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Barney S. Heath
Director

PUBLIC HEARING/WORKING SESSION MEMORANDUM

DATE: September 9, 2022
MEETING DATE: September 13, 2022
TO: Land Use Committee of the City Council
FROM: Barney S. Heath, Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning
Michael Gleba, Senior Planner
CC: Petitioner

In response to questions raised at the City Council public hearing, the Planning Department is providing the following information for the upcoming public hearing/working session. This information is supplemental to staff analysis previously provided at the Land Use Committee public hearing.

PETITION #311-22

10 Elberta Terrace

Petition #311-22, for SPECIAL PERMIT/SITE PLAN APPROVAL to allow retaining walls greater than 4' within side and rear setbacks at **10 Elberta Terrace**, Ward 4, Newton, on land known as Section 41 Block 17 Lot 19, containing approximately 15,787 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 7.3.3, 7.4, 5.4.2.B of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

The Land Use Committee (the "Committee") held a public hearing on July 12, 2022 on this petition. This memo reflects additional information addressed to the Planning Department as of September 8, 2022.

Background

The subject property at 10 Elberta Terrace consists of a 10,637 square foot lot in a Single Residence 3 (SR3) zoning district improved with a single-family dwelling constructed in 2018 that includes an attached two-car garage.

The petitioner is seeking a special permit per Section 5.4.2.B of the Newton Zoning Ordinance (NZO) to allow retaining walls with a combined length of approximately 90 feet and exceeding four feet within the setbacks in certain locations at the side and rear of the property.

Update

Site Visit

A site visit was made to the site on August 23, 2022, attended by members of the Land Use Committee, City staff, and members of the public.

Engineering Division Review

The attached Engineering Division Memorandum (**Attachment A**) provides an analysis of the proposal with regard to engineering issues. Among other topics, the memo notes that if the sought special permit be granted, the petitioner should have a surveyor “stakeout the property line with intermediate points along the property line to ensure that no encroachment has taken place, and update the plans.” It also notes that a construction management plan (CMP) would be needed for this project.

ATTACHMENTS

Attachment A

Engineering Division memorandum dated July 13, 2022

Attachment B

Planning Department’s Public Hearing Memorandum dated July 8, 2022
(includes DRAFT Order)

ATTACHMENT A

CITY OF NEWTON Department of Public Works ENGINEERING DIVISION

MEMORANDUM

To: Council Rick Lipof, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – 10 Elberta Terrace

Date: July 12, 2022

CC: Barney Heath, Director of Planning
Jennifer Caira, Deputy Director
Katie Whewell, Chief Planner
Lou Taverna, PE City Engineer
Jennifer Breslouf, Committee Clerk
Michael Gleba, Sr. Planner

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

Segmental Retaining Wall
Plan View & Notes Sheet 1 of 2
Elevation View & Sections Sheet 2 of 2
Prepared by: Luna Engineering
Dated: December 23, 2021

Executive Summary:

The site plans needs to be stamped by a Professional Registered Land Surveyor (PLS) that will attest to the property lines which should be labeled with compass bearings and distances. The plan is also missing a north arrow. Additionally offset dimension should have been placed on the corners of the wall from the property line to ensure the design intent was followed. Should this permit be approved going forward I would request that the applicant's PLS stakeout the property line with intermediate points along the property line to ensure that no encroachment has taken place, and update the plans.

