



#313-19

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City of Newton, Massachusetts

Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

Ruthanne Fuller
Mayor

Barney Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date:	October 10, 2019
Land Use Action Date:	December 10, 2019
City Council Action Date:	December 16, 2019
90-Day Expiration Date:	January 8, 2019

DATE: October 4, 2019

TO: City Council

FROM: Barney Heath, Director of Planning and Development
Jennifer Caira, Chief Planner for Current Planning
Katie Whewell, Planning Associate

SUBJECT: **Petition #313-19**, for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a two-car garage addition further extending the nonconforming front setback and to allow a retaining wall higher than four feet within a setback at 37 Duffield Road, Ward 4, Auburndale, on land known as Section 41 Block 22 lot 13, containing approximately 14,907 sq. ft. in a district zoned SINGLE RESIDENCE 3. Ref: 7.3, 7.4, 3.1.3, 7.8.2.C.2, 5.4.2.B of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

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.



37 Duffield Road

EXECUTIVE SUMMARY

The property located at 37 Duffield Road consists of a 14,907 square foot corner lot in the Single Residence 3 (SR-3) zone in Auburndale. The lot is improved with a single-family residence constructed in 1908. The petitioner proposes to construct an attached two car garage within the front setback and to construct a retaining wall greater than four feet within the front setback.

The Planning Department is unconcerned with the petition to further extend the nonconforming front setback and construct a retaining wall greater than four feet within the front setback. The proposed garage is not encroaching further into the setback and there are other attached garages in the neighborhood that appear to be within the front setback. Additionally, due to the site's unique topography and proximity to the Charles River, the garage is in the furthest location on site from the 100 year floodplain. Other homes also have retaining walls used for parking facilities, and some appear to be in the front setback. For these reasons, the Planning Department believes this to be an appropriate location for the relief requested.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the

Council should consider whether:

- The proposed attached garage that would further extend a nonconforming front setback not substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§3.1.3 and §7.8.2.C.2)
- The specific site is an appropriate location for the proposed attached garage and retaining wall greater than four feet within a setback. (§5.4.2.B and §7.3.3.C.1)
- The proposed attached garage and retaining wall greater than four feet within a setback will adversely affect the neighborhood. (§5.4.2.B and §7.3.3.C.2)
- The proposed attached garage and retaining wall greater than four feet within a setback will create a nuisance or serious hazard to vehicles or pedestrians. (§5.4.2.B and §7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§5.4.2.B and §7.3.3.C.4)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

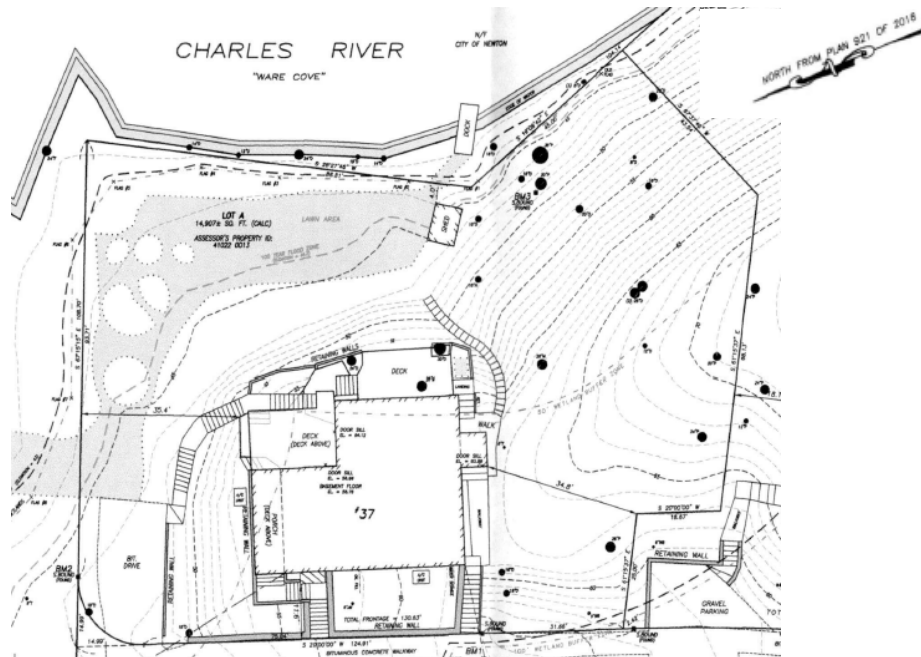
A. Neighborhood and Zoning

The subject property is located on Duffield Road in the SR-3 zone in Auburndale. The SR-3 zone encompasses the surrounding area and neighborhoods, aside from a public use zone that separates the neighborhood from the Charles River (**Attachment A**).

