



#309-19

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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

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**PUBLIC HEARING MEMORANDUM**

Public Hearing Date:	October 3, 2019
Land Use Action Date:	December 10, 2019
City Council Action Date:	December 16, 2019
90-Day Expiration Date:	January 1, 2020

DATE: September 27, 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 #309-19**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to further extend the nonconforming side setbacks and to further increase the nonconforming lot coverage, 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, §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.



**14 Church Street**

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### **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 is seeking to construct a two-story rear addition with an attached covered deck. The existing side setbacks are nonconforming at two feet and at 8.8 feet, where 12.5 feet is the minimum allowed. The structure is also nonconforming regarding lot coverage due to its current calculation of 22.3% where 20% is the maximum allowed. The addition and the deck further increase the nonconforming side setbacks and the lot coverage to 9.6 feet and 27%, respectively. As such, the petitioner requires special permits to further extend the nonconforming side setbacks, and to further increase the nonconforming lot coverage.

The Planning Department is unconcerned with the request to extend the nonconforming side setbacks and the request to further increase the nonconforming lot coverage because the increase in building footprint is minor and the structure will comply with the remaining dimensional standards of a single-family dwelling in the SR-1 zone. Additionally, the addition is to the rear and is subordinate to the principal structure.

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

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

- The proposed extensions in the nonconforming side setbacks are substantially more detrimental than the existing nonconforming setbacks are to the neighborhood. (§3.1.3 and §7.8.2.C.2)
- The proposed extension in the nonconforming lot coverage is substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§3.1.3 and §7.8.2.C.2)

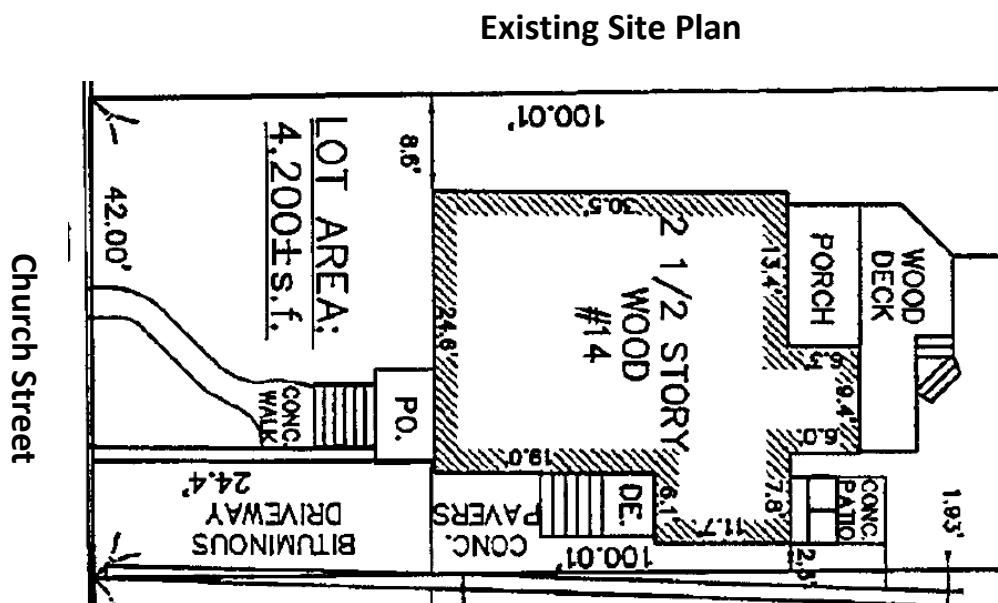
#### **II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD**

##### **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. Directly 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 4,220 square feet of land and it is improved with a 2.5-story single-family dwelling. The structure has existing nonconforming side setbacks of two feet and 8.8 feet, where 12.5 is the minimum allowed. The structure is also nonconforming regarding lot coverage due to its current calculation of 22.3%, where 20% is the maximum allowed. There is a retaining wall along the eastern boundary supporting the driveway and the rear yard is enclosed with stockade fencing.



