



Zoning & Planning Committee Report

City of Newton **In City Council**

Monday, June 27, 2016

Present: Councilors Hess-Mahan (Chair), Danberg, Kalis, Albright, Leary, Sangiolo and Yates

Absent: Councilor Baker

Also Present: Councilor Fuller

Planning & Development Board: Scott Wolf (Chair), Peter Doeringer, Jonathan Yeo, Megan Meirav and Barney Heath (Ex Officio)

City Staff: Barney Heath (Director, Planning Dept.), James Freas (Deputy Director, Planning Dept.), Michael Gleba (Senior Planner), John Lojek (Commissioner, Inspectional Services), Marie Lawlor (Assistant City Solicitor), Maura O'Keefe (Assistant City Solicitor), Karyn Dean (Committee Clerk)

#198-16 Mayor's appointment of Michael Brangwynne to the Zoning Board of Appeals
HIS HONOR THE MAYOR appointing Michael Brangwynne, 28 Ash Street, Auburndale, as an associate member of the Zoning Board of Appeals for a term to expire June 30, 2017 (60 days 8/5/16) [05/31/16 @ 4:36 PM]

Action: Approved 3-0-4 (Councilors Sangiolo, Kalis, Yates and Leary abstaining)

Note: Mr. Brangwynne joined the Committee. He explained that he is an attorney and has a background in zoning as he worked for the City of Boston Zoning Board of Appeals as a law clerk for 3 years. The clerks, in Boston, attend all the meetings and write the decisions so he has observed applications for relief from the Boston zoning code, which is different from Newton's, but the applicable General Laws still apply. He understands the types of issues that are considered as well as neighborhood concerns. He has lived in Newton for about a year and is interested in being more involved in his new City and would like to serve on the Zoning Board of Appeals.

A Committee member asked if the Boston ZBA considered special permits and Mr. Brangwynne said they did along with zoning interpretations, variances, etc. He did feel that having the City Council consider special permits was more appropriate because they would be more in tune with what is in character with neighborhoods.

A Councilor asked Mr. Brangwynne about his understanding of housing needs in the region. He responded that the whole area is going through a great deal of growth and the need for housing is rising. Development needs to be balanced with neighborhood concerns, however. As someone who is trying to break into the housing market, he has a personal experience with the difficulties of finding housing. The Councilor suggested that Mr. Brangwynne do some research on the balance

of the needs of new development, affordable housing and neighborhood concerns for preservation as these are the active issues in Newton. Mr. Brangwynne said that is the quintessential zoning concern – new development and neighborhood character. All reasonable concerns need to be taken into consideration in light of the laws that are in place.

Councilor Sangiolo explained that she would be abstaining because she was still waiting to hear from the administration about questions she had relative to a member of the ZBA who had not been re-appointed. Councilors Kalis and Leary said they would be abstaining for the same reasons.

Councilor Danberg moved approval and the Committee voted in favor with Sangiolo, Kalis, Yates and Leary abstaining

#230-16 Mayor's appoint. of Frederick D'Annolfo to Chestnut Hill Historic District Comm.
HIS HONOR THE MAYOR appointing Frederick D 'Annolfo, 95 Suffolk Road, Chestnut Hill, as an member of the Chestnut Hill Historic District Commission for a term to expire July 15, 2019 (60 days 8/19/16) [06/20/16 @ 4:14 PM]

Action: Approved 7-0

Note: Mr. D'Annolfo joined the Committee. He explained that he spent 20 years in the investment business and is now on the Finance Faculty at Babson College and is also the Director of the Culver Center for Investments and Finance there, which is an academic center under the finance division. He also has some experience in construction. He and his family have lived on Suffolk Road for 24 years and Councilor Baker approached him and asked if he would be willing to serve. He is happy to get more involved in the neighborhood.

A Councilor asked about the term limits. Councilor Fuller explained that the Chestnut Hill Historic District Commission has been short staffed for years. They are now thrilled to bring several people on board at the same time, however, it does present a situation where all the terms end at the same time. These appointments are not replacements for others, these were all vacancies.

A Committee member asked why an historic district is a good idea. Mr. D'Annolfo explained that there are many very old houses in the neighborhood and preserving that architecture and character is important for the overall character of the City. There are some houses that are less historic and that can be tricky, but looking at houses that have been torn down and what has replaced them seems to call for the kind of control an historic district can bring. A Committee member said that she has heard how restrictive these can be and has heard complaints. Mr. D'Annolfo said that he does understand that and things can sometimes be onerous but most neighbors seem to deal with it well.

Councilor Fuller said she and Councilor Baker know Mr. D'Annolfo well and he is of good character and sound judgement. He has been involved with the Chestnut Hill Association and the Chestnut Hill Historic District. She and Councilor Baker support their appointment.

The Committee voted in favor unanimously with their thanks.

#231-16 **Mayor's appointment of Kennett Burnes to Chestnut Hill Historic District Comm.**
HIS HONOR THE MAYOR appointing Kennett Burnes, 30 Kingsbury Road, Chestnut Hill, as an member of the Chestnut Hill Historic District Commission for a term to expire July 15, 2019 (60 days 8/19/16) [06/20/16 @ 4:14 PM]

Action: **Approved 7-0**

Note: Mr. Burnes joined the Committee and explained he has lived in the neighborhood since 1969. He has always been somewhat bemused by the apparent inconsistencies of the Commission, which has been frustrating as a resident of the neighborhood. Councilor Baker asked him if he would serve and since he has great respect for him, he agreed to serve. He practiced law for 20 years and has been in business since then.

It was asked if felt he could influence the inconsistencies he mentioned. He said he would try to do that and if he could not and the inconsistencies continued, he would not stay.

Councilor Fuller said she and Councilor Baker know Mr. Burnes well and he is of good character and sound judgement. He has been involved with the Chestnut Hill Association and the Chestnut Hill Historic District. She and Councilor Baker support his appointment.

The Committee voted in favor unanimously with their thanks.

#232-16 **Mayor's appointment of Susana Lannik to Chestnut Hill Historic District Comm.**
HIS HONOR THE MAYOR appointing Susana Lannik, 25 Essex Road, Chestnut Hill, as an member of the Chestnut Hill Historic District Commission for a term to expire July 15, 2019 (60 days 8/19/16) [06/20/16 @ 4:14 PM]

Action: **Approved 7-0**

Note: Ms. Lannik joined the Committee. She explained that she is an estate planning and elder law attorney with a background in conservation commissions and the arts. She loves her house and the house she grew up in, which were both older homes. She watched the house being torn down because it was in a commercial area and it was a home that Washington may have slept in. Some homes in the area are so lovely she does not want to see them destroyed. She does agree, however, that there has to be some reasonable compromise in certain cases because some of these old homes are so out-of-date they need work done. She would like to see as much of the character remain as possible. She did attend a meeting of the Commission and found the Chairman was very knowledge and had great judgement. She believes she could be useful and helpful with all of the knowledge and skills she could bring to bear.

Councilor Fuller said the Commission has had the same Chairman for 30 years, John Wyman, who is a lawyer. His consistency and knowledge is a wonderful resource. She also said that she and Councilor Baker know Ms. Lannik well and she is of good character and sound judgement. She has

been involved with the Chestnut Hill Association and the Chestnut Hill Historic District. She and Councilor Baker support her appointment.

Councilor Sangiolo expressed concern about all the appointments expiring at the same time. She felt staggering the terms would be more effective.

Councilor Sangiolo moved approval and Committee voted in favor unanimously with their thanks.

#159-16 Discussion with HRC and Fair Housing Committee relative to discriminatory practices
COUNCILOR SANGIOLO requesting a discussion with the Human Rights Commission and Fair Housing Committee regarding Fair Housing complaints and efforts to combat discriminatory practices in the City. [04/27/16 @ 1:39 PM]

Action: **No Action Necessary 7-0**

Note: Councilor Hess-Mahan introduced Phil Herr, Chairman of the Fair Housing Committee and Sheila Mondschein, member of the Fair Housing Committee and the Human Rights Commission. Councilor Hess-Mahan noted that he is the City Councilor representative on the Fair Housing Committee. Councilor Sangiolo said she docketed these two items, two years apart, in an effort to understand and address any discriminatory housing practices in the City.

Ms. Mondschein explained that she is the Commissioner on the Human Rights Commission who deals with fair housing complaints. The Human Rights Commission was created by city ordinance and has the power to receive formal complaints of housing discrimination and discrimination on other grounds as well. It has a formal process to follow in the sense that once a complaint is filed, notice is given with an opportunity to respond. Sometimes complaints can go out to the Massachusetts Commission Against Discrimination (MCAD) but usually they stay within the Human Rights Commission. The Commission does not have formal enforcement powers, but only mediation abilities to try and resolve a complaint. MCAD and HUD have formal enforcement powers. The Fair Housing Center of Greater Boston is a non-profit organization which is an advocate, which also differs from the Human Rights Commission which is not an advocate. The Fair Housing Committee is an advocacy group which focuses on policy and advising the City.

Mr. Herr provided a memo to the Committee which outlines the background, training, goals and experience of the Fair Housing Committee. There are currently 8 members serving with three vacancies. It is attached to this report. Mr. Herr explained that 10 years ago, the City managed to get the resources to engage organizations to audit fair housing. The results showed that half of the cases they reviewed revealed discrimination and the Fair Housing Committee was amazed by that. They feel it is time to undertake another audit.

Both the Human Rights Commission and the Fair Housing Committee have provided a fair number of education and training programs for a variety of audiences from realtors to human services providers to city officials, as well as the general public and others on both general and more focused themes, for instance, the recent Supreme Court Decision explaining that something that

has a discriminatory effect can be as problematic as something that has discriminatory intent. They also did a program on discrimination against families with young children and those with Section 8 vouchers. The trainings have been done using outside experts or members of the Committee. Outreach and publicity is also done in different forms such as opinion pieces in the Tab, programs on NewTV and distributed many flyers to get the word out about what housing discrimination can be and the options for enforcement. They have just together a one-page concise statement on key principles in fair housing. The law is very long and technical so this helps people understand it better. The whole range of protected classes is quite broad.

The Fair Housing Committee also initiated the hiring of a consultant to study the practices and policies on physical accessibility for people with disability and it resulted in the City hiring a full-time ADA Coordinator.