The land use of the properties in the neighborhood are all single family residential **(Attachment B)**. Many homes on Duffield Road have attached garages and retaining walls of similar style due to the topography of the area and homes at higher grades, especially those on the same side of the street as 37 Duffield.

B. Site

The site consists of 14,907 square feet of land and is improved with a 2.5 story single-family dwelling. The site is located in close proximity to the Charles River and the rear eastern portion of the property is located within the 100 year floodplain. The lot is served by one curb cut from Duffield Road providing access to a driveway. The existing structure has a nonconforming front setback of 14 feet where 25 feet is required. Due to the site's topography there are several retaining walls on the site, there is one at the rear of the existing dwelling as well as at the front of the property, parallel to Duffield Road and one that is perpendicular to that wall on the side of the existing driveway. There is an existing shed at the rear of the site. The home is on a higher grade than street level and slopes down drastically to the rear of the property to provide level access to the Charles River. The site is heavily landscaped to the rear of the home as well as along the Charles River.



III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

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

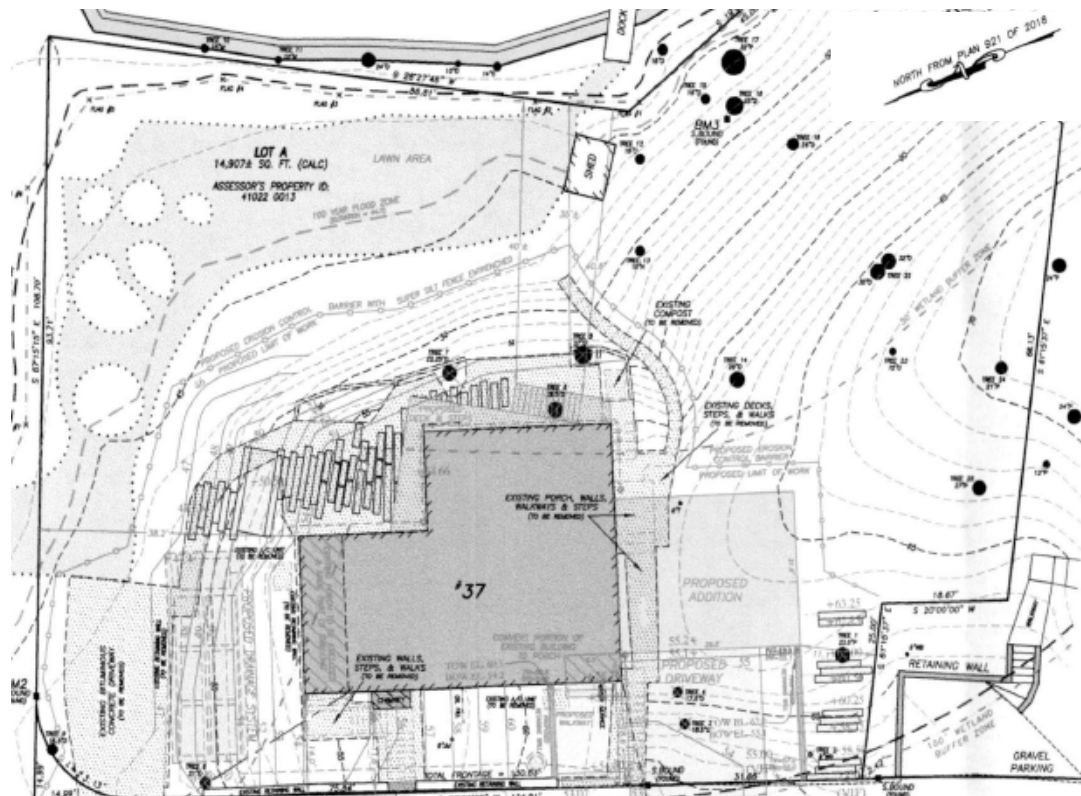
B. Building and Site Design

The petitioner is seeking to construct an attached garage to the south of the existing dwelling, the furthest portion of the site from the Charles River. The proposed attached garage adds approximately 750 square feet to the existing dwelling and brings the FAR to .19 to .14 where .38 is the maximum allowed. Due to the average grade of the property changing, the height of the structure is increasing by 1.5 feet. The lot coverage and open space are both increasing by less than 1%.

