



Memorandum

To: City Council
From: David A. Olson, City Clerk
Re: Washington Place Special Permit Discussion
Date: June 9, 2017

Councilors,

As requested at the June 5, 2017 City Council meeting, the following material regarding the Washington Place Special Permit discussion is provided here. Please find attached the material requested as well as answers to questions asked:

1. Marc Laredo's presentation at the Council meeting of the Land Use Committee discussions on the Washington Place items.
2. A Memo from Ouida Young providing the following material and answers to questions:
 - A Council Order that physically highlights the section that provides for the alternate plan of 140 units.
 - The plans of the building for both 140 and 160 units.
 - Can the Council Order actually allow for the flexibility of both 140 and 160 units?
 - Has the City done this before? It was suggested in the Land Use Report that the Chestnut Hill Development Special Permit did this, but in that case there was no difference in the footprint of the building. Has the Council done a special permit with footprint options?
 - Can there be two special permit Orders, one for the 140 units and one for the 160 units, and a Councilor can then choose which to support?
3. The fiscal impact of the difference between 140 and 160 units provided by the Planning Department?
4. A copy of Ouida Young's Memo explaining the buffer zone in reply to the protest. (The two page memo that Ouida provided on May 26 for the protest of this item is attached, as well as a longer memo provided by her back in January for the protest of #180-16.)

Report and Discussion of the Washington Place Items June 5, 2017 City Council Meeting.

Councilor Laredo presented the Land Use Committee's discussion of both the special permit and the zone change for Washington Place. He noted that 16 votes are required for both the zone change and for the special permit. The special permit is in many ways very similar to what had been presented earlier in terms of the way the building looks, the design, the sidewalk improvements and the like. There were several things Councilor Laredo noted:

1. The petitioner committed to \$700,000 in improvements as part of this project. The committee debated about what those improvements would be. There were a wide variety of options, but at the behest of Councilors Auchincloss and Albright, and with the assistance of the Law Department, it was decided to delay where the \$700,000 is spent until after the project is complete, or nearly complete. The rationale being that there will be three million dollars of work in Newtonville in the next year to year and a half. The Austin Street project will also be coming along. We don't know as we sit here today where that money could be best used. Councilor Laredo urged Councilors in the next two weeks to pay particular attention to the language that the Law Department has come up with in terms of the flexibility it allows and noted that he will also will be taking another look at that to make sure he is comfortable and that it provides sufficient flexibility while at the same time the appropriate oversight by this Council as to where the money is spent. As part of this it is important to be aware that the intersection of Washington and Walnut streets, which the petitioner had committed to improving, is not part of that \$700,000. The petitioner has also committed to reconfiguring traffic lights and sidewalks on their side of the street, and doing other types of improvements which are all detailed in the Council Order.

2. One thing that is very significant and should be focused on is that this Council Order provides the petitioner with two options. Specifically, one is to construct a 160-unit building identical to what has been presented to us at numerous meetings. The petitioner has also asked for the option to construct a slightly smaller 140-unit building which would, if constructed, have some changes including: The entrance to the garage would shift from one side of the parcel to the other. There would be a different area for trash storage. There would be additional commercial space on the project if it went from 160-units to 140, but the height in the rear of the project along Walnut Street would be reduced somewhat and there would be fewer units there. The petitioner asked for this option because they are conducting ongoing negotiations with the neighbors and direct abutters. If those negotiations are successful and an agreement is reached, and there is no appeal, the petitioner will reduce the number of units to 140. That is a business decision the petitioner has made. Councilor Laredo noted that it was the consensus of the Land Use Committee that because there are two very clearly defined alternatives, 160-units and 140-units, that this was an appropriate level of discretion to give to the petitioner. The City still keeps complete control over the project, but avoids if they were to go to one forty, because they reached an agreement, having to start the whole process all over again. The Land Use Committee was quite sensitive to the fact that time is money and if the Council is going to vote on the Special Permit, we should vote on it and let it get done. If Councilors have objections to the project at 160 or 140, of course, they are free to vote against it.

Councilor Laredo stated that those were the salient factors and urged his colleagues to take a look at the plans including how the project is laid out. The five story section is primarily concentrated on the Walnut/Washington Street side, then mostly four and then going down to three stories as the project goes further back. There is, of course, the community space and the wider sidewalks and the other things that have been talked about in the past.

Councilor Laredo then made a motion to postpone both items to a date certain of June 19th.

Councilor Sangiolo hoped that Councilor Laredo would give that summary again on the 19th when everyone is present. Councilor Laredo responded that he would be happy to give it again and that his intent tonight was for the Councilors present to have the opportunity to understand where the Land Use Committee made some decisions and to provide some context as you review the Council Order.

Councilor Sangiolo said she had asked questions during Land Use session and did not see any responses and asked if she could expect to see those before June 19th? One of the specific questions was about the flexibility of the Council Order. Councilor Sangiolo asked if this was something that had done before. President Lennon said he believed it was addressed at the Land Use Committee meeting that evening. The City had done something similar with Chestnut Hill Square. Councilor Laredo noted that to the extent that there were additional questions, it was the intent of the staff to get that back to us in the next week or so. Councilor Laredo asked Mr. Olson to speak with Ms. Khan and the appropriate staff people for two things:

1. To be sure we get the answers to Councilor Sangiolo's questions; and
2. To make sure that all members of the Council have the 160- and 140-unit alternates in the plans. He asked that those be provided in advance of the meeting.

Councilor Sangiolo stated that the on-line version of the Law Department's memo on the buffer strip was only two pages, but assumed it was a lot longer because everyone is talking about a really lengthy memorandum from Ouida Young. Councilor Laredo did not recall the length of the memo but suggested that Councilor Sangiolo email Ms. Young and ask her to send it. President Lennon made a request that the Clerk be sure to get the Law Department's Memo in its entirety to the entire Council.

Councilor Baker stated that part of the challenge of splitting the recommendation is that there may be Councilors who might support one but not the other. He felt that it creates a difficult situation to allow the developer a choice as opposed to saying the committee recommends A or the committee recommends B. He would like to at least have two Council Orders in front of the Council so that one can be substituted for the other. He does not remember ever having given two different options where there are findings that are required by the Board which must meet the standards in our Zoning Ordinance and thinks that as a procedural matter, it is important to have two orders before the Council. If the developer says they want to move ahead with one, then the Council can hear that and make a decision. Councilor Baker is troubled about granting permission in the alternative where there are different qualities of the project and different results that people may be comfortable with.

Councilor Laredo stated that that the petitioner is not going to know for months, or maybe even longer, which option is going to be feasible for them. The Committee thought through this very carefully in the confines of a single Council Order. The differences between 140 and 160 are rather minor; units that go back in size, and a somewhat smaller building. Everything else stays exactly the same and the Committee, in its wisdom, felt it was an appropriate way to proceed in this instance. When this comes to the full Council, Councilor Laredo expects to have a full debate about it, but thinks it would be quite inappropriate to go with two Council Orders. If the Council Order was for just 160-units, and the 140-unit option could be done, all we would be doing is setting the process up to come back to us in 3, 4, 6 or 9 months.

Councilor Baker wanted to clarify that he certainly understands the desire of having something that does not require return to this Council. He stated that he was trying to understand how a Council Order with two different tracks in it would work and thinks it very important that those two tracks, and the impact, not just the plan, be understood exactly what we are asked to vote for in the alternative, and whether in fact it is supportable in the alternative. Councilor Laredo suggested that the Board Order be studied and if not clear, asked that Councilors communicate with him so he can communicate with Ms. Young. If there is not a lot of clarity in our draftsmanship, certainly we want to address it before it comes to the Full Council.

Councilor Baker said people who are not here tonight will be coming back and that there is a lot of public interest, and thinks there is a value in the Board having at least a second version presented in the packet that highlights the actual document; those specific things which are different. President Lennon said it was one of the reasons why he wanted to have some explanation tonight so that as people are looking at this the Council would be able to take a little bit of input to get things ready for the 19th. Councilor Laredo asked the Clerk to ask Ms. Young to highlight the 140-unit changes so that is very clear to colleagues what the differences are.

Councilor Schwartz asked to clarify the Chair's comments regarding the number of stories. He thought Councilor Laredo had inadvertently said it went from four to three stories in the 140-unit version and Councilor Schwartz clarified that it went from five to four stories. Councilor Laredo appreciated the clarification. Councilor Schwartz also noted that the plans that are attached to the draft Council Order do not show a change that was made by the developer in response to concerns about the plaza. There are two handicapped parking spaces that will not cut into the public plaza. Chairman Laredo noted that after a fair amount of discussion in the Land Use Committee, there was concern that the handicapped parking spaces in the 140-unit option were not well configured. The petitioner has agreed to relocate those down into the underground garage so the number of parking spaces stays the same.

Councilor Schwartz stated that in regards to Councilor Baker's comments he wanted to make it clear that the Land Use Committee voted for the 160-unit project, but that it was the sense of the committee that including a 140-unit option would provide direction to the developer that if it did turn out to be a smaller project the Committee wanted to give direction as to how that would look.

The Motion to postpone both items was Approved by Voice Vote.

CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: June 9, 2017

TO: Marc Laredo, Chairman, Land Use Committee
All Members, City Council

FROM: Ouida C.M. Young, Deputy City Solicitor

RE: Questions Raised by Council Members
#96-17 Draft Order
Washington Place Project

David Olson, Clerk of the City Council, provided me with a list of a number of questions raised by the councilors at the June 5, 2017, meeting regarding the Washington Place Project draft Order. He has identified those questions which he has asked me to answer.

1. Provide a copy of the Order that highlights the sections related to the alternative 140 plan.

See attached. Schedule B showing both projects is also attached but not highlighted.

2. Can the Order actually allow for the flexibility of both 140 and 160 units?

Yes. The last memorandum I prepared for the Land Use Committee set out my reasoning on this point. I am including that discussion here for the benefit of the members of the Council who are not on the Land Use Committee.

The Petitioner is requesting a Project with 160 residential units. However, based on circumstances which are entirely outside of the Land Use Committee's control, the Petitioner may be willing to voluntarily reduce the number of units from 160 to 140. To be clear, the Project requested by the Petitioner is for the 160 unit Project. Should the Petitioner decide at a later date to build only 140 residential units, there would be a small reduction in the size of the building fronting Walnut Street, and the access into the underground parking garage would move from Walnut Street to Washington Terrace. There would also be a pro rata reduction in the number of Inclusionary/Middle Income Units, as well as a reduction in the I&I contribution. All other requirements of the Special Permit would remain unchanged, including the off-site intersection and street improvements identified in Schedule G; the \$700,000 improvements identified in Schedule D; and the \$300,000 for the TDM plan.

I do believe that this degree of flexibility can be included in the draft Order provided that the City Council understands and approves of the smaller 140 unit Project. This is similar to the Chestnut Hill Square Special Permit that approved a shopping center with a residential building containing up to 100 units, but did not require that the residential building be built unless the developer elected to do so within a defined period of time. Accordingly, I have drafted the Order for a 160 unit Project, but made provisions for a clearly defined smaller 140 unit Project.

3. Has the City done this before? It was suggested in the Land Use Committee Report that the Chestnut Hill Square Special Permit did this, but in that case there was no difference in the footprint of the building. Has the Council done a special permit with footprint options?

In the case of the Chestnut Hill Square, the special permit allowed an entirely new building containing up to 100 residential units, the footprint of which replaces surface parking, to be added. The developer was permitted, but not required, to add the new building with residential units without further approval from the City Council, provided that the new building was constructed within a certain period of time. The set of plans approved by that special permit contained less information about the new residential building than the plans for the 140 unit Project included in the Washington Place Order in Schedule B.

The Petitioner has clarified that the plans between the 160 unit Project and the 140 unit Project do not change the footprint of the buildings. However, the ramp to the below grade garage is relocated from the Walnut Street side of the Project (the 160 unit Project) to the Washington Terrace side of the project (the 140 unit Project). The portion of the building along Washington Terrace which was over-hanging surface parking in the 160 unit Project is modified to accommodate the relocated ramp to the basement garage. Finally, the 5th floor of the building facing Washington Street is also reduced along the side of the building adjacent to the driveway into the Site from Walnut Street.

4. A copy of the Law Department's memorandum regarding the re-zoning protest.

The Clerk's Office is providing both the lengthy memorandum prepared with regard to the original Protest Petition as well as the much shorter memorandum prepared with regard to the current Protest Petition.

5. Can there be two special permit Orders, one for the 140 units and one for 160 units, and a Councilor can then choose which to support?

As noted above, the Petitioner is requesting a 160 unit Project with an option to only build 140 of those units. This is the Project before the Council, and if a Councilor does not want to approve the Petitioner's Project, the appropriate action is to vote against the draft special permit Order that came out of the Land Use Committee, not create a second competing special permit Order for a project not requested by the Petitioner.

The City Council, then Board of Aldermen, rejected both a dueling order approach and a Chinese menu approach for the conditions in terms of preparing special permit decisions in the late 1990s when several very controversial special permits were being considered. Special permit decisions are quasi-judicial decisions made by a special permit granting authority – here the City's legislative body. The decisions need to be supported by findings, which findings need to satisfy both the statutory requirements under G.L. c. 40A, as well as the requirements in Newton's Zoning Ordinance. While special permit orders or decisions can be amended on the floor of the Council, putting a special permit decision together should be undertaken in committee to insure that legally supportable findings and clear conditions are presented to the Council for action.

After much deliberation regarding how best to address the need to allow members to vote against the draft special permit decision that comes out of the Land Use Committee, the Council adopted a very specific procedure set out in the Council's Rules regarding Second Call of Committee Reports and Special Recording Requirements. See Art. V, Sec. 8 and Art. II, Sec. 2, subsection 2, para. 2. Any member who wishes to vote against the recommendations of the

Land Use Committee regarding a rezoning or special permit petition needs to second call the item and offer reasons for that action during debate. Should the recommendation of the Land Use Committee fail to carry, the Clerk and Planning and Law Departments are then required to put together the special permit decision that reflects the reasons offered by the prevailing side during the debate. The procedure set out in the Council's Rules should be followed if a member wishes to vote against the draft special permit Order for Washington Place brought forward by the Land Use Committee rather than draft a competing order.

CITY OF NEWTON
IN CITY COUNCIL
June 5, 2017

ORDERED:

That the Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the Site, as defined below, 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 for a mixed use development consisting of three interconnected buildings with total gross floor area up to 236,000 square feet which shall incorporate no more than 160 residential units (approximately 180,000 square feet), not exceeding 47,165 square feet of retail sales, service establishment, restaurant, health club, and/or medical office space, no less than 2,000 square feet of office/community space, all in accordance with the recommendation of the Land Use Committee (the "LUC") and the reasons given by the Committee therefore, through its Chairman, Councilor Marc C. Laredo.

Procedural Background

The proposed development (the "Project") for Washington Place (the "Site") was submitted by Mark Newtonville, LLC (the "Petitioner") and reflects efforts to diversify Newton's housing stock, provide affordable housing choices, encourage pedestrian-oriented development with a mix of residential and business uses, and enhance the quality of life in Newtonville and Newton's village commercial centers, all in accordance with Newton's *Comprehensive Plan*.

The Petitioner filed a request to re-zone the Site from BU1/BU2/Public Use to MU4 and simultaneously filed special permit/site plan application for the Project with the City Clerk on May 9, 2016, *i.e.*, Docket ## 179-16 and 180-16. Notice of the public hearing was published on May 24, 2016 and May 31, 2016 in *The Boston Globe*, on June 1, 2016 in the *Newton Tab*, and re-noticed and re-published on November 18, 2016, November 25, 2016, December 28, 2016, and January 4, 2017 in *The Boston Globe* and on November 23, 2016 and December 28, 2016 in the *Newton Tab*, and mailed to all parties in interest in compliance with the Newton Zoning Ordinance and M.G.L. c. 40A §11. The Land Use Committee ("LUC") of the City Council opened the public hearing on June 7, 2016 and continued the public hearing on July 12, 2016, September 13, 2016, October 6, 2016, November 1, 2016, November 29, 2016, December 15, 2016, January 12, 2017, January 31, 2017, February 7, 2017, and February 28, 2017. The LUC also held a special meeting on March 20, 2017, at which meeting public testimony was not taken, to allow the City Council to identify concerns regarding the Petition prior to the close of

the public hearing.

Over the course of the public hearings on Docket # 179-16 presentations were made by the Petitioner and its Project team including its attorney, Stephen J. Buchbinder of Schlesinger and Buchbinder, LLP; Damien Chaviano of Mark Development, LLC; its architects, David Chilinski and Steven Allen of Prellwitz Chilinski Associates, Inc.; its landscape architect, Shauna Gillies-Smith of Ground, Inc.; its fiscal consultant, John Connery of Connery Associates; its transportation consultant, Randy Hart of Vanasse Hangen Brustlin, Inc. ("VHB"); its sustainability consultant, Lauren Baumann, of New Ecology; and its lighting consultant, Carrie Hawley of HLB Lighting. Presentations were also made by City staff including Alexandra Ananth, Chief Planner of Current Planning for the Planning and Development Department, and the City's transportation consultant and peer reviewer, Michael Santos of Howard Stein Hudson.

The LUC received extensive oral and written testimony from the public and written reports from the City's professional consultants and various City boards, commissions, and departments, including the Planning and Development Department, the Department of Public Works, the Planning and Development Board, the Urban Design Commission, and the Newtonville Area Council. During the review process, supplemental materials and testimony have been submitted in response to requests by the Council and the public. All testimony, written reports, and supplemental materials prepared by the Petitioner and its consultants, and the City and its staff, consultants, boards, and commissions, as well as public testimony and supplemental materials submitted by the public, are included in the record of the Council's proceedings, and provide factual and technical background for the Findings and Conditions set forth within the body of this order.

Because of a protest filed pursuant to G.L. c. 40A §5 challenging Petitioner's request to re-zone the Site, the Petitioner requested leave to withdraw without prejudice the special permit/site plan petition Docket #179-16 and the rezoning petition Docket #180(2). The LUC closed the public hearings on both petitions on March 28, 2017, and recommended approval of the request to withdraw without prejudice, which request was granted by the City Council on April 3, 2017.

On April 4, 2017, the Petitioner refiled the special permit/site plan approval for the Project, as well as a request to re-zone a portion of the Site totaling 92,907 sq. ft. from BU1/BU2/Public Use to MU4, *i.e.*, Docket ## 95-17 and 96-17, with the City Clerk. The northerly portion of the Site that is currently BU2 would not be rezoned. Given that the Project as refiled is identical to the Project proposed at the time the request to withdraw without prejudice was granted with the exception of the re-zoning request, the LUC is incorporating by reference all oral and written testimony and reports received by the LUC from the Petitioner and its consultants, the City staff and consultants, and from the public in connection with Docket ## 179-16 and 180-(1)&(2). No new special permits are required for the Project as refiled although the special permit waivers for FAR and lot area per dwelling unit are slightly changed.

Notice of the public hearing was published on April 18, 2017 and April 25, 2017 in *The Boston*

Globe and on April 26, 2017 in the *Newton Tab*, and mailed to all parties in interest in compliance with the Newton Zoning Ordinance and M.G.L. c. 40A §11. The LUC opened the public hearing on May 2, 2017 and continued the public hearing on May 30, 2017.

