



Setti D. Warren  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

**126-16**  
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Barney S. Heath  
Acting Director

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**PUBLIC HEARING MEMORANDUM**

Public Hearing Date: June 14, 2016  
Land Use Action Date: August 23, 2016  
City Council Action Date: September 5, 2016  
90-Day Expiration Date: September 12, 2016

DATE: June 10, 2016

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development  
Alexandra Ananth, Chief Planner for Current Planning  
Michael Gleba, Senior Planner

SUBJECT: **Petition #126-16**, for SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF NON-CONFORMING USE to modify an existing nonconforming two-family use and amend Special Permit #88702 to raze the existing buildings and rebuild the dwelling away from the floodplain and closer to the street at 17 Malvern Terrace, Ward 4, Auburndale, on land known as SBL 41 26 17, containing approximately 13,970 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: 3.4.1, 7.8.2.C.2, 7.3.3, 7.4 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

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.



**17 Malvern Terrace**

EXECUTIVE SUMMARY

The property at 17 Malvern Terrace consists of a 13,970 square foot lot improved with a two-family residence constructed in 1885, a two-car garage constructed in 1937 and a small outbuilding. The dwelling was originally constructed as the camp building for the Wawbewawa Canoe Club as boat storage and a canoe launch. The structure was converted into a single-family residence by right sometime before 1924, and converted into a two-family residence in 1946 under a Special Permit (#88702) issued by the Board of Aldermen. The property is still used as two-family residence.

The applicant proposes to maintain the two-family use on the property, but to raze the existing dwelling (which is currently located approximately 19 feet from the Charles River) and the small outbuilding and rebuild and re-orient the dwelling to create a greater distance from the Charles River, closer to the street and away from the floodplain.

To relocate and expand the existing nonconforming two-family dwelling requires an amendment to the 1946 Special Permit that granted permission for the existing two-family use, which is nonconforming in a single residence district.

Although the proposed new two-family structure complies with all dimensional regulations, the Planning Department notes that it is significantly larger than the existing structure and this is further magnified by proposed grade changes. Nevertheless, the site plan with grade changes, was reviewed and approved by the Conservation Commission and the project, which is expected to minimize the flood risks to which the dwelling is potentially exposed, will not adversely affect the surrounding neighborhood.

#### I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Council should consider whether:

- Whether the proposed modification of an existing nonconforming two family use in and Single Residence 3 (SR-3) zoning district would not be substantially more detrimental than the existing nonconforming use to the neighborhood. (§7.8.2.C.2)

#### I. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

##### A. Neighborhood and Zoning

The subject property is located on Malverne Terrace in Auburndale. The existing two-family dwelling is unique in the surrounding neighborhood near the intersection of Malverne Terrace and Islington Road as all the other homes are single family dwellings (**Attachment A**). The site and surrounding area are zoned Single Residence-3 (SR-3) (**Attachment B**).

**B. Site**

The property consists of a 13,970 square foot lot improved with a wood shingle, approximately 2,900 square foot two-family residence constructed in 1885, a 440 square foot, two-car garage constructed in 1937, and a 420 square foot outbuilding.

The current dwelling is located approximately 19 feet from the Charles River and within delineated wetlands and floodplains. It was originally constructed as the camp building for the Wawbewawa Canoe Club as boat storage and a canoe launch.

The structure was converted into a single-family residence by right before 1924 and converted into a two-family residence in 1946 by permission from the Board of Aldermen.

The site's grade slopes slightly downward east to west, from Malverne Terrace toward the Charles River. The existing residence and garage are accessed via separate concrete driveways on the Malverne Terrace. The remainder of the site is lawn and some mature trees (mostly along the property line shared with 122 Islington Road directly abutting to the south) and shrubs distributed throughout the along the property. The petitioner has stated that they have experienced flooding over the years.

**II. PROJECT DESCRIPTION AND ANALYSIS****A. Land Use**

The principal use of the site will remain a two-family residence.

**B. Building and Site Design**

The petitioners are proposing to raze the existing two-family dwelling located approximately 19 feet from the Charles River and small outbuilding and build a new 4,800 square foot (including 960 square feet attributed to the basement) two-family dwelling away from the floodplain and closer to the street. As the new structure would utilize the lowest level for parking, it is expected that the design will protect the occupied portions of the dwelling from flooding.

The proposed two-family dwelling would decrease the front setback from 48.6 feet to the minimum 25 feet allowed. The location of the dwelling closer to Malvern Terrace would make it consistent with that of other dwellings on the street.

The nearest side setback (southern property line) would be increased from 7.6 feet to 10.6 feet (7.5 feet is the minimum), and the rear setback (to the Charles River) would increase from 19 feet to 65 feet, well in excess of the required 15 feet.

The site's FAR would increase from 0.27 to 0.37, below the maximum 0.39 allowed. Its Lot Coverage would decrease from 17.2% to 16.9%, well below the maximum of 30% allowed. The property's Open Space percentage would decrease from 79% to 71.6%, but would remain well above the 50% required minimum.

The proposed dwelling maintains a boathouse-like appearance and includes the reuse of a cupola salvaged from the existing dwelling along the ridgeline. However, the orientation of the new dwelling would be different than the existing dwelling's as the latter's narrower (26 feet) elevations face the Charles River and Malvern Terrace while the former's, if approved, would face its wider, (57 feet) elevations toward them.

