



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

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Ruthanne Fuller
Mayor

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: March 2, 2021
Land Use Action Date: May 11, 2021
City Council Action Date: May 17, 2021
90-Day Expiration Date: May 31, 2021

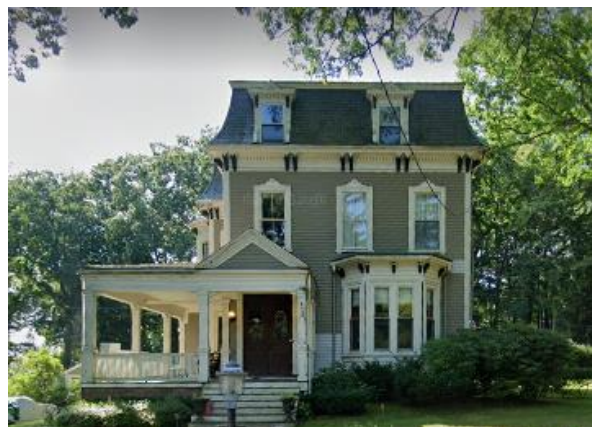
DATE: February 26, 2021

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 #130-17 (3)**, for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Council Order #130-17 to allow changes to grading, driveway design, and new landscape elements, and to allow the further extension of the nonconforming building height at 164 Highland Avenue, Ward 2, on land known as Section 24, Block 12, Lot 20, containing approximately 26,154 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: 7.3, 7.4, 3.1.3, 7.8.2.C.2 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.



164 Highland Avenue

EXECUTIVE SUMMARY

The property located at 164 Highland Ave consists of a 26,154 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 1890 and a detached garage. The property is governed by Special Permit #130-17 which allowed the construction of an oversized attached garage with more than three vehicles and to exceed the floor area ratio (“the FAR”). The petitioners require relief to extend the nonconforming building height due to a prior miscalculation of the building height. The petitioners are also seeking a special permit to amend the site plan approved by the prior special permit to construct a pool and allow site modifications of landscaping and retaining walls.

The relief for the nonconforming height represents a technicality in the measurement of the height of the structure and there are no changes proposed to the single-family dwelling and attached garage addition from the previously approved plans. The proposed modifications to the site plan are within the dimensional standards of the Ordinance, have little to no impact on setbacks and would be allowed as of right were it not for the prior special permit.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The specific site an appropriate location for the proposed changes to grading, driveway design, and new landscape elements (§7.3.3.C.1);
- The proposed changes to grading, driveway design, and new landscape elements will adversely affect the neighborhood (§7.3.3.C.2);
- The proposed changes to grading, driveway design, and new landscape elements will create a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3); and
- 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 the nonconforming height is not substantially more detrimental than the existing nonconforming structure is to 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 the southern side of Highland Avenue in the SR-1 zone in West Newton. The SR-1 zone encompasses the properties south and west of the site, while the Single Residence 2 zone encompasses north and east of the site (**Attachment A**). Highland Avenue consists of predominantly single-family

residential uses with multi residential uses north and south of the site (**Attachment B**).