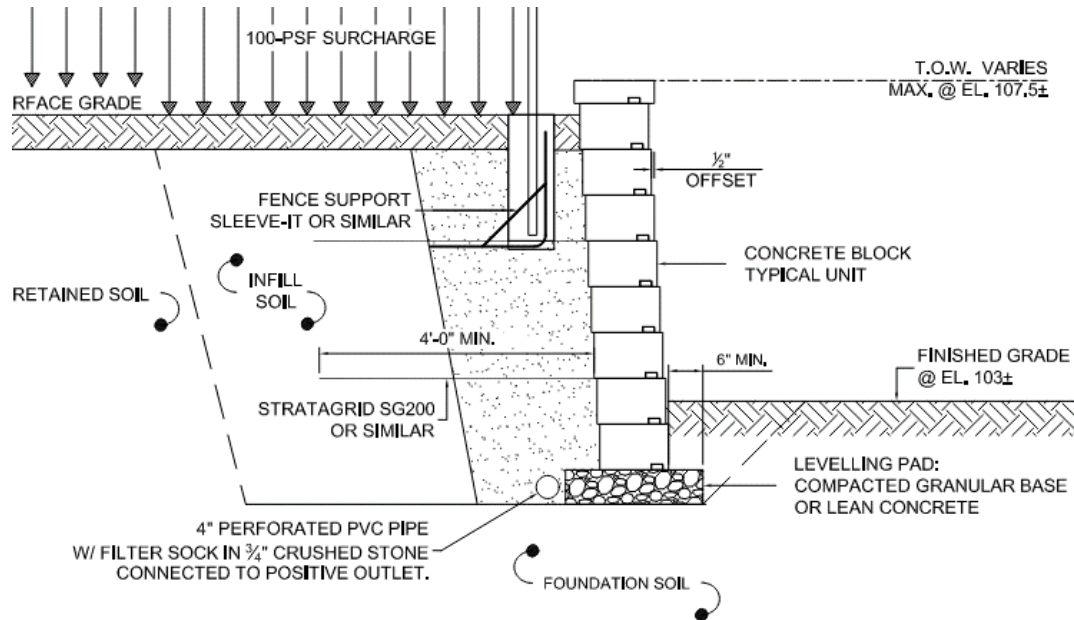


View of wall constructed to date looking west.

The proposed wall is a typical segmental wall based on a gravity design, the design calls for a level landing pad which acts as the footing or base of the wall. Each consecutive layer of block is placed on the previously laid layer and plastic spikes are placed into each block to interlock them to act as a monolithic wall. The manufacturer has a built in ½" offset in each successive layer so the wall tapers backward into the backfill for additional factor of safety.



Black plastic spikes driven into each block to interlock each layer



To reinforce the wall the designer specifies a soil reinforcing geogrid (*Stratagrid* or equal) placed on every third row of block, the geogrid is a fiberglass mesh placed on the 3rd course and rolled out perpendicular to the wall 4-feet into the back fill and the layers of soil are compacted to a specification this helps stabilize the wall from overturning or sliding failure.



The fiberglass geogrid seen between the 3rd & 4th course of blocks

The back fill directly behind the wall is a free draining crushed stone wrapped with filter fabric to prevent fines soils from clogging the back of the wall, any water that seeps in behind the wall will follow the crushed rock and drain either through the face of the wall or to the 4: perforated PVC pipe that the design calls for at the base of the wall and that is to daylight onto the applicants property this drainage should not be an issue.



The black filter fabric & crushed stone for proper drainage

Based on the site visit was made this morning the soils behind the proposed wall appear to be glacial till (i.e., a mix of stone and sandy material of varying gradation) and stable for now so long as we do not get prolonged heavy rains, and no one walks along the top of the cut face of the embankment. I recommend that the wall construction continue to keep the site as stable as possible.

There were two spots in the wall that need correction a few large stones have pushed out a couple of the blocks that can be adjusted back into proper alignment see following photos.



Multiple stones appear to have fallen and pushed out a couple blocks.



This large stone appears to have pushed out the two blocks

Upon completion of the wall the applicant's PLS and PE shall submit an as built plan to scale showing the alignment of the in relation to the property lines (with offsets dimensioned) and elevations to verify the design height of 9-feet at its high point, additionally top & bottom of wall elevations, and verification of the proposed safety fence (height & material). Keep in mind this is a structure so the applicant will have to obtain a Building Permit from inspectional Service and comply with all Inspection requirements by ISD.

Construction Management:

A construction management plan is needed for this project. At a minimum, it must address the following: staging site for construction materials and equipment, parking for construction workers vehicles, phasing of the project with anticipated completion dates and milestones, safety precautions, emergency contact personnel of the general contractor. It shall also address anticipated dewatering during construction, site safety & stability, siltation & dust control and noise impact to abutters.

The site did not have any siltation control in place as there is an established lawn and no danger of soil erosion getting into the City streets, I would not require siltation control provided the wall is completed this year.

