



Land Use Committee Report

City of Newton In City Council

Tuesday, March 12, 2024

Present: Councilors Kelley (Chair), Block, Downs, Farrell, Leary, Laredo, Lobovits and Lucas;

Also Present: Councilors Gentile, Getz, Lipoff, Malakie, Oliver, and Wright

City Staff Present: Senior Planner Joseph Iadonisi, Senior Planner Cat Kemmett, Chief Planner Katie Whewell and Assistant City Solicitor Jonah Temple

All Special Permit Plans, Designs, Plan Memoranda and Application Materials, both past and present, can be found at the following link: [NewGov - City of Newton Land Use Committee Special Permit Search](#).

The full video of the March 12, 2024, Land Use Meeting can be found at the following link: [March 12, 2024 Land Use Meeting](#)

#130-24 Class 2 Auto Dealer License

NEW ENGLAND MOTOR MART, INC
1211 Washington Street
West Newton, MA. 02465

<https://newtonma.viewpointcloud.com/records/818161>

Action: **Land Use Approved 8-0**

Note: Chair Kelley introduced the above auto dealer's licenses, and confirmed with the clerk there were no outstanding issues with this property. With no questions or concerns from the Committee, Councilor Lucas motioned to approve which passed unanimously.

**#139-24 Request to further extend nonconforming FAR and lot coverage at 157
Baldpate Hill Road**

DANIEL KRUPP & RYAN WINTON petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct basement and first story additions which will further extend the nonconforming FAR and lot coverage at 157 Baldpate Hill Road, Ward 8, Newton Centre, on land known as Section 82 Block 25 Lot 63, containing approximately 16,048 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: Sec. 7.3.3, 3.1.3, 3.1.9, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Held 8-0; Public Hearing Opened**

Note: Joe Iadonisi, Senior Planner presented the request to further extend nonconforming FAR and lot coverage at 157 Baldpate Hill Road. The presentation is attached, and additional back-up can be found at the following link: <https://newtonma.viewpointcloud.com/records/816678>. Mr. Iadonisi noted that new plans were submitted at 6PM this evening, and planning has not had a chance to review them.

The chair noted the desire to entertain a motion to hold the item to give planning and the committee a chance to review the new plans.

The public hearing was opened. No member of the public was present to speak on the item.

The chair noted the committee would wait to hear from the petitioner and their attorney until the committee and planning reviewed the material present.

Councilor Farrell motioned to hold, which passed unanimously.

#140-24 Request to allow three stories, to further extend nonconforming side setback and to exceed FAR at 86 Floral Street

SEBASTIO DASILVA petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct additions to a 2.5 story two family dwelling, resulting in a three story building, to vertically extend a nonconforming side setback, modifying the front porch entry, and constructing rear decks exceeding maximum FAR at 86 Floral Street, Ward 6, Newton Highlands, on land known as Section 52 Block 36 Lot 16, containing approximately 5,942 sq. ft. of land in a district zoned MULTI RESIDENCE 2. Ref: Sec. 7.3.3, 3.2.3, 7.8.2.C.2, 3.1.3, 3.1.9 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved 8-0; Public Hearing Closed 8-0

Note: Joe Iadonisi, Senior Planner presented the request to allow three stories, to further extend nonconforming side setback and to exceed FAR at 86 Floral Street. The presentation is attached, and additional back-up can be found at the following link: <https://newtonma.viewpointcloud.com/records/796327>. Mr. Iadonisi noted that no area in the basement should not count as FAR, which would eliminate the need for FAR relief. He noted two options for the committee moving forward, with one being to hold the item until a correct FAR worksheet is submitted, with the other being to pass the item with the understanding the petitioner will have to submit a correct FAR worksheet before receiving the building permit. He stated if the committee approved it, the petitioner would be locked in to follow the plans submitted for this permit.

Barbara Collins, attorney, on behalf of the petitioner, expressed the desire for the committee to approve and allow them time to correct the FAR worksheet before receiving the building permit.

The public hearing was opened. No member of the public was present to speak on the item.

A councilor noted the plans are consistent with the neighborhood, that this will stay a two-family home, the driveway will remain the same, and that the neighbors have been supportive of the project.

The public hearing was closed.

The committee discussed the draft council order, and Councilor Lobovits motioned to approve with the condition that an FAR worksheet is submitted before receiving the building permit, which passed unanimously.

#141-24 Request to amend Special Permit #316-20 and to exceed FAR at 432 Dedham Street
DAVID GEFFEN petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend special permit #316-20 to raze the detached garage and construct an attached garage with an accessory apartment above as well as a rear addition which exceeds the allowable FAR at 432 Dedham Street, Ward 8, Newton Centre, on land known as Section 81 Block 11 Lot 47, containing approximately 31,308 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 3.1.5, 3.1.9 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved 8-0; Public Hearing Closed 8-0

Note: Cat Kemmett, Senior Planner presented the request to amend Special Permit #316-20 and to exceed FAR at 432 Dedham Street. The presentation is attached, and additional back-up can be found at the following link: <https://newtonma.viewpointcloud.com/records/817752> . Ms. Kemmett noted the new garage is at the left of the structure from the front of the building with the accessory above the garage. She noted planning does see any issue with this permit, and noted that the additional accessory unit would add additional sizes and dwelling units to the City.

David Geffen, the petitioner, noted if it was a single residence 2 without a special permit, this could be done by right. Noted abutters have not raised any objections and he would be available to answer any questions the committee may have.

The public hearing was opened. No member of the public was present to speak on the item.

