



#353-19

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City of Newton, Massachusetts

Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

Ruthanne Fuller
Mayor

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date:	November 7, 2019
Land Use Action Date:	December 10, 2019
City Council Action Date:	December 16, 2019
90-Day Expiration Date:	February 5, 2020

DATE: November 1, 2019

TO: City Council

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

SUBJECT: **Petition #353-19**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to further increase the nonconforming floor area ratio at **38 Fenno Road**, Ward 2, Newton Centre, on land known as SBL 64, 12, 05 containing approximately 7,413 sf of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. §3.1.9, §7.8.2.C.2, and §7.4, of Chapter 30 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.



38 Fenno Road

EXECUTIVE SUMMARY

The subject property located at 38 Fenno Road consists of a 7,413 square foot lot improved with a single-family dwelling constructed circa 1920. The property is located within the Single Residence 2 (the "SR-2") zone in Newton Centre. The petitioner is seeking to construct a one-story rear addition to create additional living space. The structure currently exceeds the as of right floor area ratio (the "FAR") for the lot and any increase requires a special permit. Therefore, the petitioner requires a special permit to further increase the nonconforming FAR from .45 to .48, where .42 is the maximum allowed as of right. If approved, the addition would add 230 square feet to the dwelling for a total of 3,559 square feet, where 3,113 square feet is the maximum allowed, a difference of 446 square feet.

The Planning Department is unconcerned with the addition because the addition is contained to one story and is to the rear of the structure, not visible from the street. As such, staff believes the expanded structure will be consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood and the enlarged structure will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

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

- The proposed increase in the nonconforming FAR from .45 to .48, where .42 is the maximum allowed as of 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 increase in the nonconforming FAR from .45 to .48, where .42 is maximum allowed as of right is substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§3.1.9 and §7.8.2.C.2)

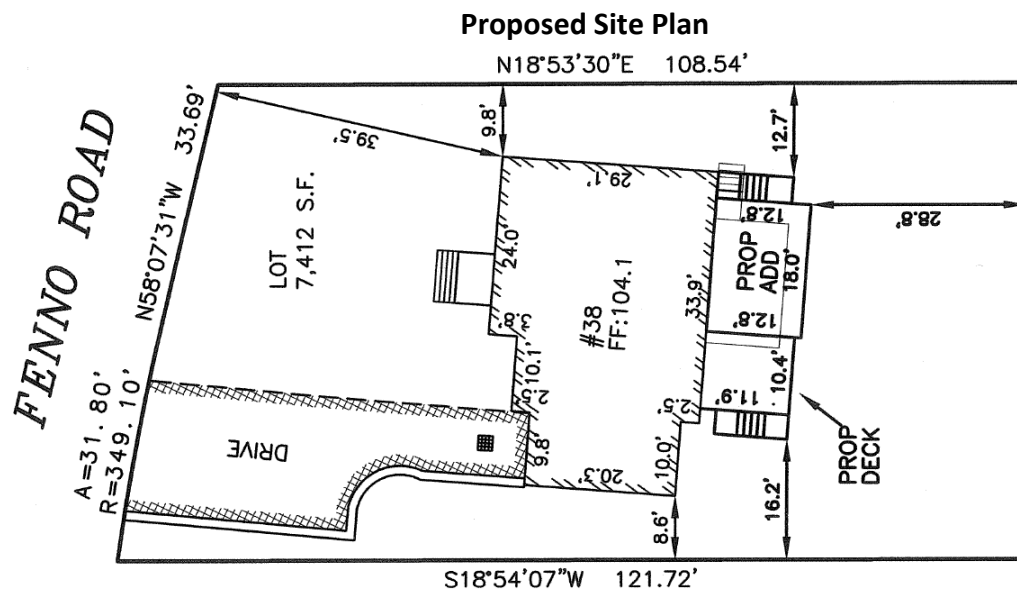
II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on Fenno Road in the SR-2 zone in Newton Centre. The immediate area and the surrounding neighborhood are located within the SR-2 zone, except a Public Use zone on the western side of Walnut Street (**Attachment A**). As such, the neighborhood consists predominantly of single-family uses, except two mixed use parcels and the Open Space parcel along Walnut Street (**Attachment B**).

