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Mayor

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#177-21

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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date:	June 22, 2021
Land Use Action Date:	September 14, 2021
City Council Action Date:	September 20, 2021
90-Day Expiration Date:	September 20, 2021

DATE: June 17, 2021

TO: City Council

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

SUBJECT: **Petition #177-21** for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a second story within the footprint of the existing dwelling, increasing the nonconforming FAR and creating a three-story structure at **540 Dudley Road**, Ward 8, Newton Centre, on land known as Section 82 Block 27 Lot 02, containing approximately 14,971 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.

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.



540 Dudley Road

EXECUTIVE SUMMARY

The subject property at 540 Dudley Road consists of a 14,971 square foot lot in a Single Residence 1 (SR1) district improved with a 4,725 square foot single-family dwelling, with a basement level two-car attached garage, constructed in 1950. Due to the average grade of the property, the basement level is considered the first story, rendering the existing ranch-style house a “two-story” structure.

The petitioners propose to construct a 1,473 square foot addition within the existing footprint of a portion of the dwelling, resulting in a 6,198 square foot structure. The proposed addition would further increase the property’s existing nonconforming floor area ratio (FAR) from 0.32 to 0.41 where 0.31 is the maximum allowed per Section 3.1.9 of the Newton Zoning Ordinance (NZO), requiring a special permit pursuant to Sections 3.1.3, 3.1.9 and 7.8.2.C.2.

The proposed addition would also increase the dwelling to three stories, where 2.5 is the maximum allowed per Section 3.1.3 of the NZO, requiring a special permit for a three-story single-family dwelling.

The Planning Department is generally not concerned with the proposal given the topography of the parcel and the neighborhood, that the addition would have limited visibility from adjacent properties and public ways, and the expanded structure would be dimensionally similar in size and scale to other structures in the area.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- the proposed expanded structure as designed with a floor area ratio (FAR) of 0.41 where 0.32 exists and 0.31 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 (§3.1.9.2)
- the proposed expanded structure as designed with a floor area ratio (FAR) of 0.41 where 0.32 exists and 0.31 is the maximum allowed by right is substantially more detrimental than the existing nonconforming use to the neighborhood (§7.8.2.C.2)
- the site in a SR1 district is an appropriate location for the proposed dwelling as designed with three-stories where 2 ½ stories is the maximum allowed by right (§7.3.3.C.1)
- the proposed expanded dwelling as designed with three-stories where 2 ½ stories is the maximum allowed by right will adversely affect the neighborhood (§7.3.3.C.2)
- the proposed expanded dwelling as designed with three-stories where 2 ½ stories is the maximum allowed by right 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)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on the north side of Dudley Road just west of Brookline Street. The site, like the lots in the surrounding neighborhood, is occupied by a single-family dwelling, (**Attachment A**). The site and surrounding area to the west and south are zoned Single Residence 1 (SR1); the area to the north and east is zoned Single Residence 2 (SR2) (**Attachment B**).

B. Site

The subject property at consists of a 14,971 square foot lot improved with a 4,725 square foot single-family dwelling. The lot slopes approximately 3-4 feet downward from front to back (west to east).

Vehicular access to the lot is provided via a circular driveway in the front of the parcel served by two curb cuts, and some additional driveway space on the right (south) side of the property. The site features lawn area as well as trees and shrubbery.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

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

B. Building and Site Design

Due to the average grade of the property, the basement level is considered the first story, rendering the existing ranch-style house a "two-story" structure. As the petitioners propose to construct a 1,473 square foot addition within and above the dwelling's existing footprint, this would give the dwelling three stories, a half-story more than the two and a half stories allowed by right. It would also increase the structure's height from the existing 27 feet to 36 feet, the maximum allowed.

The proposed addition would result in a 6,198 square foot structure, further increasing the property's existing nonconforming floor area ratio (FAR) from 0.32 to 0.41 where 0.31 is the maximum allowed by right.

As the addition would be built above existing living space, no changes would be made to the currently conforming front, side and rear setbacks which at 37.6, 18.6 and 32.6 feet respectively, exceed the respective 25, 12.5 and 25 feet required. There would also be no change to the property's existing conforming 16.9% lot coverage and 66% open space.

C. Parking and Circulation

The basement level includes a two-car attached garage. The garage would remain in place.

