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#26-20 and #27-20

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**PUBLIC HEARING/WORKING SESSION MEMORANDUM**

**DATE:** July 24, 2020  
**MEETING DATE:** July 28, 2020  
**TO:** Land Use Committee of the City Council  
**FROM:** Barney Heath, Director of Planning and Development  
Neil Cronin, Chief Planner for Current Planning  
**CC:** Petitioner

In response to questions raised at the City Council public hearing, the Planning Department is providing the following information for the upcoming public hearing/working session. This information is supplemental to staff analysis previously provided at the Land Use Committee public hearing.

**PETITIONS #26-20 & #27-20**

**355 and 399 Grove Street**

**Petition #26-20** for a change of zone to Mixed Use 3/Transit Oriented District for portions of land located at 355 Grove Street (currently zoned BU-2) and 399 Grove Street (currently zoned BU-5), also identified as Section 42, Block 11, Lots 3 and 4

**Petition #27-20** for a SPECIAL PERMIT/SITE PLAN APPROVAL 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: 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); waiver of the sustainable development design standards and placement of a retaining wall greater than 4 feet in height within a setback; for-profit educational use, retail sales of over 5,000 square feet, restaurant with more than 50 seats, 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; reduction of the residential parking requirement to 1.25 stalls per unit, reduction of the overall parking requirement by 1/3, and waiver of

parking stalls not to exceed 685 stall; and waivers to the requirements of parking facilities containing more than five stalls; 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, 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, 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.

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The Land Use Committee (the “Committee”) opened the public hearings on these petitions on January 28, 2020; both public hearings remain open. This memorandum will follow-up on conditions of the draft Council Order of the so-called “Riverside Development” proposed for the subject parcels.

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### **Background**

The Committee discussed several conditions of the draft Council Order at its hearing on July 14, 2020. Specifically, the Committee discussed how to incorporate the off-site improvements’ approval process, how much time to afford the Petitioner to pull all building permits, and how increases in height would be treated via a consistency ruling. The Petitioner also asked to combine certain stages of the design review process.

### **Off-Site Improvements**

The Planning Department conferred with the on-call transportation consultant for these petitions, Green International Affiliates, Inc., (“Green”) regarding the approval process for the Route128/Interstate 95 improvements. Green stated that the approval process may take two years. The first of which would largely consist of the approval of the 25% design. This stage is the “heaviest lift” of the process due to the level of detail required. The second year would consist of other benchmarks such as 50%, 75%, 100%, and a final stage known as Plan Specifications and Estimate. The draft Council Order requires the Petitioner to submit and to receive comments from the Massachusetts Department of Transportation at the 25% stage with an authorization to proceed before allowing the Petitioner to obtain a building permit for any portion of the project other than the nonresidential and the noncommercial aspects of Buildings 9 and 10 (the parking garage). Once those comments are received, and are in support of the design, the Petitioner may pursue building permits for other buildings with the requirement that certificates of occupancy (temporary or final) will not be issued until the interchange improvements are substantially complete.

Green stated that in their experience each project is unique in how off-site improvements are incorporated into the local approval given the community, the project, and the complexity of the off-site improvements. As such, the Planning Department is not able to use standard language or provisions in drafting the condition. The condition included in the draft Council Order based on the understanding that the 25% stage is the biggest hurdle and that occupancy certificates would not be issued until the off-site improvements are substantially complete.

In conjunction with the approval process for the off-site improvements and how that process may impact the duration of construction, the Committee took a straw poll to afford the Petitioner eight years to obtain all building permits for the Project. According to the Petitioner's construction management plan, construction would take five years beginning with a ten-month enabling phase which consists of blasting ledge at the southern portion of the MBTA rail yard, razing the hotel, and relocating utilities. Once this stage is complete, the petitioner would construct the garage, and depending upon the off-site improvements' approval, begin the off-site improvements, and pursue building permits for Buildings 7 and 8. The Petitioner would then pursue building permits for structures at the southern end of the Site (Buildings 1, 2, and 3) with the expectation that Buildings 4, 5, and 6 would be constructed last.

The Petitioner expects the off-site improvements to take two years to construct, and per the draft Council Order, these improvements must be constructed and be substantially complete before occupancy certificates are issued. While circumstances may delay construction of the Project, opening the garage in conjunction with the off-site improvements, would represent a large shift in the area adjacent to the Project. For example, the new exit ramp and roundabout would be constructed, the three traffic signals would be operational, and Recreation Road would contain two lanes.

