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Mayor

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Barney S. Heath  
Director

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## PUBLIC HEARING MEMORANDUM

Public Hearing Date:	March 5, 2019
Land Use Action Date:	may 14, 2019
City Council Action Date:	May 20, 2019
90-Day Expiration Date:	June 3, 2019

DATE: March 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 #68-19**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to further increase the nonconforming floor area ratio from .36 to .42 where .33 is the maximum allowed by-right, and to further increase the nonconforming building height at **45 Hyde Avenue**, Ward 7, Newton Corner, on land known as SBL 74, 24, 07 containing approximately 20,333 sf of land in a district zoned SINGLE RESIDENCE 2. 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.

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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 Hyde Avenue**

## **EXECUTIVE SUMMARY**

The subject property located at 45 Hyde Avenue consists of a 20,333 square foot lot improved with a Colonial Revival single-family residence constructed circa 1900. The property is located within the Single Residence (SR-2) zone in Newton Corner. The petitioners are seeking to construct a 2.5-story addition to the rear of the dwelling to create additional living space. The existing dwelling is legal nonconforming regarding floor area ratio (FAR) and building height. The addition increases the FAR of the dwelling and will extend the structure's footprint, thereby increasing the dwelling's nonconforming height. Therefore, the petitioners require special permits to further increase the nonconforming FAR from .36 to .42 where .33 is the maximum allowed by-right, and to further increase the nonconforming building height. If approved, the dwelling would contain 8,683 square feet, where 6,710 square feet is the maximum allowed and would be 41.56 feet tall, where 36 feet is the maximum allowed.

The subject property and other dwellings in the immediate area are distinctive for their scale and for their massing. The proposed the addition will be set back from the rear and side property lines in excess of the required setbacks, and the Planning Department believes the addition will not affect the structure's presence on Garden Road due to the addition's distance from the street. Staff believes the increase in building height is de minimis because the change in height is due to how building height is calculated rather than the height of the addition. For these reasons, staff believes the proposed additions are not substantially more detrimental than the existing nonconforming structure is to the neighborhood and the resulting dwelling will not be in derogation of the size, scale, and design of other structures in the neighborhood. Lastly, staff believes the increase in the nonconforming building height will not be substantially more detrimental to the neighborhood than the existing nonconforming building height is to the neighborhood.

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

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

- The proposed increase in FAR from .36 to .42, where .33 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 increase in the nonconforming FAR from .36 to .42 where .33 is the maximum allowed by-right is substantially more detrimental than the existing nonconforming FAR is to the neighborhood. (§3.1.9 and §7.8.2.C.2)
- The proposed increase in the nonconforming building height from 41.12 feet to 41.56 feet is substantially more detrimental than the existing nonconforming building height is to the neighborhood. (§3.1.3 and §7.8.2.C.2)

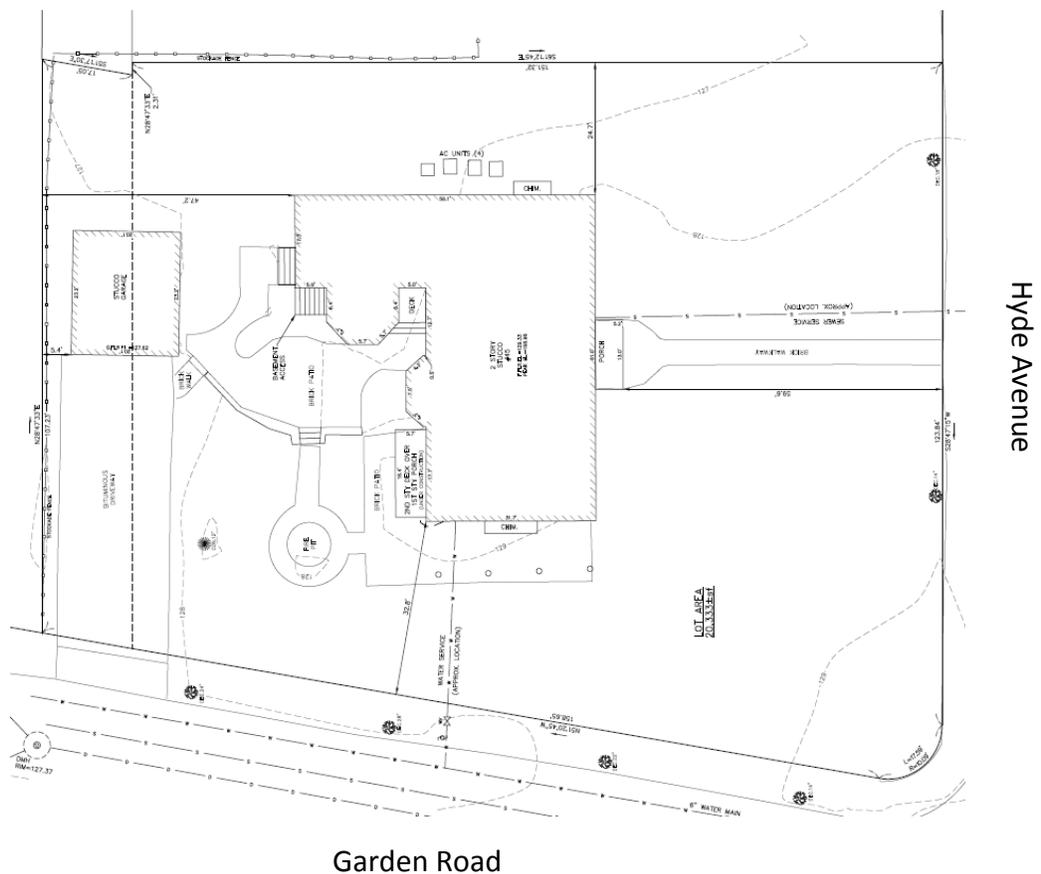
## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The subject property is a corner lot with frontages on Hyde Avenue and Garden Road in the SR-2 zone in Newton Corner. The immediate area is located entirely within the Single Residence 2 zone, predominantly containing single-family uses with the exceptions of a few multi-family uses and a nonprofit use to the south on Garden Road (**Attachments A and B**).

