



Setti D. Warren  
Mayor

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

**141-13(3)**  
Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

Candace Havens  
Director

**PUBLIC HEARING MEMORANDUM**

Public Hearing Date: May 13, 2014  
Land Use Action Date: May 27, 2014  
Board of Aldermen Action Date: July 14, 2014  
90-Day Expiration Date: August 11, 2014

DATE: May 9, 2014

TO: Board of Aldermen

FROM: Candace Havens, Director of Planning and Development  
Alexandra Ananth, Chief Planner for Current Planning  
Daniel Sexton, Senior Planner

SUBJECT: **Petition #141-13(3)**, NITZAN GORDON, for a SPECIAL PERMIT/SITE PLAN APPROVAL to construct a retaining wall greater than four feet in front of an existing garage, which will reduce the grade of the driveway to create a flatter surface, and to locate two parking stalls in the front setback at 74 NEWTONVILLE AVENUE, Newton, Ward 1, on land known as SBL 12, 21, 25 containing approx. 10,021 sf of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec 30-24, 30-23, 30-19(g)(1), 30-19(m), 30-5(b)(4) of the City of Newton Rev Zoning Ord, 2012.

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. 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 Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



**74 Newtonville Ave**

## EXECUTIVE SUMMARY

The property at 74 Newtonville Avenue consists of a 10,021 square foot lot improved with a two-story single-family residence, which was constructed in 1973. The existing house has an attached two-car garage that is accessed by a driveway with a significant slope up from the street to the garage, which causes a hazardous situation for vehicular maneuverability and pedestrian visibility. As such, the petitioner is proposing to reconstruct the driveway with a reduced slope. To achieve the desired grade, the petitioner is proposing to demolish and reconstruct the retaining walls surrounding the driveway, which are in the front setback, at a maximum height of approximately 5½-feet. The proposed driveway and retaining walls will eliminate access to the existing two-car garage, rendering it useless for the parking of vehicles, and will create two side-by-side parking stalls in the front setback. In order to construct the proposed retaining walls greater than four feet in the front setback and to provide for the parking of two vehicles in the front setback the petitioner is seeking a special permit.

The petitioner withdrew the special permit application that the Land Use Committee heard at the public hearing on September 10, 2013 and approved at the working session on November 19, 2013, because errors were found on the approved plans. The discrepancies involved inaccurate measurements of the driveway and surrounding slope, which exaggerated the proposed height of the retaining walls. Further, the Inspectional Services Department has indicated that all the City's previous enforcement cases and open building permits have been closed.

The Department of Planning and Development has no particular concerns with the revised petition. The proposed retaining walls are significantly lower than originally proposed and the parking of two vehicles in the front setback is similar to the way in which vehicle storage is handled on nearby properties with similarly sloped lots. The design of the proposed driveway and retaining walls should minimize the visual appearance of the project on the surrounding neighborhood.

### I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Board should consider whether:

- The proposed retaining walls within the front setback, which are greater than four feet in height, will not adversely affect the neighborhood. (§30-5(b)(4), §30-24(d)(2))
- The proposed placement of two parking stalls within the front setback and the location of those stalls closer than five feet from the street are appropriate, because literal compliance is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, and that such exceptions are in the public interest. (§30-19(m))
- The proposed parking stalls and retaining walls in the front setback will not be a nuisance or serious hazard to vehicles or pedestrians in the neighborhood. (§30-24(d)(3))

## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The property is located on the south side of Newtonville Avenue near the intersection with Summit Street. The houses along Newtonville Avenue consist mostly of single-family homes, although some properties to the south and west of the subject property have been developed as condominiums (**ATTACHMENT A**). The property is located in an area zoned Single Residence 3, but is flanked to the north and south by properties zoned Multi-Residence 1 (**ATTACHMENT B**).

### B. Site

The property consists of 10,021 square feet of land and is improved with a two-story single-family residence with an attached garage. The attached garage is constructed as part of the home's basement, and is accessed by a bituminous driveway with a significant slope on the north side of the site.

## III. PROJECT DESCRIPTION AND ANALYSIS

### A. Land Use

The property will remain a single-family residence.