### **Building Height**

The draft Council Order allows increases in building height of less than two feet, where allowed under the Ordinance, to be as of right; therefore, a consistency determination from the Committee is not required. As such, any height increases of two feet or greater, where allowed by the Ordinance, would require a consistency determination from the Committee. A concern was raised whether this scenario would nullify the regulations of the Ordinance and/or the Council Order.

**Table I: Height Comparison Chart**

Building Number	Proposed Height (Feet)	Height with 1.9-Foot Allowance Per Draft Council Order	Height (Feet) per the MU-3/TOD Zone
1	169.3	<b>171.2</b>	170
2	66.3	68.2	70
3	62.8	64.3	74
4	60.5	62.4	64
5	45.4	47.3	50
6	54.5	<b>56.4</b>	55
7	64.2	66.1	76

As shown in the above chart, Buildings 1 and 6 would not be afforded the 1.9-foot increase because the resulting height would exceed the maximum height per the Ordinance while Buildings 2, 5, and 6 would be close to their maximum allowed height. Buildings 3 and 7 would remain under their maximum height.

Not shown in the chart are Buildings 8, 9, and 10 which do not have specific maximum heights per the Ordinance. As such, any increase in height of two feet or more would require a consistency determination from the Committee. Depending upon the increase in height sought, the Committee could either grant the consistency request or require an amendment to the Council Order. As stated in the draft Council Order, any increase in the number of stories for any building would require an amendment to the Council Order.

### **Building Permit Review Process**

The Planning Department proposed a three-step review process for all buildings in the Project except the nonresidential and noncommercial components of Buildings 9 and 10 (the parking garage). The three steps would reflect the three stages of design: schematic design; design development; and construction documents. The first two stages would involve the Urban Design Commission (the “UDC”), and the Planning Department as well as their consultant, while the third stage would only involve the Planning Department and their consultant. The schematic design stage would provide an early indication of the building’s consistency with the MU-3 zone and the approved special permit plan set. After reviewing the materials, the Planning Department and the UDC would have 30 days to determine whether the schematic design is consistent with the Ordinance and the approved special permit plan set. If such a determination is made, the Petitioner would proceed to the design development stage. The design development stage would provide an indication of the design guidelines such as the façade hierarchies, materials, and other architectural elements such as the vista terminations and other points of interest. At this stage, the Petitioner would be required to complete the evaluation template contained within the Design Guidelines and submit it with their materials plans. The Planning Department and the UDC would have 45 days to hold a UDC meeting and to notify the Petitioner of whether the plans comply with the Design Guidelines. The final stage would be the construction documents phase and would consist of the Planning Department and their consultant reviewing the building permit application. If there are any inconsistencies identified at this stage, the Director of Planning and Development has the right to seek the opinion of the UDC. Otherwise, the Planning Department would sign the application and the application would be forwarded to Inspectional Services.

1. Filing with the Planning Department and with the UDC ---Three weeks before the UDC’s meeting.
2. UDC Public Meeting
3. Feedback delivered to the petitioner---Dependent upon the review (30 days for schematic design, 45 days for design development, and 60 days for the combined review) \*

\* The above steps could be repeated if the UDC and/or the Planning Department believe the plans are inconsistent

The Petitioner is requesting the option to combine the schematic design and design development reviews into one review to be more efficient. The Petitioner has stated that the plans would be advanced to a stage where the Planning Department, their consultant, and the UDC would be able to review the plans for compliance with the zoning ordinance, the special permit plan set, and the Design

Guidelines. As part of this review, the Petitioner would also submit the evaluation template demonstrating compliance with the principles and materials required of the Design Guidelines.

**Table II: Design Review Comparison**

Stage	Time between filing and the UDC Public Meeting (days)	Feedback from UDC and Planning (days)	Total (days)
Schematic Design	21	30	51
Design Development	21	45	66
Combined Review	21	60	81

The Planning Department understands the time commitment required for the petitioner to proceed through both the schematic design and design development stages. Under the Planning Department’s proposal, the schematic design and design development stages would take 117 days, while the combined review would take 81 days. The Planning Department is comfortable with the combined review process because the onus is on the Petitioner to develop the plans to a level of detail necessary to satisfy the Planning Department and the UDC. As such, the Planning Department has revised the draft Council Order accordingly.

**Council Order**

Attached is a redlined version of Condition #s 1-13 resulting from the Committee meeting on July 14, 2020. From Condition #14 onward (beginning with the “Mitigation Conditions”), please refer to the Council Order dated July 10, 2020 from the July 10<sup>th</sup> Council Packet.