Councilors spoke in favor of supporting the petition, and grateful the house is returning to its original state.

A councilor clarified that with this being built as an accessory dwelling unit, that the owner as required by ordinance must live in either the house or the ADU. Mr. Geffen noted that they intend to live in one or the other.

The public hearing was closed.

The committee discussed the draft council order, and Councilor Farrell motioned to approve, which passed unanimously.

#79-24 Request to amend Special Permit #395-22 to allow for a cash payment in lieu of providing IZ units at 136-144 Hancock Street

TERRENCE P. MORRIS petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend the special permit to substitute a cash payment in lieu of providing the units at 136-144 Hancock Street, Ward 4, Auburndale, on land known as Section 43 Block 31 Lot 01, containing approximately 58,492 sq. ft. of land in a district zoned MULTI RESIDENCE 2. Ref: Sec. 7.3.3, 5.11.5.A.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Land Use Held 7-0 (Councilor Downs Not Voting); Public Hearing Opened on February 6, 2024

Action: **Land Use Held 8-0; Public Hearing continued**

Note: Cat Kemmett, Senior Planner presented the Request to amend Special Permit #395-22 to allow for a cash payment in lieu of providing IZ units at 136-144 Hancock Street. The presentation is attached, and additional back-up can be found at the following link: <https://newtonma.viewpointcloud.com/records/813903>. Ms. Kemmett noted the first meeting on February 6th resulted in holding the item to examine options to have one IZ unit on site with a cash payment for the other. The petitioner proposed that the unit be located on the ground floor of the structure, which would not meet the ordinance requirements for the IZ unit. The unit must be 10% of the sum of the total square footage of all market rate and all inclusionary units in the proposed development, which this does not meet. Noted the ordinance does not explicitly state that a petitioner can provide one unit with a cash payment for the other unit. It would also have to comply with the other standards in the ordinance as well, with it needing to have an equivalent level of accessibility as the market rate units, must be proportionally distributed and located in no less desirable locations than the market rate units. Noted there are three options moving forward, with one being to build the project as the special permit dictated with two IZ units, two being to approved this petition with \$1,560,000 being paid in lieu of providing IZ units, and three being the petitioner seeks a special permit to approve 1 IZ unit and a payment of \$910,000 in lieu of the other payment.

Terry Morris, attorney, on behalf of the petitioner noted they believe the 1 IZ unit and a payment in lieu of the other unit is a viable approach. He stated that the desirability of one unit over the other is subjective. He noted the unusual net benefit to allow for the cash payment would be for the IZ unit to be increased in size to being a three-bedroom unit. He noted the petitioner would like to request a continuance to explore further options.

The public hearing was opened.

Kathleen Kouril Greiser, 258 Mill Street, noted the inclusionary ordinance should be adhered to in any decisions they make in the future.

David Hedison, 215 Waverly Avenue, noted pleasure to hear that the applicant would like to explore other options. Noted the need for affordable units throughout the city. Noted there is \$4 million in the affordable housing trust.

A councilor noted that the option brought up by the petitioner at the last hearing to link the cash contribution to providing affordable units at the site directly abutting this one that City owns needs to

be explored. Requested that all three Ward 4 councilors are kept in the loop by the petitioners, the law department, and the planning department to keep them apprised as this moves forward.

A councilor noted the parcel next door is on the property reuse agenda, and the City bought it with ARPA funds with the possibility of using it for affordable housing or for the Williams School to use in the future.

Councilors noted a preference to adhering to the IZ Ordinance.

A councilor noted the desire to know what the school will be using the parcel next to this one before deciding to link the two.

Jonah Temple, Assistant City Solicitor, noted that the committee cannot link the cash payment to the parcel next door. The cash payment as prescribed by the ordinance would be split between the Newton Housing Authority and the City's Affordable Housing Trust. It does not preclude the payment from being used for the parcel next door, but the committee could not prescribe it.

Councilor Block motioned to hold which passed unanimously.

The committee adjourned at 8:15PM.

Respectfully Submitted,

Andrea Kelley, Chair

City of Newton Planning and Development

Petition: #79-24

Special Permit/Site Plan Approval
to amend Special Permit #395-22 to allow for a
cash payment in lieu of providing IZ units

March 12, 2024



136-144 Hancock Street

1

Site Plan



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Zoning Relief

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
	Request to amend Special Permit #395-22	S.P. per §7.3.3
§5.11.5.A.2	Request to allow a cash payment in lieu of providing two IZ units	S.P. per §7.3.3

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Amendments Proposed

- Conditions 5, 6, 8, 9, 10 and 30.c, related to the Inclusionary units, will be deleted
- Condition 7 updated to higher cash payment of \$1,560,000
- Typo correction in Condition 13

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Standard of Review

When reviewing this request, the Council must find that there will be an unusual net benefit to achieving the City's housing objectives as a result of allowing a cash payment rather than requiring the construction of the inclusionary units.

