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#161-22

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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: March 8, 2022
Land Use Action Date: May 24, 2022
City Council Action Date: June 6, 2022
90-Day Expiration Date: June 6, 2022

DATE: March 4, 2022

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Neil Cronin, Chief Planner
Michael Gleba, Senior Planner

SUBJECT: **Petition #161-22** for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a new dwelling with retaining walls along the sides and rear of the property exceeding 4' in height at **26 Magnolia Avenue**, Ward 7, Newton, on land known as Section 72 Block 39 Lot 23, containing approximately 15,787 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 3.1.3, 3.1.9, 5.4.2.B of the City of Newton Rev Zoning 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.



26 Magnolia Avenue

EXECUTIVE SUMMARY

The subject property at 26 Magnolia Avenue consists of a now-vacant 15,787 square foot lot located in a Single Residence 2 (SR2) zoning district previously improved with a single-family dwelling and detached one-car garage.

The petitioner proposes to construct a new 2 ½ story, 35.2 foot tall, 6,287 square foot single family dwelling with an attached two-car garage. The proposed structure would increase the property's floor area ratio (FAR) to 0.40 where 0.33 is the maximum allowed per Section 3.1.3 of the Newton Zoning Ordinance (NZO), requiring a special permit per Sec. 3.1.9.

The petitioner also proposes to alter the topography of the site , including levelling portions of the rear of the site, that would require construction of several retaining walls. These include one wall along the entire southern side lot line; two walls across the property from north to south; and one wall along the rear boundary. As portions of the proposed walls would exceed four feet, and reach a maximum of nine feet in height, a special permit per Sec. 5.4.2.B of the NZO would be required.

The Planning Department is the proposed single-family dwelling given that its design is responsive to the sloping nature of the property (which reduces its visual appearance from the adjoining properties and public way), and it is similar in scale to other dwellings in the area-. The Department suggests the petitioner provide additional information regarding landscaping and the preservation of remaining trees on the site and a mature street tree located along its frontage.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The site in a Single Residence 2 (SR2) zoning district is an appropriate location for the proposed retaining walls exceeding four feet in height within the side and rear setbacks (§5.4.2.B)(§7.3.3.C.1)
- The proposed retaining walls exceeding four feet in height within the side and rear setbacks will adversely affect the neighborhood (§5.4.2.B)(§7.3.3.C.2)
- The proposed retaining walls exceeding four feet in height within the side and rear setbacks will create a nuisance or serious hazard to vehicles or pedestrians (§5.4.2.B)(§7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4)
- The proposed dwelling with a floor area ratio (FAR) of 0.40 where 0.33 is the maximum allowed by right is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood (§3.1.3, §3.1.9)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on the east side of Magnolia Avenue just south of Kenrick

Street. The neighborhood is predominantly developed with single family dwellings, with exceptions including Newton Commonwealth Golf Course to the south and a multi-family dwelling and vacant parcel to the west across Magnolia Avenue (**Attachment A**). The site and surrounding area to the east of Magnolia Avenue are zoned Single Residence 1 (SR1) (excepting the Public Use (PU)-zoned golf course); the area to the west and north is a Single Residence 2 (SR2) zoning district (**Attachment B**).

B. Site

The subject property consists of a vacant 15,787 square foot lot which slopes downward approximately 21 feet from the front left (northwest) to the rear right (southeast) of the lot.

It is currently accessed via a paved driveway on the left (north) side of the property dwelling. The remaining portions of the site are cleared of vegetation and feature some excavated areas.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site will be a single-family dwelling.

B. Building and Site Design

The petitioners are proposing to construct a new 2 ½ story, 35.2 foot tall, 6,287 square foot single family dwelling. As designed, the proposed structure would have a floor area ratio (FAR) 0.40 where 0.33 is the maximum allowed, representing 1,077 square feet more than the 5,210 square feet allowed by right. The Planning Department notes that due to the sloping nature of the site some of this floor area is located in the basement built into the slope and therefore not visible from adjoining properties and the street. As discussed in the attached zoning review memorandum, the structure would conform to other relevant dimensional requirements including setbacks, lot coverage and open space.



