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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: October 25, 2016
Land Use Action Date: January 9, 2017
City Council Action Date: January 16, 2017
90-Day Expiration Date: January 23, 2017

DATE: October 21, 2016

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Alexandra Ananth, Chief Planner for Current Planning
Michael Gleba, Senior Planner

SUBJECT: **Petition #312-16**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to ESTABLISH AN ACCESSORY APARTMENT in an existing third unit of a two-family dwelling, add dormers and raze the existing detached garage to build a 652 sq. ft. three car garage and construct two parking stalls within 5' of a street at 74 Waban Street, Ward 1, Newton, on land known as SBL 12 05 05A, containing approximately 12,155 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: 7.3.3, 7.4, 6.7.1.D, 5.1.7.A, 5.1.13 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

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.



74 Waban Street

EXECUTIVE SUMMARY

The property at 74 Waban Street, located in the MR1 district, consists of a 12,155 square foot lot improved with an approximately 5,800 square foot, two-family dwelling built circa 1880 and recently constructed 570 square foot three car garage. The residence, originally built as a single-family dwelling, was converted into a two-family dwelling in 1943. A third unit was subsequently added to the structure without the benefit of a building permit and the current owner of the property seeks to rectify the violation by seeking a special permit to allow the creation of an 971 square foot accessory unit within the two-family dwelling pursuant to Section 6.7.1.D.

Furthermore, as Section 5.1.4.A requires two parking stalls for each dwelling unit, and one stall for an accessory unit, a total of five parking spaces would be required. To provide the required parking, the petitioner has constructed a three-car detached garage at the rear right of the property (on the site of a previous garage), and now seeks to construct two additional parking stalls at the front lot line accessed via a separate curb cut on the left side of the property. As Section 5.1.7.A requires that no parking stall be located within five feet of the street, to do so requires a special permit per Section 5.1.13.

The Planning Department is not concerned with the creation of an accessory apartment on this property. The proposed accessory apartment would be located in existing basement and first floor level space and therefore would not expand the footprint or bulk of the structure, and will further diversify Newton's housing stock. The Planning Department is similarly not concerned with the creation of the two proposed parking spaces within five feet of the street as they would provide off-street parking for the dwelling's residents and, as they are to be surfaced with crushed stone, will not unnecessarily detract from the streetscape.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Council should consider whether:

- The site is an appropriate location for an accessory apartment within a two-family dwelling in a MR1 district. (§7.3.3.C.1)
- The accessory apartment will not adversely affect the neighborhood. (§7.3.3.C.2)
- The accessory apartment 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)
- Whether literal compliance with the requirement that no parking stalls be located within five feet of a street (§5.1.7.A) 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, in the interest of safety, or protection of environmental features. (§5.1.13)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The property is located along the Waban Park section of Waban Street, west of Jewett Street. The properties in the surrounding immediate area are mostly multi-family dwellings with some interspersed single-family dwellings, as well as some open space lots and, to the southeast, some commercial uses. To the west is the former Aquinas College site, currently being used as offices for the Newton Fire Department, and the Jackson School to the southwest (**Attachment A**). The subject property and immediate area is zoned MR1, with MR2 and Public Use (PU) districts in close proximity (**Attachment B**).

B. Site

The property consists of a 12,155 square foot lot improved with a two-family dwelling built circa 1880 and recently constructed 570 square foot three car garage that replaced a 400 square foot, two-car garage. The lot is generally level and, as the property is currently being reconstructed, it features little existing landscaping or lawn.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site will remain a two-family residence and, if approved, an accessory apartment will be created in existing space located on the basement and first floor levels of the dwelling.

The proposed accessory apartment use meets the lot size, building size and accessory unit size requirements for such units within a two-family dwelling as stipulated under §6.7.1 of the NZO.

B. Building and Site Design

The petitioners are proposing to create a 971 square foot, two-bedroom accessory apartment on the basement and first floor levels of the existing two-family dwelling as part of the current renovation of the property, which also included the creation of new dormers and the replacement of an existing garage in the rear of the property with a larger, three car garage. The dwelling would not be expanded to accommodate the proposed accessory apartment.

