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Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
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**422-13**

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Candace Havens  
Director

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## PUBLIC HEARING MEMORANDUM

Public Hearing Date: January 14, 2014  
Land Use Action Date: January 28, 2014  
Board of Aldermen Action Date: February 3, 2014  
90-Day Expiration Date: April 14, 2014

DATE: January 10, 2014

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 #422-13**, Arthur Ullian, Benjamin Ullian Trust, Arthur, Dora & Benjamin Ullian Trustees for a SPECIAL PERMIT/SITE PLAN APPROVAL to convert an existing detached structure at **76 Hyde Avenue** into a +/- 600-square-foot accessory apartment connected to the main dwelling by a pergola structure, Ward 7, on land known as SBL 72, 23, 57, containing approximately 37,405 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, and 30-8(d)(2), 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.



**76 Hyde Avenue**

### EXECUTIVE SUMMARY

The property at 76 Hyde Avenue consists of a 37,405 square foot lot improved with a single-family 2½-story residence with an attached two-car garage, and a one-story detached structure with a basement. The dwelling was constructed in 2001 after razing the original 1912 structure. The detached structure was built in the 1913 and is original to the site. The petitioner is proposing to convert the detached structure into an approximately 600-square-foot accessory apartment for their health aide. The petitioner is also proposing to construct a pergola from the detached structure to the main residence, a patio behind the detached structure, and a concrete pad for a generator for the accessory apartment. The petitioner is seeking a special permit to create an accessory apartment in a detached structure accessory to a single-family dwelling.

The detached structure is located in the rear of the site behind the attached garage, and is partially screened from abutting properties by vegetation. The health aide's vehicle will be parked in the driveway in the front of the property but will be screened from the public view by an existing wall. The Planning Department notes that the health aide already visits the petitioner on a daily basis, at least once during the day and once at night. For these reasons, the Planning Department believes that the creation of an accessory apartment in the detached structure is an appropriate use for the site and will not adversely affect the neighborhood.

#### I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Board should consider whether:

- The proposed accessory apartment in a detached structure will not adversely affect the neighborhood for the following reasons:
  - The structure already exists and no significant exterior alterations are proposed.
  - Reusing the existing structure ensures that it will be maintained and will not become a nuisance.
  - The health aide for which the accessory apartment is being created is already accessing the site at least twice a day.
- There will be no nuisance or serious hazard to vehicles or pedestrians.

#### II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

##### A. Neighborhood and Zoning

The site is located at the intersection of Hyde Avenue and George Street in Newton Corner. The zoning in the surrounding neighborhood is predominantly Single-Residence 2, and the land use in the neighborhood is predominantly single-

family residences.

B. Site

The property at 76 Hyde Avenue consists of a 37,405 square foot lot improved with a single-family 2½-story residence with an attached two-car garage, and a one-story detached structure with a basement. The dwelling was constructed in 2001 after razing the original 1912 structure, and the detached structure was built in the 1913.

The main dwelling unit is set back from the street by approximately 40 feet and is located on the northwestern side of the lot. The driveway leads to a parking court and the attached garage. The detached structure is in the rear of the site behind the main dwelling and attached garage. Since it is located towards the rear of the site the detached structure is not in close proximity to the dwellings of the abutting properties. There is significant open space in the rear of the site and the property lines are well vegetated with a combination of deciduous and evergreen trees.

The Hyde Brook intersects the northeastern corner of the site, and therefore requires the petitioner to seek approval from the Conservation Commission (or agent) for certain types of changes to the site. The Conservation Commission review is further described in the Technical Analysis section of this memorandum.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The property will remain a single-family residence but will be adding a second residential use by creating an accessory apartment in the detached structure. The accessory apartment will be used by a home health aide to assist the physically disabled petitioner, but would be considered a legal unit able to be rented by the owner in the future. Currently, a health aide visits the petitioner in the morning through the early afternoon, and then returns for an evening visit. At times the health aide stays through the night. Because the health aide visits the site on a daily basis, the Planning Department believes that the creation of an accessory apartment in an existing structure will not significantly change the existing use of the site, and will not adversely impact the surrounding neighborhood.

