



City of Newton, Massachusetts

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

Ruthanne Fuller
Mayor

Barney Heath
Director

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 #118-24**, for SPECIAL PERMIT/SITE PLAN APPROVAL to further extend nonconforming Floor Area Ratio and a nonconforming front setback as well as to alter a nonconforming three-story dwelling at 442-444 Lowell Ave., Ward 2, Newtonville, on land know as Section 24 Block 28 Lot 52, containing approximately 9,600 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 3.2.3, 3.2.11, 7.3.3, and 7.8.2.C.2 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 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.



442-444 Lowell Ave.

I. Project Description

Use – two family, detached

Zone – Multi-Residence 1 (MR1)

Lot size – 9,600 square feet

Existing Nonconformities – 62 feet of frontage where 70 feet is required, front setback is 17.5 feet where 25 feet is required, height is 3.5 stories where the maximum is 2.5 stories, and Floor Area Ratio (FAR) is 0.55 where 0.49 is the maximum allowed as of right.

Proposal- The petitioner is seeking to add a rear addition and attic level dormers to the dwelling.

Analysis

Planning is unconcerned with the proposed Special Permit project. The proposed additions are limited to the rear of the dwelling and the proposed dormers do not increase the overall height. All work will have limited visibility from the street. The site also presents some challenges and limitations due to the narrow lot and steep grade of the site which slopes approximately nine feet within the rear setback of the lot. This presents few options for fully complying with Zoning Ordinance. While the proposed Floor Area Ratio, 0.78, is significantly above the allowed Floor Area Ratio for this sized lot in the MR1 zone, the additional floor area is proposed across all floors of the dwelling and with the basement counting towards the FAR. With most of the proposed addition being out of view from the neighborhood and the proposal making a significant effort to preserve the existing Tudor-style dwelling and matching the style of the existing dwelling, the Newton Historical Commission (NHC) voted to preferably preserve this property and waive demolition delay. If the existing structure follows consistent plans with those submitted to NHC throughout the process it will meet NHC’s standards for the project to proceed.

II. Zoning Relief Requested:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§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 alter a nonconforming 3-story dwelling	S.P. per §7.3.3
§3.2.3 §7.8.2.C.2	Request to alter and 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:

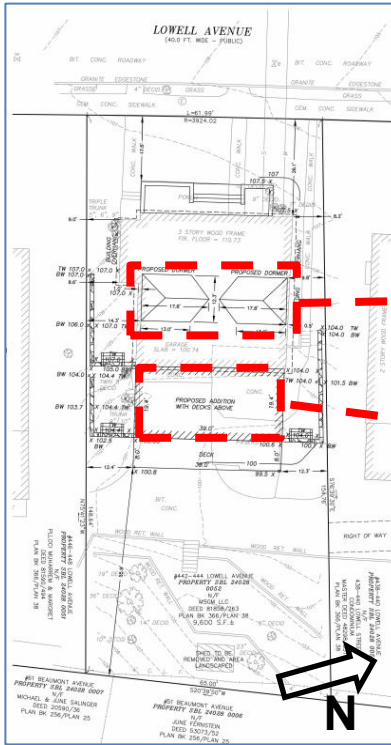
- The proposed additions, which will increase the nonconforming Floor Area Ratio, are not substantially more detrimental than the existing nonconforming use to the neighborhood. (§7.8.2.C.2)
- The proposed increase in the nonconforming FAR from .55 to .78 where .49 is the maximum allowed by right is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood (§3.1.3, §3.1.9, and §7.8.2.C.2).
- The proposed additions which extend the nonconforming 3.5-story structure, are not substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§7.8.2.C.2)
- The proposed additions which will extend the nonconforming front setback, are not substantially more detrimental than the existing nonconforming use to the neighborhood. (§7.8.2.C.2)

IV. Project Proposal and Site Characteristics

The petitioner proposes to construct a three-story rear addition as well as dormers to the attic level of the two-family dwelling. The proposed rear addition extends the structure approximately 26.8 feet to the rear and extends along the width of the existing dwelling. The rear addition would feature a first story garage and living space on the second and third stories with deck space above. The proposed dormers are proposed to the side elevations and will add approximately 139 square feet of habitable area to the area above the second story.

In total, the rear addition and dormers add 2,050 square feet to the dwelling, increasing the Floor Area Ratio from 0.56 to 0.78, where .49 is the maximum allowed as of right. The additions largely impact the rear setback, bringing the dwelling approximately 27 feet closer to the rear property line, but still meeting the rear setback requirement. Additionally, the grade of the site presents some difficulty towards compliance with the Zoning Ordinance. With the basement counting as a first floor, this increases the floor area ratio and the dwelling's height is considered 3.5 stories. This means that a total of 1,452 square feet of first floor area, including the attached garage, will count towards the floor area ratio, representing a large increase.

