



#359-22

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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: July 19, 2022  
Land Use Action Date: October 11, 2022  
City Council Action Date: October 17, 2022  
90-Day Expiration Date: October 17, 2022

DATE: July 15, 2022

TO: City Council

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

SUBJECT: **Petition #359-22**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to allow construction of a detached garage with an accessory apartment that does not meet principal setbacks, to allow oversized dormers, and further exceed the nonconforming FAR at 33 Berkeley Street, Newton, Ward 3, on land known as Section 32 Block 31 Lot 04, containing approximately 11,097 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: 7.3.3, 7.4, 6.7.1.E.1.a, 6.7.1.E.4, 1.5.4.G.2.b, 3.1.3, 3.1.9, 7.8.2.C.2 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 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.



**33 Berkeley Street**

## **EXECUTIVE SUMMARY**

The subject property consists of an 11,097 square foot lot improved with a single-family dwelling constructed in 1890. The property is located within the Single Residence 1 (SR-1) zone in West Newton. The petitioner is seeking to construct a detached structure consisting of a two car garage and an accessory apartment within the half story above. As proposed, the structure does not meet principal setbacks, features two dormers which exceed 50% of the wall below on the front and rear elevations, and increases the nonconforming FAR for the site, all of which require special permit relief.

The proposed detached structure with an accessory apartment is replacing an existing garage and features reduced setbacks from the existing garage. Planning questions whether the setbacks can be improved or maintained from the existing detached structure without significantly impacting the site design. Otherwise, Planning Staff believe the location to be appropriate as well as the waivers for dormers due to the location of the structure set further back into the site. Staff does not believe that the increase in nonconforming FAR will be in derogation of the size, scale, and design of other structures in the neighborhood because the FAR is broken up between two structures, one of which will feature and accessory apartment.

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

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

- The site is an appropriate location for the proposed detached accessory apartment with oversized dormers in a structure that does not meet principal setbacks. (§6.7.1.E.1.a, §6.7.1.E.4, §1.5.4.G.2.b, §7.3.3.C.1)
- The proposed detached accessory apartment with oversized dormers in a structure that does not meet principal setbacks will not adversely affect the neighborhood. (§6.7.1.E.1, §6.7.1.E.5, §7.3.3.C.2)
- There will be no nuisance or serious hazard to vehicles or pedestrians. (§6.7.1.E.1, §6.7.1.E.5, §7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§6.7.1.E.1, §6.7.1.E.5, §7.3.3.C.4)
- The proposed increase in the nonconforming FAR from .37 to .45, where .33 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. (§3.1.3 §3.1.9 §7.8.2.C.2)

### **II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD**

A. Neighborhood and Zoning

The subject property is on Berkeley Street in the SR-1 zone in West Newton. The immediate area is within the SR-1 zone and consists of single family uses with one mixed use property at 24 Berkeley Street (**Attachments A and B**).

B. Site

The site consists of 11,097 square feet of land and is improved with a single-family residence constructed circa 1890 and a detached garage consisting of 290 square feet. The garage has side and rear setbacks of 7.4 feet and 6.8 feet, respectively, where five feet is the minimum required. The site is accessed by a driveway from Berkeley Street along the eastern boundary leading to garage. The site has a slight downwards slope from the front to the rear of the lot.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

