



Land Use Committee Report

City of Newton In City Council

Tuesday, April 4, 2023

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

Also Present: Councilors Crossley and Humphrey

City Staff Present: Senior Planner Cat Kemmett, Senior Planner Michael Gleba, Chief Planner Katie Whewell, Deputy Chief Planner Alyssa Sandoval, and Assistant City Solicitor Jonah Temple

All Special Permit Plans, Designs, Plan Memoranda and Application Materials, both past and present, can be found at the following link: [NewGov - City of Newton Land Use Committee Special Permit Search](#).

The full video of the April 4, 2023, Land Use Meeting can be found at the following link:
[04-04-2023 NewTV Land Use Committee Meeting](#)

#91-23 Request to amend Special Permit #178-15 to allow for construction of dormers which will further increase nonconforming FAR at 12 Lake Terrace
JOSEPH AND KELLY ROGERS petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit #178-15 to allow for construction of two Nantucket style dormers at 12 Lake Terrace, Newton Centre, Ward 6, on land known as Section 62 Block 01 Lot 08, containing approximately 14,628 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 7.4, 3.1.3, 3.1.9, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action : **Land Use Approved 8-0**

Note: Jonathan Chace, the architect for the project, was present to represent the petitioners. Mr. Chace did not provide any multimedia presentations and deferred to the Planning Department's presentation for an overview of the petition.

All documents associated with the petition can be found at the following link:

[Petition Documents - 12 Lake Ter](#)

Senior Planner Michael Gleba presented an orientation of the property as well as the proposed plans, and general site information in addition to the requested relief, criteria for consideration, land use, and zoning which can be found at the following link:

[Planning Presentation - 12 Lake Ter \(4-4-23\)](#)

The property at 12 Lake Terrace was granted a special permit in 2015 to allow an addition which extended the nonconforming Floor Area Ratio (FAR). The petitioners now seek to amend the Special Permit to allow for construction of two Nantucket style dormers.

The petitioners seek to add Nantucket style dormers to the rear and eastern elevations of the single-family dwelling. Special Permit #178-15 was granted to the property in 2015 for construction of a one-story, one-car attached garage, allowing an increase in the nonconforming FAR from .44 to .46 where .33 was the maximum allowed.

Per the current submitted FAR worksheet, the existing FAR is .49 (.489) and the proposed dormers result in a minor increase in FAR, which maintains an FAR of .49 (.494). FAR is only rounded up or down to the hundredth decimal place. It was discovered that the FAR was previously miscalculated in the 2015 Special Permit, as such, it must be amended to reflect the FAR of .49 (current and proposed).

Public Comment

The Chair opened for Public Comment. No member of the public wished to speak regarding this petition.

Committee Comments

No Committee Members made comments of note regarding this petition.

Councilor Bowman motioned to close the Public Hearing which carried 8-0. Councilor Bowman motioned to approve the petition. Committee Members reviewed the draft findings and conditions as is shown in the attached presentation. The Committee voted in favor of approval 8-0.

#90-23 Request to further extend nonconforming FAR at 6 Ferncroft Road

KEN KRAFT AND REGINA KOZIYEVSKAYA petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct additions to the front and rear of the dwelling which will further extend the nonconforming FAR at 6 Ferncroft Road, Ward 5, Waban, on land known as Section 53 Block 08 Lot 11, containing approximately 11,808 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 3.1.3, 3.1.9, 7.8.2.C.2, of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved 8-0

Note: Treffe LaFleche, the architect for the project was present to represent to the petitioners. Mr. LaFleche was additionally joined by the petitioners Ken Kraft and Regina Koziyevskaya. Mr. LaFleche did not provide any multimedia presentations and deferred to the Planning Department's presentation for an overview of the petition.

All documents associated with the petition can be found at the following link:

[Petition Documents - 6 Ferncroft Rd](#)

Deputy Chief Planner Alyssa Sandoval presented an orientation of the property as well as the proposed plans, and general site information in addition to the requested relief, criteria for consideration, land use, and zoning which can be found at the following link:

[Planning Presentation - 6 Ferncroft Rd \(4-4-23\)](#)

The petitioner proposes to construct additions to the front and rear of the dwelling which will further extend the nonconforming FAR, requiring a Special Permit.

The petitioner proposes to construct an addition to the existing garage to allow accommodation of two vehicles, as well as a rear family room addition with new basement space and a second story dormer.

The proposed construction increases the nonconforming FAR from .39 to .44, where .36 is the maximum allowed per sections 3.1.3 and 3.1.9, requiring a special permit per section 7.8.2.C.2.

Public Comment

PRUDENCE and PETER ROAF, of 12 Ferncroft Road, expressed concern over the construction at the site. The Roafs noted that the ground water from the proposed construction would adversely affect the abutting and surrounding areas.

The Roafs also cited that the immediate area is a Federal Emergency Management Agency (FEMA) Designated Flood Zone. The area is characterized by a high water table, poor drainage and is prone to flooding.

Lastly, the Roafs noted that the Petitioners would not be required to obtain a minor stormwater management permit because the Petitioners were adding 399 square feet of impervious surface, two square feet shy (401 sq. ft.) of what the City would mandate for an Engineering Department review.

JUNGWOOK YANG, of 142 Gordon Road, voiced his concerns regarding the water in the neighborhood and how the proposed construction could be disruptive to the immediate neighbors as most have already been experiencing adverse water issues on their property.

Mr. Yang closely aligned his comments with those of the Roafs.

Mr. LaFleche noted that when he first became involved in the project, Mr. Kraft shared with him the challenges facing the neighborhood regarding water. Mr. LaFleche noted that his team has been monitoring water at the site and is “relatively under control.”

