

## DEPARTMENT OF PLANNING AND DEVELOPMENT

CITY OF NEWTON

Massachusetts

**DATE:** November 14, 2024

**TO:** City Council

**FROM:** Alyssa Sandoval, Deputy Chief Planner for Current Planning

**SUBJECT:** Consistency Request  
Special Permit #78-24 to allow an attic level addition that vertically extends a nonconforming front yard setback

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The petitioner obtained Special Permit #78-24 on February 20, 2024 which allowed them to construct an attic level addition with relief to vertically extend a nonconforming front yard setback. The dwelling currently has a nonconforming 10.5-foot front setback but meets all other requirements of the MR1 zone. The petitioner's approved project includes additions to the existing dwelling, to convert the single-family dwelling into a two-family dwelling, and to construct a detached carport at the rear of the property.

The approved project includes constructing additions to the side and rear of the dwelling as well as raising the roof to add additional floor area in the half story. The relief granted was only related to the vertical extension of the front setback by increasing the peak of the roof to create floor area within the half story. The project's other additions are considered as of right.

During the building permit process, several items were noted that the petitioner has now applied for a consistency ruling from the Commissioner of Inspectional Services and for which the Commissioner is seeking input from the Land Use Committee. The inconsistencies are noted on the plans and include changes to the front elevation that includes a greater separation between the front doors of each unit and enclosure of a front porch on Unit 1; changes to the left elevation that include a different location of a third story window; changes to the rear elevation that include a slight shift in the second story window location; and changes to the right elevation that includes shifts and reconfiguration of third story and second story windows. Many of the changes to the dormers were needed to comply with the Building Code and Zoning Ordinance.

The Commissioner has no major concerns about any of the proposed modifications but requested that the Land Use Committee advise on the enclosure of the front porch on one unit. The enclosure of the porch would necessitate that a landing and stairs be placed in the front yard setback. This is allowed by Newton Zoning Ordinance which allows landings and stairs to be placed in the front setback to accommodate egress, but the Commissioner notes the building is set close to the street as it is with the nonconforming 10.5-foot front setback, where 25 feet is required. As proposed, the landing would be

6.3 feet from the front property line and the stairs would be approximately 1.75 feet from the property line. While the proposed stairs and landing at this location is closer to the street than many other homes in the nearby area, there are examples of at least two homes nearby with stairs that are set at or very close to the front property line. Planning does not have particular concerns with the request but the applicant should ensure that the snow is cleared from the stairs so as not to obstruct the sidewalk. The consistency ruling request can be accessed [here](#).

Typically, the Committee will take a straw vote in sending their recommendation/input back to the Commissioner of Inspectional Services. If the Committee does not believe the changes are consistent with the special permit, the Commissioner may require the petitioner to seek an amendment to the special permit, subject to a public hearing.

