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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date:	May 1, 2018
Land Use Action Date:	June 26, 2018
City Council Action Date:	July 9, 2018
90-Day Expiration Date:	July 30, 2018

DATE: April 27, 2018

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Jennifer Caira, Chief Planner for Current Planning
Valerie Birmingham, Planning Associate

SUBJECT: **Petition #209-18**, for a SPECIAL PERMIT/SITE PLAN APPROVAL by allowing additional space above an attached garage, creating a Floor Area Ratio (FAR) of 0.35 where 0.33 is allowed at **138 Arnold Road** Ward 8, Newton, on land known as Section 81, Block 01, Lot 03, containing approximately 15,250 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3, 7.4, 3.1.3, 3.1.9 of the City of Newton Rev Zoning Ord, 2015.

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis conducted by the Planning Department. The Planning Department's intention is to provide a balanced review of the proposed project based on information it has at the time of the public hearing. Additional information about the project may be presented at or after the public hearing that the Land Use Committee of the City Council can consider at a subsequent working session.



138 Arnold Road

EXECUTIVE SUMMARY

The property at 138 Arnold Road consists of a 15,250 square foot lot in a Single Residence 2 (SR-2) zone. A single-family residence is newly built and awaiting a final inspection and Certificate of Occupancy from the Inspectional Services Department (ISD). The single-family dwelling received a building permit for the construction of a new residence from ISD in February of 2017 with the plans submitted in the special permit application. At the time of the issuance of the building permit the proposed dwelling's FAR was calculated at 0.33 where 0.33 is allowed, however, it has since been determined that the second-level space over the attached garage should have been included in the FAR calculation, but it was not. When originally calculating the proposed building's FAR the petitioner utilized the provisions dealing with attics above the second floor. As this space is above the first floor, the space should have been included and calculated as part of the second story. The additional space adds 295 square feet to the structure creating a total of 5,316 square feet, increasing the building's FAR from 0.33 to 0.35, where the maximum allowed is 0.33. A special permit pursuant to §3.1.9 is required to exceed the maximum allowable FAR.

The Planning Department is not concerned with the additional space over the garage. The dwelling is located in a neighborhood of similarly-scaled dwellings and complies with all dimensional regulations of the SR-2 zoning district, except FAR.

SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the City Council should consider whether:

- The increase in FAR from 0.33 to 0.35, where 0.33 is the maximum allowed is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood (§3.1.9).

I. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

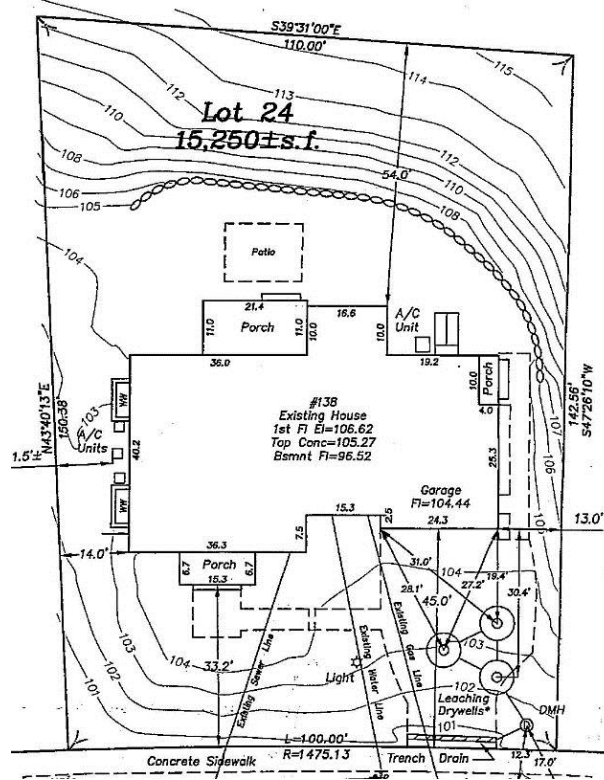
A. Neighborhood and Zoning

The subject property is located on the west side of Arnold Road, in the SR-2 zone. The immediate neighborhood and surrounding area is largely residential and zoned SR-2, except for the Charles River Country Club and Golf Course, zoned Single Residence 1 (SR-1) to the southwest, and City of Newton owned open space, zoned Public (PUB) to the north (**Attachments A & B**).

