



#158-22

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## City of Newton, Massachusetts

Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

Ruthanne Fuller  
Mayor

Barney S. Heath  
Director

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### PUBLIC HEARING MEMORANDUM

Public Hearing Date:	March 1, 2022
Land Use Action Date:	May 10, 2022
City Council Action Date:	May 16, 2022
90-Day Expiration Date:	May 30, 2022

DATE: February 25, 2022

TO: City Council

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

SUBJECT: **Petition #158-22**, for SPECIAL PERMIT/SITE PLAN APPROVAL to extend the legally nonconforming two-family residential dwelling in the SR3 district by razing and constructing a new two-family dwelling at 68 Evergreen Street, Ward 4, Newton, on land known as Section 41 Block 04 Lot 11, containing approximately 12,271 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 7.3.3, 7.4, 3.4.1, 7.8.2.C.2 of the City of Newton Rev Zoning Ord, 2017

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The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis which may be useful in the special permit decision making process of the City Council. 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 City Council will want to consider in its discussion at a subsequent Working Session.



68 Evergreen Avenue

## EXECUTIVE SUMMARY

The subject property located at 68 Evergreen Avenue consists of 12,271 square feet of land, improved with a two-family dwelling constructed in 1923. The property is located within the Single Residence 3 (the “SR-3”) zone in Auburndale. Two-family dwellings are not allowed within the SR-3 zone; as such, the use is legal nonconforming. The petitioner proposes to raze the existing structure to construct a new townhouse style, two-family dwelling. As proposed, the petitioner requires a special permit to further extend the nonconforming two-family residential use.

The Planning Department is unconcerned with the extension of the nonconforming residential two-family use. With the proposed design, the nonconforming front setback will be brought into compliance. The proposed structure complies with all other dimensional standards set forth in the zoning ordinance for two-family dwellings, including the floor area ratio (the “FAR”).

### I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The proposed nonconforming two-family residential use will be substantially more detrimental than the existing nonconforming residential use is to the neighborhood (§3.4.1, §7.8.2.C.2).

