



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: March 8, 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 #140-24**, for SPECIAL PERMIT/SITE PLAN APPROVAL to exceed Floor Area Ratio, vertically extend a nonconforming side setback, and to allow a nonconforming third story at 86 Floral St., Ward 6, Newton Highlands, on land known as Section 52 Block 36 Lot 16, containing approximately 5,941 sq. ft. of land in a district zoned MULTI-RESIDENCE 2. Ref: Sec. 3.1.3, 3.1.9, 3.2.3, 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.



86 Floral St.

I. Project Description

Use – two-family, detached

Zone – Multi-Residence 2 (MR2)

Lot size – 5,941 square feet

Existing Nonconformities – lot size of 5,941 sq. ft. where 7,500 sq. ft. is required, side setback of 7 feet where 7.5 feet is required (right/west).

Proposal- The petitioner is seeking to construct additions to the existing half story that if approved, will render the top floor a third story. The petitioner is also seeking to construct a minor three-story addition to the front elevation as well as decks to the side and rear of the dwelling, which vertically extend nonconforming side setback. The additions to the front of the dwelling and attic level require a special permit to exceed the maximum allowed floor area ratio (FAR).

Analysis

The 78 square foot addition in area to the attic results in more area than 2/3 of the floor next below and 5.7 feet addition in height renders the attic a third story and also results in an increase in the FAR which can also be attributed to the undersized lot. The front addition, which spans three stories also adds approximately 33 square feet to the first story and 60 square feet to the second story, resulting in an FAR of .58 where .56 is the maximum allowed as of right and .54 exists. The dwelling also has a pre-existing nonconforming 7-foot side setback which will be vertically extended due to addition to the top floor which creates the three-story structure. Overall, the petitioner proposes to add approximately 171 square feet to the dwelling across three stories.

Due to the 5,941 square foot lot size and existing FAR of 0.54 where 0.56 is the maximum allowed by right, there are few options to add additional living space without requiring some form of relief in the MR2 zone. The proposed additions also result in a 35.6-foot structure, just shy of the 36 feet maximum allowed. Most dwellings in the neighborhood appear to 2.5 stories and this would be one of the only three-story dwellings on Floral Street if approved. If approved, the petitioner should exercise caution during construction and be mindful of the 36-foot maximum allowed height.

II. Zoning Relief Requested:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.2.3	To allow a three story two-family dwelling	S.P. per §7.3.3
§3.2.3 §7.8.2.C.2	To further extend (vertically) a nonconforming side setback	S.P. per §7.3.3
§3.1.3 §3.1.9	To exceed FAR	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:

