



#313-20

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City of Newton, Massachusetts

Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

Ruthanne Fuller
Mayor

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date:	December 1, 2020
Land Use Action Date:	February 22, 2020
City Council Action Date:	March 1, 2020
90-Day Expiration Date:	March 1, 2020

DATE: November 27, 2020

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Neil Cronin, Chief Planner for Current Planning
Katie Whewell, Senior Planner

SUBJECT: **Petition #313-20**, for SPECIAL PERMIT/SITE PLAN APPROVAL to raze the existing single-family dwelling and construct a two-family dwelling, extending the nonconforming residential use, to allow alteration of a nonconforming side setback, and to allow a structure with 28.4' in height and more than two stories at 12 Hanson Road, Ward 8, Oak Hill Park, on land known as Section 84 Block 15 Lot 03 containing approximately 7,829 sq. ft. of land in a district zoned BUSINESS USE 1. Ref: Sec. 7.3.3, 7.4, 4.4.1, 7.8.2.C.2, 4.1.3 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.



12 Hanson Road

The petitioner requested a continuance of this item on September 4, 2020. A public hearing memorandum was issued on September 4, 2020. The petitioner submitted a revised application on October 20th, 2020 with additional relief to allow a structure with more than two stories. The public memorandum has been updated to reflect the additional relief and additional materials received.

EXECUTIVE SUMMARY

The subject property located at 12 Hanson Road consists of 7,829 square feet of land, improved with a single-family dwelling constructed in 1946. The property is located within the Business 1 (the "BU-1") zone in Oak Hill Park. Single-family dwellings are not allowed within the BU-1 zone; as such, the use is legal nonconforming. The petitioner proposes to raze the existing structure to construct a two-family dwelling. A two-family dwelling is also not allowed in the BU-1 zone; therefore, the petitioner requires a special permit to further extend the nonconforming residential use. The petitioner also requires a special permit to alter a nonconforming setback, allow a structure with more than two stories, and allow a structure with 28.4 feet in height.

The Planning Department is unconcerned with the proposed extension of the nonconforming residential use to a two-family use. The neighborhood is comprised of a mix of housing styles, including two and a half story structures. There is also a multifamily residential use abutting the site which consists of 20 units. The petitioner is proposing two curb cuts to the site, where there is currently one. The Planning Department recommends that the petitioner explore ways to minimize curb cuts along the frontage to minimize disruptions to pedestrians and conflicts between vehicle and pedestrians.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The site is an appropriate location for the proposed two-family structure with a height of 28.4 feet and more than two stories (§7.3.3.C.1, §4.1.3).
- The proposed two family structure with a height of 28.4 feet and more than two stories will adversely affect the neighborhood (§7.3.3.C.2, §4.1.3).
- There will be a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3, §4.1.3).
- Access to the sites over streets is appropriate for the types and number of vehicles involved (§7.3.3.C.4, §4.1.3).
- The proposed nonconforming residential use will be substantially more detrimental than the existing nonconforming residential use is to the

neighborhood (§4.1.3, §4.4.1, §7.8.2.C.2).

- The proposed alteration of a nonconforming side setback will be substantially more detrimental than the existing nonconforming setback is to the neighborhood (§4.1.3, §4.4.1, §7.8.2.C.2).

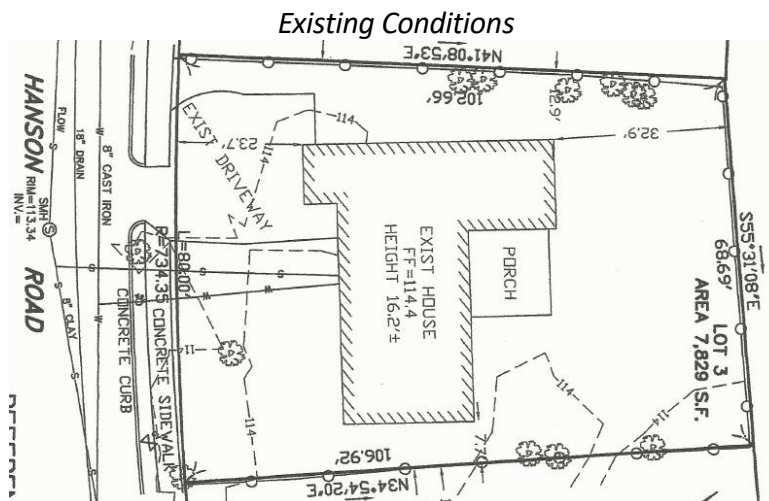
II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on Hanson Road, in the Business 1 (BU-1) zone in Oak Hill Park. The BU-1 zone encompasses the properties southwest of Hanson Road, while the Single Residence 3 zone covers the east, north, and west (ATTACHMENT A). The area is comprised of single-family residential uses, two nonprofit uses, and a multi residential use directly to the southwest of the site. (ATTACHMENT B).

