



#129-14 (2)

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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

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### PUBLIC HEARING MEMORANDUM

Public Hearing Date: January 5, 2020  
Land Use Action Date: March 9, 2021  
City Council Action Date: March 15, 2021  
90-Day Expiration Date: April 4, 2021

DATE: December 31, 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 #129-14 (2)**, for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit #129-14 to raze a detached garage and to construct an attached garage and mudroom addition, increasing the nonconforming FAR from .44 to .48, where .29 is allowed Ward 3, West Newton, on land known as Section 32 Block 49 Lot 07, containing approximately 19,071 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 3.1.3, 3.1.9, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

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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.



96 Lenox Street

*A public hearing memorandum was issued on September 4, 2020. The petitioner submitted a revised application on November 12, 2020 accounting for an adjustment of the existing and proposed floor area ratio (FAR). The public memorandum has been updated to reflect the additional relief and additional materials received.*

### **EXECUTIVE SUMMARY**

The property located at 96 Lenox Street consists of a 19,071 square foot lot in the Single Residence 1 (SR-1) zone in West Newton. The lot is improved with a single-family residence constructed circa 1875 as well as a three-car detached garage. Special Permit #129-14 was granted in 2014 that allowed the construction of the three-car garage which increased the FAR from .36 to .37. The petitioners are seeking to raze the three-car garage and construct an attached garage addition. The proposed garage addition increases the nonconforming FAR from .44 to .48, where .29 is the maximum allowed by right, requiring an amendment to the prior special permit. With the removal of the existing garage, the proposed garage addition adds a net 700 square feet to the site, resulting in a 9,143 square foot structure where 5,531 square feet is the maximum allowed by right.

The Planning Department is unconcerned with the request to further increase the nonconforming floor area ratio. The proposed addition meets all setback requirements and is consistent with the size and scale of the homes in this neighborhood. Additionally, the amount of impervious surface would decrease by approximately 10%.

#### **I. SIGNIFICANT ISSUES FOR CONSIDERATION**

When reviewing this request, the Council should consider whether:

- The site is an appropriate location for proposed attached garage addition (§7.3.3.C.1);
- The proposed attached garage addition will adversely affect the neighborhood (§7.3.3.C.2);
- The proposed attached garage addition 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);
- The proposed increase in nonconforming FAR and is not substantially more detrimental than the existing nonconforming structure is to the neighborhood (§3.1.9 and §7.8.2.C.2);
- The proposed increase in the nonconforming FAR from .44 to .48, where .29 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, and §7.8.2.C.2).

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

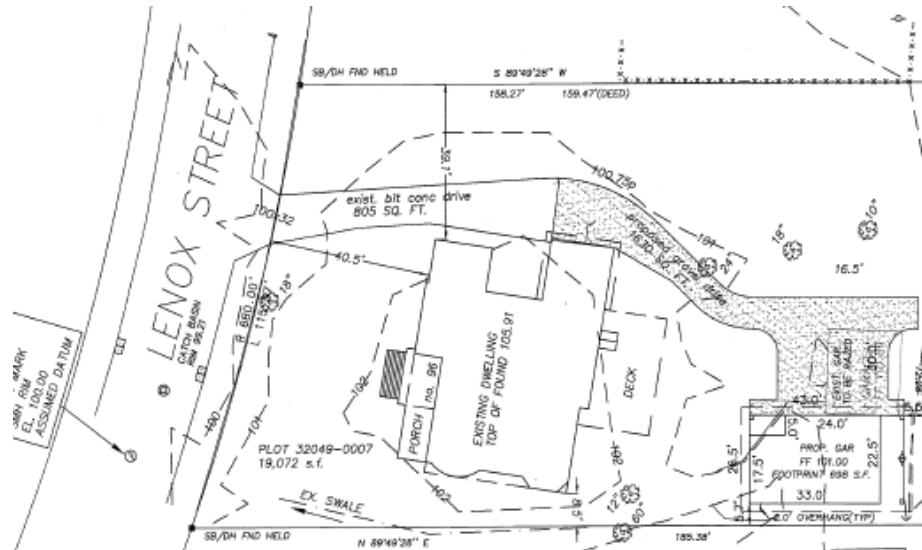
The subject property is located on Lenox Street in the SR-1 zone in West Newton. The surrounding area and neighborhood are within the Single Residence 1 zoning district and consist of predominantly single-family residential uses (**Attachments A & B**). In the surrounding neighborhood, there are similarly sized lots with similarly sized single family dwellings.

