

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

WEDNESDAY OCTOBER 12, 2011

Present: Ald. Johnson(Chairman), Swiston, Shapiro, Baker, Yates, Lennon, Lappin;

Absent: Ald. Sangiolo

Newton Conservators: Jane Sender (President)

City Staff: Seth Zeren (Zoning Code Official), Jen Molinsky (Chief Planner for Long Term Planning), Marie Lawlor (Assistant City Solicitor), Rebecca Smith (Committee Clerk)

#272-11 RICHARD & ANDREE WILSON requesting that His Honor the Mayor and the Board of Aldermen accept a Conservation Restriction on approximately 1.5 acres of their property at 15 Bracebridge Road; the proposed Restriction has been reviewed and approved by the Newton Conservation Commission and the Newton Conservators and will be held by the Newton Conservators. [9/26/11 @2:04PM]

ACTION: **HELD 7-0**

NOTE: Atty. Ashley Walter, counsel for the petitioners, presented the plan for the conservation restriction to the Committee and walked the Committee through the documents she presented to them (attached to this report), spending the most time on the maps (the third of which shows the suggestion of having straight line boundaries instead of the “mushroom” shape encompassing the house), and the draft conservation restriction. There are two lots owned by the Wilson’s, and she explained that the entirety of lot 2 would be under the conservation restriction as well as much of lot 1. This conservation restriction would be done in perpetuity to preserve its present and pristine condition and to avoid the possibility of having it subdivided and developed. Because this is being done in perpetuity, the Secretary of Energy and Environmental Affairs, as well as the Board of Aldermen and the Mayor are required to give approval per the state statute. The Executive Office of Environmental Affairs is currently reviewing the restriction and providing some guidance, but is awaiting the completion of the municipal approval process.

Atty. Walters has already appeared before the conservation commission and the Newton Conservators, both of which have already given their approval and deemed this restriction as having public benefit.

Atty. Walter explained that this conservation restriction does not grant public access to the land; the Wilson’s decided on this since they believe that allowing public access on the property would hinder a successful sale of the property. The Committee had some questions about public access as people currently walk along the trails of the aqueducts which cut through the property; they are concerned that when this property changes hands the new owners may have the right to prohibit public access through this

conservation restriction. Because of this, the Committee asked that Atty. Walter go back to her clients and ask that they agree to have a document accompanying the conservation restriction that states that though they are not granting public access through the conservation restriction, they are also not intending the disturb or prohibit whatever public access is unofficially had at the present time.

In addition to an accompanying document regarding public access, Atty. Walter will also meet with Seth Zeren, Chief Zoning Code Official, to create an accompanying document to flesh out the zoning implications of this restriction (i.e. where will setbacks be drawn from, the calculation of FAR, etc.).

Because of time sensitivity of this item (the Wilson's are in poor health and time is of the essence) the Committee has decided to hold a special meeting on Monday evening before the full Board meeting (7pm, room 202) to vote on this item should Atty. Walter be able to provide the Committee with concepts of how these issues will be addressed; the Committee is not requiring language for a vote of approval--such things will be worked out after the fact.

After the scheduling of the special meeting, Ald. Lappin moved hold which carried unanimously.

#64-11 HIS HONOR THE MAYOR, in coordination with the Director of Planning and Development, requesting to amend Section 30-15, Table 4, Dimensional Controls for Rear Lot Development in Residential Zones as they pertain to floor area ratio. [02-22-11 @ 6:47PM]

ACTION: **HELD 7-0**

NOTE: Seth Zeren, Chief Zoning Code Official presented the Committee with a presentation on the Planning Departments research and recommendation regarding rear lot developments. For the details of this presentation please see the attachment. The Committee decided to go with the recommendation of the Planning Department (detailed in Slide 7). There will be a public hearing held for this item on November 14th. Advertising language is due to Rebecca on October 21st.

#150-08 ALD. GENTILE proposing that Chapter 30 be amended to clarify that for a commercial vehicle to be parked legally at a residential property, it must be registered to the owner/occupant of that residential property. [4/15/08 @ 2:17PM].

ACTION: **HELD 7-0**

NOTE: Ald. Johnson decided to hold to item until the November 14th meeting of the Zoning and Planning Committee so that this can be discussed with Ald. Gentile, who was not in attendance. Should no progress be made at that time, Ald. Johnson will then NAN the item.

#133-03 ALD. YATES proposing an amendment to Chapter 30 requiring a special permit for a so-called "snout house" (one with excessive/intrusive garage on the front) following the example of Fort Collins, Colorado.

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

NOTE: This item was voted NAN as no progress has been made on it and it is not imperative that it be on the agenda at this time.

#475-08 ALD. HESS-MAHAN, DANBERG, JOHNSON, SWISTON, & PARKER proposing that the City of Newton accept the provisions of GL chapter 43D, a local option that allows municipalities to provide an expedited permitting process and promote targeted economic development.
[12/09/08 @ 9:41 AM]

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

NOTE: This item was voted NAN as no progress has been made on it and it is not imperative that it be on the agenda at this time.

#253-10(2) ZONING & PLANNING COMMITTEE supporting the establishment of a Brightfield Solar Energy Array, subject to neighborhood input, on the Flowed Meadow site similar to the one in Brockton. [02-15-2011 @10:01am]

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

NOTE: This item was voted NAN as no progress has been made on it and it is not imperative that it be on the agenda at this time.

#288-06 ALD. MANSFIELD, DANBERG, PARKER proposing that Sec 30-11(a), (b), and (d) of Chapter 30 be amended to allow banks and other financial institutions only by special permit in Business 1, 2 , 3 and 4 districts.

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

NOTE: This item was voted NAN as no progress has been made on it and it is not imperative that it be on the agenda at this time.

#440-04 ALD. JOHNSON, BAKER & LAPPIN proposing a definition of “accessory structure” which will include mechanical equipment.

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

NOTE: This item was voted NAN as no progress has been made on it and it is not imperative that it be on the agenda at this time.

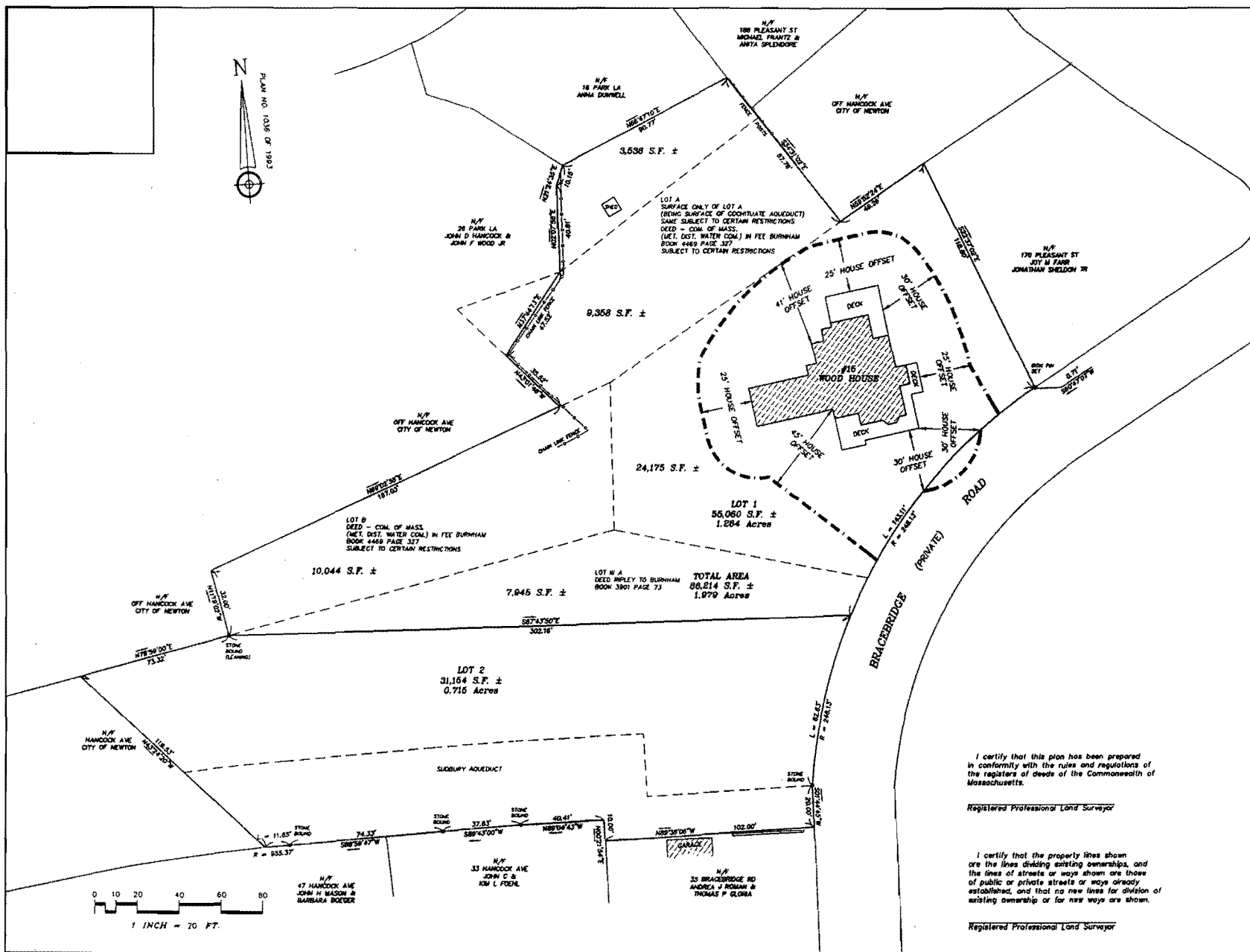
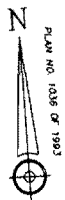
#20-99 ALD. YATES proposing that Chapter 30 be amended by removing radio and television towers as allowed uses in the Mixed Use 1 district.

