

## DEPARTMENT OF PLANNING AND DEVELOPMENT

CITY OF NEWTON

Massachusetts

**DATE:** July 19, 2024

**TO:** City Council

**FROM:** Katie Whewell, Chief Planner for Current Planning

**SUBJECT:** Consistency Request  
Special Permit #388-21 to allow four single family attached dwellings with dimensional waivers

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The petitioner obtained Special Permit #388-21 on December 20, 2021 which allowed them to construct four single family attached dwellings with relief to reduce the side and rear setback requirements, allow a driveway within ten feet of a side lot line and parking within 20 feet of a lot line, to allow parking within a side setback, to allow parking within five feet of a building containing dwelling units, to waive the parking stall dimensions, to reduce the minimum width of a driveway for two-way use, to allow tandem parking, and to allow a continuous wall plane in a dormer and a dormer wider than 50% of the wall below. The project consisted of constructing an addition to the rear of the principal dwelling to allow for two units, converting an existing accessory structure into an additional two units and the construction of a garage. The grade of the lot prior to construction was such that the site sloped steeply from the northwest corner (front right of the lot) upwards towards the southeastern corner (rear left). The slope prior and post construction is approximately a ten-foot upwards slope in the same direction as previously stated, except for where additional building area is sited. The site is still under construction; however, the petitioner has been seeking occupancy certificates as each unit completes construction.

The site is unique in that it is located in a local historic district (Upper Falls) and must comply with the plans approved by the historic commission as well as the City Council approved special permit plans. It is the petitioner's responsibility to ensure that the same set of plans are submitted to each governing commission or council. Changes to the approved plans also need to be approved by the Upper Falls local historic commission for the project to move forward with occupancy certificates.

The plans submitted at building permit were consistent with the plans approved at special permit. However, when the petitioner requested occupancy permits, Planning staff discovered several inconsistencies amongst the plans, some of which have already been corrected. This memo will focus on the items the petitioner is now seeking consistency for and for which the Commissioner is seeking input from the Land Use Committee. The inconsistencies that now exist on site relate to retaining walls, a patio, and an increase in garage square footage. On their own, some of the inconsistencies may have

been able to be administratively approved, however requesting them altogether is best to legitimize the inconsistencies. The consistency ruling request can be accessed [here](#).

### *Retaining Walls*

The most drastic change to the site is the construction of retaining walls that were not initially on the approved special permit or building permit plans. Three walls perpendicular to the carriage house were constructed that do not match the approved configuration of one undimensioned wall perpendicular to the carriage house. The as built northernmost wall reaches a height of four feet, with the two walls ranging in height from 1.3 feet to 3.2 feet. The petitioner stated that the site is not complete yet and the four-foot wall will decrease in height due to fill being brought in and have decided not to pursue an amendment to the special permit that would request relief for retaining walls over four feet. Should the wall remain at four feet, Planning and ISD will not sign off on any further occupancy certificates should the wall requiring zoning relief. The Upper Falls Historic District Commission reviewed the three walls and approved them, however, the Commission required a change in materials used to construct the walls. The petitioner is appealing this decision to the MAPC (Metropolitan Area Planning Council).

A longer retaining wall was constructed along the western (right) property line. The wall appears to extend across the property line to the abutter to the west's property. The applicant should clarify the location of the wall and confirm it is entirely on their property. The Commissioner of Inspectional Services is aware of the wall that was constructed possibly on the abutters property and will not release any more certificates of occupancy until it is resolved (bringing the wall onto the subject property or an agreement with the abutter).