B. Site

The site consists 19,071 square feet of land and is improved with a single-family residence and a detached garage. The lot is served by one curb cut on Lenox Street, leading to a driveway and an 825 square foot detached garage at the southeastern corner of the site. The height of the single-family dwelling is nonconforming with a height of 36.32 feet, where 36 feet is the maximum allowed by right.

Special Permit #129-14 was granted in 2014 to allow a three-car garage which increased the FAR from .36 to .37. The as-built FAR of .44 differs from the approved FAR of .37. The discrepancy is due to multiple miscalculations of the floor area on each floor and the garage when the prior owners completed the detached garage. In the prior application in July of 2020, the existing floor area in the basement was miscalculated. The basement counts a story, and the floor area in the basement was not fully accounted for. This resulted in an additional of 1,067 square feet of floor area that counts towards the existing floor area, for a total of 2,003 square feet of floor area in the basement.

### Existing Conditions



### III. PROJECT DESCRIPTION AND ANALYSIS

#### A. Land Use

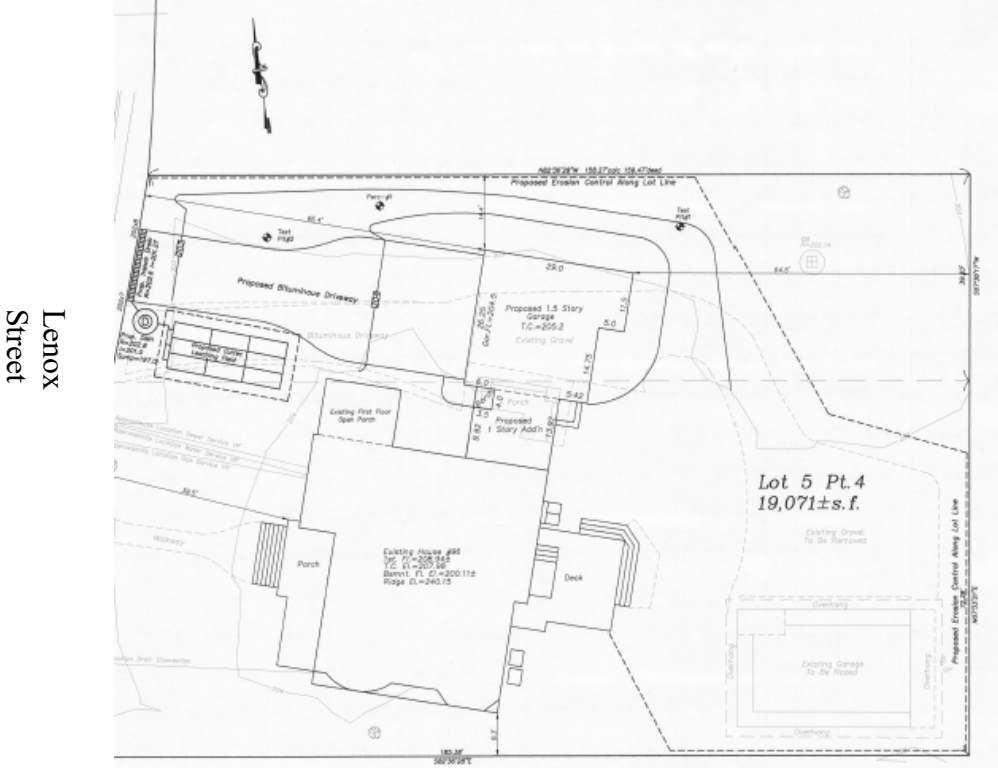
The principal use of the site is and will remain single-family.

