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#179-16 & 180-16(2)

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Barney Heath  
Director

**CONTINUED PUBLIC HEARING MEMORANDUM**

**DATE:** January 6, 2017  
**MEETING DATE:** January 12, 2017  
**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(2)-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, September 13, 2016, October 4, 2016, November 1, 2016, November 29, 2016, and December 15, 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.

The January 12th meeting will focus on the crafting of a draft Council Order with findings and conditions for the approval of the proposed project. The next meeting scheduled for the project is expected to occur on January 31st and will focus on finalizing the Council Orders. The public hearing is expected to remain open and public comment will be taken at these meetings.

What follows is a **working draft** (first draft) of a proposed Order prepared by the Planning and Law Departments for discussion on January 12.

DRAFT  
#179-16\_\_\_\_\_CITY OF NEWTON  
IN CITY COUNCIL  
February \_\_\_\_\_, 2017

## ORDERED:

That the Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the Site will be in harmony with the conditions, safeguards, and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL for a mixed use development consisting of three interconnected buildings which incorporates up to 164 residential units, not exceeding 45,000 square feet of retail sales, service establishment, restaurant, health club, and/or medical office space, not less than 2,000 square feet of office/community space, and not less than 350 on-site parking stalls, all in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefore, through its Chairman, Councilor Marc C. Laredo.

*Procedural Background.*

The proposed development (the "Project") for Washington Place (the "Site") was submitted by Mark Newtonville, LLC ( the "Petitioner") and reflects efforts to diversify Newton's housing stock, provide affordable housing choices, encourage pedestrian-oriented development with a mix of residential and business uses, and enhance the quality of life in Newtonville and Newton's village commercial centers, all in accordance with Newton's *Comprehensive Plan*.

The special permit/site plan application for the Project was filed with the City Clerk on May 9, 2016. Notice of the public hearing was published on May 24, 2016 and May 31, 2016 in *The Boston Globe*, on June 1, 2016 in the *Newton Tab*, and re-noticed and re-published on November 18, 2016, November 25, 2016, December 28, 2016, and January 4, 2016 in *The Boston Globe* and on November 23, 2016 and December 28, 2016 in the *Newton Tab*, and mailed to all parties in interest in compliance with the Newton Zoning Ordinance and M.G.L. c. 40A, Section 11. The Land Use Committee ("LUC") of the City Council opened the public hearing on June 7, 2016 and continued the public hearing on July 12, 2016, September 13, 2016, October 6, 2016, November 1, 2016, December 5, 2016, and January 12, 2017 [insert any future dates]. Over the course of the hearings presentations were made by the Petitioner and its Project team including its attorney, Stephen J. Buchbinder of Schlesinger and Buchbinder, LLP; Damien Chaviano of Mark Development, LLC; its architects, David Chilinski and Steven Allen of Prellwitz Chilinski Associates, Inc.; its landscape architect, Shauna Gillies-Smith of Ground, Inc.; its fiscal consultant, John Connery of Connery Associates; its transportation consultant, Randy Hart of Vanasse Hangen Brustlin, Inc. ("VHB"); its sustainability consultant,

Lauren Baumann, of New Ecology; and its lighting consultant, Carrie Hawley of HLB Lighting. Presentations were also made by City staff including Alexandra Ananth, Chief Planner of Current Planning for the Planning and Development Department, and the City's transportation consultant and peer reviewer, Michael Santos of Howard Stein Hudson.

The LUC received extensive oral and written testimony from the public and written reports from the City's professional consultants and various City boards, commissions, and departments, including the Planning and Development Department, the Department of Public Works, the Planning and Development Board, the Urban Design Commission and the Newtonville Area Council. During the review process, supplemental materials and testimony have been submitted in response to requests by the Council and public. All testimony, written reports, and supplemental materials prepared by the Petitioner and its consultants, and the City and its staff, consultants, boards, and commissions, as well as public testimony are included in the record of the Council's proceedings, and provide factual and technical background for the Findings and Conditions set forth within the body of this order.

