



## Land Use Committee Report

### City of Newton

### In City Council

**Tuesday, February 7, 2017**

**Present:** Councilors Laredo (Chair), Schwartz, Crossley, Lennon, Cote, Harney, Auchincloss

**Absent:** Councilor Lipof

**Also Present:** Councilors Albright, Yates, Norton

**City Staff:** Director of Planning and Development Barney Heath, Chief Planner Alexandra Ananth, Deputy City Solicitor Ouida Young, Associate City Solicitor Robert Waddick

- #180-16 (2)** MARK NEWTONVILLE, LLC petition for a change of zone to Mixed Use 4 for land located at 22 Washington Terrace, 16-18 Washington Terrace, 10-12 Washington Terrace, 6-8 Washington Terrace, 875 Washington Street, 869 Washington Street, 867 Washington Street, 861-865 Washington Street, 857-859 Washington Street, 845-855 Washington Street, 245-261 Walnut Street (a/k/a 835-843 Washington Street), 241 Walnut Street, 22 Bailey Place, 14-18 Bailey Place, and an unnumbered lot on Bailey Place, also identified as Section 21, Block 29, Lots 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 19A, 20, 21, 22, and 23, Ward 2, currently zoned Business 1, Business 2, and Public Use, further described as follows: Beginning at a point on the northerly line of Washington Street, running thence; Along the northerly line of Washington Street, south 89 degrees - 04 minutes - 40 seconds west, a distance of 433.14 feet to a point; thence Along the easterly line of Washington Terrace north 02 degrees - 03 minutes - 34 seconds west, a distance of 278.34 feet to a point, thence, the following four (4) courses along the existing zone lines of MR-1 and MR-3:  
North 86 degrees - 11 minutes - 41 seconds west, a distance of 15.07 feet to a point; thence  
North 01 degrees - 52 minutes - 35 seconds west, a distance of 3.01 feet to a point; thence  
South 86 degrees - 11 minutes - 41 seconds east, a distance of 85.43 feet to a point; thence  
North 88 degrees - 31 minutes - 34 seconds east, a distance of 370.56 feet to a point on the westerly line of Walnut Street; thence  
Along the westerly line of Walnut Street, south 04 degrees - 12 minutes - 48 seconds east, a distance of 261.82 feet to a point of curvature; thence  
Along a curve to the right having a radius of 17.00 feet, a central angle of 93 degrees - 17 minutes - 28 seconds, an arc length of 27.68 feet, a chord bearing of south 42 degrees - 25 minutes - 56 seconds west, a chord length of 24.72 feet to the point and place of beginning.

Containing 123,765 square feet, or 2.84 acres, more or less.

**Action:** Land Use Held 7-0

#179-16 MARK NEWTONVILLE, LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a mixed use development in excess of 20,000 square feet consisting of three interconnected buildings with building heights not exceeding 60 feet and five stories, total gross floor area not exceeding 235,000 square feet incorporating not more than 163 residential units, not exceeding 45,000 square feet of commercial space, not exceeding 2,500 square feet of community space, not less than 350 onsite parking stalls outside at grade or within a below-grade garage, and related site improvements; to authorize 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; to allow FAR of not more than 1.90, lot area per dwelling unit of approximately 775 square feet, reduction of the overall non-residential parking requirement by 1/3, 1.25 parking stalls per residential unit, and free standing signs; to grant waivers of not more than 97 parking stalls and of the height setback and facade transparency and entrance requirements; to grant waivers of certain parking facility design standards including dimensional requirements for parking stalls, parking stall setback requirements, entrance and exit driveways, interior landscaping, interior planting area, tree plantings, bumper overhang, lighting of one foot candle, curbing and surfacing, wheel stops, guard rails, bollards, and maneuvering space for end stalls; and to grant waivers as to number, size, location, and height of signs and number of required loading bays, at 22 Washington Terrace, 16-18 Washington Terrace, 10-12 Washington Terrace, 6-8 Washington Terrace, 875 Washington Street, 869 Washington Street, 867 Washington Street, 861-865 Washington Street, 857-859 Washington Street, 845-855 Washington Street, 245-261 Walnut Street (a/k/a 835-843 Washington Street), 241 Walnut Street, 22 Bailey Place, 14-18 Bailey Place, and an unnumbered lot on Bailey Place, also identified as Section 21, Block 29, Lots 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 19A, 20, 21, 22, and 23, containing approximately 2.84 acres of land in a proposed Mixed Use 4 District. Ref.: Sections 4.2.2.A.2; 4.2.2.B.1; 4.2.3; 4.2.5.A.2; 4.2.5.A.3; 4.2.5.A.4; 4.2.5.A.4.c; 4.2.5.A.6; 4.2.5.A.6a; 4.2.5.A.6.b; 4.4.1; 5.1.4.A; 5.1.4.C; 5.1.8.A; 5.1.8.A.2; 5.1.8.B; 5.1.8.B.1; 5.1.8.B.2; 5.1.8.B.6; 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; 5.1.10.B.3; 5.1.10.B.5; 5.1.12; 5.1.13; 5.2.13; 5.2.13.A; 7.3; and 7.4 of Chapter 30 of the City of Newton Revised Zoning Ordinances, 2015.

**Action:** Land Use Held 7-0

**Public Hearing Opened on June 7, 2016 and continued to July 12, September 13, October 6, 2016, November 1, 2016, November 29, December 15, 2016, January 12, 2017, January 31, 2017, February 7, 2017 and February 28, 2017.**

**Note:** The Chair introduced Councilors, City staff and the item before stating the Committee's intent to continue the review of the draft Council Order. He noted that the public comment would be limited to those unable to speak on January 31, 2017. All drafts orders, memos and plans can be found at the following address:

[http://www.newtonma.gov/gov/aldermen/special\\_permits/special\\_permits\\_2016.asp](http://www.newtonma.gov/gov/aldermen/special_permits/special_permits_2016.asp)

### **Public Comment**

Amy Wayne, 1616 Centre Street, is against rezoning the site to build a development that is primarily residential. She feels that the City needs more commercial space which she believes which will be less detrimental to the City's resources. Ms. Wayne has concerns about the traffic impacts in the neighborhood and does not believe Washington Place provides real affordable housing options.

Diane Prunte, 305 Winchester Street, urged Committee members to vote no on the rezoning because of the added density and traffic in the area and consequently the City. She believes that the project is too large for the area. Ms. Prunte noted that there are existing parking constraints and believes that this development will further strain the neighborhood. She feels that the developer should build within current zoning.

