



#229-20

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

Ruthanne Fuller  
Mayor

Barney S. Heath  
Director

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## PUBLIC HEARING MEMORANDUM

Public Hearing Date:	May 12, 2020
Land Use Action Date:	July 27, 2020
City Council Action Date:	August 3, 2020
90-Day Expiration Date:	August 10, 2020

DATE: May 8, 2019

TO: City Council

FROM: Barney Heath, Director of Planning and Development  
Neil Cronin, Chief Planner for Current Planning  
Katie Whewell, Senior Planner

SUBJECT: **Petition #229-20**, for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a four-unit multi-family dwelling, to extend nonconforming front and side setbacks, and to allow a retaining wall in excess of four feet within the setback at **13-17 Gardner Street**, Ward 1, Newton, on land known as Section 11, Block 25, Lot 05 and Section 11, Block 25, Lot 06, containing approximately 16,579 sq. ft. of land in a district zoned MULTI RESIDENCE 2. Ref: Sec. §3.2.6, §3.4.1, §5.4.2.B, §7.3.3, §7.8.2.C.2, and §7.4 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 for consideration at a subsequent working session by the Land Use Committee of the City Council.



**13 and 17 Gardner Street**

### **EXECUTIVE SUMMARY**

The subject properties located at 13 and 17 Gardener Street are two lots totaling 16,579 square feet in the Multi-Residence 2 (the “MR-2”) zone in Newton Corner. Gardner Street is split by Jewett Street between Nonantum to the west and Newton Corner to the east. 13 Gardner Street is improved with a two-family dwelling, while 17 Gardner Street is improved with a single-family dwelling; both dwellings were constructed circa 1851. The petitioner is proposing to raze the structures and to combine the lots to construct a four-unit multi-family dwelling. Multi-family dwellings are building types only allowed via special permit. The petition includes maintaining the architecture and the location of the existing structures which involves extending nonconforming front and side setbacks, also requiring a special permit. Lastly, the petitioner requires a special permit to allow a retaining wall of four feet in height within the front setback.

The petition is the result of the Newton Historical Commission (the “NHC”) demolition review of the dwellings at 13 and 17 Gardner Street. The NHC found both structures preferably preserved for historic context and imposed a demolition delay. As such, the petitioner is proposing to replicate the architecture and the location of the structures and incorporate those details into a new four-unit multi-family dwelling. The Planning Department believes that the replication preserves and respects the built environment of Gardner Street, while constructing a rear addition that would minimize impacts to abutters.

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

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the proposed multi-family dwelling. (§7.3.3.C.1)
- The multi-family dwelling as developed and operated will adversely affect the neighborhood. (§7.3.3.C.2)
- The multi-family dwelling will create a nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
- The proposed extensions in the nonconforming front and side setbacks are substantially more detrimental than the existing nonconforming setbacks are to the neighborhood. (§3.2.6 and §7.8.2.C.2)
- The specific site is an appropriate location for a retaining wall of four feet in height within the front setback. (§5.4.2.B)

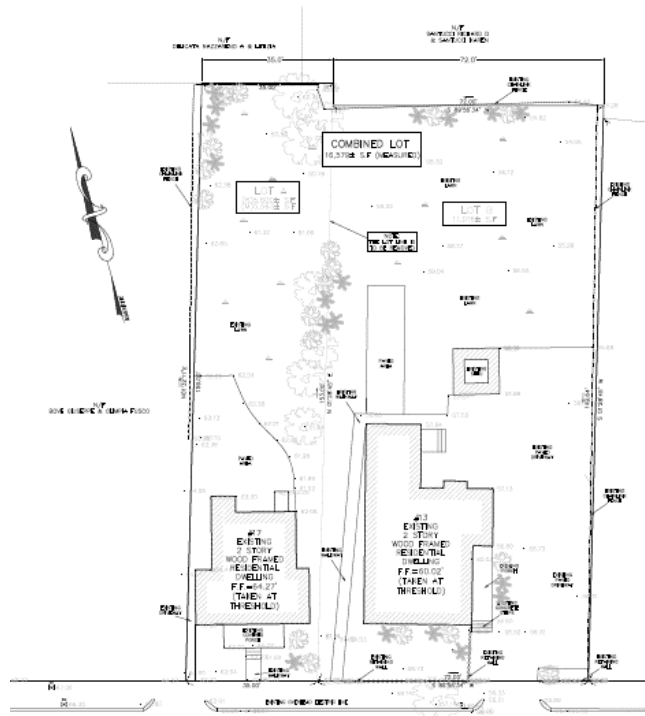
#### **II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD**

A. Neighborhood and Zoning

The subject properties are located on Gardner Street within the MR-2 zone in Newton Corner, near the Newton-Watertown boundary. The immediate area is located within the MR-2 zone, while a Multi Residence 1 zone exists to the southwest and a Public Use zone exists to the east (**Attachment A**). The neighborhood is comprised predominantly of single- and multi-family uses, except a mixed-use parcel and an Open Space parcel (**Attachment B**).

