



#523-20

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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: January 12, 2021
Land Use Action Date: March 30, 2021
City Council Action Date: April 5, 2021
90-Day Expiration Date: April 12, 2021

DATE: January 8, 2021

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 #523-20**, for SPECIAL PERMIT/SITE PLAN APPROVAL to allow the enclosure of first-level space to be used for additional living space, creating an FAR of ~~.75~~ .72 where .54 is required and .66 exists, amending Variance #4-13 to further reduce the open space and exceed maximum lot coverage at 13 Prospect Street, Ward 3, West Newton, on land known as Section 33 Block 03 Lot 09 containing approximately 6,611 sq. ft. in a district zoned MULTI RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 3.2.3, 3.2.11, 7.8.2.C.2, 7.6 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 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 for consideration at a subsequent working session by the Land Use Committee of the City Council.



13 Prospect Street

EXECUTIVE SUMMARY

The property located at 13 Prospect Street consists of a 6,611 square foot lot in the Multi Residence 2 (MR-2) zone in West Newton. The lot is improved with a two-family residence constructed circa 1920. The site also contains a Large Family Child Care Home which was introduced to the site around 1995. The petitioners are seeking to enclose existing play space at the rear of the dwelling, adding 399 square feet to the first floor. The addition will further increase the nonconforming floor area ratio (FAR), requiring a special permit. If approved, the dwelling's square footage would increase from 4,355 square feet to 4,754 square feet.

The property is governed by Variance #4-13 which allowed the conversion of a single-family dwelling to a two-family dwelling with dimensional waivers. In 2019, the petitioner was granted an amendment (**Attachment A**) to the variance conditioned upon the approval of this special permit. Should the special permit be granted, the variance would also be granted that would allow an increase in lot coverage above the maximum allowed and a reduction in open space below the minimum required.

The proposed addition would increase the FAR from .66 to .72, where .54 is the maximum allowed as of right. The proposed rear addition is increasing the footprint of the building; however, it will not be visible from the street. The addition is consistent with the size and scale of the homes in this neighborhood and the. Due to this, the Planning Department is unconcerned with the proposed addition that further increases nonconforming FAR.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The proposed increase in the nonconforming FAR from .54 to .72, where .66 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)
- The proposed increase in nonconforming FAR is not substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§3.1.9 and §7.8.2.C.2)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on the west side of Prospect Street in the MR-2 zone in West Newton. The MR-2 zone encompasses the immediate area south and west of the site. Beyond are single residence zones farther south on Prospect Street (**Attachment B**). The land use of adjacent properties on the east side of Prospect Street is multifamily residential, with single-family residence uses to the west on

Curve Street. There are a mix of uses on Prospect Street, including private educational, nonprofit, and commercial uses (**Attachment C**).

B. Site

The site consists of 6,611 square feet of land and is improved with a two-family dwelling constructed circa 1920. and a nonconforming front setback of 4.6 feet where 25 feet is required. The site has a nonconforming side setback of 3.7 feet at the northwestern property line. The lot is served by one curb cut providing access to a paved driveway that runs along the southern property line. There is a paved parking area off the driveway and to the rear of the dwelling. The site also features a legal accessory apartment, established in 2018.

C. Property History

The property is governed by Variance #4-13 which allowed the conversion of a single-family dwelling to a two-family dwelling. The variance granted a reduction in the following dimensional standards: lot area, lot area per unit, frontage, and open space. In 2019, the petitioner obtained an amendment to the variance for the increase of the lot coverage from 30% to 32.3% and reduction of the open space from 44.7% to 42.9% conditioned upon the approval of this special permit. The ZBA granted the variance upon approval of this special permit, due to the daycare use and the proposed addition providing a higher quality structure and improved play space for children attending the daycare, better screening the designated play space from the Massachusetts Turnpike.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site is and will remain a two-family residential use with an internal accessory apartment. The site also contains as a daycare use, established in 1995.