Following a final presentation by the Petitioner and City staff, as well as public testimony, the public hearing was closed on May 30, 2017 and on that date the LUC voted to recommend approval of the Project to the Council as follows:

Finding that all applicable provisions of the Zoning Ordinance have been complied with and taking into consideration the testimony and evidence provided by all interested parties, the Council GRANTS approval of this Special Permit/Site Plan Approval based on the following findings, as recommended by the LUC of the Council:

With regard to how the Project furthers the purposes of the MU4 District and meets the requirements of §7.3.3.C.1.-5., for those uses or dimensional waivers requiring special permits:

1. The Council finds pursuant to the requirements of §4.2.1.C.1.-5. that the Project is consistent with the purposes of the MU4 district and the Newton *Comprehensive Plan*, including the Mixed Use Centers Element adopted in November 2011, in that:
 - a. The Project will allow the development of buildings and uses appropriate to the Newtonville village commercial center and aligned with the vision of the City's *Comprehensive Plan* by providing a compact, pedestrian-oriented development with residences, shops, public gathering spaces, and mixed use development opportunities in a commercial village center. (§4.2.1.C.1 and §4.2.1.C.2)
 - b. The massing of the Project along two blocks on the north side of the Massachusetts Turnpike and at the corner of Washington and Walnut Streets as well as matching the Project's streetscape improvements to those streetscape improvements being made along Walnut Street south of the Turnpike will help visually connect Newtonville's commercial village center which is bifurcated by the Turnpike. (§4.2.1.C.2)
 - c. The Project will allow sufficient density and intensity of uses to promote a lively pedestrian environment, public transit, and a variety of businesses that serve the needs of the community. (§4.2.1.C.3)
 - d. The Project will expand the diversity of housing options available in the City. (§4.2.1.C.4)
 - e. The Project will promote the health and well-being of residents by encouraging physical activity, use of alternative modes of transportation, and creating a sense of place and community. (§4.2.1.C.5)
2. The Council finds that all residential units will conform to the Massachusetts Architectural Access Board (MAAB) requirements for "Group 1" units and are visitable

- by those in a wheelchair. In addition, per MAAB guidelines, 5% of the units will conform to "Group 2A" unit requirements and will be designed for immediate use and occupancy by anyone in a wheelchair, and with the ability to adapt additional components of the units upon need, at the Petitioner's sole cost and expense. This will add to the diversity of Newton's housing stock, thereby increasing housing choices and opportunities in the City.
3. The Council finds that the residential units fill a need for smaller, accessible, residential units as identified by multiple sources including the City's Housing Needs Analysis and Strategic Recommendations Report dated June 2016, the Metropolitan Area Planning Council's [Population and Housing Demand Projections for Metro Boston](#), and the two Demographic Trends and Projections Reports prepared by The Dukakis Center for the City of Newton.
 4. The Council finds that the Petitioner has taken steps to alleviate the increasing costs of housing in Newton by providing two income tiers of affordability as follows:
 - a. The first tier of affordability per Newton's Inclusionary Zoning Ordinance will set aside 15% of the total residential units as Inclusionary Units affordable to households earning up to 80% of Area Median Income ("AMI") as designated by the US Department of Housing and Urban Development (HUD), adjusted for family size (the "Inclusionary Units") in perpetuity. 50% of the Inclusionary Units will be set aside for households earning at or below 50% of AMI and 50% of the Inclusionary Units will be set aside for households earning at or below 80% of AMI. This results in a blended rate of no more than 65% of AMI.
 - b. The second tier of affordability provides an additional 10% of the total residential units affordable to households earning between 80% and 120% AMI (the "Middle Income Units") in perpetuity. The Inclusionary Units and the Middle Income Units will sometimes be referred to hereinafter as the "Deed Restricted Units."
 5. The Council finds that by including both tiers of affordability there will be potential for upward mobility within the Project, as residents may be afforded the option to transition from one tier to the next, where they would have otherwise been required to relocate or pay market rate rents if their income exceeded the cap on the Inclusionary Units.
 6. The Council finds that to the extent allowed by the Massachusetts Department of Housing and Community Development (DHCD), the Petitioner will seek permission to set aside 70% of the Deed Restricted Units as Local Preference Units.
 7. The Council finds that the specific Site is an appropriate location for the Project as the site plan maximizes the benefits of its Newtonville commercial village center location by expanding needed housing choices, diversifying commercial options in the village, connecting the Site to the village through intersection and streetscape improvements, and maximizing the number of parking stalls available on-site to the greatest extent

consistent with appropriate site planning. (§7.3.3.C.1)

8. The Council finds that the use as developed and operated will not adversely affect the neighborhood as the Project will enhance the long term economic stability of the commercial village center, the vitality and walkability of the village, and will create an approximately 9,000 square foot accessible public gathering space. (§7.3.3.C.2)
9. The Council finds that through improvements to the intersection of Walnut and Washington Streets for vehicles and pedestrians as well as the consolidation of driveways accessing the Site, there will be no nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
10. Access to the site over streets is appropriate for the types and numbers of vehicles involved. The Petitioner conducted studies which conclude that the traffic generated by this Project is accommodated by improvements that the Petitioner will make at its sole cost and expense at the intersection of Washington and Walnut Streets. The City contracted with Howard Stein Hudson ("HSH") to perform a peer review of the Petitioner's Traffic Impact and Access Study. In general, both the Petitioner's study and the City's peer review conclude that the Project will have minimal impacts on surrounding roadways with the improvements at the intersection of Washington and Walnut Streets required by this Special Permit/Site Plan Approval. (§7.3.3.C.4)
11. The Council finds that the site planning, building design, construction, maintenance, and long-term operation of the Project will contribute significantly to the efficient use and conservation of natural resources and energy. The Project is located in a commercial village center close to multiple transit options and with the benefits of a walkable commercial village center. The building shall achieve LEED Gold for Homes Midrise Version 3 certification. (§7.3.3.C.5 and §7.4.5.B.8)

With regard to the special permit to allow retail sales establishments over 5,000 square feet, restaurants with more than 50 seats, personal service establishments over 5,000 square feet, standalone ATMs, health club(s) at or above the ground floor, animal service uses, and/or street-level medical office uses pursuant to §4.4.1.:

12. The Council finds that the Site is an appropriate location for retail sales establishments over 5,000 square feet, restaurants with more than 50 seats, personal service establishments over 5,000 square feet, standalone ATMs, health club(s) at or above the ground floor, animal service uses, and/or street-level medical office uses, as the proposed uses are appropriate for the commercial center of the village and will encourage an active, pedestrian-oriented streetscape throughout the day and week, that the proposed uses fill a demonstrated need for the uses within the vicinity, and that the proposed uses are not inconsistent with the purposes of the MU4 district or the City's *Comprehensive Plan*.

With regard to the special permit to allow a building in excess of 20,000 square feet of gross floor area, pursuant to §4.2.2.B.1.:

13. The Council finds that the size of the interconnected buildings is not inconsistent with

the MU4 district or the Mixed Use Centers Element of the *Comprehensive Plan*. The proposed site plan and buildings improve the pedestrian environment, create beneficial open space, and the proposed mix of uses will enhance the commercial and civic vitality of the Newtonville commercial village center.

With regard to the special permit to allow a building height of 60 feet and 5 stories, and to waive the setback requirement for buildings taller than 40 feet pursuant to §4.2.5.A.2 and §4.2.5.A.4.c.:

14. The height and number of stories is allowable by special permit in the MU4 district and the Council finds that the building height of up to 60 feet and 5 stories is compatible in visual scale to its Newtonville commercial village center surroundings, is appropriate given the width of the street, does not adversely affect its surroundings by creating shadows or blocking views, and advances the purposes of the MU4 district.
15. The waiver of the setback requirement for the portions of the buildings taller than 40 feet is appropriate as the varied 4-5 story height and predominant massing on Washington Street is appropriate at this corner location and scales downward as the building approaches its residential abutters.

With regard to the special permit to allow floor area ratio ("FAR") of not more than 2.5 pursuant to §4.2.3.:

16. The FAR is less than the maximum permitted by special permit in the MU-4 district (2.5). The Council finds that the FAR of not more than 2.5 is appropriate for the site and not inconsistent with the MU-4 district or the City's *Comprehensive Plan*.

With regard to the special permit to waive the lot area per dwelling unit requirement, pursuant to §4.2.5.A.3.:

17. The Council finds that a lot area per dwelling unit of approximately 581 square feet creates a beneficial living environment for the residents, does not adversely affect the traffic on Washington Street or Walnut Street, and better achieves the purposes of the MU-4 district than strict compliance with these standards.

With regard to the special permit to waive the front setback requirement, pursuant to §4.2.5.A.4.:

18. The Council finds that the waivers from the front setback requirement better protect the surrounding community from shadows and blocked views, support pedestrian vitality, and encourage the purposes of this district.

With regard to the special permit to waive entrance requirements, pursuant to §4.2.5.A.6.:

19. The Council finds that a waiver of the requirement for an entrance every 50 feet on the building frontage facing Walnut Street, Washington Street, and Washington Terrace better enables appropriate use of the Site, supports pedestrian vitality, and better achieves the purposes of the MU-4 district than strict compliance with these standards.

With regard to special permits for the number of parking stalls and various requirements for the design of parking facilities in both the MU4 and BU2 districts, pursuant to §5.1.4.A.;

§5.1.4.C.; §5.1.8.A.; §5.1.8.B.1.2.; §5.1.9. B.; §5.1.10.; §5.1.12.; and §5.1.13.:

20. The Council finds that exceptions to the parking requirements, including a waiver for not more than 97 required parking stalls, to locate parking within a setback, and within five feet of a residential structure, to waive the dimensional requirements for some parking stalls, to waive the screening requirements for parking lots, to waive the interior landscaping requirements, and to waive the off-street loading requirements, are in the public interest or in the interest of safety, or protection of environmental features for the following reasons:

- a) The Project will provide 243 parking stalls in the underground garage and 109 parking stalls above ground. Six handicap stalls will be provided in the outdoor parking lot and 7 additional handicap stalls will be provided in the underground garage. The Petitioner is proposing 1.25 parking stalls per residential unit and a 1/3 reduction of the commercial parking requirement in addition to a waiver not to exceed 97 stalls. The approximately 900 square foot average size of the units will likely attract tenants who have only one automobile per unit and use public transit, making a parking waiver appropriate at this site. Covered bicycle parking will also be provided in the below-grade garage to encourage bike use. The Petitioner intends to have car-sharing services provided on-site and has submitted a Transportation Demand Management Plan and Transportation Demand Management Subsidy Program hereto attached as Schedules C and D.
- b) The parking for the market rate residential units and Middle Income Units will be charged separately and in addition to the rent so as to encourage reduced car ownership and parking demand while encouraging increased transit usage.
- c) The commercial and residential uses are complementary and will allow for shared usage of the garage at different times.
- d) The consolidation of the six existing curb cuts at the Site on Washington Street and Walnut Street into one access/egress at Washington Terrace and one access/egress on Walnut Street improves access management and public safety by reducing the number of entrances and exits into the Site, and conforms to engineering best practices by moving the entrances and exits as far as practicable from the Washington Street and Walnut Street intersection.
- e) The location of parking within property boundary setbacks and within five feet of a residential structure makes for the most efficient layout of the parking lot and helps to maximize the number of stalls that will be available.
- f) The allowance for reduced length of parking stalls (from 19 feet to 18 feet) will not create a nuisance or hazard to vehicles.
- g) The Petitioner will dedicate at least two stalls to Zipcar or other similar services and have at least 30 at-grade bike parking stalls and covered bike storage for at least 160 bicycles in the garage below.
- h) The waiver for some parking lot interior landscape screening helps maximize the

number of parking stalls that will be available to the public, and a sufficient number of trees will be added to the Site so as to improve the streetscape, perimeter screening for the abutting residential uses, and public plaza area.

- i) The provisions for on-street and off-street loading facilities are sufficient to service the buildings and related uses on the site.
- j) The waiver to allow for reduced parking lot lighting is in the public interest and in the interest of abutting residential properties.
- k) The waiver for curbing, wheel stops, guard rails and bollards is appropriate given the proposed layout of the parking lot.

With regard to the special permit to waive of the number, size, location, and height of signs pursuant to § 5.2.13

- 21. The Council finds that the nature of the use of the premises, the architecture of the buildings, and the Project's location at the intersection of Washington Street and Walnut Street, justifies exceptions to the limitations imposed by §5.2 on the number, size, location, and height of signs. The Petitioner will submit a Comprehensive Sign Package for all signage to the Urban Design Commission for review.

With regard to the site plan approval criteria under §7.4.5.B.1.-7.:

- 22. The Council finds that the Project has been designed to ensure the safety of vehicular and pedestrian movement within the Site and in relation to adjacent streets, properties, and improvements, including regulation of the number, design and location of access driveways and the location and design of handicap parking. The two access driveways include stop signs, open viewing, low planters, and wide sidewalks, and have been located as far away from the intersection as is practical. (§7.4.5.B.1)
- 23. The Council finds that the methods for disposal of sewage, refuse and other wastes , and that the methods of regulating surface water drainage are adequate for the following reasons:
 - a) The City Engineering Division has reviewed submitted plans and raised no concerns with respect to this Project. The Engineering Division will review all plans submitted for building permits for compliance with City of Newton Engineering Division design standards prior to the issuance of any building permits.
 - b) The Petitioner will be making a \$782,880 contribution to the City of Newton for municipal sewer Inflow and Infiltration improvements representing an 8:1 ratio, as more particularly set forth in General Condition 7. (§7.4.5.B.2)
- 24. The Council finds that provisions for on-street and off-street loading facilities are sufficient to service the buildings and related uses on the site. (§7.4.5.B.3)
- 25. The Council finds that screening of parking areas and structures on the site from adjoining premises is sufficient based on the landscape plans referenced in Condition #1. (§7.4.5.B.4)

26. The Council finds that the Project avoids unnecessary topographical changes. (§7.4.5.B.5)
27. The Council finds that all utility service lines on site will be undergrounded. (§7.4.5.B.6)
28. The Council finds that the proposed site design and massing is appropriate in the context of the Newtonville commercial village center location and will serve to improve connections to the south side of Newtonville with an active pedestrian streetscape designed to invite the public into the site and with pedestrian improvement designed to be consistent with the Walnut Street streetscape south of the Massachusetts Turnpike. The Petitioner has incorporated a number of building treatments and design elements that enhance the appearance of the structure, including articulating the façade to proportion building elements to a human scale and setting the fifth story back from the street in certain locations. (§7.4.5.B.6)
29. The Council finds that the Petitioner worked with the community to design a Project that mitigates the removal of the existing buildings on site. (§7.4.5.B.7)
30. The Council finds the Project will provide public benefits to the residents of Newton as the Project includes 2,000 square feet of accessible community space to be used by local non-profit organizations engaged in the arts and community education.

In light of the findings set forth above and the following conditions imposed by this Council Order, the City Council finds that the public convenience and welfare of the City will be served, and the criteria of §4.2.1.C. 1.-5.; §4.2.2. B.1.; §4.2.5.A; §4.2.5. A. 1.-4. and 6; §5.1.4. A; §5.1.4. C.; §5.1.8.A.; §5.1.8. B. 1., and 2.; §5.1.9. B.; §5.1.10.; §5.1.12.; §5.1.13.; and §7.4.5. B. 1.-8. for granting special permits/site plan approval will be satisfied.

PETITION NUMBER: #96-17

PETITIONER: Mark Newtonville, LLC . As used herein, "Petitioner" shall refer to Mark Newtonville, LLC, and its successors and assigns

LOCATION: 22 Washington Terrace, 16-18 Washington Terrace, 10-12 Washington Terrace, 6-8 Washington Terrace, 875 Washington Street, 869 Washington Street, 867 Washington Street, 861-865 Washington Street, 857-859 Washington Street, 845-855 Washington Street, 245-261 Walnut Street (a/k/a 835-843 Washington Street), 241 Walnut Street, Bailey Place, 22 Bailey Place, 14-18 Bailey Place, and an unnumbered lot on Bailey Place, also identified as Section 21, Block 29, Lots 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 19A, 20, 21, 22, and 23, Ward 2, being

currently zoned BU1, BU2, and Public Use and being rezoned in part as MU4 (the Project Site)

OWNER: Mark Newtonville, LLC, Mark Lolich, LLC, and Sunoco, LLC, their successors and assigns

ADDRESS OF OWNER: 57 River Street, Suite 106, Wellesley, MA 02481

TO BE USED FOR: A mixed use development in excess of 20,000 square feet consisting of three interconnected buildings with building heights of not more than 60 feet and five stories, total gross floor area up to 236,000 square feet incorporating no more than 160 residential units, not exceeding 47,165 square feet of commercial space, not less than 2,000 square feet of community space, not less than 350 on-site parking stalls outside at grade or within a below-grade garage, and related site improvements; to authorize uses including retail of more than 5,000 square feet, personal service of more than 5,000 square feet, restaurants over 50 seats, standalone ATMs, health club establishments at or above ground floor, animal service, and street level office

CONSTRUCTION: Masonry structure over a structural steel and concrete base

EXPLANATORY NOTES: Special permits, site plan approval, and parking waivers for the Project, all as more specifically set forth in Schedule A, attached hereto, and as further referenced in the Findings.

ZONING: MU4 and BU2 pursuant to Petition #95-17

Approved subject to the following Conditions.

General 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 the plans identified in Schedule B, and which are hereby incorporated by reference (the "Special Permit Plan Set"). The Project approved by this Order contains 160 residential units as reflected in the site plan referred to as "160 Unit Plans." In the event that the Petitioner voluntarily elects to reduce the number of residential units from 160 to 140, this Order approves the Project with 140 residential units to be constructed consistent

with the site plan referred as "140 Unit Plans." The number of Inclusionary and Middle Income units will be reduced pro rata from 24 Inclusionary/16 Middle Income units in a 160 unit Project to 21 Inclusionary/14 Middle Income units in a 140 unit Project. The number of on-site parking stalls outside at grade within the Project Site or within a below-grade garage, shall be no less than 350 in a 160 unit Project, and no less than ____ in a 140 unit Project. While the I&I contribution will be reduced due to the reduction in the number of residential units, the Petitioner shall be required to comply with all other monetary or public benefit obligations in this Order regardless of whether the Project contains 160 or 140 residential units. Final elevations, final floor plans, and any other documents required to be revised by virtue of a decrease in the residential density from 160 to 140 units shall be submitted to the Director of Planning and Development for review and approval, consistent with the terms of this Order, and shall not require the further review or approval of the City Council.

2. The Petitioner shall merge the existing parcels in one new lot no later than thirty (30) days after the issuance of the first building permit (other than a demolition permit). Proof of recording a plan with the Middlesex South District Registry of Deeds shall be submitted to the Department of Planning and Development, the Inspectional Services Department, and the City Solicitor's office.
3. This Special Permit/Site Plan Approval shall be deemed to have been (i) vested, for the purposes of utilizing the benefits of the change of zone authorized by Council Order #96-17, upon the submission to the City of an application for a building permit (other than a demolition permit) for all or any portion of the Project; and (ii) vested and exercised, with respect to the entire Project, once construction under this Special Permit/Site Plan Approval has begun for any portion of the Project.
4. Prior to the issuance of any building permits for the vertical construction of the Project, the Petitioner shall submit stamped and signed engineered plans for the reconstruction of the intersection at Walnut and Washington Streets as described on Schedule E attached hereto, for review and approval by the Director of Planning and Development and the Commissioner of Public Works in consultation with the Director of Transportation, and the City Engineer, for consistency with (i) the City's Complete Streets Policy, and (ii) to the extent such plans have been developed at the time of issuance of the building permit for the vertical construction of the Project, the Newtonville Streetscape Project south of the Massachusetts Turnpike. These improvements will be completed by the Petitioner at its sole cost and expense.
5. Prior to the issuance of any final certificates of occupancy, and at the Petitioner's sole cost and expense, the Petitioner shall complete the reconstruction of the intersection of Washington Street and Walnut Street as described on Schedule E attached hereto. The City Engineer shall also inspect and approve the improvements upon completion.

6. The Petitioner shall make or fund off-site improvements in the vicinity of the Project categorized as: (a) streetscape and street beautification initiatives in the vicinity of the Project including the bridge over the Massachusetts Turnpike and MBTA railroad line, and (b) transportation enhancements for all travel modes, including, but not limited to, pedestrian, bicycle, and elements related to the Newtonville MBTA commuter rail station. Within ninety (90) days after the issuance of a building permit for vertical construction, the City Council shall identify the specific improvements to be made under the foregoing categories and the City Council shall either direct the Petitioner to construct the improvements identified by the City Council, at Petitioner's expense, for an amount not to exceed \$700,000.00, or it shall direct the Petitioner to pay the sum of \$700,000.00 to the City, which the City shall use to construct the off-site improvements. In the event that the City Council elects to accept payment of \$700,000.00 for the off-site improvements, funds from the account in which the \$700,000.00 will be held shall be appropriated to construct the off-site improvements in accordance with municipal finance law. In the event that the City Council directs the Petitioner to construct the improvements and the final cost of the improvements is less than \$700,000.00, the Petitioner shall pay the balance to the City and the City shall use the funds for additional off-site improvements in accordance with the provisions of this condition. In the event that the City Council fails to identify the improvements to be made within ninety (90) days after the issuance of a building permit for vertical construction, in accordance with this condition, then the Petitioner shall pay the sum of \$700,000.00 to the City.
7. Prior to the issuance of any certificates of occupancy, temporary or final, for the residential portion of the site, the Petitioner, if it elects to pursue development of the Project with 160 residential units, shall pay an amount of \$782,880 to the City, which sum represents an 8:1 ratio for municipal sewer Inflow and Infiltration improvements in accordance with a memorandum from Associate City Engineer John Daghlion dated November 29, 2016, a copy of which is on file in the office of the City Clerk. In the event the Petitioner elects to pursue the Project with 140 residential units, Petitioner shall pay an amount to the City for municipal sewer Inflow and Infiltration improvements based on an 8:1 ratio calculated in a similar fashion to the calculations used in said Memorandum, but in no event shall the amount due exceed \$782,880.
8. Prior to the issuance of any certificates of occupancy, temporary or final, for the residential portion of the site, the Petitioner shall fund a Transportation Demand Management Subsidy Program (the "TDM Subsidy Program") in the amount of \$300,000. The details of the TDM Subsidy Program are set forth in Schedule C. The Transportation Demand Management Plan is attached as Schedule D. Ongoing costs associated with the Transportation Demand Management are not included in the \$300,000.00 amount.
9. In accordance with the City's Inclusionary Zoning Ordinance (§5.11.4), 15% of the residential units in the Project shall be restricted for Inclusionary Units that shall be made available to households earning up to 80% of Area Median Income (AMI), as designated by the U.S. Department of Housing and Urban Development, adjusted for household size. As proposed

in the Preliminary IHP, 50% of these units shall be made available to households earning up to 80% AMI, and 50% of these units shall be made available to households earning up to 50% AMI. Monthly housing costs (inclusive of heat, hot water, electricity, water and sewer, and one parking space) shall not exceed 30% of the applicable monthly income limit for that unit. The maximum number of the Inclusionary Units shall be designated as Local Preference units, as permitted and defined by the Massachusetts Department of Housing and Community Development (DHCD). The Preliminary IHP assumes the Project will contain 160 residential units. If the Petitioner elects to pursue the Project with 140 residential units, the Petitioner shall revise the Preliminary IHP accordingly to reflect the actual number of residential units and the actual number of Inclusionary Units based on the percentages set forth in this condition.

