



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

#146-21

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: June 8, 2021
Land Use Action Date: August 24, 2021
City Council Action Date: September 6, 2021
90-Day Expiration Date: September 6, 2021

DATE: June 4, 2021

TO: City Council

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

SUBJECT: **Petition #146-21** for SPECIAL PERMIT/SITE PLAN APPROVAL to construct an internal accessory apartment in a rear addition, exceeding the allowable FAR of at **20 Devon Road**, Ward 6 Newton Centre, on land known as Section 61 Block 04 Lot 04, containing approximately 14,226 sq. ft. in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 3.1.3, 3.1.9 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.



20 Devon Road

EXECUTIVE SUMMARY

The property at 20 Devon Road consists of a 14,226 square foot lot in a Single Residence 2 district improved with a 3,807 square foot, 2 ½ story single-family dwelling constructed in 1892 and a 536 square foot detached garage.

The petitioner proposes to build a 781 square foot, one story rear addition that would increase the property's floor area ratio (FAR) from 0.31 to 0.36, where 0.34 is the maximum allowed per Sections 3.1.3 and 3.1.9 of the Newton Zoning Ordinance (NZO), requiring a special permit.

The proposed addition would be used to create a 781 square foot, internal accessory apartment on the first story of the dwelling. As the accessory apartment would be less than both 1,000 square feet and 33% of the dwelling's post-addition total habitable space of 4,940 square feet (approximately 1,630 square feet), per Section 6.7.1.D.2 of the NZO that use does not require zoning relief.

The Planning Department is generally not concerned with the creation of the addition given its low height, limited visibility from adjacent public ways and properties, and its compliance with other relevant dimensional requirements.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- the proposed expanded structure as designed is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood (§3.1.9.2)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on the south side of Devon Road just west of Grant Avenue. The site is developed with a single-family dwelling, consistent with the surrounding neighborhood which also includes some two-family dwellings and a small retail building on Commonwealth Avenue to the north (**Attachment A**). The site and the surrounding area west of Grant Avenue is a Single Residence 2 (SR2) district while that east of Grant is a Single Residence 1 (SR1) district. A Multi Residence 1 (MR1) district is located to the north along Commonwealth Avenue (**Attachment B**).

B. Site

The property consists of a 14,226 square foot lot in a Single Residence 2 district improved with a 3,807 square foot, 2½ story single-family dwelling constructed in 1892 and a 536 square foot detached garage.

The majority of the lot is generally level, with its right (north) side sloping upward several feet in the direction of the property line on that side. Vehicular access is provided via an asphalt paved driveway along the left (east) property line that serves the existing detached garage located in the rear left (southeast) corner of the lot.

Remaining portions of the site feature lawn and vegetation including mature trees and shrubs.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site will remain a single-family residence.

B. Building and Site Design

The petitioners propose to add 781 square feet of living space to the rear right side of the dwelling's first story. The new space would be limited to the ground level. The basement and second floor levels would remain unchanged. The proposed work would increase the property's total floor area (inclusive of the detached garage) from 4,343 to 5,123 square feet representing an increase in floor area ratio (FAR) from 0.31 to 0.36, where 0.34 is the maximum allowed by right.

The one-story addition would not increase the measured height of the dwelling (29.4 feet) and the number of stories would remain at 2½.

Regarding the property's setbacks, the front would remain unchanged at 20 feet, less than the required 25 feet. The left (east) side setback would also remain unchanged while the proposed addition would reduce the right (west) setback from 10 feet to 7.9 feet, slightly more than the required 7.5 feet. The rear setback would also be reduced, from approximately 60 feet to 42.5 feet, but remain well above the required 15 feet.

As discussed in the attached memorandum from the Engineering Division (*see below*), the area between the addition and the right (west) property line would be regraded which would address certain issues with a retaining wall in that area.

Section 6.7.1.D.2 of the NZO provides that an internal accessory apartment may be the lesser of 33% of the total habitable space of the dwelling or 1,000 square feet. After construction of the addition, the total habitable space of the dwelling will be 4,940 square feet (33% of which would be 1,630 square feet), allowing for a 1,000 square foot internal accessory apartment. The proposed 781 square foot apartment therefore requires no additional zoning relief.