### B. Building and Site Design

The petitioner is proposing to reduce the slope of the driveway to create two side-by-side parking stalls in the front setback. The reconstructed driveway will be developed with concrete pavers and retaining walls built with allan blocks, and will extend to all three sides of the driveway. The proposed retaining walls, which will be approximately 5½-feet at the highest point, will cut off access to the existing two-car garage, rendering it useless for the parking of vehicles. As a result, the petitioner will be converting the existing garage into living space. The petitioner has proposed the creation of a "snow storage area" to the west of the driveway.

The significant slope present on the subject property, which also impacts other nearby properties, limits the ways in which development of on-site parking stalls can be accommodated. While numerous other houses in the surrounding neighborhood have at-grade parking in the front setback, none with similar attached garages appear to have chosen to redevelop their attached garage in favor of outdoor parking facilities.

The Planning Department believes the significant slope of the driveway does present challenges for the reasonable use of the driveway and attached garage. The reduction of the driveway slope would make parking more practical and safe for the owners and surrounding neighborhood. Further, the Planning Department believes the proposed driveway design should minimize the visual appearance of the project on the surrounding neighborhood.

C. Parking and Circulation

The proposed development will alter the parking configuration for the property. The current parking configuration includes an attached two-car garage, which has limited usability due to the significant slope of the driveway, and a stacked one-car parking stall in the driveway. The proposed configuration will render the attached two-car garage unusable as a garage, in favor of two side-by-side parking stalls below the natural grade in the front setback. The setback of the proposed parking stalls from the street is approximately 4½-feet, which is closer than the minimum five foot setback from the street as required under the Newton Zoning Ordinance.

Although the Planning Department generally prefers that off street parking facilities be contained in a structure to enhance the visual quality of the streetscape, the significant slope of the driveway limits the usability of the existing two-car garage, especially during the winter. Additionally, proposed development of two parking stalls in the front setback is consistent with other off street parking facilities on nearby properties. The Planning Department believes the proposed reduced setback of the parking stalls will not adversely affect the neighborhood.

D. Landscape Screening

No landscaping plan was required for this petition. To lessen the visually appearance of the project on the streetscape, the petitioner is proposing to install a 42-inch metal railing on top of the retaining walls segment near the structure, construct the retaining walls with allan blocks, and install concrete pavers for the driveway surface. The Planning Department believes the combination of these exterior treatments for the reconstructed driveway appear adequate to sufficiently diminish the appearance and off site impacts of the proposed driveway for abutters and the nearby street.

IV. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance): The Zoning Review Memorandum, (**ATTACHMENT C**), provides an analysis of the proposal with regard to zoning. The petitioner is requesting a special permit to allow retaining walls greater than four feet in height in the front setback, and to provide two parking stalls within the front setback.

B. Engineering Review: The Associate City Engineer, submitted an Engineering Review Memorandum (**ATTACHMENT D**), providing an analysis of the proposal with regard to engineering issues. The petitioner will be required to comply with all the recommendations put forth in the memorandum prior to issuance of a Building Permit.

V. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum, the petitioner is seeking a Special

Permit/Site Plan Approval for the following reliefs:

- §30-5(b)(4), to locate retaining walls greater than four feet in the front setback.
- §30-19(g)(1) and §30-19(m), to permit two parking spaces within the front setback and waive the five foot setback from the street for vehicles parked in this manner.

VI. PETITIONERS' RESPONSIBILITIES

The petition is considered complete at this time.

**ATTACHMENTS:**

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

# 141-13(3) Land Use Map 74 Newtonville Avenue









*City of Newton,  
Massachusetts*

**ATTACHMENT A**

### Legend

Street Names

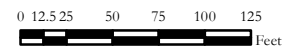
### Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Open Space
-  Nonprofit Organizations
-  Vacant Land
-  Property Boundaries
-  Building Outlines

