



Petition: #263-23  
Public Hearing:  
11/21/23

Ruthanne Fuller  
Mayor

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

Barney S. Heath  
Director

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## PUBLIC HEARING/WORKING SESSION MEMORANDUM

**DATE:** November 17, 2023  
**MEETING DATE:** November 21, 2023  
**TO:** Land Use Committee of the City Council  
**FROM:** Barney S. Heath, Director of Planning and Development  
Katie Whewell, Chief Planner for Current Planning  
Alyssa Sandoval, Deputy Chief Planner for Current Planning  
**CC:** Petitioner

In response to questions raised at the City Council public hearing, the Planning Department is providing the following information for the upcoming public hearing/working session. This information is supplemental to staff analysis previously provided at the Land Use Committee public hearing.

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**PETITION #263-23**

**373 Lexington Street**

**Petition #263-23** for SPECIAL PERMIT/SITE PLAN APPROVAL to change from a nonconforming two-family dwelling use to two single-family dwellings on one lot at 373 Lexington Street

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The Land Use Committee (the "Committee") held a public hearing on August 22, 2023 and again on October 17, on this petition.

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### **BACKGROUND**

The subject property consists of a 10,030 square foot lot improved with a nonconforming two-family dwelling in the Single-Family 3 (SR-3) district constructed circa 1880 and a detached garage constructed in 2010.

The petitioner proposes in this request to convert the existing nonconforming two-family dwelling into a single-family dwelling and to convert the detached garage into a second single-family dwelling on the same lot. This requires a special permit to change from one nonconforming use to another. Section 3.1.2.A.3 requires that where a density or dimensional control is not set forth for a use granted by special permit, the most restrictive dimensional controls applicable to where the use is allowed by right

will apply, unless otherwise required by the special permit.

Plans can be found at <https://newtonma.portal.opengov.com/records/796829>.

### **UPDATE**

The public hearing on this petition was opened and held August 22, 2023 and held again on October 17, 2023. At that time, the petitioner requested that the Committee vote to hold the item to a later date to accommodate the schedules of neighbors who wished to provide feedback on the project but were unable to attend the hearing.

In response to concerns raised at the public hearing, the petitioner uploaded a set of floor plans on November 3, 2023 to give assurance to concerned neighbors that the use on site will result in two single family dwellings, if approved. The petitioner should present and speak to the floor plans at the public hearing. This special permit request is intended to remedy prior zoning violations and convert the use of the site. The Planning Department Memorandum provided as Attachment A from August 18, 2023, which provides a background of the site, history of zoning violations, and analysis of the project. Attached in the original planning memo is a draft Council Order for review when the time is appropriate.

### **ATTACHMENT(S)**

**Attachment A**            Planning Department Public Hearing memorandum dated August 18, 2023



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### **ATTACHMENT(S)**

**Attachment A**            Planning Department Public Hearing memorandum dated August 18, 2023



Ruthanne Fuller  
Mayor

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

Barney S. Heath  
Director

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## PUBLIC HEARING MEMORANDUM

DATE: August 18, 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 #263-23**, for SPECIAL PERMIT/SITE PLAN APPROVAL to change from a nonconforming two-family dwelling use to two single-family dwellings on one lot at 373 Lexington Street

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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.



**373 Lexington Street**

## **Project Description**

### **Background**

The subject property consists of a 10,030 square foot lot improved with a nonconforming two-family dwelling in the Single-Family 3 (SR-3) district constructed circa 1880 and a detached garage constructed in 2010.

The site is located in Auburndale in a predominantly residential area, with commercial uses along Commonwealth Avenue in the nearby Auburndale village center to the south. The direct abutters of the site are all residential, with a mix of single and two-family dwellings. Most of these dwellings are on moderately sized lots and roughly half have detached structures, though most are smaller than the garage on this lot. This site and surrounding parcels are zoned SR-3, with a mix of Business Use 1 and 2, Manufacturing, and Multi-Residence 2 in Auburndale village center. The 505 and 558 MBTA bus has stops close to the site, providing connection to the Green Line, commuter rail, and express bus route with service into Boston.

### **Previous Special Permit**

In June of 2007, the petitioner applied for and received a building permit to construct a detached four bay garage with a firewall in the middle to accommodate parking for the two-family dwelling. The footprint of the permitted garage was approximately 990 square feet but was broken up in the interior by a firewall with a two-bay garage for each unit, thus considered two separate and distinct structures. However, the garage that was constructed was not built according to plans associated with the building permit and did not include the firewall separation. As built, the structure included two noncompliant dormers less than three feet from the vertical sidewall of the rear elevation of the dwelling on the site. The petitioner then applied for relief through the special permit process to allow for the detached garage with a ground floor area exceeding 700 square feet and the noncompliant dormers.

