



Setti D. Warren
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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: November 15, 2016
Land Use Action Date: January 24, 2017
City Council Action Date: February 6, 2017
90-Day Expiration Date: February 13, 2017

DATE: November 10, 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 #326-16**, ORLY MISHAN AND TIM CRAWFORD petition for SPECIAL PERMIT/SITE PLAN APPROVAL to ESTABLISH AN ACCESSORY APARTMENT by converting approximately 945 sq. ft. of existing basement space and allow parking within five feet of a street at 89 Hyde Avenue, Ward 7, Newton, on land known as SBL 72026 0008, containing approximately 13,889 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 7.4, 6.7.1.D, 6.7.1.F, 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.



89 Hyde Avenue

EXECUTIVE SUMMARY

The property at 89 Hyde Avenue, a 13,889 square foot lot located in an SR2 zoning district, is improved with an approximately 3,700 square foot single-family residence built in 1925 and an existing one-car detached garage. The applicant is proposing to convert an existing basement level guest suite into a 945 square foot accessory apartment. To do so, the applicant is seeking a special permit to allow for the creation of an accessory apartment on a lot which is smaller than 15,000 square feet.

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 three parking spaces would be required. To provide the required parking, the petitioner seeks to locate one of the three parking stalls at the front lot line on the existing approximately 22.5 foot wide driveway area curb cut on the right 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 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 generally not concerned with the location of the proposed parking space within five feet of the street as it would provide off-street parking for the resident(s) of the accessory apartment by utilizing an existing paved driveway area, thus not requiring a new curb cut and/or additional paved parking and circulation areas. However, it notes that the petitioners' recently constructed retaining wall and front walk on the left side of the driveway could possibly be reconfigured so as to allow the proposed parking space to be located five feet or further from the street.

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 one-family dwelling in a SR2 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, or 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 west side of Hyde Avenue between George and Cabot streets. The properties in the surrounding area are predominantly single family dwellings. Exceptions include a few interspersed two- and multi- family dwellings, a vacant City-owned 3,337 square foot parcel abutting to the rear, and, approximately 300 feet to the south, Mt. Alvernia High School (**Attachment A**). The subject property and immediate area is zoned SR2, with an SR1 district approximately 600 feet to the east. (**Attachment B**).

B. Site

The property at 89 Hyde Avenue is a 13,889 square foot lot located in the SR2 zoning district improved with an approximately 3,700 square foot single-family residence built in 1925 and an existing 220 square foot one-car detached garage.

The lot has a downward slope from right to left (south to north) and is attractively landscaped and includes lawn, pavers, mature trees, shrubs, groundcover and other vegetation. There is wood fencing installed along sections of the north (right) and left (south) property lines.

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 will be created in existing space located on the basement level of the dwelling.

The structure and proposed accessory apartment meet the building size and accessory unit size requirements for such units as stipulated under §6.7.1 of the NZO.

B. Building and Site Design

The petitioners are proposing to create a 945 square foot accessory apartment on the basement level of the existing single-family dwelling. The structure would not be expanded from its current size and no external modifications to the structure would be made to accommodate the proposed accessory apartment. The remainder of the structure would be occupied by the principal dwelling unit.

The accessory apartment would be accessed via an internal staircase from the first floor to the basement as well as and an existing exterior door located on the rear 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 three parking spaces on the property (two for the principal unit and one for the accessory apartment). The property already includes a one-car detached garage served by an existing driveway located to the right (north) of the dwelling; a tandem space would be located in front of the garage.

To provide the required parking, the petitioner is seeking to locate an additional space in the front of the property within five feet of the street. The proposed additional stall would be located on the left side of the existing driveway near the sidewalk and accessed by the existing curb cut off Hyde Avenue.

(The Planning Department notes that the petitioner has submitted a letter from the abutter to the right (north) of the subject property supporting the removal of some existing fencing near the location of the driveway/parking area.)

The Planning Department is generally not concerned with the location of the proposed parking space within five feet of the street as it would provide off-street parking for the resident(s) of the accessory apartment by utilizing an existing paved driveway area. Also, positioning the space elsewhere on the parcel could result in some combination of more difficult maneuverability for vehicles, a new curb cut, and/or the loss of vegetation and open space for additional paved parking and circulation areas.

However, the Planning Department notes that, in the alternative, an existing retaining wall and walkway in the front of the property might be reconfigured so as to allow the space to be located five or more feet from the street. The Planning Department recommends that the petitioner consider this possibility.

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 single-family dwelling on a lot with less than 15,000 square feet (§6.7.1.D, §6.7.1.F).
- Special permit per §7.3.3 to construct a parking stall less than five feet from the 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. 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 Order

ATTACHMENT A

Existing Land Use 89 Hyde Ave.

