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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: October 13, 2016
Land Use Action Date: December 8, 2016
City Council Action Date: January 9, 2017
90-Day Expiration Date: January 11, 2017

DATE: October 7, 2016

TO: City Council

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

SUBJECT: **Petition #289-16**, for SPECIAL PERMIT/SITE PLAN APPROVAL to FURTHER EXTEND NONCONFORMING FAR by regrading the property to construct a two car garage in the existing basement space at 35 Lenox Street, Ward 3, West Newton, on land known as SBL 32047 0006, containing approximately 9,969 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: 7.3.3, 7.4, 3.1.9.A.2, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

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 that the Land Use Committee of the City Council can consider at a subsequent working session.



35 Lenox Street

EXECUTIVE SUMMARY

The property at 35 Lenox Street consists of a 9,969 square foot corner lot in a Single Residence 1 (SR1) district in West Newton. Located at the southwest corner of Lenox and Regent streets, it is improved with a three-story, 3,760 square foot single-family dwelling constructed in 1876. The applicant proposes to regrade portions of the property and construct a two-car garage in the dwelling's existing basement and an associated 45 foot long driveway. Due to the existing grade of the property, the basement is not currently included in the dwelling's floor area ratio (FAR). While the applicant will not be constructing additional floor space pursuant to this petition, regrading the lot to expose a portion of the basement so as to allow vehicular access would render 234 square feet of area in the basement includable in the dwelling's FAR. As such, the proposed changes will further increase the already nonconforming FAR from 0.38 to 0.40 where 0.33 is the maximum allowed by right, requiring a special permit.

The Planning Department is not concerned with the proposed regrading, the creation of a basement level two-car garage and its associated driveway or the resulting increase in the dwelling's FAR as the proposed work will not increase the existing size, footprint or height of the dwelling while providing enclosed, off-street parking.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Board should consider whether:

1. The proposed regrading of the lot and associated creation of a driveway and a two-car garage in an existing basement, which will further increase the nonconforming floor area ratio (FAR) from 0.38 to 0.40 where 0.33 is the maximum allowed, will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§7.8.2.C.2)
2. The proposed increase in FAR from 0.38 to 0.40, where 0.33 is the maximum allowed by right, is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood. (§3.1.9.A.2)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The neighborhood surrounding the subject property is almost uniformly comprised of single-family residences. This corresponds with the area's uniform single residence zoning, predominantly SR1 and including an SR2 district located one block to the northwest. **(Attachments A & B).**

B. Site

The subject property is a 9,969 square foot lot at the southwest corner of Lenox and

Regent streets in a SR1 District improved with a single-family dwelling built in 1876. The dwelling is currently under renovation. The site has several mature trees and shrubbery, especially along its Lenox Street frontage. The grade is rather level, but does slope upward from the adjacent sidewalks toward the dwelling.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

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

B. Building and Site Design

The applicant proposes to construct a two-car garage within the dwelling's existing basement and create an associated driveway on the property's Regent Street side by installing retaining walls and regrading portions of the lot. The grade of the property on either side of the driveway would slope upward from the back of the sidewalk toward the house by approximately five and a half feet.

The driveway would measure 1,200 square feet and approximately 45 feet in length. Its width would vary from 20 feet at the back of the sidewalk to approximately 25 feet at the garage entrance. The driveway would slope slightly downward from both ends of the driveway to its midpoint.

No additional space will be constructed to accommodate the proposed garage. It will utilize existing basement space that, due to the lot's current grade, does not presently count toward the dwelling's FAR. However, by exposing a portion of the basement, the proposed regrading of the lot in the area of the driveway and garage entry would render a portion of the basement's floor area countable toward the dwelling's FAR, further extending it from the already nonconforming 0.38 to 0.40 where 0.33 is allowed by right.

The Planning Department is not concerned with the proposed regrading, the creation of a basement level two-car garage and its associated driveway or the resulting increase in the dwelling's FAR as the proposed work will not increase the existing size, footprint or height of the dwelling while providing enclosed, off-street parking.

C. Parking and Circulation

The proposed changes would create a new two-car garage in the dwelling's existing basement, and associated driveway on the Regent Street side of the property, requiring a new curb cut.

D. Landscape Screening

The Planning Department suggests that in the event the requested special permit is

granted, the petitioner consider installing some vegetative screening on the sides of the proposed driveway, consistent with allowing adequate, safe sightlines for drivers along Regent Street as well as those entering and exiting the driveway.