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

NOTE: This item was voted NAN as no progress has been made on it and it is not imperative that it be on the agenda at this time.

Respectfully Submitted,

Marcia Johnson, Chairman



R.E. Conner & Associates, Inc.
LAND SURVEYORS - CIVIL ENGINEERS
861 WASHINGTON STREET
NORWOOD, MA 02062
(781) 769-1777 Fax (781) 769-8644



SCALE: 1"=20' DATE: 6/21/11
DRAWN BY: SLS MATH: SLS23/SJ
JOB NUMBER: 3882 CHECKED BY:
CITY: MIDDLESEX

**CONSERVATION
RESTRICTION
BOUNDARIES
15 BRACEBRIDGE ROAD
NEWTON, MASSACHUSETTS**

Revisions		
No.	Date	Description

I certify that this plan has been prepared in conformity with the rules and regulations of the registers of deeds of the Commonwealth of Massachusetts.

Registered Professional Land Surveyor

I certify that the property lines shown are the lines dividing existing ownerships and the lines of streets or ways shown are those of public or private streets or ways already established, and that no new lines for division of existing ownership or for new ways are shown.

Registered Professional Land Surveyor

SHEET NUMBER

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CONSERVATION RESTRICTION

We, Richard D. Wilson and Andree Desiree Wilson, husband and wife, having an address at 15 Bracebridge Road, Newton Centre, MA, 02459, our successors and assigns ("Grantor(s)"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of Massachusetts General Laws grant with quitclaim covenants to Newton Conservators, Inc., a Massachusetts non-profit corporation c/o Jane Sender, _____, and its successors and permitted assigns ("Grantee") in perpetuity, and exclusively for conservation purposes, this Conservation Restriction, having the terms and conditions hereinafter set forth with respect to a portion of certain land known as 15 Bracebridge Road and located in the City of Newton, Middlesex County, Massachusetts, hereinafter referred to as the "Conservation Area." The total land contains approximately 1.979 acres; the "Conservation Area," which is covered by the Conservation Restriction, will contain approximately 1.649 acres, leaving only .330 acres of unrestricted area for the Grantor's residence. The Conservation Area is also being shown on a plan entitled "Conservation Restriction Plan 15 Bracebridge Road," drawn by R.E. Cameron & Associates, Inc., Land Surveyor, Norwood, MA., dated _____, 2011, attached hereto and made a part hereof (See Exhibit A) and also recorded in Middlesex County South Registry of Deeds, Book _____, Page _____.

Purpose

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Conservation area will be maintained in its current condition in perpetuity and for conservation purposes, predominantly in a natural, scenic and undeveloped condition, and to prevent any use or change that would materially impair or interfere with its conservation and preservation values.

These values include the following:

1. Open Space Preservation: The protection of the Conservation Area will enhance the open space value of these lands. The City of Newton has a Recreation and Open Space Plan (hereinafter, "Open Space Plan,") which expired in 2007. The Committee is presently drafting a new plan, which will be substantially similar to that which preceded it. On September 11, 1986 and on December 8, 1992 in a Confirmatory Deed by the Grantors (Middlesex Registry of Deeds, Book 24038, page 586), 21,590 square feet were given to the City of Newton for conservation purposes. In the original Open Space Plan, this 21,590 square feet is referred to as the Wilson Conservation Land and is highlighted as part of the Open Space Plan. The Wilson Conservation Land is immediately adjacent to this subject Conservation Area and, jointly, the parcels would work to enhance the open space goals and naturally enlarge the present and very modest conservation area already in place, creating a more substantial visual buffer and working in furtherance of Newton's overall open space goals.

2. Scenic Protection: The Conservation Area, which is immediately adjacent to the Wilson Conservation Area, is a pristine enclave composed of open space, wooded area and a small valley. Restricting use of this area would enhance the natural and scenic features of the area and preserve scenic enjoyment of the general public.
3. Furtherance of Government Policy: This grant will support, by way of example to others, any plans the town has in place to protect open space, recreation, scenic landscape, and water resources by others.
4. Public Access Trails lie near the Conservation Area and would visually benefit from the preservation of the Conservation Area.

This Conservation Restriction is intended to be a charitable donation.

Terms

A. *Prohibited Uses*. Except as to reserved rights set forth in paragraph B below, Grantor will not perform nor allow others to perform the following acts or uses which are prohibited on, above, and below the Conservation Area:

1. Constructing, placing or allowing to remain any temporary or permanent building, structure, tennis court, landing strip, mobile home, swimming pool, golf facility, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, light or utility pole, satellite dish tower, conduit, line or any other temporary or permanent structure or facility on, above or under the Conservation Area; excepting sheds erected for the purpose of maintaining the Conservation Area and the Grantors' home.
2. The permanent, temporary, or illegal dumping of refuse, including the placing, filling, storing or dumping in the Conservation Area of any refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other like substances or materials whatsoever;
3. Mining, excavating, dredging or removing from the Conservation Area soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit;
4. Activities detrimental to scenic views;
5. Any conveyance, lease, easement or other transfer of any part or portion of the Conservation Area without making the transfer subject to this Conservation Restriction in the transfer documents;
6. Any other use of the Conservation Area or activity thereon which is inconsistent with the purposes of this Conservation Restriction and which would materially and significantly impair this Conservation Restriction.

B. *Reserved Rights.* The Grantor reserves the right for himself and his heirs and successors in interest to conduct or permit the following activities and uses on the Conservation Area, but only if such uses and activities do not materially impair the conservation values or purposes of this Conservation Restriction:

1. Maintaining and adding to the current trees, landscaping, grass, and plants.
2. Recreational Activities. Use of the Conservation Area for any passive recreational uses that do not materially alter the landscape.
3. Wildlife Habitat Improvement: Management of the Conservation Area for the benefit of wildlife (including without limitation the planting and cultivation of wildlife cover and food crops), and cutting, mowing, pruning, burning, and removal of vegetation to enhance and promote varied types of wildlife habitat consistent with sound wildlife and forestry management practices; and
4. Non-Native or Nuisance Species: The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality.
5. Composting: The stockpiling and composting of stumps, trees and brush limbs and similar biodegradable materials originating on the premises, provided that such stockpiling and composting is in locations where the presence of such activities will not have a deleterious impact on the purposes (including scenic values) of this Conservation Restriction;
6. Utilities: Installation of underground utilities including septic systems so long as the area is restored to its former condition with plantings if necessary.
7. Signs: The erection, maintenance and replacement of signs with respect to hunting, trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Conservation Area, and the protected conservation values; and,
8. Excavation: The excavation and removal from the Conservation Area of soil, gravel or other mineral resource or natural deposit as may be incidental to the installation or maintenance or removal of underground tanks, septic systems, utilities and other underground structures or to the maintenance of good drainage, soil conservation practices or to other permissible use of the Conservation Area.