10. In addition to the Inclusionary Units, and as proposed in the Preliminary IHP, 10% of the residential units in the Project shall be restricted for Middle Income Units that shall be made available to households earning between 80% and 120% of AMI, as designated by HUD, adjusted for household size. As proposed in the Preliminary IHP, 50% Middle Income Units shall be made available to households earning between 80% AMI and 100% AMI, and 50% of the Middle Income Units shall be made available to households earning between 100% AMI and 120% AMI. For the purposes of calculating rents, monthly housing cost calculation for the Middle Income Units will not include an allowance for utilities that are not included in the rent. The Preliminary IHP assumes the Project will contain 160 residential units. If the Petitioner elects to pursue the Project with 140 residential units, the Petitioner shall revise the Preliminary IHP accordingly to reflect the actual number of residential units and the actual number of Middle Income Units based on the percentages set forth in this condition.
11. To the extent permitted by applicable regulations of DHCD, the Inclusionary Units shall be eligible for inclusion on the State's Subsidized Housing Inventory (SHI) as Local Action Units through DHCD's Local Initiative Program. Prior to the issuance of any building permits for the construction of the Project, the Petitioner, City, and DHCD will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the Law Department, which will establish the affordability restriction for the Inclusionary Units in perpetuity.
12. The Middle Income Units will be subject to an Affordable Housing Use Restriction, in a form approved by the Law Department, which shall be substantially similar in form and intent to the Regulatory Agreement and Declaration of Restrictive Covenants that governs the Inclusionary Units. The restriction shall be in perpetuity and shall be executed between the Petitioner and the City prior to the issuance of any building permits for the construction of the project.
13. Prior to the issuance of any building permits for the vertical construction of the Project, the Petitioner shall provide a final Inclusionary Housing Plan and Affirmative Marketing and Resident Selection Plan for review by the Director of Planning and Development. The

Inclusionary Housing Plan and Affirmative Marketing and Resident Selection Plan must meet the requirements of DHCD's guidelines for Affirmative Fair Housing Marketing and Resident Selection and be consistent with §5.11.9. of the Newton Zoning Ordinance. The Inclusionary Housing Plan and Affirmative Marketing and Resident selection plan should include both the Inclusionary Units and the Middle Income Units and treat the units the same with respect to Affirmative Marketing and advancing Fair Housing in Newton. In accordance with DHCD's current guidelines, the units will be affirmatively marketed and leased through a lottery.

14. The project shall include at least six three bedroom units, of which at least one of these units will be restricted as an Inclusionary Unit (made available to households earning up to 80% of AMI, as designated by HUD), at least one unit will be restricted as a Middle Income Unit (made available to households earning between 80% and 120% of AMI, as designated by HUD), and the remainder may be made available at market rates.
15. All residential units will conform to the Massachusetts Architectural Access Board (MAAB) requirements for "Group 1" units. In addition, per MAAB guidelines, 5% of the units shall be designed as "Group 2A" units, which are designed spatially for immediate wheelchair use.
16. The Petitioner shall design and construct a high R-value, durable, environmentally sensitive building. Mechanical, Electrical and Plumbing systems shall be chosen and sized to meet the minimal heating and cooling loads and to ensure occupant comfort. The building shall achieve LEED Gold for Homes Midrise Version 3 certification, and proper commissioning, optimization, and education for building management and tenants shall be conducted to operate the building at the designed level of performance.

Conditions Related To Construction

17. All construction activity shall be limited to 7AM-6PM Monday through Friday and 8AM-5PM on Saturdays excluding holidays, unless extended or restricted by the Commissioner of Inspectional Services or the Commissioner of Public Works. Interior work may occur at times outside of the hours specified above, but only after the building is fully enclosed, and only if the work complies with the provisions of the Noise Control Ordinance of the City of Newton. In addition, access to and egress from the Site for work conducted outside of the hours specified above, shall be from Washington Street only. Notwithstanding the foregoing, there shall be no restriction on work hours for work within Washington Terrace, Washington Street, and Walnut Street in order to limit disruption of the use of these roadways.
18. The Petitioner shall communicate regular construction updates to the Newtonville Area Council and all immediate abutters during construction as appropriate.
19. Not less than two (2) months prior to the commencement of any Site Work and/or other construction activities related to the work approved through this Special Permit, a Construction Liaison Committee shall be established consisting of two (2) designees of the

Petitioner, two (2) immediate abutters, and one (1) resident from _____ and _____, the Ward 2 Councilors, and any other interested Councilors. The City Council shall appoint the resident neighborhood members. Meetings of the Liaison Committee will be open to the public, and the Liaison Committee will establish such agenda and procedures as it shall see fit.

The purposes of the Liaison Committee shall be:

- To enhance and ensure communication as to the status and progress of the construction of the Project by the Petitioner.
- To provide a forum for initial presentation of a construction schedule and any significant changes to schedule or changes of plans for which public review is appropriate.
- To provide a public forum for presentation of supplementary permit requests to the extent required; and
- To receive and deal with construction-specific issues including, without limitation, noise, dust, parking and traffic; to monitor implementation of the final Construction Management Plan; and to receive notices and communications from the Department of Inspectional Services and the Planning and Development Department.

The Liaison Committee shall meet regularly (monthly for the first six (6) months of the construction period, and thereafter, every three (3) months, unless there is consensus within the Liaison Committee that no meeting is necessary until at least six (6) months after the initial occupancy of the final building to be completed. The first meeting shall be convened jointly by the Petitioner and the Ward 2 Councilors. The Liaison Committee shall work by consensus, but nothing in the establishment of the Liaison Committee shall inhibit any member, including the Petitioner, from engaging in any lawful activities.

The Liaison Committee shall, at a minimum, give written notice to the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development of its meetings, and such notice shall be posted on the construction activity website that the Petitioner shall be required to establish pursuant to its Construction Management Plan.

20. The Petitioner shall comply in all material respects with the final Construction Management Plan to be submitted for review and approval to the Commissioner of Inspectional Services, in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public Works, and the City Engineer. The Final Construction Management Plan shall include, but not be limited to, the following provisions:
 - a. 24-hour contact information for the general contractor of the Project. This contact information shall be provided to the Commissioner of Inspectional Services and to the Newton Police Department, shall be posted on a construction activity website to be

established by the Petitioner, and shall be posted on the job site.

- b. The proposed schedule of the Project, including the general phasing of the construction activities.
 - c. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for delivery vehicles, and location of any security fencing.
 - d. Proposed truck route(s) that minimize travel on local streets.
 - e. Proposed methods for dust control including but not limited to: covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; and locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the Site.
 - f. Proposed methods of noise control, in accordance with the City of Newton's Noise Ordinance. Staging activities shall be conducted in a manner that will minimize off-site impacts of noise. Noise producing staging activities shall be located as far as practical from noise sensitive locations.
 - g. A plan for rodent control during construction.
 - h. Offer to provide a pre-construction survey at no charge to the owners of the properties abutting the Site.
21. The Petitioner shall be responsible for securing and paying police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
22. The Petitioner shall be responsible for repairing any damage to public ways and property caused by any construction vehicles. All repair work shall be done prior to the issuance of a final Certificate of Occupancy, unless the Commissioner of Public Works determines that the damage to the public way is so extensive that it limits the use of the public way. In such case the repair work must be initiated within one month of the Commissioner making such determination and shall be conducted consistent with City Construction Standards, and shall be completed within an appropriate time frame, as determined by the Commissioner.
23. At the Petitioner's sole expense, the Petitioner shall locate all utility service lines on site underground, including any utility service lines along the Project's frontage on Washington and Walnut Streets if such lines are present, subject to necessary approvals from utility companies.

Conditions Precedent To The Issuance Of Any Building Permits

24. No building permit for the vertical construction of the Project shall be issued pursuant to this Special Permit/Site Plan approval until the Petitioner has:

- a. Recorded a certified copy of this Council order with the Registry of Deeds for the Southern District of Middlesex County and/or the Southern Middlesex Land Court, as appropriate.
- b. Filed a copy of such recorded Council order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
- c. Obtained a written statement from the Department of Planning and Development that confirms the final building permit plans and façade elevations are consistent with plans approved in Condition #1.
- d. Submitted a final Inclusionary Housing Plan for review and approval by the Director of Planning and Development that is certified as compliant by the Director of Planning and Development with the information required to be included in such Plan pursuant to §5.11.9. of the Zoning Ordinance.
- e. Submitted final engineering, utility, and drainage plans, and an Operations and Maintenance plan for Stormwater Management, for review and approval by the City Engineer. A statement certifying such approval shall have been filed with the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.
- f. Submitted a final Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public Works, the City Engineer, and the Director of Transportation.
- g. Submitted sample building façade materials and colors for review and approval by the Director of Planning and Development.
- h. Submitted a LEED Checklist to the Director of Planning and Development for review and approval, indicating which points the Project intends to realize in order to achieve LEED Gold for Homes Midrise Version 3 certification.
- i. Submitted to the Law Department copies of fully executed Regulatory Agreements and Affordable Housing Restriction for all Deed Restricted Units, as described in Conditions 9 through 12.

Conditions Precedent To The Issuance Of Any Occupancy Permits

25. No final occupancy permit for the use covered by this Special Permit/Site Plan approval shall be issued until the Petitioner has:
 - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect and civil engineer certifying compliance with Condition 1.

- b. Submitted to the Department of Inspectional Services, the Department of Planning and Development, and the Engineering Division final as-built survey plans in digital format.
- c. Completed the payment to the City for municipal sewer Inflow and Infiltration improvements as required in Condition 7.
- d. Filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details for the project site have been constructed to standards of the City of Newton Public Works Department.
- e. Filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details for the improvements as described in Schedule E have been constructed to standards of the City of Newton Public Works Department.
- f. Submitted to the Department of Planning and Development and the Health Department a final environmental report from a Licensed Site Professional documenting that the Site can be used for residential apartments.
- g. Filed evidence that the criteria for LEED Gold certification have been satisfied.
- h. Filed with 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, fencing, and parking areas.
- i. Provided evidence satisfactory to the Law Department that the Regulatory Agreements for all Deed Restricted Units have been recorded at the Southern Middlesex District Registry of Deeds and/or Southern Middlesex Land Court, as appropriate.
- j. Deed Restricted Units shall be constructed and available for occupancy coincident with market rate units, such that no more than three market rate units may receive occupancy permits until the corresponding affordable unit has received its occupancy permit.
- k. The Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for portions of the buildings, including both the residential and commercial space, prior to installation of required on-site landscaping/ exterior hardscape improvements required in Schedule E , provided that the Commissioner of Inspectional Services in consultation with the Director of Planning and Development and the Commissioner of Public Works concludes that the level of completion of the improvements is sufficient to permit temporary occupancy of the buildings without harm to public safety or convenience. Prior, however, to issuance of any temporary certificate of occupancy pursuant to this condition, the Commissioner of Inspectional Services shall require that the Petitioner first file a bond, letter of credit, cash or other security in the form

satisfactory to the Law Department in an amount not less than 135% of the value of the aforementioned remaining improvements.

- I. Completed the off-site improvements or paid to the City the amount of \$700,000.00 in accordance with General Condition 6.

Ongoing Conditions To Be In Effect For So Long As The Project Authorized By This Special Permit/Site Plan Approval Exists

26. The cost of residential tenant parking shall be charged separately from residential tenant rents provided, however, that one parking stall shall be provided for the household of each Inclusionary Unit which needs a parking stall without charge to the tenant of such unit.
27. All on-Site landscaping associated with this Special Permit/Site Plan Approval shall be installed and maintained in good condition. Any plant material that becomes diseased or dies shall be replaced on an annual basis with similar material.
28. The Petitioner shall be responsible at its sole cost for trash and recycling disposal for the Project. The trash and recycling disposal shall be scheduled at such times to minimize any disruption of the on-site parking.
29. A Comprehensive Sign Package including all tenant signage shall be submitted for review by the Urban Design Committee.
30. Managed or valet parking is permitted pursuant to a professionally-prepared Parking Management Plan, which shall be maintained on file and available for review upon request by the Director of Planning and Development or the Director of the Transportation Division of Public Works. Valet parking may be located within the Project Site or off-Site.
31. Except as set forth in Condition #1, no changes to the Project shall be permitted, except as otherwise set forth in this Special Permit/Site Plan Approval, unless they are consistent with the Special Permit Plan Set. Consistency determinations shall be subject to review and approval by the Commissioner of Inspectional Services but shall not require approval of the Council. When making a request for a consistency determination, the Petitioner shall submit updated construction sequencing plans and a memorandum for the Commissioner of Inspectional Services demonstrating that such changes (i) do not constitute a reallocation or reconfiguration of square footage among uses in the Project or otherwise allowed in the MU4 district such that no increase in the parking waiver approved hereunder is required; (ii) do not require additional zoning relief (other than the categories of relief granted and/or modified pursuant to the Special Permit/Site Plan Approval; and (iii) maintain the same percentage of useable open space as shown on the Special Permit Plan Set. If the Commissioner of Inspectional Services grants any consistency ruling pursuant to this

Condition, he shall provide a copy to the Land Use Committee of the Council. The LUC shall not be required to vote or to approve the consistency request.

32. At its sole expense and within 12 months of the issuance of final certificates of occupancy, the Petitioner shall complete a post-occupancy traffic study to document and assess (i) the actual traffic characteristics, volumes, and operating conditions of the Project including safety and crash results; (ii) evaluate the success and refine the elements of the TDM Measures including parking utilization and residential and commercial tenant mode shares; and (iii) assess traffic volumes and operating conditions at the intersection of Walnut and Washington Streets, at the intersection of Washington Street and Lowell Avenue, at the intersection of Foster Street and Walnut Street, at the intersection of Foster Street and Lowell Avenue, at the intersection of Page Road and Walnut Street, and at the intersection of Page Road and Lowell Avenue. Traffic counts shall be performed under average-month conditions while public schools are in regular session. The results shall be submitted to the City prior to the end of the calendar year in which the study is completed. If the results indicate the actual measured traffic volumes associated with the Project as constructed and occupied exceed the trip estimates presented in the Traffic Impact Assessment by more than 10 percent of the projected trip generation for the then occupied uses as measured at the two primary driveways serving the Project or the intersection of Walnut and Washington Streets, then the Petitioner shall correct the problem by implementing the following mitigation measures:
 - a. Appropriately adjust the traffic signal timing, phasing and coordination for the Walnut and Washington Streets intersection;
 - b. Implement refinements to on-site traffic flow and parking management;
 - c. Expand or modify the elements of the Transportation Demand Management Plan measures in order to increase use of public transportation and/or other alternatives to automobile travel, subject to review of the Director of Planning and Development in consultation with the City's Director of Transportation.
33. At least 2,000 square feet of accessible community space as shown on Plan A1.13, Second Floor, shall be made available for lease to a local non-profit organization engaged in the arts through community education. The Owner shall lease such space to the non-profit organization for \$1.00 per year rent plus the cost of utilities actually consumed for such space. The Owner may also require that the non-profit lessee maintain insurance coverage. The terms of the lease shall require the non-profit lessee to provide programming for the use of such space and also require the non-profit lessee to allow other local non-profits or community groups to use such space at least one evening a week and/or at such other times as are convenient for the non-profit lessee. The Owner shall consult with the City's Cultural Affairs office to help find the original local non-profit organization, and any replacement lessee should the original local non-profit be unable to continue the lease at any time in the future while this special permit is being exercised.

34. The Petitioner and its successors shall not lease commercial space in the Project to any commercial banks. This condition does not prohibit ATM machines, provided that no ATM machine shall be allowed on the Washington or Walnut Streets exterior facades of the building.
35. Funded a Transportation Demand Management program with \$300,000 as described in Schedule C.
36. Petitioner may store snow on the Site to the extent that it does not impede parking and circulation and pedestrian movements. To the extent snow removal is necessary, such removal will be conducted pursuant to a Snow Removal Plan, which shall be maintained on file at the Project and available for review upon request by the Director of Planning and Development. The Petitioner shall remove snow along the sidewalks abutting the Site in accordance with the City's snow removal ordinance.

SCHEDULE B

PLANS



Gross Ground Floor Area	
Space	Area (SF)
Total Ground Floor Commercial	39,260 SF
Commercial Loading	500 SF
Residential @ Ground Floor	5,405 SF
Ramp to Underground Garage	1,925 SF
Pedestrian Passage	810 SF
Shared Trash	1,205 SF
Total Ground Floor	49,105 SF

Gross Commercial Floor Area	
Total Ground Floor Commercial	39,260 SF
Basement Level Commercial	4,600 SF
Total Commercial	43,860 SF

Gross Floor Area	
Basement Commercial	4,600 SF
L1	49,105 SF
L2	51,115 SF
L3	49,025 SF
L4	47,045 SF
L5	30,585 SF
Total	231,475 SF

Community Space	
Community Room	2,030 SF
Community Crossing	810 SF
Total Community Space	2,840 SF

Unit Mix							
	ST	1BR	2BR	3BR	Total Units		
Building 1	7	28	28	2	65		
Building 2	5	14	7	3	29		
Building 3	4	33	28	1	66		
Total Units	16	75	63	6	160		
Unit Ratio	10.0%	46.9%	39.4%	3.8%	Net Rentable	Avg. Net Rentable Per Unit	
Ratio Target	10%	35%	38%	5%			
Avg Unit Area	582.8	761.9	1093.3	1315.8			
Unit Count By Level					143,240.0		895.3
Level 2	Level 3	Level 4	Level 5	Total			
42	47	45	26	160			

Avg. Gross Unit Area
1,111.1

Washington Place Development

April 4, 2017

160 Unit Plans

160 Unit Plans

40 FOSTER ST
ROBERT & ELIZABETH SMITH

34 FOSTER ST
DAVID & FRANCINE SMITH

30 FOSTER ST
JOHN & MARI WILSON

20 FOSTER ST
ELLEN FITZPATRICK

14-16 FOSTER ST
BETTE WHITE

24-26 FOSTER ST LLC

227 WALNUT ST
PATRICK SLATTERY



ARCHITECTURE PLANNING INTERIORS

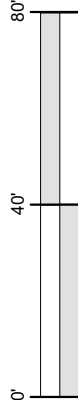
WASHINGTON PLACE

Ground Floor Plan

04/04/2017 | Scale: 1" = 40'-0"

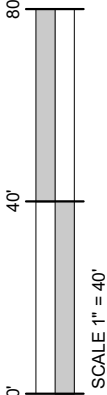
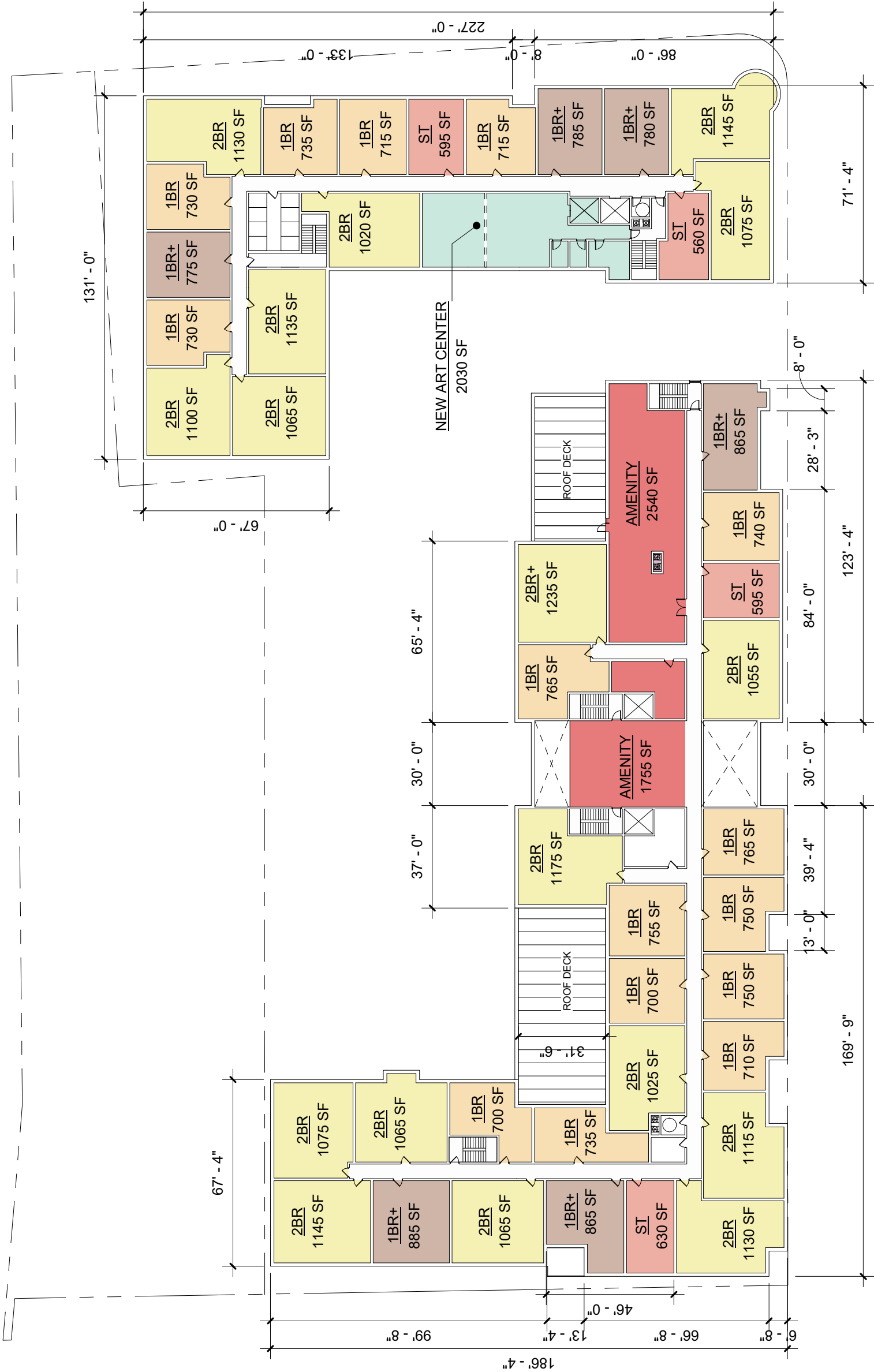