Committee Comments/Questions

Ms. Mondschein reported that not every complaint or question that comes into the Human Rights Commission ends up as a formal complaint, but overall, in the last five years, 12 complaints were filed with Newton. There were also 20 Newton-related complaints filed with the Boston Fair Housing Center and the Massachusetts Commission Against Discrimination received 7. The five years prior to that period of time, the numbers were approximately the same.

Newton Housing Partnership generally reviews projects and has created many regulatory changes. It's a place developers can come to find out how they can make fruitful exercise with the City. They have been unable to get members recently but hope they can get that taken care of soon. The key to the partnership is it is the entrance point of projects to be heard which request CDBG and HOME funds. It is the first step in approval.

It was asked what kinds of training the Human Rights Commission and Fair Housing Committee have received and what type of training they would like to receive going forward. Ms. Mondschein said one subject they have addressed is the duty to affirmatively further fair housing under federal and state law. This means more than just combatting discrimination, but using funds to open up the supply of housing and to create an inclusive community as well as to provide opportunities for those with limited access to the community. HUD has strengthened that requirement over time but it's been in the statute since 1968. HUD has imposed sanctions on certain communities who have not complied and as a result HUD took back millions of dollars and re-allocated them.

Discriminatory effect and impact is something else that needs to be looked at further. If an action is taken that is neutral on its face but if it has an impact of creating a greater negative impact on one protected class than another, or continues patterns of segregated living, it could be a violation of fair housing law. The case law is very clear. There has never been a case of this in the City of Newton, but there are some issues that do need to be watched carefully here. For instance, a development with only one or two bedroom units could be looked at a discriminatory against families, or units that exclusively do not have bedrooms on the first floor could have discriminatory

impact against those with disability. Training was provided on this last fall and they had hoped more city officials would attend. More training on these issues would be welcome.

A Councilor noted that when she has seen developers come into Land Use Committee, very often they are leery of providing the larger units for families because ultimately it leads to the question of the impact on the schools. In terms of fair housing, there seems to be an obligation to have a mix of housing including housing for families. Mr. Herr said there is no legal basis to include three-bedroom units. The City could and the Housing Partnership is going to encourage the developers of the Orr Block to create some three-bedroom units and City staff has also asked them. Fair housing is still relevant and there could be a complaint of discrimination down the road if someone is told to move out because of the size of the unit due to the size of their family. If the City continued to permit or encourage developers who confine their units to those without school children, the City could be found not acting consistently to address fair housing.

It was asked if there were annual reports from either the Fair Housing Committee or the Human Rights Commission. Councilor Hess-Mahan said there was the "Ramping Up Study" and Ms. Mondschein said she would provide that to Councilor Sangiolo.

Councilor Danberg moved No Action Necessary and the Committee voted in favor.

#445-14 Update from Newton Fair Housing Committee on housing opportunities
ALD. SANGIOLO requesting an update with members of the Newton Fair Housing Committee on the status of housing opportunities in the City of Newton.
[11/13/14 @ 2:03 PM]

Action: **Held 7-0**

Note: Mr. Herr suggested that since the Housing Strategy has just been published, it would be helpful to take some time to look at that information and hold this conversation at a later time.

Councilor Danberg moved hold and the Committee voted in favor.

#183-16 Petition to rezone lots on Mechanic Street
TERENCE P. MORRIS petitioning to rezone corresponding pieces of abutting lands in different districts, MULTI RESIDENCE 2 and BUSINESS 2, on land known as Section 51, Block 29, Lots 01 and 04 located at 38 and 44 Mechanic Street in conjunction with a land transfer. [05/05/16 @ 10:36 AM]

Planning & Development Board Approved 5-0

Action: **Hearing Closed; Approved 6-0 (Councilor Sangiolo not voting)**

Note: Councilor Hess-Mahan opened the public hearing on this petition. Terry Morris, attorney representing Steve Day, the owner of 38 Mechanic Street, addressed the Committee. Mr. Day's property is immediately adjacent to 44 Mechanic Street, the Newton Electric Company. The Newton Electric Company parcel is zoned Business and the parcel at 38 Mechanic Street is zoned

Multi Residence. For years now there has been an encroachment from the house on 38 Mechanic Street onto the land at 44 Mechanic Street. His client has been working with the owners of Newton Electric for years to try and solve this problem. The parties came to an agreement and the plan was submitted to the Committee which proposes to swap two triangular pieces of land, each of which contains 88 square feet of land. This swap and zone change of each triangular parcel would cure the encroachment. The Chief Zoning Code official and the Commissioner of Inspectional Services recommended petitioning for this zone change to be sure there were no future problems.

Planning Department

Michael Gleba, Senior Planner addressed the Committee. He provided a short presentation which reviews the facts of the petition as presented by Mr. Morris. It is attached to this report. He explained that the Planning Department recommends approval of this land swap as a suitable solution to this encroachment problem.

Committee Comments

Councilor Danberg asked if this land swap provided enough space between the corner of the building and where the new property lines would be to make it legal. Mr. Morris explained that Verne Porter, a well-known and respected land surveyor drew up the plan and certified that it was accurate, so he believes that it is accurate and legal. Mr. Porter is prepared to stamp the plan as part of the subdivision of land to be recorded at the registry.

Public Comment

Councilor Hess-Mahan asked for public comment and no one asked to be heard on this petition. The Committee voted in favor of closing the public hearing.

Planning Board

The Planning Board voted to close their public hearing 5-0. Mr. Wolf, Chairman of the Planning Board announced that the Planning Board voted to approve the petition 5-0.

Vote

Councilor Yates moved approval of the petition and the Committee voted in favor 6-0 with Councilor Sangiolo not voting.

#184-16 Petition to rezone lots on Walnut Street

TERENCE P. MORRIS, petitioning to rezone land known as Section 24, Block 11, Lots 03 and 04, located at 369 and 377 Walnut Street from SINGLE RESIDENCE 2 to MULTI RESIDENCE 1. [05/11/16 @ 3:23 PM]

Planning & Development Board Held 5-0

Action: Hearing Closed; Approved 3-1-3 (Councilor Sangiolo opposed; Councilors Kalis, Yates and Danberg abstaining)

Note: Councilor Hess-Mahan opened the public hearing on this petition. Terry Morris, attorney representing Larry Mintzer, the owner of 377 Walnut Street addressed the Committee. Mr. Morris explained that Mr. Mintzer has been in conversation with the owners of 369 Walnut Street and to the best of his knowledge they have chosen not to appear this evening. These two lots are zoned Single Residence 2, however, the adjacent lots are all zoned multi residence 1. The petition requests that these two lots be zoned to match the surrounding lots.

Between Otis Street and Walnut Place there are four lots on the west side of Walnut Street. Both 365 and 363 Walnut Street are zoned Multi Residence; 369 and 377 Walnut Street are zoned Single Residence 2 as well as 22 Walnut Place which is behind these two lots. The lot at 369 was the subject of a variance many years ago which allowed it to be converted to a dentist's office, which is a commercial use. The property at 17 Otis Street is zoned Single Residence 2. 391 Otis Street is the former Christian Science Church which received a special permit to allow 11 condo units and is zoned Multi Residence 3. 398 Walnut Street is also zoned commercial.

Mr. Mintzer has owned his property for 23 years and lived in the neighborhood for another 16 years. From a land use and zoning perspective his lot is not properly zoned and is spot zoned considering the surrounding properties. His request is to correct that. He and his wife are in their late 60s and intend to stay in Newton to age in place. If rezoned, it could be converted to a two-family which would be consistent with the surrounding lots.

Planning Department

Michael Gleba, Senior Planner addressed the Committee. He provided a short presentation which reviews the facts of the petition as presented by Mr. Morris. It is attached to this report. He explained that the Planning Department recommends approval of rezoning these parcels to Multi Residence 1 because of the proximity to a village center with excellent access to transit and consistency with the other lots in the area.

Committee Comments

Councilor Albright said she has known Mr. Mintzer for many years and she knows the Newtonville area very well. She feels this rezoning makes sense for the area and provides an opportunity for long-time residents to age in place and supports the petition. She pointed out that phase two of zoning reform will likely take a few years and to put this rezoning off for that period of time would not be right. Looking at the map it seems that many of the surrounding parcels are multi residence except the two subject properties and this would be appropriate. This area is becoming more multi residence than single residence.

Councilor Danberg also feels the petition makes sense. She noted there is a garage behind the house on 377 Walnut Street. She asked if there was any plan for that structure and if it was a carriage house. Mr. Morris said it is a modest structure and does not qualify as a carriage house.

Councilor Sangiolo is wondering about merging the lots and what the development potential might be. She had concerns about doing these one-by-one rezonings while the City is about to undertake

zoning reform and she also sees many single residence homes in the area. While these particular rezonings may make sense, she would like some more time to look at this more carefully. Councilor Danberg agreed with that sentiment. There were two cases in Ward 6 for rezoning and it was found inappropriate to change the zones in small areas because of the zoning reform project. It seemed arbitrary to then allow these rezonings and not the others.

Mr. Gleba said the lot at 377 Walnut Street is large enough to be divided into two lots. Each of those lots could have a two-family home. If for some reason the lots at 369 and 377 were combined, there could be 3 lots, each of which could hold a two-family home each.

Councilor Leary said an item is going to be docketed to require more neighbors to be notified of any zoning ordinance or zone changes. In general the concept of this rezoning is not objectionable to her, but she is in favor of more notification as she thinks the City has not done a good job of that in the past. Councilor Hess-Mahan explained that the City follows the state law to notify abutters and abutters to abutters within 300 feet of the subject property. No further notice is required and Chapter 40A is very specific about who is notified and who has legal standing for an appeal.

Public Comment

Councilor Hess-Mahan asked for public comment:

Kathleen Kouril Grieser, 258 Mill Street said she was a bit concerned about this rezoning. She had asked Mr. Morris about this petition and he told her there would be no changes to the structures and it was about changing the zoning to conform with the other lots. As she looked at this she noticed that the homes just behind these properties on Otis Street and Briar Lane are all single-family houses. It is not accurate to say this is spot zoning. These subject lots are at the point of convergence between a number of different zones so they are appropriately zoned single or multi residence. If they are rezoned, the Committee should spend some time to find out what the intention is. Mr. Morris spoke of a two-family to allow the ability to age in place, which she supports, but the Planning Memo mentions the possibility of other structures and more units so it makes her wonder if there is a different objective. If it is rezoned and someone buys it, there is a potential for a windfall profit. Much higher densities can be built on these sites. Maybe the administration would like to see higher density here and the neighbors may not be aware.

