



#376-22

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City of Newton, Massachusetts

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

Ruthanne Fuller
Mayor

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date:	August 9, 2022
Land Use Action Date:	October 24, 2022
City Council Action Date:	November 7, 2022
90-Day Expiration Date:	November 7, 2022

DATE: August 5, 2022

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning

SUBJECT: **Petition #376-22**, for SPECIAL PERMIT/SITE PLAN APPROVAL to combine two parcels and eliminate the interior lot line, and to construct additions to the existing dwelling, exceeding allowable FAR and further extending the nonconforming use at 1766-1768 Commonwealth Avenue, Ward 4, Newton, on land known as Section 43 Block 08 Lot 04, containing approximately 12,880 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 7.4, 3.4.1, 7.8.2.C.2, 3.1.3, 3.1.9 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.



1766-1768 Commonwealth Avenue

EXECUTIVE SUMMARY

The subject property located at 1766-1768 Commonwealth Avenue consists of two lots totaling 12,880 square feet of land. The property is located within the Single Residence 2 (the "SR-2") zone in West Newton, at the corner of Washington Street and Commonwealth Avenue. One of the lots is improved with a two-family dwelling constructed in 1938. Two-family dwellings are not allowed within the SR-2 zone; as such, the use is legal nonconforming. The petitioner proposes to construct an addition to the left side of the existing dwelling, increasing the FAR and extending the nonconforming two-family dwelling use in a Single Residence zone, requiring a special permit.

While the Planning Department is unconcerned with the proposed extension of the nonconforming two-family residential use, staff suggests the petitioner consider modifications to the site design and front elevation from Commonwealth Avenue. Planning noticed the proposed front elevation from Commonwealth Avenue presents as more of a side elevation, while the existing dwelling maintains a presence from the street that aligns with other structures in the neighborhood on Commonwealth Avenue. Staff believes the proposed site plan could be modified to reduce paving and recommends maintaining access from only one street. As proposed, the petitioners are seeking to add a driveway from Washington Street, resulting in two driveways, where the site currently served by one driveway from Commonwealth Ave. Planning questions the need for the additional driveway since the two-family residential use is being maintained. The site's visibility from both Commonwealth Avenue and Washington Street presents an opportunity for a street presence with less emphasis on vehicular access and allow for additional landscaping along the Washington Street frontage, which would increase the open space calculation as well.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the addition to the two family dwelling which increases the FAR. (§7.3.3.C.1, §3.1.3, §3.1.9).
- The proposed two-family dwelling as designed will not adversely affect the neighborhood. (§7.3.3.C.2, §3.1.3, §3.1.9).
- There will not be a nuisance or serious hazard to vehicles or pedestrians because the petitioner is maintaining the driveway location (§7.3.3.C.3, §3.1.3, §3.1.9).
- Access to the sites over streets is appropriate for the types and number of vehicles involved (§7.3.3.C.4, §3.1.3, §3.1.9).
- The proposed increase in FAR from .24 to .43, where .35 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. (§3.1.3 §3.1.9 §7.3.3)

- The proposed extension of the nonconforming two-family dwelling use will be substantially more detrimental than the existing nonconforming residential use is to the neighborhood (§3.1.3, §3.1.9, §7.8.2.C.2).

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

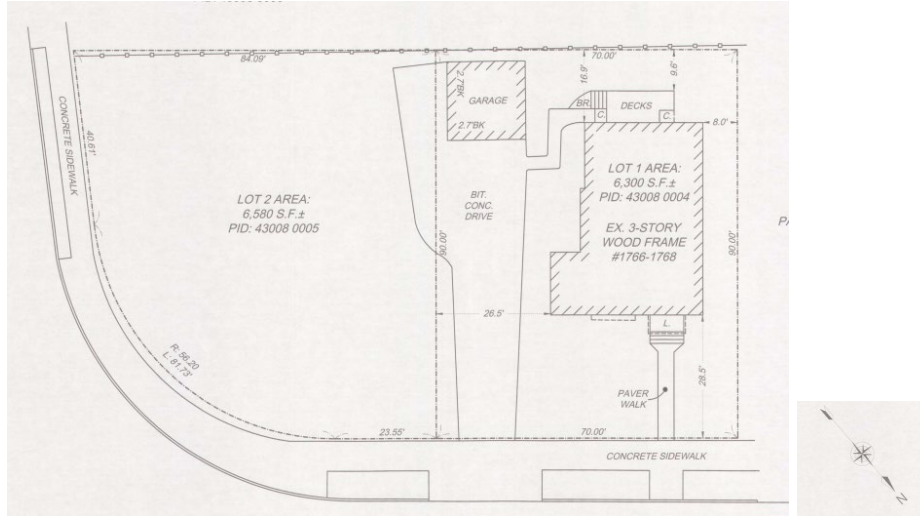
A. Neighborhood and Zoning

The subject property is located at the corner of Commonwealth Avenue and Washington Street in the SR-2 zone in Auburndale. The area is comprised of mostly single residence zones (SR-1, SR-2, and SR-3) with a public use zone at the opposite corner for Commonwealth Avenue and Washington Street, which houses a Newton Fire Station (**ATTACHMENT A**). The area consists of mostly single-family residential uses with another nonconforming two-family residential use at 1778 Commonwealth Avenue. North of the site on Washington Street are mixed use, commercial, and nonprofit uses (**ATTACHMENT B**).

