

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, SEPTEMBER 27, 2010

Present: Ald. Johnson (Chairman), Baker, Sangiolo, Swiston, Lappin, Shapiro, Yates, Lennon, Hess-Mahan

Also present: Ald. Hess-Mahan, Danberg, Crossley

Planning Board: Doug Sweet, Tabetha McCartney, Howard Haywood, Leslie Burg

City staff: John Lojek (Commissioner, Inspectional Services), Juris Alksnitis (Interim Chief Planner for Long Term Planning), Seth Zeren (Chief Zoning Code Official), Marie Lawlor (Assistant City Solicitor)

#216-10 KSKIM UBS EQUITY PARTNERS LLC, owners of property at 19-31 Needham Street, proposing that chapter 30 section §30-13(a) *Allowed Uses in Mixed Use 1 Districts*, be amended by adding a new subsection (5) as follows: “(5) Service establishment;” and that existing subsection (5) be re-numbered (6) and that section §30-13(b) *Special Permits in Mixed Use 1 Districts* be amended by deleting subsection “(4) service establishment;” and re-numbering subsequent subsections (4) through (15). 7/26/10 @2:26 PM] 90 days from pub hearing- Dec 26, 2010

HELD 8-0

After welcoming everyone to the meeting Alderman Johnson handed the floor over to Attorney Alan Schlesinger to present his proposal on behalf of KSKIM UBS Equity Partners, LLC. Attorney Schlesinger proposes that service use establishments, currently accepted only by special permit, be made an allowed use in the Mixed Use 1 District on Needham Street. The change proposed would only affect this specific area. Mixed Use 2 Districts on Needham Street, however, do include service use as an allowed use; Attorney Schlesinger asks the Committee to think about whether it makes sense for the area to not allow a use on one side of the street that is allowed on the other.

The Committee continues to show concern over the lack of definition for the term “service use”. Attorney Schlesinger provided a proposed definition within his presentation material. Ald. Yates would like to see that definition edited down so that the size of the establishment and number of employees is not included. Ald. Yates also addressed the original intentions of the Mixed Use 1 and Mixed Use 2 districts explaining that Mixed Use 1 was supposed to discourage traffic generating uses, whereas Mixed Use 2 was for retail. The question now is whether or not those distinctions should continue.

Commissioner Lojek addressed the Committee. Currently, the Commissioner makes the determination of what is and is not a service use establishment; he is

comfortable continuing to do so, however the addition of a definition is something he wouldn't oppose as it would make his job that much clearer. The Commissioner agrees with Attorney Schlesinger that it does not make sense to allow a use on one side of the street and not allow it on the other.

Ald. Johnson opened the public hearing. No members of the public chose to speak for or against the proposal. Alderman Johnson then closed the public hearing and the Committee entered into a working session.

Working Session

The Committee decided that there are too many loose ends to vote on this item tonight. The general consensus is that there needs to be a definition associated with the term "service use". Seth Zeren, Chief Zoning Code Official, doesn't think there is a compelling City interest for this proposed change happening right now. Mr. Zeren believes that incremental changes can be good, but that they should lead to a larger vision. That larger vision is not yet clear to the Committee and they prefer to approve changes that fit into a larger scheme that benefits the whole area. Ald. Baker would like the Planning Department to look deeper into this issue.

Candace Havens, Interim Director of Planning, notified the Committee that the Planning Board voted in favor of Attorney Schlesinger's proposal.

#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]

HELD 7-0 (Swiston not voting)

NOTE: Seth Zeren, Chief Zoning Code Official, gave a presentation to the Committee on "lot area", "set back" and "set back line". To accurately define lot area, which currently has no definition, there are a number of different terms within the Zoning Ordinances that should be clarified. This presentation provided a thorough explanation of those terms and how they relate.

The discussion of "set back" and "set back line" was a significant portion of the presentation and the conversation throughout it. Currently, there is a definition of "set back line" but not of "set back", which in theory makes the determination of the set back line more difficult. Defining "set back" and "lot area" are made a challenge by some of the peculiar situations within Newton. Mr. Zeren gave examples of such situations, citing "paper streets" (roads which are on plans but have never been built and likely never will be), aqueducts (which are exempt from having a "set back", so a house can directly abut it; it also confuses the lot line), public rights of way crossing private land (would the set back then be drawn from the public right of way or the lot line?), and private streets (deeds often show the lot extending into what is now the road).

Mr. Zeren raised an issue related to set back, addressing what standards are "density standards" and what are "dimensional standards". Density standards are not able to be waved; the individual must obtain a variance. Dimensional standards can be

waved. Lot area is considered a density standard and set backs are considered dimensional standards, though there is a dispute related to frontage. Some people believe frontage is density, but Commissioner Lojek believes it is dimensional. Clarifying density standard and dimensional standard would be beneficial for the City and the public.

The goal of defining and clarifying the terms within the zoning ordinances is to reduce the occurrence of nonconformities within the City and to reduce the different definitions scattered throughout the ordinances. We need clear and proper definitions to be carried throughout the document in order for this to be made a cleaner system. Mr Zeren would like the definitions to be written simply and to list exceptions underneath. He also believes we should leave room in the language for common sense and interpretation.

The general consensus of the Committee was that Mr. Zeren and the Planning Department conducted a very thorough investigation of many different elements within the Zoning Ordinances which should be clarified at some point but that may not need to be addressed or changed immediately in order to give "lot area" a definition.

Ald. Crossley was in attendance and, while she appreciated the Planning Department doing such substantial research, she spoke of her concern about changing too much at one time. She is unclear whether we need to do a complete analysis of related terms before floating a definition for "lot area". Mr. Zeren responded that it is a good idea to have all the building blocks in place that lead to the definition of this term and that these are the first steps to take to reform the zoning ordinances.

Ald. Baker believes that we do need clarity, whether through ordinance amendments or through an explicit regulatory authority within Inspectional Services to interpret the things that are not clearly defined.

Ald. Lappin agreed that we do need to fix the issues within the ordinances. She believes that it will be a while until the Committee has a comprehensive look at the ordinances but she is happy to have Mr. Zeren come up with definitions. This is a large project and it would be a good idea to start it now.

Actions to be taken:

Alderman Baker stated that there is merit in clarifying these definitions and asks the Planning Department to look into definitions for the terms discussed.

#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]

HELD 7-0 (Swiston not voting)

#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]

HELD 7-0 (Swiston not voting)

NOTE:

Items 153-10 and 183-10 were discussed together. Regarding 153-10, Ald Yates quickly shared that he believes the memo is interesting but that it overthinks correcting what is an obvious mistake. He believes that the memo should include the amount per unit that could be granted by special permit in that district.

The Committee briefly touched upon item 183-10 which proposes the possibility of adding residential units above first floor businesses in the Mixed Use 1 District. Ald. Yates supports adding residential units above the first floor but thinks the proposed language can be edited down to exclude specifying the type of businesses that can occupy the first floor.

Phil Herr raised the point that residential units are allowed by right atop the first floor of certain business in Mixed Use 2 District and Business Districts 1, 2, 3, and 4. However, the ordinance does not stipulate how many dwellings are allowed above the first floor. If there are multiple units, though, then that is a multi-family dwelling and a multi-family dwelling requires a special permit. Mr. Herr wants the Planning Department and the Committee to look into this language and also to be wary of creating an amendment for the Mixed Use 1 District that is too vague and which could create an opportunity for overdevelopment.

Respectfully Submitted,

Marcia Johnson, Chairman

216-10

10 SEP 28 A 8:58
CITY CLERK
NEWTON, MA. 02159

Presentation to Zoning and Planning Committee

September 28, 2010

1. **19-31 Needham Street Building Location Plan**
2. **19-31 Needham Street Property Plan**
3. **Needham Street Zoning Map**
4. **Needham Street Zoning Map – Annotated by Uses not of right**
5. **Uses on Needham Street**
6. **Zoning Ordinance Use Sections**
7. **Pending petition for text amendment**
8. **Possible Definition of “service uses”**
9. **Special permit process documents**

Click the Print button to print this map.



