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#360-21

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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date:	November 4, 2021
Land Use Action Date:	January 11, 2022
City Council Action Date:	January 17, 2022
90-Day Expiration Date:	February 2, 2022

DATE: October 29, 2021

TO: City Council

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

SUBJECT: **Petition #360-21** to construct an addition to the existing structure and a second two-unit structure, allowing four single-family attached dwelling units in two buildings, to allow reduced side and rear setbacks and to allow a driveway within ten feet of the side lot line, **50 Highland Avenue**, Ward 2, on land known as Section 24 Block 11 Lot 34, containing approximately 22,738 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 3.4.1, 3.2.4, 6.2.3.B.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.



50 Highland Avenue

EXECUTIVE SUMMARY

The subject property at 50 Highland Avenue consists of a 22,738 square foot lot in a Multi Residence 1 (MR1) district improved with a 2 ½ story, two-family dwelling constructed circa 1871 and a detached single car garage.

The petitioner proposes to demolish a rear portion of the existing dwelling and the detached single car garage, renovate and expand the existing dwelling to accommodate two dwelling units, and construct a new two-unit structure to its rear, resulting in four single family attached dwellings in two structures.

Per Section 3.4.1 of the Newton Zoning Ordinance (NZO), a special permit is required to construct single-family attached dwellings in the MR1 district. As designed, the proposed project would also require additional relief. The proposed rear addition to the existing structure that would result in a side setback of 24.2 feet, and the petition indicates a side setback would measure 22.5 feet, and that the rear setback would be 16.8 feet. Per Section 3.2.4 a special permit is required to reduce a setback to below 25 feet.

Also, the petitioners propose to utilize and extend the existing driveway along the right (west) property line which is less than 10 feet from the side lot line. As no driveway may be located within 10 feet of a side or rear lot line, the driveway requires a waiver per Sec. 6.2.3.B.2. The site plan submitted with the present petition indicates that the three exterior parking stalls serving the three rearmost units are 20 feet from the left boundary.

The Planning Department notes that the proposed removal of the existing structures would result in a vacant site largely free of physical constraints and, therefore, the nonconformities requiring relief discussed above would seem to be the results of design and program choices. As such, the Planning Department suggests that the petitioner consider reconfiguring the proposed structure and site design to minimize the relief required.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The site in a Multi Residence 1 (MR1) district is an appropriate location for the proposed four single family detached dwellings in two structures as designed, with reduced side and rear setbacks and a driveway within 10 feet of a side lot line (§7.3.3.C.1)
- The proposed four single family detached dwellings in two structures as designed, with reduced side and rear setbacks and a driveway within 10 feet of a side lot line will adversely affect the neighborhood (§7.3.3.C.2)
- The proposed four single family detached dwellings in two structures as designed, with reduced side and rear setbacks and a driveway within 10 feet of a side lot line will 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)
- Literal compliance with the parking/driveway dimensional requirements established by Sec. 6.2.3 is impractical due to the nature of the use, or the location, size, frontage,

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.

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on the south side of Highland Avenue just west of Walnut Place. The surrounding neighborhood includes a mix of two-family dwellings, such as the subject property, as well as single- and multi-family dwellings (**Attachment A**). The site and surrounding area along both sides of Highland Avenue are zoned Multi Residence 1 (MR1); a Single Residence 2 (SR2) zoning district is located directly to the south (**Attachment B**).

B. Site

The property consists of a 22,738 square foot lot improved with a 2 ½ story, two-family dwelling, and a detached single car garage. The generally level lot is accessed via a paved driveway on the right (west) side of the property that serves the existing garage in the rear right (southwest) corner of the property. The remaining portions of the site are occupied by mature trees, lawn areas, and shrubs.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site would change from a two-family dwelling to four single-family attached dwellings in two structures.

