



#277-22

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
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

PUBLIC HEARING MEMORANDUM

| | |
|---------------------------|-----------------|
| Public Hearing Date: | May 17, 2022 |
| Land Use Action Date: | August 9, 2022 |
| City Council Action Date: | August 15, 2022 |
| 90- Day Expiration Date: | August 15, 2022 |

DATE: May 13, 2022

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Katie Whewell, Senior Planner

SUBJECT: **Petition #277-22**, for SPECIAL PERMIT/SITE PLAN APPROVAL to construct second-story rear addition over the existing footprint, vertically extending the nonconforming side setback at 9 Day Street, Ward 4, Newton, on land known as Section 43 Block 40 Lot 05, containing approximately 6671 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 7.3.3, 7.4, 3.1.3, 7.8.2.C.2 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 Day Street

EXECUTIVE SUMMARY

The property located at 9 Day Street consists of a 6,671 square foot lot in the Single Residence 3 (SR-3) zone in Auburndale. The lot is improved with a single-family residence constructed circa 1929. The petitioners are seeking to construct a 170 square foot addition within the existing footprint which extends the nonconforming side setback of 6 feet.

The Planning Department is unconcerned with the addition to the residence that extends the nonconforming side setback. The addition does not alter the setback nor the footprint of the structure and will not be visible from the front elevation. For these reasons, staff believes the proposed extension of the nonconforming side setback will not be substantially more detrimental.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The proposed extension of a nonconforming side setback is substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§3.4.3.A.1 and §7.8.2.C.2)

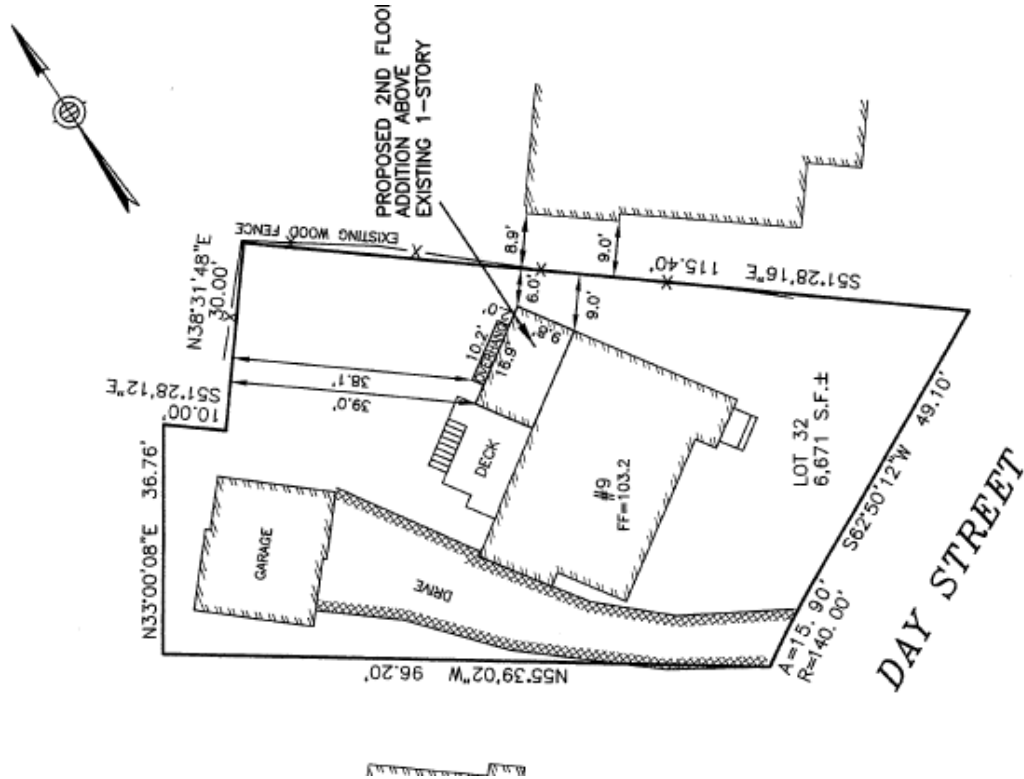
II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on Day Street in the SR-3 zone in Auburndale. The SR-3 zone encompasses the surrounding parcels on Day Street, with a Public Use zone to the northwest, and a Single Residence 2 zone across Commonwealth Ave to the north. **(Attachment A)**. The surrounding area has both single-family and multi-family residential uses as well as open space to the northwest and a golf course to the southeast **(Attachment B)**.

