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Barney S. Heath
Acting Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: July 26, 2016
Land Use Action Date: August 9, 2016
City Council Action Date: August 15, 2016
90-Day Expiration Date: September 5, 2016

DATE: July 22, 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 #217-16**, NEW NEWTON, LLC/DANIEL SZETO petition for SPECIAL PERMIT/SITE PLAN APPROVAL for the EXTENSION OF A NON-CONFORMING USE by building a rear addition to existing building and constructing a second two-family dwelling at 50-52 Rowe Street, Ward 4, Auburndale, on land known as SBL 44023 0006, containing approximately 19,321 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: 7.3.3, 7.4, 3.4, 7.8.2.C.2, 3.1.3, 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.



50 Rowe Street

EXECUTIVE SUMMARY

The property at 50-52 Rowe Street consists of a 19,321 square foot lot in a Single Residence 3 (SR3) zoning district improved with a dwelling constructed circa 1860. Originally constructed as a single-family residence, the dwelling was converted into a two-family use in 1947 and is still used as two-family residence today. The applicant is proposing to maintain two units in the existing structure while adding approximately 1,300 square feet to it, mostly within a two-story rear addition, and two construct an additional detached two-family dwelling on the lot.

A special permit is required to further extend the nonconforming use in the Single Residence 3 zoning district and to allow for two additional dwellings on the lot; a special permit is also required to allow the requested further reduction in the currently nonconforming lot area per unit.

The Planning Department can discern certain benefits from the project, including the provision of two new, relatively modestly sized residential units that would contribute to the housing options available in the city, as well as the replacement of a considerable amount of paved area with said residences and related landscaped open space and the preservation of the existing structure. However, the Planning Department nevertheless has concerns with the proposal as it would add a new detached two-family dwelling to a lot that already includes a nonconforming two-family dwelling in a single residence district and also significantly reduce the already nonconforming lot area per unit from 9,660.5 to 4,830.25 square feet in a district where 10,000 square feet per unit is required. The Planning Department notes that there used to be a large barn on the property that was recently torn down, in approximately the same location of the proposed new two-family residence. It is believed that the barn was used as part of a moving and distribution business.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Council should consider whether:

- the proposed extension of a nonconforming use would not be substantially more detrimental than the existing nonconforming use to the neighborhood (§7.8.2.C.2);
- the proposed further reduction of the nonconforming lot area per unit would not be substantially more detrimental than the existing nonconforming lot area per unit to the neighborhood (§7.8.2.C.2);
- the site is an appropriate location for an enlarged nonconforming two-family dwelling and/or an additional nonconforming two-family dwelling (§7.3.3.C.1);
- the use as developed and operated will not adversely affect the neighborhood (§7.3.3.C.2);
- there will be no 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).

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on Rowe Street between Rowe and Webster Streets in Auburndale. The site and surrounding areas to the north and west are zoned Single Residence-3 (SR3); the parcel east of the site adjacent to the property's rear lot line is zoned Manufacturing (MAN) and contains parking for adjacent commercial uses south of Rowe Street. (**Attachment A**).

Despite the prevalence of SR3 zoning in the area, two-family dwellings are quite common in the neighborhood to the north and west of the subject property. For example, the direct abutters to the left and right of the property are two-family homes, and three of the four properties on the block front across Rowe Street are two-family homes as well (the fourth, at 107 Rowe Street, is a single-family dwelling). Of the 21 residential properties along either side of Rowe Street within approximately 400 feet of the subject property, six are single-family homes, with the remaining 15 being two-family dwellings. Of note, the property's two rear abutters mentioned above are a single family dwelling at 310 Webster Street and a Business 2 / Manufacturing-zoned parking lot accessed via Crescent Street to the south. (**Attachment B**).

Of the 18 residential properties within approximately 300 feet of the subject property (i.e., those generally centered on the intersection of Rowe, Walcott and Webster streets), 11 are two-family and seven are single-family homes. The average lot size of these 18 properties is 8,189 square feet. The average lot area per unit is 5,696 square feet, a product of the relatively high number of two family homes in the neighborhood.