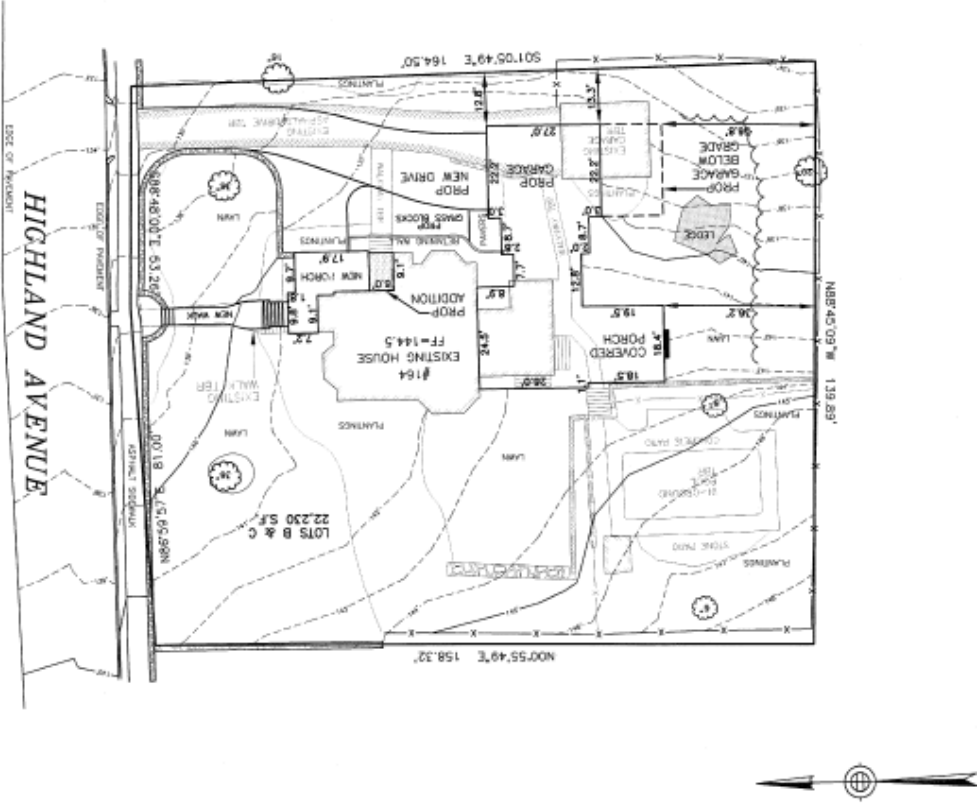
B. Site

The site consists of 22,231 square feet of land and is improved with a single-family dwelling constructed circa 1890. The lot is served by one curb cut providing access to a paved driveway that runs along the eastern property line and leads to a detached garage. The site slopes upwards from the northwest corner of the lot to the southeast corner and represents a grade change of approximately 12 feet. In the southeast corner of the site is a dilapidated pool, which is to be removed. The site features landscaping along the property lines and in the front yard.

C. Property History

The property is governed by Special Permit #130-17 which allowed the construction of a 1,500 square foot, six-car attached garage addition and granted an increase in the FAR from .19 to .28, where 27 is the maximum allowed as of right. Following the issuance of the special permit, it was discovered that the building height was miscalculated, thus requiring relief for the extension of the nonconforming building height.