**Attachment A:** Comparison of special permit approved plans and building permit plans

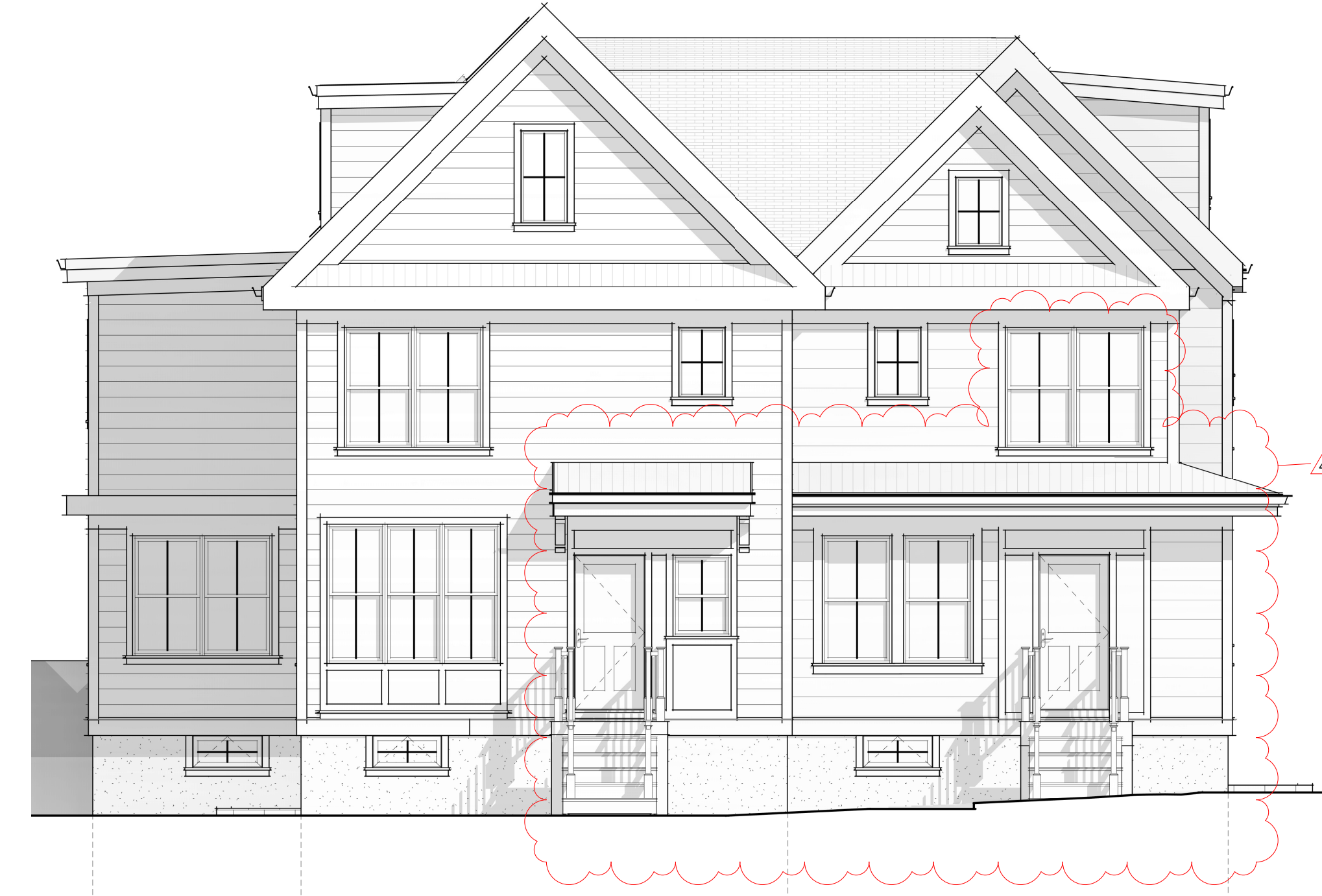
**Attachment B:** Planning Memorandum, February 2, 2023

