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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date:	October 3, 2019
Land Use Action Date:	December 10, 2019
City Council Action Date:	December 17, 2019
90-Day Expiration Date:	January 1, 2020

DATE: September 27, 2019

TO: City Council

FROM: Barney Heath, Director of Planning and Development
Jennifer Caira, Chief Planner
Michael Gleba, Senior Planner

SUBJECT: **Petition #310-19** for SPECIAL PERMIT/SITE PLAN APPROVAL to allow construction of a rear addition, further extending the nonconforming height at **67 Temple Street**, Ward 3, on land known as Section 32 Block 12 Lot 4, containing approximately 27,053 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 3.1.3, 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.



67 Temple Street

EXECUTIVE SUMMARY

The property at 67 Temple Street consists of a 27,053 square foot lot in a Single Residence 2 (SR2) district improved with a three and a half story, 6,855 square foot single-family dwelling constructed in 1880 and a 542 square foot detached garage. The petitioners have a building permit for work to the existing dwelling which includes the construction of a first-floor mudroom on the rear of the dwelling. As the property slopes downward from the front to the rear, the addition lowers the average grade plane, thus increasing the measured height of the dwelling.

To counteract this, the by-right building plans for the site includes the installation of some retaining walls along the right side of the house (and along the “house side” of the driveway) to raise the average grade plane so as to maintain the dwelling’s existing nonconforming height of 44.36 feet where 36 feet is the maximum height allowed.

The petitioners are now seeking a special permit per sections 3.1.3 and 7.8.2.C.2 to further extend the nonconforming height so as to not be required to install those proposed retaining walls. In the absence of those walls, the dwelling’s nonconforming height would to increase to 44.98 feet,

0.62 feet higher than the existing measurement of 44.36 feet where 36 feet is allowed. The Planning Department notes that as the addition is lower than the existing structure, the height, location and extent of the dwelling’s ridgeline has not and will not be changed.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The project as designed, which will increase the dwelling’s nonconforming height from 44.36 feet to 44.98 feet where 36 feet is the maximum allowed by right, will not be substantially more detrimental than the existing nonconforming use to the neighborhood (§7.8.2.C.2)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The property is located on the north side Temple Street between Putnam and Prospect streets. The neighborhood is predominantly occupied by single family dwellings, with exceptions including some two-family dwellings, especially to the north of the site, some vacant parcels distributed throughout, and a religious use to the north at the corner of Washington and Perkins streets (**Attachment A**). The subject parcel and others along the north side of Temple Street are zoned SR2; across Temple Street parcels are generally zoned Single Residence 1 (SR1), except those west of Prince Street where both sides are zoned SR2. There is also a Multi-Residence 1 (MR1) district approximately 300 feet to the north (**Attachment B**).

B. Site

The property consists of a 27,053 square foot lot improved with a three and a half story, 6,855

square foot single-family dwelling constructed in 1880 and a 542 square foot detached garage. Vehicular access to the property is provided by a curb cut off Temple Street and a paved driveway along its right (east) side.

The property slopes downward approximately six feet from front to rear (south to north). Portions of the of the site's landscape is disturbed, presumably related to the recent construction. That said the property also features lawn areas and mature vegetation including shrubs and trees, including some rather dense screening along the property line adjoining the driveway and closest to where the permitted retaining walls (which the petitioners are seeking to not be required to install) would be located.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

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

B. Building and Site Design

The petitioners have received a building permit from the Inspectional Services Department for work to the existing dwelling, including the construction of a rear first-floor mudroom. As the parcel's grade slopes down from the front to the back of the property, the rear addition has the effect of lowering the structure's average grade plane, thus increasing its relative height. To maintain (i.e., not increase) the nonconforming height of the dwelling, the by-right building plans included low retaining walls along the right side of the structure to increase the average grade plane.

As the petitioner no longer wish to install the retaining walls shown in the approved by-right building permit plans, they are seeking a special permit to instead allow the resulting increase in the structure's measured nonconforming height by 0.62 feet, from 44.36 feet (per the finished height of the existing building permit plans with the retaining walls installed) to 44.98 feet (in the absence of the planned walls) where 36 feet is allowed by right.

The Planning Department notes that the location of the dwelling's existing ridge line would not change and, as detailed in the attached Zoning Review, no other dimensional changes would occur.

C. Parking and Circulation

No changes to the existing parking or circulation are proposed.

D. Landscaping

In the event the present petition is granted the petitioner would not be required to install a low retaining wall and an associated small raised area along the right (east) side of the dwelling currently included in approved by-right building permit plans.

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 extend nonconforming height (§3.1.3, §7.8.2.C.2)

B. Engineering Review

As the addition increased the parcel's impervious area by approx. 160 square feet, Engineering Division review is not required at this time.

