



#378-21

Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
[www.newtonma.gov](http://www.newtonma.gov)

## 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:	November 16, 2021
Land Use Action Date:	February 1, 2022
City Council Action Date:	February 7, 2022
90-Day Expiration Date:	February 14, 2022

DATE: November 12, 2021

TO: City Council

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

SUBJECT: **Petition #378-21**, for SPECIAL PERMIT/SITE PLAN APPROVAL to extend the nonconforming two-family use to a three unit multifamily dwelling; and to alter the adjacent nonconforming parking facility to allow parking within the front setback, within five feet of the street, and to allow a minimum aisle width of 23 feet at 9-11 Circuit Avenue, Ward 5, Newton Highlands, on land known as Section 51 Block 15 Lots 12 and 13, containing approximately 8,471 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 7.3.3, 7.4, 3.4.1, 7.8.2.C.2, 5.1.8.A.1, 5.1.13, 5.1.8.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 which may be useful in the special permit decision making process of the City Council. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the City Council will want to consider in its discussion at a subsequent Working Session.



9-11 Circuit Avenue

## **EXECUTIVE SUMMARY**

The subject property located at 9-11 Circuit Avenue consists of 8,471 square feet of land, improved with a two-family dwelling constructed circa 1910 in the Single Residence 3 zone (the SR-3 zone). Two-family dwellings are not allowed within the SR3 zone; as such, the use is legal nonconforming. The petitioner proposes to create a third unit in the attic, further extending the nonconforming two-family residential use to a three-unit multi-family use. A three-unit multifamily dwelling is not allowed as of right in any zoning district, therefore, the Newton Zoning Ordinance "Ordinance" states that the City Council determine the density controls for the use and whether the proposed dimensional controls are appropriate.

Additionally, the property features a nonconforming surface parking facility. The petitioner is proposing to alter the parking facility and legitimize the nonconforming aspects. The petitioner requires relief to allow parking within the front setback, within five feet of the street, and to reduce the minimum aisle width for a two-way drive aisle. The Planning Department notes that relocating the parking further into the site would eliminate the relief for parking within the front setback and within five feet of the street.

The Planning Department notes that the request to extend the nonconforming two-family dwelling to a three-unit multifamily use utilizes existing attic space and does increase the footprint of the structure. The petitioner is creating the third unit within existing space. The alterations to the nonconforming parking facility reduce impervious surface, bring the site's open space into compliance, and reflect the existing conditions of the site.

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

When reviewing this request, the Council should consider whether:

- The proposed extension of the nonconforming two-family use to a three unit use will be substantially more detrimental than the existing nonconforming two-family use is to the neighborhood (§3.4.1, §7.8.2.C.2);
- The proposed alterations to the nonconforming surface parking facility will be substantially more detrimental than the existing nonconforming surface parking facility is to the neighborhood (§5.1.8.A.1, §5.1.8.C.2, §5.1.13, §7.8.2.C.2); and
- Literal compliance with the dimensional standards for parking within the front setback, within five feet of the street, and to reduce the minimum aisle width for a two-way drive aisle impractical due to the nature of the use, or the location, size, frontage, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features (§5.1.8.A.1, §5.1.8.C.2, §5.1.13).

