



**#213-18**

**City of Newton, Massachusetts**  
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Ruthanne Fuller  
Mayor

Barney S. Heath  
Director

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**PUBLIC HEARING MEMORANDUM**

Public Hearing Date: May 8, 2018  
Land Use Action Date: July 10, 2018  
City Council Action Date: July 16, 2018  
Expiration Date: August 6, 2018

DATE: May 4, 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 #213-18**, for SPECIAL PERMIT/SITE PLAN APPROVAL to further extend nonconforming setback by constructing a second floor deck above the existing sunporch, extending the existing nonconforming setback vertically at **140 Windermere Road**, Ward 4, Auburndale, on land known as Section 43, Block 08, Lot 19, containing approximately 12,445 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 3.1.3, 7.3, 7.4, 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 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.



**140 Windermere Road**

## **EXECUTIVE SUMMARY**

The property at 140 Windermere Road consists of a 12,445 square foot lot in a Single Residence 2 (SR2) district improved with an approximately 3,154 square foot, single family residence in Auburndale. The dwelling and garage were constructed circa 1922, and a rear addition to attach the two structures was constructed in 1988. The property is located on the corner of Windemere and Woodland Roads and therefore has two front setbacks.

The petitioner proposes to replace the sloped roof over an existing nonconforming first-floor sunporch with a flat roof to create a second-floor open deck off the master bedroom. The existing first-floor sunporch is 16.76 feet from the Woodland Road property line, where 25 feet is required. As the proposed second-floor deck would have the effect of further extending the property's nonconforming setback vertically, a special permit pursuant to §3.1.3 and §7.8.2.C.2 is required. The proposed second floor deck modification is part of a plan to remodel the original 1922 dwelling, as well as remove the rear of the dwelling and replace it with a larger addition. The rear addition conforms to dimensional requirements and has been permitted by right.

The Planning Department is not concerned with the proposal as the second-floor deck would not be extending the structure further into the nonconforming front setback and would not be adding any mass to the structure.

### **I. SIGNIFICANT ISSUES FOR CONSIDERATION**

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

- The proposed extension of the nonconforming front setback will be substantially more detrimental than the existing nonconforming front setback is to the neighborhood (§3.1.3; §7.8.2.C.2).

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

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

The subject property is located at the corner of Windermere and Woodland Roads in a SR2 zone in Auburndale. The immediate surrounding neighborhood to the north, east, and west is zoned SR2; one block over to the east, the area is zoned Single Residence 3 (SR3). Lasell College is located directly to the south of the site and is zoned Single Residence 1 (SR1). Due to the area's zoning the neighborhood is primarily single family residential, with the exception of Lasell College, one mixed use property to the east, and one multi-family residence to the north (**Attachments A & B**).

B. Site

The property consists of a 12,445 square foot corner lot on the east side of Windermere Road and the north side of Woodland Road. It is improved with a two-story, single-family dwelling and a formerly detached garage constructed circa 1922, and a rear addition attaching the two structures constructed in 1988. The property is accessed via a narrow driveway off of Woodland Road. The site is predominantly flat and features lawn area and mature vegetation, including trees and shrubs. A six-foot metal construction fence is located along the Windermere and Woodland Roads property lines as the petitioner has a building permit from the Inspectional Services Department for work on the dwelling.