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

Land Use

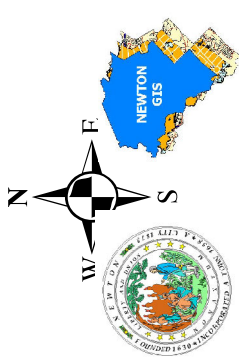
67 Temple St.

City of Newton,
Massachusetts

Land Use

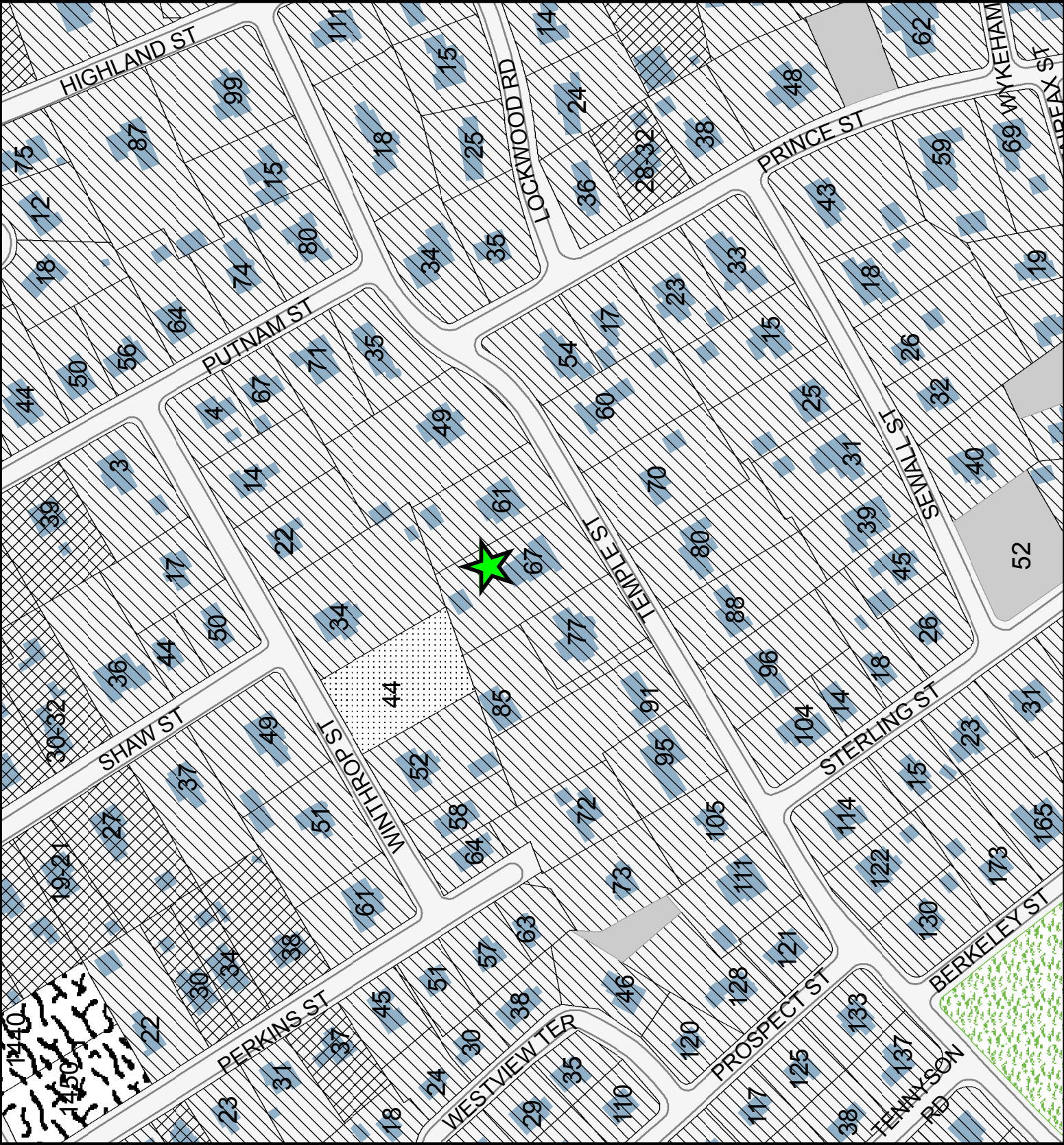
Land Use

- Single Family Residential
- Multi-Family Residential
- Mixed Use
- Open Space
- Nonprofit Organizations
- 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