WASHINGTON STREET



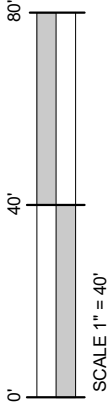
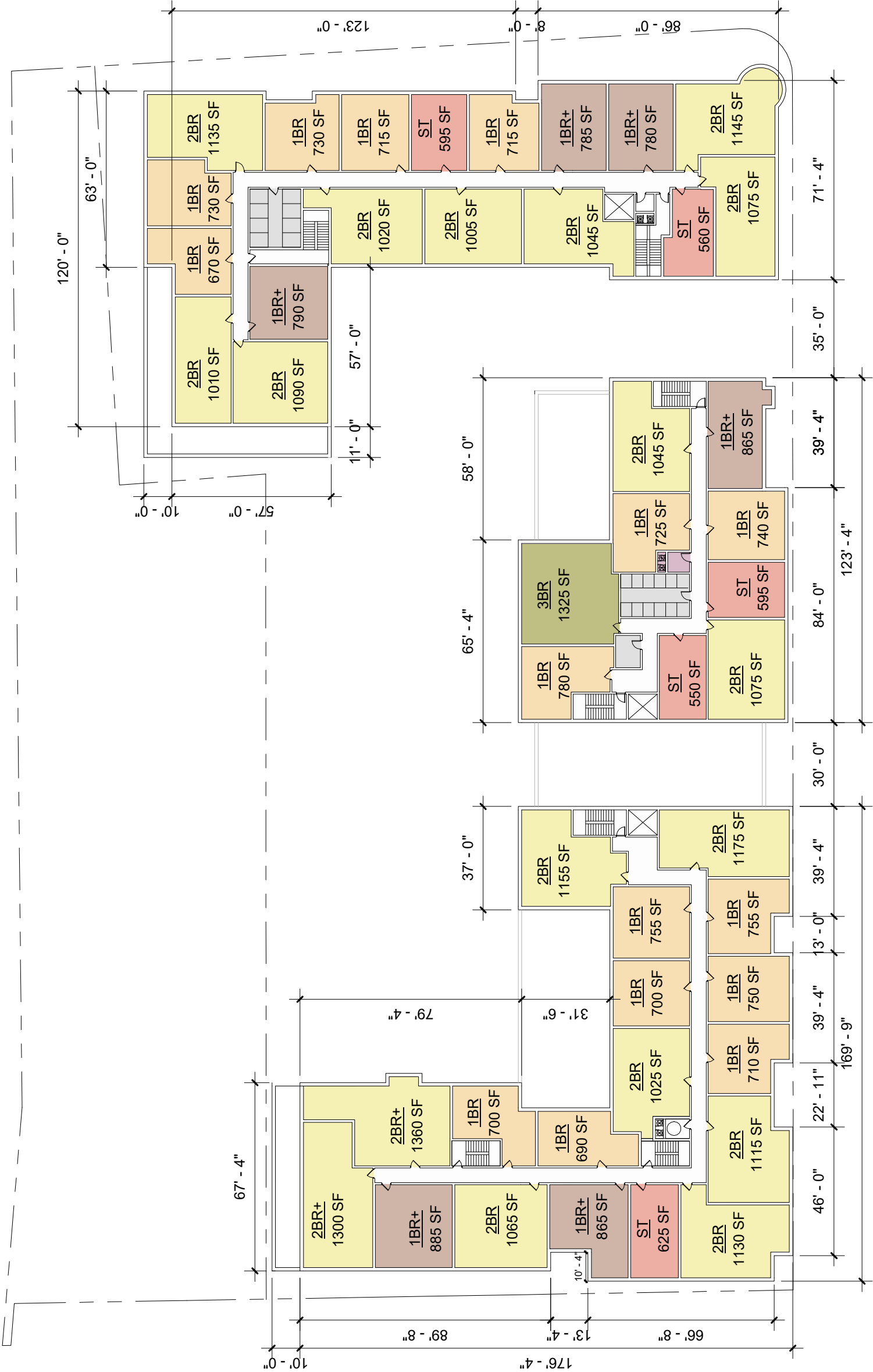
SCALE 1" = 40'

160 Unit Plans

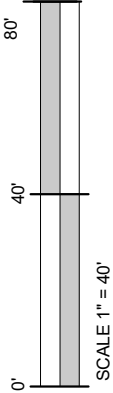
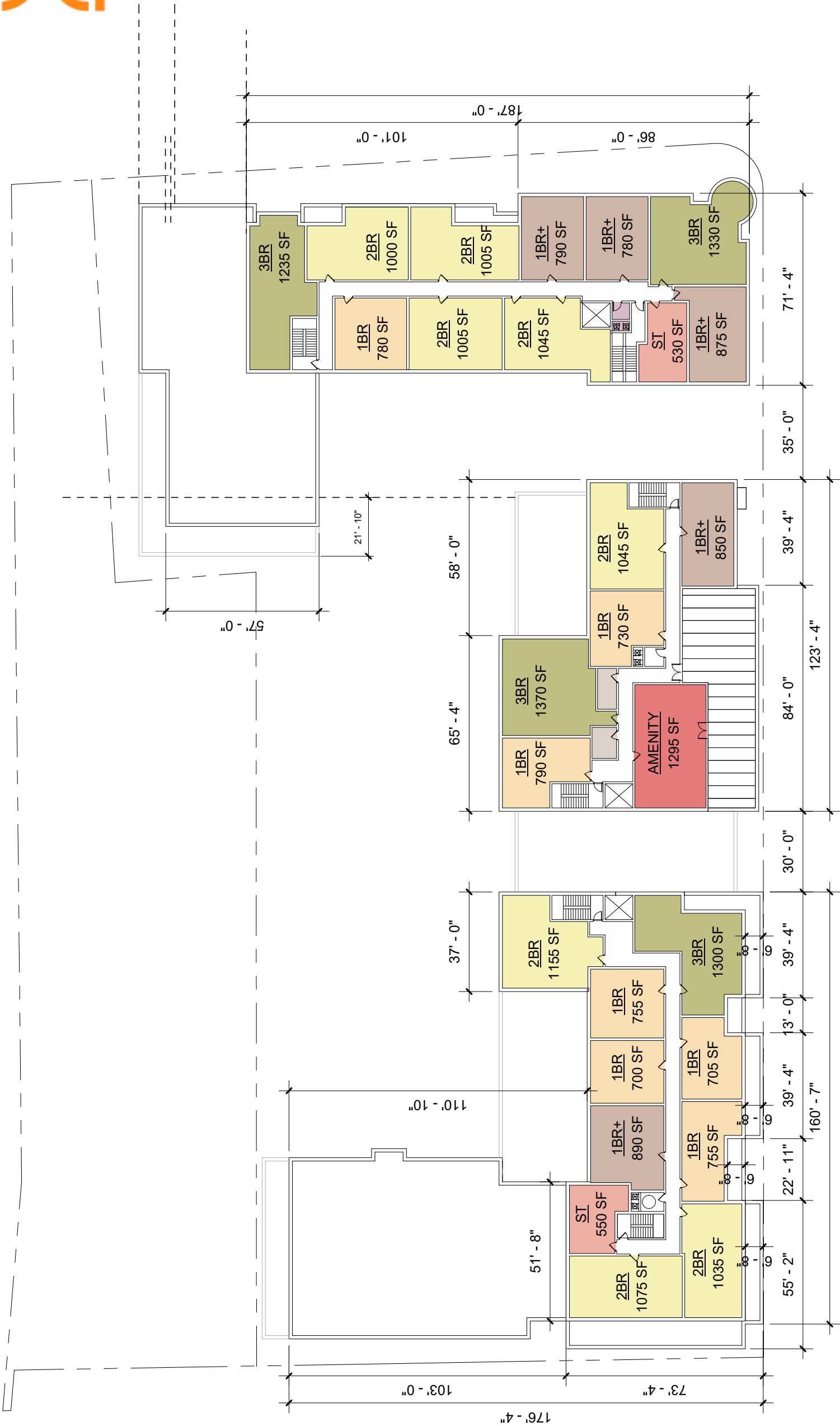


SCALE 1" = 40'

160 Unit Plans



160 Unit Plans



SCALE 1" = 40'

140 Unit Plans



Gross Ground Floor Area	
Space	Area (SF)
Total Ground Floor Commercial	42,565 SF
Commercial Loading	1,375 SF
Residential @ Ground Floor	5,960 SF
Ramp to Underground Garage	1,155 SF
Pedestrian Passage	810 SF
Shared Trash	1,120 SF
Meter	240 SF
BOH	380 SF
Total Ground Floor	53,605 SF

Gross Commercial Floor Area	
Total Ground Floor Commercial	42,565 SF
Basement Level Commerical	4,600 SF
Total Commercial	47,165 SF

Gross Floor Area	
Basement Commercial	4,600 SF
L1	53,605 SF
L2	50,455 SF
L3	49,045 SF
L4	47,110 SF
L5	10,115 SF
Total	214,930 SF

Community Space	
Community Room	2,030 SF
Community Crossing	810 SF
Total Community Space	2,840 SF

Unit Mix						
	ST	1BR	2BR	3BR	Total Units	
Building 1	4	24	25	6	59	
Building 2	4	9	10	0	23	
Building 3	5	32	21	0	58	
Total Units	13	65	56	6	140	
Unit Ratio	9.3%	46.4%	40.0%	4.3%	Net Rentable	Avg. Net Rentable Per Unit
Ratio Target	10%	35%	38%	5%		
Avg Unit Area	565.4	769.1	1096.3	1283.3		
Unit Count By Level					126,435.0	903.1
Level 2	Level 3	Level 4	Level 5	Total		
					Avg. Gross Unit Area	1,119.5

Washington Place Development

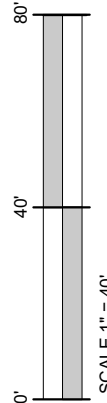
May 23, 2017

140 Unit Plans with Alternate Site Plan

140 Unit Plans



WASHINGTON STREET



SCALE 1" = 40'

WASHINGTON PLACE
Ground Floor Plan

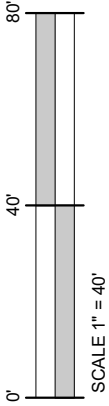
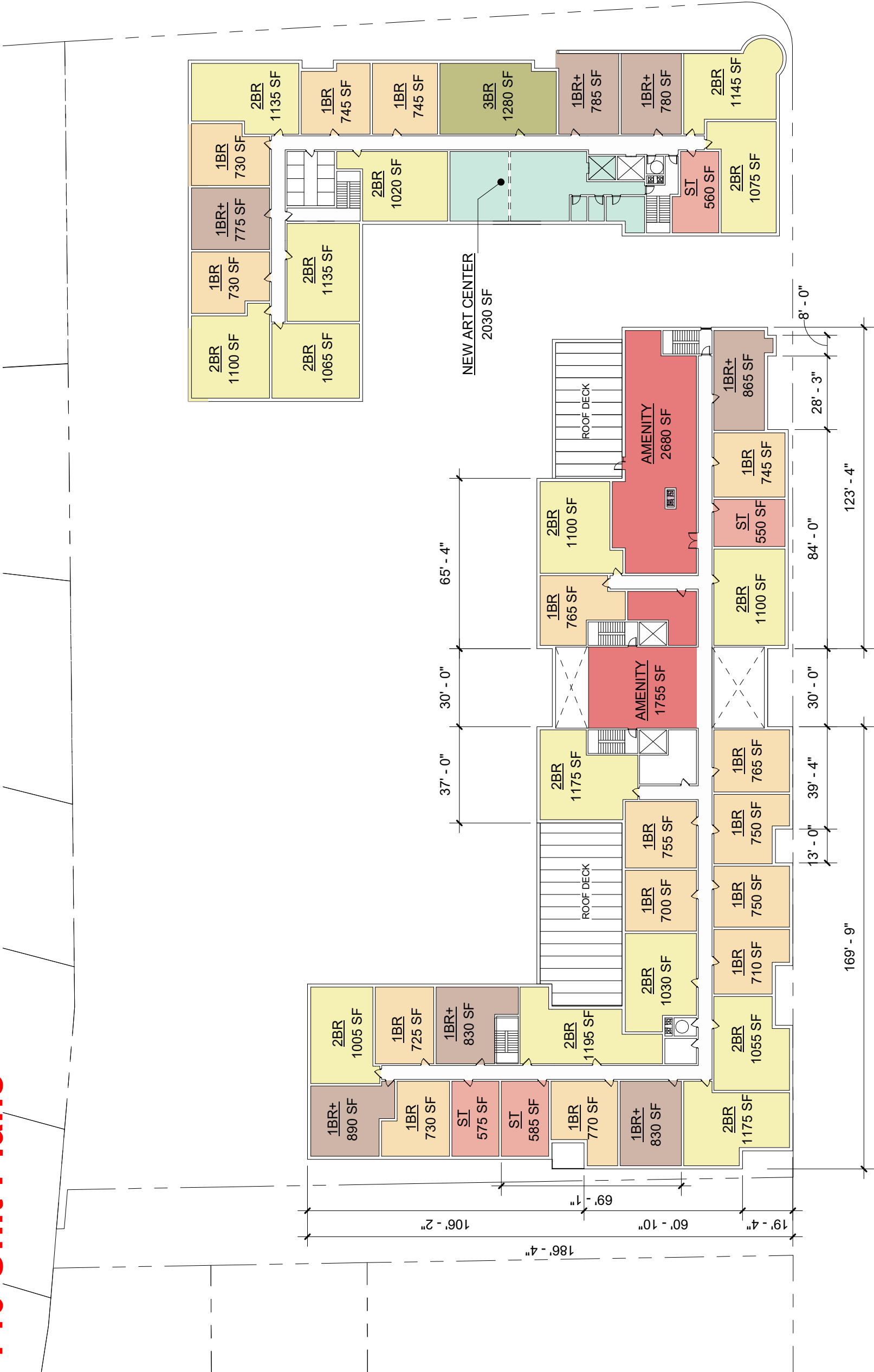
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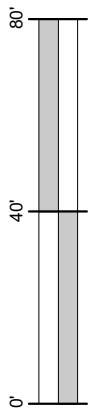
140 Unit Plans

WASHINGTON PLACE
Second Floor Plan

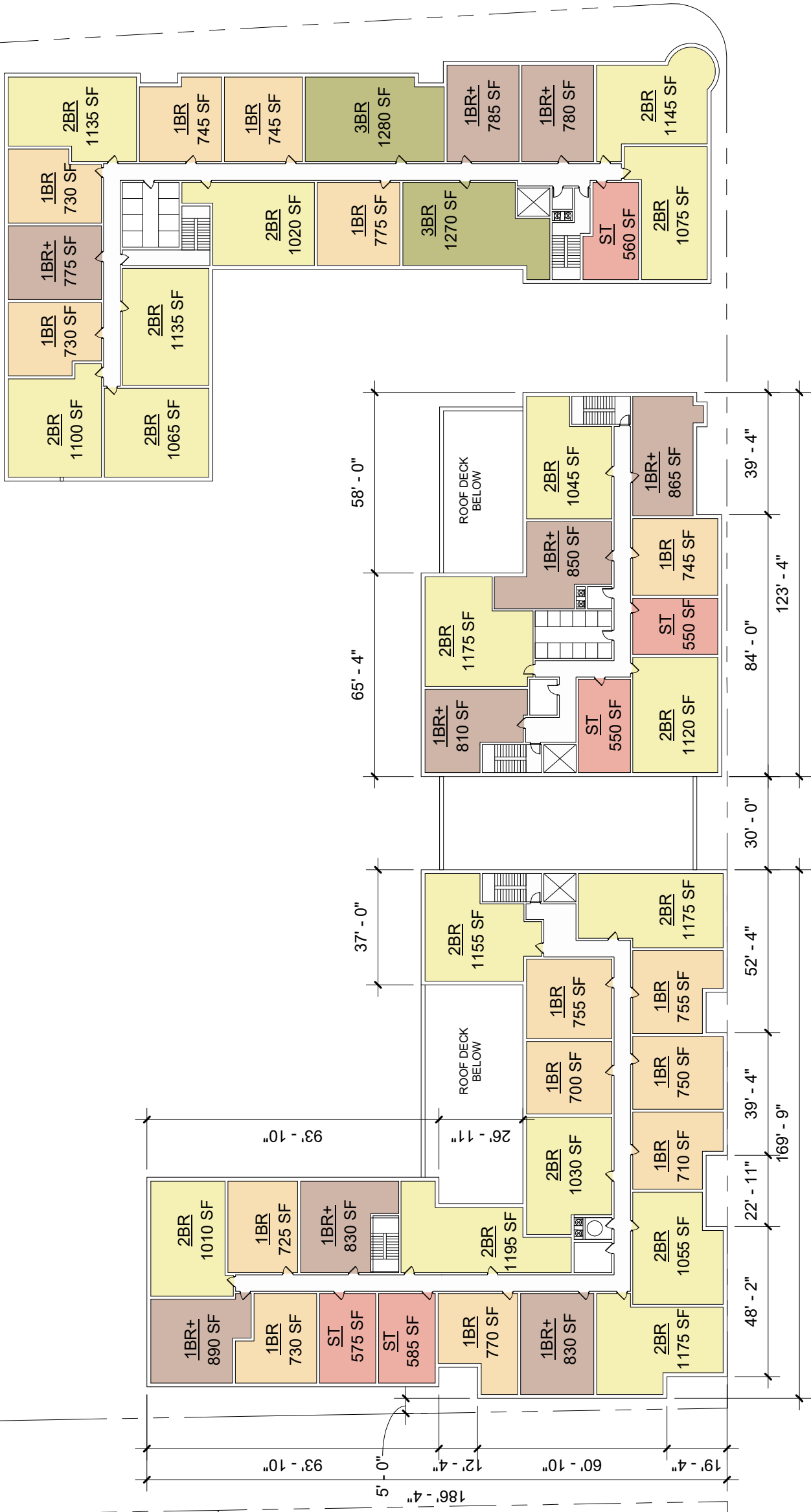
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SCALE 1" = 40'

[illegible]

SCALE 1" = 40'



WASHINGTON PLACE
Third Floor Plan
05/22/2017 | Scale: 1" = 40'-0"

05/22/2017 | Scale: 1" = 40'-0"

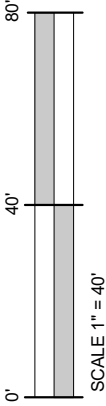
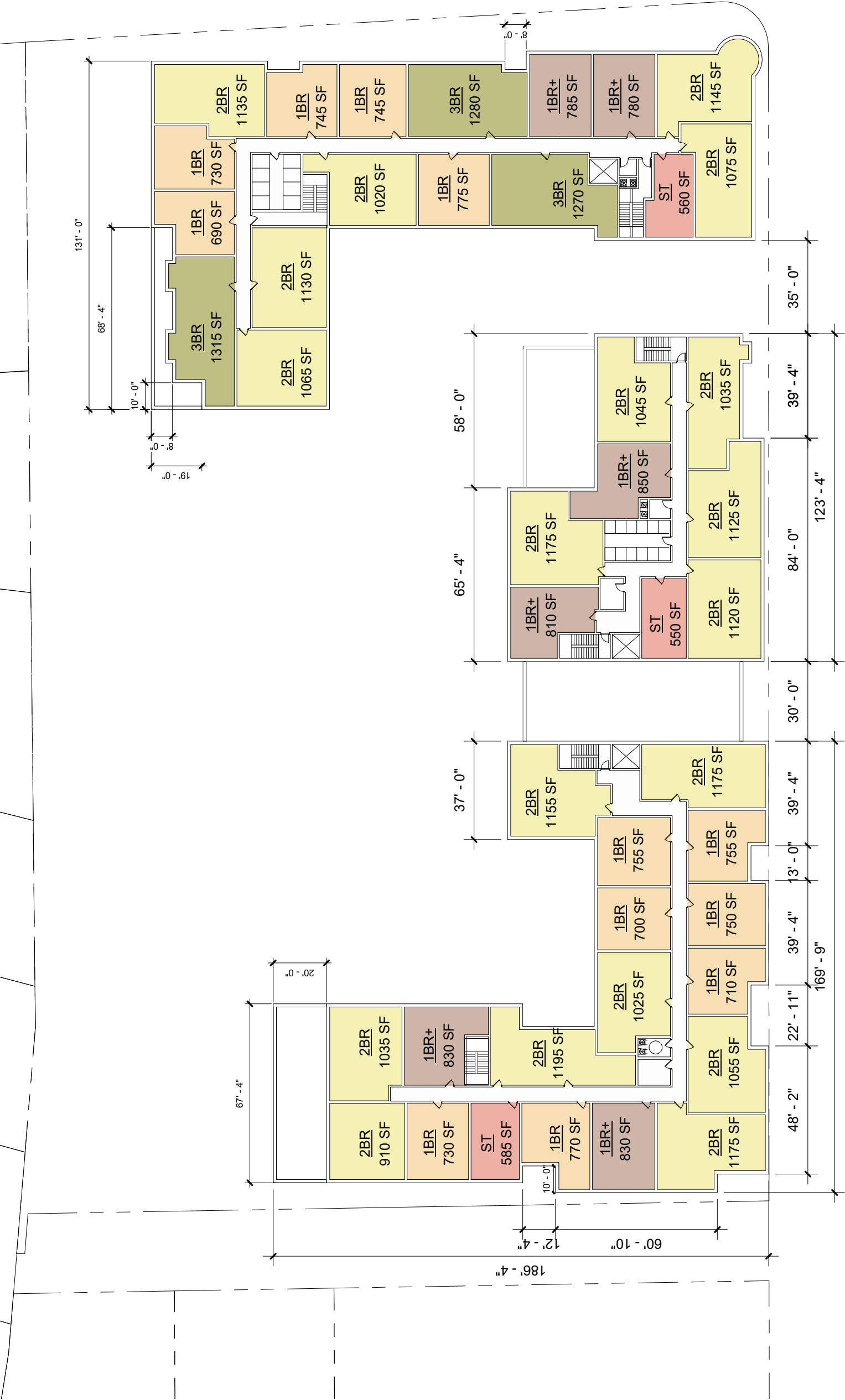
ARCHITECTURE PLANNING INTERIORS

