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City of Newton, Massachusetts

Department of Planning and Development

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Candace Havens
Director

Public Hearing Date: April 10, 2012
Land Use Action Date: June 19, 2012
Board of Aldermen Action Date: July 9, 2012
90-Day Expiration Date: July 12, 2012

DATE: April 6, 2012

TO: Board of Aldermen

FROM: Candace Havens, Director of Planning and Development
Eve Tapper, Chief Planner for Current Planning ^{ET}
Alexandra Ananth, Senior Planner

SUBJECT: **Petition #62-12**, Charlotte N. Duhamel & Gregory P. Licholai, petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NONCONFORMING STRUCTURE by adding a 3½-story addition to the rear of an existing single-family dwelling, increasing the Floor Area Ratio from a legally nonconforming .54 to .66, where .41 is allowed by-right, at **43 Hillside Road**, Ward 7, Newton, on land known as SBL 52, 10, 4, containing approximately 8,365 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-21(b), 30-15 Table 1 of the City of Newton Rev Zoning Ord, 2007.

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.



43 Hillside Rd.

EXECUTIVE SUMMARY

The subject property consists of an 8,365 square foot lot improved with a single-family dwelling built in 1890, and a small detached garage structure at the rear. The existing basement level is considered a story due to the amount of exposed basement, therefore the house is considered a 3½-story residence. The petitioners are seeking to allow a 668 square foot 3½-story addition to the rear of the house, increasing an already nonconforming FAR of .54 to .66 where .41 is allowed.

The petitioners filed for and were issued a building permit in September of 2011 for a rear addition. The by-right plan shows a retaining wall on two sides of the site which is necessary in order for the basement to not count as a story so that the maximum allowable FAR is not exceeded (**SEE ATTACHMENT "A"**). The petitioners have decided that they prefer to construct their addition without the extensive retaining wall but must now seek relief to allow an extension of a structure which is nonconforming with regard to the number of stories and for FAR now that the basement is considered a story and is included in both calculations.

The proposed rear addition will be minimally visible to abutters and will not change the look of the house as viewed from the street. Furthermore, eliminating the need for a retaining wall will result in less disturbance to the natural grade. In addition to the expansion of the residence, the petitioners are proposing to decrease the amount of impervious area on site by removing part of a bituminous driveway and a carport. The petitioners intend to park their cars in the remaining driveway immediately west of the house but out of the front setback.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Board should consider:

- Whether the proposed extension of a nonconforming structure with regard to the number of stories and FAR will be substantially more detrimental to the neighborhood than the existing structure.

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The property is located on the north side of Hillside Road in Newton Highlands. The neighborhood primarily consists of single-family houses although there is a two-family house immediately east of the subject property. The property is also in close proximity to the Sudbury aqueduct. The site is within an area zoned Single Residence 2.

B. Site

The site consists of 8,365 square feet of land and slopes down slightly to the rear property line before the aqueduct which is raised in this neighborhood of Newton. The main residence is a 3½-story Victorian-style house circa 1890 of approximately 2,600 square feet excluding the basement. A one-story detached garage and carport are located towards the rear of the property.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The property is currently used as a single-family residence and the petitioners are not proposing any changes to the use with the proposed addition.

B. Building and Site Design

The petitioners are proposing a 3½-story addition off the rear of the existing 3½-story residence. The proposed addition will be set on posts and will not have a foundation, though the area below the first floor addition will be screened with lattice and used for storage. The proposed addition will add a mudroom and breakfast area/family room to the main living area and a master bedroom with bathroom above. The addition will be 35 ft. in height from the lowest grade point at the rear of the house to the new ridgeline, slightly less than the existing ridge of the gambrel-roofed house.