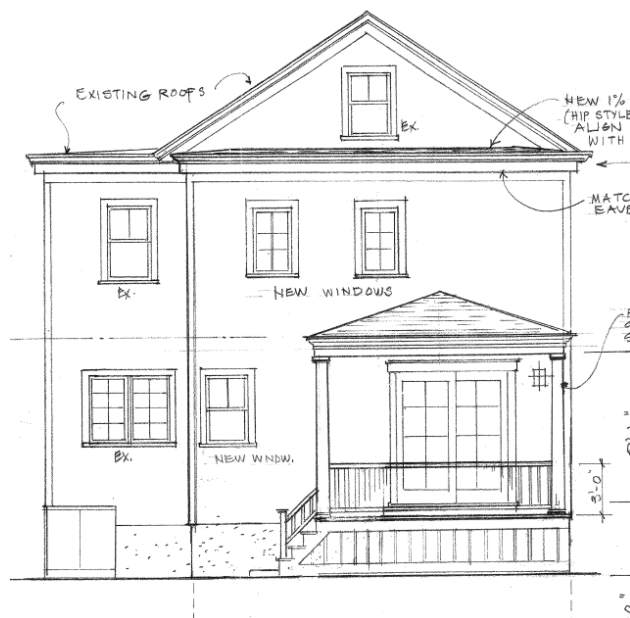
III. PROJECT DESCRIPTION AND ANALYSIS

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 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 on the same footprint as the existing covered deck, while the new deck will extend approximately eight feet to the rear. The petition further extends the nonconforming side setbacks to 9.6 feet and 9.3 feet where, 12.5 feet is the minimum allowed. The addition and covered deck also increase the nonconforming lot coverage from 22.3% to 27% where, 20% is the maximum allowed. The petitioner is not proposing any other changes to the site or to the 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:

- §3.1.3, and §7.8.2.C.2 of Section 30, to further extend the nonconforming side setbacks.
- §3.1.3, and §7.8.2.C.2 of Section 30, to further increase the nonconforming lot coverage

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:**

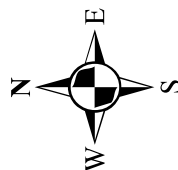
- Attachment A:** Zoning Map  
**Attachment B:** Land Use Map  
**Attachment C:** Zoning Review Memorandum  
**Attachment D:** DRAFT Order

