



Setti D. Warren  
Mayor

**City of Newton, Massachusetts**  
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Barney Heath  
Director

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**PUBLIC HEARING MEMORANDUM**

Public Hearing Date: July 11, 2017  
Land Use Action Date: September 26, 2017  
City Council Action Date: October 2, 2017  
90-Day Expiration Date: October 9, 2017

DATE: July 7, 2017

TO: City Council

FROM: Barney Heath, Director of Planning and Development  
James Freas, Deputy Director of Planning and Development  
Neil Cronin, Senior Planner

SUBJECT: **Petition #146-17**, SPECIAL PERMIT/SITE PLAN APPROVAL to amend Board Order #229-14 to allow for the erection of a swing set at **93 Bellevue Street**, Ward 1, Newton Corner, on land known as SBL 12, 21, 39 and 40, containing approx. 93,923 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3 City of Newton Rev Zoning Ord, 2012.

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The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis conducted by the Planning Department. The Planning Department's intention is to provide a balanced review of the proposed project based on information it has at the time of the public hearing. Additional information about the project may be presented at or after the public hearing that the Land Use Committee of the City Council can consider at a subsequent working session.



**93 Bellevue Street**

## EXECUTIVE SUMMARY

The property located at 93 Bellevue Street consists of two lots known as Lot 39 and Lot 40 in the Single Residence 2 (SR-2) zone in Newton Corner. Lot 39 is approximately 46,349 square feet, and is improved with a single-family residence constructed circa 1875 while Lot 40 is approximately 47,574 square feet and consists of open space and vegetation. The site was originally part of a larger estate, which included the carriage house on Lot 38 (99-109 Bellevue Street) that was converted to a six-unit condominium under Special Permit #127-80(2) (**ATTACHMENT A**). In October of 2014, the petitioner obtained Special Permit #229-14 to construct a rear addition and an attached three-car garage (**Attachment B**).

Special Permit #127-80(2) placed certain conditions on Lots 38 and 39, including preservation and conservation restrictions limiting additional development. Special Permit #229-14 carried over those conditions including a condition stating that, "No structure shall be constructed on Lot 40 and Lot 40 shall not be subdivided". The petitioner recently installed a play structure on Lot 40, which is interpreted as a structure under the Newton Zoning Ordinance (NZO). Therefore, the petitioner is seeking a waiver of this condition to continue to allow the play structure on Lot 40.

### I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Board should consider whether:

- The specific site is an appropriate location for the play structure. (§7.3.3.C.1)
- The play structure as developed and operated will not adversely affect the neighborhood (§7.3.3.C.2).
- There will be no nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3).
- Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4).

### II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

#### A. Neighborhood and Zoning

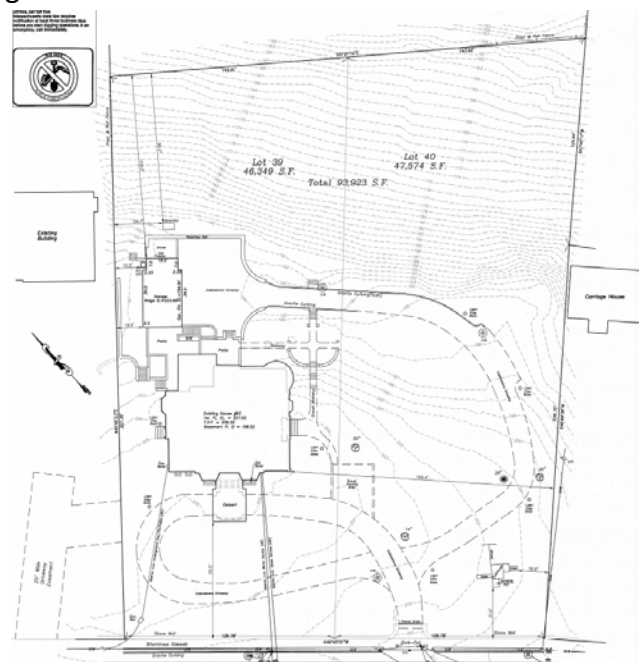
The subject property is located on Bellevue Street in the SR-2 zone in Newton Corner. The immediate area and surrounding neighborhood is entirely residential with single as well as multi-family uses (**Attachments C and D**).

#### B. Site

The subject property was originally part of the historic Riley estate, which included the adjacent Lot 38. Lot 38 consists of approximately 98,410 square feet, improved with a carriage house containing six condominium units and open space

that wraps around the rear of the subject property. In 1979, the owner of Lots 38, 39, and 40 applied for a special permit under the open space preservation development (cluster development) provision to convert the carriage house, which was already nonconforming at the time, to a six-unit condominium. The special permit was granted, but a number of conditions were added to the Board Order, including conditions to record a preservation restriction on Lots 38 and 39, and construction restrictions on Lot 40. Staff notes the site is listed on the State and National Register of Historic Places.

In October of 2014, the petitioner obtained special permit #229-14 to amend the preservation restriction on Lot 39 to construct a rear addition and an attached three-car garage accessed by a driveway extension. Staff notes that the petitioner has not received a final inspection for these improvements, but expects to do so in the coming months.



### III. PROJECT DESCRIPTION AND ANALYSIS

#### A. Land Use

The use will remain as a single-family residence.

