



Petition: #164-26
New Gov: SP-26-14
Public Hearing: 5/12/2026

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459
617-796-1120

Marc C. Laredo
Mayor

Katie Whewell
Acting Director

PUBLIC HEARING MEMORANDUM

DATE: May 8, 2026

TO: City Council

FROM: Katie Whewell, Acting Director of Planning and Development
Cat Kemmett, Chief Planner for Current Planning
Sondria Berman, Senior Planner

SUBJECT: **Petition #164-26** for an A SPECIAL PERMIT/SITE PLAN APPROVAL to allow the construction of a series of retaining walls with a combined height of over four feet in height at 43 Kenwood Avenue, Ward 6, Newton, on land known as Section 64 Block 20 Lot 22, containing approximately 10,610 sq. ft. of land in a district zoned Single Residence 2. Ref: Sec. 7.3.3., 5.4.2.B of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

APPLICATION RECORD: <https://newtonma.viewpointcloud.com/records/920722>

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis which may be useful in the special permit decision making process of the City Council. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the City Council will want to consider in its discussion at a subsequent Working Session.



43 Kenwood Avenue

Background and Neighborhood Overview

43 Kenwood Avenue consists of a 10,610 square foot lot improved with a single-family dwelling constructed circa 1890. The subject property is located in a Single Residence 2 District, (SR-2), and is abutted by similarly-sized lots improved with single-family residences. The existing topography of the site slopes downwards approximately twenty feet from the front to the rear of the property.

The existing dwelling includes an elevated rear deck as well as a ground-level terrace and paved walkway and stairs. There is an existing retaining wall to the south of the dwelling and a small boulder retaining wall at the southwestern corner of the site.

The site is also subject to an existing Special Permit #211-21 granted on July 12, 2021 to allow for an increase in the nonconforming Floor Area Ratio ("FAR") from .50 to .52, where .37 is the maximum allowed as of right, to further extend the nonconforming third story, and to waive certain dormer provisions to construct a rear addition to the primary dwelling.

Special Permit

The petitioner proposes to construct a series of retaining walls within 25 feet that have a combined height of over four feet at the rear of the property, requiring relief. The proposed walls will allow for a level hardscaped terrace proposed at the rear of the dwelling. The proposed changes to site plan of record and the request for additional relief for retaining walls also require an amendment to Special Permit #211-21.

Planning Department Analysis

The proposed series of boulder and bluestone retaining walls at 43 Kenwood Avenue address the approximate 15-foot slope that descends from the middle of the site toward the western rear lot line. The petitioner proposes to construct a series of retaining walls at rear of the property, particularly within the western and southern portions of the site. As part of the project, the petitioner plans to build a new terrace to the east of the primary dwelling and reset the existing terrace and walkway at the rear of the dwelling.

The project requires relief to allow the series of retaining walls within 25 feet that exceed four feet in height. The new retaining walls proposed within 25 feet result in a combined height of approximately 10 feet in certain locations. Per section 5.4.2.B, a special permit for a combination of retaining walls exceeding four feet in height is required. In addition, the petitioner will maintain an existing linear and curved retaining wall at the northwest corner of the site which ranges from 1.5 feet to 3.8 feet in height, as well as exiting stairwell retaining walls along the rear and sides of the primary dwelling.

In addition to requesting relief for the series of retaining walls over four feet in height, the petitioner will also need to amend Special Permit #211-21, which granted relief to further increase the nonconforming FAR, to further extend the nonconforming third story, and to waive certain dormer provisions for a rear addition. The proposed exterior site work does not impact the relief provided in the Special Permit, however, given that the proposed retaining walls will alter the site plan of record and require additional dimensional relief, an amendment to Special Permit #211-21 is required.

The proposed net increase in impervious surface area is approximately 327 square feet, and is subject to Engineering Review for compliance with city standards and regulations.

