David B. Cohen
Mayor

CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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Public Hearing Date:	July 15, 2008
Land Use Action Date:	TBD
Board of Aldermen Action Date:	September 15, 2008
90-Day Expiration Date:	October 13, 2008

DATE: July 11, 2008

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development
Candace Havens, Chief Planner
Jean Fulkerson, Principal Planner

SUBJECT: **#202-07(2)** EDEN SIFF & LAUREN ZUKER SIFF petition to AMEND SPECIAL PERMIT/SITE PLAN APPROVAL, granted on September 4, 2007 for a change of grade in excess of three feet to construct a single-family house, by replacing a dual wall design with a single wall at Lot #4, KESSELER WAY, Ward 8, on land known as Sec 82, Blk 37, Lot 82, containing approximately 21,038 sf of land in a district zoned SINGLE RESIDENCE 3.

#216-08 GEORGE KOURIS, NORANDA CONSTRUCTION MANAGEMENT & DEVELOPMENT LLC/KEN JACKSON, JACKSON REAL ESTATE PARTNERS LLC petition to alter the existing contours of land by more than three feet in order to construct a single-family dwelling on Lot #2 KESSELER WAY, on land known as Sec 82, Blk 37, Lot 84, containing approx 15,074 square feet of land in a district zoned Single Residence 3.

#218-08 SHAHROKH & DIANNA REZA petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to alter the existing contours of land by more than three feet in order to construct a single-family dwelling on Lot #6 KESSELER WAY, on land known as Sec 82, Blk 37, Lot 91, containing approx 24,750 square feet of land in a district zoned Single Residence 3.

CC: Mayor David B. Cohen

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

EXECUTIVE SUMMARY

The petitioners are seeking special permits for grade changes of more than three (3) feet to construct and landscape single-family residences on lots within the Kesseler Woods subdivision in Oak Hill. Five lots on Kesseler Way already have been the subjects of special permits for three-foot grade changes. It was known at the time the subdivision was created that many of the lots along Kesseler Way would require significant changes in grade in order to complete construction on the house lots. The owners of Lot #4 (36 Kesseler Way) received a special permit in September of 2007, but wish to amend it to accommodate a revised rear yard design. The petitioners for Lots #2 (20 Kesseler Way), and Lot #6 (25 Kesseler Way) also require special permits based on the design and location of the proposed structures.

The subject properties are located within the "Kesseler Woods" subdivision, which was approved by the Planning and Development Board, acting as the Board of Survey, on August 11, 2004. The approved subdivision contains seven lots (Lots 1-7) with access on the new subdivision roadway known as "Kesseler Way" and two lots (Lots 8 & 9) with access off of Harwich Road. Since 2005, the Board of Aldermen has granted special permits to allow for grade changes of more than three (3) feet on lots within this subdivision at 6, 7, 12, 17, and 28 Kesseler Way.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

In reviewing these petitions, the Board should consider whether the alteration of the grade by more than 3 feet will have any adverse affects on the abutters and/or the character of this site in the context of the surrounding neighborhood.

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood.

The subject properties are located within the Kesseler Way subdivision. Six of the nine lots fronting on Kesseler Way are in the process or have completed construction of single-family dwellings. Kesseler Way is located near the Brookline/Newton border, in Oak Hill, within a large Single Residence 3 District. The surrounding neighborhood is comprised of single-family dwellings, most of which were constructed in the 1950s. Parcels in the surrounding neighborhood range in size from 7,000 square feet to 14,000 square feet, averaging slightly larger than 10,000 square feet. The lots within the Kesseler Woods subdivision are substantially larger, ranging from approximately 15,000 to 25,000 square feet.

B. Sites

Figure 1. Lot #2, 20 Kesseler Way

Lot 2, 20 Kesseler Way. Lot 2 is an undeveloped site situated between two lots with dwellings already under construction. At 15,073 square feet, the lot is the smallest on Kesseler Way. The wooded site slopes downhill towards the residences on Harwich Road. There is a 20-foot. buffer zone at the rear of the lot that was included in the approved subdivision plan.

Figure 2. Lot #4, 36 Kesseler Way as seen from Lot 5

Lot 4, 36 Kesseler Way. Construction to a 2½ story dwelling is nearing completion on this 21,028 square foot property. The site slopes steeply to the rear, and backs onto Newton Conservation land. The rear yard is not visible from Harwich Road and is only slightly visible from Lot 5, which is still vacant.

Figure 3. Lot #6, 25 Kesseler Way

Lot 6, 25 Kesseler Way. Lot 6 sits at the end of the cul-de-sac and is partially wooded. The lot includes the major portion of the subdivision's detention basin, which is surrounded by chain link and picket fences and includes a 25-foot wide access easement for maintenance. The lot backs onto the municipal boundary with the Town of Brookline.

III. PROJECT REVIEW

A. Site Design

Lot 2, 20 Kesseler Way. The site plans show a 4,700 square foot, 2½ story single-family dwelling at the front of the site, with an attached front-loading three-car garage. The design calls for a 16-foot wide driveway opening leading to a 32-foot wide driveway that is 35 feet long with a hammerhead turnaround. The area of the driveway covers 1,155 square feet, which is larger than approved in the Order of Conditions from the Conservation Commission. The driveway seems excessive for the lot size and street conditions, since Kesseler Way is a cul-de-sac with on-street parking and little traffic. ***Planning Department staff recommends that the petitioners be required to redesign the driveway to reduce impervious coverage.***

Lot 4, 36 Kesseler Way. The single-family dwelling with attached three-car garage is nearly completed. An amendment to the existing special permit (grade change) should have no impact on the configuration of the dwelling or its location on the lot. There is a "Limit of Work" line at the rear of the site, which protects an area of bordering vegetated wetlands. The site plans indicate that no work will occur within the protected area and that a five-foot black vinyl-coated chain link fence will be installed to prevent use of this portion of the lot.

Lot 6, 25 Kesseler Way. This lot is triangular in shape and constrained by the presence of the subdivision's detention basin. The proposed dwelling is located at the front of the lot with a two-car garage, in-ground pool and 162 square foot pool house in the rear. A large underground storm water detention chamber will be installed at the rear of the dwelling to capture water running downhill on the site before it has a chance to enter the pool.

B. Grading

Lot 2, 20 Kesseler Way. Re-grading at the site will consist of cutting a 695 square foot area at the front southerly side of the house and filling a 3,681 square foot area along the northerly front side and rear of the house. The rear yard will be supported with a three- to four-foot high retaining wall. The grades at the sides of the lot are designed to match those of the adjoining lots at 12 Kesseler Way and 28 Kesseler Way.

Lot 4, 46 Kesseler Way. Lot 4 is an "L"-shaped lot that is fairly flat at the front property line, but drops off steeply at the rear. The grade will be altered by more than three feet on 2,742 square feet of the 21,028 square foot lot, or approximately 13 percent of the lot area, with a maximum grade change (fill) of 12 feet. The proposed grade change combines an upper and lower yard area into one larger upper yard. This requires a single 13-foot retaining wall, rather than two lower retaining walls spaced 20 feet apart. The proposed retaining wall will not have a sheer face, but will have a rubble wall with a slight slope of its own. A patio will be built out of pervious pavers.

Lot 6, 25 Kesseler Way. The petitioners propose to alter the grade by more than three feet on 4,347 square feet of the lot, or approximately 20 percent of the lot area. The maximum cut will be six feet and the maximum fill will be eight feet. Based on the proposed location of the residence, nine existing protected trees (133 total caliper inches) will be removed to accommodate the construction of the house and the fill and grading at the front and rear yards. A portion of the large knoll at the front property line will be removed to allow installation of the driveway.

The table below lists the various grade changes approved or proposed by special permit at Kesseler Way. Construction on several of the lots is complete and others are still underway. It is important to note that these figures do not include those portions of the lot where the grade is changed by less than three feet, but where some cutting or fill may have occurred. In other words, the remainder of the lot is likely to have some re-grading of less than three feet and may also be cleared, landscaped or paved.

