



#62-17

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## City of Newton, Massachusetts

### Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

Setti D. Warren  
Mayor

Barney S. Heath  
Director

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## PUBLIC HEARING MEMORANDUM

Public Hearing Date:	April 13, 2017
Land Use Action Date:	June 27, 2017
City Council Action Date:	July 3, 2017
90-Day Expiration Date:	July 12, 2017

DATE: April 7, 2017

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development  
Alexandra Ananth, Chief Planner for Current Planning  
Neil Cronin, Senior Planner

SUBJECT: **Petition #62-17**, for SPECIAL PERMIT/SITE PLAN APPROVAL to extend the existing nonconforming two-family use at 489-491 Commonwealth Avenue, Ward 7, Newton Centre, on land known as SBL 73, 43, 01, containing approximately 20,136 sq. ft. of land in a district zoned Single Residence 2. Ref. §3.4.1 and §7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

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The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis which may be useful in the special permit decision making process of the City Council. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the City Council will want to consider in its discussion at a subsequent Working Session.



**489-491 Commonwealth Avenue**

## **EXECUTIVE SUMMARY**

The property located at 489-491 Commonwealth Avenue consists of a 20,136 square foot lot improved with a two-family dwelling. The site is located in the Single Residence 2 (SR-2) zone in Newton Centre. Per the Newton Zoning Ordinance (NZO), two-family dwellings are not an allowed use in the SR-2 zone; therefore the structure is classified as a nonconforming two-family residential use. The existing structure was constructed in 1922 and is an example of “Altered Colonial” architecture. The petitioner is proposing to raze the existing structure as well as the detached three-car garage and construct a 2.5-story two-family structure. To maintain the two-family use in the SR-2 zone, the petitioner is seeking a special permit to extend the nonconforming two-family residential use.

The Planning Department notes the structure is one of eleven nonconforming two-family residential uses within the SR-2 zone. Additionally, two-family uses are allowed by-right in the Multi-Residence 1 (MR-1) zone which lies approximately 260 feet to the west. Staff notes the proposed unit sizes are larger than the existing units, and units in surrounding neighborhood. However, the lot is also the largest lot of the 50 properties within 300 feet which allows the proposed structure to comply with the dimensional regulations of an old lot in the SR-2 zone.

### **SIGNIFICANT ISSUES FOR CONSIDERATION:**

When reviewing this request, the City Council should consider whether:

- The proposed extension in the nonconforming two-family use will not be substantially more detrimental than the existing nonconforming use is to the neighborhood (§3.4.1 and §7.8.2.C.2).

## **I. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD**

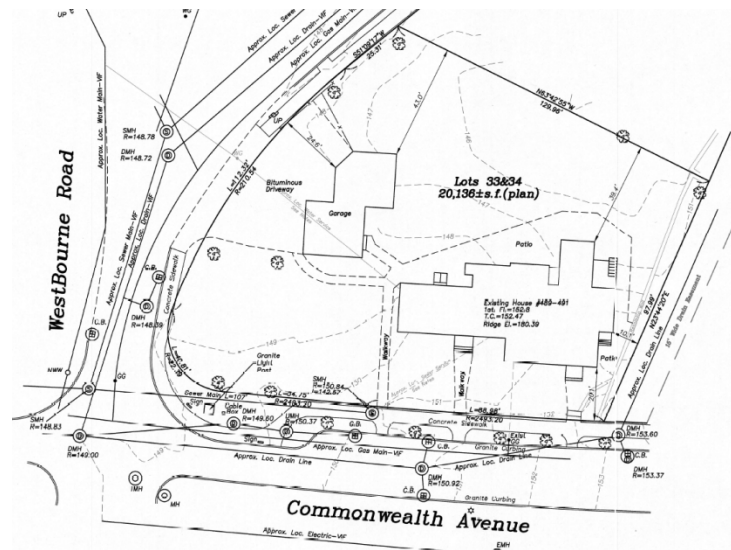
### **A. Neighborhood and Zoning**

The subject property is located on Commonwealth Avenue in the SR-2 zone in Newton Centre. Other than public land sited at the corner of Grant and Commonwealth Avenues, the immediate area is entirely residential with eleven nonconforming multi-family uses in the SR-2 zone. Additionally, there is a MR-1 zone to the west with single as well as two-family dwellings (**Attachments A & B**).

