



Ruthanne Fuller
Mayor

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#190-22

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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: April 5, 2022
Land Use Action Date: June 14, 2022
City Council Action Date: June 20, 2022
90-Day Expiration Date: July 4, 2022

DATE: April 1, 2022

TO: City Council

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

SUBJECT: **Petition #190-22** for SPECIAL PERMIT/SITE PLAN APPROVAL to raze a detached garage and construct additions exceeding FAR, to allow an oversized dormer, and to allow a retaining wall exceeding 4 feet within the setback at **20 Morton Street**, Ward 2, Newton, on land known as Section 13 Block 27 Lot 01, containing approximately 15,064 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 3.1.3, 3.1.9, 1.5.4.G.2.b, 5.4.2.B 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 Morton Street

EXECUTIVE SUMMARY

The property at 20 Morton Street consists of a 15,064 square foot corner lot in a Single Residence 2 (SR2) district improved with a 3,284 square foot, 2 ½ story 30-foot-high single-family dwelling constructed in 1935 and 431 square foot detached garage.

The petitioners propose to raze a detached garage and construct additions, including an attached two-car garage and 2.5 stories of living space, at the rear and on the side, adding 1,940 square feet to the dwelling. The proposed construction would increase the floor area ratio (FAR) from 0.25 to 0.38, where 0.33 is the maximum allowed per Sections 3.1.3 and 3.1.9 of the Newton Zoning Ordinance (NZO), requiring a special permit per Sec. 3.1.9.A.2.

The petitioners propose dormers at the front and rear of the dwelling. The dormer proposed for the dwelling's rear would be 11.83 feet long, 52% of the 21.67-foot width of wall next below. Since a dormer may be no wider than 50% of the exterior wall of the story next below per Sec. 1.5.4.G.2, this proposed dormer requires a special permit.

Lastly, the petitioners propose to construct retaining walls to the north and west of the dwelling that would reach a maximum height of 8.1 feet within the Mill Street front setback, requiring a special permit per Sec. 5.4.2.B to allow a retaining wall within a setback exceeding four feet in height.

While Planning Department is generally not concerned with the proposal, it does have some specific comments below regarding the appropriateness of certain portions of the proposed retaining walls along Mill Street and the need for vegetative screening in that area as well as in the vicinity of the addition proposed for the right side of the dwelling along Morton Street.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The site in a Single Residence 2 (SR2) district is an appropriate location for the project as designed with an oversized dormer and retaining walls higher than four feet in height (§7.3.3.C.1)
- The project as designed with an oversized dormer and retaining walls higher than four feet in height will adversely affect the neighborhood (§7.3.3.C.2)
- The project as designed with an oversized dormer and retaining walls higher than four feet in height 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); and
- the proposed structure with an FAR of 0.38 where 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 (§3.1.3; §3.1.9)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located at the intersection of Morton and Mill streets. The site's single-family use is consistent with the surrounding area, which is similarly developed with single family dwellings, with the sole exception being Edmands Park to the west (**Attachment A**). The site and surrounding area are uniformly zoned SR2, with the Public Use (PU) zoned Edmands Park being the only exception (**Attachment B**).

B. Site

The property consists of a 15,064 square foot corner lot improved with a 3,284 square foot, 2 ½ story, 30-foot-high single-family dwelling and 431 square foot detached garage.

The lot slopes upward approx. 25 feet from north to south. Vehicular access to the property and the existing garage is provided via a paved driveway along the southern property line, i.e., the right side of the Morton Street frontage.

The remaining portions of the site are considerably vegetated with some lawn area and mature trees and shrubbery.

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 raze a detached garage and construct additions, including an attached two-car garage and 2 ½ stories of living space at the rear and on the side of the dwelling.

Approximately 540 square feet would be added to the first story, 787 square feet to the second story and 414 square feet to the attic level. Combined with the basement level that would be expanded by 627 square feet and accommodate the proposed attached garage, the area countable toward the FAR would increase in the aggregate by 1,940 square feet, from 3,715 to 5,655 square feet. As such, the proposed work would increase the property's conforming floor area ratio (FAR) of 0.25 to 0.38 where 0.33 is the maximum allowed by right.

