



City of Newton, Massachusetts
Department of Planning and Development
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#211-21

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Ruthanne Fuller
Mayor

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: June 28, 2021
Land Use Action Date: September 14, 2021
City Council Action Date: September 20, 2021
90-Day Expiration Date: September 27, 2021

DATE: June 25, 2021

TO: City Council

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

SUBJECT: **Petition #211-21**, for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Council Order #211-21 to further increase the nonconforming floor area ratio (FAR) from .42 to .44, where .37 is the maximum allowed as of right, to extend the nonconforming three-story structure, and to waive the dormer provisions at **43 Kenwood Avenue**, Ward 6, Newton Centre, on land known as Section 64, Block 20, Lot 22, containing approximately 10,652 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. §3.1.9, §7.8.2.C.2, and §7.4 of the City of Newton Rev Zoning Ord, 2015.

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



43 Kenwood Avenue

EXECUTIVE SUMMARY

The subject property located at 43 Kenwood Avenue contains a 10,667 square foot lot in the Single Residence 2 zone (the "SR-2 zone") in Newton Centre. The lot is improved with a single-family residence constructed circa 1890 which is an example of Colonial Revival architecture. The petitioners received a special permit in 2019 to further increase the nonconforming floor area ratio ("FAR") to construct a second-story rear addition. Prior to the issuance of a building permit, it was determined the structure is a three-story structure due to the topography. As a result, the petition requires additional FAR relief and relief to extend the nonconforming third story.

The petitioners also wish to construct a front dormer to the third story which in addition to creating more FAR, is greater than 50 percent of the length of the exterior wall of the story next below and is within three feet of the intersection of the roof and main building, requiring a special permit. The Planning Department is unconcerned with the petition because: the addition is to the rear of the structure, not visible from the street, and within the existing footprint of the structure; and the is subordinate in height and in massing to the principal structure.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the proposed addition and dormer, which exceeds 50 percent of the length of the exterior wall of the story next below and is within three feet of the intersection of the roof and main building, that further increases the nonconforming FAR, and further extends the nonconforming third story. (§7.3.3.C.1)
- The proposed addition and dormer, which exceeds of 50 percent of the length of the exterior wall of the story next below and is within three feet of the intersection of the roof and main building will adversely impact the neighborhood. (§7.3.3.C.2)
- The proposed addition and dormer, which exceeds of 50 percent of the length of the exterior wall of the story next below and is within three feet of the intersection of the roof and main building will create a nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
- The proposed increase in the nonconforming FAR from .50 to .52, where .37 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. (§3.1.3, and §7.8.2.C.2)
- The proposed increase in the nonconforming FAR from .50 to .52, where .37 is the maximum allowed by-right, is substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§3.1.9, and §7.8.2.C.2)

- The proposed extension of the nonconforming 3.5 story structure is substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§3.1.9, §3.1.3 and §7.8.2.C.2)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

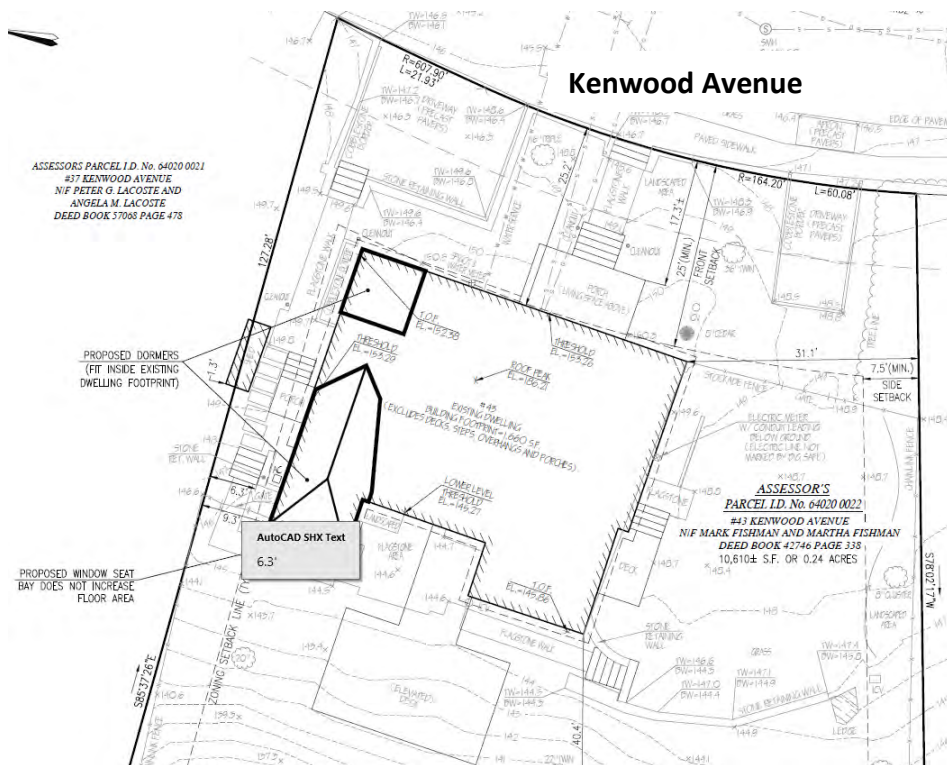
A. Neighborhood and Zoning

The subject property is located on Kenwood Avenue in the SR-2 zone in Newton Centre. The SR-2 zone encompasses the immediate area. As such, the area consists entirely of single-family uses (**Attachments A and B**).