### **B. Site**

The site is a corner lot with frontages on Commonwealth Avenue and Westbourne Road and consists of 20,136 square feet of land. The site is improved with a 2.5-story, two-family residence circa 1922 as well as a detached three-car garage. The

existing structure is located at the southeast corner of the site and “fronts” Commonwealth Avenue with a nonconforming front setback of 20.1 feet, where 25 feet is the minimum required. The detached three-car garage is located at the western portion of the site and also has a nonconforming front setback of 24.6 feet, where 25 feet is the minimum required. Close to the garage is an area partially enclosed with stockade fencing, this area may or may not have been used as a shelter for trash.



The garage is accessed from Westbourne Road via an approximately 50 foot wide curb cut and 1,200 square foot bituminous driveway. The site is predominantly flat with scattered mature trees and walkways which connect the garage to the existing dwelling as well as the unit patios. Lastly, there is a retaining wall at the southeast corner of the site which runs from Commonwealth Avenue to the rear lot line. This wall separates the subject property from an existing drainage easement on the abutting lot at 63 Avondale Road. This easement was a taking by the City in 1941 to maintain a drain pipe.

## II. PROJECT DESCRIPTION AND ANALYSIS

### A. Land Use

The principal use of the site is and will remain a two-family residence.

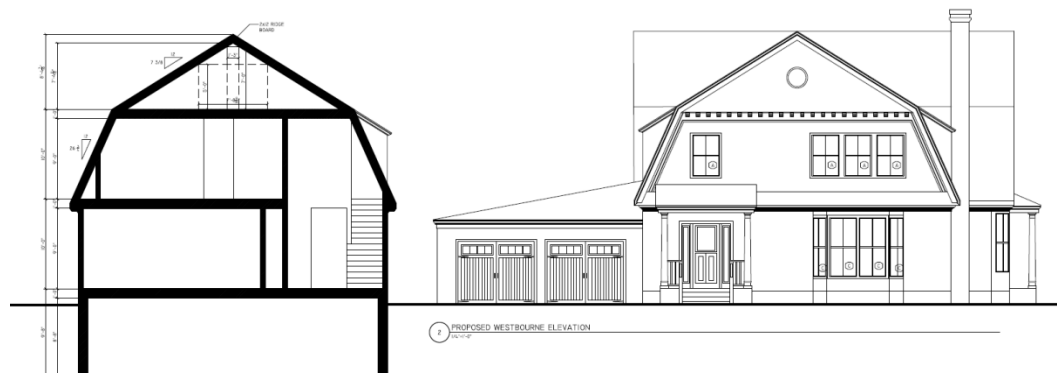
### B. Building Design

The petitioner seeks to raze the existing structure as well as the detached garage and construct a 2.5-story, two-family dwelling. Each unit will have an attached two-car garage; as part of the reconstruction, the existing nonconforming setbacks of the

dwelling and garage will be abandoned. The proposed structure is an example of Colonial Revival architecture with two full gambrel peaks. The new structure will be more centrally located on the lot with one unit fronting Westbourne Road and the other unit fronting Commonwealth Avenue. For the purposes of this memo, the unit fronting Westbourne Road will be referred to as the “Westbourne Unit” while the unit fronting Commonwealth Avenue will be referred to as the “Commonwealth Unit”.

