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Mayor

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Barney Heath  
Director

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## PUBLIC HEARING MEMORANDUM

Public Hearing Date: January 23, 2018  
Land Use Action Date: April 10, 2018  
City Council Action Date: April 16, 2018  
90-Day Expiration Date: April 23, 2018

DATE: January 19, 2018

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development  
Jennifer Caira, Chief Planner for Current Planning  
Neil Cronin, Senior Planner

SUBJECT: **Petition #24-18**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to extend the existing nonconforming three-family use to allow four units, legalize the noncompliant lot area per unit, reduce the minimum open space, allow parking within a setback, and allow waivers to the requirements of parking facilities containing more than five stalls at **4-6 Middle Street**, Ward 1, Nonantum, on land known as SBL 12, 01, 15 containing approximately 11, 281 sf of land in a district zoned MULTI RESIDENCE 2. Ref: Sec. §3.4.1, §3.2.6, §5.1.8.A.1, §5.1.8.B.2, §5.1.8.C.1, §5.1.8.D.1, §5.1.8.E.1, §5.1.9, §5.1.10, §5.1.13, §7.3.3, and §7.8.2.C.2, of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

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The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis conducted by the Planning Department. The Planning Department's intention is to provide a balanced review of the proposed project based on information it has at the time of the public hearing. Additional information about the project may be presented at or after the public hearing that the Land Use Committee of the City Council can consider at a subsequent working session.



**4-6 Middle Street**

### **EXECUTIVE SUMMARY**

The property located at 4-6 Middle Street consists of an 11, 297 square foot lot improved with a three-family residence constructed circa 1895 and a detached accessory structure. The property is located in the Multi-Residence 2 (MR-2) zone in Nonantum. The property is a legal nonconforming three-family use dating back to the 1930s, but has been used as a four-family dwelling since at least 1974, without the benefit of proper permitting. The petitioner is seeking to legalize the existing fourth unit, which requires a special permit. At four units, the property does not comply with the lot area per unit requirement of an old lot in the MR-2 zone. However, since the unit has existed for a number of years, the petitioner is seeking a Section 6 finding under the 2016 change to the State law governing nonconforming structures. Lastly, the petitioner is seeking to legalize an existing noncompliant surface parking facility at the rear of the lot via special permit.

The Planning Department is not concerned with the structure at four units given the number of multi-family character and scale of development in the neighborhood. In addition, the petition does not require alterations to existing structure. However, staff has concerns regarding the nonconforming parking facility at the rear of the structure, particularly maneuverability. As a result, staff has asked the petitioner to explore using a portion of the lot accessible via Wiltshire Court to relieve some of the parking on the lot. Staff expects the petitioner to provide an update on this alternative at the public hearing.

#### **SIGNIFICANT ISSUES FOR CONSIDERATION:**

When reviewing this request, the City Council should consider whether:

- The proposed extension of the nonconforming three-family use to allow a four-unit dwelling is substantially more detrimental than the existing three-family use is to the neighborhood (§3.4.1 and §7.8.2.C.2).
- The proposed reduction in the lot area per unit is substantially more detrimental than the existing nonconforming structure is to the neighborhood (§3.2.6 and §7.8.2.C.2).
- The proposed reduction in the minimum required open space is substantially more detrimental than the existing open space is to the neighborhood (§3.2.6 and §7.8.2.C.2).
- Literal compliance with the requirements for parking facilities containing over five stalls, including parking in a setback, waivers to the stall dimensions, aisle width, driveway width, tandem parking, perimeter screening requirements, and lighting and surface requirements are impractical due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety, or protection

of environmental features (§5.1.8.A.1, §5.1.8.B.2, §5.1.8.C.1, §5.1.8.D.1, §5.1.8.E.1, §5.1.9, §5.1.10, and §5.1.13)

