



#316-22

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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

PUBLIC HEARING MEMORANDUM

Public Hearing Date: June 28, 2022
Land Use Action Date: September 13, 2022
City Council Action Date: September 19, 2022
90-Day Expiration Date: September 26, 2022

DATE: June 24, 2022

TO: City Council

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

SUBJECT: **Petition #316-22**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to extend a nonconforming two-family use by converting a detached garage into a detached accessory apartment and to construct a retaining wall exceeding 4' within a setback at 117 Cypress Street, Ward 6, Newton, on land known as Section 65 Block 15 Lot 05, containing approximately 14,383 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: 7.3.3, 7.4, 3.4.1, 7.8.2.C.2, 5.4.2.B, 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 that the Land Use Committee of the City Council can consider at a subsequent working session.



117 Cypress Street

EXECUTIVE SUMMARY

The subject property consists of a 14,383 square foot lot improved with a two-family dwelling and detached accessory structure constructed circa 1914. The property is located within the Single Residence 3 (SR-3) zone in Newton Centre. As two-family dwellings are not allowed in the Single Residence zones, the use is considered legal nonconforming. The petitioner is seeking to convert a historically significant detached structure into a detached accessory apartment. The petitioner requires relief to extend the nonconforming two-family use in an SR-3 zoning district by converting the detached structure into an accessory apartment. The petitioner is also seeking to construct retaining walls greater than four feet in the setback to allow for a landing adjacent to the detached structure. The retaining walls greater than four feet within a setback also require special permit relief.

The Planning Department is supportive of the extension of the nonconforming two-family use that requires a special permit. The project will restore a historically significant structure and improve the overall appearance by removing the garage doors and other alterations that further revert it back to the character of the original barn. The proposed retaining wall is over a foot taller than an existing retaining wall on site. Planning suggests the petitioner explore ways to reduce the height of the retaining wall.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the City Council should consider whether:

- The site is an appropriate location for the proposed retaining wall exceeding four feet in height within a setback. (§3.4.2.B.1, 1.5.4.G.2.b, §7.3.3.C.1)
- The proposed retaining wall exceeding four feet in height within a setback will not adversely affect the neighborhood. (§3.4.2.B.1, 1.5.4.G.2.b, §7.3.3.C.2)
- There will be no nuisance or serious hazard to vehicles or pedestrians. (§3.4.2.B.1, 1.5.4.G.2.b, §7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§3.4.2.B.1, 1.5.4.G.2.b, §7.3.3.C.4)
- The proposed extension of the nonconforming two family use is not substantially more detrimental than the existing nonconforming use is to the neighborhood (§3.1.3, §3.1.9, and §7.8.2.C.2).

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

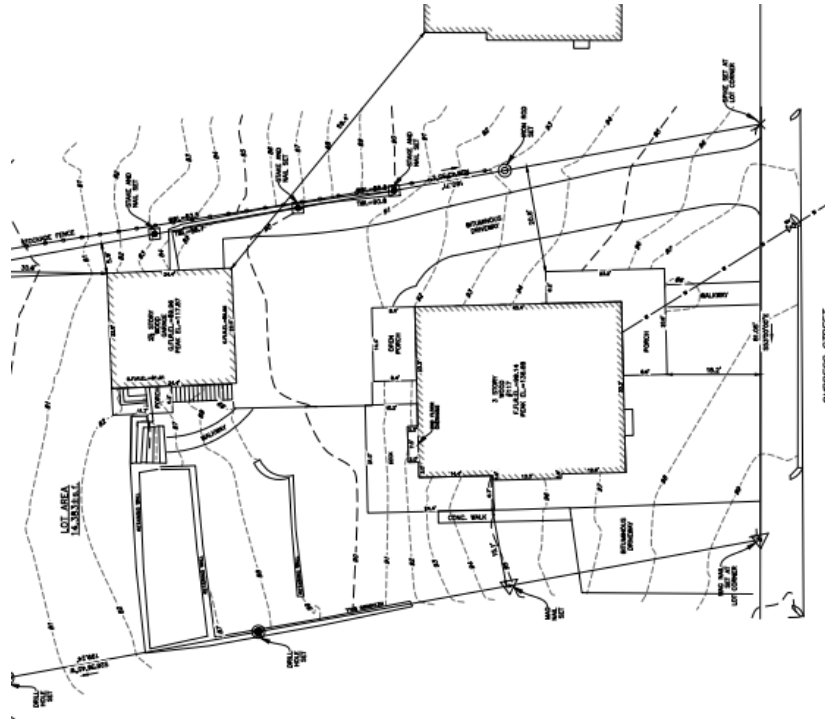
The subject property is located on Cypress Street within the SR-3 zone in Newton Centre. The immediate residential area is within the SR-2 zone, with Multi Residence 1 zones to the north (**Attachment A**). The surrounding area consists of single- and two- family residential uses as well as private educational uses (**Attachment B**). There are six other parcels along Cypress Street that consists of two family nonconforming residential uses in the SR-3 zone.

