



#220-22

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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

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## PUBLIC HEARING MEMORANDUM

Public Hearing Date: April 12, 2022  
Land Use Action Date: June 28, 2022  
City Council Action Date: July 4, 2022  
90- Day Expiration Date: July 11, 2022

DATE: April 8, 2022

TO: City Council

FROM: Barney Heath, Director of Planning and Development  
Katie Whewell, Senior Planner

SUBJECT: **Petition #220-22**, for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a two-story addition and single story one-car garage addition, exceeding the maximum allowed FAR, reducing the required setback and to construct a retaining wall within a setback exceeding the maximum allowed height at 42 Oakwood Road, Ward 2, Section 22 Block 29 Lot 06, containing approximately 6610 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 3.1.3, 3.1.9, 7.8.2.C.2, 5.4.2.B of the City of Newton Rev Zoning Ord, 2017.

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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.



**42 Oakwood Road**

### **EXECUTIVE SUMMARY**

The property located at 42 Oakwood Road consists of a 6,610 square foot corner lot in the Single Residence 2 (SR-2) zone in Newtonville. The site has frontage along both Upland Road and Oakwood Road. The lot is improved with a single-family residence constructed circa 1904 and a detached garage. The petitioners are seeking to raze the existing detached garage and construct a two-story attached garage addition with room for one car and living space. As proposed, the addition will exceed the by right Floor Area Ratio ("the FAR") and alters the nonconforming rear setback, requiring a special permit. The petitioner also requires relief to allow a retaining wall greater than four feet in height within the front setback from Upland Road.

As designed, the proposed addition would increase the floor area ratio from .37 to .51, where .44 is the maximum allowed as of right. The addition is subordinate to the existing structure and matches the existing structure and design in terms of the roof and design. The portion of the addition which alters the rear setback consists of a single story attached garage, where the addition consists of two stories further into the site. The topography of the neighborhood is such that other homes on both Upland Road and Oakwood have retaining walls along the frontages and within the setbacks. Due to this, the Planning Department is unconcerned with the proposed addition that exceeds the FAR, alters the nonconforming rear setback, and relief to allow a retaining wall greater than four feet in height within the setback.

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

When reviewing this request, the

Council should consider whether:

- The specific site is an appropriate location for the proposed addition that increases the FAR and retaining wall within the setback that exceeds four feet in height. (§7.3.3.C.1)
- The proposed addition that increases the FAR and retaining wall within the setback that exceeds four feet in height will not adversely affect the neighborhood. (§7.3.3.C.2)
- The proposed addition that increases the FAR, and retaining wall within the setback that exceeds four feet in height will not 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 increase in the FAR from .37 to .51, where .44 is the maximum allowed by-right, is consistent with and not in derogation of the size, scale and design of other

- structures in the neighborhood. (§3.1.3, and §7.8.2.C.2)
- The proposed structure which alters the nonconforming rear setback is not substantially more detrimental than the existing nonconforming structure is to the neighborhood (§3.1.3, and §7.8.2.C.2)

## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

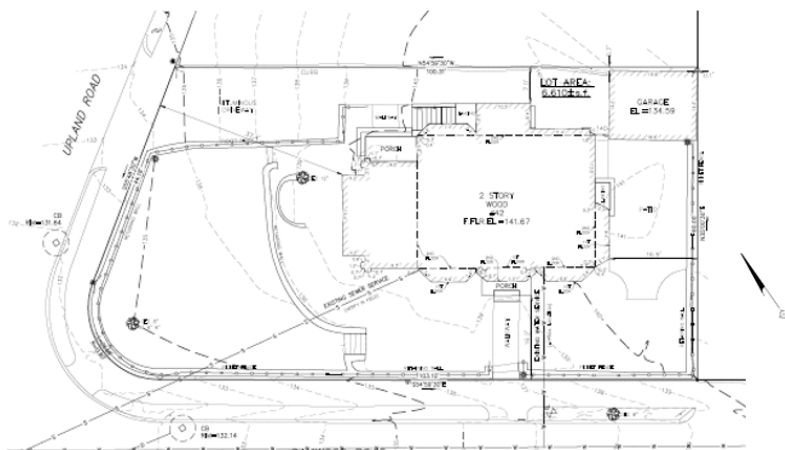
### A. Neighborhood and Zoning

The subject property is located on the corner of Upland Road and Oakwood Road in Newtonville. The SR-2 zone encompasses the surrounding neighborhoods (**Attachment A**). The surrounding land use of the neighborhood is single family residential uses (**Attachment B**).