Tarik Lucas, 36 Central Avenue, noted that Peter Harrington's balloon demonstration was impactful. He noted that the Councilors should represent constituents' desires and not the developer's. He hopes that the Ward 2 Councilors will work with abutters to ensure that their concerns are heard.

Lynn Weisberg, 5 Alden Street, believes that the workforce housing units will be beneficial and believes that should weigh more heavily than whether the project counts on the SHI. She noted that the criteria for MU4 are met by this project. Ms. Weisberg urged Committee members to approve the rezoning and Special Permit based on the criteria for the MU4 as opposed to number of public comments.

Andrea Kelley on behalf of Sarah Laskey, 154 Oliver Road, who is a millennial and cannot afford to live in Newton. She believes that the approval of Washington Place will help to diversify

housing options. She believes that Newton is missing out on millennial spending because millennials are spending time and resources in more affordable communities.

Nina Clark, Upper Falls, noted that vintage buildings are examples of craftsmanship and design. Ms. Clark believes that the proposal will set a bad precedent for development on Washington Street.

Jonathan Stevens, 357 Washington Street, owner of J Stevens salon, noted that the petitioner has been respectful and receptive to feedback. He noted that the current buildings are not well maintained and the parking is inadequate. He hopes that the Council will enhance the project benefits and encourage additional retail. He requested that protesters refrain from protesting on the salon stoop.

Mari Wilson, 30 Foster Street, asked if public comment would be taken after the 3D model. It was confirmed that the public hearing would not be closed and there would be additional opportunity for comment.

#### **Petitioner's Presentation**

Vice President of Development, David Roache presented the 3D video of the proposed development. The video begins on Foster Street and travels south towards Walnut Street, demonstrating the proposed footprint, height and massing of Washington Place. Mr. Roache noted that the trees in the video represent general existing landscaping. The video shows pedestrian pathways, commercial space and streetscape improvements.

Committee members asked if a video could be created to capture the view from the backyards of the Foster Street abutters. Mr. Roache confirmed that the images could be added, but noted that there are existing renderings that show the view from the Foster Street backyards.

Principal for VCA, Steve Allen, added that the video is in addition to a 3D Sketch Up model that can be viewed after downloading the Sketch Up software. He stated that the program allows for viewers to manipulate the view to see the development from anywhere at or around the site but can take longer than the video (approximately 4 minutes) to view. Committee members requested that the petitioner be prepared to demonstrate the 3D model at a subsequent meeting. Both the 3D model and video are posted on the City's website.

**Review of the Draft Council Order**

The Council reviewed the findings as detailed in the Council Order dated February 3, 2017 and attached.

**13.** Chief Planner Alexandra Ananth noted that this finding has been changed to allow for medical office space as opposed to general office space. The Chair questioned the appropriateness of medical office space while trying to encourage an active streetscape. Ms. Ananth stated that some medical office spaces (i.e. urgent care facilities) typically have more windows and an open feel. Committee members noted that there are comparable locations with similar uses and that a small medical office could be appropriate. Also noted was that the addition of medical office space increases the number of services available at the site.

**14.** Committee members requested that “compatible with neighborhood context” be removed. Councilors noted that it is possible that a Council member could justify voting in favor of the project even if it is not consistent with the neighborhood.

**15.** Committee members discussed how compatibility can be a measure of massing and context in addition to height alone. Ms. Ananth noted that the height of the proposed structure is appropriate given the width of Washington Street.

Shadow studies demonstrate that shadow will be cast from the proposed structure on one North abutting property, in December, midday. Committee members discussed whether the Council could find that the shadows impact abutters because of this. Ms. Ananth stated that a 4-story by right project could be built closer to the abutting property and cast more shadows. Deputy City Solicitor Ouida Young noted that the Council’s finding relates to the adversity of the shadow and not whether shadow is cast onto an abutting property.

**16.** Portions of the site, on Washington Street are not pushed back 1’ for every foot above 40’ in order to comply with the setback requirements. Councilors noted that predominant massing on Washington Street and a predominant corner at Washington and Walnut Streets was encouraged by Committee members and Newtonville Area Council members. It was also noted that the massing on Washington Street pulls mass away from Foster Street.

**17.** The petitioner is not seeking exceptions to FAR, but the Council must find that the FAR is appropriate for the site.

**18.** Ms. Ananth confirmed that it is required that the Council find that the added density resulting from the reduction in lot area per unit from 1000 sq. ft. to 775 sq. ft. does not create traffic conditions that adversely affect the neighborhood.

**19.** Committee members asked for clarification from Planning on the need for this waiver for the next meeting.

**20.** In the MU4 zone, an entrance is required every 50' on the ground level. Because the petitioner does not know who the tenants at the site will be, they are seeking for flexibility to locate some larger spaces and waive the requirement for an entrance every 50'. Committee members deliberated if waiving the entrance requirement would detract from having an active streetscape. Mr. Korff stated that the configuration of the site is designed so that each retailer has a door facing the parking lot and the street. He noted that failure to waive the entrance every 50' would result in some retailers having three entrances. Committee members discussed ways to ensure the active streetscape would remain while being considerate of the petitioner's business concerns. Councilors determined that the petitioner should collaborate with the Planning Department and Urban Design Commission when planning the space.

**21.** These findings must be made for the exceptions to parking requirements. Committee members requested the following changes:

**a.** Remove subjective language

**b.** Reword the second sentence.

**c.** Remove the second sentence.

**d.** With Atty. Buchbinder's confirmation that all parking stalls on site (except for accessible stalls) would be 9'x18', Committee members requested that this finding reflect that the reduction in parking stall only relates to the length and not width. Committee members asked that the language referring to the availability of larger stalls be removed.

**e.** Remove reference to the turning template.

**f.** The Chair noted that the electric car charging stations are not relevant to the reduction in parking. Mr. Chavieno noted that the petitioner has requested additional zipcars, but will only receive them (per zipcar policy) if the demand exists.

**g.** The petitioner stated that the intent was to focus on screening the perimeter and not the sidewalk. They planned to increase sidewalk space in front rather than landscape the parking lot. Committee members had concerns about the lack of landscaping in the parking lot and asked the Planning Department to provide analysis of how much landscaping is being waived.

**h.** The Planning Department confirmed that the loading vehicles spaces and delivery vehicle spaces will be in the back and that they have no concerns about the number of loading areas. Attorney Buchbinder noted that there are two spaces in front at the site to allow for drop off/pickups (i.e. FedEx deliveries, family member drop-off). These spaces are located at the residential entrances. Committee members asked that the second sentence and reference to turning templates be removed.

**i.** This finding allows for reduced parking lot lighting. Planning supports this finding because it helps to protect abutters from an over lit lot.