B. Building and Site Design

The petitioners are seeking to enclose play space at the rear of the structure resulting in an increase of 399 square feet of FAR. The proposed addition increases the FAR from .66 to .72, where .54 is the maximum allowed as of right. The structure would contain 4,754 square feet, where 3,569 square feet is the maximum allowed as of right. The addition increases the lot coverage from 30% to 32.3% and reduces the open space from 44.7% to 42.9%. The requests relative to lot coverage and open space were approved by the Zoning Board of Appeals conditional with the approval of this special

- permit that would grant an increase in the FAR, if approved. The proposed addition has no impact on the side setbacks but decreases the rear setback from 58.6 feet to 52.7 feet.
- C. The Planning Department is unconcerned with the proposed addition that increases the nonconforming FAR. The proposed rear addition is increasing the footprint of the building; however, it will not be visible from the street. The addition is consistent with the size and scale of the homes in the neighborhood.
 - D. Parking and Circulation
The petitioners are not proposing any changes to either the parking or circulation.
 - E. Landscaping
A landscape plan is not required with this petition.

IV. TECHNICAL REVIEW

- A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):
The Zoning Review Memorandum provides an analysis of the proposal regarding zoning (**Attachment D**). Based on the completed Zoning Review Memorandum, the petitioner is seeking the following relief:
 - §3.1.9 and §7.8.2.C.2 of Section 30, to further increase the nonconforming FAR.
- B. Engineering Review
This petition does not meet the minimum threshold for Engineering Review.
- C. Historic Preservation Review
This petition does not meet the minimum threshold for Newton Historical Commission review.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:

- Attachment A:** Variance Amendment #06-19
- Attachment B:** Zoning Map
- Attachment C:** Land Use Map
- Attachment D:** Zoning Review Memorandum
- Attachment E:** DRAFT Council Order



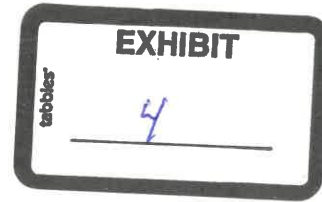
CITY OF NEWTON, MASSACHUSETTS

City Hall

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www.ci.newton.ma.us



Ruthanne Fuller
Mayor

2019 NOV 19 AM 9:30

ZONING BOARD OF APPEALS

Adrianna Henriquez, Board Clerk

#06-19

DETAILED RECORD OF PROCEEDING AND DECISION

Petition #06-19 Kathy Jordan Quern and Albert F. Quern of 13 Prospect Street, Newton, Massachusetts request to amend Variance #4-13 relative to the subject property, which is a 6,611 square foot lot in a Multi-Residence 2 (MR-2) zoning district. Petitioners seek to construct a rear addition and request to amend Variance #04-13 to increase lot coverage to 32.3% where 30% is the maximum allowed per Section 3.2.3 of the Newton Zoning Ordinance and to decrease open space to 42.9% where 44.7% is the minimum allowed per Section 3.2.3 of the Newton Zoning Ordinance.

Due notice of the public hearing before the Zoning Board of Appeals for the City of Newton (the "Board") was given by mail, postage prepaid, to all "parties in interest" in accordance with M.G.L. c. 40A, § 11 and by publication in the *Newton TAB*, a newspaper of general circulation in Newton, Massachusetts, on September 11, 2019 and September 18, 2019.

The public hearing was opened on September 23, 2019. By written agreement, the parties continued the hearing to Wednesday, October 30, 2019 at 7:00 p.m. in the Council Chambers, Room 207, Newton City Hall, 1000 Commonwealth Avenue, Newton, Massachusetts.

The following members of the Board were present:

- Brooke K. Lipsitt (Chairperson)
- Barbara Huggins Carboni
- William McLaughlin
- Michael Quinn¹
- Michael Rossi
- Stuart Snyder



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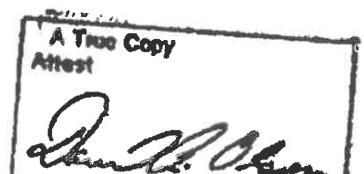
*Return:
Harrington Martini
505 Waltham St.
West Newton, MA 02465*

The following documents were submitted to the Board and/or entered into the record at the public hearing:

1. Application for Amendment to Variance, with accompanying documents, received August 14, 2019
2. Zoning Review Memorandum, with accompanying documents, dated April 23, 2019

¹ Mr. Quinn participated in discussion but did not participate in the Board's vote.