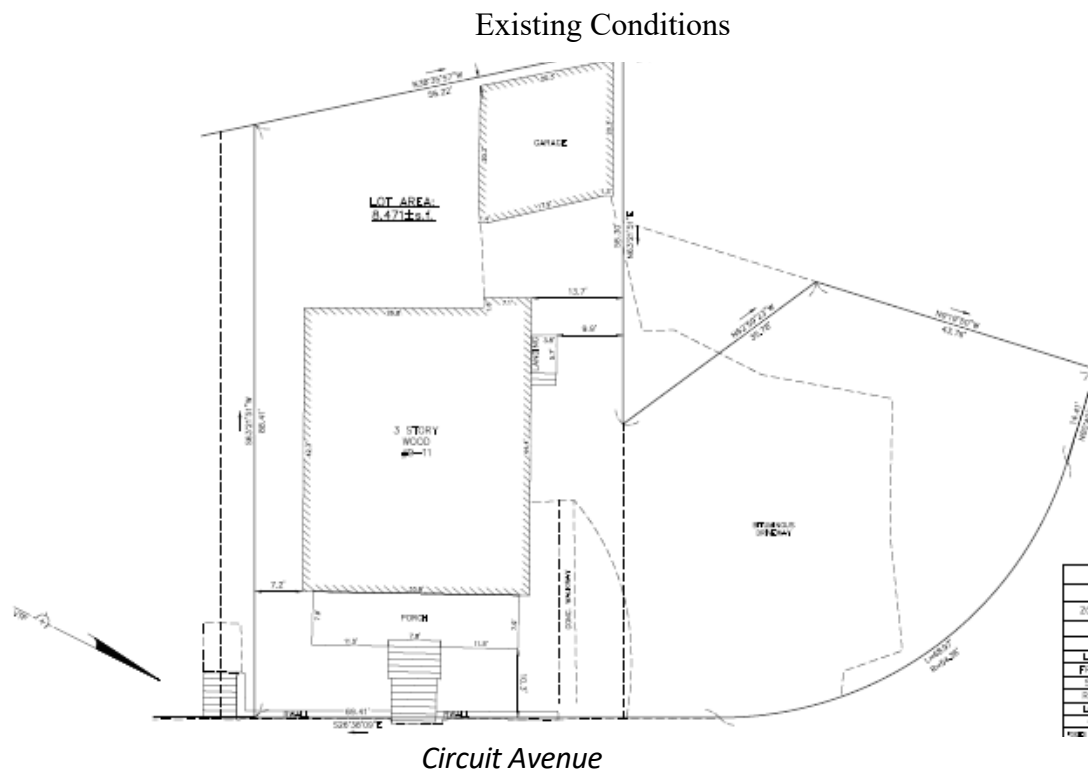
II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located at the corner of Circuit Avenue and Boylston Street in the SR-3 zone in Newton Highlands. The western side of Circuit Avenue is mostly within the SR-3 zone, the eastern side of Circuit Avenue is within the Multi-Residence 2 zone, and to the south is a public use zone (**ATTACHMENT A**). The uses in the area consist of single-family residential, multi-family residential, and the Martin Conservation Area, a park, to the south (**ATTACHMENT B**).

B. Site

The site consists of 8,741 square feet of land and is improved with a nonconforming two-family use constructed circa 1910. The site is accessed by one curb cut from Circuit Avenue which provides access to a detached garage in the northwest corner of the site as well as the nonconforming surface parking facility, which is unstriped. The nonconforming two-family dwelling has a nonconforming front setback of 10.3', where 25 feet is required. The site's open space is also nonconforming open space at 45.2%, where 50% is the minimum allowed.



III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

If approved, the nonconforming two-family use will be extended to a three-unit multifamily use.

