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Mayor

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

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**PUBLIC HEARING MEMORANDUM**

Public Hearing Date: September 27, 2016  
Land Use Action Date: December 12, 2016  
City Council Action Date: December 19, 2016  
90-Day Expiration Date: December 26, 2016

DATE: September 23, 2016

TO: City Council

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

SUBJECT: **Petition #284-16**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to further increase the already nonconforming floor area ratio (FAR) from .59 to .65, where .58 is the maximum allowed by-right at **7-9 Arundel Terrace**, Ward 1, Newton Corner, on land known as SBL 71, 01, 25 containing approximately 5,100 sf of land in a district zoned MULTI-RESIDENCE 2. Ref: Sec. §3.2.11, §7.8.2.C.2, of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

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The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis conducted by the Planning Department. The Planning Department's intention is to provide a balanced review of the proposed project based on information it has at the time of the public hearing. Additional information about the project may be presented at or after the public hearing that the Land Use Committee of the City Council can consider at a subsequent working session.



**7-9 Arundel Terrace**

### EXECUTIVE SUMMARY

The property located at 7-9 Arundel Terrace consists of a 5,100 square foot lot improved with a two-family residence circa 1900. The property is located in a Multi-Residence 2 zoning district in Newton Corner. The petitioner constructed an attached carport many years ago, but recently enclosed the structure, creating a one-garage. The Inspectional Services Department performed a zoning enforcement after the carport was enclosed without permits. The garage now contributes to floor area ratio (FAR) which exceeds the limit for the lot. Therefore, the petitioner requires a special permit to increase the already nonconforming floor area ratio (FAR) from .59 to .65, where .58 is the maximum allowed by-right. If the project is approved, the garage will result in an increase of 308 square feet (10% increase to the structure), for a total of 3,322 square feet built on the lot.

The Planning Department notes the petitioner also requires variances from the rear and side setbacks, lot coverage, and open space requirements. The carport was constructed several decades ago without a building permit. However, the statute of limitations under Section 7 of M.G.L. Chapter 40A only provides a ten-year enforcement window. As of now, the structure is non-compliant, meaning the petitioner cannot pull a building permit until the building is legalized. If the special permit and variances are not approved, the walls must be removed.

Although this project is in violation of current zoning, the Planning Department is not concerned with the legalization of the garage as it has existed as a carport for many years. The immediate area and surrounding neighborhood is thickly settled with large structures on small lots and an enclosed garage is more in-keeping with the neighborhood. For these reasons, the Planning Department believes the request to further increase the FAR from .59 to .65, where .58 is the maximum allowed by-right will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood.

#### SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the City Council should consider whether:

- The proposed increase in nonconforming FAR from .59 to .65, where .58 is the maximum allowed by right, will not be in derogation of the size, scale, and design of other residential structures in the neighborhood. (§3.2.11 and §7.8.2.C.2)

#### I. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

##### A. Neighborhood and Zoning

The subject property is located on Arundel Terrace, in a Multi-Residence 2 District in Newton Corner. The neighborhood is comprised of thickly settled single and two-family residences on small lots. The property is located just north of the Newton Corner commercial district with a number of different uses ranging from restaurants to retail, and a hotel. The property is located within a quarter mile of the Galen and Maple Street stops for the 52, 57, 502, and 504 MBTA bus line with connections to Downtown Boston, Dedham Mall, and Watertown yard. **(Attachments A & B)**.

B. Site

The site consists of 5,100 square feet of land, and is improved with a 2.5-story two-family residence circa 1900. There is an existing curb cut to the west of the structure with parking for three vehicles leading to the garage at the rear of the property.

II. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site is and will remain a two-family residence.

B. Building and Site Design

The petitioner seeks to enclose the attached carport at the rear of the property, creating a one-garage. If the project is approved, additions would enlarge the current amount of square footage on-site by 300 square feet (10%). The petitioner also requires variances from the rear and side setback, lot coverage, and open space requirements. If the petitioner does not obtain these variances, the walls must be removed from the garage, reverting the structure back to a carport.

C. Parking and Circulation

There are no changes to the parking or circulation on this site.

D. Landscape Screening

A landscape plan is not required with this petition.

