



Ruthanne Fuller
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Barney S. Heath
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PUBLIC HEARING/WORKING SESSION II MEMORANDUM

DATE: January 29, 2021
MEETING DATE: February 2, 2021
TO: Land Use Committee of the City Council
FROM: Barney S. Heath, Director of Planning and Development
Neil Cronin, Chief Planner for Current Planning
Michael Gleba, Senior Planner
CC: Petitioner

In response to questions raised at the City Council public hearing, the Planning Department is providing the following information for the upcoming public hearing/working session. This information is supplemental to staff analysis previously provided at the Land Use Committee public hearing.

PETITION #314-20

23 Johnson Pl.

Petition #314-20, for SPECIAL PERMIT/SITE PLAN APPROVAL to allow three single-family attached dwelling units in two structures, to allow a retaining wall in excess of 4' and to allow a driveway within ten feet of the side lot line, and parking within 20' at **23 Johnson Place**, Ward 4, Auburndale, on land known as Section 41 Block 7 Lot 14, containing approximately 16,767 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 3.2.4, 5.4.2.B, 6.2.3.B.2, 5.1.7.A, 5.1.13 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

The Land Use Committee (the "Committee") held a public hearing on September 15, 2020 and January 5, 2021 on this petition. This memo reflects additional information addressed to the Planning Department as of January 28, 2021.

Background

The property at 23 Johnson Place consists of an approximately 16,764 square foot lot in a Multi Residence 1 (MR1) zoning district improved with a 2 ½ story, two-family dwelling built circa 1880, an extensive concrete driveway and a disused pool with associated paved deck area. The petitioners initially proposed to create four single-family attached dwellings. This would be done by razing the existing two-family dwelling and constructing the new single-family attached dwellings within two

separate two-unit structures. Each of the four units were proposed to have attached basement level garages.

The petitioners subsequently revised the project to include three single-family attached dwellings in one structure, rather than the previously proposed to four single-family attached dwellings in two structures. The design was also changed so the garages are on the right side of the structure and, rather than the being located on the basement level and requiring an excavated driveway, they are now located on the first floor level, with the garage doors screened by 6 foot privacy fence, reducing the need for the installation of a retaining walls within the right side setback.

Update

Site Plan, Parking and Circulation:

The initial plan entailed the right side of the property being graded and landscaped and the left side being excavated to provide a new below-grade driveway for access to basement-level garages. The current proposal includes three one-car garages (one for each of the three dwellings) on the structure's first-floor level, with the garage doors screened by 6-foot privacy fence, on the right side of the structure.

As shown in a parking plan submitted by the petitioner, three additional required parking stalls would be located within the paved driveway along the right side of the property. As these stalls would be located within 20 feet of the parcel's right-side property line, they require additional relief per §6.2.3.B.2 as identified in the attached revised zoning review memorandum (**Attachment A**). As shown, given the stalls' location on the paved driveway, it appears that additional cars could be accommodated in excess of the required six. The Planning Department recommends that the petitioner revisit the dimensions of the stalls and the width of the driveway, and explore modifying the location and extent of the paving, to simultaneously reduce the likelihood the design would encourage excessive parking and to ensure appropriate sizing and function of the stalls and maneuvering aisle.

The Planning Department also recommends the petitioner clarify the proposed location of any air conditioner units and avoid their location within any setbacks so as to not require relief and avoid their impact on abutting properties.

Landscaping and Lighting:

The petitioner has submitted a landscaping and lighting plan which includes shrubbery and approximately 52 trees of varying heights to be installed around the rear and both sides of the property and around the structure. As indicated, all proposed exterior lighting is "dark sky compliant" and includes a combination of post lights, wall sconces, pendent lighting and landscape lights.

Engineering Review:

The Engineering Division has submitted a memorandum for the present petition (**Attachment B**). Among its comments, Engineering notes that in the event the present petition is granted:

- a) this project would require a construction management plan (CMP);
- b) the structural design of the proposed retain walls will require approval from the Inspectional Service Department, and safety fencing will be required along the top of any portion of the walls greater than 3-feet in height;

- c) an Operations & Maintenance Plan (O&M) for the proposed stormwater system would be required;
- d) installation of new concrete sidewalks granite curbing would be required.

