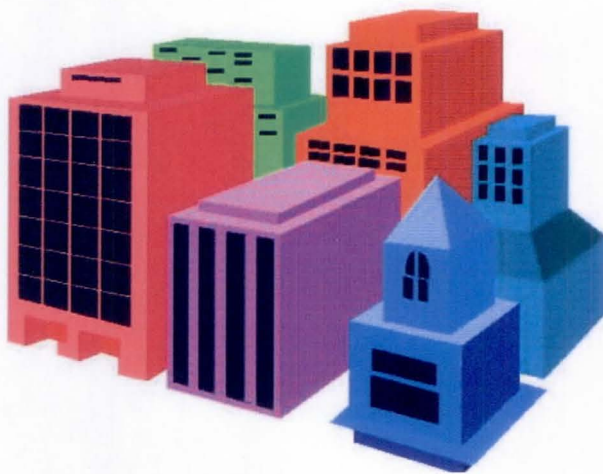


# POSITION MEMORANDUM TO NEWTONVILLE MU 4 ZONE

## Docket #179- 16 and #180-16



VS



# URBAN ENCLAVES IN VILLAGE SETTINGS ?

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## MEMORANDUM OF INFORMATION

To: Marc Laredo, Chair, Land Use Committee of the Newton City Council  
Scott Lennon, President, Newton City Council  
Members of the Newton City Council

From: Neighbors for a Better Newtonville

RE: Newtonville zone change & Special Permit application;  
Docket Items #179-16 & #180-16  
Meeting on March 20, 2017

Date: March 15, 2017

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I understand that the Land Use Committee meeting on Monday, March 20, 2017, is to allow the Petitioner for a Zone Change and Special Permit in Newtonville an opportunity to listen to Councilors, including Councilors not on the Committee but invited to attend, express their concerns about his project so he can estimate votes for and against his proposal. If so, this is one of the most remarkable departures from legislative practice I have heard of and should be nominated for some type of award. It is probably not favorable to the image of the Newton City Council.

Has the legislative committee process broken down? Is the Land Use Committee unable to perform its assigned task? I ask out of personal concern. When I was in the Legislature I personally confirmed the practice of a legislative body [Newton Board of Aldermen] of referring special permit petitions to a committee for a hearing and recommendation [releasing the entire Board from attending all Special Permit petitions] by inserting that authority into Chapter 40A. If that practice is not working we should fix it. In this new century it appears that the legislative process is being driven more by business practices than by the fiduciary practices previously intended.

There is also the question of the Land Use Committee “negotiating” with the Developer. Historically, the Land Use Committee listened to a request for a Special Permit and made its decision based upon the presentation by proponents and opponents. There was no continuing dickering over the terms of changes. Former Ald. Susan Basham was probably the last Chair of the Land Use Committee to hold to this practice.

I would like to add that Mr. Korff's claim for future success in application for 40B petition is not as realistic as it appears. For example, developer profits are limited under the statute, and the State considers land valuation under 40B based on its appraised value, not on the purchase price. Consequently, since the developer overpaid for the land at the Orr Block, his profit would be more limited if he went the 40B route.

The City Council should stand against a petitioner's threatened blackmail claims. The latest report is that a Korff surrogate told the Newtonville Area Council that if denied by the City Council Korff will apply for a 7 story, 245 apartment, 40B project.

The following are other important issues that we urge you to keep in mind as you articulate your concerns at the meeting on March 20<sup>th</sup>.

**ISSUE #1: FLOOR AREA RATIO [FAR] OR THE SIZE OF THE BUILDING:**

Under current zoning Mr. Korff can build 227,624 sq. ft., using his calculations of the lot size. The original filing requested a building containing 226,875 square feet.

According to the Newton Assessors Records the site consist of fifteen (15) lots plus Bailey place. Of the fifteen (15) lots, five (5) are zoned BU1 and ten (10) are zoned BU2. The lots zoned BU1 contain 37,561 square feet of land and the lots zoned BU2 contain 77,354 sq. ft. for a total of 114,915 square feet of land.