C. *Notice and Approval.* Any notices sent under this conservation restriction shall be sent to the parties at the addresses listed above. Any party may provide a new *address* by sending a notice containing the new address to the other parties. Whenever notice to or approval by Grantee is required hereunder, Grantor shall notify Grantee in writing not less than sixty days

prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. The notice shall state that Grantee's failure to respond within sixty days shall constitute constructive approval of the request. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within sixty days of receipt of Grantor's written request therefor. Failure of Grantee to respond in writing within such 60 days shall be deemed to constitute approval by such Grantee of the request as submitted. Grantee's approval shall not be unreasonably withheld, but a Grantee may withhold its approval if the proposed activity will materially impair the terms of this Conservation Restriction. Any written notice required or permitted hereunder shall be deemed delivered if sent by certified mail, return receipt requested, postage prepaid, to the parties at the addresses set forth at the beginning of this instrument or, with respect to assignees, to the address set forth in a recorded instrument transferring title to the Conservation Area or rights hereunder, or to such other addresses as the parties may designate in writing from time to time.

D. Release. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, conversion or taking by any public authority under power of eminent domain or other act of public authority, shall not be entitled to any portion of any such sale, exchange, conversion or taking; instead said portion shall be remitted to Grantor.

E. Access. The Conservation Restriction hereby conveyed does not grant to Grantee, to the public generally, or to any other person any right to enter upon the Conservation Area except that there is hereby granted to Grantee and its representatives the right to enter the Conservation Area at reasonable times, with reasonable notice and in a reasonable manner for the purpose of inspecting the conservation area to determine compliance herewith.

F. Legal Remedies of Grantee

1. Grantee may enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Conservation Area to its condition prior to such violation. Grantee's rights under this paragraph F shall be in addition to, and not in limitation of, any other rights and remedies available to Grantee. Enforcement of the terms of this Conservation Restriction shall be at the discretion of the Grantee. No forbearance by the Grantee to exercise its rights under this conservation restriction shall be deemed or construed to be a waiver and no waiver on one occasion shall obligate Grantee to grant an additional waiver. No waiver shall be valid unless it is written and signed by Grantee, except, as to constructive approvals provided for in paragraph C above. If the Grantee needs to resort to legal enforcement of this Conservation Restriction, and prevails in court, the Grantor will indemnify and pay the Grantee

its costs and reasonable attorneys fees and expenses incurred as a result of said legal action.

2. Notwithstanding the foregoing, for any dispute or claim arising out of or relating to the terms of the Conservation Restriction which cannot be resolved in good faith directly between the Grantor and Grantee, no action shall be filed or prosecuted in any court until the claim or dispute has first been submitted to a mediator, mutually selected by the parties hereto, for at least five hours of mediation. The cost and fees associated with the mediation services shall be shared equally by all parties. The mediator's determinations shall not be binding upon any party. If the mediation is not concluded within thirty days from the time that a dispute is presented to the grantor or grantees, then the party raising the dispute may file an action despite the failure to complete the mediation.

G. Acts Beyond Grantor's Control. Nothing contained in this Conservation Restriction shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Conservation Area resulting from causes beyond the Grantor's control, including, but not limited to, fire, flood, storm and earth movement, acts of war whether declared or undeclared, acts of criminals or enemies of the United States, or actions taken in response thereto, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Area resulting from such causes.

H. Duration and Assignability. The burdens of this Conservation Restriction shall run with the Conservation Area land and shall be enforceable against Grantor and its successors and assigns in perpetuity. Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction, should any such notices or instruments be deemed necessary. Without limiting the foregoing, Grantor agrees to execute any such instruments upon request. The benefits of this Conservation Restriction shall be in gross and shall not be assignable by Grantee, except in the following instances from time to time: (i) as a condition of any assignment, Grantee requires that the terms of this Conservation Restriction continue to be carried out; and (ii) the assignee, at the time of assignment, qualifies under section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under section 32 of Chapter 184 of the General Laws as an eligible donee to receive this Conservation Restriction directly. Upon dissolution of the Grantee or its assigns, the Grantee or its assigns may assign its rights to any other non-profit organization which has as one of its principal purposes the advancement of the interests protected by this instrument. However, if the Grantee or its assigns should fail to assign its rights then by default this Conservation Restriction will go to the Newton Conservation Commission, if they choose to accept it. If the Newton Conservation Commission should fail to accept this restriction, then any citizen of Newton may petition the Superior Court to appoint an appropriate non-profit group to hold this Conservation Restriction. Such new holder will have rights of assignment as stated hereinbefore.

I. *Subsequent Transfers.* In the event of any conveyance or transfer approved under paragraph A.5, Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which Grantor conveys any interest in all or a portion of the Conservation Area including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least forty-five (45) days prior to the date of such transfer. Failure of Grantor to do so shall not impair the validity of such transfer or of this Conservation Restriction, and shall not limit the enforceability of this Conservation Restriction in any way.

J. *Termination of Rights and Obligations.* Notwithstanding anything to the contrary contained herein, and subject to the provisions of paragraph A.6, the rights and obligations under this Conservation Restriction of any party holding any interest in the Conservation Area shall terminate upon transfer of that party's interest, except that liability for acts or omissions occurring prior to transfer, and liability for the transfer itself, if the transfer is in violation of this Conservation Restriction, shall survive the transfer.

K. *Estoppel Certificates.* Upon request by Grantor, Grantee shall, within fifteen (15) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Conservation Restriction, and which otherwise evidences the status of this Conservation Restriction as may be requested by Grantor.

L. *Representations of the Grantee.* Grantee represents that it is a private, charitable, non-profit conservation land trust or corporation, that it is a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986, that it is organized and operated for the purpose of serving and conserving natural resources, natural habitats and environmentally sensitive areas and for other charitable, scientific and educational purposes, and that it has both the necessary funds and the commitment to hold this Conservation Restriction exclusively for conservation purposes in perpetuity and to enforce its terms.

M. *Miscellaneous:*

1. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts
2. Severability. If any provision of this Conservation Restriction shall, to any extent, be held invalid, the remainder shall not be affected.
3. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.

4. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
5. Effective Date. Grantor and Grantee intend that the restrictions arising hereunder shall take effect when all requisite signatures pursuant to section 32 of chapter 184 of the General Laws have been obtained and this document has been recorded in the Middlesex South Registry of Deeds.
6. No Pre-Existing Public Right. Approval of this Conservation Restriction pursuant to M.G.L. ch. 184, Section 32, by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Conservation Area.

WITNESS my hand and seal this _____ day of ____, 2011.

RICHARD D. WILSON

ANDREE DESIREE WILSON

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

_____, 2011

Then personally appeared the above named Richard and Andree Desiree Wilson, who proved to me through satisfactory evidence of identification, which was

_____ to be the person whose name is signed on the preceding or attached document and acknowledged to me that s/he signed it voluntarily for its stated purpose. _____

Notary Public

My commission expires: _____

ACCEPTANCE OF GRANT

The above Conservation Restriction was accepted by _____, this ____ day of _____, 2011.

By: Newton Conservators, Inc.