B. Site

**Existing Conditions**



The site consists of 16,579 square feet of land and it is improved with two, 2-story dwellings constructed circa 1851. Both dwellings are situated close to the street, as is typical in the neighborhood, and contain open space at the rear yards. 17 Gardner Street has an access easement over the adjacent parcel at 21 Gardner Street, while 13 Gardner Street has its own curb cut at the southeastern corner providing access to a large paved parking area. Due to the grade of Gardner Street, the western boundary is approximately seven feet higher than the eastern boundary. As such, 13 Gardner Street has an approximately two-foot tall retaining wall along its frontage. The properties are enclosed with fencing of varying heights and the boundaries are

improved with landscaping.

### III. PROJECT DESCRIPTION AND ANALYSIS

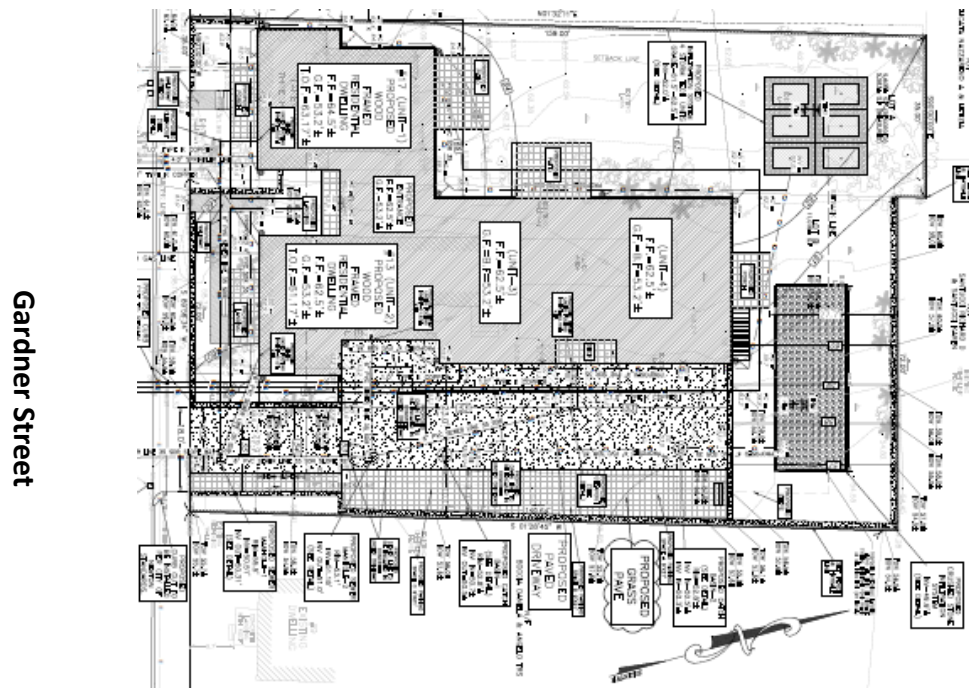
#### A. Land Use

The principal use of the site will change from a single-family use and a two-family use to a multi-family dwelling containing four dwelling units.

#### B. Site Design

The petitioner is proposing to raze the existing dwellings to construct a four-unit multi-family dwelling. The multi-family dwelling would incorporate the architecture and the location of the existing structures. Specifically, the two units fronting Gardner Street are similar in scale and massing and have a similar presence on the street. These units would also have a setback of 1.9 feet from the western boundary, where 7.5 feet is the maximum required. Because the proposed multi-family dwelling would be similar in scale and largely constructed on the footprint of the existing structures, staff believes the location within the side setback is appropriate.

**Proposed Site Plan**



The multi-family dwelling would feature an internal landing connecting the two front units and then extend the footprint in the form of rear “ell” addition, containing two dwelling units. The addition would extend the footprint of the structure approximately 70 feet to the rear, resulting in a rear yard setback of 31.2 feet, where

15 feet is required. The rear addition scales to approximately 35 to 40 feet from the side lot lines, where 7.5 feet is the maximum required. The driveway would be shifted approximately 15 feet towards the eastern boundary, providing access to eight garaged parking stalls in the basement of the structure as well as three surface parking stalls on grass pavers. A retaining wall of 4.1 feet in height is required to allow for the driveway to slope down into the lot, and its location within the front setback requires a special permit. The Planning Department is not concerned with this wall due to the grade of Gardner Street and because a retaining wall already exists in this location. An additional retaining wall would be located at the eastern boundary, but this wall does not reach four feet in height. The petitioner is not proposing much site work elsewhere on site.

