



Ruthanne Fuller
Mayor

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

#177-18
Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: April 10, 2018
Land Use Action Date: June 26, 2018
City Council Action Date: July 2, 2018
90-Day Expiration Date: July 9, 2018

DATE: April 6, 2018

TO: City Council

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

SUBJECT: **Petition #177-18**, to construct a two-story addition to the rear and side of the house, extending the existing non-conforming structure at **36 Cummings Road**, Ward 2, Newton Centre, on land known as Section 64 Block 03 Lot 47, containing approximately 18,866 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 7.4, 7.8.2.C.2 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 that the Land Use Committee of the City Council can consider at a subsequent working session.



36 Cummings Road

EXECUTIVE SUMMARY

The property at 36-40 Cummings Road consists of an 18,866 square foot “panhandle” lot in a Single Residence 2 (SR2) zoning district. The lot, which has existed in its current configuration since at least 1925, is improved with two single-family dwellings, 36 and 40 Cummings Road. The former currently contains approximately 1,343 square feet of floor area, the latter 1,498 square feet.

The applicants propose to construct an 2-story, 1,365 square foot addition to the rear and side of 36 Cummings Road; 40 Cummings Road will remain unchanged. As two detached single-family dwellings currently exist on the parcel and only one primary structure is allowed per lot in a SR2 district, a special permit per section 7.8.2.C.2. is required to extend the nonconforming use of the property for two single-family dwellings.

Although it would double 36 Cummings Road’s current size, the Planning Department is generally not concerned with the construction of the proposed addition as the resulting aggregate floor area ratio (FAR) for the two structures on the parcel, approximately 0.22, would remain well below the 0.33 allowed; the expanded dwelling would comply with other dimensional regulations; and, given the relatively large size of the property and its location within it, the addition would have limited visibility from public ways.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

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

- Whether the proposed extension of the existing nonconforming use of a Single Residence 2 (SR2) zoned parcel for two single family dwellings with the construction of an addition to one of said two dwellings would not be substantially more detrimental than the existing nonconforming use to the neighborhood. (§7.8.2.C.2)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property, which directly abuts Newton Cemetery to the east, is located on the east side of Cummings Road, about 300 feet south of Homer Street. The residential properties in the vicinity along Cummings Road and the adjacent North Street are zoned Single Residence 2 (SR2) and vary considerably in lot and house size. The neighborhood is almost completely ringed by nonresidential properties, including the electric substation located at 374 Homer Street, a small retail use, the Public Use (PUB) zoned City Hall and Newton Free Library and the Open Space/Recreational (ORD) zoned Newton Cemetery (**Attachments A & B**).

B. Site

The property consists of an 18,866 square foot panhandle lot improved with two single-family dwellings. The property is accessed by a single curb cut and a concrete and gravel driveway, located within the panhandle portion of the lot, which leads to paved parking areas for the two dwellings.

The site's grade varies by about 5 feet from front to rear, with its high point located near the location of 40 Cummings Road, and a retaining wall defines the rear and right sides of the paved parking area on the left side of 36 Cummings Road. Each of the two dwellings has separate backyard spaces enclosed by vegetative screening and/or fencing; 36 Cummings Road features a shed that would be removed as it occupies a portion of the area to be used for the proposed addition.

A City drainage and sewer easement is located along the of the rear property.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site is and will remain two single family dwellings.

B. Building and Site Design

The petitioner is proposing to expand 36 Cummings Road by approximately 1,498 square feet. The addition would be comprised of two connected elements- a two-story section to the rear of the dwelling that would provide additional space on the first floor as well as second floor space; and an attached one-car garage, with additional first floor space above, on the left side of the dwelling. The latter would be constructed generally in an area now occupied by a paved parking area and a retaining wall delimiting it from the existing dwelling. A retaining wall and associated staircase would be built between the addition and the property line to address the front-to-rear grade change in that location. 40 Cummings Road would remain unchanged.