MR 59561-461



FACTS

Petitioner Kathy Quern is licensed by the Commonwealth of Massachusetts to operate her daycare service at the subject property, which is in a densely populated area surrounded by multifamily dwellings. The daycare is located in a room in the back of the Petitioners' home and extends to the unenclosed patio. The Petitioners seek to enclose the patio to make it usable full-time for the daycare. Petitioner Albert Quern explained that the 313 square feet referenced in the petition relates to enclosing the existing space, and the additional 96 square feet referenced relates to a wall and stair area, which Petitioners also seek to enclose. Petitioners' counsel, Attorney Peter Harrington of 505 Waltham Street in Newton, explained that every abutter contacted had no issue with the project.

The Board considered a petition requesting a variance relative to the subject property in 2013. Attorney Harrington requested that the Board incorporate those findings in its decision on the instant application. Moreover, Attorney Harrington noted that there have been vast changes in the neighborhood. He explained that the area in which the Petitioners live has become incredibly dense. There has been a significant increase in traffic and noise from the nearby Massachusetts Turnpike, which has raised concerns about the safety and well-being of the children attending the daycare at the subject property.

Attorney Harrington also noted that the size and the shape of the lot were contributing factors in the grant of the prior variance. He explained that without a variance, the open space requirement currently imposes a severe limitation such that the Petitioners cannot go forward with this small expansion. The daycare facility will not function at its best level if this enclosed space is not available to the children.

A motion to close the public hearing was made by Mr. Rossi and duly seconded by Ms. Carboni. The motion passed, five in favor and none opposed.

Ms. Carboni noted that the Petitioners seem to be providing the safest and highest quality daycare that they can on their property and, but for the peculiar shape and topography of this lot, they would be able to do this modest expansion as of right. Ms. Carboni noted that in the 2013 variance Decision, this Board found hardship exists with respect to the shape of the petitioners' lot. Also, the land is confined to 6,611 square feet and the 2013 decision concluded that created a hardship for the petitioners. Ms. Carboni emphasized the word "confined" in the 2013 decision. Where the instant petition seeks a variance relative to open space and lot coverage arising from the confined nature of this lot, the hardship exists and Ms. Carboni would be inclined to grant the variance.

Chairperson Lipsitt observed that part of the hardship in these circumstances appeared to be increased pollution, noise, and potential danger to the children attending the daycare. Mr. McLaughlin also remarked on the size and shape of the lot and confirmed that he agreed with the position of Ms. Carboni. In addition, he noted the quality of what exists in the relevant space, which is enclosed merely in plastic, whereas what is being proposed by Petitioners is significantly safer, higher quality, and would give a greater buffer to the children from the dense environment around them and from the Massachusetts Turnpike. Mr. Snyder further stated that he was satisfied that a hardship exists based on the points articulated by the Chairperson, the size and nature of the lot, as well as the noise and other effects on the children using the site. Chairperson Lipsitt

Also
A True Copy
AKB

[Handwritten Signature]

noted a financial hardship given that, if the children cannot be cared for in a healthy environment, the business could close.


FINDINGS, DETERMINATION, AND CONDITIONS

1. *There are special circumstances related to the soil conditions, shape, or topography of the land or structures which affect it but do not generally affect other properties in the zoning district. The site is unique and a hardship is present due to the topography and peculiar shape of the Petitioners' lot, which is confined to 6, 611 square feet.*
2. *Literal enforcement of the provisions of the Newton Zoning Ordinance would result in a substantial hardship to the owner and the variance requested is the minimum change that is necessary to allow reasonable use of the building or land. Literal enforcement of the Newton Zoning Ordinance would result in substantial hardship. The Petitioners state that increases in traffic and noise as well as increases in the density of the surrounding area pose a risk to the safety and well-being of the children attending daycare at the subject property. Furthermore, if the children cannot be cared for in a healthy environment, Petitioners' business could cease to operate. The requested amendment to Variance 04-13 seeks to protect children in the daycare from pollution, noise, and other dangers.*
3. *The variance will be in harmony with the general purpose and intent of the Newton Zoning Ordinance and will not be detrimental to the neighborhood or the public welfare. Granting the amendment to the variance requested would not derogate from the spirit and intent of the Newton Zoning Ordinance in that the departure from the ordinance requirements would not change the character of the surrounding area. In addition, granting the Petitioners' request will not result in a substantial detriment to either the neighborhood or the public welfare, but rather will promote the safety and well-being of the children attending the daycare at the subject property.*

