



Petition: #12-24
Public Hearing:
01/09/2024

City of Newton, Massachusetts

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

Ruthanne Fuller
Mayor

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

DATE: January 5, 2024

TO: City Council

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

SUBJECT: **Petition #12-24**, for SPECIAL PERMIT/SITE PLAN APPROVAL to allow ground floor residential use, to allow three stories and 39.3-foot height, to exceed FAR, and associated parking waivers at 209-211 Adams Street

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.



209-211 Adams Street

Project Description

Background

The subject property consists of a 8,830 square foot lot improved with a two-family dwelling constructed circa 1880. The property is located in the Business Use 2 (BU-2) district at the corner of Adams Street and Murphy Court.

The surrounding area is mostly zoned BU-2 and Multi-Residence 2. The land uses in the neighborhood are a mix of residential, commercial, and mixed-use sites. The residential uses range from single- and two-family to 12-unit and 31-unit multifamily structures a block north along Adams Street. Direct abutters include commercial buildings, single and two-family dwellings, and mixed-use structures. The site is within 200 feet of a stop for the 558 MBTA bus, which runs from Riverside Station to Newton Corner. Watertown Street to the north is also close, including amenities such as restaurants, retail, additional transit options, and park space.

Special Permit

The petitioner proposes to demolish the existing building and construct a 10,995 square-foot residential building with five units. The project requires relief to allow a ground floor residential use in the BU-2 zone and site plan review for a building with more than 10,000 square feet. Dimensional relief is also required for the proposed three-story structure with 39.3 feet in height and a FAR of 1.25. Relief is needed to allow parking within the front and side setbacks and to allow parking within five feet of the street.

Analysis

The Planning Department is not concerned with the proposed multifamily use. This neighborhood has a diverse mix of uses including multifamily residences with more units than the proposed project. The site has access to nearby amenities and public transit options, making it an appropriate location for additional housing. Though this property is in a business district, this area has many residential buildings that do not feature retail uses on the ground floor. The Planning Department notes that at 39 feet tall with an active roof deck and 10,995 square feet in size, the proposed project is somewhat larger in size and scale than the abutting buildings. Staff recommend the petitioner consider reducing the massing of the structure to relate more closely to nearby structures. This could include reducing the height of the building to be more in line with what is allowed by right, or reducing the size of one or more of the units.

I. Zoning Relief Requested:

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

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§4.4.1	Request to allow ground floor residential use	S.P. per §7.3.3
§4.1.2.B.2	Request for site plan review for a building with more than 10,000 square feet	S.P. per §7.3.3
§4.1.2.B.3 §4.1.3	Request to allow a three-story structure with 39.3 feet in height	S.P. per §7.3.3
§4.1.3	Request to allow an FAR of 1.25	S.P. per §7.3.3
§5.1.7.A	Request to allow parking within the front and side setbacks, and within five feet of the street	S.P. per §7.3.3

II. Criteria for Consideration per §7.3.3. and/or §7.8.2.C.2:

- The site in BU-2 is an appropriate location for the proposed five residential units with three stories and 39.3 feet in height, a ground floor residential use, a Floor Area Ratio (FAR) of 1.25, site plan review for a building with more than 10,0000 square feet, parking within the front and side setbacks, and parking within five feet of the street. (§7.3.3.C.1)
- The proposed five residential units with three stories and 39.3 feet in height, a ground floor residential use, a Floor Area Ratio (FAR) of 1.25, site plan review for a building with more than 10,0000 square feet, parking within the front and side setbacks, and parking within five feet of the street will not adversely affect the neighborhood (7.3.3.C.2)
- The proposed five residential units with three stories and 39.3 feet in height, a ground floor residential use, a Floor Area Ratio (FAR) of 1.25, site plan review for a building with more than 10,0000 square feet, parking within the front and side setbacks, and parking within five feet of the street will not create a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4)
- The proposed FAR of 1.25 where up to 1.00 is allowed by right is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood (§4.1.3)
- Literal compliance with the number of parking stalls within the front and side setbacks and within five feet of the street 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 (§5.1.13)

