



#252-20

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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:	May 26, 2020
Land Use Action Date:	August 11, 2020
City Council Action Date:	August 17, 2020
90-Day Expiration Date:	August 24, 2020

DATE: May 22, 2020

TO: City Council

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

SUBJECT: **Petition #252-20**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to construct dormers to the existing detached garage to allow for an accessory apartment, further increasing the non-conforming FAR to .66 where .64 exists and .48 is allowed at **30-32 Salisbury Road**, Ward 2, Newton Corner, on land known as Section 13 Block 07 Lot 16, containing approximately 9,773 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 3.2.3, 3.2.11, 7.8.2.C.2, 6.7.1.E.1, 6.7.1.E.5 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.



**30-32 Salisbury Road**

## **EXECUTIVE SUMMARY**

The subject property consists of a 9,773 square foot lot improved with a two-family dwelling constructed in 2006. The property is located within the Multi Residence 1 (MR-1) zone between Newtonville and Newton Corner. The petitioner is seeking to establish an accessory apartment in an existing detached garage by constructing dormers to the half story of the garage. The dormers, as well as a 54 square foot addition to the principal structure increases the nonconforming floor area ratio (the "FAR"). The petitioner requires a special permit for the accessory apartment in a detached structure, to increase the nonconforming FAR, and to allow the accessory apartment in a detached structure that does not meet the principal building setbacks.

The Planning Department is unconcerned with the requests to increase the nonconforming floor area ratio and to establish an accessory apartment within a detached structure that does not meet the principal building setbacks. The accessory apartment is within the footprint of the existing detached garage and the proposed addition that increases the nonconforming floor area ratio existing structure is at 54 square feet. The proposed apartment in a detached garage is minimally visible from the street and tucked behind the principal dwelling. The 54 square foot addition to the principal structure will not be visible from the street. Due to this, 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.

### **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 in a structure that does not meet principal setbacks. (§6.7.1.E.1, §6.7.1.E.5, §7.3.3.C.1)
- The proposed accessory apartment 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 .64 to .66, where .48 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. (§3.2.3, §3.2.11, and §7.8.2.C.2)

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

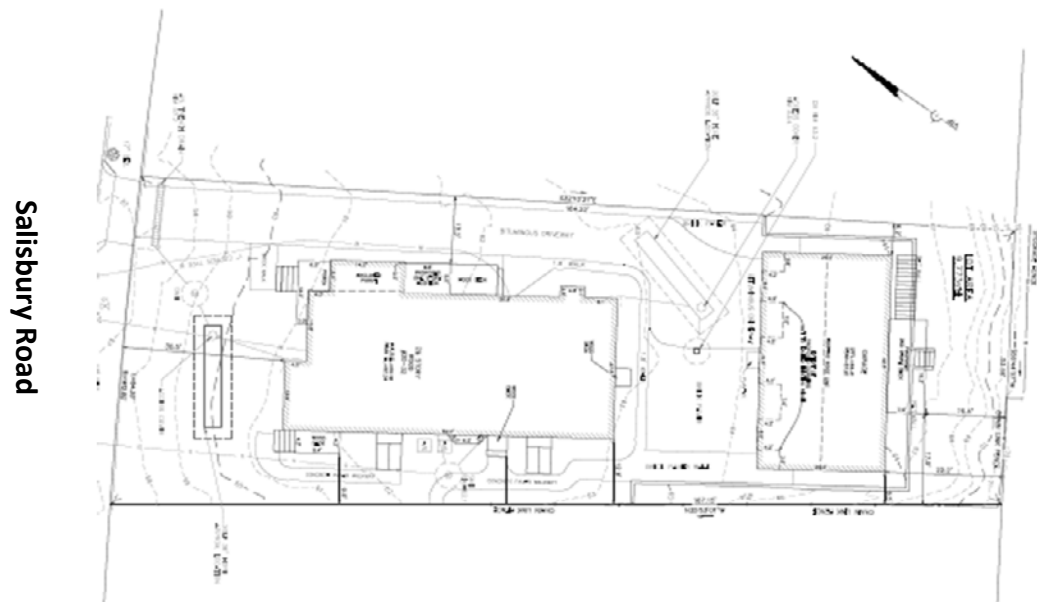
A. Neighborhood and Zoning

The subject property is on Salisbury Road in the MR-1 zone in Newton Corner. The immediate area is within the MR-1 zone, with nearby Langdon Road to the east that contains properties zoned single family residential (**Attachment A**). Salisbury Road consists of single and multi-family uses, and open space along the East Side Parkway to the west (**Attachment B**).

