



# City of Newton, Massachusetts

Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459  
Telephone: 617-796-1120

Petition: **#311-23**  
Public Hearing: ----  
10/3/23

Ruthanne Fuller  
Mayor

Barney S. Heath  
Director

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## PUBLIC HEARING MEMORANDUM

**DATE:** September 29, 2023

**TO:** City Council

**FROM:** Barney S. Heath, Director of Planning and Development  
Katie Whewell, Chief Planner for Current Planning  
Michael Gleba, Senior Planner

**SUBJECT:** **Petition #311-23** for SPECIAL PERMIT/SITE PLAN APPROVAL to demolish the existing dwelling and construct four single-family attached dwellings with dimensional waivers, and to allow a driveway and parking within setback distances at **2202 Commonwealth Avenue**, Ward 4, Auburndale, on land known as Section 41 Block 13 Lot 06, containing approximately 13,696 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: 7.3.3, 3.4.1, 3.2.4, 6.2.3.B.2 of Chapter 30 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.



**2202 Commonwealth Avenue**

## **Project Description**

### **Background**

The subject property at 2202 Commonwealth Avenue consists of a 13,696 square foot parcel in a Multi Residence 1 (MR1) zoning district in Auburndale. It is improved with a 2 ½ story single-family dwelling built circa 1900 and a detached garage located directly adjacent to the eastern property line.

The petitioner proposes to replace the existing single-family dwelling and garage with four single-family attached dwellings in one structure, which requires a special permit and associated dimensional relief for the project as designed.

The neighborhood features a mix of zoning designations and land uses. The residential properties are zoned MR1 (as is the subject property) or Single Residence 3 (SR3); the abutting multi-unit development to the east is zoned Multi Residence 2 (MR2) and the Public Use (PU)-zoned Lyons Park is directly across Commonwealth Avenue to the north.

### **Need for Special Permit**

Per Section 3.4.1 of the Newton Zoning Ordinance (NZO), a special permit is required to construct attached single-family dwellings in a MR1 district. As designed, the proposed development also requires additional zoning relief relative to the dimensions of the lot as well as the parking and driveway configuration.

The lot is undersized at 13,696 square feet and requires a special permit for the lot area (where 15,000 is required) as well as the lot area per unit for the four units proposed. The proposed eastern side setback of 22 feet requires an exception from the 25 foot minimum side setback required by Sec. 3.2.4 A.

Parking stalls may not be located within 20 feet of a lot line and a driveway may not be located within ten feet of a side or rear lot line, and the driveway on the west side of the parcel is less than ten feet from that side setback. Also, as this is an attached single-family dwelling development, the petitioner's proposed parking less than 20 feet of the front, side and rear lot lines, and the driveway's location within 10 feet of the side lot line, the proposed parking and driveway design require a special permit per Sec. 6.2.3.B.2.

### **Analysis and Recommendations**

The Planning Department is generally supportive of the proposal given its location on Commonwealth Avenue and the mix of uses in the surrounding neighborhood.

That said, given the size of the lot the Planning Department suggests the petitioner revisit the structure's proposed parking and driveway design to increase the buffer distance from the

various affected lot lines and decrease the amount of paving required, and possibly the overall size of the structure to more closely match that which would be allowed for a single- or two-family dwelling on the site, which may eliminate the relief needed to reduce the required side setback. The Planning Department would also be supportive of less parking on site, which would further decrease the amount of paving, but would require a parking waiver not currently sought, as the site is located near the Auburndale commuter rail and 558 bus, which terminates at Riverside and Newton Corner.

As noted below, the petitioner should also submit a grading plan showing the heights of the proposed retaining walls to demonstrate compliance with the NZO.

The Planning Department notes that there are still items to be worked out with the petitioner on this special permit, however a draft council order has been provided for review when the time is appropriate.

I. ZONING RELIEF REQUESTED:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>	<i>Requested Relief</i>	<i>Action Required</i>
§3.4.1	To allow attached single-family dwellings	S.P. per §7.3.3
§3.2.4	To waive minimum lot area	S.P. per §7.3.3
§3.2.4	To waive minimum lot area per unit	S.P. per §7.3.3
§3.2.4	To waive minimum side setback	S.P. per §7.3.3
§6.2.3.B.2	To allow parking within 20 feet of a lot line and a driveway within 10 feet of the side lot line	S.P. per §7.3.3

For more details regarding the zoning analysis please refer to **Attachment A**.

