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#505-22

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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: December 6, 2022
Land Use Action Date: February 28, 2023
City Council Action Date: March 6, 2023
90-Day Expiration Date: March 7, 2023

DATE: December 2, 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 #505-22** for SPECIAL PERMIT/SITE PLAN APPROVAL to construct an attached garage addition, dormer to the front elevation, and to reconfigure the roofline of the ell at **71-73 West Pine Street**, Newton, Ward 4, on land known as Section 41 Block 31 Lot 35, containing approximately 8,997 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: 7.3.3, 7.4, 3.4.1, 7.8.2.C.2, 3.1.3, 3.1.9, 1.5.4.G.2.B, 5.4.2.B of Chapter 30 of the City of Newton Rev Zoning Ord, 2017. Record SP-22-158 - View

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.



71-73 West Pine Street

EXECUTIVE SUMMARY

The subject property at 71-73 West Pine Street consists of 8,997 square foot lot in a Single Residence 3 (SR3) zoning district improved with a legal nonconforming three story, two-family dwelling constructed in 1886.

The petitioner proposes to construct an attached 624 square foot two-car garage on the left side of the structure, replace the existing dormer on the front of the dwelling with a larger nonconforming gable dormer, and to reconfigure the roofline of a rear ell. As designed, the proposed modifications would require several zoning reliefs, most related to modifying existing nonconformities.

Since the two-family dwelling is located within an SR3 district, a special permit per Section 7.8.2.C.2 of the Newton Zoning Ordinance (NZO) is required to extend the nonconforming two-family dwelling use.

The floor area of the portion of the attic that measures seven feet or more in height is 881 square feet, 71% of the area of the floor next below. As it exceeds two-thirds (66%) of the area of the floor next below (or 828 square feet) it is considered a third story per Sec 1.5.4.B of the NZO. As 2 ½ stories is the maximum number of stories allowed, a special permit per Sec. 7.8.2.C.2 is also required to further extend the nonconforming third story of the structure by reconfiguring the roofline of the rear ell.

While no construction is proposed that would rise above the existing ridgeline is proposed, the proposed construction would lower the average grade of the parcel, thus increasing the measured height of the structure's nonconforming height from 37.7 feet to 38.42 feet where 36 feet is the maximum allowed per Sec. 3.1.3., requiring a special permit per Sec. 7.8.2.C.2.

The minimum required open space is 50%. The proposed addition would further decrease the property's nonconforming open space from 43.8% to 40.7%, also requiring a special permit per Sec. 7.8.2.C.2.

Further, the proposed attached garage would increase the property's floor area ratio (FAR) from 0.38 to 0.49 where 0.43 is the maximum allowed per Secs. 3.1.3 and 3.1.9 for an 8,997 square foot lot in a SR3 district (the additional height in the rear ell does not increase the (FAR) as that space already counts toward FAR and is not being expanded), requiring a special permit per Sec. 3.1.9.A.2 to exceed allowed FAR. Per Sec. 1.5.4.G.2.b, a dormer cannot be wider than 50% of the length of the exterior wall next below. As the proposed enlarged front dormer would measure 29 feet in width (i.e., 72% of the 40.5 feet exterior wall next below), it requires a special permit.

Lastly, the petitioner proposes to construct a retaining wall in the front setback perpendicular to the property's frontage extending from the back of the sidewalk to the front left corner of the structure, along the right side of the proposed driveway. As the wall would reach a height of 4.1 feet, it requires a special permit per Sec. 5.4.2.B to allow a retaining wall measuring four feet or more in height within a setback.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- the proposed expanded structure that would extend a nonconforming two-family dwelling use (§3.4.1), further reduce nonconforming open space (§3.1.3), further extend

the nonconforming third story (§3.1.3) and extend the nonconforming height (§3.1.3) would be substantially more detrimental than the existing nonconforming use to the neighborhood (§7.8.2.C.2)