B. Site

The site consists of 14,383 square feet of land and it is improved with a nonconforming two-family residence and detached accessory structure constructed in 1914. The site is accessed by one driveway from Cypress Street providing access to the detached structure and paved parking area. The site has a downwards slope from the front to the rear and represents a grade change of approximately 21 feet.

There is a retaining wall along the northeastern (right) property line that reaches a height of 5.2 feet next to the accessory building. The wall starts along the midpoint of the property line, at a height of two feet and extends east, where it reaches a height of 5.2 feet at the detached accessory structure.

Existing Conditions



III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site is a nonconforming two-family residence. If approved, the use will remain the same but with the addition of a detached accessory apartment.

B. Building and Site Design

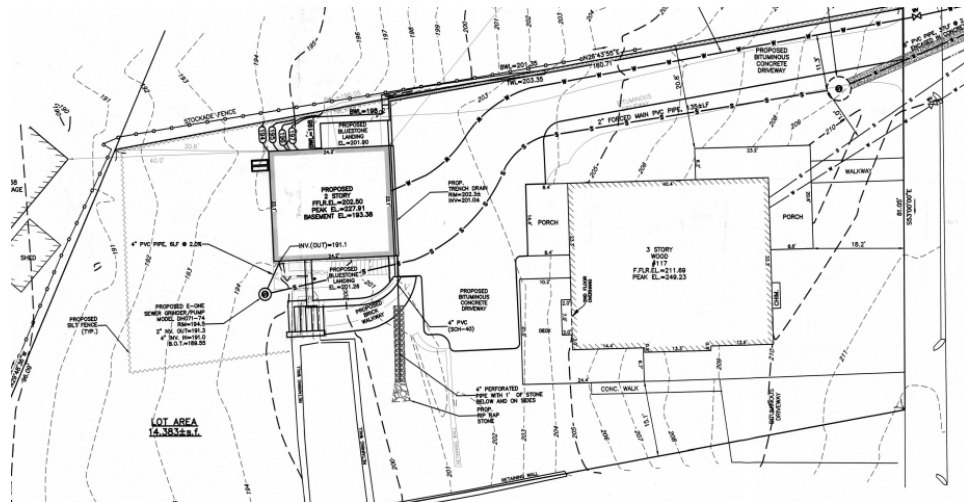
The petitioners are proposing to convert the detached accessory structure to an accessory apartment. The conversion of the structure requires a special permit to further extend the nonconforming two-family use within the SR-3 zone.

