

MEMORANDUM

**TO: MEMBERS OF THE NEWTON CITY COUNCIL
DAVID OLSON, CLERK**

**FROM: THE LOWER FALLS IMPROVEMENT ASSOCIATION RIVERSIDE
COMMITTEE**

**RE: DOCKET # 187-19: PETITION TO AMEND SECTIONS 4.2 AND 7.3.5 OF
THE NEWTON ZONING ORDINANCE**

DATE: MAY 31, 2019

Docket # 187-19 is a petition to amend various portions of the MU3 zoning district provisions in Sections 4.2 and 7.3.5 of the Newton Zoning Ordinance (the “Zoning Ordinance” or the “Ordinance”) filed by the members of the Lower Falls Improvement Association Riverside Committee (the “Riverside Committee”). The Riverside Committee submits the below memorandum in support of the petition.

TABLE OF CONTENTS

INTRODUCTION.....1

SUMMARY OF THE MOST SIGNIFICANT PROPOSED AMENDMENTS1

 Removal of the “Transit Oriented Development” and “TOD” Labels from the
 MU3 District Name.....2

 Traffic2

 Project Size3

 Civic Open Space and Community Center4

 Grove Street Building Heights and Setbacks5

 Visual Impact/Change of Character6

 Noise7

 Wind.....7

 Construction Impacts8

THE PROPOSED AMENDMENTS IN DETAIL8

**I. PROPOSED AMENDMENTS TO THE MU3 DISTRICT PROVISIONS
OF SECTION 4.2**.....8

 A. Section 4.2.1.B – MU3 District Intent8

 Potential Adverse Effects on Lower Falls and Auburndale.....9

 Civic Spaces; Healthy, Safe and Comfortable Environment9

 The TOD Label10

 B. Section 4.2.4.A – Height and Setback Requirements11

 C. Sections 4.1.2 and 4.2.4.B – Civic Open Space15

 D. Sections 4.2.4.F.1 and G.1 – Community Center17

 E. Section 4.2.4.G.1 – Maximum Total Square Footage and Distribution Among Uses17

F. Sections 4.2.4.F.1 and 4.2.4.G.1 – Potential Inclusion of the Hotel Indigo Lot in the Development Parcel	19
G. Section 4.2.4.G.2 - Bonus Square Footage for Direct Access from Rt. 129/I-95 Northbound <u>and Southbound</u>	20
II. PROPOSED AMENDMENTS TO SECTION 7.3.5	21
A. Ministerial Amendments to Sections 7.3.5.A	21
B. Traffic: Sections 7.3.5.A.6-8 (Traffic Filing Requirements); Section 7.3.5.B.3 (Post-Construction Traffic Mitigation Special Permit Criterion).....	22
C. Construction Impacts – Section 7.3.5.A.10 (Construction Impact Filing Requirement); Section 7.3.5.B.19 (Construction Impact Special Permit Criteria).....	25
D. Visual Impact and Character – Section 7.3.5.A.12 (Visual Impact Filing Requirements); Section 7.3.5.B.4 (Visual Impact Special Permit Criteria); Section 7.3.5.B.5 (Preservation of Neighborhood Character Special Permit Criteria).....	26
E. Noise Impacts – Section 7.3.5.A.13 (Noise Impact Filing Requirement); Section 7.3.5.B.6 (Noise Impact Special Permit Criteria)	29
F. Wind Impacts – Section 7.3.5.A.14 (Wind Impact Filing Requirement) and Section 7.3.5.B.7 (Wind Impact Special Permit Criteria).....	31
G. Comprehensive Signage Program – Section 7.3.5.B.12	32
H. Provisions Reinforcing the Special Permit Criterion of Section 7.3.3.C.2	33

Exhibits

Exhibit A:	Proposed Amendments to the Zoning Ordinance (with proposed deletions and additions to the existing MU3 District provisions shown in red)
Exhibit B:	2013 Special Permit: Board Order # 258-12(2)
Exhibit C:	March 16, 2012 Memorandum from the Planning and Development Department to the Zoning and Planning Committee
Exhibit D:	September 9, 2016 Memorandum from the Planning and Development Department to the Land Use Committee

INTRODUCTION

All of the requested amendments are to provisions of the Zoning Ordinance applicable to the “Mixed Use 3/Transit Oriented Development” district (the “MU3 District”) which, by its terms, is a zoning district applicable to the property known as the MBTA Riverside Station, which fronts on Grove Street in Newton (“Riverside”). This is an appropriate time to reconsider the provisions of the Ordinance applicable to the MU3 District, created in connection with the development approved in October 2013 (See Special Permits Nos. 258-12(2); 272-12 & 272-12(3)), given the renewed proposal for a mixed-use development at Riverside.

SUMMARY OF THE MOST SIGNIFICANT PROPOSED AMENDMENTS

The principal purposes of the proposed amendments are to: (1) protect the surrounding neighborhoods (Newton Lower Falls and Auburndale) and Grove Street itself from potential adverse effects, which include traffic and noise impacts, as well as potential significant alteration of the existing character of these areas; and (2) achieve a development that will be a safe, comfortable and healthy environment for its residents and one that will be a community, rather than a mere collection of buildings, by, among other things, the inclusion of indoor and outdoor spaces that encourage civic engagement and interaction. Given the size of a potential development in the district, these are vital objectives. Accordingly, the first proposed amendments are to the description of the district purposes and are intended to highlight that these are important purposes of the MU3 District. *See further discussion on pages 8-11 below and proposed amendments to Zoning Ordinance (Exhibit A hereto), § 4.2.1.B.*

To achieve these objectives, specific amendments to district requirements, special permit application requirements, and special permit criteria are also proposed. Each of these proposed amendments and the reasons for them are discussed beginning on page 8 below in the section

entitled “The Proposed Amendments in Detail.” However, the most significant proposed amendments are summarized below.

Removal of the “Transit Oriented Development” and “TOD” Labels from the MU3 District Name

Development at Riverside should be assessed based on objective facts, including that transit available at Riverside is not robust. Located at the terminus of the Green Line D Branch, with long travel times to most major centers of employment, and with only one MBTA bus line stopping a Riverside only a handful of times per day, transit at Riverside is weak. Indeed, what distinguishes Riverside from other Green Line stations in Newton (none of which are in districts named “TOD”) is its proximity to highways and its parking lot, making it a highly car-centric location. The current labeling of the District as “TOD” is both misleading and encourages reliance on labels. The label should be removed and the facts should be allowed to speak for themselves. *See further discussion on pages 10-11 below.*

Traffic

To ensure that potential traffic impacts are fully analyzed, the Riverside Committee proposes a number of enhancements to the traffic study required to be submitted by special permit applicants. These changes strengthen the analysis of traffic impacts on the surrounding neighborhoods and add a requirement to examine traffic functioning *within* a proposed development. *See further discussion on pages 22-24 below and proposed amendments to Zoning Ordinance §§ 7.3.5.A.6-8.*

In addition, the Riverside Committee seeks to address a critical omission in the Zoning Ordinance concerning traffic. The current Ordinance requires MU3 special permit applicants to identify post-construction traffic mitigation measures that can be implemented if post-construction traffic monitoring shows that traffic volumes generated by the development are

more than 10% higher than predicted. What is missing is any special permit criterion requiring that the adequacy these mitigation measures be evaluated. Because of this omission, a special permit could be approved even if the applicant's proposed post-construction mitigation measures would be entirely ineffective. Accordingly, the Riverside Committee proposes the addition of a special permit criterion that will require the City Council to examine and make findings concerning the anticipated effectiveness of the post-construction traffic mitigation measures identified by the applicant. *See further discussion on pages 24-25 below and proposed amendment adding § 7.3.5.B.3 to the Zoning Ordinance.*

Project Size

Leading up to the 2013 special permit, there were years of discussions and many public hearings concerning, among other things, what size development could be built at the Riverside site without causing significant adverse impacts on the surrounding neighborhoods. Through that process, the project size was reduced from the developer's initial proposal of approximately 860,000 square feet to 580,000 square feet (not including the MBTA parking garage, the community center that was part of that project, or the Hotel Indigo (176,027 sq. ft.)). Further, in 2012, the City's Planning and Development Department (the "Planning Department") and engineering staff considered the additional square footage that would be feasible *if* there were direct access to and from the site and both Rt. 128/I-95 northbound *and southbound*. It was concluded that an additional 100,000-125,000 square feet of development (not including increased parking) would be feasible with this two-way direct access.

Nevertheless, to provide additional site design flexibility, the Riverside Committee proposes a 10% increase in the overall project size that may be allowed by special permit (650,000 square feet, excluding parking) even without direct northbound and southbound

Rt. 128/I-95 access and, further, that an additional 100,000 square feet of development (excluding parking) may be allowed if direct access to and from both northbound and southbound Rt. 128/I-95 is provided. The proposed amendments also allow for an additional 175,000 square feet¹ of development if the Hotel Indigo lot is incorporated into the development parcel. *See further discussion on pages 17-20 below and proposed amendments to Zoning Ordinance § 4.2.4.G.1, 2.*

In addition, the Riverside Committee proposes that the allowed square footage be distributed differently among residential, retail and offices uses than called for in the existing Ordinance, with a relative reduction in office space and increase in residential space. This will permit a greater contribution to the creation of housing, including affordable housing, than if the distribution among uses remains as under the current ordinance. In addition, reducing the amount of office space will help to protect commuters from the traffic and parking conflicts inherent in the fact that they will travel to and from the site at the same times of day as office occupants (as contrasted with residents who will travel in the opposite direction from commuters). *See further discussion on pages 18-19 below and proposed amendments to Zoning Ordinance § 4.2.4.G.1.*

Civic Open Space and Community Center

Riverside should be a community, not just a collection of buildings. Creating a community requires on-site indoor and outdoor community spaces. The existing MU3 provisions include “beneficial open space” and “community use space” requirements, but neither is sufficient.

¹ The text of the proposed amendment states, in error, that the additional square footage permitted is 176,000 square feet. This should have been 175,000 square feet.

The “beneficial open space” requirement can be met by narrow strips of grass that run alongside streets or buildings or are adjacent to highway ramps. Such spaces neither foster community nor help to ensure that the development will not feel cramped and closed in. The Riverside Committee thus proposes the addition of a “civic open space” provision that requires high-quality, community engagement open spaces. *See further discussion on pages 15-17 below and proposed amendments to Zoning Ordinance §§ 4.2.3 and 4.2.4.B.*

The Riverside Committee also proposes amendments to address indoor civic space. The existing requirement in § 4.2.4.F.1 to include “community use space” was undoubtedly meant to refer to the 11,000 square foot community center space that was part of the plan approved in 2013, but the Ordinance fails to define “community use space” or to provide any size requirement for this space. The proposed amendments address these issues by expressly requiring a community center of 1.5% of the overall approved development size. *See discussion on page 17 below and proposed amendments to Zoning Ordinance § 4.2.4.F.1.*

Grove Street Building Heights and Setbacks

Grove Street at Riverside is a narrow, tree-lined, designated scenic road. The existing ordinance does not adequately protect its visual character. Accordingly, while proposing an increase to the existing limits on the overall square footage of development permitted at Riverside, the Riverside Committee also proposes revisions to the height and setback requirements to promote a streetscape that does not overwhelm Grove Street and which mitigates the extent to which its existing tree-lined character is altered.

The current MU3 Zoning Ordinance provisions allow, by special permit, building heights of up to 135 feet, regardless of their location on the site. Tall building heights are inappropriate on Grove Street. Accordingly, the Riverside Committee proposes a 4-story building height limit

on Grove Street. *See further discussion on pages 11-14 below and proposed amendments to Zoning Ordinance § 4.2.4.A.*

In addition, the existing Grove Street setback requirements need to be amended to provide clarity lacking in the existing Ordinance, to ensure a streetscape consistent with the small, scenic roadway, and to allow for a separate sidewalk and bike path. In addition, the setback must be sufficient to offer protection for the abutting buildings from truck, bus, and car traffic noise and pollution which will surely accompany any sizeable development. It should also allow for a significant landscaping barrier that will protect the visual appearance of Grove Street and be more in keeping with the setback of the Riverside Center, which is next door. Further, any development on Grove Street should not appear as an unbroken wall of buildings. The Riverside Committee thus proposes a 30-foot setback on Grove Street, with an additional 15-foot setback for portions of buildings with a Grove Street-facing length of over 115 feet. *See further discussion on pages 11-14 below and proposed amendments to Zoning Ordinance §§ 4.2.4.A.*

Visual Impact/Change of Character

Grove Street in front of Riverside is not the only area in need of protection from the potentially dramatic changes in character that may result from development at Riverside. Lower Falls and Auburndale are predominantly residential, low-rise, and quiet neighborhoods. Particularly along Grove Street, these neighborhoods are graced with a number of historic homes. In addition, tall buildings at Riverside may adversely impact the surprisingly natural-looking abutting stretch of the Charles River or the view from Riverside Park, which is on the opposite riverbank. The Riverside Committee believes that the existing Ordinance does not include provisions adequately specific to protect these areas from an ill-fitting, highly-urbanized

development. Thus, the Riverside Committee proposes amendments requiring thorough analysis of the visual impacts of tall buildings and criteria promoting a development that is not offensive to the small-scale, residential character of the surrounding neighborhoods or to users of the Charles River and Riverside Park. *See further discussion on pages 26-29 below and proposed amendments adding §§ 7.3.5.A.12, 7.3.5.B.4 and 7.3.5.B.5 to the Zoning Ordinance.*

Noise

It is well-documented that excessive noise is not just annoying and distracting, but also has adverse health impacts. Remarkably, the existing MU3 Ordinance provisions require neither that a noise analysis be conducted by the applicant nor that the City Council assess and make findings concerning noise. The Riverside Committee's proposed amendments seek to remedy these omissions with respect to both the potential noise impacts of a proposed development on the surrounding neighborhoods as well as noise levels within a proposed development. *See further discussion on pages 29-31 below and proposed amendments adding §§ 7.3.5.A.13 and 7.3.5.B.6 to the Zoning Ordinance.*

Wind

Tall buildings can create uncomfortable and even dangerous pedestrian-level winds. Thus, wind analyses are commonly required in connection with proposals for tall buildings. Because the MU3 provisions allow for such buildings at Riverside, the Riverside Committee proposes the addition of a wind study requirement and wind criteria modeled on Boston's zoning ordinance and design review guidelines. *See further discussion on page 31 below and proposed amendments adding §§ 7.3.5.A.14 and 7.3.5.B.7 to the Zoning Ordinance.*

Construction Impacts

Given the potential scale of the development, construction will likely extend over many years. A project that cannot be built without traffic disruption, noise, vibration and other adverse effects on the surrounding neighborhoods extending over many years is unacceptable. The existing MU3 provisions fail to address construction impacts. Accordingly, the Riverside Committee proposes amendments to require the filing of a construction management plan as part of a special permit application and to require that the City Council assess and make findings concerning construction impacts. *See further discussion on pages 25-26 below and proposed amendments adding §§ 7.3.5.A.10 and 7.3.7.3.5.B.19 to the Zoning Ordinance.*

THE PROPOSED AMENDMENTS IN DETAIL

Each of the proposed amendments and the reasons they are proposed are discussed in detail below. Generally, the proposed amendments are discussed in the same order as the provisions to be amended appear in the existing Zoning Ordinance.

I. PROPOSED AMENDMENTS TO THE MU3 DISTRICT PROVISIONS OF SECTION 4.2

A. Section 4.2.1.B – MU3 District Intent

Section 4.2.1.B of the Ordinance sets forth the “district intent.” The proposed amendments to this section are intended to emphasize that the avoidance of adverse impacts of development at Riverside on the surrounding neighborhoods of Lower Falls and Auburndale as well as the quality of project design (including the quality of its open spaces) are central purposes of the MU3 District provisions. In addition, the name of the district is proposed to be amended to emphasize that the transit features of the site must be assessed objectively and without reliance on the “transit oriented development” label. Each of these objectives is discussed more fully below.

Potential Adverse Effects on Lower Falls and Auburndale

With respect to the surrounding neighborhoods, the current version of § 4.2.1.B includes the phrase “protect neighborhoods from impacts of development” among a laundry list of the purposes of the MU3 District. Particularly because the MU3 District provisions allow, by special permit, a highly-intensive development on a parcel that fronts on a small two-lane road (not a commercial corridor or major artery) and is surrounded by predominantly quiet residential areas comprised of small structures, the adverse effects of any proposed development on Lower Falls and Auburndale should not be a footnote. Instead, it should be stated prominently that one of the purposes of the MU3 District is to protect these neighborhoods from the full range of potential adverse effects.

As the Riverside Committee and other area residents have expressed to a number of the City Councilors, we often feel that Lower Falls and Auburndale, being on the border of the City, relatively small, and viewed by some as somehow already blighted by their proximity to Rt. 128/I-95 and the Mass. Pike, are considered to be of marginal importance and thus a good place on which to place the burdens of a development that is tax-beneficial to the rest of the City. We heard from every Councilor with whom this issue was raised that these feelings are unwarranted. If that is true, there should be no objection to a clear and fulsome statement in the Ordinance that protecting Lower Falls and Auburndale from potential adverse effects of development at Riverside is a core purpose of the MU3 District provisions.

Civic Spaces; Healthy, Safe and Comfortable Environment

By special permit, the MU3 District allows for a large residential development together with a large office project. Undoubtedly, most of the residential units will be smaller rental units likely to experience significant turnover. These features pose challenges to the creation of a

place that feels like and functions as a community, rather than a place where relatively-short term occupants are disconnected from one another and the surrounding neighborhoods. Non-commercial, outdoor and indoor spaces that promote on-site activity and interaction among residents and visitors are vital if Riverside is to be a community. The Riverside Committee thus proposes the addition of language to § 4.2.1.B to indicate that the creation of high-quality open space that promotes civic engagement (not just “beneficial open space” as defined in the Zoning Ordinance) as well as an indoor community space are central objectives of the District provisions.

It is also important that Riverside be healthy, safe and comfortable for its residents. The Riverside Committee’s proposed amendments to § 4.2.1.B identify this objective as a purpose of the MU3 District.

The TOD Label

The current Zoning Ordinance identifies the MU3 District as “transit oriented development.” It is entirely unnecessary to include this moniker (the District is already described as located at the MBTA Riverside Station). More importantly, the name promotes reliance on a fashionable catch-phrase rather than a reasoned analysis of the available public transit, or lack thereof. It also suggests, inappropriately, that there is more or better transit at Riverside than other Green Line stops in Newton, none of which are in districts labeled TOD in the Zoning Ordinance. Riverside is different from these other Green Line stops, but what makes it different is its proximity to highways and extent of available parking for commuters. In short, the TOD label reflects wishful thinking about potential reduction of automobile use when the reality is that public transit at Riverside is limited and the far more notable feature of the site is its highway orientation.

Riverside is the terminus of one spur of the Green Line. As the terminus, the transit opportunities it offers are already limited. Further, it is a very remote terminus. Connections to other major transit lines are distant and the time to travel to them are long, as are travel times to most major centers of employment, *e.g.*, the Financial District, the Seaport District and Kendall Square. It is significantly faster to drive to these locations.

Bus service at Riverside is virtually non-existent. One bus line (the # 558) makes only three trips from Riverside to the Financial District in Boston in the morning (7:35 am, 8:00 am, and 9:05 am) and three trips to Riverside in the afternoon/evening (4:50 pm, 5:15 pm and 6:00 pm). The route between downtown Boston and Riverside is through Waltham, resulting in a travel time of 1 hour, 10 minutes in typical traffic.

In contrast, Riverside is readily accessible by car via Rt. 128/I-95 which also provides access to and from Riverside and the Mass. Pike and has a large parking lot. Without these car-friendly attributes, Riverside would be no different from the other Green Line stops in Newton. Indeed, all of the other stops provide better transit services than Riverside since they are closer to Boston and offer the opportunity to travel two directions.

Thus, development at Riverside would be more appropriately identified as highway oriented development than transit oriented development. But, rather than call the District TOD or HOD, the name of the District should simply be MU3, encouraging reliance on facts, not labels.

B. Section 4.2.4.A – Height and Setback Requirements

Section 4.2.3 provides the maximum building heights permitted as of right and by special permit in the MU3 District and the corresponding maximum floor area ratios. All other

traditional building dimensional criteria (front, rear and side lot setbacks, including additional setbacks for higher portions of buildings) for the MU3 District are addressed in Section 4.2.4.

Section 4.2.4.A of the current Ordinance is entitled “Setbacks.” In rather convoluted language, it provides: (1) that there are no required setbacks for non-residential structures from any lot line except the Grove Street lot line; and (2) a setback of ½ of the building height is required for the Grove Street lot line, regardless of building type and for other lot lines if the building is residential. The section goes on to provide that for “taller structures” each “portion of a building” shall be treated as a separate building for purposes of calculating required “building heights and setbacks.” Neither “taller structure” nor “portion of a building” are defined, nor is there clarity about how treating each the undefined “portion of a building” as a separate building is used to calculate required setbacks.

The Riverside Committee proposes amendments to Section 4.2.4.A to accomplish the following objectives: (1) to bring clarity to an otherwise confusing and vague provision; (2) to provide standards to ensure a streetscape along Grove Street that is appropriate for its narrow width and mitigates, at least to some extent, the impact of a dense development on the current tree-lined appearance of Grove Street and the character of mostly small-scale nearby residential neighborhoods; and (3) to protect light, air and views within the development.

To help mitigate the negative effects of a large development at Riverside on Grove Street and the surrounding neighborhoods, one vital step is to ensure that the buildings on Grove Street are appropriately scaled and set back. Grove Street at Riverside is no more than 30-feet wide and, to the passerby, presents as a green and tree-lined road, not an eyesore blighted by the current MBTA facility. Any development at Riverside must be respectful of the character of Grove Street and the surrounding neighborhoods. The Riverside Center office development next

door exemplifies such a respectful approach. While the Riverside Center certainly brought increased traffic, it is nicely designed to have minimal visual impact on Grove Street with its relatively low height (4 stories) and a setback which is both generous (in some places up to 90 feet from the curb) and varied. Buildings along Grove Street at Riverside should also present a low-rise street scape. A healthy setback is also vital. If bicycle and pedestrian access to Riverside is to be encouraged, there must be a sufficient set back to allow for both a sidewalk and separate bike path. The setback must also accommodate a significant landscape buffer and preservation and/or replacement of existing trees. Accordingly, the Riverside Committee proposes amendments that would limit building heights along Grove Street to four stories or 44 feet above Grove Street, whichever is lower,² with a minimum setback of 30 feet from the Grove Street lot line. *See proposed amendments at 4.2.4.A.1.a and b.*

The proposed Grove Street building height is not particularly restrictive. In fact, although intended to be applied with reference to Grove Street, the City Council may well want to consider a height limitation on these buildings as they would appear from the interior of the site. Because there is a steep slope from Grove Street down to the existing parking lot near the Hotel Indigo parcel, a building could be built into the hillside so that it appears to be four stories from Grove Street, but is seven stories on the inside of the site. As the Planning Department stated in a Memorandum to the Land Use Committee, buildings higher than the street width are generally considered to be undesirably high and, for residential buildings, 5 or 6 stories is considered to be the “upper limit of human scale.” See September 9, 2016 Memorandum from the Planning Department to the Land Use Committee (Exhibit D hereto), p. 9. Because Grove Street is no more than 30 feet wide, four stories exceeds the street width. If the buildings on

² The 44-foot height limitation would allow for a 14-foot high 1st floor with three 10-foot high floors above. The requirement for the lower of four stories or 44 feet is to avoid the possibility of four-story buildings with above-average floor heights, which would undermine the purpose of the four-story limitation.

Grove Street are residential and are seven stories when viewed from the site interior, they will be not only be in excess of human scale, but are likely to be much taller than the width of the adjacent interior street.

The proposed Grove Street setback is also not particularly restrictive. As noted above, the setback of the Riverside Center is significantly greater. This is also true of the existing Hotel Indigo.

In addition, the appearance of an unbroken wall of buildings along Grove Street should be avoided. One way to accomplish this is to require that longer buildings have a varied setback. Thus, the Riverside Committee proposes the inclusion of a requirement that for any building exceeding 115 feet in length along Grove Street, the building length over 100 feet must be setback an additional 15 feet.³ This will help promote a streetscape on which no more than 100 feet of building length runs, unbroken, along the 30-foot setback line. *See proposed amendments at § 4.2.4.A.1.c.*

On the other lot lines, the proposed amendment requires no ground-floor setback. However, for buildings over 50 feet high, it requires that the floors above 50 feet be set back from the lower floors to ensure adequate light, air and sky exposure⁴ in the development, and to avoid shadows on civic open spaces. *See proposed amendments at § 4.2.4.A.2.*

³ The proposal also includes a requirement that buildings along Grove Street be separated by at least 15 feet. *See proposed amendments at § 4.2.4.A.1.d.* This is to ensure that the setback requirement for buildings over 115 feet in length cannot be circumvented by placing “separate” buildings together or in very close proximity to one another.

⁴ Many cities have defined in their zoning or design codes, one or more “sky exposure planes” -- a virtual sloping plane that begins at a specified height above the street line and rises inward at a ratio of vertical distance to horizontal distance set forth in the code and based on street width or permitted density in the zoning district. These codes then further prohibit buildings that penetrate the sky exposure plane. The purpose is to ensure adequate light, air and views of the sky. The Riverside Committee has not attempted to specify a sky exposure plane for the MU3 district – leaving this proposed amendment somewhat vague. The Zoning and Planning Committee may well want to request that the Planning Department develop a precise sky exposure plane formula for the MU3 district. Alternatively, the City Council could adopt a provision similar to that contained in Newton’s proposed zoning redesign: that buildings above certain heights have mandatory setbacks that result in upper stories having a footprint that is 20% smaller than the stories below.

C. Sections 4.1.2 and 4.2.4.B – Civic Open Space

The proposed amendments to §§ 4.1.2 and 4.2.4.B add the concept of “civic open space” to the MU3 District open space requirements. The current MU3 provisions contemplate a small village at Riverside that includes significant residential and office developments in close proximity to one another. The presence of such large office structures will themselves undermine the sense that Riverside is a residential community, a problem further exacerbated by the fact that the office component of the development will bring significant numbers of non-residents into and out of the site each day.⁵ Furthermore, given the number of residential units permitted in a small area, most of the units will be small and it is contemplated that they will be predominantly rental units. As a result, residents are likely to remain for relatively short periods of time, making it even more challenging for Riverside to become a community. Given this challenge and the potential overall size and density contemplated, open space is required for two vital purposes: (1) to create a feeling of openness, rather than congestion; and (2) to foster a community, rather than just a cluster of buildings.

The current MU3 provisions rely entirely on “beneficial open space,” 50% of which must be open to the public. See §§ 4.2.3 and 4.2.4.B of the current Ordinance. “Beneficial open space” is defined in § 8.3 of the Zoning Ordinance as follows:

Open Space, Beneficial: Areas not covered by buildings or structures that are available for active or passive recreation, which shall include, but are not limited to: landscaped areas, including space located on top of a structure, gardens, playgrounds, walkways, plazas, patios, terraces and other hardscaped areas, and recreational areas, and shall not include: (i) portions of walkways intended primarily for circulation, i.e., that do not incorporate landscape features, sculpture

⁵ Although the trend of reducing the number of square feet per employee is slowing, it is predicted to remain relatively low in coming years—averaging around 190 square feet per employee. Cushman & Wakefield, *Why Space Matters* (June 2018), found at: <http://blog.cushwake.com/americas/why-space-matters-density.html>. Under the current ordinance provisions, which permit up to 225,000 square feet of office space, there could be over 1000 office employees working at Riverside. The Proponents seek to have that number reduced in order to allow more housing to be built at Riverside, but large numbers of non-residents would still be at the site daily.

or artwork, public benches, bicycle racks, kiosks or other public amenities, (ii) surface parking facilities or associated pedestrian circulation, (iii) areas that are accessory to a single housing unit, or (iv) areas that are accessory to a single commercial unit, and controlled by the tenant thereof, and not made available to the general public.

While “beneficial open space” is certainly better than mere open space (defined only as space not covered by a building), many spaces that are not truly beneficial fall within the definition. The beneficial open space definition allows for narrow strips of land alongside buildings and what are essentially no more than sidewalks to be claimed as beneficial open space by placing a tree, bush, or bike rack, etc., alongside or on them. It also includes space on rooftops. Such “open spaces” contribute neither to a feeling of openness nor to the creation of a community. Quality civic spaces, preferably centrally located within the development, are necessary if the new village contemplated by the MU3 District provisions is to be a community. While a path to and improvements along the Charles River are a nice amenity (and would certainly be offered by any developer as a carrot in the special permit process, as it was in BH Normandy’s proposal⁶), access to such open space at least a quarter-mile walk from the center of “town” will neither create a feeling of openness nor foster civic interaction.

Accordingly, the Riverside Committee proposes the addition of a requirement that a minimum of 15% of the development parcel be “civic open space.” *See proposed amendments at §§ 4.2.3, 4.2.4.B.2*⁷. Civic open space is what most people would consider *truly* beneficial, quality open space such as parks, plazas, playgrounds, and community gardens—in short, spaces that are designed to create openness as well as community interaction. Sidewalks, narrow strips

⁶ See condition 17 on page 18 of Board Order # 258-12(2) granting a special permit to BH Normandy (attached hereto as Exhibit B).

⁷ Amendments adding references to the civic open space requirement are proposed in a number of other sections for conformity.

of grass, traffic islands, areas alongside highway ramps and the like are excluded from the definition of civic open space, even if they include a bush, bench, planter or bike rack.

D. Sections 4.2.4.F.1 and G.1 – Community Center

Indoor space for community functions, classes, after-school programs, and athletic activities is also important to the creation of a community at Riverside and will help to foster connections with the surrounding neighborhoods. This was recognized in the discussions and hearings leading up to the 2013 special permit granted to BH Normandy. Section 4.2.F.1 of the current Zoning Ordinance requires a “community space,” but neither its size nor characteristics are specified. The 2013 special permit was conditioned on the creation of an 11,000 square foot community center. The proposed amendments to § 4.2.4.F.1 and § 4.2.4.G (in what would be subsection 1 thereof) similarly require and define a community center, to be operated by a non-profit entity (as was the chosen means operating the community center in the 2013 special permit⁸) or by other means to be determined by the City Council. The proposed amendment requires that the size of the community center be at least 1.5% of the total square footage of the retail, residential and office uses (not including parking garages).⁹ Applied to the 580,000 square foot project approved in 2013, this would result in a smaller community center than the 11,000 square foot community center that was part of that approved plan.

E. Section 4.2.4.G.1 – Maximum Total Square Footage and Distribution Among Uses

The current Ordinance allows a maximum of 580,000 square feet of development (exclusive of parking and the community center). As noted above, that number was decided upon after many years of discussion between the developers and stakeholders followed by

⁸ See condition 11 on page 17 of Board Order # 258-12(2) (Exhibit B hereto).

⁹ See discussion in footnote 14 regarding an error in the proposed provision concerning the size of the community center.

numerous public hearings concerning, among other things, impacts on Newton Lower Falls and Auburndale. The 580,000 square foot number assumed that there would be direct access to Rt. 128/I-95 north for vehicles exiting Riverside (*i.e.*, an exit from the site directly to Rt. 128/I-95 north was part of the approved plan). As discussed further at pages 20-21 below, as part of this process, the City's Planning Department considered the additional square footage that would be feasible *if* there were direct access to and from the site and both Rt. 128/I-95 northbound *and southbound*. It was concluded that an additional 100,000-125,000 square feet of development (not including associated increased parking) would be feasible with this northbound *and southbound* direct access.