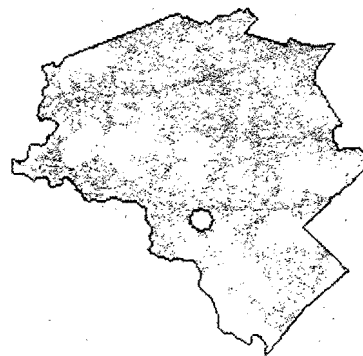
Assessor's Map For:
KSKIM UBC EQUITY
PARTNERS LLC
19-31 NEEDHAM ST Unit
21-1
Neighborhood: 2

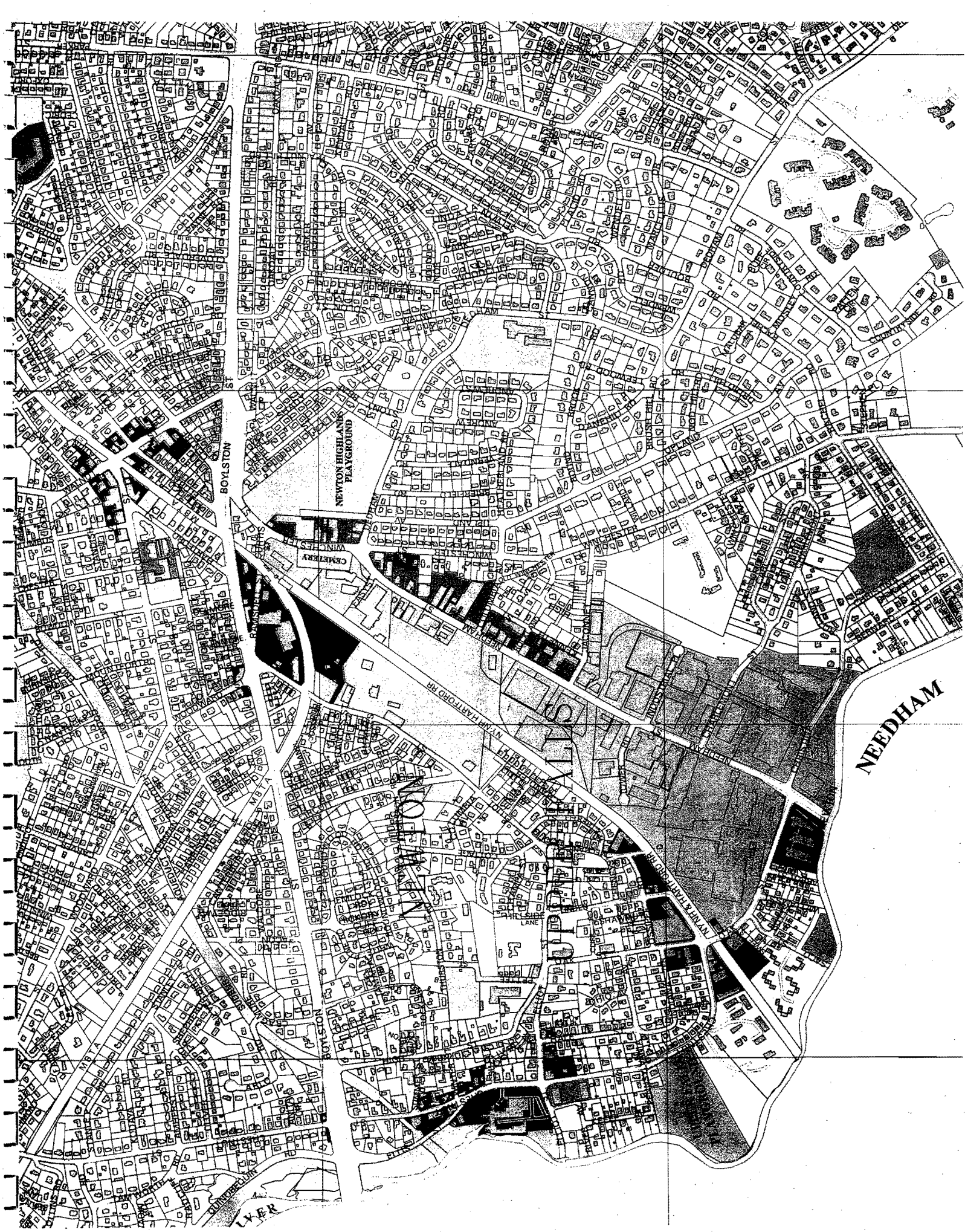
CITY OF NEWTON
MASSACHUSETTS
ASSESSING DEPARTMENT
1000 COMMONWEALTH AVE.
NEWTON CENTRE, MA 02459
PHONE: 617-796-1160

9.13.2010

Map for Reference Only
NOT A LEGAL DOCUMENT

Because of different update schedules,
current property assessments may not
reflect recent changes to property
boundaries. Check with the Board of
Assessors to confirm boundaries used at
time of assessment.