B. Site

The site is a 15,250-square foot lot improved with an approximate 5,316 square foot, 2 story newly built single-family dwelling near the center of the property. Access to the attached garage is provided by an approximately 45-foot-long paved driveway near the

right side of the property. The site gradually slopes upward from the street to the building, leveling off and remaining predominantly flat from the front of the building to a retaining wall in the center of the backyard, where it again slopes upward to the rear property line. The site features lawn area and mature vegetation. A six-foot wood fence is located along the rear property line.



II. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site is and will remain a single-family residence.

B. Building and Site Design

The petitioner recently finished constructing the single-family dwelling and is awaiting final sign off and a Certificate of Occupancy from the City. As noted above, the plans submitted with the special permit application are identical to the approved building permit plans, and the dwelling was built according to the approved plans. In order to receive a final sign-off from the City the petitioner is required to submit an As-Built Site Plan. While completing the required Site Plan, the petitioner's surveyor determined that

the second-level space over the attached garage should have been included in the original FAR calculation but was not. For the building permit the petitioner had originally calculated this space in the same way that attic space above the second floor is calculated. FAR in the attic space above the second floor is calculated differently than FAR in the first and second floor, which measures the gross floor area of the first and second floors. As the space above the attached garage is part of the second floor, the FAR was done incorrectly.

The additional 295 square feet increases the dwelling's FAR from 0.33 to 0.35, where 0.33 is allowed, and the dwelling is currently non-compliant. The petitioner is not proposing any physical changes to the newly constructed dwelling, but is seeking a special permit to rectify the miscalculation and exceed the allowable FAR. If this petition is approved, the petitioner will be required to amend the building permit to include the additional FAR before a Certificate of Occupancy is issued.

C. Parking and Circulation

The petitioner is not proposing any changes to parking or circulation

D. Landscaping and Screening

A landscape plan is not required with this petition.

III. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum provides an analysis of the proposal with regard to zoning (**Attachment C**). Based on the Memorandum, the petitioner is seeking the following relief:

- §3.1.9 of Section 30, to exceed FAR

B. Newton Historical Commission

The petitioner demolished a single-family house in 2016 after obtaining a waiver of a demolition delay from the Newton Historical Commission (NHC) per the submitted plans. Since the previous house was demolished prior to the expiration of the original demolition delay, any changes to the new house plans must be approved by NHC. If the petition is not approved, the petitioner will be required to go back to the NHC with revised plans that comply with the allowable FAR of 0.33 (**Attachment D**).

IV. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.







ATTACHMENTS:

- Attachment A:** Zoning Map
Attachment B: Land Use Map
Attachment C: Zoning Review Memorandum
Attachment D: Newton Historical Commission Demolition Review Decision
Attachment E: DRAFT Order

Attachment A Zoning Map Arnold Rd., 138

*City of Newton,
Massachusetts*

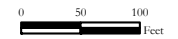
Legend

-  Single Residence 2
-  SR1
-  PUB
-  Building Outlines
-  Surface Water
-  Property Boundaries

