



Land Use Committee Report

City of Newton In City Council

Tuesday, November 12, 2019

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

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.

#620-18(2) Petition to amend Special Permits to allow additional uses at 55-71 Needham St
NEEDHAM STREET VILLAGE SHOPS, LLC. petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit Board Orders #213-12(1), #213-12(2) and #620-18 to permit a for profit education use as well as other uses which could include animal services, dry cleaners and ground floor health clubs at 55-71 Needham Street, Ward 5, Newton Highlands, on land known as Section 51 Block 28 Lot 20, containing approximately 58,875 sq. ft. of land in a district zoned MIXED USE 1. Ref: Sec. 7.3, 7.4, 4.4.1, 6.3.14.B.2 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved 8-0; Public Hearing Closed 11/12/2019

Note: Attorney Franklin Schwarzer, offices of Schlesinger and Buchbinder, 1200 Walnut Street, represented the petitioner, Needham Street Village Shops, LLC. Atty. Schwarzer explained that at the public hearing on October 3, 2019 Committee members expressed support relative to the animal service and dry cleaner uses at the site but concern relative to the for-profit educational use at the site. Councilors asked the petitioner to work with the Planning Department and Law Department to come up with a draft condition that allows for administrative review of the for-profit education use. Atty. Schwarzer noted that the revised draft language is satisfactory to the petitioner with the exception of the draft condition requiring the petitioner to use the door facing Needham Street at the site.

Chief Planner Jennifer Caira explained that there were some concerns relative to blanket approval of the for-profit educational use understanding that circulation requires additional review when there are children and constant turnover. The draft condition allows Planning to administratively review the use at the site for classes; a.) with any age of students with no standardized classes (staggered pick-up and drop-off times) or b.) for any class size of less than 15 students with students over the age of 18. Ms. Caira noted that the petitioner could use the rear door of the facility but should also be required to maintain the Needham Street door for increased vitality on the street. Atty. Schwarzer noted that there could be tenants who require a secure door at the Needham Street side (i.e. a medical office). Committee members

expressed support for increased vitality on the street but understand that the development has had difficulty tenanting the site and acknowledge that there are instances where a tenant might not want two doors for operations.

No member of the public wished to speak. Councilor Kelley motioned to close the public hearing which carried unanimously. Councilor Crossley motioned to approve the petition. Committee members reviewed the draft findings and conditions as shown on the attached presentation. Committee members were supportive of the draft condition allowing Planning administrative review of the for-profit use and struck the language requiring use of the Needham Street door. With that, Committee members voted unanimously in favor of approval.

#354-19 Special Permit to allow multi-family dwelling at 13-17 Gardner Street

CIVICO GARDNER, LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to combine two parcels and construct a five-unit multi-family dwelling, altering and extending a nonconforming front setback, altering and extending a nonconforming side setback, to waive one parking stall and to allow a retaining wall greater than four feet within a setback at 13-17 Gardner Street, Ward 1, Newton, on land known as Section 11 Block 25 Lots 5 and 6, containing approximately 16,579 sq. ft. of total land in a district zoned MULTI RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 3.4.1, 3.2.6, 7.8.2.C.2, 5.4.2.B, 5.1.4, 5.1.13 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Held 8-0; Public Hearing Continued

Note: Civico Architect Andrew Consigli represented the petitioner Civico Gardner, LLC. Mr. Consigli presented an overview of the proposed multi-family dwelling at 13-17 Gardner Street as shown on the attached presentation. Mr. Consigli noted that access to 17 Gardner is over an easement and 13 Gardner is accessed via a separate curb cut. The site of the proposed development has 16,200 sq. ft. of land in the Multi Residence 2 district. Mr. Consigli noted that the Historical Commission has reviewed the proposed plans for the site and waived the demolition delay. Mr. Consigli showed the proposed floor plans and proposed elevations (shown on the attached presentation). The height of the rear addition will not be higher than the existing height at 17 Gardner. Mr. Consigli noted that the rear of the sight is sloped, allowing parking to be located under the building and away from view. The proposed design is sustainably designed and LEED Certified.

Senior Planner Neil Cronin reviewed the requested relief, criteria for consideration, land use, zoning and proposed plans as shown on the attached presentation. Mr. Cronin confirmed that the Newton Historical Commission reviewed the existing structures and found both structures preferably preserved for historic context and imposed a one-year demo delay. The demo delay was waived after seeing the proposed plans. The Planning Department is supportive of the petition, which is located in a dense neighborhood, has small units and replicates the historic structures. Mr. Cronin noted that the Planning Department recommends extending the grass strip at the front of the site, reduce the width of a curb cut, provide a caliper inch analysis and use good faith efforts to work with the abutter at 212-25 Gardner Street to close an existing curb cut.

The Public Hearing was Opened

Daniela Boccia, 7-9 Gardner Street, submitted the attached photos and petition signed by residents of the neighborhood who are opposed to the petition. Ms. Boccia noted that the community has many children and elderly residents who walk around the neighborhood. She expressed concerns relative to the increase in traffic, safety, drainage and the lack of proposed open space.

Drew Freedman, 27 School Street, questioned where the garage and storage spaces and noted that residents may park on the street.

Michelle Freedman, 27 School Street, noted that the garages will be used for storage and residents may park on site. Ms. Freedman expressed concerns relative to the increase in number of cars at the site.

Atty. Terry Morris, 5-7 Elm Road, represented the property owners at 21-25 Gardner Street. Atty. Morris explained that there is no agreement relative to the easement at 21-25 Gardner Street.

Councilors shared concerns that limited community outreach was performed and that the Ward Councilors were not contacted. Mr. Davide Visco stated that they canvassed the neighborhood and left information for residents. Ward Councilors confirmed that they will be happy to facilitate a neighborhood meeting. With that, Councilor Greenberg motioned to hold the item which carried unanimously.

#355-19 **Special Permit to extend nonconforming use for multi-family dwelling at 148 Pine St**
PHILIP MASTROIANNI petition for SPECIAL PERMIT/SITE PLAN APPROVAL to change the existing nonconforming use from the existing two-family use to allow a three single-family dwellings in the SR3 district, to further extend the nonconforming lot area per unit, to further extend a nonconforming front setback and to allow a retaining wall in excess of four feet within a setback at 148 Pine Street, Ward 4, Auburndale, on land known as Section 44 Block 17 Lot 32, containing approximately 18,235 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 7.3.3, 7.4, 3.4.1, 7.8.2.C.2, 3.1.3, 5.4.2.B

Action: **Land Use Approved Withdrawal without Prejudice 7-0 (Auchincloss not Voting)**

Note: Committee members reviewed the request to withdraw the petition without prejudice. It was noted that a new petition may be submitted next term. Committee members expressed no concerns relative to the request and voted 7-0 in favor of allowing withdrawal of the petition without prejudice.

