



Land Use Committee Report

City of Newton **In City Council**

Thursday, November 7, 2019

Present: Councilors Schwartz (Chair), Lipof, Laredo, Auchincloss, Kelley, Markiewicz, Crossley

Also Present: Councilors Krintzman, Albright and Leary,

City Staff Present: Associate City Solicitor Jonah Temple, Senior Planner Neil Cronin, Planning Associate Katie Whewell, Deputy Director of Planning Jennifer Caira, Director of Planning and Development Barney Heath

All Special Permit Plans, Plan Memoranda and Application Materials can be found at http://www.newtonma.gov/gov/aldermen/special_permits/current_special_permits.asp. Presentations for each project can be found at the end of this report.

#140-19 Request to Rezone 4.5 acres to MU3

MD 399 GROVE OWNER, LLC/RAMIREZ CONCORD, LLC/BH NORMANDY RIVERSIDE, LLC/MASSACHUSETTS BAY TRANSPORTATION AUTHORITY petition for a change of zone to Mixed Use 3/Transit Oriented District for portions of land located at 355 Grove Street (currently zoned BU-2) and 399 Grove Street (currently zoned BU-5), also identified as Section 42, Block 11, Lots 3 and 4.

Action: **Land Use Held 6-0 (Schwartz, Auchincloss not Voting)**

#140-19(2) Special Permit to allow Mixed Use Development at Riverside Station

MD 399 GROVE OWNER, LLC/RAMIREZ CONCORD, LLC/BH NORMANDY RIVERSIDE, LLC/MASSACHUSETTS BAY TRANSPORTATION AUTHORITY petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a 10 building, mixed use, transit-oriented development of not more than 1,520,000 sq. ft. and more than 20,000 sq. ft. of gross floor area including; up to 650,000 sq. ft. of office use, up to 750 residential units containing no more than 750,000 sq. ft., retail space of not more than 200,000 sq. ft., buildings up to 18-stories in height, building height of up to 230', Floor Area Ratio up to 2.7, no more than 10% beneficial open space; to permit retail and personal establishments of more than 5,000 sq. ft., for-profit educational uses, restaurants with more than 50 seats, places of amusement, open air businesses, animal services, ground floor health club establishments, hotel, banks up to and over 5,000 square feet, theatre/hall, laboratory/research facility, multi-level accessory parking facility, multi-level non-accessory parking facility, single level accessory parking facility, single level non-accessory parking facility, reduction of the residential parking requirement to 1.25 stalls per unit, reduction of the overall commercial parking requirement by 1/3, a waiver of parking stalls not to exceed 750 stalls, waivers to parking facility design standards including: stall dimensions, minimum depth for handicap

parking stalls, maneuvering space for end stalls, dimensions for entrance and exit driveways, waiver of layout design to permit tandem parking stalls, waiver of 5% interior landscaping requirement, waiver of the interior planting area requirements, waiver of the tree requirements, waiver of the bumper overhang requirements, waiver of the one foot candle lighting, waiver of the parking stall striping requirement, waiver of the curbing, wheel stop, guard rail or bollard requirements, waiver of off-street loading facilities requirements, waiver of the number, size location or design requirements relative to signs at 355 and 399 GROVE STREET on land known as Section 42 Block 11 Lots 3 and 4, containing approximately 14.4 acres of land in a districts zoned Mixed Use 3 Transit Oriented (MU3), BU2 (a portion to be rezoned to MU3), BU5 (to be rezoned to MU3). Ref: Sec. 7.3.3, 7.4, 4.2.2A.2, 4.2.2.B.1, 4.2.2.B.3, 4.2.2.B.3, 4.2.3, 4.2.4.A, 4.2.4.F.b, 4.2.4.F.1.b, 4.2.4.G, 4.2.4.G.1, 4.2.4.G.2, 4.2.4.G.3, 4.4.1, 5.1.4, 5.1.4.A, 5.1.4.C, 5.1.8.B.1, 5.1.8.B.2, 5.1.8.B.4, 5.1.8.B.6, 5.1.8.D.1, 5.1.8.D.2, 5.1.8.E.1, 5.1.9.B, 5.1.9.B.1, 5.1.9.B.2, 5.1.9.B.3, 5.1.9.B.4, 5.1.10.A.1, 5.1.10.B.3, 5.1.10.B.5, 5.1.12, 5.1.13, 5.2, 5.2.13, 5.4.2.B, of the City of Newton Revised Zoning Ord, 2017. **Subject to approval of proposed zoning ordinance amendments in Sections 4.2.3 and 4.2.4.**

Action: **Land Use Held 6-0 (Schwartz, Auchincloss not Voting)**

Note: Attorney Steve Buchbinder, Schlesinger and Buchbinder, 1200 Walnut Street, represented the petitioner. Atty. Buchbinder stated that the petitioner's proposed text amendments for the MU3 zone are being modified to incorporate input from the Lower Falls Improvement Association (LFIA). Atty. Buchbinder stated that the proposed text amendments have been collaborated to and agreed to by the petitioner and the LFIA. Atty. Buchbinder noted that if the text amendments are approved, the petitioner will submit a revised special permit petition that reflects the modifications to the zone.

Mark Development Principal Damian Chavieno noted that the LFIA has working collaboratively to come up with a plan for the site that is acceptable to the community. Mr. Chavieno showed details of the new proposal as changed from the March submittal as shown on the attached presentation. Details of the presentation include the modified heights, setbacks, the reduction from 1.5 million square feet in gross floor area to 1.025 million square feet, the cap of 65% residential/35% commercial uses at the site, reduction in number of keys in the hotel from 194 to 150 and a reduction in the number of parking spaces by 880. Mr. Chavieno stated that when the project is reviewed by the Council, the plans will be in the conceptual phase of design. He explained that conceptual plans will allow some flexibility for future architect. Mr. Chavieno confirmed that as the design guidelines for the project are drafted, similar language to the Northland Design Guidelines will be incorporated. It was noted that the revised text amendments for the MU3 zone do not prohibit solar canopies on the roads. The revised site plan includes the creation of a third access point to the site and the open spaces represent approximately 17% of the site. A Councilor requested that the petitioner provide an estimate for a future meeting on the anticipated increased use of the green line that the project will generate. With that, Committee members voted unanimously to hold items #140-19 and #140-19(2) with a motion from Councilor Markiewicz.

#350-19 Petition to allow subdivision at 1957 Beacon Street

CHARLENE ZION petition for SPECIAL PERMIT/SITE PLAN APPROVAL to subdivide a 29,983 sq. ft. lot into one 15,000 sq. ft. lot and one 14,983 sq. ft. lot, requiring a waiver of the lot

frontage by 5% (5') and a reduction in the lot area by .114% (17 sq. ft.) at 1957 Beacon Street, Ward 5, Waban, on land known as Section 55 Block 01 Lot 27, containing approximately 29,983 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 3.1.3, 7.8.4.E, 7.8.4.F of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Approved 7-0 (Schwartz not Voting); Public Hearing Closed 11/07/2019**

Note: The petitioner, Ms. Charlene Zion presented the request to subdivide a 29,983 sq. ft. lot into two parcels at 1957 Beacon Street. Ms. Zion explained that one lot will be fully conforming, and one parcel will lack 5' of frontage, requiring a special permit. Planning Associate Katie Whewell reviewed the requested relief, criteria for consideration, zoning, land use and proposed plan as shown on the attached presentation. Ms. Whewell noted that the subdivision of the lot requires a special permit to waive lot area and frontage. Ms. Whewell noted that no construction plans have been submitted for either lot. She explained that one lot will be fully conforming under new lot standards and the second lot will reduce the frontage to be buildable under new lot standards. Ms. Whewell stated that that the proposed lot sizes are consistent with the mean and median sizes of other lots in the neighborhood. The Planning Department recommends that a condition of the special permit is that any structure that meets the new lot standards should be reviewed as a matter of right.

The Public Hearing was Opened.

Rena Getz, 192 Pine Ridge Road, stated that her only concern was to ensure that the lot would have to meet new lot standards.

Councilor Kelley motioned to close the public hearing which carried 6-0-1(Councilor Crossley abstaining). Committee members expressed no concerns relative to the request. Councilor Crossley motioned to approve the petition. Committee members reviewed the draft findings and conditions as shown on the attached presentation and voted 7-0 in favor of approval.

#352-19 Petition to extend nonconforming FAR at 32 Berkshire Road

MARIA YANAKAKIS petition for SPECIAL PERMIT/SITE PLAN APPROVAL to expand the existing garage and construct two bedrooms above, creating an FAR of .51 where .41 is allowed and .44 exists at 32 Berkshire Road, Ward 2, Newtonville, on land known as Section 24 Block 40 Lot 1, containing approximately 8,130 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 7.3.3, 7.4, 3.1.9, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Note that the proposed FAR is .43 where .38 exists and .39 is allowed.

Action: **Land Use Approved 7-0 (Schwartz not Voting); Public Hearing Closed 11/07/2019**

Note: The petitioner presented the request to exceed the allowable FAR at 32 Berkshire Road, to extend an existing garage and add two second-floor bedrooms. It was noted that the proposed FAR is .43 where .39 is allowed and .38 exists. Senior Planner Neil Cronin presented the requested relief, criteria for consideration, land use, zoning, existing and proposed elevations as shown on the attached presentation. Mr. Cronin stated that there are no proposed changes to the side or rear setback and noted that the proposed addition will increase the footprint of the structure by approximately 100 sq. ft.

The Public Hearing was Opened. No member of the public wished to speak. Councilor Auchincloss motioned to close the public hearing which carried unanimously. Councilor Auchincloss motioned to approve the petitioner. Committee members expressed no concerns relative to the petition. Councilors reviewed the draft findings and conditions as shown on the attached presentation and voted 7-0 in favor of approval.

#353-19 Petition to extend nonconforming FAR at 38 Fenno Road

MICHAEL ZALIS petition for SPECIAL PERMIT/SITE PLAN APPROVAL to raze an existing deck and construct an addition on the first floor, creating an FAR of .48 where .42 is allowed and .45 exists at 38 Fenno Road, Ward 2, Newton Centre, on land known as Section 64 Block 12 Lot 05, containing 7,413 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 3.1.9, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Held 7-0 (Schwartz not Voting); Public Hearing Continued**

Note: Acting Chair Councilor Lipof explained that additional relief is necessary for the petition, which needs to be re-advertised. The Public Hearing was opened. No member of the public wished to speak. Councilor Crossley motioned to hold the item which carried 7-0.

#314-19 Petition to increase nonconforming FAR and lot coverage at 262 Otis Street

DONNA ROTH petition for SPECIAL PERMIT/SITE PLAN APPROVAL to enclose an existing 175 sq. ft. porch and construct a single-story porch addition, increasing the non-conforming lot coverage, decreasing the non-conforming open space and creating an FAR of .56 where .53 exists and .33 is allowed at 262 Otis Street, Ward 2, West Newton, on land known as Section 32 Block 50 Lot 13, containing approximately 11,152 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 3.1.3, 3.1.9, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Approved 7-0 (Schwartz not Voting); Public Hearing Closed 11/07/2019**

Note: Architect Sacheen Dampier represented the petitioner, Donna Roth. Ms. Dampier presented an overview of the petition and updates to the Committee. Ms. Dampier provided the attached memo relative to outreach with the abutter who expressed concerns relative to the project at the public hearing on October 10, 2019. Ms. Dampier explained that the abutter to the property clearly understands the proposed plans and has requested that the petitioner landscape a buffer to the proposed porch. The petitioner has agreed to additional landscaping but has not submitted a landscaping plan at this time. Ms. Roth confirmed that she would like time to develop a landscape plan that is consistent with the existing landscaping at the site. Committee members were supportive of approval of the proposed petition with a condition requiring review and approval of the landscape plan by the Planning Department prior to issuance of a building permit.

Seeing no member of the public who wished to speak, Councilor Auchincloss motioned to close the public hearing which carried unanimously. Committee members expressed no concerns relative to the petition. Councilor Auchincloss motioned to approve the petition. Committee members reviewed the draft findings and conditions as shown on the attached presentation and voted 7-0 in favor of approval.

#351-19 Special Permit to extend nonconforming use and setback at 278-280 California St
NAJIM AND NAJLA AZADZOI petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow construction of a one-story addition at the front of the structure, to allow a first floor residential use in the BU1 district and to extend the nonconforming use and nonconforming front setback at 278-280 California Street, Ward 1, Newton, on land known as Section 11 Block 07 Lot 03, containing approximately 4,534 sq. ft. of land in a district zoned BUSINESS USE 1. Ref: Sec. 7.3.3, 7.4, 4.4., 4.1.3, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Approved 8-0; Public Hearing Closed 11/07/2019**

Note: The petitioner, Mr. Najim Azadzoi presented the request for a special permit to extend the nonconforming use and setback at 278-280 California Street. Mr. Azadzoi explained that when the property was purchased in 1999, five dwelling units existed at the site. When he went to obtain a building permit in 2018, Inspectional Services identified that the fifth unit was inconsistent with their records, which only listed four units at the site. According to other City records, the fifth unit existed in 1980s but may have been vacant at times. Mr. Azadzoi noted that the Assessors office and Fire Department have the property listed as a five-unit dwelling. It was confirmed that the fifth unit is code compliant. Mr. Azadzoi explained that the request for a special permit is to allow the change in use from retail to residential to allow the existing fifth residential unit on the ground floor. Mr. Azadzoi noted that the petition also includes a request for relief to allow an extension of the nonconforming front setback. He explained that it is the intent to replace and extend the existing nonconforming stairway.

Chief Planner Jennifer Caira reviewed the requested relief, criteria for consideration, land use, zoning, proposed plans and photos as shown on the attached presentation. Ms. Caira explained that a canopy over the proposed extension is the portion of the addition that will extend into the existing setback.

The Public Hearing was opened. No member of the public wished to speak. Councilor Greenberg motioned to close the public hearing which carried 7-0-1 (Schwartz abstaining). Ms. Caira confirmed that the proposed canopy will not impede the pedestrian right of way. A Committee member questioned whether other improvements and/or landscaping are being considered as part of the project. Mr. Azadzoi noted that other structural improvements are planned but no additional landscaping is proposed. Councilor Greenberg motioned to approve the petition. Committee members expressed no concerns relative to the request. Committee members reviewed the draft findings and conditions as shown in the attached presentation and voted unanimously in favor of approval.

#425-18 Request to Rezone three parcels for Northland Development
NEEDHAM STREET ASSOCIATES, NORTHLAND TOWER ROAD INVESTORS, NORTHLAND OAK STREET, LLC petition for a change of zone to BUSINESS USE 4 for land located at 156 Oak Street (Section 51 Block 28 Lot 5A), 275-281 Needham Street (Section 51, Block 28, Lot 6) and 55 Tower Road (Section 51 Block 28 Lot 5), currently zoned MU1.

Action: **Land Use Held 8-0; Public Hearing Closed 09/24/2019**

#426-18(2) Special Permit to allow mixed use development

NEEDHAM STREET ASSOCIATES, NORTHLAND TOWER ROAD INVESTORS, LLC, NORTHLAND OAK STREET, LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a mixed-use development greater than 20,000 sq. ft. with building heights of up to 96' and up to eight stories, to allow a development with an FAR of up to 2.0, consisting of 800 residential units, with ground floor residential units, containing restaurants with more than 50 seats, for-profit schools and educational uses, stand-alone ATMs, drive-in businesses, open air businesses, hotels, accessory multi-level parking facilities, non-accessory single-level parking facilities, non-accessory multi-level parking facilities, places of amusement, radio or TV broadcasting studios, and lab and research facilities, to allow a reduction in the overall parking requirement, to allow tandem spaces, to allow valet spaces, to waive dimensional requirements for parking stalls, to allow assigned spaces, to waive end stall maneuvering requirements, to allow driveway entrances and exits in excess of 25', to waive perimeter landscaping requirements, to waive interior landscaping and planting area requirements, to waive lighting requirements for parking lots, to waive tree requirements, to waive bumper overhang requirements, to waive 1-foot candle lighting requirements, to waive general lighting, surfacing and maintenance requirements, to waive off-street loading facilities requirements, to allow the extension of a nonconforming front setback, loading docks and nonconforming retaining wall to the extent necessary and to waive sign requirements relative to number, size, location or design, to waive the number of signs allowed at all properties known as 0 156 Oak Street (Section 51 Block 28 Lot 5A), 275-281 Needham Street (Section 51, Block 28, Lot 6) and 55 Tower Road (Section 51 Block 28 Lot 5), Newton Upper Falls, Ward 5, on 22.6 acres of land in a proposed BU4 district. Ref: Sec. 7.3.3, 7.4, 7.8.2.C, 4.1.2.B.1, 4.1.2.B.3, 4.1.3, 4.4.1, 5.1.3.E, 5.1.4.A, 5.1.4.C, 5.1.8.B.1, 5.1.8.B.2, 5.1.8.B.6, 5.1.8.D.2, 5.1.8.E.1, 5.1.9.A, 5.1.9.B, 5.1.9.B.1, 5.1.9.B.2, 5.1.9.B.3, 5.1.9.B.4, 5.1.10, 5.1.10.A.1, 5.1.12, 5.1.13, 5.2, 5.2.13, 5.4.2 and of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Held 8-0; Public Hearing Closed 09/24/2019**

Note: Committee members continued review of the draft Council Order dated October 25, 2019 (shown attached). Chief Planner Jennifer Caira responded to concerns raised relative to whether or not retail counts are being tracked. Ms. Caira explained that Planning and Law worked to consider how to approach tracking retail visits without undermining the aggressive office and residential goals, understanding that retail fluctuates based on uses and over time. She noted that it is important to promote active retail at the site and acknowledge that the petitioner is providing spaces for public use. Setting the total trip goals too high could disincentivizing active retail and setting lower total trip goals can undermine the more aggressive goals for office and residential trips. Ms. Caira noted that Planning and Law evaluated conditions used in the Austin Street, the former Riverside petition and Washington Place Council Orders. Each project Council Order included a condition that required a post occupancy traffic study. If the total trips exceed the goal established by 10% or more, the petitioners are required to meet with Planning and discuss additional mitigations. Ms. Caira explained that the proposed draft language represents a standalone condition that allows the aggressive approach with regard to the methodology for counting office and residential but also total trip counts. Given the amount of public space, the condition allows a 20% increase to the number of trip counts. If that number is exceeded, the petitioner is required to meet with Planning and make reasonable, good faith efforts to modify their Transportation Demand Management (TDM) measures. Ms. Caira confirmed that the estimated trip

counts are based on data in the traffic assessment presented to the Committee. She noted that “cut through traffic”, which can be identified by amount of time spent within the site, will be eliminated from the trip count. Committee members were supportive of the draft language but questioned whether the condition should require the petitioner to meet with Planning to jointly develop and implement additional TDM measures. Associate City Solicitor Jonah Temple explained that both draft conditions require the petitioner to work with the Planning Department to meet and discuss TDM measures.

A Committee member expressed concern that the goal is static, as it is based on ITE data, which changes. Ms. Caira noted that ITE data changes slowly, because it is based on decades of data. Additionally, she explained that the administrative role of monitoring changing goals would be difficult to track. She explained that in addition to recalculating the goals, the types of uses could change, making assessment of the site very complex for future Planning staff. It was noted that as technology changes, Planning will be able to evaluate the goals and TDM measures and work with the petitioner on implementing effective tools and measures. The flexibility in the draft language allows the Planning Department some freedom as well. The Planning Department can request additional monitoring and recording if there have been changes to the transportation landscape (changes to the regional transportation landscape to be determined at the discretion of the Director of Planning and Development). It was noted that significant changes could be the extension of the green line or, the reduction in green line service.

Ms. Caira noted that a letter submitted by Right Size Newton based trip numbers based on trip generation numbers presented at an earlier public hearing, which included a more robust shuttle plan and not the latest data. Committee members expressed concern relative to the use of trip count data submitted by the petitioner. Ms. Caira confirmed that the Planning Department could conduct the counts independently, rather than hiring a peer reviewer of the petitioner’s data. Councilors were supportive of design and implementation of the study by the Planning Department.

