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Barney S. Heath
Director

PUBLIC HEARING/WORKING SESSION MEMORANDUM

DATE: September 25, 2020
MEETING DATE: September 29, 2020
TO: Land Use Committee of the City Council
FROM: Barney S. Heath, Director of Planning and Development
Neil Cronin, Chief Planner for Current Planning
Katie Whewell, Senior Planner
CC: Petitioner

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

PETITION #252-20

30-32 Salisbury Road

Special Permit/Site Plan Approval to allow an accessory apartment in a detached structure that does not meet principal setbacks, and to increase the nonconforming Floor Area Ratio from .62 to .64, where .48 is the maximum allowed by right.

The Land Use Committee (the "Committee") held a public hearing on this petition on Tuesday, May 26, 2020. The public hearing was held open for the petitioner to respond to questions and concerns raised in the Planning Department's memorandum and at the public hearing by the Committee as well as by members of the public. This memo reflects those issues and concerns, as well as revised materials submitted by the petitioner as of September 25, 2020.

Executive Summary and Background

The public hearing for 30-32 Salisbury Road took place on May 26, 2020. The Petitioner is seeking to increase the nonconforming FAR, and locate an accessory apartment in a detached structure that does not meet principal setbacks. The petitioner is proposing a 50 square foot powder room addition to the principle structure and dormers to the half story of the detached garage. In the Public Hearing Memorandum, the Planning Department stated that it is unconcerned with the requests to increase the nonconforming FAR and to locate an accessory apartment in a detached structure that does not meet principal setbacks. The proposed accessory apartment would not increase the footprint of the

detached garage. The site is also within the Multi Residence 1 (MR-1) zoning district with the neighborhood comprised of multi residential uses. The petition was held.

At the public hearing, concerns were expressed regarding the proposed accessory apartment, the proposed deck associated with the accessory apartment, and the status of the petitioner's outreach to the neighbors. Members of the Committee suggested the petitioner work closely with the neighbors and set up a site visit to better understand the neighborhood, site, and proposed site work.

In response, the petitioner:

- Hosted a site visit on June 3, 2020; and
- Submitted revised plans that show the proposed powder room addition and proposed deck reduced in size. Plans submitted also clarified points of confusion raised at the public hearing about the space below the deck.

Revised Plans

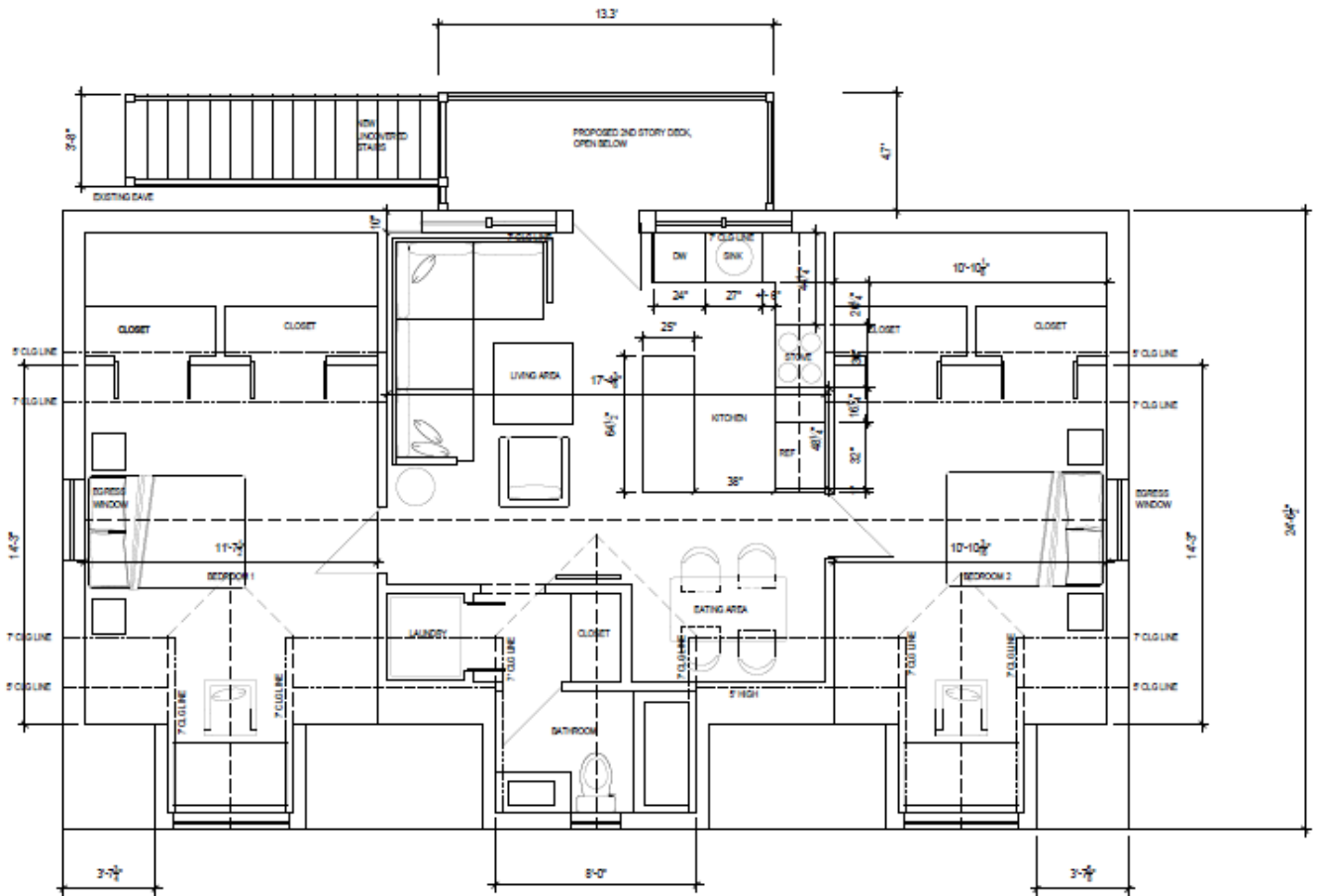
The petitioner is requesting the following waivers: to allow an accessory apartment in a detached structure in a structure that does not meet principal building setbacks, and to increase the nonconforming FAR from .62 to .64, where .48 is the maximum allowed by right. The petitioner is seeking to construct a 50 square foot powder room to the principal dwelling, and dormers to the half story above the garage to create space for an accessory apartment with 608 square feet of habitable space. The petitioner submitted revised plans which show a reduction in the proposed powder room to 50 square feet from 54 square feet, a reduction in the size of the deck off the accessory apartment to 62.5 square feet from approximately 128 square feet.