B. Site

The site consists of 7,413 square feet of land and it is improved with a 2.5-story, single-family dwelling constructed circa 1920. The structure measures 33.7 feet tall and it complies with all dimensional standards, excluding FAR. The site has access from Fenno Road via a 15-foot wide curb cut at the northwest corner of the lot that provides access to a driveway and a one-stall garage in the basement of the dwelling. The grade of the lot slopes from the front of the lot to the rear such that enough of the basement is exposed for half the basement square footage to count towards the FAR.



III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

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

B. Building and Site Design

The petitioner is proposing to construct a one-story addition to the rear of the dwelling. The existing deck in this location will be demolished and a new deck will be constructed immediately west of the addition. Due to the existing deck, the addition will result in minimal changes to the side and rear setbacks. The addition will measure approximately 15.5 feet tall and will add 230 square feet to the dwelling. The addition will not include a basement, but the area beneath the addition is classified as a crawl space that will count towards the FAR once enclosed. This square footage was not accounted for in the FAR calculation and therefore was not included in the advertisement. As such, the petitioner will provide revised plans that will leave this

area open.



Currently, the dwelling contains 3,329 square feet counting towards the FAR, exceeding the as of right FAR by 216 square feet. The addition will add 230 square feet to the FAR, for a total of 3,559 square feet. The Planning Department is unconcerned with the addition because the addition is contained to one story and is to the rear of the structure, not visible from the street. As such, staff believes the expanded structure will be consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood and the enlarged structure will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood.

C. Parking and Circulation

The petitioner is not proposing changes to either the parking or circulation on site.

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 (the "Memorandum") provides an analysis of the proposal regarding 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 from the Engineering Division of Public Works is not required at this time. The petition will be reviewed for conformance with the City of Newton Engineering Design Standards prior to the issuance of a building permit, should this petition be approved.

C. Newton Historical Commission Review

This petition does not meet the minimum threshold for review from the Newton Historical Commission.

V. PETITIONER'S RESPONSIBILITIES

In advance of the public hearing, the petitioner should provide revised plans that indicate the area beneath the addition will remain open.






ATTACHMENTS:

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

Attachment A Zoning Map Fenno Rd., 38

*City of Newton,
Massachusetts*

Legend

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

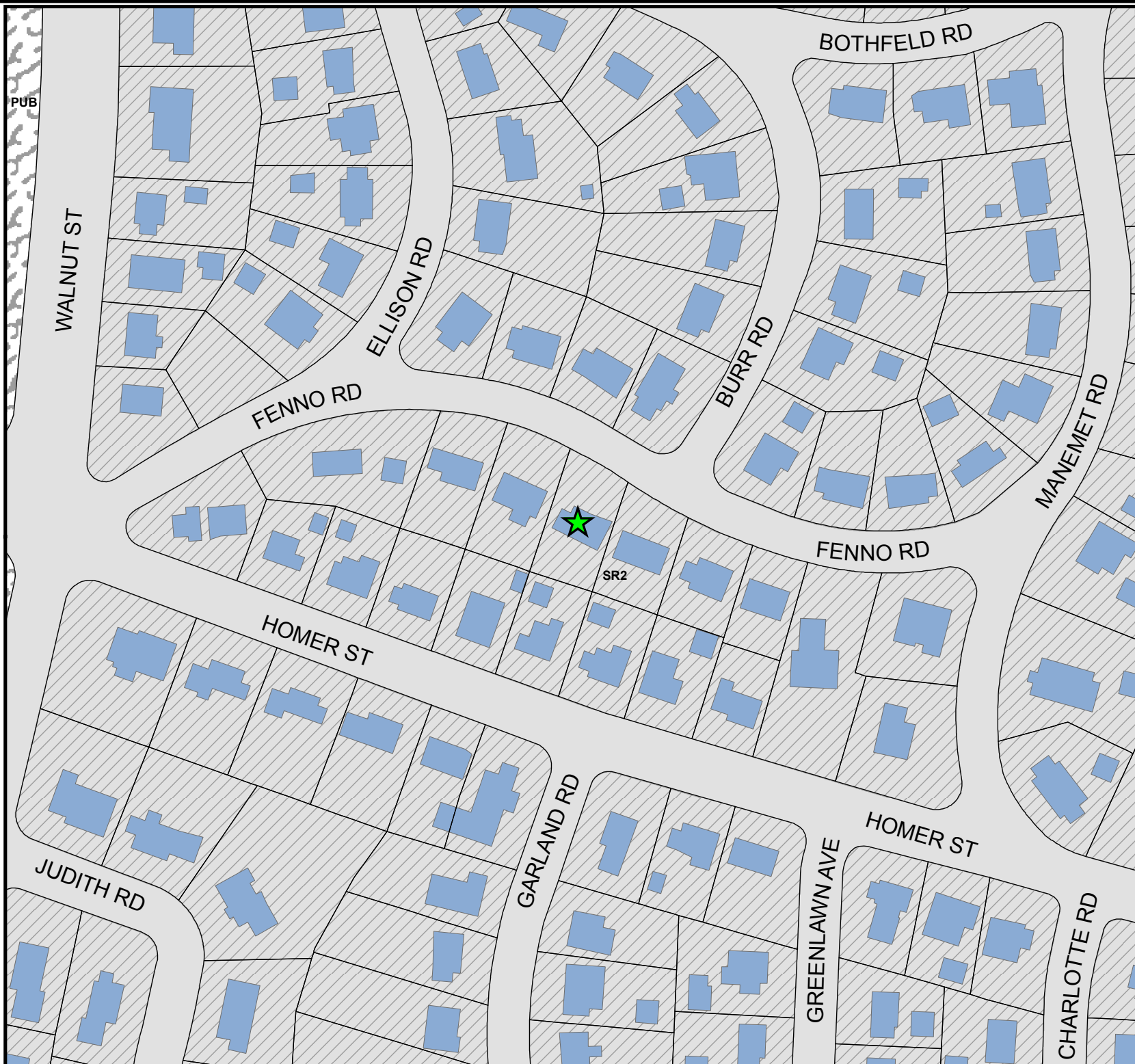


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller

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Map Date: October 23, 2019









Attachment B Land Use Map Fenno Rd., 38

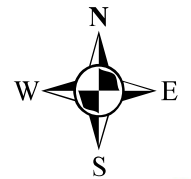
*City of Newton,
Massachusetts*

Legend

Land Use

Land Use

-  Single Family Residential
-  Mixed Use
-  Open Space
-  Building Outlines
-  Surface Water
-  Property Boundaries