B. Site

The subject property, which at 19,321 square feet is the second largest residential lot in the neighborhood, is currently improved with an approximately 3,700 square foot, wooden two-family residence constructed in 1860. The dwelling is surrounded on the west, north and east by lawn and some mature trees and shrubbery. A large proportion of the lot to the south, perhaps as much as half, is covered with asphalt, a legacy of that portion of the site's decades-long use by moving and distribution businesses.

The site's grade slopes slightly downward north to south, with the existing dwelling being located on the higher portion of the property. An existing retaining wall spans most of the 145 feet frontage of the property along Rowe Street, with exceptions

for the front walk and the driveway at the southern end of the lot that grants vehicular access to the large existing paved area. Another existing retaining wall delineates the existing dwelling's rear lawn from the extensive paved area.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The proposed use of the site is for four dwelling units located in two, two-family structures with landscaped areas and up to ten parking spaces, including four located in basement-level tandem garages, two in a new carport, and up to four surface stalls located adjacent to or on the proposed driveway.

B. Building and Site Design

The petitioners are proposing to expand the existing two-family dwelling from approximately 3,700 to 5,068 square feet by building a two-story, 988 square addition to the rear of the home and creating an additional 300 square feet of habitable space in the basement garage area. While the proposed addition to the existing two-family dwelling is lower than the existing structure, the height of the expanded structure technically increases slightly, from 24.24 to 24.50 feet, due to grade changes.

The petitioner is also proposing a new, two-story, 2,400 square foot two-unit dwelling at the rear of the lot, designed and scaled reminiscent of a carriage house and generally consistent with the existing dwelling. The benefit of this project is that the proposed new units are relatively modestly sized, with one unit containing 960 square feet ("Unit 3"), the other containing 1,440 square feet ("Unit 4"). Each would have habitable basement levels. The height of the proposed two-family structure would be 30.96 feet, but the elevation of the roofline would not be higher than that of the existing dwelling due to the property's downward slope.

A 22' by 22' two-vehicle carport is also proposed at the rear of the lot, between the existing and proposed two-family dwellings. All three structures would be access via the existing driveway located on Rowe Street.

The proposed addition to the existing dwelling would reduce that structure's rear setback from just under 40 feet to approximately 28 feet. The addition would continue the current side setback of 17.9 feet. The rear setback of the proposed new two-family dwelling would be 15.5 feet, slightly in excess of the required 15 feet. The proposed new two-family dwelling's side setback (at the southern property line) would be 12.5 feet, exceeding the required 7.5 feet, but significantly less than would be required for attached dwellings where 25 foot setbacks are required on all sides.

The site's floor area ratio (FAR) would increase from its current 0.19 to 0.39, just below the maximum 0.40 allowed (0.38 plus 0.02 bonus). The Lot Coverage would

increase from 10.3% to 19.8%, well below the maximum of 30% allowed; the Open Space percentage would decrease from 72.5% to 65.1%, but would remain well above the 50% required minimum.

Most significantly, the already nonconforming lot area per unit measurement would decrease further 9,660.5 to 4,830.25 square feet in a district where 10,000 square feet is required. The Planning Department notes that this is the result of seeking to place four units on a site zoned for single-family dwellings. However, the proposed lot area per unit is not that much lower than the neighborhood average as mentioned above.

To grant the requested special permit, the Council must find that the proposed “change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use is to the neighborhood.” To assist in that determination, the Planning Department examined Assessing Department data for the immediate neighborhood. It appears that of the 18 residential lots within 300 feet of the site, only one has the currently required 10,000 square feet per unit (a single-family dwelling on an 11,466 square foot lot). Seven are single-family residences with lot areas per unit of between 4,927 and 8,870 square feet. Notably, ten of the 18 are two-family properties with lot area per unit ratios similar or lower than that of the present proposal, ranging from 2,850 to 5,001.

Widening the focus, within about 500 feet of the site, only eight of the approximately 49 residential lots have the required 10,000 square feet per unit (all eight of which are single family dwellings). Of the other 41 lots, 19 are two-family dwellings with fewer square feet per unit than the proposal, and 22 are nonconforming one- or two- family dwellings with ratios ranging between 4,927 and 8,870 square feet per unit.

This information indicates that the proposal, if approved, would not be expected to produce conditions or a built environment dissimilar to and/or inconsistent with those already commonly present in the neighborhood.