Pamela Geib, 7 Briar Lane said she also would like to understand what the true purpose of these rezonings might be.

Hearing no other comments, the Committee voted in favor of closing the public hearing.

Planning Board

The Planning Board voted to continue their public hearing and hold this item 5-0. They will reconvene within 20 days and provide a report of their recommendation.

Vote

Councilor Sangiolo moved hold on this item with three voting in favor and four opposed. The motion to hold failed to carry. Councilor Albright moved approval and the Committee voted in favor 3-1-3 with Councilor Sangiolo opposed and Councilors Kalis, Yates and Danberg abstaining.

#196-16 Petition to rezone lot on Central Street

ROBERT KUTNER, petitioning to rezone land known as Section 43, Block 21, Lot 09 located at Central Street from PUBLIC USE to SINGLE RESIDENCE 3. [05/18/16 @ 9:25 AM]

Planning & Development Board Approved 5-0

Action: Hearing Closed; Approved 6-0-1 (Councilor Sangiolo abstaining)

Note: Councilor Hess-Mahan opened the public hearing on this petition. Mr. Kutner, owner of this subject property, addressed the Committee. He would like to return the parcel at the corner of Hancock and Central Streets to its historic use as a residential property. It is too small for development and none is planned. It is a parcel that adjoins their Hancock Street lot on which their house is built, and no other parcel adjoins it. A house had been on that lot and was razed when the Mass Turnpike extension came through the City. They had assumed that what remained of the Central Street parcel of 5,500 square feet was zoned residential and if they wanted to put a garage or tennis court there, for example, they could. But they recently found out it was actually zoned Public Use since it had been acquired through eminent domain for the Mass Pike. They acquired adjoining lot on Hancock Street in 1987 and acquired the subject lot in 1997 from the Turnpike Authority. It is a privately owned property but zoned still zoned Public Use. He would like to rezone it to Single Residence 3 to match the zoning of his adjoining Hancock Street property.

Marie Lawlor, Assistant City Solicitor, explained that prior to 1987, all land that was owned by the City, State or Commonwealth was designated as “unzoned”. In 1987, all “unzoned” land was put into a newly created district called Public Use. This parcel was one of those lots. When it was conveyed privately back to Mr. Kutner, it probably should have been rezoned, but it was not.

Planning Department

Michael Gleba, Senior Planner addressed the Committee. He provided a short presentation which reviews the facts of the petition as presented by Mr. Kutner. It is attached to this report. He explained that the Planning Department recommends approval of rezoning this parcel to Single Residence 3 consistent with the adjoining lot owned by Mr. Kutner.

Committee Comments

Councilor Albright asked is this lot had originally been part of the Hancock Street lot. Ms. Lawlor explained that it wasn't, but was a vestige of another lot that was acquired by the Turnpike Authority that was not used by them.

Councilor Sangiolo said she understands that the house is on the market right now. The subject lot is smaller so undevelopable but have they or could they be merged. Mr. Gleba, Senior Planner,

explained that if the two lots were combined, the new lot would be over 20K square feet. That would be considered a new lot and the 10,000 square foot minimum lot size would apply. The properties could then be divided into two properties. Currently the home on Hancock Street is technically a two-family but has been used solely as a single-family dwelling for the past 15 years. Since this would be zoned Single Residence 3, only single family houses could be built on the lots and therefore the density would not increase. No new two-family dwellings would be allowed.

This parcel is within the Auburndale Historic District.

Public Comment

Councilor Hess-Mahan asked for public comment and no one asked to be heard on this petition. The Committee voted in favor of closing the public hearing.

Planning Board

The Planning Board voted to close their public hearing 5-0. Mr. Wolf, Chairman of the Planning Board announced that the Planning Board voted to approve the petition 5-0.

Vote

Councilor Sangiolo would like to know that this lot is not developable on its own. Since this is in the historic district, it is unlikely that the current house will be torn down, but she will abstain, nonetheless, because of her philosophical issues with doing these one-by-one rezonings

Councilor Albright moved approval and the Committee voted in favor 6-0-1 with Councilor Sangiolo abstaining.

#153-16 Petition to rezone 1294 Centre Street from Public Use to Business 1

COUNCILORS BLAZAR, DANBERG AND SCHWARTZ petitioning to rezone land known as Section 61, Block 35, Lot 03 located at 1294 Centre Street from PUBLIC USE to BUSINESS 1 in order to better match the zoning of other commercial parcels in the area. [04/19/26 @ 9:11 PM] (65 days 7/5/15)

Planning & Development Board Approved 4-0

Action: Hearing Closed; Approved 7-0

Note: Councilor Hess-Mahan opened the public hearing on this petition. He explained that this parcel is the former Newton Centre Library.

Councilor Danberg said the Ward 6 Councilors have been looking at this for years. This building was the Newton Centre branch library and for the past 17 years it has been the headquarters for the City's Health Department. The Health Department has since moved into offices in City Hall. During those years, the building was not maintained, restored or repaired and while it is a lovely building built in 1927, it is in terrible disrepair. The Ward 6 Councilors feel it is important to maintain this building and have it not be lost to neglect. The estimated costs to restore the building are between \$3M-\$5M but it is not on the Capital Improvement Plan and there is no

reasonable suggestion on the horizon that the City will have funds for restoration. Finding a long-term lease on the land and the building would be desirable and an RFP is anticipated if the zone change is approved. A Request for Interest has gone out and some attractive proposals have been received such as a restaurant and an expanded space for the New Art Center. The opportunity for a public/private/grant project requires this rezoning and the Ward 6 Councilors strongly support this.

Planning Department

Mr. Gleba, Senior Planner addressed the Committee. He presented a short presentation which is attached to this report. This property is surrounded on three sides by Business 1 zoned properties. The Board of Aldermen had authorized leasing the property and a Request for Proposal is anticipated in the event this parcel is rezoned. In the Public Use district uses are limited to various institutional, educational and other less likely uses. Commercial and business uses are not allowed such as restaurants, retail and office space. The Planning Department recommends this rezoning to allow for additional uses.

James Freas, Deputy Director of Planning, explained that zoning is a matter of use, not ownership. So even so the City owned the property, it would still need to be zoned appropriately for use. The Business district has the advantage that it can be used for the commercial purposes that were envisioned in the Reuse Board Order and can continue to be used for public uses if that would be decided in the future. This rezoning is consistent with the recommendation of the Board Order and also opens the door for many uses.

Committee Comments

Councilor Sangiolo asked if the Business 1 use also allows for residential. Mr. Gleba said that it does. She would like to keep that option open.

Councilor Albright explained that this building was discussed in the Real Property Reuse Committee for four years. They have received responses to the RFI which would greatly add to the vibrancy of the building and its surroundings in Newton Centre. Some wish the building could stay in public use, but the City has so many obligations to capital projects that there is no money for this one. It left Real Property Reuse with the hope that it would be a business with some community use or input as well. She would be thrilled to take this forward in order to save this beautiful building and she is happy to support this.

Councilor Leary was very much in favor of saving this building and of the change in zone in order to do so.

Public Comment

Councilor Hess-Mahan asked for public comment.

Kathleen Kouril Grieser, 258 Mill Street said she attended many meetings of the Real Property Reuse Committee and everyone wants to see this building preserved. She did not feel you could

add housing to this structure, however. The goal is to save the building and she is wondering why a zoning change is required if there are non-profit or public groups who are interested in working with the City to save the building. If it is a commercial enterprise, she would not like to see the rear portion of the building changed. She thought the City was looking to lease properties and not sell them. She wondered if it was not still a public use if the City is receiving lease payments. The more public property is removed from the taxpayers and change the zoning, other things are put at risk like the 1.5% invocation. She is not sure this step is necessary to save the building.

Chris Pitts, 1756 Beacon Street said this building is one of the 16 original libraries in Newton. The main library was built and most of the branches were closed. The two that are open are thriving and what was misunderstood was how libraries are changing. What has evolved is community use of these community properties; the branch libraries. They unite a community. The City became a bad tenant of the Newton Centre property and let it fall into disrepair. He would like this to be a lease consideration and not a sale and to later take it back if the City has money to do so.

Julia Malakie, agreed with both speakers and felt it should not be rezoned and that it should be leased not sold. She is concerned that the former West Newton Branch Library will be the subject of a similar effort to dispose of a valuable public asset. She does not think the rezoning is necessary.

Lynn LeBlanc, 43 Brookdale Road asked if the City is going to lease the land, then what is the purpose of rezoning.

Carol Summers, 11 Marshall Street appreciated the efforts to save this building. She has gone to almost every meeting. She thought the Board Order did not say anything about sale and only allowed for a lease. She also thought that the back of the building was original and was documented as such and that it would be safe from being torn off for use in a bigger development.

Councilor Hess-Mahan clarified that the Board Order requires lease and not sale of the building.

Hearing no other comment, the Committee voted to close the public hearing.

Planning Board

Peter Doeringer asked if there were any expressions for interest from housing or affordable housing groups. Councilor Danberg noted that the Joint Advisory Planning Group that did a study on this building recommended that it be a commercial or public/private/community use and the Ward 6 Councilors agreed with that assessment.

The Planning Board voted to close their public hearing. They also voted to approve this petition 4-0.

Vote

Councilor Sangiolo will be abstaining based on her earlier arguments against rezonings. She does think this rezoning does make sense, however.

Councilor Danberg moved approval and the Committee voted in favor 6-0-1 with Councilor Sangiolo abstaining.

#278-14(2) Zoning amendment to clarify definition of two-family detached dwelling
COUNCILOR HESS-MAHAN requesting an amendment to clarify the intent of **Chapter 30 Section 1.5.1.B** definition of Two-Family Detached Dwelling. [03/31/16 @ 11:00 AM]
Planning & Development Board Approved 4-0
Action: Approved 6-0-1 (Councilor Yates abstaining)

Note: Councilor Hess-Mahan continued the public hearing on this item. He explained that an ordinance was passed to define a two-family dwelling, however, it later became open to some interpretation. Therefore, this item was docketed to further clarify the definition. The Committee was in favor of amending the definition as follows and also to add an illustration which can be seen in the attached draft.