B. Building and Site Design

The petitioner is proposing to convert the detached structure to an accessory apartment, to construct a patio off of the rear of the detached structure, to build a

pergola between the detached structure and the main residence, and to construct a concrete pad behind the detached structure for a generator for the accessory apartment. The site has a two-car attached garage for the home owners and will leave a designated space for the health aide in the driveway. The parking space will be dimensionally compliant.

The proposed accessory apartment is approximately 600 feet and would include a bedroom, bathroom, kitchen and living area. The basement of the detached structure is used for storage and utilities. The detached structure and the proposed pergola will not be visible from the public way and are partially screened from property abutters.

The Planning Department believes that the proposed changes to the site and the detached structure are consistent with the dimensional controls required by the Newton Zoning Ordinance, and will not adversely affect the property abutters or the surrounding neighborhood. The Planning Department also believes that environmental issues concerning the buffer areas have been addressed, as discussed in the Technical Review Section below.

C. Parking and Circulation

The petitioner is proposing to designate one dimensionally compliant parking space for the health aide in the existing parking court. No changes are proposed to the parking or circulation on the site.

D. Landscape Screening

The site is partially screened from property abutters and from the public way.

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 create an accessory apartment in a detached structure accessory to a single-family dwelling.

B. Engineering Review

As the petitioner is not increasing the impervious surfaces on the lot by more than 4% no engineering review is required.

C. Conservation Commission Review

The proposed changes to the site, including the proposed concrete pad to support

the new generator, the proposed patio, and the pergola are within a wetland resource area and/or a buffer zone for a Wetland Resource Area, and are therefore subject to the purview of the Conservation Commission. The petitioner requested and was granted administrative approval by the Conservation Commission Agent (**Attachment B**) for the proposed changes. As part of the approval the Conservation Commission requested sedimentation controls around the changes to the site.

#### V. ZONING RELIEFS SOUGHT

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

- Section 30-8(d)(2), to create an accessory apartment in a detached structure accessory to a single-family dwelling.

#### VI. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

#### **ATTACHMENTS:**

- Attachment A:** Zoning Review Memorandum  
**Attachment B:** Conservation Agent Letter  
**Attachment C:** Zoning Map  
**Attachment D:** Land Use Map



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ATTACHMENT A

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Candace Havens  
Director

## ZONING REVIEW MEMORANDUM

Date: November 13, 2013

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Commonwealth Engineering, engineer representing the applicant  
Arthur Ullian, applicant  
Candace Havens, Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Request to establish an accessory apartment in a detached accessory structure**

Applicant: Arthur Ullian	
<b>Site:</b> 76 Hyde Avenue	<b>SBL:</b> 72 23 57
<b>Zoning:</b> SR2	<b>Lot Area:</b> 37,405 square feet
<b>Current use:</b> Single-family dwelling	<b>Proposed use:</b> Single-family with accessory apartment

### BACKGROUND:

The property at 76 Hyde Avenue consists of a 37,405 square foot lot improved with a single-family dwelling with an attached two-car garage, and detached two-car garage. The dwelling was rebuilt in 2001 after razing the original 1912 structure. The detached accessory structure was built in 1913 and remains in its original condition. The applicant proposes to convert the detached structure into a ±600 square foot accessory apartment to be occupied by a health aid for the physically disabled owner. The applicant proposes to build a pergola structure connecting the main dwelling to the accessory structure.

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

- Zoning Review Application, prepared by Commonwealth Engineering, submitted 10/15/13
- Proposed site plan, prepared by Commonwealth Engineering, dated 10/10/13
- Architectural plans, prepared by MZO Group, architects, dated 10/10/13
  - Basement Plan
  - First Floor Plan

- Pergola/Pavilion Plan
- Elevations
- Pergola/Pavilion Elevation
- General Notes
- MA DEP Form 8B – Certificate of Compliance, dated 4/29/13