#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 Approved 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 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 Approved 6-0-2 (Markiewicz, Schwartz abstaining; Public Hearing Closed 09/24/2019)**

Note: Chief Planner Jennifer Caira, Associate City Solicitor Jonah Temple and Director of Planning and Development Barney Heath joined the Committee for the discussion. Committee members continued review of the draft Council Order dated October 25, 2019 (shown attached).

Committee members reviewed the **Draft Conditions Related to Affordability** and expressed no concerns but expressed general support relative to the inclusion of inclusionary units at lower levels of Area Median Income (AMI) for the proposed development and future developments.

Committee members reviewed the **Conditions Related to Construction**. Committee members made the following changes to the Council Order.

Condition 35d. Expand to require hosing during demolition and earth work.

Condition 36. The second sentence should be replaced with "The O&M plan shall be consistent with the memorandum to the City Engineer dated June 6, 2019 on file with the Engineering Department and the Planning Department. Ms. Caira noted that while there is no new impervious area at the site, the City

Engineer has requested that they treat the site as if it is entirely pervious. The petitioner has agreed to do this with discretion of the City Engineer.

Condition 40. Include a Ward 8 Council Representative.

Condition 40b. Replace ~~Ward 5 City Councilors~~ with Councilors on the Liaison Committee.

Condition 40c. Notes shall be posted at the discretion of the Liaison Committee.

Condition 48. Councilors discussed timing of undergrounding utilities at and around the site. Atty. Schlesinger noted that the petitioner must coordinate timing of the undergrounding work with property owners, Mass DOT and the utility companies. He confirmed that undergrounding of the utilities at the site is a priority for the petitioner. Committee members asked that the condition be modified to require undergrounding as soon as is practically feasible at Christina/Charlemont Street *and* Needham/Tower/Oak. Additionally, Committee members asked that Planning and Law work to modify the language requiring the petitioner to underground the utilities unless it is not commercially reasonable (subject to the review of the Planning Department).

Condition 49. Committee members agreed to strike the language “or contains conditions that are technically or financially infeasible”.

Condition 51. Committee members asked that “low” be better defined.

Ms. Caira and Atty. Temple confirmed that any contamination at the site will be addressed according to state requirements and the regulations imposed by Massachusetts Department of Environmental Protection (DEP). Ms. Caira noted that the subsurface investigations have not indicated reportable conditions.

Committee members reviewed the **Conditions Related to Sustainability**. Committee members made the following changes to the Council Order.

Committee members questioned why “certain buildings” are expected to be solar ready and not all buildings. Councilors noted that the petitioner has represented that the design will be sustainable. Ms. Caira explained that there is some flexibility with regard to the solar facilities given the petitioner’s commitment to a Passive House Design (on as many buildings as feasible). A Committee member noted that some outdoor roof spaces (possibly lower roofs) could be used for beneficial living space (decks, gardens). Councilors agreed that roofs that are not required for mechanical or living space should be made solar ready to the extent possible.

57c. Change to “In all residential units, and otherwise where applicable, the Petitioner will utilize all electric “Energy Star” or their equivalent appliances, except that domestic hot water equipment may utilize natural gas as an energy source”

57h. Change to Drought tolerant and indigenous plants will be the **predominant** species used in the landscape ~~design~~.

Committee members discussed conditions to require (not investigate feasibility) implementation of sustainability measures. A Committee member suggested that the petitioner has not had an opportunity to determine the full extent of which sustainability measures can be incorporated but has committed to implementing whichever sustainability measures are possible. Atty. Schlesinger noted that the draft language was used in another Council Order and confirmed that the petitioner intends to investigate and implement whatever measures are feasible. Ms. Caira explained that the petitioner is required to meet LEED silver in portions of the project and will be certifiable at the gold level for the new buildings. She stated that the petitioner will investigate LEED gold certification for the entire project.

Committee members reviewed the **Parking Conditions**. A Councilor questioned whether residents will park on the street during warmer months and use on-site parking exclusively during the winter parking ban to save money. Committee members asked that the Planning Department work with the Law Department to draft language relative to parking lease terms.

Committee members reviewed **Other Conditions and Conditions Precedent to the issuance of any Building Permits**, as well as the attached draft Splash Park language.

Committee members reviewed the draft findings. Councilors deliberated whether the criteria that the project does not “adversely affect the neighborhood” is defined by the positive benefits that the project offers or specific reasons why it does not adversely affect the neighborhood. Committee members agreed that benefits and specific reasons why it does not adversely affect the neighborhood should be included. Committee members asked that the Law Department and Planning Department provide a memo that accompanies the draft Council Order and reflects the changes made. After a review of the full Order, Councilor Crossley motioned to approve the request to rezone #425-18 which carried 8-0. Councilor Crossley motioned to approve the Special Permit petition #426-18 which carried 6-0-2 Councilors Schwartz and Markiewicz abstaining. With that, the Committee adjourned at 11:45 pm.

Respectfully Submitted,

Greg Schwartz, Chair

Department of Planning and Development



**PETITION #620-18 (2)
55-71 NEEDHAM STREET**

SPECIAL PERMIT/SITE PLAN
APPROVAL TO AMEND
SPECIAL PERMITS #213-12
(1), 213-12 (2) AND 62-18
TO ALLOW ADDITIONAL
USES AT 55-71 NEEDHAM
STREET



NOVEMBER 12, 2019

1

Requested Relief




Special Permit per §7.8.2.C.2 of the NZO to:

- Amend Special Permits 213-12 (1) and (2) and 620-18
- To allow a for-profit educational use (§4.4.1, §6.3.14.B.2)
- To allow animal services, dry cleaners and health club on the ground floor (§4.4.1)

2

Criteria to Consider




When reviewing this request, the Council should consider whether:

- The specific site in a MU-1 zone is an appropriate location for the proposed uses. (§7.3.3.C.1)
- The proposed uses will adversely affect the neighborhood. (§7.3.3.C.2)
- The proposed uses 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)

3

Planning Administrative Approval



1. Any age of student with no standardized classes, e.g. drop in model

OR

2. Class sizes of less than fifteen students, and the students are older than eighteen years of age.

4

Proposed Findings

1. The specific site is an appropriate location for the proposed uses because the site is located in an area containing a mix of uses and the proposed use is compatible with that mix. (§7.3.3.C.1.)
2. The proposed uses will not adversely affect the neighborhood given the mixed-use nature of the area. (§7.3.3.C.2.)
3. The proposed uses will not create a nuisance or serious hazard to vehicles or pedestrians because the use does not require any alterations to the site. (§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

