



Petition: #10-24  
Public Hearing:  
2/27/24

Ruthanne Fuller  
Mayor

City of Newton, Massachusetts  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

Barney S. Heath  
Director

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## PUBLIC HEARING/WORKING SESSION MEMORANDUM

**DATE:** February 22, 2024  
**MEETING DATE:** February 27, 2024  
**TO:** Land Use Committee of the City Council  
**FROM:** Barney S. Heath, Director of Planning and Development  
Katie Whewell, Chief Planner for Current Planning  
Cat Kemmett, 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.

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### **PETITION #10-24**

**199 Church Street**

**Petition #10-24 for SPECIAL PERMIT/SITE PLAN APPROVAL** to allow three single-family attached dwellings in two buildings, to waive certain dimensional requirements and one parking stall at 199 Church Street

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The Land Use Committee (the "Committee") held a public hearing on January 9, 2024 on this petition. This memo reflects additional information addressed to the Planning Department as of February 22, 2024.

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### **BACKGROUND**

The subject property consists of a 10,688 square foot lot improved with a two-family dwelling with a detached accessory unit in the Multi-residence 1 district built circa 1825.

The petitioner proposes to convert the existing accessory apartment at the rear of the lot into a separate dwelling and construct a new parking stall. This will result in three single-family attached dwellings in two separate structures. Though no changes are proposed to either structure, the project needs relief for several existing nonconformities in converting to a new use. That relief includes

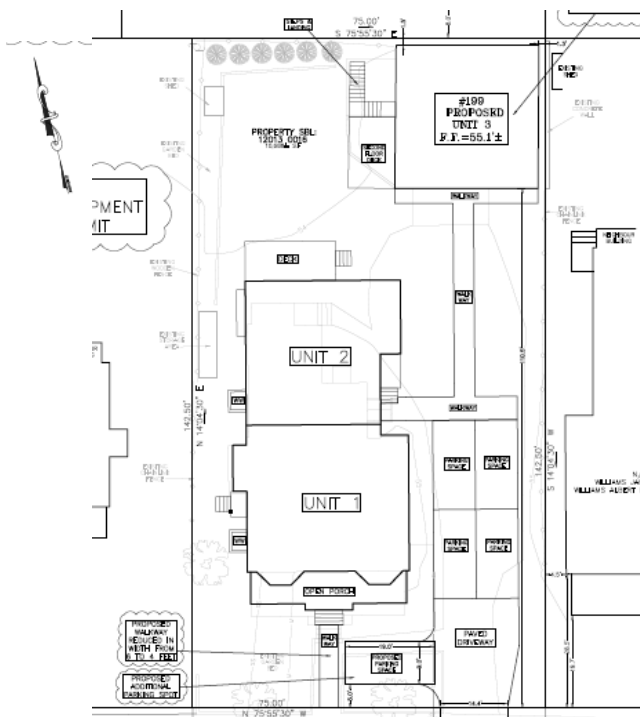
nonconforming front and side setbacks on the front building, and nonconforming side and rear setbacks on the rear building. Special permit relief is also required to waive the minimum lot area per unit, to exceed allowed lot coverage, to waive one parking stall, and to allow a driveway within 10 feet of the side lot line and parking within 20 feet of the side lot line.