#### **ADMINISTRATIVE DETERMINATIONS:**

1. The existing single-family structure is located in an SR1 district. Per section 30-8(d)(2), a special permit is required to create an accessory apartment in a detached structure accessory to a single-family dwelling.
2. Section 30-8(d)(1)(a) requires that an accessory apartment be located within a single family dwelling and one of the two units must be occupied by the owner of the property. The owner of the property intends to maintain residency in the main dwelling. The accessory unit is intended to be occupied by a home health aid.
3. Section 30-8(d)(1)(b) requires a single-family dwelling to have been constructed at least ten years prior to the date of application for the permit for the accessory apartment. The dwelling was built in 2001 and thus meets the requirement.
4. The proposed accessory unit is approximately 600 square feet, which is greater than the minimum of 400 square feet, and less than the maximum of 1,200 square feet required by the ordinance per Section 30-8(d)(2)(a).
5. No exterior alterations are required, per section 30-8(d)(1)(d) and (e) and 30-8(d)(2)(b).
6. There are no other existing or proposed accessory apartments on the lot, per section 30-8(d)(1)(f).
7. No lodgers are proposed in either unit, per section 30-8(d)(1)(g).
8. Sections 30-8(d)(1)(h), 30-19(d)(1) and 30-19(d)(19) require two parking stalls for the single-family dwelling, and one stall for the accessory unit. The applicant has an attached two-car garage and a proposed designated parking stall in the driveway, therefore no parking waivers are required.
9. The accessory apartment must comply with all applicable building, fire and health codes, per section 30-8(d)(1)(i).

<b>Zone SR2</b>	<b>Required/Allowed</b>	<b>Existing</b>	<b>Proposed</b>
Lot Size	15,000 square feet	37,405 square feet	No change
Frontage	80 feet	147.93 feet	No change
Setbacks for existing structure			
● Front	25 feet	40.2 feet	No change
● Side	7.5 feet	15.7 feet	No change
● Rear	15 feet	±100 feet	No change

1. See "Zoning Relief Summary" below:

<b>Zoning Relief Required</b>		
<b>Ordinance</b>		<b>Action Required</b>
§30-8(d)(2)	Creation of an accessory apartment in a detached structure accessory to a single-family dwelling	S.P. per §30-24



# NEWTON CONSERVATION COMMISSION

ATTACHMENT B

CITY HALL, 1000 COMMONWEALTH AVE., NEWTON, MA 02459  
TELEPHONE: 617-796-1120 [JSTEEL@NEWTONMA.GOV](mailto:JSTEEL@NEWTONMA.GOV)

## CONSERVATION COMMISSION ADMINISTRATIVE APPROVAL

*This Administrative Approval does not exempt you, your property, or activities on your property from the Wetlands Protection Act and its Regulations (310CMR 10.00). If you intend to expand or change the scope or nature of your project, consult the Conservation Commission, as a permit may be required. Cutting vegetation, grading, filling, etc. beyond the specific activities cited in this approval, may require a permit from the Conservation Commission.*

- A.  Project Address: 76 HYDE AVE Applicant: Arthur William  
Proposed Approved Project: PATIO, WALKWAY, GENERATOR  
 Sketch Attached Approved by: JENNIFER STEEL Approved Date: 11/25/13

### Jurisdiction

- B.  According to our maps, at least a portion of the property is within wetland or buffer zone protected by the Mass. Wetlands Protection Act (310CMR 10.00). Specifically, all or a portion of your property is in a:  
 Wetland Resource Area (e.g., 200' riverfront area, bordering wetland, pond, stream, or 100-yr flood zone)  
 Buffer Zone of a Wetland Resource Area (all land within 100' of a qualifying wetland).

### Reason for Administrative Approval

- C.  The work you propose is not within wetland or buffer zone. If you intend to expand or change the scope or nature of your project, consult the Conservation Commission, as a permit may be required.  
D.  According to our maps, your proposed project is within wetland or buffer zone, but has been reviewed by the Conservation Agent and has been allowed under of the following provisions.

