



Ruthanne Fuller
Mayor

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Barney S. Heath
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PUBLIC HEARING/WORKING SESSION MEMORANDUM

DATE: September 29, 2023
MEETING DATE: October 3, 2023
TO: Land Use Committee of the City Council
FROM: Barney S. Heath, Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning
Michael Gleba, Senior Planner
CC: Petitioner

In response to questions raised at the City Council public hearing, the Planning Department is providing the following information for the upcoming public hearing/working session. This information is supplemental to staff analysis previously provided at the Land Use Committee public hearing.

PETITION #262-23 **193 Lake Avenue**

Petition #262-23 for SPECIAL PERMIT/SITE PLAN APPROVAL to renovate and expand the detached accessory building for use as an accessory apartment with dimensional waivers at **193 Lake Avenue**, Ward 6, Newton Highlands, on land known as Section 52 Block 17 Lot 05, containing approximately 26,818 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 6.7.1.E.7.B, 3.4.3.A.3, 3.4.3.A.4, 7.8.2.C.2, 3.1.3, 3.1.9 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

The Land Use Committee (the "Committee") held a public hearing on August 22, 2023, on this petition. This memo reflects additional information addressed to the Planning Department as of September 29, 2023.

BACKGROUND

The subject property at 193 Lake Avenue consists of a 26,818 square foot through lot with frontages on both Lake Avenue and Saxon Terrace. Located in a Single Residence 1 (SR1) zoning district the parcel is improved with a single-family dwelling constructed circa 1890 and a detached accessory building.

The Newton Historical Commission has determined the latter to be historically significant under Section 22-50 of the Newton City Ordinances. The petitioners propose to renovate and expand it with an addition as well as dormers to the half story and use it as a detached accessory apartment.

There is an approximately 30 foot downward grade change from the property's highest point at its western frontage at the end of the Saxon Street cul-de-sac to its lowest point along its eastern property line along its Lake Avenue frontage.

The subject property and the surrounding residential neighborhood are within a Single Residence 1 (SR1) zoning district. Directly to the east across Lake Avenue is the Public Use (PU)-zoned City-owned parkland associated with Crystal Lake.

UPDATE

The public hearing on this petition was opened August 22, 2023.

The petitioners indicated that they subsequently met with the immediate neighbors at 24 Saxon Terrace and offered to prepare additional renderings of the proposed addition. They also reached out to other neighbors on Saxon Terrace who, according to the petitioners, expressed some concerns with the impacts of ongoing construction. Toward that end, the petitioners offered to keep the neighbors apprised of the status of the construction on an ongoing basis. The petitioner should confirm this is accurate at the hearing and provide any further, relevant updates surrounding this petition.

No changes have been made to the plans.

Analysis and Recommendations

As stated in its original public hearing memorandum dated August 18, 2023, the Planning Department is generally not concerned with the proposed addition given the size of the parcel and that it would have limited, if any visibility from nearby public ways and/or residences. Much of the zoning relief reflects existing conditions, such as the nonconforming height, and distance to any existing dwellings on an abutting property. The addition complements and maintains the character of the existing accessory building and does not extend above the existing ridge line.

Should the Committee approve this petition, a draft council order has been provided within the attachment referenced below.

ATTACHMENT(S)

Attachment A Planning Department Public Hearing memorandum dated August 18, 2023 (includes Zoning Review Memorandum dated September 22, 2022, and DRAFT Council Order)



City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459
Telephone: 617-796-1120

Ruthanne Fuller
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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

DATE: August 18, 2023

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 #262-23** for SPECIAL PERMIT/SITE PLAN APPROVAL to renovate and expand the detached accessory building for use as an accessory apartment with dimensional waivers at **193 Lake Avenue**, Ward 6, Newton Highlands, on land known as Section 52 Block 17 Lot 05, containing approximately 26,818 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 6.7.1.E.7.B, 3.4.3.A.3, 3.4.3.A.4, 7.8.2.C.2, 3.1.3, 3.1.9 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 which may be useful in the special permit decision making process of the City Council. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the City Council will want to consider in its discussion at a subsequent Working Session.



193 Lake Avenue

Project Description

Background

The subject property at 193 Lake Avenue consists of a 26,818 square foot through lot with frontages on both Lake Avenue and Saxon Terrace. Located in a Single Residence 1 (SR1) zoning district the parcel is improved with a single-family dwelling constructed circa 1890 and a detached accessory building.