The concerns that existed about the impacts of development at Riverside on the surrounding neighborhoods are as important and valid today as they were when the current MU3 provisions were adopted. Nevertheless, the Riverside Committee proposes a 10% increase in the total square footage that may be permitted by special permit (assuming all special permit criteria are met). This increases the maximum square footage to 650,000 square feet (if the Hotel Indigo lot is not included in the development parcel), including the community center but excluding parking structures.¹⁰

In addition to setting the maximum total square footage allowed by special permit, the current § 4.2.4.G sets maximums for the three required categories of uses: office (Category A), retail (Category B), and residential (Category C). The Riverside Committee proposes that the square footage available for these uses under their proposal be allocated more heavily toward

¹⁰ The existing 580,000 square foot maximum excludes parking structures and the community center space. The community center space required under the 2013 special permit was 11,000 square feet, bringing the total, without parking, to 591,000 square feet. The proposed new 650,000 square foot maximum is just over 10% above 591,000 square feet and, thus, the 650,000 square foot maximum includes the approximately 10,000 square foot community center which would be required for a project of this size if the Riverside Committee's proposed amendments are adopted.

residential use than under the current Ordinance. Specifically, a residential maximum of 480,000 square feet is proposed. This allows for sufficient retail space to service the residents (40,000 square feet, as proposed) and sufficient office space to help offset costs to the City of the residential space (120,000 square feet, as proposed). *See proposed amendments, §§ 4.2.4.G.1.*

Allocation of more of the available square footage for residential use is appropriate in light of the stated interest of many in increasing housing, including affordable housing, in Newton. In addition, one of the challenges of the Riverside site is its function as an important “park and ride” site for commuters. Employees of businesses in the office space at Riverside and the park and ride commuters will arrive at the site at the same time in the morning and will leave at the same time in the afternoon—likely creating internal site traffic and parking garage conflicts. Commuters should not be discouraged from using the Green Line because of these issues. In contrast, residents at Riverside will be leaving when park and ride commuters are arriving, and vice versa. Limiting office use in favor of expanded residential use is sensible for these reasons, as well as for the creation of more housing.

F. Sections 4.2.4.F.1 and 4.2.4.G.2 – Potential Inclusion of the Hotel Indigo Lot in the Development Parcel

Recognizing that the Hotel Indigo parcel was, in 2013, and apparently continues to be under the control of the same individuals or entities who also control BH Normandy Riverside, LLC, which is the lessee under the MBTA ground lease for Riverside, the Riverside Committee proposes amendments to § 4.2.4.G.1 to increase the total square footage limitation from 650,000 to 825,000 should a developer seek to include the Hotel Indigo lot in the development parcel, as the current special permit applicants have done. This 175,000 square foot increase is approximately equal to the square footage of the Hotel Indigo, which is 176,000 square feet. If

the Hotel Indigo lot is included in the development parcel, then a hotel category of use is permitted (Category E¹¹) with a maximum square footage of 175,000 square feet.¹²

G. Section 4.2.4.G.2 - Bonus Square Footage for Direct Access from Rt. 129/I-95 Northbound and Southbound

There has been much discussion about the desire to have direct connections between Rt. 128/I-95 and the Riverside site, both in connection with the 2013 special permit and in connection with the current Mark Development/BH Normandy proposal. Although not all site-generated traffic will use Rt. 128/I-95, a significant proportion will. The project ultimately approved in 2013 included direct access from the site to Rt. 128/I-95 northbound, and the total square footage allowed (580,000 square feet) was based thereon. Earlier in the process, the possibility of direct access both into and out of the site, to and from both Rt. 128/I-95 northbound and southbound was discussed. The Planning Department outlined a two-tiered approach under which Tier II would have permitted an additional 250,000 square feet of development “provided direct access to and from Route 128 northbound *and southbound* are secured.” See March 16, 2012 Planning Department Memorandum to the Zoning and Planning Committee (Exhibit C hereto), p. 5 (emphasis added).

As the Planning Department explained, Planning and Engineering staff looked at the question of “whether the site could then handle an extra 250,000 square feet of development,”

¹¹ Under the existing § 4.2.4.F, the retail category (Category B) includes “lodging, hotel and motel.” Under the proposed amendment, this language is removed. If the Hotel Indigo lot is not incorporated into the development parcel, there is no need for more hotel space within the development parcel. If the Hotel Indigo parcel is included in the development parcel, the proposed amendments provide for “lodging, hotel and motel” as “Category E.” The Category B square footage should be used for other types of retail.

¹² The proposed amendment states that the maximum square footage for Category E (lodging, hotel and motel) is 176,000 square feet. This is an error. It should state 175,000 square feet.

Another error in the proposed § 4.2.4.G.1 is in the provision concerning the size of the community center. As submitted, it states that the community center must be at least 1.5% of the total square footage of all of the other use categories and it specifies categories A, B, C and E. Category E should have been excluded. Thus, the provision should state: “Category D shall be no less than 1.5% of the total square footage of Categories A, B and C.”

including parking, if “direct access to Route 128 both northbound and southbound” were provided, and concluded as follows:

The short answer is that direct access may alleviate enough traffic on the stretch of Grove Street between the site entrance and the existing ramps to Route 128 to permit over 100,000 square feet of additional office development. This figure is in line with the density bonus offered in Tier II because approximately half of the bonus (125,000 square feet) will be available for additional office and/or commercial uses, with the other half likely used to provide required parking for the new uses.

Id., pp. 5-6.

The Planning Department also noted that not all of the traffic generated by the increased square footage would use Rt. 128, *id.*, p. 6, but nevertheless, the Riverside Committee proposes that, if northbound and southbound direct access to and from Rt. 128 is provided, the permitted square footage of the allowed residential, office and retail uses be increased by a total of 100,000 square feet.¹³ *See proposed amendments, § 4.2.4.G.2.*

II. PROPOSED AMENDMENTS TO SECTION 7.3.5

A. Ministerial Amendments to Sections 7.3.5.A

Amendments to §§ 7.3.5.A.1, 7.3.5.A.1.b, 7.3.5.A.3, 7.3.5.A.4, and 7.3.5.A.6.c.iii are proposed in order to conform these sections with the amendments proposed to section 4.2 and also to correct the references to section 7.3.6, which does not exist.¹⁴ In addition, pursuant to § 7.3.5.B of the current Ordinance, a special permit may be granted only if the criteria of both §§ 7.3.3 and 7.3.5 are met. Section 7.3.5.A.3 requires the applicant to provide a narrative

¹³ Note that, although the Planning Department discussed the addition of 250,000 square feet, as it indicated, it expected 125,000 of that additional square footage would be for additional parking. Thus, the Planning Department’s conclusion was that the provision of direct access to and from north and southbound Rt. 128 would allow 100,000-125,000 square feet of additional traffic-generating use in the development.

¹⁴ Based on the table of contents to § 7 of the Zoning Ordinance, it appears that the plan was for § 7.3.5 to be a section called “Special Requirements for Recombinant DNA Research and Technology” and for § 7.3.6 to be “Special Requirements in MU3/TOD.” However, there is no Recombinant DNA section in Article 7, “Special Requirements in MU3/TOD” became § 7.3.5 instead of § 7.3.6, and there is no § 7.3.6.

explaining how the criteria in § 7.3.5 are met, but it neglects to require such an explanation for the criteria in § 7.3.3. Accordingly, the Riverside Committee proposes that § 7.3.5.A.3 be amended to include a reference to § 7.3.3 which appears to have been omitted in error.

B. Traffic: Sections 7.3.5.A.6-8 (Traffic Filing Requirements); Section 7.3.5.B.3 (Post-Construction Traffic Mitigation Special Permit Criterion).

Traffic is, of course, a major issue. There is no denying that what makes Riverside desirable for development is its proximity to Rt. 128/I-95 and the Mass. Pike. In other words, Riverside is about access by car. Yet, one of the challenges of the site is that Grove Street is the connection between the site and the highway. It cannot be overlooked that, to date, there is no proposal that avoids the use of Grove Street as the route of access both to and from Rt. 128/I-95 southbound. Even if there were a direct connection between the site and Rt. 128/I-95 northbound, every vehicle that arrives via Rt. 128 northbound would leave by using Grove Street to get to Rt. 128 southbound, and vice versa. In addition, project-generated traffic that does not utilize Rt. 128 (e.g., traffic from many other parts of Newton) will utilize Grove Street.

Newton Lower Falls, in particular, is at risk from being cut-off from Auburndale and the rest of Newton by traffic on Grove Street. Some portions of the neighborhood can get to Washington Street without using Grove Street, but Washington Street in Lower Falls and Auburndale is already virtually impassible during peak hours. Grove Street should not be the new Washington Street or the new Needham Street or anything close to either of these. Indeed, it should be an objective, Citywide, to ensure that no more streets become notorious for their traffic woes. Errors of past poor planning should not be repeated.

Given its importance, the Zoning Ordinance should ensure that a comprehensive traffic analysis is performed. Although § 7.3.5.A.6 requires submission of a traffic study by the applicant, it fails to identify the streets and intersections to be studied. It also fails to require an

analysis of traffic flows within the development site, which may create backups onto Grove Street or Rt. 128, impair emergency vehicle and MBTA bus access, frustrate residents of the development trying to come and go, or frustrate commuters attempting to travel by Green Line. The impact of high-traffic generating special events, such as Red Sox games, on surrounding streets and on the internal functioning of the development site also are not addressed in the Ordinance.

In addition, while many hope that residents of a development at Riverside will opt not to own cars, the use of ride-hailing or transportation networks, such as Uber and Lyft, make easy and much more affordable the use of cars by people who do not own cars. Millennials in particular may be drawn to the idea of not owning a car, but they are heavy users of transportation networks. As a result, if a high percentage of Riverside residents do not own cars, there is the potential for more traffic than if they all owned cars. This is because a car owner traveling to a destination makes two trips: one away from home and one returning home. If a ride-hailing service is used, each leg of the journey becomes two vehicle trips: the driver makes one trip to the passenger's home, a second trip to take the passenger to his or her destination, a third trip to bring the passenger home, and a fourth trip for the driver to depart from the passenger's home. The Ordinance should thus require a complete analysis of the impact of transportation networks.

The impact of the ever-growing use of online shopping and the resulting explosion in the number of delivery vehicles we have all seen in our neighborhoods must also be considered. This is another area where a concentration of Millennials, in particular, may have a significant impact. The current Ordinance does not require consideration of this impact on traffic.

In addition, the existing Ordinance fails to require the applicant to provide the data and data analytics underlying its traffic conclusions. This information should be available to permit a full examination of the applicant's traffic claims by the City's peer reviewer and by the public.

Finally, the Riverside Committee proposes the addition of a requirement that the traffic study submitted by a special permit applicant be review by the Director of Transportation Planning,¹⁵ who is not mentioned in the current ordinance. Given the potential size of a development at Riverside and concomitant impacts on Newton's roadways, as well as the paucity of transit connections between Riverside and other areas of Newton, the Director of Transportation Planning should be involved in the review of any special permit application for Riverside.

The Riverside Committee proposes amendments to address the above shortcomings of the traffic-related special permit application requirements. *See proposed amendments, §§ 7.3.5.A.6., 6.c.1, 6.d, and 6.e.*

Also included in the proposed amendments are requirements that the applicant submit: (1) all transportation-related materials concerning the proposed project that are required to be submitted to state and federal agencies; and (2) traffic data collected and analysis files created concerning the proposed project. *See proposed amendments, §§ 7.3.5.A.7 and 8.* These materials should be readily available to the City and the public to fully understand and properly vet an applicant's proposals and contentions concerning traffic impacts and mitigation.

The Riverside Committee also proposes the addition of a special permit criterion concerning post-construction mitigation measures to remedy an omission in the current MU3 Ordinance Provisions. Under § 7.3.5.A.6.c.iii of the current Ordinance, a special permit

¹⁵ The Riverside Committee's proposed amendments reference the "Director of Transportation." For clarity, this should be the "Director of Transportation Planning."

applicant must include in its application “[t]he means of making mitigations if it is found pursuant to [post-construction traffic monitoring] that the trips counted exceed the projected adjusted volume by 10 percent or more.” Yet, there is no provision of the Ordinance that requires the City Council to assess or make any findings with respect to the adequacy or anticipated efficacy of the post-construction mitigation measures identified by the applicant. Without such a provision, the applicant could propose meaningless and ineffective post-construction mitigation measures and still be granted a special permit. Accordingly, the Riverside Committee proposes the addition of a special permit criterion providing that the City Council must find that the proposed post-construction mitigation measures will be effective. *See proposed amendments, § 7.3.5.B.3.*

In addition, the Riverside Committee proposes that the duration of post-construction traffic monitoring, as well as post-construction monitoring of water, sewer and stormwater impacts, be extended from two years following final build-out to five years. Particularly because future economic conditions cannot be predicted, two-years is too short a period of time. The project may be well below its ultimate occupancy two years after final build-out. Monitoring done when the project is at less than its ultimate occupancy will not accurately reflect its long-term impacts. *See proposed amendments, § 7.3.5.D.2 and E.1.a.*

C. Construction Impacts – Section 7.3.5.A.10 (Construction Impact Filing Requirement; Section 7.3.5.B.19 (Construction Impact Special Permit Criteria))

For a project of the size contemplated by the MU3 District provisions, construction could take many years. The nearby residential neighborhoods should not be subject to excessive noise, traffic disruptions, vibration, dirt, dust and the like from construction for such an extended period of time. It is vital to the well-being of the nearby residents that the City Council determine, in

advance of granting a special permit, if the applicants have a construction plan that will be effective in preventing such adverse consequences. Leaving these issues to be addressed by the Inspectional Services Department is too little and too late as the special permit cannot be withdrawn if it is determined after it is granted that the project cannot be built without unacceptable harm to the nearby residents.

The current MU3 provisions require the submission of *no* information from the special permit applicant about how construction will be undertaken and what its effects will be on the surrounding neighborhoods and roadways, other than the requirement in § 7.3.5.A.10 to submit a phasing schedule. In addition, there is no provision requiring the City Council to assess and make finding concerning construction impacts.

The Riverside Committee thus proposes a requirement that the applicant submit a detailed analysis of construction impacts on the surrounding roadways and neighborhoods and a plan detailing how these impacts will be managed. The Riverside Committee further proposes the addition of a special permit criterion requiring the City Council to assess construction impacts and make findings that there will be no excessive noise and more than minimal traffic disruptions or exposure to noise, dust and vibration. *See proposed amendments, §§ 7.3.5.A.10; 7.3.5.B.19.*

D. Visual Impact and Character – Section 7.3.5.A.12 (Visual Impact Filing Requirements); Section 7.3.5.B.4 (Visual Impact Special Permit Criteria); Section 7.3.5.B.5 (Preservation of Neighborhood Character Special Permit Criteria)

As is recognized throughout the Comprehensive Plan, in growing the City and creating areas of greater density, care must be taken to protect the character of existing residential neighborhoods. By way of example only, the Comprehensive Plan states that “[d]evelopment is to be guided to reflect the character held or sought by existing residential neighborhoods,

protecting the qualities of that which exists,” Comprehensive Plan, pp. 3-6, and “[w]e seek to assure development densities well related to both neighborhood character and infrastructure capacity.” *Id.*, pp. 1-3.

These considerations are particularly important at Riverside where what is contemplated is the creation of an entirely new multi-building village center where none now exists. This sort of dramatic change has the potential to overwhelm and completely alter the existing neighborhood character, pulling the rug out from under those who have are deeply invested—economically, socially and emotionally—in the small, quiet neighborhoods where they chose to live. To avoid this result, it is vital to consider the visual and aesthetic impacts of any proposed development at Riverside and to ensure that they are consistent with, rather than disruptive of or in conflict with the existing neighborhoods. For example, where people now see small houses and trees with open sky above from their yards, windows or when walking in their neighborhoods, they should not see towering glass and steel structures. The nighttime must also be considered. Light from the development should not intrude into people’s homes or yards, and the view of the night sky should not be a glowing tower.

Further, the look and feel of the site as one travels along Grove Street should fit with the neighborhoods that surround it. Building design and materials used should reflect and complement the character of the surrounding residential areas.

All of the above issues fall within the existing § 7.3.3.C.2 of the Ordinance prohibiting special permit approval for a project that will have any adverse impact on the surrounding neighborhoods. But, given the potential size of development at Riverside, these adverse effects are of such import that they should be called out and addressed expressly.

The Charles River also cannot be ignored. Nor can Riverside Park (even though not in Newton and currently underutilized). In spite of the nearby highways and overpasses, the stretch of the Charles River near Riverside is remarkably natural and unspoiled, as is the view from the adjacent portion of Riverside Park. Care must be taken to avoid undermining this area as a respite from man-made structures for canoeists, kayakers, paddle-boarders and visitors to the Park.

For all of the above reasons, the Riverside Committee proposes the addition of requirements that special permit applicants: (a) provide photographs of the existing appearance of the site from various locations in Lower Falls and Auburndale (from both street level and second-story window vantage points) as well as from the Charles River and Riverside Park, plus the same photographs that include project renderings accurately scaled and inserted to show the visual appearance the proposed project will have; (b) to provide simulations showing how the project will appear at night when fully illuminated; and (c) conduct a “balloon test” for any structure proposed to be over 100 feet tall. In a balloon test, balloons are placed in the exact locations and heights of proposed structures to depict their outline. Balloon tests are an often-used method to demonstrate the visual impact a structure will have, since photographs can be misleading and never duplicate how things actually appear to the human eye. *See proposed amendments, § 5.3.5.A.12.*

The Riverside Committee further proposes the addition of special permit criteria requiring the City Council to assess and make findings concerning both visual impacts (including lighting impacts) of the project on the surrounding neighborhoods, the Charles River and Riverside Park, as well as consistency of the project design and architecture with the character

and look and feel of the surrounding neighborhoods. *See proposed amendments, § 5.3.5.B.4, 5, and 11.*

E. Noise Impacts – Section 7.3.5.A.13 (Noise Impact Filing Requirement); Section 7.3.5.B.6 (Noise Impact Special Permit Criteria)

As noted above, excessive noise is not just annoying and distracting. It is also harmful.

As stated in a Journal of Urban Health article:

Environmental noise has been linked to several non-auditory, biologically relevant health outcomes, including: increased levels of hypertension and high blood pressure, lowered cognitive ability, and an increased prevalence of cardiovascular disease. Exposure to environmental noise from traffic-related sources is reportedly the most annoying of all urban pollution types, interfering with enjoyment of daily activities and largely affecting sleep and rest patterns. In a recent Canadian survey, 20–28% of urban populations attributed noise from road traffic to disruptions during sleep, conversation, and communication tasks such as reading and writing.

King, G., et al., *Noise Levels Associated with Urban Land Use*, J Urban Health. 2012 Dec, 89(6): 1017-1030 (internal footnotes omitted).¹⁶

Neither the surrounding neighborhoods nor the residents of a development at Riverside should be subjected to unacceptable noise levels. Remarkably, the current Ordinance contains no provisions about noise impacts of the development on the surrounding neighborhoods or noise levels within the development itself.

Even after construction is complete, a development at Riverside may increase noise levels in Newton Lower Falls and Auburndale because of increased traffic on Grove Street and Rt. 128/I-95 (including increased truck traffic servicing retail and office uses on the site) and also because of the potential for traffic noise from Rt. 128/I-95 to be reflected toward Lower Falls by any tall buildings constructed along the highway/Lower Falls-facing portion of the site. The residences on Grove Street across from the Hotel Indigo and across from the Riverside Center

¹⁶ This publication also identifies mixed-use developments as a planning strategy that carries with it the risk of increased environmental noise.

are particularly vulnerable not just to vehicle activity Grove Street, but also to outdoor activities on the site. However, even the portion of Newton Lower Falls across Rt.128/I-95 from the site is vulnerable to noise at the site. Many in Lower Falls recall the difficult period after the hotel transitioned from a Holiday Inn to a Hotel Indigo, when music from outdoor parties literally caused our houses to shake. Although that activity was eventually stopped (and we certainly expect both better behavior from those responsible for a development at Riverside as well as more effective enforcement against such activities), these events demonstrate the ability of sound to travel across the highway into Lower Falls.

Noise within the development is also a concern. A densely-developed project with residences set close to both the internal roadways as well as the MBTA facilities may result in unacceptable noise levels from ordinary street traffic, activities on sidewalks and other outdoor spaces, MBTA buses, private buses, MBTA trains, and MBTA maintenance and storage operations.

Accordingly, the Riverside Committee proposes the addition of an Ordinance provision requiring submission of a noise analysis by the applicant that addresses noise impacts on Newton Lower Falls and Auburndale as well as an internal site noise analysis. *See proposed amendments, § 7.3.5.A.13.*

The Riverside Committee also proposes the addition of special permit criteria concerning noise. These criteria would require a finding by the City that the project will not increase noise levels in Newton Lower Falls or Auburndale and that there will not be noise levels in excess of 55 decibels in any portion of the development site where there will be residential uses, civic open

space or beneficial open space. *See proposed amendments, § 7.3.5.B.7.* Fifty-five decibels is the maximum outdoor noise level to allow for intelligible conversation.¹⁷

F. Wind Impacts – Section 7.3.5.A.14 (Wind Impact Filing Requirement) and Section 7.3.5.B.7 (Wind Impact Special Permit Criteria)

Because tall buildings create uncomfortable and even dangerous wind effects, many cities in North America and Europe have adopted pedestrian-level wind standards and require testing for wind impacts as part of the approval process for proposed tall buildings, including Boston, New York, San Francisco, and Toronto. Although Newton, having few taller buildings, has not adopted wind standards to protect the comfort and well-being of pedestrians, in the MU3 District where tall buildings may be permitted by special permit, the special permit criteria should include such a standard and applicants should be required to perform a wind study.

Accordingly, the Riverside Committee proposes the addition of a special permit criterion setting standards for pedestrian-level winds. *See proposed amendments, § 4.3.5.B.8.* These standards are those included in the Boston Zoning Code. The Riverside Committee also proposes the addition of a requirement that special permit applicants submit a wind study. *See proposed amendments, § 7.3.5.A.14.* This provision is also based on the requirements used in Boston, found in the Boston Redevelopment Authority (now Boston Planning and Development Authority) Development Review Guidelines. However, Boston requires wind tunnel studies and the proposed amendment would permit, as an alternative, the use of computational fluid dynamics simulations, which appear to have gained recognition as an acceptable study methodology.

¹⁷ Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety. Washington, D.C: U.S. Environmental Protection Agency; 1974

G. Comprehensive Signage Program – Section 7.3.5.B.12

Section 7.3.5.B.12 of the current Ordinance requires the applicant to develop a signage program that must be approved by the City Council. It states that signage should be “complementary to the architectural quality of the mixed-used development and the character of the streetscape,” but has no restrictions on signage. Restrictions should be included to protect the residential character of the surrounding neighborhoods and Grove Street—none of which should become commercialized.

Retail signage visible on Grove Street or from Newton Lower Falls or Auburndale would be entirely inconsistent with the existing character of the neighborhood. In addition, the objective should not be to make Riverside a retail destination for people who live elsewhere, which will only bring increased traffic. It should primarily service residents of the development, who will not need signage on Grove Street to know what is available there. In addition, retailers can easily advertise through other means if they so desire.

It would also be inappropriate for signage that advertises office tenants to be placed where visible from Grove Street or any residential area of Newton Lower Falls or Auburndale. Again, the visual aesthetic of residential areas should remain residential.

Accordingly, the Riverside Committee proposes that § 7.3.5.B.12 be supplemented to require: (1) that the signage program include no office or retail signage visible from Grove Street or residential areas of Newton Lower Falls and Auburndale; and (2) that it be a condition of any special permit that the retail and office tenants be prohibited from placing any signage, whether temporary or permanent, in locations where it would be visible from Newton Lower Falls or Auburndale.

H. Provisions Reinforcing the Special Permit Criterion of Section 7.3.3.C

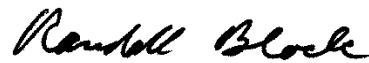
Section 7.3.3.C of the Zoning Ordinance includes special permit criteria that are applicable to all special permit applications in all zoning districts, including in the MU3 District. Indeed, § 7.3.5.B (which contains the special permit criteria specific to the MU3 District) states that the City Council shall not grant a special permit unless it finds that the proposal meets all of the criteria in § 7.3.5.B, “in addition to those listed in Sec. 7.3.3.” Nevertheless, based on discussions with various City officials, the Riverside Committee is concerned that there is little awareness that the City Council must consider and make findings concerning the special permit criteria in § 7.3.3 in connection with an MU3 special permit application.

Of particular importance to Newton Lower Falls and Auburndale is § 7.3.3.C.2, which states that no special permit can be granted absent a finding that: “The use as developed and operated will not adversely affect the neighborhood.” It should be made abundantly clear that this provision applies in the MU3 District and that the neighborhood means Newton Lower Falls and Auburndale.

In addition, it should be made clear that, if the proposed project will cause adverse impacts on Newton Lower Falls and Auburndale, it is not open to the City Council—sitting as the special permit granting authority—to grant the special permit because there are perceived benefits of the proposed development. As the Massachusetts Appeals Court has held, special permit proceedings are adjudicatory, and the special permit granting authority acts in a quasi-judicial rather than a legislative capacity. *Mullin v. Planning Bd. of Brewster*, 17 Mass. App. Ct. 139, 143 (1983). *Accord Tenneco Oil Co. v. City Council of Springfield*, 406 Mass. 658, 659 (1990). Thus, special permit decisions must be based on the Zoning Ordinance, which cannot be overruled, cast aside, or modified by policy considerations. For these reasons, the Riverside

Committee seeks the addition of an introductory paragraph to § 7.3.5.B (the MU3 “Review Criteria” section) making clear that all of the special permit criteria set forth in § 7.3.3 are applicable in the MU3 District, including § 7.3.3.C.2, and that a special permit may not be granted absent a finding that the proposed develop will have no adverse effect on Newton Lower Falls and Auburndale, made without engaging in policy-making, *i.e.*, weighing of those adverse effects against perceived benefits of the proposed project (*e.g.*, tax revenue).¹⁸

The LFIA Riverside Committee



By: Randall Block, Chair

Dated: May 31, 2019

¹⁸ The Riverside Committee also seeks a minor change to the language of § 4.3.5.B.4 (re-numbered 4.3.5.B.9 in the proposed amendments), which suggests, incorrectly, that the avoidance of adverse impacts on the neighborhood is discretionary, rather than mandatory.

**THE NEWTON LOWER FALLS IMPROVEMENT ASSOCIATION RIVERSIDE COMMITTEE'S
PROPOSED AMENDMENTS TO THE MU3 DISTRICT PROVISIONS OF THE NEWTON
ZONING ORDINANCE**

Below is a re-typed copy of Sections 4.2 and 7.3.5 of the Newton Zoning Ordinance. Although formatted differently, every effort has been made to accurately reproduce the existing ordinance. Proposed deletions from the current provisions appear as red strike-outs. Proposed additions to the current provisions appear as red, underlined text.

Sec. 4.2. Mixed Use Districts

4.2.1. District Intent

A. Mixed Use 1 and 2 District. [Reserved]

B. Mixed Use 3/~~Transit-Oriented Development~~. The purpose of the Mixed-Use 3/~~Transit-Oriented~~ district is to allow the development of a mixed-use center on a parcel of no less than 9 acres near the terminus of mass transit rail line, an interstate highway, a scenic road, and the Charles River, commonly referred to as the Riverside MBTA station, pursuant to the City's Comprehensive Plan, particularly the mixed-use centers and economic development elements. This district shall encourage comprehensive design within the site and with its surroundings, integrate complementary uses, provide enhancements to public infrastructure, provide ~~beneficial open~~high-quality outdoor and indoor spaces; ~~that promote civic engagement and create a sense of community~~ protect neighborhoods from impacts of development, allow sufficient density to make development economically feasible, foster use of alternative modes of transportation, and create a vibrant destination where people can live, work and play. In addition, the purposes of the Mixed-Use 3 district provisions of the Zoning Ordinance are to: (a) protect the adjacent neighborhoods of Newton Lower Falls and Auburndale from impacts of development in the district, including traffic, noise, visual impacts, as well as from change of neighborhood character; (b) to protect the residents of the streets adjacent to or near off-site roadway modifications made in connection with development in the district from all adverse effects thereof, including inconvenience, delays, hazards, noise and pollution; and (c) to ensure that development in the district is appropriately designed and scaled for the narrow scenic road, Grove Street, on which the district fronts, and is a healthy, safe and comfortable environment for its residents.

C. Mixed Use 4 District. The purposes of the Mixed Use 4 district are to:

1. Allow the development of buildings and uses appropriate to Newton's village commercial centers and aligned with the vision of the City's Comprehensive Plan.

Section 4.2

2. Encourage development that fosters compact, pedestrian-oriented villages with a diverse mix of residences, shops, offices, institutions, and opportunities for entertainment.
3. 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. Expand the diversity of housing options available in the City.
5. 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.

4.2.2. Dimensional Standards

A. Applicability

1. The density and dimensional controls in Sec. 4.2.2 and Sec. 4.2.3. apply to all buildings, structures and uses in each of the listed districts.
2. Where more than one dwelling unit is provided on a lot in certain Mixed Use districts, the following residential density control shall apply:

Mixed Use District	MU1	MU2	MU3/ TOD	MU4
Lot Area Per Unit (min)	10,000 sf	10,000 sf	1,200 sf	1000 sf

3. Where a density or dimensional control is not set forth in the following tables for a use granted by special permit, the most restrictive density or dimensional control applicable to such use in any district where the use is allowed as of right shall be applicable, unless otherwise required in the special permit by the City Council.

B. Approval Process.

1. **Special Permit Required.** A special permit is required for any development in a mixed use district of 20,000 square feet or more.
2. **Site Plan Review Required.** A site plan is required for any development in a mixed use district that ranges from 10,000 to 19,999 square feet of new gross floor area. After August 3, 1987, the first addition of less than 2,000 square feet to an existing building or structure is not subject to site plan approval. All buildings,

Section 4.2

structures and additions shall be located on a lot in single and separate ownership, which lot shall not be available for use in common or in connection with a contiguous or adjacent lot.

3. Stories. A special permit is required based on stories according to the following table:

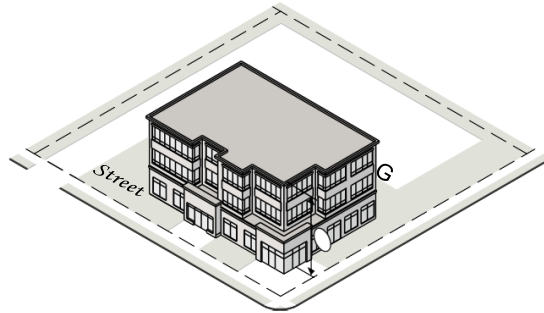
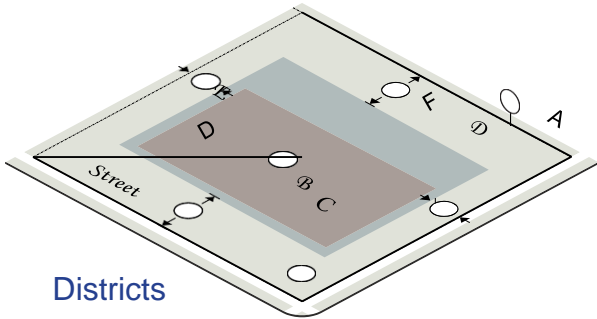
Stories	MU1	MU2	MU3/ TOD	MU4
2 stories	P	P	NA	p
3 stories, mixed use residential	NA	NA	NA	P
4 stories	SP	SP	NA	SP
5 stories, mixed use residential	NA	Na	NA	SP

P = Allowed by Right

SP = Special Permit by City Council Required

NA = Not Applicable, -- Not Allowed

4.2.3 All Building Types in Mixed Use



Districts

Mixed Use Districts		MU1	MU2	MU3	MU4
Lot Dimensions					
3	Ⓐ Lot Area (min)				
	2 stories	40,000 sf	10,000 sf	9 ac	10,000 sf
	3 stories	40,000 sf	10,000 sf	9 ac	10,000 sf
	4 stories	40,000 sf	10,000 sf	9 ac	10,000 sf
	5 stories	--	--	9 ac	10,000 sf
	Ⓑ Lot Coverage (max)	--	--	--	--
	Ⓒ Beneficial Open Space			n/a by right; 15% by for special permit	See Sec. 4.2.5
	C.1 Civic Open Space	--	--	15% for special permit	
Building Setbacks					
4	Ⓓ Front (min)				
	1 story	15'	15'	See Sec. 4.2.4	See Sec. 4.2.5
	2 or more stories	total ht of bldg	total ht of bldg		
	Parking Setback	20'	15'		
5	Ⓔ Side (min)				
	Abutting residential or Public Use district	Greater of ½ bldg ht or 20'	Greater of ½ bldg ht or 20'	See Sec. 4.2.4	See Sec. 4.2.5
	Not abutting residential or Public Use district	7.5'	7.5'		
	Parking setback	5'	5'		
5	Ⓕ Rear (min)				
	Abutting residential or Public Use district	Greater of ½ bldg ht or 20'	Greater of ½ bldg ht or 20'	See Sec. 4.2.4	See Sec. 4.2.5
	Not abutting residential or Public Use district	7.5'	0'		
	Parking setback	5'	5'		
Building and Structure Height					
6	Ⓖ Height (max)				
	2 stories	36'	24'	36' by right; 135' by special permit	24'
	3 stories	36'	36'		36'
	4 stories	48'	48'		48'
	5 stories	--	--		60'
	G Stories (max) see also Sec. 4.2.2	3	4	4	8
Floor Area Ratio					
6	Floor Area Ratio (max)				
	2 stories	1.50	1.00	up to 36' = 1.0	1.00
	3 stories	1.50	1.50	up to 135' =	1.50
	4 stories	2.00	2.00	2.4	2.00
	5 stories	--	--		2.50

* Average setback is described in [Sec. 1.5.3](#)

4.2.4. Additional Standards in MU 3/~~TOD~~

Any development permitted by special permit must meet the following requirements and the requirements of Sec. 4.2.3. The City Council may grant a special permit to allow exceptions to the by-right dimensional standards of the MU 3/~~TOD~~, provided that the requirements of this Sec. 4.2.4. are met and no dimension exceeds those allowed in Sec. 4.2.3 for the mixed-use development special permit.

