



#25-22

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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

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### PUBLIC HEARING MEMORANDUM

Public Hearing Date: January 11, 2022  
Land Use Action Date: March 29, 2022  
City Council Action Date: April 4, 2022  
90-Day Expiration Date: April 11, 2022

DATE: January 7, 2022

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 #25-22**, for SPECIAL PERMIT/SITE PLAN APPROVAL to construct dormer additions in the attic level which will further extend the nonconforming two-family dwelling and will further increase the nonconforming FAR of 22-24 Milo Street, Ward 3, Newton, on land known as Section 44 Block 04 Lot 4A, containing approximately 6106 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, 3.1.3, 3.1.9 of Chapter 30 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.



**22-24 Milo Street**

## EXECUTIVE SUMMARY

The subject property located at 22-24 Milo Street consists of 6,106 square feet of land, improved with a two-family dwelling constructed circa 1930 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 construct attic level dormers to the front and rear of the two-family dwelling. The proposed height increase and dormers extend the nonconforming use and increase the nonconforming FAR (“the FAR”) from .50 to .55, where .48 is the maximum allowed as of right, requiring a special permit. The resulting structure is approximately 400 square feet above the maximum allowed FAR allowed as of right.

The Planning Department is unconcerned with the request to extend the nonconforming two-family use and increase the nonconforming FAR. The increase in the height is only increasing by three feet, remaining below the 36-foot maximum. Milo Street also contains several nonconforming two-family uses. The additional floor area is within the footprint of the structure and the proposed dormers meet all requirements of the Newton Zoning Ordinance (the “Ordinance”).

### I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The proposed extension of the nonconforming two-family 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 increase in the nonconforming FAR from .50 to .55 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 (§3.1.9, and §7.8.2.C.2).
- The proposed increase in nonconforming FAR is not 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

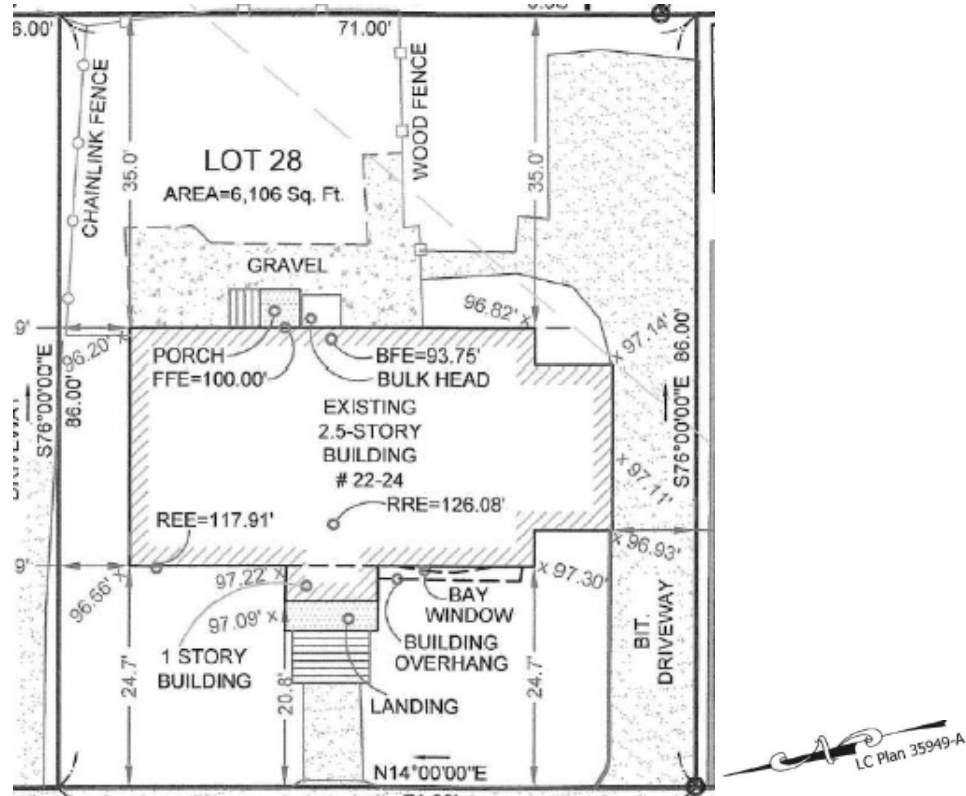
#### A. Neighborhood and Zoning

The subject property is located on Milo Street in the SR-3 zone in West Newton near the Newton/Waltham boundary. The surrounding area is entirely within the SR-3 zone (**ATTACHMENT A**). Most properties on Milo Street are nonconforming two-family uses (**ATTACHMENT B**).