BOSTON ST

NEWTON HIGH SCHOOL PLAYGROUND

NEEDHAM

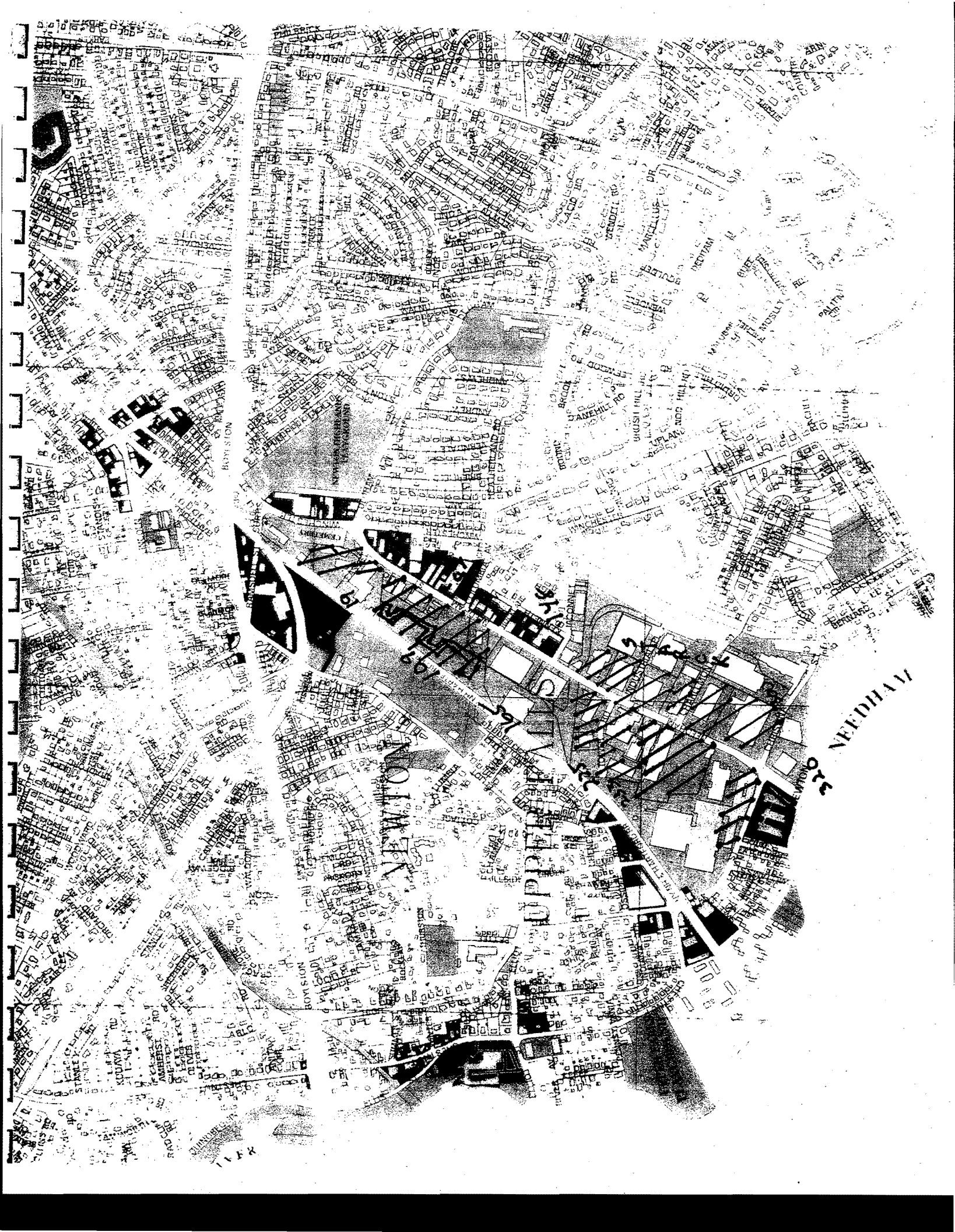
WYATT FORT RD

BOSTON ST

LANE

WYATT FORT RD

LYER



Needham Street Uses

North to South

West Side		East Side
Easy St	National Lumber	14 Tweeter MU-2
19	NTW tire	40 Farm Grill MU-2
55	Skipjack's	
71	Bicycle	
75	Gas Station	82 Book Fair MU-2
99	AvalonBay	
111	McDonald's	118 Mick Morgan MU-2
		Zone line at Jaconnet
141	Former "Polaroid" - mfg	170 (at Jaconnet) office
201	Filene's Basement Mens	230-244
215	Filene's Basement Women	210-244 Modells /Splash
233	Office building	
241	Marshall's Plaza	260 TJ Maxx
Oak St	Misc	300 Storage/ retail

- (7) Commercial outdoor amusement or recreation place or places of assembly, including an outdoor motion picture theater;
- (8) Place of amusement or assembly other than a bowling alley;
- (9) Facility engaged in recombinant DNA research or technology;
- (10) Telecommunications and data storage facility;
- (11) Other uses similar or accessory to those authorized by this section which are not injurious to the neighborhood as a Limited Manufacturing District.

(f) *Site Plan Approval, Building Size.* In the Manufacturing and Limited Manufacturing Districts, land, buildings and structures may be used for the purposes authorized in their respective districts, provided that:

- (1) any proposed building(s) or structure(s) containing individually or in the aggregate between 10,000 and 19,999 square feet in gross floor area; or
- (2) any addition(s) to an existing building(s) or structure(s) containing individually or in the aggregate between 10,000 and 19,999 square feet in gross floor area which increases the total gross floor area to less than 20,000 square feet; or
- (3) any addition(s) to an existing building(s) or structure(s) which increases the gross floor area individually or in the aggregate to between 10,000 and 19,999 square feet in gross floor area

shall require site plan approval in accordance with section 30-23, except that after August 3, 1987, the first addition of less than 2,000 square feet to an existing building or structure identified in subsection (2) or (3) of this section shall not be subject to site plan approval. All building(s), structure(s) and addition(s) thereto shall be located on a lot in single and separate ownership, which lot shall not be

available for use in common or in connection with a contiguous or adjacent lot.

(g) *Special Permit, Building Size.* In the Manufacturing and Limited Manufacturing Districts, land, buildings and structures may be used for the purposes authorized in their respective districts, provided that:

- (1) any proposed building(s) or structure(s) containing individually or in the aggregate 20,000 or more square feet in gross floor area; or
- (2) any addition(s) to an existing building(s) or structure(s) containing individually or in the aggregate 20,000 or more square feet in gross floor area; or
- (3) any addition(s) to an existing building(s) or structure(s) which increases the gross floor area individually or in the aggregate to 20,000 or more square feet in gross floor area

shall require a special permit in accordance with section 30-24, except that after August 3, 1987, the first addition of less than 2,000 square feet to an existing building or structure identified in subsection (2) or (3) of this section shall only require site plan approval pursuant to section 30-23. All building(s), structure(s) and addition(s) thereto shall be located on a lot in single and separate ownership, which lot shall not be available for use in common or in connection with a contiguous or adjacent lot.

(Ord. No. T-65, 12-18-89; Ord. No. T-75, 3-5-90; Ord. No. T-319, 12-20-93; Ord. No. V-156, 1-5-98; Ord. No. W-33, 3-5-01; Ord. No. W-34, 3-5-01)

Sec. 30-13. Mixed Use Districts.

(a) *Allowed Uses in Mixed Use 1 Districts.* In Mixed Use 1 Districts, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

- (1) Office;

NEWTON CODE — ZONING

- (2) Research and development facility, laboratory or research facility; provided that no recombinant DNA research or technology is involved;
- (3) Manufacturing, provided that such use shall not be injurious, noxious or offensive to the neighborhood by reason of noise, smoke, odor, gas, dust or similar objectionable features, or dangerous to the neighborhood on account of fire, or any other cause;
- (4) Assembly or fabrication of materials manufactured off-premises;
- (5) Uses similar or accessory to those authorized by section 30-13(a).

(b) *Special Permits in Mixed Use 1 Districts.* In Mixed Use 1 Districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, to use land, buildings and structures for one or more of the following purposes:

- (1) Retail store, provided that a free-standing retail structure shall contain a minimum of 5,000 square feet of gross floor area;
- (2) Wholesale business;
- (3) Storage or distribution facility;
- (4) Service establishment;
- (5) Restaurants and businesses which hold a Common Victualler—All Alcoholic, or Common Victualler—Wine/Malt Beverages license issued by the licensing authority of the city, provided that a free-standing restaurant or business shall contain a minimum of 5,000 square feet of gross floor area;
- (6) Inside sales, service, display or storage of motor vehicles;
- (7) Outside storage, display and sale of motor vehicles, provided that no lighting shall be allowed except such as is necessary for the safety and protection of the public and

prospective purchasers and such reasonable display lighting of vehicles as the board of aldermen shall approve;

- (8) Fuel establishment including a gasoline service station, fuel oil distributor. The following or similar uses shall not occur in conjunction with a gasoline service station or be considered an accessory use to a gasoline service station unless such use has been authorized pursuant to a special permit: carwash; trailer and/or motor vehicle leasing; retail outlets or service establishments; self-service gasoline pumping facilities;
- (9) Radio or television transmission station, provided that wireless communication equipment shall be subject to section 30-18A;
- (10) Multi-family dwelling;
- (11) Garage repair shop;
- (12) Bank, excluding drive-in facilities;
- (13) Recombinant DNA research or technology, as defined in sections 12-20 *et. seq.* of the Revised Ordinances as amended;
- (14) Veterinary hospital;
- (15) Telecommunications and data storage facility;
- (16) Uses similar to or accessory to those authorized by section 30-13(b) which are not injurious to the neighborhood.

(c) *Allowed Uses in Mixed Use 2 Districts.* In Mixed Use 2 Districts, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

- (1) Office;
- (2) Research and development facility, laboratory or research facility; provided that

no recombinant DNA research or technology is involved;

(7) Uses similar or accessory to those authorized by section 30-13(d).

- (3) Retail store;
- (4) Library or museum;
- (5) Bank, excluding drive-in facilities;
- (6) Theatre, hall or club;
- (7) Personal services;
- (8) Retail dry cleaning or laundry;
- (9) Service establishments;
- (10) Job printing under 3,000 square feet;
- (11) Restaurants having not more than 50 seats;
- (12) Bakery, the products of which are sold at retail and only on the premises;
- (13) Dwelling units above the first floor, provided that the first floor is used for an allowed use described above;
- (14) Accessory parking facilities, provided they are limited to a single level;
- (15) Uses similar or accessory to those authorized by section 30-13(c).