II. CRITERIA FOR CONSIDERATION PER §7.3.3. AND/OR §7.8.2.C.2:

When reviewing this request, the Council should consider whether:

1. The specific site is an appropriate location for the proposed four attached single-family dwellings with a lot area of 13,696 square feet, a lot area per dwelling unit of 3,424 square feet, and a side setback of 22 feet. (§7.3.3.C.1)
2. The proposed four attached single-family dwellings as developed and operated with a lot area of 13,696 square feet, a lot area per dwelling unit of 3,424 square feet, and a side setback of 22 feet, will not adversely affect the neighborhood. (§7.3.3.C.2)

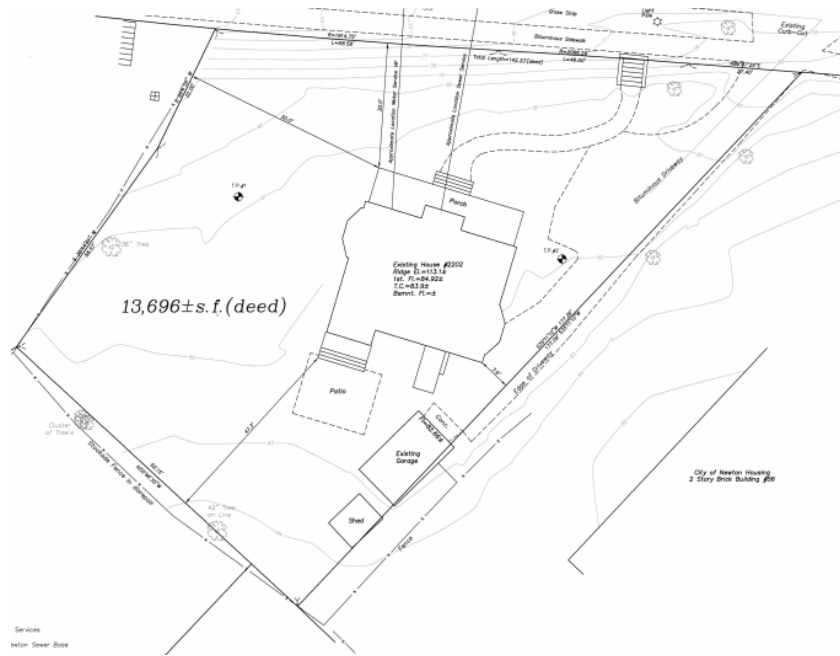
3. There will be no nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
5. Granting exceptions to certain requirements provided by Sec. 6.2.3.B.2 not allowing the location of parking within 20 feet of a lot line and/or a driveway within 10 feet of the side lot line would be appropriate as literal compliance is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features. (§6.2.3.B.2)

III. PROJECT PROPOSAL AND SITE CHARACTERISTICS:

A. Site - Existing Conditions

The subject property consists of a 13,696 square foot parcel improved with a 2 ½ story single-family dwelling and a detached garage located directly adjacent to the eastern property line.

The lot has an approximately nine-foot upward grade change from the front right of the lot to its rear. The site is accessed by a paved driveway along its left (east) boundary line serving the garage and a paved walkway to the dwelling's front door. The lot also has a shed, patio space as well as mature lawn area, trees and shrubs.



**Existing Site Plan**

IV. PROJECT DESCRIPTION AND ANALYSIS:

A. Land Use

The use of the site would be changed from a single family home to four attached single family dwellings in a single structure.

B. Site and Building Design

The petitioner proposes to demolish the existing single family dwelling and garage to construct a 2 ½ story, 35.5 foot high, 7,325 square foot residential dwelling containing four attached single family dwellings. Four single car garages are proposed, one for each unit at the basement level. four additional parking stalls would be located at the south (rear) and west (right) property lines, requiring a special permit as it does not meet the required distance for parking stalls for the single family attached dwellings use.

