

**Firearms Zoning:**

***Ban vs. Legally Defensible "Virtual" Ban***

***Legally Permissible/Practically Remote***

6/21/2021 Public Hearing Testimony by  
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# NAC's request to the City Council

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- *The ideas in these slides were presented to the Newtonville Neighborhood Area Council on 6/10/21*
- *The Newtonville Neighborhood Area Council voted unanimously to endorse the author's presenting these ideas at the 6/21/21 public hearing with the **NAC's express request that the City Council give these ideas serious consideration***

## Ban vs. A (Legally Defensible) Virtual Ban?

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- The recently enacted ordinance is a good *“Rapid Response”* to the public consensus on stopping gun shops in Newton -- but people are concerned that a door is still too widely open
- People want a ban, but disagree on whether a total ban is legally defensible/risky
- Mitigate the risks by enhancing the recently enacted ordinance -- and achieve a legally defensible *“virtual”* ban

# The Challenge of the Recently Enacted Ordinance

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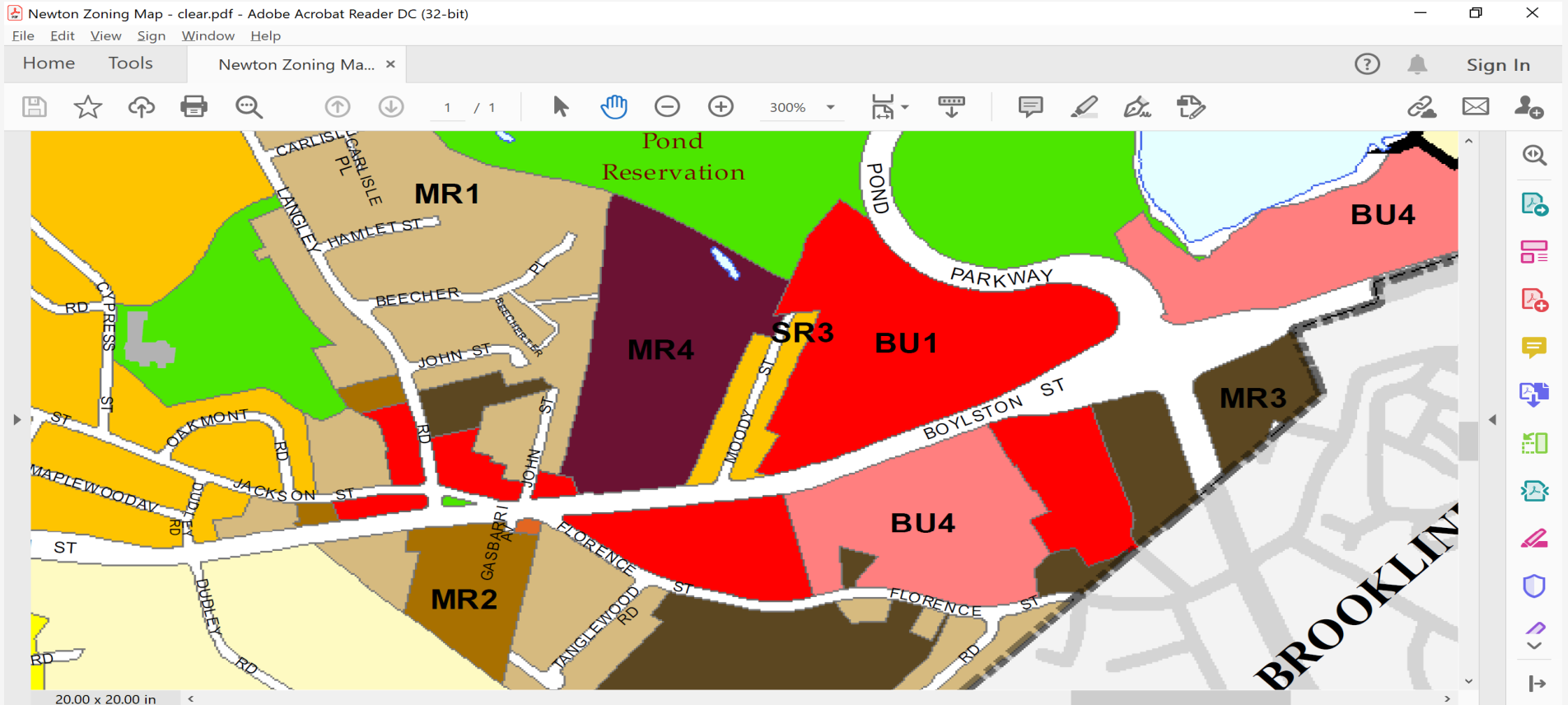
- **The new ordinance zones firearms to 3 locations (i.e., Rumford Avenue, North Street, and The Street mall)**
- **There is a very real risk that one of the many property owners might sell/lease to a gun shop/firing range**
  - **There are a many property owners at Rumford Avenue and North Street**
  - **There is a long-vacant, windowless building at The Street (i.e., the former site of the Container Store and the movie theater)**