B. Site

The site consists of 6,671 square feet on a corner lot and is improved with a single-family dwelling constructed circa 1929. The lot is served by one curb cut providing access to a paved driveway and detached garage. The single-family dwelling has a nonconforming side setback of 6 feet. Typically, 7.5 feet is required under the Ordinance, however a variance was granted in 2005 for an addition which allowed a reduction to a 6.1 feet side setback. The addition was constructed 6 feet from the property line over ten years ago, as such, the 6-foot setback is considered nonconforming.



III. PROJECT DESCRIPTION AND ANALYSIS

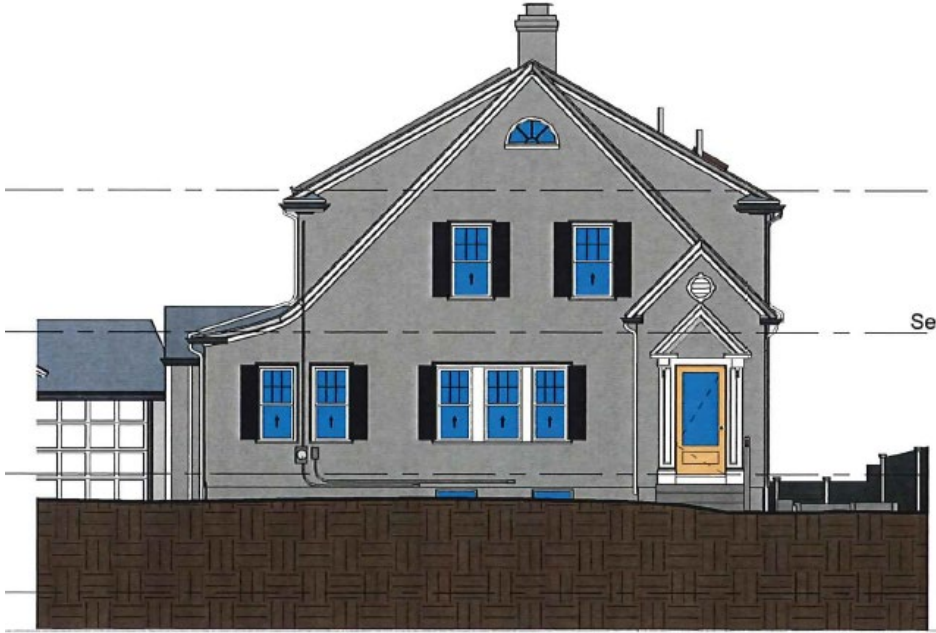
A. Land Use

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

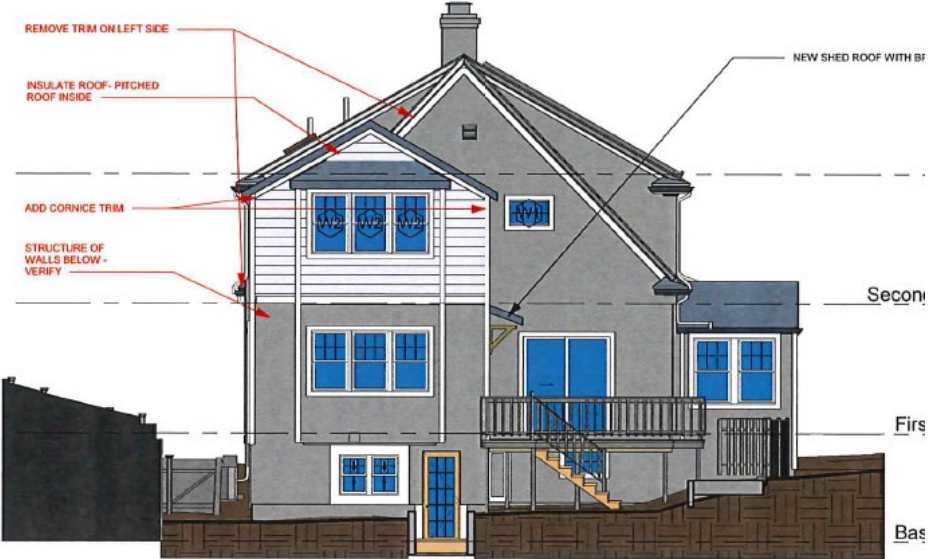
B. Building and Site Design

The petitioners are seeking to extend the side nonconforming setback by constructing a second story addition within the footprint of the existing dwelling. The addition adds approximately 170 square feet to the dwelling, increasing the FAR from .42 to .44, where .48 is the maximum allowed as of right.

