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Candace Havens
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PUBLIC HEARING MEMORANDUM

Public Hearing Date: May 13, 2014
Land Use Action Date: May 27, 2014
Board of Aldermen Action Date: July 14, 2014
90-Day Expiration Date: August 11, 2014

DATE: May 9, 2014

TO: Board of Aldermen

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

SUBJECT: **Petition #132-14**, STONE GALLERY LLC/CLINE REALTY LIMITED, for a SPECIAL PERMIT/SITE PLAN APPROVAL to allow retail use and associated outdoor display of goods with various waivers from parking requirements including minimum aisle, entrance, exit, widths, parking in front setback, landscape screening, lighting, bicycle parking, exclusive use of two parking spaces, etc. at 49-51 WINCHESTER STREET on land known as SBL 51, 28, 30, containing a total of 79,500 sq. ft. of land in a district zoned MIXED USE 1. Ref: Sec 30-24, 30-23, 30-13(b)(1) and (16), 30-19(c)(4), 30-19(h(3)(b), (4)(a), (h)(1), i(l) and (2), (j)(1), (j)(2(c), (k) and 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.



49-51 Winchester Street

EXECUTIVE SUMMARY

The property at 49-51 Winchester Street consists of a 79,500 square foot lot in a Mixed Use 1 Zoning District, improved with a two-story commercial building, a metal shed/storage structure, an unused small wood frame building, and a parking lot. The site is currently used for offices, storage, and a for-profit cooking school. The for-profit cooking school, Create-a-Cook, was allowed by special permit in 2005. The petitioner is seeking a special permit to allow the Stone Gallery to operate on the site, which is a retail business that sells manufactured and natural stone products for landscaping and architectural uses. The petitioner is also proposing to legalize the existing nonconforming parking lot, which does not meet current dimensional and design controls for parking facilities with more than five stalls per the Newton Zoning Ordinance.

The petitioner is proposing to use approximately 400 square feet of the commercial building for their retail/office space, a portion of the fenced in storage area behind the commercial building for their products, and approximately 1,100 square feet of the vegetated area surrounding the small wood frame building as an outdoor display for their products. The purpose of the display area is to showcase their products, and not as a storage area. The outdoor display area will be integrated with the surrounding vegetation, though some of the vegetation and shrubs will be removed. The petitioner is seeking to legalize the existing parking lot, as it provides a sufficient number of parking stalls, but does not meet other requirements of the Zoning Ordinance. The petitioner will be required to re-stripe the parking lot, which has faded over time, and to provide wheel stops for parking spaces along Winchester Street, as required in the 2005 special permit. The petitioner will also be required to remove the barriers and tree stump that currently block part of the entrance/exit at the corner of Winchester Street and Curtis Street. The petitioner has also agreed to locate a bicycle rack on the site.

Due to the nature of the proposed use and the excess parking on the site, the Planning Department has no particular concerns with the impact of the proposed use on the neighborhood, or parking/circulation within the site. In fact, the Planning Department believes that the landscaping improvements suggested by the Stone Gallery, including installing planter boxes between the sidewalk and parking lot along Winchester Street, and cleaning up the trash, debris and unhealthy vegetation in the proposed display area, will be an improvement to the site.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Board should consider whether:

- The site is an appropriate location for the proposed retail use and display area. (§30-24(d)(1))

- The proposed retail use and display area as developed and operated will not adversely affect the neighborhood. (§30-24(d)(2))
- The proposed retail use and display area will not result in a nuisance or serious hazard to vehicles or pedestrians in the surrounding neighborhood. (§30-24(d)(3))
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§30-24(d)(4))
- The requested waivers of the dimensional and design controls for parking facilities are appropriate because literal compliance with the dimensional parking requirements is impracticable due to the existing use and development patterns present on the subject property. (§30-19(h), §30-19(i), §30-19(j), and §30-19(m))

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The site is located on Winchester Street near the Route 9/Boylston Street overpass. The site abuts the Massachusetts Bay Transit Authority Green Line tracks to the west, Curtis Street to the north, and the Evergreen Cemetery to the south. The land uses in the surrounding area are mostly commercial businesses, though there are multi-family residences directly across the street from the location of the proposed display area (**ATTACHMENT B**). The zoning districts in the surrounding neighborhood are a mix of mostly Business 2, Mixed Use 1, Mixed Use 2 Districts (**ATTACHMENT C**). The site is located within the portion of the Needham Street Corridor that may undergo road way improvements by the Massachusetts Department of Transportation sometime in the future.

