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#23-22

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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: January 11, 2022
Land Use Action Date: March 29, 2022
City Council Action Date: April 4, 2022
90-Day Expiration Date: April 11, 2022

DATE: January 7, 2022

TO: City Council

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

SUBJECT: **Petition #23-22** for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a garage accommodating more than three vehicles with a ground floor area exceeding 700 sq ft, to raze the existing dwelling and construct a new single family dwelling on the same foundation and allow an oversized dormer at **961 Walnut**, Ward 6, Newton, on land known as Section 52 Block 14 Lot 01, containing approximately 1588 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 3.2.3, 7.8.2.C.2, 3.2.11, 1.5.4.G.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.



961 Walnut Street

EXECUTIVE SUMMARY

The subject property at 961 Walnut Street consists of a 1,588 square foot lot in a Multi Residence 1 (MR1) district is improved with a 2 ½ story, 21.9 feet high, 1,744 square foot single-family dwelling constructed in 1875. The property is abutted on the two rear boundaries by the Sudbury Aqueduct.

The petitioner proposes to replace the existing single-family dwelling with a new single-family dwelling on the existing foundation. As designed, the proposed construction requires several zoning reliefs.

As the existing structure has a nonconforming 0.0-foot front setback where 25 feet is required per Sec. 3.2.3, the proposed increase of the overall height of the dwelling would vertically increase this nonconforming front setback, requiring a special permit per Sec. 7.8.2.C.2.

The proposed further increase of the existing nonconforming floor area ratio (FAR) from 1.1 to 1.2 where 0.58 is the maximum allowed by-right would require a special permit per Secs. 3.2.3, 3.2.11 and 7.8.2.C.2.

The parcel's existing nonconforming lot coverage of 46.4% to be further increased to 51.2% where 30% is the maximum allowed, and its existing nonconforming open space of 31% further decreased to 22%, where 50% is the minimum allowed, both as required per Section 3.2.3.

Also, Sec. 1.5.4.G.2.b requires that dormers be no wider than 50% of the length of the exterior wall of the story next below. As the petitioner proposes to construct a nine-foot-long dormer on the northern elevation where the wall below measures 11.5 feet, a special permit is required to allow for a dormer that is 78% of the length of the wall plane below.

The Planning Department is generally not concerned with the proposed construction given that it is not significantly increasing the dwelling's square footage and would allow the continued residential use of a somewhat awkwardly shaped and sized parcel.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- the site in a Multi Residence 1 (MR1) zoning district is an appropriate location for the proposed dwelling as designed, including an oversized dormer and increased floor area ratio (FAR) (§1.5.4.G.2.b) (§7.3.3.C.1)
- the proposed dwelling as designed, including an oversized dormer and increased floor area ratio (FAR) will adversely affect the neighborhood (§7.3.3.C.2)
- the proposed dwelling as designed, including an oversized dormer and increased floor area ratio (FAR) 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)
- The proposed project, as designed with a vertically extended nonconforming front setback; further increased nonconforming lot coverage; further decreased nonconforming open space; and further extended nonconforming floor area ratio (FAR), would 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 subject property is located on the west side of Walnut Street just north of its intersection with Fisher Avenue and Berwick Road. Consistent with a majority of the lots in the neighborhood, the lot is developed with a single-family dwelling, with exceptions including several two-family dwellings directly across Walnut Street to the east and the aqueduct corridor that abuts directly to the rear (west) (**Attachment A**). The site and nearby properties along Walnut Street are zoned MR1, with Single Residence 2 (SR2) properties located to the west, east and south, and the adjacent aqueduct property is zoned Public Use (PU)(**Attachment B**).

B. Site

The subject property consists of a 1,588 square foot lot improved with a 2 ½ story, 21.9 feet high, 1,744 square foot single-family dwelling. The property is abutted on its two rear boundary lines by the Sudbury Aqueduct. The property slopes upward approximately four feet from front to rear (east to west). Two paved parking areas (and their associated curb cuts) flank the dwelling on its left and right sides. The remaining portions of the site feature some trees and vegetation.