**j.** Committee members requested that the petitioner show the site plan at a subsequent meeting to confirm that the waiver for some curbing, wheel stops, guard rails and bollards is appropriate.

**22.** Ms. Ananth confirmed that the petitioner has submitted sign bands which will need to be reviewed by the Urban Design Commission. Committee members requested that the Planning Department provide an overview of what the sign waivers specifically entail.

**23.** Committee members asked that this finding be reworded to reflect that safety at the site will be improved as a result of redesign.

**27.** Committee members requested that the second sentence be eliminated.

**29.** The Committee suggested that this finding be broken down into individual sub-findings and listed to improve clarity.

**31.** Committee members noted that the finding related to the community space should reflect that it is accessible to and a public benefit to the residents of the City of Newton.

### **Zone Change Discussion**

Committee members began the deliberation about the appropriateness of the zone change at the site to MU4, questioning if the site should be considered a commercial village center and how that is determined. Committee members asked where else in the City the Planning Department might think it were appropriate to rezone to MU4. Councilors agreed that using the ordinance's criteria would be helpful to guide the review of the appropriateness of the rezoning at the site. Committee members noted that in defining a commercial village center, consideration should be given to a resident's ability to access basic amenities in a short walking distance.

The Planning Department noted that MU4 could be located in the same locations that BU1 and BU2 zones exist. Ms. Ananth noted that office space can be located, above ground level in MU4 and commercial space remains appropriate in BU1/BU2 zones on the outer edge of MU4 zones. Councilors were in agreement that defining a plan to layout City zones is necessary and will define boundaries for village centers.

Some Councilors were supportive of the zone change, noting that the site is proximate to public transportation, encourages pedestrian activity, a social environment and sustainability. Councilors believed that the proposal is appropriate and designed thoughtfully in regard to architectural details including; varied massing, prominent corner details, balconies and garden spaces. Councilors noted that other comparable communities are allowing for multi-use developments. It was suggested that communities need to emphasize more sustainable and compact living.

Some Councilors were not supportive of the rezoning, noting that the proposed development does not allow for adequate commercial space. Councilors had concerns about the financial impacts on City residents as a result of eliminating too much commercial space. It was noted that the public transportation at the site is inadequate. Councilors also voiced concerns about the appropriateness of the mass on Washington Street.

The Public Hearing was continued to February 28, 2017 and the Committee adjourned at 10:00 pm.

**Respectfully submitted,**

**Marc C. Laredo, Chair**



DRAFT  
#179-16 \_\_\_\_\_  
2-3-17 revisions

CITY OF NEWTON  
IN CITY COUNCIL  
February \_\_\_\_\_, 2017

**Comment [AA1]:** Consider re-lettering the Schedules in the order in which they appear.

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 three interconnected buildings which incorporate 160 residential units (approximately 180,000 square feet), not exceeding 45,000 square feet of retail sales, service establishment, restaurant, health club, and/or medical office space, not less than 2,000 square feet of office/community space, and not less than 350 on-site parking stalls outside at grade within the Project Site or within a below-grade garage, all in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefore, through its Chairman, Councilor Marc C. Laredo.

#### **Procedural Background**

The proposed development (the "Project") for Washington Place (the "Site") was submitted by Mark Newtonville, LLC (the "Petitioner") and 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 Newtonville and Newton's village commercial centers, all in accordance with Newton's *Comprehensive Plan*.

The special permit/site plan application for the Project was filed with the City Clerk on May 9, 2016. Notice of the public hearing was published on May 24, 2016 and May 31, 2016 in *The Boston Globe*, on June 1, 2016 in the *Newton Tab*, and re-noticed and re-published on November 18, 2016, November 25, 2016, December 28, 2016, and January 4, 2017 in *The Boston Globe* and on November 23, 2016 and December 28, 2016 in the *Newton Tab*, and mailed to all parties in interest in compliance with the Newton Zoning Ordinance and M.G.L. c. 40A, Section 11. The Land Use Committee ("LUC") of the City Council opened the public hearing on June 7, 2016 and continued the public hearing on July 12, 2016, September 13, 2016, October 6, 2016, November 1, 2016, November 29, 2016, December 15, 2016, January 12, 2017, January 31, 2017, and February 7, 2017 [insert any future dates]. Over the course of the hearings presentations were made by the Petitioner and its Project team including its attorney, Stephen J. Buchbinder of Schlesinger and Buchbinder, LLP; Damien Chaviano of Mark Development, LLC; its architects, David Chilinski and Steven Allen of Prellwitz Chilinski

Associates, Inc.; its landscape architect, Shauna Gillies-Smith of Ground, Inc.; its fiscal consultant, John Connery of Connery Associates; its transportation consultant, Randy Hart of Vanasse Hangen Brustlin, Inc. ("VHB"); its sustainability consultant, Lauren Baumann, of New Ecology; and its lighting consultant, Carrie Hawley of HLB Lighting. Presentations were also made by City staff including Alexandra Ananth, Chief Planner of Current Planning for the Planning and Development Department, and the City's transportation consultant and peer reviewer, Michael Santos of Howard Stein Hudson.

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 Department of Public Works, the Planning and Development Board, the Urban Design Commission, and the Newtonville Area Council. During the review process, supplemental materials and testimony have been submitted in response to requests by the Council and the public. All testimony, written reports, and supplemental materials prepared by the Petitioner and its consultants, and the City and its staff, consultants, boards, and commissions, 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 **January 31, 2017**. On **January 31, 2017**, the LUC voted to recommend approval of the Project to the Council as follows: **[Check final dates]**

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:

With regard to how the Project furthers the purposes of the MU-4 District and meets the requirements of §7.3.3.C.1.-5., for those uses or dimensional waivers requiring special permits:

1. The Council finds pursuant to the requirements of §4.2.1.C.1.-5. that the Project is consistent with the purposes of the MU-4 district and the Newton *Comprehensive Plan*, including the Mixed Use Centers Element adopted in November 2011, in that:
  - a. The Project will allow the development of buildings and uses appropriate to the Newtonville village commercial center and aligned with the vision of the City's *Comprehensive Plan* by providing a compact development with residences, shops, public gathering spaces, and mixed use development opportunities in a village commercial center. (§4.2.1.C.1)
  - b. The massing of the Project along two blocks on the north side of the Massachusetts Turnpike and at the corner of Washington and Walnut

Streets as well as matching the Project's streetscape improvements to those streetscape improvements being made along Walnut Street south of the Turnpike with help visually connect Newtonville's village commercial center which is bifurcated by the Turnpike. (§4.2.1.C.2)