### B. Site

The site consists of 20,333 square feet of land and it is improved with a 2.5-story single-family residence constructed circa 1900; the structure is an example of Colonial Revival architecture. The site is accessed from an approximately 22-foot-wide driveway from Garden Road providing access to a two-car detached garage. The site contains mature landscaping along the Hyde Avenue and the Garden Road frontages, while the eastern and southern boundaries are enclosed with six-foot tall fencing; the lot is predominantly flat.



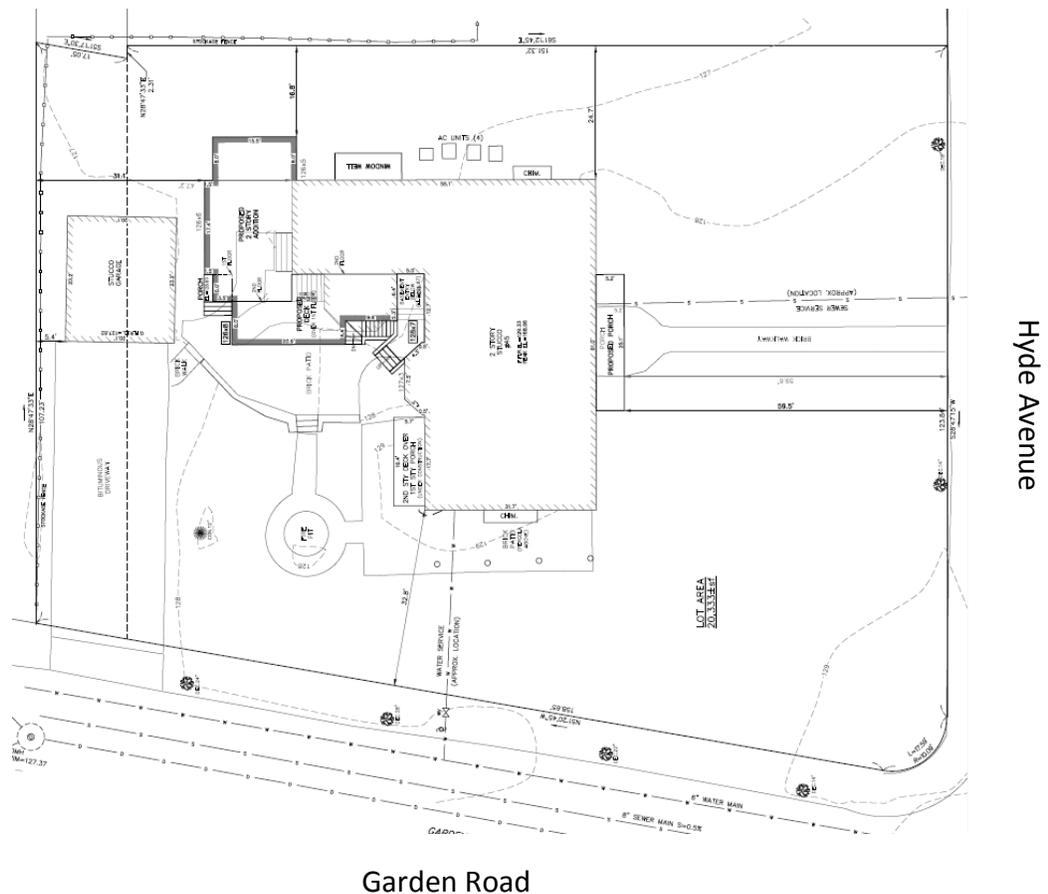
III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

