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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: February 2, 2021
Land Use Action Date: April 6, 2021
City Council Action Date: April 19, 2021
90-Day Expiration Date: May 2, 2021

DATE: January 29, 2021

TO: City Council

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

SUBJECT: **Petition #30-21**, petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit Board Orders #94-16 and #227-17 to substitute the previously approved site plan with an as-built site plan reflecting additional features which include changes to paving, landscaping, the addition of a paved patio area and additional stone pillars at 2171 Commonwealth Avenue, Ward 4, Auburndale, on land known as Section 41 Block 18 Lot 32A, containing approximately 20,952 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 7.3.3, 7.4 of Chapter 30 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.



2171 Commonwealth Avenue

EXECUTIVE SUMMARY

The property at 2171 Commonwealth Avenue consists of an approximately 20,952 square foot lot abutting Lyons Field. Located within a Single Residence 3 (SR3) zoning district, the property is improved with a single-family dwelling constructed in 1968. In 2016 the petitioner was granted a special permit (Order #94-16) allowing a two-story addition with a 1,169 square foot footprint to the rear of the house that includes a four-car garage with living space above.

The Petitioner obtained an amendment to Special Permit #94-16 (Special Permit #227-17) to modify the previously approved site plan to allow already-constructed but not approved features, including a retaining wall under four feet in height within the side setback along the southwestern property line and associated regrading, as well as eight pillars along the front property line and three along the northeast property line with related fencing.

In 2019 the Petitioner sought (Petition #227-17(2)) to amend the amended Special Permit so as to allow several additional already-constructed features, including approximately 1,000 square feet of additional paved driveway area, a paved patio area, approximately 30 additional stone pillars and associated stone walls and iron fencing along the entire length of the property's eastern boundary lines and a motorized gate control system. The petitioner withdrew that petition after one public hearing.

The present petition seeks approval of the same site plan for which Petition #227-17(2) sought approval.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The site is an appropriate location for the additional paved driveway and patio areas, the stone pillars and associated stone walls and iron fencing, and/or the motorized gate control system (§7.3.3.C.1);
- The additional paved driveway and patio areas, the stone pillars and associated stone walls and iron fencing, and/or the motorized gate control system will adversely affect the neighborhood (§7.3.3.C.2);
- There will be no 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 at 2171 Commonwealth Avenue directly abutting

Lyons Field. Consistent with the surrounding neighborhood north of Commonwealth Avenue, the site is developed with a single-family dwelling. The site and surrounding area north of Commonwealth Avenue are zoned Single Residence 3, while across Commonwealth Avenue is a mix of Multi Residence 1, Multi Residence 2, and Business 1 zoning districts (**Attachments A and B**).

B. Site

The property consists of an approximately 20,952 square foot, generally flat lot improved with a single-family raised ranch constructed in 1968 and expanded pursuant to Special Permit #94-16. The property is accessed via an asphalt and cobblestone driveway connecting to both Commonwealth Avenue to the south and Regina Road to the east and the northernmost corner of the site. The remaining portions of the site are now generally occupied by lawn area, shrubbery trees and patio deck space as well as stone pillars and walls and associated iron fencing along the entire length of the property's eastern and southern boundary lines.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

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

B. Building and Site Design

When the petitioner applied for a Certificate of Occupancy pursuant to the original approved Special Permit #94-16, the then-submitted "as-built" plans indicated the existence of several features not approved by that special permit, including a retaining wall of just under four feet in height along the property's southwest boundary (facing the adjacent public parkland and Commonwealth Avenue), grading approximately four feet higher in some locations than the approved site plan, and pillars and associated fencing along the southern and northeastern property boundaries. The previously unreviewed retaining wall and grade change raised concerns, especially given their location near and/or within a city sewer easement that crosses the property and the retaining wall's visibility from Commonwealth Avenue and Lyons Park.

The City Council granted Special Permit #227-17 amending Special Permit #94-16 to modify the approved site plan to reflect this additional work.

When the petitioner subsequently sought a Certificate of Occupancy pursuant to Special Permit #227-17, the submitted as-built plans and a view of the site indicated that further additional work, inconsistent with the amended site plan, had been installed, including:

- a) approximately 1,000 square feet of additional paved driveway area in the northern corner of the property,
- b) a paved patio area along the western property line shared with the adjacent city park

- c) approximately 30 stone pillars and associated stone walls and iron fencing along the entire length of the property's eastern boundary lines shared with abutting properties, as well as a motorized gate opening system.