ATTACHMENTS

Attachment A	Zoning Review Memorandum (Revised)
Attachment B	Engineering Division Memorandum
Attachment C	DRAFT Order



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AMENDMENT A

City of Newton, Massachusetts
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Director

ZONING REVIEW MEMORANDUM

Date: January 11, 2021

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official

Cc: Michael Lohin, Creating Homes LLC
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: Request to allow three single-family attached dwellings

Applicant: Michael Lohin	
Site: 23 Johnson Place	SBL: 41007 0014
Zoning: MR1	Lot Area: 16,767 square feet
Current use: Two-family dwelling	Proposed use: Three single-family attached dwellings

BACKGROUND:

The property at 23 Johnson Place consists of 16,764 square feet and is improved with a two-family dwelling built circa 1880 in the MR1 zoning district. The petitioners propose to raze the existing two-family dwelling, and construct three single-family attached dwellings.

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

- Zoning Review Application, prepared by Michael Lohin, dated 3/9/2020, revised 10/14/2020
- Site Plan, signed and stamped by Scott C. Lynch, surveyor, dated 9/4/2019, revised 7/7/2020,
- Architectural Plans Elevations, prepared by Timothy Mulligan, architect, dated 3/7/2020, revised 10/12/2020
- Parking Plan, prepared by S47a architects, dated 1/2/2021
- Landscape and Lighting Plan, prepared by Minglewood Design LLC, dated 1/4/2021

ADMINISTRATIVE DETERMINATIONS:

1. The petitioners propose to raze the existing two-family dwelling and construct three single-family attached dwellings in the Multi Residence 1 zoning district. Per section 3.4.1, a special permit is required to construct attached dwellings in the MR1 district.
2. Per section 3.2.4, single-family attached dwellings require a 25-foot setback on all sides. While the building meets the required 25-foot setbacks, the air conditioning condenser units create a 21.77-foot side setback. Per section 3.2.4, the Council may waive this dimensional requirement if it is found that a literal compliance is impractical due to the nature of the use, or the location, size, frontage, depth, shape or grade of the lot, or that such exceptions would be in the interest of safety or protection of environmental features.
3. Per section 5.4.2.B, a retaining wall of four feet or more in a setback requires a special permit. The petitioner proposes retaining walls around the perimeter of the property with four feet in height at the rear lot line, requiring a special permit
4. The petitioners propose to construct a driveway along the northeastern property boundary with three parallel parking stalls located on the lot line. Per sections 5.1.7.A and 6.2.3.B.2, no parking space may be located within 20 feet of a boundary line and no driveway may locate within 10 feet of a side or rear lot line. A special permit per sections 5.1.13 and 6.2.3.B.2 is required to allow a driveway within 10 feet of the side lot line and to allow parking within 20 feet.

MR1 Zone	Required	Existing	Proposed
Lot Size	15,000 square feet	16,767 square feet	No change
Frontage	80 feet	98 feet	No change
Setbacks			
• Front	25 feet	49.5 feet	25.3 feet
• Side	25 feet	10 feet	25.1 feet
• Side	25 feet	NA	26.1 feet
• Rear	25 feet	76.2 feet	25.2 feet
Building Height	36 feet	NA	30.6 feet
Max Number of Stories	2.5 (3 by special permit)	2.5	2.5
Lot Coverage	25%	9.9%	24.8%
Open Space	50%	81.5%	53.5%
Lot Area Per Unit	4,000 square feet	8,384 square feet	5,589 square feet

See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance	Site	Action Required
§3.2.4	To allow attached single-family dwellings	S.P. per §7.3.3
§3.2.4	To allow a reduced side setback	S.P. per §7.3.3

§5.4.2.B	To allow a retaining wall in excess of 4 feet	S.P. per §7.3.3
§6.2.3.B.2 §5.1.7.A §5.1.13	To allow a driveway within 10 feet of the side lot line and parking within 20 feet.	S.P. per §7.3.3

AMENDMENT B

CITY OF NEWTON Department of Public Works ENGINEERING DIVISION

MEMORANDUM

To: Council Rick Lipof, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – 23 Johnson Place

Date: January 4, 2021

CC: Barney Heath, Director of Planning
Jennifer Caira, Deputy Director
Lou Taverna, PE City Engineer
Nadia Khan, Committee Clerk
Neil Cronin, Chief Planner
Michael Gleba, Sr. Planner

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

Proposed Construction
23 Johnson Place Newton, MA
Prepared by: Hayes & Associates
Dated: July 15, 2020
Revised: 11-12-2020

Executive Summary:

This application entails the demolition of the existing building and the erection of one building having a total of 3-units. The site is 16,767 square feet [0.38 acre] with 104-feet of frontage, and surrounded by residential homes along the north, east, and westerly property lines. The high point of the lot is at elevation 62-feet near Johnson Place, and slopes gently towards rear of the house then slopes downward to a low point of elevation 48-feet at approximately 1:1 slope.