#### B. Building and Site Design

The petitioner is not proposing any changes to Lot 39 which contains the single-family structure. The petitioner's only change to Lot 40 is the installation of a play structure, which is interpreted as a structure under the NZO. Since a play structure

is not specifically defined in the NZO as an accessory building per Section 3.4.3, it is interpreted as an accessory structure under Section 3.4.3.B which states that, "Accessory structures other than accessory buildings referenced above must conform to the applicable setback requirements for the principal building." Therefore the play structure must meet the setbacks of the single-family structure; specifically, 25 feet from the front property line, 15 feet from the rear, and 7.5 feet from the sides. Staff notes the structure was initially installed within the front setback, but has since been moved and is now compliant. The height of the structure is not provided on the plan; however the Planning Department has reviewed similar models which are 17 feet tall.

In an effort to interpret the condition stating that, "No structure shall be constructed on Lot 40 and Lot 40 shall not be subdivided", the Planning Department reviewed the 1979 version of the NZO because it was most likely the version used for the initial special permit. The 1979 version does not include a definition of "structure". The current definition of structure is, "Any construction, erection, assemblage or other combination of materials at a fixed location upon the land, such as, but not limited to, a building, bridge, trestle, tower, framework, tank, tunnel, tent, stadium, platform, retaining wall or systems of walls whose above-grade height exceeds four feet, tennis court, or swimming pool."

#### IV. TECHNICAL REVIEW

##### A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum provides an analysis of the proposal with regard to zoning (**Attachment E**). Based on the Memorandum, the petitioner is seeking the following relief:

- Amend Board Order #229-14 to allow the erection of a swing set on Lot 40.

##### B. Engineering Review

This petition does not require Engineering Review.

##### C. Newton Historical Commission Review

This petition does not require review from the Newton Historical Commission.

#### V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

**ATTACHMENTS:**

- Attachment A:** Special Permit #127-80(2)
- Attachment B:** Special Permit #229-14
- Attachment C:** Zoning Map
- Attachment D:** Land Use Map
- Attachment E:** Zoning Review Memorandum
- Attachment F:** Draft Council Order



#127-80  
#127-80(2)CITY OF NEWTONIN BOARD OF ALDERMEN

October 6, 1980

## ORDERED:

That the Board finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, the following SPECIAL PERMIT is hereby granted, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefor through its Chairman, Alderman Terry Morris.

Petition number: 127-80  
 Petitioner: George A. Nadaff  
 Location: 93 Bellevue Street, Ward 1, Section 12, Block 21,  
 Lot 38, containing approximately 98,410 square feet.  
 Owner: Alfred Nadaff  
 Address of owner: 93 Bellevue Street, Newton, Mass. 02158  
 To be used for: Six (6) condominium units within existing structure  
 (Carriage House).  
 Construction: Wooden frame, brick and stone building.  
 Explanatory note: Section 30-5(d) of the Zoning Ordinance requires the  
 petitioner to obtain permission of the Board of  
 Aldermen to convert existing carriage house to  
 multi-family use.  
 Land referred to is in Single Residence "B" District.  
 Approved, subject to the following conditions:

1. That the condominium building, driveways, parking areas, walkways, walls, landscape areas, utilities and other site features shall be located and maintained consistent with a plan entitled "Site Plan of Land in Newton, Mass. belonging to Alfred N. Nadaff, Tr.," dated January 31, 1980, revised to July 10, 1980 by Barnes Engineering Co., Inc., 411 Lexington Street, Auburndale, Mass., submitted by the petitioner and filed herewith.

2. That the conversion to six dwelling units shall be consistent with a plan entitled "The Carriage House, Newton, Mass., by Michael James Philaja, Architect, 27 Claremont Park, Boston, Mass." submitted by the petitioner and filed herewith.
3. That the parking areas shall be screened from view of abutting properties by plantings, subject to approval of the Director of Planning and Development.
4. That the site identified as Section 12, Block 31, Lot 38 containing approximately 98,410 square feet shall not be subdivided for the purpose of erecting single or two-family structures or other buildings.
5. That no more than one dwelling unit shall be maintained on Lot 39 (now or formerly of Alfred N. Nadaff, Trustee) and Lot 39 shall not be subdivided.
6. That no structure shall be constructed on Lot 40 (now or formerly of Alfred N. Nadaff, Trustee, and Lot 40 shall not be subdivided.
7. That the petitioner shall apply a Conservation Restriction to Lot 38 (Carriage House) and Lot 39 (Riley House) designed to prevent their subdivision as long as the Carriage House contains more than one residence.
8. That there shall be no dumpsters located on site including Lots 38, 39 and 40.
9. That the petitioner shall include in the condominium agreement that no facade alterations shall be made to the structure on Lot 38 until the Newton Historical Commission has reviewed and filed a statement certifying approval of such facade alterations with the Building Commissioner.
10. That the petitioner shall restore the site to its original condition subsequent to the installation of underground utilities.
11. That no building permit shall be issued in pursuant to this SPECIAL PERMIT until:
  - a. The petitioner shall have filed with the City Clerk, Building Commissioner and Director of Planning and Development an instrument recorded with the Registry of Deeds for the southern District of Middlesex County prohibiting subdivision of Lots 38, 39 and 40 in accordance with the Newton Subdivision Rules and Regulations. Said instrument shall permit subdivision of Lot 38 in accordance with condominium organization pursuant to Chapter 183A of the General Laws.



