



Setti D. Warren
Mayor

City of Newton, Massachusetts

Department of Planning and Development

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Candace Havens
Director

Public Hearing Date: February 14, 2012
Land Use Action Date: April 10, 2012
Board of Aldermen Action Date: April 17, 2012
90-Day Expiration Date: May 9, 2012

DATE: February 10, 2012

TO: Board of Aldermen

FROM: Candace Havens, Director of Planning and Development
Eve Tapper, Chief Planner for Current Planning^{ET}
Alexandra Ananth, Senior Planner

SUBJECT: **Petition #9-12**, Kurosh Mizrahi petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to locate an accessory apartment in an existing detached structure and to waive the required screening for the associated parking at **1099 Walnut Street**, Ward 6, Newton Highlands, on land known as SBL 52, 9, 11, containing approximately 13,816 square feet of land in a district zoned Single Residence 2. Ref: Sec 3-24, 30-23, 30-8(d)(2), 30-8(d)(1)(h) of the City of Newton Rev Zoning Ord, 2007.

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. 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 Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



EXECUTIVE SUMMARY

The subject property is currently improved with a single-family residence and a detached accessory structure at the rear. The petitioner is seeking to allow an accessory apartment in the rear detached structure by special permit. The petitioner has previously used the structure as an accessory apartment but the apartment is now vacant as it was the subject of an enforcement order by the Inspectional Services Department for not having the required permits. The petitioner is also seeking relief from landscape screening requirements of the parking area.

Since the accessory structure is already in place, the Planning Department believes that reusing the existing structure will have a minimal impact on the neighborhood. The proposed reuse is preferable to allowing the structure to remain vacant while deteriorating to the point where it could potentially become a public nuisance or hazard. Furthermore, modest-sized units add to the diversity of housing options available in Newton.

Carriage houses are a threatened class of historic buildings. Frequently unused or under-used they are often neglected and demolished, in some cases they are ordered condemned by the Inspectional Services Department due to unsafe conditions. The Demolition Delay Ordinance has proven largely ineffective in preserving carriage houses, as they are not principal buildings on a lot and can be left to deteriorate, with limited interest in their reuse. The Newton Historical Commission is very concerned with the preservation of these buildings and strongly supports their adaptive reuse as offices and dwelling units.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When hearing this request, the Board should consider whether:

- 1) The proposed accessory apartment in a detached structure will not adversely affect the neighborhood for the following reasons:
 - a. The structure already exists and no significant exterior alterations are proposed.
 - b. Reusing the existing structure ensures that it will be maintained and will not become a nuisance.
 - c. The proposal is consistent with the 2007 *Newton Comprehensive Plan*, as it will help to preserve the existing housing stock while increasing the diversity of housing options available in the City.
- 2) Whether the requested waiver from required landscape screening is appropriate since literal compliance with this requirement is not practicable or necessary due to the existing board fence which surrounds the subject property and effectively screens all vehicles from abutting properties.

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The property is located on the west side of Walnut Street in Newton Highlands, between Hillside Road and Forest Street. It is within an area zoned Single Residence 2 before Walnut Street transitions to Multi-Residence 1 and Business 1 zone districts. Land use in the area is primarily single-family residential but transitions to two-family and commercial uses as Walnut Street approaches Newton Highlands.

B. Site

The site consists of 13,816 square feet of land and is mostly level. The main residence is a 2½-story Victorian-style house circa 1918 of approximately 3,000 square feet. A 1½-story accessory structure is located towards the rear of the property and contains approximately 1,450 square feet.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The property is currently being used as a single-family residence and the petitioner is seeking to permit an accessory apartment in the detached carriage house.

B. Building and Site Design

There are no exterior changes proposed to the accessory building at this time. The existing accessory structure is approximately 1,450 square feet and contains three bedrooms, two bathrooms, a kitchen, living, and dining room. A bituminous driveway leads from Walnut Street to the accessory structure and accommodates three exterior parking spaces. Although the accessory structure is located only 4.2 feet from the southern property line the petitioner is not expanding the building in any way.