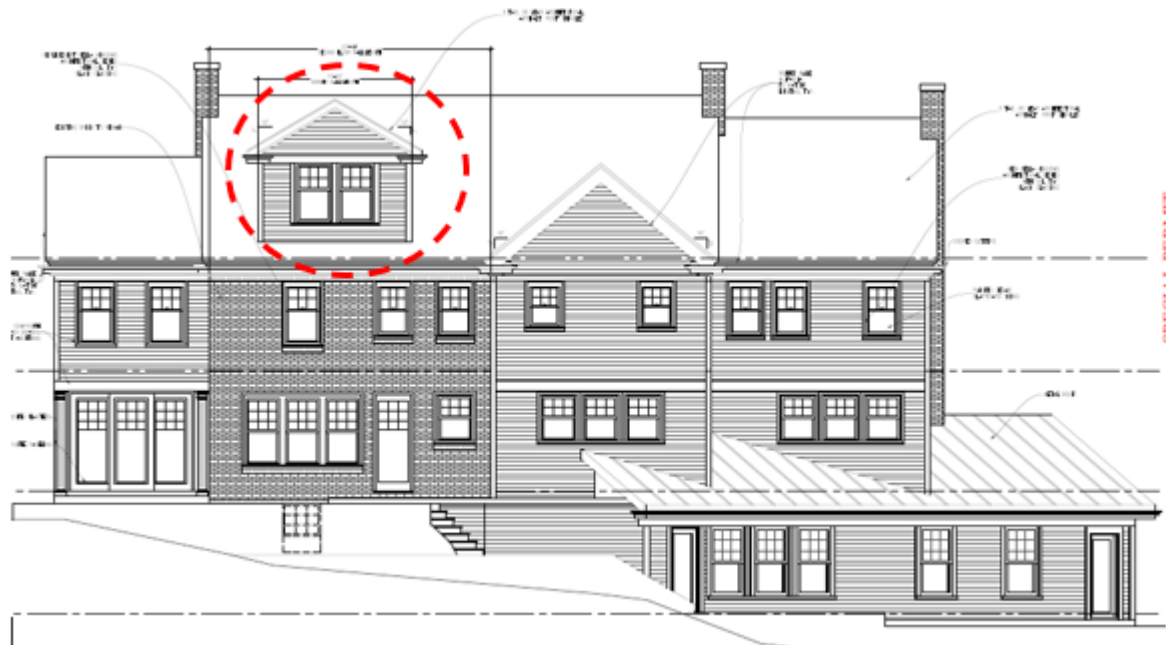
Regarding setbacks, the front setback along Morton Street would remain unchanged, as would the rear setback. The Mill Street front setback would be reduced from 30.7 to 25.2 feet, slightly more than the 25 feet required, while the side setback would be reduced from 13.9 to 7.6 feet, similarly slightly more than the required 7.5 feet.

The petitioners propose dormers at the front and rear of the dwelling. The dormer proposed for the dwelling's rear would be 11.83 feet long, 52% of the 21.67-foot width of wall next below. Since a dormer may be no wider than 50% of the exterior wall of the story next below per Sec. 1.5.4.G.2, this proposed dormer requires a special permit.

Lastly, the petitioners propose to construct retaining walls to the north and west of the dwelling that would reach a maximum height of 8.1 feet within the Mill Street front setback. The walls would serve largely to facilitate the proposed driveway and parking areas discussed below. Other sections of proposed walls would also allow the construction of paved walkway and patio space along the Mill Street side of the property.

The property's Lot Coverage would increase from 12.4% to 15.9% remaining well below the maximum 30% allowed. Its Open Space would be decreased from 76.9% to 70.8% but remain well above the minimum 50% allowed.

