



#442-20

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

Ruthanne Fuller
Mayor

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date:	December 15, 2020
Land Use Action Date:	February 23, 2021
City Council Action Date:	March 1, 2021
90- Day Expiration Date:	March 15, 2021

DATE: December 11, 2020

TO: City Council

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

SUBJECT: **Petition #442-20**, to allow retaining walls exceeding four feet in height within the front setback at 55 Alexander Road, Ward 6, Newton Highlands, on land known as Section 81 Block 27 Lot 10, containing approximately 10,286 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 7.3.3, 7.4, 3.4.2.B 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.



55 Alexander Road

EXECUTIVE SUMMARY

The property located at 55 Alexander Road (formerly 59 Alexander Road) consists of a 10,286 square foot lot in the Single Residence 3 (SR-3) zone in Newton Highlands. The lot is improved with a single-family residence under construction. The petitioners are seeking to construct a series of retaining walls within the front setback.

The retaining walls that require a special permit are largely due to the steep grade change of twenty feet from the front to the rear of the site. There is a retaining wall proposed that provides access and stairs from the driveway to the front door and is designed in that the wall is not visible from the front elevation. This wall also functions as part of the proposed stairs. Also proposed is a combination of walls at the front of the site that require a special permit. The petitioner rebuilt a five-foot-high retaining wall on City property and is proposing a 2.8-foot-high retaining wall in combination with the existing wall. Together, the proposed walls along the front property line creates a combination of walls with a height of 7.8 feet, requiring a special permit.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the proposed series of retaining walls greater than four feet in height within a setback. (§7.3.3.C.1)
- The proposed series of retaining walls greater than four feet in height within a setback will adversely affect the neighborhood. (§7.3.3.C.2)
- The proposed series of retaining walls greater than 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. (§7.3.3.C.4)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on Alexander Road in the SR-3 zone in Newton Highlands. The SR-3 zone encompasses the entire surrounding area and neighborhoods (**Attachment A**). The surrounding land use of the neighborhood is single-family residential (**Attachment B**).

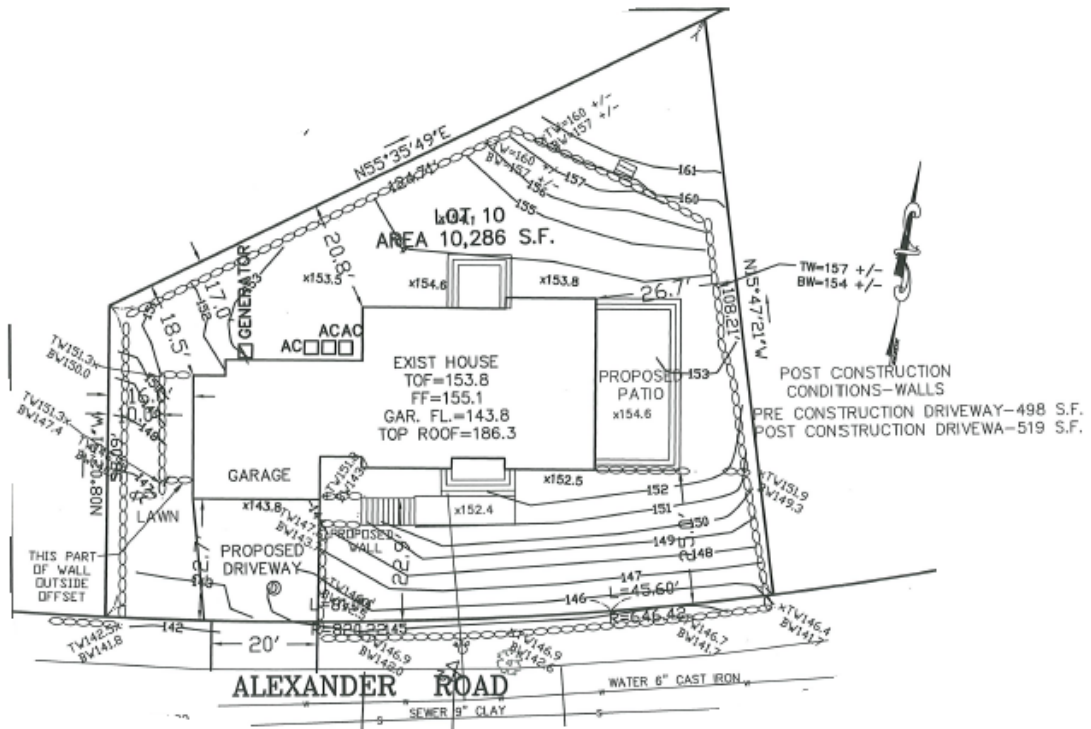
B. Site

The site consists of 10,286 square feet and is improved with a single-family dwelling nearing completion (the original 1939 dwelling was razed). The lot is served by one