Kesseler Way Lots	**Lot Size**	**Area of 3 ft. change**	**Status**
Lot J-3a, 6 Kesseler Way	15,662 s.f.	9,782 s.f.	completed
Lot J-4a, 7 Kesseler Way	17,439 s.f.	5,400 s.f.	completed
Lot 1, 12 Kesseler Way	19,047 s.f.	5,403 s.f.	underway
Lot 2, 20 Kesseler Way	15,074 s.f.	4,376 s.f. proposed	subject lot
Lot 3, 28 Kesseler Way	23,524 s.f.	2,355 s.f.	underway
Lot 4, 36 Kesseler Way	21,038 s.f.	2,742 s.f. proposed	subject lot
Lot 5, 31 Kesseler Way	25,806 s.f.		vacant
Lot 6, 25 Kesseler Way	24,750 s.f.	4,347 s.f. proposed	subject lot
Lot 7, 17 Kesseler Way	17,845 s.f.	4,470 s.f.	underway

C. Landscaping and Tree Removal

Lot 2, 20 Kesseler Way. According to the landscape plan, the total number of trees to be removed is 19, though only 18 are shown on the plan; some trees shown on the topographic site plan to be removed (noted TBR) are not accounted for on the landscape plan. ***The petitioners needs to confirm the correct number of trees to be removed, and the total caliper inches required to be replaced by the City's Tree Warden.***

The Order of Conditions specifies the type of plantings required for each lot. Lot 2 is required to install two shade trees, one flowering tree, three evergreens, two evergreen shrubs, eight deciduous trees, 316 perennials and groundcover. The petitioners' landscape plan meets these requirements with the exception of the perennials, of which only 31 are proposed. ***The petitioners must meet the requirements of the schematic landscape plan approved for the subdivision by adding more perennials.***

The buffer zone shown on the schematic landscape plan for the subdivision is an area that is protected from disturbance during the construction process and which is meant to be left in a natural state. The petitioners' landscape shows the installation of 15 white pines in the buffer zone. The City's Tree Warden must approve of the type and placement of the replacement trees.

Lot 4, 36 Kesseler Way. The landscape plan indicates that a total of 115 caliper inches of protected trees will be removed from the site that will be replaced with an equal number of caliper inches. The plant list meets the requirements of the Schematic Landscape Plan approved by in the Order of Conditions for the subdivision. The area of the proposed grade change will not be visible from the abutting properties or from the rear. The City's Tree Warden must approve of the type and placement of the replacement trees.

Lot 6, 25 Kesseler Way. The petitioners' landscape plan indicates a total of nine trees from Lot 6 will be removed for a total of 133 caliper inches. The Planning Department has advised the petitioners that they are required to comply with the Tree Preservation Ordinance prior to the issuance of any building permits. The City's Tree Warden must approve of the type and placement of the replacement trees.

The schematic landscape plan requires three shade trees, two flowering trees, 23 evergreen trees, ten deciduous shrubs, 560 perennials and groundcovers. The petitioners' landscape plan shows only a single flowering tree and two shade trees, and only 15 perennials.

Two of the petitioners' proposed trees are located within the maintenance easement for the subdivision detention basin; the easement must remain open to allow machinery and vehicles to access the basin. ***The petitioners must revise the landscape plan to meet the requirements of the schematic landscape plan and move the two trees located in the maintenance easement.***

IV. TECHNICAL ANALYSIS

A. Technical Considerations –Dimensional Controls and Parking

The single-family dwellings at Lots 2, 4, and 6 of Kesseler Way conform to all dimensional controls and parking requirements established for a single-family residence in a Single Residence 3 District. The Zoning Review Memorandum for each lot is attached ***(See Attachments "A-C").***

B. Engineering Review

The Associate City Engineer has indicated that grading as proposed should not adversely affect abutters provided the sites are properly stabilized during construction and landscaped afterwards. In all cases, an operations and management plan for storm water management facilities is needed for each site and must be submitted for his review. The Associate City Engineer also noted the following site-specific recommendations:

Lot 2 – Details for proposed retaining walls are needed. Steps may be useful for backyard access along terraced areas. A construction management plan may also be useful, if ledge is encountered.

Lot 4 – A drainage analysis is requested to confirm suggested findings.

Lot 6 – Connections to the city storm drain system need to be clarified and refined. Portions of the retaining wall in the rear yard exceed four feet and must be designed by a structural engineer and should include details of the wall construction and materials. A safety fence is required along the perimeter of the proposed wall. Adjacent to the swimming pool, the grading directs surface water towards the house and the plans should be revised to divert water away from the foundation.

C. Conservation Commission Review

Lot 2, 20 Kesseler Way. The subject lot was part of the Kesseler Woods subdivision plan, which was reviewed and approved by the Conservation Commission, as well the Planning and Development Board, acting as the Board of Survey. The proposed plans include a 58 square foot increase in the amount of impervious surface over that which was approved in the Subdivision Plan. Based on all of the above changes, the petitioners were required to file updated plans and seek an amendment to the Order of Conditions. The current plans were reviewed and endorsed by the Conservation Commission on June 26, 2008.

Lot 4, 36 Kesseler Way. In June 2007, the Conservation Commission approved an amendment to the Order of Conditions for Lot 4 allowing an increase in impervious surface. After completing their discussion, the Commission voted to approve the amendment to the Order of Conditions, with the same conditions on drainage as for the original Order. The current request does not require any further review by the Conservation Commission, as the total area of imperious cover remains the same.

Lot 6, 25 Kesseler Way. The subject lot was part of the Kesseler Woods subdivision plan, which was reviewed and approved by the Conservation Commission, as well the Planning and Development Board, acting as the Board of Survey. The proposed plans include an 880 square foot increase in the amount of impervious surface over that which was

approved in the Subdivision Plan. The table below shows the proposed changes in the total amount of impervious surface.

Impervious Surface	Impervious Area Approved in Subdivision Plan	Proposed Impervious Surface
Dwelling	2,400 sq. ft.	3,200 sq. ft.
Driveway	568 sq. ft.	0 (gravel)
Patio (and pool)	900 sq. ft.	1,086 sq. ft.
Garage	440 sq. ft.	484 sq. ft.
Shed and decks	0	518 sq. ft.
Total	4,308 sq. ft.	5,288 sq. ft.

Based on all of the above changes, the petitioners were required to file updated plans and to seek an amendment to the Order of Conditions. On June 26, 2008, the Conservation Commission reviewed and approved current plans, including the increased impervious surfaces with modified grading and drainage.

D. Design Review.

Although not related to this special permit, the approved subdivision includes a self-imposed protective covenant that requires approval of the building design and site improvements on each lot by a Design Review Committee (not an official City Board or Committee) created for this subdivision. Lot 4 was approved on June 27, 2008, and Lots #2 and #6 were approved on May 27, 2008.

V. ZONING RELIEFS REQUESTED

Based on the completed zoning reviews ***(SEE ATTACHMENTS "A-C")***, the petitioners are seeking approval through:

- Section 30-5(b)(4), which allows the Board to grant approval to alter the existing contours by more than three (3) feet;
- Section 30-23 for Site Plan Approval, including landscaping; and
- Section 30-24(d) for approval of a Special Permit for grade change.

VI. PETITIONERS RESPONSBILITIES

Lot 2, 20 Kesseler Way. Submit a revised site plan with a reduced driveway width and a landscape plan showing a plant list that meets the requirements of the schematic landscape plan.

Lot 4, 36 Kesseler Way. The petition is complete.

Lot 6, 25 Kesseler Way. Submit a revised landscape plan, removing two trees from the maintenance easement for the detention basin and with a plant list that meets requirements of the schematic landscape plan.