C. Building Design

The multi-family dwelling would consist of two components: two units fronting Gardner Street similar in architecture and in location to the existing structures; and a two-story rear “ell” addition containing two dwelling units. The rear units will front the driveway and will feature gable peaks, dormers, and vertical siding to differentiate the addition from the front units and to break up the façade. The structure will measure 23 feet tall from the average grade yet will vary from façade to façade. For example, the dwelling would appear to contain 2 stories and measure 23 feet tall from the front façade, two stories from the western façade, but 3 stories from the eastern façade. The basement meets the definition of a basement, but due to the dimension of the basement wall exposed along this facade, 1,035 square feet of the basement square footage counts towards the floor area ratio (the “FAR”). FAR does not apply to multi-family dwellings, but the proposed FAR is .54, translating to 9,012 square feet, where .41 (6,813 square feet) is the maximum allowed for an as of right single or two-family dwelling.

**Proposed Front Elevation**



### Proposed East Elevation



The multi-family dwelling would consist of two 3-bedroom units and two 2-bedroom units. The average size of the units would be 2,600 square feet inclusive of garage and basement space. Multi-Family dwellings in the MR-2 zone require 3,000 square feet of lot area per unit; as proposed, the petition is 4,154 square feet per unit. The Planning Department believes that the site is an appropriate location for the four-unit dwelling given the dense, walkable nature of the neighborhood.

#### D. Parking and Circulation

The petitioner is proposing to push the driveway to the eastern boundary to provide access to the garages in the basement. The Planning Department suggests that the petitioner consider extending the lawn area at the eastern boundary to the sidewalk to reduce the amount of paving and to reduce the width of the curb cut. Each of the units will have room for two cars park in their dedicated garages as well as an additional three spaces along the eastern boundary, on proposed grass pavers indicated in the landscape plan. The Planning Department has concerns with the additional three stalls indicated on the landscaping plan beyond the required number of stalls. The petitioner should provide turning templates for the stalls exiting the garage. The site is located within walking distance of amenities and bus transit on Washington Street and nearby Nonantum.

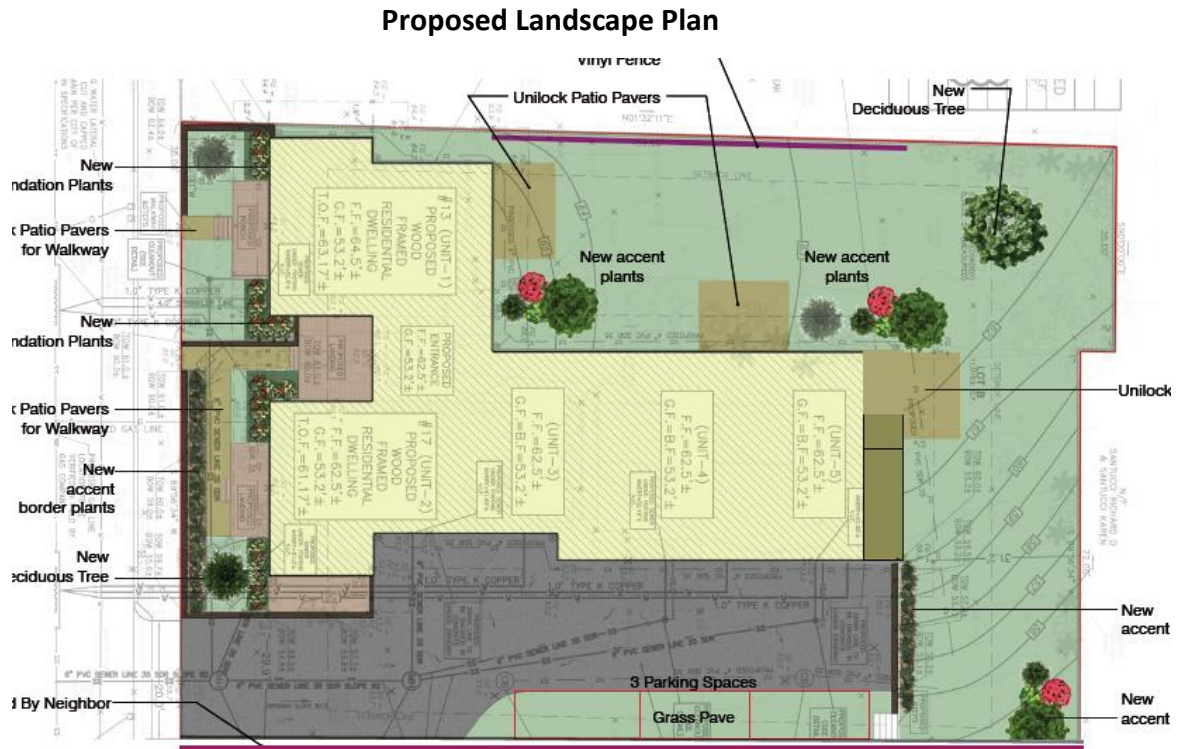
The existing curb cut at the western boundary provides access to 17 Gardner Street over the adjacent property at 21-25 Gardner Street. Because the petitioner no longer requires this access, the Planning Department suggests that the petitioner use good faith efforts to work with the abutter to close the curb cut.