MARK DEVELOPMENT

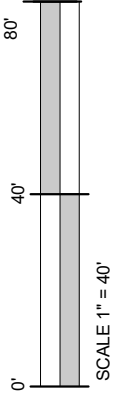
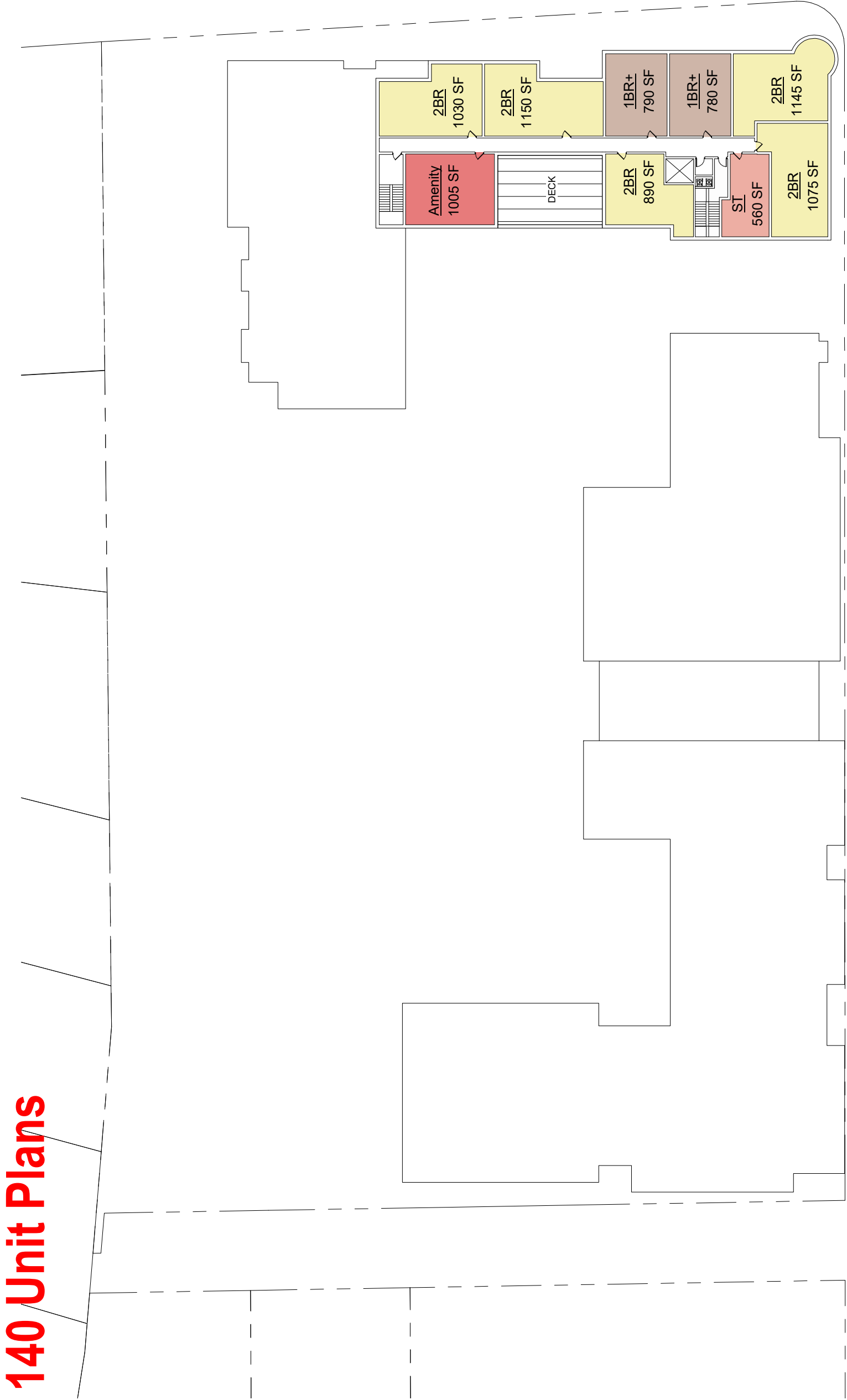
140 Unit Plans

WASHINGTON PLACE
Fourth Floor Plan

05/22/2017 | Scale: 1" = 40'-0"



SCALE 1" = 40'



140 Unit Plans



Setti D. Warren
Mayor

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Barney Heath
Director

M E M O R A N D U M

DATE: June 9, 2017
MEETING DATE: June 19, 2017
TO: City Council
FROM: Barney Heath, Director of Planning and Development
James Freas, Deputy Director of Planning and Development
Neil Cronin, Senior Planner
CC: Petitioner

PETITION #95-17 & #96-17

NW corner of Washington and Walnut Streets

Request for a change of zone to Mixed Use 4 and for special permits to construct a mixed-use development consisting of three buildings with heights up to 60 feet and 5-stories incorporating 160 residential units, approximately 43,860 square feet of commercial space and 344 parking spaces.

At its public hearing on Tuesday, May 30th, the Land Use Committee (the "Committee") asked staff to review the fiscal impact analysis for Washington Place (the "Project") regarding the estimated number of school aged children expected to reside on site. Specifically, the Committee asked staff to review the numbers and methodology employed by a resident which revealed a larger number of school aged children than estimated by the petitioner's consultant.

Petitioner's Methodology

The petitioner retained John Connery, of Connery Associates, to conduct a fiscal impact analysis, which included generating an estimate of the number of school aged children expected to reside at the project. Mr. Connery submitted an initial report on June 1, 2016 which estimated the number of school aged children to reside at the project to be 24 with a net fiscal benefit of \$206,163. **(Attachment A)**. This figure was based on Mr. Connery's professional experience, including the number and type of units. This initial figure was based on 171 units, with 15% (23 units) deed restricted to households earning between 50% and 80% of Area Median Income (AMI), and no 3-bedroom units.

Mr. Connery provided a revised fiscal analysis on January 25, 2017 which included the revisions to the project. Specifically, the project was reduced from 171 to 160, but included six 3-bedroom units, and included 10% of the total units (16 units) to be deed restricted to households earning between 80% and 120% of AMI. Taking these changes into consideration, Mr. Connery estimated the number of school aged children to be 26 with a net fiscal benefit of \$160,989 (**Attachment B**).

Resident's Methodology

At the May 30th public hearing, a Newton resident raised concern that the number of school aged children was underestimated because neither analysis included "plus" rooms as bedrooms. Plus rooms are additional rooms provided in a unit that are intended to be used as offices, dens, etc. The resident stated that the fiscal analysis prepared for the Austin Street development counted these plus rooms as bedrooms and stated that Washington Place should treat the plus rooms the same. Washington Place has 23 one-bedroom plus units and three 2-bedroom plus units. Therefore, taking this updated unit mix into account, the resident believes the project will produce a minimum of 33 school aged children. The petitioner states that these plus rooms are not intended to be used as bedrooms because they are approximately half the size of an average bedroom in the project, do not have closets, and may not have natural light.

In addition, the resident noted that the ratios for the three bedroom units used by Mr. Connery in both reports to determine the number of children are lower than the ratios used by Newton Public Schools. In turn, Mr. Connery provided a memorandum outlining his reasoning for the ratios in his analyses; nonetheless, Mr. Connery updated the ratios to those used by Newton Public Schools in the Annual Enrollment Analysis Reports. As a result, Mr. Connery notes the estimated number of school aged children increases to 31 which results in a revised net fiscal benefit of \$87,608 (**Attachment C**).

Summary

The Planning Department has reviewed the fiscal impact analyses for both the Austin Street and Riverside developments. Neither report states that plus rooms should be treated as bedrooms. Additionally, the fiscal impact analysis associated with the Riverside development was peer reviewed, and the peer reviewer did not state that plus units should be treated as bedrooms to estimate the number of school aged children.

ATTACHMENTS:

- Attachment A:** Fiscal Impact Analysis, Washington Place, dated June 1, 2016
- Attachment B:** Memorandum from John Connery to the Land Use Committee, dated January 25, 2017
- Attachment C:** Letter from John Connery to the Land Use Committee, dated June 7, 2017

Attachment A

**Fiscal Impact Analysis
Washington Place
Washington and Walnut Streets
Newton, Massachusetts**

June 1, 2016

**Prepared by
Connery Associates
Melrose, Massachusetts**

Table of Contents

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Fiscal Impact Analysis Washington Place Washington and Walnut Streets Newton, Massachusetts

June 1, 2016

1.0 Preface

Mark Newtonville, LLC of Wellesley, Massachusetts is proposing to construct a mixed-use development of 171 luxury rental apartments and 39,745 square feet of ground level commercial space at the intersection of Walnut and Washington Streets in Newton, Massachusetts (the “Project”). The Project will set aside 15% of the total number of units for affordable housing purposes consistent with the inclusionary zoning by-law for the City of Newton. The units will be created in such a way as to count towards Newton’s subsidized housing inventory, consistent with the affordable housing guidelines of the Massachusetts Department of Housing and Community Development (DHCD). The average income for the affordable units will be 65% of HUD BCQ Market Area Median Income.

The objective of this report is to identify the key fiscal characteristics of the Project in order to estimate its long term fiscal profile. Therefore, this report generates an estimated cost-to-revenue ratio at the stabilization of the Project and an estimate of the annual **fiscal benefit** expressed in current dollars that will be generated from the Project. These findings are designed to provide the City of Newton with an understanding of how the Project will impact the local tax base over the long term. Because the Project proposes to replace existing commercial and residential buildings, it is also important to understand the fiscal benefit currently being generated from the site. Therefore, this report calculates an estimated fiscal benefit of the existing properties and arrives at the **net annual fiscal benefit**, i.e., the net estimated gain in fiscal benefit to the City of Newton by the Project. *

The departmental costs used herein are intended to estimate the annual financial impact on municipal services (“general service cost”) that are expected to be affected by the Project. This report recognizes that the application of current and future municipal revenues and levels of service is within the purview of the local officials. Therefore, it should be noted that these cost estimates are not intended as budget recommendations for an individual department. Further, the estimated fiscal profile and individual cost/revenue components may fluctuate annually depending on future local, regional, or national economic background conditions.

**It should be noted that the net fiscal benefit is expressed at the time of estimated Project stabilization. Over time, a non-improved site will likely increase in value at a rate considerably below the rate of value increase for a new development. Therefore, moving away from the estimated stabilization date, the net fiscal benefit derived from a revitalized site will most likely be greater than what is shown in this report.*

Projected public school student enrollments and associated costs (“education service cost”) are a major component of any proposed residential development. This report generates an estimated education service cost based on a projection of additional school age children (SAC) using current data provided by the Newton School Department. To fine tune estimated school enrollment and corresponding costs, this report focuses on the data provided for comparable developments in Newton in terms of project size and rent levels and the current actual net school spending per pupil (ANSS) provided by the Massachusetts Department of Education. Similar to municipal service cost estimates, education service costs are not designed as budgetary or policy recommendations. Rather, the enrollment and cost projections should be considered as information to be used in conjunction with other School Department studies, plans and policies designed to meet future educational demographic trends, and school department objectives.

The education service cost estimates used in this report are intended to provide an estimate of the long- term cost per student. In the near term, school costs, approximately one to three years after a project is completed, are most likely to be lower. However, this report takes the position that the measurement of education costs, like the Project in general, should be estimated over the long term and allocates school costs to the present time frame on the basis of estimated annual cost per student at stabilization.

2.0 Project Description

Residential Component

The Project will include 171 residential units on four levels located above the ground floor commercial space. As shown in Table 1, the proposed unit mix is purposefully oriented towards non-family housing, given that 100% of the units are studio, one-bedroom, and two-bedroom designs, with zero three bedroom units. More specifically, 56% of the total units are studio and one bedroom units, which do not generate any measurable or sustainable level of school aged children. Table 1, below, provides a detailed summary of the proposed unit mix and the breakdown of units identified as affordable and market rate.

Table 1: Residential Unit Mix

Residential Component	#/Units	Percent of Total (rounded)
Market Rate		
Studio market rate	13	8%
1-bedroom market rate	69	40%
2-bedroom market rate	63	37%
Subtotal Market Rate	145	85%
Affordable Rate		
Studio affordable rate	3	1%
1-bedroom affordable rate	12	7%
2-bedroom affordable rate	11	7%
Subtotal Affordable Rate	26	15%
Total	171	100%

Commercial Component

In addition to the residential component outlined above, the Project will include approximately 39,745 square feet of ground level commercial space. At this point in time, the exact nature of the tenancy for the commercial space is not certain, but it is anticipated to be comprised of a mix of retail, restaurant, professional services, medical office and/or fitness space. The proposed mixed-use development is vertical in nature, meaning a development that features residences located above commercial street floor uses. This development concept is consistent with traditional community development patterns which provide housing and commercial uses that operate primarily as neighborhood commercial centers.

3.0 Summary of Methodology

In considering the fiscal impacts of the Project, this report divides municipal service costs into two broad categories: general service costs (i.e. all non-education costs) and education service costs. As will be discussed in further detail below, this report includes those service categories most likely to exhibit a measurable additional cost once the Project is completed, which are police and fire/EMS. The departmental cost estimates discussed in this report are based on current fiscal year operating budgets and operational data provided by the Newton Police and Fire Departments.

Consistent with any residential or mixed-use development, in addition to the general service costs generated from any new development, a project will create incremental educational service costs to a city. Not surprisingly, education service costs represent the large majority of the total estimated costs from a project. To account for this cost, the Project's annual student generation rate has been estimated by examining multi-family developments in Newton that have comparable unit types, i.e. the percentage of one bedroom, two bedroom and three bedroom apartments and corresponding monthly rents. These two factors have a direct correlation to the number of school age children (SAC) that a project will generate.

Education cost estimates are driven by the assumed number of net additional school-aged children to be enrolled in the Newton Public School System. The basic formula for determining the local education cost estimate is Actual Net School Spending per pupil (ANSS) as reported by the Massachusetts Department of Education, minus State chapter 70 aid, which is considered a revenue source.

As will be explained in more detail in this report, the regional experience has been that studio, one bedroom and two bedroom units over commercial space in neighborhood locations generate significantly fewer school aged children per unit type than regional or city wide averages. However, because of a lack of comparable developments in Newton, this report uses a higher average student per unit ratio from the existing non-mixed use developments. Accordingly, the student generation rates and costs included in this report should be considered at the high (conservative) end of the range.

3.1 General Service Cost Estimates

There are two approaches to analyzing the impact on general service costs by a new development. The first methodology is the proportional share cost allocation methodology. This approach allocates costs for each department by an estimated proportional share. Recognizing that there are

economies of scale associated with on-going government operations and that the introduction of new households and commercial operations will impact certain departments more than others, an additional efficiency factor is included to estimate the incremental cost. The second methodology looks at each department and attempts to analyze the manner in which they are impacted. For example, “pay as you go” services such as water and sewer are not deemed appropriate to include as an incremental cost generated by a project. Building Department costs, which are covered through fees generated by the respective project, would also not be included. In the case of Washington Place, because this project is located on public ways and all internal roadways will be privately maintained, Public Works responsibilities, such as road maintenance and plowing of existing public roadways, would also be excluded. In short, having analyzed the specifics of the proposed Project, the measurable additional general service costs will be associated with police and fire/EMS service. The report combines the individual estimated costs of both departments to generate a total general service cost estimate.

3.2 Revenue Projection

General service and educational service costs represent only one part of the fiscal equation. In order to appropriately estimate the annual fiscal impact of Washington Place, the estimated annual revenue stream (total tax revenues accruing to the Town) must also be determined. Based on conversations with the City’s Assessor, this report has employed two approaches to estimate the value of the residential component once completed. The first approach is the **stabilized income method**, which is consistent with current practices for residential multi-family assessment, and the second is the **comparable value method**, based on existing developments with similar assessed valuation per unit.

For the ground floor commercial component, given that the exact nature of the tenancy cannot be determined at this time, an estimate based on similar first floor commercial development in the area has been employed. This approach provides an estimate of the Project’s assessed value based on the value per square foot of comparable developments in the area.

4.0 Summary of Findings

Since the objective of the report is to provide Newton with an understanding of the long-term fiscal implications of the Project, the most important finding presented by this report is the **net fiscal benefit created by the project**. Below is a summary that highlights the findings of this report.

Table 2: Summary of Findings

Fiscal Summary	Current	Project	Net Change (Net Fiscal Benefit)
Assessed Value	\$13,330,000	\$62,763,000	\$49,433,000
Tax Revenue	\$ 257,000	\$ 861,000	\$ 604,000
Service Costs (General/Education)	\$ 107,663	\$ 505,500	\$ 397,837
Annual Benefit	\$ 149,337	\$ 355,500	\$ 206,163
Cost to Revenue	0.42	0.58	

Key Findings

- The Project will have an estimated annual revenue stream of \$861,000 and an estimated annual service cost of \$505,500 generating an annual fiscal benefit of \$355,500 (current dollars) at stabilization.
- The Net Fiscal Benefit (fiscal benefit of current use vs proposed use) is estimated at \$206,163 per year (current dollars).
- Accordingly, the Project generates a strong, positive, long term annual cost-to-revenue ratio of approximately 0.58. By component, a cost to revenue ratio of 0.75 for the residential component and 0.2 for the commercial component.
- The total site assessed value will increase by approximately by \$49,433,000.
- One-time building permit fees are estimated to be approximately \$1,000,000, payable at receipt of building permits.
- The estimated annual average number of school-aged children is estimated at not more than 24 students. The full enrollment level may be attained as early as the 2020/21 school year.

5.0. General Service Costs

This report uses the Town's FY2016 operating budget and information provided by applicable City Departments to estimate annual departmental costs associated with the Project.

5.1 Police Department

This report employs a conservative (high cost) approach to estimating police service costs. Specifically, we equate the most traditional and visible police activity, i.e., calls for service, to the total annual police budget. We understand that there are other components to the police budget such as building maintenance, communications, training, and equipment beyond the labor costs derived from service calls. However, it is the intention of this report to address the wide fluctuations in police service calls and related costs that may occur at specific locations over time by equating the annual budget to calls for service. Further, by employing an analysis of service calls at comparable multi-family developments, we intend to provide the means to compare the intensity of service demand as expressed by service calls at existing comparable developments to the Project.

5.2 Estimated Residential Cost – Police Department Service Calls

The FY2016 police budget is approximately \$20,037,000. Based on information received from the Newton Police Department Records Division in May of 2016, total police service calls were approximately 46,000 in 2015. If we assume a similar number of calls in 2016, then the cost per service call would equate to approximately \$435. Table 3 below provides a summary of the cost per service call estimate.

Table 3. Estimated Police Costs per Service Call

Department	Current Police Budget	Newton Total Service Calls	Cost Per Service Call
Police	\$20,037,000	46,000	\$435

To arrive at an incremental cost estimate to the police department that will be generated by the Project, we next examined the number of police service calls from the three most comparable multi-family developments in Newton. The three projects that were selected for this study are Avalon at Newton Highlands, Avalon at Chestnut Hill and Arborpoint at Woodland Station. By analyzing the number of calls made over a 3-year period from these developments, we are able to arrive at the estimated police service cost that will be generated by the Project. Table 4 below illustrates police call data from 2012, 2013 and 2014 for the three comparable developments noted above.

Table 4. Annual Police Service Calls by Comparable Development

Residential Community	# of Units	Calls 2012	Calls 2013	Calls 2014	Calls to Date (Sept. 8, 2015)	Three Year Average (1)	Calls per Unit Avg.
Avalon Newton Highlands	294	92	69	88	40	83	0.282
Avalon Chestnut Hill	204	135	102	55	55	97	0.475
Arborpoint at Woodland	180	73	82	72	39	76	0.422
Total	678	300	253	215	134	256	0.378

(1) Note: average is for 2012 -2014 only.