The structure was determined to be historically significant by the Newton Historical Commission (NHC) and is located outside of a historic district. The NHC issued a Statement of Historical Significance that states the existing detached garage is historically significant because it is historically or architecturally important for its

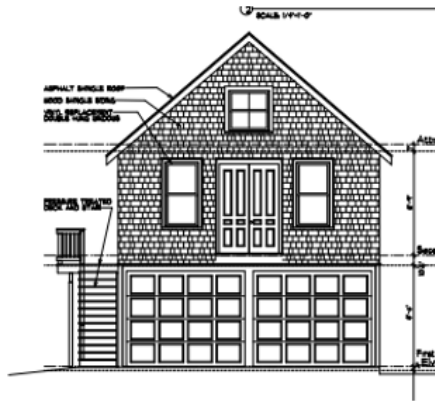
period, style, architect, builder, or context. As such, the regulations typically applying to detached accessory apartments such as size limitations and principal building setbacks do not apply to this petition per Section 6.7.E.7. The detached accessory structure only requires relief to extend the nonconforming two-family use.

The petitioners are proposing a landing on each side of the detached accessory structure. While the proposed wall to allow for the landing is under four feet, a reconstruction of an existing retaining wall reaches a maximum height of 6.35 feet. The existing retaining wall reached a height of 5.2 feet and the proposed wall will be over one foot taller than the existing wall.

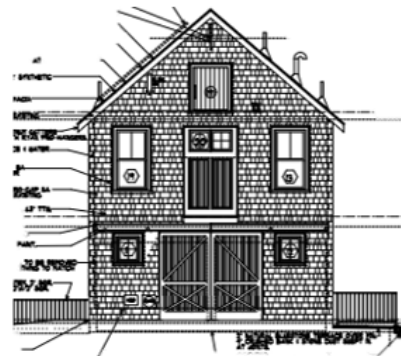
Proposed Site Plan



Existing Front Elevation



Proposed Front Elevation



The Planning Department is unconcerned with the extension of the nonconforming two-family use that requires a special permit. The project will restore a historically significant structure and remove the existing garage doors in an effort to revert back to the character of the original barn structure. Planning suggests the petitioner explore ways to reduce the height of the retaining wall along the right property line.

C. Parking and Circulation

The petitioner is not proposing any changes to parking or circulation.

D. Landscaping and Screening

A landscape plan is not required with this petition.

IV. TECHNICAL REVIEW

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

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

Zoning Relief Required		
Ordinance		Action Required
§3.4.1 §7.8.2.C.2	Request to extend a nonconforming two-family dwelling use	S.P. per §7.3.3
§5.4.2.B	Request to allow a retaining wall exceeding four feet in height within a setback.	S.P. per §7.3.3

B. Engineering Review

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

C. Newton Historical Commission Review

The existing detached garage was found to be historically significant, final review of the plans is required by NHC.

V. PETITIONER’S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:

- Attachment A:** Zoning Map
- Attachment B:** Land Use Map
- Attachment C:** Statement of Historical Significance
- Attachment D:** Zoning Review Memorandum
- Attachment E:** DRAFT Order