The units would each be accessed from the basement level and their first floor-level patios located on the left side of the property, between the structure and that side's property's line. As such, the structure has only one entrance that presents as a residential front door from Commonwealth Ave., the one located on the front façade that serves Unit 1 (the unit closest to the front).

While the proposed structure's height would be four feet higher than the existing structure's conforming 31.3 feet, it is than the maximum 36 feet allowed.



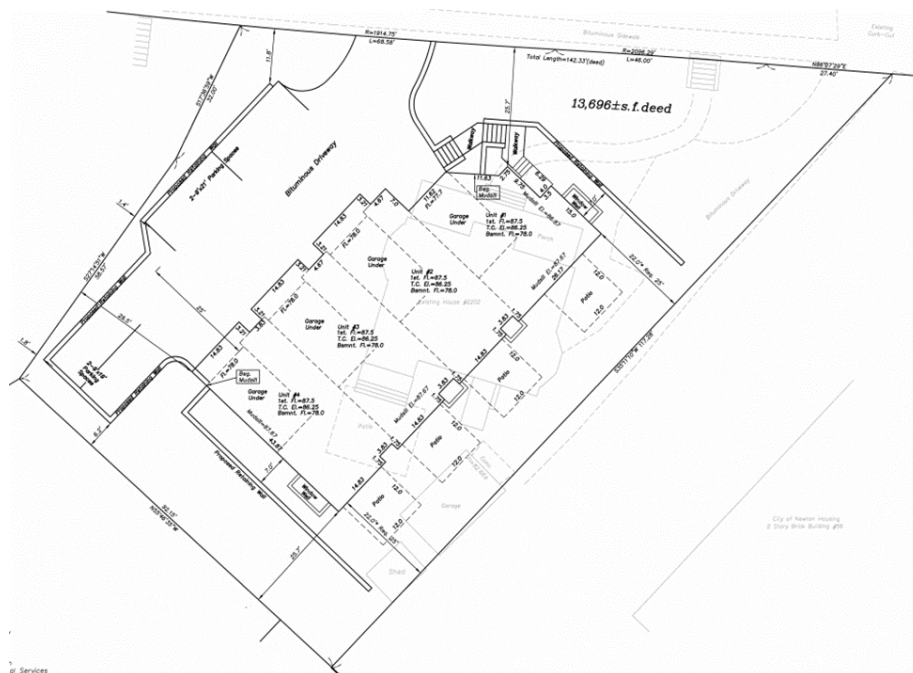
***Proposed Elevations***

Regarding setbacks, attached single family dwellings are required to have all side, front and rear setbacks measure at least 25 feet. At 27.7, 29.5 and 25.7 feet, respectively, the proposed front, right side, and rear setbacks comply; at 22 feet the side setback is three feet less than the requirement.

As an attached single family dwelling, the proposed development is not subject to floor area ratio (FAR) regulations. That said, the petitioner has indicated that the property's proposed FAR would be 0.53, more than the 0.48 (without bonus) allowed by right for single- and two- family homes, which would allow for an approx. 6,574 square foot structure, and an additional .02 in FAR (.50) if a project met "new lot" setbacks. As proposed, the four units' sizes range from 1,714 square feet (Unit 1) to 1,902 square feet (Unit 3).

As designed, the parcel's lot coverage increases from 13.8% to 23.7%, remaining just below the maximum 25% required for single family attached dwellings . Under the proposed configuration, the property's open space decreases from 73.9% to 56.8%, remaining above the minimum 50% required.

There are retaining walls proposed around the proposed building and parking area, however, no dimensions are provided for the proposed retaining walls. The petitioner should submit a grading plan showing the heights of the walls to demonstrate compliance with zoning. Retaining walls exceeding four feet in height within a setback requires a special permit.



**Proposed Site Plan**

C. Parking and Circulation

Four parking stalls, each within a single car garage for each unit, would be located at the basement level, with four others on the paved area and driveway proposed for the right (west) side of the property. The existing curb cut and driveway on the property's left (east) side would be eliminated with the latter replaced by lawn area.