#### E. Landscaping

The petitioner is proposing to install foundation plantings along the frontage and to create three planting areas and three patio areas at the rear of the site. Vinyl fencing is also proposed for portions of the east and west boundaries. Staff suggests that the



petitioner provide a tree removal and protection plan as well as a caliper inch analysis to ensure there is no net loss of caliper inches on site.



#### 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:

- §3.4.1 and §7.3.3 of Section 30, to allow a multi-family dwelling;
- §3.2.6 and §7.8.2.C.2 of Section 30, to extend a nonconforming front setback;
- §3.2.6 and §7.8.2.C.2 of Section 30, to extend a nonconforming side setback;
- §5.4.2.B and §7.3.3 of Section 30, to allow a retaining wall of four feet in height within the front setback.

##### B. Engineering Review

Associate City Engineer, John Daghljan, reviewed this petition for conformance with

the City of Newton Engineering Design Standards (**Attachment D**). Mr. Daghlion notes that the petitioner only provided drainage calculations for the runoff captured by the roof, and a revised drainage report will be required before final approval. A construction management plan and operations and maintenance plan are also required for this petition.

C. Historic Preservation Review

The NHC found the existing structures “Preferably Preserved” and implemented a one-year demolition delay. At its July 25, 2019 meeting, the NHC waived the demolition delay for both properties based on submitted plans. The Chief Preservation Planner will review this petition for conformance with NHC’s decision prior to the issuance of a building permit, should this petition be approved. Specifically, the Chief Preservation Planner will review the location, scale, style, materials, and presence on the street of the two units fronting Gardner Street.

V. PETITIONER’S RESPONSIBILITIES

The petitioner should respond to the issues raised in this memorandum and other questions raised at the public hearing as necessary. Written responses to all significant issues should be provided for analysis by the Planning Department prior to being scheduled for additional public hearings. The Planning Department will prepare an updated memo prior to any future public hearings.

**ATTACHMENTS:**







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|----------------------|---|
| <b>Attachment A:</b> | Land Use Map  |
| <b>Attachment B:</b> | Zoning Map  |
| <b>Attachment C:</b> | Zoning Review Memorandum, dated April 9, 2020       |
| <b>Attachment D:</b> | Engineering Review Memorandum, dated April 28, 2020 |
| <b>Attachment E:</b> | DRAFT Council Order                                 |



