



#98-17

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## City of Newton, Massachusetts

### Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

Setti D. Warren  
Mayor

Barney S. Heath  
Director

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### PUBLIC HEARING MEMORANDUM

Public Hearing Date:	May 9, 2017
Land Use Action Date:	July 18, 2017
City Council Action Date:	July 24, 2017
Expiration Date:	August 7, 2017

DATE: May 5, 2017

TO: City Council

FROM: Barney S. Heath, Director of Planning and Developm  
Alexandra Ananth, Chief Planner for Current Plannin  
Neil Cronin, Senior Planner

SUBJECT: **Petition #98-17**, for SPECIAL PERMIT/SITE PLAN APPROVAL to vertically extend a nonconforming front setback at **37 Troy Lane**, Ward 5, Waban, on land known as SBL 53, 04, 08, containing approximately 5,791 sq. ft. of land in a district zoned Multi-Residence 1. Ref. §3.2.3, and §7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

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The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis which may be useful in the special permit decision making process of the City Council. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the City Council will want to consider in its discussion at a subsequent Working Session.



**37 Troy Lane**

### **EXECUTIVE SUMMARY**

The property at 37 Troy Lane consists of a 5,791 square foot lot in the Multi-Residence 1 (MR-1) zone in Waban. The lot was formerly improved with a bungalow-style single-family residence circa 1905 that was razed in 2016. The original structure had a nonconforming front setback of 8.8 feet, where 25 feet is the minimum allowed. The petitioner is seeking to construct a new residence approximately 9.5 feet from the front property line and to vertically extend the second story and attic by approximately nine feet. As a result, the petitioner requires a special permit to vertically extend the nonconforming front setback.

The Planning Department notes the existing setback existed for many years, and the lot has a unique polygonal shape which limits the orientation and placement of a structure. The proposed design mimics the original structure by incorporating a front porch and new square footage is proposed to the rear, outside of the front setback. Staff notes the proposed structure and lot will remain compliant with the dimensional controls of an old lot in the MR-1 zone.

#### **SIGNIFICANT ISSUES FOR CONSIDERATION:**

When reviewing this request, the City Council should consider whether:

- The proposed vertical extension of the nonconforming front setback will be substantially more detrimental than the existing nonconforming front setback is to the neighborhood (§3.2.3 and §7.8.2.C.2).

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

##### **A. Neighborhood and Zoning**

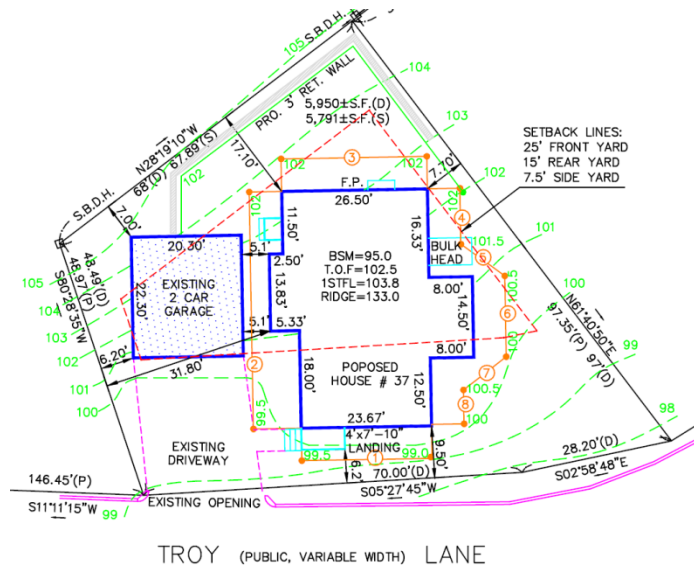
The subject property is located on Troy Lane in the MR-1 zone in Waban. The MR-1 zone encompasses the immediate area, but there is a Single Residence 2 zone to the east (**Attachment A**). The larger area is entirely residential and thickly settled with single- as well as multi-family structures (**Attachment B**).