The Newton Historical Commission has determined the latter to be historically significant under Section 22-50 of the Newton City Ordinances. The petitioners propose to renovate and expand it with an addition as well as dormers to the half story and use it as a detached accessory apartment.

There is an approximately 30 foot downward grade change from the property's highest point at its western frontage at the end of the Saxon Street cul-de-sac to its lowest point along its eastern property line along its Lake Avenue frontage.

The subject property and the surrounding residential neighborhood are within a Single Residence 1 (SR1) zoning district. Directly to the east across Lake Avenue is the Public Use (PU)-zoned City-owned parkland associated with Crystal Lake.

Need for Special Permit

Per the Newton Zoning Ordinance (NZO) a special permit is not required for the use of an historic accessory building as an accessory apartment. Further, the habitable space size limits for accessory apartments established by the NZO do not apply to such structures (see Sec. 6.7.1.E.7 of the NZO). That said, the proposal does require dimensional zoning relief relative to the addition proposed to the accessory structure and location of existing dwelling.

Per Sec. 6.7.1.E.7.b of the NZO, a historically significant detached structure being utilized as an accessory apartment must be at least 15 feet from any existing dwellings on an abutting property. The northwestern wall of the detached accessory building is 0.5 feet from the lot line and shares a wall with an abutting attached garage at 24 Saxon Terrace (which, as noted in the attached zoning review, possibly encroaches onto the subject property). The proposed detached accessory apartment therefore requires a special permit to waive the separation distance of 15 feet required by Sec. 6.7.1.E.7.b.

The detached accessory structure's nonconforming 22.7 foot height slightly exceeds the 22 foot maximum allowed by Sec. 3.4.3.A.3. While the proposed alterations do not extend above the existing ridgeline, by altering the average grade the proposed garage addition would increase the structure's nonconforming height to 24 feet, requiring a special permit per Sec. 7.8.2.C.2.

Section 3.4.3.A.4 provides that the ground floor area of an accessory structure may not exceed 700 square feet. As the accessory structure has an existing nonconforming ground floor area of 1,146 square feet, and proposed addition would further increase the nonconforming ground

floor area to 1,623 square feet, a special permit per Sec. 7.8.2.C.2 is required.

The proposed garage addition and dormers would add approximately 728 square feet of floor area to the property, increasing its floor area ratio (FAR) from 0.34 to 0.37 where 0.35 is the maximum allowed per Secs. 3.2.3 and 3.2.11, requiring a special permit to further extend the conforming FAR.

Analysis and Recommendations

Planning is generally not concerned with the proposed addition given the size of the parcel and that it would have limited, if any visibility from nearby public ways and/or residences. Much of the zoning relief reflects existing conditions, such as the nonconforming height, and distance to any existing dwellings on an abutting property. The addition complements and maintains the character of the existing accessory building and does not extend above the existing ridge line.

I. ZONING RELIEF REQUESTED:

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 increase the nonconforming height of an accessory building	S.P. per §7.3.3
§3.4.3.A.4 §7.8.2.C.2	To further enlarge the nonconforming ground floor area of an accessory building	S.P. per §7.3.3
§3.1.3 §3.1.9	To exceed FAR	S.P. per §7.3.3

For more details regarding the zoning analysis please refer to **Attachment A**.

II. CRITERIA FOR CONSIDERATION PER §7.3.3. AND/OR §7.8.2.C.2:

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the proposed detached accessory apartment as designed with dimensional waivers relative to location and size of the structure, including an FAR of .37 where .35 is the maximum allowed as of right. (§7.3.3.1)
- The proposed detached accessory apartment as designed with dimensional waivers relative to location and size of the structure, including an FAR of .37 where .35 is the

maximum allowed as of right as developed and operated will not adversely affect the neighborhood. (§7.3.3.2)

- There will be no nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.4)
- The proposed expanded structure which exceeds the FAR is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood. (§3.1.9)
- The proposed expanded structure with an increased nonconforming 22.7 foot height and an increased nonconforming ground floor area of 1,623 square feet shall not be substantially more detrimental than the existing nonconforming use to the neighborhood (§7.8.2.C.2)

III. PROJECT PROPOSAL AND SITE CHARACTERISTICS:

A. Site - Existing Conditions

The subject property is a 26,818 square foot through lot with a single-family dwelling constructed circa 1890 and a historically significant detached accessory building. There is an approximately 30 foot downward grade change from the property's highest point at its western frontage at the end of the Saxon Street cul-de-sac to its lowest point on the Lake Avenue frontage along the eastern property line.