(e) *Special Permits in Mixed Use 2.* In all Mixed Use 2 Districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, to use land, buildings and structures for one or more of the following purposes:

- (1) Assembly or fabrication of materials manufactured off-premises in a building not exceeding 10,000 square feet of gross floor area;
- (2) Sanitarium, convalescent or rest home;
- (3) Broadcasting studio, provided that wireless communication equipment shall be subject to section 30-18A;
- (4) Laboratory;
- (5) Hotel or motel;
- (6) Funeral home;
- (7) Job printing over 3,000 square feet;
- (8) Parking lots, provided that they are limited to a single level;
- (9) Multi-family dwelling;
- (10) Inside sales, service, display or storage of motor vehicles;
- (11) Garage repair shop;
- (12) Restaurants over fifty (50) seats and such businesses which hold a Common Victualler—All Alcoholic or Common Victualler—Wine/Malt Beverages license issued by the licensing authority of the city;
- (13) Gasoline service station. The following or similar uses shall not occur in conjunction with a gasoline service station or be considered an accessory use to a gasoline service station unless such use has been

(d) For substandard commercial lots as described in section 30-15(o), the only uses listed under subsection (c) herein which are permitted are:

- (1) Office;
- (2) Research and development facility;
- (3) Bank, excluding drive-in facilities;
- (4) Barbershop, beauty parlor, tailor, shoe repair shop, or similar service establishment;
- (5) Dwelling units above the first floor;
- (6) Accessory parking facilities;

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OF COUNSEL
HEATHER G. MERRILL

July 26, 2010

Scott F. Lennon, President
Board of Aldermen
City of Newton
1000 Commonwealth Avenue
Newton, MA 02459

Re: Petition for zoning change

Dear President Lennon:

I represent KSKIM UBC Equity Partners LLC ("Petitioner"), owners of property at 19-31 Needham Street, being Section 51 Block 28 Lot 25 located in the Mixed Use 1 District in Ward 5.

In accordance with G.L. c. 40A Section 5 the Petitioner submits to the Board of Alderman proposed amendments to the Revised Ordinances Chapter 30 (the "Zoning Ordinance") as follows:

1. Revised Ordinances Chapter 30 Section 13 (a) be amended by addition of a new sub-section (5) as follows:
(5) Service establishment
and by renumbering sub-section (5) as sub-section (6)
2. Revised Ordinances Chapter 30 Section 13 (b) subsection (4) be amended to read:
(4) Intentionally deleted;

The net effect of these changes is to change "service establishments" from a use requiring a special permit in the Mixed Use 1 District to a use allowed as a matter of right.

Very truly yours,


Alan J. Schlesinger

cc: Alderman Marcia Johnson, Chairperson, Zoning and Planning Committee

Possible Definition of "Service Establishment"

"Service Establishment" - a business establishment providing personal service on a one-on-one basis including but not limited to a barbershop, beauty parlor or personal grooming business, tailor, cobbler or personal trainer but excluding a health club. In the Business Districts a service establishment shall contain not more than 1500 square feet and employ not more than 3 persons. In the Mixed Use Districts a service establishment shall contain not more than 3000 square feet and employ not more than 5 persons.

Note to the Committee:

The Planning Department located a definition in the American Planning Association Glossary/Dictionary in which "service oriented shopping" is differentiated from "goods oriented shopping" as

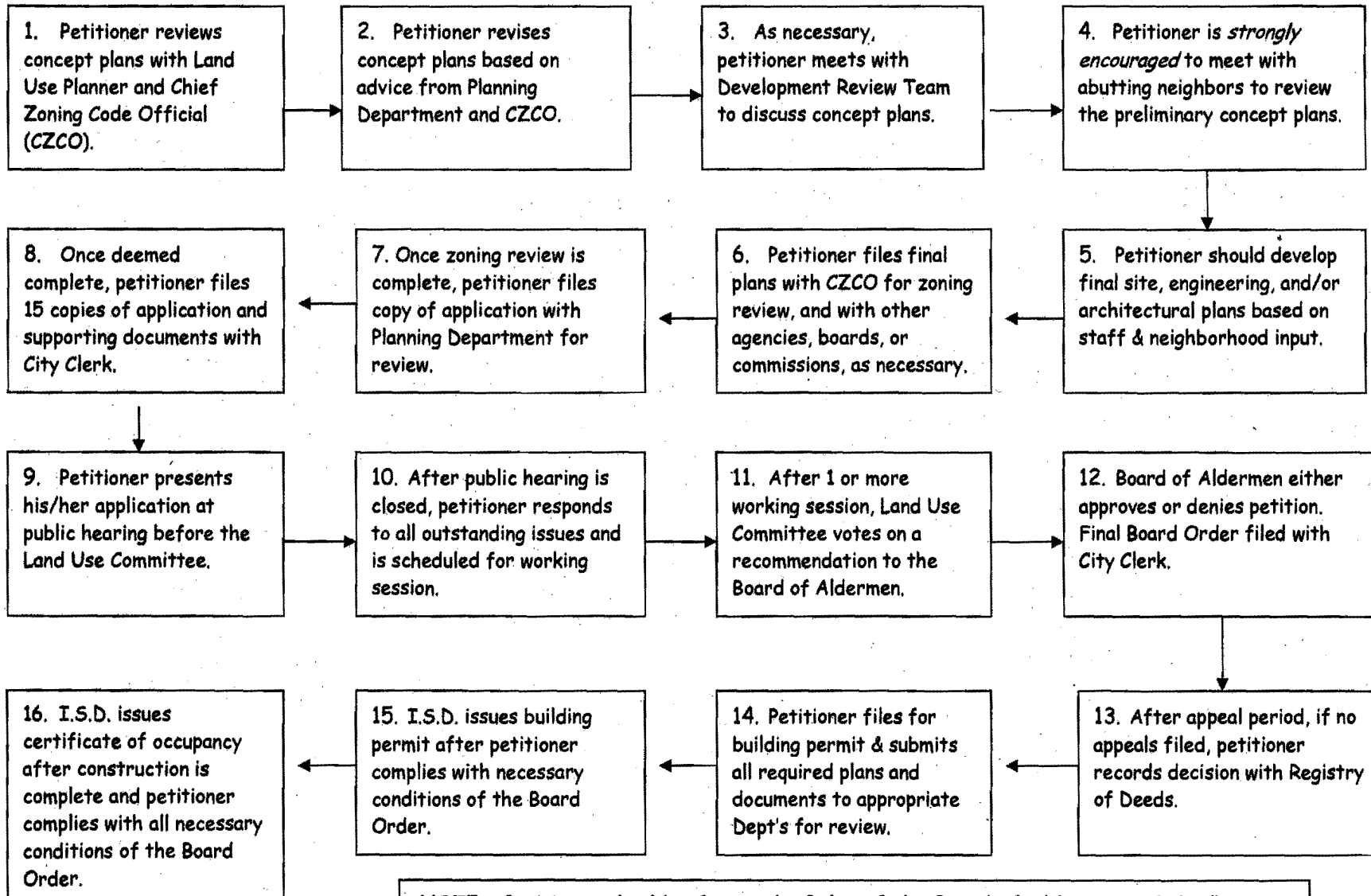
"Those shops that primarily sell services on site.

The distinction is in the physical attributes of activities associated with services, such as hairdressing. Business services, such as accounting, legal services, advertising, etc. belong in the office category".

The literature also notes that there is some blurring of the distinctions for some places which do both services and sell product. For example a hairdresser who sells shampoo is still primarily a "service".

SUMMARY OF THE "STEP-BY-STEP" SPECIAL PERMIT PROCESS

START HERE



END HERE

NOTE: Petitioner should refer to the Rules of the Board of Aldermen and the "Step-by-Step Guide" for specific details regarding the Special Permit process and filing requirements.

Rules Pertaining to Special Permit and Site Plan Approval Petitions
Effective June 7, 2004

Pursuant to G.L. c. 40A, §9, the Board of Aldermen acting as a special permit granting authority adopts the following rules relative to the submission of applications for special permits and site plan approvals.

Section 1. Contents of Applications for Special Permits or Site Plan Approvals

All applications for special permits or site plan approvals shall contain the information required by §§ 30-23 and 30-24 of the Newton Zoning Ordinance. The Director of Planning and Development, or his/her designee, (hereafter the "Director") shall have the discretion to waive the requirement for a landscape plan in instances where the type of approval sought does not raise issues involving screening or buffering. In addition, the Director shall have the authority to require more information (hereafter "Additional Information") relating to a proposed project beyond the requirements of §§ 30-23 and 30-24 of the Newton Zoning Ordinance where the Director determines that the project is likely to raise significant questions requiring more extensive review of relevant information beyond that required by ordinance. The Director may require this Additional Information in order to assess the potential impact of the proposed project on its neighborhood, on the roads serving such project, and on other City resources in light of the criteria set out in the Newton Zoning Ordinance for such special permit or site plan approval. Applications for special permits or site plan approvals must include all information required either by ordinance or by the Director in order to be complete and ready for filing as provided below.