Attachment A



APPROVED SPECIAL PERMIT FRONT ELEVATION FROM SPECIAL PERMIT SET

300 CABOT STREET RESIDENCES

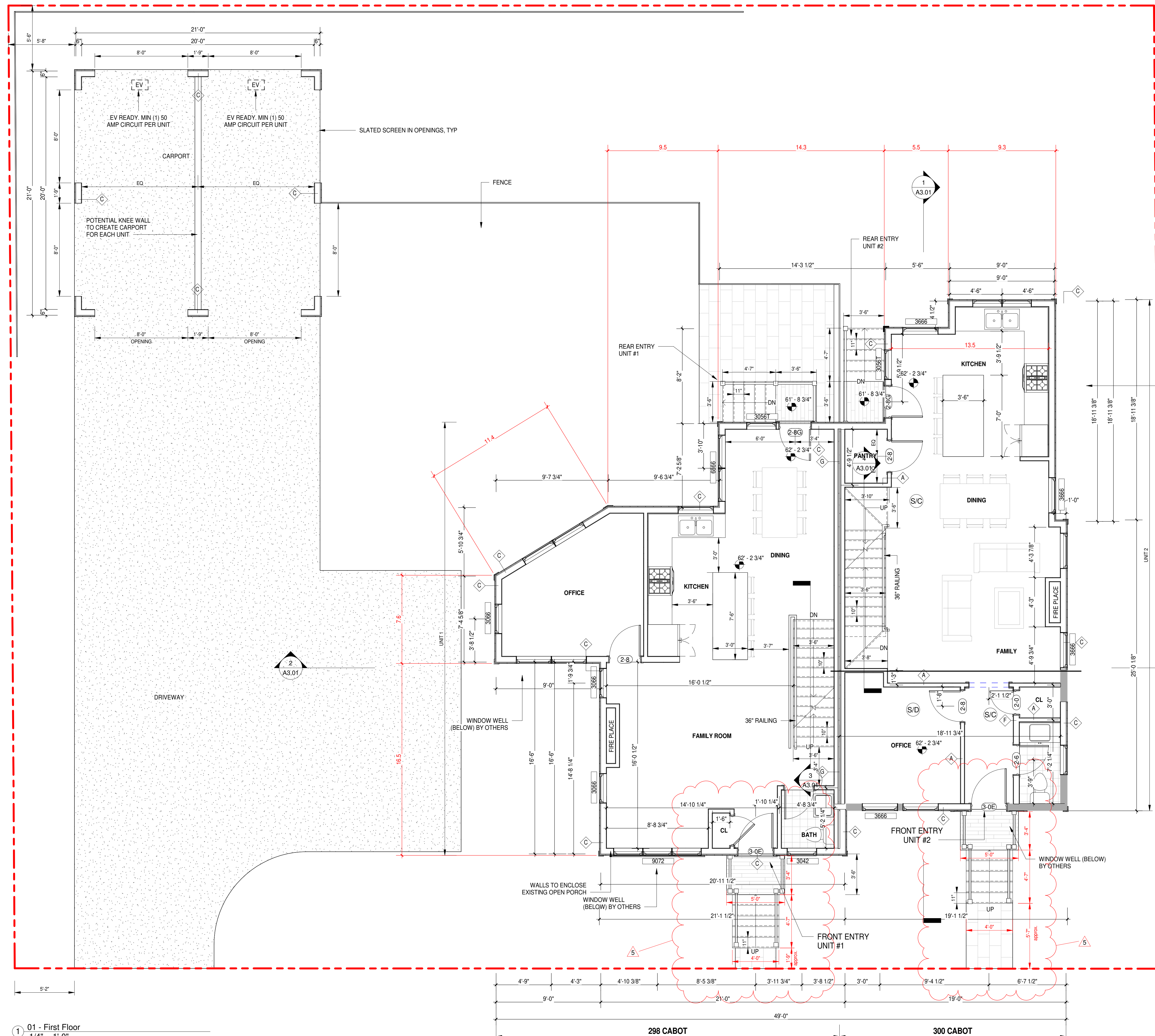


Enclosure of Front Porch Entry

AMENDED SPECIAL PERMIT FRONT ELEVATION

300 CABOT STREET RESIDENCES





**SCHEDULES**

**DOOR SCHEDULE**

#	WIDTH	HEIGHT	DOOR TYPE	COUNT	DESCRIPTION
2-0	24"	80"	Int - Single Door	1	
2-4	28"	80"	Int - Single Door	4	
2-6	30"	80"	Int - Single Door	13	
2-6L	30"	48"		1	
H					
2-8	32"	80"	Int - Single Door	14	
2-8G	32"	80"	Ext - Single Glass Door	2	
2-8S	32"	80"	Int - Single Door - Solid Core	1	Solid Core Door - Min 1-3/8" Thick - 20 Min Fire Separation
3-0E	36"	80"	Ext - Entry Door	2	
3-0M	42"	84"		1	
3-0Z	54"	80"		1	
4-0	48"	80"	Int - Double Door	3	
4-6	54"	80"	Int - Double Door	1	
5-0	60"	80"	Int - Double Door	1	

**WINDOW SCHEDULE**

#	WIDTH	HEIGHT	RO WIDTH	RO HEIGHT	WINDOW TYPE	QTY	(T)	DESCRIPTION
3042	30"	42"	2'-6 3/4"	3'-6 3/4"	Casement	2	X	
3056	30"	56"	2'-6 3/4"	4'-8 3/4"	Double Hung	2	X	
3242	32"	42"	2'-8 3/4"	3'-6 3/4"	Casement	2		
3260	32"	60"	2'-8 3/4"	5'-0 3/4"	Casement	8		
3617	36"	17"	3'-0 3/4"	1'-5 3/4"	Awning	4		
3662	36"	62"	3'-0 3/4"	5'-2 3/4"	Double Hung	5		
3666	36"	66"	3'-0 3/4"	5'-6 3/4"	Double Hung	7		
7244	30"	56"	2'-6 3/4"	4'-8 3/4"	Double Hung	1		
7258	27"	36"	2'-3 3/4"	3'-0 3/4"	Casement	1	X	
7260	36"	48"	3'-0 3/4"	4'-0 3/4"	Double Hung	1		
7262E	72"	62"	6'-0 3/4"	5'-2 3/4"	Double Hung (2)	6		
7263	68"	66"	5'-8 3/4"	5'-6 3/4"	Double Hung (2)	1		
7273	32"	36"	2'-8 3/4"	3'-0 3/4"	Casement	1	X	
7274	30"	66"	2'-6 3/4"	5'-6 3/4"	Double Hung	3		
7277	60"	52"	5'-0 3/4"	4'-4 3/4"	Double Hung (2)	1		
7278	60"	62"	5'-0 3/4"	5'-2 3/4"	Double Hung (2)	1		
7279	30"	24"	2'-6 3/4"	2'-0 3/4"	Fixed	6		
7282	36"	60"	3'-0 1/2"	5'-0 1/2"		1		
7283	24"	48"	2'-0 3/4"	4'-0 3/4"	Casement	1	X	
7286	30"	42"	2'-6 3/4"	3'-6 3/4"	Double Hung	1		
7287	24"	48"	2'-0 3/4"	4'-0 3/4"	Fixed	1		
10872	90"	72"	7'-6 3/4"	6'-0 3/4"	Double Hung (2)	1		
F2436	24"	36"	2'-0 3/4"	3'-0 3/4"	Fixed	4	X	

