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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date:	September 10, 2020
Land Use Action Date:	November 10, 2020
City Council Action Date:	November 23, 2020
90-Day Expiration Date:	December 9, 2020

DATE: September 4, 2020

TO: City Council

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

SUBJECT: **Petition #312-20**, for SPECIAL PERMIT/SITE PLAN APPROVAL to convert one unit within the existing two-family dwelling into two units, creating a three-unit multi-family dwelling in the SR2 district, extending the nonconforming residential two family at **350 Cabot Street**, Ward 2, Newtonville, on land known as Section 22 Block 19 Lot 05, containing approximately 12,594 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 3.4.1, 7.8.2.C.2 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.



350-352 Cabot Street

EXECUTIVE SUMMARY

The property at 350-352 Cabot Street consists of a 12,594 square foot lot improved with a nonconforming two-family dwelling constructed circa 1872 in a Single Residence 2 (SR2) zoning district.

The petitioners intend to convert one of the two existing units (identified as 350 Cabot Street) into two units, resulting in the creation of a three-unit multi-family dwelling. No exterior alterations to the house are contemplated by this petition with the exception of the removal and replacement of an existing pergola on the south side of the structure. The structure's nonconforming front setback along Cabot Street would remain unchanged.

As two-family dwellings are prohibited in SR2 districts, the proposed creation of a third unit would further extend the existing nonconforming use and would require a special permit per Sections 3.4.1 and 7.8.2.C.2 of the Newton Zoning Ordinance (NZO).

Further, the listed dimensional requirements for SR2 districts pertain to single-family, not three-family, dwellings. Section 3.1.2.A.3 states that where a density or dimensional control is not set forth in Section 3.1 dimensional control applicable in any district where such use is allowed by right shall be applicable. However, as three-unit multi-family dwellings are not allowed by-right in any district, the Council must therefore determine whether the dimensions of the lot and structure are appropriate for the proposed three-family dwelling use.

As the petitioner is not proposing any substantial changes to the structure, the Planning Department notes that the most salient dimensional measurement implicated by this proposal is the already nonconforming Lot Area per Unit, which would be reduced significantly further by the proposed increase in the number of units from two to three.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Council should consider whether:

- Whether the proposed modification of an existing nonconforming two family use in the Single Residence 2 (SR2) zoning district to create a third dwelling unit within the existing structure would not be substantially more detrimental than the existing nonconforming use to the neighborhood. (§7.8.2.C.2)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on the south side of Cabot Street in an SR2 zoning district. The neighborhood is predominantly a mix of single-family and two-family dwellings (including the subject property), with exceptions including two multi-family

and/or single-family attached dwelling structures to the north. **(Attachment A)**. The site and surrounding area to the south and west are zoned Single Residence 2 (SR2), with Multi-Residence 1 (MR1) and Multi-Residence 3 (MR3) districts to the north and northwest **(Attachment B)**.

B. Site

The subject property consists of a level, 12,594 square foot lot improved with a nonconforming two-family dwelling constructed circa 1872. Vehicular access is provided by two asphalt driveways, one off Cabot Street, the other off Pulsifer Street. The remainder of the lot is occupied by mature lawn area, trees and shrubbery. A wood pergola structure is located on the south side of the property above the Pulsifer Street driveway.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site would change from a two-family to a three-unit dwelling.

B. Building and Site Design

The petitioners are proposing to create a third unit within the existing structure by dividing one of the two existing units, known as 350 Cabot Street, in two. One of the two resulting smaller units, "Unit 350-A," would consist of the current first floor and measure approx. 1,000 square feet. The other, "Unit 350-B," would be comprised of the second floor and attic levels of that unit and measure approx. 1,593 square feet. The other currently existing unit, known as 352 Cabot Street, would remain unchanged. No exterior alterations to the structure are proposed except for the removal of an attached pergola that extends over portions of the Pulsifer Street driveway on the south side of the property. This attached pergola would be replaced with an unattached pergola that would be located more than five feet from the property line. This proposed change would increase the south side setback from 2.9 feet to 18.9 feet as it would now be measured to the house, not the current attached pergola. None of the other setbacks would change, nor would the height or number of stories.

As a section of existing driveway area on the east side of the property would be converted to patio and planting spaces, which would more than offset the proposed narrow (approx. 1.6 foot wide by 60 feet long) widening of that driveway, the property's Open Space percentage would increase slightly, from 56.6% to 58.3%, above the 50% required minimum.