A. Building Heights and Setbacks.

Notwithstanding anything to the contrary in Section 4.2.3, buildings in the MU3 district shall conform to the following:

1. For buildings on Grove Street:

a. The maximum building height is 4 stories or 44 ft, whichever is lower.

b. The minimum setback from Grove Street is 30 ft. from the Grove Street lot line.

c. Any building with a length along Grove Street of more than 115 ft. must have an additional 15 ft. minimum setback for so much of the building length along Grove as exceeds 100 ft. Each such further setback portion of the building shall be 15 ft. long.

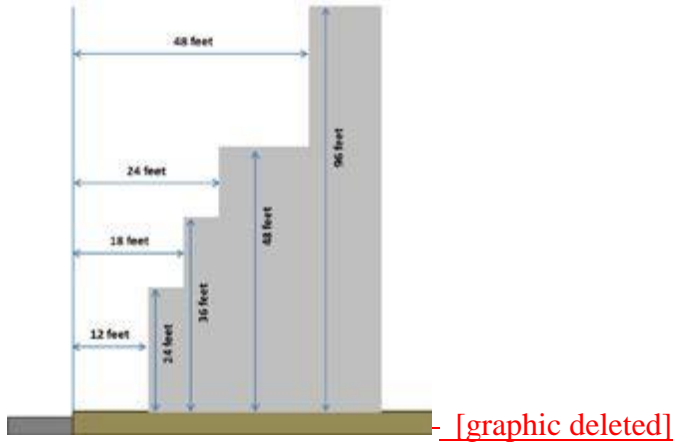
d. Buildings must be separated from one another by a minimum of 15 ft.

Any building not separated from Grove Street by another building or another street is a building on Grove Street that is subject to the provisions of this paragraph 4.2.4.A.1.

2. For all buildings not subject to paragraph 4.2.4.A.1 above, all buildings higher than 50 ft. shall have its stories above 50 ft. set back from the lower 50 ft. high portion of the building by appropriate distance to ensure adequate light, air and sky exposure within the development parcel. In particular, such buildings shall be located and designed so as not to cast excessive shadows on civic open spaces (see sec. 4.2.4.B.2 below) within the development.

~~Any structure or building must be set back a distance equal to at least half the height of that structure or building from any lot line, except that for perimeter lot lines adjoining a state highway right of way or land owned by a Commonwealth of Massachusetts instrumentality, the setback may be 0 feet for nonresidential uses. To encourage stepped setbacks for taller structures, each portion of a building shall be treated as if it is a separate building for purposes of calculating required building heights and setbacks. In accordance with the procedures provided in Sec. 7.3, the City Council may grant a special permit to allow a reduction in the minimum setback if it determines that the proposed setback is adequate to protect abutting uses.~~

Section 4.2



B. **Open Spaces.**

1. Beneficial Open Space. At least 50 percent of the beneficial open space required by Sec. 4.2.3 for a mixed-use development must be freely open to the public.

2. Civic Open Space. Civic open space is high-quality, public-use open space, of adequate size and design to allow for public congregation. Primary types of civic open space are plazas, parks, playgrounds, playing fields, and community gardens. Each civic open space shall be designed to accommodate one or more specific public uses and shall include the necessary infrastructure and amenities to support such uses. Civic open space *does not* include: space located on top of a structure; driveways or roadways, walkways or other areas intended primarily for circulation (whether or not they incorporate landscape features, sculpture or artwork, public benches or other public amenities) unless within a space that otherwise qualifies as civic open space; building terraces; areas adjacent to highway ramps; or traffic islands. No area of less than 400 sq. ft. or less than 20 ft. in either length or width shall qualify as civic open space. Civic open spaces must be located adjacent to one or more of the retail, office, residential or community center structures in the district. Land used to satisfy the Beneficial Open Space requirement of Section 4.2.1 shall not be counted toward the Civic Open Space requirement and vice-versa.

C. Exclusion of Public Structures from Zoning Requirements. Any portion of a development parcel for the proposed development owned by a Commonwealth of Massachusetts instrumentality and devoted to a governmental function from which the general public is excluded (including, but not limited to a rail yard, maintenance facility, or railroad right-of-way) and any portion of a building or structure dedicated for public use by a State instrumentality (such as a passenger station or associated facilities for use by customers of the Massachusetts Bay Transportation Authority) shall not be included in the calculation of:

1. The quantity of beneficial open space required;

Section 4.2

2. Minimum lot area; or
3. Floor area ratio.

D Impacts of Takings by or Conveyances to a Public Entity. The provisions of Sec. 7.8.4 shall apply to any taking by or conveyance of land within the development parcel to a public entity or to any land otherwise dedicated and accepted as a public way.

E. Establishment of a Development Parcel. The area developed under a special permit must be organized into a development parcel as defined in Article 8. The development parcel may contain more than 1 lot or a portion of a lot, together with any easement areas located on adjacent parcels of land. The provisions of this Chapter shall apply to the development parcel as it exists on the date that the special permit is granted as if the development parcel were a single lot for zoning purposes, without reference to interior lot lines dividing separate ownerships. After the grant of a special permit, the ownership may be further divided (subject to the establishment of an organization of owners defined below) and any interior lot lines shall be disregarded for zoning purposes. The development parcel may be modified from time to time to accommodate land swaps or the purchase of adjacent land, provided that the resulting development parcel is not less than 9 acres in size and does not create or expand any nonconformities.

F. Intensity of development.

1.—

In addition to the beneficial open space and civic open space required under sections 4.2.3 and 4.2.4.B, the development must have at least one use from each of the ~~three~~four categories (A, B, ~~and C, and D~~) below: ~~plus a community use space.~~

- a. **Category A:** Office (including research and development, business incubator, medical office, and other similar uses);
- b. **Category B:** Retail sales, personal services, restaurants, banking, health club, place of entertainment and assembly, theater, ~~lodging, hotel, motel~~; and
- c. **Category C:** Multi-family, live/work space, single room occupancy, single person occupancy, assisted living nursing home.
- d. **Category D: Community Center.** Community center means indoor space within a single building that is appropriate for a variety community uses, such as meetings, classes, after-school programs, and athletic activities that is open to the public and operated either by a non-profit organization funded by the project applicant or such other mechanism as shall be specified in the Special Permit.

In addition, if the development parcel includes the land shown on the Approval Not Required Plan, 399 Grove Street, dated October 20, 2015 and recorded at Middlesex

Section 4.2

County Registry of Deeds, Plan Book 2015, No. 1050 (the “Indigo Parcel”), the development may also include **Category E**: lodging, hotel or motel.

2. Notwithstanding paragraph G. below, any development that proposes an aggregate gross floor area of 20,000 or more square feet among all buildings within the development parcel shall require a special permit ~~for a mixed-use development~~.

G.

1. Except as set forth in section 4.2.4.G.2 below, the square footage in each category shall meet the ~~not exceed the maximums~~ requirements listed below, except, where approved by special permit, the maximums may be adjusted by up to 10 percent in ~~each~~any category, so long as the total gross floor area of all uses, excluding accessory parking, does not exceed: (a) ~~580,000~~650,000 square feet if the development parcel includes only land leased from the MBTA (the “MBTA Parcel”); or (b) 825,000 square feet if the development parcel includes both the MBTA parcel and the Indigo Parcel:

- ~~1.~~ Category A shall not exceed ~~225,000~~120,000 square feet (excluding offices incidental to residential, retail or community uses), the majority of which must be contained within one structure;
- ~~2.~~ Category B shall not exceed ~~20,000~~40,000 square feet, excluding those uses that are accessory to a use listed in Category A or C as determined by the Commissioner of Inspectional Services;
- ~~3.~~ Category C shall not exceed ~~335,000~~480,000 square feet not to exceed ~~290~~415 dwelling units.

Category D shall be no less than 1.5% of the total square footage of all other use categories (i.e., Categories A,B,C and E).

Category E: if permitted under sec. 4.2.4.F.1, shall not exceed 176,000 square feet.

2. Direct Access to and from Rt. 128/I-95 Northbound and Southbound. If, and only if, the special permit is conditioned on the provision of direct access (i.e., not utilizing Grove Street) to and from the development parcel to and from Rt. 128/I-95 northbound and direct access to and from the development parcel to and from Rt. 128/I-95 southbound, the total square footage permitted under paragraph 1 of this section 4.2.4.G shall be increased by 100,000 square feet, which shall be distributed proportionately amongst the Categories A-C uses set forth in Sections 4.2.4.F and G. Notwithstanding

the foregoing, all special permit applications shall be subject to the findings required under Sections 7.3.3.C and 7.3.5.B.

H. Organization of Owners. Prior to exercise of a special permit, an organization of all owners of land within the development parcel, except for owners of land subject to easements benefiting the mixed-use development, shall be formed. The organization of owners will be governed by special permit with the authority and obligation to act on behalf of all such owners in contact with the City or its representatives regarding compliance with this Chapter. The organization shall serve as the liaison between the City and any owner, lessee, or licensee within the development parcel governed by a special permit. Such organization shall be the primary contact for the City in connection with any dispute regarding violations of this Chapter and, in addition to any liability of individual owners, shall have legal responsibility for compliance of the development parcel with the terms of the special permit for a mixed-use development, site plan approval, and other applicable provisions of this Chapter. In addition, any special permit shall provide for the establishment of an advisory council consisting of representatives of the adjacent neighborhoods and the organization of owners to assure continued compatibility of the uses and activities within the development parcel and its neighbors during and after construction. Membership of this advisory council shall be provided for in the special permit and shall be structured to ensure all neighborhood interests are represented.

7.3.5. Special Requirements in MU3/TOD

A. Additional Filing Requirements. In addition to the provisions of Sec. 7.3 and Sec. 7.4, applicants for a special permit under Sec. 4.2.4 shall submit:

1. Conceptual Plans. Prior to submittal of an application for a special permit in the Mixed Use 3/~~Transit-Oriented Development~~ (MU3/TOD), which will include subsection 2. to 12. below, applicants shall present conceptual plans for review by the Land Use Committee of the City Council at a public meeting. The Land Use Committee shall provide a forum for a public presentation whereby the Land Use Committee and public may ask questions, gain an understanding of the project proposal, and provide feedback that can inform further development of the project. Submittal for conceptual review shall not require engineered plans, but shall include the following:
 - a. Project description, including project purpose or design rationale;
 - b. Project statistics, including zoning, current and proposed uses on site, total square footage for each use proposed, area to be covered by structures, FAR, number of bedrooms in all dwelling units, percentage of affordable units, percentages of open space with breakdown of civic open space, beneficial open space and publicly-accessible beneficial open spaces;
 - c. Preliminary site plan, including dimensioned property lines and all building setbacks and building footprints, impervious surfaces, location of waterways, top of bank and distance from waterways, proposed demolitions, location and number of parking spaces, landscaping and open spaces, trees to be removed, any access proposed to adjacent public property, whether or not it is currently available for public use, north arrow and scale; and
 - d. Other information as may be requested by City staff to perform a zoning review and preliminary impact analyses.
2. A 3D computer-generated model that shows the relationship of the project to its surroundings consistent with Sec. 7.3.1.B.;
3. Narrative analysis describing design features intended to integrate the proposed mixed-use development into the surrounding neighborhood, including the existing landscape, abutting commercial and residential character and other site-specific considerations, as well as an explanation of how the proposed mixed use development satisfies each criterion in Sec. 7.3.3 and Sec. 7.3.65.B.;
4. Statement describing how the beneficial open space areas, to the extent open to the public, and the civic open space areas are intended to be used by the public;

Section 7.3.5

5. Site plans showing any by right or zoning exempt alternatives;
6. A roadway and transportation plan reflecting the “EOEEA Guidelines for EIR/EIS Traffic Impact Assessment” with further attention to public transportation and exceptions, subject to review by the Commissioner of Public Works, Director of Planning and Development, Director of Transportation, and peer review consultants. The plan should include the following:
 - a. Graphic and narrative description of existing and proposed means of access to and within the site, including motor vehicular, pedestrian, bicycle, and public or private transportation alternatives to single occupant vehicles.
 - b. Description of a proposed transportation demand management (TDM) program identifying commitments, if any, to a designated TDM manager, employer contributions to employee public transportation passes, shuttle bus capital contribution, car pool, van pool, guaranteed ride home, flex hours, promotional programs, support for off-site pedestrian and bicycle accommodations, and similar efforts.
 - c. Detailed analysis and explanation for the maximum peak hour and daily motor vehicle trips projected to be generated by the mixed-use development, documenting:
 - i. The projected base volume of trips to and from the mixed-use development based upon the latest edition of the Trip Generation Manual published by the Institute of Transportation Engineers or other sources, such as comparable projects in Newton or nearby communities, acceptable to the Commissioner of Public Works and Director of Planning and Development, and also specifically addressing the impact on trip volume of both transportation networks (e.g., Uber and Lyft) and delivery vehicles associated with online purchases;
 - ii. The projected adjusted volume of trips net of reductions resulting from internally captured trips; access by public transport, ridesharing, walking or biking; and through the TDM program cited above; but without adjustment for “pass-by” trips, and noting how those reductions compare with the mixed use development guideline of adjusted volume being at least 10 percent below the base volume on weekday evening peak hours;
 - iii. The means of making mitigations if it is found pursuant to the monitoring under ~~Sec. 7.3.6.D. and~~ Sec. 7.3.65.E. that the trips counted exceed the projected adjusted volume by 10 percent or more; and

Section 7.3.5

iv. The projected trip reduction adjustment based on “pass-by” trips for use in projecting impacts on street traffic volumes.

d.

i. Analysis of traffic impacts on surrounding roadways, including secondary roads on which traffic to the mixed-use development may have a negative impact. The study area for the traffic impact analysis shall include, without limitation, all roadways expected to receive 50 or more peak hour vehicle trips from the proposed development and the following intersections:

Washington Street at Beacon Street

Washington Street at Quinobequin Road/ Wales Road/Route 128

SB Ramps

Washington Street at Concord Street

Washington Street at Grove Street

Concord Street at Hagar Street

Route 128 Exit 21B Collector-Distributor Road at Route 128 SB

On-Ramp

Washington Street at Route 128 NB Ramps

Grove Street at Hagar Street / Colgate Road (All-Way Stop)

Grove Street at Route 128 SB Ramps / Asheville Road

Grove Street at Route 128 NB Ramps

Grove Street at Hotel Indigo Driveway / Condo Driveway

Grove Street at MBTA Riverside Driveway

Grove Street at Riverside Office Building South Driveway

Grove Street at Riverside Office Building North Driveway /

Seminary Drive

Grove Street at Riverside Office Building Center Driveway

Grove Street at Hancock Street

Grove Street at Woodland Street (All-Way Stop)

Grove Street at Central Street and Auburn Street

Woodland Street at Hancock Street (All-Way Stop)

Woodland Street at Central Street (All-Way Stop)

Lexington Street at Auburn Street / Commercial Driveway

Washington Street at Woodland Street

Commonwealth Avenue at Lexington Street

Lexington Street at Wolcott Street

Commonwealth Avenue at Melrose Street

Commonwealth Avenue at Auburn Street (East)

Commonwealth Avenue at Washington Street

Washington Street at Auburn Street

Washington Street at Perkins Street

Washington Street at Mass Pike EB On-Ramp

Section 7.3.5

Washington Street at Mass Pike WB Off-Ramp
South Avenue at River Road / Route 128 SB Ramps
South Avenue / Commonwealth Avenue at Route 128 NB Ramps
Commonwealth Avenue at Auburn Street (West)

- ii. Analysis of traffic impacts within the study area of site-specific high-traffic events, including but not limited to Red Sox home games.

Results are to be summarized in tabular form to facilitate understanding of change from pre-development no-build conditions to the build-out conditions in trip volumes, volume/capacity ratios, level of service, delays, and queues. Analysis shall include:

- i. The assumptions used with regard to the proportion of automobile use for travel related to the site, the scale of development and the proposed mix of uses, and the amount of parking provided; and
- ii. Analysis of projected transit use and description of proposed improvements in transit access, frequency and quality of service.

- e. Analysis of peak traffic flow and circulation within the development parcel and the potential for backups within the parcel that could impact and/or impede traffic flows or fire and police operations within or adjacent to the parcel. This analysis shall include, without limitation, an assessment of the exit/entrance efficiency of parking structures and the potential for backups resulting from vehicles pulling into and/or out of parking stalls; interactions between MBTA and other buses with other vehicle traffic; the potential effects of double-parking (including by delivery vehicles, taxis and transportation network vehicles), car breakdowns, and other foreseeable events that may impede projected traffic flow; and an analysis of the impacts of site-specific high-traffic events, including but not limited to Red Sox home games.

- 7. All transportation-related studies, reports, submissions or filings required to be submitted to any state or federal agency in connection with the proposed-mixed use development (including those required as a result of any required or proposed roadway changes or traffic mitigation measures in connection with the proposed-mixed use development).

- 8. All of the following collected or prepared in connection with any of the submissions required under Section 7.3.5.A.6 and 7

above:

-All capacity analysis files, simulation files, animation files, and all modeling files, including but not limited to all analysis files for use with the following software applications:

Synchro/SimTraffic

Highway Capacity Software

PTV Vissim

-All traffic count and speed data files (both Excel files and PDFs).

7. A shared-parking analysis that demonstrates that the number of parking spaces to be provided is appropriate to the context, taking into consideration the mix of uses; the demand for parking spaces at different times of day, week, and year; availability of alternative modes of transportation; and other site-specific influences on parking supply and demand, such as, but not limited to, Red Sox home games.
8. Water, sewer, and storm water impact analysis. The analysis shall be subject to review by the Commissioner of Public Works, Director of Planning and Development, and peer review consultants and shall include the following:
 - a. A study of the proposed project's surface water runoff relating to the Charles River and how all storm water will be infiltrated on site, and which explores all feasible methods of reducing impervious surfaces, including underground parking and/or more compact site layouts, as well as the possibility of roof water harvesting for irrigation reuse, including:
 - i. A conceptual drainage plan demonstrating the consistency of the drainage infrastructure plan with the Massachusetts Department of Environmental Protection's "Stormwater Management Handbook" and the City's "Requirements for On-Site Drainage (Stormwater Management)";
 - ii. A drainage analysis based on the City's 100-year storm event of seven inches over a 24 hour period, showing how runoff from impervious surfaces will be infiltrated on-site;
 - iii. An on-site soil evaluation identifying seasonal high groundwater elevation and percolation rate and locations of these tests shown on the site plan;
 - iv. If a connection to the City's drainage system is proposed, a closed-circuit television (CCTV) inspection, prior to approval of this

Section 7.3.5

permit, which shall be witnessed by the Engineering Division of Public Works; the applicant shall provide the City inspector with a video or CD prepared by a CCTV specialist hired by the applicant. A post-construction video inspection shall also take place and be witnessed as described above; and

- v. An evaluation of hydraulic capacity of the downstream drainage system submitted to the Engineering Division of Public Works to determine any impact to the municipal drainage system.
- b. A master plan and schedule of the sanitary sewer system improvements, including:
- i. A plan showing a reduction in infiltration and inflow into the sanitary sewer system to the satisfaction of the Commissioner of Public Works;
 - ii. A calculation of the life cycle cost of the proposed sanitary system;
 - iii. A quantitative analysis of the capacity to dispose, verified by the Massachusetts Water Resource Authority (MWRA); and
 - iv. A study showing how the developer will comply with the City's cross connection control program relating to sewer and drain pipes.
- c. A 21E Environmental Site Investigation Report that evaluates the site for any contaminants related to underground fuel or oil tanks, creosote, leachate from existing trolley tracks, cleaning and/or washing facilities, or local dry wells.
- d. A solid waste master plan, including a detailed explanation of how the uses will control solid waste through reduction, reuse, recycling, compaction and removal that demonstrates compliance with Revised Ordinances Chapter 11, Recycling and Trash, and the Massachusetts Department of Environmental Protection Waste Ban. The plan shall provide estimates of the expected solid waste generation by weight and volume for each of the uses proposed for the site with consideration to peak volumes.
- e. A quantitative analysis that demonstrates that the water demands of the proposed development will not overburden the water supply of existing infrastructure provided by the City, including fire flow testing for the proposed fire suppression system, as well as domestic demands from the entire development. The applicant must coordinate this test with both the Fire Department and Utilities Division of Public Works; representatives of each department shall witness the testing and test results shall be

Section 7.3.5

submitted in a written report. Hydraulic calculations shall be submitted to the Fire Department for approval. Hydraulic analysis for both domestic and fire suppression will be required via hydraulic modeling in a format acceptable to the Director of Utilities.

9. Fiscal impact analysis that includes new tax revenue and expenses related to, but not limited to, school capacity, public safety services, and public infrastructure maintenance.
10. Construction management plan including timeline, detailed analysis of traffic, noise, vibration and other impacts on the surrounding neighborhoods, the duration of such impacts, and how they will be managed, as well as a Pproposed phasing schedule, including infrastructure improvements.
11. Shadow study showing shadow impacts on the surrounding properties for four seasons at early morning, noon, and late afternoon.

12. Visual Impact Studies.

A. Photographs showing the current appearance of the development parcel from the below listed locations, and the same photographs incorporating accurately scaled renderings of the proposed development to show the visual impact of the proposed development on the surrounding area:

(i) Grove Street, Norumbega Court, Williston Road and Central Avenue in Auburndale;

(ii) Grove Street from both the northeast and southwest ends of the development parcel;

(iii) Crehore Drive, DeForest Road, Grove Street and Hamilton Field in Newton Lower Falls;

(iv) Recreation Road, the Charles River, and Riverside Park, and the same photographs.

All of the above photographs shall be taken from the points along the identified roads, the Charles River and Riverside Park where the buildings proposed to be constructed would be the most visible.

B. Simulations showing the appearance of the proposed project after dark with all external and internal lighting in use at all locations identified in paragraph A above.

C. After opening of the public hearing on the special permit application, a balloon test shall be conducted at the expense of the applicant to demonstrate the height and visibility of all proposed buildings over 60 feet high. Where the building is designed with increased setbacks at higher floors, balloons shall be positioned at each corner of the highest point of each section of the building with

Section 7.3.5

a different setback. The balloons shall remain in place for sufficient time to allow members of the public and the City Council to observe them.

13. Noise Analyses.

A. A study of the noise impacts on Newton Lower Falls and Auburndale of both the construction of the proposed development and of the proposed development as operated, including but not limited to the impact the proposed development will have on noise from Rt. 128/I-95 reflected into Newton Lower Falls.

B. A study of the noise levels that will exist in any portion of the development in which there will be residential structures, beneficial open spaces or civic open spaces. Noise sources to be evaluated include but are not limited to traffic on Rt. 128/I-95, traffic on Grove Street, MBTA trains, buses and shuttles (including both MBTA and private buses and shuttles), other MBTA operations, private vehicles, including delivery vehicles, trash removal vehicles, mechanical systems of the proposed structures in the development parcel and proposed uses of the development parcel.

14. Wind Study.

A. Wind tunnel testing or computational fluid dynamics simulations shall be required for any proposed development that includes one or more buildings of 100 feet or more in height.

B. The analysis shall determine potential pedestrian level winds within the development parcel and shall identify any areas where wind velocities are expected to exceed the acceptable levels set forth in Sec. 7.3.5.B.7.

C. The analysis also shall determine the suitability of particular locations for various activities (e.g., walking, sitting, eating, etc.) as appropriate.

D. Particular attention shall be given to public and other areas of pedestrian use, including, but not limited to, civic open space, beneficial open space and sidewalks.

E. Wind speeds shall be measured in miles per hour.

F. For areas where wind speeds are projected to be dangerous or to exceed acceptable levels, measures to reduce wind speeds and to mitigate potential adverse impact shall be identified and, if appropriate, tested.

125. Submittal in electronic form of all documents required by Sec. 7.3 and Sec. 7.4 and any supplemental reports, memoranda, presentations, or other communications submitted by the applicant to the City Council and pertaining to

the special permit application, unless the applicant demonstrates to the satisfaction of the Director of Planning and Development that electronic submission or compliance with that standard is not feasible. Documents created using Computer Aided Design and Drafting software shall comply with the Mass GIS “Standard for Digital Plan Submittal to Municipalities,” or successor standard. Electronic submission must be contemporaneous with submission by any other means. The Director of Planning and Development will arrange to have electronically submitted documents posted on the City website within a reasonable time after receipt.

B. Review Criteria.

Section 7.3.3 Special Permit Criteria Applied in the MU3 District:

The provisions of Sec. 7.3.3 apply to all special permit applications in the MU3 district. Thus, no special permit may be granted unless all of the criteria set forth in Sec. 7.3.3.C are met, including but not limited to Sec. 7.3.3.C.2 which states that: “The use as developed and operated will not adversely affect the neighborhood.” For avoidance of doubt, as applied in the MU3 district, the neighborhood to be considered includes Newton Lower Falls and Auburndale. No special permit shall be granted if there is any adverse effect of the proposed development on any portion of either or both of these neighborhoods. Adverse effects must be assessed without regard to any perceived benefits from the proposed project.

Additional special permit criteria for a mixed-use development in the MU3/~~TOD~~ district.

In granting a special permit for a mixed-use development under Sec. 4.2.4, the City Council shall not approve the special permit unless it also finds, in its judgment, that the proposal meets all of the following criteria in addition to those listed in Sec. 7.3.3:

1. **Not inconsistent with the City’s Comprehensive Plan.** The proposed mixed-use development is not inconsistent with the City’s Comprehensive Plan in effect at the time of filing an application for a mixed-use development and applicable general laws relating to zoning and land use.
2. **Housing, Public Transportation, Parking, and Utility Infrastructure Improvements.** The proposed mixed-use development offers long-term public benefits to the City and nearby areas including:
 - a. Improved access and enhancements to public transportation;
 - b. Improvements to parking, traffic, and roadways;
 - c. On- and off-site improvements to pedestrian and bicycle facilities, particularly as they facilitate access to the site by foot or bicycle;
 - d. Public safety improvements;

Section 7.3.5

- e. On-site affordable housing opportunities, except where otherwise allowed in Sec.5.11; and
- f. Water, sewer, and storm water infrastructure improvements which increase capacity and lower impacts on the surroundings.

3. Post-Construction Traffic Mitigation Measures. The traffic mitigation measures set forth in the Special Permit application pursuant to Sec. 7.3.5.A.6.c.iii will result in a reduction of traffic volumes to volumes that are at or below 110% of projected traffic volumes (as is required under Sec. 7.3.5.E.1.c.).

4. Visual Impacts.

A. The proposed mixed-use development will have no adverse visual impact on the residential areas of Newton Lower Falls and Auburndale either during the day or at night. Adverse visual impact means that the visual aesthetic or character of the neighborhood, including the view that all or some residents will have from their properties when looking toward the Development Parcel, will be inconsistent with the low-rise, residential character of these areas of Newton Lower Falls and Auburndale.

B. Lighting for the proposed mixed-use development and/or off-site lighting to be installed in connection with the proposed mixed-use development will cause no increase in nighttime light levels in or on any surrounding residential property.

C. The proposed mixed use development will not cause any solar glare on Rt. 128/95 or in any of the surrounding neighborhoods.

D. The proposed mixed use development will be complementary to and not in conflict with the existing appearance and views from the Charles River and Riverside Park.

5. Consistent with Character of the Surrounding Neighborhoods and Grove Street. Recognizing that Newton Lower Falls and Auburndale are predominantly quiet, residential, low-rise neighborhoods and that Grove Street is a narrow, tree-lined scenic road with many historic homes, neither the height, density, or design of the proposed-mixed use development will alter these existing characteristics or look and feel of any portion of Newton Lower Falls, Auburndale or Grove Street and that, instead, the proposed mixed-use development is consistent with and will maintain these existing characteristics.

6. Noise.

Section 7.3.5

A. The proposed mixed-use development will not increase noise levels in any portion of Newton Lower Falls or Auburndale. Noise sources to be considered include but are not limited noise from the operation or uses of the proposed development, increased traffic, and reflected highway traffic noise.

B. Noise levels will not exceed 55 decibels within 6 feet of the location of any proposed containing residential units, beneficial open space or civic open space, whether the source of the noise is within or external to the development parcel.

7. Wind. The proposed mixed-use development will not cause ground-level ambient wind speeds to exceed the standards in the below table:

<u>Permitted Occurrence Activity Area Frequency</u>	<u>Effective Gust Velocity*</u>	<u>Annual</u>
<u>Limit for All Pedestrian Areas</u>	<u>13.8 m/sec (31 mph)</u>	<u>1%</u>
<u>Major Walkways - Especially Principal Egress Path for High-Rise Buildings</u>	<u>13.8 m/sec</u>	<u>1%</u>
<u>Other Pedestrian Walkways - Including Street and Arcade Shopping Areas</u>	<u>11.2 m/sec (25 mph)</u>	<u>5%</u>
<u>Open Plazas and Park Areas, Walking and Strolling Areas</u>	<u>6.3 m/sec (14.1 mph)</u>	<u>15%</u>
<u>Open Plaza and Park Areas, Open-Air Restaurants</u>	<u>4.0 m/sec (9 mph)</u>	<u>20%</u>

* The effective gust velocity (egv) is defined as $egv = U + 1.5 fvc$, where U is the mean wind speed at a particular location and fvc is the root mean square of the fluctuating velocity component measured at the same location over the same time interval.

38. Fiscal Impacts. The proposed mixed-use development has a positive fiscal impact on the City after accounting for all new tax revenue and expenses related to, but not limited to, school capacity, public safety services, and public infrastructure maintenance.

49. Improved Access Nearby. Pedestrian and vehicular access routes and driveway widths are appropriately designed between the proposed mixed-use development and abutting parcels and streets, with consideration given to streetscape continuity and ~~an intent~~ the requirement to avoid any adverse impacts on nearby neighborhoods from such traffic and other activities generated by the mixed-use development as well as to improve traffic and access in nearby neighborhoods.