The petitioners filed for and were issued a building permit in September of 2011 for a by-right rear addition. The petitioners are currently seeking a special permit for an approximately 668 square feet addition which is slightly larger (approximately 120 square feet) than the addition that was permitted in 2011. The by-right plan shows a retaining wall on two sides of the site which is necessary so that the basement would not count as a story and the maximum allowable FAR is not exceeded. The petitioners have decided that they prefer to construct their addition without the extensive retaining wall in order to minimize disturbance to the natural grade. However, with the removal of the retaining wall the petitioners must seek relief to allow an extension of a structure which is nonconforming with regard to the number of stories and FAR now that the basement is considered a story and is included in these calculations.

The proposed rear addition will be minimally visible to abutters and will not change the look of the house as viewed from the street.

C. Parking and Circulation

The petitioners are proposing to decrease the amount of impervious area on site by removing a portion of the bituminous driveway that leads to the garage which no

longer functions as a garage. The petitioners are also proposing to remove an existing carport attached to the garage. The petitioners intend to park their cars in the remaining driveway immediately west of the house but out of the front setback.

The petitioners are not proposing additional landscape screening as part of this project and the Planning Department believes existing landscape screening is adequate given the nature of this project as proposed.

IV. TECHNICAL REVIEW

- A. Technical Considerations (Chapter 30, Newton Zoning Ordinance): The Zoning Review Memorandum, dated December 12, 2011 (**SEE ATTACHMENT "B"**), provides an analysis of the proposal with regard to zoning. The petitioner is requesting special permits to allow an extension of a structure which is nonconforming with regard to the number of stories, and to allow an extension of a structure which is nonconforming with regard to FAR.
- B. Comprehensive Plan: The proposed project would help preserve and update the existing structure while meeting the needs of today's families.
- C. Engineering Review: The petitioners are proposing a net decrease to the impervious area of the site by over 300 square feet. As such the Engineering Division did not review this project.
- D. Newton Historical Commission: The Newton Historical Commission reviewed proposed plans for demolition and approved these plans at its September 2011 meeting. (**SEE ATTACHMENT "C"**).

V. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum the petitioner is seeking the following approvals or relief:

- Section 30-15, Table 1 & 30-21(b) to allow an extension of a structure which is nonconforming with regard to the number of stories.
- Section 30-21(b) & Section 30-15(u)(2) to allow an extension of a structure which is nonconforming with regard to FAR.

VI. PETITIONERS' RESPONSIBILITIES

The petitioner is considered complete at this time.

ATTACHMENTS

Attachment A: Previously Permitted Site Plan Showing Retaining Wall

Attachment B: Zoning Review Memorandum dated December 1, 2011

Attachment C: Newton Historical Commission Demolition Review Decision dated September 8, 2011