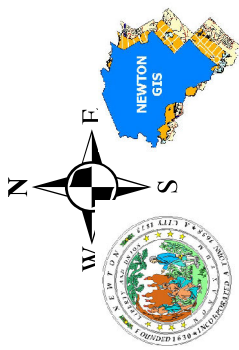
Zoning

67 Temple St.

City of Newton,
Massachusetts

Legend

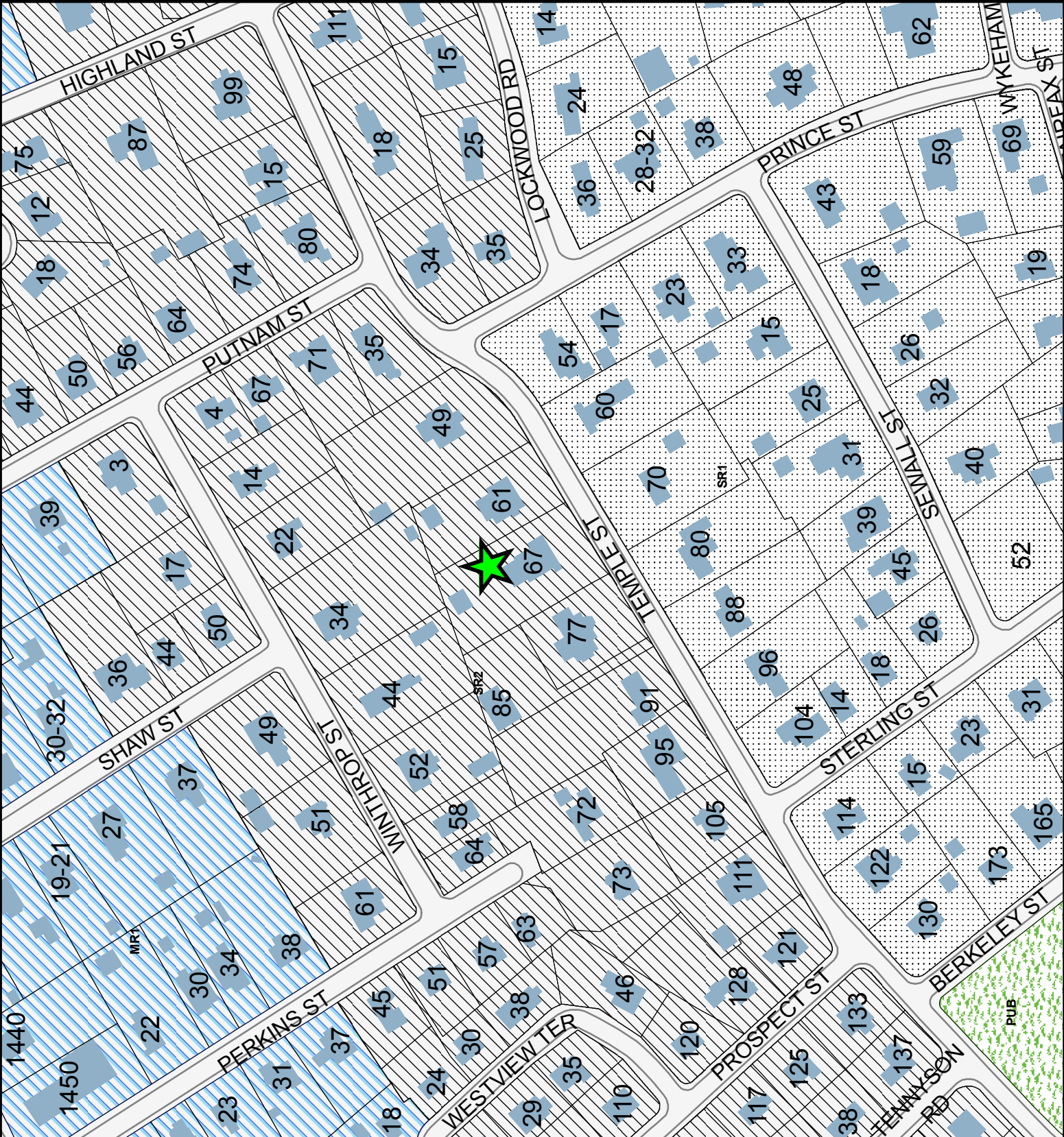
- Single Residence 1
- Single Residence 2
- Multi-Residence 1
- Public Use



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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
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0 25 50 75 100 125 150 175 200 225 250 feet





Ruthanne Fuller
Mayor

ATTACHMENT C

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: August 21, 2019

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Jennifer Caira, Chief Planner for Current Planning

Cc: Julie Haydu and Irun Bhan, Applicants
Peter Sachs, Architect
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: Request to further extend nonconforming height

Applicant: Julie Haydu & Irun Bhan	
Site: 67 Temple Street	SBL: 32012 0004
Zoning: SR2	Lot Area: 27,053 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 67 Temple Street consists of a 27,053 square foot lot improved with a single-family dwelling constructed in 1880. The petitioners have received a building permit for work to the existing dwelling, which includes the construction of a first-floor mudroom. The property slopes downward from the front to the rear. As permitted, the addition uses retaining walls to maintain the nonconforming height of the existing dwelling. The petitioners are seeking a special permit to maintain the existing grade without retaining walls, which will increase the overall nonconforming height of the dwelling with the addition of the rear mudroom.