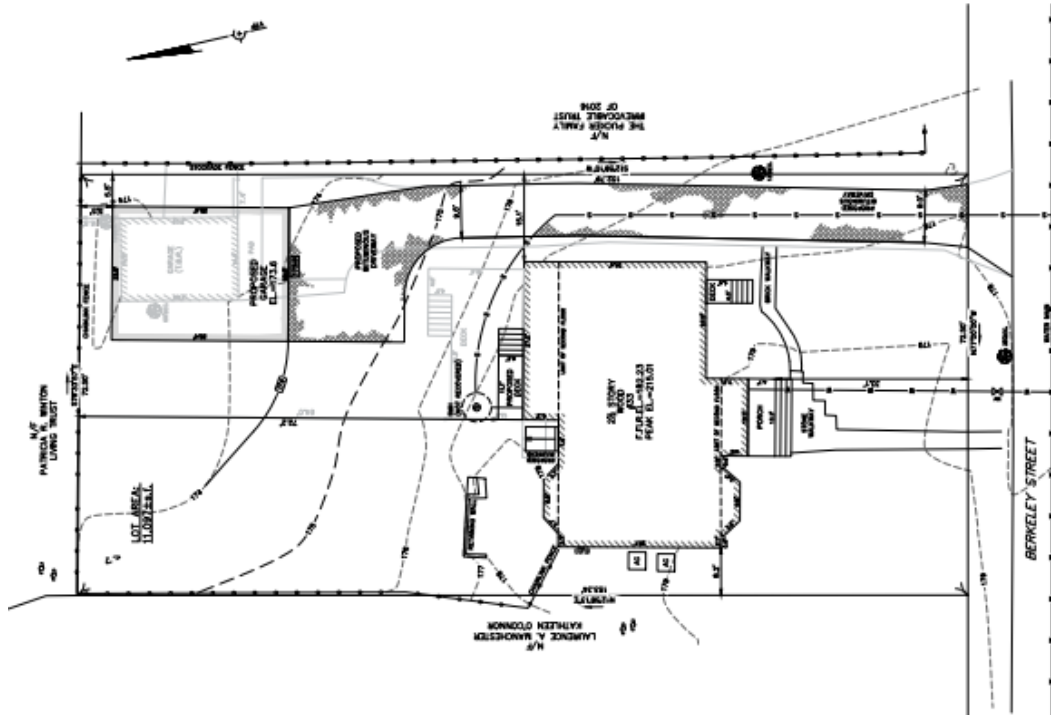
The principal use of the site is a single-family residence. If approved, the use will remain the same with the addition of a detached accessory apartment.

B. Building and Site Design

The petitioner is proposing to raze the existing detached garage and construct a new detached garage with an accessory apartment in the half story above. The design of this structure will feature oversized dormers on the front and rear elevations. The construction of the detached accessory apartment requires special permits to allow a detached accessory apartment that does not meet principal building setbacks, to allow oversized dormers, and to increase the nonconforming FAR.

The proposed detached structure will have setbacks of 5.5 feet from both the side and rear property lines, a reduction of over a foot from the existing conditions. Detached structures have required setbacks of five feet, however, detached accessory apartments are required to meet the setbacks for principal structures, or can be waived by special permit. Planning questions whether the proposed detached structure with the accessory apartment can improve upon the setbacks without causing significant impacts to other site design aspects, such as driveway location. The detached structure will have a footprint of 700 square feet and measure 21.9 feet tall.