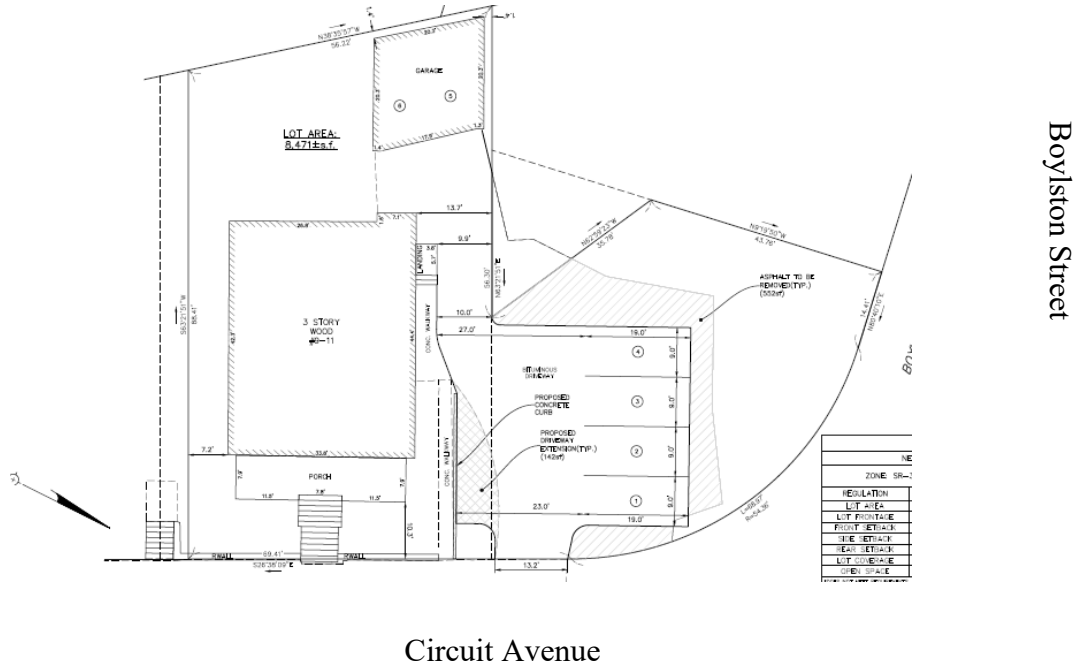
B. Site and Building Design

The petitioner is not proposing any changes to the structure's footprint, the third unit would be created within the attic.

The Zoning Ordinance states under section 3.1.2.A.3, where a density or dimensional control is not set forth in this Sec. 3.1 for a use granted by special permit, the most restrictive density or dimensional control applicable to such use in any district where the use is allowed as of right shall be applicable, unless otherwise required in the special permit by the City Council. Multifamily dwellings are not allowed by right in any district, therefore the City Council sets the dimensional controls. Should this petitioner be approved, the proposed dimensional controls would apply.

When compared to a multifamily dwelling in an MR-2 zoning district, the project meets most dimensional standards. The structure has a nonconforming front setback of 10.3 feet, where 25 feet would be required for a multifamily dwelling and required side setbacks of 7.5 feet. The structure has a nonconforming side setback from the southern boundary of 7.2 feet. A multifamily dwelling in the MR-2 zoning district would be allowed lot coverage of up to 30%, and usable open space of 50%, where it is currently nonconforming at 45.2%, but a proposed reduction in impervious area in the parking bring the site into compliance with the open space at 50%. Other structures in the neighborhood appear to have nonconforming front setbacks for a cohesive neighborhood pattern of structures closer to the street.

Proposed Site Plan



The Planning Department notes that the extension of the nonconforming two-family use to a three-unit multifamily use utilizes the existing structure. The site's proximity to Boylston Street also lends itself to an additional unit, and the site accommodates the parking requirement for three units.

C. Parking and Circulation

There is an existing surface parking facility on the right side of the structure and a two-car detached garage to the rear of the structure. The petitioner is altering the parking facility to bring it further into compliance with the dimensional standards. The four surface parking stalls will have dimensions of 9 feet x 19 feet, complying with the required stall dimensions. There are an additional two parking stalls in the detached garage. The six stalls meet the parking requirement for the three-unit multifamily use.

The curb cut is 13.2 feet wide, and the proposed drive aisle is 23 feet wide, it further narrows to 9.9 feet between the landing of the structure and northwest property line. Two-way drive aisles require an aisle of 24 feet in width. The placement of the parking facility also places four stalls within the required setback distances from Circuit Avenue and Boylston Street.

The Planning Department notes that relocating the parking further into the site would eliminate the relief for parking within the front setback and within five feet of the

street. This would also allow additional landscaping at the front of the site to screen the parking area. The petitioner should also clarify if garage stalls 5 and 6 would utilize the paved area within the 45-degree angle on the neighbor's property to exit the site.

D. Landscaping

The Planning Department suggests the petitioner consider screening where possible around the parking facility, but also as to not interfere with a clear sight distance from Boylston Street.