In 2011 special permit #351-10 legitimized the two dormers, but the special permit did not allow the request for a detached garage with a ground floor area exceeding 700 square feet. The request was denied on the basis that the petitioner did not need a special permit if they constructed the firewall in the garage as approved in the original building permit. The special permit was never recorded, and the property has been subject to enforcement by the Inspectional Services Department for several years. The current request is intended to remedy the zoning violations on the site while changing the nonconforming use of the site from a two-family dwelling to two single family dwellings on one lot.

### **Special Permit**

## Attachment A

The petitioner proposes in this request to convert the existing nonconforming two-family dwelling into a single-family dwelling and to convert the detached garage into a second single-family dwelling on the same lot. This requires a special permit to change from one nonconforming use to another. Section 3.1.2.A.3 requires that where a density or dimensional control is not set forth for a use granted by special permit, the most restrictive dimensional controls applicable to where the use is allowed by right will apply, unless otherwise required by the special permit. However, the proposed use of two detached single-family dwellings on one lot is not allowed by right in any district.

For the purpose of establishing appropriate dimensional controls for the project, the Planning Department has used the requirements for a detached single-family dwelling are used in this memo. However, Council makes the determination of whether the dimensions proposed by the petitioner are appropriate for the district. No exterior changes are proposed to either structure other than changes to doors and windows.

### **Analysis**

While the Planning Department emphasizes the importance of compliance with prior special permits, it is generally not concerned with the proposed change in use and the dimensions of the project proposed by the petitioner. The two buildings already exist on site in this current configuration. The detached accessory building that is proposed as a new dwelling is in the rear, meets the side setbacks for a single-family dwelling, and is largely screened by the existing dwelling and vegetation. The closest abutting structure to the new dwelling is a detached garage for a single-family home on Melrose Street facing away from the subject property. If approved, the total number of dwelling units on site will remain unchanged. Though the two dwellings do not meet the dimensional standards for the front and rear setbacks set forth in the ordinance for single family dwellings in the SR-3 district, it is compliant with other dimensional standards in place such as lot coverage, open space, and FAR. As such, the Planning Department is not concerned with the dimensions proposed, as the buildings are distributed evenly on site and maintain a reasonable amount of open space. The Planning Department also notes that while the surrounding neighborhood consists of long, narrow lots similar to the subject property, there are undersized parcels with single family dwellings to the south along Lexington Street that align with the scale of the proposed configuration if this parcel were subdivided with a single-family dwelling on each parcel.

Zoning Relief Requested:

## Attachment A

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

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.4.1 §7.8.2.C.2	Request to change from a nonconforming detached two-family dwelling use to two detached single-family dwellings	S.P. per §7.3.3
§3.1.3 §7.8.2.C.2	Request to determine appropriate dimensional requirements for the use	S.P. per §7.3.3

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

- The proposed nonconforming residential use will be substantially more detrimental than the existing nonconforming use is to the neighborhood (§7.8.2.C.2).
- The site and structures as proposed are an appropriate location for the density and proposed dimensional controls for the proposed two single family dwellings (7.3.3.C.1)
- The proposed two single-family dwellings with the proposed dimensional controls will not adversely affect the neighborhood vehicles or pedestrians (§7.3.3.C.2)
- The proposed two single-family dwellings 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)

II. Project Proposal and Site Characteristics

A. Site

The property at 373 Lexington Street consists of a 10,030 square foot lot improved with a two-family dwelling constructed circa 1880 and a detached accessory building in the rear constructed in 2010. The site is long and narrow, and relatively flat.

Vehicular access is provided via a curb cut to the right of the dwelling leading to a gravel driveway. Four 9x19 foot parking stalls are located behind the dwelling between the rear of the house and the front of the detached garage.