**WINDOW & DOOR NOTES:**

- WINDOW AND DOOR SIZES HAVE BEEN SPECIFIED BASED ON GENERIC STANDARD SIZES. PLEASE VERIFY ALL SIZES WITH DESIRED MANUFACTURER, AND SELECT THE CLOSEST STANDARD SIZE WHEN APPLICABLE.
- WINDOW # FOLLOWED BY AN 'A' SYMBOLIZES A NEW WINDOW THAT WILL BE PLACED IN AN EXISTING OPENING. THESE WINDOW SIZES MUST BE VERIFIED BY THE CONTRACTOR PRIOR TO ORDERING.
- WINDOWS WITH BOX CHECKED ("X") UNDER (E) WILL BE REQUIRED TO BE AN EGRESSIBLE WINDOW.
- WINDOWS WITH BOX CHECK ("X") UNDER (T) WILL BE REQUIRED TO BE A TEMPERED WINDOW.

**WINDOW EGRESS NOTES:**

- IT IS THE CONTRACTORS RESPONSIBILITY TO VERIFY ALL BEDROOM WINDOWS TO ENSURE EGRESS COMPLIANCE.
- AT MINIMUM ONE EGRESS WINDOW SHALL BE PROVIDED IN EACH BEDROOM ABOVE OR BELOW GRADE LEVEL.
- THE MINIMUM OPENING AREA SHALL MEET OR EXCEED SIZE REQUIREMENTS SET BY LOCAL AND STATE BUILDING CODES.
- ALL WINDOWS SHALL BE VERIFIED WITH MANUFACTURER TO ENSURE EGRESS COMPLIANCE.



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STAMP

**PERMIT SET**

No.	Description	Date
3	Revision 3 - Building Department Comments	8/27/2024
5	Revision 5 - FRONT PORCH DIMENSIONS	11/05/2024

**Cabot Street Residences**

298 - 300 Cabot St, Newton MA, 02460

**FIRST FLOOR PLAN**

Project number 23-006  
 Date 8-12-2024  
 Drawn by BAC  
 Checked by MGD

**A1.02**

Scale As indicated

01 - First Floor  
 1/4" = 1'-0"

**TYPICAL PLAN LEGEND**

	EXISTING WALLS
	WALLS (TO BE DEMOLISHED)
	NEW WALLS



APPROVED SPECIAL PERMIT LEFT ELEVATION FROM SPECIAL PERMIT SET

300 CABOT STREET RESIDENCES



AMENDED SPECIAL PERMIT LEFT ELEVATION

300 CABOT STREET RESIDENCES





APPROVED SPECIAL PERMIT REAR ELEVATION FROM SPECIAL PERMIT SET

300 CABOT STREET RESIDENCES



AMENDED SPECIAL PERMIT REAR ELEVATION

300 CABOT STREET RESIDENCES





APPROVED SPECIAL PERMIT RIGHT ELEVATION FROM SPECIAL PERMIT SET

300 CABOT STREET RESIDENCES



AMENDED SPECIAL PERMIT RIGHT ELEVATION

300 CABOT STREET RESIDENCES





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

Ruthanne Fuller  
Mayor

Barney S. Heath  
Director

**PUBLIC HEARING MEMORANDUM**

**DATE:** February 2, 2023

**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 #78-24** for SPECIAL PERMIT/SITE PLAN APPROVAL to construct additions to the existing dwelling, to convert the single-family dwelling into a two-family dwelling, and adding a half-story which vertically extends the nonconforming front setback at 300 Cabot Street, Ward 2, Newtonville, on land known as Section 22 Block 20 Lot 16, containing approximately 8,339 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 3.2.3, 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.