- c. The Project will allow sufficient density and intensity of uses to promote a lively pedestrian environment, public transit, and variety of businesses that serve the needs of the community. (§4.2.1.C.3)
- d. The Project will expand the diversity of housing options available in the City. (§4.2.1.C.4)
- e. The Project will promote the health and well-being of residents by encouraging physical activity, use of alternative modes of transportation, and creating a sense of place and community. (§4.2.1.C.5)

2. The Council finds that all 160 residential units will conform to the Massachusetts Architectural Access Board (MAAB) requirements for "Group 1" units and are visitable by those in a wheelchair. In addition, per MAAB guidelines, 5% 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 unit 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. **This finding is not required and can be deleted if it is the will of the Committee**

**Comment [OCMY2]:** Deleted pending possible reconsideration following review of the 3D model.

3. The Council finds that the proposed residential units fill a need for smaller, accessible, residential units as identified by multiple sources including the City's Housing Needs Analysis and Strategic Recommendations Report dated June 2016, the Metropolitan Area Planning Council's [Population and Housing Demand Projections for Metro Boston](#), and the two Demographic Trends and Projections Reports prepared by The Dukakis Center for the City of Newton. **This finding is not required and can be deleted if it is the will of the Committee.**

4. The Council finds that the Petitioner has taken steps to alleviate the increasing costs of housing in Newton by providing two income tiers of affordability as follows:

- a. The first tier of affordability per Newton's Inclusionary Zoning Ordinance will set aside 15% of the total residential units as Inclusionary Units affordable to households earning up to 80% of Area Median Income ("AMI") as designated by the US Department of Housing and Urban Development (HUD), adjusted for family size (the "Inclusionary Units") in perpetuity. The Project will consist of 12 units for households earning at or below 50% of AMI and 12 units for households earning at or below 80% of AMI. This results in a blended rate of no more than 65% of AMI.

- b. The second tier of affordability provides an additional 10% of the total residential units affordable to households earning between 80% and 120% AMI (the "Middle Income Units") in perpetuity. The Inclusionary Units and the Middle Income Units will sometimes be referred to hereinafter as the "Deed Restricted Units." **This finding is not required and can be deleted if it is the will of the Committee**

5. **By including both tiers of affordability, the Council finds that 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. This finding is not required and can be deleted if it is the will of the Committee**
6. 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. **This finding is not required and can be deleted if it is the will of the Committee**
7. The Council finds that the specific Site is an appropriate location for the proposed Project as the site plan maximizes the benefits of its Newtonville commercial village center location by expanding needed housing choices, diversifying commercial options in the village, connecting the Site to the village through intersection and streetscape improvements, and maximizing the number of parking stalls available on-site to the greatest extent consistent with appropriate site planning. (§7.3.3.C.1)
8. The Council finds that the use as developed and operated will not adversely affect the neighborhood as the Project will enhance the long term economic stability, vitality and walkability of the village, and will create an approximately 9,000 square feet accessible public gathering space. (§7.3.3.C.2)
9. The Council finds that through improvements to the intersection of Walnut and Washington Streets for vehicles and pedestrians as well as the consolidation of site driveways at the Project Site, there will be no nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
10. Access to the site over streets is appropriate for the types and numbers of vehicles involved. The Petitioner conducted studies peer reviewed by the City which conclude that the traffic generated by this Project are accommodated by improvements that the Petitioner will make at its sole cost and expense at the intersection of Washington and Walnut Streets (§7.3.3.C.4)
11. The Council finds that the site planning, building design, construction, maintenance, and long-term operation of the Project will contribute significantly to the efficient use and conservation of natural resources and energy. The Project is located in a village center close to multiple transit options and with the benefits of a walkable commercial village

center. The building shall achieve LEED Gold for Homes Midrise Version 3 certification. (§7.3.3.C.5 and §7.4.5.B.8)

12.

With regard to the special permit to allow retail sales establishments over 5,000 square feet, restaurants with more than 50 seats, personal service establishments over 5,000 square feet, standalone ATMs, health club(s) at or above the ground floor, animal service uses, and/or street-level medical office uses pursuant to §4.4.1.:

13. The Council finds that the Site is an appropriate location for retail sales establishments over 5,000 square feet, restaurants with more than 50 seats, personal service establishments over 5,000 square feet, standalone ATMs, health club(s) at or above the ground floor, animal service uses, and/or street-level medical office uses, as the proposed uses are appropriate for the commercial center of the village and will encourage an active, pedestrian-oriented streetscape throughout the day and week, that the proposed uses fill a demonstrated need for the uses within the vicinity, and that the proposed uses are not inconsistent with the purposes of the MU-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.:

14. The Council finds that the size of the interconnected buildings are not inconsistent with the MU-4 district or the Mixed Use Centers Element of the *Comprehensive Plan*. The proposed site plan and buildings are compatible with the neighborhood context, improve the pedestrian environment, create beneficial open space, and the proposed mix of uses will enhance the commercial and civic vitality of the Newtonville commercial village center.

With regard to the special permit to allow a building height of 60 feet and 5 stories, and to waive the setback requirement for buildings taller than 40 feet pursuant to §4.2.5.A.2 and §4.2.5.A.4.c.:

15. The height and number of stories is allowable by special permit in the MU-4 district and the Council finds that the building height of 60 feet and 5 stories is compatible in visual scale to its Newtonville commercial village center surroundings, does not adversely affect its surroundings by creating shadows or blocking views, and advances the purposes of the MU-4 district.
16. The waiver of the setback requirement for the portions of the buildings taller than 40 feet is appropriate as the varied 4-5 story height and massing on Washington Street is appropriate at this corner location and scales downward as the building approaches its residential abutters.

**Comment [OCMY3]:** LUC review of findings stopped at this finding.

**Comment [OCMY4]:** LUC to look again at shadow study to see when and where shadows may occur and consider shadows from potential by-right development.

With regard to the special permit to allow floor area ratio ("FAR") of not more than 1.90 pursuant to §4.2.3.:

17. The proposed FAR is less than the maximum permitted by special permit in either the MU-4 district (2.5) or the Business 2 district (2.0). The Council finds that the proposed FAR of not more than 1.90 is appropriate for the site and not inconsistent with the MU-4 district or the City's *Comprehensive Plan*.

With regard to the special permit to waive the lot area per dwelling unit requirement, pursuant to §4.2.5.A.3.:

18. The Council finds that the proposed density of approximately 775 square feet of lot area per unit creates a beneficial living environment for the residents, does not adversely affect the traffic on Washington Street or Walnut Street, and better achieves the purposes of the MU-4 district than strict compliance with these standards.