The site features extensive landscaping including trees, shrubs and decorative paved areas. Vehicular access is provided via a curb cut and driveway located at the end of the Saxon Terrace cul-de-sac.

IV. PROJECT DESCRIPTION AND ANALYSIS:

A. Land Use

Use of the site would remain as a single-family dwelling, but with the inclusion of a by right detached accessory apartment.

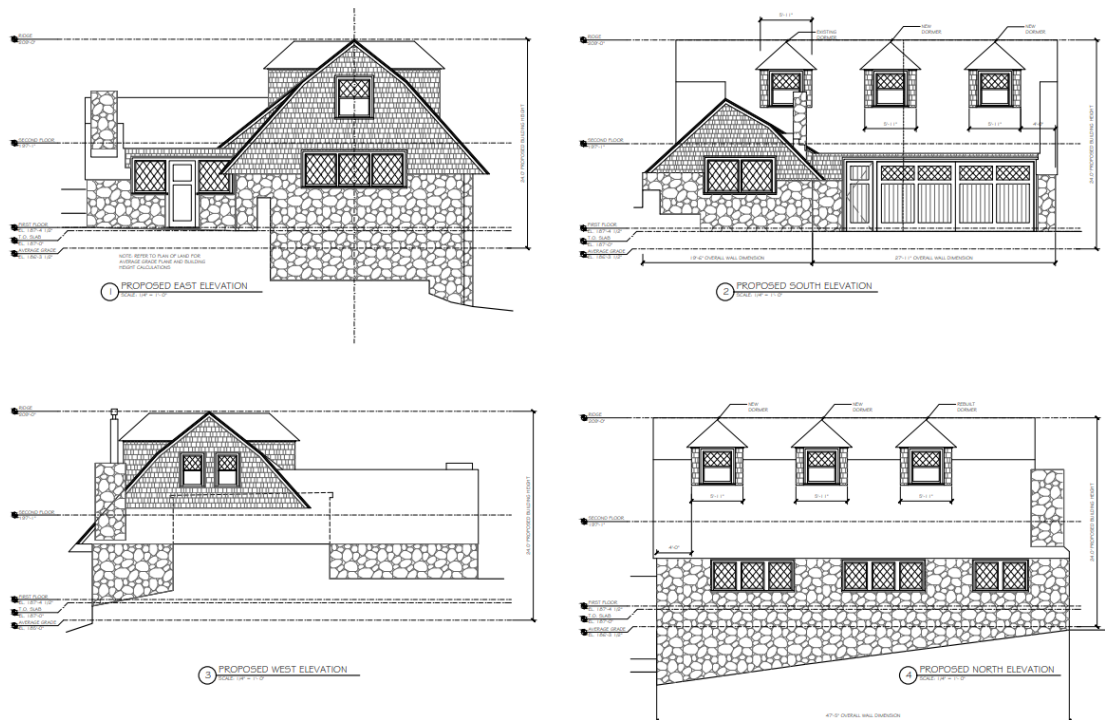
B. Site and Building Design

The petitioners propose to renovate and expand an existing historic accessory structure to the east with a 1 ½ story addition on its eastern façade.

The proposed modifications would, in the aggregate, increase the property's floor

area countable toward the calculated floor area ratio (FAR) by approx. 728 square feet, from 4,981 to 5,798 square feet. This would increase the FAR from 0.34 to 0.37 where 0.35 is the maximum allowed by right. Of the new floor area, 477 square feet would be on the ground floor and 251 square feet would be in the living space above.