# 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

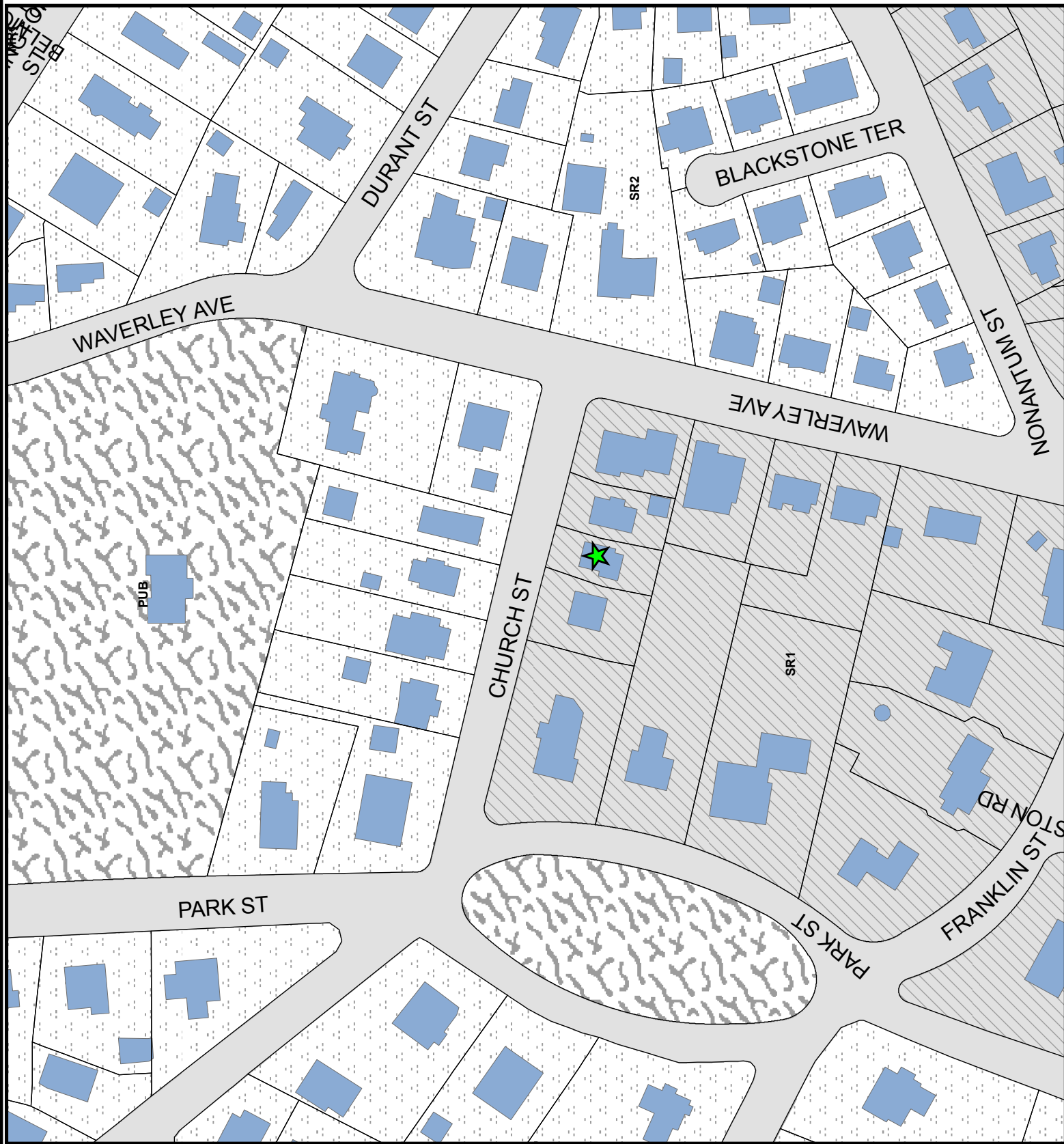


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

CITY OF NEWTON, MASSACHUSETTS  
Mayor - Ruthanne Fuller



Map Date: September 22, 2019





# Attachment B Land Use Map Church St., 14 *City of Newton, Massachusetts*

Legend

Land Use

Single Family Residential

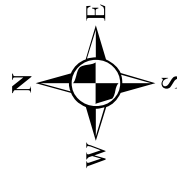
Multi-Family Residential

Open Space

Building Outlines

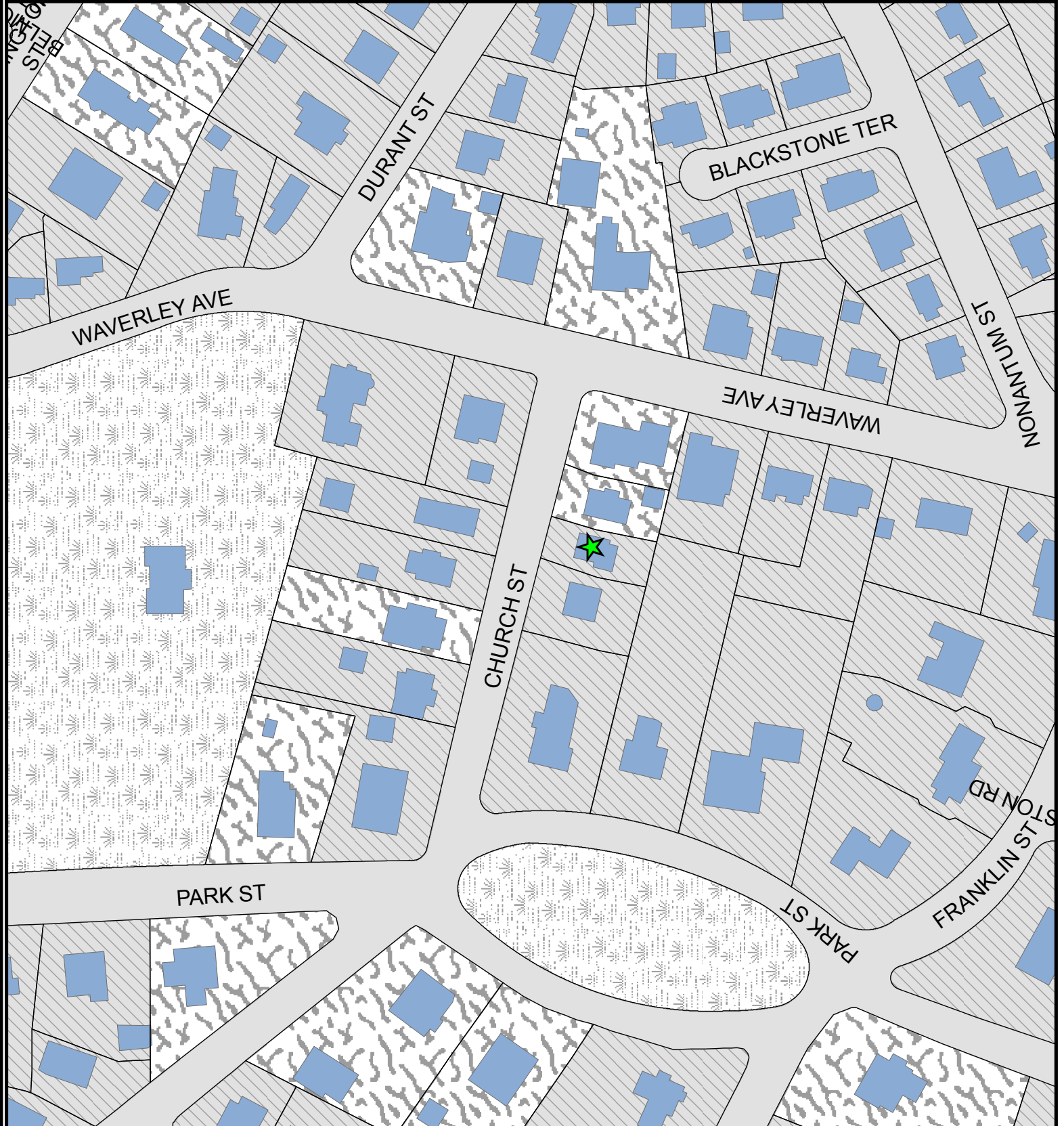
Surface Water

Property Boundaries



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**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: September 23, 2019

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Jennifer Caira, 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**

Applicant: Ethan Solomon	
<b>Site:</b> 14 Church Street	<b>SBL:</b> 72022 0003
<b>Zoning:</b> SR1	<b>Lot Area:</b> 4,200 square feet
<b>Current use:</b> Single-family dwelling	<b>Proposed use:</b> 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 proposes to construct a two-story rear addition which will further extend nonconforming side setbacks and lot coverage, requiring a special permit.

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
- Plot Plan, signed and stamped by Joseph Porter, surveyor, dated 4/13/2010
- 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.

The petitioners cannot use the *de minimis* provisions of section 7.8.2.B, as the provision requires that the resulting distance to the nearest residence where the construction is to occur is equal to or greater than the sum of the required setbacks of the two lots.

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.

SR1 Zone	Required	Existing	Proposed