ATTACHMENTS

ATTACHMENT A:	*Zoning Review Memorandum, Lot #2, June 10, 2008*
ATTACHMENT B:	*Zoning Review Memorandum, Lot #4, June 4, 2008*
ATTACHMENT C:	*Zoning Review Memorandum, Lot #6, June10, 2008*
ATTACHMENT D:	*Memorandum of the Associate City Engineer, Lot #2, July 1, 2008*
ATTACHMENT E:	*Memorandum of the Associate City Engineer, Lot #4, July 1, 2008*
ATTACHMENT F:	*Memorandum of the Associate City Engineer, Lot #6, June 27, 2008*
ATTACHMENT G:	*Land Use Map*
ATTACHMENT H:	*Zoning Map*
ATTACHMENT I:	*Vicinity Map*

ATTACHMENT A

Zoning Review Memorandum

Dt: June 10, 2008

To: Michael Peirce, representing Noranda Construction Company

CC: John Lojek, Commissioner of Inspectional Services
Michael Kruse, Director, Department of Planning and Development
Ouida Young, Associate City Solicitor

From: Candace Havens, Chief Planner
Alexandra Ananth, Planner

Re: Request for approval of grade change in excess of 3 feet

Applicant(s): Noranda Construction Company	
Site: Lot 2 Kesseler Way	**SBL:** Sect 82, Block 37, Lot 84 aka "Lot 2"
Zoning: Single Residence 3	**Lot Area:** L-82: 15,073 sq. ft.
Current use: Vacant lot	**Prop. use:** Single family residential

Background:
The subject lot is located on the cul-de-sac of Kesseler Way, within a new subdivision created as part of an overall plan to develop a part of the former Edison land, aka Kesseler Woods, per subdivision plans titled "Kesseler Woods - Definitive Plan of Land, Newton Massachusetts, March 17, 2004, last revised July 19, 2004, Sheets 1 – 8, approved by the Planning Board. Much of this area is also subject to certain Conservation Commission requirements as set out in the Order of Conditions pertaining to project DEP# 239-474, including certain plans subsequently approved by the Commission pursuant to the Order of Conditions including a grading plan and landscape plan. In addition, the subdivision is subject to development controls set out in the Kesseler Woods Protective Covenants.

The applicant seeks to build a single-family home on the lot and is subject to the above-referenced Covenants. Due to existing topographical conditions, the applicant anticipates altering the existing grade within his Lot 2 (SBL 82-37-84) at the front, rear, and north side of the proposed house in excess of three feet. *The proposed grade change on the subject lot necessitates a special permit/site plan approval per Sections 30-5(b)(4).*

Administrative determinations
1. The subject site is comprised of a lot created after December 7, 1953 and is subject to post-1953 dimensional controls applicable to lots in the SR-3 zone. The following review is based on the materials and plans referenced under Plans and Materials Reviewed, below.

2. *Section 30-15, Table 1, Density & Dimensional Controls in Residence Districts and for Residential Uses*, sets forth the applicable controls for new lots in the SR-3 zone:

SR3 (New Lot)	Required	Proposed
Lot Area	10,000 sq. ft.	15,073 sq. ft.
Frontage	80 ft.	105 ft.
Setbacks		
Front	30 ft.	34.9 ft.
Side	10 ft.	10.7 ft.
Rear	15 ft.	53.6 ft.
Total Floor Area Ratio	.35	.35
Building Height	30 ft.	29.92 ft.
Max. Number of Stories	2.5	2.5
Max. building lot coverage	30%	20.6%
Min. amount of open space	50%	70.0%
Build Factor	20	11.93

The proposed lot and building meets the applicable controls referenced above. However, extensive stone retaining walls are proposed as part of the 3 foot grade change area, where the greatest change at any one point is 8 feet. Certain segments of the proposed stone retaining walls are located within the 10 foot side setback on the north and south sides of the dwelling. These retaining walls range from approximately 0.1 feet in height above finished grade to approximately 3 feet in height. Placement of a structure within a setback would typically necessitate a dimensional variance from the Zoning Board of Appeals. The applicant has consulted with the Commissioner of Inspectional Services, who has determined that retaining walls which are an integral part of plans designed to handle grade changes in excess of 3 feet may be addressed as part of the special permit process required for 3 foot grade changes, and need not also seek a variance from the Zoning Board of Appeals. The Board of Aldermen may at its discretion approve, modify or disapprove the proposed 3 foot grade change and related retaining walls. In addition, the required 20 foot wide neighborhood buffer zone is maintained along the rear lot line.

It is noted that a Memo (not stamped signed or dated) from Noranda Construction Company was received by the Planning Department which notes a different (lower) FAR of 0.313 from the one noted on VTP's plan set. *Although both FAR's comply with requirements the applicant should clarify the correct FAR prior to filing for a special permit.*

3. *Section 30-15(p)* establishes that lots recorded after September 16, 1996 are subject to certain maximum Build Factor (BF) thresholds, depending on the zone wherein located. The attorney for the applicant represents that subject lot has a BF of 11.93 as shown on the approved Kesseler Woods Definitive Plan of Land Site Grading & Utility Plan, which meets the SR-3 BF limit of 20.

4. *Sections 30-15(m)(5), 30-19(d)(1),* and *30-19(g)* set out the applicable provisions as to garages, parking, and drive. Based on submitted plans, the proposed garage and drive meet these requirements.

5. As shown on plan, a 695 square foot area at the front southerly side of the house will be re-graded (cut) in excess of 3 feet and a 3,681 square foot area along the northerly front side and rear of the house will be re-graded (fill) in excess of 3 feet. This necessitates approval of a site plan and special permit by the Board of Aldermen per Section 30-5(b)(4) for Lot 2.

6. *Section 30-23(b)(6)* in conjunction with *Section 30-24(a)* requires the submittal of a landscape plan. *The applicant has not provided a landscape plan and should do so at the time of filing for a special permit.* The landscape plan should include a tree removal and replacement plan. The applicant is responsible for complying with Sections 20-31 through 20-39, *Tree Preservation Ordinance* and obtaining approval of the replacement plan by the Tree Warden. In addition, all lots within the subdivision have a requirement that the Conservation Commission review and approve any proposed landscape plan. The attorney for the applicant has indicated that the applicant will appear before the Conservation Commission to review said plan on June 26, 2008.

7. It is noted that the proposed dwelling is not located within the 100 foot buffer zone from the bordering vegetated wetlands however, the applicant's lot is subject to an existing Order of Conditions issued by Conservation Commission as the drainage system ties into the detention basin on Lot 6. The applicant is responsible for obtaining the approval of the Conservation Commission to the extent proposed work will require an amendment of the existing Order of Conditions. The applicant's attorney indicates that a meeting has been scheduled with the Conservation Commission.

8. The Kesseler Woods Protective Covenants are applicable to the subject site. The applicant's attorney represents that the proposed plans have been reviewed, and that the applicant will provide a "Design Review Approval" document. The applicant is responsible for providing this document not later than at the time of filing the petition with the Clerk of the Board of Aldermen.

9. Certain plans lack the stamp or signature of a registered professional as noted in Plans and Materials Reviewed, below. The applicant is responsible for providing stamped and signed plans not later than at the time of filing the petition with the Clerk of the Board of Aldermen.

10. See "Zoning Relief Summary" below.

Zoning Relief Summary		
Ordinance		***Action Required***
	Lot 2 (SRL 82-37-84)	
	Building	
	N/A	N/A
	Site	
30-5(b)(4)	Approval to alter existing contours by more than three feet as shown on plan, including placement and treatment of retaining walls.	X
30-23	Site plan approval, including landscaping.	X
	Parking	
	N/A	N/A

	Special Permit	
30-24(d)	Approval of special permit for grade change.	X
	Variances	
30-27 ZBA	N/A	N/A

Plans and materials reviewed:

- Zoning Review Application and Submittal Checklist filed May 27, 2008

- Plan set prepared by VTP Associates, Land Surveyors and Civil Engineers, 132 Adams Street, Newton, all stamped and signed by James J. Abely, Professional Civil Engineer and Land Surveyor, consisting of 6 sheets all dated May 14, 2008, including:
  - Topographic Site Plan Showing Proposed Conditions at Lot 2 Kesseler Way
  - Detail Sheet
  - Cross-Section Sheet
  - Grade Change Plan
  - Topographic Plan of Land Showing Lot-2 Original Moore Design
  - Area Map

- Memorandum from Noranda Construction Company showing third story calculation, garage size, and FAR, not stamped signed or dated

- Email correspondence from G. Michael Peirce, dated June 9, 2008

ATTACHMENT B

Zoning Review Memorandum

Dt: June 4, 2008

To: Michael Peirce, representing Eden & Lauren Siff

CC: John Lojek, Commissioner of Inspectional Services
Michael Kruse, Director, Department of Planning and Development

From: Candace Havens, Chief Planner
Jean Fulkerson, Principal Planner
Alexandra Ananth, Planner

Re: Request for amendment to BO #202-07, for alteration of previously approved grade change in excess of 3 feet.

