



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: July 19, 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 #291-24** for SPECIAL PERMIT/SITE PLAN APPROVAL to remove portions of an old addition, remodel the interior and construct an oversized dormer allowing for attic access at 44 Erie Avenue, Ward 6, Newton Highlands, on land known as Section 52 Block 43 Lot 38, containing approximately 13,032 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 1.5.4.G.2.b 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.



44 Erie Avenue

I. Project Description

Use – single-family dwelling
Zone – Single Residence 2 (SR2)/ Multi-Residence Transit (MRT)
Lot size – 13,032 square feet
Existing Nonconformities –west (right) side setback is 7.4 feet where 7.5 feet is required, frontage is 95 feet where 100 feet is required
Proposal- The petitioner is seeking to construct an oversized dormer to improve internal access to the attic of the principal dwelling.

Analysis

The proposed addition of an 11.67-foot-wide dormer to the attic level right elevation requires a special permit due to the section of the wall below measuring 19.17 feet, making the dormer over 50% of the wall plane below. Given the dwelling’s irregular shape and jogs on the exterior elevations, the denominator to calculate the dormer’s width is less than the entire length of the elevation. This results in only 19.1 feet of wall directly below count relative to the length of the dormer where approximately 60.5 feet of wall exists on the right side of the dwelling. While this means that the proposed dormer does require zoning relief, it will allow for additional width and increased headroom to stairs to the attic in compliance with applicable building code. The proposed addition of a dormer above the stairwell allows the petitioner to expand the stairwell and allow the building to comply with applicable building codes. While the dormer exceeds the maximum by-right length by about two feet, locating the dormer to where it could be constructed by right, such as on the left side of the roof, would not allow the building to conform to building code. Even if the petitioners could redesign a smaller dormer that would be less than half of the length of the wall below, the dormer should appear much less than 50% of the right side of the roof as the projection along the right façade limits the length of the wall below. As the neighborhood features many Victorian-era homes with nonconforming features, the addition of the oversized dormer will not be significantly noticeable or out of place for the neighborhood.

II. Zoning Relief Requested:

Zoning Relief Required		
Ordinance		Action Required
§1.5.4.G.2.b	To allow a dormer exceeding 50% of the length of the wall below	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 specific site is an appropriate location for a dormer exceeding 50% of the length of the wall below (§7.3.3.C.1, §3.1.3, §3.1.9).
- The dormer exceeding 50% of the length of the wall below as developed and operated will not adversely affect the neighborhood (§7.3.3.C.2, §3.1.3, §3.1.9).
- There will be no nuisance or serious hazard to vehicles or pedestrians created by the dormer exceeding 50% of the length of the wall below (§7.3.3.C.3, §3.1.3, §3.1.9).
- Access to the site over streets is appropriate for the types and numbers of vehicles involved in the construction of a dormer exceeding 50% of the length of the wall below (§7.3.3.C.4, §3.1.3, §3.1.9).

IV. Project Proposal and Site Characteristics

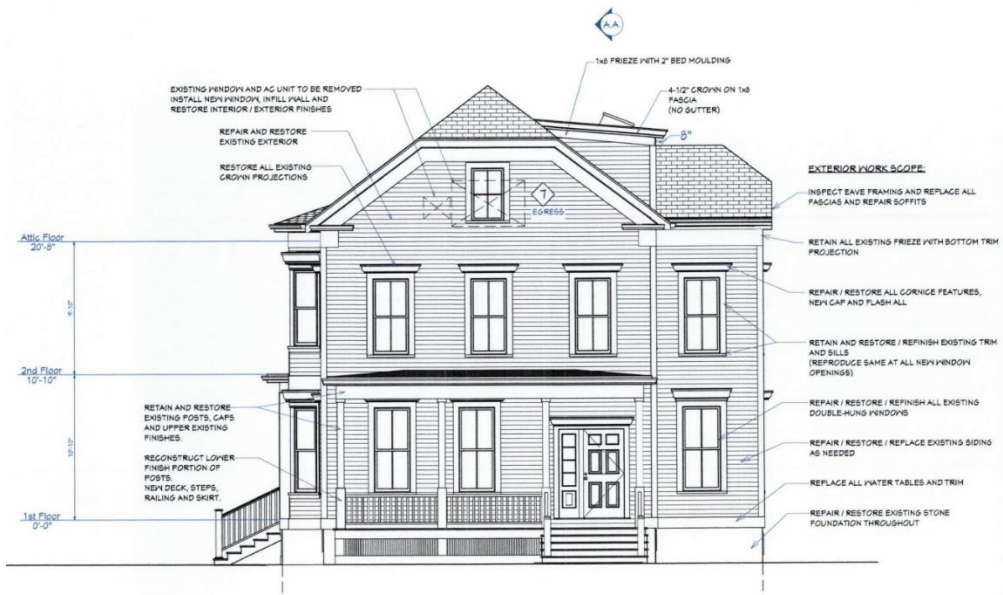
To view the details of the project proposal and site, please view the application, including the Site Plan and Architectural Plans, at the following link: <https://newtonma.portal.opengov.com/records/831953> .