Two of the four exterior stalls would be "parallel" spaces located approx. 1.3 to eight feet from the right side property line and 11.7 feet from the front property line. The two other exterior stalls would be side by side in an area at the rear of the lot, approx. 1.8 feet from the right property line and slightly more than six feet from the rear property line. These measurements are all considerably less than the required twenty-foot buffer from side or rear lot lines for parking for attached single family dwellings.

Also, certain portions of the proposed paved driveway serving these spaces would be in less than the minimum ten feet from the right side lot line.

The petitioner should confirm the proposed curb cut and driveway opening widths.

The Planning Department suggests the petitioner revisit the proposed parking and driveway design to both increase the buffer distance from the various affected lot lines and decrease the amount of paving required.

D. Landscaping

A landscape plan was provided with this petition. It includes the retention of four existing trees- one in the front of the property, three at its rear- and the installation of 39 new trees, including 22 arborvitae that would delineate the units' exclusive use areas and visually screen a portion of the left property line. The plan also includes hedges that would screen the exterior parking stalls from abutting properties.

V. INTERDEPARTMENTAL REVIEW:

- **Engineering Review:** Review of this petition by the Engineering Division is not required at this time.
- **Newton Historical Commission:** On August 31, 2022, the Newton Historic Commission (NHC) found both the existing house and garage to be historically significant and preferably preserved. The Demolition Delay for both expired on August 25, 2023.

VI. PETITIONER'S RESPONSIBILITIES:

The petition is considered complete at this time.

**ATTACHMENTS:**

**Attachment A:** Zoning Review Memorandum  
**Attachment B:** DRAFT Council Order





Ruthanne Fuller  
Mayor

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Department of Planning and Development  
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Barney S. Heath  
Director

## ZONING REVIEW MEMORANDUM

Date: August 8, 2023

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Katie Whewell, Chief Planner for Current Planning

Cc: Laurance Lee, Attorney  
2202 Commonwealth Avenue LLC, Applicant  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Deputy City Solicitor

RE: **Request to allow four single-family attached dwellings, to waive lot area and lot area per unit requirements and to allow a driveway and parking within setback distances**

Applicant: 2202 Commonwealth Avenue LLC	
Site: 2202 Commonwealth Avenue	SBL: 41013 0006
Zoning: MR1	Lot Area: 13,696 square feet
Current use: Single-family dwelling	Proposed use: Four single-family attached dwellings

### BACKGROUND:

The property at 2202 Commonwealth Avenue consists of 13,696 square feet and is improved with a single-family dwelling built circa 1900 in the MR1 zoning district. The petitioner proposes to demolish the existing dwelling and construct four single-family attached dwellings, requiring a special permit.

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

- Zoning Review Application, prepared by Laurance Lee, attorney, submitted 4/20/2023
- Existing Conditions Site Plan, prepared by Dellorco Associates, surveyor, dated 10/13/2022
- Proposed Conditions Site Plan, prepared by Dellorco Associates, surveyor, dated 4/3/2023
- Zoning Plan, prepared by Dellorco Associates, surveyor, dated 4/3/2023
- Floor plans and elevations, prepared by MGD Habitat Design, architect, dated 3/14/2023
- FAR Worksheet, signed and stamped by Ronald F. Jarek, architect, submitted 4/20/2023

**ADMINISTRATIVE DETERMINATIONS:**

1. The petitioners propose to raze the existing single-family dwelling and construct four single-family attached dwellings. Per section 3.4.1, a special permit is required to construct attached dwellings in the MR1 district.
2. Section 3.2.4 requires a minimum lot area of 15,000 square feet for single-family attached dwelling projects, unless waived by special permit. The lot has a total of 13,696 square feet, requiring an exception per the footnote to the dimensional table in section 3.2.4.
3. Per section 3.2.4 the required minimum lot area per dwelling unit is 4,000 square feet, unless waived or reduced by special permit. With four units proposed on the 13,696 square foot lot, the proposed lot area per unit is 3,424 square feet, requiring an exception per the footnote to the dimensional table in section 3.2.4.
4. Section 3.2.4 requires a minimum side setback of 25 feet. The petitioners propose a setback of 22 feet from the eastern side lot line, requiring an exception per the footnote to the dimensional table in section 3.2.4.
5. Per section 6.2.3.B.2, no parking space may be located within 20 feet of a lot line and no driveway may be located within 10 feet of a side or rear lot line, unless by special permit. The petitioner proposes parking within 11.7 feet of the front lot line, 2.5 feet of the side lot line and within 7 feet of the rear lot line. Additionally, the driveway is within 10 feet of the western side lot line. A special permit is required for a parking within 20 feet of the front, side and rear lot lines and for a driveway within 10 feet of the side lot line.

