



Ruthanne Fuller  
Mayor

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

#317-20  
Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

**Barney S. Heath**  
Director

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## PUBLIC HEARING/WORKING SESSION MEMORANDUM

**DATE:** October 9, 2020  
**MEETING DATE:** October 13, 2020  
**TO:** Land Use Committee of the City Council  
**FROM:** Barney S. Heath, Director of Planning and Development  
Neil Cronin, Chief Planner for Current Planning  
Katie Whewell, Senior Planner  
**CC:** Petitioner

In response to issues raised at the City Council public hearing, the Planning Department is providing the following information for the upcoming continued public hearing/working session. This information is supplemental to staff analysis previously provided at the public hearing.

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### PETITION #252-20

**68 Chestnut Street**

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Special Permit/Site Plan Approval to extend a nonconforming multi-family residential use by adding one unit to the existing dwelling and two units within a proposed carriage house structure, to further increase the nonconforming height, extend the nonconforming stories, extend the nonconforming side setback, to allow retaining walls greater than four feet in height within a setback, and to allow 1.25 parking stalls per unit.

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The Land Use Committee (the "Committee") held a public hearing on this petition on Tuesday, September 15, 2020. The public hearing was held open for the petitioner to request relief for a retaining wall greater than four feet in height within the setback distances and for the petitioner to respond to questions and concerns raised in the Planning Department's memorandum and at the public hearing by the Committee as well as by members of the public. This memo reflects those issues and concerns, as well as revised materials submitted by the petitioner as of October 6, 2020.

### Executive Summary and Background

Members of the committee noted the site's location in proximity to the Massachusetts Turnpike, nearby amenities on Washington Street, as well as transit. Members of the committee questioned whether the structure constitutes one or two buildings. The Inspectional Services Department stated that the project consists of two buildings, only connected by a carport and deck. However, as the site

is within the BU-1 zoning district, any configuration and number of buildings could be reviewed under the special permit to extend the nonconforming residential use.

Staff is supportive of the mix of unit types and sizes which will add to the City's diversity of housing stock with the proposed six units. While the Planning Department believes the subject property is an appropriate location for the proposed multifamily development and parking waiver given its proximity to West Newton Square, staff recommends that the petitioner submit additional information requested by the Engineering Department in their memorandum (**Attachment B**) dated September 8, 2020. This includes showing the convex mirror on a revised site plan and turning templates to ensure safe maneuvering of cars making the 90-degree turn. Staff recommends these materials are reviewed by Engineering prior to approval.

**ATTACHMENTS:**

- Attachment A: Zoning Review Memorandum, dated July 22, 2020
- Attachment B: Engineering Memorandum, dated September 8, 2020
- Attachment C: DRAFT Council Order



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## ZONING REVIEW MEMORANDUM

Date: July 20, 2020

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Braden Houston, Applicant  
Terrence Morris, Attorney  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Associate City Solicitor

RE: **Request to extend a nonconforming multi-family dwelling, extend nonconforming height and to reduce parking to 1.25 stalls per unit.**

Applicant: Braden Houston	
Site: 68 Chestnut Street	SBL: 31004 0007
Zoning: BU1	Lot Area: 10,419 square feet
Current use: Three-unit multi-family dwelling	Proposed use: 6-unit multi-family dwelling

### BACKGROUND:

The property located at 68 Chestnut Street consists of a 10,419 square foot lot improved with a three-unit multi-family dwelling originally constructed as a single-family dwelling circa 1900 and converted to a two-family in 1924. The property currently has three units, with Inspectional Services records indicating multiple units on the property dating back to the 1970s. The parcel is located in the BU1 zoning district adjacent to the Mass Pike. The petitioner seeks to extend the existing dwelling to accommodate four units, and two additional units within carriage house style structure attached by a deck, for a total of six units on site

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

- Zoning Review Application, prepared by Terrence Morris, attorney, submitted 5/29/2020
- Existing Conditions Site Plan, prepared by VTP Associates, surveyor, dated 3/13/2020
- Proposed Conditions Site Plan, signed and stamped by Joseph R. Porter, surveyor, dated 5/27/2020
- Architectural Plans and Elevations, signed and stamped by Ronald Jarek, dated 5/13/2020