The existing driveway will be removed and landscaped. A new driveway will be provided on the right side of the proposed building to provide access to the three garages.

A segmental block retaining wall is proposed along the rear property line approximately 4-feet high and has two 90-degree turns towards the front of the lot. On the west side the wall extends approximately 45-feet with a height of 5.5-feet. Along the east side the wall extends approximately 45-feet with varying heights from 4' to 8'-8". All walls over 3-feet in height will require a safety fence along the top of the wall. The structural design of these wall will need approval from Inspectional Service Department.

The engineer of record has designed a stormwater collection and infiltration system to capture and infiltrate all the runoff from the new development for the City's 100-year storm event. An Operations & Maintenance Plan is needed for the long-term performance of the stormwater system which should include intervals for: inspections, cleaning, and sweeping of the driveway.

New water & sanitary sewer services will be provided for the new units. Upon completion and installation of all utilities new concrete sidewalks granite curbing shall be installed.

Construction Management:

1. A construction management plan is needed for this project. At a minimum, it must address the following: staging site for construction materials and equipment, parking for construction workers vehicles, phasing of the project with anticipated completion dates and milestones, safety precautions, emergency contact personnel of the general contractor. It shall also address anticipated dewatering during construction, site safety & stability, siltation & dust control, and noise impact to abutters.
2. Stabilized driveway construction entrance(s) will be required for the duration of the construction which will provide a truck wash to prevent tracking of mud and silt onto City streets.
3. Catch basins within and downstream of the construction zone will be required to have siltation control installed for the duration of the project and must be identified on the site plan.

Drainage:

1. An Operations and Maintenance (O&M) plan for the long-term maintenance of the proposed stormwater management facilities needs to be drafted and submitted for review. Once approved the O&M must be adopted by the applicant/property owner, 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, trench drains, and pipe(s) are the sole responsibility of the property owner(s).

Environmental:

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

Sanitary Sewer & Domestic Water Service(s):

1. Existing water and sewer services to building(s) shall cut and capped at the respective mains and completely removed from the main(s) and its entire length and properly backfilled. The Engineering Division must inspect and approve this work, failure to having this work inspected will result in delay of issuance of the new Utility Connection or issuance of a Certificate of Occupancy.
2. All new sewer service(s) shall be pressure tested in accordance to the City Construction Specifications & Standards and inspected via Closed Circuit Television CCTV inspection after installation is completed. A copy of the video inspection and written report shall be submitted to the City Engineer or his representative. The sewer service will NOT be accepted until the two methods of inspection are completed AND witnessed by a representative of the Engineering Division. A Certificate of Occupancy will not be recommended until these tests are completed to the satisfaction of the City Engineer.
3. All sanitary sewer manhole(s) shall be vacuum tested in accordance to the City's Construction Standards & Specifications, the sewer service and manhole will NOT be accepted until the manhole(s) pass the testing requirements. All testing MUST be witnessed by a representative of the Engineering Division. A Certificate of Occupancy will not be recommended until this test is completed to the satisfaction of the City Engineer and a written report of the test results is submitted to the City Engineer.
4. With the exception of natural gas service(s), all utility trenches within the right of way shall be backfilled with Control Density Fill (CDF) Excavatable Type I-E up to within 18-inches of the asphalt binder level, after which Dense Grade Gravel compacted to 95 %

Proctor Testing shall be placed over the CDF. Details of this requirement is the Engineering Division website "Standard Construction Details".

5. All water services shall be chlorinated, and pressure tested in accordance to the AWWA and the City Construction Standards & Specifications prior to coming online. These tests MUST be witnessed by a representative of the Engineering Division.
6. Approval of the final configurations of the water service(s) shall be determined by the Utilities Division, the engineer of record shall submit a plan to the Director of Utilities for approval.