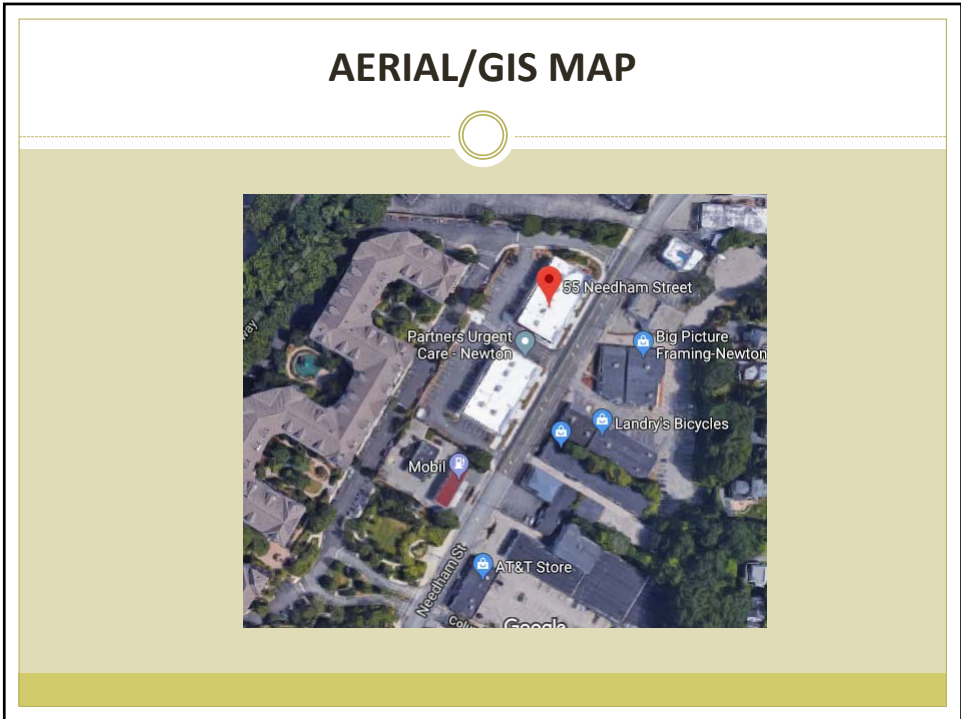
Proposed Conditions

- Standard plan referencing condition
- Standard building permit condition
- Standard Certificate of Occupancy condition
- All signage shall be reviewed and approved by the Urban Design Commission.
- Tenants shall locate their front door to Needham Street and any future health club use shall maintain transparency along Needham Street.
- The for-profit educational use and ground floor health club shall only be approved administratively by the Planning Department if it meets the following:
 1. Any age of student with no standardized classes, e.g. drop in model

