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#104-21

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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: May 4, 2021
Land Use Action Date: July 26, 2021
City Council Action Date: August 2, 2021
90- Day Expiration Date: August 2, 2021

DATE: April 30, 2021

TO: City Council

FROM: Barney Heath, Director of Planning and Development
Neil Cronin, Chief Planner
Michael Gleba, Senior Planner

SUBJECT: **Petition #104-21** for SPECIAL PERMIT/SITE PLAN APPROVAL to convert the existing two-family dwelling into a single family and construct a second unit, extending the non-conforming two-family use, to allow extension of a non-conforming front setback and to exceed FAR at **74-76 Cummings Road**, Ward 2, Newton Centre, on land known as Section 64 Block 03 Lot 40, containing approximately 17,528 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 7.4, 7.8.2.C.2 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.



74-76 Cummings Road

Preserving the Past  Planning for the Future

Preserving the Past  Planning for the Future

EXECUTIVE SUMMARY

The property at 74-76 Cummings Road consists of a 17,528 square foot lot in a Single Residence 2 (SR2) zoning district currently improved with a 3,112 square foot, two-family dwelling constructed in 1910. The petitioner intends to convert the existing dwelling into a single unit and construct an addition that includes a second unit, maintaining the two-family dwelling use.

As two-family dwellings are prohibited in the Single Residence 2 zoning district per Section 3.4.1 of the Newton Zoning Ordinance (NZO), the existing two-family dwelling use is nonconforming. Therefore, a special permit per Section 7.8.2.C.2 is required to alter and extend the nonconforming two-family dwelling use.

The proposed addition, which would include a second dwelling unit, as well as a single-car garage for each unit, would add 3,061 square feet to the structure. This would increase the property's floor area ratio (FAR) from 0.18 to 0.35 where 0.33 is the maximum allowed, requiring a special permit.

Also, the resulting expanded structure would have a front setback of 13 feet. While this is greater than the existing nonconforming front setback of 11.5 feet, it would be less than the 17.3 feet required (per Section 1.5.3.B's averaging provisions), requiring a special permit per Section 7.8.2.C.2 to extend the front setback nonconformity.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Council should consider whether:

- the proposed extended two-family dwelling as designed, including an extended nonconforming front setback, would be substantially more detrimental than the existing nonconforming use to the neighborhood (§7.8.2.C.2)
- the proposed extended two-family dwelling as designed with a floor area ratio of 0.35 where 0.18 exists and 0.33 is the maximum allowed is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood (§3.1.9)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on the east side of Cummings Road at its southern end. The site is developed with a nonconforming two-family dwelling whereas most of the nearby residential parcels are occupied by single-family dwellings. The immediate neighborhood is surrounded by the grounds of Newton Cemetery (**Attachment A**). The site and surrounding area are within a Single Residence 2 (SR2) district, with the surrounding cemetery property zoned as Open Space/Recreation (OS/R) (**Attachment B**).

B. Site

The property consists of an approximately 17,528 square foot triangular lot improved with a 3,112 square foot, 2 ½ story, two-family dwelling at its northern, wider end. The lot slopes downward approximately ten feet from left (north) to right (south) and approximately eight

feet from front (west) to rear (east). It is surrounded on the rear and right sides by the cemetery grounds, and there is a sewer and drainage easement along the rear of the property. Auto access to the property is provided by two separate paved one-car parking areas south of dwelling. The remaining portions of the site are occupied by lawn area and some mature vegetation, as well as a shed and play structure.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site would remain a two-family dwelling.

B. Building and Site Design

The petitioners are proposing to convert the existing nonconforming two-family dwelling into a single unit and construct a 3,061 square foot addition that would contain a second unit (thus maintaining the nonconforming two-family use) and two single-car garages- one for each unit. Two extensions off the front and rear of the existing structure would be removed.

The proposed addition, which would be constructed to the right (south) side of the existing dwelling and into the parcel's generous southern portion, would increase the floor area ratio (FAR) from 0.18 to 0.35 where 0.33 is the maximum allowed by right.

The addition would not increase the existing number of stories which would remain at 2½ floors; the measured height of the structure would increase slightly, from 33 to 33.2 feet, remaining below the maximum 36 feet allowed by right.