Site: 36 Kesseler Way	**SBL:** Sect 82, Block 37, Lot 82 aka "Lot 4"
Zoning: Single Residence 3	**Lot Area:** L-82: 21,028 sq. ft.
Current use: Vacant	**Prop. use:** Single family

Background:
The subject lot was reviewed and approved by the Board of Alderman under Board Order #202-07, dated September 4, 2007, which allowed the owners to make changes to the grade of three (3) ft or greater. The owners of the single family dwelling now wish to modify the extent of the 3 ft. grade change. The Commissioner of Inspectional Services ruled that the extent of the modification would not qualify the request for a Consistency Ruling and would require an amendment to BO #202-07 per Sections 30-5(b)(4) and 30-24.

To briefly review, the subject lot is located on the cul-de-sac of Kesseler Way, within a new subdivision created as part of an overall plan to develop a part of the former Edison land, aka Kesseler Woods, per subdivision plans titled "Kesseler Woods - Definitive Plan of Land, Newton Massachusetts, March 17, 2004, last revised July 19, 2004, Sheets 1 – 8, approved by the Planning Board. Much of this area is also subject to certain Conservation Commission requirements as set out in the Order of Conditions pertaining to project DEP# 239-474, including certain plans subsequently approved by the Commission pursuant to the Order of Conditions including a grading plan and landscape plan (see *Conservation Commission documents*, below for complete reference). In addition, the subdivision is subject to development controls set out in the Kesseler Woods Protective Covenants.

Administrative determinations

1. The property owner has already demonstrated that all aspects of the lot and structure meet applicable zoning controls and received site plan approval under BO #202-07. No aspect of the site plan is changing other than the modification to the three (3) ft. grade change and any resulting changes to the landscaping and retaining walls.

2. As shown on the amended site plans, the total area of 3 ft. grade change remains 2,742 sq. ft. in an area at the rear of the house and along the easterly side. However, the new grade represents a grade change of more than 3 ft. from what was originally approved. Where the previously approved grade change called for a two-step terraced yard, the property owners now wish to have a single, larger yard area, requiring more fill and a more substantial, taller, retaining wall. The Commissioner of Inspectional Services determined that changes to the grading of this extent would require an amendment to the existing Board Order, and could not be assessed through a consistency review by the Land Use Committee.

   The proposal requires approval of an amended site plan and special permit by the Board of Aldermen per Section 30-5(b)(4) for Lot 4. The applicant has consulted with the Commissioner of Inspectional Services, who has determined that retaining walls which are an integral part of plans designed to handle grade changes in excess of 3 ft. may be addressed as part of the special permit process required for 3 ft. grade changes, and need not also to seek a variance from the Zoning Board of Appeals. The proposed railings on retaining walls are not subject to the provisions of the City's fence regulations.

3. *Section 30-23(b)(6)* in conjunction with *Section 30-24(a)* requires the submittal of a landscape plan. The petitioner has provided a revised landscape plan.

4. See "Zoning Relief Summary" below.

	Lot 4 (SBL 82-2-82)	
	Site	
30-5(b)(4)	Approval to alter existing contours by more than three feet as shown on plan, including placement and treatment of retaining walls.	X
30-23	Approval to amend site plan approved under BO#202-07.	X
	Special Permit	
30-24(d)	Approval of Amendment to BO #202-07, for grade change.	X

Plans and materials reviewed:

- Plan titled "Zoning Analysis, Siff Residence, in Newton, MA", dated April 13, 2007, last revised 5.20.08, prepared by Geller DeVellis Inc., 141 Portland St., Boston, MA 02114, stamped and signed by Frank Holmes, Registered Civil Engineer.

- Plan titled "Layout and Materials Plan, Siff Residence, in Newton, MA", dated 5 June, 2007, last revised 5.20.08, prepared by Geller DeVellis Inc., 141 Portland St., Boston, MA 02114, stamped and signed by Frank Holmes, Registered Civil Engineer

ATTACHMENT C

Zoning Review Memorandum

Dt: June 10, 2008

To: Michael Peirce, representing Noranda Construction Company

CC: John Lojek, Commissioner of Inspectional Services
Michael Kruse, Director, Department of Planning and Development
Ouida Young, Associate City Solicitor

From: Candace Havens, Chief Planner
Jean Fulkerson, Principal Planner
Alexandra Ananth, Planner

Re: Request for approval of grade change in excess of 3 feet

Applicant(s): Noranda Construction Company	
Site: Lot 6 Kesseler Way	**SBL:** 82-037-0091
Zoning: Single Residence 3	**Lot Area:** 24,750 s.f.
Current use: Vacant lot	**Prop. use:** Single family residence

Background:
The subject lot is located on the cul-de-sac of Kesseler Way, within a new subdivision created as part of an overall plan to develop a part of the former Edison land, aka Kesseler Woods, per subdivision plans titled "Kesseler Woods - Definitive Plan of Land, Newton Massachusetts, March 17, 2004, last revised July 19, 2004, Sheets 1 – 8, approved by the Planning Board. Much of this area is also subject to certain Conservation Commission requirements as set out in the Order of Conditions pertaining to project DEP# 239-474, including certain plans subsequently approved by the Commission pursuant to the Order of Conditions including a grading plan and landscape plan. In addition, the subdivision is subject to development controls set out in the Kesseler Woods Protective Covenants.

The applicant seeks to build a single-family home on the lot and is subject to the above-referenced Covenants. Due to existing topographical conditions, the applicant anticipates altering the existing grade within his Lot 6 (SBL82-37-91) more than 3 ft. *The proposed grade change on the subject lot necessitates a special permit/site plan approval per Sections 30-5(b)(4).*

Administrative determinations
1. The subject site is comprised of a lot created after December 7, 1953 and is subject to post-1953 dimensional controls applicable to lots in the SR-3 zone. The following review is based on the materials and plans referenced under Plans and Materials Reviewed, below.

2. *Section 30-15, Table 1, Density & Dimensional Controls in Residence Districts and for Residential Uses*, sets forth the applicable controls for new lots in the SR-3 zone:

SR3 (New Lot)	Required	Proposed
Lot Area	10,000 sq. ft.	24,750 sq. ft.
Frontage	80 ft.	80 ft.
Setbacks Front Side Rear	 30 ft. 10 ft. 15 ft.	 30.2 ft. 10.2 ft. 60. ft. (house) 17.1 ft. (pool house)
Total Floor Area Ratio	.35	.26
Building Height	30 ft.	29.44 ft.
Max. Number of Stories	2.5	2.5
Max. building lot coverage	30%	15.5%
Min. amount of open space	50%	76.1%
Build Factor	20	8.93

The proposed building meets the applicable controls referenced above. However, extensive stone retaining walls are proposed as part of the 3 foot grade change area, where the greatest change at any one point is 8 feet. Certain segments of the proposed stone retaining walls are located within the side setback on the north side of the dwelling along the property line. These retaining walls range from approximately 3 feet in height above finished grade to approximately 8 feet in height. Placement of a structure within a setback would typically necessitate a dimensional variance from the Zoning Board of Appeals. The applicant has consulted with the Commissioner of Inspectional Services, who has determined that retaining walls which are an integral part of plans designed to handle grade changes in excess of 3 feet may be addressed as part of the special permit process required for 3 foot grade changes, and need not also seek a variance from the Zoning Board of Appeals. The Board of Aldermen may at its discretion approve, modify or disapprove the proposed 3 foot grade change and related retaining walls.

In addition to the residence the applicant is proposing an accessory structure (pool house) towards the rear of the lot. *Alhough the structure is located out of the setbacks additional information such as the height and number of stories should be submitted prior to filing for a special permit to ensure compliance with zoning.*

3. *Section 30-15(p)* establishes that lots recorded after September 16, 1996 are subject to certain maximum Build Factor (BF) thresholds, depending on the zone wherein located. The attorney for the applicant represents that subject lot has a BF of 8.93 as shown on the approved Kesseler Woods Definitive Plan of Land Site Grading & Utility Plan, which meets the SR-3 BF limit of 20.

