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#374-22

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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: August 9, 2022
Land Use Action Date: October 25, 2022
City Council Action Date: November 7, 2022
90-Day Expiration Date: November 7, 2022

DATE: August 5, 2022

TO: City Council

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

SUBJECT: **Petition #374-22** for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a two-story rear addition to the principal dwelling, further increasing nonconforming FAR; to convert an existing detached structure into an accessory apartment and allow a reduced separation distance between the detached accessory structure and abutting dwelling; and to further extend a nonconforming two-story detached accessory building at **199 Church Street**, Ward 1, Newton, on land known as Section 12 Block 13 Lot 16, containing approximately 10,688 sq. ft. in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 6.7.1.E.7.b, 3.4.3.A.3, 7.8.2.2, 3.2.3, 3.2.11 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.



199 Church Street

EXECUTIVE SUMMARY

The subject property at 199 Church Street consists of a 10,688 square foot lot in a Multi Residential (MR1) zoning district improved with a 2 ½ story, 3,887 square foot two-family dwelling constructed circa 1851 and a historic detached 2,124 square foot accessory structure (“carriage house”).

The petitioner is seeking a special permit to increase the nonconforming floor area ratio (FAR) by constructing an addition to the rear of the two-family dwelling. However, the FAR worksheet submitted does not match the FAR relief identified in the Zoning Review Memorandum. The petitioner should clarify the FAR of the project.

The petitioner proposes to convert the detached accessory structure into a detached accessory apartment. The Newton Historical Commission (NHC) determined that the accessory structure is historically significant under Section 22-50 of the Newton City Ordinances. Per Sec. 6.7.1.E.7.a of the NZO, no special permit is required for the proposed detached accessory apartment use and the size limits on the accessory apartment’s habitable space do not apply.

That said, other aspects of the accessory dwelling require a special permit to allow it to be used as a detached accessory apartment. First, the structure containing the proposed detached accessory apartment is only eight feet from an existing residential dwelling on an abutting property, less than the 15 feet required per Sec. 6.7.1.E.7.b. Second, the detached accessory structure contains two stories, where 1.5 stories is the maximum allowed per Sec. 3.4.3.A.3. As the second story is considered nonconforming, a special permit per Sec. 7.8.2.C.2 is required to further extend the nonconforming second story of the detached accessory structure.

While the Planning Department is generally supportive of accessory apartments and the effort here, as discussed below it has some concerns regarding certain dimensional and design aspects of the proposed detached accessory apartment structure.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The site in a MR1 zoning district is an appropriate location for the proposed detached accessory apartment with a reduced separation distance between it and an abutting dwelling (§7.3.3.C.1)
- the proposed detached accessory apartment with a reduced separation distance between it and an abutting dwelling will adversely affect the neighborhood (§7.3.3.C.2)
- the proposed detached accessory apartment with a reduced separation distance between it and an abutting dwelling will create a 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)
- the proposed further extension of the nonconforming two-story detached accessory building would be substantially more detrimental than the existing nonconforming use

to the neighborhood (§3.4.3.A.3, §7.8.2.C.2)

- the proposed structures that would increase the FAR are consistent with and not in derogation of the size, scale and design of other structures in the neighborhood (§3.2.3, §3.2.11)
- further increasing the nonconforming FAR would be substantially more detrimental than the existing nonconforming use to the neighborhood (§3.2.3, §7.8.2.C.2)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on the north side of Church Street just east of its intersection with Maple Avenue. The neighborhood features a mix of one-, two-, and multi-family properties; a religious use is located approximately 50 feet to the east (**Attachment A**). The site and surrounding area along Church Street are generally zoned MR1, with some Multi Residence 2 (MR2) parcels located to the north and east (**Attachment B**).

