

Ruthanne Fuller
Mayor

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

DATE: June 9, 2023

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 #202-23** for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a one-story rear addition to provide an accessible living space which requires relief to increase the nonconforming FAR and height at **25 Breamore Road**, Ward 1, Newton, on land known as Section 71 Block 19 Lot 2, containing approximately 5,239 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: 7.3.3, 3.1.3, 7.8.2.C.2, 3.1.9 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 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.



25 Breamore Road

Project Description

Background

The subject property at 25 Breamore Road is a 5,239 square foot parcel located on the west side of Breamore Road between Hunnewell Avenue and the Massachusetts Turnpike. Located in a Single Residence 3 (SR3) zoning district, it is improved with a two and a half story, 37.8 foot high single-family dwelling constructed circa 1898.

The petitioner seeks to construct an 804 square foot, one-story rear addition to provide needed accessible ground level living space (including a living room, bedroom and bath) with the dimensions necessary to accommodate the use of the electric power wheelchair, transfer lift and shower wheelchair.

As is the site, the immediately surrounding neighborhood to the east is zoned Single Residence 3 (SR3). To the immediate west are Public Use (PU) and Multi Residence 1 (MR1) districts, with a Multi Residence 2 (MR2) district further to the west.

Need for Special Permit

To construct the proposed addition as designed requires a special permit per Sec. 7.8.2.C.2 of the Newton Zoning Ordinance (NZO) to further increase its existing nonconforming 37.8 foot height of where 36 feet is the maximum allowed per Sec.3.1.3, and to further increase its nonconforming floor area ratio (FAR) from 0.58 to 0.73 where 0.48 is the maximum allowed per Secs. 3.1.3 and 3.1.9.

On May 24, 2023, the Zoning Board of Appeals granted a variance per Section 7.6 of the NZO to decrease the existing conforming rear setback of 20.5 feet to 8.4 feet where 15 feet is required per Sec. 3.1.3, and to increase the existing conforming lot coverage of 24.7% to 42.1% where 30% is the maximum allowed per Sec. 3.1.3.

Analysis and Recommendations

After consultation with the Law Department, the Planning Department notes that the petitioner, if necessary, may request “reasonable accommodation” under the provisions of Title II of the ADA when seeking consideration of the proposed zoning relief. This can be interpreted as providing individuals with disabilities and/or developers of housing for people with disabilities, flexibility in the application of land use and zoning and building regulations, policies, practices and procedures, or even waiving certain requirements, when it is necessary to eliminate barriers to housing opportunities.

The Planning Department is supportive of the request and notes that the addition was carefully designed to comply with the side setbacks and the largest impact is to the rear of the dwelling, which abuts a vacant parcel that is adjacent to the Massachusetts Turnpike as well as a single-family home. The increase in nonconforming height is due to the average grade being lowered,

increasing the distance between the average grade and the peak of the roof. The peak of the roof is not getting taller. The bulk of the addition is to the rear of the structure and consists of a single story, as such, the Planning Department believes the addition has been designed to minimize zoning relief under the special permit process while allowing for the use of the electric power wheelchair, transfer lift and shower wheelchair.

I. ZONING RELIEF REQUESTED:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.3	Request to allow a reduced rear setback of 8.4 feet	Variance per §7.6
§3.1.3	Request to exceed maximum lot coverage	Variance per §7.6
§3.1.3 §7.8.2.C.2	Request to further increase nonconforming height	S. P. per §7.3.3
§3.1.3 §3.1.9 §7.8.2.C.2	Request to further exceed nonconforming FAR	S. P. per §7.3.3

As referenced above, on May 24, 2023, the Zoning Board of Appeals granted a variance per Section 7.6 of the NZO to decrease the existing conforming rear setback of 20.5 feet to 8.4 feet where 15 feet is required per Sec. 3.1.3, and to increase the existing conforming lot coverage of 24.7% to 42.1% where 30% is the maximum allowed per Sec. 3.1.3.

For more details regarding the zoning analysis please refer to **Attachment A**.

II. CRITERIA FOR CONSIDERATION PER §7.3.3. AND/OR §7.8.2.C.2:

When reviewing this request, the Council should consider whether:

- the proposed expanded dwelling with an increased FAR of 0.73 where 0.58 exists and 0.48 is the maximum allowed by right is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood. (§3.1.9)
- The proposed expanded single family dwelling as designed which increases both the nonconforming height and nonconforming FAR would be substantially more detrimental than the existing nonconforming dwelling is to the neighborhood (§7.8.2.C.2)

III. PROJECT PROPOSAL AND SITE CHARACTERISTICS:

A. Site - Existing Conditions

The subject property is a level 5,239 square foot parcel located on the west side of Breamore Road between Hunnewell Avenue and the Massachusetts Turnpike improved with a two and a half story, 37.8 foot high single-family dwelling. Vehicular access to the site is provided by a cobblestone-paved parking area on the property's right side, proximate to the front door. The balance of the site includes mature lawn areas and vegetation.