B. Site

The site consists of 9,773 square feet of land and it is improved with a two-family residence constructed and a one and a half story detached four car garage constructed circa 2006. The garage has a rear setback of 15.4 feet, and a side setback of 6.5 feet along the eastern boundary and 6.2 feet along the western boundary, where 5 feet is required. The site is accessed by a driveway from Salisbury Road along the western boundary leading to the four-car garage and surface parking area. The site is relatively flat, however there is a grade change of 12 feet where the site slopes upwards behind the detached garage.

**Site Plan**



III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

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

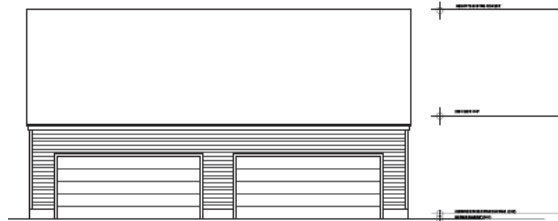
B. Building and Site Design

The petitioner is proposing to construct dormers to the half story of the existing detached garage as well as a 54 square foot powder room addition to the principal structure. The dormers and powder room add approximately 158 square feet to the structures combined, increasing the sitewide nonconforming FAR from .64 to .66 where .48 is the maximum allowed by right. The increase in nonconforming FAR requires a special permit.

The petitioner is also seeking to establish an accessory apartment in a detached structure. The proposed accessory apartment in a detached structure does not meet the setbacks of the principal structure, both to allow the accessory apartment and to allow an accessory in a detached structure that does not meet principal setbacks require special permit relief.

The petitioner is proposing to establish an accessory apartment within the half story of the detached garage. 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 petitioner has confirmed that the accessory apartment will be associated with 32 Salisbury Road. The principal structure is a two-family dwelling and the accessory apartment is required to be associated with one of the dwelling units within the two-family structure. 32 Salisbury Road contains 2,332 square feet. The proposed apartment is 767 square feet which is 33% of the total habitable space of the principal dwelling.

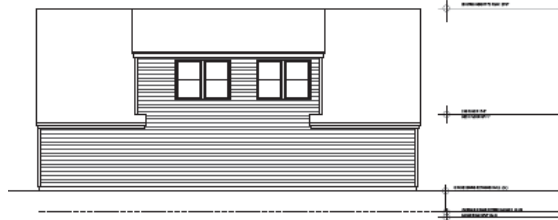
### Existing Garage Elevations



1 FRONT



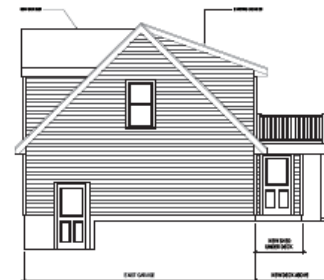
2 RIGHT



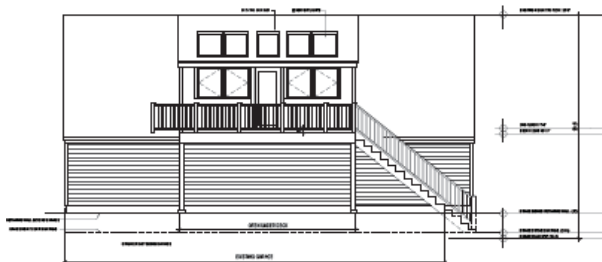
### Proposed Garage Elevations



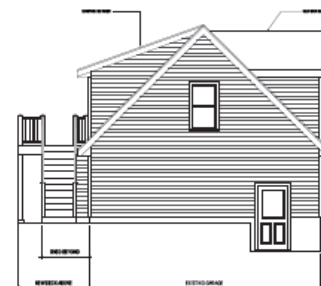
1 FRONT



2 RIGHT



3 REAR



4 LEFT

The proposed 767 square foot accessory apartment is within the footprint of the existing garage, and the addition to the principal structure is 54 square feet, with both contributing to the increase in the nonconforming FAR. The proposed accessory apartment will also be minimally visible from the street. 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

There are no proposed changes to the parking or circulation of the site.