### B. Site

The site consists of 6,610 square feet of land and is improved with a single-family dwelling constructed in 1904. The site consists of a corner lot, resulting in two front setbacks, 37.4 feet from Upland Road and a nonconforming front setback of 16.2 feet from Oakwood Road, where 25 feet is required. The single-family dwelling has a nonconforming rear setback from the northern (rear) property line of seven feet, where 15 feet is required. The lot is served by one curb cut from Upland Road providing access to a driveway that leads up to a detached garage. The detached garage has two nonconforming setbacks of less than a foot from the northern and eastern property lines. The site has a slight upwards slope from the frontages to the rear of the lot.

### Existing Conditions



III. PROJECT DESCRIPTION AND ANALYSIS

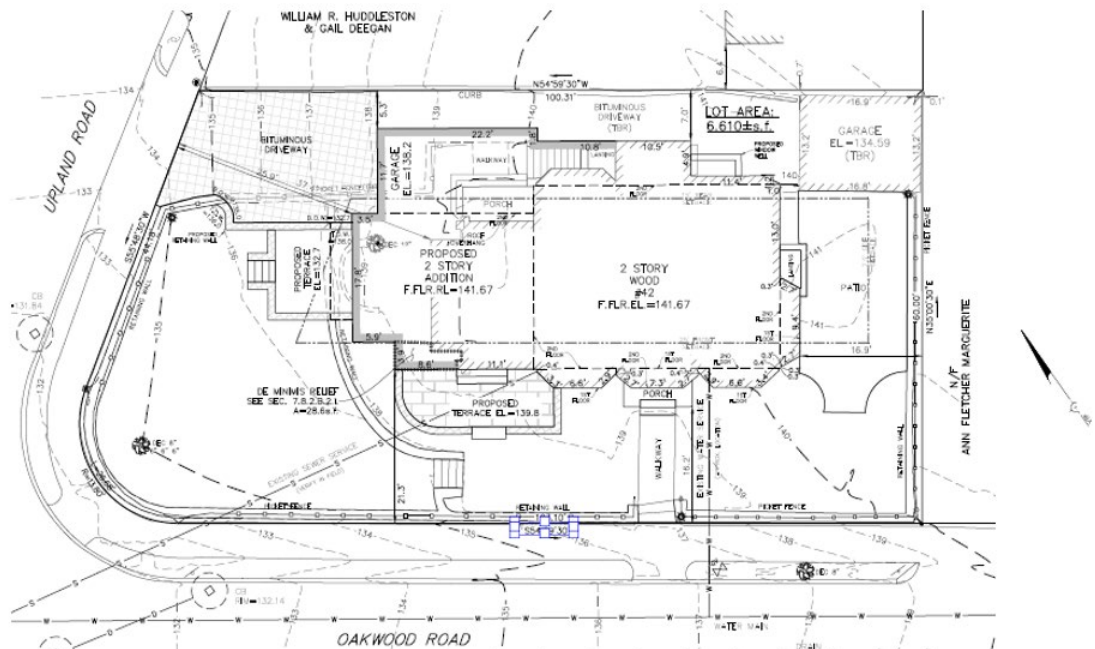
A. Land Use

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

B. Building and Site Design

The petitioners are seeking to raze the existing detached garage and construct an to the front (Upland Road) and rear of the dwelling. The addition expands the footprint by approximately 300 square feet. The addition will consist of an attached one car garage, and then increase to a two-story addition with living area in the basement, the first floor, and second floor. The addition increases the FAR from .37 to .51 where .44 is the maximum allowed by right, requiring a special permit. The proposed addition adds approximately 931 square feet of floor area to the structure, resulting in a structure that would contain 3,343 square feet of floor area, where 2,908 square feet is the maximum allowed as of right. This results in a difference of approximately 435 square feet. The addition also decreases the northern (rear) setback from seven feet to 5.3 feet. The portion of the addition that alters the rear setback is only one story.

Proposed Site Plan



Proposed Front Elevation



Proposed Left Elevation



To construct the addition as proposed, the petitioners are proposing to construct a

retaining wall with 5.3 feet in height within the front setback. While the distance isn't provided from the setback to the wall, the wall extends into the front setback from Upland Road, requiring a special permit to locate a retaining wall greater than four feet in height within the front setback.

