



Setti D. Warren  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
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Candace Havens  
Director

**PUBLIC HEARING MEMORANDUM**

Public Hearing Date: November 12, 2013  
Land Use Action Date: November 19, 2013  
Board of Aldermen Action Date: December 2, 2013  
90-Day Expiration Date: December 16, 2013

DATE: November 8, 2013

TO: Board of Aldermen

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

SUBJECT: **Petition #315-13**, CHRIS MURPHY & MARY DURR, to AMEND SPECIAL PERMIT #332-90, which allowed one parking stall in the front yard, in order to construct a retaining wall of more than four feet in the front setback and in order to provide two additional parking stalls in the front setback at 36-38 HIGH STREET, Ward 5, Newton Upper Falls, on land known as SBL 51, 6, 7, containing approximately 3,810 sf of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 30-24, 30-23, 30-19(g)(1) and (m), 30-5(b)(4) of the City of Newton Rev Zoning Ord, 2012 and special permit #332-90.

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.



**36-38 High Street**

## EXECUTIVE SUMMARY

The property at 36-38 High Street consists of a 3,810 square foot lot improved with a 2½-story two-family residence, which was constructed around 1890. The house was built on a significant slope and presently has two off-street parking spaces, one of which was permitted under Board Order #332-90, located in the northeast corner of the lot. The petitioner is proposing to construct a retaining wall greater than four feet in the setback, which will be approximately 12 feet high at the highest point, to allow for two new side-by-side parking stalls to the north of the house in the front yard setback. As proposed, the new parking spaces will eliminate the need for two vehicles to be parked on High Street. Many neighboring properties on the downhill side of High Street have similar off-street parking configurations.

The Newton Department of Planning and Development has no concerns with this petition, as long as drainage from the project is sufficiently infiltrated on-site. The petitioner is encouraged to consider adjusting the location or reducing the width of the new curb cut in order to create some distance between the driveway and the nearby fire hydrant. If approved, each unit in this two-family house will have sufficient off-street parking, eliminating a nuisance for each unit every winter when on-street parking is not available.

### I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Board should consider whether:

- The amendment to the site plan, which includes the creation of retaining walls greater than four feet and two additional parking spaces in the front yard setback, is acceptable and will not be detrimental to the public welfare.
- The proposed retaining walls will not adversely affect the neighborhood.
- The proposed exceptions to the parking requirements are appropriate, as literal compliance is impracticable due to the location, size, width, depth, shape, or grade of the lot, or that such an exception would be in the public interest.
- The proposed parking stalls and retaining walls in the front yard setback will not be a nuisance or serious hazard to vehicles or pedestrians in the neighborhood.

### II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

#### A. Neighborhood and Zoning

The property is located on the west side of High Street near the intersection with Elliot Street. The houses along Newtonville Avenue have mostly been developed with single-family and multi-family residences. The property is located in an area zoned Multi-Residence 1, but is flanked to the west by properties zoned Multi-Residence 2.

#### B. Site

The property consists of 3,810 square feet of land and is improved with a 2½-story two-family residence. The property has vehicular access via a concrete driveway on

the south side of the property, which provides access to two existing off-street parking stalls, one of which was permitted under Board Order #332-90.

### III. PROJECT DESCRIPTION AND ANALYSIS

#### A. Land Use

The property will remain a two-family residence.

#### B. Building and Site Design

The petitioner is not proposing to alter the existing two-family dwelling per this project. As proposed, the petitioner is planning to construct a retaining wall exceeding four-feet in height on the north side of the property in order to create two new side-by-side parking spaces. The proposed retaining walls, which will be approximately 12 feet at the highest point, will be constructed with concrete and surfaced with a natural stone veneer. The petitioner has also proposed to install pavers in the parking area and place a decorative iron railing, which will be four feet in height, atop the wall edge to reduce the impact of this project on abutting properties and the streetscape.

The significant slope present on the subject property, which also impacts other nearby properties, is a constraint limiting the ways in which development of off-street parking stalls can be accommodated. Other neighboring properties have created similar off-street parking areas; however, none appear to have required the creation of such a significant retaining wall. Comparatively, the subject property appears to be located on one of the steepest slopes in the neighborhood.

#### C. Parking and Circulation

The proposed development will alter the parking configuration for the property. The current parking configuration includes two off-street parking stalls, which cannot be expanded due to the significant slope of the lot and the location of the existing structure. The proposed configuration will retain the two existing parking spaces and allow for the creation of two new side-by-side parking stalls to the north of house in the front setback.

While the Department of Planning and Development is concerned with the development of parking stalls in the front yard setback and the creation of a new curb cuts, which can detract from the streetscape, similar conditions exist on neighboring properties. The Department suggests that the petitioner consider adjusting the location or reducing the width of the new curb cut to provide a buffer between the driveway and the nearby fire hydrant.