##### **B. Site**

The site consists of 5,791 square feet of land, and was formerly improved with a single-family residence circa 1905. The shape of the lot is best described as “polygonal” which restricts the orientation and location of a structure on the lot. In addition, the lot is sloped uphill from the front of the site to the rear. A row of Hemlock trees lines the rear property line and there is six foot tall privacy fence at the northern boundary (side) owned by the abutter at 29 Troy Lane. There is an existing detached two-car garage at the western boundary which was not demolished by the petitioner. This garage has an existing nonconforming front setback of 24 feet, where 25 feet is the minimum required. The garage is accessed by an approximately 21 foot wide curb cut and 525 square foot driveway.

The petitioner is not proposing to significantly alter the site design. A three foot tall retaining wall is proposed along the western and northern boundaries to create some

level outdoor space. The retaining wall is located in the setback, and is approximately 75 feet long, but is less than four feet tall and therefore does not require relief. The Planning Department suggests the petitioner consider moving the wall closer to the proposed residence in order to preserve the row of Hemlock trees along the rear property line.



#### D. Parking and Circulation

There are no proposed changes to the parking or circulation.

#### E. Landscape Screening

The Planning Department suggests the petitioner consider installing some landscaping at the front of the structure to reduce the appearance of the foundation walls and mitigate the scale of the new residence.

### 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 Memorandum, the petitioner is seeking the following relief:

- §3.2.3 and §7.8.2.C.2 of Section 30, to vertically extend the nonconforming front setback.

B. Engineering Review

No engineering review is required at this time. The Engineering Division of Public Works will review this project for conformance with the City of Newton Engineering Standards prior to the issuance of a building permit, should this project be approved.

IV. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.






**ATTACHMENTS:**

<b>Attachment A:</b>	Zoning Map
<b>Attachment B:</b>	Land Use Map
<b>Attachment C:</b>	Zoning Review Memorandum
<b>Attachment D:</b>	DRAFT Order

# Attachment A Zoning Map Troy Ln., 37

*City of Newton,  
Massachusetts*

## Legend

-  Single Residence 2
-  Multi-Residence 1
-  Building Outlines
-  Surface Water
-  Property Boundaries



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 50 100  
Feet

Map Date: April 14, 2017











# Attachment B Land Use Map Troy Ln., 37

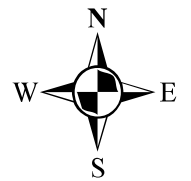
*City of Newton,  
Massachusetts*

## Legend

### Land Use

### Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Nonprofit Organizations
-  Building Outlines
-  Surface Water
-  Property Boundaries



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Attachment C

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Barney S. Heath  
Director

## ZONING REVIEW MEMORANDUM

Date: April 4, 2017

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Ralph Kilfoyle, architect  
Donald Fabrizio, applicant  
Barney S. Heath, Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Request to vertically extend an existing nonconforming front setback**

Applicant: Donald Fabrizio	
Site: 37 Troy Lane	SBL: 53004 0008
Zoning: MR1	Lot Area: 5,791 square feet
Current use: Single-family dwelling	Proposed use: No change

### BACKGROUND:

The property at 37 Troy Lane consists of a 5,791 square foot lot which had been improved with a single-family residence constructed in 1905 that was recently razed. A detached two-car garage structure was left standing. The dwelling had a nonconforming front setback of 8.8 feet. The applicant proposes construct a new single-family dwelling extending the nonconforming front setback vertically while decreasing the nonconformity by one foot. The proposed structure will otherwise meet all other dimensional requirements.

