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James Freas
Acting Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: March 17, 2015
Land Use Action Date: March 31, 2015
Board of Aldermen Action Date: April 6, 2015
90-Day Expiration Date: June 1, 2015

DATE: March 13, 2015

TO: Board of Aldermen

FROM: James Freas, Acting Director of Planning and Development
Alexandra Ananth, Chief Planner for Current Planning
Daniel Sexton, Senior Planner 

SUBJECT: **Petition #39-15**, SCOTT CUSICK/PISICK LLC./JOSHUA SHRIBER 7 PATIENCE ORBELLO, for a SPECIAL PERMIT/SITE PLAN APPROVAL for 18, 22, and 26 GODDARD STREET, Ward 8, Newton Highlands, to allow a build factor of 28.08, where 20 is the maximum allowed in a district zoned SINGLE RESIDENCE 3, in order to create two conforming lots from three lots and to legitimize two existing structures at (1) 22 Goddard Street, which will have 8,000 sq. ft. and (2) 26 Goddard (a partially complete new dwelling), which will have 7,000 sq. ft. Ref: Sec. 30-24, 30-23, 30-15(p) 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.



18, 22, and 26 Goddard Street

EXECUTIVE SUMMARY

The properties at 18, 22, and 26 Goddard Street consist of 15,000 square feet of land, and are improved as follows: 26 Goddard Street (Lot 109) has an almost fully constructed single-family house, 22 Goddard Street (Lot 110) has an existing single-family dwelling that was rehabbed and is now occupied, and 18 Goddard Street (Lot 111) remains vacant (partially constructed foundation). The petitioner obtained a building permit for the erection of a single-family dwelling on 26 Goddard Street; however, the issuance of the permit was overturned by the Zoning Board of Appeals (ZBA) per the outcome of *Mauri v. Newton Zoning Board of Appeals*, 2011¹. The ZBA determined that the three lots were merged for the purposes of zoning, and were required to meet the dimensional controls for "Old Lots". The petitioner is seeking a special permit to legitimize the two existing structures by creating two lots from three lots, which conform to the old lot dimensional controls. In order to do this, the petitioner is proposing to use §30-15(p) of the Newton Zoning Ordinance (NZO), commonly referred to as the "Build Factor" formula, which restricts the creation of irregular shaped lots. Of the two lots being proposed, one has a build factor of 28.08 (lot at 26 Goddard Street), where 20 is the maximum allowed in a Single Residence 3 (SR3) district.

As proposed, the subdivision will create two irregular shaped parcels consisting of the lot at 22 Goddard Street with 8,000 square feet of land and the lot at 26 Goddard Street with 7,000 square feet of land. The newly created parcels will comply with all the dimensional controls for old lots in a SR3 district, except for the front setback of the lot at 22 Goddard Street which will remain nonconforming at 18 feet. The Planning Department notes that the lot at 22 Goddard Street will have a build factor of 18.13, which is compliant with the NZO. Further, the petitioner has indicated that the immediate abutters are supportive of this petition.

The Planning Department has no particular concerns with the proposed irregular shaped lots. The Planning Department is, however, apprehensive about the proposed "Easement Area" shown on the subdivision plan, as it effectively reduces the usable lot area of 26 Goddard Street parcel from 7,000 square feet to 5,000 square feet. The petitioner's legal counsel has indicated that the easement is necessary to comply with the settlement agreement between the petitioner and abutting property owners, and that the easement allows the development pattern of the parcels to remain in their current conditions. For these reasons, the Planning Department supports this petition.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Board should consider whether:

- The site is an appropriate location for the proposed two single-family lots. (§30-24(d)(1))
- The uses as developed and operated will not adversely affect the neighborhood.

¹ *Mauri v. Newton Zoning Board of Appeals*, 2011 WL 9686649, 19 LCR 626.

(§30-24(d)(2))

- The proposed two single-family lots will not create a nuisance or serious hazard to pedestrians or vehicles in the surrounding neighborhood. (§30-24(d)(3))
- Access to the parcels in question over Goddard Street is appropriate for the types and numbers of vehicles involved. (§30-24(d)(4))

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The parcels affected by this petition are located on Goddard Street near the intersection of Goddard Street at Winchester Street. The subject properties are immediately abutted by other parcels containing single-family dwellings, and are proximate to the Charles River Country Club (**ATTACHMENT B**). The immediate neighborhood, including the subject properties, are zoned SR3 (**ATTACHMENT C**). On the other side of Winchester Street, there are a number of parcels zoned Single Residence 1.