- the proposed with an increased floor area ratio (FAR) from 0.38 to 0.49 where 0.43 is the maximum allowed by right (§3.1.3) would be consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood (§3.1.9)
- the site in a Single Residence 3 (SR3) zoning district is an appropriate location for the proposed modified single-family dwelling as designed including a dormer exceeding 50% of the wall next below and a retaining wall exceeding four feet within the front setback (§7.3.3.C.1)
- the proposed modified single-family dwelling as designed including a dormer exceeding 50% of the wall next below and a retaining wall exceeding four feet within the front setback will adversely affect the neighborhood (§7.3.3.C.2)
- for the proposed modified single-family dwelling as designed including a dormer exceeding 50% of the wall next below and a retaining wall exceeding four feet within the front setback 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 West Pine Street between Edgewater Park (to the west) and Staniford and Melrose streets to the east. The surrounding neighborhood is predominantly developed with single family homes, including all the abutting properties, but there are also several two- and multi- family homes in the area in addition to the subject parcel, including an approx. 20-unit townhouse style development to the east. A landlocked parcel with a single-family dwelling abuts directly to the rear. To the west is Auburndale Park and associated parking (**Attachment A**). The site and surrounding area are zoned SR3, with exceptions including the above-reference townhouse development which is zoned Multi Residence 1 (MR1) and the Public Use (PU)-zoned Auburndale Park (**Attachment B**).

B. Site

The grade of the parcel varies by about eight feet, with the home occupying the high point at its center. Vehicular access is provided via a curb cut and associated paved driveway along the property's left side. The driveway is a few feet lower than the adjoining front and side yard areas with a retaining wall delineating the driveway's right side. A second paved driveway along the right side is the location of a ten-foot-wide easement that provides access to the landlocked single-family dwelling to the property's rear as well as paved driveway area in the back right of the subject parcel. The remainder of the property is

occupied by lawn area, walkways, and mature trees and shrubs.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site would remain a single-family residence.

B. Building and Site Design

The petitioner proposes to construct an attached 624 square foot garage on the left side of the structure, replace the existing dormer on the front of the dwelling with a larger nonconforming gable dormer, and to reconfigure the roofline of a rear ell to match the current highest ridge line.



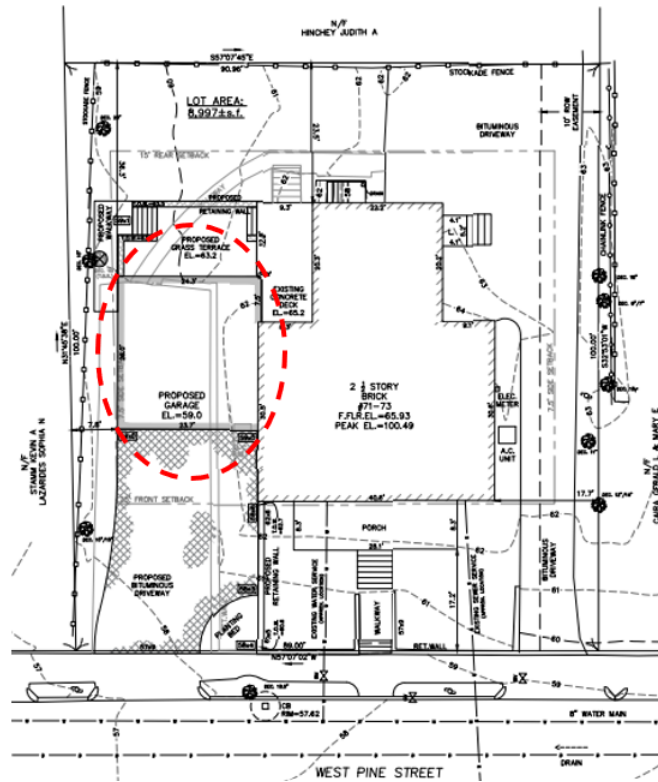
Existing and Proposed front elevations

Regarding setbacks, there would be no change made to the nonconforming 17.2-foot front setback or the conforming right side and rear setback. The left side setback, the location of the proposed attached garage, however, would be reduced from 31.5 to 7.8 feet, but remain greater than the required 7.5 feet.

The construction would increase the property's square footage by 1,016 square feet (from 3,433 to 4,449 square feet) increasing its floor area ratio (FAR) from 0.38 to 0.49, above the 0.43 maximum allowed by right.

Regarding the design and dimensions of the proposed enlarged front dormer, it would measure 29 feet in width, 72% of the 40.5 feet exterior wall next below more than the 50%, allowed. The Planning Department notes that any impact of this aspect of the dormer is mitigated by its gable design and its consistency with the existing dormer's height.

