5/2013, which allowed the petitioner six months to reduce the height of the wall or obtain a special permit. As proposed, the petitioner is not changing any aspects of the retaining wall, but is now seeking to legalize the noncompliant retaining wall as constructed.

The Department of Planning and Development is concerned with the granting of permits after the fact; however, the retaining wall as constructed appears not to cause a hazard or be a nuisance to the immediate abutters. To make the retaining wall compliant, without obtaining a special permit, the petitioner could eliminate a couple layers of block. Though, this would require the complete deconstruction and reconstruction of the retaining wall at a substantial expense to the property owner.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Board should consider whether:

- The retaining wall, which exceeds the four foot height limit for walls in the setback, will not adversely affect the neighborhood.
- The site is an appropriate location for a retaining wall that exceeds the allowable height limit for retaining walls in setbacks.
- The retaining wall, as constructed 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 along Kenrick Street near the intersection with Kenrick Terrace. The house is surrounded by other single-family residences. To the southeast, a number of parcels have been developed as multifamily residences.

The subject property is within an area zoned Single-Residence 2.

B. Site

The property consists of 11,141 square feet of land and is improved with a 2½-story single-family residence and attached garage. The dwelling is accessed by a below-grade driveway constructed of pavers on the south side of the site. Additionally, the properties' topography varies significantly in the rear, but does not change considerably in the front yard.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The property will remain a single-family residence.

B. Building and Site Design

The petitioner recently demolished a house on the property and has constructed a new single-family dwelling. The plans approved for the building permit did not include a retaining wall in this area of the site. In the process of building the new house, the petitioner created the noncompliant situation to retain the slope adjacent to the driveway. Consequently, a retaining wall exceeding the allowable four foot height limit was necessary along the west side of the driveway to retain the slope. The retaining wall spans approximately 17 feet of the 25-foot front yard setback.

The Department of Planning and Development has no particular concern with the requested relief, but is troubled that the petitioner is seeking authorization after the fact for retaining wall. As long as the runoff is sufficiently infiltrated on site, the already constructed retaining wall appears to have no immediate impact on abutting properties.

C. Parking and Circulation

The requested relief will not alter the parking configuration for the property.

D. Landscape Screening

No landscape plan was required for this petition.

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance): The Zoning Review Memorandum (**ATTACHMENT A**) provides an analysis of the proposal with regard to zoning. The petitioner is requesting a Special Permit/Site Plan Approval to legalize an already constructed retaining wall of more than four feet in the front yard setback.

B. Building Review: The Deputy Commissioner of the Inspectional Services Department submitted a Memorandum (**ATTACHMENT B**) analyzing the proposal with regards to the Building Code. According to this review, the petitioner will

need to apply for a building permit for the already constructed retaining wall. In this application, the petitioner will need to show specifically how the wall was constructed and with what materials.

- C. 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 no concerns with the retaining wall. While the driveway does have a catch basin, the Engineering Division is concerned that it will not capture any drainage from the wall as constructed, due to the placement and elevation of the catch basin. Prior to the issuance of a building permit application, the petitioner will need to submit a revised site plan explaining how the infiltration of drainage from behind the wall will be addressed.

IV. ZONING RELIEFS SOUGHT

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

- Section 30-5(b)(4), to allow a retaining wall of more than four feet in the front yard setback.

V. PETITIONERS' RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:

- Attachment A:** Zoning Review Memorandum
Attachment B: Inspectional Services Department - Memorandum
Attachment C: Engineering Review Memorandum
Attachment D: Zoning Map
Attachment E: Land Use Map



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Mayor

Attachment A

City of Newton, Massachusetts
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Candace Havens
Director

ZONING REVIEW MEMORANDUM

Date: October 3, 2013

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Manoj and Vaishali Shinde, applicants
Candace Havens, Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: **Request to build a retaining wall in excess of 4 feet in the setback.**

Applicant: Manoj and Vaishali Shinde	
Site: 287 Kenrick Street	SBL: 72037-0018
Zoning: SR-2	Lot Area: 11,141 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 287 Kenrick Street consists of a 11,141 square foot lot improved with a single-family residence reconstructed in 2013. The construction of the dwelling was done with a building permit, however the final retaining wall exceeds that which was permitted by the permit. The wall exceeds four feet in height within the front setback for approximately 17 feet in length, and therefore requires a special permit per section 30-5(b)(4) of the zoning ordinance.

