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Mayor

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James Freas  
Acting Director

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**PUBLIC HEARING MEMORANDUM**

Public Hearing Date: October 13, 2015  
Land Use Action Date: November 17, 2015  
Board of Aldermen Action Date: December 21, 2015  
90-Day Expiration Date: January 12, 2016

DATE: October 9, 2015

TO: Board of Aldermen

FROM: James Freas, Acting Director of Planning and Development  
Alexandra Ananth, Chief Planner for Current Planning  
Daniel Sexton, Senior Planner

SUBJECT: **Petition #229-15**, LINDA BRENNAN & ROBERT H. LEE, for a SPECIAL PERMIT/SITE PLAN APPROVAL to construct a detached structure for an accessory apartment accessory to a single-family dwelling at 28 ORCHARD AVENUE, Ward 5, WABAN, on land known as SBL 54, 10, 1, containing approximately 19,850 square feet of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-8(d)(2) of the City of Newton Rev Zoning Ord, 2012.

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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.



**28 Orchard Avenue**

## **EXECUTIVE SUMMARY**

The property located at 28 Orchard Avenue, in Waban, consists of a 19,859 square foot lot, and is improved with a single-family residence built in 1840 and a detach two-car garage constructed in 1921. The site has frontage on Orchard Avenue and Mayflower Terrace. The petitioners are proposing to construct a second detached accessory structure on the property that will be used as an accessory apartment accessory to the principal dwelling. In order to develop the detached accessory structure with the proposed accessory use, the petitioner is seeking a special permit to allow an accessory apartment in a detached accessory structure accessory to a single-family dwelling.

The Planning Department is not concerned with the creation of an accessory apartment in the proposed detached accessory structure on this property. The Planning Department believes the proposed structure has been designed to be sensitive to similarly styled homes and structures in the surrounding neighborhood. The petitioners have also located the structure back from Mayflower Terrace and are intending to install a robust landscape planting schedule to minimize the visual impact of the proposed accessory structure and use. The Planning Department notes that the accessory use as proposed complies with the provisions of §30-8(d)(1) and Table 30-8, and, if approved, the project will not exceed the maximum allowable amount of lot coverage or reduce the level of open space below the minimum required by the Newton Zoning Ordinance. For these reasons, the Planning Department believes the subject property is an appropriate location for an accessory apartment, and that the accessory use as developed and operated will not adversely affect the surrounding neighborhood.

The Planning Department does, however, encourage the petitioner to eliminate one of the parking stalls available to the accessory apartment to reduce the intensity of the accessory use and lessen the visual impact created by the use from Mayflower Terrace.

### **I. SIGNIFICANT ISSUES FOR CONSIDERATION:**

When reviewing this request, the Board should consider whether:

- The site is an appropriate location for a detached accessory structure with an accessory apartment accessory to a single-family dwelling in the Single Residence 2 district. (§30-24(d)(1))
- The accessory apartment will not adversely affect the neighborhood, as it is set back from Mayflower Terrace and adequately screened. (§30-24(d)(2))
- There will be no nuisance or serious hazard to vehicles or pedestrians. (§30-24(d)(3))
- Access to the site from Mayflower terrace is appropriate for the vehicles involved. (§30-24(d)(4))

## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The subject property is located on Orchard Avenue, a short dead-end street in Waban, but also has frontage on Mayflower Terrace, also a short dead-end street. The site is developed with a single-family residence which is consistent with the surrounding residential development patterns, which has an eclectic mix of residential architectural (**ATTACHMENT A**). The site and surrounding area are zoned Single Residence 2 (**ATTACHMENT B**).

### B. Site

The property consists of a 19,859 square foot lot, and is improved with a single-family residence built in 1840 and a detach two-car garage constructed in 1921. The residence is constructed on the highest portion of the site, which has a grade difference of approximately 8 feet and slopes downward towards the westerly property line. The single-family residence is accessed via a bituminous driveway on the northern side of the dwelling. The remaining portions of the site are lawn with some mature trees along the property lines abutting adjacent properties.

## III. PROJECT DESCRIPTION AND ANALYSIS

### A. Land Use

The principal use of the site will remain a single-family residence and, if approved, an accessory apartment is a detached accessory structure.