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:

- §6.7.1.E.1, 6.7.1.E.5 and §7.3.3 of Section 30, to allow an accessory apartment in a detached structure that does not meet the principal dwelling setback requirements
- §3.2.3, §3.2.11 and §7.8.2.C.2 to increase nonconforming FAR

B. Engineering Review

Review from the Engineering Division of Public Works is not required at this time.

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

### 30-32 Salisbury Road

City of Newton,  
Massachusetts

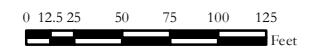
## Zoning

-  Single Residence 3
-  Multi-Residence 1
-  Public Use

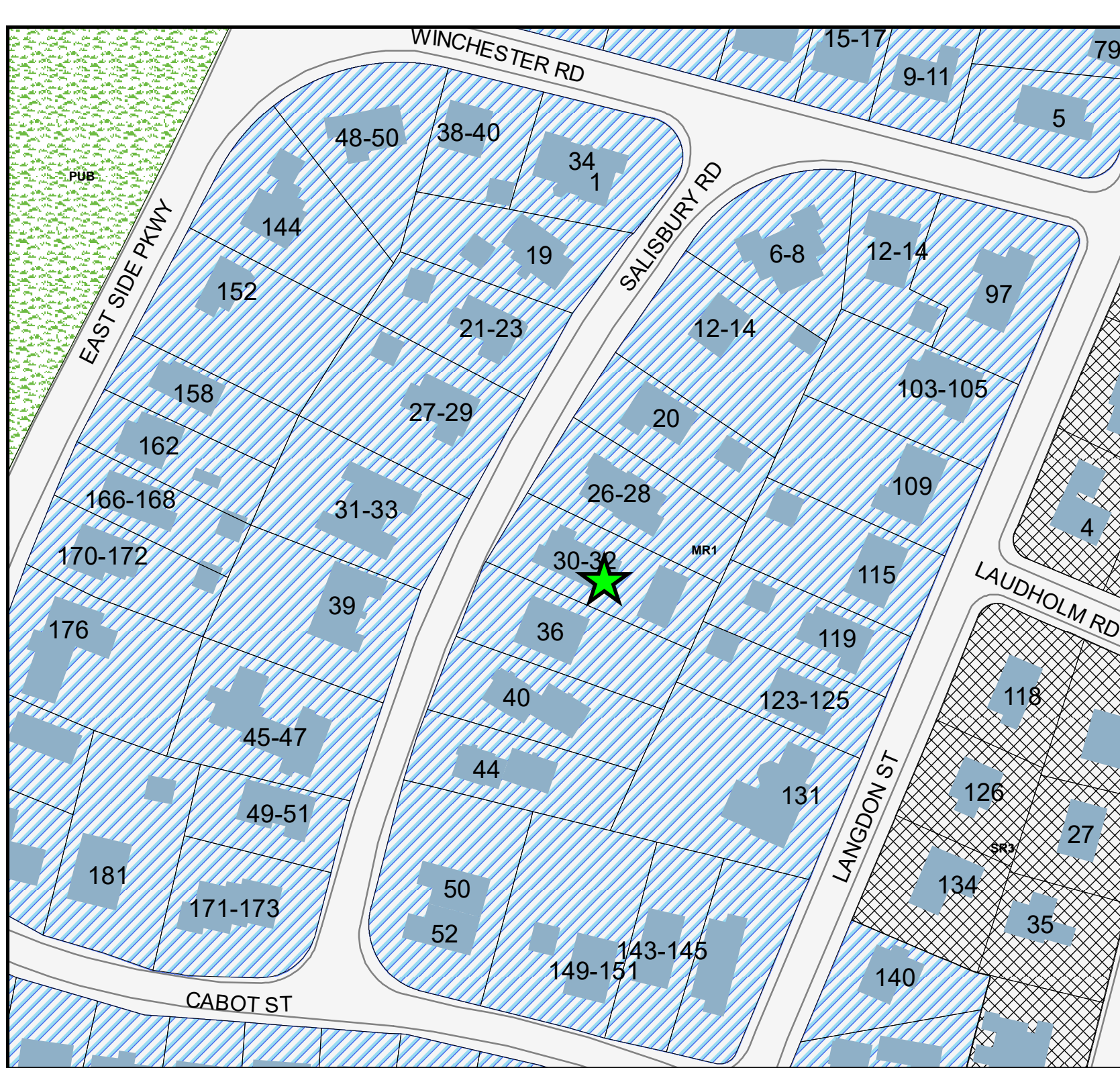


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Ruthanne Fuller  
GIS Administrator - Douglas Greenfield



Map Date: May 14, 2020



# ATTACHMENT B




## Land Use

### 30-32 Salisbury Road

*City of Newton,  
Massachusetts*

#### Land Use

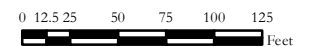
#### Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Open Space