B. Site

The properties at 18, 22, and 26 Goddard Street total 15,000 square feet of land, and are improved as follows: 26 Goddard Street (Lot 109) has a single-family house constructed to almost completion, 22 Goddard Street (Lot 110) has an existing single-family dwelling that was rehabbed and is now occupied, and 18 Goddard Street (Lot 111) remains vacant (partially constructed foundation). The original subdivision of these parcels created three separate parcels each containing 5,000 square feet. The issuance of the building permit authorizing the construction of the dwelling at 26 Goddard Street was appealed by an abutter to the ZBA, where the issuance of the permit was overturned. Subsequently, the Inspectional Services Department required the petitioner to stop work on the dwelling, which has stood partially completed and vacant for almost a year. The vehicular access to the subject properties is provided from Goddard Street.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The use of the two proposed lots will be single-family residences. The Planning Department believes the proposed uses will not adversely impact the neighborhood since they are consistent with the uses found in the immediate area, and that the proposed density will not be greater than the abutting properties.

B. Building and Site Design

The proposed subdivision will redraw the property boundaries for three existing

substandard lots to create two lots conforming to the old lot dimensional controls for the SR3 district. Although the two proposed lots will have an irregular shape, they will otherwise comply with all other dimensional controls for old lots in an SR3 district, except for the existing nonconforming front setback of the dwelling at 22 Goddard Street, which will remain nonconforming at 18 feet. This petition would also legitimize the use of the partially constructed dwelling at 26 Goddard Street.

In order to redraw the lot lines to create two irregular shaped lots, the petitioner is requesting a special permit to exceed the allowable build factor under §30-15(p). The result building factors for the proposed lots will be 18.13 for the new lot at 22 Goddard Street and 28.08 for the new lot at 26 Goddard Street, where a build factor of 20 is the maximum allowed in an SR3 district. At the suggestion of the Planning Department, the petitioner has drawn the proposed lot line so that one of the proposed parcels does not require relief for a build factor. The petitioner is also proposing to relocate the driveway for 22 Goddard Street from the eastern side to the western side of the residence.

The Planning Department is not concerned with the irregular shape of the lots being proposed, since the layout ensures that the existing two structures will be compliant with the old lot dimensional controls for a SR3 district while minimizing the number of lot line jogs. The Planning Department is, however, apprehensive about the proposed "Easement Area" shown on the subdivision plan, as it reduces the usable lot area of 26 Goddard Street from 7,000 square feet to 5,000 square feet. The petitioner's legal counsel has indicated that the easement is necessary to comply with the settlement agreement between the petitioner and abutting property owners. The petitioner also contends that the easement allows the development pattern of the parcels to remain in their current conditions. For these reasons, the Planning Department supports this petition.

C. Landscape Screening

The subject properties are minimally screened from the public way. A portion of 22 Goddard Street is screened by a sight-obscuring stockade fence, which encloses the rear yard. The petitioner did not provide a landscape plan, as no additional plantings or fences are proposed at this time. To mitigate the potential off-site impacts associated with the development of additional dwelling units and parking areas, the Planning Department would typically suggest screening along the adjoining property lines. The petitioner has indicated that the abutting property owners do not desire additional screening.

The Planning Department notes that portions of the sight-obscuring fence surrounding the rear yard of 22 Goddard Street will cross the proposed property line between the two new parcels. According to the terms of the easement, the maintenance of this fence will be the responsibility of 22 Goddard Street. This is a unique arrangement, but is the result of the settlement agreement.

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 A**). Based on the completed Zoning Review Memorandum, the petitioner is seeking the following reliefs:

- §30-15(p), to allow a build factor of 28.08 for 26 Goddard Street.

B. Engineering Review

The Engineering Division of Public Works reviewed the proposal with regard to engineering issues (**ATTACHMENT D**). The Associate City Engineer has indicated that the utilities associated serving the two structures on the proposed lots have been inspected during their installation, but that final as-built surveys are needed. Additionally, documentation for the proposed easement is needed to understand its potential impact on the two parcels. The petitioner also needs to file an Approval Not Required plan in accordance with M.G.L. Chapter 41 Section 81P to create the two proposed lots.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time. The petitioner is encouraged to consider the concerns raised by the Planning Department and Engineering Division of Public Works in advance of the public hearing.

