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Mayor

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Barney S. Heath  
Director

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**PUBLIC HEARING MEMORANDUM**

Public Hearing Date: June 6, 2017  
Land Use Action Date: August 8, 2017  
City Council Action Date: August 21, 2017  
90-Day Expiration Date: September 4, 2017

DATE: June 2, 2017

TO: City Council

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

SUBJECT: **Petition #128-17**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to further increase the nonconforming floor to area ratio from .90 to .93 where .58 is the maximum allowed by-right, and further decrease the nonconforming minimum open space from 46.5% to 44.6%, where 50% is the minimum allowed at **15 Ricker Road**, Ward 1, Newton Corner, on land known as SBL 71, 21, 09 containing approximately 4,776 sf of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. §3.2.11, §3.2.3, and §7.8.2.C.2, 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.



**15 Ricker Road**

## **EXECUTIVE SUMMARY**

The property located at 15 Ricker Road consists of a 4,776 square foot lot improved with a 2.5-story, two-family residence circa 1925. The property is located in the Multi Residence 1 (MR-1) zone in Newton Corner. The existing structure is comprised of two-flat type units and is an example of Colonial Revival architecture. The petitioner is seeking to construct dormers on the left and right facades of the structure at the attic level. These dormers will add 167.35 square feet of habitable space to the already nonconforming floor area ratio (FAR). Additionally, the petitioner has demolished a previously noncompliant deck at the rear of the structure, and seeks to construct two new decks on the first and second floors of the right facade. These decks will further decrease the minimum open space required for the lot. Therefore, the petitioner is seeking special permits to further increase the nonconforming FAR from .90 to .93 where .58 is the maximum allowed by-right, and further decrease the nonconforming minimum open space from 46.5% to 44.6%, where 50% is the minimum allowed.

The Planning Department is generally not concerned with the addition of the dormers as they will only add 167.35 square feet to the attic which already contains habitable space. In addition, the dormers are within the footprint of the structure, and are present in other structures in the neighborhood. However, staff has reservations regarding the proposed decks as they further reduce the minimum open space by expanding the amount of structure on the lot. Staff suggests that the petitioner provide a landscaping plan to soften the amount of impervious surface in the front yard and to reduce the appearance of the foundation walls.

### **SIGNIFICANT ISSUES FOR CONSIDERATION:**

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

- The proposed extension in the nonconforming FAR will be substantially more detrimental than the existing nonconforming FAR is to the neighborhood (§3.2.11 and §7.8.2.C.2).
- The proposed extension in the nonconforming FAR is consistent with and will not be in derogation of the size, scale, and design of other structures in the neighborhood (§3.2.11 and §7.8.2.C.2).
- The proposed reduction in the nonconforming minimum open space will be substantially more detrimental than the existing nonconforming open space is to the neighborhood (§3.2.3 and §7.8.2.C.2).

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

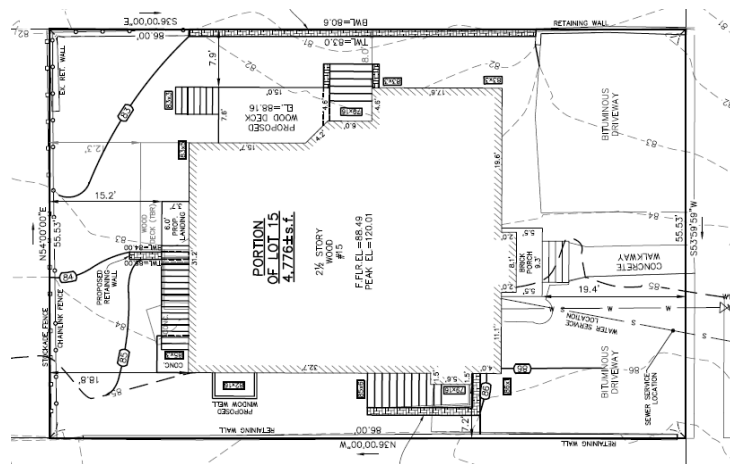
### **A. Neighborhood and Zoning**

The subject property is located on Ricker Road in the MR-1 zone in Newton Corner near the Brighton line. The immediate area and surrounding neighborhood is entirely residential as the MR-1 zone encompasses the majority of the

neighborhood and is comprised of single- as well as two-family uses. However, there are Single Residence 2 zones to the south and south west which contain single-family uses (**Attachments A & B**). Staff notes the area consists of large structures small lots as the median lot size for the 46 properties within 300 feet is 5,553 square feet.