B. Site

The site consists of two lots with 12,880 square feet of land improved with a two-family dwelling constructed in 1938. The site is currently accessed by a single curb cut with a driveway which leads to a detached garage. The structure has nonconforming front and rear setbacks of 24.2 feet from the front property line, where 25 feet is required and 9.6 feet from the rear porches to the rear property line (opposite Commonwealth Avenue), where 15 feet is required. The existing structure has a height of 31.57 feet, where 36 feet is the maximum allowed as of right. The site is relatively flat.

Existing Conditions



III. PROJECT DESCRIPTION AND ANALYSIS

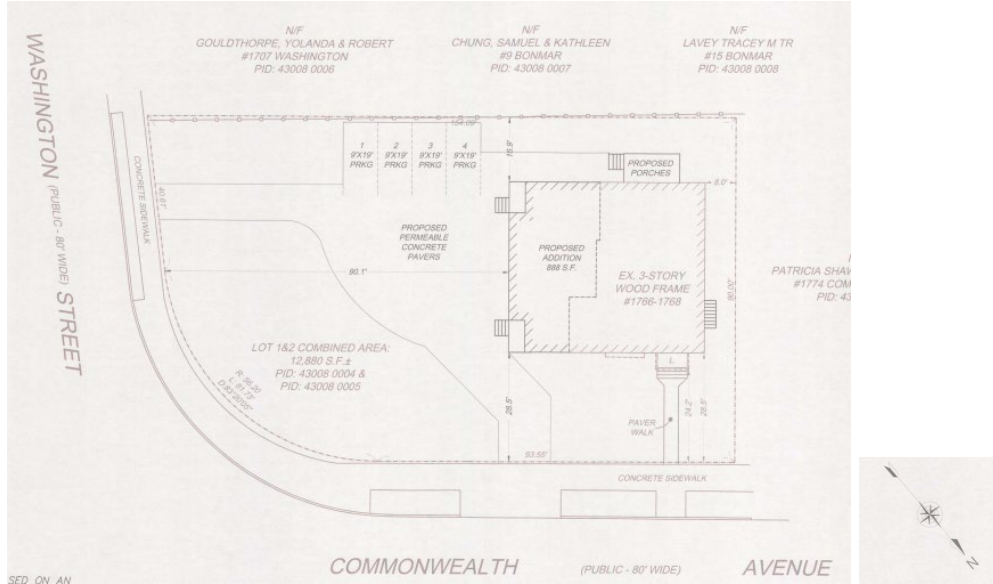
A. Land Use

If approved, the use will remain two-family residential.

B. Site and Building Design

The petitioner is proposing to combine the two lots, construct an addition to the two-family dwelling and a four-stall surface parking facility. With the combining of the two lots, the lot area is increasing from approximately 6,300 square feet to 12,880 square feet. Despite the addition, the number of units will remain at two units. The proposed two-unit dwelling will measure 34.33 feet tall, an increase of approximately three feet, and contain 2.5 stories.

Proposed Site Plan



As proposed, the project has a floor area ratio (the “FAR”) of .24, where .35 is the maximum allowed as of right in the SR-2 zoning district. The petitioner is seeking to construct an addition consisting of 2,452 square feet. The addition increases the FAR from .24 to .43, which translates to an existing floor area calculation of 3,091 square feet to a proposed floor area of 5,522 square feet. The maximum as of right floor area is 4,508 square feet.

The existing Commonwealth Avenue front elevation maintains the character with other homes in the neighborhood. Planning noticed the proposed front elevation from Commonwealth Avenue presents as more of a side elevation, with a portion of the elevation presenting as a blank wall. Planning questions whether any features or elements that would better contextualize the elevation could be incorporated, especially given the dwelling’s location at the corner of Commonwealth Avenue and Washington Street.

Existing Front Elevation
Commonwealth Avenue



Proposed Front Elevation
Commonwealth Avenue



Existing Left Elevation
Washington Street



Proposed Left Elevation
Washington Street



Existing Rear Elevation
Opposite Commonwealth Ave.



Proposed Rear Elevation
Opposite Commonwealth Ave.



Planning also questions whether the site's open space of 52%, where 50% is the minimum required could be further improved by removing areas dedicated to the

driveways or parking, further detailed in the Parking and Circulation section of this memorandum.