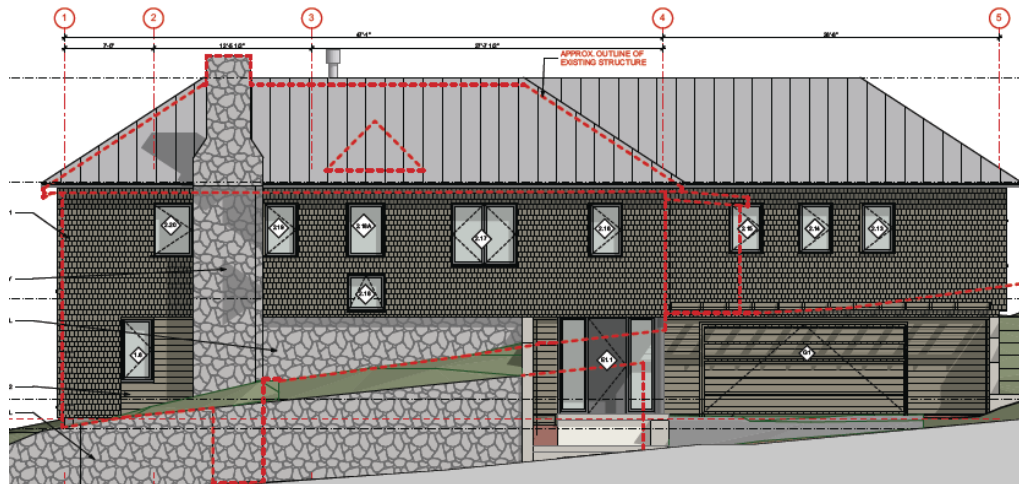
In order to construct the attached garage, the petitioner is proposing to construct a new retaining wall to the right of the proposed driveway leading up to the attached garage. The wall will have a high point of seven feet and extend towards the street and have a terminus at Duffield Road, where it will be two feet in height. This retaining wall is also in the front setback, requiring a special permit.

The petitioners are also proposing to remove an existing deck and construct a new deck to the rear of the dwelling.

Proposed Site Plan:



Proposed Front Elevation:



The Planning Department is unconcerned with the petition to extend the nonconforming front setback and construct a retaining wall within the front setback. While the addition would be visible from the street, Duffield Road is a dead end street and the petitioners own the property adjacent to 37 Duffield as well as across the street. Also, the garage and retaining wall's location is appropriate due to conservation concerns and being farthest from the portion of the property that is in the 100-year flood zone. Additionally, the attached garage is set further from the property line than the existing house and is not decreasing the nonconforming front setback.

C. Parking and Circulation

The petitioners are proposing to relocate existing parking by constructing an attached garage to the right of the home with an associated driveway.

D. Landscaping

A landscape plan is not required with this petition.

IV. TECHNICAL REVIEW

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

The Zoning Review Memorandum provides an analysis of the proposal regarding zoning (**Attachment C**). Based on the completed Zoning Review Memorandum, the petitioner is seeking the following relief:

- §3.1.3 and §7.8.2.C.2 of Section 30, to further extend a nonconforming front setback
- §5.4.2.B and §7.8.2.C.2 of Section 30, to further extend a nonconforming front setback

B. Engineering Review

This petition does not meet the minimum threshold for Engineering Review.

C. Historic Preservation Review

This petition does not meet the minimum threshold for Historic Preservation Review.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:

- | | |
|----------------------|--------------------------|
| Attachment A: | Zoning Map |
| Attachment B: | Land Use Map |
| Attachment C: | Zoning Review Memorandum |
| Attachment D: | DRAFT Council Order |