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

- Zoning Review Application, prepared by Peter Sachs, architect, dated 6/13/2019
- Plan of Land – Existing Conditions, signed and stamped by Joseph R. Porter, surveyor, dated 11/1/2018
- Plan of Land – Proposed Conditions, signed and stamped by Joseph R. Porter, surveyor, dated 11/1/2018
- Architectural Plans and Elevations, signed and stamped by Peter Sachs, Architect, 6/10/2019

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner has been issued a building permit from Inspectional Services for a rear addition of a mudroom. Due to the existing grade changes surrounding the dwelling, the approved plans include the construction of retaining walls along the driveway that allow the addition to maintain or lower the overall height of the dwelling, as the grade slopes down from the front to the back of the property. Per section 3.1.3, the maximum height allowed in the SR2 district is 36 feet. The rear addition increases the overall nonconforming height of the dwelling from 44.36 feet (per the finished height of the existing building permit plans) to 44.98 feet if no retaining walls are used to maintain the grade around the addition. The petitioners would like to maintain the driveway width and not construct the retaining walls necessary to maintain the existing height, which requires a special permit to further extend the nonconforming height, per sections 3.1.3 and 7.8.2.C.2.

SR2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	27,053 square feet	No change
Frontage	80 feet	120 feet	No change
Setbacks • Front • Right Side • Left Side • Rear	25 feet 7.5 feet 7.5 feet 15 feet	51.7 feet 21.1 feet 49 feet 82.7 feet	No change No change No change No change
Building Height	36	44.36 feet	44.98 feet
Max Number of Stories	2.5	3.5	No change
FAR	.33	.25	No change
Lot Coverage Max	30%	12.2%	No change
Open Space Min	50%	74%	No change

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§3.1.3 §7.8.2.C.2	Request to further extend nonconforming height	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

ATTACHMENT D

DRAFT #310-19
67 Temple Street

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 increase the dwelling's nonconforming height from 44.36 feet to 44.98 feet where 36 feet is the maximum allowed by right, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Gregory Schwartz:

- 1) The project as designed, which will increase the dwelling's nonconforming height from 44.36 feet to 44.98 feet where 36 feet is the maximum allowed by right, will not be substantially more detrimental than the existing nonconforming use to the neighborhood as the increase is the result of the elimination of previously planned retaining walls and not any modification of the ridgeline of the existing dwelling (§7.8.2.C.2)

PETITION NUMBER:	#310-19
PETITIONERS:	Irun Bhan
LOCATION:	67 Temple Street, on land known as Section 32 Block 12 Lot 4, containing approximately 27,053 sq. ft. of land
OWNERS:	Irun Bhan
ADDRESS OF OWNER:	67 Temple Street Newton, MA
TO BE USED FOR:	Single Family Dwelling
CONSTRUCTION:	Wood frame
EXPLANATORY NOTES:	§3.1.3 and §7.8.2.C.2 to further extend a nonconforming height

ZONING: Single Residence 2 (SR2) 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 plan entitled "Topographic Site Plan, Newton Massachusetts, Showing Proposed Conditions at #67 Temple Street" prepared by VTP Associates, Inc., dated November 1, 2018, stamped and signed by Joseph R. Porter.
 - b. A set of architectural plans entitled "Bhan-Haydu Residence, 67 Temple St., Newton, MA," dated June 10, 2019, stamped and signed by Peter Sachs, Registered Architect:
 - i. Title Sheet (A-1);
 - ii. Proposed Basement (A-2)
 - iii. Proposed First Floor (A-3);
 - iv. Proposed Second Floor (A-4);
 - v. Proposed Right Elevation (A-5);
 - vi. Proposed Driveway View (A-6);
 - vii. Proposed Elevations (Front, Back & Left- Permit) (A-7).
 - c. A document entitled "Floor Area Ratio Worksheet, 67 Temple St." indicating a Proposed "Total gross floor area" of 6,855 square feet and a Proposed "FAR" (floor area ratio) of .25
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 Approval with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the final site plan.
 - d. 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 certifying compliance with Condition #1, including the floor area ratio (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.