

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

WEDNESDAY, MARCH 27, 2013

Present: Ald. Johnson (Chairman), Swiston, Sangiolo, Yates, Danberg, Baker and Kalis

Absent: Ald. Lennon

Also Present: Ald. Hess-Mahan, Albright, Linsky, Fischman, Harney, Lappin, Gentile and Rice

Others Present: Candace Havens (Director, Planning & Development), John Lojek (Commissioner, Inspectional Services), Marie Lawlor and Maura O'Keefe (Assistant City Solicitors), James Freas (Chief Long Range Planner), Joyce Moss (Planning & Development Board), Chris Steele (Economic Development Commission), Karyn Dean (Committee Clerk)

#25-12      TERRENCE P. MORRIS, G. MICHAEL PEIRCE, JASON ROSENBERG, JOHN LOJEK proposing a zoning ordinance amendment to amend section 30-15(c)(3)(b) by inserting the word "*subject*" before the word "*lot*", the word "*and*" before the word "*such*" and the word "*adjoining*" after the word "*such*" so that the paragraph reads as follows:  
*(b) if the subject lot was held in common ownership at any time after January 1, 1995 with an adjoining lot or lots that had continuous frontage on the same street with the subject lot and such adjoining lot had on it a single-family or two-family dwelling.* [01/30/2012 @ 3:14PM]

**ACTION:**      **NO ACTION NECESSARY 7-0**

**NOTE:** This item was discussed in tandem with item #77-13. Please see the note below.

#77-13      ALD. GENTILE & HARNEY requesting that the Board of Aldermen amend the **City of Newton Zoning Ordinances** so that any properties that have been built and purchased that may now be considered non-compliant due to the recent court decision in the Mauri/Chansky case be considered valid non-conforming properties. [02/27/13 @ 3:06 PM]

**ACTION:**      **HELD 7-0**

**NOTE:** James Freas explained that Section 30-15(c) exempts residential development on existing lots from current lot standards where the lot: was legally created; is a minimum of 5,000 square feet and has 50 feet of frontage; in the history of the lot there has been no change in the size or shape of the lot; is not in common ownership with a neighboring property, unless there is already a home on the subject lot. A recent court case is the subject of the last provision.

Previous and Current Interpretations

Under the previous interpretation of Section 30-15(c), two adjacent lots under common ownership that are contiguous on the same street, the vacant lot is considered buildable. The

current interpretation, based on the recent court decision, is that these two lots would effectively be merged by law and therefore the “vacant lot” portion is not considered buildable as it is now one lot and could not have two houses on it. The question before the Board now is should the City allow people owning two contiguous “old” lots, where one is vacant, the option to sell or develop the vacant lot. An “old” lot is a lot legally created according to the requirements of a previous version of the Zoning Ordinance but no longer consistent with the current Zoning Ordinance. These are also typically referred to as non-conforming lots. Mr. Freas referred to an example of an “old” lot. It was created in 1933, is 7,351 square feet with 76 feet of frontage in a SR3 zone, which is non-conforming under the current version of the zoning ordinance. (The current zoning ordinance would require 10,000 square feet and 80 feet of frontage.) Whether these lots are vacant or there is a structure already on it, it could be developed if it stood on its own (was not in common ownership with the adjacent lot). If, however, it is in common ownership with the adjacent lot, then it is not a buildable lot. There are approximately 217 lots like this throughout the City and the question is should they be considered buildable lots.

#### Property Owner Options

Currently, a property owner has two options if they own two lots as has been described. They can stay exactly the same; or they can build one new home. The two lots could be merged into one larger lot and a house could be built that is appropriate to the size of the new lot. If the proposed amendments in the docket item were adopted, the property owner would have a third choice as well, to build a second house on the vacant lot that is consistent with the other homes in the neighborhood. **A picture of an example of this third option is attached to this report.**

#### Item #77-13

Since the decision from the court in the Mauri case, there are now 10 homes that are non-compliant with the current interpretation that came out of that case. The statute of limitation on enforcement action by the City is six years. Half of these homes received their building permit more recently than six years so the City could take an enforcement action and tear down those homes. All of them, whether older or newer than six years, would be unable to receive any future building permits. This is the strict interpretation of the law, but the City would have a certain degree of discretion. It is the position of the Planning Department and the Law Department that it would be difficult to fix this problem through the zoning ordinance as proposed in #77-13. It is difficult to precisely define these lots and not define them in a way that does not encompass other lots. There is also a concern that it might be a situation of spot zoning, where essentially these lots would be given a benefit not available to other lots similarly situated. It is the Planning and Law Departments’ conclusion that these ten homes could be handled through the process of variance through the Zoning Board of Appeals.

#### Conclusion

If no action is taken on either item, then the ten non-compliant homes can be handled through a variance process. Going forward, property owners with similar situations would have the two options as described above: do nothing; or merge lots and have the opportunity to build a larger home on the new larger lot, even though the larger home may not be consistent with the character of the neighborhood.

If action is taken on #25-12, no variances would be necessary for the ten non-compliant homes. Property owners would have all three options as previously described: do nothing; merge lots for a larger home; or build another home on the vacant lot consistent with the neighborhood.

In both instances, there is a recommendation to clarify the intent for 30-15(c).

#### Committee Response and Concerns

There was concern from the Committee, and they heard the same from some of their constituents, that building on the second vacant lot could place that new home quite close to existing homes. Also concern that the merging of two lots would allow a home to be built that is probably much larger than others in the neighborhood and out of context.

It was noted by a Committee member that by state law, that older substandard lots are to be merged. The point of zoning ordinances is to try to get communities to general conformance. In 1940 the City adopted dimensional controls and as of then, those lots that did not make those dimensional controls were made substandard and not buildable. That's the way they've been assessed and there has never been a determination to the contrary. A policy was made by the Board of Aldermen in 2001. The policy is in place to grandfather the older, smaller homes on small lots but the other vacant lots were not to be developed. Ms. Havens said it was her understanding that there was a request to review the policy. She said the Planning Dept. followed up to provide information to the Committee with options.

It was pointed out that in 2001 a Zoning Task Force was created to address the inconsistencies and problems with policy interpretations of 30-15 regarding density and controls and requirements for residential problems. One of those issues was the holding in common ownership of adjoining non-conforming lots after 1950 where a change in lot lines pre-1953 could create non-compliance, not only non-conformity. The task force outcome was that the revisions were never meant to make a previously non-developable lot, developable. In June of 2001, the wording of what was passed by the Zoning and Planning Committee is "if the lot was held in common ownership anytime after January 1, 1995, with an adjoining lot or lots that had continuous frontage on the same street with the lot in question, *each* such lot had on it a single family or two-family dwelling." That wording with "*each* such lot" was passed. It was moved to the Board of Aldermen and went through on first call because it was so vetted by the Committee. No one bothered to look and notice that a scrivener's error had left out the word "each". That is what created the problem we are looking at today. Former Ald. Mansfield was present and agreed that this was the intent. To protect the lots with houses on them, not to make vacant lots buildable.