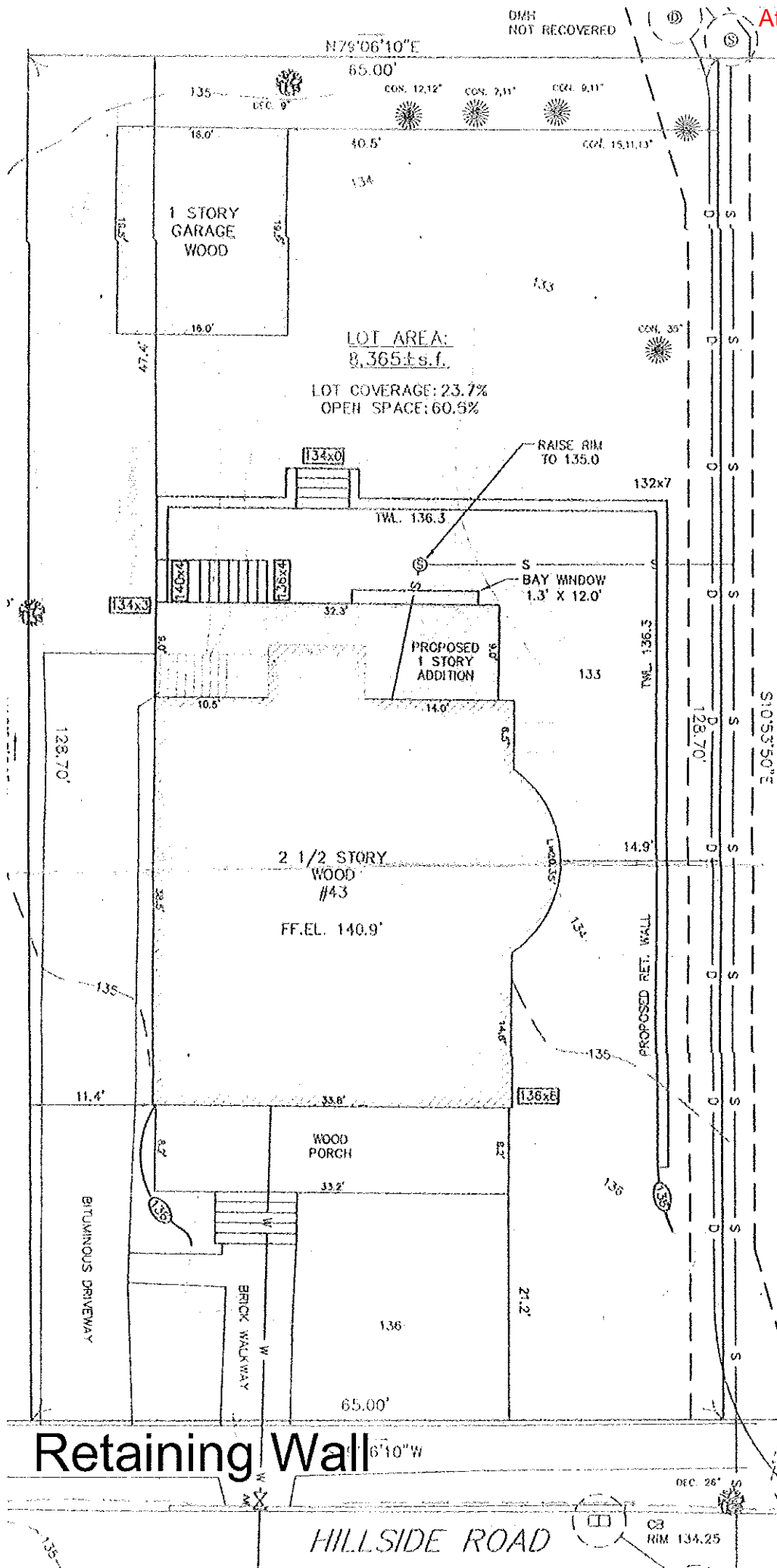
Attachment D: Zoning Map

Attachment E: Land Use Map

Attachment F: Draft Board Order #62-12, 43 Hillside Rd.

DMH
NOT RECOVERED

Attachment "A"



DEC 26'



HILLSIDE ROAD



Setti D. Warren
Mayor

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

ATTACHMENT "B"

(617) 796-1142
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www.newtonma.gov

Candace Havens
Director

ZONING REVIEW MEMORANDUM

Date: December 12, 2011

To: John Lojek, Commissioner of Inspectional Services

From: Seth Zeren, Chief Zoning Code Official
Eve Tapper, Chief Planner for Current Planning ET

Cc: Michael Huller, architect representing applicant
Candace Havens, Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: **Request to allow an increase in FAR and extend a nonconforming three-and-a-half story structure**

Applicant: Greg Licholai and Charlotte DuHamel	
Site: 43 Hillside Street	SBL: 52010 0004
Zoning: SR2	Lot Area: 8,365 square feet
Current use: Single-family dwelling	Proposed use: Single-family dwelling

Background:

The property at 43 Hillside Street consists of an 8,365 square foot lot improved with a single-family dwelling built in 1890. The house sits high on a lot that slopes down toward the rear. The applicant seeks to add a three-and-a-half-story addition to the rear (north side) of the house.

