



**City of Newton, Massachusetts**  
Department of Planning and Development  
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Setti D. Warren  
Mayor

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Barney S. Heath  
Director

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**PUBLIC HEARING MEMORANDUM**

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

DATE: December 9, 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 #337-16** for SPECIAL PERMIT/SITE PLAN APPROVAL to construct an accessory apartment approximately 846 sq. ft. with dormer wider than 50% of the exterior wall below, above a three car garage at **41 Dorset Road**, Ward 5, Waban, on land known as SBL 55010 0045, containing approximately 24,936 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3, 7.4, 6.7.1.D, 3.4.3.A.4.c, 3.4.4.E.3, 1.5.4.G.2, 1.5.4.G.2.b of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

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The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the City Council will want to consider in its discussion at a subsequent Working Session.



**41 Dorset Road**

## **EXECUTIVE SUMMARY**

The property at 41 Dorset Road consists of a 24,936 square foot lot in a Single Residence 2 (SR-2) district improved with a 3,887 square foot, two-story single-family dwelling constructed in 1927 that includes a basement level garage. The applicant proposes to construct an accessory structure that would include a three-car detached garage on the ground level and a one-bedroom accessory apartment in a half-story above. The proposed detached structure has a footprint of 864 square feet and a dormer wider than 50% of the exterior wall below. The existing attached garage would be converted into living space.

To construct the detached accessory structure as proposed, the petitioner is seeking approvals to exceed the maximum 700 square foot ground floor area requirement for an accessory building being used as a garage, to allow the creation of an accessory apartment in a detached structure accessory to a single-family dwelling, and to allow a dormer wider than 50% of the exterior wall below.

The Planning Department is generally not concerned with the creation of the proposed accessory structure. Although the Planning Department would prefer that the footprint of the accessory structure not exceed 700 square feet, it nevertheless recognizes that the proposed location has limited visibility from the adjacent public way and properties, and will not unnecessarily detract from the neighborhood's streetscape. Furthermore, the accessory apartment would further diversify Newton's housing stock and the three-car garage would provide enclosed off-street space for the required parking stalls for both the principal and accessory units.

### **I. SIGNIFICANT ISSUES FOR CONSIDERATION:**

When reviewing this request, the Board should consider whether:

1. The site is an appropriate location for an accessory structure with a ground floor area in excess of 700 square feet that contains an accessory apartment above a three car garage (§7.3.3.C.1)
2. The proposed accessory structure will not adversely affect the neighborhood (§7.3.3.C.2).
3. The structure as proposed will not be a nuisance or create a serious hazard to vehicles or pedestrian (§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).

## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The neighborhood, which is in a Single-Residence 2 (SR-2) district, is predominated by single family homes, with exceptions being the Angier School's playing fields that abut the subject property to the east, the MBTA rail line just to the north of the property and, across them, the Brae Burn Country Club's golf course (**Attachments A & B**).

### B. Site

The property consists of 24,936 square feet of land and is improved with a two-story, 3,887 square foot single-family residence with basement level garage.

The property slopes considerably downward from Dorset Road toward the rear of the lot, especially its northern corner, with that grade change being as much as 25 feet. The residence is accessed by a driveway of varying width on the comparatively less sloped southwest side of the property that provides both parking area and access to the existing attached garage.

There are several mature trees along the rear of the property along its boundary shared with the MBTA's Green Line. There is also considerable mature vegetation along the property line shared with the Angier School's playing fields to the east and the abutting dwelling to the south.

## III. PROJECT DESCRIPTION AND ANALYSIS

### A. Land Use

The property will contain an owner occupied single-family residence and, if approved, an accessory structure containing a three car garage and a one bedroom accessory apartment.

### B. Building and Site Design

As proposed, the existing attached garage within the primary dwelling will be converted to living space. The detached accessory structure will be of wood-frame construction and measure 35 feet by 24 feet (excluding a small entry vestibule on the north side) and would rise to 21.5 feet in height, just below the maximum 22 feet allowed. It would contain a three -car garage of 864 square feet and a 630 square foot accessory apartment above, 570 square feet of that at 7 feet in height, which meets the requirement of a half story. The apartment would feature a dormer on its rear elevation of approximately 29 feet in length.