**ATTACHMENTS**

**Attachment A:** Redlined Draft Council Order

**GENERAL CONDITIONS**

1. All buildings, parking areas, driveways, walkways, landscaping, and all other site features on the Development Parcel associated with this Special Permit/Site Plan Approval shall be located, constructed, and implemented consistent with the set of plans entitled “\_\_\_\_\_” dated \_\_\_\_\_ (the “Special Permit Plan Set”), which are more particularly identified in Exhibit A and are hereby incorporated by reference. No changes to the Project are permitted unless they are consistent with the Special Permit Plan Set as set forth in Conditions #8 through 11.
2. All buildings, parking areas, driveways, walkways, landscaping, and all other site features on the Development Parcel associated with this Special Permit/Site Plan Approval shall be located and constructed consistent with the City of Newton Design Guidelines for the Riverside Station Development, dated \_\_\_\_\_ (the “Design Guidelines”), which are on file with the Department of Planning and Development, the Inspectional Services Department, and the City Clerk. No changes to the Project are permitted unless they are consistent with the Design Guidelines as set forth in Conditions #8 through 11.
3. The Special Permit/Site Plan Approval shall be deemed to have been vested for the purposes of utilizing the benefits of the change of zone authorized by Council Order #26-20 for the entire Project for all purposes upon the earliest of: (a) the issuance of a [City or State](#) building permit (other than a demolition permit) for all or any portion of the Project (including any parking structure) or (b) commencement of the removal or the relocation of the MWRA water line crossing the Development Parcel.
4. Pursuant to Section 7.3.2.E and Section 7.4.5.D of the City of Newton Zoning Ordinance in effect at the time this Special Permit/Site Plan Approval was approved (hereinafter, “Zoning Ordinance”), the time for exercise of this Special Permit/Site Plan Approval is extended to a period of three years, which shall not include such time required to pursue or await the determination of an appeal pursuant M.G.L. c. 40A, § 17 or an appeal of any other local permits or approvals necessary to complete the project, without the necessity of a further public hearing. This Special Permit/Site Plan Approval shall be deemed to have been exercised upon the [commencement of construction pursuant to issuance of](#) a building permit (other than a demolition permit) for all or any portion of the Project (including the parking structure) [issued by the City or the State](#).
5. If within 8 years from the date of this Special Permit/Site Plan Approval, which shall not include such time required to pursue or await the determination of an appeal pursuant M.G.L. c. 40A, § 17 or an appeal of any other local permits or approvals necessary to complete the Project, the Petitioner has not applied for all building permits necessary to complete construction of the Project, then further construction under this Special Permit/Site Plan Approval is not authorized unless the Petitioner seeks and receives an amendment to this Special Permit/Site Plan Approval that extends the time for fulfilling this condition. In no

event shall any portion of the Project for which a Certificate of Occupancy has been issued in accordance with the provisions of this Special Permit/Site Plan Approval be deemed to be in violation of this Special Permit/Site Plan Approval or be deemed to have lapsed due to the fact that any other portion of the Project has not been commenced or completed.

6. All real and personal property that make up the Development Parcel and the Project, except for the non-residential and non-commercial portions of Buildings 9 and 10 (the parking garage) owned and used by the MBTA for the provision of transportation that are deemed exempt by the Newton Assessors' Office, shall be subject to the assessment of local taxes in accordance with the provisions of M.G.L. c. 59. However, in the event that a final binding decision of the Appellate Tax Board or appellate court determines that any other part of the Development Parcel or the Project is exempt from the assessment of local taxes notwithstanding the first sentence of this Condition, the Petitioner agrees to and shall immediately execute a PILOT with the City of Newton Board of Assessors which will require the Petitioner to make quarterly payments in lieu of taxes based on the market value of the portions of the Project determined to be exempt as though the same were subject to the assessment of local taxes, excluding those portions of the project owned and used by the MBTA for the provision of transportation.
7. Prior to exercise of this Special Permit as defined in Condition #4 above, an organization of all owners of land and ground lessees within the Development Parcel, ~~which may but is not required to include the MBTA and the owners of land subject to easements benefiting the Project,~~ shall be formed (the "Organization of Owners"). ~~Neither the owners of land subject to easements benefitting the Project nor the MBTA are required to join the Organization of Owners.~~ ~~I~~in accordance with the provisions of Section 4.2.4 of the Zoning Ordinance, ~~the~~ Organization of Owners shall ~~be governed by this Special Permit/Site Plan Approval and shall have the authority and obligation to act on behalf of all such owners. The Organization of Owners shall~~ serve as the liaison between the City and any owner, lessee, or licensee ~~(other than the MBTA)~~ within the Development Parcel governed by this Special Permit. Such Organization of Owners shall be the primary contact for the City in connection with any dispute regarding violations of this Special Permit/Site Plan Approval or the Zoning Ordinance and, in addition to any liability of individual owners or lessees (with regard to matters specifically related to the individual owners' or lessees' parcels and not those related to the overall Project or Development Parcel), shall have legal responsibility for compliance of the Project with the terms of this Special Permit/Site Plan Approval and the provisions of the Zoning Ordinance.