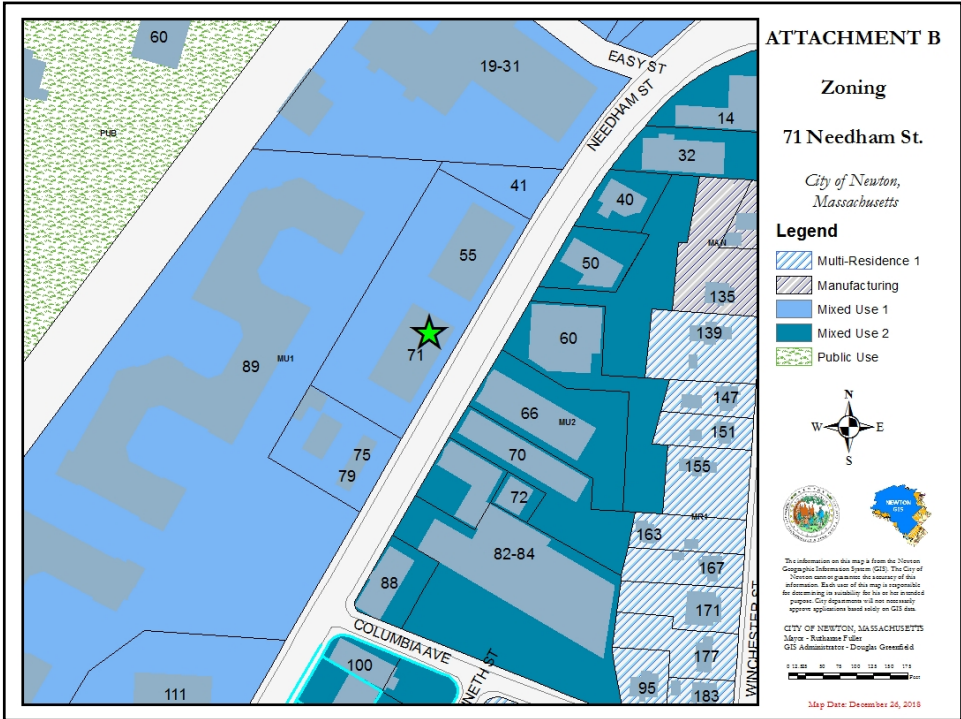
OR

 2. Class sizes of less than fifteen students, and the students are older than eighteen years of age.

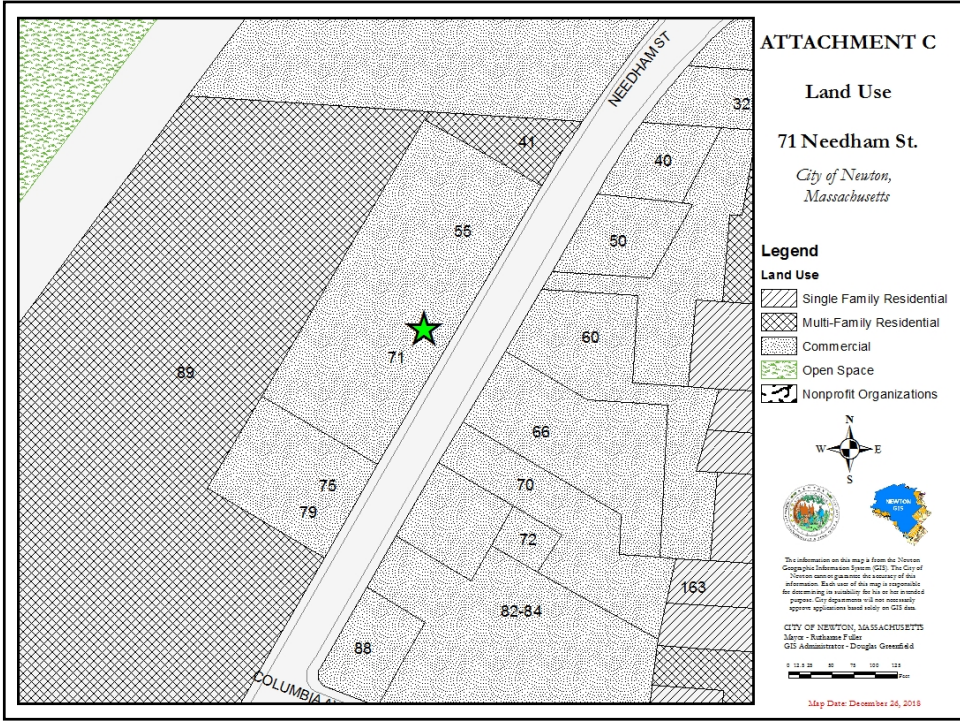
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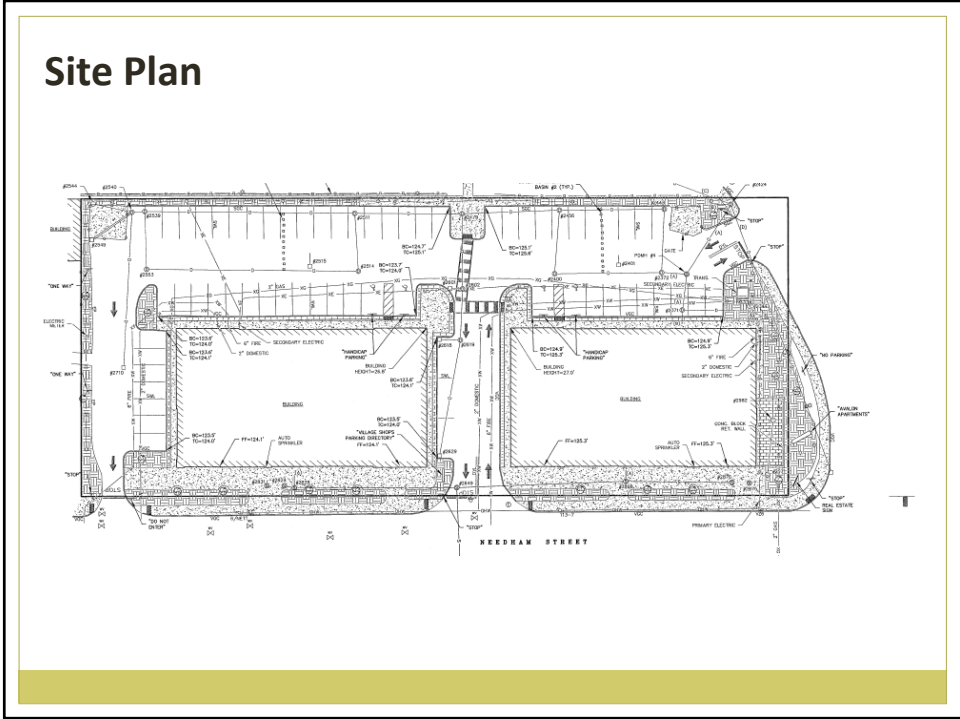
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8



9



10

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 amend Special Permit Board Orders #213-12(1), #213-12(2), and #620-18 to allow a for profit educational use, animal services, dry cleaners and ground floor health club uses at 55-71 Needham Street as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Gregory Schwartz:

1. The specific site is an appropriate location for the proposed uses because the site is in an area containing a mix of uses and the proposed uses are compatible with that mix. (§7.3.3.C.1.)
2. The proposed uses will not adversely affect the neighborhood given the mixed-use nature of the area. (§7.3.3.C.2.)
3. The proposed uses will not create a nuisance or serious hazard to vehicles or pedestrians because the use does not require any alterations to the site. (§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.)

PETITION NUMBER: #620-18(2)

PETITIONER: Needham Street Village Shops

LOCATION: 55-71 Needham Street, Section 51, Block 28, Lot 20, containing approximately 58,875 square feet

OWNERS: Needham Street Village Shops, LLC

ADDRESS OF OWNERS: 420 Bedford Street, Lexington, MA 02420

TO BE USED FOR: Mixed Use building

| | |
|--------------------|---|
| CONSTRUCTION: | One Story, multi-tenant, commercial building |
| EXPLANATORY NOTES: | To amend Council Orders #213-12 (1) and 213-12 (2) which authorized the redevelopment of the site for a mix of office, restaurant, retail, and service uses and Council Order #620-18 which allowed a bank use. §4.4.1 and §7.3.3 |
| ZONING: | Mixed Use 1 District |

The prior special permits for this property is as follows: Council Order #213-12(1), to construct two single story commercial buildings with an aggregate total gross area of 19,200 sq. ft.; to permit retail and/or service uses, to waive up to 6 parking stalls and certain dimensional requirements and associated landscaping, fencing, and lighting requirements for parking facilities greater than five stalls, to waive one required loading dock facility; and to allow a freestanding sign and the number of secondary signs and dimensional requirements for signs at 49, 55, and 71 Needham Street, Council Order #213-12(2), to permit a restaurant use(s) containing up to 110 seats in the multi-tenant commercial buildings authorized by Council Order #213-12(1); and to waive up to 8 parking stalls at 49, 55, 71 Needham Street and Council Order #620-18 that allowed a bank use on site. The conditions set forth in Council Orders #213-12(1), #213-12(2), and 620-18 remain in full force and effect.

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. As-built plan of Needham Street Village Shops dated January 23, 2015, signed and stamped by William J. Doucet, Professional Land Surveyor.
2. All signage shall be reviewed and approved by the Urban Design Commission.
3. Any future health club use shall maintain transparency along Needham Street.
4. The for-profit educational use and ground floor health club use shall only be approved administratively by the Planning Department if it meets either of the following:
 - a. Any age of student with no standardized classes, e.g. drop in model; or
 - b. Class sizes of less than fifteen students, and the students are older than eighteen years of age.
5. No Building Permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
 - a. Recorded a certified copy of this Board 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 Board Order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Obtained a written statement from the Department of Planning and Development that confirms plans submitted with any building permit are consistent with plans approved in Condition #1.
6. No Certificate of Occupancy/Final Inspection for the buildings and uses 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 or surveyor certifying substantial compliance with Condition #1.