While the Planning Department is unconcerned with the extension of the nonconforming residential use, there are elements of the project that could be improved upon to maintain the character of the existing home due to the dwelling's visibility from both Washington Street and Commonwealth Avenue. The addition and area dedicated to parking bring the site's open space close to the 50% minimum required while maintaining its status as a two-family dwelling. Planning suggests the petitioner explore ways to increase the site's open space and incorporate landscaping.

C. Parking and Circulation

The petitioner is proposing an additional driveway from Washington Street but does not show a curb cut. Both access points from Washington Street and Commonwealth Avenue will provide access to four surface parking stalls. The proposed parking stalls comply with the dimensional requirements of the Ordinance. The plans indicate that the parking area will be comprised of permeable concrete pavers.

Planning Staff question whether the additional driveway from Washington Street is necessary for the two-unit project. Decreasing the area of which cars can drive upon would increase the open space of the site, which is currently proposed at 52%, where 50% is the minimum required for the SR2 zoning district, and 72.1% exists. Planning Staff suggests the petitioner maintain the access to the site from Commonwealth Avenue and consider screening along the Washington Street frontage.

Initial submitted plans indicate an attached garage reference on the floorplans and within the FAR worksheet. The petitioner stated that there are not garages proposed, and the four surface parking stalls will be the parking accommodated on site. The references to the attached garage within the floorplans should be removed.

D. Landscaping

A landscape plan is not required with this petition. However, staff recommends the petitioner install landscaping where possible with a focus along the Washington Street frontage and rear property line, where the additional massing is focused.

IV. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum (**ATTACHMENT C**) provides an analysis of the proposal regarding zoning. The petitioner is seeking the following relief:

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

B. Engineering Review

The size and increase in impervious area of the proposed two-family structure will require the petitioner to provide a drainage analysis to the Engineering Division for review and approval prior to the issuance of a building permit. Staff suggests incorporating the standard condition regarding the Operations and Maintenance (O & M) Plan for the stormwater management system prior to the issuance of a temporary certificate of occupancy, should this petition be approved.

C. Newton Historical Commission

The Chief Preservation Planner found the structure not historically significant in April 2022. As such, further review from the Chief Preservation Planner is not required.

V. PETITIONER’S RESPONSIBILITIES

The petitioner should provide a site plan demonstrating that the parking requirement can be met. Otherwise, the petition is considered complete.

ATTACHMENTS:

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





ATTACHMENT A

Zoning

1766-1768 Commonwealth Avenue

*City of Newton,
Massachusetts*

Zoning

-  Single Residence 1
-  Single Residence 2
-  Single Residence 3
-  Public Use



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: July 25, 2022



ATTACHMENT B

Land Use

1766- 1768 Commonwealth Avenue

*City of Newton,
Massachusetts*

Land Use

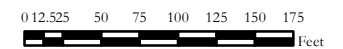
Land Use

- Single Family Residential
- Multi-Family Residential
- Commercial
- Mixed Use
- Open Space
- Private Educational
- Nonprofit Organizations
- Vacant Land



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



Map Date: July 25, 2022





Ruthanne Fuller
Mayor

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: May 11, 2022

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official

Cc: Aguimar Desouza, Applicant
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: Request to extend a nonconforming two-family dwelling use and to exceed FAR

Applicant: Aguimar Desouza	
Site: 1766-1768 Commonwealth Avenue	SBL: 43008 0004
Zoning: SR2	Lot Area: 12,880 square feet
Current use: Two-family dwelling	Proposed use: No change

BACKGROUND:

The property at 1766-1768 Commonwealth Avenue consists of two parcels totaling 12,880 square feet in the Single Residence 3 zoning district improved with a nonconforming two-family dwelling constructed in 1938. The petitioner proposes to combine the two parcels and construct additions to the dwelling, requiring a special permit.

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

- Zoning Review Application, prepared by Aguimar Desouza, applicant, submitted 2/21/2022
- Floor plans and elevations, Flow Design Architects, dated 5/3/2022
- Existing Plot Plan, prepared by Scott M Cerrato, surveyor, dated 12/15/2021
- Proposed Plot Plan, prepared by Scott M Cerrato, surveyor, dated 4/1/2022
- Proposed Site Plan, prepared by Flow Design Architects, dated 5/3/2022
- FAR worksheet, submitted 2/21/2022

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner’s parcel contains two lots; a 6,300 square foot parcel improved with the dwelling and a 6,580 square foot vacant parcel which are considered merged for the purposes of zoning. The petitioner proposes to eliminate the interior lot line resulting in a single 12,880 square foot lot.
2. The property is located in the Single Residence 2 zoning district and is improved with a legal nonconforming two-family dwelling. The petitioner proposes to construct an 880 square foot addition to the dwelling, requiring a special permit per sections 3.4.1 and 7.8.2.C.2 to extend a nonconforming two-family dwelling in an SR2 district.
3. The proposed 880 square foot addition increases the FAR from .24 to .43 where .35 is the maximum allowed per sections 3.1.3 and 3.1.9 for a 12,880 square foot lot in the SR2 district. Per section 3.1.9.A.2 a special permit is required to exceed FAR.

