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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date:	December 1, 2020
Land Use Action Date:	February 22, 2020
City Council Action Date:	March 1, 2020
90-Day Expiration Date:	March 1, 2020

DATE: November 27, 2020

TO: City Council

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

SUBJECT: **Petition #427-20**, for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a rear lot subdivision to create two lots, abandon the two-family use in the existing structure and construct a single-family on the rear 12,000 sq. ft. lot, extending the existing non-conforming side setback at 41 Washington Street, Ward 1, Newton, on land known as Section 71 Block 29 Lot 07, containing approximately 25,902 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: 7.3, 7.4, 3.1.5, 3.1.10, 3.1.3, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

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.



41 Washington Street

EXECUTIVE SUMMARY

The property at 41 Washington Street consists of 25,964 square foot lot in a Single Residence 3 (SR3) zoning district improved with a 5,167 square foot, 2 ½ story, nonconforming two-family dwelling. Constructed circa 1891 as a single-family dwelling, the structure was converted into a two-family dwelling in 1925. The dwelling is nonconforming in two aspects: (1) the use is a two-family use in a SR3 district; and (2) the structure has a side setback of 4.8 feet, where 7.5 feet is the minimum allowed.

The applicant proposes to create a rear lot subdivision. A new front lot measuring 13,964 square feet would be created for the existing dwelling which would be converted back to a single-family use. A new 12,000 square foot lot intended for the construction of a 2,880 square foot, 2 ½ story single-family dwelling would be created in the rear.

As per Sections 3.1.5 and 3.1.10 of the Newton Zoning Ordinance (NZO) rear lot subdivisions are only allowed via special permit. Further, as the subdivision would alter the dimensions of the property as well as impose “new lot” dimensional requirements on the resulting lots, the existing dwelling’s nonconforming side setback would be extended, also requiring a special permit.

The Planning Department notes that it has requested that the petitioner submit some additional information, particularly regarding the proposed development’s distance from, and comparative heights with, abutting residential properties.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

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

- the specific site is an appropriate location for the proposed rear lot subdivision (§7.3.3.C.1);
- the rear lot subdivision as developed and operated will not adversely affect the neighborhood, (§7.3.3.C.2);
- there would 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); and
- the proposed extension of the nonconforming side setback is substantially more detrimental than the existing setback is to the neighborhood (§3.1.3 and §7.8.2.C.2).

As the petition is requesting approval of a rear lot development in a residential zoning district, the City Council shall also consider the following criteria:

- whether the proposed buildings or structures exceed the respective average height of abutting residential buildings and any structures used for accessory purposes

- (§7.3.4.B.1);
- the scale of proposed buildings or structures in relation to adjacent residential buildings and structures used for accessory purposes and in relation to the character of the neighborhood (§7.3.4.B.2);
 - topographic differentials, if any, between proposed buildings or structures and adjacent residential buildings and any structures used for accessory purposes (§7.3.4.B.3);
 - proposed landscape screening (§7.3.4.B.4);
 - adequacy of vehicular access, including, but not limited to fire and other public safety equipment, with emphasis on facilitating common driveways (§7.3.4.B.5);
 - whether any historic or conservation public benefit is provided or advanced by the proposed development (§7.3.4.B.6);
 - whether the location of structures used for accessory purposes or mechanical equipment, including but not limited to free-standing air conditioning units or compressors, on the new rear lot or on abutting lots will negatively impact either the proposed rear lot development or abutting property (§7.3.4.B.7);
 - siting of the proposed buildings or structures with reference to abutting residential buildings or any structures used for accessory purposes (§7.3.4.B.8); and
 - impact of proposed lighting on the abutting properties (§7.3.4.B.9).

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on Washington Street in the SR3 zone in Newton Corner. The SR3 zone encompasses the immediate area except for a block of parcels across the street from the subject property which are located in a Multi-Residence 1 (MR1) zone (**Attachment A**). Given the SR3 and the MR1 districts, the area consists entirely of single and multi-family uses (**Attachment B**).

