

## Overview: Legal Issues

This section covers two legal issues that need to be resolved. First, whether commercial space can be double-counted, which in turn affects the density of apartments. Second, whether Mr. Korff owns two small streets that he claims within the Orr Block.

- *Density Controls — Letter to Marc Laredo*  
Peter Harrington
  - ¾ *Mr. Harrington explains how density controls work under different zoning categories. Emphasis is on double counting of commercial land, an issue that must be resolved.*
  
- *Who owns Bailey Place and Washington Terrace?*  
Peter Harrington
  - ¾ *The Orr Block parcel includes two small streets: Bailey Place and Washington Terrace. The petitioner claims to have ownership rights over both, but he does not. This must be resolved before he can claim them.*

# Summary

## Of letter from Peter Harrington to Hon. Marc C. Laredo

### Subject: Density Controls

November 15, 2016

In answer to your request for clarification of a portion of the Newton Zoning Ordinance that deals with density controls.

- **Density control determines how many people can live on the same lot of land** at the same time. In a Single Residence 1 zone, only one family is allowed to live on a lot containing 25,000 square feet of land.
- If that same lot was in a Business Use zone, the formula would be one unit for each 1,200 square feet of land, allowing 21 families to live on the same size lot.
- Under Korff's proposed density of one family for each 725 square feet of land, 34 families would be allowed on a 25,000 square foot lot.

**The issue of "density control" is complicated when applied to zoning districts that allow more than one use**, such as a Mixed Use zoning district. The complication has to do with **double counting**.

- Double counting allows the developer to use some of the land for commercial purposes and then count that same land again when applying a density formula to determine the number of residential units that may be built on the site.
- Korff's density proposal of 1 family for each 725 square feet of land is achieved by use of a double count.
- If the 40,000 square feet of land set aside for retail and commercial use were deducted from the total land area of 115,000 square feet of land, Korff would need a density formula of 466 square feet per unit to build his proposed 161 units. That formula would allow 54 families to live on that same 25,000 square foot lot.

**The issue of double counting has yet to be addressed, and should be addressed prior to a determination about the Korff petitions.**

– Full text follows

# HARRINGTON & HARRINGTON

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November 15, 2016

Hon. Marc C. Laredo, Chairman  
Land Use Committee  
Newton City Council  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

RE: Docket Items #179-16 & 180-16 Density Controls

Dear Marc,

At the November 1, 2016 Public Hearing on the Korff project in Newtonville you asked for a clarification of a portion of the Newton Zoning Ordinance that deals with density controls. The following are my thoughts on your question.

Most agree that the earth is 4.5 billion years old. Paleontologists agree that dinosaurs were the dominate vertebrate on earth 200 million years ago. The recorded history of civilized society extends back over five thousand years.

The history of zoning in Massachusetts extends back to November 5, 1918 when Article XL of the Amendments to the Constitution was adopted by the voters. From this we might conclude that zoning is in its infancy.

***Article XL - The general court shall have power to limit buildings according to their use or construction to specified districts of cities and towns.***

From that simple sentence our City Council has developed an 8 section, 176 page ordinance regulating uses of land in Newton dividing the city into 24 different types of zoning districts. Newton has 3 single family and 4 multifamily zoning districts; 9 mixed use business and residential districts; 2 manufacturing districts; an open space district, a public use/recreation district and 4 overlay districts.

A fair amount of time and space in the Ordinance is devoted to “density and dimensional controls”. For example, Section 3.1.2 describes the density and dimensional standards for single family lots created after December 7, 1953. One of the key elements of this section is the required Lot Area per unit. That is, the amount of land required to be owned in order to build a single family home on a particular lot. There are other elements of the Section that address other restrictions or requirements such as the size of the house (floor area ratio), open space, frontage on a street, building height and setbacks, etc.

In the three zoning districts for single family homes the Lot Area in each zone varies from 10,000 square feet (SR 3) to 15,000 square feet (SR2) to 25,000 square feet (SR 1).

The issue of “density control” appears to become more complicated when applied to zoning districts that allow more than one use, such as Business Use and Mixed Use zoning districts. The intent of density control is to regulate the number of people that can live on one lot (site) at the same time.

Each zoning district has an underlying requirement that a lot in that particular zone be a minimum lot size. It is the basic density control regulation that is used in zoning laws to regulate the intensity of residential use of property. It is a determining factor in the projection of municipal population, school budgets, fire department costs and tax income to the city.

Density control helps determine how many people can live on the same lot of land at the same time. The difference is that in a Single Residence 1 zone, only one residential unit would be allowed on a lot containing 25, 000 square feet of land. But, if that same lot was in a Business Use zone, residential units above the first floor could be constructed based upon the formula of one unit for each 1,200 square feet of land allowing 21 families to live on the same size lot.

In a Multi Family zone, such as Foster Street, that abuts the Korff project for the Orr Block, one family is allowed per 5,000 square feet of land

At the proposed 30 acre Northland project on Needham Street one family will be permitted for each 1,375 square feet of project land.