#### **DESIGN REVIEW & PLAN CONSISTENCY CONDITIONS**

All buildings, other than the non-residential and non-commercial portions of Buildings 9 and 10 (the parking garage), shall undergo a two- or three-step process set forth in Conditions #8 through 12 ~~11~~ for review of each building to ensure the Project is constructed in accordance with the Zoning Ordinance, this Special Permit/Site Plan Approval, and the Design Guidelines

8. Submission and Review of Schematic Plans

- a. At the schematic design stage, the Petitioner shall present individual building plans consisting of exterior renderings, preliminary building elevations, building footprints, and representative wall sections to the City of Newton's Urban Design Commission (the "UDC"), the Director of Planning and Development, and its consultants at a public meeting of the UDC. The Petitioner shall **simultaneously** provide notice of this ~~meeting~~ **filing and electronic copies of all submittals** to the Liaison Committee. **The Petitioner shall also provide the Liaison Committee and the Ward 4 City Councilors with notice of the date of the UDC's public meeting at least 14 days in advance. The** ~~and the~~ UDC should make all efforts to take public comment.
- b. Within 30 days of such public meeting, the UDC and the Director of Planning and Development shall each notify the Petitioner in writing as to whether the UDC and the Director of Planning and Development believes the schematic design plans are consistent with the Zoning Ordinance, the Special Permit/Site Plan Approval, and the Design Guidelines.
- ~~b.~~ **c. Upon receipt of the written consistency opinions referenced in Condition #8(b) above, the Petitioner may proceed to the design development stage. If either the UDC or the Director of Planning issues an opinion that the schematic design plans are inconsistent with either the Zoning Ordinance, the Special Permit Plan Set, or the Design Guidelines, the Petitioner must submit revised schematic design plans in accordance with Condition #8(a).**

9. Submission and Review of Design Development Plans

- a. Upon completion of the schematic plan ~~stage~~ **process** set forth in Condition #8, the Petitioner may proceed to the design development stage. At this stage, the Petitioner shall file the following with the Director of Planning and Development, ~~the Commissioner of Inspectional Services, the Director of Public Works, and the~~ UDC, **and the Liaison Committee**:
  - i. a copy of plans showing consistency with the Special Permit Plan Set and the Design Guidelines for the portions of the Project necessary for the permit or determination being sought (the "Design Development Plans"); ~~;~~
  - ii. a signed certificate from the Petitioner's architect and/or civil engineer certifying that the Design Development Plans are consistent and in full compliance with the Special Permit Plan Set; **and**
  - iii. a completed Evaluation Template in accordance with and in the form required by the Design Guidelines.



- b. Within forty five (45) days of receipt of a complete submission of the materials set forth in Condition #9(a) the Director of Planning and Development will review and provide an opinion as to whether the Design Development Plans are in full compliance with the Special Permit Plan Set and consistent with the Design Guidelines. If the Director of Planning and Development's review requires the input or assistance from a peer review consultant, the Petitioner shall pay the reasonable fees for such peer review. The Director of Planning and Development's opinion shall be submitted in writing to the Petitioner and the Commissioner of Inspectional Services. If it is the Director's opinion that the Design Development Plans are not compliant with the Special Permit Plan Set or inconsistent with the Design Guidelines, such inconsistencies shall be expressly identified.
- ~~c.~~ Within forty five (45) of receipt of a complete submission of the materials set forth in Condition #9(a) (and concurrent with the review of the Director of Planning and Development), the UDC, after review of such submission at a public meeting, will provide an opinion as to whether the Design Development Plans are in full compliance with the Special Permit Plan Set and consistent with the Design Guidelines. The Petitioner shall provide [the Liaison Committee and the Ward 4 City Councilors](#) with notice of the date of the UDC's public meeting [at least 14 days in advance](#) ~~to the Liaison Committee~~ and the UDC should make all efforts to take public comment. The UDC's opinion shall be submitted in writing to the Petitioner and the Commissioner of Inspectional Services. If it is the UDC's opinion that the Design Development Plans are inconsistent with either the Special Permit Plan Set or the Design Guidelines, such inconsistencies shall be expressly identified.
- ~~d.~~c. Upon receipt of the written [consistency](#) opinions referenced in Condition #9(b) and (c) above, the Petitioner may proceed to the ~~c~~Construction ~~d~~Documents ~~stage~~[phase](#). If either the UDC or the Director of Planning issues an opinion that the design development plans are inconsistent with either the Zoning Ordinance, the Special Permit Plan Set, or the Design Guidelines, the Petitioner must submit revised design development plans in accordance with Condition #9(a).