### *Patio*

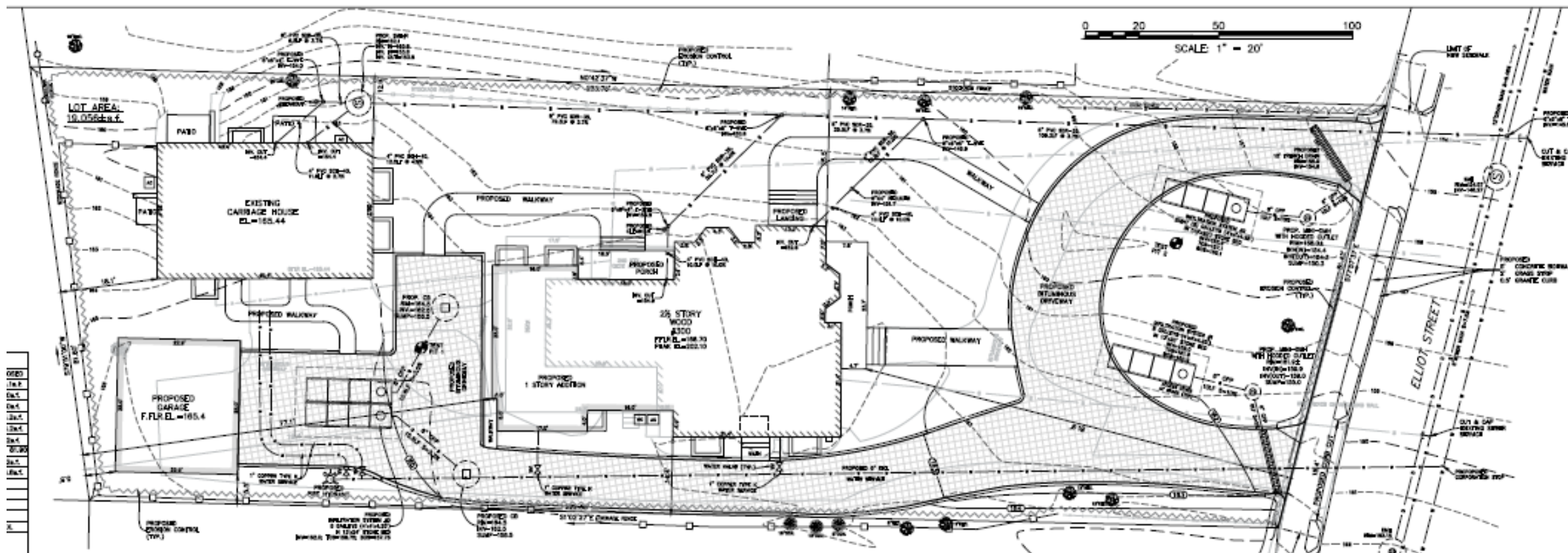
A patio was constructed along the western side yard. On its own, a patio is generally not a cause for concern with the Planning Department as they are allowed as of right per the zoning and it is not unusual that they are considered later in the construction process. However, due to the cumulative changes of the site, it is best handled by consistency. The patio is subject to the Upper Falls Historic Commission review and approval, however, they have yet to apply to the Upper Falls Historic District Commission for approval of the patio.

### *Increase in garage footprint*

The garage at the rear of the site increased from the approved dimensions of 22.9 feet x 25 feet (572.5 square feet) to 23.1 feet x 25.3 feet (584.43 square feet) representing an increase in 11 square feet. Floor area ratio does not apply to single family attached dwellings; thus is not a dimensional control this site is subject to. However, the garage's approved setbacks from 5.5 feet from the south and east property lines were reduced to 5 feet from the eastern property line and 5.4 feet from the southern property line, placing it closer to the abutters.