General:

1. All trench excavation shall comply with Massachusetts General Law Chapter 82A, Trench Excavation Safety Requirements, and OSHA Standards to protect the general public from unauthorized access to unattended trenches or excavations. Trench Excavation Permit is required prior to any construction. This applies to all trenches on public and private property. *This note shall be incorporated onto the final plans.*
2. All tree removal shall comply with the City's Tree Ordinance.
3. The contractor of record 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 services 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 Engineer's Inspector has given their approval. *This note shall be incorporated onto the final plans.*
4. The applicant shall apply for a Building Permit with the Inspectional Services Department prior to ANY construction.
5. Before requesting a Certificate of Occupancy, an As Built plan shall be submitted to the Engineering Division in both digital and paper format. The plan shall show all utilities and final grades, any easements and improvements and limits of restoration. The plan shall include profiles of the various new utilities including but not limited to rim & invert elevations (City of Newton Datum), slopes of pipes, pipe materials, and swing ties from permanent building corners. The as built shall be stamped by both a Massachusetts Registered Professional Engineer and Registered Professional Land Surveyor. Once the As built plan is received the Engineering Division shall perform a final site inspection and then make a determination to issue a Certificate of Occupancy. *This note shall be incorporated onto the final plans.*

6. All site work including trench restoration, sidewalk, curb ,apron and loam border (where applicable) shall be completed before a Certificate of Occupancy is issued. *This note shall be incorporated onto the final plans.*
7. The contractor of record shall contact the Newton Police Department 48-hours in advanced and arrange for Police Detail to help residents and commuters navigate around the construction zone.
8. If any changes from the final approved design plan that are required due to unforeseen site conditions, the contractor of record shall contact the design engineer of record and submit revised design and stamped full scale plans for review and approval prior to continuing with construction.
9. *The engineer of record shall add the following attestation to the plans when applying for a building permit:*

I certify that the construction so shown was inspected prior to backfill and that all work conforms with the Approved Plan and meets or exceeds the City of Newton Construction Standards.

Signature

Note: If the plans are updated it is the responsibility of the applicant to provide all City Departments [ISD, Conservation Commission, Planning 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 at 617-796-1023.

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 the following SPECIAL PERMIT/SITE PLAN APPROVAL to allow single-family attached dwellings in the Multi Residence 1 zoning district (§3.2.4); allow a reduced side setback (§3.2.4); allow a retaining wall in excess of four feet in height in a setback (§5.4.2); and allow a driveway within 10 feet of the side lot line (§6.2.3.B.2), and parking spaces within 20 feet of a boundary line (§6.2.3.B.2), as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

1. The site in a Multi-Residence 1 (MR1) district is an appropriate location for the proposed three single-family attached dwellings in one structure as designed, including a reduced side setback and retaining walls exceeding four feet in height within setbacks, as it is located in a neighborhood with a mix of single-, two- and multi- family dwellings (§7.3.3.C.1);
2. The proposed three single-family attached dwellings in one structure as designed, including a reduced side setback and retaining walls exceeding four feet in height within setbacks, will not adversely affect the neighborhood (§7.3.3.C.2);
3. The proposed three single-family attached dwellings in one structure as designed, including a reduced side setback and retaining walls exceeding four feet in height within setbacks, will create a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4);
5. Granting an exception to the provisions of Sec 5.1.7.A requiring that no parking stall shall be located within required setback distances from a street and side lot line is appropriate as literal compliance is impracticable due to the size and width of the lot.
6. Granting an exception to the provisions of Sec 6.2.3.B.2 requiring that no parking space shall be located within 20 feet of a boundary line is appropriate as literal compliance is impractical due to the size of the lot.
7. Granting an exception to the provisions of Sec 6.2.3.B.2 requiring that no driveway shall be located within 10 feet of a side lot line is appropriate as literal compliance is impractical due to the size of the lot.