#### B. Building and Site Design

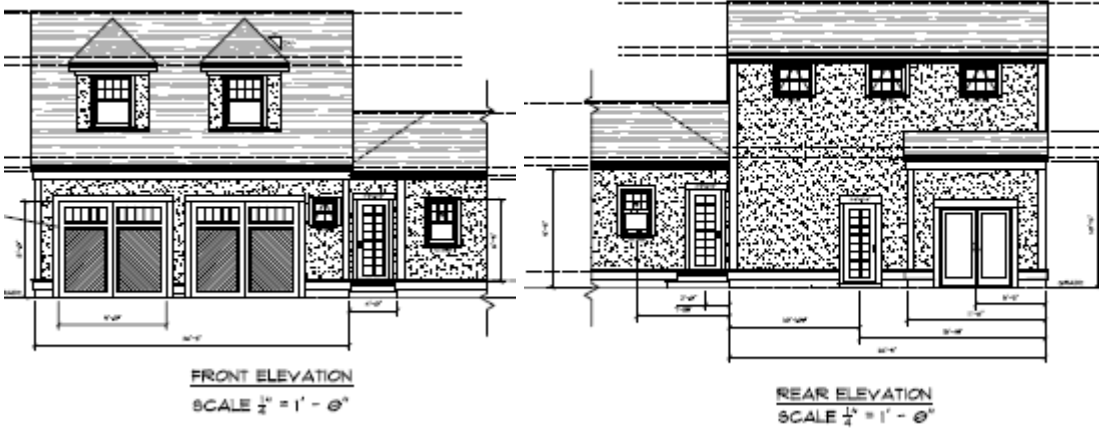
The petitioners are seeking to raze the 825 square foot detached garage located in the southeast corner of the site and to construct an attached two car garage with living space above to the northern elevation of the single-family home. The proposed addition adds 1,504 square feet to the structure, resulting in a 9,143 square foot structure where 5,531 square feet is the maximum allowed by right. The footprint of the existing structure will increase by an additional 802 square feet. The proposed addition results in an increase in the nonconforming FAR from .44 to .48, where .29 is the maximum allowed by right. The proposed addition has no significant impact on setbacks, decreases the lot coverage and increases the open space by approximately 10%.

The Planning Department is unconcerned with the attached garage addition because it is consistent with the size and scale of the neighboring homes and meets all other dimensional requirements for an old lot in the SR-1 zoning district. The proposed removal of the existing garage and shortening the driveway to accommodate the addition decreases the lot coverage, and increases the open space

Proposed Site Plan



Elevations (attached garage only):



C. Parking and Circulation

The petitioners are proposing to reconfigure the site's parking and circulation by demolishing the existing three car garage constructing an attached garage. The proposed configuration will decrease the amount of paving.

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:

- To amend Special Permit #129-14
- §3.1.9, 3.1.3 and §7.8.2.C.2 of Section 30, to further increase the nonconforming FAR

B. Engineering Review

This petition does not meet the minimum threshold for Engineering Review.