Lot Size	15,000 square feet	<b>4,200 square feet</b>	<b>No change</b>
Frontage	100 feet	<b>42 feet</b>	<b>No change</b>
Setbacks <ul style="list-style-type: none"><li>• Front</li><li>• Side</li><li>• Side</li><li>• Rear</li></ul>	25 feet 12.5 feet 12.5 feet 25 feet	29.9 feet <b>2.0 feet</b> <b>8.8 feet</b> 25.5 feet	No change <b>No change</b> <b>No change</b> 25.4 feet
Max Lot Coverage	20%	<b>22.3%</b>	<b>27%</b>
Min. Open Space	65%	65%	66%
FAR	.46	.40	.45

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

### **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 extend the nonconforming side setbacks from two feet and from 8.8 feet, to 9.6 feet and to 9.3 feet, respectively and to further increase the nonconforming lot coverage from 22.3% to 27%, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Gregory Schwartz:

1. The proposed extensions in the nonconforming side setbacks are not substantially more detrimental than the existing setbacks are to the neighborhood because the proposed increase in building footprint is minor and the addition is subordinate to the principal dwelling. (§3.1.3 and §7.8.2.C.2).
2. The proposed extension in the nonconforming lot coverage is not substantially more detrimental than the existing nonconforming lot coverage is to the neighborhood because the addition is within the footprint of the existing structure. (§3.1.3 and §7.8.2.C.2)

PETITION NUMBER: #309-19

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: §3.1.3 and §7.8.2.C.2 to further extend the nonconforming side setbacks; §3.1.3 and §7.8.2.C.2 to further increase the nonconforming lot coverage

ZONING: Single Residence 1 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. 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.