### B. Building and Site Design

The petitioners are proposing to construct a second 1½-story detached accessory structure in the southeast corner of the site. The accessory structure has been designed to be sensitive to similarly styled homes and structures in the surrounding neighborhood, and will total approximately 1,864 square feet. The proposed accessory apartment will only occupy a total of 1,150 square feet in the accessory structure, which includes 696 square feet on the first story and 454 square feet in half story above. The remaining portion of the accessory structure, which includes a 696 square foot basement level, will be used by the principal dwelling for storage and to house the mechanicals for the structure. The proposed accessory use meets all of the controls for accessory apartments in detached structures as stipulated under §30-8(d)(1) and Table 30-8 of the NZO.

The petitioners are also proposing to provide vehicle access to the accessory apartment via Mayflower Terrace, which abuts the property in the southwest corner of the site. Two exterior parking spaces are proposed just west of the accessory apartment, which is one more stall than is required. With the exception of the exterior parking stalls and landscape plantings around the proposed accessory structure, no

other changes are proposed for the site.

The Planning Department has no concerns with the proposed accessory apartment, as the accessory unit is small and will further diversify Newton's housing stock. While the development of the accessory structure and use off Orchard Avenue would be preferred, the topography of the site is such that the development in this portion of the site is not possible without significantly altering the character of the immediate area. As such, the Planning Department believes that the proposed placement of the structure and the landscape planting schedule should minimize the visual impact of the structure. The Planning Department does, however, encourage the petitioners to consider eliminating one proposed parking stall.

C. Landscape Screening

The site has a significant amount of existing mature vegetation along the property lines abutting adjacent properties. As part of the project, the petitioners are proposing to install additional plants to reduce the visual impact of the new accessory structure and the surface parking stalls located off of Mayflower Terrace. The Planning Department believes that existing and proposed vegetation is adequate, and does not believe additional screening is needed.

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:

- §30-8(d)(1) and §30-8(d)(2), to create an accessory apartment in a detached accessory structure accessory to a single-family dwelling in a Single Residence 2 district.

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. According to the memorandum, the Engineering Division of Public Works noted that the soils on the lot have a rapid percolation rate and groundwater is deep. The petitioners are proposing to install an on-site infiltration system to capture the runoff from all the new impervious surfaces and infiltrate on-site.

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, dated July 1, 2015
- ATTACHMENT D:** Engineering Review Memorandum, dated October 2, 2015

# Land Use Map 28 Orchard Avenue

City of Newton,  
Massachusetts

## ATTACHMENT A

### Legend

#### Land Use

- Single Family Residential
- Multi-Family Residential
- Open Space
- Vacant Land
- Building Outlines
- Property Boundaries