- 510. Enhanced Open Space.** Appropriate setbacks, buffering, and screening are provided from nearby residential properties and Grove Street; the quality and access of beneficial open space, civic open space and on-site recreation opportunities is appropriate for the number of residents, employees and customers of the proposed mixed-use development; and meaningful bicycle and pedestrian connections to open spaces, recreational areas, trails, and natural resources, including the banks of the Charles River and adjacent public property, whether or not they are currently available for public use, are provided and take full advantage of the unique opportunities of the site and its nearby natural features for use and enjoyment by the community at large.
- 611. Excellence in Place-Making.** The proposed mixed-use development provides high quality architectural design and site planning so as to be compatible with the style of the residential properties in Newton Lower Falls and Auburndale, to minimize the visual impact of the development on Grove Street, Lower Falls, Auburndale and the Charles River, and to enhance the visual and civic quality of the site and the overall experience for residents of and visitors to both the mixed-use development and its surroundingsthe neighborhoods of Lower Falls and Auburndale.
- 712. Comprehensive Signage Program.** Notwithstanding the requirements of Sec. 5.2, all signage for the proposed mixed-use development shall be in accordance with a comprehensive signage program developed by the applicant and approved by the City Council, which shall control for all purposes, shall supersede any other sign requirements, and shall be complementary to the architectural quality of the mixed-use development and character of the streetscape. The signage program shall include no signage (including banners, posters, flags or the like), whether exterior or interior for any office or retail uses where they will be visible from Grove Street, or from any residential or recreation areas of Newton Lower Falls or Auburndale. In addition, it shall be a condition of the special permit that no retail tenant or occupant be permitted to hang or place any signage (including banners, posters or the like in any location where they are visible from Grove Street or any residential area of Newton Lower Falls or Auburndale, including but not limited to temporary signage advertising sales, prices or products.
- 813. Pedestrian Scale.** The proposed mixed-use development provides building footprints and articulations appropriately scaled to encourage outdoor pedestrian circulation; features buildings with appropriately spaced street-level windows and entrances; includes appropriate provisions for crossing all driveway entrances and internal roadways; and allows pedestrian access appropriately placed to encourage walking to and through the development parcel.
- 914. Public Space.** The proposed mixed-use development creates public spaces as pedestrian-oriented destinations that accommodate a variety of uses, promote a vibrant street life, make connections to the surrounding neighborhood, as well as

Section 7.3.5

to the commercial and residential components of the mixed-use development, to other commercial activity, and to each other.

- 105. Sustainable Design.** The proposed mixed-use development at least meets the energy and sustainability provisions of Sec. 7.3.3.C.5. and Sec. 7.4.5.B.8.
- 116. Adequacy of Parking.** Parking for the site is appropriate to the intensity of development, types of uses, hours of operation, availability of alternative modes of travel and encourages the use of alternatives without over-supplying parking.
- 127. Pedestrian and Neighborhood Considerations.** If the proposed mixed-use development project proposes any of the measures listed below, and if such measures, singly or in combination, create a negative impact on pedestrians or surrounding neighborhoods, the applicant has proposed feasible mitigation measures to eliminate such negative impact:
 - a. Widening or addition of roadway travel or turning lanes or conversion of on-street parking to travel lanes;
 - b. Removal of pedestrian crossing, bicycle lanes, or roadway shoulder;
 - c. Traffic signal additions, alterations, or roundabouts; and
 - d. Relocation or alterations to public transport access points.
- 138. Accessible Design.** Consideration is given to issues of accessibility, adaptability, visitability, and universal design in development of the site plan.
- 19. Construction Impacts.** Construction of the proposed mixed-use development (including construction of associated roadway changes) will have no significant adverse impact on Newton Lower Falls and Auburndale. Significant adverse impacts include noise levels above 55 decibels, anything in excess of short-term minimal exposure to dust or vibration, traffic delays and/or interruption in the use of Grove Street, parking on residential streets and interference with prompt response times of the Newton Fire and Police Departments and other emergency vehicles to any area of Newton Lower Falls or Auburndale.

C. Project Phasing. Any development subject to a special permit under Sec. 4.2.4 may be built in multiple phases over a period of time, in accordance with the terms of the special permit granted, provided that all off-site improvements and enhancements to public roadways are completed prior to issuance of any occupancy permits.

D. Adequacy of Public Facilities.

- 1. Transportation, utilities, water, sewer and storm water infrastructure, public safety, schools including capacity, and other public facilities and infrastructure

Section 7.3.5

shall serve the mixed use development appropriately and safely and without deterioration in service to other locations. To determine the adequacy of public facilities, impact studies of the following must be undertaken by the applicant as part of the special permit application process under Sec. 4.2.4 with the project scope determined by the Director of Planning and Development and the Commissioner of Public Works (peer reviews may be required, hired by the City and paid for by the applicant):

- a. Adequacy of road and traffic infrastructure, including the traffic analysis required in Sec. 7.3.65.A.6.;
 - b. Adequacy of water, sewer, and storm water infrastructure, including the water, sewer, and storm water analysis required in Sec. 7.3.65.A.8.; and
 - c. Net fiscal impacts, including the fiscal impact analysis required in Sec. 7.3.65.A.9.
2. As part of any special permit granted, post-construction studies for impacts on road and traffic capacity and water, sewer, and stormwater service shall also be required. These studies must be conducted within 12 months of full occupancy of each phase, or earlier if requested by the Director of Planning and Development and Commissioner of Public Works, and continue annually for 25 years following final build-out. If the actual impacts are consistent with projections, no further study or mitigation shall be required. If the actual impacts exceed projections, further mitigation shall be required. Following completion of such additional mitigation, annual follow-up studies shall be conducted until these studies show for 5 years consecutively that the impacts from the development comply with the special permit.
3. The special permit shall also require a bond or other security satisfactory to the Director of Planning and Development and Commissioner of Public Works to secure performance. The bond or other security may be forfeited, at the election of the Director of Planning and Development and Commissioner of Public Works, and proceeds used by the City for mitigation if the applicant fails to complete any required mitigation or to manage impacts within acceptable levels identified by special permit, subject to reasonable extensions under the circumstances.

E. Post-Construction Traffic Study.

1. A special permit issued under Sec. 4.2.4 shall provide for monitoring to determine consistency between the projected and actual number of weekday peak hour, Saturday peak hour, and weekday daily vehicle trips to and from the site and their distribution among points of access to the mixed-use development. The special permit shall require a bond or other security satisfactory to the Commissioner of Public Works and Director of Planning and Development to secure performance as specified below:

Section 7.3.5

- a. Monitoring of vehicle trips for this purpose shall begin within 12 months of full occupancy of each phase, or earlier if requested by the Director of Planning and Development and Commissioner of Public Works, and continue annually for 25 years following final build-out. Measurements shall be made at all driveway accesses to the mixed-use development and/or intersections studied in the pre-construction roadway and transportation plan. The Commissioner of Public Works may require traffic monitoring earlier or more frequently, if there appears to be degradation from the level of service projected by the pre-construction roadway and transportation plan.
- b. The actual number of weekday peak hour, Saturday peak hour, and weekday daily vehicle trips to and from the mixed-use development at all points studied in the pre-construction roadway and transportation plan shall be measured by a traffic engineering firm retained by the City and paid for by the applicant or successor.
- c. Mitigations will be required if actual total number of vehicle trips to and from the mixed-use development measured per paragraph b. above, summed over the points of access exceeds the weekday evening adjusted volume projected per Sec. 7.3.5.A.5.c6-B.5. by more than 10 percent as a result of traffic generated by the mixed-use development. Within 6 months of notification, the owner of the mixed-use development site shall begin mitigation measures (reflecting applicable roadway design standards at the time and pending receipt of all necessary state and local approvals), as described in the roadway and transportation plan submitted by the applicant and listed in the mixed-use development special permit in order to reduce the trip generation to 110 percent or less of the adjusted volume. Such reduction is to be achieved within 12 months after mitigation begins. The Commissioner of Public Works and Director of Planning and Development must approve any mitigation efforts prior to implementation.

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CITY OF NEWTON

IN BOARD OF ALDERMEN

October 7, 2013

ORDERED:

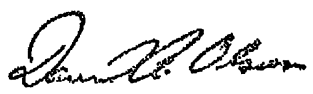
That the Board, finding that the public convenience and welfare will be substantially served by its action, that the use of the Site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT and SITE PLAN for a mixed-use, transit-oriented development at the Riverside MBTA station, known as The Station at Riverside, and related Site improvements as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Alderman Ted Hess-Mahan.

As required by §30-24(j)(1), BH Normandy Riverside LLC (the "Petitioner") presented conceptual plans for the proposed Project which included a description of the proposed Project, Project statistics, and a preliminary site plan. A public meeting was held by the Land Use Committee of the Board of Aldermen to review such plans and information on June 26th, 2012, at which members of the public were invited to comment.

In accordance with the Zoning Ordinance and the applicable rules of the Board, the Petitioner submitted its application for the proposed Project to the Chief Zoning Code Official on August 2, 2012. The Chief Zoning Code Official, having determined that the Petitioner's submission was complete, issued a Zoning Review Memorandum dated August 28th, 2012, itemizing the relief required in connection with the proposed Project. The special permit/site plan application was duly filed with the City Clerk on August 30th, 2012. The application included the additional filing requirements for a special permit for a Mixed-Use Development in excess of 20,000 sq. ft. set out in §30-24(j)(2-12).

After due notice of public hearing published in the Boston Globe on October 2nd, 2012, and October 9th, 2012, and mailed to all parties in interest all pursuant to and in compliance with the Zoning Ordinance and M.G.L. c. 40A, the Board held a public hearing at Newton City Hall on October 16th, November 27th, and December 18th, 2012. At the close of the public hearing, the application was duly referred to the Board's Land Use Committee, which held working session meetings on the application on March 5th, April 2nd, May 7th, May 21st, June 4th, June 18th, July 16th, July 23rd, July 30th, August 6th, September 26th, and September 30th, 2013. At the conclusion of the working session meetings, the Land Use Committee voted to (i) recommend approval of the application to the Board; and (ii) forward a draft written Board Order to the Board for consideration.

327 Grove Street, Newton, MA
Title Ref: Book 9169, Page 574

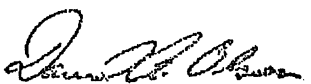
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Comments from the public and various City boards and departments were received by the Board during the public hearing. In addition, the Board received extensive testimony and written reports from the City's professional consultants on the adequacy of public facilities in all the areas required by §30-24(c)(9)a-c, i.e., adequacy of road and traffic infrastructure, adequacy of water, sewer, and storm water infrastructure, and net fiscal impact. During the review process, the Petitioner's professional consultants also provided various supplemental materials in response to requests by the Board, its consultants and various City departments that reviewed the Project. The foregoing written reports and supplemental materials prepared by City staff, as well as comments received from the public, are included in the record of the Board's proceedings and provide factual and technical background for the Findings and Conditions set forth within the body of this Order.

Finding that all applicable provisions of the Zoning Ordinance and the Board of Aldermen Rules and Orders have been complied with, the Board GRANTS approval of this Special Permit/Site Plan Approval based on the following findings, as recommended by the Land Use Committee of the Board through its Chairman Alderman Ted Hess-Mahan:

With regard to the dimensional requirements of §30-15(v), §30-15 Table 3, and the locational, density, and mixed-use requirements of §30-13(f)(1), (g)(1) and (2), and §30-24(d)(1):

1. The Station at Riverside (the "Project") will redevelop an existing surface parking lot, with an office building of approximately 225,000 sq. ft. (exclusive of the parking garage) and 571 parking spaces ("Building A"); a residential building containing not more than 290 apartments, including 15% of the total number of apartments being affordable units, 438 parking spaces, and approximately 5,000 sq. ft. of retail space ("Building B"); a three-story building containing approximately 15,000 sq. ft. of retail space and 11,000 sq. ft. of community space ("Building C"); and over 174,000 square feet of open space. The retail/community use building (Building C) and adjoining outdoor plaza area will be constructed next to an Intermodal Commuter Facility on adjacent MBTA land. The total square footage of the Project, excluding accessory parking, does not exceed 580,000 sq. ft. (exclusive of community space) and the Project as designed is in compliance with the maximum building height, maximum FAR, minimum lot area, and beneficial open space.
2. The Project site ("Development Parcel" or "Site") consists of 9.38-acre "Development Parcel" owned by the MBTA and leased to the Petitioner located in the Mixed-Use 3/Transit Oriented District, pursuant to Board Order #258-12, which was adopted by the Board prior to this Order, together with a .35 acre parcel ("Access Parcel") adjoining the MBTA parcel over which the Petitioner will have an easement. The Access Parcel is located in the Mixed Use 3/Transit Oriented District, pursuant to Board Order #272-12(2), and will be developed as part of the Project pursuant to Phase 2 identified in Board Order #272-12 and 272-12(3) relating to the Hotel Indigo. The total acreage of the Project site is 9.73 acres. The dimensional requirements for the Project have been based upon the 9.38 acre Development Parcel owned by the MBTA and leased to the Petitioner, given that the use of the .35 acre Access Parcel will be primarily as a roadway.

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3. The location of the Development Parcel is a regional transportation center near existing transit and the intersection of I-95 and I-90, which is an appropriate location for the proposed mixed-use/transit-oriented development that may include offices above the ground floor; retail sales, personal services, eating and drinking establishments of less than 5,000 square feet in gross floor area; one eating and drinking establishment of up to 7,500 square feet in gross floor area; health clubs above the ground floor; multifamily dwellings; live/work spaces; and a variety of public and community uses. These uses are allowed by right or by special permit in a Mixed-Use 3/Transit-Oriented District pursuant to Table A of §30-13(f)(2) and include at least one use from Categories A, B, and C of §30-13(g)(2), as well as a community use space. The uses proposed from each Category do not exceed the maximum square footage permitted for each Category.
4. Development of the Site is affected by a number of unique physical conditions and legal circumstances, including a complex interplay of intergovernmental jurisdictions controlling access to the Site. The portion of the Development Parcel leased from the MBTA by the Petitioner is presently used by the MBTA for commuter parking. Until the MBTA Intermodal Commuter Facility is constructed and the surface commuter parking eliminated from the Development Parcel, the Petitioner will be unable to commence construction of any of the office, residential or retail/community use buildings proposed for the Project. In addition, major capital expenditures and construction work is required in order to relocate and reconstruct sewer, water, and drainage pipes crossing the Site before construction of the various Project buildings, including the Intermodal Commuter Facility, can begin. The Petitioner must also secure a Section 61 Finding and comments at the 25% Design review stage as more specifically set forth in Condition 3(a) from the state and federal highway agencies which would allow access to and from the Site from the connector road ("Riverside Station Road") via a roundabout that will permit a left hand turn from the Project back to Grove Street before commencing construction of any Project building. For these reasons, there is "good cause" to clearly define in the conditions of this Board Order what constitutes substantial use or construction of the Project for purposes of complying with the requirement of M.G.L. c. 40A, §9 and §§30-23(c)(4) and 30-24(c)(5), and to vest the Petitioner's rights under this Board Order and Board Order 258-12 establishing the zoning requirements for the Site to avoid a premature lapse of those rights.

With regard to the criteria for special permits under §30-13(g) for a Mixed-Use Development that proposes an aggregate gross floor area of 20,000 square feet or more, §30-24(d)(1-5), §30-24(f), §30-24(g), §30-24(i)(1-13), and site plan approval under §30-23(c)(2)(a-h), and a special permit for a shared parking arrangement, §30-19(d)(22).

5. The Project is not inconsistent with the Comprehensive Plan, as it advances the City's planning goals with respect to smart growth and transit-oriented development. The provision of a diversity of housing types, 15% of which are affordable, on underutilized land in close proximity to a variety of transportation modes, supports a variety of lifestyles. Design of the Project strives to create a vibrancy and sustainability made possible by a more compact development, which includes a number of complementary uses, activities, and amenities in close proximity to one another, which serve the

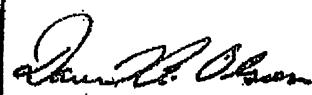
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residents, businesses and travelers to the Site as described in the Mixed Use Element of the Comprehensive Plan.

6. The Project as developed and operated in accordance with the conditions of this Special Permit/Site Plan approval offers long-term public benefits to the City and nearby areas including:
- a. improved access and enhancements to public transportation by providing a roundabout on the westerly side of the Site, which enables bus routing onto the Interstate while minimizing traffic on Grove Street; and by connecting interior roadways with a proposed sheltered drop-off/pick-up area at an Intermodal Commuter Facility with taxi stands, bicycle accommodations, and parking for vehicles that facilitates easy connections among the various modes of travel;
 - b. improvements to Grove Street that are intended to mitigate the impact of the Project and reduce negative impacts on surrounding neighborhoods by better accommodating the volume of traffic generated by the Project. Other modifications will add functional, visual and public safety benefits, including the installation of a traffic signal; addition of dedicated turn lanes on Grove Street to facilitate the flow of through traffic; addition of roundabouts at Interstate off-ramps to calm traffic and allow slow, but steady flow of traffic; addition of a roundabout at the westerly entrance that will reduce traffic volumes on the 1100-foot segment of Grove Street between the Grove Street entrance to the Site and I-95 Exit 22 to levels below that which would occur on Grove Street under the "No Build" condition in 2022 by providing an alternative route to the Interstates as described in a Traffic Impact and Access study prepared by Vanasse Hangen Brustlin, dated February 2012 and affirmed by a peer review report prepared by Fay Spofford and Thorndike, dated August 13, 2012; undergrounding of overhead wires; improvements to pedestrian and bicycle facilities, including bike lanes on both sides of Grove Street and new sidewalks on the north side of Grove Street, as well as clear pedestrian walkways that connect uses within the Site;
 - c. more housing options for the City with up to a maximum of 290 apartments, including 15% affordable and 85% market rate apartments;
 - d. removal of existing impervious surfaces and the addition of storm water infrastructure improvements to capture storm water and recharge groundwater; and
 - e. a monetary contribution to fund sewer infrastructure improvements by the City that will reduce stormwater flows or the quantity of groundwater entering the system by eight gallons for every one gallon of new sanitary sewage generated by the Project.

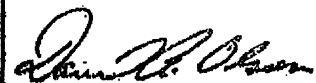
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7. The Project will have a positive net fiscal impact on the City after accounting for all new tax revenue and expenses related to, but not limited to, school capacity, public safety services, and public infrastructure maintenance.
8. Significant roadway improvements will be made to Grove Street, which together with improved access to and from the Site; well-marked routes for pedestrians, cyclists, and motorists both on- and off-site, with wayfinding signs, road markings and an on-site Traffic and Parking Manager, are intended as mitigation measures to prevent nuisance or serious hazard to vehicles or pedestrians.
9. Access to the Site is designed to accommodate and is appropriate for the types and numbers of vehicles involved because the addition of roundabouts, creation of a second access to/egress from the Site, and signage are intended to direct traffic away from residential areas, slow motor vehicles exiting and entering the ramps at I-95, and facilitate access to destinations within the Site. Pedestrian and vehicular access routes and driveway widths are appropriately designed between the Project and abutting parcels and streets, with consideration given to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the Project, as well as to improve traffic and access in nearby neighborhoods by reducing traffic volumes on Grove Street between the Grove Street entrance and Exit 22 on I-95 to below that which would occur in the "No Build" condition in 2022.
10. Appropriate setbacks, buffering, and screening with ample landscaping are provided from nearby residential properties; open space totals 43% of the Site, and includes 17.5% beneficial open space where 15% is required and will include amenities, which (by way of example) may consist of a community garden, off-leash area for dogs, and an active outdoor plaza, which are appropriate for the number of residents, employees, and customers of the Project. The beneficial open space will be available to the general public. Potential bicycle and pedestrian connections from the Project to open spaces, recreational areas, trails, and natural resources, including the banks of the Charles River and adjacent public property, will remain available for future development, and make possible more robust connections that can take full advantage of the unique opportunities of the Site and its nearby natural features for use and enjoyment by the community at large.
11. The Project provides high quality architectural design and site planning that enhances the visual and civic quality of the Site and overall experience for residents of and visitors to both the Project and its surroundings. In particular, the façade of the residential building uses a number of different materials, incorporates doorways fronting Grove Street, sets back a portion of the building to break up the massing along Grove Street, and buries a portion of the parking garage into the hillside, all in an effort to relate the scale of this building to the surrounding neighborhood and give the appearance of townhouses along a portion of the Grove Street façade, consistent with the intent of the Mixed Use Element of the Comprehensive Plan to orient buildings towards streets and create pleasurable walks to nearby public spaces. Similarly, the façade of the office building is broken up into four different façade types to mitigate the visual impact of this large building. The

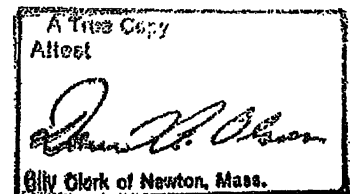
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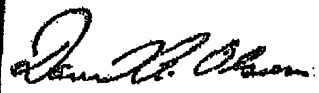
landscape design of the public plaza adjacent to the retail/community use building creates a sense of openness while reinforcing a separation from the driveway around the MBTA Intermodal Commuter Facility to protect the users of this public space and offers points of interest to people of all ages and abilities with gardens, a splash pad, outdoor seating, and easy access to adjacent retail shops and community center.

12. The comprehensive signage proposal for the Project is in keeping with the scale and needs for wayfinding in and around the Site, and is complementary to the architectural quality of the Project, the character of the streetscape, and interior of the Site.
13. The Project provides building footprints and articulations scaled to encourage outdoor pedestrian circulation with the retail uses and associated windows and entrances being at the street level, creating activity and interest at the entrance to the Site; including well-placed crosswalks to enable residents and visitors to the Site to move freely between the retail, residential, public plaza, community use space and MBTA station; and pathways to connect the office building with the hotel at 399 Grove Street and to the residences.
14. The Project creates public spaces as pedestrian-oriented destinations, including a public plaza, community center, community garden, and overlook that accommodate a variety of public uses and which are intended to promote a vibrant street life and connect the Project to surrounding neighborhoods and natural resources, as well as to the commercial and residential components of the Project.
15. The Site planning, building design, construction, maintenance and/or long-term operation of the Project will contribute significantly to the efficient use and conservation of natural resources and energy with the redevelopment of an already developed Site for the following reasons:
 - a. Impervious surfaces and resulting run-off are reduced with the elimination of the existing parking lot;
 - b. open space in excess of that required in the Mixed Use 3/Transit-Oriented District is provided;
 - c. there will be energy modeling and commissioning of building energy systems and the building will meet the minimum energy performance requirements equivalent of LEED Silver or better for New Construction so as to optimize the energy performance of the office and residential buildings;
 - d. there is convenient access to public transportation on site and Transportation Demand Management practices will help to reduce carbon dioxide emissions as more specifically described in condition 20(j) below;
 - e. stormwater management systems will maximize groundwater recharge and water quality through implementation of best management practices to remove



contaminants from surface water and provide infiltration on-site and are designed to capture the volume of water generated by the 100-year storm;

- f. water conservation measures will be employed to minimize impact on sanitary sewer infrastructure, and the submetering of utilities will encourage conservation;
 - g. sewer infrastructure improvements that will increase the capacity of the systems and reduce impacts on the surroundings by removing inflow and infiltration of stormwater at an 8:1 ratio from the sanitary system; and
 - h. low-impact development techniques will be employed such as using rain gardens and swales to manage storm water and reusing existing site materials to balance cut and fill.
16. Parking studies prepared by Vanasse Hangen Brustlin and reviewed on behalf of the City by Fay Spofford Thorndike confirm that parking for the Project is appropriate to the intensity of development, types of uses, hours of operation, availability of alternative modes of travel and the encouragement of alternative transportation modes without providing an over-supply of parking on the Site, and the shared use of parking in the Intermodal Commuter Facility, office building, and Hotel Indigo located at 399 Grove Street along with Parking Management Plan will encourage the maximum and efficient use of the parking supply.
17. Consideration has been given to accessibility, adaptability, visibility, and universal design in development of the site plan by providing at-grade handicap-accessible entries on each frontage, a number of handicap accessible and adaptable apartments, direct pedestrian connections to the MBTA station that will be functional for those with mobility issues, and other outdoor pathways with suitable slopes and adequate widths to accommodate wheelchair access, as well as tactile warnings at intersections, and handicap parking closest to building entries. The Project will meet Massachusetts Architectural Access Board requirements and the residential building will be designed to meet ADA standards.
18. The Petitioner will provide a Construction Management Plan, which will include appropriate procedures and protocols to be implemented during construction of the Project to provide construction parking areas on-site and to minimize construction-related impacts, including, but not limited to blasting, noise, dust, construction traffic, and tracking of mud.
19. Pedestrian and vehicular access routes and driveway widths are appropriately designed between the Project and abutting parcels and streets, with consideration given to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the Project, as well as to improve traffic and access in nearby neighborhoods.

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20. The Petitioner has voluntarily agreed to contribute financially to a Neighborhood Improvement Fund that will provide mitigation of the Project's impact in the surrounding neighborhoods and foster the goals of the Project.

With regard to the special permit for one eating and drinking establishment of up to 7,500 square feet in gross floor area, §30-13(f) Table A, Category B and §30-24:

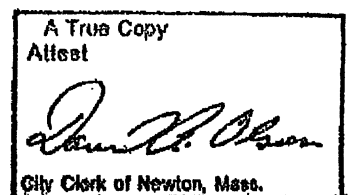
21. The Project will have approximately 19,000 square feet of Category B uses. Allowing a single eating and drinking establishment to exceed the by-right size limit by up to 2,500 square feet will increase the pool of potential restaurant businesses that might locate in the Project without jeopardizing the goal of having a diversity of Category B uses to serve the needs of the businesses, residents and visitors to the Site.

With regard to the setback waivers under §30-15(v):

22. The proposed exceptions to the setback dimensional requirement in §30-15(v)(1) for the office building's side setback from the internal access roadway and front setback for the retail/community building at Grove Street, which results from the widening of Grove Street, are adequate to protect abutting uses and will not have an adverse effect on the Site or surrounding neighborhood.
23. The office building has a 7.5 ft. setback from the lot line on its westerly side which abuts I-95, a 38 ft. setback on its northerly side which abuts the MBTA yard, and a 3.6 ft. setback from the lot line of the abutting Indigo Hotel, which setbacks are appropriate for a non-residential building and permit greater separation of this building from the residential building and Grove Street. The retail/community building has a zero setback from the Intermodal Commuter Facility which is appropriate for this building and permits greater separation of this building from Grove Street.
24. All other setbacks in the Project comply with the requirements of §30-15(v)(1) and Table 3.

With regard to parking waivers related to various dimensional requirements for the design of parking facilities, lighting, and the number of off-street loading facilities under §30-19(m):

25. The proposed waivers to dimensional requirements for the design of parking facilities are appropriate for residential and office buildings with regular users who will become familiar with the internal workings of the facilities and should be able to navigate safely within them. It is in the public interest to minimize the amount of space within the buildings and on the Site utilized for parking while still providing a sufficient number of parking spaces and appropriate circulation space within the parking facilities for the businesses, residents and visitors to the Site. Similarly, the proposed waiver from the number/design of loading docks is in the public interest in that it minimizes the space needed for such functions, while providing adequate means in appropriate locations for serving the needs of the facilities. For each building, the waivers granted are reflected on the approved plans and consist of the following:



Office Building (Building A): exceptions to parking stall width and depth; exceptions to maneuvering space for end stalls; minimum width for entrance and exit driveways; number of loading facilities.

Residential Building (Building B): exceptions to maneuvering space for end stalls; landscape screening; surface and curbing requirements; number/design of loading facilities; number/design off loading docks.

Retail/Community Use Building (Building C): allow shared parking based on Finding #16 above; number/design of loading facilities; number/design of loading docks.

26. It is in the public interest to reduce the lighting level below one foot-candle near the residential building given that the level of lighting proposed provides sufficient illumination for safety while allowing the Site to be more residential in character.
27. In light of the findings set forth above and the following conditions imposed by this Board Order, the Board of Aldermen finds that the public convenience and welfare of the City will be served, and the criteria of §§30-13(g), 30-13(f) Table A, Category B, 30-23, 30-24(d)(1-5), (f), (g), and (i), §30-19(m), §30-23(c)(2)(a-h), and §30-19(22) for granting special permits/site plan approval will be satisfied.

PETITION NUMBER: #258-12(2)

CO-PETITIONERS: BH Normandy Riverside, LLC, its successor(s), assign(s), and/or designee(s) and the Massachusetts Bay Transportation Authority. When used in this Board Order, the term "Petitioner" shall refer to BH Normandy Riverside, LLC, its successor(s), assign(s), and/or designee(s), and shall include the Organization of Owners required by §30-13(g)(3).

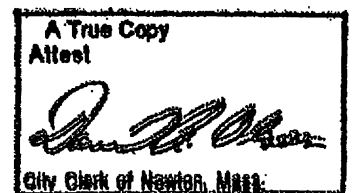
LOCATION: 327 Grove Street, Newton, MA 02466

OWNER: Massachusetts Bay Transportation Authority

ADDRESS OF OWNER: 327 Grove Street, Newton, MA 02466

TO BE USED FOR: Mixed-use/transit-oriented development with residences, retail, offices, and community use space adjacent to the Riverside MBTA station.

CONSTRUCTION: Steel and wood-framed structures, with brick and cementitious siding.



EXPLANATORY NOTES Special permits, site plan approval, and parking waivers for the Project, all as more specifically set forth in the Findings.

ZONING:

Mixed Use 3/Transit-Oriented District

Approved subject to the following conditions:

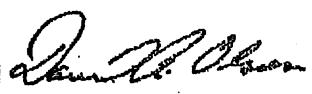
1. All buildings, parking and other Site features associated with this Special Permit/Site Plan Approval shall be located and constructed/implemented consistent with the plans identified in *Exhibit A* which are hereby incorporated by reference.
2. The Special Permit/Site Plan Approval shall be deemed to have been:
 - a. vested for the purposes of utilizing the benefits of the change of zone authorized by Board Order 258-12 and for the entire Project for all purposes upon: a) the commencement of the removal of the MBTA drain line crossing the Site, or b) commencement of the relocation of the water line crossing the Site, even if these improvements are constructed in advance of the commencement of construction or occupancy of the Intermodal Commuter Facility; and
 - b. tolled for purposes of the running of the one year period for commencement of construction imposed by §§ 30-23(c)(4) and 30-24(c)(5) and M.G.L. c. 40A, §9 until the earlier of: (a) the date that construction of the office building or residential building or retail/community use building has been commenced, or (b) the date that the MBTA Intermodal Community Facility has received final state approval for its use, subject to the provisions of condition 3 below.

All time periods established by this Board Order shall also be tolled during the period of time beginning on the date that an appeal of this Special Permit/Site Plan Approval has been filed, and ending on the date that such appeal has been dismissed and the dismissal becomes final and nonappealable.

In no event shall any portion of the Project for which a Certificate of Occupancy has been issued in accordance with the provisions of the 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 portion of the Project has not been commenced or completed.

3. Each of the proposed buildings/site improvements may be constructed and occupied prior to construction of the remaining buildings/site improvements provided that adequate parking, landscaping, and public amenities associated with such proposed building, as set forth in the Special Permit Plan Set and application, and roadway improvements to support the new structures, are in place, and further provided that the following improvements have been completed:

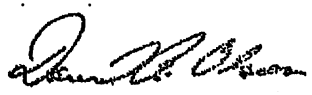
- a. Prior to the issuance of any Building Permits for any of the following: the office building, residential building, or retail/community use building, the

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- Department of Transportation must issue a Section 61 Finding (Mitigation Commitment Document required as part of the Massachusetts Environmental Protection Act (MEPA) process), comments to the MassDOT Highway Access Permit 25% Design Submission, and a favorable response from the Federal Highway Administration on the Project Framework Document related to the proposed roundabouts and access to and from Riverside Station Road via a roundabout that will permit a left hand turn from the Project back to Grove Street. The mitigation obligations in the Section 61 Finding, comments on the 25% Design review, and comments on the Project Framework document must support the underlying design improvements (roundabouts and left hand turn from the Project back to Grove Street) and permit the plan review process to proceed to the next level;
- b. Prior to the issuance of final state approval for use of the Intermodal Commuter Facility, the traffic signal on Grove Street, the roadway that connects the Intermodal Commuter Facility to new signalized intersection on Grove Street, as well as Grove Street improvements within the City's jurisdiction must be substantially completed (i.e., all such improvements must be operational from a traffic handling perspective as determined by the Commissioner of Public Works, but final punch list items, including but not limited to landscaping, may be scheduled for completion after the issuance of final state approval provided the Petitioner posts a bond or other security as determined by the Commissioner to be sufficient to complete such outstanding work);
 - c. Prior to the issuance of any Occupancy Permit for any of the following: the office building, residential building, or retail/community space building, construction of the roundabouts and connecting roadways must be substantially complete (i.e., all such improvements must be operational from a traffic handling perspective as determined by the Commissioner of Public Works, but final punch list items, including but not limited to landscaping, may be scheduled for completion after the issuance of the Certificate of Occupancy provided the Petitioner posts a bond or other security as determined by the Commissioner to be sufficient to complete such outstanding work).

