



**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459  
617-796-1120

Ruthanne Fuller  
Mayor

Barney S. Heath  
Director

---

**PUBLIC HEARING MEMORANDUM**

**DATE:** November 9, 2023

**TO:** City Council

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

**SUBJECT:** **Petition #333-23** for SPECIAL PERMIT/SITE PLAN APPROVAL to enclose two open porches, further extending the nonconforming use at 27-29 Kilburn Road

---

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.



**27-29 Kilburn Road**

## Project Description

### Background

The subject property at 27-29 Kilburn Road consists of two parcels totaling 8,551 square feet. The front parcel measures 6,351 square feet and is improved with a nonconforming two-family dwelling constructed circa 1930 and a detached garage. The rear parcel measures 2,200 square feet and is currently vacant.

The property lies to the north of West Newton village center on the west side of Kilburn Road, opposite the intersection with South Gate Park. The surrounding neighborhood is zoned primarily Single Residence 3 (SR-3) and occupied by single- and two-family dwellings. One parcel, the Wellington Playground across Kilburn Road to the southeast, is zoned for Public Use.

### Special Permit

The petitioner proposes to enclose two existing open porches at the rear of the dwellings, one each on the first and second floor. This will increase the living space of the dwelling, thereby extending the nonconforming use. The structure's footprint would not be extended or modified.

The project requires a special permit due to the two family dwelling's location in the SR-3 zoning district, where the use is prohibited. Due to this, the proposed modifications require a special permit to alter and extend a nonconforming two-family dwelling. Where a density or dimensional control is not set forth in the zoning ordinance for a use granted by special permit, the most restrictive density or dimensional control applicable to such use in any district where the use is allowed by right shall apply, unless otherwise required in the special permit. Two-family dwellings are allowed by right in the Multi-Residence 1 (MR-1) zoning district, and the most restrictive dimensional controls would apply to a post-1953 (new) lot. The dimensional control for a new MR-1 lot will apply to this petition.

SR3 Zone (new MR1 lot standards applied)	Required	Existing	Proposed
Lot Size	10,000 square feet	<b>8,551 square feet</b>	<b>No change</b>
Frontage	80 feet	<b>60 feet</b>	<b>No change</b>
Setbacks			
• Front	30 feet	<b>22.3 feet</b>	<b>No change</b>
• Side	10 feet	13.4 feet	No change
• Side	10 feet	20.8 feet	No change
• Rear	15 feet	±20 feet	No change
Max Number of Stories	2.5	2.5	No change
Height	36 feet	Not provided	No change
FAR	.55	.47	.50
Max Lot Coverage	30%	Not provided	No change
Min. Open Space	50%	Not provided	No change

**BOLD** indicates nonconformity

**Analysis**

Planning is unconcerned with the proposed alteration and extension of the nonconforming two-family residential use. The dwelling has been used as a two-family dwelling since 1930. The work proposed will be limited to the existing footprint of the building and therefore will not result in an increase in paving on the site. The porches that will be enclosed are located at the rear of the property and will not be visible from the street.

I. Zoning Relief Requested:

Zoning Relief Required		
Ordinance		Action Required
§3.4.1 §7.8.2.C.2	Request to alter and extend a nonconforming two-family dwelling use	S.P. per §7.3.3

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

II. Criteria for Consideration per §7.3.3. and/or §7.8.2.C.2:

- The site in SR-3 is an appropriate location for the addition that will alter and extend the nonconforming two-family use (§7.3.3.C.1)
- The proposed addition that will alter and extend the nonconforming two-family use will not adversely affect the neighborhood (§7.3.3.C.2)
- The proposed addition that will alter and extend the nonconforming two-family use will not 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 extension of the nonconforming two-family dwelling use will not be substantially more detrimental than the existing nonconforming residential use is to the neighborhood (§3.4.1, §7.8.2.C.2).