#### 10. Submission and Review of ~~Construction Documents~~[Expanded Schematic Plans](#)

- a. ~~Upon completion of the design development process~~ In lieu of proceeding through both the schematic plan stage set forth in Condition #89, and the [design development](#) stage set forth in Condition #9 for any building or buildings, the Petitioner may ~~proceed to the construction documents stage. At this stage,~~ [combine the two steps into one expanded schematic plan review step](#) if ~~the~~ Petitioner ~~shall~~[files](#) the following with the Director of Planning and Development, ~~the Commissioner of Public Works,~~ the UDC, and the Liaison Committee:

- i. individual building plans consisting of exterior renderings, preliminary building elevations, building footprints, representative wall sections, window and door schedules, enlarged elevation details and wall sections, as well as substantially completed structural and mechanical, electrical, plumbing, fire protection (“MEP/FP”) plans showing consistency with the Special Permit Plan Set and the Design Guidelines (the “Expanded Schematic Plans”);
  - ii. a signed certificate from the Petitioner’s architect and/or civil engineer certifying that such plans are consistent and in full compliance with the Special Permit Plan Set; and
  - iii. a completed Evaluation Template in accordance with and in the form required by the Design Guidelines.
- b. A public meeting of the UDC shall be held to review the submittal. The Petitioner shall provide the Liaison Committee and the Ward 4 City Councilors with notice of the date of the UDC’s public meeting at least 14 days in advance and the UDC should make all efforts to take public comment. Within 60 days of such public meeting, the UDC and the Director of Planning and Development shall each notify the Petitioner in writing as to whether the UDC and the Director of Planning and Development believes the plans presented during the expanded schematic design stage are consistent with the Zoning Ordinance, the Special Permit/Site Plan Approval, and the Design Guidelines.
- c. Upon receipt of the written consistency opinions referenced in Condition #10(b) above, the Petitioner may proceed to the construction documents stage. If either the UDC or the Director of Planning issues an opinion that the expanded schematic design plans are inconsistent with either the Zoning Ordinance, the Special Permit Plan Set, or the Design Guidelines, the Petitioner must submit revised expanded schematic design plans in accordance with Condition #10(a).

#### 11. Submission and Review of Construction Documents

- a. Upon completion of the design development stage set forth in Condition #9 or the expanded schematic plan stage set forth in Condition #10, the Petitioner may proceed to the construction documents stage. At this stage, the Petitioner shall file the following with the Director of Planning and Development:
  - i. a copy of plans showing consistency with the Special Permit Plan Set and the Design Guidelines for the portions of the Project necessary for the permit or determination being sought (the “Construction Documents”);

- ii. a signed certificate from the Petitioner's architect and/or civil engineer certifying that the construction Documents are consistent and in full compliance with the Special Permit Plan Set; and
  - iii. a completed Evaluation Template in accordance with and in the form required by the Design Guidelines.
- b. Within thirty (30) days of receipt of a complete submission of the materials set forth in Condition #110(a) the Director of Planning and Development will review and provide an opinion as to whether the Construction Documents are in full compliance with the Special Permit Plan Set and consistent with the Design Guidelines. If the Director of Planning and Development's review requires the input or assistance from a peer review consultant, the Petitioner shall pay the reasonable fees for such peer review. The Director of Planning and Development's opinion shall be submitted in writing to the Petitioner and the Commissioner of Inspectional Services. If it is the Director's opinion that the ~~Design Development~~Construction Documents Plans are not compliant with the Special Permit Plan Set or inconsistent with the Design Guidelines, the Director has the option to seek the UDC's opinion regarding the Construction Documents.
- c. Upon receipt of the written opinion referenced in Condition #110(b) above, the Petitioner may submit a formal building permit application.

