



Setti D. Warren  
Mayor

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

Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
[www.newtonma.gov](http://www.newtonma.gov)

Candace Havens  
Director

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**PUBLIC HEARING MEMORANDUM**

Public Hearing Date: September 10, 2013  
Land Use Action Date: September 24, 2013  
Board of Aldermen Action Date: November 18, 2013  
90-Day Expiration Date: December 2, 2013

DATE: September 6, 2013

TO: Board of Aldermen

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

SUBJECT: **Petition #259-13**, Cypress Development LLC, for a SPECIAL PERMIT/SITE PLAN APPROVAL to extend a non-conforming use/structure to allow the expansion of a legal nonconforming three family dwelling and to locate 4 parking stalls 6 feet from the side lot line at **43-45 High Street**, Newton Upper Falls, Ward 5, on land known as SBL 51, 8, 5, containing approximately 25,618 s.f. of land in a district zoned MULTI-RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-21(a)(2)(a), 30-21(b), 30-9(b)(5)a and b), 30-19(m), of the City of Newton Rev Zoning Ord, 2012.

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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.



**43-45 High Street**

### **EXECUTIVE SUMMARY**

The property at 43-45 High Street consists of a 25,618 square foot lot improved with a three-family residence with two attached garages built circa 1880. The petitioner is proposing to renovate the existing structure, and to replace the portion of the building that extends towards the rear of the site with a new structure that extends an additional 30 feet. The petitioner is also proposing to adjust the driveways and parking on the site, and to add new patio areas. The petitioner is requesting a special permit to allow for the expansion of a legal nonconforming three-family dwelling and to locate a parking stall six feet from the side lot line. The proposed site plan and elevations have been approved by the Newton Upper Falls Historic District Commission.

The site abuts residential properties to the north and south, and a larger building containing condominiums, the Upper Falls Nursery school, and the Emerson Community Center to the east. The proposed addition to the rear of the structure will be setback from the north, south and east property lines by approximately 30, 70, and 21 feet, respectively. The rear of the lot that abuts the site to the east serves as a parking lot and will not be impacted by the proposed addition. The northern and eastern property lines are well vegetated and screened, and the southern property line is partially screened. The proposed landscaping plan replaces the existing vegetation on portions of the site but generally maintains the same level of screening.

While the petitioner is proposing to expand the residential structure and the impervious area, they are not increasing the number of units, building orientation, or vehicle circulation. The Planning Department believes that the proposed addition to the residence and other minor changes to the site are not in derogation of the size, scale and design of other structures in the neighborhood and will not be substantially more detrimental than the existing use. The Planning Department also believes that the changes to the driveway and parking areas, and the addition of a third garage will not adversely impact vehicle circulation on the site.

#### **I. SIGNIFICANT ISSUES FOR CONSIDERATION:**

When reviewing this request, the Board should consider whether:

- The extension of the use is not substantially more detrimental than the existing nonconforming use to the neighborhood.
- The extension of the structure will not be in derogation of the character, size and design of other structures in the neighborhood.
- The location of a parking stall six feet from the lot line and the addition of a third garage will improve the parking on the site.

## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The site is located on High Street between Winter Street and Elliot Street in the Newton Upper Falls Historic District. The neighborhood is densely populated with two-family and multi-family residences. Abutting the property in the rear/east are the Falls Ridge Condominiums, the Emerson Community Center and the Upper Falls Nursery School. Abutting the property to the north and south are two-to three-family houses. The site and the immediate area are zoned Multi-Residence 1.

### B. Site

The site consists of 25,618 square feet of land and is improved with a 2½-story three-family house with two attached garages. The house has two side-by-side units in the front and one unit in the rear. There is also a detached shed on the site. The site is the shape of an ell, with a portion of the site extending behind the property abutter to the north. A paved driveway runs along the southern property line and accesses the attached garages and an informal gravel parking area. The site slopes down significantly from the rear of the lot to the street. The site is heavily vegetated and well screened along most of the property lines.