Mr. Snyder moved to grant the petition. This motion was duly seconded by Mr. McLaughlin. The Board voted in favor 5-0. Therefore, the request to amend Variance #04-13 is granted subject to the following condition:

1. If the Petitioners are required to obtain a special permit, then the grant of the amendment to Variance #04-13 is conditioned upon the Petitioners' obtaining a special permit.
2. The addition and all site features associated with this Variance shall be located and constructed consistent with the plans submitted with the Petitioners' application.
3. No building permit shall be issued pursuant to this Variance until Petitioners have:
 - a. Recorded a certified copy of the Variance with the Registry of Deeds for the Southern District of Middlesex County; and
 - b. Filed a copy of such recorded Variance with the Clerk of the Zoning Board of Appeals, the Department of Inspectional Services, and the Department of Planning and Development.

A True Copy
Attest:





Brooke K. Lipsitt, Vice Chairman

AYES: Harvey A. Creem
Barbara Huggins
Peter Kilborn
Brooke K. Lipsitt
William McLaughlin

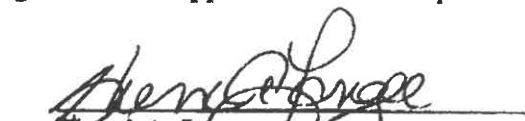
Copies of this decision and all plans referred to in this decision have been filed with the Planning and Development Board and the City Clerk.


This decision was filed with the City Clerk on: *May 2, 2013*

The City Clerk certified that all statutory requirements have been complied with and that 20 days have elapsed since the date of filing of this decision and no appeal, pursuant to Section 17 of Chapter 40A has been filed.


David A. Olson, City Clerk
acting

I, Sherri A. Lougee, am the Clerk of the Zoning Board of Appeals and the keeper of its records. This is a true copy of its decision.


Sherri A. Lougee

A True Copy
Attest

City Clerk of Newton, Mass.







ATTACHMENT B

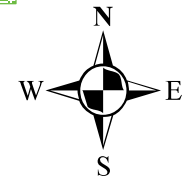
Zoning

13 Prospect Street

*City of Newton,
Massachusetts*

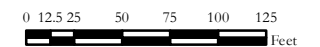
Zoning

-  Single Residence 2
-  Single Residence 3
-  Multi-Residence 1
-  Multi-Residence 2
-  Manufacturing
-  Public Use