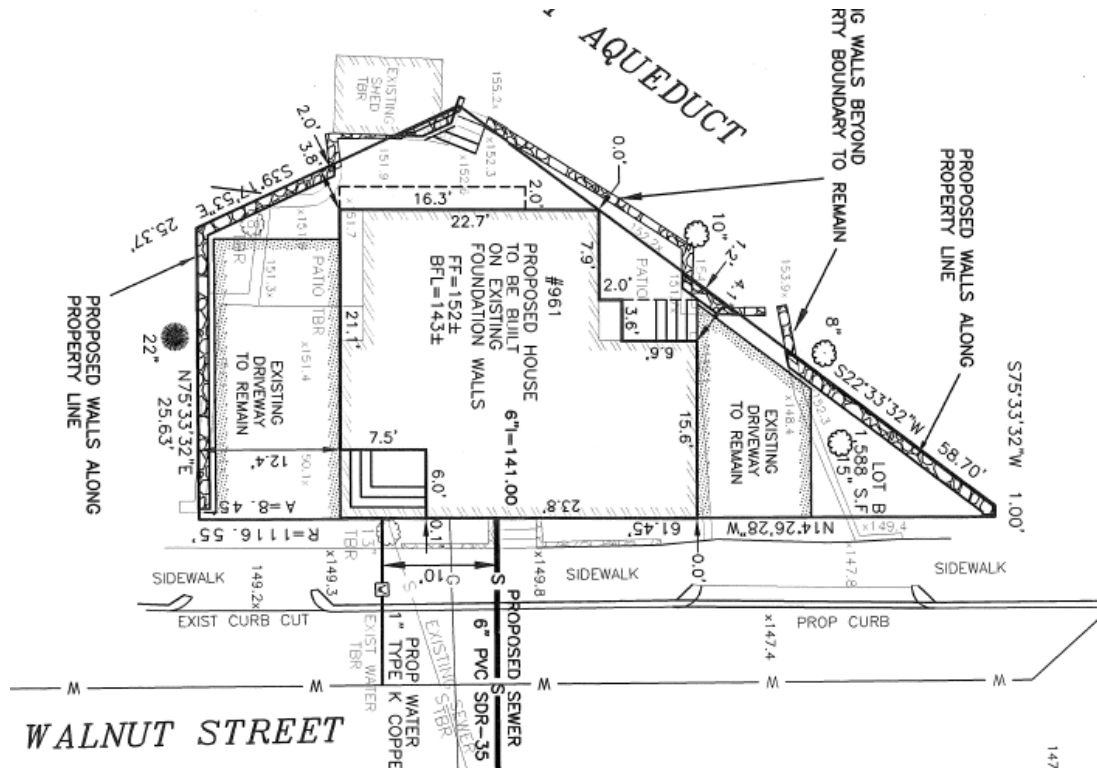
III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

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

B. Building and Site Design

The petitioner proposes to replace the existing single-family dwelling with a new single-family dwelling on the existing foundation.



Proposed site plan

The number of stories would remain at 2.5. However, the structure’s measured height would increase from 21.9 to 34.4 feet but remain below the maximum 36 feet allowed by right. This increased height would increase the front setback’s nonconformity upward.

Regarding the other setbacks, no changes requiring relief are proposed. That said, some modifications to the dimensions at the rear of the lot are proposed, including a reduction of the structure’s rear setback distance in one location from 4.7 to 3.8 feet, but as noted in the attached zoning review memorandum (Attachment C), no setback is required from the abutting aqueduct property.

As a result of some proposed changes to the floor plans, the existing nonconforming floor area ratio (FAR) would be increased from 1.1 to 1.2 where 0.58 is the maximum allowed by-right. This would represent an increase of approximately 160 square feet countable toward FAR, from 1,744 to 1,905 square feet where 920 square feet would be allowed by right.

The parcel’s existing nonconforming lot coverage of 46.4% would be further increased to 51.2% (primarily as a result of projections above the first floor) where 30% is the maximum allowed, and its existing nonconforming open space of 31% further decreased to 22%, where 50% is the minimum allowed.

Also, Sec. .5.4.G.2.b requires that dormers be no wider than 50% of the length of the exterior wall of the story next below. As the petitioner proposes to construct a nine-foot-long dormer on the northern elevation where the wall below measures 11.5 feet, a special permit is required to allow the length of that dormer to be 78% of the length of the wall plane below.