IV. PROJECT DESCRIPTION AND ANALYSIS:

A. Land Use

The use would remain as a single-family dwelling.

B. Site and Building Design

The petitioner proposes to construct a one-story rear addition to provide needed accessible ground level living space (including a living room, bedroom and bath) with the dimensions necessary to accommodate the use of the electric power wheelchair, transfer lift and shower wheelchair. A ramp would be constructed from the front façade of the addition toward the front of the property along the left side of the lot.

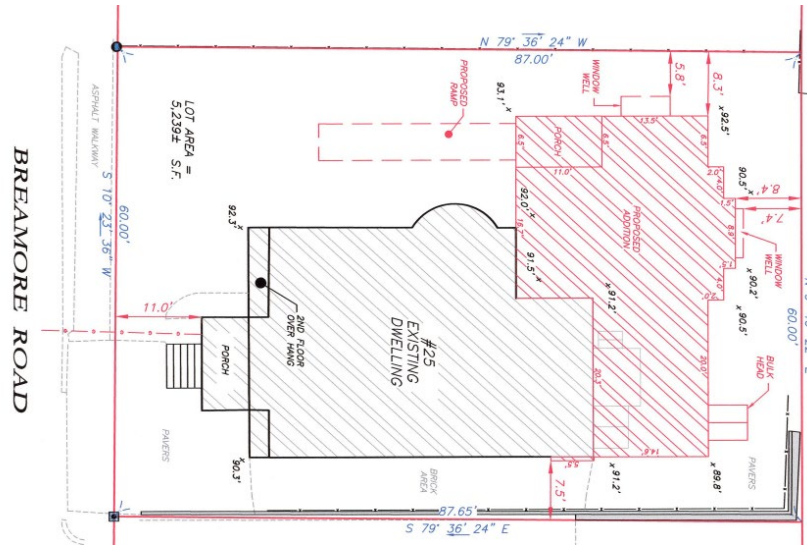
The proposed modifications would, in the aggregate, increase the property's floor area countable toward the calculated floor area ratio (FAR) by approx. 804 square feet, from 3,024.4 to 3,828.80 square feet. This would increase the already nonconforming FAR from 0.58 to 0.73 where 0.48 is the maximum allowed by right.

The structure has an existing nonconforming height at the ridgeline of 37.8 feet where 36 feet is the maximum allowed by right. By altering the average grade around the structure, the addition would increase the measured height to 38.1 feet but do so without altering or adding to the ridgeline.

Regarding setbacks, there would be no change to the property's 11 foot front setback. The property's left side setback would be reduced from 19.7 feet to 8.3 feet; the right side setback would be reduced from eight to 7.5 feet (the minimum allowed by right is 7.5 feet). The rear setback would be reduced from 20.5 to 8.4 feet where 15 feet is required; as discussed above, a variance to create a nonconforming rear setback was granted by the ZBA last month.

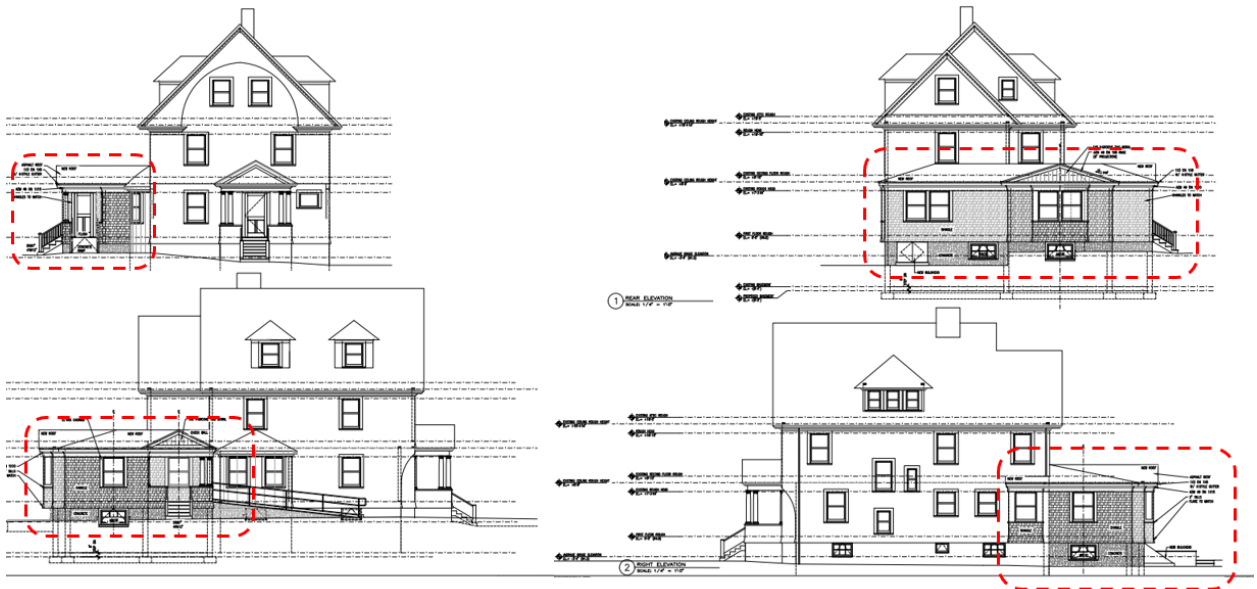
As designed, the parcel's lot coverage would be increased from 24.75% to 42.1%, above the maximum 30% allowed. Again, as discussed above, a variance to allow that