ATTACHMENTS:

- ATTACHMENT A:** Zoning Review Memorandum, dated February 4, 2015
ATTACHMENT B: Land Use Map
ATTACHMENT C: Zoning Map
ATTACHMENT D: Engineer Review Memorandum, dated February 25, 2015



Setti D. Warren
Mayor

Attachment A

City of Newton, Massachusetts

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James Freas
Acting Director

ZONING REVIEW MEMORANDUM

Date: January 21, 2015

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Scott Cusick, Pitsick LLC
James Freas, Acting Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to exceed maximum lot build factor

Applicant: Pitsick, LLC	
Site: 22 and 26 Goddard Street	SBL: 83034 0013 and 83034 0012
Zoning: SR-3	Lot Area: 15,000 square feet
Current use: Two single-family dwellings	Proposed use: No change

BACKGROUND:

The properties at 22 and 26 Goddard Street, as well as the vacant parcel east of 22, were the subject of a recent ZBA decision. Each lot is 5,000 square feet with 50 feet of frontage, the minimum required by state statute. The owner of the parcels received building permits to rehab the existing single-family dwelling at 22 Goddard St, as well as permits to construct new single-family dwellings on the vacant lots on either side. Based on the outcome of *Mauri v. Newton Zoning Board of Appeals*, 2011 WL 9686649, 19 LCR 626, the ZBA determined that the vacant lots merged with the house lot (#22) for the purposes of zoning, and were required to meet the dimensional standards for "old lots". A house was constructed to almost completion on the lot known as 26 Goddard Street, while the lot on the other side of 22 Goddard Street remains vacant.

Goddard St

#26	#22	Vacant lot
(new dwelling)	(existing house)	5,000 sf
5,000 sf	5,000 sf	50 feet of frontage
50 feet of frontage	50 feet of frontage	

The applicant would like to legitimize the two existing structures and create two lots which conform to the required old lot dimensional standards. To achieve this, the lot lines will be redrawn. The Newton Zoning Ordinance has provisions which limit the degree to which a lot may have an irregular shape, known as the build factor. The higher the build factor, the more irregular the shape of the lot. The redrawing of the lot lines in this situation creates a build factor of 28.08 for the property at 26 Goddard Street. A special permit is required to create a lot with a build factor in excess of 20, the maximum allowed in the SR3 district.

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

- Zoning Review Application, prepared by Scott Cusick, Pitsick LLC, dated 12/10/2014
- FAR Worksheet, prepared by Scott Cusick, Pitsick LLC, dated 12/10/2014
- Subdivision Plan, signed and stamped by George C. Collins, surveyor, dated 11/4/2014

ADMINISTRATIVE DETERMINATIONS:

1. The applicant would like to complete the dwelling at 26 Goddard Street, as the building permit was revoked after an appeal to the ZBA by abutters. To mitigate the cause for appeal, the applicant proposes to change the existing lot lines creating three 5,000 square foot lots, and to instead create two lots. The lot at 22 Goddard Street will have 8,000 square feet, and the lot at 26 Goddard Street will have 7,000 square feet, both conforming. To create these new lot lines with existing structures produces irregularly shaped lots, resulting in the lot at 26 Goddard Street to have a build factor of 28.08, which requires a special permit pursuant to Section 30-15(p).

22 Goddard Street – Built in 1923			
SR3 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	5,000 square feet	8,000 square feet
Frontage	70 feet	50 feet	80 feet
Setbacks			
• Front	25 feet	18 feet	No change
• Side	7.5 feet	7.5 feet	No change
• Rear	15 feet	33 feet	15 feet
Lot Build Factor	Less than 20	.03	18.13
26 Goddard Street – Under construction			
Lot Size	7,000 square feet	5,000 square feet	7,000 square feet
Setbacks			
• Front	25 feet	25.7 feet	No change
• Side	7.5 feet	11.2 feet	No change
• Rear	15 feet	35 feet	No change
Lot Build Factor	Less than 20	.03	28.08

1. See "Zoning Relief Summary" below:







Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§30-15(p)	To allow a lot build factor of 28.08	S.P. per §30-24

Land Use Map 18, 22, and 26 Goddard Street

*City of Newton,
Massachusetts*

ATTACHMENT B

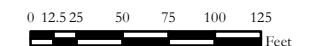
Legend

-  Property Boundaries
-  Building Outlines
- Land Use**
-  Single Family Residential
-  Golf Course
-  Open Space
-  Vacant Land