Source: Michael Bozio Newton Crime Analysis Unit

As noted above, for the 678 comparable units there was a three-year average of 256 calls, or **0.378 calls per unit**. Applying the rate of 0.378 to 171 proposed units generates an average of 65 calls per year.

As shown in Table 4, annual calls at the comparable developments can fluctuate from the average, either higher or lower. Therefore, to take into account the annual fluctuations in service calls at any one location, rather than apply the average rate, we have increased the call estimate by 30% essentially reflecting the difference between the 215 annual calls in 2014 versus the 300 that were made in 2012. Therefore, this report assumes 85 residential service calls per year are made from to the Project.

At a cost of \$435 per service call, the estimated annual police service cost is approximately \$37,000 (\$435 X 85).

5.3 Estimated Residential Cost – Fire Department Service Calls/Runs

This report uses a similar methodology for calculating the incremental cost to the Fire Department by estimating the number of service calls (“runs”) that will be generated by the Project once completed. Rather than parse out the minor costs not tied to service runs, we deploy a similar (conservative) approach by assuming the entire fire department budget is attributable to service runs. Based on information received from the Newton Fire Chief’s office, approximately 9,745 service runs were made in 2015. Given the current fire department budget of \$19,425,000, dividing the annual call rate by the budget generates an average cost per call of \$2,050. Table 5 provides a summary of the cost per service call estimate.

Table 5. Estimated Fire Department Cost per Call

Department	Current Fire Budget	Newton Total Service Calls	Cost Per Service Call
Fire	\$19,425,000	9,475	\$2,050

By studying the same set of development projects that were identified in the police department analysis, we are able to generate an average number of calls per unit which can be applied to the Project. As indicated below, the comparable developments generate on average a fire service call rate of **0.067 per unit** for comparable multi-family developments. Accordingly, applying said average rate of 0.067 per unit to 171 proposed units generates an estimate of 11 fire service calls (non-emergency service) per year for the Project. To address potential annual fluctuation, similar to the approach taken with the police service calls, this report increases the number of service calls for cost estimation purposes by 30% from 11 to 15.

Assuming up to 15 additional annual fire service calls to the site and a cost per call of \$2,050, the estimated fire service cost would be \$30,750 (\$2,050 x 15 calls).

Table 6. Fire Service Calls (Fire Service)

Residential Comparable	Number of Units	Three Year Total 2012-2014	Average Per year.	Average per unit per year
Avalon Newton Highlands	294	68	23	0.078
Avalon Chestnut Hill	204	32	11	0.054
Arborpoint at Woodland	180	37	13	0.072
Total (678 units)	678	137	46	0.067

5.4 Estimated Residential Cost - EMS Service Calls

It is important to note that the above estimate does not take into account Fire Department Emergency Service (EMS) calls. Newton contracts its ambulance service to a third party and this report does not have access to the private service average cost per run. Although the fire department does not provide an ambulance service, it does respond by providing fire apparatus support to the large majority of calls. Therefore, it is important when studying the fire department costs to include EMS service calls. Table 7 below captures the service calls made from the comparable developments over a three-year period.

Table 7. EMS Calls for Service by Comparable Development

Residential Comparable	Number of Units	Three Year Total 2012-2014	Average Per year.	Average per unit per year
Avalon Newton Highlands	294	84	28	0.095
Avalon Chestnut Hill	204	28	10	0.049
Arborpoint at Woodland	180	19	7	0.038
Total (678 units)	678	131	45	0.066

As highlighted above, Table 7 indicates an average three-year call per unit rate of **0.066**. At said rate, the proposed 171 residential units would generate an additional 11 ambulance service calls per year. In most cases, the 11 additional ambulance runs per year will generate some level of reimbursement to the City. However, to be conservative, we will assume that no insurance reimbursement is forthcoming.

Further, to address the likelihood that for some years the EMS calls for service will exceed the average of EMS calls for the comparable developments, this report increases the number of EMS service calls for cost estimation purposes by 30% from 11 to 15.

Accordingly, this report adds an EMS contingency cost of \$30,750 based on an estimated cost service calls per year of \$2,050 for 15 additional ambulance calls (non-reimbursed). Combining the EMS and Fire service costs noted above generates a total fire service cost of \$61,500 per year for the residential component.

5.5 Estimated Commercial Service Cost - Police and Fire

The proposed commercial component has yet to be defined, but it has been our experience that the cost-to-revenue ratio for first floor commercial space in urban settings can range from 0.05 to 0.20 depending on the commercial mix. This cost-to-revenue ratio accounts for the police, fire and EMS service costs that will be generated by the commercial tenants. Unlike the residential component of the project, there will not be incremental costs to the school system from the commercial tenants.

Similar to the Austin Street Project, we have assumed the high end of the range and used a 0.2 cost-revenue ratio of the total commercial revenue generated. As noted in section 7.4, the commercial taxes estimated from the new Project are \$261,000 per year. Accordingly, at a service cost of 0.20, the annual service cost of the commercial component will be **\$52,000 (\$261,000 x 0.20)**.

5.6 Summary of General Service Costs

As noted earlier, the methodology used in this report analyzes departments where specific incremental costs will be attributable to the Project, while excluding those costs that will be covered by fees or costs borne by the Project itself. For example, water and sewer costs for the Project will be addressed by enterprise fees established by the City of Newton that the developer will be required to pay. Similarly, building department costs will be covered by the required building permit fees that will be due upon filing for the permit. The additional population should not generate additional staffing requirements for general government services such as Town Clerk, Treasurer, Tax Assessor or Controller, and for discretionary services such as libraries or recreation. The roadways bordering the site will be maintained whether or not the Project proceeds.

Based on our experience, the municipal departments that will experience measurable additional costs from the Project will be the Police and Fire Departments. Table 8 below, summarizes the total estimated annual general service costs (current dollars) associated with the Project for both the residential and commercial components.

Table 8. Summary of General Service Costs – Washington Place

Department		Annual Cost
Police	(Residential)	\$37,000
Fire/EMS	(Residential)	\$61,500
Police/Fire/EMS	(Commercial)	\$52,000
Total		\$150,500

6.0 Education Service Costs

6.1 School Aged Children

Similar to the Austin Street Project, this report utilizes the same methodology employed by the Newton Public Schools Office in the 2013 Enrollment Analysis Report to estimate the number of students that would be generated by the Riverside Housing Development. In this 2013 report, the Newton Public Schools office analyzed the 2013-14 enrollment data for the same comparable development projects that have been used throughout this report, to arrive at a ratio of school aged children generated based on unit type and rent level. Table 9, applies these same ratios to Washington Place, to arrive at an average of 24 school aged children for the Project. Unlike the Austin Street Project, this analysis does not adjust for the number of SAC that are expected to attend public vs. private school and therefore has assumed all SAC will attend Newton public schools

Table 9. SAC Rate for Two Bedroom Units in Comparable Development.

Unit Type	Units	Avalon Newton Highlands	SAC	Avalon at Chestnut Hill	Arborpoint at Woodland	Ratio 3	SAC
Market							
One Bed	69	0.000	0	0.000	0	0.000	0
Two Bed	63	0.192	12	0.193	12	0.258	16
Affordable							
One Bed	12	0.000	0	0.000	0	0.000	0
Two Bed	11	0.914	10	0.922	10	1.219	13
Total			22		22		29

Average Number of School Aged Children (24)

Based on information received from the Massachusetts Department of Education, the Actual Net Spending per Student (ANSS) for Newton FY 2016 is **\$16,395 per student**. When you deduct the **State aid of \$1,591** per student that Newton receives, the cost per student to the city of Newton is reduced to **\$14,804 (\$14,800)**.

SAC Summary	# of Students	Cost Per Student	Total Education Cost
Washington Place	24	\$14,800 (net of State Aid)	\$355,000

Based on experience in Newton and the region with multifamily development, approximately 60% or fourteen (14) of the twenty-four (24) additional students will likely enroll in various elementary grades and ten (10) will enroll in the various middle and high school grades. Depending on physical capacity issues by the 2020/21 school year, the 14 additional elementary students will most likely be assigned either the Franklin Elementary School or Cabot Elementary School.

6.2 Location Factors

It has been our consistent experience that apartment locations that are operationally and visually integrated into commercial settings or are located above commercial street level uses have student generation rates per unit type considerably below residential locations that are more residentially oriented apartment locations. The emerging live/work or mixed use locations in the region all share this characteristic such as Charles River Landing in Needham, Avalon at the Hingham Shipyard, Station 250 at Legacy Place in Dedham, Cronin's Landing, The Merc, and Currents on the Charles, all new residential over commercial mixed-use developments located in suburban locations.

An important key factor in estimating the generation of school aged children for any multi-family development concerns the issue of traditional neighborhood location versus a non-neighborhood location. For example, if a site is perceived to be different from a "traditional" neighborhood in terms of scale, or if the site is a stand-alone location without easy pedestrian links to surrounding traditional neighborhoods, or if it lacks significant secure private play space, is visually or operationally part of a mixed use or commercial setting, or is clearly identified with highway or major roadway access, or is designed as residential over commercial use, then the number of school aged children per unit type is likely to decline by at least 50% per unit type with the exceptions being low and very low income housing developments.

The following are a list of factors that identify non-neighborhood residential locations. The key characteristics include operational isolation from traditional residential areas, location over a commercial ground floor, visual and operational integration into commercial/industrial areas (mixed use), and primary access provided from nearby major highway or artery. The italicized items are applicable to the Project.

- Multi-family locations that are not physically or easily connected by pedestrian access to surrounding established residential neighborhoods, or are set off from traditional neighborhoods.

- *Multi-family residences that provide minimal safe private recreation areas for children by design.*
- *Multi-family residential development located above commercial uses.*
- Multi-family residences accessed primarily by elevators; usually buildings of 5 or more stories.
- *Multi-family locations located in the midst of commercial strips, mixed use developments, commercial nodes centers or locations that are visually and operationally a part of abutting commercial / industrial areas.*
- Multi-family developments that abut or are within close proximity to high intensity commercial developments, such as shopping or community commercial centers.
- *Multi-family developments located on local high traffic ways or where primary access is via a highway interchange or a major collector roadway.*

The author of this report believes that the location factors inherent in the Project will generate a SAC rate significantly below average for Newton multi-family development. However, to maintain consistency with a conservative approach, this report will assume 24 additional students per year for cost estimating purposes.

7.0 Total Service Cost (General Service Cost and Education Service Cost)

Table 10 below summarizes the estimated total annual municipal service cost associated with the Project. The value is expressed in current dollars.

Component		Estimated Cost
Police	(Residential)	\$ 37,000
Fire/EMS	(Residential)	\$ 61,500
Schools	(Residential)	\$355,000
Police/ Fire	(Commercial)	\$ 52,000
Total		\$505,500

Table 10. Total Residential and Commercial Service Cost Estimate

8.0 Revenue Projection

8.1 Estimated Revenue - Residential Component

For the purpose of generating a revenue estimate for the residential component, this report employs two methods. The first estimates the revenue based on the assessed value per unit of the three

comparable developments that have been analyzed throughout this report (Avalon Highlands, Avalon at Chestnut Hill, and Arborpoint at Woodland). The second studies the rents expected for the property and values the Project based on an “income method approach.” Table 11 below summarizes the comparable assessed value per unit approach.

Table 11. Comparable Assessed Values

Residential Comparable	Units	Assessed Value	Value per Unit
Avalon Newton Highlands	294	\$73,429,700	\$249,761
Avalon Chestnut Hill	204	\$57,239,500	\$280,586
Arborpoint Woodlands	180	\$48,068,400	\$267,046
Total /Averages	678	\$178,732,600	\$263,624

As Table 11 indicates, the average per unit assessed value of the 678 comparable units is **\$263,624 per unit**. If this value were applied to the Project’s 171 units, the estimated assessed value of the residential component would be **\$45,080,000 (rounded)**. To provide an additional perspective, this report will apply the rent estimates from an internal market analysis and apply said rent values to current income method metrics employed by the City.

The second methodology analysis uses the internal rents for both the market and affordable units to arrive at an assessed value (“income method approach”). Specifically, the internal market analysis has arrived a range of \$3.15 to \$3.40 per square foot for the 142 market units and \$1.15 to \$1.25 for the 26 affordable units. For the purposes of this revenue estimate, a value of **\$3.30 per sf** is used for the market rate units and **\$1.20 per sf** is used for the affordable rate units has been employed. The aggregate average size of both market and affordable units is 890 square feet.

Based on discussions with the Newton Assessors Department, this analysis applied the gross rents derived from the above noted rent schedule to the following metrics to generate an estimated assessed value for the Project’s residential component i.e. income method approach.

- 5.0% vacancy deduction
- 35.0% operation and maintenance deduction
- Capitalization rate of 6.00%

Using the income method approach, the residential component of the Project at stabilization is estimated to have an assessed value of \$55,800,000 (current dollars).

Residential Valuation	Total
Gross Annual Rent Revenue	\$5,445,000
Parking Revenue	\$135,000
Gross Potential Revenue	\$5,580,000
Less: Vacancy (5.0%)	(\$279,000)
Less: Operation & Maintenance Deduction (35%)	(\$1,953,000)
Net Operating Income (NOI)	\$3,348,000
Building Value (6.0% Capitalization Rate)	\$55,800,000

Averaging the estimated income method based on assessed value (\$55,800,000) with the assessed value derived from the comparable developments (\$45,080,000) **yields a blended estimate of \$50,440,000.**

Applying the current \$11.38 residential tax rate to the average estimated assessed value of \$50,440,000, yields an annual estimated property tax of \$574,000 at project stabilization. All values are current dollars.

Additionally, the Project will generate approximately 171 registered vehicles on site that will be subject to automobile excise taxes. The City's average excise tax per vehicle is approximately \$150. Assuming 171 vehicles on site, the Project will generate approximately **\$25,650 (\$26,000) in annual excise tax revenue. Adding excise tax to the estimated property taxes yields an annual revenue stream estimate of \$600,000.**

8.2 Revenue Estimate - Commercial Component

The Project includes 39,745 sf of first floor commercial space. At this juncture, the specific nature of the commercial tenants is unknown. While the commercial space will be subject to market conditions, this report assumes the majority of the space will be retail oriented but with a significant percentage rented restaurant and coffee shop space.

Our general review of first floor commercial space in Newton indicates an assessed value per square foot of new retail/ restaurant space at approximately \$300. For the purposes of this report the average value of all future commercial uses will be assumed to be \$300 per square foot.

Accordingly, the 39,745 sf commercial component will have an estimated assessed value of \$11,923,500. Given the \$21.94 commercial tax rate, the estimated annual tax yield at stabilization will be **\$261,000 (current dollars).**

8.3 Summary of Project Revenue – Residential and Commercial

Based on the analysis of this section, Table 12 below summarizes the estimated assessed value and annual revenue stream both the residential and commercial components.

Table 12. Assessed Value and Annual Revenue- Washington Place

Project Component	Estimated Assessed Value	Property Tax (1)	Excise Tax	Annual Revenue
Residential	\$50,440,000	\$574,000	\$26,000	\$600,000
Commercial	\$12,323,000	\$261,000	NA	\$261,000
Total	\$62,763,000	\$835,000	\$26,000	\$861,000

(1) Residential tax rate \$11.38; commercial rate \$21.94

9.0 Fiscal Profile of Washington Place

Table 13 provides a summary of the Project's estimated long term fiscal profile by combining the cost and revenue for both the residential and commercial components and illustrating the overall cost to revenue ratio or fiscal profile.

Table 13. Summary of Washington Place Fiscal Profile

Project	Annual Revenue	Annual Cost	Annual Benefit (loss)	Cost to Revenue Ratio
Residential (171 Units)	\$ 600,000	\$453,500	\$146,500	0.75
Commercial (39,745 sf)	\$261,000	\$ 52,000	\$209,000	0.20
Totals	\$861,000	\$505,500	\$355,500	0.58

The report finds that the Project generates a strong positive fiscal profile of **0.58**; essentially at stabilization approximately 42% of every revenue dollar will accrue to the City as an annual fiscal benefit.

In current dollar terms, from stabilization onward the Project will generate approximately **\$355,500 in annual fiscal benefit** to the City of Newton.

10.0 Fiscal Profile of Existing Property

10.1 Existing Revenue

A review of the 15 properties that comprise the project site indicates a variety of current uses i.e. two (2) three family houses, two (2) two family houses, (10) residential units, office use; retail

use, indoor recreation and parking lots. The total current assessed value of the existing uses (rounded value) is \$13,330,000. Approximately \$4,099,000 of current total assessed value is taxed at the residential rate (\$11.38) and \$9,231,000 at the commercial tax rate (\$21.94) for a total assessed value of \$13,330,000. Accordingly, the current total tax yield at the existing properties is \$257,000 (\$52,585 + \$204,415).

10.2 Existing Costs

Residential

By applying the same metrics that were used on the proposed Project to the existing residential properties, we can arrive at an estimated general service cost currently being generated. If the current property has 20 residential units, the general service costs for the property would be as follows:

Table 14: Existing Residential General Service Costs

Existing Residential General Service Costs	Ratio	# of Calls	Cost Per Call	Total Cost
Police	0.378	8	\$435	\$3,480
Fire	0.067	1	\$2,050	\$2,050
EMS	0.066	1	\$2,050	\$2,050
Total	-		-	\$7,580

Currently four (4) students living on the property attending Newton Public Schools. Using the same cost per student (\$14,800), the current impact on the school system equates to \$59,200.

Therefore, the total residential impact to the City is approximately \$66,780. It is worth noting that the SAC currently living at the property are based on a very low occupancy rate. It is anticipated that as the spaces are re-leased the number of school aged children would increase at the same ratio, or greater, than what it estimated to be generated by the Project.

Commercial

Similar to the proposed commercial space, this report assumes a .2 cost-to-revenue ratio for the current commercial space. **Under this assumption, it is estimated that the commercial space contributes \$40,883 (\$204,415 x .2) in overall general service costs.** Table 15 illustrates the fiscal benefit currently generated by the property, \$149,337.

Table 15: Existing Fiscal Benefit

Existing Property	Commercial	Residential	Total
Revenue	\$204,415	\$52,585	\$257,000
General Service Costs	\$40,883	\$7,580	\$48,463
Service Cost (Education)	0	\$59,200	\$59,200
Total (loss)	\$163,532	(\$14,195)	\$149,337

11.0 Net Fiscal Benefit

This report arrives at the **net fiscal benefit** created by the new Project by analyzing the existing fiscal benefit and comparing it to what is expected to occur once the Project is stabilized. Below is a summary of the findings.

Comparison	Existing	Project	Net Change Dollars
Assessed Value	\$13,330,000	\$62,763,000	\$49,433,000
Annual Revenue	\$257,000	\$861,000	\$604,000
Annual Cost	\$107,663	\$505,500	\$397,837
Fiscal Benefit	\$149,337	\$355,500	\$206,163

Summary of Findings

Based on the table above, the following comparative statements can be made:

- The Project will increase the site's assessed value by \$49,433,000
- The Project will increase annual revenue by \$604,000 per year.
- The net fiscal benefit for the initial year; i.e. proposed annual benefit minus existing annual benefit, will be \$206,163.

It should be noted that it is most likely that the redeveloped site will increase in assessed value at a higher rate than if the site remains in the current state. Accordingly, the net fiscal benefit of the Project as compared to the current uses will improve over the initial stabilization year as estimated above.

12.0 One Time Fees

Based on the applicant's initial estimate of construction costs for both the residential and commercial components and the current fee schedule, total building permit fees are estimated to be \$1,000,000.

Memorandum

January 25, 2017

To: Newton Land Use Committee
Fr: John Connery
Re: Fiscal Impact Study

Dear Chairman Laredo:

I have been asked by my client, Mark Newtonville LLC (the "developer") to reevaluate the fiscal benefit of the Washington Place project in lieu of the changes made since the developer's original filing in May of 2016. For your benefit, below is a brief synopsis of the changes:

- The number of residential units has decreased from 171 to 160.
- The residential unit mix has been revised to include six (6) 3-bedroom units; the prior submission had zero.
- The commercial square footage has been increased by 4,115 SF to 43,860 SF.
- The developer has allocated 10% of the total units for "middle income" households.

When I completed my original fiscal impact study, I concluded the project would bring a net fiscal benefit of approximately \$206,163. Taking into account the aforementioned changes, the new estimated net fiscal benefit will be \$160,989. The decrease can largely be attributed to the inclusion of 3-bedroom units and the additional middle income units.

While I feel the project is not targeted specifically towards families, the three bedroom units will generate some interest. Based on the same comparable set from my earlier report¹, the average school age child ("SAC") per market rate 3-bedroom unit can vary from 0.40 to 0.60. A 3-bedroom inclusionary zoning unit can range between 0.90 to 1.40 per unit. For my analysis, I have been conservative and assumed 0.60 and 1.40 SAC per unit respectively, for market rate and inclusionary zoning units.

The developer's decision to include affordable, middle income units is a first for the City of Newton. As a result, there are no real data points to try and estimate the impact on the Newton schools by this demographic. To come to a reasonable assumption, I took the average SAC ratio of a market rate unit and an inclusionary zoning unit to estimate the number of SAC generated by the middle income units. Based on this assumption, and the addition of 3-bedroom units to the project, the number of school aged children has increased from 24 to 26.