**300 Cabot St.**



**Project Description**

**Background**

The subject property at 300 Cabot St. consists of a single-family dwelling on an 8,399 square foot lot constructed circa 1880. The property is located in the Multi-Residence 1 zone (MR1). The lot also has a small shed to the rear of the driveway and is also bisected from northeast to southwest by a 25-foot-wide Laundry Brook Easement. The abutting and adjacent properties are a mix of single-family and two-family dwellings. The dwelling currently has a nonconforming 10.5-foot front setback but meets all other requirements of the MR1 zone. The applicants are constructing additions to the rear and side of the dwelling as well as increase the square footage within the half story. In total, the additions consist of 2,124 of floor area, but remain within the by right FAR. The petitioner plans to convert the single-family dwelling into a two-family dwelling, which is allowed as of right due to its location in the MR1 zoning district.

**Special Permit**

The additional living space and reconfiguration of the half story requires a special permit to vertically extend the 10.5-foot nonconforming front setback, which will remain unchanged. k. No additional relief is required as all proposed work, including the FAR, will be within the zoning standards for the MR1 zone.

**Analysis**

Planning is unconcerned with the proposed Special Permit project. The proposed additions are designed to not require any additional relief beyond the existing nonconforming front setback. As the Laundry Brook Easement diagonally bisects the 8,399 square foot lot, designing a dwelling that conforms with the 25-foot front setback requirement is likely not feasible. As the surrounding neighborhood features a mix of single- and two-family homes of various designs and sizes, many predating the City’s Zoning Ordinance and with nonconforming setbacks, the proposed project will closely match the character of the neighborhood.

I. Zoning Relief Requested:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
§3.2.3 §7.8.2.C.2	To alter/extend a nonconforming front setback	S.P. per §7.3.3

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

II. Criteria for Consideration per §7.3.3. and/or §7.8.2.C.2:

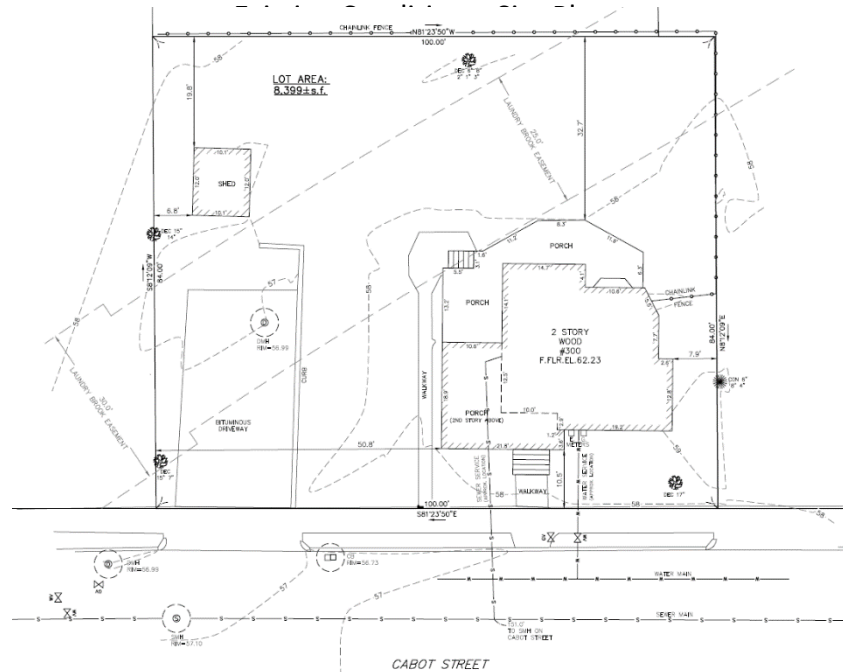
- The proposed additions, which will vertically extend the nonconforming front setback,

are not substantially more detrimental than the existing nonconforming use to the neighborhood. (§7.8.2.C.2)

III. Project Proposal and Site Characteristics

A. Site - Existing Conditions

The property at 300 Cabot St. consists of a 1,681 square foot (floor area) single-family dwelling constructed circa 1880 atop a 8,399 square foot lot. At 10.5 feet the front setback is considered nonconforming as it does not meet the 25-foot requirement, however the existing dwelling meets all other zoning requirements for the MR1 zone. The Laundry Brook Easement diagonally bisects the lot, limiting where a dwelling and/or permanent structures may be sited.



PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

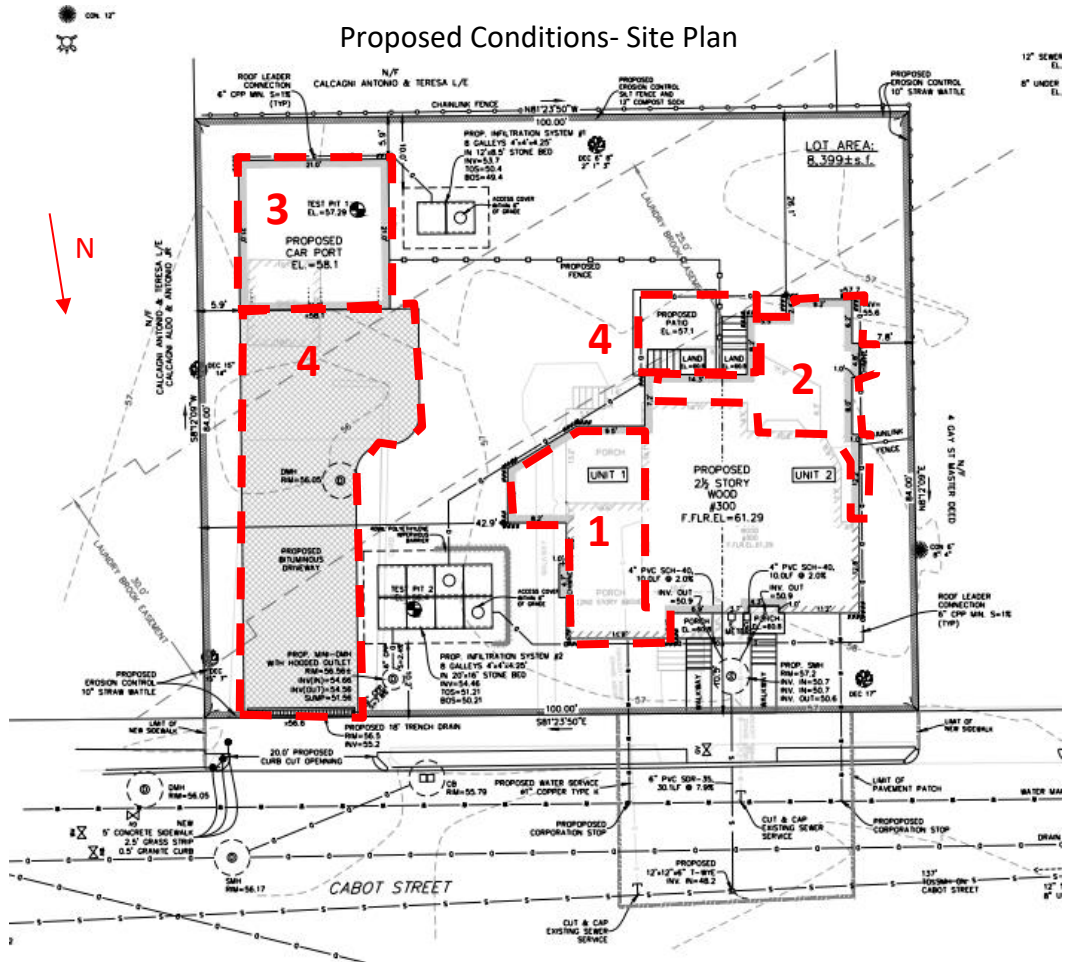
If approved, the use will change from a single-family, detached dwelling to a two family, detached dwelling. This use is permitted by right in the MR1 zone per Sec.

3.4.1 of the Zoning Ordinance.

