



Land Use Committee Report

City of Newton In City Council

Tuesday, October 6, 2020

Present: Councilors Lipof (Chair), Kelley, Greenberg, Auchincloss, Markiewicz, Downs, Bowman, Laredo, Gentile, Leary, Krintzman, Wright, Ryan and Malakie

City Staff Present: Chief Planner Neil Cronin, Associate City Solicitor Jonah Temple, Senior Planner Michael Gleba, Planning Associate Katie Whewell, 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.

#319-20 **Request to Rezone two parcels from BU-1 to MU-4 at 1149-1151 Walnut Street**
NEWTON WALNUT LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to rezone two parcels; 1149 Walnut Street (Section 52 Block 08 Lot 13) and 1151 Walnut Street (Section 52 Block 08 Lot 14) from BUSINESS USE 1 to MIXED USE 4.

Action: **Land Use Hekd 8-0; Public Hearing Continued**

#320-20 **Petition to allow 26-unit mixed use development at 1149-1151 Walnut Street**
NEWTON WALNUT LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to raze the existing buildings and construct a four-story mixed-use building up to 48' in height, containing 26 units and 23 parking stalls, to waive the minimum lot area per unit, to reduce the side setback requirement, to waive the requirement to use A-B+C formula to determine the parking requirement, to waive 24 parking stalls, to allow 1.25 parking stalls per unit, to allow parking in the side setback, to waive dimensional requirements for parking stalls, to allow restricted end stalls, to allow reduced aisle width , to waive perimeter landscaping requirements, to waive interior landscaping requirements and to waive lighting requirements at 1149-1151 Walnut Street, Ward 6, Newton Highlands, on land known as Section 52 Block 08 Lots 13 and 14, containing 13,200 sq. ft. in a district to be zoned MIXED USE 4 (currently zoned BUSINESS USE 2). Ref: Sec. 7.3.3, 7.4, 4.2.2.B.1, 4.2.2.A.2, 4.2.5.A.3, 4.2.2.B.3, 4.2.5.A.2, 4.2.5.A.4.b, 4.2.5.A.4, 5.1.3.B, 5.1.13, 5.1.4, 5.1.4.A, 5.1.8.A.1, 5.1.8.B.1, 5.1.8.B.2, 5.1.8.B.6, 5.1.8.C.1, 5.1.9.A, 5.1.9.B, 5.1.10 of the City of Newton Rev Zoning Ord, 2017.

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

Note: Items #319-20 and #320-20 required a change in the request to rezone. The property is zoned as BU-2, not BU-1 as advertised. The petitioner submitted an amended request and the Committee voted unanimously to hold items #319-20 and #320-20 without discussion. A public hearing will be opened on both items on Thursday, November 5, 2020.

#26-20 Request to Rezone Approximately 4.4 acres to MU-3 to Create a Contiguous MU-3 Zone
MD 399 GROVE OWNER, LLC/RAMIREZ CONCORD, LLC/BH NORMANDY RIVERSIDE, LLC/MASSACHUSETTS BAY TRANSPORTATION AUTHORITY petition for a change of zone to Mixed Use 3/Transit Oriented District for portions of land located at 355 Grove Street (currently zoned BU-2) and 399 Grove Street (currently zoned BU-5), also identified as Section 42, Block 11, Lots 3, 4, and 4A, abutting the existing MU-3 Zone.

Action: Land Use Approved 8-0; Public Hearing Closed 10/06/2020

#27-20 Petition to allow Mixed Use Transit Oriented Development at Riverside Station
MD 399 GROVE OWNER, LLC/RAMIREZ CONCORD, LLC/BH NORMANDY RIVERSIDE, LLC/MASSACHUSETTS BAY TRANSPORTATION AUTHORITY petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a mixed use, transit-oriented development of residential units, office, retail, personal services, restaurant, hotel, and related commercial uses not to exceed 1,025,000 square feet of gross floor area, with residential uses comprising not less than 60% of the total gross floor area with a residential density of not less than 800 square feet per unit with not less than 560 units nor more than 620 units with special permit relief and/or waivers as follows: as to dimensional standards, a development of more than 20,000 square feet of gross floor area, building height of up to 170 feet, buildings up to 11 stories, Floor Area Ratio of up to 2.5, beneficial open space of not less than 15%, increase of height of certain buildings with the Grove Street Area Corridor (to the extent necessary), and reduction in setback from Grove Street for certain buildings within the Grove Street Corridor Area (to the extent necessary); as to design standards, waiver of the sustainable development design standards and placement of a retaining wall greater than 4 feet in height located in a setback; as to uses, for-profit educational use, retail sales of over 5,000 square feet, restaurant with more than 5,000 square feet of gross floor area, personal service use of over 5,000 square feet, place of amusement, health club on ground floor, animal services, hotel, bank up to and over 5,000 square feet, theatre/hall, laboratory/research facility, parking facility, accessory, multi-level, parking facility, non-accessory, single level; as to parking, reduction of the residential parking requirement to 1.25 stalls per unit, reduction of the overall commercial parking requirement by 1/3, and waiver of parking stalls not to exceed 685 stalls, above and beyond the reductions specified above; as to parking facilities, waivers of the parking stall dimension requirements, the end stall maneuvering space requirements, the driveway entrance and exit requirements, the 5% interior landscaping requirements, the interior planting area requirements, the tree requirements, the bumper overhang requirements, the one-foot candle lighting requirement, the parking stall striping requirements (to the extent necessary), the curbing, wheel stop, guard rail, or bollard requirements, and the number of off-street loading facilities requirements; and as to signage, waiver of the number, size, type, location, and design requirements, all at 355 and 399 GROVE STREET on land known as Section 42, Block 11, Lots 3, 4 and 4A, containing approximately 13.05 acres of land in districts zoned Mixed Use 3 Transit Oriented (MU3), BU2 (a portion to be rezoned to MU3), BU5 (to be rezoned to MU3). Ref: Sec. 4.2.2.B.1, 4.2.2.B.3, 4.2.3, 4.2.4, 4.2.4.A.4, 4.2.4.B.3, 4.2.4.G.2, 4.4.1, 5.1.4, 5.1.4.A, 5.1.4.C, 5.1.8.B.1, 5.1.8.B.2, 5.1.8.B.4, 5.1.8.B.6, 5.1.8.D.1, 5.1.8.D.2, 5.1.9.B.1, 5.1.9.B.2, 5.1.9.B.3, 5.1.9.B.4, 5.1.10.A.1,

