

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE AGENDA

MONDAY NOVEMBER 14, 2011

7:45pm Room 202

Clerk's Note: Items # 64-11, #474-08, and #365-06 are to be voted No Action Necessary without discussion.

ITEMS SCHEDULED FOR DISCUSSION:

- #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]
- #49-11 ALD. JOHNSON, Chair of Zoning and Planning Committee, on behalf of the Zoning and Planning Committee requesting that the Director of Planning & Development and Commissioner of Inspectional Services review with the Zoning & Planning Committee the FAR data collected during the eight months prior to the new FAR going into effect and the 12 months after. This committee review should occur no less than bi-monthly but could occur as frequently as monthly, based on the permits coming into the departments. [02-15-2011 @8:44AM]
- #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].
- #162-11 ALD. YATES requesting a report from the Director of Planning and Development on the status of the update of the *Open Space and Recreation Plan*, particularly as it pertains to the Charles River Pathway. [05/12/11 @ 10:16AM]

The location of this meeting is handicap accessible and reasonable accommodations will be provided to persons requiring assistance. If you have a special accommodation need, contact the Newton ADA Coordinator Trisha Guditz at 617-796-1156 or tguditz@newtonma.gov or via TDD/TTY at (617) 796-1089 at least two days in advance of the meeting.

- #60-10 ALD. HESS-MAHAN proposing that sections 30-15(s)(10) and 30-24(b) of the City of Newton Ordinances be amended to substitute a 3-dimensional computer model for the scaled massing model in order to facilitate compliance with recent amendments to the Open Meeting Law and that sections 30-23 and 30-24 be amended to reflect the filing procedures in Article X of the Rules & Orders of the Board of Aldermen. [02/23/10 @ 3:24 PM]
- #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]
- #474-08 ALD. HESS-MAHAN & VANCE proposing that Chapter 30 be amended to transfer from the Board of Aldermen to the Zoning Board of Appeals and/or the Planning & Development Board the special permit granting authority for special permit/site plan petitions not classified as Major Projects pursuant to Article X of the Board Rules. [12/09/08 @ 3:26 PM]
- #365-06 ALD. YATES requesting the establishment of an education program for realtors concerning properties in historic districts.

ITEMS NOT YET SCHEDULED FOR DISCUSSION:

- #81-11 ALDERMEN JOHNSON, CROSSLEY, HESS-MAHAN, LAPPIN & DANBERG requesting the Director of Planning & Development and the Chair of the Zoning Reform Scoping Group provide updates on the Scoping Group's Progress. These updates will occur at the frequency determined by the Chair of the Scoping Group and the Chair of the Zoning and Planning Committee. [3/14/2011 @ 11:16PM]

Public hearing to be assigned for November 28, 2011:

- #64-11(2) HIS HONOR THE MAYOR, in coordination with the Director of Planning and Development, requesting to amend Section 30-15(u) to exclude dwellings on rear lots created under the provisions of section 30-15(r); to amend section 30-15(r) and Section 30-15 Table 4 to allow the FAR limits of Section 30-15, Table 4, to be waived by special permit; and to amend the footnotes of section 30-15 Table 4 to be consistent with the changes above.
- #153-11 ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting that Chapter 30 be amended by adding a new Sec. 30-14 creating certain Retail Overlay Districts around selected village centers in order to encourage vibrant pedestrian-oriented streetscapes which would allow certain uses at street level, including but not limited to financial institutions, professional offices, and salons, by special permit only and

require minimum transparency standards for street-level windows for all commercial uses within the proposed overlay districts. [05-10-11 @3:19 PM]