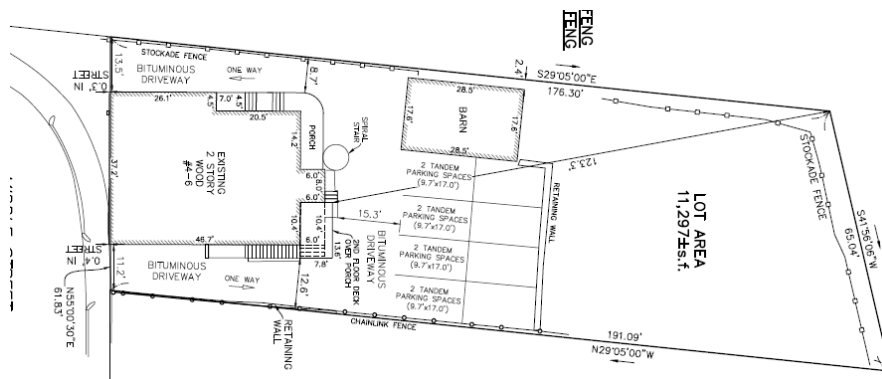
I. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on Middle Street in the MR-2 zone in Nonantum. The MR-2 zone encapsulates the immediate area, while a Business Use 2 zone and a Multi Residence 1 zone exist to the west and south, respectively. The surrounding neighborhood area consists predominantly of single and multi-family uses with the exception of the Newton Housing Authority development on John F. Kennedy circle to the northwest (**Attachments A & B**).

B. Site

The site consists of 11,297 square feet of land, and is improved with a 2.5-story, three-family residence and detached accessory structure. The site is served by two curb cuts on either side of the structure which facilitate a circular vehicular pattern through the site. The curb cut to the right of the structure is approximately 12 feet wide leading to the rear of the lot and the surface parking facility containing eight parking stalls. The curb cut to the left of the structure is approximately 14 feet wide and serves as the egress from the site. There is a detached barn adjacent to the surface parking facility which has a nonconforming side setback of 2.5 feet, where five feet is the minimum allowed. The surface parking facility is separated from the rear of the lot, which is a large open area, by an approximately three-foot tall retaining wall.



The rear of the lot can be accessed from Wiltshire Court which is an extension of Wiltshire Road to the south of Middle Street. The Planning Department has asked the petitioner for more information as to the plans for this portion of the lot and expects an update at the public hearing. Lastly, reviewing the property record in Inspectional Services, there appears to be a City of Newton easement bisecting the

property. Staff suggests the plan should be updated to include this easement.

## II. PROJECT DESCRIPTION AND ANALYSIS

### A. Land Use

The principal use of the site will be remain a multi-family residence, but with four units, not three.

### B. Building & Site Design

The petitioner is not proposing any changes to either the structure or site. The structure consists of flat type units with an average unit size of 1,265 square feet. At four units, the property would have a lot area per unit of 2,824.5 square feet, which is greater than the median lot area per unit of the 32 multi-family parcels located within 300 feet, which is 2,700 square feet per unit.

### C. Nonconforming Structures and M.G.L. Chapter 40A Section 7

As currently exists, the structure is a legal nonconforming three-family use located on an old lot in the MR-2 zone. An old lot in the MR-2 zone requires a lot area per unit of 3,000 square feet. The site contains 11,297 square feet of land, thereby falling short of the 12,000 square feet requirement for a four-unit, multi-family residence. Therefore, the petitioner is seeking a "Section 6" finding via M.G.L. Chapter 40A Section 7.

In August of 2016, the State Legislature amended M.G.L. Chapter 40A Section 7 by adding language which states that nonconforming structures, which have been in existence for at least ten years without enforcement, can be deemed nonconforming structures subject to Section 6 (of MGL 40A); Section 6 defines the criteria of "substantially more detrimental" for legalizing nonconformities. As the unit has been in existence for at least ten years without enforcement, the structure is nonconforming with respect to lot area per unit. Therefore, the City Council, acting as the special permit granting authority, can legalize the nonconforming lot area per unit, which would allow four units on site.

The Planning Department is not concerned with the structure containing four units because the neighborhood contains 32 multi-family structures and the lot's density fits in the neighborhood's scale of development. Additionally, the petitioner is not proposing any changes to the existing structure.

### D. Parking and Circulation

The existing parking facility at the rear of the lot is nonconforming with respect to many of the dimensional standards required of parking facilities containing more than five stalls. Even though the parking facility has existed in this condition for many years, staff has concerns about maneuverability. Specifically, staff does not believe the space between the structure and the parking facility allows for the

maneuverability required for tandem parking. As such, staff has asked the petitioner to explore utilizing some portion of the rear lot for parking to allow for greater flexibility in the existing facility.