With regard to the special permit to waive the front setback requirement, pursuant to §4.2.5.A.4.:

19. The Council finds that the waivers from the front setback requirement can better protect the surrounding community from shadows and blocked views, support pedestrian vitality, and encourage the purposes of this district than strict compliance with the requirements.

With regard to the special permit to waive entrance requirements, pursuant to §4.2.5.A.6.:

20. The Council finds that a waiver of the requirement for an entrance every 50 feet on the building frontage facing Walnut Street, Washington Street, and Washington Terrace better enables appropriate use of the Site, supports pedestrian vitality, and achieves the purposes of the MU-4 district than strict compliance with the requirements.

With regard to special permits for the number of parking stalls and various requirements for the design of parking facilities, pursuant to §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.; and §5.1.13.:

21. The Council finds that exceptions to the parking requirements, including a waiver for not more than 97 required parking stalls, to locate parking within a setback, and 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 Project will provide 243 parking stalls in the underground garage and 109 parking stalls above ground. Six handicap stalls will be provided in the outdoor parking lot and 7 additional handicap stalls will be provided in the underground

garage. The Petitioner is proposing 1.25 parking stalls per residential unit and a 1/3 reduction of the commercial parking requirement in addition to a waiver not to exceed 97 stalls. The small (< 900 square feet) average size of the units will likely attract tenants who have only one automobile per unit and use public transit, making a parking waiver appropriate at this site. Covered bicycle parking will also be provided in the below-grade garage to encourage bike use. The Petitioner intends to have car-sharing services provided on-site and has submitted a robust Transportation Demand Management Plan and Transportation Demand Management Subsidy Program hereto attached as Schedules E and F.

- b) 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, parking demand and increased transit usage. The rent for the Inclusionary Units will include one parking stall at no additional charge for those households with a car.
- c) The commercial and residential uses are complementary and will allow for shared usage of the garage at different times. Accordingly, the Council concludes that the number of parking stalls required by the Zoning Ordinance would be more than necessary to meet the realistic parking demand.
- d) The location of parking within property boundary setbacks and within five feet of a residential structure makes for the most efficient layout of the parking lot and helps to maximize the number of stalls that will be available.
- e) The allowance for reduced size of parking stalls will not create a nuisance or hazard to vehicles because the stalls will be well marked as intended for use by smaller vehicles, uniform in size to the extent possible, and larger stalls will be available. A turning template demonstrated that maneuvering aisles and parking stalls including end stall maneuvering space are sufficient.
- f) The Petitioner will dedicate at least two stalls to Zipcar or other similar services, install charging stations for electric vehicles both in the surface lot and in the garage, and have at least 30 at-grade bike parking stalls and covered bike storage for at least 160 bicycles in the garage below.
- g) The Council finds that the waiver for some parking lot interior landscape screening helps maximize the number of parking stalls that will be available to the public, and that a sufficient number of trees will be added to the Site in more perimeter locations so as to improve the streetscape, perimeter screening, and public plaza area.
- h) The waiver for off-street loading facilities is justified as turning templates illustrate the building can be serviced by larger vehicles.

- i) The waiver to allow for reduced parking lot lighting is in the public interest and in the interest of abutting residential properties.
- j) The waiver for curbing, wheel stops, guard rails and bollards is appropriate given the proposed layout of the parking lot.

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

22. The Council finds that the nature of the use of the premises, the architecture of the buildings, and the Project's location at the intersection of Washington Street and Walnut Street, 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.

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

23. The Council finds that the Project has been designed to ensure the safety of vehicular 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 for the following reasons:
- a) The two access driveways have been designed with pedestrian safety and vehicular sight lines in mind including stop signs, open viewing, low planters, and wide sidewalks, and have been located as far away from the intersection as is practical. (§7.4.5.B.1)
24. The Council finds that the methods for disposal of sewage, refuse and other wastes , and that the methods of regulating surface water drainage are adequate for the following reasons:
- a) The City Engineering Division has reviewed submitted plans and raised no concerns with respect to this Project. The Engineering Division will review all plans submitted for building permits for compliance with City of Newton Engineering Division design standards prior to the issuance of any building permits.
  - b) The Petitioner will be making a \$782,880 contribution to the City of Newton for municipal sewer Inflow and Infiltration improvements. (§7.4.5.B.2)
25. The Council finds that 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)
26. The Council finds that 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)



27. The Council finds that the Project avoids unnecessary topographical changes. Additionally, proposed landscaping will enhance the Site and streetscape in keeping with the appearance of neighboring developed areas. (§7.4.5.B.5)
28. The Council finds that all utility service lines on site will be undergrounded. (§7.4.5.B.6)
29. The Council finds that the proposed site design and massing is appropriate in the context of the neighborhood and will serve to connect the Site to the village by interconnected buildings with an active pedestrian streetscape designed to invite the public into the site and with pedestrian improvement designed to be consistent with the Walnut Street streetscape south of the Massachusetts Turnpike. The Petitioner has incorporated a number of building treatments and design elements that enhance the appearance of the structure, including articulating the façade to proportion building elements to a human scale and setting the fifth story back from the street in certain locations. The corner tower element is appropriate at this intersection. (§7.4.5.B.6)
30. The Council finds that many of the existing buildings on site are not original or have been significantly altered so that they are not considered historical resources. (§7.4.5.B.1)
31. The Project will provide 2,000 sq. ft. of accessible community space to be used by a local non-profit organization engaged in the arts through community education, which will be a public benefit both to the residents of the Project as well as the broader Newtonville community.
32. 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., and 2.; §5.1.9. B.; §5.1.10.; §5.1.12.; §5.1.13.; and §7.4.5. B. 1.-8. for granting special permits/site plan approval will be satisfied.

PETITION NUMBER: #179-16

PETITIONER: Mark Newtonville, LLC , its successors and assigns

LOCATION: 22 Washington Terrace, 16-18 Washington Terrace, 10-12 Washington Terrace, 6-8 Washington Terrace, 875 Washington Street, 869 Washington Street, 867 Washington Street, 861-865 Washington Street, 857-859 Washington Street, 845-855 Washington Street, 245-261 Walnut Street (a/k/a 835-843 Washington Street), 241 Walnut Street, Bailey Place, 22 Bailey Place, 14-18 Bailey Place, and an unnumbered lot on Bailey Place, also identified as Section 21, Block 29, Lots 10, 11, 12, 13, 14,

15, 16, 17, 18, 19, 19A, 20, 21, 22, and 23, Ward 2,  
currently zoned Business 1, Business 2, and Public Use (the  
Project Site)

OWNER: Mark Newtonville, LLC, Mark Lolich, LLC, and Sunoco, LLC,  
their successors and assigns

ADDRESS OF OWNER: 57 River Street, Suite 106, Wellesley, MA 02481

TO BE USED FOR: A mixed use development in excess of 20,000 square feet  
consisting of three interconnected buildings with building  
heights of not more than 60 feet and five stories, total  
gross floor area not exceeding 235,000 square feet  
incorporating 160 residential units, not exceeding 45,000  
square feet of commercial space, not less than 2,000  
square feet of community space, not less than 350 on-site  
parking stalls outside at grade or within a below-grade  
garage, and related site improvements; to authorize 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: Masonry structure over a structural steel and concrete  
base

EXPLANATORY NOTES: Special permits, site plan approval, and parking waivers for  
the Project, all as more specifically set forth in Schedule A,  
attached hereto, and as further referenced in the Findings.

