



Ruthanne Fuller  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

**#25-18**  
Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
[www.newtonma.gov](http://www.newtonma.gov)

Barney S. Heath  
Director

---

## PUBLIC HEARING MEMORANDUM

|                           |                  |
|---------------------------|------------------|
| Public Hearing Date:      | January 23, 2018 |
| Land Use Action Date:     | April 10, 2018   |
| City Council Action Date: | April 16, 2018   |
| 90-Day Expiration Date:   | April 23, 2018   |

DATE: January 19, 2018

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development  
Jennifer Caira, Chief Planner for Current Planning  
Valerie Birmingham, Planning Associate

SUBJECT: **Petition #25-18**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to further increase the nonconforming floor area ratio (FAR) from 0.41 to 0.43, where 0.35 is the maximum allowed by right at **45 Beethoven Avenue**, Ward 5, Waban, on land known as Section 53, Block, 15, Lot 29, containing approximately 15,000 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 3.1.9, 7.8.2.C.2 of the City of Newton Rev Zoning Ord, 2015.

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 that the Land Use Committee of the City Council can consider at a subsequent working session.



**45 Beethoven Avenue**

## **EXECUTIVE SUMMARY**

The property located at 45 Beethoven Avenue consists of a 15,000 square foot lot improved with a single-family residence constructed in 2010 in the Single Residence 2 (SR2) zone. At the time the house was constructed, the floor area ratio (FAR) was calculated differently, and did not include basement and attic space, resulting in an FAR of .32, where the maximum allowed was .35. A 2011 amendment to the way FAR is calculated resulted in more of the dwelling being included in the formula, creating a new FAR of .41 for the same dwelling.

The petitioners are seeking to construct a single-story addition to the rear of the dwelling for additional kitchen area. The proposed modification would add approximately 247 square feet of floor area to the home, and would increase the property's FAR from 0.41 to 0.43, above the maximum 0.35 allowed by right per Section §3.1.9 (0.33 plus the .02 bonus for meeting new lot setback requirements). A special permit pursuant to Sections §3.1.9 and §7.8.2.C.2 is required to further increase the already nonconforming FAR.

The Planning Department recommends approval of the petition as the proposed addition is modestly scaled and would conform to other relevant dimensional requirements and has limited visual impact on adjoining public ways and properties.

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

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

- The nonconforming FAR from 0.41 to 0.43, where 0.35 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 (§3.1.9 and §7.8.2.C.2).
- The proposed extension in the nonconforming FAR will be substantially more detrimental than the existing nonconforming FAR is to the neighborhood (§3.1.9 and §7.8.2.C.2).

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

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

The subject property is located on the west side of Beethoven Avenue, directly opposite the Zervas Elementary School.

The neighborhood is, with the exceptions of the Zervas Elementary School and one mixed use parcel, residential in nature and predominantly occupied by single-family dwellings. The site and surrounding area is almost uniformly zoned Single Residence-2

(SR2), with exception of the Public Use (PUB) zoned Zervas Elementary School  
**(Attachments A & B).**

B. Site

The site is a 15,000 square foot lot improved with a 2 ½ story single-family dwelling centrally located on the lot. Access to the garage is provided by a paved driveway and curb cut. The driveway is bell shaped to allow for turning around and additional surface parking.

A City of Newton Drain Easement runs parallel to the rear property line across the property's backyard, but significantly set back from the nearest structure or the proposed addition.

The front of the property, including a portion of the existing dwelling, is located in a 100' wetlands buffer zone. No alterations are proposed within the wetland buffer zone. The site features lawn area and some mature vegetation, including trees and shrubs.

II. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

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

B. Building and Site Design

The petitioners propose to expand the dwelling by enlarging the first floor for additional kitchen area in the rear.

The rear deck would be removed, and a new deck would be constructed with two access doors, one remaining in the existing location and the other to be accessed directly from the extended kitchen. The stairs to the backyard as proposed would be located on the corner of the new deck. In addition, the new deck would have built in benches for outdoor seating, as well as new planting troughs for additional vegetation.