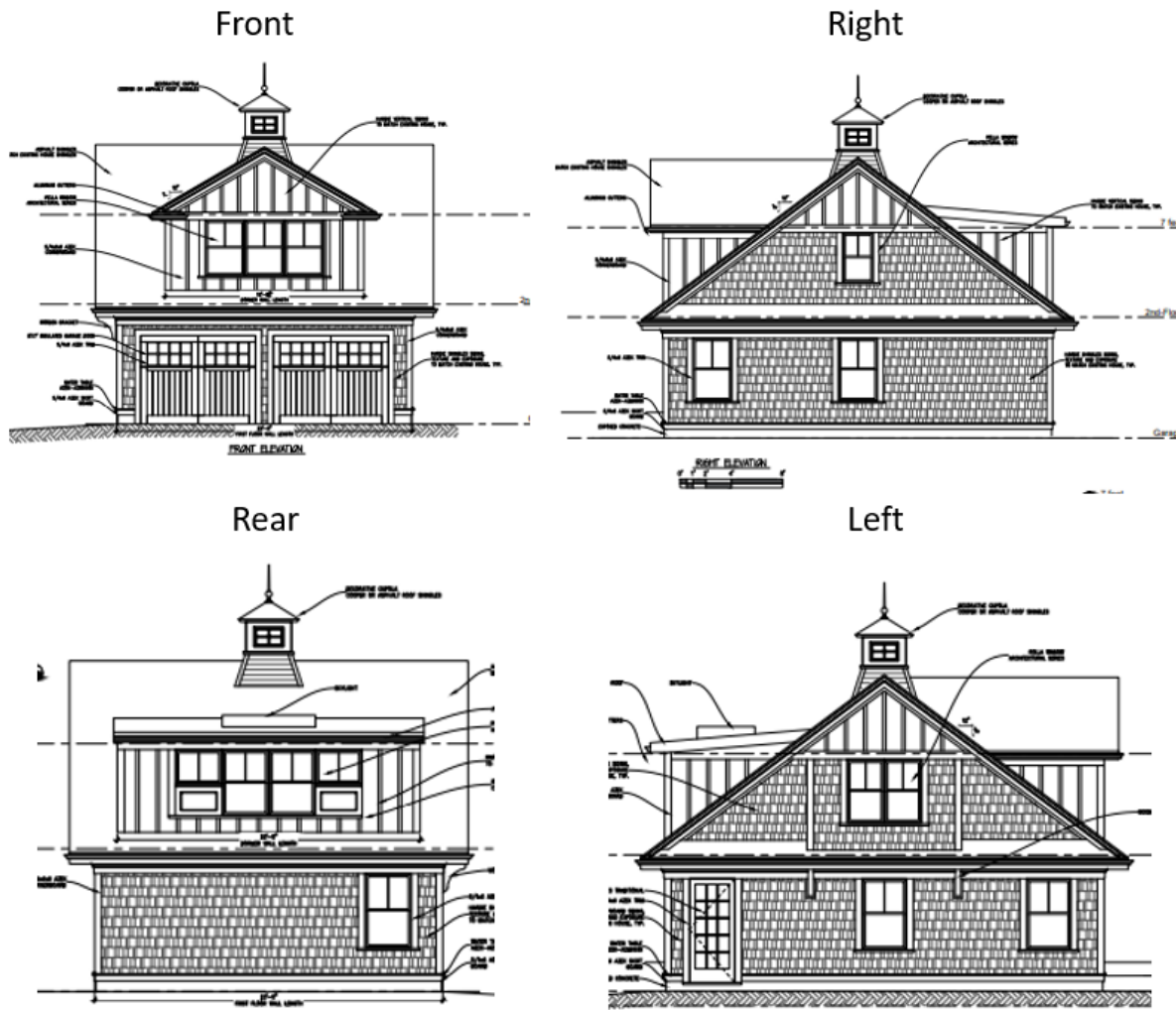
### Proposed Site Plan



The proposed front and rear dormers require relief for dormers exceeding 50% of the wall plane below. The front dormer measures approximately 15.5 feet, which is approximately 67% of the wall plane below. The rear dormer measures 20 feet wide, which equates to 87% of the wall plane below.

The single-family home and existing garage currently have an FAR of .37 where .33 is the maximum allowed as of right. The existing FAR of .37 translates to 4,078 square feet of floor area, where 3,662 is allowed as of right. As designed, the proposed detached structure adds approximately 875 square feet of floor area to the site, resulting in an FAR of .45 or 4,953 square feet between the two structures, requiring a special permit to extend the nonconforming FAR.

Proposed Garage Elevations



The petitioner is proposing to establish an accessory apartment within the half story of the detached structure. The interior design will feature a two car garage on first floor, with a one-bedroom accessory apartment within the half story above. The Ordinance allows detached accessory apartments with the provision that they are no greater than 1,200 square feet or 40% of the total habitable space of the principal dwelling, whichever is less. The habitable space for both the single family dwelling and proposed habitable space for the accessory apartment equals 4,048 square feet of habitable space. With the proposed accessory apartment consisting of 466 square feet of habitable space, the project complies with the size limits for detached accessory apartment with the proposed apartment equating to 10% of the total habitable space of the principal dwelling plus the space to be created for the accessory

apartment.

The proposed detached structure with an accessory apartment is replacing an existing garage and features reduced setbacks from the existing garage. Planning questions whether the setbacks can be improved without impacting the site design significantly. Otherwise, Planning Staff believe the location to be appropriate as well as the waivers for dormers due to the location of the structure set further back into the site. Staff does not believe that the increase in nonconforming FAR will be in derogation of the size, scale, and design of other structures in the neighborhood.