B. Two-Family, Detached. A building that contains 2 dwelling units and is either divided vertically so that the dwelling units are side by side but separated by a shared wall extending the entire maximum height of one or both units, and/or is divided horizontally so that one dwelling unit is above another.

Committee Comments

Councilor Yates asked if there could be a simpler definition that just includes side-by-side, or one-over-the-other units. Councilor Hess-Mahan said that type of simple definition led to interpretation by builders constructing two houses and connected them by garages which precisely what the Committee was trying to avoid. This allows for a much larger building by circumventing the floor area ratio. A building inspector interpreted the definition in a way that allowed that sort of construction. The illustration will hopefully clarify the definition even further. No illustration was originally incorporated.

Councilor Sangiolo noted that the zoning reform process might find a simpler definition and she would like it to be examined during that process. Mr. Freas, Deputy Director of Planning, said there are far simpler definitions used on a wide basis. The hope here is to clearly specify the intent and that cannot be done with a simpler definition unless changes are made other places in the ordinance. All of that will be reviewed during phase 2 of zoning reform.

Public Comment

Councilor Hess-Mahan asked for public comment.

Mike Vahey, 33 Stanley Road said every time the words are changed in the zoning it makes it more difficult for owners of two-families to eventually continue to have their places as rentals. Anything that is 100 years old will have to be replaced and there are a number of smaller and irregular lots. The problem is that many of the two-families have been built since the 1920s and were not built to accommodate people in the 2000s and in further in the future. All these changes can create roadblocks for the future. There are already dimensional standards for zoning and there is no need to fiddle with what a builder, architect or owner can do to accommodate people in the future.

Hearing no other comment, the Committee voted to close the public hearing.

Planning Board

The Planning Board voted to close their public hearing and also voted to approve this item 4-0.

Vote

Councilor Sangiolo moved approval and the Committee voted in favor 6-0-1 with Councilor Yates abstaining.

#182-16 Citizens petition to prohibit zones changes without surrounding owner's approval
FRED ARNSTEIN ET AL., submitting a petition, pursuant to Article 10, Section 2 of the Newton City Charter, to establish a moratorium to prohibit the change of the zoning district applicable to any land in Newton without the written approval of a majority of the owners of land within 1,000 feet of the land contained in said proposed changed zoning district. [04/28/16 @ 10:34 AM] (90 day 8/14/16)

Action: **Hearing Continued; Held 7-0**

Note: The Committee voted to keep the public hearing open and hold this item. A report will be provided after the close of the public hearing.

#80-13 Updates on the zoning reform project
THE PLANNING DEPARTMENT requesting update discussions of the zoning reform project. [02/25/13 @ 12:31 PM]

Action: **Held 7-0**

Note: James Freas, Deputy Director of the Planning Department noted that the City has signed the contract with Sasaki Associates, the consultants for Phase 2 of Zoning Reform. He and Councilor Hess-Mahan would like to schedule time at the August Zoning & Planning Committee meeting to discuss the community engagement plan and to determine items of immediate concern and action. He would like those items decided at that meeting and asked that they be sent to him in advance.

Councilor Yates asked the Sasaki Associates be instructed to learn more about what is going on in the City before embarking upon the Phase Two project. He was very disappointed with the Management Study they presented.

Meeting adjourned.

Respectfully Submitted,

Ted Hess-Mahan, Chair

Memorandum

Date: June 27, 2016

From: Phil Herr

Topic: **NEWTON FAIR HOUSING COMMITTEE REVIEW**

In response to the request from the Zoning and Planning Committee for information about the Fair Housing Committee's background and experience, training, cases we are working on, and our thoughts about how the Council might assist us, here are a few observations as given to me by members.

Newton Fair Housing Task Force (2005 – 2009)

The Newton Fair Housing Task Force was created by Mayor Cohen in 2005 as requested by Newton Housing Partnership members and City housing staff. The Committee had nine members, four of them Housing Partnership members, 3 of whom are still members of the successor Newton Fair Housing Committee eleven years later.

Task Force members participated in preparing the City's "Fair Housing Action Plan," assisted staff on various materials required by HUD, and laid grounds for a permanent fair housing organization. It gained support for and guided the two fair housing audits conducted and reported in 2006 regarding housing and disability discrimination. It organized a number of public events regarding various aspects of fair housing.

Newton Fair Housing Committee (2009 – present)

The Fair Housing Committee was created by Mayor Cohen in 2009 as requested by the Task Force and City staff, replacing the Task Force. The Committee is supposed to have eleven members, with four from Housing Partnership. Currently there are only eight members, including only one Housing Partnership member (see attached membership list). Members have a wide range of education and experience: For example,

- Three members are lawyers, with widely varied experience regarding fair house law;
- Two members are employed by banks, with fair housing experience through both their jobs and broad community experience;
- Two members are retired from jobs (clinical social worker, city planner/architect) in which they experienced issues around fair housing over many years.

The Committee has regularly assisted the City staff in preparing many HUD mandated documents such as "Consolidated Plans" every five years, "Annual Action Plans," and "Analyses of Impediments to Fair Housing." Committee members have regularly had articles published in the TAB and have held public events seeking to improve community understanding of fair housing, in some cases for the general public and in

others for special groups, such as managers of rental properties. Important among Committee sponsored and assisted publications is Barbara Chandler's *Ramping Up: Planning for a more Accessible Newton*, completed in 2011. Recent TAB articles were "Court decision underscores need for fair housing" in October 2015 by Sheila Mondshein and Philip Herr, and "A Fair Housing Guide for Fair Housing Month" in April, 2016 by Sheila Mondshein.

Another Committee effort that is nearly final is the drafting of materials to assist City staff in reviewing projects as called for in the HUD – Engine 6 Agreement, examining not only regulatory requirements but also consistency with City policies and goals as documented in various adopted documents. We are also currently making efforts to facilitate and encourage agencies to systematically report findings re encountered discrimination by realtors and landlords.

In the very recent past, many of our members and staff have participated in such events as an April HUD/MAPC updating session regarding Regional Collaboration and Affirmatively Furthering Fair Housing (AFFH), and a June session at the Suffolk Law School's Housing Discrimination Project on audits regarding discrimination.

The Committee has from time to time provided leadership and assistance in drafting regulatory provisions, such as amendments to inclusionary zoning, but unlike the Housing Partnership, only rarely addresses issues regarding individual projects unless that case is of generic importance, such as the Engine 6 case.

How the Council might help

Our members wish for many things and hope the Council can help although more often than not these actions depend first upon action by the City administration.

1. The Mayor's just released Housing Strategy calls for reorganization of both staff and committees, so we are hopeful for prompt action. We and others badly need additional staff, funding, and members to address unfairness still common in Newton.
2. People with Section 8 vouchers and/or children under about 6 are daily discriminated against in Newton. We need help including but not limited to professional auditing to strongly address that major concern.
3. Squarely within the Council's domain, we need to make advances in City ordinances and regulations to address fair housing concerns that go beyond those barely cited in the Housing Strategy.
4. More training on fairness would be helpful to all of us: City staff, City committee members, and the broad population, but the training needs to be specific to the differences among needs of Councilors, staff, and lay committee members.

Department of Planning and Development



PETITION #183-16

TO REZONE CORRESPONDING PIECES OF ABUTTING LANDS IN DIFFERENT DISTRICTS, MULTI RESIDENCE 2 AND BUSINESS 2, ON LAND KNOWN AS SECTION 51, BLOCK 29, LOTS 01 AND 04 LOCATED AT 38 AND 44 MECHANIC STREET IN CONJUNCTION WITH A LAND TRANSFER.