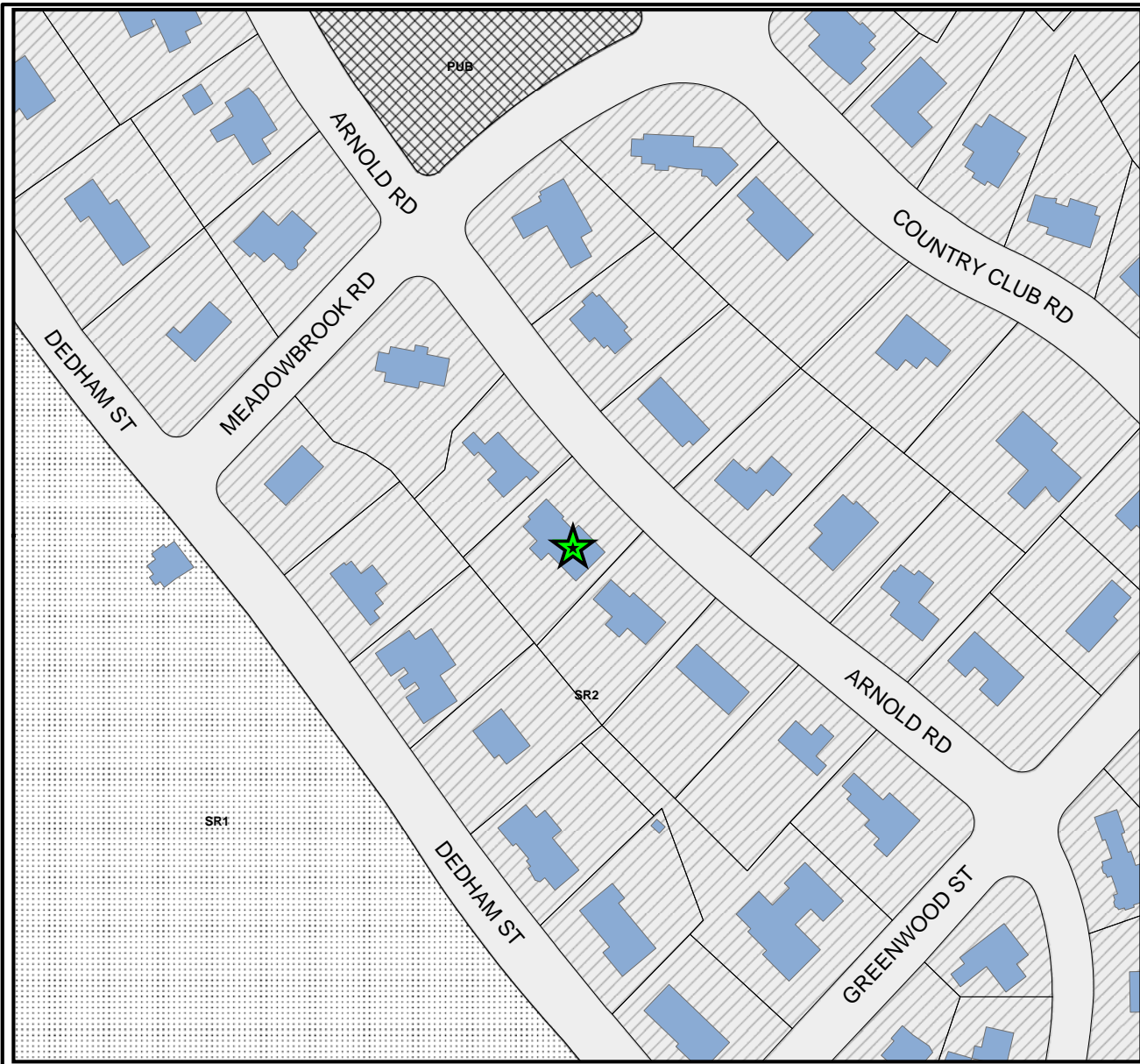


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

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



Map Date: April 24, 2018



ATTACHMENT B


Land Use

Arnold Rd., 138

*City of Newton,
Massachusetts*

Land Use

Land Use

-  Single Family Residential
-  Golf Course
-  Open Space
-  Vacant Land

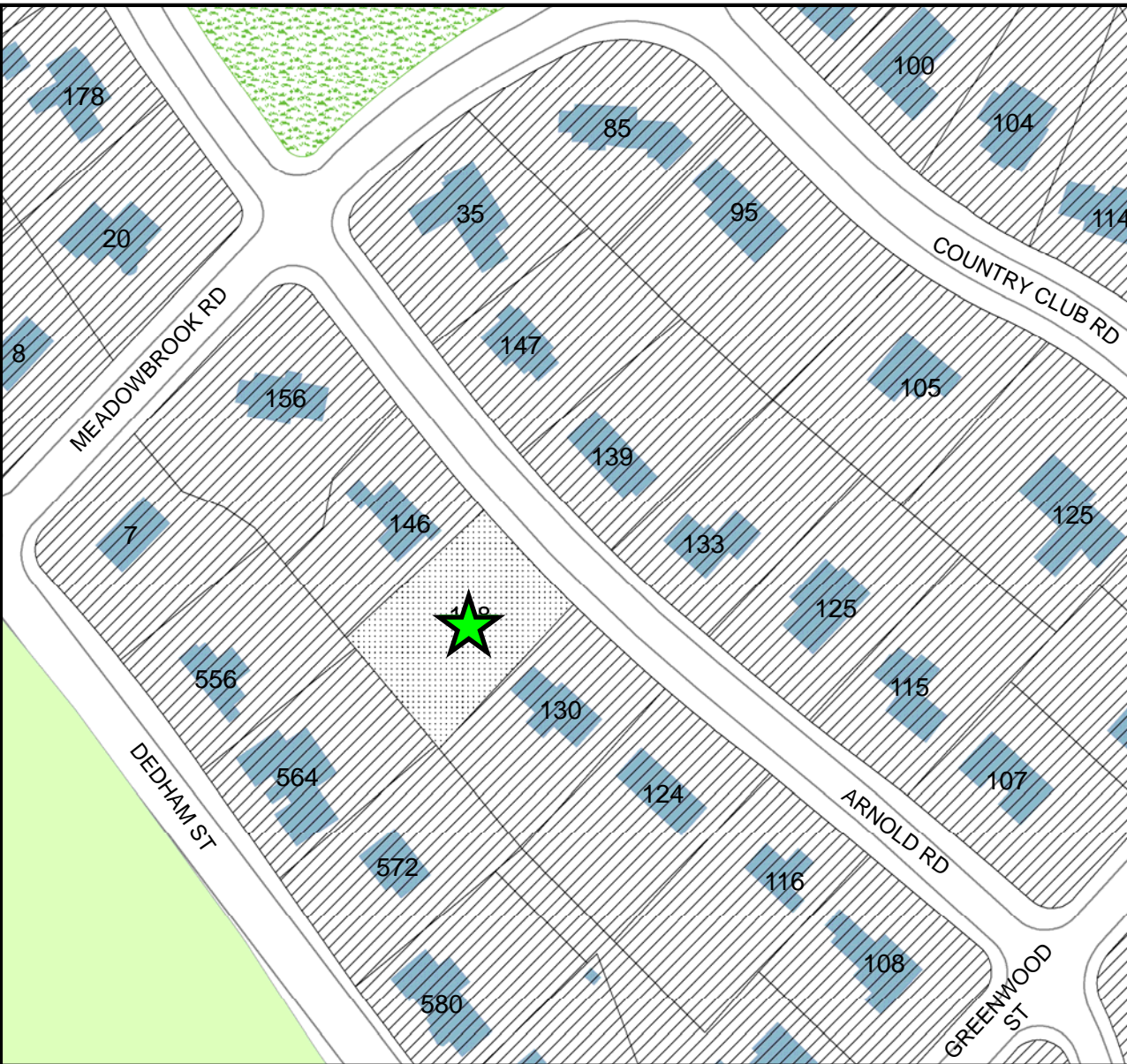


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Map Date: April 24, 2018





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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: March 28, 2018

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Jennifer Caira, Chief Planner for Current Planning

Cc: Jams Realty LLC
Louis Franchi, Applicant
Barney S. Heath, Director of Planning and Development
Ouida Young, Acting City Solicitor

RE: Request to exceed FAR

Applicant: Louis Franchi	
Site: 138 Arnold Road	SBL: 81001 0003
Zoning: SR2	Lot Area: 15,250 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 138 Arnold Road consists of a 15,250 square foot lot improved with a single-family residence currently under construction. The single-family dwelling received a building permit from Inspectional Services for the plans under review by this application. It was determined that the second-level attic space over the attached garage should have been included in the FAR calculation, but was not. The petitioner utilized the provisions dealing with attics *above the second floor*. As this attic space is above the first floor, the elimination of that space as part of the FAR calculation does not apply, and should have been included. The petitioner seeks to rectify the miscalculation and requests a special permit to exceed the allowable FAR.

