



#222-22

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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

PUBLIC HEARING MEMORANDUM

Public Hearing Date: April 12, 2022
Land Use Action Date: June 28, 2022
City Council Action Date: July 4, 2022
90- Day Expiration Date: July 11, 2022

DATE: April 8, 2022

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Katie Whewell, Senior Planner

SUBJECT: **Petition #222-22**, for SPECIAL PERMIT/SITE PLAN APPROVAL to raze the existing structure and construct a three-story single-family dwelling, exceeding the maximum allowed FAR at 115 Elinor Road, Ward 6, Section 81 Block 34 Lot 23, containing approximately 10, 352 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 7.3.3, 7.4, 3.1.3, 3.1.9 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.



115 Elinor Road

EXECUTIVE SUMMARY

The property located at 115 Elinor consists of a 10,352 square foot lot in the Single Residence 3 (SR-3) zone in Newton Highlands. The lot is improved with a single-family residence constructed in 1954. The petitioners are seeking to raze the existing structure and construct a single-family dwelling. As proposed, the new single-family dwelling will exceed the by right Floor Area Ratio (“the FAR”) and contain three stories, both requiring a special permit. If approved, the dwelling will total 5,086 square feet of floor area and have an FAR of .49 where .41 is the maximum allowed as of right and .30 currently exists.

The Planning Department notes that the proposed single-family dwelling which consists of three stories and exceeds the as of right FAR meets all other dimensional standards of the SR-3 zoning district, including setbacks and preserves 68% of open space, where 50% is the minimum allowed. Due to the topography of the site, the basement counts as a story and fully counts towards FAR which contributes to the relief requested. Elinor Road begins to slope upwards in front of the site and many of the homes in the neighborhood have exposed basements and present at a higher grade.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the proposed three-story structure which exceeds the maximum allowed FAR as of right. (§7.3.3.C.1)
- The proposed three-story structure which exceeds the maximum allowed FAR as of right will adversely affect the neighborhood. (§7.3.3.C.2)
- The proposed three-story structure which exceeds the maximum allowed FAR as of 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)
- The proposed FAR of .49, where .41 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. (§3.1.3, and §7.8.2.C.2)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

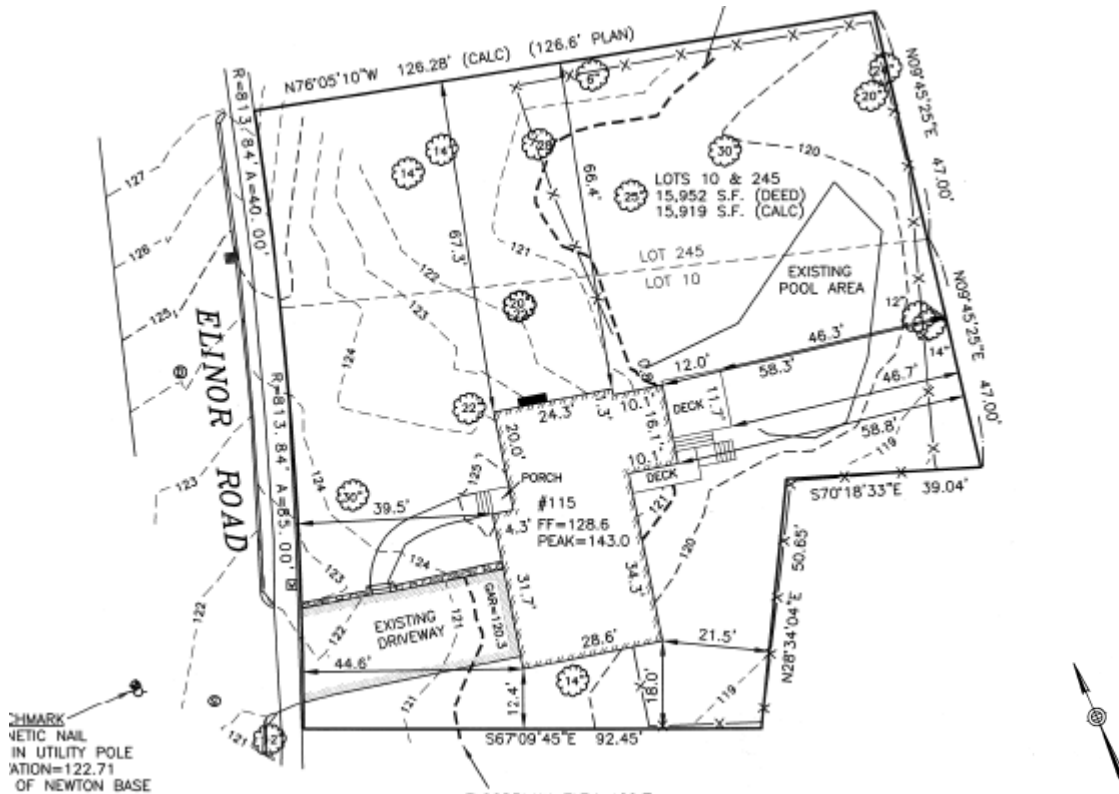
The subject property is located on the eastern side of Elinor Road in Newton Highlands. The SR-3 zone encompasses the entirety of the neighborhood and

