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Barney S. Heath  
Director

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## PUBLIC HEARING MEMORANDUM

Public Hearing Date: July 26, 2016  
Land Use Action Date: October 10, 2016  
City Council Action Date: October 17, 2016  
90-Day Expiration Date: October 24, 2016

DATE: July 22, 2016

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 #233-16**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to extend a non-conforming two-family residential use and to exceed the floor area ratio (FAR) from .47 to .57, where .50 is the maximum allowed by-right at **45-47 Noble Street**, Ward 3, Wes Newton, on land known as SBL 44, 04, 13 containing approximately 6,278 sf of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. §3.4.1, §7.8.2.C.2, §3.1.9.A.2, §7.3.3, 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.



**45-47 Noble Street**

## EXECUTIVE SUMMARY

The property located at 45-47 Noble Street consists of a 6,278 square foot lot improved with a two-family residence circa 1928. Since the property is located in the Single Residence 3 zoning district (West Newton), the two-family use is non-conforming. The petitioner is proposing to construct a rear dormer to the attic level to finish the third floor room for living space. To construct the dormer, the applicant is seeking special permits to expand a nonconforming two-family residential use, and to increase the floor area ratio (FAR) from .47 to .57, where .50 is the maximum allowed by-right. If approved, the proposed dormer will result in a net increase to the existing structure by 623 square feet (21%) for a total of 3,595 square feet built on the lot.

The Planning Department is not concerned with the construction of the proposed additions. The dwelling is located in a neighborhood comprised of single and two family dwellings of varying sizes. The proposed additions are to the rear of the existing structure, while also preserving new lot setbacks. For these reasons, the Planning Department believes the expansion of a non-conforming two-family residential use is not substantially more detrimental than the existing nonconforming use is to the neighborhood, and increase in the FAR from .47 to .57, is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood.

### I. SIGNIFICANT ISSUES FOR CONSIDERATION:

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

- The site is an appropriate location for the expanded residence. (§7.3.3.C.1)
- The proposed expansion of a non-conforming two-family use is not substantially more detrimental than the existing nonconforming use is to the neighborhood. (§3.4.1 and §7.8.2.C.2)
- The proposed increase in FAR from .47 to .57, where .50 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.A.2 and §7.3)

### II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

#### A. Neighborhood and Zoning

The subject property is located on Noble Street, in a Single Residence 3 District in West Newton. The neighborhood is comprised of single and two-family residences of different sizes. The property is located southeast of the Moody Street commercial district in Waltham with a number of different uses ranging from restaurants to a movie theatre. To the east of the property is the Franklin Elementary School. **(Attachments A & B).**

B. Site

The site consists of 7, 6,278 square feet of land, and is improved with a 3-story colonial revival two-family residence circa 1928. There is an existing detached two-car garage to the northwest of the property.

III. 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 existing structure is a non-conforming two-family residence with flat-type units. The petitioner seeks to construct a rear dormer to create more livable space in the existing attic level. If the project is approved, addition would enlarge the current amount of square footage on-site by 623 square feet (21%), which is not visible from the street. The proposed dormer and dwelling otherwise meets all of the dimensional controls as stipulated in the NZO including new lot setbacks; the lone exception being the increase in FAR. Lot size, frontage, and front setback are also nonconforming, but are pre-existing conditions. Lastly, the structure will remain 2.5 stories.

C. Parking and Circulation

No changes are proposed to either the parking or circulation.

D. Landscape 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 with regard to zoning (**Attachment C**). Based on the Memorandum, the petitioner is seeking the following relief:

- §3.4.1 and §7.8.2.C.2 of Section 30, to extend a nonconforming two-family use in an SR-3 zoning district.
- §3.1.9.A.2 of Section 30, to exceed the maximum FAR;

B. Engineering Review

No engineering review is required at this time. The Engineering Division of Public Works will review this project for conformance with the City of Newton Engineering Standards prior to the issuance of a building permit should this project 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 45-47 Noble St.

