



#521-20

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## City of Newton, Massachusetts

Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

Ruthanne Fuller  
Mayor

Barney S. Heath  
Director

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### PUBLIC HEARING MEMORANDUM

Public Hearing Date: January 12, 2021  
Land Use Action Date: March 30, 2021  
City Council Action Date: April 5, 2021  
90-Day Expiration Date: April 12, 2021

DATE: January 8, 2021

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development  
Neil Cronin, Chief Planner for Current Planning  
Katie Whewell, Senior Planner

SUBJECT: **Petition #521-20**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to allow an oversized internal accessory apartment and construct a second story addition, increasing the FAR from .58 to .64, where .58 is the maximum allowed at 26 Gilbert Street, Ward 4, West Newton, on land known as Section 33 Block 02 Lot 25, containing approximately 5,000 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 3.2.3, 3.1.11, 6.7.1.D.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

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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 that the Land Use Committee of the City Council can consider at a subsequent working session.



26 Gilbert Street

## EXECUTIVE SUMMARY

The subject property at 26 Gilbert Street consists of a 5,000 square foot lot improved with a single-family dwelling constructed circa 1930. The property is located within the Multi Residence 1 (MR-1) zone in West Newton. The petitioner is seeking to construct an addition above the attached garage, exceeding the allowable Floor Area Ratio (“the FAR”) of the site, requiring a special permit. The additional space would be part of an oversized internal accessory apartment, also requiring a special permit.

The Planning Department is unconcerned with the request to exceed the floor area ratio and allow an oversized accessory apartment. The bulk of the addition is to the rear and within the footprint of the structure. Staff does not believe that the increase in FAR will be in derogation of the size, scale, and design of other structures in the neighborhood due to neighboring structures consisting of two stories on similarly sized lots.

### I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the City Council should consider whether:

- The site is an appropriate location for the proposed oversized accessory apartment. (§6.7.1.D.1, §7.3.3.C.1)
- The proposed oversized accessory apartment will adversely affect the neighborhood. (§6.7.1.D.1, §7.3.3.C.2)
- There will be no nuisance or serious hazard to vehicles or pedestrians. (§6.7.1.E.1, §6.7.1.E.5, §7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§6.7.1.E.1, §6.7.1.E.5, §7.3.3.C.4)
- The proposed increase in FAR from .58 to .64, where .58 is the maximum allowed as of right is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood. (§3.1.9 and §7.3.3)