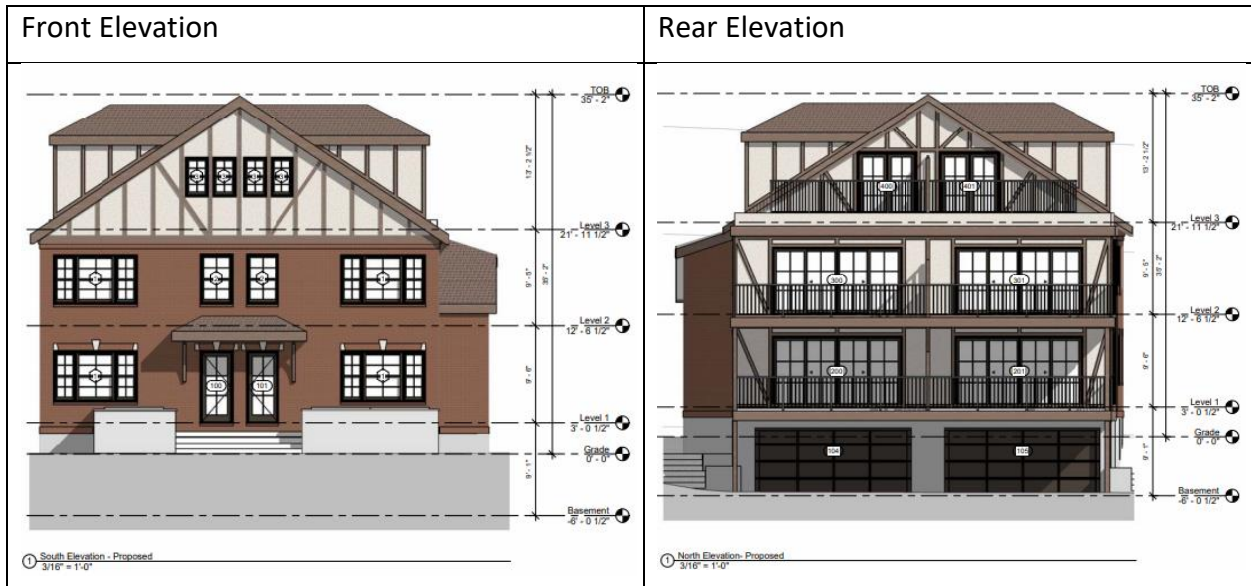
Proposed Site Plan

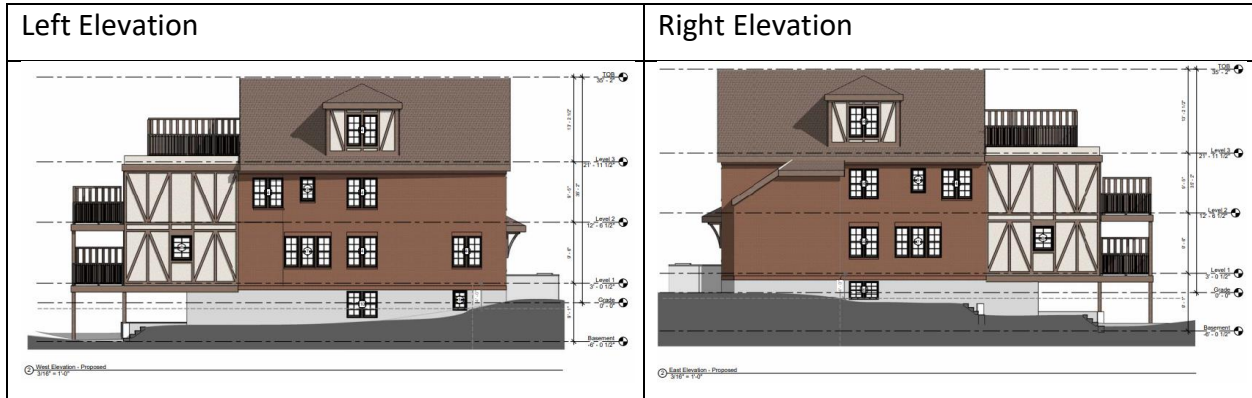


Proposed Dormer Additions

Proposed Rear Addition

Proposed Elevations





I. Interdepartmental Review

Engineering: If this project is approved, the Engineering Division will review during the building permit phase for compliance with the City's Stormwater Ordinance.