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 Memorandum, the petitioner is seeking the following relief:

- §3.1.9.A.2, §7.8.2.C.2 of Section 30, to further extend nonconforming FAR.

B. Engineering Review:

The Engineering Division of Public Works reviewed and approved the site plan for this project on May 31, 2016.

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 Order

ATTACHMENT A



Existing Land Use 35 Lenox St.

City of Newton,
Massachusetts

Legend

Land Use

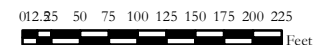
Land Use

-  Single Family Residential
-  Multi-Family Residential

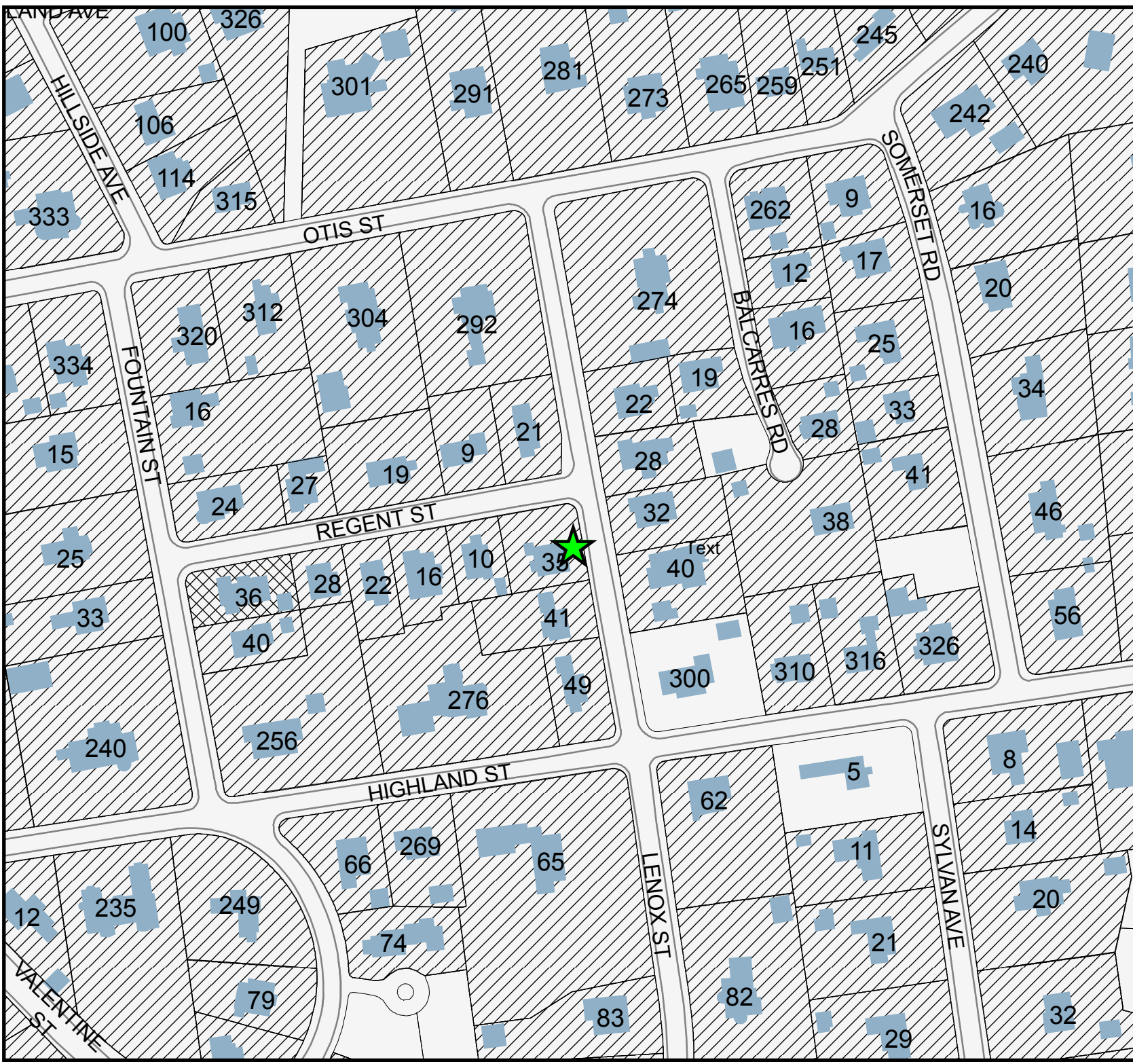


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

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



Map Date: October 05, 2016






ATTACHMENT B

Existing Zoning 35 Lenox St.

