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#563-22

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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: January 10, 2023
Land Use Action Date: March 28, 2023
City Council Action Date: April 3, 2023
90-Day Expiration Date: April 10, 2023

DATE: January 6, 2023

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning
Michael Gleba, Senior Planner

SUBJECT: **Petition #563-22** for SPECIAL PERMIT/SITE PLAN APPROVAL to raze the existing two-family dwelling and construct a two-unit dwelling at **219 Melrose Street**, Ward 4, Newton, on land known as Section 41 Block 18 Lot 26, containing approximately 16,976 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: 7.3.3, 7.4, 3.4.1, 7.8.2.C.2, 3.1.2.A.3 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.



219 Melrose Street

EXECUTIVE SUMMARY

The subject property at 219 Melrose Street consists of a 16,976 square foot lot located in a Single Residence 3 (SR3) zoning district improved with a legal nonconforming two-family dwelling constructed circa 1870.

The parcel, which is located in the center of its block and surrounded by the rear or sides of several abutting residential properties, has thirty feet of frontage along the unimproved portion of Higgins Street and gains access from Melrose Street via a twenty-foot wide right of way shared with 215 and 223 Melrose Street.

The petitioner proposes to maintain the current two-family dwelling use of the property but raze the existing 2 ½ story, 31.4 foot high, approx. 3,508 square foot structure and construct a new two story, 33.59 foot high, 6,749 square foot, two-unit dwelling on the parcel (any basement area is not included in the square footage measurement).

As the proposed two-unit dwelling is designed so that the garage for Unit 1 would share a party wall with habitable space within Unit 2, the proposed dwelling does not meet the Newton Zoning Ordinance's (NZO) definition of a detached two-family dwelling which requires that only habitable space of each dwelling unit provide the shared wall connection for the two units. As such, the proposed two-unit dwelling configuration requires a special permit per Sections 3.4.1 and 7.8.2.C.2 of the NZO to extend a nonconforming two-family dwelling use, while not meeting the definition of a two-family dwelling, in an SR2 district. An amendment to change the definition of a two-family with an option to allow the garages to touch, as in the proposed configuration, was proposed at the Zoning and Planning Committee meeting in July 2021, however the amendment specifically regarding the two-family definition did not go further beyond an initial proposal to change the definition.

Also, per Sec. 3.1.2.A.3, where a density or dimensional control is not set forth for a use granted by special permit, the most restrictive density or dimensional control applicable to such use in any district where the use is allowed as of right shall apply. As two-unit dwellings are not a specified use in the NZO the use does not have any by right dimensional controls, the City Council must determine the appropriateness of the proposed building dimensions found below.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- the proposed modification of an existing nonconforming two-family use in and Single Residence 3 (SR-3) zoning district would not be substantially more detrimental than the existing nonconforming use to the neighborhood (§7.8.2.C.2)
- the proposed dimensions are appropriate (§3.1.2.A.3)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

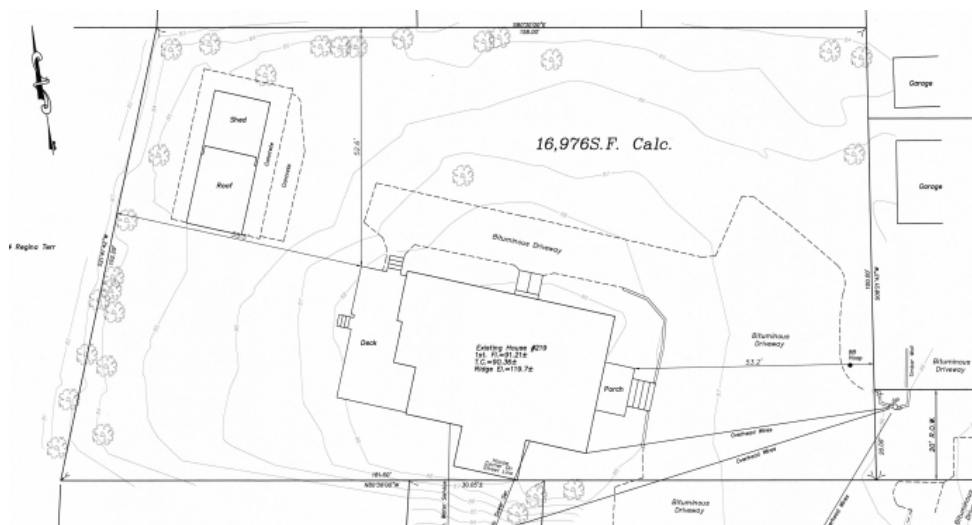
The subject property and surrounding parcels are used as residences with some, including the property, used as two-family dwellings (**Attachment A**). The site and neighboring vicinity

are zoned Single Residence 3 (SR3), with some Business 2 (BU2) and Manufacturing (MAN) parcels located to the southeast and Public Use (PU) zoned properties to the west (**Attachment B**).