The property's Lot Area Per Unit would also change, from the current 6,297 square feet for the two units (already well below the 15,000 square feet required in an SR2 district), to 4,198 square feet. The Planning Department notes that this would be both less than

one-third of the requirement, and comparable to several of the existing two-family properties in the immediate vicinity, especially those directly to the east.

C. Parking and Circulation

There are two driveways serving the property, one off Cabot Street and the other off Pulsifer Street. The Pulsifer Street driveway contains two parking stalls which will remain unchanged, although the pergola structure above it would be replaced as discussed above. The Cabot Street driveway would be expanded in width from 16.4 feet to 18 feet. It would accommodate four cars in two sets of tandem spaces (two stalls for each of the two units that would result from the proposed division of an existing unit). The overall length of that driveway, however, would be reduced by approximately 20 feet with that area to be replaced with a landscaped area and patio. The Planning Department suggests that the petitioner consider further shortening the driveway in such a way that would discourage use of the driveway for the storage of more than four cars.

D. Landscaping

No landscaping plan was submitted with this petition. The Planning Department recommends the petitioner consider adding some vegetative screening for the driveways, especially the one off Cabot Street that would provide parking for four parking stalls in tandem spaces.

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 further expand a nonconforming two-family dwelling in a SR2 district to three units (§3.4.1; §7.8.2.C.2)

B. Engineering Review

Review by the Engineering Division of the Department of Public Works is not required at this time.

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 Board Order

ATTACHMENT A





Land Use

350-352 Cabot Rd.

*City of Newton,
Massachusetts*

Land Use

Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Open Space
-  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.

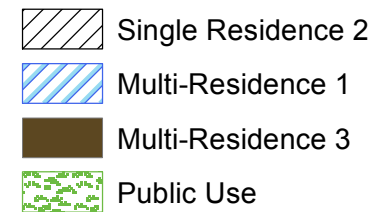
CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield

0 12.5 25 50 75 Feet

Map Date: September 02, 2020



*City of Newton,
Massachusetts*



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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
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Map Date: September 02, 2020





Ruthanne Fuller
Mayor

ATTACHMENT C

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: July 6, 2020

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Peter Leis and Jennifer Storo
Terrence P. Morris, Attorney
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: Request to convert a nonconforming two-family dwelling to three units and to extend nonconforming lot area per unit

Applicant: Peter Leis & Jennifer Storo	
Site: 350 Cabot Street	SBL: 22019 0005
Zoning: SR2	Lot Area: 12,594 square feet
Current use: Two-family dwelling	Proposed use: Three-family dwelling

BACKGROUND:

The property at 350 Cabot Street consists of a 12,594 square foot lot improved with a nonconforming two-family dwelling constructed circa 1872 in the SR2 district. The petitioners intend to convert one of the units within the dwelling into two units to create a three-unit multi-family dwelling. The two-family dwelling is a nonconforming use in the Single Residence 2 zoning district and the proposed alteration further extends the nonconformity, requiring a special permit.

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

- Zoning Review Application, prepared Terrence P. Morris, attorney, submitted 5/15/2020
- Existing Condition Plan of Land, prepared by VTP surveyor, dated 5/15/2020
- Proposed Condition Plan of Land, prepared by VTP, surveyor, dated 5/15/2020
- Proposed Floor Plans, prepared by Boston Survey, Inc, dated 4/2/2020

ADMINISTRATIVE DETERMINATIONS:

1. The existing two-family dwelling is nonconforming, as it is located in the Single Residence 2 zoning district, which prohibits two-family dwellings per section 3.4.1. The petitioners intend to rehab the existing dwelling and convert one of the existing units into two, creating a three-family dwelling. To further extend the nonconforming two-family dwelling use requires a special permit per sections 3.4.1 and 7.8.2.C.2.
2. There are two driveways serving the property, one off Cabot Street and the other off Pulsifer Street. The Pulsifer Street driveway contains two parking stalls which will remain unchanged . The Cabot Street driveway will be expanded in width from 16.4 feet to 18 feet and will accommodate four cars for the remaining two units. The overall driveway length will be reduced and replaced with a landscaped area and patio.