General:

1. All trench excavation shall comply with Massachusetts General Law Chapter 82A, Trench Excavation Safety Requirements, and OSHA Standards to protect the general public from unauthorized access to unattended trenches or excavations. Trench Excavation Permit is required prior to any construction. This applies to all trenches on public and private property. *This note shall be incorporated onto the final plans.*
2. All tree removal shall comply with the City's Tree Ordinance.
3. The contractor of record is responsible for contacting the Engineering Division and scheduling an appointment 48-hours prior to the date when the utilities will be made available for an inspection of water services, sewer services and drainage system installation. The utility in question shall be fully exposed for the Inspector to view, backfilling shall only take place when the City Engineer's Inspector has given their approval. *This note shall be incorporated onto the final plans.*
4. The applicant shall apply for a Building Permit with the Inspectional Services Department prior to ANY construction.
5. Before requesting a Certificate of Occupancy, an As Built plan shall be submitted to the Engineering Division in both digital and paper format. The plan shall show all utilities and final grades, any easements and improvements and limits of restoration. The plan shall include profiles of the various new utilities including but not limited to rim & invert elevations (City of Newton Datum), slopes of pipes, pipe materials, and swing ties from permanent building corners. The as built shall be stamped by both a Massachusetts

Registered Professional Engineer and Registered Professional Land Surveyor. Once the As built plan is received the Engineering Division shall perform a final site inspection and then make a determination to issue a Certificate of Occupancy. *This note shall be incorporated onto the final plans.*

6. All site work including trench restoration, sidewalk, curb, apron, and loam border (where applicable) shall be completed before a Certificate of Occupancy is issued. *This note shall be incorporated onto the final plans.*
7. The contractor of record shall contact the Newton Police Department 48-hours in advanced and arrange for Police Detail to help residents and commuters navigate around the construction zone.
8. If any changes from the final approved design plan that are required due to unforeseen site conditions, the contractor of record shall contact the design engineer of record and submit revised design and stamped full scale plans for review and approval prior to continuing with construction.
9. *The engineer of record shall add the following attestation to the plans when applying for a building permit:*

I certify that the construction so shown was inspected prior to backfill and that all work conforms with the Approved Plan and meets or exceeds the City of Newton Construction Standards.

Signature

Note: If the plans are updated it is the responsibility of the applicant to provide all City Departments [ISD, Conservation Commission, Planning 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 at 617-796-1023.



Ruthanne Fuller
Mayor

ATTACHMENT B

City of Newton, Massachusetts
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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: July 12, 2022
Land Use Action Date: September 27, 2022
City Council Action Date: October 3, 2022
90-Day Expiration Date: October 10, 2022

DATE: July 8, 2022

TO: City Council

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

SUBJECT: **Petition #311-22** for SPECIAL PERMIT/SITE PLAN APPROVAL to allow retaining walls greater than 4' within side and rear setbacks at **10 Elberta Terrace**, Ward 4, Newton, on land known as Section 41 Block 17 Lot 19, containing approximately 15,787 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 7.3.3, 7.4, 5.4.2.B 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.



10 Elberta Terrace

EXECUTIVE SUMMARY

The subject property at 10 Elberta Terrace consists of a 10,637 square foot lot in a Single Residence 3 (SR3) zoning district improved with a single-family dwelling constructed in 2018 that includes an attached two-car garage.

The petitioner is seeking a special permit per Section 5.4.2.B of the Newton Zoning Ordinance (NZO) to allow retaining walls exceeding four feet within the setbacks at the side and rear of the property. As designed the proposed walls would have a combined length of approximately 90 feet and reach a maximum height of 7 feet in the west setback and 4.7 feet within the northern setback.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The specific site in a Single Residence 3 (SR3) district is an appropriate location for the proposed retaining walls in excess of four feet in height within a side and the rear setbacks (§7.3.3.C.1)
- The proposed retaining walls in excess of four feet in height within the side and the rear setbacks will adversely affect the neighborhood (§7.3.3.C.2)
- The proposed retaining walls in excess of four feet in height within a side and the rear setbacks 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 west side of Elberta Terrace just north of Commonwealth Avenue. The surrounding neighborhood north of Commonwealth Avenue is a largely a mix of single- and two- family dwellings; with an exception being a commercial property located just to the southeast, at the northwest corner of Commonwealth and Lexington Street. Parcels to the south across Commonwealth Avenue are occupied by a mix of two-family dwelling and commercial uses (**Attachment A**). The site and immediate vicinity north of Commonwealth Avenue are in a Single Residence 3 (SR3) district, an exception being the above-referenced parcel to the southeast of the subject property which is zoned Business 2 (BU2); to the south across Commonwealth Avenue are several Multi Residence (MR1) and Business 1 (BU1) zoned properties (**Attachment B**).