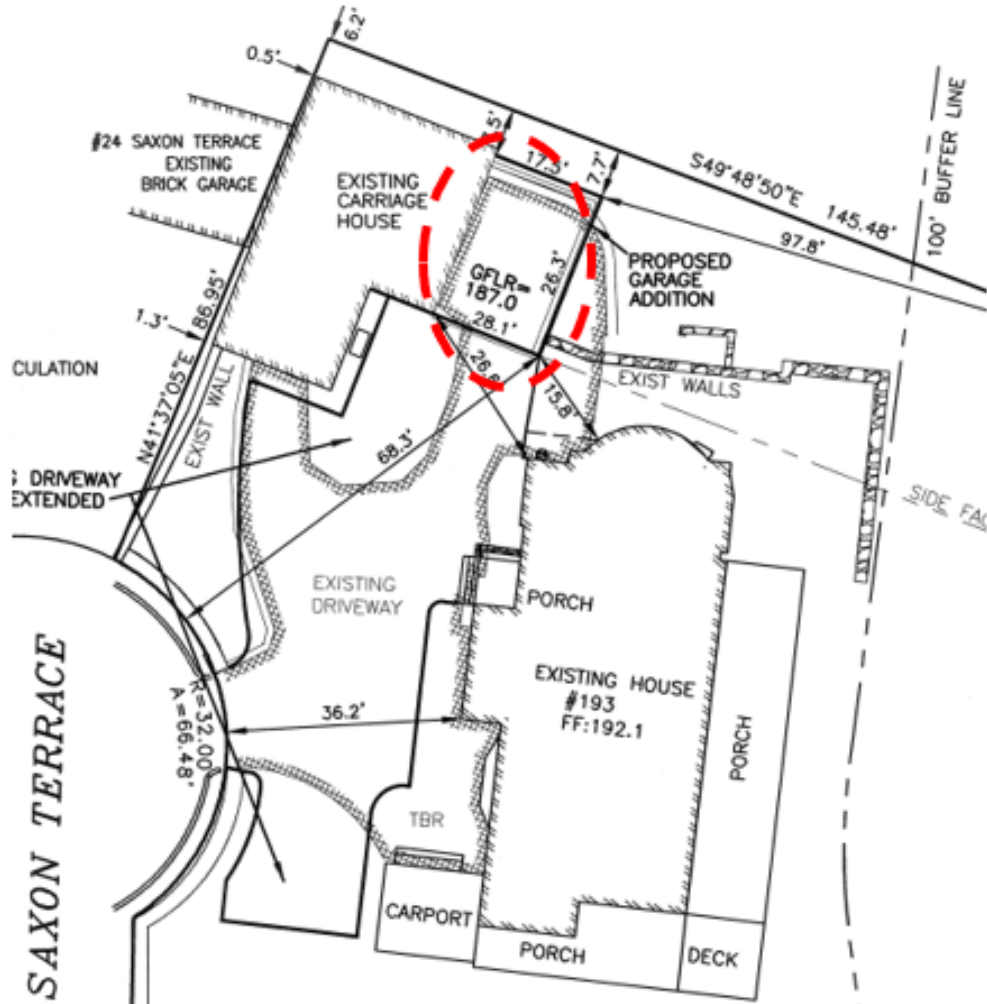
As designed, the expanded accessory structure would have 1,219 square feet of habitable space, with 671 square feet on the ground first floor and 548 square feet on the second. The ground floor of the addition would also house two parking spaces. Section 3.4.3.A.4 of the NZO limits the ground floor area of accessory structures to 700 feet. The structure currently has a nonconforming ground floor area of 1,146 square feet, and the proposed addition would further increase it by 477 square feet to 1,623 square feet (0.02% of the lot area).



Proposed elevations

The detached accessory structure's nonconforming 22.7 foot height slightly exceeds the 22 foot maximum allowed by Sec. 3.4.3.A.3. While the proposed alterations do not modify or extend above the existing ridgeline, by altering the average grade the proposed garage addition would increase the structure's measured height to 24 feet.

Regarding setbacks, there would be no changes to any of the principal dwelling's setbacks. At 7.7 inches the proposed addition to the accessory structure's east side would be set back slightly (0.2 inches) more than the existing 7.5 feet.



Proposed Site Plan (detail)- proposed addition *indicated*

C. Parking and Circulation

As discussed above, the proposed addition would create two ground floor garaged parking spaces. As the associated garage doors would be oriented to face the south, they would have limited, if any, visibility from nearby public ways and/or dwellings. Per the submitted proposed site plan, locating the garage entrance as such would require some additional paved driveway area to serve that location. The plan also indicates that while some additional paving would be installed at the southern end of

the existing driveway (near the existing carport), other paving at the base of the main dwelling would be removed.

D. Landscaping

A landscape plan was not provided with this petition.