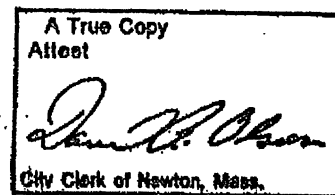
Construction of any portion of the Project will not obligate the Petitioner to construct any other portion of the Project, provided that the Petitioner shall be obligated to complete all requirements that are a condition of a Certificate of Occupancy of the constructed portion of the Project in accordance with the provisions of this Board Order.

If within five (5) years from the date of this Board Order, either a) the Petitioner has not received a building permit and commenced construction of any of the following: office building, residential building, or retail/community use buildings, or b) the MBTA Intermodal Commuter Facility has not received final state approval for its use, then further construction under this Special Permit/Site Plan Approval is not authorized unless a majority of the Board of Aldermen vote to extend the time for fulfilling these conditions. If the Petitioner has not commenced construction of any portion of the Project within ten years of the date of this Board Order,

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construction of such portion, even if consistent with the original Special Permit Plan Set, shall require an amendment to the Special Permit/Site Plan Approval.

4. The Petitioner shall design and construct Grove Street improvements as shown on the approved plans and as further approved by the Public Facilities Committee of the Board of Aldermen and Traffic Council, and subject to the provisions hereof and receipt of all necessary state, federal and local permits and/or approvals, including Massachusetts Department of Transportation and Federal Highway Administration review, revision, and approval. Any material modification(s) of the preferred designs by either the Public Facilities Committee or Traffic Council will be considered consistent with the preferred design(s) if, in the opinion of the Commissioner of Public Works or his designee, the modified design(s) achieves the same performance objectives as the preferred design(s). In making a consistency determination, the Commissioner of Public Works shall consult with the Land Use Committee prior to making such determination. It is anticipated that state funding will be made available for construction of the Grove Street improvements. The City will cooperate with the Petitioner for purposes of applying for public funding for such improvements; provided, however, that in no event shall the City be liable for the cost or construction of any such improvements.
5. The Petitioner shall submit engineered plans for off-site improvements to the Commissioner of Public Works or his designee for review prior to submittal to Massachusetts Department of Transportation and the Federal Highway Administration that show preferred designs including:
 - a. five-foot bike lanes wherever possible, including cycle tracks without limitation on the bridge over I-95;
 - b. transitions of the bike lanes at the roundabouts and trestles near the MBTA station on Grove Street;
 - c. deflection at the off ramps to calm traffic on the approaches to the roundabouts;
 - d. the most suitable permanent pedestrian safety features at the crosswalk nearest the Hotel Indigo, whether signs, reflectors, lights, or other state-of-the art devices for protecting pedestrians at the roundabouts;
 - e. integration of traffic calming modifications at the corner of Asheville and Grove Streets in design of roundabout and roadway nearest that intersection to deter drivers from speeding around the corner, and which provides some visual screening without causing visibility hazards for motor vehicles existing Asheville Street onto Grove Street, if possible;
 - f. protection of the stone wall at 416 Grove Street;
 - g. continuous sidewalk from 416 Grove Street to the nearest crosswalk; and



- h. roundabouts and roadway improvements within the state and federal jurisdictions as shown on Plans for Special Permit and Site Plan Approval, dated July 23, 2013 and referenced in Exhibit A attached hereto, and more specifically, to allow motor vehicles exiting the Project through the Riverside Station Road roundabout to turn left towards Grove Street.

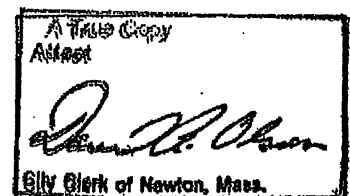
Any material modification(s) of the preferred designs by either the Massachusetts Department of Transportation or the Federal Highway Administration will be considered consistent with the preferred design(s) if, in the opinion of the Commissioner of Public Works or his designee, the modified design(s) achieves the same performance objectives as the preferred design(s), provided, however, that no modification of the Riverside Station Road roundabout that prevents exiting motor vehicles from turning left towards Grove Street will be considered consistent with the preferred design. Any modification of the preferred design of the Riverside Station Road roundabout which prevents exiting motor vehicles from turning left towards Grove Street shall require that the Petitioner seek an amendment to this Special Permit prior to receiving a Building Permit for any portion of the Project. In making a consistency determination, the Commissioner of Public Works or his designee shall consult with the Land Use Committee prior to making such determination.

6. The Petitioner has voluntarily agreed to contribute \$6,100,000 to the City to establish a Mitigation Fund ("Fund"). The purpose of the Fund is to provide mitigations related to the Project such as sewer and stormwater mitigations, and traffic improvements and/or mitigations that foster the desired attributes of this mixed-use/transit-oriented development, particularly those that enhance connections between modes of transportation and enhance the access to the natural features of the surroundings.

As further discussed below, the Fund may be used for the following public purposes: improvements to the sewer and stormwater systems infrastructure to reduce inflow and infiltration; traffic studies and/or traffic mitigation in the areas of Lower Falls and Auburndale impacted by the Project; and for such other public purposes as set out in this condition.

The Petitioner shall pay the \$6,100,000 voluntary contribution to the City as follows: one quarter upon the issuance of a Building Permit for the residential building; one quarter upon the issuance of a Building Permit for the office building; one quarter upon the issuance of a Certificate of Occupancy for the residential building; and one quarter upon the issuance of a Certificate of Occupancy for the office building.

Inflow and Infiltration Allocation: \$4,100,000 of the Fund shall be dedicated to sewer and stormwater improvements directed at eliminating inflow and infiltration ("I&I", with the allocation among the buildings being 64.7% for the residential building), 24.1% to the office building, and 11.2% to the retail/community building. The monies placed in the I&I Allocation of the Fund shall be deemed to satisfy the Petitioner's obligation for I & I mitigation, including for purposes of sewer connection permits for all buildings in the Project, provided that the Petitioner undertakes the water conservation measures set out in this Condition.




The Petitioner has agreed to mitigate for infiltration and inflow at a rate of 8 gallons for each gallon of sanitary sewage generated by the buildings, at a cost of \$8.40 per gallon of mitigation. The Petitioner intends to implement water conservation measures which will result in a minimum overall reduction of 15% in water use and subsequent wastewater generation from the current flow schedule at 314 CMR 7.15. To secure such water conservation measures, the Petitioner has agreed to install in all buildings low flow fixtures (water closets, faucets, urinals, showerheads) and high-efficiency appliances (washing machines, dishwashers), which meet at a minimum the baseline water consumption standards for IP Units as more specifically set out in the excerpt from the Leadership in Energy and Environmental Design (LEED®) Green Building Rating System version 4 concerning Indoor Water Use Reduction on file with the Commissioner of Inspectional Services.

Traffic and Neighborhood Improvements Allocation: \$2,000,000 of the Fund shall be allocated to traffic improvements or other neighborhood improvements as follow, which are offered by way of illustration and not by way of limitation: traffic studies and/or traffic mitigation in the areas of Lower Falls and Auburndale impacted by the Project; improvements to the Williams School; fire and safety equipment; a study of the Charles River Basin area in close proximity to the Site; improvements to the rail trail running over I-95 from Newton Lower Falls to the MBTA Riverside Facility; playground and/or park improvements; and similar purposes. A minimum of 60% of this allocation will be dedicated to traffic improvements, which may be expended for such traffic improvements either prior to or subsequent to the post-occupancy traffic studies required by this Special Permit/Site Plan Approval. If based on the post-occupancy traffic studies the Petitioner is obligated to undertake additional traffic mitigation measures to fulfill the requirements of this Special Permit/Site Plan Approval, the Petitioner shall receive a credit towards such traffic mitigation measures up to the greater of the following: a) all funds actually spent on traffic mitigations, or b) 60% of this allocation. Nothing in this Condition shall relieve the Petitioner from paying the cost of all required post-occupancy traffic mitigations that may exceed monies available for this purpose from the Fund.

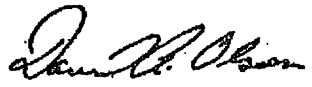
The Mitigation Fund shall be expended only with the approval of the Board of Aldermen. Requests for expenditures from the Mitigation Fund may be made by a Neighborhood Improvement Council ("NIC") to be established by the Board of Aldermen in accordance with this condition, or at the request of City officials. The NIC shall serve in an advisory role regarding any expenditure from the Traffic and Neighborhood Improvements Allocation. All requests for expenditures made by the NIC shall be referred to the appropriate City Department for review. All expenditures from the Mitigation Fund shall require, in addition to the approval of the Board of Aldermen, the approval of the City Department, or State agency, if any, where the improvement is proposed.

The Board of Aldermen shall establish a five-member NIC, which shall be composed as follows: one alderman from Ward 4 and two representatives each from the Auburndale and Lower Falls neighborhoods. Any request for expenditures made by the NIC shall require a majority vote of a quorum of three members of the NIC, provided, however,

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shall be required when the NIC is providing advice to the Board of Aldermen on a request for any expenditure from the Fund. The Board of Aldermen may establish terms for the community members as well as additional procedural rules for the NIC, which shall be subject to the same laws and regulations as any other City board or commission. The NIC shall be staffed by the Planning and Development Department.

7. If for any reason the Project, or any part thereof, is not subject to the assessment of local taxes in accordance with the provisions of M.G.L. c. 59, the Petitioner agrees to and shall immediately negotiate and execute a PILOT with the City of Newton Board of Assessors which will require it to make a payment in lieu of taxes for the Project thereon as though the same were subject to the assessment of local taxes.
8. When school is in session, the Petitioner shall provide a police detail for the school route crosswalk at the Grove Street roundabout nearest 399 Grove Street during the morning and afternoon when children walk to school commencing upon the occupancy of the first building. Upon the granting of a Certificate of Occupancy for and actual occupancy of each additional building, the Petitioner shall employ a transportation professional to obtain pedestrian counts at various times during the day and week during the subsequent three months, which shall be submitted to the Commissioner of Public Works or designee and Police Chief who shall determine the additional need or lack thereof for police details and shall require adjustments based on this information. Should conditions change, the Petitioner may present additional data or Police Chief or Commissioner of Public Works who may request additional data to make further determinations. The Director of Planning and Development shall approve the qualifications of the transportation professional employed by the Petitioner and shall also approve the exact time of the study and the methodology of the study to ensure that the data collected is an accurate representation of the pedestrian counts.
9. Prior to operation of the new traffic signal at the Grove Street entrance and to subsequent adjustments or modifications to the timing of the signal, the Commissioner of Public Works or designee will consult with the owners of the property located at 269-287 Grove Street (known as the "Riverside Business Center") and/or their traffic consultant(s) regarding the initial timing and any subsequent adjustments or modifications to the timing of the new traffic signal to seek to establish traffic flow that maximizes benefits to that property and the Site.
10. Prior to exercise of this Special Permit as defined in Condition 2 above and in accordance with the provisions of sec. 30-13(g)(3), as amended from time to time, an organization of all owners of land within the Development Parcel, except for owners of land subject to easements benefiting the Project, shall be formed. The Organization of Owners will be governed by special permit with the authority and obligation to act on behalf of all such owners in contact with the City or its representatives regarding compliance with the Zoning Ordinance. The Organization shall serve as the liaison between the City and any owner, lessee, or licensee within the Development Parcel. Such Organization shall be the primary contact for the City in connection with any dispute regarding violations of the Zoning Ordinance and, in addition to any liability of individual owners (with regard to

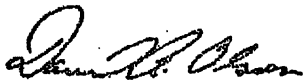
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matters specifically related to the individual owners' parcels and not those related to the overall Project or Site), shall have legal responsibility for compliance of the Project with the terms of this special permit/site plan approval and/or other applicable provisions of the Zoning Ordinance.

11. The Petitioner shall provide legal assistance and pay the initial filing fees to create a nonprofit entity which will oversee operations at the Community Center. In no event shall the legal fees and filing fees paid by the Petitioner pursuant to this condition exceed \$15,000. The Board of Aldermen will establish a steering committee which will include an alderman from Ward 4, the Cultural Affairs Director, a representative of the Parks and Recreation Department, a member of the Board of Directors of the Newton Highlands Community Development Corporation, a representative from the Lower Falls community, a representative from the Auburndale community, and such other member(s) as the Board deems appropriate. The steering committee will provide advice to the Petitioner in connection with the creation of the nonprofit entity. The nonprofit entity shall be created prior to the issuance of a Building Permit for the retail/community use building.

The retail/community use building will include a basketball court/community room, limited service kitchen, storage area, office, and bathrooms as more specifically described in a Memorandum prepared by ADD, Inc., dated April 10, 2013, on file with the Commissioner of Inspectional Services and the Director of Planning and Development. Upon granting of occupancy of the Community Use Facility, the nonprofit entity will be responsible for maintenance of the interior, payment for utilities, and oversight of operations. The building will remain in the ownership of the Petitioner, who shall be responsible for maintaining the exterior of the building in good condition. The nonprofit will lease the Facility for \$1 a year. If the nonprofit entity fails to enter into, to renew, or to remain in compliance with, its lease, the retail/community use building shall be released from the requirements of this condition, provided, however, prior to the retail/community use building being released, the following must occur: a) the nonprofit entity shall receive notice of any failure to enter into, to renew, or to remain in compliance with its lease; b) the nonprofit entity shall be given a six-month opportunity to cure such failure; and c) further provided that the non-profit entity may assign its rights under this condition to operate the Facility to another nonprofit entity for the same purposes and on the same conditions.

The retail/community use building shall be built and its certificate of occupancy issued no later than 24 months from the issuance of any certificate of occupancy for either the residential building or the office building. The Petitioner shall commence construction of the retail/community use building within six months of the date of issuance of a final certificate of occupancy for the earliest to be constructed of the residential building or office building. The Petitioner shall complete the construction of the retail/community use building within eighteen months of the issuance of a building permit for the same. The Petitioner shall deposit \$3,000,000 with the City of Newton as follows: \$1,500,000 at the time a building permit is issued for the first to be built of either the residential

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building or the office building, and \$1,500,000 at the time a certificate of occupancy is issued for such building.

Upon issuance of a building permit and commencement of construction of the retail/community use building, the City shall release the \$3,000,000 to the Petitioner in four equal payments of \$750,000 each at 25%, 50%, 75% and 100% completion points. The City shall not be required to pay interest on the \$3,000,000 while it holds the same.

If the Petitioner fails to commence and complete construction of the retail/community use building within 24 months as outlined in this condition and the plans referenced in Exhibit A, the \$3,000,000 deposit shall be forfeited to the City and be subject to appropriation by the City.

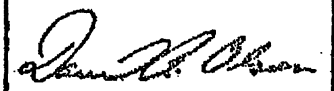
The Petitioner has estimated the cost of the community center to be \$1.8 million. The Petitioner has agreed to escrow \$3 million in order to furnish additional security to the City. However, in doing so, the City acknowledges that the Petitioner is not required to construct more than is referenced in the plan and in this Board Order.

12. Until a Certificate of Occupancy is issued for a particular building, the Petitioner will be responsible for keeping clear of snow the internal roadways and sidewalks on Grove Street abutting the Development Parcel to ensure safe and reliable access to and from that building at all times. The Petitioner must submit a snow storage and removal plan that identifies:
 - a. where snow will be stored on the Site; and
 - b. a plan of action for removal of snow from the Site when available snow storage is at capacity.

The Organization of Owners and/or the MBTA shall be responsible for snow removal following the issuance of Certificates of Occupancy for all the buildings.


13. The Petitioner shall be responsible for complying with the requirements in § 30-24(f) of the Newton Zoning Code, as amended from time to time, including § 30-24(f)(8) Inclusionary Housing Plans and Covenants which require the Petitioner to submit an inclusionary housing plan prior to issuance of any building permit for the residential building. The Inclusionary Housing Plan and Covenant shall be subject to review and approval by the Director of Planning and Development following consultation with the Newton Housing Partnership and the Fair Housing Committee, as well as review by the Newton Housing Authority. In addition, upon completion of the housing component of the Project, fifteen percent (15%) of the total number of housing units as required by the Zoning Ordinance shall be subject to such Inclusionary Housing Plan and Covenant.
14. If, after a Certificate of Occupancy is issued for a particular building, the demand for bicycle spaces exceeds the supply, the then-owner of such building shall provide additional bicycle racks. The then-owner of such building shall provide a location for

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bicycles associated with a bike-sharing program (e.g., Hubway), should one be extended to the MBTA station, and a location designated on the final Site plan.

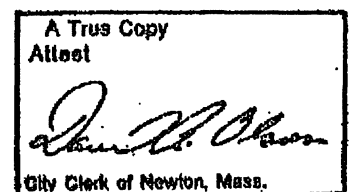
15. The Owner of each Project building, for as long as it is the Owner of that component, will be responsible at its sole expense for trash disposal for the commercial, residential and retail uses, although the Owner may allocate such costs among the tenants of those spaces.
16. All utility service lines along the frontages of the subject property shall be placed underground. Consideration of undergrounding, as well as other work on Grove Street should be coordinated to the extent possible with other planned street improvements listed in the City's Capital Improvement Program.
17. Until a Certificate of Occupancy is issued for all buildings within the Project, the Petitioner shall make every reasonable effort to obtain the required approvals from the Department of Conservation Recreation and/or the Massachusetts Bay Transit Authority, the governing bodies or owners of properties to which connections can be made, and, if necessary, the Conservation Commission, to install the overlook by the Charles River, and to improve the abandoned rail bed over I-95 so it can be used by residents to travel from the Lower Falls neighborhood to the Project. Following the issuance of Certificates of Occupancy for all buildings within the Project, the Organization of Owners shall renew requests for such approvals at least annually and shall annually submit evidence of its efforts to secure such approvals to the Director of Planning and Development and Commissioner of Inspectional Services for so long as the rights granted pursuant to this Board Order are exercised. The Organization of Owners shall be responsible for construction of the overlook and the improvement of the abandoned rail bed at its sole cost if such approvals are received following the issuance of Certificates of Occupancy for so long as the rights granted pursuant to this Board Order are exercised.
18. 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 (other than consistency determinations made by the Director of Public Works pursuant to Conditions 4 and 5 above), but shall not require approval of the Board. When making a request for a consistency determination, the Petitioner shall submit updated construction sequencing plans and a memorandum to the Commissioner of Inspectional Services demonstrating that such change(s): (i) do not require further Massachusetts Environmental Policy Act (MEPA) review under 301 CMR 11.10(8); (ii) constitute a reallocation or reconfiguration of square footage among uses in the Project provided that the same are consistent with the provisions of §30-13(g)(2) and are still in compliance with the approved shared parking plan; (iii) do not require a new type of zoning relief (other than the categories of relief granted and/or modified pursuant to this Special Permit/Site Plan Approval); and (iv) maintain the same percentage of beneficial open space which is freely open to the public as shown in 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 Board. The Land Use Committee shall not be required to vote or to approve the consistency request.

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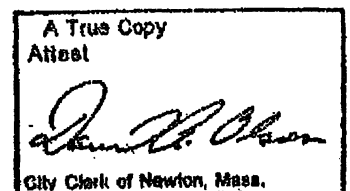
19. The Advisory Council required by §30-13(g)(3) shall consist for the following members: a Ward 4 alderman; one representative each from the Auburndale and Lower Falls neighborhoods; and one representative each from the Woodland Grove Condominiums, the Riverside Business Center, and the Petitioner or its successor Organization of Owners. The Board of Aldermen may establish terms for the community members as well as additional procedural rules for the Advisory Council, which shall be staffed by the Planning and Development Department. The purpose of the Advisory Council is to assure continued compatibility of the uses and activities within the Development Parcel and its neighbors during and after construction. The Advisory Council shall be established by the Board of Aldermen prior to the commencement of construction of the Intermodal Commuter Facility.

20. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the Petitioner has:

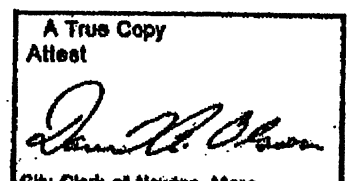
- a. recorded a certified copy of this Board Order for the approved Special Permit/Site Plan with the Registry of Deeds for the Southern District of Middlesex County.
- b. filed a copy of such recorded Board Order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
- c. submitted final plans and elevations of the building to the Director of Planning and Development to assure consistency with the applicable plans approved under this Special Permit/Site Plan Approval.
- d. submitted documentation to the Commissioner of Public Works, Director of Planning and Development and Commissioner of Inspectional Services that the Petitioner has satisfied the requirements of Condition 3(a) above.
- e. submitted final engineering plans for review and approval by the City Engineer, in accordance with the memorandum from the Associate City Engineer, dated October 3, 2012, on file with the City Clerk.
- f. submitted a final Site circulation plan for review by the Fire Department that confirms a bus 45 template for fire access will function safely, particularly around the roundabouts, showing all hydrants and fire connections, and other features as may be required for Fire Department approval.
- g. submitted a final sign package for approval by the Director of Planning and Development and Commissioner of Public Works or his designee that, in addition to signs shown in draft sign plans, which shall include:
 1. signs at the roundabouts on Grove Street that direct motor vehicles to (a) Quinobequin Road (b) the westerly entrance/entrance to the Project, and (c) the rear entrance to the parking lot at Hotel Indigo;
 2. Colors, materials, and design details of Site identification and interior directional signs; and



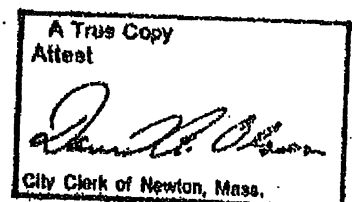
3. final designs for tenant identification signs.
- h. complied with the City of Newton Tree Preservation Ordinance, if applicable.
 - i. obtained a certification from the Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs indicating that the Final Environmental Impact Report for the Project adequately and properly complies with the Massachusetts Environmental Protection Act.
 - j. developed a Stormwater Pollution Prevention Plan, as total Site disturbance is over an acre. During construction, the Petitioner will comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site and provide documentation to the City once every four months during construction that the stormwater pollution control measures to be undertaken during construction have been implemented on an ongoing basis.
 - k. submitted to the Newton Health Commissioner and the City Engineer copies of the 21E investigation and report. If requested by the Commissioner of Inspectional Services, engage an Inspectional Group acceptable to the Commissioner and under his supervision.
 - l. submitted to the Director of Planning and Development for review and approval a photometric and lighting plan that shows exterior lights on the residential building placed so as to have minimal impact on neighborhood residential and commercial abutters.
 - m. performed a pre-blast survey and obtained a Blasting Permit from the Newton Fire Department. If on-site rock crushing is planned, the Petitioner shall address issues in regards to noise control & dust control. The times for on-site rock crushing shall be limited to the mid-morning to mid-afternoon hours to reduce disruption to the surrounding residential neighborhoods. Dust control shall include steps to prevent dust from leaving the Site and may include, as needed in the discretion of the Commissioner of Inspections Services, an on-site water truck and the covering of dirt piles. The Petitioner will comply with applicable state and local laws, regulations and protocols governing blasting, including the Standard Blasting Conditions for Special Permit/Site Plan Approvals, dated May 31, 2002 on file with the City Clerk.
 - n. submitted to the Director of Planning and Development and the Urban Forester for their approval a final landscape plan including, but not limited to:
 - i. the size and type of all trees, shrubs, and other plantings;
 - ii. landscaping along the pathway to the overlook at the Charles River;



- iii. plantings in the median of Grove Street that complement those on the easterly end of Grove Street and that assure good visibility for drivers; and
 - iv. pedestrian ways, including a route from Office Building (A) to the rear of the Indigo Hotel.
- o. submitted to the Commissioner of Inspectional Services, the Director of Planning and Development, the City Engineer, Commissioner of Public Works, and Fire Department a Construction Management Plan for review and approval. The Petitioner shall comply in all material respects with the final Construction Management Plan, which shall be consistent with the Special Permit Plan Set. At a minimum, the Construction Management Plan shall specify:
- i. The hours of construction from 8:00 a.m. – 4:00 p.m. Monday through Friday, unless otherwise extended with the approval of the Commissioner of Inspectional Services and subject to receipt of a Noise Ordinance waiver from the Mayor if necessary. Hours for construction on Grove Street and on state and federal roadways will be subject to the control of those governmental agencies having jurisdiction over such roadways.
 - ii. A commitment that there shall be no construction on weekends, evenings, or holidays, except in an emergency, and only with prior approval from the Commissioner of Inspectional Services
 - iii. Proposed timeline/construction schedule of the Project
 - iv. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging area(s) for delivery vehicles, location of any security fencing, truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the Site, locations of on-site dumpsters and regular disposal schedule
 - v. Construction truck route(s) for both the Project buildings and the MBTA Intermodal Commuter Facility that minimize, to the maximum extent feasible, travel on local streets. Construction truck access to the Site for both the Project buildings and the MBTA Intermodal Commuter Facility shall not be through the Grove Street driveway entrance, but shall be limited to access either from the Recreation Road, or from the C-D connector road.
 - vi. Proposed methods for dust control including, but not be limited to using covered trucks for transportation of excavated material
 - vii. Anticipated dewatering during construction, site safety, and stability, particularly for driveway entrances

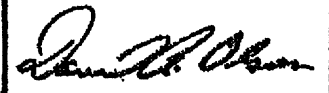


- viii. A site safety plan, which will show paths of travel for emergency vehicle access during construction, as Riverside MBTA is part of an Emergency Evacuation System so access must never be hindered during construction
 - ix. Phasing of The Project with anticipated completion dates and milestones
 - x. Name(s) of emergency contact personnel
 - xi. How the Site will be secured during construction and after hours
 - xii. Proposed methods for noise control in accordance with the City of Newton's Ordinances
 - xiii. How staging activities will be conducted in a manner that will minimize off-site impacts of noise, with noise-producing staging activities located as far as practical from noise-sensitive locations
21. No occupancy permit for building authorized by this Special Permit/Site Plan approval shall be issued until the Petitioner has:
- a. filed with the Clerk of the Board, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect or engineer certifying compliance with Condition #1.
 - b. submitted to the City Engineer, Department of Inspectional Services, and the Department of Planning and Development final as-built plans for the building subject to the occupancy permit in digital and paper format, with the latter sealed by a licensed surveyor that should show all utilities and final grades, any easements and final grading.
 - c. filed with the Clerk of the Board, the Department of Inspectional Services and Department of Planning and Development a statement by the City Engineer certifying that the infrastructure related to the building that is subject to the occupancy permit has been constructed to the standards of the City of Newton Engineering Department.
 - d. filed with the Clerk of the Board and the Department of Inspectional Services a statement from the Director of Planning and Development approving the final location, number and type of plant materials and confirming that Site lighting has been installed in accordance with the approved plans for the building subject to the occupancy permit.
 - e. recorded with the Middlesex South District Registry of Deeds an Operations and Maintenance Plan for Stormwater Management Facilities that provides ongoing stormwater system cleaning and maintenance and provided a copy of the recorded document to the City Engineer.



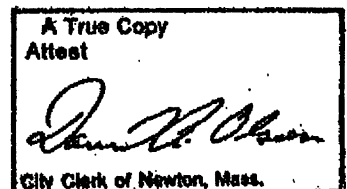
- f. substantially completed (i.e., fully operational from a traffic management perspective) construction of all improvements to Grove Street as more specifically stated in Condition 3(b) prior to the issuance of an occupancy permit for any of the following: the office building, the residential building, or the retail/community use building.
- g. substantially completed (i.e., fully operational from a traffic management perspective) construction of all roundabouts and roadway improvements as more specifically stated in Condition 3(c) above prior to issuance of an occupancy permit for any of the following : the office building, the residential building, or the retail/community use building.
- h. designated a Traffic and Parking Manager who will respond to neighborhood concerns and enforce the Parking Management Plan and Transportation Demand Management Plan, and whose contact information must be provided to the Commissioner of Public Works and the Director of Planning and Development.
- i. submitted a Parking Management Plan to the Director of Planning and Development and City Traffic Engineer for their review and approval that maximizes the use of available parking spaces and encourages shared parking opportunities. The Plan shall include, but not be limited to, the following:
 - i. a Memorandum of Understanding between the Petitioner and the MBTA regarding use of parking within the Intermodal Commuter Facility for visitors to the retail and community use space and the details of a proposed validation system with the retailers and nonprofit entity that oversees operations of the Community Use Facility.
 - ii. flexibility in updating the Plan in the event that conditions change that merit different approaches to maximizing the use of available parking spaces. Changes to the Final Parking Management shall be subject to the approval of the Director of Planning and Development and the Director of Transportation and should be reconsidered with each change in use.
 - iii. locations and type of signage and staff posted strategically to direct people to available parking on Red Sox game days.
 - iv. incentives to reduce parking demand, such as renting parking spaces separately from rental of residential units so as to make extra parking available for use by nonresidents, assigning priority parking for carpoolers, and setting aside spaces for car-sharing (e.g., Zipcar).
 - v. provision for valet parking for Hotel Indigo in the office building (Building A) as referenced in the Parking Management Plan for Hotel Indigo located at 399 Grove Street.

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Notary Public for the State of Massachusetts

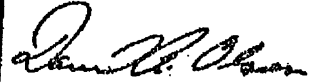
- j. submitted to the Director of Planning and Development and Commissioner of Public Works a Transportation Demand Management Plan (TDM) with incentives to reduce use of single- occupancy vehicles and increase use of alternative modes of transportation. The Petitioner shall review the TDM measures with the Director of Planning and Development. At the request of the Director of Planning and Development or at the Petitioner's election, the Petitioner will annually evaluate the effectiveness of the TDM measures to determine whether any proposed adjustment to the TDM measures should be made to optimize the TDM program. Any adjustments to the TDM measures resulting from such annual review will be submitted to the Director of Planning and Development and the Commissioner of Public Works and shall be maintained on file at the Project. TDM measures shall be substantially implemented prior to occupancy of each phase of the Project authorized under this Special Permit/Site Plan approval, unless otherwise determined by the Director of Planning and Development in consultation with the Commissioner of Public Works. The TDM shall require that:
- i. until final Certificates of Occupancy are issued for the buildings in the Project, the Petitioner shall become a member of the Route 128 Business Council to further the goals of shared transit use. Thereafter, the owner's association representative shall be such a member.
 - ii. buses destined for the highway shall be directed to enter and exit the Site by way of the westerly roundabout to minimize bus traffic onto Grove Street and foster ease of use of the transit system.
- k. An occupancy permit may be issued for any portion of the Project prior to the completion of the entire development or implementation of the Parking and Transportation Demand Management measures upon submission by the Petitioner of a parking analysis and traffic report prepared by a professional traffic engineer to the Commissioner of Inspectional Service, Director of Planning and Development, and the City Traffic Engineer evidencing that the parking provided and improvements completed together with any necessary alternative measures proposed by the Petitioner in the Traffic Impact and Access Study submitted in support of the application for this Special Permit/Site plan approval (Exhibit A), are sufficient to safely and efficiently accommodate the parking demand and traffic generated by the portion of the Project for which the occupancy permit is sought. The parking analysis and traffic report shall be subject to review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development and the Commissioner of Public Works, or his designee.
22. The Petitioner shall install all landscaping as proposed and approved through this Special Permit/Site plan approval and shall maintain landscaping in good condition. Any plant material that becomes diseased or dies shall be replaced by the then-owner on an annual basis with similar material.



