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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: March 22, 2022
Land Use Action Date: June 14, 2022
City Council Action Date: June 20, 2022
90-Day Expiration Date: June 20, 2022

DATE: March 18, 2022

TO: City Council

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

SUBJECT: **Petition #177-22**, for SPECIAL PERMIT/SITE PLAN APPROVAL to create an oversized internal accessory apartment within one of two dwelling units and further extend the nonconforming two-family dwelling use at **350 Cabot Street**, Ward 2, Newton, on land known as Section 22 Block 19 Lot 05, containing approximately 12,594 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 3.4.1, 7.8.2.C.2, 6.7.1.D.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.



350-352 Cabot Street

EXECUTIVE SUMMARY

The property at 350-352 Cabot Street consists of a 12,594 square foot lot in a Single Residence 2 (SR2) zoning district improved with a nonconforming two-family dwelling constructed circa 1872. Two-family dwellings are not allowed in the SR2 zoning district, as such, the use is legal nonconforming. The petitioners are seeking to establish an oversized, internal oversized accessory apartment within one of the dwelling units, which would further extend the nonconforming two-family dwelling use, requiring a special permit.

The proposed accessory apartment would consist of 1,000 square feet within one of the two principal dwelling units. The principal dwelling unit to which the proposed apartment would be accessory to contains 2,593 square feet of habitable space. As the proposed accessory apartment would be 1,000 square feet or 39% of the principal dwelling unit, it requires a special permit.

The proposed accessory apartment is within the footprint of the existing structure and there are no substantial changes proposed to the exterior of the structure. For these reasons, the Planning Department is generally not concerned with the proposal.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the proposed oversized, internal accessory apartment as designed (§7.3.3.C.1)
- The proposed oversized, internal accessory apartment as developed and operated will not adversely affect the neighborhood (§7.3.3.C.2)
- There will be no 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)
- Whether the proposed modification of an existing nonconforming two-family use in the Single Residence 2 (SR2) zoning district to create an oversized accessory apartment one of the two principal dwellings would not be substantially more detrimental than the existing nonconforming use to the neighborhood. (§7.8.2.C.2)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on the southeast corner of Cabot Street and Pulsifer Street. The neighborhood is predominantly a mix of single- and two- and multi- family

dwellings (**Attachment A**). The site and surrounding area to the south and west are in a Single Residence 2 (SR2) zoning district; the area to the north/northeast is zoned (**Attachment B**).

B. Site

The subject property consists of a level, 12,594 square foot corner lot improved with a nonconforming two-family dwelling constructed circa 1872. The two-family dwelling is divided vertically in that 350 and 352 Cabot Street are side by side. Vehicular access is provided by two asphalt driveways, one off Cabot Street, the other off Pulsifer Street. The remainder of the lot is occupied by mature lawn area, trees, and shrubbery. A wood pergola structure is located on the south side of the property above the Pulsifer Street driveway.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site would change from a two-family to a two-family with an internal accessory apartment.

B. Building and Site Design

The petitioners propose to create a 1,000 square foot accessory apartment within one of the two principal dwelling units, 350 Cabot Street, which contains 2,593 square feet of habitable space.

The proposed accessory apartment, referred to as "Unit 350-A," would consist of the unit's current first floor. The other, "Unit 350-B," would be comprised of the second floor and attic levels of that unit and measure approx. 1,593 square feet. The other dwelling unit in the structure, 352 Cabot Street, would remain unchanged. No exterior alterations to the structure are proposed.