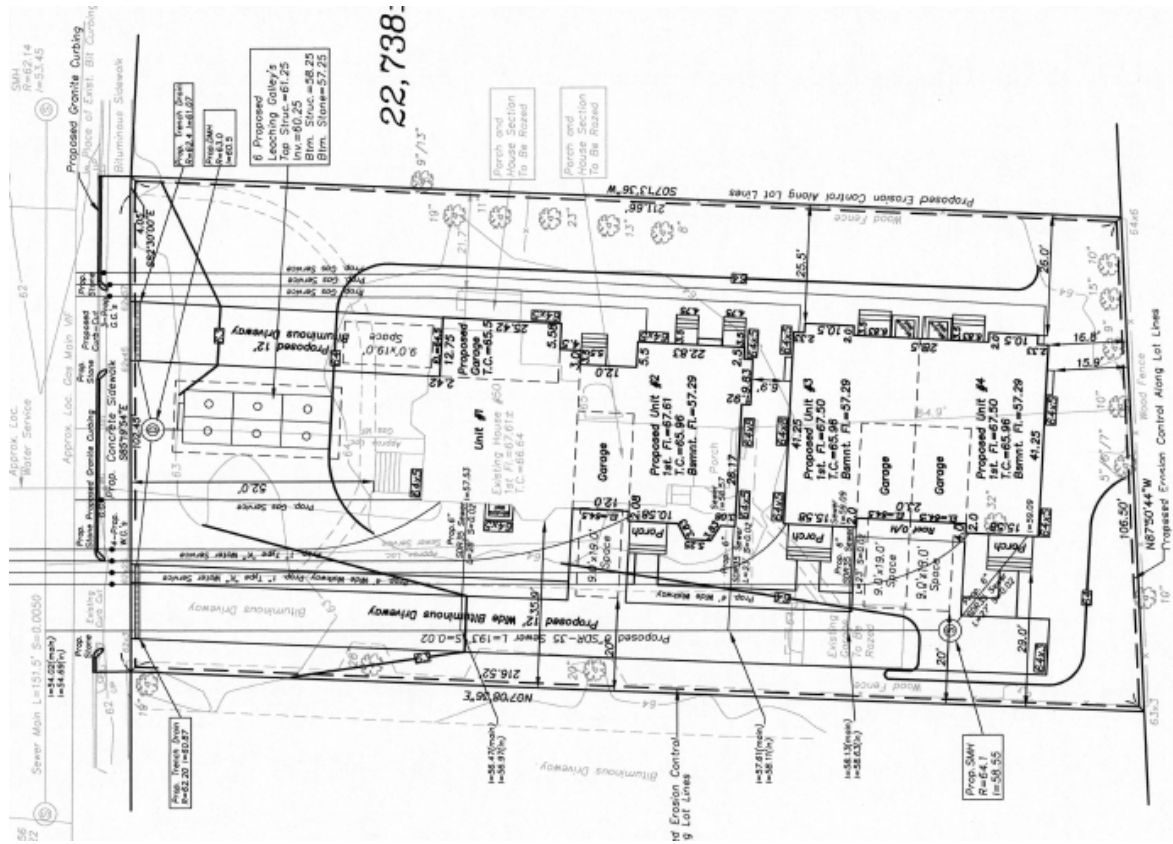
B. Building and Site Design

The petitioner is proposing to create four attached dwelling units, two within each of the two structures, one existing and expanded ("Building 1"), the other proposed ("Building 2"). The two structures would be separated from each other by approximately 8.9 feet. Both structures would have 2 ½ stories. As Building 1 would measure 35.37 feet in height and Building 2 would measure 34.22 feet, they would each be slightly lower than the maximum 36 feet allowed for single-family attached dwellings. The proposed lot area per unit is 5,685 square feet, more than the minimum 4,000 square feet required.

Regarding setbacks, single-family attached dwellings require 25-foot front, side, and rear setbacks. Building 1's existing conforming 52-foot front setback would be maintained, and its conforming 35.9-foot right (west) side setback would be reduced to a still-conforming 30 feet (approx.). Its currently nonconforming left (east) side setback of 21.97 feet would be slightly improved, increasing to 24.2 feet.

