



#382-21

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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

PUBLIC HEARING MEMORANDUM

Public Hearing Date:	November 4, 2021
Land Use Action Date:	January 11, 2022
City Council Action Date:	January 17, 2022
90-Day Expiration Date:	February 2, 2022

DATE: October 29, 2021

TO: City Council

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

SUBJECT: **Petition #382-21**, for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a rear, oversized dormer, further increasing the nonconforming FAR at **109 Oak Terrace**, Ward 5, Newton Highlands, on land known as Section 52 Block 01 Lot 02, containing approximately 4,633 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 1.5.4.G.2.b, 3.1.3, 3.1.9, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

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 for consideration at a subsequent working session by the Land Use Committee of the City Council.



9 Oak Terrace

EXECUTIVE SUMMARY

The subject property located at 9 Oak Terrace consists of a 4,633 square foot lot in the Single Residence 2 zone (the "SR-2 zone") in Newton Highlands. The lot is improved with a single-family residence constructed circa 1906. The petitioners are seeking to construct a rear dormer that is wider than what is allowed as of right and that would further increase the nonconforming floor area ratio (the "FAR"). As a result, the petitioners require special permits to construct an oversized dormer and to further increase the nonconforming FAR. The Planning Department is unconcerned with the dormer because it is to the rear of the structure, therefore not visible from abutting properties or public ways.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the proposed dormer, which exceeds 50 percent of the length of the exterior wall of the story next below. (§7.3.3.C.1)
- The proposed dormer, which exceeds of 50 percent of the length of the exterior wall of the story next below, will adversely impact the neighborhood. (§7.3.3.C.2)
- The proposed dormer, which exceeds of 50 percent of the length of the exterior wall of the story next below, will create a nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
- The proposed increase in the nonconforming FAR from .70 to .72, where .48 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. (§3.1.3, and §7.8.2.C.2)
- The proposed increase in the nonconforming FAR from .70 to .72, where .48 is the maximum allowed by-right, is substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§3.1.9, and §7.8.2.C.2)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

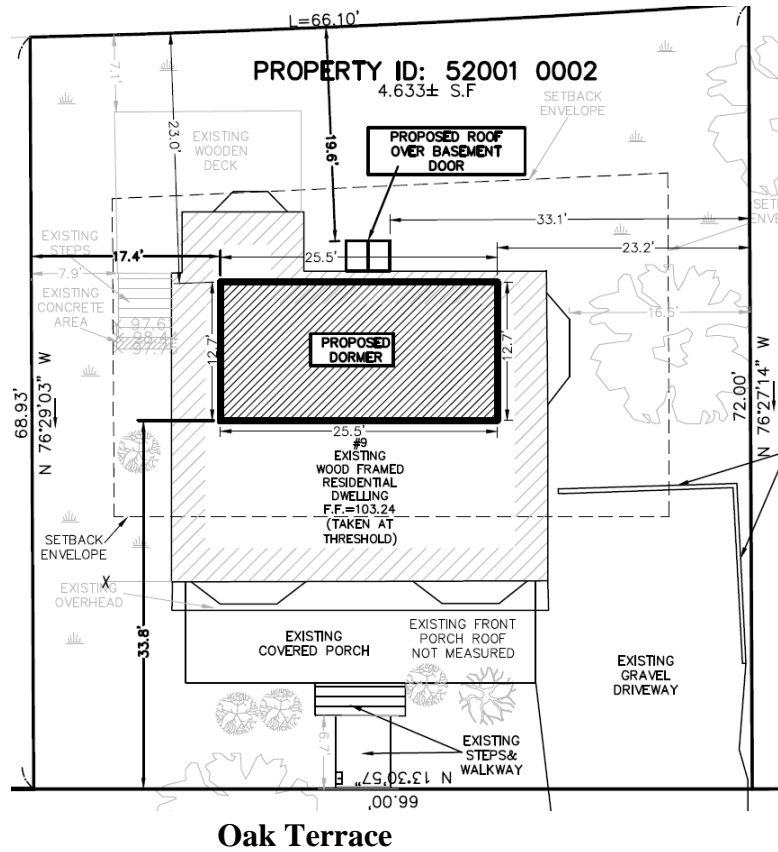
A. Neighborhood and Zoning

The subject property is located on Oak Terrace in the SR-2 zone in Newton Highlands. The SR-2 zone encompasses the surrounding neighborhood except a Public Use district immediately north of the site (**Attachment A**). As such, the area consists of an Open Space parcel in the form of the Sudbury Aqueduct, single-family uses, and some nonconforming multi-family uses to the south (**Attachment B**).