E. Landscaping and Screening

A landscape plan is not required with this petition.

III. 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 C**). Based on the Memorandum, the petitioner is seeking the following relief:

- §3.4.1 and §7.8.2.C.2 of Section 30, to extend the existing nonconforming three-family use to allow four units.
- §3.2.6 and §7.8.2.C.2 of Section 30, to legalize the existing nonconforming lot area per unit per a Section 6 finding.
- §3.2.6 and §7.8.2.C.2 of Section 30, to further decrease the nonconforming minimum open space.
- §5.1.8.A.1, §5.1.8.B.2, §5.1.8.C.1, §5.1.8.D.1, §5.1.8.E.1, §5.1.9, §5.1.10, and §5.1.13 of Section 30 to allow parking within a setback, to allow a reduced stall depth, to allow a reduced aisle width, to allow a reduced driveway width, to allow tandem parking, to waive the perimeter screening requirements, and waive the lighting and surfacing requirements.

B. Engineering Review

Review from the Engineering Division is not required at this time. The Engineering Division of Public Works will review this project for conformance with the City of Newton Engineering Standards prior to the issuance of a building permit, should this project be approved.

C. Historic Review

The petitioner is not proposing any changes to the structure; therefore historic review is not required.

IV. PETITIONER'S RESPONSIBILITIES

Staff expects the petitioner to provide an update the possibility of access the rear portion of the site from Wiltshire Court at the public hearing. Moreover, the petitioner shall update the site plan to include the City of Newton easement which bisects the property.

**ATTACHMENTS:**

- Attachment A:** Zoning Map
- Attachment B:** Land Use Map
- Attachment C:** Zoning Review Memorandum








# ATTACHMENT A

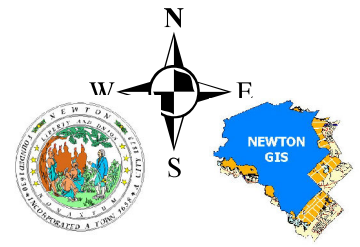
## Land Use

### 4-6 Middle St.

*City of Newton,  
Massachusetts*

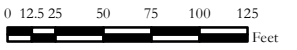
## Legend

- Land Use**
-  Single Family Residential
  -  Multi-Family Residential
  -  Mixed Use
  -  Open Space
  -  Private Educational
  -  Nonprofit Organizations
  -  Vacant Land