ATTACHMENT A

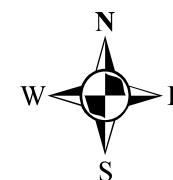
Zoning

37 Duffield Road

*City of Newton,
Massachusetts*

Zoning

-  Single Residence 3
-  Public Use

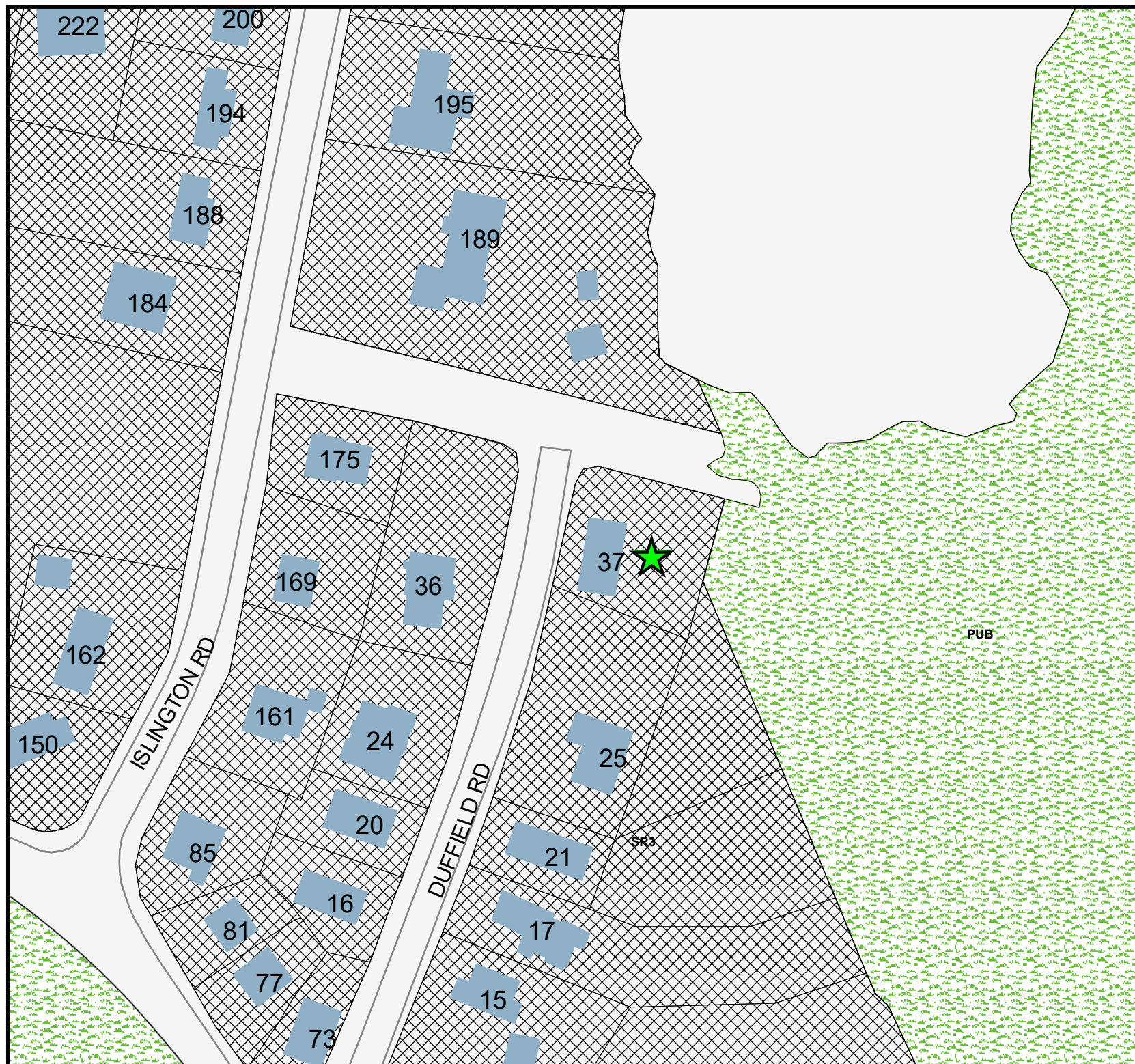


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield

0 12.5 25 50 75 100 125 Feet

Map Date: October 03, 2019






ATTACHMENT B

Land Use

37 Duffield Road

*City of Newton,
Massachusetts*

Land Use

-  Single Family Residential
-  Open Space
-  Vacant Land



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CITY OF NEWTON, MASSACHUSETTS
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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: August 20, 2019

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Sandra and David Baird, Applicants
G. Michael Peirce, Attorney
Barney S. Heath, Director of Planning and Development
Jonah Temple, Associate City Solicitor

RE: **Request to further increase nonconforming front setback and for a retaining wall in the setback**

Applicant: Sandra and David Baird	
Site: 37 Duffield Road	SBL: 41022 0013
Zoning: SR3	Lot Area: 14,907 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 37 Duffield Road consists of a 14,907 square foot new lot improved with a single-family residence constructed in 1908. The lot was expanded with the purchase of approximately 5,000 square feet of land from an abutter. The petitioners propose to construct an addition to the existing dwelling including a two-car attached garage. The existing dwelling is nonconforming with regard to the front setback, and the proposed addition further extends the nonconforming front setback, requiring a special permit.