B. Site

The site consists of 4,776 square feet of land, and is improved with a 2.5-story, two-family residence circa 1925. The existing structure is comprised of two-flat type units and is an example of Colonial Revival architecture; the structure is currently undergoing updates to the interior and exterior. There are two curb cuts on site, each is approximately 20 feet wide and provide access to two 400 square feet bituminous parking areas. Staff notes that these two parking areas are located within the front setback and consume the majority of the front yard. The lot is sloped from left to right as Ricker Road is constructed at the foot of a hill. As a result, the right boundary is approximately ten feet lower than the left boundary. Lastly, there are recently constructed retaining walls at the left and right property lines which are fewer four feet in height.



II. PROJECT DESCRIPTION AND ANALYSIS

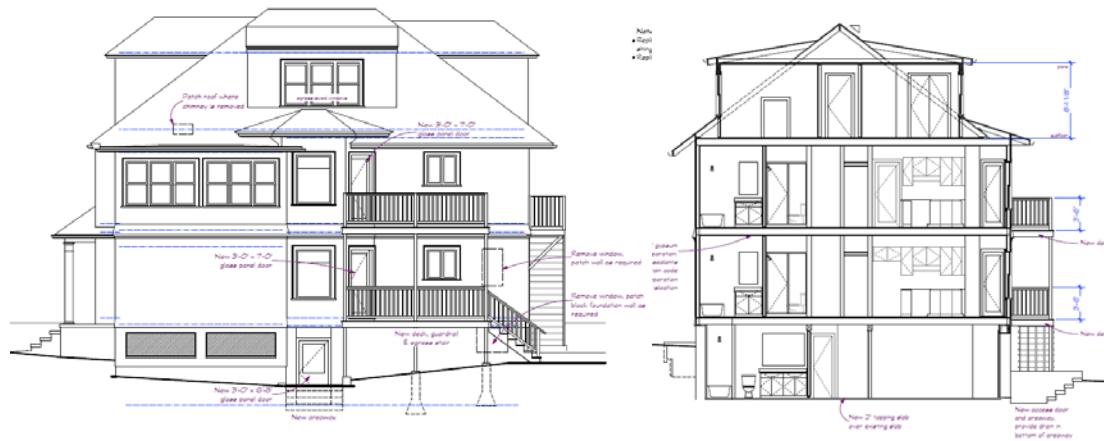
A. Land Use

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

B. Building and Site Design

The petitioner is proposing to construct two dormers to the attic level at the right and left facades; staff notes there are existing dormers at the front and rear façades. The proposed dormers will be 15 feet long and extend approximately eight feet high to allow for three egress windows. Staff notes that these dormers will not extend beyond the height of the main ridgeline and are less than 50% of the exterior wall of

the second story, per Ordinance. In total, these dormers will add 167.35 square feet of habitable space to the already nonconforming FAR of the structure. Staff is not concerned with the addition of the dormers as the attic already includes habitable space and other structures in the neighborhood have dormers at the attic level.



Additionally, the petitioner has removed a previously noncompliant deck at the rear of the structure. The deck was noncompliant because it was constructed without the benefit of a building permit and encroached upon the rear yard setback. Since it was demolished, the rear yard setback has been brought into conformance at 15.2 feet. In turn, the petitioner is seeking to construct two decks: one each on the first and second floor to the right façade. Both decks are the same size at approximately 105 square feet. The proposed decks will comply with the side yard setback, but will further reduce the minimum required open space for the lot. Staff notes that the lot would still not meet the open space requirement without the proposed decks. However, staff believes that the proposed decks add to the amount of structure on the lot and suggest that the petitioner consider reducing their size to only provide egress.

C. Parking and Circulation

The petitioner is not proposing any changes to the parking or circulation on site. Staff notes that the parking areas are located within the front setback and consume much of the front yard. Staff suggests the petitioner reconstruct the left driveway apron with bituminous to match the rest of the streetscape.