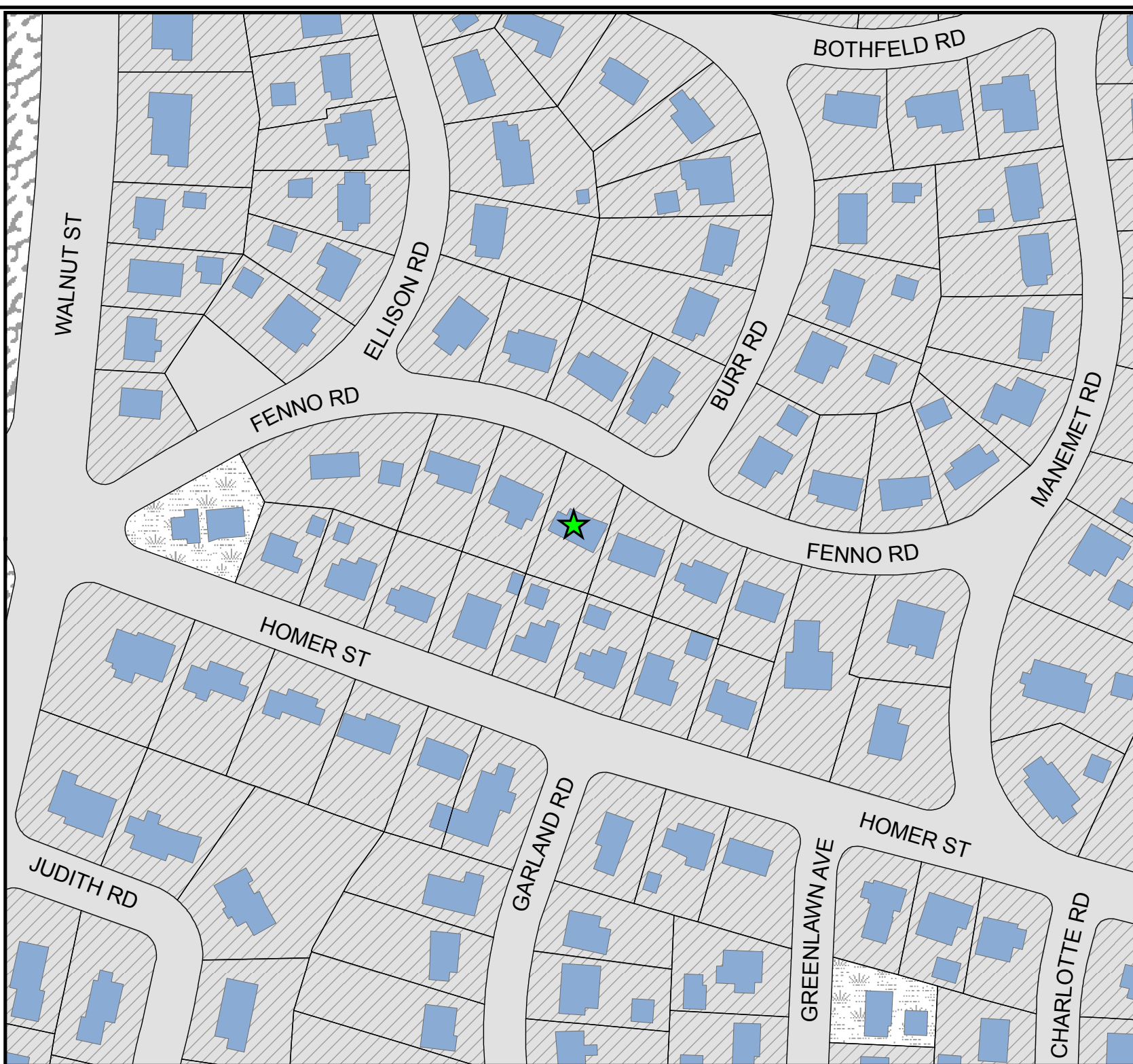


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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: September 20, 2019

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Michael Zalis, Applicant
Tova Greenberg, Architect
Barney S. Heath, Director of Planning and Development
Jonah Temple, Associate City Solicitor

RE: **Request to further increase nonconforming FAR**

Applicant: Michael Zalis	
Site: 38 Fenno Road	SBL: 64012 0005
Zoning: SR2	Lot Area: 7,413 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 38 Fenno Road consists of an 7,413 square foot lot improved with a single-family residence constructed in 1920. The petitioners propose to raze an existing deck and construct a first floor family room off the rear of the dwelling. The proposed changes 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 by Tova Greenberg, architect, submitted 7/28/2019
- FAR Worksheet, submitted 7/28/2019, revised
- Plot Plan, proposed addition, prepared by Everett M Brooks, surveyor, 7/17/2019
- Architectural plans and elevations, prepared by Steveworks LLC, dated 7/29/2019

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner intends to demolish an existing deck and construct a 230 square foot first floor family room addition at the rear of the dwelling, as well as a 80 square foot deck off the side of the addition. The existing FAR is .45, where .42 is the maximum allowed. The proposed addition adds 230 square feet to the dwelling, resulting in an FAR of .48. 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	7,413 square feet	No change
Frontage	80 feet	172 feet	No change
Setbacks <ul style="list-style-type: none">• Front• Side• Rear	25 feet 7.5 feet 15 feet	38.6 feet 9.7 feet ± 32 feet	No change No change 28.8 feet
Height	36 feet	33.5 feet	No change
FAR	.42	.45	.48
Max Lot Coverage	30%	18.3%	19.2%
Min. Open Space	50%	72%	69%

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.9, §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

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 floor nonconforming area ratio (the "FAR") from .45 to .48, where .42 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 FAR from .45 to .48, where .42 is the maximum allowed as of right is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood and the enlarged structure will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood because the addition is contained to one story and is located to the rear of the structure, not visible to the street. (§3.1.9, §7.8.2.C.2)

PETITION NUMBER: #353-19

PETITIONER: Mike Zalis

LOCATION: 38 Fenno Road, on land known as Section 64, Block 12, Lot 05, containing approximately 7,413 square feet of land

OWNER: Mike Zalis

ADDRESS OF OWNER: 38 Fenno Road
Newton, MA 02459

TO BE USED FOR: Rear Addition to Single-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.9 and §7.8.2.C.2 to further increase the nonconforming floor area ratio

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. Plot Plan showing Proposed Conditions, prepared by Everett M. Brooks Co., signed and stamped by Bruce Bradford, Professional Land Surveyor, dated October 2, 2017, Revised March 27, 2019 and July 17, 2019.
 - b. Architectural Plans, prepared by SteveWorks LLC., unsigned and unstamped, dated September 9, 2019, consisting of three (3) sheets.
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. 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 council 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, 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.
4. 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 land surveyor certifying compliance with Condition #1 as well as the as-built floor area ratio 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 professional 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.