#### D. Landscape Screening

No landscaping plan was submitted with the petition. The petitioner has, however, indicated that plantings, most likely shrubs, will be installed at the base of the retaining walls to visually screen the project from abutting properties and to

help stabilize the downhill slope. Together, the proposed plants, decorative iron railing and natural rock veneer, which are shown on supplemental plans (**Attachment A**), appear to mitigate the visual impacts of the proposed project.

#### IV. TECHNICAL REVIEW

- A. Technical Considerations (Chapter 30, Newton Zoning Ordinance): The Zoning Review Memorandum, (**ATTACHMENT B**), provides an analysis of the proposal with regard to zoning. The petitioner is requesting a special permit to allow retaining walls greater than four feet in height within a front yard setback in order to provide two new side-by-side parking stalls within the front yard setback.
- B. Newton Historical Commission: On February 14, 2013, the Newton Upper Falls Historic Commission (NUFHC) reviewed and approved the proposed project. According to the Certificate of Appropriateness (**ATTACHMENT C**), the NUFHC found the proposed project appropriate for the site.
- C. Engineering Review: The Associate City Engineer submitted an Engineering Review Memorandum (**ATTACHMENT D**) providing an analysis of the proposal with regard to engineering issues. According to the memorandum, the Engineering Division is concerned that the plans don't identify how drainage from the project will be infiltrated on site. The petitioner will be required to comply with all the recommendations put forth in the memorandum and provide additional drainage information prior to the issuance of any building permit.

#### V. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum, the petitioner is seeking a Special Permit/Site Plan Approval for the following reliefs:

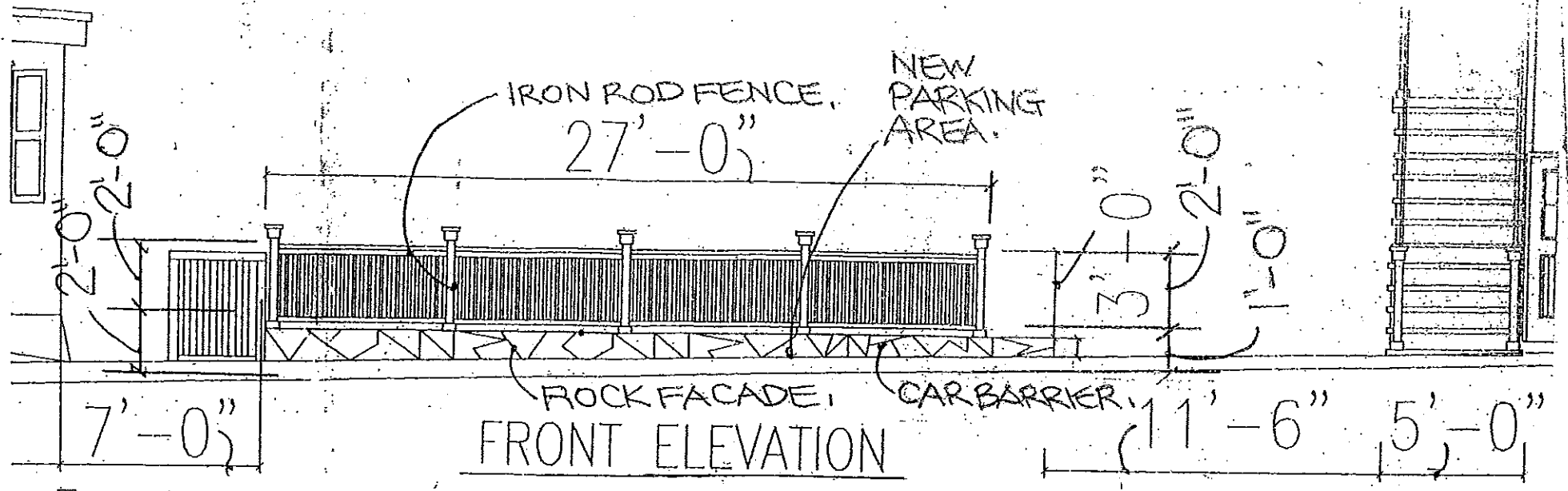
1. Section 30-24, to amend Board Order #332-90.
2. Section 30-5(b)(4), to locate retaining walls greater than four feet within a front yard setback.
3. Sections 30-19(g)(1) and 30-19(m), to permit two required parking spaces within the front setback.