B. Site

The subject property consists of a 10,637 square foot lot improved with a single-family dwelling constructed in 2018. The parcel's grade slopes upward toward the northwest portion of the site, with an approximately 16-foot difference across site's expanse. Vehicular access is provided by a paved driveway off Elberta Terrace, near the property's

southeastern corner that serves a two-car garage. The property is currently under construction, and the remainder of the site features some lawn area, shrubs and trees.

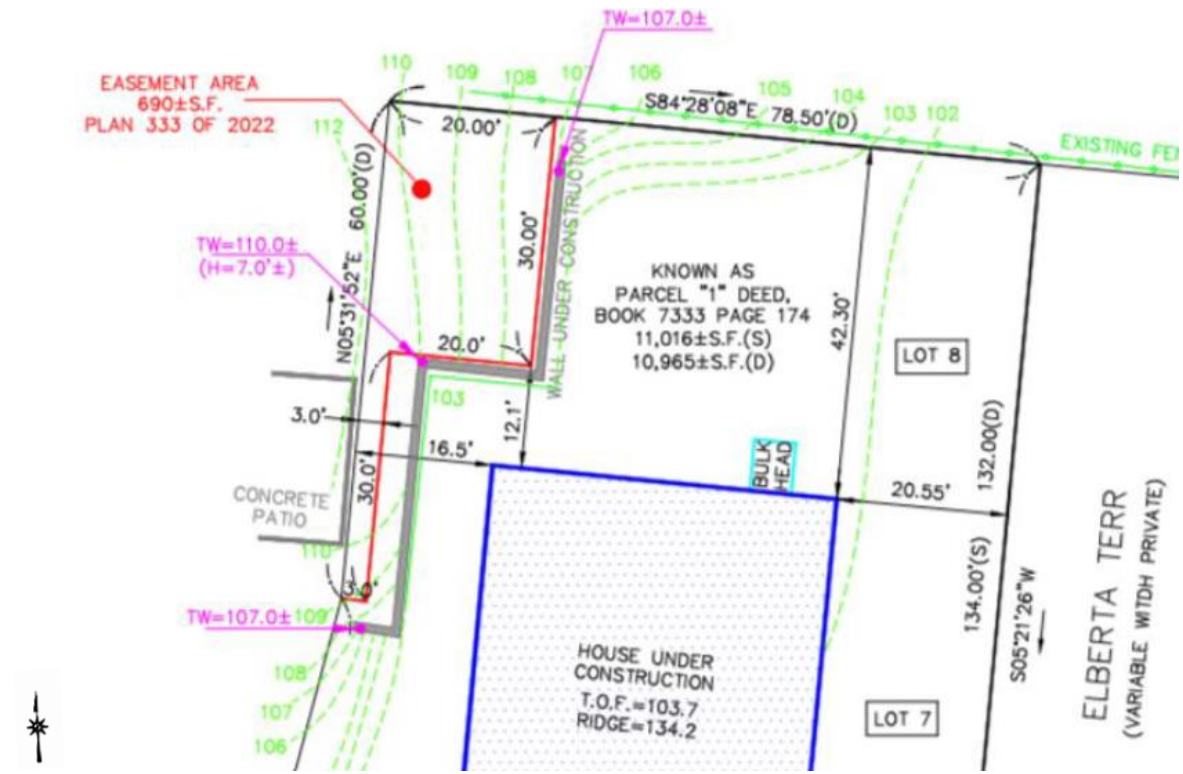
III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

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

B. Building and Site Design

The petitioner seeks approval to complete the construction of approximately 90 linear feet of retaining walls within the rear and side setbacks that will allow the retention of soil from portions of the site and adjacent higher properties.



Site Plan detail showing location of proposed retaining walls

One wall segment located perpendicular to the rear northern property line would measure approximately 4.7 feet in height. That section would also be within the west setback, as would a connected wall that would be approximately seven feet high and run perpendicular to it and the west property line. Another segment of wall would be perpendicular to the previous described wall and parallel to, and three feet from, the western property line. A short segment

of wall would then run a few feet westward.