Based on the Proposed Site Plan, dated 2/2/2026 as revised through 4/16/2026, the rear yard appears to include several mature trees. It is unclear, however, if any of these trees are slated for removal as part of the proposed site work. Planning notes that the Petitioner will need to comply with the Tree Ordinance and obtain a tree permit prior to issuance of a building permit.

Planning believes the proposed series of retaining walls as designed enables greater use of the rear portion of site, which is constrained by steep change in grade towards the rear lot line. It is important to note that residential dwellings to the left and right abutting 43 Kenwood Avenue have similar topographical changes and include retaining walls to address the slope of the rear yard areas. As such, the retaining walls proposed for 43 Kenwood Road are not dissimilar to neighboring properties that utilize the same structures for soil stabilization and greater use of the site(s).

I. **Zoning Relief Requested:**

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§5.4.2.B	Request to allow a system of retaining walls exceeding four feet in height	S.P. per §7.3.3
	Amend Special Permit #211-21	

For more details around the zoning analysis please refer to **ATTACHMENT A**.

II. **Criteria for Consideration per §7.3.3, §5.4.2.C:**

- The site is an appropriate location for the series of proposed retaining walls over four feet in height. (§7.3.3.C.1)

- The proposed series of retaining walls over four feet in height will not adversely affect the neighborhood. (§7.3.3.C.2)
- The proposed series of retaining walls over four feet in height will not be 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 lot presents challenging topography which limits the use of the property, such that it could not be improved without the implementation of a series of retaining walls over four feet in height. (§5.4.2.C.1)
- The proposed series of retaining walls over four feet in height will not adversely impact adjacent property, the neighborhood, or the public. (§5.4.2.C.2)
- The proposed series of retaining walls over four feet in height is the minimum structure necessary to allow a subject property to be reasonably utilized. (§5.4.2.C.3)

III. **Land Use**

If approved, the use will remain a single-family residential.

IV. **Interdepartmental Review**

- A. Engineering Review: The City of Newton's Engineering Department provided a memorandum dated May 6, 2026 requesting plans prepared and stamped by a Professional Land Surveyor as well as for additional information pertaining to the total amount of land disturbance calculations specific to the City's Stormwater Management and Erosion Control Rules and Regulations, as well as details on siltation control, soil base and backfill, and additional dimensional details regarding the proposed retaining walls surrounding the proposed terrace (Attachment B).

Petitioner's Responsibilities

The petition is complete.

ATTACHMENTS:

- ATTACHMENT A:** Zoning Review Memorandum, dated April 24, 2026
ATTACHMENT B: Engineering Department Memorandum dated May 6, 2026
ATTACHMENT C: DRAFT Council Order



City of Newton

Department of Planning & Community Development

Marc C. Laredo Mayor

1000 Commonwealth Avenue, Newton, Massachusetts 02459 (617) 796-1120 | newtonma.gov/planning

Katie Whewell Acting Director

ZONING REVIEW MEMORANDUM

Date: April 24, 2026
To: Anthony Ciccariello, Commissioner of Inspectional Services
From: Jane Santosuosso, Chief Zoning Code Official
Cat Kemmett, Acting Chief Planner for Current Planning
Cc: Martha Fishman, Applicant
Christoher Patzke, The MacDowell Company
Katie Whewell, Acting Director of Planning and Development
Jonah Temple, Deputy City Solicitor
RE: Request to allow a combination of retaining walls exceeding four feet in height and to amend Special Permit #211-21

Table with 2 columns: Site, Zoning, Current use and SBL, Lot Area, Proposed use. Applicant: Martha Fishman

BACKGROUND:

The property at 43 Kenwood Avenue consists of a 10,610 square foot lot improved with a single-family dwelling constructed circa 1890. The petitioner proposes to construct a series of retaining walls at the rear of the property with a combined height exceeding the four-foot maximum height allowed requiring special permit relief.