JUNE 27, 2016

Requested Rezoning

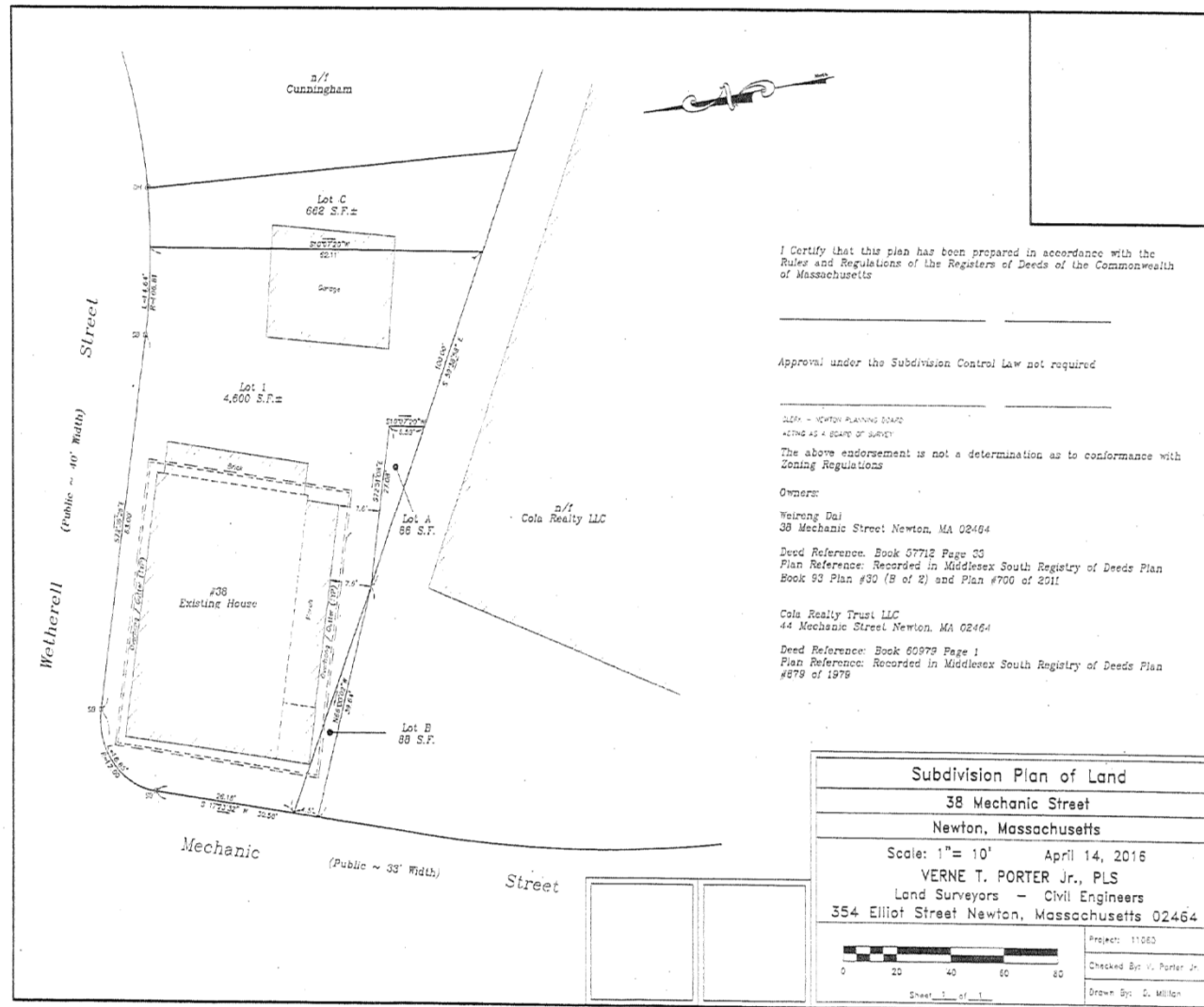


- Rezone corresponding pieces of abutting lands in different districts, MULTI RESIDENCE 2 and BUSINESS 2, on land known as Section 51, Block 29, Lots 01 and 04 located at 38 and 44 Mechanic Street in conjunction with a land transfer.

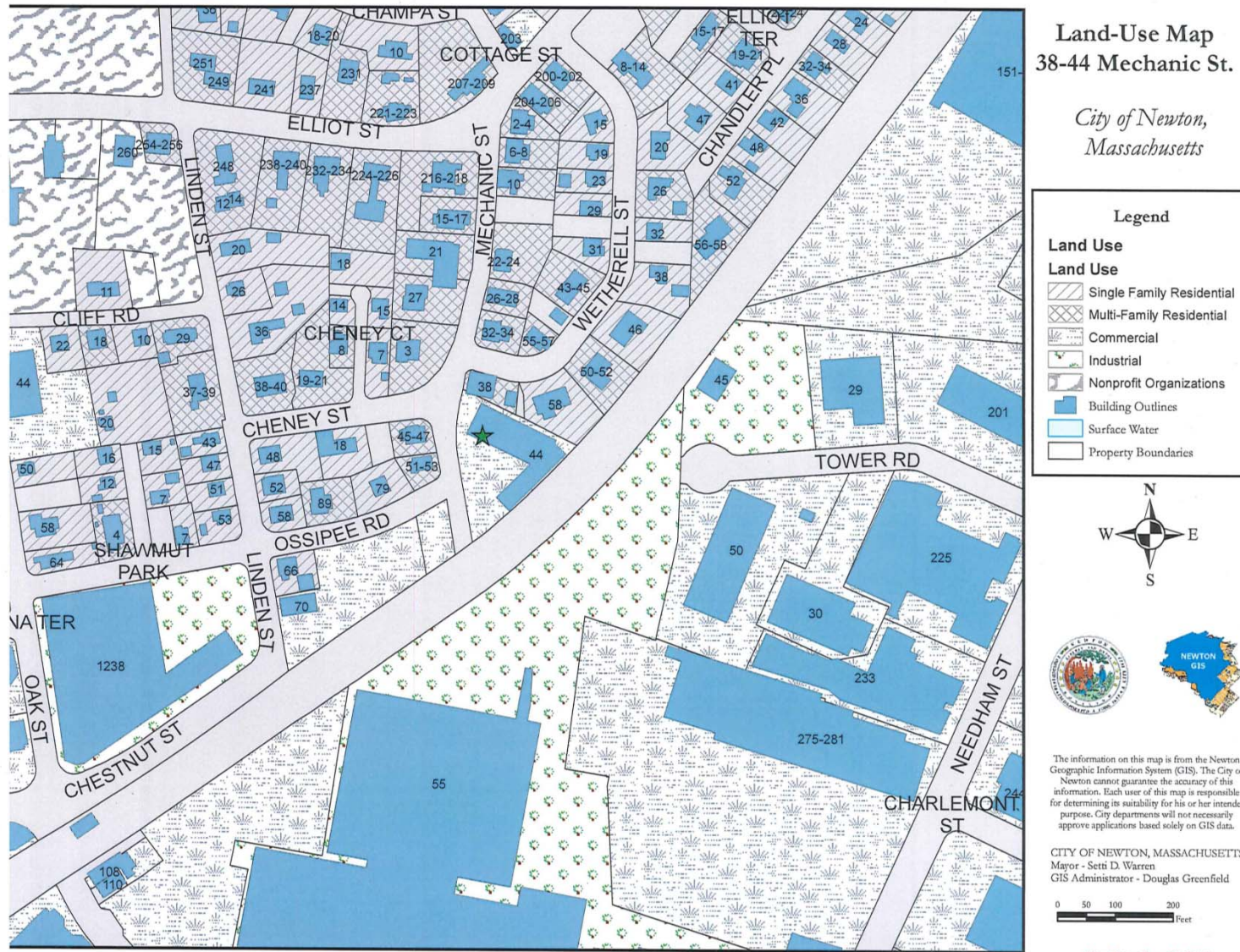
Aerial Photo

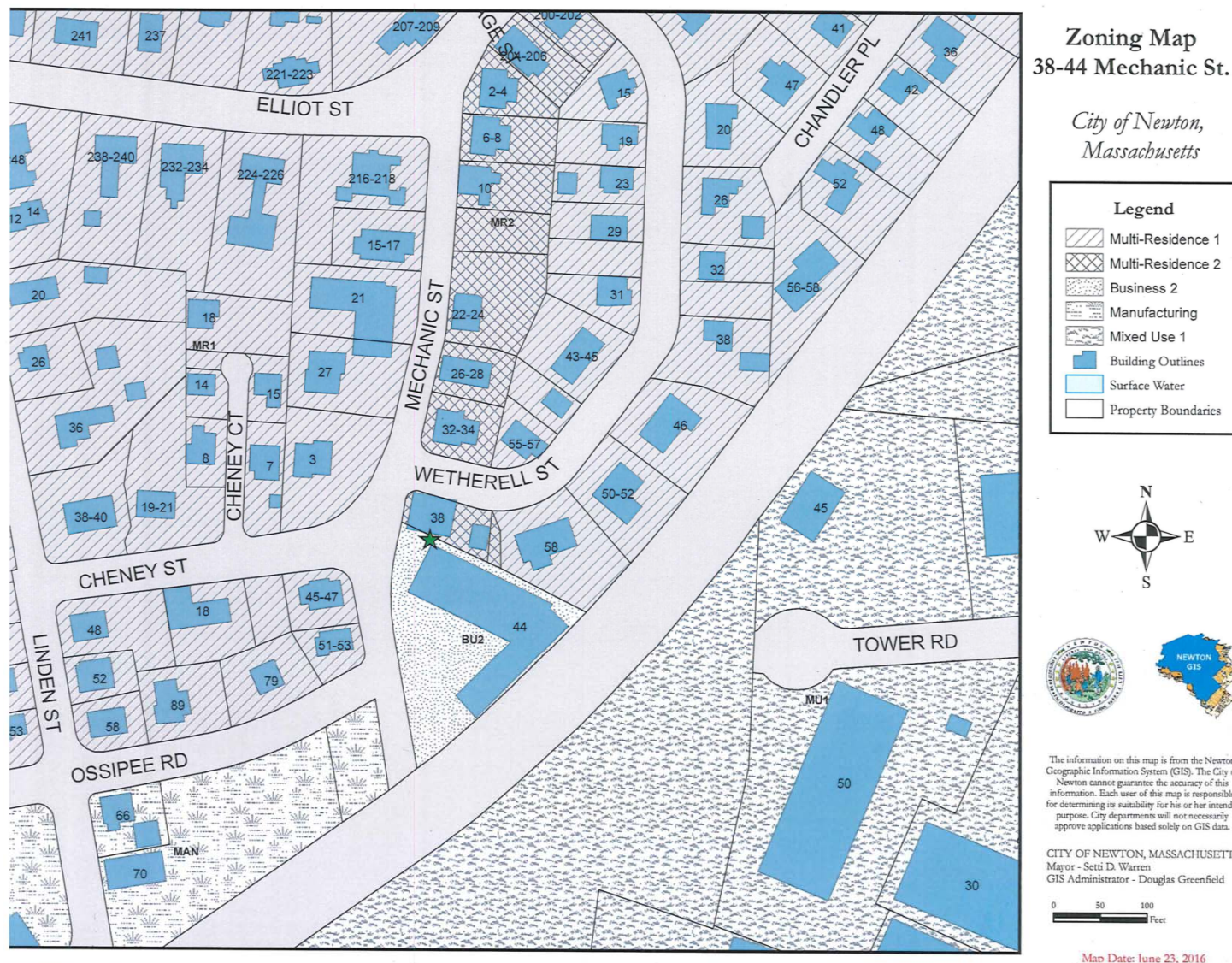


- Sought to address encroachment
- Two lots
 - East side of Mechanic Street between Cheney Street and Wetherell Street
- 38 Mechanic Street
 - Zoned MR2
 - 5,051 SF lot
 - Three-family dwelling
- 44 Mechanic Street
 - Zoned BU2
 - 28,384 SF lot
 - warehouse/office



Existing Land Use





Zoning Requirements



- No change lot sizes or allowed uses

Department of Planning and Development



PETITION #184-16

TO REZONE LAND KNOWN AS SECTION 24, BLOCK 11,
LOTS 03 AND 04, LOCATED AT 369 AND 377 WALNUT
STREET FROM SINGLE RESIDENCE 2 TO MULTI-
RESIDENCE 1.