A Committee member stated that developers tend to maximize their potential on a lot, which is reasonable, but the homes end up being inconsistent with neighborhoods and not the kind of housing that is being encouraged through the Comprehensive Plan. The Comprehensive Plan wants to create units in the villages, near public transportation, etc. There has also been argument that making these lots non buildable would be taking the nest egg out of property owners' hands, but for 62 years none of these lots were buildable. And the intent of the Task Force was not to change that, but to protect the lots that already had homes on them.

Considering the Appeals Court has spoken in support of that, some members wanted to vote #25-12 No Action Necessary.

Some Committee members did not want to modify the interpretation of the ordinance that the courts have upheld going forward. Part of the rationale is that there is no “in-fill” policy in that not every parcel needs to have a structure on it. These are parcels that have historically been viewed as not buildable. There was also sentiment that there would not be 16 votes to modify the interpretation and change the policy. Also, there was disagreement that it would not be possible to amend the ordinance in a way that would protect the 10 homes that have been affected by the previous and current interpretations. Ald. Baker submitted a draft as follows:

Add to 30-15(c)(3) a new subsection and change introduction to refer to three rather than two:

*c) if the lot was held in common ownership at any time after January 1, 1995 with an adjoining lot or lots that had continuous frontage on the same street with the lot in question, such lot had on it a single or two-family dwelling, and the lot in question also has on it a single family or two-family dwelling that was constructed in compliance with a building permit issued between July 7, 2001 and October 6, 2009.*

Ald. Yates also submitted a draft on behalf of Citizens for Responsible Development. **It is attached to this report.**

The spot zoning issue did not seem pertinent to some Committee members. As it was understood, the Spot Zoning policy is that the City is not supposed to create undue benefit to a specific parcel without a significant public benefit and planning rationale. The public benefit here is there is a subclass of people who are non-compliant, not through any fault of their own, but because the Inspectional Services Department, with the best of faith, granted building permits and they are now non-compliant. It was precisely those kinds of non-compliant situations that were dealt with in the 30-15 Task Force to begin with and they were scattered all over the City. It was felt it was possible to do this without it being spot zoning. The variance process could be difficult because it is a legal hardship, not the usual variance hardship criteria.

There was also sentiment that building a house that is consistent with the neighborhood on an adjacent lot might well be reasonable. Statute does allow that, so perhaps a hard and fast rule disallowing all instances of that may not be reasonable.

Committee members were concerned that some people bought these homes and lots with certain expectations, and have been assessed that way by the City. They believed that a lot was buildable or non-buildable, as a property owner or as a neighbor, and now that reality could be changing and impacting their financial investment or the enjoyment of their homes, respectively.

There was concern that some people had to spend great amounts of money to go to court for relief and some Committee members were concerned about impacting them further or having their efforts nullified.

Follow Up

They would also like to know the size of the houses that have been built on the 10 lots that were developed and what they may have sold for. The Committee would also like to know if there were any thoughts about avoiding the oversized houses on merged lots in neighborhoods with smaller homes.

Committee members asked for more data on the 217 lots in the City that could be impacted by this issue. The Committee agreed to docket an item as follows:

*The Programs & Services Committee requesting information from the Planning Department concerning the nature and character of vacant lots that were confirmed as unbuildable by the Mauri Appeals Court decision.*

There was sentiment that since members from the Task Force explained their intent, and that intent was upheld by the court decisions, the interpretation should stay as is, and allow opportunity for relief as possible to the 10 property owners who were impacted. With that, the Committee voted to NAN #25-12 by a vote of 7-0.

The submitted draft ordinances will be reviewed and the Law Department will report back with comments and opinions. The Committee voted to hold item #77-13.

#11-12      ALD. HESS-MAHAN & LINSKY requesting discussion on the implementation and enforcement of the provisions of Section 30-5(c)(1) of the Newton Ordinances which requires that “[w]henver the existing contours of the land are altered, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of surface water to or from abutting properties.” [1/11/12 1:01PM]

**ACTION:**      **HELD 5-0 (Ald. Baker and Kalis not voting)**

**NOTE:** James Freas addressed the Committee. He explained that there was a meeting of the Engineering, Inspectional Services and Planning Departments and a flow chart was developed to show the process by which they coordinate the review of potential grade changes and drainage facilities on proposed development sites. They were able to identify a few places where improvements could be made. The Committee had asked the Planning Department to look at the process in more detail and report back. Mr. Freas presented a **flow chart and presentation which is attached to this report**. The process works as follows:

An applicant would submit their plan to ISD for zoning and building code review. ISD would share the plans with the Engineering Dept. which reviews the plan for drainage and grading. If revisions need to be made, the applicant is notified and the process would basically begin again. When the revisions are adequate, then the building permit is issued and the construction process may begin.

In the construction phase, Engineering does an onsite review of the grading and drainage of the site and if there are no issues, the process can move forward. If there are problems, ISD must be

notified to issue a stop work order. Engineering lacks the authority to enforce code violations under the City Charter. Therefore, it is extremely important that communication between Engineering and ISD takes place at this point, in every instance. The applicant has two options available at that point: they can submit a new plan, or they can fix the problem. When the plan is approved, or the problem is fixed, the construction process can begin again.

In the completion phase, the applicant must submit an As-Built plan. It is also reviewed by both ISD and Engineering. If the As-Built plan is accurate in terms of what has been actually built on the site but is inconsistent with the original plan that was submitted, the builder can then either change the grading/drainage on the site to be consistent with the original plan; or submit a new plan which reflects the actual grading/drainage on the site, which brings the process back to the beginning for plan review, etc. If the As-Built plan is inconsistent with what was actually constructed, the applicant would have to correct the As-Built plan and resubmit it for plan review, etc. If the new plan did not meet code standards, the site would then need to be re-graded. If the As-Built plan is consistent on the ground as well as with the original site plan that was submitted, ISD can then issue a Certificate of Occupancy.

Some recommended improvements to the process would include better notification to builders that construction must be to plan and how the entire process works, as well as requiring more information from the builder at the time of submission.

The Committee noted that there are two cases in litigation that relate to this problem. The issue seems to be whether Chapter 30-5 is sufficient on the grade change issue. The Zoning Task Force about 5 years ago eliminated the 3-foot grade change in favor of requiring a special permit to have retaining walls or structures in the setback that exceed 4 feet in height. They also put in various provisions to make sure that Engineering would have opportunity to review the plans before anything gets built so that drainage would not be an issue for the landowner or any neighbors. The enforcement piece has been lacking. Mr. Freas said that the piece that has been lacking has really been communication between the two departments and the applicants. The key is to make it very clear to applicants that every failure to meet the standard brings you back to the beginning of the process. That is significant because there is a pending proposal that an applicant would have to submit fees with every re-start of the submittal process. There was concern in the Committee that "getting caught" is the issue. Mr. Freas said that Engineering is the department that has the expertise to "catch" someone, but ISD has the authority to stop them once they are caught. The communication piece between the two would ensure that violations are dealt appropriately. Mr. Freas said there was real commitment between ISD and Engineering to maintain good communication and that should provide significant improvement in the process.

The Committee noted that there are so many steps in this process, especially when plans need to be re-submitted and reviewed one or more times, that it provides more opportunity for mistakes to be made or miscommunications. Also, the reality is that there are only so many inspectors and they can't be on every site as much as might be necessary. It's a staffing issue. It was also stated that there are cases that are perfectly legal and up to code but may still cause problems to neighbors and they may have to be resolved through the courts. The concept of peer review was also suggested.