curb cut providing access to an asphalt driveway and the single-family dwelling with an attached garage. The site slopes upwards with a grade change of approximately twenty feet from the front to the rear of the site. The site features a retaining wall around the perimeter, this wall ranges from 2.6 feet to 3 feet in height within the setbacks. There is a retaining wall between the western boundary and attached garage that reaches a height of 3.6 feet at the southwest corner of the wall.

During construction of the new single-family dwelling, an existing five-foot tall wall along the frontage was demolished and rebuilt resulting from the installation of utilities. The wall was built in the approximate location and height of previous wall, which is on City property. The petitioner has been in contact with the Department of Public Works and the City Solicitor's office regarding a license and reconstruction of this wall and should provide an update at the public hearing.

Existing Conditions



III. PROJECT DESCRIPTION AND ANALYSIS

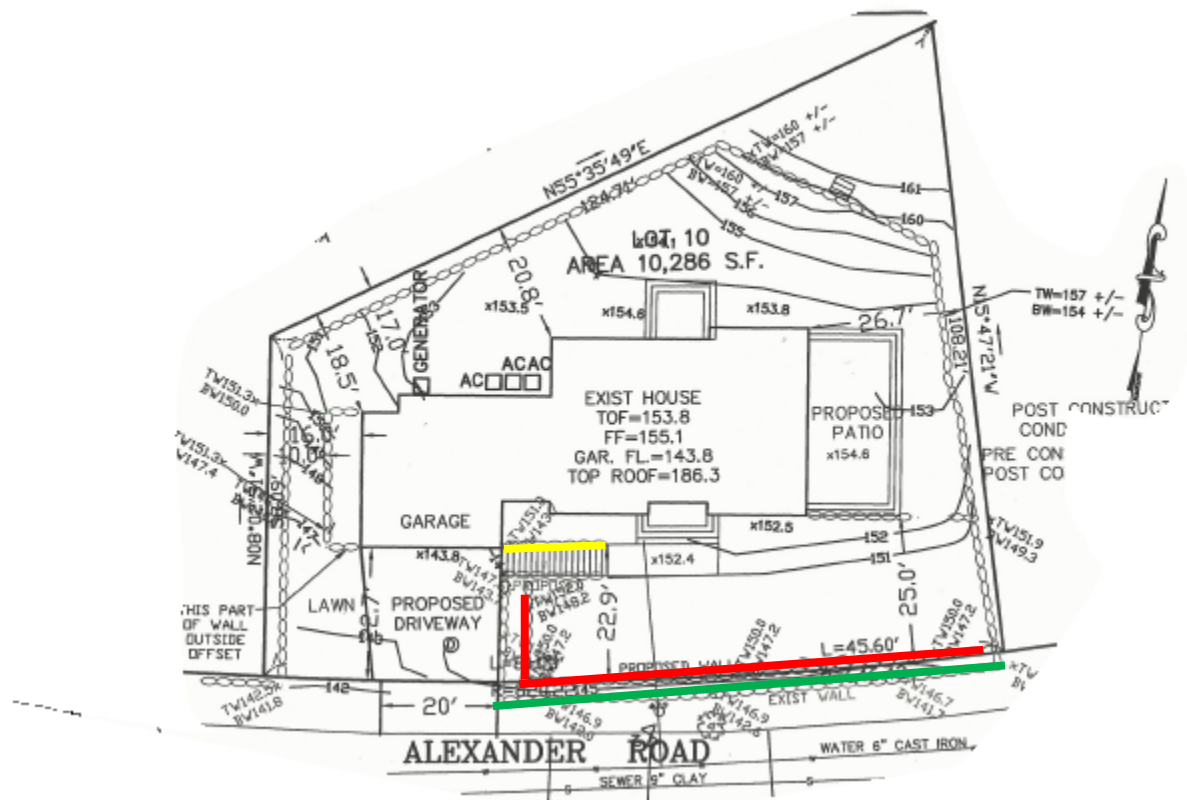
A. Land Use

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

B. Building and Site Design

The petitioner is seeking to construct two retaining walls within the front setback to create a level front yard and to provide access from the driveway to the front door. One wall is proposed along the front property line that makes a 90 degree turn to the north with a height of 2.8 feet, outlined in red on the site plan below. When combined with the reconstructed wall, a combination of retaining walls with a height of 7.8 feet is proposed. Retaining walls or a combination of retaining walls greater than four feet in height within a setback require a special permit. The existing retaining wall with a height of five feet that was rebuilt is outlined in green.

