



Ruthanne Fuller  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
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**#176-19**

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Barney S. Heath  
Director

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**PUBLIC HEARING MEMORANDUM**

Public Hearing Date:	June 18, 2019
Land Use Action Date:	August 13, 2019
City Council Action Date:	September 3, 2019
90-Day Expiration Date:	September 16, 2019

DATE: June 14, 2019

TO: City Council

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

SUBJECT: **Petition #176-19**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to further extend a nonconforming front setback from 4.4 feet to 4.1 feet, where 25 feet is the minimum allowed, and to allow a parking stall within the front setback and within five feet of a street, at **1188 Chestnut Street**, Ward 5, Upper Falls, on land known as SBL 51, 40, 22 containing approximately 5,807 sf of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. §3.2.3, §5.1.7.A, §5.1.13, §7.8.2.C.2, and §7.4, 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 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.



**1188 Chestnut Street**

## **EXECUTIVE SUMMARY**

The subject property located at 1188 Chestnut Street consists of a 5,807 square foot lot in the Multi Residence 1 (the “MR-1”) zone in Upper Falls. The property was formerly improved with a single-family dwelling which was razed in 2017; only a one-car detached garage remains. The detached garage has a nonconforming front setback of 4.4 feet, where 25 feet is the minimum allowed. The petitioners are seeking to add a second bay to the garage, thereby extending the nonconforming front setback to 4.1 feet and to construct a single-family attached dwelling. The second bay adds a second parking stall within the front setback and within five feet of a street, requiring a special permit. As a result, the petitioners require special permits to further extend the nonconforming front setback from 4.4 feet to 4.1 feet, and to allow a parking stall within the front setback and within five feet of the street.

The subject property has a steep slope that makes building on the site difficult. However, the Planning Department does not support the special permits to enlarge the garage. Staff believes the enlarged garage, combined with the short setback from Chestnut Street, will create a safety concern due to limited visibility. The Planning Department suggests that the petitioners consider alternatives for parking on site.

### **I. SIGNIFICANT ISSUES FOR CONSIDERATION**

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

- The proposed extension of the nonconforming front setback is substantially more detrimental than the existing nonconforming setback is to the neighborhood. (§3.2.3 and §7.8.2.C.2)
- Literal compliance with the parking requirements is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest or in the interest of safety or protection of environmental features (§5.1.7.A and §5.1.13)

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

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

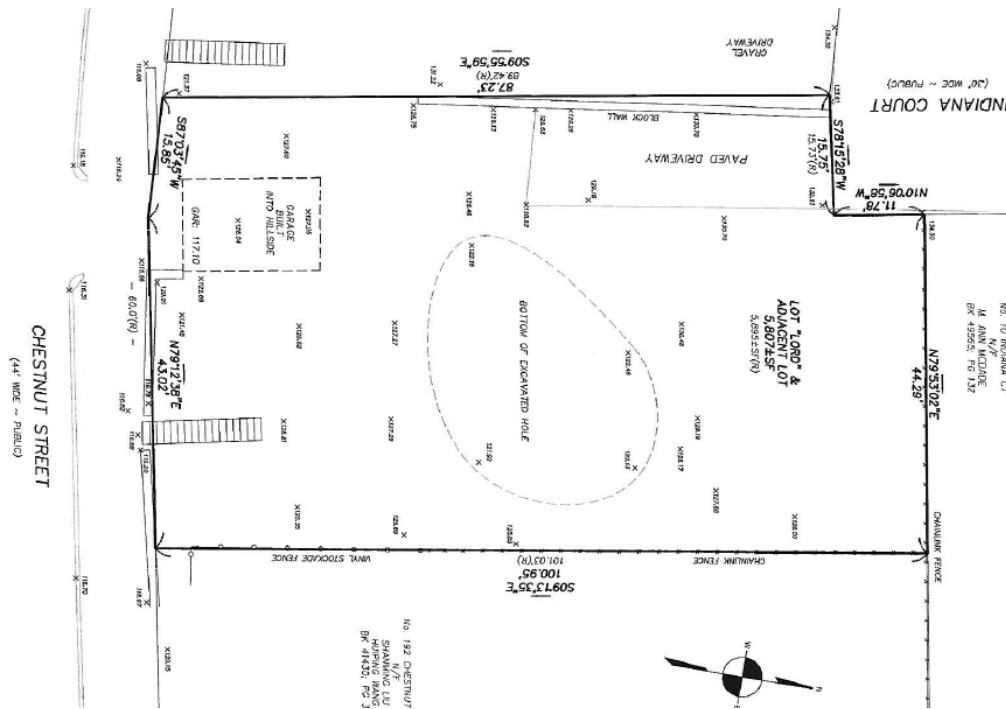
The subject property is located on Chestnut Street in the MR-1 zone in Upper Falls. The properties to the north are located within the MR-1 zone and are improved with single-family uses. The properties to the south and to the east are located within a variety of zones from the Public Use, the Business 1 and 2 zones, and the Manufacturing zones. These parcels contain several different uses which comprise the