Following a final presentation by the Petitioner and City staff, as well as public testimony, the public hearing was closed on January 12, 2017. On January 31, 2017, the LUC voted to recommend approval of the Project to the Council as follows: [Check final dates]

Finding that all applicable provisions of the Zoning Ordinance have been complied with and taking into consideration the testimony and evidence provided by all interested parties, the Council GRANTS approval of this Special Permit/Site Plan Approval based on the following findings, as recommended by the LUC of the Council:

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

1. The Council finds pursuant to the requirements of §4.2.1.C.1.-5. that the proposed use is not inconsistent with the purposes of the MU-4 district or the Newton *Comprehensive Plan* in that:
  - a. The Project will allow the development of buildings and uses appropriate to the Newtonville village center as described in the *Comprehensive Plan*.
  - b. The Project will better connect the businesses and residences on Washington Street and Walnut Street to that portion of Newtonville village south of the Massachusetts Turnpike.
  - c. The Project will allow sufficient density and intensity of uses through the mixture of housing and commercial uses to promote a lively pedestrian environment and streetscape throughout the day and week.
  - d. The Project will provide up to 164 mixed income rental housing units with

proximity to a variety of services and public transit, increasing the quantity and diversity of housing resources in the City.

- e. The Project is located so as to encourage both the use of public transportation and the walkability of the Newtonville area, including the village center and the surrounding amenities.
2. The Council finds that the proposed residential units fill a demonstrated and growing need for smaller, accessible, energy efficient residential units; that 15% of the units will be affordable to households earning up to 80% of Area Median Income ("AMI") (the "inclusionary units") and that an additional 10% of the units will be affordable to households earning between 80% and 120% AMI (the "middle income units"). The inclusionary units and the middle income units will sometimes be referred to hereinafter as the "deed restricted units".
3. The Council finds that the Site is an appropriate location for the proposed mixed-use building as the Project site plan maximizes the benefits of its Newtonville village location by expanding needed housing choices, diversifying commercial options in the village, connecting the Site to the village, and maximizing the number of parking stalls available on-site to the greatest extent consistent with appropriate site planning.
4. The Council finds that the use as developed and operated will not adversely affect the neighborhood as the Site will enhance the long term economic stability and vitality of the village, and will create an attractive public gathering space.
5. The Council finds that through careful attention to traffic calming design elements, particularly at the intersection of Washington Street and Walnut Street, and by providing clear visibility, wide sight lines, and pedestrian markings and improvements at the intersection of Washington Street and Walnut Street, there will be no nuisance or serious hazard to vehicles or pedestrians.
6. The Petitioner has conducted studies which concluded that the traffic implications of this Project, combined with improvements at the intersection of Washington and Walnut Street, will have a minimal impact on Newtonville.
7. The Council finds that the site planning, building design, construction, maintenance, and long-term operation of the Project will contribute significantly to the efficient use and conservation of natural resources and energy. The Project is located in a village center close to multiple transit options and with the benefits of a walkable village center. The buildings have been designed to be LEED certified for Neighborhood Development at the Gold Level. The buildings provide smaller, energy-efficient residential units.
8. The Council finds that the proposed redevelopment of the site will facilitate the environmental cleanup of the site in accordance with state regulations and a Soil Management Plan will be prepared and submitted to the City to document soil cleanup.

9. The Council finds that 24 fully accessible/adaptable inclusionary units and another 16 fully accessible/adaptable middle income units will be created by the Project, and that the other 124 fully accessible/adaptable market rate dwelling units will add to the diversity of Newton's housing stock, thereby increasing housing choices and opportunities in the City.

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

10. The Council finds that the Site is an appropriate location for retail sales over 5,000 square feet, restaurants with more than 50 seats, personal service over 5,000 square feet, standalone ATMs, health club above the ground floor, animal services, and street-level office uses, as the proposed uses are appropriate for the commercial center of the village and will encourage an active, pedestrian-oriented streetscape throughout the day and week, fill a demonstrated need for the uses within the vicinity, and are consistent with the purposes of the MU-4 district and the *Comprehensive Plan*.