Significantly, the grade of the front yard would be altered. A retaining wall just below four feet in height is proposed within the front setback and the grade behind it would increase leading up to the first floor of the proposed dwelling which would be approximately eight feet and nine inches above the sidewalk's grade. This grading would also necessitate the construction of a retaining wall in the southern side yard, albeit not within that side setback. The grade of the rear yard and north side yard would remain mostly unchanged with the proposed dwellings having at-grade access.

The height of the new dwelling would be 34 feet as measured from the new average grade plane, higher than the existing dwelling's height of 27.1 feet as measured from the currently existing grade, but below the maximum allowed height of 36 feet. The number of stories would continue to be 2.5, the maximum allowed.

C. Parking and Circulation

The petitioners are proposing to provide two vehicle spaces within the north half of the basement level, accessed via a relocated curb cut off Malvern Terrace and a new wide driveway (slightly less than 24 feet in width) constructed of permeable pavers along the north property line. This garage will be in addition to the existing two-car, 440 square foot detached garage and associated driveway at the southeast corner of the site.

D. Landscaping and Screening

The site plan includes approx. 1,265 square feet of planting areas for native species along the Charles River to be installed by the property owners. Further detail as to location and species of plantings is provided in the Planting Plan (**Attachment C**).

The Planning Department recommends that additional vegetation, preferably evergreen trees, be provided along the north side of the proposed driveway to better screen the driveway from abutting properties.

III. 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:

- Special Permit. per §7.3.3 to amend Special Permit #88702.

- Special Permit per §7.3.3 to modify the existing nonconforming two-family use (§3.4.1; §7.8.2.C.2)

B. Engineering Review

The Associate City Engineer submitted an Engineering Review Memorandum (**Attachment F**) providing an analysis of the project proposal with regard to engineering issues. All runoff is proposed to be retained onsite in compliance with the Engineering Division of the Department of Public Works standards.

C. Conservation Commission

The Conservation Commission reviewed the project and issued an Order of Conditions on May 27, 2016 (**Attachment G**).

IV. PETITIONER'S RESPONSIBILITIES

The petitioner submitted an unscaled, undated and apparently hand-drawn planting plan on June 8, 2016 (**Attachment E**). It is recommended that a more formally produced plan be submitted for incorporation by reference to any approved Board Order and that the planting plan be reviewed by the City's Senior Environmental Planner prior to the issuance of a building permit.

**ATTACHMENTS:**

<b>Attachment A:</b>	Land Use Map
<b>Attachment B:</b>	Zoning Map
<b>Attachment C:</b>	Zoning Review Memorandum
<b>Attachment D:</b>	Special Permit # 88702
<b>Attachment E:</b>	Planting Plan
<b>Attachment F:</b>	Associate City Engineer's Report
<b>Attachment G:</b>	Conservation Commission Order of Conditions (Cover Letter and Special Conditions)
<b>Attachment H:</b>	Draft Board Order



# Land Use Map

## 17 Malvern Terrace

City of Newton,  
Massachusetts

### ATTACHMENT A

#### Legend

#### Land Use

#### Land Use

- Single Family Residential
- Multi-Family Residential
- Open Space
- Surface Water