Within Buffer Zone or Riverfront Area [310 CMR 10.02(b)(1)], as long as proper erosion controls are maintained

- The conversion of lawn to uses accessory to residential structures such as decks, sheds, pools, and patios more than 50 feet from edge of wetland, stream, pond, etc. + MINOR ADDITION OF GENERATOR (~50 S.F.), WALKWAY (~128 S.F.), + CONCRETE SLAB (~120 SF.) [TOTAL = 298 S.F.]. PREVIOUSLY PERMITTED BUT NOT UTILIZED WAS 890 S.F. OF IMPERVIOUS AREA.
- Installation of pervious (unpaved, wood-chipped, or gravel) pedestrian walkways for private use.
- Fencing, stonewalls, or stacks of cord-wood that do not bar wildlife movement.
- Plantings of native species of trees, shrubs, or groundcover, but excluding turf lawns
- Vista pruning of native species of trees, shrubs, or groundcover, but excluding turf lawns
- Conversion of impervious surfaces to vegetated surfaces such as lawn, shrubs, and trees.

Anywhere within a Resource Area or Buffer Zone [Town Approval for Maintenance and Safety]

- Maintaining or repairing an existing structure. No filling, grading, or landscaping is allowed under this approval.
- Replacement of sonotubes under existing decks, sunrooms, sheds, etc.
- Replacement of asphalt driveway with permeable pavers or permeable asphalt.
- Removal of 1-2 hazard trees deemed by the Agent and the Tree Warden to be likely to injure a person or damage a structure. No equipment shall enter a wetland. No brush shall be left in or within 25 ft. of a wetland.  
 The tree may be cut flush with the ground.  
 Only the top of the tree may be removed to eliminate danger. \_\_\_ feet of trunk must be left as habitat.  
 No wood chips may remain on site.  
 1-2 saplings (native species) shall be planted on the site for each tree over 18" dbh removed. Total to be planted \_\_\_.

Within a 100-Year Floodplain ONLY:  "fill" ≤ 1 cubic yard IF compensatory storage of ≥1 cu yard is provided.

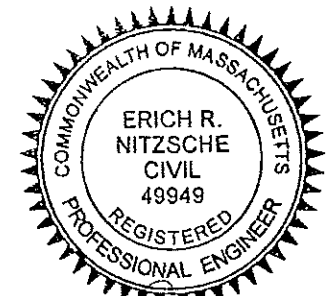
Within 25' of wetland or river bank:  conversion of lawn to pervious structures such as decks and patios.

### Requirements

- E.  This Administrative Approval requires the following otherwise full wetland permitting requirements shall apply.  
 Sedimentation controls shall be installed as shown on the attached plans. SEE ANNOTATIONS ON ATTACHED PLAN  
 GROUND SHALL BE PLANTED + STABILIZED IMMEDIATELY UPON COMPLETION OF CONSTRUCTION.

### ZONING REQUIREMENTS

SR2-SINGLE RESIDENCE 2 - TABLE 1	REQUIRED	EXISTING
MINIMUM LOT AREA	15,000 s.f.	37,405 s.f.
MINIMUM FRONTAGE	100'	147.93'
MINIMUM FRONT SETBACK	30'	40.2'
MINIMUM SIDE SETBACK	15'	15.7'
MINIMUM REAR SETBACK	15'	41.4'
MAXIMUM BUILDING LOT COVERAGE	20%	12.7%
MINIMUM AMOUNT OF OPEN SPACE	65%	87.3%