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| | <p>13-17 GARDNER ST, NEWTON, MA 02458 JUNE 14, 2019 JOB NUMBER: 160101</p> | <p>EXISTING PHOTOS</p> | <p>SHEET NUMBER A-6</p> |



13-17 GARDNER ST, NEWTON, MA 02458
 JUNE 14, 2019
 JOB NUMBER: 160101

EXISTING PHOTOS

SHEET NUMBER
A-7



View along Gardner



Gardner Street Elevation



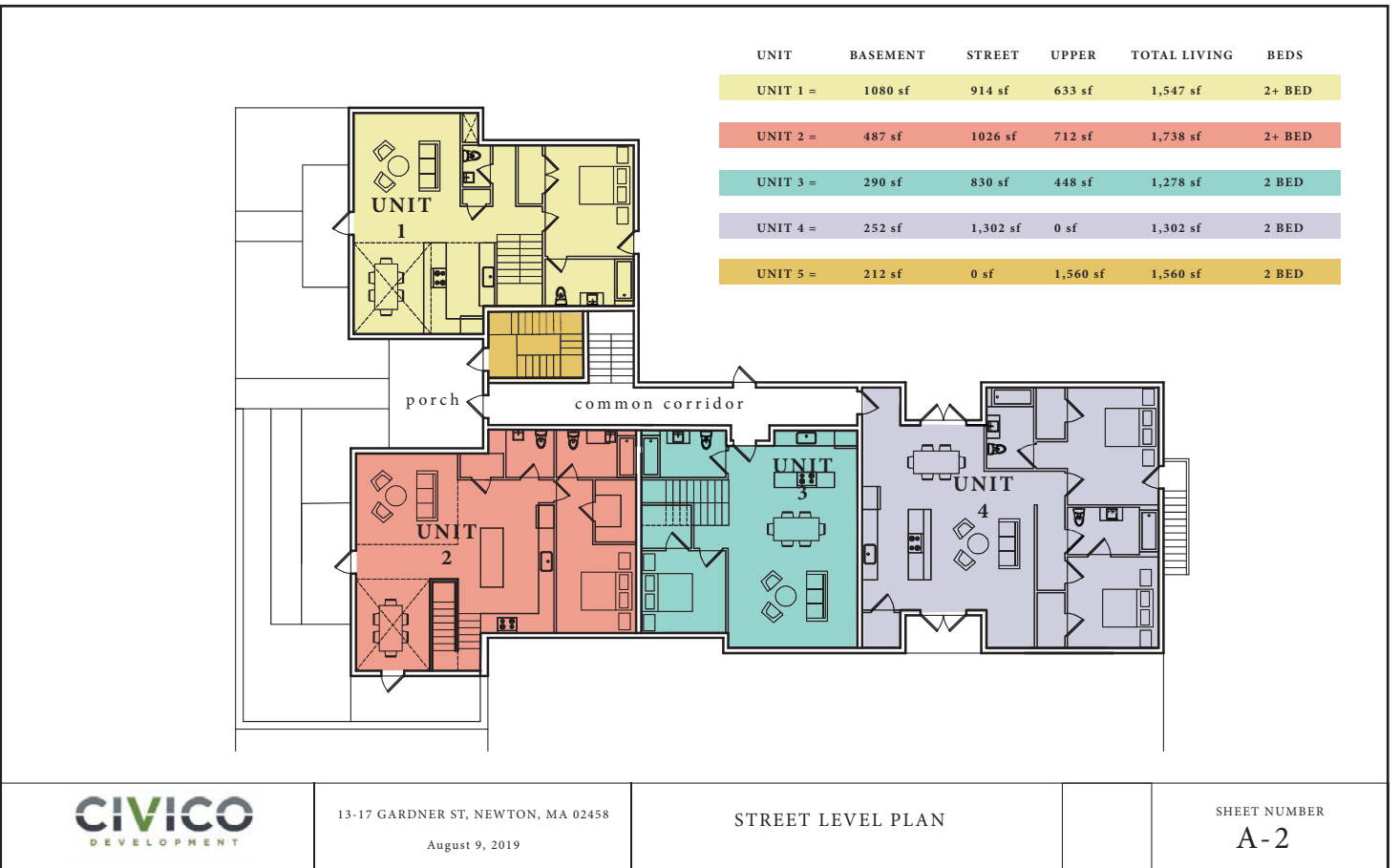
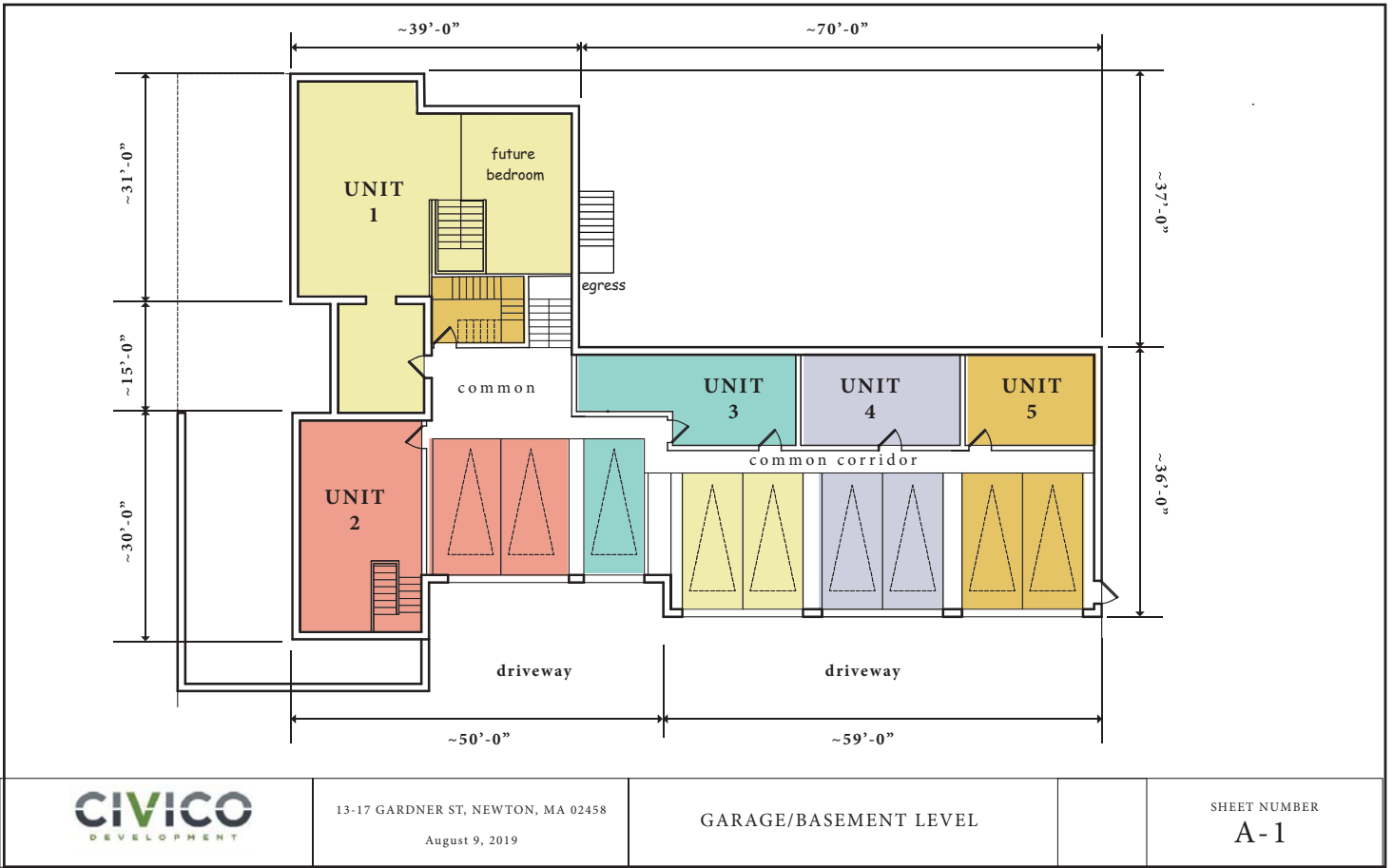
Side Elevation