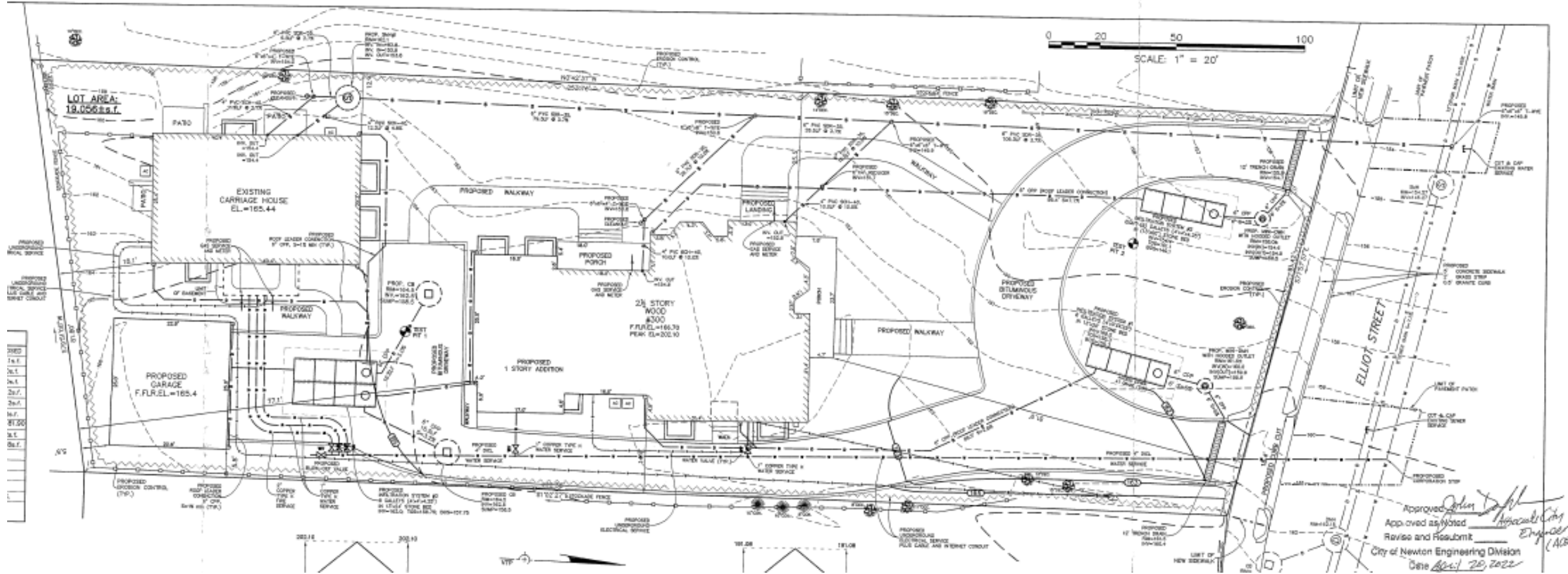
**Attachment A:** Comparison of special permit approved plans and as built plans