MR1 Zone	Required	Existing	Proposed
Lot Size	15,000 square feet	13,696 square feet	<b>No change*</b>
Frontage	80 feet	142 feet	No change
Setbacks			
• Front	25 feet	30 feet	27.7 feet
• Side	25 feet	7.9 feet	29.5 feet
• Side	25 feet	50 feet	<b>22 feet*</b>
• Rear	25 feet	47.3 feet	25.7 feet
Building Height	36 feet	31.3 feet	35.3 feet
Max Number of Stories	2.5 (3 by SP)	2.5	2.5
Lot Coverage Max	25%	13.8%	23.7%
Open Space Min	50%	73.9%	56.8%
Lot Area Per Unit	4,000 square feet	13,696 square feet	<b>3,424 square feet*</b>

See "Zoning Relief Summary" below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>	<i>Requested Relief</i>	<i>Action Required</i>
§3.4.1	To allow attached single-family dwellings	S.P. per §7.3.3
§3.2.4	To waive minimum lot area	S.P. per §7.3.3
§3.2.4	To waive minimum lot area per unit	S.P. per §7.3.3
§3.2.4	To waive minimum side setback	S.P. per §7.3.3
§6.2.3.B.2	To allow parking within 20 feet of a lot line and a driveway within 10 feet of the side lot line	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 allow four attached single-family dwellings in a single structure, waive minimum lot area, minimum lot area per unit, and minimum side setback requirements, and allow parking within 20 feet of a lot line and a driveway within 10 feet of the side lot line, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

1. The specific site is an appropriate location for the proposed four attached single-family dwellings with a lot area of 13,696 square feet, a lot area per dwelling unit of 3,424 square feet, and a side setback of 22 feet given its location on Commonwealth Avenue in a multiresidence zone and the mix of uses in the surrounding neighborhood, including an 18 unit multifamily use adjacent to the project. (§7.3.3.C.1)
2. The proposed four attached single-family dwellings as developed and operated with a lot area of 13,696 square feet, a lot area per dwelling unit of 3,424 square feet, and a side setback of 22 feet, will not adversely affect the neighborhood as the neighborhood includes a mix of uses including multifamily dwellings and public parkland. (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
5. Granting exceptions to certain requirements provided by Sec. 6.2.3.B.2 not allowing the location of parking within 20 feet of a lot line and/or a driveway within 10 feet of the side lot line would be appropriate as literal compliance is impracticable due to the nature of the use, and the size and width of the lot. (§6.2.3.B.2)

PETITION NUMBER: #311-23

PETITIONER: 2202 Commonwealth Avenue LLC

LOCATION: 2202 Commonwealth Avenue, Ward 4, Auburndale, on land known as Section 41 Block 13 Lot 06, containing approximately 13,696 sq. ft. of land

OWNER: 2202 Commonwealth Avenue LLC

ADDRESS OF OWNER: 14 Rangeley Road  
Brookline, MA 02467

TO BE USED FOR: Four attached single-family dwellings in one structure

RELIEF GRANTED: Special permit to allow attached single-family dwellings (§3.4.1), waive minimum lot area (§3.2.4), waive minimum lot area per unit (§3.2.4), waive minimum side setback (§3.2.4), allow parking within 20 feet of a lot line and a driveway within 10 feet of the side lot line (§6.2.3.B.2)