~~11.12.~~

Formal Submission of a Building Permit Application

- a. Upon receipt of a complete building permit application, the Commissioner of Inspectional Services shall make a final determination, with due consideration given to the written opinions of the Director of Planning and Development and the UDC on the Design Development Plans, as to whether the plans filed with such application are in full compliance with the Special Permit Plan Set and consistent with the Design Guidelines.
- b. The formal submission of the building permit application shall include a narrative setting forth the total gross square feet of development proposed in the building permit, the total gross square feet of commercial space proposed in the building permit, the total number of bicycle parking stalls proposed in the building permit, the total gross square feet of development on the Development Parcel for which building permits have already been issued, the total gross square feet of the commercial space for which building permits have already been issued, the total number of bicycle stalls for which building permits have already been issued the total number of residential units and Inclusionary Units proposed (if applicable), and the total number of residential units and Inclusionary Units on the

Development Parcel for which building permits have already been issued, and the total number of parking stalls for which building permits have been issued. -

- c. In making the final consistency determination, the Commissioner of Inspectional Services may elect to refer the matter to the Land Use Committee for the Committee's review and recommendation, provided however that referral to the Land Use Committee is required for the Committee's review and recommendation of any modifications or changes to the Special Permit Plan Set concerning the following: (i) increase in building height of two feet or greater where allowed under the Zoning Ordinance; (ii) building location changes greater than five feet without decreasing setbacks; (iii) increase in building dimensions or massing where such increase results in an increase in the total gross floor area of a building greater than five percent from what is shown on the Special Permit Plan Set; (iv) footprints of buildings where such changes alter the footprint area or an overall dimension by more than five percent; (v) material changes to the interior road network layout, including driveway locations; (vi) reduction in open space of more than one percent and less than five percent; (vii) an increase or decrease of in the total number of residential units up to four percent; (viii) an increase or decrease of greater than one percent, but less than two percent, in the number of striped parking stalls from what is shown on the Special Permit Plan Set, provided however that in the event a grocery store is located within the Project, an increase of up to four percent in the number of striped parking stalls from what is shown on the Special Permit Plan Set is permitted; and (ix) significant changes to major design elements such as towers, vista terminations, entries, and façade treatments. Consistency determinations that are referred to the Land Use Committee for review and recommendation in accordance with this condition do not require the vote or approval of the Committee.
- d. If the Commissioner determines that the application plans are inconsistent with either the Zoning Ordinance, the Special Permit Plan Set, or the Design Guidelines, no building permit will be issued, and the Petitioner ~~must either: (i) may~~ submit revised plans to the Commissioner which the Commissioner deems to be consistent, ~~or (ii) seek an amendment to this Special Permit/Site Plan Approval.~~
- e. The following modifications or changes shall not be eligible for a consistency determination and can only be done through amendment of this Special Permit/Site Plan Approval: (i) increase to the building stories shown on the Special Permit Plan Set; (ii) change in the total number of residential units in the Project by more than four percent; (iii) ~~any increase in the total gross floor area of the Project above 1,025,000 square feet [which would also require an amendment to the Zoning Ordinance], (iv) any increase in the total gross floor area of any building greater than ten percent from what is shown on the Special Permit Plan Set;~~ (iv) any increase or decrease of more than ~~two~~one percent in the number of striped

parking stalls ~~on the Development Parcel~~ from what is shown on the Special Permit Plan Set, ~~except in the event a grocery store is located in the Project as allowed by Condition #12(c);~~ and ~~or~~ (vi) decrease of more than five percent to the amount of open space of the Project from what is shown on the Special Permit Plan Set.

### **OFF-SITE IMPROVEMENT CONDITIONS**

~~12.13.~~ The Petitioner shall design and construct, at no cost to the City, the Route 128/Interstate-95 Interchange improvements as shown on sheets \_\_\_ of the Conceptual Plans dated \_\_\_ and entitled “Massachusetts Department of Transportation Highway Division Plan of Rt 128/I-95 Grove Street (Bridge No. N-12-056) in the City of Newton, Middlesex County” (hereinafter the Off-Site Improvements Plans”), ~~the conceptually approved plan (Figure 19) contained in the Transportation Impact and Access Study, dated December 2019 and as further described in the TIA Study in more detail~~ which encompasses both the improvements to the Route 128/Interstate 95 southbound and northbound off ramps (hereinafter, the “Interchange Improvements”).