The site consists of a single-family dwelling with a detached garage to the rear on a 13,032 square foot lot. Both the principal and accessory buildings on the site can be assumed to maintain their original form, style, and massing as it was originally constructed in 1885. The site closely resembles those in the surrounding neighborhood and in Newton Highlands with a narrow and undersized lot and dwelling built in the Victorian era. Dormers of a similar size are common although it is not immediately apparent where they slightly exceed 50% of the wall below. Other nonconformities, such as mansard roofs creating a third story, two-family uses in the SR2 zone, and dwellings with apparent nonconforming Floor Area Ratios, are common in the area.

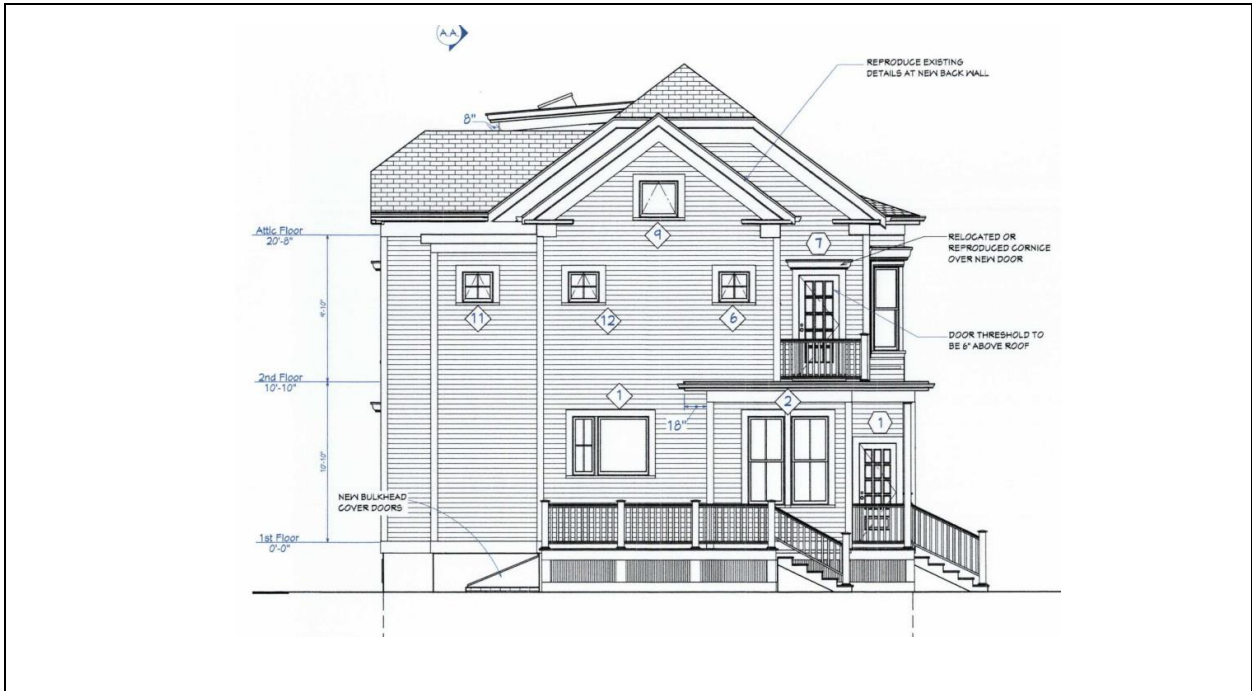
The proposed project consists of by-right internal renovation and the addition of the proposed dormer requiring relief per Section 1.5.4.G.2.b of the Zoning Ordinance. The dormer is proposed to the attic level right side elevation of the principal dwelling. The dormer as proposed will be 11.67 feet, with the wall next below at 19.1 feet due to an irregular jog along the right-side elevation, breaking up the wall plane below. The proposed location is directly above an existing stairwell and is proposed to provide adequate clearance for the residents to access the attic area. As part of the by-right renovations, the petitioners are widening the existing stairwell to the attic to conform with applicable building code.