Accessory apartments are allowed by special permit in a detached structure if they are no greater than 1,200 square feet or 40% of the total habitable space of the principal dwelling, whichever is less. The principal structure is a two-family dwelling and the accessory apartment is required to be associated with one of the two dwelling units. The petitioner states that the accessory apartment will be accessory to 32 Salisbury Road, which contains 2,332 square feet. The proposed apartment consists of 608 square feet of habitable space, which is 26% of the total habitable space of 32 Salisbury Road. The size of the accessory apartment was previously calculated as 767 square feet but was incorrectly calculated due to the area five feet in height or above being calculated, which is the measurement used when calculating a dwelling's floor area. When calculating floor area above a detached garage, areas with seven feet in height is the measurement used. While the existing garage meets accessory structure setbacks of five feet, to locate the accessory apartment within the existing detached garage, it must meet principle building setbacks or request relief. The garage has an existing side setback of 6.2 feet, where 7.5 feet is required for the accessory apartment to meet the principle structure's required setbacks in the MR-1 zoning district.

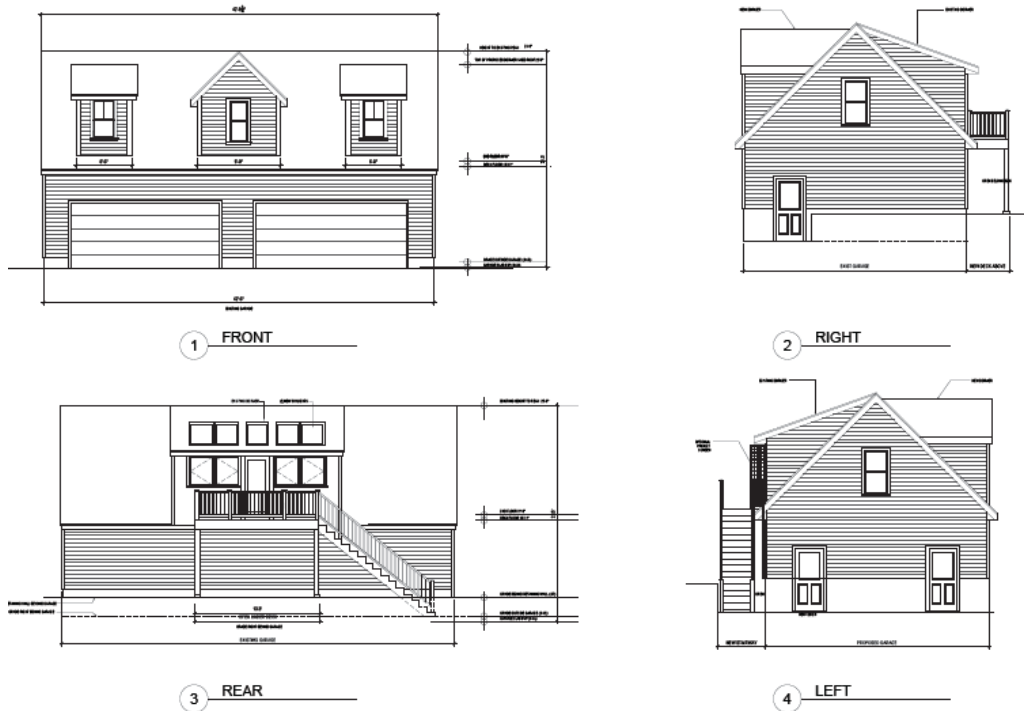
The nonconforming FAR is increasing from .62 to .64 with the powder room addition to the principle structure and the accessory apartment with proposed dormers. The structures will contain a combined