III. TECHNICAL REVIEW

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

The Zoning Review Memorandum provides an analysis of the proposal with regard to zoning (**Attachment C**). Based on the Memorandum, the petitioner is seeking the following relief:

- §3.2.11 and 7.8.2.C.2 of Section 30, to increase the already nonconforming FAR;
- In addition, the petitioner requires variances from §3.2.3 for rear and side setback, lot coverage, and open space requirements.

IV. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.








**ATTACHMENTS:**

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

#284-16  
**Attachment A**  
**Zoning Map**  
**7-9 Arundel Terr.**

*City of Newton,  
 Massachusetts*

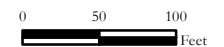
**Legend**

-  Multi-Residence 2
-  Business 1
-  Business 2
-  Public Use
-  Building Outlines
-  Surface Water
-  Property Boundaries

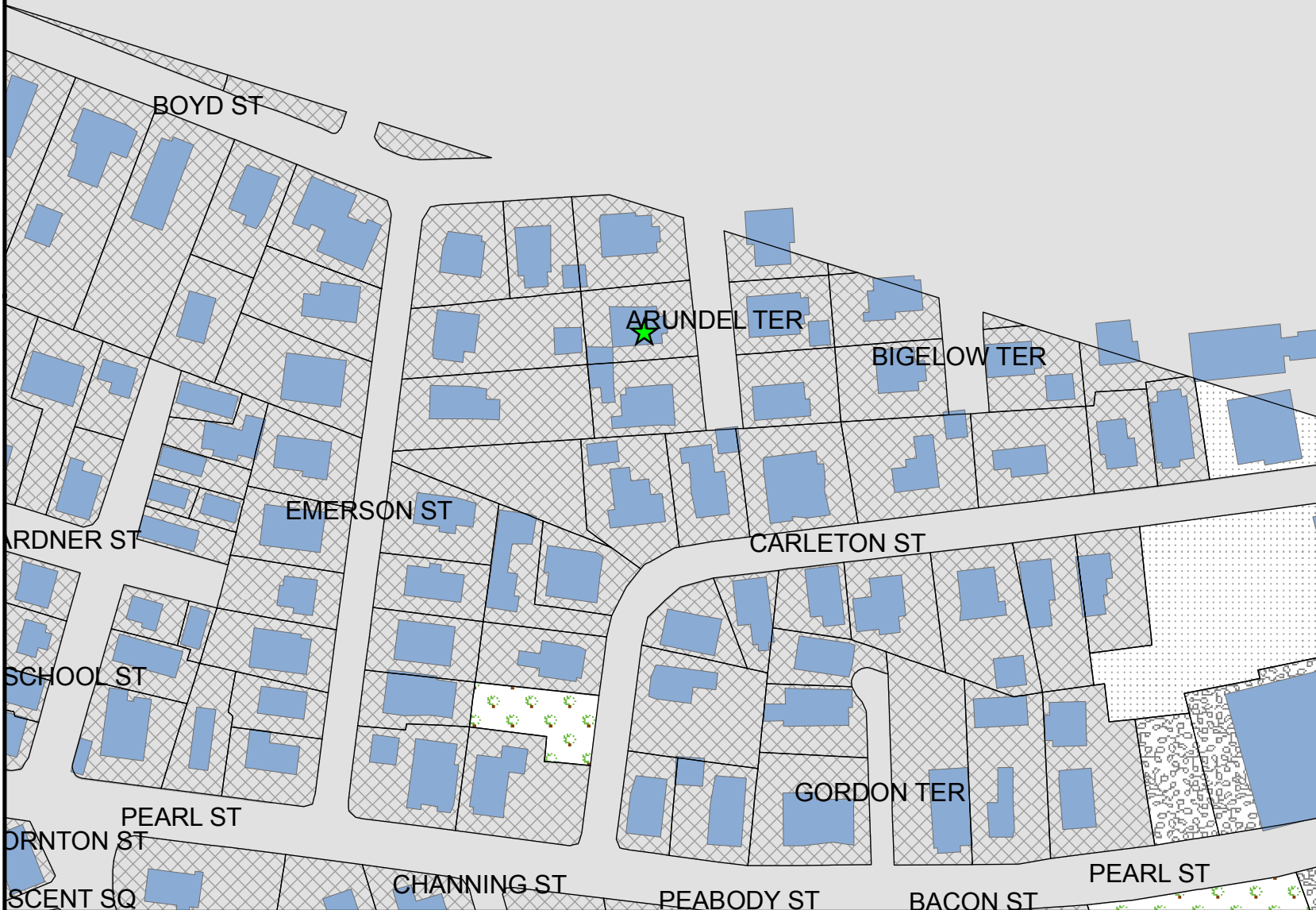


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS  
 Mayor - Setti D. Warren  
 GIS Administrator - Douglas Greenfield



Map Date: August 16, 2016



#284-16  
**Attachment B**  
**Land-Use Map**  
**7-9 Arundel Terr.**

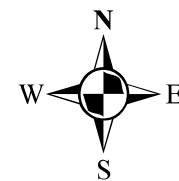
*City of Newton,  
 Massachusetts*

**Legend**

**Land Use**

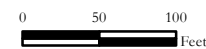
**Land Use**

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Mixed Use
-  Open Space
-  Building Outlines
-  Surface Water
-  Property Boundaries