With regard to the special permit to allow a building in excess of 20,000 square feet of gross floor area, pursuant to §4.2.2.B.1.:

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

With regard to the special permit to allow a building height of 60 feet and 5 stories, pursuant to §4.2.5.A.2.:

12. The Council finds that the building height of 60 feet and 5 stories will not adversely affect the neighborhood as the proposed structure is compatible in visual scale to its surroundings, does not adversely affect its surroundings by creating shadows or blocking views of surrounding properties, and advances the purposes of the MU-4 district. The height is in keeping with existing landmarks in Newtonville including the Masonic Hall and the Swedenborgian Church, and the height and number of stories are allowable by special permit in the MU-4 district.

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

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

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

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

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

15. The Council finds that the proposed setback of \_\_\_\_\_ feet on Washington Street, \_\_\_\_\_ feet on Walnut Street, and \_\_\_\_\_ feet on Washington Terrace can better protect the surrounding community from shadows and blocked views, support pedestrian vitality, and encourage the purposes of the MU-4 district. [Include portions of the building that exceed 40 ft and do not meet setback.]

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

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

With regard to special permits for the number of parking stalls and various requirements for the design of parking facilities, pursuant to §5.1.4.A.; §5.1.4.C.; §5.1.8.A.; §5.1.8.B.1.2.; §5.1.9.B.; §5.1.10.; §5.1.12.; and §5.1.13.:

17. The Council finds that exceptions to the parking requirements, including a waiver for not more than 97 required parking stalls, to locate parking within a setback, and within five feet of a residential structure, to waive the dimensional requirements for some parking stalls, to waive the screening requirements for parking lots, to waive the interior landscaping requirements, and to waive the off-street loading requirements, are in the public interest and that such exceptions are in the interest or protection of environmental features for the following reasons:
  - a) The Project will provide 243 parking stalls in the underground garage and 109 parking stalls above ground. Six (6) handicap stalls will be provided in the outdoor parking lot and 7 additional handicap stalls will be provided in the underground garage. A total of X parking stalls (two stalls per dwelling unit and stalls for the commercial space) would be required without a waiver. The Petitioner is proposing 1.25 parking stalls per residential unit and a 1/3 reduction of the commercial parking requirement in addition to a waiver not to exceed 97 stalls.

- b) The parking for the market rate residential units will be charged separately and in addition to the rent so as to reduce demand for parking by the market rate residential units. The rent for the affordable units will include one parking stall at no additional charge for those households with a car. Recent parking utilization studies of other comparable multi-family projects in Newton have shown a parking utilization rate of less than 1.25 stalls per unit and the Project is within walking distance of the Newtonville commuter rail station, MBTA bus routes, and a broad spectrum of neighborhood amenities. The relatively small average size of the units will likely attract tenants disposed to use public transportation or more likely to have only one automobile per unit, making a parking waiver appropriate at this site. Covered bicycle parking will also be provided in the below-grade garage to encourage the use of alternative modes of transportation and the Petitioner will seek to have car-sharing services provided on-site.
- c) The commercial and residential uses are complementary and will allow for some coordinated or shared usage of the garage at different times by commercial tenants and residential users. Accordingly, the Council concludes that the number of parking stalls required by the Zoning Ordinance would be more than necessary to meet the realistic demand for parking that could be expected to be generated at the Project.
- d) The location of parking within setbacks and within five feet of a residential structure makes for the most efficient layout of the parking lot and helps to maximize the number of stalls that will be available.
- e) The allowance for reduced size of parking stalls will not create a nuisance or hazard to vehicles because the stalls will be well marked as intended for use by smaller vehicles, will be uniform in size to the extent possible, and larger stalls are available to accommodate larger vehicles. A turning template has been presented that provides evidence that maneuvering aisles and the parking stalls are substantially consistent with many other parking facilities in Newton, and many surrounding communities allow for similarly sized parking stalls.
- f) The Petitioner will dedicate at least two stalls to Zipcar or other similar services, will install charging stations for electric vehicles both in the surface lot and in the garage, and will have at least 30 at-grade bike parking stalls and covered bike storage for at least 160 bicycles in the garage below. With respect to the screening of the parking lot and interior landscaping, the Council finds that the waiver helps maximize the number of parking stalls that will be available to the public, and that a sufficient number of trees will be added to the Site in more perimeter locations so as to improve the streetscape, perimeter screening, and public plaza area.

- g) The waiver for off-street loading facilities is justified as turning templates show that the building can be serviced by larger vehicles.