# Attachment A Zoning Map Gardner St., 13-17

*City of Newton,  
Massachusetts*

## Legend

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

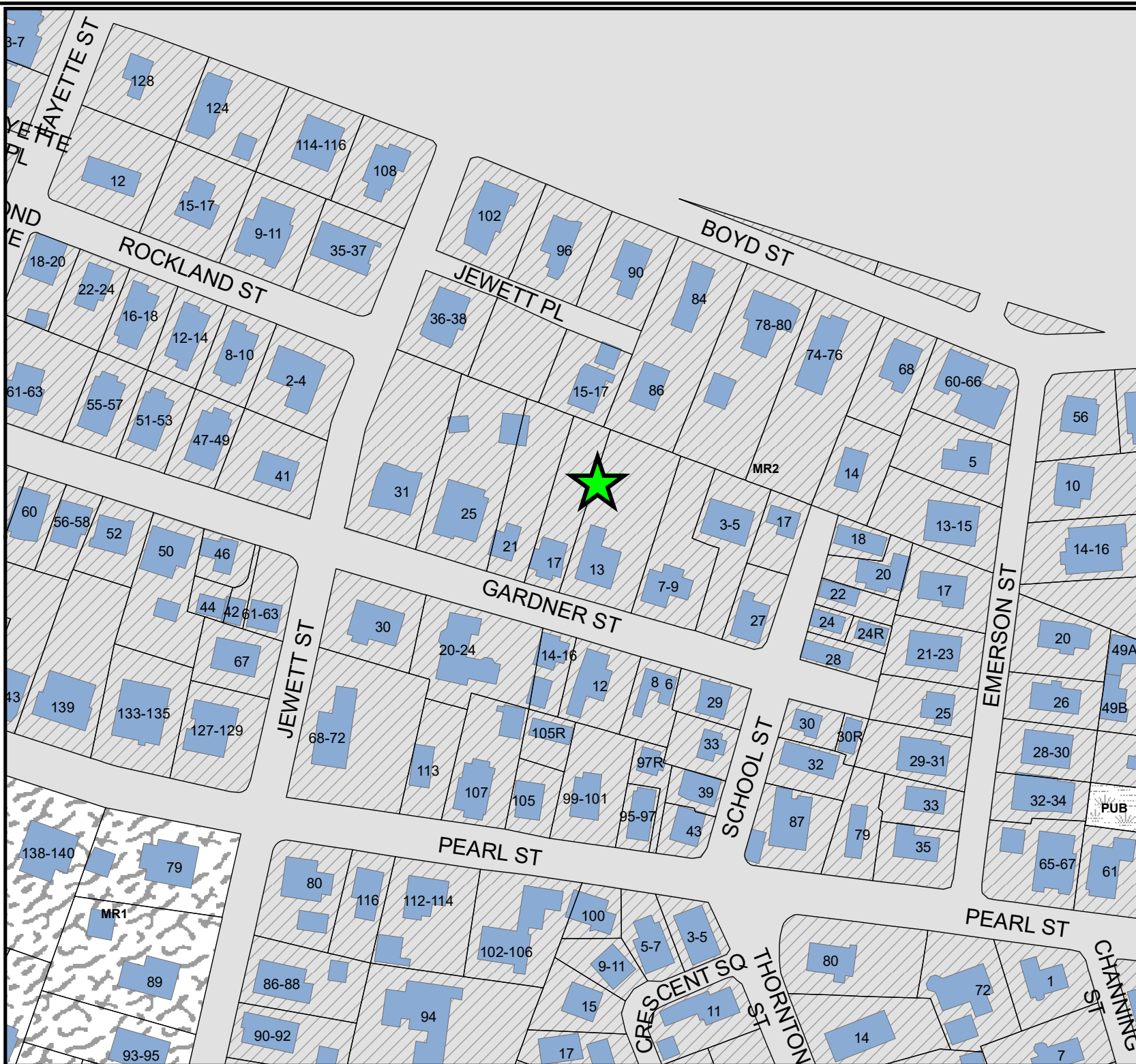


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Ruthanne Fuller

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Map Date: May 08, 2020











# Attachment B Land Use Map Gardner St., 13-17

*City of Newton,  
Massachusetts*

## Legend

### Land Use

### Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Mixed Use
-  Open Space
-  Vacant Land
-  Building Outlines
-  Surface Water
-  Property Boundaries