The pending application for a zone change claims the site is 123,956 square feet. There is a 9,041 sq ft discrepancy. There are those that claim the land is owned by the Developer. This is not correct. There is a legal process that allows the Developer to petition the Court to acquire the land, but, to the best of my knowledge, such an action has not been started. While the petitions are usually granted, it is not guaranteed until the Decision is written. Over the years I have seen more failed "slam dunks" than you would care to hear about.

The allowed Floor Area Ratio (FAR) in Business Use 1, under a Special Permit, is 1.5. So the maximum Floor Area Ratio allowed in the Orr Block Business Use 1 Zone, under a Special Permit, is 56,345 sq. ft.

The allowed Floor Area Ratio (FAR) in Business Use 2, under a Special Permit, is 2.0 So the maximum Floor Area Ratio allowed in the Orr Block Business Use 2 Zone, under a Special Permit, is 154,708 sq. ft.

**CALCULATION:** the maximum FAR permitted under current zoning on the Petitioner's site is BU 1 FAR = 56,345 sq. ft. + BU 2 FAR = 154,708 sq. ft. The total allowed FAR on the site is 211,049 sq. ft.

The pending application for a zone change includes the use of the missing 9,041 square feet of land, most probably made up of Bailey Place, a portion of Washington Terrace and land acquired by recalculation of old deed descriptions. If the missing 9,041 square feet is added into the calculation as 1/3 BU1 and 2/3 BU2 zones another 4,521sq. ft. (BU1) and 12,054 (BU2) sq. ft. can be added to increase the total FAR at the Orr Block.

**CONCLUSION:** The size of the building and the FAR should not be an issue since the number of square feet that can be built under current zoning is slightly more than requested

in the original petition. The petitioner can build his project within the current zoning district limitations. The ISSUE is the height and the design of the building; 5 stories vs 3 story and 4 story buildings; a monument vs a building that would be compatible with the surrounding neighborhood.

**ISSUE #2 DENSITY HOW MANY HOUSING UNITS ON A PARCEL OF LAND.**

Newton has 24 different of zoning districts. 16 of 24 zone districts are available for residential use.

The dimensional control section of the Zoning Ordinance that addresses Density is the Lot Area per unit [the amount of land required to build a residential unit on a particular lot. In a Single Residence 1 zone one residential unit would be allowed on a lot containing 25,000 square feet of land. However, if that same lot was in a Business Use zone residential units above the first floor could be constructed based upon the formula of one unit for each 1,200 square feet of land or 21 units on that same lot.

At the 30 acre Northland project on Needham Street it is proposed that one family be permitted for each 1,375 square feet of project land.

In a Multi Family zone, such as Foster Street, that abuts the Orr Block, one family is allowed per 5,000 square feet of land or 5 units for each 25,000 sq. ft. of land.

On the issue of density in an MU4 zone, the question is the location of the site and its relation to abutting properties and the nearby neighborhood.

In the case of the Orr Block It appears that the Council is concentrating on the proximity of a Rail Transit stop and a bus stop used for workforce commuter transport and a cross-city bus stop, as opposed to the impact of a project size, density and building height on the adjacent single and two family homes. It is also projecting that at sites adjacent or near to transit stops local residents will not own or require automobiles. While this may be a concept applied to projects in large cities it has yet to be accepted as a suburban phenomenon.

**CONCLUSION: The Council will have to determine, “What is an appropriate housing density to place adjacent to the MR1 Zone of single and two family homes?” 21 units for each 25,000 sq. ft. is very dense. There is no need to change the zone to gain a 5<sup>th</sup> story and a few extra units.**

**There is also no need to change the zone for the developer to build smaller units. He can build small units under the current zoning.**

Another question to be answered is what is the benefit from adding extra units and what impact does the additional mass and square footage have on the abutters and village neighborhood? Should the same impact results be applied to all residential neighbors or should there be different impact guidelines for different villages? Should the impact guidelines applied to Chestnut and Beacon Streets [St. Philip Neri church property] be applied to Newtonville?

### ISSUE #3 LOSS OF COMMERCIAL TAX BASE

One of the most important issues to consider when evaluating the rezoning petition is the loss of our commercial tax base. Since I participated in disposing of some of it over the past years I must share the blame and my comments should be viewed as advisory and not as criticism.