Proposed Elevations

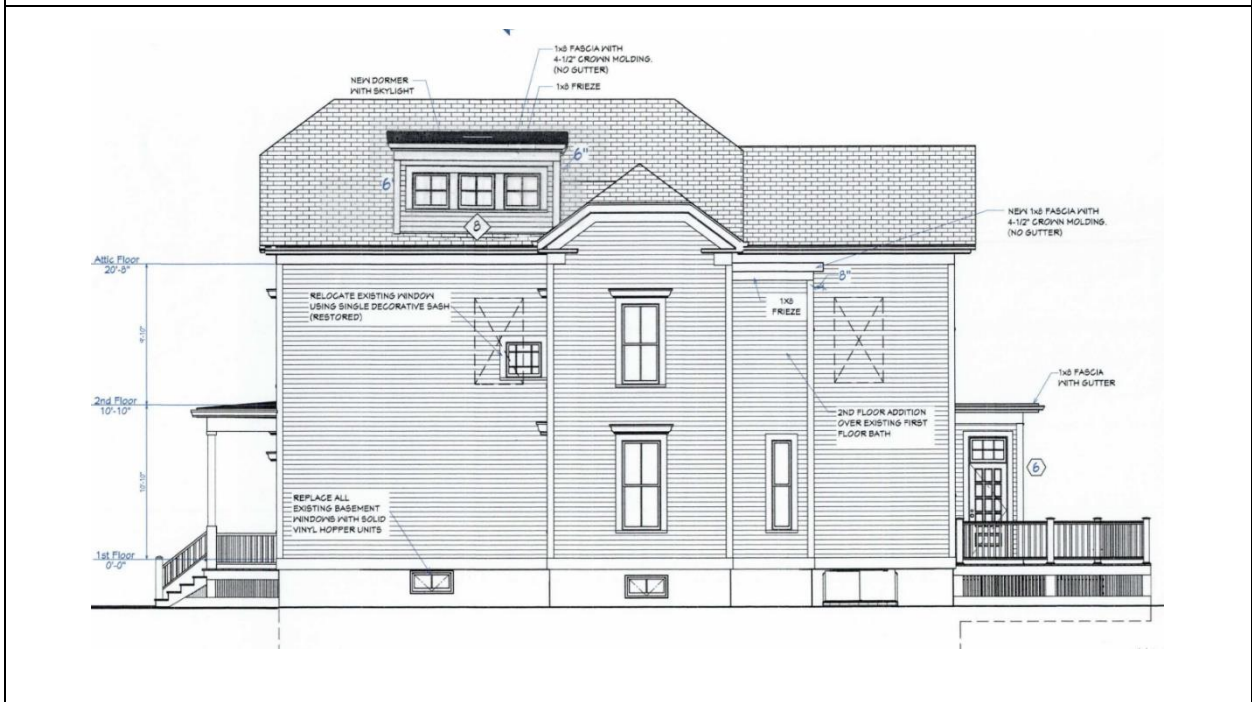
Front Elevation



Rear Elevation



Right Elevation



West Elevation



- I. Interdepartmental Review
No departmental review is required.

- II. Petitioner's Responsibilities
The petition is complete.

ATTACHMENTS:

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



Ruthanne Fuller
Mayor

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: June 12, 2024

To: Anthony Ciccariello, Commissioner of Inspectional Services

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

Cc: Robert Fizek, Architect
Tod and Johanna Healy, Applicants
Barney S. Heath, Director of Planning and Development
Jonah Temple, Deputy City Solicitor

RE: **Request to allow a dormer exceeding 50% and to allow a dormer with an uninterrupted wall plane**

Applicant: Tod and Johanna Healy	
Site: 44 Erie Avenue	SBL: 52043 0038
Zoning: SR2	Lot Area: 13,032 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 44 Erie Avenue consists of a 13,032 square foot lot in the Single Residence 2 zoning district improved with a single-family dwelling constructed circa 1885 and a detached carriage house. The petitioner seeks to remove portions of an old addition, remodel the interior and construct an oversized dormer allowing for attic access which meets the building code, requiring a special permit.