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

- Zoning Review Application, prepared Ralph Kilfoyle, architect, submitted 3/1/2017
- FAR Worksheet, submitted 3/1/2017
- Plan of Land, signed and stamped by Robert Bibbo, surveyor, dated 1/5/2017
- Floor Plans, signed and stamped by Ralph Kilfoyle, architect, submitted 3/1/2017



## ADMINISTRATIVE DETERMINATIONS:

1. The applicant razed the existing two-story single-family dwelling in October 2016 with the intent to reconstruct. The razed dwelling had a legally nonconforming front setback of 8.8 feet, where 25 feet is required per Section 3.2.3. The applicant requests a special permit per Section 7.8.42.C.2 to reconstruct a single-family dwelling with a slightly less nonconforming front setback of 9.5 feet which vertically extends the nonconforming front setback and increases the overall massing of the structure.

MR1 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	<b>5,791 square feet</b>	<b>No change</b>
Frontage	70 feet	98.2 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	<b>8.8 feet</b> 9.9 feet 24.2 feet	<b>9.5 feet</b> 7.7 feet 17.1 feet
Max Number of Stories	2.5	2	2.5
Height	36 feet	23.5 feet	32.3 feet
FAR	.56	.37	.49
Max Lot Coverage	30%	27.4%	29.9%
Min. Open Space	50%	63.5%	60.9%

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.2.3 §7.8.2.C.2	Request to vertically extend a nonconforming front setback	S.P. per §7.3.3

CITY OF NEWTON  
IN CITY COUNCIL

May 15, 2017

ORDERED:

That the City 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 the following SPECIAL PERMIT/SITE PLAN APPROVAL to vertically extend a nonconforming front setback, as recommended by the Land Use Committee for the reason given by the Committee, through its Chairman, Councilor Marc Laredo:

1. The proposed vertical extension of the nonconforming front setback is not substantially more detrimental than the existing setback is to the neighborhood because the new structure will not encroach any farther into the setback than the existing structure and the property will remain compliant with all other dimensional controls of an old lot in the Multi-Residence 1 zone (§3.2.3 and §7.8.2.C.2).

PETITION NUMBER: #98-17

PETITIONER: Donald Fabrizio

LOCATION: 37 Troy Lane, on land known as Section 53, Block 04, Lot 08, containing approximately 5,791 square feet of land

OWNER: Donald Fabrizio

ADDRESS OF OWNER: 43 Troy Lane  
Newton, MA 02468

TO BE USED FOR: Single-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.2.3 and §7.8.2.C.2 to vertically extend a nonconforming front setback

ZONING: Multi-Residence 1 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. Site Plan, signed and stamped by Robert Bibbo, Professional Land Surveyor, dated January 5, 2017
  - b. Architectural Plans, entitled "37 Troy Lane, Newton, MA", signed and stamped by Ralph D. Kilfoyle, Registered Architect, consisting of the following seven (7) sheets:
    - i. Sheet A-1 First Floor Plan
    - ii. Sheet A-2 Second Floor Plan
    - iii. Sheet A-3 Comparison of Existing and Proposed Elevations
    - iv. Sheet A-4 Front Elevation
    - v. Sheet A-5 Left Elevation
    - vi. Sheet A-6 Right Elevation
    - vii. Sheet A-7 Rear Elevation
2. 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.
3. Prior to the issuance of any building permit the petitioner shall submit a Construction Management Plan for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, and the City Engineer. The Construction Management Plan shall be consistent and not in conflict with relevant conditions of this Council Order and shall include, but not be limited to, the following provisions:
  - 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 7:00 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. The proposed schedule of the project, including the general phasing of the construction activities.
  - d. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for delivery vehicles, and location of any security fencing.

- e. 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.
  - f. Proposed methods of noise control, in accordance with the City of Newton's Ordinances. Staging activities should be conducted in a manner that will minimize off-site impacts of noise. Noise producing staging activities should be located as far as practical from noise sensitive locations.
  - g. De-watering methodology.
  - h. Tree preservation plan to define the proposed method for protection of any existing trees to remain on the site.
  - i. A plan for rodent control during construction.
4. 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 board 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. 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.
  - d. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
5. 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 architect or land 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 land surveyor.