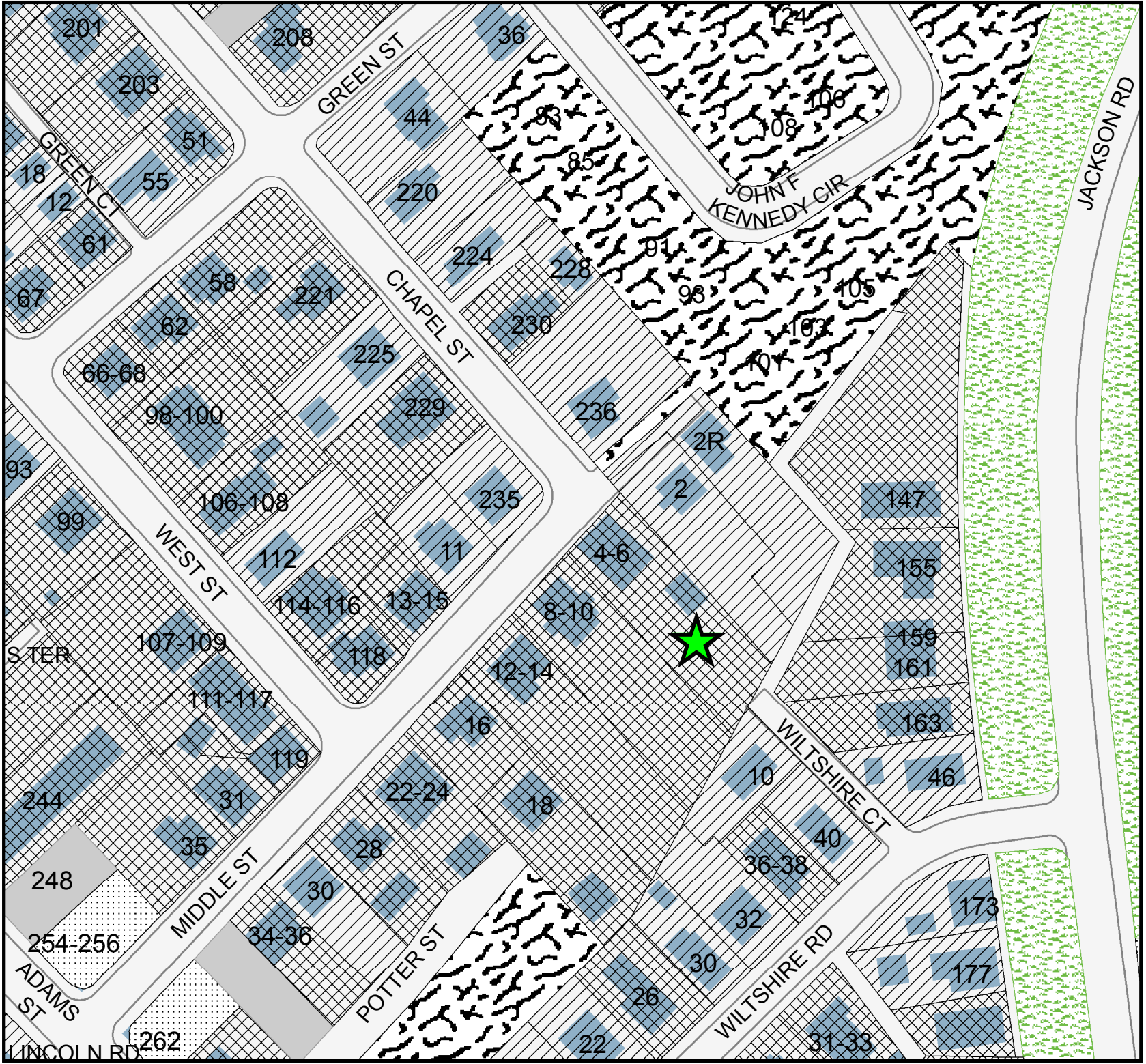


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

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



Map Date: January 10, 2018



# ATTACHMENT B

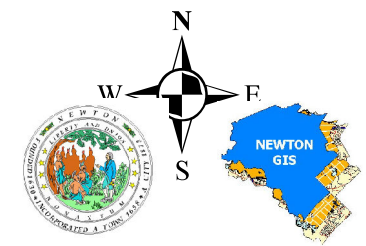
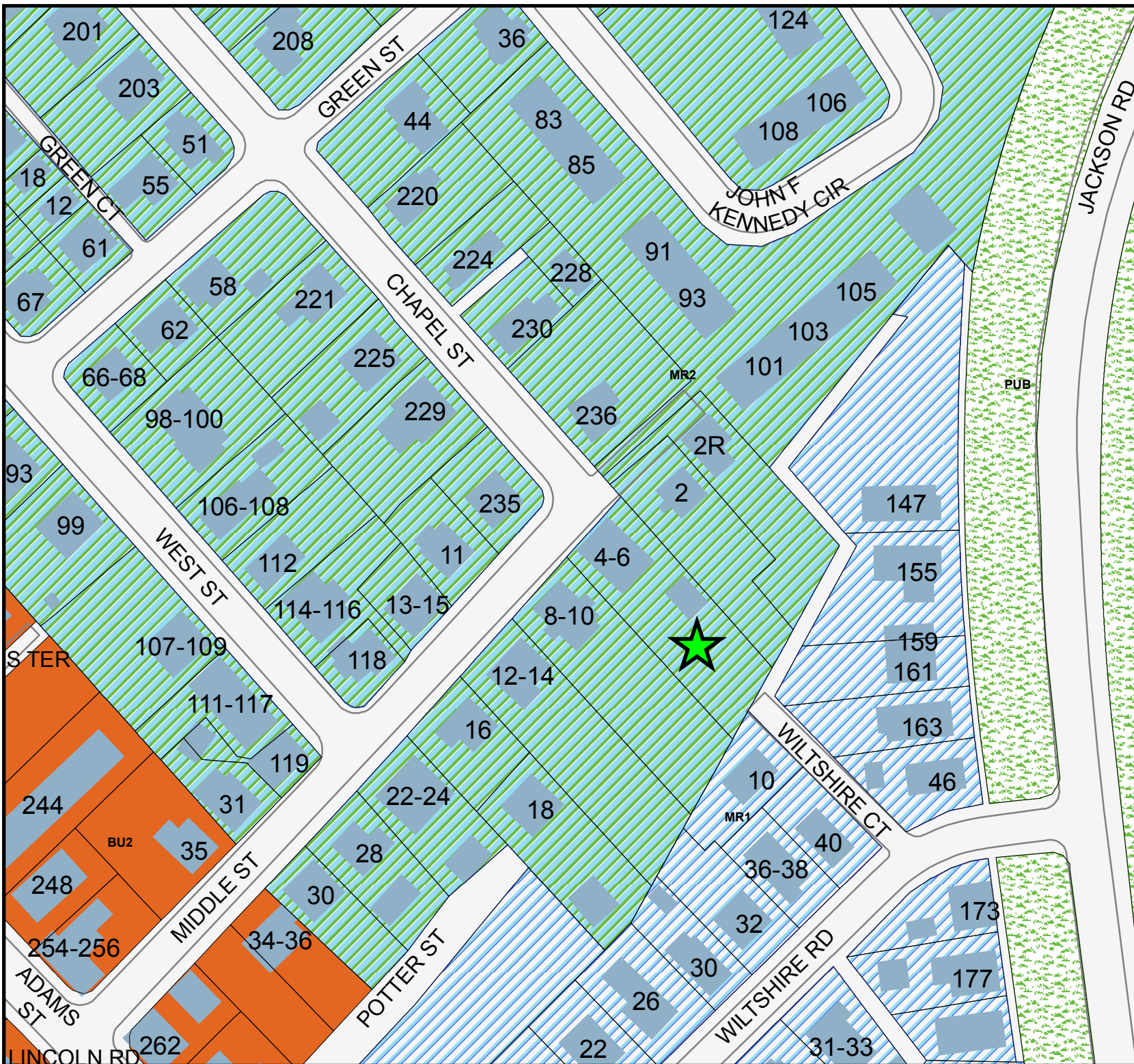
## Zoning

### 4-6 Middle St.

City of Newton,  
Massachusetts

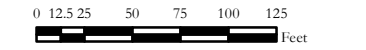
### Legend

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



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







Setti D. Warren  
Mayor

# ATTACHMENT C

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Barney S. Heath  
Director

## ZONING REVIEW MEMORANDUM

Date: December 11, 2017

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official

Cc: Alfredo Cedrone, Applicant  
Terrence P. Morris, Attorney  
Barney S. Heath, Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Request to further extend an existing nonconforming three-family use to allow for four units, a section 6 finding for nonconforming lot area per unit and minimum open space, and to waive certain design standards relative to parking**

Applicant: Alfredo Cedrone	
Site: 4-6 Middle Street	SBL: 12001 0015
Zoning: MR2	Lot Area: 11,281 square feet
Current use: Three-unit multi-family dwelling	Proposed use: Four-unit multi-family dwelling

### BACKGROUND:

The property located at 4-6 Middle Street consists of an 11,281 square foot lot improved with a nonconforming three-unit multi-family dwelling constructed circa 1895. The petitioner states that City Directories and Census Polls from as early as 1972 indicate the existence of a fourth unit on the property. The applicant is seeking a special permit to allow for the legal use of the fourth unit, as well as legitimizing some dimensional and parking nonconformities.

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

- Zoning Review Application, prepared by Terrence P. Morris, Attorney, submitted 10/30/2017
- Site Plan, prepared VTP Associates Inc, dated 10/26/2017