D. Landscaping and Screening

As the majority of the front yard is impervious, staff suggests the petitioner consider install landscaping to soften the effect of the parking areas on the streetscape as well as reduce the appearance of the foundation walls.

### III. TECHNICAL REVIEW

#### A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum provides an analysis of the proposal with regard to zoning (**Attachment C**). Based on the Memorandum, the petitioner is seeking the following relief:

- §3.2.11 and §7.8.2.C.2 of Section 30, to further increase the nonconforming FAR; and
- §3.2.3 and §7.8.2.C.2 of Section 30, to further decrease the nonconforming minimum open space.

#### B. Engineering Review

No Engineering review is required at this time. This project will be reviewed for conformance with the City of Newton Engineering Division standards prior to the issuance of a building permit, should this project be reviewed.

#### C. Historic Review

As the petitioner is only proposing to construct three dormers to the attic level, the project does not meet the threshold for Newton Historical Commission review.

### IV. PETITIONER'S RESPONSIBILITIES

The petitioner shall provide a landscape plan to the Director of Planning and Development for review and approval, should this project be approved.







#### **ATTACHMENTS:**

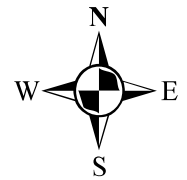
- Attachment A:** Zoning Map  
**Attachment B:** Land Use Map  
**Attachment C:** Zoning Review Memorandum  
**Attachment D:** DRAFT Order

# Attachment A Zoning Map Ricker Rd., 15

*City of Newton,  
Massachusetts*

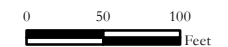
## Legend

-  Single Residence 2
-  Single Residence 3
-  Multi-Residence 1
-  Building Outlines
-  Surface Water
-  Property Boundaries

