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Memorandum of Objection to Proceedings

To: Marc C. Laredo, Chair, Land Use Committee
Copy: Land Use Committee

To: Scott Wolf, Chair, Newton Planning Board
Copy: Planning Board members

From: Neighbors for a Better Newtonville

Re: Objection to Proceedings; Newtonville zone change; Docket Items #179-16 & #180-16

Date: September 7, 2016

The following is a list of objections to the continued proceeding of the above reference Docket Items.

A. Zone Change Application, Docket Item #180-16.

Docket Item #180-16 for a Zone Change does not appear to have an Application. Attached to Docket Item #179-16 is a General Permit Application that makes reference to a zone change in a parenthetical expression indicating an additional future action, set out on the line identified by (ZONING DISTRICT: BU1 and BU2 (to be rezoned to MU4).

The PROJECT DESCRIPTION describes a proposal to construct 3 buildings. It does not identify a Zone Change request.

Included in #180-16 documents is a plan titled "Proposed Zoning Boundary". In the title block the plan identifies "Lots 10, 11, 12, 13, 14, 16, 19, 20, 21 & 22, Block 29, Map 201, City of Newton, MA, dated 05-06-16, by Control Point Associates, Inc." as the land to be rezoned. This does not identify Lots 15, 17, 18, 19A, 23, Bailey Place and a portion of Washington Terrace in its Title Block as being included. Also, there is no land in Newton identified by Map number 201.

Included in #180-16 documents is a "Surveyor's Meets and Bounds Description", dated May 6, 2016, by Control Point Associates, Inc. This document gives a perimeter description that does

include lots 10 through 23 in Sec 21, Block 29, Bailey Place and a portion of Washington Terrace. It include land not owned by or under the control of the developer.

The petitioner's written and signed General Permit Application, under Project Location Information does not include Bailey Place and a portion of Washington Terrace.

Assuming, for the sake of argument, that the above meets the minimum requirements for a proper petition for a change of zone, the question arises as to what property is being rezoned.

The legal notice published by the City of Newton, following the description of lots included as set out in the Applicants "Proposed Zoning Boundary" plan is also defective.

B. Bailey Place.

1. Bailey Place is a street shown on municipal records since the 1895 City Atlas. Its status as a public or private way is uncertain. There are indications it could be either. Chief among those are the lack of any reference to right of way access in the deeds to the interior lots in both registered and recorded land.

2. The deed to Bailey Place is not included in the Petitioner's site purchase. Bailey Place is not owned or under the control of the Petitioner.

3. There also appears to be a portion of a building across the northerly portion of Bailey Place, shown on the Application for a Special permit, Docket Item #179-16.

C. Washington Terrace.

Finally, the westerly boundary of the proposed zone change plan and survey appears to run "Along the approximate centerline of Washington Terrace, ... a distance of 282.88 feet ...", according to Control Point Associates, Inc. "Surveyor's Meets and Bounds Description".

I am not aware of Newton's policy concerning the zoning of private ways, but I am sure there must be some precedent.

There are also issues of the rights of others with an interest in the private way to object to its proposed use as access to the project.

The Special Permit Application also raises an interesting question as to use of a way designed to provide access for 9 or 10 lots. Does the owner of some of the lots have the right to grant access to adjacent lots with their own separate and independent access to a public way (Washington Street)? Does the owner of some of the lots have the right to burden the remaining owners with a significant increase in use? What is the language creating Washington Terrace? Does it allow the proposed use?

D. Size of the site. The Surveyor's description says the parcel to be rezoned is 127,985 square feet of land. The Petitioner says the land of the project is 123,965 square feet

and the Newton Assessors Records show the land comprises 114,915 square feet of land, 37,561 square feet zoned BU 1 and 77,354 square feet zoned BU 2.

ITEM	CLAIMED	ACTUAL
Lot Size	123,965 sq. ft.	114,915 sq. ft.