As to the proposed rear Building 2, the rear setback would be 16.8 feet, approx. seven feet less than the required 25 feet. Its right (west) side setback of 29 feet would be conforming. Regarding its left (east) setback, the attached Zoning Review memo indicated that it would measure a nonconforming 22.5 feet, and the petitioner has requested relief to allow a side

setback of that depth. However, the Planning Department notes that the petitioner-submitted site plan appears to indicate a minimum setback on that side of 25.5 feet, more than the required 25 feet. The petitioner should confirm that measurement to determine to location and depth of the narrowest left (east) side setback for both of the structures.



Proposed site plan (Highland Avenue frontage to left)

The Planning Department notes that the proposed removal of portions of the rear of the existing dwelling and the existing detached garage would result in a largely vacant rear half of the lot with few if any physical constraints and, therefore, the nonconformities requiring relief, such as the deficient rear setback, would seem to be the results of design and program choices. Indeed, much of the rear setback deficiency is a product of separating the proposed development into two structures, with the separation imposing the reduced rear setback on adjacent properties.

As such, it is likely that the petitioner could construct the proposed four units without any new construction encroaching into the required 25-foot setbacks. The Planning Department recommends that the petitioner consider reconfiguring the proposed structure(s) and site design to minimize the relief required.



VIEW FROM HIGHLAND



VIEW FROM HIGHLAND



AERIAL VIEW



AERIAL VIEW

Various views (from petitioner)

C. Parking and Circulation

As proposed, the existing detached garage would be removed, and the petitioners are proposing to provide eight parking spaces, two for each of the four dwellings. Each unit would have one garaged stall and one stall located directly in front of each units' one-car garage. The rear three units' stalls would be accessed via the right (west) side driveway; the front-most unit's stalls would be accessed by a new driveway on the left (east) side of the property.

The right-side driveway, while located in the general location of the existing driveway. It would be reconfigured and extended, and portions of which would be located within 10 feet of that side's property line, requiring zoning relief.

The Planning Department notes that the attached Zoning Review memorandum indicated that relief was required to allow parking with 20 of a side lot line, indicating that condition was proposed for the right (west) side of the property. The site plans submitted with this petition show measurements of exactly 20 feet for stalls on that side, and the petitioner did not request such relief with this petition. The Planning Department suggests the petitioner confirm this relief is not required.

D. Landscaping

A landscaping plan was submitted with this petition. It includes the preservation of approximately nine existing trees and the installation of approximately 35 trees of three generally located so as to screen adjacent properties. The plan also features lawn areas, paved patio areas and shrubbery. A six-foot high privacy fence is also proposed for much

of the perimeter of the site.

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:

- allow attached single-family dwellings (§3.4.1)
- reduce required side and rear setbacks (§3.2.4)
- allow a driveway within 10 feet of the side lot line and parking within 20 feet of a boundary (§6.2.3.B.2)

B. Engineering Review

The Associate City Engineer submitted an Engineering Review Memorandum dated October 8, 2021 (**Attachment D**), providing an analysis of the proposal with regard to engineering issues. These include that the proposed stormwater collection and infiltration system has been consistent with DPW Stormwater Policy and that a Construction Management Plan (CMP) and an Operations & Maintenance (O&P) will be required.

C. Historic Review

On June 2, 2021, the Newton Historical Commission (NHC) waived the demo delay based on approved plans dated May 5th, 2021, requiring staff review and approval of construction plans prior to the issuance of a building permit.

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: Engineering Division Memorandum

ATTACHMENT A

Land Use





50 Highland Ave.

*City of Newton,
Massachusetts*



Land Use

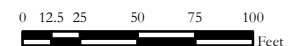
Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Open Space
-  Nonprofit Organizations



The information on this map is 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: October 18, 2021




ATTACHMENT B

Zoning

50 Highland Ave.

City of Newton,
Massachusetts

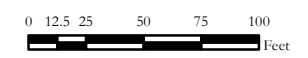


-  Single Residence 2
-  Multi-Residence 1
-  Mixed Use 4



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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
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ATTACHMENT C



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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: August 24, 2021