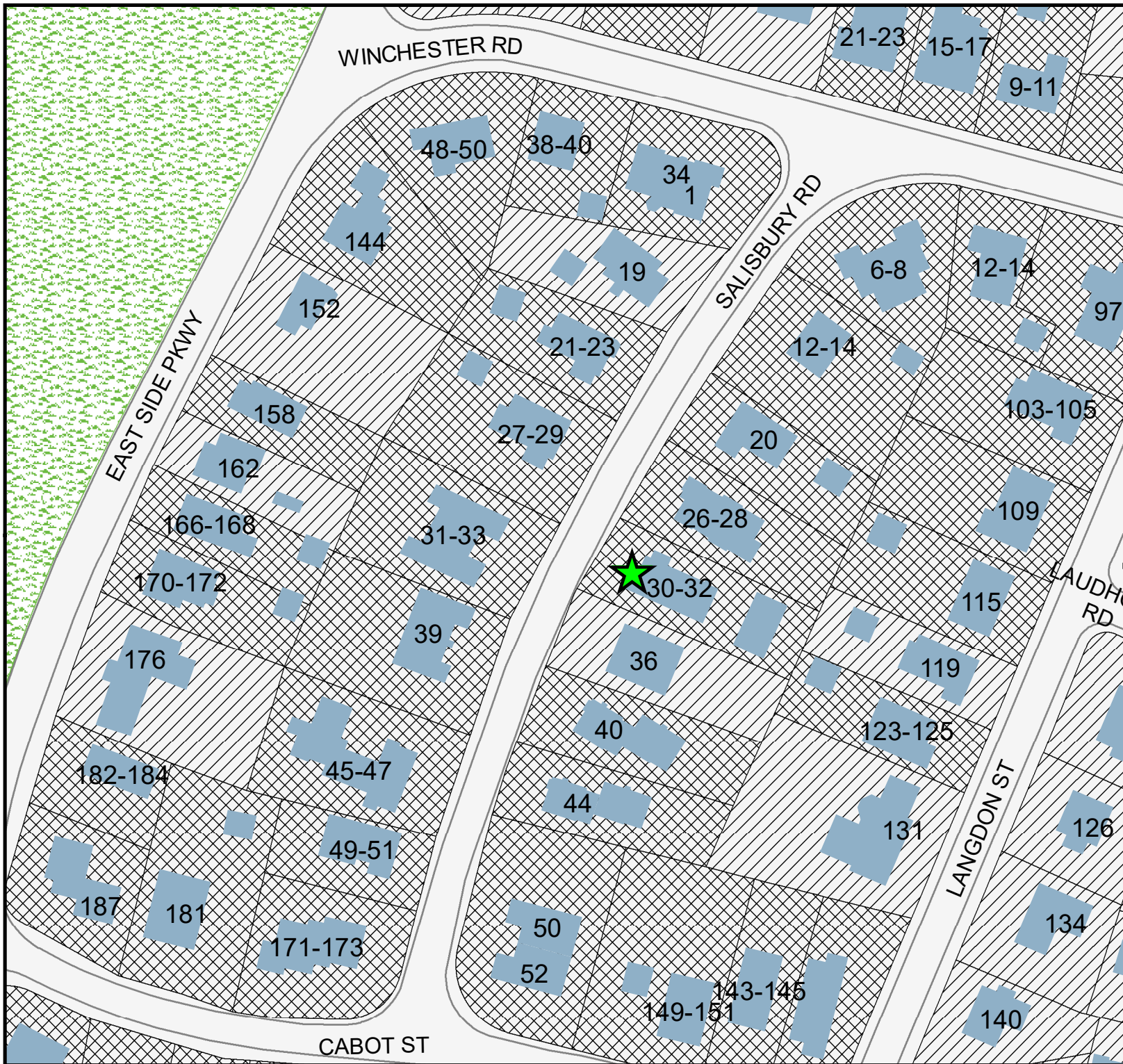


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Ruthanne Fuller  
GIS Administrator - Douglas Greenfield



Map Date: May 14, 2020







Ruthanne Fuller  
Mayor

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Barney S. Heath  
Director

## ZONING REVIEW MEMORANDUM

Date: April 22, 2020

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Neil Cronin, Chief Planner for Current Planning

Cc: Lee Silverstone, Architect  
Sharona Mizrahi and David Nahoumi, Applicant  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Assistant City Solicitor

**RE: Request to allow an accessory apartment in a detached structure and to further extend nonconforming FAR**

Applicant: Sharona Mizrahi and David Nahoumi	
Site: 30-32 Salisbury Rd	SBL: 13007 0016
Zoning: MR1	Lot Area: 9,773 square feet
Current use: Two-family dwelling	Proposed use: Two-family dwelling with a detached accessory apartment

### BACKGROUND:

The property at 30-32 Salisbury Road consists of a 9,773 square foot lot improved with a two-family dwelling constructed in 2006 and an accessory structure in the form of a four car garage. The 1,016 square foot detached garage was reconstructed after a fire in its original size, configuration and location. The petitioner proposes to make a small first floor powder room addition to the principal dwelling, and to construct dormers in of the half story of the detached garage to be used as a four-car garage with an accessory apartment above.

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

- Zoning Review Application, prepared by Lee Silverstone, architect, dated 3/6/2020
- Existing and Proposed FAR and Habitable Space Calculations, submitted 3/6/2020
- FAR worksheet, submitted 3/6/2020