These findings must include the following:

- Consideration of the appropriateness of the development site location for income-eligible households including proximity to and quality of public transportation, schools, and other services
- The current balance of the Inclusionary Housing Fund
- The purposes of the Inclusionary Zoning Ordinance

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Proposed single affordable unit

- Per 5.11.7.C.3, *"The total square footage of Inclusionary Units in a proposed development must not be less than 10% of the sum of the total square footage of all market-rate and all Inclusionary Units in the proposed development"*
 - Ordinance does not explicitly allow "half and half" scenario
 - Therefore if only one affordable unit is provided, it must be at least 3,559.5 square feet
- The affordable units must also have an equivalent level of accessibility as that of the market rate units.
- Per 5.11.7.C.A, the inclusionary units provided on-site must be proportionally distributed and located in no less desirable locations than the market-rate units.
 - Housing staff's interpretation is that if one unit is provided, it should not be on the lower level

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Options

1. The petitioner can continue to pursue the relief included in this petition, wherein the petitioner will pay the full payment in lieu of the two required affordable units in the amount of \$1,560,000 for the 2.4 affordable units required by the ordinance.
2. The petitioner builds the project as approved in their special permit, which would include two affordable units that are equally distributed and comparable to the market rate units, subject to approval by Housing staff, and pays the \$260,000 required fractional payment.
3. The petitioner may seek relief to amend their special permit to provide one inclusionary unit that complies with the ordinance and a payment of \$910,000 for the 1.4 affordable units not built on site.

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Purpose of Inclusionary Zoning

The purposes of Sec. 5.11 are to:

- A. Promote the public health, safety, and welfare by encouraging a diversity of housing opportunities for people of different income levels in the City;
- B. Provide for a full range of housing choices throughout the City for households of all incomes, ages, and sizes;
- C. Increase the production of affordable housing units to meet existing and anticipated housing needs within the City; and
- D. Work to overcome economic segregation regionally as well as within Newton, allowing the City to be a community of opportunity in which low and moderate-income households have the opportunity to advance economically.

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Analysis

The purposes of Sec. 5.11 are to:

- A. Promote the public health, safety, and welfare by encouraging a diversity of housing opportunities for people of different income levels in the City;
- B. Provide for a full range of housing choices throughout the City for households of all incomes, ages, and sizes;
- C. Increase the production of affordable housing units to meet existing and anticipated housing needs within the City; and
- D. Work to overcome economic segregation regionally as well as within Newton, allowing the City to be a community of opportunity in which low and moderate-income households have the opportunity to advance economically.

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Findings

1. The specific site is an appropriate location for the amendments to Council Order #395-22. (§7.3.3.C.1)
2. The amendments to Council Order #395-22 will not adversely affect the surrounding neighborhood. (§7.3.3.C.2)
3. The amendments to Council Order #395-22 will not create a nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
5. There will be an unusual net benefit to achieving the City's housing objectives as a result of allowing a cash payment rather than requiring the development of Inclusionary Units. (§5.11.5.A.2)

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Conditions

1. Conditions 5, 6, 8, 9, 10 shall be deleted in their entirety.
2. Condition 7 shall be deleted and replaced with the following: "The Petitioner shall provide a fractional cash payment of \$1,560,000 in accordance with the City's Zoning Ordinance, §5.11, prior to the issuance of any certificate of occupancy."
3. Condition 31.b shall be revised to read "Submitted the payments required in accordance with conditions #7, #15.a and #15.b"
4. Condition 31.c is to be deleted in their entirety.
5. Condition 32 shall be modified by deleting e through h.
6. Condition #7 shall be modified as follows: "The Petitioner shall provide a fractional cash payment of \$1,560,000 in accordance with the City's Zoning Ordinance, §5.11, prior to the issuance of any certificate of occupancy."
7. Condition 15.b. shall be modified to allow the payment at certificate of occupancy of the eighth unit.

City of Newton Planning and Development

Petition: #139-24
Special Permit/Site Plan Approval
Addition of lower level and first floor area,
exceeding by-right lot coverage and FAR
March 12, 2024



157 Baldpate Hill Rd.

Zoning Relief

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.3 §3.1.9 §7.8.2.C.2	Request to further extend nonconforming FAR	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

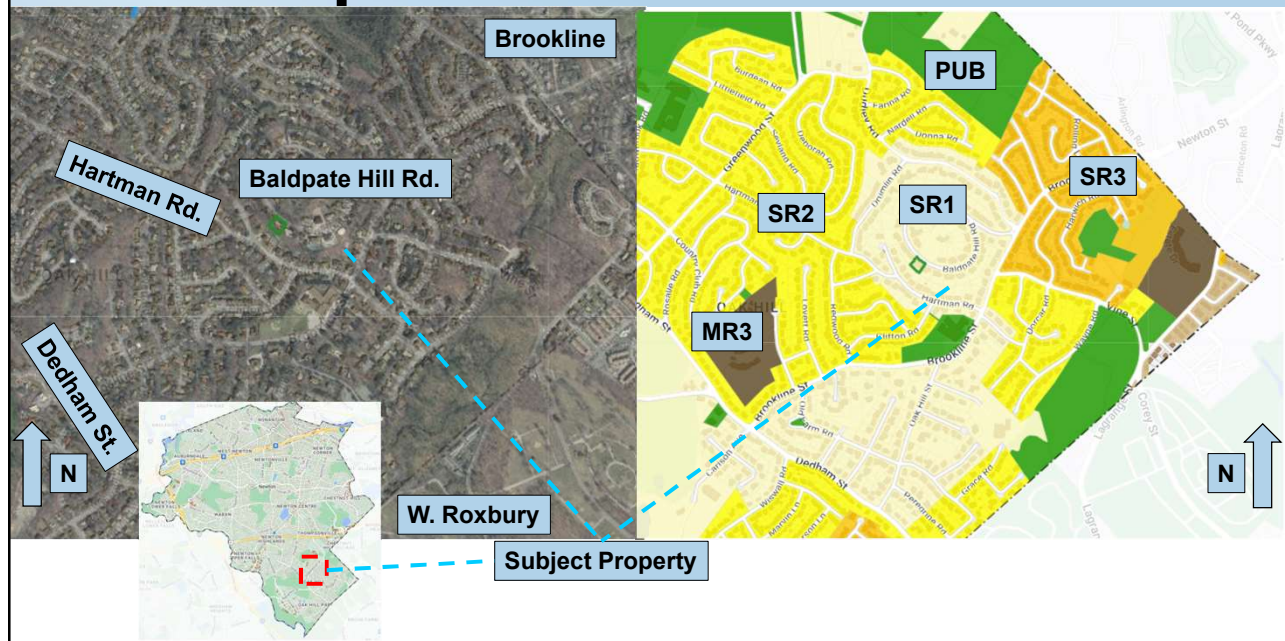
Criteria to Consider

When reviewing this request, the Council should consider:

- The proposed addition of a lower level and additions to the first level, further extending nonconforming Floor Area Ratio and nonconforming lot coverage, is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood. (§3.1.3, §3.1.9)
- The proposed addition of a lower level and additions to the first level, further extending nonconforming Floor Area Ratio and nonconforming lot coverage, will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§7.8.2.C.2)

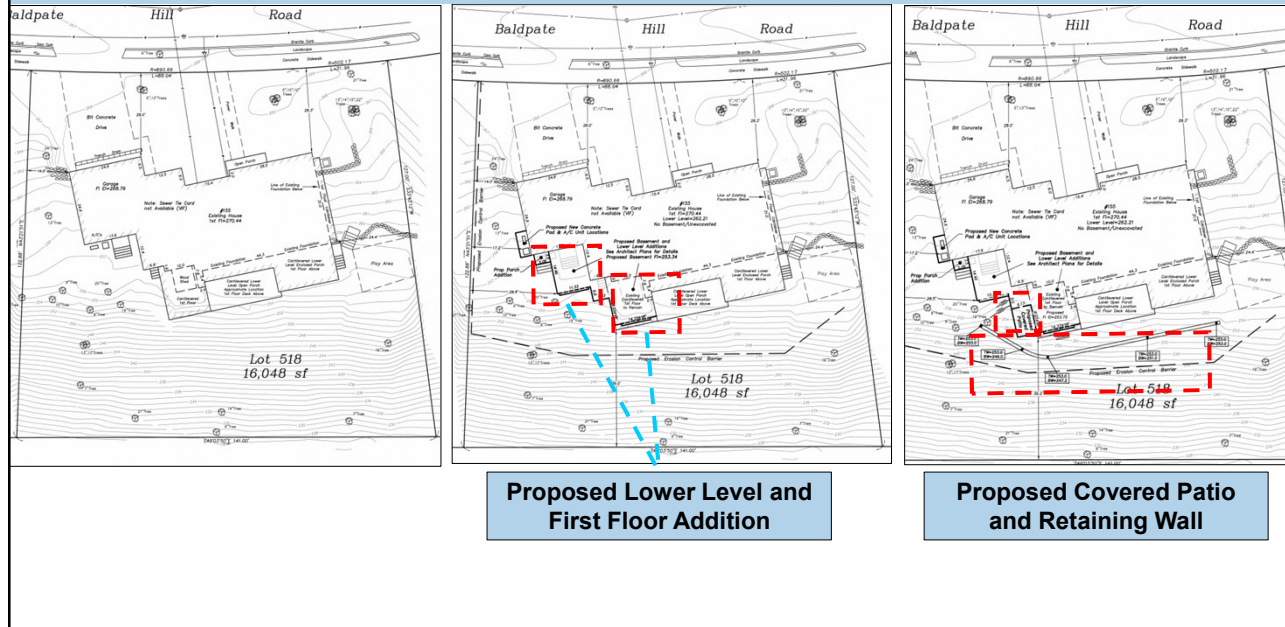
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Aerial Map



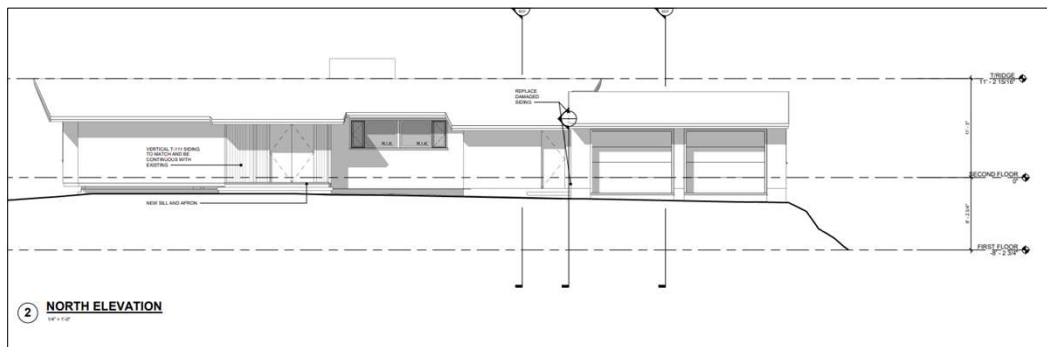
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Site Plan