By: _____

Title: _____

Its: _____, duly authorized

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss _____, 2011

Then personally appeared the above named _____, who proved to me through satisfactory evidence of identification, which was _____ to be the person whose name is signed on the preceding or attached document and acknowledged to me that s/he signed it voluntarily for its stated purpose. _____

Notary Public

My commission expires: _____

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to the Newton Conservators has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: _____, 2011

Richard K. Sullivan, Jr.
Secretary of Energy and Environmental Affairs

EXHIBIT A

(PLAN)

EXECUTIVE OFFICE OF ENERGY and ENVIRONMENTAL AFFAIRS
DIVISION OF CONSERVATION SERVICES
100 Cambridge St., 9th fl.
Boston, MA 02114-2150
(617) 626-1011

For agency use only
DATE: _____
MUNICIPALITY (list all): _____
NUMERIC ASSIGNMENT(S): ____/____

CONSERVATION RESTRICTION APPLICATION FORM

Pursuant to the provisions of M.G.L .ch. 184. §32. the Executive Secretary of Energy and Environmental Affairs is hereby requested to approve a perpetual conservation restriction as described below:

A. GENERAL INFORMATION (please indicate contact person for CR review)

1. GRANTOR(S) (must list all owners)

Richard D. Wilson and Andree Desiree Wilson
15 Bracebridge Road, Newton Centre, MA 02459
Telephone: 617-332-4823
Fax: 617-495-0416

2. GRANTEE(S): **Newton Conservators, Inc.**
c/o Jane Sender

3. ARE THERE ONE OR MORE MORTGAGES ON THE PROPERTY? Yes No
(Assent of mortgagee(s) is required and must be recorded with the restriction.)

4. IS THE RESTRICTION IN MORE THAN ONE MUNICIPALITY? Yes No

5. TYPE OF RESTRICTION: a. Conservation Only:
b. Joint Restriction:

Type: _____
(agricultural, historical, watershed)

6. STATE OR FEDERAL FUNDS INVOLVED Yes No
 CPA (attach attested copy of town meeting vote(s) as an exhibit)
 Grant (type) (attach as an exhibit)
 Other (attach)
 Is there a deadline for completing restriction (reason)? _____ 20__

NOTE: (A full package must be submitted for CR review, even if all or some of the materials were submitted as part of the grant process, as the grant programs are separate)

7. PUBLIC OFFICIALS: State Representative(s) **Ruth Balser**

State Senator(s) **Cynthia Creem**

Other involved Official(s) **Newton Conservation Commission**

NOTES:

If the grantee is a non-profit charitable corporation or trust, DCS may require proof that it is a qualified charitable organization in accordance with M.G.L. c.180 §4(a) or (l) and the I.R.S. Code Section 501(c) (3) that qualifies as a M.G.L. c.184 §32 holder, and reserves the right to review the organization's by-laws and list of officers.

Regardless of whether the grantee is a qualified private non-profit organization or a city or town or commission, authority, or other instrumentality thereof, the local conservation commission must define the reasons for preserving the property and certify that the restriction is in the public interest (please refer to page 6).

A conservation restriction is a voluntary limitation on the use of land designed to preserve it from adverse future change. But it should be distinguished at the outset from an agricultural preservation restriction which is approved by the Commissioner of Food and Agriculture for the Commonwealth, 251 Causeway Street, Boston, MA 02114-2150, and from an historical preservation restriction, which is approved by the Massachusetts Historical Commission 80 Boylston Street, Rm. 310, Boston, MA 02116, and from a state watershed preservation restriction which is approved by the Commissioner of the Department of Conservation and Recreation, 251 Causeway St., Boston, MA 02114-2150.

It is possible for a restriction to fit into more than one category, requiring more than one approval. If this is a joint restriction, has the approval process been started with the joint holder, including the Commissioners of Food and Agriculture, DCR, the Massachusetts Historical Commission, etc.? Yes No

8. GRANTOR'S INTENT

- a. Charitable contribution: Yes No
Do you intend to claim an IRS income tax deduction? Yes No
- b. Granted or required as part of municipal or state permitting process? Yes No
1. Is this restriction required by a M.G.L. C.40A §9 special permit? Yes No
(Please attach a copy of the permit(s) as an exhibit)
2. Required by M.G.L. C.131, §40 Wetlands Order of Conditions? Yes No
(Please attach a copy of the Order of Conditions)
3. Other? Yes No (please explain)

c.. Other: Please explain (for example, sale of a C.R. to a public agency):

d. Is this a perpetual restriction? Yes No If less than permanent, for how many years: _____
(It is the policy of DCS not to approve less than permanent restrictions except in exceptional circumstances. Please discuss the restriction with DCS before submitting a non-permanent CR)

B. PUBLIC BENEFIT

1. Is the restriction for the preservation of land areas for outdoor recreation by, or the education of, the general public (will there be public access)? Yes** No
**** The restriction is for the preservation of land areas for outdoor recreation and observation; however, it will not be accessible to the public****
2. Is the restriction for the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystems? Yes No
3. Is the restriction for the preservation of open space (including farmland and forest land) where such preservation is:
- a. pursuant to a clearly delineated federal, state, local governmental policy, and will yield a significant public benefit? Yes** No
**** The City of Newton Open Space Policy encourages these private restrictions. The area within the conservation restriction represents a natural continuance and extension of lands already delineated as conservation and protected by local governmental policy****

- b. for the scenic enjoyment of the general public and will yield a significant public benefit?
 Yes No
4. Is the property historically significant or meets National Register Criteria or is within a registered historic district or contributes to the integrity of an historic building or property? Yes No
5. Other public benefit? Yes No (if yes, please explain)

****The conservation restriction serves to benefit the public through open space preservation, in accordance with the City of Newton Recreation and Open Space Plan; through scenic protection; and, by way of example, serves to protect other and additional open space, recreation, scenic landscape and water resources. Those conservation and public access trails, which run along the premises would also greatly benefit from the preservation of the Conservation area for visual enhancement reasons and for reasons associated with more providing a greater buffer from more urban distractions.****

NOTES:

The Secretary will find sufficient evidence of the "public interest," if the applicant can show that the restriction meets any of the tests for deductibility under the Internal Revenue Service Code Section 170(h) and the Regulations promulgated thereunder, or a private letter ruling by the Internal Revenue Service shall be deemed sufficient for establishing such deductibility, or the applicant makes an independent showing of eligibility for deductibility. The letter ruling or documentation demonstrating eligibility for deductibility should be attached along with this application.

Regardless of the intent of the grantor's gift, the Secretary's determination of public interest will be dependent upon how well the applicant demonstrates public interest; however, grantors should be advised that the Secretary reserves the right to require modifications to the conservation restriction where in his/her opinion the retained rights adversely impact the public interest or natural resource values of the property or when the document is improperly drafted.

C. SITE DATA

1. Location:
 1. Municipality: **Newton** Location: **15 Bracebridge Road, Newton Centre**
 2. Grantor's Registry of Deeds Bk. # **26978** Page # **183**
 3. Assessors Map # **089NW** Property SBL # **64016 0014A** Property Tax Bill #: **2226927**
 4. New Site?: _____ Addition to existing restricted area: _____ (please specify)
2. Zoning: Commercial Industrial Residential (check all that apply)
3. Title: Does applicant have clear title? Yes No
 If no, please explain:

4. Encumbrances: Is the property encumbered by any easement(s)? Yes No
 Is the property encumbered by any mortgages(s)? Yes No
 Please explain and attach copy of easement, mortgage subordination, etc.:

5. Geographic Information (if restriction is located in 2 municipalities, fill out separate page for each):
1. Total acres: **1.979 acres** Acres covered by restriction: **1.649 acres** Total unrestricted areas: **.330 acres**
2. Cover: acres in A. Upland Forest: **N/A** B. Open (field, pasture, etc.) **N/A**
 C. Vegetated Wetland: **N/A** D. Water: **N/A** E. Other: **N/A**
3. Topography: acres in A. Flat: **1.200** B. Hilly: **.779**

C. Rolling: N/A D. Mountains: N/A

4. Water front: feet on A. Ocean: N/A B. River: N/A
 C. Stream: N/A D. Lake: N/A

Please identify waterbody: N/A

6. General information:

Are there any improvements existing on the property, or to be permitted after execution of the C.R.? Yes No If yes, please describe in detail:

SHED?