C. Parking and Circulation

The existing paved driveway on the left (east) side of the property and its associated curb cut would remain unchanged. The petitioners propose to construct a brick paved parking stall, and associated second curb cut, approximately 11 feet from the right (west) side of the property line. The proposed stall/driveway would measure approximately 12 by 24 feet, allowing for a 9 by 19-foot stall set five feet back from the front property line. A paved path would facilitate wheelchair access from the stall to the accessory apartment.

D. Landscaping

A landscaping plan was not submitted with this petition.

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 exceed FAR (§3.1.3, §3.1.9)

B. Engineering Review

The attached Engineering Division Memorandum (**Attachment D**) provides an analysis of the proposal with regard to engineering issues. The memo notes that “the DPW has no objections to (the) proposed (new) curb cut” and, as referenced above, the “proposed grading along the western property line will address the localized failure of the retaining wall which was caused by ... former tree roots.” The memo notes that an Operation and Maintenance (O&M) plan for the proposed drainage system should be submitted at the time of Building Permit review in the event the present petition is granted.

C. Newton Historic Commission Review

On March 31, 2021, Newton Historical Commission (NHC) staff approved the project based upon submitted materials, requiring only final review of construction plans prior to 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 D:** Engineering Division Memorandum
- Attachment E:** DRAFT Council Order

ATTACHMENT A






Land Use

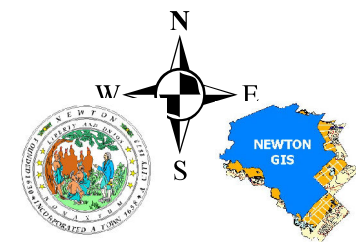
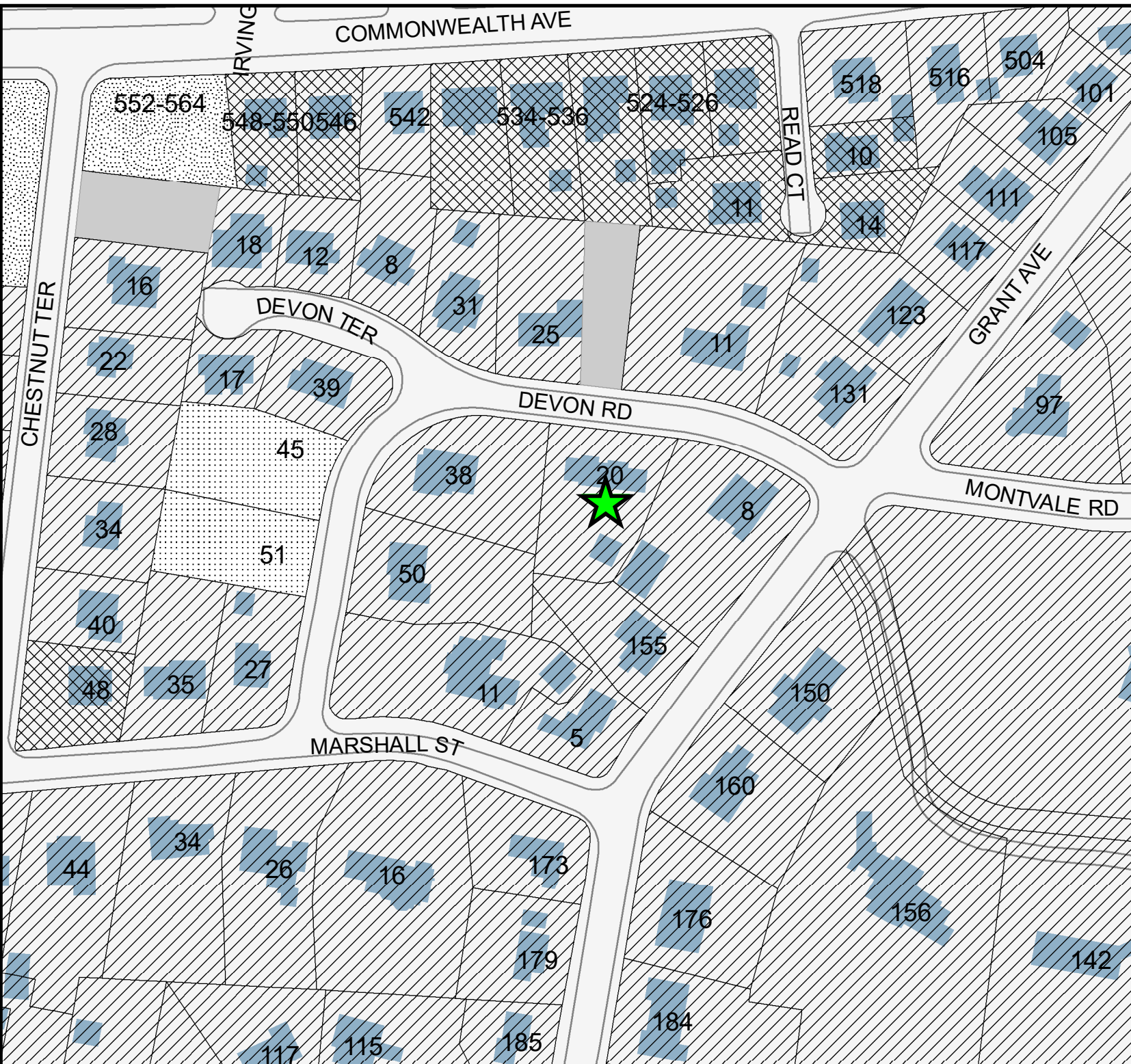
20 Devon Rd.

