



## City of Newton, Massachusetts

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

Ruthanne Fuller  
Mayor

Barney Heath  
Director

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### PUBLIC HEARING MEMORANDUM

**DATE:** February 23, 2024

**TO:** City Council

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

**SUBJECT:** **Petition #117-24**, for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a rear addition and add dormers which will further extend the nonconforming two-family use in a Single Residence zone and alter the nonconforming setback at 265-267 River St., Ward 4, West Newton, on land known as Section 44 Block 12 Lot 01, containing approximately 6,671 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 3.1.2.A.3, 3.2.3, 3.4.1, 7.3.3, and 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

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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.



**265-267 River St.**

I. Project Description

*Use* – two family, detached

*Zone* – Single-Residence 3 (SR3)

*Lot size* – 6,702 square feet

*Existing Nonconformities* - nonconforming two-family use in a Single Residence zone, nonconforming front setbacks of 19.8 feet along River St. and 21.9 feet along William St. where 30 feet is required as well as 9.8 feet side setback where 10 feet is required, and 3,336 square feet of lot area per unit where 5,000 square feet is required.

*Proposal*- The petitioner is seeking to add 569 square feet of living space by adding dormers and living space to the area above the second floor and add porches and decks to the ground floor and second story.

*Analysis*

Planning is unconcerned with the proposed Special Permit project. For both categories of relief, the petitioners are not proposing to increase the degree by which the property is out of compliance with the Zoning Ordinance as the nonconforming front setbacks will remain at the same distance and the use will remain as a two-family dwelling. Given the undersized lot area at 6,671 square feet and its status as a corner lot, there are fewer opportunities to bring the dwelling into conformity with all setback requirements. Additionally, while the two-family use is nonconforming, 265-267 River St. is adjacent to another nonconforming two-family dwelling at 275-277 River St. and in close vicinity to several other nonconforming two-family dwellings.

II. Zoning Relief Requested:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
§3.4.1	Request to alter/extend a nonconforming two-family dwelling use in the SR3 district	S.P. per §7.3.3
§3.1.2.A.3 §3.2.3	Request to alter/extend the nonconforming front setback	S.P. per §7.3.3

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

III. Criteria for Consideration per §7.8.2.C.2:

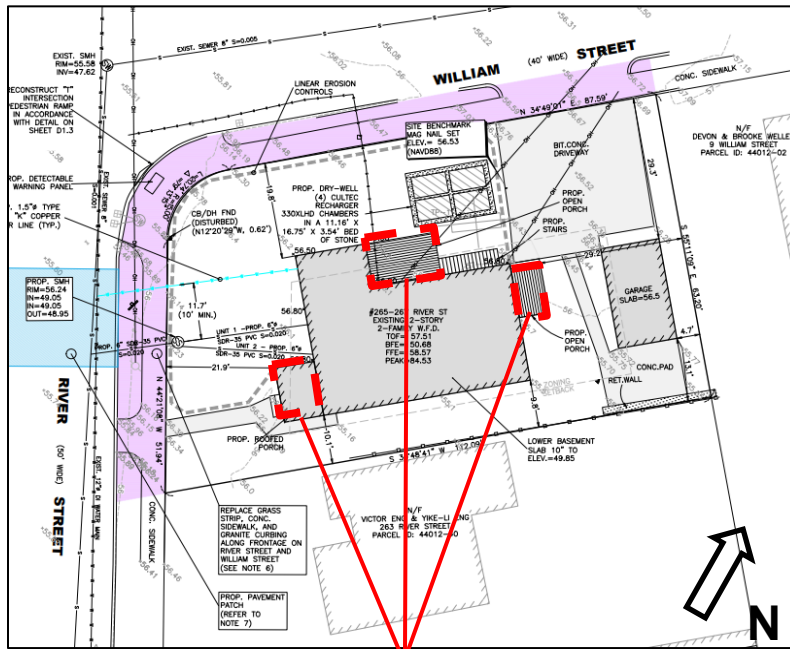
- The proposed deck additions, which extend the nonconforming front setback are not substantially more detrimental than the existing nonconforming structure to the neighborhood. (§7.8.2.C.2)
- The proposed alteration of the two-family use in a Single Residence zone are not substantially more detrimental than the existing nonconforming use is to the

neighborhood. (§7.8.2.C.2)

#### IV. Project Proposal and Site Characteristics

The proposed project consists of adding dormers and porches which extend the two-family use in a Single Residence zone as well as the nonconforming front setback from Williams Street. The project will add a total of 569 square feet, increasing the floor area ratio to 0.49, below the maximum allowable 0.54 as of right. The dormer additions will increase the peak of the roof, thus increasing the height of the structure to 35.33 feet, but will remain below the 36 feet maximum height allowed as of right.

#### *Proposed Site Plan*



Proposed Removal of Enclosed Spaces and Construction of Porch/Deck Space

*Proposed Elevations*



I. Interdepartmental Review

Review from other departments is not necessary or required at this time.

