

From the Law Office of Terrence P. Morris, Esq.

Memorandum

To: FILE
From: Terrence P. Morris, Esquire
Cc: Client
Date: January 18, 2020
Re: 70 Walker Street

Concerned neighbors have consistently advanced several arguments with respect to this project. Chief among these is the argument that approval of the project will set an unfavorable precedent for future special permit applications in the neighborhood. The fact of the matter is that the subject lot with 21,962 sq. ft. is the largest lot in the greater neighborhood comprised of Walker Street, Roberts Avenue and Brooks Avenue. As such it is truly unique. The ability to use it as a precedent is belied by the actual physical makeup of the neighborhood and threshold zoning requirements for special permits

Built-out Neighborhood: Precedent?

This is especially true of the more immediate neighborhood block comprised of Walker Street from Washington Street north to Proctor Street (the "Walker Street Block"). Apart from the subject property there are 18 house lots in this block on Walker Street with an additional 3 smaller lots on Roberts Avenue. These 21 properties contain 37 dwelling units of which only 8 units are single-family dwellings. The remaining 29 units are situated in 10 two-family dwellings (20) and 3 three-family dwellings (9). Of the 8 single family house lots, only 2 contain more than 6,000 sq. ft.

The minimum lot size for attached dwellings by special permit in a Multi-residence 1 (MR1) zoning district is 15,000 sq. ft. However there are no other lots in the MR1 zone on either Walker Street or Brooks Avenue which meet this threshold requirement. Additionally, of all the lots, only 2 exceed 15,000 sf, one on the southerly end of each Street. However both of those are part of the Multi-residence 3 (MR3) district that defines the more dense development perimeter along Washington Street. As a result, future development either by special permit or by right is severely restricted by the existing build-out of the neighborhood.

It has also been suggested that granting the relief requested in the special permit would run counter to the stated purpose of zoning redesign and the Washington Street Vision of preserving and enhancing the existing character of Newton's neighborhoods. To the extent that the character of the neighborhood is defined by its density, the principal zoning criteria for evaluating and regulating density is lot area per dwelling unit (sf/du). The average lot area per unit for the 18 properties on Walker Street within the Block is 5,049 sf/du. If one includes the 3 Roberts Avenue properties the average drops to 5,020 sf/du. The proposed sf/du for the subject project is 5,490, which compares favorably with the existing ratio of the immediate neighborhood. (See Exhibit A).

Zoning: Evolutionary Context

When first introduced into the zoning code in the 1960s attached dwellings were considered the equivalent of row houses. Indeed the development template required them to be built in rows of, not less than 4 nor more than, 8 such units. There was also a floor area ratio (FAR) limit of .75. It was under this model that the uniform 25-foot setbacks were instituted as a means of compensating for the linear building form and expansive FAR. There was no mechanism for dimensional waivers. (See Exhibit B). Originally limited to multi-residence districts, attached dwellings are now allowed in all Single Residence districts (SR1-SR3) by special permit. By definition attached

dwelling is considered a sub-set of single-family use¹, which is the reason they may be permitted in single-family districts.

Over time the building paradigm evolved in stages to the point where 2-unit building blocks had become the desired norm. These facts belie the notion that they are inherently incompatible with two-family dwellings in multi-residence districts. To the contrary, projects based upon the use of 2-unit templates are entirely consistent with the spatial relationship of land to buildings found in Multi-residence 1 (MR1) districts, where two-family homes are predominant. Dimensional waivers were introduced in recognition of the fact that the change in building template resulted in moving the buildings closer to the perimeter of the lot. It also promoted flexibility in site planning, which had become a more widely used tool in reviewing and approving special permits.

Relief Requested

While classification of uses has always been a central element of zoning, one of the other major underpinnings is the relationship of land to buildings. This relationship is regulated by a series of dimensional controls including lot size, frontage, lot coverage, open-space, building height, setbacks, floor area ratio, and lot area per dwelling unit. With regard to lot size, frontage, lot coverage, open-space and lot area per dwelling unit, the project meets or exceeds the required standards.

The height relief (2.8') for the addition to the historic house is driven by the existing height of the circa 1865 dwelling and the desire for visual continuity. Even so, the roof wall of the addition has been stepped back seven (7) feet from the face of the existing house to mitigate this relief in direct response to the nearest abutter's concern.