The Planning Department notes the addition is subordinate to the existing structure and is consistent with the size and scale of the neighboring homes. The addition which decreases nonconforming rear setback by approximately two feet is one story, while the addition consists of two stories further into the site. Planning suggests that petitioner consider screening the addition with the proposed setback of five feet from the abutter to the northeast. The alteration of the rear setback accommodates an attached garage, which allows for the removal of the detached garage that has setbacks of less than one foot. The proposed addition would also match the existing structure in terms of the roof and design. The proposed retaining wall that exceeds four feet in height within the front setback from Upland Road is set further into the site and other structures on Upland Road and Oakwood Road have similar topographies and retaining walls along the frontages and within the front setbacks.

C. Parking and Circulation

The petitioners are maintaining the driveway location from Upland Road and constructing an attached garage addition with room for one car. To accommodate the addition, the driveway is being reduced in length and is configured between the attached garage addition and Upland Road.

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:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.3 §3.1.9	Request to exceed FAR	S.P. per §7.3.3
§3.1.3 §7.8.2.C.2	Request to further extend a nonconforming rear setback	S.P. per §7.3.3
§5.4.2.B	Request to allow a retaining wall exceeding four feet in a setback	S.P. per §

B. Engineering Review

Engineering Review is not required at this time.

C. Historic Preservation Review

This project was found to be historically significant by the Chief Preservation Planner on October 14, 2021 and final approval of plans is required at the building permit stage, should this project be approved.