City of Newton,
Massachusetts

Legend

Land Use

Land Use

Single Family Residential

Multi-Family Residential

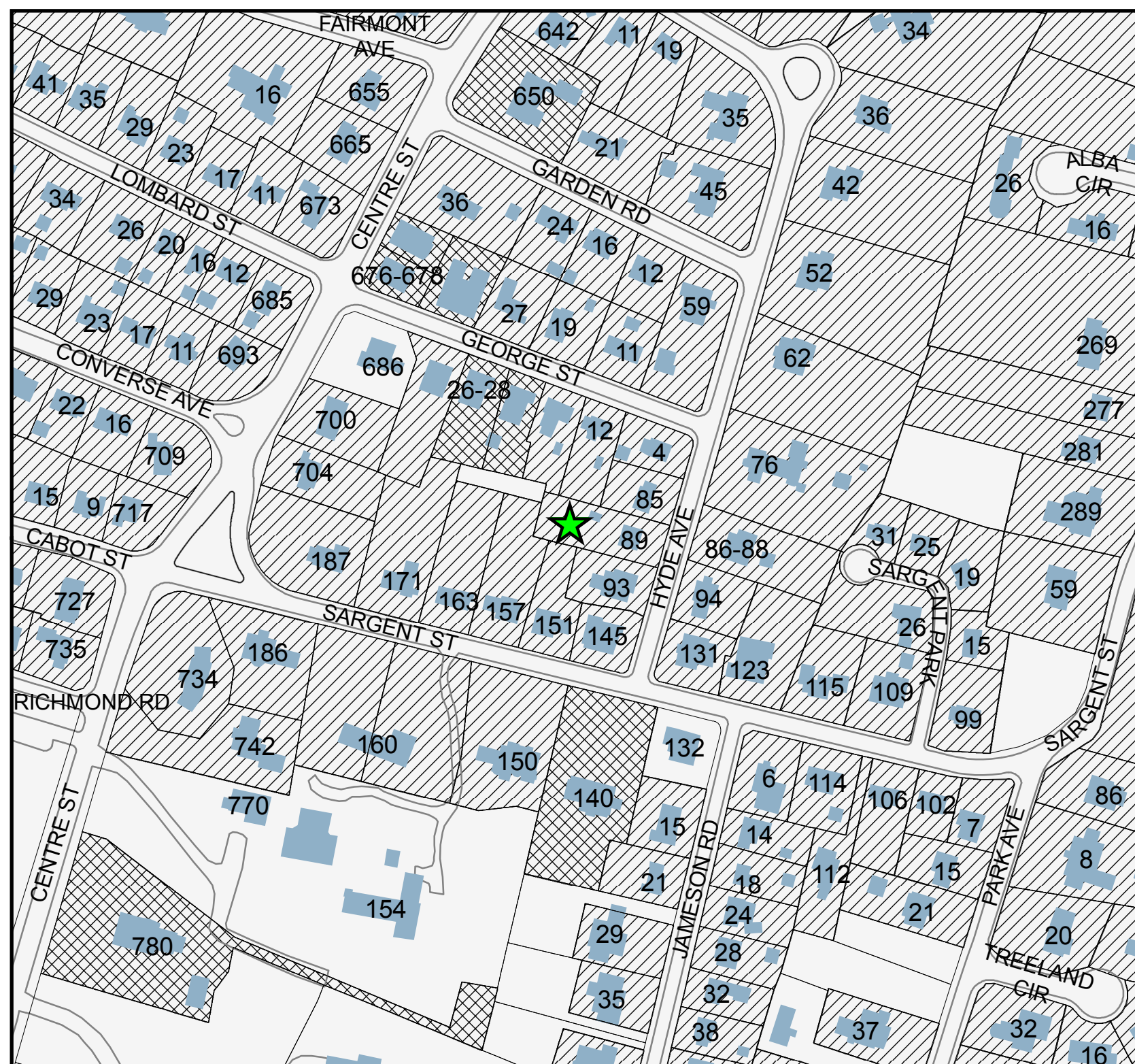


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

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

0 12.5 50 75 100 125 150 175 200 225 250 275
Feet

Map Date: November 01, 2016



ATTACHMENT B

Zoning 89 Hyde Ave.