Proposed Site Plan



A second retaining wall with a height of 8.1 feet, highlighted in yellow, is proposed east of the garage entry to accommodate a walkway and set of stairs to the dwelling's front door. This wall will be placed 22.9 feet from the front property line, within the front setback and requires a special permit. It is designed in that the wall is not visible from the front elevation, only the 8.6-foot grade change between the front door and the driveway is notable from the front elevation.

In addition to a special permit required for one retaining wall greater than four feet in height within a setback, the Ordinance states that a combination of walls with a height of four feet or greater located within the setback requires a special permit. There is a combination of walls proposed at the front of the site that in total, measures 7.8 feet. The wall on City property measures 5 feet in height at its tallest point and the interior wall that runs parallel to the existing wall measures 2.8 feet, creating a combination of walls with a height of 7.8 feet. The combination of the walls resulting in a height of 7.8 feet requires a special permit.

C. Parking and Circulation

The petitioners are not proposing any changes to either the parking or circulation.

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:

- §3.4.2.B and §7.3.3 of Section 30, to allow a system of retaining walls exceeding four feet in height within a setback.

B. Engineering Review

The petitioner should continue to work with the Engineering Department and Law Departments to acquire a license for the retaining wall on City property and ensure the wall was constructed to the City of Newton Engineering standards.

C. Historic Preservation Review

This petition does not meet the minimum threshold for Newton Historical Commission review.

