



# Land Use Committee Report

## City of Newton

### In City Council

**Tuesday, June 29, 2021**

**Present:** Councilors Lipof (Chair), Kelley, Greenberg, Lucas, Markiewicz, Downs, Bowman and Laredo; also Present: Councilors Wright

**City Staff Present:** Senior Planner Katie Whewell, Senior Planner Michael Gleba, Director of Planning and Development Barney Heath, Associate City Solicitor Jonah Temple

All Special Permit Plans, Plan Memoranda and Application Materials can be found at the following link <https://www.newtonma.gov/government/city-clerk/city-council/special-permits/-folder-1058>. Presentations for each project can be found at the end of this report.

**#211-21**      **Petition to extend nonconforming FAR and third story at 43 Kenwood Avenue**  
MARK AND MARTHA FISHMAN petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a rear addition and construct an oversized dormer to the front façade, extending the nonconforming third story and the nonconforming FAR 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. 7.3, 7.4, 7.8.2.C.2, 3.1.9, 3.1.3, 1.5.4.G.2.b of the City of Newton Rev Zoning Ord, 2017.

**Action:**      **Land Use Approved 8-0; Public Hearing Closed 06/29/2021**

**Note:**      Architect Stephen Potts represented Mark and Martha Fishman. Mr. Potts presented the request to extend the nonconforming FAR and third-story structure at 43 Kenwood Avenue. In 2018, the petitioners received a special permit to construct a single-story rear addition to the structure with nonconforming FAR. After approval, it was determined that the FAR calculation approved was inaccurate. Because the lot is sloped towards the rear, the basement counts as a full story and was not accounted for during the special permit process. The petitioner is seeking to remedy the FAR miscalculation and has additional proposed relief for a dormer with a window at the front ceiling on what is considered the third floor.

Chief Planner Neil Cronin reviewed the requested relief, criteria for consideration, land use, zoning and proposed plans as shown on the attached presentation. Mr. Cronin stated that the proposed dormer will be subordinate to the existing massing.

The Public Hearing was opened. No member of the public wished to speak. Mr. Potts noted that the proposed plans have been communicated to neighbors, who have been supportive. The Committee was supportive of the proposed plans. Councilor Bowman motioned to close the public hearing which carried

unanimously. Councilor Bowman motioned to approve the petition. The Committee reviewed the draft findings and conditions as shown attached and voted unanimously in favor of approval.

**#71-20**      **Amended Petition to allow 2734-unit multi-family dwelling at 1114 Beacon Street**  
1114 BEACON STREET LLC. petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a 2734-unit multi-family dwelling greater than 20,000 sq. ft. of new gross floor area, a four-story structure up to 48' in height, to allow ground floor residential use, to allow an FAR of up to 2.0, a waiver for parking in the side setback, a waiver of the minimum stall depth requirements, relief to allow 1.25 parking stalls per unit, and a waiver of the sustainable design standards at 1114 Beacon Street, Ward 6, Newton Highlands, on land known as Section 54 Block 22 Lot 04, containing approximately 51,745 sq. ft. of land in a district zoned BUSINESS USE 2. Ref: Sec. 7.3.3, 7.4, 4.4.1, 4.1.2.B.1, 4.1.2.B.3, 4.1.3, 7.8.2.C.2, 5.1.4.A, 5.1.13, 5.1.7.A, 5.1.8.B.2, 5.1.8.D.2, 5.4.2.B, 5.12 of the City of Newton Rev Zoning Ord, 2017.

**Action:**      **Land Use Held 8-0; Public Hearing Continued**

**Note:**      After discussion and public comment, the Committee held item #71-20. An amended report reflecting the discussion will be available on Friday, July 16, 2021.

**#179-21**      **Petition to allow 174-unit congregate living facility at 333 Nahanton Street/677 Winchester Street**  
2LIFE HOLDINGS LLC/2LIFE COLEMAN LIMITED PARTNERSHIP petition for SPECIAL PERMIT/SITE PLAN APPROVAL to create a 6-acre development using land from 333 Nahanton Street to construct a 174-unit congregate living facility with amenity space, connected to the Coleman House via an enclosed walkway, on a new 218,583 subdivided portion of the lot, to determine density and dimensional controls, to allow assigned parking, to allow parking in the side setback, to allow parking within five feet of a building containing dwelling units, to allow reduced parking stall width and depth, to allow reduced accessible stalls, to allow reduced aisle width, to waive perimeter landscaping requirements, to waive lighting requirements for outdoor parking and to allow three years to exercise the special permit at 333 Nahanton Street and 677 Winchester Street, Ward 8, Newton Centre, on land known as Section 83 Block 35 Lots 04 and 04B, containing approximately 1,225,207 sq. ft. of land in a district zoned SINGLE RESIDENCE 1.f Ref: 7.3.3, 7.4, 7.3.2.E, 3.4.1, 3.2.2.A.3, 3.1.2.A.3, 5.1.3.E, 5.1.8.A.1, 5.1.8.A.2, 5.1.8.B.1, 5.1.8.B.2, 5.1.8.B.4, 5.1.8.C.1, 5.1.9.A.1.i, 5.1.10.A.1 of the City of Newton Rev Zoning Ord, 2017.