IV. TECHNICAL REVIEW

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

The Zoning Review Memorandum (**ATTACHMENT C**) provides an analysis of the proposal regarding zoning. The petitioner is seeking the following relief:

- §3.4.1, §7.8.2.C.2 of Section 30, to extend a nonconforming two-family use.
- §5.1.8.A.1, §5.1.8.C.2, §5.1.13, §7.8.2.C.2 of Section 30, to alter the nonconforming parking facility to allow parking within the front setback, within five feet of the street, and to reduce the drive aisle width for two way traffic.

B. Engineering Review

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

C. Newton Historical Commission

This petition does not meet the minimum threshold for Newton Historical Commission review.

V. PETITIONER'S RESPONSIBILITIES

The petition is complete.

**ATTACHMENTS:**

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








# ATTACHMENT A

## Zoning

### 9-11 Circuit Avenue

City of Newton,  
Massachusetts

## Zoning

-  Single Residence 2
-  Single Residence 3
-  Multi-Residence 1
-  Multi-Residence 2
-  Public Use

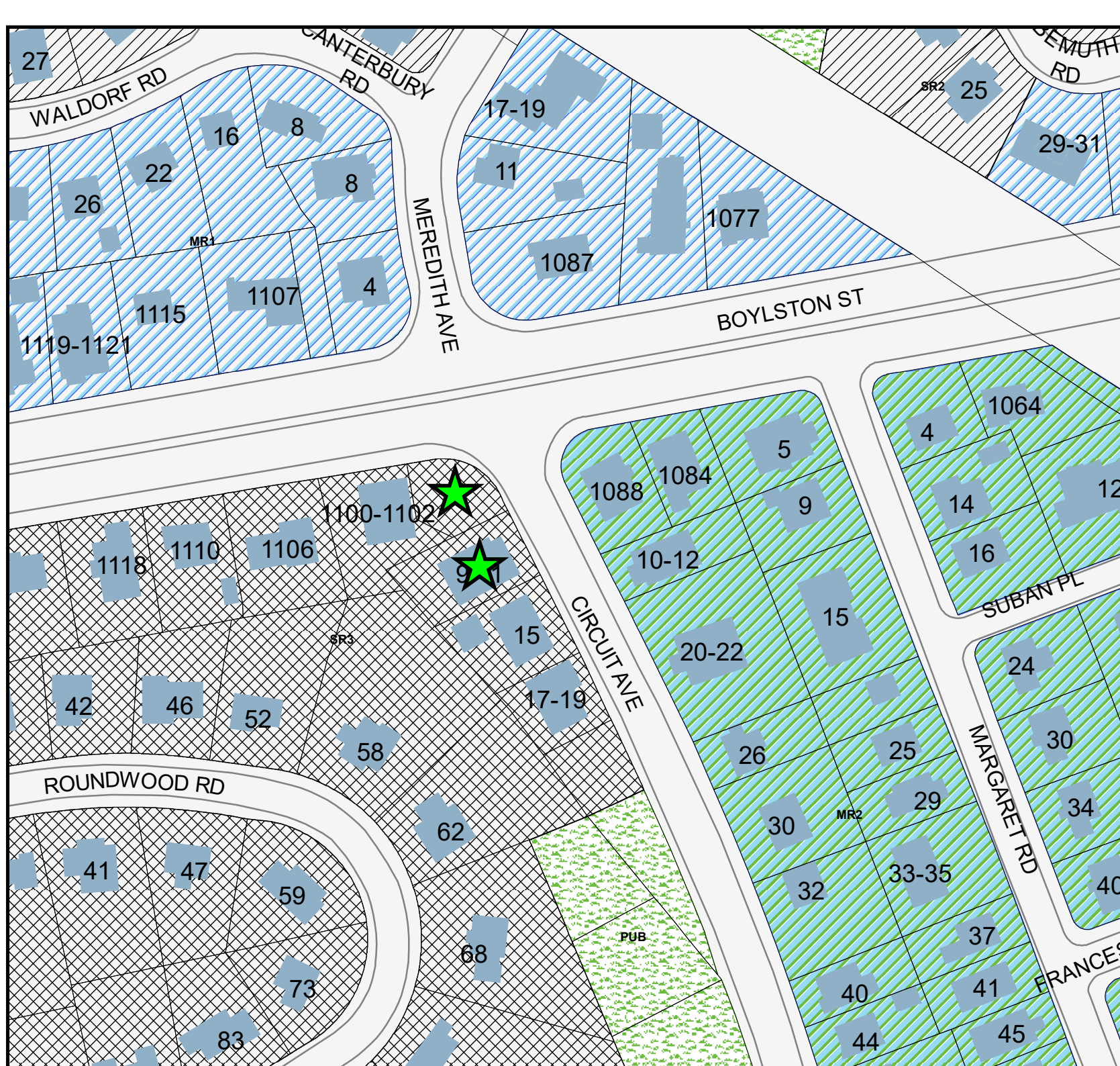


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Ruthanne Fuller  
GIS Administrator - Douglas Greenfield