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

- Zoning Review Application, prepared by Robert J. Fizek, architect, submitted 5/2/2024
- FAR Worksheet, signed and stamped by Robert J. Fizek, architect, submitted 5/6/2024
- Proposed Plot Plan, signed and stamped by Dennis L O'Brien, surveyor, dated 1/6/2024
- Floor plans and elevations, signed and stamped by Robert J. Fizek, architect, dated 2/24/2024

ADMINISTRATIVE DETERMINATIONS:

1. Per section 1.5.4.G.2.b, a dormer may be no wider than 50% of the length of the exterior wall next below. A dormer is proposed on the eastern side of the dwelling in a portion of the building with a jog in the facade. As such, the measurement of the exterior wall next below includes only that plane directly below and does not include any other portion of the second floor after the jog. The section directly below the dormer has a width of 19.17 feet. The proposed dormer is 11.67 feet wide, or approximately 61% of the length of the exterior wall next below, requiring a special permit.

SR2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	13,032 square feet	No change
Frontage	100 feet	95 feet	No change
Setbacks			
• Front	25 feet	25.8 feet	No change
• Side	7.5 feet	52 feet	No change
• Side	7.5 feet	7.4 feet	No change
• Rear	15 feet	42.1 feet	No change
Stories	2.5	2.5	No change
Height	36 feet	30.8 feet	No change
FAR	.35	.31	.29
Max Lot Coverage	30%	16%	15.4%
Min. Open Space	50%	68.4%	68.2%

bold indicates a nonconformity

See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§1.5.4.G.2.b	To allow a dormer exceeding 50% of the length of the wall below	S.P. per §7.3.3



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Director

Newton Historical Commission Demolition Review Decision

Date: February 28, 2024

Application # HRA-24-47

Address of structure: 44 ERIE AVE

Type of building: House

If partial demolition, feature to be demolished is Portion of rear addition, chimneys

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.

Owner of Record:
Healy, Todd & Johanna

Conditions:

Determination made by:

David Lewis, Chief Preservation Planner

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 allow an oversized dormer exceeding 50% of the wall plane below as recommended by the Land Use Committee for the reasons given by the Committee, through its Chair, Councilor Andrea Kelley:

1. The specific site is an appropriate location for a dormer exceeding 50% of the length of the wall below as the proposed addition will enable the site to conform with building codes and the dwelling will continue to maintain the appearance and scale of other dwellings built in the late nineteenth century, which are common in the area (§7.3.3.C.1, §3.1.3, §3.1.9).
2. The dormer exceeding 50% of the length of the wall below as developed and operated will not adversely affect the neighborhood as nonconformities are common given the development of most lots predates the Zoning Ordinance (§7.3.3.C.2, §3.1.3, §3.1.9).
3. There will be no nuisance or serious hazard to vehicles or pedestrians created by the dormer exceeding 50% of the length of the wall below as no changes to site circulation or parking will occur (§7.3.3.C.3, §3.1.3, §3.1.9).
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved in the construction of a dormer exceeding 50% of the length of the wall below as the proposed scope of work is similar to that for by-right projects (§7.3.3.C.4, §3.1.3, §3.1.9).

PETITION NUMBER: #291-24

PETITIONER: Johanna and Todd Healy

LOCATION: 44 Erie Avenue on land known as Section 52 Block 43 Lot 38, containing approximately 13,032 sq. ft. of land

OWNER: Johanna and Todd Healy

ADDRESS OF OWNER: 44 Erie Avenue
Newton, MA 02461

TO BE USED FOR: Single-family dwelling

RELIEF GRANTED: Special Permit per §7.3.3 to allow a dormer exceeding 50% of the length of the wall below (§1.5.4.G.2.b)

ZONING: Single Residence 2/Multi-Residence Transit

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 and stamped by Dennis O'Brien, Registered Land Surveyor, dated January 6, 2024.
 - b. Architectural plans signed and stamped by Robert J. Fizek, Registered Architect dated April 18, 2024 consisting of the following sheets:
 - i. Proposed elevations (showing front), A7
 - ii. Proposed elevations (showing right), A8
 - iii. Proposed elevations (showing rear), A9
 - iv. Proposed elevations (showing left), A10
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.