C. Parking and Circulation

The driveway location is being maintained along the eastern property line but will be expanded at the front of the proposed detached structure to align with the larger proposed accessory structure.

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 C**). Based on the Memorandum, the petitioner is seeking the following relief:

Zoning Relief Required		
Ordinance		Action Required
§6.7.1.E.1.a	To allow a detached accessory apartment	S.P. per §7.3.3
§6.7.1.E.4	To allow a detached accessory apartment that does not meet principal setbacks	S.P. per §7.3.3
§1.5.4.G.2.b	To allow oversized dormers	S.P. per §7.3.3
§3.1.3 §3.1.9 §7.8.2.C.2	To further exceed nonconforming FAR	S.P. per §7.3.3

B.

Engineering Review

The petition’s impervious area is increasing by 204 square feet, as such, review from the Engineering Division of Public Works is not required.

C. Newton Historical Commission Review

Review from the Newton Historical Commission is not required at this time.

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 Order

# ATTACHMENT A

## Zoning

**33 Berkeley Street**

*City of Newton,  
Massachusetts*


## Zoning

 Single Residence 1

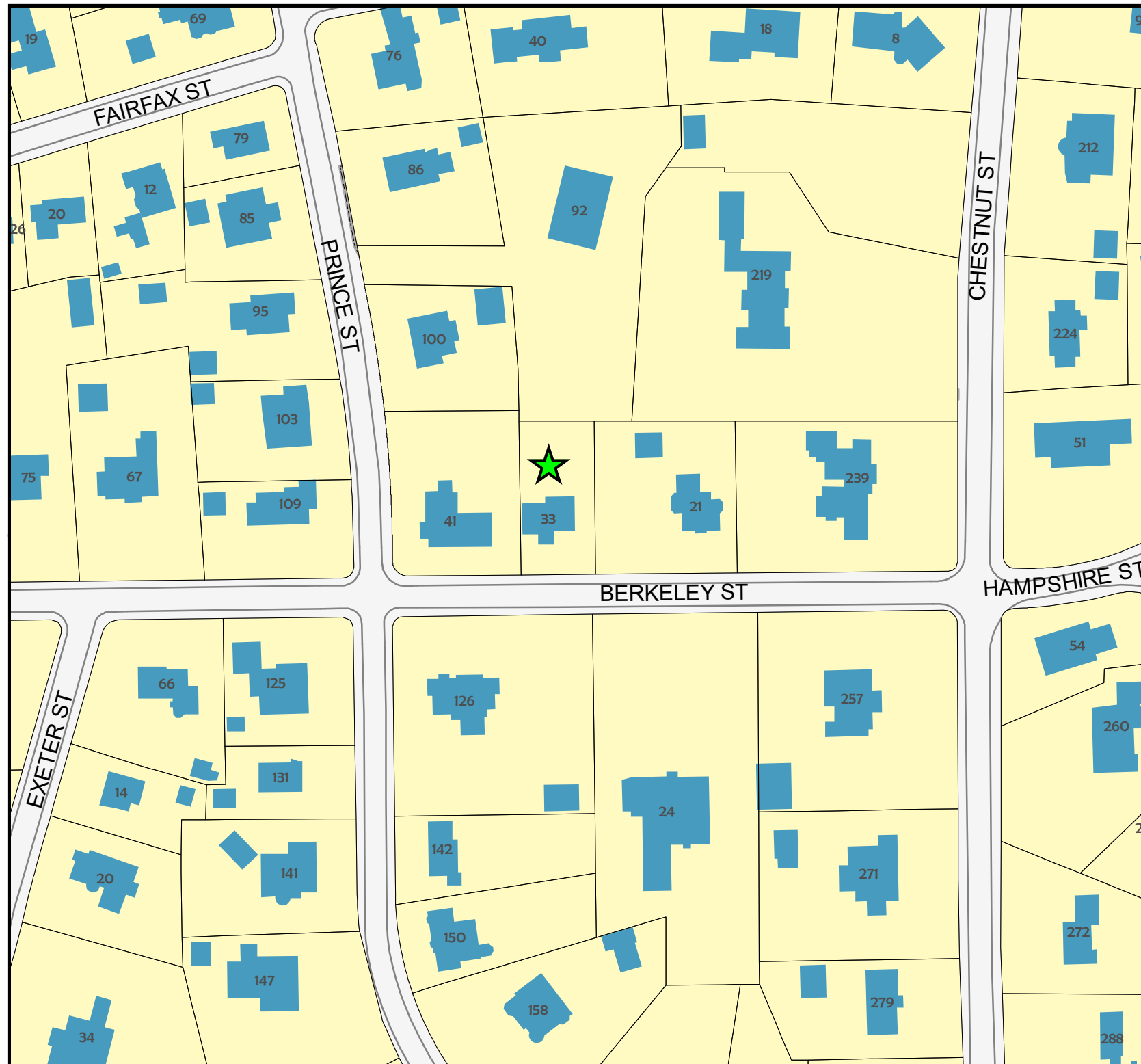


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

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

0 12.5 25 50 75 100 125 150 175  
 Feet

Map Date: July 14, 2022





# ATTACHMENT B



## Land Use

### 33 Berkeley Street

*City of Newton,  
Massachusetts*

#### Land Use


#### Land Use

-  Single Family Residential
-  Mixed Use



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

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Map Date: July 15, 2022





Ruthanne Fuller  
Mayor

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Barney S. Heath  
Director

## ZONING REVIEW MEMORANDUM

Date: May 31, 2022

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Kevin and Liz Bramson-Boudreau, Applicants  
Peter Sachs, Architect  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Deputy City Solicitor

**RE: Request to further exceed nonconforming FAR, to allow a detached accessory apartment, reduced setbacks for the apartment and to allow oversized dormers**

Applicant: Kevin & Liz Bramson-Boudreau	
Site: 33 Berkeley Street	SBL: 32031 0004
Zoning: SR1	Lot Area: 11,097 square feet
Current use: Single-family dwelling	Proposed use: Single-family dwelling with a detached accessory apartment