Historic: This project was reviewed at a meeting of the Newton Historical Commission in August 2023. The structure was found to be historically significant and preferably preserved. The demolition delay was waived based on the plans submitted. The Chief Preservation Planner will review this project at the building permit phase, if approved to ensure that the plans submitted at the building permit phase are consistent with those presented to the Newton Historical Commission.

II. Petitioner's Responsibilities

The petition is complete.

ATTACHMENTS:

- ATTACHMENT A:** Zoning Review Memorandum
- ATTACHMENT B:** Newton Historical Commission Decision
- ATTACHMENT C:** DRAFT Council Order



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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: January 12, 2024

To: Anthony Ciccariello, Commissioner of Inspectional Services

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

Cc: MSGM LLC, Applicant
Laurance Lee, Attorney
Barney S. Heath, Director of Planning and Development
Jonah Temple, Deputy City Solicitor

RE: Request to further extend nonconforming FAR and to alter the nonconforming number of stories

Applicant: MSGM LLC	
Site: 442-444 Lowell Avenue	SBL: 24028 0052
Zoning: MR1	Lot Area: 9,600 square feet
Current use: Two-family dwelling	Proposed use: No change

BACKGROUND:

The property at 442-444 Lowell Avenue consists of a 9,600 square foot lot improved with a two-family dwelling constructed in 1924. The petitioner proposes to construct a two-story rear addition and dormers which will further extend the nonconforming FAR, requiring a special permit.

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

- Zoning Review Application, prepared Laurance Lee, attorney, submitted 9/28/2023
- Plan of Proposed Construction, signed and stamped by Paul J. Tyrell, surveyor, dated 9/11/2023, resubmitted 1/4/2023
- Floor Plans and Elevations, signed and stamped by Nicholas Landry, architect, dated 9/28/2023
- FAR calculations, submitted 12/6/2023

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner proposes to construct a two-story rear addition as well as attic dormers in the existing portion of the dwelling. The proposed construction increases the nonconforming FAR from .55 to .78, where .49 is the maximum allowed per sections 3.2.3 and 3.2.11, requiring a special permit per section 7.8.2.C.2.
2. Due to the sloping topography of the lot, the basement level is currently considered the first story, resulting in a 3.5 story dwelling where 2.5 is the maximum allowed by right per section 3.2.3. The proposed construction alters the average grade, rendering the lowest level as the basement and not a story. However, the dormer additions add enough square footage to the attic level so-as to render it a full third story. Per section 3.2.3, a special permit is required to allow a three-story dwelling. While the dwelling is going from 3.5 stories to 3, the nature of the nonconformity is being altered requiring a special permit per section 7.8.2.C.2.
3. The dwelling has an existing nonconforming front setback of 17.5 feet, where 25 feet is required per section 3.2.3. The petitioner intends to widen the front porch along the front façade maintaining the 17.5 foot existing setback. The 100 square feet of additional porch area exceeds the 75 square feet allowed by right by the de minimis provision of 7.8.2.B.2.i, requiring a special permit per section 7.8.2.C.2.

MR1 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	9,600 square feet	No change
Frontage	70 feet	62 feet	No change
Setbacks			
• Front	25 feet	17.5 feet	No change*
• Side	7.5 feet	8.2 feet	No change
• Side	7.5 feet	8.6 feet	No change
• Rear	15 feet	82.7 feet	55.9 feet
Height	36 feet	34.9 feet	No change
Stories	2.5	3.5	3*
FAR	.49	.55	.78*
Max Lot Coverage	30%	18%	28%
Min. Open Space	50%	59%	60%

BOLD indicates a nonconformity

*Relief required

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§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 alter a nonconforming 3-story dwelling	S.P. per §7.3.3
§3.2.3 §7.8.2.C.2	Request to alter and extend the nonconforming front setback	S.P. per §7.3.3



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Newton Historical Commission Demolition Review Decision

Date: December 13, 2023 Application # HRA-23-150

Address of structure: 442-444 LOWELL AVE

Type of building: House
If partial demolition, feature to be demolished is Proposed Addition to Rear of Existing House

The building or structure is:
 in a National Register historic district or in a historic district eligible for listing
 individually listed on the National Register or individually eligible for listing.
 importantly associated with historic person(s), events, or architectural or social history
 historically or architecturally important for period, style, architect, builder, or context.
 in a local historic district not visible from a public way

is **NOT HISTORICALLY SIGNIFICANT** as defined by the Newton Demolition Delay Ordinance.
Demolition is not delayed and no further review is required.
is **HISTORICALLY SIGNIFICANT** as defined by the Newton Demolition Delay Ordinance (See below).

