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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: August 4, 2020
Land Use Action Date: October 23, 2020
City Council Action Date: November 2, 2020
90-Day Expiration Date: November 2, 2020

DATE: July 31, 2020

TO: City Council

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

SUBJECT: **Petition #298-20** SPECIAL PERMIT/SITE PLAN APPROVAL to allow a retaining wall in excess of 4' within the setback at **36 Walsh Road**, Ward 8, Newton Centre, on land known as Section 84 Block 34 Lot 35, containing approximately 10,048 sq. ft. in a district zoned SINGLE RESIDENCE 2. Ref: 7.3, 7.4, 5.4, 5.4.2.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.



36 Walsh Road

EXECUTIVE SUMMARY

The subject property located at 36 Walsh Road consists of a 10,048 square foot lot improved with a 3,818 square foot single-family dwelling that was constructed in 2019 pursuant to a by-right building permit.

A system of retaining walls around portions of the property's perimeter, including within the front setback from Wiswall Road, with sections exceeding four feet in height as measured from the foot of the lowest wall to the top of the highest wall. Such walls were not shown on plans that were reviewed during the by-right building plan review.

Per section 5.4.2 of the Newton Zoning Ordinance (NZO), the construction of retaining walls or a system of retaining walls greater than four feet in height within a setback requires a special permit. The petitioner now seeks a special permit for the already constructed retaining walls.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for retaining wall in excess of four feet in height within a setback in a Single Residence 2 (SR2) district (§7.3.3.C.1)
- The retaining wall in excess of four feet in height within a setback will adversely affect the neighborhood (§7.3.3.C.2)
- The retaining wall in excess of four feet in height within a setback 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

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located at the south corner of Walsh and Wiswall roads. The surrounding neighborhood is developed largely with single-family dwellings, with extensive parkland (and the Charles River) located to the west (**Attachment A**). The site and immediate vicinity are in a Single Residence 2 (SR2) district, with a Single Residence 1 (SR1) district located to the northwest and Public Use-zoned land directly to the west (**Attachment B**).

B. Site

The subject property is a 10,048 square foot lot improved with a 3,818 square foot single-family dwelling built in 2019. Before the walls that are the subject of this petition were constructed the lot was steeply sloped, with the grade increasing by approx. 16 feet from the southwest to northeast corners of the property (essentially, when viewed from Walsh Road, from the front left to the rear right of the property). The grade was especially steep on the side of the property parallel to Wiswall Road. Now, with extensive retaining walls in

place, that side of the parcel is now considerably more level, with the grade change now more “compressed” and largely limited to the area between the wall system and Wiswall Road.

Vehicular access to the lot is provided via a driveway and associated curb cut off Walsh Road on the left (south) side of the dwelling. The remaining portions of the site are largely occupied by lawn and patio areas, and trees have been installed in the area supported by the retaining walls parallel to Wiswall Road; fencing has also been installed along the frontage along that public way.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site will remain a single-family dwelling.

B. Building and Site Design

The dwelling was built by-right in 2019. The petitioners seek to retroactively obtain a special permit for already constructed retaining walls upwards of eight feet in height (well above the four feet allowed by right), especially along the parcel’s west side along Wiswall Road. These walls allowed for a considerable leveling of the grade of the property along that side.

The Planning Department notes that the “as-built” plans submitted with the present petition do not indicate the existence of a large paved patio located to the rear-right side of the dwelling, near the retaining walls. The Planning Department recommends that a revised plan be submitted, and that such revision be also submitted to the Engineering Division for its review.

C. Parking and Circulation

As referenced above, vehicular access to the lot is provided via a driveway and associated curb cut off Walsh Road. This driveway serves a basement level garage. No changes are proposed to the driveway or garage.

D. Landscaping

The site has a significant amount of newly installed trees, shrubs and fencing along much of its perimeter. The submitted “as-built” plans discussed above also do not show the extensive fencing that has been installed on the front property line along Wiswall Road. The Planning Department again recommends that a revised plan be submitted, at that such plan indicate the location and height of such fencing.

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 a retaining wall exceeding four feet in height within a setback (§3.4.2.B)

B. Engineering Review

On July 23, 2020, the Engineering Division issued a memorandum on this petition (**Attachment D**). It notes that the plan it reviewed for the by-right building permit (dated March 26, 2019) did not include retaining walls along the frontage, including that along the Wiswall Road property line.