7. Is the property currently under any of the preferential real estate tax assessment programs?

Yes No If yes, which one: c.61 c.61A c. 61B

NOTE:

If the restriction lies in more than one community, separate Site Data forms, Selectmen and Conservation Commission approvals must be completed for that portion of the restriction within each community

8. If the property is under agricultural use, is the soil considered prime or of statewide agricultural significance?

N/A

9. Is the property adjacent to any public or quasi-public land or buildings? Yes No

Describe briefly:

**** Yes. In a Confirmatory Deed by the Grantors (Middlesex Registry of Deeds, Book 24038, page 586) 21,590 square feet were given to the City of Newton for conservation purposes. This land also adjoins the so-called Cochituate and Sudbury Aqueducts which are currently used as public walking trails.****

10. Does the property lie within an historic district, include an archaeological or rare species site, fall within a Department of Conservation and Recreation designated scenic landscape, river, or within an Executive Office of Energy and Environmental Affairs designated Area of Critical Environmental Concern, a Zone II of a public water supply etc.? Please explain:

No.

11. Will public access be allowed? Yes No If yes, explain any limitations, type, etc.:

****Direct public access will not be permitted. The restricted land is immediately adjacent to a residence. However, there will be great benefit to the public given their access and use of immediately adjacent conservation lands and trails. The addition of this additional conservation restriction, would serve to enhance that visual buffer, less another home be erected in its stead.****

Prepared by: William H. Shaevel
Address: Shaevel & Krems, LLP
141 Tremont Street, Boston, MA 02155
(p) 617-556-0244 (f) 617-556-0284

ATTACHMENTS:

- | | | | | |
|----|---|-----|---|--|
| a. | Draft Conservation Restriction (required) | | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| b. | USGS Topographic map with conservation restriction outlined and identified thereon (required) | | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| c. | Survey, plotmap, or sketch plan (required) | | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| d. | Natural resource inventory, (if available) | | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| e. | Wetlands Order of Conditions C.131.§40, (if applicable) | | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| f. | Zoning, C. 40A, §9 Special Permit, etc. (if applicable) | | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| g. | I.R.S. letter ruling, (if applicable & not previously provided) | | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| h. | Charitable status documentation,(if applicable & not previously provided) | | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| i. | Assent of mortgagee(s) (if applicable) | N/A | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| j. | USDA Soil Data, (if applicable) | N/A | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| k. | Other (please specify) (court orders, settlement agreements, votes, grant agreement, contracts, etc.) | | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

NOTES:

The applicant is highly advised to follow the Model Conservation Restriction and submit a draft of the conservation restriction for a determination as to whether it is acceptable for approval by the Secretary. All required attachments must be submitted for review.

The final conservation restriction must be prepared in a form suitable for recording and be approved and signed by the grantor, grantee, and municipal official(s), have all final Exhibits attached, and a subordination, if applicable, to be recorded prior to the conservation restriction.

Please check your local Registry of Deeds for their requirements, particularly as to first page spacing.

MUNICIPAL CERTIFICATION

(We) the undersigned Conservation Commission of _____ (the certifier/holder) hereby certify that the proposed conservation restriction is in the public interest in that it (describe public benefit):

Date: _____

Signed:

NOTES:

This certification by the conservation commission may be submitted separately from the application and filed with the submission of the executed conservation restriction, it being recognized that the applicant may want to submit the application with a draft copy of the conservation restriction for review prior to actual submission of the executed document.

Conservation restriction lands which overlap municipal boundaries must be approved and certified by the appropriate officials of both municipalities.

The commissioners' certification should state why the property is significant and why the conservation restriction is important.

APPENDIX C

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DIVISION OF CONSERVATION SERVICES
100 Cambridge Street, 9th Floor
Boston, MA 02114
(617) 626-1011

DATE: _____
MUNICIPALITY: _____
NUMERIC ASSIGNMENT: _____

CONSERVATION RESTRICTION FIELD INSPECTION

1. MUNICIPALITY: _____ LOCATION (street,road,etc): _____

2. GRANTOR: _____ GRANTEE: _____

3. NEW SITE: _____ ADDITION TO SITE: _____ TOTAL ACRES: _____ TERM: _____

4. ARE BUILDINGS INCLUDED? YES NO
If yes, estimate value, condition, and existing or proposed use. (include photographs and negatives)

5. PRESENT AND PAST USE OF SUBJECT PROPERTY AND ADJACENT LANDS:
(please include USGS topographical maps showing subject and adjacent public lands, if any)

6. BRIEF DESCRIPTION OF PROPERTY INCLUDING NATURAL RESOURCES AND ANY UNIQUE FEATURES:

- a. Are prohibited activities sufficient to protect the resource values? Yes No
- b. Are retained uses compatible with the preservation or protection of the natural resources?
 Yes No (if answers to 6a or 6b are no, please explain in 8 below)

7. ARE PUBLIC ACTIVITIES PERMITTED? Yes No
If yes, please explain NATURE and SCOPE: _____

8. COMMENTS AND RECOMMENDATIONS: _____

INSPECTOR _____ DATE: _____
ACCOMPANIED BY: _____

APPENDIX D

PLANS, POLICIES, PROGRAMS, AND LANDS HELPFUL IN DEMONSTRATING STATE AND LOCAL PUBLIC BENEFIT

1. Municipal Open Space and Recreation Plans
2. Regional Open Space Plans (Regional Planning Authorities)
3. Statewide Comprehensive Outdoor Recreation Plan
 - * State Trail System
 - * Scenic Rivers Program
 - * Unique Geological Inventory
 - * Bay Circuit Program
4. Massachusetts Natural Heritage Inventory of Rare and Endangered Botanical and Zoological Species Habitat and National Endangered Species Act
5. Areas of Critical Environmental Concern - designated areas
6. Coastal Zone Management Plan - Significant Resource Areas
 - * Barrier Beaches
 - * Primary Dunes
 - * Sandy Beaches
 - * Saltwater Marshes
 - * Shellfish Beds
 - * Salt Ponds
 - * Estuaries
 - * Coastal Embayments
 - * Anadromous Fish Runs
 - * Erosion Areas
 - * Designated Ports
 - * Accretion Areas
 - * View Points
 - * Historic Sites (also on Massachusetts Historical Commission inventory)
 - * Recreational Beaches
 - * Boat Ramps, Marinas
7. Massachusetts Historical Commission
 - * Massachusetts Historical Sites
 - * National Historic Register Sites (P.L. 89-665), eligible for inclusion
 - * Known Cultural and Archeological Sites
8. Scenic roads, Chapter 40, §15C
9. Scenic Mountains, Chapter 131, §39A
10. Historic Districts
11. Flood Disaster Protection Act of 1973, land within flood lines. See also P.L. 566 Small Watershed Projects.
12. USDA Soil Conservation Service (SCS) - various inventories of potential reservoir sites
13. Massachusetts Water Resources Commission - inventory of regionally important wetlands, (identified in Massachusetts Water Supply Statement May 2, 1978, 353 pp.)
14. National Natural Landmarks (i.e. Gay Head Cliffs, Lynnfield Marsh)
15. Town well-fields (existing and proven reserves and reservoirs)
16. Agricultural land - SCS identified prime, Massachusetts unique
17. Wetlands Restrictions Program

- * Chapter 131, §40
- * Chapter 130, §105
- * Restricted areas and areas to be restricted

18. Executive Orders
 - * #181 Barrier Beaches
 - * #193 Agricultural lands
19. Department of Environmental Protection Great Pond Inventory
20. Department of Environmental Management Scenic Landscape Inventory, 1982
21. Department of Environmental Protection Water Quality Plans or Programs, various
22. Buffers to water bodies, other protected lands, ACECs, critical habitat, parks, etc.
23. Greenways, trails, and wildlife corridor connections
24. Public access for passive recreation

APPENDIX E

Recommendations to Increase the Reliability of Grantees as Conservation Restriction Managers¹