23. Notwithstanding the provisions of Condition 22 the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the Site prior to installation of final landscaping provided that 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 landscaping to secure installation of such landscaping.
24. As part of this special permit, post-construction studies for impacts on road and traffic capacity and water, sewer and storm water service shall be required. These studies must be conducted within twelve months of full occupancy of each building, other than the Intermodal Community Facility, or earlier if requested by the Director of Planning and Development and Commissioner of Public Works, and continue annually for two years following final build-out of the project. If the actual impacts are consistent with projections provided by the Petitioner in the Traffic Impact and Assessment Study as revised pursuant to peer review, no further study or mitigation shall be required. If the actual impacts exceed projections, further mitigation shall be required. Following completion of such additional mitigation, annual follow-up studies shall be conducted until these studies show for five consecutive years that the impacts from the development are consistent with the special permit.

The post-construction study for traffic shall provide for monitoring to determine consistency between the projected and actual number of weekday peak hour, Saturday peak hour, and weekday daily vehicle trips to and from the Site and their distribution among points of access to the mixed-use/transit-oriented development. The Petitioner or Organization of Owners must provide a bond or other security in an amount sufficient to secure performance of the post-construction study and satisfactory to the Commissioner of Public Works and Director of Planning and Development to secure performance as specified herein. Up to 60% of the monies allocated in the Mitigation Fund for traffic and neighborhood improvements can be considered as the required bond or other security, provided that the Petitioner or Organization of Owners shall be required to post an additional bond or security if the estimated cost of the study and necessary mitigations exceeds the amount available for this purpose in the Mitigation Fund. The bond or other security may be forfeited at the election of the Director of Planning and Development and the Commissioner of Public Works, and proceeds used by the City for mitigation if the petitioner fails to complete any required mitigation to manage impacts within acceptable levels established by this Special Permit/Site Plan Approval, subject to reasonable extensions under the circumstances.

- a. Monitoring of vehicle trips for this purpose shall begin within twelve months of full occupancy of the Project, or earlier if requested by the Director of Planning and Development and Commissioner of Public Works, and continue annually for two years following final build-out. Measurements shall be made at all driveway accesses to the Project and/or intersections studied in the pre-construction Roadway and Transportation Plan. The Commissioner of Public Works may require traffic monitoring earlier or more frequently if in his or her judgment

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there appears to be degradation from the level of service projected by the pre-construction Roadway and Transportation Plan.

- b. A traffic engineering firm shall be retained by the City and paid for by the Petitioner or successor to measure the actual number of weekday peak hour, Saturday peak hour and weekday daily vehicle trips to and from the Project at all points studied in the pre-construction Roadway and Transportation Plan.
- c. Mitigations will be required if total number of vehicle trips to and from the Project measured per subsection b, above, summed over the points of access exceed the Adjusted Volume of vehicle trips projected per §30-24(c)(9) by more than ten percent (10%) as a result of traffic generated by the Project. Within six months of notification, the owner of the Site shall begin mitigation measures (reflecting applicable roadway design standards at the time and pending receipt of all necessary state and local approvals), as described in the Roadway and Transportation Plan submitted by the petitioner in order to reduce the trip generation to 110% or less of the Adjusted Volume. Such reduction is to be achieved within twelve months after mitigation begins. The Commissioner of Public Works and Director of Planning and Development shall approve any mitigation efforts prior to implementation.

Under Suspension of Rules

Readings Waived and Approved

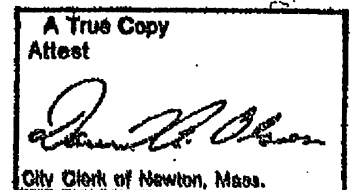
21 yeas 0 nays 1 absent (Alderman Lappin) 1 recused (Alderman Sangiolo) 1 vacancy

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on October 10, 2013. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:

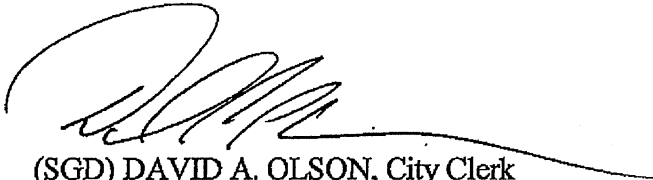


(SGD) DAVID A. OLSON, City Clerk
Clerk of the Board of Aldermen



I, David A. Olson, as the City Clerk/Clerk of the Board of Aldermen and keeper of its records and the official keeper of the records of the City of Newton, hereby certify that (1) an appeal of the foregoing decision of the Board of Aldermen, which was filed pursuant to M.G.L c. 40A, sec. 17, on October 30, 2013, in the Commonwealth of Massachusetts Land Court Department of the Trial Court (Case No. 13-MISC-480330), was dismissed by a Stipulation of Dismissal filed on February 24, 2014; and (2) no other appeals from the foregoing decision have been filed, and the appeals period has expired.

ATTEST:



(SGD) DAVID A. OLSON, City Clerk
Clerk of the Board of Aldermen

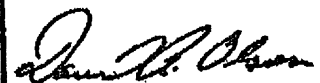
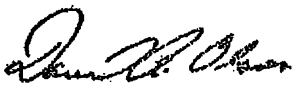
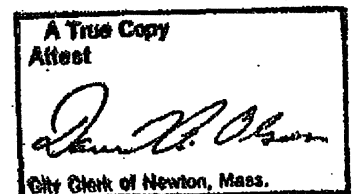
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EXHIBIT A

- a. Plans by Harry R. Feldman, Inc. dated February 14, 2011, revised June 3, 2011 as follows:
- i. Sheet 1 of 4 entitled "Route Survey/Plan of Land Riverside MBTA Station, Grove Street, Newton, Massachusetts"
 - ii. Sheet 2 of 4 entitled "Route Survey/Plan of Land Riverside MBTA Station, Grove Street, Newton, Massachusetts"
 - iii. Sheet 3 of 4 entitled "Route Survey/Plan of Land Riverside MBTA Station, Grove Street, Newton, Massachusetts"
 - iv. Sheet 4 of 4 entitled "Route Survey/Plan of Land Riverside MBTA Station, Grove Street, Newton, Massachusetts"
- b. Plans by Vanasse Hangen Brustlin, Inc. dated August 27, 2012, revised July 23, 2013 as follows:
- i. Sheet No. S-1.0 entitled "Legend and General Notes"
 - ii. Sheet No. S-2.0 entitled "Area Plan"
 - iii. Sheet No. S-2.1 entitled "Overall Zoning Assessment for Development Parcel" (further revised September 24, 2013)
 - iv. Sheet No. S-2.2 entitled "Zoning Assessment for Building A" (further revised September 24, 2013)"
 - v. Sheet No. S-2.3 entitled "Zoning Assessment for Building B" (further revised September 24, 2013)
 - vi. Sheet No. S-2.4 entitled "Zoning Assessment for Building C" (further revised September 13, 2013)
 - vii. Sheet No. S-2.5 entitled "Beneficial Open Space for Development Parcel" (further revised September 24, 2013)
 - viii. Sheet No. S-3.1 entitled "Layout & Materials Plan"
 - ix. Sheet No. S-3.2 entitled "Layout & Materials Plan" (further revised September 24, 2013)
 - x. Sheet No. S-3.3 entitled "Layout & Materials Plan"
 - xi. Sheet No. S-4.1 entitled "Grading and Drainage Plan"
 - xii. Sheet No. S-4.2 entitled "Grading and Drainage Plan" (further revised September 24, 2013)
 - xiii. Sheet No. S-4.3 entitled "Grading and Drainage Plan"
 - xiv. Sheet No. S-5.1 entitled "Utility Plan"
 - xv. Sheet No. S-5.2 entitled "Utility Plan" (further revised September 24, 2013)
 - xvi. Sheet No. S-5.3 entitled "Utility Plan"
 - xvii. Sheet No. S-5.4 entitled "Sanitary Sewer Profile"
 - xviii. Sheet No. S-6.1 entitled "Details"
 - xix. Sheet No. S-6.2 entitled "Details"
 - xx. Sheet No. S-6.3 entitled "Details"

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- xxi. "Proposed MBTA Riverside Station Redevelopment Conceptual Improvement and Access Plan," dated September 15, 2013
- c. Plans by Ground, Inc. dated August 27, 2012, revised July 23, 2013 as follows:
- i. Sheet No. L-1.1 entitled "Building A Landscape Plan"
 - ii. Sheet No. L-1.2 entitled "Building B Landscape Plan"
 - iii. Sheet No. L-1.3 entitled "Building C Landscape Plan"
 - iv. Sheet No. L-2.1 entitled "Landscape Construction Details"
 - v. Sheet No. L-2.2 entitled "Planting Details"
- d. Plans by ADD, Inc. respecting Building A dated August 30, 2012 (unsigned) as follows:
- i. Sheet No. AP-100 entitled "Office Parking Layout Levels 0-5"
 - ii. Sheet No. A-102 entitled "Floor Plans Levels 0-1"
 - iii. Sheet No. A-103 entitled "Floor Plans Levels 2,3-4"
 - iv. Sheet No. A-104 entitled "Floor Plans Level 5"
 - v. Sheet No. A-105 entitled "Levels 6-10 & Roof Plan"
 - vi. Sheet No. A-301 entitled "Building Elevations"
- e. Plans by ADD, Inc. respecting Building B (undated and unsigned) as follows:
- i. Sheet No. B-100.1 entitled "Building B Parking Layouts"
 - ii. Sheet No. B-100.2 entitled "Building B Lower Parking Floor Plan"
 - iii. Sheet No. B-100.3 entitled "Building B Upper Parking Floor Plan"
 - iv. Sheet No. B-101 entitled "Building B First Residential Floor Plan"
 - v. Sheet No. B-102 entitled "Building B Second Floor Residential Floor Plan"
 - vi. Sheet No. B-103 entitled "Building B Third Floor Residential Floor Plan"
 - vii. Sheet No. B-104 entitled "Building B Fourth Floor Residential Floor Plan"
 - viii. Sheet No. B-200 entitled "Building B Elevations"
- f. Plans by ADD, Inc. respecting Building C (undated and unsigned) as follows:
- i. Sheet No. C-102 entitled "Floor Plans"
 - ii. Sheet No. C-301 entitled "Building Elevations"
- g. Plan by ADD, Inc. respecting Signage (undated and unsigned) as follows:
- i. Sheet No. D-480 entitled "Exterior Signage"
- h. Plan by Lam Partners dated January 28, 2013, revised July 16, 2013 (unsigned) as follows:
- i. Sheet No. Lam SLL-01 entitled "Preliminary Site Lighting Plan"





Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Candace Havens
Director

PUBLIC HEARING MEMORANDUM

DATE: March 16, 2012

TO: Alderman Marcia Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development
Eve Tapper, Chief Planner for Current Planning
Seth Zeren, Chief Zoning Code Official

RE: #400-11: Ald. Gentile, Harney, Sangiolo requesting establishment of a Business 5/Riverside Zone: a mixed-use transit-oriented district at the site of the current Riverside MBTA rail station. The proposed new zone shall allow by special permit a single commercial office building not to exceed 225,000 square feet with a maximum height of 10 stories or 135 feet in height, two residential buildings not to exceed 290 housing units in total, retail space not to exceed 20,000 square feet, along with a multi-use community center.

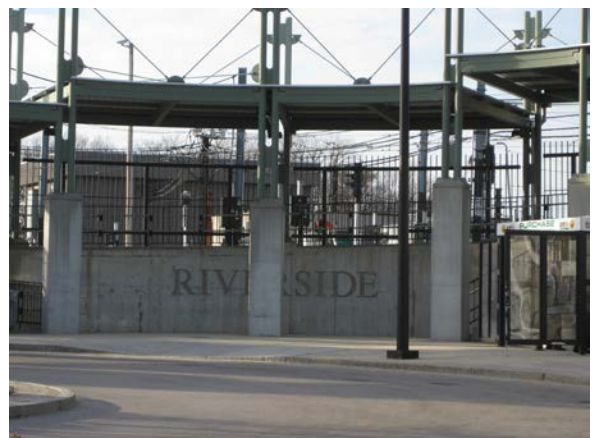
#400-11(2): The Planning Department, requesting in the event that #400-11 is adopted, to amend Section 30-15(v) and Table 3 to allow up to 250,000 square feet of additional gross floor area and a maximum FAR of 3.0 for providing direct access to and from Route 128.

MEETING DATE: Public Hearing on March 22, 2012

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor

INTRODUCTION

In 2007, the MBTA advertised the availability of the land around the terminus of the mass transit Green Line at the Riverside Station (referred to generally as "Riverside") for a long-term lease to a private developer for mixed-use development. Consistent with the *Newton Comprehensive Plan* adopted by the Board of



Aldermen in November 2007, this site was identified as one with great potential for economic development, and particularly for mixed-use development. In 2008, the MBTA selected BH Normandy, LLC to develop the site. Since then, the developers have met with a various stakeholders, including abutters, representatives from several City departments, aldermen, and community groups to discuss possible project designs of appropriately-scaled mixed-use development for the site. The property is currently zoned for Public Use and, since no other existing zoning district can achieve the kind of integrated development with public amenities as effectively, a new zoning text is warranted. Petition #400-11 proposes creation of such a zone at Riverside that would allow for an office building not to exceed 225,000 square feet in area, with a maximum height of ten stories or 135 feet in height; one or two residential buildings not to exceed 290 housing units in total; retail space not to exceed 20,000 square feet; and a multi-use community center. Petition #400-11(2) offers an additional 250,000 square feet of gross floor area if north- and southbound access to Route 128 is provided.

Process

Development of the Riverside site for mixed use requires review by two aldermanic committees: the Zoning and Planning Committee and the Land Use Committee. The Zoning and Planning Committee is charged with considering text changes to the City's Zoning Ordinance and making recommendations to the full Board, which takes final action on the legislation. Once the zoning text for a new zone is approved by the full Board, a developer can then submit a request to rezone the land along with an application for a special permit to the Land Use Committee for a specific development project. The Land Use Committee will review a project proposal and make recommendations to the Board, again with final approval resting with the full Board of Aldermen. If the rezoning and special permit both are approved, the City's zoning map will be changed from Public Use to Mixed Use 3/Transit-Oriented Development and the developer then can apply for a building permit and begin construction, provided all conditions of approval are met. The Planning and Development Board advises the Board of Aldermen on zoning amendment matters and it has been the practice for this group to hold public hearings concurrent with those of the Board Committees and to make its recommendations to the respective Committees in advance of Board action.

SUMMARY OF PROPOSED ZONING TEXT

On January 9th, Planning Department staff presented the Zoning and Planning Committee with some zoning concepts and sample text for a new zone appropriate for Riverside. At its meetings on January 23rd, February 9th, February 15th and February 27th, the Committee reviewed a "menu" of zoning tools and their policy implications, as well as draft zoning language. Based on the Committee's general policy preferences, the Planning and Law Departments staff produced the zoning text language (Attachment A) that is the subject of this public hearing. The key components of the draft language that would establish the Mixed-Use 3/Transit-Oriented District are summarized below.

Purpose

The purpose of the Mixed-Use 3/Transit-Oriented District is to create a well-integrated mixed-use development on a 9.33-acre parcel of land adjacent to the Riverside MBTA rail station. While some aldermen expressed concern that such specificity would constitute spot zoning, the Law Department has advised that the planning rationale for creating site-specific parameters is clear; this is a unique site of nearly ten acres of land bordered by the Charles River at the terminus of the Green Line, adjacent to a scenic road, and discrete from most of the surrounding neighborhoods. The geography is

unusual, having been at one time a site where sand was mined and thus, is carved out of the adjacent hillside and below grade of Grove Street. Its proximity to the Charles River offers opportunities to foster public enjoyment of this natural resource and, generally, develop the site into an attractive community asset. In addition, improvements to public infrastructure, beneficial open space, the convergence of many forms of transportation foster smart growth principles, which aim to take advantage of the benefits of bringing a variety of complementary activities into one place where they can create a sense of place and vitality for those who may live, work in, and travel to the site.

Allowed Uses

The draft language includes a table (Table A) that lists several uses, which are allowed in the zone either by right or by special permit; it also prohibits drive-in businesses. Most of the uses fall into three categories: office (Category A), retail/service/restaurants (Category B), and residential (Category C). The uses listed as Public and Community uses are ones that are presently allowed on the site. For any development exceeding 20,000 gross square feet, a Mixed-Use Development special permit would be required. For this comprehensive type of special permit, at least one use from each of the categories (A, B and C) must be included in the development to ensure a mix of compatible uses that, by virtue of their synergies and proximity to a variety of transportation options, will also foster shared parking opportunities, use of alternative modes of transportation, and add multiple points of interest that can add to its vibrancy.

Development Parcel

The zoning text employs the concept of a development parcel: an area that can consist of multiple lots or portions of one lot, which is defined during the special permit process and serves as the unit for zoning. Setbacks would be measured from the edges of the development parcel and not any underlying lot lines, for example, and floor area ratio (FAR) and required open space would be calculated for the whole development parcel as one.

Organization of Owners

The zoning text includes a requirement that an organization of all owners within the development parcel should be created to function as a liaison group between the City and property owners as a contact point regarding compliance with zoning regulations, as well as an advisory group to communicate with the neighborhoods and City during and after construction.

Dimensional Standards

Dimensional standards for by-right development in the new zone resemble those in existing commercial zones; however, due to the large size of the Riverside site, it is unlikely that any developer would choose to build less than 20,000 square feet there. As noted above, for any development totaling greater than 20,000 square feet, a Mixed-Use Development special permit would be required. A new list of dimensional standards in the Mixed-Use 3/ Transit-Oriented District would apply to this site and includes the following (*to be added to Tables 1 and 3 in Section 30-15*):

- Minimum development parcel Size = 9.33 acres
- Minimum Lot Size = 40,000 square feet (as required in the BU4 zone)
- Minimum Lot Area per Residential Unit = 1,200 square feet (as required in most existing commercial zones)
- Maximum Building Height = 135 feet
- Maximum Floor Area Ratio (FAR) = 2.4

- Minimum Beneficial Open Space = 15%, useful outdoor space of which at least half is publicly accessible
- Minimum Front Setback along Grove Street = ½ building height, stepped buildings encouraged
- Minimum Setback from Route 128 and/or the MBTA station or public parking structure = 0 feet
- No setbacks are required between individual structures within the interior of the Development Parcel, as defined by the proposed zoning text.
- Structures that are owned by the state or serve a government function shall not be included in calculations of beneficial open space, minimum lot area, or floor area ratio (FAR).

Project Phasing

The proposed text allows for a development to be constructed in phases over a period of time as determined by a schedule approved in the special permit; however, in order to protect travelers going to and from the surrounding neighborhoods from undue hardship during construction of roadways related to the project, the zoning text proposes that all off-site improvements and enhancements to public roadways be completed prior to the issuance of any occupancy permits.

Adequacy of Public Facilities – Impact Studies and Performance Measures

Maintaining the adequacy of infrastructure for public facilities, including but not limited to transportation, utilities, water, sewer, storm water, public safety, and schools is a key feature of the proposed zoning language. The text requires a potential developer to submit before and after studies (subject to peer review by a city-selected consultant) for traffic, water, sewer and storm water infrastructure, as well as an overall fiscal impacts analysis, which includes school impacts, as part of the special permit process. The results of traffic and other infrastructure studies conducted after the project has been built will be used to monitor performance to determine whether the project has met its projected goals with respect to minimizing impacts to the City. If these studies show that a project's impacts exceed predicted levels, further mitigation may be required until goals established by special permit are met.

Additional Special Permit Findings

In order to encourage a vibrant mixed-use development, the new zone includes specific findings that the Board of Aldermen must consider, in addition to the more general findings that currently exist in Section 30-24(d) of the Newton Zoning Ordinance, before granting a Mixed-Use Development special permit. Specifically, proposed development must accomplish certain City goals with respect to:

- The Newton *Comprehensive Plan*, *i.e.*, the development shall not be inconsistent with the *Plan*
- Housing, Public Transportation, Parking, and Utility Infrastructure Enhancements that create long-term benefits, including fostering all modes of transportation and public safety, as well as infrastructure improvements
- Fiscal Impacts that show a net benefit to the City
- Improved Access Nearby
- Enhanced Open Space
- Excellence in Place Making
- Comprehensive Signage Program
- Pedestrian Scale
- Public Space that lends itself to the vitality of the site and surroundings
- Sustainable Design that at least meets, preferably exceeds current code requirements
- Pedestrian and Neighborhood Considerations of alterations to travel ways to ensure they cause no harm

Special Permit Filing Requirements

The proposed zoning language also mandates the following additional special permit filings:

- Conceptual Plans for review by the Land Use Committee and public prior to submittal of application for special permit to provide an early opportunity to inform its development
- Computer Model for easier storage and broader public viewing that shows how the project fits into its surroundings
- Narrative analysis to explain the project rationale and design in its context
- Statement about Beneficial Open Spaces describing their function and value
- Site plans of by-right or zoning exempt alternatives to compare and contrast development outcomes on the site
- Roadway and Transportation Plan to fully describe how and why various means of improving access to and from the site are valuable and not detrimental
- Parking analysis to identify the proper number of parking for the uses proposed at the site, maximizing their potential for sharing and without over-parking the site
- Water, sewer and storm water impact analyses
- Fiscal impact analysis, including impacts on schools, public safety services and public infrastructure maintenance
- Proposed phasing schedule
- Shadow study
- All documents in approved electronic form

Tiered Zoning Text

The proposed zoning text is divided into two sections upon which separate actions can be taken and that are crafted to provide options for a range of development possibilities on the site. Actions on these items are to be taken individually in the order shown; i.e., if the first option is approved, the second action can modify it.

- The **initial action (Tier I)** includes all the provisions of the docket language of Petition #400-11 described on page 1 of this memo, including dimensional standards that hold the intensity of the development to 225,000 square feet of office use and 290 dwelling units, as well as impact studies, performance measures, and additional special permit filing requirements and findings.
- The **second action (Tier II)** creates an incentive to allow an increase in the development potential in exchange for direct access to the subject property from the highway. Following a vote in favor of Tier I, a vote for this second action would allow an additional 250,000 square feet of gross floor area, not to exceed 1.2 million square feet total gross floor area, and an FAR of up to 3.0, provided direct access to and from Route 128 northbound and southbound are secured. The impact studies, performance measures and additional special permit criteria would still apply.

In response to questions raised regarding the effect direct access may have on traffic along Grove Street and whether the site could then handle an extra 250,000 square feet of development if that access was provided, Planning and Engineering staff looked closely at the implications and feasibility of direct access to Route 128 both northbound and southbound. The answer is complicated. The short answer is that direct access may alleviate enough traffic on the stretch of Grove Street between the site entrance and the existing ramps to Route 128 to permit over 100,000 square feet of additional office development. This figure is in line with the density bonus offered in Tier II because

approximately half of the bonus (125,000 square feet) will be available for additional office and/or commercial uses, with the other half likely used to provide required parking for the new uses.

In assessing the benefits of direct access, staff assumed that all traffic coming to and from Route 128 would use this new point of entry/exit. Based on professional traffic engineering knowledge and preliminary traffic studies for the area staff reached the following general conclusions:

- To properly design safe, compliant, and functional direct access to southbound Route 128 would likely require significant infrastructure changes (going over or under Route 128). As such, it is likely to be quite costly.
- People tend to make travel choices based largely on time and money. Preliminary studies have suggested that drivers who avoid toll roads to save money, may approach the site from Grove Street rather than by taking advantage of direct access. Thus, it is important to consider the location and pricing of tolls along with design of direct access to ensure its effectiveness in rerouting traffic away from residential streets.
- While direct access could remove some cars from Grove Street between the site entrance and the existing Route 128 ramps, it is likely that there may be additional traffic on the rest of Grove Street; however, effective transit-oriented design can mitigate the additional traffic from the development by encouraging residents, workers, and visitors to use the Green Line, buses, bicycles, or other modes of transportation.

In sum, staff believes that additional development potential on this site can be achieved with some benefit from direct access, although the costs may be substantial and the benefits should be carefully weighed. In any event, should the potential for development be expanded with or without direct access, any proposed design would be shaped and limited by the dimensional standards, impact studies, and performance measures required by the proposed text, all of which are explicitly intended to ensure the project is compatible within its context and does not negatively influence its surroundings.

ANALYSIS

The development of the Riverside site reflects an important trend in successful economic development and regional planning: smart growth. Smart growth emphasizes locating new development near existing infrastructure, particularly transit, to lower the cost of new roads, water and sewer systems, and other public services. A development at Riverside would have lower impacts than lower density development on the regional fringe with more benefits to Newton as a community. Transit-oriented development is a type of smart growth that emphasizes connections among a variety of travel modes, and especially encourages use of transit to reduce reliance on vehicles and, consequently reduce related traffic and parking impacts, while encouraging context-sensitive infill development.

Central to the idea of smart growth and transit-oriented development is the idea of mixed uses—integrating residential and commercial uses adjacent to each other or in the same building. As described in Newton’s new Mixed-Use Centers Element of the Comprehensive Plan, mixed-use development lowers the impact of each individual use because residents and visitors to the site can walk to destinations for many of their daily needs for work, shopping, and entertainment without getting into a car. Mixed-use development of the type that is envisioned for Riverside also addresses other important goals of the *Comprehensive Plan*, including growing the commercial tax base to support Newton’s excellent City services and increasing the number and diversity of the housing stock,

especially one- and two-bedroom apartments, which can provide transitional housing especially for young professionals and empty-nesters who want to live in Newton.

The Planning Department studied a range of existing and proposed mixed-use developments in the Boston area, ranging from University Park in Cambridge, to Station Landing in Medford, to Mashpee Commons on Cape Cod, to understand what features made for vibrant mixed-use centers. Staff found that there was no specific mix of uses or density that ensured success. Rather, the key to successful development seemed to be related to finding the right fit between the location, current market conditions, and demand for proposed uses. Securing a sufficient number of ancillary uses that support the basic needs of residents will be critical to the viability of the center and reduce the need for residents to travel by car for goods and services. At Riverside, the numerous transportation options and potential to create a community asset adjacent to the Charles River are two unique features of this site that also make it desirable as a mixed-used destination.

The proposed zoning text for this site includes some very specific parameters related to the number of buildings for various uses and size limits. While unusual to include this level of detail in the zoning text, it offers assurances that the project design most recently presented to the community can be realized. Should deviations from these parameters be desired when the Land Use Committee reviews the project design, the zoning text would need to be amended.

Finally, it is important to reinforce the notion that the impact studies can predict and the performance standards can measure and mitigate potentially damaging outcomes. Though the proposed zoning has specific parameters for some of the buildings and uses that provide some certainty about particular features of the development, the impact studies and follow-up also provide assurances that any project that is proposed at this site will be a good neighbor.

NEXT STEPS

Following the close of the public hearing, the Zoning and Planning Committee will hold a working session to discuss the public testimony and modify the zoning text language, as it deems appropriate. If the text is approved by the Committee, the full Board will take action on the docket items at its next Board meeting. As noted previously, no land in the City will be rezoned to Mixed-Use 3/Transit-Oriented District until the Land Use Committee reviews a specific project proposal along with a map change request. This action also is subject to approval by the full Board of Aldermen as part of the special permit application.

OPTIONS FOR ACTION

1. If the Committee is satisfied that it has sufficient information to conclude its work in Committee, the public hearing can be closed. A working session will follow on March 26th at which time staff will respond to unanswered questions posed at the public hearing and the Committee can fine tune the text, if desired.
2. If the Committee feels that additional information is needed prior to concluding its discussion, it may hold open the public hearing and continue to hear testimony on March 26th. A working session could follow the close of the public on the same night or at a future date.

ATTACHMENT A

***Petition #400-11 and #400-11(2)
February 27, 2012 – Hearing Draft***

WHEREAS, the 22-acre area owned by the Massachusetts Bay Transportation Authority (“MBTA”) and including the MBTA Station and lands adjacent to existing highways in the Riverside area of the City of Newton represents an unique opportunity to encourage mixed-use development based upon smart growth principles; and

WHEREAS, the purpose of a mixed-use development within the Riverside area is to allow development appropriate to the area and its surroundings, provide enhancements to infrastructure, integrate with and protect nearby neighborhoods, provide a mix of compatible and complementary commercial and residential uses appropriate for transit-oriented sites, and advance the City’s long-term goal of strengthening alternatives to single-occupancy automobile use while remaining consistent with the City’s *Comprehensive Plan*; and

WHEREAS, the Zoning Ordinances of the City of Newton do not presently provide the appropriate development controls and incentives to encourage and control the transit-oriented development of the Riverside area; and

WHEREAS, such controls and incentives are in the public interest and further the objectives of the City’s *Comprehensive Plan*; and

WHEREAS, this proposal provides a new zoning district for Mixed-Use Development and no land will be placed in this zone until the Board of Aldermen approves a map change;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEWTON AS FOLLOWS:

#400-11 TIER I – INITIAL ACTION

1. *By re-designating the current Section 30-13(f) as Section 30-13(h); re-designating the current Section 30-13(g) as Section 30-13(i); and inserting a new Section 30-13(f) and a new Section 30-13(g) as follows:*

(f) Establishment and purpose of the Mixed-Use 3/Transit-Oriented District.

(1) Purpose. The purpose of the Mixed-Use 3/Transit-Oriented District is to allow the development of a mixed-use center on a 9.33-acre parcel near the terminus of a mass transit rail line, an interstate highway, a scenic road, and the Charles River, commonly referred to as the Riverside MBTA station, pursuant to the City’s *Comprehensive Plan*, particularly the Mixed-Use Centers and Economic Development Elements. This district shall encourage comprehensive design within the site and with its surroundings, integrate complementary uses, provide enhancements to public infrastructure, provide beneficial open spaces, protect neighborhoods from impacts of development, allow sufficient density to make development economically feasible, foster use of alternative modes of transportation, and create a vibrant destination where people can live, work and play.

(2) Allowed uses. In the Mixed-Use 3/Transit-Oriented District, land, buildings, and structures may be used or may be designed, arranged, or constructed for one or more of the purposes listed in Section 30-13 Table A, subject to the density and dimensional controls of Section 30-15 and the parking requirements of Section 30-19.

TABLE A: PRINCIPAL USES*	
Uses similar to or accessory to the following	BR
Mixed-Use Development	
• Mixed-Use Development per section 30-13(g)	SP
Category A	
• General office: including but not limited to research and development, professional offices, medical offices, and similar uses	BR
• On the ground floor	SP
Category B	
• Retail sales, including, but not limited to retail bakery, and similar uses, excluding sales of motor vehicles or gasoline	BR
• Retail banking and financial services	SP
• Automated Teller Machines	BR
• Personal services: including but not limited to barbershop, salon, tailor, cobbler, personal trainer or fitness studio, and similar uses, excluding repair of motor vehicles	BR
• Retail laundry or dry cleaning	BR
• Eating and drinking establishments, excluding fast food establishments as defined in section 30-1	BR
• Car rental and car-sharing services that enhance alternative transportation modes	BR
• Health club	BR
• On the ground floor	SP
• Place of entertainment and assembly, theater	SP
• Lodging, hotel, motel	SP
• Parking, non-accessory commercial	SP
• Any retail, service, eating and drinking establishment over 5,000 square feet of gross floor area	SP
• Drive-in business	X
Category C	
• Multifamily dwelling (a building containing three or more dwelling units)	BR
• Live/work space or home business	BR
• Single-room occupancy dwelling or single-person occupancy dwelling	SP
• Assisted living or nursing home	SP
Public and Community	
• Community use space	BR
• Day care (adult or child)	BR
• Place of religious assembly	BR
• Government offices or services	BR
• Park or garden	BR
• Nonprofit or public school	BR
• Rail or bus terminal	BR
• Public parking	BR
• Library or museum	BR

*A use listed in Table A is permitted as of right in the Mixed-Use 3/Transit-Oriented District where denoted by the letter "BR." Uses designated in the Table by the letters "SP" may be allowed only if a special permit is issued by the Board of Aldermen in accordance with the procedures section 30-24. Uses denoted by an "X" are prohibited.

(g) **Development by special permit in the Mixed-Use 3/Transit-Oriented District.** Land and buildings in the Mixed-Use 3/Transit-Oriented District may be used for any of the purposes authorized in 30-13(f)(2). Notwithstanding section 30-13(i), any development that proposes an aggregate gross floor area of 20,000 or more square feet of gross floor area among all buildings within the Development Parcel shall require a special permit for a Mixed-Use Development, which is defined to include a Development Parcel combining a residential use with at least two other principal uses listed in Table A as allowed by right or by special permit, in accordance with the procedures provided in section 30-24. Any proposed Mixed-Use Development shall comply with the following provisions and the provisions of sections 30-15(v) and Table 3, 30-24(c)(7), 30-24(c)(8), 30-24(i), 30-24(j)), and 30-24(f).