The Director shall develop guidelines or criteria to be used in determining what kinds of projects may require Additional Information, and shall have the discretion to waive all or part of such Additional Information in a particular case where the circumstances indicate that such information will not be needed for the review anticipated. The Director shall consult with the Land Use Committee from time to time regarding such guidelines/criteria. The Director may require more information beyond that specified in such guidelines/criteria if the Director deems it necessary for an appropriate review of the project. The Land Use Committee may also require more information beyond that required by the Director during its review of a request for a special permit or site plan approval.

Section 2. Preapplication information, scoping, and review.

The Director shall prepare a standard checklist form based upon the guidelines/criteria to help applicants understand what information and reviews by various City agencies might be needed to file an application for a special permit or site plan approval. Applicants shall meet with a staff member of the Planning and Development Department (hereinafter "Department") to complete a checklist for their project prior to submitting plans and supporting information for a zoning determination, as set forth below. At the request of either the applicant or the Director, the Department will schedule a pre-zoning determination meeting to discuss issues that may be

raised by the proposed project and to identify any need to coordinate review of the proposed project by other City agencies or departments. The Director shall request that staff with relevant experience from other City departments or agencies and the Chief Zoning Code Official (hereafter the "CZCO") attend the pre-zoning determination meeting. In the event that the CZCO does not attend the pre-zoning determination meeting scheduled by the Department, promptly after such meeting the applicant shall meet with the CZCO to determine what materials and information the CZCO requires from the applicant for a zoning review and determination of what zoning permits, if any, are required for the applicant's proposed project.

Section 3. Determination of what zoning relief is required.

In order to determine the zoning relief that may be required for a proposed use or structure, prior to filing an application for a special permit or site plan approval, an applicant shall submit plans, a completed checklist and such information as is necessary to the CZCO for a zoning review of the proposed project. If the CZCO makes a preliminary determination that such plans and information are incomplete, the CZCO shall notify the applicant in writing within twenty-one (21) days of receipt of such a request for determination so that the omission(s) can be corrected in a timely manner. The CZCO shall make a final written determination of the zoning permits that are required for the proposed project within forty-five (45) days from receipt of all plans and information needed for such zoning review. If the final written zoning determination is not completed within 45 days, an applicant may file an application for a special permit/site plan approval without the written determination.

During the CZCO's review, the Director shall review the checklist submitted by the applicant and determine what Additional Information beyond that required by ordinance must be submitted with the special permit or site plan approval application or whether the proposed project should be classified as a Major Project and subject to the time restrictions set out in Section 5 below. As part of the written zoning determination, the CZCO shall transmit to the applicant the Director's determination regarding the Additional Information that must be included with the application for a special permit or site plan approval and whether the proposed project has been classified as a Major Project.

Section 4. Pre-filing Review of Applications for Completeness

An application for a special permit or site plan approval shall not be deemed complete and ready for filing with the City Clerk in accordance with the provisions of the Revised Ordinances of Newton and the Rules of the Board of Aldermen unless the application and supporting materials have been reviewed by the Director and found to include all the required information as provided above.

The applicant shall submit the completed application form together with a copy of the written zoning determination and one set of all plans and required information to the Department. The applicant shall not be required to include the CZCO's written determination as part of an application for special permit or site plan approval if the CZCO fails to prepare a written determination within the time set out in Section 3. Within ten (10) days from the date of receipt, the Director shall review the application to determine if the same includes all the

required information and is ready for filing. If so, the Director shall indicate that the application is complete by stamping and initialing the application. If not, the Director shall provide the applicant with a written determination of how the application is incomplete so that it can be corrected in a timely manner. If the Director determines that the application is incomplete because the applicant has made a timely request for, but has not received, a document or documents that must be obtained from an agency or department of the City, the Director shall promptly request that such agency or department submit such document or documents to the applicant and the Department. If all such documents have not been so submitted within five (5) business days after the Director has made such request, the Director shall stamp and initial such application as complete and ready for filing notwithstanding the lack of such documents. The Director's stamping and initialing of the application as complete and ready for filing in a case where such documents have not yet been provided shall not waive the requirement for submission of such documents during the post-filing stage of the process. The City Clerk shall not accept an application for a special permit or site plan approval unless the same has been stamped and initialed by the Director as complete and ready for filing, provided, however, that the City Clerk shall accept an application if the Director has not completed his review and either returned the application as incomplete or stamped the same as complete within ten (10) days from the date the application is received by the Director.

For purposes of determining the completeness of an application, the Director's review shall not consider the adequacy of the information submitted, but shall only consider whether the application includes all the types of information required either by the Zoning Ordinance or as Additional Information. However, the Director shall advise the applicant in writing at the time the Director stamps and initials the application as complete of any inadequacies that have been identified in the submitted information. Thereafter, prior to the public hearing with respect to such application, the Director shall advise the applicant and the Land Use Committee of any inadequacies still outstanding in the application materials.

Nothing in this Section shall prevent the Land Use Committee from requesting the submission of additional or supplemental information in connection with a special permit or site plan application. The Land Use Committee may elect to continue the public hearing on applications, where appropriate, to receive such additional or supplemental information. The Land Use Committee may consider the Director's comments on the adequacy of the information submitted in the application for a special permit or site plan approval in deciding whether to continue a public hearing for the receipt of additional or supplemental information.

Section 5. Time Restrictions for Filing Special Permits/Site Plan Projects for Major Projects

Purpose

The purpose of this rule is to avoid scheduling public hearings during the months of July or August, or during the months of November or December in the last year of the Board's term for Major Projects. Major Projects are projects that are likely to require the submission of Additional Information and which may involve significant land use issues either due to the location of the proposed use, the type of proposed use, or the size of the proposed use. Holding public hearings for Major Projects during the aforementioned months may not allow sufficient

opportunity for public comment, review by the Land Use Committee and City departments or agencies, or deliberation by the Board of Aldermen. This rule shall not apply to special permit/site plan projects that are not classified as Major Projects.

Criteria for Major Project Classification

If any of the following criteria apply, the Director shall determine that a proposed project qualifies as a Major Project:

- Projects that require a waiver of more than five (5) parking stalls from the parking ordinance; seek to locate required parking off-site, or seek to locate a parking facility in a residential district that is accessory to business or manufacturing use.
- Projects that involve a multi-level parking structure constructed either above or below ground.
- Projects likely to generate more than 500 cars per day or 50 cars per peak hour.
- Projects that increase average daily traffic or peak hour traffic along the adjacent street(s) by more than 10%.
- Projects where the proposed use(s), principal or accessory, involve(s) activities that include designated pick-up/drop-off times.
- Projects that involve the construction of 20,000 or more square feet in gross floor area, or the renovation of 10,000 or more square feet in gross floor area.
- Projects that involve a non-residential use that immediately abuts a residential zone.
- Projects that exceed six (6) residential units and trigger the Inclusionary Zoning Ordinance (see Section 30-24(f)).
- Projects that involve the construction of a tower associated with a radio or television transmission station.
- Projects that include a Newton Landmark Preservation Site (see Section 22-90 to Section 22-103).
- Projects that involve a use identified in G.L. c. 40A, §3.

Time Restrictions

Due to the Board of Aldermen's reduced summer schedule for meetings as well as the need to afford the public an opportunity to participate at the public hearing, the City Clerk shall not accept for filing a completed application for a proposed project that is classified as a Major Project during the period from June 1st through July 20th in any year.

