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Mayor

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**#205-23**  
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Director

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## MEMORANDUM

**DATE:** July 28, 2023

**TO:** Councilor Deborah Crossley, Chair, Zoning and Planning Committee  
Members of the Zoning and Planning Committee

**FROM:** Barney Heath, Director, Department of Planning and Development  
Jennifer Caira, Deputy Director Department of Planning and Development  
Zachery LeMel, Chief of Long Range Planning  
Joe Iadonisi, Planning Associate

**SUBJECT:** **Petition #205-23** for a change of zone to MIXED USE 1 for land located at 126-132 Charles St. Street. 126 Charles St. (Section 41 Block 06 Lot 26) is currently zoned Manufacturing (MAN), 132 Charles St. (Section 41 Block 06 Lot 14) is currently zoned MAN for what was formerly Section 41 Block 06 Lot 11, Multi-Residence 2 (MR2) for what was formerly Section 41 Block 06 Lot 12, and Multi-Residence 1 (MR1) for what was formerly Section 41 Block 06 Lot 14.

**MEETING:** July 31, 2023

**CC:** City Council  
Planning and Development Board

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At the July 24, 2024 Zoning and Planning Committee (ZAP) meeting, a public hearing was held and closed on the subject item above. ZAP voted to hold the item with the request for two additional pieces of information:

1. *An explanation from the petitioner why the property is seeking this rezoning, given that rezonings similar to this typically happen in parallel to a development proposal.*

The petitioner has provided a narrative explanation (Attachement A).

2. *A comparison of the allowed development and uses between the current zones (MR1, MR2, and MAN) and the proposed zone (MU1).*

The comparison zoning dimensional and use tables are provided here.

Zoning Dimensional Requirements:

|                  | Current Zoning                    |                                   |                                                                                   | Proposed Zoning                                                   |
|------------------|-----------------------------------|-----------------------------------|-----------------------------------------------------------------------------------|-------------------------------------------------------------------|
|                  | MR1 (new lot)                     | MR2 (new lot)                     | MAN                                                                               | MU1                                                               |
| Min. lot size    | 10,000 sqft                       | 10,000 sqft                       | 10,000 sqft                                                                       | 40,000 sqft                                                       |
| Height           | 36' sloped<br>30' flat            | 36' sloped<br>30' flat            | 2 stories/ 24' by right<br>3 stories/ 36' by special permit                       | 3 stories/ 36' by-right<br>4 stories/ 48' by special permit       |
| Floor Area Ratio | 0.38-0.58 (see Ch.30 sec. 3.2.11) | 0.38-0.58 (see Ch.30 sec. 3.2.11) | 1.00 for 2 stories or less, 1.50 for 3 stories                                    | 1.50 for 3 stories or less, 2.00 for 4 stories                    |
| Front Setback    | 30'                               | 25'                               | Greater of 15' or 1/2 building height or average                                  | 1 Story: 15'<br>2 or more stories: Equal to Building Height       |
| Side Setback     | 10'                               | 10'                               | Abutting res/pub.: greater of ½ bldg. height or 20'<br>Other: 1/2 building height | Abutting res/pub: greater of ½ bldg. height or 20'<br>Other: 7.5' |
| Rear Setback     | 15'                               | 15'                               | Abutting res/pub.: greater of ½ bldg. height or 20'<br>Other: 1/2 building height | Abutting res/pub: greater of ½ bldg. height or 20'<br>Other: 7.5' |

While the above table demonstrates that the zoning dimensional requirements of the Mixed Use 1 zone are designed to accommodate buildings with a large footprint on a large parcel, there are limited options for developing or expanding beyond the current use. Options for expanding the current buildings or building new, larger, structures are limited by the zoning dimensional standards and site plan review for additions beyond 2,000 square feet and a special permit for any development beyond 20,000 square feet. There are no listed standards for lot coverage and open space with the MU1 zone. Setback requirements set forth for the MU1 zone would limit expansion westward as well as expansion eastward given the building at 132 Charles St. currently sits on the eastern lot line and the site is predominantly surrounding by residential and public zoning districts which require greater setbacks. Given 132 Charles St., currently has a building area of 19,361 square feet, any larger potential structures or additions proposed would require site plan review. Any dimensional nonconformities would be allowed to be extended via special permit.