- (1) **Establishment of a Development Parcel.** The area developed under a special permit by this section must be organized into a Development Parcel as defined in Section 30-1. The Development Parcel may contain more than one lot and/or a portion of a lot. The provisions of this Zoning Ordinance shall apply to the Development Parcel as it exists on the date that the special permit is granted as if the Development Parcel were a single lot for zoning purposes, without reference to interior lot lines dividing separate ownerships. After the grant of a special permit per Section 30-13(g), the ownership may be further divided (subject to the establishment of an organization of owners defined in (3) below) and any interior lot lines shall be disregarded for zoning purposes. The Development Parcel may be modified from time to time to accommodate land swaps or the purchase of adjacent land, provided that the Development Parcel is not less than 9.33 acres in size and does not create or expand any nonconformities.
- (2) **Intensity of development.** The aggregate gross floor area of all structures, including private accessory parking structures within the Development Parcel, excluding any structures or portions of structures dedicated to public use and owned by a state instrumentality, shall be subject to all of the following provisions:
 - a) The total area of office uses shall not exceed 225,000 square feet of gross floor area and must be contained within one structure (excluding offices incidental to residential, retail and/or community uses);
 - b) The number of dwelling units within the Development Parcel shall not exceed 290 and must be contained within up to two structures;
 - c) The total area of uses in Category B in enumerated Table A shall not exceed 20,000 square feet; and
 - d) The development must have at least one use from each of the three categories (A, B, and C) enumerated in Table A.
- (3) **Organization of Owners.** Prior to exercise of a special permit granted under this section, an organization of all owners of land within the Development Parcel shall be formed. The organization of owners will be governed by special permit with the authority and obligation to act on behalf of all such owners in contact with the city or its representatives regarding compliance with the zoning ordinance. The organization shall serve as the liaison between the city and any owner, lessee, or licensee within the Development Parcel governed by a special permit granted under section 30-13(g). Such organization shall be the primary contact for the city in connection with any dispute regarding violations of the zoning ordinance and, in addition to any liability of individual owners, shall have legal responsibility for compliance of the Development Parcel with the terms of the special permit for a Mixed-Use Development, site plan approval, and other applicable provisions of the zoning ordinance. In addition, any special permit granted under this section shall provide for the establishment of an advisory council consisting of representatives of the adjacent neighborhoods and this organization to assure continued compatibility of the uses within the Development Parcel and its neighbors during and after construction.

2. By adding a new Section 30-15(v) as follows:

(v) **Mixed-Use Developments in the Mixed-Use 3/Transit-Oriented District.** Any development permitted by special permit per section 30-13(g) must meet the following requirements and the requirements of Table 3. The Board of Aldermen may grant a special permit per section 30-24, including section 30-24(i), to allow exceptions to the by-right dimensional standards of the Mixed-Use 3/Transit-Oriented District, provided that the requirements of this section are met and no dimension exceeds those allowed in Table 3 for the Mixed-Use Development Special Permit.

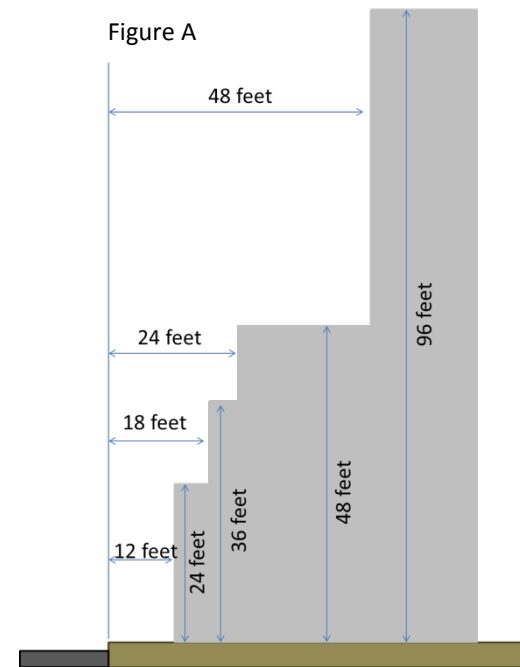
(1) **Setbacks.** Any structure or building must be set back a distance equal to at least half the height of that structure or building from any public way, except that for perimeter lot lines adjoining a state highway right-of-way or land owned by a state instrumentality, the setback may be zero feet for nonresidential uses. To encourage stepped setbacks for taller structures, each portion of a building shall be treated as if it is a separate building for purposes of calculating required building heights and setbacks (as illustrated in Figure A). In accordance with the procedures provided in Section 30-24, the board of aldermen may grant a special permit to allow a reduction in the minimum setback if it determines that the proposed setback is adequate to protect abutting uses.

(2) **Beneficial Open Space.** At least 50% of the beneficial open space provided as part of a Mixed-Use Development must be freely open to the public.

(3) **Exclusion of Public Structures from Zoning Requirements.** Any portion of the Development Parcel for the proposed development owned by a state instrumentality and devoted to a governmental function from which the general public is excluded, including, but not limited to a rail yard, maintenance facility, or railroad right of way and any portion of a building or structure dedicated for public use by a state instrumentality, such as a passenger station or associated facilities for use by customers of the Massachusetts Bay Transportation Authority, shall not be included in the calculation of:

- i. The quantity of beneficial open space required;
- ii. Minimum lot area; or
- iii. Floor Area Ratio.

(4) **Impacts of Takings by or Conveyances to a Public Entity:** The provisions of section 30-26(a) shall apply to any taking by or conveyance of land within the Development Parcel to a public entity or to any land otherwise dedicated and accepted as a public way.



3. By adding the dimensional requirements for the Mixed-Use 3/Transit-Oriented District to Table 1 and Table 3 of Section 30-15 as follows:

Zoning District	Minimum Required Lot Area	Lot Area per unit ¹	Frontage	
MU3/TOD	40,000	1,200	80	SEE TABLE 3 for other dimensional controls

Table 1

Zoning District ¹¹	Max. # of Stories	Bldg Ht ¹² (ft.)	Total Floor Area Ratio	Gross Floor Area/ Site Plan Approval (SF)	Threshold by Special Permit (Gross Floor Area; SF)	Min Lot Area (SF)	Lot Coverage	Beneficial Open Space	Front (feet)	Side (ft.)	Rear (ft.)
MU3/ TOD											
As of Right	N/A	36	1.0	10,000-19,999	20,000	40,000	N/A	N/A	15 ⁹	10	15
Mixed-Use Development Special Permit, per 30-13(g) ¹³	N/A	135	2.4	N/A	N/A	40,000	N/A	15% ¹³	½ build. height ¹ ₃	0	0

Table 3

13. See sec. 30-15(v) for additional dimensional requirements for developments within the Mixed-Use 3/Transit-Oriented District.

4. By adding new sections 30-24(c)(7), 30-24(c)(8), 30-24(i), 30-24(j) as follows (and renumbering all the others):

(c)(7): **Project Phasing.** Any development subject to a special permit under section 30-13(g) may be built in multiple phases over a period of time, in accordance with the terms of the special permit granted, provided that all off-site improvements and enhancements to public roadways are completed prior to issuance of any occupancy permits.

(c)(8): **Adequacy of public facilities.** Transportation, utilities, water, sewer and storm water infrastructure, public safety, schools including capacity, and other public facilities and infrastructure shall serve the Mixed-Use Development appropriately and safely and without deterioration in service to other locations. To determine the adequacy of public facilities, impact studies of the following must be undertaken by the applicant as part of the special permit application process under 30-13(g) with the project scope determined by the director of planning and development, the city engineer, and traffic engineer (peer reviews may be required, hired by the city and paid for by the petitioner):

- a) Adequacy of road and traffic infrastructure, including the traffic analysis required in section 30-24(j)(6)
- b) Adequacy of water, sewer, and storm water infrastructure, including use of the water, sewer, and storm water analysis required in section 30-24(j)(8)

c) Net fiscal impacts, including use of the fiscal impact analysis required in section 30-24(j)(9)

As part of any special permit granted per section 30-13(g), post-construction studies for impacts on road and traffic capacity and water, sewer, and storm water service shall also be required. These studies must be conducted within twelve months of full occupancy, or earlier if requested by the director of planning and development, the city engineer or traffic engineer, and continue annually for two years. If the actual impacts are consistent with projections, no further study or mitigation shall be required. If the actual impacts exceed projections, further mitigation shall be required. Following completion of such additional mitigation, annual follow-up studies shall be conducted until these studies show for five consecutive years that the impacts from the development comply with the special permit.

The special permit shall also require a bond or other security satisfactory to the director of planning and development, the city engineer, and traffic engineer to secure performance. The bond or other security may be forfeited, at the city's election, and proceeds used by the city for mitigation if the petitioner fails to complete any required mitigation or to manage impacts within acceptable levels identified by special permit, subject to reasonable extensions under the circumstances,

Post-Construction Traffic Study. A special permit issued under section 30-13(g) shall provide for monitoring to determine consistency between the projected and actual number of weekday peak hour, Saturday peak hour, and weekday daily vehicle trips to and from the site and their distribution among points of access to the Mixed-Use Development. The special permit shall require a bond or other security satisfactory to the city traffic engineer and director of planning and development to secure performance as specified below:

- i. Monitoring of vehicle trips for this purpose shall begin not earlier than twelve months following the granting of the final certificate of occupancy and shall continue annually over the following twenty-four months. Measurements shall be made at all driveway accesses to the Mixed-Use Development and/or intersections studied in the pre-construction Roadway and Transportation Plan. The city engineer may require traffic monitoring earlier or more frequently if in his or her judgment, there appears to be degradation from the LOS projected by the pre-construction Roadway and Transportation Plan.
- ii. The actual number of weekday peak hour, Saturday peak hour, and weekday daily vehicle trips to and from the Mixed-Use Development at all points studied in the pre-construction Roadway and Transportation Plan shall be measured by a traffic engineering firm retained by the city and paid for by the applicant or successor.
- iii. Mitigations will be required if actual total number of vehicle trips to and from the Mixed-Use Development measured per subsection (ii), above, summed over the points of access exceeds the weekday evening Adjusted Volume projected per section 30-24(i)(5) by more than ten percent (10%) as a result of traffic generated by the Mixed-Use Development. Within six months of notification, the owner of the Mixed-Use Development site shall begin mitigation measures (reflecting applicable roadway design standards at the time and pending receipt of all necessary state and local approvals), as described in the Roadway and Transportation Plan submitted by the applicant and listed in the Mixed-Use Development special permit in order to reduce the trip generation to 110% or less of the Adjusted Volume. Such reduction is to be achieved within twelve months after mitigation begins. The city engineer and director of planning and development must approve any mitigation efforts prior to implementation.

(i) **Additional special permit criteria for a Mixed-Use Development in the Mixed-Use 3/Transit-Oriented District.** In granting a special permit for a Mixed-Use Development under section 30-13(g), the Board of Aldermen shall not approve the special permit unless it also finds, in its judgment, that the proposal meets all of the following criteria in addition to those listed in section 30-24(d):

- (1) *Not inconsistent with the Comprehensive Plan.* The proposed Mixed-Use Development is not inconsistent with the City's Comprehensive Plan in effect at the time of filing an application for a Mixed-Use Development and applicable general laws relating to zoning and land use.
- (2) *Housing, public transportation and parking improvements, and utility infrastructure enhancements.* The proposed Mixed-Use Development offers long-term public benefits to the city and nearby areas such as:
 - a) Improved access and enhancements to public transportation;
 - b) Enhancements to parking, traffic, and roadways;
 - c) On- and off-site improvements to pedestrian and bicycle facilities, particularly as they facilitate access to the site by foot or bicycle;
 - d) Public safety improvements;
 - e) On-site affordable housing opportunities except where otherwise allowed in subsection 30-24(f)(5), the inclusionary zoning ordinance; and
 - f) Water, sewer, and storm water infrastructure enhancement.
- (3) *Fiscal Impacts.* The proposed Mixed-Use Development has a positive fiscal impact on the city after accounting for all new tax revenue and expenses related to, but not limited to, school capacity, public safety services and public infrastructure maintenance.
- (4) *Improved access nearby.* Pedestrian and vehicular access routes and driveway widths are appropriately designed between the proposed Mixed-Use Development and abutting parcels and streets, with consideration to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the Mixed-Use Development as well as to improve traffic and access in nearby neighborhoods
- (5) *Enhanced open space.* Appropriate setbacks, buffering, and screening are provided from nearby residential properties; the quality and access of beneficial open space and on-site recreation opportunities is appropriate for the number of residents, employees and customers of the proposed Mixed-Use Development; and meaningful bicycle and pedestrian connections to open spaces, recreational areas and natural resources, including the bank of the Charles River and associated walking trails that are publicly accessible and take full advantage of the unique opportunities for use and enjoyment by the community at large.
- (6) *Excellence in place-making.* The proposed Mixed-Use Development provides a high quality architectural design so as to enhance the visual and civic quality of the site and the overall experience for residents of and visitors to both the Mixed-Use Development and its surroundings.
- (7) *Comprehensive signage program.* Notwithstanding the requirements of Section 30-20, all signage for the proposed Mixed-Use Development shall be in accordance with a comprehensive signage program developed by the applicant and approved by the Board of Aldermen, which shall control for all purposes, shall supersede any other sign requirements, and shall be complementary to the architectural quality of the Mixed-Use Development and character of the streetscape.
- (8) *Pedestrian scale.* The proposed Mixed-Use Development provides building footprints and articulations appropriately scaled to encourage outdoor pedestrian circulation; features buildings with appropriately spaced street-level windows and entrances; includes appropriate provisions for crossing all driveway entrances and internal roadways; and allows pedestrian access appropriately placed to encourage walking to and through the Development Parcel.
- (9) *Public space.* The proposed Mixed-Use Development creates public spaces as pedestrian-oriented destinations that accommodate a variety of uses, promote a vibrant street life, make

connections to the surrounding neighborhood, as well as to the commercial and residential components of the Mixed-Use Development, to other commercial activity, and to each other.

- (10) *Sustainable design.* The proposed Mixed-Use Development at least meets the energy and sustainability provisions of subsections 30-24(d)(5), 30-24(g), and 30-23(c)(2)(h).
- (11) *Adequacy of parking.* Parking for the site is appropriate to the intensity of development, types of uses, hours of operation, availability of alternative modes of travel and encourages the use of alternatives without over-supplying parking.
- (12) *Pedestrian and Neighborhood Considerations.* If the proposed Mixed-Use Development project proposes any of the measures listed below, and if such measures, singly or in combination, create a substantial negative impact on pedestrians or surrounding neighborhoods, the applicant has proposed feasible mitigation measures to eliminate such substantial negative impact:
 - a) Widening or addition of roadway travel or turning lanes or conversion of on-street parking to travel lanes;
 - b) Removal of pedestrian crossing, bicycle lanes, or roadway shoulder;
 - c) Traffic signal additions, alterations, or roundabouts; and
 - d) Relocation or alterations to public transport access points.

(j) *Additional Filing Requirements for Special Permit in the Mixed-Use 3/Transit-Oriented District*

In addition to the provisions of sections 30-23 and 30-24, applicants for a grant of a special permit under section 30-13(g) shall submit:

- (1) **Conceptual Plans.** Prior to submittal of an application for a special permit in the MU3/TOD, which will include items (2) to (12) below, applicants shall present conceptual plans for review by the Land Use Committee of the Board of Aldermen at a public meeting. The Committee shall provide a forum for a public presentation whereby the Committee and public may ask questions, gain an understanding of the project proposal, and provide feedback that can inform further development of the project. Submittal for conceptual review shall not require engineered plans, but shall include the following:
 - a) Project description, including project purpose or design rationale;
 - b) Project statistics, including zoning, current and proposed uses on site, total square footage for each use proposed, area to be covered by structures, FAR, number of bedrooms in all dwelling units, percentage of affordable units, percentages of open space with breakdown of beneficial and publicly-accessible open spaces;
 - c) Preliminary site plan, including dimensioned property lines and all building setbacks and building footprints, impervious surfaces, location of waterways, top of bank and distance from waterways, proposed demolitions, location and number of parking spaces, landscaping and open spaces, trees to be removed, any access proposed to public lands nearby, north arrow and scale; and
 - d) Other information as may be requested by city staff to perform a zoning review and preliminary impact analyses.
- (2) Computer model that shows the relationship of the project to its surroundings consistent with section 30-24(b);
- (3) Narrative analysis describing design features intended to integrate the proposed Mixed-Use Development into the surrounding neighborhood, including the existing landscape, abutting commercial and residential character and other site-specific considerations, as well as an explanation of how the proposed Mixed-Use Development satisfies each criterion in this section;
- (4) Statement describing how the beneficial open space areas, to the extent open to the public, are intended to be used by the public;
- (5) Site plans showing any by-right or zoning-exempt alternatives;

- (6) A Roadway and Transportation Plan reflecting the “EOEEA Guidelines for EIR/EIS Traffic Impact Assessment” with further attention to public transportation and exceptions, subject to review by the city traffic engineer, director of planning and development, and peer review consultants. The Plan should include the following:
- a) Graphic and narrative description of existing and proposed means of access to and within the site, including motor vehicular, pedestrian, bicycle, and public or private transportation alternatives to single-occupant vehicles
 - b) Description of a proposed transportation demand management (TDM) program identifying commitments, if any, to a designated TDM manager, employer contributions to employee public transportation passes, shuttle bus capital contribution, car pool, van pool, guaranteed ride home, flex hours, promotional programs, support for off-site pedestrian and bicycle accommodations, and similar efforts
 - c) Detailed analysis and explanation for the maximum peak hour and daily motor vehicle trips projected to be generated by the Mixed-Use Development, documenting:
 - i) The projected Base Volume of trips to and from the Mixed-Use Development based upon the latest edition of the Trip Generation Manual published by the Institute of Transportation Engineers or other sources, such as comparable projects in Newton or nearby communities, acceptable to the city traffic engineer and director of planning and development;
 - ii) The projected Adjusted Volume of trips net of reductions resulting from internally captured trips; access by public transport, ridesharing, walking or biking; and through the TDM program cited above; but without adjustment for “pass-by” trips, and noting how those reductions compare with the Mixed-Use Development guideline of Adjusted Volume being at least ten percent (10%) below the Base Volume on weekday evening peak hours;
 - iii) The means of making mitigations if it is found pursuant to the monitoring under section 30-24(c)(7) of this section that the trips counted exceed the projected Adjusted Volume by ten percent (10%) or more; and
 - iv) The projected trip reduction adjustment based on “pass-by” trips for use in projecting impacts on street traffic volumes.
 - d) Analysis of traffic impacts on surrounding roadways, including secondary roads on which traffic to the Mixed-Use Development may have a negative impact. Results are to be summarized in tabular form to facilitate understanding of change from pre-development no-build conditions to the build-out conditions in trip volumes, volume/capacity ratios, level of service, delays, and queues. Analysis shall include:
 - i) The assumptions used with regard to the proportion of automobile use for travel related to the site, the scale of development and the proposed mix of uses, and the amount of parking provided; and
 - ii) Analysis of projected transit use and description of proposed improvements in transit access, frequency and quality of service.
- (7) A shared-parking analysis that demonstrates that the number of parking spaces to be provided is appropriate to the context, taking into consideration the mix of uses; the demand for parking spaces at different times of day, week, and year; availability of alternative modes of transportation; and other site-specific influences on parking supply and demand.

- (8) Water, sewer, and storm water impact analysis. The analysis shall be subject to review by the city engineer, director of planning and development, and peer review consultants and shall include the following:
- a) A study of the proposed project's surface water runoff relating to the Charles River and associated deep marsh system, which explores all feasible methods of reducing impervious surfaces, including underground parking and/or more compact site layouts, as well as the possibility of roof water harvesting for irrigation reuse, including:
 - i) A conceptual drainage plan demonstrating the consistency of the drainage infrastructure plan with the DEP Storm Water Management Policy and the City of Newton drainage policy;
 - ii) A drainage analysis based on the City's 100-year storm event of six inches over a 24-hour period, showing how runoff from impervious surfaces will be infiltrated on-site;
 - iii) An on-site soil evaluation identifying seasonal high groundwater elevation and percolation rate and locations of these tests shown on the site plan;
 - iv) A closed circuit television (CCTV) inspection, if a connection to the city's drainage system is proposed, prior to approval of this permit, which shall be witnessed by the engineering division, the applicant shall provide the city inspector with a video or CD prepared by a CCTV specialist hired by the applicant. A post-construction video inspection shall also take place and be witnessed as described above; and
 - v) An evaluation of hydraulic capacity of the downstream drainage system submitted to the engineering division to determine any impact to the municipal drainage system.
 - b) A master plan and schedule of the sanitary sewer system improvements, including:
 - i) A plan showing a reduction in infiltration and inflow into the sanitary sewer system of at least eight gallons for every one gallon of sanitary sewage contributed by this development;
 - ii) A calculation of the life cycle cost of the proposed sanitary system;
 - iii) A quantitative analysis of the capacity to dispose, verified by the Massachusetts Water Resource Authority (MWRA); and
 - iv) A study showing how the developer will comply with the city's cross connection control program.
 - c) A 21E Environmental Site Investigation Report that evaluates the site for any contaminants related to underground fuel or oil tanks, creosote, leachate from existing trolley tracks, cleaning and/or washing facilities, or local dry wells.
 - d) A solid waste master plan, including a detailed explanation of how the uses will control solid waste through reduction, reuse, recycling, compaction and removal, that demonstrates compliance with the city's solid waste master plan. The plan shall provide estimates of the expected solid waste generation by weight and volume for each of the uses proposed for the site with consideration to peak volumes; and
 - e) A quantitative analysis that demonstrates that the water demands of the proposed development will not overburden the water supply of existing infrastructure provided by the city, including fire flow testing for the proposed fire suppression system, as well as domestic demands from the entire development. The applicant must coordinate this test with both the fire department and utilities division; representatives of each department shall witness the testing and test results shall be submitted in a written report. Hydraulic calculations shall be

submitted to the fire department for approval. Hydraulic analysis for both domestic and fire suppression will be required via hydraulic modeling in a format acceptable to the utilities director.

- (9) Fiscal impact analysis that includes new tax revenue and expenses related to, but not limited to, school capacity, public safety services, and public infrastructure maintenance.
- (10) Proposed phasing schedule, including infrastructure improvements;
- (11) Shadow study showing shadow impacts on the surrounding properties for four seasons at early morning, noon, and late afternoon; and
- (12) Submittal in electronic form of all documents required by sections 30-23 and 30-24 (including this section 30-24(i)) and any supplemental reports, memoranda, presentations, or other communications submitted by the applicant or its representatives to the Board of Aldermen and pertaining to the special permit application, unless the applicant demonstrates to the satisfaction of the director of planning and development that electronic submission or compliance with that standard is not feasible. Documents created using Computer Aided Design and Drafting software shall comply with the Mass GIS "Standard for Digital Plan Submittal to Municipalities," or successor standard. Electronic submission must be contemporaneous with submission by any other means. The director of planning and development will arrange to have electronically submitted documents posted on the city website within a reasonable time after receipt.

5. *By adding a new Section 30-19(d)(22) as follows:*

- (22) Notwithstanding the other requirements of 30-19(d), by special permit from the Board of Aldermen in accordance with the procedures provided in section 30-24, the parking requirement for a mixed-use development approved under Section 30-13(g) shall be set through a shared-parking analysis, which demonstrates that the number of stalls provided is sufficient for the combination of uses proposed taking into account the proximity to public transportation and other factors. This analysis shall be subject to review by the city's planning director and peer review at the applicant's expense if requested by the planning director. Following the grant of a special permit under this section, no material change in the combination of uses shall be authorized until the petitioner submits a revised analysis demonstrating to the satisfaction of the planning director that sufficient parking exists to accommodate the new combination of uses or requests and receives a modification of the special permit to authorize a change in the number of stalls provided.

6. *By deleting the definition of "Development Parcel" as it appears in Section 30-1, Definitions, and substituting the following definition:*

Development Parcel: The real property on which a Planned Multi-Use Business Development or a Mixed-Use Development is located in connection with a special permit under Section 30-15(s) or 30-13(g).

By deleting the definition of "Open Space, Beneficial" as it appears in Section 30-1, Definitions, and substituting the following definition:

Open Space, Beneficial: Areas not covered by buildings or structures that are available for active or passive recreation, which shall include, but are not limited to: landscaped areas, including space located on top of a structure, gardens, playgrounds, walkways, plazas, patios, terraces and other hardscaped areas, and recreational areas, and shall not include: (i) portions of walkways intended primarily for circulation, i.e., that do not incorporate landscape features, sculpture or artwork, public benches, bicycle racks, kiosks or other public amenities, (ii) surface parking facilities or associated pedestrian circulation,

(iii) areas that are accessory to a single housing unit, or (iv) areas that are accessory to a single commercial unit, and controlled by the tenant thereof, and not made available to the general public.

And by adding the following Definition in Section 30-1 as follows:

“Community Use Space: Space that is open to the public and used for, but not limited to, ball courts, gymnasias, play areas, community meeting rooms, social services, outdoor play areas, playgrounds, related seating areas, and similar uses.”

7. *By inserting a new Section 30-5(a)(4) as follows:*

(4) Public uses described in Section 30-6(a) through (k); provided that such uses shall be subject only to site plan review as required under Section 30-6 and shall not be subject to dimensional, parking or any otherwise applicable zoning requirement.

Petition #400-11(2) - TIER II

If #400-11 is adopted, consider amending it by inserting the following as Section 30-15(v)(5) and modifying Table 3 of Section 30-15, provided that all other dimensional standards are met:

- (5) ***Incentives.*** For providing direct access to and from an interstate highway both northbound and southbound, the maximum allowed gross floor area may be increased up to 250,000 square feet not to exceed 1,200,000 square feet total gross floor area and an FAR of 3.0, including above-ground parking.



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney Heath
Director

CONTINUED PUBLIC HEARING MEMORANDUM

DATE: September 9, 2016
MEETING DATE: September 13, 2016
TO: Land Use Committee of the City Council
FROM: Barney Heath, Director of Planning and Development
James Freas, Deputy Director of Planning and Development
Alexandra Ananth, Chief Planner for Current Planning
CC: Petitioner
Planning Board

PETITION #179-16 & #180-16

NW corner of Washington and Walnut Streets

Request for a change of zone to Mixed Use 4 and for special permits to construct a mixed-use development consisting of three buildings with heights up to 60 feet and 5-stories incorporating 171 residential units, approximately 40,000 square feet of commercial space and 346 parking spaces.

The Land Use Committee (the "Committee") opened the public hearing on June 7, 2016, and the hearing was held open. A site visit was held by the Committee on June 13, 2016 and the hearing was continued on July 12, 2016. In response to questions raised at the Land Use Committee public hearings or by written communication thereafter, and/or staff technical reviews, the Planning Department is providing the following information and analysis for the upcoming continued public hearing. This information is supplemental to staff analysis previously provided at public hearings. It should be noted that the petitioner provided detailed responses to the Planning Department to many of the questions asked by members of the Council and that the Planning Department synthesized their responses with their own analysis to respond to the questions in this memorandum.

The September 13, 2016 meeting will focus on the program for affordable/mixed income housing, the Fiscal Impact Report and the amount of office space proposed. An October meeting will focus on an update of the design of the building and intersection. This meeting is expected to occur on October 6th.

Fiscal and Demographic Questions

What is the total square footage of space in the buildings that exist on site today, broken down by residential and commercial space?

Existing uses on the site include 20 residential units totaling approximately 17,000 square feet, approximately 45,000 square feet of commercial uses which include retail uses, restaurant uses, the gas station and the Boston Ballet School (a nonprofit educational use), and approximately 13,000 square feet of office uses.

Residential	17,248 SF
Commercial	44,761 SF
Office	<u>12,946 SF</u>
Total	74,955 SF

The proposed mix of space for the project includes 40,000 square feet of commercial uses and 171 residential units totaling approximately 200,000 square feet.

What is the assessed value of the current space broken down by residential and commercial space?

The existing commercial space has an assessed value of approximately \$9,231,000.

The existing residential space has an assessed value of approximately \$4,099,000.

The total assessed value for the existing site is \$13,330,000, with an annual benefit to the City of \$149,337.

What is the assessed value of the current proposal broken down by residential and commercial space?

Current Proposal:

	Gross SF	% of Total	Rentable SF	% of Total	# of Units
Commercial	39,745	17%	39,745	21%	-
Residential	198,330	83%	153,900	79%	171
Total	238,075	100%	193,645	100%	171
Fiscal Impact	Assessed Value	Revenue	Muni. Cost	Edu. Cost	Net Annual Benefit
Commercial	\$11,924,000	\$261,602	(\$52,320)	\$0	\$209,281
Residential	\$50,440,000	\$599,656	(\$98,475)	(\$355,200)	\$145,981
Total	\$62,364,000	\$861,257	(\$150,795)	(\$355,200)	\$355,262

The Planning Department shared the Fiscal Impact Report with the Assessing Department who confirmed that the petitioner's projected assessed value is accurate.

What would the fiscal impact be if the project was one-third commercial?

	GSF	% of Total	RSF	% of Total	# of Units
Commercial*	79,358	33%	79,358	24%	-
Residential	158,717	67%	123,161	76%	137
Total	238,075	100%	193,645	100%	137
Fiscal Impact	Assessed Value	Revenue	Muni. Cost	Edu. Cost	Net Annual Benefit
Commercial	\$23,808,000	\$522,337	(\$104,467)	\$0	\$417,869
Residential	\$40,508,000	\$481,506	(\$78,806)	(\$294,249)	\$108,452
Total	\$64,316,000	\$1,003,843	(\$183,273)	(\$294,249)	\$526,321

This calculation assumes that the commercial space can be filled and leased at market rates.

Would the petitioner be willing to add office space in place of some market rate housing so that this project can be more of a fiscal benefit to the City?

The petitioner has stated that they spent significant time analyzing the demand for office space in Newton and specifically at this location. Based on their research and conversations with the brokerage community it is the petitioner’s position that office space is not feasible for a multitude of reasons including:

- New construction demands a rent that is higher than what the current office market supports in this location.
- The distance from exits on the major interstates (I-90, I-95/128) makes this location less desirable for office users.
- Office floor to floor heights are higher than residential heights and would require that the overall height of the proposed project increase in order to accommodate the same number of stories.
- Office space requires separate entrances, amenity space, vertical transportation and parking, all of which create a number of costly inefficiencies that make it unfeasible.

The petitioner is expected to further explain their rationale for not increasing the amount of commercial office space in the proposed development at the September 13th public hearing.

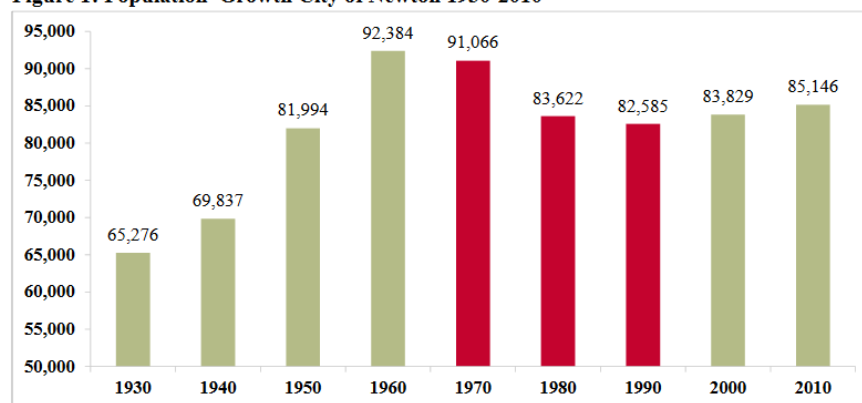
Why was the highest figure (.2) used to estimate costs for commercial space? How does the fiscal impact change if a different ratio is used?