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

B. Site Design

The petitioners are not proposing major changes to the site. The proposed addition will extend the footprint of the dwelling approximately 18 feet to the south, resulting in a reduced rear yard setback of 31.1 feet, from 47.2 feet. The addition will also include two side-wings that will extend the addition to the west and to the east: the western portion will extend approximately eight feet, reducing the side yard setback from 24.7 feet to 16.8 feet; while the eastern portion will extend approximately 13 feet. The eastern extension does not affect the front yard setback from Garden Road because it does not extend beyond the footprint of the principal structure.



C. Building Design

The petitioners are proposing to construct a 2.5-story addition to the rear of the dwelling. The addition will be constructed out of stucco to match the principal dwelling, and the addition will feature a two-story porch on the eastern facade. The petitioners are also proposing to construct a porch and a second-floor balcony to the southeastern corner of the principal dwelling, which is as of right.



Existing Garden Road Elevation



Proposed Garden Road Elevation

The addition will contain increased living space on all three floors, including basement space. The allowable FAR for the lot is .33 which translates to approximately 6,710 square feet. The existing dwelling has a FAR of .36 which translates to 7,320 square feet. The addition would add 1,357 square feet to the FAR calculation bringing the lot to .42.

The Planning Department believes the dwellings in the immediate area are distinctive for their scale and for their massing. The addition will be set back from the rear and side property lines in excess of the required setbacks, and at 57 feet from the street, staff believes the addition will not affect the Garden Road streetscape. For these reasons, staff believes the proposed dwelling is not substantially more detrimental than the existing nonconforming structure is to the neighborhood and the resulting dwelling will not be in derogation of the size, scale, and design of other structures in the neighborhood.

The petitioners are proposing to extend the roof line of the existing rear all the length of the addition. The petitioners' architect states that this ell roofline is approximately 33 feet tall, which is under the 36-foot height limit. However, the building height will increase from 41.12 feet to 41.56 feet. This increase in height is due to the method by which building height is calculated by the Ordinance. Building height is calculated from the average grade to the highest point of the roof, which is the roofline of the principal

structure that runs parallel to Hyde Street, not the ell addition. As the footprint of the structure extends southerly, the grade in that portion of the lot is lower, thereby increasing the distance from the lowest portion of the dwelling to the principal roofline. Staff believes the increase in height from 41.12 feet to 41.56 feet is de minimis and is an outcome of the Ordinance, rather than an increase in building height. For these reasons, staff believes the increase in building height will not be substantially more detrimental than the existing nonconforming building height is to the neighborhood.



Proposed Rear Elevation

D. Parking and Circulation

The petitioners are not proposing any changes to either the parking or the circulation on site.

E. 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 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 building height

B. Engineering Review

Review from the Engineering Division of Public Works is not required at this time. The addition will increase the amount of impervious surface on the lot by more than 400 square feet, requiring the petitioner to provide a drainage analysis to the Engineering Division for review and approval prior to the issuance of a building permit. Staff suggests incorporating the standard condition regarding the Operations and Maintenance (O & M) Plan of the stormwater management system prior to the issuance of a temporary certificate of occupancy, should a drainage system be required, and should this petition be approved.

C. Newton Historical Commission Review

The submitted plans were reviewed and approved by the Chief Preservation Planner on October 17, 2018. 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.

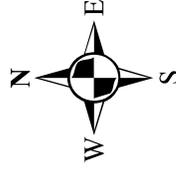
**ATTACHMENTS:**

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

# Attachment A Zoning Map Hyde 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 - Ruthanne Fuller



Map Date: February 27, 2019



# Attachment B Land Use Map Hyde Ave., 45

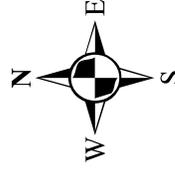
City of Newton,  
Massachusetts

## Legend

### Land Use

#### Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Mixed Use
-  Open Space
-  Nonprofit Organizations
-  Vacant Land
-  Building Outlines
-  Surface Water
-  Property Boundaries



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Barney S. Heath  
Director

## ZONING REVIEW MEMORANDUM

Date: February 27, 2019

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Chris and Melissa Kontaridis, Applicants  
Peter Sachs, Architect  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Assistant City Solicitor

RE: Request to further increase nonconforming FAR and nonconforming height

Applicant: Chris and Melissa Kontaridis	
Site: 45 Hyde Avenue	SBL: 72024 0007
Zoning: SR2	Lot Area: 19,603 square feet
Current use: Single-family dwelling	Proposed use: No change

### BACKGROUND:

The property at 45 Hyde Avenue consists of a 20,333 square foot lot improved with a single-family residence constructed circa 1900. The petitioners propose to construct a 1,357 square foot rear addition expanding the basement, the first-floor kitchen and family room and a new master suite on the second floor. The proposed changes will further increase the nonconforming FAR and height, requiring a special permit.