4. *Sections 30-15(m)(5), 30-19(d)(1),* and *30-19(g)* set out the applicable provisions as to garages, parking, and drive. Based on submitted plans, the proposed garage and drive meet these requirements.

5. As shown on plans, a 1,693 square foot area at the front of the house will be re-graded (cut) in excess of 3 feet and a 2,644 square foot area at the rear of the house will be re-graded (fill) in excess of 3 feet. This necessitates approval of a site plan and special permit by the Board of Aldermen per Section 30-5(b)(4) for Lot 6.

6. *Section 30-23(b)(6)* in conjunction with *Section 30-24(a)* requires the submittal of a landscape plan. The applicant has provided a landscape plan including a tree removal and replacement plan. The applicant is responsible for complying with Sections 20-31 through 20-39, *Tree Preservation Ordinance* and obtaining approval of the replacement plan by the Tree Warden. In addition, all lots within the subdivision have a requirement that the Conservation Commission review and approve any proposed landscape plan. The attorney for the applicant has indicated that the applicant will appear before the Conservation Commission to review said plan on June 26, 2008.

7. It is noted that the proposed dwelling is not located within the 100 ft. buffer zone from the bordering vegetated wetlands however, the applicant's lot is subject to an existing Order of Conditions issued by Conservation Commission as the drainage system ties into the detention basin for the subdivision (also located on Lot 6). Portions of the residence are also located within the 200 foot outer riparian. The applicant is responsible for obtaining the approval of the Conservation Commission to the extent proposed work will require an amendment of the existing Order of Conditions. The applicant's attorney indicates that a meeting has been scheduled with the Conservation Commission.

8. The Kesseler Woods Protective Covenants are applicable to the subject site. The applicant's attorney represents that the proposed plans have been reviewed, and that the applicant will provide a "Design Review Approval" document. The applicant is responsible for providing this document not later than at the time of filing the petition with the Clerk of the Board of Aldermen.

9. Certain plans lack the stamp or signature of a registered professional as noted in Plans and Materials Reviewed, below. The applicant is responsible for providing stamped and signed plans not later than at the time of filing the petition with the Clerk of the Board of Aldermen.

10. See "Zoning Relief Summary" below.

Zoning Relief Summary		
Ordinance		*Action Required*
	[illegible]	
	Building	
	N/A	N/A
	Site	
30-5(b)(4)	Approval to alter existing contours by more than three feet as shown on	X

	plan, including placement and treatment of retaining walls.	
30-23	Site plan approval, including landscaping.	X
	Parking	
	N/A	N/A
	Special Permit	
30-24(d)	Approval of special permit for grade change.	X
	Variances	
30-27 ZBA	N/A	N/A

Plans and materials reviewed:

- Zoning Review Application and Submittal Checklist filed May 27, 2008

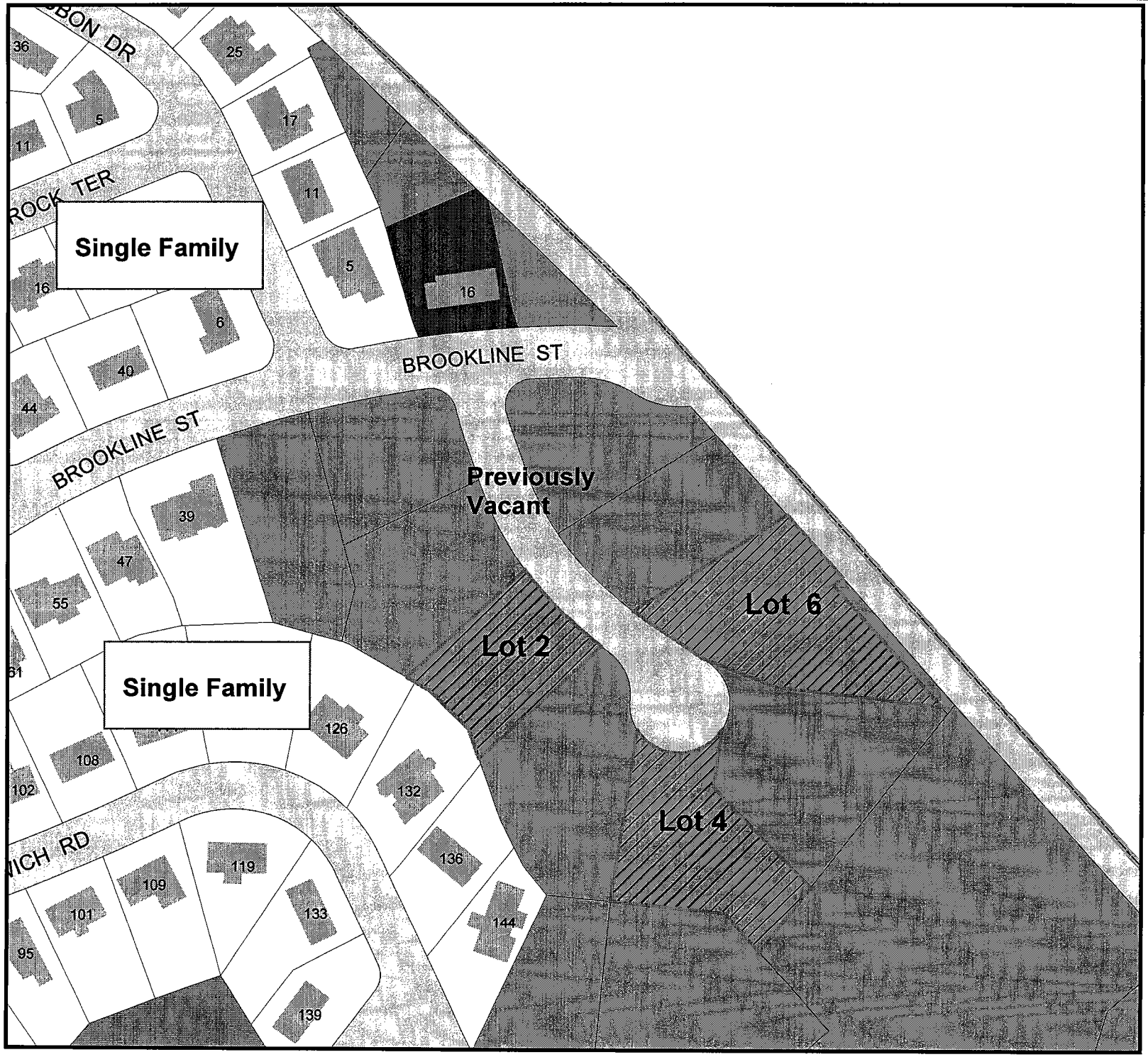
- Plan set prepared by VTP Associates, Land Surveyors and Civil Engineers, 132 Adams Street, Newton, all stamped and signed by James J. Abely, Professional Civil Engineer and Land Surveyor, consisting of 6 sheets all dated May 14, 2008, including:
  - Topographic Site Plan Showing Proposed Conditions at Lot 2 Kesseler Way
  - Detail Sheet
  - Cross-Section Sheet
  - Grade Change Plan
  - Topographic Plan of Land Showing Lot-6 Original Moore Design
  - Area Map

- Memorandum from Noranda Construction Company showing third story calculation, not stamped signed or dated

- Memorandum from Noranda Construction Company showing FAR calculation, not stamped signed or dated

Land Use
Kesseler Way

City of Newton,
Masscahusetts



Legend

- subject lots
- Building Footprints
- Single Family Residential
- Multifamily Residential
- Mixed Use
- Vacant Land
- Open Space
- Property Boundaries
- Lakes & Rivers