B. Site

The site consists of 10,667 square feet of land and is improved with a 3.5-story Colonial Revival single-family dwelling. The lot is served by two curb cuts providing access to two separate surface parking facilities along the site's frontage. The grade of the lot slopes downward significantly from the rear of the dwelling towards the rear lot line and all four boundaries contain mature landscaping.

Figure I: Site Plan



III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site is and will remain single-family.

B. Building Design

The petitioners previously received approval to construct a second-floor rear addition. Due to the topography, the basement is considered the first floor, which renders the second-floor addition an addition to the nonconforming third story. Additionally, although the addition is the same size, increasing the FAR by 161 square feet, the relief is changing because the entirety of the basement counts towards the FAR, increasing the relief from the previously approved .42 to .44 to the current .50 to .52. The Planning Department is unconcerned with the rear addition, despite the revised relief, because the addition is to the rear and within the footprint, preserving setbacks.

The proposed dormer to the front façade will add 39 square feet of FAR beyond the 161 square feet contained within the rear addition. This dormer is also greater than 50% of the length of the exterior wall of the story next below and within three feet of the end wall, requiring a special permit. The front façade features three different roof types which create the appearance of an articulated front elevation which results in the required relief. As shown in the photo below, the roof where the dormer is proposed (outlined in blue) is subordinate in both height and in massing to the other roof types which will preserve the massing of the structure. As a result, the Planning Department is unconcerned with the proposed dormer.

Figure II: Front Elevation



C. Site Design

The petitioners are not proposing to alter the site.

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 C**). Based on the completed Zoning Review Memorandum, the petitioner is seeking the following relief:

- §3.1.3, §3.1.9 and §7.8.2.C.2 of Section 30, to further increase the nonconforming FAR;
- §3.1.3 and §7.8.2.C.2 of Section 30, to further extend a nonconforming third story;
- §1.5.4.G.2.b and §7.3.3 of Section 30, to allow a dormer exceeding 50% of the length of the exterior wall of the story next below; and
- §1.5.4.G.2.c and §7.3.3 of Section 30, to allow a dormer within three feet of the intersection of the roof and main building.

B. Engineering Review

This petition does not meet the minimum threshold for Engineering Review.

C. Historic Preservation Review

The Chief Preservation Planner previously approved the rear addition. The proposed dormer does not meet the minimum criteria to require review from the Newton Historical Commission. The Chief Preservation Planner will review the plans for the addition again prior to the issuance of a building permit, should this petition be approved.

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:** DRAFT Council Order

Attachment A Zoning Map Kenwood Ave., 43

*City of Newton,
Massachusetts*

Legend

-  Single Residence 2
-  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

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Feet

Map Date: October 22, 2018



Attachment B Land Use Map Kenwood Ave., 43

*City of Newton,
Massachusetts*

Legend

Land Use

Land Use

-  Single Family Residential
-  Vacant Land
-  Building Outlines
-  Surface Water
-  Property Boundaries



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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: June 3, 2021

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Mark and Martha Fishman, Applicants
Stephan Potts, Architect
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: Request to further increase the nonconforming FAR, to increase the nonconforming third story, and to allow an oversized dormer

Applicant: Mark and Martha Fishman	
Site: 43 Kenwood Avenue	SBL: 64020 0022
Zoning: SR2	Lot Area: 10,652 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 43 Kenwood Avenue consists of a 10,652 square foot lot improved with a single-family residence constructed circa 1890. Due to the average grade, the basement level is considered the first story, resulting in a 3.5 story structure. The petitioners propose to construct a rear addition and to construct a dormer to the front facade. The proposed changes will further increase the nonconforming FAR, increase the nonconforming third story, and create an oversized dormer, requiring a special permit.