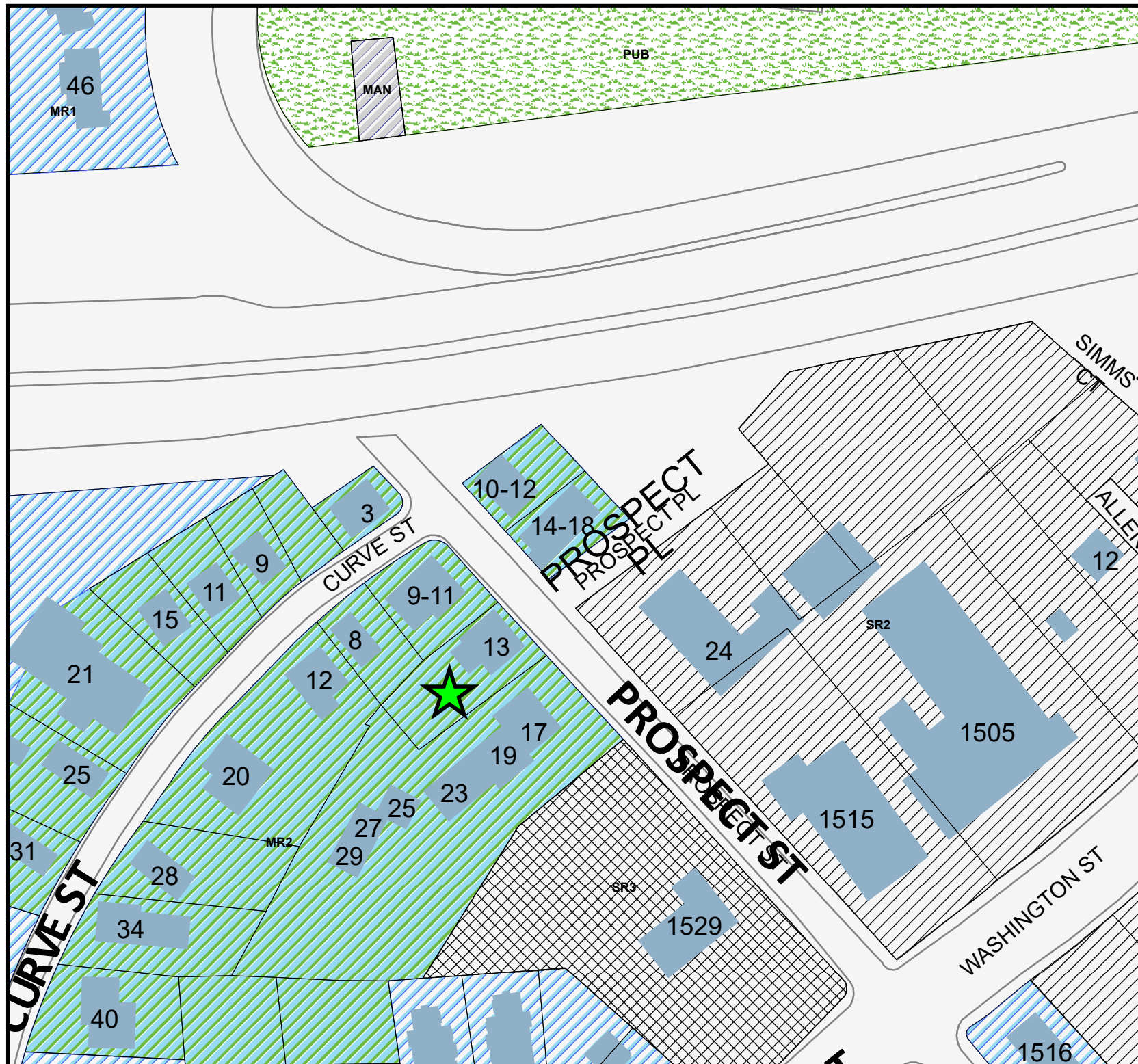


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield



Map Date: January 05, 2021



ATTACHMENT C









Land Use

13 Prospect Street

*City of Newton,
Massachusetts*

Land Use

Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Industrial
-  Open Space
-  Private Educational
-  Nonprofit Organizations
-  Vacant Land

