



Ruthanne Fuller  
Mayor

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

Petition: #301-24  
Public Hearing:  
8/27/24

Barney Heath  
Director

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## PUBLIC HEARING MEMORANDUM

**DATE:** August 22, 2024

**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 #301-24** for SPECIAL PERMIT/SITE PLAN APPROVAL to extend the nonconforming two-family dwelling use, to extend the nonconforming front setback and to allow an oversized dormer

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.



**12-14 Stoneleigh Road**

I. Project Description

**Use:** Two family dwelling

**Zoning:** Single-Residence 3 (SR-3)

**Lot size:** 11,021 square feet

**Existing nonconformities:**

- Two family use
- Frontage of 64 feet (80 feet required)
- Front setback of 26.3 feet (30 feet required)
- Side setback of 7 feet (10 feet required)

**Proposal:** The petitioner proposes to enclose side porches on each story which will be converted into living space, add decks to each level, and construct dormers on the north and south elevations. The work proposed requires relief to alter and extend a nonconforming two-family dwelling use, to extend the nonconforming front setback, and to allow a dormer exceeding 50% of the length of the wall below.

**Analysis:** The Planning Department is not concerned with the relief requested in this petition. While the two-family use is nonconforming in the SR-3 district, the dwelling has been used as a two-family dwelling for many years and there are several other two-family residences in the neighborhood, including direct abutters. Dormers of varying sizes and orientations are a feature on other dwellings in the area, and the work proposed meets other applicable dimensional regulations including open space, lot coverage, and maximum building height.

II. Zoning Relief Requested:

Zoning Relief Required		
Ordinance		Action Required
§3.4.1 §7.8.2.C.2	Request to alter and extend a nonconforming two-family dwelling use	S.P. per §7.3.3
§3.2.3 §7.8.2.C.2	Request to extend the nonconforming front setback	S.P. per §7.3.3
§1.5.4.G.2.b	Request 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 site in SR-3 is an appropriate location for the proposed work which requires relief to alter and extend a nonconforming two-family dwelling use, extend the

nonconforming front setback, and allow a dormer exceeding 50% of the length of the wall below (7.3.3.C.1)

- The proposed work which requires relief to alter and extend a nonconforming two-family dwelling use, extend the nonconforming front setback, and allow a dormer exceeding 50% of the length of the wall below will not adversely affect the neighborhood (§7.3.3.C.2)
- The proposed work which requires relief to alter and extend a nonconforming two-family dwelling use, extend the nonconforming front setback, and allow a dormer exceeding 50% of the length of the wall below 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)
- The proposed extension of the nonconforming two-family dwelling use will not be substantially more detrimental than the existing nonconforming residential use is to the neighborhood (§3.4.1, §7.8.2.C.2).

#### IV. Project Proposal and Site Characteristics

The property is located on a 11,021 square foot lot that is improved with a legal nonconforming two-family dwelling constructed in 1927. The site is relatively flat. The zoning of this property and surrounding lots is SR-3, and the neighborhood is primarily residential in character.

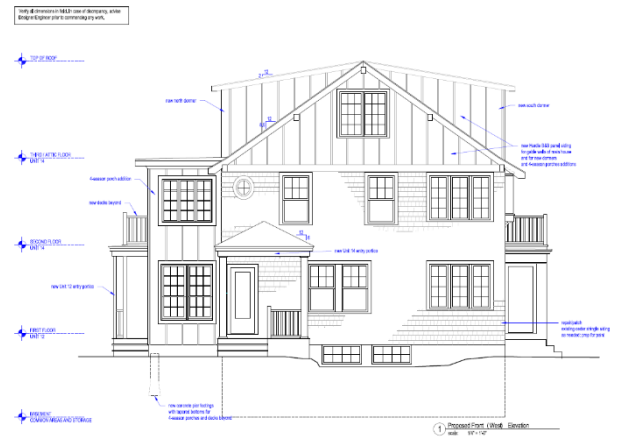
The petitioner proposes to enclose side porches on each story, which will be converted into living space. Decks will be constructed on each level and dormers will be added on the north and south elevations. The project requires a special permit for the use because it is a two-family dwelling, a use that is not allowed in the SR-3 district, so the proposed modifications require relief to alter and extend a nonconforming two-family dwelling. Where a density or dimensional control is not set forth in the zoning ordinance for a use granted by special permit, the most restrictive density or dimensional control applicable to such use in any district where the use is allowed by right applies, unless otherwise required in the special permit. Two-family dwellings are allowed by right in the Multi-Residence 1 (MR-1) zoning district, and the most restrictive dimensional controls would apply to a post-1953 (new) lot. The dimensional control for a new MR-1 lot will apply to this petition.