Upper Falls Village Center (**Attachments A & B**).

B. Site

The site consists of 5,807 square feet of land, improved with a one-car detached garage. The grade of the lot slopes up significantly from the front (south) of the lot to the rear (north) such that the rear of the site lies approximately 14 feet above the grade of Chestnut Street. Due to this condition, an approximately three-foot tall retaining wall exists along the Chestnut Street frontage. The rear of the lot has access to Indiana Court via a driveway long enough to park one vehicle. The lot is overgrown with wild brush.

**Existing Site Plan**



III. PROJECT DESCRIPTION AND ANALYSIS

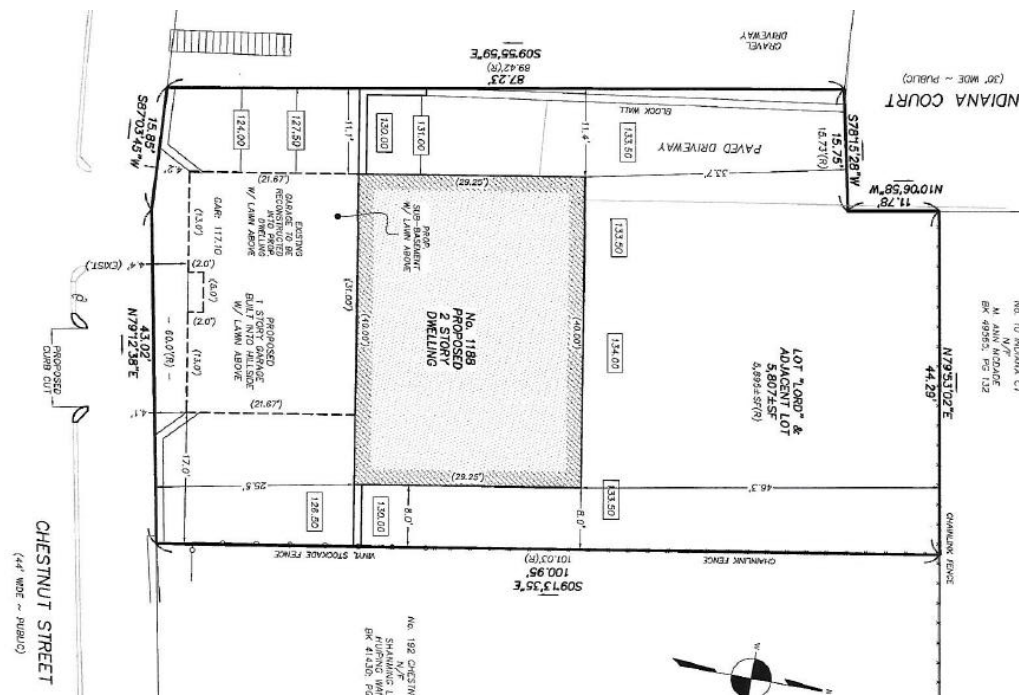
A. Land Use

The principal use of the site is and will remain a single-family residence.