Also, the petitioners propose dormers at the front and rear of the dwelling. The dormer proposed for the dwelling's "rear" façade facing Mill Street would be 11.83 feet long, 52% of the 21.67-foot width of wall next below. The Planning Department notes that that proposed dormer is oversized relative to a specific portion of the articulated wall of the second floor below, not the full width of the second floor.



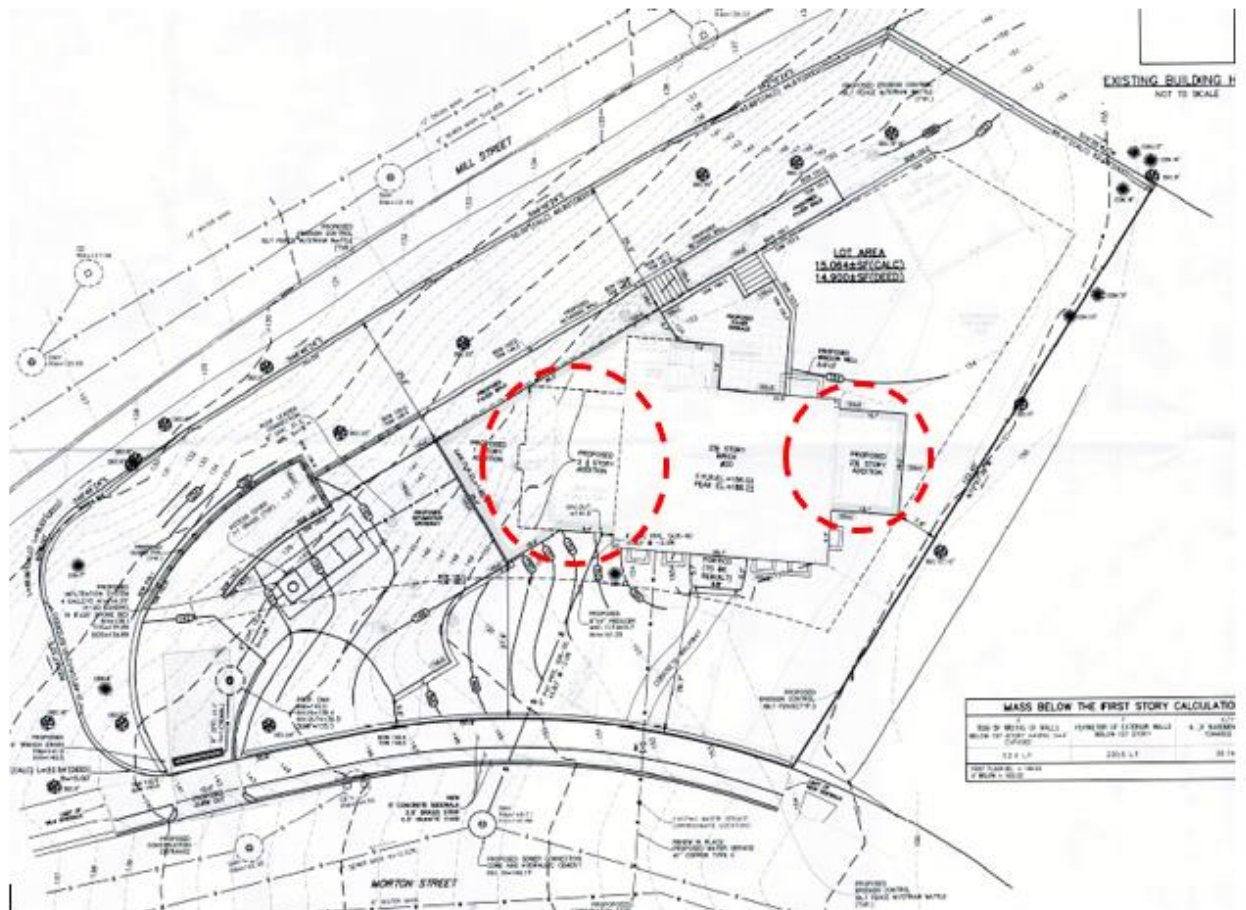
Rear elevation (with dormer indicated)

C. Parking and Circulation

The petitioners propose to raze a detached garage and construct an attached two-car garage within additions that would be constructed at the northly portion of the dwelling. The new garage would be accessed via a new curb cut and associated paved driveway located further to the north along Morton Street.