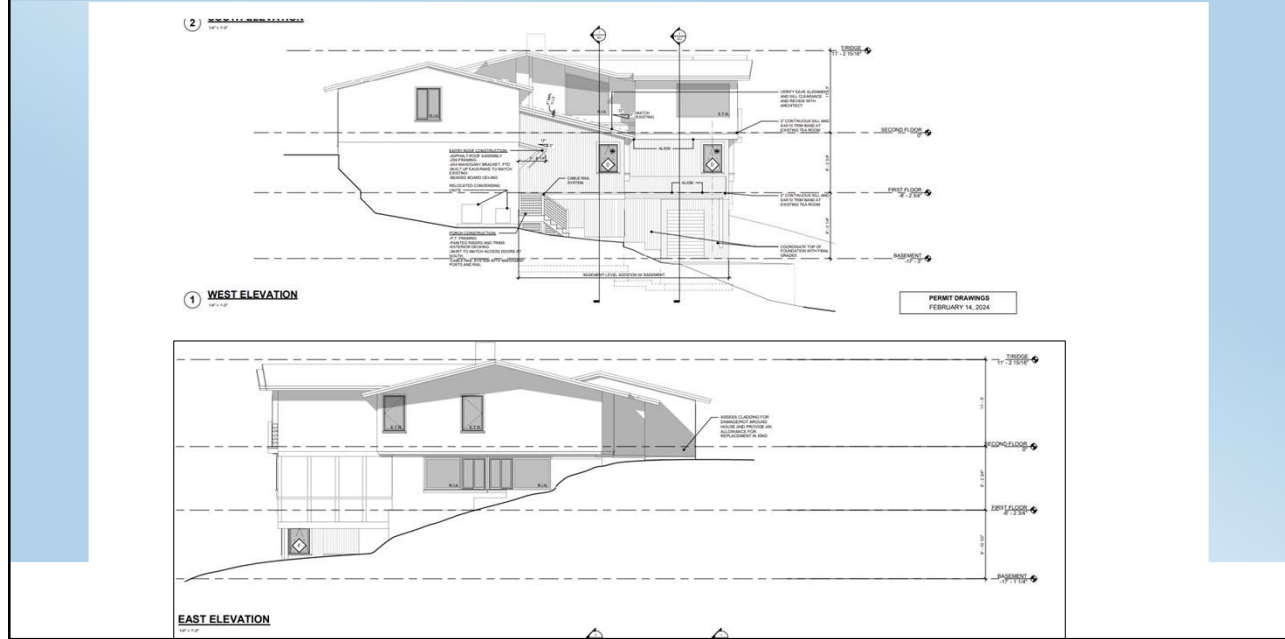
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Proposed Elevation-Front



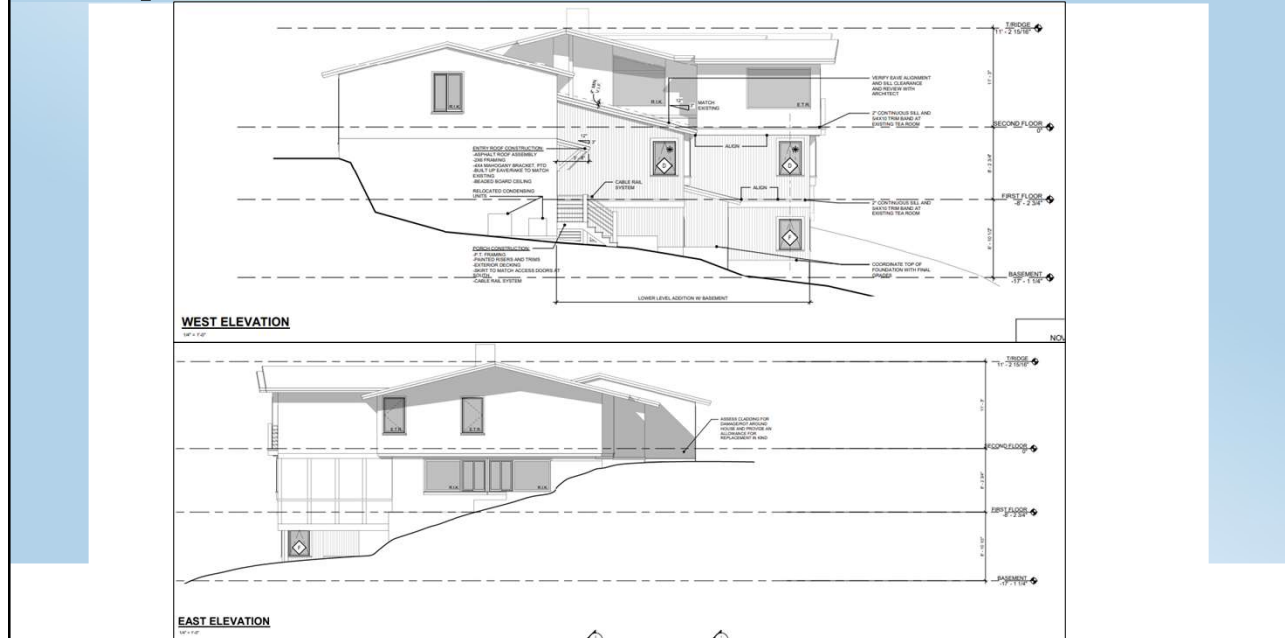
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Proposed Elevations- Sides



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Proposed Elevations- Sides



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Findings

1. The proposed addition of a lower level and additions to the first level, further extending nonconforming Floor Area Ratio and nonconforming lot coverage, is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood as the additions are the rear of and beneath the dwelling and the dwelling will still present as a single-story from the street. (§3.1.3, §3.1.9)
2. The proposed addition of a lower level and additions to the first level, further extending nonconforming Floor Area Ratio and nonconforming lot coverage, will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood as the steep grade of the site limits the potential locations and by-right options for additions. (§7.3.3.C.1)

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Conditions

1. Plan referencing
2. Standard building permit conditions
3. Standard occupancy conditions

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City of Newton Planning and Development