The Planning Department notes the proposed walls would likely need safety fencing in some sections given their height.

C. Parking and Circulation

No changes to the site's parking or circulation are contemplated by the present petition.

D. Landscaping

No changes to the site's parking or circulation are contemplated by the present 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 allow a retaining wall exceeding four feet within the setback (§5.4.2)

B. Engineering Review

The Planning Department recommends that in the event this petition is granted a condition be included requiring review and approval of a final site plan by the Engineering Division before a building permit is issued. Also, the Planning Department notes that, as with all retaining walls, a structural analysis will be required by the Inspectional Services Department prior to the issuance of any building permit for the proposed wall.

C. Historic Review

Review of this project by the Newton Historic Commission is not required.

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 Council Order

ATTACHMENT A




Land Use

10 Elberta Terrace

*City of Newton,
Massachusetts*

Land Use

Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial

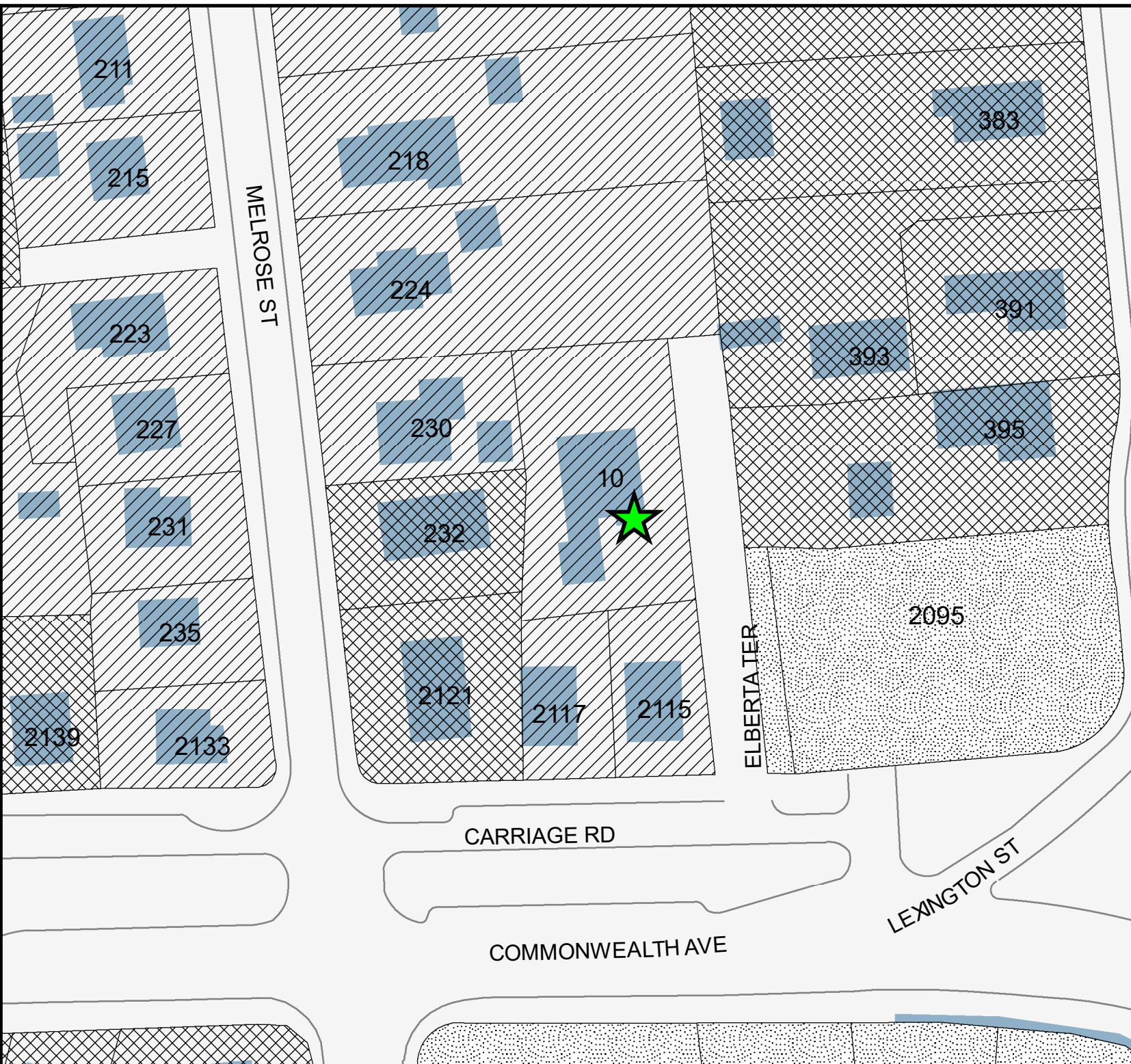


The information on this map is a Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications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