B. Site

The site consists of 25,964 square feet of land improved with a nonconforming two-family dwelling constructed circa 1891. A curb cut at the northeast corner of the site provides access to a two-stall, tandem surface parking facility. Otherwise, the lot is improved with lawn and mature landscaping. The lot slopes up from the street such that the first floor of the structure lies approximately five feet above the grade of the sidewalk. From the rear of the dwelling, the lot slopes down slightly before dropping by approximately six feet towards the rear of the lot; this lower area is the proposed rear lot. This area is generally flat and occupied by mature vegetation.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

If approved, the petitioner will abandon the two-family use in the existing structure. The principal use of the site will then change from one lot containing a nonconforming two-family dwelling to two lots, each containing a single-family dwelling.

B. Site and Building Design

Section 3.1.10.B.2 requires both the front and rear lots to meet the frontage requirements for new lots in the zoning district. The front lot has 107 feet of frontage, where 80 feet is required. The rear lot gains its frontage from the front lot's rear lot line which, at 112.43 feet, meets the requirements of the Ordinance.

After the reduction in lot size, the front lot that would contain the existing structure would have a floor area ratio (FAR) of 0.37, where 0.39 is the maximum allowed for a 13,964 square foot lot. The dwelling on the rear lot would have a FAR of .24, where .24 is the maximum allowed. Neither structure requires FAR relief.

The existing dwelling at 41 Washington Street has an existing nonconforming side setback of 4.8 feet on the northern property boundary, where 7.5 feet is currently for an old lot in the SR3 zoning district. The proposed division of the property would render the front lot subject to "new lot" requirements, including a side setback of 10 feet, thus increasing this nonconformity although the structure within the side setback would not be altered. The petitioner is proposing to construct an 18 foot by 21-foot, 378 square foot deck off the rear of the first floor of the existing dwelling. The petitioners intend to use ground level space below this deck for two parking stalls.

The proposed rear lot would contain 12,000 square and be approximately 45 feet from the rear of the existing dwelling (not including the proposed rear deck). In turn, the proposed rear lot dwelling would be situated 30.2 feet from the rear lot line of the front lot.

This lot would be improved with a 2 ½ story single-family dwelling that would measure 35.9 feet tall where 36 feet is the maximum allowed. At 2,880 square feet of countable area, the dwelling would have a FAR of .2419 where .24 is the maximum allowed for a rear lot. The proposed rear dwelling and lot comply with all dimensional standards of a new lot in the SR3 zone.

C. Parking and Circulation

Vehicular access to the front lot would continue to be provided by an existing driveway, associated curb cut and *porte cochère* on the right (north) side of the property. The existing driveway would be extended to the rear of the dwelling to provide access to two

parking stalls proposed to be created at ground level below the proposed deck off the first floor.

Vehicular access to rear lot would be provided by a new, 14-foot wide curb cut off Washington Street at the left side of the property that would serve a new 12-foot wide paved driveway within a 20-foot wide (and approx. 129 feet long) easement over the front lot. This curb cut would be located approximately 69 feet from the property's existing curb cut and approximately 13 feet from the curb cut serving the abutting property to the left. This driveway would serve a two-stall carport on the left side, and a maneuvering area in front of the proposed rear dwelling. It would require the construction of a 3.9-foot-high retaining wall within the (side) setback.

The portion of the proposed new, second driveway within the proposed access easement across the front lot would involve approximately 2,600 square feet of new paving. This would be in addition to the new paved area in front of the rear dwelling and under its proposed carport, as well as that of the extension of the existing driveway on the right side and the two parking stalls that would be created under the front dwelling's new rear deck. The Planning Department suggests that the petitioner consider ways to minimize the lots' increased impervious areas.