The petitioners are proposing to remove approximately 950 square feet on paving in the front of the property that provides a portion of the current circular driveway. Approximately 465

square feet of new paving would be added to the right (south) side of the property, at the “back” of the existing driveway area on that side, between the dwelling and the right side boundary line. This new paving should facilitate vehicles to be able to turn around on site and avoid backing up into the street.

D. Landscape, Lighting and Signage

A landscaping plan was not submitted with this petition.

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 completed Zoning Review Memorandum, the petitioner is seeking the following relief:

- Special Permit per §7.3.3 to:
 - further increase nonconforming FAR (§3.1.3, §3.1.9, §7.8.2.C.2)
 - allow a three-story structure (§3.1.3)

B. Engineering Review

Review by the Engineering Division is not required at this time.

C. Historic Preservation Review

On May 10, 2021, Newton Historic Commission (NHC) staff approved the project based upon submitted plans.

V. PETITIONER’S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:

- Attachment A:** Land Use Map
Attachment B: Zoning Map
Attachment C: Zoning Review Memorandum
Attachment D: DRAFT Order

ATTACHMENT A



Land Use

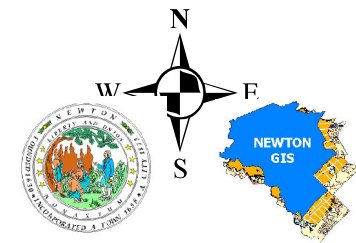
540 Dudley Rd.