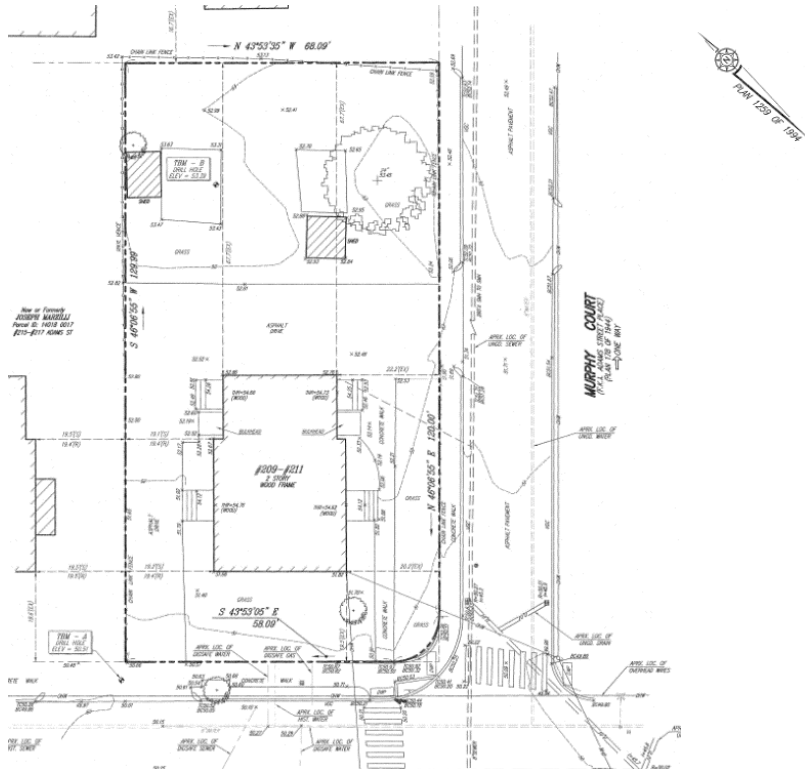
III. Project Proposal and Site Characteristics

A. Site

The subject property consists of a 8,830 square foot corner lot improved with a two-family dwelling built circa 1880. Because a minimum of 10,000 square feet is required for the current residential use on the lot, the size is nonconforming. The structure has a nonconforming height of two and a half stories where two stories are allowed by right.

The site has vehicular access from curb cuts on both Murphy Court and Adams Street, which lead to two perpendicular paved driveways that run along the southeastern property line and the rear of the building along the southwest side. A chain link fence runs along the northwest and southwest property lines. The lot is relatively flat.

Existing conditions



The building is proposed at 39.3 feet and 3 stories in height, where up to 24 feet and 2 stories are allowed by right, and thus requires relief. The maximum FAR allowed by right for a three-story building is 1.00, with up to 1.50 allowed by special permit. This building is proposed with an FAR of 1.25 with a gross floor area of 10,995 square feet, which requires a special permit.

The units will all be located in one building. Unit 1 will front on Adams Street, Units 2-4 will front on Murphy Court, and Unit 5 will face out to the abutting property to the northeast. The interior units (2,3,4) are approximately 1,850 square feet each, while the end units (1 & 5) are approximately 2,100 square feet each. The construction will be wood framed, slab-on-grade with no basement. The building will have a roof deck enclosed by an aluminum railing and rooftop enclosures for mechanical equipment for each unit.

Proposed conditions



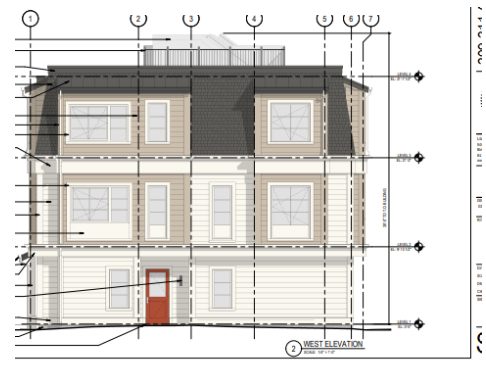
North elevation



East elevation



South elevation



West elevation

The Planning Department notes that size and scale of the proposed structure would be among the larger residential structures in this stretch of the street. The Department suggests that the petitioner consider modifying the scale of the building

to be more in keeping with neighboring structures. This could include lowering the roofline, or reducing the sizes of one or more of the units to reduce the FAR.

C. Parking and Circulation

As is the case now, the petitioner proposes a curb cut along each street frontage to provide vehicular access. Because ten parking stalls are proposed for the five units, no parking waiver is required. The curb cut on Murphy Court will be relocated further southwest towards the rear of the site and will provide surface parking for two vehicles on a permeable paver surface. The driveway off Adams Street will be maintained in its current location and provide access to an entrance and dedicated parking space in an individual garage for each unit. This driveway also leads to surface parking for three vehicles towards the rear of the lot.

No parking may be located within the required front and side setbacks, or within five feet of the street. All five surface stalls are located wholly or partially within the required side setback of 19.7 feet, which requires relief. Additional relief is required for the two parking stalls accessed from Murphy Court, which are located directly on the front lot line, and therefore within both the front setback and within five feet of the street.

D. Landscaping

The petitioner has provided a landscape plan with their application which depicts some screening and plantings for the site. This plan includes a variety of shrubs, perennials, and ornamental grasses concentrated along the frontages on Murphy Court and Adams Street. Eight red maples are proposed on the site along the perimeter.