Under the current zoning laws one family is permitted for each 1,200 square feet of land on Korff’s site at Washington & Walnut Streets in Newtonville.

Mr. Korff is proposing a density of one family for each 715 square feet of land on the project site.

If we used Mr. Korff’s density formula in our Single Residence 1 zone, that would allow 35 families in a 25,000 square foot lot.

Another complication when applying a residential density formula in a Business Use or Mixed Use zone is the question of a double count. That is, allowing the developer to use some of the land for commercial purposes and then count that same land again when applying a density formula to determine the number of residential units that may be built on the site.

Using the City Assessor’s information concerning the area of the lots contained in the Korff petition, the Korff’s site has 115,000 square feet of land (this does not include Bailey Place). See **Exhibit 1**. Using this information we can calculate how many residential units are permitted on the site, under the zoning Ordinance.

Under the BU 2 density formula of one unit per 1,200 sq. ft. (BU1 & BU2), 96 units are allowed (rounding up) on Korff's 115,000 sq. ft. site;

Under the MU 4 density formula of one unit per 1,000 sq. ft., 115 units are allowed;

Under the Korff density formula of one unit per 715 sq. ft., 161 units are allowed (rounding up).

The Korff proposal is requesting 65 additional units or 68% more than what's allowed in a Business Use zone.

If we correct the formula and subtract the building space used for commercial purposes from the total land area of 115,000 sq. ft., (49,325 sq. ft. ground floor area is set aside for retail use. [PCA PROJECT #: 15063 Cover sheet] (including corridors and common space), but not including the space taken up for commercial parking), we are left with 66,000 sq. ft. to be used for residential purposes, we can calculate as follows:

- 1) On 66,000 sq. ft. of land, under the BU 2 density formula of one unit per 1,200 sq. ft. (BU1 & BU2), 55 units are allowed;
2. Under the MU 4 density formula of one unit per 1,000 sq. ft., 66 units are allowed;
3. Under the Korff density formula of one unit per 715 sq. ft., 92 units are allowed.

To qualify for 161 units Korff is asking for a waiver to reduce the density ratio to one family per 410 sq. ft. That same formula would allow 61 families on a 25,000 square foot SR1 lot, 37 families on an SR2 lot and 24 families on SR3 and MR1 lots. MR1 is the zoning district adjacent to the project site. Under this formula the Korff proposal is requesting 106 additional units. Nearly 2 times than what's allowed in a Business Use zone.

It is my best memory that in years past the Building Inspector used the latter formula, deducting the amount of land used for other (commercial) purposes from the total land area before applying the residential density formula, as the proper application of the ordinance.

Mr. Korff's claim that he can not afford to build less is not based upon municipal regulation but is based upon his overpayment for the land. He is looking to the City Council to provide relief for his investment mistake. The issue of overpayment is presented in the attached **Exhibit 2**.

Under existing zoning, with a Special Permit, Mr. Korff can build 56,345 sq. ft. in the BU 1 zone and 154,700 sq. ft. in the Business 2 zone, for a total of 211,053 sq. ft. of new building space. That should calculate to about \$200.00 per foot. Consider that Developers are spending \$550,000.00 to \$600,000.00 per lot to tear down an existing home to build a new 3,300 sq. ft house you will see that Korff paid high end prices on a the gamble that he would get a Special Permit.

If you would like further explanation I would be happy to provide it but I may need more than 3 minutes.

Sincerely,

# FACT CHECK REPORT # 2 Lot Size

**To: Newton City Council & Newton Special Permit Granting Authority**

**Docket Item #179-16, Special Permit Petition for Orr Building at Walnut St. and Washington St.**

**Docket Item #180-16, Special Permit Petition to rezone the Orr block to Mixed Use 4**

ITEM	CLAIMED	ACTUAL
Lot Size	123,965 sq. ft.	114,915 sq. ft.

Address	Sec 21, Bk 29 Lot #	Value	Zoning District	Area
241 Walnut Street	10	\$ 950,000.00	BU 2	7,794 sq. ft.
245-261 Walnut Street	11	\$ 2,818,100.00	BU 1	12,788 sq. ft.
848-855 Washington Street	12	\$ 2,052,400.00	BU 1	7,478 sq. ft.
14-18 Bailey Place	13	\$ 234,600.00	BU 2	9,457 sq. ft.
22 Bailey Place	14	\$ 281,600.00	BU 2	6,914 sq. ft.
Bailey Place (Lot 15)	15	\$ 112,700.00	BU 2	3,364 sq. ft.
861-865 Washington Street	16	\$ 1,860,500.00	BU 2	17,072 sq. ft.
857-859 Washington Street	17	\$ 1,163,200.00	BU 1	3,235 sq. ft.
867 Washington Street	18	\$ 722,200.00	BU 1	3,300 sq. ft.
869 Washington Street	19	\$ 391,700.00	BU 2	19,971 sq. ft.
875 Washington Street	19A	\$ 696,200.00	BU 1	10,760 sq. ft.
6-8 Washington Terrace	20	\$ 544,300.00	BU 2	2,345 sq. ft.
10-12 Washington Terrace	21	\$ 588,000.00	BU 2	1,855 sq. ft.
16-18 Washington Terrace	22	\$ 439,800.00	BU 2	4,200 sq. ft.
22 Washington Terrace	23	\$ 474,500.00	BU 2	4,382 sq. ft.
<b>TOTAL</b>		<b>\$13,329,800.00</b>		<b>114,915 sq. ft.</b>

<b>Business Use 1 area</b>	37,561 sq. ft.
<b>Business Use 2 area</b>	77,354 sq. ft.
Total	<b>114,915 sq. ft.</b>

# Inquiring minds ask WHY ?

Is there a need to change the zoning district in Newtonville?