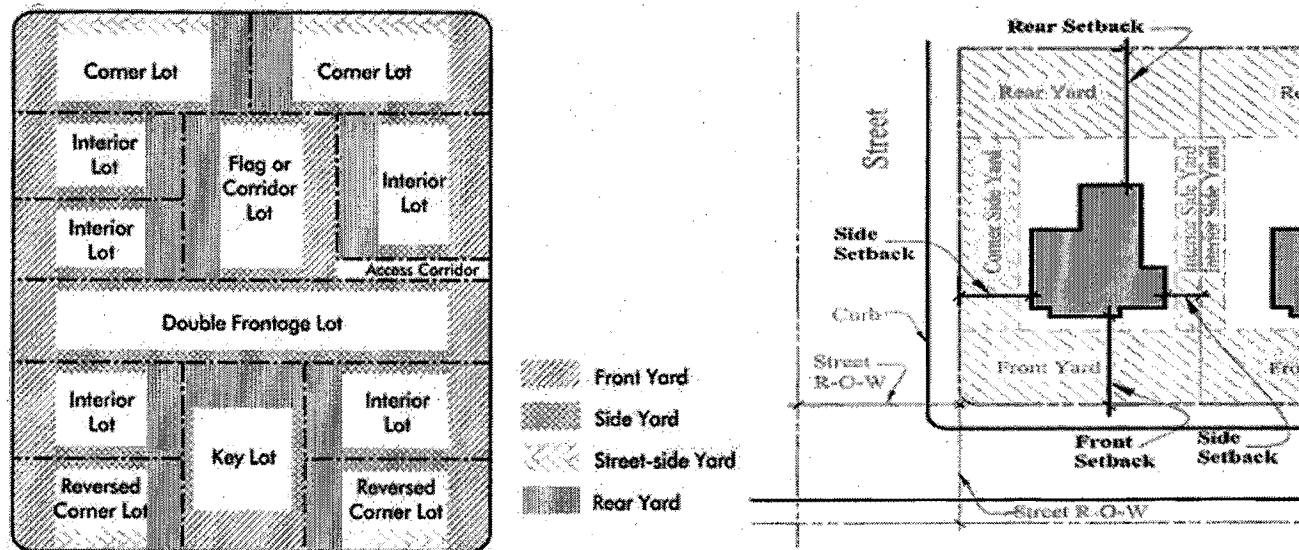
Due to the expiration of the two-year term for aldermen at the end of every odd-numbered calendar year and the need for sufficient time for the Land Use Committee to review proposed projects and the Board to reach a decision regarding such projects, the City Clerk shall not accept for filing a completed application for a proposed project that is classified as a Major

Project after the second Tuesday after the first Monday in September through November 15th during the last year of any term of the Board of Aldermen.

Suspension of Time Restrictions

The time restrictions in this section of these Rules may be suspended by the Board pursuant to Article IX, Section 1 of the Board Rules at the request of a petitioner for a special permit or site plan review. Such requests must be made by filing such a request with the Clerk of the Board by the docketing deadline for the next regular Board meeting. The request must have appended to it the subject application, and provide summary information sufficient to indicate the nature of the Major Project and that the application for a special permit is otherwise complete for filing with the City Clerk under these Rules but for this time restriction. The request shall be presented for decision by the Board at Second Call at the beginning of the Land Use Committee Report, if any, and if this Rule is suspended, the item shall be deemed docketed and accepted by the City Clerk at that time. In such instance, the Chairman of Land Use or his designee may then request an assignment of the item for a public hearing within 65 days of such acceptance. If this Rule is not so suspended then all the provisions of these Rules relating to time restrictions would continue to apply.

Petition #154-10: Defining "lot area" and "setbacks"



Working Session – Sept 27, 2010
Zoning and Planning Committee
Newton, MA

Regulating lot area and setbacks

- Lot area and setbacks are some of the oldest zoning tools
 - Included in the 1927 standard enabling act
- Used to regulate:
 - Density (size and number of buildings)
 - Intensity (impacts on neighbors)
 - Building relationships (fire protection, beauty, etc.)
- In Newton:
 - *Lot area* is used to calculate minimum lot size, lot area/dwelling unit, FAR, open space, and lot coverage
 - *Setbacks* set a minimum the distance between structures and lot lines

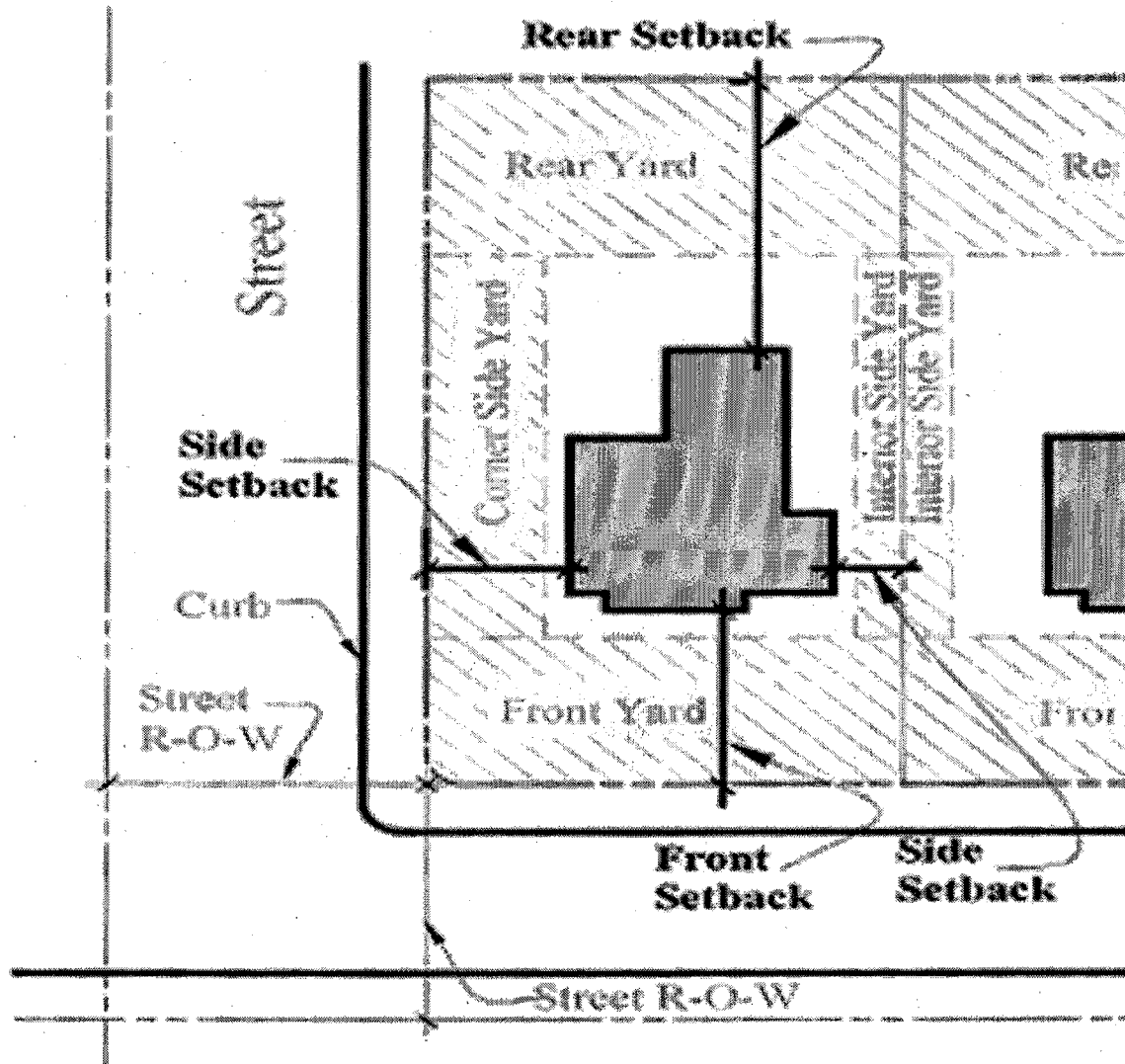
Existing Definitions: “lot area”

- No existing definition
- Interpreted as horizontal area between “lot lines”
 - “lot lines” is in defined §30-1 as:
 - “A division line between adjoining properties, including the division line between individual lots established by a plan filed in the registry of deeds, except that the line between land of the commonwealth used as a aqueduct or land formerly an aqueduct now owned by the city and adjoining land shall not be termed a lot line.”
 - Interpreted as the “meets and bounds” described on the deed for the property

Existing Definitions “set backs”

- No definition of “setbacks”
- “Setback line” is defined in §30-1 as:
 - “A line equidistant from the lot line which establishes the nearest point to the lot line at which the nearest point of the structure may be erected
- “Setback line” is also, separately defined in §30-15
 - Subsection §30-1(e), along with definitions of rear and side yard set backs in subsections (d) and (f)
 - “Distances shall be measured from the lot lines to the nearest portion of the structure...” (including porches, not including stairs, bulkheads, eaves less than two feet, etc.)