The Planning Department notes that the proposed site plan indicates a paved area adjacent to the driveway that would serve the new attached garage. It is surrounded on three sides by

retaining walls, considerable portions of which are within the Mill Street front setback. Given the relatively large increase in impermeable surface proposed and the amount of paving between Morton Street and the proposed two garage (including an additional hammerhead section toward Morton Street), the Department recommends that the petitioner reconsider this area which appears to be intended for use as additional parking (although this perhaps might not be the case). The Department notes that its modification might eliminate the need for at least some of the zoning relief need for the walls in a setback.



Proposed site plan (proposed additions indicated)

D. Landscaping

A landscaping plan was not submitted with this petition. The Planning Department recommends that the petitioner provide screening in the vicinity of the addition proposed along the right side of the property along Morton Street where the current driveway is located. It is also recommended that the petitioner explore vegetative screening of the proposed walls that would face Mill Street and be within that front setback to mitigate their visual impact on the streetscape.

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)
- allow an oversized dormer (§1.5.4.G.2.b)
- allow a retaining wall exceeding 4 ft in the setback (§5.4.2.B)

B. Engineering Review

In the event the requested special permit is granted, the proposed work would increase the amount of impervious area by approximately 1,944 square feet (12% of the lot size), the project will require review by the Engineering Division before the issuance of a building permit

C. Historic Review

On September 24, 2021, the Newton Historic Commission resolved to preferably preserve the dwelling but to waive the demolition delay based on approved plan. On that same day, it also found the garage not preferably preserved, requiring no further review.