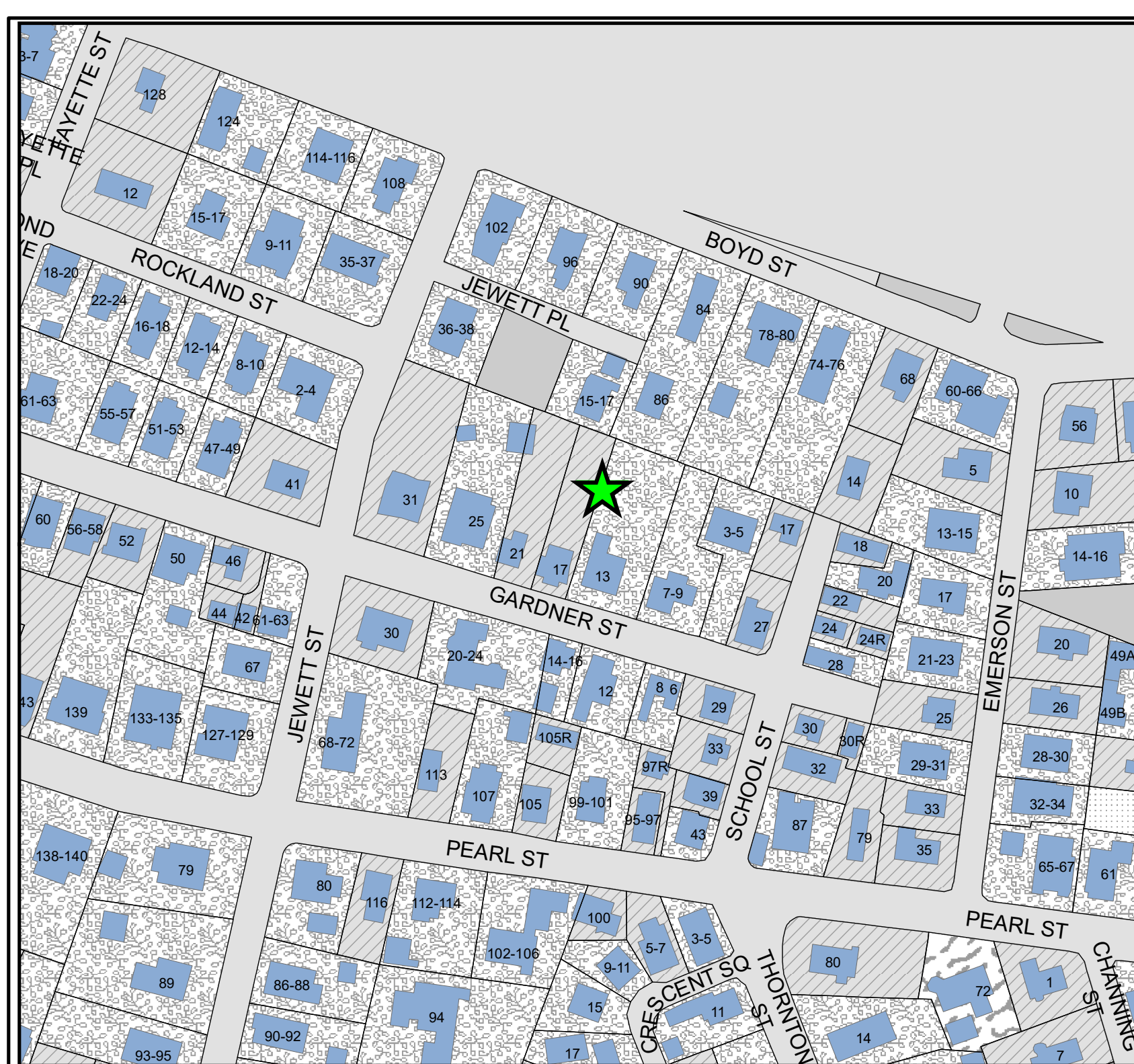


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0 50 100  
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Map Date: May 08, 2020





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**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: April 9, 2020

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Neil Cronin, Chief Planner for Current Planning

Cc: Civico Gardner, LLC  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Assistant City Solicitor

**RE: Request to allow for a four-unit multi-family dwelling, to extend nonconforming setbacks and to allow a retaining wall greater than four feet within a setback**

Applicant: Civico Gardner LLC	
<b>Site:</b> 13-17 Gardner Street	<b>SBL:</b> 11025 0005 and 11025 0006
<b>Zoning:</b> MR2	<b>Lot Area:</b> 16,579 square feet (total)
<b>Current use:</b> One single- and one two-family dwelling	<b>Proposed use:</b> Four-unit multi-family dwelling

### BACKGROUND:

The subject site consists of two parcels; 13 and 17 Gardner Street totaling 16,579 square feet. 13 Gardner Street is improved with a two-family dwelling and 17 Gardner Street is improved with a single-family dwelling, both to be razed. The petitioner proposes to combine the two lots and construct a four-unit multi-family dwelling.

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

- Zoning Review Application, prepared by David Visco. Civico Gardner, LLC, applicant, submitted 8/9/2019, revised 2/17/2020
- Proposed Civil Plan, prepared by Peter Nolan & Associates, surveyor, and Spruhan Engineering, P.C., dated 7/17/2019
- Floor Plans and elevations, prepared by P.L.A.N.S. Company, dated 8/9/2019

## ADMINISTRATIVE DETERMINATIONS:

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1. The petitioner proposes to raze the existing single- and two-family dwellings, combine the lots and construct a four-unit multi-family dwelling. Per section 3.4.1, a special permit is required to construct a multi-family dwelling in the MR2 zoning district.
2. Per section 3.2.6, the required front setback in the MR2 zoning district is 25 feet, however section 1.5.3.B allows for the front setback on a lot to be determined by the average of the abutting structures. The existing structure at 17 Gardner St has a setback of 8.7 feet, and the structure at 13 Gardner has a 14.9-foot existing front setback, with an average setback of 11.8 feet. The proposed multi-family dwelling maintains the front setback of 8.7 feet, where 11.8 feet is required which extends the nonconforming front setback of the existing structure at 13 Gardner St.
3. The existing dwelling at 13 Gardner Street has a nonconforming side setback of 1.7 feet, where 7.5 feet is required per section 3.2.6. The proposed multi-family dwelling alters this existing nonconforming side setback to construct a multi-family dwelling at 1.9 feet from the side lot line, requiring a special permit per sections 3.2.6 and 7.8.2.C.2.
4. A retaining wall greater of four feet or greater within a setback requires a special permit per section 5.4.2.B. The petitioners propose a retaining wall of 4.1 feet in height at the front right corner of the driveway, requiring a special permit.
5. Per section 5.1.4, two parking stalls are required per each dwelling unit. Per this requirement, the four-unit multi-family dwelling must provide eight parking stalls. The petitioners propose to provide a below-grade garage accommodating eight vehicles for the four dwelling units requiring no relief.