(Please note that at the June 11, 2019 public hearing on the subsequently withdrawn Petition #227-17(2), the petitioners indicated that they had received a Fence Permit for the installation of fencing on the property. The Planning Department notes that the permit describes that project merely as such: "Install 6' vertical wrought iron fence setback 3' from property line on front, rear, & side property. BETTER SIDE OUT" with no reference made to the installed masonry pillars and low walls.)

The as-built site conditions for which the present petition is seeking to have approved include 61.5% open space. While this is above the required 50%, it is below the 76.2% that was approved per the previous amendment, Special Permit #227-17.

C. Parking and Circulation

In addition to the parking and circulation areas approved by Special Permits #94-16 #227-18, there is now, as referenced above, an additional approximately 1,000 square feet of paved driveway space in the northern corner of the site. This area is directly adjacent to the parcel's northeastern property line shared with a Regina Road abutter, with some screening.

D. Landscape and Screening

As discussed above, approximately 30 additional stone pillars and associated stone walls and iron fencing have been installed along the entire length of the property's eastern boundary lines.

Regarding vegetation, numerous trees and shrubs have been installed along the periphery of the property, albeit located largely within the fencing and walls along the several of the property's boundary lines.

In the event the present petition is granted, the Planning Department recommends that before any final Certificate of Occupancy is issued for this property the petitioner should provide a final as-built plan evidencing the installation of all landscaping required as shown by plans cited in Condition #1 of Special Permit #227-17, except as modified by the presence of any additional paved areas approved pursuant to this petition.

IV. TECHNICAL REVIEW

A. Engineering Review

At the time of the submission of the now-withdrawn Petition #227-17(2), the additional paved areas and stone walls raised concerns related to drainage and stormwater, especially given the proximity of abutting homes and public parkland.

The Planning Department referred this work to the Engineering Division for its review. (The Planning Department notes that on March 6, 2019, the Engineering Division stamped as approved the as-built site conditions, including those features for which the immediately preceding petition sought, and the present petition is seeking, Special Permit/Site Plan approval.)

While its review was not available at the time of the June 11, 2019 hearing on Petition #227-17(2), the Engineering Division subsequently issued a memorandum on the identical then- and now- “proposed” (but currently “as-built”) site plan. The memorandum discusses the installation of dry well system added to receive runoff from the Special Permit-approved addition and that runoff from the expanded paved area at the north of the site is expected to remain on site and not impact the neighboring property at which is at a higher grade than the subject parcel. It also discusses the need for the petitioner to receive a license from the City for the structures that have been constructed within a city-owned easement on the property **(Attachment C)**

V. PETITIONER’S RESPONSIBILITIES

The petitioner should be prepared to respond to all comments and concerns regarding the work done in excess of that approved by the previously approved and amended special permit(s).

ATTACHMENTS:

- Attachment A:** Land Use Map
- Attachment B:** Zoning Map
- Attachment C:** Engineering Division memorandum
- Attachment D:** DRAFT Order

ATTACHMENT A








Land Use

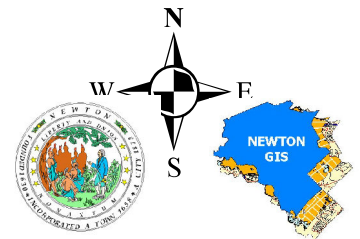
2171 Commonwealth Ave.

City of Newton, Massachusetts

Land Use

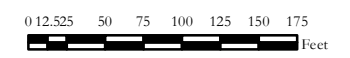
Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Mixed Use
-  Open Space
-  Nonprofit Organizations
-  Vacant Land