Address	Sec 21, Bk 29 Lot #	Value	Zoning District	Area
241 Walnut Street	10	\$ 950,000.00	BU 2	7,794 sq. ft.
245-261 Walnut Street	11	\$ 2,818,100.00	BU 1	12,788 sq. ft.
848-855 Washington Street	12	\$ 2,052,400.00	BU 1	7,478 sq. ft.
14-18 Bailey Place	13	\$ 234,600.00	BU 2	9,457 sq. ft.
22 Bailey Place	14	\$ 281,600.00	BU 2	6,914 sq. ft.
Bailey Place (Lot 15)	15	\$ 112,700.00	BU 2	3,364 sq. ft.
861-865 Washington Street	16	\$ 1,860,500.00	BU 2	17,072 sq. ft.
857-859 Washington Street	17	\$ 1,163,200.00	BU 1	3,235 sq. ft.
867 Washington Street	18	\$ 722,200.00	BU 1	3,300 sq. ft.
869 Washington Street	19	\$ 391,700.00	BU 2	19,971 sq. ft.
875 Washington Street	19A	\$ 696,200.00	BU 1	10,760 sq. ft.
6-8 Washington Terrace	20	\$ 544,300.00	BU 2	2,345 sq. ft.
10-12 Washington Terrace	21	\$ 588,000.00	BU 2	1,855 sq. ft.
16-18 Washington Terrace	22	\$ 439,800.00	BU 2	4,200 sq. ft.
22 Washington Terrace	23	\$ 474,500.00	BU 2	4,382 sq. ft.
TOTAL		\$13,329,800.00		114,915 sq. ft.

Business Use 1 area	37,561 sq. ft.
Business Use 2 area	77,354 sq. ft.
Total	114,915 sq. ft.

E. Site Density. Does the City of Newton now allow the same land to be counted twice when calculating density? The Petitioner has counted the land area once to determine the Floor Area Ratio of the proposed business use and the proposed business parking on the site. Then, the same area has been counted again to measure against the required density of 1,000 square feet per residential unit.

ITEM	REQUIRED	PROPOSED	ACTUAL
Lot Area per Dwelling Unit	1,000 sq. ft.	725 sq. ft	151 sq. ft.

The proposed density of 725 sq. ft per dwelling unit is achieved by double counting.

The Total Land Area, according to the Newton Assessors Records, is 114,915 square feet of land.

In calculating the adherence to the density requirements of the Newton Zoning Ordinance:

First, 49,325 sq. ft. ground floor area is set aside for retail use.

[PCA PROJECT #: 15063 Cover sheet]

Second, 39,745 sq. ft. ± is set aside for commercial parking.

[PCA PROJECT #: 15063 Cover sheet]

The remainder of 25,845 sq. ft. ± is available for Residential Units.

The density calculation for 171 residential units is arrived at by dividing the proposed 171 units into the 25,845 square feet of remaining land area.

The result is 151 sq. ft. per unit, a waiver of 85% of the density requirement.

The Issue is can the land be counted twice for different uses when calculating density requirements? If so, will the double counting calculation apply to every zone or just Mixed Use Zones?

F. Open Space.

The Developer claims 10% open space, whereas the project contains 4.48% open space, less than the required amount.

ITEM	REQUIRED	PROPOSED	ACTUAL
Open Space	5% / 5,746 sq. ft.	10% / 12,396 sq. ft,	4.48%

PCA PROJECT #: 15063, Plan C3.2 describes the proposed open space as follows:

Hardscape *	9,670 sq. ft.
Roof Deck	1,643 sq. ft.
Roof Deck	<u>1,957 sq. ft.</u>
Total	13.270 sq. ft

* included in the Hardscape calculation is a significant portion of Bailey Place
Approximately 138 feet of length by 30 feet width = 4,140 sq. ft

If the roof deck space (3,600 sq. ft.) and Bailey Place (4,140 sq. ft.) are eliminated the remaining open space contributed by the developer is 5,530 sq. ft. that appears from the plans to be mostly space providing access to the buildings [5,530/114,915 = 4.8%].

5,530 sq. ft. of open space is less than the Ordinance requirement of 5%.