The existing chain link fence that currently separates the driveway accessed from Adams Street from the abutting driveway will be replaced with a six-foot-tall privacy wall. Though perimeter screening for abutting properties is not required for this petition, the Planning Department notes that the driveway accessed from Adams Street will have up to eight cars entering and exiting in a fairly tight space which may cause some noise and disturbance for the abutting driveway. Planning staff recommend screening in the form of plantings along this line, if possible, to minimize this impact.

V. Interdepartmental Review:

- Engineering Review: This proposal has been reviewed by John Daghlian, the City's Associate City Engineer, in a memo dated December 8, 2023. The City Engineer Lou Taverna has also issued a memo stating the mitigation cost for sewer inflow and infiltration, which is a total of \$75,567. An abatement of 75%

of this fee, or \$56,675, is recommended to be used towards other mitigation purposes.

- Newton Historical Commission: At a public hearing held on June 22, 2023, the Newton Historic Commission voted on a motion to preferably preserve the dwelling, which did not pass. Demolition is not delayed and no further historic review is required.

VI. PETITIONER'S RESPONSIBILITIES

The petition is considered complete.

ATTACHMENTS:

- Attachment A:** Zoning Review Memorandum
Attachment B: Draft council order



Ruthanne Fuller
Mayor

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

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: December 11, 2023

To: Anthony Ciccariello, Commissioner of Inspectional Services

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

Cc: Claire A. Leone, Deborah Sylvester and Lisa Caira, Applicants
Laurance Lee, Attorney
Barney S. Heath, Director of Planning and Development
Jonah Temple, Deputy City Solicitor

RE: Request to allow ground floor residential use, to allow three stories and a 39.3-foot height, to exceed FAR, and associated parking waivers

Applicant: Claire A. Leone, Deborah Sylvester and Lisa Caira

Site: 209-211 Adams Street	SBL: 14018 0016
Zoning: BU2	Lot Area: 8,830 square feet
Current use: Two-family dwelling	Proposed use: Five residential units in one dwelling

BACKGROUND:

The subject site is an 8,830 square foot corner lot improved with a two-family dwelling built circa 1880. The petitioner proposes to raze the existing dwelling and construct a 10,995 square foot five-unit residential dwelling with both garage and surface parking. The proposed development requires a special permit for the use and certain dimensions, and associated parking waivers.

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

- Zoning Review Application, prepared by Laurance Lee, attorney, dated 11/14/2023
- Topographic Plan (existing conditions), signed and stamped by William Tirrell, surveyor, dated 10/17/2023
- Plan For Proposed Building, signed and stamped by William Tirrell, surveyor, dated 11/8/2023
- Limited Zoning Sketch Plan, signed and stamped by Brian W Timm, engineer, dated 11/8/2023
- Elevations, signed and stamped by Treffle E. LaFleche, architect, dated 11/10/2023
- FAR Worksheet, signed and stamped by Treffle E. LaFleche, architect, submitted 11/14/2023

ADMINISTRATIVE DETERMINATIONS:

1. The petitioners intend to raze the existing two-family dwelling to construct a five-unit residential building. Per section 4.4.1, a special permit is required to allow residential uses on the ground floor with residential above in a Business 2 zoning district.
2. Per section 4.1.2.B.2, site plan review is required for any development in a Business district of over 10,000 square feet or more of new gross floor area. The proposed building is 10,995 square feet, requiring a site plan review.
3. The petitioners intend to construct a three-story residential building. Per section 4.1.2.B.3 and 4.1.3, a special permit is required to allow for each three-story structure with 39.3 feet in height.
4. Per section 4.1.3, the maximum by-right FAR for a three-story building is 1.00, and up to 1.50 by special permit. The building is proposed with 10,995 square feet of floor area resulting in an FAR of 1.25, requiring a special permit.
5. Per section 5.1.4, two parking stalls are required per each residential unit. The petitioners propose one garage parking stall per each unit, accessed from a driveway along the rear lot line and five surface parking stalls, for a total of ten stalls on site. No waiver is required.
6. Per section 5.1.7.A, no parking may be located within the required front and side setbacks, or within five feet of the street. Two parking stalls are proposed within the front setback and within five feet of the street, located directly on the front lot line. All five surface stalls are located (wholly or in part) within the required side setback of 19.7 feet. The five proposed parking stalls require special permit relief to be located in the side and front setbacks, with two requiring relief to be within five feet of the street.