**ADMINISTRATIVE DETERMINATIONS:**

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1. The existing structure was constructed circa 1900 as a single-family dwelling. A building permit was issued in 1924 to convert the structure into a two-family dwelling. Historical Inspectional Services records indicate that the dwelling has had multiple units since at least the 1970s. Per section 4.4.1, a multi-family residential use on the ground level requires a special permit. The petitioner proposes to expand the existing ground floor residential use by constructing three additional units by expanding the existing dwelling to accommodate four units and by constructing a new two-unit dwelling, requiring a special permit per sections 4.4.1 and 7.8.2.C.2.
2. The existing structure has a nonconforming height of 39.99 feet, where 24 feet is the maximum allowed per section 4.1.3. The proposed additions increase the nonconforming height of the structure to 40.36 feet, requiring a special permit per sections 4.1.3 and 7.8.2.C.2.
3. Per section 4.1.2.B.3 a special permit is required for a three-story structure. The proposed additions to the existing dwelling increase the overall height, thereby extending the nonconforming three-story dwelling, requiring a special permit per sections 4.1.2.B.3 and 7.8.2.C.2.
4. Per section 4.1.3, the required side setback is half the building height or equal to the abutting side yard setback. The property abuts the Pike to the west, therefore a setback of half the building height is required on that side. The structure has an existing nonconforming side setback of 12.6 feet where 20 feet (half the existing height of 39.99 feet) is required. The petitioner proposes to increase the height of the structure to 40.36 feet, resulting in a required setback of 20.2 feet. The proposed additions further extend the nonconforming side setback of 12.6 feet to the rear of the property, requiring a special permit per sections 4.1.3 and 7.8.2.C.2.
5. The petitioner proposes to construct eight parking stalls for the six dwelling units.. Section 5.1.4.A requires two parking stalls per dwelling unit, but Section 5.1.13 allows a reduction to 1.25 stalls per unit by special permit.

<b>BU1 Zone</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>
Lot Size	10,000 square feet	10,419 square feet	No change
Setbacks-			
• Front	10 feet	12.7 feet	<b>No change</b>
• Side	5.8 feet (equal to abutter)	40.6 feet	10 feet
• Side	20.2 feet (½ building height)	<b>12.6 feet</b>	<b>No change</b>
• Rear	0 feet	22.3 feet	20.3 feet
Building Height	24 feet	<b>39.99 feet</b>	<b>40.36 feet</b>
Max Number of Stories	2	<b>3</b>	<b>No change</b>
Lot Area Per Unit	1,200 square feet	3,473 square feet	1,737 square feet

See "Zoning Relief Summary" below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
§4.4.1 §7.8.2.C.2	Request to extend a nonconforming residential use	S.P. per §7.3.3
§4.1.3 §7.8.2.C.2	Request to further increase nonconforming height	S.P. per §7.3.3
§4.1.2.B.3 §7.8.2.C.2	Request to further extend nonconforming stories	S.P. per §7.3.3
§4.1.3 §7.8.2.C.2	Request to extend the nonconforming side setback	S.P. per §7.3.3
§5.1.4	Request to allow 1.25 parking stalls per unit	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 Daghlian, Associate City Engineer

Re: Special Permit – 68 Chestnut Street

Date: September 8, 2020

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

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

Topographic Site Plan  
Showing Proposed Conditions at 68 Chestnut Street  
Prepared by: VTP associates, Inc.  
Dated: August 21, 2020

Executive Summary:

This petition request is to further extend the non-conforming residential use to add three additional dwelling units to the site. The existing 3-story dwelling is sited on 10,419 square feet [0.239 acre] lot having 105-feet of frontage along Chestnut Street; residential homes along its southern & eastern property lines, and the Mass-Turnpike along the northern property line.

New domestic & fire suppression water and sanitary services are proposed, and the engineer of record has designed a stormwater collection and infiltration system for the 100-year storm event. The proposed infiltration gullies need an impervious barrier along the side near the abutting property as they are less than 10-feet from the property line.

An Operation and Maintenance plan is needed for the proposed stormwater collection system to ensure long-term performance. The existing driveway apron near #76 Chestnut Street will be closed and a new driveway will be constructed along the Turnpike side of the property that will extend towards the rear of the lot. To facilitate this portion of the driveway, a retaining wall is proposed. The retaining wall's height is 6 feet at its highest point, details of its construction is needed.

Due to the configuration and sharp angle of the driveway at the rear of the proposed expanded dwelling, a turning template for automobiles is needed to ensure safe maneuvering of cars making this 90-degree turn. Additionally, a convex mirror will be needed for the residents so that they can see cars turning the corner & exiting as other residents are entering the driveway.

Construction Management:

1. A construction management plan is needed for this project. At a minimum, it must address the following: staging site for construction materials and equipment, parking for construction workers vehicles, phasing of the project with anticipated completion dates and milestones, safety precautions, emergency contact personnel of the general contractor. It shall also address anticipated dewatering during construction, site safety & stability, siltation & dust control and noise impact to abutters.
2. Stabilized driveway construction entrance(s) will be required for the duration of the construction which will provide a truck wash to prevent tracking of mud and silt onto City streets.
3. Catch basins within and downstream of the construction zone will be required to have siltation control installed for the duration of the project and must be identified on the site plan.