However, the Planning Department nevertheless has concerns regarding allowing four residential units (including two, albeit modestly-sized, units) on one lot within a SR3 district that already lacks the required square footage under current zoning for two dwelling units as among zoning’s functions is to, where feasible and/or appropriate, diminish the number and scale of nonconformities over time. The Planning Department is also concerned that such action could have implications for potential applications on other similarly nonconforming lots in the city.

Lastly, the Planning Department notes that in 1962 the then-owners of the subject property applied to the Zoning Board of Appeals for variances to minimum lot size and frontage requirements to allow the division of the subject property into two lots measuring approximately 9,650 square feet each, presumably to allow otherwise unpermitted structures or uses on the lot. That petition failed to receive the support of four members - three members voted to grant the variance and two members voted to deny it.

C. Parking and Circulation

Vehicular access to the site would be provided via a 16 foot wide bituminous paved driveway at the existing curb cut on Rowe Street.

The petitioners are proposing to provide four vehicle spaces (two pair of tandem spaces) within the basement level of the existing two-family dwelling to serve the units in that structure. Two additional stalls would be located within the proposed carport, and two more spaces would be provided in an area surrounded by a proposed retaining wall adjacent to the driveway. Taken together, these stalls would provide eight spaces for the four units. It should be noted that the submitted landscape plan has a notation indicating two spaces on the driveway, directly in front of the two, two-car garages proposed for the basement level of the existing dwelling, which would raise the number of on-site spaces to ten.

D. Landscaping and Screening

The site plan includes the driveway referenced above with a four-foot wide flush paver-surfaced walkway leading to the proposed new two-family dwelling. Lawn is proposed for most of those portions of the site not occupied by structures or drive-and-walk-ways. The submitted landscape plan shows planting beds along the front and right side of the existing dwelling, and at the driveway entrance. A white birch is indicated for the area in front of the proposed new dwelling, and seven additional new trees are shown for screening the side of the that structure from the abutter at 62-64 Rowe Street. Importantly, an existing fence is located between the two properties; however it appears that the fence is located on the abutting property and not subject to the petitioner's control. As such, in the event the special permit is granted, the Planning Department recommends that the petitioner provide and maintain additional evergreen plantings along that property line, extending approximately 50 feet in the direction of Rowe Street and terminating at a point approximately in line with the front of the existing dwelling on the subject property.

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 further extend a nonconforming two-family residential use in an SR2 zoning district (§3.4; §7.8.2.C.2);
- Special Permit per §7.3.3 to further extend nonconforming lot area per unit (§3.1.3; §7.8.2.C.2).

B. Engineering Review

The Associate City Engineer submitted an Engineering Review Memorandum (**Attachment D**) providing an analysis of the project proposal with regard to engineering issues. All runoff is proposed to be retained onsite in compliance with the Engineering Division of the Department of Public Works standards. The Associate City Engineer notes that the sidewalk along the property's frontage is in poor condition and should be reconstructed along with curbing as a public benefit should this project be approved.

V. PETITIONER'S RESPONSIBILITIES

The petitioner's application is considered complete at this time. The Committee must decide if the benefit of the preservation of the existing structure and the addition of two modestly sized new units which require waivers to the lot area per unit requirement outweighs concerns that the site with the new and expanded units would be substantially more detrimental than the existing two-family use is to the neighborhood.






ATTACHMENTS:

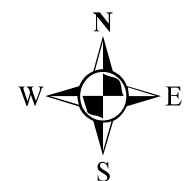
- Attachment A:** Zoning Map
Attachment B: Land Use Map
Attachment C: Zoning Review Memorandum
Attachment D: Associate City Engineer's Report

Zoning Map 50 Rowe Street

*City of Newton,
Massachusetts*

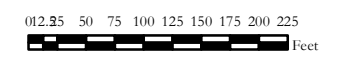
Legend

-  Single Residence 3
-  Multi-Residence 1
-  Business 2
-  Manufacturing
-  Public Use