## B. Site Design

The petitioners are proposing to extend the garage to the east by approximately 18 feet to allow for a second garage bay. Due to the bend in the street, the front setback will be reduced from 4.4 feet to 4.1 feet. There is a utility pole along the site's frontage that will require the petitioner to install a second curb cut to provide access to the second garage bay. This additional curb cut will render much of the frontage a driveway opening. The remaining frontage, approximately 33 feet, will be improved with retaining walls that sit directly behind the sidewalk. The site will be terraced such that the roof of the garage will be a "green roof" that will serve as open space. This level area also contains retaining walls in the form of planters. The petitioner should confirm that these planters are not four feet in height because of their location within the front setback. The petitioner is not proposing any changes to the lawn area at the rear of the site.

### Proposed Site Plan



The Planning Department believes that the extended nonconforming front setback will create a safety concern. The property is located on a bend in the street that, when combined with the short distance from the sidewalk, will result in limited visibility for vehicles backing out of the site onto Chestnut Street. The Planning Department recognizes that this condition exists with the existing one-car garage but believes that

the condition should not be increased with an additional parking stall.

Staff also recognizes that the property at 1186 Chestnut Street features a two-car garage close to the street and features a similar topographical condition. These two properties are outliers when compared with other properties in the immediate area due to their location along Chestnut Street and to their slope. However, the subject property is different from the property at 1188 Chestnut Street because the subject property has a large area at the rear of the site, close to Indiana Court, which may allow for parking, and the current vacant site allows for design flexibility. The Planning Department does not believe that the topographical condition should result in a safety concern and suggests that the petitioners consider alternatives for parking on site, including providing access from Indiana Court.

C. Building Design

The petitioners are proposing to construct a two-story dwelling approximately 25 feet from the front lot line. The dwelling will feature a symmetrical façade and a flat roof with a widow's walk and will be an example of Contemporary Federalist architecture. Due to the grading of the site, the dwelling contains two basements and two stories. However, when viewing the dwelling from Chestnut Street, it appears to contain four stories. The grading of the site is illustrated by the fact that the height of the dwelling is approximately 30 feet, but the ridge of the dwelling is approximately 39 feet above the grade of the sidewalk. The dwelling complies with the dimensional standards of a single-family dwelling in the MR-1 zone.

**Proposed Chestnut Street Elevation**



D. Parking and Circulation

The petitioners are proposing to enlarge the existing garage to allow for a second parking stall within the front setback and within five feet of a street. As stated above, the Planning Department is concerned that the enlarged garage will create a safety concern and does not support the relief necessary to enlarge it.

E. Landscaping and Screening

A landscape plan is not required with this petition.

IV. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance)

The Zoning Review Memorandum (the “Memorandum”) provides an analysis of the proposal regarding 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 further extend a nonconforming front setback.
- §5.1.7.A and §5.1.13 of Section 30, to allow parking within the front setback and within five feet of a street.

The Memorandum suggested that relief be sought to exceed the floor area ratio (the “FAR”) because the proposed FAR is nine square feet less than the maximum allowed. However, the Commissioner of Inspectional Services has determined that the petitioners cannot seek relief that is not shown in the submitted plans. As such, the petitioners should withdraw their request to exceed the FAR.

B. Engineering Review

Associate City Engineer, John Daghljan, reviewed this petition for conformance with the City of Newton Engineering Standards (**Attachment D**). Mr. Daghljan suggests that the petitioner move the two retaining walls away from the sidewalk by at least one foot and that crushed stone be installed to ensure that the sidewalk is not damaged from freeze-thaw cycles. Additionally, Mr. Daghljan suggests that drainage structures be installed to accommodate the stormwater from the dwelling and from the detached garage.

C. Newton Historical Commission Review

This petition does not meet the minimum threshold for review from the Newton Historical Commission.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.








**ATTACHMENTS:**

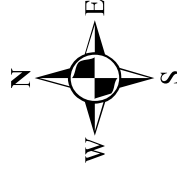
<b>Attachment A:</b>	Zoning Map
<b>Attachment B:</b>	Land Use Map
<b>Attachment C:</b>	Zoning Review Memorandum
<b>Attachment D:</b>	DRAFT Order



# Attachment A Zoning Map Chestnut St., 1188 *City of Newton, Massachusetts*

## Legend

-  Multi-Residence 1
-  Business 1
-  Business 2
-  Public Use
-  Building Outlines
-  Surface Water
-  Property Boundaries