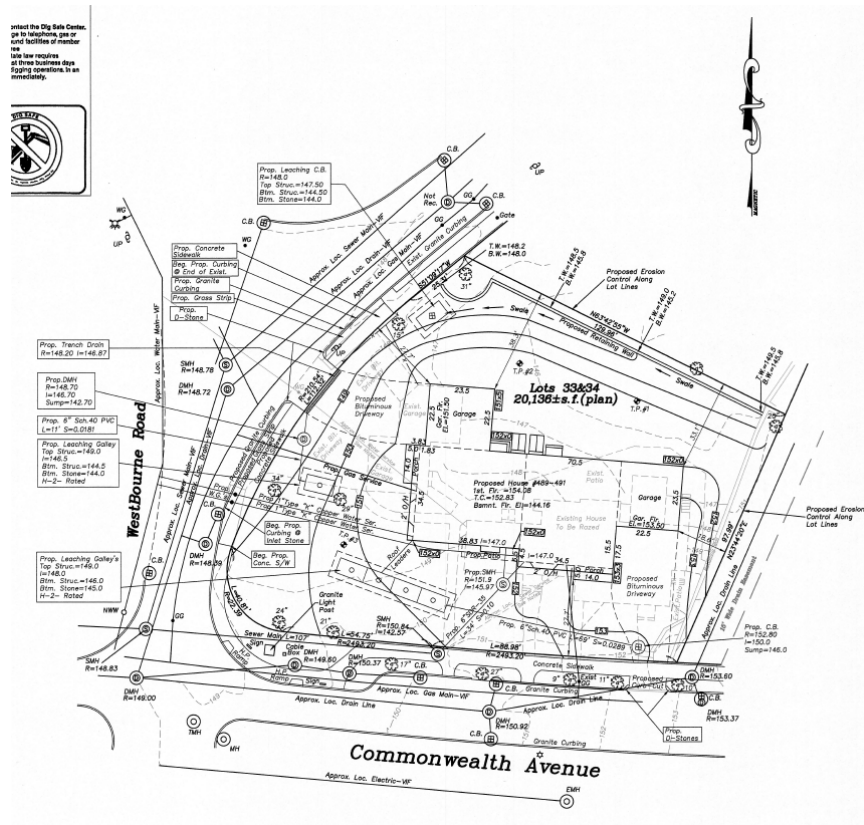


Staff notes the new structure will comply with all of the dimensional requirements of an old lot in the SR-2 zone. The units are approximately 2,300 square feet each (not including the basement) which makes them larger than the existing units and other units in the neighborhood. The existing structure is 31 feet tall, while the proposed structure will be approximately 29 feet tall, from the average grade. The units will have some attic space that is not classified as habitable space per building code. Additionally, the units will have basements with living space, but due to the proposed grading of the lot, the basements will not count towards the floor area ratio (FAR) calculation.



### C. Site Design

The petitioner is proposing to regrade the entire site with a slight berm across the site from west to east. This berm will allow for the demolition of the existing retaining wall at the eastern boundary and the creation of a swale along the northern boundary. The petitioner is proposing a retaining wall in conjunction to this swale approximately two feet from the shared lot line with the neighbor at 150 Eastbourne Road. The retaining wall is approximately 3.7 feet tall and therefore does not require relief from the NZO. The Planning Department suggests the petitioner consult with the Engineering Division of Public Works prior to the demolition of this wall.



#### D. Parking and Circulation

The petitioner is proposing to demolish the existing detached three-car garage and has designed the new structure to incorporate attached two-car garages for each unit; one with access from Westbourne Road and the other from Commonwealth Avenue. The existing curb cut on Westbourne Road will be reduced from 50 feet to approximately 20 feet. Subsequently, the existing driveway will be reduced from

1,200 square feet of bituminous to 900 square feet. A second curb cut is proposed on Commonwealth Avenue to provide access to the Commonwealth Unit garage. This curb cut is approximately thirteen feet wide and will lead to a 27 foot long driveway.

In order to shorten the Westbourne Road curb cut, the petitioner is extending the sidewalk and associated granite curbing with the grass strip. These sidewalk extensions will be fully Americans with Disabilities Act (ADA) compliant and represent a public benefit to the neighborhood that will improve the safety of pedestrians and improve vehicular circulation in the immediate area. Staff notes the petitioner will need to complete the sidewalk extensions before a final certificate of occupancy is issued for either unit.

E. Landscape Screening

The petitioner has submitted a landscape plan to supplement the existing landscaping on site. Staff notes the petitioner has proposed a mix of evergreen and deciduous trees along the Commonwealth Avenue frontage as well as the side and rear lot lines. In addition, small shrubs and grasses will be planted to accent the structure and create some privacy for unit patios. Staff notes the landscape plan shows a fence separating the proposed patio of the Westbourne unit from the lawn area of the Commonwealth unit. Per the City's Fence Ordinance, this fence must terminate two feet from the lot line.

III. 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 Memorandum, the petitioner is seeking the following relief:

- §3.4.1 and §7.8.2.C.2 of Section 30, to further extend the nonconforming two-family residential use in the SR-2 zone.

B. Engineering Review

At the time of this writing, the petition is being reviewed by the Engineering Division of Public Works. If the review is completed prior to the public hearing on April 13th, staff will forward the report to the Land Use Committee. Should this project be approved, the Engineering Division of Public Works will review this project for conformance with the City of Newton Engineering Standards prior to the issuance of a building permit.

C. Historic Review

As the petition requires the total demolition of the garage and dwelling, which are

greater than fifty years old, approval was required from the Newton Historical Commission (NHC). On January 14, 2010, the NHC waived the demolition delay of the two-family dwelling, and the demolition delay of the garage was waived on March 30, 2017.

