



Setti D. Warren
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Candace Havens
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: April 8, 2014
Land Use Action Date: May 13, 2014
Board of Aldermen Action Date: June 16, 2014
90-Day Expiration Date: July 7, 2014

DATE: April 4, 2014

TO: Board of Aldermen

FROM: Candace Havens, Director of Planning and Development
Alexandra Ananth, Chief Planner for Current Planning
Daniel Sexton, Senior Planner 

SUBJECT: **Petition #70-14, JOHN J. ROCHE, INC./ROBERT J. MERINICK FAMILY TRUST OF 1996, for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NONCONFORMING USE to add a new prefabricated spray booth adjacent to an existing auto body shop and for related waivers from dimensional parking requirements, landscaping, and lighting requirements at 740 BEACON STREET (and 0 UNION STREET) on land known as SBL 61, 38, 5 and 6, containing a total of 10,888 sq. ft. of land in a district zoned BUSINESS 2. Ref: Sec 30-24, 30-23, 30-21(b), 30-15 Table 3, 30-11(g)(2), 30-19(h), 30-19(m) of the City of Newton Rev. Zoning Ord, 2012.**

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



740 Beacon Street

EXECUTIVE SUMMARY

The property located at 740 Beacon Street consists of two parcels totaling 10,888 square feet of land that are improved with a legal nonconforming structure constructed in approximately the 1920s. The use of the property and structure for an autobody repair use, a legal nonconforming use, has existed on the site since approximately 1942, but may have been in operation earlier. While the site has frontage on Langley Road, access to the site is provided via an access easement/private right-of-way off of Union Street. To allow for more efficient use of the existing building as an autobody repair shop and to meet current air quality standards, the petitioner is proposing to attach an approximately 582 square foot pre-fabricated spray booth to the east side of the structure. In order to construct the pre-fabricated spray booth, the petitioner is seeking a special permit to allow the extension of a nonconforming autobody repair use, to extend the legal nonconforming structure by reducing the side setback of 4½-feet to 0.1-feet, and for waivers to legalize the proposed noncompliant parking conditions.

Per the Zoning Review Memorandum (**ATTACHMENT A**), the property's parking facility is technically deficient in terms of the substandard aisles, parking stall dimensions, and parking facility design requirements. According to the petitioner, the proposed parking configuration and vehicle storage plan is adequate for the autobody repair use. The development pattern and access easement/private right-of-way do not allow the parking facilities to meet the technical requirements for parking facility prescribed in the Newton Zoning ordinance.

The Planning Department has no particular concerns with this petition. The *Newton Comprehensive Plan*, adopted in 2007, recognizes the importance of maintaining existing business uses and encourages strengthening viable businesses that contribute to the vitality and mix of commercial uses in Newton's village centers. The Planning Department believes this proposal accomplishes this by allowing an existing business to grow in a manner that will improve the working environment for its employees and improves the appearance of the site. Therefore, the petitioner's modest addition and landscape and screening improvements will not be more substantially detrimental than the existing nonconforming use to the surrounding neighborhood. Further, the existing development patterns on the site make literal compliance with the parking requirements impracticable.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Board should consider whether:

- The extension of a legal nonconforming use is not substantially more detrimental than the existing nonconforming use to the neighborhood. (§30-11(g)(2), §30-21(b))
- The proposed pre-fabricated spray booth addition, which will decrease the side setback of the structure on the site from 4½-feet to 0.1-feet, is not more detrimental than the existing legal nonconforming structure to the neighborhood, as the addition is over existing impervious surfaces and will be partially screened by

- a proposed sight obscuring wooden fence. (§30-15 Table 3, §30-21(b))
- The requested waivers of the dimensional and design controls for parking facilities are appropriate because literal compliance with the parking requirements is impracticable due to the existing use and development patterns present on the subject property and in the surrounding neighborhood. (§30-19(h)(2), (3), and (h)(a), §30-19(i)(1)(a), §30-19(j), and §30-19(m))

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The property fronts on Langley Road, but is accessed over a common access/right-of-way easement off of Union Street near the intersection of Union Street and Beacon Street. The properties directly abutting the site are used for commercial uses, but the properties located across the Massachusetts Bay Transportation Authority's (MBTA) Green Line subway route are being used as multi-family and single family residences (**ATTACHMENT B**). The subject property and surrounding parcels are zoned Business 2. The parcels located across the MTBA's Green Line subway route from the subject parcel are zoned Multi-Residence 1 and the parcels across Beacon Street are zoned Multi-Residence 2, Business 1, and Business 2 (**ATTACHMENT C**).