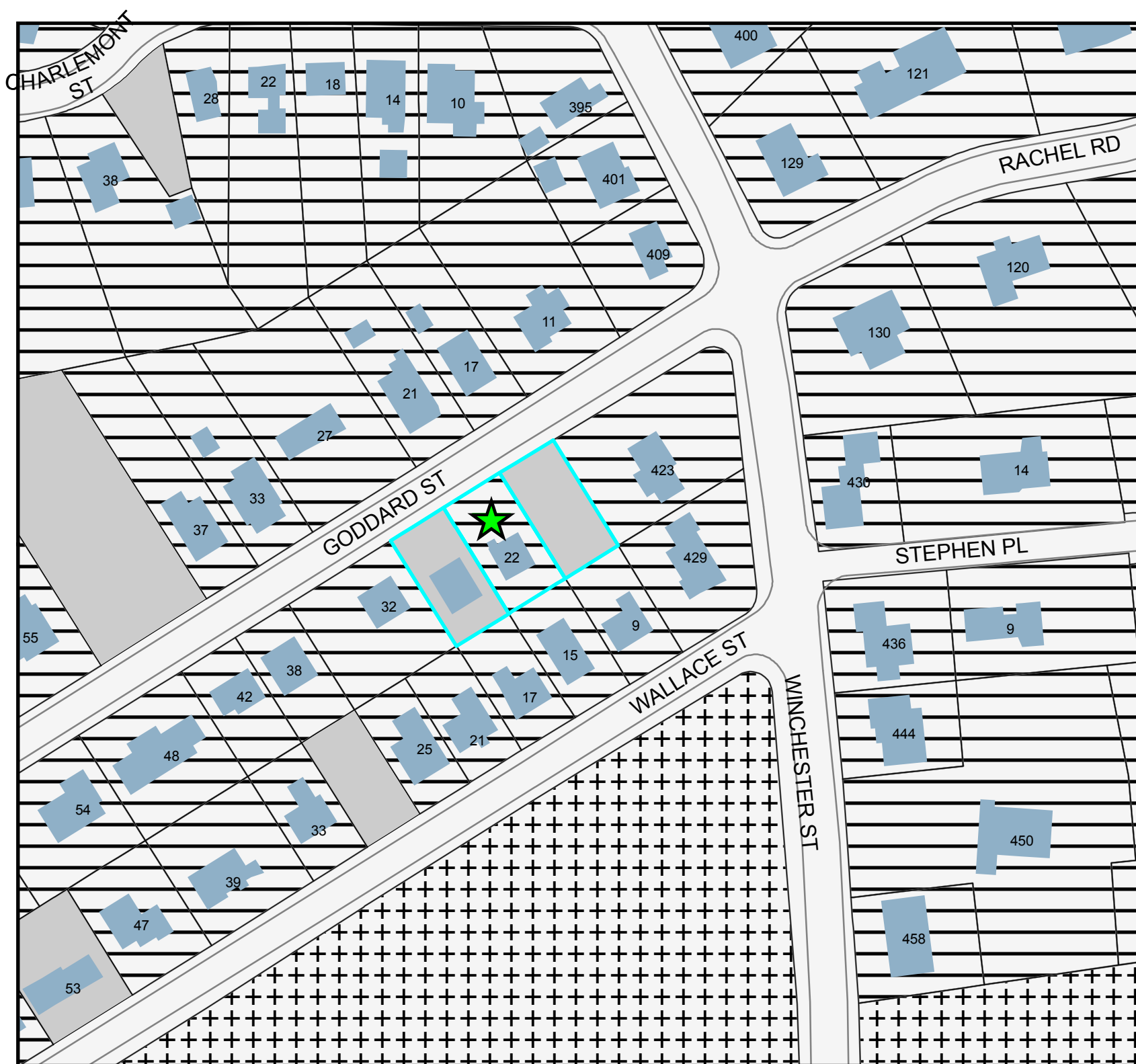


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

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



Map Date: February 18, 2015







Zoning Map 18, 22, and 26 Goddard Street

*City of Newton,
Massachusetts*

ATTACHMENT C

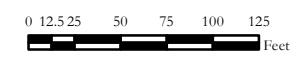
Legend

-  Single Residence 1
-  Single Residence 3
-  Property Boundaries
-  Building Outlines