¹ Arborpoint Woodland Station, Avalon Newton Highlands and Avalon Chestnut Hill

Although the changes made since the filing have reduced the net fiscal benefit by 23%, my belief remains the same that the number of school aged children at this location is most likely going to be less than the comparable set due it's mixed-use nature and location in a village center. As I stated in my previous report it is less likely for families with SAC to reside in mixed use developments because they lack safe play areas and typically are in high traffic volume settings; families coming from cities, like Boston, with young SAC see mixed use developments in the suburbs as the transition phase before buying or renting a home. I am happy to answer any questions or discuss in further detail if you deem appropriate.

Sincerely,

John Connery

Connery Associates

June 7, 2017

Dear City Councilors,

In recent correspondence from a resident of Newton, I have been asked to address a few questions relating to the methodology used in preparing the net fiscal impact calculation for Washington Place. Below are my responses, which I am more than happy to discuss in further detail if appropriate.

Question: Why are 1+ bedroom units not treated as 2-bedroom units and 2+ bedroom units treated as 3-bedroom units for purposed of calculating school aged children (SAC)?

The additional room in a “plus” unit has a very different characteristic than a conventional bedroom. For starters, the size of the additional room in a plus unit is typically smaller in overall square footage. At Washington Place, the additional room in the plus units are approximately 75 SF in size compared to a typical bedroom at 140 SF. In addition, unlike a true bedroom, the additional room in a plus unit is not required by code to provide either natural light or closet space, and therefore does not allow the apartment to be marketed as having an additional bedroom.

Given these distinguishing characteristics, I have not seen plus units treated as having an additional bedroom for calculation of the net fiscal impact, nor do I know of any data that supports that these units are drivers of school aged children in residential buildings. Therefore, consistent with the Austin Street Fiscal Impact Report, I have not assumed the additional room in a plus unit to constitute a bedroom.

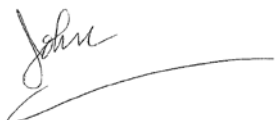
Question: If we apply the same formula used by the Planning Department for Austin Street (Appendix F of the NPS Enrollment Analysis Report) the number of school-age children jumps from 24 to 32 children. Author's Note: I believe the question is meant to reference Appendix G in the 2013 NPS Enrollment Analysis Report, not Appendix F.

I have reviewed the formulas in “Appendix G” of the 2013 NPS Enrollment Analysis Report and I would like to make the following points. First, footnote #3 states that only the physical addresses of the SAC are known and NOT the types of units (e.g., 2BR or 3BR units), so these allocations are estimates. As a matter of policy, the School Department does not disseminate information on SAC by unit type or by grade.

Second, in my many years of preparing Fiscal Impact Reports, I have never seen the ratio of school aged children for 3 BR Affordable units this high, i.e., 2.579, 2.548, and 3.25 for the three comparable projects. Based on my experience, I am more accustomed to seeing a ratio of 1.40 for 3BR Affordable Units, as noted in my revised report. That said, if I adjust the 3 BR ratios based on Appendix G, my projection of **28 SAC increases to 31 SAC**. This increase in the number of SAC would reduce my currently projected net fiscal benefit from **\$133,598 down to \$87,608**.

Please let me know if you have any further questions.

Regards,



John Connery


CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: May 26, 2017

TO: Mark Laredo, Chairman, Land Use Committee
All Members, Land Use Committee

FROM: Ouida C.M. Young, Deputy City Solicitor

RE: Protest to Rezoning
Washington Place Properties
Docket #95-17

**********

BACKGROUND

As members of the Land Use Committee know, the current request of Mark Newtonville, LLC (hereinafter the "Developer") to rezone a portion of land bounded by Walnut Street, Washington Street, Washington Terrace and residential properties to the north from B1 and B2 to MU4 (hereinafter the "Orr Block") differs from the Developer's prior rezoning request. Specifically, the current request seeks to rezone only a portion of the Orr Block to MU4, leaving a strip of land running along the northern boundary abutting the residential properties in its current B2 zone. The width of the strip of land which is *not* being rezoned (hereinafter the "Buffer Strip") varies from approximately 90 feet abutting Washington Terrace to approximately 35+ feet abutting Walnut Street. The Buffer Strip is owned by the Developer and will be used for parking and circulation purposes for the Washington Place Project, which are permitted accessory uses in the B2 zone. As with the prior rezoning request, a Protest Petition pursuant to G.L. c. 40A §5 has been filed (hereinafter the "#95-17 Protest"). In this instance ten (10) property owners signed the #95-17 Protest, four (4) of whom were found to be owners of the "area of the land immediately adjacent extending three hundred feet therefrom" the land to be rezoned with regard to the prior re-zoning request.¹ G.L. c. 40A §5.

QUESTION

Given the #95-17 Protest, is a 2/3rds or 3/4ths vote of the full membership of the City Council required to approve the rezoning proposed by petition #95-17?

SHORT ANSWER & DISCUSSION

Rezoning petition #95-17 can be approved with a 2/3rds vote of the full City Council. As discussed at considerable length in a memorandum titled *Protest to Rezoning Washington Place Properties Docket #180-16*, dated January 11, 2017, (hereinafter the "#180-16 Protest Memorandum"), based upon principles of statutory construction, the Law Department concluded that only owners of land immediately adjacent to the northern boundary of the Orr Block qualified to file a protest pursuant to G.L. c. 40A §5. In the present rezoning petition, the Buffer Strip interrupts the immediate adjacency of the land owned by the four (4) Foster Street property

¹ The owners of 14-16 Foster Street, 20 Foster Street, 30 Foster Street and 34 Foster Street joined in the original protest petition and were considered qualified to file that protest petition. See Exhibit D attached to the #180-16 Protest Memorandum.

owners to that portion of the Orr Block being rezoned. For the reasons set forth in the #180-16 Protest Memorandum, the Foster Street property owners are no longer qualified to file a protest pursuant to G.L. c. 40A §5, and the vote to rezone can be approved with a 2/3rds vote of the City Council.

In a letter dated May 24, 2017 to the Law Department (and filed with the City Clerk as well), the attorney representing the owners protesting the current rezoning petition sets out a legal argument for why the Foster Street protestors should still be qualified to file a protest and that a 3/4ths vote of the City Council should still be required to approve the rezoning petition. Several out of state judicial decisions, all considering slightly different statutory language or facts, are cited as grounds against applying a strict interpretation to the statutory requirement in section 5 of G.L. c. 40A, that to qualify to file a protest an owner must have land which is "immediately adjacent", *i.e.* abutting, the land to be rezoned. I do not find those judicial decisions persuasive absent guidance from a Massachusetts court as to who is qualified to file a zoning protest where the land owned by the protesting party is not immediately adjacent to the property being rezoned due to a buffer strip of some width or a street, for that matter, which may not be as wide as the Buffer Strip in the current rezoning petition.

Typographical errors corrected 1-13-17.

CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: January 11, 2017

TO: Mark Laredo, Chairman, Land Use Committee
All Members, Land Use Committee

FROM: Ouida C.M. Young, Deputy City Solicitor

RE: Protest to Rezoning
Washington Place Properties
Docket # 180-16

BACKGROUND

Mark Newtonville, LLC seeks to rezone a portion of land bounded by Walnut Street, Washington Street, Washington Terrace, and residential private properties fronting on Foster Street from B1 and B2 to MU4 (hereinafter the "Orr Block"). A 2/3 vote of the City Council is required to rezone property pursuant to G.L. c. 40A §5 unless a protest against the rezoning is filed, in which case a 3/4 vote is required. The required vote to approve the Orr Block special permits/site plan approvals remains 2/3 regardless of whether or not there is a protest filed against the rezoning.

In pertinent part, §5 of c. 40A sets out the requirements for a protest as follows:

...provided, however, that if in a city or town with a council of fewer than twenty-five members there is filed with the clerk prior to the final action by the council a written protest against such change, stating the reasons duly signed by owners of twenty per cent or more of the area of the land proposed to be included in such change or of the area of the land immediately adjacent extending three hundred feet therefrom, no such change of any such ordinance shall be adopted except by a three-fourths vote of all members. (*emphasis added*).

A petition protesting the proposed rezoning (hereinafter the "Protest") has been filed with the City Clerk by a number of owners whose property abuts the Orr Block. Owners of property which does not abut the Orr Block have also joined in the Protest.^{1 2}

QUESTION

Given the Protest, is a 2/3 or 3/4 vote of the full membership of the City Council required to approve the proposed rezoning?

¹ A copy of one of the Protest Petitions is attached hereto as Exhibit A. A list of owners who have signed the Protest is attached hereto as Exhibit B. A map showing the location of the properties whose owners have signed the Protest Petition, the Orr Block, and the land located within 300 feet of the boundary of the Orr Block is attached as Exhibit C.

² The original petition to change the zoning of the Orr Block from B1 and B2 to MU4 has been withdrawn without prejudice and refiled with slight modifications due to procedural concerns unrelated to the Protest. The Petitioner has expressly waived any objection to allowing the already filed Protest to apply to the refiled rezoning petition.

SHORT ANSWER

For the reasons set forth below, the Law Department believes that the Protest has met the requirements of G.L. c. 40, §5, and a 3/4 vote (18 members) of the City Council is required to rezone the Orr Block to MU4.

DISCUSSION AND ANALYSIS

The answer to the question depends on determining which owners qualify to file a protest as well as determining how to calculate the land area of those owners (the numerator) as well as the total area of what might be considered the "Protest Corridor" (the denominator). Is the Protest Corridor restricted to just the land immediately adjacent, *i.e.*, actually abutting, extending 300 hundred feet from the land being rezoned, and is a protest filed by the owners of 20% of the area of the Protest Corridor sufficient to require a 3/4 vote to rezone? Alternatively, is the Protest Corridor calculated based on the entire area of land extending 300 feet from the boundary of the land being rezoned? Using this approach, do only those owners of land actually abutting the land to be rezoned qualify to file a Protest or does any owner of land in the Protest Corridor qualify to join the Protest? In addition, where the area being rezoned abuts a street, as the Orr Block does on three sides, does the street prevent land on the other side of the street from being immediately adjacent to the land to be rezoned where the municipality does not own the fee in the public street? Further, does it matter if the street is a private way albeit the public has a right of access?

Unfortunately, there are no Massachusetts judicial decisions that have addressed any of these issues, and answers are sorely needed.³ While there have been out of state decisions interpreting different zoning amendment protest provisions, those decisions provide limited guidance, and different courts have reached opposite conclusions on the same question involved in a rezoning protest.

Interpreting the phrase "immediately adjacent" to qualify both who can file a protest and how to calculate the Protest Corridor would allow only those owners of land actually abutting the Orr Block to file a protest, and would restrict the area of the Protest Corridor to such abutting land extending up to 300 feet from the Orr Block. Following this approach, the area of land within 300 feet but not abutting the Orr Block would not be included in calculating the area of the Protest Corridor. Only 6 parcels of land along the south side of Foster Street qualify as immediately adjacent to the area of land being rezoned. The owners of all 6 parcels have filed a written protest with the City Council, although the owners of one of the properties has since withdrawn from the Protest.⁴ Accordingly, under this interpretation of the statute, owners of 84% of the area of land immediately adjacent have signed the Protest, and it will take a 3/4 vote to approve the requested rezoning of the Orr Block. One of the virtues of this approach is the ability to determine with a high degree of certainty whether the protest satisfies the statutory requirements, and a 3/4 vote is required.

³ This issue was raised in a recent Land Court decision, *Farrington, et als v. City of Cambridge and Lesley University*, 19 LCR 142 (2011). Judge Sands reported in n. 4, that the City of Cambridge originally told the plaintiffs that "anyone within 300 feet of the [area to be rezoned] was eligible to sign", but at the public hearing on the rezoning the City limited qualified protestors to the immediate abutters. The City Engineer determined that the area of land owned by qualified protestors was 19%, which was challenged by the protestors who argued that the area of land owned by qualified protestors was 31%. See n. 19. Judge Sands did not, however, decide this issue because more than 3/4 of the City Council passed the challenged rezoning, rendering the issue moot.

⁴ Those properties are 14-16 Foster Street, 20 Foster Street, 24-26 Foster Street, 30 Foster Street, 34 Foster Street, and 227 Walnut Street, although the new owners of 24-26 Foster Street have withdrawn from the Protest. The determination of ownership for purposes of this Memorandum is based on the information in the Newton Assessors' Database. Consistent with prior opinions from this Office, all the owners must sign the Protest where a property is owned by more than one owner, albeit there is disagreement between courts on that point. Cf., *Disco v. Bd. of Selectmen of Amherst*, 115 NH. 609, 347 A.2d 451 (1975) (Only one owner needs to sign the petition); *Woldan v. City of Stanford*, 22 Conn. Supp. 164, 164 A.2d 306 (1960) (All co-owners must sign the petition).

However, this office has taken the position in two prior rezoning protest situations (the Nahanton Woods and the Jordan Marsh Warehouse rezonings) that if the City does not own the fee in a street, then land on the other side of a street from the property being rezoned is still immediately adjacent to the land being rezoned.⁵ In addition, both prior opinions counted all the land area within 300 feet of the land being rezoned as the Protest Corridor, including the area in the streets. If a court adopts this reasoning, then the requirement that the owners of 20% of the area of the immediately adjacent land within 300 feet has not been satisfied. In that case, a 2/3 vote would be sufficient to approve the rezoning. The problem with this approach is the high degree of uncertainty that results in determining if streets prevent land on the other side from being “immediately adjacent.” Does this analysis require a determination of who owns the fee in the street, or whether the street is public, private, or paper? If land on the other side of a street is considered immediately adjacent, how should the area of the streets be counted – is the land area to be included in the area of the owners on either side, or is it to be excluded altogether in calculating the total land area of the Protest Corridor?

Based on more extensive legal research done in preparing this memorandum and for the reasons set out in the Discussion section of the Memorandum, I believe it is more likely that a court would give greater weight to the phrase “immediately adjacent” in calculating both who is qualified to file a protest as well as how the area of the Protest Corridor is calculated. This approach is consistent with one of the principles of statutory construction:

The words of a statute are the main source for the ascertainment of a legislative purpose. They are to be construed according to their natural import in common and approved usage. The imperfections of language to express intent often render necessary further inquiry. Statutes are to be interpreted, not alone according to their simple, literal or strict verbal meaning, but in connection with their development, their progression through the legislative body, the history of the times, prior legislation, contemporary customs, ...

Com. v. Welosky, 276 Mass. 398, 401-402 (1931).

I. Legislative History

A procedure to protest a rezoning appears in many state zoning statutes and reflects some version of the protest language found in the Standard State Zoning Enabling Act (“SSZEA”). Drafted by the U.S. Department of Commerce and first issued in 1923 as a model zoning enabling act, the SSZEA proposed a means of protesting zoning amendments based on land ownership as a way to provide stability in zoning. If the owners of 20% or more of the area of lots in various classes of land protested the rezoning, the vote required to approve the rezoning increased from a simple majority to 3/4 vote. The SSZEA recognized 3 classes of property owners who could protest a proposed rezoning based on the location of the land each class owned.⁶ Most importantly, the SSZEA used the phrase “immediately adjacent to the rear” to define one of the class of land owners, and stated in an explanatory note that this phrase was “... necessary for precision; otherwise, there will be doubt, and owners of lots in the rear but some distance away might claim the right to be included in the objection.”, SSZEA n. 33.

The SSZEA has been considered to have influenced many state zoning acts, including Massachusetts. As noted in one well respected Massachusetts land use treatise:

⁵ An even earlier opinion from the office took a contrary position and held that regardless of whether the City owned the fee in a street, the street would prevent an owner on the opposite side from being immediately adjacent to the property being rezoned.

⁶ The 3 classes were owners of lots: 1) included in the area to be rezoned; 2) “immediately adjacent to the rear” of the land to be rezoned extending “X” feet therefrom; or 3) “directly opposite” of the land to be rezoned extending “X” feet therefrom. The SSZEA also suggested that a distance provision be selected by the states based on the “prevailing lot depth in the municipalities of the State.” See SSZEA n. 34.

The purpose, nonconforming use, **protest**, and enforcement clauses of 1933 Mass. Act 269 ...borrow heavily from the Standard State Zoning Enabling Act. (*emphasis added*).

Bobrowski, *Massachusetts Land Use and Planning Law* 3rd Ed., §2.03 p. 33 (2011)

Massachusetts may have been heavily influenced by the SSZEA, but the protest language is not identical. One difference is that the SSZEA refers to the owners of the area of lots, while the Massachusetts protest provision refers to the owners of the area of land. However, the Massachusetts legislature retained the phrase “immediately adjacent.” If that phrase means abutting or adjoining, then land that is separated from the rezoned land by the land of another owner is not “immediately adjacent.” See Section II Definition of “Immediately Adjacent” *infra*. Thus, using the word “land” rather than “lot” does not seem to make any difference in terms of which owners are qualified to file a protest.⁷

Prior to the adoption in 1975 of the current language in §5 of c. 40A (the “Zoning Act”) regarding protest petitions, the protest procedure appeared in §7 of c. 40A (the “Zoning Enabling Act”). While §5 provides for just two classes of owners entitled to protest a zoning amendment, §7 recognized 3 classes in line with the SSZEA. Those classes were:

...owners of 20% or more of the area of the land proposed to be included in such change, or of the area of the land immediately adjacent, extending 300 feet therefrom, or of the area of other land within 200 feet of the land proposed to be included in such change.

The change that occurred in the protest provision is partially explained in the Report of the Department of Community Affairs Relative to Proposed Changes in the Zoning Act (the “DCA Report”), which is often referred to as the legislative history for the Zoning Act.⁸ The DCA Report recommended eliminating the protest provision altogether except where there was an unfavorable report by the planning board or regional planning commissioner on grounds that this provision made it “unnecessarily difficult” to revise zoning. See DCA Report, p. 34, *Sec. C. Vote Required*.

The Legislation did not, however, fully implement the DCA’s recommendation, although it did eliminate one of the classes of land owners, *i.e.*, owners of land within 200 feet of the land to be rezoned. It is significant that the Legislature eliminated the class of land owners within 200 feet of the land to be rezoned because the land of these owners did not have to be immediately adjacent to the property being rezoned. For example, the class eliminated could have included owners of land separated from the land to be rezoned by land owned by another person, or by a street. The effect of this statutory change was to narrow the number of owners who could qualify to file a protest, allowing only those owning land being rezoned or immediately adjacent to the land being rezoned to file a protest.

⁷ Note, however, that if the owner of the abutting lot also owned the lot abutting the abutting lot, then the phrase “area of land” would include both lots held in common ownership. This raises the question of whether the area of 221 Walnut Street should be included in the Protest Corridor, given that it abuts 227 Walnut Street which is an immediate abutter. However, the Assessors’ Database shows different owners for those two lots, and that source is being used to verify ownership. Accordingly, 221 Walnut Street is not counted in the Memorandum as immediately adjacent land.

⁸ The DCA Report is also referenced as Mass. H.R. Rep. No. 5009 (1972).

The significance of the legislative decision to retain a protest provision notwithstanding the recommendation of the DRC Report, but to narrow the number of owners who could file protests, should also be understood in the context of one of the few Massachusetts decisions involving a zoning protest. The same year that the Legislature revised the zoning protest section, the Appeals Court in the case of *Parisi v. City of Gloucester*, 3 Mass. App. Ct. 680 (1975) considered a zoning protest filed under §7 of the Zoning Enabling Act, rather than the current §5. The requirement considered by the Court is the same under either the earlier or current statute -- owners must sign and file "... a written protest against such change, stating the reasons..." The question presented to the Court was whether a written protest that was signed by the owners but failed to give any reasons for the protest was sufficient to increase the required vote to approve the rezoning to 3/4.

The Court held that the protest petition was deficient because it contained no written statement of reasons, although the owners had appeared during the public hearing and stated their objections orally. The Court found that the language in the statute calling for a written protest stating the reasons had to be strictly followed, and the failure to file a written protest stating the reasons was no "trivial procedural defect." The Court stated:

Statutes providing for a greater than majority vote of the appropriate governing body in order to override a protest of a given percent of the landowners affected by a proposed zoning amendment exist in many states. *See Trumper v. Quincy*, 358 Mass. 311, 312 (1970) Such statutes are designed to give affected landowners 'some leverage in the adoption or rejection of the propos(ed) amendment' (*Id.* at 314) and are expressions of 'the precise degree of extra diligence those citizens (whose property rights it is proposed to alter) will be guaranteed.' *Id.* at 313 *See Opinion of the Justices*, 234 Mass. 597, 606 (1920). However, the landowner's leverage to invoke the unanimity requirement derogates from the normal legislative process by majority rule even more drastically than the statutory two-thirds rule (see fn. 1) which otherwise applies to the enacting of zoning amendment. The limitations upon and conditions of that leverage must therefore be strictly enforced. (citations omitted) Additionally, such conditions and limitations represent a legislative response to the conflict between the rights of the landowner and the public welfare (*See e.g. Raymond v. Building Inspector of Brimfield*, 3 Mass. App. 38 (1975)). And we must take care not to vary the balance it has set. (*emphasis added*).

Parisi v. City of Gloucester, 3 Mass. App. Ct. at 682, 683.

Similarly, the statutory requirement that a citizen must be an owner of land immediately adjacent to the land being rezoned to file a protest under §5 should be understood as a limiting qualification on the pool of citizens entitled to exert leverage on the legislative rezoning process, most especially after the Legislature narrowed that pool by deleting the class of owners that owned land simply within 200 feet of the rezoned property.