5.1.10.B.3, 5.1.10.B.5, 5.1.12, 5.1.12.B.4, 5.1.13, 5.2, 5.2.13, 5.4.2.B, 5.12, 6.4.29.C.5, 7.3.3, 7.3.5, 7.4 of the City of Newton Revised Zoning Ordinance, 2017. Additionally, as to infiltration and inflow mitigation, an abatement of the infiltration/inflow mitigation fee pursuant to Section 29-170 of the City of Newton Revised Zoning Ordinance, 2017.

Action: Land Use Approved 8-0; Public Hearing Closed 10/06/2020

Note: Atty. Steve Buchbinder presented updates and comments on the draft Council Order. Atty. Buchbinder presented outstanding concerns relative to specific conditions as shown below.

13d and 89c. With respect to the Mass DOT approval of the interchange improvements, the petitioner has recommended use of the work “operationally” prior to approval noting that Mass DOT may not ever issue a formal approval. VHB Traffic Engineer Randy Hart explained that after construction of the roadway improvements, there will be a preliminary inspection by Mass DOT. If the agency is satisfied, they will allow operation of the improvements even if they require additional adjustments. It was noted that the bonding requirement relates to off-site improvements within the City’s jurisdiction. The Committee expressed no concern relative to this change and took a straw poll which carried 5-0.

Condition 14. With respect to the language “shall discourage left turns”. Atty. Buchbinder noted that the petitioner will go to Traffic Council and seek approval of the prohibition of the left turn. The petitioner is more than willing to put a sign up. If the MBTA asked for the turn, they would be required to make a change.

*Regarding the two bridges DCR payment, it was suggested that if DCR is not ready or unwilling to make the payment, the payment can be issued directly to the City.

Condition 46. Atty. Buchbinder asked that the language in Condition 46 be clarified to state that recommendations made by the liaison Committee are advisory. The Committee took a straw poll 6-0 in favor of this change.

Condition 38F. It was noted that the draft Council Order previously cited the Mass DEP noise policy and the City’s noise ordinance. The City’s peer reviewed suggested that the language relative to Mass DEP’s noise policy was included in the Construction Management Plan (CMP) but did not reference the City’s noise ordinance. Noting that state’s standard and the City’s standard may not be aligned with each other, Associate City Solicitor Jonah Temple suggested that the CMP and Council Order reference the City’s noise ordinance. The Committee expressed some concern relative to the exclusive reference to the City’s noise ordinance and questioned why the petitioner may not be able to comply with the state regulations. Atty. Temple noted that the City does not have experience enforcing the state regulations, which would fall to the jurisdiction of the Police and Fire Departments. He explained that the DEP policy uses somewhat ambiguous language but confirmed that the petitioner would be required to comply with both, regardless of the language included. The Committee took a straw poll which carried 4-2-1; four in favor of keeping both standards, 2 in favor of using only the City’s standard and 1 abstention from Councilor Downs.

Chief Planner Neil Cronin noted that the petitioner’s commitment to Passive House Design and design principles has been incorporated with different language than was previously reviewed by the Committee. He noted that Planning will work with the Law Department to include more actionable

language and specific commitments. The Committee noted that language that is too prescriptive may be problematic if/when sustainability standards change. Atty. Temple noted that as the standards change, it is likely that the Commissioner of Inspectional Services would be willing to issue a consistency ruling.

Condition 14. Councilor Downs and Bowman submitted draft language to change the language in A3 from an exact length to a minimum amount of space to allow some flexibility for changes to the bike lane, installation of trees and/or a bench. The Committee was uncomfortable with delegating design to City staff without Council review. Atty. Temple noted that any major construction work in the public way must also be reviewed and approved by the Council via the Public Facilities Committee and confirmed that the final Grove Street design will have to come back to the Council. The Committee took a straw poll 4-4; (Councilors Downs, Greenberg, Auchincloss and Bowman in favor of allowing the change and Councilors Lipof, Kelley, Markiewicz and Laredo opposed to making the change).