B. Site

The site consists of 6,106 square feet of land and is improved with a nonconforming two-family use constructed circa 1930. The site is accessed by one curb cut from Milo Street which provides access to surface parking at the southeastern corner of the site via a driveway that runs along the southern (side) property line.

Existing Conditions Site Plan



Milo Street

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

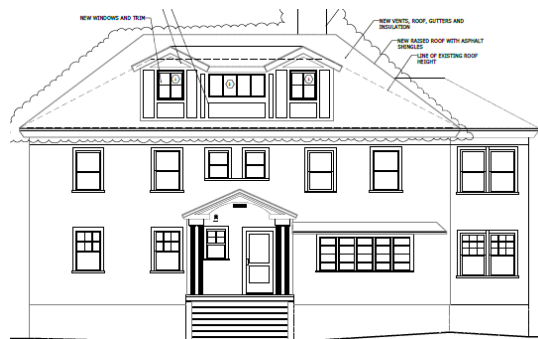
The use of the site will remain a nonconforming two-family use.

B. Site and Building Design

The petitioner is proposing to increase the height of the roof and construct attic level dormers to the front and rear of the dwelling, requiring a special permit to extend the nonconforming two-family use. The project increases the building height from

approximately 29.7 feet to 33 feet, under the 36 feet allowed. The proposed design includes a Nantucket style dormer on the front elevation and a shed dormer on the rear of the structure. The dormers will create an additional 600 square feet of floor area and will allow for a bedroom and a bathroom. The additional floor area increases the nonconforming FAR from .50 to .55, where .48 is the maximum allowed as of right. As the dormers are proposed to the attic level, the additional floor area is within the footprint of the structure and the petitioner is not proposing any changes to the site design.

Proposed Front Elevation



Proposed Rear Elevation



The Planning Department is unconcerned with the proposed extension of the nonconforming two-family use and increase in FAR. Many of the homes on Milo Street are nonconforming two-family uses, and the dormers meet all other provisions of the Ordinance.

C. Parking and Circulation

There are no changes proposed to the parking or circulation on site

D. 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 (**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.
- §3.1.3, §3.19 §7.8.2.C.2 of Section 30, to increase the nonconforming FAR.