B. Site

The site consists of 7,829 square feet of land improved with a single-family dwelling constructed in 1946. The site is currently accessed by a single curb cut from Hanson Road. As the structure is in the BU-1 zoning district, the required setbacks are equal to half of the building height. In that respect, the structure has a nonconforming side setback of 7.7 feet at the western boundary, where eight feet is required. The existing structure has a height of 16 feet, where 24 feet is the maximum allowed for a two-story structure. The site is relatively flat.



III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

If approved, the land use will change from a single- to a two-family use.

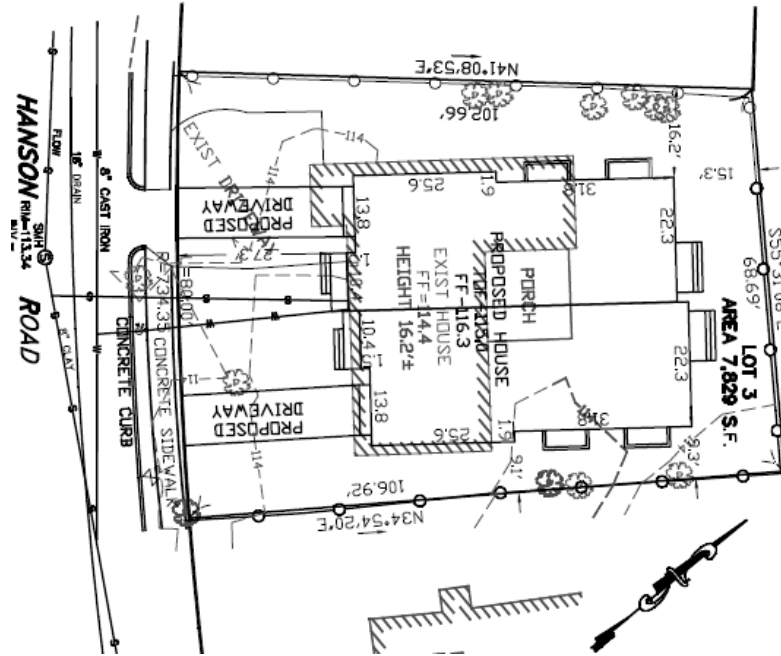
B. Site and Building Design

The petitioner is proposing to raze the existing single-family dwelling to construct a two-family dwelling. The proposed two-family dwelling consists of townhouse-style units, with dedicated driveways and garages for each unit. The proposed two-family dwelling will measure 28.4 feet tall, exceeding the 24 feet allowed by right, requiring a special permit. The increase in height also results in new setback requirements. With a height of 28.4 feet, the side setback requirements are 14.2 feet. The proposed dwelling is utilizing the nonconforming setback along the western boundary and increasing that setback to 9.1 feet from 7.7 feet, where 14.2 feet is required.

As proposed, the project has a floor area ratio of .69, where 1 is the maximum allowed in the BU-1 zoning district. The unit sizes were not provided, and the petitioner should clarify the sizes of the two units proposed. The structure will contain more than two stories, and each unit will consist of a playroom and bedroom at the basement level. The first story will consist of living space and a garage, and the second story will also consist of living space.

There is a dormer-like feature proposed above the second story that extends approximately five feet above the second story and will house mechanical equipment. The BU-1 zone allows two stories by right and three stories by special permit. Due to the feature that extends beyond the second story but does not constitute a half story or third story, a special permit is required to allow a structure greater than two stories.

Proposed Site Plan



Proposed Front Elevation



FRONT ELEVATION

Proposed Right Elevation



The Planning Department is unconcerned with the extension of the nonconforming residential use to a proposed two-family use and two-family dwelling. There is a mix of style of homes in the neighborhood including single story Cape style homes as well as two and half story structures. The extension of the nonconforming side setback will be improved by two feet. There is also a multifamily residential use abutting the site to the southwest which consists of 20 units.