To: John Lojek, Commissioner of Inspectional Services

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

Cc: 50 Highland Realty LLC, Applicant
Terrence P. Morris, Attorney
Barney S. Heath, Director of Planning and Development
Jonah Temple, Acting City Solicitor

RE: **Request for a special permit to allow four single-family attached dwellings in two separate structures**

Applicant: 50 Highland Realty LLC	
Site: 50 Highland Avenue	SBL: 24011 0034
Zoning: MR1	Lot Area: 22,738 square feet
Current use: Two-family dwelling and detached garage	Proposed use: Four single-family attached dwellings in two structures

BACKGROUND:

The property at 50 Highland Avenue consists of a 22,738 square foot lot improved with a two-family dwelling constructed circa 1871 and a detached garage. The petitioner proposes to construct an addition to the structure as well as a second two-unit structure, resulting in two two-unit attached dwellings, for a total of four units.

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

- Zoning Review Application, prepared by Terrence Morris, attorney, submitted 7/6/2021
- Existing Conditions Plan, signed and stamped by Verne T. Porter, surveyor, dated 6/14/2021
- Zoning Plan, signed and stamped by Verne T. Porter, surveyor, dated 6/14/2021
- Architectural plans and elevations, prepared by Vance Architects, dated 6/22/2021

ADMINISTRATIVE DETERMINATIONS:

1. The petitioners propose to construct four single-family attached dwellings in two structures in the Multi Residence 1 zoning district. Per section 3.4.1, a special permit is required to construct attached dwellings in the MR1 district.

2. The petitioners intend to construct a rear addition resulting in a side setback of 24.2 feet. Additionally, a second two-unit structure will be constructed to the rear of the site. The rear structure will have a 22.5-foot side setback on the eastern side, and a 16.8-foot rear setback. Per Section 3.2.4 a special permit is required to reduce the setback to below 25 feet.

3. The petitioners propose to utilize and extend the existing driveway along the western property line which is less than 10 feet from the side lot line. Per section 6.2.3.B.2, no driveway may be located within 10 feet of a side or rear lot line, requiring a waiver.

Per this same section, no parking may be located within 20 feet of a boundary line. The surface parking stalls for the three rear units are located within 20 feet of a lot line, requiring a waiver per section 6.2.3.B.2.

MR1 Zone	Required	Existing	Proposed
Lot Size	15,000 square feet	22,738 square feet	No change
Frontage	80 feet	106.5 feet	No change
Setbacks – Building 1 <ul style="list-style-type: none"> • Front • Side • Side 	25 feet 25 feet 25 feet	52 feet 35.9 feet 21.97 feet	No change ± 30 feet 24.2 feet
Setbacks – Building 2 <ul style="list-style-type: none"> • Side • Side • Rear 	25 feet 25 feet 25 feet		29 feet 22.5 feet 16.8 feet
Building Height <ul style="list-style-type: none"> • Building 1 • Building 2 	36 feet 36 feet		35.37 feet 34.22 feet
Max Number of Stories <ul style="list-style-type: none"> • Building 1 • Building 2 	2.5 (3 by special permit)	2.5	No change 2.5
Lot Area Per Unit	4,000 square feet	11,369 square feet	5,685 square feet
Lot Coverage	25% (max)	8.99%	22.2%
Open Space	50% (min)	79.25%	59.9%
Lot Area Per Unit	4,000 square feet (min)	11,369 square feet	4,858 square feet

See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Requested Relief</i>	<i>Action Required</i>
§3.4.1	To allow attached single-family dwellings	S.P. per §7.3.3
§3.2.4	To reduce required side and rear setbacks	S.P. per §7.3.3
§6.2.3.B.2	To allow a driveway within 10 feet of the side lot line and parking within 20 feet of a boundary	S.P. per §7.3.3

Next Steps

Please contact a Planner by calling 617.796.1120 to obtain a copy of the Special Permit Application. If there have been any changes made to the plans since receipt of your Zoning Review Memorandum you must inform the Zoning Code Official to ensure additional relief is not required. You will need an appointment with a Planner to file your Special Permit Application. **Incomplete applications will not be accepted.**