surrounding streets (**Attachment A**). The surrounding land use of the neighborhood is single family residential (**Attachment B**).

B. Site

The site consists of 10,352 square feet of land and is improved with a two-story single-family dwelling. The site is accessed by one curb cut with an asphalt driveway along the southern property line. The site has a downward slope from the front to the rear. A large portion of the rear of the property is within a flood zone.

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

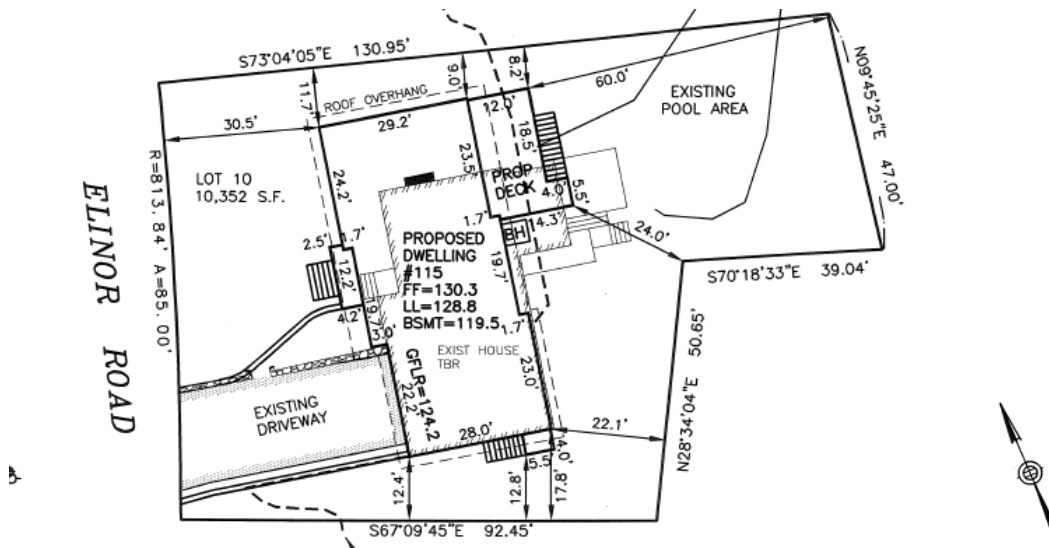
The petitioners are proposing to raze the existing structure to construct a three-story single-family dwelling. The new construction requires relief to exceed the FAR and allow a three-story structure. Per the Ordinance's definition of a story, the basement level is

considered the first story due to the average grade, thus partially counting towards the FAR.