ZONING: MU-4

**Approved subject to the following Conditions.**

**General Conditions**

1. All buildings, parking areas, driveways, walkways, landscaping, and other site features associated with this Special Permit/Site Plan Approval shall be located and constructed consistent with the plans identified in Schedule B, and which are hereby incorporated by reference.

2. The Petitioner shall merge the existing parcels to one new lot either prior to the issuance of the first building permit (other than a demolition permit) or within thirty (30) days from the issuance of such building permit. Proof of recording a plan 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.
3. This Special Permit/Site Plan Approval shall be deemed to have been (i) vested, for the purposes of utilizing the benefits of the change of zone authorized by Council Order #180(2)-16, upon the submission to the City of an application for a building permit (other than a demolition permit) for all or any portion of the Project; and (ii) vested and exercised, with respect to the entire Project, once construction under this Special Permit/Site Plan Approval has begun for any portion of the Project.
4. Prior to the issuance of any building permits, the Petitioner shall submit stamped and signed engineered plans for the reconstruction of the intersection at Walnut and Washington Streets as described on Schedule G attached hereto, for review and approval by the Director of Planning and Development and the Commissioner of Public Works in consultation with the Director of Transportation, and the City Engineer, for continuity with the Newtonville Streetscape Project south of the Massachusetts Turnpike and consistency with the City's Complete Streets Policy. These improvements will be completed by the Petitioner at its sole cost and expense.
5. Prior to the issuance of any building permits, the Petitioner shall submit stamped and signed engineered streetscape design plans for the improvements to Walnut and Washington Streets adjacent to the project site, for review and approval by the Director of Planning and Development and the Commissioner of Public Works in consultation with the Director of Transportation, and the City Engineer, for continuity with the Newtonville Streetscape Project south of the Massachusetts Turnpike and consistency with the City's Complete Streets Policy.
6. Prior to the issuance of any building permits, the Petitioner shall submit stamped and signed engineered streetscape design plans for the improvements on the east side of Walnut Street for review and approval by the Director of Planning and Development and the Commissioner of Public Works in consultation with the Director of Transportation, and the City Engineer, for continuity with the Newtonville Streetscape Project south of the Massachusetts Turnpike and consistency with the City's Complete Streets Policy.
7. Prior to the issuance of **any final** certificates of occupancy, and at the Petitioner's sole cost and expense, the Petitioner shall complete the reconstruction of the intersection of Washington Street and Walnut Street as described on Schedule G attached hereto. The City Engineer shall also inspect and approve the improvements upon **completion**.
8. Prior to the issuance of **any** final certificates of occupancy, and at the Petitioner's sole cost and expense, the Petitioner shall design and construct bike **facilities** on both sides of Walnut Street from Newtonville Avenue north to Foster Street. The design of the bike

**Comment [OCMY5]:** The phasing of construction between the Project and the intersection improvements needs to be looked at, esp. in terms of possible constructability issues, i.e., weather. The Petitioner is proposing that temporary certificates of occupancy for one (1) commercial tenant and 50% of the residential tenants be permitted prior to completion of the intersection improvements. Under discussion.

**Comment [U6]:** This is vague; are we referring to the bike lanes?

facilities shall be reviewed and approved by the Director of Planning and Development and the Commissioner of Public Works in consultation with the Director of Transportation, and the City Engineer, for consistency with the Newtonville Streetscape Project and consistency with the City's Complete Streets Policy.

9. Prior to the issuance of **any** final certificate of occupancy, the petitioner shall complete all offsite improvements as described in Schedule D attached hereto, the estimated cost of which is approximately \$700,000.
10. Prior to the issuance of **any** certificates of occupancy, **temporary or final**, for the residential portion of the site, the petitioner shall pay an amount of \$782,880 to the City, which sum represents an 8:1 ratio for municipal sewer Inflow and Infiltration improvements in accordance with a memorandum from Associate City Engineer John Daghlian dated November 29, 2016, attached hereto as Schedule C.
11. Prior to the issuance of **any** certificates of occupancy, temporary or final, for the residential portion of the site, the Petitioner shall fund a Transportation Demand Management Subsidy Program (the "TDM Subsidy Program") in the amount of \$300,000. The details of the TDM Subsidy Program are set forth in Schedule E. The Transportation Demand Management Plan is attached as Schedule F.
12. In accordance with the City's Inclusionary Zoning Ordinance (§5.11.4), and as proposed in the Preliminary Washington Place Inclusionary Housing Plan (IHP) dated January 18, 2017 as described as Schedule H attached hereto, the Project shall include a total of 15% Deed Restricted units for low- and moderate-income households (Inclusionary Units totaling twenty-four units) that shall be made available to households earning up to 80% of Area Median Income (AMI), as designated by the U.S. Department of Housing and Urban Development, adjusted for household size. As proposed in the Preliminary IHP, twelve of these units shall be made available to households earning up to 80% AMI, and twelve of these units shall be made available to households earning up to 50% AMI. Monthly housing costs (inclusive of heat, hot water, electricity, water and sewer, and one parking space) shall not exceed 30% of the applicable monthly income limit for that unit. The maximum number 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).
13. In addition to the Inclusionary Units, and as proposed in the Preliminary (IHP), the Project shall further include 10% Deed Restricted units for Middle Income Households (Middle Income Units, totaling sixteen units) that shall be made available to households earning between 80% and 120% of AMI, as designated by HUD, adjusted for household size. As proposed in the IHP, eight Middle Income units shall be made available to households earning up to 80% AMI and 100% AMI, and eight of the Middle Income Units shall be made available to households earning up to 100% AMI and 120% AMI. For the purposes

of calculating rents, monthly housing cost calculation for the Middle Income Units will not include an allowance for utilities that are not included in the rent.