It was noted that while TDM measures begin from first certificate of occupancy, the full TDM (with the shuttle) does not begin until 400 certificates of occupancy are issued. A Councilor noted that behaviors are changed when there are significant live changes (new job, moving, etc.). It was suggested that allowing time between issuance of certificates of occupancy and when the full TDM begins could encourage early residents to develop more car centric behaviors. Committee members discussed whether the first trip counts should be six months after full TDM is implemented or less, noting that six months is a long time to wait to determine that changes are necessary for the traffic conditions. Ms. Caira noted that six months is the industry standard for the minimum amount of time necessary to account for behavioral changes. Councilors noted that because the Planning Department will be conducting the monitoring and real time data is available, Planning can make suggestions to the petitioner before the formal study is conducted.

Committee members reviewed the revised Design Guidelines and expressed support for the modified language. Committee members asked that the Planning and Law Departments provide a memo accompanying the draft Council Order. Committee members held items #425-18 and #426-18 and adjourned at 10:45 pm.

Respectfully Submitted,

Greg Schwartz, Chair

Riverside Station Redevelopment

Land Use

November 7, 2019

MARK
DEVELOPMENT

	[A] Original Special Permit Filing March 2019	[B] Current November 2019	[C] Delta
Total GFA (1)	1,457,592	1,025,000	(432,592)
Residential Units	675	TBD	
Hotel Keys	194	150	(44)
Parking Spaces	2,922	2,039	(883)
% Residential	49.9%	64.2%	14.3%
% Commercial	50.1%	35.8%	-14.3%
<u>Footnotes:</u> (1) GFA excludes: MBTA space, mechanical penthouse spaces, and loading areas.			

MARK
DEVELOPMENT

	[A]	[B]		[C]	[D]		[E]	[E]
	Original Special Permit Filing March 2019			Current November 2019			Delta	
	# of Stories	FT.		# of Stories	FT.		# of Stories	FT.
Building 1 (1)	14	217		10 / 11	170		(3)	(47)
Building 2	18	226		6	70		(12)	(156)
Building 3 (1) (2)	5	104		5	64		0	(40)
Building 4 (2)	4.5	62		4.5	62		0	0
Building 5	5	60		4	45		(1)	(15)
Building 6	6	81		4	55		(2)	(26)
Building 7	6	76		5.5	76		(0.5)	0
Building 8	7	84		5.5	70		(1.5)	(14)
Building 9	7	84		6	69		0	0
Building 10	7	80		6	69		0	0

Footnotes:

(1) Number of Stories does not include mechanical penthouse.

(2) Measured at Grove Street.

MARK
DEVELOPMENT

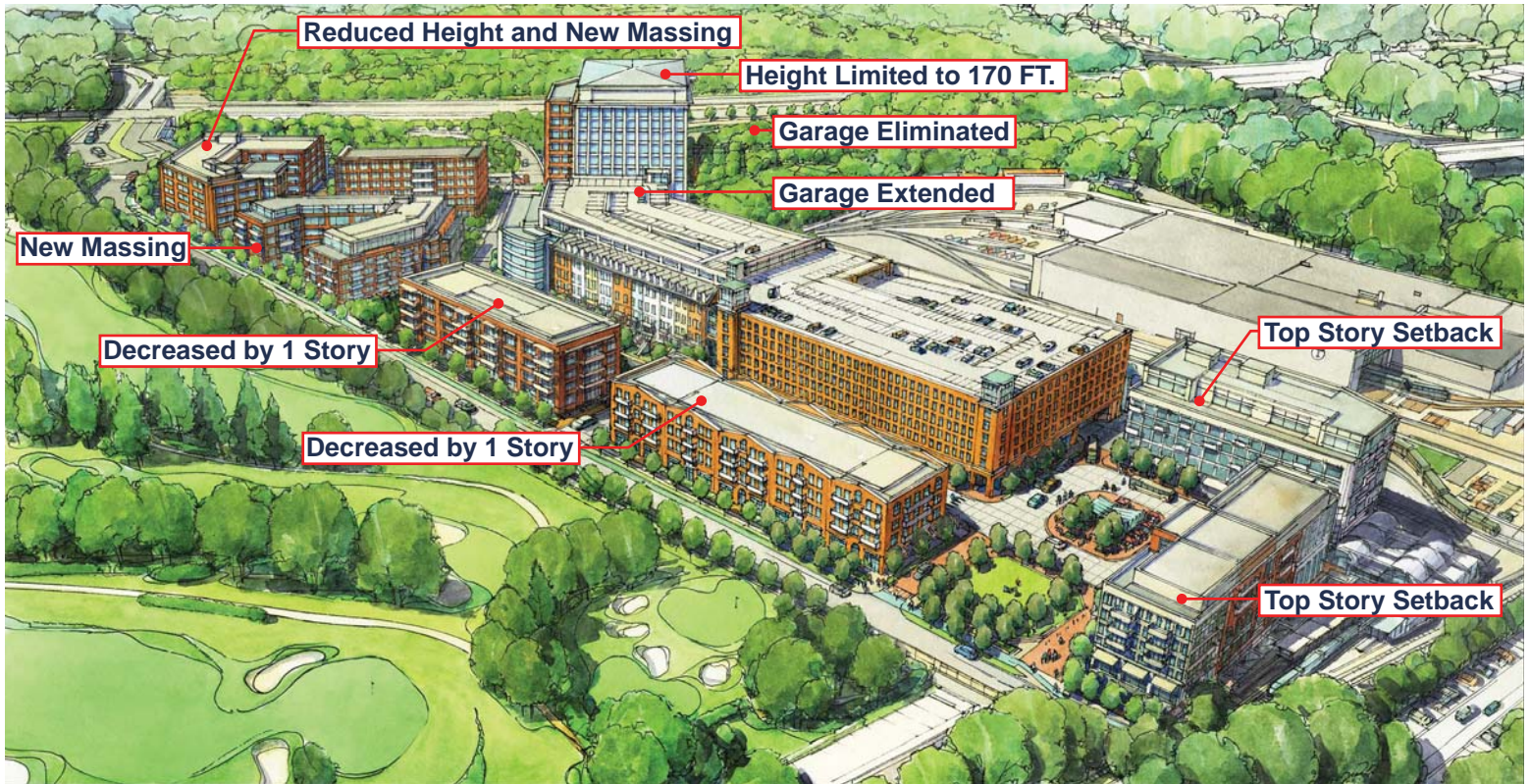


1.025M

* AT GROVE STREET

November 7, 2019

MARK
DEVELOPMENT



1.025M

November 7, 2019

DOES NOT REPRESENT
SETBACK ADJUSTMENTS

MARK
DEVELOPMENT



1.025M

November 7, 2019

DOES NOT REPRESENT
SETBACK ADJUSTMENTS

MARK
DEVELOPMENT



1.025M

November 7, 2019

MARK
DEVELOPMENT

Department of Planning and Development



PETITION #350-19 1957 BEACON STREET

SPECIAL PERMIT/SITE PLAN
APPROVAL TO SUBDIVIDE A 29,983
SQ. FT. LOT INTO ONE 15,000 SQ.
FT. LOT AND ONE 14,983 SQ. FT.
LOT, REQUIRING A WAIVER OF THE
LOT FRONTAGE BY 5% (5') AND A
REDUCTION IN THE LOT AREA BY
.114% (17 SQ. FT.)

NOVEMBER 7, 2019



1

Requested Relief



Special Permit per §7.8.4 and §7.3.3 of the NZO to:

- Reduce the lot area and frontage (§3.1.3, 7.8.4.F, 7.8.4.E).

2

Criteria to Consider

When reviewing this request, the Council should consider whether:

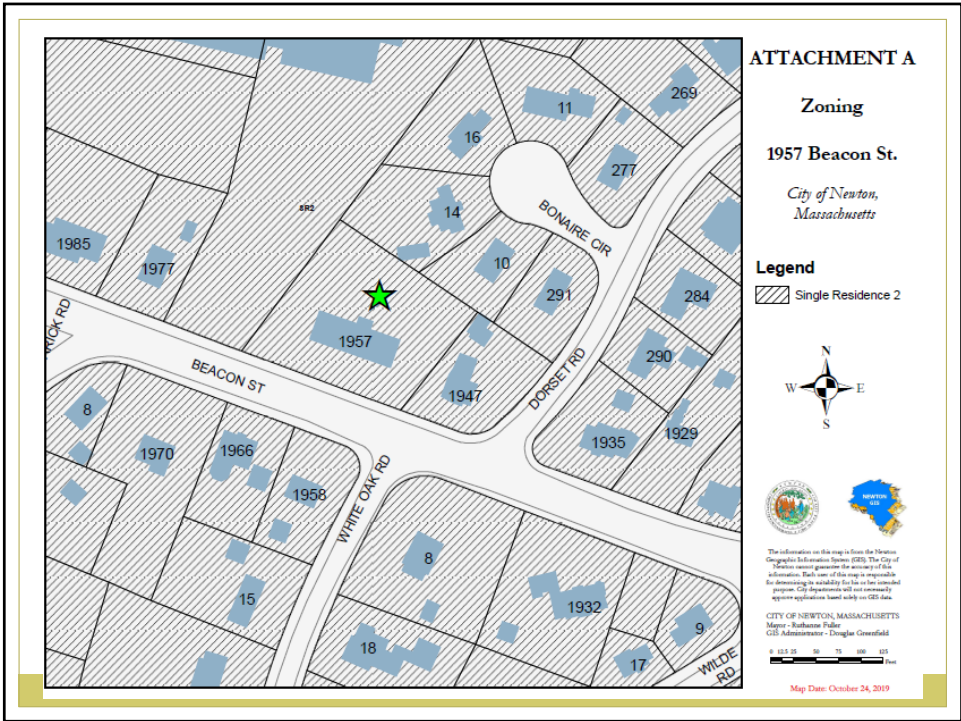
- The proposed reduction in lot area and frontage, is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood. (§3.1.3, §7.8.4.E, §7.8.4.F)
- The proposed reduction in lot area and frontage do not create a nonconformity that did not previously exist. (§3.1.3, §7.8.4.E, §7.8.4.F)
- The site is an appropriate location for the proposed subdivision that requires waivers for frontage and lot area (§7.3.3.C.1)
- The reduction in frontage and lot area will adversely affect the neighborhood (§7.3.3.C.2).
- There will be no 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).

3

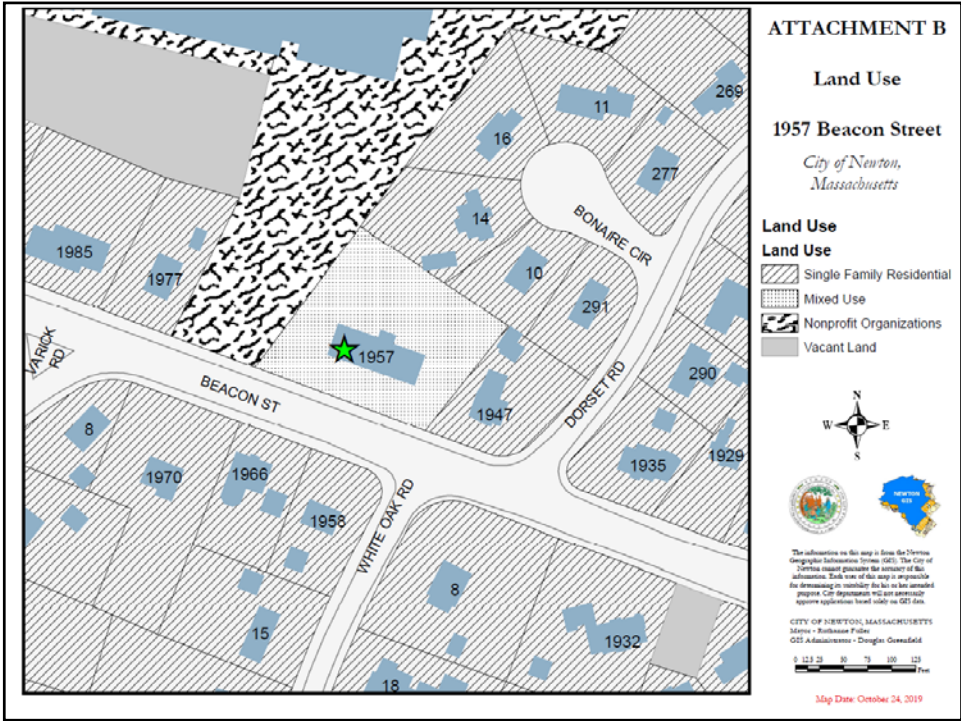
Aerial/GIS Map



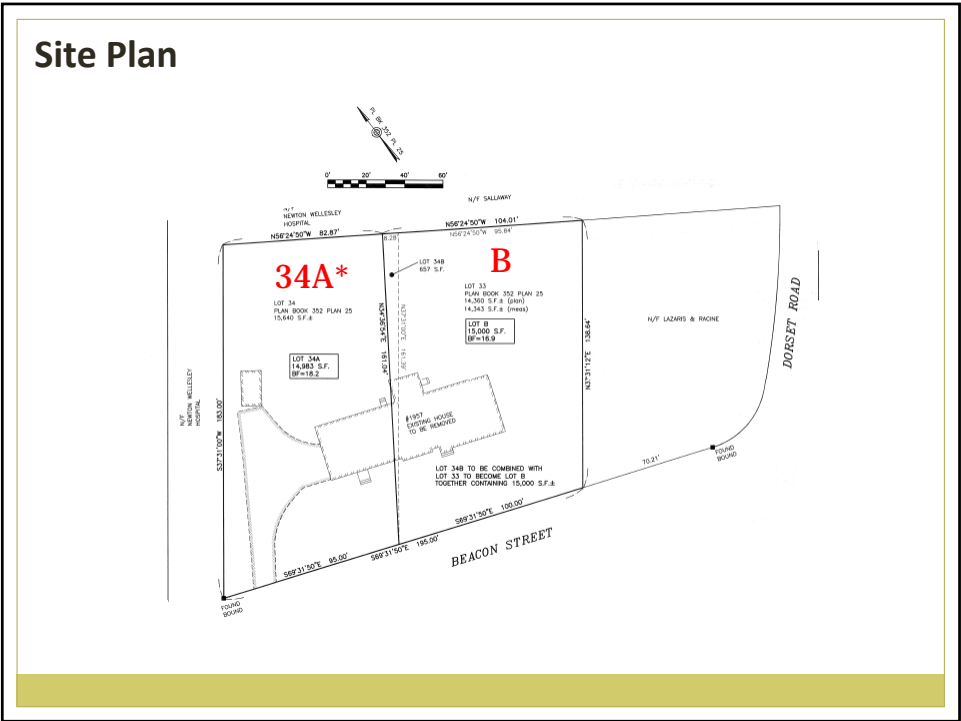
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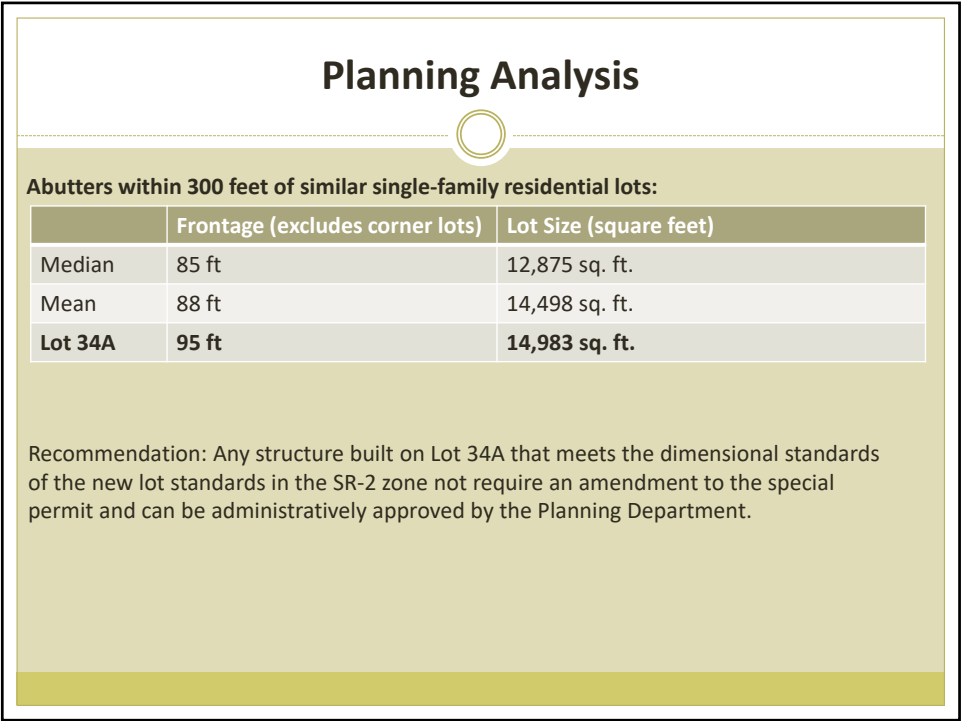
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6



7



8

Proposed Findings

1. The proposed reduction in lot area and frontage, is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood. (§3.1.3, §7.8.4.E, §7.8.4.F)
2. The proposed reduction in lot area and frontage do not create a nonconformity that did not previously exist. (§3.1.3, §7.8.4.E, §7.8.4.F)
3. The site is an appropriate location for the proposed subdivision that requires waivers for frontage and lot area because the proposed frontage and lot size are greater than the median frontage and lot sizes of abutting single family residential properties within 300 feet. (§7.3.3.C.1)
4. The reduction in frontage and lot area will not adversely affect the neighborhood because the proposed frontage and lot size are greater than the median frontage and lot sizes of abutting single family residential properties within 300 feet (§7.3.3.C.2).
5. There will be no nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3).
6. Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4).

9

Proposed Conditions

1. Plan Referencing Condition.
2. Standard Building Permit Condition.
3. Standard Final Inspection/Certificate of Occupancy Condition.
4. An approved, recorded subdivision plan shall be submitted to the Planning and Development Department prior to any building permit application.
5. Future proposed structure(s) built upon Lot 34A that is/are considered by right, shall be reviewed administratively by the Planning Department, rather than an amendment to the special permit. This special permit shall only apply to Lot 34A once a subdivision plan has been recorded.

10

New Zoning Analysis, 1957 Beacon Street Lots

Dimensional standards a new structure would need to meet:

- Frontage
- Building footprint
- Building width
- Building depth
- Front, rear and side setbacks
- Maximum stories
- Story height

House Type: A,B,C,D
R1 Residential 1 Zoning District

The proposed project would **be allowed by right** due to the required frontage being less than the existing zoning requirements:

Lot Standard	Required/Allowed	Proposed
Minimum Frontage	80 feet	95 ft.
Lot Size	No minimum lot size	

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 a reduction of 5% or less from lot size and frontage, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Gregory Schwartz:

1. The proposed reductions in lot area and frontage are consistent with and not in derogation of the size, scale and design of other structures in the neighborhood. (§3.1.3, §7.8.4.E, §7.8.4.F)
2. The proposed reductions in lot area and frontage do not create a nonconformity that did not previously exist. (§3.1.3, §7.8.4.E, §7.8.4.F)
3. The site is an appropriate location for the proposed subdivision that requires waivers for frontage and lot area because the proposed frontage and lot size are greater than the median frontage and lot sizes of abutting single family residential properties within 300 feet. (§7.3.3.C.1)
4. The reductions in frontage and lot area will not adversely affect the neighborhood because the proposed frontage and lot size are greater than the median frontage and lot sizes of abutting single family residential properties within 300 feet (§7.3.3.C.2).
5. There will be no nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3).
6. Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4).

PETITION NUMBER: #350-19

PETITIONER: Charlene Zion

LOCATION: 1957 Beacon Street, on land known as Section 55, Block 001, Lot 27, containing approximately 29,983 square feet of land

OWNER: Charlene Zion

ADDRESS OF OWNER: 1957 Beacon Street
Newton, MA 02468

TO BE USED FOR: Single-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.3, §7.8.4.E, §7.3.3 to reduce lot area by .114%; §3.1.3,
§7.8.4.F, §7.3.3 to reduce lot frontage by 5%

ZONING: Single Residence 2 district

Approved subject to the following conditions:

1. All parcels associated with this special permit/site plan approval shall be located and constructed consistent with:
 - a. "Plan of Land in Newton, MA 1957 Beacon Street", signed and stamped by Bruce Bradford, Professional Land Surveyor, dated January 1, 2019.
2. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:
 - a. Recorded a certified copy of this 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 subdivision plans are consistent with plans approved in Condition #1.
3. An approved, recorded subdivision plan shall be submitted to the Planning and Development Department prior to any building permit application.
4. Future proposed structure(s) built upon Lot 34A that is/are considered by right shall be reviewed administratively by the Planning Department and an amendment to this special permit shall not be required for such structures.
5. This special permit shall only apply to Lot 34A once a subdivision plan has been recorded.