SR2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	6,580 & 6,300 square feet	12,880 square feet
Frontage	80 feet	93.6 feet	No change
Setbacks			
• Front (Commonwealth Ave)	25 feet	24.2 feet	No change
• Front (Washington St)	25 feet	>90 feet	90.1 feet
• Side	7.5 feet	8 feet	No change
• Rear	15 feet	9.6 feet	No change
Max Number of Stories	2.5	2.5	No change
FAR	.35	.24	.43*
Max Lot Coverage	30%	14.2%	18.9%
Min. Open Space	50%	72.1%	52%

*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

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 extend a nonconforming two family dwelling use in a Single Residence 2 zone, and to exceed the FAR as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

- The specific site is an appropriate location for the addition to the two family dwelling which increases the FAR because the addition meets the required setbacks and dimensional standards prescribed for the Single Residence 2 zone. (§7.3.3.C.1, §3.1.3, §3.1.9).
- The proposed addition which increases the FAR will not adversely affect the neighborhood. (§7.3.3.C.2, §3.1.3, §3.1.9).
- There will not be a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3, §3.1.3, §3.1.9).
- Access to the sites over streets is appropriate for the types and number of vehicles involved (§7.3.3.C.4, §3.1.3, §3.1.9).
- The proposed increase in FAR from .24 to .43, where .35 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. (§3.1.3 §3.1.9 §7.3.3)
- The proposed extension of the nonconforming two-family dwelling use will not be substantially more detrimental than the existing nonconforming residential use is to the neighborhood (§3.1.3, §3.1.9, §7.8.2.C.2).

PETITION NUMBER: #376-22

PETITIONER: New Color Properties 005 LLC

LOCATION: 1766-1768 Commonwealth Avenue, on land known as Section 43, Block 8, Lot 4, containing approximately 12,880 square feet of land

OWNER: New Color Properties 005 LLC

ADDRESS OF OWNER: 191 Broadway
Somerville, MA 02145

TO BE USED FOR: Two Unit Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §4.4.1, and §7.8.2.C.2, to further extend the nonconforming residential use; §3.13, 3.1.9, 7.3.3 to exceed the FAR

ZONING: Single Residence 2

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. Proposed Plot Plan, 1766-1768 Commonwealth Avenue, prepared by Scott Cerrato, signed and stamped by Scott Cerrato, Professional Land Surveyor, dated May 9, 2022
 - b. Architectural Plans and Elevations, prepared by Flow Design Inc., signed and stamped by Darguin Fortuna, dated May 20, 2022 consisting of two (2) sheets.
 - i. Proposed Exterior Elevations, showing Front and Left Side, A-200
 - ii. Proposed Exterior Elevations, showing Rear and Right Side, A-201
2. Prior to the issuance of any Building Permit, the petitioner shall provide a final Site Plan for review and approval by the Department of Planning and Development, and the Engineering Division of Public Works.
3. Prior to the issuance of any building permit for the Project, the petitioner shall provide an Approval Not Required ("ANR") plan combining the two lots into one lot to the City Engineer for review and approval. Once approved, the ANR plan must be recorded at the Middlesex South Registry of Deeds. A recorded copy of the ANR plan shall be submitted to the Engineering Division of Public Works and submitted with the building permit application.

4. The Petitioner shall do the following to remediate pest and rodent activity:
 - a. Prior to issuance of any demolition or building permit, the petitioner, at its sole cost and expense, shall hire a licensed Pest Control Operator to assess the property for pest and rodent activity and develop and implement a pest remediation action plan to eliminate the activity and prevent off-site migration. The plan shall include the target pest, the methods for eliminating activity, and plan for preventing pest migration off-site during demolition and construction.
 - b. A copy of the Pest Control inspection report and the remediation action plan shall be submitted to the Inspectional Services Department and the Health and Human Services Department for review and approval prior to issuance of any demolition or building permit. Copies of such approvals shall be provided to the Department of Planning and Development.
5. Prior to the issuance of any temporary occupancy certificates for the Project, the petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management, should such a system be required, to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be recorded by the petitioner at the Middlesex South District Registry of Deeds. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.
6. 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 council 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. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
7. No Final Inspection/Occupancy Permit for the use 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 statements by a registered architect and professional land surveyor certifying compliance with Condition #1.
 - 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. Provided a recorded copy of the O&M Plan in accordance with Condition #5 above, should a system be required.

- d. 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.

DRAFT