*City of Newton,
Massachusetts*

Land Use

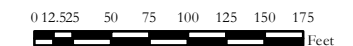
Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Mixed Use
-  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






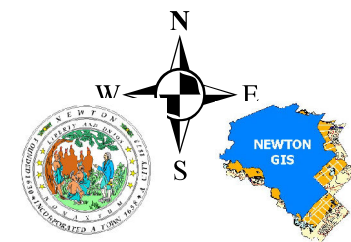
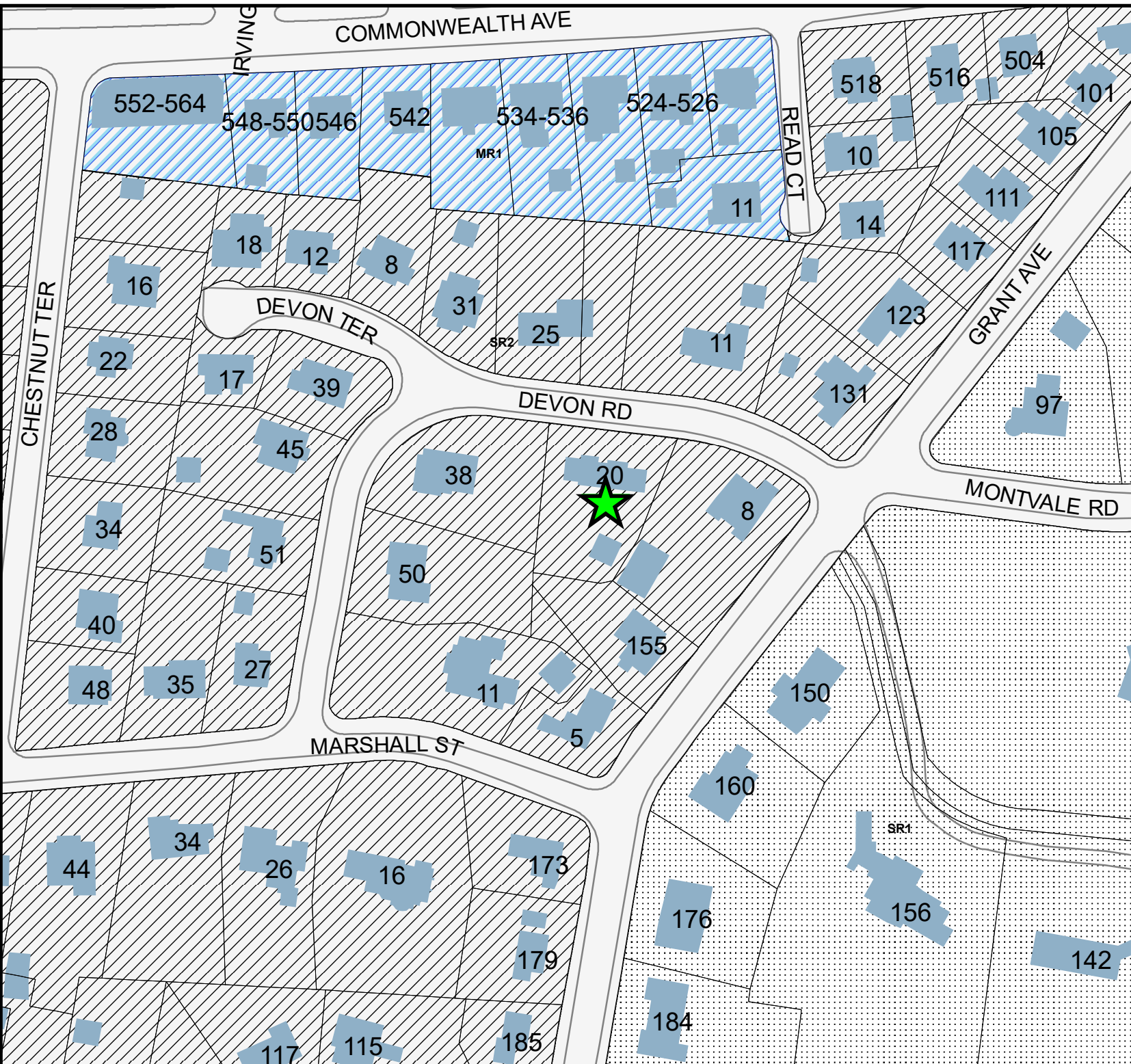
Map Date: June 03, 2021