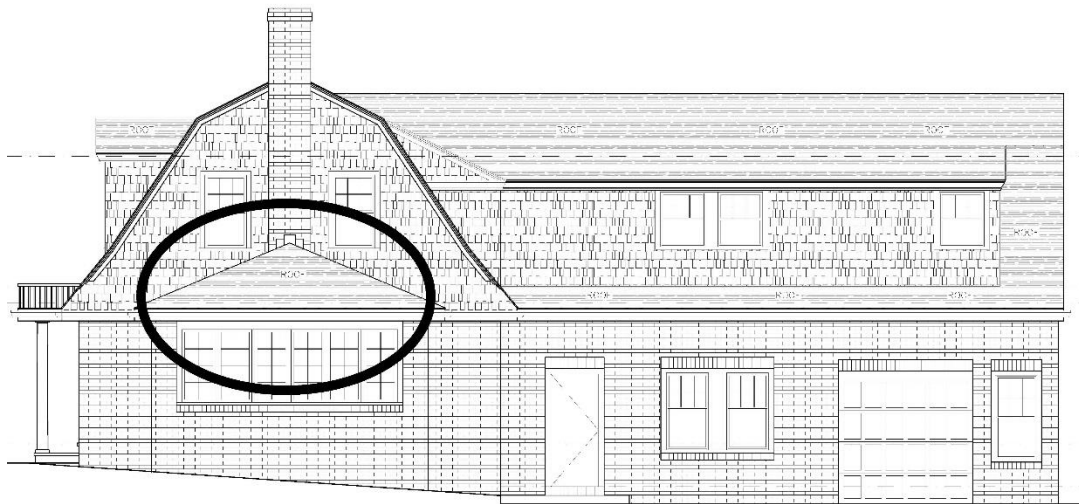
### III. PROJECT DESCRIPTION AND ANALYSIS

### A. Land Use

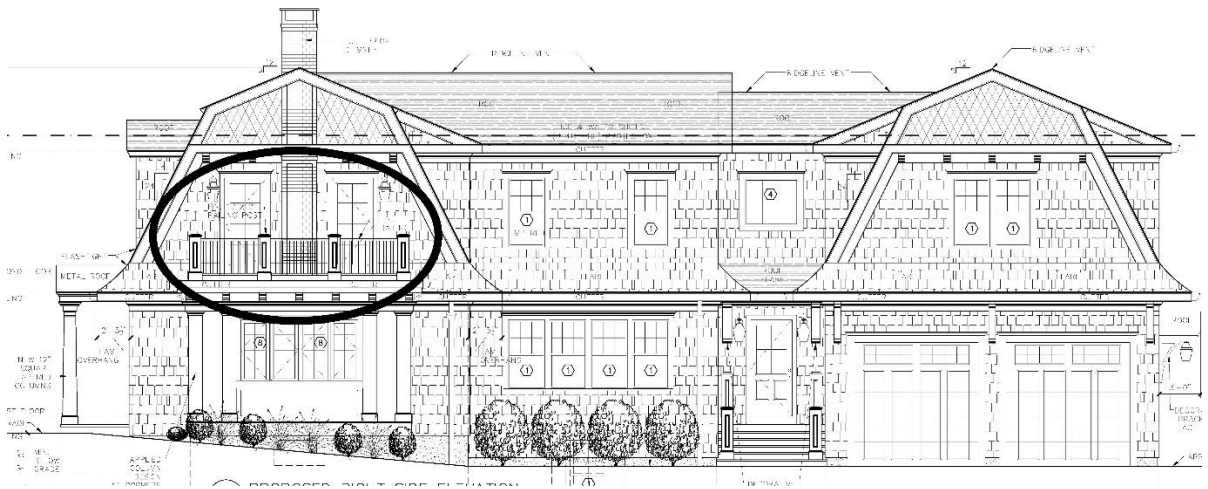
The principal use of the site is and will remain a single-family residence.

B. Building Design

The petitioner proposes to replace the sloped roof over an existing nonconforming first-floor sunporch with a flat roof to create a second-floor open deck off the master bedroom. Three-foot decorative railings and posts are proposed to encompass the flat roof and meet building code, and existing windows will be converted to doors in order to provide access to the open deck. The existing Woodland Road front setback is nonconforming at 16.76 feet, where 25 feet is required, and the proposed deck extends that nonconforming setback vertically. The proposed modification adds approximately 128 square feet within the setback.



Existing Woodland Road Elevation



Proposed Woodland Road Elevation

The proposed second-floor roof deck is part of a larger project for the site. The petitioner has a valid building permit to remove the 1988 rear addition and garage and reconstruct a larger addition in its place; as well as remodel the original dwelling. The permitted rear addition conforms to all dimensional requirements and is allowed by right. If the petition is approved, the petitioner will be required to amend the existing building permit to include the proposed second floor deck.