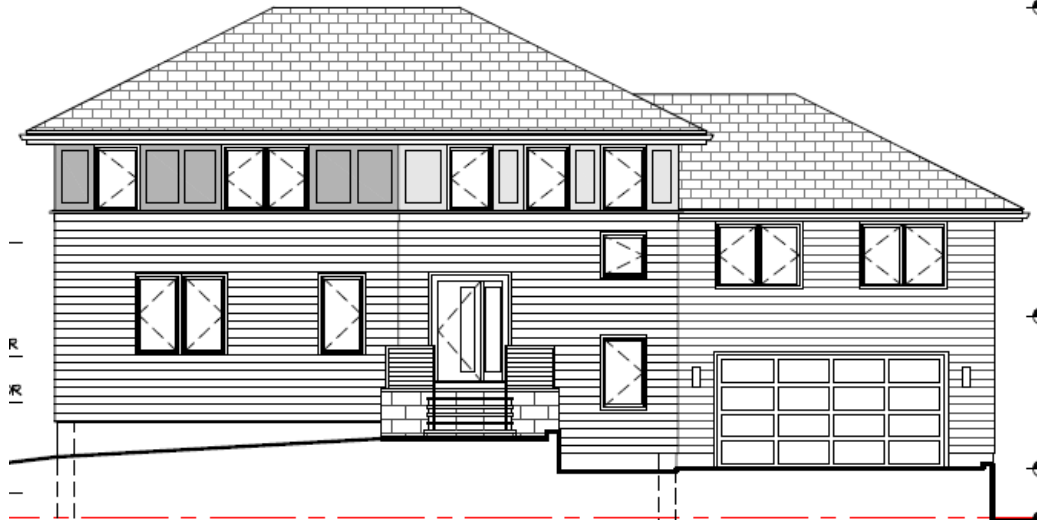
The petitioner is proposing to construct a three-story, single-family dwelling. The proposed dwelling meets the setback requirements for a single-family dwelling in the SR-3 zoning district. The dwelling will consist of three stories, with some of the basement counting towards the FAR due to the average grade of the site. The dwelling will measure 34.1 feet tall, below the 36 feet allowed as of right. The petitioners are proposing a lot coverage of 19.2%, where 30% is the maximum allowed and 15.2% exists. The proposed open space is 68% where 50% is the minimum required and 75% exists.

As proposed, the basement (first story) will consist of 1,267 square feet of floor area. The first floor (second story) will consist of 1,909 square feet of floor area, and the third story will consist of 1,910 square feet of floor area. The proposed FAR is .49, where .41 is the maximum allowed as of right, and .30 exists. The proposed FAR of .49 translates to 5,086 square feet of floor area, where 4,244 is the maximum allowed as of right, a difference of 842 square feet.

Proposed Site Plan



Proposed Front Elevation



Proposed Side Elevation



Proposed Rear Elevation



The Planning Department notes that the proposed single-family dwelling meets most of the dimensional standards of the SR-3 zoning district. The relief for the three-story structure and FAR is largely due to the basement counting as a story. Many homes on Elinor Road have similar topographies and exposed basements and Elinor Road has an upward slope when traveling from south to north.

C. Parking and Circulation

The petitioner is maintaining the existing driveway location along the southern property line and constructing a new two car attached garage consisting of 634 square feet.

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:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.3 §3.1.9	Request to exceed FAR	S.P. per §7.3.3
§3.1.3	Request to allow a 3-story structure	S.P. per §7.3.3

B.

Engineering Review

Should this project be approved, the Engineering Division will review at the building permit stage.

C. Historic Preservation Review

The existing structure was deemed not historically significant by the Chief Preservation Planner on February 19, 2021.

D. Conservation Review

The rear of the site is in a flood zone and is subject to Conservation jurisdiction. The petitioner stated they are working on Conservation review and approval.

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:** Engineering Memorandum
- Attachment E:** DRAFT Council Order

