



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

James Freas  
Acting Director

---

**PUBLIC HEARING MEMORANDUM**

Public Hearing Date: April 12, 2016  
Land Use Action Date: June 14, 2016  
City Council Action Date: June 20, 2016  
90-Day Expiration Date: July 11, 2016

DATE: April 8, 2016

TO: City Council

FROM: James Freas, Acting Director of Planning and Development  
Alexandra Ananth, Chief Planner for Current Planning  
Michael Gleba, Senior Planner 

SUBJECT: **Petition #99-16**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to extend a non-conforming structure with respect to the front setback, FAR, lot coverage and open space at 360 Ward Street, Ward 7, Chestnut Hill on land known as SBL 73 45 01A containing approximately 3,220 sq. ft. of land in a district zoned Single Residence 2. Ref: Sec. 3.1.3, 7.8.C.2, 3.1.9.A.2, 5.4.2.B, 7.3.3, 7.4 of Chapter 30 of the City of Newton Rev Zoning Ord., 2015.

---

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



**360 Ward Street (left side)**

## **EXECUTIVE SUMMARY**

The property at 360 Ward Street is located at the curve of Ward Street and Westbourne Road in a Single Residence 2 zoning district in Chestnut Hill. The lot consists of 3,320 square feet and is improved with a single-family attached dwelling constructed in 1920. The structure shares a party wall with another single-family dwelling located on the adjacent lot at 362 Ward Street.

The site presently has a one-car garage which is difficult to use due to the configuration of the site. The applicants propose to re-orient the garage to face the street, and add and utilize basement space to create a two-car garage. The existing driveway off of Westbourne Road will be enlarged to accommodate the new garage.

The existing dwelling structure is 9.42 feet from Westbourne Road, where a 25 foot front setback is required. The proposed addition will further decreasing the nonconforming front setback to 7.67 feet. The site's existing nonconforming FAR of 0.75 would further increase to 0.79, where 0.46 is the maximum allowed. The construction of the proposed garage would further decrease the existing nonconforming open space from 38% to 35% where the minimum required is 50% requiring a special permit. The intensification of these three nonconformities require special permits.

Furthermore, to accommodate vehicular access to the reoriented and expanded garage, a retaining wall with a maximum height of six feet is proposed within the front setback, requiring a special permit.

The Planning Department is generally not concerned with the construction of the proposed addition and creation of a retaining wall at this single-family dwelling located in a neighborhood of other similarly-scaled dwellings. The proposed addition is partially below an existing raised deck, with the rest serving to "square off" the basement level of the home. Because of the sloping nature of the site, the addition will largely be hidden from Ward Street. However, since the proposed addition and retaining wall will be visible from Westbourne Road, the Planning Department recommends that landscape screening be installed to limit the visual impact.

### **I. SIGNIFICANT ISSUES FOR CONSIDERATION:**

When reviewing this request, the Council should consider whether:

- The proposed reduction of the nonconforming front setback from 9.4 feet to 7.6 feet will not be substantially more detrimental than the existing nonconforming use to the neighborhood (§3.1.3 and §7.8.2.C.2)
- The proposed increase in FAR from 0.75 to 0.79 where 0.46 is the maximum allowed by right, is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood. (§3.1.9.A.2 and §7.8.2.C.2)
- The proposed reduction of the nonconforming open space from 38% to 35%, will not be substantially more detrimental than the existing nonconforming structure to the neighborhood (§3.1.3 and §7.8.2.C.2)

- The proposed retaining wall will not adversely affect the neighborhood. (§5.4.2.B and §7.3.3.C.2)

## I. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The property is located at the curve of the intersection of Ward Street and Westbourne Road in Chestnut Hill (**Attachment A**). The site and surrounding area are zoned Single Residence 2 except for the area immediately to the west across Francis Street and south of Ward Street which is zoned Multi-Residence 2 (**Attachment B**).

### B. Site

The lot consists of 3,320 square feet and is improved with a single-family attached dwelling constructed in 1920. The structure shares a party wall with another single-family structure located on the adjacent lot to the west.

The single family home is a wood frame structure on a concrete slab and foundations. The sited slopes downward from north to south. Auto access to the current basement level garage is provided by an asphalt driveway from Westbourne Road to the current single garage door on the south elevation of the home. The remaining portions of the site are landscaped with some shrubbery, including a line of shrubs along the sidewalk at the intersection of Ward Street and Westbourne Road. There is no screening along the property line with the neighboring two-family home at 7 Westbourne Road.

## II. PROJECT DESCRIPTION AND ANALYSIS

### A. Land Use

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

### B. Building and Site Design

The current structure includes a one-car garage located on the basement level which the petitioner asserts is difficult to use due to the configuration of the site. The applicants propose to re-orient the garage to face the street and add a second bay. No additional living space will be created, but the roof of the expanded garage will be used as a deck/circulation space connecting two exterior doors on the first floor.