- b. The petitioner shall have filed with the City Clerk, Building Commissioner and Director of Planning and Development, an instrument recorded with the Registry of Deeds for the Southern District of Middlesex County requiring the preservation, as long as the Carriage House contains more than one family, of the existing topography and natural vegetation except for ordinary care and maintenance, the removal of dead plants, and perimeter landscaping in the immediate vicinity of the buildings, and other construction on Lots 38 and 39. Such instrument shall conform to requirements of Chapter 184, Mass. G.L. where applicable.
  - c. The City Engineer shall have reviewed and approved of utility plans, and a statement certifying such approval shall have been filed with the City Clerk, Building Commissioner, and the Department of Planning and Development.
  - d. A landscape and lighting plan indicating the location, size, number and type of landscaping and landscape materials and lighting fixtures to be installed shall have been submitted to and approved by the Director of Planning and Development and a statement certifying such approval shall have been filed with the City Clerk and the Building Commissioner.
  - e. The petitioner shall have recorded with the Registry of Deeds for the Southern District of Middlesex County a certified copy of this Board Order granting this SPECIAL PERMIT with appropriate reference to the book and page of the recording of the petitioner's title deed or notice of lease endorsed thereon.
  - f. A certified copy of such recorded notice shall have been filed with the City Clerk, the Building Department and the Department of Planning and Development.
8. That no building or part thereof subject to this SPECIAL PERMIT shall be occupied until:
- a. A statement by the Building Department that there has been full compliance with the Massachusetts State Building Code, including any permits issued by said Department, and that the premises are suitable for occupancy shall have been filed with the City Clerk and the Department of Planning and Development.
  - b. The petitioner shall have filed with the City Clerk, the Building Department, and the Department of Planning and Development a statement by a registered architect or registered engineer certifying that Conditions 1 and 2 herein, have been complied with.

- c. There shall have been filed with the City Clerk, the Building Department, and the Department of Planning and Development a statement by the City Engineer certifying that the finished grade and final construction details of the driveways, parking areas, drainage systems and utility installations have been constructed to the standards of the City of Newton Engineering Department.
- d. There shall have been filed with the City Clerk and the Building Department a statement by the Director of Planning and Development approving the final location, number, size, and type of plant materials, final landscape features, and lighting installation.
- e. The petitioner will have established a condominium organization pursuant to Chapter 183A of the General Laws.

Under Suspension of Rules  
 Readings Waived & Adopted  
 18 Yeas 2 Nays 1 Excused  
 3 Absent (Nays: Sheehan,  
 Taglianti; excused: McCreath;  
 absent: Jefferson, Dine,  
 Richmond)

EXECUTIVE DEPARTMENT

Approved October 8, 1980

(Sgd) EDWARD G. ENGLISH City Clerk (Sgd) THEODORE D. MANN Mayor

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT is a true, accurate and complete copy of said decision; that all statutory requirements for the issuance of such SPECIAL PERMIT have been complied with; and that copies of the foregoing decision and all plans referred to in the decision have been filed with the Planning & Development Board and the City Clerk.

Twenty days have elapsed since the date of filing of the Board Order with the City Clerk and no appeal thereto has been filed.

*Edward G. English*  
 City Clerk Edward G. English  
 October 27, 1980



R 8.75

PRESERVATION RESTRICTION UPON THE "CARRIAGE HOUSE" LOT 38  
AND "RILEY HOUSE" LOT 39, NEWTON, MASSACHUSETTS

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George A. Naddaff, Trustee of the High Tide Trust, under a Declaration of Trust dated July 28, 1972 and recorded in Book 12257, Page 624, and its successors and assigns, (the "Grantor") grants to the City of Newton, Massachusetts, a municipal corporation, (the "Grantee"), a Preservation Restriction on a parcel of land with improvements in said City, described as follows:

The land and buildings of the High Tide Trust being Lot #38 containing approximately 98,410 square feet, more or less, and Lot #39 containing approximately 46,349 square feet, more or less, having frontage on Bellevue Street, Newton, Massachusetts (the "Property") as shown on a plan entitled "Plan of Land in Newton, Mass. owned by Alfred N. Naddaff, Tr." dated Dec. 4, 1980 by Barnes Engineering Company, Inc., 411 Lexington Street, Auburndale, Mass. to be recorded herewith.

This conveyance is subject to, and with the benefit of, easements, restrictions, covenants, agreements and encumbrances of record, if any, and the Terms of the Preservation Restriction set forth in Schedule 1 attached.

The provisions of this conveyance shall be considered to be severable, and the revocation, termination or modification of any provision of this conveyance of its terms and conditions shall not affect the force, effect or validity of the provision not so revoked, terminated or modified.

*George A. Naddaff*  
George A. Naddaff, Trustee  
High Tide Trust

COMMONWEALTH OF MASSACHUSETTS

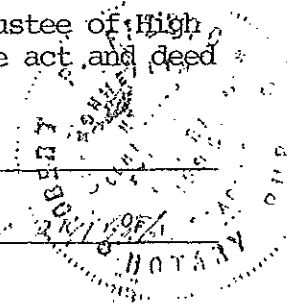
Middlesex, ss.