Proposed front and right side elevations

C. Parking and Circulation

Two existing parking areas located directly on either side of the dwelling would continue to be used, with that on the left (south) portion of the property being expanded slightly with the relocation of an existing retaining wall to the property's rear left corner. (Please note that a garage is not contemplated by this petition.)

D. Landscaping

A landscaping plan was not submitted with 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 a Special Permit per §7.3.3 to:

- extend a nonconforming front setback (§3.2.3, §7.8.2.C.2)
- further extend nonconforming floor area ratio (FAR)(§3.2.3, 3.2.11, §7.8.2.C.2)
- further increase nonconforming lot coverage (§3.2.3, §7.8.2.C.2)
- further decrease nonconforming open space (§3.2.3, §7.8.2.C.2)
- allow an oversized dormer (§1.5.4.G.2.b)

B. Engineering Review

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

C. Historic Review

On July 1, 2021, the Newton Historical Commission found the property not preferably preserved.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:

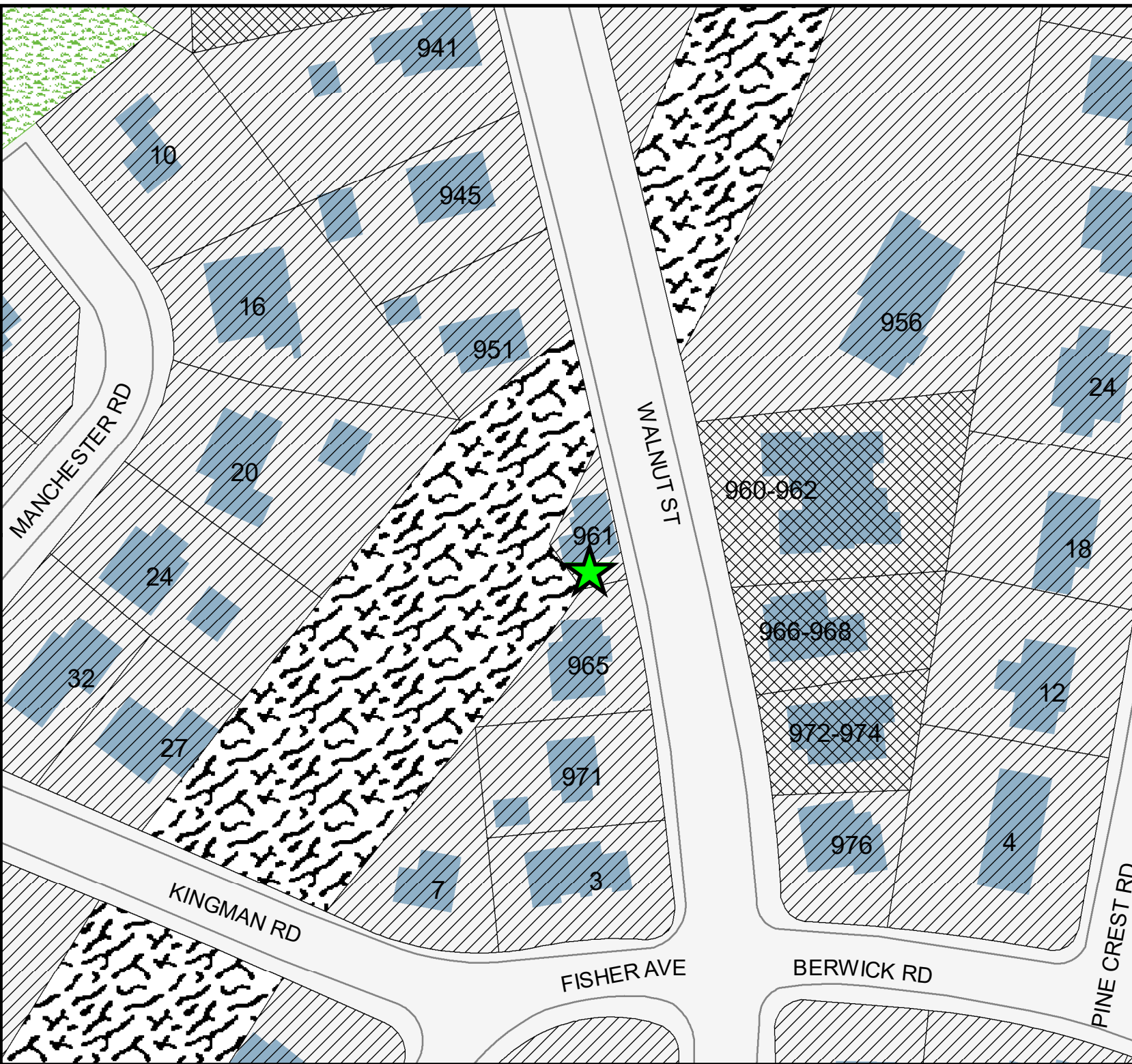
- Attachment A:** Land Use Map
Attachment B: Zoning Map
Attachment C: Zoning Review Memorandum
Attachment D: DRAFT Council Order