Previously Approved Special Permit Plans -2017



III. PROJECT DESCRIPTION AND ANALYSIS

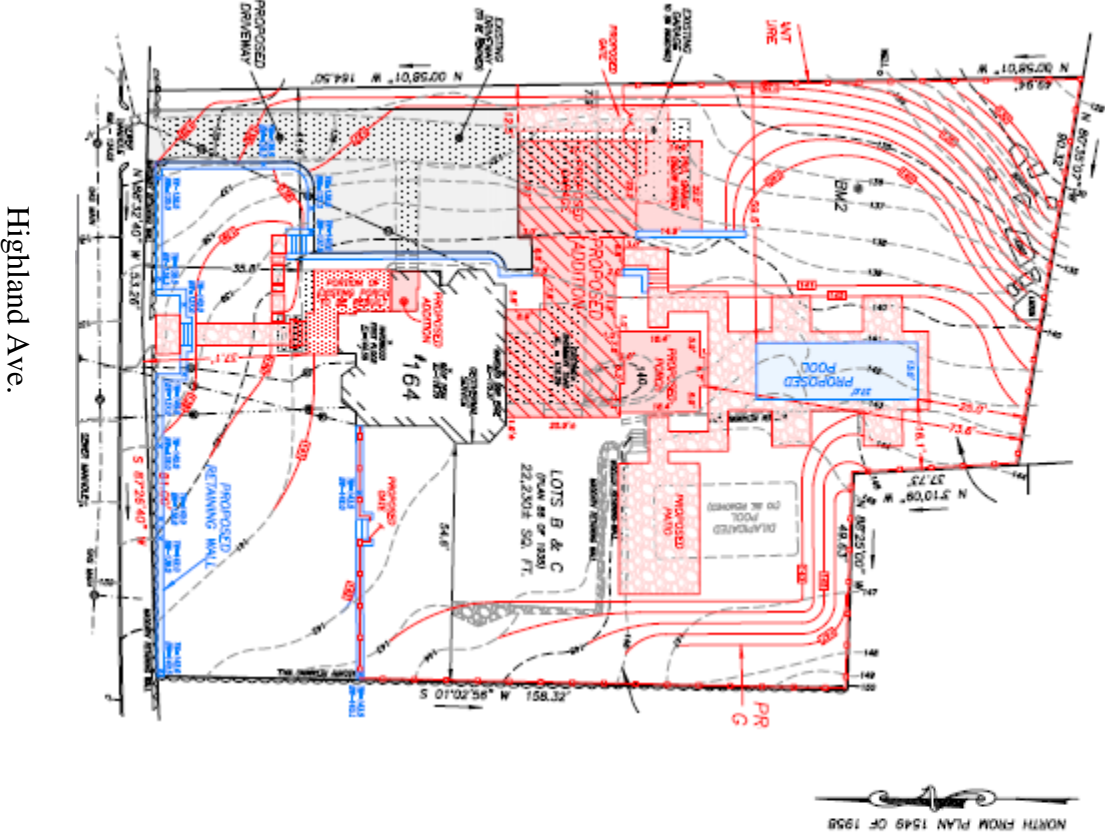
A. Land Use

The principal use of the site will remain a single-family residential use.

B. Site Design

The petitioners are seeking to amend the previously approved site plan by constructing a 480 square foot in-ground pool in the rear yard with proposed patio space around the pool and separate patio space in the western side yard. The petitioners are also proposing retaining walls in the front setback and along the driveway. The retaining walls reach a maximum height of 3.5 feet.

Proposed Site Plan



C. Building Design

Special Permit #130-17 allowed for the construction of an attached garage greater than 700 square feet which accommodates more than three vehicles, and an increase in FAR from .19 to .28. The petitioners are increasing the lot area with the acquisition of a 3,924 square foot unimproved lot to the rear of the property. Due to the increase in lot area, the FAR is now compliant with a proposed FAR of .24 where .27 is the maximum allowed as of right.

Due to a prior miscalculation in the building height, the existing height is nonconforming at 38.4 feet where 36 ft is the maximum allowed as of right. Due to the addition in a lower portion of the lot the average grade is reduced and results in a taller building height of 39.6 feet. The principal ridgeline is not changing; however, a special permit is required for the increase in the nonconforming height of the structure.

There are no proposed changes to the previously approved attached garage addition or the single-family dwelling.

D. Parking and Circulation

The previously approved plans show plantings between the edge of the driveway and western property line, grass blocks and plantings between the interior edge of the driveway and retaining wall. The petitioners are proposing to replace the grass blocks with paving, and the paving will be screened by the proposed retaining wall.

E. 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 D**). Based on the completed Zoning Review Memorandum, the petitioner is seeking the following relief:

- To amend Special Permit #130-17
- §3.1.9 and §7.8.2.C.2 of Section 30, to further increase the nonconforming building height.

B. Engineering Review

If approved, the petition will be reviewed by the Engineering Division at the building permit stage. The petitioner should clarify the increase in impervious area from the 2017 Special Permit approved site plans and proposed amended site plan. A condition will be incorporated that the petitioner provide an O&M Plan to Engineering, should the Engineering Division require one.

C. Historic Preservation Review

The Chief Preservation Planner reviewed the proposed amendments to Special Permit #130-17 and determined further NHC review was not required.

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 Map Highland Ave., 164

*City of Newton,
Massachusetts*

Legend

-  Single Residence 1
-  Single Residence 2
-  Multi-Residence 1
-  Public Use
-  Building Outlines
-  Surface Water
-  Property Boundaries



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

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Feet

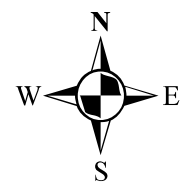
Map Date: February 18, 2021



Attachment B Land Use Map Highland Ave., 164 *City of Newton, Massachusetts*

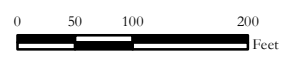
Legend

- Land Use**
-  Single Family Residential
 -  Multi-Family Residential
 -  Mixed Use
 -  Open Space
 -  Nonprofit Organizations
 -  Vacant Land
 -  Building Outlines
 -  Surface Water
 -  Property Boundaries