The proposed changes would increase the **lot coverage** from 21.4% to 28.2%, remaining below the maximum 30% allowed by right. The property's **open space** would decrease from 43.8% to 40.7% but remain above the minimum 50% required.



Proposed site plan (attached garage location indicated)

C. Parking and Circulation

The petitioner proposes to construct an attached 624 square foot two-car garage on the left side of the structure. Located approximately 35 feet from the front property line (and 7.8 feet from its left property line), the addition would be one-story with a sloped roof and two-separate street-facing garage doors (i.e., one door for each of the two parking stalls). A driveway approximately the width of the garage would be installed from the back of the sidewalk to the front façade of the garage. The proposed retaining wall referenced above would be located along the right side of the driveway. A small planting bed would be installed near the front right of the driveway (adjacent to the proposed retaining wall) would narrow the width of the driveway entrance.

The Planning Department notes that the petitioner should provide additional dimensional information for the driveway and consider reducing the amount of paving where feasible.

D. Landscaping

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 a Special Permit per §7.3.3 to:

- extend a nonconforming two-family dwelling use (§3.4.1, §7.8.2.C.2)
- exceed FAR (§3.1.3, §3.1.9)
- further extend the nonconforming third story (§3.1.3, §7.8.2.C.2)
- extend nonconforming height (§3.1.3, §7.8.2.C.2)
- allow a dormer exceeding 50% of the wall next below (§1.5.4.G.2.b)
- further reduce nonconforming open space (§3.1.3, §7.8.2.C.2)
- allow a retaining wall exceeding four feet within the front setback (§5.4.2.B)

B. Engineering Review

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

C. Historic Review

The petitioner should continue to coordinate with Newton Historic Preservation staff to confirm the appropriate required review for the project.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:

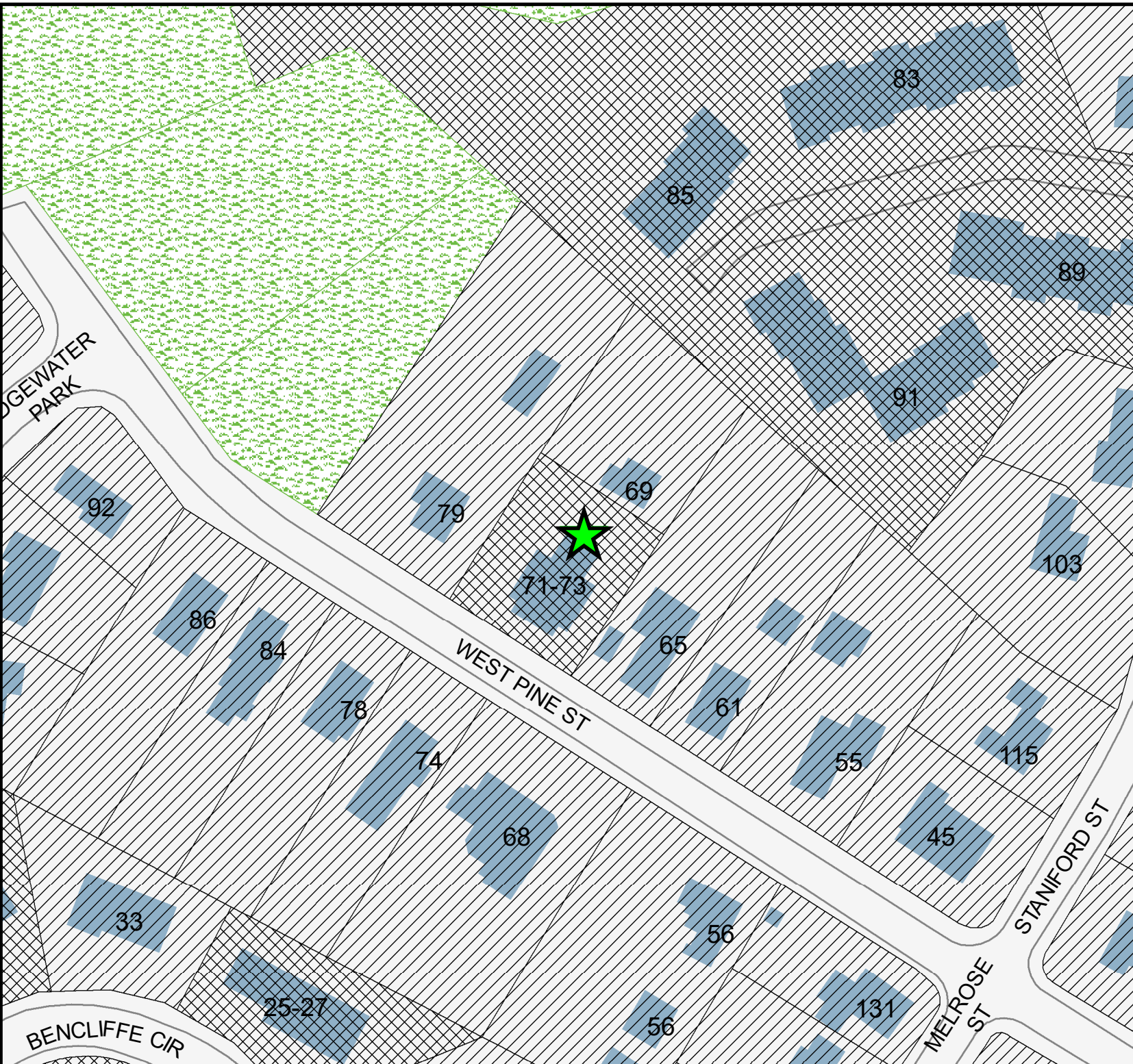
- Attachment A:** Land Use Map
Attachment B: Zoning Map
Attachment C: Zoning Review Memorandum
Attachment D: DRAFT Order