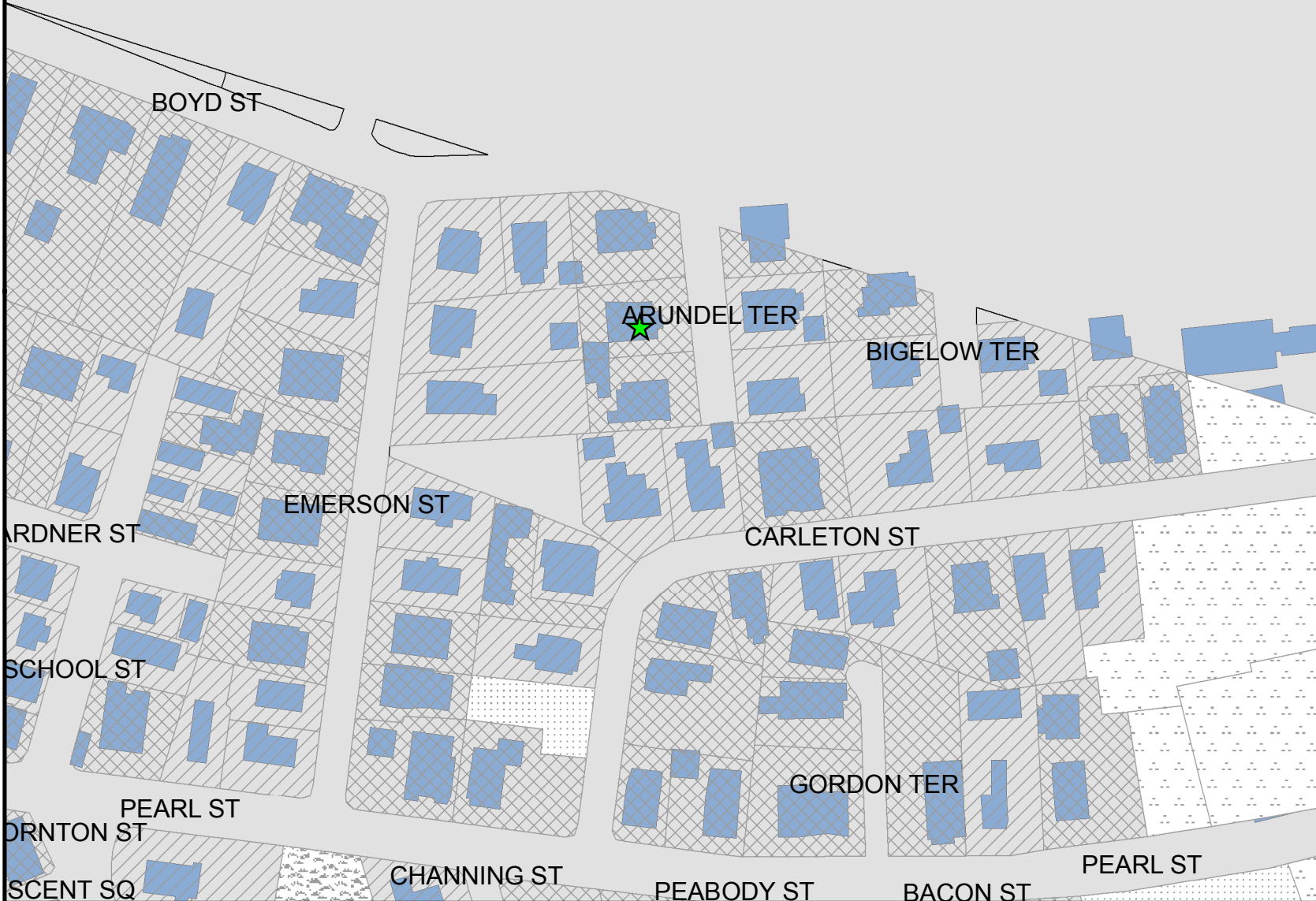


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CITY OF NEWTON, MASSACHUSETTS  
 Mayor - Setti D. Warren  
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Map Date: August 16, 2016







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Mayor

Attachment C

## City of Newton, Massachusetts

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Barney S. Heath  
Director

### ZONING REVIEW MEMORANDUM

Date: June 14, 2016

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Alexandra Ananth, Chief Planner for Current Planning

Cc: Terrence P. Morris, attorney  
Carmen Fugazzotto, applicant  
Barney S. Heath, Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Request for variances from the rear and side setback, lot coverage and open space requirements, and for a special permit to further extend nonconforming FAR**

Applicant: Carmen Fugazzotto	
Site: 7-9 Arundel Terrace	SBL: 71001 0025
Zoning: MR2	Lot Area: 5,100 square feet
Current use: Two-family dwelling	Proposed use: No change

#### BACKGROUND:

The property at 7-9 Arundel Terrace consists of a 5,100 square foot lot improved with a two-family residence built in 1899. An attached carport was built at some point more than ten years ago without the benefit of a building permit, likely in the 1960s or '70s. The carport was built directly on the rear and side lot lines attaching to the rear left corner of the dwelling structure. The applicant recently enclosed the carport without a building permit creating a garage. Inspectional Services undertook zoning enforcement after the carport was enclosed by request from an abutter. To maintain the enclosed garage and legitimize the existing conditions, the applicant requires variances from the rear and side setbacks and lot coverage and open space requirements, as well as a special permit (or variance) to extend the already nonconforming FAR.

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

- Zoning Review Application, prepared by Carmen Fugazzotto, applicant, dated 4/26/2016
- Plot Plans, signed and stamped by Paul E. Pronovost,, surveyor, and James E. McLaoughlin IV, engineer, dated 3/15/2016

- FAR worksheet, submitted 4/26/2016

**ADMINISTRATIVE DETERMINATIONS:**

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1. Section 7 of M.G.L. Chapter 40A provides statutes of limitations for enforcement action on zoning violations. First, where structures have been improved and used in accordance with the terms of a building permit issued in error, a six-year statute of limitations on enforcement applies. Second, where structures have been built or improved in violation of zoning regulations or in violation of the terms of a valid building permit, or without the benefit of a building permit, a ten-year statute of limitations on