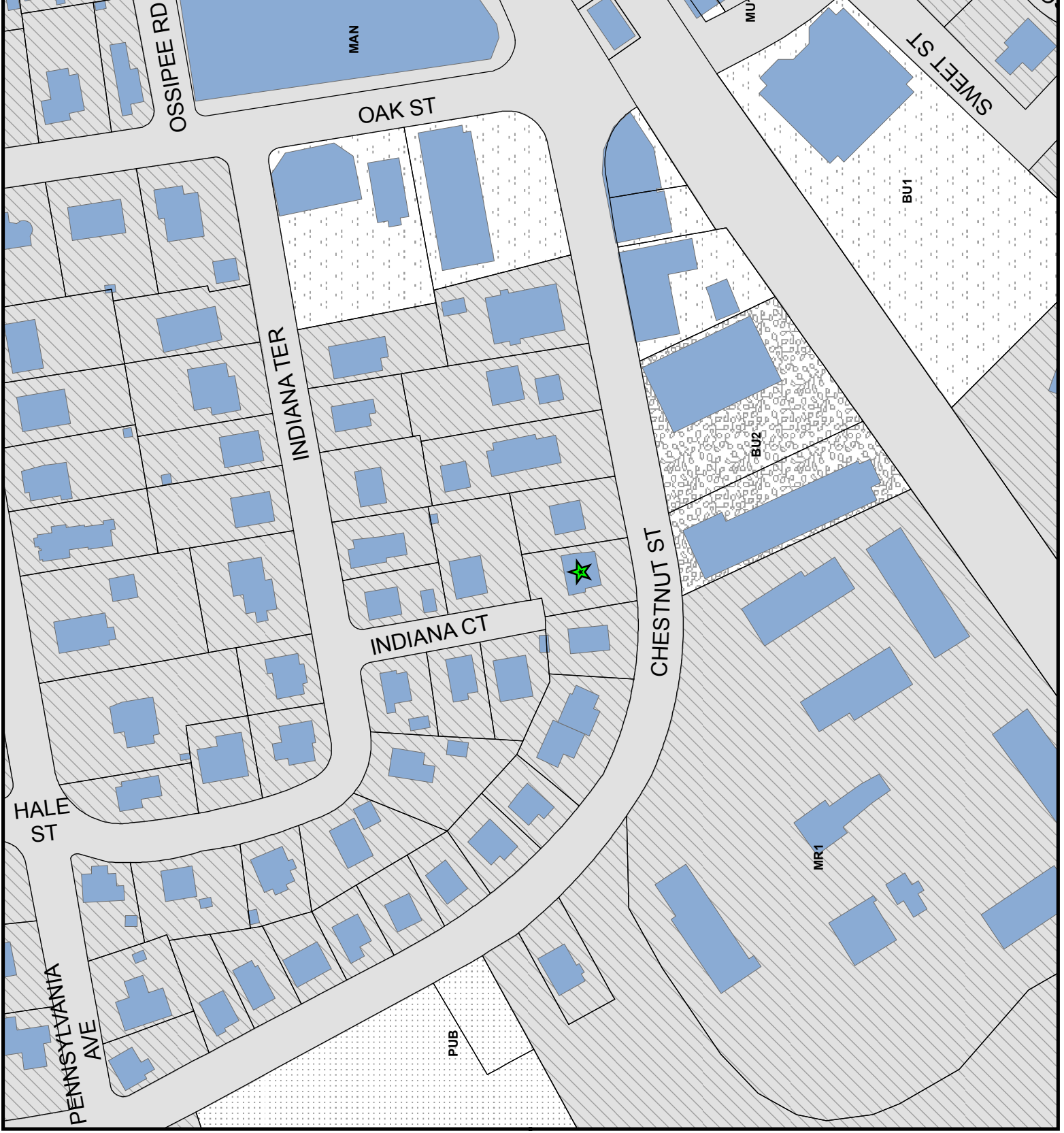


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

CITY OF NEWTON, MASSACHUSETTS  
Mayor - Ruthanne Fuller

0 50 100 Feet

Map Date: June 07, 2019





# Attachment B

## Land Use Map

### Chestnut St., 1188

*City of Newton,  
Massachusetts*

Legend

Land Use

Land Use

Single Family Residential

Multi-Family Residential

Commercial

Mixed Use

Open Space