**Comment [OCMY7]:** Staff does not agree with approach and prefers to have the same manner of calculation the monthly housing costs for both the inclusionary and Middle Income units

14. To the extent permitted by applicable regulations of DHCD, the 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. Prior to the issuance of any building permits for the construction of the Project, the Petitioner, City, and DHCD will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the Law Department, that will establish the affordability restriction for the Inclusionary Units in perpetuity.

**Comment [NR8]:** Intent here is to distinguish between Demo permit and New Construction.

15. The Middle Income Units will be subject to an Affordable Housing Use Restriction, in a form approved by the Law Department, which shall be substantially similar in form and intent to the Regulatory Agreement and Declaration of Restrictive Covenants that governs the Inclusionary Units. The restriction shall be in perpetuity and shall be executed between the Petitioner and the City prior to the issuance of any building permits for the construction of the project.

**Comment [NR9]:** Intent here is to distinguish between Demo permit and New Construction.

16. Prior to the issuance of any building permits, the Petitioner shall provide a final Inclusionary Housing Plan and Affirmative Marketing and Resident Selection Plan for review by the Director of Planning and Development. The Inclusionary Housing Plan and Affirmative 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 §5.11.9. of the Newton Zoning Ordinance. The Inclusionary Housing Plan and Affirmative Marketing and Resident selection plan should include both the Inclusionary Units and the Middle Income Units and treat the units the same with respect to Affirmative Marketing and advancing Fair Housing in Newton. In accordance with DHCD's current guidelines, the units will be Affirmatively Marketed and leased through a lottery.

17. The project shall include at least six three bedroom units. At least one of these units will be restricted as an Inclusionary Unit (made available to households earning up to 80% of AMI, as designated by HUD), at least one unit will be restricted as a Middle Income Unit (made available to households earning between 80% and 120% of AMI, as designated by HUD), and the remainder may be made available at market rates.

18. All 160 residential units will conform to the Massachusetts Architectural Access Board (MAAB) requirements for "Group 1" units. In addition, per MAAB guidelines, 5% of the units will be designed as "Group 2A" units, which are designed spatially for immediate wheelchair use.

19. In accordance with the memorandum from New Ecology dated November 22, 2016, attached hereto as Schedule J, careful attention will be paid to design and construct a

high R-value, durable, environmentally sensitive building. Mechanical, Electrical and Plumbing systems will be chosen and sized to meet the minimal heating and cooling loads and to ensure occupant comfort. The building shall achieve LEED Gold for Homes Midrise Version 3 certification, and proper commissioning, optimization, and education for building management and tenants shall be ensured to operate the building at the designed level of performance.

#### **Conditions Related To Construction**

20. All construction activity shall be limited to 7AM-6PM Monday through Friday and 8AM-5PM on Saturdays excluding holidays, unless extended or restricted by the Commissioner of Inspectional Services or the Commissioner of Public Works. Interior work may occur at other times when the building is fully enclosed.
21. The Petitioner shall communicate regular construction updates to the Newtonville Area Council and all immediate abutters during construction as appropriate.
22. 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, including any demolition activities requiring a building permit, a Construction Liaison Committee shall be established consisting of two (2) designees of the Petitioner; two (2) immediate abutters and one (1) resident from each of the following neighborhood streets: XXXXXX; and the Ward 2 Councilors and any other interested Councilors. The City Council shall appoint the resident neighborhood members. Meetings of the Liaison Committee will be open to the public, and the Committee will establish such agenda and procedures as it shall see fit.

The purposes of the Liaison Committee shall be:

- To enhance and insure communication as to the status and progress of the construction of the Project by the Petitioner.
- 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.
- To provide a public forum for presentation of supplementary permit requests to the extent required.
- 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.

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 2 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.

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.

23. 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. 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.
  - b. The proposed schedule of the Project, including the general phasing of the construction activities.
  - c. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for delivery vehicles, and location of any security fencing.
  - d. Proposed truck route(s) that minimize travel on local streets.
  - e. 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.
  - f. Proposed methods of noise control, in accordance with the City of Newton's Noise Ordinance. Staging activities should be conducted in a manner that will minimize off-site impacts of noise. Noise producing staging activities should be located as far as practical from noise sensitive locations.
  - g. A plan for rodent control during construction.

- h. Provide a pre-construction survey at no charge to the owners of any abutting property that consent to such survey.
- 24. 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.
- 25. The Petitioner shall be responsible for repairing any damage to public ways and property caused by any construction vehicles. All repair work shall be done prior to the issuance of a final Certificate of Occupancy, unless the Commissioner of Public Works determines that the damage to the public way is so extensive that it limits the use of the public way. In such case 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.
- 26. At the Petitioner's sole expense, the Petitioner shall locate all utility service lines on site and along the Project's frontage on Washington Street and Walnut Street underground, subject to necessary approvals from utility companies.

**Conditions Precedent To The Issuance Of Any Building Permits**

- 27. No building permit shall be issued pursuant to this Special Permit/Site Plan approval until the Petitioner has: **Think about critical path, construction phasing and prior conditions that need to be added here.**
  - 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. Obtained a written statement from the Department of Planning and Development that confirms the final building permit plans and façade elevations are consistent with plans approved in Condition #1.
  - d. Obtained a written statement from the Department of Planning and Development and the Commissioner of Public Works that confirms that final plans for the reconstruction of the intersection at Walnut and Washington Streets, the improvements to Walnut and Washington Streets adjacent to the project site, and the improvements to the east side of Walnut Street including bike facilities, are consistent with the Newtonville Streetscape Project and the City's Complete Streets Policy.
  - e. 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

**Comment [OCMY10]:** Consider which of these would be required at the demo permit stage rather than actual construction permit stage.



of Planning and Development with the information required to be included in such Plan pursuant to §5.11.9. of the Zoning Ordinance.

- f. Submitted final engineering, utility, and drainage plans, and 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.
- g. 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, the City Engineer, and the Director of Transportation.
- h. Submitted sample building façade materials and colors for review and approval by the Director of Planning and Development.
- i. Submitted a LEED Checklist to the Director of Planning and Development for review and approval, indicating which points the Project intends to realize in order to achieve LEED Gold for Homes Midrise Version 3 certification.
- j. Submitted to the Law Department copies of fully executed Regulatory Agreements and Affordable Housing Restriction for all Deed Restricted Units, as described in Condition 12 and Condition 13.

**Comment [OCMY11]:** Consider whether timing of this should be prior to issuance of building given that subsection j requires Regulatory Agreements to be executed.