**Attachment B:** Planning Memorandum, December 10, 2021

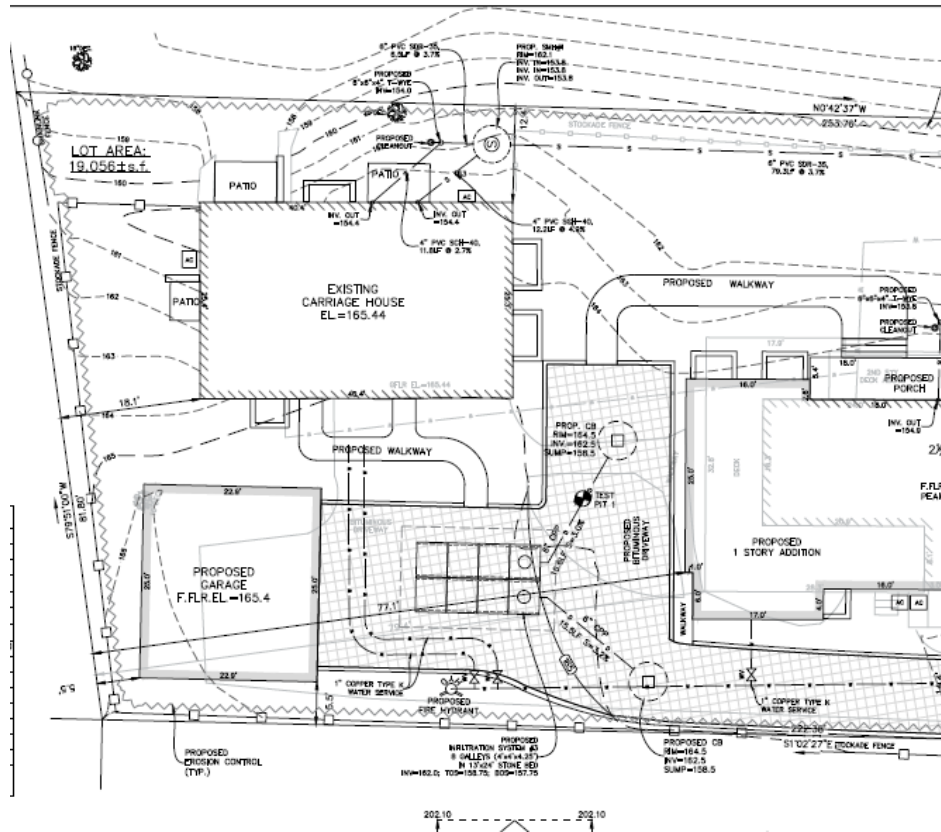


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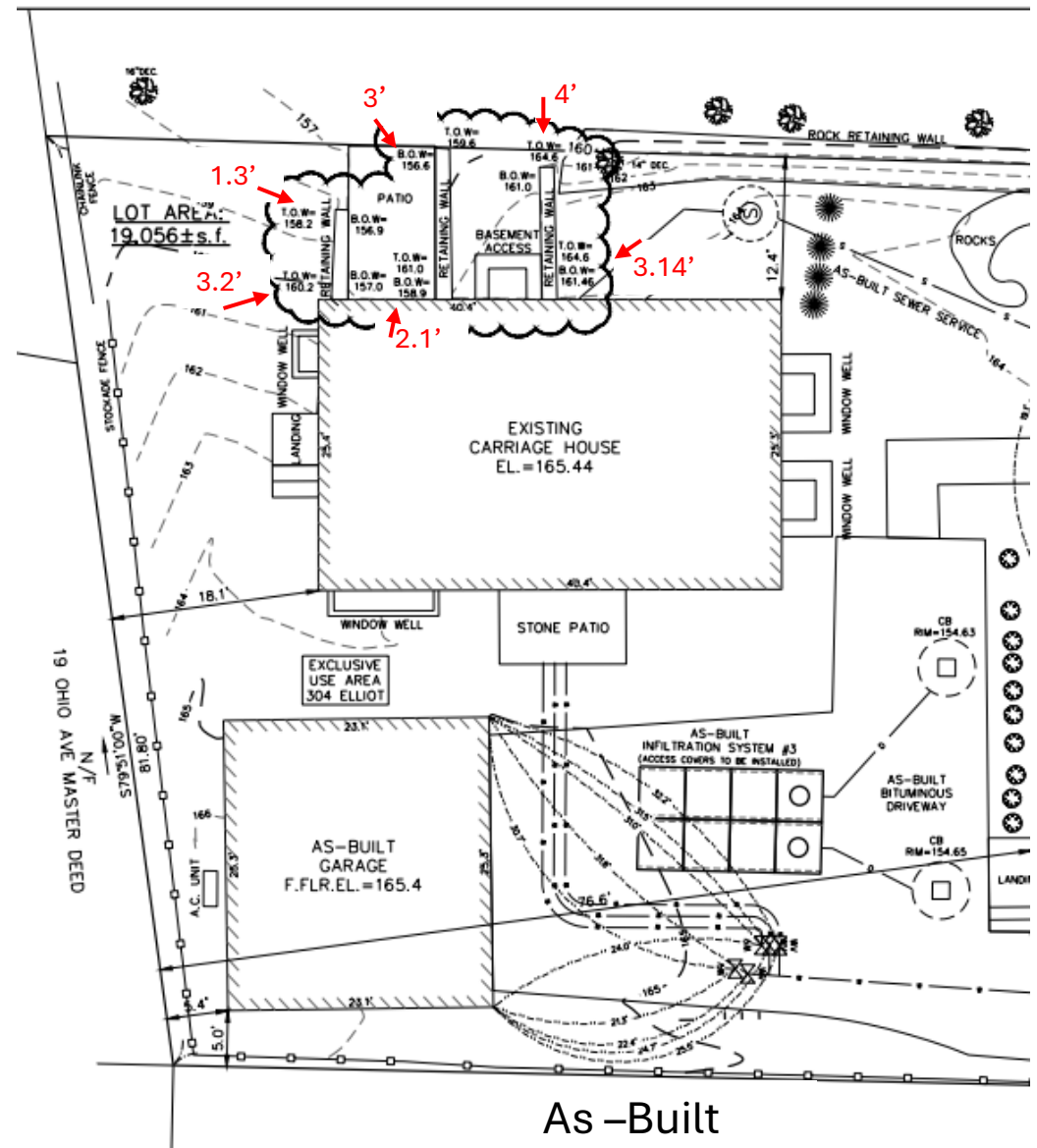
# Building Permit Approved Site Plan



# Comparison - Rear of the Lot



Special Permit Approved Plan  
Rear of the lot



As-Built  
Rear of the lot





Ruthanne Fuller  
Mayor

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**#388-21**

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Barney S. Heath  
Director

## PUBLIC HEARING MEMORANDUM

|                           |                   |
|---------------------------|-------------------|
| Public Hearing Date:      | December 14, 2021 |
| Land Use Action Date:     | March 1, 2022     |
| City Council Action Date: | March 7, 2022     |
| 90-Day Expiration Date:   | March 14, 2022    |

