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PUBLIC HEARING/WORKING SESSION II MEMORANDUM

DATE: October 22, 2021
MEETING DATE: October 26, 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 #427-20

41 Washington Street

Petition #427-20, for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a rear lot subdivision to create two lots, abandon the two-family use in the existing structure and construct a single-family on the rear 12,000 sq. ft. lot, extending the existing non-conforming side setback at **41 Washington Street**, Ward 1, Newton, on land known as Section 71 Block 29 Lot 07, containing approximately 25,902 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: 7.3, 7.4, 3.1.5, 3.1.10, 3.1.3, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

The Land Use Committee (the "Committee") held a public hearing on December 1, 2020 and April 13, 2021, on this petition. This memo reflects additional information addressed to the Planning Department as of October 21, 2021.

Background

The property at 41 Washington Street consists of 25,964 square foot lot in a Single Residence 3 (SR3) zoning district improved with a 5,167 square foot, 2 ½ story, two-family dwelling constructed circa 1891. The dwelling is nonconforming in two aspects: (1) the use is a two-family use in a SR3 district; and (2) the structure has a side setback of 4.8 feet on the northern property boundary, where 7.5 feet is the minimum allowed.

The applicant proposes to create a rear lot subdivision. A new front lot measuring 13,964 square feet would be created for the existing dwelling which would be converted back to a single-family use. A new 12,000 square foot lot intended for the construction of a 2,880 square foot, 2 ½ story single-family dwelling would be created in the rear.

Per the Newton Zoning Ordinance (NZO) rear lot subdivisions are only allowed via special permit. Further, as the subdivision would alter the dimensions of the property as well as impose “new lot” dimensional requirements on the resulting lots, the existing dwelling’s nonconforming side setback would be extended, also requiring a special permit.

UPDATE

July 29th Neighborhood Meeting

As discussed at the previous public hearing, the petitioner has reported that that it hosted a neighborhood meeting on July 29, 2021 to discuss neighbors’ privacy concerns, proposed landscaping, and site plan features to address concerns regarding possible flooding concerns (the plans discussed at the meeting are those dated June 30, 2021). The petitioner has also indicated that pursuant to comments at that meeting it has agreed to provide a back-up battery power system for the proposed pumps.

Landscaping

The petitioner’s current landscaping plan, as revised through April 23, 2021 includes extensive vegetive screening of the proposed rear lot (including along the lot line it would share with the proposed front lot). Forty-seven trees of several types which expected measure 8-10 feet in height upon maturity would be installed, measuring 144.5 caliper inches in aggregate. Several existing trees would be preserved, and a solid board fence would be installed along the proposed rear lot’s rear and right property lines.

Engineering

In response to the Engineering Division’s April 12, 2021 memorandum (**Attachment A**) in which it noted some ‘minor housekeeping’ items that would need to be addressed at the building permit stage, the petitioner has revised utility and drainage plans to address the issues Engineering identified. In the event a special permit is granted, per Engineering’s April memo these revisions would be appropriately reviewed before the issuance of a building permit.

Lot merger and side setback questions

At the last public hearing, members of the public and committee members raised questions concerning the application of the merger doctrine to this project. The Planning Department has confirmed with the Law Department that the merger doctrine is inapplicable. The Law Department has provided the following explanation:

- The basic rule of the merger doctrine is that when adjacent undersized lots are held in common ownership where at least one of the lots is unimproved with a principal structure, they will be treated as a single lot for zoning purposes so as to minimize nonconformities. Put another way, a lot that is nonconforming as to lot size or frontage will lose its nonconforming protections if it can

achieve dimensional compliance by being combined with adjoining land held in common ownership.

- In response to the question of whether 41 Washington Street merged with 47 Washington Street for the purposes of zoning, the answer is no because 41 Washington is not an undersized lot. The merger doctrine is equally inapplicable because it does not apply when adjoining lots are both improved with a dwelling.
- In response to the question of whether the front and rear lots that would be created by this proposed rear lot subdivision will merge back into a single lot under the merger doctrine, the answer is no. If this rear lot subdivision is approved by special permit, both resulting lots will be in dimensional compliance with the zoning ordinances as to lot size by the granting of the special permit and therefore no dimensional nonconformities would be cured by merging them back together.

