



Ruthanne Fuller  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
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**#353-21**

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Barney S. Heath  
Director

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## PUBLIC HEARING MEMORANDUM

Public Hearing Date:	October 12, 2021
Land Use Action Date:	December 14, 2021
City Council Action Date:	January 3, 2022
90-Day Expiration Date:	January 10, 2022

DATE: October 8, 2021

TO: City Council

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

SUBJECT: **Petition #353-21**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to construct a front addition and three-story rear addition, extending the nonconforming three-story structure at **173 Allen Avenue**, Ward 5, Waban, on land known as Section 53 Block 22 Lot 10, containing approximately 13,776 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 3.1.3, 7.3.3, 7.4, and 7.8.2.C.2 of the City of Newton Rev Zoning Ord, 2017.

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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.



**173 Allen Avenue**

## EXECUTIVE SUMMARY

The subject property located at 173 Allen Avenue consists of a 13,776 square foot lot improved with a single-family dwelling constructed circa 1930. The property is within the Single Residence 2 zone (the "SR-2 zone") in Waban. Due to the topography, the basement is considered the first story and the structure is legal nonconforming with three stories, where 2.5 stories the maximum allowed as of right. The petitioners are seeking to construct additions to the third story, thereby extending the nonconformity, and requiring a special permit. The Planning Department is unconcerned with the proposed additions to the nonconforming third story because the additions would add 109 square feet to the third story and are in keeping with the massing of the structure.

### I. SIGNIFICANT ISSUES FOR CONSIDERATION

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

- The proposed extension of the nonconforming third story 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 Allen Avenue in the SR-2 zone in Waban. The SR-2 zone, along with a Public Use zone immediately north and northeast of the subject property, encompasses the area (**Attachment A**). As a result, the area consists of single-family uses along with an Open Space parcel in the form of the Cochituate Aqueduct (**Attachment B**).

#### B. Site

The site consists of 13,776 square feet and it is improved with a three-story single-family dwelling constructed circa 1930. The grade slopes down from the front to the rear (east to west), such that the basement is exposed, rendering it the first story. The site is served by one curb cut from Allen Avenue providing access to a driveway and surface parking. The site is improved with mature landscaping

### 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 petitioners are proposing to construct additions to the front and rear facades. The addition to the front façade would consist of two stories and would bump out the northernmost portion approximately four feet to create a consistent wall plane. The rear addition would span the entire rear (west) façade and would replace an unenclosed deck. As a result, changes to the footprint are de minimis. The southernmost portion of the rear addition is contained to the second story, while the northernmost would include an approximate 4.5-foot bump out to the third story. The resulting structure would be 30 feet tall, and the third story would increase by 109 square feet.

**Graphic I: Rear Elevation**



The Planning Department is unconcerned with the proposed additions to the nonconforming third story because the additions would add 109 square feet to the third story and are in keeping with the massing of the structure.

C. Parking and Circulation

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

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 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 a nonconforming three-story structure.

##### B. Engineering Review

This petition does not meet the minimum threshold for review from the Engineering Division.

##### C. Newton Historical Commission Review

The submitted plans were reviewed and approved by the Chief Preservation Planner on June 24, 2021.

#### 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

173 Allen Avenue

*City of Newton,  
Massachusetts*

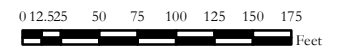
## Zoning

-  Single Residence 2
-  Public Use



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  
GIS Administrator - Douglas Greenfield



Map Date: October 07, 2021





# ATTACHMENT B





## Land Use

173 Allen Avenue

*City of Newton,  
Massachusetts*

## Land Use

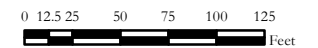
### Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Open Space
-  Vacant Land