C. Historic Preservation Review

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

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

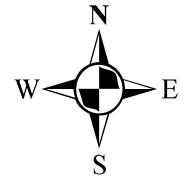
## Zoning

### 96 Lenox Street

*City of Newton,  
Massachusetts*

## Zoning

-  Single Residence 1
-  Public Use

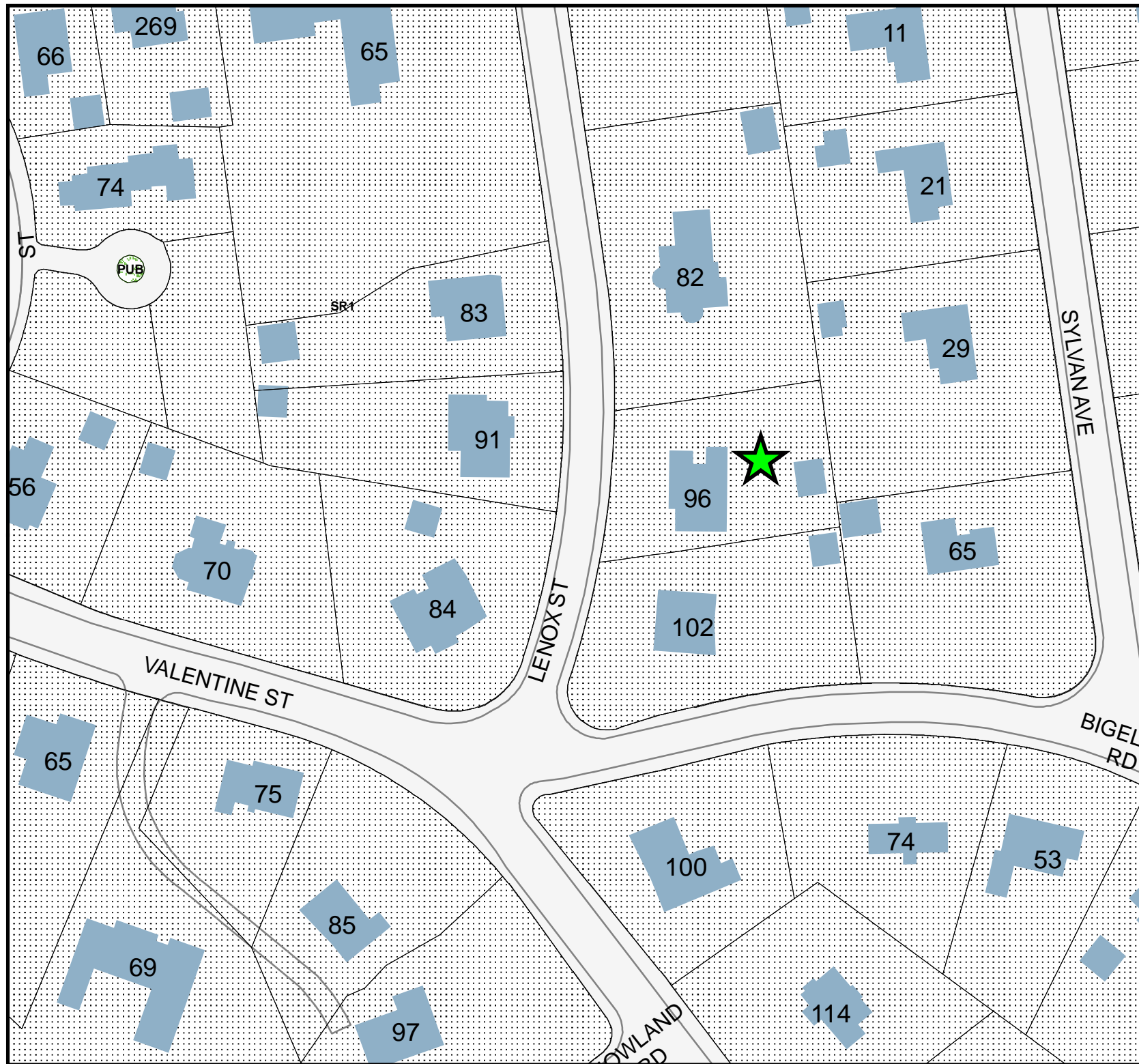


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Ruthanne Fuller  
GIS Administrator - Douglas Greenfield