Use Allowances:

The table illustrates that a rezoning to MU1 would expand allowed residential and commercial uses, while

further limiting restricted and industrial uses compared to MAN.

| Use                                             | MR1 | MR2 | MAN | MU1 |
|-------------------------------------------------|-----|-----|-----|-----|
| <b>Residential Uses</b>                         |     |     |     |     |
| Single-Family, detached                         | P   | P   |     |     |
| Two-Family, detached                            | P   | P   |     |     |
| Single-Family, attached                         | SP  | SP  |     |     |
| Multi-family dwelling                           |     | SP  |     |     |
| Residential use, above ground floor             |     |     |     | SP  |
| Residential use, ground floor                   |     |     |     | SP  |
| Live/work space                                 |     |     |     | P   |
| Lodging House, above ground floor               |     |     |     | SP  |
| Lodging House                                   | SP  | SP  |     |     |
| Associations of persons in a common dwelling    | SP  | SP  |     |     |
| Congregate living facility                      | SP  | SP  |     |     |
| Dormitory (5-20 persons)                        | SP  | SP  |     |     |
| Dormitory (20+ persons)                         | L   | L   |     |     |
| Cluster development for open space preservation | SP  | SP  |     |     |
| Residential care facility                       | SP  | SP  |     |     |

| Use                                                                   | MR1 | MR2 | MAN | MU1 |
|-----------------------------------------------------------------------|-----|-----|-----|-----|
| <b>Civic/Institutional Uses</b>                                       |     |     |     |     |
| Cemetery, private                                                     | SP  | SP  | SP  | SP  |
| Club, clubhouse                                                       | SP  | SP  |     |     |
| Community use space                                                   |     |     | P   | P   |
| Family child care home, large family child care home, day care center | L   | L   | L   | L   |
| Heliport                                                              |     |     |     | SP  |
| Hospital                                                              | SP  | SP  |     |     |
| Library, museum or similar institution                                | SP  | SP  |     |     |
| Nonprofit Institution                                                 | SP  | SP  |     |     |
| Public use                                                            | L   | L   | L   | L   |
| Rail/bus station                                                      |     |     | P   | P   |
| Religious institution                                                 | L   | L   | L   | L   |
| Sanitarium, convalescent or rest home, other like institution         | SP  | SP  |     |     |
| School or other educational purposes, non-profit                      | L   | L   |     |     |
| School or other educational purposes, for-profit                      | SP  | SP  |     |     |
| Scientific research and development activities, accessory             | SP  | SP  |     |     |

| Use                                                                         | MR1 | MR2 | MAN | MU1 |
|-----------------------------------------------------------------------------|-----|-----|-----|-----|
| <b>Commercial Uses</b>                                                      |     |     |     |     |
| Animal service, excluding overnight boarding                                |     |     |     | SP  |
| ATM, standalone                                                             |     |     | SP  | SP  |
| Bank, up to 5,000 square feet                                               |     |     |     | SP  |
| Bank, over 5,000 square feet                                                |     |     |     | SP  |
| Bed & Breakfast                                                             | SP  | SP  |     |     |
| Business incubator                                                          |     |     |     | P   |
| Business services                                                           |     |     |     | SP  |
| Car-sharing service, car rental, bike rental, electric car-charging station |     |     | P   | P   |
| Car wash                                                                    |     |     | SP  |     |
| Dry cleaning or laundry, retail                                             |     |     |     | SP  |
| Fuel establishment                                                          |     |     | SP  | SP  |
| Funeral home                                                                |     | SP  |     |     |
| Health club, above or below ground floor                                    |     |     | P   | P   |
| Health club, ground floor                                                   |     |     | P   | SP  |
| Job printing, up to 3,000 square feet (area used for work and storage)      |     |     | P   |     |
| Job printing, over 3,000 square feet (area used for work and storage)       |     |     | P   |     |
| Kennel                                                                      |     |     | P   |     |
| Microfulfillment Center                                                     |     |     | L   | L   |
| Office                                                                      |     |     | P   | P   |
| Parking facility, accessory, single level                                   |     |     | P   | P   |
| Parking facility, non-accessory, single level                               |     |     | SP  | SP  |
| Parking facility, accessory, multi-level                                    |     |     | SP  | SP  |
| Parking facility, non-accessory, multi-level                                |     |     | SP  | SP  |
| Radio or television broadcasting studio                                     |     |     | L   |     |
| Radio, or television transmission station                                   | SP  | SP  | SP  | SP  |
| Restaurant                                                                  |     |     |     | SP  |
| Retail sales, over 5,000 square feet                                        |     |     |     | SP  |
| Service establishment, up to 5,000 sq. feet                                 |     |     |     | SP  |
| Service establishment, over 5,000 sq. feet                                  |     |     |     | SP  |
| Vehicle repair shop, minor                                                  |     |     | SP  | SP  |
| Vehicle repair shop, major                                                  |     |     | SP  | SP  |
| Vehicles sales and service facility, indoor                                 |     |     | SP  | SP  |
| Vehicles sales and service facility, outdoor                                |     |     | SP  | SP  |
| Veterinary hospital                                                         |     |     | P   | SP  |
| <b>Industrial Uses</b>                                                      |     |     |     |     |
| Assembly or fabrication of materials manufactured off premise               |     |     | P   | P   |
| Bakery, wholesale                                                           |     |     | SP  |     |
| Boat building, storage and repair                                           |     |     | L   |     |
| Bottling works (except for alcoholic beverages)                             |     |     | P   |     |