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 BURLINGTON, MA 01803  
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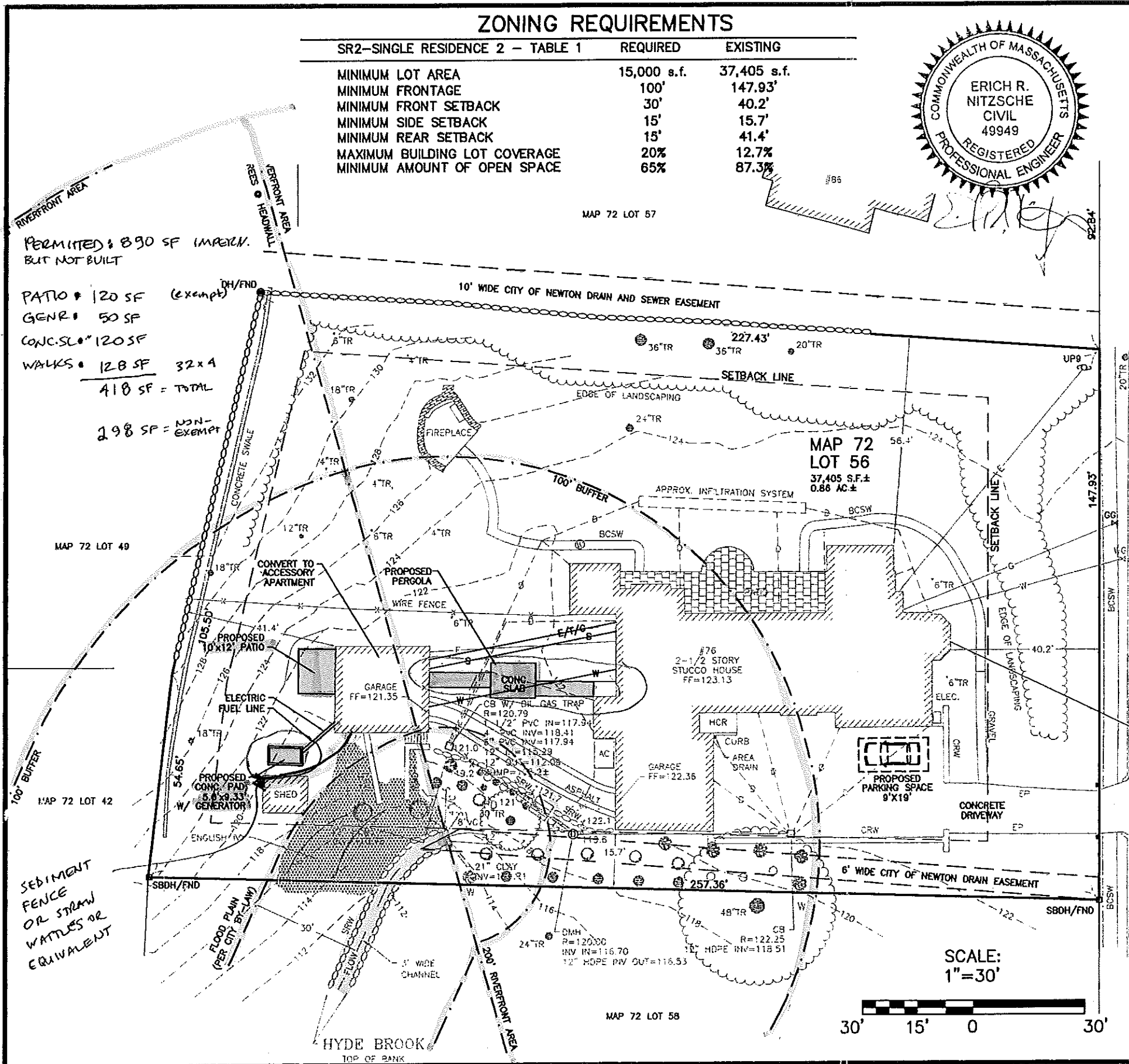
## SITE PLAN 76 HYDE AVENUE NEWTON, MA 02458

PREPARED FOR:

**ARTHUR D. ULLIAN**  
 76 HYDE AVENUE  
 NEWTON, MA 02458

OCTOBER 15, 2013

DRAWN: ERN	CHECKED: DNR
FILE PATH (H:/PROJ): \\200008.00\DWG\SITE_PLAN.DWG	
FIELD BOOK/PAGE: 19/43	SHEET: 1
JOB NO.: 200008.00	



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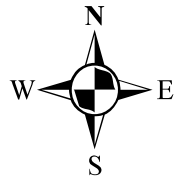
# 422-13 Zoning Map 76 Hyde Ave

*City of Newton,  
Massachusetts*

### Legend

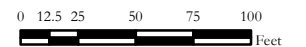
- Streets - Pavement Edge
- Building Outlines
- Zoning**
  - Single Residence 2