Zoning

20 Devon Rd.

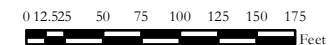
*City of Newton,
Massachusetts*

-  Single Residence 1
-  Single Residence 2
-  Multi-Residence 1



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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: April 12, 2021

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Simon and Lucia Dolan, Applicants
Anita Rogers, Architect
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: **Request to exceed FAR**

Applicant: Simon and Lucia Dolan	
Site: 20 Devon Road	SBL: 61004 0004
Zoning: SR2	Lot Area: 14,226 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 20 Devon Road consists of a 14,226 square foot lot improved with a single-family dwelling constructed in 1892 and a detached garage. The petitioner proposes to construct an internal accessory apartment in a rear addition as well as a second driveway to service the apartment. The proposed rear addition construction will exceed FAR, requiring a special permit.

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

- Zoning Review Application, prepared Anita Rogers architect, dated 3/3/2021
- Drainage Plan of Land, prepared by EMB, surveyor, dated 5/19/2020, revised 2/9/2021
- Architectural Plans and Elevations, signed and stamped by Anita Rogers, architect, dated 2/5/2021
- FAR calculations, signed and stamped by Anita Rogers, architect, submitted 3/3/2021

ADMINISTRATIVE DETERMINATIONS:

1. The petitioners propose to add 781 square feet of living space to the first story to create an internal accessory apartment. The proposed construction of the rear addition increases the FAR from .31 to .36, where .34 is the maximum allowed per sections 3.1.3 and 3.1.9, requiring a special permit.
2. Per section 6.7.1.D.2, an internal accessory apartment may be 33% of the total habitable space of the dwelling or 1,000 square feet, whichever is less. After construction of the addition, the total habitable space of the dwelling will be 4,940 square feet, allowing for a 1,000 square foot internal accessory apartment. The proposed 781 square foot apartment requires no relief.