Petition: #140-24
Special Permit/Site Plan Approval
Addition of a nonconforming third story, vertically
extending the nonconforming side setback, and
exceeding maximum by-right Floor Area Ratio
March 12, 2024



86 Floral St.

Zoning Relief

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.2.3	To allow a three story two-family dwelling	S.P. per §7.3.3
§3.2.3 §7.8.2.C.2	To further extend (vertically) a nonconforming side setback	S.P. per §7.3.3
§3.1.3 §3.1.9	To exceed FAR	S.P. per §7.3.3

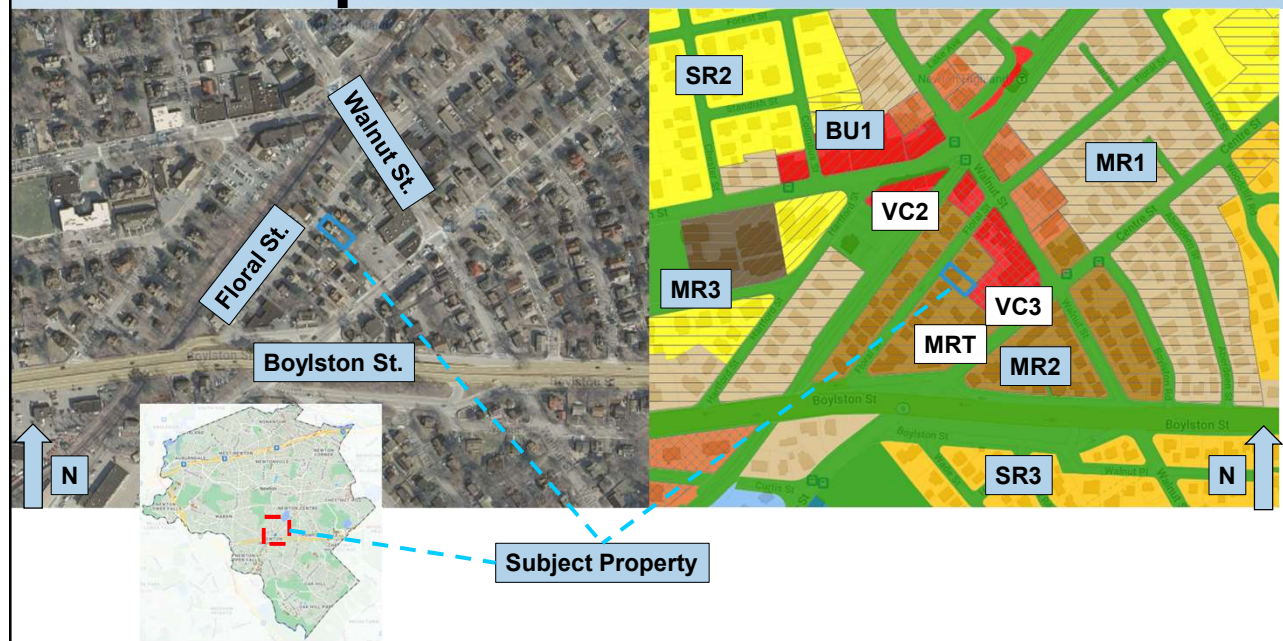
Criteria to Consider

When reviewing this request, the Council should consider:

- The proposed three-story dwelling, which exceeds the Floor Area Ratio and vertically extends a nonconforming side setback, is not in derogation of the size, scale, and design of other structures in the neighborhood. (§3.1.3, §3.1.9)
- The site is an appropriate location for the three-story dwelling which exceeds the FAR. (§7.3.3.C.1)
- The three-story dwelling which exceeds the FAR as developed and operated will not adversely affect the neighborhood. (§7.3.3.C.2)
- There will be no nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
- The proposed addition which vertically extends the non-conforming side setback, will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§7.8.2.C.2)

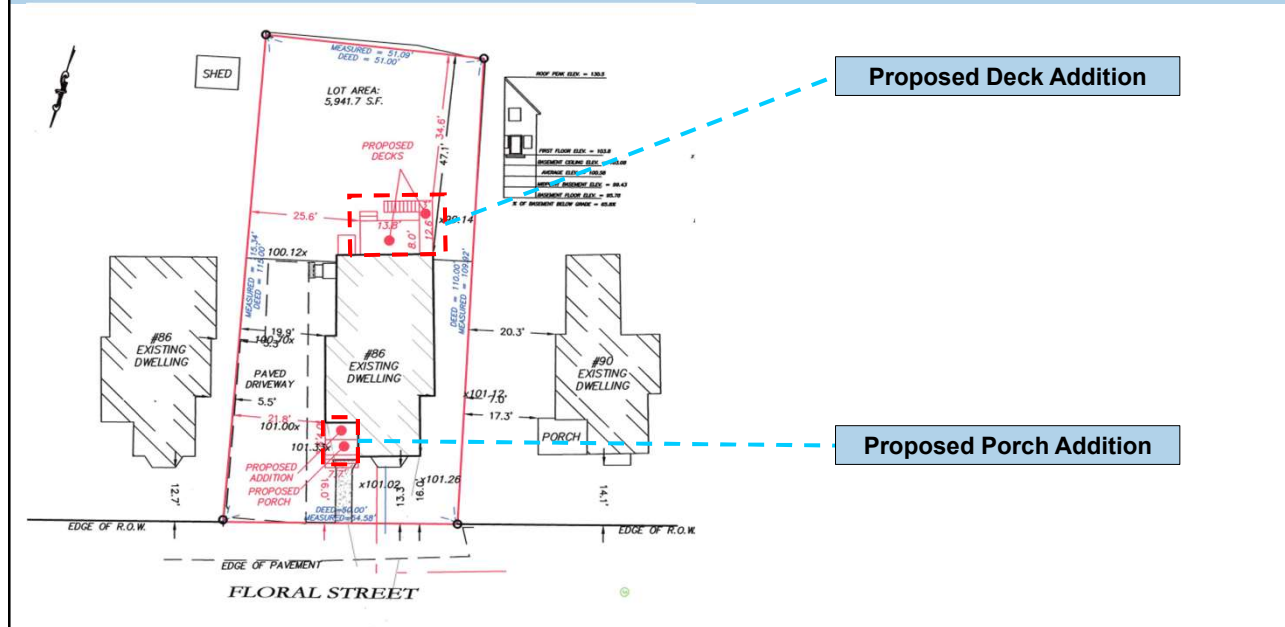
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Aerial Map