Proposed Front Elevation



Proposed Rear Elevation



The Planning Department is unconcerned with the addition to that extends the nonconforming side setback. The addition does not alter the setback nor the footprint of the structure and will not be visible from the front elevation. For these reasons, staff believes the proposed extension of the nonconforming side setback will not be substantially more detrimental.

C. Parking and Circulation

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

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 provides an analysis of the proposal regarding zoning (**Attachment C**). Based on the completed Zoning Review Memorandum, the petitioner is seeking the following relief:

- §3.1.9, §3.1.3 and §7.8.2.C.2 of Section 30, to further extend a nonconforming rear setback

B. Engineering Review

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

C. Historic Preservation Review

This petition does not meet the minimum threshold for Historic Preservation Review.

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 Council Order

ATTACHMENT A

Zoning

9 Day Street

City of Newton,
Massachusetts

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

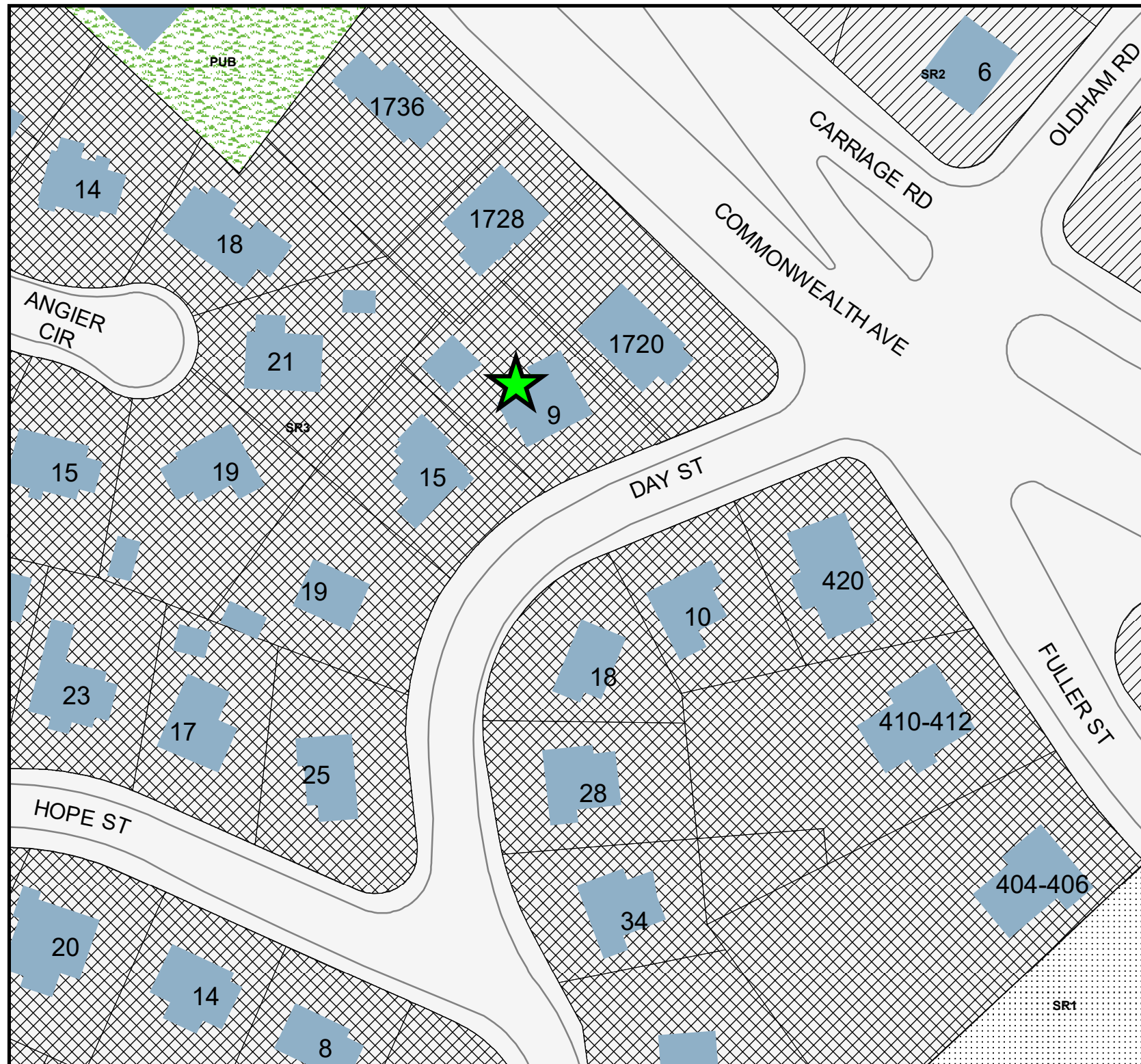


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield



Map Date: May 06, 2022



ATTACHMENT B




Land Use

9 Day Street

*City of Newton,
Massachusetts*

Land Use

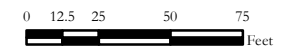
Land Use

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

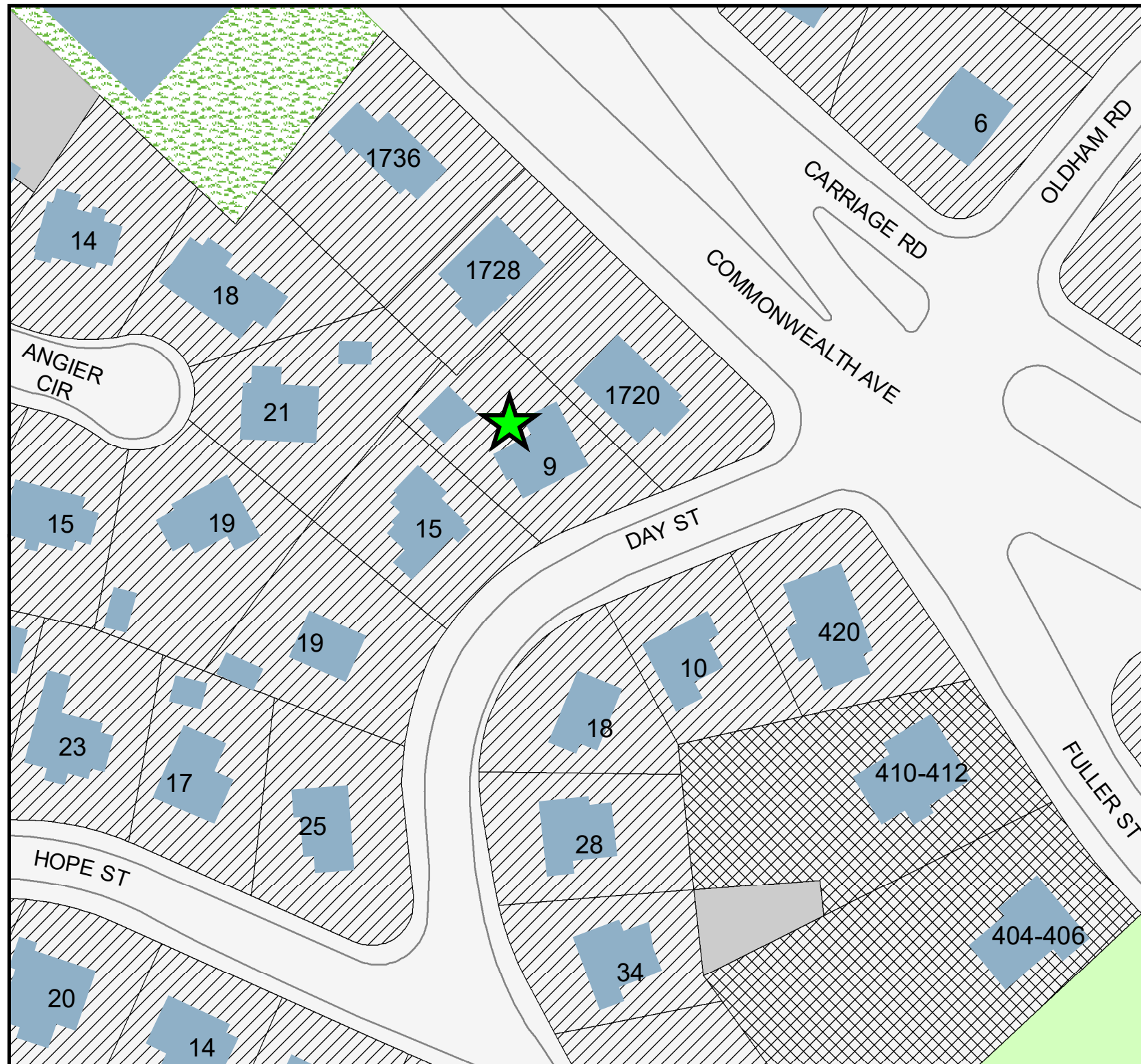


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CITY OF NEWTON, MASSACHUSETTS
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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: April 20, 2022