SR2 Zone	Required*	Existing	Proposed
Lot Size	10,000 square feet	12,594 square feet	No change
Frontage	70 feet	90 feet	No change
Setbacks - <ul style="list-style-type: none">• Front (Cabot)• Front (Pulsifer)• Side• Rear	25 feet 25 feet 7.5 feet 15 feet	37.2 feet 19.2 feet 22 feet 2.9/18.9 feet	No change No change No change 5 feet
Lot Area Per Unit	15,000 square feet	6,297 square feet	4,198 square feet
Height	36 feet	33.75 feet	No change
Stories	2.5	2.5	No change
Max Lot Coverage	30%	25%	No change
Min. Open Space	50%	56.6%	58.3%

*The listed dimensional requirements pertain to single-family dwellings in the SR2 district. Section 3.1.2.A.3 states that where a density or dimensional control is not set forth in Section 3.1 Single Residence Districts for a use allowed by special permit, the most restrictive density or dimensional control applicable in any district where such use is allowed by right shall be applicable. The proposed three-unit multi-family dwelling use is not allowed in any district by right. Therefore, the Council must determine whether the existing dimensions of the lot and structure are appropriate for the proposed use.

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§3.4.1 §7.8.2.C.2	Request to further expand a nonconforming two-family dwelling in a SR2 district to three units	S.P. per §7.3.3

Next Steps

Please contact a Planner by calling 617.796.1120 to obtain a copy of the Special Permit Application. If there have been any changes made to the plans since receipt of your Zoning Review Memorandum you must inform the Zoning Code Official to ensure additional relief is not required. You will need an appointment with a Planner to file your Special Permit Application. **Incomplete applications will not be accepted.**

The following must be included when filing a Special Permit Application:

2. Two (2) copies of the completed Special Permit Application (signed by property owner)
3. Filing Fee (see Special Permit Application)
4. Two (2) copies of the Zoning Review Memorandum
5. Plans (Thirteen sets signed and stamped by a design professional). Each set shall contain:
 - Site Plans showing existing and proposed conditions (including topography as applicable)
 - Architectural plans showing existing and proposed conditions (including façade materials)
 - Landscape plan (as applicable)
6. One (1) Floor Area Ratio (FAR) Worksheet, (signed and stamped by a design professional)
7. One (1) copy of any previous special permits or variances on the property (as applicable)
8. One (1) copy of any other review/sign-off (Historic, Conservation, Tree Removal, etc. as applicable)
9. Two (2) electronic copies of the application with all above attachments (USB or CD)

Copies of all plans shall either be 8.5 x 11 or 11 x 17, except as requested by staff

Special Permit Sign (\$20 fee)

Incomplete applications will delay the intake and review of your project.

Depending on the complexity of the project additional information may be requested to facilitate a full review of the application.

Has the proposed project been presented to and discussed with abutting property owners? Y/N

CITY OF NEWTON

IN CITY COUNCIL

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 a SPECIAL PERMIT/SITE PLAN APPROVAL to modify the existing nonconforming two-family use by creating a third unit within the structure and to further decrease the nonconforming Lot Area per Unit, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

1. The extension of the nonconforming two-family use to a three-unit multi-family use and the decreased Lot Area per Unit will not be substantially more detrimental than the existing nonconforming use is to the neighborhood as the structure will not be expanded, a nonconforming portion of the dwelling will be removed, and additional open space will be created on the property (§3.4.1 and 7.8.2.C.2.)

PETITION NUMBER:	#312-20
PETITIONERS:	Peter Leis & Jennifer Storo
LOCATION:	350-352 Cabot Street, Section 22, Block 19, Lot 5, containing approximately 12,594 square feet of land
OWNER:	Peter Leis & Jennifer Storo
ADDRESS OF OWNER:	350 Cabot Street Newton, MA 02460
TO BE USED FOR:	Three-Family Residence
CONSTRUCTION:	Wood Frame
EXPLANATORY NOTES:	§3.4.1. and §7.8.2.C.2., to further expand a nonconforming two-family use in a Single Residence 2 (SR2) district to three units and decrease the property's Lot Area per Unit.

ZONING: Single Residence 2 (SR2) 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 plan entitled "Topographic Site Plan, Newton, Massachusetts, Showing Proposed Conditions at #350-352 Cabot Street," prepared by VTP Associates, Inc., dated May 15, 2020, as revised through May 17, 2016, signed and stamped by Joseph R. Porter, Registered Professional Surveyor.
 - b. A floor plan entitled "Amended Condominium Floor Plans, for Unit 350-A and Unit 350-B of the '350-352 Cabot Street Condominium'" located at 350-352 Cabot Street, Newton, MA," prepared by Boston Survey, Inc. dated April 2, 2020.
2. 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 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 Fire Department approving the building permit plans.
 - d. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
3. No Final Inspection and/or Occupancy Permit for the buildings 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, surveyor or engineer certifying compliance with Condition #1.
 - b. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services, final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.
 - c. Filed with the City Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, final landscape features and fencing.