Regarding setbacks, the existing structure has a nonconforming front setback of 11.5 feet where 17.3 feet is required per the averaging provisions of Section 1.5.3.B. As referenced above, a front portion of the existing structure would be removed, increasing the setback there. However, the proposed construction would be set back 13 feet, and while the nonconforming nature of the front setback would be reduced, it would nevertheless be extended for the new dwelling unit.

The left side setback would remain unchanged. The rear setback would be changed because, as referenced above, an extension would be removed from the rear of the existing structure. The combination of that removal, the addition, and the angle of the rear property line would result in a new rear setback of 25 feet, slightly less than the current approximately 25 feet and more than the required 15 feet.

The open space on the parcel would decrease, from 87.9% to 79%, but remain above the required 50%. The parcel's existing lot coverage is 7.9%. The petitioner proposes to increase it to 16.7%, remaining well below the minimum 50% required.

C. Parking and Circulation

Four parking spaces, two for each of the two dwellings, would be provided onsite. As referenced above, the proposed addition would include an attached one-garage for each of the two dwellings, and there would be one additional space for each on the driveways in front of each. The petitioner should confirm the width of the proposed curb cuts and the dimensions of the paved areas/driveways in front of each garage.

D. Landscape, Lighting and Signage

A landscaping plan was not submitted with this petition. While the Planning Department notes that the property is abutted to the rear and one side by the adjacent cemetery property, it suggests that the petitioner share what if any landscaping it plans to add to the lot.

IV. 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 completed Zoning Review Memorandum, the petitioner is seeking the following relief:

- Special Permit per §7.3.3:
 - to extend a nonconforming two-family dwelling use (§3.4.1, §7.8.2.C.2)
 - to extend a nonconforming front setback (§1.5.3.B, §3.1.3, §7.8.2.C.2)
 - to exceed floor area ratio (FAR)(§3.1.3, §3.1.9)

B. Engineering Review

In the event the present petition is granted the Engineering Division would review the project prior to the issuance of a building permit. Nevertheless, the Planning Department discussed the proposal with Engineering and it was suggested that any special permit include conditions requiring that temporary fencing be erected during construction to protect the City sewer and drainage easement located along the rear property line and CCTV inspection of that sewer be conducted before and after construction to ascertain its condition and whether any damage was sustained.

C. Newton Historic Commission Review

On April 1, 2021, the Newton Historic Commission resolved to preferably preserve the buildings on the subject property but waived the demolition delay based on approved plans, with review of final construction plan required before the issuance of a building permit.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:

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

ATTACHMENT A





Land Use

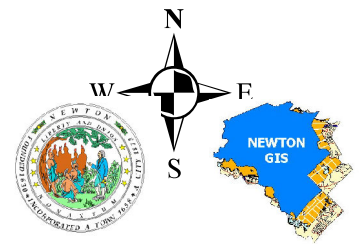
74-76 Cummings Rd.

*City of Newton,
Massachusetts*

Land Use

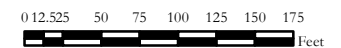
Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Nonprofit Organizations
-  Vacant Land