D. Landscape and Screening

The petitioner has submitted what it states is a "preliminary" landscape plan. It indicates the length of left side of the proposed new driveway across the front lot would be lined with 32 arborvitae and ten new evergreens would be installed along the proposed new lot line separating the two new lots. On the rear lot at least four mature trees (totaling approximately 86 caliper inches) would be removed to make way for the proposed new dwelling and carport, while ten additional new arborvitae would be installed mostly in the rear right of the lot and/or in front of the new dwelling. The plan also indicates the retention of approximately 10 existing trees of varying caliper widths and species in the vicinity of the rear lot line, which would also be the location of a six-foot-high cedar fence. It is unclear what, if any provisions, would be made for screening for the abutting dwellings to the right of the property.

E. Rear Lot Subdivision Criteria

The zoning ordinance establishes additional requirements for rear lots in residential districts, including additional review criteria. These criteria include assessing the height, scale and topographical differences of and between proposed structures which are the products of rear lot subdivisions and abutting and adjacent residential buildings and structures used for accessory purposes. Other additional criteria include potential impacts on abutting properties from mechanical equipment and lighting.

Due to the distance of the proposed rear lot from Washington Street and to the siting of the proposed dwelling, the dwelling should be compared to the dwellings along Grasmere Street to the west, Merton Street to the north, and Elmhurst Road to the east, rather than to the dwellings along Washington Street. Several of these dwellings are built above the grade of the street, contain two to three stories, and feature turrets and other architectural elements.

The Planning Department notes that the “area plan” required per Sec. 7.3.4.A2 submitted with this petition appears to reflect a previous iteration of the project design, including indicating a lower height of the proposed rear lot dwelling. It also does not indicate, as is required, the distances from the proposed structures to all existing residential structures on the original and all abutting lots.

Also, the submitted plans do not indicate the location any proposed structures used for accessory purposes or mechanical equipment, e.g., free-standing air conditioning units, compressors, etc., on the new rear lot.

As such, at this time the Planning Department is unable to fully assess how the proposal responds to several of the criteria for rear lot subdivisions. The Department suggests that the petitioner provide this information in a timely manner to allow for the appropriate analysis of this material aspects of the proposal.

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 as the following relief:

- Special Permit per §7.3.3 to:
 - to allow a rear lot subdivision (§3.1.5; §3.1.10)
 - to extend a nonconforming side setback (§3.1.3; §7.8.2.C.2)

B. Engineering Review

At the time of the writing of this memorandum the Planning Department is awaiting the Engineering Division’s review of the present petition. The Planning Department will be prepared to address the memo at the upcoming public hearing in the event it is received in advance of the hearing.

C. Newton Historical Commission

The Planning Department is currently coordinating with the petitioners to determine whether to proposed alterations to the existing structure are subject to review by the Newton Historic Commission.

V. PETITIONER'S RESPONSIBILITIES

The petitioner should respond to the issues raised in this memorandum and other questions raised at the public hearing as necessary. Written responses to all significant issues should be provided for analysis by the Planning Department prior to being scheduled for additional public hearings. The Planning Department will prepare an updated memo prior to any future public hearings.

ATTACHMENTS:

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

ATTACHMENT A




Land Use

41 Washington St.

City of Newton,
Massachusetts

Land Use

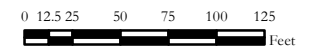
Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Vacant Land



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: November 23, 2020





ATTACHMENT B

Zoning

41 Washington St.

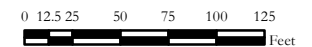
*City of Newton,
Massachusetts*

-  Single Residence 3
-  Multi-Residence 1



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ATTACHMENT C

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: September 29, 2020

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official

Cc: Terrence P. Morris, Attorney
Joseph and Sheila Keegan, Applicants
Barney S. Heath, Director of Planning and Development
Jonah Temple, Associate City Solicitor

RE: Request to allow a rear-lot subdivision

Applicant: Joseph & Sheila Keegan	
Site: 41 Washington Street	SBL: 71029 0007
Zoning: SR3	Lot Area: 25,902 square feet
Current use: Two-family dwelling	Proposed use: Two single-family dwellings on two separate lots

BACKGROUND:

The property at 41 Washington Street consists of 25,902 square feet and is improved with a two-dwelling built in 1891 in the SR3 zoning district, originally as a single-family and converted into two units in 1925. The applicant proposes to subdivide the lot to create a 12,000 square foot rear lot intended for the construction of a single-family dwelling, while maintaining the existing structure on the front lot which will be converted back to a single-family dwelling.