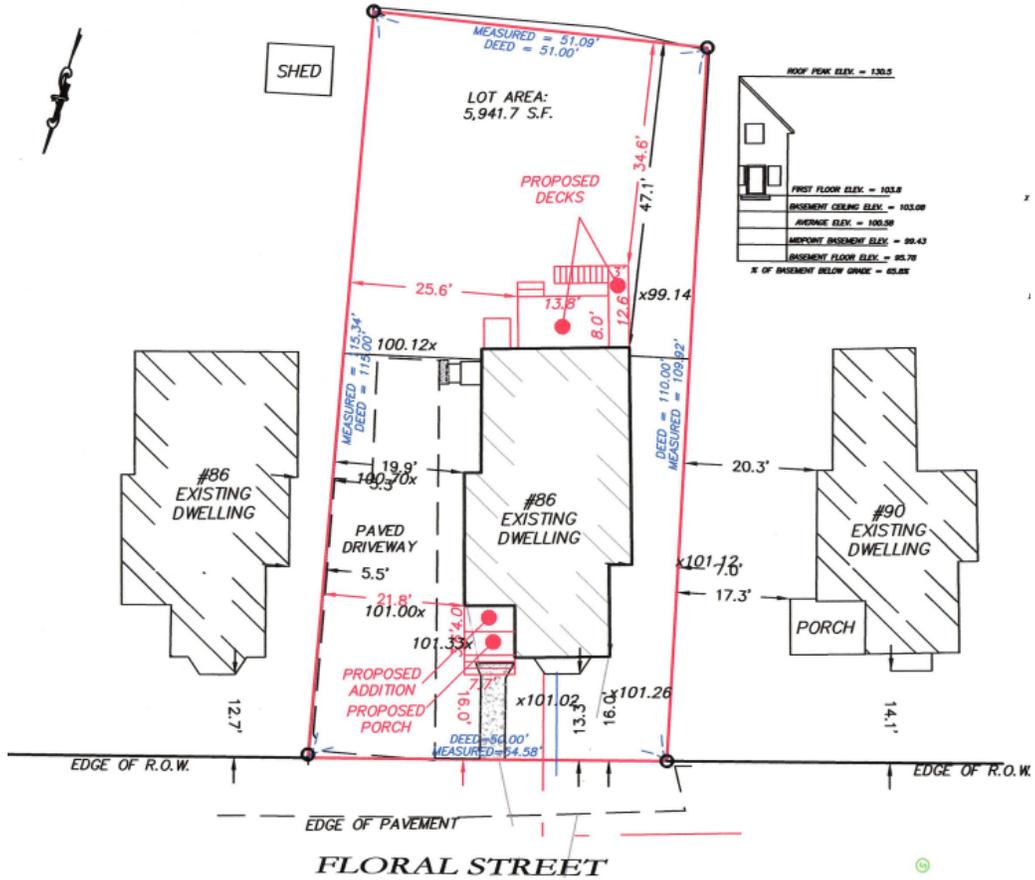
- The proposed three-story dwelling, which exceeds the Floor Area Ratio and vertically extends a nonconforming side setback, is not in derogation of the size, scale, and design of other structures in the neighborhood. (§3.1.3, §3.1.9)
- The site is an appropriate location for the three-story dwelling which exceeds the FAR. (§7.3.3.C.1)
- The three-story dwelling which exceeds the FAR as developed and operated will not adversely affect the neighborhood. (§7.3.3.C.2)
- There will be no 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 addition which vertically extends the non-conforming side setback, will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§7.8.2.C.2)

IV. Project Proposal and Site Characteristics

The proposed project consists of an addition to the attic level of the dwelling, which results in a three-story structure and also exceeds the maximum allowed as of right FAR. The petitioner also proposes to construct decks to the rear of the existing dwelling which extends a nonconforming side setback as well as and an entryway consisting of 33 square feet with a porch to the front of the dwelling and an addition of two story stories directly above.