### Attachment B

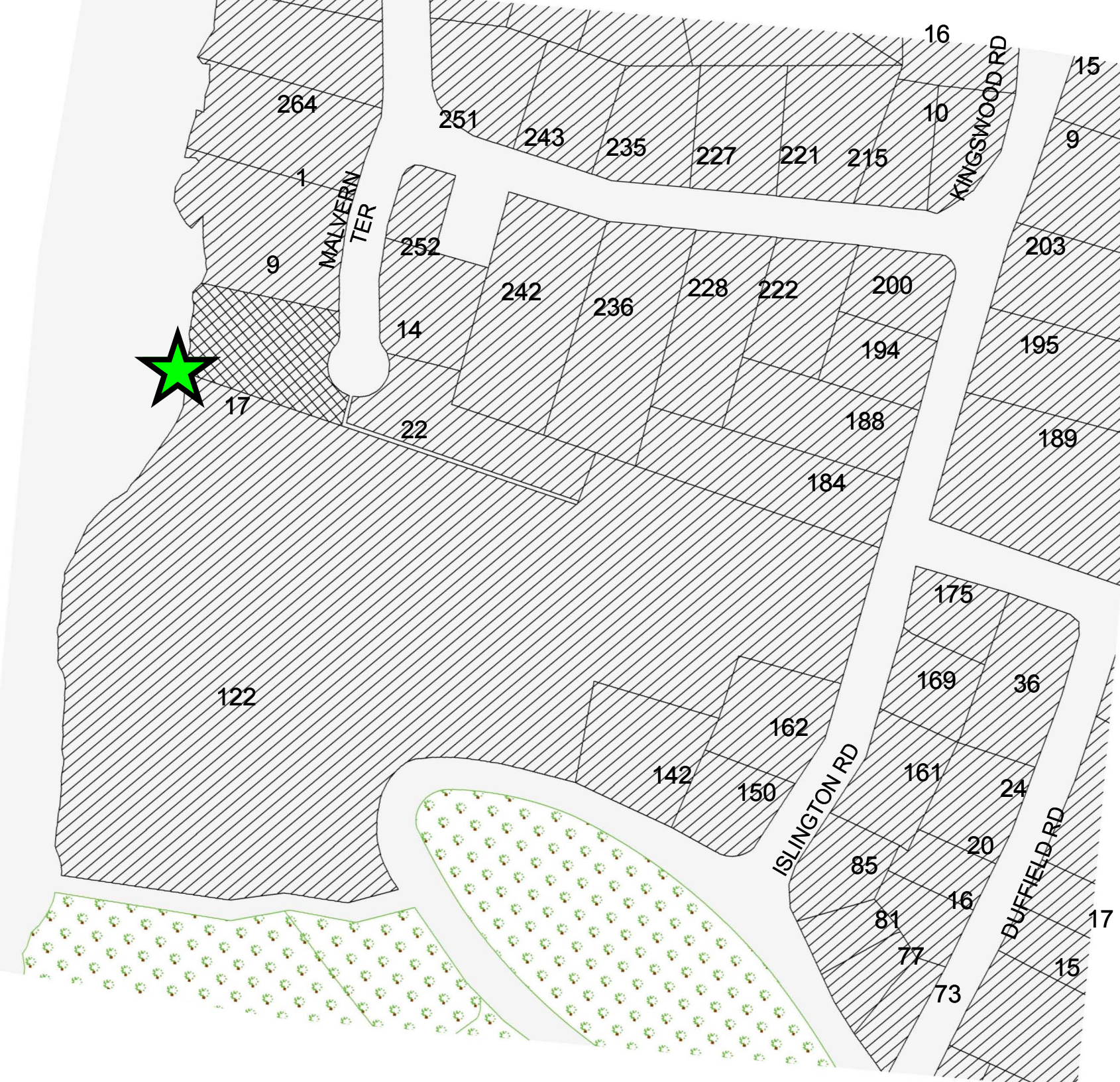


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield

0 12.525 50 75 100 125 150 175  
Feet

Map Date: May 05, 2016









Setti D. Warren  
Mayor

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James Freas  
Acting Director

## ZONING REVIEW MEMORANDUM

Date: March 28, 2016

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Alexandra Ananth, Chief Planner for Current Planning

Cc: Terrence Morris, Architect  
Charles Cossaboom, applicant  
James Freas, Acting Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Request to modify an existing nonconforming two-family use and amend Special Permit  
Petition # 88702**

Applicant: Charles Cossaboom	
Site: 17 Malvern Terrace	SBL: 41026 0017
Zoning: SR-3	Lot Area: 13,970 square feet
Current use: Two-family dwelling	Proposed use: No change

### BACKGROUND:

The property at 17 Malvern Terrace consists of a 13,970 square foot lot improved with a two-family residence constructed in 1885, a two-car garage constructed in 1937 and a small outbuilding. The dwelling was originally constructed as the camp building for the Wawbewawa Canoe Club as boat storage and a canoe launch. The structure was converted into a single-family residence by right sometime before 1924, and later converted into a two-family residence in 1946 by permission from the Board of Aldermen. The property is still used as two-family residence.

The dwelling is currently located approximately 19 feet from the Charles River. The applicant requests permission to raze the existing buildings and rebuild the dwelling away from the floodplain and closer to the street, so as to avoid further flood damage.

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

- Zoning Review Application, prepared by Terence P. Morris, submitted 2/9/2016



- Plan of Land – existing conditions, prepared by Edward M Brooks Co, dated 3/16/2016
- Plan of Land – proposed conditions, prepared by Edward M Brooks Co, dated 3/16/2016
- Board of Aldermen Decision Petition #88702, dated 6/24/1946
- Minutes of Public Hearing, Newton Historical Commission, dated 2/26/2015
- Site Plan and Architectural Plans, signed and stamped by Jay Walter, architect, dated 3/21/2016
  - First floor plan
  - Second floorplan
  - Basement plan
  - Framing plans
  - Elevations

#### ADMINISTRATIVE DETERMINATIONS:

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1. Sometime before 1924, the structure was converted from a boat house to a single-family dwelling. A special permit Petition #88702 was granted in 1946 allowing for conversion to a two-family dwelling, as the property is located in a single residence district. To raze the existing nonconforming two-family dwelling and relocate it on the lot requires an amendment to special permit Petition #88702 to modify the approved plans.
2. The 1946 special permit granted permission for the two-family use, which is nonconforming in a single residence district. The applicant proposes to maintain the two-family use on the property, but to relocate and re-orient the structure so as to create a greater distance from the Charles River and minimize the flood risk. To modify an existing nonconforming use requires a special permit per Section 7.8.2.C.2.