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

- Zoning Review Application, prepared by Peter Sachs, architect, dated 1/3/2018
- FAR Worksheet, submitted 1/29/2018
- Topographic Site Plan, signed and stamped by Joseph R. Porter, surveyor, dated 1/2/2019
- Architectural Plans, prepared by Peter Sachs, architect, dated 5/7/2018

**ADMINISTRATIVE DETERMINATIONS:**

1. The applicants’ existing FAR is .36, where .33 is the maximum allowed. The proposed additions add 1,357 square feet to the dwelling, resulting in an FAR of .42. A special permit pursuant to Sections 3.1.9 and 7.8.2.C.2 is required to further increase the already nonconforming FAR.
2. The dwelling has an existing nonconforming height of 41.12 feet, where a height of 36 feet is the maximum allowed per section 3.1.3. The petitioners intend to construct a rear addition which lowers the average grade around the building, increasing the overall height to 41.56 feet. The increased height increases the nonconformity, requiring a special permit per section 3.1.3 and 7.8.2.C.2.

SR2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	19,603 square feet	No change
Frontage	80 feet	124 feet	No change
Setbacks			
• Front (Hyde Ave)	25 feet	59.5 feet	No change
• Front (Garden Rd)	25 feet	32.8 feet	No change
• Side	7.5 feet	24.7 feet	16.8 feet
• Rear	15 feet	47.2 feet	31.1 feet
Max Number of Stories	2.5	2.5	No change
Height	36 feet	<b>41.12 feet</b>	<b>41.56 feet</b>
FAR	.33	<b>.36</b>	<b>.42</b>

1. See “Zoning Relief Summary” below:

<b>Zoning Relief Required</b>		
<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
§3.1.3 §7.8.2.C.2	Request to further increase nonconforming height	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 (FAR) from .36 to .42, where .33 is the maximum allowed by-right, and to further increase the nonconforming building height, 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 from .36 to .42, where .33 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 because the dwelling is one of a group of dwellings in the immediate area that is distinctive for its scale and its massing. (§3.1.9 and §7.8.2.C.2)
2. The proposed increase in the nonconforming FAR from .36 to .42 where .33 is the maximum allowed by-right is not substantially more detrimental than the existing nonconforming FAR is to the neighborhood because the addition will be set back from the side and rear property lines in excess of the required setbacks, and the addition will not impact the Garden Road streetscape due to the addition's distance from the street. (§3.1.9 and §7.8.2.C.2)
3. The proposed increase in the nonconforming building height from 41.12 feet to 41.56 feet is not substantially more detrimental than the existing nonconforming building height is to the neighborhood because the change in height is de minimis as the principal roofline is not increasing. (§3.1.3 and §7.8.2.C.2)

PETITION NUMBER:

#68-19

PETITIONER:

Chris and Melissa Kontaridis

LOCATION:

45 Hyde Avenue, on land known as Section 72, Block 24, Lot 07, containing approximately 20,333 square feet of land

OWNER: Chris and Melissa Kontaridis

ADDRESS OF OWNER: 45 Hyde Avenue  
Newton, MA 02458

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; §3.1.3, and §7.8.2.C.2 to further increase the nonconforming building height

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. Topographic Site Plan, signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated January 2, 2019.
  - b. Architectural Plans and Elevations, signed and stamped by Peter Sachs, Registered Architect, dated July 2, 2018 revised October 10, 2018, December 7, 2018, and February 5, 2019 consisting of twenty-four (24) sheets.
2. Prior to the issuance of any Building Permit, the petitioners 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. Prior to the issuance of any temporary occupancy certificates for the Project, the petitioners shall provide a final Operations and Maintenance Plan (O&M) for stormwater management, should such a system be required, to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be recorded by the petitioners at the Middlesex South District Registry of Deeds. A recorded copy of the O&M shall be submitted to the Engineering Division of Public Works.
4. 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 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. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.

5. 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 statements by a registered architect and professional land surveyor certifying compliance with Condition #1, including the as built 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. Provided a recorded copy of the O&M Plan in accordance with Condition #3 above.
  - d. 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.