ATTACHMENT A

Zoning

115 Elinor Road

*City of Newton,
Massachusetts*

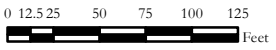
Legend

 Single Residence 3

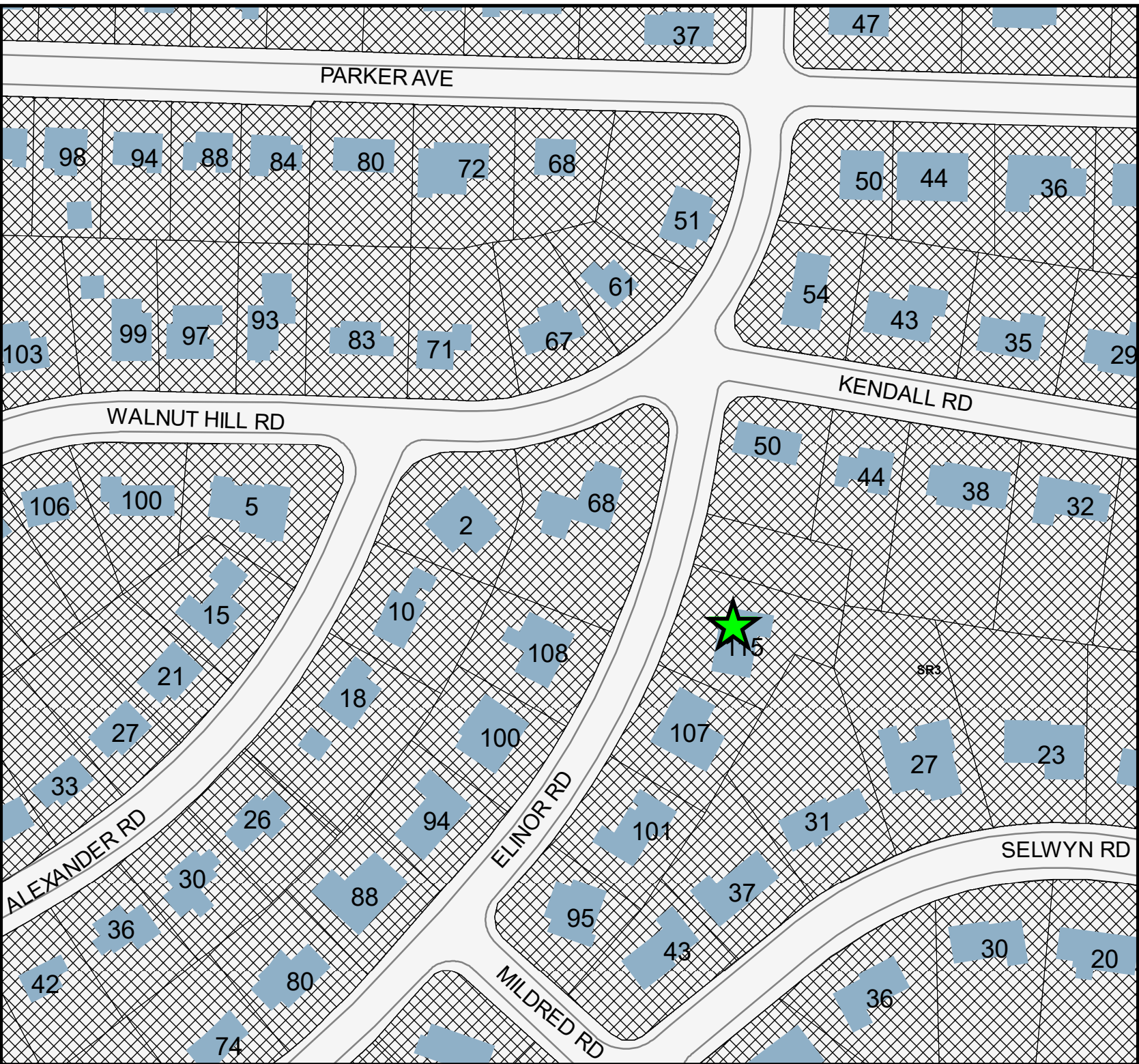


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield



Map Date: March 31, 2022



ATTACHMENT B

Land Use

115 Elinor Road

*City of Newton,
Massachusetts*

Legend

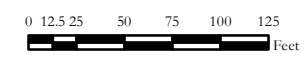
Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Open Space
-  Nonprofit Organizations