SR3 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	10,340 square feet	No change
Frontage	70 feet	102 feet	No change
Setbacks <ul style="list-style-type: none"> <li>• Front</li> <li>• Side</li> <li>• Rear</li> </ul>	25 feet 7.5 feet 15 feet	48.6 feet 7.6 feet 19 feet	25 feet 10.6 feet +/- 65 feet
Building Height	36	27.1 feet	34 feet
Max Number of Stories	2.5	2.5	2.5
FAR	.41	.35	.41
Max Lot Coverage	30%	23.2%	22.5%
Min. Open Space	50%	72%	76%

See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
	Request to amend Petition #88702	S.P. per §7.3.3
§3.4.1 §7.8.2.C.2	Request to modify the existing nonconforming two-family use	S.P. per §7.3.3

ATTACHMENT D



ORDERED

City of Newton  
IN BOARD OF ALDERMEN

June 24, 1946

Pub. Bldg

88872

That Petition #88702, of Henry S. Harvey, 673  
Washington Street, Brookline, for permission to change  
a One Family dwelling to a Two Family dwelling at  
17 Malvern Terrace, Ward 4, be and is hereby granted,  
under the provisions of Section 572-C of the Zoning  
Ordinance, subject to the provisions of the Building  
Code and in accordance with plan filed with petition,

46

Read and adopted  
read twice and adopted

Yeas \_\_\_\_\_ Absent \_\_\_\_\_

FRANK M. GRANT, Clerk

true copy

Attest

*Frank M. Grant* CITY CLERK

Executive Department

Approved June 26, 1946

PAUL M. GODDARD, Mayor



ATTACHMENT E

Right Side

126-16



- 1 - Red Osier Dogwood - Tree
- 1 - Clump Gray Birch - Tree
- 1 - Black Willow - Tree
- 1 - Clethra alnifolia - Shrub
- 1 - Swamp Azalea - Shrub
- 2 - Winter Berry - Shrub
- 5 - Sensitive Fern
- 4 - Low Bush Blueberry

Existing that will remain

- 5 - Swamp Mallow
- 3 - Yellow water Iris
- Mix Mallow and Iris

CHARLES RIVER



LEFT SIDE

- 1 - Button Bush - Shrub
- 1 - Clethra alnifolia - Shrub
- 1 - Ink Berry - Shrub
- 1 - Swamp Azalea - Shrub
- 2 - High Bush Blueberry - Shrub
- 4 - Cinnamon Fern

Existing that will remain.

- 1 - Swamp Mallow - Existing
- 8 - Flag Iris - Existing
- 8 - Fall Flox - Existing

**CITY OF NEWTON**  
ENGINEERING DIVISION

MEMORANDUM

To: Jennifer Steel, Conservation Commission Administrator

From: John Daghlion, Associate City Engineer

Re: Notice of Intent – 17 Melvern Terrace

Date: May 23, 2016

CC: Lou Taverna, PE, City Engineer

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In reference to the above site, I have the following comments for a Notice of Intent entitled:

*Site Plan of Land in Newton, MA  
17 Melvern Terrace  
Designed by: Everett M. Brooks Company  
Dated: March 21, 2016  
Revised: 5/17/16*

Executive Summary:

Revised drawings were received however the issues of the April 29<sup>th</sup> memo have not been addressed. The proposed retaining wall along the backside of the existing public sidewalk needs clarification (i.e. top & bottom of wall elevations, design, materials and how drainage from the back of the wall will be handled, as discharging water onto a City sidewalk is prohibited and is a concern during freeze/thaw cycles when ice may accumulate.

The narrative does not address how dewatering will be addressed during construction, this is a major concern since the property is directly on the Charles River. The narrative does not explain the methodology of the new construction i.e., the type of foundation (will be it on pilings, helical piers, traditional foundation?).

The proposed driveway is to be constructed of pervious pavers, but the narrative indicates that the drainage calculations regarded this as impervious; which is fine, however; there is no calculation of how much runoff is coming off this driveway. The issue with “pervious” pavers is that for the system to properly drain, long-term maintenance via a vacuum sweeping is required to keep the pavers and gaps between functional as “pervious”; yet

homeowners do not conduct this type of maintenance, this is why DPW does not give credit for these pavers. This design does not take into account water quality of the groundwater. If a “pervious” driveway is installed with stone material to allow runoff to infiltrate into the base and ultimately the groundwater, how does the system address the potential for any gas or oil drippings from contaminating the local soil and ultimately the ground water. Since DPW does not allow credit for pervious pavers, the right thing to do is to install a closed network system to capture the runoff from this driveway via a trench drain and gas trap outlet then infiltrate on site.

Since construction activity will take place near the existing City drain easement, outfall #54, prior to any demolition and or construction, a Closed Circuit Television (CCTV) inspection shall be performed by the applicant and witnessed by the Engineering Division, furthermore a post construction CCTV will be required. This is a standard requirement for any construction near City utilities.

An existing 16” diameter deciduous tree is to be cut down for the construction of the proposed driveway; this will require a public hearing with the Tree Warden.

In addition to the test pit, a percolation test is required with 25 feet of any on site drainage facility. The calculation methodology for the design of the dry well is acceptable however there is a slight mathematical error in the calculations; please correct it for the record.

An Operations and Maintenance (O&M) plan for Stormwater Management Facilities needs to be drafted and submitted for review. It is imperative that regular maintenance be performed to ensure proper operation of the drainage improvements as designed by the engineer. Once approved the O&M must be adopted by applicant, incorporated into the deeds; and recorded at the Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.

A comment was brought to my attention regarding the drainage system performance during the winter when there is frost in the ground, although there is a potential for about 4-feet of frost, the galley is constructed within crushed stone and frost is not an issue within the stone zone of the proposed system.

This concludes my review, when 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 complete and consistent plans.