The side yard setback relief requested is governed by different factors for each of the buildings. With respect to the old house/addition (Units #1 and #2), as a two-family house on an old ("pre-1953") lot, the existing building was subject to a minimum side yard setback of 7.5 feet². As initially proposed the new addition was located 11' from the southerly side lot line and 25' from the northerly side lot line. In response to requests to reduce the size of the building and increase the southerly setback, both setbacks were balanced out at 20' and 20.5' respectively. The rationale for granting this 4.5'-5' waiver is sustained by: (1) the fact that the 2-unit attached dwelling template approximates that of a two-family dwelling; (2) the proposed setbacks are more than double the requirement for a two-family dwelling; and (3) the flexibility demonstrated herein is precisely that which was envisioned when the waiver provision was adopted.

With respect to the new house (Units #3 and #4), its location on the lot was initially governed by the existence of the accessory barn in that same location, i.e., 11+/- feet from the northerly lot line. During the historic review process the siting of unit #3 on the approximate footprint of the former barn was of sufficient importance that the Commission requested "through" views of the proposed building from the sidewalk. In the minutes of the Historical Commission meeting on May 8, 2019, the Commission members commented "*that the reduced scale of the additions acknowledged the aesthetic of the historic house and barn.*" Subsequent to the Commission meeting and most recently the scale of both buildings has been further reduced. In the reduction of the building footprint the setback was increased to 14+/- feet on the north, leaving a compliant setback of 39 feet on the south. There was a suggestion by the planning staff that both setbacks be equalized and made compliant (25'+ each) by centering the building. After two neighborhood meetings this idea was abandoned in part because the abutter at #74 Walker Street feared being hemmed in on 2 sides by the buildings (despite the existence of a 28'+ setback for his rear lot line).

Historic Preservation Projects

Historic preservation projects are those which have sought to preserve historic buildings on large lots from demolition by utilizing the special permit process and attached dwelling paradigm. The most common prototype has been a 4-unit project containing two 2-unit buildings on lots in excess of 20,000 sq. ft. Since the lot area per unit requirement for a two-family dwelling on a new lot is 5,000 sq. ft., there is inherent evidence of compatibility in two-family neighborhoods.

¹ See NZO Section 8.3. Defined Terms "Attached, Single Family"

² New lots created post-1953 have a 10' side setback.

In terms of size, the original home, having been built as a single-family, is the largest of the units for preservation purposes. This factor is taken into account when one considers the overall volume of the project. Removal of nondescript rear elements of the existing building allows for the addition of a 2nd smaller unit matching the architectural style. Often the second building which is smaller will replace an existing accessory building by mimicking a carriage house design. This model has been favorably used for more than 20 years.

With regard to floor area ratio there has been no established standard for attached dwellings since the .75 maximum was eliminated in favor of a case-by-case evaluation. The subject lot is 38 sq. ft. short of having the necessary minimum lot area (22,000 sq. ft.) for treatment as a rear lot subdivision. For the purpose of establishing context, if this development were considered a 2-lot rear lot subdivision each with a two-family dwelling, the FAR would be .48.

Under this scenario, the proposed FAR which is .51 (after having been reduced by 15% from the initial proposal) would exceed the allowable limit by .03. By contrast/comparison, over the past 3 months the Land use Committee has unanimously approved eight (8) special permit applications for an increase in FAR over the allowable limit. Five of the 8 involved an extension of a nonconforming FAR. In all but two the approved increases exceeded .50. The average margin of increase over allowable limit was .14 (See Exhibit C).

Conclusion

By any objective measure or standard, the proposed project is appropriate for the subject site and the neighborhood as a whole.

EXHIBIT A

Walker Street
Neighborhood Comparables

No.	Street	Lot Size* (sq.ft.)	Units*	Lot Area per unit	
43	Walker St (W)	10602	2	5301	Walker West: 9 Properties
49	Walker St (W)	10602	1	10602	1F = 1
55-57	Walker St (W)	11060	2	5530	2F = 7
61	Walker St (W)	9743	2	4872	3F = 1
65	Walker St (W)	9375	2	4688	
69-71	Walker St (W)	9375	2	4688	
75	Walker St (W)	14420	3	4807	
83	Walker St (W) **	10560	2	5280	
89-91	Walker St (W) **	10302	2	5151	
38-40	Walker St (E)	6778	2	3389	Walker East: 9 Properties
44-46	Walker St (E)	6800	2	3400	1F = 4
52-54	Walker St (E)	6050	2	3025	2F = 3
56	Walker St (E)	4912	1	4912	3F = 2
66	Walker St (E)	4566	1	4566	
70	Walker St (E)				5490 SF/DU
74	Walker St (E)	6000	1	6000	
78	Walker St (E)	10963	3	3654	
84	Walker St (E) **	18992	3	6331	
92	Walker St (E) **	10580	1	10580	
Walker St Averages		171680	34	96774	5049 SF/DU
9	Roberts Ave	3856	1	3856	
10	Roberts Ave	5105	1	5105	
15	Roberts Ave	5081	1	5081	
Roberts Ave Average		14042	3		4681 SF/DU
Walker & Roberts Averages		185722	37		5020 SF/DU