Questions were also raised concerning the existing nonconforming side setback. Planning has reviewed with the Law Department and Chief Zoning Code Official, who both confirmed that this does not preclude issuance of a special permit for a rear lot subdivision. The existing dwelling is not being altered and the side lot line is not changing. While the front lot would be subject to new lot dimensional controls after the proposed subdivision (which is the only reason the nonconforming side set back is technically increasing), there is no basis for the property to lose its nonconforming protection as to side setback and compliance with new lot dimensional controls is not required prior to the subdivision. This is consistent with how the City has interpreted and applied the rear lot subdivision requirements.

ATTACHMENT(S)

Attachment A Engineering Division memorandum (dated April 12, 2021)
Attachment B DRAFT Council Order

ATTACHMENT A

CITY OF NEWTON
Department of Public Works
ENGINEERING DIVISION

MEMORANDUM

To: Council Rick Lipof, Land Use Committee Chairman

From: John Daghljan, Associate City Engineer

Re: Special Permit – 41 Washington Street

Date: April 12, 2021

CC: Barney Heath, Director of Planning
Jennifer Caira, Chief Planner
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:

*Site Plan of Land in Newton, MA
41 Washington Street
Prepared by Everett M. Brooks Company
Dated: July 16, 2020
Revised: 3/19/2021*

Executive Summary:

The City Ordinances only regulate surface runoff which the design addresses. The engineer of record has designed an interceptor (*french*) drain approximately 30” deep along the lower elevation of the site; this was added to address groundwater concerns of the neighborhood. The interceptor drain will be connected to a pump system that will eventually discharge to the City’s drainage system.

There are some minor housekeep items that need to be addressed prior to applying for a Building Permit should this application be approved. I will require the depth of the interceptor drain be extended to a depth of six feet, this is based on the new soil logs provided. The detail for the interceptor drain does not show the proposed impervious barrier that will be required on the downstream side of the trench, additionally Engineering will require that the top of the interceptor drain be brought to finished grade

with the crushed stone exposed; this will allow surface runoff during freeze/thaw cycles to penetrate into the trench and be removed from the site. A standby generator for the pump system will be required to ensure un-interrupted power supply. The proposed interceptor drain should be extended an additional 25 feet northly. Finally, the piping configuration needs to be slightly tweaked. The drainage report had a minor issue that needs to be corrected for a final design. The Operations and Maintenance plan (3/17/2021) is acceptable and must be recorded at the Registry of Deeds prior to applying for a Building Permit.

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).

Hydraulic calculations of the on-site pipe network will be needed. As well as capacity calculation of the City drainage system for the overflow connection. Pre & post Closed Circuit Television (CCTV) inspection of the City's drainage system will be required for the overflow connection.

If the special permit is approved an Approval Not Required (ANR) plan will be needed in accordance with Massachusetts General Laws Chapter 41 Section 81P requiring the single lot being subdivided into two lots, the creating of an ANR should be part of the Board Order requirement.

Construction Management:

1. Prior to applying for a Building Permit the applicant shall develop & submit a plan to address dewatering during construction, it needs to explain how the dewater will take place and how it will be controlled on site.
2. A construction management plan is needed for this project. At a minimum, it must address the following: staging site for construction equipment, construction materials, parking of construction worker's vehicles, phasing of the project with anticipated completion dates and milestones, safety precautions, emergency contact personnel of contractor. It shall also address any anticipated dewatering during construction, site safety & stability, and impact to abutting properties.
3. Stabilized driveway entrances are needed during construction which will provide a tire wash and mud removal to ensure City streets are kept clean.