Plans can be found at <https://newtonma.viewpointcloud.com/records/810672>

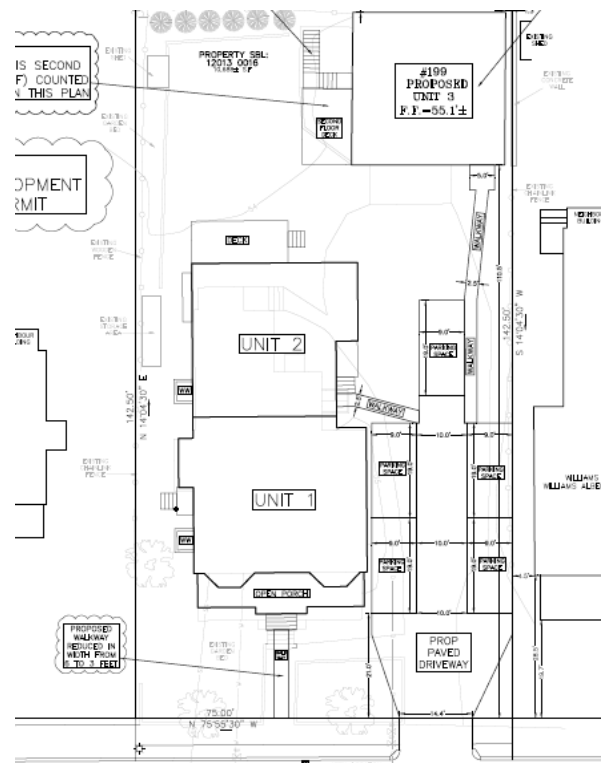
### UPDATE

The first public hearing on this petition was opened January 9, 2024. The item was held for the petitioner to respond to concerns from the Committee. In response to suggestions raised at the public hearing, the petitioner uploaded a revised version of the proposed site plan on January 31, 2024. This revised plan relocates the new parking stall from the original location within the front setback to further to the rear of the site, at the far end of the driveway past the four existing parking stalls on the site. The walkway proposed in front of the building closest to the street has been reduced in width from four feet to three feet.

January 2024 Plan



Revised Plan



No additional relief is needed for the relocated parking stall, as the proposed lot coverage will be 30%, the same as what was proposed in January 2024, which needs relief as only up to 25% is allowed by right. The existing paved driveway is 1,079.5 square feet, and this proposed driveway and associated parking will be 1,757.5 square feet. The total impervious area on the site will increase from 4,967.6 square feet to 5,360.1 square feet, representing an increase of 392.5 square feet.

The Planning Department Memorandum provided as Attachment A from January 5, 2024 provides a background of the site and analysis of the previous site plan proposed for the project. A revised draft Council Order reflecting the new site plan is included as Attachment B.

**ATTACHMENTS**

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|--------------|---|
| Attachment A | Planning Department Public Hearing memorandum dated January 5, 2024 |
| Attachment B | Draft Council Order   |



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

Petition: #10-24  
Public Hearing:  
01/09/24

Ruthanne Fuller  
Mayor

Barney S. Heath  
Director

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**PUBLIC HEARING MEMORANDUM**

**DATE:** January 5, 2024

**TO:** City Council

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

**SUBJECT:** **Petition #10-24**, for SPECIAL PERMIT/SITE PLAN APPROVAL to allow three single-family attached dwellings in two buildings, to waive certain dimensional requirements and one parking stall at 199 Church Street

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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 for consideration at a subsequent working session by the Land Use Committee of the City Council.



**199 Church Street**

## **Project Description**

**Current Use:** Two-family dwelling built with detached accessory unit

**Zoning:** Multi-residence 1 (MR-1)

**Lot size:** 10,688 square feet

**Existing Nonconformities:**

- Lot size of 10,688 square feet where 15,000 square feet is required
- Frontage of 75 feet where 80 feet is required
- Front building setback of 19.5 feet where 25 feet is required
- Front building side setback (west) of 8.6 feet where 25 feet is required
- Rear building side setback of 1.6 feet where 25 feet is required
- Rear building rear setback of 1.3 feet where 25 feet is required
- Lot coverage of 28.8% where up to 25% is allowed

## **Background**

The subject property consists of a 10,688 square foot lot improved with a two-family dwelling built circa 1825 and a detached carriage house. Special permit #374-22, approved by City Council in 2022, included relief to increase nonconforming FAR on the site and dimensional relief which allowed the historic carriage house on the property to be used as an accessory apartment.

The site is located on Church Street to the east of where it intersects with Maple Avenue in a predominantly residential area, with several commercial uses to the north, and a municipal building (Fire Station 1) and a church to the east. The subject parcel and several abutting parcels are zoned Multi-Residence 1, with some Multi Residence 2 (MR-2) parcels to the north and east.