The dwelling has a nonconforming front setback of 26.3 feet where a front setback of 30 feet would be required for a comparable project in the MR-1 district. The petitioner proposes a front porch addition, which will reduce the front setback to 25.7 feet. Therefore, a special permit is required to further extend the nonconformity.

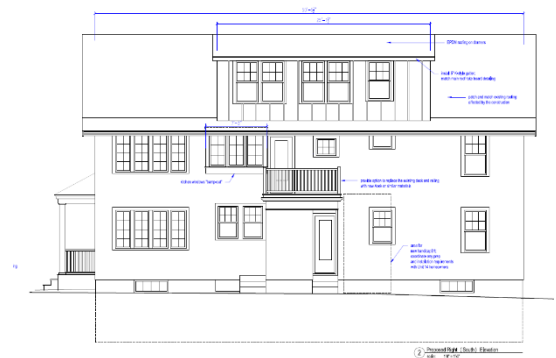
The petitioner proposes to enlarge and enclose an existing two-story side porch to create additional habitable space. The porch has an existing nonconforming setback of 8.8 feet, where 10 feet is required. The proposed enclosure of this porch results in a further reduced setback of 8.2 feet. Along the same elevation, the petitioner proposes to construct a new porch with a deck above behind the proposed addition, the proposed porch and deck will have a setback of 6.5 feet. The "de minimis" provisions of section 7.8.2.B allow for by-right extensions of nonconforming setbacks within the parameters of the relief afforded by the provisions. Decks and porches with less than 200 square feet within a setback are allowed if there is an existing nonconforming side setback.

No special permit relief is required for the proposed extensions to the northern side of the dwelling, as all are within the limits of the de minimis relief outlined in Section 7.8.2.B. 5 of the zoning ordinance. Special permit relief is required to construct a dormer 50% of the length of the exterior wall of the story next below or wider. The petitioner proposes dormers on the attic level of the north and south elevations. The dormer on the north elevation is 23.25 feet wide where the plane below is 31.08 feet wide, or 74.8% of the width, requiring special permit relief. The maximum allowable FAR for a two-family dwelling on an 11,021 square foot lot in the MR-1 district is .48. The existing FAR of the dwelling is .34. Enclosing the existing porches and adding dormers increases the FAR to .40, requiring no relief.

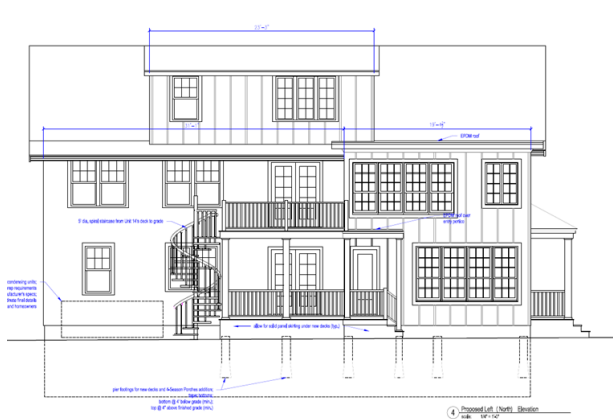
### Proposed front elevation



### Proposed right elevation



### Proposed left elevation



### Proposed rear elevation



### V. 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

**Attachment A**  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

Barney S. Heath  
Director

## ZONING REVIEW MEMORANDUM

Date: June 3, 2024

To: Anthony Ciccariello, Commissioner of Inspectional Services

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

Cc: Donna Cvitkovich, Applicant  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Deputy City Solicitor