*Recommendations:*

1. Prior to and demolition & construction, and upon completion of all construction, the applicant shall have the drain pipe in the City easement inspected via a Closed Circuit Television Inspection (CCTV). The Engineering & Utilities Division shall



- be given 48 hours prior notice to the date of the CCTV inspection to arrange an Inspector to witness the inspection.
2. 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).
  3. Snow storage areas need to be identified on the site plan.
  4. The existing driveway apron shall be remodeled as a compliant City sidewalk; the new driveway apron shall conform to the City's Construction standards.
  5. The applicant will have to apply for a Building Permit with the Inspectional Services Department.
  6. The applicant's contractor shall apply with the DPW for Utilities Connection permits. Note that the winter moratorium will be in effect on December 15<sup>th</sup> no excavations will be allowed with public right of ways until April 15<sup>th</sup>.
  7. The contractor needs to notify the Engineering Division 48-hours in advance and schedule an appointment to have the drainage system & all utilities inspected. The system & utility must be fully exposed for the inspector. ***This note must be incorporated onto the final contract plans.***
  8. All siltation control systems shall be installed and inspected by the Conservation Commission Agent(s) prior to any construction. ***This note must be incorporated onto the final contract plans.***
  9. Prior to a request for a Certificate of Compliance 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. ***This note must be incorporated onto the final contract plans.***
  10. All site work must be completed before requesting a Certificate of Occupancy.

If you have any questions or concerns please feel free to contact me @ 617-796-1023.





Setti D. Warren  
Mavor

# CITY OF NEWTON, MASSACHUSETTS

## Department of Planning and Development

**126-16**

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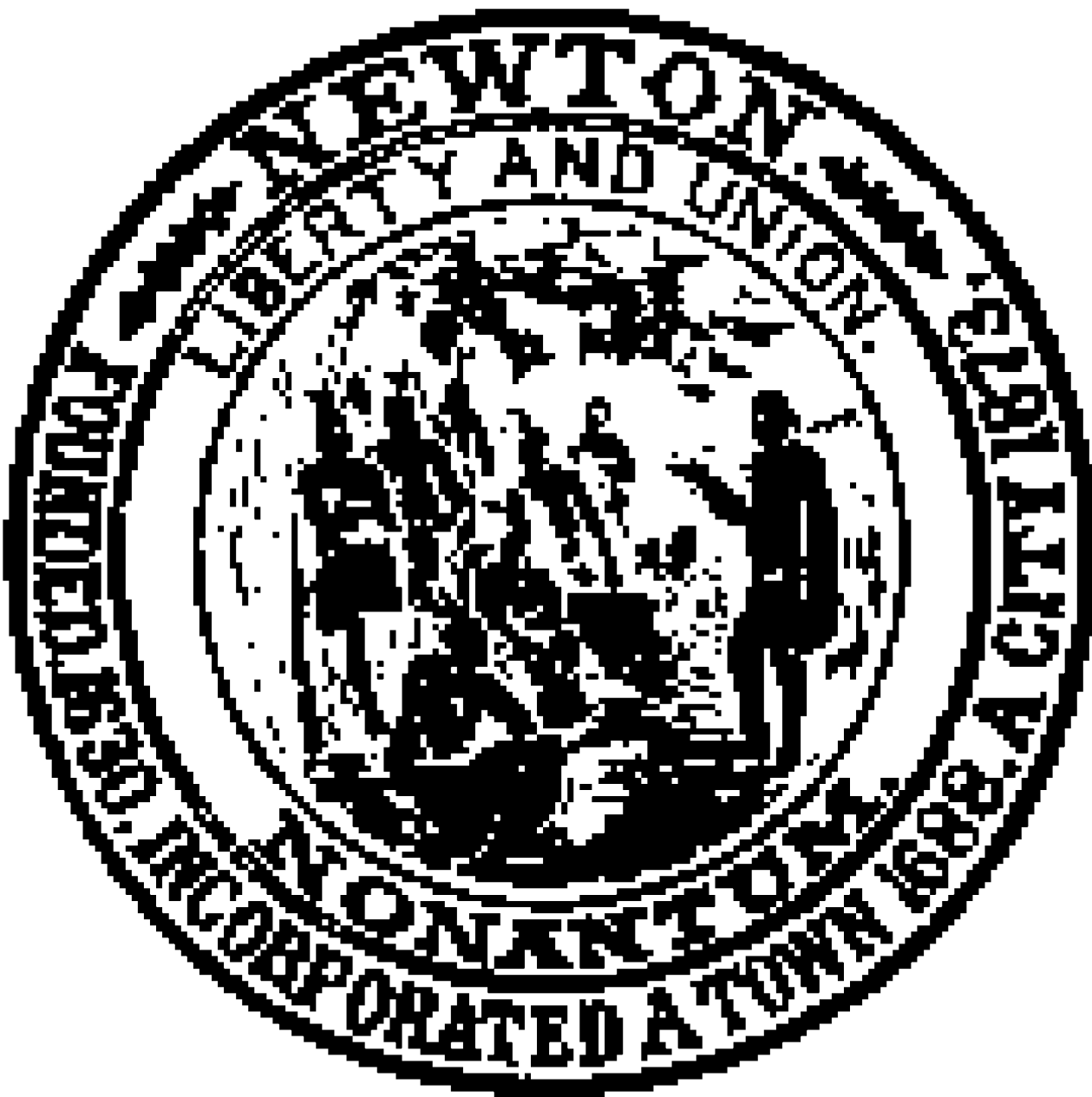
**Once received, your Certificate of Compliance must be recorded at the Middlesex South Registry of Deeds and proof of recording sent to the Conservation office (as per the Wetlands Protection Regulations 310 CMR 10.05(9)(f)).**