*City of Newton,
Massachusetts*

Land Use

Land Use

-  Single Family Residential
-  Vacant Land

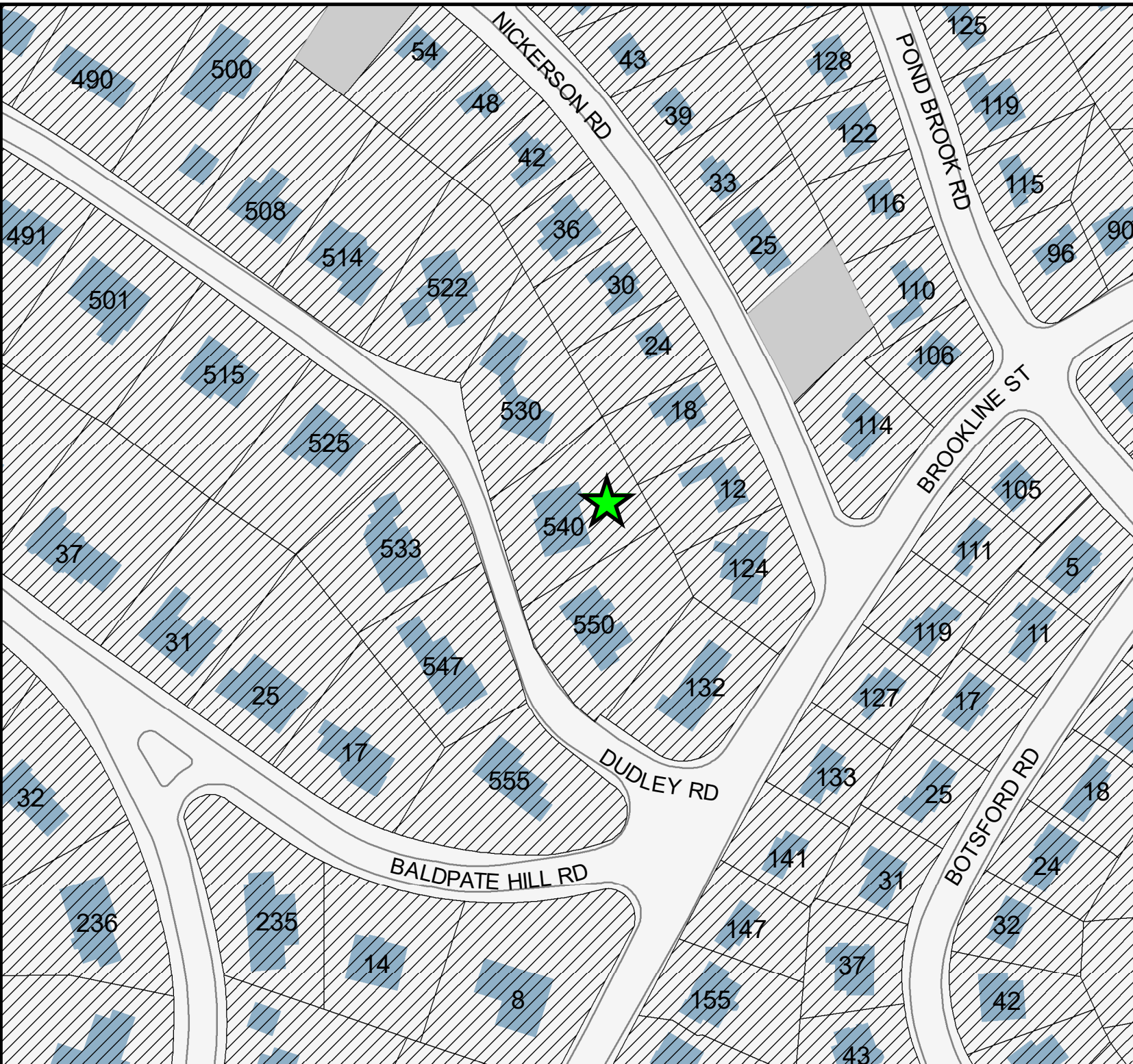


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

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

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Feet

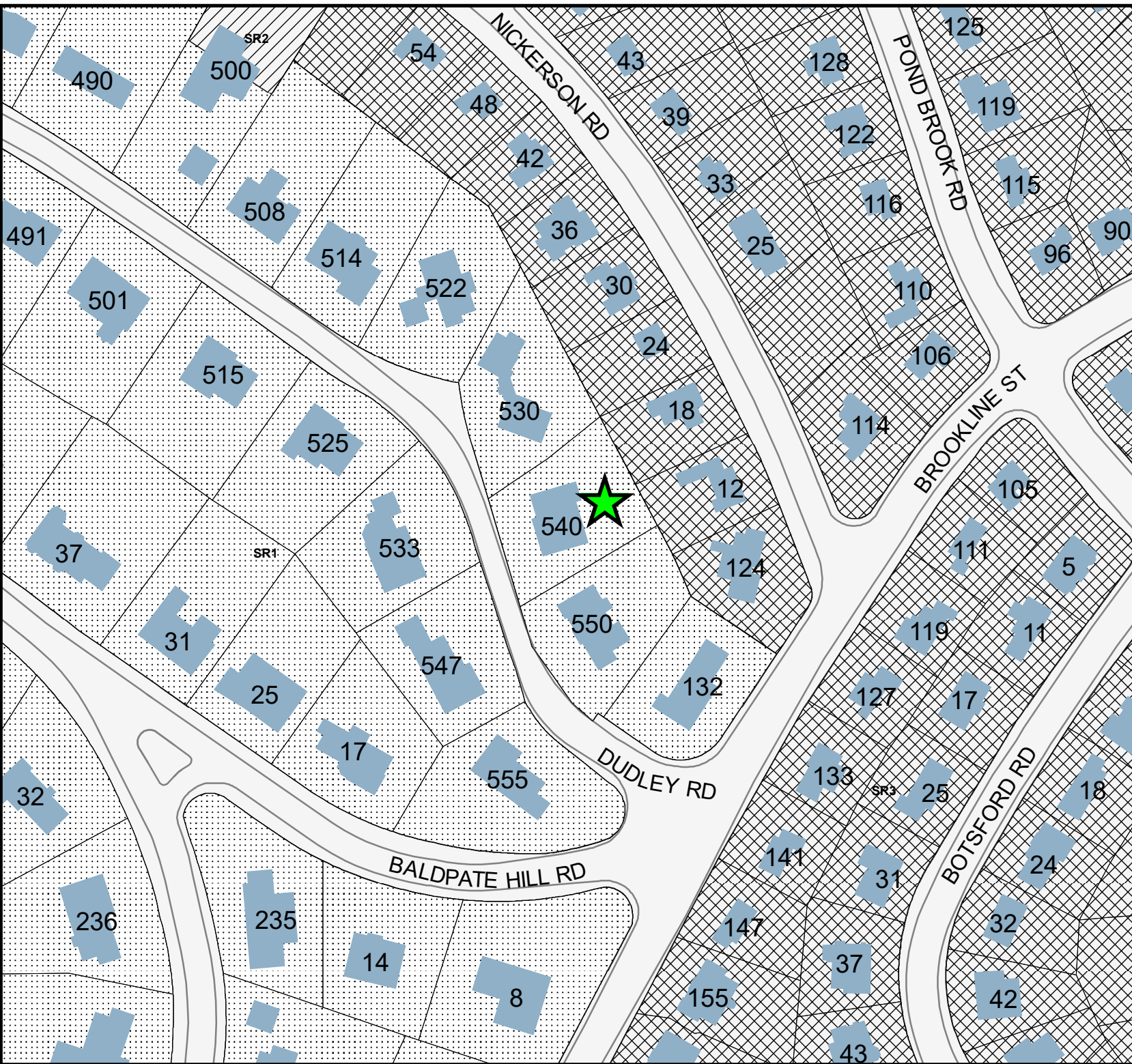
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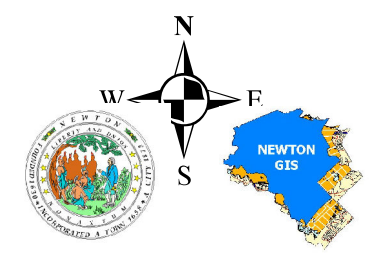
Zoning