We must first recognize that we have to make a choice between a continuing to expand the residential tax base or establishing a firm commercial tax base. The system we have in place is not working. The concept of allowing some residential use in our commercial village business district has been distorted as allowing some limited first floor business use in our commercial village business districts. The concept of converting village business zones into Mixed Use zones for the purpose of intensifying housing is, at best, a questionable municipal practice, at this time, in this City.

The question of redefining the purpose of our village centers is upon us. Will Newton's village centers morph into a continuation of urban sprawl, a straggling and disorderly distribution of urban enclaves flowing west to Framingham and beyond? Or, will we preserve the commercial component of our village centers? Will we take advantage of the emerging e-commerce business model with downsized retail space? Will we answer a growing demand for non-retail commercial space? A vibrant business community is one that keeps pace with current changes, not one that relies on last century practices, products and projections.

CONCLUSION: We are at a municipal crossroad. Newton of the mid 21<sup>st</sup> century will be composed of a series of village urban enclaves composed of mid rise residential buildings with first floor commercial space if the MU 4 zone is introduced into our villages for the purpose of replacing existing commercial space with resident units.

### ISSUE #4 WHAT CONSIDERATION IS GIVEN TO THE IMPACT OF A MU4 ZONE ADJACENT MR1 ZONED NEIGHBORHOOD THAT IS ALSO A LOCAL HISTORIC DISTRICT?

The Newton Comprehensive Plan stresses the importance of "sensitivity to place," and respect for "the special characteristics of locations" in development. "At the very least," it asserts, "new development should not damage the valued qualities of that which exists in the vicinity." It also strongly affirms the importance of protecting the City's historic resources, including its historic districts.

More pointedly, the Comprehensive plan explains that "many Newton villages were developed by subdividing farmland around railroad stations." That pattern that led to neighborhoods that "contain some large, architect-designed homes, built for professionals and business people who commuted to and from Boston by rail. Yet the same railroads and neighborhoods also housed blue-collar workers and contractors, who designed, built and occupied much more modest houses.

Until the early twentieth century, all these residents obtained daily or weekly goods and services from businesses within walking distance of home. These areas are full of what traditional zoning would consider 'nonconforming uses'; on the surface, they present a confusing jumble of lot and house sizes, setbacks, and architectural styles. Yet homogenizing that jumble would undercut rather than preserve the historic significance of these places: their 'historic character' lies precisely in their mixture of periods, styles, uses, and stories." This precisely describes the residential neighborhood of Northern Newtonville that adjoins the proposed development.

The residential neighborhood that directly abuts the Orr Block project is one of only four local historic districts in the City of Newton.

Has the Council considered the impact of a development of this size and massing on the Newtonville Local Historic District with which it will share an immediate boundary?

Has it examined from the vantage point of the rear boundary of the development its impact on the visual context and integrity of the Local Historic District?

At several of the public hearings residents requested the 3-D model for the proposal, as required by the Ordinance, be presented from the perspective of the backyards of the houses on Foster Street, and 227 Walnut Street, to show how the project would look from the properties of the closest abutters. We request that you require Korff to produce that model before you make a statement of your intent.

Is the Council prepared to green light the construction of highly dense, buildings 60 feet in height next to Local Historic Districts designed to preserve the City's historic homes, dwellings and neighborhoods which it has already voted to safeguard in perpetuity?

If the intent of adopting the MU4 zoning district is to create Urban Enclaves in our villages should there not be guidelines or rules relating to the impact of these Enclaves.

Has the Council reviewed or adopted any guidelines or rules relating to the change in composition of a neighborhood when there is a zone change? For example the same criteria applied to the Waban Staples Craft-Wiswall Farmhouse project should apply to the Orr Block.

On page 2 of the November 10, 2016 Zoning Board of Appeals Comprehensive Permit Memo about a plan to redevelop the Staples Craft-Wiswall Farmhouse property at 1615 Beacon Street in Waban, the Planning Dept. expressed concern about the scale of the 40B proposal there:

“...the Department has several concerns about the project, which have to do with the massing and siting of the proposed structure as it relates to the existing structure and abutting properties. The proposed structure is significantly taller and appears to loom over the historic farmhouse thus diminishing its importance and taking away the open feel of the site which is part of the historic context of the property. The proposed structure is also sited hard up against the property line with its only direct abutter suggesting that the proposed new structure is too big for the site.”