B. Site

The property consists of two parcels totaling 10,888 square feet of land that are improved with a legal nonconforming structure and autobody repair shop use. The two parcels are considered merged for the purposes of zoning.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The property will continue to be used as an autobody repair shop, a legal nonconforming use in a Business 2 zoning district. The intensity of the use will not increase per the proposed spray booth, as the painting of vehicles is already occurring on the site.

B. Building and Site Design

The petitioner's proposed facility expansion, consisting of the pre-fabricated spray booth, will be constructed of concrete and metal, and have a finish color matching the existing structure. The proposed addition will expand the structure by approximately 582 square feet and will reduce the side setback from 4½-feet to 0.1-feet along the property line abutting the MTBA's Green Line subway route. The petitioner is proposing to install arborvitae along the southwest property line and a

wooden stockade fence along the southeast property line, which will screen the proposed project and use on the site from Langley Road and the adjacent properties on Warren Street.

C. Parking and Circulation

The proposed development will alter the parking and circulation of vehicles for the property. The petitioner is proposing to use the following approach for the parking/storage of vehicles on the site: five parking stalls will be located in the southwest corner of the lot, seven tandem parked vehicle stalls will be used during the day on the eastern side of the parcel, and the overnight storage of vehicles will be accommodated inside the existing autobody repair shop and on the eastern side of the site. Although the proposed addition will enlarge the overall size of the existing autobody repair shop, the existing parking situation predates current parking regulations. The construction of the spray booth does not increase the parking requirement for the repair shop, as the number of employees will not increase.

According to the proposed site plan, the petitioner's proposed parking and circulation arrangement for the site will result in the creation of a parking facility that is technically noncompliant. As such, the petitioner is seeking waivers to the following parking facility dimensional and design controls: to create five 8' X 18' parking stalls, where 9' X 19' parking stalls are required; the use of a 10-foot wide maneuvering aisle, where a 20-foot minimum maneuvering aisle width is required for two-way vehicle traffic; to allow tandem parking stalls for the employee and vehicle storage parking areas, where parking stalls are to be maintained without requiring the moving of any other vehicle; install a modest amount of screening, where all outdoor parking facilities of more than five vehicles are to be screened from abutting streets and properties; and the requirement of security lighting. Because employees will be parking and maneuvering vehicles on the site, the Planning Department is not concerned about the proposed waivers.

Since the proposed expansion does not increase the number of employees or the volume of vehicles being repaired at one time, the proposed site improvements, consisting of the landscape plantings and wooden stockade fence, appear to improve the existing parking facility with respect to the off-site impacts of the expanded structure and use. The Planning Department, after consultation with the Newton Police and Fire departments, encourages the petitioner to maintain the fire lane so that emergency access to the site can be ensured.

D. Landscape Screening

The petitioner has identified the location and plants for three landscaped areas, as well as the location of a wooden stockade fence. The proposed landscaping

measures appear adequate to screen the proposed addition and use of the site from Langley Road and the adjacent residential properties on Warren Street. Additional screening on the northwest side of site appears unnecessary because the existing structure and proposed addition are setback more than 100 feet from Beacon Street, at a significantly higher elevation than adjacent parcels, and partially obscured from view by existing buildings on adjacent lots from Beacon Street.

The Planning Department believes that the combination of the proposed plantings and fences, which provide year around screening, should sufficiently screen the abutting property from the impacts of the proposed additions.