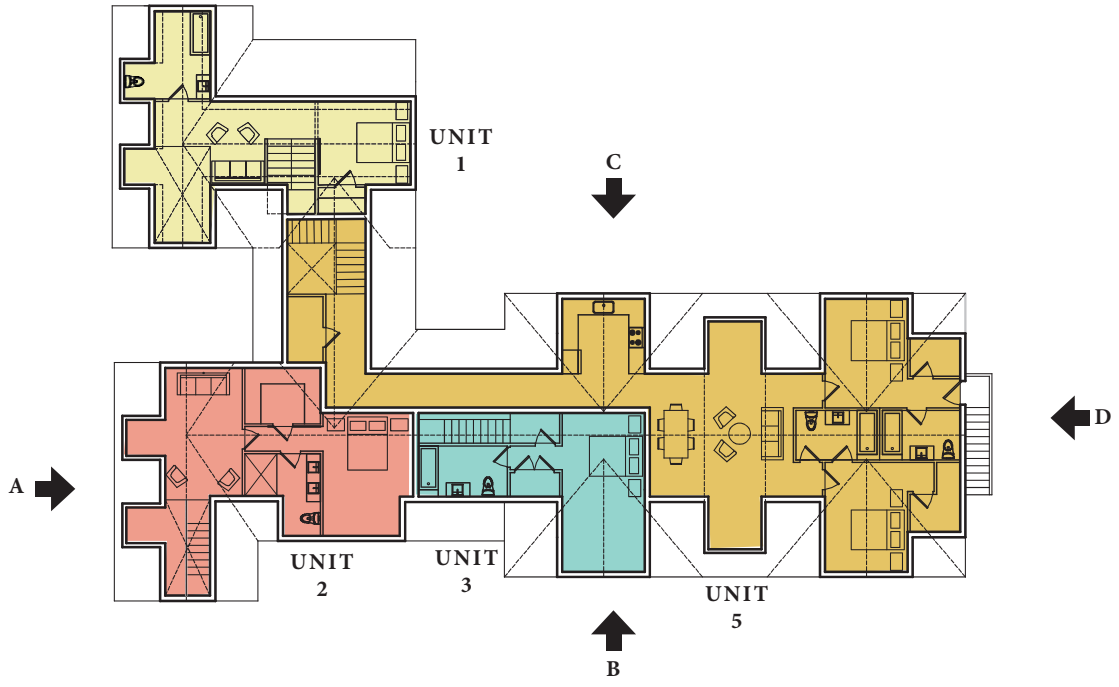
Proposed Residential Project at 13-17 Gardner Street

- Rebuilding Two Historic Homes Along Gardner Street To Maintain Character Of Existing Neighborhood
- Height Of Rear Addition Will Not Exceed Height Of Existing Homes Fronting Gardner Street
- Front And Side Setbacks Will Not Be Increased
- Only Two Additional Units Will Be Added
- Average Unit Size Is 1,400 Sf | Two Bedrooms Appealing To Young Professionals And Empty Nesters
- Propose All Cars To Be Garage Parked; Currently No Garage Space For Existing Units Exist
- Only One Driveway Entrance Required, Eliminating The Need For The Two That Exist.
- Award Winning Architect And Development Team
- Highly Sustainable Green Building Techniques
- Recent Projects At 131 Charlesbank And 19-23 Orchard Street Are Recent Built Examples In The Nonantum / Newton Corner Neighborhoods.



www.civicodevelopment.com
 508.400.0809





13-17 GARDNER ST, NEWTON, MA 02458
August 9, 2019

UPPER LEVEL PLAN

SHEET NUMBER
A-3

A-Front Elevation



B-Side Elevation

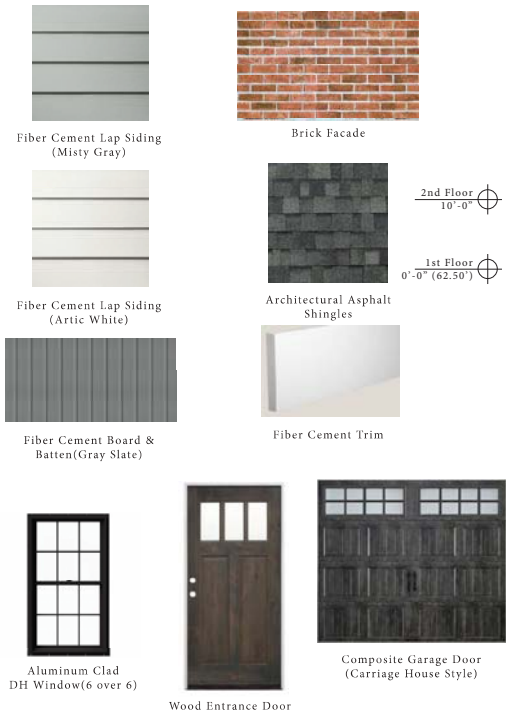


13-17 GARDNER ST, NEWTON, MA 02458
August 9, 2019

ELEVATIONS

SHEET NUMBER
A-4

Proposed Materials



13-17 GARDNER ST, NEWTON, MA 02458
August 9, 2019

ELEVATIONS

SHEET NUMBER
A-5



13-17 GARDNER ST, NEWTON, MA 02458
August 9, 2019

LANDSCAPE PLAN

SHEET NUMBER
A-6



Charlesbank Road



Watertown Street



Department of Planning and Development



PETITION #354-19
13 AND 17 GARDNER STREET

SPECIAL PERMIT/SITE PLAN APPROVAL TO ALLOW A FIVE-UNIT MULTI-FAMILY DWELLING, TO EXTEND NONCONFORMING FRONT AND SIDE SETBACKS, TO WAIVE ONE PARKING STALL, AND TO ALLOW A RETAINING WALL EXCEEDING FOUR FEET IN HEIGHT WITHIN THE SETBACK



OCTOBER 12, 2019

1

Requested Relief



Special permits per §5.1.13, 7.3.3, and 7.8.2.C.2 of the Newton Zoning Ordinance to:

- Allow a five-unit multi-family dwelling (§3.4.1).
- Extend the nonconforming front setback (§3.2.6).
- Extend the nonconforming side setback (§3.2.6).
- Waive one parking stall (§5.1.4).
- Allow a retaining wall of four feet in height within the setback (§5.4.2.B and §7.3.3)

