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Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: April 14, 2020
Land Use Action Date: June 30, 2020
City Council Action Date: July 6, 2020
90-Day Expiration Date: July 6, 2020

DATE: April 10, 2020

TO: City Council

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

SUBJECT: **Petition #309-19(2)**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to amend Council Order #309-19 to further increase the nonconforming floor area ratio ("FAR") to further increase the nonconforming lot coverage, and to further extend the nonconforming open space, at **14 Church Street**, Ward 7, Newton Corner, on land known as SBL 72, 22, 03 containing approximately 4,220 sf of land in a district zoned SINGLE RESIDENCE 1. Ref: Sec. §3.1.3, §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.



14 Church Street

EXECUTIVE SUMMARY

The subject property located at 14 Church Street consists of a 4,200 square foot lot in the Single Residence 1 (the "SR-1") zone in Newton Corner. The petitioner obtained a special permit in 2019 to extend the nonconforming side setbacks and to increase the nonconforming lot coverage to construct a two-story rear addition. Prior to submitting for a building permit, it was determined that the existing structure contains FAR in the basement that renders the existing structure nonconforming regarding FAR. Additionally, the property is nonconforming regarding open space. To construct the addition authorized by Council Order #309-19, the petitioner requires special permits to further increase the nonconforming FAR and to further extend the nonconforming open space. The Planning Department is unconcerned with the requests to increase the nonconforming FAR and to extend the nonconforming open space because the addition is to the rear and within the footprint of the existing structure.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

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

- The proposed increase in the nonconforming FAR from .51 to .56, where .46 is the maximum allowed as of right is substantially more detrimental than the existing nonconforming structure is to the neighborhood (§3.1.3 and §7.8.2.C.2)
- The proposed extension in the nonconforming open space from 59 percent to 60 percent, where 65 percent is the minimum allowed is substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§3.1.3 and §7.8.2.C.2)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on Church Street in the SR-1 zone in Newton Corner. The properties on the southern side of Church Street are located within the SR-1 zone while the properties on the northern side are located within the Single Residence 2 zone. To the east and farther north, beyond the Single Residence 2 zone, exist two separate Public Use zones (**Attachment A**). Due to the presence of these three districts, the neighborhood consists predominantly of single-family and open space parcels, but some nonconforming multi-family uses exist as well (**Attachment B**).

B. Site

The site consists of 4,200 square feet of land and it is improved with a 2.5-story single-family dwelling. The structure and lot are nonconforming to the below dimensional standards of the SR-1 zone:

- side setbacks of two feet and 8.8 feet, where 12.5 is the minimum allowed;*
- lot coverage calculation of 22.3%, where 20% is the maximum allowed;*
- FAR of .51, where .46 is the maximum allowed as of right; and
- Open space of 59 percent, where 65 percent is the minimum allowed.

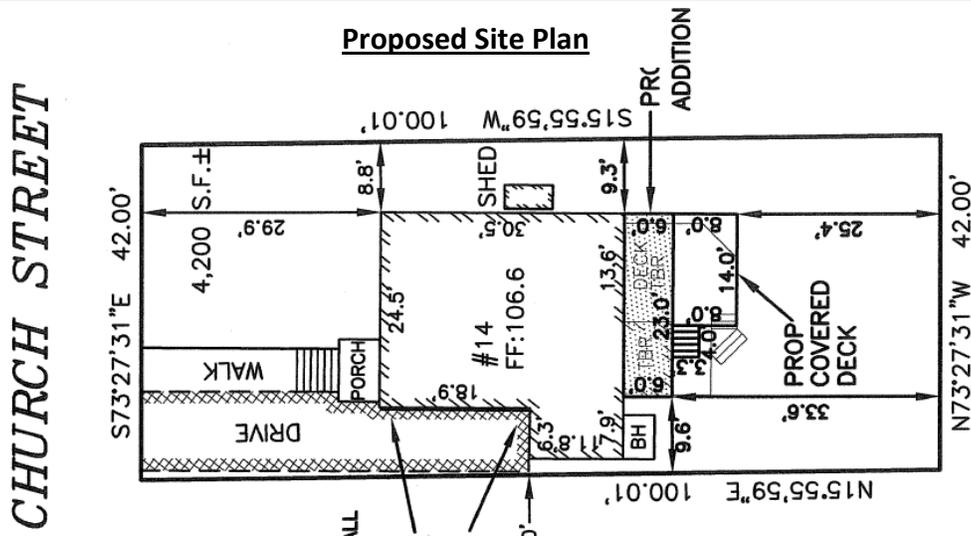
* Side setbacks and lot coverage were legalized by Council Order #309-19