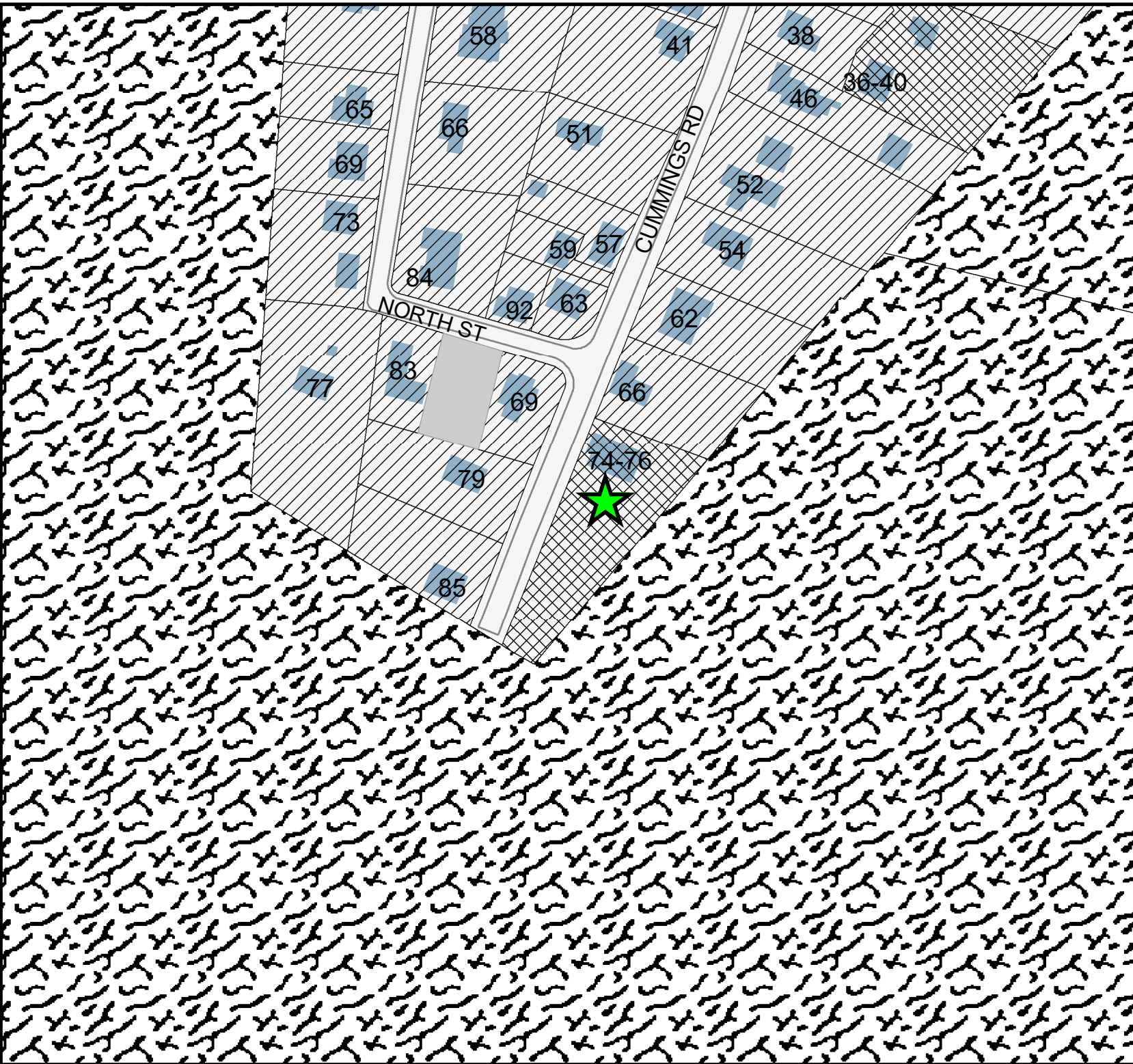


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

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



Map Date: April 29, 2021





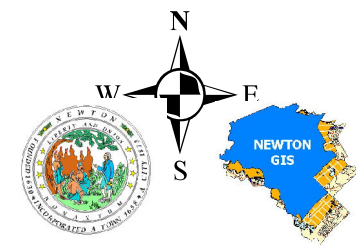
ATTACHMENT B

Zoning

74-76 Cummings Rd.

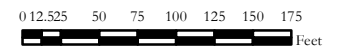
*City of Newton,
Massachusetts*

-  Single Residence 2
-  Open Space/Recreation



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CITY OF NEWTON, MASSACHUSETTS
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Mayor

ATTACHMENT C

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: November 24, 2020

To: John Lojek, Commissioner of Inspectional Services

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

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

RE: Request to extend a nonconforming two-family use and to exceed FAR

| Applicant: John Arone | |
|----------------------------------|------------------------------|
| Site: 74-76 Cummings Road | SBL: 64003 0040 |
| Zoning: SR2 | Lot Area: 17,528 square feet |
| Current use: Two-family dwelling | Proposed use: No change |

BACKGROUND:

The property at 74-76 Cummings Road consists of a 17,528 square foot lot currently improved with a two-family dwelling constructed in 1910. The petitioner intends to convert the existing dwelling into a single unit and construct an addition of a second unit, maintaining the two-family dwelling use.