B. Site and Building Design

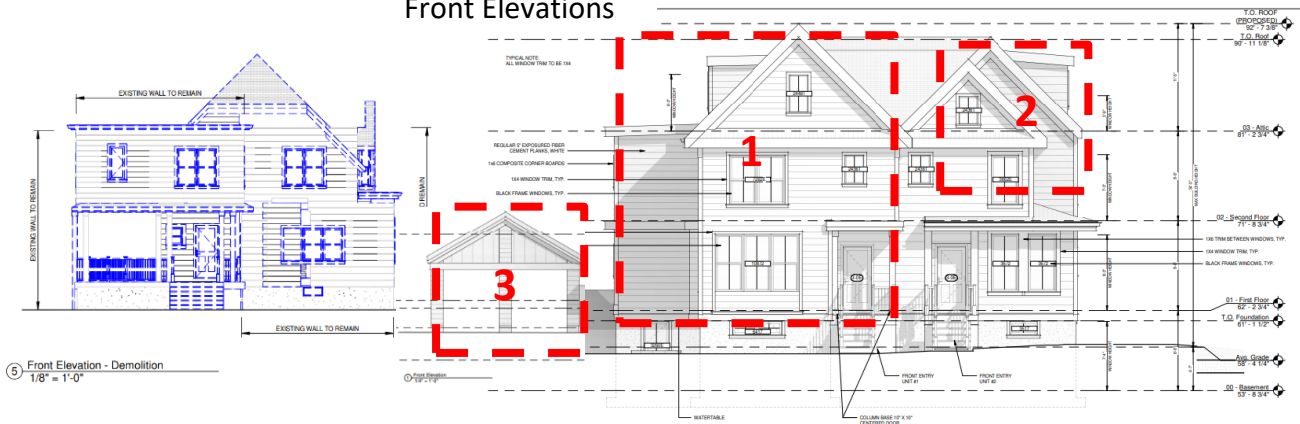
The proposed changes add 2,124 of floor area by constructing additions to the side and rear of the dwelling as well as raising the roof to add additional floor area in the half story. The relief required only pertains the vertical extension of the front setback by increasing the peak of the roof to create floor area within the half story, however the project consists of additions that would be considered as of right, shown below with corresponding numbers in red, the plans depict four major areas of work.

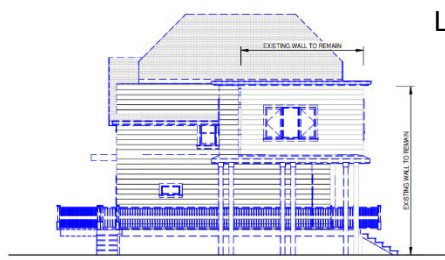
1. 2.5 story addition of living space to the front and side of the dwelling.
2. 2.5 story addition of living space to the rear of the property, expanding the footprint of the dwelling while complying with all applicable standards for MR1 and without placing any permanent structures over the easement.
3. Removal of the existing shed and the addition of a carport at the end of the proposed driveway, in the southwest corner of the site.
4. , Addition of a patio and expanded driveway for the building.



### Existing and Proposed Elevations

#### Front Elevations

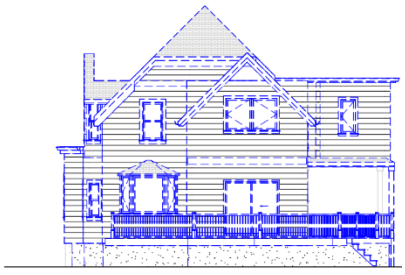




6 Left Elevation - Demolition  
 1/8" = 1'-0"



8 Right Elevation - Demolition  
 1/8" = 1'-0"



7 Rear Elevation - Demolition  
 1/8" = 1'-0"

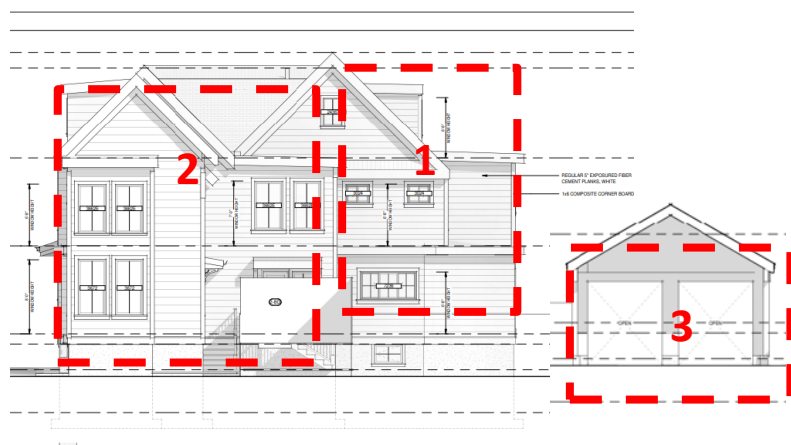
Left Elevations



Right Elevations



Rear Elevations



C. Parking and Circulation

The proposed project increases the property's parking requirement from two to four spaces. The proposed plans meet these requirements by providing parking for two cars in the proposed carport and the driveway. As the carport is 21 feet wide by 21 feet long, the maximum stall width of nine feet and depth of nineteen feet will be accommodated. An additional two spaces of parallel parking will be provided by the driveway with two stalls measuring nine feet wide and 21 feet long, this will provide adequate space for circulation given the driveway entrance width is 20 feet.