Water:

1. Fire flow testing is required for the proposed fire suppression system. The applicant must coordinate this test with both the Newton Fire Department and the Utilities Division; representatives of each department shall witness the testing,

test results shall be submitted in a write report. Hydraulic calculation shall be submitted to the Newton Fire Department for approval.

2. All water connections shall be chlorinated & pressure tested in accordance to AWWA and the City of Newton Construction Standards and Specifications prior to opening the connection to existing pipes.
3. Approval of the final configuration of the water service(s) shall be determined by the Utilities Division, the engineer of record should submit a plan to the Director of Utilities for approval

General:

1. 5 Year Moratorium – if at time of construction of this project the roadway is under a 5-year moratorium, the roadway must be milled and paved gutter-to-gutter for a distance of 25 feet in each direction from the outermost trenches.
2. 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.*
3. All tree removal shall comply with the City’s Tree Ordinance.
4. 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.*
5. The applicant will have to apply for Street Opening, Sidewalk Crossing, and Utilities Connecting permits with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*
6. The applicant will have to apply for a Building Permits with the Department of Inspectional Service prior to any construction.
7. 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, improvements and limits of restoration work. The plan shall also include profiles of the various new utilities, indicating rim & invert elevations, slopes of pipes, pipe material,

and swing ties from permanent building corners. ***This note must be incorporated onto the final contract plans.***

8. All site work including trench restoration must be completed before a Certificate of Occupancy is issued. *This note must be incorporated onto the site plan.*
9. If any changes from the original approved design plan that are required due to unforeseen site conditions, the engineer of record shall submit a revised design & stamped and submitted for review and approval prior to continuing construction.

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.

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the 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 the extension of a nonconforming side setback, a rear lot subdivision by allowing the frontage of the rear lot to be measured along the rear lot line of the lot in front, and the construction of a single family dwelling on the rear lot, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

1. The site is an appropriate location for the proposed use and structures as the proposed new front and rear lots will be used as single-family dwellings in a Single Residence 3 (SR3) district. (§7.3.3.C.1)
2. As single-family dwellings in a Single Residence 3 (SR3) district, the proposed residential use as will not adversely affect the neighborhood. (§7.3.3.C.2)
3. The proposed shared 20-foot-wide driveway will provide adequate sight lines and there will be no 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. At 35.9 feet the height of the proposed rear dwelling will be comparable to the respective average height of abutting residential buildings and any structures used for accessory purposes. (§7.3.4.B.1)
6. The two proposed single-family dwellings are designed in such a manner that their massing and scale will be in character and consistent with adjacent existing and allowed residential structures in the surrounding Single Residence 3 (SR3) zoning district. (§7.3.4.B.2)
7. Differences in the relative dwelling heights between the proposed rear dwelling and structures on abutting properties are largely reflect the neighborhood's topography. (§7.3.4.B.3)
8. The proposed landscape plan includes the extensive installation of trees and other

vegetation which will largely screen the new dwellings from abutting properties.
(§7.3.4.B.4)

9. The common driveway along the south east property line is adequate for vehicular access.
(§7.3.4.B.5)
10. The location of structures used for accessory purposes or mechanical equipment, including but not limited to free-standing air conditioning units or compressors, on the new rear lot or on abutting lots will not negatively impact either the proposed rear lot development or abutting property (§7.3.4.B.7);
11. The siting of the existing front dwelling, and that of the proposed rear dwelling structure, are appropriate given the scales and locations of abutting residential structures.
(§7.3.4.B.8)
12. The proposed lighting will be residential in character and will not impact abutting properties. (§7.3.4.B.9)
13. The proposed extension of the nonconforming side setback is not substantially more detrimental than the existing setback is to the neighborhood (§3.1.3 and §7.8.2.C.2).

PETITION NUMBER: #427-20

PETITIONERS: Joseph & Sheila Keegan

LOCATION: 67 Dunboy Street, Brighton, MA 02134, on land known as Section 79 Block 29 Lot 7, containing approximately 25,964 square feet of land

OWNER: Joseph & Sheila Keegan

ADDRESS OF OWNER: 67 Dunboy Street
Brighton, MA 02134

TO BE USED FOR: Rear lot subdivision and construction of two new single-family dwellings, one on the resulting 13,964 square foot front lot, the other on the resulting 12,000 square foot rear lot.