## III. PROJECT DESCRIPTION AND ANALYSIS

### A. Land Use

The property will remain a three-family residence.

### B. Building and Site Design

The petitioner is proposing to renovate the existing residential structure, and to replace the portion of the structure that extends towards the rear of the site with a new structure that will extend an additional 30 feet. The proposed structure will include three attached garages, with the one closest to the rear partially below grade. The rear of the proposed addition will be 2½ stories instead of two stories, and the entire addition will have significantly more windows than the current structure.

The petitioner will also add new walkways and patios, add a new drainage system, add new landscaping, improve the existing driveway and extend it to the new garage, and create formalized parking spaces in the parking area. The proposed site plan will remove four trees, several shrubs, and pave over the gravel parking area.

The proposed elevations and massing were reviewed and approved by the Upper Falls Historic District Commission. The Planning Department believes that the proposed addition to the residential structure and the other minor changes to the site are not in derogation of the size, scale and design of other structures in the neighborhood and will not be substantially more detrimental than the existing use.

C. Parking and Circulation

The proposed site plan includes a third garage for the rear unit. The partially below-grade garage is accessed by a short driveway off of the main driveway. The driveway width is not provided on the plan; however, based on the scale of the plans the occupants should be able to back out of the driveway and into the main parking area to turn around. The two existing garages will be demolished and rebuilt on essentially the same footprint.

The proposed site plan indicates minor adjustments to the main driveway width and location, as well as new striping for four formalized parking stalls in the parking area. The Planning Department noted that only one of the four stalls is located six feet from the side lot line, not four as indicated in the public notice. The Planning Department believes that formalizing the parking stalls on the southern property line will improve parking on the site.

D. Landscape Screening and Fencing

Except for a portion of the southern property line the site is well screened from abutters by vegetation and fencing. The proposed site plan removes several trees and shrubs, most of which appear to be replaced or are not essential for screening. The proposed site plan shows new trees and shrubs being planted throughout the site and along the southern property line. The petitioner should file a tree removal application with the Tree Warden.

The Planning Department believes that the proposed landscaping plan will maintain the existing screening on the site.

IV. TECHNICAL REVIEW

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

The Zoning Review Memorandum, (**ATTACHMENT A**), provides an analysis of the proposal with regard to zoning. The petitioner is requesting a special permit to allow for the expansion of a legal nonconforming three-family dwelling and to locate parking six feet from the side lot line.

B. Engineering Review

The Engineering Department reviewed the site plan and provided comments in the Engineering Memorandum, (**ATTACHMENT B**). The Department's main concerns were the overflow connection from the site to the City's drainage system, and the need for a trench drain at the bottom of the driveway to reduce runoff onto High Street. The Department believes that the site is large enough to infiltrate a 100-year storm event and runoff on site. The petitioner should revise the drainage plans accordingly prior to being scheduled for a working session.

V. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum, the petitioner is seeking the following reliefs:

- Section 30-21(a)(2)(a), to allow the expansion of a legal nonconforming three-family dwelling
- Section 30-19(m), to locate a proposed parking stall six feet from the side lot line

VI. PETITIONER'S RESPONSIBILITIES

The petition is complete at this time.

**ATTACHMENTS:**

- Attachment A:** Zoning Review Memorandum  
**Attachment B:** Engineering Review Memorandum  
**Attachment C:** Zoning Map  
**Attachment D:** Land Use Map  
**Attachment E:** Newton Upper Falls Historic District Commission Approval



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Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
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**Attachment A**

(617) 796-1142  
TDD/TTY  
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www.newtonma.gov

Candace Havens  
Director

**ZONING REVIEW MEMORANDUM**

**Date:** July 24, 2013

**To:** John Lojek, Commissioner of Inspectional Services

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

**Cc:** Rhanna Kidwell, Cypress Development LLC  
Candace Havens, Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Request to expand an existing nonconforming three-family dwelling**

| <b>Applicant: Cypress Development LLC</b> |   |
|---|---|
| <b>Site:</b> 43-45 High Street            | <b>SBL:</b> 51008 0005                              |
| <b>Zoning:</b> MR-1                       | <b>Lot Area:</b> 25,618 square feet                 |
| <b>Current use:</b> Three-family dwelling | <b>Proposed use:</b> Expanded three-family dwelling |