Ald. Johnson asked that the City Engineer, Lou Taverna be present at the next discussion of this item. The Committee would also like to have Commissioner Lojek present to discuss enforcement issues. The Committee voted to hold this item.

#162-12      THE ECONOMIC DEVELOPMENT COMMISSION requesting a one-year moratorium, starting immediately, where no bank shall be allowed to be built or opened for business on the ground floor of any building in any Business District within the city unless granted a Special Permit from the Board of Aldermen.  
[05-17-12 @ 4:18 PM]

**ACTION:**      **NO ACTION NECESSARY 6-0-1 (Ald. Kalis abstaining)**

**NOTE:** Mr. Freas referred to the Planning Memo that was submitted regarding this item. He summarized that the impact of banks on the City's village centers was shown to be relatively modest. There are a variety of efforts underway to enhance village vitality including the Main Streets Program, Zoning Reform, Community Engagement and Beautification and a Parking Management Plan. The original intent of this moratorium was to stimulate village vitality and given the other initiatives in play, the Planning Department recommends that the Committee vote no action necessary (NAN) for this item. Chris Steele from the EDC commented that the EDC was comfortable supporting a NAN vote as they were pleased with the ongoing initiatives as well.

Ald. Danberg said she saw this model work very well in Bronxville, NY, a community very similar to Newton. Banks were moved to second floor space which created market value for second floors. She said that she felt the other initiatives would accomplish the intended goal of village vitality and she supported the NAN vote as did other Committee members. Some members felt that the moratorium would be appropriate to keep in place while these other projects were ongoing.

There was still concern about attracting first floor tenants that would stimulate more foot traffic in village centers. The Planning Department commented that they were working with the EDC on that issue and also doing some educational outreach efforts to attract tenants. There is also a list on the website of parcels that are for sell so that people who are looking for space can find it. Staff is also engaged with the small business assistance outlets and is constantly talking to people about places that might be good matches for them. The Mayor has been hosting roundtable discussions with merchants in various villages and the Planning Dept. has been reaching out directly to property owners about attracting tenants as well.

Ald. Danberg moved No Action Necessary and the Committee voted in favor with one abstention.

Respectfully Submitted,

Marcia T. Johnson, Chairman

**PROPOSED NEW SUBSECTION 30-15(c)**

**Existing § 30-15(c):**

(c) *Exceptions Applicable in Residential Districts.* Any increase in area, frontage, or setback requirements prescribed in Table 1 of this section shall apply to any **lot** in a residential zoning district except to the extent that either the provisions of Massachusetts General Laws, Chapter 40A, Section 6, as in effect on January 1, 2001, or the following provisions, provide otherwise.

Any increase in area, frontage, or setback requirements prescribed in Table 1 of this section shall not apply to any lot in a residential district if all of the following requirements are met:

- (1) At the time of recording or endorsement, whichever occurred sooner, or on October 11, 1940 if the recording or endorsement occurred before October 11, 1940, the **lot**
  - a) conformed to the requirements in effect at the time of recording or endorsement, whichever occurred sooner, but did not conform to the increase requirements, and
  - b) had at least five thousand (5,000) square feet of area, and
  - c) had at least fifty (50) feet of frontage.
- (2) The size or shape of the **lot** has not changed since the **lot** was created unless such change complied with the provisions of section 30-26.
- (3) Either
  - a) The **lot** was not held in common ownership at any time after January 1, 1995 with an *adjoining lot or lots* that had continuous frontage on the same street with the **lot in question**,
  - or
  - b) If the **lot** was held in common ownership at any time after January 1, 1995 with an *adjoining lot or lots* that had continuous frontage on the same street with the **lot in question**, such lot had on it a single-family or two-family dwelling.

RECEIVED  
Newton City Clerk  
2013 MAR 27 PM 4:00  
DAVIDA A. OLSON, MC  
NEWTON, MA 02459

**Proposed New (c)(4).**

- (4) Notwithstanding anything contained herein to the contrary, any increase in area, frontage, or setback requirements prescribed in Table 1 of this section shall not apply to an adjoining lot held in common ownership with the lot in question, as described in § 30-15(c)(3)b), if the adjoining lot has on it a single family or two-family dwelling that was constructed in compliance with a building permit issued between July 6, 2001 and October 6, 2009 and would otherwise be unlawful under § 30-15(c)(3)b).<sup>1</sup>

<sup>1</sup> October 6, 2009 is the day before first publication of notice in the Newton TAB of the Mauris' appeal to the Zoning Board of Appeals. This publication provides fair warning to the public that the ISD interpretation may be overturned and that subsequent building permits would be at risk of being deemed improperly issued. For the publication date see: <<http://www.newtonma.gov/civicax/filebank/documents/28320>>

Provided by "The Citizens for Responsible Behavior"  
via ald. Yates



Srdjan S. Nedeljkovic  
5 Bellingham Street  
Newton Highlands, MA 02461

Marcia T. Johnson  
Chair, Zoning and Planning Committee  
Board of Aldermen  
1000 Commonwealth Avenue  
Newton, MA 02459

Re: #77-13: Request to amend the City of Newton Zoning Ordinance so that properties that have been built and purchased that are now non-compliant due to the recent court decision in the Mauri/Chansky case be considered valid non-conforming properties

#25-12: Proposal to amend section 30-15(c)(3)(b) of the zoning ordinance to allow building on currently undeveloped, undersized lots in cases where there is an existing house on an adjacent lot and the both lots have been held in common ownership

Dear Ms. Johnson and members of the Zoning and Planning Committee,

I urge the members of the Zoning and Planning Committee to:

**SUPPORT** item #77-13

**REJECT** item #25-12

**Arguments below are in support of item #77-13.**

- 1) This item refers to properties build on undersized vacant lots (those without a previously existing house) that have been held in common ownership with the adjacent lot (which has contained an existing house). Over the past several years, the City's Inspectional Services department has granted building permits on these undersized lots (which are those that have less than the required land area or street frontage). At the time these building permits were issued and at the time the houses were purchased, the owners were under the impression that they were compliant with all applicable zoning ordinances.
- 2) Properties thereby affected include: 77 Allison Street, 7 Churchill Street, 1682 Commonwealth Avenue, 101 Manet Road, 19 Olde Field Road, 40 Pickwick Road, 70 Pickwick Road, 91 Pickwick Road, and 91 Woodland Road. Therefore, there are 9 (nine) properties under consideration for item #77-13. These properties should be protected and granted status that will make them compliant and "legal" from the perspective of the city's zoning ordinances.

- 3) In October 2009, public notice was issued regarding an appeal to the Zoning Board of Appeals on the issuance of building permits on such undersized lots. At that time, Mauri et al pointed out that the issuance of building permits on these undersized lots was illegal based on the existing zoning code. Therefore, parties were subsequently informed of the risk of proceeding with construction on such lots. Construction on properties at 18 Goddard Street, 26 Goddard Street, and 197 Pine Ridge Road was initiated under the full knowledge of the owners/builders of the questionable legality of proceeding and at their own individual risk. Therefore, houses granted building permits after October 2009 should not be protected under Item #77-13. However, it is understood that the owners/builders shall continue to have the option of coming before the Board of Aldermen to request variances and special permits related to these properties.