### BACKGROUND:

The property at 33 Berkeley Street consists of a 11,097 square foot lot in the Single Residence 1 zoning district improved with a single-family dwelling constructed in 1890 and a detached garage. The petitioners propose to raze the detached garage and construct a new larger detached garage with an accessory apartment on the second level, requiring a special permit.

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

- Zoning Review Application, prepared by Peter Sachs, architect, submitted 4/28/2022
- Floor plans and elevations, prepared by Peter Sachs, architect, dated 4/21/2022
- Existing Site Plan, signed and stamped by Joseph R. Porter, surveyor, dated 1/13/2022
- Proposed Site Plan, signed and stamped by Joseph R. Porter, surveyor, dated 3/23/2022

## **ADMINISTRATIVE DETERMINATIONS:**

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1. The petitioners propose to raze the detached garage in the rear of the property and construct a new larger detached garage with a second story accessory apartment. Per section 6.7.1.E.1 a special permit is required to allow an accessory apartment in a detached structure.
2. The accessory apartment is proposed with 466 square feet, which is less than 10% of the habitable space of the dwelling, meeting the requirement of section 6.7.1.E.2.
3. Per section 6.7.1.E.4 a detached accessory apartment must meet the principal setback requirements. The proposed detached building is set back 5.5 feet from the side and rear lot lines where 7.5 and 15 feet are required respectively per section 3.1.3. A special permit is required to allow a detached accessory apartment that does not meet principal setbacks.
4. Per section 1.5.4.G.2.b a dormer may be no wider than 50% of the length of the exterior wall next below. The petitioners propose dormers on each side of the roof above a 23-foot-wide exterior wall next below. The front dormer is 15.4 feet wide, which is 67% of the wall below. The rear dormer is 20 feet wide, which is 87% of the wall below. The proposed oversized dormers require a special permit.
5. The existing dwelling and garage have a nonconforming FAR of .37 where .33 is the maximum allowed per section 3.1.9. The proposed construction of the garage further increases the nonconforming FAR to .45, requiring a special permit per section 7.8.2.C.2.
6. Per section 1.5.2.D.2, the lot coverage requirements in section 3.1 shall not apply to garages accessory to single- and two-family dwellings constructed prior to December 27, 1922. By not including the 700 square foot footprint of the proposed detached garage in the calculation, the proposed lot coverage is below the maximum allowed.