C. Parking and Circulation

As part of this petition the petitioners are not proposing any changes to parking or circulation.

D. Landscaping and Screening

A landscape plan is not required with this petition.

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 Memorandum, the petitioner is seeking the following relief:

Special permit per §7.3.3:

- to further continue the nonconforming front setback (§3.1.3; §7.8.2.C.2).

B. Auburndale Historic District Commission

The property is located in the Auburndale Local Historic District. The project, as proposed, was approved by the Auburndale Local Historic District Commission per the submitted plans on February 20, 2018 (**Attachment D**).

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.







**ATTACHMENTS:**

- Attachment A:** Zoning Map
- Attachment B:** Land Use Map
- Attachment C:** Zoning Review Memorandum
- Attachment D:** Auburndale Historic District Commission Decision
- Attachment E:** DRAFT Order

**Attachment A**  
**Zoning Map**  
**Windermere Rd., 140**

*City of Newton,  
Massachusetts*

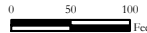
**Legend**

-  Single Residence 3
-  Single Residence 2
-  Single Residence 1
-  Building Outlines
-  Surface Water
-  Property Boundaries

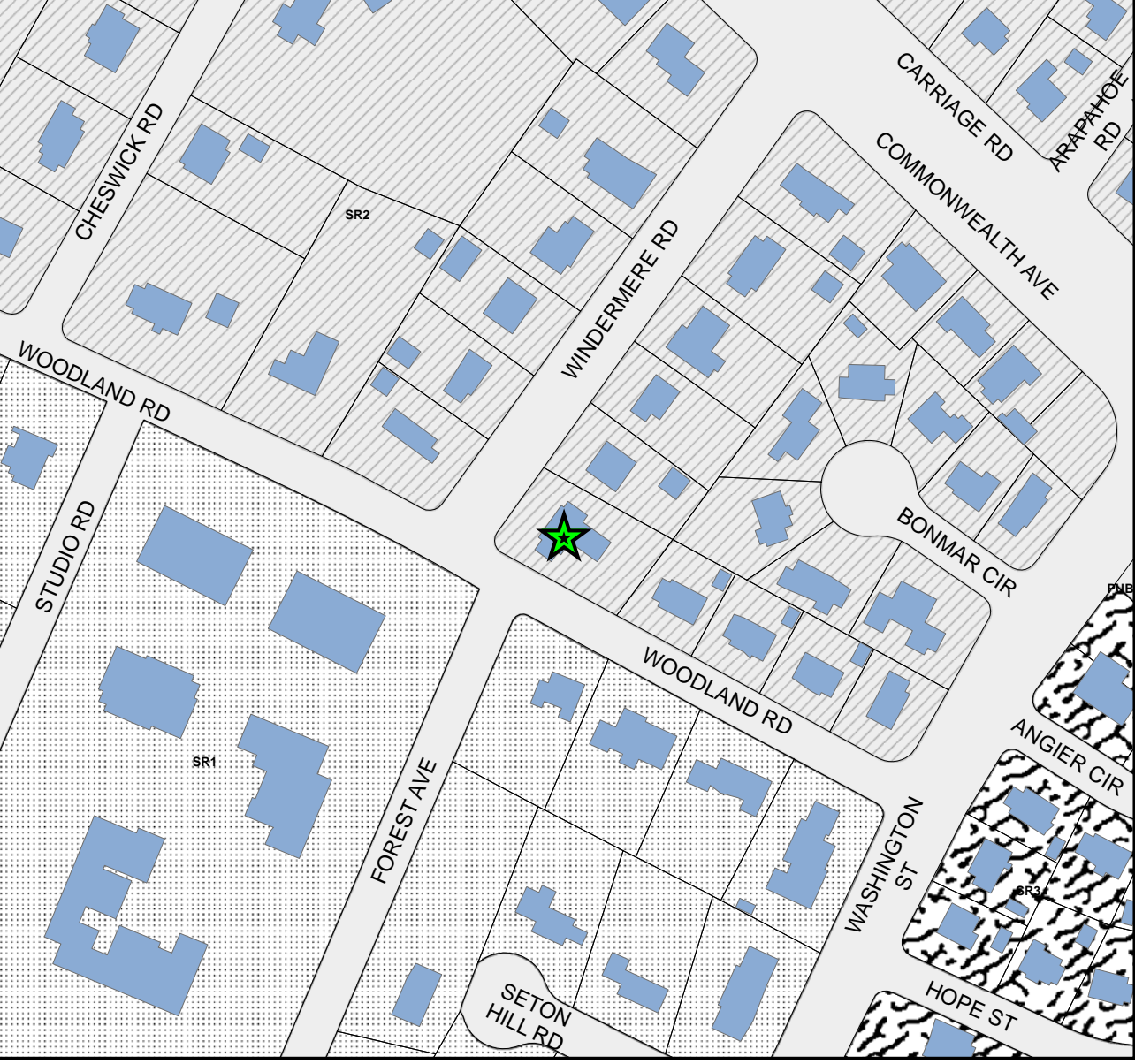


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS  
Mayor - Ruthanne B Fuller  
GIS Administrator - Douglas Greenfield



Map Date: May 03, 2018





# ATTACHMENT B






## Land Use

### Windermere Rd., 140

*City of Newton,  
Massachusetts*

#### Land Use

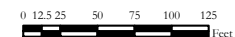
#### Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Mixed Use
-  Private Educational
-  Nonprofit Organizations