ATTACHMENT A

Zoning

117 Cypress Street

*City of Newton,
Massachusetts*

Zoning

-  Single Residence 3
-  Multi-Residence 1
-  Multi-Residence 2

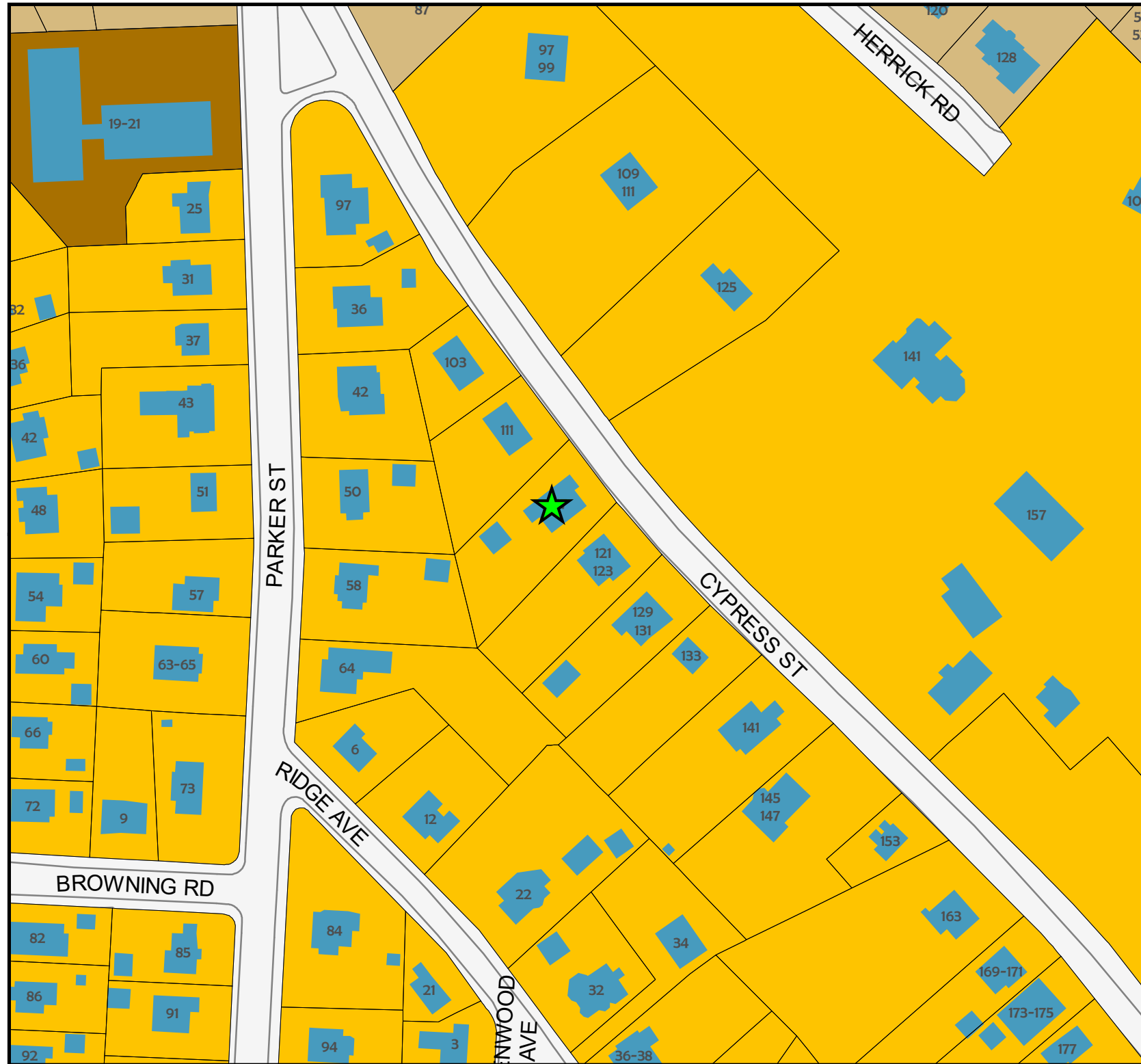


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield

0 12.5 25 50 75 100 125 150 175 Feet

Map Date: June 10, 2022



ATTACHMENT B





Land Use

117 Cypress Street

*City of Newton,
Massachusetts*

Land Use

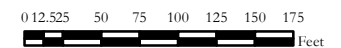
Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Private Educational
-  Nonprofit Organizations