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

- Zoning Review Application, prepared by William P. Drexel, PE, submitted 9/19/13
- Plot Plan, signed and stamped by William P. Drexel, PE, dated 9/19/13
- Retaining Wall details, signed and stamped by William P. Drexel, PE, dated 9/19/13

ADMINISTRATIVE DETERMINATIONS:

1. Section 30-5(b)(4) requires a special permit for a retaining wall within the setback in excess of 4 feet. At its tallest, the wall reaches 57 inches (4.75 feet), and approximately 17 feet of the wall is within the setback.

SR2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	11,141 square feet	No change
Frontage	80 feet	90 feet	No change
Setbacks for existing structure			
• Front	25 feet	27 feet	No change
• Side	7.5 feet	10 feet	No change
• Rear	15 feet	75 feet	No change
Max. Lot Coverage	30%	15.2%	No change
Open Space	50%	79.2%	No change

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§30-5(b)(4)	Allow a retaining wall of more than 4 feet in the setback	S.P. per §30-24

City of Newton



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Inspectional Services Department

John D. Lojek, Commissioner
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Newton Centre, MA 02459-1449
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Building/Zoning Inspectors
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Zoning Board of Appeals
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Plumbing and Gas Division
(617) 796-1070
Electrical Division
(617) 796-1075
TDD/TTY
(617) 796-1089

David R. Norton – Deputy Commissioner (617) 796-1078
dnorton@newtonma.gov

Memo

Re: 287 Kendrick Street

To Mr. Dan Sexton

Dan,

Per our conversation; the retaining wall that was constructed in the front setback was not inspected at the time of its construction. If the Board decides to grant the Special Permit, the applicant will still be required to submit for a building permit showing specifically how the wall was constructed and with what materials. If you have any questions, please feel free to contact me.

David Norton,

A handwritten signature in black ink, appearing to read "David Norton".

Deputy Commissioner ISD
617-796-1078

**CITY OF NEWTON
ENGINEERING DIVISION**

MEMORANDUM

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

From: John Daghlian, Associate City Engineer

Re: Special Permit – 287 Kendrick Street

Date: October 29, 2013

CC: Lou Taverna, PE City Engineer
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:

*Special Permit Plan 2
287 Kendrick Street
Newton, MA
Prepared by: Northwest Engineering Services
Dated: September 15, 2013*

Executive Summary:

Based on a site visit the proposed wall is already constructed with precast concrete segmental units, (see photo below). The driveway does have a catch basin however; it will not capture any drainage that weeps out from the wall do to the placement and elevation of the basin's grate.

The Engineering Division does not inspect retaining walls since they are considered "structures" and come under the jurisdiction of the Inspectional Services Department.



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 287 Kenrick St.

City of Newton,
Massachusetts

Legend

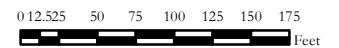
- Building Outlines
- Streets - Pavement Edge
- Single Residence 1
- Single Residence 2
- Property Boundaries