V. INTERDEPARTMENTAL REVIEW:

- **Engineering Review:** Review of this petition by the Engineering Division is not required at this time.
- **Newton Historical Commission:** On September 28, 2022, the Newton Historic Commission found the carriage house to be historically significant and preferably preserved, but waived the demolition delay and approved the project based upon submitted material.

VI. PETITIONER'S RESPONSIBILITIES:

The petition is considered complete at this time.

ATTACHMENTS:

- Attachment A:** Zoning Review Memorandum
Attachment B: DRAFT Council Order



Ruthanne Fuller
Mayor

ATTACHMENT A

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: September 22, 2022

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Stephen J. Buchbinder, Attorney
Robert and Laura Kay Hughes, Applicants
Barney S. Heath, Director of Planning and Development
Jonah Temple, Deputy City Solicitor

RE: **Request to waive the separation requirement for an historic detached accessory apartment, to further extend nonconforming height and footprint and to exceed FAR**

Applicant: Robert and Laura Kay Hughes	
Site: 193 Lake Avenue	SBL: 52017 0005
Zoning: SR2	Lot Area: 26,818 square feet
Current use: Single-family dwelling with detached accessory apartment	Proposed use: No change

BACKGROUND:

The property at 193 Lake Avenue consists of a 26,818 square foot lot in the SR2 zoning district improved with a single-family dwelling constructed circa 1890 and a historic detached accessory building. The petitioners seek to renovate and expand the detached accessory building for use as an accessory apartment.

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

- Zoning Review Application, prepared by Stephen J. Buchbinder, attorney, submitted 8/18/2022
- As-Built plan, signed and stamped by Bruce Bradford, surveyor, dated 10/18/2021, revised 1/21/2022, 1/25/2022
- Proposed Additions plan, signed and stamped by Bruce Bradford, surveyor, dated 3/28/2022, revised 4/13/2022
- FAR worksheet, submitted 9/14/2022

ADMINISTRATIVE DETERMINATIONS:

1. The property is improved with a single-family dwelling and a detached accessory building which the petitioner proposes to convert 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 northwestern wall of the detached accessory building is 0.5 feet from the lot line and shares a wall with the abutting attached garage at 24 Saxon Terrace which encroaches onto the property. The proposed detached accessory apartment requires a special permit to waive the separation distance of 15 feet required by section 6.7.1.E.7.b.
3. The detached accessory structure is nonconforming with 22.7 feet in height where 22 feet is the maximum height allowed per section 3.4.3.A.3. The proposed garage addition alters the average grade increasing the nonconforming height of the structure to 24 feet, requiring a special permit per section 7.8.2.C.2. The proposed alterations do not extend above the existing ridgeline and the height increase is solely due to changes in the average grade.
4. Per section 3.4.3.A.4 the ground floor area of an accessory structure may not exceed 700 square feet. The accessory structure has an existing nonconforming ground floor area of 1,146 square feet. The proposed garage addition further increases the nonconforming ground floor area to 1,623 square feet, requiring a special permit per section 7.8.2.C.2.
5. The petitioners propose to construct a garage addition to the detached accessory structure as well as dormers to the half story. The proposed addition adds 728 square feet of FAR, increasing the FAR from .34 to .37 where .35 is the maximum allowed per sections 3.2.3 and 3.2.11. A special permit is required to further extend the nonconforming FAR.

The petitioners were issued a building permit in 2019 for work to the principal structure which included additions and alterations that increased the FAR. The work met the new lot setbacks and the petitioners took advantage of the FAR bonus to avoid a special permit. Once the bonus is applied, any subsequent additions or alterations must meet new lot setback requirements. The following table reflects this change to the property's setback requirements. All other dimensional requirements remain those prescribed to a pre-1953 lot.

SR2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	26,818 square feet	No change
Frontage	80 feet	152 feet	No change
Setbacks - Principal <ul style="list-style-type: none"> • Front (Lake Ave) • Front (Saxon Terrace) • Side • Side Setbacks – Accessory <ul style="list-style-type: none"> • Front (Lake Ave) • Front (Saxon Terrace) • Side • Rear 	30 feet 30 feet 15 feet 15 feet 30 feet 30 feet 5 feet 5 feet	>100 feet 36.2 feet >35 feet >60 feet > 30 feet >100 feet 0.5 feet 6.2 feet	No change No change No change 43.3 feet No change No change No change No change
Stories – <ul style="list-style-type: none"> • Principal • Accessory 	2.5 1.5	2.5 1.5	No change No change
Height – <ul style="list-style-type: none"> • Principal • Accessory 	36 feet 22 feet	39.2 feet 22.7 feet	No change 24 feet*
FAR	.35	.34	.37*
Max Lot Coverage	30%	18%	19.7%
Min. Open Space	50%	70%	69%