Although the farmhouse is a Local Landmark, and on the National Register of Historic Places, it is not part of a Local Historic District. In contrast, the Local Historic District in Newtonville has rarely been mentioned in any of the Planning Department’s memos about Washington Place, which shows a blatant inconsistency with how the city has presented and advocated for Washington Place without regard to the historic context of the Newtonville Historic District’s visual context. We believe the city and the Planning Department have a responsibility to demonstrate an equal degree of concern about ensuring development is compatible with any Local Historic District or Local Landmark, regardless of the village in which it is proposed.

**CONCLUSION: The proposed MU4 zone is not appropriate if placed adjacent to a Local Historic District comprised of single and two family residential homes.**

#### ISSUE #5    NEWTON HOUSING ISSUES

Newton has a long history of providing affordable housing. Skipping over the mill worker housing along the Charles River, Newton, after WW II, was one of the first cities in the country to expend its own money (municipal funds and credit) to drain low elevation land; construct an infrastructure; hire an architect to design homes; and retain a builder to construct them at a fixed price. All this to provide low cost housing for returning veterans and their families. In the early 1970’s Newton established the first linkage program in Massachusetts to require low income housing be included in any new special permit housing projects. Thousands of Newton residents supported a project to build multiple housing projects in a number of villages. This plan failed by one vote of the Board of Aldermen, but the work of NCDF continues. Many of us have contributed to their efforts.

Newton has 24 zoning districts; 3 single family, 4 multi family, 9 mixed use business and residential districts, 2 manufacturing districts, an open space district, a public use/recreation district and 4 overlay districts. 16 of these districts are designed for building of a variety of housing with a density range of a one unit per 1,000 square feet to one unit per 25,000 square feet. This is not exclusionary zoning sought to be addressed by Chapter 40B.

The Mayor has said that we need 800 new low income housing units to reach the goal of 10% of our housing be available to people and families earning up to 80% or less of the area median

income. In order to achieve that goal we will need to build 16,000 new units under our current plan of requiring new special permit projects to contribute 15% of the units to low income eligibility list, also known as the State Housing Inventory or the SHI. Why are 16,000 new units needed? 10% is applied to the project being built and the remaining 5% is applied to our 800 unit deficit. In order to make up the 800 unit deficit at 5% per project, we will need 1,600 units [5% of 1,600 = 800 units to be applied the deficit]

DHCD has provided a more attractive option: "In a rental or ALF (Assisted Living Facility) development, if at least 25% of units are to be occupied by Income Eligible Households earning 80% or less than the area median income, or alternatively, if at least 20% of units are to be occupied by households earning 50% or less of area median income, and meet all criteria outlined in Section 1, then all of the units in the rental development shall be eligible for inclusion on the SHI." With 25% of the units are SHI eligible a different formula will apply.

**CONCLUSION:** If an MU4 guideline were adopted requiring each new project to provide 25% affordable housing we would need to only construct 5,334 new units; that is an average of 667 new units per ward. If 20% of the units are SHI eligible 8,000 new residential units will be needed to add 800 new SHI units, 1,000 new units per ward.

#### **ISSUE # 6 HOUSKEEPING ISSUES**

The Petitioner claims there are three (3) buildings proposed for the site, yet there is no application to construct three (3) buildings on a single lot. There is no plan showing the lots have been combined into a single lot. There is no subdivision plan, proposed or on file, showing the three lots upon which the proposed three (3) buildings will be placed.

#### **ISSUE # 7 ADDITIONAL CONSIDERATIONS**

**Affordable Housing:** The number and size of affordable housing units will have to be determined by the City Council. Affordable housing is a significant contribution to the socio-economic mix of the Village population. The Council should take into consideration that twenty (20) units of low to moderate priced rental units will be lost. Many support the concept that in addition to new Low Income (SHI) units, a concerted attempt should be made to replace these lost units and add them to the SHI.

**Reconfigure the zoning districts** to locate the BU2 zone along Washington Street and the BU1 zone abutting the Foster Street neighbors. This would put the higher buildings farther from the residential abutters on Foster Street. (See Exhibit 1 for depiction of current zoning. Information obtained from Newton Assessor's records.)