If you have any questions, please don't hesitate to contact the office at 617-796-1134. For the Commission, Jennifer Steel, Sr. Environmental Planner

*Enclosures: Order of Conditions*

*Certificate of Understanding*

*CC: Wetlands Division, DEP - NERO, 205B Lowell St., Wilmington, MA 01887*



**Conservation Commission**

1000 Commonwealth Avenue, Newton, Massachusetts 02459

Email: [jsteel@newtonma.gov](mailto:jsteel@newtonma.gov)





Setti D. Warren  
Mayor

# CITY OF NEWTON, MASSACHUSETTS

## Department of Planning and Development

**126-16**

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### Certificate of Understanding re Conditions and Restrictions in Wetlands and Buffer Zones

Street Address: \_\_\_\_\_

DEP File # \_\_\_\_\_

Owner: \_\_\_\_\_

OOO Issue Date: \_\_\_\_\_

I, \_\_\_\_\_, one of the owners of \_\_\_\_\_, Newton, Massachusetts, do hereby acknowledge and understand that:

- A portion of my property lies within a buffer zone and/or wetland and that **new work** within this area is subject to review and approval by the Conservation Commission. *initials* \_\_\_\_\_
- I, as property owner, am responsible for all work on my property even if it is conducted by private contractors. *initials* \_\_\_\_\_
- I have received and read and understand the conditions established in the referenced Order of Conditions (OOC). *initials* \_\_\_\_\_
- There are specific requirements for the start of work, *initials* \_\_\_\_\_
- There are specific requirements for the construction and work, *initials* \_\_\_\_\_
- There are specific requirements relating to Certificate of Compliance when all work is complete and *initials* \_\_\_\_\_
- There are a number of ongoing/perpetual obligations with respect to the **landscaping and maintenance activities** required within wetlands and/or buffer zones. *initials* \_\_\_\_\_

I have carefully reviewed and understand the requirements and agree to adhere to them.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Date)

Please complete this form and return it to:

Jennifer Steel  
Conservation Commission  
1000 Commonwealth Avenue, Newton, Massachusetts 02459  
Email: [jsteel@newtonma.gov](mailto:jsteel@newtonma.gov)

Findings and Special Conditions of the Newton Conservation Commission  
DEP #239-756, 17 Malvern Ter., Charles Cossaboom, Tear-Down/Re-Build 2-Family House

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**Findings (considered as and given equal status as special conditions)**

- Owner: Charles Cossaboom
- Applicant: Charles Cossaboom
- Representative: EMBrooks, Mike Kosmo
- In case of emergencies, problems, or questions, contact: Jennifer Steel: 617-796-1134.
- Existing Conditions: 2-family house, lawn, gardens, sheds, small driveway, dock, wall along Charles River
- Jurisdiction, Performance Standards, and Ecological Issues:
  - Bordering Land Subject to Flooding: The house will be moved back from the river but will be placed on fill in the BLSF. Compensation is being generated by the removal of the existing house and some grading changes.
  - City Floodplain: The City Floodplain elevation is below that of the BLSF, so is adequately compensated for.
  - Riverfront Area: The entire lot is within RFA. The house is being moved well away from the river and some restoration of a vegetated buffer will occur (see the approved mitigation planting area). While there is a net increase in impervious area, it is in the outer riparian zone over what was lawn, well within the 5000 sf allowance.
  - Stormwater Management Standards were reviewed by the City Associate Engineer. All standards have been met. Roof runoff will go into a drywell. Driveway runoff will sheet to the lawn.
  - Dewatering: The applicant has stated that no dewatering will be required. This Order does not approve any dewatering plan.
- Approved Project:
  - Project Purpose: The current house is very low in the floodplain and in need of updating.
  - Permitted Activities:
    - Demolition of house and grading of back yard to fill in cellar hole.
    - Construction of new house, associated walls and grading, driveway.
    - A planting plan MUST be implemented to compensate for the removal of trees and the larger footprint in the Riverfront Area.
  - Protective measures include: Silt fence around the perimeter of the property and tree protection for the trees that are to remain (see the approved plan that identifies those trees).
- Final Approved Plans: Site Plan of Land in Newton MA, 17 Malvern Terrace, E.M. Brooks, (Mike Kosmo), last revised 5/17/16, sheets 1 of 2 and 2 of 2.
- The Newton Conservation Commission shall retain the right to require the submittal of additional information or additional construction measures deemed necessary to ensure the protection of wetland resource areas
- Any required or desired deviations from this plan shall be requested in writing of the Commission Office, who shall determine if said changes require filing a new Notice of Intent.
- When plans are updated it is the responsibility of the applicant to provide all City Departments involved in the permitting and approval process complete and consistent plans.

**Newton's Conditions (Note: Violation of any condition stated herein may result in Enforcement Action.)**

**Specific to this Project**

20. Required activities include:
  - a. Runoff from the driveway must be directed, by means of grading, towards the northern property boundary and the northwestern mitigation planting area.
  - b. In the event that the Engineering Department requires that the driveway be impervious and that a trench drain and closed drainage system with a gas trap outlet that discharges to an infiltration system be installed, the applicant must provide revised plans and must submit an O&M plan for the revised driveway drainage and infiltration system to the Conservation Commission prior to the pre-construction site visit for review and approval.
  - c. A pre-construction site visit must be scheduled with the Conservation office to confirm sediment controls, tree protection, and limit of work.