B. Site

The site consists of 4,633 square feet and it is improved with a 2.5-story single-family dwelling. The site is served by curb cut at the southeast corner providing access to a gravel driveway. The grade of the lot slopes downward from the rear of the dwelling towards the Sudbury Aqueduct.

Figure I: Site Plan



III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

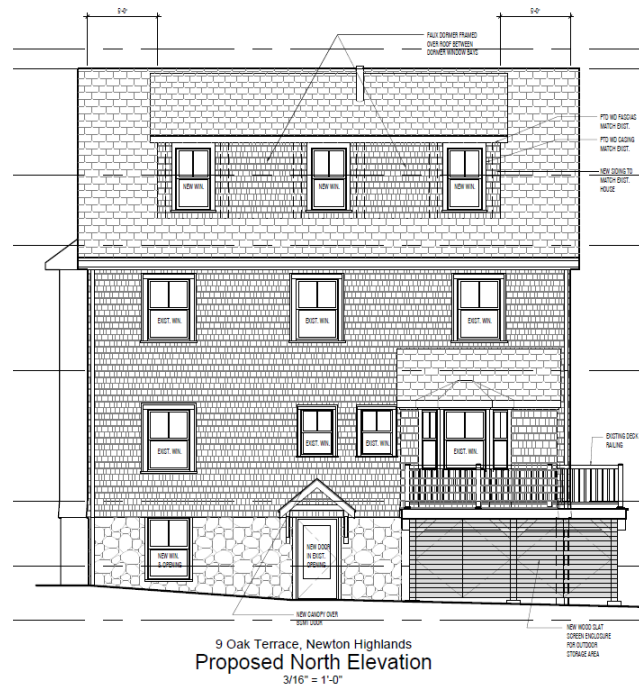
The principal use of the site is and will remain single-family.

B. Building Design

The petitioners are proposing to construct a shed dormer on the rear facade to create additional living space. The dormer would measure 24.5 feet, while the length of the exterior wall of the second story is 34.5 feet wide (71%), where 50% is the maximum

allowed as of right. Additionally, the lot exceeds the maximum allowed FAR, measuring .70, where .48 is the maximum allowed. The dormer would add 51 square feet to the FAR, resulting in an FAR of .72. The Planning Department is unconcerned with the dormer because it is to the rear, therefore not visible from abutting properties or public ways.

Figure II: Proposed Rear Elevation



C. Site Design

The petitioners are not proposing to alter the site.

D. Parking and Circulation

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

E. Landscaping

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 completed Zoning Review Memorandum, the petitioner is seeking the following relief:

- §3.1.3, §3.1.9, and §7.8.2.C.2 of Section 30, to further increase the nonconforming FAR.
- §1.5.4.G.2.b and §7.3.3 of Section 30, to allow a dormer exceeding 50% of the length of the exterior wall of the story next below.

B. Engineering Review

This petition does not meet the minimum threshold for Engineering Review.

C. Historic Preservation Review

The Newton Historical Commission approved the dormer on August 2, 2021. 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:** Land Use Map
Attachment B: Zoning Map
Attachment C: Zoning Review Memorandum
Attachment D: DRAFT Council Order



