

January 9, 2023

By Email

Auburndale Historic District Commission
City of Newton
1000 Commonwealth Ave.
Newton Centre, MA 02459

**Re: Application for a Certificate of Appropriateness –
24 Robin Dell, Auburndale MA 02466**

Dear Members of the Commission:

I represent certain residents of the Auburndale Historic District neighborhood in Newton. They have asked me to write you concerning Lasell University's (c/o Lasell Village) application for a certificate of appropriateness (Application) to significantly relocate the historic home located at 24 Robin Dell and to construct a massive, multi-story institutional use building in the historic home's former footprint.

As you no doubt know, demolishing or relocating a home within a historic district is one of the most significant actions that an applicant can propose because doing so dramatically alters both the resource (home) and the historic setting. As I explain in this letter, the Application provides no good reason for such a dramatic alteration to this historic neighborhood by relocating a historic home from its original location to make way for a massive, multi-story institutional structure. To the contrary, this proposed change would radically alter the appearance of the existing neighborhood and the interrelationship of the historic buildings within the District. This proposal eviscerates the District's existing history, with little regard for preservation. Even worse, the relocation may also implicate issues with Robin Dell, which I understand to be a private (not public) way, and potential future reconfiguration of access to the 24 Robin Dell historic home, if relocated.

There is simply no good reason to approve this Application and many good reasons to deny it. As explained below, you, as the members of the Auburndale Historic District Commission (Commission) should do exactly

that: deny the Application. As explained below, the Commission has the legal authority to do so, and both general principles applicable to historic districts and the specific guidelines applicable to the Auburndale Historic District compel doing so. Moreover, the Commission should be untroubled by other matters – such as the Dover Amendment or the purported benefits of this project – that have no relevance to the Commission’s jurisdiction or decision-making.

DISCUSSION

1. The Commission’s Authority. Before discussing the many drawbacks to this proposal, I believe it is helpful to ensure a common understanding of the law and legal standards that the Commission must apply to this Application.

Historic District Commissions draw their authority from Chapter 40C of the General Laws. Section 6 of that chapter authorizes you to issue certificates of appropriateness, and section 7 provides factors you should consider in making that decision, along with the “criteria for decision” set forth in §22-40 of the City of Newton’s ordinances. You are no doubt familiar with these standards and I will not waste time reviewing them.¹

Importantly, you have significant discretion when evaluating and applying these standards to the Application. You have broad authority to apply the applicable standards in the aforementioned statute and City ordinance to fulfill your charge to preserve the history of the Auburndale neighborhood. While your authority is broad, your decision-making in that regard is subject to being overturned by a court if it is “legally untenable” (*i.e.*, contrary to a clear law on point) or “unreasonable, whimsical, capricious or arbitrary.”² Put simply, your discretion and knowledge of this neighborhood will be respected by any reviewing authority so long as your decisions are not unreasonable or arbitrary, and are legally supported and based on the information presented to you.

Also important, your jurisdiction and authority are distinct and independent from the City’s zoning powers under Massachusetts’ *Zoning Act*, G.L. c.40A. Historic District preservation exists as a separate statutory chapter in the General Laws – chapter 40C – distinct from any limitations on

¹ Those standards – the criteria for determination – may be found in §22-40(g) of the City’s Ordinances, available at:
<https://www.newtonma.gov/home/showpublisheddocument/29807/637867563487070000>.

² *E.g.*, *Warner v. Lexington Historic Dist. Comm’n*, 64 Mass. App. Ct. 78, 82 (2005).

the City's zoning authority under that act. Indeed, the City's zoning ordinances recognize as much.³

I bring this to your attention because it appears from the Application that Lasell's motivation for attempting first to demolish and now to significantly relocate this historic home is to construct what it characterizes as an institutional, educational use. Such uses have certain advantages concerning the City's exercise of its zoning power under chapter 40A – the so-called "Dover Amendment," G.L. c.40A, §3. Whatever treatment this larger project may enjoy under the Dover Amendment, it is entirely irrelevant to this Application. As a matter of law, under a separate statute (G.L. c.40C), the Commission's charge and authority are independent of the City's zoning power and should be exercised accordingly.

2. The Purpose of Historic Districts. Having a common understanding of the law, it is also important to understand what the law has to say about historic districts' purpose in general, including the Auburndale Historic District.