PETITION NUMBER: #314-20

PETITIONER: Charles Dabritz

LOCATION: 23 Johnson Place, Ward 4, Auburndale, on land known as Section 41 Block 7 Lot 14, containing 16,767 sq. ft. of land

OWNER: Charles Dabritz

ADDRESS OF OWNER: 368 Union Street
Ashland, MA 01721

TO BE USED FOR: Four single-family attached dwellings in two structures

EXPLANATORY NOTES: Special permit as per §7.3.3 to:

- allow single-family attached dwellings in an MR1 zoning district (§3.2.4)
- allow a retaining wall in excess of 4 feet (§5.4.2.B)
- allow a driveway within 10 feet of the side lot line (§6.2.3.B.2)
- allow parking within 20 feet of a boundary line (§6.2.3.B.2)

ZONING: Multi-Residence 1 (MR1) 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. Site plans, entitled “23 Johnson Place, Newton, MA 02466,” prepared by Hayes & Associates, Inc., signed and stamped by Lawrence Hayes, Professional Engineer, dated September 3, 2020, consisting of the following sheets:
 - i. “Proposed Construction” (Sheet 1 of 4), as revised through November 12, 2020
 - ii. “Existing & Proposed Grading” (Sheet 2 of 4), as revised through November 12, 2020
 - iii. “Proposed Construction” (detail sheet)(Sheet 3 of 4), as revised as through November 12, 2020
 - iv. “Proposed Construction” (detail sheet)(Sheet 4 of 4), as revised through November 12, 2020
 - b. Architectural plans entitled “Johnson Place Residences, 23 Johnson Place Newton, MA,” prepared by Studio 47 Architects, Inc., signed and stamped by Timothy B. Mulligan, Registered Architect, dated October 12, 2020, consisting of the following sheets:

- i. 1st & 2nd Floor Plans (A101)
 - ii. Basement & Roof Plans (A102)
 - iii. East (*note*: North)& South Elevations (A200)
 - iv. West & East Elevations (A201)
 - v. Retaining Wall Elevations (A203)
 - c. A plan entitled “Johnson Place Residences, 23 Johnson Place Newton, MA, Site/Parking Plan” (A100), prepared by Studio 47 Architects, Inc., dated January 2, 2021
 - d. A plan entitled “23 Johnson Place, Newton, MA- Landscape and Lighting Plan” (L.1), prepared by Minglewood, LLC, dated January 4, 2021.
2. The petitioner shall comply with the Tree Preservation Ordinance.
3. No Building Permit shall be issued pursuant to this Special Permit/Site Plan Approval 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. Provided a final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
 - d. 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.
 - e. Provided a Final Landscape Plan showing compliance with the Tree Preservation Ordinance and all new plantings, for review and approval by the Director of Planning and Development.
 - f. Provided a final Operations and Maintenance Plan (O&M) for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be adopted by applicant, incorporated into the deeds; and recorded at the Registry of Deeds for the Southern District of Middlesex County. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.
 - g. Obtained a written statement from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1 including all dimensional requirements.
4. Prior to the issuance of any building permit pursuant to this Special Permit/Site Plan Approval, the petitioner shall submit a Construction Management Plan for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, and the City Engineer. The Construction Management Plan shall be consistent and not in conflict with relevant conditions of this Order and shall include, but not be limited to, the following provisions:
 - a. staging site for construction equipment,

- b. construction materials,
 - c. parking of construction workers' vehicles,
 - d. phasing of the project with anticipated completion dates and milestones,
 - e. safety precautions,
 - f. emergency contact personnel of contractor
 - g. anticipated dewatering during construction,
 - h. site safety & stability, and
 - i. impacts to abutting properties.
5. Hours of construction: construction shall be limited to between the hours of 7:00 a.m. and 7:00 p.m. on weekdays, and between the hours of 8:00 a.m. and 7:00 p.m. on Saturdays. No construction is permitted on Sundays or holidays except in emergencies, and only with prior approval from the Commissioner of Inspectional Services.
6. No Final Inspection/Occupancy Permit for the use covered by this Special Permit/Site Plan Approval shall be issued until the petitioner has:
- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect or engineer certifying compliance with Condition #1.
 - b. Submitted to the Department of Inspectional Services and the Department of Planning and Development a final as-built survey plan in paper and digital format.
 - c. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division certifying that the final site construction details have been constructed to the standards of the City of Newton Engineering Division.
 - d. Filed with the City Clerk and the Commissioner of Inspectional Services, a statement from the Planning Department approving final location, number and type of plant materials and final landscape features.
7. Notwithstanding the provisions of Condition #7 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 provided 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.
8. All landscaping shall be maintained in good condition and shall be replaced with similar material as necessary.