### II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

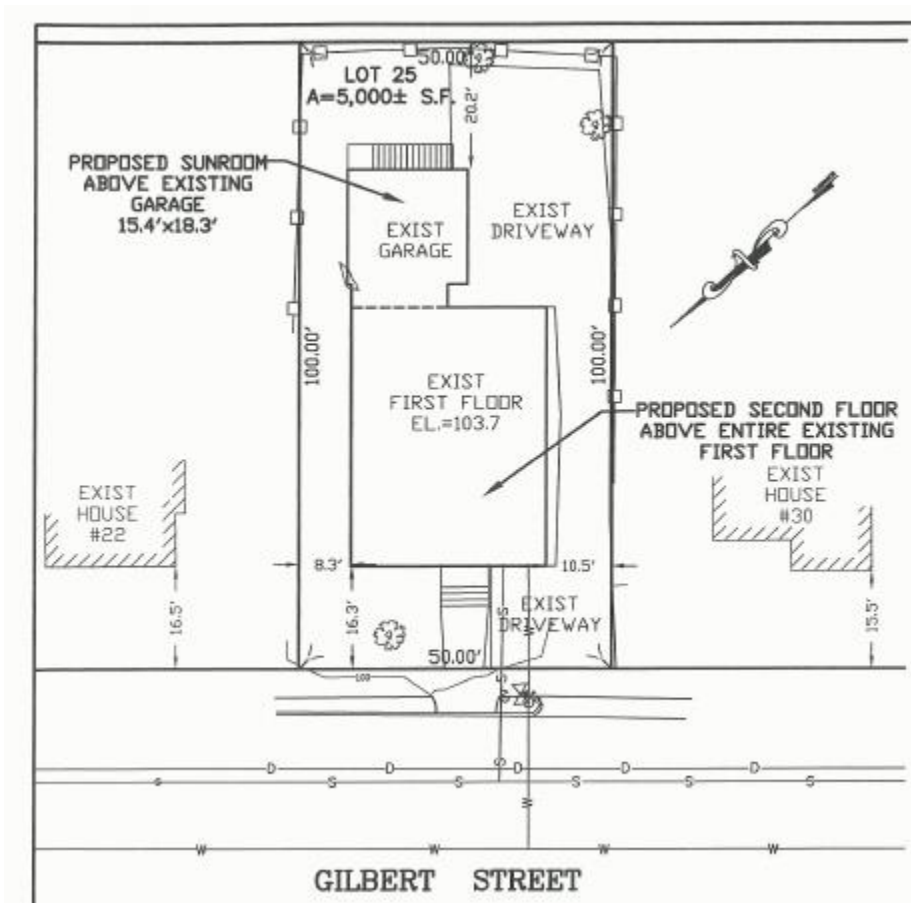
#### A. Neighborhood and Zoning

The subject property is on Gilbert Street in the MR-1 zone in West Newton. The immediate area and entirety of Gilbert Street are located entirely within the MR-1 zone. There is a Single Residence 2 zone to the south as well as Multi Residence 3 to the east on Commonwealth Ave (**Attachment A**). Gilbert Street and the surrounding neighborhoods consist of predominantly single and multi-family uses (**Attachment B**).

B. Site

The site consists of 5,000 square feet of land and it is improved with a single-family residence constructed circa 1930. The site is accessed by a driveway from Gilbert Street which runs along the southern property line and provides access to the attached garage.

Site Plan



III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

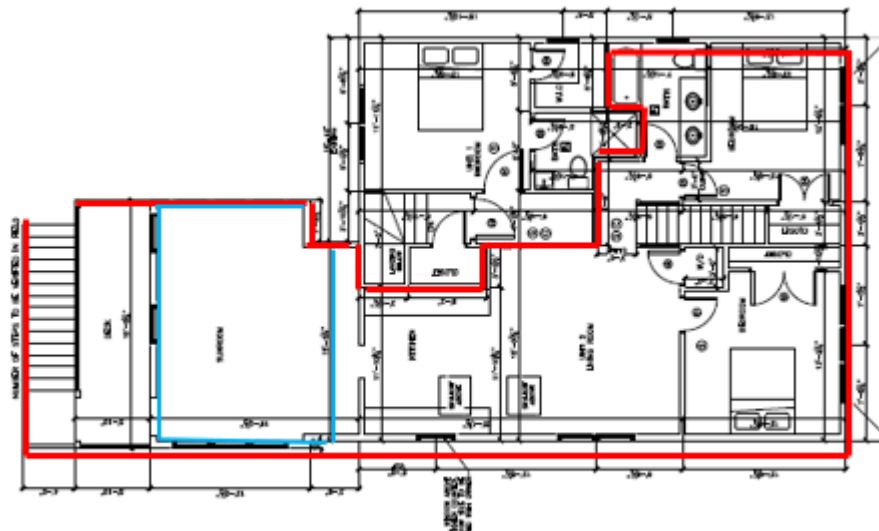
The principal use of the site is a single-family residence. If approved, the petitioner will seek to establish an internal accessory apartment.

B. Building and Site Design

The petitioner is proposing to construct an addition above the garage to create additional space for the second-floor internal accessory apartment. The petitioner obtained a building permit in December of 2020 to construct a second story to include an accessory apartment, the work allowed as of right is also shown on the proposed plans below. This special permit only pertains to the addition above the garage, outlined in blue on the proposed second floor floorplan below. The proposed addition above the garage would result in an oversized accessory apartment and increases the FAR.

The addition above the garage adds approximately 300 square feet to the second story. The additional square footage increases the FAR from .58 to .64 where .58 is the maximum allowed by right thus requiring a special permit. The allowable FAR is 2,900 square feet, while the petitioner is proposing 3,182 square feet for the single-family structure with the proposed accessory apartment.