*City of Newton,
Massachusetts*

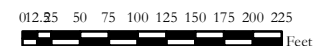
Legend

-  Single Residence 1
-  Single Residence 2
-  Public Use

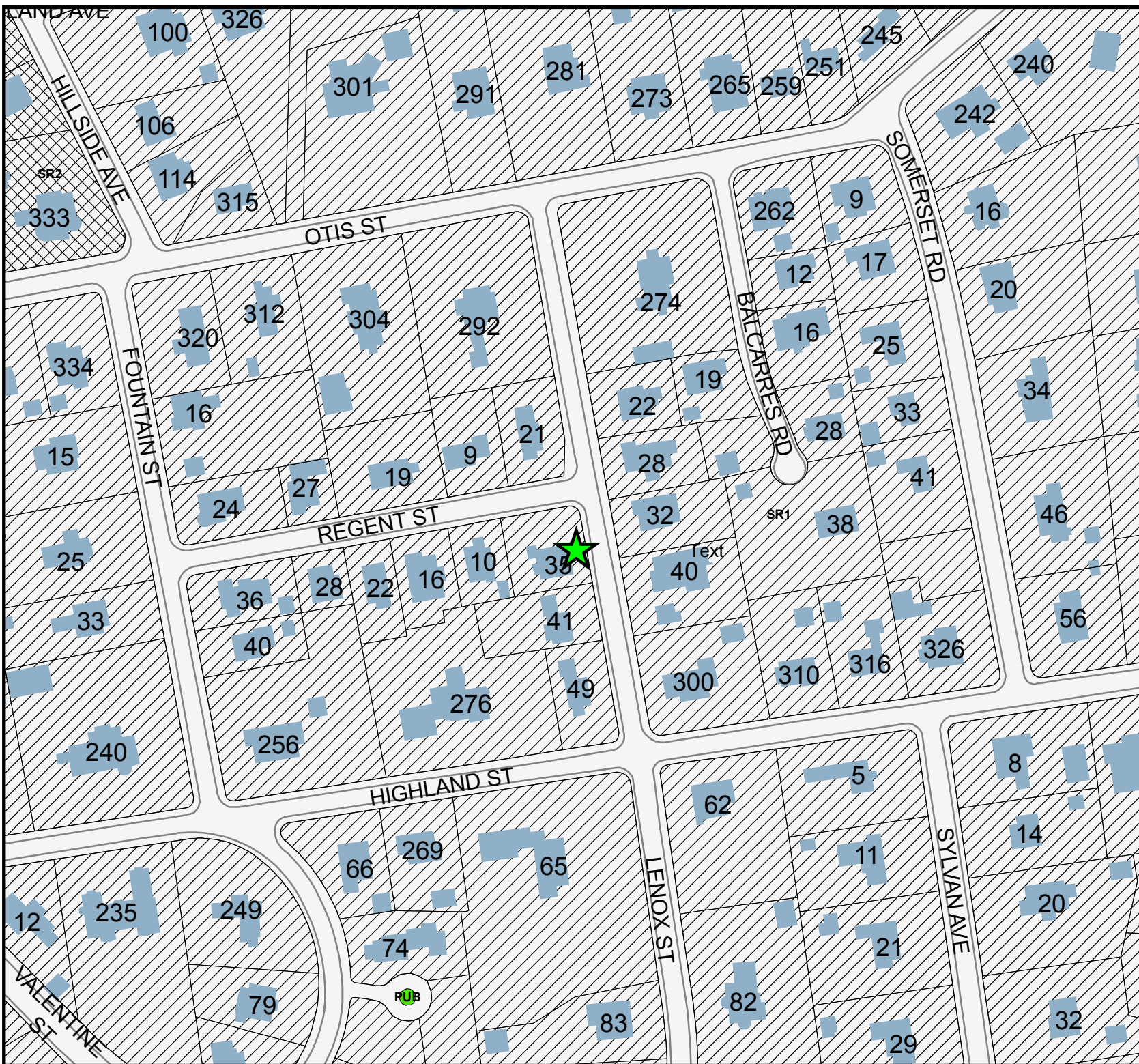


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas Greenfield



Map Date: October 07, 2016





Setti D. Warren
Mayor

ATTACHMENT C
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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: August 25, 2016

To: John Lojek, Commissioner of Inspectional Services

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

Cc: James Beninati, 35 Lenox Street LLC
Barney S. Heath, Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: **Request to further extend nonconforming FAR**

Applicant: 35 Lenox Street LLC	
Site: 35 Lenox Street	SBL: 32047 0006
Zoning: SR1	Lot Area: 9,969 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 35 Lenox Street consists of a 9,969 square foot lot improved with a single-family dwelling constructed in 1876. The applicant proposes to regrade the property so as to construct a two-car garage in the existing basement space. While the applicant will not be adding any additional construction to the existing dwelling, regrading the landscape to access the basement level will now make a portion of the basement count toward FAR where it doesn't in its current configuration. The proposed changes will further extend the already nonconforming FAR, requiring a special permit.