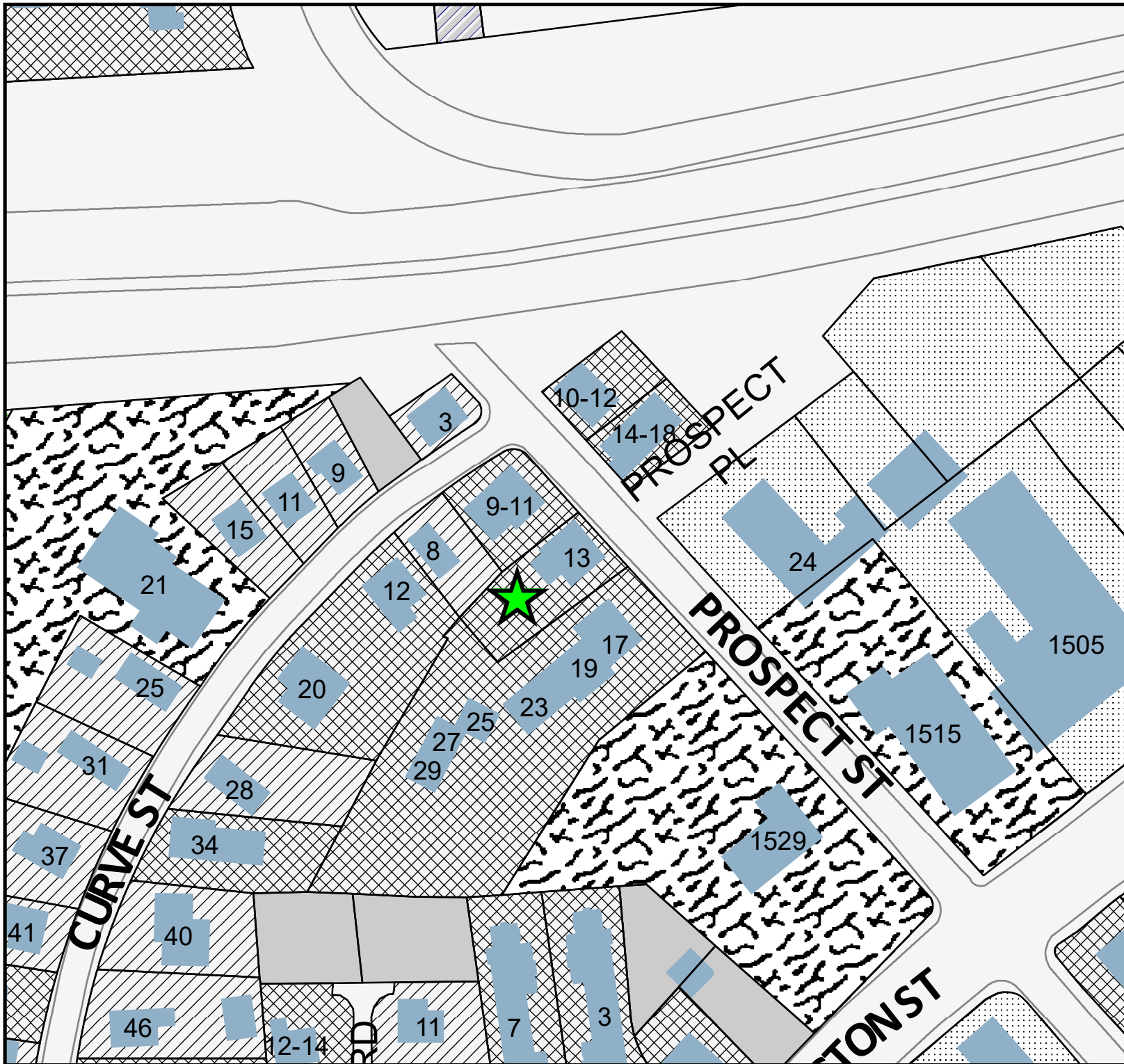


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield

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Map Date: January 08, 2021





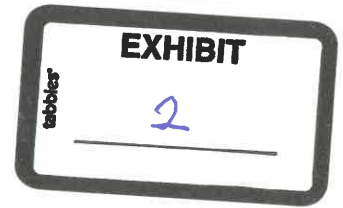
Ruthanne Fuller
Mayor

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

ZONING REVIEW MEMORANDUM



Date: November 19, 2020

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Kathy Jordan Quern, Applicant
Peter Harrington, Attorney
Barney S. Heath, Director of Planning and Development
Jonah Temple, Associate City Solicitor

RE: Request to amend Variance #4-13 to increase lot coverage and decrease open space, and a special permit to exceed FAR

Applicant: Kathy Jordan Quern	
Site: 13 Prospect Street	SBL: 33003 0009
Zoning: MR2	Lot Area: 6,611 square feet
Current use: Two-family dwelling with an accessory apartment and family day care	Proposed use: No change

BACKGROUND:

The property at 13 Prospect Street consists of a 6,611 square foot lot improved with a two-family dwelling with an accessory apartment constructed circa 1920 in the MR2 zoning district. The property received Variance #4-13 in 2013 allowing for the conversion of the existing single-family dwelling into a two-family dwelling, as the property lacked sufficient lot area per unit and a proposed addition that would reduce the minimum open space below the requirement. A legal accessory apartment was created on the property in 2018. The petitioner now seeks a special permit and to amend the existing variance to construct a rear addition.

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

- As-Built, signed and stamped by George C. Collins, surveyor, dated 1/14/2013, revised 4/12/2019
- Certified Plot Plan, signed and stamped by George C. Collins, surveyor, dated 10/4/2018, revised 4/12/2019
- FAR worksheet, submitted 10/15/2018, revised 8/13/2020
- Variance #4-13

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner proposes to enclose space below an existing deck at the rear of the dwelling to create additional first level living space used in a family day care operated on the property.
2. The petitioner received a variance in 2013 to allow for an existing single-family dwelling to be converted into a two-family dwelling with an addition. The variance was required for lot area per unit and insufficient open space. The open space allowed by the 2013 variance was 44.7%, where 50% is required per section 3.2.3. The survey on file with the as-built plans in ISD from 2013 indicates that the as-built open space was as permitted at 44.7%. However, the current survey indicates an existing open space of 43.4%, which is below that which was permitted by the variance. The as-built plan appears largely the same as the current plan found in the petitioner's application, so it is unclear where the discrepancy between the two open space figures lies. The proposed addition would further reduce to the open space to 42.9%. A variance amendment is required to allow for a further reduction of open space from the approved 44.7% to the proposed 42.9%.