ZONING: Multi Residence 1 (MR1) 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 the following plans:
  - a. a set of engineering plans entitled "2202 Commonwealth Avenue, Newton, Massachusetts," prepared by Dellorco Associates, dated April 3, 2023, signed and stamped by Verne T. Porter, Registered Professional Land Surveyor, comprised of the following sheets
    - i. Zoning Plan (Sheet 2 of 6)
    - ii. Detail Sheet (Sheet 4 of 6)
    - iii. Detail Sheet (Sheet 5 of 6)
  - b. a set of architectural plans entitled "Commonwealth Ave Residences, 2202 Commonwealth Ave, Newton – Ma, Schematic Design Set," prepared by MGD Habitat Design, dated July 20, 2023, comprised of the following sheets:
    - i. SD.00- Cover Page
    - ii. SD.01- Zoning Analysis
    - iii. SD.01a- FAR Analysis
    - iv. SD.02- Architectural Site Plan
    - v. SD.02a- Landscape Plan
    - vi. SD.03- Basement Floor Plan
    - vii. SD.04- First Floor Plan
    - viii. SD.05- Second Floor Plan
    - ix. SD.06-- Attic Plan
    - x. SD.07- Roof Plan
    - xi. SD.08- Elevations

xii. SD.09- Elevations

2. Prior to the issuance of any Building Permit pursuant to this Special Permit/Site Plan Approval, the Petitioner shall provide a final Operations and Maintenance Plan (the "O&M Plan") for stormwater management to the Engineering Division of Public Works for review and approval, should a system be required. Once approved, the O&M Plan must be adopted by the Petitioner and recorded at the Middlesex South District Registry of Deeds. A copy of the recorded O&M Plan shall be filed with the Engineering Division of Public Works and submitted with the Building Permit application.
3. 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 for review and approval prior to issuance of any demolition or building permit. A copy of such approval 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.
4. Prior to the issuance of any Building Permit, the Petitioner shall submit a Construction Management Plan (the "CMP") for review and approval to the Commissioner of Inspectional Services, the Director of Planning and Development, the City Engineer, and the Chief of the Fire Department. The CMP shall be in compliance with all applicable policies and ordinances in effect at the time of submission. The Petitioner shall comply in all material respects with the Construction Management Plan, which shall be consistent with and not in conflict with relevant conditions of this Order and shall include, but not be limited to, the following provisions:
  - a. 24-hour contact information for the general contractor. This information shall also be posted in a clear and visible manner at the construction site.
  - b. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones.
  - c. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for construction materials and delivery vehicles and equipment, and location of any security fencing and erosion control.
  - d. A plan showing temporary pedestrian access within work zones in accordance with DPW Policy

- e. Proposed methods for dust control including, but not limited to: watering, covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
  - f. Proposed methods of noise control, in accordance with the Revised Ordinances, §20-13. Staging activities should be conducted in a manner that will minimize off-site impacts of noise. Noise producing staging activities should be located as far as practical from noise sensitive locations.
  - g. Tree preservation plan to define the proposed method(s) for protection of any existing trees to remain on site.
  - h. The CMP shall also address the following: safety precautions; anticipated dewatering during construction; site safety and stability; and impacts on abutting properties.
5. No building permit (other than a demolition permit) and unless otherwise specified shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:
- a. Recorded a certified copy of this Special Permit/Site Plan Approval at the Middlesex South Registry of Deeds and filed proof of such recording with the City Clerk and submitted a copy with the building permit application.
  - b. Submitted final engineering, utility, and drainage plans, and a recorded copy of the O&M Plan with the Middlesex South District Registry of Deeds and provided a copy of the recorded document to the City Engineer in accordance with this Order.
  - c. Obtained a written statement/sign off from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1 including all dimensional requirements.
6. No certificate of occupancy (temporary or final) shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the petitioner has:
- a. Filed with the building permit record statements by a registered architect, professional land surveyor, or professional engineer, certifying compliance with Condition #1.
  - b. Submitted final as-built survey plans in digital format, stamped and signed by a professional land surveyor or professional engineer, as applicable.
  - c. Obtained approval from the City Engineer certifying that all engineering details for the portion of the Project for which a certificate of occupancy is requested have been constructed to standards of the City of Newton Public Works Department.
  - d. Filed with the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, landscape features, fencing and parking areas related to or for the portion of the Project for which a certificate of occupancy is requested.

7. Provided that all other requirements in Condition #6 are satisfied and the project is substantially complete, the Commissioner of Inspectional Services may in their discretion, issue one or more certificates of temporary occupancy for all or portions of the building prior to completion of final landscaping (including hardscape improvements).