MR2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	16,616 square feet	No change
Frontage	80 feet	107 feet	No change
Setbacks <ul style="list-style-type: none"><li>• Front</li><li>• Side</li><li>• Rear</li></ul>	11.3 feet* 7.5 feet 15 feet	<b>8.7 feet</b> <b>1.7 feet</b> 84.7 feet	<b>8.7 feet</b> <b>1.9 feet</b> 31.2 feet
Building Height	42	22.98 feet	23.05 feet
Stories	3	1.5	2
Lot Area Per Unit	3,000 square feet	5,539 square feet	4,154 square feet
Max Lot Coverage	30%	14.4%	29.3%
Min. Open Space	50%	78.1%	51.4%

\* Due to averaging

See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.4.1	Request to allow a multi-family dwelling	S.P. per §7.3.3
§3.2.6 §7.8.2.C.2	Request to alter and extend a nonconforming front setback	S.P. per §7.3.3
§3.2.6 §7.8.2.C.2	Request to alter and extend a nonconforming side setback	S.P. per §7.3.3
§5.4.2.B	To allow a retaining wall in excess of four feet within a setback	S.P. per §7.3.3



CITY OF NEWTON  
Department of Public Works  
ENGINEERING DIVISION

MEMORANDUM

To: Council Rick Lipof, Land Use Committee Chairman

From: John Daghlia, Associate City Engineer

Re: Special Permit – #13-17 Gardner Street

Date: April 28, 2020

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

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

*13-17 Gardner Street  
Newton, MA  
Prepared by: Spruhan Engineering  
Dated: 7-17-'19*

*Executive Summary:*

This permit entails the demolition of two residential homes on two separate lots, and the construction of a single *4-unit* residential building on a total combined lot of 16,579 square foot [0.38 acre]. If the special permit is approved an Approval Not Required (ANR) plan will be needed in accordance to Massachusetts General Laws Chapter 41 Section 81P requiring the two separate lots be combined into one lot.

The topography of the site varies from a high point of elevation 62-feet near the northwest corner of the lot and slope gradually towards the northeast at elevation 55-feet and to the south at elevation 56-feet. The site is surrounded with residential homes and has a combine frontage of approximately 106-feet. Sheet 2 of 4 is missing a Professional Engineers Stamp & signature.



The plan indicates an on-site stormwater collection and infiltration system for the roof and the driveway; drainage calculations were provided; however, they only included calculations for runoff captured by the roof. The design shows a stormwater collection system for the driveway with a series of catch basin that direct water to a crushed stone drainage field, however this system was not accounted for. A revised drainage report will be required before final approval. The proposed 6-unit infiltration system needs an impervious barrier along the side of the western side of the system as portions are less than 10-feet.

The design also has a retaining wall along the frontage that varies in height from (*1 - 4.1 feet*) as well as a wall along its eastern property line with a varying height from *1.5 feet* towards the front of the lot and as high as *3.4 feet* at the midpoint of the wall. Retaining walls over 3 - feet in high must have a safety fence along its length.

After completion and installation of all new municipal utilities the sidewalk and curbing should be updated to current City Standards of cement concrete sidewalks and granite curbing.

*Construction Management:*

1. A construction management plan is needed for this project. At a minimum, it must address the following: staging site for construction equipment, construction materials, parking of construction worker's vehicles, phasing of the project with anticipated completion dates and milestones, safety precautions, emergency contact personnel of contractor. It shall also address any anticipated dewatering during construction, site safety & stability, and impact to abutting properties.
2. Stabilized driveway entrances are needed during construction which will provide a tire wash and mud removal to ensure City streets are kept clean.

*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:

1. Has a 21E investigation & report been performed on the site, if so copies of the report should be submitted the Newton Board of Health and the Engineering Division.
2. 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(s) 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(s) shall be pressure tested and videotaped after final installation is complete. The sewer service will NOT be accepted until 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.
4. All sewer manhole(s) shall be vacuum tested in accordance to the City's Construction Standards & Specifications. The sewer service will NOT be accepted until the manhole(s) pass the testing requirements. 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.
2. Fire flow testing is required for the proposed fire suppression system. The applicant must coordinate this test with both the Newton Fire Department and the Utilities Division; representatives of each department shall witness the testing; test results shall be submitted in a write report. Hydraulic calculation shall be submitted to the Newton Fire Department for approval.
3. 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.
4. 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 be completed before a Certificate of Occupancy is issued. *This note must be incorporated onto the site plan.*
8. The contractor of record shall contact the Newton Police Department 48 hours in advanced and arrange for Police detail to help residents & commuters navigate around the construction activity.
9. 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.

