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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: November 15, 2016
Land Use Action Date: January 24, 2017
City Council Action Date: February 6, 2017
90-Day Expiration Date: February 13, 2017

DATE: November 10, 2016

TO: City Council

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

SUBJECT: **Petition #341-16**, for SPECIAL PERMIT/SITE PLAN APPROVAL to FURTHER EXTEND NONCOMING USE and ALLOW PARKING WITHIN A SETBACK AND WITHIN FIVE FEET OF A RESIDENTIAL STRUCTURE by adding a third unit to the rear of the existing two-family dwelling, maintaining driveways on either side of the house for parking, further extending the nonconforming use at 220-222 California Street, Ward 1, Newton, on land known as SBL 11010 0016, containing approximately 9,510 sq. ft. of land in a district known as BUSINESS USE 1. Ref: 7.3.3, 7.4, 4.4.1, 5.1.8.A, 5.1.13 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

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.



220-222 California Street

EXECUTIVE SUMMARY

The property at 220-222 California Street consists of 9,510 square feet of land improved with a 3,793 square foot two-family dwelling constructed in 1890 and two driveways that fit approximately four cars. The petitioner is proposing to construct a 2,999 square foot, 2½-story addition to the rear of the structure to accommodate a third residential unit. The property is located in a Business 1 (BU1) zoning district, which requires a special permit in order to create a multi-family dwelling. The petitioner is also seeking relief to locate parking stalls within setbacks and within five feet of a residential structure. While the property was found preferably preserved by the Newton Historical Commission staff, the demolition delay was waived based on the proposed plans.

The property is located in a mixed-use neighborhood that includes Multi-Residence 2, Business 1 and Manufacturing zoning districts. If this petition were to be approved, the resulting structure would have a total square footage of 6,792, square feet. The proposed Floor Area Ratio (FAR) of 0.71 is less than the maximum 1.00 FAR allowed in a BU1 zoning district. The proposed addition meets all requirements for setbacks, building height, and stories. The petitioner is proposing to maintain the sight-obscuring fence along the property lines.

The Planning Department believes that the proposed three-unit multi-family dwelling is appropriate for this mixed-use neighborhood and does not have any major concerns with the site plan. Since the addition will be located at the rear of the existing structure the project will preserve the existing streetscape. The Planning Department does not believe that additional landscape screening is necessary due to the location of the dwellings on abutting properties, existing fencing along the property's side and rear boundaries, and the existing vegetation to the rear of the property.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Board should consider whether:

- the specific site is an appropriate location for the proposed multi-family dwelling (§7.3.3.C.1);
- the proposed multi-family dwelling as developed and operated will not adversely affect the surrounding neighborhood (§7.3.3.C.2);
- there will be no nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3);
- access to site is appropriate for the number and types of vehicles involved (§7.3.3.C.4);
- literal compliance with the parking requirements is impracticable due to the nature of the use, or the location, size, width, 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 (§5.1.13).

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The site is located on California Street between Jasset Street and Allison Street. The property is located in a mixed-used neighborhood that includes single-family and multi-family dwellings, industrial, mixed-use and commercial uses. The properties abutting to the immediate left and right are two-family dwellings; the rear property line is adjacent to the rear yard of a single family dwelling. (**Attachment A**). The zoning districts in the surrounding neighborhood consist of Multi Residence 2, Business 1, and Manufacturing districts (**Attachment B**).

B. Site

The site consists of 9,510 square feet of land, improved with a 2½-story, 3,793 square foot two-family dwelling constructed in 1890. There are two driveways along the side property lines that can fit approximately four vehicles. There is a yard at the rear of the site with vegetation along portions of the property lines, and an approximately six-foot high sight-obscuring fence around the side and rear property lines.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The petitioner is proposing to change the use from a two-family dwelling to a three unit multi-family dwelling.

B. Building and Site Design

The petitioner is proposing to construct a wood framed 2½-story, 34 foot by 35 foot, addition to the rear of the existing structure to be used as a third unit. The proposed addition would be located in an area currently occupied by a wood deck, porch and brick patio, as well as some lawn area. As designed, it would be compatible with the existing structure's architectural style, and, at approximately 29.88 feet in height, rise to the same height. The addition would be offset slightly from the existing dwelling, which will help to break up the view of the mass of the new combined structure from the side property line and screening most of the addition from California Street.