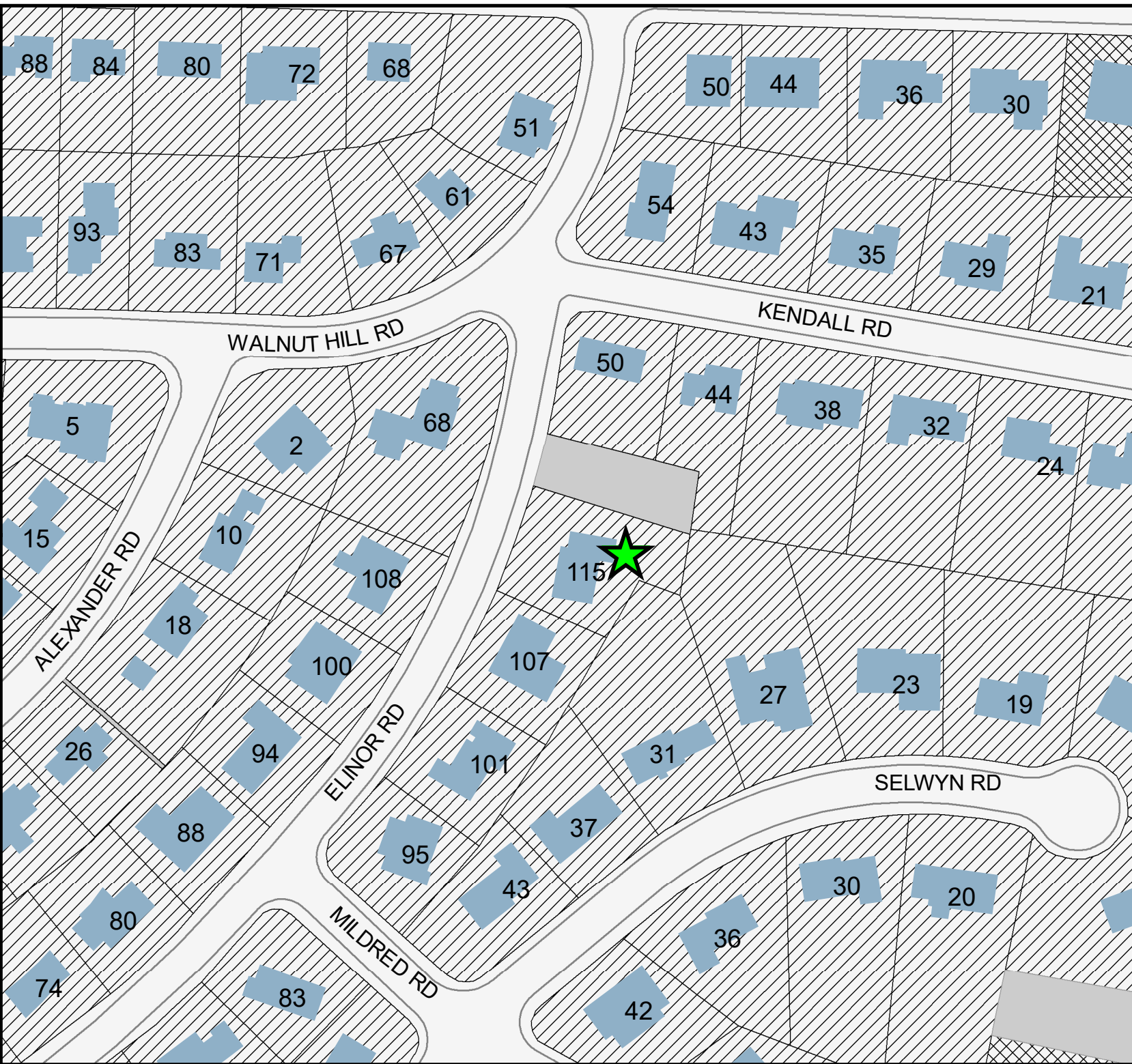


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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: March 17, 2022

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official

Cc: Pheobe and Andrew Lamuda, Applicants
Alan Mayer, Architect
Barney S. Heath, Director of Planning and Development
Jonah Temple, Associate City Solicitor

RE: Request to exceed FAR and to allow a three-story single-family dwelling

Applicant: Pheobe and Andrew Lamuda

Site: 115 Elinor Road	SBL: 81034 0013
Zoning: SR3	Lot Area: 10,352 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 115 Elinor Road consists of a 10,352 square foot lot improved with a single-family dwelling constructed in 1954. An adjacent 5,565 square foot lot is commonly held, but with separate metes and bounds and not part of the subject lot. The petitioners propose to raze the existing single-family dwelling and construct a new three-story dwelling. The proposed three-story single-family dwelling will exceed maximum 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 Alan Mayer, submitted 2/4/2022
- Existing Conditions Plan of Land, signed and stamped by Bruce Bradford, surveyor, dated 5/14/2021
- Proposed Conditions Plan, signed and stamped by Bruce Bradford, surveyor, dated 2/3/2022
- Plans and elevations, signed and stamped by Alan Mayer, architect, dated 2/4/2022
- FAR calculation, signed and stamped by Alan Mayer, submitted 2/4/2022

ADMINISTRATIVE DETERMINATIONS:

1. The petitioners propose to raze the existing two-story single-family dwelling and construct a new single-family dwelling. As with the existing dwelling, the basement is the first story due to the average grade, resulting in a three-story structure. Per section 3.1.3, a special permit is required to allow a three-story single-family dwelling.
2. The proposed construction results in a 5,086 square foot dwelling with an FAR of .49, where .41 is the maximum allowed. The proposed addition results in a FAR of .42, exceeding the maximum allowed, requiring a special permit pursuant to Sections 3.1.3 and 3.1.9.

1.