540 Dudley Rd.

*City of Newton,
Massachusetts*

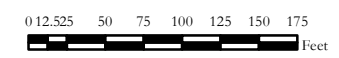


- Single Residence 1
- Single Residence 2
- Single Residence 3



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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
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Ruthanne Fuller
Mayor

ATTACHMENT C

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Director

ZONING REVIEW MEMORANDUM

Date: April 27, 2021

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Shiva Karimi, Applicant
Barney S. Heath, Director of Planning and Development
Jonah Temple, Associate City Solicitor

RE: Request to further increase nonconforming FAR and to allow a three-story structure

Applicant: Shiva Karimi	
Site: 540 Dudley Road	SBL: 82027 0002
Zoning: SR1	Lot Area: 14,971 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 540 Dudley Road consists of a 14,971 square foot lot improved with a single-story single-family dwelling constructed in 1950. The petitioners propose to construct an addition of a second story within the existing footprint of a portion of the dwelling. The proposed changes will increase the FAR beyond the maximum allowed and create a three-story structure, requiring a special permit.

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

- Zoning Review Application, prepared by Shiva Karimi, submitted 1/1/2021
- Plan of Land, prepared by EMB, surveyors, dated 10/27/2020, revised 4/20/2021
- Architectural plans and elevations, prepared by I-Kanda Architects, architect, dated 8/18/2020, revised 8/26/2020, 10/23/2020

ADMINISTRATIVE DETERMINATIONS:

1. The petitioners intend to construct an addition of a second story within the existing footprint of a portion of the dwelling. The addition adds 1,473 square feet resulting in a total of 6,198 square feet. The existing nonconforming FAR is .32, where .31 is the maximum allowed per section 3.1.9. The proposed addition further increases the nonconforming FAR to .41, requiring a special permit pursuant to Sections 3.1.3, 3.1.9 and 7.8.2.C.2.
2. Due to the average grade, the basement is the first story, creating an existing two-story ranch-style house. The proposed addition of a story over the existing footprint increases the dwelling to three stories, where 2.5 is the maximum allowed per section 3.1.3. Per that same section, a special permit is required for a three-story single-family dwelling.

SR1 Zone	Required	Existing	Proposed
Lot Size	15,000 square feet	14,971 square feet	No change
Frontage	100 feet	107 feet	No change
Setbacks			
• Front	25 feet	37.6 feet	No change
• Side	12.5 feet	18.6 feet	No change
• Rear	25 feet	32.6 feet	No change
Max Number of Stories	2.5	2	3
Max Height	36 feet	27 feet	36 feet
FAR	.31	.32	.41
Max Lot Coverage	20%	16.9%	No change
Min. Open Space	65%	66%	69%

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.3, §3.1.9 §7.8.2.C.2	Request to further increase nonconforming FAR	S.P. per §7.3.3
§3.1.3	Request to allow a three-story structure	S.P. per §7.3.3

Next Steps

Please contact a Planner by calling 617.796.1120 to obtain a copy of the Special Permit Application. If there have been any changes made to the plans since receipt of your Zoning Review Memorandum you must inform the Zoning Code Official to ensure additional relief is not required. You will need an appointment with a Planner to file your Special Permit Application. **Incomplete applications will not be accepted.**

The following must be included when filing a Special Permit Application:

2. Two (2) copies of the completed Special Permit Application (signed by property owner)
3. Filing Fee (see Special Permit Application)
4. Two (2) copies of the Zoning Review Memorandum
5. Plans (Thirteen sets signed and stamped by a design professional). Each set shall contain:
 - Site Plans showing existing and proposed conditions (including topography as applicable)
 - Architectural plans showing existing and proposed conditions (including façade materials)
 - Landscape plan (as applicable)
6. One (1) Floor Area Ratio (FAR) Worksheet, (signed and stamped by a design professional)
7. One (1) copy of any previous special permits or variances on the property (as applicable)
8. One (1) copy of any other review/sign-off (Historic, Conservation, Tree Removal, etc. as applicable)
9. Two (2) electronic copies of the application with all above attachments (USB or CD)

Copies of all plans shall either be 8.5 x 11 or 11 x 17, except as requested by staff

Special Permit Sign (\$20 fee)

Incomplete applications will delay the intake and review of your project.