#### IV. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

#### **ATTACHMENTS:**

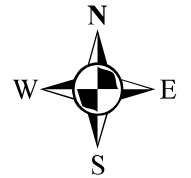
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|----------------------|--|
| <b>Attachment A:</b> | Zoning Map                                     |
| <b>Attachment B:</b> | Land Use Map                                   |
| <b>Attachment C:</b> | Zoning Review Memorandum, dated March 27, 2017 |
| <b>Attachment D:</b> | Draft Board Order                              |

# Attachment A Zoning Map Comm. Ave., 489-491

*City of Newton,  
Massachusetts*

## Legend

- Single Residence 1
- Single Residence 2
- Multi-Residence 1
- Public Use
- Building Outlines
- Surface Water
- Property Boundaries



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 - Setti D. Warren  
GIS Administrator - Douglas Greenfield

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Map Date: March 31, 2017











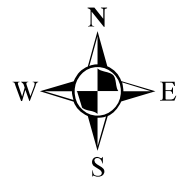
# Attachment B Land Use Map Comm. Ave., 489-491

## Legend

### Land Use

### Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Mixed Use
-  Open Space
-  Vacant Land
-  Tax Exempt
-  Building Outlines
-  Surface Water
-  Property Boundaries

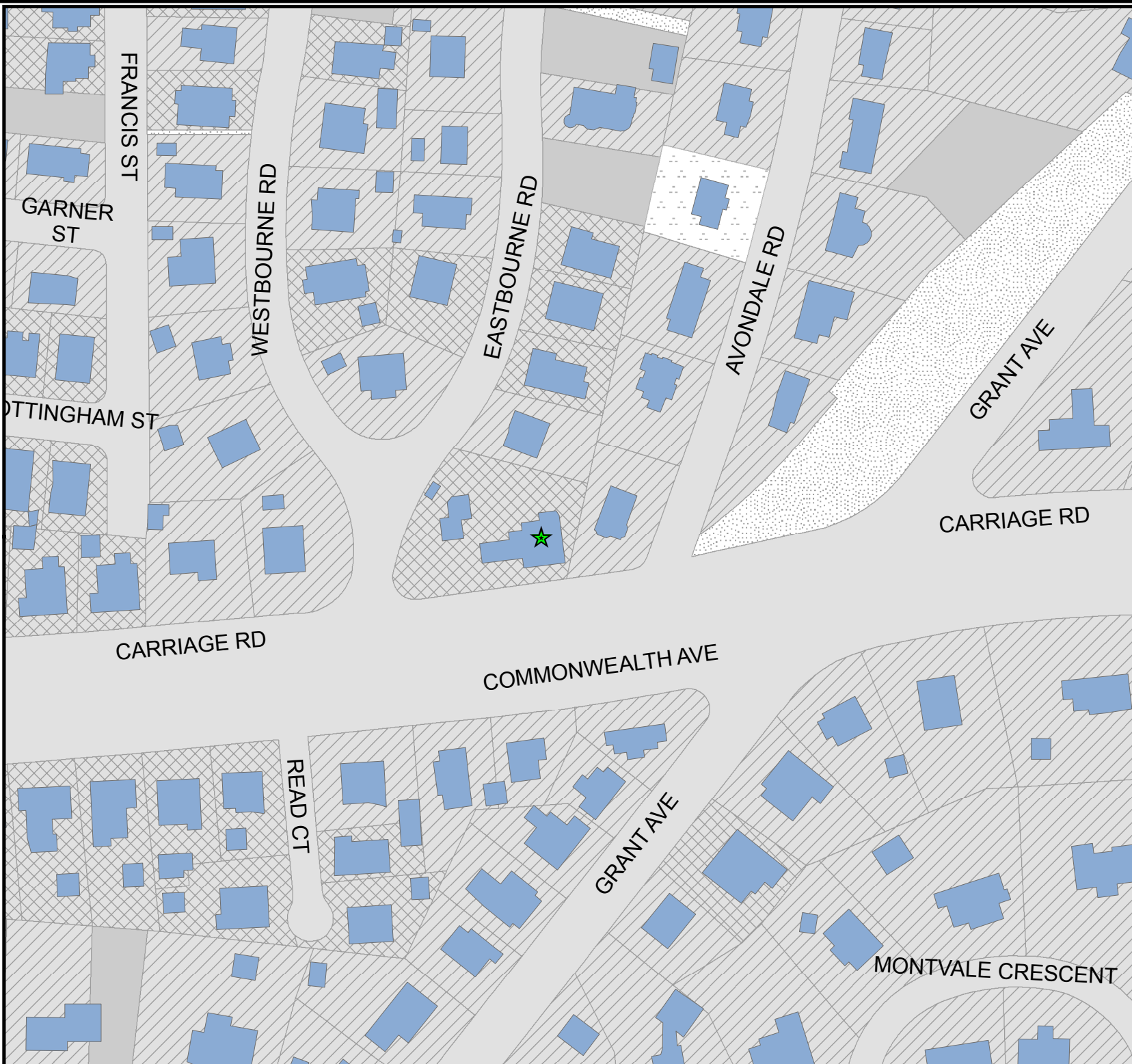


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield

0 50 100  
Feet

Map Date: March 31, 2017





Setti D. Warren  
Mayor

Attachment C

**City of Newton, Massachusetts**  
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Barney S. Heath  
Director

## ZONING REVIEW MEMORANDUM

Date: March 27, 2017

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Alexandra Ananth, Chief Planner for Current Planning

Cc: Ronald Gold, applicant  
Barney S. Heath, Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Request to extend an existing nonconforming two-family use**

Applicant: Ronald Gold	
Site: 489-491 Commonwealth Ave	SBL: 73043 0001
Zoning: SR2	Lot Area: 20,136 square feet
Current use: Two-family dwelling	Proposed use: No change

### BACKGROUND:

The property at 489-491 Commonwealth Avenue consists of 20,136 square foot lot in the SR2 zoning district improved with a two-family dwelling constructed in 1922 and a detached two-car garage structure. The site is located at the corner of Commonwealth Avenue and WestBourne Road. The existing structure is nonconforming with regard to front setback. The applicant proposes to raze the existing structure and construct a new two-family dwelling meeting all dimensional requirements. Each unit will have its own attached garage and driveway, with one unit accessed from WestBourne Road and the other off the Carriage Road.

