

CITY OF NEWTON

IN CITY COUNCIL

September 20, 2022

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 allow a retaining wall in excess of 4 feet in height within the rear and side setbacks, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

- The specific site in a Single Residence 3 (SR3) district is an appropriate location for retaining wall in excess of four feet in height within the rear and side setbacks to assist in soil stabilization given the grades of adjacent properties. (§7.3.3.C.1)
- The retaining wall in excess of four feet in height within a setback will not adversely affect the neighborhood as it will assist in soil stabilization given the grades of adjacent properties. (§7.3.3.C.2)
- The retaining wall in excess of four feet in height within a setback will not create a nuisance or serious hazard to vehicles or pedestrians. (§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)

PETITION NUMBER: #311-22

PETITIONER: Kenneth Leary

LOCATION: 10 Elberta Terrace, on land known as Section 41, Block 17, Lot 19, containing approximately 15,787 square feet of land

OWNER: Kenneth Leary

ADDRESS OF OWNER: 2115 Commonwealth Avenue
Newton, MA 02466

TO BE USED FOR: Single Family Residence

EXPLANATORY NOTES: Special permits per §7.3.3 to allow a retaining wall exceeding four feet in height within a setback (§3.4.2.B)

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 site plan entitled "Plan of Land - Newton, MA, Showing Block Wall Under Construction, #10 Elberta Terrace, prepared by Bibbo Brothers and Associates, dated May 23, 2022, as revised through September 16, 2022.
2. Prior to the issuance of any Building Permit issued pursuant to this Special Permit/Site Plan Approval, the Inspectional Services Department shall perform a structural analysis of the proposed retaining walls.
3. No Building Permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:
 - 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 board 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/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
 - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by an professional engineer or surveyor certifying compliance with Condition #1.

- b. 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 architect, engineer or 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.
5. The Petitioner shall ensure that any and all safety fencing installed in relation to the retaining walls approved pursuant to this order shall be maintained in good condition.

Under Suspension of Rules
Readings Waived and Approved

The undersigned hereby certifies that the foregoing copy of the decision of the Newton City Council granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the City Clerk on August 10, 2022. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:

(SGD) CAROL MOORE
Clerk of the City Council

I, Carol Moore, as the Clerk of the City Council and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that twenty days have elapsed since the filing of the foregoing decision of the Newton City Council in the Office of the City Clerk on August 10, 2022 and that NO APPEAL of said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:

(SGD) CAROL MOORE
Clerk of the City Council