It was noted that vesting of the zone change is specific and should be tied to an important stage in the project. Additionally, the time to exercise the special permit is three years. It was suggested that three years is a long time to apply for the building permit for the parking garage. Noting that the petitioner has 12 years to complete the project, it was suggested that the Council should reconsider the amount of time that the petitioner must complete each stage.

With respect to de minimis changes via consistency rulings, it was noted that the height on Grove Street is problematic. Noting that there are four buildings proposed on Grove Street with heights greater than 60', the petitioner should not be permitted to go any higher. Mr. Cronin explained that there are buildings that could be increase in height that still comply with the MU-3/TOD zone. He confirmed that the 60' buildings would not be permitted a height increase of 2', as that would be in excess of what is permitted by the zone. Atty. Temple confirmed that increases in the number of stories would require an amendment to the special permit.

Atty. Temple confirmed that with respect to the highway reconfigurations, material modifications can be made if the performance achieves the same intent as the concept design presented. If the new design does not achieve the performance objectives, there would need to be an amendment to the special permit.

Regarding the funds reserved for Williams School, a suggested was made that the funds be made available for use by students at Angier as well. The Committee noted that Angier was recently upgraded and may not need additional funding at this time. It was suggested that the funds for Williams are not significant to fund a significant redesign, which will be costly, but that they could be used for programs at both Williams or Angier.

It was noted that the Woodland Golf Course remains concerned about the project's impact on the water source in the area, possible damage to the aquifer underneath the Riverside site through blasting or construction and water runoff from the site. Additionally, Woodland is concerned that early morning operations in the maintenance shed could be subject to noise complaints once the new residents begin to occupy units at Riverside. The petitioner is committed to resolving these issues and will meet with Woodland prior to the full Council meeting.

The Committee expressed support for consultation by the Commissioner of Public Works with the City Council through the Public Facilities and/or Land Use Committees for consistency rulings that relate to critical components of the project (particularly Mass DOT determination, roadway configuration(s)). Atty. Buchbinder expressed no concern relative to the change and the Committee took a straw poll 8-0 in favor of including the language.

Councilors noted that after the final CMP was relocated to prior to applying for building permits, some matters are not addressed (i.e. dust, air, noise parking, access, air quality, emissions, etc.). Atty. Temple confirmed that a new condition (Condition 37) has been drafted to require a Demolition Management Plan for review by Inspectional Services that addresses these concerns. Councilors questioned why the CMP cannot be required prior to demolition. It was noted that the CMP has historically been required prior to construction because demolition is often by-right. Mr. Cronin confirmed that the CMP would be required prior to issuance of the foundation permit. It was noted that the initial CMP would need to be approved prior to issuance of a building permit.

The Committee expressed no further concerns relative to petitions #26-20 and #27-20. Councilor Markiewicz motioned to close public hearings for items #27-20 and #26-20, both carried unanimously. The Committee reviewed the draft Council Order for the request to rezone the site and expressed no concerns. A roll call vote was taken for item #26-20 which carried 8-0. A roll call vote was taken for item #27-20 which carried 8-0.

#337-20 **Petition to allow business and accessory apartment in detached structure at 16 Hyde St**
RACHEL SEGALL AND JAMES HURLEY petition for SPECIAL PERMIT/SITE PLAN APPROVAL to raze the existing detached garage and create a new detached accessory structure for a home business and accessory apartment at 16 Hyde Street, Ward 6, Newton Highlands, on land known as Section 52 Block 18 Lot 15, containing approximately 7,719 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 6.7.3.B.1.k.iv, 6.7.1.E.1, 6.7.1.E.5 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Approved 7-0 (Councilor Auchincloss not Voting); Public Hearing Closed 10/06/2020**

Note: Petitioners Rachel Segall and James Hurley presented the request to replace an existing detached garage and replace it with a new accessory structure with space for an office/bedroom/kitchenette. It was noted that Ms. Segall is a psychotherapist who will use the space primarily to meet with clients. On occasional weekends, the space will be used to host in-laws.

Senior Planner Michael Gleba presented the requested relief, criteria for consideration, land use, zoning, photos and proposed plans as shown on the attached presentation. Mr. Gleba noted that because the structure is more than fifty years old, it is subject to historic jurisdiction and the City's Preservation Planner has not yet filed a decision on the property.

The Public Hearing was Opened. No member of the public wished to speak. Committee members expressed support for the petition. It was noted that the structure will be moved farther from the property line and access to the site is clear. It was confirmed that parking is permitted on Hyde Street as well. Seeing no member of the public who wished to speak, Councilor Bowman motioned to close the

public hearing which carried 7-0. Councilor Bowman motioned to approve the petition and the Committee voted 8-0 in favor of approval.