*City of Newton,  
Massachusetts*

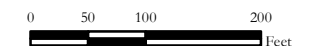
### Legend

-  Single Residence 3
-  Building Outlines
-  Surface Water
-  Property Boundaries

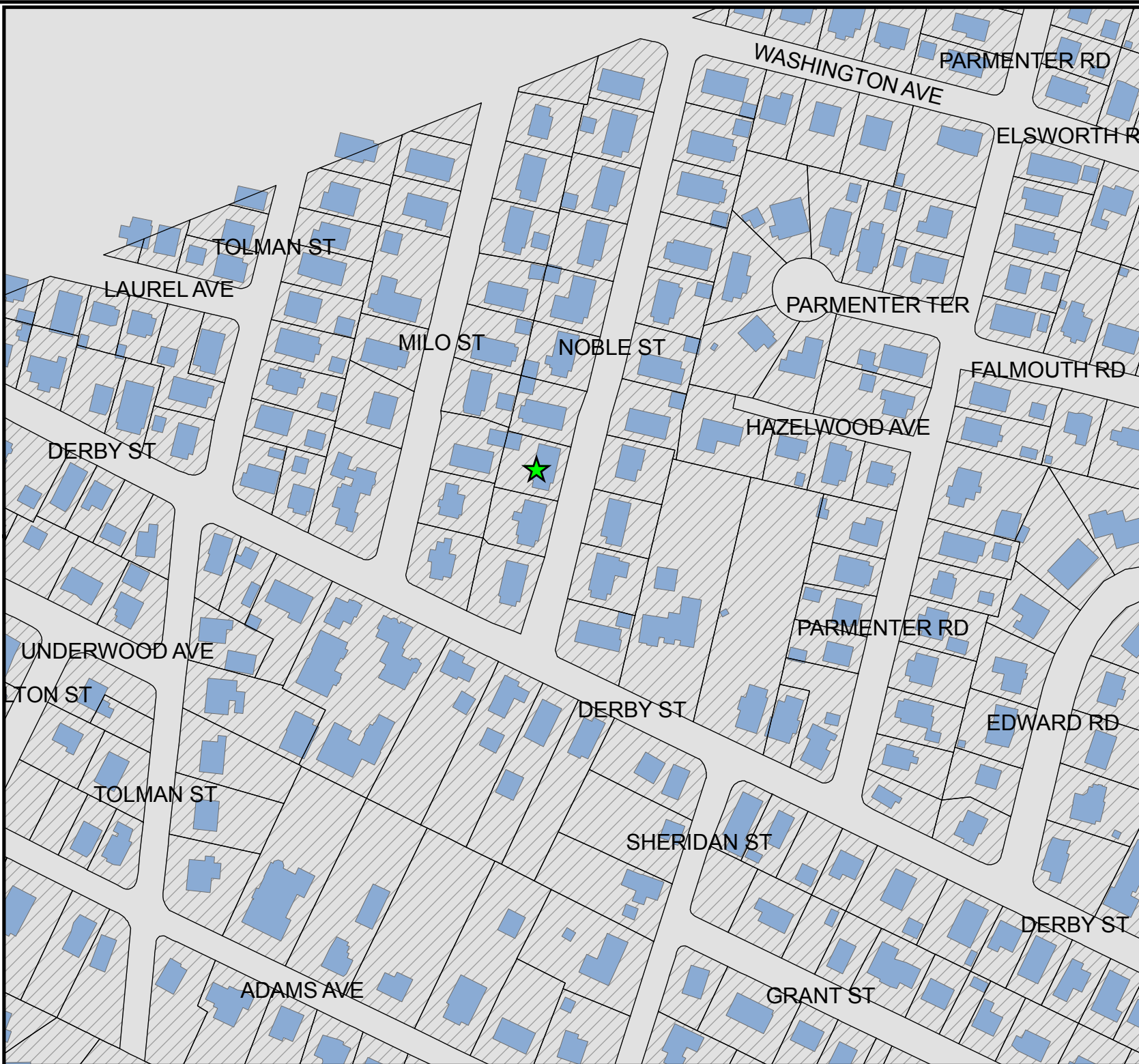


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

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



Map Date: July 12, 2016










# Attachment B Land-Use Map 45-47 Noble St.

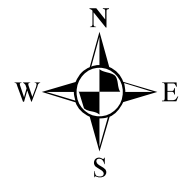
*City of Newton,  
Massachusetts*

## Legend

### Land Use

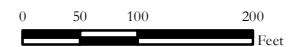
### Land Use

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



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CITY OF NEWTON, MASSACHUSETTS  
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Map Date: July 12, 2016