| Use                                                                                     | MR1    | MR2    | MAN    | MU1    |
|-----------------------------------------------------------------------------------------|--------|--------|--------|--------|
| <b>Industrial Uses (cont.)</b>                                                          |        |        |        |        |
| Building materials sales yard and storage building                                      |        |        | SP     |        |
| Contractor's yard                                                                       |        |        | P      |        |
| Feed and seed store                                                                     |        |        | SP     |        |
| Food processing, wholesale                                                              |        |        | P      |        |
| Laboratory, research and development                                                    |        |        | P      | P      |
| Laundry, cleaning & dyeing establishment                                                |        |        | P      |        |
| Manufacturing                                                                           |        |        | P      |        |
| Manufacturing, molding, shaping or assembly from prepared materials (including repairs) |        |        | P      |        |
| Paint store                                                                             |        |        | SP     |        |
| Printing, publishing and reproduction establishment                                     |        |        | P      |        |
| Sign painting shop                                                                      |        |        | P      |        |
| Telecommunications and data storage facility                                            |        |        | SP     | SP     |
| Vehicle storage                                                                         |        |        | SP     |        |
| Wholesale business or storage facility                                                  |        |        |        | SP     |
| Wireless communication equipment                                                        | P/L/SP | P/L/SP | P/L/SP | P/L/SP |
| Manufacturing, uses not allowed by right                                                |        |        | SP     |        |

| Use                                         | MR1 | MR2 | MAN | MU1 |
|---------------------------------------------|-----|-----|-----|-----|
| <b>Open Space Uses</b>                      |     |     |     |     |
| Agriculture, on a parcel of 5 or more acres | P   | P   | P   | P   |
| Agriculture, on a parcel under 5 acres      | SP  | SP  | SP  | SP  |
| Resource extraction                         | SP  | SP  | SP  | SP  |
| Riding school, stock farm                   | SP  | SP  |     |     |

| Use                                | MR1 | MR2 | MAN | MU1 |
|------------------------------------|-----|-----|-----|-----|
| <b>Restricted Uses</b>             |     |     |     |     |
| Keno                               |     |     |     | SP  |
| Medical Marijuana Treatment Center |     |     |     | SP  |
| Craft Marijuana Cooperative        |     |     | SP  |     |
| Independent Testing Laboratory     |     |     | SP  |     |
| Marijuana Courier                  |     |     | L   |     |
| Marijuana Cultivator               |     |     | SP  |     |
| Marijuana Delivery Operator        |     |     | L   |     |
| Marijuana Product Manufacturing    |     |     | SP  |     |
| Marijuana Research Facility        |     |     | SP  |     |
| Marijuana Retailer                 |     |     |     | SP  |
| Marijuana Transporter              |     |     | SP  |     |
| Microbusiness                      |     |     | SP  |     |
| Firearm Business                   |     |     | SP  |     |
| Firing Range                       |     |     | SP  |     |
| Gunsmith                           |     |     | SP  |     |

### **Next Steps**

With the additional information provided, the Planning Department continues to recommend that ZAP vote to approve this zoning change to MU1.