**Action:**      **Land Use Held 8-0; Public Hearing Continued**

**#201-21**      **Petition to amend Special Permits at 333 Nahanton Street**  
JEWISH COMMUNITY CENTERS OF GREATER BOSTON, INC. petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend special permit Council Orders #175-18, #147-79, #147-79(2), #292-93 to permit the sale of approximately 218,583 sq. ft. to 2Life Holdings to allow the construction of a congregate living facility, and to allow three years to exercise this amendment at 333 Nahanton Street, Ward 8, Newton Centre, on land known as Section 83 Block 35 Lots 04 and 04B, containing approximately 1,225,207 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: 7.3.3, 7.4, 7.3.2.E, 3.4.1, 3.2.2.A.3, 3.1.2.A.3,

5.1.3.E, 5.1.8.A.1, 5.1.8.A.2, 5.1.8.B.1, 5.1.8.B.2, 5.1.8.B.4, 5.1.8.C.1, 5.1.9.A.1.i, 5.1.10.A.1 of the City of Newton Rev Zoning Ord, 2017.

**Action:** **Land Use Held 8-0; Public Hearing Continued**

**Note:** After discussion and public comment, the Committee held item #201-21. An amended report reflecting the discussion will be available on Friday, July 16, 2021.

**#178-21 Petition to allow marijuana retailer at 1158 Beacon Street**

UNION TWIST, INC. petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to allow a retail marijuana establishment, to allow assigned parking, and to waive lighting requirements at 1158 Beacon Street, Ward 6, Newton Highlands, on land known as Section 54 Block 22 Lot 49A, containing approximately 20,443 sq. ft. of space in a district zoned BUSINESS USE 2. Ref: Sec. 7.3.3, 7.4, 6.10.3.D, 4.4.1, 5.1.10, 5.1.3.E, 5.1.13 of the City of Newton Rev Zoning Ord, 2017.

**Action:** **Land Use Held 8-0; Public Hearing Continued**

**Note:** After discussion and public comment, the Committee held item #178-21. An amended report reflecting the discussion will be available on Friday, July 16, 2021.

The Committee adjourned at 11:00 pm.

**Respectfully Submitted,**

**Richard Lipof, Chair**

# Department of Planning and Development



**PETITION #211-21  
43 KENWOOD AVENUE**

SPECIAL PERMIT/SITE PLAN APPROVAL  
TO AMEND COUNCIL ORDER #513-18  
TO FURTHER INCREASE THE  
NONCONFORMING FLOOR AREA RATIO  
TO EXTEND THE NONCONFORMING  
THIRD STORY AND TO ALLOW  
WAIVERS TO THE DORMER  
PROVISIONS



JUNE 29, 2021

# Requested Relief



Special Permits per §7.3.3 and §7.8.2.C.2 of the NZO to:

- Amend Council Order #513-18
- Further increase the nonconforming floor area ratio. (§3.1.3 and §3.1.9)
- Further extend the nonconforming third story (§3.1.3)
- Allow waivers to the dormer provisions (1.5.4.G)

# Criteria to Consider



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, **creates a continual wall plane beyond two stories**, 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, **creates a continual wall plane beyond two stories**, 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, **creates a continual wall plane beyond two stories**, 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)

# Criteria to Consider Continued



- 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)