#### VI. PETITIONERS' RESPONSIBILITIES

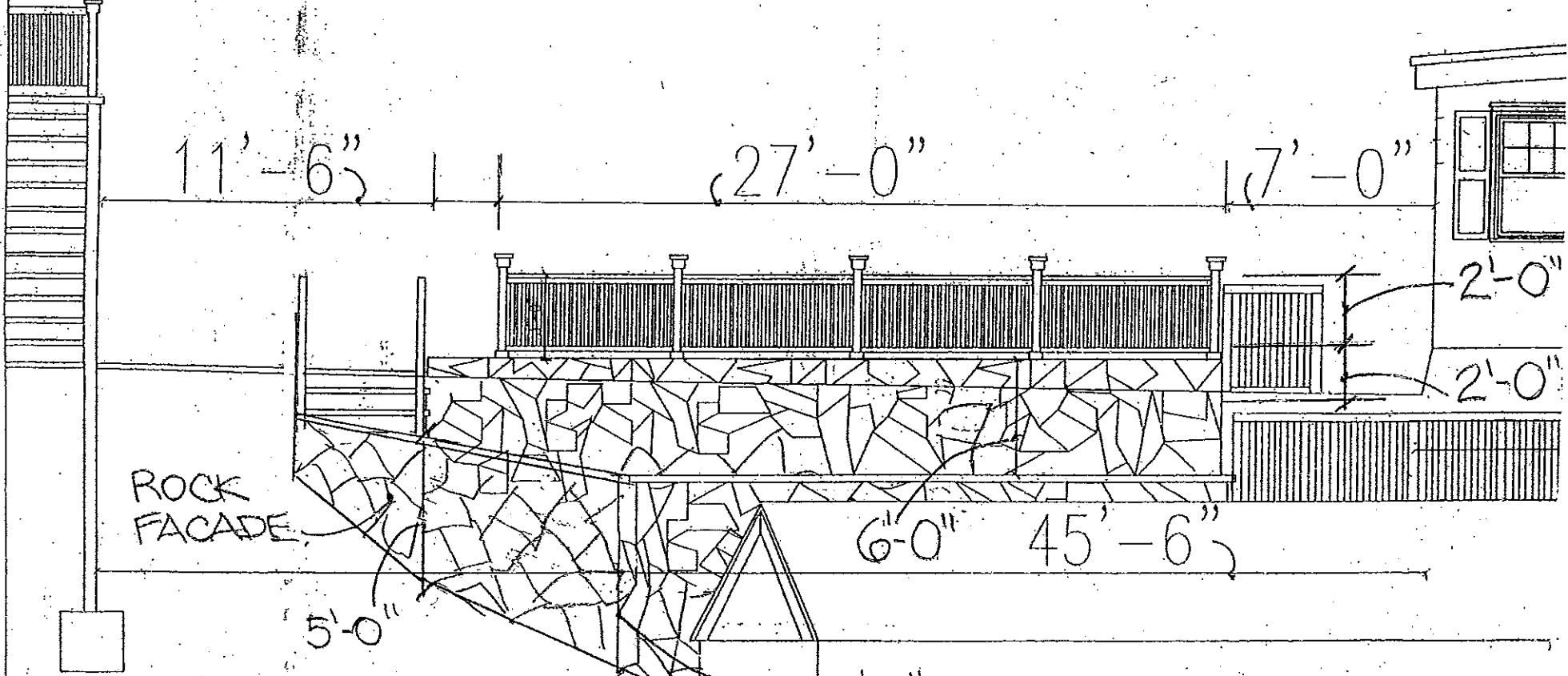
The petition is considered complete at this time.

#### **ATTACHMENTS:**

<b>Attachment A:</b>	Supplemental Plans
<b>Attachment B:</b>	Zoning Review Memorandum
<b>Attachment C:</b>	NUFHC - Certificate of Appropriateness
<b>Attachment D:</b>	Engineering Review Memorandum
<b>Attachment E:</b>	Land Use Map
<b>Attachment F:</b>	Zoning Map



