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Barney S. Heath
Director

PUBLIC HEARING/WORKING SESSION MEMORANDUM

DATE: December 10, 2021
MEETING DATE: December 14, 2021
TO: Land Use Committee of the City Council
FROM: Barney S. Heath, Director of Planning and Development
Neil Cronin, Chief Planner for Current Planning
CC: Petitioner

In response to questions raised at the City Council public hearing, the Planning Department is providing the following information for the upcoming public hearing/working session. This information is supplemental to staff analysis previously provided at the Land Use Committee public hearing.

PETITION #360-21

50 Highland Avenue

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 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 Land Use Committee (the "Committee") opened the public hearing, without discussion, on November 4, 2021 and held a Working Session on November 9, 2021.

Background

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.

Floor Area Ratio

At the Working Session on Thursday, December 9th, the Committee asked the Planning Department to review the floor area ratio (the "FAR") of the petition versus what is allowed as of right. The petition's FAR is .46, translating to 10,500 square feet. This figure includes all square footage on the first and second stories, of both structures, and square footage within the attic of building 1. This figure does not include any basement space and does not include the attic of building 2 because those areas do not meet the criteria set forth in the zoning ordinance.

The as of right FAR for the site is .42, translating to 9,550 square feet (a difference of 950 square feet). To achieve this, the site could only be improved with a single- or two-family dwelling, which would have to comply with new-lot setbacks (30 feet from the front boundary, ten feet from the side boundaries, and 15 feet from the rear boundary).

ATTACHMENTS

Attachment A: DRAFT Council Order

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 four single-family attached dwellings in two structures (§3.4.1), and a driveway within 10 feet of the side lot line as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

1. The site in a Multi-Residence 1 (MR1) district is an appropriate location for the proposed four single-family attached dwellings in two structures as designed given the mix of residential uses and the scale of structures in the surrounding area (§7.3.3.C.1);
2. The proposed four single-family attached dwellings in two structures as designed will not adversely affect the neighborhood given the mix of residential uses and the scale of structures in the surrounding area (§7.3.3.C.2);
3. The proposed four single-family attached dwellings in two structures as designed will not create a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3);
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4);
5. Granting an exception to the provisions of Sec 6.2.3.B.2 requiring that no driveway be located within 10 feet of a side lot line is appropriate as literal compliance is impractical due to the shape of the lot and is in the public interest as an existing structure will be preserved in its existing location and the driveway shall remain in its current location.

PETITION NUMBER: #360-21

PETITIONER: 50 Highland Realty LLC

LOCATION: 50 Highland Avenue, Ward 2, on land known as Section 24, Block,11 Lot 34, containing approximately 22,738 sq. ft. of land

OWNER: 50 Highland Realty LLC

ADDRESS OF OWNER: 727 Washington Street, Suite 3
Newton, MA 02460

TO BE USED FOR: Four single-family attached dwellings in two structures

EXPLANATORY NOTES: Special permit as per §7.3.3:

- To allow single-family attached dwellings (§3.4.1)
- To allow a driveway within 10 feet of a side lot line

ZONING: Multi-Residence 1 (MR1) 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 set of engineering plans, entitled "50 Highland Avenue, Newton, Massachusetts," prepared by Verne T. Porter, Jr., PLS, dated September 9, 2021, as revised through November 23, 2021, signed and stamped by Verne T. Porter, Jr., Registered Land Surveyor, and Paul J. Tyrell, Registered Professional Engineer consisting of the following sheets:
 - i. Proposed Conditions Site Plan. (Sheet 2 of 5)
 - ii. Detail Sheet (Sheet 3 of 5)
 - iii. Detail Sheet (Sheet 4 of 5)
 - iv. Area Plan (Sheet 5 of 5)
 - b. A set of architectural drawings entitled "Sunset Development, 50 Highland Ave, Newton, MA 02460, Special Permit Submission (Revised), prepared by Vance Architect, dated November 30th, 2021, signed and stamped by Christopher Vance, Registered Architect, consisting of the following sheets:
 - i. Zoning Compliance- Building One (Z1)
 - ii. Zoning Compliance- Building Two (Z2)
 - iii. Proposed Floor Plans- Unit #1 and Unit #2 (A100)
 - iv. Proposed Floor Plans- Unit #1 and Unit #2 (A102)
 - v. Proposed Floor Plans- Unit #1 and Unit #2 (A103)
 - vi. Proposed Floor Plans- Unit #1 and Unit #2 (A104)
 - vii. Proposed Floor Plans- Unit #3 and Unit #4 (A105)
 - viii. Proposed Floor Plans- Unit #3 and Unit #4 (A106)
 - ix. Proposed Floor Plans- Unit #3 and Unit #4 (A107)
 - x. Proposed Floor Plans- Unit #3 and Unit #4 (A108)