*City of Newton,
Massachusetts*

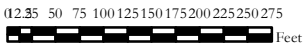
Legend

-  Single Residence 1
-  Single Residence 2
-  Public Use

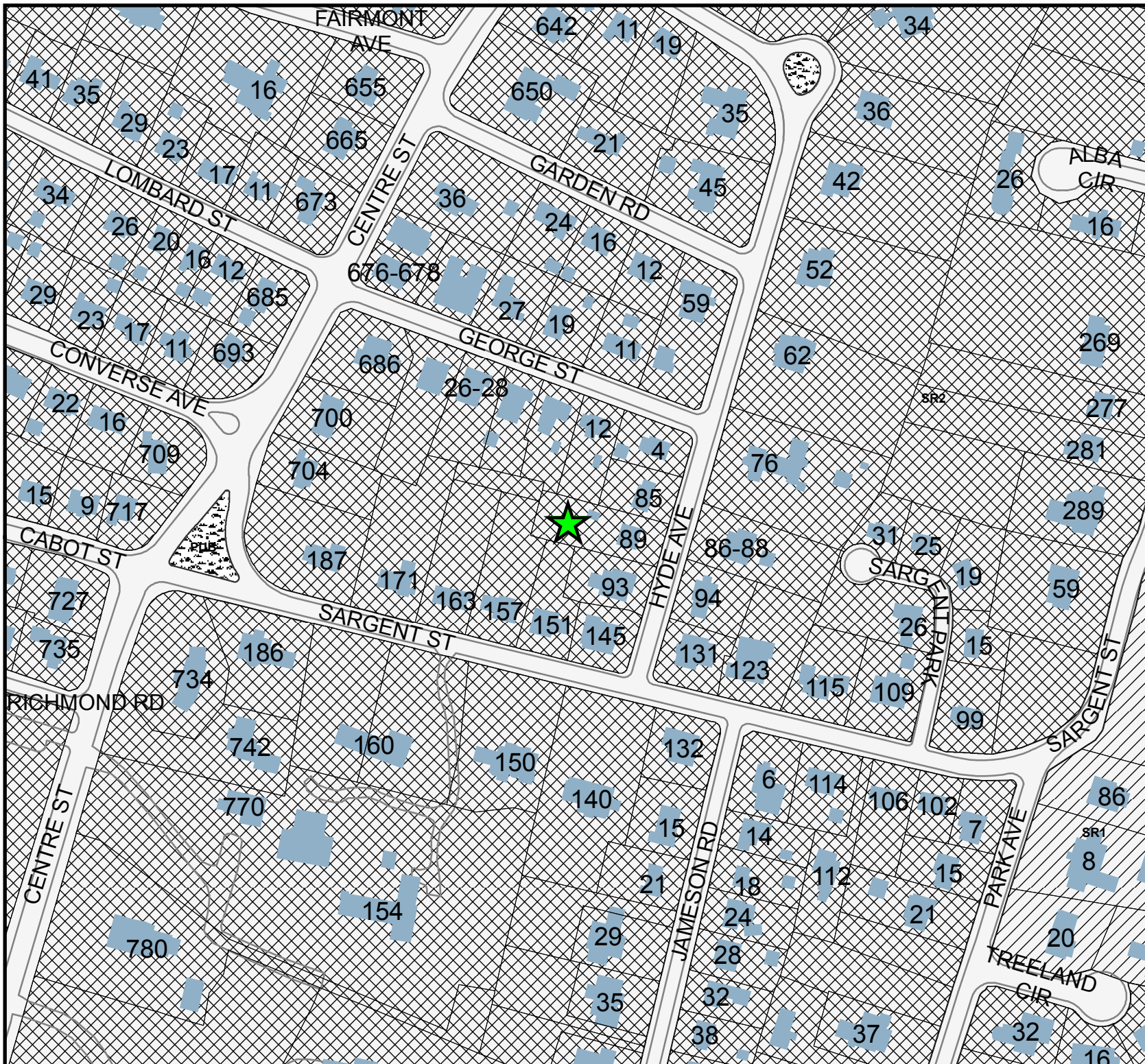


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
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Map Date: November 01, 2016





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Mayor

ATTACHMENT C
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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: September 8, 2016

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Frank Dill, architect
Orly Mishan and Timothy Crawford, applicants
Barney S. Heath, Director of Planning and Development
Ouida Young, Associate City Solicitor

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

Applicant: Orly Mishan & Timothy Crawford	
Site: 89 Hyde Avenue	SBL: 72026 0008
Zoning: SR2	Lot Area: 13,889 square feet
Current use: Single-family dwelling	Proposed use: Single-family dwelling with accessory apartment

BACKGROUND:

The property at 89 Hyde Avenue is located in the SR2 zoning district and is improved with a single-family residence built in 1925. The applicant is proposing to convert an existing guest suite in the basement into a 945 square foot accessory apartment. The applicant is seeking a special permit to allow for the creation of the accessory apartment on a lot which is less than 15,000 square feet.