Proposed front and rear elevations

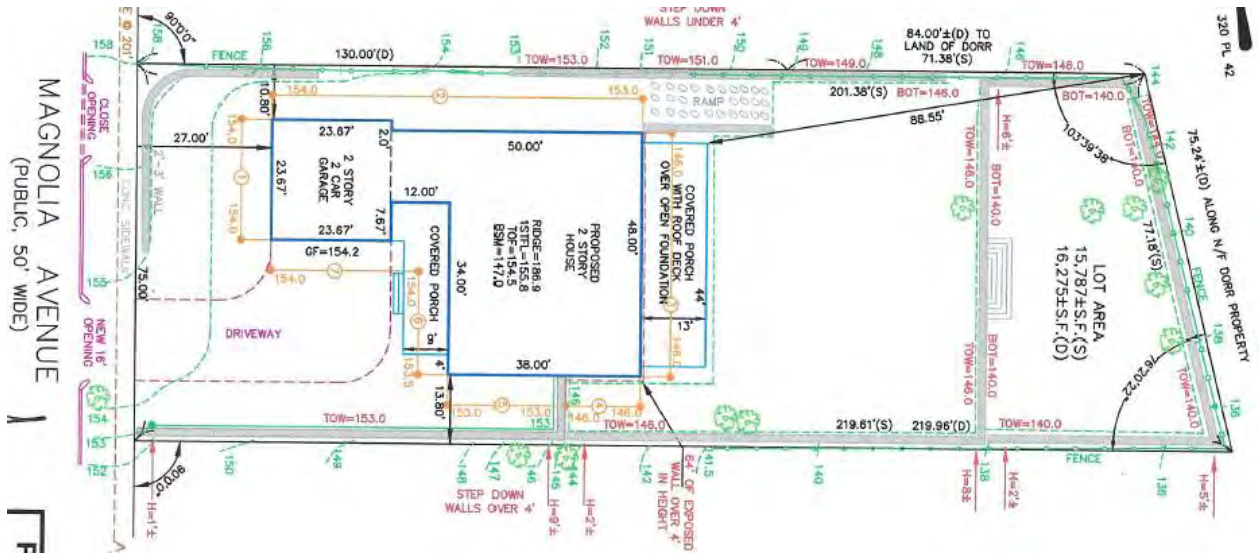


Proposed right elevation



Proposed left elevation

The petitioner is also proposing to construct several retaining walls which would create additional level area in the currently sloped lot. They include one along the entire right (south), sections along the left (north) and others across the rear property line and another across the property from north to south. Several sections would exceed four feet in height within portions of the side and rear setbacks, reaching a maximum height of nine feet. Material submitted by the petitioner indicates that the walls would be constructed of concrete block.



Proposed site plan

C. Parking and Circulation

As proposed, an attached two car garage would be constructed at the front of the dwelling. The garage doors would face the right (south) side of the property (i.e., not Magnolia Avenue) and be accessed via a new 16-foot-wide curb cut and associated driveway on the right side of the parcel. The existing driveway and curb cut on its left side would be eliminated.

D. Landscaping

A landscaping plan was not submitted with the present petition. The Planning Department recommends that in the event the petition is approved the petitioner consider installing appropriate vegetation along some sections of the wall to soften their visual impact. The Department also recommends that the petitioner indicate intentions regarding the large existing street tree near the front right of the property, near the proposed location of the new driveway and any other existing trees on the lot.

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

- S.P. per §7.3.3 to:
 - exceed floor area ratio (FAR) (§3.1.3, §3.1.9)
 - allow a retaining wall exceeding four feet within setbacks (§5.4.2.B)

B. Engineering Review

Review of this proposal by the Engineering Division is not required at this time.

C. Historic Review

On December 28, 2018, the Newton Historical Commission found the previously existing single-family home “preferably preserved” for architectural integrity and historic context. The Demolition Delay expired December 20, 2019, and a building permit for the demolition of that house was issued on November 22, 2021.