### II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

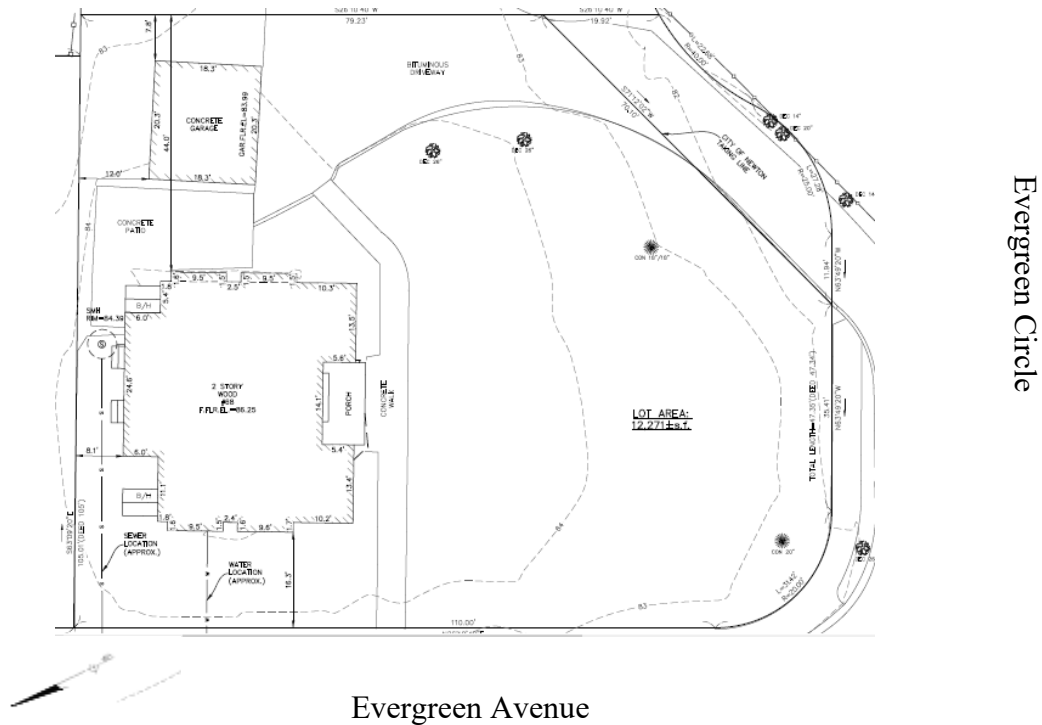
#### A. Neighborhood and Zoning

The subject property is located on Evergreen Avenue in the SR-3 zone in Auburndale. The SR-3 zone encompasses the properties north of the Massachusetts Turnpike, with public use, and a Multi-Residence 1 zone south of the Massachusetts Turnpike (**ATTACHMENT A**). Evergreen Avenue consists of a mix of single and two-family residential uses (**ATTACHMENT B**).

#### B. Site

The site consists of 12,271 square foot, corner lot improved with a two-family dwelling constructed in 1923. The site is currently accessed via Evergreen Circle, a private way, via a driveway along the eastern property line that provides access to a detached garage. The structure has a nonconforming front setback of 16.3 feet, where 25 feet is required. The site is relatively flat.

### Existing Conditions



### III. PROJECT DESCRIPTION AND ANALYSIS

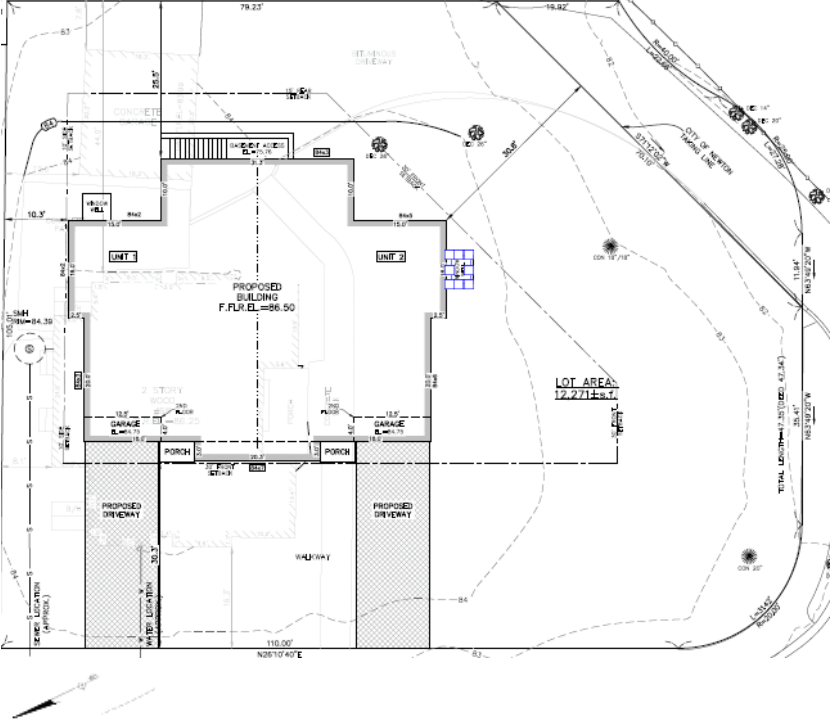
#### A. Land Use

If approved, the land use will remain a two-family use.

#### B. Site and Building Design

The petitioner is proposing to raze the existing two-family dwelling to construct a new two-family dwelling. The proposed two family-dwelling features two modern town-house style units with a pitched roof and a gable dormer above the second story that spans the front of both units. There are dedicated driveways and single car garages proposed for each unit. The proposed two-family dwelling will measure 30.6 feet tall and will contain two and half stories. The proposed dwelling would improve the nonconforming front setback from 16.3 feet to 30.3 feet, where 25 feet is required. As proposed, the project has an FAR of .40, where .40 is the maximum allowed. The plans indicate each unit will have four bedrooms, with one of the bedrooms in the basement.

Proposed Site Plan



Evergreen Circle

Evergreen Avenue

Proposed Front Elevation



The Planning Department is unconcerned with the extension of the nonconforming residential two-family use. With the proposed design, the nonconforming front setback will be brought into compliance. The proposed structure complies with all other dimensional standards set forth in the zoning ordinance for two-family dwellings.