- a. Prior to the issuance of any Building Permits for any of the buildings, except for the non-residential and non-commercial portions of Buildings 9 and 10 (the parking garage), the following must occur in connection with the Interchange Improvements:
  - i. The Massachusetts Department of Transportation (MassDOT) must issue a Section 61 Finding (Mitigation Commitment Document required as part of the Massachusetts Environmental Policy Act (MEPA) process).
  - ii. The Petitioner must complete the 25% Design Submission phase of the application process for receiving a Highway Access Permit from MassDOT and receive MassDOT’s comments in response to the submission **indicating authorization to proceed to the next phase of the application process.**
  - iii. The mitigation obligations in the Section 61 Finding and the MassDOT, comments on the 25% Design review must support approval of the Interchange Improvements.
- b. The Petitioner shall submit all state and federal submissions in connection with the Interchange Improvements, including engineered plans, to the Commissioner of Public Works for review simultaneous with submission to MassDOT and/or FHWA. The Petitioner shall also provide copies of all comments and responses it receives from any federal or state entity to the Director of Planning and Development and the Commissioner of Public Works in a timely manner. **The**

Petitioner shall provides copies of all such submissions, comments, and responses to the Liaison Committee in a timely manner.

- c. Any material modifications to the final design of the Interchange ~~Improvements~~ ~~by~~Improvements by either MassDOT or FHWA will be considered consistent with the conceptually approved plan if, in the opinion of the Commissioner of Public Works, the modified design achieves the same performance objectives as the conceptually approved design.
  - d. Prior to the issuance of a Certificate of Occupancy for any of the buildings, except for a partial, temporary and permanent Certificate of Occupancy for the non-residential and non-commercial portions of Buildings 9 and 10 (the parking garage), construction of the Interchange Improvements must be substantially complete (i.e. a final inspection has been completed by MassDOT), but final punch list items, including but not limited to landscaping, may be scheduled for completion after the issuance of temporary Certificate of Occupancy provided the Petitioner posts a bond or other security as determined by the Commissioner of Inspectional Services (after consultation with the Director of Planning and Development and the Commissioner of Public Works) to be sufficient to complete such outstanding work.
14. The Petitioner shall design and construct, at its sole cost, the roadway improvements and mitigation along Grove Street as shown and described on the [Off-Site Improvements Plans](#) and as further described in [Condition #14\(a\) below](#) (hereinafter the “[Grove Street Improvements](#)”). ~~conceptually approved plan (Figure 19) contained in the Transportation Impact and Access Study, dated December 2019 (TIAS) and as shown on the approved Special Permit Plan Set (plan No. \_\_\_\_), dated April 28, 2020 (hereinafter, the “Grove Street Improvements”).~~

~~e.a.~~The Grove Street Improvements shall consist of the following:

- i. A new traffic signal at the [Project’s](#) Grove Street entrance. Such signal shall use adaptive technology [as well as transit signal priority](#) ~~–~~and shall be connected to the traffic signals at the proposed Grove Street and Recreation Road Extension intersection/NB Ramp and the Grove Street at Grove Street extension intersections. The signal and lane striping shall not encourage left hand turns into the Project. [Prior to operation of the new traffic signal at the Grove Street entrance, as well as prior to any subsequent adjustments or modifications to the timing of the signal, Petitioner must consult with the Commissioner of the Department of Public Works regarding the timing of the signal, in order to establish the most beneficial traffic flow. Any future changes to the timing must be reviewed and approved by the Commissioner of Public Works. To the](#)

extent required, it shall be the responsibility of the Petitioner to receive all necessary approvals from MassDOT concerning this signal at the Grove Street entrance.

- ii. Adjustment or modification to the timing of the signal at the intersection of Grove Street and the Riverside Business Center drive entrance, to be reviewed and approved by the Commissioner of Public Works, in order to establish the most beneficial traffic flow.
- iii. A ten-foot wide ~~multi-use~~two-way bicycle track ~~and pedestrian path constructed~~ along the entire length of the Project's Grove Street frontage and continuing from the southerly end of that frontage to the northerly corner of Grove Street and Asheville Road.
- iv. A ten-foot wide multi-use path on the westerly side of Grove Street from Asheville Road to the driveway entrance of the Lower Falls Community Center at 545 Grove Street.
- v. A pedestrian walkway along the entire length of the Project's Grove Street frontage and continuing from the southerly end of that frontage to the northerly corner of Grove Street and Asheville Road which shall be:
  - 1. no less than six feet in width from the northerly end of the Project's Grove Street frontage to the Project's Grove Street entrance;
  - 2. no less than eight feet in width from the southerly side of the Project's Grove Street entrance/exist to the southerly end of the Project's Grove Street Frontage; and
  - 3. no less than 5 feet in width from the southerly end of the Project's Grove Street frontage to the northerly corner of Grove Street and Asheville Road.
- ~~iii. , no less than six feet in width throughout its length along the Project frontage.~~
- vi. A tree way no less than five feet in width throughout its length along the Project's Grove Street frontage on the easterly side of the two-way bicycle track.
- vii. Light poles in a buffer separating the ~~multi-use path~~two-way bicycle track from the pedestrian walkway for the length of the Project's Grove Street frontage. This buffer shall be at least 2.5 feet wide. All details of the light