### **Attachments and Links**

Attachment A      Explanation for rezoning request from petitioner  
Link                    [January 24, 2023 ZAP Memo](#)

*From the Law Office of Terrence P. Morris, Esq.*

Memorandum

To: Zachery LeMel, Chief of Long-Range Planning  
From: Terrence P. Morris, Esquire  
Cc: Zoning & Planning Committee; Client  
Date: July 26, 2023  
Re: 126-132 Charles Street

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***Background***

This memo will explain the circumstances leading up to the petitioner's request for a rezoning of the subject properties, which the company had acquired on 12/9/2021 (#132) and 9/21/2022 (#126).

In November 2022, prior to obtaining legal counsel, the owner/petitioner was contemplating improvements to the existing commercial property (#132) that had been constructed in 1927. As part of its due diligence, the owner was referred to the city's Chief Zoning Code Official (CZO), Jane Santosuosso, for advice. The matter was complicated due to the patchwork of zoning classifications, as shown in the attached Existing Zoning Plan, which had a small part of the commercial building at the rear located within the multi-residence 1 (MR1) district, while the bulk of the building was in the manufacturing (MAN) district.

When the owners filed the application for a building permit with ISD, it was informed that the permit could not be issued because the building was located in 2 zoning districts, one of which was residential. The matter was ultimately resolved with the intervention of the CZO. The building permit was issued on January 4, 2023, to renovate the first floor to accommodate new lab equipment, upgrade the front entry and rear egress to facilitate handicap accessibility.

Even so, the CZO advised the owner to seek a comprehensive rezoning to avoid future complications for both properties. Needless to say, the whole experience left the owner with considerable uncertainty about the investment it had made in Newton. As a result, the owner sought legal counsel as to the most appropriate zoning district into which the property should be placed to accommodate its current operation and future needs. Among the immediate future needs is the use of the property at # 126 for office space in conjunction with laboratory use on the entire property. In doing so the owner sought predictability and flexibility in finding future tenants without the need for zoning relief upon every change in tenancy.