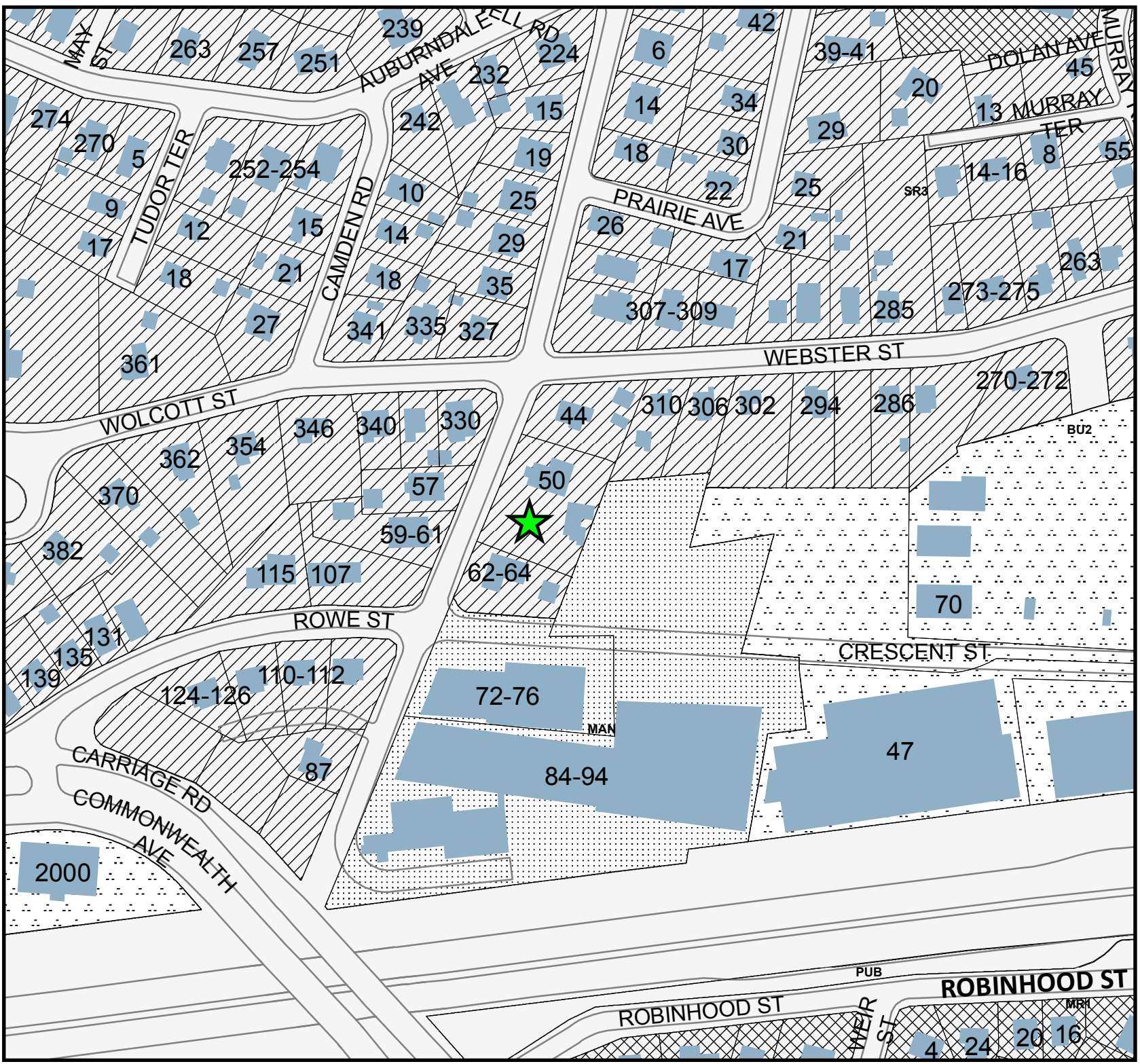


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas Greenfield



Map Date: July 14, 2016







Existing Land Use 50 Rowe Street

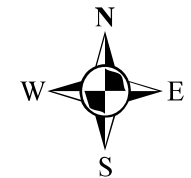
*City of Newton,
Massachusetts*

Legend

Land Use

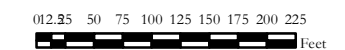
Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Industrial