IV. TECHNICAL REVIEW

- A. Technical Considerations (Chapter 30, Newton Zoning Ordinance): The Zoning Review Memorandum (**ATTACHMENT A**) provides an analysis of the proposal with regard to zoning. The petitioner is requesting a Special Permit/Site Plan Approval for the proposed additions that will extend a legal nonconforming use (autobody repair shop) within a B-2 zoning district, to extend the legal nonconforming structure by reducing the side setback, and waivers to legalize the proposed noncompliant parking conditions.
- B. Engineering Review: The Associate City Engineer, submitted an engineering Review Memorandum (**ATTACHMENT D**), which indicated that the Engineering Division has no issues with the proposed project. The petitioner will be required to comply with all the recommendations put forth in the memorandum prior to issuance of a Building Permit.

V. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum, the petitioner is seeking a Special Permit/Site Plan Approval for the following reliefs:

- §30-11(g)(2) and §30-21(b), to allow extension of a nonconforming use.
- §30-15 Table 3 and §30-21(b), to allow an extension of a nonconforming side setback.
- §30-19(h)(2), to waive the dimensional requirements for parking stalls.
- §30-19(h)(3), to waive the dimensional requirements for maneuvering aisles.
- §30-19(h)(5)(a), to allow tandem parking.
- §30-19(i)(1)(a), to waive landscaping requirements for parking facilities with more than five parking stalls.
- §30-19(i)(1)(a), to waive lighting requirements for parking facilities with more than five parking stalls.

VI. PETITIONERS' RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:

- Attachment A:** Zoning Review Memorandum
- Attachment B:** Land Use Map
- Attachment C:** Zoning Map
- Attachment D:** Engineering Review Memorandum



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Attachment A

City of Newton, Massachusetts

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Candace Havens
Director

ZONING REVIEW MEMORANDUM

Date: March 20, 2014

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Alexandra Ananth, Chief Planner for Current Planning

Cc: Jason Rosenberg, Attorney for the applicant
Robert J. Marinick Family Trust of 1996, John J. Roche, Inc.
Candace Havens, Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to extend a nonconforming autobody repair use and structure, and to legalize nonconforming parking

Applicant: Robert J. Marinick Family Trust of 1996, John J. Roche, Inc	
Site: 740 Beacon Street (and 0 Union Street)	SBL: 61038 0005 and 61038 0006
Zoning: BU2	Lot Area: 10,888 square feet (total)
Current use: Autobody Repair	Proposed use: No change

BACKGROUND:

The property referred to as 740 Beacon Street is comprised of two lots, the other at 0 Union Street. The parcels together are 10,888 square feet, with 10.75 feet of frontage on Langley Road. This frontage does not provide vehicular or pedestrian access to the lot, due to its high grade relative to the rest of the lot. The lot is accessed via a 30 foot wide right-of-way off of Beacon Street, which is shared with other businesses.

The oldest record for use of the property is a 1923 plumbing permit for a garage. It is unclear from the permit whether this garage was for residential or commercial use. The first clear reference of a repair shop on this site is made in a 1942 license from Commonwealth of Massachusetts Division of Fire Prevention for a permit to "conduct and maintain a repair shop". The property has been used continuously since at least that time as an auto repair shop by various owners. A trust is the current owner of the property, and it continues to be used as the John J. Roche Autobody, Inc.

The applicant is seeking relief to extend the nonconforming autobody repair use and shop to construct a new autobody spray booth immediately to the east of the building. The proposed spray booth will be attached to the existing building. The garage door on the westerly side of the existing building will be in alignment with the garage size doors on the easterly and westerly ends of the new spray booth so that vehicle can drive through the building and spray booth. The existing building and proposed spray booth will be set back more than 100 feet from Beacon Street. There has been a spray booth area within the floor area of the existing building for as long as it has been used as an autobody shop. The current situation is inefficient and doesn't meet current code for air quality and workplace standards.