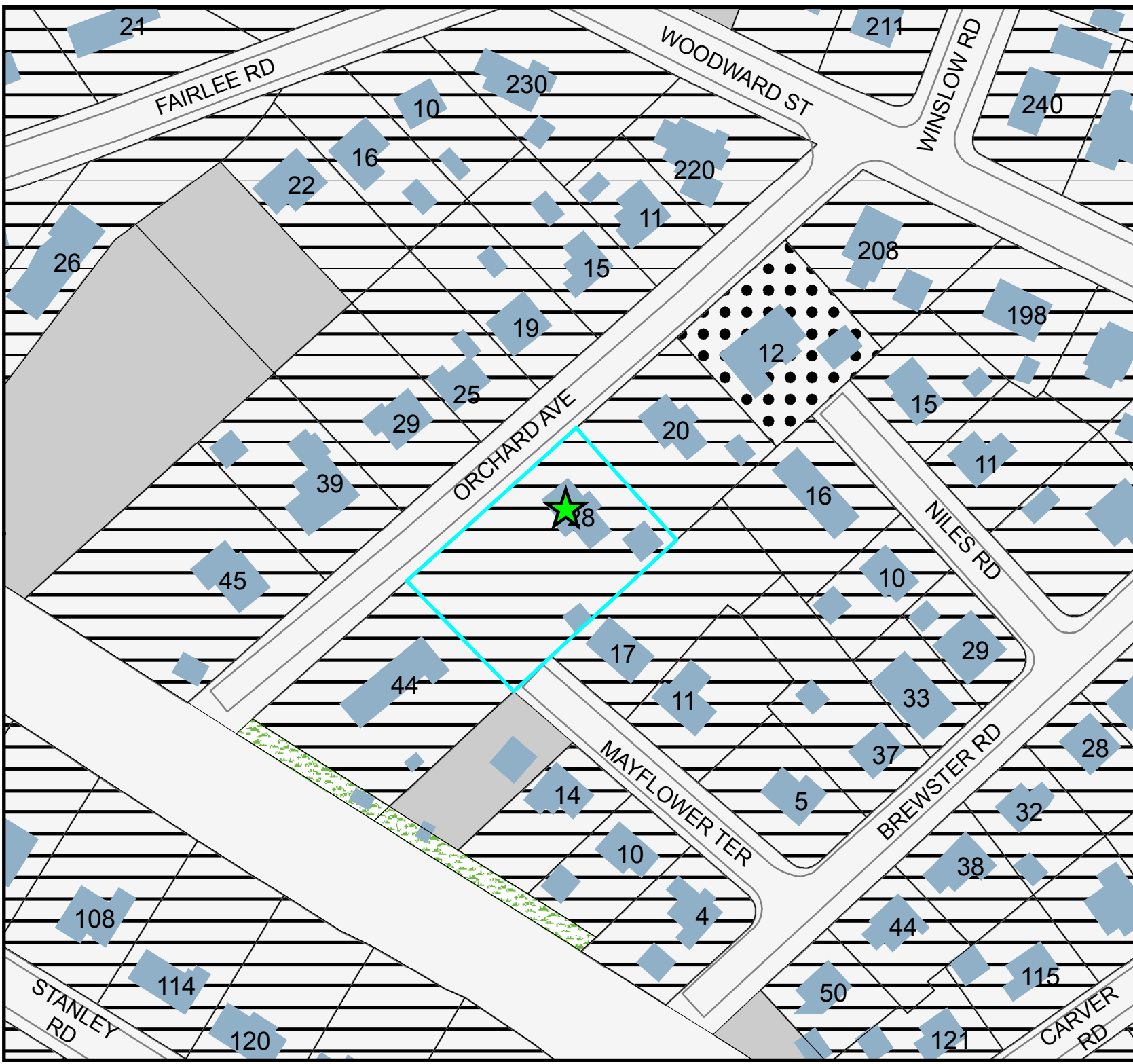


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

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

0 12.5 25 50 75 100 125  
Feet

Map Date: October 05, 2015







# Zoning Map 28 Orchard Avenue

City of Newton,  
Massachusetts

## ATTACHMENT B

### Legend

-  Single Residence 2
-  Public Use
-  Building Outlines
-  Property Boundaries

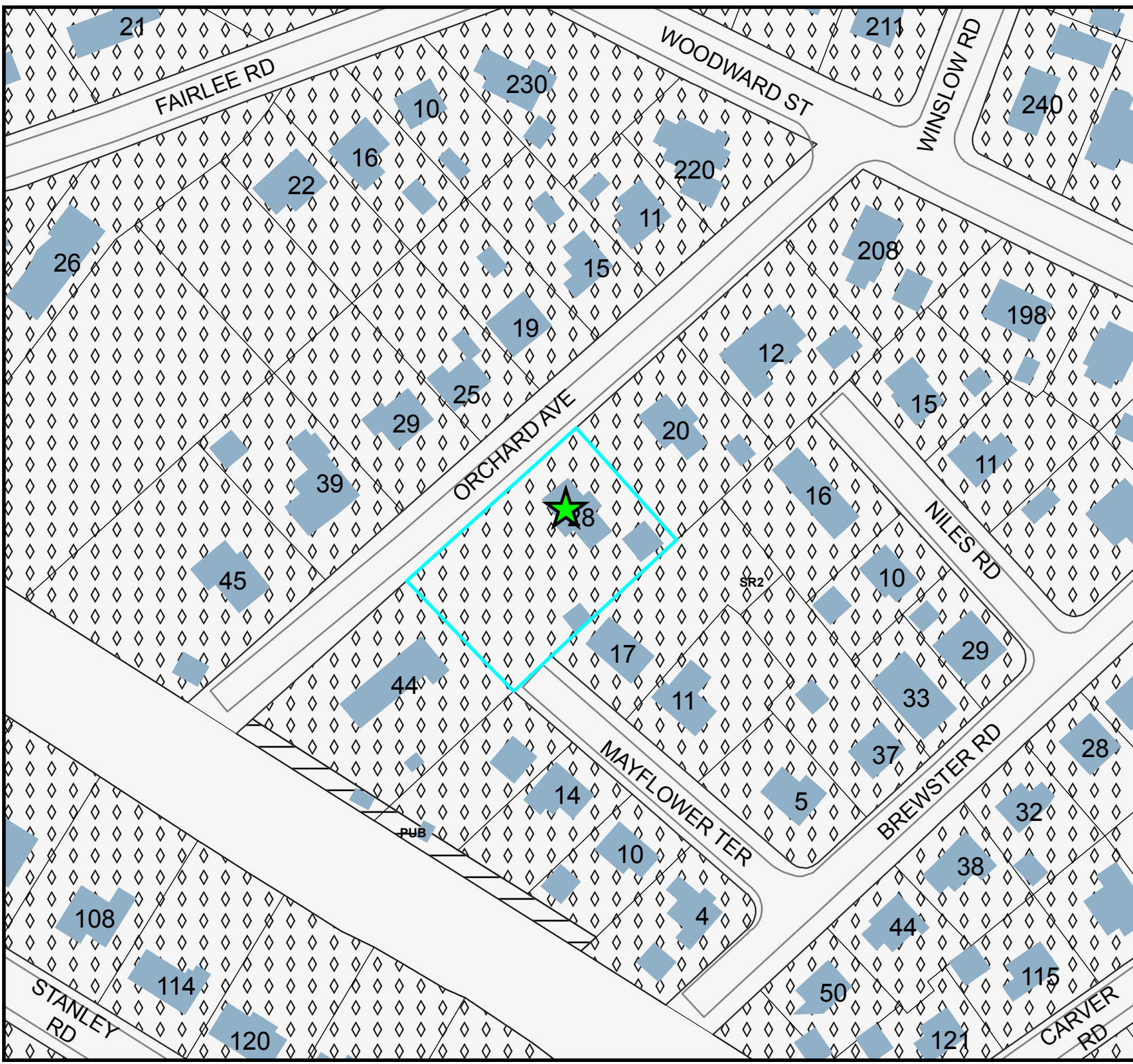


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
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0 12.5 25 50 75 100 125  
Feet

Map Date: October 05, 2015







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# ATTACHMENT C

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James Freas  
Acting Director

## ZONING REVIEW MEMORANDUM

Date: July 1, 2015

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Florin Luca, Studio Pph, architects  
Linda Brennan & Robert Lee, applicants  
James Freas, Acting Director of Planning and Development  
Ouida Young, Associate City Solicitor

RE: **Request to establish an accessory apartment in a detached structure**

Applicant: Linda Brennan & Robert Lee	
Site: 28 Orchard Ave (Waban)	SBL: 54010 0001
Zoning: SR2	Lot Area: 19,859 square feet
Current use: Single-family dwelling	Proposed use: Single-family with accessory apartment in detached structure

### BACKGROUND:

The property at 28 Orchard Ave. in Waban consists of a 19,859 square foot lot improved with a single-family dwelling built in 1840 and a detached two-car garage built in 1921. The property has frontage along Orchard Avenue, as well the end of Mayflower Terrace at the southern corner. The applicants propose to build a detached accessory structure to house an accessory apartment which will be accessed off of Mayflower Terrace.

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

- Zoning Review Application, prepared by Luca Florin, architect, submitted 5/28/2015
- Existing Conditions Plan, prepared by Verne T. Porter, surveyor, dated 4/9/2015
- Proposed Conditions Plan, prepared by Verne T. Porter, surveyor, dated 3/31/2015
- Code and Zoning Information, prepared by Studio Pph, architect, dated 5/26/2015
- Site Plan, prepared by Studio Pph, architect, dated 5/26/2015
- Floor Plans, prepared by Studio Pph, architect, dated 5/26/2015