Drainage:

1. An Operations and Maintenance (O&M) plan for the long-term maintenance of the proposed stormwater management facilities needs to be drafted and submitted for review. Once approved the O&M must be adopted by the applicant/property owner, 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, trench drains, and pipe(s) are the sole responsibility of the property owner(s).

Environmental:

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

Sanitary Sewer & Domestic Water Service(s):

1. The proposed sewer connection should be made at the existing sewer manhole rather than what is proposed.
2. Existing water and sewer services to building(s) shall cut and capped at the respective mains and completely removed from the main(s) and its entire length and properly backfilled. The Engineering Division must inspect and approve this work, failure to having this work inspected will result in delay of issuance of the new Utility Connection or issuance of a Certificate of Occupancy.
3. All new sewer service(s) shall be pressure tested in accordance to the City Construction Specifications & Standards and inspected via Closed Circuit Television CCTV inspection after installation is completed. A copy of the video inspection and written report shall be submitted to the City Engineer or his representative. The sewer service will NOT be accepted until the two methods of inspection are completed AND witnessed by a representative of the Engineering Division. A Certificate of Occupancy will not be recommended until these tests are completed to the satisfaction of the City Engineer.
4. All sanitary sewer manhole(s) shall be vacuum tested in accordance to the City's Construction Standards & Specifications, the sewer service and manhole 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 to the satisfaction of the City Engineer and a written report of the test results is submitted to the City Engineer.
5. With the exception of natural gas service(s), all utility trenches within the right of way shall be backfilled with Control Density Fill (CDF) Excavatable Type I-E up to within 18-inches of the asphalt binder level, after which Dense Grade Gravel compacted to 95 % Proctor Testing shall be placed over the CDF. Details of this requirement is the Engineering Division website "Standard Construction Details".

6. Fire Flow testing is required for the proposed fire suppression system. The applicant must coordinate the fire flow test with both the Newton Fire Department and the Utilities Division, representative of each department shall witness the testing. Test results shall be submitted in a written report along with hydraulic calculations that demonstrate the required size of the fire suppression system, these calculations shall be submitted to the Newton Fire Department for approval, and copies give to the Engineering Division.
7. For water quality issues a fire hydrant will be required at the end of the proposed water main/service. This hydrant will be utilized for flushing out the main as required.
8. All water services shall be chlorinated, and pressure tested in accordance to the AWWA and the City Construction Standards & Specifications prior to coming online. These tests MUST be witnessed by a representative of the Engineering Division.
9. Approval of the final configurations of the water service(s) shall be determined by the Utilities Division, the engineer of record shall submit a plan to the Director of Utilities for approval.

General:

1. All trench excavation shall comply with Massachusetts General Law Chapter 82A, Trench Excavation Safety Requirements, and OSHA Standards to protect the general public from unauthorized access to unattended trenches or excavations. Trench Excavation Permit is required prior to any construction. This applies to all trenches on public and private property. *This note shall be incorporated onto the final plans.*
2. All tree removal shall comply with the City's Tree Ordinance.
3. The contractor of record 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 services 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 Engineer's Inspector has given their approval. *This note shall be incorporated onto the final plans.*
4. The applicant shall apply for a Building Permit with the Inspectional Services Department prior to ANY construction.
5. Before requesting a Certificate of Occupancy, an As Built plan shall be submitted to the Engineering Division in both digital and paper format. The plan shall show all utilities

and final grades, any easements and improvements and limits of restoration. The plan shall include profiles of the various new utilities including but not limited to rim & invert elevations (City of Newton Datum), slopes of pipes, pipe materials, and swing ties from permanent building corners. The as built shall be stamped by both a Massachusetts Registered Professional Engineer and Registered Professional Land Surveyor. Once the as built plan is received the Engineering Division shall perform a final site inspection and then make a determination to issue a Certificate of Occupancy. *This note shall be incorporated onto the final plans.*

6. All site work including trench restoration, sidewalk, curb ,apron and loam border (where applicable) shall be completed before a Certificate of Occupancy is issued. *This note shall be incorporated onto the final plans.*
7. The contractor of record shall contact the Newton Police Department 48-hours in advanced and arrange for Police Detail to help residents and commuters navigate around the construction zone.
8. If any changes from the final approved design plan that are required due to unforeseen site conditions, the contractor of record shall contact the design engineer of record and submit revised design and stamped full scale plans for review and approval prior to continuing with construction.
9. *The engineer of record shall add the following attestation to the plans when applying for a building permit:*

*I certify that the construction so shown was inspected prior to backfill and that all work conforms with the Approved Plan and meets or exceeds the City of Newton Construction Standards.*

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Signature

Note: If the plans are updated it is the responsibility of the applicant to provide all City Departments [ ISD, Conservation Commission, Planning 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 at 617-796-1023.