**Summary:** Item #77-13 should be supported because it will rightfully protect homeowners who purchased properties not knowing that the city's Inspectional Services department had misinterpreted the city Zoning Ordinances relevant to their homes. As the challenge to the City's issuing of building permits on such non-compliant lots had not yet been brought forth, it is a matter of justice and fairness that the owners of these existing houses are granted full legal protections within Newton's zoning ordinances.

**Arguments below are to oppose item #25-12:**

- 1) This item would change the city's existing zoning code to allow construction of houses on undersized lots adjacent to and in common ownership with lots that have an existing house. In effect, the zoning change would reverse the City's policies and intentions related to the existing density of neighborhoods where these lots are located. As in multiple recent cases (Bradford Rd, Goddard St, Pine Ridge Rd, Beacon St), this type of sudden change in zoning is unwelcome and undesired by many of Newton's citizens and homeowners. The proposed zoning change would lead to an undesirable densification of established neighborhoods. There is little public support for such a drastic and unprecedented change in the zoning code of Newton's single residence neighborhoods, and it should be rejected.
- 2) Over the past 20 years I have lived in Newton, it has been broad public knowledge that undersized lots in Newton's residential zones are "undevelopable." Until recently, these lots were clearly listed as unbuildable on property assessor documents and maps. To this day, the assessment of these lots accurately reflects their non-developable status. Recent court decisions have only confirmed Newton's zoning code that these lots are not developable. In addition, decisions to purchase homes and to reside on particular streets have been made by citizens who have been under this broad impression that undersized lots are de facto "open space" in our neighborhoods. Newton residents depend on the city's zoning code to protect their neighborhoods from excessive building of additional houses and other intrusions that would affect their perceived quality of life. Item #25-12 should be rejected based on everyone's broad, long-standing knowledge that these lots are undevelopable, which is also consistent with ongoing city policy to assess these properties as undevelopable.

- 3) The item should be rejected because it is inconsistent with the City's Comprehensive Plan. As a member of the Comprehensive Planning Advisory Committee that worked for many years to develop the Comprehensive Plan, I can recall the strong sentiment shared by many to maintain the existing qualities and density of our residential neighborhoods. When projections were made for additional housing units as part of a "build out assessment," staff who then worked in the city's Planning Department conducted an analysis to project where additional dwelling units might be constructed under realistic conditions. A map of this build-out analysis (Map 3-1) appears on page 3-2 of Newton's Comprehensive Plan, which was passed by the Planning and Development Board and adopted by the Board of Aldermen in 2007. The non-conforming small lots are not identified for new buildings on this map, which is consistent with the position that the Comprehensive Plan considers these lots as being non-developable.

Furthermore, the City's Comprehensive Plan states that any further new growth in single-family residential areas should be such that it does not result in "substantial net increases through rezoning, "loosening" rules, 40B development, or other public actions." Any intention to rezone non-conforming small lots would again therefore be inconsistent with the City's Comprehensive Plan. It was clearly not the intent to the Comprehensive Plan to increase the density of our residential neighborhoods. The Plan envisioned growth in village centers and along the city's transportation corridors (like Needham Street). Member of CPAC who were on the open space committee and those on the affordable housing committee certainly did not encourage the development of expensive, oversized structures on small lots in what little green space we have left in our neighborhoods.

**Summary:** Item #22-12 should be rejected. The proposal is unwelcome and ill advised with little support from Newton's residents. There has been a common long-standing knowledge that these small lots have always been unbuildable. For that reason, they were until recently noted as "undevelopable" on city assessor maps and treated as such in terms of tax implications. The zoning changes proposed in this item would be extreme and unprecedented for Newton's residential neighborhoods. This type of over-densification of our neighborhoods and green spaces is highly inconsistent with the City's Comprehensive Plan and the vision that many of us have for Newton.

Thank you for taking into consideration these opinions and the opinions of many others as you deliberate on these two items.

Sincerely,



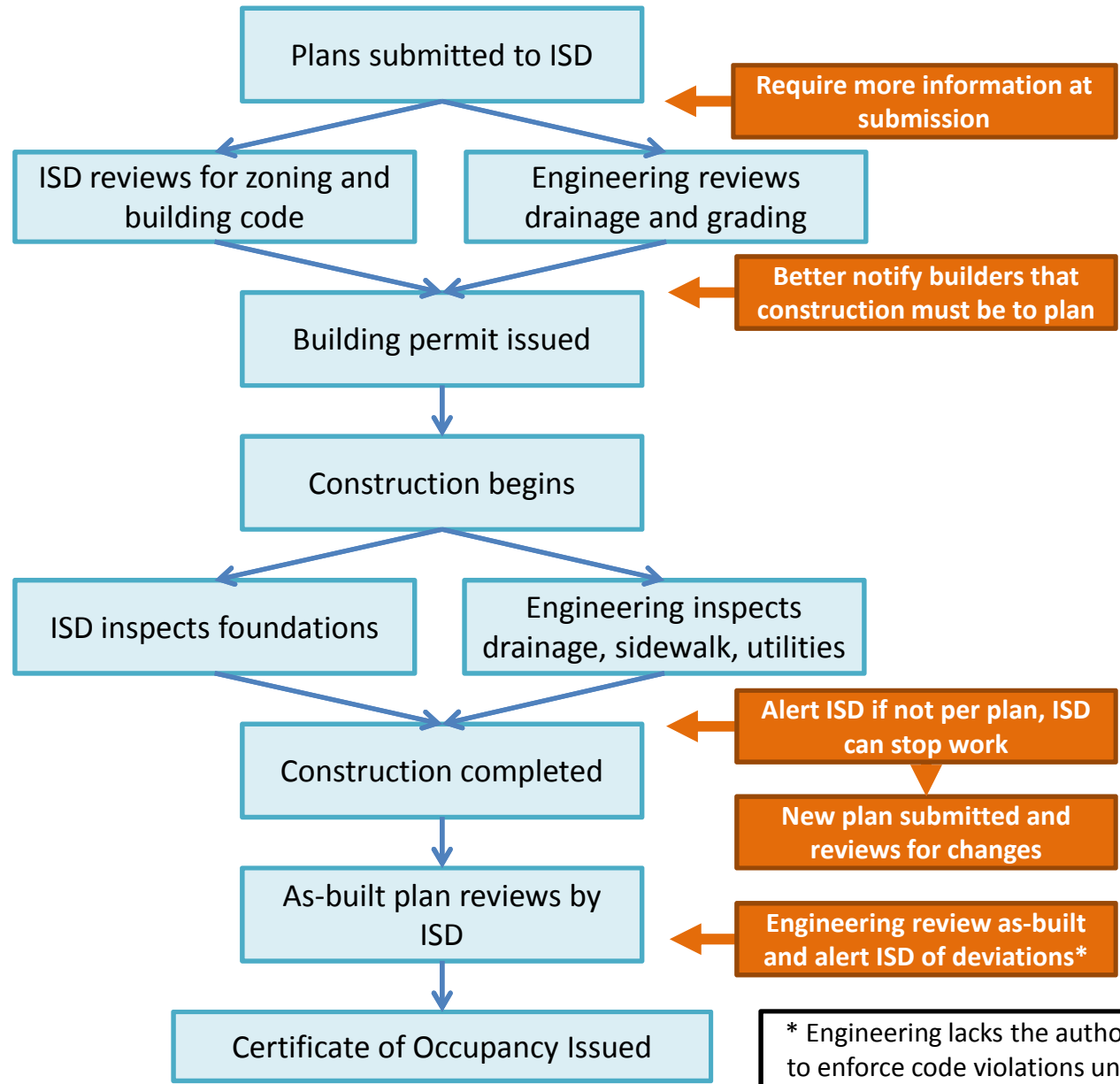
Srdjan S. Nedeljkovic  
5 Bellingham Street  
Newton Highlands, MA