The accessory structure would be located approximately from 70 feet from the front property line at Dorset Road. Its smallest setback, that from the adjacent Angier School playing fields, is 5.4 feet, just greater than the required 5 feet; however, it has a side setback of 17.3 feet from the closest residential property

located to the south.

The property's floor area ratio (FAR) would increase by 0.06, from 0.16 to 0.22, but remain well below the maximum allowed. Lot coverage would increase from 6.6% to 10.1%, well below the maximum 30% allowed; open space would decrease from 84% to 77.7%, but remain well above the required 50% minimum.

C. Parking and Circulation

The proposed project development will alter the parking configuration for the property by eliminating the existing attached garage in the dwelling's basement level and providing the three required parking stalls within the proposed accessory structure. The accessory structure would be accessed by the existing driveway on the southwest side of the property that would be extended to the south to serve the full width of the garage.

D. Landscape Screening

No landscaping plan was provided with the petition. The Planning Department does not consider the proposed structure to be a visual nuisance for the neighborhood as the slope of the site results in limited visibility of the proposed structure from public way and abutter(s), as does its location set back approximately 70 feet from Dorset Road. Furthermore, as noted above, there is considerable mature vegetation along the property line shared with the Angier School's playing fields to the east and the abutting dwelling to the south, as well as several mature trees along the property's boundary line shared with the MBTA's Green Line.

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. Based on the completed Zoning Review Memorandum, the petitioner is seeking a Special Permit/Site Plan Approval for the following relief:

- Special permit per §7.3 to allow the creation of an accessory apartment in a detached structure accessory to a single-family dwelling (§6.7.1.D)
- Special permit per §7.3 to allow an accessory structure with a ground floor area in excess of 700 square feet (§3.4.3.A.4.c §3.4.4.E.3)
- Special permit. per §7.3 to allow a dormer wider than 50% of the exterior wall below (§1.5.4.G.2, §1.5.4.G.2.b)

B. Engineering Review

The Engineering Division of Public Works will review this project for conformance

with the City of Newton Engineering Standards prior to the issuance of a building permit for the proposed accessory structure should this petition be approved.

V. PETITIONERS' RESPONSIBILITIES

The petition is considered complete at this time.

**ATTACHMENTS:**

<b>Attachment A:</b>	Zoning Map
<b>Attachment B:</b>	Land Use Map
<b>Attachment C:</b>	Zoning Review Memorandum
<b>Attachment D:</b>	Draft Order

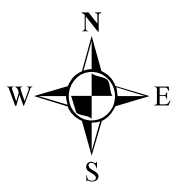
# ATTACHMENT A

## Existing Land Use 41 Dorset Rd.

*City of Newton,  
Massachusetts*

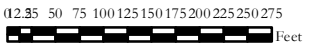
### Legend

- Land Use**
- Single Family Residential
  - Mixed Use
  - Golf Course
  - Open Space
  - Nonprofit Organizations
  - Vacant Land