The following must be included when filing a Special Permit Application:

1. Two (2) copies of the completed Special Permit Application (signed by property owner)
2. Filing Fee (see Special Permit Application)
3. Two (2) copies of the Zoning Review Memorandum
4. Plans (Thirteen sets signed and stamped by a design professional). Each set shall contain:
 - Site Plans showing existing and proposed conditions (including topography as applicable)
 - Architectural plans showing existing and proposed conditions (including façade materials)
 - Landscape plan (as applicable)
5. One (1) Floor Area Ratio (FAR) Worksheet, (signed and stamped by a design professional)
6. One (1) copy of any previous special permits or variances on the property (as applicable)
7. One (1) copy of any other review/sign-off (Historic, Conservation, Tree Removal, etc. as applicable)
8. Two (2) electronic copies of the application with all above attachments (USB or CD)

Copies of all plans shall either be 8.5 x 11 or 11 x 17, except as requested by staff

Special Permit Sign (\$20 fee)

Incomplete applications will delay the intake and review of your project.

Depending on the complexity of the project additional information may be requested to facilitate a full review of the application.

Has the proposed project been presented to and discussed with abutting property owners? Y/N

ATTACHMENT D

CITY OF NEWTON Department of Public Works ENGINEERING DIVISION

MEMORANDUM

To: Council Rick Lipof, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – 50 Highland Avenue

Date: October 8, 2021

CC: Barney Heath, Director of Planning
Jennifer Caira, Deputy Director
Lou Taverna, PE City Engineer
Nadia Khan, Committee Clerk
Neil Cronin, Chief Planner
Katie Whewell, Sr. Planner

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

Proposed Conditions Site Plan
50 Highland Avenue
Prepared by: Verne T. Porter Jr. PLS
Dated: September 9, 2021

Executive Summary:

This application entails a renovation to an existing single-family dwelling and conversion to a multi-family dwelling and by constructing a new separate building with two units. The existing single car garage is to be razed to make room for the new construction. The site is very flat a highpoint around the immediate perimeter of the existing dwelling is at elevation +64 feet and gentle slopes towards the north to Highland Avenue, and the south, west, and east toward residential home. Currently the runoff from the peastone driveway and roof simply sheet off to the road or the lawn areas with no treatment nor control. The engineer of record has designed a stormwater collection and infiltration system consistent with DPW Stormwater Policy to capture and infiltrate runoff from the proposed development, this will enhance both stormwater quantity and quality for the site.



Existing peastone driveway & single car garage

Construction Management:

1. A construction management plan is needed for this project. At a minimum, it must address the following: staging site for construction materials and equipment, parking for construction workers vehicles, phasing of the project with anticipated completion dates and milestones, safety precautions, emergency contact personnel of the general contractor. It shall also address anticipated dewatering during construction, site safety & stability, siltation & dust control and noise impact to abutters.
2. Catch basins within and downstream of the construction zone will be required to have siltation control installed for the duration of the project and must be identified on the site plan.

Drainage:

1. The Operations and Maintenance (O&M) plan for the long-term maintenance of the proposed stormwater management facilities is acceptable for the design. Should the Special Permit application be approved the O&M must be adopted by the applicant/property owner, 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.
2. 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, trench drains, and pipe(s) are the sole responsibility of the property owner(s).

Domestic Water:

1. All water services shall be chlorinated, and pressure tested in accordance with the AWWA and the City Construction Standards & Specifications prior to coming online. These tests MUST be witnessed by a representative of the Engineering Division.
2. Approval of the final configurations of the water service(s) shall be determined by the Utilities Division, the engineer of record shall submit a plan to the Director of Utilities for approval.

General:

The following statement shall be on the As Built plan.

I certify that the construction so shown was inspected prior to backfill and that all work conforms with the Approved Plan and meets or exceeds the City of Newton Construction Standards.

Signature

Note: If the plans are updated it is the responsibility of the applicant to provide all City Departments [ISD, Conservation Commission, Planning 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 at 617-796-1023.