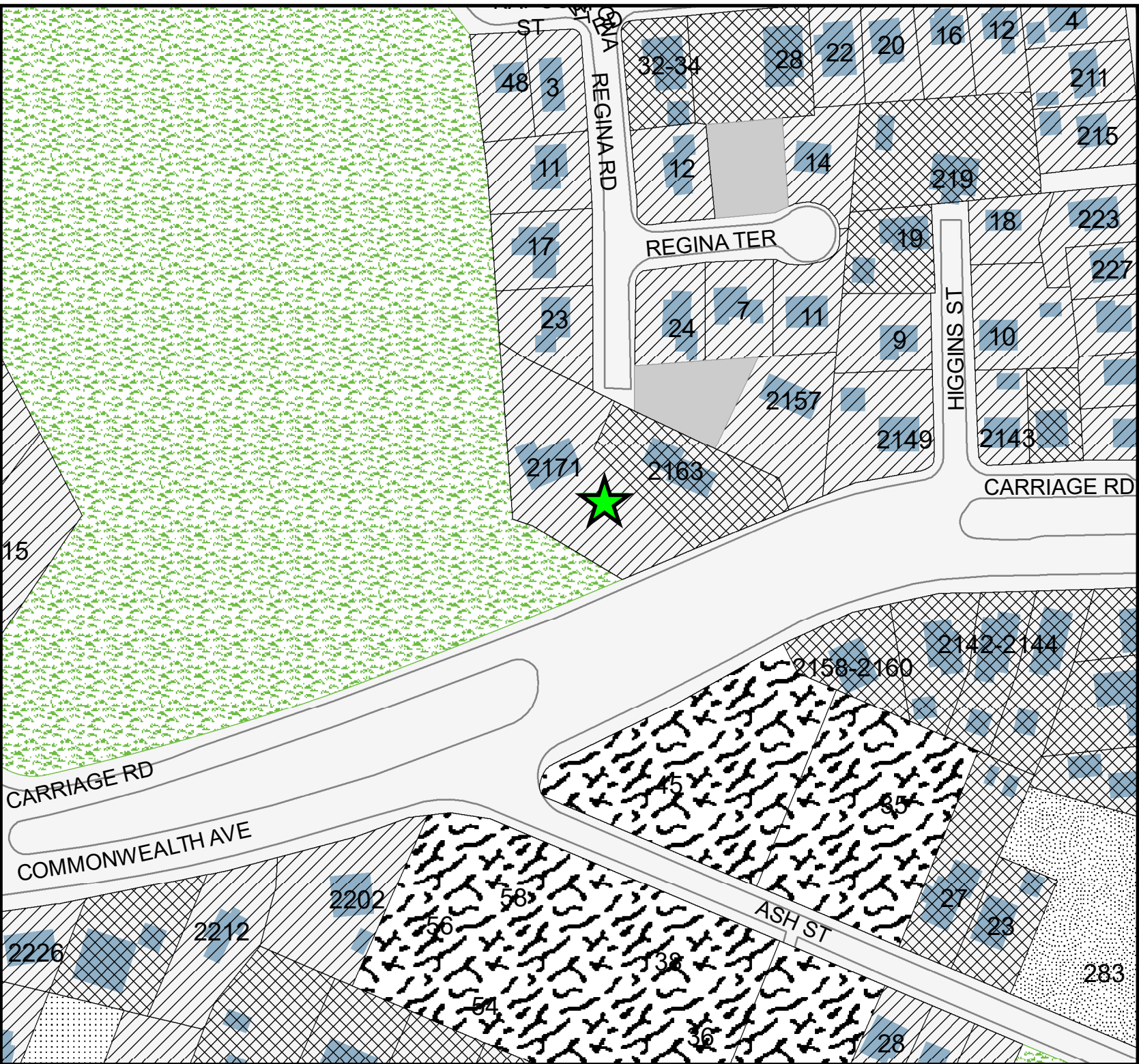


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

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



Map Date: January 28, 2021







ATTACHMENT B

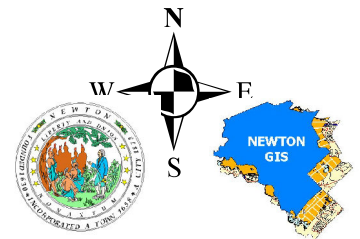
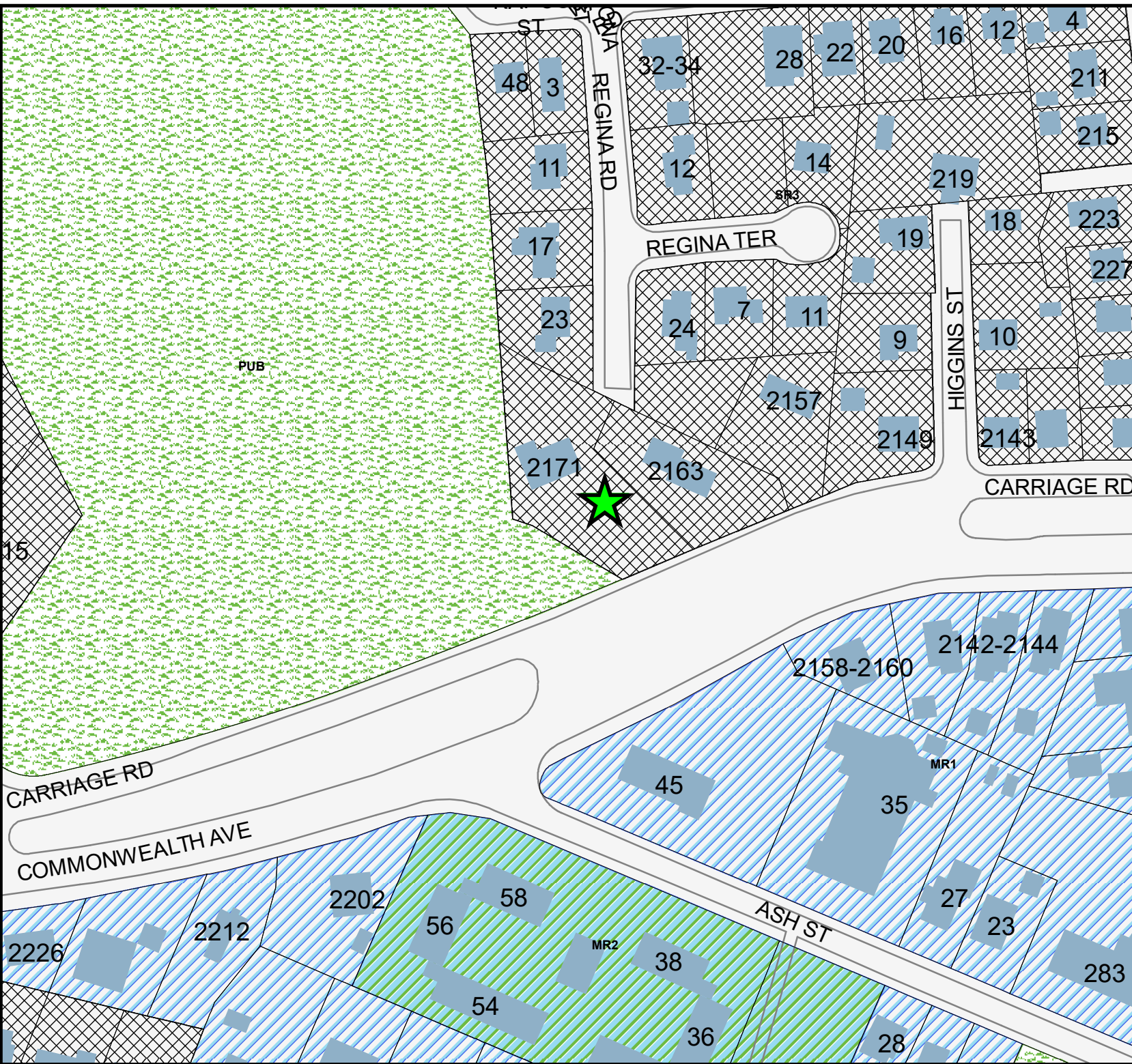
Zoning

2171 Commonwealth Ave.

*City of Newton,
Massachusetts*

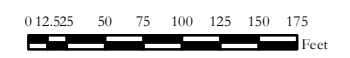
Legend

-  Single Residence 3
-  Multi-Residence 1
-  Multi-Residence 2
-  Public Use



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



ATTACHMENT C

CITY OF NEWTON Department of Public Works ENGINEERING DIVISION

MEMORANDUM

To: Council Gregory Schwartz, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – 2171 Commonwealth Avenue

Date: July 25, 2019

CC: Barney Heath, Director of Planning
Jennifer Caira, Chief Planner
Lou Taverna, PE City Engineer
Nadia Khan, Committee Clerk
Michael Gleba, Sr. Planner