SR1 Zone	Required	Existing	Proposed
Lot Size	15,000 square feet	<b>11,097 square feet</b>	<b>No change</b>
Frontage	100 feet	<b>72 feet</b>	<b>No change</b>
Setbacks - Principal <ul style="list-style-type: none"> <li>• Front</li> <li>• Side</li> <li>• Rear</li> </ul> Setbacks – Accessory <ul style="list-style-type: none"> <li>• Front</li> <li>• Side</li> <li>• Rear</li> </ul>	25 feet 7.5 feet 15 feet 25 feet 7.5 feet 15 feet	33.1 feet 8.2 feet 72.2 feet >100 feet 7.4 feet 6.8 feet	No change No change No change >100 feet <b>5.5 feet*</b> <b>5.5 feet*</b>
Height – <ul style="list-style-type: none"> <li>• Principal</li> <li>• Accessory</li> </ul>	36 feet 22 feet	32.78 feet <22 feet	No change 21.9 feet
Stories – <ul style="list-style-type: none"> <li>• Principal</li> <li>• Accessory</li> </ul>	2.5 1.5	2.5 1	No change 1.5
FAR	.33	<b>.37</b>	<b>.45</b>
Max Lot Coverage	20%	17.7%	<b>21.3%</b>
Min. Open Space	65%	54.5%	65.1%

\*Requires relief

See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§6.7.1.E.1.a	To allow a detached accessory apartment	S.P. per §7.3.3
§6.7.1.E.4	To allow a detached accessory apartment that does not meet principal setbacks	S.P. per §7.3.3
§1.5.4.G.2.b	To allow oversized dormers	S.P. per §7.3.3
§3.1.3 §3.1.9 §7.8.2.C.2	To further exceed 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 allow a detached accessory apartment, to allow a detached accessory apartment that does not meet principal building setbacks, to allow dormers which exceed 50% of the wall plane below, and to increase the nonconforming floor area ratio 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 detached accessory apartment with oversized dormers in a structure that does not meet principal setbacks because the setbacks for accessory structures is being maintained at five feet. (§6.7.1.E.1.a, §6.7.1.E.4, §1.5.4.G.2.b, §7.3.3.C.1)
2. The proposed detached accessory apartment with oversized dormers in a structure that does not meet principal setbacks will not adversely affect the neighborhood because the structure is set back further into the site and will be minimally visible from the street. (§6.7.1.E.1, §6.7.1.E.5, §7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians because the driveway location is being maintained. (§6.7.1.E.1, §6.7.1.E.5, §7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§6.7.1.E.1, §6.7.1.E.5, §7.3.3.C.4)
5. The proposed increase in the nonconforming FAR from .37 to .45, where .33 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 FAR is broken up between two structures. (§3.1.3 §3.1.9 §7.8.2.C.2)

PETITION NUMBER: #359-22

PETITIONER: Elizabeth Bramson Boudreau

LOCATION: 33 Berkeley Street, on land known as Section 32, Block 31, Lot 4, containing approximately 11,097 square feet of land

OWNER: Elizabeth Bramson Boudreau

ADDRESS OF OWNER: 33 Berkeley Street  
Newton, MA 02465

TO BE USED FOR: Detached garage with accessory apartment

CONSTRUCTION: Wood frame, masonry

EXPLANATORY NOTES: To allow a detached accessory apartment that does not meet principal setbacks (§6.7.1.E.1.a, §6.7.1.E.4), to allow oversized dormers (§1.5.4.G.2.b) and to increase the nonconforming FAR (§3.1.3, §3.1.9, §7.8.2.C.2)

ZONING: Single Residence 1

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 33 Berkeley Street, signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated March 23, 2022
  - b. Architectural Plans, prepared by Peter Sachs Architect, signed and stamped by Peter Sachs, dated June 2, 2022, consisting of three (3) sheets:
    - i. G-1 Proposed Floor Plans
    - ii. G-7 Proposed Building Elevations, front and left
    - iii. G-8 Proposed Building Elevations, right and rear
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 and Inspectional Services.
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 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 professional land surveyor.