The material submitted with the petition indicates that with the proposed addition would increase the parcel's total floor area ratio (FAR) (i.e., inclusive of both dwellings) from 0.15 to 0.22, remaining below the maximum 0.33 allowed by right. The Lot Coverage would increase from 9.3% to 13.3% but remain below the maximum 30.0% allowed; the Open Space percentage would decrease slightly from 69.4% to 67.3% but would remain above the required 50%.

It should be noted that the Floor Area Ratio (FAR) information submitted for this petition is somewhat unclear as to the measurement of first floor and attached garage space. That said, it appears that any discrepancy would likely amount to approximately 300

square feet which would change the final FAR by about 0.02, keeping the proposal well below the maximum 0.33. The Planning Department is working with the petitioner to resolve this discrepancy so as to be able to jointly address this issue in advance of or at the public hearing.

If necessary, the Planning Department recommends that a revised FAR Worksheet be submitted and the FAR information on the proposed site plan be rectified and, in the event this petition is granted, such changes be made conditions of any resulting order.

Regarding 36 Cummings Road's other dimensional requirements, the front setback would remain unchanged, as would the right (south) side setback. While the proposed addition would decrease the left (north) side setback to 8 feet from its current 24.5 feet, it would remain greater than the minimum 7.5 feet required. The rear set back would also be reduced, from 78.8 to 63.2 feet, but it would remain greater than the minimum 15 feet required. The two-story portion of the addition would increase the dwelling's height from 19 to 34 feet, below the maximum 36 feet.

C. Parking and Circulation

As referenced above, a portion of the addition including a garage will be located generally in area now occupied by a paved parking area, thus providing an enclosed parking stall. No other changes to parking or vehicular circulation are proposed.

D. Landscape Screening

A landscaping plan was not submitted with this petition. Planning staff recommends that the petitioner consider installing year-round vegetative screening along the property's left (north) boundary line in the vicinity of the proposed addition.

IV. 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:

- Special permit per §7.3 to allow for the extension of an existing nonconforming use (§7.8.2.C.2)

B. Engineering Review

The Associate City Engineer submitted an Engineering Review Memorandum (**Attachment D**) providing an analysis of the project proposal with regard to engineering issues.

V. PETITIONER'S RESPONSIBILITIES

As discussed above, the Planning Department suggests that the petitioner be prepared to address and clarify the FAR issue in advance of, or at the public hearing, including, if appropriate, providing a revised FAR Calculation Worksheet and site plans.

ATTACHMENTS:

- Attachment A:** Land Use Map
- Attachment B:** Zoning Map
- Attachment C:** Zoning Review Memorandum
- Attachment D:** Associate City Engineer's Memorandum
- Attachment E:** DRAFT Order

ATTACHMENT A

Land Use

36-40 Cummings Rd.

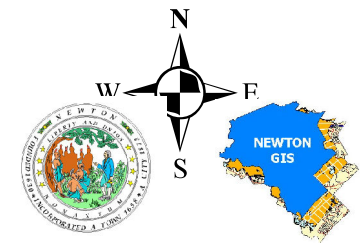
*City of Newton,
Massachusetts*

Legend

Land Use

Land Use

- Single Family Residential
- Multi-Family Residential
- Commercial
- Industrial
- Mixed Use
- Open Space
- Nonprofit Organizations
- Vacant Land



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 12.5 25 50 75 100 125 Feet

Map Date: March 22, 2018




ATTACHMENT B

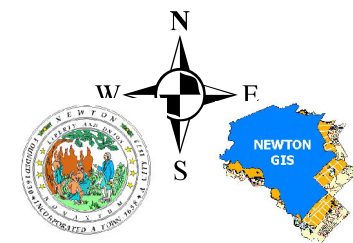
Zoning

36-40 Cummings Rd.