ATTACHMENT A

Zoning

9 Oak Terrace

City of Newton,
Massachusetts

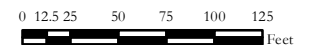
Zoning

-  Single Residence 2
-  Public Use

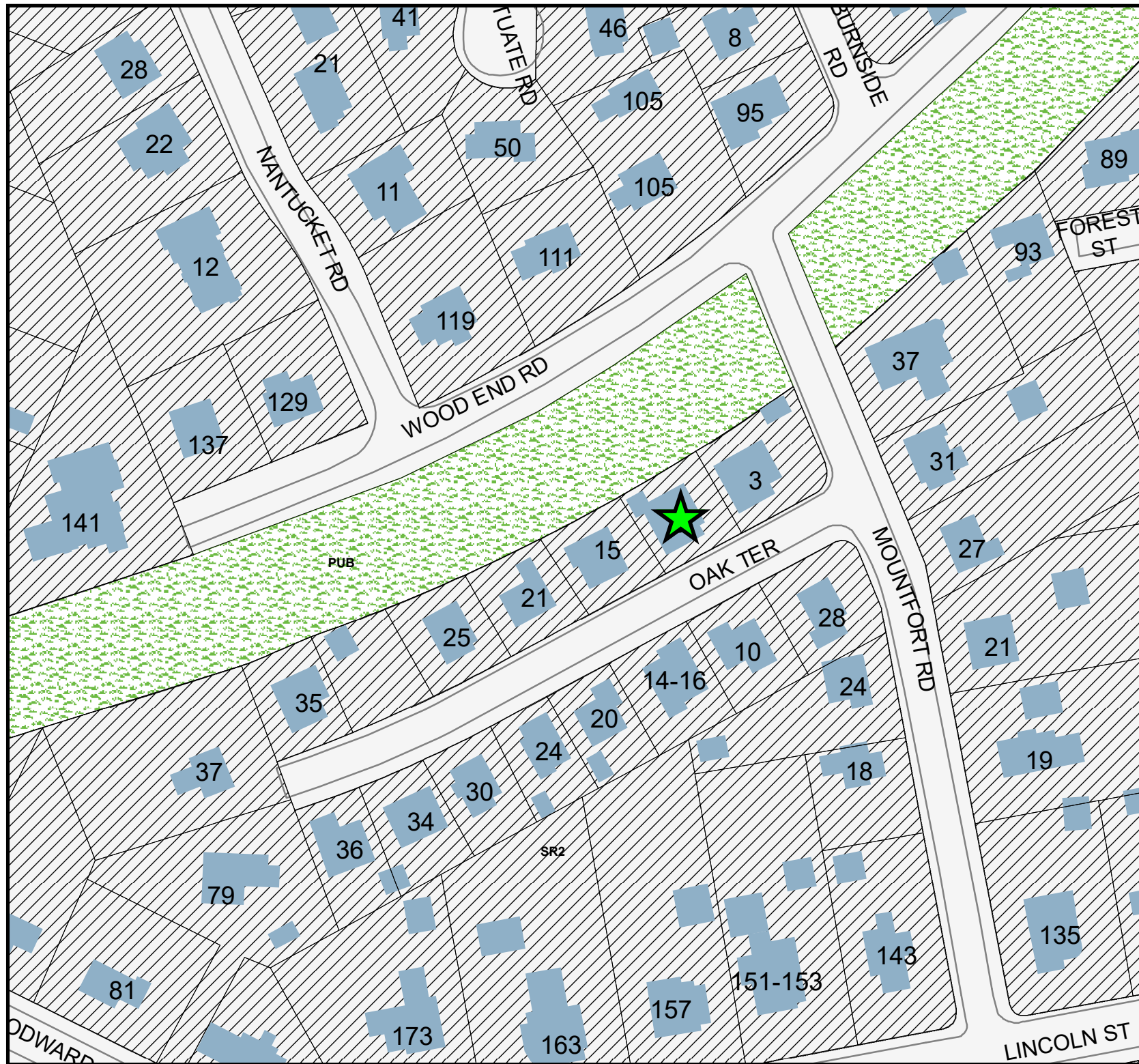


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield



Map Date: October 25, 2021



ATTACHMENT B





Land Use

9 Oak Terrace

*City of Newton,
Massachusetts*

Land Use

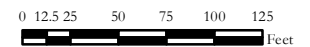
Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Nonprofit Organizations
-  Vacant Land