Findings and Special Conditions of the Newton Conservation Commission  
DEP #239-756, 17 Malvern Ter., Charles Cossaboom, Tear-Down/Re-Build 2-Family House

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- d. Dewatering: Should dewatering become necessary, the applicant will have to stop construction, develop a dewatering plan, submit it to Conservation Commission and Engineering Department for review and approval prior to continuing work.
  - e. The stormwater infiltration system must be installed as per the plans and its installation must be inspected by a City Engineer.
  - f. Mitigation plantings shall occur within 6 months of completion of construction. Desired deviations from the approved planting plans must be approved by the Conservation Commission in advance. Mitigation plantings must be installed and permanently bounded as per the approved plans and must survive to 75% for 2 growing seasons for a Certificate of Compliance to be granted.
  - g. The applicant shall install an additional black willow in the southwest mitigation planting area which shall not be subject to the survival requirements in paragraph f (below).
  - h. As built plans must confirm compensatory flood storage.
21. Prohibited activities include: No activities shall occur beyond the erosion control barrier shown on the plan. All trees to remain must not be allowed to sustain damage to their trunks or roots.

#### Before Work Begins

22. Before any land disturbing activities may begin, the applicant must schedule a pre-construction site visit with:
- a. Applicant or Applicant's Representative(s)
  - b. Applicant's Construction Supervisor (person responsible for compliance with this Order and who may be held jointly responsible for any violations and the penalties under the law for said violations)
  - c. Applicant's Contractor(s)
  - d. Agent(s) of the Commission
- At the pre-construction site visit the following will be checked by an agent of the Conservation Commission:
- e. Sedimentation/erosion controls are properly installed in the correct locations
  - f. DEP File number sign of minimum size 2'x2' shall be displayed clearly visible from the street
  - g. Proof of Recording the Order has been supplied to the Conservation office
  - h. Contact information for those responsible for construction, sediment controls, and landscaping has been supplied to the Conservation office
  - i. Anticipated timeline has been supplied to the Conservation office
23. Before any work on-site begins, all other applicable federal, state &/or local permits and/or approvals must be obtained.
24. Notice shall be given to the Newton Conservation Commission no less than two (2) business days prior to the commencement of construction activities.
25. This document shall be included in all construction contracts, subcontracts, and specifications dealing with the work proposed and shall supersede any conflicting contract requirements. The Applicant shall assure that all contractors, subcontractor and other personnel performing the permitted work are fully aware of the permit's terms and conditions. Thereafter, the contractor will be held jointly liable for any violation of this Order resulting from failure to comply with its conditions. Nothing in this paragraph shall limit or restrict the liability of the Applicant for violations of this Order.
26. Wetlands flags in the vicinity of the work area are to be clearly marked and numbered exactly as they are surveyed on the approved plan cited in this Order. They must be maintained at all times and replaced if missing or illegible.

#### During Construction

27. Appropriate erosion control measures must be installed, inspected, and maintained during the construction period until the site is stable. Erosion control measures shall be installed as shown on the approved Plan and shall indicate the limit of work. Earth shall not be backfilled against or allowed to overtop erosion control barriers. Silt and sand accumulating behind said barriers shall be removed regularly. If a breach of the erosion control barriers occurs, the Newton Conservation Commission shall be notified, and measures shall be taken to remediate said breach under the guidance of the Commission. All soils must be contained on the site. City streets shall be kept clean and catch basins in the immediate area shall be protected from eroding soils. Hay bales, for any purpose without explicit permission from the Commission, are prohibited by this Order. An adequate supply of extra erosion control materials shall be stored on-site at all times for repair or replacement. Erosion control barriers shall remain in

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place until a Certificate of Compliance is issued for said work or upon written authorization from the Newton Conservation Commission.

28. The applicant shall ensure that throughout the construction period, all measures necessary to prevent any damage to the wetland resource area are taken. Should any damage occur during the course of the project, the applicant, any successor in interest, or successor in control shall be responsible for and bear the full cost of restoration of the wetland to the satisfaction of the Conservation Commission.
29. A copy of the approved plans and Order of Conditions shall be kept on-site and available for review at all times. All contractors are expected to adhere to the approved plan and these Conditions.
30. "Good housekeeping practices" shall be implemented at all times, including:
  - a. appropriate limits to discharges within a Resource Area, Buffer Zone, or an area leading to a stormwater conveyance system
  - b. appropriate stockpile area management
  - c. appropriate limits to vehicle refueling, washing, etc.
  - d. appropriate litter management
  - e. appropriate controls for tire tracking
31. During the construction period and prior to issuance of a Certificate of Compliance, members and agents of the Conservation Commission shall have the right to inspect the applicant's project to evaluate compliance with the approved plans and these conditions.
32. Work shall be immediately halted on the site if an Agent of the Commission or DEP determines that any of the work is not in compliance with this Order of Conditions or Special Conditions.