"The overarching benefit of a local historic district is the protection of significant buildings from demolition and inappropriate alteration."⁴ Thus, chapter 40C, §2 recognizes that:

The purpose of this chapter is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings and places significant in the history of the commonwealth and its cities and towns or their architecture, and through the maintenance and improvement of settings for such buildings and places and the encouragement of design compatible therewith.

A municipality's creation of such a district is not taken lightly and reflects a strong public statement about preserving both the structures and character of the area in question. As you know, the process takes months, involves a Local Historic District Study Committee, requires significant historical

³ City of Newton Ordinances, *Zoning Ordinance*, c.30, §1.3.1 ("Historic Districts (which are not part of zoning)").

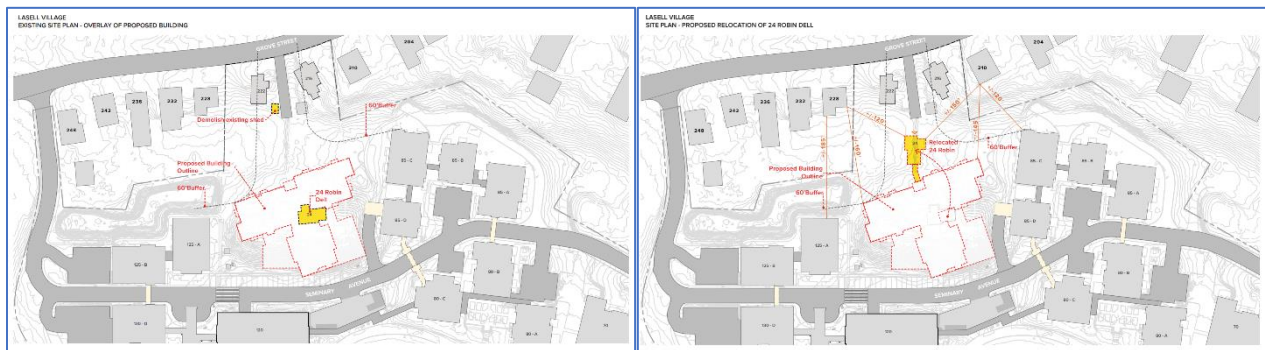
⁴ Mass. Historical Comm'n, *Establishing Local Historic Districts*, p.3 (available at <https://www.sec.state.ma.us/mhc/mhcpdf/establishinglocalhistoricdistricts.pdf>).

investigation and reporting, and is not done on a whim.⁵ What results is a studied, careful determination yielding a land area whose preservation is important to the community. A combination and layout of structures whose alteration should be both limited and not taken lightly.

Indeed, a municipalities' ultimate enactment of a historic district requires more than a simple majority vote by City Council – it requires 2/3 of the councilors to so approve. The establishment of a historic district thus constitutes a definitive statement by a municipality – here the City of Newton – that history should be preserved. These preservation principles and their importance to the community as reflected by this process and that vote must inform the Commission's exercise of its authority when evaluating this Application.

3. The Application Should be Denied. With both the Commission's legal framework and an understanding of a historic district's purpose firmly in hand, we can now turn to the Application.

The Application proposes a radical alteration of the location and layout of a specific portion of the Auburndale Historic District. Having abandoned a previous request to demolish the historic home at 24 Robin Dell entirely, Lasell instead asks nearly the same: to substantially relocate that home from its original location, changing both the characteristics of that structure and the historic scene of that area of the neighborhood, all to make way for a massive, multi-level institutional building in the home's original location.



Source: Site Plan presented to Commission

⁵ See G.L. c.40C, §§3, 4.

The impacts of implementing this proposal are equally clear from the Applicant’s submissions. Whereas the historic home at 24 Robin Dell once stood in the backdrop of this neighborhood’s historic scene, the Applicant would see it moved substantially forward. This significantly alters the look, feel, and aesthetic of the neighborhood and the relationship of the buildings to one another. The proposal would alter those relationships by lessening the land area of the adjacent historic homes’ backyards at 216 and 222 Grove Street. And, this proposal would of course add to the District a massive, multi-story institutional use non-historic building in the place where a historic home once existed. All of this would be visible from the roadway and would dramatically alter the historic appearance and aesthetic of the District that City Council previously voted to protect when creating the Auburndale Historic District.