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

- Zoning Review Application, prepared by Frank Dill, architect, dated 8/26/2016
- Plan of Land, signed and stamped by Bruce Bradford, surveyor, dated 8/3/2015
- Site Plan, signed and stamped by Frank Young Dill, architect, dated 8/26/2016
- Floor Plans, signed and stamped by Frank Young Dill, architect, dated 8/26/2016

ADMINISTRATIVE DETERMINATIONS:

1. The existing single-family structure is located in the SR2 district. Per Section 6.7.1.F, a dwelling must have a building size of at least 3,100 square feet to allow an accessory apartment by right. The existing dwelling has approximately 3,700 square feet of building size, meeting the by-right requirement.
2. Section 6.7.1.F requires a lot have at least 15,000 square feet for a by-right accessory apartment, or 10,000 square feet by special permit. The applicants' lot is 13,889 square feet, requiring a special permit.
3. Section 6.7.1.D.1.a requires that an accessory apartment in the SR3 district be no larger than 1,200 square feet. The proposed apartment is 945 square feet.
4. Section 6.7.1.B.1 requires that an accessory apartment 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.
5. Section 6.7.1.B.2 requires a 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 in 1925 and thus meets the requirement.
6. 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.
7. Section 5.1.4.A requires two parking stalls for the primary dwelling unit, and one stall for the accessory unit. There are three existing parking stalls on the property, satisfying the parking requirement.
8. Section 5.1.7.A requires that no parking stall be located within five feet of a street. The applicant proposes a new parking stall at the front of the property located 2.5 feet from the public way. A special permit is required to waive this provision.

SR2 Zone	Required/Allowed	Existing	Proposed
Lot Size	10,000 square feet	13,889 square feet	No change
Frontage	80 feet	70 feet	No change
Lot size required for an accessory apartment	15,000 square feet	13,889 square feet	No change
Unit size required for an accessory apartment	3,100 square feet	3,700 square feet	No change
Setbacks <ul style="list-style-type: none"> • Front • Side • Rear 	25 feet 7.5 feet 15 feet	35 feet 10.3 feet >100 feet	No change No change No change
Stories	2.5	2.5	No change
Max Lot Coverage	30%	11.8%	No change
Min Open Space	50%	75%	No change

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§6.7.1.D §6.7.1.F	Creation of an accessory apartment in a single-family dwelling on a lot with less than 15,000 square feet	S.P. per §7.3.3
§5.1.7.A §5.1.13	To construct a parking stall less than five feet from the street	S.P. per §7.3.3

ATTACHMENT D

DRAFT- #326-16
89 Hyde Avenue

CITY OF NEWTON

IN CITY COUNCIL

November 21, 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 level of a single-family dwelling on a lot with less than 15,000 square feet and the location of a parking stall 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 single-family dwelling in a Single Residence 2 (SR-2) district on a lot with less than 15,000 square feet 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 single-family dwelling. (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians, as the property's driveway on Hyde Avenue is appropriate to allow for adequate sightlines 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. Granting an exception to the requirement that a parking stall not be located within five feet of a street (§5.1.7.A) so as to allow the use of the existing driveway area for the proposed additional stall would be in the public interest as it will provide off-street parking for the resident(s) of the accessory apartment, and not require a new curb cut and/or additional paved parking and circulation areas. (§5.1.13)

PETITION NUMBER: #326-16

PETITIONER: Frank Dill

LOCATION: 89 Hyde Avenue, on land known as Section 72, Block 26, Lot 8, containing approximately 13,889 square feet of land

OWNERS: Orly Mishan and Tim Crawford

ADDRESS OF OWNER: 89 Hyde Avenue
Newton, MA 02458

TO BE USED FOR: Accessory apartment in a single family dwelling
One parking stall within five feet of a street

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §6.7.1.D, §6.7.1.F - Creation of an accessory apartment in a single-family dwelling on a lot with less than 15,000 square feet;
§5.1.7.A, §5.1.13- Creation of a parking stalls within five feet of a street

ZONING: Single Residence 2 (SR-2) 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 "Plan of Land in Newton, MA, 89 Hyde Avenue, Existing Conditions," prepared by Everett M. Brooks Co., dated September 21, 2016, stamped and signed by Bruce Bradford, Professional Land Surveyor;
 - b. A set of architectural plans entitled "Mishan-Crawford Residence, Eighty Nine Hyde Avenue, Newton, Massachusetts," dated August 26, 2016, prepared by Frank Dill Architects, signed and stamped by Frank Young Dill, Registered Architect:
 - i. Site Plan, Table of Contents, Project Information (A-01);
 - ii. Basement Accessory Apartment Floor Plan (A-02);
 - iii. Main Level, Upper Level Floor Plans (Sheet A-03).
2. The accessory apartment must be held in common ownership with the principal dwelling unit.
3. The owner of the dwelling shall occupy either the principal unit or the accessory apartment and shall file an annual affidavit with the Commissioner of Inspectional Services attesting to

this fact prior to July 1 of every year.

4. When ownership of the property 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. 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 of landscape features and parking areas.