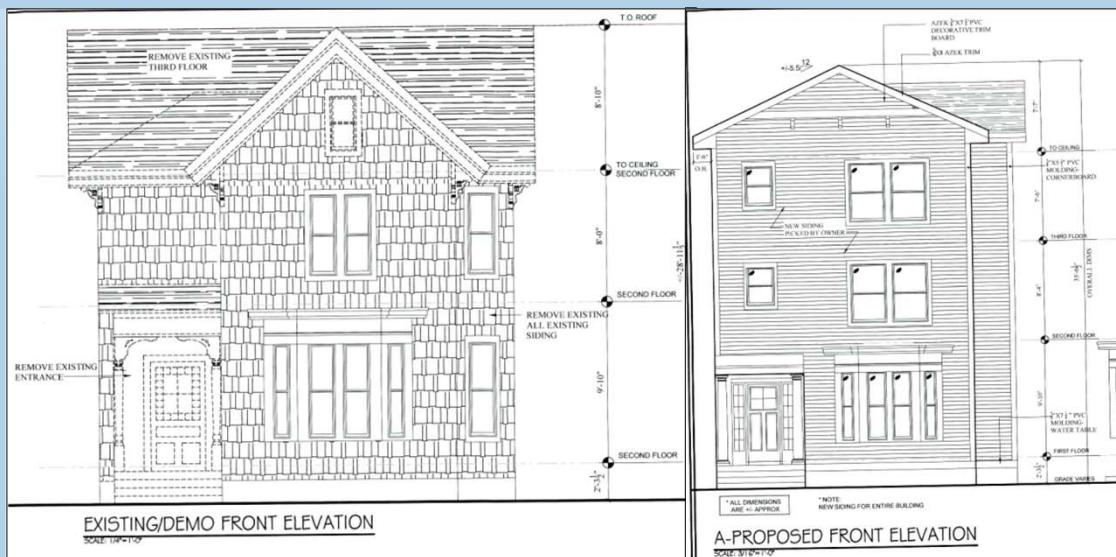
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Site Plan



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Elevations-Front

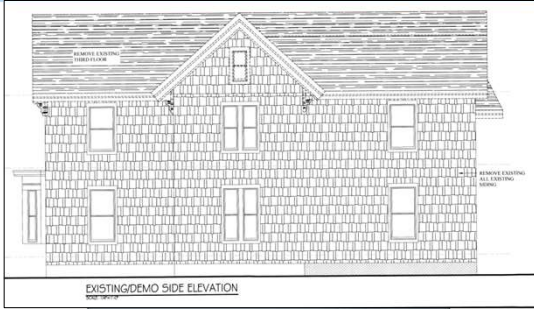


Existing Elevation

Proposed Elevation

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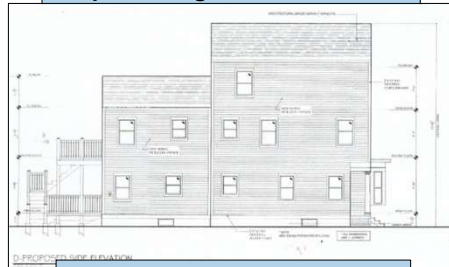
Elevations- Sides