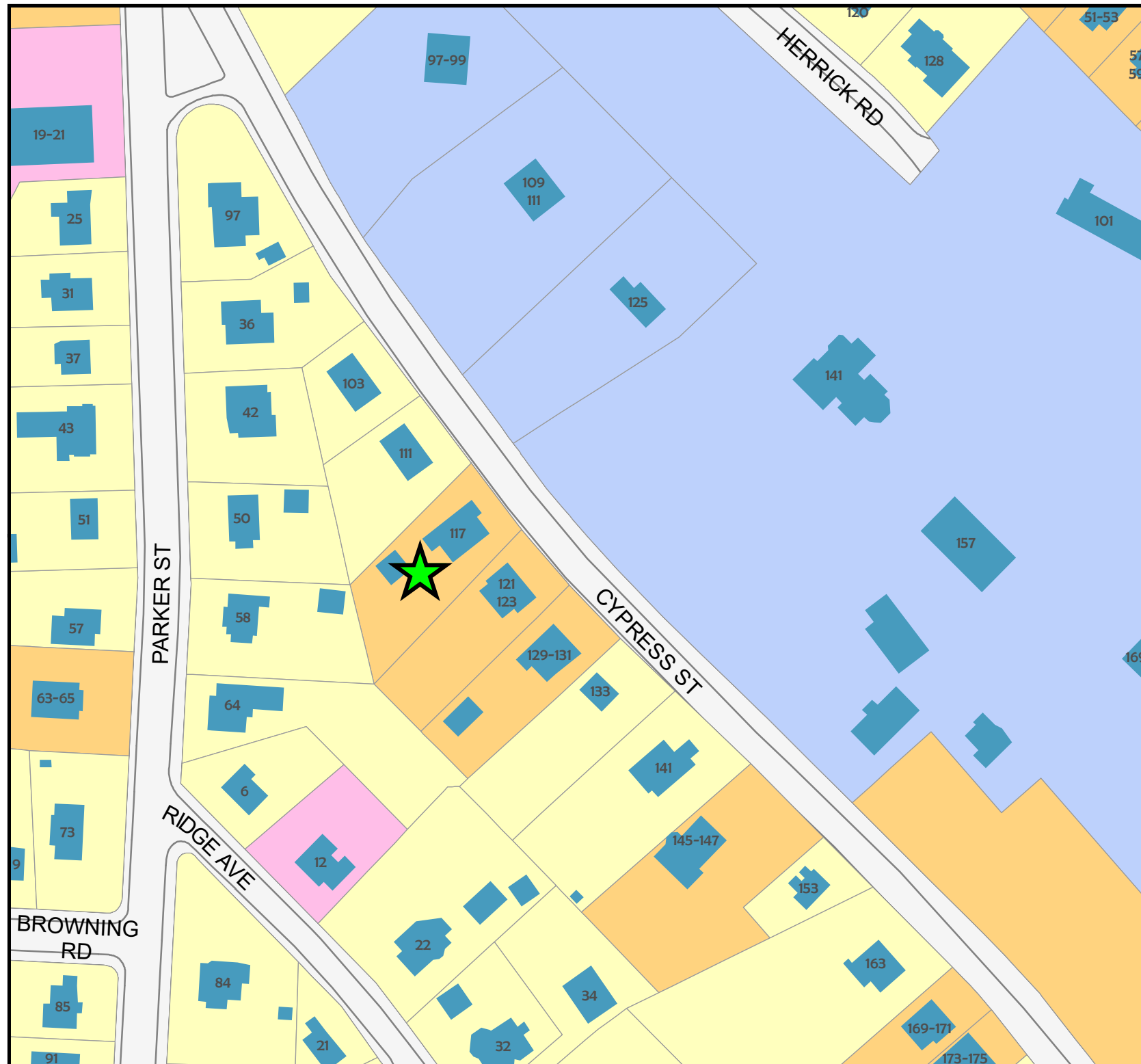


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
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Map Date: June 10, 2022





Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
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Attachment
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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: May 23, 2022

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Katie Whewell, Chief Planner for Current Planning

Cc: Patrick Powdermaker, Applicant
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: Request to extend a nonconforming two-family use to allow a detached accessory apartment and for a retaining wall in the setback

Applicant: Patrick Powdermaker	
Site: 117 Cypress Street	SBL: 65015 0005
Zoning: SR3	Lot Area: 14,383 square feet
Current use: Two-family dwelling	Proposed use: Two-family dwelling with a detached accessory apartment

BACKGROUND:

The property at 117 Cypress Street consists of a 14,383 square foot lot in the Single Residence 3 zoning district improved with a nonconforming two-family dwelling and a detached garage, both constructed in 1914. The petitioner proposes to convert the existing detached garage barn into an accessory apartment, requiring a special permit.