March 31, 1981

Then personally appeared the above named George A. Naddaff, Trustee of High Tide Trust, and acknowledged the foregoing instrument to be his free act and deed before me,

*Robert P. [Signature]*  
Notary Public

My commission expires: Nov 20 1981



SEE PLAN IN RECORD BOOK 14250 PAGE 422

SCHEDULE 1TERMS OF THE PRESERVATION RESTRICTION UPON A PORTION OF  
THE LAND OF THE HIGH TIDE TRUST

The terms of the Preservation Restrictions on Lots 38 and 39 are as follows as long as (the Carriage House) Lot 38 contains more than one family:

- Procede*
1. No loam, peat, gravel, sand, rock or other mineral resource or natural deposit shall be excavated or removed from said parcel in such a way as to affect the surface of the property.
  2. No trees, grasses or other vegetation shall be cut or otherwise destroyed.
  3. In order that the unique architecture style of the Carriage House be reasonably preserved in perpetuity, no substantial alteration to the basic facade of the building shall be undertaken without the prior written consent of the Newton Historical Commission. The requirement of consent by said Commission shall not be construed to prevent interior modifications within the structure.
  4. Notwithstanding anything contained in paragraphs 1 through 3, to the contrary, the Grantor and Grantee reserve to themselves, their successors and assigns the right to conduct or permit the following activities on the Property:
    - a) the maintaining of perimeter landscaping in the immediate vicinity of the Carriage House including, without limitation, the planting of trees and shrubs and the mowing of grass;
    - b) the installation of underground utilities;
    - c) the maintenance of the Property including, without limitation, the planting or selective cutting or pruning of trees, brush or other vegetation, and the removal of same, to improve the scenic view and to implement disease prevention measures;
    - d) to take such additional actions as are not contrary to the intent of the granting of this Preservation Restriction subject to the written approval of the Grantee.

The foregoing restriction is authorized by General Laws Ch. 184, Sec. 31-33, and is intended to retain the Property predominantly in its present condition in order to protect the architectural integrity, basic topography, and natural vegetation of a site historically significant for its architecture and associations. Both the Grantor and Grantee, their successors and assigns shall have the right to inspect the Property and enforce the foregoing restrictions, with the right, without obligation, to remedy any violation thereof. The rights hereby granted and reserved shall be in addition to any other remedies to the Grantor and Grantee for the enforcement of the foregoing restriction.

CONSERVATION RESTRICTION ON (CARRIAGE HOUSE) LOT 38  
AND LOT 39 (RILEY HOUSE) AND LOT 40, NEWTON, MASS.

RECEIVED 557 385

George A. Naddaff, Trustee of the High Tide Trust under a Declaration of Trust dated July 28, 1972 and recorded in Book 12257, Page 624 and its successors and assigns, (the Grantor) covenants not to subdivide Lot 38 (Carriage House) and Lot 39 (Riley House) and Lot 40 as long as the Carriage House contains more than one residence, in accordance with the Newton Subdivision Rules and Regulations. Lot 38 (the Carriage House) shall be permitted to be converted into six (6) condominiums in accordance with condominium organization pursuant to Chapter 183A of the General Laws.

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APR 24 1981

*George A. Naddaff Trustee*  
George A. Naddaff, Trustee  
High Tide Trust

COMMONWEALTH OF MASSACHUSETTS

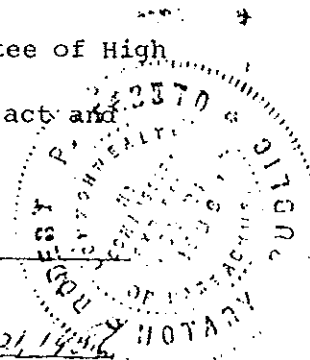
Middlesex, ss

March 31, 1981

Then personally appeared the above named George A. Naddaff, Trustee of High Tide Trust, and acknowledged the foregoing instrument to be his free act and deed, before me,

*[Signature]*  
Notary Public

My commission expires: Nov 21, 1982



5 pages

CITY OF NEWTON  
IN BOARD OF ALDERMEN

October 6, 2014

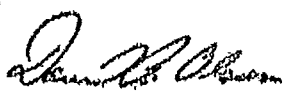
RECEIVED  
NEWTON CITY CLERK  
#229-14  
2014 OCT -8 PM 4:12  
David A. Olson, CMC  
Newton, MA 02459

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to extend a nonconforming structure as to building height, by constructing a new addition to the rear of the existing building, including a new attached garage, and to add new driveways and parking areas on the site, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Alderman Marc Laredo:

73 Bellevue Street, Newton  
Deed Ref: Book 62435, Page 377

1. The extension of the structure is not substantially more detrimental than the existing nonconforming structure is to the neighborhood. The proposed addition complies with the required setback and will be approximately 50 feet from the nearest structure on the adjacent property. The increase in the non-conforming building height from 42.6 ft. to 44.91 ft. is due to the lower grade where the addition will be located, which reduces the average grade for the site and technically increases the non-conforming height of the existing structure. The addition does not reflect a physical increase in the maximum height of the structures on the site. (§30-21(b))
2. The specific site is an appropriate location for the proposed addition and changes to the site, as the open space percentage and lot coverage will continue to meet the requirements of the Newton Zoning Ordinance, and the addition complies with all applicable dimensional requirements of said Ordinance. The proposed addition and changes to the site will not add additional housing units nor subdivide the land, significantly change the topography, nor change the character of the site, and therefore a waiver from the preservation restriction imposed pursuant to the previous special permit is appropriate. (§30-24(d)(1))
3. The proposed addition will not adversely affect the surrounding neighborhood, as it will be located in the rear of the existing dwelling and will be mostly screened from the public view. The addition of the proposed driveway will allow the petitioner to access the proposed garage through their property, instead of through the adjacent property at 99

A True Copy  
Attest  
  
City Clerk of Newton, Mass.