II. Definition of “Immediately Adjacent”

Absent a specific legislative definition of a term or phrase, statutory construction looks to the ordinary or common meanings of words or phrases. *See Com. v. Welosky, supra*. A second principle of statutory construction is that every word in a statute is to be given meaning. *See Matter of Yankee Milk, Inc.* 372 Mass. 353, 358 (1977).

The New College Edition of *The American Heritage Dictionary* defines “adjacent” as “close to; next to; lying near; adjoining.” In §5, the word “adjacent” is modified by the word “immediately” which is defined by *The American Heritage Dictionary* as “without intermediary; directly.” (*See also* definition of “immediate” in *Black’s Law Dictionary* 9th Ed., as “not separated by other persons or things.”) Accordingly, the phrase “immediately adjacent” should be understood to mean land adjoining or abutting the land to be rezoned, not just land near the land to be rezoned.

Several out-of-state courts have considered the phrase “immediately adjacent” to mean adjoining or abutting in the context of a zoning protest petition. These courts have also held that the ownership of abutting land is a requirement in order to file a protest, not simply ownership of land within the statutory distance from the land being rezoned. *See Parsons v. Town of Whethersfield*, 135 Conn. 24, 60 A.2d 771 (1948) (A 66 foot wide right of way owned in fee by a railroad prevented the owners of land on the other side of the right of way from being “immediately adjacent” to rezoned property and disqualified such owners from filing a protest even though their land was within 100 feet of the rezoned land.); *Putney v. The Township of Abington*, 176 Pa. Super 463, 108 A.2d 134 (1954) (A 100 ft. railroad right of way preventing the signers of a protest land and the rezoned land from “touching” and therefore signers’ land was not “immediately adjacent” to the rezoned land, disqualifying the owners from protesting the rezoning even though their land was within 100 feet of the rezoned land.)

Applying the ordinary meaning of the words “immediately” and “adjacent” as well as considering the holdings in both the *Parsons* and *Putney* judicial decisions, in order to qualify to file a protest pursuant to §5 an individual must own land that adjoins or abuts the land to be rezoned. Up to 300 feet of that owner’s land can be included in determining the area to be counted towards the numerator, but if land within 300 feet of the land to be rezoned is owned by a different individual, the area of that land should not be included in the numerator in calculating whether the 20% requirement has been met.

What is still somewhat unclear under this approach is whether the area of the denominator, *i.e.*, the Protest Corridor, should be the area of all the land extending 300 feet from the common boundary of the immediately adjacent land and the land being rezoned. However, this confuses matters by restricting the pool of owners qualified to file a protest to only those immediately abutting the land to be rezoned, but increasing the area to be included in the denominator to land that may be owned by persons who are not qualified to file a protest but who own land within 300 feet of land to be rezoned. The better approach is to say that the area of the Protest Corridor should be restricted to the area of land whose owners are qualified to file a protest, and that 20% of those qualified owners must file the protest in order to require a 3/4 vote to rezone.

III. Streets Keep Land on the Opposite Side From Being Immediately Adjacent to the Rezoned Land

As noted above, prior to adoption of the current language of §5, there was no requirement that land within 200 feet of the rezoned land be immediately adjacent to such property in order for the owners of that land to protest the rezoning. This allowed owners of land located across a street from the rezoned land to join in a protest. The deletion of this class of owners, however, from the protest provision should be understood as

reflecting intent by the Legislature to have streets interrupt the potential area of land from which protestors can be drawn.⁹

The prior opinions from this office which held that property located on the other side of a street opposite the land to be rezoned was immediately adjacent did so on grounds that under common law principles reflected in G.L. c. 183, §58 (also known as the Derelict Fee Statute), unless there is clear evidence reflected in deeds or in an order to taking, the land abutting a way includes the fee interest to the center line of the way. *See Tattan v. Kurlan*, 32 Mass. App. Ct. 239, 243 (1992). This approach renders the phrase “immediately adjacent” meaningless, which is contrary to statutory construction principles. In addition, this approach runs afoul of a number of instances in which courts have found that the issue of ownership of the fee reflected in the Derelict Fee Statute does not control issues related to zoning.

Thus, for example, the fee owned under an abutting private way was not added to that property owner’s lot in order to calculate the minimum lot area required by a zoning by-law. *See Sears v. Building Inspector of Marshfield*, 73 Mass. App. Ct. 913 (2009). Streets, whether public, private, or even paper, have also been held to prevent substandard lots from merging for zoning purposes as would otherwise be required by the provisions of G.L. c. 40A, §6. *See Dowling v. Board of Health of Chilmark*, 28 Mass. App. Ct. 547, 548-549 (1990); *Johnson, Trustee of Vale Realty Trust v. Casper et als*, 16 LCR 87, 89-90 (2008).

Further, given that the protest provision requires one to calculate the area of both the land owned by those filing the protest (the numerator) as well as the area of the land within what this Memorandum refers to as the “Protest Corridor,”(the denominator) in calculating whether the 20% requirement has been met, there is no suggestion in the statute as to how to treat the area in the street itself. Is this area to be excluded altogether, or is 1/2 of the area under the street to be added to each of the adjacent properties? These questions are hardly rhetorical. The uncertainty of this approach is an additional reason to decline to find the land separated from the land to be rezoned by a public or private street as included in the “area of land immediately adjacent within 300 feet” of the land to be rezoned.¹⁰

The drawback to this approach is almost present in the instant case – if the property to be rezoned is surrounded on all sides by streets, then only the owners of the land being rezoned would be able to protest. This result, however, would appear to be a possible consequence of what the Legislature intended to do when it re-wrote the zoning protest provisions in 1975. It should also be noted that holding the area of the Protest Corridor to just the area of land abutting the area to be rezoned makes it easier to reach the 20% threshold. The fact that the entity seeking to rezone land may take advantage of any “safe harbor” a statute provides has been recognized by a number of different state courts. (See the discussion of the use of “buffer zones” in Rohan, *Zoning and Land Use Controls*, §38.03[5][b], pgs. 38-100-38-104 (2008) (A number of courts have held that an owner can create a so-called buffer zone on the same lot which is not be rezoned in order to prevent abutting land of a different owner from being “immediately adjacent” to the land being rezoned as required by the statute.)

⁹ The Legislature certainly had alternative language to identify property owners than the restrictive language used in §5. As an example, the Legislature required written notice of special permits and variances to be sent to “parties in interest” which the Legislature statutorily identified as the “petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the petitioner....” This description stands in contrast to the language of §5 that refers more narrowly to “owners ... of the area of the land immediately adjacent extending three hundred feet therefrom”

¹⁰ New Hampshire has addressed the many problems identified in this approach by modifying its statutory protest language. *See* RSA 675:5. New Hampshire has two classes of owners who may protest – those owning 20% of the area of lots to be rezoned and the “owners of 20 percent of the area within 100 feet immediately adjacent to the area affected by the change or across a street from such area.” RSA 675:5 I-c. further provides that “The area of streets, commons, or land owned by a governmental entity shall not be included in any calculation under this section.”

CONCLUSION

In view of both the legislative history of the rezoning protest provision as well as established principles of statutory construction, a court would likely limit the area of land from which owners can protest the rezoning, the "Protest Corridor", to land that actually abuts the northern boundary of the Orr Block. In that event, the protest has been signed by the owners of 84% of the area of land immediately abutting the Orr Block and a 3/4 vote will be required to approve the rezoning petition.

Even if the Protest Corridor is extended out the full 300 feet from the Orr Block northern boundary, crossing Foster Street, which should interrupt the immediate adjacency of the land to the north of Foster Street for the reasons set forth above, 37% of the owners of the area of land in this larger Protest Corridor have signed the Protest. See Exhibit D for the map showing this conclusion based on the City's GIS mapping application.

However, for the reasons set forth in the Discussion, the Protest Corridor should not be calculated based on the area of all the land within 300 feet of the Orr Block boundary, or even on the area of land which is separated from the Orr Block by a street, whether public or private. See Exhibit E for the map showing the area of land separated from the Orr Block by streets.¹¹

¹¹ The electronic copy of this Memorandum posted at the City's website includes pdfs of the Maps which can be enlarged to more clearly read the square footage of the various areas of land listed in the Legend on each Map.

EXHIBIT

A

We, the undersigned owners of land in Newtonville, Ward 2, Newton, MA under provisions of Massachusetts General Law Chapter 40A, Section 5, hereby state our protest to Newton City Council Docket No. 180-16 and No. 179-16, proposals for permits and rezoning of 245-261 Walnut St, 845-855, 857-859, 867, and 875 Washington St from Business Use 1 and 2 to Mixed Use 4, and rezoning of 241 Walnut St, 14-18 and 22 Bailey Pl, an unnumbered lot on Bailey Place, 861-865 and 869 Washington St, 6-8, 10-12, 16-18 and 22 Washington Terrace from Business Use 1 and 2 to Mixed Use 4.

As abutters to the proposed development, we object strongly to the zoning change and special permit applications. The proposed use of the site for a 5-story structure containing 40,000 square feet of retail store space and 171 apartments, is wholly out of keeping with the adjacent local Historic District, local business district, and adjoining neighborhood. The excessive size, scale, massing and density of the proposed steel-frame development will erode the integrity of the abutting Newtonville Historic district (including structural damage to historic buildings), increase traffic and parking density, displace affordable housing, drive up residential and commercial rents, and radically undermine the village model on which Newton is based. The enclosed pages enumerate 10 reasons for our petition objecting to the request for special permits and rezoning.

Signature

Print Name

Newtonville Address

- | | | |
|--------------------------------|---------------------|------------------------------|
| ✓ 1. <i>Bette A. White</i> | BETTE A. WHITE | 14 FOSTER ST. |
| ✓ 2. <i>Ellen Fitzpatrick</i> | Ellen Fitzpatrick | 20 FOSTER ST. |
| ✓ 3. <i>John + Mari Wilson</i> | John + Mari Wilson | 30 Foster St |
| 4. <i>Elizabeth B. Smith</i> | Elizabeth B. Smith | 40 Foster St. |
| 5. <i>Robert H. Smith</i> | ROBERT H. Smith | 40 Foster St. |
| 6. <i>William R. Foss</i> | William R. Foss | 142 Lowell Ave |
| 7. <i>Kimberly Davis</i> | Kimberly Davis | 128 Lowell Ave. |
| ✓ 8. <i>Meghan Smith</i> | Meghan Smith | 34 Foster st. |
| 9. <i>FA Choi GEE</i> | FA CHOI GEE | 15 FOSTER ST. |
| 10. <i>Jean Chang</i> | Jean Chang | 205 Walnut St |
| 11. <i>Odile Poirier</i> | Odile Poirier | 133 Lowell Ave |
| 12. <i>ERAN CASPI</i> | ERAN CASPI | 137 Lowell Ave |
| 13. <i>MICHA KLUGMAN-CASPI</i> | MICHA KLUGMAN-CASPI | 137 Lowell ave |
| 14. <i>Maura Harrington</i> | Maura Harrington | 157 ⁺ Lowell Ave. |
| 15. <i>Minjie Xie</i> | Minjie Xie | 161 Lowell Ave. |

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 NEWTON CITY COUNCIL

Abutters' Reasons for Protesting Newton City Council Petition #180-16 and #179-16

1. Size, Scale, Massing and Density of the Development out of Character with Village Concept

The current municipal plan, evidenced by the existing zoning districts and described on the Municipal web site, is to maintain Newton as a city of 13 villages. Current zoning in this area allows for two stories. We believe this development and zoning plan is sound. The 5-story plan of the Washington and Walnut Street development and lack of setbacks from the street are entirely out of line with the scale of the rest of the village, which is predominantly one- and two-story buildings. The proposed zoning change will forever alter the village concept of Newtonville by creating an excessively large, dominant, dense retail and residential structure that will overshadow the adjoining residential neighborhood and existing business district.

2. Lack of Buffer Zone to Protect Adjacent Newtonville Local Historic District

The abutting Local Historic District on Foster Street, Lowell Ave. and Walnut Street is in an MR1 zone. Rezoning the Washington Street parcel to MU4 would provide no transitional area between the site, and the residential MR1 zone where the historic district is located. Furthermore, the density, aesthetic design, scale and massing of the proposed development and the area's rezoning as a MU4 fundamentally undermines and compromises the integrity of the abutting Newtonville Local Historic District which the Board of Aldermen itself recognized as worthy of historic preservation in its 2002 vote to create the Local Historic District. As Newton's own Historic Preservation guidelines states: "the study which formed the basis of the historic designation describes the cohesive nature of the neighborhood resulting from the overall massing, scale, lot size, setbacks and craftsmanship of its buildings." The Washington Street development will seriously compromise "the cohesive nature of the neighborhood" that the City has deemed worthy of protection.

3. Potential for Site Construction to Cause Structural Damage to Historic Dwellings

The demolition, pile-driving construction and creation of an underground garage involved in the proposed development pose a serious threat to the structural integrity of surrounding homes in the historic district. Many adjacent homes are built on 19th century fieldstone foundations that are structurally sensitive to such processes. Damaged historic windows, foundations, walls and ceilings are prohibitively costly, or indeed impossible, to replace "in kind." No mitigation can reverse damage to historic structures which the City itself has affirmed are worthy of protection and preservation.

4. Traffic Impact and Site Access

We are concerned that an adequate study of traffic impacts has not been done, and we request that the city conduct a "peer review" traffic study. The intersection of Washington & Walnut as well as Washington and Lowell are not designed to accommodate the additional volume of traffic that will be generated by the larger residential and commercial complex proposed. Walnut Street between Washington Street and Newton North High School is already a crowded north/south traffic conduit and may need redesign to deal with the increased traffic as well as significant pedestrian population going to the commuter rail and high school.

The access to and from the site is not designed to provide for traffic to return north on Walnut Street and east on Washington Street. Because the site access on Walnut Street is within 100 feet

of the busy intersection at Walnut and Washington Streets, northbound traffic trying to turn left into the site will likely have a negative impact upon the functioning of the intersection. Current southbound traffic on Walnut Street is routinely backed up to Page Road and Turner Street, and this development could significantly push that backup all the way to Watertown Street.

5. Lack of Adequate Parking

The developer is asking for numerous waivers for parking when it is still unclear whether his major commercial tenants will be restaurants, retail, or a health club, all of which have different parking projections. The current request for 1.25 spots per housing unit is also clearly insufficient, particularly with 74 two-bedroom units. This parking insufficiency is likely to cause spillover into adjacent streets such as Lowell Avenue. This parking insufficiency may be particularly acute in winter due to snow piles and the overnight parking ban on city streets. Snow will also inevitably reduce parking in the proposed ground level lot during the winter months.

6. Net Loss of Affordable Housing in Newtonville

Over 20 units of naturally occurring affordable apartments are being displaced by the project, and only 17 units (10%) are required to be built in the new development. Therefore, the project will result in a net *loss* of moderate/low income affordable housing units. Even if 15% of the units (26) were set aside as affordable, the net gain would be negligible (only 5 or 6 units). We support the addition of low-income and moderate housing in Newtonville, but this project does not promise to significantly add to that number, given the housing that is being displaced by it. There also is a concern that a development of this nature could drive up the rents of other affordable housing in the area, which would be a serious concern. For a development this large, the City Council should request a study of the economic impact upon rents in the village and environs.

7. Lack of an Environmental Impact Report

The developer of a project of this magnitude should be required to produce an environmental impact review, but none has been conducted. Since the project will demolish a gas station, the ground ought to be studied for gasoline contamination. Digging for an underground garage may affect rock ledges or ground water tables, so those environmental impacts should be assessed to determine that there is no significant adverse impact on the environment.

8. Noise, Lighting, and Other Disturbances to Abutters

The residential abutters would be subjected to escalating traffic, noise, lighting and density impacts which would violate Newton's Zoning Ordinance for an MR1 district. Nighttime lighting of the parking lot and apartment buildings will disturb residential abutters on Foster Street, whose bedrooms directly overlook the site. Constant traffic going in and out of the site will create noise and air pollution that will disturb local residents of homes a few feet away from the two site exits/entrances.

9. Possible Impact on Other Municipal and State Services

171 new apartments will have a financial impact on city services, such as schools and waste removal, and will increase ridership on MBTA bus and commuter rail lines, but no details have been forthcoming about impacts on these services. Since 43% (74) of the units in the building

are 2 bedroom, it is reasonable to expect that sizeable numbers of children will reside in the Washington Street development, a fact which must be taken into consideration when projecting enrollments and ensuring adequate staff and classroom space at Horace Mann (soon to be Carr), Day Middle, and Newton North.

10. Unknown Effects of 2 Other High-Density Developments in Newtonville

A 36-unit development on Court Street and a 68-unit mixed-use development on Austin Street with 5000 square feet of commercial space were approved in 2015. The effects of these projects on Newtonville's traffic congestion, parking demand, and school enrollment are unknown. It would be misguided for the city to consider rezoning the 'Washington Place' site at this time before the impacts of these other high-density developments can be registered and felt.

Our protest is in accordance with MGL Chapter 40A, Section 5, fifth paragraph:

No zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a town meeting; provided, however, that if in a city or town with a council of fewer than twenty-five members there is filed with the clerk prior to final action by the council a written protest against such change, stating the reasons duly signed by owners of twenty per cent or more of the area of the land proposed to be included in such change or of the area of the land immediately adjacent extending three hundred feet therefrom, no such change of any such ordinance shall be adopted except by a three-fourths vote of all members.

Washington Place Properties

Adjacent Properties

Signed Petition

Draft as of January 9, 2017

Number	Street	Sq. Ft. of property*	Owner
33	Austin Street	25,860	Star Markets Company Inc.
14-18	Bailey Place		Mark Lolich LLC
22	Bailey Place		Mark Lolich LLC
	Bailey Place		Mark Lolich LLC
119	Central Avenue	944	Verizon
16	Chesley Avenue	2,741	Denn Thomas C & Alice M
14-16	Foster Street	10,458	White Betty
15	Foster Street	7,079	Gee FA Chwi & Wah Kum
20	Foster Street	11,185	Fitzpatrick Ellen F
21	Foster Street	17,813	The Second Step
24-26	Foster Street	9,154	24-26 Foster St. LLC (Galia Carlos D & Gertrud Trs)
30	Foster Street	9,073	Wilson John L & Mari
34	Foster Street	8,930	Smith David J & Francine M (deceased); Belson David & Smith Meghan M
40	Foster Street	8,008	Smith Robert H & Elizabeth B
118	Lowell Avenue	482	Shatkin Gavin M
122	Lowell Avenue	5,759	McLaughlin Marion B
125	Lowell Avenue	387	Bemporad Brenda
128	Lowell Avenue	10,427	Davis Jonathan G & Kimberly Chabot
133	Lowell Avenue	3,323	Poirier Jean-Jaques & Odile B
137	Lowell Avenue	8,004	Caspi Efran & Micha Klugman
142	Lowell Avenue	8,226	Koss William R
145-147	Lowell Avenue	5,072	DCL Investments LLC
149-151	Lowell Avenue	4,283	DCL Investments LLC
150	Lowell Avenue	18,499	Italian Pentecostal Christian Church
157	Lowell Avenue	4,643	Harrington Maura J
161	Lowell Avenue	104	Xie Minjie
162	Lowell Avenue	9,412	A & M Joint Ventures LLC
	Lowell Avenue	3,266	Paper Street/Alley ??
12	Page Road	1,120	Dawes Phillip Jr & Nickki P
200	Walnut Street	-	Miller Donald C Tr
203-205	Walnut Street	7,150	Chang Jean TR 205 & Jasper Michael S 203
209	Walnut Street	7,510	Lewis Adam Marc
218	Walnut Street	23,910	Boston Chinese Evangelical Church
221	Walnut Street	8,692	Slattery Patrick J Tr
227	Walnut Street	9,181	Slattery Patrick J
230	Walnut Street	15,579	Walnut Terr LLC
	Walnut St/Terr Alley	542	City ???
241	Walnut Street		Lolich Mark LLC
245-261	Walnut Street		Mark Lolich LLC
246-254	Walnut Street	34,897	Hanlon Patricia A Tr
288	Walnut Street	245	Spencer Bradford A
1-6	Walnut Terrace	13,674	Walnut Terrace LLC
793-821	Washington Street	6,698	Bram S Richard & Vivian R Trs
823-833	Washington Street	10,682	Handler Newtonville LLC
845-855	Washington Street		Mark Lolich LLC
857-859	Washington Street		Mark Lolich LLC

861-855	Washington Street		Mark Lolich LLC
867	Washington Street		Mark Lolich LLC
869	Washington Street		Mark Lolich LLC
875	Washington Street		Sunoco Inc
885	Washington Street	3,203	Santosuosso Elena & John Trs
891-897	Washington Street	14,978	Postal Limited Partnership
899	Washington Street	7,675	HLC Aroma LLC
911	Washington Street	3,214	Martino Eric M & V Ronald
	Washington Street	2,051	City of Newton
	Washington Street	45,348	City of Newton - Southern Half of Street
	Mass Pike	154,454	MassDot/MBTA Rail Lines
6-8	Washington Terrace		Arcuri Joseph A & Rosina
10-12	Washington Terrace		Lafave Lance R
16-18	Washington Terrace		Saminsky Valery & Elena
17	Washington Terrace	5,543	Coletti Daniel A Tr
21	Washington Terrace	5,400	MacNeil Edna B & Patricia A
22	Washington Terrace		Chow Siu Ming

* does not include to centerline of street

one owner did not sign