The proposed modifications would add approximately 247 square feet of floor area to the first floor of the dwelling and would increase the FAR from 0.41 to 0.43, above the maximum .35 (0.33 plus the .02 bonus for meeting new lot setback requirements) allowed by right.

The proposed modifications would not increase the dwelling's height and would meet all other dimensional standards and requirements.

The planning department is unconcerned with the proposed addition due to its location in the rear of the property, which is not visible from a public way; as well as the size of the project.

C. Parking and Circulation

The petitioners are not proposing any changes to parking or circulation

D. Landscaping and Screening

A landscape plan is not required with this petition.

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:

- §3.1.9 and §7.8.2.C.2 of Section 30, to further increase the nonconforming FAR

B. Engineering Review

Review of this proposal by the Engineering Division is not required at this time. In the event this petition is approved, the Engineering Division will review the project for conformance with the City of Newton Engineering Standards prior to the issuance of a building permit.

C. Newton Historical Commission

Review of this proposal by the Newton Historical Commission is not required because the dwelling is less than fifty years old.

D. Newton Conservation Commission

Review of the Newton Conservation Commission is not required at this time. In the event this petition is approved, conservation commission staff will review the plans administratively for conformance with the Newton Conservation Commission Standards prior to the issuance of a building permit.

IV. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.






**ATTACHMENTS:**

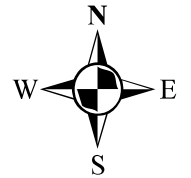
- |                      |                          |
|----------------------|--------------------------|
| <b>Attachment A:</b> | Zoning Map               |
| <b>Attachment B:</b> | Land Use Map             |
| <b>Attachment C:</b> | Zoning Review Memorandum |
| <b>Attachment D:</b> | DRAFT Order              |

# Attachment A Zoning Map Beethoven Ave., 45

*City of Newton,  
Massachusetts*

## Legend

-  Single Residence 2
-  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

0 50 100  
Feet

Map Date: December 14, 2017










# Attachment B Land Use Map Beethoven Ave., 45

*City of Newton,  
Massachusetts*

## Legend

### Land Use

#### Land Use

-  Single Family Residential
-  Mixed Use
-  Open Space
-  Vacant Land
-  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

0 50 100  
Feet

Map Date: December 14, 2017



Setti D. Warren  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

Barney S. Heath  
Director

## ZONING REVIEW MEMORANDUM

Date: September 26, 2017

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Jennifer Caira, Chief Planner for Current Planning

Cc: David Boronkay, Architect  
Matthew and Michelle Zisow, Applicants  
Barney S. Heath, Director of Planning and Development  
Ouida Young, Associate City Solicitor

RE: Request to further increase nonconforming FAR

| Applicant: Matthew and Michelle Zisow |                              |
|---------------------------------------|------------------------------|
| Site: 45 Beethoven Avenue             | SBL: 53016 0029              |
| Zoning: SR2                           | Lot Area: 15,000 square feet |
| Current use: Single-family dwelling   | Proposed use: No change      |

### BACKGROUND:

The property at 45 Beethoven Avenue consists of a 15,000 square foot lot improved with a single-family residence constructed in 2010 on an old lot. At the time the house was constructed, the floor area ratio was calculated differently, and did not include basement and attic space, resulting in an FAR of .32, where the maximum allowed was .35. A 2011 amendment to the way FAR is calculated resulted in more of the dwelling being included in the formula, creating a new FAR of .41 for the same dwelling. The petitioners now propose to construct a single-story addition to the rear of the dwelling, which will further increase the nonconforming FAR, requiring a special permit.