109 Bellevue Street, for which no easement exists, and the elimination of such shared use will also serve to eliminate overburdening of the same. (§30-24(d)(2))

4. There will be no nuisance or serious hazard to vehicles or pedestrians, and access to the site over streets is appropriate for the type and numbers of vehicles involved. (§30-24(d)(3) and (4))

PETITION NUMBER: #229-14

PETITIONER: Michael and Dena Rashes

LOCATION: 93 Bellevue Street, Ward 1, on land known as SBL 12, 21, 39 and 40, containing approx. 93,923 sq. ft. of land in total

OWNER: Michael Rashes and Dena Rashes

ADDRESS OF OWNER: 93 Bellevue Street,  
Newton, MA 02458

TO BE USED FOR: Single-Family Dwelling

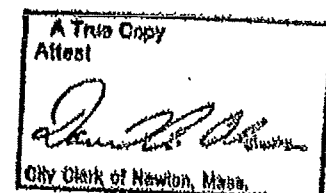
EXPLANATORY NOTES: §30-15 Table 1 and §30-21(b), to extend a nonconforming structure as to building height; to waive the preservation restriction on Lot 39 imposed pursuant to Special Permit #127-80, 127-80(2) to allow for the garage and driveway; and to amend the prior site plan approved by said Special Permit

ZONING: Single Residence 2

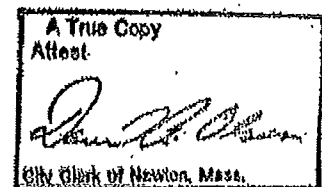
The plans referenced in Condition #1 of this special permit supersede site plans approved under prior special permits #127-80 and #127-80(2). Those conditions and provisions from such prior special permits other than the site plans that remain applicable are still in full force and effect, including restrictions set forth in the Preservation Restriction recorded with the Middlesex South District Registry of Deeds in Book 14250, Page 422 and the Conservation Restriction recorded with said Deeds in Book 14250, Page 426.

Special Permit/Site Plan Approval #229-14 approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this Special Permit/Site Plan Approval shall be located and constructed consistent with:
  - a. Area Plan, prepared and stamped by Verne T. Porter, Professional Land Surveyor, dated May 12, 2014.

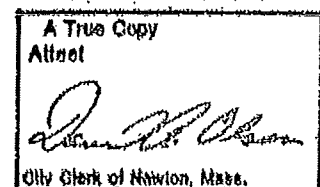


- b. Existing Conditions Site Plan, prepared, stamped and signed by Verne T. Porter, Professional Land Surveyor, dated May 12, 2014.
  - c. Proposed Conditions Site Plan Option 2, prepared, stamped and signed by Verne T. Porter, Professional Land Surveyor, dated September 16, 2014.
  - d. Landscape and Lighting Plans, prepared by Past Designs, consisting of three (3) sheets as follows:
    - i. Proposed Driveway & Tree Removal Plan Option 2, dated September 14, 2014, Sheet PD-L1(2)
    - ii. Proposed Landscape Planting Plan Driveway Option 2, dated September 14, 2014, Sheet PD-L2(2)
    - iii. Proposed Exterior Lighting Driveway Option 2, dated September 14, 2014, Sheet PD-L3(2)
  - e. Architectural Drawings, prepared by Slocum Hall Design Group, LLC, Stamped by Leah Cohen Lanekin, Registered Architect, dated June 10, 2014, consisting of thirteen (13) sheets as follows:
    - i. Cover Sheet
    - ii. Proposed Addition and Garage and Basement Floor Plan, Sheet A105
    - iii. Proposed Addition and Garage Main Floor Plan and Roof Plan, Sheet A106
    - iv. Proposed Addition Exterior Elevations, Sheet A205;
    - v. Proposed Addition Exterior Elevations, Sheet A206.
2. No structure shall be constructed on Lot 40 and Lot 40 shall not be subdivided.\
3. The petitioner shall retain a certified arborist throughout the duration of the project to ensure the long-term health of the trees and other vegetation on the property that may be impacted by the construction of the driveway and the addition. The certified arborist shall also oversee the removal of existing trees and the planting of new trees. If any tree(s), beyond the three trees earmarked for removal as shown on the plan referenced in Condition #1d.i., above, becomes severely damaged or dies within a period of five years from the date of this Board Order, the petitioner shall replace the same with a tree(s) of comparable quality, the size of such replacement tree(s) upon installation to be approved by the Director of Urban Forestry, the intent being for any replacement tree(s) to be as large as reasonable in terms of survivability. All tree removal and tree replacement (as to size and quality) shall be subject to the review and approval by the Director of Urban Forestry for a period of five years from the date of this Board Order.
4. All driveway lighting shall be placed on a motion sensor or a timer to ensure that lights are not left on all night.
5. Construction of the proposed driveway shall be completed as soon as possible in order to afford access to the rear of the site. At such time as the proposed driveway has been constructed and approved by the Inspectional Services Department, the petitioner shall abandon the existing easement over a portion of Lot 38.