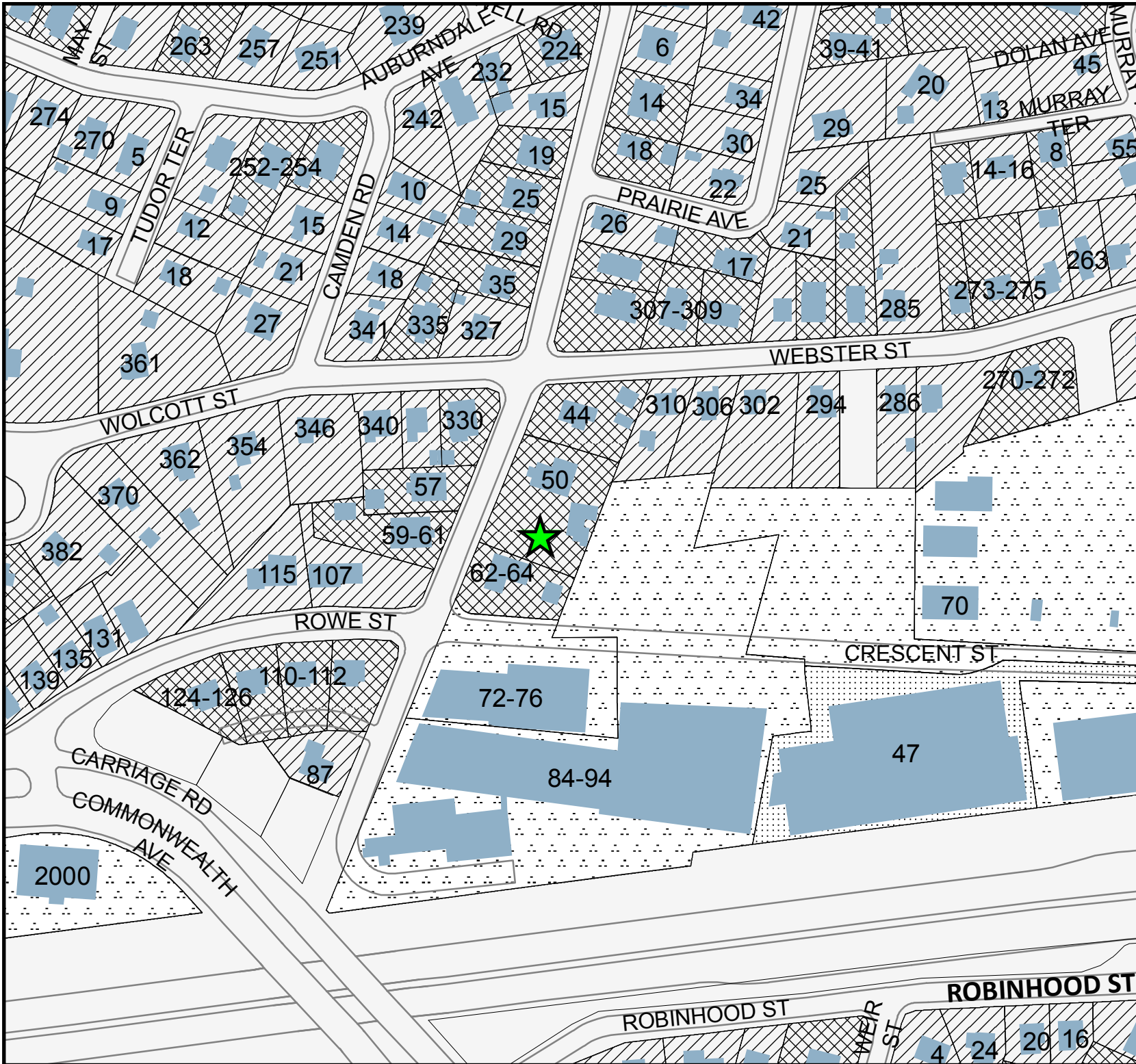


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
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Map Date: July 14, 2016





Setti D. Warren
Mayor

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

Attachment C

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: June 6, 2016

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Terrence P. Morris, attorney
Barney S. Heath, Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to extend a nonconforming two-family dwelling use to allow for a second two-family dwelling on the lot

Applicant: Brian Humphrys	
Site: 50-52 Rowe Street	SBL: 44023 0006
Zoning: SR3	Lot Area: 19,321 square feet
Current use: Two-family dwelling	Proposed use: Two two-family dwellings

BACKGROUND:

The property at 50-52 Rowe Street consists of a 19,321 square foot lot improved with a dwelling constructed circa 1860 in the SR3 zoning district. Originally constructed as a single-family residence, the dwelling was converted into a two-family use in 1947. The applicant proposes to construct a rear addition to the existing dwelling, maintaining two units, as well as constructing a second two-family dwelling on the lot. A special permit is required to further extend the nonconforming two-family dwelling use in the Single Residence 3 zoning district to allow for a second two-family dwelling on the lot.