Department of Planning and Development



PETITION #352-19
32 BERKSHIRE ROAD

SPECIAL PERMIT/SITE PLAN
APPROVAL TO EXCEED THE FLOOR
AREA RATIO

NOVEMBER 7, 2019



1

Requested Relief



Special Permits per §7.3.3 of the Newton Zoning Ordinance to:

- Exceed the Floor Area Ratio (§3.1.3 and §3.1.9).

2

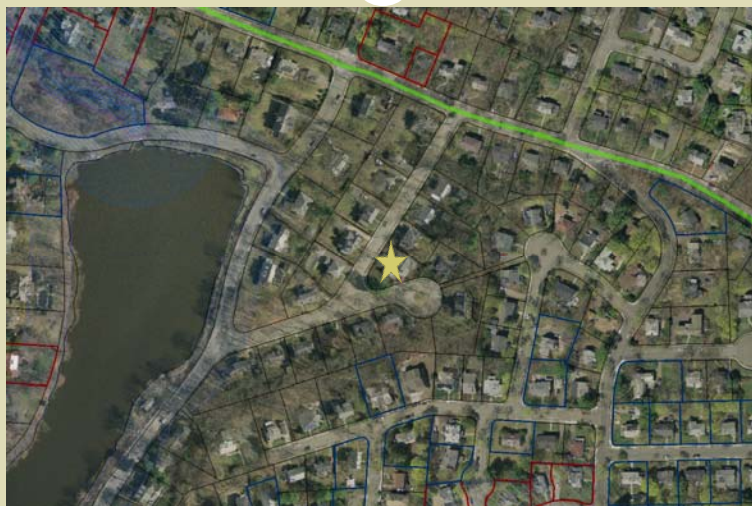
Criteria to Consider

When reviewing this request, the Council should consider whether:

- The proposed increase in FAR from .38 to .43, where .39 is the maximum allowed as of right, is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood (§3.1.9 and §7.3.3)

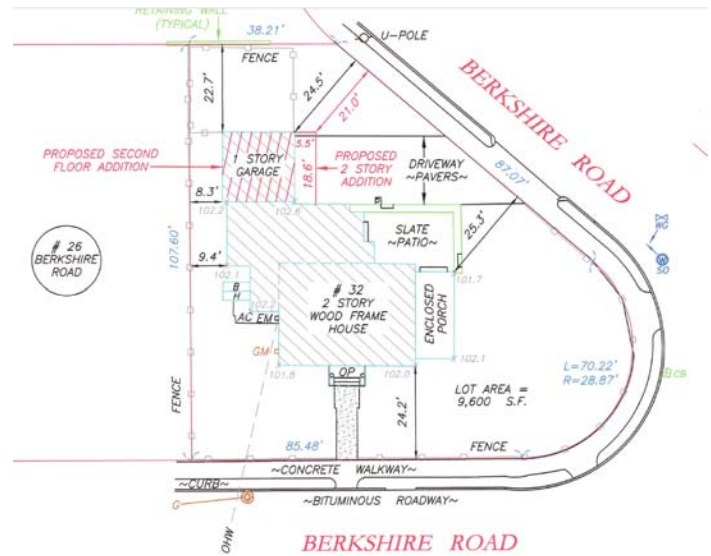
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Aerial/GIS Map



4

Site Plan

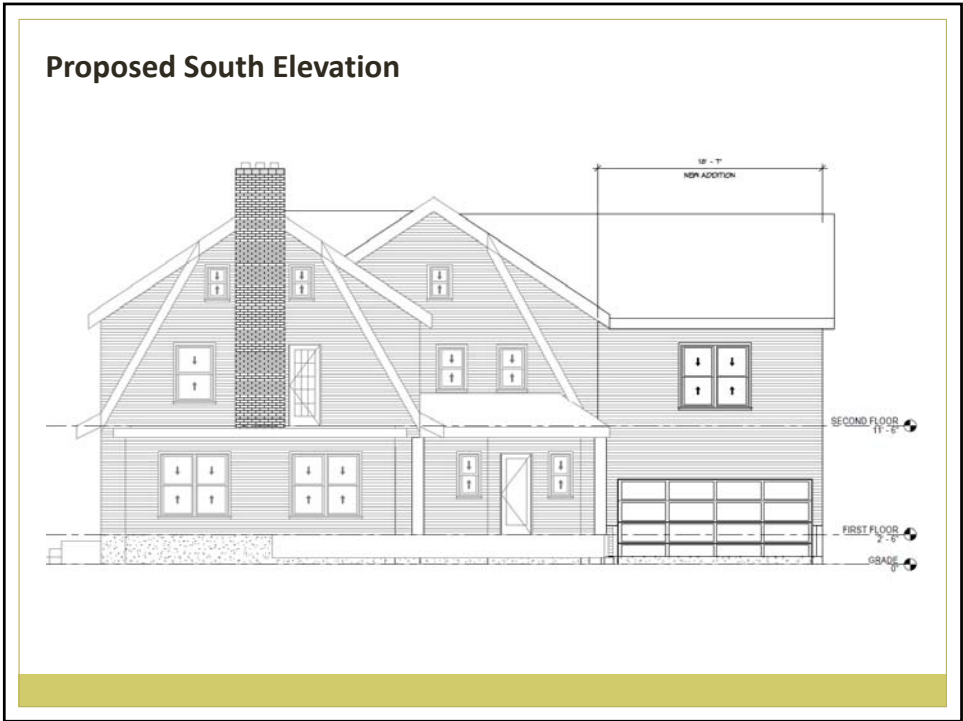


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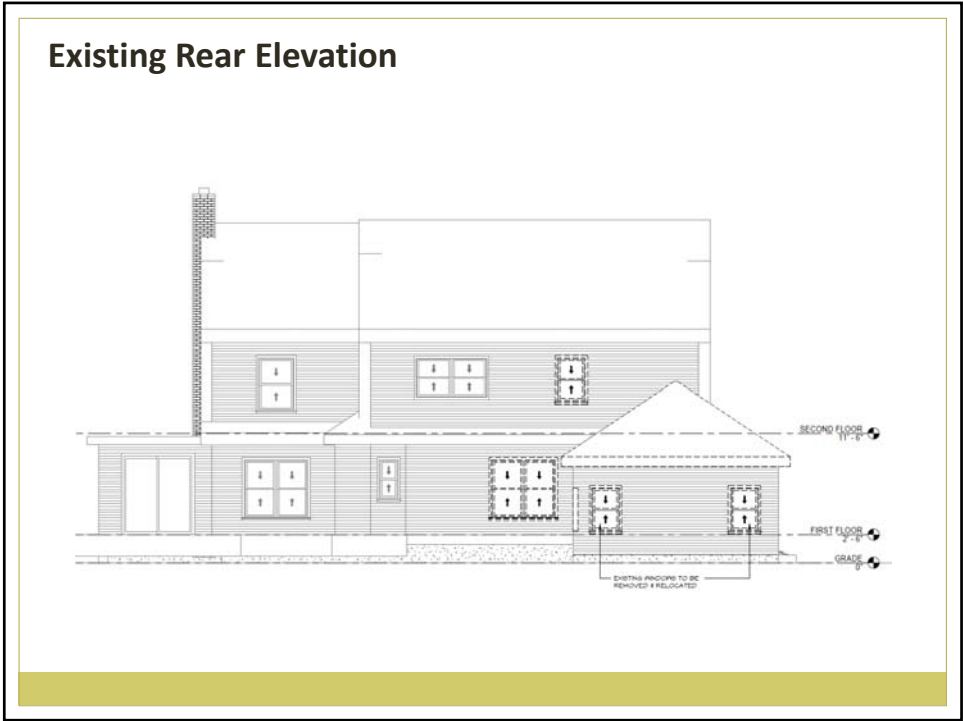
Existing South Elevation



6



7



8

Proposed Rear Elevation



9

Proposed Findings

1. The proposed increase in FAR from .38 to .43, where .39 is the maximum allowed as of right is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood because the expanded structure will comply with the dimensional standards of a structure on an old lot in the SR-2 zone and will be subordinate to and will be set back from the principal dwelling. (§3.1.9 and §7.8.2.C.2)

10

Proposed Conditions

1. Plan Referencing Condition.
2. Standard Building Permit Condition.
3. Standard Final Inspection/Certificate of Occupancy Condition.

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 exceed the floor area ratio (the "FAR") from .38 to .43, where .39 is the maximum allowed by-right, as recommended by the Land Use Committee for the reasons given by the Committee, through its Vice-Chairman, Councilor Rick Lipof:

1. The proposed increase in FAR from .38 to .43, where .39 is the maximum allowed as of right is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood because the expanded structure will comply with the dimensional standards of a structure on an old lot in the SR-2 zone and will be subordinate to and will be set back from the principal dwelling. (§3.1.9, §7.8.2.C.2)

PETITION NUMBER:	#352-19
PETITIONER:	Maria Yanakakis
LOCATION:	32 Berkshire Road, on land known as Section 24, Block 40, Lot 01, containing approximately 9,600 square feet of land
OWNER:	Maria Yanakakis
ADDRESS OF OWNER:	32 Berkshire Road Newton, MA 02460
TO BE USED FOR:	Single-Family Dwelling
CONSTRUCTION:	Wood frame
EXPLANATORY NOTES:	§3.1.9 and §7.3.3 to exceed the floor area ratio

ZONING: Single Residence 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. Plot Plan showing Proposed Conditions, prepared by O'Brien Land Surveying, signed and stamped by Dennis O'Brien, Professional Land Surveyor, dated September 14, 2018, Revised October 18, 2018
 - b. Architectural Plans, prepared by Kritikos Associates Architects, signed and stamped by Phillip Kritikos, Registered Architect, dated October 29, 2018, consisting of eight (8) sheets.
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. 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 board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the final site plan.
 - d. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
4. 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 a statement by a registered architect certifying compliance with Condition #1 as well as the as-built floor area ratio of the structure.
 - 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 professional 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.

Department of Planning and Development



PETITION #314-19

262 OTIS STREET

SPECIAL PERMIT/SITE PLAN
APPROVAL TO ENCLOSE AN EXISTING
175 SQ. FT. PORCH AND CONSTRUCT
A SINGLE-STORY PORCH ADDITION,
INCREASING THE NONCONFORMING
LOT COVERAGE, DECREASING THE
NONCONFORMING OPEN SPACE AND
CREATING AN FAR OF .56 WHERE .53
EXISTS AND .33 IS ALLOWED

NOVEMBER 7, 2019



1

UPDATE



- Petitioner met with abutter regarding landscaping
- November 4, 2019 letter from petitioner's architect:
 - Petitioner has "agreed to provide plantings at the property line in keeping with the style of the landscaping at the front of the (subject) property"

2

UPDATE



Aerial view of area to be landscaped between 262 Otis St and 9 Somerset Rd



View of area to be landscaped between 262 Otis St and 9 Somerset Rd.

3

Requested Relief

Special permit per §7.3.3 to:

- further increase nonconforming floor area ratio (FAR) (§3.1.3, §3.1.9, §7.8.2.C.2)
- further increase nonconforming lot coverage (§3.1.3, §7.8.2.C.2)
- further decrease nonconforming open space (§3.1.3, §7.8.2.C.2)

4

Criteria to Consider

When reviewing the requested special permits the Council should consider whether:

- The proposed increase in floor area ratio (FAR) from 0.53 to 0.56 where 0.33 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 (§3.1.9.A.2)
- That the proposed extension and alterations, with the resulting increase in the dwelling's nonconforming floor area ratio (FAR) from 0.53 to 0.56 where 0.33 is the maximum allowed; increase of its nonconforming lot coverage of 26.5 percent to 28.3 percent where 20 percent is the maximum allowed; and the further decrease of the lot's nonconforming open space from 60.8 percent to 59 percent where 65 percent is the minimum allowed, shall not be substantially more detrimental than the existing nonconforming use to the neighborhood (§7.8.2.C.2)

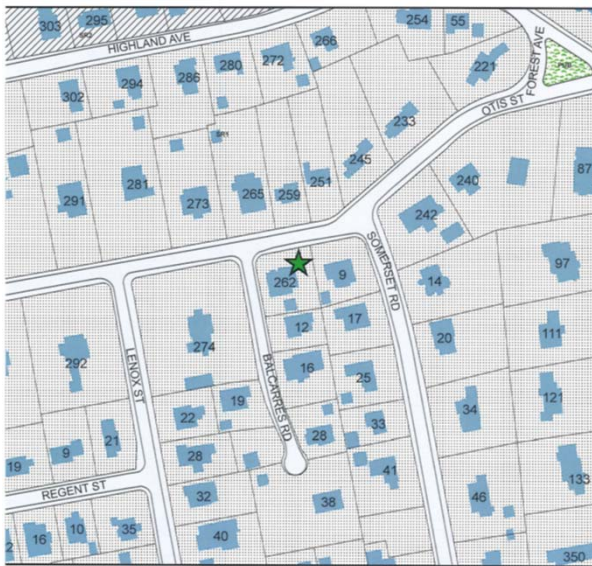
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AERIAL/GIS MAP



6

Zoning



ATTACHMENT I

Zoning

262 Otis St.

City of Newton,
Massachusetts

Legend

- Single Residence 1
- Single Residence 2
- Public Use



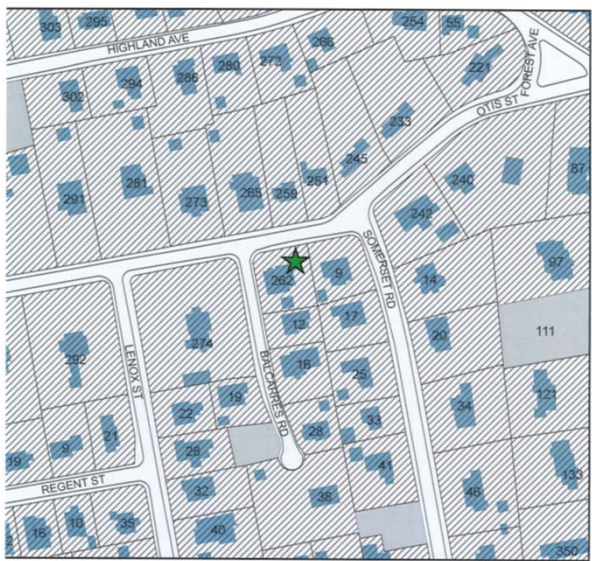
The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not be responsible for any errors or omissions.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Radwan Fikri
GIS Administrator - Douglas Goodfield

Map Date: October 05, 2019

7

Land Use



ATTACHMENT I

Land Use

262 Otis St.

City of Newton,
Massachusetts

Land Use

- Single Family Residential
- Vacant Land



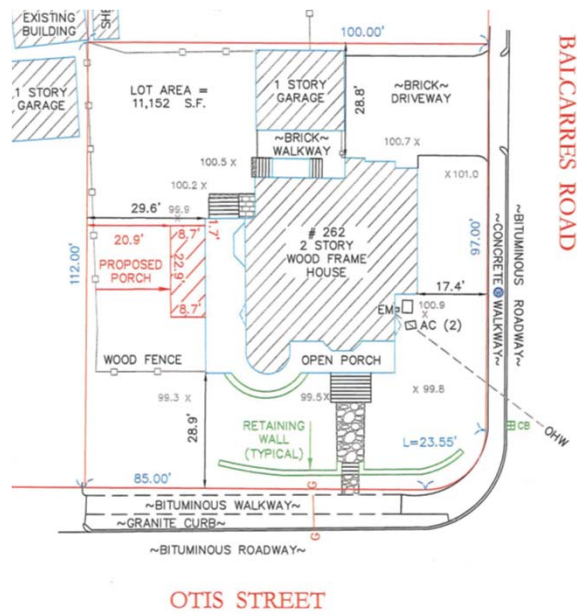
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CITY OF NEWTON, MASSACHUSETTS
Mayor - Radwan Fikri
GIS Administrator - Douglas Goodfield

Map Date: October 05, 2019

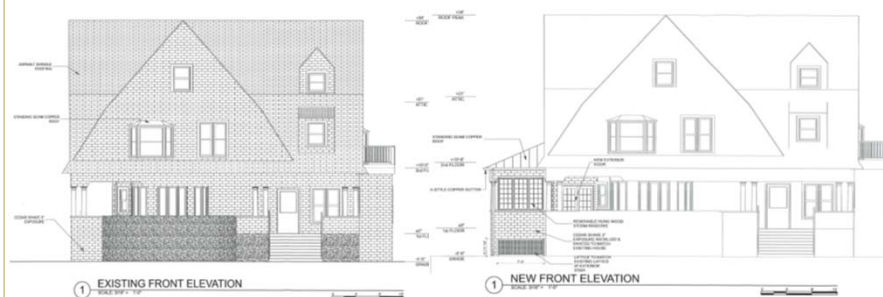
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Site Plan

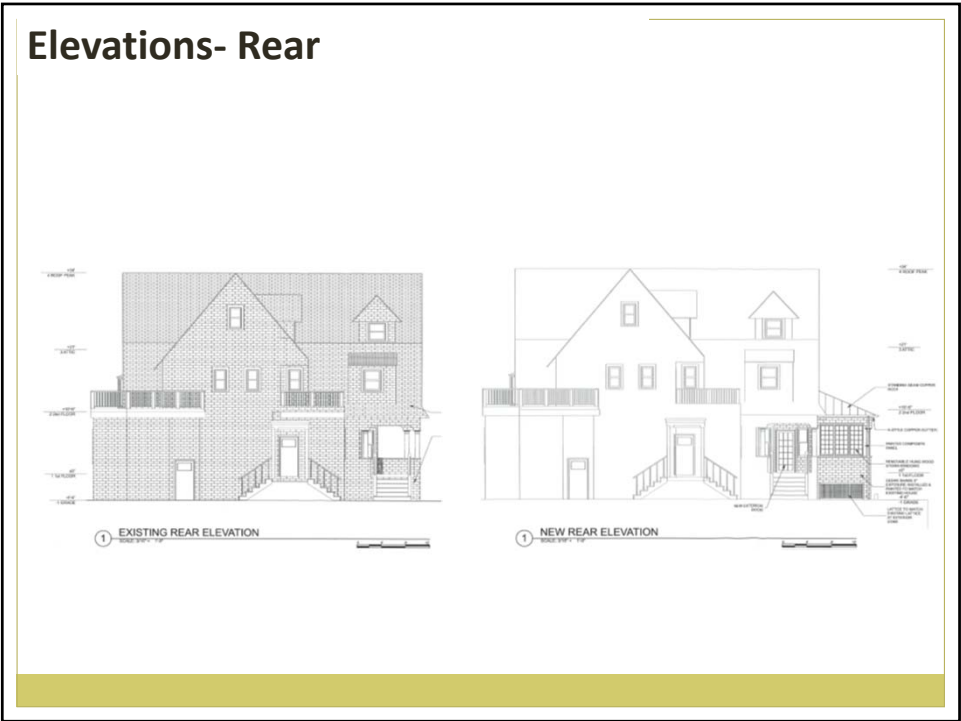


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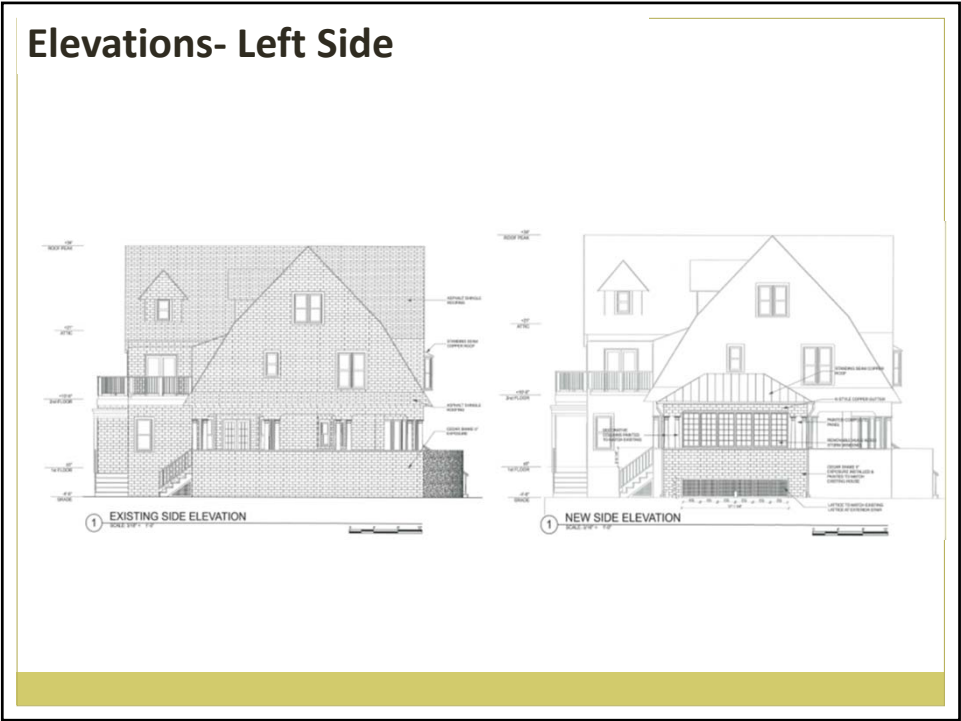
Elevations- Front Existing and Proposed



10



11



12

Perspectives- Existing & Proposed



13

Newton Historical Commission

- On October 14, NHC Staff approved the project based upon submitted materials, requiring approval of final plan

14

Photos



15

Photos



16

Proposed Findings

1. The proposed increase in floor area ratio (FAR) from 0.53 to 0.56 where 0.33 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 (§3.1.9.A.2)
2. That the proposed extension and alterations, with the resulting increase in the dwelling's nonconforming floor area ratio (FAR) from 0.53 to 0.56 where 0.33 is the maximum allowed; increase of its nonconforming lot coverage of 26.5 percent to 28.3 percent where 20 percent is the maximum allowed; and the further decrease of the lot's nonconforming open space from 60.8 percent to 59 percent where 65 percent is the minimum allowed, shall not be substantially more detrimental than the existing nonconforming use to the neighborhood as it would conform to other relevant dimensional requirements, such as minimum setbacks, and have limited visibility from the street (§7.8.2.C.2)

17

Proposed Conditions

1. Plan Referencing Condition
2. Standard Building Permit Condition
 - Newton Historical Commission approval of final plan required
 - Director of Planning and Development review and approval of Final Landscape Plan required
3. Standard Final Inspection/Certificate of Occupancy Condition
 - Director of Planning and Development approval final location, number and type of any plant materials, final landscape features and fencing.