The accessory apartment would be accessed via a foyer located on the right (northwest) side of the structure. The remainder of the structure would be occupied by two other residential units with floor areas of 3,099 square feet (Unit A) and 3,572 square feet (Unit B). The proposed work on the portion of the structure to be occupied by the accessory apartment includes the opening, and closing, of several windows located on the rear and right side of the structure.

C. Parking, Circulation and Landscaping

As provided by §5.1.4 of the NZO, the proposed creation of an accessory apartment on the property would require the provision of a total of five parking spaces on the property (two each for Units A and B and one for the accessory apartment. The property already includes a three car detached garage (located in the rear of the property and served by the driveway located to the right of the dwelling).

To satisfy the parking requirement, the petitioner is seeking to install two additional spaces in the front of the property within five feet of the street. Located on an 18 foot by 19 foot crushed stone driveway to the left of the dwelling, the spaces and accessed by a new 18 foot wide curb cut off Waban Street.

The Planning Department is generally not concerned with the addition of the two proposed spaces as they would provide off-street parking for the dwelling's residents. Also, location of the spaces elsewhere on the parcel would likely result in requiring difficult maneuverability for vehicles and the loss of trees and open space. The Planning Department recommends that the petitioner install and maintain low vegetation consistent with adequate sightlines for drivers and pedestrians alike along either side of the proposed parking area, especially along the property line shared with the property to the left.

IV. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum provides an analysis of the proposal with regard to zoning (**Attachment C**). Based on the completed Zoning Review Memorandum, the petitioner is seeking the following relief:

- Special permit per §7.3.3 to create an accessory apartment in a two-family dwelling in the MR1 district (§6.7.1.D).
- Special permit per §7.3.3 to construct two parking stalls within five feet of a street (§5.1.7.A, §5.1.13)

B. Engineering Review:

No engineering review is required at this time. The Engineering Division of Public Works will review this project for conformance with the City of Newton Engineering Standards prior to the issuance of a building permit for the proposed work should this petition be approved.

C. Historical Commission:

The Newton Historical Commission reviewed the demolition of the previously existing garage and waived the demolition delay on May 2, 2016.

D. Fire Department

The petitioner and Fire Department have been in contact with regard to this project to ensure its compliance with relevant fire prevention requirements.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:

- Attachment A:** Land Use Map
- Attachment B:** Zoning Map
- Attachment C:** Zoning Review Memorandum
- Attachment D:** Draft Board Order



Setti D. Warren
Mayor

ATTACHMENT C
City of Newton, Massachusetts

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: September 1, 2016

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Alexandra Ananth, Chief Planner for Current Planning

Cc: Joe Roman, Brown Dog Properties LLC, applicant
Barney S. Heath, Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to establish an accessory apartment in an existing two-family dwelling and to allow two parking stalls within five feet of a street

Applicant: Iulia Pirvu	
Site: 74 Waban Street	SBL: 12005 0005A
Zoning: MR1	Lot Area: 12,155 square feet
Current use: Two-family dwelling	Proposed use: Two-family dwelling with accessory apartment

BACKGROUND:

The property at 74 Waban Street is located in the MR1 district and improved with a two-family dwelling built circa 1880. The dwelling was built originally as a single-family dwelling, and was converted into a two-family dwelling in 1943. At some point thereafter a third unit was added to the structure without the benefit of a building permit. The new owner of the property seeks to rectify the violation by seeking a special permit for an accessory unit within a two-family dwelling. The applicant also plans to construct two dormers, one over the middle unit stairs on the second floor and another in the attic at the head of the stairs, as well as razing the existing detached garage and rebuilding a 652 square foot three-car garage. Pursuant to Section 6.7.1.D, a special permit is required to create an accessory apartment in a two-family dwelling.