6. All stone cutting shall be done within the proposed new garage not earlier than 8:00 a.m. nor later than 5:00 p.m. on weekdays. No stone cutting may be done on weekends.
7. The petitioner shall take reasonable measures to mitigate the noise generated by the HVAC system located below the terrace connecting the existing house to the new attached garage.
8. Within six months of completing construction of the new driveway authorized by this special permit and abandonment of the easement over a portion of Lot 38, the petitioner shall contact the owners of Lot 38; shall offer to install at its sole expense a new gravel surface on the driveway of such Lot; and if granted approval by the owners of Lot 38, shall install a new gravel surface on such driveway.
9. No Building Permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
  - a. Recorded a certified copy of this Board Order for the approved Special Permit/Site Plan Approval with the Registry of Deeds for the Southern District of Middlesex County.
  - b. Filed a copy of such recorded Board Order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
  - c. Obtained a written statement from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1.
10. No Final Inspection/Occupancy Permit for the use covered by this Special Permit/Site Plan Approval shall be issued until the petitioner has:
  - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect or engineer certifying compliance with Condition #1.
  - b. Submitted to the Department of Inspectional Services and the Department of Planning and Development a final as-built survey plan in paper and digital format.
  - c. Filed with the City Clerk and the Inspectional Services Department a statement by the Director of Planning and Development approving final location, number and type of plant materials and fencing.
11. Notwithstanding the provisions of Condition #10c above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the building prior to the installation of final landscaping provided that the petitioner shall first have filed with the Director of Planning and Development a bond, letter of credit, or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.



Under Suspension of Rules

Readings Waived and Approved

22 yeas 0 nays 1 absent (Alderman Johnson) 1 recused (Alderman Brousal-Glaser)

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on October 8, 2014. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:



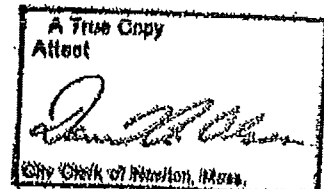
(SGD) DAVID A. OLSON, City Clerk  
Clerk of the Board of Aldermen

I, David A. Olson, as the Clerk of the Board of Aldermen and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that Twenty days have elapsed since the filing of the foregoing decision of the Board of Aldermen in the Office of the City Clerk on 10/8 and that NO APPEAL to said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:

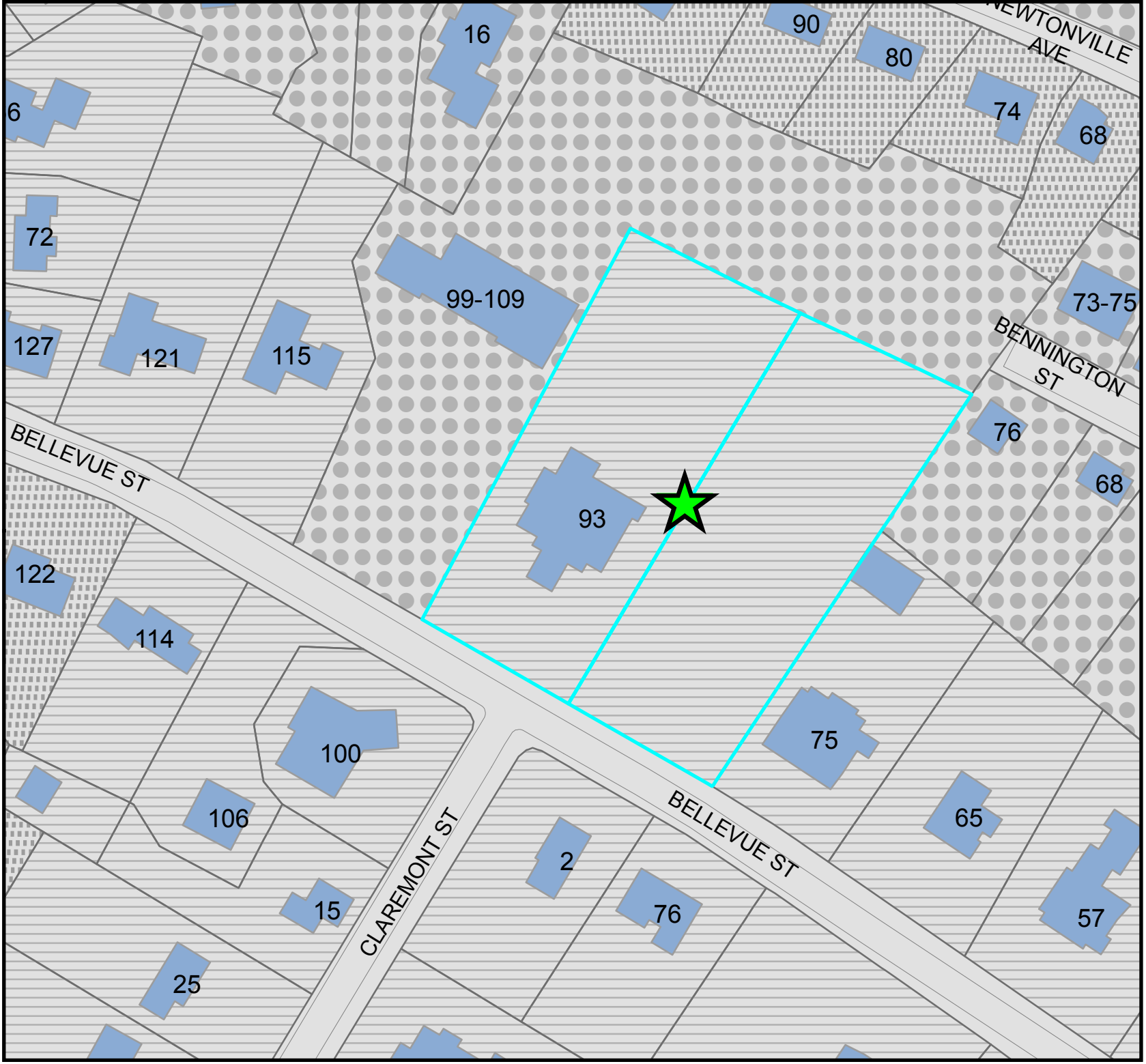


(SGD) DAVID A. OLSON, City Clerk  
Clerk of the Board of Aldermen



# Attachment C Zoning Map Bellevue St., 93

*City of Newton,  
Massachusetts*

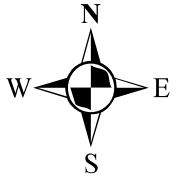


**Legend**

- Streets - Pavement Edge
- Building Outlines

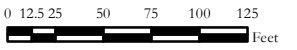
**Zoning**

- Single Residence 1
- Single Residence 2
- Single Residence 3
- Multi-Residence 1



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



# Attachment D Land Use Map Bellevue St., 93

*City of Newton,  
Massachusetts*

**Legend**

- Streets - Pavement Edge
- Building Outlines

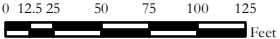
**Land Use**

- Single Family Residential
- Multi-Family Residential
- Vacant Land

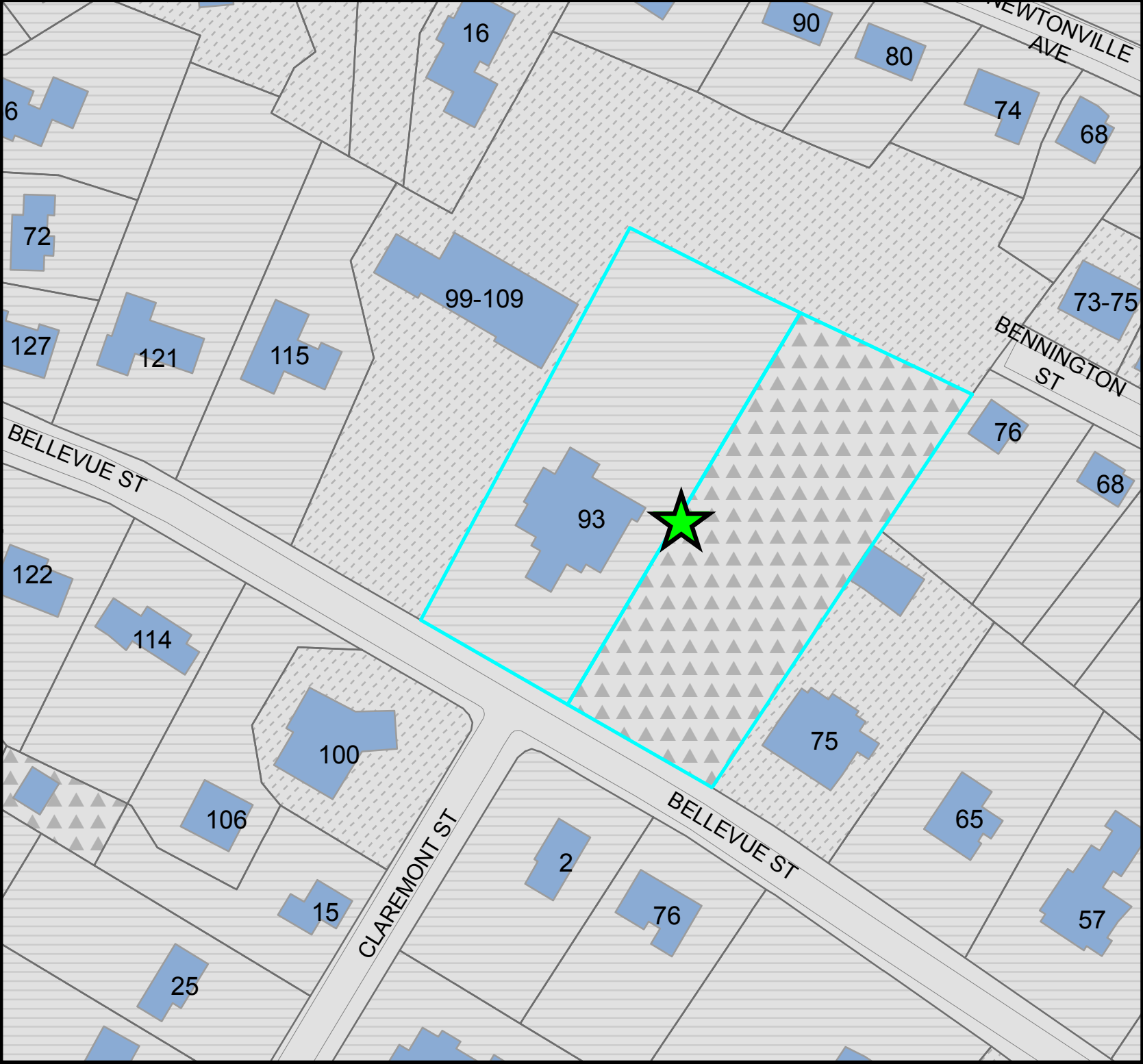


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield



Map Date: July 03, 2017





Setti D. Warren  
Mayor

Attachment E

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

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(617) 796-1120  
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(617) 796-1142  
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(617) 796-1089  
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Barney S. Heath  
Director