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 A

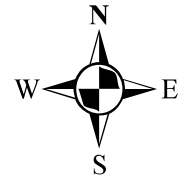
Zoning

55 Alexander Road

*City of Newton,
Massachusetts*

Zoning

 Single Residence 3

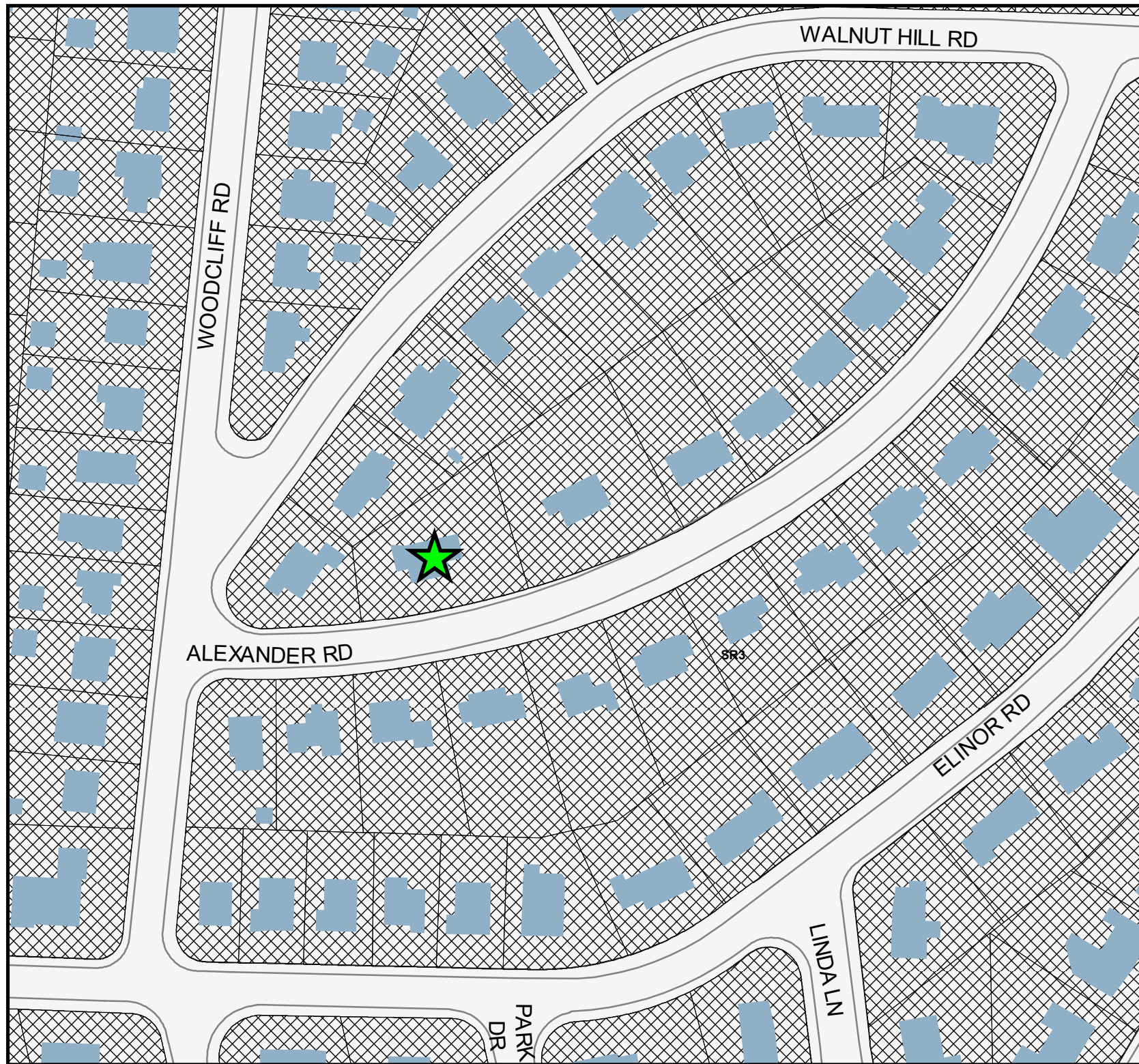


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield

0 12.5 25 50 75 100 125
Feet

Map Date: December 07, 2020



ATTACHMENT B




Land Use

55 Alexander Road

*City of Newton,
Massachusetts*

Land Use

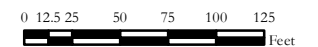
Land Use

-  Single Family Residential
-  Mixed Use
-  Vacant Land

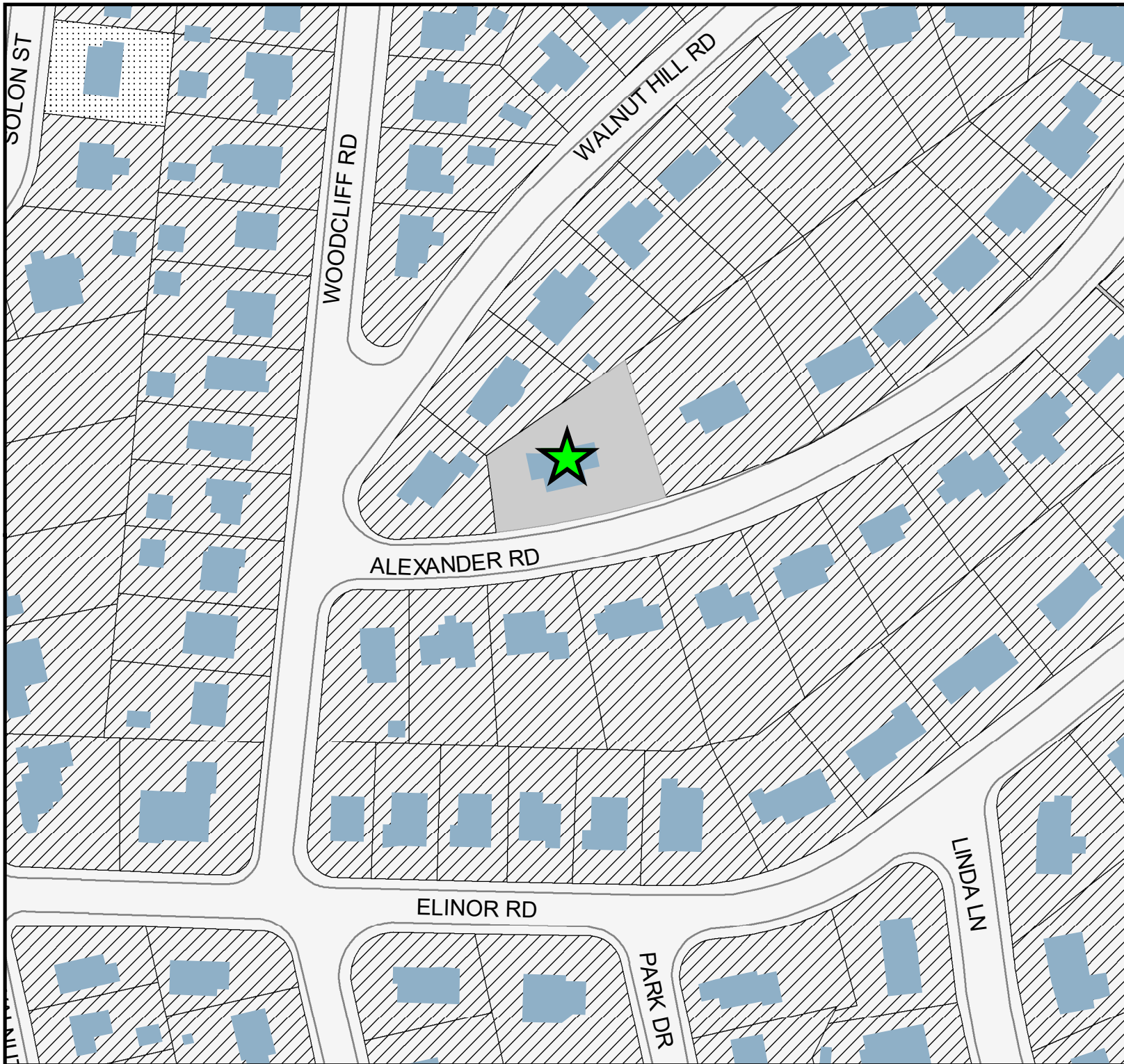


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
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Map Date: December 07, 2020





Ruthanne Fuller
Mayor

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: November 3, 2020

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Roman Fayngersh, Applicant
Terrence P. Morris, Attorney
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: Roman Fayngersh	
Site: 55 Alexander Road	SBL: 81027 0010
Zoning: SR3	Lot Area: 10,286 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 55 Alexander Road consists of a 10,286 square foot lot improved with a single-family residence nearing completion after razing the original 1939 dwelling. The petitioner seeks to construct a series of retaining walls 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 Terrence P. Morris, attorney, dated 8/11/2020
- Existing Conditions Site Plan, signed and stamped by A. Matthew Belkin Jr., surveyor, dated 3/13/2018
- Proposed Conditions Site Plan, signed and stamped by A. Matthew Belkin Jr., surveyor, dated 7/10/2019
- Rendering of new walls, dated 8/12/2020

ADMINISTRATIVE DETERMINATIONS:

1. The existing original retaining wall was five feet in height but predated the requirement for a special permit for a retaining wall in excess of four feet in a setback. The petitioner demolished this stone retaining wall in conjunction with the construction of the new dwelling. The survey indicates that the retaining wall was located in the right of way and not on the subject property. The petitioner reconstructed a new wall maintaining the location within the right of way and with a maximum height of five feet. The petitioner now seeks to construct a second wall approximately three feet behind the location of the original wall, with a maximum height for the wall system of 7.8 feet at the front of the lot. An additional retaining wall system is requested along the driveway as well, reaching a maximum height of 8.1 feet. Per section 5.4.2.B, a special permit is required to allow a system of retaining walls 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 system of retaining walls exceeding four feet in height within a setback	S.P. per §7.3.3