B. Site

The subject property consists of a 10,688 square foot lot improved with a two-family dwelling constructed circa 1851 and a historic detached accessory structure. The lot is generally level, and vehicular access is provided via a paved driveway that runs along the length of the east (right) property line to the accessory structure in the rear right of the lot. The remaining portions of the site include lawn with some mature trees and shrubs.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

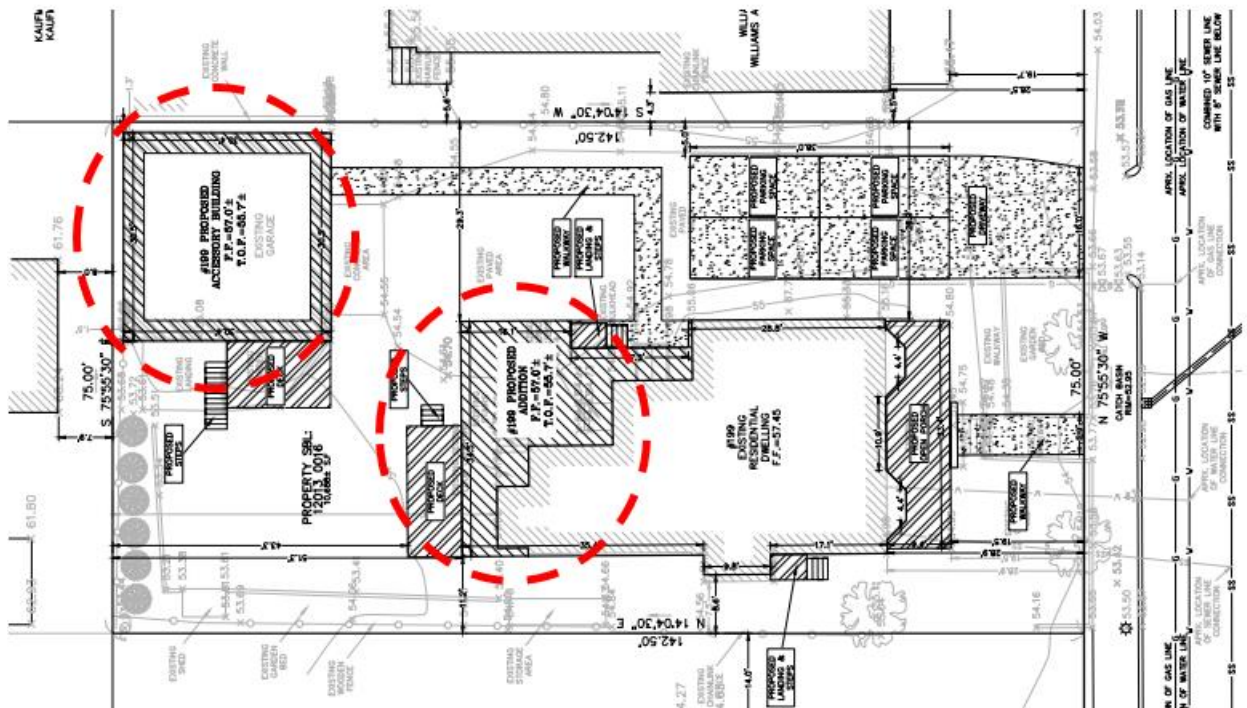
The principal use of the site will remain a two-family residence and, if the petition is granted, an accessory apartment will be in a detached accessory structure.

B. Building and Site Design

The petitioner proposes to construct a two-story rear addition to the principal structure and to adapt a historic carriage house for use as an accessory apartment.

The petitioner is seeking relief to increase the nonconforming FAR. The FAR relief identified in the zoning review memorandum indicates the FAR increasing from .55 to .62, where .48 is the maximum allowed as of right. The petitioner submitted an FAR worksheet indicating the FAR is increasing from .56 to .57 and does not account for the existing area above the second story shown on the floorplans within the existing two-family dwelling. The petitioner should submit a revised FAR worksheet to Planning Staff. Staff will provide an update at the hearing regarding the FAR calculation and translate to increase in square footage.

Second, as the accessory structure's two stories exceeds the maximum 1 ½ stories allowed by right, the proposed expansion of the second floor by approximately 221 square feet is an extension of that nonconformity. The Planning Department notes that while given its modest size this might not usually be a concern, it is notable here as the structure is located only 1.3 feet from the side property line and the proposed second floor expansion includes the construction of a dormer on its right side, the window of which would overlook abutting properties' rear and side yards.