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Barney S. Heath  
Director

## ZONING REVIEW MEMORANDUM

Date: June 29, 2016

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Anna Rumshisky, applicant  
Barney S. Heath, Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Request to further increase a nonconforming two-family structure and to exceed FAR**

Applicant: Anna Rumshisky	
Site: 45-47 Noble Street	SBL: 44004 0013
Zoning: SR-3	Lot Area: 6,278 square feet
Current use: Two-family dwelling	Proposed use: No change

### BACKGROUND:

The property at 45-47 Noble Street consists of a 6,278 square foot lot improved with a two-family dwelling constructed in 1928. The applicant proposes a rear dormer addition to the attic level to finish the attic level for living space. The structure is an existing nonconforming two-family dwelling in a Single Residence 3 zoning district. To expand the nonconforming two-family use, as well as increase living space exceeding maximum allowed FAR requires a special permit.

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

- Zoning Review Application, prepared by Anna Rumshisky, applicant, submitted 5/24/2016
- FAR Worksheet, submitted 5/24/2016
- Mortgage Inspection Plan, Provident Funding, dated 1/9/2012
- Exterior Elevation, dated 9/17/2015

**ADMINISTRATIVE DETERMINATIONS:**

1. The applicant proposes to construct a rear dormer to the attic level, adding 623 square feet of living space. The additional living space creates an FAR of .57 from the existing .47, where .50 is the maximum allowed. The applicant is able to take advantage of the .02 increase in FAR, from .48 to .50, as the proposed construction meets new lot setback requirements. To construct the dormer addition as proposed, a special permit per Section 3.1.9 is required.
2. The existing two-family dwelling is a nonconforming use in the Single Residence 3 zoning district per Section 3.4.1. The applicant intends to add living space in the attic by constructing a dormer. To expand a nonconforming use requires a special permit per Section 7.8.2.C.2.

SR3 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	<b>6,278 square feet</b>	<b>No change</b>
Frontage	80 feet	<b>73 feet</b>	No change
Setbacks <ul style="list-style-type: none"> <li>• Front</li> <li>• Side</li> <li>• Rear</li> </ul>	25 feet 7.5 feet 15 feet	<b>16 feet</b> 7.5 feet 42 feet	<b>No change</b> No change No change
Building Height	36		No change
Max Number of Stories	2.5	2.5	No change
FAR	.50 (.48 plus .02 bonus)	.47	.57

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.9	To exceed FAR	S.P. per §7.3.3
§3.4.1 §7.8.2.C.2	Request to further increase nonconforming two-family use	S.P. per §7.3.3



CITY OF NEWTON  
IN CITY COUNCIL

August 8, 2016

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 expand a non-conforming two-family use and to exceed the floor area ratio from .47 to .57, where .50 is the maximum allowed by right, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Marc Laredo:

1. The site is an appropriate location for the proposed dormer addition to the third floor and the house will remain 2.5 stories (§7.3.3.C.1).
2. The proposed expansion of the non-conforming two-family residential use is not substantially more detrimental than the existing nonconforming use is to the neighborhood (§3.4.1 and §7.8.2.C.2) because the proposed addition is to the rear of the structure thereby preserving the traditional front façade and streetscape; and
3. The proposed increase in floor area ratio from .47 to .57, where .50 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.A.2 and §7.8.2.C.2) because the addition is within the existing footprint, maintaining the current new-lot setbacks.

PETITION NUMBER: #216-16

PETITIONER: Anna Rumshisky

LOCATION: 45-47 Noble Street, on land known as Section 44, Block 04, Lot 13, containing approximately 6,278 square feet of land

OWNER: Anna Rumshisky

ADDRESS OF OWNER: 45-47 Noble Street  
Newton, MA 02465

TO BE USED FOR: Two-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.4.1, 3.1.9.A.2 and §7.8.2.C.2, to expand a non-conforming two-family use; §3.1.9.A.2 and §7.3 to exceed the floor to area ratio

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. Structural Drawings, signed and stamped by Alexander Dorfman, Professional Engineer, dated 4/26/2014, Sheets S1 and S2
  - b. Exterior Elevation, 45 Noble Street, dated 5/23/2016, sheet A-1
2. 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.
3. 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 or 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.