enforcement applies. The fact that a statute of limitations might prevent an enforcement action does not mean that the structure becomes a valid non-conforming structure. The structure remains non-compliant and cannot be lawfully altered or reconstructed. The applicant states that his father built the attached carport more than twenty years ago. There is no evidence of a building permit having been issued for the construction of the attached carport at any time. The ten year time limit to undertake an enforcement action has clearly lapsed, and the carport could remain as originally built. However, the applicant enclosed the carport, creating a garage, within the last two years. Accordingly, an enforcement action can be undertaken with regard to the garage.
2. Section 3.2.3 requires a side setback of 7.5 feet in the Multi Residence 2 zoning district. The original dwelling was built circa 1899 with a 14 foot side setback on the side where the violation exists. The undocumented carport was built directly on the side lot line connecting to the abutter's existing detached garage which was built in 1924 according to the building permit. Had the applicant maintained the original carport structure, the ten-year statute of limitations would have allowed it to remain as it was built. The applicant must rectify the zoning violations before a building permit can be issued. The applicant requires a variance from the side setback requirement to legitimize the structure as it exists with no setback from the side lot line.
3. Section 3.2.3 requires a rear setback of 15 feet in the Multi Residence 2 district. The original dwelling was built with a 16 foot rear setback. The attached carport was built directly on the rear lot line, and the newly enclosed garage maintained this setback. The applicant requires a variance to legitimize the structure directly on the rear lot line.
4. The property has an existing lot coverage of 35.9%, where the maximum allowed per Section 3.2.3 is 30%. While enclosing the existing carport does not increase the lot coverage, it was not built with the benefit of a building permit and is therefore not protected. To exceed maximum lot coverage requires a variance.
5. The existing open space is 48%, where the minimum required by Section 3.2.3 is 50%. While enclosing the existing carport does not decrease the percentage of open space, it was not built with the benefit of a building permit and is therefore not protected. To legitimize the existing noncompliant percentage of open space requires a variance.
6. The property has a nonconforming FAR of .59, where .58 is the maximum allowed per Section 3.2.11. A carport does not count toward FAR, however a garage does. Enclosing the garage created an FAR of .65. To exceed FAR, or to further extend a nonconforming FAR, as is the case