ATTACHMENT A

Land Use





961 Walnut St.

City of Newton,
Massachusetts



Land Use

Land Use

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



The information on this map is 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: January 03, 2022

ATTACHMENT B

Zoning

961 Walnut St.

City of Newton,
Massachusetts

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

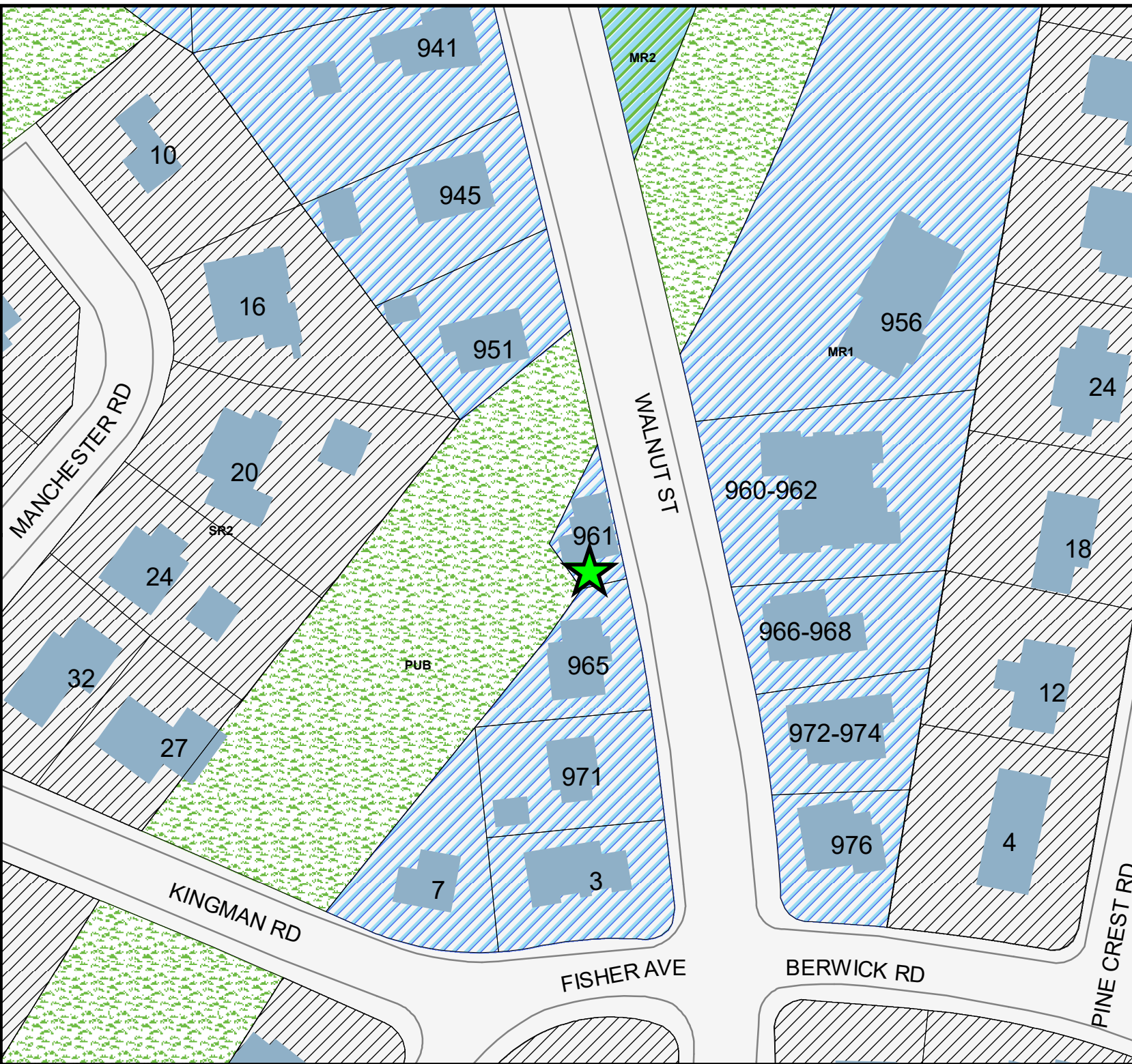


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield



Map Date: January 03, 2022





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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: October 12, 2021

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Neil Cronin, Chief Planner for Current Planning

Cc: Oscar Escobar, Applicant
PropertyVelopment LLC
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: Request to extend a nonconforming single-family structure, to further exceed nonconforming FAR and lot coverage, to further reduce nonconforming open space and for an oversized dormer

Applicant: Oscar Escobar	
Site: 961 Walnut Street	SBL: 52014 0001
Zoning: MR1	Lot Area: 1,588 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 961 Walnut Street consists of a 1,588 square foot lot improved with a single-family dwelling constructed in 1875 in the Multi Residence 1 zoning district. The property is abutted on the two rear boundaries by the Sudbury Aqueduct. The petitioner intends to raze the existing dwelling and construct a new single-family dwelling on the same foundation, requiring a special permit to extend several nonconformities and to allow an oversized dormer.

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

- Zoning Review Application, prepared by Oscar Escobar, applicant, submitted 9/3/2021
- Site Plan of Land, signed and stamped by Bruce Bradford, surveyor, and Michael Kosmo, engineer, dated 6/4/2021