**Setbacks:** Buildings should be set back from residential properties 75 to 100 feet depending on height (25 feet for each story).



**The required 5% Open Space should be at ground level.** Rooftop decks should not be considered public open space. Additionally, rooftop decks contribute to noise and disturbance of abutting residential homes and they do not add anything to the sense of the project open space.

**Require a central entrance** to the development parking lot. It should be located on Washington Street and include two exit lanes (left turn and right turn) and a traffic control system during morning and evening rush hour to allow motor vehicles to access and exit the site. Without a traffic signal drivers will block the entrance, refuse to look at exiting traffic and be as discourteous as possible to avoid letting another vehicle get in front of them. The traffic flow entering and exiting the development will be impeded and will lend to increased congestion. Traffic exiting at Washington Terrace is blocked by westbound traffic waiting for Lowell Ave. light change. Westbound traffic is also inhibited by vehicle stops for use of Post Office.

**Require site entrance/exit to conform to municipal standards**, including sidewalk, lighting and construction regulations.

**Reconfigure the garage access** so that exiting vehicles do not shine their head lights into the bedroom windows at 227 Walnut Street Carriage House.

**Limit the Walnut Street access to emergency vehicles only.** Walnut Street is not a suitable access point, as southbound traffic backs up beyond the driveway entrance. The access can be used by a very few vehicles per light change. There is insufficient clearance to accommodate the volume of vehicles which would be entering and exiting from this point.

**Limit the Washington Terrace access to Postal vehicles, local traffic to the homes on the west side of the Terrace and emergency vehicles.** Washington Terrace is not a suitable access point. There is insufficient clearance to accommodate the volume of vehicles which would be entering and exiting from this point.

**Eliminate waivers of the parking lot requirements contained in the Zoning Ordinance**, including: i) requiring full size parking spaces needed to attract market customers. ii) Restrict the uncoupling of residential parking spaces to provide adequate parking for guests, family and friends. Also, the uncoupling may be a violation of the Zoning Ordinance requiring 2 parking spaces per residential unit. Newtonville is another village experiencing difficulty arising from the production of rental units without sufficient parking spaces.

**Upgrade the traffic control signal at the intersection of Lowell Ave. & Washington St.** Include left turn arrows for each lane. This intersection is dangerous under its present use, due in part to the fact that it is not a square 90° intersection. Lowell Avenue crosses Washington St. at a diagonal.

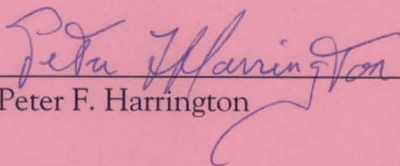
**Separate buildings:** The developer says there will be three separate buildings. Where are they? They are not apparent on the plans.

**Financing:** while the Developer makes reference to financial matters, the Council has been advised by the Law Department that it can not look into the developer's claims regarding financial issues. Any experienced speculator/developer will include a "subject to obtaining permits" provision in a purchase agreement. If it is not included, all experienced speculators/developers will have an alternate plan in the event permits are not obtained. The alternate plan is usually confidential and not disclosed to third parties. We must assume that this experienced developer has one or more alternative plans in the event his proposal for an MU4 district is not approved. In this proposal we have assumed that this reasonable use of the land under the existing Zoning District has been considered by the developer and is included in one of his alternate plans.

Thank you for your time and attention. We expect to be present on the 20<sup>th</sup> and we will be available to answer any questions you may have.

**This presentation is a compilation of concerns, opposition and advice of members of the Neighbors for a Better Newtonville and was prepared by a working subcommittee of members.**