## **ADMINISTRATIVE DETERMINATIONS:**

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1. The preponderance of evidence in the Inspectional Services files indicates that the circa 1895 structure is a legal nonconforming three-unit multi-family dwelling in a Multi Residence 2 zoning district per Section 3.4.1. The Assessors' records as far back as 1996 indicate that the property had four dwelling units, though only three were legal. The petitioner seeks a special permit pursuant to Section 7.8.2.C.2 to extend the nonconforming three-unit multi-family dwelling use in the Multi Residence 2 zoning district to allow four units.
2. Per Section 3.2.6, the lot area per unit requirement in the MR2 zoning district is 3,000 square feet. The applicant's lot is 11,297 square feet, thus the lot meets the lot area per unit for the permitted three-unit multi-family dwelling. To allow for four units, a 12,000 square foot lot would be required. However, the 2016 amendment to Section 7 of MGL Chapter 40A (The Zoning Act) allows for a special permit granting authority to make a finding that a dimensionally non-compliant structure in existence for ten years without any action being taken for enforcement may be deemed a nonconforming structure and subject instead to a "Section 6" finding for extensions or modifications to the nonconformity. This new provision deals only with dimensionally noncompliant structures, and does not apply to uses. According to the petitioner, the fourth unit has been in existence for several decades, and creates a dimensional noncompliance with regard to lot area per unit. If a Section 6 finding is not applicable, and the Council does not consider the change from three units to four an extension of the nonconformity, the petitioner requires a variance from the Zoning Board of Appeals to allow the lot area per unit to be reduced.
3. GIS aerial photos indicate that the parking on the property has existed in its current configuration for at least ten years. To the extent that the legalization of the fourth unit extends any nonconformities to the existing parking, the following relief is required.
4. Section 5.1.8.A.1 requires that no parking be located within a required side setback. There are eight parking stalls behind the dwelling structure, of which two are located in the side setback. A special permit to allow two parking stalls in the side setback per section 5.1.13 is required.
5. The parking stalls are 17 feet in depth, where 19 feet is required per section 5.1.8.B.2. A special permit to allow a reduced stall depth is required per section 5.1.13.
6. There are two curb cuts on the property allowing for one-way traffic flow. Per section 5.1.8.C.1, an access aisle width of 24 feet is required for one-way traffic in connection with 90 degree parking. The aisle behind the parking is 15.3 feet wide, requiring a waiver per section 5.1.13 of the aisle width provision.
7. Section 5.1.8.D.1 requires a minimum driveway width of 12 feet for one-way traffic. The driveway entering the property at the front right corner of the dwelling is only 11.2 feet wide at the street, and exiting the property narrows to 8.7 feet at the rear left corner of the dwelling. A waiver from this section is required per section 5.1.13.
8. Section 5.1.8.E.1 requires that parking be designed so that each vehicle is able to proceed to and from each stall without requiring the moving of any other vehicle. Of the eight parking stalls, four

are tandem and require a car to be moved for access. A special permit is required per section 5.1.13 to waive this section.

9. Section 5.1.9 requires adequate perimeter screening for outdoor parking for more than five vehicles. No vegetation or solid fencing is shown on the plans, or proposed in the application. To the extent that there is inadequate perimeter screening on the property, a special permit is required per section 5.1.13.
10. To the extent that the parking does not meet the lighting and surfacing requirements of section 5.1.10, a special permit per section 5.1.13 is required.

MR2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	11,281 square feet	No change
Frontage	80 feet	<b>61.83 feet</b>	<b>No change</b>
Setbacks			
• Front	25 feet	<b>-0.4 feet (over the lot line)</b>	<b>No change</b>
• Side	7.5 feet	8.7 feet	No change
• Rear	15 feet	123.3 feet	No change
Max Lot Coverage	30%	21.9%	No change
Min. Open Space	50%	<b>46%</b>	<b>No change</b>

See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§3.4.1 §7.8.2.C.2	Request to extend the existing nonconforming three unit multi-family use to allow four units	S.P. per §7.3.3
§3.2.6 §7.8.2.C.2	Section 6 finding to legalize noncompliant lot area per unit	S.P. per §7.3.3
§5.1.8.A.1 §5.1.13	To allow parking in the side setback	S.P. per §7.3.3
§5.1.8.B.2 §5.1.13	To allow reduced stall depth	S.P. per §7.3.3
§5.1.8.C.1 §5.1.13	To allow reduced aisle width	S.P. per §7.3.3
§5.1.8.D.1 §5.1.13	To allow a reduced driveway width	S.P. per §7.3.3
§5.1.8.E.1 §5.1.13	To allow tandem parking	S.P. per §7.3.3
§5.1.9 §5.1.13	To waive the perimeter screening requirements	S.P. per §7.3.3
§5.1.10 §5.1.13	To waive the lighting and surfacing requirements	S.P. per §7.3.3