- #153-11(2) ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting the map changes necessary to establish certain Retail Overlay Districts around selected village centers. [05-10-11@3:16 PM]
- #65-11(3) ZONING AND PLANNING COMMITTEE requesting that the terms “flat roof” and “sloped roof” be defined in the zoning ordinance.
- #65-11(2) TERRENCE P. MORRIS & JOSEPH PORTER proposing amendments to the Zoning Ordinance to revise the definition of “height” in Section 30-1 B) and to add a provision in Section 30- 15(m) to allow accessory structure height limits to be waived by special permit. [03-30-11 @ 4:12PM]
(Public Hearing closed 4-25-2011; 90 day expiration July 22, 2011)
- #154-10(2) ZONING AND PLANNING COMMITTEE requesting to amend **Section 30-1 Definitions** by inserting revised definitions for “lot line” and “structure” for clarity. [04-12-11 @ 11:34AM]
- #154-10 ALD. JOHNSON, CROSSLEY and HESS-MAHAN requesting to amend **Section 30-1 Definitions**, by inserting a new definition of “lot area” and revising the “setback line” definition for clarity. [06/01/10 @ 9:25 PM]
- #150-09(3) ALD. ALBRIGHT, JOHNSON, LINSKY proposing that a parcel of land located in Newtonville identified as Section 24, Block 9, Lot 15, containing approximately 74,536 square feet of land, known as the Austin Street Municipal Parking Lot, currently zoned Public Use, be rezoned to Business 4. (12/10/10 @9:21AM)
- #153-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-15 Table 1** of the City of Newton Ordinances to allow a reasonable density for dwellings in Mixed Use 1 and 2 districts. [06/01/10 @ 9:25 PM]
- #183-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-13(a) Allowed Uses in Mixed Use 1 Districts** by inserting a new subsection (5) as follows: “(5) Dwelling units above the first floor, provided that the first floor is used for an office or research and development use as described above;” and renumbering existing subsection (5) as (6). [06/07/10 @ 12:00 PM]
- #152-10 ALD. BAKER, FULLER, SCHNIPPER, SHAPIRO, FISCHMAN, YATES AND DANBERG recommending discussion of possible

amendments to **Section 30-19** of the City of Newton Ordinances to clarify parking requirements applicable to colleges and universities. [06/01/10 @ 4:19 PM]

#411-09 ALD. DANBERG, MANSFIELD, PARKER requesting that §30-19(d)(13) be amended by adopting the Board of License Commissioners' current informal policies, which waive parking stall requirements for a set maximum number of seasonal outdoor seats in restaurants and require that indoor seats be temporarily reduced to compensate for any additional outdoor seats while they are in use, by establishing a by-right limit based on a proportion of existing indoor seats that will allow seasonal outdoor seats to be used without need for additional parking.

#391-09 ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting an amendment to §30-19 to allow payments-in-lieu of providing required off-street parking spaces when parking spaces are waived as part of a special permit application.

REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES

#391-09(2) ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting the establishment of a municipal parking mitigation fund whose proceeds, derived from payments-in-lieu of providing off-street parking spaces associated with special permits, will be used solely for expenses related to adding to the supply of municipal parking spaces, improving existing municipal parking spaces, or reducing the demand for parking spaces.

FINANCE VOTED NO ACTION NECESSARY 10/12/11

#207-09(2) ALD. PARKER, DANBERG & MANSFIELD, proposing that chapter 30 be amended to allow additional seating in restaurants. [07/07/09 @ 12:42 PM]

#61-10 ALD. CICCONE, SWISTON, LINSKY, CROSSLEY AND HESS-MAHAN requesting a discussion relative to various solutions for bringing existing accessory and other apartments that may not meet the legal provisions and requirements of Chapter 30 into compliance. [02/23/10 @ 2:48 PM]

#164-09(2) ALD. HESS-MAHAN requesting that the Planning Department study the dimensional requirements for lot and building size for accessory apartments and make recommendations for possible amendments to those dimensional requirements to the board of Aldermen that are consistent with the Newton Comprehensive Plan. [01/07/10 @ 12:00 PM]

REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES

#48-06

ALD. HESS-MAHAN, BURG, JOHNSON, DANBERG, PARKER & WEISBUCH proposing that the city provide financial incentives to rent accessory apartments to low- to moderate-income households at affordable rates that can serve housing affordability goals.

FINANCE VOTED NO ACTION NECESSARY ON 3/8/10

Respectfully Submitted,

Marcia Johnson, Chairman

William H. Shaevel
Kenneth A. Krems
Daniel S. O'Connor
David R. Jackowitz
Amy Rosengarten Waksler
Stephen J. Allard
Ashley F. Walter

Kathy Nagle, Senior Paralegal
Lisa O'Brien, Senior Paralegal
Alice Van Zandt, Paralegal
Kim Caranfa, Paralegal

November 10, 2011

(U.S. Mail & Email)

Newton Board of Aldermen
Zoning and Planning Committee
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02458

Re: Richard and Andree Wilson
15 Bracebridge Road-Ward 6
Conservation Restriction

Dear ZAP Committee Member:

Enclosed is the latest "draft" of the Conservation Restriction for the above property. The Wilsons have agreed to allow a 5 ft. wide public access through the conservation area. We will present the exact location at the ZAP meeting on Monday, November 14, 2011. However, I have attached a "tentative plan" at the end of the "draft restriction."