III. Project Description and Analysis



## Attachment A

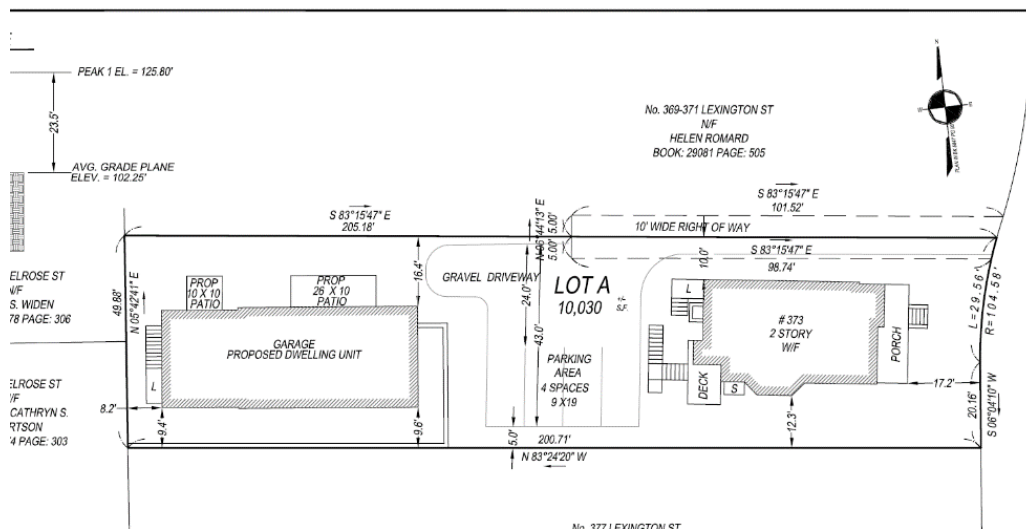
### A. Land Use

If approved the principal use of the site will change from a two family dwelling with a detached accessory building to two single family homes on one lot.

### B. Site Design

The petitioner proposes to convert the existing two-family dwelling on the lot to a single-family dwelling and convert the detached garage at the rear into a second single family home. Relief is required to convert the existing nonconforming use to two single family homes on the same lot, and zoning relief is required to determine the appropriate dimensional requirements for this use.

### Proposed conditions



The existing dwelling on the lot meets the side and rear setback minimums for a detached single-family dwelling in the SR-3 district. The front setback of 17.2 feet where 25 feet is required is nonconforming and reflects existing conditions of the building constructed circa 1880. The proposed second single family home (in what is currently the garage) would have a conforming front and side setbacks, but a rear setback of 8.2 feet, where 5 feet was required for an accessory building but where 15 feet is required for a single-family dwelling in the SR-3 zoning district.

The exact height and calculation for the number of stories for the existing dwelling was not provided by the petitioner in their application. It appears to be roughly in keeping with the height and number of stories of similar dwellings in the area. The proposed rear single-family dwelling is 23.5 feet and two stories tall, subordinate to the front dwelling and in line with what is allowed in SR-3 which is up to 36 feet and

## Attachment A

two stories tall.

The size of the lot is 10,030 square feet, where for one single family dwelling a minimum lot size of 7,000 square feet is required. The existing frontage on the site is 52 feet, where a minimum of 70 feet is required. The FAR for the proposed single-family dwellings is .44, where up to .48 is allowed. The proposed lot coverage is 26%, where up to 30% is allowed by right. The open space proposed is 55.1%, where a minimum of 50% is required in SR-3.

C. Parking and Circulation

The existing gravel parking on the site will be maintained and continue to provide access to the two single family dwellings. The four surface parking stalls between the two dwellings are sufficient to meet the parking requirement set by the ordinance.

IV. Interdepartmental Review:

No interdepartmental review is required at this time.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete.

**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

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**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: June 20, 2023

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Jon Hollingsworth, Applicant  
Terrence P. Morris, Attorney  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Deputy City Solicitor

**RE: Request to change from a nonconforming two-family dwelling use to two single-family dwellings on one lot**

Applicant: Jon Hollingsworth	
Site: 373 Lexington Street	SBL: 41017 0012
Zoning: SR3	Lot Area: 10,030 square feet
Current use: Two-family dwelling & accessory building	Proposed use: Two single-family dwellings

### BACKGROUND:

The property at 373 Lexington Street consists of a 10,030 square foot lot improved with a two-family dwelling constructed circa 1880 and a detached accessory building constructed in 2010. The petitioner proposes to convert the existing nonconforming two-family dwelling into a single-family dwelling and to convert the accessory building into a second single-family dwelling, requiring a special permit to change from one nonconforming use to another.

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

- Zoning Review Application, prepared Terrence P. Morris, attorney, submitted 5/24/2023
- As-Built Plan, signed and stamped by George C. Collins, surveyor, dated 5/25/2023
- Floor Plans and Elevations, submitted 5/24/2023
- FAR calculations, submitted 5/24/2023

## Attachment A

### ADMINISTRATIVE DETERMINATIONS:

1. The subject site is located in the SR3 district and is improved with a nonconforming two-family dwelling and a detached garage. The garage was the subject of a 2011 special permit (#351-10) which legitimized two dormers less than three feet from the vertical sidewall of the rear elevation. That same special permit also denied a request for a detached garage with a ground floor area exceeding 700 square feet. A building permit had been issued for the garage in 2007 showing a building of approximately 990 square feet that was divided by a firewall or structural divide resulting in two separate and distinct structures (each therefore less than 700 square feet).

The petitioner did not construct the building according to the approved building permit (the firewall was not constructed) and sought relief through the special permit process to allow for a single detached garage structure with a ground floor area exceeding 700 square feet. The special permit was denied as then-Board of Aldermen determined that the petitioner could construct the divide in conformance with the building permit and eliminate the need for a special permit. The special permit was never recorded, and the property has been subject to enforcement with ISD for a number of years. The current request is intended to rectify the situation.