poles including but not limited to type, height, fixtures, and level of illumination shall be reviewed and approved by the Commissioner of Public Works or his/her designee.

- viii. A crosswalk with a Rapid Reflectorized Flashing Beacon (the “RRFB”) adjacent to the transit plaza between Buildings 6 and 7. The Petitioner shall also design and construct a sidewalk on the eastern side of Grove Street from the RRFB to the existing sidewalk north of the Project. The final location of these improvements shall be reviewed and approved by the Commissioner of Public Works or his/her designee.
  - ~~vi~~.ix. The above-referenced plans shall be updated to retain the crosswalk across Grove Street adjacent to 406-416 Grove Street.
  - ~~vii~~.x. General grading and drainage improvements on Grove Street as shown on sheets [] of the Special Permit Plan Set.~~the approved plans.~~
  - ~~viii~~.xi. Signage appropriate to direct pedestrian and bicyclists, subject to the approval of Traffic Council and/or the Public Facilities Committee and, to the extent necessary, MassDOT.
    - ~~ix. Extension of the multi-use path, as shown on the conceptual plans in the TIAS and at least ten feet in width, from the proposed roundabout adjacent to Ashville Road to Pine Grove Avenue.~~
- f.b. Prior to the issuance of any Building Permits for any of the buildings, except for the non-residential and non-commercial portions of Buildings 9 and 10 (the parking garage), the Petitioner shall submit final engineered plans for the Grove Street Improvements for review and approval by the Public Facilities Committee and docket a petition with the Traffic Council, pursuant to Revised Ordinances, § 19-29, for adoption of a regulation prohibiting left turns from Grove Street into the Project.~~and MassDOT.~~
- g.c. Prior to the issuance of a Certificate of Occupancy (temporary or final) for any of the buildings, except for the non-residential and non-commercial portions of Buildings 9 and 10 (the parking garage), the Petitioner shall, at its own expense, offer a permanent easement in favor of the City, in a form approved by the Law Department, to allow the ~~City to maintain and the~~ public to access and use the portion of the pedestrian and bicycle infrastructure along the Project’s Grove Street frontage that is located within the Development Parcel (which includes the pedestrian walkway, buffer, and two-way bicycle track). ~~sidewalk (including paths intended for bicycle travel, buffer, and tree way) along the west side of Grove Street that is located within the Development Parcel.~~ Such easement shall be executed and recorded upon substantial completion of the Grove Street



Improvements. At the same time, the Petitioner shall also enter into a License Agreement with the City, in a form approved by the Law Department, obligating the Petitioner to indemnify the City and maintain (including but not limited to snow removal), at its sole cost, the pedestrian walkway, two-way bicycle track, and landscaping along the entire length of the Project's Grove Street frontage that is located between the Project's property line and the curb line. The License Agreement will not obligate the Petitioner to maintain any lighting, signage or fire hydrants.

~~h.d.~~ Prior to the issuance of any Certificate of Occupancy (temporary or final) for any part of buildings 5 and 6, construction of the Grove Street Improvements must be substantially complete (i.e. fully operational from a traffic management perspective), but final punch list items, including but not limited to landscaping, may be scheduled for completion after the issuance of a temporary Certificate of Occupancy provided the Petitioner posts a bond or other security as determined by the Commissioner of Inspectional Services to be sufficient to complete such outstanding work.

~~i. Prior to operation of the new traffic signal at the Grove Street entrance, as well as prior to any subsequent adjustments or modifications to the timing of the signal, Petitioner must consult with the Commissioner of the Department of Public Works regarding the timing of the signal in order to establish the most beneficial traffic flow. Any future changes to the timing must be reviewed and approved by the Commissioner of Public Works.~~