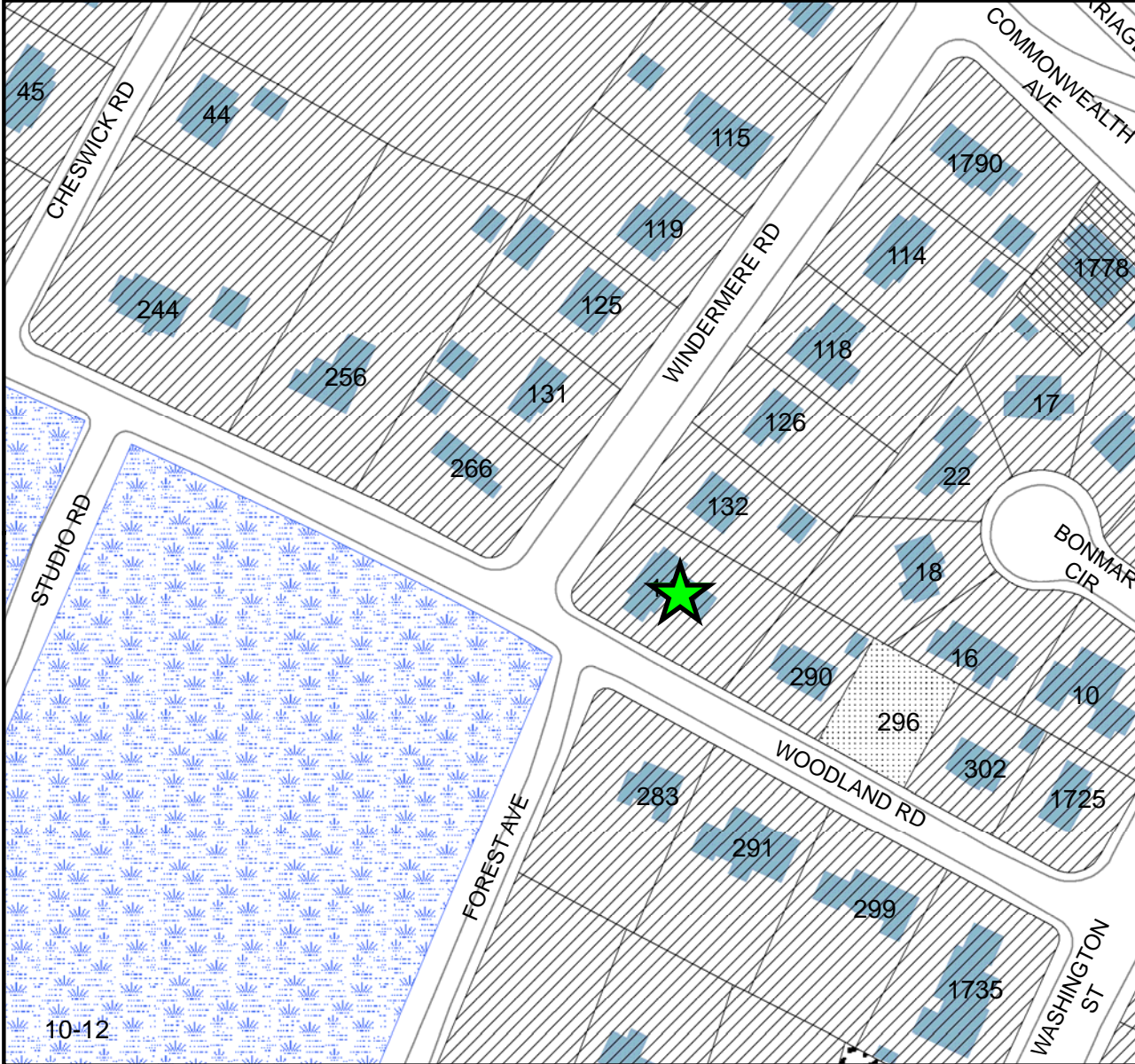


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Map Date: May 03, 2018







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Mayor

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**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: March 29, 2018

To: John Lojek, Commissioner of Inspectional Services

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

Cc: John Arone, Applicant  
Barney S. Heath, Director of Planning and Development  
Ouida Young, Acting City Solicitor

RE: Request to further extend nonconforming front setback

Applicant: John Arone	
Site: 140 Windermere Road	SBL: 43008 0019
Zoning: SR2	Lot Area: 12,445 square feet
Current use: Single-family dwelling	Proposed use: No change

### BACKGROUND:

The property at 140 Windermere Road consists of a 12,445 square foot lot improved with a single-family residence constructed in 1930 at the corner of Windermere and Woodland Roads. The petitioner proposes to replace the sloped roof over existing first-floor sunporch with a flat roof to create a second-floor deck off the master bedroom. The existing front setback is nonconforming at 16.76 feet, and the proposed deck extends that nonconforming setback vertically.

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

- Zoning Review Application, prepared John Arone, applicant, dated 3/27/2018
- FAR Worksheet, submitted 3/27/2018
- Plan of Land, prepared by Bibbo Brothers, surveyors, dated 1/29/18
- Architectural Plans, prepared by