Attachment: Existing Zoning Plan

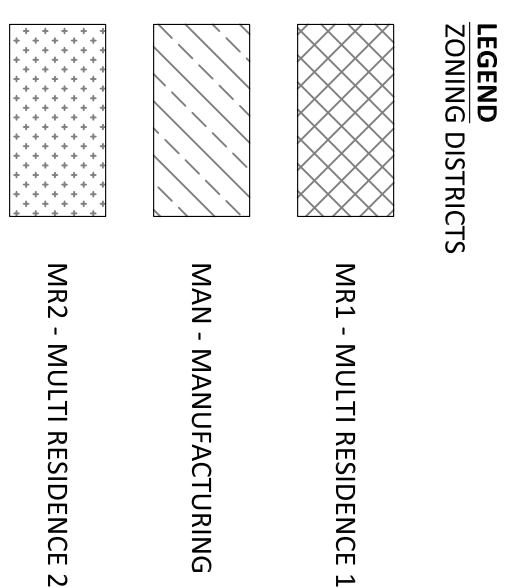
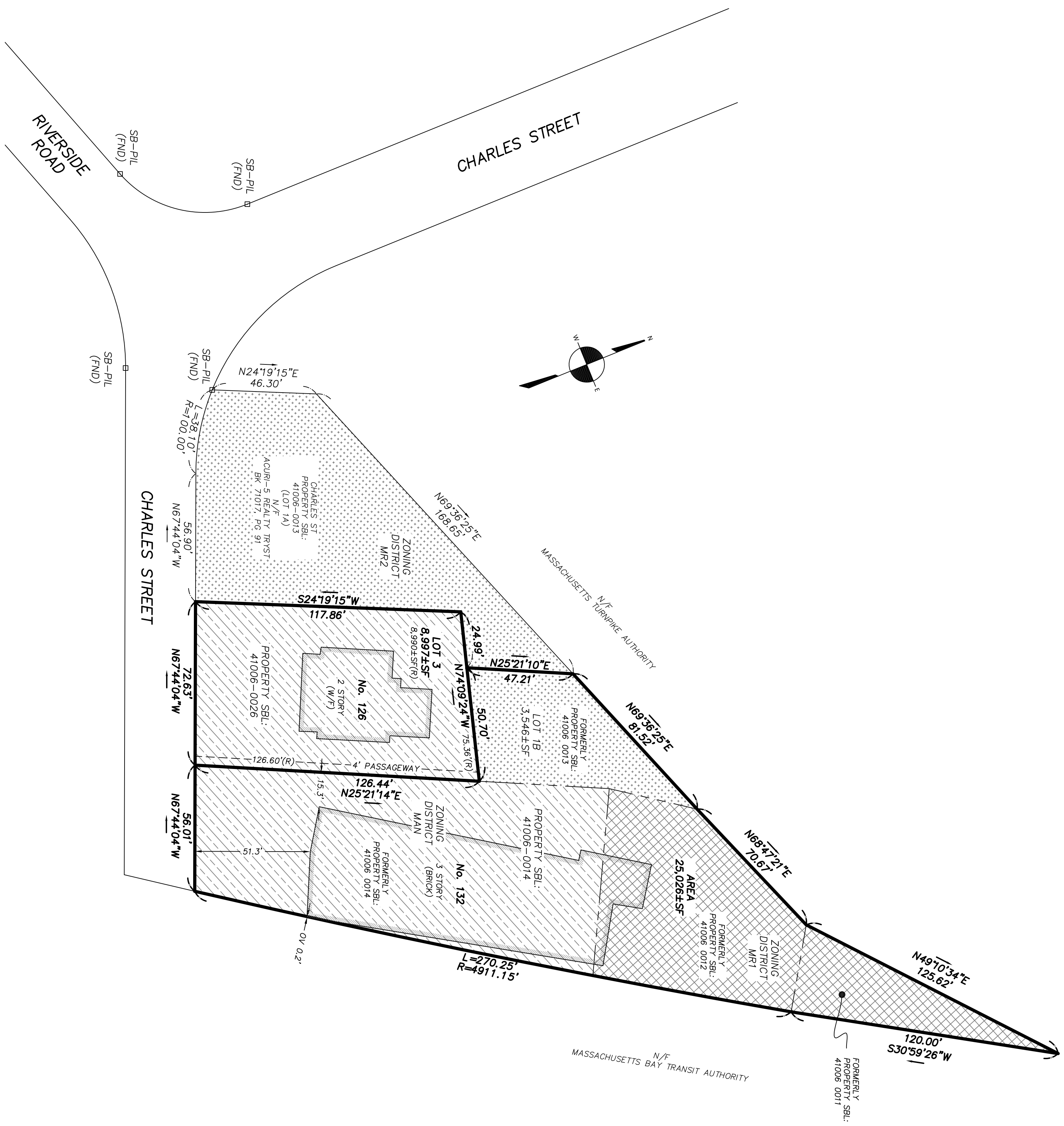
**PREPARED FOR:**  
OWNER OF RECORD:  
472 DANA STREET  
FRANKLIN, MA 02038

**REFERENCES:**  
DEED: BK 79314, PG 510  
BK 80734, PG 498  
PLAN: PL 1940 #94  
PL 1941 #105  
PL 1942 #420  
PL 1964 #943  
PL 1970 #102  
PL 1970 #153  
PL 2015 #694

**#132 CHARLES STREET**  
**#126 CHARLES STREET**

**SITE PLAN OF LAND**  
SHOWING THE EXISTING ZONING  
AT 126 - 132 CHARLES STREET  
NEWTON, MA

DATE: MARCH 24, 2023 SCALE: 1.0 INCH = 30.0 FEET



I CERTIFY THAT THIS PLAN WAS MADE FROM AN INSTRUMENT SURVEY ON THE GROUND ON THE DATE OF JULY 31, 2015 AND ALL STRUCTURES ARE LOCATED AS SHOWN HEREON.

ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) MAPS, THE MAP SHOWS THAT THIS PROPERTY FALLS IN AN AREA DESIGNATED AS X COMMUNITY PANEL: 25017C0394E EFFECTIVE DATE: 06/04/2010

FIELD: JHH  
DRAFT: JHH, GCC, RAB  
CHECK: GCC  
DATE: 03/24/23  
JOB #: 15-00506