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

- Architectural plans, signed and stamped by Michael Huller, Architect, dated 8/20/11
 - A1: Foundation Plan
 - A2: First Floor Plan
 - A3: Second Floor Plan
 - A4: Exterior Elevations (North)
 - A5: Exterior Elevations (West)
 - A6: Exterior Elevations (East)
- Revised FAR Worksheets, with calculations for enclosed and unenclosed basement level, by Michael Huller, unsigned, unstamped, undated
- FAR Worksheet, by Michael Huller, unsigned, unstamped, undated
- Site plan by VTP Associates, signed and stamped by Joseph R. Porter, Surveyor, dated 11/1/11
- Area plan by VTP Associates, signed and stamped by Joseph R. Porter, Surveyor, dated 11/11/11

ADMINISTRATIVE DETERMINATIONS:

1. The property is in the SR2 zone and must comply with the dimensional standards of Section 30-15, Table 1, for a pre-1953 lot (see chart below).

SR2 Zone	Required/Allowed	Existing	Proposed
Lot Size	10,000 square feet	8,365 square feet	No change
Frontage	80 feet	65 feet	No change
Setbacks			
• Front	25 feet	21.2 feet	No change
• Side	7.5 feet	11.4 feet	No change
• Rear	15 feet	55.5 feet	45.4 feet
FAR	.41	.54	.66
Building Height	36 feet	35.73 feet	35.72 feet
Maximum Stories	2.5	3.5	No change
Max. Lot Coverage	30%	23.7%	27.6%
Min. Open Space	50%	60.5%	64.8%

2. Per Section 30-1, *Definitions*, “any story in a building in which one-half or more of the distance between the floor and the ceiling next above it is below the average grade plan adjacent to the building” qualifies as a basement. The applicant’s site plan shows that more than one-half the height of the basement is above the average grade plane. Therefore, the basement counts as the first floor and the structure is a nonconforming three-and-a-half-story structure. To construct this addition as proposed, the applicant must obtain a special permit from the Board of Aldermen per Section 30-21(b) to extend this nonconformity.
3. Per Ordinance Z-77, Section 30-15(u), Table A allows a lot with a lot size of 8,365 square feet located in the SR2 zone a Floor Area Ratio (FAR) of .41. A further .02 bonus is allowed for construction which stays within post-1953 setbacks on a pre-1953 lot. The applicant’s site plan shows the new addition extending the existing side setback (which complies with pre-1953 dimensional standards but not with post-1953 standards) and therefore does not qualify for the bonus. The applicants FAR calculations show that the structure is currently nonconforming with regard to FAR. To construct this addition as proposed, the applicant must obtain a special permit from the Board of Aldermen per Section 30-21(b) to extend this nonconformity.
4. See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance	Structure	Action Required
§30-15, Table 1; §30-21(b)	Allow an extension of a structure which is nonconforming with regard to the number of stories	S.P. per §30-24
Ordinance Z-77; §30-21(b)	Allow an extension of a structure which is nonconforming with regard to FAR	S.P. per §30-24



CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

Attachment "C"

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Setti D. Warren Mayor

Newton Historical Commission Demolition Review Decision

Date: 9/8/11

Zoning & Dev. Review Project# 11080059

Address of structure: 43 Hillside Road

Type of building: House

If partial demolition, feature to be demolished is Rear porch and facade

The building or structure:

- is is not in a National Register or local historic district not visible from a public way.
is is not on the National Register or eligible for listing.
is is not importantly associated with historic person(s), events, or architectural or social history
is is not historically or architecturally important for period, style, architect, builder, or context.
is is not located within 150 feet of a historic district and contextually similar.

is NOT HISTORIC as defined by the Newton Demolition Delay Ordinance. Demolition is not delayed and no further review is required.

is HISTORIC as defined by the Newton Demolition Delay Ordinance (See below).

The Newton Historical Commission staff:

APPROVES the proposed project based upon materials submitted see below for conditions (if any). Demolition is not delayed, further staff review may be required.

Final plan sign off required.

DOES NOT APPROVE and the project requires Newton Historical Commission review (See below).