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 extend a nonconforming residential use, to further increase the nonconforming height, to extend the nonconforming side setback, to further extend the nonconformity of structure containing three stories, to allow retaining walls greater than four feet within a setback, and to allow 1.25 parking stalls per unit 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 proposed multifamily use with retaining walls over four feet in height due to its proximity to amenities on Washington Street, the Massachusetts Turnpike and transit (§7.3.3.C.1, §4.4.1, §4.1.3, §4.1.2.B.3, §5.1.4, and §5.4.2).
2. The proposed multifamily use with retaining walls over four feet in height will not adversely affect the neighborhood because there are a mix of uses nearby, including multifamily residential uses and the retaining walls will not be visible to abutters (§7.3.3.C.2, §4.4.1, §4.1.3, §4.1.2.B.3, §5.1.4, and §5.4.2).
3. There will be no nuisance or serious hazard to vehicles or pedestrians because parking will be contained on-site, and the site is located in close proximity to transit options (§7.3.3.C.3, §4.4.1, §4.1.3, §4.1.2.B.3, §5.1.4, and §5.4.2).
4. Access to the sites over streets is appropriate for the types and number of vehicles involved (§7.3.3.C.4, §4.4.1, §4.1.3, §4.1.2.B.3, §5.1.4, and §5.4.2).
5. The proposed extensions of the nonconforming residential use will not be substantially more detrimental than the existing nonconforming use is to the neighborhood because there are a mix of uses in the neighborhood, including multifamily residential uses (§7.8.2.C.2).
6. The proposed extensions of the nonconforming side setback, height, and number of stories will not be substantially more detrimental than the existing

nonconforming use is to the neighborhood because there are a mix of uses in the neighborhood, including multifamily residential uses (§7.8.2.C.2).

7. Literal compliance with the parking requirements of the Newton Zoning Ordinance is in the public interest because the site is located in close proximity to transit options and Washington Square. (§5.1.13)

PETITION NUMBER: #317-20

PETITIONER: Braden Houston

LOCATION: 68 Chestnut Street, on land known as Section 31, Block 4, Lot 7, containing approximately 10,419 square feet of land

OWNER: Braden Houston

ADDRESS OF OWNER: 168 Mt. Vernon Street  
Newton, MA 02460

TO BE USED FOR: Four-unit multifamily structure with two-unit detached carriage house

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: To extend a nonconforming residential use and nonconforming dimensional standards; to allow retaining walls greater than four feet in height within a setback, and to allow 1.25 parking stalls per unit (§4.4.1, §4.1.3, §4.1.2.B.3, §5.1.4, §5.4.2, §7.8.2.C.2 and §7.3.3)

ZONING: Business 1 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. Zoning Plan showing proposed conditions at 68 Chestnut Street, signed and stamped by Joseph R. Porter, VTP Associates, Professional Land Surveyor, dated May 27, 2020



The Construction Management Plan shall be consistent and not in conflict with relevant conditions of this Order and shall include, but not be limited to, the following provisions:

- a. 24-hour contact information for the general contractor of the project.
  - b. Hours of construction: construction shall be limited to between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and from 8:00 a.m. to 7:00 p.m. on Saturdays. No construction is permitted on Sundays, or holidays except in emergencies, and only with prior approval from the Mayor.
  - c. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones.
  - d. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for construction and delivery vehicles, and location of any security fencing.
  - e. Proposed methods for dust control including, but not limited to: covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
  - f. Proposed methods of noise and vibration control, in accordance with the City of Newton's Ordinances. Staging activities should be conducted in a manner that will minimize off-site impacts of noise. Noise producing staging activities should be located as far as practical from noise sensitive locations.
  - g. Tree preservation plan to define the proposed method for protection of any existing trees to remain on the site.
  - h. A plan for rodent control prior to demolition, during demolition, and during construction.
  - i. The CMP shall also address the following:
    - safety precautions;
    - anticipated dewatering during construction;
    - site safety and stability;
    - impacts on abutting properties.
8. 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 an architect certifying compliance with Condition #1 as well as the as-built floor area ratio of the structure.
  - 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 professional land surveyor.

- c. Closed the existing curb cut on Chestnut Street at the southern corner of the site closest to 76 Chestnut Street and shall construct a sidewalk according to the City of Newton Engineering standards.
- d. Filed with the Clerk of the Council, 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.