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



Land Use

20 Morton St.

*City of Newton,
Massachusetts*

Land Use

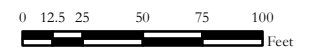
Land Use

-  Single Family Residential
-  Open Space



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: March 28, 2022





ATTACHMENT B

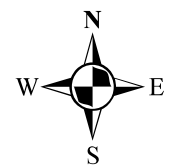
Zoning

20 Morton St.

*City of Newton,
Massachusetts*

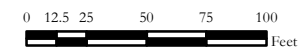
Legend

-  Single Residence 2
-  Public Use

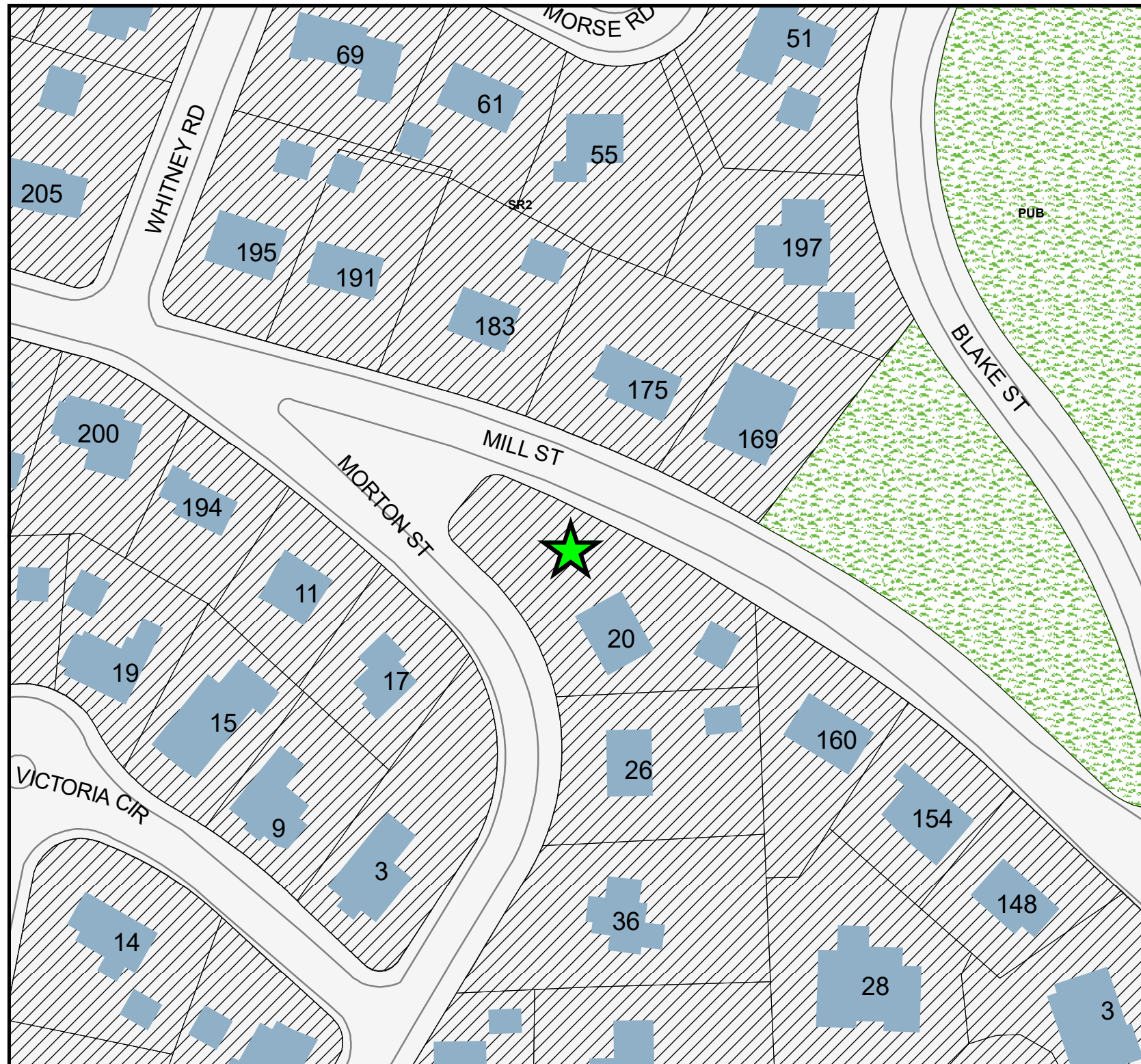


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CITY OF NEWTON, MASSACHUSETTS
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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: February 15, 2022

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Peter Sachs, Architect
Brian and Shana Hickey, Applicants
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: **Request to exceed FAR, to allow an oversized dormer, and allow a retaining wall exceeding four feet in height within a setback**

| Applicant: Brian & Shana Hickey | |
|-------------------------------------|------------------------------|
| Site: 20 Morton Street | SBL: 13027 0001 |
| Zoning: SR2 | Lot Area: 15,064 square feet |
| Current use: Single-family dwelling | Proposed use: No change |

BACKGROUND:

The property at 20 Morton Street consists of a 15,064 square foot lot improved with a single-family dwelling constructed in 1935. The petitioner proposes to raze an existing detached garage and construct additions including an attached two-car garage and 2.5 stories of living space. The proposed construction will exceed the maximum FAR, require a waiver from the dormer provisions, and include retaining walls exceeding four feet in height in the setback, requiring a special permit.

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

- Zoning Review Application, prepared Peter Sachs, architect, dated 1/6/2022
- Existing Conditions Plot Plan, signed and stamped by Joseph R. Porter, surveyor, dated 4/17/2017
- Proposed Conditions Plot Plan, signed and stamped by Joseph R. Porter, surveyor, dated 11/19/2021, revised
- Floor Plans and Elevations, signed and stamped by Peter Sachs, architect, dated 12/21/2021
- FAR calculations, signed and stamped by Peter Sachs, architect, submitted 1/6/2022

ADMINISTRATIVE DETERMINATIONS:

1. The petitioners propose to raze a detached garage and construct additions including an attached two-car garage and 2.5 stories of living space at the rear and on the side, adding 1,940 square feet to the dwelling. The proposed construction increases the FAR from .25 to .38, where .33 is the maximum allowed per sections 3.1.3 and 3.1.9. A special permit per section 3.1.9.A.2 is required to exceed FAR.
2. The petitioners propose dormers at the front and rear of the dwelling. Per section 1.5.4.G.2.b, a dormer may be no wider than 50% of the exterior wall of the story next below. The proposed dormer on the rear of the dwelling is 11.83 feet long where the wall next below is 21.67 feet, resulting in a dormer that is 52%, requiring a special permit.
3. To accommodate the new construction, the petitioners propose to construct retaining walls to the north and west of the dwelling. Per section 5.4.2.B a retaining wall within a setback exceeding four feet in height requires a special permit. The proposed walls reach a maximum height of 8.1 feet within the front setback from Mill Street, requiring a special permit.

| SR2 Zone | Required | Existing | Proposed |
|---|---|--|---|
| Lot Size | 10,000 square feet | 15,064 square feet | No change |
| Frontage | 80 feet | 112 feet | No change |
| Setbacks - Principal <ul style="list-style-type: none"> • Front (Morton St) • Front (Mill St) • Side • Rear | 25 feet 25 feet 7.5 feet 15 feet | 27.6 feet 30.7 feet 13.9 feet 61.5 feet | No change 25.2 feet 7.6 feet No change |
| Height | 36 feet | 30 feet | No change |
| Stories | 2.5 | 2.5 | No change |
| FAR | .33 | .25 | .38 |
| Max Lot Coverage | 30% | 12.4% | 15.9% |
| Min. Open Space | 50% | 76.9% | 70.8% |

1. See “Zoning Relief Summary” below:

| Zoning Relief Required | | |
|------------------------|---|------------------------|
| <i>Ordinance</i> | | <i>Action Required</i> |
| §3.1.3 §3.1.9 | Request to exceed FAR | S.P. per §7.3.3 |
| §1.5.4.G.2.b | Request to allow an oversized dormer | S.P. per §7.3.3 |
| §5.4.2.B | Request to allow a retaining wall exceeding 4 ft in the setback | 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:

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 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 a SPECIAL PERMIT/SITE PLAN APPROVAL to exceed the allowed floor area ratio (FAR) (§3.1.3; §3.1.9), allow an oversized dormer (§1.5.4.G.2.b), and allow a retaining wall exceeding 4 ft in the setback (§5.4.2.B), as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

1. The site in a Single Residence 2 (SR2) district is an appropriate location for the project as designed with an oversized dormer and retaining walls higher than four feet in height given the limited visual impact of the proposed oversized dormer and the sloped topography of the property (§7.3.3.C.1)
2. The project as designed with an oversized dormer and retaining walls higher than four feet in height will not adversely affect the neighborhood given the limited visual impact of the proposed oversized dormer and the sloped topography of the property (§7.3.3.C.2)
3. The project as designed with an oversized dormer and retaining walls higher than four feet in height will 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); and
5. the proposed structure with an FAR of 0.38 where 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 as other dwellings in the area feature are of similar scope and visual presence (§3.1.3; §3.1.9)
- 6.

PETITION NUMBER: #190-22

PETITIONER: Brian Hickey and Shana Hickey

LOCATION: 20 Morton Street, Section 130, Block 27, Lot 1, containing approximately 15,064 square feet of land

OWNER: Brian Hickey and Shana Hickey

ADDRESS OF OWNER: 20 Morton Street
Newton, MA

TO BE USED FOR: Single-Family Residence

CONSTRUCTION: Wood Frame

EXPLANATORY NOTES: Special Permit per §7.3.3 to:

- exceed allowed floor area ratio (FAR) (§3.1.3; §3.1.9)
- allow an oversized dormer (§1.5.4.G.2.b)
- allow a retaining wall exceeding 4 ft in the setback (§5.4.2.B)