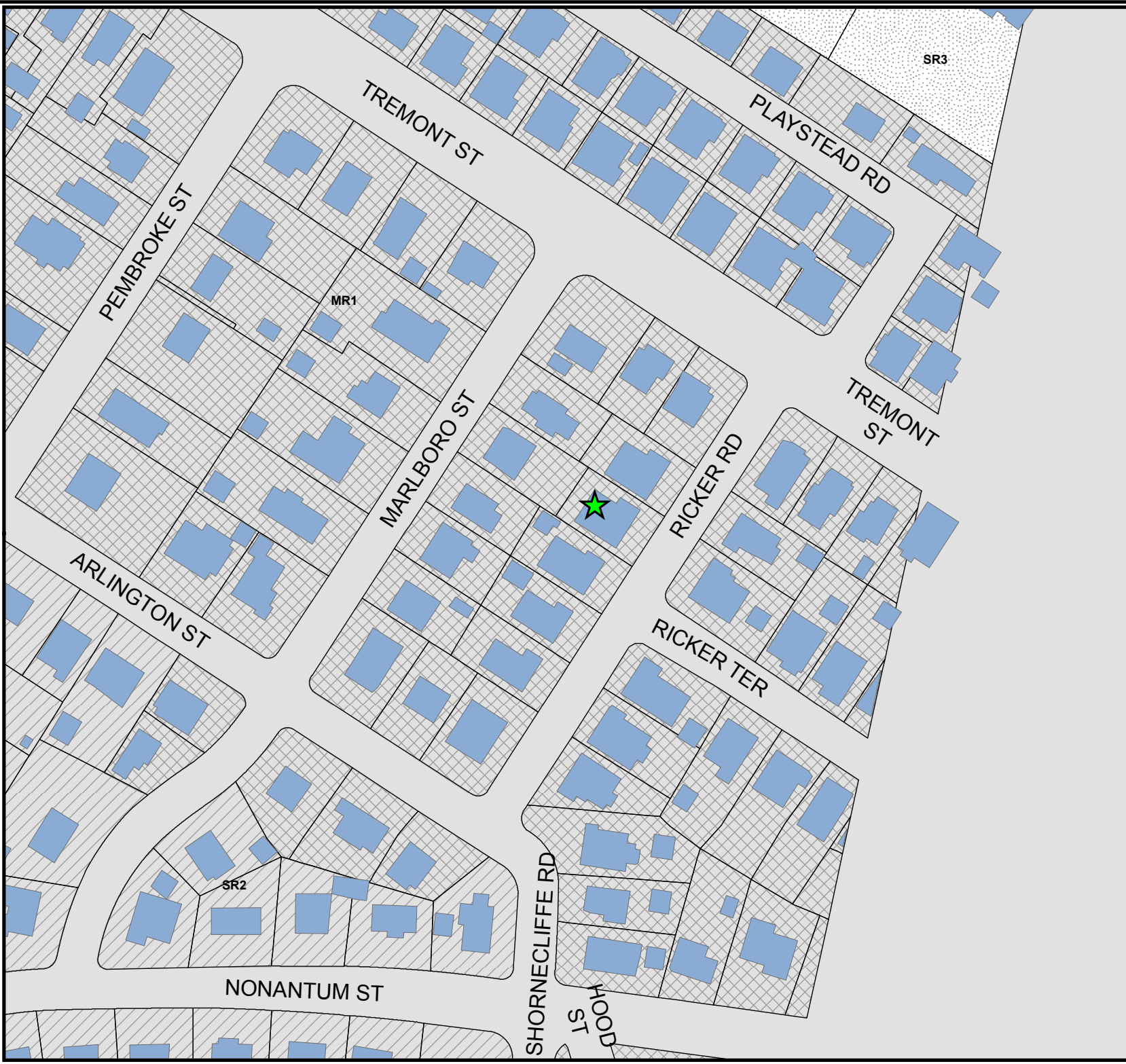


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield



Map Date: May 17, 2017



# Attachment B Land Use Map Ricker Rd., 15 *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

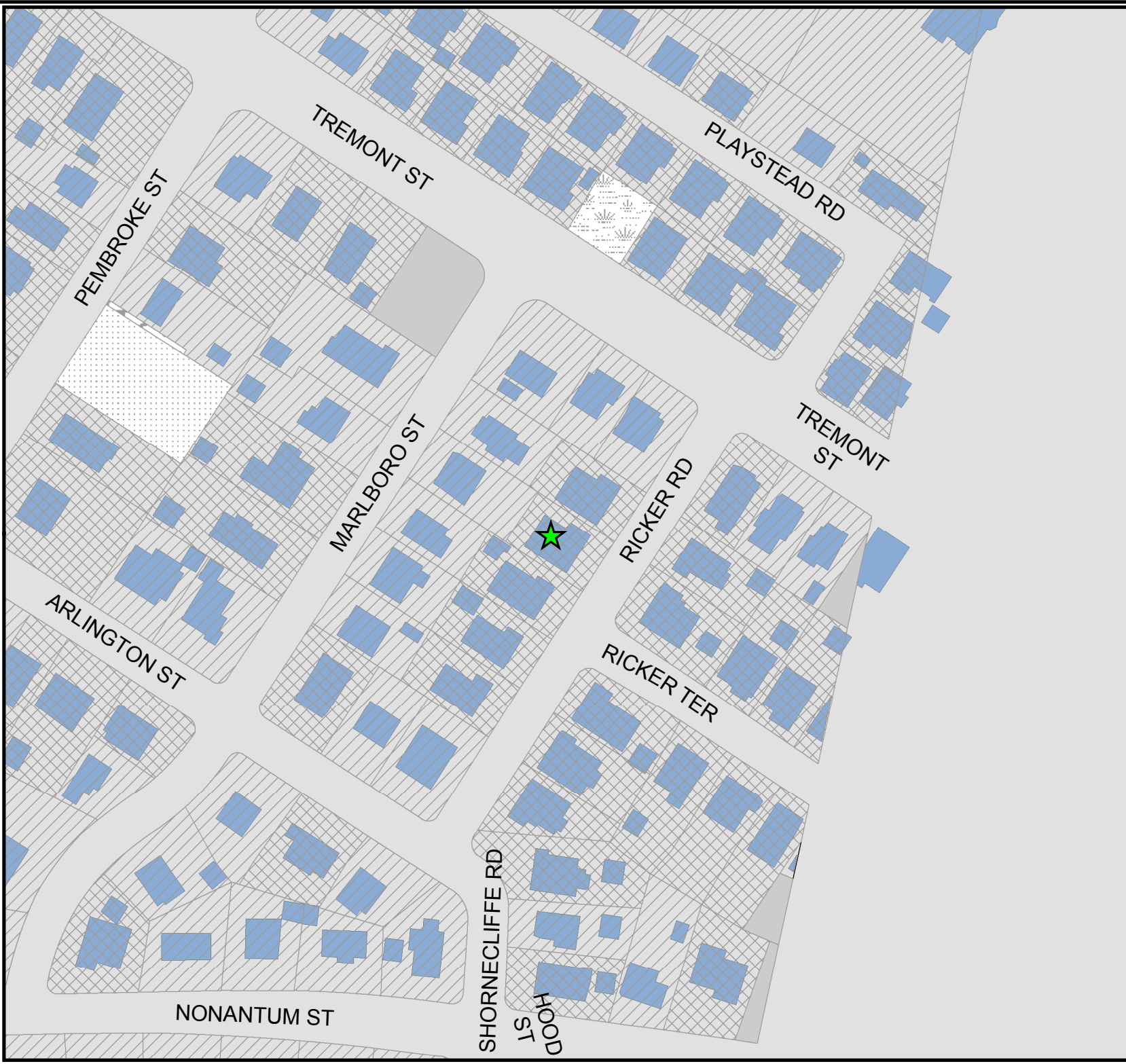


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield

0 50 100  
Feet

Map Date: May 17, 2017





Setti D. Warren  
Mayor

Attachment C

**City of Newton, Massachusetts**  
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Barney S. Heath  
Director

## ZONING REVIEW MEMORANDUM

Date: May 4, 2017

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Alexandra Ananth, Chief Planner for Current Planning

Cc: Charles Navratil, Architect  
EMJ Prime Build LLC  
Barney S. Heath, Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Request to further increase nonconforming FAR and to further decrease existing nonconforming open space**

Applicant: EMJ Prime Build LLC	
Site: 15 Ricker Rd	SBL: 71021 0009
Zoning: MR1	Lot Area: 4,776 square feet
Current use: Two-family dwelling	Proposed use: No change

### BACKGROUND:

The property at 15 Ricker Road consists of a 4,776 square foot lot improved with a two-family residence constructed in 1925. The applicant proposes to expand each unit by claiming space in the basement for the first floor unit, and in the attic for the second floor unit. The attic will be improved with two dormers adding 167.35 square feet to the FAR. There is currently a noncompliant deck at the rear of the dwelling which is to be removed, and replace elsewhere on site. The proposed dormer addition will further increase the nonconforming FAR, requiring a special permit. The proposed deck will further increase the existing nonconforming open space, also requiring relief.