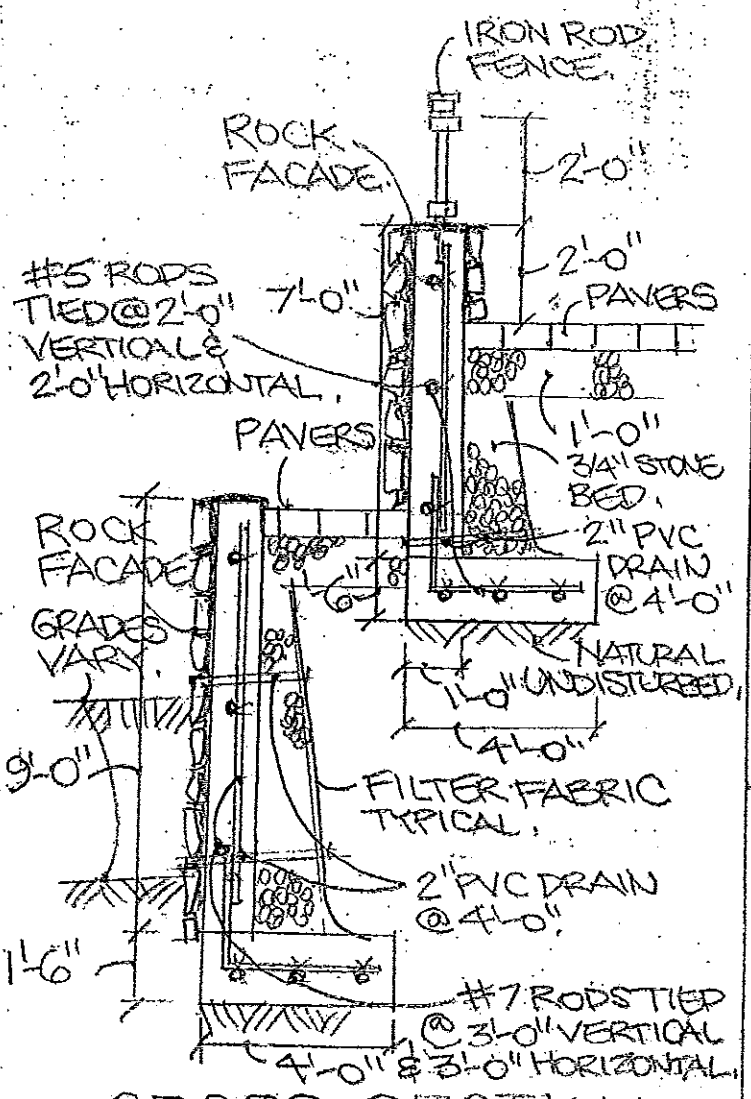
FRONT ELEVATION



REAR ELEVATION

SCALE: 3/16" = 1'-0"

36 & 38 HIGH STREET  
NEWTON UPPER FALLS, MA



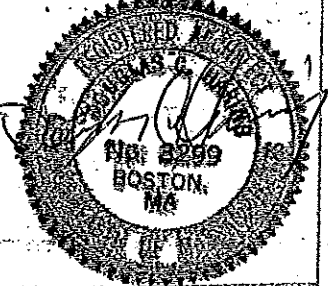
CROSS SECTION  
SCALE: 1/4" = 1'-0"

2 Car Parking Area

Chris Murphy & Mary Durr  
36 & 38 High Street  
Newton Upper Falls, MA

HH Design Group Architects  
1 Ticehurst Lane  
Marblehead, MA 01945  
781 639 3493  
David M. Hallotis, Assoc. AIA

SEPT 27 2012



Approved  
2-14-13  
*[Signature]*

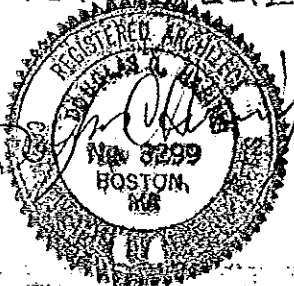
S2

Chris Murphy & Mary Durr  
36 & 38 High Street  
Newton Upper Falls, MA

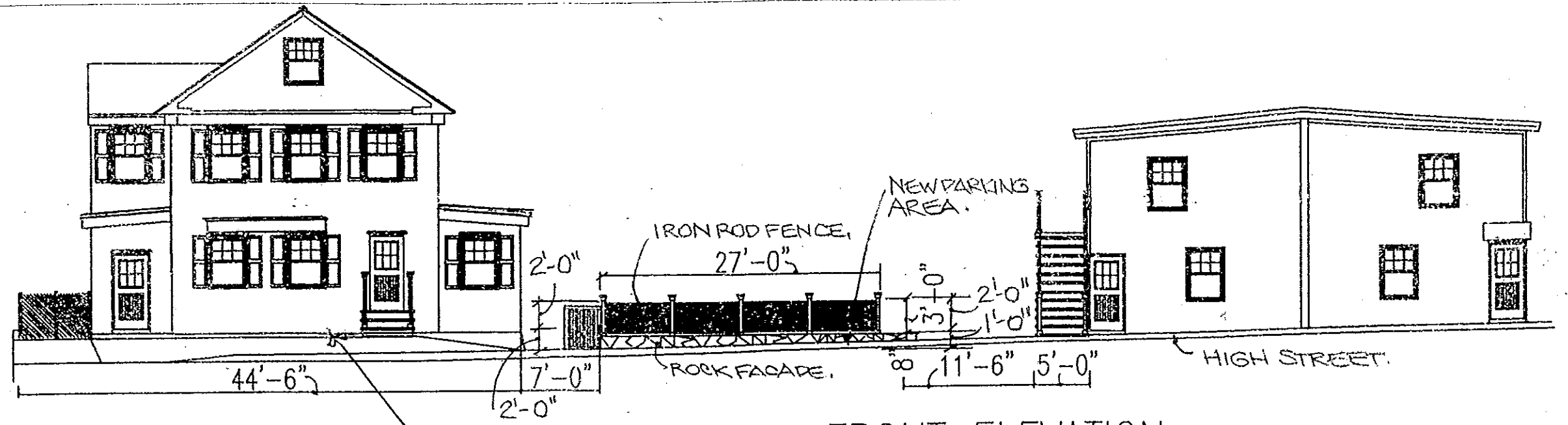
2 Car Parking Area

HH Design Group Architects  
1 Ticehurst Lane  
Marblehead, MA 01945  
781 639 3493  
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SEPT 27 2012