The site plan will maintain a small backyard at the rear of the site. The property's lot coverage would increase from 17% to 28%, and open space on the lot would correspondingly decrease, from 76.2% to 50.9%; however, the Planning Department notes that as the property is within a BU1 district there are no requirements for either of these attributes.

The addition would add approximately 2,999 square feet to the structure, resulting

in a total of 6,792 square feet of floor space on the property, increasing its floor area ratio (FAR) from 0.40 to 0.71, well below the allowed maximum of 1.00.

C. Parking, Circulation and Landscaping

To provide the required six parking stalls (2 per unit) the Petitioner is required to create two additional stalls in addition to the four that already exist on site (two each in the existing driveways on either side of the existing dwelling). As proposed, all six spaces would be located within the side setbacks; one stall would also be within the front setback and two stalls would be within five feet of the existing dwelling.

The petitioner is proposing to utilize both of the site's two existing curb cuts. First, the existing driveway and two tandem parking stalls along the western (right) property line would be maintained. Second, to add additional parking along the eastern (left) property line, the existing driveway on that side would be extended (requiring the removal of an existing tree and storage shed) to a point near the rear of the property, allowing for the location of two tandem parking stalls within five feet of the existing dwelling as well as an approximately 11 foot drive aisle serving these spaces as well as two proposed parking stalls at the rear of the site.

The Planning Department recognizes that vehicles utilizing the four parking stalls located along the eastern driveway will likely continue to back out onto California Street but believes that adequate maneuvering space to avoid this will be provided by the turn-around area to be located near the entrance to the proposed addition. The Planning Department further notes that due to the limited space on the site and the width of the drive aisle to the rear parking stalls, it will be important for the petitioner to manage snow removal during the winter months so that adequate maneuvering space is maintained.

Relatedly, as the addition has a footprint of approximately 1,190 square feet, the Planning Department recommends that the Petitioner consider modifying the design to include an attached garage within the addition. This would serve to remove one or more cars from view, simplify parking and maneuvering, and reduce the number of stalls requiring the requested zoning relief.

D. Landscape Screening

The Planning Department does not believe that additional landscape screening is required due to the existing vegetation, the location of structures on the surrounding lots and the existing screening fence located along the property's side and rear property lines. However, the Planning Department does recommend that the property's fencing be maintained as located on the site plan and that this be made a condition of any special permit/site plan approval.

IV. TECHNICAL REVIEW

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

The Zoning Review Memorandum (**Attachment C**) provides an analysis of the proposal with regard to zoning. The petitioner is seeking the following relief:

- special permit per §7.3.3, to allow a 3-unit multi-family dwelling on the ground level (§4.4.1);
- special permit per §7.3.3, to locate parking within a setback and within 5 feet of a residential structure (§5.1.8.A, §5.1.13).

B. Engineering Review

The site plan provided with the special permit application indicates the general location of the infiltration system but indicates that the final location and size of the system will be determined prior to the submission for the building permit, if approved. The site plan also indicates that there will be no changes to the location of the existing water and sewer service.

Planning Department staff has previously discussed the project with the Associate City Engineer who stated that the petitioner could submit the final calculations and details for the system during the permitting process. The Associate City Engineer noted at that time that the proposed system will need to be setback farther from the side property line and the engineer will need to do soil testing.

C. Newton Historical Commission

On October 3, 2014 the property was found preferably preserved by the Newton Historical Commission staff and the demolition delay was waived based on the proposed plans.

V. PETITIONER'S RESPONSIBILITIES

Although the petition is considered complete at this time, the Planning Department recommends, as referenced above, that the Petitioner consider submitting modified plans to create an attached garage within the addition to remove one or more cars from view, simplify parking and maneuvering, and reduce the number of stalls requiring the requested zoning relief.