18

MEMORANDUM

November 4, 2019

RE: 262 Otis St. Community Hearing Update

To: Land Use Committee

CC: Donna Roth, Applicant

Nadia Kahn, City Clerk's Office

Prepared By: Sacheen Dampier, RA, Project Architect

The Special Permit Application for 262 Otis St. was heard by the Land Use Committee on October 10, 2019. The Committee held their vote on the application pending a conversation between the Applicant and the direct abutter at 9 Somerset Rd, who raised objections to the project at the meeting.

Sol Roth (the Applicant's husband and property owner) met with Robin and Haiden Toone of 9 Somerset Road on October 19, 2019 to discuss the project. Sol Roth walked the Toone's through the project, marking out the extent of the proposed porch and the relationship of its' extents to the property line. The application is seeking relief for FAR, lot coverage and open space but not setbacks. The Toone's appreciated seeing the extent of proposed porch and left the meeting understanding the project much more thoroughly. In the meeting and in subsequent discussions, the Toone's have expressed concerns regarding privacy between the two properties.

In order to mitigate the concerns of the abutter, the Applicant, Donna Roth, has agreed to provide plantings at the property line in keeping with the style of the landscaping at the front of the property (262 Otis St). The Applicant has notified the abutter at 9 Somerset Rd of this proposal. The abutter appreciates the Applicant's efforts to provide privacy between the two properties, but will not remove their objection to the project until they see specific landscape plans. The Applicant would like time to design the landscape plan and hopes that construction can begin on the porch prior to the finalization of the landscaping.

The Applicant also spoke with the direct abutter at 12 Balcarres Rd about the proposed porch. This abutter has no objections to the project.

For reference, a view of 262 Otis St is provided to see the type of landscaping the Applicant will be considering. Also provided is an aerial view highlighting the area that the Applicant agrees to landscape, as well as photo of that area.



Front view of 262 Otis St.



Aerial view of area to be landscaped between 262 Otis St and 9 Somerset Rd



View of area to be landscaped between 262 Otis St and 9 Somerset Rd.

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 increase the Floor Area Ratio (FAR) from 0.53 to 0.56 where 0.33 is the maximum allowed by-right, increase the nonconforming lot coverage of 26.5 percent to 28.3 percent where 20 percent is the maximum allowed; and further decrease the lot's nonconforming open space from 60.8 percent to 59 percent where 65 percent is the minimum allowed, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Gregory Schwartz:

1. The proposed increase in floor area ratio (FAR) from 0.53 to 0.56 where 0.33 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. (§3.1.9.A.2)
2. That the proposed extension and alterations, with the resulting increase in the dwelling's nonconforming floor area ratio (FAR) from 0.53 to 0.56 where 0.33 is the maximum allowed; increase of its nonconforming lot coverage of 26.5 percent to 28.3 percent where 20 percent is the maximum allowed; and the further decrease of the lot's nonconforming open space from 60.8 percent to 59 percent where 65 percent is the minimum allowed, shall not be substantially more detrimental than the existing nonconforming use to the neighborhood as it would conform to other relevant dimensional requirements, such as minimum setbacks, and have limited visibility from the street. (§7.8.2.C.2)

PETITION NUMBER: #314-19

PETITIONER: Donna Roth

LOCATION: 262 Otis Street, on land known as Section 32 Block 50 Lot 13, containing approximately 11,152 sq. ft. of land

OWNER: Donna Roth

ADDRESS OF OWNER: 262 Otis Street
Newton, MA 02465

TO BE USED FOR: Single Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: Special permit per §7.3.3 to:
further increase nonconforming FAR (§3.1.3, §3.1.9,
§7.8.2.C.2); further increase nonconforming lot coverage
(§3.1.3, §7.8.2.C.2); further decrease nonconforming open
space (§3.1.3, §7.8.2.C.2)

ZONING: Single Residence 1 (SR1) 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. A plan entitled "Plan Showing Proposed Porch, 262 Otis Street, Newton, MA Middlesex County," prepared by D. O'Brien Land Surveying, dated May 15, 2019, stamped and signed by Dennis O'Brien, Professional Land Surveyor.
 - b. A set of architectural plans entitled "262 Otis St. Porch Addition, Special Permit Set," dated August 18, 2019, prepared by Sacheen Dampier, RA, stamped and signed by Sacheen T. Dampier, Registered Architect:
 - i. Coversheet (CO)
 - ii. Lot Survey (L1.0)
 - iii. Site Plan (A1.0)
 - iv. Partial Enlarged Plans (A1.1)
 - v. Partial Enlarged Plans (A1.2)
 - vi. Partial Enlarged Plans (A1.3)
 - vii. Partial Enlarged Plans (A1.4)
 - viii. Existing Front Elevation (A2.0)
 - ix. Existing Rear Elevation (A2.1)
 - x. Existing Side Elevation (A2.2)
 - xi. Proposed Front Elevation (A2.3)
 - xii. Proposed Rear Elevation (A2.4)
 - xiii. Proposed Side Elevation (A2.5)

- c. A document entitled "Floor Area Ratio Worksheet, 262 Otis St," signed and stamped by Sacheen T. Dampier, Registered Architect indicating a Proposed "Total gross floor area" of 6,298 square feet and a Proposed "FAR" (floor area ratio) of .564.
2. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:
 - a. Recorded a certified copy of this order for the approved Special Permit/Site Plan Approval 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. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the final site plan.
 - d. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Newton Historical Commission approving the final plans.
 - e. Filed a final Landscape Plan to the Director of Planning and Development for review and approval.
 - f. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
3. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
 - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect certifying compliance with Condition #1, including the floor area ratio (FAR) of the structure.
 - 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, if necessary, 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.
 - d. Filed with the City Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of any plant materials, final landscape features and fencing.
4. Notwithstanding the provisions of Condition #3 above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the buildings prior to installation of final landscaping provide that the petitioner shall first have filed a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.

Department of Planning and Development



PETITION #351-19
278-280 CALIFORNIA STREET

SPECIAL PERMIT/SITE PLAN
APPROVAL TO ALLOW
CONSTRUCTION OF A ONE-STORY
ADDITION AT THE FRONT OF THE
STRUCTURE, TO ALLOW A FIRST
FLOOR RESIDENTIAL USE IN THE
BU1 DISTRICT AND TO EXTEND THE
NONCONFORMING USE AND
NONCONFORMING FRONT SETBACK

NOVEMBER 7, 2019



1

Requested Relief



Special permit per §7.3.3 to:

- allow a first floor residential use in the Business 1 (BU1) zoning district (§4.4.1)
- further extend a nonconforming front setback (§4.1.3; §7.8.2.C.2)

2

Criteria to Consider

When reviewing the requested special permits the Council should consider whether:

- The site is an appropriate location for a first floor residential use in a Business 1 (BU1) district. (§7.3.3.C.1)
- The first floor residential use in a Business 1 district will adversely affect the neighborhood (§7.3.3.C.2)
- The first floor residential use in a Business 1 district will 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 front setback along California Street of 1.4 feet will be substantially more detrimental to the neighborhood than the existing nonconforming front setback of 2.7 feet (§7.8.2.C.2)

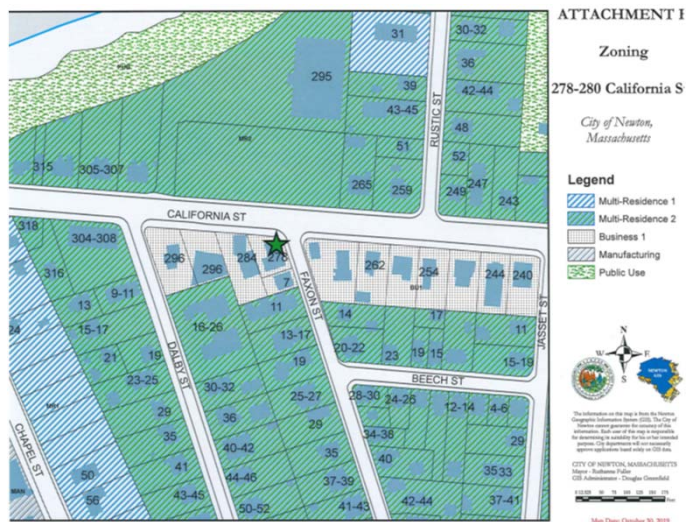
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AERIAL/GIS MAP



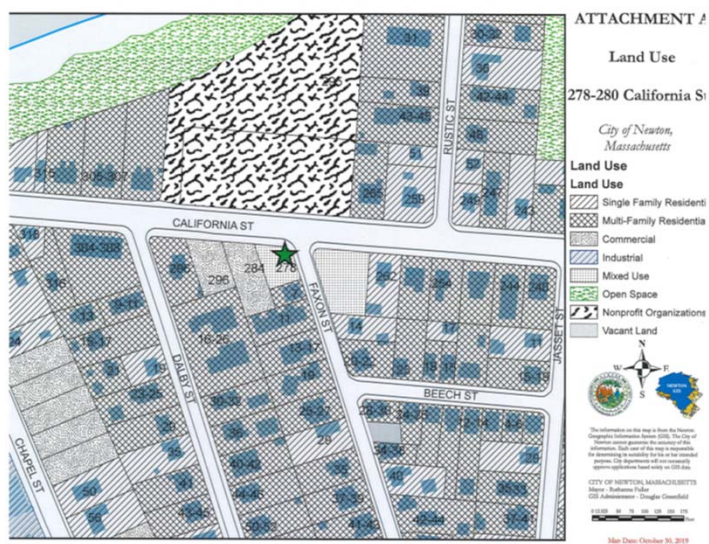
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Zoning



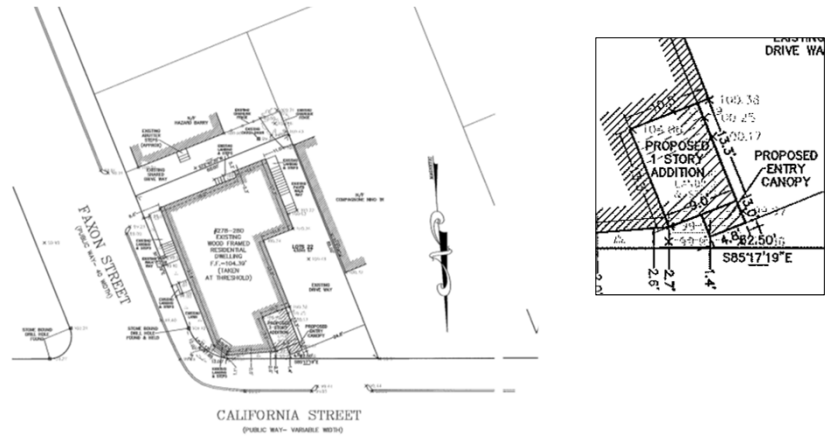
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Land Use



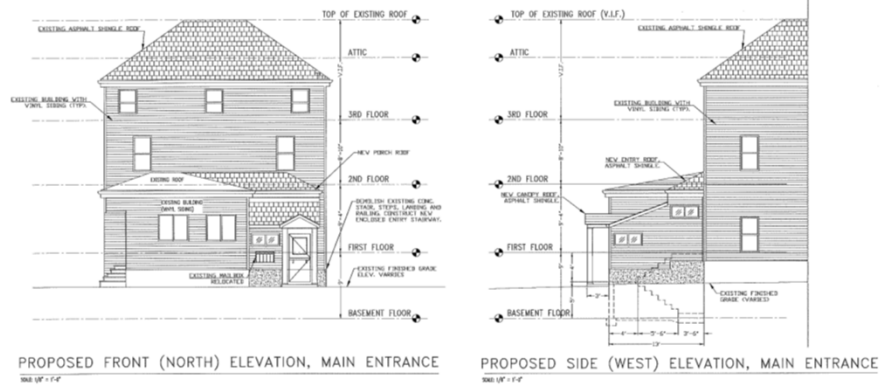
6

Site Plan, with detail



7

Elevations- California St, and west side



8

Photos



9

Photos



10

Photos



11

Proposed Findings

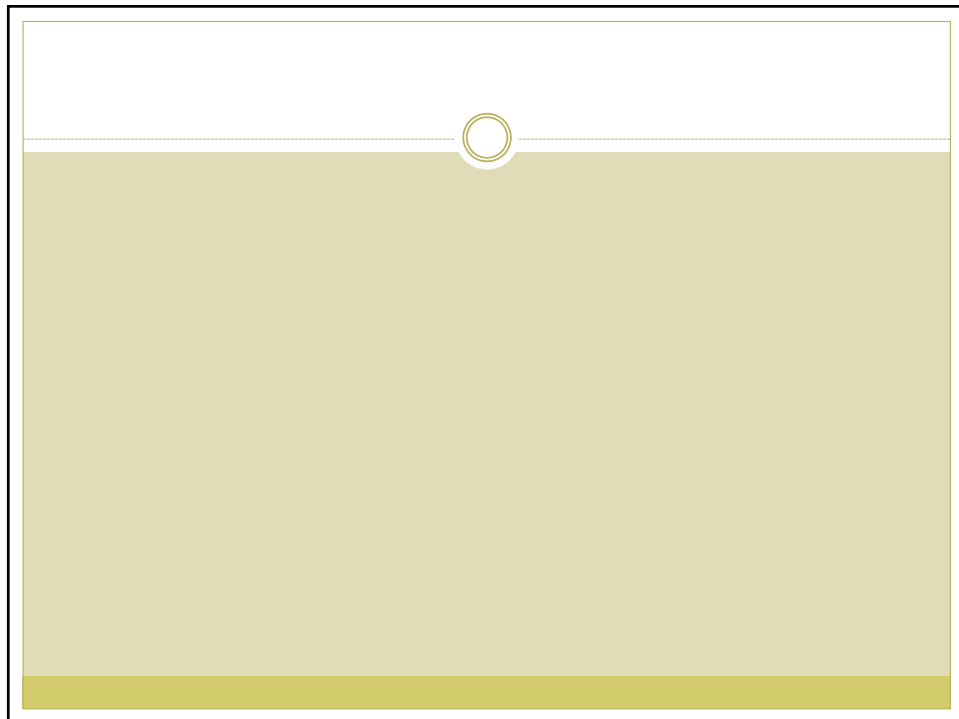
1. The site is an appropriate location for a first floor residential use in a Business 1 (BU1) district as it is located in a mixed use neighborhood (§7.3.3.C.1)
2. The first floor residential use in a Business 1 district will not adversely affect the neighborhood given its existing mixed use nature (§7.3.3.C.2)
3. The first floor residential use in a Business 1 district will not create a 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. The proposed front setback along California Street of 1.4 feet will not be substantially more detrimental to the neighborhood than the existing nonconforming front setback of 2.7 feet given the modest scale of the proposed addition (§7.8.2.C.2)

12

Proposed Conditions

1. *Plan Referencing Condition*
2. *Standard Building Permit Condition.*
3. *Standard Final Inspection/Certificate of Occupancy Condition.*

13



14

CITY OF NEWTON
CITY COUNCIL
November __, 2019

ORDERED:

That the 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 for a mixed use development consisting of approximately 115,114 square feet of retail and commercial space, approximately 193,200 square feet of office space, not more than 800 residential units, and various public open spaces, all in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefore, through its Chairman, Councilor Gregory R. Schwartz.

Procedural Background

The proposed development (the "Project") for 156 Oak Street, 55 Tower Road and 275-281 Needham Street (the "Site") was submitted by Northland Development LLC on behalf of three affiliated entities which own the Site (the "Petitioner"). The Project reflects efforts to diversify Newton's housing stock, provide affordable housing choices, encourage pedestrian-oriented development with a mix of residential and business uses, and enhance the quality of life in Newton Upper Falls, all in accordance with Newton's *Comprehensive Plan* and specifically in accordance with the Mixed Used Center Amendment and the Needham Street Area Vision Plan.

The Petitioner filed a request to re-zone the Site from MU-1 to BU-4 and simultaneously filed a special permit/site plan application for the Project with the City Clerk on August 3, 2018 (the "First Application"). An amended special permit/site plan application was filed on August 26, 2019 (the "Second Application"). Notice of the public hearing of the First Application was published on September 11, and September 18, 2018, in *The Boston Globe* and on September 19, 2018, in the *Newton Tab*, and notice of the Second Application was published on September 10, and September 17, 2019, in *The Boston Globe* and on September 18, 2019, in the *Newton Tab*, and notices of the First Application and the Second Application were mailed to all parties in interest in compliance with the Newton Zoning Ordinance and M.G.L. c. 40A, § 11. The Land Use Committee ("LUC") of the City Council opened the public hearing on the First Application on September 25, 2018 and continued the public hearing on November 13, 2018, December 11, 2018, January 15, 2019, March 12, 2019, April 9, 2019, May 14, 2019, June 18, 2019, August 6, 2019, September 11, 2019 and September 24, 2019. The LUC opened the public hearing on the Second Application on September 24, 2019. Over the course of the public hearings, presentations

were made by the Petitioner and its Project team, including its attorney, Alan Schlesinger of Schlesinger and Buchbinder, LLP; Lawrence Gottesdiener and Peter Standish of Northland; the Project architects, Brian O'Connor and Michelle Quinn of Cube 3 LLC, Jeff Sauser of Stantec, Inc., its transportation consultants, Randy Hart, Matthew Duranleau, Federico Tallis and Curt Quitzau of Vanasse Hangen Brustlin Inc. (VHB) and Monica Tibbits-Nutt of 128 Business Council; its sustainability consultant, Michelle Lambert of Lambert Sustainability; Keith O'Connor of Skidmore, Owings and Merrill; Robert Andrews of AHA Consulting Engineers; Mark Fougere of Fougere Planning and Development, Inc.; Jon Tremontozzi of Landwise Advisors; Josh Safdie of KMA Architects; and Dylan Martello of Steven Winter Associates. Presentations were also made by City staff including members of the Planning and Development Department and the Transportation Division of the Department of Public Works; the City's transportation consultant and peer reviewer BETA Group; Master Plan peer reviewer Horsley Witten, Inc.; fiscal peer reviewer RKG Inc.; and design guidelines consultant Form + Place.