- Architectural plans and elevations, signed and stamped by Phillip Bakalchuk, architect, dated 3/6/2020
- Topographic Site Plan, signed and stamped by Joseph R. Porter, surveyor, dated 3/4/2020

**ADMINISTRATIVE DETERMINATIONS:**

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1. The petitioner proposes to construct dormers in the detached garage to create a second level accessory apartment. Per section 6.7.1.E.1, a special permit is required for an accessory apartment in a detached structure.
2. The detached garage was reconstructed in its original 1,006 square foot footprint after a fire. Because it was constructed in its original nonconforming size, location and configuration, it did not require a special permit for a garage larger than 700 square feet, per section 3.4.2.B.1. The proposed changes do not increase the nonconforming footprint.
3. The petitioner proposes a first floor addition to the principal dwelling of a 54 square foot powder room, as well as dormer additions to the second level of the garage adding an additional 104 square feet for a total of 158 square feet. The proposed additions increase the FAR from .64 to .66 where .48 is the maximum allowed per sections 3.2.3 and 3.2.11. A special permit is required to further increase the nonconforming FAR per sections 3.2.3, 3.2.11 and 7.8.2.C.2.
4. Per section 6.7.1.E.5, a detached accessory apartment must meet the setbacks of the principal dwelling unit, as well as FAR and other applicable dimensional controls unless allowed by special permit. The existing detached garage structure has a 6.2 foot side setback, where 7.5 feet is required per section 3.2.3. A special permit is required to allow for the reduced setback. As mentioned above, the proposed dormers further increase the nonconforming FAR and also require a special permit per section 6.7.1.E.5.