** ZONED MR3

- (10) Private garage with provision for more than three (3) automobiles.
 - (11) Chapel situated on the grounds of and operated in connection with a cemetery.
 - (12) Radio or television transmission station.
 - (13) Nonprofit institutions or organizations organized and operated for welfare and philanthropic purposes and serving the general public of the city.
 - (14) Such accessory purposes as are proper and usual with the preceding uses and are not injurious to a residential neighborhood.
- (e) In private residence, residence D and residence E districts, the board of aldermen may give permission, in accordance with the procedures in sections 24-24 and 24-29 for the construction of attached dwellings subject to the following conditions:

- (1) Each attached dwelling shall be occupied by not more than one family.
- (2) No row of attached dwellings shall consist of less than four (4) nor more than eight (8) such units.
- (3) Each attached dwelling shall be a minimum of twenty (20) feet wide, measured between party walls.
- (4) There shall be provided for each attached dwelling, in the aggregate, a minimum of thirty-five hundred (3,500) square feet of land area, and there shall be provided for each attached dwelling, in the aggregate, a minimum of twenty-five (25) feet of lot width. The word "lot" as used herein shall have the same meaning as the word "lot" in section 24-13, and lot width shall be measured in accordance with said section.
- (5) The ratio of the gross floor area of all buildings in a single development to the total land area of the single development shall not exceed 0.75.
- (6) Not less than thirty (30) per cent of the land area in the single development shall be free from structures,

streets, parking area, drives, walkways or other constructed approaches or service areas and shall be attractively landscaped and maintained.

- (7) The minimum setback line applicable to attached dwellings shall be twenty-five (25) feet.
 - (8) A twenty (20) foot side yard shall be required at the side lot line at the end of each row of attached dwellings, and no building shall be closer to any other building in the single development than twenty-five (25) feet.
 - (9) No attached dwelling shall be constructed nearer than twenty-five (25) feet to any rear lot line.
 - (10) Inner courts shall not be permitted in attached dwelling developments. No outer court shall have a width less than one and one-half (1½) times the average height of the surrounding walls nor a depth greater than its own width.
 - (11) Parking space shall be provided on the premises on a basis of one and one-half (1½) parking spaces for each attached dwelling unit. No parking space shall be located within the required setback distances from a street and from the side and rear yard lines.
- (f) In residence D and residence E districts, the board of aldermen may give permission, in accordance with the provisions of section 24-29 for the construction, alteration, enlargement, extension or reconstruction of buildings, and for the use of buildings, structures or land for a funeral home; provided, that no portion of the lot or tract of land upon which said funeral home is located shall be further than five hundred (500) feet from a business or manufacturing district and subject to the following conditions:

- (1) The proprietor, manager or a person in responsible charge shall maintain a permanent residence therein.
- (2) The lot or tract shall have a minimum area of twenty-four thousand (24,000) square feet if located in a residence D district, and twenty thousand (20,000)

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EXHIBIT C

RECENT SPECIAL PERMITS APPROVED

FOR INCREASED FAR

Docket #	Date	Address	Existing	Allowed	Granted	Ave > over limit
#10-20	1/7/20	68 Manet Road	0.53	0.55	0.65	0.10
#11-20	1/7/20	95 Suffolk Road	0.41*	0.33	0.43	0.20
#353-19	12/10/19	38 Fenno Road	0.45*	0.42	0.50	0.08
#352-19	11/7/19	32 Berkshire Road	0.44*	0.41	0.51	0.10
#314-19	11/7/19	262 Otis Street	0.53*	0.33	0.56	0.23
#315-19	10/29/19	73 Falmouth Road	0.38	0.48	0.54	0.06
#311-19	10/29/19	25-27 Oak Street	0.40	0.49	0.53	0.04
#316-19	10/10/19	969/969F Chestnut St	0.59*	0.45	0.72	0.27
						0.14

* Extension of Nonconforming