

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 certain 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, is within three feet of the intersection of the roof and main building, 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 not 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 the bulk of the FAR increase is to the rear of the structure and not visible from the street. (§3.1.3; §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 not substantially more detrimental than the existing

nonconforming structure is to the neighborhood because all proposed square footage is within the footprint, preserving setbacks. (§3.1.9; §7.8.2.C.2)

7. The proposed extension of the nonconforming 3.5 story structure is not 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; §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 was previously governed by Special Permit #513-18, which approved an increase in the nonconforming floor area ratio to construct a rear addition. This Special Permit #211-21 supersedes Special Permit #513-18 and consolidates and incorporates herein the findings and relief from that prior special permit, as well as all conditions that remain applicable. Accordingly, Special Permit #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 professional land surveyor.