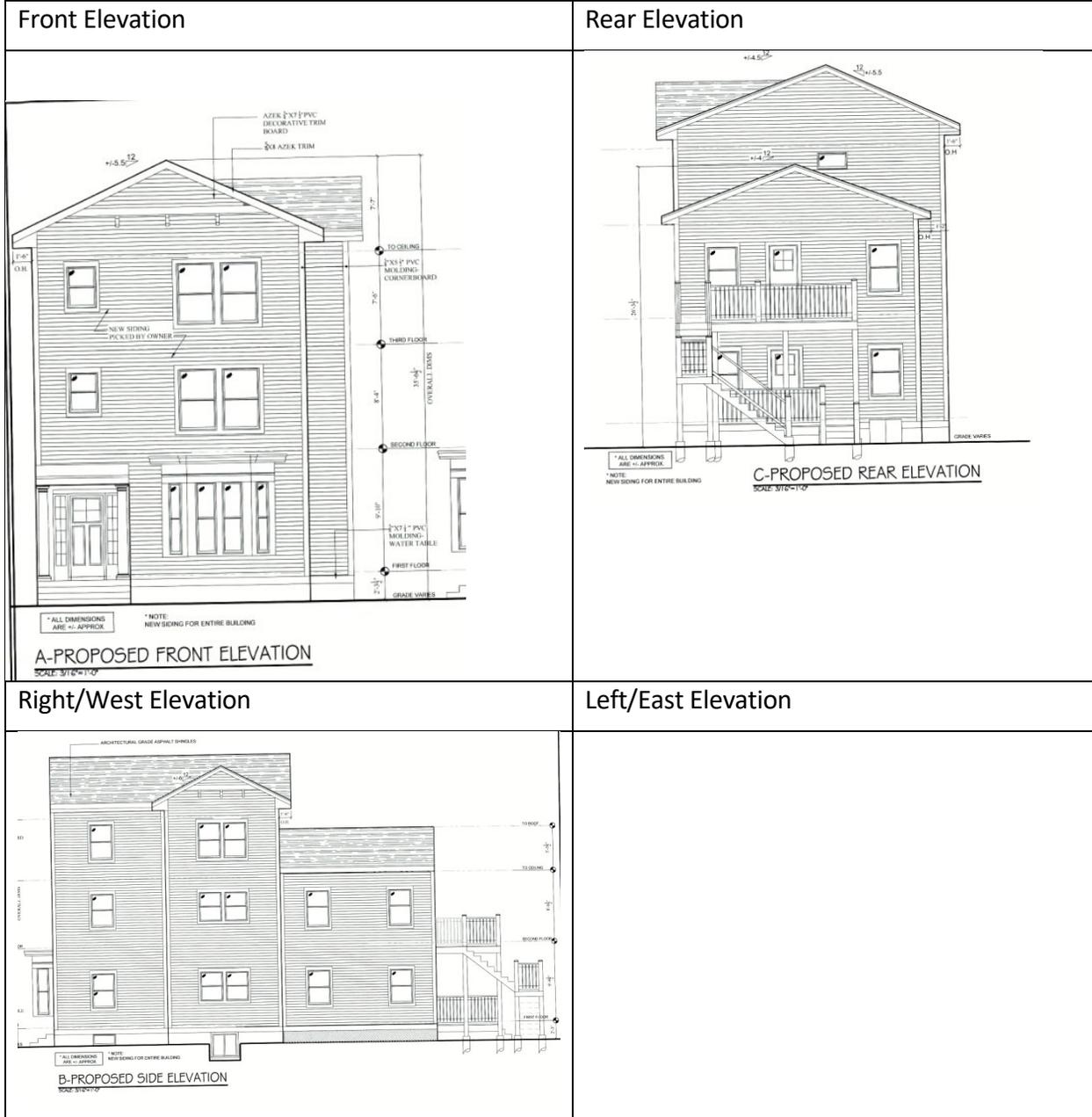
Due to the amount of square footage proposed to the attic level, the attic square footage exceeds 2/3 of the area of the floor below, rendering it a third story. The first story addition to the front does not change the front setback, however the proposed rear deck results in a decreased rear setback from 47.1 feet to 34.6 feet where 15 feet is the minimum. The lot coverage and open space are also being altered but remain within the required standards.

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

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: June 13, 2023

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Barbara Collins, Attorney
Sebastio DaSilva, Applicant
Barney S. Heath, Director of Planning and Development
Jonah Temple, Deputy City Solicitor

RE: Request to allow three stories, to further extend nonconforming side setback and to exceed FAR

Applicant: Sebastio DaSilva	
Site: 86 Floral Street	SBL: 52036 0016
Zoning: MR2	Lot Area: 5,942 square feet
Current use: Two-family dwelling	Proposed use: No change

BACKGROUND:

The property at 86 Floral Street consists of a 5,942 square foot lot improved with a two-family dwelling constructed in 1916. The petitioners propose to construct a full third story on the existing 2.5-story two-family dwelling, as well as modify the front porch entry and construct rear decks. The proposed third story additions will vertically extend a nonconforming side setback and result in a three-story structure, as well as exceed maximum FAR, requiring a special permit.

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

- Zoning Review Application, prepared by Barbara Collins, attorney, completed 5/3/2023
- Existing Conditions Plan of Land, signed and stamped by Frank Iebba, surveyor, dated 4/7/2021
- Plan Showing Proposed Addition, signed and stamped by Dennis B. O'Brien, surveyor, dated 12/2/2022
- Plans and elevations, signed and stamped by Michael J. Burke, engineer, dated 12/7/2021
- FAR calculation, submitted 5/3/2023

ADMINISTRATIVE DETERMINATIONS:

1. The petitioners propose to construct additions to the attic level increasing the dwelling from 2.5 stories to three. Per section 3.2.3 a special permit is required to allow a three-story structure.