ATTACHMENTS:

Attachment A:	Land Use Map
Attachment B:	Zoning Map
Attachment C:	Zoning Review Memorandum
Attachment D:	Draft Order

ATTACHMENT A

Existing Land Use 220-222 California Street

*City of Newton,
Massachusetts*

Legend

Land Use Land Use

- Single Family Residential
- Multi-Family Residential
- Commercial
- Industrial

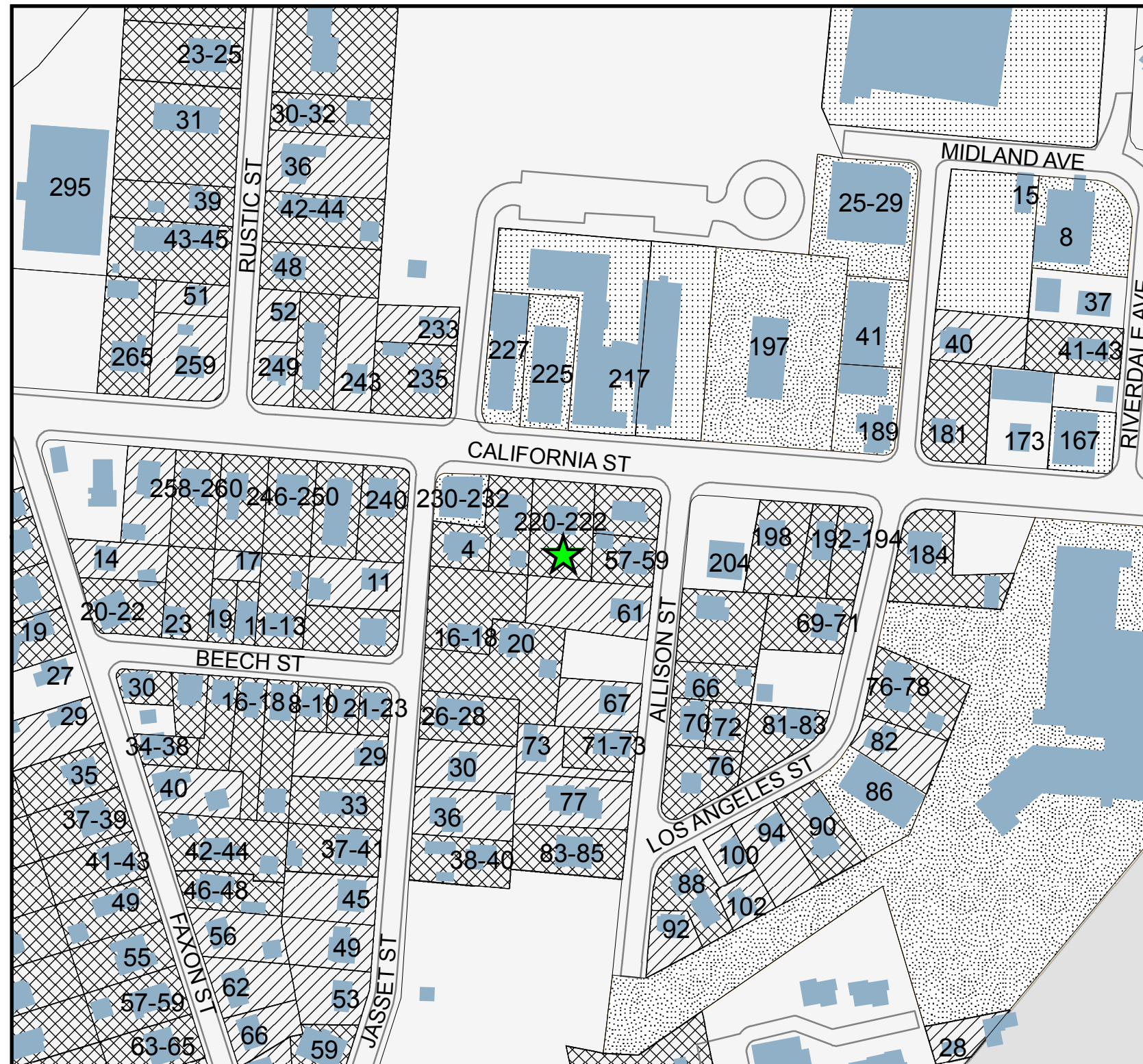


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas Greenfield

0 25 50 75 100 125 150 175 200 225
Feet

Map Date: November 10, 2016



ATTACHMENT B

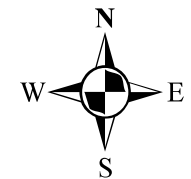
Zoning 220-222

California Street

*City of Newton,
Massachusetts*

Legend

- Multi-Residence 1
- Multi-Residence 2
- Business 1
- Manufacturing
- Public Use