Set Back Example



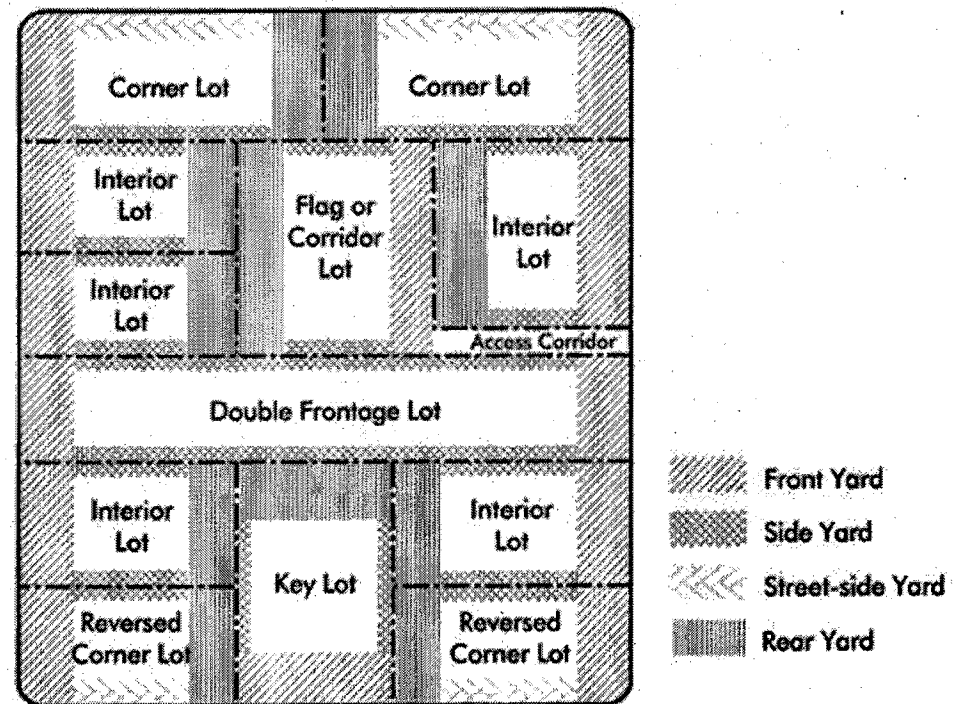
<http://modcoach.blogspot.com/2009/07/when-is-setback-line-not-set-back-line.html>

Other Definitions:

- Type of Lot:
 - Corner (§30-1)
 - Interior (§30-1)
 - Rear (§30-15)
- Lot Frontage (§30-15)
- The column headings for density tables (in §30-15)
 - FAR, minimum required lot area, lot area per unit, maximum lot coverage, minimum open space,

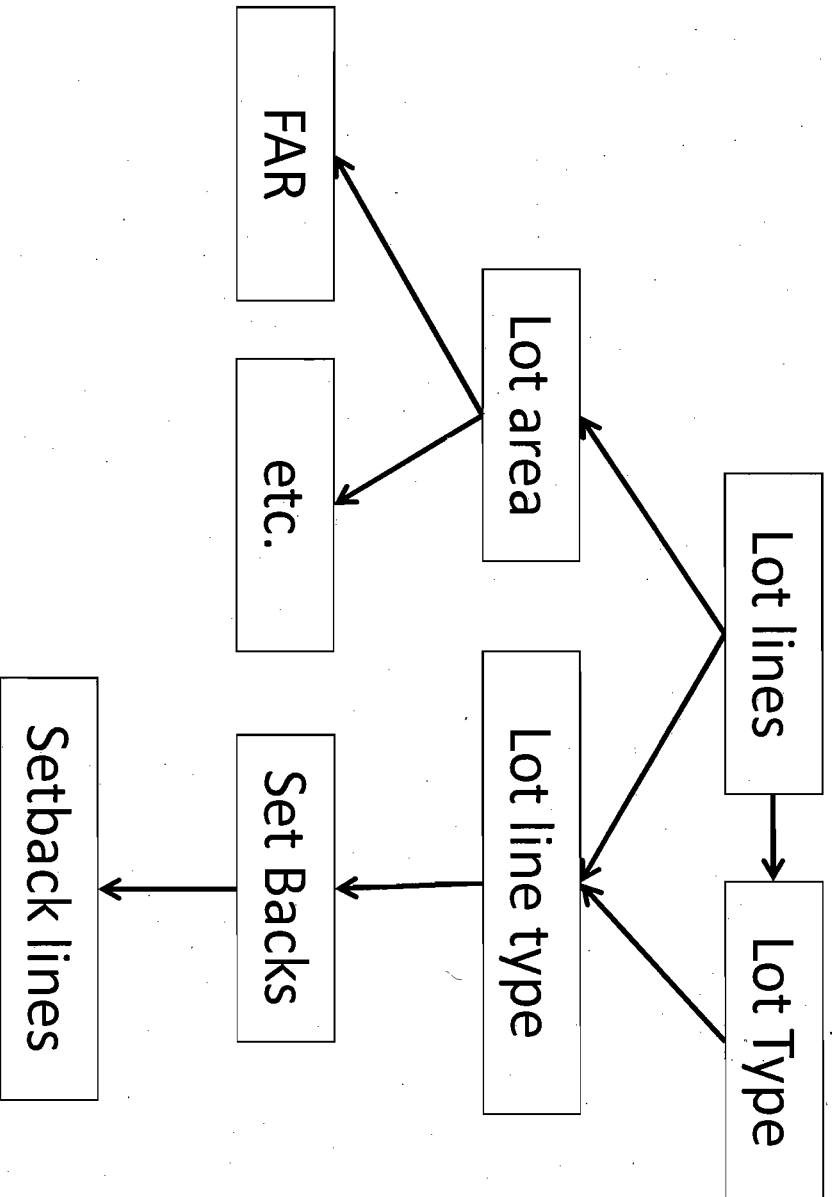
Setbacks, lot lines, and lot types

- There are many kinds of lots
- There are different types of *lot lines* (front, side, rear) determined by the lot configuration
- Which *set back* (front, side, rear) you use is determined by the type of *lot line*