- Elevations, prepared by Studio Pph, architect, dated 5/26/2015



## **ADMINISTRATIVE DETERMINATIONS:**

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1. The existing single-family structure is located in an SR2 district. Per section 30-8(d)(2), a special permit is required to create an accessory apartment in a detached structure accessory to a single-family dwelling.
2. Table 30-8 requires a lot of at least 10,000 square feet and a building size of at least 2,600 square feet. The property is 19,859 square feet and the building size is approximately 4,081 square feet. The property meets the requirements of Table 30-8.
3. Section 30-8(d)(1)(a) requires that an accessory apartment be located within a single family dwelling and one of the two units must be occupied by the owner of the property. The owner of the property intends to maintain residency on the property.
4. Section 30-8(d)(1)(b) requires a single-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 1840 and thus meets the requirement.
5. The applicant has not made any alterations to the structure within the last four years necessary to meet the requirements of Table 30-8, per Section 30-8(d)(1)(e).
6. Pursuant to Section 30-8(d)(1)(f), only one accessory apartment is allowed per lot. Only one is proposed.
7. No lodgers are proposed in either unit, per Section 30-8(d)(1)(g)
8. Sections 30-8(d)(1)h) and 30-19(d)(19) and 30-19(g) require that the property provide two parking stalls for the single-family dwelling, as well as one stall for the accessory unit. The main dwelling has a two-car garage built in 1926, meeting the parking requirement. The applicants propose to provide two surface parking stalls accessed off of Mayflower Terrace located in a paved area in front of the proposed accessory structure.
9. The proposed parking for the accessory apartment is located within the front setback. Section 30-19(g)(1) states that one parking stall per each unit may be located within the front setback. As there will be two units on the property, the two stalls in the front setback are allowed by right.
10. The proposed accessory apartment is 1,150 square feet, which is greater than the minimum of 400 square feet, and less than the maximum of 33% of the total building size, or 1,690 square feet, required by the ordinance per Section 30-8(d)(2)(a).