# Aerial/GIS Map





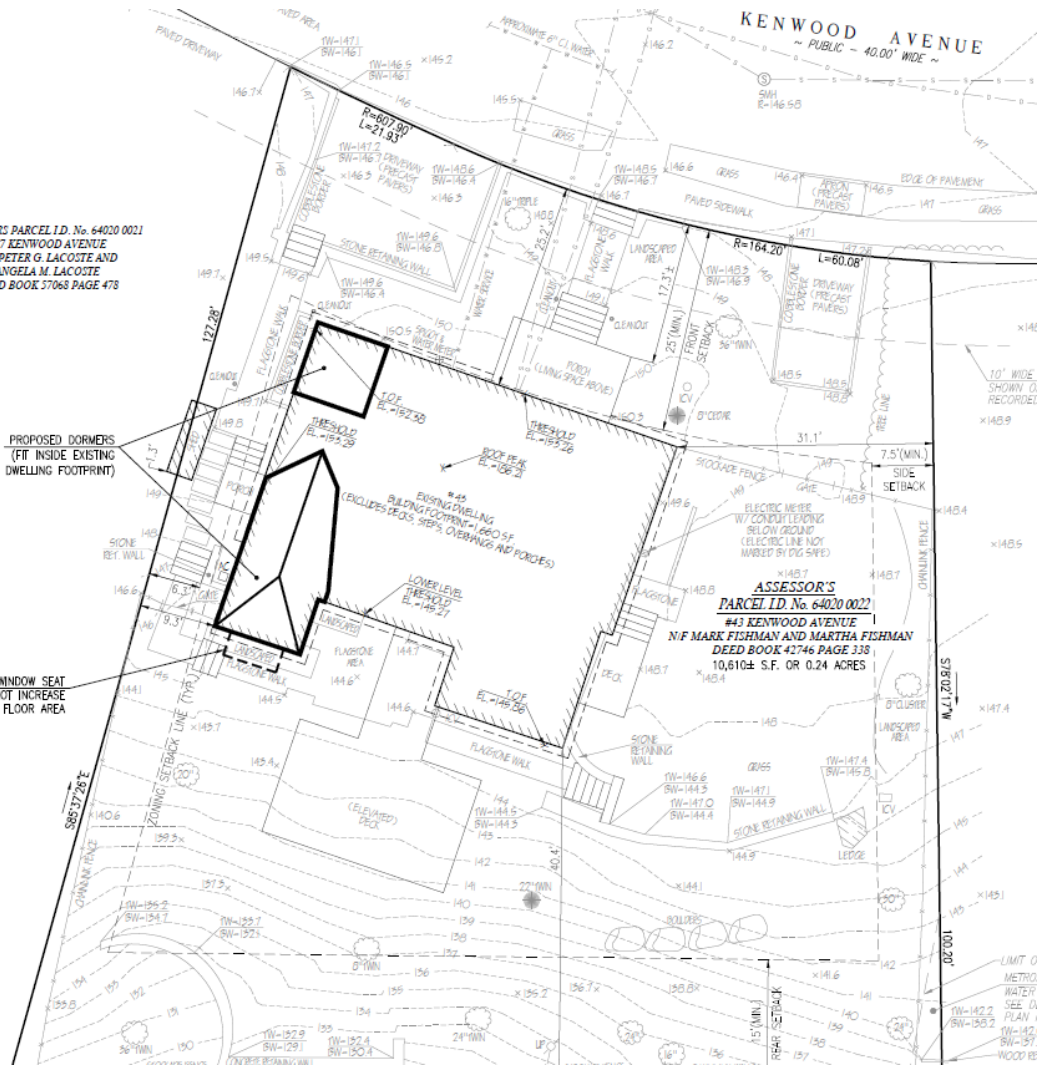
# Site Plan



ASSESSOR'S PARCEL I.D. No. 64020 0021  
 #37 KENWOOD AVENUE  
 N/F PETER G. LACOSTE AND  
 ANGELA M. LACOSTE  
 DEED BOOK 57063 PAGE 478

PROPOSED DORMERS  
 (FIT INSIDE EXISTING  
 DWELLING FOOTPRINT)