## **Special Permit**

The petitioner proposes to convert the existing accessory apartment at the rear of the lot into a separate dwelling and construct a new parking stall. This will result in three single-family attached dwellings in two separate structures. With the exception of the new parking stall and change in use, the relief required applies to the existing buildings on the site and no new structures or major renovations are proposed.

Relief is required to allow the proposed use, which is three attached dwellings in two separate buildings in the MR-1 district. Though no changes are proposed to either structure, the project needs relief for several existing nonconformities for this new use including the nonconforming front and side setback of the front building, and the nonconforming side and rear setbacks of the rear building. Special permit relief is also required to waive the minimum lot area per unit,

exceed allowed lot coverage, waive one parking stall, and to allow a driveway within 10 feet of the side lot line and parking within 20 feet of the side lot line.

### Analysis

The Planning Department is not concerned with the proposed change in use. Though the petition does need several elements of dimensional relief for the use change since different standards apply to accessory units and single-family attached dwellings, the massing and location of the structures will remain the same. The detached accessory building that is proposed as a new dwelling is in the rear and partially screened from view. The closest abutting structure to the new dwelling is a single-family home on Richardson Street which faces away from the carriage house.

Though supportive of the change in use, the Planning Department notes that the proposed construction of a fifth parking stall on the site will further increase the already high amount of impervious paving on the site and is wholly located within the front setback. Staff recommend the applicant consider relocating this stall further from the street or utilizing pervious pavers to facilitate drainage on the site.

#### I. Zoning Relief Requested:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>	<i>Requested Relief</i>	<i>Action Required</i>
§3.4.1	To allow attached single-family dwellings	S.P. per §7.3.3
§3.2.4	To reduce the required lot area per unit	S.P. per §7.3.3
§3.4.2	To reduce minimum front setback	S.P. per §7.3.3
§3.4.2	To reduce minimum side setback	S.P. per §7.3.3
§3.4.2	To reduce minimum rear setback	S.P. per §7.3.3
§3.4.2	To exceed lot coverage	S.P. per §7.3.3
§5.1.4 §5.1.13	To waive one parking stalls	S.P. per §7.3.3
§5.1.7.A §5.1.13	To allow parking stalls within the front and side setbacks	S.P. per §7.3.3
§6.2.3.B.2	To allow a driveway within 10 feet of the side lot line and parking within 20 feet of the side lot line	S.P. per §7.3.3

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

#### II. Criteria for Consideration per §7.3.3. and/or §7.8.2.C.2:

- The site and structures as proposed are an appropriate location for the proposed three single family attached dwellings (7.3.3.C.1)

- The proposed three single-family attached dwellings will not adversely affect the neighborhood (§7.3.3.C.2)
- The proposed three single-family attached dwellings will not 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)
- Literal compliance with the required amount of parking is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features (§5.1.13)

### III. Project Proposal and Site Characteristics

#### A. 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 used as an accessory apartment. Vehicular access is provided via a paved driveway that runs along the length of the east (right) property line. The lot is generally level. The remaining portions of the site include lawn with some mature trees and shrubs.

### IV. Project Description and Analysis

#### A. Land Use

If approved the principal use of the site will change from a two-family dwelling with detached accessory apartment to three single-family attached dwellings in two separate buildings.