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official

Cc: James Smith, Applicant
Barney S. Heath, Director of Planning and Development
Jonah Temple, Associate City Solicitor

RE: Request to vertically extend a nonconforming side setback

| Applicant: James Smith | |
|--|------------------------------------|
| Site: 9 Day Street | SBL: 43040 0005 |
| Zoning: SR3 | Lot Area: 6,671 square feet |
| Current use: Single-family dwelling | Proposed use: No change |

BACKGROUND:

The property at 9 Day Street consists of a 6,671 square foot lot improved with a single-family dwelling constructed in 1929. The petitioners received a variance in 2005 from the side yard setback for a 1.5-story rear addition. The addition was not constructed to the setback as allowed by the variance and the building permit. As such, the setback which required the variance relief is now considered nonconforming per MGL Chapter 40A, section 7. The petitioner now seeks to construct a second-story rear addition over the existing footprint, requiring a special permit to vertically extend the nonconforming side setback.

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

- Zoning Review Application, prepared by James Smith, applicant, submitted 2/17/2022
- Plan of Land existing, signed and stamped by Bruce Bradford, surveyor, dated 2/11/2022
- Plan of Land Proposed Addition, signed and stamped by Bruce Bradford, surveyor, dated 2/11/2022
- FAR worksheet, submitted 2/17/2022
- Floor plans and elevations, prepared by Leslie Saul & Associates, architect, dated 1/26/2022
- Variance decision #19-05

ADMINISTRATIVE DETERMINATIONS:

1. Variance #19-05 allowed for a reduction in the required side yard setback from 7.5 feet per section 3.1.3 to 6.1 feet to construct a 1.5-story rear addition. While the as-built side setback is not conforming with the variance at 6.0 feet, it was constructed with a building permit and has existed as such for longer than ten years without enforcement action and is thus protected as legally nonconforming. The petitioners seek to construct a second-story addition within the footprint of the existing space, vertically extending the nonconforming side setback, requiring a special permit per section 7.8.2.C.2.

| SR3 Zone | Required | Existing | Proposed |
|--|--|---|--|
| Lot Size | 7,000 square feet | 6,761 square feet | No change |
| Frontage | 80 feet | 49 feet | No change |
| Setbacks <ul style="list-style-type: none"> • Front • Side • Side • Rear | 25 feet 7.5 feet 6.1 feet 15 feet | 24 feet 10 feet 6 feet 38.1 feet | No change No change No change No change |
| Max Number of Stories | 2.5 | 2.5 | No change |
| FAR | .48 | .42 | .44 |
| Max Lot Coverage | 30% | 23.3% | No change |
| Min. Open Space | 50% | 61% | No change |

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 vertically extend the nonconforming side setback | 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 side setback 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 a nonconforming side setback is not substantially more detrimental than the existing nonconforming structure is to the neighborhood because the addition is within the footprint of the dwelling and will not be visible from the street. (§3.1.9, §3.1.3 and §7.8.2.C.2)

PETITION NUMBER: #277-22

PETITIONER: James F. Smith Jr.

LOCATION: 5 Dedham Street, on land known as Section 43, Block 40, Lot 5, containing approximately 6,671 square feet of land

OWNER: James F. Smith Jr.

ADDRESS OF OWNER: 9 Day Street
Newton, MA 02466

TO BE USED FOR: Single Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.3, §3.1.9, and §7.8.2.C.2 to extend a nonconforming side setback

ZONING: Single Residence 3 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. Plot Plan showing proposed conditions at 9 Day Street, prepared by Everett Brooks Co., signed and stamped by Bruce Bradford, dated February 11, 2022;
 - b. Existing conditions at 9 Day Street, prepared by Everett Brooks Co., signed and stamped by Bruce Bradford, dated February 11, 2022;
 - c. Architectural Plans, titled "Smith-Hart Renovation", unsigned and unstamped, prepared by unknown, issued September 2020, consisting of ten (10) sheets:
 - i. Construction Plan, 1st Floor, A3.1
 - ii. Construction Plan, 2nd Floor, A3.24
 - iii. Exterior Elevations, A5.0
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.
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 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 petitioner has:
 - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by an architect or land surveyor certifying compliance with Condition #1 .