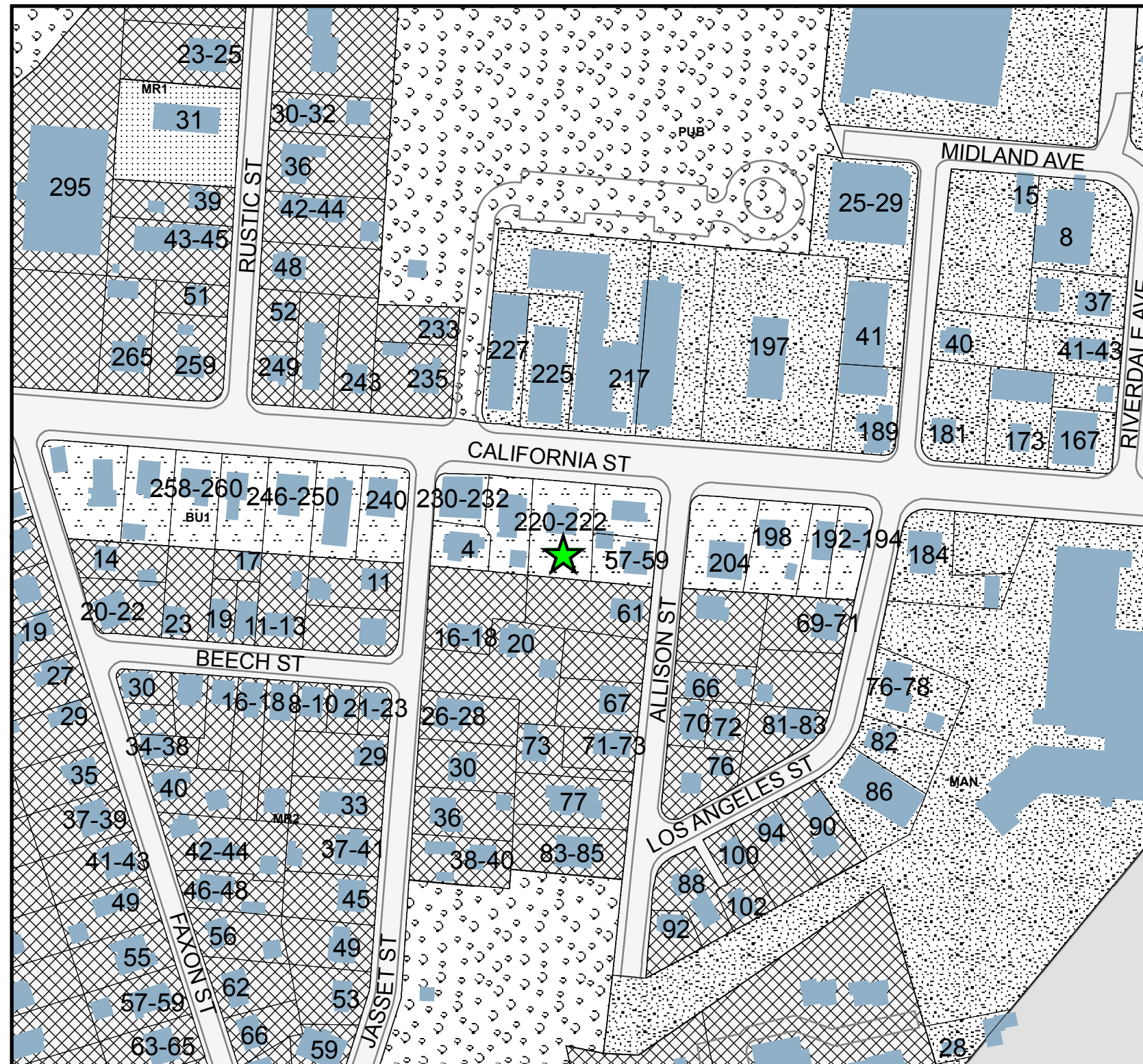


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
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Feet

