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Barney S. Heath
Director

PUBLIC HEARING/WORKING SESSION MEMORANDUM

DATE: April 1, 2022
MEETING DATE: April 5, 2022
TO: Land Use Committee of the City Council
FROM: Barney S. Heath, Director of Planning and Development
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 #161-22

26 Magnolia Ave.

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 Land Use Committee (the "Committee") held a public hearing on March 8, 2022 on this petition. This memo reflects additional information addressed to the Planning Department as of July 23, 2021.

Background

The subject property 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.

Update

The Planning Department has not received any new information and/or material at the time of the writing of this memorandum. Please see attached the draft council order that was included in Planning Department's March 4, 2022, memorandum on this petition.

ATTACHMENTS

Attachment A

DRAFT Council Order as included in Planning Department's Public Hearing Memorandum dated March 4, 2022

ATTACHMENT A

ATTACHMENT D- DRAFT- #161-22

26 Magnolia Avenue

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.