Source: Lasell Village Application Materials – Visual Representations

In short, this proposal is no small “tweak” to the historic scene to accommodate appropriate changes for residents. Rather, it is an altogether revision of the neighborhood’s history that compromises the original decision by City Council – when voting to create the Auburndale Historic District – to preserve those buildings and their interrelationships. The Application thus proposes far more than is often considered and granted in certificates of appropriateness. This is not a minor alteration to certain exterior characteristics of a building. It goes far beyond simply choosing replacement materials for a building, adding a small ancillary structure in keeping with the neighborhood aesthetic, or even a modest relocation of a structure that is in keeping with the neighborhood aesthetic and the historical relationship of the structure in question to other structures in the District. Not only will 24 Robin Dell’s historic home be relocated with a substantially different appearance within the neighborhood, but the aesthetic of this portion of Grove Street and the relationship of numerous homes – including the

abutting 216 and 222 Grove Street houses and the views across the street from (amongst others) 225, 221, 215, and 211 Grove Street will be fundamentally altered.

It should therefore be no surprise that such a dramatic alteration is by no means “appropriate” under the applicable “Guidelines for Additions & New Construction” within the Auburndale Historic District.⁶ Page 12 of those Guidelines provides considerations for building relocations. To start, of course, “[i]t is always preferable to retain a building in its original historic setting” and the Guidelines contemplate relocation as only suited to “rare circumstances” when other options are “not feasible.” Nothing in the Application rises to the level of justifying this proposal as such a rare circumstance as relocating a building in a flood plain or for a municipal infrastructure project such as a road widening.

The Guidelines also reaffirm that “buildings are best appreciated *within the appropriate setting*” (emphasis added) and, as already explained, this proposed relocation eviscerates the existing setting, upending its original, historical appearance including the neighborhood aesthetic and the interrelationships of the many historic homes in this District. Thus, this proposal does not meet with the Guidelines’ encouragement for: “[p]reservation/rehabilitation of historic buildings on their original sites;” “[l]ocating the building in a setting similar to the original site *including orientation and distance from the roadway ...*,” and “[a]ltering the historic spatial relationship between the relocated building and its surrounding historic features.”⁷

Put simply, the Application proposes a relocation that is incongruous with many of the applicable Guidelines and therefore is not remotely the type of “rare circumstance” contemplated for a building relocation in the Auburndale Historic District. Accordingly, the Commission should vote to deny the Application. There is no basis in the Application to allow such a substantial, dramatic alteration to the Auburndale Historic District. The Commission can properly deny a certificate of appropriateness for this Application without fear that such a decision would be overturned – it would not be legally untenable nor, on this record, would it be remotely unreasonable, capricious, or arbitrary.

⁶ Available at:

<https://www.newtonma.gov/home/showpublisheddocument/41345/637411402915370000>.

⁷ Guidelines for Additions & New Construction” within the Auburndale Historic District at 12.

And the Commission must also bear in mind the precedent it would set, should it nonetheless disregard the Guidelines and issue a certificate of appropriateness. Deviating so radically from the “rare circumstances” that justify a building relocation in this case would only set a precedent for others. Building demolitions and relocations are fundamentally different requests from minor modifications to historic buildings that may otherwise be more readily granted. To preserve the historic setting of the Auburndale Historic District, the Commission must avoid setting precedents that run contrary to the District’s Guidelines and would allow more expansive and fundamental alterations to the community’s history than should be allowed.

Indeed, when it comes to precedent, the current “precedent” for Lasell’s handling of this historic home is one of neglect. As happens all too often in local historic districts, Lasell has allowed this particular home to fall into relative disrepair. And as often tactically occurs, having done so, Lasell originally proposed to demolish this historic home – a request that I understand was not favorably received by the Commission. But that is only part of the issue. Just because the Commission properly rejected the demolition of a building that the owner allowed to fall into disrepair, does not mean that the same owner should now be viewed more favorably with a request for relocation along with repairs. To do so, would only encourage future owners to similarly allow buildings to deteriorate, to achieve objections contrary to the District’s purpose.

4. Allowing the Application Would Create Future Uncertainty. In addition to contravening the preservation purpose of the District, as specified in the Guidelines, issuing a certificate of appropriateness would create future uncertainty in the District.

It appears from the Site Plan and other materials presented to the Commission, that the historic 24 Robin Dell home will be relocated to a space already occupied by the Robin Dell way itself. I also understand that: (1) Robin Dell may be a private, not public, way; and (2) the applicant may have inquired whether the relocated home can be serviced by means other than access to the nearest public way, Grove Street.