The LUC received extensive oral and written testimony from the public and written reports from the City's professional consultants and various City boards, commissions and departments, including the Planning and Development Department, the Engineering Department, the Fire Department, the Newton Council on Aging, the Commission on Disabilities, the Urban Design Commission, the Economic Development Commission, the Conservation Commission, the Newton Highlands Area Council and the Newton Upper Falls Area Council, as well as various public interest groups including the Newton Citizens Commission on Energy, the Newton Conservators, Newton-Needham Regional Chamber, Green Newton, Livable Newton and the League of Women Voters. During the review process, supplemental materials and testimony have been submitted in response to requests by the Council and public. All testimony, written reports and supplemental materials prepared by the Petitioner and its consultants, and the City and its staff, consultants, boards, commissions and departments, as well as public testimony and supplemental materials submitted by the public, are included in the record of the Council's proceedings and provide factual and technical background for the Findings and Conditions set forth within the body of this Order.

Following a final presentation by the Petitioner and City staff, as well as public testimony, the public hearing was closed on September 24, 2019. On November __, the LUC voted to recommend approval of the Project to the Council as follows:

Finding that all applicable provisions of the Zoning Ordinance have been complied with and taking into consideration the testimony and evidence provided by all interested parties, the Council GRANTS approval of this Special Permit/Site Plan Approval based on the following findings, as recommended by the LUC of the Council.

SPECIAL PERMIT FINDINGS

The Council finds that the Project meets the requirements of §7.3.3.C.1.-5 for those uses or waivers requiring special permits in that:

1. The Site is an appropriate location for the Project (§7.3.3 C.1) because:
 - a. The proposed structures and uses are consistent with the uses and dimensions provided for the BU-4 district.
 - b. The site plan maximizes the benefits of its Needham Street corridor location and proximity to the Newton Upper Falls Village Center.
 - c. The Project provides a pedestrian-oriented development that expands needed housing choices, offers diverse commercial options, public open spaces, options for transit use.
 - d. The proposed structures and uses are consistent with and in furtherance of the Newton *Comprehensive Plan*, including the Mixed Use Centers Element adopted in November 2011, and the Needham Street Area 2018 Vision Plan.
2. The Project as developed and operated, will not adversely affect the neighborhood (§7.3.3.C.2) because:
 - a. The Site will be open for pedestrian and bicycle access to Newton Upper Falls, will provide options for residential and commercial uses that will enhance the neighborhood uses.
 - b. The Project enhances a large, paved and currently underutilized site.
 - c. The Project will provide various open spaces and parks available to the public, including a public splash park to be operated by the City's Department of Parks and Recreation.
 - d. The Project will enhance the public amenity of the Upper Falls Greenway by providing connections to the Greenway, including a bike path from the Greenway to Needham Street.
 - e. There will be significant and long term mitigation of the traffic impacts of the Project which in any event will be less than the traffic impacts of development as of right.
 - f. The Project will include 3 buildings with residential portions constructed to achieve Passive House certification and a building designated as "all age friendly", so that in total the Project will provide a variety of housing alternatives and experiences.
3. The Project will not be a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3) because:

- a. The Project facilitates MassDOT improvements to the intersection of Charlemont and Needham streets, including the addition of a new traffic light at the Charlemont Street entrance and a crosswalk for bicycles and pedestrians.
 - b. The Project relocates the current Oak Street entrance to an area of preferred visibility to reduce impacts on the surrounding neighborhood and improve safety for vehicles and pedestrians through traffic calming and directional controls.
 - c. The Project consolidates driveways accessing the Site, and also achieves spreading of traffic to the Charlemont Street, Main Street, Tower Road and Oak Street entrances to the Site.
4. Access to the Site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4) because:
 - a. The Project will provide four vehicular accesses to Needham Street, Tower Road and Oak Street including enhancing the existing entrance from Tower Road, an aligned four-way intersection entrance at Charlemont Street with a new traffic light.
 - b. The parking for the Project has been limited to a ratio significantly lower than otherwise required under the Zoning Ordinance.
 - c. The Petitioner will implement and maintain a robust transportation demand management plan.
 - d. Both the Petitioner's and the City's peer review studies conclude that the Project will minimize impacts on surrounding roadways with the TDM measures required by this Special Permit/Site Plan Approval.
5. The site planning, building design, construction, maintenance or long term operation of the Site will contribute significantly to the efficient use and conservation of natural resources and energy (§7.3.3.C.5) because:
 - a. The master planning of the Project, the mix of uses, the open spaces provided and the elements of the Petitioner's sustainability plan, including site and building design, open spaces, stormwater control, and the Petitioner's transportation demand management plan all contribute significantly to the efficient use and conservation of natural resources and energy.
 - b. The Project will be constructed to achieve LEED Neighborhood Development v.3 Certification at the Silver Level.
 - c. The Saco-Pettee Mill building at 156 Oak Street will be renovated to achieve LEED Core and Shell v.3 Certification at the Silver Level.
 - d. All new buildings within the Site will be designed to achieve a LEED Gold certifiable standard.

- e. The Petitioner is constructing the residential portions of three buildings to achieve Passive House certification.
- f. The Petitioner has committed to a detailed Sustainability Plan that includes many elements required by this Special Permit/Site Plan Approval.
- g. The Project will redevelop a previously developed industrial/commercial parcel with no existing green spaces into a new mixed use environment with significant new publicly accessible green spaces that will enhance the adjacent Upper Falls Greenway.
- h. Water quality will be improved by installation of a new drainage system;

ADDITIONAL FINDINGS

- 6. The Council finds that the Project is consistent and in furtherance of the purposes of the Newton *Comprehensive Plan* in that:
 - a. The Project will allow the development of buildings and uses appropriate to the BU-4 District and the Needham Street corridor as described in the *Comprehensive Plan*.
 - b. The Project will better connect the Newton Upper Falls Village Center and the Upper Falls Greenway with the Needham Street corridor.
 - c. The Project will allow sufficient density and intensity of uses through the mixture of housing and commercial uses to promote a vibrant pedestrian environment and streetscape throughout the day and week.
 - d. The Project will expand the quantity and diversity of housing options available in the City by providing 800 residential rental units, of which 140 will be affordable units in accordance with the City's Inclusionary Zoning Ordinance, with proximity to a variety of services.
 - e. The Project is located so as to encourage all modes of transportation including pedestrian access, bicycle access and public and private transportation resources.
- 7. The Council finds that the Project is consistent with the Newton Leads 2040 Housing Strategy 2015 which identified the Site as "Potentially suitable for medium/high density mixed-use/multifamily residential development."
- 8. The Council finds that the Project is an example of proactive municipal planning in that the City has completed and the Council has adopted the Needham Street Area 2018 Vision Plan to guide in the evaluation of Needham Street projects and the Project is consistent with the findings and vision of that Plan.

9. The Council finds that the development of several public park areas with open space comprising approximately 40% of the site will provide significant public amenities and areas for active and passive recreation; that the proposed Village Green will provide a public meeting space and a focal point of the residential, commercial and public activities, that the proposed splash park to be built by the Petitioner and operated by the City will provide a new public facility, and that all of the public benefits are contemplated with solely private funding.
10. The Council finds that all residential units will conform to the Massachusetts Architectural Access Council (MAAB) requirements for "Group 1" units and are accessible by those in a wheelchair. In addition, per MAAB guidelines, 44 of the units will conform to "Group 2A" unit requirements and will be designed for immediate use and occupancy by anyone in a wheelchair, and with the ability to adapt additional components of the units upon need, at the Petitioner's sole cost and expense. This will add to the diversity of Newton's housing stock, thereby increasing housing choices and opportunities in the City.
11. The Council finds that the Petitioner has proposed that Building 8 be designated as an "all age friendly" building in that the building design shall incorporate a variety of universal design elements, such as for example intentional color schemes, contrasting materials for visibility, supplemental corridor and common space lighting and all-age friendly amenities and common spaces.
12. The Council finds that the Petitioner has agreed to dedicate not less than 10,000 square feet of the commercial space for lease to "non-formula" commercial tenants.
13. The Council finds that the Project will provide 120 affordable residential units to households earning at or below 80% of Area Median Income (AMI) and 20 affordable residential units to households earning greater than 80%, but at or below 110% of AMI in accordance with the City's Inclusionary Zoning Ordinance.
14. The provision of 140 affordable units will help alleviate the increasing costs of housing in Newton. By including two tiers of affordability, there will be potential for upward mobility within the Project, as residents may be afforded the option to transition from one tier to the next, where they would have otherwise been required to relocate or pay market rate rents if their income exceeded the cap on the Inclusionary Units.
15. The Council finds that to the extent allowed by the Massachusetts Department of Housing and Community Development (DHCD) the Petitioner will seek permission to set aside 70% of the Deed Restricted Units as Local Preference Units.
16. The Council finds that the renovation of the Saco-Pettee Mill building at 156 Oak Street is allowed by right, and that its preservation will be undertaken in accordance with a Memorandum of Understanding between the Petitioner and the Massachusetts Historic Commission.

TRAFFIC FINDINGS

17. The Council notes that transportation planning has played a significant role in the Council's deliberations of the Project. The mix of uses proposed on the site, facilitated by the rezoning, minimizes the number of parking stalls necessary and the traffic impacts from the project. The Council notes that a development built under existing zoning would exacerbate weekday peak hour traffic conditions on Needham Street well beyond what the Project contemplates, and would likely not provide the same level of amenities or open space that are provided with the Project. The Council recognizes the existence of significant congestion on Needham Street existing under current conditions and has reviewed studies of the Project's impact on traffic including:
- a. Traffic Impact and Access Study by Vanasse Hangen Brustlin, Inc. (VHB), dated October, 2018.
 - b. Transportation Implementation Plan by 128 Business Council, dated October 16, 2018.
 - c. Transportation Engineering Peer Review by BETA Group Inc. dated, December, 2018.
 - d. Response Memorandum by VHB, dated February 22, 2019.
 - e. Response Peer Review Memorandum as to Revised Building Program by BETA Group, dated March 6, 2019.
 - f. Additional Comments Memorandum by BETA Group, dated March 7, 2019.
 - g. Oak Street Alternatives Access Evaluation by BETA Group, dated March 15, 2019.
 - h. Transportation Demand Management Plan, dated March 28, 2019.
 - i. Response Memorandum of VHB, dated April 16, 2019.
 - j. Petitioner letter altering the proposed shuttle system, dated June 11, 2019.
 - k. Consolidated List of Councilor Questions and Responses appended at Attachment C to the Planning Department report, dated June 14, 2019.
 - l. Northland Newton Development Draft Transportation Demand Management Plan, dated July 26, 2019.
18. The Council finds that the Petitioner has proposed a wide-ranging array of flexible and measurable transportation demand management ("TDM") techniques and has made a significant financial commitment to TDM measures to mitigate the effect of additional traffic on Needham Street and that none of these techniques would be required of a development

built as a matter of right. In particular the Council finds that traffic impacts of the Project will be mitigated by:

- a. The mixed use nature of the Project which the Council finds will lead to integration of residential, commercial and retail uses, allowing residents to live, work and shop in the same development reducing the need for trips off-site.
 - b. The provision of connections from and through the site for pedestrian and bicycle traffic including connections across Charlemont Street to Needham Street and connections to the Upper Falls Greenway to encourage residents, employees and shoppers to use alternative means of transportation to the site.
 - c. Provision of over 1100 bicycle parking spaces, bicycle maintenance stations, the availability of shared bicycles and shared car services, as well as such additional transit options as may become available in the future.
 - d. The alignment of Charlemont Street and the Project entrance and the installation of a four-way traffic light and bicycle/pedestrian crossing at Charlemont Street and the closing of one curb cut from the Site onto Needham Street.
 - e. Supplementary (unbundled) charges for parking for residential tenants and limitations on parking availability for commercial and retail tenants.
 - e.f. Provision of a last mile connection to public transit.
 - f.g. Provision of a Mobility Hub for a center of information and services as to transportation services, public transportation, and a waiting area with information boards and wifi for the convenience of commuters and other passengers.
 - g.h. Provision of a transit coordinator to be responsible for executing the Project's TDM program.
 - h.i. A robust program of monitoring and reporting the effectiveness of the transportation demand management program including tracking of shuttle usage, if implemented, and the peak hour vehicle trips generated from residential and office portions of the Project.
19. The Council finds that the Petitioner has provided a projection of project-generated traffic which is a fair and reasonable projection for the Site and that the Petitioner has further agreed to implement, supplement and/or revise the traffic demand management plan so as to achieve a traffic generation within the projected amounts.
20. The Council finds that the Petitioner's traffic studies and implementation plan have been appropriately prepared and have been reviewed by the City's peer reviewer and Planning Department, and while recognizing existing traffic conditions on Needham Street by taking into account the multi-faceted transportation demand management plan to be implemented

by the Petitioner and the monitoring and adjustment process to be adopted, the access to the Site over the surrounding streets is appropriate for the types and numbers of vehicles involved.

21. The Council finds that in addition to the traffic demand management plan proposed by the Petitioner, the Petitioner has proposed to contribute \$5,000,000 towards a program of offsite traffic mitigation as suggested by the Planning Department and referred to in the conditions to this Order, which program will significantly enhance traffic planning within the area of the Project.

PARKING FINDINGS

With regard to special permits to reduce the number of required parking stalls, pursuant to §5.1.4.A and §5.1.13:

22. The Council finds that a waiver of 1,737,600 required parking stalls, resulting in a total of 1350 lined parking spaces for the Project with an additional capacity for 250 parking spaces available for use by valet, is in the public interest or in the interest of safety, or protection of environmental features for the following reasons:
- a. Based upon the Petitioner's proposed parking plan, shared parking capability, and the robust TDM plan, the reduction in parking to ~~a minimum of~~ provide 1350 striped parking spaces with an additional capacity for 250 parking spaces available for use by valet is warranted and consistent with the City's goals to reduce single-occupancy vehicular trips and to incentivize alternative modes of transportation.
 - b. The Petitioner's shared parking plan together with the centrality of parking within the Site and ~~limited the lack of~~ pedestrian access through Building 1 to the site will lead vehicles to the on-site parking facilities rather than neighborhood streets, and that the redevelopment of this site will not adversely affect the future parking availability in Newton Upper Falls.
 - c. The Petitioner has put almost all of the Project parking underground and the reduced parking requires that the Petitioner closely coordinate parking supply, parking demand and the Petitioner's transportation demand management plan.
 - d. The parking for the market rate residential units will be charged separately and in addition to the rent so as to encourage reduced car ownership and parking demand while encouraging increased transit usage.
 - e. Based on the Petitioner's transportation demand management plan, the redevelopment of the Site will not adversely affect the future parking availability in Newton Upper Falls.
 - f. The commercial and residential uses are complementary and will allow for shared usage of the garage at different times. The Petitioner has prepared a shared parking analysis to allow office retail and residential users to share parking in

mixed use garages as appropriate. The shared parking analysis has predicted that at certain hours and dayspeak times the Petitioner may require valet or tandem parking in its parking structure.

With regard to special permits to allow exceptions to the various design and dimensional requirements for parking facilities in both the MU4 and BU42 districts, pursuant to §5.1.8.B.1, §5.1.8.B.2, §5.1.8.B.6, §5.1.9.A, §5.1.9.B.1, §5.1.9.B.2, §5.1.9.B.3, §5.1.9.B.4, §5.1.10, §5.1.12, and §5.1.13:

23. The Council finds that exceptions to certain design and dimensional requirements of the Zoning Ordinance, to locate parking within five feet of a residential structure, to waive the dimensional requirements for some parking stalls, to waive the screening requirements for parking lots, to waive the interior landscaping requirements, and to waive the off-street loading requirements, are in the public interest or in the interest of safety, or protection of environmental features for the following reasons:

- a. The location of parking within five feet of a residential structure makes for the most efficient layout of the underground parking facility and helps to maximize the number of stalls that will be available.
- b. The allowance for reduced length of parking stalls (from 19 feet to 18 feet) and or/width as shown on the Master Project Plans where the aisle widths meet or exceed standards of the Zoning Ordinance will not create a nuisance or hazard to pedestrians or vehicles and will accommodate parking spaces in the underground garage.
- c. The Petitioner will dedicate at least four stalls to Zipcar or other similar services and have covered bike storage for at least 1100 bicycles in the various convenient areas of the Project.
- d. The waiver for some parking lot interior landscape screening helps maximize the number of parking stalls, and that a sufficient number of trees and open space will be added to the Site so as to improve the streetscape, perimeter screening, and public open space areas.
- e. That provisions for on-street and off-street loading facilities are sufficient to service the buildings and related uses on the site. Adequate provision is made for deliveries through the garages, streets and Laneways.
- f. The waiver to allow for reduced parking lot lighting is in the public interest and in the interest of the residential portions of the Project.
- g. The waiver for curbing, wheel stops, guard rails and bollards is appropriate given the proposed layout of the parking lot and garage facilities.

OTHER SPECIAL PERMIT CRITERIA FINDINGS

With regard to the special permit to allow residential use on the ground floor, retail sales establishments over 5,000 square feet, restaurants with more than 50 seats, schools or other educational purposes, stand-alone ATMs, ~~drive-in businesses~~, open air businesses, ~~hotels~~, accessory or non-accessory multi-level parking facilities, places of amusement, radio or TV broadcasting studios, and laboratory or research facilities, pursuant to §4.4.1:

24. The Council finds that the Site is an appropriate location for said uses as the uses are appropriate for a mixed use project and encourage an active, pedestrian-oriented streetscape throughout the day and week, the proposed uses fill a demonstrated need for the uses within the vicinity, and the proposed uses are not inconsistent with the purposes of the BU-4 district or the City's *Comprehensive Plan*.

With regard to the special permit to allow a building in excess of 20,000 square feet of gross floor area, pursuant to §4.2.2.B.1:

25. The Council finds that the size of the Site being 22.6 acres is appropriate for several buildings in excess of that scale.

With regard to the special permit to allow a building heights up to 96 feet and up to 8 stories, ~~and to waive the setback requirement for buildings taller than 40 feet~~, pursuant to ~~§4.1.2 and §4.1.3~~:

26. The Council finds that the BU-4 District allows buildings of up to 8 stories and 96' in height by special permit and that the Site and the Project are an appropriate location for such buildings because:

- a. There are building of comparable height in the vicinity including the Village Falls Condominium of 7 stories across Oak Street and the Paragon office building of 5 stories at 233 Needham Street.
- b. The 8 story and 96 feet height sections of the Project comprise approximately 11% of the roof area of the buildings of the Project, and the balance of approximately 89% of the roof area is lower than 8 stories and 96 feet.
- c. The Project buildings at the east, west and south perimeter of the Site are lower in scale particularly where abutting the Upper Falls Greenway and the Upper Falls village where the buildings are 3 stories and along Needham Street where Building 7 is 5 stories and Building 2 is 2 stories.
- d. The maximum height of the Project buildings is located at the center of the site, at the intersection of Main Street, Tower Road and the Village Green, not less than 200 feet from Needham Street and from the Upper Falls Greenway.
- e. The Project is designed to focus height at the center of the site and to step down the building heights towards the edges of the site.

With regard to the special permit to waive the number, size, location, and height of signs, pursuant to §5.2.13:

27. The Council finds that the nature of the use of the Site, the architecture of the buildings, and the Project's location at the intersection of Needham Street, Oak Street and Tower Road, justifies exceptions to the limitations imposed by §5.2 on the number, size, location, and height of signs. The Petitioner will submit a Comprehensive Sign Package for all signage to the Urban Design Commission for review.