RE: **Request to extend the nonconforming two-family dwelling use, to extend the nonconforming front setback and to allow an oversized dormer**

Applicant: Donna Cvitkovich	
Site: 12-14 Stoneleigh Road	SBL: 31018 0010
Zoning: SR3	Lot Area: 11,021 square feet
Current use: Two-family dwelling	Proposed use: No change

### BACKGROUND:

The property at 12-14 Stoneleigh Road consists of 11,021 square feet improved with a nonconforming two-family dwelling constructed in 1927 in the Single Residence 3 zoning district. The petitioner at 14 Stoneleigh Road proposes to rebuild and enclose porches and add dormers, further extending the nonconforming 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 Donna Cvitkovich, applicant, submitted 5/3/2024
- Floor plans and elevations, prepared by Dimiter Kostov, dated 4/30/2024
- Plan of Land Existing Conditions, signed and stamped by Bruce Bradford, surveyor, dated 4/3/2024
- Plan of Land Proposed Conditions, signed and stamped by Bruce Bradford, surveyor, dated 4/5/2024, revised 4/9/2024
- FAR worksheet, submitted 5/3/2024

**ADMINISTRATIVE DETERMINATIONS:**

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1. The property is located in the Single Residence 3 zoning district and is improved with a legal nonconforming two-family dwelling constructed in 1927. The petitioner proposes to enclose side porches on each story to be converted into living space, add decks to each level and construct dormers on the north and south elevations. The proposed construction requires a special permit per sections 3.4.1 and 7.8.2.C.2 to alter and extend a nonconforming two-family dwelling use in an SR3 district.
2. The two-family dwelling use is not an allowed use in the SR3 district. Per section 3.1.2.A.3, where a density or dimensional control is not set forth in Section 3.1 Single Residence Districts for a use granted by special permit, the most restrictive density or dimensional control applicable to such use in any district where the use is allowed by right shall be applicable, unless otherwise required in the special permit. Two-family dwellings are allowed by right in the MR1 zoning district, with the most restrictive dimensional controls prescribed for a post-1953 (new) lot. The dimensional controls for a new MR1 lot are applied.
3. The dwelling has an existing nonconforming front setback of 26.3 feet, where a post-1953 MR1 lot requires a front setback of 30 feet per section 3.2.3. The petitioner proposes a front porch addition resulting in a reduced front setback of 25.7 feet, requiring a special permit per section 7.8.2.C.2 to further extend the nonconformity.
4. The petitioner proposes to enlarge and enclose an existing two-story side porch to create habitable space. The porch has an existing nonconforming setback of 8.8 feet, where 10 feet is required per section 3.2.3. The proposed enclosure of this porch results in a further reduced setback of 8.2 feet. Along the same elevation, the petitioner proposes to construct a new porch with a deck above behind the proposed addition, the proposed porch and deck will have a setback of 6.5 feet.

The "de minimis" provisions of section 7.8.2.B allow for by-right extensions of nonconforming setbacks within the parameters of the relief afforded by the provisions. Per section 7.8.2.B.2.b, decks and porches with less than 200 square feet within the setback are allowed where there is an existing nonconforming side setback. Additionally, per section 7.8.2.B.2.c, a first-floor addition within the side (or rear) setback are allowed with up to 200 square feet into the setback. Section 7.8.2.B.2.d allows for second floor additions with not more than 400 square feet within the setback. No special permit relief is required for the proposed extensions to the northern side of the dwelling, as all are within the limits of the de minimis relief of section 7.8.2.B.