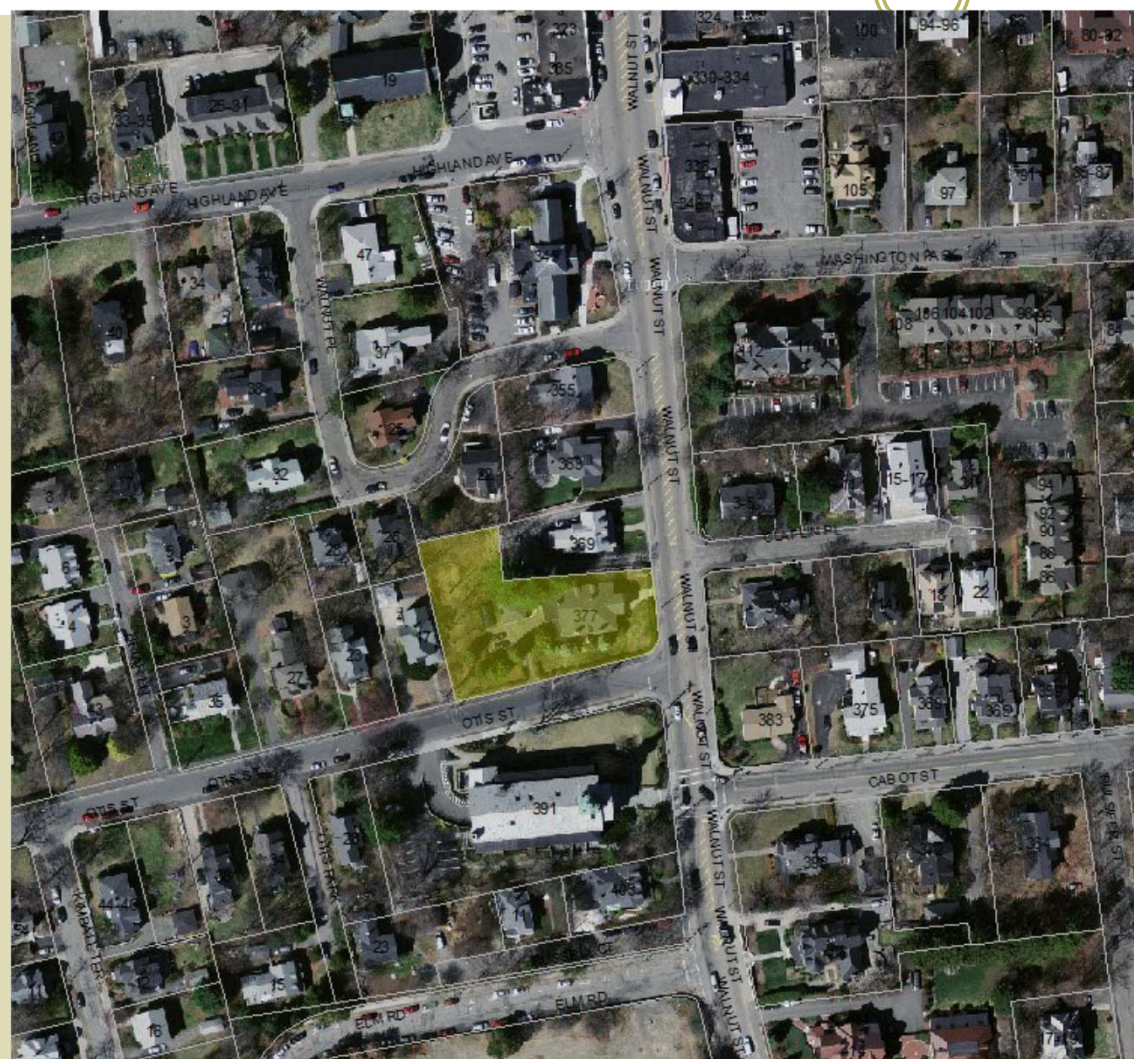
JUNE 27, 2016

Requested Rezoning



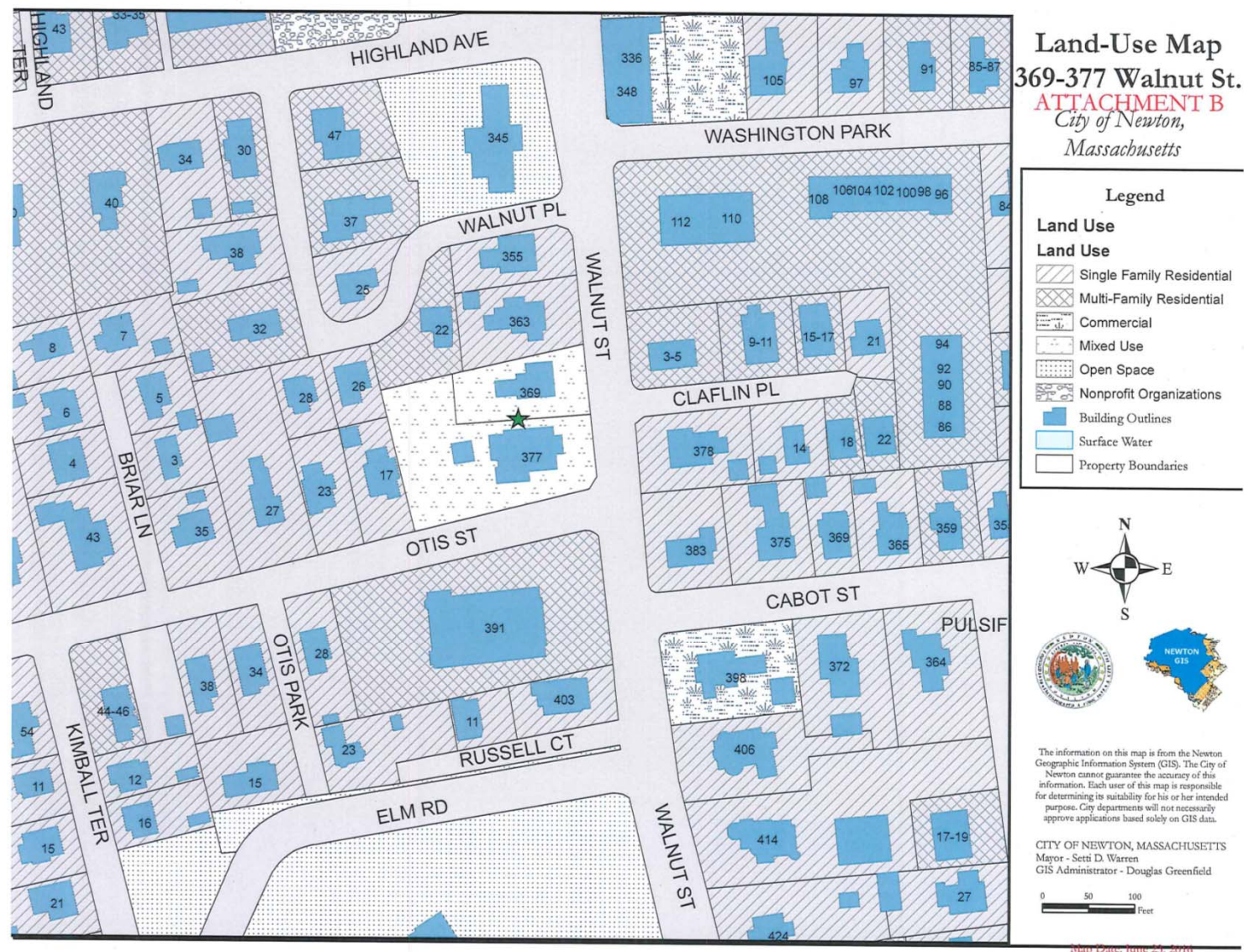
- Rezone land known as Section 24, Block 11, Lots 03 and 04, located at 369 and 377 Walnut Street from SINGLE RESIDENCE 2 to MULTI-RESIDENCE 1.

Aerial Photo

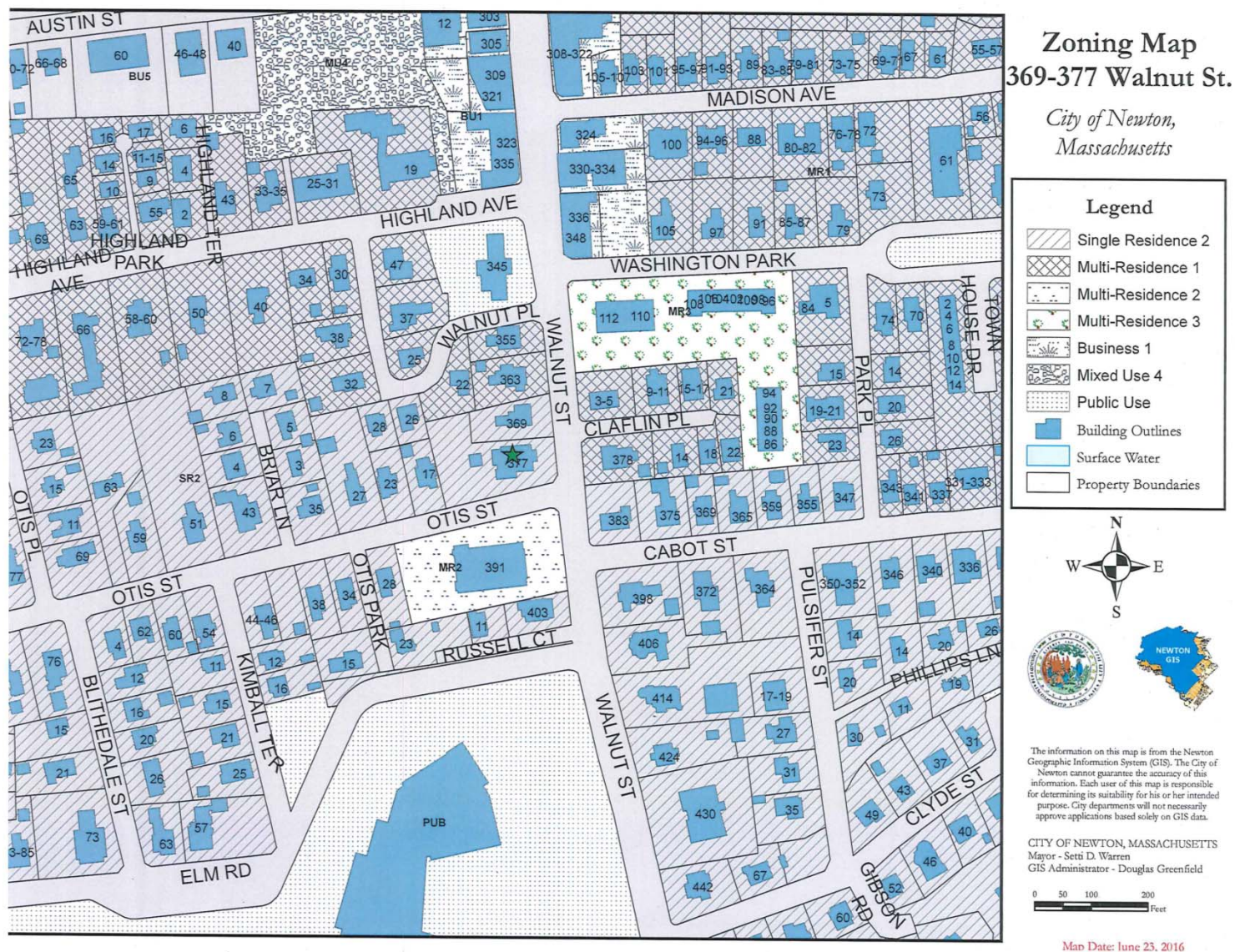


- Two lots
 - West side of Walnut St. just north of Otis St.
- 369 Walnut Street
 - 9,000 SF
 - zoned SR2.
 - two and a half story structure that includes a non-resident medical office (1978 variance)
- 377 Walnut Street
 - 24,100 SF
 - zoned SR2
 - single family dwelling and garage.