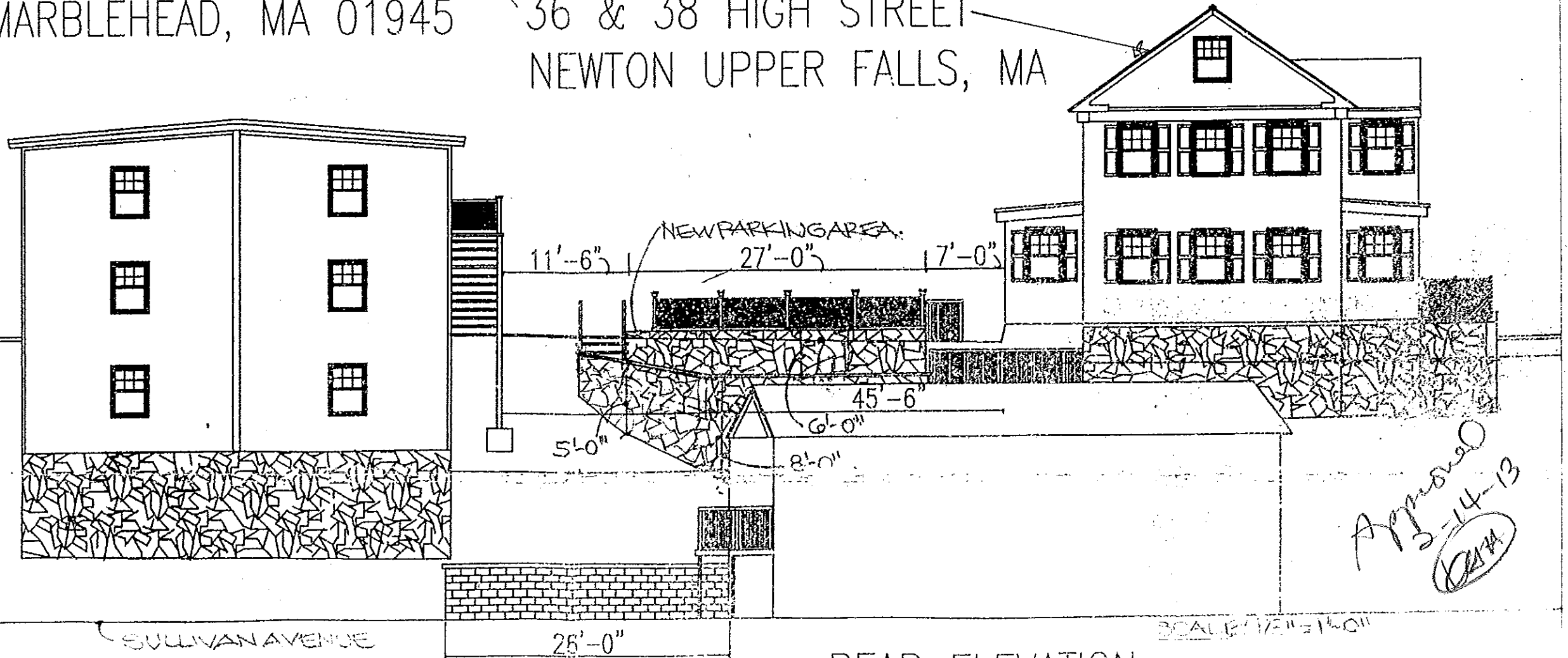
S1



FRONT ELEVATION

HH DESIGN GROUP  
1 TICEHURST LANE  
MARBLEHEAD, MA 01945

36 & 38 HIGH STREET  
NEWTON UPPER FALLS, MA



REAR ELEVATION

SCALE 1/8" = 1'-0"

Approved  
3-14-13  
(Signature)



Setti D. Warren  
Mayor

# Attachment B

## City of Newton, Massachusetts

Department of Planning and Development  
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Candace Havens  
Director

### ZONING REVIEW MEMORANDUM

Date: October 23, 2013

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Chris Murphy  
Candace Havens, Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Request to add two parking stalls in the front setback at a two-family residence and to build a retaining wall in excess of 4 feet in the setback and to amend Special Permit BO # 332-90.**

Applicant: Chris Murphy and Mary Durr	
Site: 36-38 High Street	SBL: 12021 0028
Zoning: MR1	Lot Area: 3,810 square feet
Current use: Two-family dwelling	Proposed use: No change

#### BACKGROUND:

The property at 36-38 High Street consists of a 3,810 square foot lot improved with a two-family residence constructed in approximately 1890. The property has a single-car driveway on the southwest side of the dwelling, and another car parks in front of the house. The stall in the front yard was allowed by Special Permit BO # 332-90. Any remaining cars park on the street. The applicant proposes to build a retaining wall on the northeast side of the structure to create two parking stalls. These two stalls will be located within the front setback.