Generally, the enclosed restriction does the following:

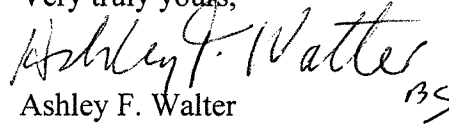
- 1) Prohibits development on 80% of the lot. The entire lot is currently 1.79 acres. It creates a linear greenway.
- 2) It creates a public access from the city's land to Bracebridge Road.
- 3) The Newton Conservators will hold the conservation restriction and it will be "in perpetuity."
- 4) If the law changes and abolishes the restrictions, then holder of the land cannot benefit financially.

The Wilson's and I will be present at the Monday, November 1, 2011 ZAP meeting and answer any questions.

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We are hoping this will be voted upon at the November 14, 2011 meeting.

Very truly yours,

 Ashley F. Walter

Encl.

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 1.581 acres, leaving . .398 acres of unrestricted area for the Grantor’s residence. The Conservation Area is also 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 _____. For our title, see Book ____, page ____ in the Middlesex (South) Registry of Deeds.

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 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 modest conservation area already in place, creating visual buffer and furthering 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. Public Access Trail: for passive recreation, education and nature study.

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. Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks; provided, however, that any underground storage tanks or systems now on the property shall be exempted.
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. Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of Premises (as compared to conveyance of the Premises in its entirety which shall be permitted),

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. Landscaping. Maintaining and adding to the current trees, landscaping, grass, and plants.
 2. Public Access. The public will be permitted to walk through a 5' wide corridor running parallel to the southeastern lot line, from Bracebridge road to the property of the City as indicate in the Plan attached hereto as Exhibit A. Grantor reserves the right to relocate this access area with notice to the Grantee.
 3. Recreational Activities. Use of the Conservation Area for any passive recreational uses that do not materially alter the landscape.
 4. 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
 5. 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.
 6. 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;
 7. Utilities: Installation of underground utilities including septic systems, provided it is not feasible to put in the unrestricted area so long as the area is restored to its former condition with plantings if necessary.
 8. 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,
 9. 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 Grantee may withhold its approval if the proposed activity will materially impair the purposes 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 or that is reasonably ascertainable
- D. *Extinguishment.* If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law. 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, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with the paragraph immediately below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.
- E. *Proceeds.* Grantor and Grantee agree that the donation of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction, determined at the time of the gift, bears to the value of the unrestricted property at that time. Such proportionate value of the Grantee's property right shall remain constant.
- F. *Grantor/Grantee Cooperation Regarding Public Action:* Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent

domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in shares equal to such proportionate value. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

- G. *Access to Grantee.* The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines. However, before exercising this right of entry, 5 days notice must be given to Grantor.
- H. *Access to Public:* The public will be permitted to walk through a 5' wide corridor running parallel to the Southeast lot line, from Bracebridge road to the property of the City as indicated on the Plan attached hereto as Exhibit A. Such access shall be limited to the hours between sunrise and sunset and subject to the reasonable rules and regulations of the Grantee, or the Grantor and Grantee in consultation with each other. In granting this right, Grantor is entitled to the benefits and protections of the "Recreational Use Statute," as outlined in Massachusetts General Laws Chapter 21, Section 17C. Grantor shall not be obligated to create or maintain this pathway in any manner. Grantor reserves the right to relocate this access area at any time.
- I. *Legal Remedies of Grantee*
- a. Grantee may enforce this Conservation Restriction by appropriate legal proceedings and 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, it being agreed that Grantee has no remedy at law. 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 above** and no waivers or approvals of prohibited uses shall be valid unless and until this

Conservation Restriction is amended to reflect the change. 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.

- b. 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 mediator, then the party raising the dispute may file an action despite the failure to complete the mediation.
- J. *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.
- K. *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 run to the Grantee, 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 eligible person or official 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.