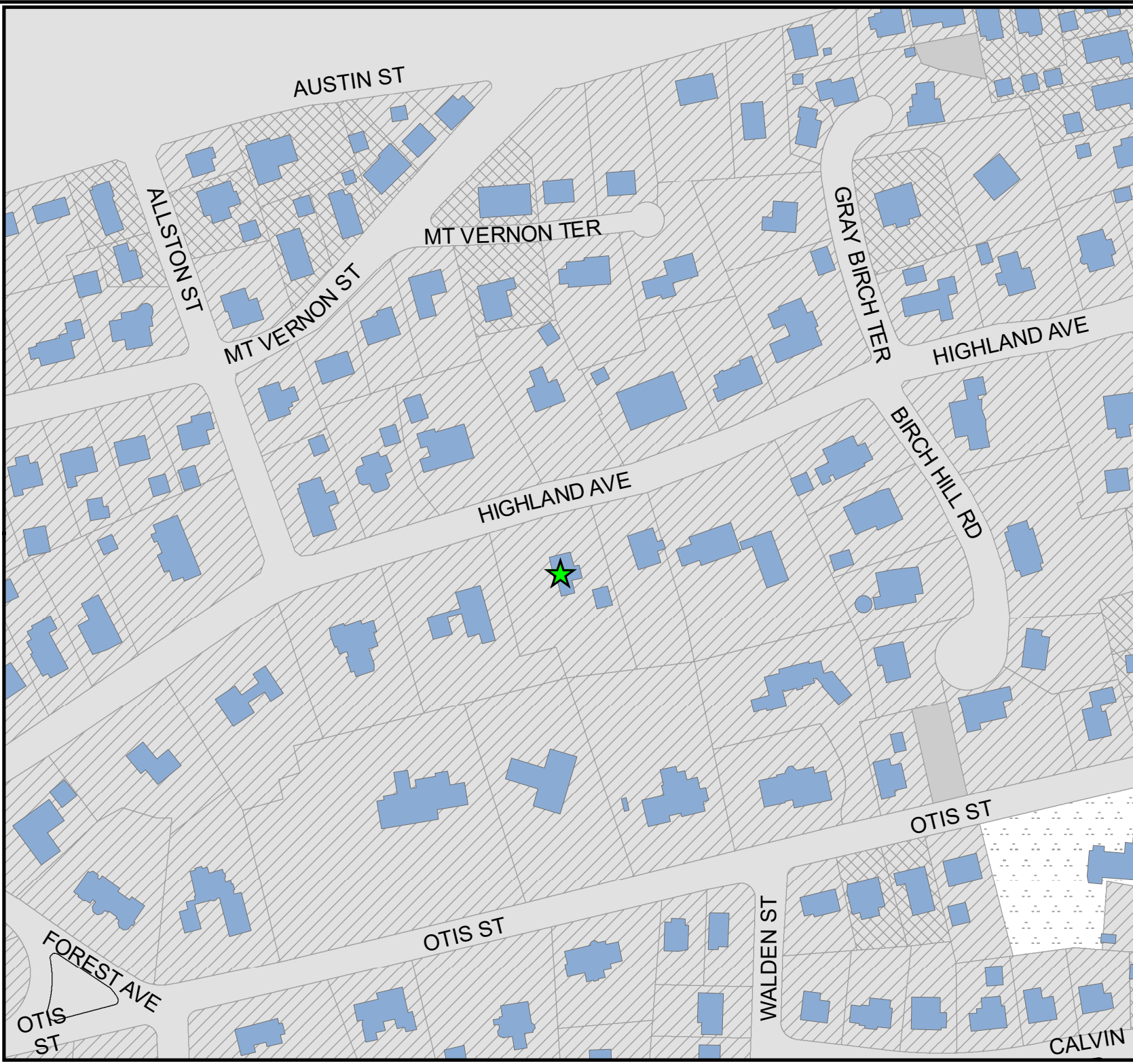


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas Greenfield



Map Date: February 18, 2021





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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: January 14, 2021