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

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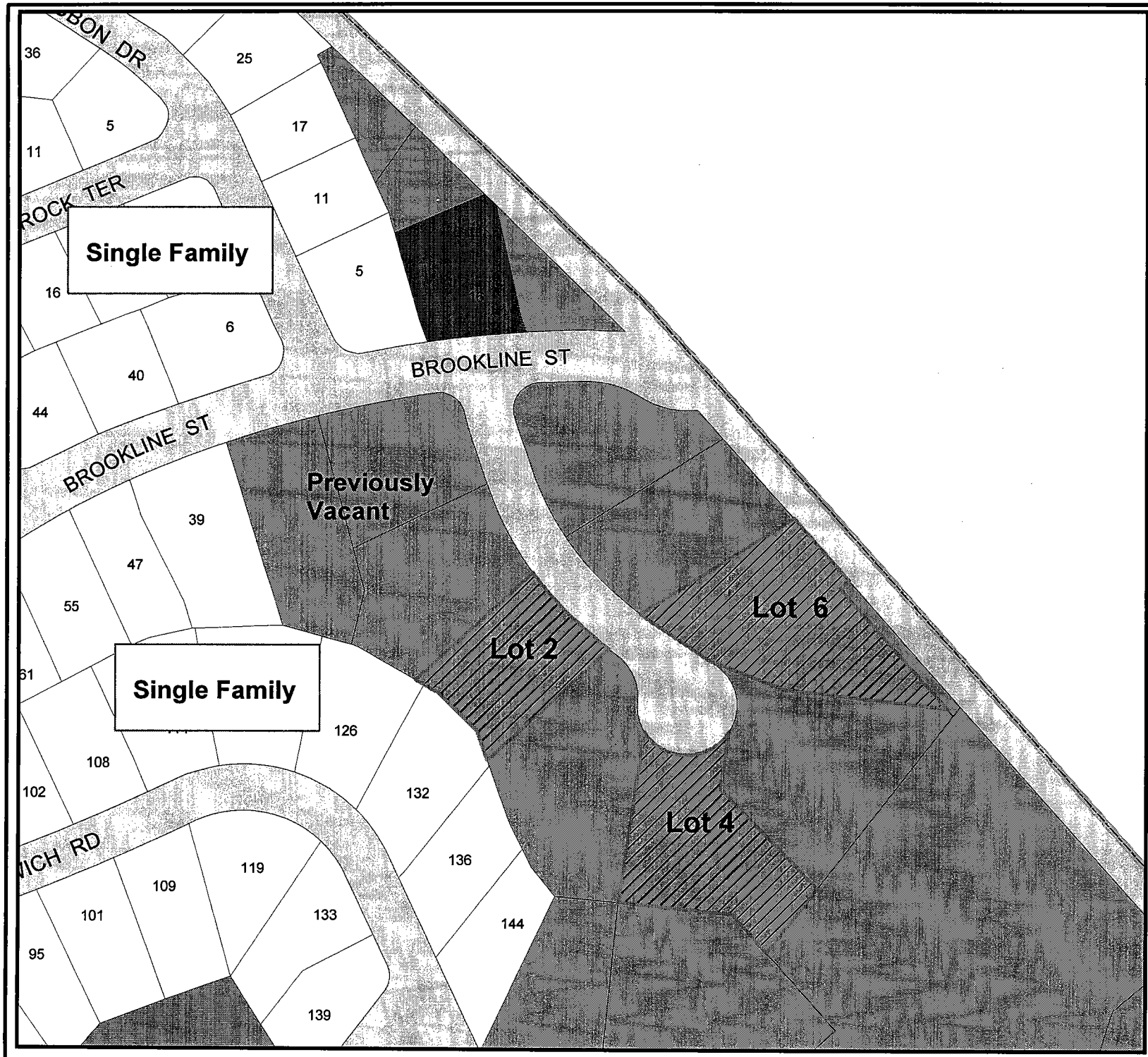
MAP DATE: June 23, 2008

Zoning
Kesseler Way

City of Newton,
Masscahusetts



Legend

- subject lots
- Single Family Residential
- Multifamily Residential
- Mixed Use
- Vacant Land
- Open Space
- Property Boundaries
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MAP DATE: June 23, 2008

ATTACHMENT D

CITY OF NEWTON
ENGINEERING DIVISION

MEMORANDUM

To: Alderman George Mansfield, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – Lot 2 Kesseler Way

Date: July 1, 2008

CC: Lou Taverna, PE City Engineer (via email)
Candice Havens, Chief Planner (via email)
Linda Finucane, Associate City Clerk (via email)
Alexandra Ananth, Planner (via email)

In reference to the above site, I have the following comments for a plan entitled:

Topographic Site Plan
Showing Proposed Conditions at
Lot 2 Kesseler Way
Newton, MA
Prepared by: VTP Associates, Inc.
Dated: May 14, 2008

Drainage:

1. The drainage analysis is correct for the City of Newton's 100-year storm event.

2. An Operations and Maintenance (O&M) plan for Stormwater Management Facilities needs to be submitted for review. If the O&M plan is acceptable then it needs to be incorporated into the deed; and recorded at the Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.

3. It is imperative to note that the ownership, operation, and maintenance of the proposed drainage system and all apparentness including but not limited to the drywells, catch basins, and pipes are the sole responsibility of the Homeowner.

4. An approved siltation control system is required for the site; all siltation control must be installed and inspected prior to commencement of any construction activity.

3-Foot grade Change:

1. The areas identified as cut or filling in excess of 3-feet are correctly identified based on the proposed grading plan. The grading from these areas should not negatively impact any abutter provided the site is properly stabilized during construction and properly landscaped and maintained after construction.

2. Details for the proposed retaining walls are needed, the construction materials, footing, drainage, etc. Although not required, it maybe prudent to install steps for access of the backyard along the terraced areas of the side-yard as the grade changes 3 feet between levels.

3. A construction management plan is needed which will address how the contractor will remove any ledge if encountered, dewatering of the site if needed, keeping the site stable during construction, etc.

General:

1. All tree removal shall comply with the City's Tree Ordinance.

2. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of water services, sewer service, and drainage system installation. The utility is question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval. *This note should be incorporated onto the plans*

3. The applicant will have to apply for Utilities Connecting Permit with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*

4. The applicant will have to apply for a Building Permits with the Department of Inspectional Service prior to any construction.

5. Prior to Occupancy permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading. *This note must be incorporated onto the site plan.*

6. If a Certificate of Occupancy is requested prior to all site work being completed, the applicant will be required to post a Certified Bank Check in the amount to cover the

remaining work. The City Engineer shall determine the value of the uncompleted work. *This note must be incorporated onto the site plan.*

If you have any questions or concerns please feel free to contact me @ 617-796-1023.

ATTACHMENT E

CITY OF NEWTON
ENGINEERING DIVISION

MEMORANDUM

To: Alderman George Mansfield, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – Lot 4 Kesseler Woods

Date: July 1, 2008

CC: Lou Taverna, PE City Engineer (via email)
Candace Havens, Chief Planner (via email)
Linda Finucane, Associate City Clerk (via email)
Alexandra Ananth, Planner (via email)

In reference to the above site, I have the following comments for a plan entitled:

Siff Residence
Newton, MA
Prepared by: Geller DeVellis Inc.
Dated: June 5, 2007
Revised: 6-12-'07
5-20-'08

Drainage:

1. Although a statement is made about the increase of runoff due to the increase of impervious area, a drainage analysis along with the soil log for test pit #2 needs to be submitted for the City of Newton's 100-year storm event for the modified site plan for confirmation.

2. An Operations and Maintenance (O&M) plan for Stormwater Management Facilities needs to be submitted for review. If the O&M plan is acceptable then it needs to be incorporated into the deed; and recorded at the Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.

3. It is imperative to note that the ownership, operation, and maintenance of the proposed drainage system and all apparentness including but not limited to the drywells, catch basins, and pipes are the sole responsibility of the Homeowner.

4. An approved siltation control system is required for the site; all siltation control must be installed and inspected prior to commencement of any construction activity.

3-Foot grade Change:

1. The areas identified as cut or filling in excess of 3-feet are correctly identified based on the proposed grading plan. The grading from these areas should not negatively impact any abutter provided the site is properly stabilized during construction and properly landscaped and maintained after construction.

2. The applicant will have to file with the Conservation Commission for a modification of the Order of Conditions

General:

1. All tree removal shall comply with the City's Tree Ordinance.

2. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of water services, sewer service, and drainage system installation. The utility is question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval.