The Fire Department has requested that if this accessory apartment is permitted the driveway be widened from 10 to 14 feet. Should the Board choose to approve this petition the Planning Department recommends a condition requiring the petitioner to submit a revised site plan reflecting a widened driveway to both the Planning and Fire Departments for review and approval prior to the issuance of a building permit.

C. Parking and Circulation

The proposed use of the property requires a total of three parking spaces on-site. The petitioner is proposing three exterior parking spaces in front of the accessory structure. Submitted plans indicate parking stalls are only 18 feet in length where 19 is required. It does not appear that there would be any problem meeting the dimensional requirements and this should be corrected on a revised site plan prior to

the issuance of a building permit.

The site is surrounded by a wood stockade fence and the petitioner is requesting a waiver from the screening requirement in light of the fence. The Planning Department has no concerns with parking or circulation on-site or the requested waiver from the landscape screening requirements. The Planning Department suggests the petitioner be required to maintain the fence on the southern property line if desired by the immediate abutter.

IV. TECHNICAL REVIEW

- A. Technical Considerations (Section 30-15 and 30-19): The Zoning Review Memorandum, dated December 1, 2011 (**SEE ATTACHMENT "A"**), provides an analysis of the proposal with regard to zoning. The petitioner is requesting special permits to allow an accessory apartment in a detached structure and for a waiver of the screening requirements. Accessory apartments of less than 1/3 the total building area on site are permitted and the proposed accessory apartment will be just less than 33% of the total building area and is therefore allowed.
- B. Comprehensive Plan: The proposed project would help preserve the existing structure while increasing the diversity of housing options available in the City.
- C. Engineering Review: Although the Engineering Division had no comments on the project at this time (**SEE ATTACHMENT "B"**), should the Board wish to approve the project, prior to the issuance of a building permit the petitioner should submit revised plans for review and approval to the Engineering Division for review of additional pervious surface and potential changes to the curb cut.
- D. Fire Department Review: The Newton Fire Department has requested that prior to the issuance of a building permit revised plans be submitted for review and approval showing that the driveway will be widened from 10 to 14 feet (**SEE ATTACHMENT "C"**).

V. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum the petitioner is seeking the following approvals or relief:

- Section 30-8(d)(2) to allow an accessory apartment in a detached structure;
- Sections 30-8(d)(1)h) to waive required screening.

VI. PETITIONERS' RESPONSIBILITIES

The petitioner is considered complete at this time.

ATTACHMENTS

- Attachment A:** Zoning Review Memorandum dated December 1, 2011
- Attachment B:** Engineering Review dated February 2, 2012
- Attachment C:** Letter from the Fire Department dated February 1, 2012
- Attachment D:** Zoning Map
- Attachment E:** Land Use Map
- Attachment F:** Draft Board Order #9-12, 1099 Walnut St.



Setti D. Warren
Mayor

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

ATTACHMENT 9ⁿ 12^o A

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Candace Havens
Director

ZONING REVIEW MEMORANDUM

Date: December 1, 2011

To: John Lojek, Commissioner of Inspectional Services

From: Seth Zeren, Chief Zoning Code Official
Eve Tapper, Chief Planner for Current Planning ET

Cc: Jay W. Melick, designer representing applicant
Candace Havens, Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to allow an accessory apartment in an accessory structure

Applicant: Kevin Mizrahi	
Site: 1099 Walnut Street	SBL: 52009 0011
Zoning: SR2	Lot Area: 13,816 square feet
Current use: Single-family dwelling	Proposed use: Single-family dwelling with an accessory apartment

Background:

The property at 1099 Walnut Street consists of a 13,816 square foot lot currently improved with a single-family dwelling and a large carriage house. The applicant proposes to use the existing carriage house as an accessory apartment.

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

- Architectural plans, by Jay W. Melick, designer, revised 10/20/11
- Site plan signed and stamped by Allen F. Paige, Engineer, dated 4/30/10
- Zoning summary, unsigned and undated

ADMINISTRATIVE DETERMINATIONS:

1. The property is located in the SR2 zone and must meet the dimensional criteria of Section 30-15 Table 1 for a pre-1953 lot. Accessory structures must meet the dimensional requirements of Section 30-15(m), per the table below. The existing carriage house is legally nonconforming with regard to setbacks and ground floor area, as it predated zoning regulations in the City of Newton.