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

- 18. The Council finds that the nature of the use of the premises, the architecture of the buildings, and the project's location at the intersection of Washington Street and Walnut Street, justifies exceptions to the limitations imposed by §5.2 on the number, size, location, and height of signs.

With regard to the site plan approval criteria under §7.4.5.B.1.-8.:

- 19. The Council finds that the Project has been designed to ensure the safety of vehicular and pedestrian movement within the Site and in relation to adjacent streets, properties, and improvements for the following reasons:
  - a) Access driveways have been designed with pedestrian safety and vehicular sight lines in mind including stop signs, open viewing, low planters, and generous sidewalks.
  - b) A sufficient number of handicap stalls are provided in both the outdoor parking lot and the garage. The final location of such stalls may be adjusted slightly based on projected demand and state and local requirements.
- 20. The Council finds the methods for disposal of waste and methods of regulating surface water drainage are adequate for the following reasons:
  - a) The City Engineering Division has reviewed submitted plans and raised no major concerns with respect to this Project. The Engineering Division will review any plans submitted for building permits for compliance with City of Newton Engineering Division design standards prior to the issuance of any permits.
  - b) The Petitioner will be making a \$782,880 contribution to the City of Newton for inflow and infiltration ("I and I"). [Condition how it gets paid.]
- 21. The Council finds that the provision for on street and off-street loading facilities is sufficient for the servicing of the building.
- 22. The Council finds that parking is sufficiently screened so as to not detract from the streetscape and public plaza environment.
- 23. The Council finds that the Project has avoided unnecessary topographical changes, and that the installation of the building foundation/garage should not negatively impact abutters. Additionally, proposed landscaping will enhance the Site and streetscape.
- 24. The Council finds that the Project utility lines will be undergrounded from the street to



the buildings.

25. The Council finds that the proposed site design is appropriate in the context of the neighborhood and will serve to connect the Site to the village by designing interconnected buildings with an active pedestrian level that will be enticing to Newtonville residents and fill a void in the streetscape. The Petitioner has incorporated a number of building treatments and design elements that enhance the appearance of the structure, including articulating the façade and setting the fifth story back from the street in certain locations. The height of the structure is in keeping with surrounding buildings including the Masonic Hall and the Swedenborgian Church.
26. The Council finds that no historical resources currently exist on the Site.
27. In light of the findings set forth above and the following conditions imposed by this Council Order, the City Council finds that the public convenience and welfare of the City will be served, and the criteria of §4.2.1.C. 1.-5.; §4.2.2. B. 1.; §4.2.5.A; §4.2.5. A. 1.-4. and 6; §5.1.4. A; §5.1.4. C.; §5.1.8.A.; §5.1.8. B. 1., and 2.; §5.1.9. B.; §5.1.10.; §5.1.12.; §5.1.13.; and §7.4.5. B. 1.-8. for granting special permits/site plan approval will be satisfied.

PETITION NUMBER: #179-16

PETITIONER: Mark Newtonville, LLC

LOCATION: 22 Washington Terrace, 16-18 Washington Terrace, 10-12 Washington Terrace, 6-8 Washington Terrace, 875 Washington Street, 869 Washington Street, 867 Washington Street, 861-865 Washington Street, 857-859 Washington Street, 845-855 Washington Street, 245-261 Walnut Street (a/k/a 835-843 Washington Street), 241 Walnut Street, 22 Bailey Place, 14-18 Bailey Place, and an unnumbered lot on Bailey Place, also identified as Section 21, Block 29, Lots 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 19A, 20, 21, 22, and 23, Ward 2, currently zoned Business 1, Business 2, and Public Use

OWNER: Mark Newtonville, LLC, Mark Lolich, LLC, and Sunoco, LLC

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

TO BE USED FOR: A mixed use development in excess of 20,000 square feet consisting of three interconnected buildings with building heights of not more than 60 feet and five stories, total gross floor area not exceeding 235,000 square feet incorporating up to 164 residential units, not exceeding 45,000 square feet of commercial space, not less than 2,000 square feet of community space, not less than 350

on-site parking stalls outside at grade or within a below-grade garage, and related site improvements; to authorize uses including retail of more than 5,000 square feet, personal service of more than 5,000 square feet, restaurants over 50 seats, standalone ATMs, health club establishments at or above ground floor, animal service, and street level office