ATTACHMENT C

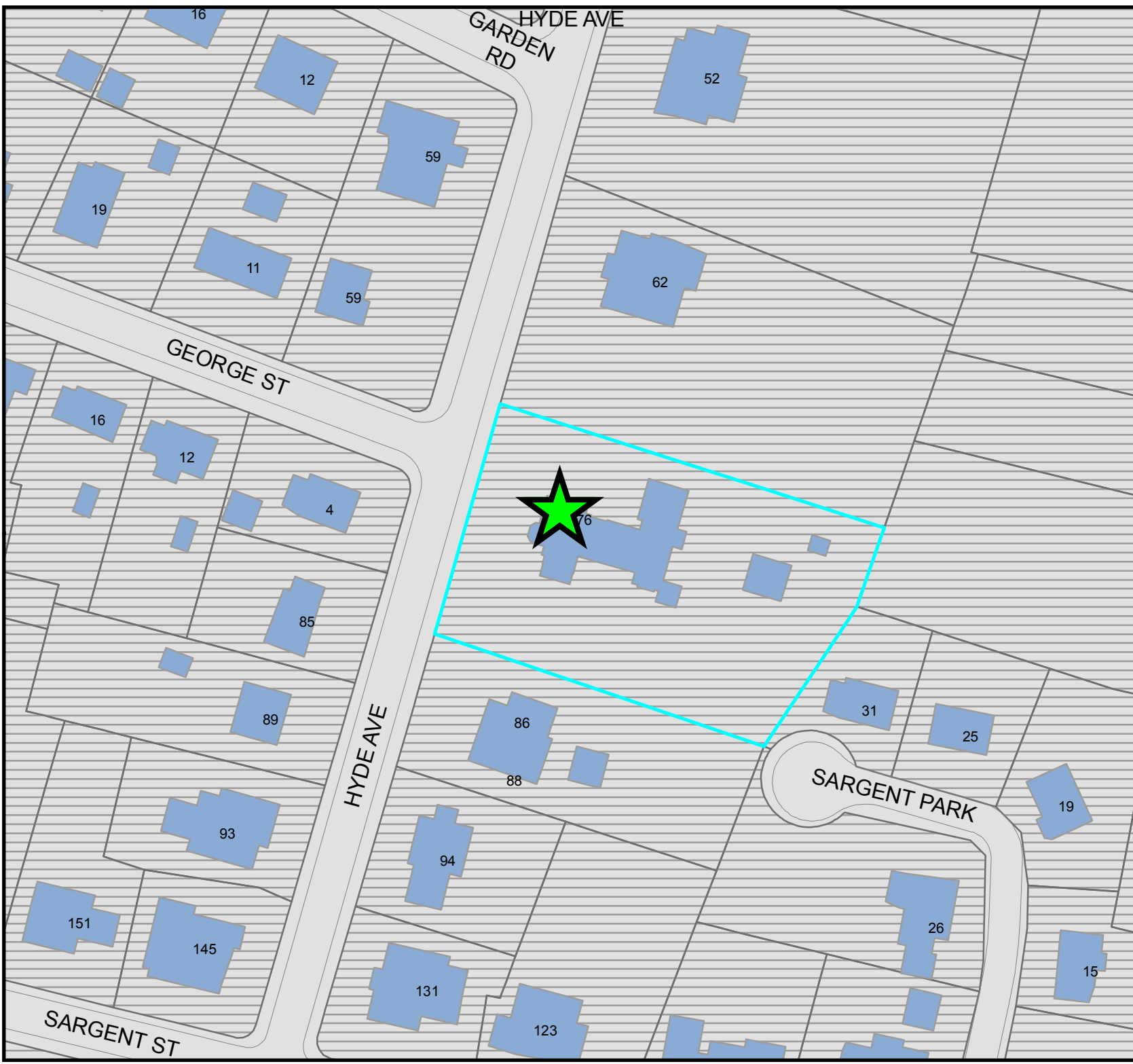


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield



Map Date: December 09, 2013



# 422-13 Land Use Map 76 Hyde Ave.

*City of Newton,  
Massachusetts*

**Legend**

- Streets - Pavement Edge
- Building Outlines
- Open Space

**Land Use**

- Single Family Residential
- Multi-Family Residential
- Open Space

ATTACHMENT D



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