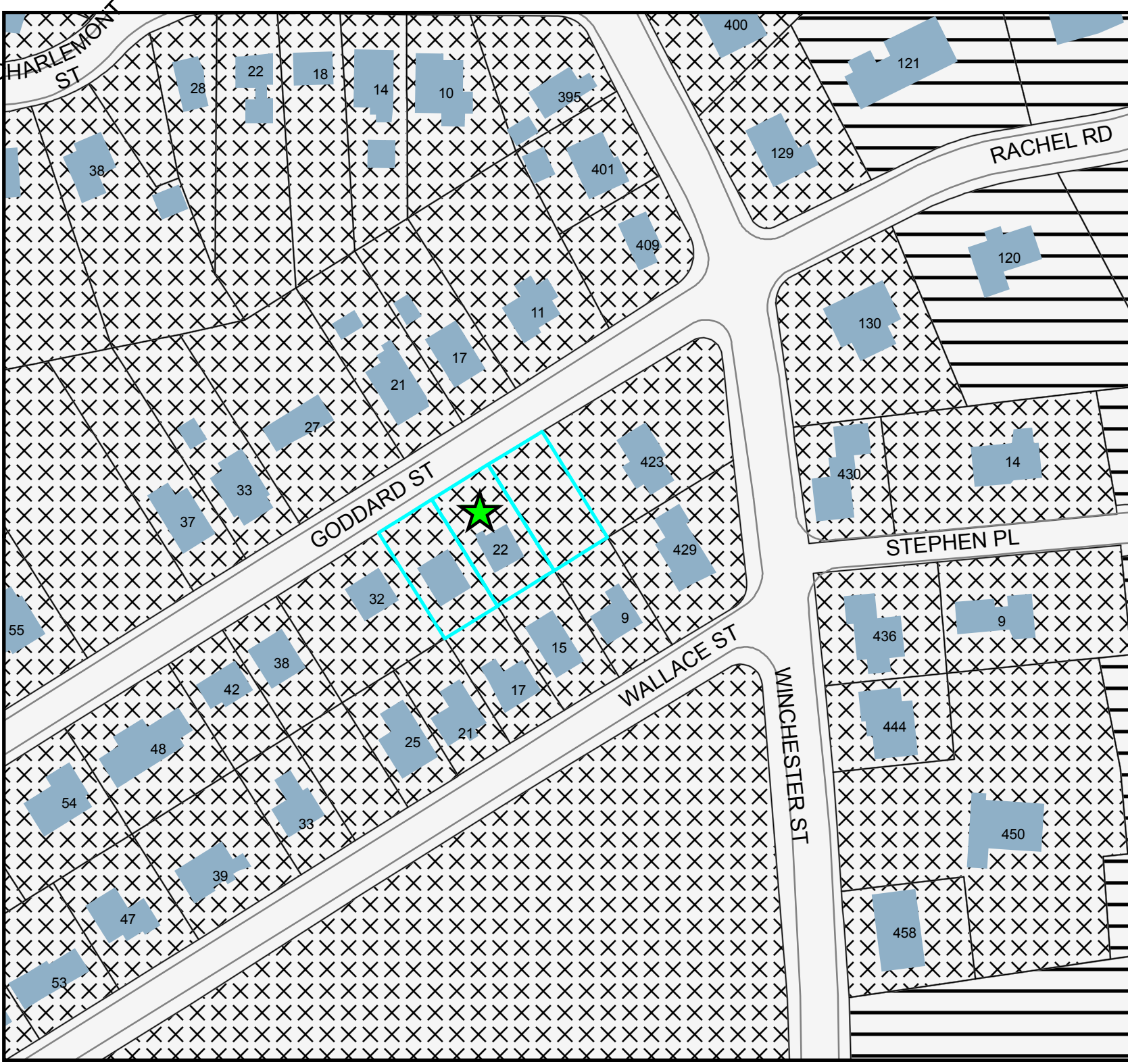


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Map Date: February 18, 2015



**CITY OF NEWTON
DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION**

MEMORANDUM

To: Alderman Mark Laredo, Land Use Committee Chairman
From: John Daghlian, Associate City Engineer
Re: Special Permit – 22 Goddard Street
Date: February 25, 2015
CC: Lou Taverna, PE City Engineer
Linda Finucane, Associate City Clerk
Alexandria Ananth, Chief Planner
Dan Sexton, Sr. Planner

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

*Plot Plan Showing Proposed 2 Story Home
Lot 109
Newton, MA
Prepared by: Neponset Valley Survey Association Inc.
Dated: October 13, 2011
Revised: 12/1/11
And
Utility Plan
Located at #22-26 Goddard Street
Prepared by: Boston Survey, Inc.
Dated: 9/9/11
Revised: 1/30/15*

Executive Summary:

This is a after the fact filing, somehow a Building permit was issued and this single family home is already constructed, all utilities have been installed and inspected and the applicant needs to submit an As-Built plan. The Utility plan indicates new property lines and easements that need clarification. Not having any easement documentation [description] for review I cannot comment on these proposed easements.

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

If a Certificate of Occupancy is requested prior to all site work being completed.

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

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