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

- Zoning Review Application, prepared by Ronald Gold, submitted 1/5/2017, revised 3/24/2017
- Existing conditions plan, signed and stamped by Verne T. Porter, surveyor, dated 12/28/2016
- Proposed Conditions Site Plan, signed and stamped by Verne T. Porter, surveyor, and Paul Tyrell, engineer, dated 12/28/2016, revised 3/10/2017
- Proposed Grading Plan, signed and stamped by Verne T. Porter, surveyor, and Paul Tyrell, engineer, dated 12/28/2016
- Architectural Plans, prepared by Slocum Hall Design Group, dated 1/5/2017, revised 3/10/2017

## ADMINISTRATIVE DETERMINATIONS:

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1. The site is currently improved by a nonconforming two-family dwelling constructed in 1922 located within the front setback. The applicant intends to raze the existing dwelling structure and detached accessory garage structure, and construct a new two-family dwelling with attached garages meeting all dimensional requirements. Per Section 3.4.1, the existing two-family use is nonconforming, and to reconstruct such use requires a special permit.

SR2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	20,136 square feet	No change
Frontage	80 feet	165 feet	No change
Setbacks <ul style="list-style-type: none"><li>• Front</li><li>• Side</li><li>• Rear</li></ul>	25 feet 7.5 feet 15 feet	<b>20.1 feet</b> 10.1 feet 39.4 feet	27.7 feet 18.6 feet 33.1 feet
Building Height	36 feet	31.3 feet	29 feet
Stories	2.5	2.5	No change
FAR	.33	.29	.33
Max Lot Coverage	30%	16.5%	20.3%
Min. Open Space	50%	75.7%	70.3%

See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.4.1 §7.8.2.C.2	Request to extend the existing nonconforming two-family use	S.P. per §7.3.3

CITY OF NEWTON

CITY COUNCIL

April 18, 2017

ORDERED:

That the Board, 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 extend the nonconforming two-family residential use, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Marc Laredo:

1. The proposed extension of the nonconforming two-family use is not substantially more detrimental than the existing nonconforming use is to the neighborhood because the neighborhood already contains eleven nonconforming two-family uses and the lot will comply with the dimensional controls of an old lot in the Single Residence 2 zone (§3.4.1 and §7.8.2.C.2).
2. The applicant's proposed construction of a sidewalk along the frontage of Westbourne Road is a public benefit to the City that will enhance the safety of pedestrians and improve vehicular circulation in the immediate neighborhood.