Proposed site plan (Church St. to right)- accessory apartment and addition *indicated*

C. Parking and Circulation

The petitioners are proposing to provide the required four parking stalls in two sets of tandem stalls along the right side of the property, between the main dwelling and the right (east) property line. The stalls would be accessed by a driveway that would range in width from 16 feet to approx. 18 feet. As the stalls would be adjacent to the main dwelling, some of the existing paved driveway that now extends to the accessory structure in the rear right of the property would be eliminated. As there is no turnaround/hammerhead area associated with the driveway, it appears that any vehicle movement to enter/leave the parcel and/or access the two "inner" stalls would be done either on the proposed driveway and/or the adjacent public way.

D. Landscaping

A landscaping/planting plan was not submitted with this petition. The Planning Department

suggests the petitioner be prepared to discuss what if any vegetation is expected to be preserved and/or installed on the property.

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:

- allow a reduced separation distance between the detached accessory apartment and the abutting dwelling (§6.7.1.E.7.b)
- further extend a nonconforming two-story detached accessory building (§3.4.3.A.3, §7.8.2.2)
- further increase nonconforming FAR (§3.2.3, §3.2.11, §7.8.2.C.2)

B. Engineering Review

Review of the petition by the Engineering Division is not required at this time.

C. Historic Review

On December 23, 2021, the Newton Historic Commission resolved to preferably preserve the dwelling and accessory structure. On the same day the commission waived the demolition delay based on approved plans for the dwelling and the accessory structure.