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

- Zoning Review Application, prepared by Joe Roman, applicant, dated 7/21/2016
- Site Plan, signed and stamped by Peter Nolan, surveyor, and Stephanie Bowker, engineer, dated 7/18/2016
- Architectural Plan of proposed garage, prepared by Matthew Lawrence, architect, dated 7/17/2016

ADMINISTRATIVE DETERMINATIONS:

1. The existing two-family structure is located in the MR1 district. Per Sections 6.7.1.D a special permit is required to create an accessory apartment in two-family structure.
2. Section 6.7.1.F requires a lot have at least 8,000 square feet for an accessory apartment by special permit. The applicant's lot has 12,155 square feet.
3. Section 6.7.1.F requires that a dwelling have at least 2,600 square feet to allow an accessory apartment by special permit. The structure has a building size of greater than 5,800 square feet.
4. Section 6.7.1.D.1.b requires that an accessory apartment in the MR1 district be no larger than 1,200 square feet. The proposed apartment is 971 square feet.
5. Section 6.7.1.B.1 requires that an accessory apartment within a two-family dwelling must have one of the units occupied by the owner of the property. The owner of the property must maintain residency in the main dwelling or the proposed apartment.
6. Section 6.7.1.B.2 requires a two-family dwelling to have been constructed at least ten years prior to the date of application for the permit for the accessory apartment. The dwelling was built circa 1880 and thus meets the requirement.
7. Section 6.7.1.D.1.c states that any alterations required to meet the applicable Building, Fire or Health codes are permitted provided they maintain the residential character of the neighborhood.
8. Section 5.1.4.A requires two parking stalls for each dwelling unit, and one stall for the accessory unit. The applicant proposes to construct a three-car detached garage at the rear of the property, as well as two new parking stalls on a separate curb cut from the driveway for a total of five stalls, satisfying the parking requirement.
9. Section 5.1.7.A requires that no parking stall locate within five feet of the street. The applicant proposes to construct two new parking stalls at the front lot line. To do so requires a special permit per Section 5.1.13.

MR1 Zone	Required/Allowed	Existing	Proposed
Lot Size	8,000 square feet	12,155 square feet	No change
Frontage	70 feet	80 feet	No change
Lot size required for an accessory apartment	8,000 square feet	12,155 square feet	No change
Building size required for an accessory apartment	2,600 square feet	>5,800 square feet	No change
Setbacks <ul style="list-style-type: none"> • Front • Side • Rear 	25 feet 7.5 feet 15 feet	25.2 feet 12.7 feet 42.9 feet	No change No change No change
Stories	2.5	2.5	No change
Garage Setbacks <ul style="list-style-type: none"> • Front • Side • Rear Height Stories	25 feet 5 feet 5 feet 22 feet 1.5		125.2 feet 5 feet 5 feet 15.89 feet 1
Max Lot Coverage	30%	29.02%	29.07%
Min Open Space	50%	50.51%	50.46%

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§6.7.1.D	Creation of an accessory apartment in a two-family dwelling in the MR1 district	S.P. per §7.3.3
§5.1.7.A §5.1.13	To construct two parking stalls within five feet of a street	S.P. per §7.3.3

ATTACHMENT D

DRAFT- 74 Waban Street
#312-16

CITY OF NEWTON

IN CITY COUNCIL

November 7, 2016

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 a SPECIAL PERMIT/SITE PLAN APPROVAL for the creation of an internal accessory apartment on the basement and first floor levels of a two-family dwelling and the construction of two parking stalls within five feet of a street, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Marc Laredo:

1. The site is an appropriate location for an accessory apartment within a two-family dwelling in a Multi-Residence 1 (MR1) district as the existing structure can accommodate the accessory apartment without any increase to its size. (§6.7.1.D.1 and §7.3.3.C.1)
2. The accessory apartment will not adversely affect the neighborhood as it will be located in existing space within a two-family dwelling on a property that has sufficient interior and exterior capacity to accommodate the required additional parking stall. (§7.3.3.C.2) Furthermore, approval will allow a third unit that has existed on site to be brought into compliance with applicable regulations.
3. There will be no nuisance or serious hazard to vehicles or pedestrians, as the property's two driveways will have ample curb cuts on Waban Street that will allow for adequate site lines for drivers and pedestrians passing, entering or leaving the property. (§7.3.3.C.3)
4. Access to the site is appropriate for the number of vehicles related to the residential use of the site. (§7.3.3.C.4)
5. The creation of an accessory apartment will help to diversify Newton's housing stock consistent with Newton's *Comprehensive Plan*.
6. Literal compliance with the requirement that the two required parking stalls not be located within five feet of a street (§5.1.7.A) is impracticable due to the size of the lot, and furthermore, granting an exception to would be in the public interest as the spaces will provide off-street parking for the residents of the dwelling and preserve open space while not disrupting the adjacent approximately seven foot wide public sidewalk. (§5.1.13)

PETITION NUMBER: #312-16

PETITIONER: Joe Roman

LOCATION: 74 Waban Street, on land known as Section 12, Block 5, Lot 54, containing approximately 12,115 square feet of land

OWNER: Brown Dog Properties, LLC

ADDRESS OF OWNER: 80 Reddington Street
Swampscott, MA 01907

TO BE USED FOR: Internal Accessory Apartment in Two-Family Dwelling
Two parking stalls within five feet of a street

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §6.7.1.D- Accessory Apartments Allowed by Special Permit
§5.1.7.A, §5.1.13- Parking stalls within five feet of a street

ZONING: Multi Residence 1 (MR-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. A plan entitled "74 Waban Street, Newton, Massachusetts, Existing Conditions Site Plan," prepared by Peter Nolan & Associates LLC, dated April 20, 2016.
 - b. A plan entitled "74 Waban Street, Newton, Massachusetts, Proposed Garage and Driveway Addition," dated July 18, 2016, prepared by Peter Nolan & Associates LLC, stamped and signed by Peter J. Nolan, Professional Land Surveyor.
 - c. A set of architectural plans entitled "Proposed Renovation Residences at 74 Waban Park, Newton MA," prepared by Incite Architecture, signed and stamped by William R. Hubner:
 - i. Foundation and Basement Plans (Accessory Apartment), dated July 6, 2016 (Sheet A0);
 - ii. Floor Plans (Accessory Apartment) & Notes, dated July 6, 2016 (Sheet A1);
 - iii. Elevations & Sections, dated June 8, 2016 (Sheet A2);
 - iv. Elevations, dated June 8, 2016 (Sheet A3);
 - v. Sections & Notes, dated June 8, 2016 (Sheet A4);
 - vi. Framing Diagrams, dated June 8, 2016 (Sheet F1);
 - vii. Framing Diagrams, dated June 8, 2016 (Sheet F2).
2. The accessory apartment must be held in common ownership with one or both of the two

principal units within the two-family dwelling in which it is located.

3. The owner of the accessory apartment shall occupy either one of the principal units or the accessory apartment, and the owner shall file an annual affidavit with the Commissioner of Inspectional Services attesting to this fact prior to July 1 of every year.
4. When ownership of the accessory apartment changes the new owner 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.
5. 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 Order for the approved Special Permit/Site Plan Approval with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded Order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Submitted a final Landscape Plan to the Director of Planning and Development for review and approval.
 - d. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
6. No Final Inspection and/or Occupancy Permit for the buildings 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 a registered land surveyor or engineer certifying compliance with Condition #1.
 - b. Submitted to the Director of Planning and Development, Commissioner of Inspectional Services and City Engineer, final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.
 - c. Filed with the City Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, final landscape features, and parking areas, as well as an acknowledgement that the driveway has been resurfaced subsequent to the date of this Order.
7. Notwithstanding the provisions of Condition #6c above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the site prior to installation of final landscaping and parking areas provided that the Petitioner shall first have filed with the Director of Planning and Development a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining site work to secure installation of such landscaping and parking areas.