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 B

## Zoning

**42 Oakwood Rd.**

*City of Newton,  
Massachusetts*

## Legend

 Single Residence 2

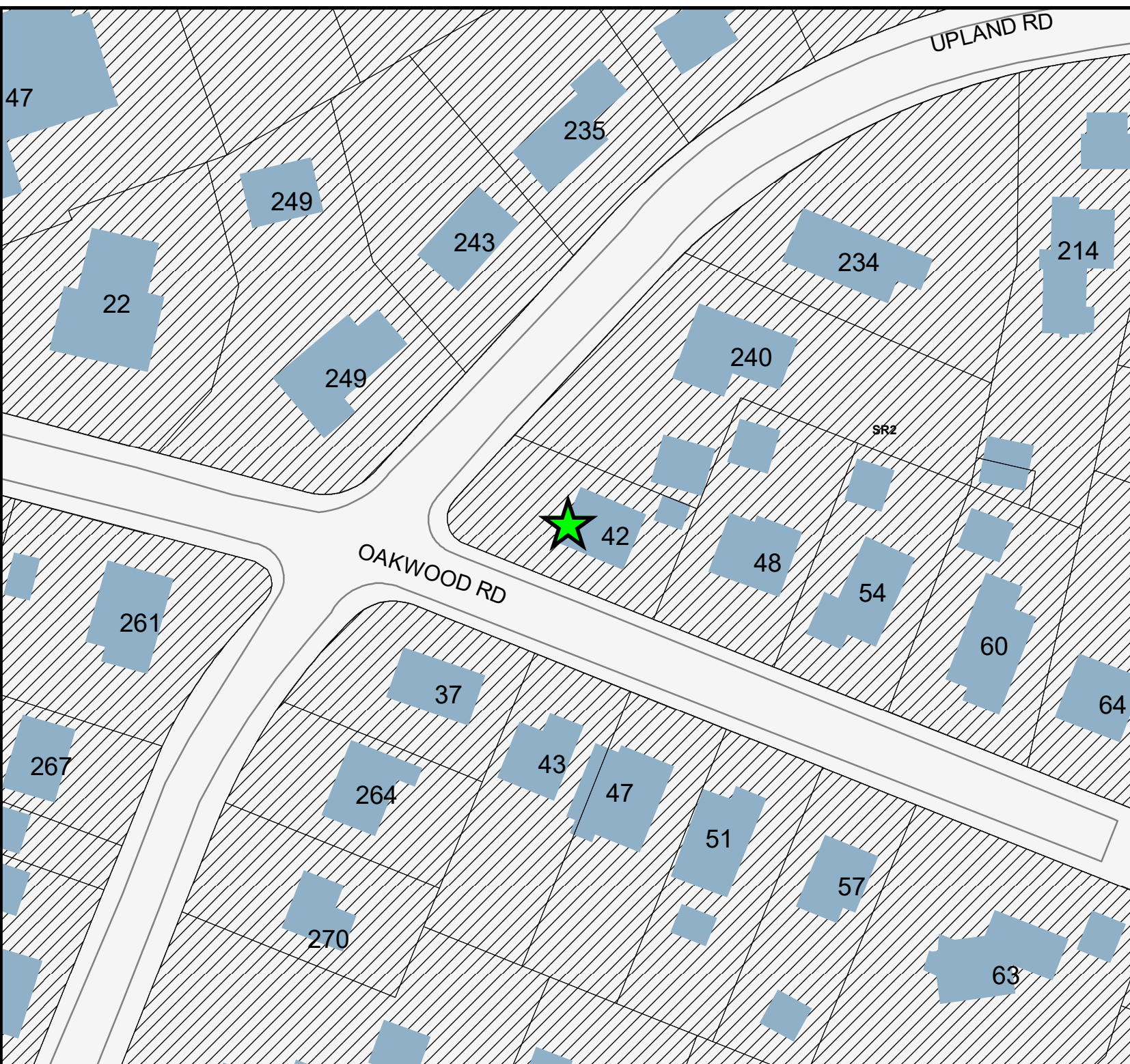


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Ruthanne Fuller  
GIS Administrator - Douglas Greenfield