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

- Zoning Review Application, prepared by Patrick Powdermaker, applicant, submitted 3/4/2022
- Floor plans and elevations, signed and stamped by T. Andrew Hatcher, architect, dated 2/24/2022
- Site Plan, signed and stamped by Joseph R. Porter, surveyor, dated 2/9/2022
- Statement of Historical Significance, dated 6/22/2021

ADMINISTRATIVE DETERMINATIONS:

1. The property is located in the Single Residence 3 zoning district and is improved with a legal nonconforming two-family dwelling and detached garage barn constructed in 1914. The petitioner proposes to convert the detached structure into a 1,284 square foot detached accessory apartment. The accessory apartment further extends the nonconforming two-family use, requiring a special permit per sections 3.4.1 and 7.8.2.C.2.
2. The detached garage has been deemed historically significant by the Newton Historical Commission. Per section 6.7.1.E.7, the size limits on habitable space are not applicable and special permit is required to convert the structure into a detached accessory apartment.
3. The petitioner proposes to construct a retaining wall along the northeast property line. The proposed wall reaches a maximum height of 5.2 feet. Per section 5.4.2.B a retaining wall exceeding four feet in height within a setback requires a special permit.

See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§3.4.1 §7.8.2.C.2	Request to extend a nonconforming two-family dwelling use	S.P. per §7.3.3
§5.4.2.B	Request to allow a retaining wall exceeding four feet in height within a setback.	S.P. per §7.3.3

#316-22
117 Cypress Street

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 a nonconforming two-family residential use in a Single Residence 3 zone, and to allow a retaining wall exceeding four feet within a setback as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The site is an appropriate location for the proposed retaining wall exceeding four feet in height within a setback due to the topography of the site representing a grade change of approximately twenty feet from the front to rear of the site and is in the same location as an existing retaining wall over four feet. (§3.4.2.B.1, 1.5.4.G.2.b, §7.3.3.C.1)
2. The proposed retaining wall exceeding four feet in height within a setback will not adversely affect the neighborhood because there is an existing retaining wall within the side setback that reached a height of over five feet. (§3.4.2.B.1, 1.5.4.G.2.b, §7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians. (§3.4.2.B.1, 1.5.4.G.2.b, §7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (3.4.2.B.1, 1.5.4.G.2.b, §7.3.3.C.4)
5. The proposed extension of the nonconforming two family use is not substantially more detrimental than the existing nonconforming use is to the neighborhood because the accessory dwelling unit will be located in an existing historic structure (§3.1.3, §3.1.9, and §7.8.2.C.2).

PETITION NUMBER: #316-22

PETITIONER: Patrick Powdermaker

LOCATION: 117 Cypress Street, on land known as Section 65, Block 15, Lot 5, containing approximately 14,383 square feet of land

OWNER: Patrick Powdermaker

ADDRESS OF OWNER: 117 Cypress Street
Newton, MA 02459

TO BE USED FOR: Detached garage with accessory apartment, retaining walls greater than four feet in height within a setback

CONSTRUCTION: Wood frame, masonry

EXPLANATORY NOTES: §3.4.1, §7.8.2.C.2 to extend a nonconforming residential use in a single residence zone, and §5.4.2.B, §7.3.3 to allow retaining walls exceeding four feet in height within a setback

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. Topographic Site Plan showing proposed conditions at 117 Cypress Street, signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated May 18, 2022
 - b. Architectural Plans, prepared by Hatcher Architects, signed and stamped by T. Andrew Hatcher, dated May 11, 2022, consisting of one (1) sheets:
 - i. A1.1 Proposed Elevations
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 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.
 - 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.