C. Parking and Circulation

The petitioner is proposing to incorporate one-car garages at the first floor of both units, with dedicated driveways from Evergreen Avenue. Each driveway is 12 feet wide and measures 30 feet long. The second required parking stall would be located in front of the garage door for each of the units.

D. Landscaping

While not required, the petitioner did not submit a landscape plan, and should consider additional landscaping where possible.

IV. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum (**ATTACHMENT C**) provides an analysis of the proposal regarding zoning. The petitioner is seeking the following relief:

- §3.4.1, §7.8.2.C.2 of Section 30, to further extend the nonconforming two-family use

B. Engineering Review

The size and increase in impervious area of the proposed two-family structure will require the petitioner to provide a drainage analysis to the Engineering Division for review and approval prior to the issuance of a building permit. Staff suggests incorporating the standard condition regarding the Operations and Maintenance (O & M) Plan for the stormwater management system prior to the issuance of a temporary certificate of occupancy, should this petition be approved.

C. Newton Historical Commission

On May 31, 2018, the Newton Historical Commission reviewed the existing structure for historical significance and voted the structure “not preferably preserved”. As such, the existing structure can be razed.

V. PETITIONER’S RESPONSIBILITIES

The petition is considered complete at this time.

**ATTACHMENTS:**

- Attachment A:** Land Use Map
- Attachment B:** Zoning Map
- Attachment C:** Zoning Review Memorandum
- Attachment D:** DRAFT Council Order




# ATTACHMENT A

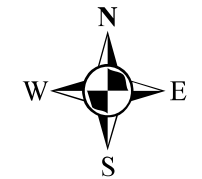
## Zoning

68 Evergreen Avenue

*City of Newton,  
Massachusetts*

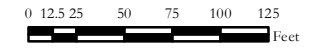
### Legend

-  Single Residence 3
-  Multi-Residence 1
-  Public Use



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 - Ruthanne Fuller  
GIS Administrator - Douglas Greenfield



Map Date: February 22, 2022



# ATTACHMENT B






## Land Use

### 68 Evergreen Avenue

*City of Newton,  
Massachusetts*

#### Legend

##### Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Open Space
-  Nonprofit Organizations