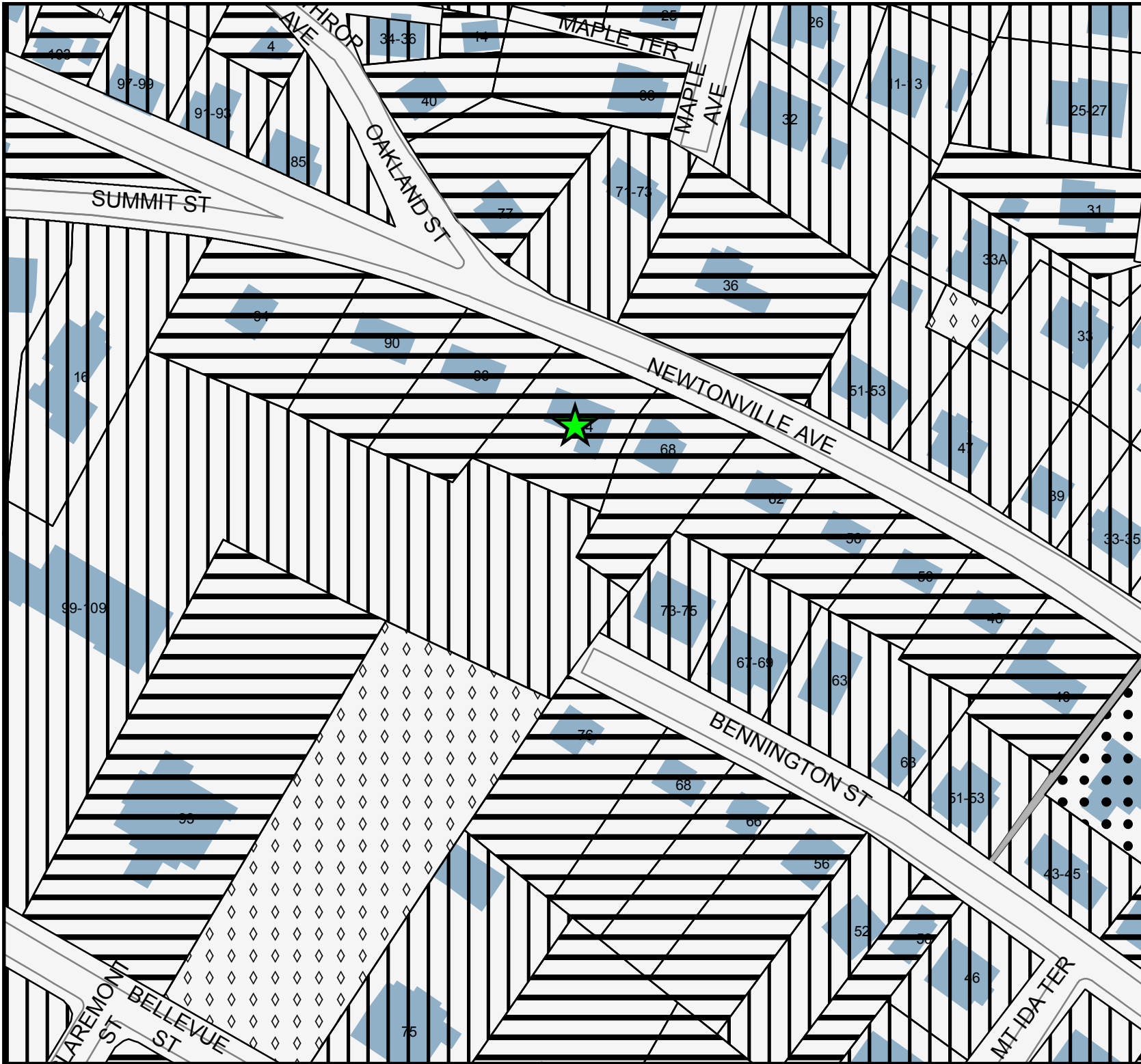


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield



Map Date: April 23, 2014










# 141-13(3) Zoning Map 74 Newtonville Avenue

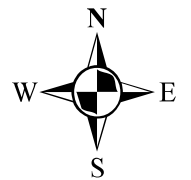
*City of Newton,  
Massachusetts*

**ATTACHMENT B**

### Legend

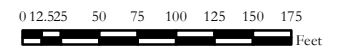
Street Names

-  Single Residence 1
-  Single Residence 2
-  Single Residence 3
-  Multi-Residence 1
-  Multi-Residence 2
-  Property Boundaries
-  Building Outlines