The existing driveway off of Westbourne Road will be enlarged to accommodate the new garage by excavating a portion of the front yard. The new garage space will add approximately 265 square feet to the house. The excavation and resulting change of grade of the front yard will require the construction of a retaining wall just inside the property line at the sidewalk. The wall measures six feet at its highest and will be

surmounted by a three foot seven inch high metal picket fence.

C. Parking and Circulation

The petitioners are proposing to provide two vehicle spaces within the expanded and reoriented garage accessed via the short driveway off Westbourne Road.

D. Landscape, Lighting and Signage

The project will require the excavation of a portion of the front yard to provide driveway access to the re-oriented garage. As this will necessitate the removal of several shrubs along sidewalk and there is currently no screening between the existing driveway and the adjacent property at 7 Westbourne Road, the Planning Department recommends the installation of additional screening in both locations.

III. TECHNICAL REVIEW

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

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

- §3.1.3 and §7.8.C.2 to extend an attached single-family dwelling with a nonconforming front setbacks
- §3.1.9.A.2 and §7.8.C.2 to further increase the nonconforming Floor Area Ratio (FAR)
- §3.1.3 and §7.8.C.2 to further decrease the nonconforming open space
- §5.4.2.B to allow a retaining wall in excess of 4 feet in a setback

B. Engineering Review

No engineering review is required at this time. The Engineering Division of Public Works will review this project for conformance with the City of Newton Engineering Standards prior to the issuance of a building permit for the proposed addition should this project be approved.

IV. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time. The petitioners should consider adding landscaping and screening along the sidewalk adjacent to the expanded and along the property line shared with 7 Westbourne Road.

**ATTACHMENTS:**

- Attachment A:** Land Use Map
- Attachment B:** Zoning Map
- Attachment C:** Zoning Review Memorandum
- Attachment D:** Draft Board Order





# Land Use Map 360 Ward St.

City of Newton,  
Massachusetts

### Legend

#### Land Use

#### Land Use

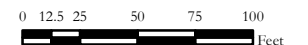
-  Single Family Residential
-  Multi-Family Residential
-  Nonprofit Organizations
-  Vacant Land

**Attachment A**



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

CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield






Map Date: April 08, 2016



# Zoning Map 360 Ward St.

City of Newton,  
Massachusetts

**Legend**

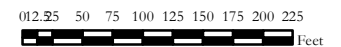
-  Single Residence 2
-  Multi-Residence 1
-  Public Use