Map Date: November 10, 2016





Setti D. Warren
Mayor

ATTACHMENT C
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James Freas
Acting Director

ZONING REVIEW MEMORANDUM

Date: October 12, 2016

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Alexandra Ananth, Chief Planner for Current Planning

Cc: Laurence Lee, attorney
Ayeng Fong, Applicant
James Freas, Acting Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to add a third unit to an existing nonconforming two-family dwelling; and to locate parking within a setback and within 5 feet of a residential structure

Applicant: Ayeng Fong	
Site: 220-222 California Street	SBL: 11010 0016
Zoning: BU1	Lot Area: 9,510 square feet
Current use: Two-family residence	Proposed use: Multi-family dwelling

BACKGROUND:

The property at 220-222 California Street consists of a 9,510 square foot lot improved with an existing two-family dwelling constructed in 1890. The applicant proposes to add a third unit to the rear of the existing two-family dwelling, to create a multi-family dwelling. The applicant intends to maintain the two existing driveways on either side of the house for parking for the three units. The property is located in the Business 1 district, which requires a special permit for a multi-family dwelling.

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

- Zoning Review Application, prepared by Ayeng Fong, applicant, submitted 6/13/2015
- Proposed Site Plan, signed and stamped by Peter J. Nolan, surveyor, dated 5/12/2015
- Architectural Plans, dated 5/29/2015
 - Site Plan
 - Basement Plan
 - First Floor Plan
 - Second Floor Plan
 - Attic Level Plan
 - Roof Plan

- Elevations

ADMINISTRATIVE DETERMINATIONS:

1. The subject property is located in the BU1 zoning district. The applicant is proposing to add a third residential unit to the existing nonconforming two-family dwelling, creating a multi-family dwelling. Section 4.4.1 of the Newton Zoning Ordinance allows a multi-family dwelling in the Business 1 district provided that the applicant obtains a special permit.
2. The applicant is maintaining the two existing driveways on either side of the dwelling. The driveway on the western side of the property will be extended to provide two parking stalls for the rear unit. This configuration has one stall in the front setback, and all six within the side setback, as well as two within five feet of the structure. Section 5.1.8.A requires a special permit to locate parking within a setback and within five feet of a residential structure for parking for more than five vehicles.

Zone BU-1	Required	Existing	Proposed
Lot Size	10,000 square feet	9,510 square feet	No change
Lot area per unit	1,200 square feet	4,755 square feet	3,170 square feet
Frontage	80 feet	80 feet	No change
Setbacks <ul style="list-style-type: none"> • Front • Side • Rear 	Average 11.9 feet* 20 feet**	25.2 feet 17.9 feet 54.7 feet	No change 12.1 feet 20.9 feet
Building Height (by Special Permit)	36 feet	N/A	29.875 feet
Max number of stories (by Special Permit)	3	2.5	2.5
Max building lot coverage	No requirement		28%
Min amount of open space	No requirement		50.86%
Parking stalls/dwelling units	6 spaces (2 per unit)	4	6
FAR	1	N/A	.71

*Section 4.1.3 states that the side setback requirement in the Business 1 district is "one-half the building height or a distance equal to the side yard setback of the abutting property at any given side yard..."

** Section 4.1.3 requires a setback of one-half the building height or 15 feet, whichever is greater, when abutting a residential district.