3. The applicant will have to apply for Utilities Connecting Permit with the Department of Public Works prior to any construction.

4. Prior to Occupancy permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading.

5. If a Certificate of Occupancy is requested prior to all site work being completed, the applicant will be required to post a Certified Bank Check in the amount to cover the remaining work. The City Engineer shall determine the value of the uncompleted work.

If you have any questions or concerns please feel free to contact me @ 617-796-1023.

ATTACHMENT F

CITY OF NEWTON
ENGINEERING DIVISION

MEMORANDUM

To: Alderman George Mansfield, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – Lot 6 Kesseler Way

Date: June 27, 2008

CC: Lou Taverna, PE City Engineer (via email)
Frank Nichols, PE (via email)
Candice Havens, Chief Planner (via email)
Linda Finucane, Associate City Clerk (via email)
Alexandra Ananth, Planner (via email)

In reference to the above site, I have the following comments for a plan entitled:

Topographic Site Plan
Showing Proposed Conditions at
Lot 6 Kesseler Way
Newton, MA
Prepared by: VTP Associates, Inc.
Dated: May 14, 2008

Drainage:

1. The drainage analysis appears to be correct for the City of Newton's 100-year storm event.

2. The proposed dry well located in the front yard has an overflow pipe connecting to a drain manhole located on lot 5; does the owner of lot 6 have an easement to connect its overflow pipe onto lot 5? If so documentation is needed. If no easement exists, then an additional drain manhole shall be installed on the applicants' lot to facilitate the overflow connection and access for future maintenance.

3. A sedimentation forebay is needed at the outlet pipe that discharges from the rear yard drainage system.

4. An Operations and Maintenance (O&M) plan for Stormwater Management Facilities needs to be submitted for review. If the O&M plan is acceptable then it needs to be incorporated into the deed; and recorded at the Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.

5. It is imperative to note that the ownership, operation, and maintenance of the proposed drainage system and all apparentness including but not limited to the drywells, catch basins, and pipes are the sole responsibility of the Homeowner.

6. An approved siltation control system is required for the site; all siltation control must be installed and inspected prior to commencement of any construction activity.

3-Foot grade Change:

1. The areas identified as cut or filling in excess of 3-feet are correctly identified based on the proposed grading plan. The grading from these areas should not negatively impact any abutter provided the site is properly stabilized during construction and properly landscaped and maintained after construction.

2. Portions of the proposed retaining wall along the rear yard are in excess of 4-feet, and will need to be designed by a structural engineer, details of the wall construction and materials are needed. A safety fence will be required along the perimeter of the proposed wall by the Inspectional Service Department.

3. The proposed retaining wall along the northern properly line needs to specify top & bottom of wall heights, materials, wall drainage, and construction.

4. In the southeast corner of the yard adjacent to the proposed swimming pool, the proposed grading is from elevation 168 to 164.5 feet to the rear corner of the house; this will direct surface water from the high point to the corner of the house. The engineer of record should reconfigure this grading to avoid direction water to the foundation.

General:

1. The applicant will need to obtain an Order of Conditions form the Conservation Commission.

2. All tree removal shall comply with the City's Tree Ordinance.

3. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for

an inspection of water services, sewer service, and drainage system installation. The utility is question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval. *This note should be incorporated onto the plans*

4. The applicant will have to apply for Utilities Connecting Permit with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*

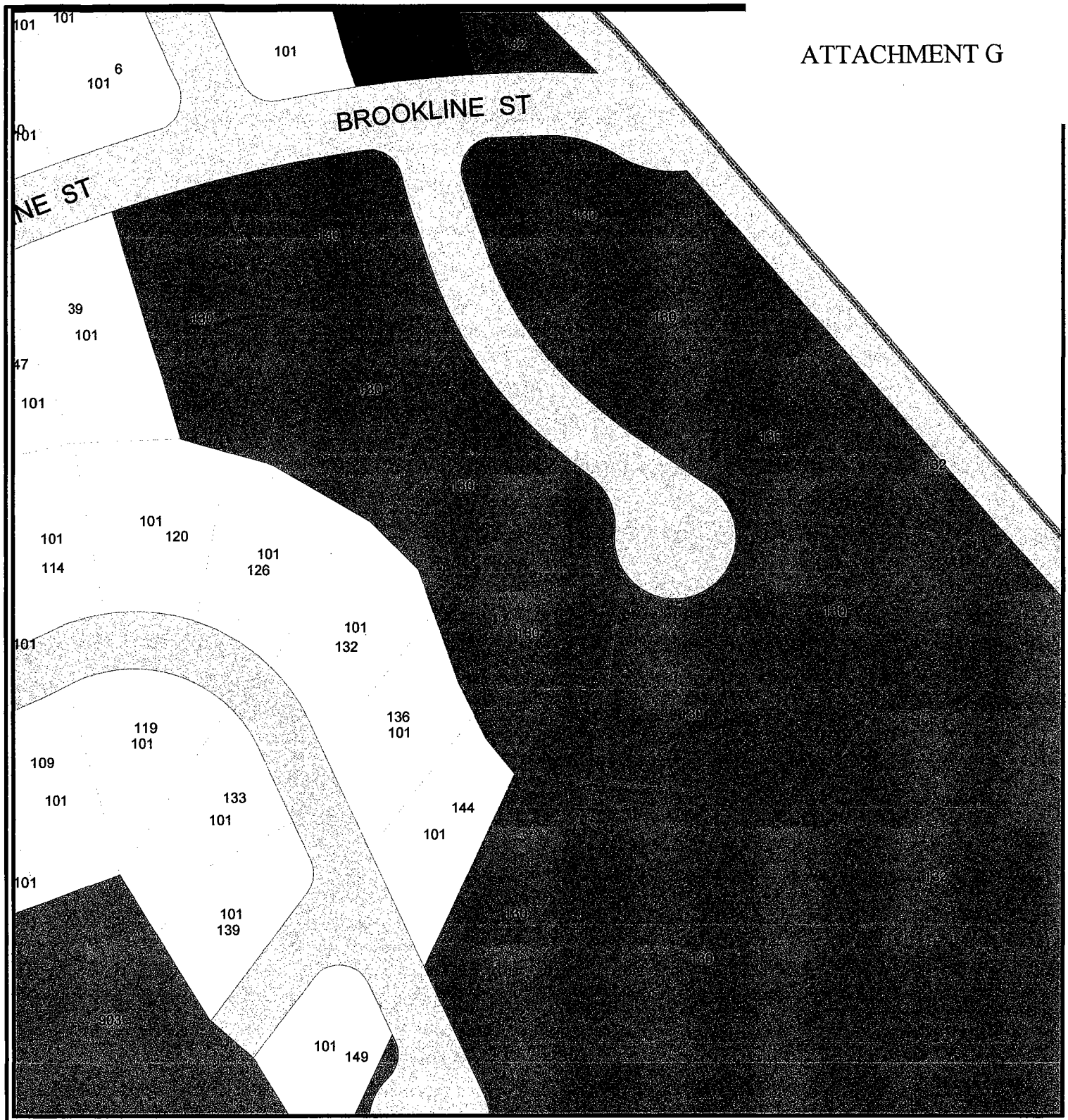
5. The applicant will have to apply for a Building Permits with the Department of Inspectional Service prior to any construction.

6. Prior to Occupancy permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading. *This note must be incorporated onto the site plan.*

7. If a Certificate of Occupancy is requested prior to all site work being completed, the applicant will be required to post a Certified Bank Check in the amount to cover the remaining work. The City Engineer shall determine the value of the uncompleted work. *This note must be incorporated onto the site plan.*

If you have any questions or concerns please feel free to contact me @ 617-796-1023.