**BACKGROUND:**

The property at 43-45 High Street is improved with a legally nonconforming three-family dwelling, built circa 1880. Historic records indicate that the structure has been used as a three-family dwelling since as early as 1899. As the property is in the Newton Upper Falls Local Historic District, the proposed site plan and elevations have been approved by the Newton Upper Falls Historic District Commission. The Commission denied the applicant’s original proposal, and required significant changes before approving the plans proposed in this memo.

The applicant proposes to expand the existing structure to increase the size of the individual units, while not increasing the total number of units. The applicant proposes to maintain the main structure, and to demolish the rear ell and rebuild a larger ell which will include a total of three units and associated parking garages. The applicant proposes to maintain the existing driveway, add three one-car garages and reconfigure existing surface parking for four cars. Per Section 30-21(a)(2)(a), a special permit is required to expand the structure’s size, as it is a nonconforming use within the district.

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

- Zoning Review Application, prepared by Rhanna Kidwell, Cypress Development LLC, submitted 7/3/13
- Record of Action, Newton Upper Falls Historic District Commission, dated 6/17/13
- Zoning Plan, signed and stamped by Joseph Porter, Surveyor, dated 6/28/13

- Elevations, drawn by H. Bernal, Casa Sangiolo, dated 5/29/13

**ADMINISTRATIVE DETERMINATIONS:**

1. The subject property is located in the MR-1 zoning district. The structure pre-dates zoning and is therefore a legally nonconforming use. To expand a nonconforming structure requires a special permit per Section 30-21(a)(2)(a).
2. The plans show a proposed rear setback of 20.9 feet. Section 30-15 Table 1 requires a 15 foot rear setback for lots created prior to 1953. No relief is required.
3. Section 30-19(g) prohibits parking within the setback. The four proposed parking spaces are within 6 feet of the side lot line and therefore require a waiver under §30-19(m).

| MR1 Zone        | Required/Allowed   | Existing                                 | Proposed               |
|-----------------|--------------------|--|------------------------|
| Lot Size        | 15,000 square feet | 25,618 square feet                       | No change              |
| Frontage        | 80 feet            | 99.47 feet                               | No change              |
| Setbacks        |                    |  |                        |
| • Front         | 25 feet            | 37.6 feet                                | No change              |
| • Side          | 7.5 feet           | 31.7 feet on right<br>22.5 feet on right | No change<br>No change |
| • Rear          | 15 feet            | 57.6 feet                                | 20.9 feet              |
| Building Height | 36 feet            | 27.04 feet                               | 28.95 feet             |
| Lot Coverage    | 30%                | 9.5%                                     | 14.4%                  |
| Open Space      | 50%                | 75.9%                                    | 70.9%                  |

4. See “Zoning Relief Summary” below:

| Zoning Relief Required                        |  |                 |
|---|--|-----------------|
| Ordinance                                     |  | Action Required |
| §30-21(a)(2)(a),<br>§30-21(b)                 | Allow the expansion of a legal nonconforming three-family dwelling | S.P. per §30-24 |
| §30-9(b)(5)a),<br>§30-9(b)(5)b),<br>§30-19(m) | Locate proposed parking 6 feet from the side lot line              | S.P. per §30-24 |

**CITY OF NEWTON  
ENGINEERING DIVISION**

**MEMORANDUM**

To: Alderman Ted Hess-Mahan, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – #43-45 High Street

Date: August 22, 2013

CC: Lou Taverna, PE City Engineer  
Linda Finucane, Associate City Clerk  
Alexandria Ananth, Chief Planner  
Stephen Pantalone, Sr. Planner