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Robert and Cindy Laughrea
Alan Mayer, Architect
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: **Request to further extend the nonconforming building height and to amend Special Permit #130-17**

| Applicant: Robert & Cindy Laughrea | |
|--|-------------------------------------|
| Site: 164 Highland Avenue | SBL: 24012 0020 |
| Zoning: SR1 | Lot Area: 26,154 square feet |
| Current use: Single-family dwelling | Proposed use: No change |

BACKGROUND:

The property at 164 Highland Avenue consists of two lots totaling 26,154 square feet, currently improved with a single-family dwelling constructed in 1890 and detached garage. The petitioners received a special permit in 2017 to exceed the floor area ratio and to construct an oversized attached garage. After the issuance of the special permit, it was determined that the average grade was miscalculated, and the correct measurement renders the building height nonconforming. The approved addition further increases the nonconforming building height, requiring a special permit. Further, the petitioners seek to add a parcel of land to the subject property. With the additional lot area, the relief for FAR is no longer required. They now seek to amend the existing special permit to allow for changes to the grading and driveway design, as well as new landscape elements including patios, wall, fences and a pool and to eliminate the FAR relief. As well, the petitioners intend to file an ANR plan to combine a rear lot with the existing lot.

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

- Zoning Review Application, prepared Alan Mayer, architect, submitted 12/10/2020
- Existing Condition Plan of Land, signed and stamped by John R. Hamel, surveyor, dated 12/9/2020
- Proposed Condition Plan of Land, prepared by John R. Hamel, surveyor, dated 12/9/2020
- FAR worksheet, signed and stamped by Alan J. Mayer, architect, submitted 12/10/2020

ADMINISTRATIVE DETERMINATIONS:

1. The petitioners received Special Permit #130-17 to exceed the FAR and the maximum size for a garage. After the special permit was granted, it was determined that the average grade, and thus the height of the dwelling, was miscalculated. The petitioners seek to amend the special permit to extend the nonconforming building height, and to make changes to the site plan.
2. The petitioners own a 3,924 square foot unimproved lot to the rear of the subject property. They intend to file an ANR plan eliminating the interior lot lines, creating one 26,154 square foot lot. Per section 7.8.4.D.6, the lot remains an old lot. However, after this change to the lot lines, if more than 50% of the dwelling is demolished, the new lot dimensional requirements will apply.
3. The petitioner was granted relief in the 2017 special permit to exceed the FAR, from .19 to .28, where .27 is the maximum allowed by right per sections 3.1.3 and 3.19. With the additional lot area provided by the rear lot, the proposed FAR is reduced .24, which complies with sections 3.1.3 and 3.19.
4. A new survey was done after the issuance of the special permit which determined that the dwelling has a nonconforming building height of 38.4 feet where 36 is that maximum allowed per section 3.1.3. The approved addition increases the nonconforming building height to 39.6 feet, requiring a special permit per sections 3.1.3 and 7.8.2.C.2.

| SR1 Zone | Required | Existing | Proposed |
|------------------|--------------------|--------------------|--------------------|
| Lot Size | 15,000 square feet | 22,230 square feet | 26,154 square feet |
| Frontage | 100 feet | 134 feet | No change |
| Setbacks | | | |
| • Front | 25 feet | 35.8 feet | 37.1 feet |
| • Side | 12.5 feet | 41.4 feet | No change |
| • Side | 12.5 feet | 54.6 feet | No change |
| • Rear | 25 feet | >50 feet | 25 feet (pool) |
| Height | 36 feet | 38.4 feet | 39.6 feet |
| Stories | 2.5 | 2.5 | No change |
| FAR | .27 | .19 | .24 |
| Max Lot Coverage | 20% | 10.2% | 12.9% |
| Min. Open Space | 65% | 84.8% | 78% |