B. Site

The subject property consists of 79,500 square feet of land, with a portion of the property wrapping around the abutting Evergreen Cemetery to the southwest. The land is improved with a two-story commercial building, a metal storage structure in the southwestern corner of the site, and a small wood framed building and vegetated area along Curtis Street. The vegetated area is overgrown, unkempt and scattered with litter. The remainder of the site consists of three parking areas with total of approximately 93 parking stalls. There are no medians, barriers, or other landscaped or hardscape features in the parking areas, and no real separation between the parking areas and the sidewalk/streets. There are three entrances/exits on the sites, including one on Winchester Street, one on Curtis Street, and one at the corner of Winchester and Curtis Street. The entrance at the corner of Winchester and Curtis Street is partially blocked by a tree stump and old wheel stops.

The parking areas are noncompliant with the dimensional and design controls of the Zoning Ordinance, including the widths of the maneuvering aisles, landscaping, and lighting requirements. During a number of visits to the site, the Planning Department noted that the parking stall striping has completely faded, and that there are no wheel stops between the parking lot and sidewalk, as required in the 2005 special permit for Create-a-Cook.

The current uses on the site include offices, storage, and a for-profit cooking school. It appears that most of the approximately 19,178 square foot commercial building is occupied by tenants. The small wooden structure in the vegetated area is not being used.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The petitioner is seeking a special permit to allow a retail use and associated outdoor display area on the site for the Stone Gallery, which sells manufactured and natural stone products for landscaping and architecture. The Stone Gallery uses two main suppliers for its products, and sells mostly to homeowners and landscape companies. The company expects to have no more than three employees on the site, including the owner of the business and his son.

The Stone Gallery is proposing to use the display area, which will be located around the small wooden structure in the existing vegetated area of the site, to showcase their materials; and to use approximately 400 square feet of the commercial building for office and sales activities. Customers will be able to purchase products on site, or have them delivered to their sites. Products delivered or retrieved from the site are typically transported by pick-up trucks, and will be stored in the indoor and fenced-in outdoor storage areas. The Stone Gallery has indicated that large commercial trucks are unnecessary for types and amount of products associated with the business. The outdoor display area will not be used during the winter months, and the owner expects that the most active days of the week will be on the weekends.

The site is located along a commercial corridor with a mix of commercial uses, including a gas station directly across the street from the site. Based on the information provided by the Stone Gallery, the operation of the proposed use will not substantially impact the amount of noise or traffic generated from the site. As such, the Planning Department believes that the site is an appropriate location for a retail use, and that the proposed use will not adversely affect the neighborhood.

B. Building and Site Design

The petitioner is not proposing any exterior changes to the commercial building where the Stone Gallery's indoor space will be located. For the outdoor display space, the petitioner is proposing to integrate their products into the existing vegetated area, which will require removing some of the trees and shrubs. The products will include different types of permeable stone pavers, and stone walls and veneers. The petitioner will change the products over time but will maintain the basic footprint and layout. In addition to retaining some of the larger and healthier trees, the petitioner is proposing to plant Arbor Vitaes along Curtis Street and to place planters near the entrance/exit, as well as along Winchester Street. Overall, the Planning Department believes that the proposed display area and planter boxes will improve the visual aesthetics of the site. The Planning Department recommends that a more detail plan for the display area is provided prior to receiving a building permit.