G. Traffic Experts and Traffic Study.

A review of the Traffic Impact and Access Study prepared by Vanasse Hangen Brustlin, Inc. leads to the Conclusion that the traffic counts, the projections and the calculations contained in the Traffic Study, as supplemented by their public hearing presentation, do not provide any reasonable hope that the addition of the proposed project to the Village of Newtonville will alleviate existing traffic problems on Walnut Street, Washington Street or Lowell Avenue. It appears that the proposed project will most likely exacerbate existing traffic problems on Walnut Street, Washington Street and Lowell Avenue. It also raises the question as to the sufficiency of the proposed parking plan and allotment.

The VHB Traffic Study would have us believe this project and the extra residents and traffic it causes will improve traffic conditions in Newton and reduce delays. This seems curious and there are a number of questions and issues that suggest otherwise.

- Traffic data were not collected at the places where the project will have its largest negative impacts and only one day was sampled. A larger sample and additional locations are needed to produce a valid assessment of traffic impacts.
- The trip estimates assume all existing trips disappear so the net effect is only the new trips generated by the project. This incorrectly minimizes the project's traffic impact because most if these trips will still occur on Newton streets – and mostly in the same Newtonville area.
- There are many “curious” or improbable results in the intersection delay results that need to be explained and/or corrected.
- The claimed benefits from reduced access points ignore the fact that total exposure is greater because there are more vehicles using the project site. More vehicles interacting with pedestrians is worse even if the number of places where this occurs is fewer.
- These are inconsistencies between the MPO corridor study and the intersection improvements assumed by VHB. Some of the assumed benefits may not be realized.

The Executive Summary says: VHB, Inc. has completed a *detailed traffic assessment* to evaluate the potential impacts associated with the mixed use *transit oriented redevelopment* know as Washington Place to be located at northwest corner of the intersections of Washington Street and Walnut Street in the *Newtonville section* of Newton, Massachusetts.

At the Public Hearing on August 12, 2016, both traffic experts seemed to agree that the proposals to include a bicycle lane on Walnut Street and relieve traffic congestion by adding a 2nd southbound traffic lane on Walnut Street were incompatible.

They also agreed that the Walnut Street southbound traffic queue is 900 feet and would be reduced to 250 feet by adding a second traffic lane and eliminating the bicycle lane. The claim of a 900 foot traffic queue is disputed on the grounds that it is longer than 900 feet. The claim that a 900 foot traffic queue would be reduced to 250 feet by adding a 2nd traffic lane is disputed as mathematically incorrect.

The Traffic Experts also agree that now, before the addition of the Project, “some of the movements” on Washington & Walnut Streets are at a maximum.

H. Transit Oriented Development

Under the Newton Zoning Ordinance a Transit Oriented Development (TOD) requires a minimum of 9 acres (392,040 square feet). The proposed Washington Place project site contains less than 3 acres (114,915 square feet). Also, a TOD is not an allowed use in the Mixed Use 4 Zone requested by the Developer. The project is mislabeled and improperly presented.

I. Site Environmental Contamination

Lot 19A, 875 Washington Street, the Sunoco Service Station, is a contaminated site. It is not approved for Residential Use.

The documents associated with the Sunoco station spill in 1994 are available at the Mass DEP. There has been no information as to a proposal to include the environmental issues/plans to remediate the site. It is the city's responsibility to ensure the site gets cleaned up.

Information is available at <http://public.dep.state.ma.us/SearchableSites2/Search.aspx>

Enter Newton, and Washington as the street, then sort by date. You will see 2 entries for 875 Washington St from 8/18/94 and 9/3/94. Each link has documents which can be downloaded. Below are links to some of the documents. The first one below is about the AUL (Activity Use Limitation) on the site, which states that the DEP considers the site low risk if it is continued to be used as a gas station or for other commercial use which does not disturb the soil. If the owner plans to use the site for an unapproved use, like housing or an underground garage, they need to get it cleaned up. *Currently it is not approved for residential use.*

Additional information may be available at:

<http://public.dep.state.ma.us/fileviewer/DefaultScanned.aspx?documentid=84971>

<http://public.dep.state.ma.us/fileviewer/Rtn.aspx?rtn=3-0011576>

<http://public.dep.state.ma.us/fileviewer/Rtn.aspx?rtn=3-0011485>

<http://public.dep.state.ma.us/fileviewer/DefaultScanned.aspx?documentid=84966>

CONCLUSION: Some may say that these conflicts are de minimus or inconsequential. I would disagree. I would suggest that the best resolution is for the developer to withdraw and re-file the Petition.