1. Conservation Restriction programs should have written criteria for what constitutes a satisfactory restriction.
2. Background data assembled should be adequate to support proper monitoring and legal enforcement action.
3. Organizations and agencies holding conservation restrictions should make every reasonable effort to ensure that they will have a reliable source of funds for monitoring and enforcement actions, including court cases.
4. Properties protected by conservation restrictions should be checked at least annually.
5. Careful records should be kept of inspections and of all contacts with landowners.
6. Monitoring programs should be designed and managed so that violations will be detected early before elimination of the violation becomes a practical impossibility.
7. Organizations and agencies holding conservation restrictions should keep track of changes in ownership of restriction - protected properties.
8. Organizations and agencies holding conservation restrictions should frequently remind landowners about the terms of conservation restrictions, especially after a property changes hands.
9. Organizations and agencies holding conservation restrictions should establish careful procedures for reviewing possible amendments to ensure that any permitted amendment does not impair the conservation values of the restriction.
10. In the case of donated conservation restrictions for which tax deductions have been taken, donees should seek competent appraisal advice to satisfy themselves that a permitted amendment will not add value to the property.
11. Organizations and agencies holding restrictions should maintain careful written records of all discussions and correspondence relating to an amendment in case of questions later.
12. Termination should be viewed as an absolute last resort and only done after exhaustive consideration has demonstrated overriding public need for the termination.
13. In any situation where the primary grantee's long term commitment and/or financial resources for monitoring and enforcement are open to reasonable question, the landowner and primary grantee should make every reasonable effort to find a suitable back-up grantee.

¹ Land Trust Ex

(Appendix F)
Executive Office of Energy and Environmental Affairs / Division of Conservation Services
GIS Data Entry Form

Local Acquisitions for Natural Diversity (LAND) (formerly Selp-Help), Parkland Acquisitions and Renovations for Communities (PARC) (formerly Urban Self-Help), SURF, Land & Water Conservation Fund Projects and Conservation Restrictions

1. Contact Person: _____

(telephone) _____

2. Project Type (select one):

- LAND
 PARC
 SURF
 Land & Water Conservation Fund
 Other _____

3. Municipality(ies): _____ Project Number _____

4. a. Fee Owner: _____
(holder of the Deed)

b. Manager (if different from Owner): _____

5. *Conservation Restriction held by: _____

*Complete only if land is encumbered by a Chapter 184 section 31-33 Conservation Restriction.

Check the box corresponding to how the restriction was obtained:

- Gifted Purchased Exacted by Regulation or given as part of permit process

Number of reserved lots within the restriction, if any: _____

6. Assessor's Information _____
(map) _____ (Block) _____ (lot) _____

7. Registry Information _____
(name) _____
(book) _____ (page) _____ (plan) _____ (page) _____

8. Acreage: _____

9. Primary Use: (select one)

Public Access:

- Conservation
 Recreation
 Both Conservation and Recreation
 Water Supply Protection
 Agriculture
 Historic/Cultural
 Other (please explain)

- Public
 Public, limited (explain) _____
 Public, seasonal
 None
 Other (please explain) _____

The applicant must provide to the Executive Office of Energy & Environmental Affairs materials that will allow MassGIS to accurately represent the site in the state's open space data layer. These materials include:

1. A USGS topological map or copy (including the name & date of the quad) with the site accurately drawn on it.
2. A copy of the site plan and/or a survey plan if available (required for exacted conservation restrictions).
3. A printout of the digital representation of the site on a USGS topological map background and a note indicating that the digital representation of the site has been emailed to Dominique.pahlavan@state.ma.us in appropriate format (Massachusetts State Plane Meters NAD1983 Datum) with a subject line of: <town> <Project Type> <Project#> (e.g. Boston CR #12).

MassGIS will attempt to add the site to the open space data layer using these materials but may request additional material from the grantee if the materials provided are not at an appropriate scale or are not sufficiently clear to support conversion to digital data that conform to MassGIS data standards. Topographical maps can be purchased at book stores or printed from

<http://www.mass.gov/mgis/mapping.htm>. Please call Dominique Pahlavan at MassGIS, 617.626.1184, with any questions or for assistance with this form.



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Candace Havens
Director

September 26, 2011

Ashley F. Walter, Esq.
Shavel & Krems, LLP
141 Tremont Street, 3rd Floor
Boston, Massachusetts 02111

RE: Conservation Commission certification of Conservation Restriction

Dear Ms. Ashley, Esq.;

Enclosed is the conservation commission certification of the proposed conservation restriction as a public benefit to the City of Newton. I understand time is of the essence in this matter, and am happy to help in any way that I can.

Very truly yours,

For the Commission

Anne Phelps
Sr. Environmental Planner

Enclosure

CC: Donnalyn Kahn, City Solicitor

Conserva\conservarea\Wilson CR

Conservation Commission
1000 Commonwealth Avenue, Newton, Massachusetts 02459
Email: aphelps@newtonma.gov

Preserving the Past  Planning for the Future

MUNICIPAL CERTIFICATION

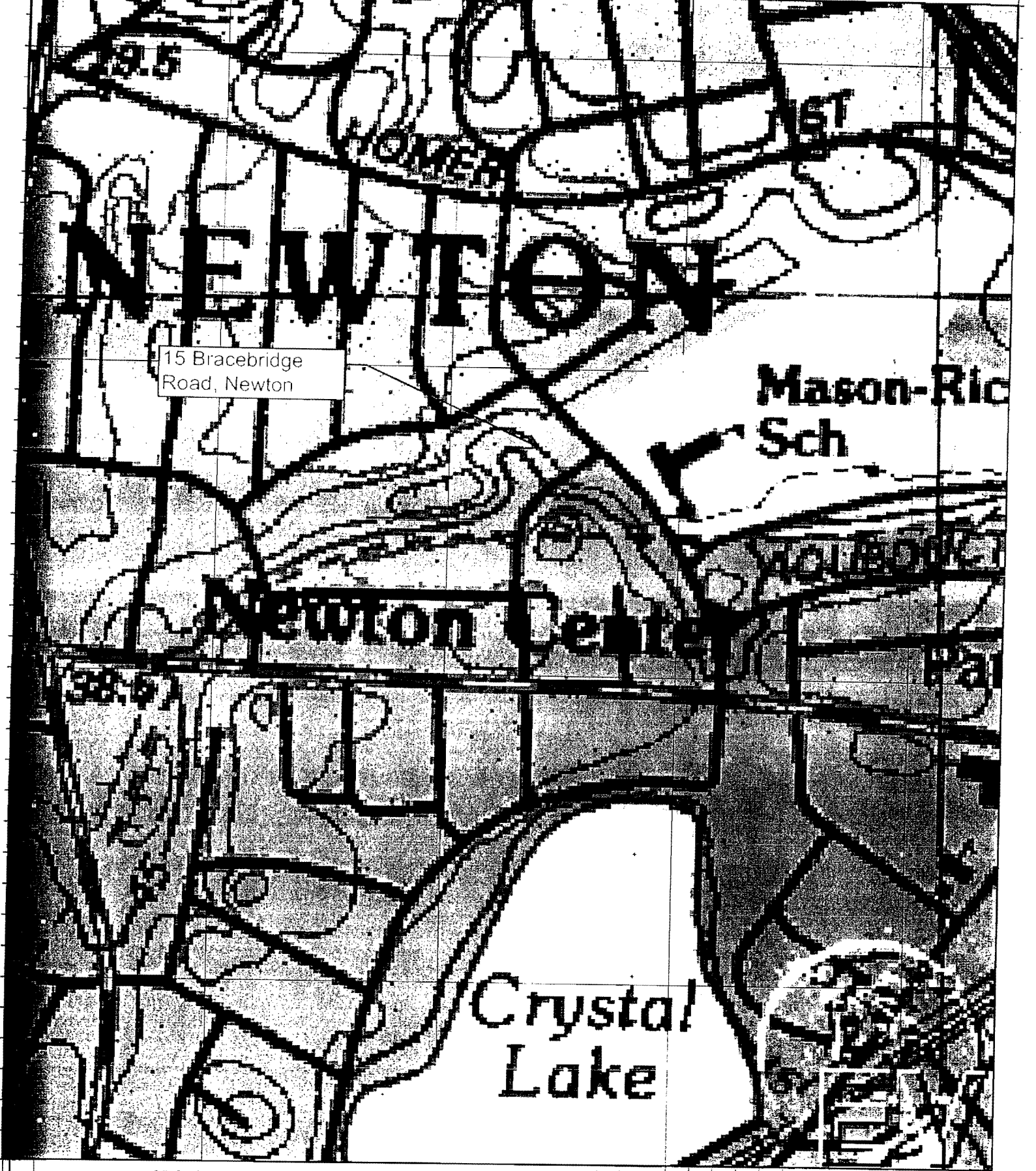
(We) the undersigned Conservation Commission of City of Newton (the certifier/holder) hereby certify that the proposed conservation restriction is in the public interest in that it (describe public benefit):