### Proposed Second Floor Floorplan



The petitioner is proposing to establish an accessory apartment within the second story of the structure. The proposed accessory apartment is outlined in red above. The Ordinance allows internal accessory apartments as of right if they are no greater than 1,000 square feet or 33% of the total habitable space of the principal dwelling, whichever is less. An internal accessory apartment allowed as of right would consist of 935 square feet, while the proposed apartment consists of 1,133 square feet which is 40% of the total habitable space of the principal dwelling.

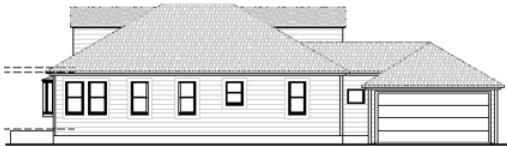
Existing Left Elevation



Proposed Left Elevation



Existing Rear Elevation



Proposed Rear Elevation



The Planning Department is unconcerned with the requests to exceed the FAR and establish an oversized internal accessory apartment. The bulk of the addition is to the rear and within the footprint of the structure. Staff does not believe that the increase in FAR will be in derogation of the size, scale, and design of other structures in the neighborhood due to neighboring structures with consisting of two stories on similarly sized lots.

C. Parking and Circulation

There are no proposed changes to the parking or circulation of the site.

D. Landscaping and Screening

A landscape plan is not required with this petition.

IV. TECHNICAL REVIEW

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

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

- §3.2.3 and §7.3.3 of Section 30, to exceed the FAR
- §6.7.1.D.1 and §7.3.3 of Section 30, to allow an oversized accessory apartment

B. Engineering Review

Review from the Engineering Division of Public Works is not required at this time.

C. Newton Historical Commission Review

Review from the Newton Historical Commission is not required at this time.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