0 12.5 25 50 75 100 125 Feet

Map Date: August 20, 2020







# ATTACHMENT B

## Land Use

### 96 Lenox Street

*City of Newton,  
Massachusetts*

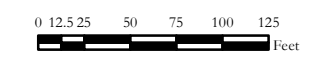
## Land Use

-  Single Family Residential
-  Vacant Land

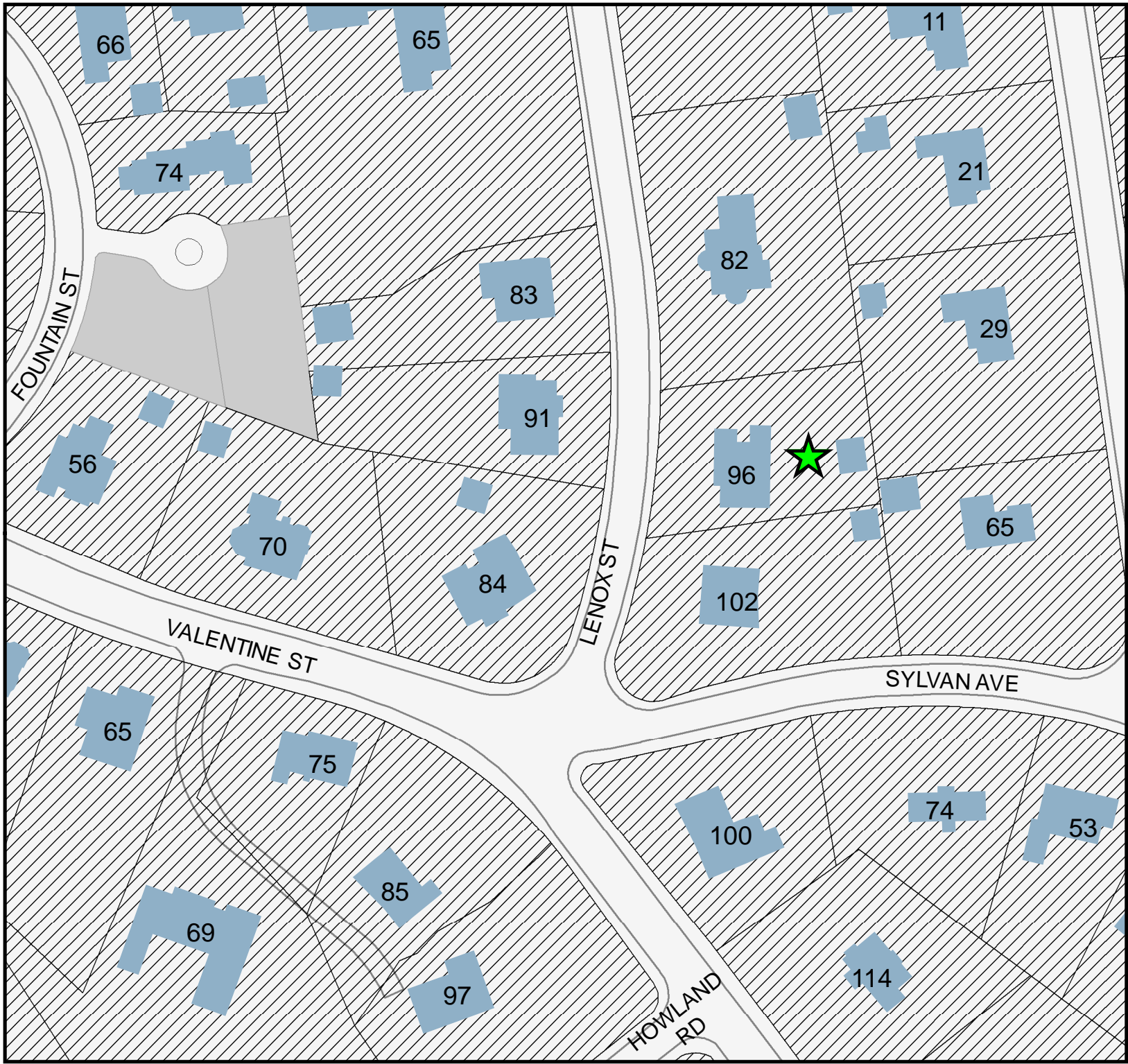


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Map Date: August 20, 2020







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Mayor

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**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: November 9, 2020

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Jeremy Shinewald, Applicant  
Joseph Walsh, Contractor  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Associate City Solicitor

**RE: Request to amend Special Permit #129-14 and to further increase nonconforming FAR**

Applicant: Jeremy Shinewald	
Site: 96 Lenox Street	SBL: 32049 0007
Zoning: SR1	Lot Area: 19,071 square feet
Current use: Single-family dwelling	Proposed use: No change

### BACKGROUND:

The property at 96 Lenox Street consists of a 19,071 square foot lot improved with a single-family residence constructed in 1875 and a detached three-car garage reconstructed by special permit in 2014. The petitioner proposes to raze the detached garage and construct an attached two-car garage and mudroom addition, as well as enclosing a porch for year-round use. The proposed changes will further increase the 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 Joseph Walsh, contractor, submitted 5/5/2020
- FAR Worksheet, submitted 5/5/2020
- Proposed Site Plan, signed and stamped by Verne T. Porter, surveyor, dated 3/16/2020
- Architectural Plans, prepared by Rockwood Design, architect, dated 2/12/2020

**ADMINISTRATIVE DETERMINATIONS:**

1. The petitioner intends to raze the 825 square foot detached garage and construct a one-story addition consisting of a two-car garage and mudroom. The petitioner is also seeking to enclose an existing porch. The proposed additions add 699 square feet to the dwelling. The site is governed by Special Permit #129-14 which allowed an increase in the nonconforming FAR from .36 to .37. However, an as-built calculation of the FAR indicates the FAR is currently .44. The proposed additions increase the nonconforming FAR from .44 to .48, requiring an amendment to the special permit per sections 3.1.3, 3.1.9 and 7.8.2.C.2.