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

- Zoning Review Application, prepared by Chris Murphy, submitted 7/31/13
- Proposed Plot Plan, signed and stamped by Christ P. Sparages, Surveyor, dated 7/17/13
- Front and Rear Elevations, signed and stamped by Douglas Haring, Architect, dated 11/30/11
- Retaining Wall details, signed and stamped by Richard Williams, Engineer, dated 7/11/13

**ADMINISTRATIVE DETERMINATIONS:**

1. Section 30-19(d)(1) requires two parking stalls per each dwelling unit in a single- or two-family structure. At present, the applicant provides only two stalls for both units. The applicant seeks to create two additional parking stalls on the northeast side of the dwelling, which will be located within the front setback. A special permit is required to allow for parking stalls within the front setback per Section 30-19(m).
2. Because of the significant drop in the topography from the front of the property to the rear, a retaining wall will need to be built to accommodate the two new parking stalls. The wall will be 12 feet tall at the highest point. A system of stairs and paths will allow a pedestrian connection to the rear entrance of the house along the backside of the retaining wall. Section 30-5(b)(4) requires a special permit for a retaining wall within the setback in excess of 4 feet.
3. Special Permit BO #332-90 approved the use of a 7’x16’ parking space in the front yard of the property. This stall is within the front setback. The special permit must be amended to allow for the additional parking stalls.

MR1 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	3,810 square feet	No change
Frontage	70 feet	90 feet	No change
Setbacks for existing structure			
• Front	25 feet	25.2 feet	No change
• Side	7.5 feet	15.5 feet on right 8.4 feet on left	No change No change
• Rear	15 feet	22.7 feet	No change
Max. Lot Coverage	30%	27.6%	27.6%
Open Space	50%	67.7%	56.5%

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§30-19(g)(1) 30-19(m)	Allow more than one parking stall in the front setback	S.P. per §30-24
§30-5(b)(4)	Allow a retaining wall of more than 4 feet in the setback	S.P. per §30-24
	Amend Board Order 332-90	S.P. per §30-24





Setti D. Warren  
Mayor

City of Newton, Massachusetts  
Department of Planning and Development

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(617) 796-1086

**Newton Local Historic District Commission**  
APPLICATION FOR CERTIFICATE OF APPROPRIATENESS  
NON-APPLICABILITY OR HARDSHIP

Project#	13020349
Date Received	1-30-13

As specified in Newton City Ordinances 22-40(e)(1), for properties in a local historic district, a certificate is required before obtaining any building permit or before proceeding with construction projects affecting the exterior of the property. Please fill in the following information where applicable and submit to Preservation Planner, Planning and Development Department, Newton City Hall, 1000 Commonwealth Avenue, Newton MA 02459.

I. **PROPERTY ADDRESS** 36-38 High St Newton Upper Falls 02464  
Name of local historic district Newton Historic District - Upper Falls

II. **Primary Contact** MARY DORR  
Address 26 SULLIVAN AVE NUF Phone # 617 669 1932 (cell)

**Property Owner (if different)** \_\_\_\_\_  
Address \_\_\_\_\_ Phone # \_\_\_\_\_

**Architect / Contractor** DAVID HALIOTS  
Address MARBLE HEAD MA Phone # 1-978-335-3645

III. **TYPE OF STRUCTURE (Please Check):**  
 House     Garage     Shed     Wall     Fence     Sign  
 Non-Residential Building     Other

**PROPOSED WORK (Please Check):**  
 New Construction     Demolition     Addition     Alteration  
 Replacement     Repair     Other

IV. **DESCRIPTION OF WORK:** (Statement of scope of work with specific information about materials, style, extent of work, etc. referencing plans and photographs if appropriate.)

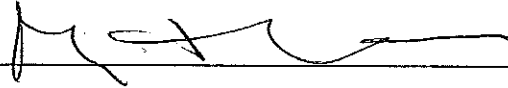
<u>We would like to turn the hill into</u>
<u>Parking for 2 cars. We will use</u>
<u>brick + stone and wrought iron fencing.</u>
<u>Plans are</u>
<u>Plans Attached</u>
<u>1</u>

V. SUGGESTED DOCUMENTATION (See Design Guidelines for Complete List)

- |                          |  |                          |           |
|--------------------------|--|--------------------------|-----------|
| <input type="checkbox"/> | Photographs (both subject property and streetscapes)                                 | <input type="checkbox"/> | Site Plan |
| <input type="checkbox"/> | Assessor's Map locating property   | <input type="checkbox"/> | Sketches  |
| <input type="checkbox"/> | Building plans ( <i>elevations, no larger than 11 x 17</i> )                         |                          |           |
| <input type="checkbox"/> | Product/Material information – literature and specifications, brochures, photographs |                          |           |
| <input type="checkbox"/> | Historical Information (old plans, old photos, etc.)                                 |                          |           |

VI. SIGNATURES

Property Owner



I agree that if necessary the Commission may extend the hearing on this application from the scheduled hearing / meeting on: MTD

**Applicants Please Take Note:**

- 1) An approved Certificate shall expire one year from the time of issuance unless otherwise extended by the Commission.
- 2) If a Certificate is approved without a public hearing, approval is subject to a 10 day appeal period as per the City Ordinance governing Historic Districts.
- 3) This application is only for Historic District review. Applicants should also consult the Planning Department to consider other relevant planning and zoning ordinances. Following this review, an application for Plan Examination and/or Building Permit must be completed and submitted to Inspectional Services. Should the plans approved under this certificate be changed as a result of the issuance of other permits, including but not limited to Building permits, Special Permits, Street Opening Permits, and Utility Connection permits, the Historic District Commission shall be notified and a new plan presented for review prior to the commencement of construction.
- 4) Please notify the Commission upon completion of the changes included in this Certificate.