**ATTACHMENTS:**

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





# ATTACHMENT A

## Zoning

26 Gilbert Street

*City of Newton,  
Massachusetts*

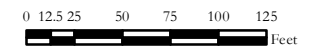
## Zoning

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

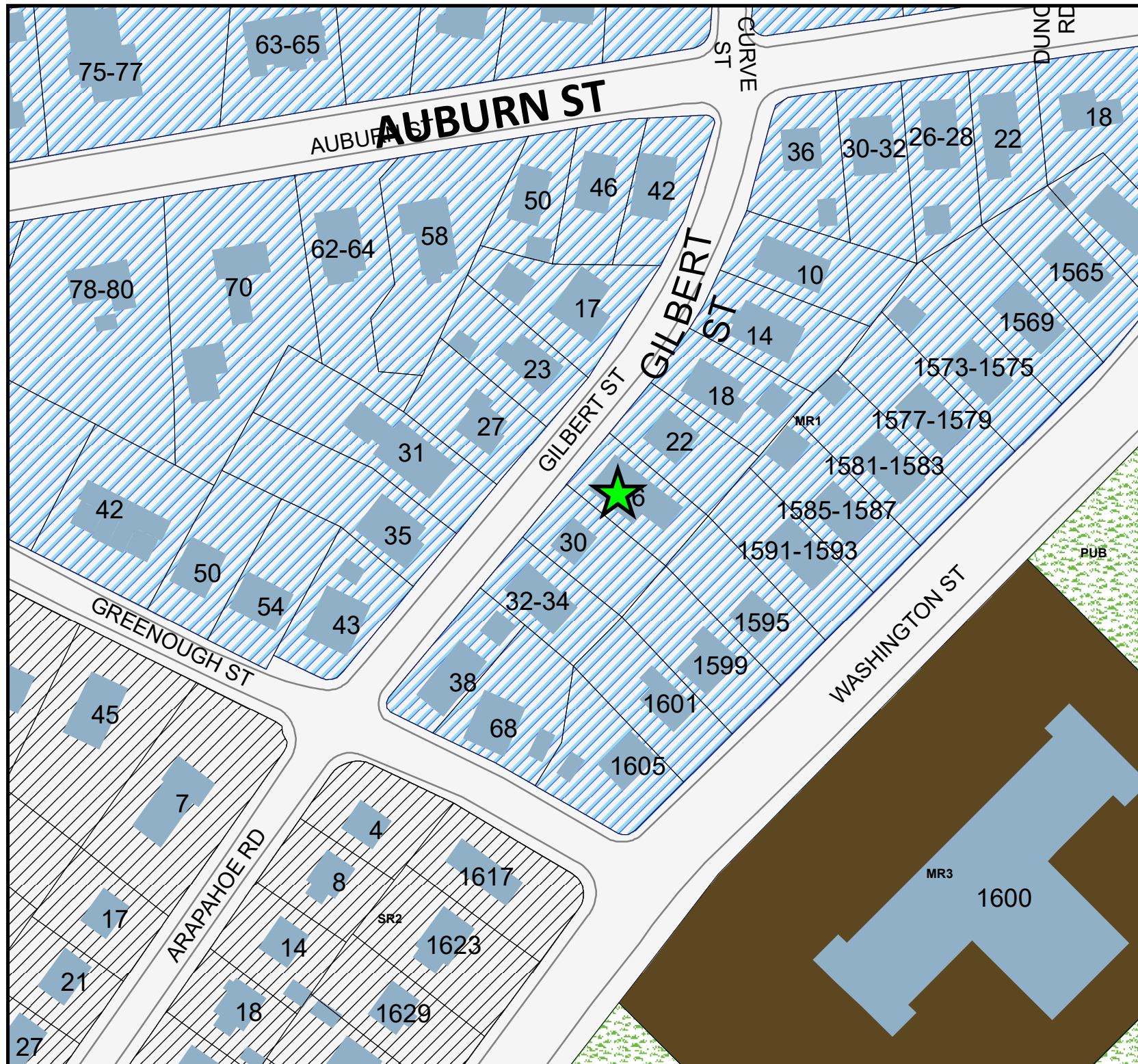


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

CITY OF NEWTON, MASSACHUSETTS  
Mayor - Ruthanne Fuller  
GIS Administrator - Douglas Greenfield



Map Date: January 08, 2021



# ATTACHMENT B






## Land Use

### 26 Gilbert Street

*City of Newton,  
Massachusetts*

## Land Use

### Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Industrial
-  Open Space
-  Vacant Land



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CITY OF NEWTON, MASSACHUSETTS  
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Map Date: January 08, 2021







Ruthanne Fuller  
Mayor

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**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: November 30, 2020

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Neil Cronin, Chief Planner for Current Planning

Cc: Beata Shapiro, Applicant  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Associate City Solicitor

**RE: Request to exceed FAR and to allow an oversized accessory apartment**

Applicant: Beata Shapiro	
<b>Site:</b> 26 Gilbert Street	<b>SBL:</b> 33002 0025
<b>Zoning:</b> MR1	<b>Lot Area:</b> 5,000 square feet
<b>Current use:</b> Single-family dwelling	<b>Proposed use:</b> No change

### BACKGROUND:

The property at 26 Gilbert Street consists of a 5,000 square foot lot improved with a single-family residence constructed in 1930. The petitioners have received a building permit to construct an addition to the second level of the dwelling to include an accessory apartment. They now seek to enclose an existing sunporch over the garage to provide additional square footage to the apartment.

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

- Zoning Review Application, prepared by Beata Shapiro, applicant, dated 9/16/2020
- FAR Worksheet, submitted 9/16/2020, revised 11/17/2020, 11/26/2020
- Plan of Land, signed and stamped by A. Matthew Belski Jr., surveyor, dated 9/9/2020
- Architectural Plans and elevations, prepared by RAV & Associates, dated 9/11/2019, revised 11/17/2020, 11/26/2020

**ADMINISTRATIVE DETERMINATIONS:**

1. The petitioners intend to enclose an existing porch over the garage to create a four-season room. The additional square footage results in a total of 3,184 square feet. The existing FAR is .58, where .58 is the maximum allowed. The proposed addition results in a FAR of .64, exceeding the maximum allowed, requiring a special permit pursuant to Sections 3.1.3 and 3.1.9.
2. Per section 6.7.1.D.2 an internal accessory apartment exceeding 1,000 square feet may be up to 1,200 square feet or 40% of the total habitable space, whichever is less, with a special permit. The additional habitable space increases the square footage of the accessory apartment to 1,133 square feet, or 40% of the total 2,833 square feet of habitable space, requiring a special permit.