The Fiscal Impact Analysis report prepared by the petitioner uses the most conservative figures that are reasonable, which means that every cost is maximized. Such methods are not uncommon and were similarly used for the Austin Street analysis. It is therefore reasonable to assume revenues will be higher than projected as the analysis presents a worse-case scenario. A lower ratio would result in higher revenue projections and would ultimately increase the net fiscal benefits beyond those projected in favor of the City.

Provide us with data showing the City’s population, the number of residential units in the City and the amount of commercial space in the City. Please then add in estimates for increases due to recently approved but not yet built projects.

Since 2000, Newton’s population has begun to grow again as an increasingly diverse population sees it as one of the premier places to live in the Boston Metro area given the quality of life in the community and the quality of its public schools. Nevertheless, the population increases have lagged behind both state and county growth and is below its 1960 peak of 92,284 residents. Between 2000 and 2010, the number of residents in Newton increased by 1.6%, whereas the state and county grew roughly twice as fast, at rates of 3.1% and 2.6%, respectively. In 2000 Newton’s population was 83,829 and in 2010 the population was 85,146.

Figure 1: Population Growth City of Newton 1930-2010



Source: State Data Center, MISER and U.S. Census American FactFinder

Interestingly, the number of households declined in the same decade from 31,201, to 31,168. In place of the traditional family, Newton, like most of Massachusetts and the nation, is increasingly comprised of a diverse arrangement of household types. Since 1980, the number of single-person households has increased, as well as the number of households comprised of unrelated individuals – unmarried couples and households made up of roommates. In addition, the percentage of residents living in group quarters (college dormitories, skilled nursing facilities, and religious group quarters) has increased significantly. The school age population has rebounded to its peak in the 1980’s and the number of seniors has been increasing, as has the racial and ethnic composition of the City.

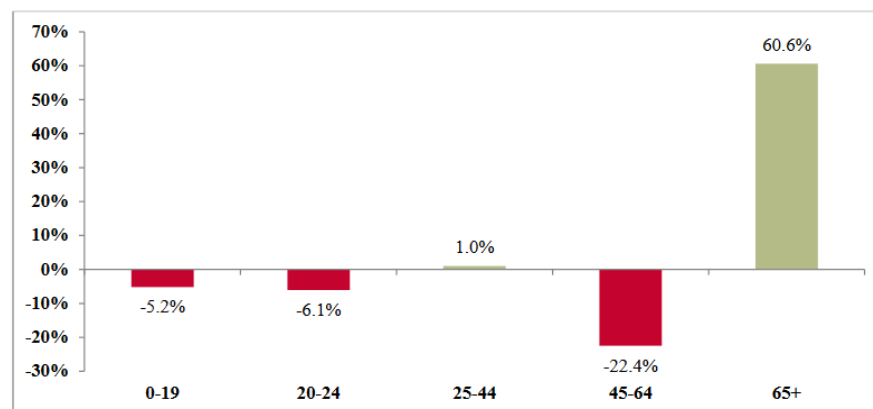
In 2000 the City had 32,112 housing units which increased to 32,648 by 2010, an increase of 1.7%, consistent with the number of new residents over the same decade. A significant number of these new units include the large comprehensive permits (40B projects) permitted in 2001 and 2004 and 2005 (both Avalon Bay’s and Woodland Station).

At the same time the population of Newton has grown more affluent and the housing stock has become more and more expensive, threatening the economic diversity of the population. This is true for both rental and homeownership units. Nonetheless, nearly one out of eight Newton households (12.2%) live on less than \$25,000 per year.¹

¹ Demographic information taken from “Demographic Trends and Housing in the City of Newton, MA”. Northeastern University. May 2014.

Newton's population is expected to continue to grow slowly to approximately between 86,000 and 89,600 residents by 2030 (between 1-5%), still short of the 1960 population peak, with the senior population expecting to increase from 15% to 24%. This is due to the aging of the baby boom generation. Correspondingly, there is projected to be a decline in older "prime age" individuals (45-64) by nearly 7 percentage points to 22% of the 2030 population. The decline in this age bracket is expected to have a correlated decline in the number of children living in Newton of between 500-1,000 fewer children relative to 2010. Although the number of households may increase slightly to 33,000 by 2030, projections indicate that a trend toward smaller households will continue. In 2010, "older" Newton households (households headed by someone 65 or older) accounted for less than 27% of all households. By 2030, they are expected to account for approximately 40%, fundamentally altering the demographic profile of Newton. This shift will include a significant increase in the number of one-person households, many of whom are likely to be widows or widowers. If these projections hold true Newton will have nearly 9% more single person households by 2030.

Figure 4: City of Newton Projected Population Change by Age Cohort 2010–2030 Status Quo Projection



Source: Computed from MAPC Projection Data

Over the next fifteen years the aging of the Newton population will likely affect the housing choices of current residents, many of whom might choose to stay in Newton, but not necessarily in their current homes, increasing the demand for smaller housing units. The Bluestone Demographic Projections Report not surprisingly projects that if additional smaller housing units are not developed, it is possible that older Newton residents will seek more appropriate housing in other communities.²

Regarding trends in commercial space, CoStar, a resource the City subscribes to which provides current inventory data, estimates that Newton has approximately 10.2 million square feet of commercial space. Approximately half of this space, or 5.3 million square feet, is classified as office space and approximately 3 million square feet is retail and shopping center space. The remainder is a mix of industrial and flex space. As most commercial development over 20,000 square feet requires a special permit, a cursory review of special permits in the past decade includes few new commercial projects and even less office development.

Route 9 has seen new and renovated commercial space including some office space at both The Street and Chestnut Hill Square, but the former Atrium has struggled to attract tenants in its

² Demographic Projections for the City of Newton, MA. Northeastern University. May 2014.

conversion from retail to office space. Recently owners of the Atrium have announced signing Lifetime Fitness as a tenant and are positioning the property as a hub for health and wellness uses.

Redevelopment on Washington Street has included the new bank across the street from Whole Foods at 624 Washington Street, a new retail building at 1081 Washington Street (currently occupied by Sleepy's), and the Tennant Insurance building at 1149 Washington Street. A new 32,000 office building was constructed at 130 Rumford Avenue in 2006.

Wells Avenue has seen some re-tenanting of space with the upgraded medical office use at 159 Wells Avenue and the recently approved additions at 2 and 180 Wells Avenue. However, vacancies remain in this office park. 2 Wells Avenue is currently under construction but 180 Wells Avenue is waiting to begin construction until they can identify a tenant for the expanded building. Although there is some redevelopment on Needham Street, this corridor has actually lost office space in favor of mixed-use retail space with the move of Trip Advisor to the Needham Crossing Office Park. The City is making a concerted effort to continue to attract office and high-tech tenants to the Needham Street and Wells Avenue area with its N2 Innovation District initiative whose aim is to grow the economic potential of this area, provide good-paying jobs and increase tax revenues. One of the challenges to the initiative is the lack of affordable work-force housing in the area.

It should be noted that most of the commercial growth has occurred in the regional business areas of Needham Street, Wells Avenue and Chestnut Hill which have good access to major highways, and that the next tier of commercial area classification, village centers, have seen little new commercial growth, although these areas could support some moderate amount of growth if market conditions supported it. Washington Street has seen modest development but most of this appears to have been built with end users in mind and has not included speculative office space.

Recently approved but not yet built projects include up to 100 residential units at Chestnut Hill Square on Boylston Street. The Station at Riverside includes up to 225,000 square feet of office space, up to 290 apartments and up to 20,000 square feet of retail space. 28 Austin Street includes up to 68 residential units and 5,000 square feet of commercial space. A total of 131 residential units are currently under construction on Court Street, Curve Street and Kessler Woods. A recent special permit at the Turtle Lane Theatre approved 16 condominium units. These projects together total just over 600 residential units, up to 225,000 square feet of office space and 25,000 square feet of new retail space.

What are some types/examples of stores that would need spaces of similar size to those proposed?

While it is too early to know who the commercial tenants will be, the petitioner has stated that the project's location and residential component will make Washington Place attractive to a variety of retailers and service establishments, including local small businesses as well as national retailers. Various food establishments ranging from a small coffee shop/bakery to finer dining are also highly likely candidates for the commercial spaces. The following table lists examples of the types of tenants often interested in the size of commercial spaces proposed.

C1 13,000SF	C2 & C6 1,250SF	C3 & C5 5,000 SF	C4 3,890 SF	C7 2,415 SF	C8 7,835 SF
Walgreens	Starbucks	Sephora	Panera	Brewer's Coalition	Legal C Bar
Pottery Barn	Pinkberry	Aquitaine	Douzo	Cabot	
Anthropologie	Polka Dog Bakery	The Cottage	White House\Black Market	Soul Cycle	

Design and Comprehensive Plan Questions

The petitioner has stated that the project design is inspired by the historic buildings of Newtonville Square which were comparable in height to the buildings proposed. The architect's vision is to design three buildings that have some common characteristics of massing and scale that help to create a sense of place yet would differ in the use of materials, texture and color, so that they appear to fit together but do not necessarily match. Design revisions are expected to be presented at the October 6th meeting and will include some changes to the building façade on Walnut Street.

How does the proposal fit with the Comprehensive Plan's goals for increased commercial space, especially in Newtonville?

The vision that the City's Comprehensive Plan presents is one of moderate, controlled and responsible growth, yet also calls for enhancing village centers and supporting their vitality by providing services to nearby neighborhoods, housing alternatives, and focal areas to create a sense of place. With the exception of the Boston Ballet and Newtonville Camera, the current uses on site do not contribute to Newtonville as a destination or generate much pedestrian activity. With the exception of the building at the corner of Washington and Walnut Streets, the design of the block doesn't contribute to the sense of place or add to the connection with the rest of Newtonville. It is anticipated that the proposed commercial space will provide improvements and additional vitality and connection to the village center, will help to renew a sense of place north of the village center, and will add needed housing alternatives in the form of smaller single floor residential units without impacting parking in Newtonville.

Section 2, Excellence in Place-Making (page 2-2) calls for documenting a clear vision and connecting public investment and regulation to that vision. The City Council acted consistently with these principles when it adopted the Mixed Use 4 Village Zoning District to encourage economically sustainable and active, pedestrian-oriented villages in order to maintain Newton's unique village oriented culture. More specifically, in 2015 the Planning Department put together a Vision for Newtonville for the Mayor which has been shared with the Council in relation to the discussion of the Austin Street development parcel.

The Executive Department has continued to think and act from a comprehensive perspective following the release of the two demographic reports prepared for the City by the Dukakis Center at Northeastern University and the release of the Housing Needs Analysis and Strategic

Recommendations which highlights the critical need to promote affordable and diverse housing options in Newton.

Other sections of the Comprehensive Plan further encourage locating new development where it makes the most sense, which tends to be village centers, and particularly village centers with access to multiple modes of transit. The Land Use Section of the Comprehensive Plan (page 3-6) notes that land use is to be guided with the intention of enhancing village centers and supporting their vitality, and (page 3-19) predicts mixed-use developments will be key to maintaining the City’s housing goals as well as maintaining strong and vibrant village centers.

Economic and employment trends in Newton have led to more office, retail and service jobs in the City and fewer industrial and manufacturing positions. This has meant that older structures are slowly being renovated or reconstructed to allow for newer uses. One example of where this is evident is Needham Street which is being transformed into a mixed use area including industrial, retail, housing and office uses. According to (page 3-23) the Comprehensive Plan almost half of the City’s existing commercial floor area is concentrated in the regional business areas of Needham Street, Chestnut Hill and Wells Avenue. The next tier of commercial area classification would be considered the major village centers of Newton Corner, Newtonville, Newton Center and West Newton. Current trends seem to indicate that housing demand is presently stronger than economic and job growth in Newton as evidenced by strong demand for housing and increasing home prices. The current financing market also appears to indicate the same as real estate developers are proposing more new residential development than commercial development in these major centers. Over the past decade there has been minimal commercial development in these major village centers.

The Business Vision and Goals portion of the Comprehensive Plan (page 3-28) notes that Newton does not seek to become a bedroom community and seeks a jobs/housing balance and to maintain a significant commercial real estate tax and employment base and encourage business growth that furthers other goals in the Comprehensive Plan, provides essential services, and contributes to the vibrancy of the community.

The proposed project replaces the existing 58,000 square feet of aging commercial space with approximately 40,000 square feet of new commercial uses. Although there is a net loss in commercial square feet, it is expected that the new space will be assessed at more than four times the existing space and the new space will be more efficient and actively used. Furthermore, new residents will contribute to and support both the new and existing commercial space in Newtonville.

Provide some examples of other recent mixed use development with similar residential/commercial ratios.

Project	Location	# of Units	Residential GSF	Commercial SF	Commercial % of Total SF
Washington Place	Newton	171	198,330	39,745	17%
Chestnut Hill Square	Newton	Up to 100	~110,000	230,000	32%

Riverside	Newton	Up to 290	335,000	20,000 retail 225,000 office	42%
28 Austin St	Newton	68	76,163	5,000	6%
Merc on Main	Waltham	269	295,900	28,000	9%
Cronin's Landing	Waltham	225	247,500	29,000	10%
Brookside Square	W. Concord	74	60,000	11,000	15%
30 Haven Street	Reading	53	50,000	20,000	29%

Provide support for the statement in the Planning Department Memo that six stories is generally considered mid-rise development and appropriate in village centers.

In the field of urban design, the idea of human scale refers to a scale of development that feels “comfortable” to the average person experiencing the place and relates to basic human mobility and perception. As in any field, there are varying opinions but much of the literature agrees on a set of design principles tied to the two principles described above. The first is the sense of comfort in a place, which is related to one’s sense of enclosure, often likened to the idea of being in a large outdoor room. There is less comfort in environments that either lack definition, presenting themselves as a wide-open and therefore a vulnerable environment (think about how it feels to walk through a very large parking lot), or in highly enclosed environments with very high, crowded buildings. The general rule of thumb is that a sense of appropriate enclosure is achieved where there is a ratio of building height to street width of approximately 1:1. Washington Street is over 80 feet wide and Walnut Street is just over 60 feet wide, making a five or six story building generally appropriate at this location.

The idea of human scale also refers to general human mobility and perception. As these concepts apply to building height, the upper limit of human scale is the same as a walk-up apartment building, which is five to six stories or the maximum number of stories that the average person can reasonably climb. From a perception stand point, the height is tied to the distance a person can see and still recognize another person, which is approximately a distance of 60 feet.

Please expand on how this project will be linked with other proposed improvements to the Newtonville village. In particular how will this project be connected to improvements on the other side of the turnpike?

Proposed improvements for the Washington Place project include a complete redesign of the intersection of Walnut and Washington Street and aesthetic improvements to the bridge over the turnpike ending at the junction of Walnut Street and Newtonville Avenue. The improvements on the other side of the turnpike extend through the Walnut Street and Newtonville Avenue intersection, where Washington Place leaves off. The City’s Department of Public Works with the help of the Planning Department’s Urban Designer will be coordinating the design of both projects to ensure

consistency in plans and to create a seamless streetscape along Walnut Street on both sides of the turnpike.

Expand on the uses of the proposed public space and compare it to what was approved for the Austin Street project.

The Austin Street project includes approximately 5,000 SF of public space including Bram Way. There is an additional 2,600 square foot garden area tucked behind the building.

Washington Place will have approximately 10,000 SF of public outdoor space between the linear pedestrian plaza leading from Washington Street and the larger interior plaza. This area is envisioned to include outdoor seating where people can come to eat, read socialize and shop, much like the public space at Austin Street with the exception that there will be no vehicular traffic on any portion of the public space. The petitioner has stated that they anticipate working with local artists to provide ongoing art displays for users to enjoy while visiting the space. The petitioner also intends to partner with local community organizations to provide ongoing programming for the area such as concerts and local artisanal markets.

The plaza includes a balance of pavers, benches, ornamental trees, and low plantings. Approximately half of the plaza area includes plantings. The plaza will receive daily sunshine during the growing season. Additional renderings of the outdoor public space will be shown at the October 6th meeting.

If this project is approved, what will the impact be on the other buildings on Washington Street and Walnut Street? What is the opinion of the Planning Department regarding where MU4 is appropriate on Washington Street?

The intent of the MU4 district is to allow for the development of buildings and uses appropriate to Newton's commercial village centers and aligned with the vision of the City's Comprehensive Plan as adopted by the City Council. It is realistic to anticipate and even encourage development to occur in village centers and along the more regional corridors of Newton, of which Washington Street would be considered in Newton Corner, Newtonville and West Newton. The approval of this project would likely signal that Newton is supportive of controlled and responsible development where it makes the most sense, and that redeveloping less efficient parcels with affordable and diverse housing, as well as updated commercial space will contribute to Newton's economic stability in the years to come.

One-story buildings are often inefficient and a waste of expensive land and should generally be discouraged in village centers where there are multiple transit options and amenities. Where overriding historic or scale considerations are not present, density incentives such as the MU4 designation might be appropriate in order to encourage development of multi-story buildings. However, each village center is different and should be looked at on a case by case basis.

Should there be any waivers of the transparency and doors requirement?

The MU4 zoning district includes requirements that there shall be at least one entrance every 50 feet of building frontage facing a public way, and that a minimum of 60% of the street facing building façade between two and eight feet in height above the street-level floor must consist of clear windows that allow views of indoor space or display areas. The intent of these requirements are to promote a lively pedestrian environment.

Although the petitioner has stated that they intend and hope to meet these requirements, they are requesting waivers from these provisions in the event that some tenant in the future may require flexibility for less visual transparency or fewer entrances/exits. The Planning Department continues to recommend the denial of these requested waivers in order to maintain an active and engaging environment for pedestrians.

How was the amount of community space arrived at and was there consideration given to better access off the plaza?

In order to provide 2,000 square feet of community space the petitioner has removed two residential units from the second floor and will include a dedicated entrance and elevator exclusive to this space to facilitate access from the interior plaza. Although the petitioner has indicated that he would be willing to move the use to the first floor, they note that the space would be smaller as it would decrease the rentable commercial space for the project. The Planning Department has no concerns with the community space being located on the second floor provided sufficient access is made available.

The petitioner has stated that they arrived at the 2,000 square foot number by assuming an average use or attendance per event of 50 people, or 40 square feet per person, and that conversations with community groups interested in using the space also confirmed that 2,000 square feet is adequate for their needs.

Transportation Questions

Please provide more detail regarding the proposed traffic signal improvements at Washington and Walnut Streets.

As part of the proposed project the petitioner will reconstruct the intersection at Washington and Walnut Streets. More detailed plans will be presented on October 6th but proposed improvements include:

- The installation of a new modern traffic signal capable of multiple timing and phasing plans to adjust operations throughout the day as conditions change. The current signal maintains the same operational programming regardless of traffic conditions;
- Resurfacing of the intersection including pavers or colored concrete;
- Pedestrian bump outs on corners to shorten crossings for pedestrians;
- ADA compliant cross-walks; and
- Bike lanes along Walnut Street connecting across the turnpike.

How will traffic change at the intersection?

As outlined in the May 2016 Traffic Impact and Access Study, traffic associated with the redevelopment of the project is expected to increase during the weekday morning peak hour by approximately 89 new trips over the course of the hour. During the weekday evening peak hour, traffic will remain similar to existing conditions as the Boston Ballet currently generates a significant number of trips which would not exist in the future. With the change in traffic from the site and the traffic signal improvements outlined above, the overall peak period operations are expected to improve over existing conditions. The City's peer transportation review concurs with this analysis.

What improvements are proposed to make public transit more accessible in the area?

The Planning Department reached out to DOT to discuss this issue. Unfortunately most improvements to the commuter rail station are limited in what can be done short of a complete accessibility upgrade by the MBTA of the entire station (elevator and new platform) per Federal regulations.

The petitioner is proposing improvements to the sidewalk access to the station, including improved pedestrian crossings at the intersection of Walnut and Washington Streets, installing ADA ramps at the intersection, as well as sidewalk repairs.

Is the petitioner willing to subsidize MBTA/commuter rail passes for residents?

The petitioner has stated that they are willing to provide a T-pass subsidy for future tenants through a rent discount once a tenant verifies the purchase of a T-pass.

How do the parking waivers requested for Washington Place compare to the waivers granted for Chestnut Hill Square? Proportionally similar?

Washington Place is located in a village center and would be considered a more walkable location than Chestnut Hill Square, which also has more limited transportation options. Chestnut Hill Square includes approximately 230,000 square feet of commercial space and 700 parking spaces for a ratio of 3.02 spaces per 1,000 square feet. Washington Place includes 40,000 square feet of commercial space and is providing 132 parking spaces for a ratio of 3.34 spaces per 1,000 square feet. Proportionally, a greater waiver was provided for the commercial space at Chestnut Hill Square than Washington Place is seeking. It should also be noted that the large grocer at Chestnut Hill Square generates a higher parking demand than the smaller tenant users expected to occupy this site.

Recognizing that we have a complete streets policy what traffic mitigation is recommended by the City for the north side of the Walnut Street intersection?

The City is working with the petitioner on traffic mitigation at the intersection of Washington and Walnut Streets including the installation of a new modern traffic signal which in and of itself will significantly improve vehicle queues. Other priorities for the City include bike lanes on both sides of the street connecting over the turnpike and improvements to the pedestrian experience at this intersection. The City will work with the petitioner to ensure consistency in design with Walnut Street south of the intersection and for some improvements to the bridge over the turnpike.

The City is also interested in advancing the redesign of the Washington Street corridor and would also hope to see mitigation funds applied to this endeavor.

Should the City request help to mitigate traffic effects from the nearby intersections of Lowell Ave, Cabot Street and Walnut/Watertown intersections?

The City's peer transportation review did not indicate that mitigation was required at these intersections.

The DOT is reducing stops in Newtonville – What can the City do to make sure DOT knows that we have two projects?

The City is taking multiple steps, both independently and with our legislative delegation, to ensure continued commuter rail service. The DOT is aware of existing and proposed developments in Newtonville.

What happens if site parking is maxed out and overflow parking is needed?

The petitioner has indicated that in the event that site parking is maxed out a valet program would be implemented to manage excess parking demand within the site. Valets typically implement stacked parking to store more cars in existing space. Other special permits in Newton utilize this step on an as needed basis, such as the Marriott. The Planning Department also notes that developers are very aware that patrons will not continue to visit sites where parking is insufficient. Additionally, the petitioner is willing to de-couple parking fees from the rent for residential renters, and it is expected that potential residents with multiple cars would likely choose to live in a different location because of this disincentive.

Is the petitioner willing to provide a housing experience for the car-free (i.e., no parking spaces or only Zipcar)?

The development's proximity to transportation allows the petitioner to provide parking for residents at a reduced amount (1.25 stalls per unit). The petitioner is willing to agree to decouple parking from rent in order to encourage living a car-free or car-lite life and Zipcar has tentatively agreed to provide two dedicated Zipcar spaces on-site. However, the petitioner believes that the demographic of residents who will chose to live at the site would like the option to own and park a car there, and the petitioner is not willing to not provide any parking stalls for the residential units at this time. The petitioner is willing to subsidize MBTA passes as mentioned above.

Housing Questions

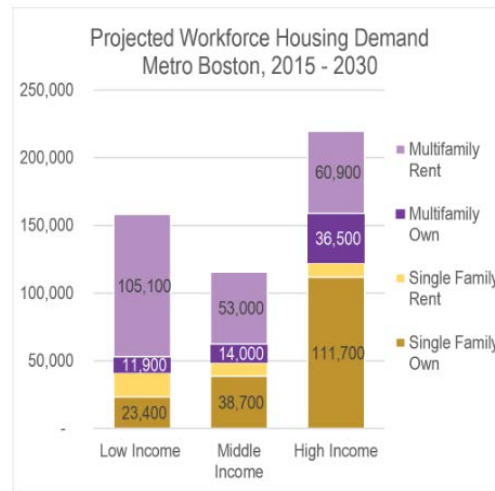
Will the petitioner increase the number of deed-restricted units in the project?

The petitioner is required to meet the City's Inclusionary Zoning Ordinance and 15% of the total units (26 units) will be available through a lottery process to households earning up to 80% of the Area Median Income (AMI) and all inclusionary units in the development must average no more than 65% of the AMI (50% of the units will be priced for households having incomes at 50% of the AMI and all other remaining inclusionary units will be priced for households having incomes at 80% of the AMI). It is expected that these 26 units will be eligible for inclusion on the City's subsidized housing inventory.

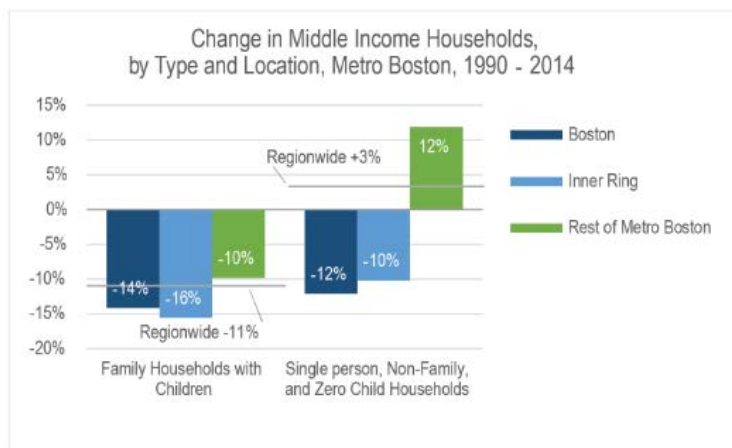
In addition, the petitioner is proposing a second tier of affordable units, an additional 10% of the total units (17 units), that would be available to residents earning between 80-120% of AMI, for "middle income renters." This is an income band that is not currently served by existing programs in Newton, and also represents a significant number of households that are being priced out of the Newton housing market.

The Urban Land Institute recently released a study about the importance of this income segment to the greater Boston area workforce who have limited choices in the regional housing market. The

executive summary of the study is available here: <http://boston.uli.org/wp->



content/uploads/sites/12/2016/05/ULI_BuildingfortheMiddle-1.pdf. The report highlights that more than a third of middle income households are housing cost-burdened and that this number is increasing. Data shows that the region has been losing middle income households and that a growing economy will require more new workers than there will be housing therefore good housing policy is critical to help sustain the economy.



The Planning Department is very supportive of the petitioner’s commitment to provide 43 units of deed restricted lower and middle income units in this project. These 43 units represent 25% of the total project units.

The petitioner is also willing to commit to providing a local preference for households that currently live at the site if their income qualifies them for any of the deed restricted units in accordance with the City’s Inclusionary Zoning Ordinance and state regulations.

The floor plans included in the June 7th Preliminary Inclusionary Housing Plan highlight the suggested locations of the affordable units as well as the unit mix. The Planning Department is reviewing this

plan and recommends that should the Council choose to approve this project, a condition be included that a final Inclusionary Housing Plan be approved by the Director of Planning and Development prior to the issuance of any building permits.

Will the petitioner add some 3 bedroom units to the mix?

The petitioner is willing to add 6 to 8 3-bedroom units (~5%) to the proposed bedroom mix if the City Council desires. The Planning Department recommends that 5% of the units be 3-bedroom units in an effort to not exclude families from this development. Some larger units are often desirable for families that are in transition or who need temporary accommodations while they are renovating a home.

Other Questions

Provide a description of how the project meets the site plan criteria in terms of natural energy.

The petitioner has stated that the project has been designed and will be constructed to meet the LEED for Homes Midrise at the Silver certification level.

Will all utilities be located underground?

The petitioner has stated that all utilities will be located underground.

How long is construction expected to take?

Construction is expected to take approximately 22-24 months from groundbreaking until occupancy.

How many units will be built accessible in the initial construction?

Five percent of the dwelling units will be built as accessible units. All units will be adaptable.

Please address concerns about school placement in terms of school capacity not just dollars

The number of school children in a project is not a land use issue that the Council can legally consider in its review of special permits. Nevertheless, the Fiscal Impact Study anticipates 24 new school aged children will reside at the project, including 16 elementary school students. The School Department is currently projecting a decline in enrollment at Cabot School of 15 students in the 2018/2019 school year so it appears that there will be adequate capacity to accommodate the elementary aged children generated by the project. The number of middle school and high school aged children is too small to impact the capacity at those respective schools. The Planning Department confirmed the projected number of school children with the School Department and they concurred that they would project 24 school age students may live at the site based on comparable multi-family projects in Newton.

What are the environmental conditions of the site?

As part of the petitioners due diligence in purchasing the property an environmental assessment of the site was completed. Although the majority of soil samples did not reveal any contamination, some Reportable Concentrations of lead and other compounds were encountered and reported to the Massachusetts Department of Environmental Protection in May 2016 (**Attachment A**). It should be noted that this is not unusual for an urban site. The proposed redevelopment will facilitate the cleanup of the site in accordance with state regulations and a Soil Management Plan will be prepared to document soil cleanup. This will include dust monitoring provisions during earthwork activities. Should the Council choose to approve this project the Planning Department recommends a condition that a final environmental report documenting the removal of contaminants be submitted to the Planning Department prior to the issuance of any occupancy permits.

ATTACHMENTS:

Attachment A: Letter from Sanborn Head

MEMORANDUM

To: Mr. Robert Korff ~ Mark Investment, LLC.
Copy: Mr. David Roache, P.E., Ms. Leslie Kivitz, Esq.
From: Matthew P. Heil, P.E., LSP and Robert D. House, P.E.
File: 3927.00
Date: September 7, 2016
Re: Licensed Site Professional (LSP) Opinion Regarding Environmental Conditions
Land Use Council Hearing - 9/13/16
Proposed Washington Place Redevelopment
Newtonville, Massachusetts

As requested by Mark Investment, LLC (Client), Sanborn, Head & Associates, Inc. (Sanborn Head) has prepared this memorandum outlining the current environmental conditions for the proposed re-development at Washington Place in Newtonville, Massachusetts. We understand that this memorandum has been requested prior to the September 13, 2016 meeting of the City of Newton Land Use Council.

- Soil impacts in excess of Reportable Concentrations (RCs) were encountered. These Reportable Concentrations were encountered during real estate due diligence activities and were reported to the Massachusetts Department of Environmental Protection (DEP) in May 2016 in accordance with applicable laws. Although a small number of samples exceeded Reportable Concentrations for lead (220 mg/kg vs. 200 mg/kg), total petroleum hydrocarbons (TPH at 1,020 mg/kg vs. 1,000 mg/kg) and some common polycyclic aromatic hydrocarbons (PAHs) which are included within the TPH value, the majority of samples did not exceed Reportable Concentrations. In addition, the limited exceedances remain relatively low and generally consistent with DEP published soil background values in Massachusetts. Only one PAH compound will need to be cleaned up to meet residential closure standards.

This type of condition is very typical for historical urban soils based on Sanborn Head's extensive experience with similar projects in Massachusetts. For general reference, there have been 46,200 other reported Massachusetts Contingency Plan (MCP) sites in Massachusetts, of which 500 are also located in Newton.

- Site cleanup will be in accordance with the applicable law (Chapter 21E) and supporting regulations, the MCP. As part of the redevelopment, Sanborn Head will prepare a Soil Management Plan (SMP) and other regulatory filings to document soil management and cleanup. This will include dust monitoring provisions during

earthwork activities. Based on the proposed construction schedule, clean-up actions will be completed well ahead of the required regulatory cleanup timeframe. Clean-up actions will be overseen by Mr. Matthew P. Heil a registered Professional Engineer and LSP with over 21 years of professional experience in the environmental investigation, risk assessment, remediation and groundwater engineering fields. Mr. Heil has worked on hundreds of redevelopment projects within the greater Boston area throughout his career.

- The proposed redevelopment will facilitate the cleanup. Excess soil generated from both the garage construction and the installation of utilities will require off-site removal to an approved disposal or recycling facility. In addition, the site redevelopment includes the removal of the existing Sunoco service/filling station at 875 Washington Street. We anticipate that the redevelopment will allow for the removal of the existing Activity and Use Limitation (AUL) deed restriction on that portion of the site.

Overall, it is our opinion that this site does not represent a significant environmental challenge for redevelopment. In fact, it is even “cleaner” than we would have expected based on our extensive experience supporting the redevelopment of urban properties in Massachusetts.

We trust this memorandum meets the needs of the project at this time. Please call us if you have any questions regarding this memorandum.

MPH/RDH: rdh

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