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

0 12.5 25 50 75
Feet

Map Date: June 29, 2022





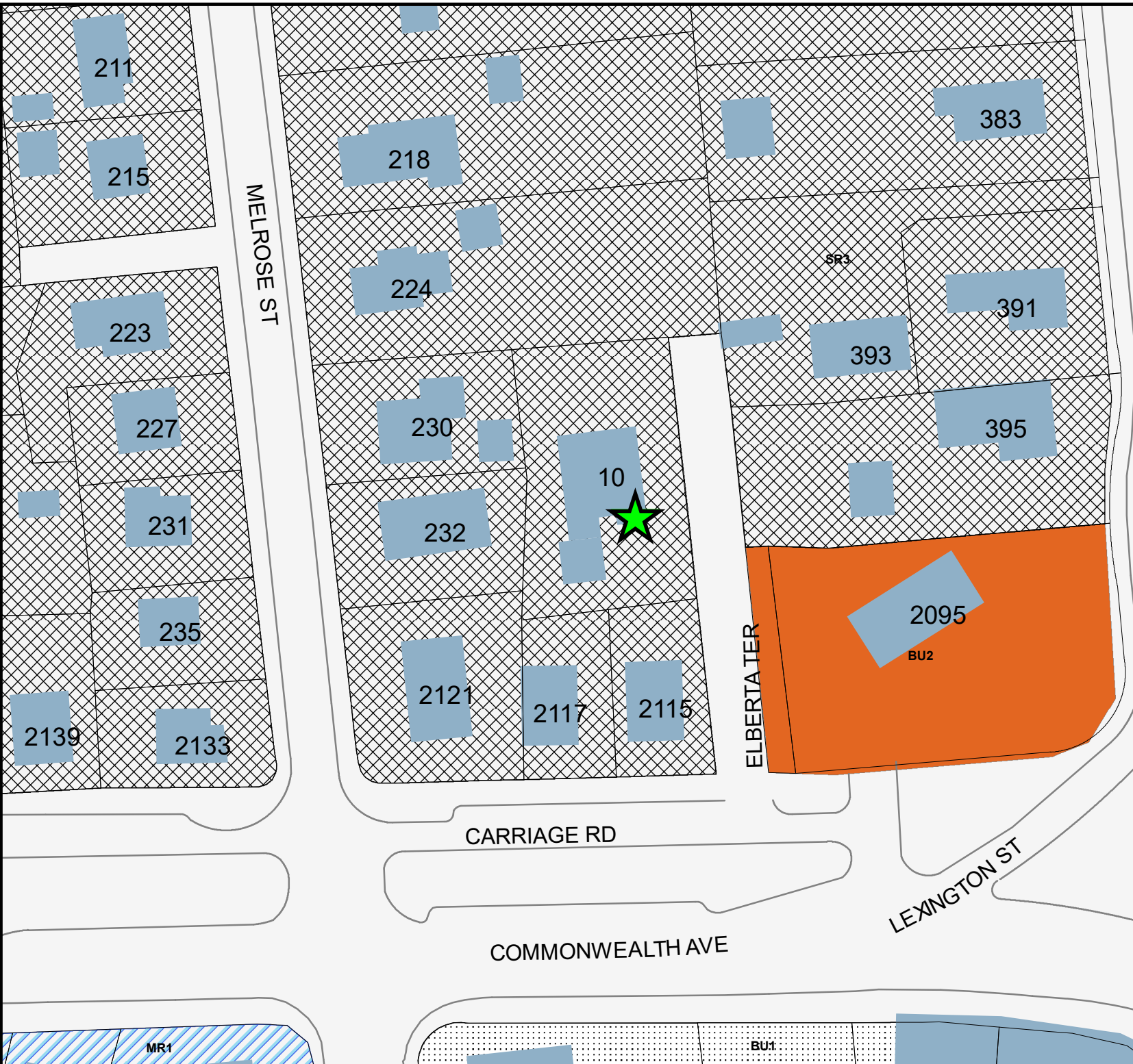
ATTACHMENT B

Zoning

10 Elberta Terrace

*City of Newton,
Massachusetts*

-  Single Residence 3
-  Multi-Residence 1
-  Business 1
-  Business 2



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CITY OF NEWTON, MASSACHUSETTS
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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: April 28, 2022