here, requires a special permit pursuant to Sections 3.2.11 and 7.8.2.C.2. The Zoning Board of Appeals may determine that the violation of FAR may be legitimized by a variance. Without such determination, a special permit from the City Council is required.

<b>MR2 Zone</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>
Lot Size	7,000 square feet	<b>5,100 square feet</b>	<b>No change</b>
Frontage	70 feet	<b>60 feet</b>	<b>No change</b>
Setbacks			
• Front	25 feet	<b>24 feet</b>	<b>No change</b>
• Side	7.5 feet	<b>0 feet</b>	<b>No change</b>
• Rear	15 feet	<b>0 feet</b>	<b>No change</b>
Max Lot Coverage	30%	<b>35.9%</b>	<b>No change</b>
Min Open Space	50%	<b>48.%</b>	<b>No change</b>
FAR	.58	<b>.59</b>	<b>.65</b>

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
§3.2.3	To encroach into rear setback	Variance
§3.2.3	To encroach into side setback	Variance
§3.2.3	To exceed maximum lot coverage	Variance
§3.2.3	To be below minimum open space	Variance
§3.2.11 §7.8.2.C.2	To further increase nonconforming FAR	S.P. per §7.3.3 or Variance

CITY OF NEWTON  
IN CITY COUNCIL

October 3, 2016

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 increase the nonconforming Floor Area Ratio (FAR) from .59 to .65, where .58 is the maximum allowed by right as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Marc Laredo:

1. The proposed increase in the nonconforming FAR from .59 to .65, where .58 is the maximum allowed by right is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood (§3.1.9 and §7.8.2.C.2) because the proposed garage will be in-keeping with the neighborhood and setback from the street.
2. The proposed increase in the nonconforming structure will not be significantly more detrimental than the existing nonconforming structure is to the neighborhood because the immediate area and surrounding neighborhood is thickly settled on small lots and a carport has existed in this location for many years. (§7.8.2.C.2).

PETITION NUMBER: #284-16

PETITIONER: Carmen Fugazotto

LOCATION: 7-9 Arundel Terrace, on land known as Section 71, Block 01, Lot 25, containing approximately 5,100 square feet of land

OWNER: Carmen Fugazotto

ADDRESS OF OWNER: 7 Arundel Terrace  
Newton, MA 02459

TO BE USED FOR: Two-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.2.11, §7.8.2.C.2, and §7.3.3 to further increase the non-conforming FAR

ZONING: Multi-Residence 2 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. Pre-Construction Plot Plan, 7-9 Arundel Terrace, signed and stamped by James E. McLoughlin IV, Professional Engineer, dated 3/15/2016 Revised 4/27/2016
2. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:
  - a. Recorded a certified copy of this board 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 board 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.
  - d. The petitioner shall obtain variances from the Board of Appeals for waivers of the rear and side setback, lot coverage, and open space.
3. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
  - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect or land surveyor certifying compliance with Condition #1, including the as built FAR of the structure.
  - 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.