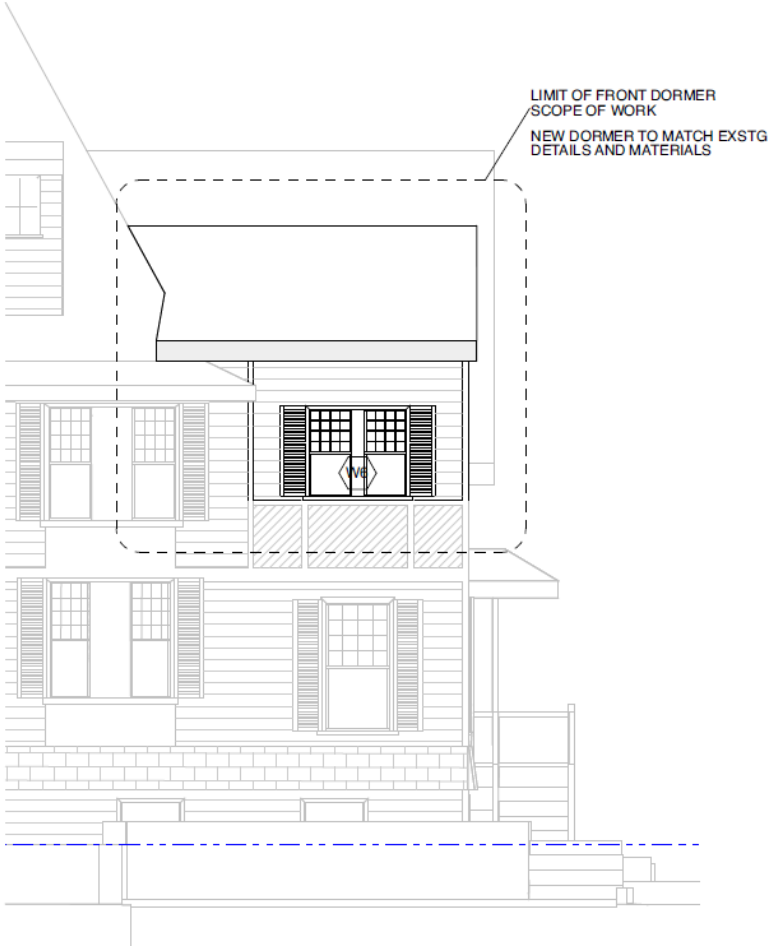
PROPOSED WINDOW SEAT  
 BAY DOES NOT INCREASE  
 FLOOR AREA



ASSESSOR'S  
 PARCEL I.D. No. 64020 0022  
 #43 KENWOOD AVENUE  
 N/F MARK FISHMAN AND MARTHA FISHMAN  
 DEED BOOK 41746 PAGE 338  
 10,610± S.F. OR 0.24 ACRES