#285-20 Petition to amend Council Orders #218-08 and #218-08(2) to allow education use and parking waiver at 141-145 California Street

MAZZI REALTY petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit Council Orders #215-08 and #215-08(2) to allow a for-profit educational use and reconfiguration of the parking stalls, to waive the requirement to use the formula for A-B+C parking, to waive ~~18~~ 22 parking stalls, to waive minimum stall dimensions, to waive minimum accessible stall dimensions, to allow restricted end stalls, to waive minimum aisle widths, to waive a minimum driveway width, to waive perimeter landscaping requirements, to waive interior landscaping requirements, to waive lighting requirements for parking areas and to waive bicycle parking requirements at 141-145 California Street, Ward 1, Newton, on land known as Section 11 Block 01 Lots 01A, containing approximately 65,568 sq. ft. of land in a district zoned MANUFACTURING. Ref: Sec. 7.3.3, 7.4, 4.4.1, 5.1.3.B, 5.1.13, 5.1.4, 5.1.8.B.1, 5.1.8.B.2, 5.1.8.B.4, 5.1.8.B.6, 5.1.8.C.1, 5.1.8.D.2, 5.1.9.A, 5.1.9.B, 5.1.10.A, ~~5.1.11~~ of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Approved**

Note: Atty. Katherine Adams, with law offices at Schlesinger and Buchbinder, 1200 Walnut Street, presented an overview of changes to the petition since August 2020. Atty. Adams noted that the petitioner was asked during the public hearing in August, to consider making the parking stalls at the site more compliant and to find a way to encourage one-way circulation throughout the site. The petitioner secured MDM Transportation Consultant Bob Michaud to provide analysis of the site's prior and proposed uses. Atty. Adams noted that the revised parking plan includes 9'x19' spaces for all of the van spaces and 8.5'x18' spaces for all of the employee/visitor spaces, resulting in a loss of four total spaces. She confirmed that pavement markings and/or signage can be added to reinforce the one-way counterclockwise circulation around the site, which will mitigate concerns relative to backing out onto California Street. At the public hearing in August, the petitioner was asked to consider installation of a sign to identify the entrance through the site to the Riverway path. The petitioner has been advised that a sign may be problematic as there is no walking path to the Riverway.

In response to questions raised about installation of benches near the Riverway path, Atty. Adams confirmed that the petitioner is willing to reinstall and maintain benches that are satisfactory to the DCR. Atty. Adams noted that the petitioner has agreed to install a trash receptacle for use by customers and members of the public on site.

Mr. Michaud provided an overview of the data used to characterize historic operations for Zdorovie in Newton and at their second location, in Natick. His presentation can be found at the end of this report. Mr. Michaud noted that the prior uses at the California Street site include ballroom dancing studio, camera rental and a medical dental office building. Based on analysis assuming full permitted capacity, Mr. Michaud explained that 22-23 vehicle trips are anticipated between 7-8 a, and 2-3 pm. During the peak pm hour 5-6, the facility is not operating. Mr. Michaud noted that a surplus of approximately 4 parking stalls (7%) throughout the site is anticipated. He continued, stating that that the petitioner is committed to reducing reliance on vehicles and reinforcing the use of public transportation and

alternative travel modes. As such, the petitioner has agreed to fully fund commuter rail passes for employees. It was noted that the van spaces will be located in a designated area of the site and there is sufficient maneuvering area to access and leave the area. Mr. Michaud noted that the proposed use for the site has a lower impact than the prior combined uses at the site.

The Committee noted that there are some spaces oriented at an angle on site, which could create conflict points. Mr. Michaud explained that there is sufficient maneuvering space for the vehicles to reverse and make the appropriate turn to exit the site. The Committee suggested that the petitioner limit parking in the angled spaces to employees, who will understand circulation quicker than visitors to the site.

The Committee was generally supportive of the petition and the improvements made to the Transportation Management Plan, the parking layout and traffic circulation. It was suggested that the draft Council Order include language as follows:

“The petitioner will reach out to DCR to partner with them to improve the quality of the DCR greenspace that abuts their property, including but not limited to litter pickup, erosion control, invasive removal and to sponsor the installation of benches at the open area across from the access point to their property”

Atty. Temple confirmed that this language is acceptable as a condition. The Committee expressed no further concerns relative to the petition. Councilor Greenberg motioned to close the public hearing which carried 7-0. Councilor Greenberg motioned to approve the petition. The Committee reviewed the draft findings and conditions as shown on the attached presentation and voted 7-0 in favor of approval.

The Committee adjourned at 9:15 pm.

Respectfully Submitted,

Richard Lipof, Chair

Department of Planning and Development



PETITION #337-20

ADDRESS

SPECIAL PERMIT/SITE PLAN
APPROVAL TO RAZE THE
EXISTING DETACHED GARAGE
AND CREATE A NEW DETACHED
ACCESSORY STRUCTURE FOR A
HOME BUSINESS AND
ACCESSORY APARTMENT

OCTOBER 6, 2020



Requested Relief



Special permit per §7.3.3 to:

- allow a home office in a detached structure (§6.7.3.B.1.k.iv)
- allow a detached accessory apartment (§6.7.1.E.1)
- allow a detached accessory apartment in a structure that does not meet principal setbacks (§6.7.1.E.5)