Depending on the complexity of the project additional information may be requested to facilitate a full review of the application.

Has the proposed project been presented to and discussed with abutting property owners? Y/N

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 further increase the floor area ratio (FAR) of the existing single-family dwelling from 0.32 to 0.31 where 0.41 is the maximum allowed by right, and increase the dwelling's number of stories from two to three stories, where two and half is the maximum allowed, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. the proposed expanded structure as designed with a floor area ratio (FAR) of 0.41 where 0.32 exists and 0.31 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 given the topography of the parcel and the neighborhood and the expanded structure would be similar in size and scale to other structures in the area (§3.1.9.2)
2. the proposed expanded structure as designed with a floor area ratio (FAR) of 0.41 where 0.32 exists and 0.31 is the maximum allowed by right is not substantially more detrimental than the existing nonconforming use to the neighborhood as the addition would have limited visible impact given the topography of the parcel and the neighborhood, (§7.8.2.C.2)
3. the site in a Single Residence 1 zoning district is an appropriate location for the proposed dwelling as designed with three-stories where 2 ½ stories is the maximum allowed by right as the parcel's slope will reduce the apparent bulk of the proposed third floor (§7.3.3.C.1)
4. the proposed expanded dwelling as designed with three-stories where 2 ½ stories is the maximum allowed by right will not adversely affect the neighborhood as the visual impact of the proposed third floor is limited by the slope of the parcel which will allow the dwelling to appear as a two story structure from nearby properties and public ways (§7.3.3.C.2)
5. the proposed expanded dwelling as designed with three-stories where 2 ½ stories is the

maximum allowed by right will not create a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3)

6. access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4)

PETITION NUMBER: #177-21

PETITIONER(S): Shiva Karimi

LOCATION: 540 Dudley Road, on land known as Section 87, Block 27, Lot 2, containing approximately 14,971 sq. ft. of land

OWNER(S): Shiva Karimi

ADDRESS OF OWNER(S): 540 Dudley Road
Newton, MA

TO BE USED FOR: Single-Family Residence

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: Special permit per §7.3.3 to:

- further extend nonconforming FAR (§3.1.3, §3.1.9, §7.8.2.2)
- allow a three-story structure (§3.1.3)

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 site plan entitled "Plot of Land in Newton, MA, 540 Dudley Road, Proposed Additions," prepared by Everett M. Brooks Co., dated April 20, 2021, signed and stamped by Bruce Bradford, Professional Land Surveyor on April 20, 2021.
 - b. A set of architectural plans entitled "Renovation Phase 2, 540 Dudley Rd, Newton MA," prepared by I-Kanda Architects, LLC, as revised through April 1, 2021, signed and stamped by Isamu Kanda, Registered Architect, consisting of the following sheets:
 - i. Title Page (A0.00) (*note: see 1(c) below for FAR information*)

- ii. Schedule Window + Door (A0.01)
 - iii. Site Plan Existing (1.00)
 - iv. Existing Plan Basement (A2.00)
 - v. Existing Plan 1st Floor (A2.01)
 - vi. Existing Plan Roof (A2.02)
 - vii. Proposed Plan Basement (A3.00)
 - viii. Proposed Plan 1st Floor (A3.01)
 - ix. Proposed Plan 2nd Floor (A3.02)
 - x. Proposed Plan Roof (A3.03)
 - xi. Extr. Elev. Existing (A4.00)
 - xii. Extr. Elev. New (A4.01)
 - c. A document entitled "Floor Area Ratio Worksheet" indicating a proposed "Total gross floor area" of 6,198 square feet and a proposed "FAR" (floor area ratio) of 0.41 signed and stamped by Isamu Kanda, Registered Architect.
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 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. 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 and certifying compliance with Condition #1, including the as built FAR.
 - 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.