# Zoning and Planning Committee

1

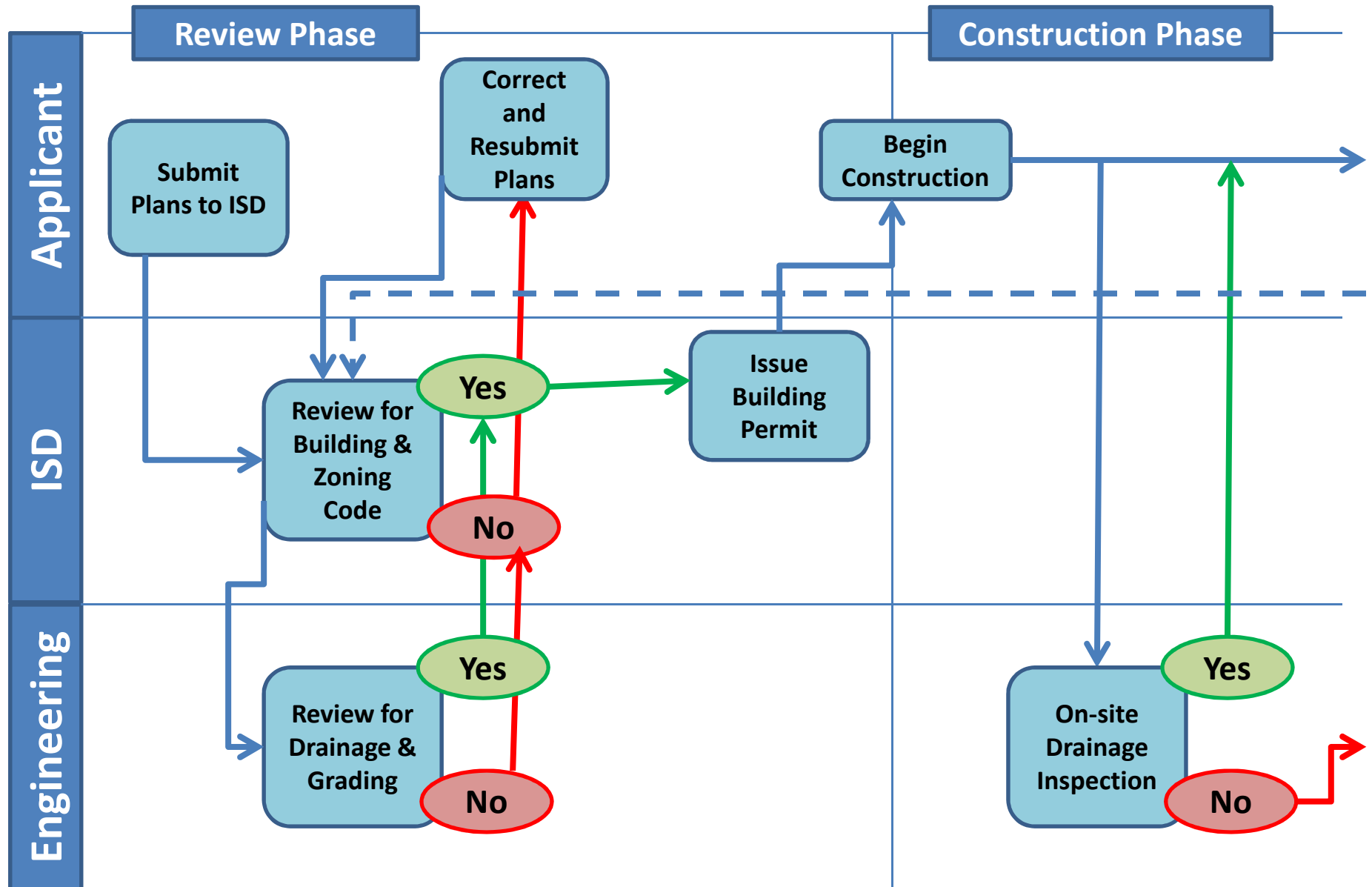
**Petition #11-12:** requesting discussion on the implementation and enforcement of the provisions of Section 30-5(c)(1) of the Newton Ordinances which requires that “[w]henver the existing contours of the land are altered, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of surface water to or from abutting properties.”