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 the following SPECIAL PERMIT/SITE PLAN APPROVAL to allow a four-unit multifamily dwelling, to extend the nonconforming front and side setbacks, and to allow a retaining wall exceeding four feet in height within the front setback, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

1. The specific site is an appropriate location for the proposed four-unit, multi-family dwelling because multi-family dwellings are an allowed use in the Multi-Residence 2 zone and the proposed dwelling exceeds the lot area per unit required of multi-family dwellings. (§3.4.1 and §7.3.3.C.1)
2. The proposed multi-family dwelling as developed and operated will not adversely affect the neighborhood because the petitioner is replicating the location and the architecture of two existing structures and the addition containing two dwelling units exceeds the setback requirements. (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians because all parking is contained on site. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
5. The proposed extension in the nonconforming front setback of 8.7 feet, where 11.3 feet is the maximum required is not substantially more detrimental than the existing nonconforming structure is to the neighborhood because such placement reflects the built environment of Gardner Street. (§3.2.6 and §7.8.2.C.2)
6. The proposed extension in the nonconforming side setback from 1.7 feet to 1.9 feet, where 7.5 feet is the maximum required is not substantially more detrimental than the existing nonconforming structure is to the neighborhood because such placement reflects the location of an existing historic structure. (§3.2.6 and §7.8.2.C.2)

7. The Council finds the site is an appropriate location for a retaining wall exceeding four feet in height within the front setback due to the grade of Gardner Street. (§5.4.2.B and §7.3.3)

PETITION NUMBER: #229-20

PETITIONER: Civico Gardner LLC

LOCATION: 13-17 Gardner Street, Ward 1, on land known as Section 11, Block 25, Lot 05 and Section 11, Block 25, Lot 06, containing approx. 16,579 sq. ft. of land

OWNER: Civico Gardner LLC

ADDRESS OF OWNER: 2 Tammie Road  
Hopedale, MA 01770

TO BE USED FOR: Four-unit multi-family dwelling

EXPLANATORY NOTES: §3.4.1 and §7.3.3 to allow a four-unit multi-family dwelling; §3.2.6 and §7.8.2.C.2 to extend a nonconforming front setback; §3.2.6 and §7.8.2.C.2 to extend a nonconforming side setback; and §5.4.2.B and §7.3.3 to allow a retaining wall of four feet or greater in a setback

ZONING: Multi-Residence 2 (MR-2) 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. Civil plans entitled "13-17 Gardner Street, Newton, MA" prepared by Peter Nolan & Associates, LLC and Spruhan Engineering, P.C., signed and stamped by Peter J. Nolan Professional Land Surveyor, and by Edmund Spruhan, Professional Engineer, consisting of four (4) sheets:
  - b. Architectural drawings entitled "13-17 Gardner Street, Newton, MA" prepared by Civico Development, LLC, signed and stamped by Andrew Consigli, Registered Architect, dated August 9, 2019; most recently revised February 14, 2020; consisting of eight (8) sheets.
2. The petitioner shall comply with the Tree Preservation Ordinance.
3. All utilities shall be located underground from the property line.



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. Prior to the issuance of any Building Permit, the petitioner shall provide a Final Landscape Plan for review and approval to the Director of Planning and Development.
6. Prior to the issuance of any building permit, the petitioner shall provide a final Operations and Maintenance ("O&M") Plan for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be recorded by the petitioner at the Middlesex South District Registry of Deeds and implemented. A recorded copy of the O&M shall be submitted to the Engineering Division of Public Works, the Inspectional Services Department, and the Department of Planning and Development.
7. Prior to the issuance of any building permit, the petitioner shall provide an Approval Not Required ("ANR") plan combining the two lots into one lot to the City Engineer for review and approval. Once approved, the ANR plan must be recorded at the South Middlesex Registry of Deeds. A recorded copy of the ANR plan shall be submitted to the Engineering Division of Public Works, the Commissioner of Inspectional Services, and the Director of Planning and Development.
8. 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 Approval 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 Engineering Division of Public Works that confirms receipt of a certified Copy of the O&M Plan in accordance with Condition #6.
  - e. Obtained a written statement from the Engineering Division of Public Works that confirms receipt of a certified Copy of the ANR Plan in accordance with Condition #7.
  - f. Obtained a written statement from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1.
  - g. Submitted a Final Landscape Plan to the Director of Planning and Development for review and approval.
9. No Final Inspection/Occupancy Permit for the use 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 a professional land surveyor certifying compliance with Condition #1.

- b. Submitted to the Director of Planning and Development, Commissioner of Inspectional Services and City Engineer, final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.
  - 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.
10. All landscaping shall be maintained in good condition and shall be replaced with similar material as necessary.
11. Notwithstanding the provisions of Condition #10 above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the buildings prior to installation of final landscaping provide that the petitioner shall first have filed a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.