SITE PLAN APPROVAL CRITERIA FINDINGS

With regard to the site plan approval criteria, pursuant to under §7.4.5.B.1-7:

28. The Project has been designed to ensure the safety of vehicular, bicycle and pedestrian movement within the Site and in relation to adjacent streets, properties, and improvements, including regulation of the number, design and location of access driveways and the location and design of handicap parking. The access driveways include a full traffic light control at Charlemont Street to be installed by the Commonwealth of Massachusetts Department of Transportation as part of its Needham Street reconstruction, an appropriate and improved sight line at Oak Street and appropriate distances and viewing lines from driveway intersections. (§7.4.5.B.1)
29. The methods for disposal of sewage, refuse and other wastes, and the methods of regulating surface water drainage are adequate because Preliminary plans have been reviewed by the City Engineering Division and the Petitioner will be making a \$1,850,000.00 contribution to the City for municipal sewer Inflow and Infiltration improvements based upon a projected daily sewer flow of 93,425 gallons. The Engineering Division will also review all final plans submitted for building permits for compliance with City of Newton Engineering Division design standards prior to the issuance of any building permits. (§7.4.5.B.2)
30. The provisions for on-street and off-street loading facilities are sufficient to service the buildings and related uses on the site. (§7.4.5.B.3)
31. The screening of parking areas and structures on the site from adjoining premises is sufficient based on the landscape plans referenced in Condition #1. (§7.4.5.B.4)
32. The Project avoids unnecessary topographical changes. (§7.4.5.B.5)
33. All utility service lines on the Site will be undergrounded. The Council finds that by its letter of June 11, 2019 the Petitioner has proposed to re-route or place underground significant utility lines in the vicinity of the Site. Petitioner's proposal will require consents of third parties including abutters, utilities, the State DOT and the City. If the Petitioner is successful in these efforts, the result will create a substantial visual enhancement to the Needham Street area and be of benefit to the entire neighborhood. (§7.4.5.B.6)

34. The Council finds that that the proposed site design and massing is appropriate in the context of the Needham Street and Newton Upper Falls location and that the site plan is based upon connectivity to and permeability through the Site, that the mixed uses within the Project will serve to improve connections between Upper Falls and Needham Street through connections to the Greenway with an active pedestrian streetscape designed to invite the public into the Site from all directions and by various means. The highest massing of the buildings is appropriately located in the middle of the Site so as to limit the impact on adjacent properties. (§7.4.5.B.6)
35. The Council finds that the Project will protect and enhance the historic Saco-Pettee Mill building at 156 Oak Street, a property which is listed on the National Register of Historic Properties, while permitting the removal of buildings that have been deemed not preferably preserved by the Newton Historic Commission or that have no historic significance. (§7.4.5.B.7)
36. In light of the findings set forth above and the following conditions imposed by this Council Order, the City Council finds that the public convenience and welfare of the City will be served, and the criteria of §4.2.1.C.1-5; §4.2.2.B.1; §4.2.5.A; §4.2.5.A.1-4 and 6; §5.1.4.A; §5.1.4.C; §5.1.8.A; §5.1.8.B.1-2; §5.1.9.B; §5.1.10; §5.1.12; §5.1.13; and §7.4.5.B.1-8 for granting special permit/site plan approval will be satisfied.

PETITION NUMBER: #426-18

PETITIONERS: Northland Development LLC, Northland Oak Street, LLC, Northland Tower Road Investors, LLC, Needham Street Associates, and all their successors and assigns (collectively, the "Petitioner")

LOCATION: 156 Oak Street, Newton, on the land known as SBL 51/28/5A, containing 237,832 sq. ft.
55 Tower Road, Newton on the land known as SBL 51/28/5, containing 483,583 sq. ft.
275-281 Needham Street, Newton, on the land known as SBL 51/28/6 containing 265,232 sq. ft.

OWNER: As to 156 Oak Street: Northland Oak Street, LLC
As to 55 Tower Road: Northland Tower Road Investors, LLC
As to 275-281 Needham Street: Needham Street Associates

ADDRESS OF OWNER: c/o Northland Investment Corporation
2150 Washington Street Newton, MA 02462

TO BE USED FOR: A mixed use development containing approximately 193,200 s.f. office space, approximately 115,114 s.f. of retail or commercial or

restaurant space, not more than 800 residential units, and surface and underground parking providing approximately 1350 striped spaces and including approximately 250 additional valet/tandem spaces, and open spaces or park spaces available for public use as shown on the plans referred to herein, with uses including retail of more than 5,000 square feet, personal service of more than 5,000 square feet, restaurants over 50 seats, standalone ATMs, health club establishments at or above ground floor, animal service, and street level office.

CONSTRUCTION:

Various, steel frame, wood frame, and masonry structure, over a structural steel and concrete podium base.

EXPLANATORY NOTES:

References to the Zoning Ordinance above: Special Permit under §7.3.3 and Site Plan Approval under §7.3.4 with reference to §4.1.2.B.1 to allow a structure in excess of 20,000 s.f.; §4.1.2.B.3 for a building of more than 3 stories; §4.1.3 to allow a height in excess of 36'; §4.4.1 for uses allowed by special permit including (a) residential use on the ground floor, (b) restaurant, (c) restaurants of over 50 seats, (d) school or other educational purposes, for-profit, (e) standalone ATMs, ~~(f) drive-in business~~ (fg) open air business, ~~(h) hotel;~~ (gi) parking facility- accessory multi-level, (hj) parking facility-non-accessory single level, (ik) parking facility-non accessory multi-level; (jl) place of amusement, (km) radio or TV broadcasting studio, and (ln) laboratory and research facility; §5.1.13 for exceptions to the parking requirements to allow the Project to include approximately 13509 striped parking spaces in addition to approximately 250 valet/tandem spaces; §5.1.5.A to waive the requirement for a parking plan; §5.1.8.A to locate parking within 5 feet of a residential structure; §5.1.8.B to waive the dimensional requirements for parking stalls; §5.1.8.B.6 to waive certain end stall maneuvering requirements; §5.1.8.E to allow assigned and/or valet/tandem spaces; §5.1.9.A.1 to waive the screening requirements for parking lots; §5.1.9.B.1-3 to waive the interior landscaping, planting area and tree requirements for parking lots; §5.1.9.B.4 to waive of bumper overhang requirements; §5.1.10 to waive certain lighting, surfacing and maintenance requirements; §5.1.12 to waive the off-street loading requirements; all pursuant to §7.4.5. B. 1-8.; and §7.3.3. C. 1-5.

ZONING:

BU- 4

Approved Subject to the Following Conditions:

GENERAL CONDITIONS

1. All buildings, parking areas, driveways, walkways, landscaping and all other site features associated with this Special Permit/Site Plan Approval shall be located and constructed consistent with the Plan Set entitled "The Northland Newton Development" dated April 12, 2019 and as amended, dated, September 3, 2019 containing 109 sheets (the "Project Master Plans") which are more particularly identified in Exhibit A and are hereby incorporated by reference. No changes to the Project are permitted unless they are consistent with the Project Master Plans as set forth in Conditions #7 through 10.
2. All buildings, parking areas, driveways, walkways, landscaping and all other site features associated with this Special Permit/Site Plan Approval shall be located and constructed consistent with ~~and in compliance with~~ the City of Newton Design Guidelines for the Northland Newton Development, dated September 11, 2019 (the "Design Guidelines"), which are on file with the Department of Planning and Development, the Inspectional Services Department, and the City Clerk.
3. The Petitioner shall merge the three existing lots into one new lot no later than thirty (30) days after the issuance of the first building permit (other than a demolition permit or renovation permit for 156 Oak Street). Proof of recording a plan of merger with the Middlesex South District Registry of Deeds shall be submitted to the Department of Planning and Development, the Inspectional Services Department, and the City Solicitor's office.
4. This Special Permit/Site Plan Approval shall be deemed to have been vested, for the purposes of utilizing the benefits of the change of zone authorized by Council Order #425-18, upon the issuance of a building permit (other than a demolition permit) for all or any portion of the Project.
5. Pursuant to Zoning Ordinance §7.3.2.E, the time for exercise of this Special Permit/Site Plan Approval is extended to grant a period of three years for the exercise hereof without the necessity of a further public hearing. This Special Permit/Site Plan Approval shall be deemed to have been exercised upon the issuance of a building permit (other than a demolition permit) for all or any portion of the Project.
6. If within **five (5) years** from the date of this Special Permit/Site Plan Approval, the Petitioner has not applied for all building permits necessary to complete construction of the Project, then further construction under this Special Permit/Site Plan Approval is not authorized unless the Petitioner seeks and receives an amendment to this Special Permit/Site Plan Approval that extends the time for fulfilling this condition.

DESIGN REVIEW & MASTER PLAN CONSISTENCY CONDITIONS

7. Preliminary Submission Of All Building Permit Plans

- a. Prior to any application for a building permit (other than a demolition permit or renovation permit for 156 Oak Street or tenant improvement permits), the Petitioner must file the following with the Director of Planning and Development, the Commissioner of Inspectional Services, the Director of Public Works, and the City of Newton's Urban Design Commission (UDC):
 - i. a copy of all ~~final~~ plans ~~necessary related for to~~ the permit or determination being sought ("Request Plans");
 - ii. a signed certificate from the Petitioner's architect and/or civil engineer certifying that the Request Plans are consistent and in full compliance with the Project Master Plans (the "Compliance Certificate");
 - iii. a completed Evaluation Template in accordance with and in the form required by the Design Guidelines.

8. Preliminary Review Of All Building Permit Plans

- a. Within sixty (60) days of receipt of a complete submission of the above materials, the Director of Planning and Development will review and provide an opinion as to whether the Request Plans are ~~consistent and~~ in full compliance with the Project Master Plans and consistent with the Design Guidelines. If the Director of Planning and Development's review requires the input or assistance from a peer review consultant, the Petitioner shall pay the reasonable fees for such peer review. The Director of Planning and Development's opinion shall be submitted in writing to the Petitioner and the Commissioner of Inspectional Services. If it is the Director's opinion that the Request Plans are ~~inconsistent not compliant~~ with ~~either~~ the Project Master Plans or inconsistent with the Design Guidelines, such inconsistencies shall be expressly identified.
- b. Within sixty (60) days of receipt of a complete submission of the above materials, the UDC will provide an opinion as to whether the Request Plans are ~~consistent and~~ in full compliance with the Project Master Plans and consistent with the Design Guidelines. The UDC's opinion shall be submitted in writing to the Petitioner and the Commissioner of Inspectional Services. If it is the UDC's opinion that the Request Plans are inconsistent with either the Project Master Plans or the Design Guidelines, such inconsistencies shall be expressly identified.
- c. Upon reception of the written opinions, the Petitioner may file a formal building permit application with the Commissioner of Inspectional Services, which shall include a copy of the opinions. Alternatively, the Petitioner may revise the Request

Plans and resubmit them for a preliminary review in accordance with Conditions #7 and 9.

9. Formal Submission Of Building Permit Application

- a. Upon receipt of a complete building permit application, the Commissioner of Inspectional Services shall make a final determination, with due consideration given to the written opinions of the Director of Planning and Development and the UDC, as to whether the plans filed with such application are ~~consistent and~~ in full compliance with the Project Master Plans and consistent with the Design Guidelines.
 - b. In making the final consistency determination, the Commissioner of Inspectional Services may elect to refer the matter to the Land Use Committee for the Committee's review and recommendation, provided however that referral to the Land Use Committee is required for any modifications or changes to the Project Master Plans concerning the following: (i) building locations; (ii) building massing or elevations ~~relative heights of building elements~~; (iii) footprints of buildings and other structures; (iv) program; (v) driveway and parking stall locations; (vi) interior road network; and (vii) open space. The Land Use Committee shall not be required to vote or to approve any matter referred to it in accordance with this condition.
 - c. If the Commissioner determines that the application plans are inconsistent with either the Project Master Plans or the Design Guidelines, no building permit will be issued, and the Petitioner must either: (i) submit revised plans which the Commissioner deems to be consistent, or (ii) seek an amendment to this Special Permit/Site Plan Approval.
 - d. Any increase to the maximum building heights, number of units, total floor area of the Project, total floor area of any building ~~greater than~~ greater ten percent, any increase or decrease to the number of parking stalls, or any material decrease to the amount of open space of the Project from what is shown on the Project Master Plans shall not be eligible for a consistency determination and such modification can only be done through amendment of this Special Permit/Site Plan Approval.
10. The procedure for preliminary review of building permit plans set forth in Conditions #7-8 may be utilized by the Petitioner earlier in the design process for one or more buildings or public spaces in order to receive initial opinions on the consistency of schematic/architectural drawings. If the opinions of both the Director of Planning and Development and the UDC after such an initial schematic review are that the schematic drawings are ~~consistent and~~ in full compliance with the Project Master Plans and consistent with the Design Guidelines, the Commissioner of Inspectional Services may accept final building permit plans without further preliminary review so long as they do not include any additional design elements or change any design elements governed by the Design Guidelines.

CONDITIONS REQUIRING COMMUNITY BENEFITS

11. The Petitioner shall make payments in the aggregate amount of \$1,850,000.00 to the City for municipal infrastructure improvements, which amount shall be deemed to be in satisfaction of the request of the Engineering Division for funding for infrastructure improvements for inflow and infiltration (I&I). The amount is calculated based on a projected 93,425 gallons of daily sewer flow with a charge of \$19.77 per gallon for a transportation and treatment cost in accordance with the City's I&I Mitigation Policy, dated March 7, 2019, rounded up to \$1,850,000.00. Payments shall be made as follows:
 - a. \$925,000.00 at the first building permit for a residential building in the Project.
 - b. \$925,000.00 at the first residential unit occupancy permit (temporary or final) in the Project.
12. The Petitioner shall, within ~~one year~~sixty days after issuance of a Certificate of Occupancy (temporary or final) for the last residential unit within the Project, undertake a post-occupancy measurement of the sewer flow from the Project (excluding any sewer flow associated with the spray park), at its sole expense, to compare the actual sewer flow to the flow estimated in Condition #10. The post-occupancy measurement shall be taken at a time and in a manner approved by the City Engineer to provide for typical conditions. In the event the sewer flow from the Project exceeds 93,425 gallons under typical conditions, then the Petitioner shall pay to the City an amount equal to the excess sewer flow beyond 93,425 gallons, multiplied by 4 and by \$19.77 per gallon. Such payment shall be made within sixty (60) days from the date the City provides the Petitioner with written notification of the excess sewer flow amount.
13. The Petitioner shall make payments in the aggregate of \$5,000,000.00 to the City for offsite traffic mitigation and improvements. A preliminary list of possible projects for offsite mitigation is attached hereto as Exhibit B, and the Director of Planning and Development, after consultation with the Commissioner of Public Works and the Petitioner, shall recommend projects for funding to the Mayor and the City Council. The Petitioner's payments shall be made to a municipal account designated for improvements to the Countryside School as follows:
 - a. \$2,500,000.00 at the first building permit for a residential building in the Project.
 - b. \$2,500,000.00 at the first residential unit occupancy permit (temporary or final) in the Project.
14. The Petitioner shall make payments in the aggregate amount of \$1,500,000.00 to the City for improvements to or replacement of the Countryside School. The Petitioner's payments shall be made as follows:
 - a. \$1,000,000.00 at the first building permit for a residential building in the Project.

- b. \$500,000.00 at the first residential unit occupancy permit (temporary or final) in the Project.
15. The Petitioner shall design and construct, at a cost to the Petitioner not to exceed \$1,000,000.00 (except as provided below), a public splash park located on a 7,000 - 8,000 square foot portion of the Project located in the southwest corner of the Site adjacent to the Upper Falls Greenway and the Depot building, as shown on the Plan Sheet C-5.4 dated September 3, 2019 and labeled "Approximate Location of Splash Park."
- a. The Petitioner shall submit final design plans for review and approval by the City's Department of Parks and Recreation prior to the Petitioner's first application for a building permit (other than a demolition permit or renovation permit for 156 Oak Street). Said final design plans shall be consistent with the approved conceptual design plan sheet XXXX and must include a minimum of ten (10) water features and seating elements. The Petitioner shall not spend more than \$120,000.00 on the design of the splash park, which amount shall be applied against the \$1,000,000.00 contribution of the Petitioner.
 - b. The Petitioner shall perform the construction of the splash park in accordance with the approved final design plans. The Petitioner shall be responsible for any cost overruns in constructing the splash park as approved, which may require the Petitioner to pay more than the \$1,000,000.00 contribution required by this condition. The City shall pay the costs of any change orders it requests after approval of the plans. The Petitioner shall assign to the City any warranties or guaranties of construction or of equipment installed in the splash park.
 - c. The Petitioner shall license the Splash Park Area to the City for \$1.00, subject to a license agreement mutually agreed upon by Petitioner and the City. The license agreement shall provide the following terms: the City shall operate the splash park, maintain the license area and all splash park facilities in good and safe condition, bear responsibility and pay for all operating, water, sewer and utility costs, future improvements, and user safety, provided however that the City shall not be required to provide insurance coverage or an indemnification agreement.
 - d. Construction of the splash park shall be completed, the license agreement shall be executed, and custody and control of the splash park shall be turned over to City prior to the issuance of the first residential unit occupancy permit (temporary or final) in the Project.
16. All open spaces shown in the Project Master Plans shall be open to the public, at no cost to the City, from at least dawn to dusk every day. The Petitioner's obligation to maintain the open spaces and to allow public access as required by this condition shall continue for so long as the Project authorized by this Special Permit/Site Plan Approval or any amendment thereto is in effect.

- a. The construction of the Village Green and Mill Park open spaces, as shown and labeled on the Plan Sheet XXX, shall be substantially completed and fit for occupancy before the issuance of the occupancy permit (temporary or final) for the 400th residential unit. The construction of all remaining open spaces shall be completed before the issuance of an occupancy permit (temporary or final) for the first unit in the final residential building.
 - b. All open spaces must be accessible to persons with disabilities.
 - c. The Petitioner shall maintain the landscape, lawns and plantings on the open spaces in good, healthy condition.
 - d. The Petitioner and the City shall work together for programming for the open spaces for public events. The City shall be responsible for the cost to set-up, clean up and operate of such public events, but will not be charged rent for use of the open spaces.
 - e. The Petitioner may promulgate reasonable rules and regulations that govern use of the open spaces, which must be reviewed and approved by the Commissioner of Parks, Recreation and Culture Department. The open spaces may be closed by the Petitioner, at periodic and reasonable times, for private events or for the minimum extent necessary to prevent the establishment of prescriptive easements.
17. The Petitioner shall ensure the availability of a public bathroom facility at the Mobility Hub for public users of the open spaces and splash park at reasonable times.
18. The Petitioner is required to reserve (i.e., whether leased or vacant and available for lease) at least 10,000 rentable square feet of space within the ground floor only, to non-formula retail, restaurant, or personal service use tenants.
- a. For the purposes of this condition, formula retail, restaurant, and personal service use is defined as “Any establishment, which along with nine or more other businesses regardless of ownership or location worldwide, does or is required as a franchise, by contractual agreement, or by other agreement to maintain two of the following features:
 - i. A standardized menu;
 - ii. A standardized facade;
 - iii. A standardized décor and/or color scheme;
 - iv. A standardized uniform;
 - v. A standardized sign or signage; or
 - vi. A standardized trademark or service mark.
 - b. In the event that a non-formula tenant disqualifies itself in accordance with the criteria referenced in this condition, thereby decreasing the total rentable square feet reserved for non-formula tenants to below 10,000 square feet, the tenant

may remain and the Petitioner shall dedicate the next available tenant space or spaces (unless such space is deemed inappropriate for a non-formula tenant by the Director of Planning and Development) to other non-formula tenants until the Project is compliant with this condition.

- c. Prior to the issuance of any Building Permit for the ground floor of each building, the Petitioner shall provide documentation indicating whether the proposed retail, restaurant, or personal service use is a non-formula use in accordance with this condition. The Petitioner is not entitled to a building permit if such permit would prevent the Project from complying with this condition.

CONDITIONS RELATED TO AFFORDABILITY

19. In accordance with the City's Inclusionary Zoning Ordinance, §5.11.4, the Project shall include 140 affordable housing units (the "Inclusionary Units"), as follows:

- a. 120 of the residential units in the Project shall be made available to households earning at or below 80% of Area Median Income (AMI), as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA ("Tier 1 Units"). The AMI used for establishing rent and income limits for the Tier 1 Units must average no more than 65% AMI. Alternatively, at least 50% of the Tier 1 Units may be priced for households having incomes at 50% of AMI and the remaining Tier 1 priced for households at 80% of AMI.
- b. 20 of the residential units in the Project shall be affordable to households earning greater than 80%, but at or below 110% of AMI, as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA ("Tier 2 Units").

20. The Petitioner, the Project, and the Inclusionary Units shall comply with all applicable provisions of the City's Inclusionary Zoning Ordinance, §5.11, in effect as of the date of this Special Permit/Site Plan Approval, regardless of whether such requirements are set forth herein. The Project is not required to comply with amendment, effective January 1, 2021, changing the requirements for large projects.