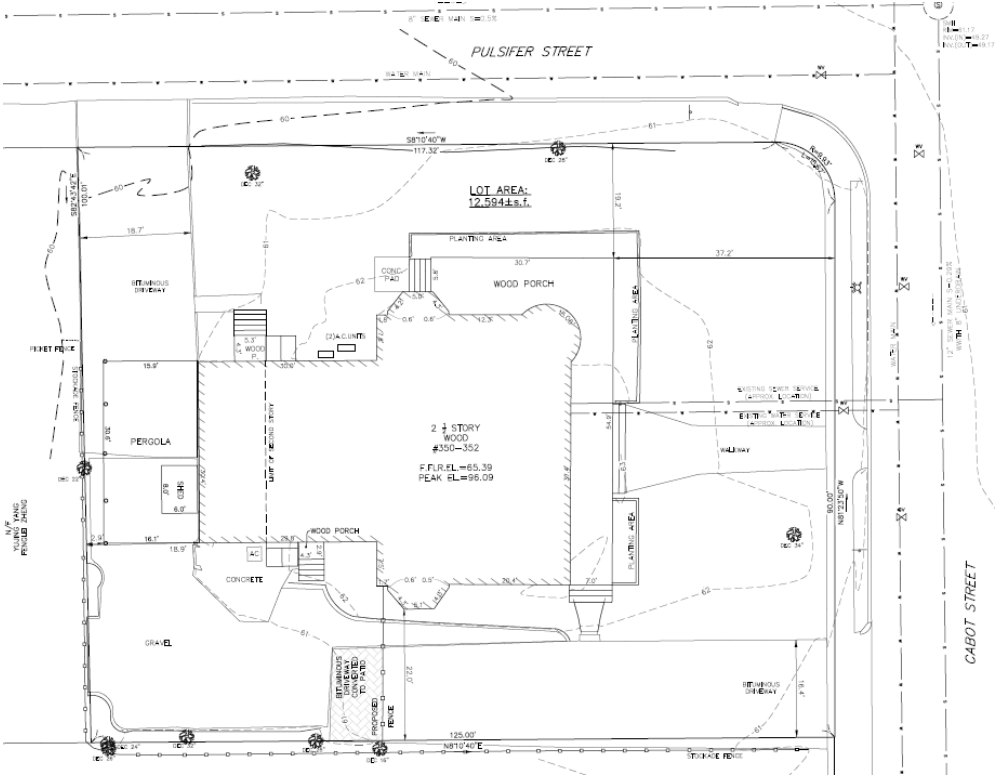
A section of the Cabot Street driveway on the east side of the property would be converted to patio and planting spaces, and the property's Open Space percentage would increase slightly, from 56.6% to 57.7%, remaining above the 50% required minimum.

Per Section 6.7.1.D.2 of the Newton Zoning Ordinance (NZO), the size of an internal accessory apartment may be the lesser of 33% of the total habitable space of the dwelling unit with which it is associated or 1,000 square feet, and up to 40% or 1,200 square feet by special permit. The proposed accessory apartment would be 1,000 square feet, 39% of its principal dwelling unit, requiring a special permit.

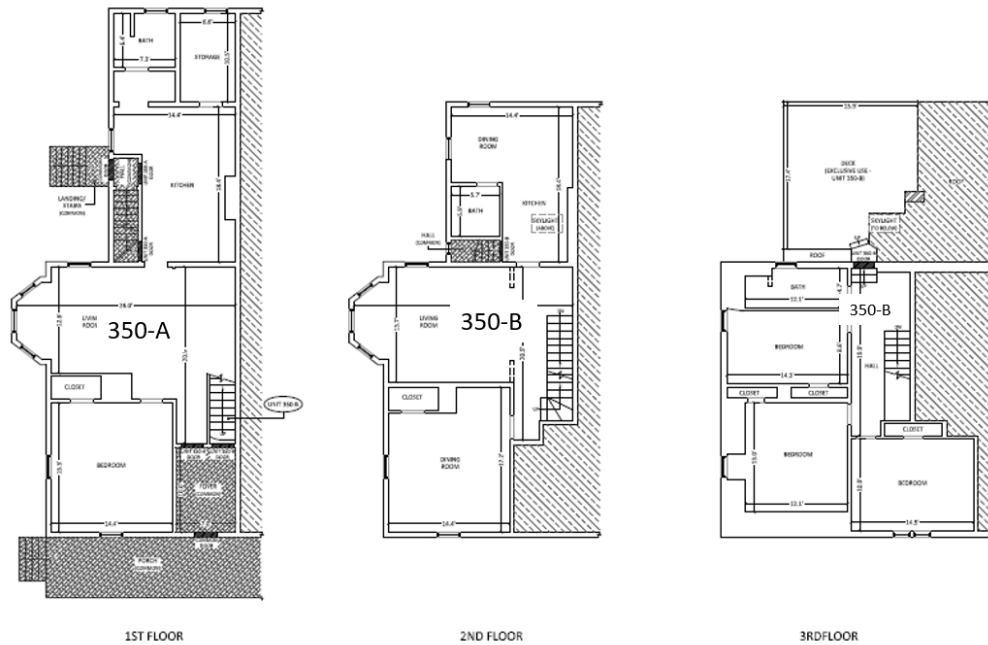
The property is located in a Single Residence 2 (SR2) zoning district, which prohibits two-family dwellings per Sec. 3.4.1, the proposed accessory apartment would further extend