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

- Zoning Review Application, prepared by John Arone, applicant, submitted 8/16/2020
- Plan showing existing and proposed conditions, signed and stamped by Robert Bibbo, surveyor, dated 9/23/2020
- Architectural plans and elevations, signed and stamped by Island Architects, dated 6/19/2019, revised 10/15/2020

ADMINISTRATIVE DETERMINATIONS:

1. The existing two-family dwelling use is nonconforming, where two-family dwellings are prohibited in the Single Residence 2 zoning district per section 3.4.1. The petitioner intends to convert the existing two-family dwelling into a single unit and construct a new attached second unit, maintaining the nonconforming two-family dwelling use. A special permit is required to alter and extend the nonconforming two-family dwelling use per sections 3.4.1 and 7.8.2.C.2.
2. The existing structure has a nonconforming front setback of 11.5 feet where 17.3 feet is required per the averaging provisions of section 1.5.3.B. The proposed construction extends the nonconforming front setback to the new dwelling unit, with a proposed front setback of 13 feet. A special permit per sections 3.1.3 and 7.8.2.C.2 is required.
3. The petitioner proposes to construct additions of a second dwelling unit and a single-car garage for each unit. The proposed additions add 3,061 square feet, increasing the FAR from .18 to .35 where .33 is the maximum allowed. A special permit is required to exceed the maximum FAR per sections 3.1.3 and 3.1.9.

| SR2 Zone | Required | Existing | Proposed |
|--|--|--|---|
| Lot Size | 10,000 square feet | 17,528 square feet | No change |
| Frontage | 80 feet | 239.6 feet | No change |
| Setbacks <ul style="list-style-type: none"> • Front • Side • Side • Rear | 17.3 feet 7.5 feet 7.5 feet 15 feet | 11.5 feet 16.5 feet 16.5 feet >25 feet | 13 feet 10.4 feet No change 23 feet |
| Height | 36 feet | 33 feet | 33.2 feet |
| Stories | 2.5 | 2.5 | 2.5 |
| FAR | .33 | .18 | .35 |
| Max Lot Coverage | 30% | 7.9% | 16.7% |
| Min. Open Space | 50% | 87.9% | 79% |

1. See “Zoning Relief Summary” below:

| Zoning Relief Required | | |
|----------------------------------|--|------------------------|
| <i>Ordinance</i> | | <i>Action Required</i> |
| §3.4.1 §7.8.2.C.2 | Request to extend a nonconforming two-family dwelling? use | S.P. per §7.3.3 |
| §1.5.3.B §3.1.3 §7.8.2.C.2 | Request to extend a nonconforming front setback | S.P. per §7.3.3 |
| §3.1.3 §3.1.9 | Request to exceed FAR | S.P. per §7.3.3 |

Next Steps

Please contact a Planner by calling 617.796.1120 to obtain a copy of the Special Permit Application. If there have been any changes made to the plans since receipt of your Zoning Review Memorandum you must inform the Zoning Code Official to ensure additional relief is not required. You will need an appointment with a Planner to file your Special Permit Application. **Incomplete applications will not be accepted.**

The following must be included when filing a Special Permit Application:

1. Two (2) copies of the completed Special Permit Application (signed by property owner)
2. Filing Fee (see Special Permit Application)
3. Two (2) copies of the Zoning Review Memorandum
4. Plans (Thirteen sets signed and stamped by a design professional). Each set shall contain:
 - Site Plans showing existing and proposed conditions (including topography as applicable)
 - Architectural plans showing existing and proposed conditions (including façade materials)
 - Landscape plan (as applicable)
5. One (1) Floor Area Ratio (FAR) Worksheet, (signed and stamped by a design professional)
6. One (1) copy of any previous special permits or variances on the property (as applicable)
7. One (1) copy of any other review/sign-off (Historic, Conservation, Tree Removal, etc. as applicable)
8. Two (2) electronic copies of the application with all above attachments (USB or CD)

Copies of all plans shall either be 8.5 x 11 or 11 x 17, except as requested by staff

Special Permit Sign (\$20 fee)

Incomplete applications will delay the intake and review of your project.

Depending on the complexity of the project additional information may be requested to facilitate a full review of the application.

Has the proposed project been presented to and discussed with abutting property owners? Y/N