SR2 Zone	Required/Allowed	Existing	Proposed
Ground Floor Area	700 square feet	847 square feet	No change
Setbacks	5 feet	4.2 feet	No change

2. Per Section 30-8(d)(2), the applicant must obtain a special permit from the Board of Aldermen to locate an accessory apartment in an accessory structure.
3. Per Section 30-8(d)(2)a), an accessory apartment permitted under Section 30-8(d)(2) is limited to a maximum of 1,200 square feet or 1/3 the total building size as defined in Section 30-1, whichever is more. The total building size is 4,408 square feet, including the primary dwelling and the area of the accessory structure used for the accessory apartment. The proposed accessory apartment would have an area of 1,445 square feet, which is 32.8% of the total building area and is therefore allowed.
4. Per Section 30-19(d)(19) one parking stall must be provided on site for an accessory apartment in addition to the two required for the single-family dwelling, for a total of three stalls. The applicant's site plan shows these required parking stalls. However, Section 30-8(d)(1)h) requires "landscape screening in the area between the parking space required for the accessory unit and the nearest side lot line sufficient to minimize the visual impact on abutters, such as evergreen or dense deciduous plantings, walls, fences, or a combination thereof." The applicants must meet the requirements of Section 30-8(d)(1)h) or obtain a special permit from the Board of Aldermen to waive this requirement.
5. See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Accessory Apartment</i>	<i>Action Required</i>
§30-8(d)(2)	Allow an accessory apartment in a detached structure	S.P. per §30-24
§30-8(d)(1)h)	Provide the required screening or obtain a waiver	S.P. per §30-24

**CITY OF NEWTON
ENGINEERING DIVISION**

MEMORANDUM

To: Alderman Ted Hess-Mahan, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – 1099 Walnut Street

Date: February 2, 2012

CC: Lou Taverna, PE City Engineer (via email)
Linda Finucane, Associate City Clerk (via email)
Eve Tapper, Chief Planner (via email)
Alexandria Ananth, Sr. Planner (via email)

In reference to the above site, I have the following comments for a plan entitled:

*Special Permit Plot Plan
1099 Walnut Street
Newton, MA
Prepared by: Allen F. Paige
Dated: April 30, 2010*

Executive Summary:

It appears that there are no improvements in regards to utilities, drainage or site grading; therefore the Engineering Division has no issues at this time.

Note: If the plans are updated it is the responsibility of the Applicant to provide all City Departments [Conservation Commission, ISD, and Engineering] involved in the permitting and approval process with complete and consistent plans.

If you have any questions or concerns please feel free to contact me @ 617-796-1023.



Bruce A. Proia
Chief

CITY OF NEWTON, MASSACHUSETTS
FIRE DEPARTMENT HEADQUARTERS

1164 Centre Street, Newton Center, MA 02459-1584
Chief: (617) 796-2210 Fire Prevention: (617) 796-2230
FAX: (617) 796-2239 EMERGENCY: 911

9-12
ATTACHMENT "C"



Setti D. Warren
Mayor

February 1, 2012

Alexandra Ananth
Senior Planner
City of Newton Planning and Development

Dear Alexandra

On January 26, 2012 I visited 1099 Walnut Street.

With regard to the special permit my only concern is Fire Department access.

NFPA 3-5.4 recommends 14ft minimum for Fire Department access points.

The driveway as it currently exists is about 10ft wide.

As this situation is corrected I will have no problem stamping the petitioners Plan.

If I can be of any assistance please feel free to contact me.