nonconforming condition was granted by the ZBA last month.



Proposed site plan (addition indicated)

The property's open space would be decreased from 66.6% to 50.8%, remaining just above the minimum 50% required. Also, as the site of the proposed addition is currently rear yard space, the amount of impervious area on the parcel would be increased from 2,681 to 3,424 square feet, a net increase of 743 square feet.



Proposed elevations (addition indicated)

C. Parking and Circulation

No changes to the existing driveway and curb cut are contemplated by this petition.

D. Landscaping

While a landscape plan was not provided with this petition, the petitioner has indicated that on the left side of the parcel “some current plantings will be relocated to landscape around the addition and to maintain a natural screen between neighbors” and that a “walkway will be added surrounded by plantings.”

V. INTERDEPARTMENTAL REVIEW:

- **Engineering Review:** Review of this petition by the Engineering Division is not required at this time.
- **Newton Historical Commission:** On April 25, 2023, Newton Historic Commission staff found the structure historically significant but approved the project based upon submitted materials.

VI. PETITIONER’S RESPONSIBILITIES:

The petition is considered complete at this time.

ATTACHMENTS:

Attachment A: Zoning Review Memorandum

Attachment B: DRAFT Council Order

ATTACHMENT A



Ruthanne Fuller
Mayor

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: April 10, 2023

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Linda Blacksmith, Applicant
Barney S. Heath, Director of Planning and Development
Jonah Temple, Deputy City Solicitor

RE: **Request for a Variance to allow a reduced rear setback and to exceed maximum lot coverage, and a special permit to further increase nonconforming FAR and height**

Applicant: Linda Blacksmith

Site: 25 Breamore Road	SBL: 71019 0002
Zoning: SR3	Lot Area: 5,239 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 25 Breamore Road is located in the SR3 zoning district and improved with a single-family dwelling constructed circa 1898. The petitioner seeks to construct a one-story rear addition to provide an accessible living space for an adult son who permanently uses a wheelchair, allowing him to live in the family home. The proposed addition will require a variance from the rear setback and lot coverage requirements and a special permit to further increase the nonconforming FAR and height.

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

- Zoning Review Application, prepared by Linda Blacksmith, applicant, submitted 3/7/2023
- Certified Plot Plan, signed and stamped by Dennis O'Brien, surveyor, dated 11/9/2022
- Proposed Addition and Ramp, signed and stamped by Dennis O'Brien, surveyor, dated 2/1/2023, revised 4/6/2023
- FAR worksheet, submitted 3/29/2023
- Floor plans and elevations, signed and stamped by Kenton L. Duckham, architect, dated 1/25/2023, revised 2/22/2023

ADMINISTRATIVE DETERMINATIONS:

1. The proposed project is intended to provide an accessible living space for the petitioner’s adult son with quadriplegia and has a permanent need for an electric power wheelchair. The petitioners seek to construct a one-story rear addition which will provide a living room, bedroom and bath at the ground level with the dimensions necessary to accommodate the use of the electric power wheelchair, transfer lift and shower wheelchair. The petitioner, if necessary, may request reasonable accommodation under the provisions of Title II of the ADA when seeking consideration of the proposed zoning relief.
2. The dwelling has an existing conforming rear setback of 20.5 feet where 15 feet is required per section 3.1.3. The proposed one-story addition results in a rear setback of 8.4 feet, requiring a variance per section 7.6.
3. The property is conforming as to lot coverage at 24.7% where the maximum allowed is 30% per section 3.1.3. The proposed addition results in 42.1% lot coverage, exceeding the maximum and requiring a variance per section 7.6.
4. The structure has an existing nonconforming height of 37.8 feet where 36 feet is the maximum allowed per section 3.1.3. The proposed addition lowers the average grade by 0.3 feet, thus increasing the height to 38.1 feet, without altering or adding to the ridgeline. A special permit per section 7.8.2.C.2 is required to further increase the nonconforming height of the dwelling.
5. The existing nonconforming FAR is .58 where .48 is the maximum allowed per sections 3.1.3 and 3.1.9. The proposed addition further increases the nonconforming FAR to .73, requiring a special permit per section 7.8.2.C.2.