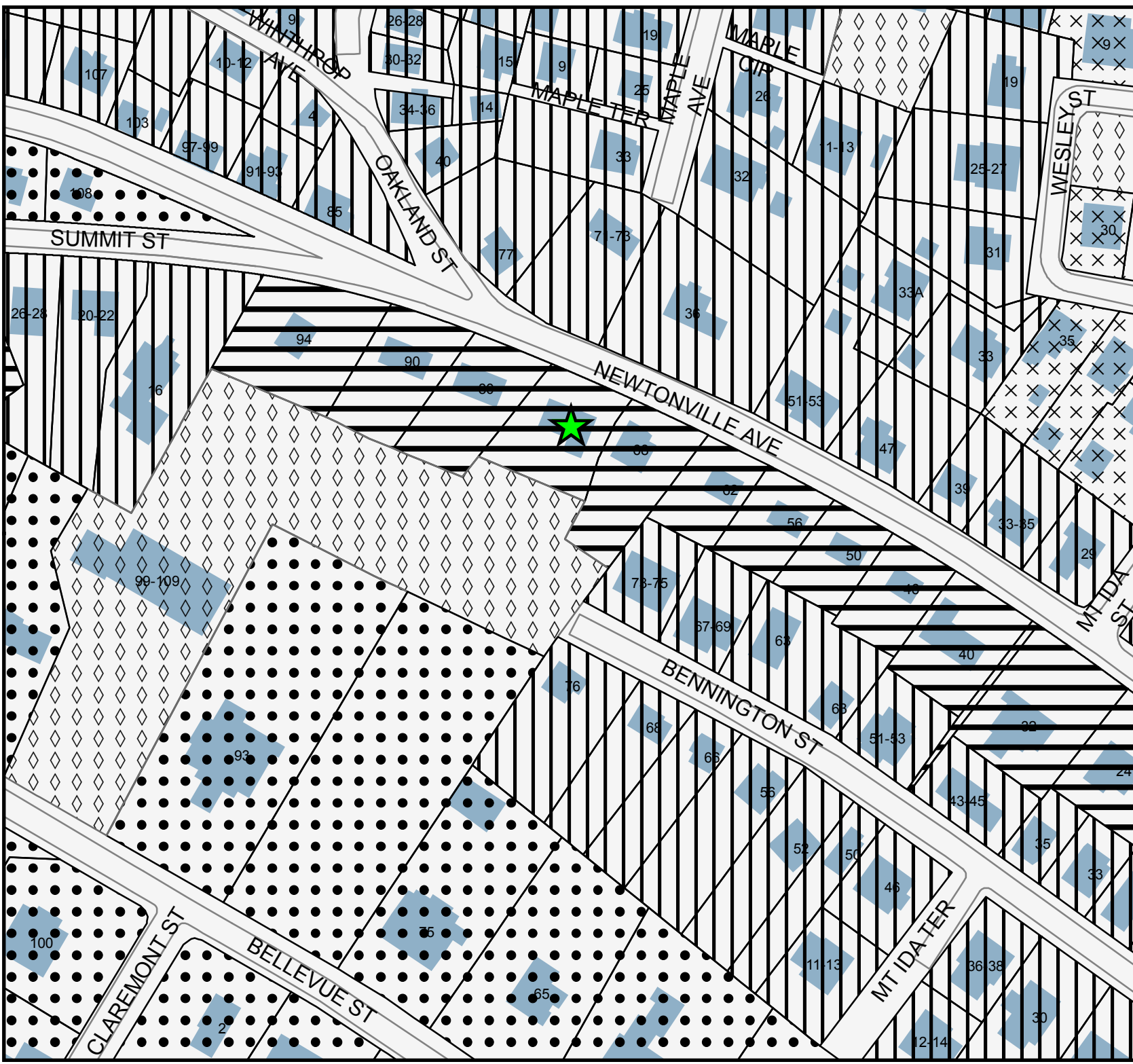


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
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Map Date: April 23, 2014





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Mayor

# Attachment C

## City of Newton, Massachusetts

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Candace Havens  
Director

### ZONING REVIEW MEMORANDUM

Date: April 17, 2014

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Alexandra Ananth, Chief Planner for Current Planning

Cc: Nitzan Gordon and Zion Yehoshua, applicants  
Candace Havens, Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Request to build a retaining wall in excess of 4 feet in the setback and to create two parking stalls in the front setback**

Applicant: Nitzan Gordon & Zion Yehoshua	
Site: 74 Newtonville Ave	SBL: 12021 0025C
Zoning: SR3	Lot Area: 10,021 square feet
Current use: Single-family dwelling	Proposed use: No change

#### BACKGROUND:

The property at 74 Newtonville Ave consists of a 10,021 square foot lot improved with a single-family residence constructed in 1973. The dwelling is a split ranch with a two-car garage in the basement level. The property slopes downward significantly from the back to the front, with a grade change of approximately 10 feet from the front of the house to the street. The applicants are proposing to build a retaining wall in front of the existing garage which would allow them to lower the grade of the driveway and create a flatter surface. The retaining wall will be 5.47 feet at its highest point in front of the existing garage, and will step down to a height of three feet at the street. The applicants propose two parking stalls in the flattened area created by the walls. These stalls are within the front setback. A retaining wall greater than 4 feet in the front setback, and parking stalls in the front setback require a special permit.