B. Site

Uncommonly situated at the center of a block with dwellings surrounding it on all sides, the subject property at consists of a 16,976 square foot lot with a legal nonconforming two-family dwelling. While the site itself is relatively level, with an approx. two-foot upward grade toward its center, the lot is located in the center and high point of its block.

The site includes mature lawn area, trees and shrubs and considerable paved driveway area accessed via thirty feet of frontage along the unimproved portion of Higgins Street to the south and a twenty-foot wide right of way to/from Melrose Street to the east shared with two Melrose Street properties.



Site plan- existing

III. PROJECT DESCRIPTION AND ANALYSIS

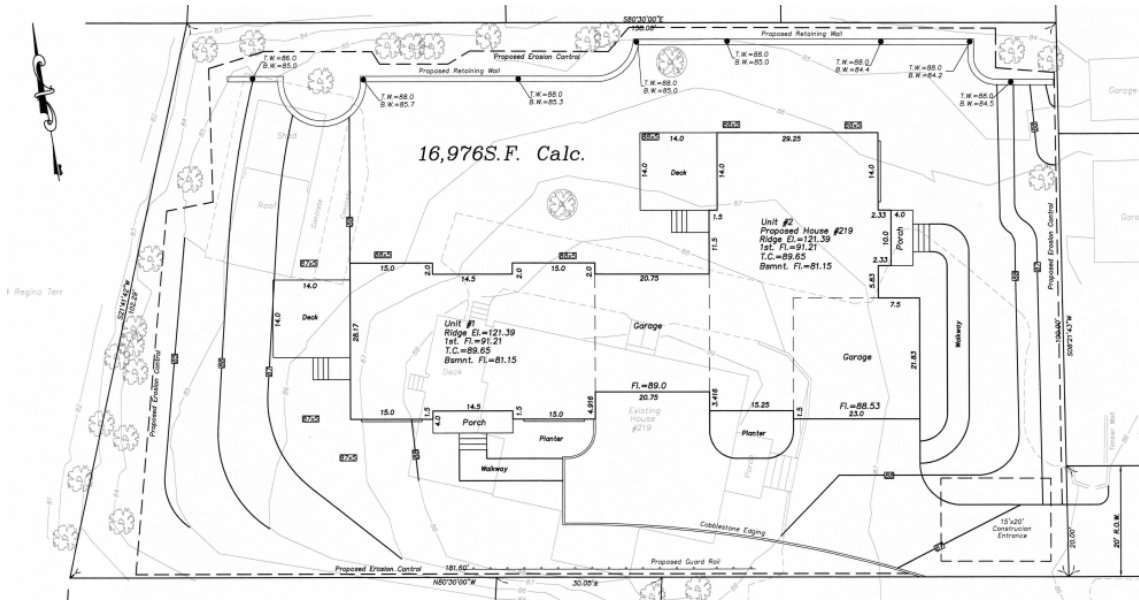
A. Land Use

The principal use of the site would remain a two-family residence.

B. Building and Site Design

The petitioner proposes to maintain the current use of the property but replace the existing 2½ story, 31.4 foot high, approx. 3,508 square foot structure with a new two story, 33.59 foot high, 6,749 square foot, two-unit dwelling (any basement area is not included in the square footage measurement). The petitioner intends to regrade the site to level and slightly lower the center of the parcel, requiring the installation of a retaining wall (less than four feet in height) near the northern property line. As designed, the proposed two-unit dwelling does not meet the definition of a two-family dwelling as defined in the Ordinance due to the garages for each unit sharing a party wall. An amendment to change the definition of a two-family with

an option to allow the proposed configuration was proposed at the Zoning and Planning Committee meeting in July 2021, however the amendment specifically regarding the two family definition failed to pass.



Site plan- proposed

Per Sec. 3.1.2.A.3, where a density or dimensional control is not set forth for a use granted by special permit, the most restrictive density or dimensional control applicable to such use in any district where the use is allowed as of right shall apply. As two-unit dwellings are not a specified use in the NZO, the proposal does not have any by right dimensional controls the City Council must determine the appropriateness of the proposed building dimensions. Toward that end, this memo compares the proposal with the by-right dimensional requirements for single family dwellings on “old lots” in an SR3 district.

The number of stories would be reduced from 2 ½ to 2. The height of the new dwelling would be 33.59 feet as measured from the new average grade plane, higher than the existing dwelling’s height of 31.4 feet as measured from the existing grade, but below the maximum allowed height of 36 feet for single family dwellings in an SR3 district. It should be noted that the elevation height of the new structure’s ridgeline would be located approx. 1.7 feet higher than the that of the existing structure.