<http://www.codepublishing.com/CA/elkgrove/html/elkgrove23/ElkGrove2364.html>

Summary



Particular Conditions in Newton

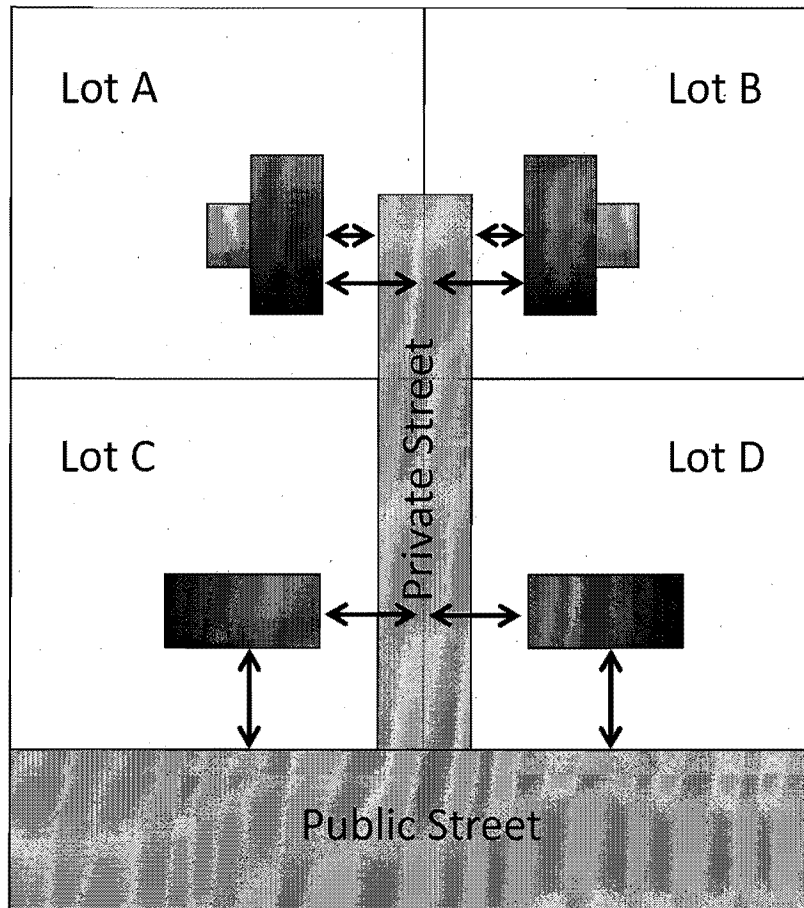
- “Paper streets” – created by subdivision plans, but never constructed, and will not be
- Public ways on private land, deed restricted
- Easements for driveway access to rear lots
- Private streets where deeds describe lot lines going out to the middle of the road
- Aqueduct land, some public, some private, does not count as “lot line” (meaning no setbacks)
- Lot Assemblages – no setbacks from interior lot lines

Particular Conditions: “lot area”

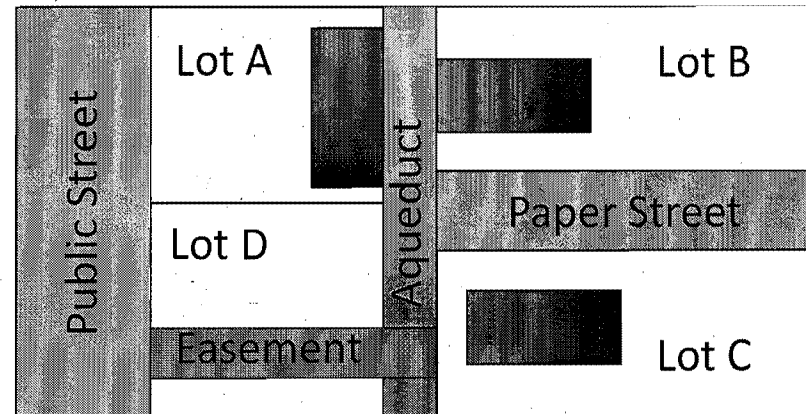
- Lot area is significant in Newton for regulating FAR, minimum lot size, and lot area per dwelling unit, etc.
- If easements or public rights-of-way on the property owner’s land can not count for lot area, then they lose development potential.
 - Potentially creating new non-conformities

Particular Conditions: Graphics

Public Ways and Private Ways



Paper Streets and Aqueducts



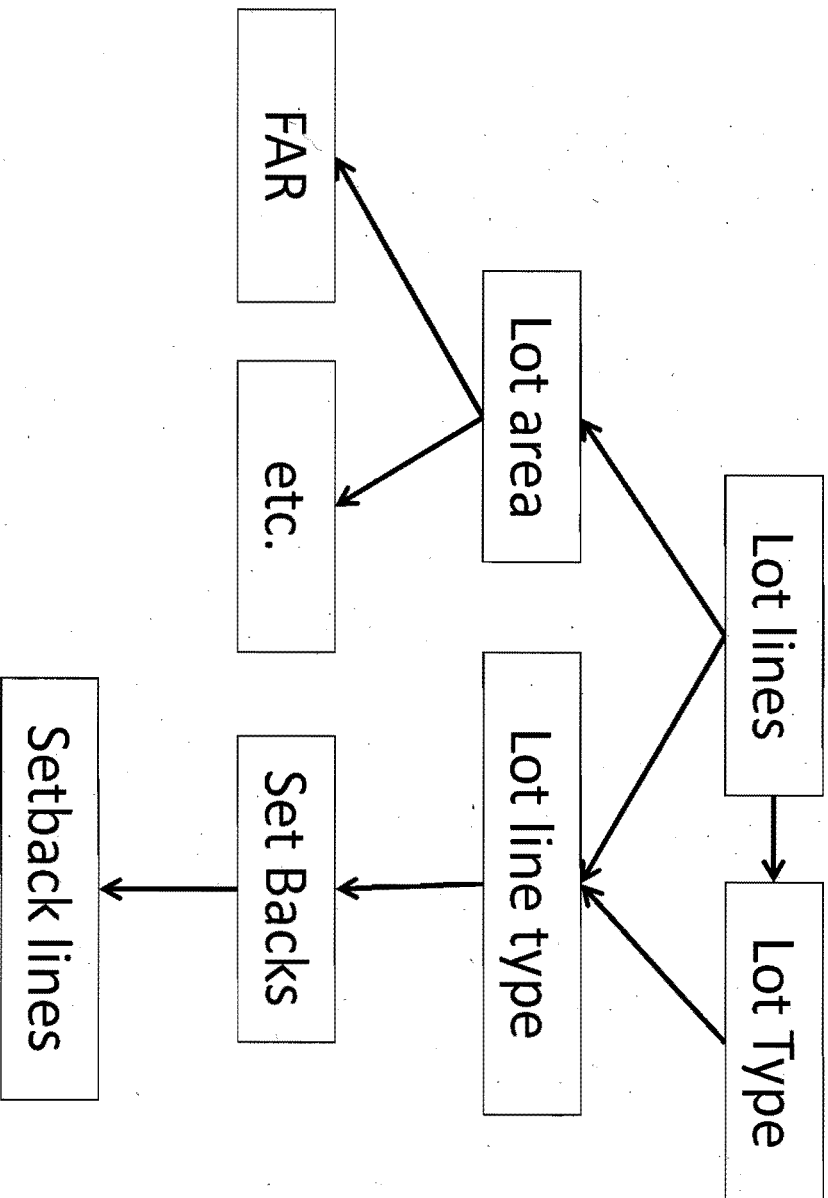
Particular Conditions “setbacks”

- Currently setbacks go from property line
- In the case of private streets where the properties extend to the road center or public rights-of-way extend over private property, a building might be set closer to the road than normal, we interpret from layout lines
- Set backs include structures, but not egress stairs, bulkheads, eaves and gutters, and accessory structures
- No set backs adjacent to aqueduct land

Goals

- Clarify and consolidate definitions
 - Comprehensible by citizens, officials, and staff
- Reduce number of nonconforming properties
- Create framework that eases later revisions
- Balance complexity and public objectives
 - Even some good rules take more energy to enforce than they create in benefits

Model



Summary

- Redefine “lot lines”
 - Based on meetings and bounds or engineering plan
 - Define lot line types (front, side, rear)
 - Eliminate aqueduct exception (or move to “set backs”)
- Create definition of “lot area”
 - Horizontal area between lot lines
 - Include whole area of property, with exception for public or private ways
 - Add special cases to a solid underlying definition

Summary, Continued

- Replace definitions of “setback lines” in §30-1 and §30-15 with a new “setback” definition
- “Setback lines” are a design envelope that emerges from set back distances
- Potential text example:
 - “Set back: the minimum (or maximum) distance that a structure is required to be built from the property line. Required set backs are determined by the property line type (front, side, rear) and are measured perpendicularly from the property line, or as a radius at interior corners.”
 - Include exceptions for stairs, bulkheads, etc. and aqueducts as bullet points below, allowing for easy identification and revision

Outstanding questions

- What counts toward lot area and set backs and what doesn't?
 - Private streets?
 - Public ways?
- Currently set backs also allow an “average of neighboring set back” exception – do we keep it?
- Which are “density” standards which may not be waived, vs. “dimensional standards which may be?