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 allow a series of retaining walls exceeding four feet in height within a setback, 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 series of retaining walls greater than four feet in height within a setback due to the steep grade change of twenty feet from the front to the rear of the site. (§7.3.3.C.1)
2. The proposed series of retaining walls greater than four feet in height within a setback will not adversely affect the neighborhood. (§7.3.3.C.2)
3. The proposed series of retaining walls greater than four feet in height within a setback will create a nuisance or serious hazard to vehicles or pedestrians. (§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)

PETITION NUMBER: #422-20

PETITIONER: Roman Fayngersh

LOCATION: 55 Alexander Road, on land known as Section 81, Block 27, Lot 10, containing approximately 10,286 square feet of land

OWNER: Roman Fayngersh

ADDRESS OF OWNER: 55 Alexander Road
Newton, MA 02461

TO BE USED FOR:	A series of retaining walls greater than four feet within a setback
CONSTRUCTION:	Masonry
EXPLANATORY NOTES:	§3.4.2.B and §7.3.3 to construct a series of retaining walls greater than four feet within a setback
ZONING:	Single Residence 3 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. "Proposed site plan second retaining wall 59 Alexander Road" showing proposed conditions at 55 Alexander Road , signed and stamped by Matthew Belski, Professional Land Surveyor, dated October 7, 2020
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 Planning and Development and the Engineering Division of Public Works.
3. Prior to the issuance of a building permit, the petitioner shall obtain a license from the Law Department and Department of Public Works for the reconstructed wall on City property.
4. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
 - a. Recorded a certified copy of this board 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 board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. 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.
 - d. 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 petitioner has:
 - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by land surveyor 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.
- c. 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.