ZONING: Single Residence 2 (SR2)

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 the following plans:
 - a. a site plan entitled “Zoning Plan, Newton, Massachusetts, Showing Proposed Conditions at #20 Morton Street (Sheet 1 of 2), dated, November 19, 2021, as revised through March 2, 2022, prepared by VTP Associates, signed and stamped by Marc Besio, Registered Professional Engineer and Joseph R. Porter, Professional Land Surveyor
 - b. a plan entitled “Details, Newton, Massachusetts, Showing Proposed Conditions at #20 Morton Street (Sheet 2 of 2), dated, November 19, 2021, as revised through March 2, 2022, prepared by VTP Associates, signed and stamped by Marc Besio, Registered Professional Engineer and Joseph R. Porter, Professional Land Surveyor
 - c. a set of architectural drawings entitled “Hickey Residence, 20 Morton St, Newton, MA,” prepared by Peter Sachs, Architect, dated March 11, 2022, signed and Peter Sachs, Registered Architect, consisting of the following sheets:
 - i. Title Sheet (A-1)
 - ii. Title Sheet (showing proposed basement floor plan) (A-2)
 - iii. First Floor Plan (A-3)
 - iv. Proposed Second Floor Plan (A-4)
 - v. Proposed Attic Floor Plan (A-5)
 - vi. Proposed Roof Plan (A-6)
 - vii. Proposed Front Elevation (A-7)
 - viii. Proposed Right Elevation (A-8)
 - ix. Proposed Left Elevation (A-9)

x. Proposed Back Elevation (A-10)

- d. A document entitled "Floor Area Worksheet- 20 Morton St." indicating a proposed total gross floor area of 5,655 square feet and a proposed FAR of 0.38
2. The Petitioner shall do the following to remediate pest and rodent activity:
 - a. Prior to issuance of any demolition or building permit, the petitioner, at its sole cost and expense, shall hire a licensed Pest Control Operator to assess the property for pest and rodent activity and develop and implement a pest remediation action plan to eliminate the activity and prevent off-site migration. The plan shall include the target pest, the methods for eliminating activity, and plan for preventing pest migration off-site during demolition and construction.
 - b. A copy of the Pest Control inspection report and the remediation action plan shall be submitted to the Inspectional Services Department and the Health and Human Services Department for review and approval prior to issuance of any demolition or building permit. Copies of such approvals shall be provided to the Department of Planning and Development.
 - c. The Pest Control Operator shall implement the approved remediation action plan, monitor the site for the duration of the project, and take whatever action the Operator deems necessary to control pest infestation and migration. The Pest Control Operator shall maintain a written record of all pest control measures performed within the subject property and shall provide progress reports to Inspectional Services Department and the Health and Human Services Department upon request.
 - d. Prior to issuance of the certificate of occupancy, the Pest Control Operator shall file a final report with the Department of Planning and Development, Inspectional Services Department and the Health and Human Services Department summarizing the methods used, whether off-site migration occurred, the frequency and dates of service, and a post-construction site assessment and neighborhood.
 - e. In the event any demolition or construction activity causes off-site pest migration, prior to the issuance of any certificates of occupancy (temporary or final), the petitioner shall offer and provide, at its sole cost and expense, rodent abatement services on an as needed basis for all direct abutters and abutters to direct abutters, subject to owner authorization of such properties and a waiver of liability.
 3. No Building Permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
 - 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. Provided a Final Site Plan for review and approval by the Department of Planning and Development and the Engineering Division of Public Works

- d. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the Final Site Plan.
 - e. 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 and/or Occupancy Permit for the buildings covered by this Special Permit/Site Plan approval shall be issued until the petitioner has:
- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect certifying compliance with Condition #1.
 - b. Filed with the Clerk of the Council, the Department of Inspectional Services and the Department of Planning and Development a statement from the Engineering Division of the Department of Public Works certifying that improvements authorized by this Order have been constructed to the standards of the City of Newton Engineering Department.
 - c. 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.