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

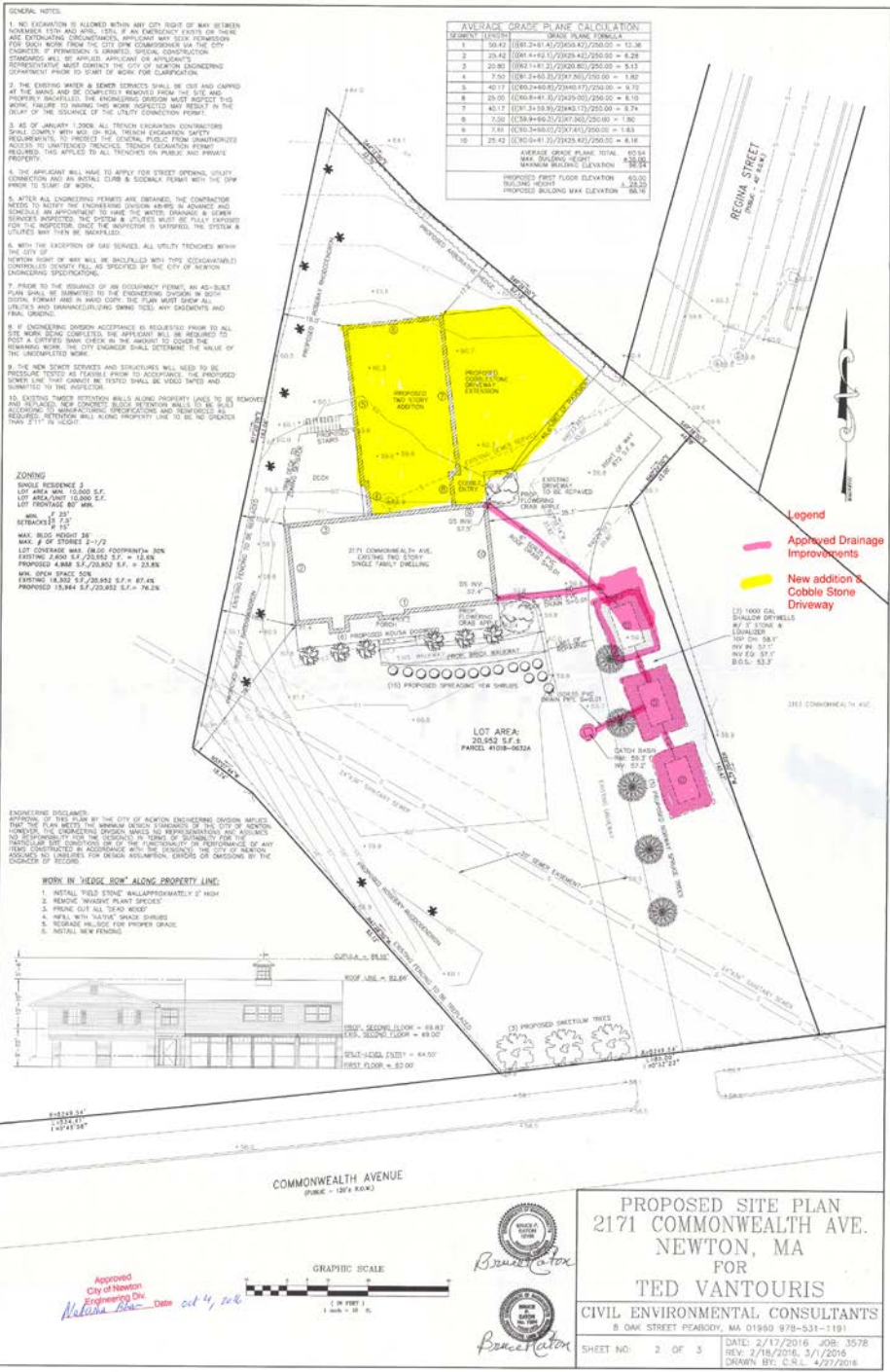
*Proposed Site Plan
2171 Commonwealth Avenue
Newton, MA
Prepared By: Civil Environmental Consultants
Approved Oct 12, 2016 for Building Permit*

&

*As Built Site Plan
2171 Commonwealth Avenue
Newton, MA
Prepared by: Civil Environmental Consultants
Dated: 4-24-'19*