DATE: December 10, 2021

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development  
Neil Cronin, Chief Planner  
Michael Gleba, Senior Planner

SUBJECT: **Petition #368-21** to construct an addition to the existing structure and a second two-unit structure, allowing four single-family attached dwelling units in two buildings, to allow reduced side and rear setbacks and to allow a driveway within ten feet of the side lot line at **300 Elliot Street**, Ward 5, Newton Upper Falls, on land known as Section 51 Block 38 Lot 19, containing approximately 19,057 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 3.4.1, 3.2.4, 6.2.3.B.2, 5.1.8.A.1, 5.1.13, 5.1.8.A.2, 5.1.8.B.1, 5.1.8.B.2, 5.1.8.D.1, 5.1.8.E.1, 1.5.4.G.2.a, 1.5.4.G.2.b of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis conducted by the Planning Department. The Planning Department's intention is to provide a balanced review of the proposed project based on information it has at the time of the public hearing. Additional information about the project may be presented at or after the public hearing for consideration at a subsequent working session by the Land Use Committee of the City Council.



## EXECUTIVE SUMMARY

The property at 300 Elliot Street consists of 19,057 square feet in a Multi Residence 1 (MR1) zoning district improved with a single-family dwelling built circa 1840 and an accessory structure.

The petitioner intends to construct a rear addition, containing a second unit, to the existing dwelling, and to convert the accessory structure into two units. Additionally, the petitioners intend to construct a detached two-car garage. The modifications would result in four single-family attached dwellings in two structures and a detached garage

Per section 3.4.1, a special permit is required to construct attached dwellings in the MR1 district. As designed, the proposed project requires certain additional zoning relief.

The proposed addition to the rear of the existing structure which would create a 14.21-foot side setback, and the accessory structure to be converted to two dwelling units would have a 12.6-foot side and an 18-foot rear setback. As Sec. 3.2.4 requires attached single-family dwellings to have a 25-foot setback from the front, rear and side lot lines, a special permit per Sec. 3.2.4 would be required.

A special permit would be required to waive several parking facility regulations, including those established by Sec. 6.2.3.B.2 related to locating driveways within 10 feet of a side lot line and parking within 20 feet of a property line and within a side setback. Other parking regulations, established by Sec. 5.1, would need to be waived, such as those related to stall width and length, tandem stalls, minimum driveway width, and locating stalls within five feet of a building containing dwelling units.

The petitioners propose to construct the detached garage with a gable dormer that extends the wall plane up through the dormer requiring a special permit to waive the requirement per Sec. 1.5.4.G.2. that a roofline overhang must be continued between the dormer and the story next below to avoid the appearance of an uninterrupted wall plane.

The petitioner proposes to construct the garage with a gable dormer 14 feet wide where the wall plane below it is 25.2 feet wide. Per section 1.5.4.G.2.b a dormer may not be wider than 50% of the exterior wall of the story next below. As the proposed dormer measures 56%, it would require a special permit.

As the project would preserve two existing structures and create several new dwelling units, the Planning Department is generally supportive of the project, subject to some concerns discussed below, including those regarding the setback of the proposed addition and the practicality of some of the parking arrangements.

### I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The site in a Multi Residence 1 (MR1) district is an appropriate location for the proposed four single family detached dwellings in two structures as designed, with reduced side and rear setbacks and a dormer with a continuous wall plane and width greater than 50% of the wall below (§7.3.3.C.1)
- The proposed four single family detached dwellings in two structures as designed, with reduced side and rear setbacks and a dormer with a continuous wall plane and width



- greater than 50% of the wall below, will adversely affect the neighborhood (§7.3.3.C.2)
- The proposed four single family detached dwellings in two structures as designed, with reduced side and rear setbacks and a dormer with a continuous wall plane and width greater than 50% of the wall below, 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)
  - Literal compliance with the parking/driveway dimensional requirements established by Sec. 5.1.8.B as related to location of a driveway within 10 feet of a lot line, parking within a side setback, parking within five feet of a structure containing dwelling units, stall width, stall depth, width of a two way driveway and tandem parking, is impractical due to the nature of the use, or the location, size, frontage, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety or protection of environmental features (§5.1.13)

## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The subject property is located on the south side of Elliot Street just west of its intersection with High and Oak streets. The surrounding neighborhood includes a mix of single- and two-family dwellings, commercial uses, and institutions (**Attachment A**). The neighborhood is predominantly zoned Multi Residence 1 (MR1) with exceptions including several Multi Residence 2 (MR2) and Public Use (PU) zoned parcels to the north (**Attachment B**).