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

- Zoning Review Application, prepared Charles Navratil, architect, submitted 3/27/2017
- FAR Worksheet, submitted 3/27/2017
- Site Plan, prepared by VTP Associates, surveyors, dated 1/18/2017, revised 3/3/2017
- Architectural Plans, signed and stamped by Charles M. Navratil, dated 2/23/2017



**ADMINISTRATIVE DETERMINATIONS:**

1. The applicants’ existing FAR is .90, where .58 is the maximum allowed per Section 3.2.11. The proposed addition of dormers adds 167.35 square feet to the dwelling, resulting in an FAR of .93. 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 noncompliant deck built without a building permit 12.3 feet from the rear lot line, where 15 feet is required per Section 3.2.3. The applicant intends to remove this deck, and construct a landing for the rear access which will meet the setback requirement at 15.2 feet.
3. The existing open space (without the noncompliant deck) is 46.5%, where 50% is required per Section 3.2.3. The applicant intends to construct a deck on the right side of the property, which will further decrease the existing nonconforming open space to 44.6%, requiring a special permit.

MR1 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	<b>4,776 square feet</b>	<b>No change</b>
Frontage	70 feet	<b>55.5 feet</b>	<b>No change</b>
Setbacks			
• Front	25 feet	<b>19.4 feet</b>	<b>No change</b>
• Side	7.5 feet	8 feet	7.9 feet
• Rear	15 feet	<b>12.3 feet</b>	15.2 feet
Max Number of Stories	2.5	2.5	No change
FAR	.58	<b>.90</b>	<b>.93</b>
Max Lot Coverage	30%	32.2%	No change
Min. Open Space	50%	<b>46.5%</b>	<b>44.6%</b>