1. See "Zoning Relief Summary" below:

| Zoning Relief Required | | |
|-------------------------------|--|------------------------|
| <i>Ordinance</i> | | <i>Action Required</i> |
| | Request to amend Special Permit #130-17 | |
| §3.1.3 §7.8.2.C.2 | Request to further extend nonconforming height | 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 allow site plan changes to grading, driveway design, and new landscape elements, and to allow the further extension of the nonconforming building height, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The specific site an appropriate location for the proposed changes to grading, driveway design, and new landscape elements because the site modifications comply with the dimensional standards of the Single Residence 1 zoning district (§7.3.3.C.1);
2. The proposed changes to grading, driveway design, and new landscape elements will not adversely affect the neighborhood because the site changes are located towards the rear of the property and will be minimally visible from the street (§7.3.3.C.2);
3. The proposed changes to grading, driveway design, and new landscape elements will not create a nuisance or serious hazard to vehicles or pedestrians because parking is contained on site (§7.3.3.C.3); and
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4).
5. The proposed increase in the nonconforming height is not substantially more detrimental than the existing nonconforming structure is to the neighborhood because the principal ridgeline is not increasing. (§3.1.9 and §7.8.2.C.2)

PETITION NUMBER: #130-17 (3)

PETITIONER: Robert Laughrea

LOCATION: 164 Highland Avenue, on land known as Section 24, Block 12, Lot 20, containing approximately 22,230 square feet of land

OWNER: Robert Laughrea

ADDRESS OF OWNER: 164 Highland Avenue
Newton, MA 02465

TO BE USED FOR: Single-Family dwelling with attached six car garage

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: To amend Special Permit #130-17 to allow site modifications (§7.3.3), and to further increase the nonconforming height (§3.1.9 and §7.8.2.C.2).

ZONING: Single Residence 1 district

The prior special permit for this property is Special Permit #130-17 which allowed the construction of a single-family dwelling with a private garage consisting of 1,500 square feet and accommodating six vehicles. This special permit supersedes and replaces Special Permit #130-17. Any conditions in prior special permits not set forth in this Special- Permit #130-17(3) are null and void.

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. Proposed Site Plan, signed and stamped by John R. Hamel, Professional Land Surveyor, dated February 22, 2021.
 - b. Architectural Plans and Elevations, signed and stamped by Alan J. Mayer, Registered Architect, consisting of seventeen (17) sheets:
 - i. A1-0 Existing Conditions, Basement Plan, dated April 12, 2017;
 - ii. A1-1 Existing Conditions, First Floor Plan, dated April 12, 2017;
 - iii. A1-2 Existing Conditions, Second Floor Plan, dated January 23, 2017;
 - iv. A1-3 Existing Conditions, Third Floor Plan, dated January 23, 2017;
 - v. A2-1 Existing Conditions, Existing Front Elevation, dated January 23, 2017;
 - vi. A2-2 Existing Conditions, Existing Side Elevation, dated January 23, 2017;
 - vii. A2-3 Existing Conditions, Existing Rear Elevation, dated January 23, 2017;
 - viii. A2-4 Existing Conditions, Existing Side Elevation, dated January 23, 2017;
 - ix. A3-0 Proposed Additions, Basement Plan, dated March 3, 2017;
 - x. A3-1 Proposed Additions, First Floor Plan, dated January 23, 2017;
 - xi. A3-2 Proposed Additions, Second Floor Plan, dated January 23, 2017;
 - xii. A3-3 Proposed Additions, Third Floor Plan, dated January 23, 2017;

- xiii. A4-1 Proposed Additions, Proposed Front Elevation, dated January 23, 2017;
 - xiv. A4-2 Proposed Additions, Proposed Side Elevation, dated January 23, 2017;
 - xv. A4-3 Proposed Additions, Proposed Rear Elevation, dated January 23, 2017; and
 - xvi. A4-4 Proposed Additions, Proposed Side Elevation, dated January 23, 2017.
2. There shall be no commercial automotive use of any sort conducted on site.
 3. There shall be no rental of any of the 6 parking spaces in the garage, and there shall be no second hand motor vehicle dealer license registered to this site, which license would be required if any person residing at the site sells more than three (3) motor vehicles in any calendar year.
 4. The petitioner shall comply with the Noise Ordinance.
 5. When either of the two lifts in the garage is in operation, the garage doors shall be closed.
 6. 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.
 7. 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 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 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. The petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management, should such a system be required, to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be recorded by the petitioner at the Middlesex South District Registry of Deeds. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.
 - e. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
 5. 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 statements by a registered architect

and professional 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.

DRAFT