5. Per section 1.5.4.G.2.b, a dormer may be no wider than 50% of the length of the exterior wall of the story next below, unless by special permit. The petitioner proposes dormers in the attic level on the north and south elevations. The dormer on the north elevation is 23.25 feet wide where the plane next below is 31.08 feet wide, or 74.8% of the width, requiring a special permit per section 1.5.4.G.2.
6. The maximum allowable FAR for a two-family dwelling on an 11,021 square foot lot in the MR1 district is .48. The existing FAR of the dwelling is .34. Enclosing the existing porches and adding dormers increases the FAR to .40, requiring no relief.

SR3 Zone (new MR1 lot standards applied)	Required	Existing	Proposed
Lot Size	10,000 square feet	11,021 square feet	No change
Frontage	80 feet	<b>64 feet</b>	<b>No change</b>
Setbacks <ul style="list-style-type: none"> <li>• Front</li> <li>• Side</li> <li>• Side</li> <li>• Rear</li> </ul>	30 feet 10 feet 10 feet 15 feet	<b>26.3 feet</b> <b>7 feet</b> 16.6 feet 46.5 feet	<b>25.7 feet*</b> <b>6.5 feet</b> 17.6 feet No change
Max Number of Stories	2.5	2.5	No change
Height	36 feet	31.7 feet	31.6 feet
FAR	.48	.34	.40
Max Lot Coverage	30%	14.8%	17.4%
Min. Open Space	50%	63%	61%

**BOLD** indicates nonconformity

\*Requires relief

See "Zoning Relief Summary" below:

Zoning Relief Required		
Ordinance		Action Required
§3.4.1 §7.8.2.C.2	Request to alter and extend a nonconforming two-family dwelling use	S.P. per §7.3.3
§3.2.3 §7.8.2.C.2	Request to extend the nonconforming front setback	S.P. per §7.3.3
§1.5.4.G.2.b	Request to allow a dormer exceeding 50% of the length of the wall below	S.P. per §7.3.3



#301-24  
12-14 Stoneleigh Road

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 the nonconforming front setback and to allow an oversized dormer as recommended by the Land Use Committee for the reasons given by the Committee, through its Chair, Councilor Andrea Kelley:

1. The site in SR-3 is an appropriate location for the proposed alteration and extension of a nonconforming two-family use, extension of nonconforming front setback, and dormer exceeding 50% of the length of the wall below because there are other nonconforming two-family dwellings in the vicinity that are built to a similar scale. (§7.3.3.C.1)
2. The proposed alteration and extension of a nonconforming two-family use, extension of nonconforming front setback, and dormer exceeding 50% of the length of the wall below will not adversely affect the neighborhood because the front setback will be reduced by less than a foot, which will minimize negative impact to abutting properties. (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians because the driveway and curb cut will be maintained in the same location. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
5. The proposed alteration and extension of a nonconforming two-family use, extension of nonconforming front setback, and dormer exceeding 50% of the length of the wall below will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood because it complies with other dimensional regulations including the required minimum open space, maximum height, maximum lot coverage, and maximum floor area ratio. (§7.3.3.C.1)

PETITION NUMBER: #301-24

PETITIONER: Donna Cvitkovich

LOCATION: 12-14 Stoneleigh Road, Ward 3, West Newton, on land known as Section 31 Block 18 Lot 10, containing approximately 11,021 sq. ft. of land

OWNER: Donna Cvitkovich

ADDRESS OF OWNER: 12-14 Stoneleigh Road  
Newton, MA 02465

TO BE USED FOR: Two Family dwelling

RELIEF GRANTED: Special Permit to alter and extend a nonconforming front setback (§7.8.2.C.2)

ZONING: Single Residence 3 District

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. A site plan signed and stamped by Bruce Bradford, Professional Land Surveyor, dated 4/5/2024 and revised 4/9/2024.
  - b. A set of architectural plans entitled "12-14 Stoneleigh Road" prepared by Dimiter Kostov, unsigned and unstamped, dated 4/30/2024 consisting of seven sheets.
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, including the as built FAR.
- b. Submitted final as-built survey plans in digital format, stamped and signed by a professional land surveyor or professional engineer, as applicable.