**Conditions Precedent To The Issuance Of Any Occupancy Permits**

28. No occupancy permit for the use covered by this Special Permit/Site Plan approval shall be issued until the Petitioner has:
- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect and civil engineer certifying compliance with Condition #1.
  - b. Submitted to the Department of Inspectional Services, the Department of Planning and Development, and the Engineering Division final as-built survey plans in digital format.
  - c. Completed the payment to the City for municipal sewer Inflow and Infiltration improvements as required in Condition 10.
  - d. Completed all off-site improvements as described in Schedule D.
  - e. Funded a Transportation Demand Management program with \$300,000 as described in Schedule E.
  - f. Filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering

**Comment [U12]:** Could this be moved to Condition 26? No, ocm, but not needed for issuance of demo permit. Clarify this point.

**Comment [U13]:** I would propose issuance of temporary certificates of occupancy for (1) commercial tenants, and (2) 50% of residential tenants prior to completion of all Schedule D improvements.

**Comment [OCMY14]:** Not sure that I would agree with prior comment, but do believe we need to consider timing of Project completion and intersection completion.

details for the project site have been constructed to standards of the City of Newton Public Works Department.

- g. 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 including the reconstruction of the intersection at Washington and Walnut Streets, the Walnut Street and Washington Street Streetscape improvements adjacent to the project site, the improvements to the east side of Walnut Street, including bike facilities, have been constructed to standards of the City of Newton Public Works Department.
- h. Submitted to the Department of Planning and Development and the Health Department a final environmental report from a Licensed Site Professional documenting that the Site can be used for residential apartments.
- i. Filed evidence of that the criteria for LEED Gold certification has been satisfied.
- 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, final landscape features, fencing, and parking areas.
- k. Provided evidence satisfactory to the Law Department that the Regulatory Agreements for all Deed Restricted Units have been recorded at the Southern Middlesex District Registry of Deeds or Southern Middlesex Land Court, as appropriate.
- l. Deed Restricted units shall be constructed and occupied coincident with market rate units, such that no more than three market rate units may receive occupancy permits until the corresponding affordable unit has received its occupancy permit.
- m. The Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the building constructed subject to this special permit prior to installation of landscaping or exterior hardscape improvements required in Condition 31, provided the Petitioner shall first have filed with the Director of Planning and Development a bond, letter of credit, cash, or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining site improvements to ensure their completion.

**Ongoing Conditions To Be In Effect For So Long As The Project Authorized By This Special Permit/Site Plan Approval Exists**

- 29. The cost of residential tenant parking shall be charged separately from residential tenant rents so as to minimize car ownership by residential tenants, provided, however, that one

parking stall shall be provided for the household of each Inclusionary Unit which needs a parking stall without charge to the tenant of such unit.

**Comment [U15]:** Is this above and beyond the Pilot Program which we have proposed?

**Comment [OCMY16]:** Question raised as to whether this reduction in rent applies to inclusionary units without cars that receive a TDM subsidy.

30. 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.
31. The Petitioner shall be responsible at its sole cost for trash and recycling disposal for the Project. The trash and recycling disposal shall be scheduled at such times to minimize any disruption of the on-site parking.
32. A Comprehensive Sign Package including all tenant signage shall be submitted for review by the Urban Design Committee.
33. 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 Project site.
34. No changes to the Project shall be permitted, except as otherwise set forth in this Special Permit/Site Plan Approval, unless they are consistent with the Special Permit Plan Set. Consistency determinations shall be subject to review and approval by the Commissioner of Inspectional Services but shall not require approval of the Council. When making a request for a consistency determination, the Petitioner shall submit updated construction sequencing plans and a memorandum for the Commissioner of Inspectional Services demonstrating that such changes (i) do not constitute a reallocation or reconfiguration of square footage among uses in the Project or otherwise allowed in the MU-4 district such that no increase in the parking waiver approved hereunder is required; (ii) do not require additional zoning relief (other than the categories of relief granted and/or modified pursuant to the Special Permit/Site Plan Approval; and (iii) maintain the same percentage of useable open space as shown on the Special Permit Plan Set. If the Commissioner of Inspectional Services grants any consistency ruling pursuant to this Condition, he shall provide a copy to the Land Use Committee of the Council. The Land Use Committee shall not be required to vote or to approve the consistency request.
35. At its sole expense and within 12 months of the issuance of final certificates of occupancy, the Petitioner shall complete a post occupancy traffic study to document and assess (i) the actual traffic characteristics, volumes, and operating conditions of the Project including safety and crash results; (ii) evaluate the success and refine the elements of the TDM Measures including parking utilization and residential and commercial tenant mode shares; and (iii) assess traffic volumes and operating conditions at the intersection of Walnut and Washington Streets. Traffic counts shall be performed under average-month conditions while public schools are in regular session. The results shall be submitted to the City prior to the end of the calendar year in which the study is completed. If the

**Comment [OCMY17]:** Question raised as to whether valet off-site parking that is not on street or in a municipal lot might be possible and if so, under what circumstances.

results indicate the actual measured traffic volumes associated with the Project as constructed and occupied exceed the trip estimates presented in the Traffic Impact Assessment by more than 10 percent of the projected trip generation for the then occupied uses as measured at the two primary driveways serving the Project or the intersection of Walnut and Washington Streets, then the Petitioner shall correct the problem by implementing mitigation measures, including but not limited to the following:

- a. Appropriately adjust the traffic signal timing, phasing and coordination for the Walnut and Washington Streets intersection; **Who does this and for how long?**
- b. Implement refinements to on-site traffic flow and parking management;
- c. Expand or modify the elements of the Transportation Demand Management Plan measures in order to increase use of public transportation and/or other alternatives to automobile travel, subject to review of the Director of Planning and Development in consultation with the City's Director of Transportation.

36. At least 2,000 square feet of accessible community space as shown on Plan A1.13, Second Floor, shall be made available for lease to a local non-profit organization engaged in the arts through community education. The Owner shall lease such space to the non-profit organization for \$1.00 per year rent plus the cost of utilities actually consumed for such space. The Owner may also require that the non-profit lessee to maintain insurance coverage. The terms of the lease shall require the non-profit lessee to provide programming for the use of such space and also require the non-profit lessee to allow other local non-profits or community groups to use such space at least one evening a week and/or at such other times as are convenient for the non-profit lessee. The Owner shall consult with the City's Cultural Affairs office to help find the original local non-profit organization, and any replacement lessee should the original local non-profit be unable to continue the lease at any time in the future while this special permit is being exercised.

37. The Petitioner and its predecessors agree to not lease commercial space in the Project to any banks. This condition does not prohibit ATM machines. **Work on details of this condition.**

**Comment [U18]:** Lessee must carry insurance; also must be responsible for cleaning of community space.