Neighbors for a Better Newtonville, by

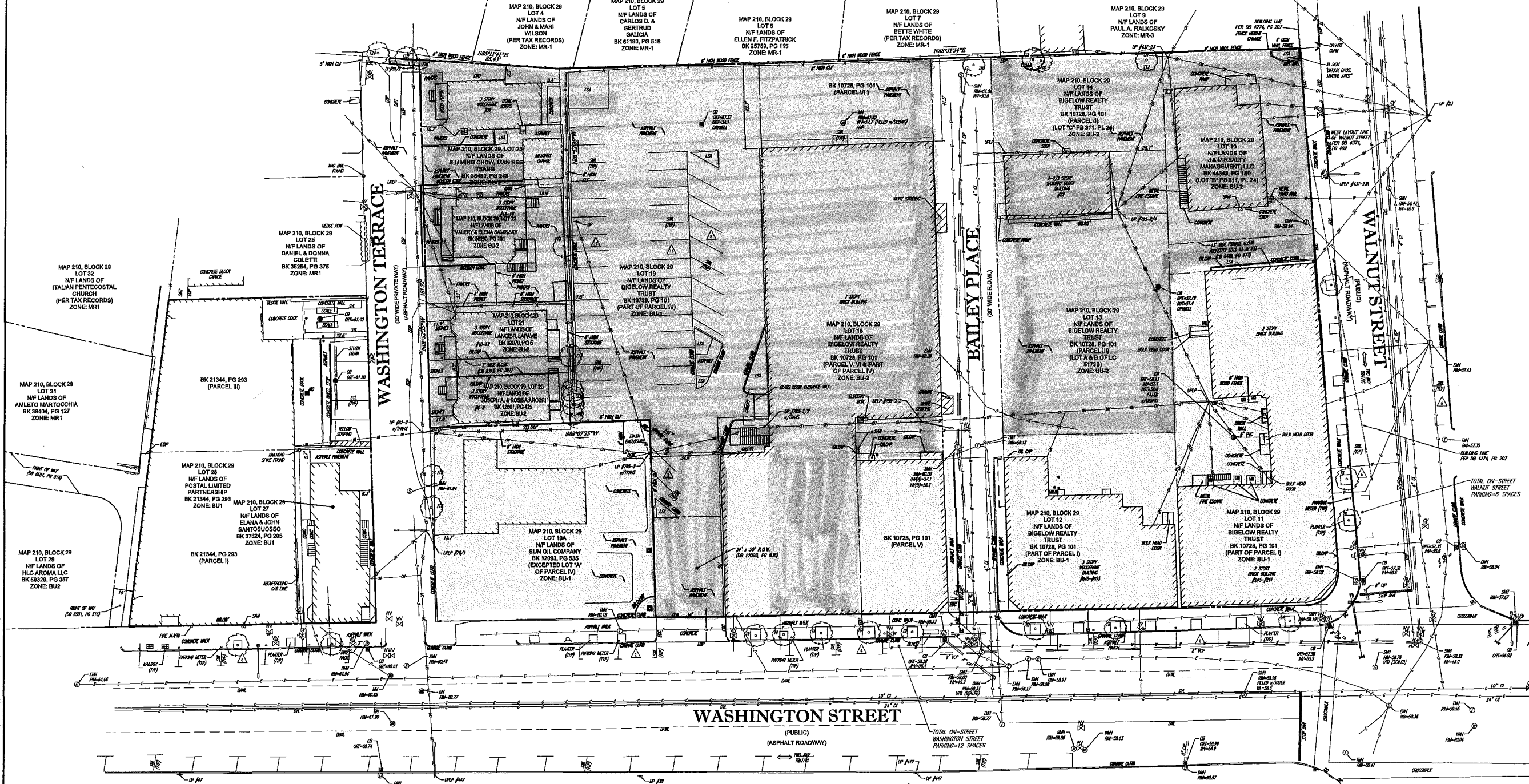
  
\_\_\_\_\_  
Peter F. Harrington

WASHINGTON PLACE  
WASHINGTON STREET @ WALNUT STREET, NEWTON, MA



ORIGINAL DATE: 05/05/18  
SCALE: AS SHOWN

EXISTING CONDITIONS PLAN



NOTE: 18 EXISTING ON-STREET PARKING SPACES ALONG PROJECT FRONTAGE (WASHINGTON & WALNUT)

PLAN REFERENCE: INFO TAKEN FROM "ALTA/ACSM LAND TITLE SURVEY" PREPARED BY CONTROL POINT ASSOCIATES, DATED 12-04-15, REVISED AS OF 3/28/16, SCALE 1"=

B41 - yellow  
B42 - orange