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

- Zoning Review Application, prepared by Terrence P. Morris, attorney, dated 4/22/2016
- Zoning Plan, signed and stamped by Joseph R. Porter, surveyor, dated 4/22/2016
- Architectural Plans, prepared by Ronald F. Jarek, architect, dated 4/18/2016
 - Floor Plans and Elevations, units 3 and 4
 - Elevations, units 1 and 2

ADMINISTRATIVE DETERMINATIONS:

1. The applicant proposes to construct a rear addition to the existing two-family dwelling to add living space and accommodate two garage spaces at the lowest level. A second two-family dwelling is proposed in the southwest corner of the lot in the location of a garage which had been demolished in 2011. As the existing use on the site is non-conforming as a two-family use in a single residence 3 zoning district, the applicant may seek a special permit to change from one nonconforming use to another pursuant to Sections 3.4 and 7.8.2.C.2.
2. Section 3.1.3 requires 10,000 square feet of lot area per unit in the SR3 zoning district. With a 19,321 square foot lot and two existing dwelling units, the applicant is nonconforming with 9,660.5 square feet per unit. To add two additional units will increase the nonconformity to 4,830.25 square feet per unit, which requires a special permit pursuant to Sections 3.1.3 and 7.8.2.C.2.

SR3 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	19,321 square feet	No change
Frontage	70 feet	145 feet	No change
Setbacks- Existing dwelling <ul style="list-style-type: none"> • Front • Side • Rear 	25 feet 7.5 feet 15 feet	20.4 feet 17.9 feet 27.9 feet	No change No change No change
Setbacks – Proposed dwelling <ul style="list-style-type: none"> • Front • Side • Rear 	25 feet 7.5 feet 15 feet	N/A N/A N/A	+/- 80 feet 12.5 feet 15.5 feet
Lot Area Per Unit	10,000 square feet	9,660.5 square feet	4,830.25 square feet
Building Height	36 feet	24.24 feet	No change/28 feet
Max Number of Stories	2.5	2.5	No change
FAR	.38	<.25	.37
Lot Coverage	30%	10.3%	19.8%
Open Space	50%	72.5%	65.1%

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§3.4 §7.8.2.C.2	To further extend a nonconforming two-family residential use in an SR2 zoning district	S.P. per §7.3.3
§3.1.3 §7.8.2.C.2	To further extend nonconforming lot area per unit	S.P. per §7.3.3

CITY OF NEWTON
Department of Public Works
ENGINEERING DIVISION

MEMORANDUM

To: Alderman Mark Laredo, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – 50 Rowe Street

Date: June 30, 2016

CC: Lou Taverna, PE City Engineer
Nadia Khan, Committee Clerk
Alexandria Ananth, Chief Planner
Michael Gleba, Sr. Planner

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

Topographic Site Plan
Showing Proposed Conditions at
50 Rowe Street
Newton, MA
Prepared by: VTP Associates, Inc.
Dated: June 13, 2106

Executive Summary:

This application entails a proposed addition to an existing dwelling and the construction of two additional units, a retaining wall that will provide two parking stalls, and stormwater collection and infiltration systems.

The site is somewhat hilly having a high point at elevation 65-ft near the front of the existing dwelling and sloping down towards the south-east at elevation 56-feet. The site has 145-feet of frontage along Rowe Street, the sidewalk is in poor condition, and as part of all the utilities that need to be brought onto the property, it would be required that the

sidewalks and driveway apron be reconstructed to City standards and ADA compliance. Furthermore it would be a public benefit if curbing is installed to prevent further damage of the roadway edge.

The engineer of record has designed a stormwater collection and infiltration; however, the drainage report was not available for review.