C. Parking and Circulation

The petitioner is proposing to create two additional parking spaces for the proposed retail use, which will be located adjacent to the display area. The petitioner is not planning any additional changes to the parking or circulation on the site, which is noncompliant in terms of dimensional, lighting, and landscaping requirements. A special permit was granted in 2005 for Create-a-Cook, but specific relief from these requirements was not requested at that time, though such relief may have been inferred by the acceptance of the site plan. To ensure that the existing parking situation is legalized, the relief has been specifically requested for this special permit. The petitioner will be required to restripe the lot, which has faded over time, to be consistent with the proposed site plan, and to install wheel stops along Winchester Street. The petitioner has agreed to locate a bicycle rack on the site to meet a portion of the required bicycle parking.

The Planning Department does not believe that the noncompliant parking facilities shown on the site plan, particularly as they relate to aisle widths, pose a nuisance to pedestrians or vehicles. The aisle widths between the parking areas, which only allow for one way traffic, have signage or sufficient site lines to avoid major conflicts, and overall, the parking areas have good visibility. The Planning Department encourages adding appropriate landscaping or lighting on the site, as part of any future redevelopment.

D. Landscape Screening

The portion of the site where the proposed display area is to be located is screened by existing vegetation from the two residential properties located across the street on Curtis Street. It appears most of the healthy vegetation along Curtis Street will be retained, and that additional screening trees will be planted by the Stone Gallery; however a complete landscape plan should be provided prior to receiving a building permit to ensure such screening. All trees to be removed should be reviewed by the City's Tree Warden. Considering that the site is located on a commercial corridor, the Planning Department does not believe screening the use from Winchester Street is necessary.

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 to allow a retail use and associated outdoor display area in a Mixed Use 1 District, and waivers to legalize the proposed noncompliant parking conditions.

B. Engineering Review:

The Engineering Department and City Staff met the petitioner at the site to walk through the proposed site plan, which calls for the replacement of more than 400 square feet of pervious soil with permeable pavers. The proposed permeable pavers will not be sanded during the winter months. As such, the City Engineer agreed that an additional drainage system for the site is unnecessary. The Planning Department also notes that the permeable pavement will be integrated with the existing vegetation, and that the petitioner is planning to have a one to two-foot walls around the display area, which will further mitigate potential runoff.

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:

- §30-13(b)(1) and §30-13(b)(16), to allow a retail use, and associated outdoor display of goods in the Mixed Use 1 district
- §30-19(h)(3)(b) and §30-19(m), to waive minimum aisle width for two way traffic
- §30-19(h)(4)(a) and §30-19(m), to waive the minimum width of entrance and exist drives
- §30-19(h)(1) and §30-19(m), to allow parking in the front setback

- §30-19(i)(1) and §30-19(m), to waive requirements for landscape screening
- §30-19(i)(2) and §30-19(m), to waive interior landscaping requirements
- §30-19(j)(1) and §30-19(m), to waive lighting requirements
- §30-19(k) and §30-19(m), to waive the requirement for bicycle parking facilities
- §30-19(c)(4), and §30-19(m), to allow for the exclusive rights of use of two 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



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ATTACHMENT A

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Candace Havens
Director

ZONING REVIEW MEMORANDUM

Date: April 3, 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 and Lawrence Lee, Attorneys
The Stoney Gallery, LLC, Tenant
Candace Havens, Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request for a retail use in a Mixed Use 1 district, and to allow for assigned parking

Applicant: Cline Limited Partnership	
Site: 49-51 Winchester Street	SBL: 51028 0030
Zoning: MU1	Lot Area: 79,500 square feet
Current use: Office, storage and a cooking school	Proposed use: Same + retail

BACKGROUND:

The property at 49-51 Winchester Street consists of a 79,500 square foot lot in a Mixed Use 1 zone. The site is at the corner of Winchester and Curtis Streets and is improved with a 19,000 square foot commercial building, a detached 3,600 square foot metal shed used for storage in the rear of the property and a detached 1,378 square foot wooden shed at the front of the property. The applicant, The Stone Gallery, will have its primary office space within approximately 900 square feet of space in the main commercial building, adjacent to the outdoor display area. They also propose to use the wooden shed and an approximately 4,800 square foot landscaped area on which it is located as a display area incidental to a retail and wholesale business for the sale of marble, stone and other architectural materials and general landscaping materials for use in gardens, landscaping, patios, building and paving. The proposed use involves both indoor and outdoor display of materials for sale.