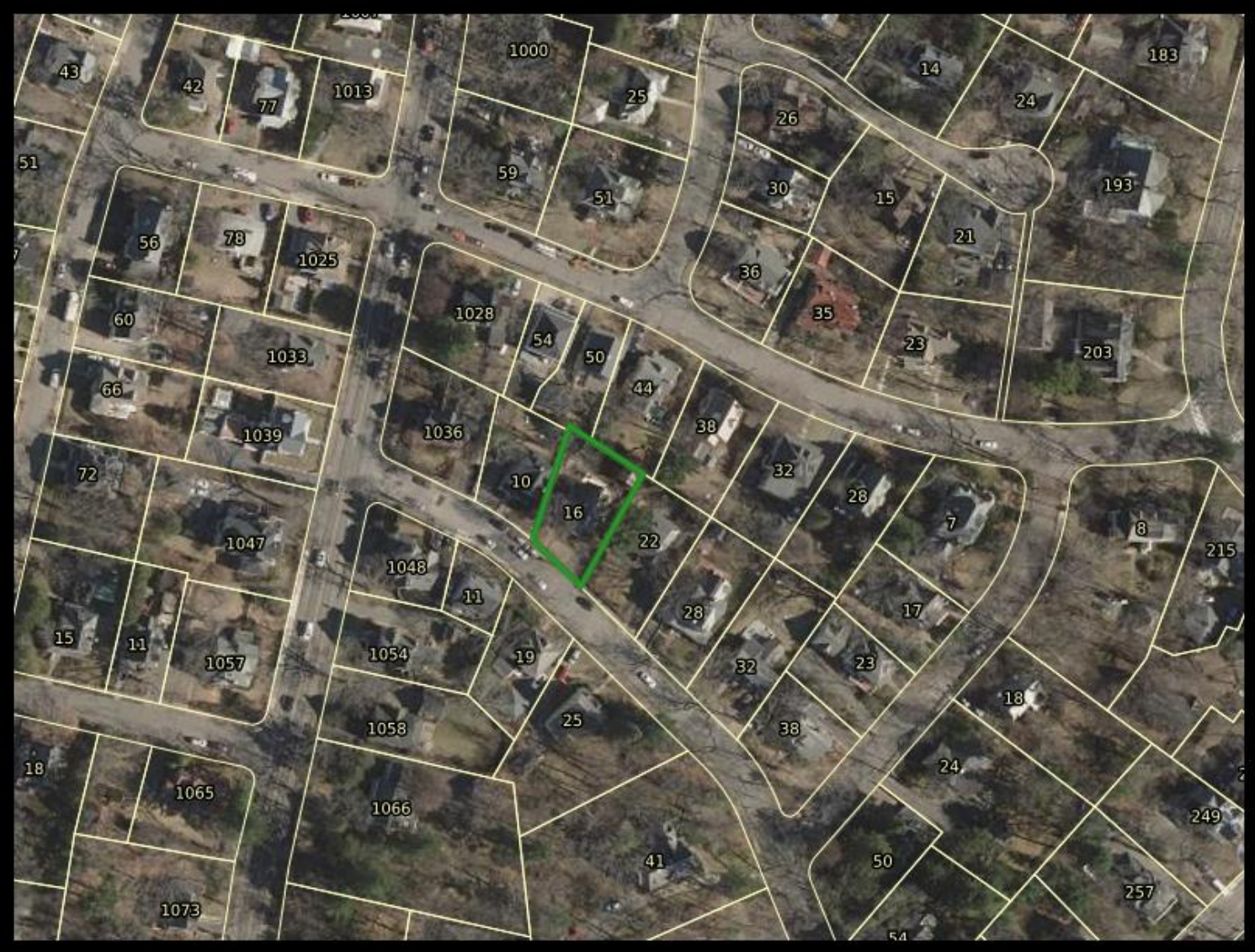
Criteria to Consider



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

- The site in a Single Residence 2 (SR2) district is an appropriate location for the proposed accessory apartment and home business within a detached structure that does not meet principal dwelling setbacks (§7.3.3.C.1)
- The accessory apartment and home business within a detached structure that does not meet principal dwelling setbacks, will adversely affect the neighborhood (§7.3.3.C.2)
- The accessory apartment and home business within a detached structure that does not meet principal dwelling setbacks, 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)