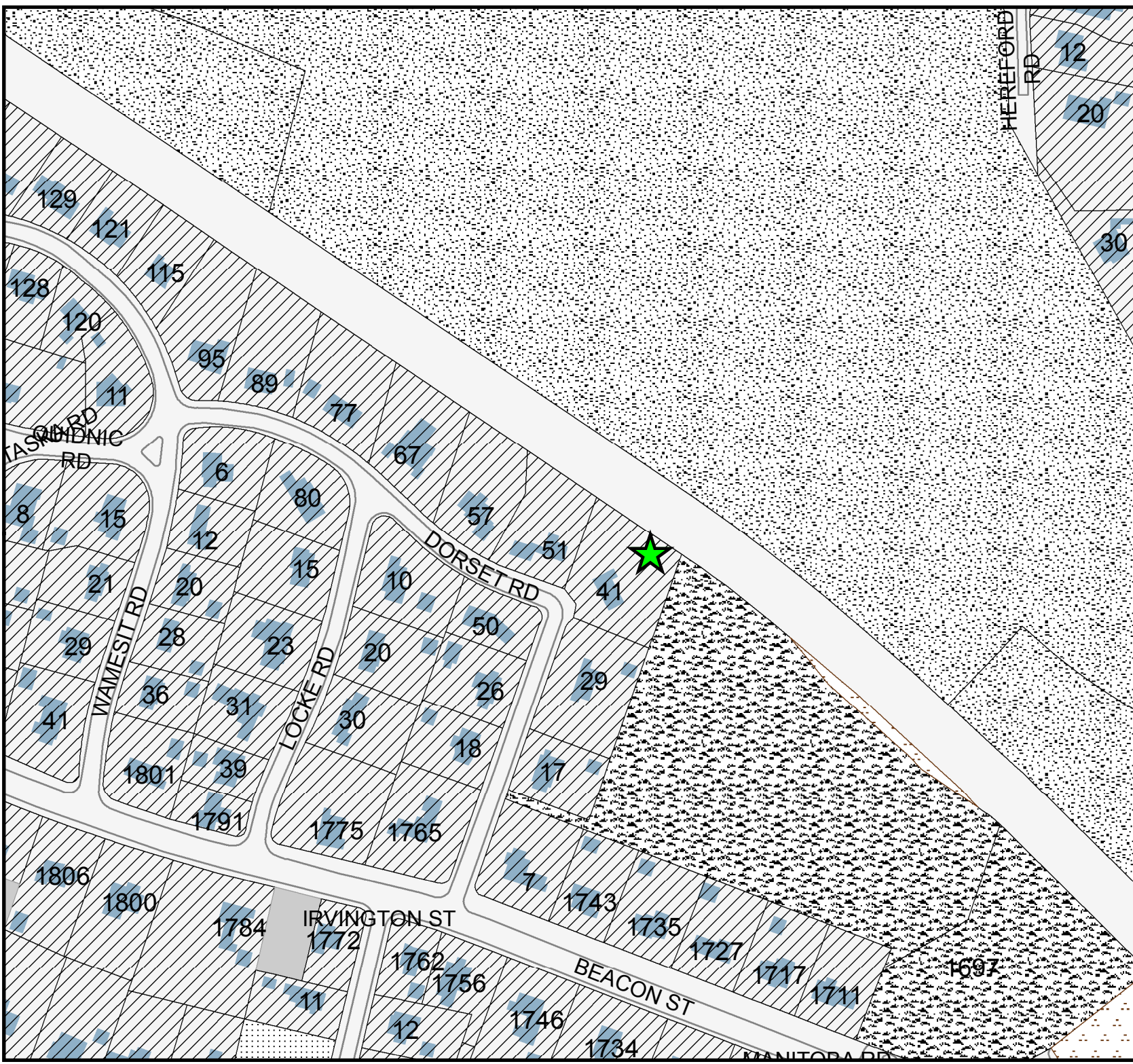


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

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



Map Date: December 06, 2016








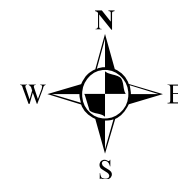
# ATTACHMENT B

## Zoning 41 Dorset Rd.

*City of Newton,  
Massachusetts*

### Legend

-  Single Residence 1
-  Single Residence 2
-  Public Use



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

Map Date: November 01, 2016



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Barney S. Heath  
Director

## ZONING REVIEW MEMORANDUM

Date: November 17, 2016

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Andrew Falkenstein, agent  
Timothy Leary, owner  
Barney S. Heath, Director of Planning and Development  
Ouida Young, Associate City Solicitor

RE: **Request to establish an accessory apartment in a detached garage, to exceed 700 square feet and to allow an oversized dormer**

Applicant: Timothy Leary	
Site: 41 Dorset Road	SBL: 55010 0045
Zoning: SR2	Lot Area: 24,936 square feet
Current use: Single-family dwelling	Proposed use: Single-family with accessory apartment above detached garage

### BACKGROUND:

The property at 41 Dorset Road consists of a 24,936 square foot lot improved with a single-family dwelling constructed in 1927. The applicant proposes to construct a three-car detached garage with a one-bedroom accessory apartment above. The proposed detached accessory structure has a footprint of 864 square feet and a dormer wider than 50% of the exterior wall below.