Figures in **BOLD** are nonconforming

*Requires relief

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 increase the nonconforming height of an accessory building	S.P. per §7.3.3
§3.4.3.A.4 §7.8.2.C.2	To further enlarge the nonconforming ground floor area of an accessory building	S.P. per §7.3.3
§3.1.3 §3.1.9	To exceed 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 reduced separation distance between a detached accessory apartment and the abutting dwelling; to further increase the nonconforming height of an accessory building; further enlarge the nonconforming ground floor area of an accessory building; and to exceed the maximum floor area ratio (FAR) allowed by right, 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 detached accessory apartment as designed with dimensional waivers relative to location and size of the structure, including an FAR of .37 where .35 is the maximum allowed as of right, as given the topography and size of the parcel, it will have limited, if any visibility from nearby public ways and/or residences. (§7.3.3.1)
2. The proposed detached accessory apartment, as designed with dimensional waivers relative to location and size of the structure, including an FAR of .37 where .35 is the maximum allowed as of right, as developed and operated will not adversely affect the neighborhood given much of the granted zoning relief reflects the existing historic structure, that the size of the parcel, and the addition will have limited, if any, visibility from nearby public ways and/or residences. (§7.3.3.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.4)
5. The proposed expanded structure with an FAR of .37 where .35 is the maximum allowed as of right is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood. (§3.1.9)
6. The proposed expanded structure with an increased nonconforming 22.7 foot height and an increased nonconforming ground floor area of 1,623 square feet shall not be substantially more detrimental than the existing nonconforming use to the neighborhood as, given the topography and size of the parcel, it will have limited if any visibility from nearby public ways and/or residences. (§7.8.2.C.2)

PETITION NUMBER: #262-23

PETITIONER: Robert and Laura Kay Hughes

LOCATION: 193 Lake Avenue, Ward 6, Newton Highlands, on land known as Section 52 Block 17 Lot 05, containing approximately 26,818 sq. ft. of land

OWNER: Robert and Laura Kay Hughes

ADDRESS OF OWNER: 193 Lake Avenue,
Newton, MA

TO BE USED FOR: Single-family dwelling

RELIEF GRANTED: Special permit per §7.3.3 to allow a reduced separation distance between an detached accessory apartment and the abutting dwelling (§6.7.1.E.7.b); to further increase the nonconforming height of an accessory building (§3.4.3.A.3, §7.8.2..2); further enlarge the nonconforming ground floor area of an accessory building (§3.4.3.A.4, §7.8.2.C.2); and to exceed the maximum floor area ratio (FAR) allowed by right (§3.1.3, §3.1.9)

ZONING: Single Residence 1 (SR1)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 the following plans:
 - a. A site plan entitled "Plan of Land in Newton, MA, 193 Lake Avenue, Proposed Additions," prepared by Everett M. Brooks, dated March 28, 2022, as revised through April 13, 2022, signed and stamped by Bruce Bradford, Professional Land Surveyor on April 13, 2022.
 - b. A set of architectural plans entitled "Proposed Renovations to the Hughes Residence, 193 Lake Avenue, Newton, MA," prepared by SV Design, dated June 17, 2022, consisting of the following sheets:
 - i. Carriage House- First Floor Plan (CH1.1)
 - ii. Carriage House- Second Floor Plan (CH1.2)

iii. Carriage House- Proposed Elevations (CH2.1)

2. No building permit (other than a demolition permit) and unless otherwise specified shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:
 - a. Recorded a certified copy of this Special Permit/Site Plan Approval at the Middlesex South Registry of Deeds and filed proof of such recording with the City Clerk and submitted a copy with the building permit application.
 - b. Obtained a written statement/sign off from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1 including all dimensional requirements.
3. No certificate of occupancy (temporary or final) shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the petitioner has:
 - a. Filed with the building permit record statements by a registered architect, professional land surveyor, or professional engineer, certifying compliance with Condition #1, including the as built FAR.
 - b. Submitted final as-built survey plans in digital format, stamped and signed by a professional land surveyor or professional engineer, as applicable.