- L. *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.
- M. *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.
- N. *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. If Grantee fails to respond within 15 days, this shall waive any right to assert any violation of the restriction prior to the date the estoppel certificate was requested.
- O. *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 and M.G.L. ch. 184 Section 32, 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 monitor, enforce and hold this Conservation Restriction exclusively for conservation purposes in perpetuity and to enforce its terms.
- P. *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 timely 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 OF NEWTON BOARD OF ALDERMEN

We, the undersigned, being a majority of the Board of Aldermen of the Town of Newton, hereby certify that at a meeting duly held on _____, 2011, the Board of Aldermen voted to approve the foregoing Conservation Restriction to the Newton Conservators, Inc, pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

Board of Aldermen

**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)



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

MEMORANDUM

DATE: November 10, 2011

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

FROM: Candace Havens, Director, Planning and Development
Brian Lever, Senior Preservation Planner

MEETING DATE: November 14, 2011

SUBJECT: Education Resources Available on Historic Preservation in Newton

The City of Newton has a number of historic preservation related resources available to property owners, realtors and potential buyers of historic properties in Newton as well as their architects and contractors. These resources are designed to provide information that can assist potential buyers in deciding whether or not to purchase a historic property and what responsibilities are required of historic property owners in Newton. In addition, available resources provide information on the application and review processes for owners who wish to undertake a construction project. The vast majority of these resources are available online on the City's website; however, we encourage everyone to discuss their purchase of a historic property or potential project with preservation staff well in advance of purchase or project implementation whenever possible.

Four of the most often requested resources are as follows:

The City of Newton Historic Preservation page:

<http://www.newtonma.gov/Planning/cityplhc.html#nhpp>

This is the main online resource for preservation projects in the City of Newton with information on historic districts, demolition review, City landmarks, and the Commissions that oversee changes to these properties and places. Each Commission has its own page with

specific information on its operation. This page is listed under “Committees” from the City’s homepage and the Planning and Development Department’s homepage under Programs and Services.

The City of Newton “Forms” page:

<http://www.newtonma.gov/FormListing.htm>

This page, linked from the City’s homepage, provides application forms for a variety of City processes, including applications for projects in historic districts and demolition review.

The Newton GIS Browser:

<http://assessing.newtonma.gov/gisapps/browser.html>

This online mapping program provides zoning, conservation, and historic preservation information on properties located throughout the City to assist current and potential buyers with information about their properties including specific designations such as location in a historic district. This page is linked to from the Historic Preservation page and through the City’s homepage via the Resources and City Maps for Download links.

Newton City Ordinances:

<http://www.ci.newton.ma.us/Legal/Ordinance/Chapter-22.pdf>

Chapter 22 contains the legal basis and specific ordinance language for all of the City’s preservation ordinances and is often consulted by attorneys and realtors reviewing potential property purchases as well as some homeowners. It is available through the Quick Links drop down menu.

In addition to online resources, the Planning and Development Department has recently created a brochure on preservation in the City of Newton that is tailored toward information useful to property owners on City regulations. Hardcopies of application forms are available at the Inspectional Services counter. Commission minutes and agendas are stored at the City Clerk’s Office and Planning Department as well as available on-line. In the past, the preservation staff has provided education programs on the City’s preservation efforts. While beneficial, these programs usually reach only a small audience and rely upon people to pass on information correctly to others. Creating on-line and print resources on the City’s preservation efforts assures that information is accurately conveyed and available for everyone.

Historic Preservation Homepage



Planning Links

- [Programs & Services](#)
- [FAQ's](#)
- [Development Reviews](#)
- [Boards & Commissions](#)
- [Special Reports & Studies](#)
- [Floor Area Ratio Updates](#)
- [Demographics](#)
- [Maps](#)
- [Contact Us](#)

QUESTIONS? SERVICE REQUESTS?



[CLICK HERE TO ENTER A SERVICE REQUEST](#)

Links

- [Assessor's Database](#)
- [Budget and Financial Info](#)

Historic Preservation

Mission To identify, evaluate and protect historic resources which contribute to an understanding of the development of Newton.