The Newton Historical Commission finds the building or structure:

is NOT PREFERABLY PRESERVED Demolition is not delayed and no further review is required.

is PREFERABLY PRESERVED - (SEE BELOW).

One year delay of Demolition:

is in effect until has been waived - see attached for conditions

Determination made by: Brian Lever

Please Note: if demolition does not occur within two years of the date of expiration of the demolition delay, the demolition will require a resubmittal to the Historical Commission for review and may result in another demolition delay.

Zoning Map 43 Hillside Rd.

*City of Newton,
Massachusetts*



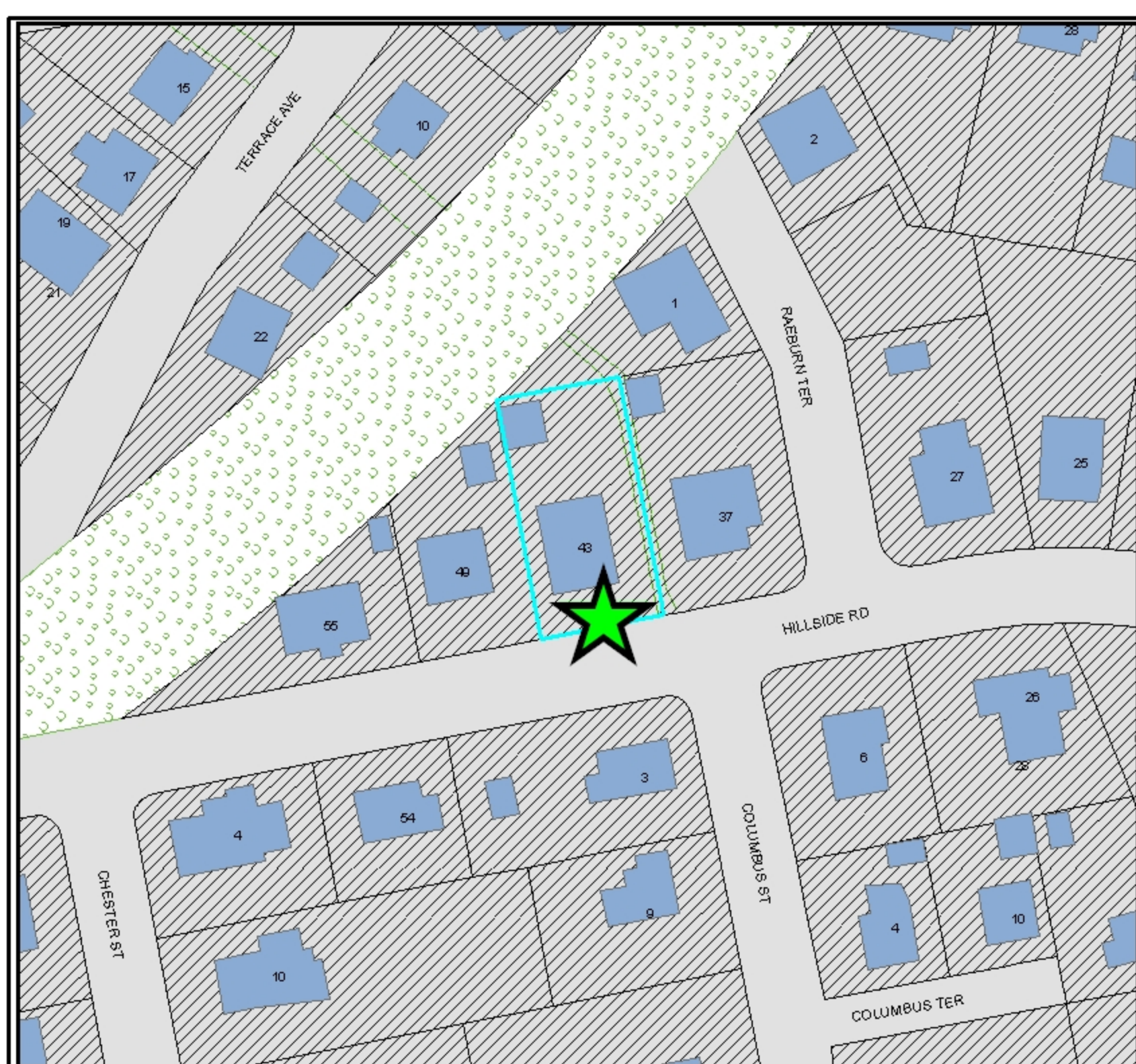
Attachment "D"