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: Special Permit per §7.3.3 to:

- allow a rear-lot subdivision (§3.1.5, §3.1.10)
- extend a nonconforming side setback (§3.1.3, §7.8.2.C.2)

ZONING: Single Residence 3 (SR3) 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. A plan entitled "Area Wide Plan of Land in Newton, MA, 41 Washington Street, to accompany the petition of Joseph A. & Shiela (*sic*) A. Keegan," prepared by Everett M. Brooks Co., signed and stamped by Bruce Bradford, Professional Land Surveyor dated February 4, 2021
 - b. A set of plans plan entitled "Site Plan of Land in Newton, MA, 41 Washington Street," prepared by Everett M. Brooks Co., signed and stamped by Michael S. Kosmo, Registered Professional Engineer and Bruce Bradford, Professional Land Surveyor, dated July 16, 2020, including the following sheets:
 - i. Existing conditions and proposed layout (Sheet 1 of 3) (as revised through February 4, 2021)
 - ii. Site Plan of Land in Newton, MA- 41 Washington Street (showing utilities & grading) (Sheet 2 of 4) (as revised through June 30, 2021)
 - iii. Site Plan of Land in Newton, MA (showing details) (Sheet 3 of 4) (as revised through June 30, 2021)
 - iv. Site Plan of Land in Newton, MA- 41 Washington Street (showing details) (Sheet 4 of 4) (as revised through April 12, 2021)
 - c. A set of architectural plans entitled "41 Washington St, Newton MA 02458," prepared by SB Architects, signed and stamped by Phillip H. Bakalchuk, Registered Architect, dated February 5, 2021, including the following sheets:
 - i. "Cover Page/Drawing List" (Sheet A0);
 - ii. Site Plan (Sheet C1)
 - iii. Floor Plans - New House (Sheet A1)
 - iv. Elevations - New House (Sheet A2)
 - v. Floor Plan + Elevations - New Deck W/ Parking Below (Sheet A3)
 - vi. Zoning Area Plans / FAR - New House (Sheet A4)
 - d. A landscape plan entitled "41 Washington Street, Newton, Massachusetts," prepared by Verdant Landscape Architecture, signed and stamped by Blair C. Hines, Registered Landscape Architect, as revised through April 23, 2021 (L1)
 - e. A plan entitled "41 Washington Street, Newton, MA, Tree Protection," prepared by Verdant Landscape Architecture, signed and stamped by Blair C. Hines, Registered Landscape Architect, dated **November 2020** (L2)
 - f. A document entitled "Tree Mitigation Plan," prepared by Verdant Landscape Architects, Inc., signed by Blair Hines, Principal, Registered Landscape Architect, dated **November 5, 2020**
2. All utilities shall be located underground from the property line.
3. All lighting fixtures shall be residential in scale.