BU2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	8,830 square feet	No change
Setbacks			
• Front (Adams St)	10 feet	19.5 feet	10.1 feet
• Front (Murphy Ct)	10 feet	20.2 feet	10.2 feet
• Side	19.7 feet	67.7 feet	26.8 feet
• Rear	0 feet	19.1 feet	15.2 feet
Building Height	24 feet (36 feet by SP)	Not provided	39.3 feet*
Max Number of Stories	2 (3 by SP)	2.5	3*
Lot Area Per Unit	1,200 square feet	4,415 square feet	1,766 square feet
FAR	1.00 (1.50 by SP)	.28	1.25*

****Requires relief

See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§4.4.1	Request to allow ground floor residential use	S.P. per §7.3.3
§4.1.2.B.2	Request for site plan review for a building with more than 10,000 square feet	S.P. per §7.3.3
§4.1.2.B.3 §4.1.3	Request to allow a three-story structure with 39.3 feet in height	S.P. per §7.3.3
§4.1.3	Request to allow an FAR of 1.25	S.P. per §7.3.3
§5.1.7.A	Request to allow parking within the front and side setbacks, and within five feet of the street	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 five residential units with three stories and 39.3 feet in height, a ground floor residential use, a Floor Area Ratio (FAR) of 1.25, site plan review for a building with more than 10,000 square feet, parking within the front and side setbacks, and parking within five feet of the street as recommended by the Land Use Committee for the reasons given by the Committee, through its Chair, Councilor Andrea Kelley:

1. The specific site is an appropriate location for the proposed residential project in the Business Use 2 district (BU-2) because the neighborhood has a variety of residential uses of different scales. (§7.3.3.C.1)
2. The proposed residential project as designed will not adversely affect the neighborhood because the lot area per unit exceeds what is required for the district. (§7.3.3.C.2)
3. The proposed residential project will not create a nuisance or serious hazard to vehicles or pedestrians because new plantings will be provided along the street frontage. (§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. The proposed structure with an FAR of 1.25, where 1.0 is the maximum allowed by right, is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood because other buildings on the street have multiple dwelling units on undersized lots. (§7.3.3)

PETITION NUMBER: #12-24

PETITIONER: Claire A. Leone, Deborah Sylvester and Lisa Caira

LOCATION: 209-211 Adams Street, Ward 1, Newton, on land known as Section 14 Block 18 Lot 16, containing approximately 8,830 sq. ft. of land

OWNER: Joseph Leone

ADDRESS OF OWNER: 209 Adams Street
Newton, MA 02468

TO BE USED FOR: Construction of five residential units with three stories and 39.3 feet in height, a ground floor residential use, a Floor Area Ratio (FAR) of 1.25, site plan review for a building with more than 10,000 square feet, parking within the front and side setbacks, and parking within five feet of the street

RELIEF GRANTED: Special Permit per §7.3. to allow to allow ground floor residential uses (§4.4.1), site plan review for a building with more than 10,000 square feet (4.1.2.B.2), a three-story structure with 39.3 feet in height (§4.1.2.B.3 and §4.1.3), FAR of 1.25 (§4.1.3), and parking within the front and side setbacks, and within five feet of the street (§5.1.7.A)

ZONING: Business Use 2 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. Site plan prepared by Framingham Survey Consultants Inc., signed and stamped by William E. Tirrell, Professional Land Surveyor, dated November 3, 2023
 - b. A set of architectural drawings prepared by LDa Architecture & Interiors, LLP, signed and stamped by Treffle E. LaFleche, Registered Architect, dated November 30, 2023:
 - i. "North elevation" (SP-105)
 - ii. "East and west elevations" (SP-106)

- iii. "South elevation" (SP-107)
 - c. A landscape plan entitled "Landscape Plan," prepared by Michael D'Angelo Landscape Architecture, unsigned and unstamped, dated November 21, 2023
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. All appliances and utilities for the building shall be all-electric, including heating and cooling.
6. 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. Submitted a Final CMP for review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public Works, and the City Engineer in accordance with this Order.
 - d. Received approval for the Pest Control inspection report and the remediation action plan and submitted a copy of such approval to the Director of Planning and Development in accordance with this Order.

- e. 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.
7. 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 for the portion of the project for which occupancy is requested and the Petitioner has:
 - a. Filed with the building permit record statements by a registered architect (or professional engineer) and a professional land surveyor (or professional engineer) certifying compliance with Condition #1, including the as built FAR.
 - b. Submitted final as-built survey plans in digital format, stamped and signed by a professional land surveyor or professional engineer, as applicable.
 - c. Filed with the building permit record a statement by a registered landscape architect certifying compliance with the landscape plan referenced Condition #1.
 - d. 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.
 - e. 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.
8. The Petitioner shall install all landscaping consistent with this Special Permit/Site Plan approval and shall maintain landscaping in good condition. Any plant material that becomes diseased or dies shall be replaced as soon as feasibly possible with similar material.
9. Provided that all other requirements in Condition #7 are satisfied and the project is substantially complete, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the building prior to completion of final landscaping (including hardscape improvements).