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

# ATTACHMENT A

## Zoning

### 22-24 Milo Street

*City of Newton,  
Massachusetts*

### Legend

 Single Residence 3

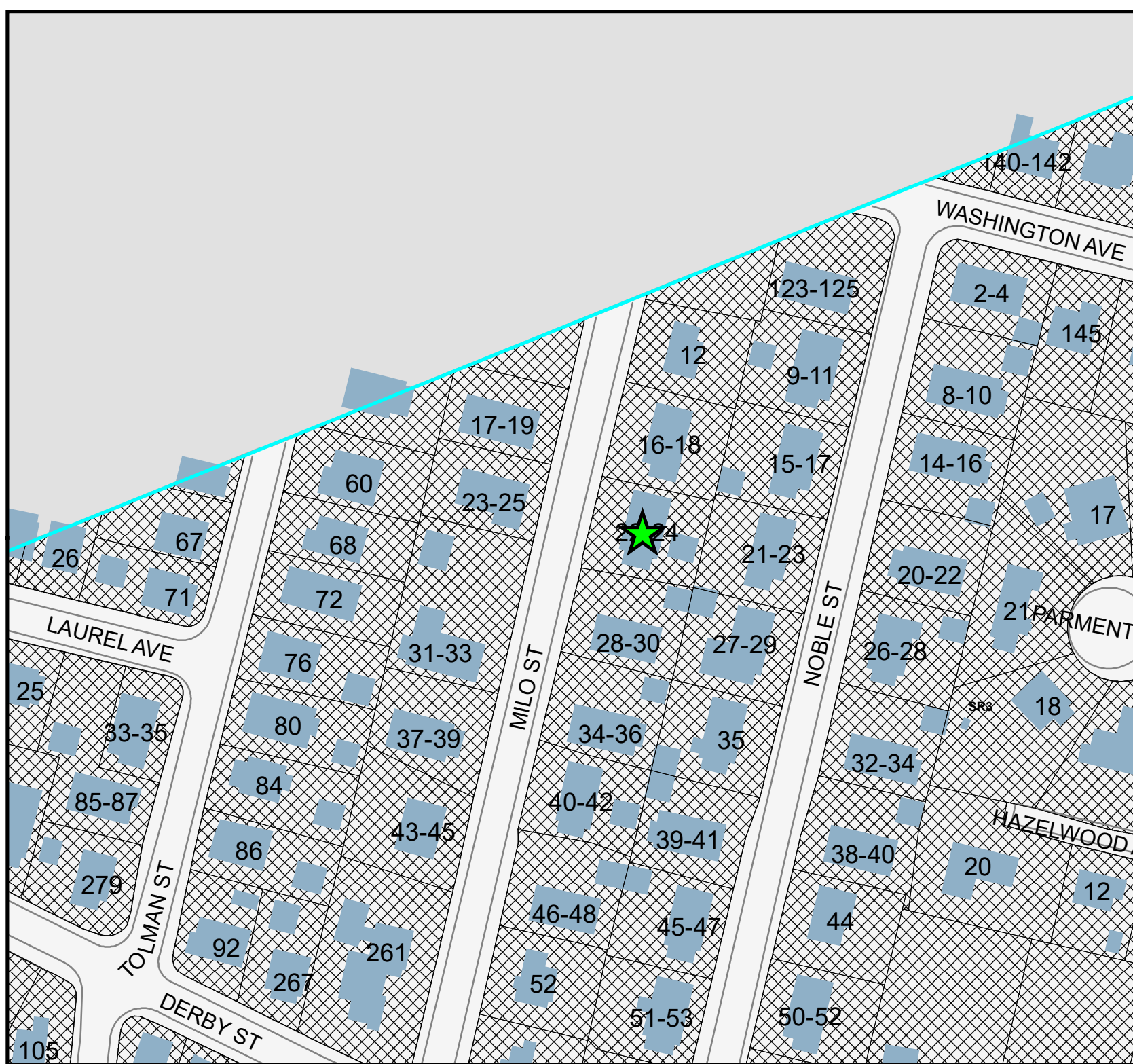


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Ruthanne Fuller  
GIS Administrator - Douglas Greenfield

0 12.5 25 50 75 100 125  
Feet

Map Date: December 27, 2021



# ATTACHMENT B


## Land Use

### 22-24 Milo Street

*City of Newton,  
Massachusetts*

#### Legend

##### Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Open Space
-  Nonprofit Organizations