6,229 square feet, where 6,079 square feet is existing and 4,691 square feet is the maximum allowed by right.

Floorplan – Proposed Accessory Apartment



Proposed Garage Elevations



The Planning Department is unconcerned with the proposed accessory apartment which increases the nonconforming FAR and does not meet principal building setbacks due to its location within an existing structure, thus not increasing the footprint, and it will be minimally visible from the street. The location of the accessory apartment is appropriate in the MR-1 zoning district with multiple multi residential land uses nearby.

ATTACHMENTS:

- Attachment A: Zoning Review Memorandum, dated September 24, 2020
- Attachment B: DRAFT Council Order



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ZONING REVIEW MEMORANDUM

Date: September 24, 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. 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:

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 existing garage was constructed after a previous garage was destroyed by a fire with a building permit issued in March 2010. While the original garage exceeded the 700 square footprint allowed by section 3.4.2.B.1, the existing garage appears to have increased the footprint and other dimensional nonconformities. As the structure is more than ten years old, any dimensional issues are now considered nonconforming. The proposed changes do not increase the nonconforming footprint.
3. The petitioner proposes a first-floor addition to the principal dwelling of a 50 square foot powder room, as well as dormer additions to the second level of the garage adding an additional 100 square feet for a total of 150 square feet. The proposed additions increase the nonconforming FAR from .62 to .64 where .48 is the maximum allowed per sections 3.2.3 and 3.2.11. A special permit is required to 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.
5. The detached accessory apartment is to be accessory to 32 Salisbury Street, which has a total of 2,332 square feet of habitable space. Per section 6.7.1.E.2, a detached accessory apartment may be a maximum of 1,200 square feet or 40% of the habitable space of the principal dwelling unit, whichever is less. With 608 square feet, the accessory apartment is 26% of the principal unit, requiring no relief.

MR1 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	9,773 square feet	No change
Frontage	70 feet	64.39 feet	No change
Setbacks - Principal			
• Front	25 feet	30.4 feet	No change
• Side	7.5 feet	9.9 feet	No change
• Side	7.5 feet	13.3 feet	10.3 feet
• Rear	15 feet	73.3 feet	15.1 feet
Setbacks – Accessory			
• Front	25 feet	±100 feet	No change
• Side	5 feet	6.2 feet	No change
• Side	5 feet	6.5 feet	No change
• Rear	5 feet	22.2 feet	17.8 feet
Height –			
• Principal	36 feet	33.16 feet	No change
• Accessory	22 feet	23.42 feet	No change

Stories –			
• Principal	2.5	2.5	No change
• Accessory	1.5	1.5	No change
FAR	.48	.62	.64
Max Lot Coverage	30%	28.8%	29.3%
Min. Open Space	50%	50.2%	50%

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 extend 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 .62 to .64, 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 and does not alter the existing setback. (§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 are multi-family 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 and parking will be contained within 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 .62 to .64, 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: Detached Accessory Apartment and a one-story addition

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 July 23, 2020, consisting of eight (8) sheets:
 - i. Existing first floor garage, X1.1, dated July 23, 2020
 - ii. Existing second floor garage plan, X1.2, dated July 23, 2020
 - iii. Existing main house floor plan, X1.3, July 23, 2020
 - iv. Existing garage elevations, X2.1, dated July 23, 2020
 - v. Proposed first floor garage plan, A1.1, July 23, 2020
 - vi. Proposed second floor plan garage, A1.2, dated July 23, 2020
 - vii. Proposed addition at first floor of house, A1.3, dated July 23, 2020
 - viii. Proposed elevations, A2.1, dated July 23, 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 council 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 council 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 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.