CONSTRUCTION: Masonry structure over a structural steel and concrete base

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

ZONING: MU-4

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping, and other site features associated with this Special Permit/Site Plan Approval shall be located and constructed consistent with the plans identified in Schedule B and which are hereby incorporated by reference.
2. This Special Permit/Site Plan Approval shall be deemed to have been (i) vested, for the purposes of utilizing the benefits of the change of zone authorized by Council Order #180(2)-16, upon the submission to the City of an application for a building permit for all or any portion of the Project; and (ii) vested and exercised, with respect to the entire Project, once construction under this Special Permit/Site Plan Approval has begun for any portion of the Project.
3. The Petitioner shall merge the existing parcels to one new lot within 30 days from the issuance of a building permit.
4. The Petitioner shall, prior to the issuance of a final certificate of occupancy, make payments to the City as follows: (a) an amount of \$782,880 \_\_\_\_\_ for I and I improvements; (b) perform off-site improvements as described in Schedule C, the estimated cost of which is \$700,000; and (c) fund a Transportation Demand Management ("TDM") program with \$300,000. The details of the pilot program are set forth in Schedule D.
5. To the extent permitted by applicable regulations of the Department of Housing and Community Development ("DHCD"), at least 15% of the up to 164 residential units shall be eligible for listing on the State's Subsidized Housing Inventory.
6. The Project shall include 15% income restricted units (the "inclusionary units") that shall be made available to households earning up to 80% of AMI, as designated by HUD,

adjusted to family size. Monthly housing costs (inclusive of utilities) shall not exceed 30% of the applicable monthly income limit for that unit with adjustment for bedroom number, in accordance with DHCD requirements for eligibility on the SHI. The maximum local preference as permitted by DHCD and applicable law shall be provided. The Project shall further include 10% income restricted units (the "middle income units") that shall be made available to households earning between 80% and 120% of AMI, as designated by HUD, adjusted to family size.

7. The marketing and resident selection process for the deed restricted units shall be consistent with the "Guidelines for Uniform Local Resident Preferences in Affordable Housing" prepared by the City's Fair Housing Committee. That process shall be consistent with the provisions of §5.11.9. of the Newton Zoning Ordinance, and is intended as a standard provision for all Newton housing programs.
8. The 10% middle income units (restricted to households earning between 80% and 120% of AMI) shall be permanently restricted and shall be subject to a Regulatory Agreement with the City.
9. Specify number of 3BR units (break down by AMI)
10. The Petitioner shall make improvements to the intersection of Washington Street and Walnut Street as described on Schedule E attached hereto at the Petitioner's sole cost and expense based upon plans reviewed and approved by the Director of Planning and Development, the Director of Public Works, and the City Engineer, who shall also inspect and approve the improvements upon completion.
11. Streetscape and intersection improvements to Walnut Street and Washington Street shall be reviewed and approved by the Director of Planning and Development, the Director of Public Works, and the Director of Transportation for consistency with the Newtonville Streetscape Project south of the Massachusetts Turnpike and the City's Complete Streets Policy.
12. The Petitioner shall construct bike lanes on both sides of Walnut Street from Foster Street south over the Massachusetts Turnpike bridge to Newtonville Avenue. (and along both sides of Washington Street from Lowell Avenue to Walnut Street?)
13. At least 2,000 square feet of community space shall be made available for use by the Newton Arts Center (the "NAC") (or its successor and local nonprofits and the public. The NAC shall manage the community space.

#### **Conditions related to construction**

14. All construction activity shall be limited to 7AM-6PM Monday through Friday and 8AM-5PM on Saturdays excluding holidays, unless extended by the Commissioner of

Inspectional Services with any additional required approvals. Interior work may occur at other times when the building is fully enclosed.