### B. Site

The property consists of a 19,057 square foot lot improved with a single-family dwelling built circa 1840 and an accessory structure in the rear right (southwest) portion of the lot.

The site has an upward grade of approximately nine feet from front to back, toward the accessory structure. The lot is accessed via a paved driveway on the right (west) side of the property that serves the existing accessory structure .

## III. PROJECT DESCRIPTION AND ANALYSIS

### A. Land Use

The principal use of the site would change from a two-family dwelling to four single-family attached dwellings in two structures.

### B. Building and Site Design

The petitioner is proposing to create four attached dwelling units, two within each of two structures, one existing and expanded (the front dwelling), the other renovated for residential use (the rear dwelling ). The two structures would be separated from each other by approximately 20 feet. Additionally, the petitioners intend to construct a detached two-car

garage in the rear left of the lot.

The front and rear dwellings would continue to have their existing heights and stories of 31 feet and 2 ½ stories and 28.1 feet and two stories, respectively, both remain below the maximum 36 feet allowed by right. The proposed one-story garage would measure 21.25 feet in height, just below its 22-foot maximum.

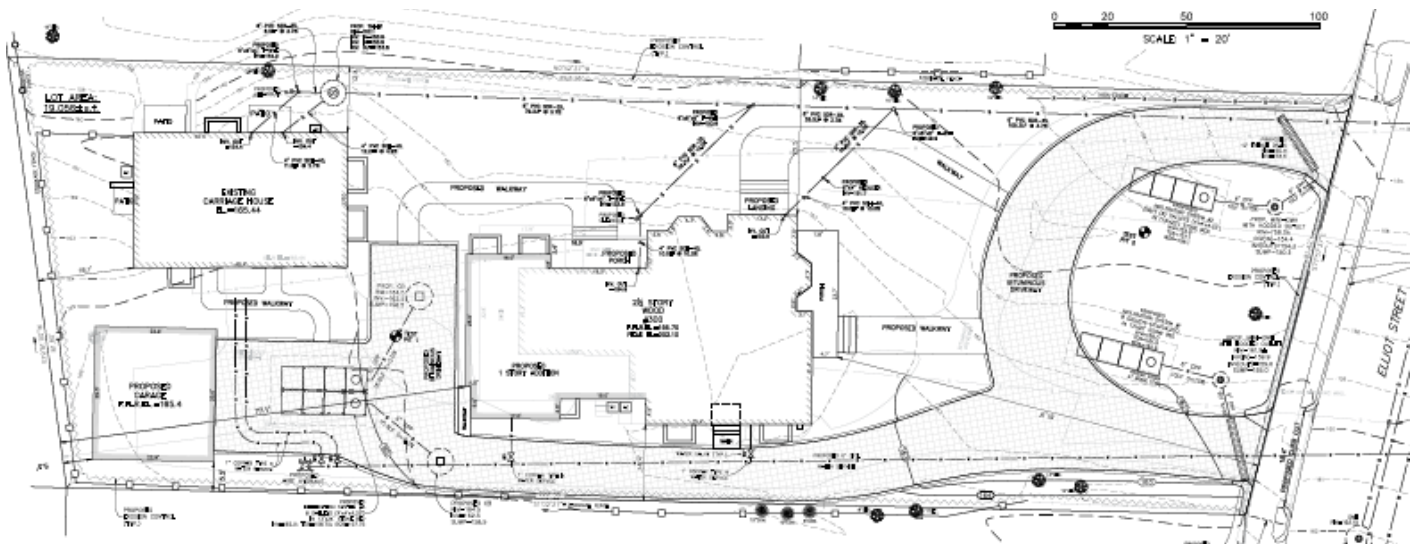
The proposed lot area per unit is 4,769 square feet, more than the minimum 4,000 square feet required but significantly less than the current 19,075 square feet.

