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PUBLIC HEARING/WORKING SESSION MEMORANDUM

DATE: May 1, 2020
MEETING DATE: May 5, 2020
TO: Land Use Committee of the City Council
FROM: Barney Heath, Director of Planning and Development
Neil Cronin, Chief Planner for Current Planning
Michael Gleba, Senior Planner
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 #145-20

169 Hunnewell Avenue

Petition #145-20 for SPECIAL PERMIT/SITE PLAN APPROVAL to convert space on the third floor of the existing two-family structure to allow an interior accessory apartment exceeding 1,000 sq. ft. at **169 Hunnewell Avenue**, Ward 1, Newton, on land known as Section 71 Block 32 Lot 01, containing approximately 9,568 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 6.7.1.D.2 of the City of Newton Rev Zoning Ord, 2017.

The Land Use Committee (the "Committee") held a public hearing on April 14, 2020 on this petition. This memo reflects additional information addressed to the Planning Department as of May 1, 2020.

Background

The petitioner proposes to convert existing finished attic-level space into a 1,092 square foot internal accessory apartment. Per section 6.7.1.D.2 of the Newton Zoning Ordinance, an internal accessory apartment may be, by-right, between 250 and 1,000 square feet, or 33 percent of the total habitable space, whichever is less. The City Council may grant a special permit for a larger accessory apartment up to 1,200 square feet or 40 percent of the total habitable space, whichever is less. As 40 percent of

the structure's total habitable space is 1,840, the maximum allowed is 1,200 square feet, and, therefore, the proposed 1,092 square foot internal accessory apartment requires a special permit.

Update

Questions were raised at the April 14, 2020 public hearing on the present petition relative to, in light of the NZO's owner-occupancy requirements for accessory apartments, whether the proposed accessory apartment would become an "third unit" and possibly be converted into a separate condominium unit.

Subsequent to that meeting, the petitioner has clarified that the accessory apartment would not established as a separate unit but, as required by the NZO, be an accessory unit to, and held in common ownership with, one of the two principal dwelling units (i.e., it would not constitute a "third unit" on the subject property). The petitioner has also provided a draft affidavit to that effect and the attached draft order (**Attachment A**) includes some modified language addressing this issue.

Please note that the attached draft order also includes language requiring the petition to seek a license from the City for the apparent encroachment of a paved parking area into City-owned property on the right side of the subject parcel. In the event such license cannot be or is not granted the petitioner shall be obliged to remove any portion of the parking area that so encroaches and cease any use of that area.

The Planning Department will continue to work with the Law Department and the petitioner in advance of the public hearing.

ATTACHMENTS

Attachment A DRAFT Order

ATTACHMENT A

DRAFT #145-20
169 Hunnewell Ave.

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 a SPECIAL PERMIT/SITE PLAN APPROVAL to allow an interior accessory apartment exceeding 1,000 sq. ft. as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

1. The specific site is an appropriate location for the proposed 1,092 square foot internal accessory apartment within a two-family dwelling in a Multi-Residence 1 (MR1) district because the neighborhood is comprised of a mix of single-, two-, and multi- family dwellings and will contribute to a diversity of housing options (§7.3.3.C.1)
2. The accessory apartment will not adversely affect the neighborhood as it will be located in existing space within a two-family dwelling (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians, as the property's paved parking area is able to accommodate the parking demand of the two principal dwellings and the proposed accessory apartment (§7.3.3.C.3)
4. Access to the site is appropriate for the number of vehicles related to the residential use of the site (§7.3.3.C.4)

PETITION NUMBER: #145-20

PETITIONER: Tom Dowd

LOCATION: 169 Hunnewell Avenue, on land known as Section 71, Block 32, Lot 1, containing approximately 16,700 square feet of land

OWNERS: Tom Dowd and Marc Resnick, Trustees u/d/t dated May 24, 2016 recorded with the Middlesex South Registry of Deeds in Book 68260, Page 386 ("Trust")

ADDRESS OF OWNER: 100 Felton St.
Suite 201
Waltham, MA 02452

TO BE USED FOR: Accessory apartment in a two-family dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: Special permit per §7.3.3 to allow an accessory apartment larger than 1,000 square feet (§6.7.1.D.2)

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. Architectural plans entitled "169 Hunnewell Ave., 169 Hunnewell Avenue, Newton, MA 02458," prepared by Seger Architects, Inc., dated January 27, 2020, signed and stamped by John A. Seger:
 - i. Existing Second & Thrid (*sic*) Floor Plan (EX-1)
 - ii. Third Floor Plan (A-1)
2. Prior to the issuance of any building permit, the Petitioner is required to request a license with the City to permit the subject property's existing encroachment onto the abutting City-owned parcel and agrees to accept all reasonable terms and conditions of such license. In the event that the license is not granted or is later revoked, the Petitioner shall remove the encroachments.
3. The Petitioner and the accessory apartment must at all times comply with all applicable rules for accessory apartments set forth in Section 6.7 of the Newton Zoning Ordinance. The accessory apartment cannot constitute its own unit within a condominium.
4. The accessory apartment must be held in common ownership with at least one of the two principal dwelling units in accordance with Section 6.7.C.1 of the Newton Zoning Ordinance.
5. The owner of the principal dwelling unit to which the accessory apartment is accessory to shall occupy either the principal 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. these requirements shall be included in the master deed if the two-family dwelling is converted into a condominium.

6. In the event the two-family dwelling is converted into a condominium, a copy of the Master Deed shall be submitted to the Department of Planning and Development and the Law Department for review to determine consistency with this Special Permit prior to recording.
7. In the event ownership of the principal dwelling unit being held in common ownership with the accessory apartment 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.
8. 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. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
9. No Final Inspection and/or Occupancy Permit for the buildings 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 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.