15. The Petitioner shall communicate regularly with the Newtonville Area Council during construction as appropriate.
16. The Petitioner shall comply in all material respects with the final Construction Management Plan to be submitted for review and approval to the Commissioner of Inspectional Services, in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public Works, and the City Engineer. The Final Construction Management Plan shall include, but not be limited to, the following provisions:
  - a. The proposed schedule of the Project, including the general phasing of the construction activities.
  - b. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for delivery vehicles, and location of any security fencing.
  - c. Proposed truck route(s) that minimize travel on local streets.
  - d. Proposed methods for dust control including but not limited to: covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; and locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the Site.
  - e. Proposed methods of noise control, in accordance with the City of Newton's Ordinance. Staging activities should be conducted in a manner that will minimize off-site impacts of noise. Noise producing staging activities should be located as far as practical from noise sensitive locations.
  - f. A plan for rodent control during construction.
  - g. 24-hour contact information for the general contractor of the Project. This contact information shall be provided to the Commissioner of Inspectional Services and to the Newton Police Department.
17. The Petitioner shall be responsible for securing and paying police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
18. The Petitioner shall be responsible for repairing any damage to public ways caused by any construction vehicles. All repair work shall be done prior to the issuance of a final Certificate of Occupancy, unless the Commissioner of Public Works determines that the damage to the public way is so extensive that it limits the use of the public way. In such case the repair work must be initiated within one month of the Commissioner making

such determination and shall be conducted consistent with City Construction Standards, and shall be completed within an appropriate time frame, as determined by the Commissioner.

19. The Project's utility service lines along the Project's frontage on Washington Street and Walnut Street shall be located underground from existing poles, subject to necessary approvals from utility companies.
20. The Petitioner shall make every effort to utilize building materials and systems that comply with US EPA "Energy Star" standards, and at a minimum, all new appliances installed shall meet the US EPA "Energy Star" standard.

**Conditions precedent to the issuance of any building permit**

16. 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 Council order with the Registry of Deeds for the Southern District of Middlesex County.
  - b. Filed a copy of such recorded Council order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
  - c. Obtained a written statement from the Department of Planning and Development that confirms the final building permit plans are consistent with plans approved in Condition #1.
  - d. Submitted a final Inclusionary Housing Plan for review by the Director of Planning and Development. [Or reference as Schedule F][?]
  - e. Director of Planning and Development that is certified as compliant by the Director of Planning and Development with the information required to be included in such Plan pursuant to §5.11.9. of the Zoning Ordinance.
  - f. Submitted final engineering, utility, and drainage plans, and an Operations and Maintenance plan for Stormwater Management, for review and approval by the City Engineer. A statement certifying such approval shall have been filed with the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.
  - g. Submitted a final Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public Works, the City Engineer, and the Director of the Transportation Division of Public Works.
  - h. Submitted sample building façade materials and colors for review and approval by

the Director of Planning and Development.

**Conditions precedent to the issuance of any occupancy permits**

17. No occupancy permit for the use covered by this Special Permit/Site Plan approval shall be issued until the Petitioner has:
  - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect and civil engineer certifying compliance with Condition #1.
  - b. Submitted to the Department of Inspectional Services, the Department of Planning and Development, and the Engineering Division a final as-built survey plan in digital format.
  - c. Completed all landscaping in compliance with Condition #1.
  - d. There shall have been filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details have been constructed to standards of the City of Newton Public Works Department.
  - e. A final environmental report documenting that the site is sufficiently clean for residential use shall be submitted to the Director of Planning and Development.
  - f. There shall have been filed with the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number, and type of plant materials, final landscape features, fencing, and parking areas.
  - g. The Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the building constructed subject to this special permit prior to installation of landscaping or exterior hardscape improvements required in Condition 24 c. and d., provided the Petitioner shall first have filed with the Director of Planning and Development a bond, letter of credit, cash, or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining site improvements to ensure their completion.

**Ongoing Conditions to be in effect for so long as this Special Permit/Site Plan Approval is exercised.**

18. The cost of residential tenant parking shall be charged separately from residential tenant rents so as to minimize car ownership by residential tenants, provided, however, that one parking stall shall be provided for the household of each rent restricted unit which needs a parking stall without charge to the tenant of such unit.
19. All landscaping associated with this Special Permit/Site Plan Approval shall be maintained in good condition. Any plant material that becomes diseased or dies shall be replaced on an annual basis with similar material.