There is a retaining wall along the eastern boundary supporting the driveway, there is also a deck to the rear of the structure and the rear yard is enclosed with stockade fencing.

III. 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 petitioner is proposing to demolish a portion of the rear deck and a one-story rear-portion of the dwelling to construct a two-story addition and a covered deck; the addition will be constructed within the existing footprint. Due to the height of the foundation walls below the first-floor elevation, the square footage in the basement counts towards the FAR. This square footage renders the structure

nonconforming and therefore a special permit is required to add the 213 square feet contained in the addition. As such, the petition further increases the nonconforming FAR from .51 to .56.

Additionally, the lot is nonconforming regarding open space. The addition increases the open space from 59 percent to 60 percent, but still below the required 65 percent. As such a special permit is required. The plans to construct the addition have not changed since the initial petition and the petitioner is not proposing any other changes to the site or to the structure. The Planning Department is unconcerned with the requests to further increase the nonconforming FAR and to extend the nonconforming open space because the addition is to the rear and within the footprint of the existing structure.

C. Parking and Circulation

The petitioner is not proposing any 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.
- §3.1.3, and §7.8.2.C.2 of Section 30, to further increase the nonconforming open space.

B. Engineering Review

Review from the Engineering Division of Public Works is not required at this time. This petition will be reviewed in accordance 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

The Newton Historical Commission approved the addition on August 19, 2019. The Chief Preservation Planner will review the plans again prior to the issuance of a building permit, should this petition be approved.

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:** DRAFT Order

Attachment A Zoning Map Church St., 14

*City of Newton,
Massachusetts*

Legend

-  Single Residence 1
-  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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Feet

Map Date: September 22, 2019



Attachment B Land Use Map Church St., 14

*City of Newton,
Massachusetts*

Legend

Land Use

Land Use

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



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CITY OF NEWTON, MASSACHUSETTS
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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: April 9, 2020

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Neil Cronin, Chief Planner for Current Planning

Cc: Ethan Solomon, Applicant
Jessica Snare, Architect
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: Request to further extend nonconforming side setbacks and to further increase nonconforming lot coverage and FAR

Applicant: Ethan Solomon	
Site: 14 Church Street	SBL: 72022 0003
Zoning: SR1	Lot Area: 4,200 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 14 Church Street consists of a 4,200 square foot lot improved with a single-family residence constructed in 1890. The petitioner received Special Permit #309-19 in October 2019 to extend nonconforming setbacks and lot coverage. It was determined at the building permit level that the FAR was not calculated correctly and also requires special permit relief.

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

- Zoning Review Application, prepared by Jessica Snare, architect, dated 7/1/2019
- FAR Worksheet, submitted 7/1/2019, updated 4/6/2020
- Plot Plan, signed and stamped by Joseph Porter, surveyor, dated 4/13/2010, revised 3/17/2020
- Existing and proposed floor plans and elevations, prepared by Spring Hill Design, architect, dated 6/28/2019

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner intends to raze some existing living space, a covered porch and a wood deck, and construct a two-story rear addition and covered deck. The existing side setback is 9.3 feet from the eastern side lot line where the addition is proposed (it is 8.8 feet at its closest on that same side at the front of the structure), where 12.5 feet is required per section 3.1.3. The proposed additions will further extend the nonconforming eastern setback vertically and back towards the rear of the property, but will not go closer to the side lot line.