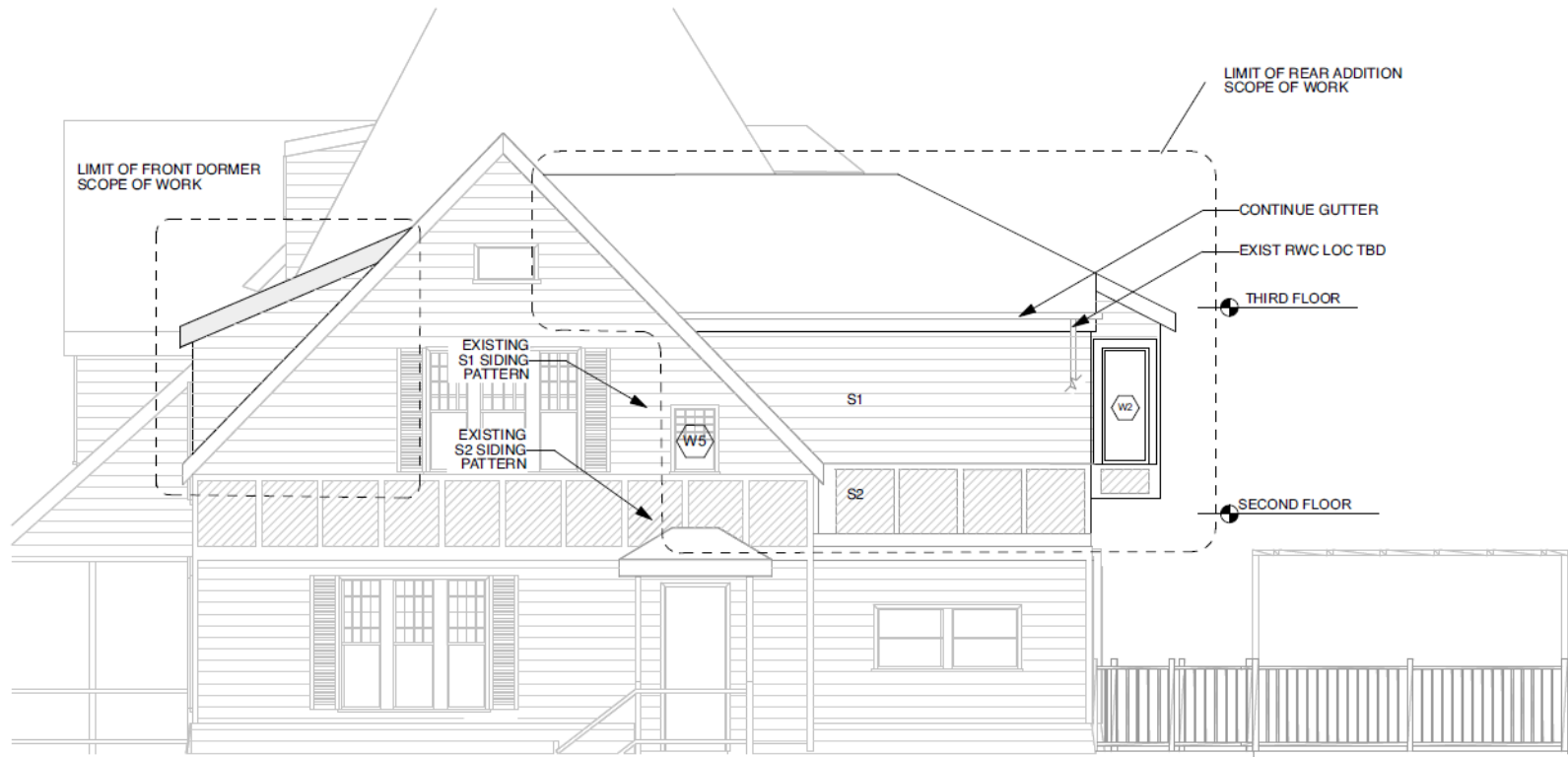
LIMIT O  
 METRO  
 WATER  
 SEE O  
 PLAN 1  
 TW-142  
 SW-137  
 WOOD B

# Proposed Front Elevation



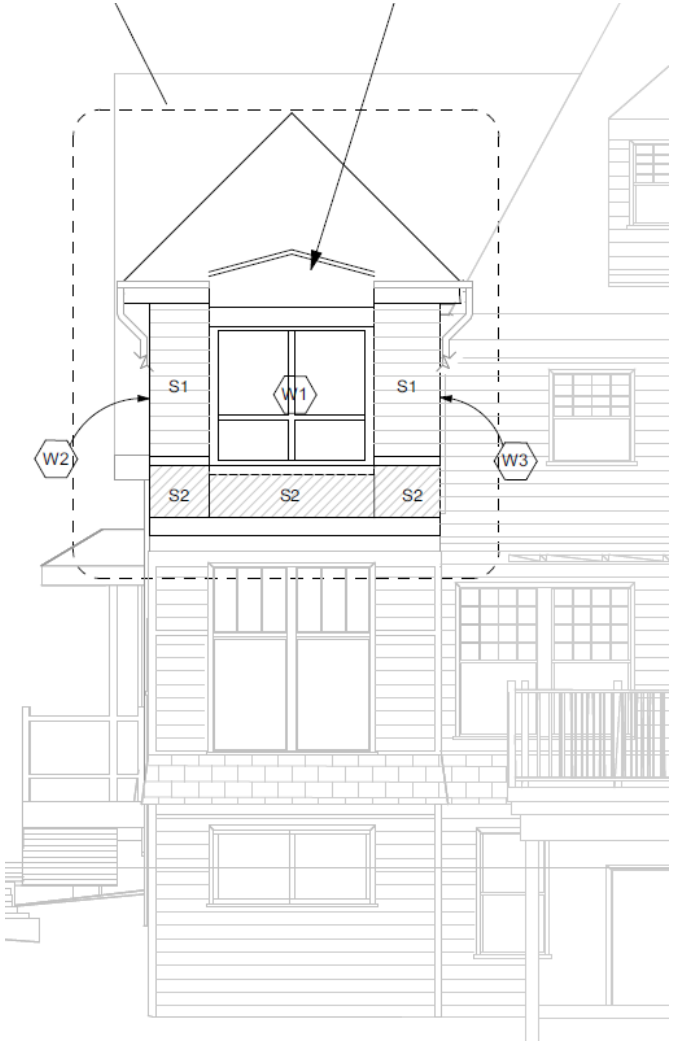
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# Proposed Right Elevation



**7** NORTH ELEVATION  
SCALE: 1/4" = 1'-0"

# Proposed Rear Elevation



# Existing Front Elevation



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, [creates a continual wall plane beyond two stories](#), 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, [creates a continual wall plane beyond two stories](#) 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, [creates a continual wall plane beyond two stories](#) 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; [§1.5.4.G.2.a and §7.3.3 of Section 30, to allow a dormer creating a continual wall plane beyond two stories](#); 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.