The members of the conservation
commission ^{agree} that the offered conservation
restriction provides a public benefit in the
form of open space preservation and connectivity
for wildlife benefit, particularly as it is adjacent to
existing conservation land and the Cockituate and
Sudbury Aqueducts, which provide walking trails
in some areas.

Date: 9/22/11 Signed: [Signature]

[Signature]
[Signature]
[Signature]
[Signature]

NOTES:
This certification by the conservation commission may be submitted separately from the application and filed with the submission of the executed conservation restriction, it being recognized that the applicant may want to submit the application with a draft copy of the conservation restriction for review prior to actual submission of the executed document.
Conservation restriction lands which overlap municipal boundaries must be approved and certified by the appropriate officials of both municipalities.
The commissioners' certification should state why the property is significant and why the conservation restriction is important.



Name: BOSTON SOUTH
Date: 9/1/111
Scale: 1 inch equals 400 feet

Location: 042° 19' 53.1" N 071° 12' 07.1" W
Caption: 15 Bracebridge Road
Newton Massachusetts

071° 12' 20.08" 071° 12' 10.08" 071° 12' 0.08" 071° 11' 50.08"

Department of Planning and Development

1

**WORKING SESSION OF THE ZONING AND
PLANNING COMMITTEE, OCTOBER 12, 2011**

REAR LOT FLOOR AREA RATIO

**#64-11 HIS HONOR THE MAYOR, IN COORDINATION WITH THE
DIRECTOR OF PLANNING AND DEVELOPMENT, REQUESTING TO
AMEND SECTION 30-15, TABLE 4, DIMENSIONAL CONTROLS FOR
REAR LOT DEVELOPMENT IN RESIDENTIAL ZONES AS THEY PERTAIN
TO FLOOR AREA RATIO.**

Rear Lot Floor Area Ratio

Summary Background

Analysis of Rear Lot Regulations

Policy Options and Discussions

Recommendation

Summary and Background

- Ordinance Z-77 revised the method of measuring and regulating FAR for residential properties
- During the discussion of residential FAR, no change was proposed for the rear lot FAR number
- The new method of measuring residential FAR means that rear lots face a more restrictive limit
 - What counts has changed but the number has not
- This petition proposes to consider how to amend Section 30-15(r) in light of our new FAR approach.

Rear Lot Floor Area Ratio

Summary Background

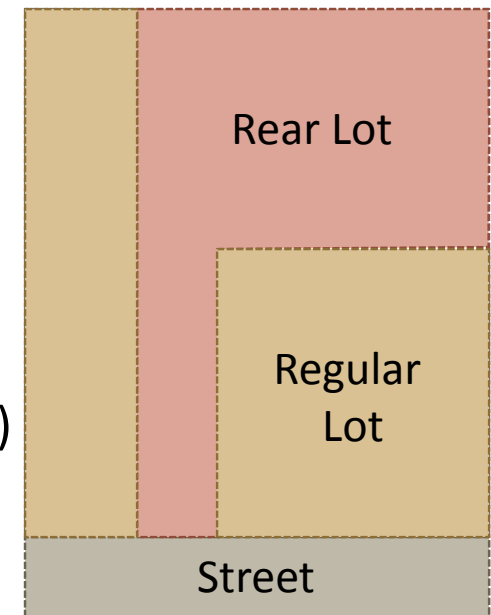
Analysis of Rear Lot Regulations

Policy Options and Discussions

Recommendation

Analysis of Rear Lot Regulations

- Lacks adequate frontage
- Either existing lot, or created by Section 30-15(r)
- New rear lots must meet the standards in 30-15 Table 4
- The new FAR rules in 30-15(u) conflict with 30-15(r) and Table 4



Rear Lot Floor Area Ratio

Summary Background

Analysis of Rear Lot Regulations

Policy Options and Discussions

Recommendation

Two Questions

Question 1: Should the FAR limits on rear lots be:

- More restrictive than as currently applied?
- About as restrictive as currently applied?
- Less restrictive than currently applied?

Question 2: Should there be an allowance for a waiver by special permit?

- No (leave as it is, restrictive hard boundary)
- Yes (policy change, gives flexibility)

Table of Options

	More restrictive	About as restrictive	Less restrictive
Flexible (Allow waiver by SP)	No change to Table 4; add an exception to 30-15(r) allowing waiver of FAR by SP; revise 30-15(u) to exclude rear lots	Increase the allowed ratio in Table 4; add an exception to 30-15(r) allowing waiver of FAR by SP; revise 30-15(u) to exclude rear lots	Keep 30-15(u) as is; modify 30-15(r) and Table 4 to reference 30-15(u)
Inflexible (No waiver by SP)	Revise 30-15(u) to exclude rear lots; leave 30-15(r) and Table 4 as is	Increase the allowed ratio Table 4; revise 30-15(u) to exclude rear lots	Keep 30-15(u) as is; state that rear lots cannot receive special permit under 30-15(u); modify 30-15(r) and Table 4 to reference 30-15(u)

Rear Lot Floor Area Ratio

Summary Background

Analysis of Rear Lot Regulations

Policy Options and Discussions

Recommendation

Discussion

- Magnitude of issue (~1 rear lot S.P. per year)
- Section 30-15(r) intended to limit impacts on neighboring lots from rear lot development
- Retaining the same number under new FAR rules will result in somewhat smaller houses
 - +.05 flat increase in FAR
 - The average increase for mid-sized lots under new FAR: (+12% for SR 1, +10% for SR2, and +16% for SR3)
 - No clear-cut way to find “right” number
- Allowing special permit waiver for FAR provides flexibility

Rear Lot Floor Area Ratio

Summary Background

Analysis of Rear Lot Regulations

Policy Options and Discussions

Recommendation

Recommendation

- No change to allowed FAR in Table 4
- Amend 30-15(r) to allow waiver of FAR by special permit
- Amend new 30-15(u) to exclude rear lots from FAR limits/procedure
- Allows flexibility on a case by case basis
- Appropriate for small scale of problem
- No additional process created as Table 4 rear lots already require a special permit.



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

WORKING SESSION MEMORANDUM

DATE: October 7, 2011

TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development
Jennifer Molinsky, Chief Planner for Long-Range Planning
Seth Zeren, Chief Zoning Code Official

RE: #64-11 HIS HONOR THE MAYOR, in coordination with the Director of Planning and Development, requesting to amend Section 30-15, Table 4, Dimensional Controls for Rear Lot Development in Residential Zones as they pertain to floor area ratio.