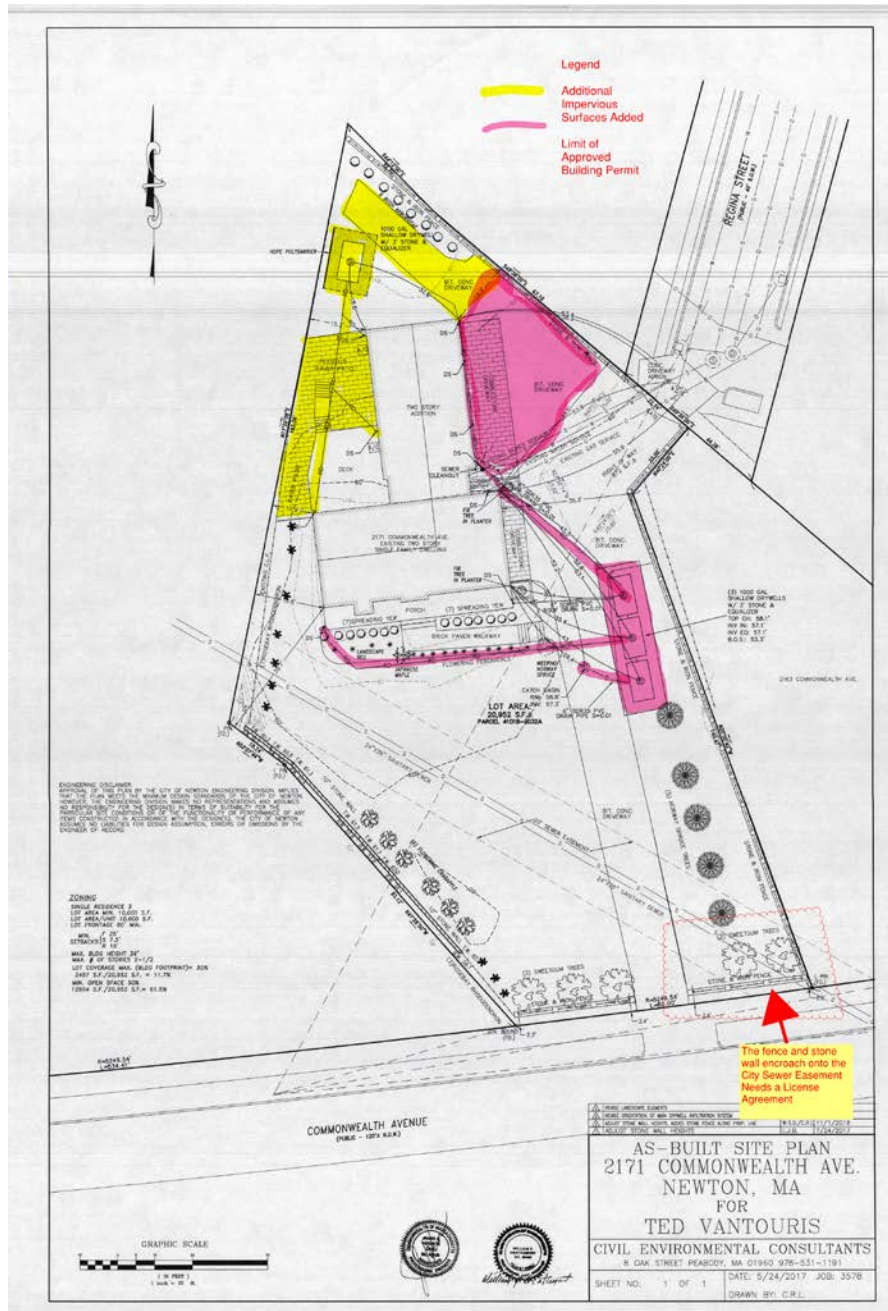
Executive Summary:

This site received a Building Permit approval on October 16, 2016 for an addition and expanded driveway, the proposed drainage improvements were designed to collect runoff from the addition, the existing and expanded driveway, see attached plan.



Approved Building Permit Plan Dated: October 4, 2016

The As built plan shows that the applicant expanded the driveway beyond what was approved on the original Building Permit. This plan has an extend hammerhead turnaround added (highlighted in yellow are: approximately 625 square feet and pervious patio area approximately 567 square feet) toward the west property line. The as built plan also shows additional dry well system added to receive runoff from the new addition and the existing home, however not from the hammerhead, (see plan below).