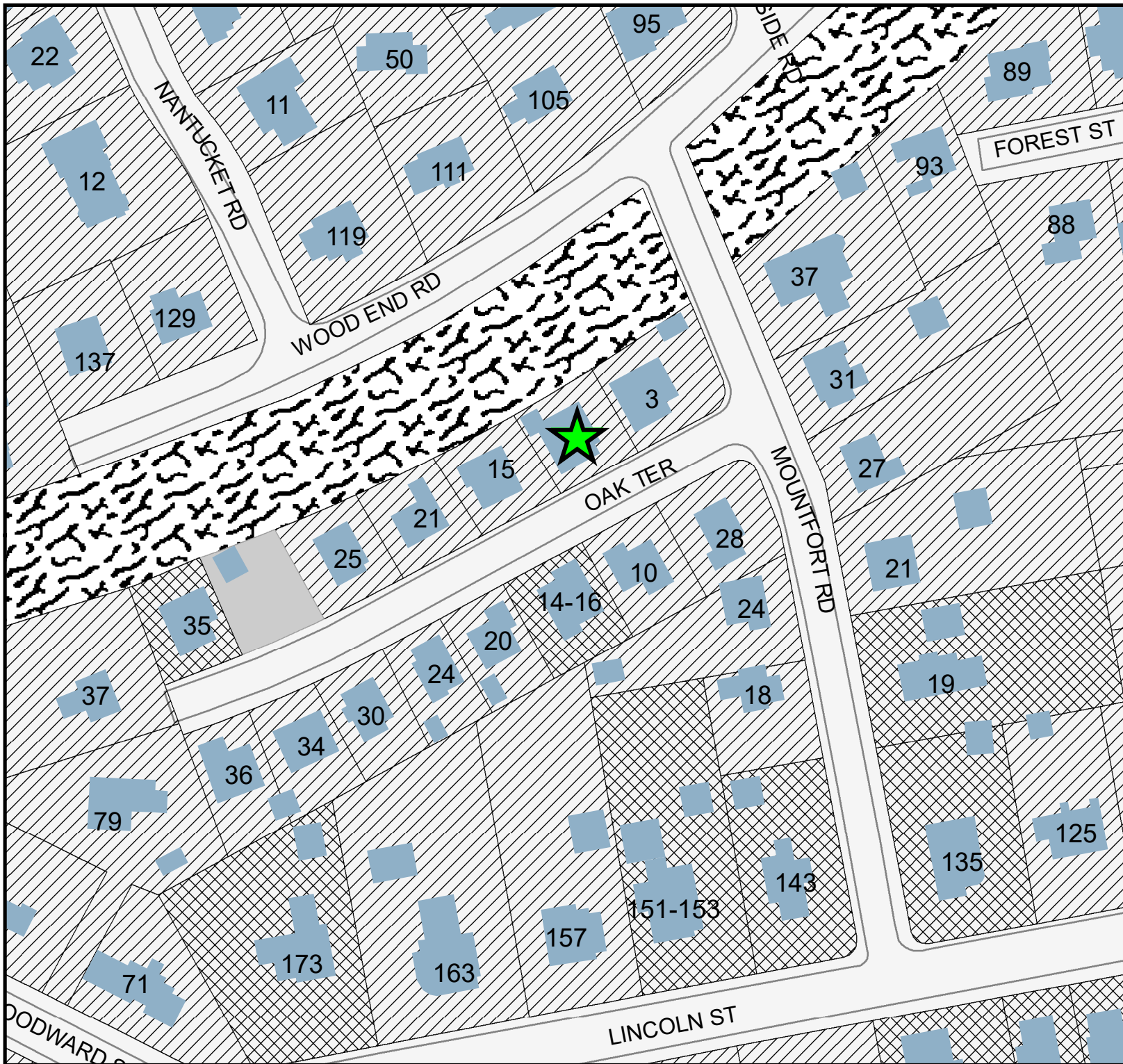


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
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Map Date: October 25, 2021





Ruthanne Fuller
Mayor

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Attachment C
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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: September 28, 2021

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Elizabeth Richter, Applicant
Derek Bloom, Architect
Barney S. Heath, Director of Planning and Development
Jonah Temple, Associate City Solicitor

RE: Request to further increase nonconforming FAR and to allow an oversized dormer

Applicant: Elizabeth Richter	
Site: 109 Oak Terrace	SBL: 52001 0002
Zoning: SR2	Lot Area: 4,633 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 9 Oak Terrace consists of a 4,633 square foot corner lot improved with a single-family dwelling constructed in 1906. The petitioners propose to construct a rear dormer. The proposed dormer is wider than allowed by right and will further increase the nonconforming FAR, requiring a special permit.