ATTACHMENT A

Land Use




71-73 West Pine St.

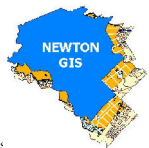
*City of Newton,
Massachusetts*



Land Use

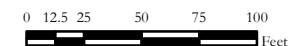
Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Open Space



The information on this map is derived from 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



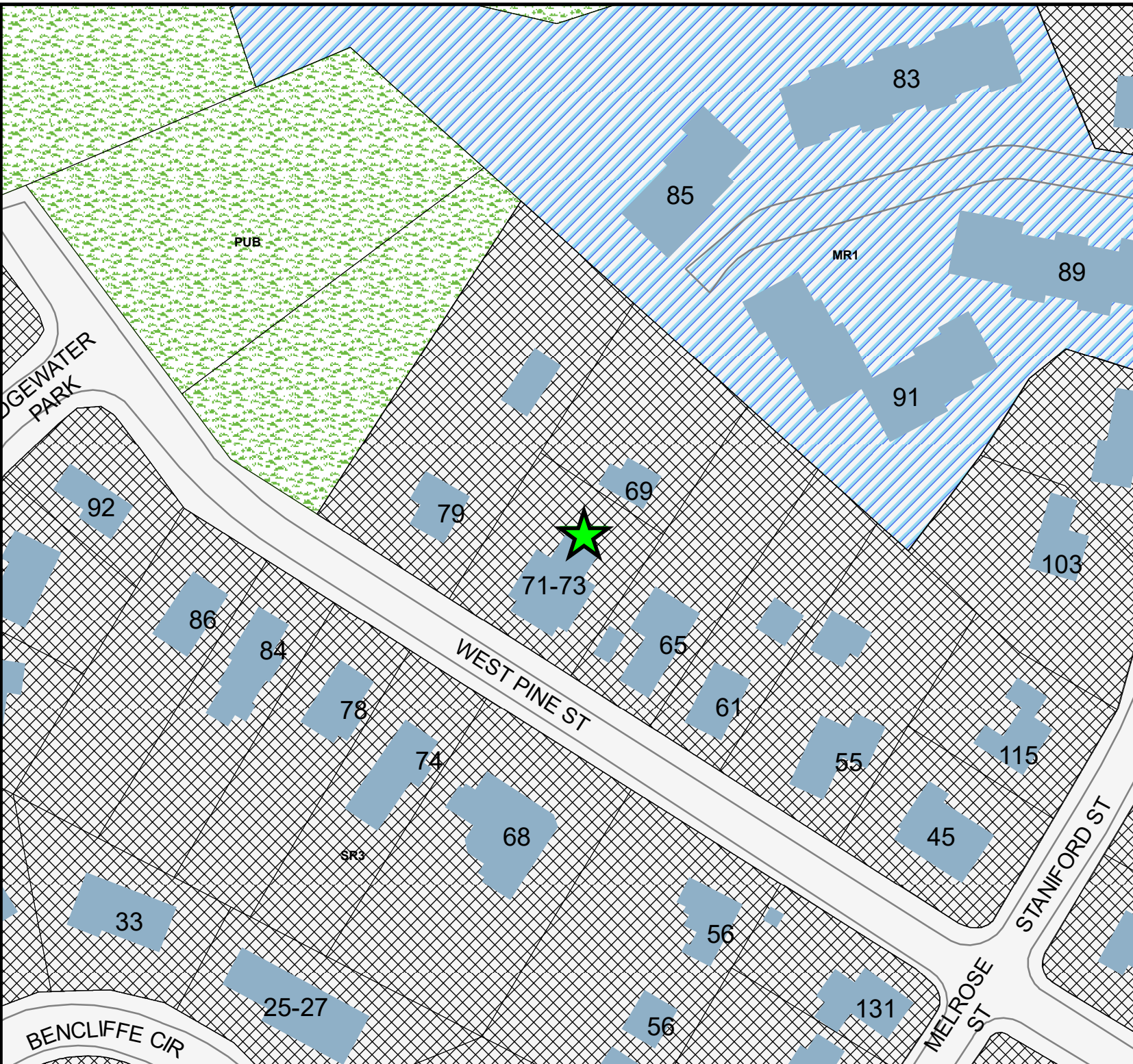
Map Date: November 29, 2022




ATTACHMENT B

Zoning

71-73 West Pine St.

*City of Newton,
Massachusetts*

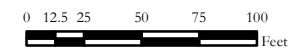


-  Single Residence 3
-  Multi-Residence 1
-  Public Use



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



Map Date: November 29, 2022



Ruthanne Fuller
Mayor

ATTACHMENT C

City of Newton, Massachusetts Department of Planning and Development

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: September 13, 2022

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Katie Whewell, Chief Planner for Current Planning

Cc: Justin and Lorena Buck, Applicants
Steven Meyers, Architect
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: Request to extend a nonconforming two-family dwelling use, a nonconforming third story, to increase nonconforming height, to further reduce nonconforming open space, to allow an oversized dormer, to exceed FAR and to allow a retaining wall of four feet or more in a setback

Applicant: Justin and Lorena Buck	
Site: 71-73 West Pine Street	SBL: 41031 0035
Zoning: SR3	Lot Area: 8,997 square feet
Current use: Two-family dwelling	Proposed use: No change

BACKGROUND:

The property at 71-73 West Pine Street consists of 8,997 square foot lot in the Single Residence 3 zoning district improved with a nonconforming two-family dwelling constructed in 1886. The petitioner proposes to construct an attached garage addition, dormer to the front elevation, and to reconfigure the roofline of the rear ell, requiring a special permit.

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

- Zoning Review Application, prepared by Steven Meyers, architect, submitted 7/18/2022
- Floor plans and elevations, Steven Meyers, architect, dated 5/25/2022
- Topographic Site Plan, signed and stamped by Joseph R. Porter, surveyor, dated 7/18/2021
- FAR worksheet, submitted 7/18/2022

ADMINISTRATIVE DETERMINATIONS:

1. The property is located in the Single Residence 3 zoning district and is improved with a legal nonconforming two-family dwelling. The petitioner proposes to construct an attached garage addition as well as reconfiguring the roofline in the rear ell, requiring a special permit per sections 3.4.1 and 7.8.2.C.2 to extend a nonconforming two-family dwelling use in an SR3 district.
2. The proposed 624 square foot garage increases the FAR from .38 to .49 where .43 is the maximum allowed per sections 3.1.3 and 3.1.9 for an 8,997 square foot lot in the SR3 district. The additional height in the rear ell does not increase the FAR as the space already counts toward FAR and is not being expanded. Per section 3.1.9.A.2 a special permit is required to exceed FAR.
3. Per section 1.5.4.B, the attic level of the dwelling is considered the third story as the area in the attic exceeds 2/3 of the floor next below. To be considered a half story the area of the attic with seven feet in height would need to consist of 828 square feet or less. The area in the attic with seven feet in height is 881 square feet, which is 71% of the area of the floor next below. The petitioners propose to increase the height of the rear of the dwelling and to enlarge the existing front dormer, further extending the nonconforming third story of the structure, requiring a special permit per sections 3.1.3 and 7.8.2.C.2.
4. The dwelling has a nonconforming height of 37.7 feet, where 36 feet is the maximum allowed per section 3.1.3. The proposed construction reduces the average grade, thus increasing the height of the structure to 38.42 feet, requiring a special permit per section 7.8.2.C.2. No construction is proposed above the existing ridgeline and the increase in height is solely due to the change in the average grade.
5. The petitioners propose to reconfigure and enlarge an existing front dormer. Per section 1.5.4.G.2.b a dormer may be no wider than 50% of the length of the exterior wall next below. The proposed front dormer is 29 feet wide, where the exterior wall below is 40.5 feet. The proposed dormer is 72% of the wall next below, requiring a special permit per section 1.5.4.G.2.b.
6. Per section 3.1.3, the minimum required open space is 50%. The proposed addition further decreases the property's nonconforming open space from 43.8% to 40.7%, requiring a special permit per section 7.8.2.C.2.
7. The petitioner proposes to construct a retaining wall in the front setback from the frontage to the front corner of the dwelling along the driveway reaching a maximum height of 4.1 feet. Per section 5.4.2.B a special permit is required for a retaining wall with four feet or more in height within a setback.

SR3 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	8,997 square feet	No change
Frontage	70 feet	89 feet	No change
Setbacks			
• Front	25 feet	17.2 feet	No change
• Side	7.5 feet	31.5 feet	7.8 feet
• Side	7.5 feet	17.7 feet	No change
• Rear	15 feet	23.5 feet	No change
Height	36 feet	37.7 feet	38.42*
Max Number of Stories	2.5	3	No change*
FAR	.43	.38	.49*
Max Lot Coverage	30%	21.4%	28.2%
Min. Open Space	50%	43.8%	40.7%*

*Requires relief

BOLD indicates nonconformity

See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§3.4.1 §7.8.2.C.2	Request to extend a nonconforming two-family dwelling use	S.P. per §7.3.3
§3.1.3 §3.1.9	Request to exceed FAR	S.P. per §7.3.3
§3.1.3 §7.8.2.C.2	Request to further extend the nonconforming third story	S.P. per §7.3.3
§3.1.3 §7.8.2.C.2	Request to extend nonconforming height	S.P. per §7.3.3
§1.5.4.G.2.b	Request to allow a dormer exceeding 50% of the wall next below	S.P. per §7.3.3
§3.1.3 §7.8.2.C.2	Request to further reduce nonconforming open space	S.P. per §7.3.3
§5.4.2.B	Request to allow a retaining wall exceeding four feet within the front setback	S.P. per §7.3.3

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 extend a nonconforming two-family dwelling use (§3.4.1, §7.8.2.C.2); exceed FAR (§3.1.3, §3.1.9); further extend the nonconforming third story (§3.1.3, §7.8.2.C.2); extend nonconforming height (§3.1.3, §7.8.2.C.2); allow a dormer exceeding 50% of the wall next below (§1.5.4.G.2.b); further reduce nonconforming open space (§3.1.3, §7.8.2.C.2); allow a retaining wall exceeding four feet within the front setback (§5.4.2.B) 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 that would extend a nonconforming two-family dwelling use (§3.4.1), further reduce nonconforming open space (§3.1.3), further extend the nonconforming third story (§3.1.3) and extend the nonconforming height (§3.1.3) would not be substantially more detrimental than the existing nonconforming use to the neighborhood as it features a range of similarly scaled dwellings, the garage would be located in a portion of the lot largely occupied by paved driveway area, the existing roof ridgeline height would be maintained, and the third floor addition would be located on the rear of the structure with little visibility from the adjacent public way (§7.8.2.C.2)
2. the proposed expanded structure with an increased floor area ratio (FAR) from 0.38 to 0.49 where 0.43 is the maximum allowed by right (§3.1.3) would be consistent with and not in derogation of the size, scale and design of other structures in the neighborhood as they are a mix of single-, two-, and multi- family dwellings of various sizes , scales and designs (§3.1.9)
3. the site in a Single Residence 3 (SR3) zoning district is an appropriate location for the proposed modified two-family dwelling as designed including a dormer exceeding 50% of the wall next below and a retaining wall exceeding four feet within the front setback as it located in a neighborhood that is comprised of a mix of structures that includes similarly scaled dwellings (§7.3.3.C.1)
4. the proposed modified two-family dwelling as designed including a dormer exceeding 50% of the wall next below and a retaining wall exceeding four feet within the front setback will not adversely affect the neighborhood as neither the proposed dormer's nor