III. Project Proposal and Site Characteristics

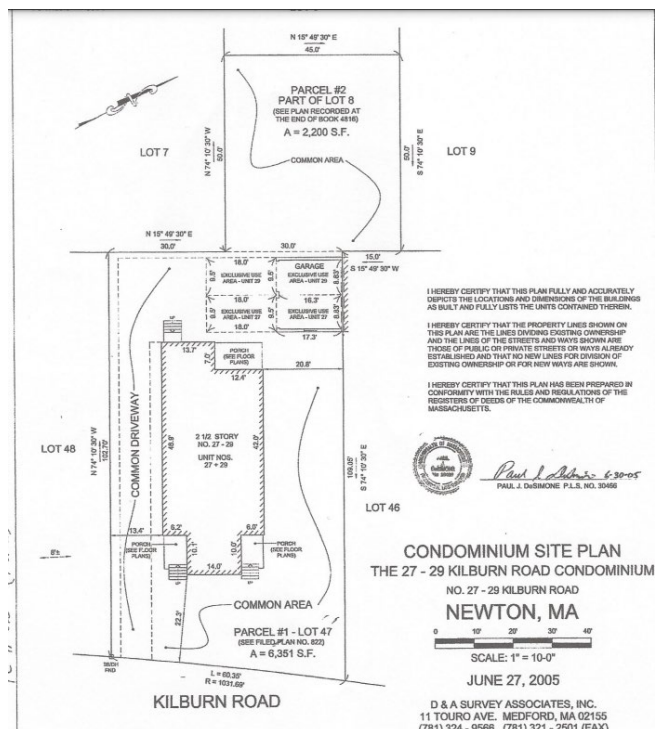
A. Site - Existing Conditions

The subject lot at 27-29 Kilburn Road consists of two parcels. The front parcel closer to Kilburn Road is 6,351 square feet and is improved with a two-family dwelling constructed circa 1930 and a detached garage. The rear parcel is vacant with 2,200 square feet. The use of the existing dwelling is nonconforming because two-family

dwellings are not allowed in the SR-3 district. The site is relatively flat. Vehicular access is provided via a curb cut leading to a paved driveway on the left side of the dwelling, and a detached two-car garage behind the dwelling.

Applying MR1 new lot standards, the structure has a nonconforming lot size of 8,551 square feet where 10,000 square feet is required. The frontage is nonconforming at 60 feet where a minimum of 80 feet is required. The front setback is also nonconforming at 22.3 feet where 30 feet is required. The FAR is .47 where up to .55 is allowed by right.

### Existing Conditions



## PROJECT DESCRIPTION AND ANALYSIS

### A. Land Use

If approved, the use will remain a two-family home.

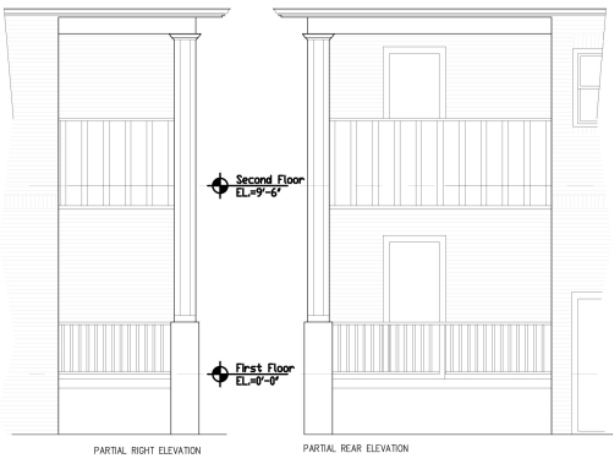
### B. Site and Building Design

The petitioner proposes to enclose two open porches to create additional living area.

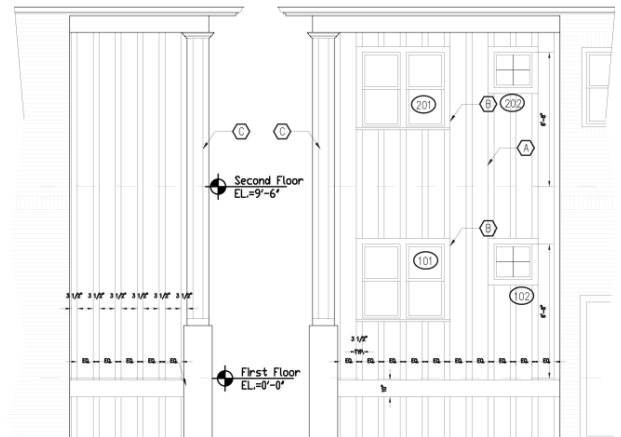
This would further extend and alter the nonconforming use, requiring a special permit. As proposed, this work would be limited to the existing footprint of the dwelling with no extension of the footprint. The current setbacks, building height, lot coverage, open space, and number of stories will remain the same as they are under existing conditions.

The maximum allowable floor area ratio (FAR) for a two-family dwelling in the MR-1 district is 0.55. This lot is comprised of two parcels, so the FAR is measured using only the square footage of the parcel on which the dwelling is located, which is 6,351 square feet. Based on that calculation the existing FAR of the dwelling is 0.47. By enclosing the two rear porches, 81 square feet of floor area will be added to each floor for a total increase of 162 feet. This will increase the FAR to 0.50, requiring no additional relief.

Existing Right and Rear Elevations



Proposed Right and Rear Elevations



C. Parking and Circulation

No changes are proposed in this petition that will impact parking and circulation on the site.

IV. Interdepartmental Review:

No additional reviews are required.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

**ATTACHMENTS:**

- Attachment A:** Zoning Review Memorandum  
**Attachment B:** DRAFT Council Order



Ruthanne Fuller  
Mayor

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

Attachment A  
Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

Barney S. Heath  
Director

## ZONING REVIEW MEMORANDUM

Date: September 25, 2023

To: Anthony Ciccariello, Commissioner of Inspectional Services

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

Cc: Linda Finguerra, Applicant  
Maurice Mayer, Architect  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Deputy City Solicitor

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

Applicant: Linda Finguerra	
Site: 27-29 Kilburn Road	SBL: 33032 0024
Zoning: SR3	Lot Area: 8,551 square feet (6,351 sf and 2,200 sf)
Current use: Two-family dwelling	Proposed use: No change

### BACKGROUND:

The subject lot at 27-29 Kilburn Road consists of two parcels; a 6,351 square foot parcel improved with a nonconforming two-family dwelling constructed circa 1930 and a detached two-car garage; and a vacant rear parcel with 2,200 square feet, both located in the Single Residence 3 zoning district. The petitioner proposes to enclose two open porches, further extending the nonconforming use, requiring a special permit.