3. See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§4.4.1	Allow a 3-unit multi-family dwelling on the ground level	S.P. per §7.3.3
§5.1.8.A §5.1.13	To locate parking within a setback and within 5 feet of a residential structure	S.P. per §7.3.3

ATTACHMENT D

DRAFT- #341-16
220-222 California Street

CITY OF NEWTON IN CITY COUNCIL

November 21, 2016

ORDERED:

That the 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 add a third unit to the rear of an existing two-family dwelling, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Marc Laredo:

1. The specific site is an appropriate location for the addition of a third unit as it is located in a mixed-use neighborhood and the proposed floor area of the structure is less than the maximum floor area allowed in the zoning district. (§7.3.3.C.1);
2. The proposed three-unit, multi-family dwelling, as developed and operated will not adversely affect the surrounding mixed-use neighborhood. The existing structure will be preserved, and the addition to the structure will be minimally visible from the street (§7.3.3.C.2);
3. There will be no nuisance or serious hazard to vehicles or pedestrians. The new dwelling unit will have a sufficient number of parking stalls on the site and the extension of the driveway will be designed and sized so as to allow appropriate on-site maneuvering as well as adequate sightlines for pedestrians and vehicles (§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. Literal compliance with the parking requirements is impracticable due to the size and width of the lot. The site is surrounded by a sight-obscuring fence, which will screen the vehicles located in the setback. (§5.1.13).

PETITION NUMBER: #341-16

PETITIONER: Ayeng Fong

LOCATION: 220-222 California Street, Ward 4, on land known as SBL 11, 10, 16 containing approx. 9,510 sq. ft. of land

OWNER: Ayeng Fong and Binh Nguyen

ADDRESS OF OWNER: 220-222 California Street
Newton, MA 02458

TO BE USED FOR: 3-Unit Multi-family dwelling

EXPLANATORY NOTES: §4.1.1 to allow a 3-unit multi-family dwelling;
§5.1.8A; §5.1.13 to locate parking within a setback and within five feet of a residential structure.

ZONING: Business 1 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. Proposed Site Plan, prepared by Peter Nolan & Associates LLC, signed and stamped by Peter J. Nolan, Professional Land Surveyor, dated May 15, 2015.
 - b. Architectural Drawings, prepared by Lau Design Co., dated August 8, 2015, consisting of the following nine (9) sheets:
 - i. Site Plan;
 - ii. Basement Plan;
 - iii. First Floor Plan;
 - iv. Second Floor Plan;
 - v. Attic Level Plan;
 - vi. Roof Plan;
 - vii. Proposed East Elevation;
 - viii. Proposed South Elevation.
2. The petitioner shall maintain adequate screening fencing in the locations shown in the plan referenced in Condition 1.a.
3. Prior to the issuance of a building permit the petitioner shall submit final Engineering Plans to the City Engineer for review and approval.
4. If so required by the City Engineer, the petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management to the Engineering Division of Public Works for review and approval prior to the issuance of any Building Permit. Once approved, the O&M must be adopted by the applicant, incorporated into the deeds; and recorded at

the Middlesex Registry of Deeds. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.

5. Prior to the issuance of any building permit the petitioner shall submit a Construction Management Plan for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, and the City Engineer. The Construction Management Plan shall be consistent and not in conflict with relevant conditions of this Board Order and shall include, but not be limited to, the following provisions:
 - a. 24-hour contact information for the general contractor of the project.
 - b. Hours of construction: construction shall be limited to between the hours of 7:00 a.m. and 7:00 p.m. on weekdays, and between the hours of 8:00 a.m. and 5:00 p.m. on Saturdays. No construction is permitted on Sundays or holidays except in emergencies, and only with prior approval from the Commissioner of Inspectional Services.
 - c. The proposed schedule of the project, including the general phasing of the construction activities.
 - d. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for delivery vehicles, and location of any security fencing.
 - e. Proposed methods for dust control including, but not limited to: covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
 - f. Proposed methods of noise control, in accordance with the City of Newton's Ordinances. Staging activities should be conducted in a manner that will minimize off-site impacts of noise. Noise producing staging activities should be located as far as practical from noise sensitive locations.
 - g. Tree preservation plan to define the proposed method for protection of any existing trees to remain on the site.
 - h. A plan for rodent control during construction.
6. 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. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the final site plan.

- 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 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 or engineer certifying compliance with Condition #1.
 - b. Submitted to the Director of Planning and Development, Commissioner of Inspectional Services and City Engineer, final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.
 - 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.