AERIAL/GIS MAP



Zoning




ATTACHMENT A

Zoning

16 Hyde Street

*City of Newton,
Massachusetts*

Zoning

 Single Residence 2



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield

0 12.5 25 50 75 100 125 Feet

Map Date: September 29, 2020

Land Use



ATTACHMENT A




Land Use

16 Hyde Street

*City of Newton,
Massachusetts*

Land Use

Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Mixed Use



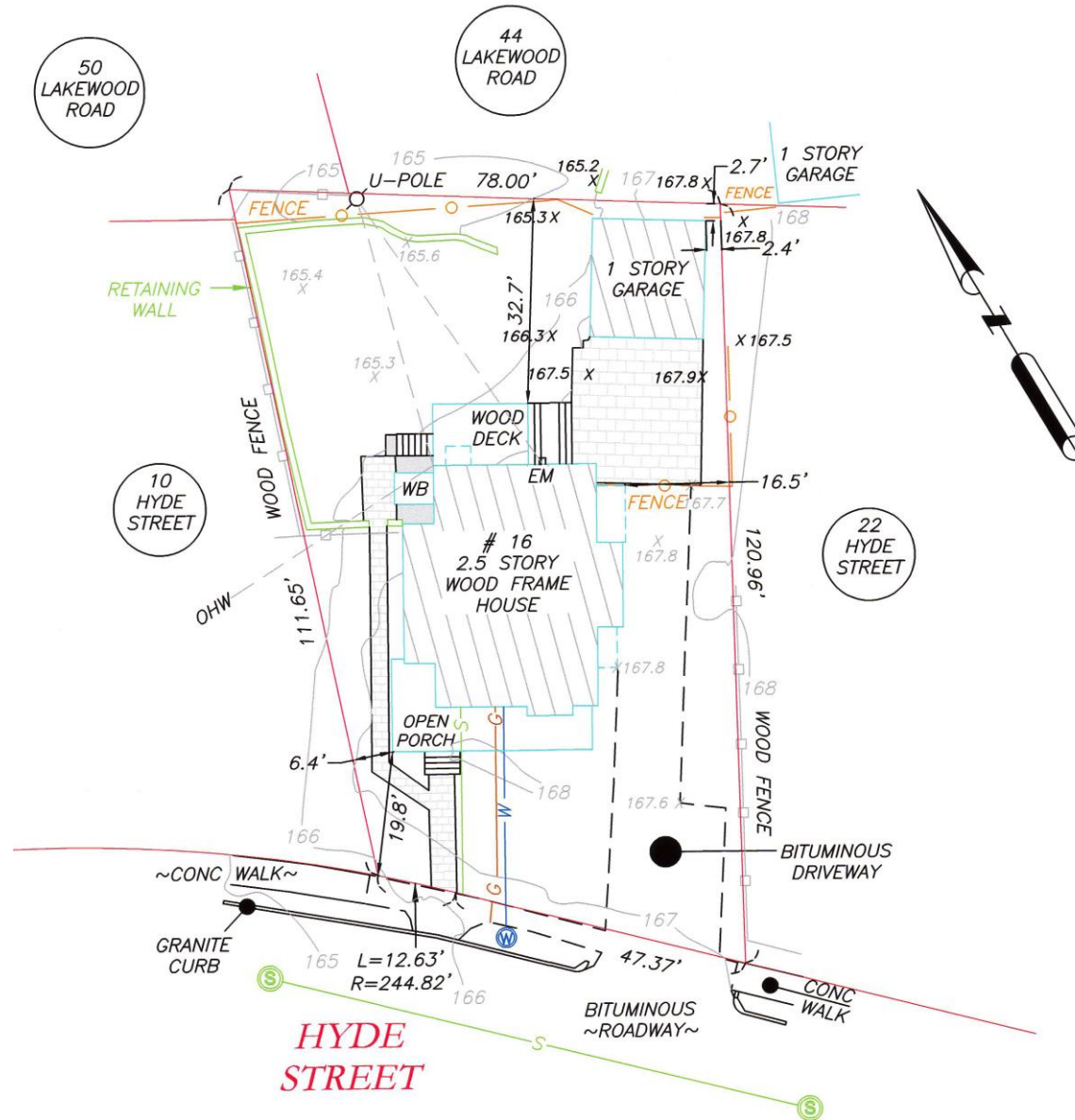
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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield

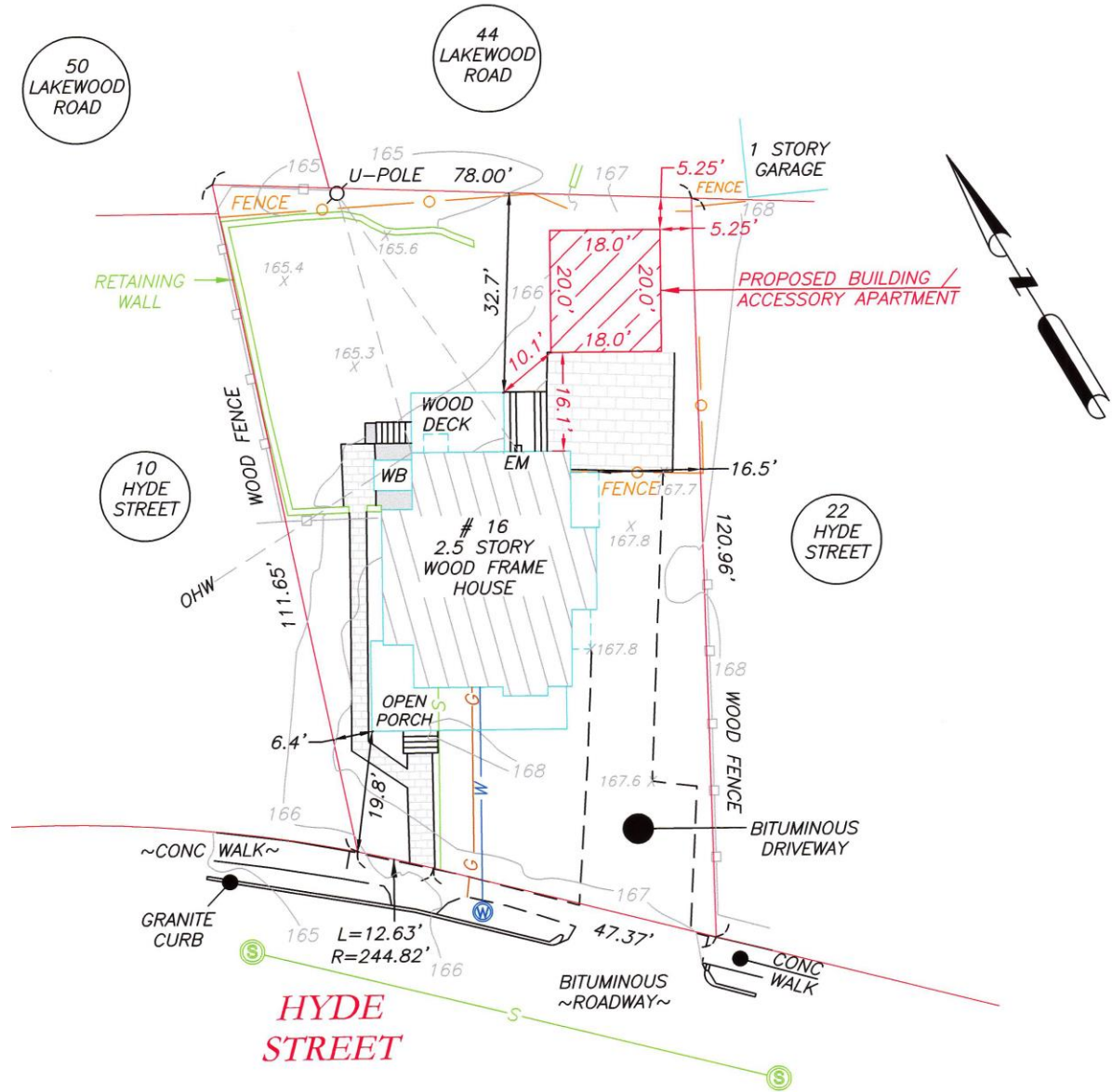


Map Date: September 29, 2020

Site Plan- existing



Site Plan- proposed



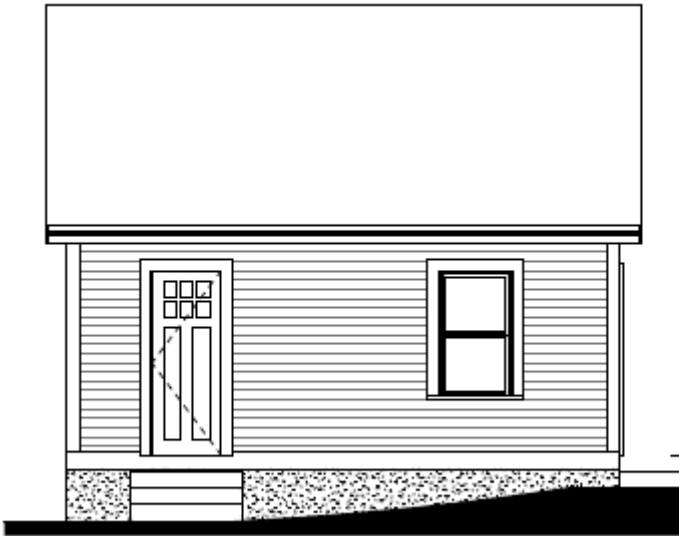
Elevations



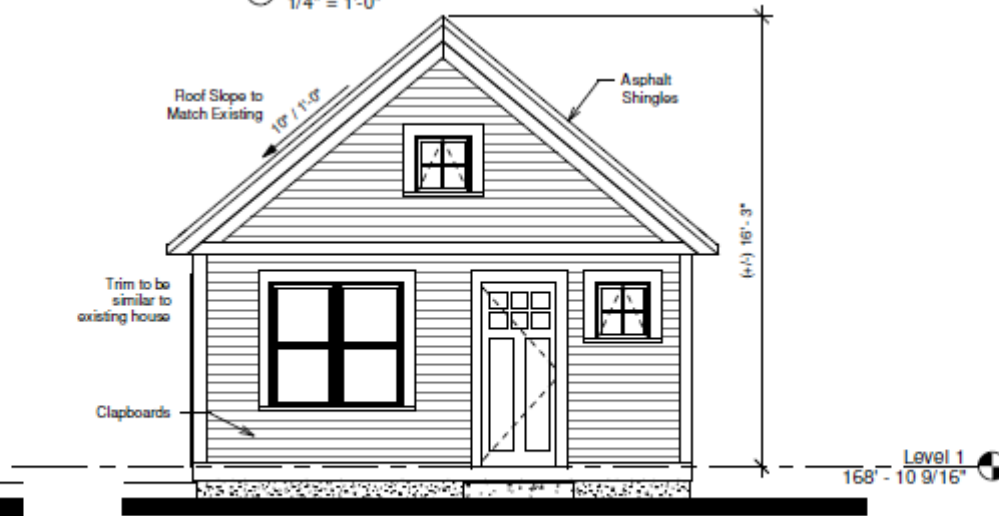
① Northwest
1/4" = 1'-0"



② Northeast
1/4" = 1'-0"

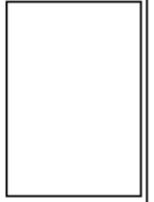


④ Southeast
1/4" = 1'-0"