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 Council Order

ATTACHMENT A







Land Use

199 Church St.

*City of Newton,
Massachusetts*

Land Use

Land Use

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

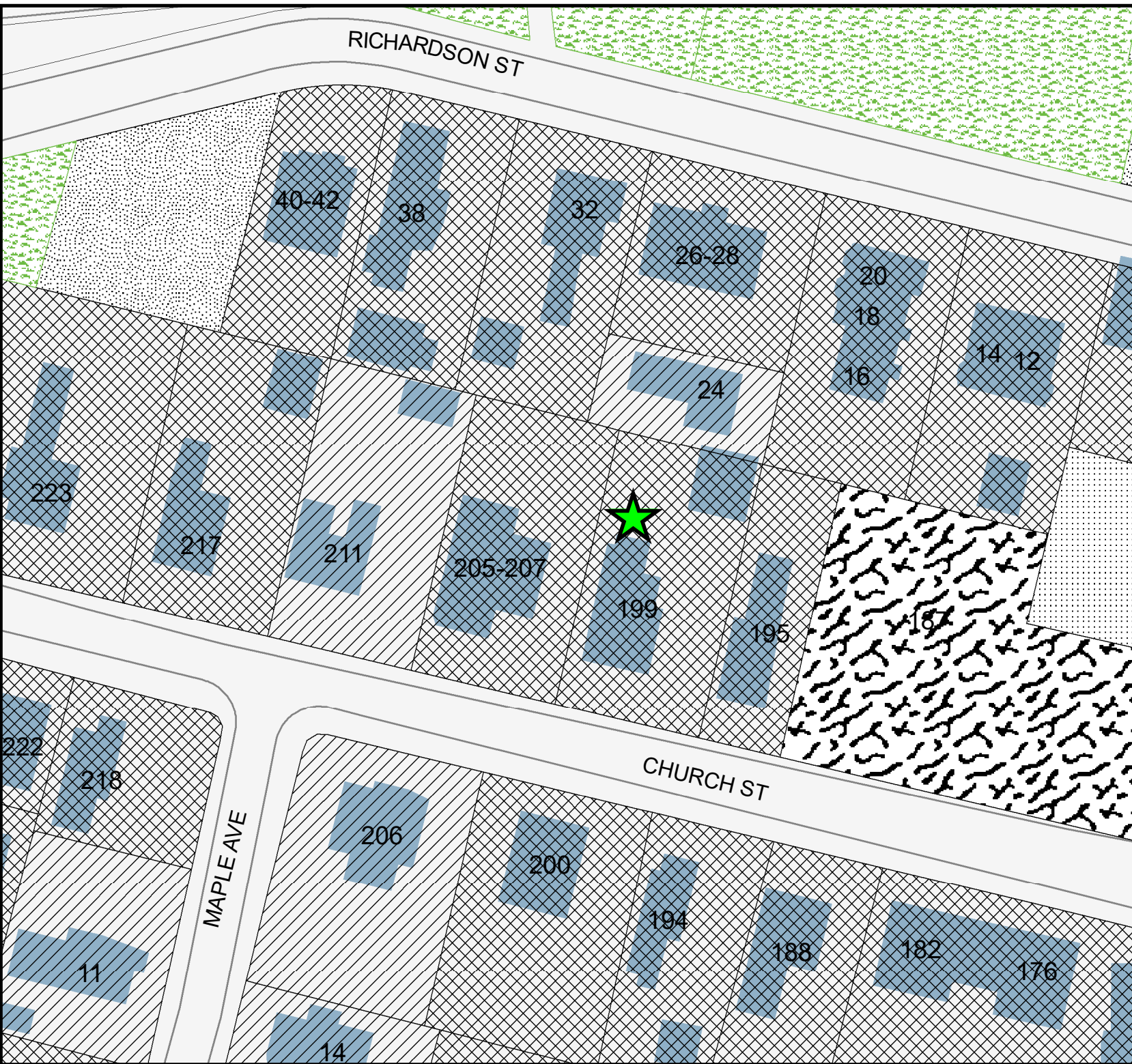


The information on this map is a Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications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

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



Map Date: July 25, 2022




Zoning

199 Church St.

*City of Newton,
Massachusetts*



-  Multi-Residence 1
-  Multi-Residence 2
-  Business 1
-  Public Use



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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: June 16, 2022

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Terrence P. Morris, Attorney
199 Church Street LLC, Applicant
Barney S. Heath, Director of Planning and Development
Jonah Temple, Deputy City Solicitor

RE: Request to allow waive the separation requirement for a historic detached accessory apartment, and to further extend a nonconforming accessory building and nonconforming FAR

Applicant: 199 Church Street LLC	
Site: 199 Church Street	SBL: 12013 0016
Zoning: MR1	Lot Area: 10,688 square feet
Current use: Two-family dwelling	Proposed use: Two-family dwelling with a detached accessory apartment

BACKGROUND:

The property at 199 Church Street consists of a 10,688 square foot lot in the MR1 zoning district improved with a two-family dwelling constructed circa 1851 and a historic detached accessory structure. The petitioner proposes to construct a two-story rear addition to the principal dwelling and to convert the existing detached accessory structure 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 Terrence P. Morris, attorney, submitted 2/22/2022
- Floor plans and elevations, signed and stamped by Mark Sangiolo, architect, dated 11/4/2021, revised 5/5/2022, 6/7/2022, 6/15/2022
- Existing Conditions Plan, signed and stamped by Christopher C. Charlton, surveyor, dated 6/10/2021

ADMINISTRATIVE DETERMINATIONS:

1. The property is improved with a two-family dwelling and a detached accessory building. The petitioner proposes to convert the accessory building into a detached accessory apartment. The Newton Historical Commission has determined that the structure is historically significant under section 22-50 of the Newton City Ordinances. Per section 6.7.1.E.7.a, no special permit is required for the proposed detached accessory apartment use and the size limits on the accessory apartment’s habitable space do not apply.

2. Per section 6.7.1.E.7.b, a detached accessory apartment within a historically significant structure must be greater than 15 feet from an existing residential dwelling on an abutting property. The detached accessory apartment is eight feet from the abutting dwelling, requiring a special permit.

3. The detached accessory structure contains two stories, where 1.5 stories is the maximum allowed per section 3.4.3.A.3. As such, the second story is considered nonconforming. A special permit per section 7.8.2.C.2 is required to further extend the nonconforming second story of the detached accessory structure.

4. The petitioner proposes to construct a two-story rear addition to the principal dwelling. The proposed addition adds 780 square feet to the dwelling, increasing the nonconforming FAR from .55 to .62 where .48 is the maximum allowed per sections 3.2.3 and 3.2.11. A special permit per section 7.8.2.C.2 is required to further extend the nonconforming FAR.