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

- FAR Worksheet, submitted 8/2/2018
- Plot Plan, prepared by Merrill Engineers and Surveyors, surveyor, dated 3/4/2021
- Architectural Plans, signed and stamped by Stanev Potts Architects, dated 5/27/2021

ADMINISTRATIVE DETERMINATIONS:

1. The FAR is .50, where .37 is the maximum allowed. The proposed addition and dormer add 200 square feet to the dwelling, resulting in an FAR of .52. A special permit pursuant to Sections 3.1.9 and 7.8.2.C.2 is required to further increase the nonconforming FAR.
2. Due to the average grade, the basement is considered the first story, resulting in a 3.5-story structure, where 2.5 stories are the maximum allowed per section 3.1.3. The petitioners propose to an addition and a dormer addition to the third story. To further increase the nonconforming third story requires a special permit per sections 3.1.3 and 7.8.2.C.2.
3. Per section 1.5.4.G.2.b, a dormer may be no wider than 50% of the length of the exterior wall of the story next below. The petitioners propose to construct a dormer within the footprint of a second-story bump out. The proposed dormer is 100% of the width of the story next below, requiring a special permit.
4. Per section 1.5.4.G.2.c, a dormer may not be closer than three feet from the vertical plane of the intersection with the roof and the main building without a special permit. The petitioners proposes a dormer that extends to the intersection with the roof and main building with no separation, requiring a special permit.

SR2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	10,667 square feet	No change
Frontage	80 feet	82 feet	No change
Setbacks			
• Front	25 feet	~30 feet	No change
• Side	7.5 feet	9.2 feet	No change
• Rear	15 feet	39.8 feet	No change
Max Number of Stories	2.5	3.5	No change
Height	36 feet	29.2 feet	No change
FAR	.37	.50	.52

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§3.1.3, §3.1.9 §7.8.2.C.2	Request to further increase nonconforming FAR	S.P. per §7.3.3
§3.1.3 §7.8.2.C.2	Request to further increase a nonconforming third story	S.P. per §7.3.3
§1.5.4.G.2.b	Request to allow a dormer exceeding 50% of the length of the exterior wall of the story next below	S.P. per §7.3.3

§1.5.4.G.2.c	Request to allow a dormer within three feet of the intersection of the roof and main building	S.P. per §7.3.3
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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

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 .50 to .52, where .37 is the maximum allowed as of right, to further extend the nonconforming third story, and to waive the dormer provisions as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The specific site is an appropriate location for the proposed addition and dormer, which exceeds 50 percent of the length of the exterior wall of the story next below and is within three feet of the intersection of the roof and main building, that further increases the nonconforming FAR, and further extends the nonconforming third story because the site is improved with a single-family dwelling which is an allowed use in the Single Residence 1 district. (§7.3.3.C.1)
2. The proposed addition and dormer, which exceeds of 50 percent of the length of the exterior wall of the story next below and is within three feet of the intersection of the roof and main building will adversely impact the neighborhood because the dormer is subordinate to the primary massing. (§7.3.3.C.2)
3. The proposed addition and dormer, which exceeds of 50 percent of the length of the exterior wall of the story next below and is within three feet of the intersection of the roof and main building will not create a nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
5. The proposed increase in the nonconforming FAR from .50 to .52, where .37 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 bulk of the FAR increase is to the rear of the structure, not visible from the street . (§3.1.3, and §7.8.2.C.2)
6. The proposed increase in the nonconforming FAR from .50 to .52, where .37 is the maximum allowed by-right, is substantially more detrimental than the existing

nonconforming structure is to the neighborhood because all work is within the footprint, preserving setbacks. (§3.1.9, and §7.8.2.C.2)

7. The proposed extension of the nonconforming 3.5 story structure is substantially more detrimental than the existing nonconforming structure is to the neighborhood because the additions are within the footprint, preserving setbacks . (§3.1.9, §3.1.3 and §7.8.2.C.2)

PETITION NUMBER: #211-21

PETITIONER: Mark and Marth Fishman

LOCATION: 43 Kenwood Avenue, on land known as Section 64, Block 20, Lot 22, containing approximately 10,652 square feet of land

OWNER: Mark and Marth Fishman

ADDRESS OF OWNER: 43 Kenwood Avenue
Newton, MA 02459

TO BE USED FOR: Single-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.3, §3.1.9 and §7.8.2.C.2 of Section 30, to further increase the nonconforming FAR; §3.1.3 and §7.8.2.C.2 of Section 30, to further extend a nonconforming third story; §1.5.4.G.2.b and §7.3.3 of Section 30, to allow a dormer exceeding 50% of the length of the exterior wall of the story next below; and §1.5.4.G.2.c and §7.3.3 of Section 30, to allow a dormer within three feet of the intersection of the roof and main building.

ZONING: Single Residence 2 district

This property is governed by Council Order #513-18 which approved an increase in the nonconforming floor area ratio to construct a rear addition. This Special Permit/Site Plan Approval supersedes Council Order #513-18. As such, Council Order #513-18 is null and void.

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, prepared by Merrill Engineers and Surveyors, unsigned and unstamped, dated March 4, 2021.
 - b. Architectural Plans, prepared by Stanev Potts Architects, signed and stamped by Stephan K. Potts, dated February 8, 2021, consisting of the following four (4) sheets:
 - i. G-001 Cover Sheet
 - ii. A-100 Demolition Scope
 - iii. A-200 Floor Plans and Interior Elevations
 - iv. A-300 Elevations and Building Sections
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. 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.
4. 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 an architect 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 architect.