## ZONING REVIEW MEMORANDUM

Date: May 9, 2017

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Stephen J. Buchbinder, Attorney  
Michael & Dena Rashes, Applicants  
Barney S. Heath, Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Request to amend Board Order #229-14 to allow for a swingset**

Applicant: Michael & Dena Rashes	
<b>Site:</b> 93 Bellevue Street	<b>SBL:</b> 12 021 0039 and 0040
<b>Zoning:</b> SR-2	<b>Lot Area:</b> 94,410 square feet
<b>Current use:</b> Single-family dwelling	<b>Proposed use:</b> No change

### BACKGROUND:

The property at 93 Bellevue Street consists of 94,410 square feet improved with a single-family residence constructed in 1875. The property was originally part of a much larger parcel which included the neighboring carriage house at 99-109 Bellevue Street. In 1980, the larger parcel was subdivided by Board Order #127-80(2), into three lots, known as Lots 38, 39 and 40. Lot 38 is the site of the Carriage House Condominium, containing six units, and lots 39 and 40 are the two lots comprising the applicants' property. The site is subject to recorded conservation and preservation restrictions of Board Order #127-80(2), as well as the conditions of Board Order #229-14 which allowed for an addition to the existing nonconforming single-family structure in 2014.

Condition #2 of Board Order #229-14 states that no structure "shall be constructed on Lot 40", the vacant parcel commonly owned with the improved parcel known as Lot 39. The applicant seeks an amendment to the special permit condition to erect a swing set on Lot 40.

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

- Zoning Review Application, prepared by Stephen Buchbinder, Attorney, submitted 4/10/2017
- As-Built Site Plan, signed and stamped by Verne T. Porter, surveyor, dated 3/16/2017

- Board Order #229-14
- Board Order #127-80(2)

**ADMINISTRATIVE DETERMINATIONS:**

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1. The applicant’s property is comprised of two lots; Lot 39 is the site of the dwelling and Lot 40 is vacant and subject to conservation and preservation restrictions which limit construction. The applicant received a special permit (Board Order #229-14) in 2014 which allowed for construction of an addition to the dwelling. Condition #2 of that board order states that no structure “shall be constructed on Lot 40.” The applicant is seeking an amendment to the Board Order to allow for the erection on Lot 40 of a swing set, which has been deemed a structure by the Inspectional Services Department per Section 8.3, as it is an assemblage of materials at a fixed location on the land.

See “Zoning Relief Summary” below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
	Amend Board Order #229-14 to allow for erection of a swing set	

CITY OF NEWTON

IN CITY COUNCIL

August 14, 2017

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to amend Board Order #229-14 to allow a structure on Lot 40 , as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Marc Laredo:

1. The site is an appropriate location for the play structure as it is an accessory use to the single-family home (§7.3.3.C.1).
2. The proposed play structure will not adversely affect the neighborhood because the play structure is set back from the street the distance required of principal structures (§7.3.3.C.2).
3. The proposed play structure will not create a nuisance or serious hazard to vehicles or pedestrians as (§7.3.3.C.3).
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4).

PETITION NUMBER: #146-17

PETITIONER: Michael and Dena Rashes

LOCATION: 93 Bellevue Street, Ward 1, on land known as SBL 12, 21, 39 and 40, containing approx. 93,923 sq. ft. of land in total

OWNER: Michael Rashes and Dena Rashes

ADDRESS OF OWNER: 93 Bellevue Street,  
Newton, MA 02458

TO BE USED FOR: Single-Family Dwelling

EXPLANATORY NOTES: To waive Condition #2 on Lot 40 imposed pursuant to Special Permit #127-80, 127-80(2), and #229-14 to allow for a play structure to be installed on Lot 40; and to amend the prior site plan approved by said Special Permit

ZONING: Single Residence 2

The plans referenced in Condition #1 of this special permit supersede site plans approved under prior special permits #127-80, #127-80(2), and #229-14. Those conditions and provisions from such prior special permits other than the site plans that remain applicable are still in full force and effect, including restrictions set forth in the Preservation Restriction recorded with the Middlesex South District Registry of Deeds in Book 14250, Page 422 and the Conservation Restriction recorded with said Deeds in Book 14250, Page 426.

Special Permit/Site Plan Approval #146-17 approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this Special Permit/Site Plan Approval shall be located and constructed consistent with:
  - a. As-Built Site Plan 93 Bellevue Street, prepared and stamped by Verne T. Porter, Professional Land Surveyor, dated March 16, 2017
2. No dwelling or accessory building shall be constructed on Lot 40 and Lot 40 shall not be subdivided.
3. No Final Inspection/Occupancy Permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
  - a. Recorded a certified copy of this Board Order for the approved Special Permit/Site Plan Approval with the Registry of Deeds for the Southern District of Middlesex County.
  - b. Filed a copy of such recorded Board Order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
  - c. Obtained a written statement from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1.
  - d. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect or engineer certifying compliance with Condition #1.
  - e. Submitted to the Department of Inspectional Services and the Department of Planning and Development a final as-built survey plan in paper and digital format.