Respectfully

Paul Chagnon
Assistant Chief
Newton Fire Department
617-796-2203
pchagnon@newtonma.gov

Land Use Map^{9/12} 1099 Walnut St

City of Newton,
Massachusetts

Legend

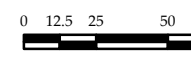
- Single Family Residential
- Multifamily Residential
- Building Outlines
- Surface Water



Attachment "E"

The information on this map is derived from a Geographic Information System (GIS) of the City of Newton. The City of Newton cannot guarantee the accuracy of the information. Each user of this map is responsible for determining its suitability for their intended purpose. City departments will only approve applications based solely on the information provided on this map.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas



Map Date: February 06, 2012



DRAFT
#9-12CITY OF NEWTON
IN BOARD OF ALDERMEN

February 20, 2012

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action 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, hereby grants the following SPECIAL PERMIT/SITE PLAN APPROVAL for an accessory apartment in an existing detached structure, and to waive required screening, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefore, through its Chairman, Alderman Ted Hess-Mahan.

The Board finds that:

- 1) The proposed accessory apartment in a detached structure will not adversely affect the neighborhood for the following reasons:
 - a. The structure already exists and no significant exterior alterations are proposed.
 - b. Reusing the existing structure ensures that it will be maintained and will not become a nuisance.
 - c. The proposal is consistent with the 2007 *Newton Comprehensive Plan*, as it will help to preserve the existing housing stock while increasing the diversity of housing options available in the City.
- 2) The waiver from required screening is appropriate since literal compliance with this requirement is not practicable or necessary due to the existing board fence which surrounds the subject property and effectively screens all vehicles from abutting properties.

PETITION NUMBER: #9-12

PETITIONER: Kurosh Mizrahi

LOCATION: 1099 Walnut Street, Ward 6, on land known as Sec 52, Blk 9,

Lot 11, containing approx. 13,817 sf of land

OWNER: Kurosh Mizrahi

ADDRESS OF OWNER: 1099 Walnut Street, Newton, MA 02461

TO BE USED FOR: Accessory Apartment in a detached structure

CONSTRUCTION: Wood-frame

EXPLANATORY NOTE: Section 30-8(d)(2) to allow an accessory apartment in a detached structure; and Section 30-8(d)(1)h) to waive required screening

ZONING: Single-Residence 2 District.

Approved, subject to the following conditions:

1. The carriage house and areas of the subject property directly related to the uses approved and relief granted through this Special Permit shall be consistent with the following plans:
 - City of Newton, MA, Special Permit Plot Plan, Kurosh Mizrahi, 1099 Walnut Street, Newton, MA, stamped and signed by Allen F. Paige, Registered P.E., and dated April 30, 2010
 - Architectural Plans, 1099 Walnut Street, prepared by J.W. Melick Design, Worcester, MA, dated 11/30/09 and Revised 10/20/11
2. Prior to the issuance of a building permit the petitioner shall submit a revised site plan for review and approval to the Fire, Planning and Development Department, and the Engineering Division of the Department of Public Works, indicating that the driveway will be widened from 10 to 14 feet, showing three 9 by 19 foot parking stalls, and detailing any changes to the curb cut and increase in pervious surface.
3. The Petitioner shall maintain fencing around the subject property unless no fencing is desired by immediate abutters.
4. The property must be owner-occupied and the owner must submit a yearly affidavit attesting to this condition per Section 30-8(d)(2) of the Newton Zoning Ordinance. The principal dwelling and the accessory dwelling shall not be held in separate ownership, and the owner must live in either the accessory apartment or the principal dwelling.

5. No building permit shall be issued pursuant to this SPECIAL PERMIT/SITE PLAN APPROVAL until the petitioner has:
 - a. Recorded with the Registry of Deeds for the Southern District of Middlesex County a certified copy of this Board Order granting this SPECIAL PERMIT/SITE PLAN APPROVAL.
 - b. Filed a certified copy of such recorded notices with the Clerk of the Board, the Inspectional Services Department and the Department of Planning and Development.
 - c. Submitted a revised site plan for review and approval to the Fire, Planning and Development Department, and the Engineering Division of the Department of Public Works, in accordance with Condition #2.

6. No portion of the building pursuant to this SPECIAL PERMIT and SITE PLAN APPROVAL shall be occupied until the petitioner has:
 - a. Filed with the Clerk of the Board, the Department of Inspectional Services and the Department of Planning and Development, a statement by a registered engineer or surveyor certifying compliance with Condition #1.
 - b. The accessory apartment shall have been brought into compliance with all applicable building and safety codes.