**Attachment B**

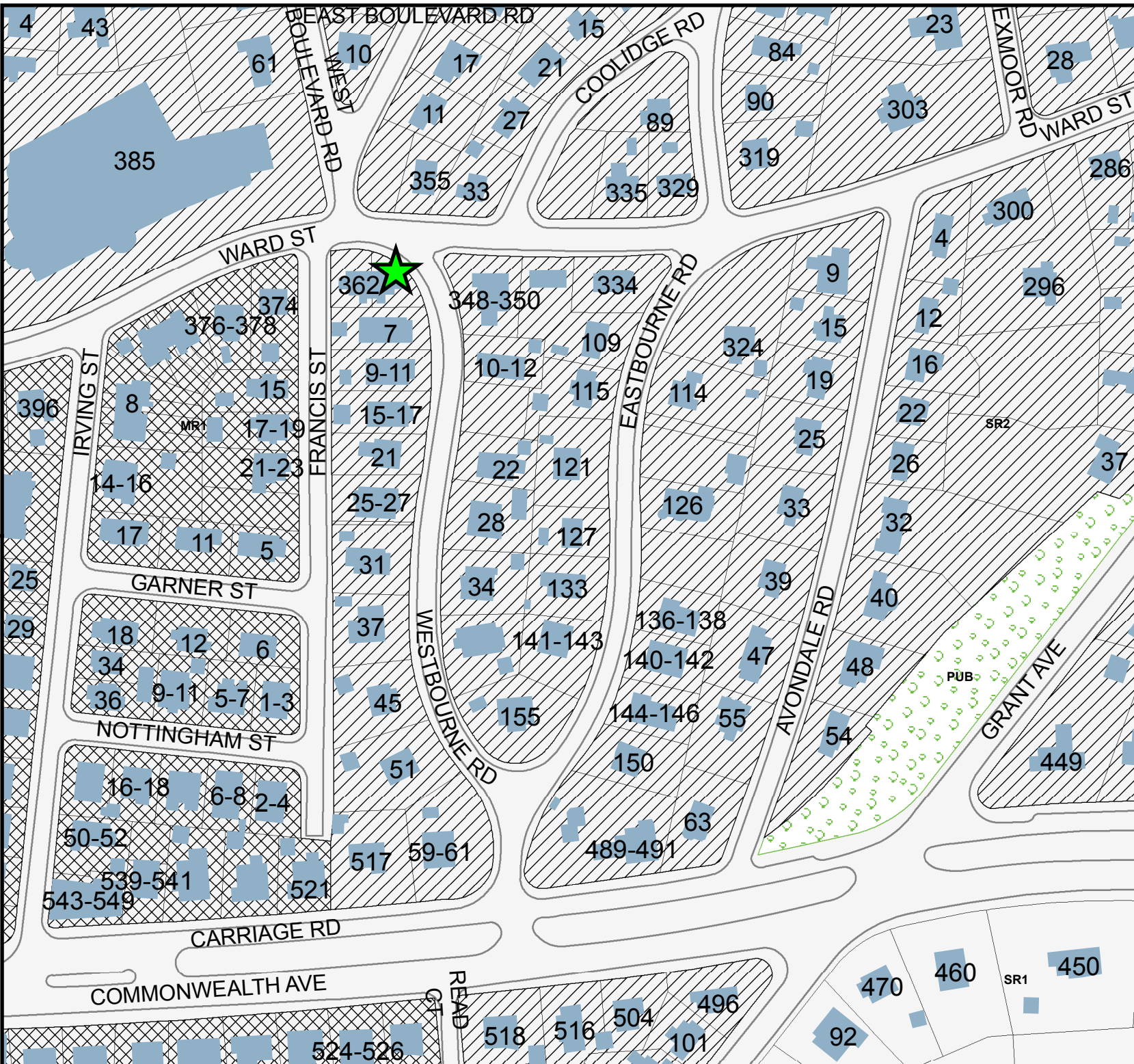


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield



Map Date: April 08, 2016





Setti D. Warren  
Mayor

## ATTACHMENT C

**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

James Freas  
Acting Director

### ZONING REVIEW MEMORANDUM

Date: March 15, 2016

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Alexandra Ananth, Chief Planner for Current Planning

Cc: Sasson and Sabrina Shemesh, applicants  
James Freas, Acting Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Request to extend a nonconforming structure with respect to front setback, FAR, lot coverage and open space**

Applicant: Sasson and Sabrina Shemesh	
Site: 360 Ward Street	SBL: 73045 0001A
Zoning: SR-2	Lot Area: 3,220 square feet
Current use: Single-family dwelling	Proposed use: No change

#### BACKGROUND:

The property at 360 Ward Street is located at the curve of Ward Street and Westbourne Road in the Single Residence 2 zoning district. The lot consists of 3,320 square feet and is improved with a single-family attached dwelling constructed in 1920. The structure shares a party wall with a second single-family structure located on the adjacent lot.

The site presently has a one-car garage which is not useable due to the configuration of the site. The applicants propose to re-orient the garage to face the street, and add a second bay to create a two-car garage. The existing driveway off of Westbourne Road will be enlarged to accommodate the new garage.

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

- Zoning Review Application, prepared by Sasson Shemesh, applicant, submitted 9/23/2015
- FAR Worksheet, submitted 9/23/2015
- Plot Plan, signed and stamped by Antoni Szerszunowicz, surveyor, dated 9/17/2015
- Photos, submitted 9/23/2015



**ADMINISTRATIVE DETERMINATIONS:**

1. The existing dwelling structure is 9.42 feet from Westbourne Road, where Section 3.1.3 requires a 25 foot front setback. The applicant intends to add to and utilize some basement space and the existing garage space to create a two-car garage. The additional 265 square feet of the garage further extends the nonconforming front setback to 7.67 feet, requiring a special permit pursuant to Section 7.8.C.2.
2. The applicants' existing nonconforming FAR is .75, where .46 is the maximum allowed per Section 3.1.9. The proposed garage adds an additional 265 square feet, creating an FAR of .79. A special permit to further increase the nonconforming FAR is required per Sections 7.8.C.2 and 3.1.9.A.2.
3. The existing nonconforming lot coverage on the site is 32%, where maximum allowed is 30% pursuant to Section 3.1.3. The construction of the proposed garage further increases the nonconforming lot coverage to 41%. Pursuant to Section 1.5.2, lot coverage requirements do not apply for the erection of a garage accessory to a single-family dwelling in existence on December 27, 1922. The subject dwelling was constructed in 1920, no relief is required.
4. The existing nonconforming open space is 38%, where the minimum required is 50% per Section 3.1.3. The construction of the proposed garage further decreases the nonconforming open space to 35%, requiring a special permit per Section 7.8.C.2.
5. To accommodate the construction of the garage, a retaining wall with a maximum height of 6 feet is proposed within the front setback. Pursuant to Section 5.4.2.B, placement of a retaining wall in excess of 4 feet in a setback requires a special permit.