20. The Petitioner shall be responsible at its sole cost for trash and recycling disposal for the Project. The trash and recycling disposal shall be scheduled at such times to minimize any disruption of the on-site parking.
21. Managed or valet parking is permitted pursuant to a professionally-prepared Parking Management Plan, which shall be maintained on file and available for review upon request by the Director of Planning and Development or the Director of the Transportation Division of Public Works. Valet parking must be kept within the Project site.
22. **Post occupancy after studies, traffic, TDM, LEED for Neighborhood Development Certification**
23. No changes to the Project shall be permitted, except as otherwise set forth in this Special Permit/Site Plan Approval, unless they are consistent with the Special Permit Plan Set. Consistency determinations shall be subject to review and approval by the Commissioner of Inspectional Services but shall not require approval of the Council. When making a request for a consistency determination, the Petitioner shall submit updated construction sequencing plans and a memorandum for the Commissioner of Inspectional Services demonstration that such changes (i) do not constitute a reallocation or reconfiguration of square footage among uses in the Project or otherwise allowed in the BU-4 district such that no increase in the parking waiver approved hereunder is required; (ii) do not require a new type of zoning relief (other than the categories of relief granted and/or modified pursuant to the Special Permit/Site Plan Approval; and (iii) maintain the same percentage of useable open space as shown on the Special Permit Plan Set. If the Commissioner of Inspectional Services grants any consistency ruling pursuant to this Condition, he shall provide a copy to the Land Use Committee of the Council. The Land Use Committee shall not be required to vote or to approve the consistency request.

SCHEDULE A

Relief Sought

**Dimensional Standards**

1. development of more than 20,000 square feet pursuant to Section 4.2.2.B.1
2. lot area less than 1,000 square feet per unit pursuant to Section 4.2.5.A.3
3. building height of 60' pursuant to Sections 2.2.3 and 4.2.5.A.2
4. 5 story building pursuant to Section 4.2.3 and 4.2.5.A.2
5. floor area ratio of not more than 1.90 pursuant to Section 4.2.3

**Design Standards**

6. waiver of the height setback requirement of Section 4.2.5.A.4.c for buildings greater than 40' pursuant to Section 4.2.5.A.4
7. waiver of the transparency and entrance requirements of Section 4.2.5.A.6.a-c

**Uses**

8. retail sales use of over 5,000 square feet pursuant to Section 4.4.1
9. restaurant of over 50 seats pursuant to Section 4.4.1
10. personal service use of over 5,000 square feet pursuant to Section 4.4.1
11. standalone ATM pursuant to Section 4.4.1
12. health club at or above ground floor pursuant to Section 4.4.1
13. animal services pursuant to Section 4.4.1

**Parking Facility**



14. 1.25 parking stalls per residential unit pursuant to Section 5.1.4.A
15. reduction of the overall parking requirement by 1/3 pursuant to Section 5.1.4.C
16. waiver of 97 parking stalls pursuant to Section 5.1.13
17. waiver of the parking stall dimensions required by Sections 5.1.8.B.1 and 2
18. waiver of parking stall setback requirements pursuant to Section 5.1.8.A
19. waiver of dimensional requirements for entrance and exit driveways pursuant to Section 5.1.8.D
20. waiver of end stall maneuvering space requirements of Section 5.1.8.B.6
21. waiver of the 5% interior landscaping requirement of Section 5.1.9.B.1
22. waiver of the interior planting area requirements of Section 5.1.9.B.2
23. waiver of the tree requirements of Section 5.1.9.B.3
24. waiver of the bumper overhang requirements of Section 5.1.9.B.4
25. waiver of the 1-foot candle lighting requirements of Section 5.1.10.A.1
26. waiver of the curbing, wheel stop, guard rail or bollard requirements of Section 5.1.10.B.5
27. waiver of the number of off-street loading facilities required pursuant to Section 5.1.12
28. waiver of the number, size, location and height of signs pursuant to Section 5.2.13

SCHEDULE B

Plans

DRAFT

SCHEDULE C

\$700,000 of Improvements

DRAFT

SCHEDULE D

Transportation Demand Management Plan ("TDM")

DRAFT

SCHEDULE E

Washington Street and Walnut Street Intersection Improvements

DRAFT