Regarding setbacks, the proposed two-unit dwelling would increase the front (south) setback from Higgins Street from 0 to 25.9 feet. The west side setback would measure 24.9 feet and the east side setback would be 25.8 feet. At 19.7 feet, the rear (north) setback would be the smallest. While the proposed side and rear setbacks would all be less than the existing ones (all of which range between 52-56 feet), each would exceed the corresponding “old lot” setback requirements for single family dwellings in an SR3 district of 25, 7.5 and 15 feet, for

front, side and rear setbacks respectively. (They would also exceed the “new lot” requirements except for the front which would be 0.5 feet short of the required 30 foot minimum.)

The site’s floor area ratio (FAR) would be 0.40, above the 0.38 maximum for lots the size of the subject property in a SR3 district, but equivalent to the 0.40 allowed with the 0.02 “bonus” for new construction on old lots that meet “new lot” setback standards, which the proposal does except for the front setback which is 0.5 feet short of the 30-foot minimum discussed above.

The property’s lot coverage would increase from 11.7% to 20.8%, well below the maximum of 30% allowed. Its open space percentage would decrease from 67.6% to 66.5% but would remain well above the 50% required minimum.



South elevation

The plans submitted by the petitioner apparently includes only two elevation drawings. The petitioner should be prepared to submit the other elevations in advance of the upcoming public hearing.

C. Parking and Circulation

The submitted site plans indicate that access across the property’s frontage at the end of Higgins Street would be physically closed with a guard rail. The petitioners are proposing to provide vehicular access via a 12-foot-wide paved driveway within the 20 foot right of way to/from Melrose Street. The driveway would continue along the property’s south boundary and extend northward to serve the two proposed south facing attached garages. Measuring 20.75 and 23 feet wide for Unit #1 and Unit #2, respectively, both garages would presumably be for two cars each. There appears to be adequate maneuvering space in front of both garages to allow drivers to turn so as to enter and exit the property facing forward.

D. Landscaping

The petitioner has indicated that, per the submitted plan, all existing trees are to remain and vegetative screening will be in place along sections of the proposed driveway, including within the area between the proposed driveway and the end of Higgins Street.

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 a Special Permit per §7.3.3 to:

- extend a nonconforming residential use (§3.4.1, §7.8.2.C.2)
- determine density and dimensional controls for the proposed use (§3.1.2.A.3)

B. Engineering Review

Review by the Engineering Division is not required at this time.

C. Historic Review

On August 31, 2022, the Newton Historical Commission found the property not preferably preferred and required no additional 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



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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: November 8, 2022

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Katie Whewell, Chief Planner for Current Planning

Cc: Fox & Toby LLC, Applicant
Terrence P. Morris, Attorney
Barney S. Heath, Director of Planning and Development
Jonah Temple, Deputy City Solicitor

RE: Request to alter and extend a nonconforming two-family dwelling use and to determine dimensional controls

Applicant: Fox & Toby LLC	
Site: 219 Melrose Street	SBL: 41018 0026
Zoning: SR3	Lot Area: 16,976 square feet
Current use: Two-family dwelling	Proposed use: Two-unit dwelling

BACKGROUND:

The property at 219 Melrose Street consists of 16,976 square feet in the Single Residence 3 zoning district improved with a two-family dwelling constructed circa 1870. The parcel gains access from Melrose Street via a twenty-foot wide right of way, which is shared with 215 and 223 Melrose Street. Additionally, the parcel has thirty feet of frontage along the unimproved portion of Higgins Street. The petitioner proposes to raze the existing two-family dwelling and construct a two-unit dwelling, requiring a special permit.

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

- Zoning Review Application, prepared by Terrence P, Morris, submitted 2/21/2022
- Floor plans and elevations, prepared by MGD+, architect, dated 9/28/2022
- Existing Plot Plan, prepared Dellorco Associates, surveyor, dated 6/25/2022
- Proposed Plot Plan, prepared by Dellorco Associates, surveyor, dated 10/19/2022
- Proposed Site Plan, prepared by Flow Design Architects, dated 5/3/2022
- FAR worksheet, signed and stamped by Ronald F. Jarek, architect, dated 10/11/2022

ADMINISTRATIVE DETERMINATIONS:

1. The property is located in the Single Residence 3 zoning district and is improved with a legal nonconforming two-family dwelling constructed circa 1870. The petitioner proposes to raze the existing two-family dwelling and construct a dwelling with two units. The proposed two unit dwelling is designed so that the garage for Unit 1 shares a party wall with Unit 2’s habitable space. The proposed dwelling does not meet the definition of a detached two-family dwelling, which requires that only the habitable space of each dwelling unit provide the shared wall connection for the two units. The proposed two-unit dwelling configuration requires a special permit to change from one nonconforming use to another, requiring a special permit per sections 3.4.1 and 7.8.2.C.2 to extend a nonconforming two-family dwelling in an SR2 district.
2. Per section 3.1.2.A.3 where a density or dimensional control is not set forth for a use granted by special permit, the most restrictive density or dimensional control applicable to such use in any district where the use is allowed as of right shall apply. A two-unit dwelling is not a specified use in the Zoning Ordinance and as such, does not have any by right dimensional controls. The Council must determine the appropriateness of the proposed building dimensions found below:

SR3 Zone	Existing	Proposed
Lot Size	16,976 square feet	No change
Frontage	30 feet	No change
Setbacks		
• Front	0 feet	25.9 feet
• Side	55.5 feet	24.9 feet
• Side	53.2 feet	25.8 feet
• Rear	52.6 feet	19.7 feet
Height	31.4 feet	33.59 feet
Number of Stories	2.5	2
FAR	NA	.40
Lot Coverage	11.7%	20.8%
Open Space	67.6%	66.5%

See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§3.4.1 §7.8.2.C.2	Request to extend a nonconforming residential use	S.P. per §7.3.3
§3.1.2.A.3	To determine density and dimensional controls for the proposed use	S.P. per §7.3.3

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 extend a nonconforming residential use (§3.4.1, §7.8.2.C.2) and determine appropriate density and dimensional controls for the proposed use (§3.1.2.A.3), as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

1. the proposed expanded structure that would extend a nonconforming two-family dwelling use would not be substantially more detrimental than the existing nonconforming use to the neighborhood as it would largely meet dimensional requirements for a single-family dwelling in this location with the exception of a front setback nonconformity of 0.05 feet and create a 29.5-foot setback where it is currently measures 0 feet (§7.8.2.C.2)
2. the proposed density and dimensions of the proposed structure and use are appropriate for the location as the project largely meets dimensional requirements for a single-family dwelling in this location with the exception of a 29.5-foot front setback where 30 feet would be required for a single-family dwelling (§3.1.2.A.3)

PETITION NUMBER: #563-22

PETITIONER: Fox & Toby LLC

LOCATION: 219 Melrose Street, Ward 4, Newton, on land known as Section 41 Block 18 Lot 26, containing approximately 16,976 sq. ft. of land

OWNER: Fox & Toby LLC

ADDRESS OF OWNER: Fox & Toby LLC
Needham, MA 02492

TO BE USED FOR: Two-unit dwelling

CONSTRUCTION: Wood Frame

EXPLANATORY NOTES: Special Permit per §7.3.3 to:

- extend a nonconforming two-family dwelling use (§3.4.1, §7.8.2.C.2)
- determine density and dimensional controls for the proposed use (§3.1.2.A.3)

ZONING: Single Residence 3 (SR3)

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 set of site plans entitled “219 Melrose Street, Newton, Massachusetts,” dated October 19, 2022, prepared by Dellorco Associates,, comprised of the following sheets:
 - i. Proposed Drainage & Utility Plans, stamped and signed by Tsung Ting Chiang, Registered Professional Engineer on November 28, 2022, and Verne T. Porter, Professional Land Surveyor
 - ii. Proposed Grading and Erosion Control Plan, stamped and signed by Tsung Ting Chiang, Registered Professional Engineer on November 28, 2022, and Verne T. Porter, Professional Land Surveyor
 - iii. Zoning Plan, stamped and signed by Verne T. Porter, Professional Land Surveyor
 - b. a set of architectural plans entitled “Melrose Residences, 219 Melrose Street, Newton, MA 02466- Special Permit Set,” prepared by MGD+ LLC and Ron Jarek, dated September 28, 2022 May 25, 2022, comprised of the following sheets:
 - i. SP.00 Cover Page
 - ii. SP.01 Zoning & FAR Analysis
 - iii. SP.02 Architectural Site Plan (incl. tree plan)
 - iv. SP.03 Basement Floor Plan
 - v. SP.04 First Floor Plan
 - vi. SP.05 Second Floor Plan
 - vii. SP.06 Attic Plan
 - viii. SP.07 Roof Plan
 - ix. SP.08 Front Elevation - Unit 1
 - x. SP.09 Front Elevation – Unit 2
 - xi.*
 - xii.*

- c. a document entitled "Floor Area Worksheet- 219 Melrose Street," indicating a proposed total gross floor area of 6,749 square feet and a proposed FAR (floor area ratio) of 0.398, signed and stamped by Ronald F. Jarek, Registered Architect
2. 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, Engineering Division of Public Works and Fire Department.
 - d. 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 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 or engineer certifying compliance with Condition #1.
 - 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.