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

*Topographic Site Plan  
Newton, MA  
Showing Proposed Conditions at  
#43-45 High Street  
Prepared by: VTP Associates, Inc.  
Dated: July 25, 2013*

*Executive Summary:*

An existing 3-family dwelling is to be expanded with an addition and expanded asphalt parking area and driveway. The design includes on site drainage collection system with an overflow to the City drainage system. The engineer of record needs to demonstrate why an overflow connection is needed when there is ample area for infiltrating the 100-year storm event. Furthermore since the driveway is being expanded, a trench drain is needed near the base of the apron to collect the runoff before it runs onto High Street and infiltrated on site.

Construction Management:

1. A construction management plan is needed for this project. At a minimum, it must address the following: staging site for construction equipment, construction materials, parking of construction worker's vehicles, phasing of the project with anticipated completion dates and milestones, safety precautions, emergency contact personnel of contractor. It shall also address any anticipated dewatering during construction, site safety & stability, and impact to abutting properties.
2. Stabilized driveway entrance is needed during construction, which will provide a tire wash and mud removal to ensure City streets are kept clean.

Drainage:

1. Additional soil testing is required since the only test pit & percolation test is beyond 60- 80-feet to the proposed systems, the DEP & City standard is 20-feet. Furthermore, the infiltration systems numbered 2 & 3 will need impervious barriers on the downstream side of each system.
2. An Operations and Maintenance (O&M) plan for Stormwater Management Facilities needs to be drafted and submitted for review. Once approved the O&M must be adopted by applicant, incorporated into the deeds; and recorded at the Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.
3. When a connection to the City's drainage system is proposed, prior to approval of the Building Permit a Closed Circuit Television (CCTV) inspection shall be performed and witnessed by the Engineering Division, the applicant shall retain a contractor that specializes in CCTV inspection. The applicant shall contact the Engineering Division 48 hours in advance to schedule an appointment. At the end of the inspection the video or CD shall be given to the inspector. Furthermore, upon completion of the connection to the drainage system a Post – Construction video inspection shall also take place and witnessed as described above. This is required regardless of the connection point, the intent is to ensure that there are no downstream blockages or damaged pipe so that the contractor of record is not held accountable for preexisting conditions.
4. It is imperative to note that the ownership, operation, and maintenance of the proposed drainage system and all appurtenances including but not limited to the drywells, catch basins, and pipes are the sole responsibility of the property owner(s).

Environmental:

1. Has a 21E investigation & report been performed on the site, if so copies of the report should be submitted the Newton Board of Health and the Engineering Division.
2. Are there any existing underground oil or fuel tanks, are they to be removed, if they have been evidence should be submitted to the Newton Fire Department, and Newton Board of Health.

Sewer:

1. A detailed profile is needed which shows the existing water main, proposed water service(s), sewer main and proposed sewer service(s) with the slopes and inverts labeled to ensure that there are no conflicts between the sewer services and the water service. The minimum slope for a service is 2.0%, with a maximum of 10%. Pipe material shall be 6" diameter SDR 35 PVC pipe within 10' of the dwelling then 4" pipe per Massachusetts State Plumbing Code. In order to verify the slopes and inverts of the proposed service connection, two manholes of the existing sanitary sewer system need to be identified on the plan with rim & invert elevations. The crown of the service connection & the sewer man need to match.
2. The existing water & sewer services to the building shall be cut and capped at the main and be completely removed from the site and properly back filled. The Engineering Division must inspect this work; failure to having this work inspected may result in the delay of issuance of the Utility Connection Permit.
3. With the exception of natural gas service(s), all utility trenches with the right of way shall be backfilled with Control Density Fill (CDF) Excavatable Type I-E, detail is available in the city of Newton Construction Standards Detail Book.
4. All new sewer service and/or structures shall be pressure tested or video taped after final installation is complete. Method of final inspection shall be determined solely by the construction inspector from the City Engineering Division. All sewer manholes shall be vacuum tested in accordance to the City's Construction Standards & Specifications. The sewer service will NOT be accepted until one of the two methods stated above is completed. All testing MUST be witnessed by a representative of the Engineering Division. A Certificate of Occupancy will not be recommended until this test is completed and a written report is received by the City Engineer. ***This note must be added to the final approved plans.***
5. All sewer manholes shall be vacuum tested in accordance to the City's Construction Standards & Specifications. The sewer service will NOT be accepted until one of the two methods stated above is completed. All testing MUST be witnessed by a representative of the Engineering Division. A