Peter F. Harrington

FACT CHECK REPORT # 1 — NOTICE DEFECTS

To: Newton Special Permit Granting Authority and Newton Planning Board

**Re: Docket Item #180-16, Special Permit Petition to rezone the Orr block to
Mixed Use 4**

Zone Change Application, Docket Item #180-16.

Docket Item #180-16 for a Zone Change does not appear to have an Application. However, attached to Docket Item #179-16 is a General Permit Application that makes reference to a zone change in a parenthetical expression indicating an additional future action, set out on the line identified by (ZONING DISTRICT: BU1 and BU2 (to be rezoned to MU4)).

The PROJECT DESCRIPTION describes a proposal to construct 3 buildings. It does not identify a Zone Change request.

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Also included in #180-16 documents is a “Surveyor’s Meets and Bounds Description”, dated May 6, 2016, by Control Point Associates, Inc. This document gives a perimeter description that does include lots 10 through 23 in Sec 21, Block 29, Bailey Place and a portion of Washington Terrace.

The petitioner’s written and signed General Permit Application, under Project Location Information does not include Bailey Place and a portion of Washington Terrace.

Assuming, for the sake of argument, that the above meets the minimum requirements for a proper petition for a change of zone, the question arises as to what property is being rezoned.

The legal notice published by the City of Newton, following the description of lots included as set out in the Applicants “Proposed Zoning Boundary” plan is also defective.

**The following is the official Notice of Public Hearing published as required under
The requirements of MGL c. 40A**

**“City of Newton
Legal Notice
Tuesday, June 7, 2016**

“Public hearings will be held on Tuesday, June 7, 2016 at 7:00 PM, second floor, Newton City Hall before the Land Use Committee of the Newton City Council for the purpose of hearing the following petitions at which time all parties interested in the items shall be heard. Notice will be published Tuesday, May 24, 2016 and Tuesday, May 31, 2016 in The Boston Globe and Wednesday, June 1, 2016 in the Newton Tab, with a copy posted on the city’s website at www.newtonma.gov and in a conspicuous place at Newton City Hall.

“#180-16 Special Permit Petition to rezone the Orr block to Mixed Use 4 MARK NEWTONVILLE, LLC. petition for SPECIAL PERMIT/SITE PLAN APPROVAL for a change of zone to MIXED USE 4 for a portion of land located at Walnut Street, Washington Street, Washington Terrace, also identified as Lots 10, 11, 12, 13, 14, 16, 19, 20, 21, 22, Block 29, Map 201 currently zoned Business 1 and Business 2.”

- 1. there is no authority to grant a Zone change by a Special Permit;**
- 2. the description of the site is inaccurate (there is no Map 201);**
- 3. the Notice to change the zone as to Lots 15, 17, 19A, 23, a portion of Washington Terrace and Bailey Place is defective.**

FACT CHECK REPORT # 1A — BAILEY PLACE

- 1. Bailey Place is a street shown on municipal records since the 1895 City Atlas. It's status as a public or private way is uncertain. There are indications it could be either.**
- 2. The deed to Bailey Place is not included in the Petitioner's site purchase. Bailey Place is not owned or under the control of the Petitioner.**
- 3. The Petitioner's Application does not include a request to re-zone Bailey Place.**

FACT CHECK REPORT # 1B — WASHINGTON TERR.