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

- Zoning Review Application, prepared by G. Michael Peirce, attorney, dated 3/12/2018
- Existing Site Plan, signed and stamped by John R. Hamel, surveyor, dated 6/10/2019
- Proposed Site Plan, signed and stamped by John R. Hamel surveyor, dated 7/1/2019
- Plan of Land 25 & 37 Duffield Road, signed and stamped by John R. Hamel, dated 8/17/2018
- Architectural Plans, prepared by Kaplan Thompson Architects, architect, dated 6/26/2019
- Determination Letter, signed by John Lojek, Commissioner of Inspectional Services, dated 3/8/2018

ADMINISTRATIVE DETERMINATIONS:

1. The lot area was increased in 2018 with the purchase of approximately 5,000 square feet of land from the adjacent parcel at 25 Duffield Road, creating the present 14,907 square foot lot. Per section 7.8.4.D, the lot remains an old lot for the purposes of setbacks, lot coverage and open space. Per section 7.8.4.D.6, because the resulting lot meets the new lot frontage requirement of 80 feet with 131 feet of frontage, and the new lot lot area requirement of 10,000 square feet with 14,907 square feet, the new lot requirements for lot area and frontage must hereafter be met.
2. The existing dwelling has an existing front setback of 14 feet where 25 feet is required per section 3.1.3. The proposed attached garage addition has a front setback of 18.6 feet. The proposed addition does not meet the front setback requirement of 25 feet and further extends the nonconforming front setback. Per sections 3.1.3 and 7.8.2.C.2, a special permit is required.
3. The petitioners propose to construct several retaining walls at the front of the property along the front walkway and the proposed driveway. The proposed walls range in height from 2 feet to as tall as 6.9 feet. Per section 5.4.2.B, a retaining wall greater than 4 feet in height in a setback requires a special permit.
4. The proposed construction includes a rear addition and the removal of a rear deck. The removal of the deck increases the side setback on the left side, and increases the total open space.

SR3 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	14,907 square feet	No change
Frontage	80 feet	131 feet	No change
Setbacks <ul style="list-style-type: none">• Front• Right Side• Left Side• Rear	25 feet 7.5 feet 7.5 feet 15 feet	14 feet 34.8 feet 35.4 feet ±45 feet	No change 11.1 feet 38.2 feet 40 feet
Max Number of Stories	2.5	2.5	No change
Height	36 feet	25.2 feet	26.7 feet
FAR	.38	.14	.19
Max Lot Coverage	30%	15.2%	15.3%
Min. Open Space	50%	81.8%	82.1%

1. See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.3, §7.8.2.C.2	Request to further extend a nonconforming front setback	S.P. per §7.3.3
§5.4.2.B	Request to allow a retaining wall higher than four feet within a setback	S.P. per §7.3.3

CITY OF NEWTON
IN CITY COUNCIL

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 extend the non-conforming front setback and construct a retaining wall within a setback as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Gregory Schwartz:

1. The proposed attached garage that would further extend a nonconforming front setback is not substantially more detrimental than the existing nonconforming structure is to the neighborhood because the proposed garage does not increase the existing nonconforming front setback (§3.1.3 and §7.8.2.C.2)
2. The specific site is an appropriate location for the proposed attached garage and retaining wall greater than four feet within a setback because there are similar attached garages and retaining walls due to the topography of the land near the Charles River. (§5.4.2.B and §7.3.3.C.1)
3. The proposed attached garage and retaining wall greater than four feet within a setback will not adversely affect the neighborhood because there are similar structures in the neighborhood. (§5.4.2.B and §7.3.3.C.2)
4. The proposed attached garage and retaining wall greater than four feet within a setback will not create a nuisance or serious hazard to vehicles or pedestrians due to its location on a dead end street. (§5.4.2.B and §7.3.3.C.3)
5. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§5.4.2.B and §7.3.3.C.4)

PETITION NUMBER: #313-19

PETITIONER: Sandra and David Baird

LOCATION: 37 Duffield Road, on land known as Section 41 Block 022, Lot 13, containing approximately 14,907 square feet of land

OWNER: Sandra and David Baird

ADDRESS OF OWNER: 37 Duffield Rd.
Newton, MA 02466

TO BE USED FOR: Single-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.3, §5.4.2.B and §7.8.2.C.2 to further extend the nonconforming front setback by constructing an attached garage and to construct a retaining wall greater than four feet within a setback.

ZONING: Single Residence 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. "Site Plan, 37 Duffield Rd.," signed and stamped by John R Hamel, Professional Land Surveyor, dated August 30, 2019
 - b. "Baird House," Architectural Plans and Elevations, Prepared by Kaplan Thompson Architects, signed and stamped by James Thompson, dated August 26, 2019 consisting of eight (8) sheets
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. 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. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
4. 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 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 architect.