V. PETITIONER’S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:

- Attachment A:** Land Use Map
- Attachment B:** Zoning Map
- Attachment C:** Zoning Review Memorandum
- Attachment D:** DRAFT Council Order







ATTACHMENT A

Land Use

26 Magnolia Ave.

*City of Newton,
Massachusetts*

Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Mixed Use
-  Open Space
-  Vacant Land
-  Tax Exempt



The information on this map is 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 - Ruthanne Fuller
GIS Administrator - Douglas Greenfield






ATTACHMENT B

Zoning

26 Magnolia Ave.

City of Newton,
Massachusetts

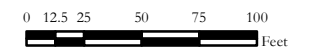


-  Single Residence 1
-  Single Residence 2
-  Public Use



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



Map Date: February 28, 2022



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Director

ZONING REVIEW MEMORANDUM

Date: March 1, 2022

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Neil Cronin, Chief Planner for Current Planning

Cc: John Arone, Applicant
Barney S. Heath, Director of Planning and Development
Jonah Temple, Associate City Solicitor

RE: Request to allow retaining walls exceeding four feet within a setback and to exceed FAR

Applicant: John Arone	
Site: 26 Magnolia Avenue	SBL: 72039 0023
Zoning: SR2	Lot Area: 15,787 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 26 Magnolia Avenue consists of a 15,787 square foot lot. The petitioner proposes to construct a new dwelling along with changes to the topography at the rear. The proposed structure will exceed maximum FAR and require construction of retaining walls exceeding four feet within the setbacks at the side and rear of the property, requiring a special permit.

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

- Zoning Review Application, prepared by John Arone, applicant, submitted 11/18/2021, revised 2/14/2022
- Plan of Land Showing Proposed Walls, signed and stamped by Robert Bibbo, surveyor, dated 6/9/2021, revised 2/14/2022

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner intends to construct a new dwelling, as well as grade changes to increase usable yard space. With the new construction and grade changes, the FAR increases from .33 to .40 where .33 is the maximum allowed per section 3.1.3 and 3.1.9, requiring a special permit.
2. The petitioner is proposing retaining walls: one wall along the entire southern side lot line; two walls across the property from north to south; and one wall along the rear boundary. The walls reach a maximum height of nine feet, exceeding four feet within the side and rear setbacks. Per section 5.4.2.B, the petitioner requires special permits to construct the proposed walls.

SR2 Zone	Required	Proposed
Lot Size	10,000 square feet	15,787 square feet
Frontage	80 feet	75 feet
Setbacks		
• Front	25 feet	27 feet
• Side	7.5 feet	10.8 feet
• Side	7.5 feet	13.8 feet
• Rear	15 feet	88.6 feet
Height	36 feet	35.2 feet
Stories	2.5	2.5
FAR	.33	.40
Max Lot Coverage	30%	22%
Min. Open Space	50%	70.4%

*Requires relief

3. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.3 §3.1.9	Request to exceed FAR	S.P. per §7.3.3
§5.4.2.B	Request to allow a retaining wall exceeding four feet within the setback	S.P. per §7.3.3

Next Steps

Please contact a Planner by calling 617.796.1120 to obtain a copy of the Special Permit Application. If there have been any changes made to the plans since receipt of your Zoning Review Memorandum you must inform the Zoning Code Official to ensure additional relief is not required. You will need an appointment with a Planner to file your Special Permit Application. **Incomplete applications will not be accepted.**

The following must be included when filing a Special Permit Application:

1. Two (2) copies of the completed Special Permit Application (signed by property owner)
2. Filing Fee (see Special Permit Application)
3. Two (2) copies of the Zoning Review Memorandum
4. Plans (Thirteen sets signed and stamped by a design professional). Each set shall contain:
 - Site Plans showing existing and proposed conditions (including topography as applicable)
 - Architectural plans showing existing and proposed conditions (including façade materials)
 - Landscape plan (as applicable)
5. One (1) Floor Area Ratio (FAR) Worksheet, (signed and stamped by a design professional)
6. One (1) copy of any previous special permits or variances on the property (as applicable)
7. One (1) copy of any other review/sign-off (Historic, Conservation, Tree Removal, etc. as applicable)
8. Two (2) electronic copies of the application with all above attachments (USB or CD)

Copies of all plans shall either be 8.5 x 11 or 11 x 17, except as requested by staff

Special Permit Sign (\$20 fee)

Incomplete applications will delay the intake and review of your project.

Depending on the complexity of the project additional information may be requested to facilitate a full review of the application.