<b>MR1 Zone</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>
Lot Size	7,000 square feet	<b>5,000 square feet</b>	<b>No change</b>
Frontage	70 feet	<b>50 feet</b>	<b>No change</b>
Setbacks <ul style="list-style-type: none"> <li>• Front</li> <li>• Side</li> <li>• Rear</li> </ul>	16 feet 7.5 feet 15 feet	16.3 feet 8.3 feet 20.2 feet	No change No change No change
Max Number of Stories	2.5	1.5	2.5
Max Height	36 feet	33.1 feet	No change
FAR	.58	.58	<b>.64</b>
Max Lot Coverage	30%	<b>34%</b>	<b>No change</b>
Min. Open Space	50%	<b>43.4%</b>	<b>No change</b>

1. See “Zoning Relief Summary” below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
§3.2.3, §3.1.11	Request to exceed FAR	S.P. per §7.3.3
§6.7.1.D.2	Request to allow an oversized internal accessory apartment	S.P. per §7.3.3

CITY OF NEWTON  
IN CITY COUNCIL

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 the following SPECIAL PERMIT/SITE PLAN APPROVAL to allow an oversized internal accessory apartment and to exceed the floor area ratio (FAR) as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

- The site is an appropriate location for the proposed oversized accessory apartment due to its location within the existing dwelling's footprint. (§6.7.1.D.1, §7.3.3.C.1)
- The proposed oversized accessory apartment will not adversely affect the neighborhood due to neighboring structures consisting of two stories on similarly sized lots. (§6.7.1.D.1, §7.3.3.C.2)
- There will be no nuisance or serious hazard to vehicles or pedestrians the site complies with the zoning ordinance regarding driveway width and the number of parking stalls. (§6.7.1.E.1, §6.7.1.E.5, §7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved because all parking will be contained on site. (§6.7.1.E.1, §6.7.1.E.5, §7.3.3.C.4)
- The proposed increase in FAR from .58 to .64, where .58 is the maximum allowed as of right is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood because there are neighboring structures consisting of two stories on similarly sized lots. (§3.1.9 and §7.3.3)

PETITION NUMBER: #521-20

PETITIONER: Yefim Shapiro

LOCATION: 26 Gilbert Street, on land known as Section 33, Block 2, Lot 25, containing approximately 5,000 square feet of land

OWNER: Yefim Shapiro

ADDRESS OF OWNER: 26 Gilbert Street  
Newton, MA 02465

TO BE USED FOR: Single-Family Dwelling with an internal accessory  
apartment

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §6.7.1.D.1, and §7.3.3, to allow an oversized internal  
accessory apartment and §3.2.3, and §7.3.3 to exceed the  
FAR

ZONING: Multi Residence 1

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. Plot Plan showing proposed conditions at 26 Gilbert Street, signed and stamped by A. Matthew Belski, Professional Land Surveyor, dated September 9, 2020;
  - b. Architectural Plans and Elevations, prepared by RAV & Associates, signed and stamped by Richard Volkin, dated September 11, 2019, most recently revised December 10, 2020 consisting of the following five (5) sheets.
    - i. Existing Floor Plans
    - ii. Proposed Floor Plans
    - iii. Existing Elevations
    - iv. Proposed Elevations, Front and Left
    - v. Proposed Elevations, Right and Rear
    - vi. West Elevations
    - vii. Garage Plans showing front and north elevation, floor plan and section, dated November 18, 2020
2. Prior to the issuance of any Building Permit, the petitioner shall provide a final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
3. The Petitioner and the accessory apartment must at all times comply with all applicable rules for accessory apartments set forth in Section 6.7 of the Newton Zoning Ordinance. The accessory apartment cannot constitute its own unit within a condominium.
4. The accessory apartment must be held in common ownership with the principal dwelling unit in accordance with Section 6.7.C.1 of the Newton Zoning Ordinance.
5. The owner of the principal dwelling unit to which the accessory apartment is accessory to 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. these requirements shall be included in the master deed if the two-family dwelling is converted into a condominium.

6. In the event ownership of the principal dwelling unit being held in common ownership with the accessory apartment changes, the new owner(s) 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.
7. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:
  - a. Recorded a certified copy of this order for the approved Special Permit/Site plan 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.
5. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
  - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development statements by a registered architect and professional land surveyor certifying compliance with Condition #1, including the as built FAR of the structure.
  - b. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.