The existing parking situation on the site predates the adoption of the 1963 parking regulations. Parking stall location and dimensions have varied over the 90 years the site has been used. The proposed site plan shows five 8'x18' parking stalls for employees, a 10-foot two-way access to the stalls with some tandem parking. A waiver from the dimensional requirements of the parking regulations is required. The applicants are proposing a new van accessible handicapped parking stall in front of the existing building.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared Jason Rosenberg, Attorney, dated 2/11/2014
- Assessors information
- Area Plan, signed and stamped by Joseph R. Porter, dated 10/31/2013
- Site Plan – Existing Conditions, signed and stamped by Joseph R. Porter, dated 9/23/2013
- Site Plan – Proposed Conditions, signed and stamped by Joseph R. Porter, dated 10/21/2013, revised 11/13/2013, 12/6/2013 and 1/7/2014
- Floor Plan, signed and stamped by Joseph R. Porter, dated 11/13/2013
- Spray Booth Details and Plan, dated 9/15/2010
- Newton Department of Inspectional Services permits, 1923-present
- Record Plans, 1907- present
- Polk Street Directories, 1927
- Newton Assessor's Department Records, 1933-1969

ADMINISTRATIVE DETERMINATIONS:

1. There currently exists on site an autobody repair and service station, which is a legal nonconforming use dating back to at least 1942, though the use likely began earlier than that. The applicants propose to add a new pre-fabricated spray booth adjacent to the existing building. The shop has always offered this service, and the proposed addition brings the service up to current code. Per Section 30-11(g)(2), a garage repair shop requires a special permit. To extend this nonconforming use by enlarging the existing building requires a special permit per Section 30-21(b).
2. The City recognizes that the property has 15 feet of frontage along Langley Road, with access achieved over an easement from Union Street off of Beacon Street. With Langley as the frontage, the side lot lines are in the easement to the north and along the MBTA property to the south. The existing building is situated 4.5 feet from the side lot line along MBTA property. The proposed spray booth will be situated 0.1' from this lot line. Section 30-15 Table 3 states that the side setback requirement in a BU2 zone shall be half the building height. The proposed spray booth is 14 feet high, thus a 7-foot setback is required. As the existing building is already nonconforming as

to side setback, a special permit is required to extend the nonconforming nature of the structure with regard to the side setback per Section 30-21(b).

3. Parking has evolved over time and there currently exists no striped parking on site. The dimensions of the parking stalls have varied and stacked parking has been used over the years. The erection of the spray booth does not increase the parking requirement for the business, as the number of employees will not increase and the additional square footage is minimal.
4. The applicants propose five 8'x18' parking stalls for employees, a 10 foot two-way access to the stalls and tandem parking. Section 30-19(h)(2) requires parking stall to be 9'x19', therefore a waiver is required for the reduced stall size under Section 30-19(m).
5. The applicants propose a 10-foot aisle along the building to access the employee parking. Section 30-19(h)(3) requires a 20-foot minimum aisle width for two-way traffic. A waiver is required to reduce the aisle with per Section 30-19(m).
6. The applicants are proposing two tandem parking stalls for employees. Section 30-19(h)(5)(a) requires that a parking stall shall be accessible without requiring moving any other motor vehicle. A waiver from this requirement is necessary per Section 30-19(m).
7. Section 30-19(i) requires landscape screening for parking facilities from neighboring streets and properties. The applicant proposes a full-length solid wood fence along the property line abutting the MBTA. Landscaping is proposed in front of the building and at the frontage along Langley Road. No screening is proposed along the abutting property to the west and north, as there currently exists paving and an access easement. A waiver for these areas per Section 30-19(m) is required.
8. Section 30-19(j) requires security lighting for parking facilities requiring more than five stalls. No lighting is proposed on the applicant's plans. The applicant's plans must show such lighting as needed, or request a waiver per Section 30-19(m) of the Ordinance.

BU2 Zone	Required/Allowed	Existing	Proposed
Lot Size	10,000 square feet	10,888 square feet	No change
Setbacks			
<ul style="list-style-type: none"> • Front • Side • Rear 	Average ½ building height (7 feet) ½ building height	63 feet 4.5 feet 55 feet	No change 0.1 feet 26.1 feet
Building Height	24 feet		14.03 feet

9. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
§30-11(g)(2) 30-21(b)	To allow an extension of a nonconforming autobody repair use	S.P. per §30-24
§30-15 Table 3, 30-21(b)	To allow an extension of a nonconforming side setback	S.P. per §30-24
§30-19(h)(2), 30-19(m)	To waive the dimensional requirements for parking stalls	S.P. per §30-24
§30-19(h)(3), 30-19(m)	To waive the dimensional requirements for maneuvering aisles	S.P. per §30-24
§30-19(h)(5)(a), 30-19(m)	To allow tandem parking	S.P. per §30-24
§30-19(i)(1)(a)	To waive landscaping requirements	S.P. per §30-24
§30-19(j), 30-19(m)	To waive lighting requirements	S.P. per §30-24