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

- Zoning Review Application, prepared by Andrew Falkenstein, agent, submitted 6/6/2016
- Existing Conditions Plan, prepared by the Jillson Company, Inc, surveyor, dated 8/12/2016
- Proposed Conditions Plan, prepared by The Jillson Company Inc., surveyor, dated 6/2/2016
- Half-story calculations, prepared by Concise Design Group, dated 7/12/2016
- FAR calculations
- Architectural plans, prepared by Concise Design Group, dated 7/12/2016
  - Floor plans
  - Elevations



#### **ADMINISTRATIVE DETERMINATIONS:**

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1. The existing single-family structure is located in an SR2 district. Per section 6.7.1.D, a special permit is required to create an accessory apartment in a detached structure accessory to a single-family dwelling in the SR2 district.
2. Section 6.7.1.B.1 requires that one of the two units be owner-occupied. The applicant must maintain residence in one of the units.
3. The dwelling must have been constructed 10 or more years prior to application per Section 6.7.1.B.2. The primary dwelling was constructed in 1927.
4. To grant a special permit for an accessory apartment, Section 6.7.1.F requires a lot of at least 10,000 square feet, and a building size of at least 2,600 square feet in the SR2 district. The property is 24,936 square feet and the building size is approximately 3,887 square feet. The property meets the requirements of this section.
5. Section 6.7.1.D.1.a states that in a single residence district, an accessory apartment shall be a minimum of 250 square feet and a maximum of 1,200 square feet, or 33 percent of the total building size, whichever is greater. Per this section, the maximum allowed size of the accessory apartment is 1,282 square feet. The accessory apartment, as proposed, is 630 square feet.
6. Section 6.7.1.D.1.c allows for exterior alterations required to meet applicable building, fire or health codes which are in keeping with the architectural integrity of the structure and neighborhood. The applicants propose a covered porch and step on the side of the existing detached structure, as well as a proposed roof over the front entrance. Both meet all zoning requirements for setbacks.
7. Per Section 3.4.3.A.2, an accessory building with a sloping roof shall have a maximum height of 22 feet. The proposed structure is 21.5 feet in height.
8. Per Section 3.4.3.A.2, an accessory building with a sloping roof shall not have more than 1½ stories. Section 1.5.4.C defines a half story as a story directly under a sloping roof where the area with a ceiling height of 7 feet or greater is less than ⅔ of the area of the story next below. The footprint of the proposed accessory building is 864 square feet. The space above has 570 square feet at 7 feet in height, which meets the requirement of a half story.
9. No more than one garage is permitted per Section 3.4.3.A.4.a. There is an existing attached garage within the primary dwelling which will be converted to living space. No relief is required.
10. Sections 3.4.3.A.4.c and 3.4.4.E.3 state that the ground floor area of a garage may not exceed 700 square feet without a special permit. The proposed detached garage has a footprint of 864 square feet, requiring a special permit.
11. Section 1.5.4.G.2.b states that a dormer in an accessory structure may be no wider than 50% of the length of the exterior wall of the next story below. The applicant proposes a dormer 26.83 feet

wide, where the building is 35 feet wide, which is 77% of the exterior wall below. Per Section 1.5.4.G.2, a special permit is required.