The information on this map is a Geographic Information System of the City of Newton. The City of Newton cannot guarantee the accuracy of the information. Each user of this map is responsible for determining its suitability for their intended purpose. City departments will not approve applications based solely on this map.

CITY OF NEWTON, MASS.
Mayor - Seth D. Warren
GIS Administrator - Douglas



Map Date: April 06, 2012



Land Use Map 43 Hillside Rd.

*City of Newton,
Massachusetts*

Legend

Land Use
Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Nonprofit Organizations
-  Vacant Land
-  Building Outlines
-  Surface Water



Attachment "E"

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CITY OF NEWTON, MASS.
Mayor - Seth D. Warren
GIS Administrator - Douglas



Map Date: April 06, 2012



CITY OF NEWTON
IN BOARD OF ALDERMEN
April 16, 2012

ORDERED:

That the Board, 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 to allow an increase in FAR and an extension of a nonconforming structure with regard to the number of stories, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman Alderman Ted Hess-Mahan:

1. The proposed extension of a nonconforming structure will not be substantially more detrimental to the neighborhood than the existing structure for the following reasons:
 - a. The proposed addition consists of 668 sq. ft. which will increase the already nonconforming FAR from .54 to .66 (where .41 is allowed by right).
 - b. The structure is nonconforming with regard to the number of stories as the basement , which will not be enlarged with living space, qualifies as a story.
 - c. The proposed addition is located on the rear of the house and will be minimally visible to abutters or from the street, and the property complies with dimensional standards for lot coverage and open space.
 - d. The proposed addition has been designed in keeping with the architecture and roofline of the existing house and complies with all setback requirements.
 - e. Construction of the addition without a retaining wall, which would have allowed the addition by right, is preferable to minimize disturbance to the natural grade and drainage patterns.
 - f. With the removal of a significant portion of the driveway, the petitioners are decreasing the overall amount of impervious surface on the lot as a result of this project.

PETITION NUMBER: #62-12

PETITIONER: Charlotte N. Duhamel & Gregory P. Licholai

LOCATION: 43 Hillside Road, Section 52, Block 10, Lot 4 containing approximately 8,365 sq. ft. of land

OWNER: Charlotte N. Duhamel & Gregory P. Licholai

ADDRESS OF OWNER: 43 Hillside Road, Newton, MA 02461

TO BE USED FOR: Addition to rear of existing house

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §30-15, Table 1 and §30-21(b) to extend a structure which is nonconforming with regard to the number of stories; Ordinance Z-77, Section 30-15(u)(2) and §30-21(b) to extend a structure which is nonconforming with regard to FAR (from .54 to .66 where .41 is allowed; §30-23 for site plan approval; and §30-24(d) for special permit approval

ZONING: Single Residence 2 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:
 - Topographic Site Plan Showing Proposed Conditions at #43 Hillside Road, prepared by VTP Associates, signed and stamped by Joseph R. Porter, Surveyor, dated 11/1/11
 - Architectural plans, signed and stamped by Michael Huller, Architect, dated 8/20/11 and Revised 12/2/11
 - A4: Exterior Elevations (North)
 - A5: Exterior Elevations (West)
 - A6: Exterior Elevations (East)
 - Left Elevation Amended 3/8/12
2. 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. obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
3. No 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 a statement by a registered architect and Land Surveyor certifying that the building and site have been constructed in compliance with plans approved in Condition #1.
 - b. submitted to the Department of Inspectional Services, and the Department of Planning and Development each, a final as-built survey plan in paper and digital format.