The commercial building is currently occupied by several tenants with varying uses. Approximately 14,560 square feet of the building are dedicated to office space between four tenants. The remaining space is used for storage and a cooking school. The cooking school tenant, Create-A-Cook, was approved by special permit Board Order No 219-05 as a for-profit educational use in 2005.

The applicants are requesting that the two parking stalls in front of the wooden shed be reserved exclusively for their use. Submitted plans show the potential for 93 striped parking stalls on site, however there is no striping at present.

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

- Zoning Review Application, prepared by Rosenberg, Freedman & Lee, attorneys, dated 2/20/2014
- Tenant List, undated
- Area Plan of Newton, signed and stamped by Bruce Bradford, dated 7/13/2013, revised 4/24/2013
- Plan of Land, signed and stamped by Bruce Bradford, dated 7/13/2013, revised 4/24/2013
- City of Newton Board Order #219-05, dated 9/6/2005
- Letter of determination, signed by John Lojek, Commissioner of Inspectional Services and Jane Santosuosso, Chief Zoning Code Official, dated 3/13/2013

ADMINISTRATIVE DETERMINATIONS:

1. Per section 30-13(b)(1), a retail establishment requires a special permit in the Mixed Use 1 district. The use of the outdoor space adjacent to the principal commercial building and wooden shed for display of materials for sale is accessory to the retail use within the commercial building, and permitted by special permit per section 30-13(b)(16), as a use similar or accessory to the use allowed by 30-13(b)(1).
2. The site has an existing parking lot with the potential for 93 stalls, as shown on the site plan submitted with the application. The current uses on site require 70 parking stalls, with nine of those stalls reserved exclusively for Create-A-Cook by Board Order #219-05. Sections 30-19(d)(10) and 30-19(d)(14) explain the parking requirement for this particular use. Section 30-19(d)(10) requires one stall per each 300 square feet of gross floor area for a retail use, plus one stall per each three employees at the highest shift. The applicants are proposing to use approximately 900 square feet of the commercial building, with no more than three employees working at one time, thus requiring four stalls. Section 30-19(d)(14) requires one stall for every 600 square feet of outdoor space for open-air retail. The estimated 4,800 square feet of landscaped area will require eight parking stalls accordingly. Therefore, the total parking requirement for this use is twelve stalls. Should the overall measurement of the landscaped area change significantly, the requirement may change. No parking waiver is required.
3. Although the parking conditions indicated on the submitted plans appear to be consistent with those which were permitted in 2005 and are therefore considered grandfathered, there is no indication that the proposed nonconforming situation was legalized by Board Order #219-05. To legalize the parking facility as proposed, a number of special permit waivers must be obtained.
4. The submitted plans show a two-way aisle with angled parking in the northern section of the parking area adjacent to the proposed display area which is 14 feet wide. Section 30-19(h)(3)(b) requires a maneuvering aisle for two-way traffic to be a minimum of 20 feet wide. A special permit is necessary to waive this requirement.