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

- Zoning Review Application, prepared by James Beninati, applicant, submitted 7/12/2016
- Site Plan, signed and stamped by Robert Bibbo, surveyor and Tsung Ting Chang, Engineer, dated 5/12/2016
- Architectural Plans, signed and stamped by Afab Enterprises, engineer, dated 4/2/2016
- FAR worksheet, dated 7/12/2016, revised 8/18/2016

ADMINISTRATIVE DETERMINATIONS:

- The applicant proposes to construct a basement level two-car garage within the existing basement space of the existing dwelling. The applicant intends to create the access to the garage by regrading and constructing retaining walls. No additional space will be constructed to accommodate the garage, it will utilize existing basement space. The existing nonconforming FAR of the structure as it is currently configured is .38, which exceeds the .33 allowed by the Ordinance. The proposed regrading of the surrounding landscape produces an FAR of .40, which further extends the nonconforming FAR and requires a special permit per Sections 3.1.9.A.2 and 7.8.2.C.2.

SR1 Zone	Required	Existing	Proposed
Lot Size	15,000 square feet	9,969 square feet	No change
Frontage	100 feet	195 feet	No change
Setbacks <ul style="list-style-type: none"> • Front (Lenox St) • Front (Regent St) • Side • Rear 	25 feet 25 feet 12.5 feet 25 feet	20.18 feet 41.17 15 feet 28.46 feet	No change No change No change No change
Building Height	36	45.3 feet	No change
Max Number of Stories	2.5	3	No change
Open Space Minimum	65%	70.8%	No change
Lot Coverage Maximum	20%	17.2%	No change
FAR	.33	.38	.40

- See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.9.A.2 §7.8.2.C.2	Request to further extend nonconforming FAR	S.P. per §7.3.3

ATTACHMENT D

DRAFT #289-16
35 Lenox St.

CITY OF NEWTON
IN CITY COUNCIL

October 17, 2016

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 further extension of the dwelling's already nonconforming floor area ratio (FAR) from 0.38 to 0.40 where 0.33 is the maximum allowed by right, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Marc Laredo:

1. The proposed regrading of the lot so as to allow the construction of a two-car garage in the existing nonconforming dwelling's existing basement and an associated 45 foot long driveway and retaining walls, will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood and will provide enclosed, off-street parking. (§7.8.2.C.2)
2. The proposed increase in FAR from 0.38 to 0.40, where 0.33 is the maximum allowed by right, is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood as the increase would be the result of the proposed regrading of the lot and not of any increase in the existing size, footprint or height of the existing dwelling. (§3.1.9.A.2)

PETITION NUMBER: #289-16

PETITIONER: James Chiasson and James Beninati

LOCATION: 35 Lenox Street, on land known as Section 32, Block 47, Lot 06, containing approximately 9,969 square feet of land

OWNER: 35 Lenox Street LLC

ADDRESS OF OWNER: 73 Lexington Street
Newton, MA 02466

TO BE USED FOR: Single Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.9.A.2, §7.8.2.C.2, to further extend nonconforming floor area ratio (FAR)

ZONING: Single Residence 1 (SR1) 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. A plan entitled "Plan of Land – Newton, MA, Showing Proposed Driveway and Utilities # 35 Lenox Street," dated May 12, 2016, prepared by Bibbo Brothers and Associates, signed and stamped by Robert Bibbo, Professional Land Surveyor, and Tsung Ting Chiang, Registered Professional Engineer.
 - b. A set of plans and elevations entitled "Proposed Renovation By Inline Construction, 35 Lenox St. Newton, MA," signed and stamped by Andrew S. Bradshaw, Registered Professional Engineer:
 - i. front and left side elevations, dated February 23, 2016 (Page 1),
 - ii. rear and right side elevations, dated April 2, 2016 (page 2),
 - iii. Exist. Basement Plan & Proposed Basement Plan, dated April 2, 2016 (Page 3).
2. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:
 - 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.
3. No Final Inspection/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

or land surveyor certifying compliance with Condition #1, including the as built FAR of the structure.

- 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 licensed 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.