As Built Plan Dated: 4-24-'19

Additionally, a stone wall and iron fence have been installed along the frontage and specifically on top of the City Sanitary sewer main easement, this will require a License Agreement.

Based on a site visit yesterday and observing the expanded hammerhead area (from outside the fence), it appears that any runoff from this area will remain on site sheet off towards the existing lawn and not impact the neighboring property at # 23 Regina Road which is at a higher elevation than this property.

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.

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the 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 to amend the site plan for SPECIAL PERMIT/SITE PLAN APPROVAL #227-17, which amended SPECIAL PERMIT/SITE PLAN APPROVAL #94-16, which allowed construction of a two-story garage/barn-style addition to the rear of an existing structure to allow a private garage with a footprint of 1,169 square feet, by substituting the herein approved site plan with an As-Built plan showing several additional features, including approximately 1,000 square feet of additional paved driveway area, a paved patio area, approximately 30 additional stone pillars and associated stone walls and iron fencing, 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 the additional paved driveway and patio areas, the stone pillars and associated stone walls and iron fencing, and the motorized gate control system, as the installed stormwater management system is adequate and the site exceeds the minimum open space requirements (§7.3.3.C.1);
2. The additional paved driveway and patio areas, the stone pillars and associated stone walls and iron fencing, and the motorized gate control system will not adversely affect the neighborhood, as the installed stormwater management system is adequate and the site exceeds the minimum open space requirements (§7.3.3.C.2);
3. There will be no 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: #227-17(2) (amending Special Permit/Site Plan Approval #227-17)

PETITIONER: Theodore Ventouris and Angelina Ventouris

LOCATION: 2171 Commonwealth Avenue, Section 41, Block 18, Lot 32A,
containing approximately 20,952 square feet of land

OWNER: Theodore Ventouris and Angelina Ventouris

ADDRESS OF OWNER: 2171 Commonwealth Avenue
Newton, MA

TO BE USED FOR: Single-Family Residence

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §7.3.3.C.2, request to amend Special Permit/Site Plan Approval
#9227-17 by substituting a new site plan

ZONING: Single Residence 2 District

Approved subject to the following conditions:

1. All conditions set forth in Special Permit/Site Plan Approvals #94-16 and #227-17 shall remain in full force and effect with the exception that the following plans are substituted for the plans identified in Condition 1(i-iii), and the buildings, parking areas, driveways, walkways, landscaping and other site features associated with Special Permit/Site Plan Approvals #94-17 and #227-17 shall be located and constructed consistent with the plans as originally identified in Condition 1 and as amended by the following plans:
 - i. "Existing Conditions Site Plan, 2171 Commonwealth Ave., Newton MA for Ted Vantouris," prepared by Civil Environmental Consultants, dated 2/17/2016 as revised through 4/27/2016 and signed and stamped by Bruce P. Eaton, Professional Engineer and Professional Land Surveyor.
 - ii. "As-Built Site Plan, 2171 Commonwealth Ave., Newton MA for Ted Vantouris," prepared by Civil Environmental Consultants, dated 5/24/2017 as revised through 4/24/2019 and signed and stamped by James A. Herrion, Registered Engineer and William R. Dentremont, Professional Land Surveyor.
 - iii. "Detail Sheet, Proposed Site Plan, 2171 Commonwealth Ave., Newton MA for Ted Vantouris," prepared by Civil Environmental Consultants, dated 2/17/2016 as revised through 4/27/2016 and signed and stamped by Bruce P. Eaton, Professional Engineer.
2. No Final Inspection and/or Occupancy Permit for the buildings 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 a registered architect or engineer certifying compliance with Condition #1.

- b. Filed with the Clerk of the Board, the Department of Inspectional Services and the Department of Planning and Development a statement from the Engineering Division of the Department of Public Works certifying that improvements authorized by this Order have been constructed to the standards of the City of Newton Engineering Department.
- c. Provided a final Operations and Maintenance Plan (O&M) for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be adopted by applicant, incorporated into the deeds; and recorded at the Middlesex Registry of Deeds. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.
- d. 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. These plans shall confirm the modifications to the nonconforming deck have been completed and include all required landscaping as shown by plans cited in Condition #1.