- FAR worksheet, submitted 9/3/2021
- Floor Plans and Elevations, signed and stamped by Michael Heller, architect, dated 8/23/2021

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner proposes to raze the existing single-family dwelling and construct a single-family dwelling on the existing foundation. The existing dwelling has a nonconforming 0.0-foot front setback where 25 feet is required per section 3.2.3. The petitioner proposes to increase the overall height of the dwelling, vertically increasing the nonconforming front setback requiring a special permit per section 7.8.2.C.2.
2. The existing 1,744 square foot dwelling on the 1,588 square foot lot results in a nonconforming FAR of 1.1 where .58 is the maximum allowed per sections 3.2.3 and 3.2.11. The proposed construction further increases the nonconforming FAR to 1.2, requiring a special permit per sections 3.2.3, 3.2.11 and 7.8.2.C.2.
3. The parcel has an existing nonconforming lot coverage of 46.4% where 30% is the maximum allowed per section 3.2.3. The proposed construction further increases the nonconforming lot coverage to 51.2%, requiring a special permit per sections 3.2.3 and 7.8.2.C.2.
4. The parcel has an existing nonconforming open space of 31% where 50% is the minimum required per section 3.2.3. The proposed construction further reduces the nonconforming open space to 22%, requiring a special permit per sections 3.2.3 and 7.8.2.C.2.
5. Per section 1.5.4.G.2.b a dormer may be no wider than 50 percent of the length of the exterior wall of the story next below. The petitioner proposes to construct a dormer on the northern elevation measuring nine feet in length, where the wall below measures 11.5 feet, resulting in a dormer that is 78% of the wall below. A special permit is required to allow for a dormer that is 78% of the length of the wall plane below it.