Existing Right/West Elevation



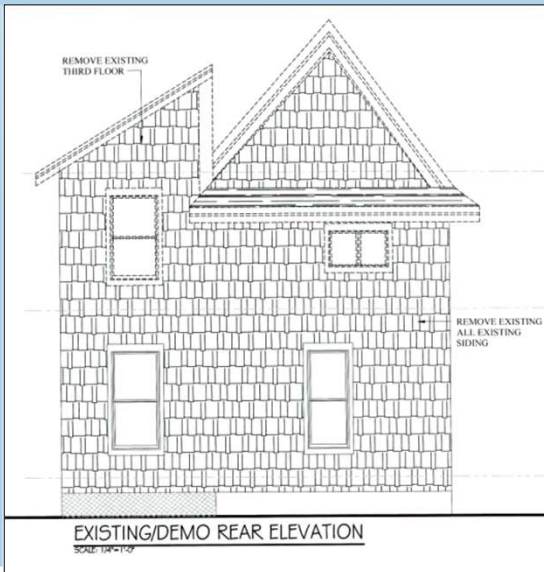
Proposed Right/West Elevation



Proposed Left/East Elevation

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Elevations- Rear



Existing Elevation



Proposed Elevation

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Findings

1. The proposed three-story dwelling which exceeds the allowed Floor Area Ratio and vertically extends a nonconforming side setback, is not in derogation of the size, scale, and design of other structures in the neighborhood, as many of the surrounding dwellings preexist the Zoning Ordinance and have similarly sized structures on similarly sized lots. The increase in FAR is spread out amongst three stories and adds a total of 171 square feet to the dwelling. (§3.1.3, §3.1.9)
2. The site is an appropriate location for the three-story dwelling which exceeds the Floor Area Ratio as the dwelling is in close proximity to the Newton Highlands Village Center which has a mix of building types, uses and range of building sizes. (§7.3.3.C.1)
3. The three-story dwelling which exceeds the FAR as developed and operated will not adversely affect the neighborhood, because the dwelling will remain within the height allowance set forth by the Zoning Ordinance. (§7.3.3.C.2)
4. There will be no nuisance or serious hazard to vehicles or pedestrians as the proposed additions do not require or proposed any change to parking or circulation. (§7.3.3.C.3)
5. Access to the site over streets is appropriate for the types and numbers of vehicles involved as the proposed additions do not require or proposed any change to parking or circulation. (§7.3.3.C.4)
6. The proposed addition which vertically extends the nonconforming side setback, will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood as the dwelling proposes minimal additions within the existing building footprint. (§7.8.2.C.2)

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Conditions

1. Plan referencing
2. Standard building permit conditions
3. Standard occupancy conditions

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City of Newton Planning and Development

Petition: #141-24

Special Permit/Site Plan Approval

to amend special permit #316-20 to raze the detached garage and construct an attached garage with an accessory apartment above as well as a rear addition which exceeds the allowable FAR

March 12, 2024



432 Dedham Street

Zoning Relief

Zoning Relief Required		
Ordinance	Site	Action Required
	Request to amend Special Permit # 316-20	S.P. per §7.3.3
§3.1.5 §3.1.9	Request to exceed FAR	S.P. per §7.3.3

Criteria to Consider

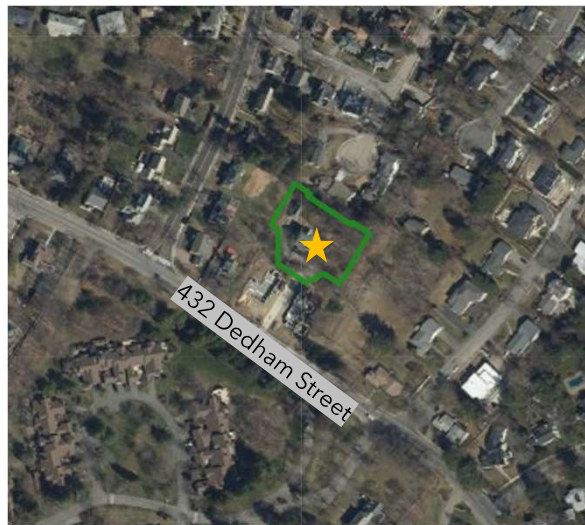
When reviewing this request, the Council should consider:

- The site is an appropriate location for the proposed amendment to Council Order #316-20 and additions which require relief for FAR. (7.3.3.C.1)
- The proposed additions will not adversely affect the neighborhood. (§7.3.3.C.2)
- The proposed additions will not create a nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
- The increase in FAR is not substantially more detrimental than the existing structure is to the neighborhood. (§3.1.5 and §3.1.9)

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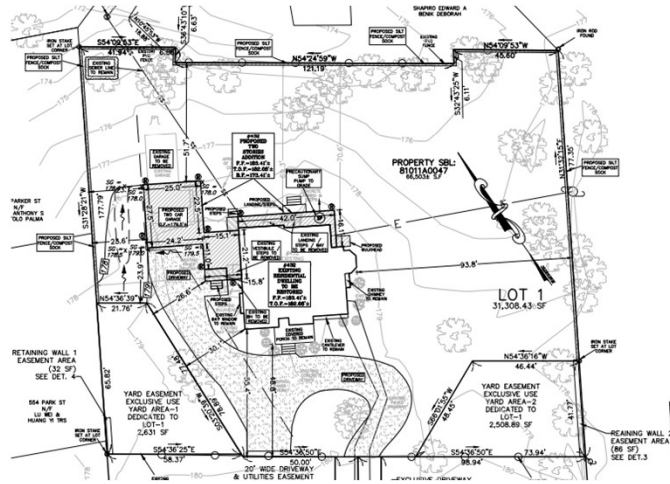
Aerial Map



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Proposed Site Plan



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Proposed Front Elevation



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Proposed Right Elevation



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Proposed Rear Elevation



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Proposed Left Elevation



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Findings

1. The site in a Single Residence 2 (SR-2) district is an appropriate location for the proposed additions that require relief for FAR because the additional massing is well screened from Dedham Street and will allow for an accessory dwelling unit. (§7.3.3.C.1)
2. The proposed additions that exceed the FAR will not adversely affect the neighborhood because the additions are set far back from Dedham Street and will be well-screened by trees and greenery. (§7.3.3.C.2)
3. The proposed additions will not create a nuisance or serious hazard to vehicles or pedestrians because the curb cut and driveway location will not change. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
5. The increase in FAR is not substantially more detrimental than the existing structure is to the neighborhood because it will add one new unit of housing on the site. The flexibility to renovate a historic structure and add a modestly sized accessory unit supports the city's goals of increasing housing stock in a way that utilizes existing infrastructure and increases the variety of residential unit configurations. (§3.4.1 and §7.8.2.C.2)

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Conditions

1. Plan referencing
2. Standard building permit conditions
3. Standard occupancy conditions
4. The petitioner shall comply with the City's Accessory Apartment and Short Term Rental Ordinances