On top of this, the endpoint to this applicant’s proposed changes to this area of the Historic District are not clear. As already explained, the Application proposes construction of a massive, multi-story institutional building in the old footprint of the Robin Dell historic home, and into abutting parcels of land at 216 and 222 Grove Street, two other historic

properties in the District. The ultimate disposition of these lots and how they are incorporated into the applicant's institutional "campus" or whether future changes will be requested as part of this complicated, extensive construction project is left unexplored by the Application. Also unclear is whether Lasell will seek to remove or relocate other structures – such as the garage at 222 Grove Street – in further support of this expansive construction project.

It is thus unclear what future changes Lasell may request, once construction is underway, to further alter the ways and historical appearance of this portion of the District. The Commission should demand from Lasell a far better explanation and understanding of its intentions before granting a certificate of appropriateness. Otherwise, the Commission is likely to find itself with future requests that alter the historic nature of this District even more, compromising even further the District's historic preservation goals.

5. The Commission Should Ignore Irrelevant Matters. In addition to applying the Guidelines to this Application, the Commission should further be mindful to ignore irrelevant matters that are outside of its jurisdiction.

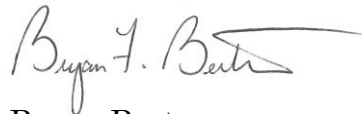
First, Lasell touts in its Application materials the "potential benefits" for the City of Newton, including increased tax revenue and other purported benefits. Whether true or not, they are of no moment here. The Commission's jurisdiction and authority are limited to its review of matters of historic preservation, as specified in the General Laws, the City's ordinances, and the Guidelines. None authorizes the Commission to contemplate these other "benefits" as some form of mitigation or tradeoff to otherwise compromise the historic integrity of the Auburndale Historic District.

Second, and as previously explained, the institutional/educational nature of this project should also be irrelevant to the Commission. While the Dover Amendment may offer this project certain advantages with respect to the City's Zoning Ordinance, it is inapplicable to the Commission's review. The Commission must therefore remain focused on the task at hand and set aside any considerations properly left to other boards and officials as to the chapter 40A zoning power.

CONCLUSION

The Commission should deny the Application and decline to grant Lasell a certificate of appropriateness. The proposed relocation of the historic home at 24 Robin Dell Road does not remotely qualify as the type of “rare circumstance” in which such a request should be granted. On the contrary, granting a certificate would radically alter the appearance and location of this particular home and, further, compromise the historic scene, setting, and aesthetics of that portion of the Auburndale Historic District.

Respectfully:

A handwritten signature in cursive script that reads "Bryan F. Bertram". The signature is written in black ink and includes a long horizontal flourish extending to the right.

Bryan Bertram

Second Comment (Neighbor)

Auburndale - Lasell Drawings

Steve < >
To: bkurze@newtonma.gov

Mon, Jan 9, 2023 at 4:18 PM

Hi Barbara,

I am not sure how to submit information to the commission on the Lasell project, but I did notice a fairly large discrepancy on the location of the house stakes and the drawings and wanted to raise this. I think it is important as I believe that we are supposed to rely on the provided application drawings in determining the possible effect to the neighborhood.