II. Petitioner's Responsibilities

The petition is 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

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

**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: January 20, 2024

To: Anthony Ciccariello, Commissioner of Inspectional Services

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

Cc: Alex Svirsky, Architect  
American Way Development, Applicant  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Deputy City Solicitor

**RE: Request to further extend a nonconforming two-family dwelling**

Applicant: American Way Development, Inc	
Site: 265-267 River Street	SBL: 44012 0001
Zoning: SR3	Lot Area: 6,671 square feet
Current use: Two-family dwelling	Proposed use: No change

### BACKGROUND:

The property at 265-267 River Street consists of a 6,671 square foot lot improved with a nonconforming two-family dwelling constructed in 1927 and a detached garage. The petitioner proposes to raise the roof and add dormers, further extending the nonconforming two-family dwelling 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 Alex Svirsky, Architect, submitted 12/15/2023
- Existing Conditions Plan, signed and stamped by Robert S. Rego, engineer, dated 11/8/2023 and Bernard N. Perrotty, surveyor, stamped 12/13/2023
- Floor Plans and Elevations, prepared by architecture sv, architect, dated 12/15/2023
- FAR calculations, submitted 12/15/2023

## ADMINISTRATIVE DETERMINATIONS:

1. Per section 3.4.1, two-family dwellings are prohibited in the Single-Residence 3 zoning district, rendering the existing two-family dwelling nonconforming. The petitioner proposes to add living space to the half story as well as decks along the Williams Street frontage, further extending the nonconforming two-family dwelling use, requiring a special permit per section 7.8.2.C.2.
2. As indicated above, two-family dwellings are not an allowed use in the Single Residence 3 zoning district. As such, there are no density or dimensional controls prescribed to the use in that district. Per section 3.1.2.A.3, where a density or dimensional control is not provided for a use allowed by special permit, the most restrictive density or dimensional control for that use where it is allowed by right should be applied. In this case, the dimensional controls for a detached two-family dwelling in the MR1 district for a post-1953 lot are applied.
3. The petitioner proposes to raise the roofline of the dwelling within the existing footprint to accommodate 569 square feet of living space, as well as opening enclosed porches on the first and second story. The proposed construction increases the FAR from .41 to .49, where .54 is the maximum allowed per sections 3.2.3 and 3.2.9 for a by-right MR1 detached two-family dwelling. No relief is required.
4. Per section 3.2.3, the required front setback for a detached two-family dwelling on a post-1953 MR1 lot is 30 feet. The structure has nonconforming front setbacks from both River and William Street at 21.9 and 19.8 feet respectively. The petitioner proposes to construct decks on the first and second stories for each unit along the William Street frontage, maintaining the nonconforming 19.8-foot setback but further extending it along the front of the dwelling, requiring a special permit per section 7.8.2.C.2.

SR3 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	<b>6,671 square feet</b>	<b>No change</b>
Frontage	80 feet	164 feet	No change
Setbacks			
• Front (River Street)	30 feet	<b>21.9 feet</b>	<b>No change</b>
• Front (William Street)	30 feet	<b>19.8 feet</b>	<b>No change</b>
• Side	10 feet	<b>9.8 feet</b>	<b>No change</b>
• Rear	15 feet	29.2 feet	No change
Height	36 feet	28.8 feet	35.33 feet
Stories	2.5	2	No change
Lot Area Per Unit	5,000 square feet	<b>3,336 square feet</b>	<b>No change</b>
FAR	.54	.48	.52
Max Lot Coverage	30%	23.4%	22.5%
Min. Open Space	50%	59%	56.3%

**BOLD** indicates a nonconformity

\*Relief required

1. See "Zoning Relief Summary" below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
§3.4.1	Request to alter/extend a nonconforming two-family dwelling use in the SR3 district	S.P. per §7.3.3
§3.1.2.A.3 §3.2.3	Request to alter/extend the nonconforming front setback	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 alter and extend a nonconforming two family dwelling use in the Single Residence (SR-3) district, and to alter a nonconforming front setback as recommended by the Land Use Committee for the reasons given by the Committee, through its Chair Councilor Andrea Kelley:

1. The proposed deck, which extends the nonconforming front setback, is not substantially more detrimental than the existing nonconforming structure to the neighborhood because the proposed deck is not changing the setback and does not increase the overall massing of the structure within the nonconforming setback. (§7.8.2.C.2)
2. The proposed alterations of the nonconforming two-family use in a Single Residence zone are not substantially more detrimental than the existing nonconforming use to the neighborhood as the neighborhood has several nonconforming two-family dwellings and no change in use is proposed. The proposed additions have been carefully designed to minimize exacerbating any existing nonconformities. (§7.8.2.C.2)

PETITION NUMBER: #117-24

PETITIONER: Alexander Svirsky

LOCATION: 265-267 River St., Ward 4, West Newton, on land known as Section 44 Block 12 Lot 01, containing approximately 6,671 sq. ft. of land

OWNER: American Way Development, Inc.

ADDRESS OF OWNER: 16 Caldwell Rd.  
Waltham, MA 02453

TO BE USED FOR: Two-family dwelling

RELIEF GRANTED: Special Permit per §7.3.3, §7.8.2.C.2, §3.1.2.A.3, §3.2.3, and §3.4.1 to alter a nonconforming two-family use in a Single Residence zone and alter a nonconforming front setback.

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. Plot Plan signed, stamped, and dated by Bernard N. Perrotty, Professional Land Surveyor, dated December 13, 2023 with a plan date of 11/8/2023.
  - b. Architectural plans created by Architecture Design Planning dated December 15, 2023 consisting of the following sheets:
    - i. Proposed elevations (showing front and left), A2.1
    - ii. Proposed elevations (showing rear and right), A2.2
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.