## Construction approval process

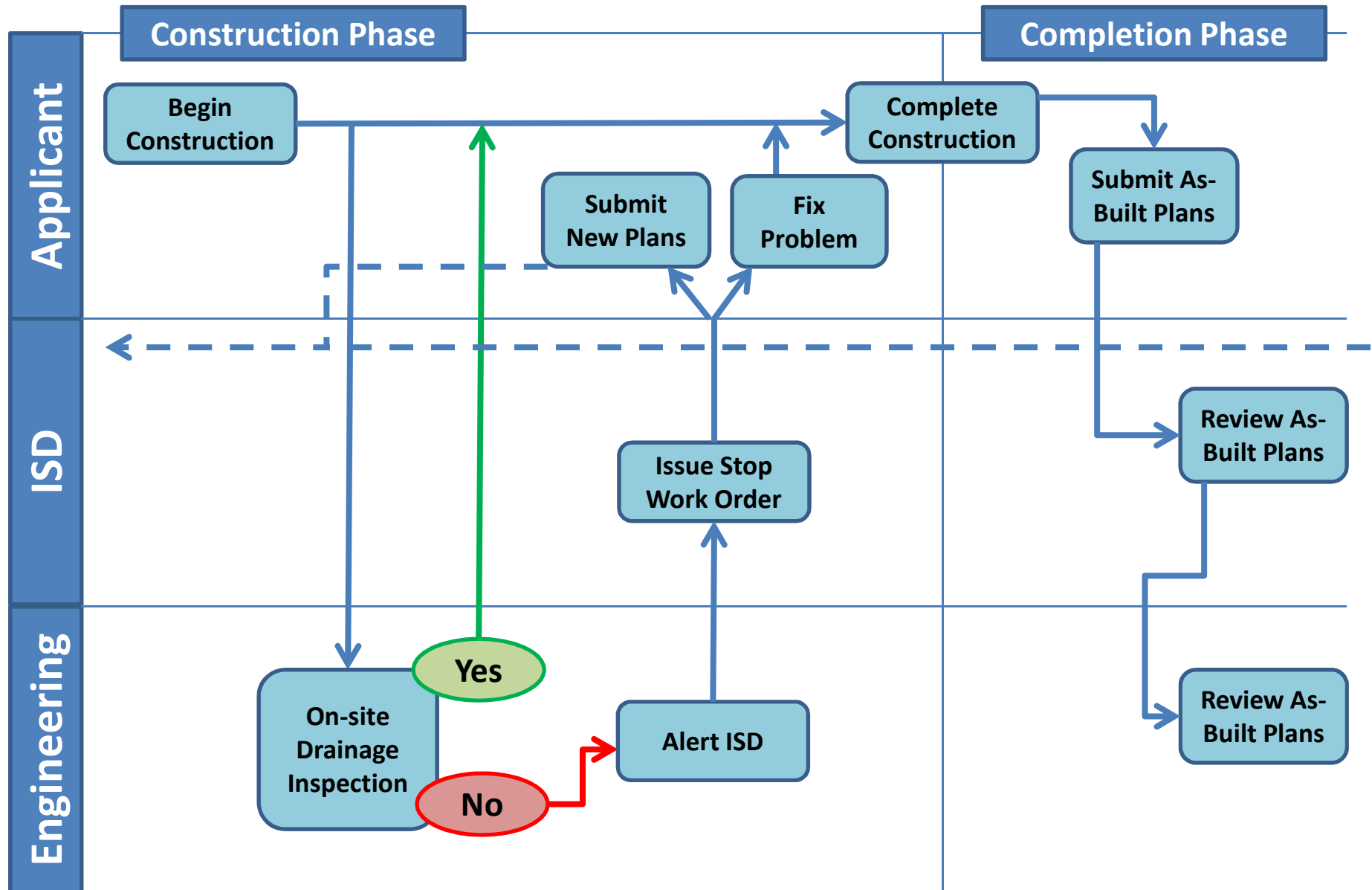


\* Engineering lacks the authority to enforce code violations under the City Charter

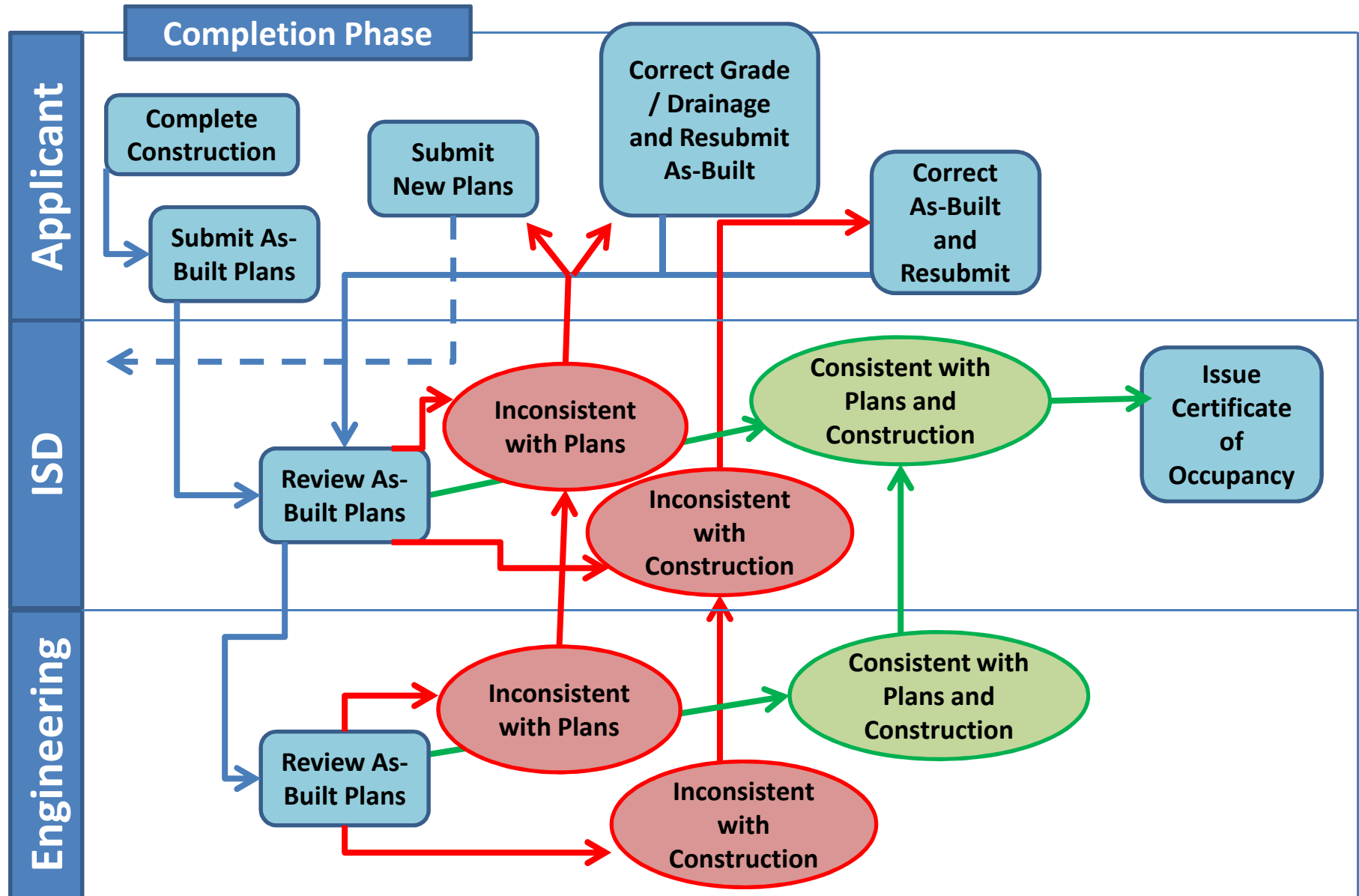
# Grading and Drainage Plan Approval Process: Plan Submittal to Certificate of Occupancy, ISD & Engineering Review



# Grading and Drainage Plan Approval Process: Plan Submittal to Certificate of Occupancy, ISD & Engineering Review



# Grading and Drainage Plan Approval Process: Plan Submittal to Certificate of Occupancy, ISD & Engineering Review





# Zoning and Planning Committee

6

**Petition #162-12:** requesting a one-year moratorium, starting immediately, where no bank shall be allowed to be built or opened for business on the ground floor of any building in any Business District within the city unless granted a Special Permit from the Board of Aldermen.

# Zoning and Planning Committee

7

**Petition #25-12:** A zoning ordinance amendment to amend section 30-15(c)(3)(b) by inserting the word “subject” before the word “lot”, the word “and” before the word “such” and the word “adjoining” after the word “such”.