2

Criteria to Consider

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

- The specific site is an appropriate location for the proposed multi-family dwelling. (§7.3.3.C.1)
- The multi-family dwelling as developed and operated will adversely affect the neighborhood. (§7.3.3.C.2)
- The multi-family dwelling 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)

3

Criteria to Consider Continued

- The proposed extensions in the nonconforming front and side setbacks are substantially more detrimental than the existing nonconforming setbacks are to the neighborhood. (§3.2.6 and §7.8.2.C.2)
- Literal compliance with the parking requirements is impractical due to the nature of the use, or the location, size, frontage, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features. (§5.1.4 and §5.1.13)
- The specific site is an appropriate location for a retaining wall of four feet in height within the front setback. (§5.4.2.B)

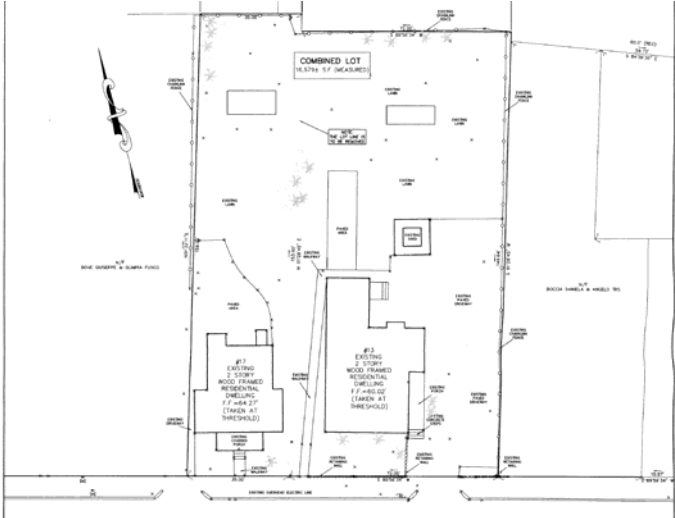
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AERIAL/GIS MAP



5

Existing Site Plan



6

Proposed Front and East Elevations



9

Proposed West and Rear Elevations



10

Analysis

- The Planning Department is supportive of the petition due to its efforts in historic replication, providing smaller unit sizes, and locating housing within a dense neighborhood, near Newton Corner.
- Staff suggests that the petitioner consider extending a portion of the green strip along the eastern boundary to the street, reducing the width of the curb cut, subject to Newton Fire Department approval and provide a caliper inch analysis.
- Staff suggests that the petitioner use good faith efforts to work with the abutter at 21-25 Gardner Street to close the curb cut.

11

Findings

1. The specific site is an appropriate location for the proposed five-unit, multi-family dwelling because multi-family dwellings are an allowed use in the Multi-Residence 2 zone and the proposed dwelling exceeds the lot area per unit required of multi-family dwellings (§3.4.1 and §7.3.3.C.1)
2. The proposed multi-family dwelling as developed and operated will not adversely affect the surrounding neighborhood because the petitioner is replicating the location and the architecture of two existing structures and the addition containing three dwelling units exceeds the setback requirements. (§7.3.3.C.2)

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Findings Continued

3. There will be no nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
5. The proposed extension in the nonconforming front setback from 14.9 feet to 8.8 feet, where 11.3 feet is the maximum required is not substantially more detrimental than the existing nonconforming structure is to the neighborhood because such placement reflects the built environment of Gardner Street. (§3.2.6 and §7.8.2.C.2)

13

Findings Continued

6. The proposed extension in the nonconforming side setback from 1.7 feet to 1.9 feet, where 7.5 feet is the maximum required is not substantially more detrimental than the existing nonconforming structure is to the neighborhood because such placement reflects the location of an existing historic structure. (§3.2.6 and §7.8.2.C.2)
7. The Council finds that waiving one parking stall is in the public interest because it preserves open space and increase choice for residents. (§5.1.4 and §5.1.13)
8. The Council finds the site is an appropriate location for a retaining wall exceeding four feet in height within the front setback due to the grade Gardner Street. (§5.4.2.B and §7.3.3)

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Conditions



1. Standard Plan Reference Condition.
2. The petitioner shall comply with the Tree Preservation Ordinance.
3. All utilities shall be located underground from the property line.
4. Operations and Maintenance (“O&M”) Plan Condition.
5. Approval Not Required (“ANR”) Plan Condition.
6. Final Landscape Plan Condition.
7. NHC Approval Condition
8. Standard Building Permit Condition.
9. Standard CO Condition.

Lincoln- Eliot Elementary School
GARDNER STREET



GARDNER STREET



- Vehicles trying to drive thru
- Vehicles parked on both sides of Gardner St. plus driveway
- ONE Driveway with 10+ vehicles entering and exiting would create an additional hazard for pedestrians, and **children that walk to school**
- We have a **blind** resident, a **handicapped** resident, numerous **elderly** residents, and **children**.
ALL of these people require extra time when getting in and out of vehicles when they are being picked up, or dropped off.
Additional traffic from additional units would adversely affect the neighborhood.

- As is, residents at 12 Gardner St. and 13 Gardner St. can NOT freely enter/exit their driveways; you have to take turns.
- 10+ vehicles entering and exiting this driveway would be a nuisance, and hazard to vehicles, and pedestrians.
- 10+ vehicles entering and exiting one driveway would be would adversely affect residents at 12 Gardner St.
- A **child** gets dropped off here everyday.
- Eleni Orfanidis is having complications from knee replacement surgery, and is **handicap**.



13 Gardner
Proposal brings 10+ vehicles here
12 Gardner

Corner of Gardner St and School S
Vehicles parked on street



Bove family
Residents **50+** years

Handicapped
Resident

Elderly Widower
Boccia Ricci family
(4 generations)
Residents **45+** years



Easement

Blind

Resident
McCurtin family
Residents **27** years

Elderly
Children
Orfanidis family
Residents **48+** years

Elderly Widow
Parivury family
Residents **45+** years

Easement

Lots sorted by size (largest to smallest)