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

- Zoning Review Application, prepared by Nitzan Gordon, applicant, submitted 4/7/2014
- Site Plan, signed and stamped by Allen Page, engineer, Alpha Omega Engineering, dated 4/4/2014



**ADMINISTRATIVE DETERMINATIONS:**

1. Section 30-5(b)(4) requires a special permit for a retaining wall within the setback in excess of 4 feet. The applicants are proposing a retaining wall in front of the existing two-car garage, which is 5.5 feet tall at its highest point, and within the front and side setbacks.
2. The erection of the retaining walls will eliminate vehicular access to the garage parking, and require the applicants to park in the driveway. The two required parking stalls will be 4 feet from the street, where 5 feet is the required minimum, and are located in the front setback. A special permit per Section 30-19(g)(1) is required to allow parking in the front setback.

SR3 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	10,021 square feet	No change
Frontage	80 feet	82 feet	No change
Setbacks for existing structure			
• Front	30 feet	30 feet	No change
• Side	10 feet	20 feet	No change
• Rear	15 feet	36 feet	No change

1. See "Zoning Relief Summary" below:

Zoning Relief Required		
§30-5(b)(4)	Allow a retaining wall greater than 4 feet in height in the front setback	S.P. per §30-24
§30-19(g)(1), 30-19(m)	Allow parking in the front setback	S.P. per §30-24

**CITY OF NEWTON  
ENGINEERING DIVISION**

**MEMORANDUM**

To: Alderman Deborah Crossley, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – 74 Newtonville Avenue

Date: May 5, 2014

CC: Lou Taverna, PE City Engineer  
Linda Finucane, Associate City Clerk  
Alexandria Ananth, Chief Planner  
Daniel Sexton, Sr. Planner

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

*Site Plan  
Located at  
74 Newtonville (AKA #72)  
Proposed Changes to Driveway  
Newton, MA  
Prepared by: Alpha Omega Engineering Inc.  
Dated: April 4, 2014*

*Executive Summary:*

This project involves the regarding of an existing driveway and new retaining walls. The existing driveway is very steep and has uncontrolled runoff from the site and onto Newtonville Avenue, the design will incorporate a trench drain to capture runoff from the driveway and from behind the proposed retaining walls and infiltrate the runoff underground.

Newtonville Avenue was paved in 2013; the contractor of record will have to exercise great care to ensure that the new pavement is not damaged. Any damaged caused as a result of the driveway, drainage system, and retain wall construction shall be repaired at their expense.

Drainage:

1. An Operations and Maintenance (O&M) plan for Stormwater Management Facilities needs to be drafted and submitted for review. Once approved the O&M must be adopted by applicant, incorporated into the deeds; and recorded at the Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.
2. It is imperative to note that the ownership, operation, and maintenance of the proposed drainage system and all appurtenances including but not limited to the drywells, catch basins, and pipes are the sole responsibility of the Homeowner.

General:

1. As of January 1, 2009, all trench excavation contractors shall comply with Massachusetts General Laws Chapter 82A, Trench Excavation Safety Requirements, to protect the general public from unauthorized access to unattended trenches. Trench Excavation Permit required. This applies to all trenches on public and private property. *This note shall be incorporated onto the plans*
2. All tree removal shall comply with the City's Tree Ordinance.
3. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of water services, sewer service, and drainage system installation. The utility is question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval. *This note should be incorporated onto the plans*
4. The applicant will have to apply for Sidewalk Crossing permit with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*
5. The applicant will have to apply for a Building Permits with the Department of Inspectional Service prior to any construction.
6. Prior to Occupancy Permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading. *This note must be incorporated onto the site plan.*
7. All site work shall be completed before a Certificate of Occupancy is issued. *This note must be incorporated onto the site plan.*

Note: If the plans are updated it is the responsibility of the Applicant to provide all City Departments [Conservation Commission, ISD, 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 @ 617-796-1023.