PETITION NUMBER: #62-17

PETITIONER: Ronald K. Gold

LOCATION: 489-491 Commonwealth Avenue, on land known as Section 73, Block 43, Lot 01, containing approx. 20,136 square feet of land

OWNER: Ronald K. Gold

ADDRESS OF OWNER: 30 Wildwood Avenue  
Newton, MA 02465

TO BE USED FOR: Two-family dwelling

EXPLANATORY NOTES: §3.4.1 and §7.8.2.C.2 to extend the nonconforming two-family use

ZONING: Single Residence 2 District

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. Civil Plan Set, prepared, stamped and signed by Verne T. Porter Jr., Professional Land Surveyor, and Paul J. Tyrell, Professional Engineer, consisting of the following five (5) sheets:
    - i. "Existing Conditions Site Plan", dated December 28, 2016, revised on March 10, 2017;
    - ii. Proposed Conditions Site Plan", dated December 28, 2016, revised on March 10, 2017;
    - iii. "Proposed Grading Plan", dated December 28, 2016, revised on March 10, 2017;
    - iv. "Proposed Utility Plan", dated December 28, 2016, revised on March 10, 2017;
    - v. "Proposed Detail Sheet", dated December 28, 2016, revised on March 10, 2017;
  - b. Architectural Plan Set, entitled Commonwealth Ave. LLC, 489-491 Commonwealth Avenue, prepared by Slocum Hall Design Group, consisting of the following six (6) sheets:
    - i. A100, Proposed Basement Plan
    - ii. A101, Proposed Main Floor Plan
    - iii. A102, Proposed Second Floor Plan
    - iv. A200, Proposed Exterior Elevations
    - v. A201, Proposed Exterior Elevations
    - vi. A001, 3D Views
  - c. Landscape Plan, signed and stamped by Jane Shoplick, Registered Landscape Architect.
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. The petitioner shall comply with the City's Tree Preservation Ordinance.
4. Prior to the issuance of any Building Permit, the petitioner shall provide a Final Landscape Plan for review to the Director of Planning and Development.
5. Prior to the issuance of any Building Permit, the petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management to the Engineering Division of

Public Works for review and approval. Once approved, the O&M must be adopted by applicant, and recorded at the Middlesex Registry of Deeds. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.

6. Prior to the issuance of any building permit the petitioner shall submit a Construction Management Plan for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, and the City Engineer. The Construction Management Plan shall be consistent and not in conflict with relevant conditions of this Board Order and shall include, but not be limited to, the following provisions:
  - a. 24-hour contact information for the general contractor of the project.
  - b. Hours of construction: construction shall be limited to between the hours of 7:00 a.m. and 7:00 p.m. on weekdays, and between the hours of 8:00 a.m. and 5:00 p.m. on Saturdays. No construction is permitted on Sundays or holidays except in emergencies, and only with prior approval from the Commissioner of Inspectional Services.
  - c. The proposed schedule of the project, including the general phasing of the construction activities.
  - d. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for delivery vehicles, and location of any security fencing.
  - e. Proposed methods for dust control including, but not limited to: covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
  - f. Proposed methods of noise control, in accordance with the City of Newton's Ordinances. Staging activities should be conducted in a manner that will minimize off-site impacts of noise. Noise producing staging activities should be located as far as practical from noise sensitive locations.
  - g. De-watering methodology.
  - h. Tree preservation plan to define the proposed method for protection of any existing trees to remain on the site.
  - i. A plan for rodent control during construction.
7. 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 Board Order for the approved Special Permit/Site Plan Approval with the Registry of Deeds for the Southern District of Middlesex County.
  - b. Filed a copy of such recorded Board Order with the City Clerk, the Department of

- Inspectional Services, and the Department of Planning and Development.
- c. 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.
  - d. Obtained a written statement from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1.
  - e. Obtained a written statement from the Engineering Division of Public Works that confirms receipt of a certified Copy of the O&M Plan in accordance with Condition #5.
  - f. Received final approval from the Director of Planning and Development for the Final Landscape Plan.
  - g. Received final approval from the Director of Planning and Development for the Construction Management Plan.
8. No Final Inspection/Occupancy Permit for the use 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 and professional engineer certifying compliance with Condition #1.
  - b. Submitted to the Department of Inspectional Services and the Department of Planning and Development, a final as-built survey plan in paper and digital format by a licensed surveyor.
  - c. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division certifying that the final site construction details, including the sidewalk extensions, have been constructed to the standards of the City of Newton Engineering Division.
  - d. Filed with the City Clerk and the Commissioner of Inspectional Services, a statement from the Planning Department approving final location, number and type of plant materials and final landscape features.
9. Notwithstanding the provisions of Condition #8. above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the buildings prior to installation of final landscaping provide that the petitioner shall first have filed a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.