1. See “Zoning Relief Summary” below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
§3.2.11, §7.8.2.C.2	Request to further increase nonconforming FAR	S.P. per §7.3.3
§3.2.3 §7.8.2.C.2	Request to further decrease nonconforming minimum open space	S.P. per §7.3.3

CITY OF NEWTON  
IN CITY COUNCIL

June 19, 2017

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 from .90 to .93, where .58 is the maximum allowed by right and to further decrease the nonconforming open space from 46.5% to 44.6%, where 50% is the minimum allowed, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Marc Laredo:

1. The proposed increase in floor area ratio from .90 to .93, where .58 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 and will not be substantially more detrimental than the existing non-conforming floor area ratio is to the surrounding neighborhood because the proposed dormers will only add an 167.35 square feet to the structure and exist in other structures throughout the neighborhood (§3.2.11 and §7.8.2.C.2).
2. The proposed decrease in the nonconforming open space from 46.5% to 44.6%, where 50% is the minimum allowed, will not be substantially more detrimental than the existing non-conforming open space is to the surrounding neighborhood because the reduction in open space does not translate to an increase in square footage to the structure (§3.2.3 and §7.8.2.C.2).

PETITION NUMBER: #128-17

PETITIONER: EMJ Prime Build LLC

LOCATION: 15 Ricker Road, on land known as Section 71, Block 21, Lot 09, containing approximately 4,776 square feet of land

OWNER: EMJ Prime Build LLC

ADDRESS OF OWNER: 44 Production Road

Walpole, MA 02081

TO BE USED FOR: Two-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.2.11 and §7.8.2.C.2 to further increase the nonconforming floor area ratio; and §3.2.3 and §7.8.2.C.2 to further decrease the minimum open space

ZONING: Multi 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. Topographic Site Plan, prepared by VTP Associated, unsigned and unstamped, dated January 18, 2017 Revised March 3, 2017
  - b. Architectural Plans and Elevations, signed and stamped by Charles Navratil, Registered Architect, dated February 23, 2017 consisting of ten (10) sheets:
    - i. A1.0 Proposed Basement Plan;
    - ii. A1.1 Proposed First Floor Plan;
    - iii. A1.2 Proposed Second Floor Plan;
    - iv. A1.3 Proposed Third Floor Plan;
    - v. A2.1 Proposed Front Elevation;
    - vi. A2.2 Proposed Left Elevation;
    - vii. A2.3 Proposed Rear Elevation;
    - viii. A2.4 Proposed Right Elevation;
    - ix. A3.1 Proposed Section A; and
    - x. A3.2 Proposed Section B.
2. Prior to the issuance of any Building Permits, the petitioners shall submit a final Construction Management Plan (CMP) to the Commissioner of Inspectional Services, the Director of Urban Forestry, the Engineering Division of Public Works, the Director of the Department of Planning and Development, the Newton Fire Department and Newton Police Department, which plan should shall include at a minimum:
  - a. 24-hour contact information for the general contractor of the project.
  - b. Hours of construction: construction shall be limited to between the hours of 7:00 a.m. and 5:00 p.m. on weekdays, and between the hours of 8:00 a.m. and 3:00 p.m. on Saturdays. No construction is permitted on Sundays or holidays except in emergencies, and only with prior approval from the Commissioner of Inspectional Services.

- c. Proposed methods for dust control including, but not limited to: covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
  - d. A tree preservation plan to define the proposed method for protection of existing trees to remain on the site and on abutting properties during construction.
  - e. A plan for site access and traffic control.
  - f. A plan regulating the delivery of material to the site, including the staging and storage of construction vehicles.
  - g. A plan for rodent control during construction.
  - h. If blasting of on-site ledge is required, the petitioner shall obtain a Blasting Permit from the Newton Fire Department.
3. 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 board 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. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
  - d. Submitted a landscape plan to the Director of Planning and Development.
4. 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 a statement by a registered architect and land surveyor certifying compliance with Condition #1, including the as built FAR of the structure.
  - b. Filed with the Clerk of the Board, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that improvements authorized by this Council Order have been constructed to the standards of the City of Newton Engineering Department.
  - c. 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.
5. Notwithstanding the provisions of Condition #4 above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the buildings prior to installation of final landscaping provide that the petitioner shall first have filed a bond, letter of credit, cash or other security in the form

satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.