ATTACHMENT G



City of Newton, Massachusetts

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LAND USE

Legend

- Single Family Residential
- Multifamily Residential
- Commercial
- Industrial
- Mixed Use
- Vacant Land
- Golf Course
- Open Space
- Private Educational
- Nonprofit Organizations
- Public Housing
- Tax Exempt

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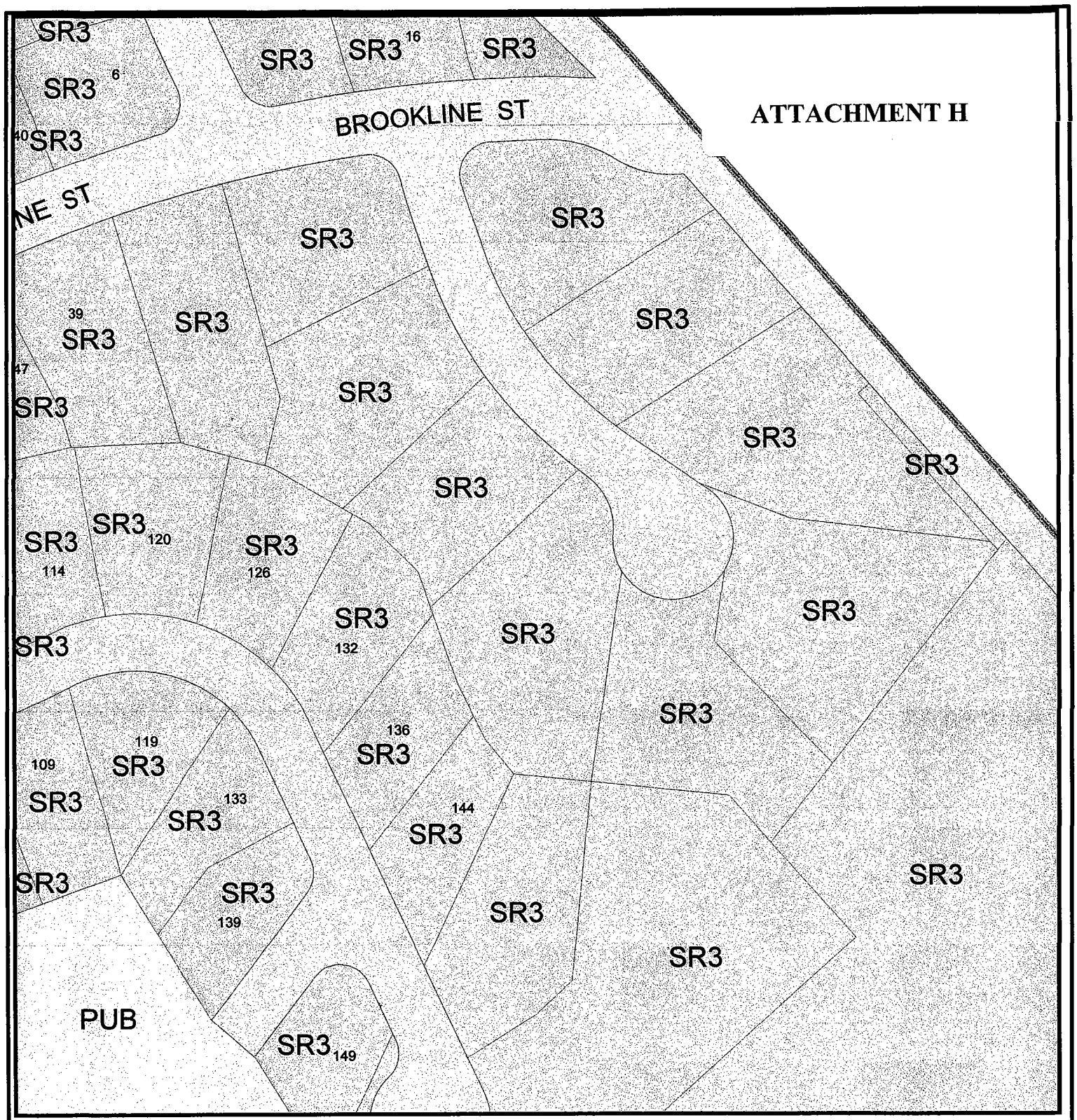
MAP DATE: July 10, 2008



City of Newton, Masscahusetts

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ZONING

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Single Res. 1	Multi-Res. 1
Single Res. 2	Multi-Res. 2
Single Res. 3	Multi-Res. 3
Business 1	Multi-Res. 4
Business 2	Mixed Use 1
Business 4	Mixed Use 2
Business 5	OS/Rec.
Limited Manufacturing	Public Use
Manufacturing	

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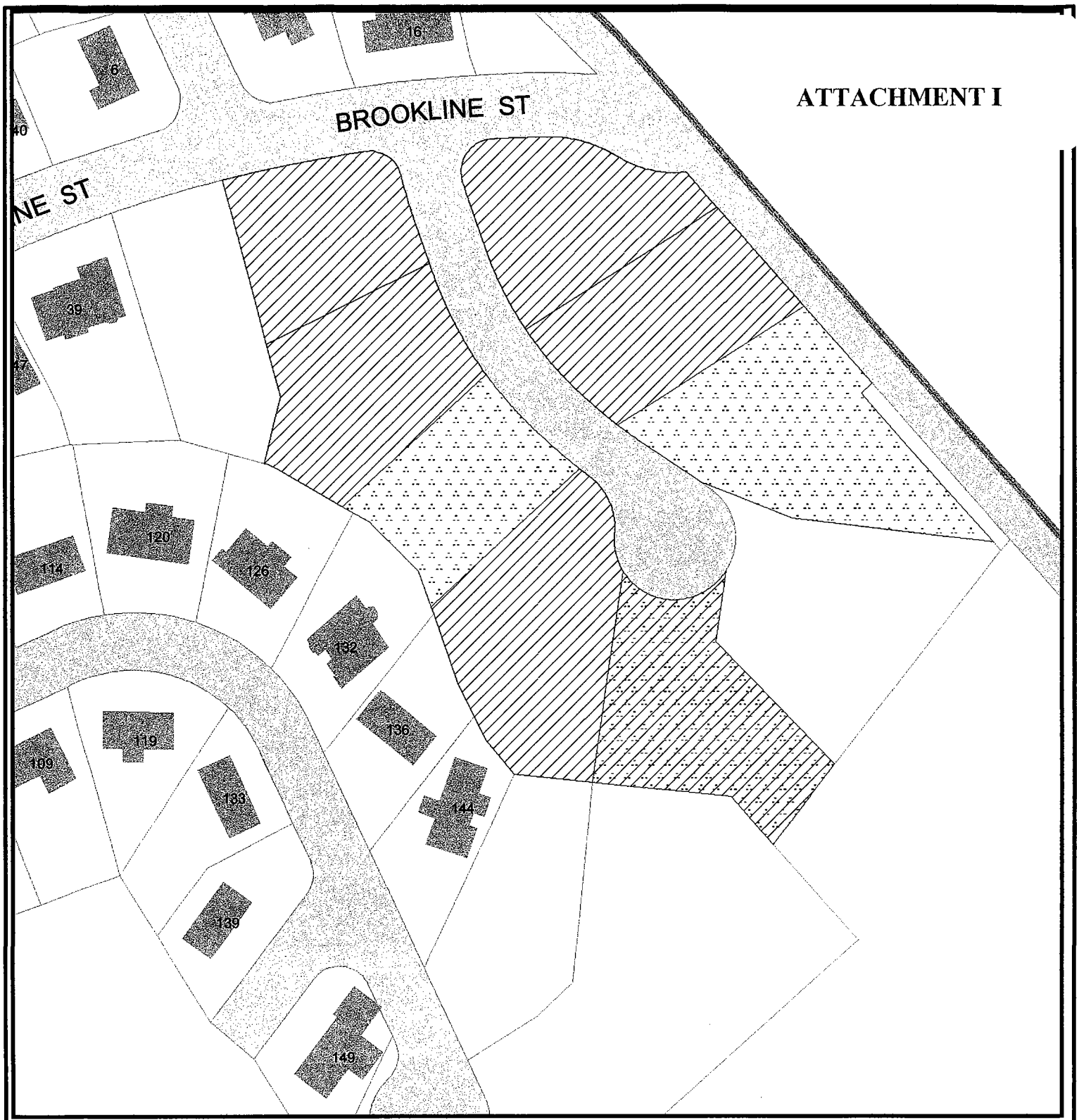

City of Newton, Massachusetts

Legend

Subject Lots

Lots with approved 3-foot grade change

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VICINITY MAP

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