<b>Zone SR2</b>	<b>Required/Allowed</b>	<b>Existing</b>	<b>Proposed</b>
Lot Size	10,000 square feet	16,859 square feet	No change
Frontage	100 feet	172 feet	No change
Setbacks for existing structure <ul style="list-style-type: none"> <li>• Front</li> <li>• Side</li> <li>• Rear</li> </ul>	25 feet 7.5 feet 15 feet	<b>19.3 feet</b> 24.9 feet 20.7 feet	<b>No change</b> No change No change
Setbacks for detached structures <ul style="list-style-type: none"> <li>• Front (Mayflower Terrace)</li> <li>• Front (Orchard Avenue)</li> <li>• Side</li> <li>• Height</li> </ul>	25 feet 25 feet 5 feet 22 feet		35 feet 51.6 feet 14 feet 22 feet
Max Lot Coverage	30%	14%	18%
Min Open Space	50%	77%	70%

1. See “Zoning Relief Summary” below:

<b>Zoning Relief Required</b>		
<b>Ordinance</b>		<b>Action Required</b>
§30-8(d)(2)	Creation of an accessory apartment in a detached structure accessory to a single-family dwelling	S.P. per §30-24

# ATTACHMENT D

## 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 – 28 Orchard Avenue

Date: October 2, 2015

CC: Lou Taverna, PE City Engineer  
Linda Finucane, Associate City Clerk  
Alexandria Ananth, Chief Planner  
Dan Sexton, Sr. Planner

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

*28 Orchard Avenue  
Newton, MA  
Prepared by: Verne T. Porter, Jr., PLS  
Dated: September 1, 2015*

*Executive Summary:*

The proposed permit involves the construction of a new detached accessory structure (i.e. apartment) on a 19,859 square foot (0.45 acre) lot. The site has a grade difference of approximately 8 feet having a high point near the existing garage and sloping downward towards westerly property line. Based on the soil testing on the lot, groundwater is deep at approximately 12.5 feet below the surface; and the soils have a rapid percolation rate of less than 2 minute per inch. The engineer of record has designed a storm water collection system to capture the runoff from all the new impervious surfaces and infiltrate on site. The design is in accordance to the City's drainage policy, however an impervious barrier will be required on the downstream side of the proposed *Cultec*<sup>®</sup> infiltration system. The proposed Operations and maintenance plan is also acceptable

and if approved the special permit is approved it should be recorded at the Registry of Deeds.

Drainage:

- 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).

Sewer:

1. A detailed profile is needed which shows the existing water main, proposed water service(s), sewer main and proposed sewer service(s) with the slopes and inverts labeled to ensure that there are no conflicts between the sewer services and the water service. The minimum slope for a service is 2.0%, with a maximum of 10%. Pipe material shall be 6" diameter SDR 35 PVC pipe within 10' of the dwelling then 4" pipe per Massachusetts State Plumbing Code. In order to verify the slopes and inverts of the proposed service connection, two manholes of the existing sanitary sewer system need to be identified on the plan with rim & invert elevations. The crown of the service connection & the sewer man need to match.
2. Invert elevations of the service connection is missing along with the slope of the proposed pipe.
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.***

Water:

- 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. Finalized utility connection plan reflecting the above changes that meets the minimal design standards of the City of Newton must be submitted for approval by the contractor of record with appropriate Bonds & Insurance. The Engineering Division makes no representations and assumes no responsibility for the design(s) in terms of suitability for the particular site conditions or of the functionality or performance of any items constructed in accordance with the design(s). The City of Newton assumes no liabilities for design assumption, error or omissions by the Engineer of Record.
2. 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*
3. All tree removal shall comply with the City's Tree Ordinance.
4. 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*
5. 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.*
6. The applicant will have to apply for a Building Permits with the Department of Inspectional Service prior to any construction.
7. 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. *This note must be incorporated onto the site plan.*

8. All site work 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.