Should the petitioner not receive the permissions required for the proposed addition, an amendment to legitimize the current conditions shown on the submitted plans of 43.4% open space, where 44.7% had been approved in 2013, should be made.

3. Lot coverage is a measurement of the percentage of the lot covered by structures with roofs. The existing lot coverage is 30%, where the maximum allowed is 30% per section 3.2.3. The proposed addition is under an existing deck. As it is not currently under a roof, the space intended for the addition does not count against lot coverage. However, once constructed the space would be under a roof and would therefore increase the lot coverage figure. To allow an increase of the lot coverage to 32.3%, which exceeds the maximum allowed, requires a variance.
4. The FAR for the addition was likely miscalculated in 2013, with the as-built plans showing a figure of .40, whereas the FAR calculation included in the current submission shows an existing FAR of .66. This discrepancy between the two figures is possibly due to a 2013 miscalculation of the basement level of the dwelling. Due to the average grade of the property, the entire basement counts toward FAR, and it is likely that it was not included in the initial calculation.

The proposed addition adds 398.7 square feet to the first story, creating a total of 4,189 square feet counting toward FAR. The existing FAR is .66, where .54 is the maximum allowed per sections 3.2.3 and 3.2.11. The proposed additions further increase the nonconforming FAR to .72, requiring a special permit per sections 3.2.3, 3.2.11.

Should the petitioner not receive the permissions necessary for the proposed addition, a special permit to legitimize the current FAR of .66 is required.

MR2 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	6,611 square feet	No change
Frontage	70 feet	56.5 feet	No change
Setbacks			
• Front	25 feet	4.6 feet	No change
• Side (right)	7.5 feet	2.8 feet	No change
• Side (left)	7.5 feet	11.5 feet	No change
• Rear	15 feet	58.6 feet	52.7 feet
FAR	.54	.66	.72
Maximum Lot Coverage	30%	30%	32.3%
Minimum Open Space	44.7%*	43.4%	42.9%

*Allowed by Variance #4-13

See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
	Request to amend Variance #4-13	
§3.2.3	Request to further reduce minimum open space	Variance per §7.6
§3.2.3	Request to exceed maximum lot coverage	Variance per §7.6
§3.2.3 §3.2.11 §7.8.2.C.2	Request to further extend nonconforming FAR	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 increase the nonconforming floor area ratio (FAR) from .54 to .72, where .66 is the maximum allowed as of right as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The proposed increase in the nonconforming FAR from .54 to .72, where .66 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 because the proposed addition is to the rear and limited to the first floor of the structure (§3.1.9, and §7.8.2.C.2)
2. The proposed increase in nonconforming FAR is not substantially more detrimental than the existing nonconforming structure is to the neighborhood because the addition is within the footprint of the existing structure. (§3.1.9 and §7.8.2.C.2)

PETITION NUMBER: #523-20

PETITIONER: Katherine R. Jordan-Quern

LOCATION: 13 Prospect St., on land known as Section 3, Block 3, Lot 9, containing approximately 6,611 square feet of land

OWNER: Katherine R. Jordan-Quern and Albert F. Quern

ADDRESS OF OWNER: 13 Prospect Street
Newton, MA 02465

TO BE USED FOR: Rear Addition to Two-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.9 and §7.8.2.C.2 to further increase the nonconforming 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. Certified Plot Plan, signed and stamped by George C. Collins, Land Surveyor, dated December 4, 2018.
 - b. Architectural Plans, signed and stamped by Gregory Ettridge, Professional Architect, dated October 3, 2017, consisting of the following two (2) sheets:
 - i. Floor Plans and Section
 - ii. Elevations
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 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 council 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.
3. 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 a statement by an architect certifying compliance with Condition #1, including the as built floor area ratio 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 architect.