Map Date: November 08, 2021





# ATTACHMENT B





## Land Use

### 9-11 Circuit Avenue

*City of Newton,  
Massachusetts*

#### Land Use

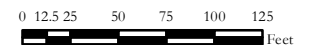
#### Land Use

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

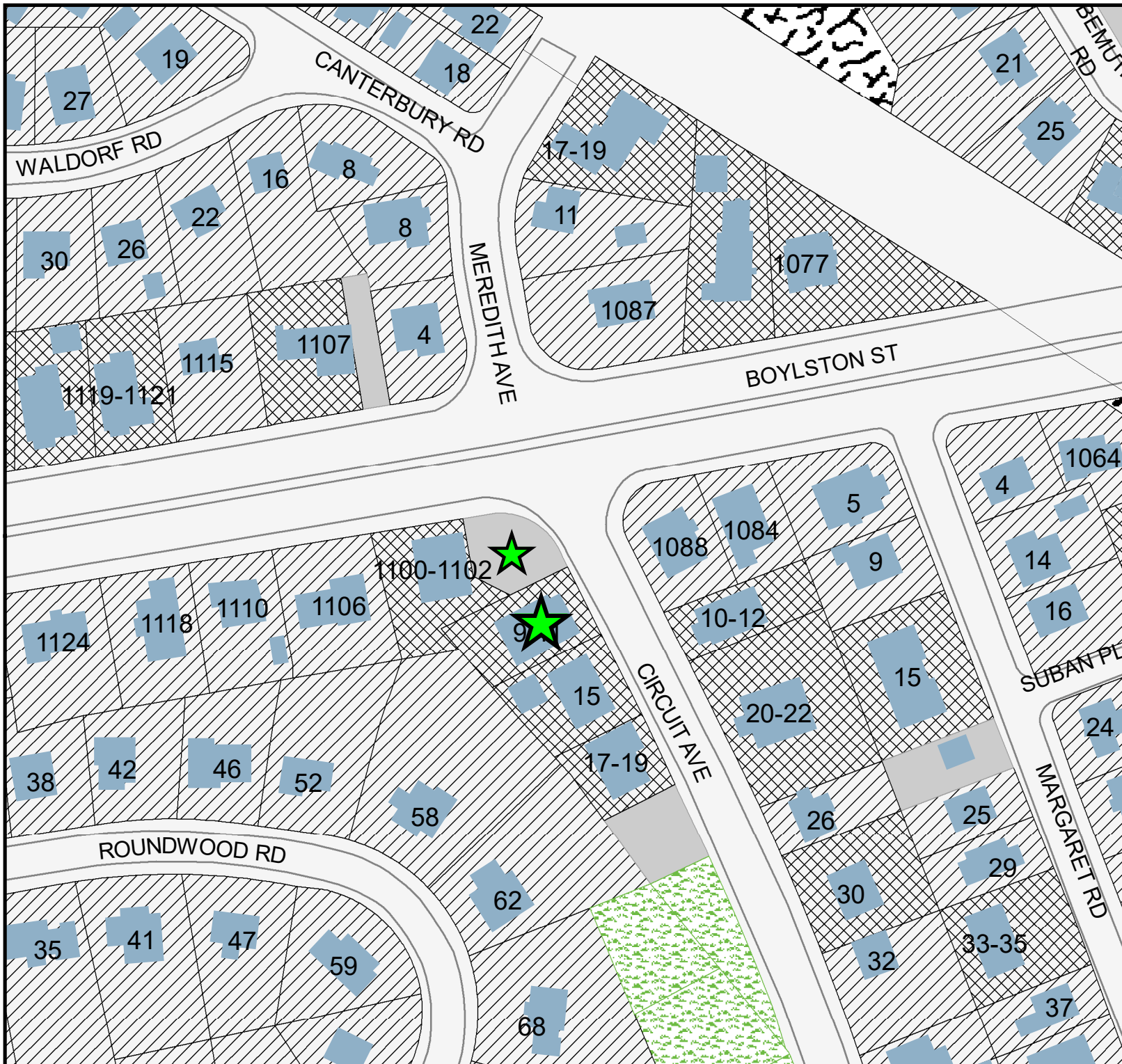


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CITY OF NEWTON, MASSACHUSETTS  
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Map Date: November 08, 2021







Ruthanne Fuller  
Mayor

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**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: September 23, 2021

To: John Lojek, Commissioner of Inspectional Services

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

Cc: James D. Marino, Applicant  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Assistant City Solicitor

**RE: Request to extend a nonconforming two-family use to create a structure with three dwelling units and to alter a nonconforming parking facility**

Applicant: James D. Marino	
Site: 9-11 Circuit Avenue	SBL: 31027 0035
Zoning: SR3	Lot Area: 8,471 square feet
Current use: Two-family dwelling	Proposed use: 3-unit Multi-family dwelling

### BACKGROUND:

The property at 9-11 Circuit Avenue consists of an 8,471 square foot corner lot improved with a two-family dwelling constructed circa 1910 in the Single Residence 3 zoning district. The petitioner seeks to create a third unit in the nonconforming two-family dwelling and to make modifications to the existing nonconforming parking facility, requiring a special permit.

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

- Zoning Review Application, prepared by G. Michael Peirce, attorney, submitted 7/28/2021
- Plan of Land, signed and stamped by Joseph R. Porter, surveyor, dated 6/16/2021, revised 9/17/2021
- Zoning Determination, signed by John Lojek, Commissioner of Inspectional Services, dated 5/12/2021