2. The subject site is improved with a nonconforming two-family dwelling use, where only single-family dwellings are allowed by right in the SR3 district. The petitioner seeks to alter the nonconforming use by converting the existing two-family dwelling into a single-family dwelling and the detached garage into a second single-family dwelling, thereby creating two principal dwellings on the lot. The petitioner seeks a special permit per section 7.8.2.C.2 to alter the nonconforming two-family dwelling use to allow two detached single-family dwellings on the lot.
3. Section 3.1.2.A.3 requires that where a density or dimensional control is not set forth for a use granted by special permit, the most restrictive dimensional controls applicable to such use where allowed by right will apply, unless otherwise required by the special permit. The proposed use of two detached single-family dwellings on one lot is not allowed by right in any district. As such, the City Council must determine if the dimensions as proposed are appropriate.

No exterior changes are proposed to either structure other than changes to doors and windows.

4. For the purpose of the dimensional table, the requirements for a detached single-family dwelling are used, however it is at the Council’s discretion as to whether the proposed dimensions are appropriate for the district.

SR3 Zone	Required	Existing
Lot Size	7,000 square feet	10,030 square feet
Frontage	70 feet	52 feet
Setbacks (Existing dwelling - front)		
• Front	25 feet	<b>17.2 feet</b>
• Side	7.5 feet	12.3 feet
• Side	7.5 feet	10 feet
• Rear	15 feet	>100 feet
Setbacks (Garage dwelling – rear)		
• Front	25 feet	>100 feet

<ul style="list-style-type: none"> <li>• Side</li> <li>• Side</li> <li>• Rear</li> </ul>	7.5 feet 7.5 feet 15 feet	<b>Attachment A</b> 9.4 feet 16.4 feet <b>8.2 feet</b>
Height <ul style="list-style-type: none"> <li>• Existing dwelling – front</li> <li>• Garage dwelling - rear</li> </ul>	36 feet 36 feet	Not provided 23.5 feet
Stories <ul style="list-style-type: none"> <li>• Existing dwelling – front</li> <li>• Garage dwelling - rear</li> </ul>	2.5 2.5	Not provided 2
FAR	.48	.44
Max Lot Coverage	30%	26%
Min. Open Space	50%	55.1%

**BOLD** indicates a nonconformity

1. See “Zoning Relief Summary” below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
§3.4.1 §7.8.2.C.2	Request to change from a nonconforming detached two-family dwelling use to two detached single-family dwellings	S.P. per §7.3.3
§3.1.3 §7.8.2.C.2	Request to determine appropriate dimensional requirements for the 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 to the conversion of a nonconforming two-family residential use to two single-family dwellings and to determine the appropriate dimensional controls for the use as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The proposed nonconforming residential use with two single-family detached dwellings on the same lot will not be substantially more detrimental than the existing nonconforming two-family use is to the neighborhood because the total number of dwellings on the site will remain the same. The proposed single family dwellings comply with many of the required dimensional standards for single family dwellings including FAR, side setbacks, open space, and lot coverage and the rear dwelling is subordinate to the front dwelling unit, minimizing the impact from the street thus giving the appearance of an accessory building (§7.8.2.C.2).
2. The site and structures as proposed are an appropriate location for the density and dimensional controls for the proposed two single-family dwellings because the project complies with most of the dimensional standards of a single-family structure in the Single Residence 3 district. (§7.3.3.C.1)
3. The proposed two single-family dwellings will not adversely affect the neighborhood because the structures existing in the proposed configuration and the rear dwelling is subordinate to the front dwelling on site, minimizing the impact 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)

## Attachment A

PETITION NUMBER: #263-23

PETITIONER: Jon Hollingsworth

LOCATION: 373 Lexington Street, Ward 4, Auburndale, on land known as Section 41 Block 17 Lot 12, containing approximately 10,030 sq. ft. of land

OWNER: Jon Hollingsworth

ADDRESS OF OWNER: 15 Standish Street  
Wellesley, MA 02466

TO BE USED FOR: Two single family dwellings on one lot

RELIEF GRANTED: Special Permit per §7.8.2.C.2 and §7.3.3 to change from a nonconforming detached two-family dwelling use to two detached single-family dwellings (§3.4.1) and to determine appropriate dimensional requirements for the use (§3.1.3)

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. As built site plan prepared by Boston Survey, Inc. signed and stamped by George C. Collins, Professional Land Surveyor, dated May 25, 2023
  - b. A set of architectural drawings, unsigned and unstamped, dated May 24, 2023:
    - i. "373 Lexington Street Change of Use" (Sheet 1)
    - ii. "First floor plan" (Sheet 2)
    - iii. "Second floor plan" (Sheet 3)
    - iv. "Elevations" (Sheet 4)
    - v. "Elevations" (Sheet 5)
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.

## Attachment A

- 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.