Committee Comments

Councilors questioned if the architect and the petitioner intentionally designed a project that fell just two square feet short of the stormwater management review threshold. Noting that just two square feet short was highly coincidental.

Mr. Kraft disputed the claim and noted that he and Mr. LaFleche designed a project that they felt was appropriate and never had a conversation regarding the stormwater management review threshold.

Through discussion with the neighborhood and petitioners, the Committee sought a resolution for the petitioners to build their project, while protecting the abutting neighbors from undue harm. The petitioners were comfortable agreeing to a condition in the Special Permit that requires them to submit a plan for review and approval prior to the building permit to the Engineering Department. The petitioners would potentially prepare and submit a Stormwater Management Plan for review and approval if the Engineering Department deems that necessary.

Councilor Downs motioned to close the Public Hearing which carried 8-0. Councilor Downs motioned to approve the petition. Committee Members reviewed the draft findings and conditions as is shown in the attached presentation. The Committee voted in favor of approval 8-0.

#89-23 Request to exceed FAR at 49 Lenox Street

JOHN AND KYLIE MILLS petition for SPECIAL PERMIT/SITE PLAN APPROVAL to raise the ridgeline and increase the roof pitch and construct two-story additions to both sides of the dwelling at 49 Lenox Street, Ward 3, West Newton, on land known as Section 32 Block 47 Lot 08, containing approximately 9,738 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: 7.3.3, 7.4, 3.1.3, 3.1.9 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved 8-0

Note: Architect Lee Silverstone was present to represent the petitioner. Ms. Silverstone did not have a multimedia presentation for this petition, but rather provided an overview of the project and orientation of the site utilizing the petition documents. Those, and all other documents associated with this petition can be found at the following link:

[Petition Documents - 49 Lenox St](#)

Senior Planner Michael Gleba presented an orientation of the property as well as the proposed plans, and general site information in addition to the requested relief, criteria for consideration, land use, and zoning which can be found at the following link:

[Planning Presentation - 49 Lenox St \(4-4-23\)](#)

The petitioners propose to raise the ridgeline and increase the roof pitch and construct two-story additions to both sides of the dwelling. The proposed additions will exceed the maximum FAR, requiring a Special Permit.

The petitioners propose to replace the existing garage with a new two-car attached garage with living space above, as well as extending an existing sunroom adding living space above. Additionally, the petitioners intend to raise the ridgeline, modify the roof pitch, and add dormers. The proposed additions increase the FAR from .30 to .49 where .34 is the maximum allowed. A Special Permit per sections 3.1.3 and 3.1.9 is required.

The dwelling has an existing nonconforming rear setback of 15.5 feet where 25 feet is required per section 3.1.3. The proposed addition reduces the rear setback to 14.6 feet (to the HVAC, the rear setback to the dwelling is proposed at 17.5 feet, reducing the nonconformity). Per the de minimis provisions of sections 7.8.2.B.2.C and D, first floor additions within the side and rear setbacks which do not total more than 200 square feet in size within the setback, and second floor additions which do not total more than 400 square feet may be allowed by right if no closer than five feet and with the resulting distance to the nearest residence equal to or greater than the sum of the required setbacks of the two lots. The proposed rear addition is allowed by right.

Public Comment

The Chair opened for Public Comment. No member of the public wished to speak regarding this petition.

Committee Comments

Committee Members expressed support for the petition citing the scope and aesthetics of the project fit in well with the existing neighborhood.

Councilor Kelley motioned to close the Public Hearing which carried 8-0. Councilor Kelley motioned to approve the petition. Committee Members reviewed the draft findings and conditions as is shown in the attached presentation. The Committee voted in favor of approval 8-0.

#92-23 Request to amend Special Permit #480-18 to allow a retaining wall exceeding four feet in height in a setback at 44 Ballard Street

MELISSA FANG AND ANDREW HARGENS petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit #480-18 to allow a series of previously constructed retaining walls at 44 Ballard Street, Newton Centre, Ward 7, on land known as Section 73 Block 31 Lot 11, containing approximately 16,633 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 7.4, 5.4.2.B of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved 8-0

Note: Architect Peter Sachs was present to represent the petitioner. Mr. Sachs did not provide a multimedia presentation and deferred to the Planning Department's presentation.

Additional documents associated with this petition can be found at the following link:

[Petition Documents - 44 Ballard St](#)

Deputy Chief Planner Alyssa Sandoval presented an orientation of the property as well as the proposed plans, and general site information in addition to the requested relief, criteria for consideration, land use, and zoning which can be found at the following link:

[Planning Presentation - 44 Ballard St \(4-4-23\)](#)

The petitioners were granted a Special Permit in 2018 to exceed FAR and to extend nonconforming height to accommodate the relocation of an existing carriage house with an internal accessory apartment. A

series of retaining walls were constructed as part of the project which exceed four feet in height, requiring a Special Permit.

The petitioners constructed a series of retaining walls along the rear lot line to accommodate construction. The walls are within the 15-foot rear yard setback and reach a maximum cumulative height of 4.8 feet. Per section 5.4.2.B, a Special Permit is required for retaining walls exceeding four feet within a setback.

Public Comment

The Chair opened for Public Comment. No member of the public wished to speak regarding this petition.

Committee Comments

Committee Members expressed concerns over the petitions initial building of the retaining walls without prior approval from the Committee.

Mr. Sachs was contrite and was willing to speculate on how the initial discrepancy occurred.

Councilor Laredo motioned to close the Public Hearing which carried 8-0. Councilor Laredo motioned to approve the petition. Committee Members reviewed the draft findings and conditions as is shown in the attached presentation. The Committee voted in favor of approval 8-0.

The Committee adjourned at 8:33 p.m.

Respectfully Submitted,

Richard Lipof, Chair