



**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

Ruthanne Fuller  
Mayor

**#337-16(2)**  
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Barney S. Heath  
Director

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**PUBLIC HEARING MEMORANDUM**

Public Hearing Date: March 10, 2020  
Land Use Action Date: May 25, 2020  
City Council Action Date: June 1, 2020  
90-Day Expiration Date: June 8, 2020

DATE: March 6, 2020

TO: City Council

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

SUBJECT: **Petition #337-16(2)** for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit Council Order #337-16, which approved an oversized dormer, an accessory structure with ground floor area in excess of 700 sq. ft. and an accessory apartment in a detached structure, to make changes to the site plan at **41 Dorset Road**, Ward 5, Waban, on land known as Section 55 Block 10 Lot 45, containing approximately 24,936 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3, 7.4 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

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The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis which may be useful in the special permit decision making process of the City Council. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the City Council will want to consider in its discussion at a subsequent Working Session.



**41 Dorset Road**

## **EXECUTIVE SUMMARY**

The property at 41 Dorset Road consists of a 24,936 square foot lot in a Single Residence 2 (SR2) district improved with a 3,887 square foot, two-story single-family dwelling constructed in 1927 and an accessory structure that includes a three-car detached garage on the ground level and a one-bedroom accessory apartment in a half-story above that was the subject of Special Permit #337-16 granted in 2016.

The petitioner is presently seeking an amendment to that special permit to modify the approved site plan so as to allow changes to some aspects of the site plan, including alterations of the grade, a larger patio area, and the inclusion of an outdoor fireplace, grill and spa. No changes to the dwelling, accessory structure or parking are proposed, nor is any additional zoning relief requested.

### **I. SIGNIFICANT ISSUES FOR CONSIDERATION:**

When reviewing this request, the Board should consider whether:

1. The site is an appropriate location for the proposed alterations to the site plan approved pursuant to Special Permit #337-16, including changes to the site's grading and the installation of features including a larger patio area, an outdoor fireplace, a grill and spa (§7.3.3.C.1);
2. The proposed changes to the site's grading and the installation of features including a larger patio area, an outdoor fireplace, a grill and spa, will not adversely affect the neighborhood (§7.3.3.C.2);
3. The proposed changes to the approved site plan will not be a nuisance or create a serious hazard to vehicles or pedestrian (§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).

### **II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD**

#### **A. Neighborhood and Zoning**

The neighborhood, which is in a Single-Residence 2 (SR2) district, is predominated by single family homes, with exceptions being the Angier School's playing fields that abut the subject property to the east, the MBTA rail line just to the north of the property and, across them, the Brae Burn Country Club's golf course (**Attachments A & B**).

#### **B. Site**

The property consists of 24,936 square feet of land and is improved with a two-story, 3,887 square foot single-family dwelling and an accessory structure with a footprint of

864 square feet that includes a three-car detached garage on the ground level and a one-bedroom accessory apartment in a half-story above.

The property slopes considerably downward from Dorset Road toward the rear of the lot, especially its northern corner, with that grade change being as much as 25 feet. The residence is accessed by a driveway of varying width on the comparatively less sloped southwest side of the property that provides both parking area and access to the existing attached garage.

There are several mature trees along the rear of the property along its boundary shared with the MBTA's Green Line. There is also considerable vegetation along the property line shared with the Angier School's playing fields to the east and the abutting dwelling to the south.

### III. PROJECT DESCRIPTION AND ANALYSIS

#### A. Land Use

The property will contain an owner occupied single-family residence and an accessory structure containing a three car garage and a one bedroom accessory apartment.

#### B. Building and Site Design

No changes to the existing dwelling or the accessory structure that was the subject of Special Permit #337-16 that was granted in 2016 are contemplated by the present petition.

As proposed by the petitioner, the site plan approved pursuant to that special permit would be modified to allow a larger patio with various features including an outdoor fireplace, grill and spa. These changes would increase the impervious area of the lot above that allowed by the previous special permit from 5,487 to 6,517 square feet (22.1% to 26.1%), while the lot coverage would remain the same at 10%. Further, the grading of the lot would be altered to allow for more level space in the vicinity of the expanded patio with a relatively more downward sloped portion being located near the rear of the lot, toward the abutting MBTA right-of-way.

#### C. Parking and Circulation

No changes to the parking or circulation are proposed.

#### D. Landscape Screening

No landscaping plan was provided with the petition. The Planning Department does not consider the proposed expanded patio and associated improvements to be a visual nuisance for the neighborhood as the slope of the site results in limited visibility of the proposed patio from public way and abutters as does its location in the rear of the dwelling. Furthermore, there is vegetation along the property line shared with the Angier School's playing fields to the east and the abutting dwelling

to the south, as well as several mature trees along the property's boundary line shared with the MBTA's Green Line.