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

- Zoning Review Application, prepared by Christopher Patzke, landscape architect, dated 3/2/2026
• As-Built Plan, signed and stamped by Deana Boumitri, surveyor, dated 2/23/2023
• Proposed Site Plan, signed and stamped by Christopher Patzke, landscape architect, dated 2/2/2026, revised 2/26/2026, 3/2/2026, stamped 4/2/2026
• Proposed Grading Plan, signed and stamped by Christopher Patzke, landscape architect, dated 2/2/2026, revised 3/2/2026, 4/2/2026

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner intends to construct a combination of retaining walls at the rear of the property, while maintaining existing retaining walls. The proposed walls result in a combined height of approximately 10 feet in certain locations. Per section 5.4.2.B, a special permit for a combination of retaining walls exceeding four feet in height is required.
2. The property was granted Special Permit #211-21 to allow for relief for dormer design and to exceed FAR. The proposed retaining walls do not impact the relief granted by the existing special permit, however they do require amendment to the site plan associated with the approval.

See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§5.4.2.B	Request to allow a system of retaining walls exceeding four feet in height	S.P. per §7.3.3
	Amend Special Permit #211-21	

CITY OF NEWTON
Department of Public Works
ENGINEERING DIVISION

MEMORANDUM

To: Council Andrea Kelly, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – 26-14 ~ 43 Kenwood Avenue

Date: May 6, 2026

CC: Alfredo Vargas, PE City Engineer
Katie Whewell, Acting Director of Planning

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

*The Fishman Residence
43 Kenwood Avenue
Newton, MA
Prepared by: The McDowell Company
Dated: February 2, 2026
Revised: 4/16/2026*

Executive Summary:

The proposed permit entails essentially a landscape improvement project on the single-family property having 10,610 square feet. The DPW requires that site plans are stamped by a Professional Land Surveyor that shows the property lines with proper compass bearings & distance. The improvements entail the construction of a series of retaining walls, a patio, resetting of existing terrace, and placement of large landscape boulders as terraced walls.

The Landscape Architect of record needs to provide a calculation to indicate the total land disturbance in accordance to the *Stormwater Management & Erosion Control Rules & Regulations (4/15/2022)* Section 4: Applicability: Subsection B which states: Land Disturbance Stormwater Management Permit is required for the following activities, as stated in Ch. 29-148(c): Projects that will or could disturb over 5,000 square feet of land. The calculation needs to include the total area of disturbance which includes the patio, steps, paving, resetting of

existing terrace & steps, and the placement of the large boulders terracing below the formal retaining wall.

The site plan provides a breakdown for the new retaining wall, steps and paving which is less than the 400 square foot threshold therefore, it does not trigger on-site drainage improvements.

EXISTING IMPERVIOUS TO BE REMOVED:

RETAINING WALLS	60 sf
STEPS	26 sf
TOTAL	86 sf

PROPOSED IMPERVIOUS:

RETAINING WALLS	160 sf
STEPS	57 sf
PAVING	216 sf
TOTAL	413 sf

DIFFERENCE IN IMPERVIOUS: +327 sf

Due to construction on the steep hillside an approved type of siltation control is needed to protect downhill abutters from possible migration of soils during construction and should remain in place until the site is stabilized.



The following photo shows some of the large landscape boulder delivered to the site that will be placed as shown on the proposed site plan as terraced walls. No detail was provided as how these stones will be placed (i.e. the preparation of soil base beneath the boulder and backfilling).

The landscape plan did not provide details of the proposed retaining wall that will surround the proposed patio. The landscape architect should provide these details to the Planning Department & ISD.

General:

1. Upon completion of the project the applicant shall provide an as-built plan to the Planning Department.
2. Any tree removal shall comply with the City's Tree Ordinance.
3. The applicant shall apply for a Building Permit with the Inspectional Services Department prior to ANY construction.
4. The contractor of record shall obtain a Sidewalk Crossing permit with DPW prior to any construction for delivery of materials & equipment crossing the driveway apron.
5. If there are 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.