**ADMINISTRATIVE DETERMINATIONS:**

1. The existing two-family dwelling use is legally nonconforming, as two-family dwellings are prohibited in the Single Residence 3 zoning district per section 3.4.1. The petitioner seeks to create a third unit within the dwelling. A special permit is required to extend the nonconforming two-family dwelling use per sections 3.4.1 and 7.8.2.C.2 to allow for a three-unit multi-family dwelling.
2. Per section 3.1.3.A.3, where a density or dimensional control is not set forth for a proposed special permit use, the most restrictive density or dimensional control applicable to such use in any district where the use is allowed as of right is applicable unless otherwise required in the special permit by City Council. A multi-family dwelling is not allowed in any district by right, therefore the appropriate dimensional controls for the use are to be set by the City Council.
3. The petitioner proposes to reconfigure the existing nonconforming parking area to accommodate four vehicles, as well as to provide parking in the rear in a two-car detached garage. Per section 5.1.4.A, two parking stalls are required per dwelling unit. With six parking stalls proposed for three dwelling units, no relief is required.
4. Per section 5.1.8.A.1, in parking facilities with more than five stalls, no stall may be located within any required setback distances and must be set back a minimum of five feet from the front lot line. The existing informal parking area allows for parking within the front setbacks of both Circuit Avenue and Boylston Street. The petitioner proposes to formalize the parking facility which will locate three of the surface stalls within the front setbacks from Circuit Avenue and Boylston Street and one stall within five feet of the Circuit Avenue frontage, requiring a special permit per sections 5.1.13 and 7.8.2.C.2.
5. Section 5.1.8.C.2 requires a minimum width of 24 feet for maneuvering aisles providing access to stalls for two-way traffic. With the proposed changes to the parking area, the petitioner proposes an aisle width of 23 feet at the surface parking, requiring a special permit per sections 5.1.13 and 7.8.2.C.2.