Staff
Brian Lever, Senior Preservation Planner,
Contact: (617) 796-1129, blever@newtonma.gov
Newton Historical Commission, Auburndale Historic District Commission, Chestnut Hill Historic District Commission

Katy Holmes, Preservation Planner
Contact: 617-796-1143, kholmes@newtonma.gov
Newton Upper Falls Historic District Commission,
Newtonville Historic District Commission

[Interactive Property Information Map](#)

Historic Commission Meeting Dates All Commission Meetings are typically held in room 202, City Hall beginning at 7:30pm. Please contact the Planning Department for further information.

[View Meeting Dates 2011](#)  (adobe reader required)


Newton Historical Commission Has overview of City's preservation activities, administers the demolition review ordinance and the landmark ordinance, updates survey and National Register information. Meets on the fourth Thursday of each month.

Newtonville Historic District Commission Established in 2002, the District includes over one hundred properties exhibiting a variety of 19th and early 20th century residential architectural styles in a neighborhood initially developed to take advantage of its close proximity to commuter transportation. The

City of Newton Forms Page



Links

- Assessor's Database
- Budget and Financial Info
- Committees
- Departments
- Events
- Forms
- Internships 
- Newton North Construction
- Online Bill Pay
- Residents
- Resources
- Visitors
- Volunteer

QUESTIONS? SERVICE REQUESTS?



CLICK HERE TO ENTER A SERVICE REQUEST

FORMS

- Abutter List Request 
- Accident Report
- Administrative Site Plan Review 
- Birth Certificate
- Building Permit 
- Change of Address 
- Community Preservation Grant Proposals
- Death Certificate
- Dog License
- Electrical Permit 
- Elderly and Disabled Taxation Aid fund 
- Employment Application
- Engineering Permit Details About Application
- Engineering Permit Application
- Excise Abatement Application 
- Express Permitting in ISD 
- Fire Permit
- Fishing Permit
- Form of List (State Form 2) 
- Form of List Worksheets 
- Gas Fitting Permit 
- High School Diploma
- Historic District Review Application 
- Historic District Amendment Application 
- * Historic Comm, Newton demo review app 
- Hunting Permit
- Liquor Licensing
- Marriage License
- Parking Permit
- Parking Ticket Appeal 
- Plumbing Permit 
- Police Forms, Newton Police Dept
- Police Forms, Commonwealth of MA
- Property Tax Workoff Program 
- Public Document Request 
- Raffle & Bazaar Permit Application 
- Sign Permit Application 
- Tax Exemption Form 17D 
- Tax Exemption Form 18 
- Tax Exemption Form 22 
- Tax Exemption Form 37A 
- Tax Exemption Form 41C 
- Traffic Council Petition 
- Voter Registration Form
- Zoning Enforcement 

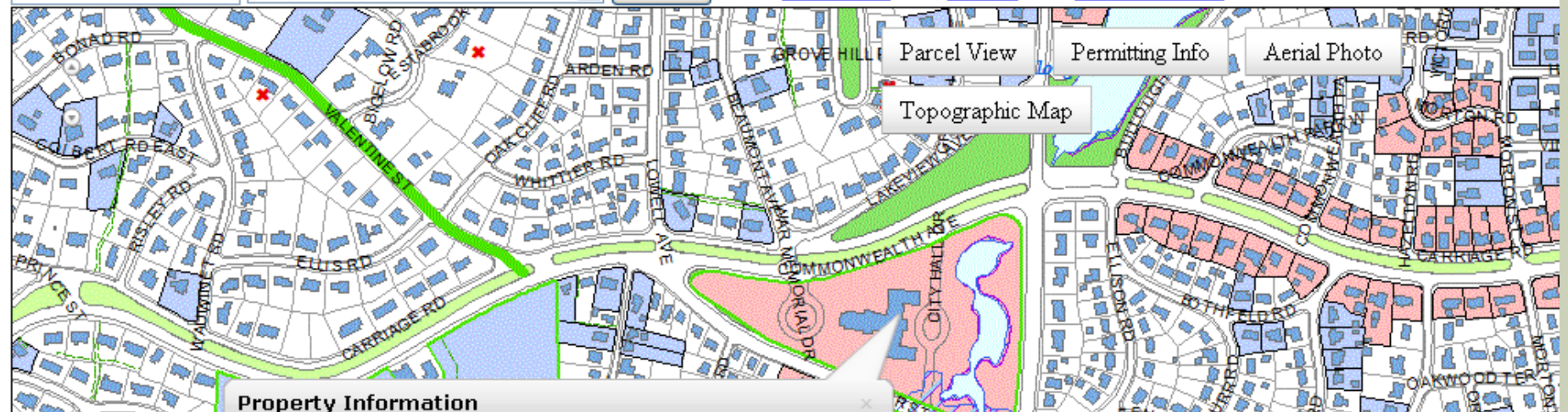
* (current version of Adobe Reader required)