#### Upon Completion of the Project

33. Upon completion of the project, all exposed soil areas shall be stabilized and re-vegetated. Any excess spoil material which is to remain on Applicant's premises and all areas of disturbed soil shall be left stabilized with mulch, grass or other plantings and protected against erosion and sedimentation. All materials not to remain on Applicant's premises shall be removed from said premises and disposed of in a legal manner.
34. Upon completion of the project, the Conservation Office shall be notified, and permission to remove sediment barriers and the DEP file number sign shall be sought.
35. No Certificate of Occupancy shall be approved by Conservation unless a Certificate of Compliance has been issued or the request receives the written approval of the Sr. Environmental Planner.
36. Upon completion of the project, the applicant must apply for a Certificate of Compliance in accordance with DEP Condition #12, by submitting:
  - a. A completed "Request for Certificate of Compliance (WPA Form 8A)."
  - b. A written statement from a Professional Engineer registered in Massachusetts certifying that the work has been completed in substantial compliance with this Order of Conditions and the approved plans referenced herein (or approved revisions). If the completed work differs from that in the approved plans and conditions, the report must specify how the project differs.
  - c. An as-built plan signed and stamped by a professional land surveyor registered in Massachusetts. This plan will include all structures, grading (topography), drainage, and landscape features and plantings.
  - d. A letter from a landscaper certifying compliance with the approved planting scheme. A Certificate of Compliance shall not be issued until after two growing seasons after plantings have been installed and found to be well established.

#### On-going Conditions

37. Certain conditions shall remain in effect in perpetuity and shall not expire upon completion of the project or the issuance of a Certificate of Compliance. These conditions are as follows:
  - a. To improve water quality in the adjacent wetlands and waterways, the use of herbicides and other pesticides is prohibited and fertilizers shall be limited to slow-release organic fertilizers.

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- b. In order to protect wildlife and/or vernal pool species, artificial lighting shall be designed to prevent lighting of the wetlands. Any outdoor lights within 200 feet of the wetland shall be directed so as not to radiate light towards those areas. Any such lights shall be limited to no more than 1,800 lumens per fixture and the fixture shall not illuminate any part of the wetland more than 0.2 footcandles. Exterior lights shall not be mounted higher than 25 feet above the ground.
- c. Required mitigation planting areas near the river shall be maintained in perpetuity in their predominantly natural condition.



## ATTACHMENT H

DRAFT- #126-16

CITY OF NEWTONIN CITY COUNCIL

June 20, 2016

## 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 and the amendment of Special Permit #88702 to modify an existing nonconforming two-family use by razing the existing dwelling and outbuilding and rebuilding the dwelling away from the floodplain and closer to the street at 17 Malvern Terrace, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Marc Laredo:

1. The extension of the nonconforming use and structure will not be substantially more detrimental than the existing nonconforming use and structure as the expanded structure will be in conformance with applicable dimensional requirements. (§3.4.1 and 7.8.2.C.2.)
2. The site is an appropriate location for the proposed expanded structure as it is located on a large lot and conforms with current Floor Area Ratio (FAR) requirements. (§7.3.3.C.1.)
3. The use as developed and operated will not adversely affect the neighborhood. All runoff will be retained on-site and the Conservation Commission has reviewed and approved the site plan. (§7.3.3.C.2.)
4. There will be no nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3.)
5. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4.)

PETITION NUMBER: #126-16

PETITIONER: Charles B. Cossaboom

LOCATION: 17 Malverne Terrace, Section 41, Block 26, Lot 17, containing approximately 13,970 square feet of land

OWNER: Charles B. Cossaboom

ADDRESS OF OWNER: 17 Malverne Terrace  
Newton, MA 02466

TO BE USED FOR: Two-Family Residence

CONSTRUCTION: Wood Frame

EXPLANATORY NOTES: §3.4.1. and §7.8.2.C.2., to modify a nonconforming structure;  
amend Special Permit #88702.

ZONING: Single Residence 3 (SR-3) 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 "Site Plan of Land in Newton, MA, 17 Malvern Terrace," prepared by Everett M. Brooks Co., dated March 21, 2016, as revised through May 17, 2016, signed and stamped by Michael S. Kosmo, Registered Professional Engineer.
  - b. A set of architectural plans entitled "Cossaboom Residence Newton, Ma.," prepared by Entasis PC, Jay C. Walter AIA, dated June 1, 2016, signed and stamped by Jay C. Walter, Registered Architect:
    - i) Site Plan/General Notes (A-1);
    - ii) First Floor Plan (A-2);
    - iii) Second Floor Plan (A-3);
    - iv) Basement Plans (A-4);
    - v) Exterior Elevations (A-5).
2. 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.
3. 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.
4. Prior to the issuance of any Building Permits, the petitioner shall provide a final Landscape Plan showing compliance with the Tree Preservation Ordinance and all new plantings, for review and approval by the Director of Planning and Development.

5. 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 should 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.
6. No Building Permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
  - 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 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. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the final site plan.
  - e. Filed a final Landscape Plan to the Director of Planning and Development for review and approval.
  - f. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
7. 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 or engineer certifying compliance with Condition #1.
  - b. Filed with the Clerk of the Board, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that improvements authorized by this Board 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.
  - d. Submitted to the Director of Planning and Development a statement from the City's Senior Environmental Planner that the improvements authorized by this Board Order have been constructed in Compliance with the relevant Conservation Commission Order of Conditions.
8. Notwithstanding the provisions of Condition #7 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.
9. The landscaping shown on the approved 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.