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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: April 12, 2022
Land Use Action Date: June 28, 2022
City Council Action Date: July 4, 2022
90- Day Expiration Date: July 11, 2022

DATE: April 8, 2022

TO: City Council

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

SUBJECT: **Petition #219-22** for SPECIAL PERMIT/SITE PLAN APPROVAL to convert a detached garage to an accessory apartment that reduces side and front setback requirements at **88 High Street**, Ward 5, Section 51 Block 05 Lot 05, containing approximately 5053 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 6.7.1.E.1, 6.7.1.E.5, 3.2.3 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.



88 High Street

EXECUTIVE SUMMARY

The subject property at 88 High Street consists of a 5,053 square foot, “through-block” lot with frontages on High and Spring streets located in a Multi Residential 1 (MR1) zoning district. The parcel is improved with a 2,550 square foot, two-family dwelling constructed circa 1930 and a 1,014 square foot accessory structure, with access to the latter provided on Spring Street.

The petitioner proposes to convert space within the existing detached structure currently used as storage, work, and living space into a detached accessory apartment, requiring a special permit per Section 6.7.1.E.1 of the Newton Zoning Ordinance (NZO).

Further, Sec. 6.7.1.E.5 requires that a detached accessory apartment meet the setback requirements for the principal structure. As the accessory building has a front setback of 18 feet from Spring Street and a north side setback of five feet where per Sec. 3.2.3 25 feet and 7.5 feet are required respectively, a special permit is also required to allow an accessory structure with reduced setbacks to be used as a detached accessory apartment.

The Planning Department is generally not concerned with the creation of the proposed accessory apartment. The subject property is an appropriate location for the proposed accessory apartment as it would be within an existing structure and would further diversify Newton’s housing stock.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The site in a Multi Residential 1 (MR1) zoning district is an appropriate location for the proposed detached accessory apartment within an accessory structure with reduced front and setbacks (§7.3.3.C.1)
- The proposed detached accessory apartment within an accessory structure with reduced front and setbacks will adversely affect the neighborhood (§7.3.3.C.2)
- The proposed detached accessory apartment within an accessory structure with reduced front and setbacks 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)
- The proposed accessory apartment within an existing accessory structure is in keeping with the architectural integrity of the principal dwelling and character of the neighborhood. (§6.7.1.E.3)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on the west side of High Street at its intersection with Rockland Place, between Summer and Winter streets. The site’s residential use is consistent

with the neighborhood's predominantly residential use with a mix of single, two- and multi-family dwellings; there is also a religious use approx. 100 feet to the north along Summer Street (**Attachment A**). The neighborhood's zoning largely reflects this use, with the subject parcel and areas to the north, west, and south zoned MR1, and the area to the northeast zoned Single Residence3 (SR3) (**Attachment B**).

B. Site

The subject property consists of a 5,053 square foot, through-block lot with frontages on High and Spring streets. The parcel is improved with a two-family dwelling facing High Street and an accessory structure facing Spring Street.

The site is generally level, with the grade varying with a range of about four feet across the parcel, with its low point located along its center. The area not occupied by the structures is all but completely paved with little or no landscaping.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site would change from a two-family dwelling to a two-family dwelling with a detached accessory apartment.

B. Building and Site Design

The subject property consists of a 5,053 square foot, through-block lot (with frontages on High and Spring streets) improved with a 2,550 square foot, two-family dwelling and a 1,014 square foot detached accessory structure, with access to the latter located on Spring Street.