#### B. Site and Building Design

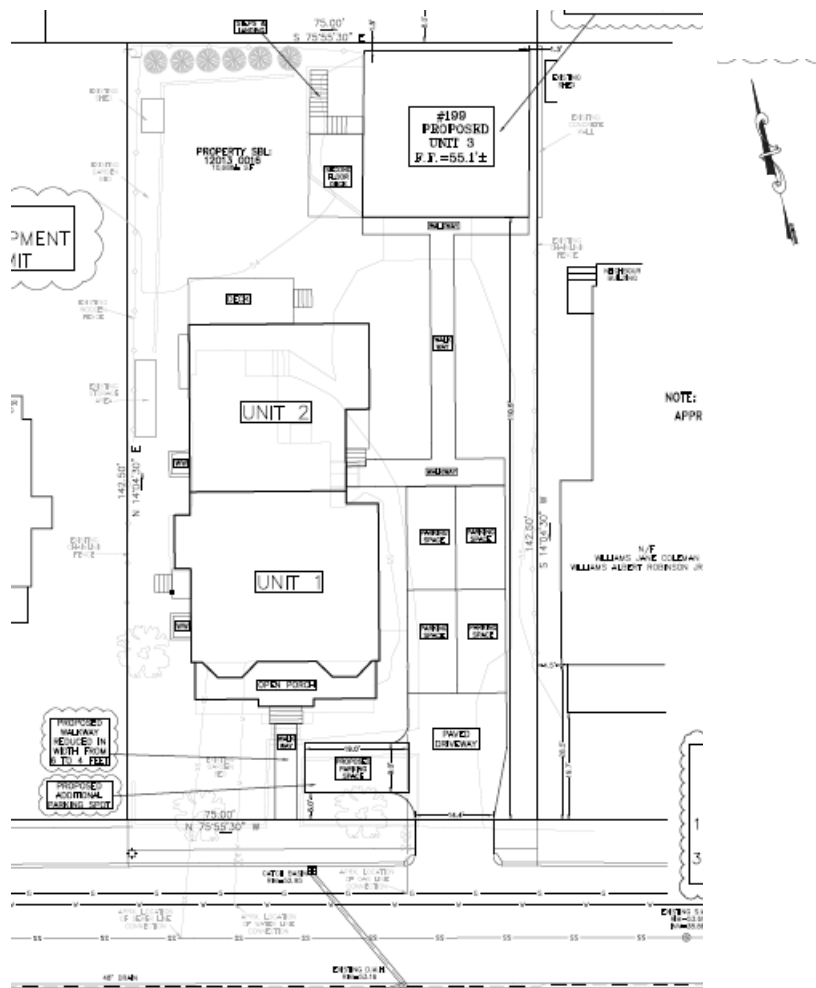
The petitioner proposes to convert the accessory apartment in the rear building into a separate single-family dwelling. This will result in three single-family attached dwellings in two separate structures. The changes proposed for the units are all internal within the existing envelope of each building, and no square footage will be added.

Single-family attached dwellings may either contain three or more dwelling units attached to one another at the ground level and each having separate ground level access or may be a grouping of principal buildings containing more than two units in total, as is the case here. Therefore, to allow the configuration of units proposed a

special permit is required.

The changes proposed on the site are limited to the construction of one parking stall in the front setback, and a paved walkway from the street to the front entrance of the front building.

Proposed Conditions



Though no changes are proposed to the envelope of the structures, dimensional relief is required for several existing nonconformities on the lot. The front structure has a nonconforming front setback of 19.5 feet and nonconforming side setback of 8.6 feet where 25 feet is required. The rear building has a nonconforming side setback of 1.6 feet and rear setback of 1.3 feet where 25 feet is required. Because the setbacks that apply to detached accessory apartments are not identical to the setbacks that apply to single-family attached dwellings, the existing conforming side setback of 11.7 feet



requires relief.

Three units are proposed on the 10,668 square foot lot, resulting in a lot area per unit of 3,556 square feet where 5,334 square feet currently exists and 4,000 square feet is required, which requires relief. The lot coverage proposed is 28.8% where a maximum of 25% is allowed by right, thus requiring relief.

C. Parking and Circulation

The existing curb cut on Church Street and paved driveway on the site will be maintained and continue to provide access to the two buildings. The four surface parking stalls between the two dwellings will be retained, and a fifth stall will be constructed in front of the main building. Because six parking stalls are required for the three units proposed, a waiver of one parking stall is needed.

No parking stall may be located within front and side setbacks in parking facilities containing up to five stalls (unless associated with a single- or two-family dwelling). The petitioner proposes one parking stall within the front setback and four stalls within the side setback, requiring a special permit. For single-family attached dwellings in the MR-1 zoning district, no parking space may be located within 20 feet of a lot line and no driveway may be located within 10 feet of a side or rear lot line, unless by special permit. The existing driveway and parking are both within 5 feet of the eastern side lot line, requiring a special permit.