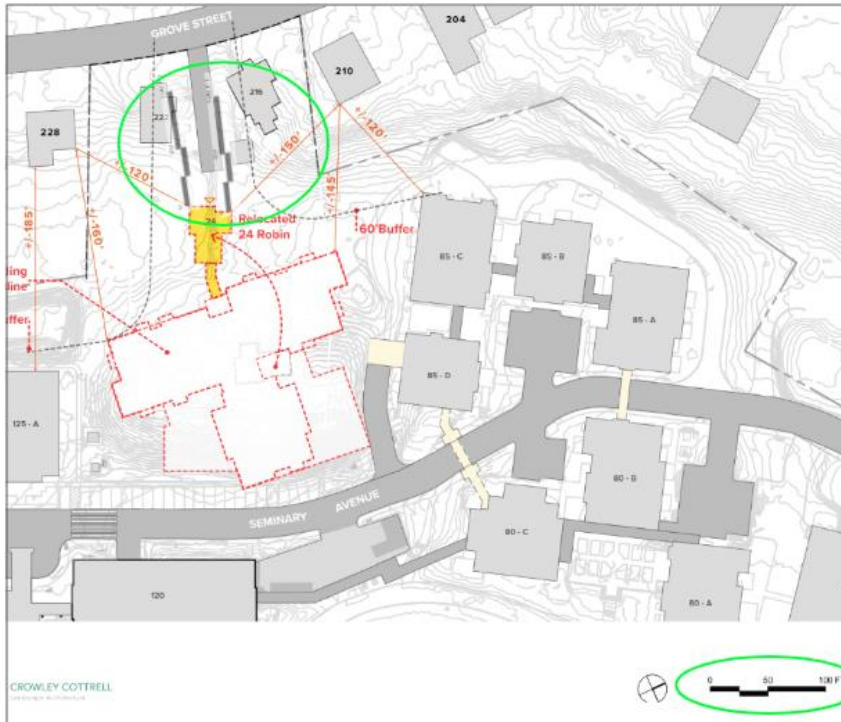
I put together a pdf attached that I think helps highlight the issues with the physical stakes and the provided application drawings. Perhaps there are some technical issues with either the stakes or drawings, but it is pretty easy to observe that there is a discrepancy from simply standing at the stake locations and looking around.

Thanks,
Steve Weiss
210 Grove St, Auburndale, MA 02466.

 **2023_01_09 Notes on drawings.pdf**
1420K

Comments on the provided application maps

There appears to be a discrepancy between the provided maps and related renderings and the yard staking of the proposed house location. Specifically, the application shows the new location for the 24 Robin Dell house location to be 25 feet further back than currently staked.

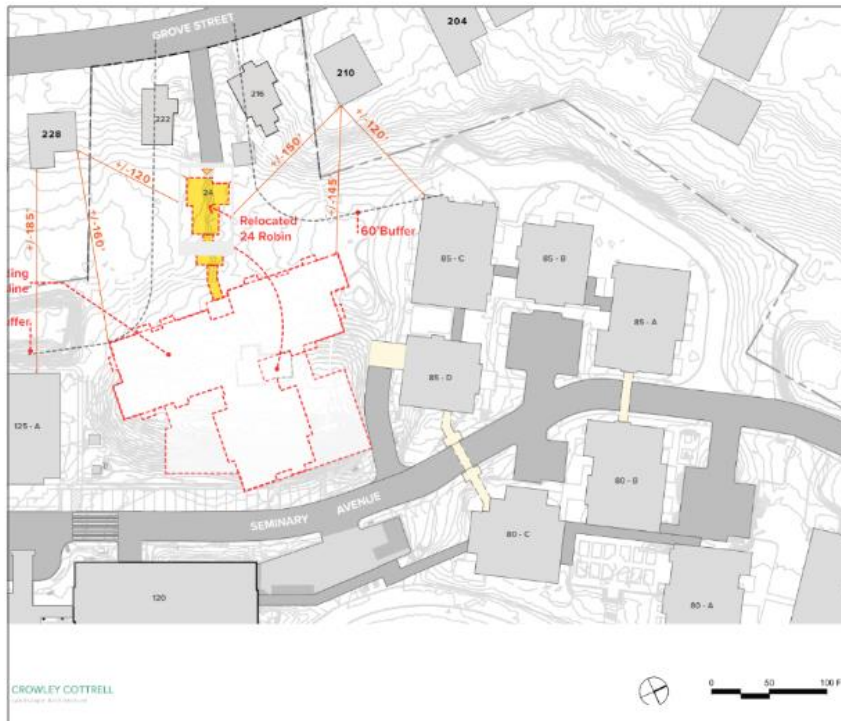


The provided map scale bar was rotated and placed on the corners of the proposed 24 Robin Dell House location (see green circle).

Based on the provided scale bar of this drawing, this drawing implies the house is 58' from 222 and 37.5' from the garage on 216.

This is clearly not the case as staked. The stake behind the garage at 216 is approximately 12.5 feet.

The image below is more representative of the yard stake location. The tail of the original drawing was left visible making the fairly large discrepancy easier to observe.



Based on yard stakes, this 24 Robin Dell Location appears to be more accurate.

In particular, the corner of the moved house is $\sim\frac{1}{2}$ the length of the garage at 216 grove st. (12-13ft)

Therefore, one should also wonder if the new structure is correctly represented.