The petitioner proposes to establish a detached accessory apartment in the existing detached accessory structure. As indicated by the petitioner, the accessory structure's first floor is currently utilized for storage and a work area, and its second floor as living space with a bedroom and bathroom but no kitchen. The space would be modified to construct a new kitchen, living space and half bath on the first floor and two bedrooms on the second floor

The dwelling with which proposed accessory apartment would be associated and part of is "Unit 1" which includes 1,791.5 square feet of habitable area, including the first floor (1,288.5 square feet) and the finished basement level (503 square feet) of the two-family structure. Per Sec. 6.7.1.E.2, a detached accessory apartment may be a maximum of 40% of the habitable area of the dwelling (i.e., the principal unit and the accessory apartment) or 1,200 square feet by right (and up to 1,500 square feet by special permit). As the proposed 1,014 square foot accessory apartment is 36% of the dwelling's 2,805 square feet of habitable area, it does not require a special permit for its size.

No changes to the dimensions of the accessory structure are proposed. Its nonconforming front setback of 18 feet from Spring Street and north side setback of five feet where 25 feet and 7.5 feet are required respectively would remain unchanged, thus requiring a special permit as relief from the requirement a detached accessory apartment meet the setback

requirements for the principal structure.

The lot coverage, which will not change is 38%, higher than the maximum 30% allowed; the open space will remain at approximately 2.6%, considerably below the required minimum of 50%.

The exterior changes indicated by the petitioner include replacement of the door facing Spring Street with windows and the installation of new window openings elsewhere on the structure, including on its right and rear elevations.

C. Parking and Circulation

No changes to the parcel's parking or circulation are proposed by this petition. The Planning Department notes that the creation of the proposed accessory apartment would not increase the number of required parking stalls.

D. Landscaping

A landscaping plan was not submitted with this petition. The Planning Department suggests the petitioner indicate whether fencing along the nonconforming north side setback in the vicinity of the accessory structure can be expected to be in place going forward.

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 detached accessory apartment (§6.7.1.E.1.)
- To allow a detached accessory apartment that does not meet principal setbacks (§6.7.1.E.5, §3.2.3)

B. Engineering Review

Review by the Engineering Division is not required at this time.

C. Historic Review

As the property is in the Upper Falls Historic District, the petitioner will need to confirm with Historic staff as to any proposed exterior alterations to the accessory structure.

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 Council Order

ATTACHMENT A






Land Use

88 High St.

*City of Newton,
Massachusetts*

Land Use

Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Open Space
-  Nonprofit Organizations
-  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: April 06, 2022






ATTACHMENT B

Zoning

88 High St.

*City of Newton,
Massachusetts*

Legend

-  Single Residence 3
-  Multi-Residence 1
-  Business 1



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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
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Map Date: April 06, 2022





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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: March 1, 2022

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Cheng Bin Zhang, Applicant
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: Request to allow a detached accessory apartment

| Applicant: Cheng Bin Zhang | |
|----------------------------------|---|
| Site: 88 High Street | SBL: 51005 0005 |
| Zoning: MR1 | Lot Area: 5,053 square feet |
| Current use: Two-family dwelling | Proposed use: Two-family dwelling with a detached accessory apartment |

BACKGROUND:

The property at 88 High Street consists of a 5,053 square foot lot improved with a two-family dwelling constructed circa 1930 and a detached garage. The petitioner proposes to use an existing detached garage as an accessory unit, requiring a special permit.

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

- Zoning Review Application, [prepared by Cheng bin Zhang, applicant, submitted 1/7/2022](#)
- [Floor plans and elevations, prepared by Up Design & Build, dated 7/18/2021](#)
- [Site Plan, signed and stamped by Frank Iebba, surveyor, dated 11/2/2021](#)
- FAR worksheet, signed and stamped by Kui Xue, architect, submitted 2/17/2022

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner proposes to use finished space in a detached accessory building as an accessory apartment. Per section 6.7.1.E.1, a special permit is required to allow a detached accessory apartment.
2. Per section 6.7.1.E.2, a detached accessory apartment may be a maximum of 40% of the habitable area of the principal dwelling or 1,200 square feet, or up to 1,500 square feet with additional relief. The petitioners propose a 1,014 square foot accessory apartment, which is 36% of the 2,805 square feet of habitable area of the principal dwelling unit, requiring no relief.
3. Section 6.7.1.E.5 requires that a detached accessory apartment meet the setback requirements for the principal structure unless by special permit. The existing detached accessory building has a side setback of 5 feet where 7.5 feet is required per section 3.2.3. Additionally, the accessory apartment has a front setback of 18 feet from Spring Street where 25 feet is required per section 3.2.3. A special permit is required to allow the detached accessory structure with reduced setbacks.