**ADMINISTRATIVE DETERMINATIONS:**

1. The property is located at the corner of Windermere and Woodland Roads, and thus has two front setback requirements. The proposed second-floor deck is located on the 16.5 foot by 12.2 foot footprint of the existing first-floor sunporch. While the *de minimus* provisions of section 7.8.2.B allow for decks less than 200 square feet within a setback, they also require that alterations to the front of a structure must be less than 75 square feet within the setback, even if within the footprint of the existing structure. The deck adds approximately 128 square feet within the setback, exceeding the allowable 75 square feet, and requires a special permit per sections 3.1.3 and 7.8.2.C.2.

The remaining additions and alterations proposed by the petitioner may be done by right with a valid building permit.

SR2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	12,445 square feet	No change
Frontage	80 feet	<b>73 feet</b>	<b>No change</b>
Setbacks <ul style="list-style-type: none"> <li>• Front (Windermere Rd)</li> <li>• Front (Woodland Rd)</li> <li>• Side</li> <li>• Rear</li> </ul>	25 feet 25 feet 7.5 feet 15 feet	30.5 feet <b>16.76 feet</b> 17.09 feet 80 feet	No change <b>No change</b> No change 29.7 feet
Max Number of Stories	2.5	2.5	No change
FAR	.36	25	.34
Max Lot Coverage	30%	--	19.9%
Min. Open Space	50%	--	74.3%

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§3.1.3, §7.8.2.C.2	Request to extend a nonconforming front setback	S.P. per §7.3.3



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# **RECORD OF ACTION:**

**DATE:** February 21, 2018

**SUBJECT:** 140 Windermere Road - Certificate of Appropriateness

At a scheduled meeting and public hearing on February 20, 2018 the Auburndale Historic District Commission, by vote of 5-0,