SR2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	14,226 square feet	No change
Frontage	80 feet	120 feet	No change
Setbacks			
• Front	25 feet	±20 feet	No change
• Side	7.5 feet	±10 feet	7.9 feet
• Rear	15 feet	>60 feet	42.5 feet
Height	36 feet	29.4 feet	No change
Stories	2.5	2.5	No change
FAR	.34	.31	.36
Max Lot Coverage	30%	17.1%	23%
Min. Open Space	50%	66%	59%

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.3	Request to exceed FAR	S.P. per §7.3.3
§3.1.9		

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:

2. Two (2) copies of the completed Special Permit Application (signed by property owner)
3. Filing Fee (see Special Permit Application)
4. Two (2) copies of the Zoning Review Memorandum
5. 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)
6. One (1) Floor Area Ratio (FAR) Worksheet, (signed and stamped by a design professional)
7. One (1) copy of any previous special permits or variances on the property (as applicable)
8. One (1) copy of any other review/sign-off (Historic, Conservation, Tree Removal, etc. as applicable)
9. 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

ATTACHMENT D

CITY OF NEWTON
Department of Public Works
ENGINEERING DIVISION

MEMORANDUM

To: Council Rick Lipof, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – 20 Devon Road

Date: May 3, 2021

CC: Barney Heath, Director of Planning
Jennifer Caira, Deputy Director
Lou Taverna, PE City Engineer
Nadia Khan, Committee Clerk
Neil Cronin, Chief Planner
Michael Gleba, Sr. Planner

In reference to the above site, I have the following comments for a plan entitled:

Drainage Plan of Land in Newton, MA

20 Devon Road

Prepared by: Everett M. Brooks Company

Dated: August 22, 2018

Revised: 4/15/'21

Executive Summary:

This application entails a 781 square foot accessible internal accessory apartment to the existing home. The engineer of record has designed a stormwater collection system to capture and infiltrate the runoff generated from the addition and portions of the existing roof. The design is consistent with the DPW stormwater policy, with the only exception that the test pit & percolation #1 is more than 25-feet from the proposed infiltration drywells; as a matter of housekeeping when the excavation is performed for this proposed system, the engineer of record shall verify the soil type for consistency. The only other housekeeping item is the need for an Operation & Maintenance plan for the proposed drainage system improvements, this can be submitted along with the Building Permit should this application be approved. Once the

O&M plan is approved it must be recorded at the Middlesex Registry of Deeds along with proof of recording.



Proposed location of 2nd driveway apron

A second driveway apron is needed to facilitate the proper grades for the accessibility component of the apartment without the need for a lift nor elevator, the DPW has no objections to this proposed curb cut.

The proposed grading along the western property line will address the localized failure of the retaining wall which was caused by the former tree roots.



View of existing retaining wall along western property line.

Construction Management:

1. Stabilized driveway construction entrance(s) will be required for the duration of the construction which will provide a truck wash to prevent tracking of mud and silt onto City streets.
2. Catch basins within and downstream of the construction zone will be required to have siltation control installed for the duration of the project and must be identified on the site plan.

Drainage:

1. An Operations and Maintenance (O&M) plan for the long-term maintenance of the proposed stormwater management facilities needs to be drafted and submitted for review. Once approved the O&M must be adopted by the applicant/property owner, incorporated into the deeds; and recorded at the Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.
2. It is imperative to note that the ownership, operation, and maintenance of the proposed drainage system and all appurtenances including but not limited to the drywells, catch basins, trench drains, and pipe(s) are the sole responsibility of the property owner(s).

General:

1. 5 Year Moratorium – if at time of construction the roadway is under a 5-year moratorium, the roadway must be milled and paved gutter-to-gutter for a distance of 25 feet in each direction from the outermost trenches.
2. All trench excavation shall comply with Massachusetts General Law Chapter 82A, Trench Excavation Safety Requirements, and OSHA Standards to protect the general public from unauthorized access to unattended trenches or excavations. Trench Excavation Permit is required prior to any construction. This applies to all trenches on public and private property. *This note shall be incorporated onto the final plans.*
3. All tree removal shall comply with the City's Tree Ordinance.
4. The contractor of record is responsible for contacting the Engineering Division and scheduling an appointment 48-hours prior to the date when the utilities will be made available for an inspection of water services, sewer services and drainage system

installation. The utility in question shall be fully exposed for the Inspector to view, backfilling shall only take place when the City Engineer's Inspector has given their approval. *This note shall be incorporated onto the final plans.*