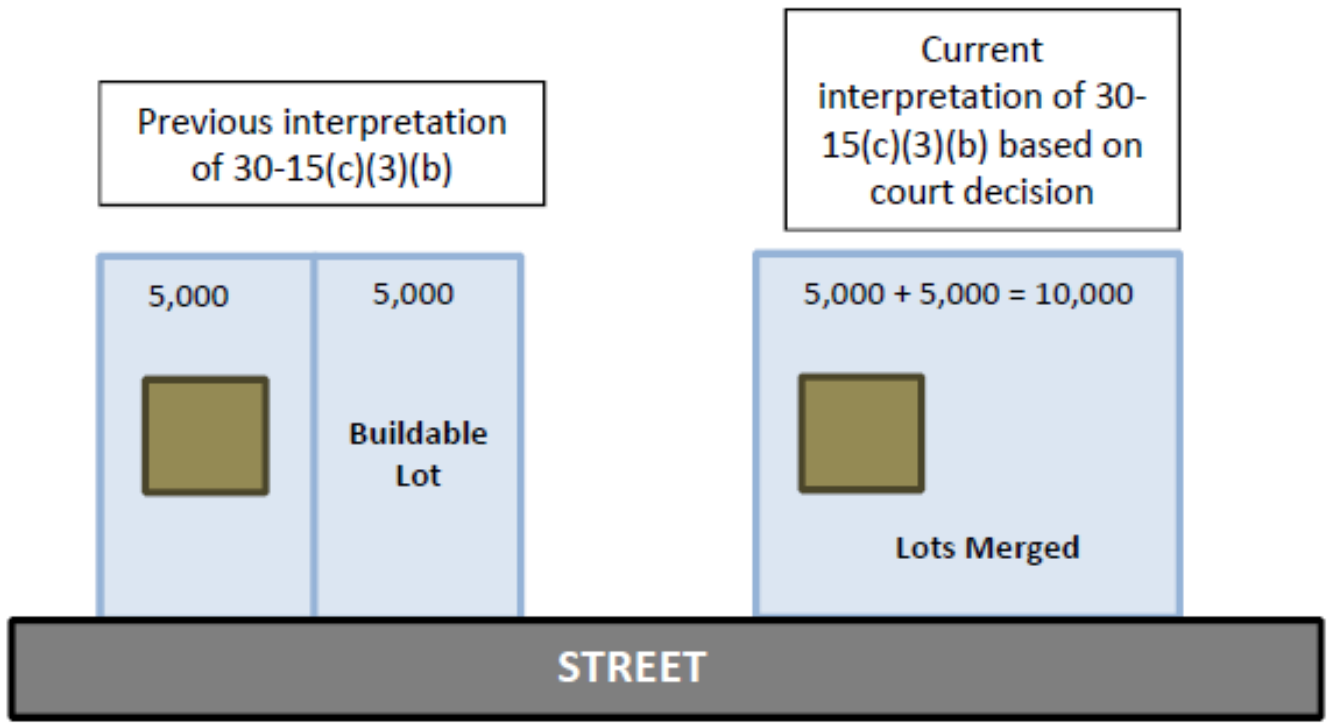
## Section 30-15 (c)

8

Exempts residential development on existing lots from current lot standards where:

- Lot was legally created.
- Lot is min 5,000 sq ft and 50 ft of frontage.
- No change in size or shape.
- Not in common ownership with a neighboring property, unless there is already a home on the subject lot.

**Illustration 1**



**Should the City allow people owning two contiguous “old” lots, where one is vacant, the option to sell or develop the vacant lot?**

# What is an “Old” Lot?

11

Lot legally created according to the requirements of a previous version of the Zoning Ordinance but no longer consistent with the current Zoning Ordinance.



**“Old” Lot Example**  
Created in 1933  
7,351 Sq. Ft.  
76 Ft. Frontage  
Single Residence 3 Zoning

**Single Residence 3**  
**Requirements**  
10,000 Sq. Ft.  
80 Ft. Frontage







# Comprehensive Plan

15

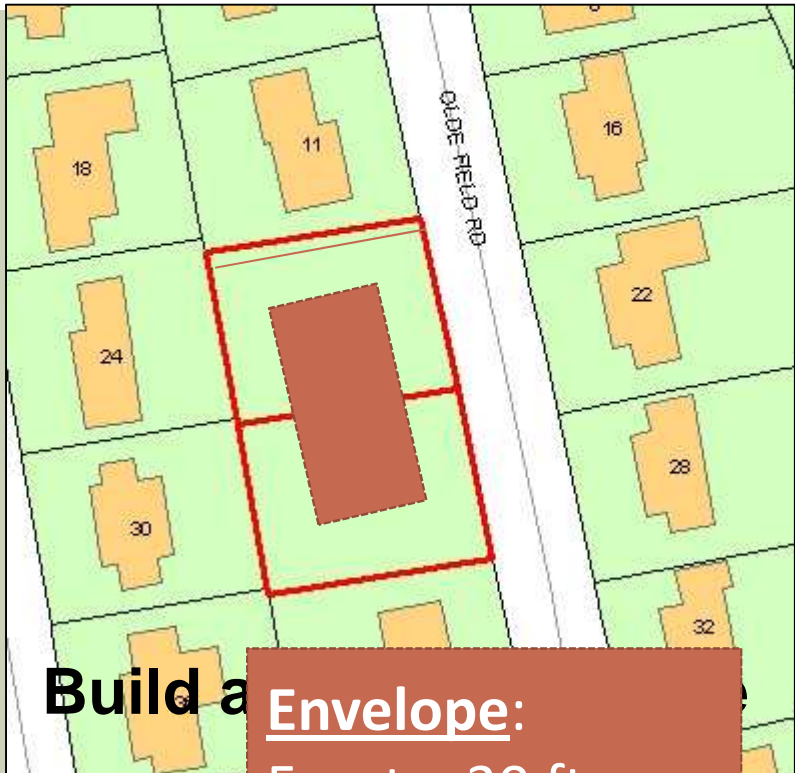
*“Development is to be guided to reflect the character held or sought by existing residential neighborhoods protecting the qualities of that which exists.”* Land Use, 3-6