the proposed retaining wall's design will have a negative visual impact on the nearby public right of way and/or properties (§7.3.3.C.2)

5. the proposed modified two-family dwelling as designed including a dormer exceeding 50% of the wall next below and a retaining wall exceeding four feet within the front setback 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: #505-22

PETITIONER: Justin and Lorena Buck

LOCATION: 71-73 West Pine Street, on land known as Section 41 Block 31 Lot 35, containing approximately 8,997 sq. ft. of land

OWNER: Justin and Lorena Buck

ADDRESS OF OWNER: 71-73 West Pine Street
Newton, MA 02446

TO BE USED FOR: Single Family Residence

CONSTRUCTION: Wood Frame

EXPLANATORY NOTES: Special Permit per §7.3.3 to:

- extend a nonconforming two-family dwelling use (§3.4.1, §7.8.2.C.2)
- exceed allowed floor area ratio (FAR) (§3.1.3, §3.1.9)
- further extend the nonconforming third story (§3.1.3, §7.8.2.C.2)
- extend nonconforming height (§3.1.3, §7.8.2.C.2)
- allow a dormer exceeding 50% of the wall next below (§1.5.4.G.2.b)
- further reduce nonconforming open space (§3.1.3, §7.8.2.C.2)
- allow a retaining wall exceeding four feet within the front setback (§5.4.2.B)

ZONING: Single Residence 3 (SR3)

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 the following plans:
 - a. a site plan entitled "Topographic Site Plan, Newton, Massachusetts, Showing Existing Conditions" (*note*: plan details proposed conditions), dated July 18, 2021, prepared by VTP Associates, stamped and signed by Joseph R. Porter, Professional Land Surveyor
 - b. architectural plans entitled "Buck Residence, 71-73 West Pine Street, Auburndale, MA," prepared by Steven J. Meyers, AIA, dated May 25, 2022, as revised through July 1, 2022, comprised of the following sheets:
 - i. Floor Plans- Existing/Proposed (showing Basement Plan and First Floor Plan)(A1)
 - ii. Floor Plans- Existing/Proposed (showing Second Floor Plan and Third Floor Plan)(A2)
 - iii. Exterior (*sic*) Elevations- Existing (showing Left Side Elevation- Existing and Front Elevation- Existing)(A3)
 - iv. Exterior Elevations- Existing (showing Right Side Elevation- Existing and Front Elevation- Existing)(A4)
 - v. Exterior (*sic*) Elevations- Proposed (showing Left Side Elevation- Proposed and Front Elevation- Proposed)(A5)
 - vi. Exterior Elevations- Proposed (showing Right Side Elevation- Proposed and Rear Elevation- Proposed)(A6)
 - vii. Exterior (*sic*) Elevations- Proposed (showing Left Side Elevation- Proposed and Front Elevation- Proposed)(A5) modified to indicate front gable dormer dimensions
 - c. a document entitled "Floor Area Worksheet- 71-73 West Pine Street," indicating a proposed total gross floor area of 4,449 square feet and a proposed FAR (floor area ratio) of 0.49, signed and stamped by Richard Mark Whiteside, Registered Architect
2. No Building Permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
 - a. Recorded a certified copy of this Special Permit/Site Plan Approval at the Middlesex South Registry of Deeds and filed proof of such recording with the City Clerk and submitted a copy with the building permit application.
 - b. Provided a Final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works, and Fire Department.
 - 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 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 building permit record statements by a registered architect and a professional land surveyor certifying compliance with Condition #1, including the as-built FAR.

- b. Submitted final as-built survey plans signed and stamped by a licensed land surveyor in digital format.