Existing Land Use



Existing Zoning



Use Regulations



- **SINGLE RESIDENCE 2 to MULTI-RESIDENCE 1.**
 - Would allow two-family detached dwellings by right
 - Would allow boarding houses and non-profit institutions by special permit (these uses are not allowed in SR2 districts)
 - Multi-family dwellings not allowed

Dimensional Requirements



- **SR-2 District (pre-1953 lots)**
 - Minimum lot area- 10,000 SF
 - Minimum lot are per unit- 15,000 SF

- **MR1 District (pre-1953 lots)**
 - Minimum lot area- 7,000 SF
 - Minimum lot are per unit- 3,500 SF

- **MR1 District (post-1953 lots)**
 - Minimum lot area- 10,000 SF
 - Minimum lot are per unit- 5,000 SF

 - New detached two-family dwellings allowed
 - Possible division of 377 Walnut St. (24,100 SF)

Department of Planning and Development



PETITION #196-16

TO REZONE LAND KNOWN AS SECTION 43, BLOCK 21,
LOT 09 LOCATED AT CENTRAL STREET FROM PUBLIC
USE TO SINGLE RESIDENCE 3.

JUNE 27, 2016

Requested Rezoning



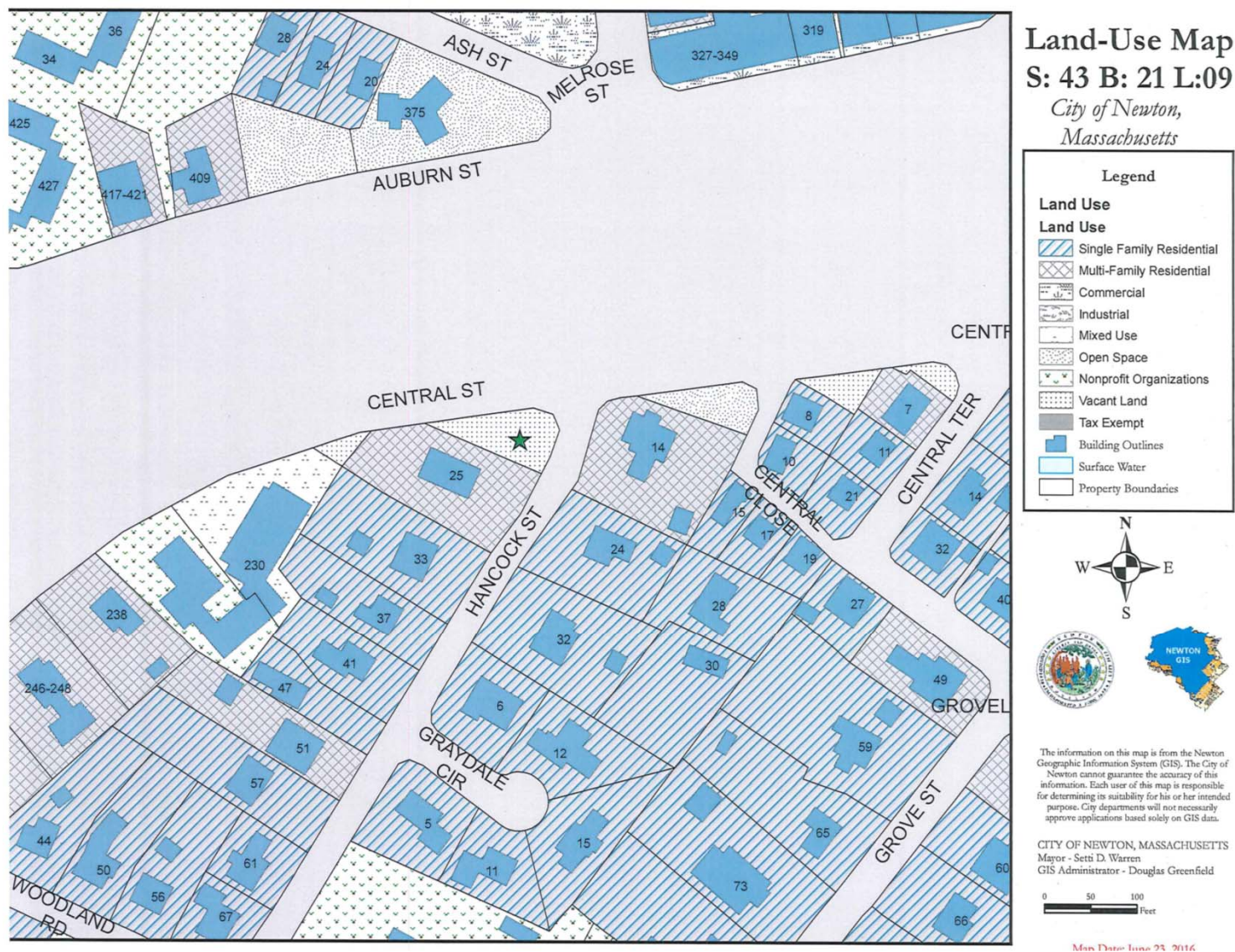
- Rezone land known as Section 43, Block 21, Lot 09 located at Central Street from PUBLIC USE to SINGLE RESIDENCE 3.

Aerial Photo

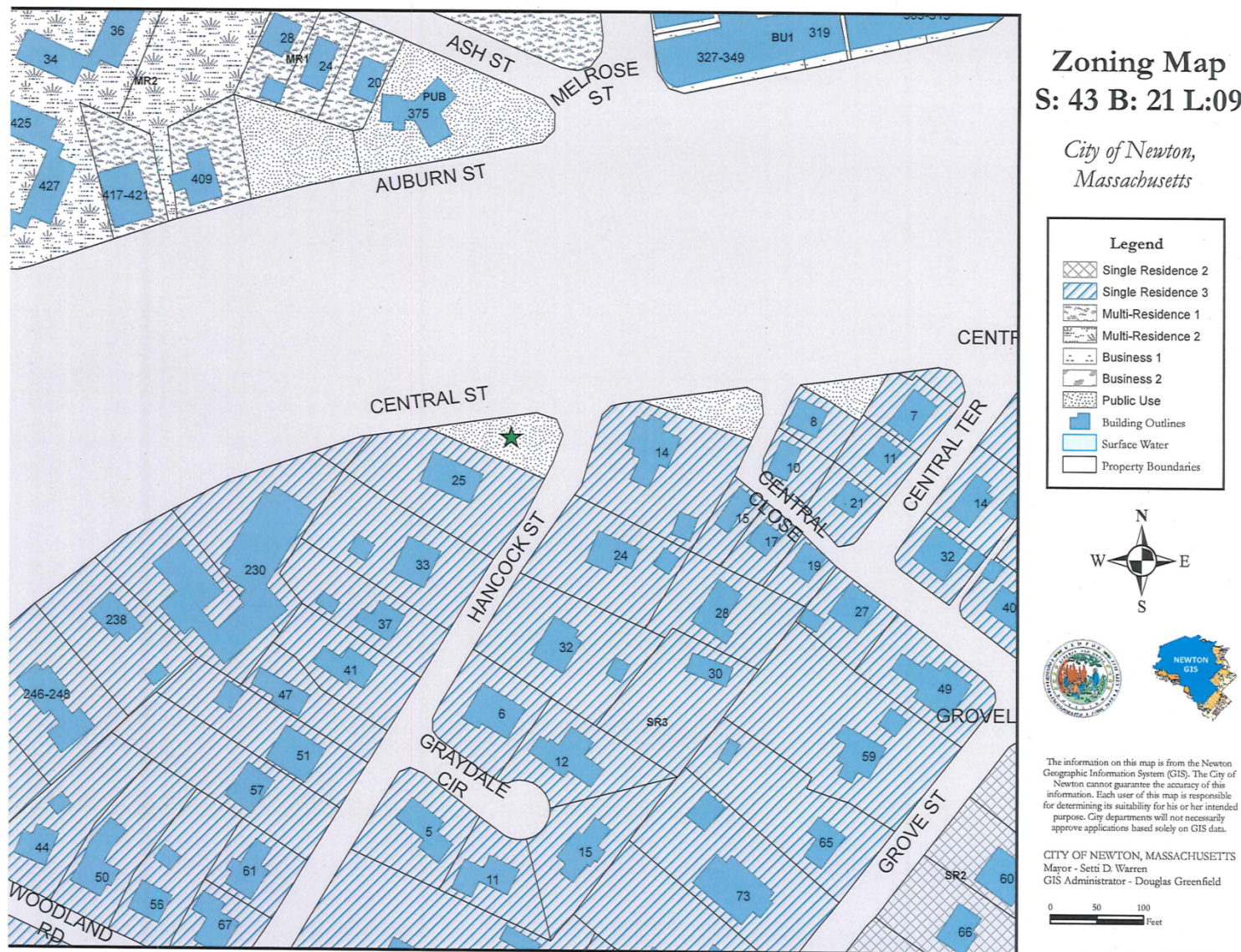


- 5,532 square feet
- 1963- Property acquired by Massachusetts Turnpike Authority from
- 1997- Conveyed to abutters (current owners) at 25 Hancock St.