the nonconforming two-family dwelling use, requiring a special permit per Secs. 3.4.1 and 7.8.2.C.2.

Site Plan



Floor Plans



C. Parking and Circulation

There are two driveways serving the property, one off Cabot Street, the other off Pulsifer Street. The Pulsifer Street driveway would remain unchanged. The overall length of the Cabot Street driveway, however, would be reduced by approximately eight feet with that area to be replaced to patio space (its width would remain unchanged). These driveways would continue to accommodate the four required parking stalls in two sets of tandem spaces (two stalls for each of the two principal dwelling units).

D. Landscaping

A landscaping plan was not submitted with this petition.

IV. TECHNICAL REVIEW

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

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

- Special Permit per §7.3.3 to:
 - further expand a nonconforming two-family dwelling use in a SR2 district

(§3.4.1; §7.8.2.C.2)

- allow an oversized internal accessory apartment (§6.7.1.D.2)

B. Engineering Review

Review by the Engineering Division of the Department of Public Works is not required at this time.

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 Board Order

ATTACHMENT A





Land Use

350-352 Cabot Rd.

*City of Newton,
Massachusetts*

Land Use

Land Use

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



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: March 04, 2022







ATTACHMENT B

Zoning

350-352 Cabot Rd.

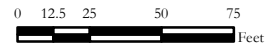
*City of Newton,
Massachusetts*

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



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CITY OF NEWTON, MASSACHUSETTS
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Map Date: March 04, 2022





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Director

ZONING REVIEW MEMORANDUM

Date: February 22, 2022

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Peter Leis and Jennifer Storo
Terrence P. Morris, Attorney
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: **Request to allow an oversized internal accessory apartment and to extend a nonconforming two-family dwelling use**

Applicant: Peter Leis & Jennifer Storo	
Site: 350 Cabot Street	SBL: 22019 0005
Zoning: SR2	Lot Area: 12,594 square feet
Current use: Two-family dwelling	Proposed use: Two-family dwelling and accessory apartment

BACKGROUND:

The property at 350 Cabot Street consists of a 12,594 square foot lot improved with a nonconforming two-family dwelling constructed circa 1872 in the SR2 district. The petitioners intend to convert 1,000 square feet of one of the two units to accommodate an accessory apartment. The proposed accessory apartment requires a special permit.

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

- Zoning Review Application, prepared Terrence P. Morris, attorney, submitted 8/15/2021, revised 1/28/2022
- Proposed Condition Plan of Land, signed and stamped by Joseph R. Porter, surveyor, dated 5/15/2020, revised 1/28/2022

ADMINISTRATIVE DETERMINATIONS:

1. The petitioners intend to create a 1,000 square foot accessory apartment within one of the two principal dwelling units. The unit the apartment is to be accessory to contains 2,593 square feet. Per section 6.7.1.D.2 an internal accessory apartment may be 33% of the total habitable space of the dwelling unit with which it is associated, or 1,000 square feet, whichever is less. By special permit the unit may be up to 40% or 1,200 square feet. The proposed 1,000 square foot accessory apartment is 39% of the total habitable space, requiring a special permit.
2. The two-family dwelling is nonconforming, as it is located in the Single Residence 2 zoning district, which prohibits two-family dwellings per section 3.4.1. The proposed accessory apartment further extends the nonconforming two-family dwelling use requiring a special permit per sections 3.4.1 and 7.8.2.C.2.