21. The bedroom mix of the Inclusionary Units shall be equal to the bedroom mix of the market-rate units in the Project. The proposed mix of the Inclusionary is:

	Studio	1BR	2BR	3BR
Tier 1 Units Inclusionary Units	12	54	48	6
Tier 2 Inclusionary Units	2	9	8	1

The final bedroom mix shall be reviewed and approved by the Director of Planning and Development prior to the issuance of a building permit for the Project.

22. Monthly housing costs (inclusive of rent, utility costs for heat, water, hot water and electricity, 1 parking space and access to all amenities offered to tenants in the building), must not exceed 30% of the applicable household income limit for that Inclusionary Unit and shall be consistent with Inclusionary Zoning Ordinance, § 5.11.4.D.1.
23. For the initial lottery, 70% of the Inclusionary Units shall be designated as Local Preference units, as permitted and defined by the Massachusetts Department of Housing and Community Development (DHCD).
24. Prior to the issuance of any building permits for the vertical construction of the Project, the Petitioner shall provide an updated Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan (AFHMP) for review and approval by the Director of Planning and Development in accordance with §5.11.8 of the Inclusionary Zoning Ordinance. The Inclusionary Housing Plan and Affirmative Fair Housing Marketing and Resident Selection Plan must meet the requirements of DHCD's guidelines for Affirmative Fair Housing Marketing and Resident Selection and be consistent with §5.11.8. of the Inclusionary Zoning Ordinance. In accordance with DHCD's current guidelines, the units will be affirmatively marketed and leased through a lottery.
25. Prior to the issuance of any temporary occupancy certificates for the Project, the Petitioner, the City, and DHCD will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Tier 1 Inclusionary Units in perpetuity.
26. Prior to the issuance of any temporary occupancy certificates for the Project, the Petitioner and the City will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Tier 2 Inclusionary Units in perpetuity.
27. To the extent permitted by applicable regulations of DHCD, the Tier 1 Inclusionary Units shall be eligible for inclusion on the State's Subsidized Housing Inventory (SHI) as Local Action Units through DHCD's Local Initiative Program.
28. The Inclusionary Units shall be designed and constructed subject to the provisions of the Inclusionary Zoning Ordinance, §5.11.7.
29. Inclusionary Units, and their associated parking spaces, shall be proportionally distributed throughout the Project and be sited in no less desirable locations than the market-rate units, and shall be reviewed and approved by the Director of Planning and Development prior to the issuance of a building permit for the Project.
30. No residential unit or building shall be constructed to contain or be marketed and/or sold as containing more bedrooms than the number of bedrooms indicated for said unit in the Project Master Plans referenced in Condition #1.
31. Any room that meets the minimum dimensional and egress requirements to be considered a bedroom under the state building code and Title 5 regulations shall be counted as a bedroom for purposes of determining the required bedroom mix of the Inclusionary Units in accordance with the Inclusionary Zoning Ordinance.

32. Any guest suites or temporary housing that meet the definition of a Dwelling Unit under the Zoning Ordinance shall be counted as a bedroom for purposes of calculating the Project's inclusionary zoning requirement.

CONDITIONS RELATED TO CONSTRUCTION

33. The Petitioner shall pay the reasonable fees of the City's consultants for review of the building permit plans or documents described herein or for inspections required herein during the construction phase.
34. All construction activity shall be limited to 7:00AM-7:00PM Monday through Friday and 8:00AM-7:00PM on Saturdays, excluding holidays, unless waived by the Mayor in accordance with Newton Ordinances, §20-13. Interior work may occur at times outside of the hours specified above, but only after the building is fully enclosed.
35. The Petitioner shall comply in all material respects with the final Construction Management Plan to be submitted for review and approval to 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. The Final Construction Management Plan shall include, but not be limited to, the following provisions:
- a. The proposed schedule of the Project, including the general sequencing of the construction activities.
 - b. Site plans showing the proposed location of contractor and subcontractor parking, on-site material storage areas, on-site staging areas for delivery vehicles, and location of any security fencing.
 - c. Proposed truck routes that minimize travel on local streets.
 - d. Proposed methods for dust control including, but not limited to: 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; and locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the Site.
 - e. Proposed methods of noise control, in accordance with the City of Newton's Ordinances. 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 practicable from noise sensitive locations.
 - f. Proposed methods of vibration control.
 - g. A plan for rodent control during construction.

- h. 24-hour contact information for the general contractor of the Project. This contact information shall be provided to the Commissioner of Inspectional Services and to the Newton Police Department, shall be posted on a construction activity website to be established by the Petitioner, and shall be posted on the job site.
 - i. Offer to provide a pre-construction survey at no charge to the owners of the properties abutting the Site.
- 36. The Petitioner shall submit final engineering, utility, and drainage plans, and an Operations and Maintenance plan for Stormwater Management, for review and approval by the City Engineer. For stormwater management design calculations, no credit shall be taken for existing impermeable surfaces within the site.
- 37. The Petitioner shall be responsible for securing and paying police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
- 38. The Petitioner shall be responsible for repairing any damage to public ways and public property caused by any construction vehicles traveling to or from the Site. All repair work shall be done prior to the issuance of final Certificate of Occupancy, unless the Commissioner of Public Works determines either: (a) that the damage to the public way is so extensive that it limits the use of the public way; (b) that the damage interferes with traffic flow; or (c) that the damage poses a threat to public safety. In such cases, the repair work must be initiated within one month of the Commissioner making such determination and shall be conducted consistent with City Construction Standards, and shall be completed within an appropriate time frame, as determined by the Commissioner.
- 39. The Petitioner shall implement a Community Engagement Plan during the construction period of the Project in order to predict, preempt and address issues which may arise affecting the general community. The Community Engagement Plan shall provide, without limitation, a communication plan and schedule for regular construction updates and advisories, point contacts for Petitioner and Petitioner's primary contractors, engagement plan with the Upper Falls and Newton Highlands Area Councils and local businesses, and communications with Ward councilors and any other interested councilors. The Petitioner shall designate a single individual to communicate with the neighbors, the Ward 5 and Ward 8 City Councilors, and the Newton Upper Falls and Newton Highlands Neighborhood Area Councils via email. The designated individual shall send updates of any changes of the construction schedule to the established distribution list.
- 40. Not less than two (2) months prior to the commencement of any Site work and/or other construction activities related to the work approved through this Special Permit/Site Plan Approval, a Construction Liaison Committee shall be established consisting of two (2) designees of the Petitioner, four (4) residents from the neighborhood surrounding the Project, one (1) representative of the Needham Street commercial community or the Newton-Needham Regional Chamber ~~of Commerce~~, and the Ward 5 City Councilors. The

President of the City Council shall appoint the resident neighborhood members. Meetings of the Liaison Committee will be open to the public, and the Liaison Committee will establish such agenda and procedures as it shall see fit.

- a. The purposes of the Liaison Committee shall be:
 - i. To enhance and ensure communication as to the status and progress of the construction of the Project by the Petitioner.
 - ii. To provide a forum for initial presentation of a construction schedule and any significant changes to schedule or changes of plans for which public review is appropriate.
 - iii. To receive and deal with construction-specific issues including, without limitation, noise, dust, parking and traffic; to monitor implementation of the final Construction Management Plan; and to receive notices and communications from the Department of Inspectional Services and the Planning and Development Department.
 - b. The Liaison Committee shall meet regularly (monthly for the first six (6) months of the construction period, and thereafter, every three (3) months, unless there is consensus within the Liaison Committee that no meeting is necessary, until at least six (6) months after the initial occupancy of the final building to be completed). The first meeting shall be convened jointly by the Petitioner and the Ward 5 City Councilors. The Liaison Committee shall work by consensus, but nothing in the establishment of the Liaison Committee shall inhibit any member, including the Petitioner, from engaging in any lawful activities.
 - c. The Liaison Committee shall, at a minimum, give written notice to the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development of its meetings, and such notice shall be posted on the construction activity website that the Petitioner shall be required to establish pursuant to its Construction Management Plan.
41. Any portions of the Site subject to the jurisdiction of Conservation Commission must receive an Order of Conditions from the Conservation Commission prior to the issuance of any building permit for work on the Project subject to such jurisdiction.
42. The Petitioner shall comply with the terms of the Petitioner's Memorandum of Understanding Agreement with the Massachusetts Historic Commission, dated September 21, 2018.
43. Building 8 shall be designated as an "all age friendly" building in that the building design shall incorporate a variety of universal design elements, including intentional color schemes, contrasting materials for visibility, supplemental corridor and common space lighting and all-

age friendly amenities and common spaces. The Petitioner has submitted a memorandum dated October 9, 2019, prepared by Project architect Michele Quinn of Cube 3 LLC, that sets forth a series of “all age friendly” design elements which the Petitioner has agreed to incorporate into Building 8, and which must be provided.

44. All residential units will conform to the Massachusetts Architectural Access Board (MAAB) requirements for “Group 1” units. In addition, per MAAB guidelines, 44 units shall be designed as “Group 2A” units, which are designed spatially for immediate wheelchair use and with the ability to adapt additional components of the units upon need, at the Petitioner’s sole cost and expense. 22 of the Group 2A units shall be Inclusionary Units.
45. All internal roadways shall be designed as shown on the Project Master Plans ~~in accordance with standard traffic engineering practice~~ and, except as otherwise provided for herein, shall be open to the public. The Petitioner is responsible for maintaining and plowing all internal roadways and sidewalks, ensuring they are clean, well-kept and in good and safe working order.
46. All sidewalks and handicapped ramps shall be ADA compliant unless a variance for noncompliance is granted. A letter of compliance prepared by a professional engineer registered in the state of Massachusetts shall be submitted prior to issuance of an occupancy permit (temporary or final).
47. The Petitioner shall locate all utility service lines on the Site underground.
48. The Petitioner shall make best efforts to diligently obtain all necessary municipal, utility and private party approvals to relocate all overhead utility service lines along the Project’s frontage on Needham Street ~~and~~ Oak Street, Christina Street, Tower Road and Charlemont Street underground as shown on the Utility Infrastructure Undergrounding Plan attached hereto as Exhibit C. If such approvals are received, the Petitioner shall relocate the utility service lines on Needham Street, Oak Street and Tower Road at its own expense prior to the issuance of the ~~first-last temporary~~ residential unit occupancy permit ~~(temporary or final)~~ in the Project and on Christina Street and Charlemont Street as soon as is practically feasible. In the event approvals for ~~any~~ sections cannot be obtained or are obtained on conditions that are infeasible to the Petitioner or are delayed so as to make the undergrounding impractical, the Petitioner may complete only such portions of the underground as may be approved on conditions that are feasible.
49. The Petitioner shall daylight a portion of the South Meadow Brook between Buildings #1 and #2 as shown on the Project Master Plans, subject to any required Order of Conditions by the Conservation Commission. The Petitioner shall not be required to undertake such “daylighting” if an Order of Conditions is denied or contains conditions that are technically or financially infeasible. The Petitioner shall make all reasonable efforts to visually represent the South Meadow Brook where located underground as shown in the Project Master Plans.

50. The Petitioner shall construct a bike path through the Site from the Greenway to Needham Street as shown on the Project Master Plans.
51. The Site shall be open to the Greenway without fencing or screening, with the exception of fencing if necessary to enclose the splash park and low hedges behind the townhouse units.
52. The Petitioner shall prepare and submit a final Site circulation plan for review by the Fire Department that confirms the Fire Department will have sufficient access to all buildings, confirms that a bus 45 template for fire access will function safely, and shows all hydrants and fire connections, and other features as may be required for Fire Department approval.

CONDITIONS RELATED TO SUSTAINABILITY

53. The Petitioner shall design and construct high R-value, durable, environmentally sensitive building. All new buildings shall be designed for modern energy and resource conservation, and portions of certain of the buildings will be solar ready. Mechanical, electrical and plumbing systems shall be chosen and sized to meet reduced heating and cooling loads and to ensure occupant comfort. Proper commissioning, optimization, and education for building management and tenants shall be conducted to operate the building at the designed level of performance. The Petitioner shall make diligent efforts to utilize durable building materials, high performance building envelopes and energy-efficient appliances. Where applicable, all new appliances installed shall meet the US EPA "Energy Star" standard.
54. The Project shall be constructed to achieve, and the Petitioner shall pursue LEED Certification for Neighborhood Development v3 at the Silver Level. The Saco-Pettee Mill building at 156 Oak Street shall be renovated to achieve LEED Core and Shell (CS) v3 Certification at the Silver Level.
55. All new buildings within the Site shall be designed to achieve either: (i) a LEED v.3 Gold certifiable standard, or (ii) a LEED v.4 Gold for Building Design and Construction Multifamily Midrise certifiable standard. Because buildings #9, 10, 11 and 14 are smaller scale residential buildings, such buildings may utilize either: (i) LEED for Homes, (ii) LEED v.4 for Multifamily Low-rise, or (iii) subject to approval by the Director of Planning and Development, an alternative recognized green building standard appropriate for such building types.
56. The Petitioner shall construct the residential portions of Buildings #3, 4 and 8 to achieve Passive House certification in accordance with the requirements of the Passive House Institute US (PHIUS), the Passive House Institute (PHI) or other recognized passive house certification organization. The commercial portions of such buildings shall not be obligated to meet such standards and shall be excluded from the certification.
57. The Petitioner has committed to achieve and/or implement the following sustainability strategies which shall be incorporated into the Project:

- ~~a.~~ ~~All buildings will conduct energy modeling.~~
- ~~b.~~a. _____ The Petitioner will conduct Passive House feasibility studies, incorporating energy modeling, for buildings #5a/b, 6a, 6b/c, 7 and 12.
- ~~c.~~b. The Petitioner will utilize electric heat pumps for heating and cooling in all buildings in order to reduce fossil fuel use unless another technology becomes available that is at least as equally efficient and environmentally sustainable.
- ~~d.~~c. Where applicable, the Petitioner will utilize electric “Energy Star” appliances, except that domestic hot water equipment may utilize natural gas as an energy source.
- ~~e.~~d. _____ To the greatest ~~extend~~extent feasible, building roofs will be utilized to take advantage of outdoor opportunities and amenities for residents and/or for implementation of sustainable strategies including photovoltaic panels, green roofs and reflective roof materials.
- ~~f.~~e. Bicycle parking/storage will be provided for at least 1,100 bicycles.
- ~~g.~~f. Electric car charging stations will be provided for 5% (66 spaces) of the striped parking with expansion built in to double the amount (to 10%, 132 spaces) of charging stations.
- ~~h.~~g. _____ A rain harvesting system will be utilized to capture some roof rainwater for irrigation.
- ~~i.~~h. Drought tolerant and indigenous plants will be utilized in the landscape design.
- ~~j.~~i. Low Impact Design (LID) strategies will be employed in the design of the stormwater management system.
- ~~k.~~j. Permeable pavement and pavers will be utilized as part of the LID strategy.
58. The Petitioner has committed to analyze, review and discuss with the Director of Planning and Development the following sustainability strategies, prior to the issuance of any building permit for the Project, in order to determine their feasibility and the possible return on investment if they were to be implemented:
- a. Depending on the results of the Passive House feasibility studies for Buildings 5a/b, 6a, 6b/c, 7 and 12 noted in Condition #57(b) above and Petitioner’s return on investment analysis, the Petitioner will seek to achieve Passive House Certification similar to those contemplated in Condition #56 for the residential

portions of some or all of these buildings to the fullest extent feasible.

- b. The Petitioner's design teams will utilize the best available information to assess embodied carbon in building materials and incorporate that information into the design process so that low embodied carbon materials can be incorporated when cost, availability and performance is feasible.
- c. The Petitioner will target LEED Gold Certification (LEED ND v3 and LEED CS v3) for the buildings in Condition #54 above.
- d. Depending on the future utilization of the electric car charging stations and the level of future potential demand, the Petitioner will explore the feasibility of securing increased electrical service to provide charging stations for up to 90% (1,215) of the striped parking spaces as the market demand for charging stations increases.
- e. The Petitioner will monitor new technologies for electric domestic hot water equipment and evaluate the feasibility of incorporating the new technology.

CONDITIONS RELATED TO TRAFFIC

59. Petitioner's Trip Reduction Obligation

- a. The Petitioner is required to reduce the number of the projected residential and office trips that will be generated by the Project, as set forth herein as the Maximum Trip Count, in order to mitigate the traffic impacts of the Project.
- b. The Petitioner shall not exceed the **Maximum Trip Count** as follows:
 - i. The total Maximum Trip Count for all office and residential uses within the Project is 289 vehicles during the weekday morning peak hour and 220 vehicles during the weekday evening peak hour.
- c. The Petitioner shall prepare, submit and implement a **Transportation Demand Management Work Plan** (the "TDM Work Plan"), in accordance with Condition #64, that includes strategies and measures necessary to comply with the Maximum Trip Count.
- d. The Petitioner has the burden to demonstrate that it is in compliance with the Maximum Trip Count. In order to demonstrate compliance, the Petitioner shall periodically conduct trip counts in accordance with the **Trip Count Methodology** set forth in Condition #63 and submit **TDM Monitoring Reports** to the City in accordance with Condition #62.

- e. If the Petitioner fails to achieve the Maximum Trip Count, the Petitioner will be required to revise its TDM Work Plan and invest the **TDM Investment Amount** of \$1,500,000, plus additional funds in accordance with the **Additional Investment Amount** set forth in Condition #65, in implementing its TDM Work Plan.
- f. The Petitioner shall pay the reasonable fees of any consultants/peer reviews as necessary for the Director of Planning and Development or the ~~Director of the Transportation Division~~ Commissioner of Public Works to review and analyze any submitted TDM Work Plans or TDM Monitoring Reports.

60. Commencement of Petitioner's Trip Reduction Obligation

- a. The Petitioner must comply with the Maximum Trip Count beginning on the date of the issuance of a Certificate of Occupancy (temporary or final) for the 400th 80% of the residential units.

61. Reporting Requirements

a. Initial TDM Monitoring Report and Trip Count

- i. The Petitioner shall conduct its first trip count and submit an Initial TDM Monitoring Report within sixsixty (60) monthsdays after the issuance of a Certificate of Occupancy (temporary or final) for the 400th 80% of the residential units.
- ii. The trip count must be conducted in accordance with the Trip Count Methodology set forth in Condition #63 and the Initial TDM Monitoring Report must be prepared and submitted in accordance with Condition #62.

b. Subsequent Periodic Reporting

- i. Following submission of the Initial TDM Monitoring Report, the Petitioner shall thereafter submit TDM Monitoring Reports every six months from the date of submission of the initial report.
- ii. The reporting period shall change to once per year only after the Petitioner/Project has been fully compliant with the Maximum Trip Count for two consecutive six-month reporting periods following 80% occupancy of the residential units and office building.
- iii. Once the Petitioner/Project has been in full compliance with the Maximum Trip Count for five (5) consecutive years following full residential occupancy, the Petitioner's reporting and monitoring requirements will cease, provided that so long as there are no changes to the TDM Work Plan. ~~a~~ Any ~~substantial~~ changes to the TDM Work Plan after such full compliance must be approved by the Director of Planning and

Development in accordance with Condition #64(c), who may require the submission of ~~trip counts prior to approval~~ additional monitoring reports. The Director of Planning and Development shall also have authority to require the submission of trip counts after the Petitioner's reporting and monitoring requirements have ceased in the event there are significant changes to the regional or local transportation landscape that impact the Project.

62. Submission of TDM Monitoring Reports

- a. The Petitioner shall submit all TDM Monitoring Reports to the Director of Planning and Development and the Commissioner of Public Works within thirty (30) days after the end of each reporting period following submission of the initial TDM Monitoring Report. Submission dates may be adjusted slightly at the discretion of the Director of Planning and Development to accommodate counts and surveys being conducted during a typical week.
- b. The TDM Monitoring Reports shall contain the results of the required trip counts and surveys, a description of methodology, and the qualifications of the consultant(s) performing the counts and surveys.
- ~~c. The Petitioner shall pay the reasonable fees of any consultants/peer reviews as necessary for the Director of Planning and Development or the Director of the Transportation Division to analyze the reports.~~
- ~~d.c.~~ In the event the Petitioner fails to comply with the Maximum Trip Count, pursuant to Condition #65, subsequent TDM Monitoring Reports must include a certified financial accounting of how the TDM Investment Amount and the Additional Investment Amount were allocated and spent on implementing the approved TDM Work Plan.
- ~~e.d.~~ In accordance with Condition #64, a TDM Work Plan shall also be submitted with every submission of a TDM Monitoring Report. The TDM Work Plan must include a comprehensive list of the measures proposed for the upcoming reporting period and, if required by Condition #~~65~~7, proposed expenditures.