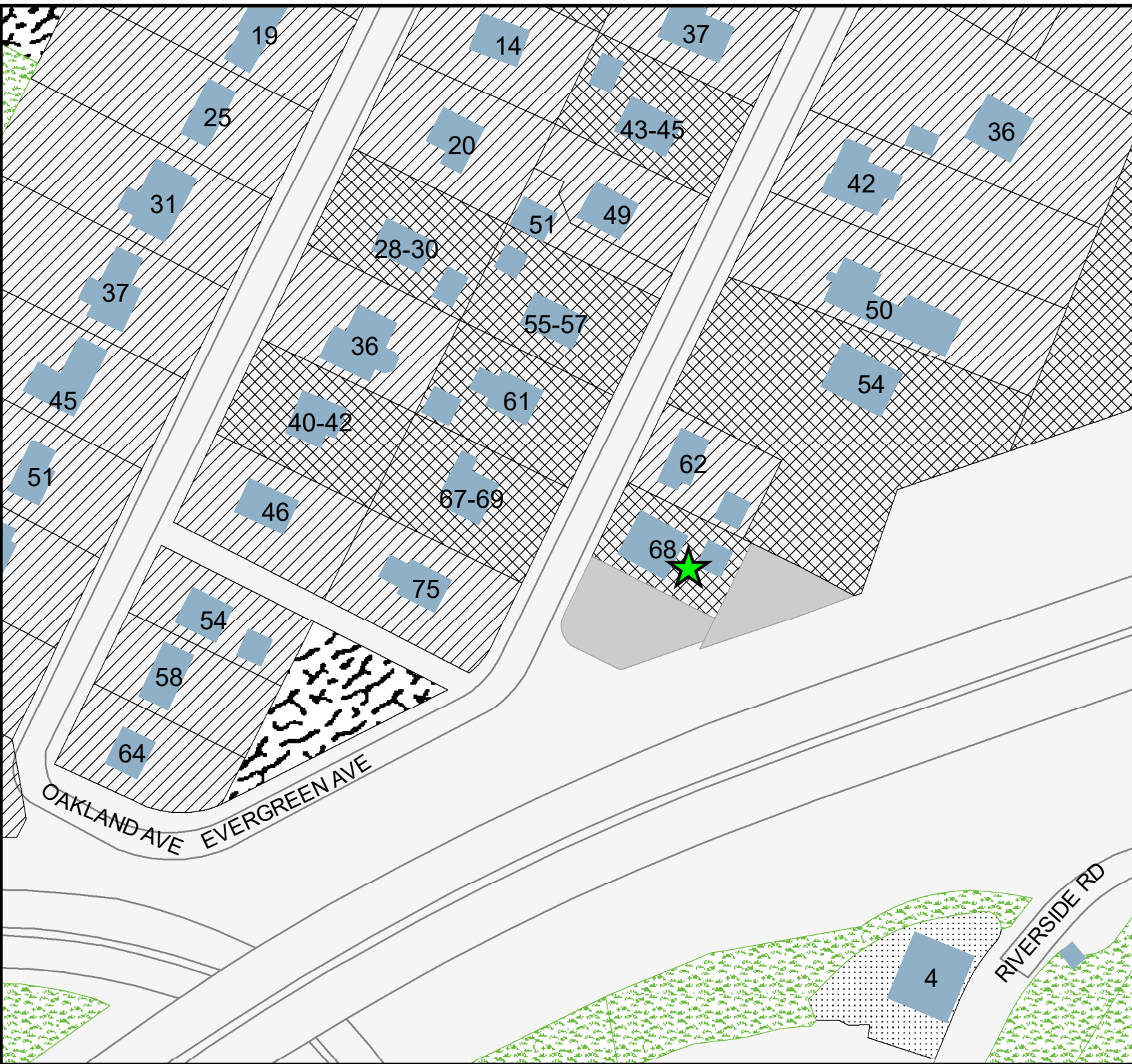


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**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: December 7, 2021

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Neil Cronin, Chief Planner for Current Planning

Cc: Carol Quinn, Applicant  
Roger Wheaton, Agent  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Assistant City Solicitor

**RE: Request to reconstruct and extend a nonconforming two-family use**

Applicant: Carol Quinn	
Site: 68 Evergreen Avenue	SBL: 41004 0011
Zoning: SR3	Lot Area: 12,271 square feet
Current use: Two-family dwelling	Proposed use: No change

### BACKGROUND:

The property at 68 Evergreen Avenue consists of a 12,271 square foot lot currently improved with a legally nonconforming two-family dwelling constructed in 1923 and a detached garage structure. The property is located at the corner of Evergreen Avenue and the private way known by deed as Evergreen Terrace and shown on the submitted plans as Evergreen Circle. The petitioner proposes to raze the existing dwelling and construct a new two-family dwelling, expanding the footprint. The proposed construction requires a special permit to reconstruct and extend the nonconforming two-family dwelling use in the Single Residence 3 district.

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

- Zoning Review Application, prepared Roger Wheaton, submitted 7/22/2019, revised 12/6/2021
- FAR Worksheet, submitted 7/22/2019
- Topographic Site Plan, existing conditions, signed and stamped by Joseph R. Porter, surveyor, dated 10/30/2018
- Zoning Plan, proposed conditions, signed and stamped by Joseph R. Porter, surveyor, dated 7/18/2019
- Architectural plans and elevations, prepared by HPA Design, Inc, architect, dated 3/3/2019

**ADMINISTRATIVE DETERMINATIONS:**

1. The existing two-family dwelling was constructed in 1923. The two-family use is legally nonconforming, as it is located in the Single Residence 3 zoning district which prohibits two-family dwellings per section 3.4.1. The petitioner proposes to raze the existing two-family dwelling and detached garage and construct a larger two-family dwelling with an attached garage for each unit. A special permit per section 7.8.2.C.2 is required to reconstruct and extend the nonconforming two-family dwelling use.