- xi. Proposed Elevations- Unit #1 and Unit #2 (A301)
 - xii. Proposed Elevations- Unit #1 and Unit #2 (A302)
 - xiii. Proposed Elevations- Unit #3 and Unit #4 (A303)
 - xiv. Proposed Elevations- Unit #3 and Unit #4 (A304)
 - xv. Perspectives- Proposed (A306)
 - c. A set of landscape plans, entitled "50 Highland Avenue, Newton, MA 02460), prepared by Michael d'Angelo Landscape Architecture LLC, signed and stamped by Michael d'Angelo, Registered Landscape Architect, dated November 29, 2021, consisting of the following sheets:
 - i. Landscape Planting Plan (Sheet 1 of 2)
 - ii. Landscape Planting Details (Sheet 2 of 2)
 - d. An exhibit entitled "50 Highland Planting Palette," prepared by Michael d'Angelo Landscape Architecture LLC, dated November 30, 2021
2. All lighting fixtures shall be residential in scale.
 3. The petitioner shall comply with the Tree Preservation Ordinance.
 4. The petitioner shall do the following to remediate pest and rodent activity:
 - a. Prior to issuance of any demolition or building permit, the petitioner shall hire a licensed pest control operator (the "Operator") to assess the property for pest and rodent activity and develop and implement a pest remediation action plan (the "Plan") to eliminate the activity and prevent off-site migration. The Plan shall include the target pest, the methods for eliminating activity, and plan for preventing pest migration off-site during demolition and construction.
 - b. A copy of the Plan shall be submitted to the Inspectional Services Department, and the Health and Human Services Department for review and approval prior to issuance of any demolition or building permit. Copy of such approvals shall be provided to the Department of Planning and Development.
 - c. The Operator shall implement the approved remediation action plan, monitor the site for the duration of the project, and take whatever action the Operator deems necessary to control pest infestation and migration. The Operator shall maintain a written record of all pest control measures performed within the subject property and shall provide progress reports to Inspectional Services Department and the Health and Human Services Department upon request.
 - d. Prior to issuance of the certificate of occupancy, the Operator shall file a final report with the Department of Planning and Development, Inspectional Services Department and the Health and Human Services Department summarizing the methods used, whether off-site migration occurred, the frequency and dates of service, and a post-construction site assessment.

5. Prior to a building permit being issued pursuant to this special permit, the petitioner shall submit a construction management plan (CMP) for review and approval by the Engineering Division and the Director of Planning and Development. 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.
6. Prior to the issuance of any building permit pursuant to this special permit, an Operations and Maintenance (O&M) plan for the long-term maintenance of the proposed stormwater management facilities needs to be drafted and submitted for review and approval by the Engineering Division. Once 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.
7. 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. Provided a final Site Plan for review and approval by the Department of Planning and Development, and the Engineering Division of Public Works.
 - d. Provided a Final Landscape Plan showing for review and approval by the Director of Planning and Development.
 - e. Obtained a written statement from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1.
8. No Final Inspection/Occupancy Permit for the use 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 architect surveyor certifying compliance with Condition #1.
 - b. Submitted to the Department of Inspectional Services and the Department of Planning and Development a final as-built survey plan in paper and digital format.
 - c. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division certifying that the final site construction details have been constructed to the standards of the City of Newton Engineering Division.

- d. Filed with the City Clerk and the Commissioner of Inspectional Services, a statement from the Planning Department approving final location, number and type of plant materials and final landscape features.
9. Notwithstanding the provisions of Condition #8 above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the buildings prior to installation of final landscaping provided that the petitioner shall first have filed a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.