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

- Zoning Review Application, prepared by Derek bloom, architect, submitted 7/30/2021
- Plot Plan of Land, prepared by Peter Nolan & Associates, surveyor, dated 7/28/2021
- FAR calculation, dated 7/27/2021
- Plans and elevations, prepared Bloom Architecture, architect, dated 8/26/2021

ADMINISTRATIVE DETERMINATIONS:

1. The petitioners intend to construct a rear shed dormer. The dormer is 24.5 feet wide where the wall plane next below is 34.5 feet wide. Per section 1.5.4.G.2.b, the length of dormer may be no wider than 50% of the length of the exterior wall of the story next below. The proposed dormer is 71% of the length of the wall of the story next below, requiring a special permit.
2. The dormer adds 131 square feet towards the FAR resulting in a total of 3,354 square feet. The existing nonconforming FAR is .70, where .46 is the maximum allowed per section 3.1.9. The proposed addition further increases the nonconforming FAR to .72, requiring a special permit pursuant to Sections 3.1.3, 3.1.9 and 7.8.2.C.2.

SR2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	4,633 square feet	No change
Frontage	100 feet	66 feet	No change
Setbacks			
• Front	25 feet	6.7 feet	No change
• Side	7.5 feet	7.9 feet	No change
• Side	7.5 feet	16.6 feet	No change
• Rear	0 feet**	7.1 feet	No change
Max Number of Stories	2.5	2.5	No change
Max Height	36 feet	35.44 feet	No change
FAR	.46	.70	.72*
Max Lot Coverage	30%	29%	No change
Min. Open Space	50%	55%	No change

Figures in **BOLD** are nonconforming

*Requires a special permit

**Per section 1.5.2.A, no setback is required abutting an aqueduct

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§1.5.4.G.2.b	Request to allow an oversized dormer	S.P. per §7.3.3
§3.1.3, §3.1.9 §7.8.2.C.2	Request to further increase nonconforming FAR	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 waive certain dormer provisions and to further increase the nonconforming floor area ratio (the "FAR") from .70 to .72, where .48 is the maximum allowed as of right, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The specific site is an appropriate location for the dormer, which exceeds 50 percent of the length of the exterior wall of the story next below, because the site is improved with a single-family dwelling which is an allowed use in the Single Residence 2 district. (§7.3.3.C.1)
2. The proposed dormer, which exceeds of 50 percent of the length of the exterior wall of the story next below, will not adversely impact the neighborhood because the dormer is to the rear of the structure. (§7.3.3.C.2)
3. The proposed dormer, which exceeds of 50 percent of the length of the exterior wall of the story next below, will not create a nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
5. The proposed increase in the nonconforming FAR from .70 to .72, where .48 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 the resulting structure is not substantially more detrimental than the existing nonconforming structure is to the neighborhood because the FAR increase is to the rear of the structure, not visible from abutting properties and the public way. (§3.1.3, and §7.8.2.C.2)

PETITION NUMBER:

#382-21

PETITIONER: Elizabeth Richter

LOCATION: 9 Oak Terrace, on land known as Section 52, Block 01, Lot 02, containing approximately 4,633square feet of land

OWNER: Elizabeth Richter

ADDRESS OF OWNER: 9 Oak Terrace
Newton, MA 02461

TO BE USED FOR: Single-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: 1.5.4.G.2.b and §7.3.3 of Section 30, to allow a dormer exceeding 50% of the length of the exterior wall of the story next below; §3.1.3, §3.1.9 and §7.8.2.C.2 of Section 30, to further increase the nonconforming FAR

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. Proposed Plot Plan, prepared by Peter Nolan and Associates, LLC, signed and stamped, by Peter J. Nolan, Professional Land Surveyor, dated September 15, 2021.
 - b. Architectural Plans, prepared by BLOOM Architecture, signed and stamped by Derek Bloom, Registered Architect, dated August 26, 2021, consisting 17 sheets.
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 petitioners have:
 - 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. 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 have:
 - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by an architect certifying compliance with Condition #1, including the as built FAR.
 - 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.