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official

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

RE: Request to allow retaining walls exceeding four feet within a setback

Applicant: Pasquale Bruno	
Site: 10 Elberta Terrace	SBL: 41017 0019
Zoning: SR3	Lot Area: 10,637 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 10 Elberta Terrace consists of a 10,637 square foot lot improved with a single-family dwelling constructed in 2018. The petitioner proposes to construct retaining walls exceeding four feet within the setbacks at the side and rear of the property, requiring a special permit.

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

- Zoning Review Application, prepared by Pasquale Bruno, applicant, submitted 3/10/2022
- Plan of Land Showing Proposed Walls, prepared by Bibbo Brothers and Associates, surveyor, dated 7/27/2021

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner is proposing retaining walls along the western side lot line as well as along half of the rear boundary. The walls reach a maximum height of 7 feet in the side setback and 4.7 feet within the rear, exceeding the four feet maximum height allowed within a required setback. Per section 5.4.2.B, the petitioner requires special permits to construct the proposed walls.

2. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§5.4.2.B	Request to allow a retaining wall exceeding four feet within the setback	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:

1. Two (2) copies of the completed Special Permit Application (signed by property owner)
2. Filing Fee (see Special Permit Application)
3. Two (2) copies of the Zoning Review Memorandum
4. 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)
5. One (1) Floor Area Ratio (FAR) Worksheet, (signed and stamped by a design professional)
6. One (1) copy of any previous special permits or variances on the property (as applicable)
7. One (1) copy of any other review/sign-off (Historic, Conservation, Tree Removal, etc. as applicable)
8. 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 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 a SPECIAL PERMIT/SITE PLAN APPROVAL to allow a retaining wall in excess of 4 feet in height within the rear and side setbacks, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

- 1) The specific site in a Single Residence 3 (SR3) district is an appropriate location for retaining wall in excess of four feet in height within the rear and side setbacks to assist in soil stabilization given the grades of adjacent properties (§7.3.3.C.1)
- 2) The retaining wall in excess of four feet in height within a setback will not adversely affect the neighborhood (§7.3.3.C.2)
- 3) The retaining wall in excess of four feet in height within a setback will not create a 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: #311-22

PETITIONER: Kenneth Leary

ADDRESS OF PETITIONER: 2115 Commonwealth Avenue
Newton, MA 02466

LOCATION: 10 Elberta Terrace, on land known as Section 41, Block 17, Lot 19,
containing approximately 15,787 square feet of land

OWNER: Kenneth Leary

ADDRESS OF OWNER: 2115 Commonwealth Avenue
Newton, MA 02466

TO BE USED FOR: Single Family Dwelling

EXPLANATORY NOTES: Special permits per §7.3.3:

- to allow a retaining wall exceeding four feet in height within a setback (§3.4.2.B)

ZONING: Single Residence 3 (SR3) 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 "Plan of Land - Newton, MA, Showing Block Wall Under Construction, #10 Elberta Terrace, prepared by Bibbo Brothers and Associates, dated May 23, 2022, as revised through July 8, 2022
2. Prior to the issuance of any Building Permit issued pursuant to this Special Permit/Site Plan Approval, the Inspectional Services Department shall perform a structural analysis of the proposed retaining walls.
3. 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 board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Submitted a Final Site Plan for review and approval by the Engineering Division and the Planning and Development Department. Said plan shall indicate the location of all structures, walls, paved areas and fencing as well as the height of any walls and fencing.
 - 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 petitioners have:
 - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by an professional engineer or surveyor certifying compliance with Condition #1.

- 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 architect, engineer or surveyor.
 - c. Filed with the City Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, final landscape features and fencing.
5. The Petitioner shall ensure that any and all safety fencing installed in relation to the retaining walls approved pursuant to this order shall be maintained in good condition.