SR2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	<b>3,220 square feet</b>	<b>No change</b>
Frontage	80 feet	<b>40 feet</b>	<b>No change</b>
Setbacks			
• Front	25 feet	<b>9.42 feet</b>	<b>7.67 feet</b>
• Side	7.5 feet	<b>0 feet</b>	<b>No change</b>
• Rear	15 feet	<b>9.4 feet</b>	<b>No change</b>
FAR	.46	<b>.75</b>	<b>.79</b>
Max Lot Coverage	30%	<b>32%</b>	<b>41%</b>
Min. Open Space	50%	<b>38%</b>	<b>35%</b>

1. See "Zoning Relief Summary" below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.3 §7.8.C.2	To extend an attached single-family dwelling which is nonconforming due to front setbacks	S.P. per §7.3, §7.4
§7.8.C.2 §3.1.9.A.2	To further increase the nonconforming FAR	S.P. per §7.3.3
§3.1.3 §7.8.C.2	To further decrease the nonconforming open space	S.P. per §7.3.3
§5.4.2.B	To allow a retaining wall in excess of 4 feet in a setback	S.P. per §7.3.3

CITY OF NEWTON

IN CITY COUNCIL

April 19, 2016

ORDERED:

That the City Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to extend a non-conforming structure with respect to front setback, floor area ratio (FAR), lot coverage and open space, and to allow for a retaining wall in a front setback, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Marc Laredo:

1. The site is an appropriate location for the proposed garage addition and retaining wall given its sloped topography. (§7.3.3.C.1.)
2. The proposed addition and retaining wall will not adversely affect the neighborhood, as it will be located largely under an existing raised deck and largely shielded by the site's sloped topography. (§7.3.3.C.2.)
3. The proposed extension of the nonconforming structure with regard to front setback, floor area ratio (FAR), lot coverage and open space will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood as it will add only 268 square feet to the existing dwelling and will be largely hidden by an existing raised deck and the topography of the site (§3.1.3 and §7.8.2.C.2.)
4. The existing dwelling extended with the proposed addition that will increase the site's existing nonconforming FAR of 0.75 to 0.79 where 0.46 is the maximum allowed will be consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood. (§3.1.9.)
5. There will be no nuisance or serious hazard to vehicles or pedestrian as the width of existing driveway entrance will remain unchanged. (§7.3.3.C.3)

PETITION NUMBER: #99-16

PETITIONER: Benjamin Ber

LOCATION: 360 Ward Street, on land known as Section 73, Block 45 Lot 1A, containing approximately 3,220 square feet of land

OWNER: Sasson Shemesh

ADDRESS OF OWNER: 360 Ward Street  
Newton, MA

TO BE USED FOR: Attached Single-Family Residence

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.3 and §7.8.C.2 to extend an attached single-family dwelling which is nonconforming due to front setbacks;  
§3.1.9. and §7.8.2.C.2., to further increase a nonconforming structure with respect to FAR;  
§3.1.3 and §7.8.C.2., to further decrease the nonconforming open space;  
§5.4.2.B to allow a retaining wall in excess of 4 feet in a setback.

ZONING: Single Residence 2 district

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
  - a. A set of plans entitled "Alterations and Additions to Shemesh Residence, 360 Ward Street, Newton," prepared by Neh-Koo-Dah, Boston, Massachusetts:
    - i. Cover Sheet (G 001), dated March 15, 2016;
    - ii. Architectural Site Plan (AS 101), dated March 15, 2016;
    - iii. Basement Plan (A 101), dated March 15, 2016;
    - iv. First Floor Plan (A 102), dated March 15, 2016;
    - v. Second Floor Plan (A 103), dated March 15, 2016;
    - vi. Second Floor Plan (A 103), dated March 15, 2016;
    - vii. Roof Plan (A 104), dated March 15, 2016;
    - viii. Elevations (A 201), dated March 15, 2016;
    - ix. Elevations (A 202), dated March 15, 2016.
2. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:
  - a. Recorded a certified copy of this order for the approved Special Permit/Site plan with the Registry of Deeds for the Southern District of Middlesex County.

- b. Filed a copy of such recorded order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
  - c. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the final site plan.
  - d. Filed a final Landscape Plan to the Director of Planning and Development for review and approval.
  - e. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
3. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
  - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect and certifying compliance with Condition #1.
  - b. Filed with the Clerk of the Board, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that improvements authorized by this Order have been constructed to the standards of the City of Newton Engineering Department.
  - c. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services, final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.
4. Notwithstanding the provisions of Condition #3 above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the buildings prior to installation of final landscaping provide that the petitioner shall first have filed 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.
5. The landscaping shown on the approved final Landscape Plan shall be maintained in good condition. The plantings shall be inspected annually and any plant material that becomes diseased or dies shall be replaced in a timely manner with similar material.