SR3 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	10,352 square feet	No change
Frontage	80 feet	85 feet	No change
Setbacks			
• Front	25 feet	39.5 feet	30.5 feet
• Side	7.5 feet	± 20 feet	8.2 feet
• Side	7.5 feet	12.4 feet	No change
• Rear	15 feet	58.3 feet	24 feet
Max Number of Stories	2.5	2	3*
Max Height	36 feet	21.5 feet	34.1 feet
FAR	.41	.30	.49*
Max Lot Coverage	30%	15.2%	19.2%
Min. Open Space	50%	75%	68%

*Requires relief

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§3.1.3	Request to exceed FAR	S.P. per §7.3.3
§3.1.9		
§3.1.3	Request to allow a 3-story structure	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 a three story structure which increases the floor area ratio (FAR) from .30 to .49, where .41 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 specific site is an appropriate location for the proposed three-story structure which exceeds the maximum allowed FAR as of right because the topography of the site is such that the basement counts as the first story, and towards the FAR. (§7.3.3.C.1)
2. The proposed three-story structure which exceeds the maximum allowed FAR as of right will not adversely affect the neighborhood because other structures in the neighborhood have exposed basements and similar topographies. (§7.3.3.C.2)
3. The proposed three-story structure which exceeds the maximum allowed FAR as of right will not create a nuisance or serious hazard to vehicles or pedestrians because the driveway location is being maintained. (§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)
5. The proposed FAR of .49, where .41 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. (§3.1.3, and §7.8.2.C.2)

PETITION NUMBER: #222-22

PETITIONER: Phoebe and Andrew Lamuda

LOCATION: 115 Elinor Road, on land known as Section 81, Block 34, Lot 13, containing approximately 10,523 square feet of land

OWNER: Phoebe and Andrew Lamuda

ADDRESS OF OWNER: 115 Elinor Road
Newton, MA 02461

TO BE USED FOR: Single-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: To allow a three-story structure and to exceed the FAR (§3.1.9, §3.1.3 and §7.3.3)

ZONING: Single Residence 3

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. Site Plan, prepared by EMB, signed and stamped by Bruce Bradford, Professional Land Surveyor, dated November 3, 2021, Revised February 3, 2022
 - b. Architectural Floorplans, prepared by Mayer and Associates, signed and stamped by Alan J. Mayer, registered architect, dated March 18, 2022 consisting of the following eight (8) sheets.
 - i. Proposed Basement Plan, A1-0
 - ii. Proposed First Floor Plan, A1-1
 - iii. Proposed Second Floor Plan, A1-2
 - iv. Proposed Roof Plan, A1-3
 - v. Proposed Front Elevation, A2-1
 - vi. Proposed Side Elevation, A2-2
 - vii. Proposed Rear Elevation, A2-3
 - viii. Proposed Side Elevation, mislabeled as rear, A2-4
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 Inspectional Services, Engineering Division of Public Works, and the Department of Planning and Development.
3. The Petitioner shall do the following to remediate pest and rodent activity:
 - a. Prior to issuance of any demolition or building permit, the petitioner, at its sole cost and expense, shall hire a licensed Pest Control Operator to assess the property for pest and rodent activity and develop and implement a pest remediation action plan to eliminate the activity and prevent off-site migration. The plan shall include the target pest, the methods for eliminating activity, and plan for preventing pest migration off-site during demolition and construction.
 - b. A copy of the Pest Control inspection report and the remediation action plan shall be submitted to the Inspectional Services Department and the Health and Human

Services Department for review and approval prior to issuance of any demolition or building permit. Copies of such approvals shall be provided to the Department of Planning and Development.

- c. The Pest Control Operator shall implement the approved remediation action plan, monitor the site for the duration of the project, and take whatever action the Operator deems necessary to control pest infestation and migration. The Pest Control Operator shall maintain a written record of all pest control measures performed within the subject property and shall provide progress reports to Inspectional Services Department and the Health and Human Services Department upon request.
 - d. Prior to issuance of the certificate of occupancy, the Pest Control Operator shall file a final report with the Department of Planning and Development, Inspectional Services Department and the Health and Human Services Department summarizing the methods used, whether off-site migration occurred, the frequency and dates of service, and a post-construction site assessment and neighborhood.
 - e. In the event any demolition or construction activity causes off-site pest migration, prior to the issuance of any certificates of occupancy (temporary or final), the petitioner shall offer and provide, at its sole cost and expense, rodent abatement services on an as needed basis for all direct abutters and abutters to direct abutters, subject to owner authorization of such properties and a waiver of liability.
4. 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 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 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.
 - 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.
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.