The new stall will be 19 by 9 feet in size, parallel to the front façade of the building. This stall requires relief as it is located entirely within the front setback from Church Street. Because it will be so close to the street, staff recommend the applicant consider relocating this stall further back or utilizing pervious pavers to facilitate drainage on the site.

V. Interdepartmental Review:

No interdepartmental review is required at this time.

VI. PETITIONER'S RESPONSIBILITIES

The petition is considered complete.

**ATTACHMENTS:**

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

CITY OF NEWTONIN 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 the conversion of a detached accessory apartment into a separate dwelling, resulting in three single-family attached dwellings in two separate structures that require relief to allow single-family attached dwellings, for a reduced lot area per unit, reductions in the minimum required front, side, and rear setbacks, to exceed lot coverage, a waiver of one parking stall, to allow parking within the front and side setbacks, and to allow a driveway within 10 feet of the side lot line and parking within 20 feet of the side lot line, for the use as recommended by the Land Use Committee for the reasons given by the Committee, through its Chair, Councilor Andrea Kelley:

1. The specific site in the Multi Residence 1 (MR-1) district is an appropriate location for three single family attached dwellings in two separate buildings with reduced lot area per unit, reduced front setback, reduced side setback, reduced rear setback, with one parking stall waived, parking stalls within the front and side setbacks, and with a driveway within 10 feet of the side lot line and parking within 20 feet of the side lot line because there is a diverse mix of residential building sizes and configurations in the area. Much of the relief required reflects existing conditions and is triggered by the conversion to a different building type. (§7.3.3.C.1)
2. The project as proposed will not adversely affect the neighborhood because the total number of units on the site will remain the same and no additional square footage will be added to the existing structures. (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians because the existing curb cut and driveway location will be maintained. (§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. Literal compliance with the required amount of parking is not in the public interest because additional paving would result in an increase in the nonconforming lot coverage and add additional unnecessary paved area. (§5. 1.13)

PETITION NUMBER: #10-24

PETITIONER: 199 Church Street LLC

LOCATION: 199 Church Street, Ward 1, Newton, on land known as Section 12 Block 13 Lot 16, containing approximately 10,688 sq. ft. of land

OWNER: 199 Church Street LLC

ADDRESS OF OWNER: 28 Brooks St. Apt 1  
Brighton, MA 02135

TO BE USED FOR: Three single-family attached dwellings

RELIEF GRANTED: Special Permit relief to allow three single-family attached dwellings in two buildings, to reduce the required lot area per unit, to reduce minimum front setback, to reduce minimum side setback, to reduce minimum rear setback, to exceed lot coverage, to waive one parking stall, to allow parking stalls within the front and side setbacks, and to allow a driveway within 10 feet of the side lot line and parking within 20 feet of the side lot line (§7.3.3, 3.4.1, 3.2.4, 3.4.2, 5.1.4, 5.1.13, 5.1.7.A, 6.2.3.B.2)

ZONING: Multi-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. Plot plan prepared by Spruhan Engineering, signed and stamped by Christopher C. Charlton, Professional Land Surveyor, and Edmond T. Spruhan, Professional Engineer, dated November 16, 2023 and revised January 24, 2024.
  - b. A set of architectural drawings, signed and stamped by Mark Sangiolo, Registered Architect, dated 10/17/2021, and revised 1/19/2023 and 1/23/2023.
    - i. "North elevation" (Sheet A10)
    - ii. "West elevation" (Sheet A9)
    - iii. "East elevation" (Sheet A8)
    - iv. "South elevation" (Sheet A7)

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 for the portion of the project for which occupancy is requested and the Petitioner has:
  - a. Filed with the building permit record statements by a registered architect (or professional engineer) and a professional land surveyor (or professional engineer) certifying compliance with Condition #1.
  - b. Submitted final as-built survey plans in digital format, stamped and signed by a professional land surveyor or professional engineer, as applicable.