*City of Newton,
Massachusetts*

Legend

-  Single Residence 2
-  Open Space/Recreation
-  Public Use



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 12.5 25 50 75 100 125 Feet

Map Date: March 22, 2018



Setti D. Warren
Mayor

ATTACHMENT C

City of Newton, Massachusetts

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

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: October 11, 2017

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Jennifer Caira, Chief Planner for Current Planning

Cc: Anna Mariani and William Fabrizio, Applicants
Barney S. Heath, Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to extend a nonconforming use

Applicant: Anna Mariani and William Fabrizio	
Site: 36-40 Cummings Road	SBL: 64003 0047
Zoning: SR2	Lot Area: 18,866 square feet
Current use: Two single-family dwellings	Proposed use: No change

BACKGROUND:

The property at 36-40 Cummings Road consists of an 18,866 square foot lot improved with two single-family dwellings. An addition is proposed to the single-family dwelling known as 36 Cummings Road, adding to the side and rear of the existing dwelling. Only one primary structure is allowed per lot in the Single Residence 2 zoning district, where two detached single-family dwellings currently exist. A special permit is required to extend the nonconforming use of the single-family dwelling structure, where another primary dwelling structure exists on the lot.

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

- Zoning Review Application, prepared by Anna Mariani and William Fabrizio, applicants, submitted 9/18/2017
- FAR worksheet, submitted by Anna Mariani, submitted 9/29/2017
- Topographic Site Plan, signed and stamped by Marc Besio, civil engineer, and by Joseph R. Porter, surveyor, dated 8/23/2017

ADMINISTRATIVE DETERMINATIONS:

1. The property is currently improved with two existing detached single-family dwellings, both built in the late 1800s. The panhandle lot has existed in its current configuration at least as far back as 1925. The applicants propose to construct two-story additions to the rear and side of the unit known as 36 Cummings Road. The dwelling known as 40 Cummings Road will remain unchanged. To increase the nonconforming use of the property for two single-family dwellings by making additions to one of those dwellings requires a special permit per section 7.8.2.C.2.

Zone SR2	Required/Allowed	Existing	Proposed
Lot Size	10,000 square feet	18,866 square feet	No change
Frontage	70 feet	10 feet	No change
Setbacks #36 <ul style="list-style-type: none">• Front• Side• Rear• Height	25 feet 7.5 feet 15 feet 36 feet	20 feet 24.5 feet 78.8 feet 19 feet	No change 8 feet 63.2 feet 34 feet
Setbacks #40 <ul style="list-style-type: none">• Front• Side• Rear• Height	25 feet 7.5 feet 15 feet 36 feet	12.8 feet 7.1 feet 77.7 feet 24 feet	No change No change No change No change
Lot Area Per Unit	15,000 square feet	9,433 square feet	No change
Max Lot Coverage	30%	9.3%	13.3%
Min Open Space	50%	69.4%	67.3%
Max FAR	.33	.15	.22

1. See "Zoning Relief Summary" below:

Zoning Relief Required		
Ordinance		Action Required
§7.8.2.C.2	To allow for the extension of an existing nonconforming structure	S.P. per §7.3

ATTACHMENT D

CITY OF NEWTON Department of Public Works ENGINEERING DIVISION

MEMORANDUM

To: Council Gregory Schwartz, Land Use Committee Chairman

From: John Daghljan, Associate City Engineer

Re: Special Permit – #36-40 Cummings Road

Date: March 23, 2018

CC: Barney Heath, Director of Planning
Jennifer Caira, Chief Planner
Lou Taverna, PE City Engineer
Nadia Khan, Committee Clerk
Natasha Bhan, Permits Engineer

Michael Gelba, Sr. Planner

In reference to the above site, I have the following comments for a plan entitled:

*Topographic Site Plan
Showing Proposed Conditions at #36-40 Cummings Road
Prepared By: VTP Associates, Inc.
Dated: August 23, 2017*

Executive Summary:

The owner of an existing 1-1/2 story single family dwelling intends to add a 2-story addition & garage. The engineer of record has designed a storm water collection system to capture and infiltrate the runoff from the new impervious surfaces and the driveway.

The infiltration system for the driveway will need an impervious barrier along its perimeter specifically along the north side as it is less than 10' from the property line. Additionally an Operations and Maintenance plan is required that will indicate annual inspections, maintenance of the proposed drainage improvements. If the interior of the

dwelling is gutted more than 50%, then the water and sewer services shall be updated to current standards.

Drainage:

1. An Operations and Maintenance (O&M) plan for Stormwater Management Facilities needs to be drafted and submitted for review. 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.
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).