- 1. Washington Terrace is a street shown on municipal records since the 1886 City Atlas as a private way. The first gasoline powered automobile was invented by Karl Benz in 1886.**
- 2. Washington Terrace was created to provide access to the nine lots abutting the private way.**
- 3. There is no evidence that the developer's rights to use the way included the right to turn it into an access point for 346 parking spaces for gasoline powered automobiles.**
- 4. There is no evidence that the developer's rights to use the way included the right to turn it into an access point for land abutting Walnut Street, 450 feet distant.**
- 5. The proposed plans for Washington Terrace do not meet Newton requirements concerning sidewalks, lighting, handicapped access and pedestrian safety.**
- 6. There is no proposed covenant for maintenance of Washington Terrace.**

FACT CHECK REPORT # 2 Lot Size

To: Newton City Council & Newton Special Permit Granting Authority

Docket Item #179-16, Special Permit Petition for Orr Building at Walnut St. and Washington St.

Docket Item #180-16, Special Permit Petition to rezone the Orr block to Mixed Use 4

ITEM	CLAIMED	ACTUAL
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FACT CHECK REPORT # 3 DENSITY

To: Newton City Council & Newton Special Permit Granting Authority

Docket Item #179-16, Special Permit Petition for Orr Building at Walnut St. and Washington St.

Docket Item #180-16, Special Permit Petition to rezone the Orr block to Mixed Use 4

ITEM	REQUIRED	PROPOSED	ACTUAL
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[PCA PROJECT #: 15063 Cover sheet]

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The remainder of 25,845 sq. ft. \pm is available for Residential Units.

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The result is 151 sq. ft. per unit. A waiver of 85% of the density requirement.

The Issue is: can the land be counted twice for different uses when calculating density requirements?

If so, will the double counting calculation apply to every zone or just Mixed Use Zones?

FACT CHECK REPORT # 4 GROSS FLOOR AREA

To: Newton City Council & Newton Special Permit Granting Authority

Docket Item #179-16, Special Permit Petition for Orr Building at Walnut St. and Washington St.

Docket Item #180-16, Special Permit Petition to rezone the Orr block to Mixed Use 4

ITEM	PROPOSED by Special Permit	PERMITTED UNDER EXISTING ZONING by Special permit
Gross Floor Area	238,075 sq. ft.	211,049 sq. ft.,

The site contains 114,915 square feet of land in two zoning districts, BU 1 & BU 2.
The developer can build 114, 915 square feet of space in two stories.

There is 37,561 square feet of land zoned Business Use 1.
There is 77,354 square feet of land zoned Business Use 2.

The allowed Floor Area Ratio (FAR) in Business Use 1, under a Special Permit, is 1.5

The allowed Floor Area Ratio (FAR) in Business Use 2, under a Special Permit, is 2.0

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

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

**CALCULATION: of maximum FAR permitted under current zoning
BU 1 56,345 sq. ft. + BU 2 154,708 sq. ft. = 211,049. sq. ft**

FACT CHECK REPORT # 5 OPEN SPACE

To: Newton City Council & Newton Special Permit Granting Authority

**Docket Item #179-16, Special Permit Petition for Orr Building at
Walnut St. and Washington St.**

**Docket Item #180-16, Special Permit Petition to rezone the Orr block to
Mixed Use 4**

ITEM	REQUIRED	PROPOSED	ACTUAL
Open Space	5% / 5,746 sq. ft.	10% / 12,396 sq. ft,	?%

PCA PROJECT #: 15063, Plan C3.2 describes the proposed open space as follows:

Hardscape *	9,670 sq. ft.
Roof Deck	1,643 sq. ft.
Roof Deck	<u>1,957 sq. ft.</u>
Total	13.270 sq. ft

* included in the Hardscape calculation is a significant portion of Bailey Place
Approximately 138 feet of length by 30 feet width = 4,140 sq. ft

If the roof deck space (3,600 sq. ft.) and Bailey Place (4,140 sq. ft.) are eliminated the
remaining open space contributed by the developer is 5,530 sq. ft. that appears from the
plans to be mostly interior access space.

5,530 sq. ft. of open space is less than the Ordinance requirement of 5%.