Existing Land Use



Existing Zoning



Use Regulations



- PUBLIC USE to SINGLE RESIDENCE 3 (SR3)
 - PU District-
 - ✦ allowed uses limited to various institutional, educational, wireless communications, agriculture and resource extraction uses
 - ✦ residential uses not permitted
 - SR-3 District-
 - ✦ Single-family dwellings allowed (incl. attached by SP, but 1 acre min.)
 - ✦ New two-family dwellings not allowed
 - ✦ Certain Civic/Institutional uses allowed, incl. day care and education

SR3 Dimensional Regulations



- SR3 District (pre-1953 lots)
 - Minimum lot area- 7,000 SF
 - Minimum lot are per unit- 10,000 SF

- SR3 District (post-1953 lots)
 - Minimum lot area- 10,000 SF
 - Minimum lot are per unit- 10,000 SF

- Subject property combined with adjacent 25 Hancock Street total 21,259 SF

Department of Planning and Development



PETITION #153-16

TO REZONE LAND KNOWN AS SECTION 61, BLOCK 35,
LOT 03 LOCATED AT 1294 CENTRE STREET FROM
PUBLIC USE TO BUSINESS 1 IN ORDER TO BETTER
MATCH THE ZONING OF OTHER COMMERCIAL PARCELS
IN THE AREA.

JUNE 27, 2016

Requested Rezoning



- Rezone land known as Section 61, Block 35, Lot 03 located at 1294 Centre Street from PUBLIC USE to BUSINESS 1 in order to better match the zoning of other commercial parcels in the area.

Aerial Photo



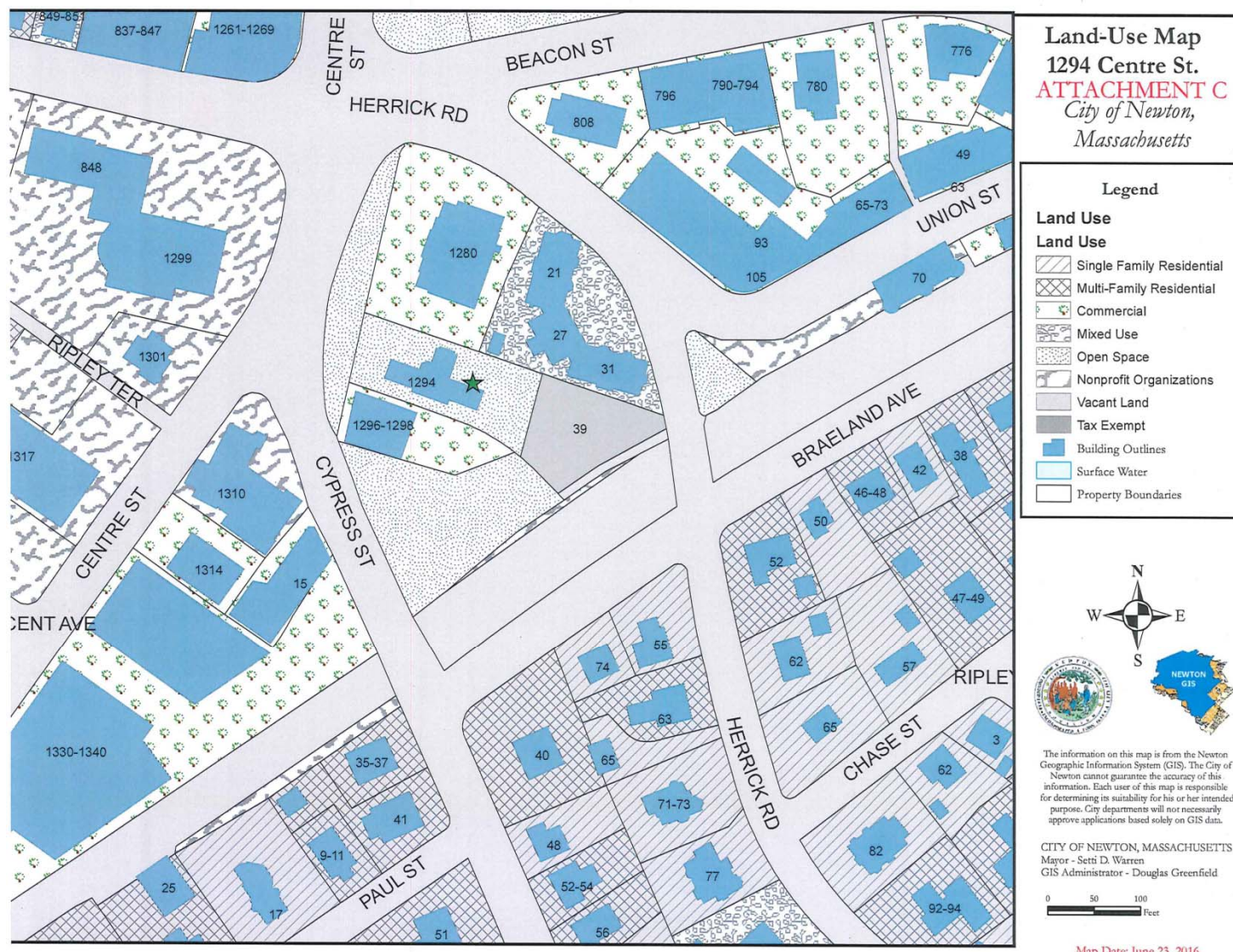
East side of Centre Street, near Cypress Street.

Surrounded on three sides by BU1 zoned properties.

Municipally-owned (former Newton Health Department headquarters).

Board authorized leasing; RFP anticipated.

Existing Land Use





Use Regulations



- PUBLIC USE (PU) to BUSINESS 1 (BU1)
 - PU District-
 - ✦ allowed uses limited to various institutional, educational, wireless communications, agriculture and resource extraction uses
 - ✦ Commercial and residential uses not permitted
 - BU1 District-
 - ✦ Commercial/business uses allowed
 - incl. e.g., banks, offices, restaurants, retail, etc.
 - Civic/institutional uses also generally allowed

other authorizations or by easements, covenants or agreements, the provisions of this Chapter shall prevail.

(Ord. No. S-260, 08/03/87)

1.1.4 Validity

Nothing in this Chapter shall be construed as establishing regulations or restrictions which are not uniform for each class or kind of buildings, structures, or land, and for each class or kind of use in each district.

Ord. No. S-260, 08/03/87

1.1.2. Effect of Invalidity

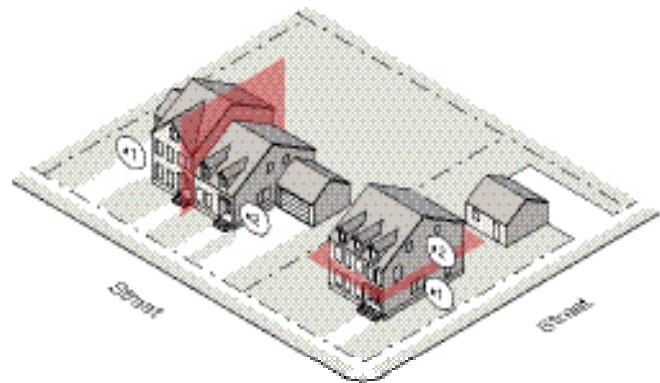
If it is determined by a court of competent jurisdiction that any provision of this Chapter is invalid as applying to any particular land, building or structure by reason of such land, building or structure having been placed in an excessively restrictive district, such land, building or structure shall thereby be zoned in the next least restrictive district created by this Chapter.

(Rev. Ords. 1973 §24-33)

Sec. 1.1. Rules of Measurement

1.1.1. Building Types

- A. **Single-Family, Detached.** A building or structure that contains only one dwelling unit.
- B. **Two-Family, Detached.** A building that contains 2 dwelling units and is either divided vertically so that the dwelling units are side by side but separated by a shared wall extending the entire maximum height of one or both units, and/or is divided horizontally so that one dwelling unit is above another.



- C. **Single-Family, Attached.** A building or structure that either:
 1. Contains 3 or more dwelling units, attached to one another at the ground level and each having a separate primary and secondary access at ground level; or
 2. Contains 2 dwelling units and is not a two-family detached dwelling.
- D. **Multi-Family.** A building or structure containing 3 or more dwelling units.
- E. **Dwelling Unit.** One or more rooms forming a habitable unit for 1 family, with facilities used or intended to be used, in whole or in part, for living, sleeping, cooking, eating and sanitation.

(Ord. No. X-38, 12/02/02)

CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO.

July , 2016

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2012, as amended, be and are hereby further amended with respect to **Chapter 30 ZONING** as follows:

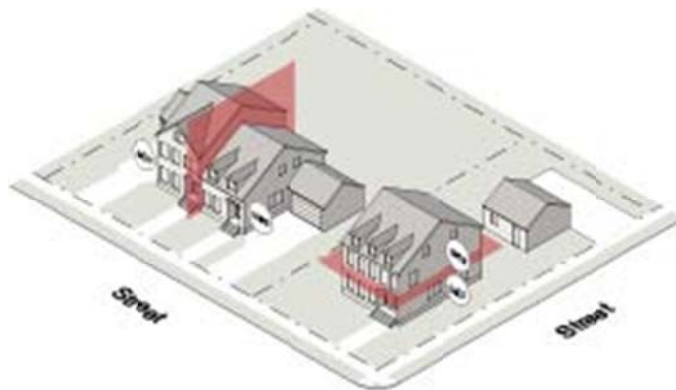
1. **Insert**, in Section 1.1.1.B, after the words “extending the entire” and before the words “height of one or both units,” the following word:

“maximum”

2. **Delete**, in Section 1.1.1.B, the word “or” where it occurs after the words “both units and before the words “is divided horizontally” and **insert** in its place the following language:

“and/or”

3. Insert the following Illustration to accompany the text of Section 1.1.1.B:



Approved as to legal form and character:

DONNALYN LYNCH KAHN

City Solicitor

Under Suspension of Rules
Readings Waived and Adopted

EXECUTIVE DEPARTMENT

Approved:

(SGD) DAVID A. OLSON

City Clerk

(SGD) SETTI D. WARREN

Mayor