FOR COMMISSION USE ONLY

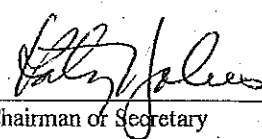
Date Completed Application Received 1-30-13  
 Date Notice Sent 1-31-13  
 Date of Hearing/Meeting 2-14-13  
 Date of Decision 2-14-13

ACTION: Accepted  Denied

Reason for Action: See Record of Action

TYPE OF CERTIFICATE ISSUED

- Appropriateness  
 Non-Applicability  
 Hardship

 2-15-13  
 Chairman or Secretary Date

Conditions: \_\_\_\_\_



# CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development  
Candace Havens, Director

Setti D. Warren  
Mayor

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**DATE:** February 15, 2013

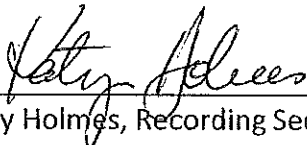
**SUBJECT:** 36-38 High Street – Certificate of Appropriateness

At the regularly scheduled meeting and public hearing on February 14, 2013, the Newton Upper Falls Historic District Commission, by a vote of 4-0 with one recusal:

RESOLVED to approve the plans as presented, with the stone facing and railing to match that used at 24-26 Sullivan Avenue as presented.

Voting in the Affirmative: Larry Schwirian, Chairman; Paul Snyder, Jay Walter, Don Tellalian,

Recusal as Abutter: Jeff Riklin

  
Katy Holmes, Recording Secretary

**CITY OF NEWTON  
ENGINEERING DIVISION**

**MEMORANDUM**

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

From: John Daghlian, Associate City Engineer

Re: Special Permit – 36-38 High Street

Date: October 30, 2013

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

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

*Proposed Plot Plan Showing Proposed Retaining Wall & Parking Spaces  
#36-38 High Street  
Newton Upper Falls, MA  
Prepared by: Williams Sparages  
Dated: August 7, 2012  
Revised: 8/23/13*

Executive Summary:

The proposal calls for the creation of two new parking stalls that will be sited on an existing wooded embankment along the northern and western property lines. The plan indicates two sets of parallel retaining walls constructed of reinforced cast in place concrete, which will have a stone veneer exposed finish. The grade change from the City sidewalk to the bottom of the embankment is approximately 12-feet. The grade of the parking surface is at elevation 96.5-feet (near the wall) and the top of the wall is at elevation 98.5- feet; so the concrete wall will extend 2-feet above the proposed parking surface. This 2-foot extension will act as a barrier to stop the cars from going down the embankment; in concert with this wall extension, a safety fence should be installed on top of the wall to prevent anyone from falling over the walls.

The surface of the new parking area is to be pavers; the Engineering Department does not consider pavers as “*pervious*”; the reason being the pavers are not 100% pervious, the gap between the pavers ultimately becomes impervious with deposition & settlement overtime; and without “*vacuum cleaning*” of the surface, the pavers are therefore considered imperious.

The total impervious area added to the site is approximately 950 square feet based upon my calculations for the parking area, new stairway and retaining walls. Other than, weep holes within the walls there are no proposed drainage improvement for the new parking area. Based on the proposed grades the runoff from the new parking area will sheet flow towards High Street. Snow removal and snow storage is also a concern due to the embankment and the proximity of the lower retaining wall to the rear property line, which is only one foot.

Inspectional Services Department will require detailed drawings and calculations for the design, stability, and construction methodology for the proposed retaining walls. Due to the length and elevation differences for the stairs within the two walls, the designer should consider recessed lighting within the walls.

The new curb cut for the driveway apron needs to be dimensioned, the City apron detail is available on line and needs to be included in the final construction plans, all work within the sidewalk area (i.e. driveway apron must be ADA compliant).

Drainage:

1. A drainage analysis needs to be performed based on the City of Newton’s 100-year storm event of 6-inches over a 24-hour period. All runoff from impervious areas need to be infiltrated on site, for the project. The design of the proposed on site drainage system needs to comply with the MassDEP Stormwater Regulations and City Ordinances.
2. An on-site soil evaluation needs to be performed to obtain the seasonal high groundwater elevation, percolation rate in accordance to Title V. This information must be submitted with the drainage study. The locations of these tests need to be shown on the site plan and must be performed within 20-feet of a proposed system.
3. An Operations and Maintenance (O&M) plan for Stormwater Management Facilities needs to 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.

4. It is imperative to note that the ownership, operation, and maintenance of the 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).