#### IV. TECHNICAL REVIEW

##### A. Engineering Review

The Engineering Division Memorandum (**Attachment C**) provides an analysis of the proposal with regard to engineering issues. The memorandum notes that the "proposed expanded patio also has additional drainage collection system that will connect to the previously approved infiltration system which has been expanded to account for the addition(al) impervious surface."

#### V. PETITIONERS' RESPONSIBILITIES

The petition is considered complete at this time.

#### **ATTACHMENTS:**

<b>Attachment A:</b>	Land Use Map
<b>Attachment B:</b>	Zoning Map
<b>Attachment C:</b>	Engineering Division Memorandum
<b>Attachment D:</b>	DRAFT Order

# ATTACHMENT A






## Land Use

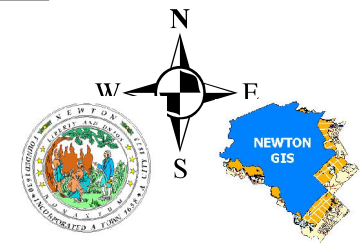
### 41 Dorset Rd.

*City of Newton,  
Massachusetts*

## Land Use

### Land Use

-  Single Family Residential
-  Golf Course
-  Open Space
-  Nonprofit Organizations
-  Vacant Land

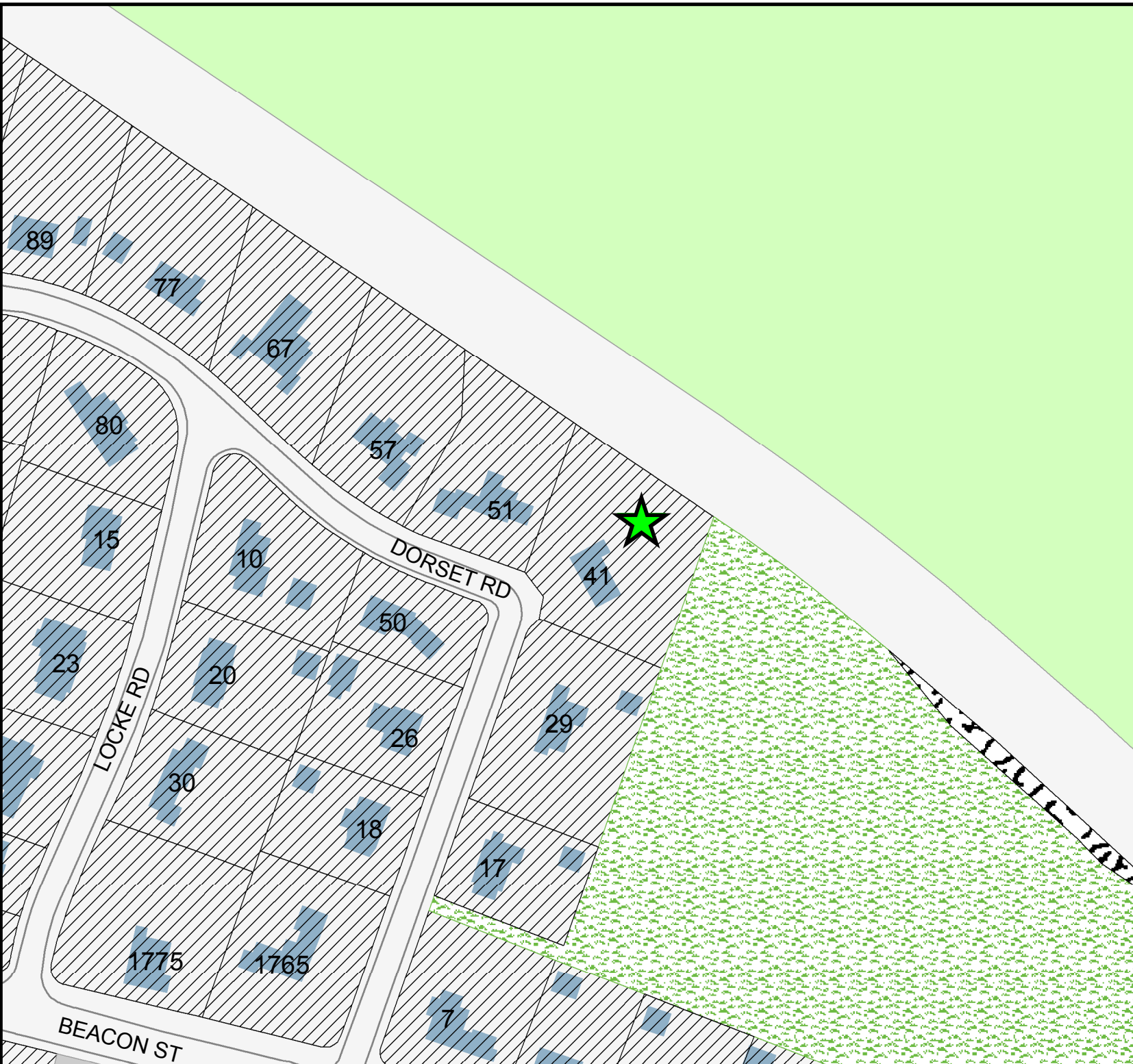


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

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

0 12.5 25 50 75 100 125 150 175 Feet

Map Date: February 20, 2020








# ATTACHMENT B

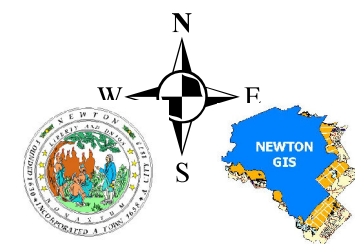
## Zoning

41 Dorset Rd.

*City of Newton,  
Massachusetts*

## Legend

-  Single Residence 1
-  Single Residence 2
-  Public Use

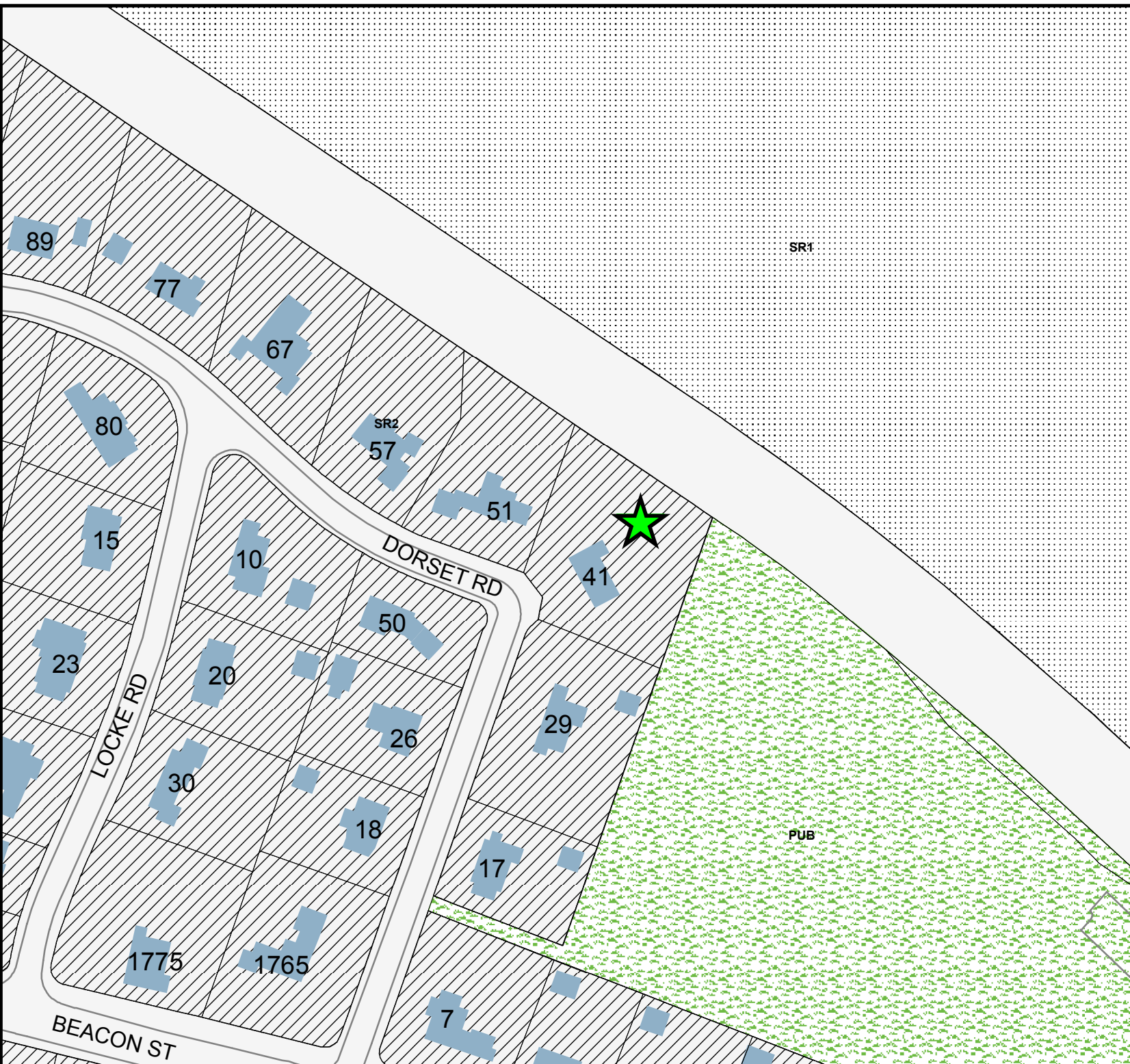


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Ruthanne Fuller  