SR1 Zone	Required	Existing	Proposed
Lot Size	15,000 square feet	19,071 square feet	No change
Frontage	100 feet	115 feet	No change
Setbacks			
• Front	25 feet	39.5 feet	No change
• Side	12.5 feet	8.5 feet	No change
• Side	12.5 feet	>30 feet	14.4 feet
• Rear	25 feet	>65 feet	64.5 feet
Max Number of Stories	2.5	2.5	No change
Max Height	36 feet	<b>36.32 feet</b>	<b>36.24 feet</b>
FAR	.29 (.37 by SP 129-14)	<b>.44</b>	<b>.48</b>
Max Lot Coverage	20%	18%	17%
Min. Open Space	65%	63.9%	74.2%

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
	Amend Special Permit #129-14	
§3.1.3, §3.1.9 §7.8.2.C.2	Request to increase nonconforming FAR	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 amend Special Permit #129-14, increase the nonconforming FAR of .44 to .48 where .29 is the maximum allowed by right, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The site is an appropriate location for proposed attached garage addition that increases the nonconforming FAR because the proposed addition meets all other dimensional standards for the SR-1 zoning district (§7.3.3.C.1).
2. The proposed attached garage addition that increases the nonconforming FAR will not adversely affect the neighborhood because the proposed addition meets all other dimensional standards for the SR-1 zoning district (§7.3.3.C.2).
3. The proposed attached garage addition will not create a nuisance or serious hazard to vehicles or pedestrians because all parking is contained on site and project results in a shorter driveway (§7.3.3.C.3).
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved because the site complies with the zoning ordinance regarding driveway width and the number of parking stalls (§7.3.3.C.4).
5. The proposed increases in nonconforming FAR is not substantially more detrimental than the existing nonconforming structure is to the neighborhood because the proposed addition meets all setback requirements and is consistent with the size and scale of the homes in this neighborhood (§3.1.9 and §7.8.2.C.2).
6. The proposed increase in the nonconforming FAR from .44 to .48, where .29 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 because proposed addition meets all setback requirements and is consistent with the size and scale of the homes in this neighborhood (§3.1.9, and §7.8.2.C.2).

PETITION NUMBER: #129-14 (2)

PETITIONER: Jeremy Shinewald

LOCATION: 96 Lenox Street, on land known as Section 32, Block 49, Lot 07, containing approximately 19,071 square feet of land

OWNER: Jeremy Shinewald

ADDRESS OF OWNER: 96 Lenox Street  
Newton, MA 02492

TO BE USED FOR: Single Family Dwelling with Attached Garage

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.3, §3.1.9 and §7.8.2.C.2 to increase the nonconforming floor area ratio

ZONING: Single Residence 1 district

Approved subject to the following conditions:

Prior special permits for this property is as follows: Council Order #129-14 (1) to increase the nonconforming Floor Area Ratio from .36 to .37.

This special permit supersedes all prior special permits and consolidates and incorporates herein those conditions and provisions from such prior special permits that remain applicable, are still in full force and effect, and are set forth in this special permit. Any conditions in such prior special permits not set forth in this special permit are null and void.

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 Conditions Site Plan at 96 Lenox Street, signed and stamped by Verne T Porter, Professional Land Surveyor, sated March 16, 2020, most recently revised November 2, 2020
  - b. Architectural Plans, "Shinewald, Jeremy -Joe Walsh, 96 Lenox Street", prepared by Rockwood Design, Inc., unsigned and unstamped, dated February 13, 2020 consisting of eleven (11) sheets:
    - i. Locus Map/Title Page

- ii. Front Elevation, A2
  - iii. Rear Elevation, A2.2
  - iv. Left Elevation, A2.3
  - v. Proposed First Floor Plan, A3.1
  - vi. Proposed Second Floor Plan, A4.1
  - vii. Proposed Roof Plan, A6.1
  - viii. Building Section A-A, A8
  - ix. Proposed Foundation Plan, S1.1
  - x. First Floor Framing Plan, S3
  - xi. Second Floor Framing Plan, S4
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, Engineering Division of Public Works, and Fire Department.
3. 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 council 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 council 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.
4. 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 an architect or land surveyor certifying compliance with Condition #1 as well as the as-built floor area ratio 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 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.