5. Section 30-19(h)(4)(a) requires an entrance and exit driveway be at least twenty feet wide for two-way use. The entrance off of Curtis Street measures 18.4 feet, and requires a special permit to waive this requirement.
6. Section 30-19(h)(1) states that no parking shall be located within any required setback. There are 16 parking stalls located within the front setback. A special permit is required to waive this provision.
7. Section 30-19(i)(1) requires parking lots be screened from abutting streets and properties. The parking area extends to the sidewalk with no landscaping or screening present and there is no landscaping providing screening from abutters and abutting streets on the site, other than informal wooded area in the northern section of the lot, which is proposed to be used as the display area for The Stone Gallery. To maintain the present condition, a special permit to waive the requirements of section 30-19(i)(1) is necessary.
8. Section 30-19(i)(2) requires interior landscaping for facilities greater than 20 stalls. There is no interior landscaping on site, and a special permit is required to waive these provisions.
9. No lighting is shown on the submitted plans. Section 30-19(j)(1) addresses the requirements for lighting of parking facilities. The applicant shall either comply with the provisions of the Ordinance, or should apply for a waiver from the requirements of 30-19(j)(1).
10. There is currently no striping within the parking facility. Section 30-19(j)(2)(c) requires paved surfaces to be marked with four-inch painted lines or some other method to indicate stalls. If the applicant does not stripe the lot, a waiver from Section 30-19(j)(2)(c) is required.
11. Section 30-19(k) requires bicycle parking facilities. There is currently no bike parking on site, or indicated in the submitted plans. A waiver from this section is required.
12. Under the terms of their lease, the applicants have the right to the exclusive use of the two parking stalls directly in front of the wooden structure. Section 30-19(c)(4) prohibits assigned parking, therefore a waiver from this provision is required by section 30-19(m).
13. If the applicant proposes to remove any protected trees from the proposed outdoor display area, the Tree Preservation Ordinance may apply.











14. See “Zoning Relief Summary” below:

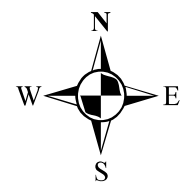
Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
§30-13(b)(1), 30-13(b)(16)	To allow retail use, and associated outdoor display of goods in the Mixed Use 1 district	S.P. per §30-24
§30-19(h)(3)(b), 30-19(m)	To waive minimum aisle width for two-way traffic	S.P. per §30-24
§30-19(h)(4)(a), 30-19(m)	To waive the minimum width of entrance and exit drive	S.P. per §30-24
§30-19(h)(1), 30-19(m)	To allow parking in the front setback	S.P. per §30-24
§30-19(i)(1), 30-19(m)	To waive requirements for landscape screening	S.P. per §30-24
§30-19(i)(2), 30-19(m)	To waive interior landscaping requirements	S.P. per §30-24
§30-19(j)(1), 30-19(m)	To waive lighting requirements	S.P. per §30-24
§30-19(j)(2)(c), 30-19(m)	To waive the requirement for striping of parking stalls	S.P. per §30-24
§30-19(k), 30-19(m)	To waive the requirement for bicycle parking facilities	S.P. per §30-24
§30-19(c)(4), 30-19(m)	To allow for exclusive rights of use of two parking stalls	S.P. per §30-24

132-14 Land Use Map 49-51 Winchester St

*City of Newton,
Massachusetts*

Legend

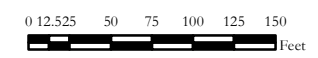
-  Building Outlines
-  Streets - Pavement Edge
- MBTA Transit Lines**
-  MBTA GREEN LINE
- Land Use**
-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Industrial
-  Open Space
-  Nonprofit Organizations
-  Vacant Land