SR3 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	5,239 square feet	No change
Frontage	70 feet	60 feet	No change
Setbacks			
• Front	25 feet	11 feet	No change
• Side	7.5 feet	19.7 feet	8.3 feet
• Side	7.5 feet	8 feet	7.5 feet
• Rear	15 feet	20.5 feet	8.4 feet*
Max Number of Stories	2.5	2.5	No change
Height	36 feet	37.8 feet	38.1 feet*
FAR	.48	.58	.73*
Max Lot Coverage	30%	24.7%	42.1%*
Min. Open Space	50%	66.6%	50.8%

* Requires relief

See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
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§3.1.3	Request to exceed maximum lot coverage	Variance per §7.6
§3.1.3 §7.8.2.C.2	Request to further increase nonconforming height	S. P. per §7.3.3
§3.1.3 §3.1.9 §7.8.2C.2	Request to further exceed nonconforming FAR	S. P. per §7.3.3

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the City Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to to further increase the dwelling's nonconforming height and further extend the nonconforming floor area ratio (FAR), as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

1. The proposed expanded dwelling with an increased FAR of 0.73 where 0.58 exists and 0.48 is the maximum allowed by right is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood given its modest height subordinate to the existing portions of the dwelling, and limited visibility from nearby properties and/or public rights-of-way. (§3.1.9)
2. The proposed expanded single family dwelling as designed which increases both the nonconforming height and nonconforming FAR would be substantially more detrimental than the existing nonconforming dwelling is to the neighborhood given its modest height subordinate to the existing portions of the dwelling, and limited visibility from nearby properties and/or public rights-of-way. (§7.8.2.C.2)
3. Granting the requested special permit relief is a reasonable accommodation under the provisions of Title II of the Americans with Disabilities Act (ADA) so as to provide flexibility in the application of land use and zoning regulations necessary to eliminate barriers to housing opportunities individuals with disabilities.

PETITION NUMBER: #202-23

PETITIONER: Linda Blacksmith

LOCATION: 25 Breamore Road, Ward 1, Newton, on land known as Section 71 Block 19 Lot 2, containing approximately 5,239 sq. ft. of land

OWNER: Linda Blacksmith

ADDRESS OF OWNER: 25 Breamore Road
Newton, MA 02459

TO BE USED FOR: Single-family dwelling

RELIEF GRANTED: Special permit as per §7.3.3 to further increase nonconforming height and further extend nonconforming FAR (§3.1.3, §3.1.9, §7.8.2.C.2)

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 “Proposed Addition & Ramp, 25 Breamore Road Newton, MA, Middlesex County”, dated March 5, 2023, prepared by D. O’Brien Land Surveying, dated February 1, 2023, signed and stamped by Dennis B. O’Brien, Professional Land Surveyor
 - b. Architectural drawings entitled “Blacksmith Residence, 25 Breamore Road, Newton, MA, prepared by Duckham Architecture and Interiors, January 25, 2023, signed and stamped by Kenton L. Duckham, Registered Architect, consisting of the following sheets:
 - i. Zoning Legend (as revised through February 22, 2023)(A001-a)
 - ii. Area Calcs (A001)
 - iii. Proposed Site Plan (A002)
 - iv. Proposed Basement Plan (A100)
 - v. Proposed First Floor (A101)
 - vi. Proposed Roof Plan (A102)
 - vii. Proposed Exterior Elevations (A201)
 - viii. Proposed Exterior Elevations (A202)
 - ix. Elevation 2 and Elevation 3 (page 3)
2. No building permit (other than a demolition permit) and unless otherwise specified shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and 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. Obtained a written statement/sign off from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1 including all dimensional requirements.
3. No certificate of occupancy (temporary or final) shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the petitioner has:

- a. Filed with the building permit record statements by a registered architect (or professional engineer) and a professional land surveyor (or professional engineer) certifying compliance with Condition #1, including the as built FAR.
- b. Submitted final as-built survey plans in digital format, stamped and signed by a professional land surveyor or professional engineer, as applicable.