GIS Administrator - Douglas Greenfield

0 12.5 25 50 75 100 125 150 175 Feet

Map Date: February 20, 2020



# ATTACHMENT C

## CITY OF NEWTON Department of Public Works ENGINEERING DIVISION

### MEMORANDUM

To: Council Rick Lipof, Land Use Committee Chairman

From: John Daghlion, Associate City Engineer

Re: Special Permit – 41 Dorset Road

Date: February 24, 2020

CC: Barney Heath, Director of Planning  
Jennifer Caira, Deputy Director  
Lou Taverna, PE City Engineer  
Nadia Khan, Committee Clerk  
Michael Gleba, Sr. Planner

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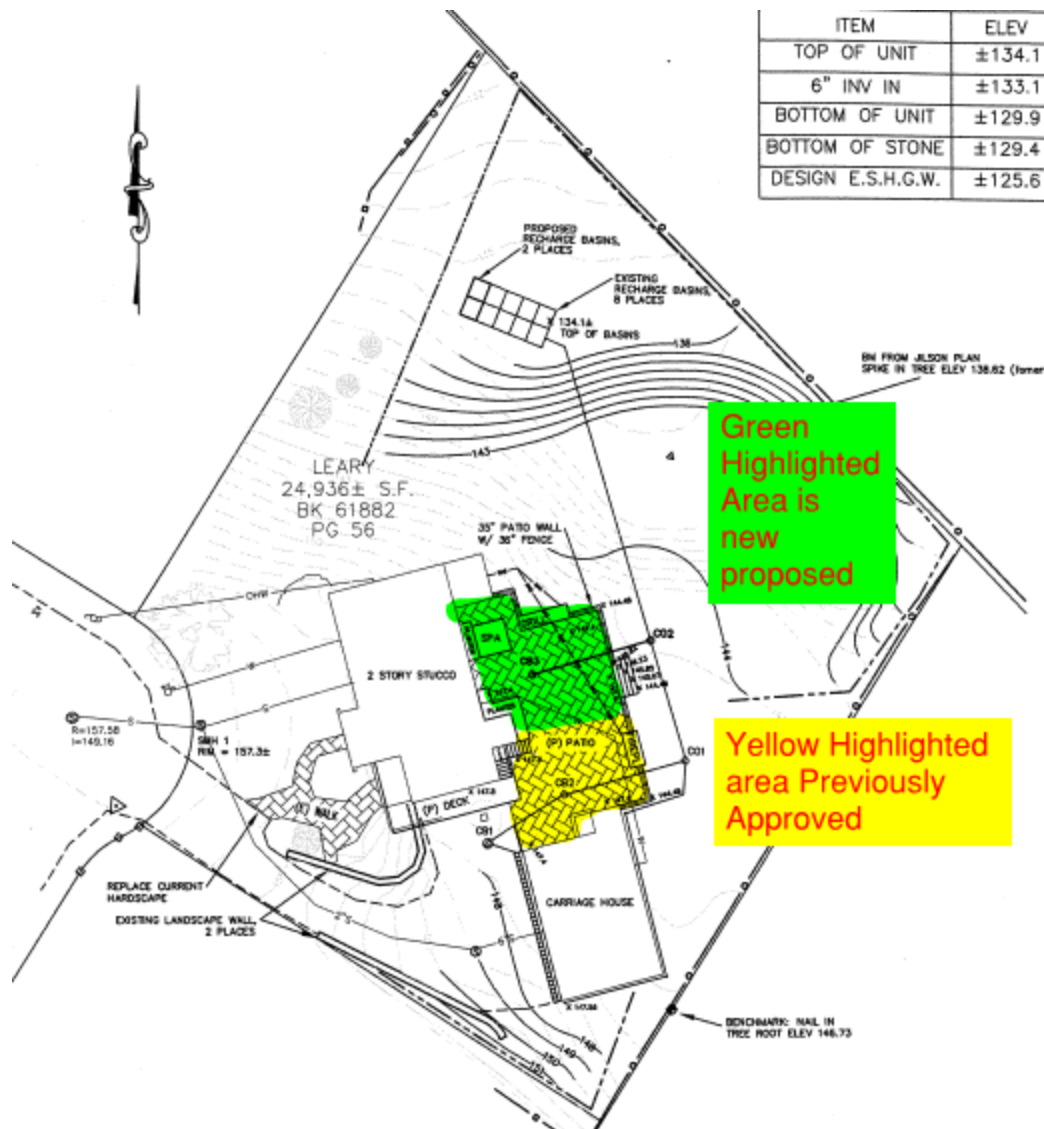
In reference to the above site, I have the following comments for a plan entitled:

Site Improvements  
41 Dorset Road  
Prepared by: Bergman & Associates, Inc.  
Dated: 11-26-'19  
Revised: 1/21/'20

#### Executive Summary:

The applicant wishes to expand on some of the landscape features of the Special Permit BO # 337-16, that includes a hardscape patio with limits as shown on the next page.

The proposed expanded patio also has additional drainage collection system that will connect to the previously approved infiltration system which has been expanded to account for the addition impervious surface.



An Operations and Maintenance (O&M) plan for the long-term maintenance of the proposed stormwater management facilities needs to be drafted and submitted for review. Once approved the O&M must be adopted by the applicant/property owner, incorporated into the deeds; and recorded at the Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.

The proposed infiltration system must be covered completely with filter fabric- a 3" layer of peastone then completely covered over with filter fabric.



All previous conditions of the approved site plan that included sanitary sewer and water service connection still must be met by the applicant's contractor of record.

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.

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.

## ATTACHMENT D

#337-16(2)  
41 Dorset Road

### 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 to amend the site plan for SPECIAL PERMIT/SITE PLAN APPROVAL #337-16, which allowed construction of an accessory structure with a ground floor area in excess of 700 square feet and a dormer wider than 50% of the exterior wall below containing a three-car garage with an accessory apartment above, by substituting the approved site plan with a modified site plan showing changes to the site's grading and the installation of features including a larger patio area, an outdoor fireplace, a grill and spa, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The site is an appropriate location for the proposed alterations to the site plan approved pursuant to Special Permit #337-16, including changes to the site's grading and the installation of features including a larger patio area, an outdoor fireplace, a grill and spa as they will be located toward the rear of a large, downward sloping site which abuts a rail right-of-way and the Angier School fields, limiting their visibility from abutting public ways and properties (§7.3.3.C.1)
2. The proposed changes to the site's grading and the installation of features including a larger patio area, an outdoor fireplace, a grill and spa, will not adversely affect the neighborhood as they will be located toward the rear of a large, downward sloping site which abuts a rail right-of-way and the Angier School fields, limiting their visibility from abutting public ways and properties (§7.3.3.C.2);
3. The proposed changes to the approved site plan will not be a nuisance or create a serious hazard to vehicles or pedestrian (§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: #337-16(2)

PETITIONER: Timothy Leary

LOCATION: 41 Dorset Road, Ward 5, Waban, on land known as Section 55, Block 28, Lot 17, containing approximately 24,936 square feet of land

OWNER: Timothy Leary

ADDRESS OF OWNER: 41 Dorset Road  
Newton, MA

TO BE USED FOR: Modifications to grading and landscaping features

CONSTRUCTION: Masonry

EXPLANATORY NOTES: §§7.3.3.C, request to amend Special Permit/Site Plan Approval #337-16 by substituting a new site plan showing changes to the site's grading and the installation of features including a larger patio area, an outdoor fireplace, a grill and spa

ZONING: Single-Residence 2 (SR2)

Approved subject to the following conditions:

1. All conditions set forth in Special Permit/Site Plan Approval #337-16 shall remain in full force and effect with the exception that the following plan is substituted for the plan identified in Condition 1(a), and the buildings, parking areas, driveways, walkways, landscaping and other site features associated with Special Permit/Site Plan Approval #337-16 shall be located and constructed consistent with the plans as originally identified in Condition 1(a) and as amended by the following plan:
  - a. A site plan entitled "Site Improvements, 41 Dorset Road, Newton, MA 02468; Proposed Site Plan- Updated Patio, Drawing C1" prepared by Bergman & Associates, Inc., signed and stamped by Paul A. Bergman, Registered Professional Engineer.
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, the Assessing Department 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 or engineer certifying compliance with Condition #1.
  - b. Submitted to the Department of Inspectional Services, and the Department of Planning and Development a final as-built survey plan in paper and digital format.
  - c. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division certifying that the final site construction details have been constructed to the standards of the City of Newton Engineering Division.