Construction Management:

1. A construction management plan is needed for this project. At a minimum, it must address the following: staging site for construction equipment, construction materials, parking of construction worker's vehicles, phasing of the project with anticipated completion dates and milestones, safety precautions, emergency contact personnel of contractor. It shall also address any anticipated dewatering during construction, site safety & stability, and impact to abutting properties.
2. Stabilized driveway entrances are needed during construction which will provide a tire wash and mud removal to ensure City streets are kept clean.

Drainage:

1. A drainage analysis needs to be performed based on the City of Newton's 100-year storm event of 6-inches over a 24-hour period. All runoff from impervious areas need to be infiltrated on site, for the project. The design of the proposed on site drainage system needs to comply with the MassDEP Stormwater Regulations and City Ordinances.
2. Although on-site soil evaluation was performed the locations of the tests need to be identified on the site plan. Furthermore, the information obtained must be submitted with the drainage study. The locations of these tests need to be shown on the site plan and must be performed within 25-feet of a proposed system.
3. An Operations and Maintenance (O&M) plan for Stormwater Management Facilities needs to be drafted and submitted for review. Once approved the O&M must be adopted by applicant, incorporated into the deeds; and recorded at the Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.

4. It is imperative to note that the ownership, operation, and maintenance of the proposed drainage system and all appurtenances including but not limited to the drywells, catch basins, and pipes are the sole responsibility of the property owner(s).

Environmental:

1. Has a 21E investigation & report been performed on the site, if so copies of the report should be submitted the Newton Board of Health and the Engineering Division.
2. Are there any existing underground oil or fuel tanks, are they to be removed, if they have been evidence should be submitted to the Newton Fire Department, and Newton Board of Health.

Sewer:

1. The existing water & sewer services to the building shall be cut and capped at the main and be completely removed from the main and the site then properly back filled. The Engineering Division must inspect this work; failure to having this work inspected may result in the delay of issuance of the Utility Connection Permit.
2. Use City of Newton Details in lieu of the details submitted they are in PDF format on the City's website.
3. With the exception of natural gas service(s), all utility trenches with the right of way shall be backfilled with Control Density Fill (CDF) Excavatable Type I-E, detail is available in the city of Newton Construction Standards Detail Book.
4. All new sewer service and/or structures shall be pressure tested or videotaped after final installation is complete. Method of final inspection shall be determined solely by the construction inspector from the City Engineering Division. All sewer manholes shall be vacuum tested in accordance to the City's Construction Standards & Specifications. The sewer service will NOT be accepted until one of the two methods stated above is completed. All testing MUST be witnessed by a representative of the Engineering Division. A Certificate of Occupancy will not be recommended until this test is completed and a written report is received by the City Engineer. ***This note must be added to the final approved plans.***
5. All sewer manholes shall be vacuum tested in accordance to the City's Construction Standards & Specifications. The sewer service will NOT be accepted until one of the two methods stated above is completed. All testing

MUST be witnessed by a representative of the Engineering Division. A Certificate of Occupancy will not be recommended until this test is completed and a written report is received by the City Engineer.

Water:

1. All water connections shall be chlorinated & pressure tested in accordance to AWWA and the City of Newton Construction Standards and Specifications prior to opening the connection to existing pipes.
2. Approval of the final configuration of the water service(s) shall be determined by the Utilities Division, the engineer of record should submit a plan to the Director of Utilities for approval

General:

1. All trench excavation contractors shall comply with Massachusetts General Laws Chapter 82A, Trench Excavation Safety Requirements, to protect the general public from unauthorized access to unattended trenches. Trench Excavation Permit required. This applies to all trenches on public and private property. *This note shall be incorporated onto the plans*
2. All tree removal shall comply with the City's Tree Ordinance.
3. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of water services, sewer service, and drainage system installation. The utility in question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval. *This note should be incorporated onto the plans*
4. The applicant will have to apply for Street Opening, Sidewalk Crossing, and Utilities Connecting permits with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*
5. The applicant will have to apply for a Building Permits with the Department of Inspectional Service prior to any construction.
6. Prior to Occupancy Permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading, improvements

and limits of restoration work. The plan shall also include profiles of the various new utilities, indicating rim & invert elevations, slopes of pipes, pipe material, and swing ties from permanent building corners. ***This note must be incorporated onto the final contract plans.***

7. All site work including trench restoration must be completed before a Certificate of Occupancy is issued. *This note must be incorporated onto the site plan.*

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.