

CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: August 11, 2017

TO: Marc Laredo, Chair, Land Use Committee

FROM: Ouida C.M. Young, Deputy City Solicitor

RE: #183-17
11 Fairview Street

I've attached the draft Order approving the above referenced special permit/site plan approval. I have left the "Draft" watermark on this Order because the petitioner has not yet had a chance to review the last revisions requested by the abutter. While I don't anticipate any issue with this draft, because the petitioner has not had an opportunity to see this draft, I wanted you to know the status of the Order.

I have asked the petitioner's Architect, Alan Mayer, to have his client contact me directly on Monday to see if the language of this draft Order is acceptable or requires further discussion.

I will let you know prior to the Monday meeting of the City Council.

CITY OF NEWTON
IN CITY COUNCIL

August 14, 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 further continue the nonconforming front setback for eleven feet and reduce it from 17.3 feet to 17.2 feet where 25 feet is the minimum allowed by right, and further increase the nonconforming floor area ratio (FAR) from 0.55 to 0.65 where 0.48 is the maximum allowed by right, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Marc Laredo:

1. The proposed further continuance of the nonconforming front setback for eleven feet and its reduction from 17.3 feet to 17.2 feet is not substantially more detrimental than the existing nonconforming front setback to the neighborhood given that the continuance is for an uncovered deck and the reduction is only approximately one inch (§3.1.3 and §7.8.2.C.2).
2. The proposed expanded structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood as it will be similar in regard to those characteristics of other dwellings in the surrounding area (§3.1.9).
3. The proposed increase in the structure's nonconforming floor area ratio (FAR) from 0.55 to 0.65 where 0.48 is the maximum allowed by right is not substantially more detrimental than its existing FAR is to the neighborhood as the proposed addition will conform with side and rear setback requirements and is lower than the existing structure (§7.8.2.C.2).
4. A requested shadow study of the proposed addition was performed and showed that there would be minimal increase in shadows on the abutting properties.

PETITION NUMBER: #183-17

PETITIONER: Elias and Sonya Tembelopoulos

LOCATION: 11 Fairview Street, on land known as Section 71, Block 21,
Lot 9, containing approximately 6,565 square feet of land

OWNER: Elias and Sonya Tembelopoulos

ADDRESS OF OWNER: 11 Fairview Street
Newton, MA 02458

TO BE USED FOR: Single-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.3 and §7.8.2.C.2 to further extend a nonconforming front setback and §3.1.9 and §7.8.2.C.2 to further increase the nonconforming floor area ratio

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 in Newton, MA, 11 Fairview Street, Existing Conditions," prepared by Everett M. Brooks Co., dated May 18, 2017;
 - b. A site plan entitled "Plan of Land in Newton, MA, 11 Fairview Street, Proposed Addition," prepared by Everett M. Brooks Co., dated June 8, 2017, signed and stamped by Bruce Bradford, Professional Land Surveyor, June 8, 2017;
 - c. Floor area ratio worksheets signed and stamped by Alan J. Mayer, Registered Architect:
 - i. 11 Fairview Stree (*sic*) (Tembelopoulos Residence)- Existing;
 - ii. 11 Fairview Street (Tembelopoulos Residence)- Proposed.
 - d. A set of architectural plans entitled "Tembelopoulos Residence, 11 Fairview Street, Newton, MA 02458", prepared by Mayer + Associates Architects, consisting of the following sheets:
 - i. Proposed Additions (A0-1), dated August 3, 2017;
 - ii. Existing Conditions- Basement Plan (A1-0), dated June 9, 2017;
 - iii. Existing Conditions- First Floor Plan (A1-1), dated June 9, 2017;
 - iv. Existing Conditions- Second Floor Plan (A1-2), dated June 9, 2017;
 - v. Existing Conditions- Third Floor Plan (A1-3), dated June 9, 2017;
 - vi. Existing Conditions- Exterior Elevations- Front Elevation (A2-1), dated June 9, 2017;

- vii. Existing Conditions- Exterior Elevations- Side Elevation (A2-2), dated June 9, 2017;
 - viii. Existing Conditions- Exterior Elevations- Side Elevation (A2-3), dated June 9, 2017, revised August 3, 2017;
 - ix. Existing Conditions- Exterior Elevations- Side Elevation (A2-4), dated June 9, 2017, revised August 3, 2017;
 - x. Proposed Alterations- Basement Plan (A3-0), dated June 9, 2017, revised August 2, 2017;
 - xi. Proposed Alterations- First Floor Plan (A3-1), dated June 9, 2017;
 - xii. Proposed Alterations- Second Floor Plan (A3-2), dated June 9, 2017;
 - xiii. Proposed Alterations- Third Floor Plan (A3-3), dated June 29, 2017;
 - xiv. Proposed Additions- Exterior Elevations- Front Elevation (A4-1), dated June 9, 2017;
 - xv. Proposed Additions- Exterior Elevations- Side Elevation (A4-2), dated June 9, 2017;
 - xvi. Proposed Additions- Exterior Elevations- Side Elevation (A4-3), dated June 9, 2017, revised August 2, 2017;
 - xvii. Proposed Additions- Exterior Elevations- Side Elevation (A4-4), dated June 9, 2017, revised August 2, 2017.
 - xviii. Sun Path Diagrams- March/September 21
 - xix. Sun Path Diagrams- June 21
 - xx. Sun Path Diagrams- December 21
2. The Petitioner shall, after completion of construction, and prior to requesting a certificate of occupancy, clean out and make operable an existing catch basin located in front of the garage and install and maintain a rain barrel or barrels at the gutter downspouts on the addition to help contain storm water runoff. Petitioner shall thereafter have the obligation to keep clean and/or maintain said catch basin and rain barrel(s).
3. The Petitioner shall implement the following procedures during construction to preserve and protect the existing trees located on 160 and 166 Oakleigh Road abutting the rear property line of the subject property:
- a. Show a limit of site disturbance line on the final landscape plan subject to the review and approval of the Director of Planning and Development that will keep heavy construction equipment and activities away from the root zones of the trees on the abutting lots to the extent reasonably feasible and maintain a physical barrier such as a construction fence and/or erosion barriers during construction along the limit of construction to prevent access to this area and to contain soils during excavation and backfilling;
 - b. Coordinate excavation activities with an arborist hired by the owner of 166 Oakleigh Road and allow such arborist to be present during construction to prune tree roots as necessary during excavation to minimize the damage to such trees;
 - c. Any removal and replacement of pavers on the patio to the rear of the property shall be done by hand; and

- d. Use best efforts to use the existing driveway for staging and for use of any large construction vehicles or machinery.
4. 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.
5. 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. 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.
 - e. Submitted a Final Landscape Plan to the Director of Planning and Development for review and approval.
6. 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 and 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 an architect and licensed land surveyor including the as built floor area ratio of the structure.
 - c. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division certifying that the final site construction details have been constructed to the standards of the City of Newton Engineering Division.
 - d. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Engineering Division of Public Works a statement from the Department of Planning and Development approving the final location, number and type of plant materials and final landscape features consistent with the approved Final Landscape Plan.