Regarding setbacks, single-family attached dwellings require 25-foot front, side, and rear setbacks. Taking the proposed expanded front and rear dwellings together, the existing conforming 83.1-foot front setback would be maintained, and the conforming 25-foot side setback would be reduced to 12.4 feet; the other side setback would measure 14.4 feet. The rear setback as measured from the existing rear dwelling would measure 18.1 feet. The proposed garage would have rear and side setbacks of 5.5 feet, just above the minimum 5 feet allowed.

The Planning Department notes that the proposed setback nonconformities reflect existing conditions, with the exception of the left (east) side of the addition to the front residence being sited so that while it is no closer to the left side property line than the existing portions of the residence, it is less than 25 feet, likely allowing it to be larger than if the addition was designed to conform with the 25-foot setback.

Also, the petitioner proposes to construct a gable dormer on the detached garage that would measure 14 feet wide, 56%, of the 25.2-foot-wide wall plane below and therefore in excess of the maximum 50% allowed.

Lastly, the Planning Department notes that the by right alternative would be an approximately 8,400 square foot, one- or two- family dwelling with an allowed floor area ratio (FAR) of approximately 0.44, slightly more than the proposed project's FAR of 0.43. .



### ***Proposed site plan***

#### C. Parking and Circulation

The petitioner proposes to construct a circular drive at the front of the property, both sides of which would be located within ten feet of the side lot lines. Also, the proposed two-way driveway would continue along the left (east) side lot line to the rear of the property to serve the proposed two-car garage. The driveway narrows to 10 feet wide at the left side of the front dwelling but otherwise measures 12 feet in width (less than the by right minimum width of 20 feet for two-way driveways).

Two of the six surface parking stalls would be located within 20 feet of the side lot lines and within a side setback. Two stalls would be located within five feet of a structure containing dwelling units, one just to the rear of the front dwelling, another just in front of the rear dwelling .

Four of the six surface parking stalls would have a width of 8 feet, less than the 9 feet required; two angled surface parking stalls and two parallel stalls would have with depths of 18 feet, less than the 19 and 21 feet respectively required. Two surface stalls would be established directly in front of the proposed two-car garage, creating two pair of tandem stalls.

The Planning Department notes that the proposed distribution of parking stalls in various locations on the site, and the storage of two in the proposed garage, would limit the visual impact of eight vehicles on-site.

That said, the Planning Department does have some concerns regarding the submitted turning templates as they do not seem to contemplate the tandem spaces that would be located in front of the proposed garage and, as such, some of the depicted maneuvers seem impractical if vehicles were occupying those tandem stalls. The Planning Department recommends the petitioner revisit the placement of some exterior parking stalls to address this issue.

#### D. Landscaping

A landscaping plan was submitted with this petition. It includes the preservation of several trees on the left-front and front of the property. Most other aspects of the proposed landscaping involve the installation of shrubs throughout the property and several arborvitaes to delineate open space adjacent to the rear dwelling.

## IV. TECHNICAL REVIEW

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

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

- Special permit per §7.3.3 to:
  - allow single-family attached dwellings (§3.4.1)

- reduce the side and rear setback (§3.2.4)
- allow a driveway within ten feet of a lot line (§6.2.3.B.2)
- allow parking within a side setback (§6.2.3.B.2, §5.1.8.A.1, §5.1.13)
- allow parking within five feet of a building containing dwelling units (5.1.8.A.2, §5.1.13)
- reduce parking stall width (§5.1.8.B.1, §5.1.13)
- reduce parking stall depth (§5.1.8.B.2, §5.1.13)
- reduce the minimum width of a driveway for two-way use (§5.1.8.D.1, §5.1.13)
- allow tandem parking (§5.1.8.E.1, §5.1.13)
- allow a continuous wall plane in a dormer (§1.5.4.G.2.a)
- allow a dormer wider than 50% of the wall below (§1.5.4.G.2.b)

B. Engineering Review

The Associate City Engineer submitted an Engineering Review Memorandum dated November 12, 2021 (**Attachment D**), providing an analysis of the proposal with regard to engineering issues. These include that the proposed stormwater collection and infiltration system has been consistent with DPW Stormwater Policy and that a Construction Management Plan (CMP) and an Operations & Maintenance (O&P) will be required.

C. Historic Review

On June 11, 2021, the Newton Upper Falls Historic District Commission resolved to grant a Certificate of Appropriateness for the project subject to certain identified conditions.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.