70-14 Land Use Map 740 Beacon Street

*City of Newton,
Massachusetts*

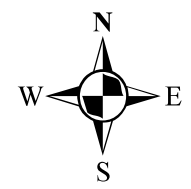
ATTACHMENT B

Legend

Street Names

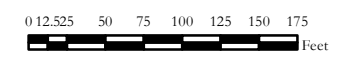
Land Use

- Single Family Residential
- Multi-Family Residential
- Commercial
- Mixed Use
- Open Space
- Nonprofit Organizations
- Vacant Land
- Tax Exempt
- Property Boundaries
- Building Outlines

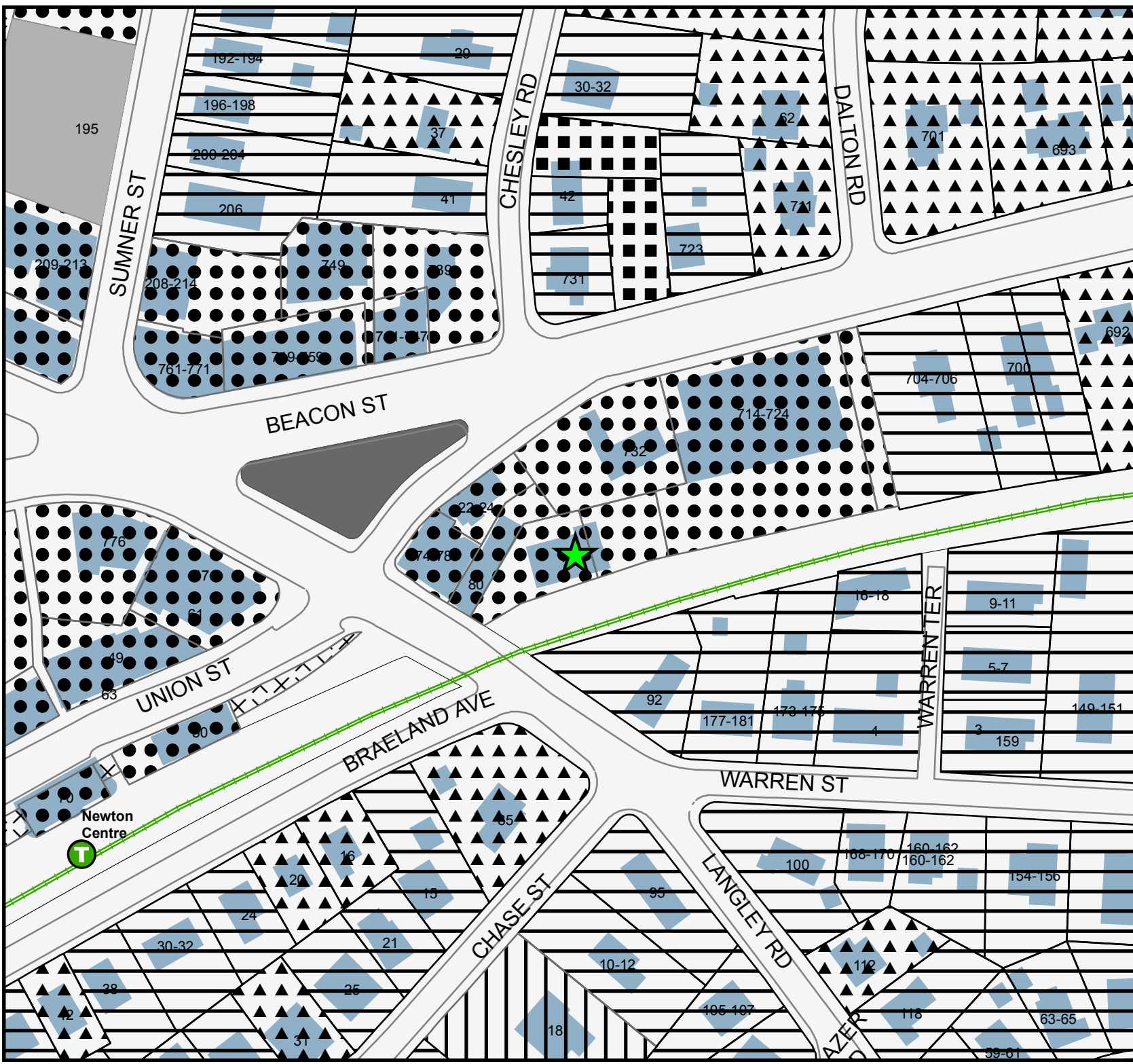


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas Greenfield



Map Date: March 18, 2014

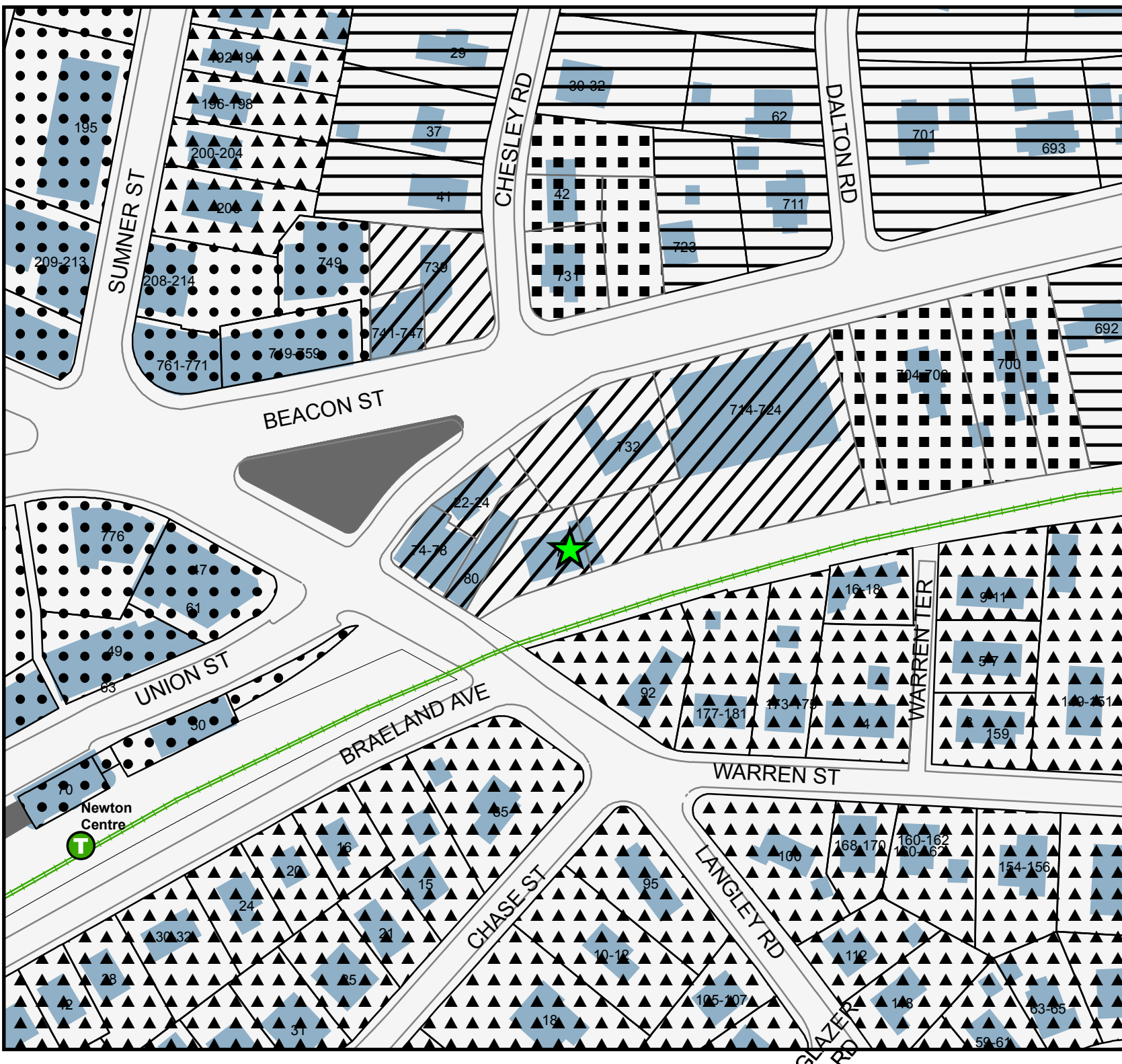


70-14 Zoning Map

740 Beacon Street

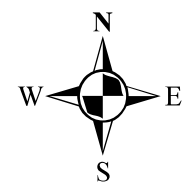
*City of Newton,
Massachusetts*

ATTACHMENT C



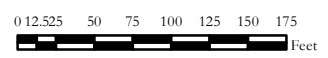
Legend

- Street Names
- Single Residence 2
- Multi-Residence 1
- Multi-Residence 2
- Business 1
- Business 2
- Public Use
- Property Boundaries
- Building Outlines
- Surface Water



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CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas Greenfield



Map Date: March 18, 2014

Attachment D

**CITY of NEWTON
ENGINEERING DIVISION**

MEMORANDUM

To: Alderman Mark Laredo, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – 740 Beacon Street

Date: March 26, 2014

CC: Lou Taverna, PE City Engineer
Linda Finucane, Associate City Clerk
Alexandria Ananth, Chief Planner
Dan Sexton, Sr. Planner

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

*Topographic Site Plan
Showing Proposed Conditions at
740 Beacon Street
Newton, MA
Prepared by: VTP Associates Inc.
Dated: October 21, 2013
Last Revised: March 10, 2014*

Executive Summary:

The existing autobody & repair shop intends to place an addition in the form of a pre-fabricated spray booth adjacent to the building over a paved surface. Since no new impervious surface is being added, no new drainage improvements are needed. However, floor drains with MDC gas traps will be required that will be connected to the sanitary sewer service.

If the special permit is approved an Approval Not Required (ANR) plan will be needed in accordance to Massachusetts General Laws Chapter 41 Section 81P requiring the two separate lots be combined into one lot.

Environmental:

1. Has a 21E investigation & report been performed on the site, if so copies of the report should be submitted the Newton Board of Health and the Engineering Division.
2. Are there any existing underground oil or fuel tanks, that need to be removed for the installation of the spray booth? If this is the case then the applicant will need permits from the Newton Fire Department, and Newton Board of Health.

Sewer:

1. A detailed profile is needed which shows the existing water main, proposed water service(s), sewer main and proposed sewer service(s) with the slopes and inverts labeled to ensure that there are no conflicts between the sewer services and the water service. The minimum slope for a service is 2.0%, with a maximum of 10%. Pipe material shall be 6" diameter SDR 35 PVC pipe within 10' of the dwelling then 4" pipe per Massachusetts State Plumbing Code. In order to verify the slopes and inverts of the proposed service connection, two manholes of the existing sanitary sewer system need to be identified on the plan with rim & invert elevations.
2. A detail of the MDC gas trap or oil/water separator is needed.

General:

1. As of January 1, 2009, all trench excavation contractors shall comply with Massachusetts General Laws Chapter 82A, Trench Excavation Safety Requirements, to protect the general public from unauthorized access to unattended trenches. Trench Excavation Permit required. This applies to all trenches on public and private property. *This note shall be incorporated onto the plans*
2. All tree removal shall comply with the City's Tree Ordinance.
3. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of water services, sewer service, and drainage system installation. The utility is question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval. *This note should be incorporated onto the plans*

4. The applicant will have to apply for a Utilities Connection permit with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*
5. The applicant will have to apply for a Building Permits with the Department of Inspectional Service prior to any construction.
6. Prior to Occupancy Permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading. *This note must be incorporated onto the site plan.*
7. All site work must be completed before a Certificate of Occupancy is issued. *This note must be incorporated onto the site plan.*

Note: If the plans are updated it is the responsibility of the Applicant to provide all City Departments [Conservation Commission, ISD, and Engineering] involved in the permitting and approval process with complete and consistent plans.

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