The Newton Historical Commission staff:
 APPROVES the proposed project based upon materials submitted see below for conditions (if any).
Demolition is not delayed, further staff review may be required.

DOES NOT APPROVE and the project requires Newton Historical Commission review on this date August 30, 2023 (See below).

Conditions:

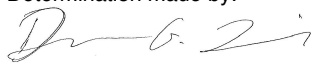
The Newton Historical Commission finds the building or structure:

is **NOT PREFERABLY PRESERVED**
Demolition is not delayed and no further review is required.
is **PREFERABLY PRESERVED – (SEE BELOW).**

Owner of Record:
MSGM, LLC

Delay of Demolition:
 is in effect until _____
 has been waived - see conditions

Please Note: if demolition does not occur within two years of the date of expiration of the demolition delay, the demolition will require a resubmittal to the Historical Commission for review and may result in another demolition delay.

Determination made by:

David Lewis, Chief Preservation Planner



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Barney S. Heath
Director

RECORD OF ACTION

DATE: December 13, 2023

SUBJECT: 442-444 LOWELL AVE

At a scheduled meeting and public hearing on August 30, 2023, the Newton Historical Commission, by vote of 7 to 0 RESOLVED to:

Find the property preferably preserved.

Voting in the Affirmative:

John Rice
Harvey Schorr
Anne Marie Stein
Scott Friedman, Alternate
Katie Kubie
Nancy Grissom
Doug Cornelius, Chair

Voting in the Negative:

Abstained:

Recused:

At a scheduled meeting and public hearing on August 30, 2023, the Newton Historical Commission, by vote of 6 to 1 RESOLVED to:

Waive the demolition delay and approve the design as is.

Voting in the Affirmative:

Nancy Grissom
Katie Kubie
Anne Marie Stein
Scott Friedman, Alternate
John Rice
Doug Cornelius, Chair

Voting in the Negative:

Harvey Schorr

Abstained:

Recused:

Title Reference:

Owner of Property: MSGM, LLC

Deed recorded at: Middlesex County Registry of Deeds

Book/Page

Date

David Lewis, Chief Preservation Planner

Newton Historical Commission
1000 Commonwealth Avenue, Newton, Massachusetts 02459
Email: dlewis@newtonma.gov
www.newtonma.gov

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 further increase the nonconforming floor area ratio, to alter and extend a nonconforming three story dwelling, and to alter and extend a nonconforming front setback as recommended by the Land Use Committee for the reasons given by the Committee, given by the Committee, through its Chair, Councilor Andrea Kelley:

1. The proposed additions, which will further the nonconforming Floor Area Ratio, are not substantially more detrimental than the existing nonconforming use to the neighborhood, as the additional floor area is located to the rear and lower in height than the existing structure. (§7.8.2.C.2)
2. The proposed increase in the nonconforming FAR from .55 to .78 where .49 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 given the small and narrow lot size with a two-family dwelling is typical for this area along Lowell Ave. (§3.2.11)
3. The proposed additions, which continue the nonconforming 3.5-story height, are not substantially more detrimental than the existing nonconforming use to the neighborhood, as the additions will be solely to the rear of the dwelling. (§7.8.2.C.2)
4. The proposed additions, which will vertically extend the nonconforming front setback, are not substantially more detrimental than the existing nonconforming use to the neighborhood because the widening of the porch that extends the setback maintains the same setback and does not exacerbate the nonconformity. (§7.8.2.C.2)

PETITION NUMBER: #118-24

PETITIONER: MSGM, LLC

LOCATION: 442-444 Lowell Ave., Ward 2, Newtonville, on land known as Section 24 Block 28 Lot 52, containing approximately 9,600 sq. ft. of land

OWNER: MSGM, LLC

ADDRESS OF OWNER: 484 Commonwealth Ave.
Boston, MA 02118

TO BE USED FOR: Two-family dwelling

RELIEF GRANTED: Special Permit per §7.3.3, §7.8.2.C.2, §3.2.3 and §3.2.11 to extend the nonconforming front setback, further increase the nonconforming Floor Area Ratio, and extend the nonconforming three-story dwelling

ZONING: Multi Residence 1

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 stamped and dated by Paul J. Tyrell, Professional Land Surveyor, dated September 11, 2023.
 - b. Architectural plans prepared by Design Resource Team (DRT); signed, stamped, and dated by Nicholas Landry, Registered Architect dated January 19, 2024 consisting of the following sheets:
 - i. Proposed elevations (showing front and left), A200
 - ii. Proposed elevations (showing rear and right), A201
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.