IV. Interdepartmental Review:

No additional reviews are required.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

**ATTACHMENTS:**

**Attachment A:** Zoning Review Memorandum

**Attachment B:** DRAFT Council Order



**Ruthanne Fuller**  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
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**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: December 6, 2023

To: Anthony Ciccariello, Commissioner of Inspectional Services

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

Cc: Benny Lu and Amy Xu, Applicant  
Terrence P. Morris, Attorney  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Deputy City Solicitor

**RE: Request to extend a nonconforming front setback**

Applicant: Benny Lu & Amy Xu	
Site: 300 Cabot Street	SBL: 22020 0016
Zoning: MR1	Lot Area: 8,339 square feet
Current use: Single-family dwelling	Proposed use: Two-family dwelling

### BACKGROUND:

The property at 300 Cabot Street consists of an 8,399 square foot lot improved with a single-family dwelling constructed circa 1880. A 30-foot wide easement for Laundry Brook diagonally bisects the property from the northeast corner to the southwest. The petitioners seek to construct additions to the existing dwelling, to convert the single-family dwelling into a two-family dwelling, and to construct a detached carport at the rear of the property. The proposed construction to the dwelling vertically extends the nonconforming front setback, requiring a special permit.

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

- Zoning Review Application, prepared by Terrence P. Morris, attorney, dated 11/8/2023
- Proposed conditions plan, signed and stamped by Joseph R. Porter, surveyor, and Mario Besio, engineer dated 10/1/2023
- Floor plans and elevations, signed and stamped by Derek Rubinoff, dated 10/30/2023
- FAR calculation, submitted 11/8/2023

**ADMINISTRATIVE DETERMINATIONS:**

- The petitioners seek to construct 2.5 story additions to the side and rear, and to raise the roof to increase the square footage of the half story. The dwelling has an existing nonconforming front setback of 10.5 feet where 25 feet is required per section 3.2.3. The petitioners seek to vertically extend the nonconforming front setback by adding to the half story at the front of the structure, requiring a special permit per section 7.8.2.C.2.

MR1 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	8,399 square feet	No change
Frontage	70 feet	100 feet	No change
Setbacks - Principal <ul style="list-style-type: none"> <li>• Front</li> <li>• Side</li> <li>• Side</li> <li>• Rear</li> </ul>	25 feet 7.5 feet 7.5 feet 15 feet	<b>10.5 feet</b> ± 50 feet 7.9 feet 32.7 feet	<b>No change*</b> 42.9 feet 7.8 feet 26.1 feet
Setbacks - Accessory <ul style="list-style-type: none"> <li>• Front</li> <li>• Side</li> <li>• Side</li> <li>• Rear</li> </ul>	25 feet 5 feet 5 feet 5 feet		± 57 feet 5.9 feet ± 72 feet 5.9 feet
Max Number of Stories <ul style="list-style-type: none"> <li>• Principal</li> <li>• Accessory</li> </ul>	2.5 1.5	2	2.5 1
Max Height <ul style="list-style-type: none"> <li>• Principal</li> <li>• Accessory</li> </ul>	36 feet 22 feet	31.9 feet	34.3 feet < 22 feet
FAR	.51	.20	.47
Max Lot Coverage	30%	13.9%	24.5%
Min. Open Space	50%	72.7%	62.6%

Nonconformities are indicated in **BOLD**

\*Requires relief

- See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§3.2.3 §7.8.2.C.2	To alter/extend a 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 allow for an addition that vertically extends a nonconforming front setback given by the Committee, through its Chair, Councilor Andrea Kelley:

1. The proposed attic level addition which will vertically extend the nonconforming front setback is not substantially more detrimental than the existing nonconforming structure is to the neighborhood because the project meets all other dimensional standards and results in a two and a half story structure, which is contextual with the surrounding neighborhood. (§7.8.2.C.2)

PETITION NUMBER: #78-24

PETITIONER: Terrence Morris

LOCATION: 300 Cabot Street, Ward 2, Newtonville, on land known as Section 22 Block 20 Lot 16, containing approximately 8,339 sq. ft. of land

OWNER: Benny Lu and Amy Xu

ADDRESS OF OWNER: 161 Walnut St.  
Newton, MA 02460

TO BE USED FOR: Two-family dwelling

RELIEF GRANTED: Special Permit per §3.2.3 to alter/extend a nonconforming front setback

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. Topographic Site Plan showing Proposed Conditions at 300 Cabot Street signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated October 1, 2023.
  - b. Architectural plan signed, stamped, and dated by Derek A. Rubinoff, Registered Architect, dated November 14, 2023 consisting of the following sheets:
    - i. Front and Left Elevations, A2.01
    - ii. Rear and Right Elevations, A2.02
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.