5. The applicant shall apply for a Building Permit with the Inspectional Services Department prior to ANY construction.
6. Before requesting a Certificate of Occupancy, an As Built plan shall be submitted to the Engineering Division in both digital and paper format. The plan shall show all utilities and final grades, any easements and improvements and limits of restoration. The plan shall include profiles of the various new utilities including but not limited to rim & invert elevations (City of Newton Datum), slopes of pipes, pipe materials, and swing ties from permanent building corners. The as built shall be stamped by both a Massachusetts Registered Professional Engineer and Registered Professional Land Surveyor. Once the as-built plan is received the Engineering Division shall perform a final site inspection and then make a determination to issue a Certificate of Occupancy. *This note shall be incorporated onto the final plans.*
7. All site work shall be completed before a Certificate of Occupancy is issued. *This note shall be incorporated onto the final plans.*
8. If any changes from the final approved design plan that are required due to unforeseen site conditions, the contractor of record shall contact the design engineer of record and submit revised design and stamped full scale plans for review and approval prior to continuing with construction.
9. *The engineer of record shall add the following attestation to the plans when applying for a building permit:*

I certify that the construction so shown was inspected prior to backfill and that all work conforms with the Approved Plan and meets or exceeds the City of Newton Construction Standards.

Signature

Note: If the plans are updated it is the responsibility of the applicant to provide all City Departments [ISD, Conservation Commission, Planning and Engineering] involved in the permitting and approval process with complete and consistent plans.

If you have any questions or concerns, please feel free to contact me at 617-796-1023.

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 increase the floor area ratio (FAR) of the existing single-family dwelling from 0.31 to 0.36 where 0.34 is the maximum allowed by right as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. the proposed structure with a floor area ratio of 0.36 where 0.31 exists and 0.34 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 given the topography of the area; that as the proposed addition would have only one story the height of the structure would not be increased; and the addition would have limited visibility from adjacent properties and public ways (§3.1.9)

PETITION NUMBER: #146-21

PETITIONER(S): Simon and Lucia Dolan

LOCATION: 20 Devon Road, on land known as Section 64, Block 4, Lot 4, containing approximately 14,226 sq. ft. of land

OWNER(S): Simon and Lucia Dolan

ADDRESS OF OWNER(S): 20 Devon Road
Newton, MA

TO BE USED FOR: Single-Family Residence

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: Special permit per §7.3.3 to:

- exceed floor area ratio (FAR) (§3.1.3; §3.1.9)

ZONING: Single Residence 2 (SR2) 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. A site plan entitled "Drainage Plan of Land in Newton, MA, 20 Devon Road," prepared by Everett M. Brooks Co., dated August 22, 2018, as revised through April 15, 20121, signed and stamped by Bruce Bradford, Professional Land Surveyor, on April 15, 2021 and Michael S. Kosmo on April 15, 2021.
 - b. A set of architectural plans entitled "Accessible Internal Accessory Apartment, Dolan Residence, 20 Devon Road, Newton, Massachusetts," prepared by Nashawtuc Architects Inc., dated February 5, 2021, signed and stamped by Anita L. Rogers, Registered Architect, consisting of the following sheets:
 - i. First Floor, & Basement Plans Door Schedule (A1))
 - ii. Exterior Elevations and Window Schedule (A2)
 - iii. Exterior Elevations (A3)
 - iv. Sections and Details (A4)
 - c. A document entitled "Floor Area Ratio Worksheet, 20 Devon Road, Newton, MA," indicating a proposed "Total gross floor area" of 5,123.0 square feet and a proposed "FAR" (floor area ratio) of 0.3601, signed and stamped by Anita L. Rogers.
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 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.
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 and certifying compliance with Condition #1, including the as built FAR.
 - 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.