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

- Zoning Review Application, prepared David Boronkay, Architect, dated 8/23/2017
- FAR Worksheet, submitted 8/24/2017
- Plot Plan, signed and stamped by Verne T. Porter Jr., surveyor, dated 8/22/2017
- Existing Conditions, prepared by Slocum Hall Design, Architect, dated 7/17/2017
- Proposed Main Floor Plan, prepared by Slocum Hall Design, Architect, dated 7/20/2017
- Proposed Exterior Elevation, prepared by Slocum Hall Design, Architect, dated 8/23/2017

**ADMINISTRATIVE DETERMINATIONS:**

- The applicants' existing FAR is .41, where .35 (.33 plus .02 bonus for meeting new lot setback for the rear addition) is the maximum allowed. The proposed addition adds 247 square feet to the dwelling, resulting in an FAR of .43. A special permit pursuant to Sections 3.1.9 and 7.8.2.C.2 is required to further increase the already nonconforming FAR.

| SR2 Zone  | Required                      | Existing                            | Proposed                            |
|---|-------------------------------|-------------------------------------|-------------------------------------|
| Lot Size  | 10,000 square feet            | 15,000 square feet                  | No change                           |
| Frontage  | 80 feet                       | 100 feet                            | No change                           |
| Setbacks* <ul style="list-style-type: none"> <li>• Front</li> <li>• Side</li> <li>• Rear</li> </ul> | 30 feet<br>15 feet<br>15 feet | ± 35 feet<br>15.1 feet<br>60.8 feet | No change<br>No change<br>51.5 feet |
| Max Number of Stories   | 2.5                           | 2.5                                 | No change                           |
| FAR   | .35 (.33+.02)                 | <b>.41</b>                          | <b>.43</b>                          |
| Max Lot Coverage  | 30%                           | 17.8%                               | 19.6%                               |
| Min. Open Space   | 50%                           | 71.8%                               | 70.4%                               |

\*The property is an "old lot" and is only required to meet old lot setbacks. However, to take advantage of the .02 FAR bonus, new lot setbacks are applied

- See "Zoning Relief Summary" below:

| Zoning Relief Required |   |                        |
|------------------------|---|------------------------|
| <i>Ordinance</i>       |   | <i>Action Required</i> |
| §3.1.9,<br>§7.8.2.C.2  | Request to further increase nonconforming FAR | 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

## ATTACHMENT D

DRAFT #25-18  
45 Beethoven Avenue

### 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 0.41 to 0.43 where 0.35 is the maximum allowed by-right, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Gregory Schwartz:

1. The proposed increase in the nonconforming FAR will be consistent with and not in derogation of the size, scale and design of other structures in the neighborhood as it will be similar in regard to those characteristics of other structures in the surrounding area and conform to other relevant dimensional requirements (§3.1.9 and §7.8.2.C.2).
2. The proposed increase in the nonconforming FAR will not be substantially more detrimental than the existing nonconforming FAR is to the neighborhood (§3.1.9 and §7.8.2.C.2).

PETITION NUMBER: #25-18

PETITIONER: Matthew and Michelle Zisow

LOCATION: 45 Beethoven Avenue, on land known as Section 53, Block, 15, Lot 29, containing approximately 15,000 sq. ft. of land

OWNER: Matthew and Michelle Zisow

ADDRESS OF OWNER: 45 Beethoven Avenue  
Newton, MA

TO BE USED FOR: Single Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.9 and §7.8.2.C.2, to further increase the nonconforming FAR

ZONING: Single Residence 2 (SR2) 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. A plan showing #45 Beethoven Avenue entitled "Proposed Addition Plan," prepared by Verne T. Porter Jr., PLS, dated August 22, 2017, stamped and signed by Verne T. Porter Jr., Professional Land Surveyor.
  - b. A set of plans entitled "Zisow Residence, 45 Beethoven Avenue, Newton, MA," prepared by Slocum Hall Design Group, Inc., dated December 1, 2017:
    - i. Existing Rear Elevation;
    - ii. Existing First Floor Plan;
    - iii. Existing Square Footage Plan;
    - iv. Proposed Exterior Elevation;
    - v. Proposed Floor Plans
2. 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 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 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. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Newton Conservation Commission approving the final plans.
  - e. 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/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 a registered architect certifying compliance with Condition #1, including the floor area ratio (FAR) of the structure.

- 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.
- c. Filed with the Clerk of the Council, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that improvements authorized by this Order have been constructed to the standards of the City of Newton Engineering Department.