C. Parking and Circulation

The petitioner is proposing to incorporate one-car garages at the first floor of both units resulting in two curb cuts where one exists. The Planning Department recommends that the petitioner reconsider the additional curb cut and explore ways to consolidate curb cuts along the frontage to minimize disruptions to pedestrians and conflicts between vehicle and pedestrians.

D. Landscaping

The petitioner will be required to comply with the Tree Preservation Ordinance. The petitioner submitted a landscape plan that shows landscaping throughout the site, offering screening from abutters. The plan does not include the caliper inches removed and replaced. The Planning Department recommends the petitioner submit an updated landscape plan with the caliper inch analysis prior to the issuance of a building permit.

IV. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum (**ATTACHMENT C**) provides an analysis of the proposal regarding zoning. The petitioner is seeking the following relief:

- §4.4.1, §7.8.2.C.2 of Section 30, to further extend a nonconforming residential use in the BU-1 zoning district
- §4.1.3, §7.8.2.C.2 of Section 30, to extend and alter a nonconforming side setback §4.1.3, §7.3.3 of Section 30, to allow a structure with 28.4 feet in height and a structure with more than two stories

B. Engineering Review

The size and increase in impervious area of the proposed two-family structure will require the petitioner to provide a drainage analysis to the Engineering Division for review and approval prior to the issuance of a building permit. Staff suggests incorporating the standard condition regarding the Operations and Maintenance (O & M) Plan for the stormwater management system prior to the issuance of a temporary certificate of occupancy, should this petition be approved.

C. Newton Historical Commission

The petition does not meet the minimum threshold for review by the Newton Historical Commission. The Chief Preservation Planner found the structure not historically significant in April 2020. As such, the existing structure can be razed.

V. PETITIONER'S RESPONSIBILITIES

The petitioner should respond to the issues raised in this memorandum and other questions raised at the public hearing, as necessary. Written responses to all significant issues should be provided for analysis by the Planning Department prior to being scheduled for additional public hearings. The Planning Department will prepare an updated memo prior to any future public hearings.

ATTACHMENTS:

- Attachment A:** Land Use Map
Attachment B: Zoning Map
Attachment C: Zoning Review Memorandum
Attachment D: DRAFT Council Order

ATTACHMENT B




Land Use

12 Hanson Road

*City of Newton,
Massachusetts*

Land Use

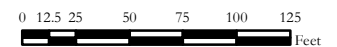
Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Nonprofit Organizations