Certificate of Occupancy will not be recommended until this test is completed and a written report is received by the City Engineer.

Water:

1. All water connections shall be chlorinated & pressure tested in accordance to AWWA and the City of Newton Construction Standards and Specifications prior to opening the connection to existing pipes.
2. Approval of the final configuration of the water service(s) shall be determined by the Utilities Division, the engineer of record should submit a plan to the Director of Utilities for approval

General:

1. As of January 1, 2009, all trench excavation contractors shall comply with Massachusetts General Laws Chapter 82A, Trench Excavation Safety Requirements, to protect the general public from unauthorized access to unattended trenches. Trench Excavation Permit required. This applies to all trenches on public and private property. *This note shall be incorporated onto the plans*
2. All tree removal shall comply with the City's Tree Ordinance.
3. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of water services, sewer service, and drainage system installation. The utility in question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval. *This note should be incorporated onto the plans*
4. The applicant will have to apply for Street Opening, Sidewalk Crossing, and Utilities Connecting permits with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*
5. The applicant will have to apply for a Building Permits with the Department of Inspectional Service prior to any construction.
6. Prior to Occupancy Permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading. *This note must be incorporated onto the site plan.*
7. All site work must be completed before a Certificate of Occupancy can be issued. *This note must be incorporated onto the site plan.*

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.