The memo states that a recent Engineering Division site visit indicated that “the retaining walls appear stable, there is no washout, no erosion of any abutting property.” That said, Engineering recommended that the contractor of record provide an affidavit to Inspectional Services Department (ISD) indicating that the retaining walls were constructed in accordance with the segmental block wall manufacturer’s specifications.

In response to the memo, the petitioner provided copies of related documentation, including an affidavit from a registered engineer, regarding the construction of the wall. The Engineering Division has indicated that the documentation satisfies the request it made in its memo, and Planning is working with ISD to ascertain its determination regarding that documentation.

V. PETITIONER’S RESPONSIBILITIES

The Planning Department recommends that a revised as-built plan be submitted, and that such revision be also submitted to the Engineering Division for its review.

ATTACHMENTS:

- Attachment A:** Land Use Map
Attachment B: Zoning Map
Attachment C: Zoning Review Memorandum
Attachment D: Engineering Division Memorandum

ATTACHMENT A







Land Use

36 Walsh Road

*City of Newton,
Massachusetts*

Land Use

Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Open Space
-  Private Educational
-  Nonprofit Organizations
-  Vacant Land

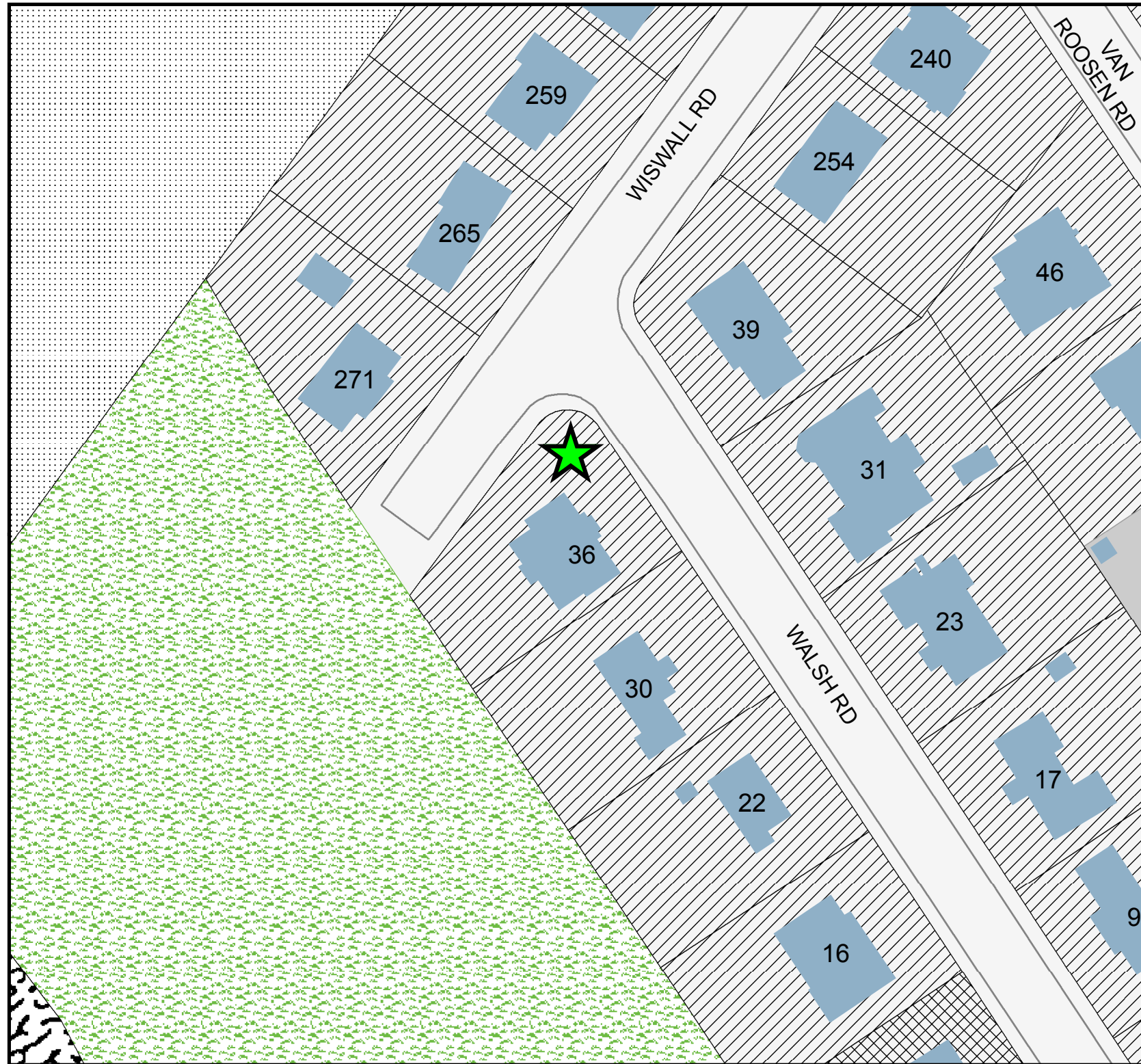


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield



Map Date: July 29, 2020






ATTACHMENT B

Zoning

36 Walsh Road

*City of Newton,
Massachusetts*

Legend

-  Single Residence 1
-  Single Residence 2
-  Public Use

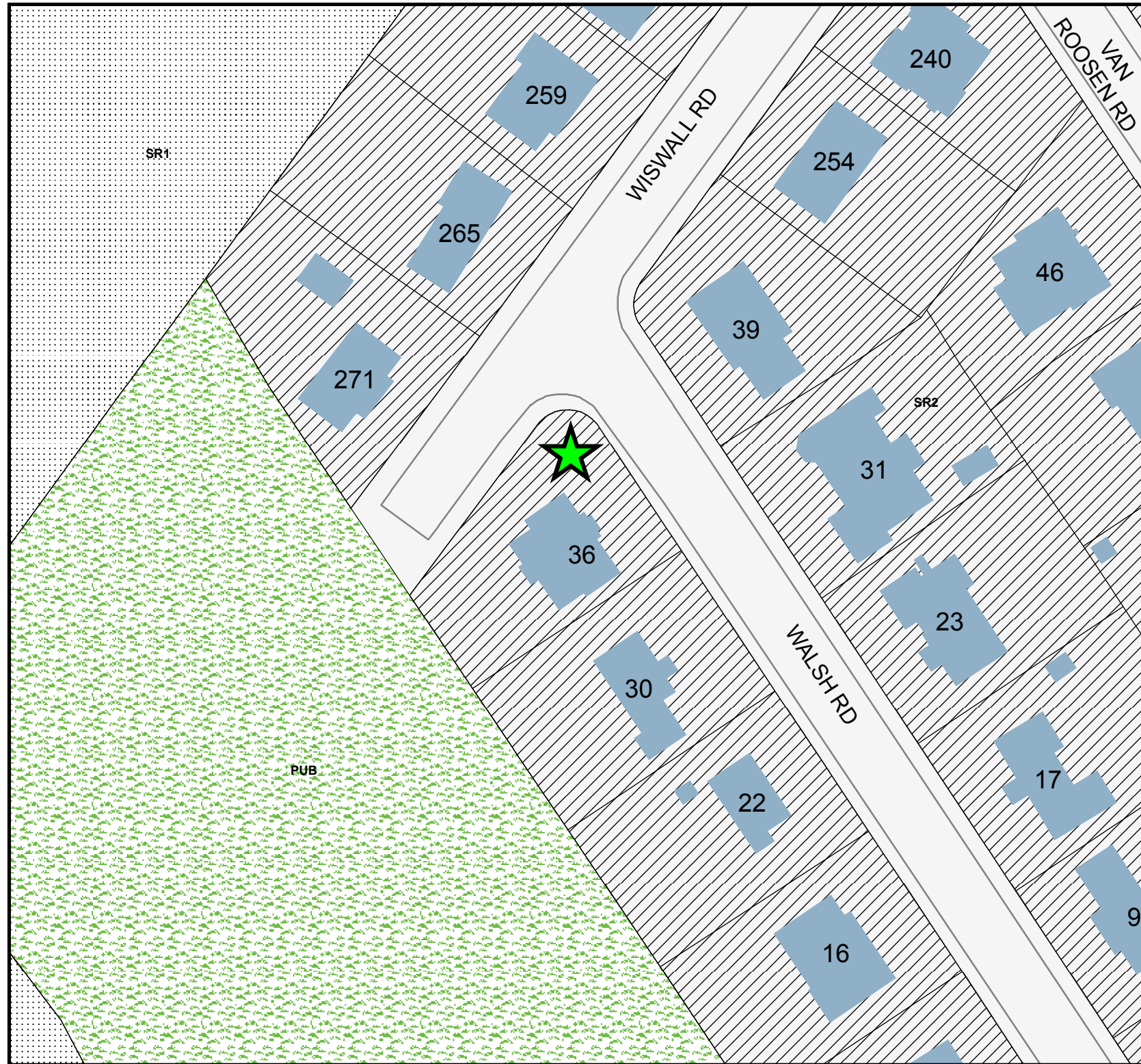


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CITY OF NEWTON, MASSACHUSETTS
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Map Date: July 29, 2020