See “Zoning Relief Summary” below:

| Zoning Relief Required | | |
|-------------------------------|---|------------------------|
| Ordinance | | Action Required |
| §6.7.1.E.1 | To allow detached accessory apartment | S.P. per §7.3.3 |
| §6.7.1.E.5 §3.2.3 | To allow a detached accessory apartment that does not meet principal setbacks | 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 a detached accessory apartment (§6.7.1.E.1) and allow a detached accessory apartment that does not meet principal setbacks (§6.7.1.E.5, §3.2.3), as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipoff:

1. The site in a Multi Residential 1 (MR1) zoning district is an appropriate location for the proposed detached accessory apartment within an accessory structure as the accessory structure is currently used for living, storage, and work space (§7.3.3.C.1)
2. The proposed detached accessory apartment within an accessory structure with reduced front and setbacks will not adversely affect the neighborhood as the accessory structure is currently used for living, storage, and work space (§7.3.3.C.2)
3. The proposed detached accessory apartment within an accessory structure with reduced front and setbacks 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. The proposed accessory apartment within an existing accessory structure is in keeping with the architectural integrity of the principal dwelling and character of the neighborhood as the accessory structure will only be slightly modified and any proposed changes will require approval by the Newton Upper Falls Local Historic District (§6.7.1.E.3)
6. The proposed accessory apartment will help to diversify Newton's housing stock consistent with Newton's Comprehensive Plan.

PETITION NUMBER: #219-22

PETITIONER: Cheng Bin Zhang

LOCATION: 88 High Street, Ward 5, on land known as Section 51, Block 5, Lot 5, containing approximately 5,053 square feet of land

OWNER: Cheng Bin Zhang

ADDRESS OF OWNER: 88 High Street
Newton, MA

TO BE USED FOR: Detached accessory structure with an accessory apartment

CONSTRUCTION: Wood-framed

EXPLANATORY NOTES: Special permit per §7.3 to allow:

- a detached accessory apartment (§6.7.1.E.1.)
- a detached accessory apartment that does not meet principal setbacks (§6.7.1.E.5, §3.2.3)

ZONING: Multi Residence 1 (MR1)

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:
 - i. A site plan entitled "Existing House, 88 High Street, Newton, MA," prepared by Essex Eng. & Survey, signed and stamped by Frank Iebba, Professional Land Surveyor, dated November 2, 2021.
 - ii. A set of plans entitled "88 Street, Newton, MA, Renovation of Building at Rear Yard," prepared by Up Design & Build, LLC, dated February 28, 2022, comprised of the following sheets:
 - iii. A document entitled "FAR Worksheet- 88 High Street," indicating a proposed total gross floor area of 3,568.9 square feet and a proposed FAR (floor area ratio) of 0.71, stamped and signed by Kui Xue
2. The accessory apartment shall be accessory to the principal unit within the existing two-family structure known as "Unit 1" which is located on the first floor and basement of that structure and contains includes 1,791.5 square feet of habitable area.
3. The accessory apartment may not be held in separate ownership from the principal structure/dwelling unit.
4. The owner of the principal structure/dwelling unit shall occupy either said principal structure/dwelling 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.

5. In the event ownership of the subject property 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.
6. 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 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, the Assessing Department and the Department of Planning and Development.
 - c. Obtained a written statement from the Newton Upper Falls Local Historic District approving any exterior changes.
 - d. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
7. 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 a statement by a registered architect or engineer 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. Obtained a written statement from the Newton Upper Falls Local Historic District approving any exterior changes.