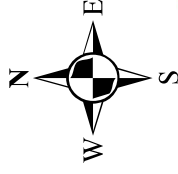
Nonprofit Organizations

Vacant Land

Building Outlines

Surface Water

Property Boundaries

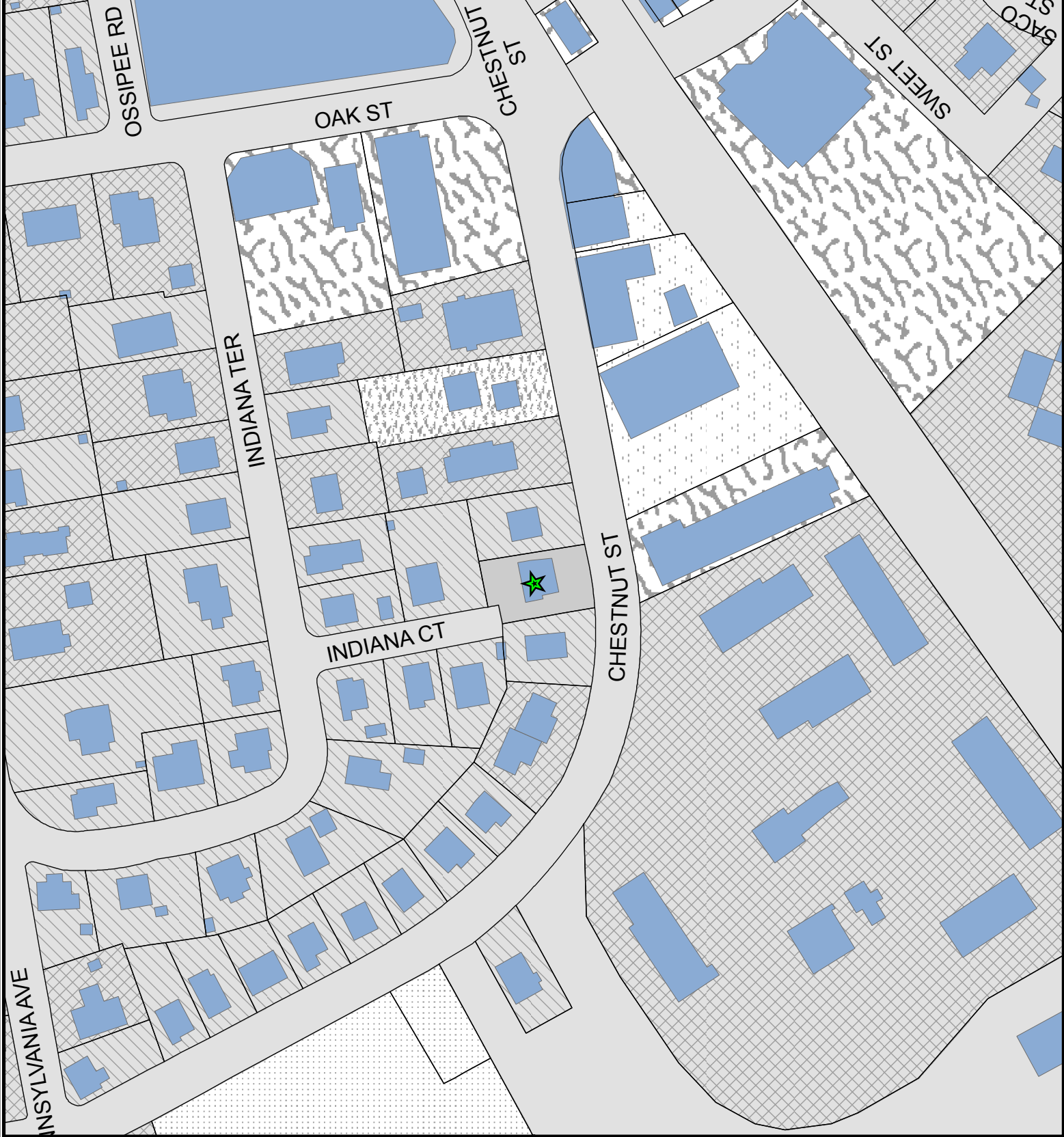


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Ruthanne Fuller



Map Date: June 07, 2019





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**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: May 15, 2019