# Zoning Map 43-45 High Street

*City of Newton,  
Massachusetts*

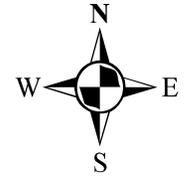
**Legend**

- Streets - Pavement Edge
- Building Outlines

**Zoning**

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

ATTACHMENT C

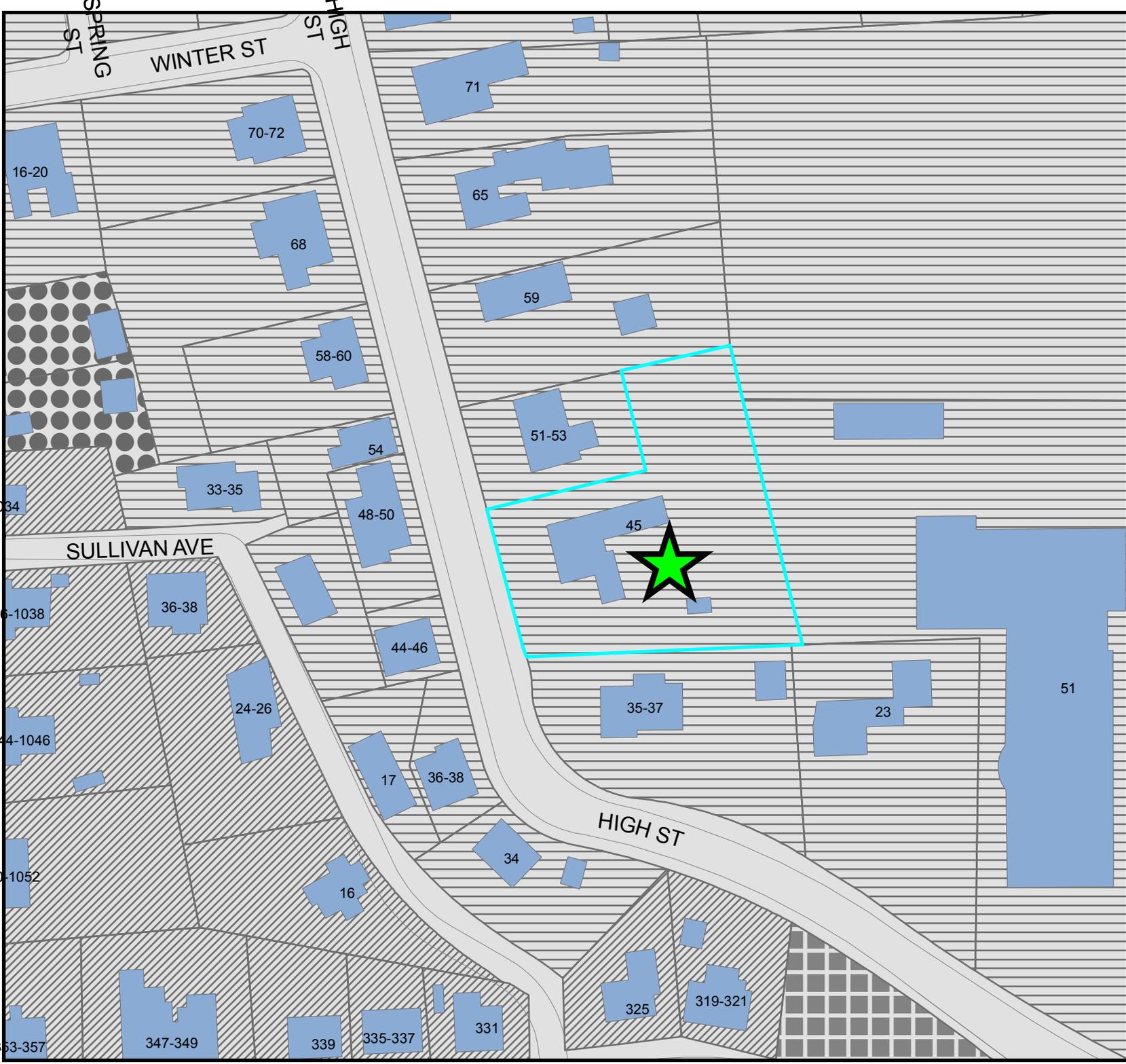


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield



Map Date: August 20, 2013



# Land Use Map 43-45 High Street

*City of Newton,  
Massachusetts*

**Legend**

- Streets - Pavement Edge
- Building Outlines

**Land Use**

- Single Family Residential
- Multi-Family Residential
- Mixed Use
- Open Space

**ATTACHMENT D**

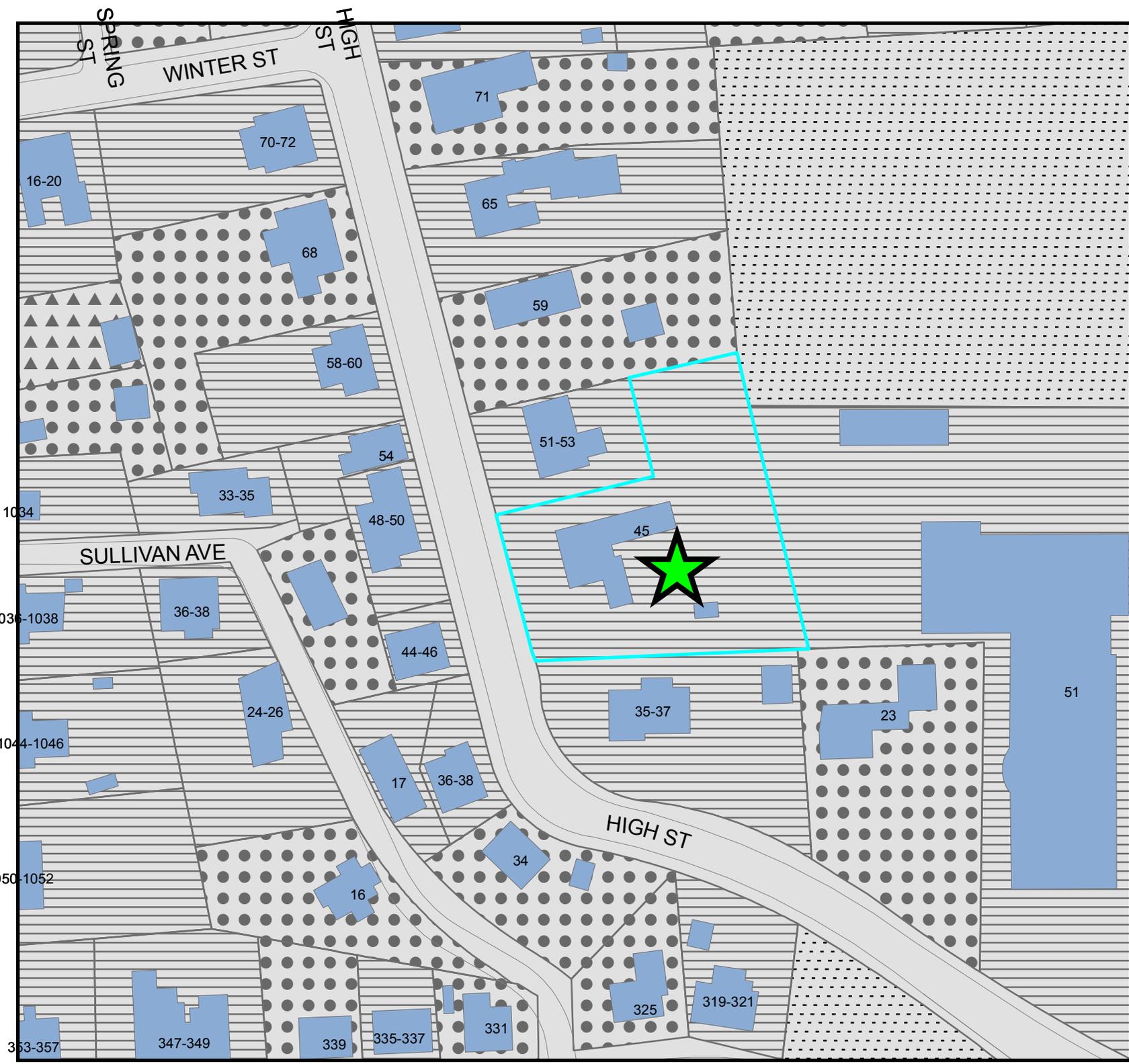


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield



Map Date: August 20, 2013



# ATTACHMENT E



Setti D. Warren  
Mayor

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

Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
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Candace Havens  
Director

## RECORD OF ACTION:

DATE: June 17, 2013

SUBJECT: 43-45 High Street

At a scheduled meeting and public hearing on June 16, 2013 the Newton Upper Falls Historic District Commission, by vote of 4-0,

**RESOLVED** to issue a Certificate of Appropriateness for the application as submitted at 43-45 High Street to remove and replace the rear ell as well as other façade and site changes with the following conditions: (1) that rectangular wood balusters be used; (2) that fiberglass gutters be used; (3) that curved wood brackets intersecting with vertical wood trim be used in supporting the proposed porch roofs; (4) that on the proposed cupola, either a larger louver be used or a raised panel be added to it; (5) that the existing fanlight on the south elevation be replaced with a wood simulated divided light fanlight with three lights divided by "v" shaped muntins; (6) that cedar board fences with caps be used to replace the existing stockade fences; (7) that the stainless steel flue pipe be painted matte black to minimize its visibility and (8) that revised plans reflecting these changes be submitted and approved by staff prior to issuance of a building permit.

Voting in the Affirmative:

Paul Snyder, Acting-Chair  
Jay Walter, Member  
Donald Tellalian, Member  
Laurie Malcom, Alternate Member

Recused from Vote:

Jeff Riklin, Member

Handwritten signature of Brian Lever in cursive script.

Brian Lever, Senior Preservation Planner