63. Trip Count Methodology

- a. Trip counts shall be done by a qualified professional firm, to be approved by the Director of Planning and Development.
- b. Trip counts shall measure residential and office trips during the weekday morning and evening peak hours.

- c. Trip counts shall include the following:
 - i. A count of the resident and office vehicles entering and exiting at all residential and office garage entries during the weekday and evening peak hours.
 - ii. Intercept surveys taken at every residential and office building entry/exit point to capture residential and office visitors and pick-up and drop-off trips.
- d. Trip counts and surveys shall be conducted over three consecutive weekdays (Tuesday through Thursday) during a typical week with no holidays or school vacations.
- e. The time period for all trip counts, the peak hours, methodology and intercept survey questions shall be reviewed and approved by the Director of Planning in advance.
- f. Every two years, beginning with the initial TDM Monitoring Report, trip counts shall also include the total number of vehicular trips during peak hours at each driveway.
- g. The Petitioner shall utilize technology to track real time counts of residential and office vehicles entering and exiting at all garage entries. This data shall be included in every TDM Monitoring Report and shall at all times be made available to the Director of Planning and Development upon request.

64. Approval of the TDM Work Plan

- a. Prior to the issuance of the first building permit for any new vertical construction, the Petitioner shall submit any changes or updates to its initial TDM Work Plan, dated October xx and on file with the Planning and Development Department, the Inspectional Services Department, and the City Clerk, to the Director of Planning and Development and Commissioner of Public Works for review and approval.
 - i. The Initial TDM Work Plan shall include a detailed plan for the phase-in of TDM measures.
 - ii. As feasible, TDM measures, including potential transit subsidies and options for first/last mile connections, shall begin with initial occupancy permits.
 - iii. Full implementation of the TDM Work Plan shall begin no later than the issuance for a Certificate of Occupancy for 400 residential units.

- iv. The full-time TDM Coordinator shall start no later than the issuance of a Certificate of Occupancy for 25,000 square feet of office space, or 12 months after the issuance of the first residential building permit (whichever comes first).
- b. The TDM Work Plan shall set forth sufficient Transportation Demand Management (TDM) strategies and measures necessary to comply with the Maximum Trip Count, including, but not limited to, last-mile connections to mass transit, subsidies for transit passes for employees and residents, a full-time TDM coordinator, on-site support facilities and information, marketing and awareness programs, financial incentives, and car and bike share programs.
- c. The TDM Work Plan may change over time to respond to changing transportation needs and circumstances, with the objective of meeting the trip reduction goal through compliance with the Maximum Trip Count. All changes must be reviewed and approved by the Director of Planning and Development prior to implementation.
- d. A TDM Work Plan shall also be submitted with every submission of a TDM Monitoring Report. The TDM Work Plan must include a comprehensive list of the measures proposed for the upcoming reporting period, and shall be based on best practices, results of prior counts and surveys, and additional data collected by the Petitioner.

65. Enforcement

- a. If a TDM Monitoring Report shows that the Petitioner/Project exceeded the Maximum Trip Count, the Petitioner shall be required to invest funds into implementation of its TDM Work Plan as follows:
 - i. The Petitioner shall spend the **TDM Investment Amount** of \$1,500,000.00 in implementing its TDM Work Plan during the 12 month period following submission of the TDM Monitoring Report where the Maximum Trip Count was exceeded. The TDM Investment Amount shall be adjusted annually from the date of commencement of Petitioner's trip reduction obligation based upon the Consumer Price Index.
 - ii. In addition to the TDM Investment Amount, during the same time period the Petitioner shall also expend an **Additional Investment Amount** which shall be calculated as a percentage of the TDM Investment Amount (adjusted per the CPI) equal to the percentage of trips reported over the Maximum Trip Count.

Example: if the number of actual trips was 20% more than the Maximum Trip Count, the Petitioner shall create a TDM Work Plan for the upcoming reporting period that costs at a minimum \$1.5 million + 20% of \$1.5 million, for a total investment of \$1.8 million (prior to CPI adjustment).

- iii. There is no maximum cap on the Petitioner's additional investment.
- iv. The TDM Investment Amount and the Additional Investment Amount shall be expended annually until the Petitioner submits a TDM Monitoring Report demonstrating compliance with the Maximum Trip Count.
- b. If the Maximum Trip Count is exceeded, the Petitioner must submit a revised TDM Work Plan for the next Reporting Period that shall include a narrative of how the changes to the TDM Work Plan for the upcoming reporting period will reduce the number of vehicular trips during peak hours and a detailed proposal of how the TDM Investment Amount and the Additional Investment Amount will be spent. The TDM Work Plan and the proposal for TDM expenditures shall be reviewed and approved by the Director of Planning and Development.
- c. The Petitioner agrees to and shall embody these financial commitments in a contractual agreement with the City to be entered into prior to the issuance of the first building permit for a residential building in the Project, which agreement shall allow for the remedy of specific performance.
- d. Failure to comply with the Maximum Trip Count for five (5) consecutive Reporting Periods will constitute a violation of this Special Permit/Site Plan Approval and no further occupancy permits of any kind will be issued until the Petitioner submits a TDM Monitoring Report demonstrating compliance with the Maximum Trip Count.
- e. So long as the Petitioner complies with the Maximum Trip Count, there is no minimum TDM Investment Amount required.

PARKING CONDITIONS

- 66. All lined parking stalls must be a minimum of eight feet, ~~six~~nine inches (~~8'5~~8'6") in width. In addition, 60% of all lined parking stalls must be a minimum of nine (9) feet in width. All parking stalls that have a width of 8'6" must not be located immediately adjacent to any vertical obstruction.
- 67. The cost of residential tenant parking for market-rate units shall be charged separately from residential tenant rents. One parking stall shall be provided for the household of each Inclusionary Unit without charge to the tenant of such unit.

68. Managed or valet parking is permitted pursuant to a professionally-prepared Parking Management Plan, which shall be maintained on file and available for review upon request by the Director of Planning and Development or the Director of the Transportation Division of Public Works. Valet parking must be located within the Site.
69. The Petitioner shall provide a minimum of five (5) percent of all parking as EV parking with car charging stations, with expansion built in to double the amount of charging stations to ten (10) percent.
70. The Petitioner is prohibited from utilizing offsite locations for parking for any uses within the Site. The Petitioner cannot establish any non-accessory parking on any parcel that is not included within the Site.

OTHER CONDITIONS

71. All landscaping associated with this Special Permit/Site Plan Approval shall be installed and maintained in good condition. Any plant material that becomes diseased or dies shall be replaced on an annual basis with similar material.
72. The Petitioner shall be responsible at its sole cost for trash and recycling disposal for the Project.
73. A Comprehensive Sign Package including all tenant signage shall be submitted for review by the Urban Design Commission.
74. Petitioner may store snow on the Site to the extent that it does not impede parking and circulation and pedestrian movements. To the extent snow removal is necessary, such removal will be conducted pursuant to a Snow Removal Plan, which shall be maintained on file at the Project and be available for review upon request by the Director of Planning and Development. The Petitioner shall remove snow along the sidewalks abutting the Site in accordance with the City's snow removal ordinance. Petitioner shall not use salt as part of its removal of snow or maintenance of roadways or sidewalks.
75. Nothing in this Special Permit/Site Plan approval shall prevent the Petitioner from submitting a building(s) to a condominium property regime, provided that the land on which such condominium is located shall not be subdivided. In no event shall the submission of the buildings to a condominium property regime relieve the Petitioner of any applicable requirements of this Special Permit/Site Plan Approval. The violation of the conditions of this Special Permit/Site Plan Approval by an owner or occupant of a single condominium unit within the Project shall not be deemed to be a violation by any other owner or occupant within the Project, but shall be deemed to be a violation by the owner or occupant of the condominium unit(s)/premises violating the conditions of this Special Permit/Site Plan Approval. The City may, at the election of the Commissioner of Inspectional Services, look to the applicable condominium association, or in the event of a lease-hold condominium, the

applicable lessor, in connection with such violation. Nothing herein shall limit the rights of a condominium association against a violating owner or occupant.

76. In the event the Petitioner subjects the Site to a condominium form of ownership under G.L. c. 183A, pPrior to the exercise of this Special Permit as defined in Condition #5, an organization of all owners of land within the Site shall be formed. The Organization of Owners will be governed by this Special Permit/Site Plan Approval, with the authority and obligation to act on behalf of all such owners in contact with the City or its representatives regarding compliance with the Zoning Ordinance. The Organization shall serve as the liaison between the City and any owner, lessee, or licensee within the Site. Such Organization shall be the primary contact for the City in connection with any dispute regarding violations of the Zoning Ordinance and, in addition to any liability of individual owners (with regard to matters specifically related to the individual owners' parcels and not those related to the overall Project or Site), shall have legal responsibility for compliance of the Project with the terms of this Special Permit/Site Plan Approval and/or other applicable provisions of the Zoning Ordinance.

CONDITIONS PRECEDENT TO THE ISSUANCE OF ANY BUILDING PERMITS

77. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval (other than a renovation permit for 156 Oak Street or tenant improvement permits) until the Petitioner has:
- a. Recorded a certified copy of this Council Order with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded Council Order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Complied with all applicable sections of the Design Review and Master Plan consistency procedure set forth in Conditions #7 through 10 and obtained a written statement from the Department of Inspectional Services that confirms the final building permit plans and façade elevations are consistent with the Master Project Plans and Design Guidelines approved in Conditions #1 and 2.
 - d. Submitted a final Inclusionary Housing Plan for review and approval by the Director of Planning and Development that is certified as compliant by the Director of Planning and Development with the information required to be included in such Plan pursuant to §5.11.8. of the Zoning Ordinance.
 - e. Submitted engineering, utility and drainage plans, an Operations and Maintenance plan for Stormwater Management, for review and approval by the City Engineer. ~~A statement certifying such approval shall have been filed with the City Clerk, the Commissioner of Inspectional Services and the Director of Planning and Development.~~ Once approved, the O&M must be adopted by the petitioner

and recorded at the Middlesex South District Registry of Deeds. A copy of the recorded O&M shall be filed with the Engineering Division of Public Works, the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.

- f. Submitted a final Construction Management Plan (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 Condition #35.
- g. Submitted sample building facade materials as provided in Conditions #7 and 8.
- h. Submitted a final Community Engagement Plan for review and approval by the Director of Planning and Development in accordance with Condition #39.
- i. Submitted a final Site circulation plan for review and approval by the Fire Department in accordance with Condition #52.
- j. Submitted any payments required under Conditions #11, 13 and 14.
- k. With respect to the splash park and in accordance with Condition #15, submitted (i) plans for construction of the splash park approved by the Commissioner of Parks and Recreation and (ii) a mutually agreed upon form of license vesting rights in the splash park to the City.
- l. Obtained a written statement from ~~a licensed architect confirming that the the final building permit plans are consistent with the Petitioner's Memorandum of Understanding with Massachusetts Historic Commission (MHC) in accordance with Condition #42~~the Newton Historical Commission that confirms the final building permit plans are consistent with the Petitioner's Memorandum of Agreement in accordance with Condition #42.
- m. Submitted a narrative and plans prepared and certified by a licensed architect to the Director of Planning and Development demonstrating the universal design elements in units and common areas and all-age friendly amenities to be included in Building 8 in accordance with Condition #43.
- n. Submitted a LEED Checklist prepared and certified by a ~~licensed architect~~LEED Accredited Professional to the Director of Planning and Development, indicating which points the Project intends to realize in order to achieve LEED certification in accordance with Conditions #54-55.
- o. Submitted a Passive House narrative and/or checklist prepared and certified by a licensed architect to the Director of Planning and Development, indicating

standards that will be achieved for Buildings 3, 4 and 8 in order to achieve Passive House certification in accordance with Condition #56.

~~e-p.~~ Submitted an analysis of sustainability strategies, in accordance with Condition #58, for review and approval by the Director of Planning and Development.

~~p-q.~~ Prior to a building permit for a residential building, entered into a contractual agreement with the City embodying its TDM commitments and the City's enforcement rights in accordance with Condition #65.

CONDITIONS PRECEDENT TO THE ISSUANCE OF ANY OCCUPANCY PERMITS

78. No occupancy permit of any kind 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 a statement by a registered architect and engineer certifying compliance with Conditions #1 and 2.
- b. Submitted to the Department of Inspectional Services, and the Department of Planning and Development, and the Engineering Division, final as-built survey plans in digital format for the portion of the Project for which an occupancy permit is requested.
- c. Submitted any payments required under Conditions #11, 13 and 14.
- d. Filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details for the portion of the Project for which an occupancy permit is requested have been constructed to standards of the City of Newton Public Works Department.
- e. Filed with the Department of Inspectional Services and the Department of Planning and Development a plan recorded with the Middlesex South Registry of Deeds showing the merger of the three existing lots on the Site in accordance with Condition #3.
- f. Submitted to the Law Department copies of fully executed Regulatory Agreements and Affordable Housing Restriction for all Inclusionary Units, in accordance with Condition #25.
- g. Provided evidence satisfactory to the Law Department that the Regulatory Agreements for all Inclusionary Units have been recorded at the Southern Middlesex District Registry of Deeds, as appropriate.

- h. Inclusionary Units shall be completed and occupied no later than the completion and occupancy of the Project's market-rate units. If the Inclusionary Units are not completed as required within that time, temporary and final occupancy permits may not be granted for the number of market-rate units equal to the number of Inclusionary Units that have not been completed.
- i. Completed all landscaping in compliance with Condition #1 related to or for the portion of the project for which an occupancy permit is requested.
- j. 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 an occupancy permit is requested.
- k. Completed the construction of the Village Green and Mill Park open spaces prior to the issuance of an occupancy permit (temporary or final) for the 400th residential unit, in accordance with Condition #16.
- l. Filed with ~~the Department of Inspectional Services and~~ the Department of Planning and Development and the Newton Historical Commission, for review and approval, a certificate from a licensed architect certifying that the Petitioner has complied with the Memorandum of Understanding with MHC as of the date of the requested certificate of occupancy together with Petitioner's plans and schedule for further compliance written statement that confirms compliance with the Memorandum of Agreement with MHC and provides evidence that the four stipulations have been completed in accordance with the terms outlined in the Memorandum of Agreement: A. Photography; B. Interpretive Program; C. Daylighting the Mill Rock Feature; and D. Site Plan.
- m. Prior to a Certificate of Occupancy for Building 8, Filed with the Department of Inspectional Services and the Department of Planning and Development a certificate from a licensed architect certifying that the all-age friendly design elements have been constructed in Building 8 in accordance with Condition #43.
- n. Filed with the Department of Inspectional Services and the Department of Planning and Development a certificate from a licensed architect certifying that all residential units have been constructed to conform to the MAAB requirements for "Group 1" units and that 44 additional units meet the requirements for "Group 2A" in accordance with Condition #44.
- o. Filed with the Department of Inspectional Services and the Department of Planning and Development a letter of compliance prepared by a professional engineer certifying that all sidewalks and handicapped ramps are ADA compliant in accordance with Condition #46.

- p. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that the undergrounding of utilities has been completed to the extent required by~~in accordance with~~ Conditions #47-48.
 - q. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that LEED certification has been achieved for the Site and 156 Oak Street, and that the criteria for further certifiability of other buildings have been satisfied in accordance with Conditions #54-55. The Petitioner shall have twelve (12) months from the issuance of the Project's final certificate of occupancy to receive its final LEED certificate.
 - r. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that the Passive House standards have been achieved in accordance with Condition #56.
 - s. The Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the buildings to be constructed subject to this Special Permit/Site Plan Approval and may issue final certificates of occupancy for portions of the Project prior to installation of landscaping or exterior hardscape improvements of the entire Project as required by the Master Project Plans, provided that the Commissioner of Inspectional Services, in consultation with the Director of Planning and Development and the Commissioner of Public Works, concludes that the level of completion of the improvements is sufficient to permit temporary occupancy of the buildings without harm to public safety or convenience. Prior, however, to issuance of any temporary certificate of occupancy pursuant to this condition, the Commissioner of Inspectional Services shall require that the Petitioner first file a bond, letter of credit, cash or other security in the form satisfactory to the City Solicitor's Office in an amount not less than 135% of the value of the aforementioned remaining Site improvements to ensure their completion. As the Project contains multiple buildings built in sequences the Commissioner shall have the authority to segment the requirements of this section to allow certificates of occupancy for various buildings upon receipt of security for the areas adjacent to or appurtenant to each such building.
79. Notwithstanding any of the above conditions, the by-right renovation of the building located 156 Oak Street (the Mill Building), may be issued an occupancy permit upon completion of construction so long as all applicable parking requirements of the Newton Zoning Ordinance are met.

Proposed new Northland TDM Condition:

66. The Petitioner shall also count and report a *Sitewide Total Trip Count* at each site driveway entrance/exit over three consecutive weekdays during the weekday morning and evening peak hours (Tuesday through Thursday) and also on Saturday during the afternoon peak hour of a typical week with no holidays or school vacations (timing of counts subject to approval by the Director of Planning). A Monitoring Report will be submitted in the same manner as Condition 62. If any Monitoring Report submitted shows that the Sitewide Trip Count net of cut-through traffic exceeds the ITE Unadjusted Vehicle Trips estimates set forth in the *Expanded Revised Building Program Traffic Generation Memorandum* submitted by VHB on behalf of the Petitioner, dated March 28, 2019, by more than 20 percent (to account for variations in commercial uses and trips generated by public spaces), the Petitioner shall meet with the Director of Planning and Development and make reasonable good faith efforts to jointly develop modified TDM measures.

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 a first floor residential use in the Business 1 (BU1) zoning district and further extend a nonconforming front setback, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Gregory Schwartz:

1. The site is an appropriate location for a first floor residential use in a Business 1 (BU1) district as it is located in a mixed use neighborhood. (§7.3.3.C.1)
2. The first floor residential use in a Business 1 district will not adversely affect the neighborhood given its existing mixed use nature. (§7.3.3.C.2)
3. The first floor residential use in a Business 1 district will not create a 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. The proposed front setback along California Street of 1.4 feet will not be substantially more detrimental to the neighborhood than the existing nonconforming front setback of 2.7 feet given the modest scale of the proposed addition. (§7.8.2.C.2)

PETITION NUMBER: #351-19

PETITIONERS: Najim M. Azadzoi and Najla O. Azadzoi

LOCATION: 278-280 California Street, on land known as Section 11,
Block 7 Lot 3, containing approximately 4, 534 sq. ft. of land

OWNERS: Najim M. Azadzoi and Najla O. Azadzoi

ADDRESS OF OWNER: 278-280 California Street

Newton, MA 02452

TO BE USED FOR: Five residential units and one commercial unit

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: Special permit per §7.3.3 to:

- allow a first floor residential use in the Business 1 (BUS1) zoning district (§4.4.1)
- further extend a nonconforming front setback (§4.1.3; §7.8.2.C.2)

ZONING: Business 1 (BUS1) 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. A plan entitled "278-280 California Street & 3 Faxon Street- Newton, Massachusetts- Plot Plan of Land," prepared by Peter Nolan & Associates LLC, dated February 27, 2019, stamped and signed by Peter J. Nolan, Professional Land Surveyor.
 - b. A set of architectural plans entitled "278-280 California Street & 3 Faxon Street, Newton, MA02458, Proposed Addition to Main Entrance at 280 California Street," dated April 21, 2019, prepared by Azad Architects Designer/Planners, stamped and signed by Najim M. Azadzoi, Registered Architect, consisting of the following sheets:
 - i. Cover Sheet (A-O)
 - ii. Existing Basement and first Floor Demolition Plans (A-1)
 - iii. Proposed New Entrance Basement and First Floor Plans (A-2)
 - iv. Existing Second and Third Floor Plans (A-3)
 - v. Proposed New Addition Elevations (A-4)
 - vi. Proposed Building Section (A-5)
 - c. A document entitled "Floor Area Ratio Worksheet, 278-280 California Street, Newton, MA 02458" signed and stamped by Najim M. Azadzoi, Registered Architect, indicating a Proposed "Total gross floor area" of 5,845 square feet and a Proposed "FAR" (floor area ratio) of 1.29.
2. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:
 - a. Recorded a certified copy of this order for the approved Special Permit/Site Plan Approval 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.
3. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect certifying compliance with Condition #1, including the floor area ratio (FAR) of the structure.
 - 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.