4. Prior to the issuance of any Building Permit, the petitioner shall provide 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 Middlesex Registry of Deeds. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.
5. Prior to the issuance of any Building Permit, the petitioner shall provide a final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
6. Prior to the issuance of any Building Permits, the petitioner shall provide a Final Landscape Plan showing all new plantings, for review and approval by the Director of Planning and Development.
7. The Petitioner shall do the following to remediate pest and rodent activity:
 - Prior to issuance of any demolition or building permit, the petitioner shall hire a licensed pest control operator (the "Operator") to assess the property for pest and rodent activity and develop and implement a pest remediation action plan (the "Plan") to eliminate the activity and prevent off-site migration. The Plan shall include the target pest, the methods for eliminating activity, and plan for preventing pest migration off-site during demolition and construction.
 - A copy of the Plan shall be submitted to the Inspectional Services Department, and the Health and Human Services Department for review and approval prior to issuance of any demolition or building permit. Copy of such approvals shall be provided to the Department of Planning and Development.
 - The Operator shall implement the approved remediation action plan, monitor the site for the duration of the project, and take whatever action the Operator deems necessary to control pest infestation and migration. The Operator shall maintain a written record of all pest control measures performed within the subject property and shall provide progress reports to Inspectional Services Department and the Health and Human Services Department upon request.
 - Prior to issuance of the certificate of occupancy, the Operator shall file a final report with the Department of Planning and Development, Inspectional Services Department and the Health and Human Services Department summarizing the methods used, whether off-site migration occurred, the frequency and dates of service, and a post-construction site assessment.
8. Prior to the issuance of any Building Permit, the petitioner shall submit a final Construction Management Plan (CMP) to the Commissioner of Inspectional Services, the Director of Urban Forestry, the Engineering Division of Public Works, the Director of the Department of Planning and Development, the Newton Fire Department and Newton Police Department, which plan shall include at a minimum:
 - a. 24-hour contact information for the general contractor of the project.
 - b. Hours of construction: construction shall be limited to between the hours of 7:00 a.m. and 5:00 p.m. on weekdays, and between the hours of 8:00 a.m. and 5:00 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.
- c. Proposed methods for dust control including, but not limited to: covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
 - d. A tree preservation plan to define the proposed method for protection of existing trees to remain on the site and on abutting properties during construction.
 - e. A plan for rodent control during construction.
 - f. If blasting of on-site ledge is required, the petitioner shall obtain a Blasting Permit from the Newton Fire Department.
 - g. To ensure emergency vehicle access there shall be no parking in the driveway.
 - h. The CMP shall also address the following:
 - i. location(s) of a staging site for construction equipment and parking for construction workers vehicles;
 - ii. identification of building materials;
 - iii. phasing of the project with anticipated completion dates and milestones;
 - iv. safety precautions;
 - v. anticipated dewatering during construction;
 - vi. site safety and stability;
 - vii. impacts on abutting properties, including any on the retaining wall located on the adjacent property to the west.
9. No Building Permit for one or both of the dwellings shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has, as such relates to the dwelling(s) for which the such building permit is requested:
- a. Received final approval from the Director of Planning and Development for the Construction Management Plan.
 - b. 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.
 - c. Filed a copy of such recorded Order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - d. Obtained a written statement from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1.
 - e. Obtain a written statement from the Engineering Division of Public Works that confirms the receipt of a certified copy of the recorded O&M in accordance with Condition #4.

- f. Filed a final Landscape Plan to the Director of Planning and Development for review and approval.
 - g. Recorded a certified copy of an Approval Not Required (ANR) plan showing the division of the property consistent with the plans referenced in Condition #1 with the Registry of Deeds for the Southern District of Middlesex County and has filed a copy of such recorded ANR plan with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
10. No Final Inspection and/or Occupancy Permit for one or both of the dwellings constructed pursuant to this Special Permit/Site Plan Approval shall be issued until the petitioner has, as such relates to the dwelling(s) for which the such Final Inspection and/or Occupancy Permit is requested:
- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect certifying compliance with Condition #1.
 - b. 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.
 - c. Filed with the City Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, final landscape features and fencing.
 - d. Filed with the Clerk of the Council, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that improvements authorized by this Order have been constructed to the standards of the City of Newton Engineering Department.
10. No Final Inspection and/or Occupancy Permit for one or both of the dwellings constructed pursuant to this Special Permit/Site Plan Approval shall be issued until the petitioner has, as such it relates to the such dwelling(s) for which the such Final Inspection and/or Occupancy Permit is requested, has filed with the Clerk of the Council, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that the stormwater and drainage improvements identified in the provisions of Condition #1 above have been constructed to the standards of the City of Newton Engineering Department.
11. Notwithstanding the provisions of Condition #9 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 provide 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.
12. The landscaping shown on the approved Final Landscape Plan shall be maintained in good condition. The plantings shall be inspected annually and any plant material that becomes diseased or dies shall be replaced in a timely manner with similar material.