General:

1. All trench excavation contractors shall comply with Massachusetts General Laws Chapter 82A, Trench Excavation Safety Requirements, to protect the general public from unauthorized access to unattended trenches. Trench Excavation Permit required. This applies to all trenches on public and private property. *This note shall be incorporated onto the plans*
2. Any tree removal shall comply with the City's Tree Ordinance.
3. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of water services, sewer service, and drainage system installation. The utility in question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval. *This note should be incorporated onto the plans*
4. The applicant will have to apply for a Building Permit with the Department of Inspectional Service prior to any construction.
5. Prior to Occupancy Permit being issued, 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. The plan shall also include profiles of the various new utilities, indicating rim & invert elevations, slopes of pipes, pipe material, and swing ties from permanent building corners. *This note must be incorporated onto the final contract plans.*

6. All site work including trench restoration must be completed before a Certificate of Occupancy is issued. *This note must be incorporated onto the site plan.*

Note: If the 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 with complete and consistent plans.

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

ATTACHMENT E

DRAFT- Petition #177-18
36 Cummings Road

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of a SPECIAL PERMIT/SITE PLAN APPROVAL to extend the existing nonconforming use of the subject parcel for two single family dwellings, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Gregory Schwartz:

1. The proposed extension of the existing nonconforming use by expanding one of the two single family dwellings on the subject parcel, 36 Cummings Road, will not be substantially more detrimental than the existing nonconforming two single family dwellings use is to the neighborhood as said expanded single family dwelling will be in conformance with relevant dimensional requirements, including floor area ratio (FAR), height, setbacks, open space and lot coverage regulations; further, the proposed addition will have limited visibility from adjoining public ways (§7.8.2.C.2).

PETITION NUMBER: #177-18

PETITIONER: Annamaria Mariani and Bill Frabizio

LOCATION: 36-40 Cummings Road, Ward 2, Newton Centre, on land known as Section 64 Block 03 Lot 47, containing approximately 18,866 sq. ft. of land

OWNERS: Annamaria Mariani and Bill Frabizio

ADDRESS OF OWNER: 36-40 Cummings Road
Newton, MA 02459

TO BE USED FOR: One of two single-family dwellings on the subject parcel

CONSTRUCTION: Wood Frame

EXPLANATORY NOTES: §7.8.2.C.2, to extend the existing nonconforming use of the subject parcel for two single family dwellings

ZONING: Single Residence 2 (SR2) 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 "Topographic Site Plan, Newton, Massachusetts, Showing Existing Conditions at #36-40 Cummings Road," prepared by VTP Associates Inc., dated July 18, 2017, signed and stamped by Joseph R. Porter, Professional Land Surveyor.
 - b. A plan entitled "Topographic Site Plan, Newton, Massachusetts, Showing Proposed Conditions at #36-40 Cummings Road, Sheet 1 of 2," prepared by VTP Associates Inc., dated August 23, 2017, signed and stamped by Joseph R. Porter, Professional Land Surveyor.
 - c. A plan entitled "Detail Sheet, Newton, Massachusetts, Showing Proposed Conditions at #36-40 Cummings Road, Sheet 2 of 2," prepared by VTP Associates Inc., dated August 23, 2017, signed and stamped by Joseph R. Porter, Professional Land Surveyor.
 - d. An architectural plan entitled "Fabrizio Residence, 36-40 Cummings Road, Revere (*sic*), MA, Elevations Existing/Proposed" prepared by Commercial Residence Hospitality, dated November 2017.
 - e. A document entitled "Floor Area Ratio Worksheet, 36-40 Cummings Road, signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated _____, 2018.
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 provide documentation authorizing and facilitating the proposed use of land to increase the size of the condominium unit identified as 36 Cummings Road for the purposes permitted by this order for review and approval by the Department of Planning and Development and the Law Department.
4. If so required by the City Engineer, 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 prior to the issuance of any Building Permit. Once

approved, the O&M must be adopted by the 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.

5. No Building Permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
 - 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 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.
6. 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 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.