CC: Mayor Setti D. Warren
Board of Alderman
Planning and Development Board
Marie Lawlor, Assistant City Solicitor

EXECUTIVE SUMMARY

Last February the Board of Aldermen passed revisions to the floor are ratio (FAR) rules that govern residential density and mass for single-family and two-family dwellings in order to create a fair system for balancing the right to modest additions with the desire to preserve neighborhood character. When this amendment was drafted and considered, it became clear that the City’s existing rules concerning rear lot FAR would also need revision. This petition seeks address a conflict between the existing rear lot FAR rules and the new FAR rules. Currently, rear lot development is not a major issue; the City receives approximately one application per year for a new rear lot development. The Planning Department considered a range of possible amendments in response to two policy questions: 1) Should the limits be more, less, or as restrictive as before? and 2) Should a waiver from these FAR limits be allowed by special permit from the Board of Aldermen (currently not allowed)? The Planning Department recommends a simple solution: keep the FAR limits in Section 30-15 Table 4 the same, while inserting a provision into Section 30-15(r) which allows a waiver by special permit, and removing a conflict with the new FAR rules in Section 30-15(u). This approach is flexible, preserves the City’s existing approach to rear lot development, and is appropriate for the magnitude of the problem.

BACKGROUND

In the spring of 2009, Ordinance Z-44 deleted Section 30-15, Table 1, Footnote 7 for the City's Zoning Code. This change was made in response to concerns from members of the Board of Aldermen and others that this provision created a loophole, which allowed the construction of houses exempt from FAR controls and out of scale and character with their neighborhoods. After the elimination of the Footnote 7 exception, many additions and renovations of existing residential structures, which had previously not been subject to FAR, were required to meet FAR standards.

In response, the Board of Aldermen convened a working group to develop a solution to regulating residential FAR and, in the meantime, created temporary bonuses for existing homes and older lots. In the fall of 2010 the FAR Working Group presented its recommendations for how residential FAR could be reformed and in February of 2011, the Board of Aldermen passed Ordinance Z-77, which includes a new way of measuring residential floor area (which includes accessory structures and more features that contribute to the overall "mass" of a structure), while allowing more total FAR on a sliding scale, with smaller lots receiving the largest increases. Z-77 was passed with an eight-month data collection period before coming into effect on October 15, 2011.

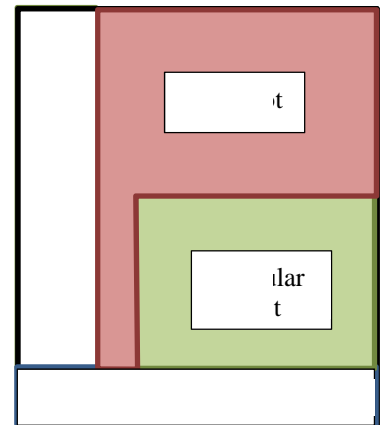
In revising the residential FAR allowances in Section 30-15, Table 1, the Working Group did not consider whether there should be a corresponding increase in allowed FAR for dwellings on "rear lots" in Section 30-15, Table 4. This petition was filed to address whether the FAR limits for rear lots should be changed in a corresponding fashion as regular lots under the new FAR rules and to resolve an unanticipated conflict between the sections.

ANALYSIS OF REAR LOT AND FAR REGULATIONS

A "rear lot" is a lot which lacks adequate frontage and accesses the street via a panhandle or flag-pole shaped portion of land or through an easement over a lot in front. Section 30-15(r) of the Ordinance allows for the creation of a rear lot by special permit and includes a definition of rear lot. Most of the rear lots in Newton predate this provision. So long as a pre-existing lot was legally created and has 50 feet of frontage (as measured when it was created, i.e. "lot width") then it may be developed by right, employing the requirements of Section 30-15, Table 1.

New rear lots created by Section 30-15(r) must meet the requirements of Table 4 in Section 30-15. The allowed FAR in Table 4 is currently significantly lower than the standards for lots in the same zone under the pre-October 15 FAR rules. In addition, under the old rules, there is no special permit option to exceed the allowed FAR in Table 4, as is allowed for regular lots—with two exceptions: 1) Properties which provide at least one inclusionary unit may receive a waiver to use the standards of Table 1; and 2) where an existing historic structure is to be preserved the Board may waive required setback distances. (To our knowledge, no property has used either provision.)

On October 15, the new FAR rules will come into effect, per Section 30-15(u). These rules apply to "all one and two family structures, whether new or existing, according to the FAR limits contained in Table A," in residential districts. This seems to imply a conflict whereby the rules of Section 30-15(u) would apply to rear lots (including the provisions for a sliding scale of allowed density in Table A and an option for a waiver through special permit) at the same time as the existing rules for rear lots in Section 30-15(r) and Table 4. It is unclear which of these conflicting provisions should take precedence.



POLICY OPTIONS AND DISCUSSION

in resolving this conflict, there are two policy questions at stake:

Question 1: Should the FAR limits on rear lots be:

- a. More restrictive than as currently applied?
- b. About as restrictive as currently applied?
- c. Less restrictive than currently applied?

Question 2: Should there be an allowance for a waiver by special permit?

- a. No (leave as it is, restrictive hard boundary)
- b. Yes (policy change, gives flexibility)

Depending on the pair of answers to these questions, a range of regulatory fixes could be applied:

	More restrictive	About as restrictive	Less restrictive
Flexible (Allow waiver by SP)	No change to Table 4; add an exception to 30-15(r) allowing waiver of FAR by SP; revise 30-15(u) to exclude rear lots	Increase the allowed ratio in Table 4; add an exception to 30-15(r) allowing waiver of FAR by SP; revise 30-15(u) to exclude rear lots	Keep 30-15(u) as is; modify 30-15(r) and Table 4 to reference 30-15(u)
Inflexible (No waiver by SP)	Revise 30-15(u) to exclude rear lots; leave 30-15(r) and Table 4 as is	Increase the allowed ratio Table 4; revise 30-15(u) to exclude rear lots	Keep 30-15(u) as is; state that rear lots cannot receive special permit under 30-15(u); modify 30-15(r) and Table 4 to reference 30-15(u)

In considering this petition, the Planning Department has been mindful of the magnitude of this issue (there is approximately one application for a special permit per year to allow development on an existing or new rear lot). Given this, we have looked for the least invasive, simplest change possible, which largely preserves the existing regulations. The above matrix lays out this range of potential solutions. The purpose of Section 30-15(r) states an original concern with the impacts of rear lot development on adjacent residential uses. The allowed FAR is most significant if no special permit waiver from the FAR limit is allowed; this creates a hard cap on potential development. Without allowing a special permit waiver, retaining the current number would result in smaller allowed houses than are currently allowed. Allowing houses to be approximately the same size could be achieved by raising the allowed FAR limit. The least restrictive approach would be to grant rear lots the same FAR as regular lots (though a special permit would still be required in order to create a rear lot).

If the Committee prefers the middle “about as restrictive” column a decision must be made on how to increase the allowed FAR in Table 4. There are two obvious options: 1) increase it by a flat rate across all categories (perhaps .05), or 2) institute a gradation by lot size similar to that done for regular lots under the new FAR rules (+12% for SR1, +10% for SR2, and +16 % for SR3). However, there is not any clear-cut way to determine whether the allowed ratio is the “right” number; investing a large amount of energy in identifying the “right” number would be disproportionate to the scale of the problem.

If a special permit waiver of the FAR limit is allowed, then along with the special permit for a rear lot development, a project could request an FAR waiver at the same time and the Board could decide based on the merits of the design.

RECOMMENDATION AND CONCLUSION

Given the above considerations, the Planning Department recommends the “more restrictive” but “flexible” option from the table above. We do not find a compelling reason to raise FAR limits for rear lot development beyond what might be consistent with the increases built into the sliding scale that will take effect on October 15 and therefore recommend against either option in the “less restrictive” approach in the table above.

Under the recommended approach, Section 30-15(u) would be amended to clearly exclude rear lots, no changes would be made to the allowed FAR in Table 4, but a provision would be added to Section 30-15(r) to allow an exception from the FAR rules by special permit from the Board of Aldermen. This approach avoids lengthy debate over setting the right number citywide, and instead gives flexibility in modifying the now more restrictive allowed FAR of Table 4 through the special permit on a case-by-case basis. No additional process is created by allowing a special permit exception to the FAR limits in Table 4, as the creation of a new rear lot already requires special permit approval. The Planning Department believes that this is the best way to resolve the conflict between Sections 30-15(r) and 30-15(u).