**RESOLVED** to issue a Certificate of Appropriateness for the project as presented at 140 Windermere Road with the following required changes: 1) the chimney will be full-depth brick and will not be veneer; 2) the second-floor dormers will be narrowed so that they are subordinate to the first-floor windows; and 3) the right-side library will have three-foot-high railings. A set of the revised drawings must be submitted to Staff for review and final approval. The scope of the project includes demolishing the existing rear addition, left side porch and garage; building up and renovating the existing house; and building a new rear addition, left side porch with pergola and attached garage.

## **Voting in the Affirmative:**

Italo Visco, Chair  
Nancy Grissom, Member

Patricia Baker, Member  
Martin Smargiassi, Member

Patricia Bottomley, Member

Barbara Kurze, Commission Staff

## **DATE TRACKING**

Date Notice Sent: 1-30-18

Date of Hearing/Meeting: 2-20-18

Date of Decision: 2-20-18

## **ACTION TAKEN**

Accepted: X

Denied: \_\_\_\_\_

Reason for Action: Appropriate

## **TYPE OF CERTIFICATION ISSUED**



Appropriateness



Non-Applicability



Hardship

Conditions: See requirements detailed above.

Chairman or Secretary

Date

2-21-2018

After Historic District Commission approval has been issued, please check with Inspectional Services Department to see if a building permit will be required.



**DRAFT** #213-18  
140 Windermere Road

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 continue an existing nonconforming front setback of 16.76 feet where 25 feet is the minimum allowed by right, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Gregory Schwartz:

1. The proposed extension of the nonconforming front setback is not substantially more detrimental than the existing nonconforming front setback is to the neighborhood given that the proposed second floor deck would be subordinate in scale to the existing dwelling and would not increase the existing front setback nonconformity (§3.1.3 and §7.8.2.C.2).

PETITION NUMBER: #213-18

PETITIONER: John and Daniel Arone

LOCATION: 140 Windermere Road, on land known as Section 43, Block 08, Lot 19, containing approximately 12,445 square feet of land

OWNER: John and Daniel Arone

ADDRESS OF OWNER: 35 Fair Oaks Avenue  
Newton, MA 02466

TO BE USED FOR: Single-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.3 and §7.8.2.C.2 to further continue a nonconforming front setback

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 site plan entitled "Showing Proposed Addition #140 Windermere Road," prepared by Bibbo Brothers and Associates, unstamped, dated January 29, 2018
  - b. Architectural plans entitled "Arone Bros, LLC. 140 Windermere Road Newton, Mass Existing Single Family Complete Renovation and New Addition" prepared by Costa Architects, dated January 23, 2018, revised March 27, 2018, signed and stamped by Albert Costa, Registered Architect, consisting of the following sheets:
    - i. Existing Basement Floor and First Floor (A-1);
    - ii. Existing Second Floor and Roof Plan (A-2);
    - iii. Existing Basement Floor and First Floor Demo Plans (A-3);
    - iv. Existing Second Floor and Roof Demo Plans (A-4);
    - v. Existing/Proposed Basement Floor Plan (A-5);
    - vi. Existing/Proposed First Floor Plan (A-6);
    - vii. Existing/Proposed Second Floor Plan (A-7);
    - viii. Proposed Roof Plan (A-8);
    - ix. Existing Front and Right Side Elevations (A-9);
    - x. Existing Rear and Left Side Elevations (A-10);
    - xi. Proposed Front and Right Side Elevations (A-11);
    - xii. Proposed Rear and Left Side Elevations (A-12);
    - xiii. Typical Section Details 1,2 & 3 (A-13);
    - xiv. Proposed New Roof Framing Plan (A-14).
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 board 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 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, as statement from the Auburndale Local Historic District Commission approving the final plans.
  - 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/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 an architect and land surveyor certifying compliance with Condition #1.
  - b. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by the Auburndale Local Historic District Commission certifying compliance with Condition #1.
  - 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 an architect and licensed land surveyor including the as built floor area ratio of the structure.