0 12.5 25 50 75  
Feet

Map Date: April 07, 2022





# ATTACHMENT A





## Land Use

### 42 Oakwood Rd.

*City of Newton,  
Massachusetts*

## Land Use

### Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Mixed Use
-  Vacant Land

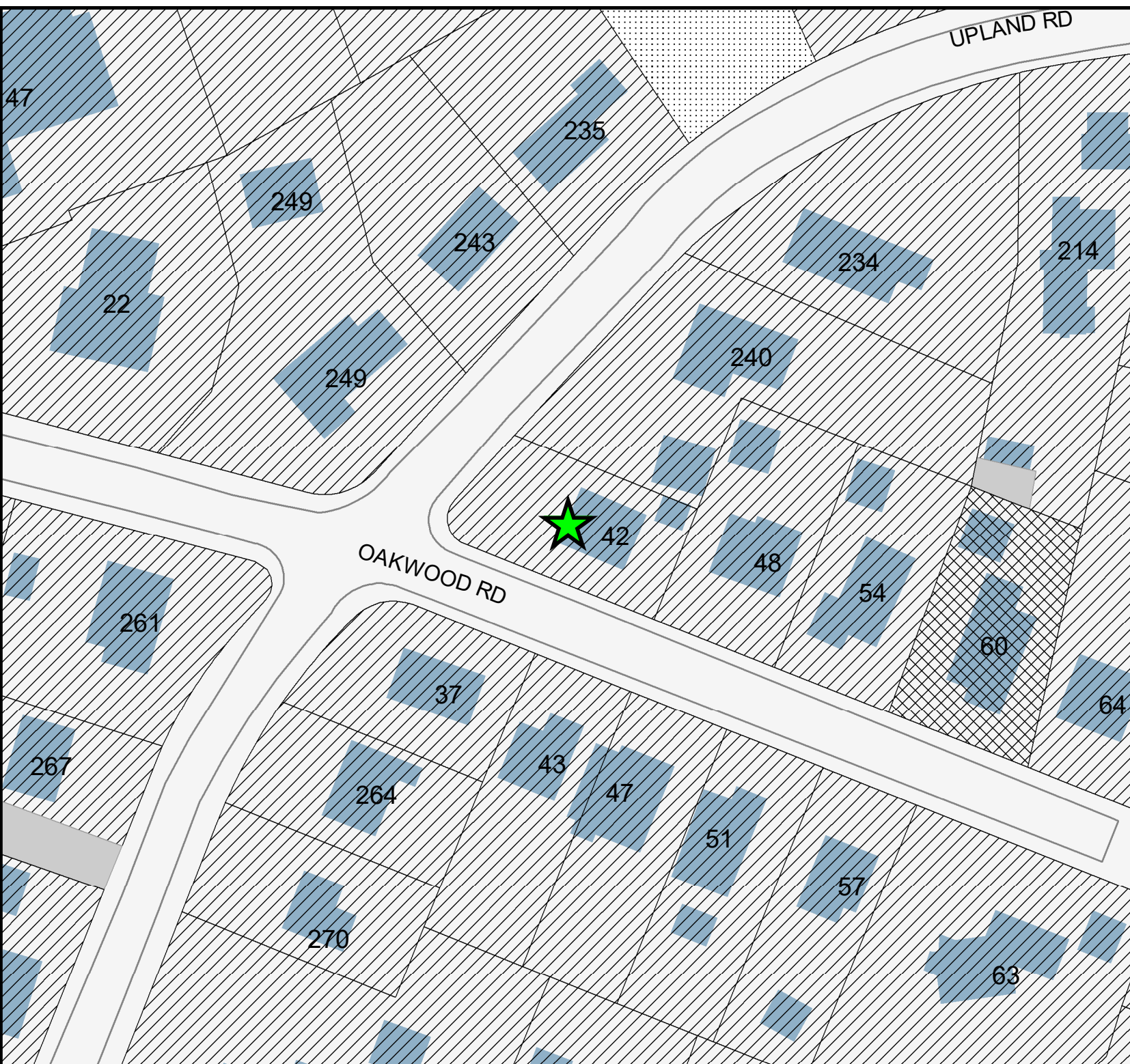


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Ruthanne Fuller  
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Map Date: April 07, 2022





**Ruthanne Fuller**  
Mayor

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**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: March 8, 2022

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Peter Sachs, Architect  
Daniel Kolodner and Lauren Kohl, Applicants  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Assistant City Solicitor

**RE: Request to exceed FAR, to extend a nonconforming rear setback and to allow a retaining wall exceeding four feet within a setback**

Applicant: Daniel Kolodner & Lauren Kohl	
Site: 42 Oakwood Road	SBL: 22029 0006
Zoning: SR2	Lot Area: 6,610 square feet
Current use: Single-family dwelling	Proposed use: No change

### BACKGROUND:

The property at 42 Oakwood Road consists of a 6,610 square foot corner lot improved with a single-family dwelling constructed in 1904. The petitioner proposes to construct a two-story addition at the rear and side of the dwelling including a one-car attached garage. The proposed construction will exceed the maximum FAR and further extend the nonconforming rear setback, requiring a special permit.

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

- Zoning Review Application, prepared Peter Sachs, architect, dated 2/3/2022
- Topographic Site Plan-Existing Conditions, signed and stamped by Joseph R. Porter, surveyor, dated 6/16/2020
- Topographic Site Plan-Proposed Conditions, signed and stamped by Joseph R. Porter, surveyor, dated 11/21/2021, revised 2/1/2022
- Floor Plans and Elevations, signed and stamped by Peter Sachs, architect, dated 1/31/2022
- FAR calculations, submitted 2/3/2022

**ADMINISTRATIVE DETERMINATIONS:**

1. The petitioners propose to construct an addition on the Oakwood Road façade, a two-story addition to the portion of the dwelling facing Upland Road, as well as a single-story one-car garage and mudroom addition on the rear of the dwelling. An existing detached garage will be razed. The proposed construction increases the FAR from .37 to .51, where .44 is the maximum allowed per sections 3.1.3 and 3.1.9. A special permit per section 3.1.9.A.2 is required to exceed FAR.
2. The structure has a nonconforming rear setback of 7 feet, where 15 feet is required per section 3.1.3. The proposed addition further reduces the setback to 5.3 feet, requiring a special permit per sections 3.1.3 and 7.8.2.C.2.
3. Per section 5.4.2.B a retaining wall exceeding four feet in height within a setback requires a special permit. The petitioners propose to construct retaining a retaining wall along the southern side of the driveway which will reach a maximum height of 5.3 feet, requiring a special permit.
4. A 29 square foot addition is proposed on the Oakwood Road façade. The addition does not encroach further into the setback and is less than 75 square feet and is allowed by right through the de minimis provision of section 7.8.2.B.2.i.

SR2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	<b>6,610 square feet</b>	<b>No change</b>
Frontage	80 feet	173 feet	No change
Setbacks			
• Front (Oakwood Rd)	25 feet	<b>16.2 feet</b>	<b>No change</b>
• Front (Upland Rd)	25 feet	37.4 feet	25 feet
• Side	7.5 feet	16.9 feet	No change
• Rear	15 feet	<b>7 feet</b>	<b>5.3 feet*</b>
Height	36 feet	25.5 feet	No change
Stories	2.5	2	No change
FAR	.44	.37	<b>.51*</b>
Max Lot Coverage	30%	24.9%	29.1%
Min. Open Space	50%	61.6%	63.7%

Figures in **BOLD** are nonconforming

\*Requires relief

1. See "Zoning Relief Summary" below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.3 §3.1.9	Request to exceed FAR	S.P. per §7.3.3
§3.1.3 §7.8.2.C.2	Request to further extend a nonconforming rear setback	S.P. per §7.3.3
§5.4.2.B	Request to allow a retaining wall exceeding four feet in a setback	S.P. per §