The distances marked on the longer red lines also sometimes conflict with the given scale bar.

Comments on pictures provided in the application

The following two pictures are captured from the application with the same picture dimensions. The real photo shows a vantage point of one slightly looking down at the porch of 222 Grove Street. Also, one should note that the garage at 216 Grove Street is not visible in this picture.



The rendering perspective makes the sides of both 216 and 222 visible to the observer. It is now a lower vantage point and is visibly looking up at 222. The upward angle from the lower perspective would make the retirement center behind 24 Robin Dell more obscured. Because both 216 and 222 are presenting their sides, a fish eye perspective seems present. In person, one could only observe both sides of 216 and 222 if they were standing into Robin Dell road.

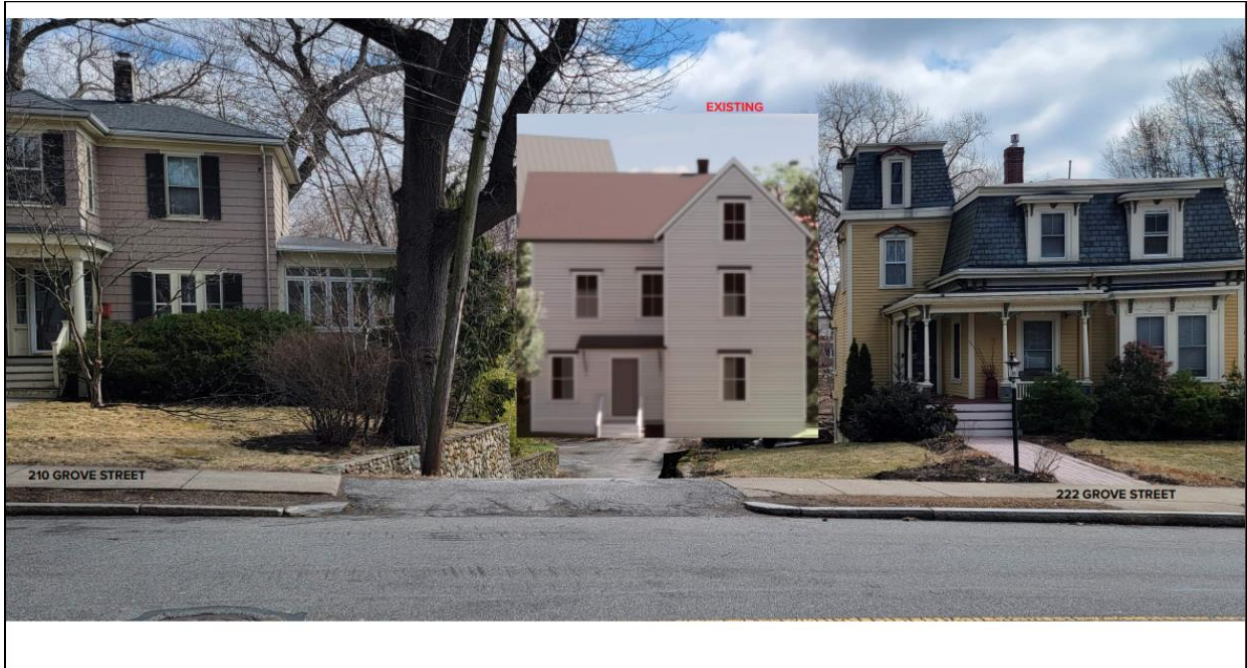


The previous drawing also shows that roughly 1.5 trees would be visible to the left and right of the new 24 Robin Dell Location (see red circles).

Based on the stakes, it seems a more accurate street view is as follows:



Or trying to put the provided image on the corners where the stakes were present.



Note, the rendering view had an upward focus meaning the roof of the retirement community building behind 24 Robin Dell is being de-emphasized. Small angles over large distances can be confusing. It remains unclear how visible the new building will be under normal human perspective to someone with a height of 5ft-6ft tall when they are on either Grove St sidewalk.

Regardless, it seems quite clear that 1.5 trees on each side of the proposed 24 Robin Dell house is unlikely. This is easily verifiable by standing at the stake locations and looking.

(Note, the stake behind 216 Grove Street garage says that the intended stake location is 10ft into the pavement.)

Comparison to Existing Neighborhood

Houses on Grove Street in the historic district have relatively large spacing between houses with no houses visible between the houses. The houses also have back yards.