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

- Zoning Review Application, prepared Louis Franchi, dated 3/28/2018
- FAR Worksheet, submitted 3/28/2018
- As Built Site Plan, signed and stamped by Verne T. Porter, surveyor, dated 2/28/2018
- Architectural plans and elevations, prepared by AMD Designs, architect, dated 11/6/2016

ADMINISTRATIVE DETERMINATIONS:

1. The single-family dwelling is under construction by a building permit issued by Inspectional Services in February 2017. At the time the petitioner applied for the Certificate of Occupancy, it was determined that the FAR was incorrectly calculated and the structure was over the maximum allowable FAR. The space above the garage adds 295 square feet, changing the FAR from .33 to .35, which exceeds the maximum of .33 allowed by section 3.1.9, requiring a special permit.

SR2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	15,250 square feet	No change
Frontage	80 feet	100 feet	No change
Setbacks			
• Front	25 feet	33.2 feet	No change
• Side	7.5 feet	11.5 feet	No change
• Rear	15 feet	54 feet	No change
Max Number of Stories	2.5	2.5	No change
FAR	.33	.33	.35
Max Lot Coverage	30%	21.72%	No change
Min. Open Space	50%	70.4%	No change

1. See "Zoning Relief Summary" below:

Zoning Relief Required		
Ordinance		Action Required
§3.1.3	Request to exceed FAR	S.P. per §7.3.3
§3.1.9		

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Barney S. Heath
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Setti D. Warren
Mayor

RECORD OF ACTION:

DATE: September 29, 2016

SUBJECT: 138 Arnold Road

At a scheduled meeting and public hearing on September 22, 2016, the Newton Historical Commission, by a vote of 5-1:

RESOLVED to waive the demo delay based on 138 Arnold Road based on approved plans, contingent upon submittal of a materials list.

Voting in the Affirmative: _____ Voting in the Negative: _____ Abstained: _____

Nancy Grissom, Member
Peter Dimond, Member
Mark Armstrong, Member

Laura Fitzmaurice, Member

Ellen Klapper, Alternate
Jean Fulkerson, Member

Title Reference: Owner of Property:

Jaws Realty LLC

Deed recorded at:

Middlesex (South) Registry of Deeds
Book 66703, Page 73
Date 1/21/16

Katy Hax Holmes
Katy Hax Holmes
Staff

DRAFT #209-18
138 Arnold Road

CITY OF NEWTON
IN CITY COUNCIL

ORDERED:

That the City Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to increase the Floor Area Ratio (FAR) from 0.33 to 0.35, where 0.33 is the maximum allowed by-right, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Gregory Schwartz:

1. The proposed increase of FAR from 0.33 to 0.35, where 0.33 is the maximum allowed by-right, is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood as it will be adding 295 square feet to the structure and meets all other dimensional requirements. (§3.1.9 and §7.3.3)

PETITION NUMBER: #209-18

PETITIONER: Louis Franchi/Jams Realty LLC

LOCATION: 138 Arnold Road, on land known as Section 81, Block 01, Lot 03, containing approximately 15,250 square feet of land

OWNER: Louis Franchi/Jams Realty LLC

ADDRESS OF OWNER: 182 West Central Street #303
Natick, MA 01760

TO BE USED FOR: Single Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.9 and §7.3.3, to construct additions with a FAR exceeding the maximum allowed by-right

ZONING: Single Residence 2 district

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
 - a. As-Built Site Plan, signed and stamped by Verne T Porter, Professional Land Surveyor, dated February 28, 2018.
 - b. Architectural plans, dated August 13, 2016, designed by AMD Designs:
 - i. Elevations (T-1);
 - ii. Foundation and First Floor Plan (A-1);
 - iii. Second Floor and Roof Plan (A-2);
 - iv. Elevations (A-3);
 - v. First and Second Framing Plans (A-4);
 - vi. Roof Framing Plan and Sections (A-5)
2. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:
 - c. Recorded a certified copy of this order for the approved Special Permit/Site plan with the Registry of Deeds for the Southern District of Middlesex County.
 - d. Filed a copy of such recorded order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - e. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
2. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
 - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development statements by a registered architect or designer, and professional land surveyor certifying compliance with Condition #1, including the as built FAR of the structure.
 - b. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.