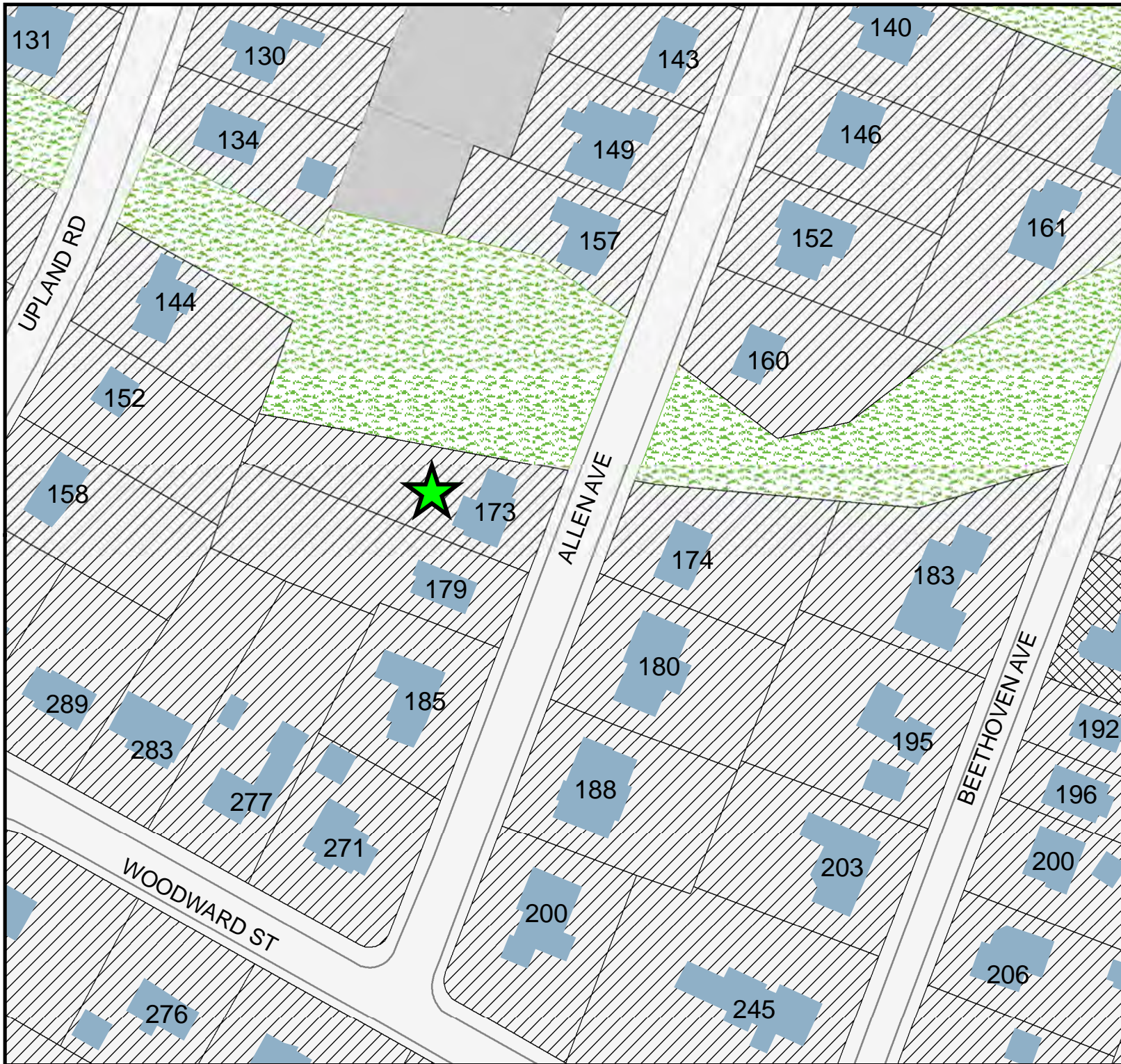


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Map Date: October 07, 2021





**Ruthanne Fuller**  
Mayor

**City of Newton, Massachusetts**  
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Attachment C

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**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: August 30, 2021

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Neil Cronin, Chief Planner for Current Planning

Cc: Matthew and Megan Feinberg, Applicants  
Tova Greenberg, Architect  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Associate City Solicitor

**RE: Request to extend a nonconforming three-story structure**

Applicant: Matthew & Megan Feinberg	
Site: 173 Allen Avenue	SBL: 53022 0010
Zoning: SR2	Lot Area: 13,776 square feet
Current use: Single-family dwelling	Proposed use: No change

### BACKGROUND:

The property at 173 Allen Avenue consists of a 13,776 square foot lot improved with a single-family dwelling constructed in 1930. The petitioners propose to construct a three-story rear addition as well as a small front addition. The proposed changes will extend the nonconforming three-story structure, requiring a special permit.

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

- Zoning Review Application, prepared by Tova Greenberg, architect, submitted 7/20/2021
- Plan Showing Proposed Conditions, signed and stamped by Dennis O'Brien, surveyor, dated 6/15/2021
- Architectural plans and elevations, prepared by Tova Greenberg, architect, dated 5/21/2021
- FAR calculation, submitted 8/26/2021

**ADMINISTRATIVE DETERMINATIONS:**

1. Due to the topography the basement is the first story resulting in a three-story structure where 2.5 is the maximum allowed per section 3.1.3. The petitioners propose a three-story rear addition and a small addition to the front, further extending the nonconforming third story requiring a special permit per sections 3.1.3 and 7.8.2.C.2.

SR2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	13,776 square feet	No change
Frontage	100 feet	<b>80 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 7.5 feet 0 feet* 15 feet	29.6 feet 12.3 feet 12.9 feet NA	No change No change 8.4 feet >150 feet
Max Number of Stories	2.5	<b>3</b>	<b>No change</b>
Max Height	36 feet	31.3 feet	32.5 feet
FAR	.34	.26	.29
Max Lot Coverage	30%	9.5%	11%
Min. Open Space	50%	86.7%	85.5%

Nonconformities are indicated in **bold**

\*Per section 1.5.2 no setback is required from an aqueduct

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 extend a nonconforming three-story structure	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:**

1. Two (2) copies of the completed Special Permit Application (signed by property owner)
2. Filing Fee (see Special Permit Application)
3. Two (2) copies of the Zoning Review Memorandum
4. 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)
5. One (1) Floor Area Ratio (FAR) Worksheet, (signed and stamped by a design professional)
6. One (1) copy of any previous special permits or variances on the property (as applicable)
7. One (1) copy of any other review/sign-off (Historic, Conservation, Tree Removal, etc. as applicable)
8. 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 increase the nonconformity of a structure with three stories, where 2.5 stories is the maximum allowed by-right, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The proposed additions to the nonconforming third story are not substantially more detrimental than the existing nonconforming structure is to the neighborhood because the additions add 109 square feet to the third story and are in keeping with the massing of the structure. (§3.1.3, and §7.8.2.C.2)

PETITION NUMBER: #353-21

PETITIONER: Megan and Matthew Feinberg

LOCATION: 173 Allen Avenue, on land known as Section 53, Block 22, Lot 10, containing approximately 13,776 square feet of land

OWNER: Megan and Matthew Feinberg

ADDRESS OF OWNER: 173 Allen Avenue  
Newton, MA 02468

TO BE USED FOR: Single-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.3 and §7.8.2.C.2 to increase the nonconformity of a structure with three stories

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. Site Plan signed and stamped by Dennis O' Brien, Professional Land Surveyor, dated June 15, 2021, Revised August 30, 2021.
  - b. Architectural Plans and Elevations, prepared by Steveworks, LLC., dated May 12, 2021 consisting of eighteen (18) 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 and the Inspectional Services 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 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 a statement from 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 licensed land surveyor.