See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§6.7.1.E.1	To allow an accessory apartment in a detached structure	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
§6.7.1.E.5 §3.2.3	To allow an accessory apartment in a detached structure that does not meet the principal setback requirements and further increases 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 increase the nonconforming floor area ratio (the "FAR") from .64 to .66, where .48 is the maximum allowed by-right, to allow a detached accessory apartment and to allow a detached accessory apartment in a structure that does not meet principal setbacks 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 in a detached structure that does not meet principal setbacks because the proposed apartment is within the footprint of the existing garage. (§6.7.1.E.1, §6.7.1.E.5, §7.3.3.C.1)
2. The proposed accessory apartment will not adversely affect the neighborhood because the site and surrounding neighborhood are within a Multi Residence 1 zoning district and many properties in the neighborhood have multifamily residential uses. (§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 petitioner is not proposing any changes to the site. (§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 .64 to .66, where .48 is the maximum allowed by-right is not substantially more detrimental than the existing nonconforming structure is to the neighborhood because the additions are within the footprints of the existing structures. (§3.2.3, §3.2.11, and §7.8.2.C.2)

PETITION NUMBER:

#252-20

PETITIONER: Sharona Mizrahi

LOCATION: 30-32 Salisbury Road, on land known as Section 13, Block 7, Lot 16, containing approximately 9,773 square feet of land

OWNER: Sharona Mizrahi

ADDRESS OF OWNER: 30-32 Salisbury Road  
Newton, MA 02458

TO BE USED FOR: Multi-Family Dwelling with a Detached Accessory Apartment

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §6.7.1.E.1, §6.7.1.E.5, §3.2.3, §7.3.3 to allow a detached accessory apartment in a detached structure that does not meet principal setbacks; and §3.2.3, §3.2.11 and §7.8.2.C.2 to further increase nonconforming floor area ratio.

ZONING: Multi Residence 1 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:
  - a. Topographic site plan showing proposed conditions at 30-32 Salisbury Road, signed and stamped by Joseph R. Porter, VTP Associates, Professional Land Surveyor, dated March 4, 2020
  - b. Architectural Plans, prepared by SB Architects, signed and stamped by Phillip H. Bakalchuk, dated March 6, 2020, consisting of eight (8) sheets:
    - i. Existing first floor plan, X1.1, dated March 6, 2020
    - ii. Existing second floor garage plan, X1.2, dated March 6, 2020
    - iii. Existing main house floor plan, X1.3, dated March 6, 2020
    - iv. Existing garage elevations, X2.1, dated March 6, 2020
    - v. Proposed garage plan, A1.1, dated March 6, 2020
    - vi. Proposed second floor plan garage, A1.2, dated March 6, 2020
    - vii. Proposed addition at first floor of house, A1.3, dated March 6, 2020
    - viii. Proposed elevations, A2.1, dated March 6, 2020

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, Engineering Division of Public Works, and Fire Department.
3. The accessory apartment may not be held in separate ownership from the principal structure/dwelling unit.
4. The owner of the principal structure/dwelling unit shall occupy either said principal structure/dwelling unit or the accessory apartment and shall file an annual affidavit with the Commissioner of Inspectional Services attesting to this fact prior to July 1 of every year.
5. In the event ownership of the subject property changes, the new owner(s) shall notify the Commissioner of the Inspectional Services Department at which time the Commissioner shall conduct a determination of compliance with this decision and all applicable codes.
6. 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 board 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 board 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.
7. 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 an architect or land surveyor certifying compliance with Condition #1 as well as the as-built floor area ratio of the structure.
  - 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.