The City of Newton has agreed to lease 28 Austin Street, containing 74,536 sq. ft. of land for ninety-nine years for a one-time payment of \$1,050,000.00 (One Million Fifty Thousand) Dollars. That is a price of \$14.09 per sq. ft. Included in the lease terms is a requirement that the Lessee provide municipal parking. The cost of the municipal parking (124 surface parking spaces) would have to be added to the price for the purposes of comparison to recent sales. Considering the Lessee will have to put its own parking underground and using a generous adjustment factor of \$30,000.00 per parking space that would add \$3,700,000.00 to the lease cost and increase the **price to \$64.00 per square foot.**

It is reported that 773 Washington Street (BU2 zone) & 90 Court Street (MR1 zone), containing 74,518 sq. ft., are to be sold for \$12,000,000.00 (Twelve Million) Dollars. That is a sale **price of \$161.03 per square foot.**

Robert Korff has purchased six of the seven parcels identified in his Petition for a Special Permit. The six parcels contain 97,437 sq. ft. of land located on Washington and Walnut Streets (the Orr Block) (zoned BU1 & BU2) for a \$28,920,000.00 (Twenty-Eight Million Nine Hundred Twenty Thousand) Dollars. That is an **average purchase price of \$296.81 per square foot.**

1. \$20,000,000.00 (Twenty Million) Dollars for 83,579 sq. ft. on Washington, Walnut & Bailey Place (\$239.29 per square foot) See Attachment A;
  2. \$2,300,000.00 (Two Million Three Hundred Thousand) Dollars for 7,794 Sq. Ft. on Walnut Street (\$295.10 per square foot) See Attachment B;
  3. \$2,000,000.00 (Two Million) Dollars for 2,345 sq. ft. at 6-8 Washington Terrace (\$852.88 per square foot) See Attachment C;
  4. \$1,200,000.00 (One Million Two Hundred Thousand) Dollars for 1,855 sq. ft. at 10-12 Washington Terrace (\$646.90 per square foot) See Attachment D;
  5. \$1,420,000.00 (One Million Four Hundred Twenty Thousand) Dollars for 4,200sq. ft. at 16-18 Washington Terrace (\$338.10 per square foot) See Attachment E;
  6. \$2,000,000.00 (Two Million) Dollars for 4,382 sq. ft. at 22 Washington Terrace (\$456.41 per square foot) See Attachment F;
- R Korff has not yet purchased 875 Washington Street (Sunoco Gas Station) containing 10,760.00 sq. ft. of land.
  - R Korff did not apply employ the standard safeguards used by prudent developers, such as: “the sale is pending receipt of permits”.

**Does Korff expect the Newton City Council help him make recoup his overinvestment?**

**The following attachments can be obtained from Peter Harrington**

**Attachment A**

**Washington, Walnut & Bailey Place**

**Attachment B**

**Walnut Street**

**Attachment C**

**6-8 Washington Terrace**

**Attachment D**

**10-12 Washington Terrace**

**Attachment E**

**16-18 Washington Terrace**

**Attachment F**

**22 Washington Terrace**



## Who Owns Bailey Place and Washington Terrace?

Peter Harrington

### **FACT CHECK REPORT — BAILEY PLACE**

1. **Bailey Place is a street shown on municipal records since the 1895 City Atlas. Its status as a public or private way is uncertain. There are indications it could be either.**
2. **The deed to Bailey Place is not included in the Petitioner's site purchase. Bailey Place is not owned or under the control of the Petitioner.**
3. **The Petitioner does not own Bailey Place.**

### **FACT CHECK REPORT — WASHINGTON TERR.**

1. **Washington Terrace is a street shown on municipal records since the 1886 City Atlas as a private way. The first gasoline powered automobile was invented by Karl Benz in 1886.**
2. **Washington Terrace was created to provide access to the nine lots abutting the private way.**

3. **The proposed plans for Washington Terrace do not meet Newton requirements concerning sidewalks, lighting, handicapped access and pedestrian safety.**
4. **There is no proposed covenant for maintenance of Washington Terrace.**
5. **There is no evidence that the developer's rights to use the way included the right to turn it into an access point for 346 parking spaces for gasoline powered automobiles.**
6. **There is no evidence that the developer's rights to use the way included the right to turn it into an access point for land abutting Walnut Street, 450 feet distant.**
7. **The Petitioner does not own Washington Terrace.**