Ruthanne Fuller
Mayor

ATTACHMENT C

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: June 18, 2020

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Alex Linkov, Applicant
Barney S. Heath, Director of Planning and Development
Jonah Temple, Associate City Solicitor

RE: Request to allow a retaining wall exceeding 4 feet in height within a setback

Applicant: Alex Linkov	
Site: 36 Walsh Road	SBL: 84034 0035
Zoning: SR2	Lot Area: 10,048 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 36 Walsh Road consists of a 10,048 square foot lot improved with a single-family residence constructed in 2019. The petitioner constructed a system of retaining walls around the perimeter of the property, with a portion exceeding four feet in height within the front setback, requiring a special permit.

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

- Zoning Review Application, prepared by Alex Linkov, applicant, dated 5/6/2020
- FAR Worksheet, submitted 4/13/2020
- Site Plan, signed and stamped by Richard A. Volkin, engineer, dated 4/28/2019

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner obtained a building permit to construct a single-family dwelling as of right in 2019. During construction, a system of retaining walls, that were not shown on the approved plans, were constructed along the southern boundary. Per section 5.4.2.A when a system of walls is placed within a setback, the height is measured from the foot of the lowest wall to the top of the highest wall. Those sections of the retaining wall system exceeding four feet are within the front setback from Wiswall Road. Per section 5.4.2.B, a special permit is required to allow a retaining wall in excess of four feet in height within a setback.

1. See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.4.2.B	Request to allow a retaining wall exceeding four feet in height within a setback	S.P. per §7.3.3

Next Steps

Please contact a Planner by calling 617.796.1120 to obtain a copy of the Special Permit Application. If there have been any changes made to the plans since receipt of your Zoning Review Memorandum you must inform the Zoning Code Official to ensure additional relief is not required. You will need an appointment with a Planner to file your Special Permit Application. **Incomplete applications will not be accepted.**

The following must be included when filing a Special Permit Application:

2. Two (2) copies of the completed Special Permit Application (signed by property owner)
3. Filing Fee (see Special Permit Application)
4. Two (2) copies of the Zoning Review Memorandum
5. Plans (Thirteen sets signed and stamped by a design professional). Each set shall contain:
 - Site Plans showing existing and proposed conditions (including topography as applicable)
 - Architectural plans showing existing and proposed conditions (including façade materials)
 - Landscape plan (as applicable)
6. One (1) Floor Area Ratio (FAR) Worksheet, (signed and stamped by a design professional)
7. One (1) copy of any previous special permits or variances on the property (as applicable)
8. One (1) copy of any other review/sign-off (Historic, Conservation, Tree Removal, etc. as applicable)
9. Two (2) electronic copies of the application with all above attachments (USB or CD)

Copies of all plans shall either be 8.5 x 11 or 11 x 17, except as requested by staff

Special Permit Sign (\$20 fee)

Incomplete applications will delay the intake and review of your project.

Depending on the complexity of the project additional information may be requested to facilitate a full review of the application.

Has the proposed project been presented to and discussed with abutting property owners? Y/N

ATTACHMENT D

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 – 36 Walsh Road

Date: July 23, 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

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

As Built Plan
36 Walsh Road

Prepared by: A. Matthew Belski, Jr. PLS

Dated: April 16, 2020

Executive Summary:

The original site plan approved by the Engineering Division dated March 26, 2019 [prepared by RAV Associates, Inc.] did not have retaining walls along the frontage nor along the Wiswall Road property line. A site visit was conducted yesterday, based on what was observed the retaining walls appear stable, there is no washout, no erosion of any abutting property, as seen on the following photos. I would recommend that the contractor of record provide an affidavit to Inspectional Services Department [the Dept. having jurisdiction on vertical construction] that attests that the retaining walls were constructed in accordance to the segmental block wall manufacturers specification in relation to proper construction which includes: properly prepared base foundation, backfill, stability, reinforcement requirements, and drainage behind the wall.



Retaining wall along Walsh Road looking towards Wiswall Road



Retaining wall along Wiswall Road property line

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.