# Achieve a “Virtual Ban” by Zoning Better Places

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- Achieve a “virtual ban” by zoning firearms as *legally permissible, but practically remote*
- Change the zoned locations
- Restrict firearms to *2 specific BU1 parcels:*
  - Lifetime Center (fka the **Atrium Mall**) and
  - The Shops at Chestnut Hill (fka **The Upper Chestnut Hill Mall**)

# Achieve a "Virtual Ban" by Zoning Better Places



Version 6/21/2021

# Zoning Mechanics

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- **Three possible zoning mechanics:**
  - **Create a special Overlay District,**
  - **Create a new zoning category (“BU6”), or**
  - **Use the BU1 zoning category and add a Rt.9 proximity requirement (rather than a buffer) plus other criteria to exclude other BU1 parcels**

# Keep the Special Permit Requirement

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- **The Special Permit requirement would add “hurdles,” but**
  - **Per Councilor Norton, the City Council acts in a quasi-judicial role in evaluating Special Permit applications and cannot deny a Special Permit to a qualified applicant just because of not wanting a gun shop/firing range**
  - **Per Councilor Gentile, in practice the City Council rarely denies a Special Permit**
    - **Many applications are withdrawn “without prejudice,” but they can be edited and resubmitted after addressing the issues raised during review**



# Why a “Virtual Ban” Is Better

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- Avoids a ban’s potential for a Second Amendment challenge
- As a practical matter, the chance of a firearms application at the Atrium or Upper Mall would be ***vanishingly small*** because mall operators won’t want to (a) upset key tenants (i.e., Dana Farber Cancer Institute, MassGeneralBrigham/Newton Wellesley Hospital, Apple Store, Bloomingdale’s), (b) incur bad press, or (c) have public backlash protests
- These 2 locations are as good or better than the recently enacted ordinance re: “sensitive use” buffers
  - They’re about as far from residences, but further away from passive recreation land and the pediatric/family trauma care, community living/retraining assistance and childcare sites in neighboring communities

## Lessons Learned from Dedham

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- **Follows Dedham’s model of an “Adult Uses District Overlay” that is parcel-specific and coincides with Legacy Place**
  - **Dedham got "stuck" with their threatened gun shop because they couldn’t act fast enough to enact an ordinance**
  - **Newton was saved by the 709 Washington Street applicant’s failure to get a building permit, so the “Stop Work” order prevented it from opening before the public hearing notice**
- **Newton has the opportunity to strengthen the recently enacted ordinance with a location change after a new public hearing**
  - **The 709 Washington Street location would still be blocked by the April 23rd public hearing notice and recently enacted ordinance**

# Lessons Learned from Dedham

Dedham Zoning Map.pdf - Adobe Acrobat Reader DC (32-bit)

File Edit View Sign Window Help

Home Tools Dedham Zoning M... x

75%

Overlay Districts

Adult Use

36.00 x 24.00 in

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1:57 PM  
6/21/2021

## Lessons Learned from Dedham

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- **Dedham also restricted other adult uses (i.e., strip clubs, porn shops, XXX-rated video stores, and sex toys) to the Legacy Place “Adult Uses Overlay District”**
- **Needham Streets isn’t an appropriate place for these adult uses → its retail stores have significantly upgraded, plus more retail and 800 housing units will be added by the Northland project**
  - **The same practical business constraints at the Upper Mall and Atrium would help protect Newton if the adult use zoning were also changed**

# The Bottom Line

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- There's broad consensus: *Gun shops and firing ranges should not find a home in Newton*
- A ban involves uncertain legal risks
- We can mitigate those risks by enhancing the recently enacted ordinance
  - Changing the zoned locations would make firearms uses legally permissible but, as a practical matter, render the chance of confronting a qualified firearms Special Permit application *vanishingly small*