Newton GIS Browser



City of Newton GIS Browser

Go to an address:

[Instructions](#)[Legend](#)[About this page](#)

Property Information

Dimensions | Historic Restrictions | Inspector

Total features returned: 1

| | |
|---|--------------------------------------|
| Property ID | Historic Preservation Restriction(s) |
| 64001 0001 (highlight property) | National or State Register |

[Explanation of Historic Preservation Designations](#)

Historic Property Designations

Protection Designations / Properties Under City Review

Local Historic Districts:
This is a local designation to preserve and protect the architectural and historical characteristics of an area. In many cases properties within districts are also listed on the National Register. Districts are created through neighborhood interest and a 2/3 vote of the Board of Alderman. Proposed changes to properties including minor alterations of buildings and landscapes require review of the district commission. Contact the Preservation Planner for application information and procedures.

Preservation Restriction:
Preservation restrictions are easements placed on properties which are held by the City of Newton to protect their historic character. They require review of proposed changes to the interior, exterior, and landscape depending upon the restriction. Preservation restrictions can be bought, sold, or donated and run for a set number of years or in perpetuity. When considering alterations, property owners should check with the Preservation Planner to review the specific terms of their restriction.

Local Landmark:
A local (City) landmark is a property designated by the Newton Historical Commission for preservation for reasons of its historic significance. In order to become a landmark, a property for a building, structure, or landscape must be determined eligible for the National Register and have a 3/4 vote of the Commission in favor of landmarking. Changes to landmarks including minor alterations of buildings and landscapes require approval of the Newton Historical Commission. Contact the Preservation Planner for application information and procedures.

Designations of Historical Significance

State National Register of Historic Places:
Properties listed on the State and / or National Register of Historic Places are recognized for their historical significance. Listed properties can be objects, structures, landscapes, and buildings. For example the Hammond Pond Parkway, the Corbridge Apartment, and Newton City Hall are all listed on the State and National Register.

Historic Resource Survey:
Properties included in Newton's Historic Resource Survey have been preliminarily investigated for their historic significance. These properties are considered of historic interest for their architectural and historical association with the City's heritage, but have no formal listing.

Mid 20th Century Housing Survey:
Properties included in Newton's Mid-Twentieth Century Housing Survey are a subset of the City's Historic Resource Survey and includes neighborhoods developed between 1940 and 1960 that have architectural and historical associations with the City.

Newton City Ordinances



Chapter-22.pdf (application/pdf Obj...)

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ARTICLE III. HISTORICAL PROVISIONS

DIVISION 1. COMMISSIONS AND DISTRICTS

Sec. 22-38. Historical commission— establishment, purpose, appointment, officers.

(a) There is hereby established under General Laws chapter 40, section 8D a Newton Historical Commission for the preservation, promotion and development of the historical or archeological assets of the city, to be governed by and operated in accordance with the provisions relative thereto of the General Laws or any special act or amendment thereto.

(b) Said commission shall consist of seven members, including one member from two nominees submitted by the Jackson Homestead; one member who is a registered architect from two nominees submitted by the Boston Society of Architects; one member from two nominees submitted by the Newton Board of Realtors; and four members who shall be appointed at large. If within thirty (30) days after submission of a written request for nominees to any of the organizations herein named no such nominations have been made, the mayor may proceed to appoint the commission without nomination by such organization. There also shall be appointed no more than seven alternate members, who shall be selected at large.

(c) The permanent members shall elect one member as chair and one member as secretary. In the event a member is absent or unable to act for any reason, the chair shall designate an alternate member to act.

(d) Members and alternate members of the historical commission shall by their appointment to the historical commission also be appointed as members and alternate members respectively of the historic district commission(s) established under section 22-40. (Ord. No. 102, 12-15-75; Ord. No. X-17, 4-16-02)

Cross references—Division of city into zoning districts, §1-4; regulations governing appointment to and service on commissions and committees, §2-8