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 construct a two story addition, alter the nonconforming rear setback, allow a retaining wall greater than four feet in height within a setback and to increase the floor area ratio (FAR) from .37 to .51, where .44 is the maximum allowed by right 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 addition that increases the FAR and retaining wall within the setback that exceeds four feet in height because the addition is subordinate to the structure and matches the existing house in style. (§7.3.3.C.1)
2. The specific site is an appropriate location for the proposed retaining wall within the setback that exceeds four feet in height. (§7.3.3.C.1)
3. The proposed addition that increases the FAR and retaining wall within the setback that exceeds four feet in height will not adversely affect the neighborhood because there are similar retaining walls in the neighborhood due to the topography of the area. (§7.3.3.C.2)
4. The proposed addition that increases the FAR and retaining wall within the setback that exceeds four feet in height will not create a nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
5. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
6. The proposed increase in the FAR from .37 to .51, where .44 is the maximum allowed by-right, is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood because the proposed design complements the existing structure in design and roof line. (§3.1.3, and §7.8.2.C.2)
7. The proposed structure which alters the nonconforming rear setback is not substantially more detrimental than the existing nonconforming structure is to the neighborhood because the addition that alters the setback consists of a single story and allows for the removal of a detached garage with setbacks of less than one foot. (§3.1.3, and §7.8.2.C.2)

PETITION NUMBER: #220-22

PETITIONER: Lauren Kohl

LOCATION: 42 Oakwood Road, on land known as Section 22, Block 29, Lot 6, containing approximately 6,610 square feet of land

OWNER: Lauren Kohl

ADDRESS OF OWNER: 42 Oakwood Road  
Newton, MA 02460

TO BE USED FOR: Single-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.3, and §7.8.2.C.2, to alter the nonconforming rear setback, §5.4.2.B and §7.3.3 to allow a retaining wall greater than four feet in height within the front setback and §3.1.9, §3.1.3 and §7.3.3 to exceed the FAR

ZONING: Single Residence 2

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. Proposed Conditions Site Plan, prepared by VTP Associates, signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated November 22, 2021, Revised March 16, 2021.
  - b. Architectural Floorplans, "Kolodner/Kohn Residence", prepared by Peter Sachs Architect, signed and stamped by Peter Sachs, Registered Architect, dated March 9, 2022 consisting of the following seven (7) sheets.
    - i. Proposed Basement Floor Plan, A-2
    - ii. Proposed First Floor Plan, A-3
    - iii. Proposed Second Floor Plan, A-4
    - iv. Proposed Roof Plan, A-5
    - v. Proposed Front Elevation, A-6
    - vi. Proposed Right and Left Elevations, A-7
    - vii. Proposed Back Elevation, A-8
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 Inspectional Services, Engineering Division of Public Works, Fire Department, and the Department of Planning and Development.

3. The Petitioner shall do the following to remediate pest and rodent activity:
  - a. Prior to issuance of any demolition or building permit, the petitioner, at its sole cost and expense, shall hire a licensed Pest Control Operator to assess the property for pest and rodent activity and develop and implement a pest remediation action plan to eliminate the activity and prevent off-site migration. The plan shall include the target pest, the methods for eliminating activity, and plan for preventing pest migration off-site during demolition and construction.
  - b. A copy of the Pest Control inspection report and the remediation action plan shall be submitted to the Inspectional Services Department and the Health and Human Services Department for review and approval prior to issuance of any demolition or building permit. Copies of such approvals shall be provided to the Department of Planning and Development.
  - c. The Pest Control Operator shall implement the approved remediation action plan, monitor the site for the duration of the project, and take whatever action the Operator deems necessary to control pest infestation and migration. The Pest Control Operator shall maintain a written record of all pest control measures performed within the subject property and shall provide progress reports to Inspectional Services Department and the Health and Human Services Department upon request.
  - d. Prior to issuance of the certificate of occupancy, the Pest Control Operator shall file a final report with the Department of Planning and Development, Inspectional Services Department and the Health and Human Services Department summarizing the methods used, whether off-site migration occurred, the frequency and dates of service, and a post-construction site assessment and neighborhood.
  - e. In the event any demolition or construction activity causes off-site pest migration, prior to the issuance of any certificates of occupancy (temporary or final), the petitioner shall offer and provide, at its sole cost and expense, rodent abatement services on an as needed basis for all direct abutters and abutters to direct abutters, subject to owner authorization of such properties and a waiver of liability.
4. 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 council 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 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.
5. 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 statements by a registered architect and professional land surveyor certifying compliance with Condition #1, including the as built FAR 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 licensed land surveyor.