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Tara Potter and Doug Rooney, Applicants  
David Geffen, David Geffen Const. Co. LLC  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Assistant City Solicitor

**RE: Request to extend a nonconforming front setback to expand a detached garage structure and to allow parking within the front setback and within five feet of the street**

Applicant: Tara Potter and Doug Rooney	
<b>Site:</b> 1188 Chestnut Street	<b>SBL:</b> 51040 0022
<b>Zoning:</b> MR1	<b>Lot Area:</b> 5,807 square feet
<b>Current use:</b> Single-family dwelling	<b>Proposed use:</b> No change

### BACKGROUND:

The property at 1188 Chestnut Street consists of a 5,807 square foot lot which is currently vacant except for a detached single-car garage structure built into the front hillside within 4.4 feet of the street. The previously existing single-family dwelling was razed. The lot has a significant front to back upward slope. The petitioners intend to construct an addition to the existing garage to accommodate two cars, and to construct a single-family dwelling. The garage and dwelling will have a subterranean connection. To enlarge the garage requires a special permit to extend the nonconforming front setback and to waive certain parking requirements.

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

- Zoning Review Application, prepared David Geffen, submitted 3/21/2019
- Certified Plot Plan (existing), signed and stamped by George C. Collins, surveyor, dated 9/18/2018
- Certified Plot Plan (proposed), signed and stamped by George C. Collins, surveyor, dated 2/7/2019
- Architectural plans and elevations, prepared by David Geffen Const. Co. LLC, dated 3/14/2019

## ADMINISTRATIVE DETERMINATIONS:

1. The existing nonconforming one-car detached garage is located 4.4 feet from the street, where 25 feet is the required setback per section 3.2.3. The petitioners intend to construct a second bay on the existing structure, further extending the nonconforming front setback to 4.1 feet. To further extend the nonconforming front setback requires a special permit per section 7.8.2.C.2.
2. The petitioner is seeking to enlarge the existing detached garage to accommodate two cars. Per section 5.1.7.A, no more than one parking stall may be located in the front setback, and no parking may be located within five feet of the street. The proposed additional parking bay places a second parking stall within the front setback, and an additional stall within five feet of the street. To construct the structure as proposed within the front setback and five feet of the street requires a special permit per section 5.1.7.A and 5.1.13.
3. The petitioner proposes to enlarge the existing detached garage structure and to construct a subterranean connection to the dwelling. Per a determination by the Commissioner of Inspectional Services, a subterranean connection does not render the garage attached and would still be considered a detached structure.
4. Due to the existing sloped topography, the garage is considered a sub-basement by Inspectional Services. The dwelling's first level is considered the basement as per the average grade calculation. As such, the dwelling is considered to have two stories with a basement and a sub-basement.

MR1 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	<b>5,807 square feet</b>	<b>No change</b>
Frontage	70 feet	60 feet	No change
Setbacks - Principal <ul style="list-style-type: none"><li>• Front</li><li>• Side</li><li>• Rear</li></ul>	25 feet 12.5 feet 25 feet	N/A N/A N/A	25.5 feet 8 feet 33.7 feet
Setbacks – Accessory <ul style="list-style-type: none"><li>• Front</li><li>• Side</li><li>• Rear</li></ul>	25 feet 5 feet 5 feet	<b>4.4 feet</b> 11 feet 62.95 feet	<b>4.1 feet</b> No change No change
Height	30 feet (flat roof)	N/A	28.67 feet
Stories	2.5	N/A	2
FAR	.56	N/A	
Max Lot Coverage	30%	N/A	20.1%
Min. Open Space	50%	N/A	69.2%

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 further extend a nonconforming front setback	S.P. per §7.3.3
§5.1.7.A §5.1.13	Request to allow parking within the front setback and five feet of the street	S.P. per §7.3.3

CITY OF NEWTON  
Department of Public Works  
ENGINEERING DIVISION

MEMORANDUM

To: Council Gregory Schwartz, Land Use Committee Chairman

From: John Daghlia, Associate City Engineer

Re: Special Permit – 1188 Chestnut Street

Date: June 13, 2019

CC: Barney Heath, Director of Planning  
Jennifer Caira, Chief Planner  
Lou Taverna, PE City Engineer  
Nadia Khan, Committee Clerk  
Neil Cronin, Sr. Planner