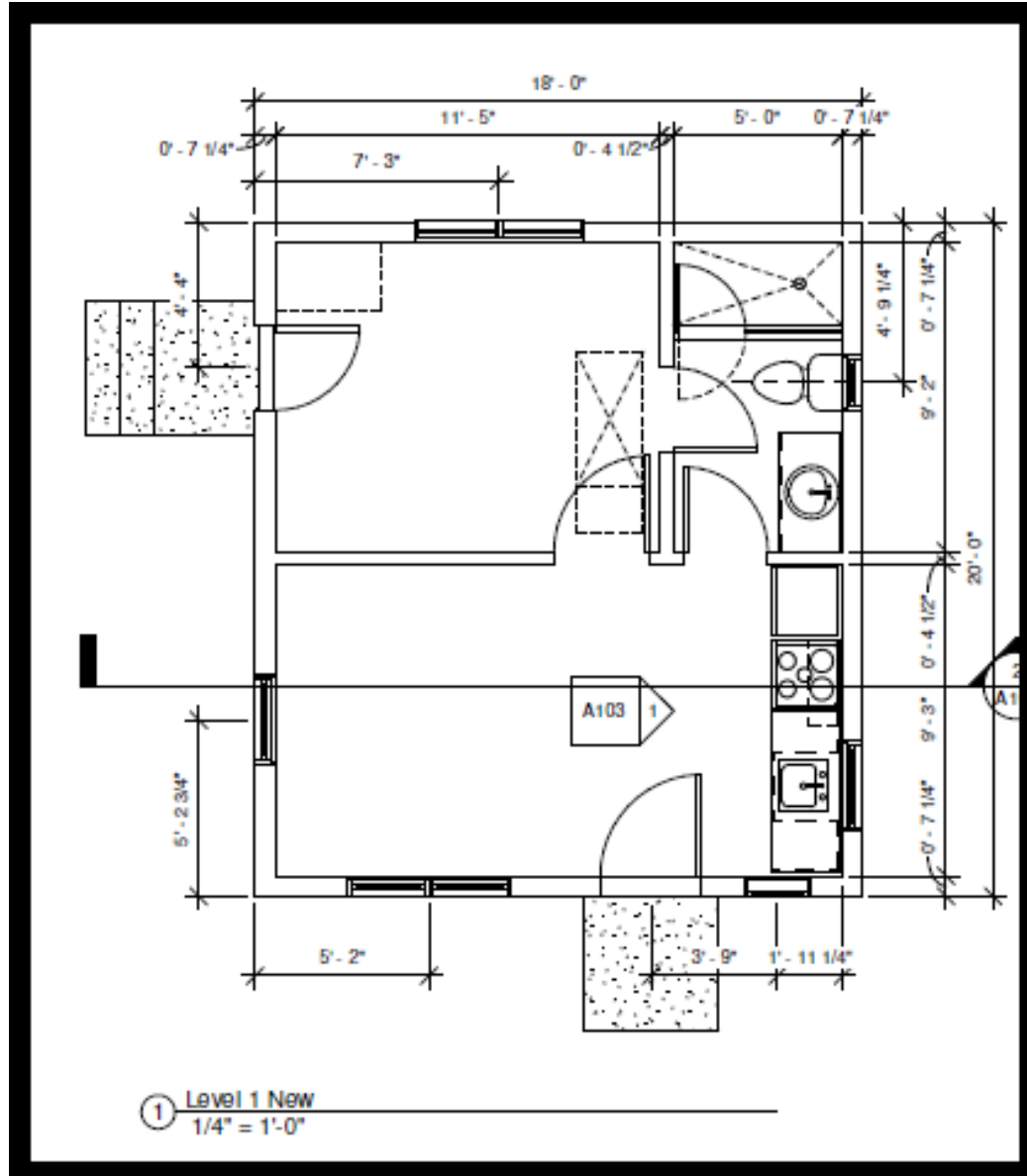
③ Southwest
1/4" = 1'-0"

Elevations	
Project number	Project Number
Date	June 18, 2020
Drawn by	JDS
Checked by	MS
A102	
Scale 1/4" = 1'-0"	



Segall / Hurley
Accessory Apartment

Floor plan



Photos



Photos



Photos



Proposed Findings



1. The site in a Single Residence 2 (SR2) district is an appropriate location for the proposed accessory apartment and home business within a detached structure that does not meet principal dwelling setbacks because it is similar in size and location to a garage that it would replace and its proposed uses are not expected to generate significant noise, light or activity. (§7.3.3.C.1)
2. The proposed accessory apartment and home business within a detached structure that does not meet principal dwelling setbacks, will not adversely affect the neighborhood because the structure and uses are accessory to the principal residential use on site. (§7.3.3.C.2)
3. The proposed accessory apartment and home business within a detached structure that does not meet principal dwelling setbacks, will not create a nuisance or serious hazard to vehicles or pedestrians because there are no changes to either the parking or circulation on 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)

Proposed Conditions



1. Plan Referencing Condition
2. *The Petitioner and the accessory apartment must at all times comply with all applicable rules for accessory apartments set forth in Section 6.7 of the Newton Zoning Ordinance. The accessory apartment cannot constitute its own unit within a condominium.*
3. *The accessory apartment must be held in common ownership with the principal dwelling unit in accordance with Section 6.7.C.1 of the Newton Zoning Ordinance.*
4. *The owner of the principal dwelling unit to which the accessory apartment is accessory to shall occupy either the principal unit or the accessory apartment and shall file an annual affidavit with the Commissioner of Inspectional Services attesting to this fact prior to July 1 of every year.*

Proposed Conditions (con't)



1. *The home business shall operate with all applicable rules for home businesses set forth in Section 6.7.B.1. of the Newton Zoning Ordinance.*
2. Standard Building Permit Condition.
3. Standard Final Inspection/Certificate of Occupancy Condition.