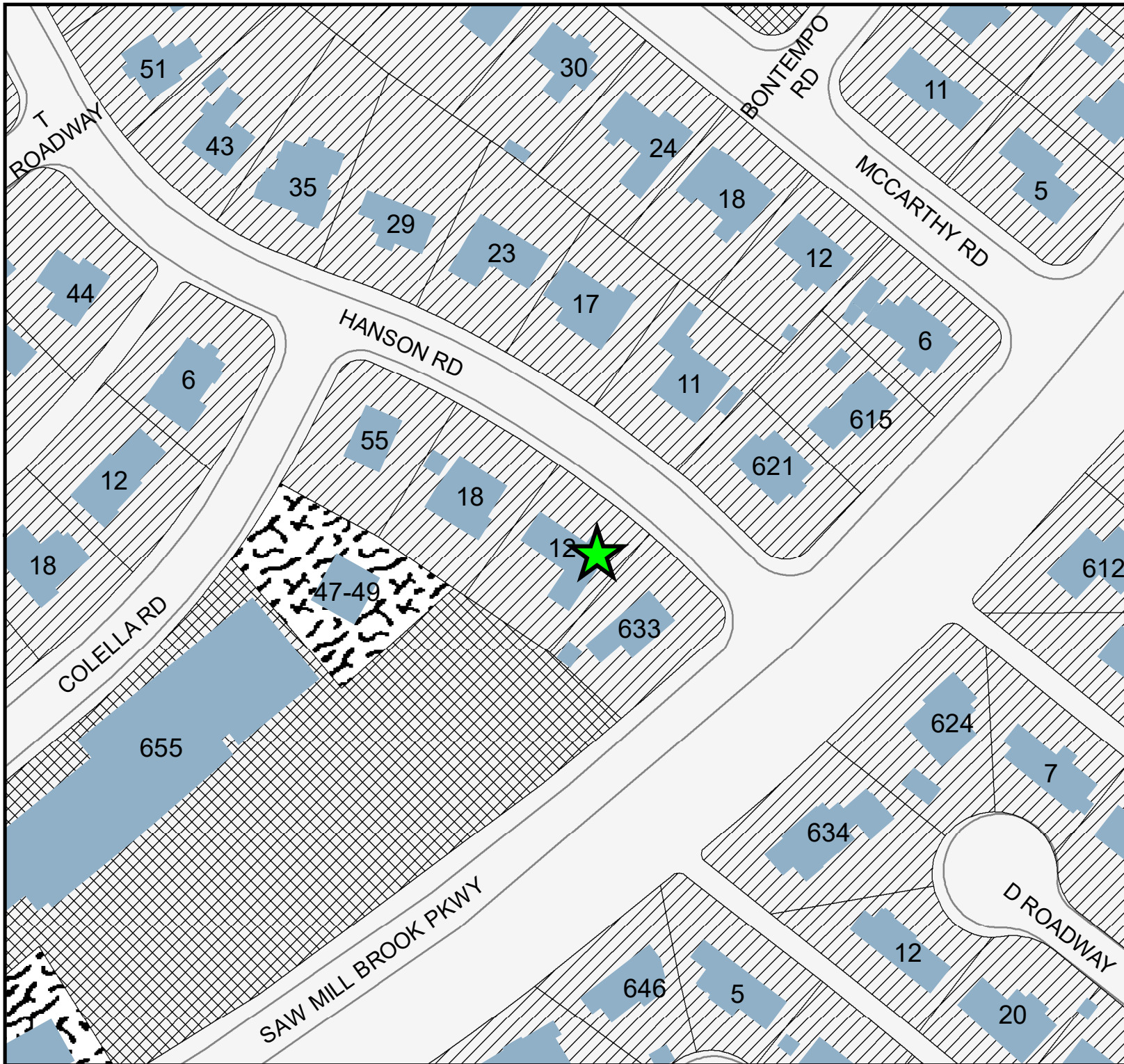


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield



Map Date: August 24, 2020






ATTACHMENT A

Zoning

12 Hanson Road

City of Newton,
Massachusetts

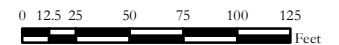
Zoning

-  Single Residence 2
-  Single Residence 3
-  Business 1

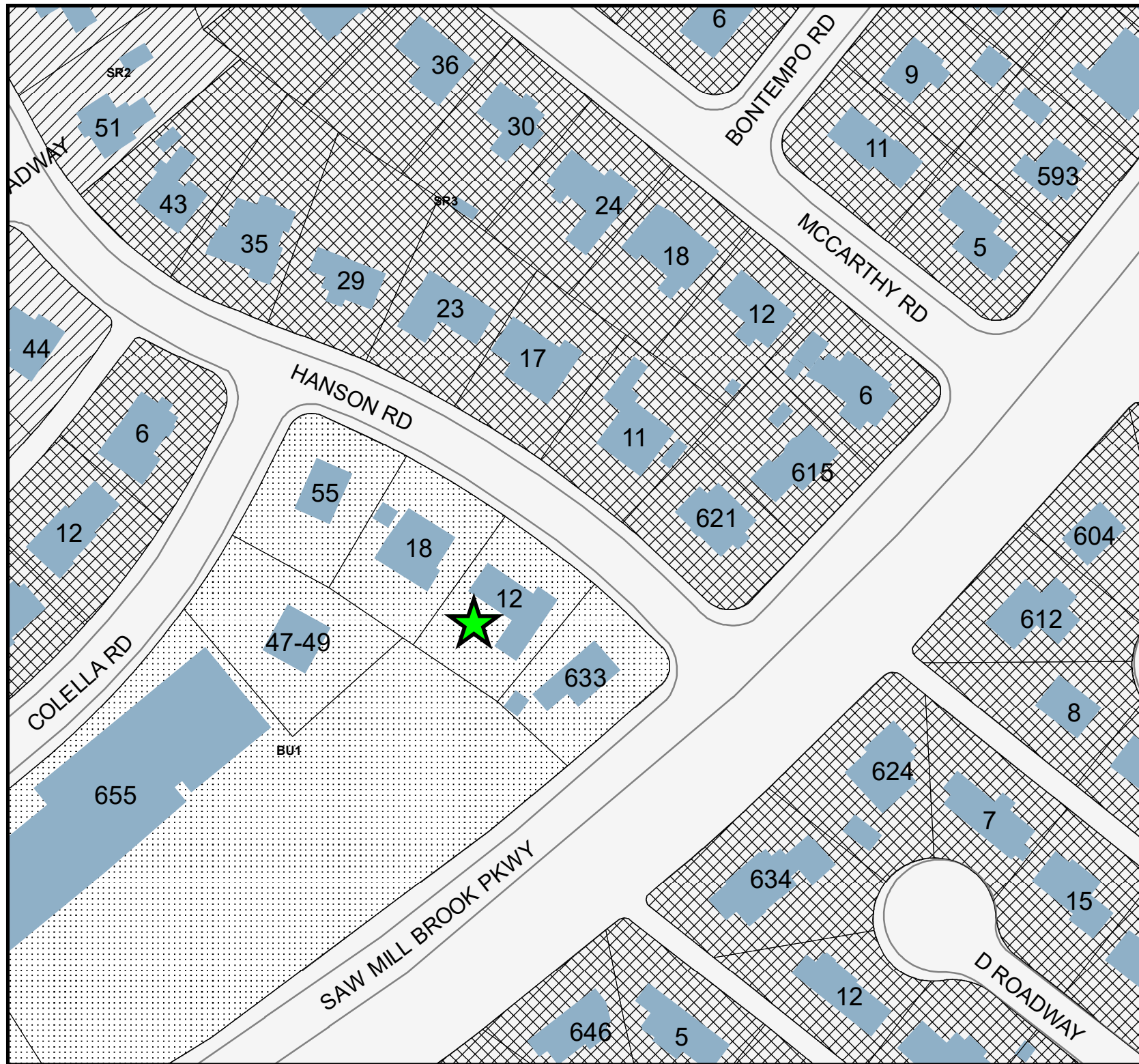


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
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Map Date: August 24, 2020





Ruthanne Fuller
Mayor

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: October 7, 2020

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Neil Cronin Chief Planner for Current Planning

Cc: Esther Dezube, Applicant
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: **Request to extend a nonconforming use to convert a single-family dwelling into a two-family dwelling, to allow more than two stories and 24 feet and to extend a nonconforming side setback**

Applicant: Esther Dezube	
Site: 12 Hanson Road	SBL: 84015 0003
Zoning: BU1	Lot Area: 7,829 square feet
Current use: Single-family dwelling	Proposed use: Two-family dwelling

BACKGROUND:

The property at 12 Hanson Road consists of a 7,829 square foot lot improved with a single-family dwelling built in 1946 in the Business 1 zoning district. The petitioner proposes to raze the existing dwelling and construct a two-family dwelling, extending the nonconforming residential use.

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

- Zoning Review Application, prepared by Esther Dezube, applicant, submitted 4/23/2020
- Existing Conditions Plan, signed and stamped by Matthew Belski Jr., surveyor, dated 3/6/2019
- Proposed Site Plan, signed and stamped by Matthew Belski Jr., surveyor, dated 3/24/2019
- Architectural plans, signed and stamped by RAV & Associates, civil engineer, dated 3/28/2020

ADMINISTRATIVE DETERMINATIONS:

1. The existing single-family dwelling was constructed in 1946 in what is now the Business 1 zoning district. Per section 4.4.1, the dwelling is a nonconforming use, as single-family dwellings are not allowed in the Business 1 district. The petitioner proposes to raze the existing single-family dwelling and construct a new detached two-family dwelling, altering and expanding the nonconforming residential use. A special permit per sections 4.4.1 and 7.8.2.C.2 is required.
2. Section 4.1.3 requires a side setback equal to the abutting side setback or half the building height, whichever is greater. Half the height of the existing single-family dwelling is 8.1 feet. The abutter to the northwest is 16.9 feet from the side lot line, creating a setback requirement of 16.9 feet. The abutter to the southeast is 13.2 feet from the side lot line, creating a side setback requirement 13.2 feet. The existing side setback is nonconforming at 7.7 feet on the southeast side where 13.2 feet is required per the abutting side setback. The height of the proposed dwelling is 28.4 feet, creating a new side setback requirement of 14.2 feet. The petitioner proposes a side setback of 9.1 feet, which increases the setback but is still nonconforming, requiring a special permit per sections 4.1.3 and 7.8.2.C.2.

The petitioner's proposed side setback on the northwest side is 16.2 feet, where half the building height (14.2 feet) is required. No relief is necessary.

3. Per section 4.1.3, the maximum allowable height in the Business 1 district is 36 feet in three stories by special permit per section 4.1.2.B.3. The petitioner proposes to construct a new 2+-story two-family dwelling with 28.4 feet in height, exceeding the 24 foot by right height limitation, requiring a special permit.
4. Section 4.1.3 allows a maximum of two stories by right and requires a special permit to allow up to three stories. The proposed structure is two stories with additional space above the second story which does not have any area with seven feet in height and is therefore by definition not a full- or half-story. To allow a structure with more than two stories, but not more than three, requires a special permit.