SR3 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	12,271 square feet	No change
Frontage	70 feet	141 feet	No change
Setbacks			
• Front (Evergreen Ave)	25 feet	<b>16.3 feet</b>	30.3 feet
• Front (Evergreen Cr)	25 feet	>50 feet	30.8 feet
• Side	7.5 feet	8.1 feet	10.3 feet
• Rear	15 feet	44 feet	25.5 feet
Max Number of Stories	2.5	2.5	No change
Max Height	36 feet	25.6 feet	27.5 feet
FAR	.40	NA	.40
Max Lot Coverage	30%	18.1%	20.5%
Min. Open Space	50%	73.8%	73%

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.4.1 §7.8.2.C.2	Request to reconstruct and extend a nonconforming two-family dwelling use	S.P. per §7.3.3

CITY OF NEWTON  
IN CITY COUNCIL

ORDERED:

That the City Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to further extend the nonconforming two-family residential use in a Single Residence 3 zone as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The proposed nonconforming two-family residential use will not be substantially more detrimental than the existing nonconforming residential use is to the neighborhood because the proposed two family dwelling complies with all dimensional standards (§3.4.1, §7.8.2.C.2).

PETITION NUMBER: #158-22

PETITIONER: Carol Quinn

LOCATION: 68 Evergreen Avenue, on land known as Section 41, Block 004, Lot 11, containing approximately 12,271 square feet of land

OWNER: Carol Quinn

ADDRESS OF OWNER: 68 Evergreen Avenue  
Newton, MA 02466

TO BE USED FOR: Two-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.4.1, and §7.8.2.C.2, to further extend the nonconforming two family residential use;

ZONING: Single Residence 3 district

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
  - a. Zoning Plan, 68 Evergreen Ave, signed and stamped by Joseph Porter, Professional Land Surveyor, dated July 18, 2019.
  - b. Architectural Plans and Elevations, prepared by HPA Design Inc. Architects., unsigned and unstamped, dated March 3, 2019 consisting of five (5) sheets:
    - i. A1.1 First Floor Plan
    - ii. A1.2 Second Floor Plan
    - iii. A1.3 Basement Plan
    - iv. A2.1 Elevations, showing front elevation
    - v. A2.2 Elevations, showing Rear, Right and Left elevations
2. Prior to the issuance of any Building Permit, the petitioner shall provide a final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
3. Prior to the issuance of any building permit , the petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management, should such a system be required, to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be recorded by the petitioner at the Middlesex South District Registry of Deeds. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.
4. The Petitioner shall do the following to remediate pest and rodent activity:
  - a. Prior to issuance of any demolition or building permit, the petitioner, at its sole cost and expense, shall hire a licensed Pest Control Operator to assess the property for pest and rodent activity and develop and implement a pest remediation action plan to eliminate the activity and prevent off-site migration. The plan shall include the target pest, the methods for eliminating activity, and plan for preventing pest migration off-site during demolition and construction.
  - b. A copy of the Pest Control inspection report and the remediation action plan shall be submitted to the Inspectional Services Department and the Health and Human Services Department for review and approval prior to issuance of any demolition or building permit. Copies of such approvals shall be provided to the Department of Planning and Development.
  - c. The Pest Control Operator shall implement the approved remediation action plan, monitor the site for the duration of the project, and take whatever action the Operator deems necessary to control pest infestation and migration. The Pest Control Operator shall maintain a written record of all pest control measures performed

within the subject property and shall provide progress reports to Inspectional Services Department and the Health and Human Services Department upon request.

- d. Prior to issuance of the certificate of occupancy, the Pest Control Operator shall file a final report with the Department of Planning and Development, Inspectional Services Department and the Health and Human Services Department summarizing the methods used, whether off-site migration occurred, the frequency and dates of service, and a post-construction site assessment and neighborhood.
  - e. In the event any demolition or construction activity causes off-site pest migration, prior to the issuance of any certificates of occupancy (temporary or final), the petitioner shall offer and provide, at its sole cost and expense, rodent abatement services on an as needed basis for all direct abutters and abutters to direct abutters, subject to owner authorization of such properties and a waiver of liability.
5. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
- a. Recorded a certified copy of this council order for the approved Special Permit/Site plan with the Registry of Deeds for the Southern District of Middlesex County.
  - b. Filed a copy of such recorded order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
  - c. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
5. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioner has:
- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development statements by a registered architect and professional land surveyor certifying compliance with Condition #1.
  - b. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.
  - c. Filed with the Clerk of the Council, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that improvements authorized by this Order have been constructed to the standards of the City of Newton Engineering Department.