ATTACHMENT D

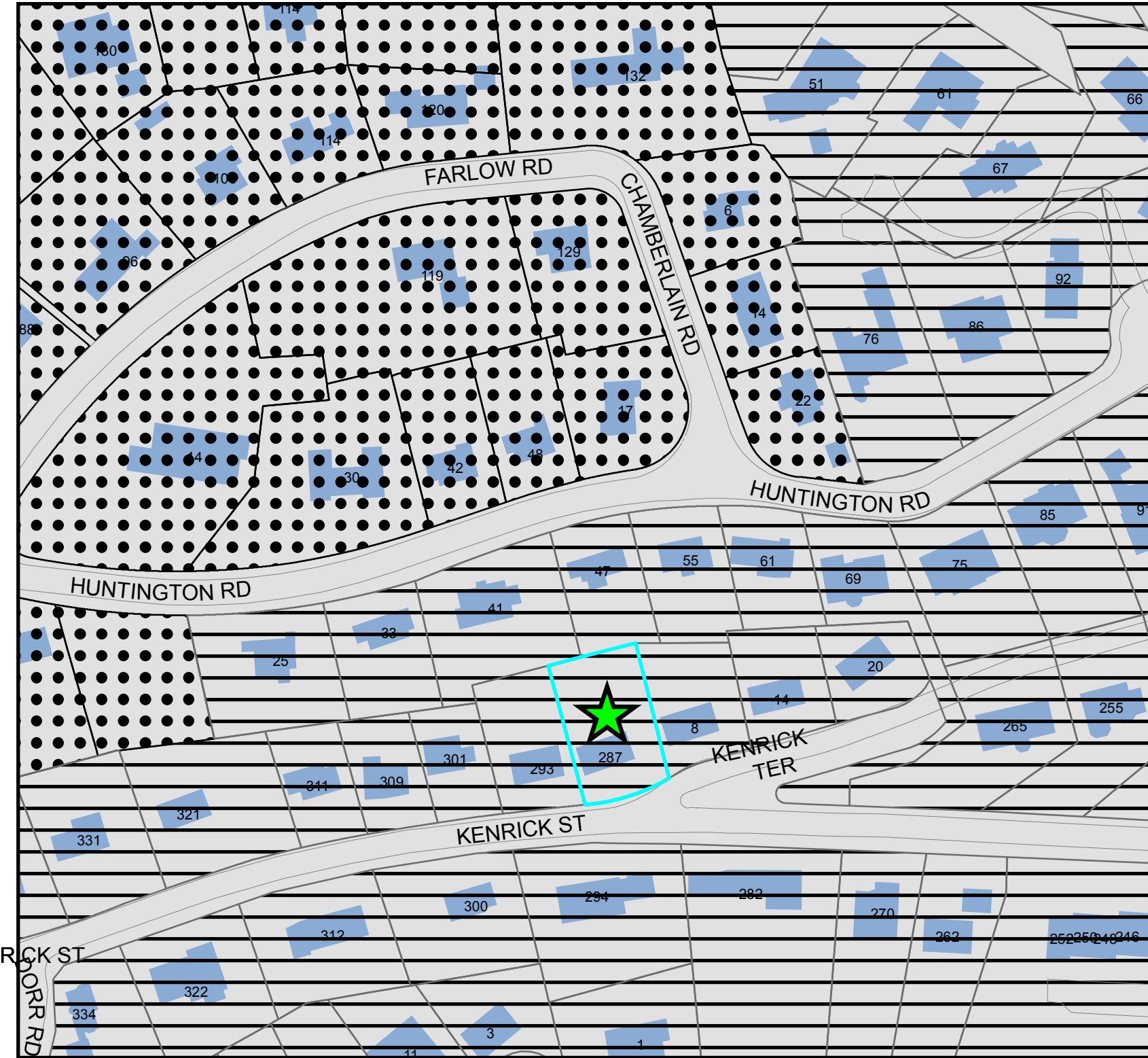


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

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



Map Date: October 18, 2013



Land Use Map 287 Kenrick St.

*City of Newton,
Massachusetts*

Legend

- Building Outlines
- Streets - Pavement Edge

Land Use

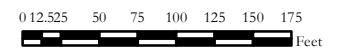
- Single Family Residential
- Multi-Family Residential
- Mixed Use
- Vacant Land
- Property Boundaries

ATTACHMENT E



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Map Date: October 29, 2013