MR1 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	1,588 square feet	No change
Frontage	70 feet	61.5 feet	No change
Setbacks			
• Front	25 feet	0.0 feet	No change*
• Side	7.5 feet	12.4 feet	No change
• Rear	0 feet**	0 feet	No change
Max Number of Stories	2.5	2.5	No change
Max Height	36 feet	21.9 feet	34.4 feet
FAR	.58	1.1	1.2*
Max Lot Coverage	30%	46.4%	51.2%*
Min. Open Space	50%	31%	22%*

*Requires relief

**No setback is required abutting an aqueduct

Figures in **Bold** are nonconforming

1. See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.2.3 §7.8.2.C.2	Request to extend a nonconforming front setback	S.P. per §7.3.3
§3.2.3 §3.2.11 §7.8.2.C.2	Request to further extend nonconforming FAR	S.P. per §7.3.3
§3.2.3 §7.8.2.C.2	Request to further increase nonconforming lot coverage	S.P. per §7.3.3
§3.2.3 §7.8.2.C.2	Request to further decrease nonconforming open space	S.P. per §7.3.3
§1.5.4.G.2.b	Request to allow an oversized dormer	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 extend a nonconforming front setback (§3.2.3, §7.8.2.C.2); further extend nonconforming floor area ratio (FAR)(§3.2.3, 3.2.11, §7.8.2.C.2); further increase nonconforming lot coverage (§3.2.3, §7.8.2.C.2); further decrease nonconforming open space (§3.2.3, §7.8.2.C.2); and allow an oversized dormer (§1.5.4.G.2.b), as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

- the site in a Multi Residence 1 (MR1) zoning district is an appropriate location for the proposed dwelling as designed, including an oversized dormer and increased floor area ratio (FAR), given the property's previous use as a single-family dwelling and the area's predominantly residential use (§7.3.3.C.1)
- the proposed dwelling as designed, including an oversized dormer and increased floor area ratio (FAR) will not adversely affect the neighborhood given the small increase in the footprint of the dwelling and required setbacks are not being reduced (§7.3.3.C.2)
- the proposed dwelling as designed, including an oversized dormer and increased floor area ratio (FAR)will not create a nuisance or serious hazard to vehicles or pedestrians as the parcel's two curb cuts are existing (§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)
- the proposed project, as designed with an extended nonconforming front setback; further increased nonconforming lot coverage; further decreased nonconforming open space (§3.2.3, §7.8.2.C.2); and further extended nonconforming floor area ratio (FAR), would not be substantially more detrimental than the existing nonconforming use to the neighborhood, given the reuse of the existing foundation and the parcel is abutted on several sides by aqueduct corridor property (§7.8.2.C.2)

PETITION NUMBER: #23-22

PETITIONER: Oscar Escobar/PropertyVelopment LLC

LOCATION: 961 Walnut Street, Section 52, Block 14, Lot 1, containing approximately 1,588 square feet of land

OWNER: PropertyVelopment LLC

ADDRESS OF OWNER: 432 America Boulevard
Ashland, MA 01721

TO BE USED FOR: Single-Family Residence

CONSTRUCTION: Wood Frame

EXPLANATORY NOTES: Special Permit per §7.3.3 to allow:

- extend a nonconforming front setback (§3.2.3, §7.8.2.C.2)
- further extend nonconforming floor area ratio (FAR)(§3.2.3, 3.2.11, §7.8.2.C.2)
- further increase nonconforming lot coverage (§3.2.3, §7.8.2.C.2)
- further decrease nonconforming open space (§3.2.3, §7.8.2.C.2)
- allow an oversized dormer (§1.5.4.G.2.b)

ZONING: Multi Residence 1 (MR1)

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 "Site Plan of Land in Newton, MA, 961 Walnut Street," dated June 4, 2021 as revised through September 2, 2021, prepared by Everett M. Brooks Co., signed and stamped by Michael S. Kosmo, Registered Professional Engineer on September 2, 2021, and Bruce Bradford, Professional Land Surveyor, September 2, 2021
 - b. a set of architectural drawings entitled "961 Walnut Street, Newton Ma" prepared by Michael Huller Architects, dated August 23, 2021, signed and stamped by Michael Huller, Registered Architect, consisting of the following sheets:
 - i. First Floor Plan
 - ii. Second Floor Plan

- iii. Attic Floor Plan
 - iv. Front Elevation
 - v. Right Elevation
 - vi. Rear Elevation
 - vii. Left Elevation
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 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 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 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 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.
 - b. Filed with the Clerk of the Council, the Department of Inspectional Services and the Department of Planning and Development a statement from the Engineering Division of the Department of Public Works certifying that improvements authorized by this Order have been constructed to the standards of the City of Newton Engineering Department.
 - c. 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.