Per section 1.5.4.C, a half story is defined as “A story directly under a sloping roof where the area with a ceiling height of 7 feet or greater is less than 2/3 of the area of the story next below.” When determining whether the story above the second story was a half story or a full third, the ratio is taken from the square footage of the space directly below. As such, the rear portion of the second story is not included in this calculation as no part of the third level is above it. Per this interpretation, the structure is three stories.

2. The dwelling has a nonconforming side setback of 7 feet where 7.5 feet is required per section 3.2.3. The proposed third story addition vertically extends the nonconforming side setback, requiring a special permit per section 7.8.2.C.2.
3. The proposed additions increase the FAR from .54 to .57 where .56 is the maximum allowed per sections 3.2.3 and 3.2.11. A special permit per section 3.2.11.A.2 is required to exceed maximum FAR.

MR2 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	4,389 square feet	No change
Frontage	70 feet	85 feet	No change
Setbacks			
• Front	13.4 feet (average)	16 feet	No change
• Side	7.5 feet	19.9 feet	No change
• Side	7.5 feet	7 feet	No change*
• Rear	15 feet	47.1 feet	34.6 feet
Max Number of Stories	2.5	2.5	3*
Max Height	36 feet	29.9 feet	35.6 feet
FAR	56	.54	.57*
Max Lot Coverage	30%	18.5%	18.9%
Min. Open Space	50%	64%	58.9%

*Requires relief

1. See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.2.3	To allow a three story two-family dwelling	S.P. per §7.3.3
§3.2.3 §7.8.2.C.2	To further extend (vertically) a nonconforming side setback	S.P. per §7.3.3
§3.1.3 §3.1.9	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 allow a three story structure that exceeds the Floor Area Ratio and to vertically extend a nonconforming side setback as recommended by the Land Use Committee for the reasons given by the Committee, through its Chair, Councilor Andrea Kelley:

1. The proposed three-story dwelling which exceeds the allowed Floor Area Ratio and vertically extends a nonconforming side setback, is not in derogation of the size, scale, and design of other structures in the neighborhood, as many of the surrounding dwellings preexist the Zoning Ordinance and have similarly sized structures on similarly sized lots. The increase in FAR is spread out amongst three stories and adds a total of 171 square feet to the dwelling. (§3.1.3, §3.1.9)
2. The site is an appropriate location for the three-story dwelling which exceeds the Floor Area Ratio as the dwelling is in close proximity to the Newton Highlands Village Center which has a mix of building types, uses and range of building sizes. (§7.3.3.C.1)
3. The three-story dwelling which exceeds the FAR as developed and operated will not adversely affect the neighborhood, because the dwelling will remain within the height allowance set forth by the Zoning Ordinance. (§7.3.3.C.2)
4. There will be no nuisance or serious hazard to vehicles or pedestrians as the proposed additions do not require or proposed any change to parking or circulation. (§7.3.3.C.3)
5. Access to the site over streets is appropriate for the types and numbers of vehicles involved as the proposed additions do not require or proposed any change to parking or circulation. (§7.3.3.C.4)
6. The proposed addition which vertically extends the nonconforming side setback, will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood as the dwelling proposes minimal additions within the existing building footprint. (§7.8.2.C.2)

PETITION NUMBER: #140-24

PETITIONER: Sebastiao DaSilva

LOCATION: 86 Floral St., Newton Highlands, on land known as Section 52 Block 36 Lot 16, containing approximately 5,941 sq. ft. of land

OWNER: Sebastiao DaSilva

ADDRESS OF OWNER: 86 Floral St.
Newton, MA 02461

TO BE USED FOR: Two-family dwelling

RELIEF GRANTED: Special Permit per §3.1.3, §3.1.9, §3.4.1, and §7.8.2.C.2 to exceed Floor Area Ratio, vertically extend a nonconforming side setback, and to allow a three story, two family dwelling

ZONING: Multi-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. Plot Plan stamped and dated by Dennis O'Brien, Professional Land Surveyor, dated December 2, 2022.
 - b. Architectural plans prepared by Creative Home Plan, LLC; signed, stamped, and dated by Michael J. Burke, Professional Engineer, dated December 9, 2021 consisting of the following sheets:
 - i. Proposed elevations (showing front, rear, and right/west), A-3
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.