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

- Zoning Review Application, prepared by Maurice Mayer, architect, submitted 9/4/2023
- Floor plans and elevations, signed and stamped by Stanislav Berdichevsky, structural engineer, dated 7/12/2023
- Existing Conditions plan, signed and stamped by Christopher C. Charlton, surveyor, dated 10/19/2022
- Condominium Site Plan, signed and stamped by Paul J. DiSimone, surveyor, dated 7/27/2005
- FAR worksheet, submitted 9/4/2023, revised 9/13/2023, 9/20/2023

**ADMINISTRATIVE DETERMINATIONS:**

1. The property is located in the Single Residence 3 zoning district and is improved with a legal nonconforming two-family dwelling constructed circa 1930. The petitioner proposes to enclose rear porches on each story to be converted into living space, with no extension of the footprint. The proposed construction requires a special permit per sections 3.4.1 and 7.8.2.C.2 to alter and extend a nonconforming two-family dwelling use in an SR3 district.
2. The two-family dwelling use is not an allowed use in the SR3 district. Per section 3.1.2.A.3, where a density or dimensional control is not set forth in Section 3.1 Single Residence Districts for a use granted by special permit, the most restrictive density or dimensional control applicable to such use in any district where the use is allowed by right shall be applicable, unless otherwise required in the special permit. Two-family dwellings are allowed by right in the MR1 zoning district, with the most restrictive dimensional controls prescribed for a post-1953 (new) lot. The dimensional controls for a new MR1 lot are applied.
3. The maximum allowable FAR for a two-family dwelling in the MR1 district is .55. Where the lot is comprised of two parcels, the FAR is measured using only the square footage of the parcel on which the dwelling is located; 6,351 square feet. The existing FAR of the dwelling is .47. Enclosing the existing porches increases the FAR to .50, requiring no relief.

SR3 Zone (new MR1 lot standards applied)	Required	Existing	Proposed
Lot Size	10,000 square feet	<b>8,551 square feet</b>	No change
Frontage	80 feet	<b>60 feet</b>	No change
Setbacks			
• Front	30 feet	<b>22.3 feet</b>	No change
• Side	10 feet	13.4 feet	No change
• Side	10 feet	20.8 feet	No change
• Rear	15 feet	±20 feet	No change
Max Number of Stories	2.5	2.5	No change
Height	36 feet	Not provided	No change
FAR	.55	.47	.50
Max Lot Coverage	30%	Not provided	No change
Min. Open Space	50%	Not provided	No change

**BOLD** indicates nonconformity

See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§3.4.1 §7.8.2.C.2	Request to alter and extend a nonconforming two-family dwelling use	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 allow the alteration and extension of the nonconforming two-family residential use as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The proposed additions that will alter and extend the nonconforming two-family use will not be substantially more detrimental than the existing nonconforming two-family use is to the neighborhood because the work proposed will be limited to the existing footprint of the building. (§7.8.2.C.2).
2. The site is an appropriate location for the additions that will alter and extend the nonconforming two-family use because there are other nonconforming two-family dwellings in the neighborhood of comparable size and massing. (§7.3.3.C.1)
3. The proposed additions that will alter and extend the nonconforming two-family use will not adversely affect the neighborhood because the additional living space added is less than 200 square feet and will not be visible from the street. (§7.3.3.C.2)
4. There will be no nuisance or serious hazard to vehicles or pedestrians because all parking will be provided on site and the access to the site is not changing. (§7.3.3.C.3)
5. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)

PETITION NUMBER: #333-23

PETITIONER: Linda Finguerra

LOCATION: 27-29 Kilburn Road, Ward 3, West Newton, on land known as Section 33 Block 32 Lot 24, containing approximately 8,551 sq. ft. of land

OWNER: Linda Finguerra

ADDRESS OF OWNER: 27 Kilburn Street  
Newton, MA 02456

TO BE USED FOR: Two family dwelling

RELIEF GRANTED: Special Permit per §3.4.1, §7.8.2.C.2 and §7.3.3 to alter and extend a nonconforming two-family dwelling use

ZONING: Single Residence 3

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. Site Plan, signed and stamped by Paul J. DiSimone, surveyor, dated July 27, 2005
  - b. A set of architectural drawings prepared by BlueCircle Studio, signed and stamped by Stanislav Berdichevsky, structural engineer, dated July 12, 2023:
    - i. "Proposed Partial Exterior Elevations" (Sheet A-4.0)
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 for the portion of the project for which occupancy is requested 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.
- b. Submitted final as-built survey plans in digital format, stamped and signed by a professional land surveyor or professional engineer, as applicable.