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 the drainage system installation. The system 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 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. If a Certificate of Occupancy is requested prior to all site work being completed. *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.









# Land Use Map 36-38 High St.

*City of Newton,  
Massachusetts*

**Legend**

-  Building Outlines
-  Streets - Pavement Edge

**Land Use**

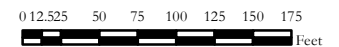
-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Mixed Use
-  Open Space
-  Nonprofit Organizations
-  Vacant Land
-  Property Boundaries

**ATTACHMENT E**

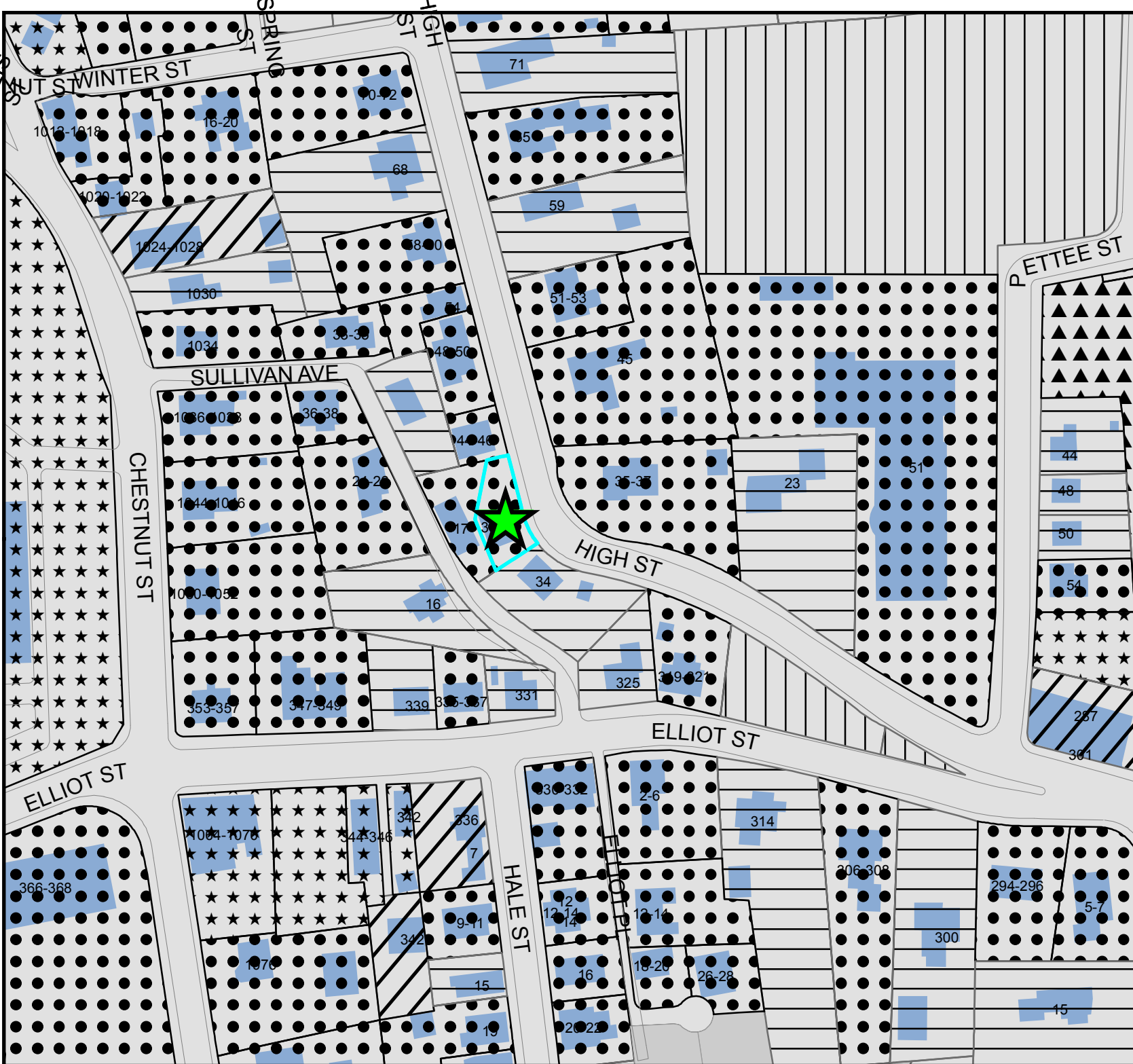


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

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



Map Date: October 29, 2013



# Zoning Map 36-38 High St.

City of Newton,  
Massachusetts

ATTACHMENT F

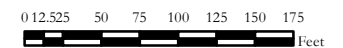
**Legend**

- Building Outlines
- Streets - Pavement Edge
- Single Residence 1
- Multi-Residence 1
- Multi-Residence 2
- Business 1
- Manufacturing
- Public Use
- Property Boundaries



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CITY OF NEWTON, MASSACHUSETTS  
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Map Date: October 29, 2013