<b>Zone SR2</b>	<b>Required/Allowed</b>	<b>Existing</b>	<b>Proposed</b>
Lot Size	10,000 square feet	24,936 square feet	No change
Frontage	80 feet	<b>56 feet</b>	<b>No change</b>
Setbacks for existing structure <ul style="list-style-type: none"> <li>• Front</li> <li>• Side</li> <li>• Rear</li> </ul>	25 feet 7.5 feet 15 feet	30 feet 42 feet 44 feet	No change No change No change
Setbacks for detached structures <ul style="list-style-type: none"> <li>• Front</li> <li>• Side</li> <li>• Rear</li> <li>• Height</li> <li>• Max stories</li> </ul>	25 feet 5 feet 5 feet 22 feet 1.5		+/- 70 feet 34 feet 10 feet 21.5 feet 1.5
Max Lot Coverage	30%	8%	11%
Min Open Space	50%	85%	82%

1. See “Zoning Relief Summary” below:

<b>Zoning Relief Required</b>		
<b>Ordinance</b>		<b>Action Required</b>
§6.7.1.D	Creation of an accessory apartment in a detached structure accessory to a single-family dwelling	S.P. per §7.3
§3.4.3.A.4.c §3.4.4.E.3	To allow an accessory structure with a ground floor area in excess of 700 square feet	S.P. per §7.3
§1.5.4.G.2 §1.5.4.G.2.b	To allow a dormer wider than 50% of the exterior wall below	S.P. per §7.3

CITY OF NEWTON

IN CITY COUNCIL

December 19, 2016

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 construct an accessory structure with a ground floor area in excess of 700 square feet and a dormer wider than 50% of the exterior wall below containing a three-car garage with an accessory apartment above, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Marc Laredo:

1. The site is an appropriate location for an accessory structure with a ground floor area of 864 square feet and a dormer wider than 50% of the exterior wall below containing an accessory apartment above a three car garage, and said accessory structure will not adversely affect the neighborhood as it will be located approximately 75 feet from the street and toward the rear of a large, downward sloping site, limiting its visibility from abutting public ways and properties and it will provide off-street, enclosed space for the required parking stalls (§7.3.3.C.1) (§7.3.3.C.2).
2. The structure as proposed will not be a nuisance or create a serious hazard to vehicles or pedestrians (§7.3.3.C.3).
3. Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4).
4. The creation of an accessory apartment will help to diversify Newton's housing stock consistent with Newton's Comprehensive Plan.

PETITION NUMBER: #337-16

PETITIONER: Andrew Falkenstein

LOCATION: 41 Dorset Road, Ward 5, Waban, on land known as Section 55, Block 28, Lot 17, containing approximately 24,936 square feet of land

OWNER: Timothy Leary

ADDRESS OF OWNER: 41 Dorset Road  
Newton, MA

TO BE USED FOR: Accessory structure with a three car garage and an accessory apartment above

CONSTRUCTION: Wood-framed

EXPLANATORY NOTES: Special permit per §7.3:  
– to allow the creation of an accessory apartment in a detached structure accessory to a single-family dwelling (§6.7.1.D);  
– to allow an accessory structure with a ground floor area in excess of 700 square feet (§3.4.3.A.4.c, §3.4.4.E.3);  
– to allow a dormer wider than 50% of the exterior wall below (§1.5.4.G.2, §1.5.4.G.2.b).

ZONING: Single-Residence 2

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 site plan entitled "'41 Dorset Road Petitioner's Plan,' Land in Newton, Mass.," prepared by the Jillson Company, Inc., stamped by Todd P. Chapin, Registered Land Surveyor, dated September 30, 2016.
  - b. A set of architectural drawings, titled "41 Dorset Road Newton, MA," prepared by Consise Design Group, 7 Kent Street # 4, Brookline, Mass. 02118, undated:
    - i. Proposed Site Plan (A1.0);
    - ii. Proposed Floor Plans (A1.1);
    - iii. Elevations (A2.0);
    - iv. Sections (A2.2).
2. The accessory apartment may not be held in separate ownership from the principal structure/dwelling unit.
3. 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.



4. 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.
5. 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 Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
6. 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. 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.