SR2 Zone	Required**	Existing	Proposed
Lot Size	10,000 square feet	12,594 square feet	No change
Frontage	80 feet	90 feet	No change
Setbacks -			
• Front (Cabot)	30 feet	37.2 feet	No change
• Front (Pulsifer)	30 feet	19.2 feet	No change
• Side	10 feet	22 feet	No change
• Rear	15 feet	2.9 feet	No change
Height	36 feet	33.75 feet	No change
Stories	2.5	2.5	No change
Max Lot Coverage	30%	25%	26.6%
Min. Open Space	50%	56.6%	58.3%

Figures in **BOLD** are nonconforming

**Per section 3.1.2.A.3, the most restrictive dimensional control for the proposed use where it is allowed by right is found in section 3.2.3 for an MR1 new lot

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§3.4.1 §7.8.2.C.2	Request to further expand a nonconforming two-family dwelling use in a SR2 district	S.P. per §7.3.3
§6.7.1.D.2	Request to allow an oversized internal accessory apartment	S.P. per §7.3.3

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the 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 a SPECIAL PERMIT/SITE PLAN APPROVAL to further expand a nonconforming two-family use in a Single Residence 2 district by creating an accessory apartment within one of the two principal dwelling units, and to allow an oversized internal accessory apartment 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 proposed oversized internal accessory apartment because the proposed accessory apartment is within the footprint of the existing structure (§7.3.3.C.1)
2. The proposed oversized accessory apartment as developed and operated will not adversely affect the neighborhood because the proposed accessory apartment is within the footprint of the existing structure (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians because the existing driveway locations are being maintained on Cabot and Pulsifer Streets (§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 modification of the existing nonconforming two-family use in the Single Residence 2 zoning district would not be substantially more detrimental than the existing nonconforming use to the neighborhood because the proposed oversized accessory apartment is within the existing footprint of the structure and no significant changes to the site plan are proposed (§3.4.1 and 7.8.2.C.2.).

PETITION NUMBER: #177-22

PETITIONERS: Peter Leis & Jennifer Storo

LOCATION: 350-352 Cabot Street, Section 22, Block 19, Lot 5, containing approximately 12,594 square feet of land

OWNER: Peter Leis & Jennifer Storo

ADDRESS OF OWNER: 350 Cabot Street
Newton, MA 02460

TO BE USED FOR: Two-family dwelling with an internal oversized accessory apartment

CONSTRUCTION: Wood Frame

EXPLANATORY NOTES: Special Permit per §7.3.3 to

- further expand a nonconforming two-family use in a Single Residence 2 district (§3.4.1. and §7.8.2.C.2)
- allow an oversized internal accessory apartment (§6.7.1.D.2)

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. a plan entitled "Topographic Site Plan, Newton, Massachusetts, Showing Proposed Conditions at #350-352 Cabot Street," prepared by VTP Associates, Inc., dated May 15, 2020, as revised through January 28, 2022, signed and stamped by Joseph R. Porter, Registered Professional Surveyor
 - b. a plan entitled "Proposed Condominium Floor Plans, for Unit 350-A and Unit 350-B of the '350-352 Cabot Street Condominium'" located at 350-352 Cabot Street, Newton, MA," prepared by Boston Survey, Inc. dated January 24, 2022
2. The accessory apartment may not be held in separate ownership from the principal dwelling unit to which it is associated.
3. The owner of the principal dwelling unit to which the accessory apartment is associated shall occupy either said principal dwelling unit or the accessory apartment and shall file an annual affidavit with the Commissioner of Inspectional Services attesting to this fact prior to July 1 of every year.
4. In the event ownership of the principal dwelling unit to which the accessory apartment is associated changes, the new owner(s) shall notify the Commissioner of the Inspectional

Services Department at which time the Commissioner shall conduct a determination of compliance with this decision and all applicable codes.

5. 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. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Fire Department approving the building permit plans.
 - d. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
6. No Final Inspection and/or Occupancy Permit for the buildings 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 a registered architect, surveyor or engineer 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.