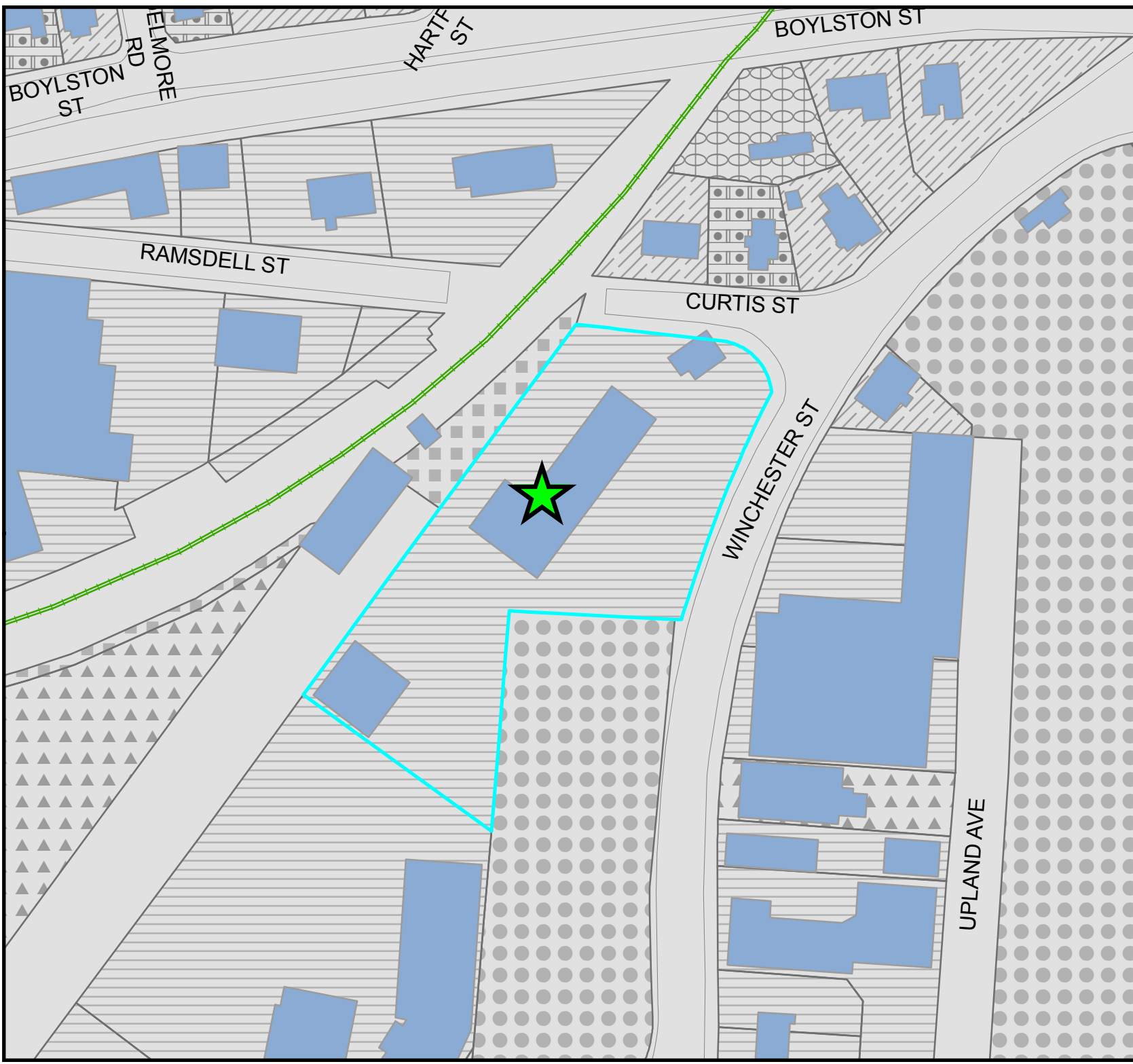
ATTACHMENT B

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.