# Current Zoning

16



**Stay the Same**



**Build a**

**Envelope:**

Front – 30 ft

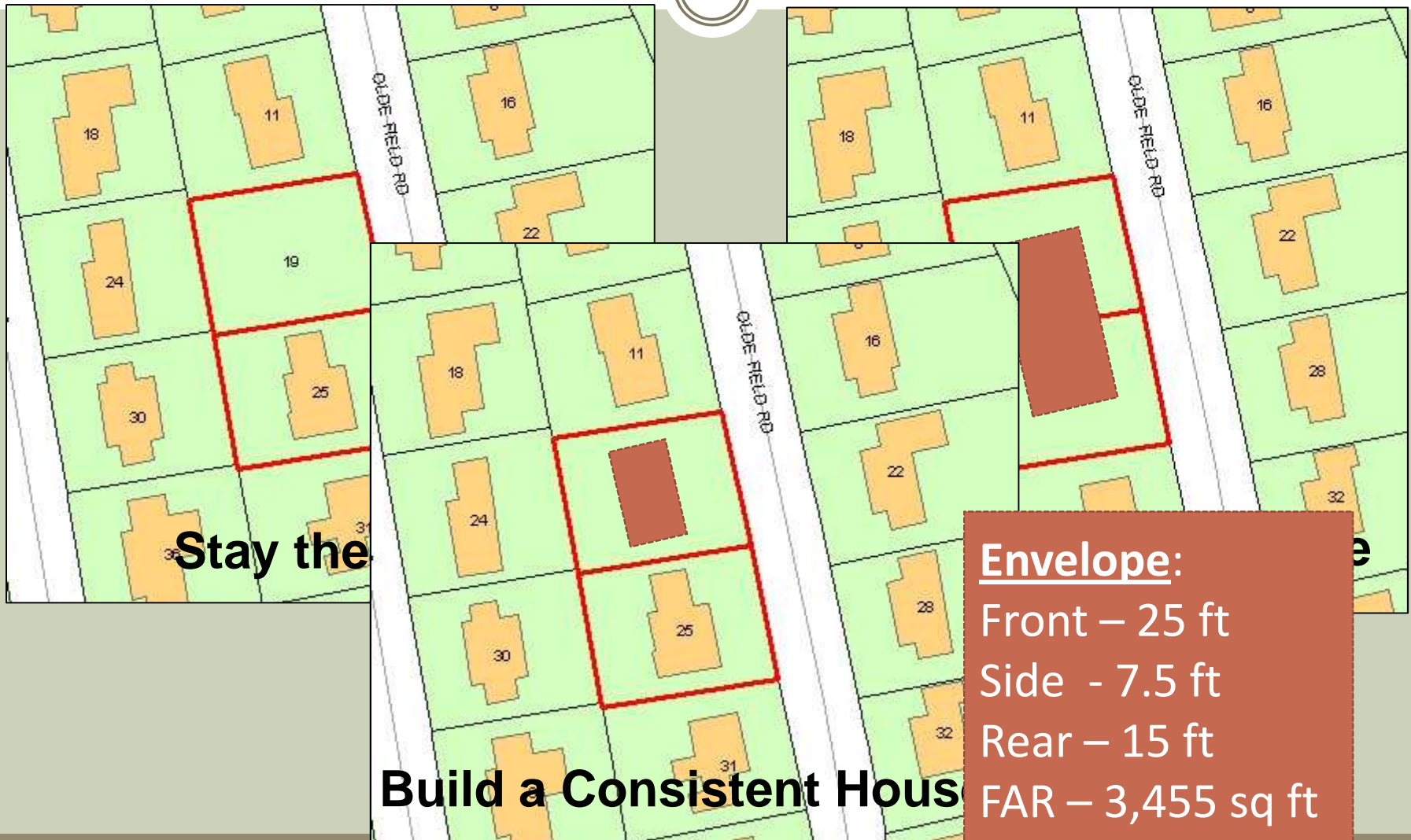
Side - 10 ft

Rear – 15 ft

FAR – 5,647 sq ft

# Proposed Zoning Amendment

17



Stay the

Build a Consistent House

**Envelope:**

Front – 25 ft

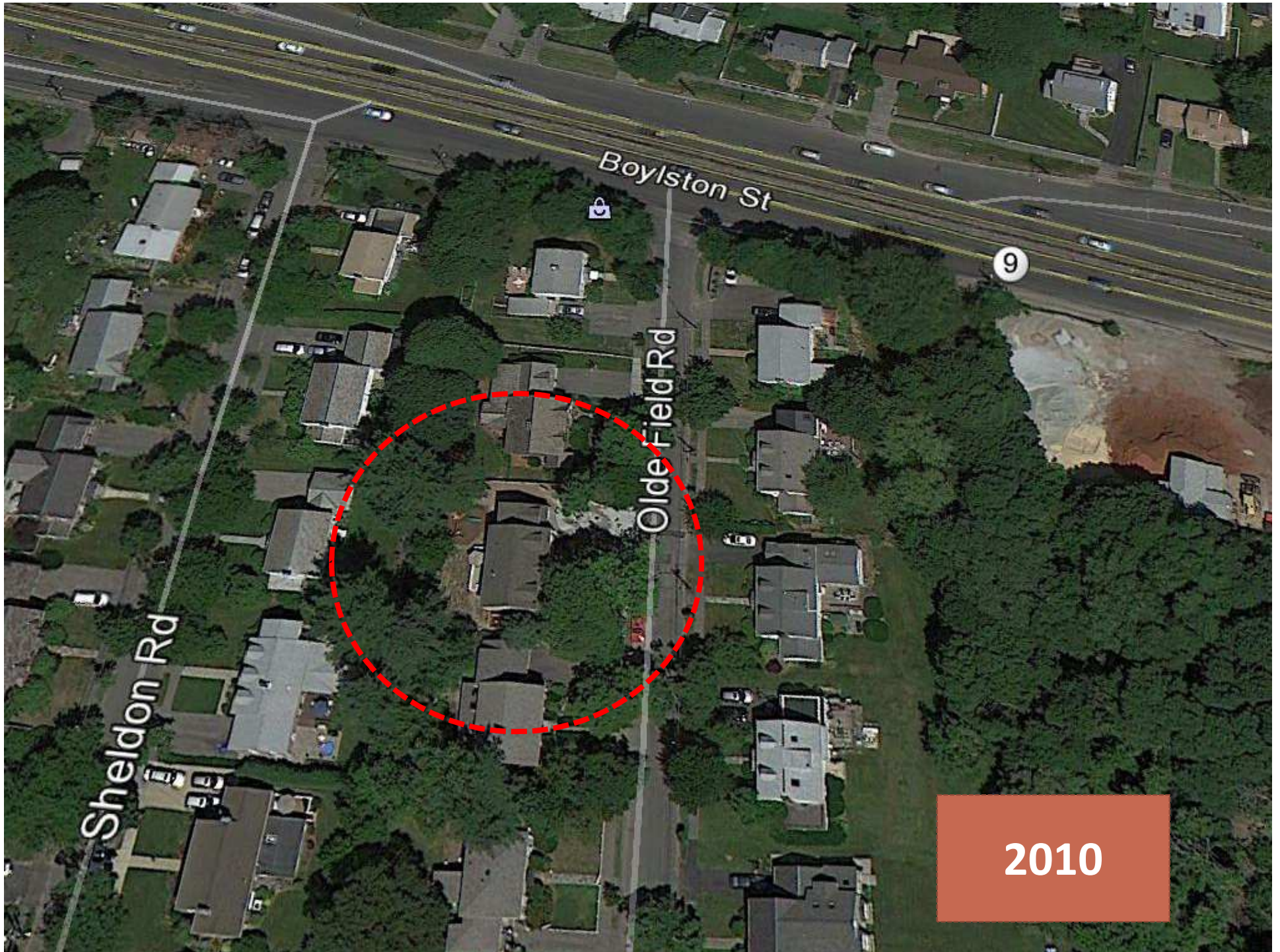
Side - 7.5 ft

Rear – 15 ft

FAR – 3,455 sq ft



2008



2010

# Zoning and Planning Committee

20

**Petition #77-13:** Amend the City of Newton Zoning Ordinances so that any properties that have been built and purchased that may now be considered non-compliant due to the recent court decision in the Mauri/Chansky case be considered valid non conforming properties.

# Non-Compliance

21

- Estimating 10 homes.
- About half subject to enforcement – tear down.
- All unable to receive future building permits.



# #25-12 & #77-13

22

## No Action

- Non-compliant Homes – Variances
- Property owners have 2 options
- Recommend clarifying intent for 30-15 (c)

## Action

- No variances necessary
- Property owners have all 3 options
- Recommend clarifying intent for 30-15 (c)