SR3 Zone	Existing	Proposed
Lot Size	8,417 square feet	No change
Frontage	104 feet	No change
Setbacks- Principal <ul style="list-style-type: none"> <li>• Front</li> <li>• Side</li> <li>• Side</li> <li>• Rear</li> </ul>	10.3 feet 7.2 feet 9.9 feet >25 feet	No change No change No change No change
Setbacks – Accessory <ul style="list-style-type: none"> <li>• Front</li> <li>• Side</li> <li>• Side</li> <li>• Rear</li> </ul>	>50 feet >30 feet 1.4 feet 1.4 feet	No change No change No change No change
Lot Area Per Unit	4,209 square feet	2,806 square feet
Stories	3	No change
Max Lot Coverage	24.7%	No change
Min. Open Space	45.2%	No change

See "Zoning Relief Summary" below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
§3.4.1 §7.8.2.C.2	Request to extend a nonconforming two-family use to allow a three-unit multi-family dwelling	S.P. per §7.3.3
§5.1.8.A.1 §5.1.13 §7.8.2.C.2	Request to alter a nonconforming parking facility to allow parking within the front setback and within five feet of the street	S.P. per §7.3.3
§5.1.8.C.2 §5.1.13 §7.8.2.C.2	Request to alter a nonconforming parking facility to allow a minimum aisle width of 23 feet	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 extend the nonconforming two-family use to a three-unit multifamily dwelling to alter the adjacent nonconforming parking facility to allow parking within the front setback, within five feet of the street, and to reduce the minimum aisle width for a two way drive aisle, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The proposed extension of the nonconforming two-family use to a three unit multifamily use will not be substantially more detrimental than the existing nonconforming two-family use is to the neighborhood because the petitioner is creating the third unit within the attic, and is not expanding the footprint of the structure (§3.4.1, §7.8.2.C.2).
2. The proposed alterations to the nonconforming surface parking facility will not be substantially more detrimental than the existing nonconforming surface parking facility is to the neighborhood because the alterations bring the site's open space into compliance by reducing impervious paving (§5.1.8.A.1, §5.1.8.C.2, §5.1.13, §7.8.2.C.2).
3. Exceptions to literal compliance with the dimensional standards for parking within the front setback, within five feet of the street, and to reduce the minimum aisle width for a two way drive aisle is in the public interest to preserve open space and reflects the existing conditions (§5.1.8.A.1, §5.1.8.C.2, §5.1.13).

PETITION NUMBER: #378-21

PETITIONER: Ronnie Cavalieri

LOCATION: 9-11 Circuit Avenue, on land known as Section 51, Block 15, Lots 12 and 13, containing approximately 8,471 square feet of land

OWNER: Ronnie Cavalieri

ADDRESS OF OWNER: 9-11 Circuit Avenue  
Newton, MA 01602

TO BE USED FOR: Three Unit Multifamily Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: To further extend the nonconforming two-family use to a three unit multifamily use (§3.4.1 and §7.8.2.C.2) and to alter a nonconforming parking facility to allow parking within the front setback, within five feet of the street and to reduce the minimum aisle width for a two way drive aisle (§5.1.8.A.1, §5.1.8.C.2, §5.1.13, §7.8.2.C.2).

ZONING: Single Residence 3

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 Site Plan, signed and stamped by Joseph Porter, Professional Land Surveyor, dated September 17, 2021.
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 Inspectional Services and the Department of Planning and Development.
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 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 statements by 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 architect.