Additionally, the side setback on the western side of the dwelling is nonconforming. At its closest, the dwelling is 2.0 feet from the side lot line. The existing enclosed rear entry is nonconforming at 9.6 feet from the western side lot line, where 12.5 feet is required. The petitioners intend to raze the existing rear entry and construct an addition within the footprint that extends to the second floor, vertically increasing the nonconforming western side setback.

A special permit pursuant to Sections 3.1.3 and 7.8.2.C.2 is required to further extend the nonconforming side setbacks to allow for construction of the two-story rear addition and covered porch.

2. The petitioner’s existing lot coverage is nonconforming at 22.3%, where 20% is the maximum allowed per section 3.1.3. The proposed construction further increases the lot coverage to 27%, requiring a special permit per sections 3.1.3 and 7.8.2.C.2.

It is noted that the open space for the lot is slightly increasing even though the lot coverage is as well. The proposed addition is in place of existing first floor living space, a covered porch and a large deck. The resulting footprint decreases the amount of lot which is covered by structures by 1 percent.

3. The petitioner’s existing nonconforming FAR is .51, where .46 is the maximum allowed per section 3.1.9. The additions further increase the FAR to .56, requiring a special permit per sections 3.1.3, 3.1.9 and 7.8.2.C.2.

SR1 Zone	Required	Existing	Proposed
Lot Size	15,000 square feet	4,200 square feet	No change
Frontage	100 feet	42 feet	No change
Setbacks			
• Front	25 feet	29.9 feet	No change
• Side	12.5 feet	2.0 feet	No change
• Side	12.5 feet	8.8 feet	No change
• Rear	25 feet	25.5 feet	25.4 feet
Max Lot Coverage	20%	22.3%	27%
Min. Open Space	65%	65%	66%
FAR	.46	.51	.56

1. See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.3, §7.8.2.C.2	Request to further extend a nonconforming side setbacks	S.P. per §7.3.3
§3.1.3, §7.8.2.C.2	Request to further increase nonconforming lot coverage	S.P. per §7.3.3
§3.1.3 §3.1.9 §7.8.2.C.2	Request to further increase nonconforming FAR	S.P. per §7.3.3

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 (the "FAR) and to extend the nonconforming open space from 59 percent to 60 percent, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Rick Lipof:

1. The proposed increase in the nonconforming FAR is not substantially more detrimental than the existing nonconforming structure is the neighborhood because the proposed addition is within the footprint and to the rear of the existing structure (§3.1.9 and §7.8.2.C.2).
2. The proposed extension in the nonconforming open space is not substantially more detrimental than the existing nonconforming open space is to the neighborhood because while still nonconforming, the addition increases the amount of open space. (§3.1.3 and §7.8.2.C.2)

PETITION NUMBER: #309-19(2)

PETITIONER: Ethan Solomon

LOCATION: 14 Church Street, on land known as Section 72, Block 22, Lot 03, containing approximately 4,220 square feet of land

OWNER: Ethan Solomon

ADDRESS OF OWNER: 14 Church Street
Newton, MA 02458

TO BE USED FOR: Rear Addition

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.9 and §7.8.2.C.2 to further increase the nonconforming FAR; and §3.1.3 and §7.8.2.C.2 to extend the nonconforming open space

ZONING: Single Residence 1 district

This property is governed by Council Order #309-19 which approved the extension in the nonconforming side setbacks and the increase in the nonconforming lot coverage to construct the addition detailed in the plans cited in Condition #1 below. This Special Permit/Site Plan Approval amends Council Order #309-19 by adding relief to further increase the nonconforming FAR and to extend the nonconforming open space. Council Order #309-19 is hereby null and void.

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. Site Plan, prepared by Everett M. Brooks CO., signed and stamped by Bruce Bradford, Professional Land Surveyor, dated June 25, 2019
 - b. Architectural Plans, prepared by Spring Hill Design, signed and stamped by Jessica Romualdi Snare, dated June 28, 2019, consisting of the following four (4) sheets:
 - i. Demolition Plan
 - ii. First and Second Floor Plans
 - iii. Third Floor and Rear Elevation
 - iv. Electrical Plans
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 Council 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 petitioners 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 or a professional land surveyor certifying compliance with Condition #1.
 - 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.