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

*Proposed Garage Expansion to Existing Nonconforming small 1 car Garage  
1188 Chestnut Street Upper Falls  
Newton, MA*

*Prepared by: David Geffen Construction  
Dated: 3-14-'19*

*&*

*Certified Plot Plan 1188 Chestnut Street Newton, MA  
Prepared by: George Collins, PLS  
Dated: 2-7-'19*

*Executive Summary:*

The plans submitted were not stamped by a Registered Professional Engineer. The project entails the demolition of an existing dwelling and construction of a new three (3) story dwelling and underground garage. The plans do not have any existing or proposed utilities, additionally; retaining walls are shown with no detail nor clear definition of heights, drainage or design.

Sight distance exiting the site appears to be limited at best as the property is on a curved portion of the road, if this permit is approved the applicant should install a convex mirror across the street to assist the homeowners exiting from the driveway a safer egress. As an alternate the applicant should consider relocating the garage on the upper level of the lot off Indiana Terrace for safer access and one level access rather than multiple stairs between the garage level and living quarters.

The proposed driveways do not have any dimensions, nor proposed grading of the driveway aprons and sidewalk is also missing.

A stormwater collection and infiltration system is need for the new development, it is the policy of the DPW that 100% of the impervious surface be captured and infiltrated on site to the maximum practical extent. Various details are missing that need to be incorporated. The proposed “*green-roof*” should be designed with an underdrain to relief excess water that can pond and accumulate on the flat roof, the underdrain should be connected to an overflow or downspout that directs the excess water to an on-site infiltration system. Additionally, the retaining walls proposed adjacent to the sidewalk should be pulled back about a foot and a crushed stone trench should be installed to receive water that weeps from behind the walls to prevent any potential icing on the sidewalk during freeze-thaw cycles.

#### 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).

#### Environmental:

Are there any existing underground oil or fuel tanks, are they to be removed, if they have been evidence should be submitted to the Newton Fire Department, and Newton Board of Health.

#### Sewer:



1. The existing water & sewer services to the building shall be cut and capped at the main and be completely removed from the main and the site then properly back filled. The Engineering Division must inspect this work; failure to having this work inspected may result in the delay of issuance of the Utility Connection Permit.
2. With the exception of natural gas service(s), all utility trenches with the right of way shall be backfilled with Control Density Fill (CDF) Excavatable Type I-E, detail is available in the City of Newton Construction Standards Detail Book.
3. All new sewer service and/or structures shall be pressure tested or videotaped after final installation is complete. Method of final inspection shall be determined solely by the construction inspector from the City Engineering Division. All sewer manholes shall be vacuum tested in accordance to the City's Construction Standards & Specifications. The sewer service will NOT be accepted until one of the two methods stated above is completed. All testing MUST be witnessed by a representative of the Engineering Division. A Certificate of Occupancy will not be recommended until this test is completed and a written report is received by the City Engineer. ***This note must be added to the final approved plans.***
4. All sewer manholes shall be vacuum tested in accordance to the City's Construction Standards & Specifications. The sewer service will NOT be accepted until one of the two methods stated above is completed. All testing MUST be witnessed by a representative of the Engineering Division. A Certificate of Occupancy will not be recommended until this test is completed and a written report is received by the City Engineer.

Water:

1. All water connections shall be chlorinated & pressure tested in accordance to AWWA and the City of Newton Construction Standards and Specifications prior to opening the connection to existing pipes.
2. Approval of the final configuration of the water service(s) shall be determined by the Utilities Division, the engineer of record should submit a plan to the Director of Utilities for approval

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. All 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 is 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 Street Opening, Sidewalk Crossing, and Utilities Connecting permits with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*
5. The applicant will have to apply for a Building Permits with the Department of Inspectional Service prior to any construction.
6. 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.***
7. All site work including trench restoration must being completed before a Certificate of Occupancy is issued. *This note must be incorporated onto the site plan.*
8. If any changes from the original approved design plan that are required due to unforeseen site conditions, the engineer of record shall submit a revised design & stamped and submitted for review and approval prior to continuing construction.

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.