BU1 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	7,829 square feet	No change
Setbacks			
• Front	10 feet	23.7 feet	27.3 feet
• Side	14.2 feet*	7.7 feet	9.1 feet
• Side	14.2 feet*	12.9 feet	16.2 feet
• Rear	0 feet	32.9 feet	15.3 feet
Building Height	24 feet (36 feet by SP)	16.2 feet	28.4 feet
Max Number of Stories	2	1	2+*
Lot Area Per Unit	1,200 square feet	7,829 square feet	3,965 square feet
FAR	1.00	.21	.69

*the proposed structure has space above the second floor which does not constitute a story or a half story

See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§4.4.1 §7.8.2.C.2	Request to further extend a nonconforming residential use in a Business 1 zoning district	S.P. per §7.3.3
§4.1.3 §7.8.2.C.2	Request to extend and alter a nonconforming side setback	S.P. per §7.3.3
§4.1.3	Request to allow a structure with 28.4 feet in height	S.P. per §7.3.3
§4.1.3	Request to allow a structure with more than two stories	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 further extend the nonconforming residential use in a Business 1 zone, alter a nonconforming side setback, and allow a structure with 28.4 feet in height and more than two stories as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The site is an appropriate location for the proposed two family structure with a height of 28.4 feet and more than two stories because there are other homes in the neighborhood with more than two stories (§7.3.3.C.1, §4.1.3).
2. The proposed two family structure with a height of 28.4 feet and more than two stories will not adversely affect the neighborhood because there are other homes in the neighborhood with more than two stories (§7.3.3.C.2, §4.1.3).
3. There will be no nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3, §4.1.3).
4. Access to the sites over streets is appropriate for the types and number of vehicles involved (§7.3.3.C.4, §4.1.3).
5. The proposed nonconforming residential use will not be substantially more detrimental than the existing nonconforming use is to the neighborhood because there are other nonconforming residential uses in the Business 1 zone including a 20 unit multifamily residential use abutting the site to the southwest.(§4.1.3, §4.4.1, §7.8.2.C.2).
6. The proposed alteration of a nonconforming side setback will not be substantially more detrimental than the existing nonconforming setback is to the neighborhood because the proposed side setback improves the nonconformity by two feet. (§4.1.3, §4.4.1, §7.8.2.C.2).

PETITION NUMBER:

#313-20

PETITIONER: Esther Dezube

LOCATION: 12 Hanson Road, on land known as Section 84, Block 15, Lot 03, containing approximately 7,829 square feet of land

OWNER: 12 Hanson Road LLC

ADDRESS OF OWNER: 109 Meadowbrook Road
Newton, MA 02459

TO BE USED FOR: Two-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §4.4.1, and §7.8.2.C.2, to further extend the nonconforming residential use; §4.1.3, and §7.8.2.C.2 to alter a nonconforming setback, and §4.1.3, and §7.3.3 to allow a structure measuring 28.4 feet in height, and to allow a structure with more than two stories

ZONING: Business 1 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. Proposed Site Plan, 12 Hanson Road, signed and stamped by Matthew Belski, Professional Land Surveyor, dated March 24, 2020.
 - b. Architectural Plans and Elevations, prepared by RAV & Assoc., Inc., unsigned and unstamped, dated May 31, 2018 revised February 28, 2020 consisting of four (4) sheets.
2. Prior to the issuance of any Building Permit, the petitioner shall provide a final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
3. The petitioner shall comply with the City of Newton Tree Ordinance.
4. Prior to the issuance of any building permit for the Project, the petitioner shall provide a landscape plan for review and approval by the Director of Planning and Development.
5. Prior to the issuance of any temporary occupancy certificates for the Project, the petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management, should such a system be required, to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be recorded by the petitioner at the

Middlesex South District Registry of Deeds. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.

6. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
 - a. Recorded a certified copy of this council order for the approved Special Permit/Site plan with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
5. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioner has:
 - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development statements by a registered architect and professional land surveyor certifying compliance with Condition #1.
 - b. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.
 - c. Provided a recorded copy of the O&M Plan in accordance with Condition #3 above.
 - d. Filed with the Clerk of the Council, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that improvements authorized by this Order have been constructed to the standards of the City of Newton Engineering Department.