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

- Zoning Review Application, prepared by Terrence Morris, Attorney, dated 7/28/2020
- Civil Plan Set, prepared by Everett M Brooks, surveyor, dated 7/16/2020, revised 7/23/2020
- Architectural Plans and Elevations, signed and stamped by Phillip H. Bakalchuk, architect, dated 7/24/2020
- FAR worksheet

ADMINISTRATIVE DETERMINATIONS:

1. The applicant proposes to create a rear lot subdivision per Sections 3.1.5 and 3.1.10. To subdivide the land as proposed, the applicant must obtain a special permit from the City Council per Section 3.1.10.A.
2. Section 3.1.10.B.1 requires that a 20-foot wide vehicular access, or access easement, be provided. The rear lot will be accessed by a 20-foot wide easement with a 14-foot wide paved street opening, which narrows to a 12-foot wide driveway to the rear lot.
3. Section 3.1.10.B.2 requires both the front and rear lots to meet the frontage requirements for new lots in the zoning district. The front lot has 107 feet of frontage, where 80 feet is required. The rear lot gains its frontage from the rear lot line of 41 Washington Street. The frontage for the rear lot is the width of the property, or 112.43 feet, which meets the requirements of the Ordinance.
4. The proposed dwelling on the rear lot is situated 30.2 feet from the rear lot line of the front lot (41 Washington Street), which meets the requirements of Section 3.1.10.B.3.a
5. The proposed structures meet the required rear and side setbacks set forth in Section 3.1.5.
6. The existing dwelling at 41 Washington Street has an existing nonconforming side setback of 4.8 feet on the northern property boundary, where 7.5 feet is currently required per section 3.1.3 for an old lot in the SR3 zoning district. The division of land renders the lot a “new lot”, which requires a side setback of 10 feet. A special permit per section 7.8.2.C.2 is required to allow for the extended nonconforming setback, although the structure will not be altered.
7. The proposed dwelling has a maximum height of 35.9 feet, where 36 feet is the maximum allowed. No relief is required for the proposed heights of the structures.
8. After the reduction in lot size, the existing single-family dwelling on the front lot will have an FAR of .37, where .39 is the maximum allowed for a 13,964 square foot lot. The dwelling on the rear lot will have an FAR of .24, where .24 is the maximum allowed. Neither structure requires FAR relief.

Front Lot (Lot 1) per Section 3.1.3

SR3 Zone	Required/Allowed	Proposed
Lot Size	10,000 square feet	13,964 square feet
Frontage	80 feet	107 feet
Setbacks		
• Front	25 feet*	26.5 feet
• Side	10 feet	4.8 feet
• Rear	15 feet	45 feet
FAR	.39	.37
Maximum Stories	2.5	2.5
Max. Lot Coverage	20%	16.4%
Min. Open Space	50%	62%

*Average front setback per section 1.5.3.B

Proposed Rear Lot (Lot 2), per Section 3.1.5

SR3 Zone	Required/Allowed	Proposed
Lot Size	12,000 square feet	12,000 square feet
Frontage	100 feet	121.37 feet
Vehicle Access	20 feet	20 feet
Setbacks		
• Front	30 feet	30.5 feet
• Side	23 feet	15.2 feet
• Rear	23 feet	23 feet
FAR	0.24	0.24
Building Height	36 feet	35.9 feet
Maximum Stories	2.5	2.5
Max. Lot Coverage	25%	18.7%
Min. Open Space	50%	69.5%

9. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Site</i>	<i>Action Required</i>
§3.1.5 §3.1.10	Request to allow a rear lot subdivision	S.P. per §7.3.3
§3.1.3 §7.8.2.C.2	Request to extend a nonconforming side setback	S.P. per §7.3.3