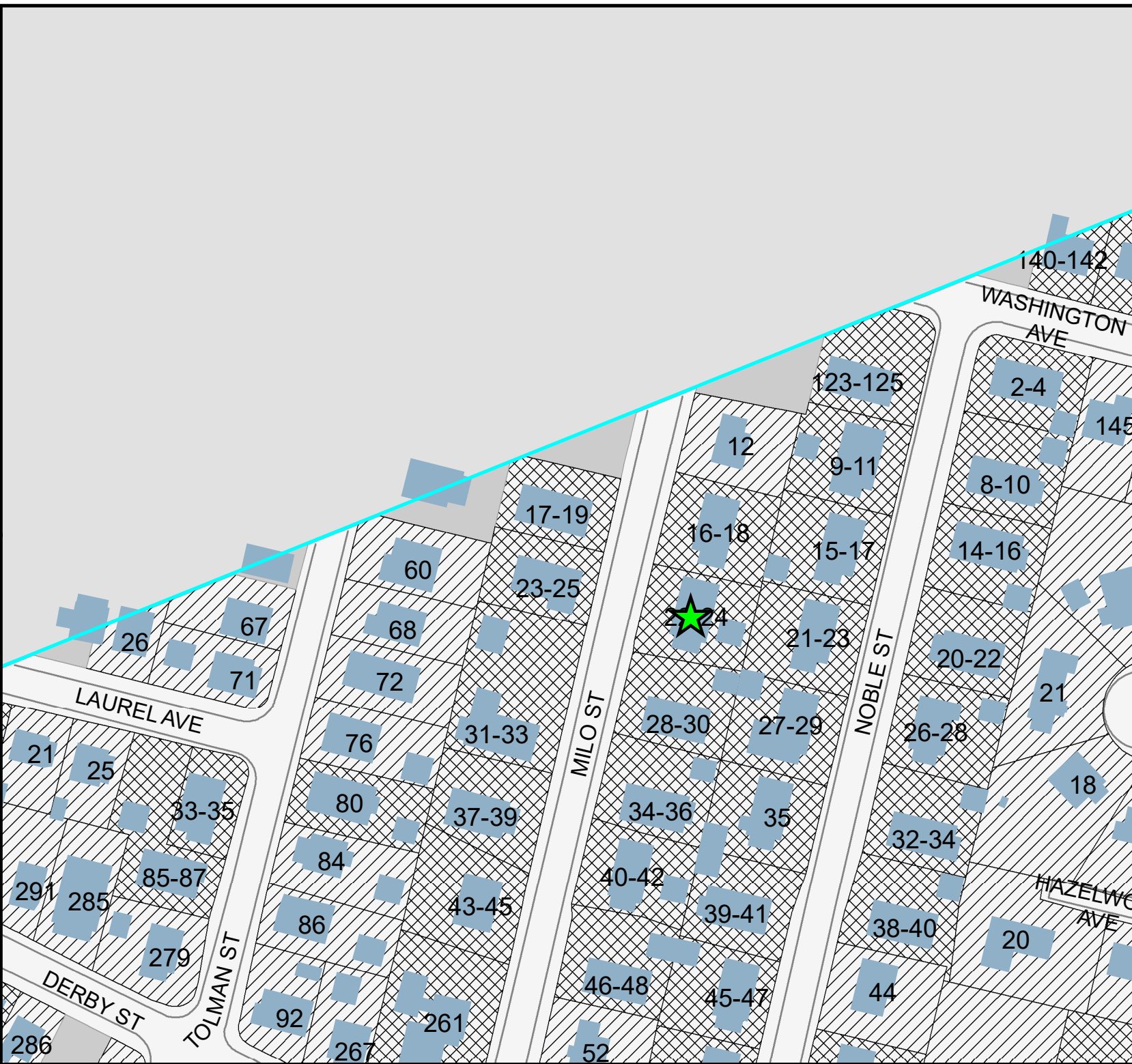


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Map Date: December 27, 2021





Ruthanne Fuller  
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**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: August 10, 2021

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Jessica Dowling, Applicant  
Diana Pauro, Rebel Design Build  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Associate City Solicitor

**RE: Request to further increase nonconforming FAR and to further extend a nonconforming two-family use**

Applicant: Jessica Dowling	
Site: 22-24 Milo Street	SBL: 44004 0004A
Zoning: SR3	Lot Area: 6,106 square feet
Current use: Two-family dwelling	Proposed use: No change

### BACKGROUND:

The property at 22-24 Milo Street consists of a 6,106 square foot lot improved with a two-family dwelling constructed in 1930. The petitioner proposes to construct dormer additions in the attic level. The proposed additions will further extend the nonconforming two-family dwelling 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 Diana Pauro, architect, submitted 6/24/2021
- Plan of Land, signed and stamped by Neil J. Murphy, surveyor, dated 5/26/2021
- Architectural plans and elevations, prepared by Rebel Design Build, submitted 6/24/2021
- FAR worksheet, submitted 6/24/2021



**ADMINISTRATIVE DETERMINATIONS:**

1. The two-family dwelling is located in the SR3 zoning district. Per section 3.4.1, two-family dwellings are not permitted in the SR3 district. A special permit is required to expand the nonconforming two-family dwelling use per section 7.8.2.C.2.
  2. The petitioner intends to construct dormer additions to the front and rear attic elevations. The additions add 599 square feet resulting in a total of 3,345 square feet. The existing nonconforming FAR is .50, where .48 is the maximum allowed per section 3.1.9. The proposed additions further increase the nonconforming FAR to .55, requiring a special permit pursuant to Sections 3.1.3, 3.1.9 and 7.8.2.C.2.
1. 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 further extend a nonconforming two-family use	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 further extend the nonconforming two-family use by increasing the building height and constructing dormers to the attic level and increasing the nonconforming FAR 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 dwelling will not be substantially more detrimental than the existing nonconforming two-family dwelling is to the neighborhood because the neighborhood consists of nonconforming two-family uses (§3.4.1, §7.8.2.C.2).
2. The proposed increase in the nonconforming FAR from .50 to .55 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 because the additional floor area is within the footprint of the structure. (§3.1.9, and §7.8.2.C.2).
3. The proposed increase in nonconforming FAR is not substantially more detrimental than the existing nonconforming structure is to the neighborhood because the the proposed dormers which increase the FAR meet the dormer requirements of the Newton Zoning Ordinance (§3.1.9, and §7.8.2.C.2).

PETITION NUMBER: #25-22

PETITIONER: Jessica Dowling

LOCATION: 22-24 Milo Street on land known as Section 44, Block 4, Lot 4A, containing approximately 6,106 square feet of land

OWNER: Jessica Dowling

ADDRESS OF OWNER: 22 Milo Street  
Newton, MA 02465

TO BE USED FOR:	Two-Family Dwelling
CONSTRUCTION:	Wood frame
EXPLANATORY NOTES:	§3.1.9, §3.4.1, and §7.8.2.C.2, to further extend the nonconforming two-family use and increase the nonconforming FAR
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. Site Plan, signed and stamped by Neil J. Murphy, Professional Land Surveyor, dated September 29, 2021
  - b. Architectural Floorplans, "Dowling Residence" prepared by Rebel Builders, unsigned and unstamped, dated November 1, 2021 consisting of the following four (4) sheets.
    - i. Proposed West Elevation, A201
    - ii. Proposed East Elevation, A202
    - iii. Proposed South Elevation, A203
    - iv. Proposed North Elevation, A204
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 petitioner has:
  - 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.
4. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioner has:
  - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development statements by a registered architect

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 professional land surveyor.

DRAFT