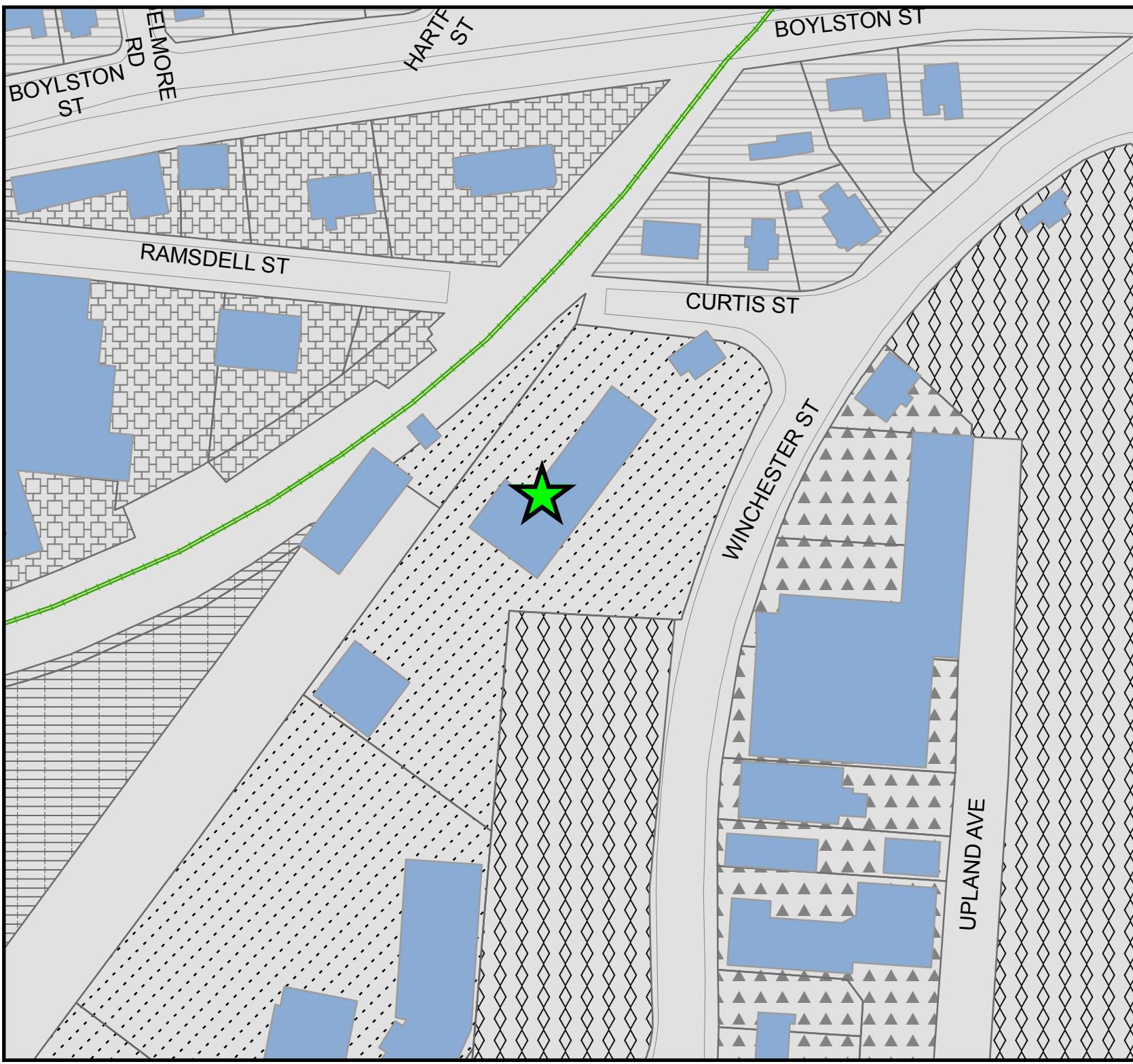
CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas Greenfield



Map Date: April 18, 2014



2014 Zoning Map
49-51 Winchester St
City of Newton,
Massachusetts

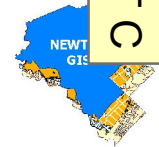
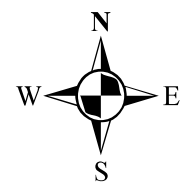


Legend

- Building Outlines
- Streets - Pavement Edge
- MBTA GREEN LINE

Zoning

- Multi-Residence 1
- Business 2
- Manufacturing
- Mixed Use 1
- Mixed Use 2
- Public Use



ATTACHMENT C

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