MR1 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	10,688 square feet	No change
Frontage	70 feet	75 feet	No change
Setbacks - Principal <ul style="list-style-type: none"> • Front • Side • Side • Rear 	25 feet 7.5 feet 7.5 feet 15 feet	19.5 feet 7.6 feet 28.9 feet 56.4 feet	No change 8.6 feet No change 43.3 feet
Setbacks – Accessory <ul style="list-style-type: none"> • Front • Side • Rear 	25 feet 5 feet 5 feet	± 110 feet 1.3 feet 1.5 feet	No change No change No change*
Stories – <ul style="list-style-type: none"> • Principal • Accessory 	2.5 1.5	2.5 2	No change No change
FAR	.48	.55	.62*
Max Lot Coverage	30%	NA	28.8%
Min. Open Space	50%	NA	55.3%

See "Zoning Relief Summary" below:

Zoning Relief Required		
Ordinance		Action Required
§6.7.1.E.7.b	To allow a reduced separation distance between the detached accessory apartment and the abutting dwelling	S.P. per §7.3.3
§3.4.3.A.3 §7.8.2..2	To further extend a nonconforming two-story detached accessory building	S.P. per §7.3.3
§3.2.3 §3.2.11 §7.8.2.C.2	To further increase nonconforming FAR	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

allow a reduced separation distance between the detached accessory apartment and the abutting dwelling (§6.7.1.E.7.b); further extend a nonconforming two-story detached accessory building (§3.4.3.A.3, §7.8.2.2), and further increase the nonconforming floor area ratio (FAR) (§3.2.3, §3.2.11, §7.8.2.C.2)

as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

1. *the site in a MR1 zoning district is an appropriate location for the proposed detached accessory apartment with a reduced separation distance between it and an abutting dwelling (§7.3.3.C.1)*
2. *the proposed detached accessory apartment with a reduced separation distance between it and an abutting dwelling will not adversely affect the neighborhood (§7.3.3.C.2)*
3. *the proposed detached accessory apartment with a reduced separation distance between it and an abutting dwelling will not create a nuisance or serious hazard to vehicles or pedestrians (§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 further extension of the nonconforming two-story detached accessory building would not be substantially more detrimental than the existing nonconforming use to the neighborhood (§3.4.3.A.3, §7.8.2.C.2)*
6. *the proposed structures that would increase the FAR are consistent with and not in derogation of the size, scale and design of other structures in the neighborhood (§3.2.3, §3.2.11)*
7. *further increasing the nonconforming FAR would be substantially more detrimental than the existing nonconforming use to the neighborhood (§3.2.3, §7.8.2.C.2)*

PETITIONER: 199 Church Street, LLC

LOCATION: 199 Church Street, Section 12, Block 13 Lot 16, containing approximately 10,688 square feet of land

OWNER: 199 Church Street, LLC

ADDRESS OF OWNER: 28 Brooks Street
Boston, MA 02135

TO BE USED FOR: Two-Family Residence

CONSTRUCTION: Wood Frame

EXPLANATORY NOTES: Special Permit per §7.3.3 to:

- allow a reduced separation distance between the detached accessory apartment and the abutting dwelling (§6.7.1.E.7.b)
- further extend a nonconforming two-story detached accessory building (§3.4.3.A.3, §7.8.2.2)
- further increase nonconforming floor area ratio (FAR) (§3.2.3, §3.2.11, §7.8.2.C.2)

ZONING: Multi Residence 1 (MR1)

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 the following plans:
 - a. a site plan entitled "199 Church Street, Newton, Massachusetts, Survey Plan," dated February 21, 2022, as revised through June 1, 2022, prepared by Spruhan Engineering, P.C. stamped and signed by Christopher C. Charlton, Professional Land Surveyor
 - b. a set of architectural drawings entitled "199 Church St., Newton, MA 02671," prepared Sangiolo Associates Architects, dated November 4, 2021, as revised through June 15, 2022, consisting of the following sheets:
 - i. South Elevation (08)
 - ii. North Elevation (09)
 - iii. East Elevation (10)
 - iv. West Elevation (11)
 - c. A document entitled "Floor Area Worksheet- 199 Church Street," prepared by Sangiolo Assoc. Architects, indicating a proposed total gross floor area of 6,108 square feet and a proposed FAR (floor area ratio) of 0.57

2. 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 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. Provided a final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
 - d. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the final site plan.
 - e. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
3. No Final Inspection and/or Occupancy Permit for the buildings 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 registered architect certifying compliance with Condition #1.
 - b. Filed with the Clerk of the Council, the Department of Inspectional Services and the Department of Planning and Development a statement from the Engineering Division of the Department of Public Works certifying that improvements authorized by this Order have been constructed to the standards of the City of Newton Engineering Department.
 - c. 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.