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 **AMEND** Special Permit #211-21 to allow construction of a series of retaining walls over four feet in height located within 25 feet of each other as recommended by the Land Use Committee for the reasons given by the Committee, through its Chair, Councilor Andrea Kelley:

FINDINGS:

1. The site is an appropriate location for the proposed series of retaining walls over four feet in height as they allow for greater use of the rear portion of the site. (§7.3.3.C.1)
2. The proposed series of retaining walls over four feet in height will not adversely affect the neighborhood because the series of retaining walls are located in rear of the property and are not readily visible from the street. (§7.3.3.C.2)
3. The proposed series of retaining walls over four feet in height will not be a nuisance or serious hazard to vehicles or pedestrians because they are located at the rear of the site and do not affect parking or pedestrian traffic. (§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 lot presents challenging topography which limits the use of the property, such that it could not be improved without the implementation of the retaining walls over four feet in height to utilize the rear of the site. (§5.4.2.C.1)
6. The proposed retaining wall over four feet in height will not adversely impact adjacent property, the neighborhood, or the public as it is located at the rear of the property and is not readily visible from the street. (§5.4.2.C.2)
7. The proposed retaining wall over four feet in height is the minimum structure necessary to allow the subject property to be reasonably utilized and provide structural stability for the proposed terrace in the rear yard. (§5.4.2.C.3)

PETITION NUMBER: #164-26

PETITIONER: Martha Fishman

LOCATION: 43 Kenwood Avenue, Ward 6, Newton, on land known as Section 64 Block 20 Lot 22, containing approximately 10,610 sq. ft.

OWNER: Martha Fishman

ADDRESS OF OWNER: 43 Kenwood Avenue
Newton, MA 02459

TO BE USED FOR: Single Family Dwelling

RELIEF GRANTED: **Special Permit per Sec. 7.3.3:**

- to allow a series of retaining walls over four feet in height (§5.4.2.B.1)

Relief granted under Special Permit #211-21 per 7.3.3:

- to further increase the nonconforming floor area ratio (FAR) from .50 to .52, where .37 is the maximum allowed as of right (§3.1.3, §3.1.9, §7.8.2.C.2)
- to further extend the nonconforming third story per (§3.1.3, §7.8.2.C.2)
- to allow a dormer exceeding 50% of the length of the exterior wall of the story next below (§1.5.4.G.2.b)
- to allow a dormer creating a continual wall plane beyond two stories (§1.5.4.G.2.a)
- to allow a dormer within three feet of the intersection of the roof and main building (§1.5.4.G.2.c)

ZONING: Single Residence 2

This property is governed by Council Order #211-21 which approved an increase in the nonconforming floor area ratio to construct a rear addition. This Special Permit/Site Plan Approval supersedes Council Order #211-21. As such, Council Order #211-21 is null and void.

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 titled "Proposed Site Plan," prepared by The MacDowell Company, LLC, signed and stamped by Christopher D. Patzke, Registered Landscape Architect, dated 2/2/2026, as revised 2/26/2026, 4/02/2026, and 4/16/2026.
 - b. Grading Plan titled, "Proposed Grading Plan," prepared by The MacDowell Company, LLC, signed and stamped by Christopher D. Patzke, Registered Landscape Architect, dated 2/2/2026, as revised 2/26/2026, 4/02/2026, and 4/16/2026.
2. No building permit (other than a demolition permit) and unless otherwise specified shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:
 - a. Recorded a certified copy of this Special Permit/Site Plan Approval at the Middlesex South Registry of Deeds and filed proof of such recording with the City Clerk and submitted a copy with the building permit application.
 - b. 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, including the details and specifications related to drainage.
 - c. Obtained a written statement/sign off from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1 including all dimensional requirements.
3. No certificate of occupancy (temporary or final) shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with for the portion of the project for which occupancy is requested and the Petitioner has:
 - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by professional land surveyor (or professional engineer) and registered architect (or professional engineer) 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 professional land surveyor or professional engineer, as applicable.
 - c. Obtained approval from the City Engineer certifying that all engineering details for the portion of the Project for which a certificate of occupancy is requested have been constructed to standards of the City of Newton Public Works Department.