Has the proposed project been presented to and discussed with abutting property owners? Y/N

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 a SPECIAL PERMIT/SITE PLAN APPROVAL to exceed the allowed floor area ratio (FAR) (§3.1.3, §3.1.9) and allow retaining walls exceeding four feet in height within setbacks (§5.4.2.B), 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 Single Residence 2 (SR2) zoning district is an appropriate location for the proposed retaining walls exceeding four feet in height within the side and rear setbacks given the slope of the lot (§5.4.2.B)(§7.3.3.C.1)
2. The proposed retaining walls exceeding four feet in height within the side and rear setbacks will not adversely affect the neighborhood given their limited visibility from adjacent properties and public ways (§5.4.2.B)(§7.3.3.C.2)
3. The proposed retaining walls exceeding four feet in height within the side and rear setbacks will not create a nuisance or serious hazard to vehicles or pedestrians (§5.4.2.B)(§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. The proposed dwelling with a floor area ratio (FAR) of 0.40 where 0.33 is the maximum allowed by right is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood as the resulting structure would be similar to size and scale to existing structures in the surrounding neighborhood (§3.1.3, §3.1.9)

PETITION NUMBER: #161-22

PETITIONER: John B. Arone

LOCATION: 26 Magnolia Avenue, Section 72, Block 39, Lot 23, containing approximately 15,787 square feet of land

OWNER: Arone Bros LLC

ADDRESS OF OWNER: 35 Fair Oaks Avenue
Newton, MA

TO BE USED FOR: Single-Family Residence

CONSTRUCTION: Wood Frame

EXPLANATORY NOTES: Special Permit per §7.3.3 to:

- exceed allowed floor area ratio (FAR) (§3.1.3, §3.1.9)
- allow retaining walls exceeding four feet within setbacks (§5.4.2.B)

ZONING: Single Residence 2 (SR2)

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 the following plans:
 - a. a site plan entitled "Plan of Land Newton, MA, Showing Proposed House, #26 Magnolia Avenue," prepared by Bibbo Brothers and Associates, dated February 14, 2022, signed and stamped by Robert Bibbo, Professional Land Surveyor on February 14, 2022 (*note: plan indicates proposed floor area ratio (FAR) of 0.40 (6,298 square feet)*)
 - b. a set of architectural drawings entitled "Residence at Magnolia Ave, 26 Magnolia Ave, Newton, MA 02458," dated February 11, 2022, prepared by Island Architects, consisting of the following sheets:
 - i. Basement Floor Plan (A1.0)
 - ii. First Floor Plan (A1.1)
 - iii. Second Floor Plan (A1.2)
 - iv. Attic Floor Plan (A1.3)
 - v. Roof Plan (A1.4)
 - vi. Full Front Elevation (A2.0)
 - vii. Front Elevation (A2.1)
 - viii. Right Elevation (A2.2)
 - ix. Rear Elevation (A2.3)
 - x. Left Elevation (A2.4)
2. The Petitioner shall do the following to remediate pest and rodent activity:
 - a. Prior to issuance of any demolition or building permit, the petitioner, at its sole cost and expense, shall hire a licensed Pest Control Operator to assess the property for pest and rodent activity and develop and implement a pest remediation action 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.

- b. A copy of the Pest Control inspection report and the remediation action plan shall be submitted to the Inspectional Services Department for review and approval prior to issuance of any demolition or building permit. Copies of such approvals shall be provided to the Department of Planning and Development.
 - c. The Pest Control 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 Pest Control 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.
 - d. Prior to issuance of the certificate of occupancy, the Pest Control 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 and neighborhood.
 - e. In the event any demolition or construction activity causes off-site pest migration, prior to the issuance of any certificates of occupancy (temporary or final), the petitioner shall offer and provide, at its sole cost and expense, rodent abatement services on an as needed basis for all direct abutters and abutters to direct abutters, subject to owner authorization of such properties and a waiver of liability.
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 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. Submitted a Final Site Plan for review and approval by the Engineering Division and the Planning and Development Department. Said plan shall indicate the location of all structures, walls, paved areas and fencing as well as the height of any walls and fencing.
 - d. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
4. No Final Inspection and/or Occupancy Permit for the buildings 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 certifying compliance with Condition #1.

- b. Filed with the Clerk of the Council, the Department of Inspectional Services and the Department of Planning and Development a statement from the Engineering Division of the Department of Public Works certifying that improvements authorized by this Order have been constructed to the standards of the City of Newton Engineering Department.
- c. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services, final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.