| | Address | # Units | Lot (S.F.) | Lot (S.F.) per Unit | Proposed Lot (S.F.) per Unit |
|---------|-----------------------|----------|---------------|---------------------|---------------------------------|
| 1 | 31 Gardner St. | 1 | 12401 | 12401 | 12401 |
| 2 | 13 Gardner St. | 2 | 11016 | 5508 | 3672 With 3 units |
| 3 | 25 Gardner St. | 2 | 10904 | 5452 | 5452 |
| 4 | 20-24 Gardner St. | 3 | 10450 | 3483 | 3483 |
| 5 | 50 Gardner St. | 2 | 8311 | 4156 | 4156 |
| 6 | 21 Gardner St. | 1 | 7821 | 7821 | 7821 |
| 7 | 7-9 Gardner St. | 2 | 7361 | 3681 | 3681 |
| 8 | 30 Gardner St. | 1 | 7098 | 7098 | 7098 |
| 9 | 99-101 Pearl St | 2 | 6814 | 3407 | 3407 |
| 10 | 41 Gardner St. | 1 | 6802 | 6802 | 6802 |
| 11 | 107 Pearl St | 2 | 6790 | 3395 | 3395 |
| 12 | 3-5 Gardner St. | 2 | 6300 | 3150 | 3150 |
| 13 | 14 School St. | 1 | 5996 | 5996 | 5996 |
| 14 | 36-38 Jewett St | 2 | 5680 | 2840 | 2840 |
| 15 | 15-17 Jewett St | 2 | 5600 | 2800 | 2800 |
| 16 | 17 Gardner St. | 1 | 5515 | 5515 | 2758 with 2 units |
| 17 | 12 Gardner St. | 2 | 4964 | 2482 | 2482 |
| 18 | 113 Pearl St | 1 | 4518 | 4518 | 4518 |
| 19 | 55-57 Gardner St. | 2 | 4412 | 2206 | 2206 |
| 20 | 52 Gardner St. | 1 | 4267 | 4267 | 4267 |
| 21 | 51-53 Gardner St. | 2 | 4238 | 2119 | 2119 |
| 22 | 47-49 Gardner St. | 2 | 4062 | 2031 | 2031 |
| 23 | 32 School St. | 1 | 3502 | 3502 | 3502 |
| 24 | 6-8 Gardner St. | 2 | 3480 | 1740 | 1740 |
| 25 | 60 Gardner St. | 1 | 3375 | 3375 | 3375 |
| 26 | 27 School St. | 1 | 3242 | 3242 | 3242 |
| 27 | 105 Pearl St | 1 | 3238 | 3238 | 3238 |
| 28 | 33 School St. | 1 | 3152 | 3152 | 3152 |
| 29 | 14-16 Gardner St. | 2 | 2738 | 1369 | 1369 |
| 30 | 20 School St. | 1 | 2625 | 2625 | 2625 |
| 31 | 17 School St. | 1 | 2520 | 2520 | 2520 |
| 32 | 105R Pearl St | 1 | 2282 | 2282 | 2282 |
| 33 | 29 School St. | 1 | 2276 | 2276 | 2276 |
| 34 | 46 Gardner St. | 1 | 2206 | 2206 | 2206 |
| 35 | 22 School St. | 1 | 2080 | 2080 | 2080 |
| 36 | 43 School St. | 2 | 2013 | 1007 | 1007 |
| 37 | 28 School St. | 2 | 2000 | 1000 | 1000 |
| 38 | 95 Pearl St | 1 | 1930 | 1930 | 1930 |
| 39 | 39 School St. | 1 | 1715 | 1715 | 1715 |
| 40 | 30 School St. | 1 | 1676 | 1676 | 1676 |
| 41 | 18 School St. | 1 | 1345 | 1345 | 1345 |
| 42 | 97 Pearl St | 1 | 1284 | 1284 | 1284 |
| 43 | 44 Gardner St. | 1 | 1281 | 1281 | 1281 |
| 44 | 24 School St. | 1 | 1200 | 1200 | 1200 |
| 45 | 24R School St. | 1 | 1200 | 1200 | 1200 |
| 46 | 30R School St. | 1 | 965 | 965 | 965 |
| 47 | 42 Gardner St. | 1 | 897 | 897 | 897 |
| | | | 205542 | 150234 | 145640 |
| Average | | | 4373 | 3196 | 3099 |
| | | | Lot (S.F.) | Lot (S.F.) per Unit | Proposed Lot (S.F.) per Unit |

Neighbors OPPOSED to 5 unit development at 13 and 17 Gardner St. Newton MA 02458

| Name | Signature | Address | Phone Number | Date |
|--------------------|-----------------|--|--------------|----------|
| 1 Wilma Parvins | Wilma Parvins | 8 Gardner St. Newton | 617-965-3563 | 11/11/19 |
| 2 Robert Parvins | Bob Parvins | 6 Gardner St. Newton | 617-833-5705 | 11/11/19 |
| 3 Harro Leung | Harro Leung | 29 School St Newton | 617-335-9880 | 11/11/19 |
| 4 Adam Gushi | Adam Gushi | 14 Gardner St Newton | 617-640-9257 | 11/11/19 |
| 5 Despina Konaras | Despina Konaras | 101 Pearl St. Newton | 617-538-8383 | 11/11/19 |
| 6 Stone O'Farrell | Stone O'Farrell | 12 Gardner St | 619-9654215 | 11/11/19 |
| 7 Ebru Aksoy | Ebru Aksoy | 12 Gardner St | 617-9654215 | 11-11-19 |
| 8 Antimio Letizia | Antimio Letizia | 9 Gardner St | 617-8244944 | 11-11-19 |
| 9 Stephen Plitkin | Stephen Plitkin | 6 JEWETT PLACE | | |
| 10 Dan O'Connor | Dan O'Connor | 30 School Street | | |
| 11 Joe Conti | Joe Conti | 39 School St. | 857-6361058 | |
| 12 CHARLIE ROMNEDS | Charlie Romned | 12 Gardner St New Apt | 781-7886799 | 11/11/19 |
| 13 Daniela Beers | Daniela Beers | 32 SCHOOL ST | 617-792-3300 | 11-11-19 |
| 14 Eleni Rommes | Eleni Rommes | 79 Gardner St (7-9) ^{Toussie} | 617-710-0724 | 11-11-19 |
| 15 Eleni Rommes | Eleni Rommes | 32 SCHOOL ST | 617-9695154 | 11-12-19 |
| 16 Eleni Rommes | Eleni Rommes | 12 Gardner St Newton 02458 | 617-513-4600 | 11/11/19 |
| 17 Richard Smith | Richard Smith | 84 Boyd St Newton | 617-964-1041 | 11/12/19 |
| 18 Kean Santora | Kean Santora | 54 Boyd St. Newton | 617-964-4041 | 11/12/19 |
| 19 | | | | |
| 20 | | | | |
| 21 | | | | |

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 Trementozzi 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 1350~~ 9 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 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 #~~657~~, 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, prior 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.g.~~ 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.

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 provide adequate water, sewer, and electricity connections to the public splash park at its own cost.

~~a.b.~~_____ 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. Prior to submission of final design plans for review and approval, the Petitioner shall periodically meet with, update, and solicit input and feedback from the City of Newton during the feasibility, schematic design, design development, and construction document phases. 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.c.~~ 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.d.~~ 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.e.~~_____ 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, provided that the Commissioner of Inspectional Services may determine that delivery should be deferred to a later date due to construction and safety conditions on the Site.