



**City of Newton, Massachusetts**  
Department of Planning and Development  
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**#263-19**  
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Ruthanne Fuller  
Mayor

Barney Heath  
Director

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**PUBLIC HEARING MEMORANDUM**

Public Hearing Date: September 11, 2019  
Land Use Action Date: November 12, 2019  
City Council Action Date: November 18, 2019  
90-Day Expiration Date: December 10, 2019

DATE: September 6, 2019

TO: City Council

FROM: Barney Heath, Director of Planning and Development  
Jennifer Caira, Chief Planner for Current Planning  
Michael Gleba, Senior Planner

SUBJECT: **Petition #263-19** for SPECIAL PERMIT/SITE PLAN APPROVAL to further extend the nonconforming three-story dwelling by razing an existing deck and constructing a three-story side addition at **28 East Boulevard Road**, Ward 7, Newton Centre, on land known as Section 73 Block 33 Lot 32, containing approximately 11,301 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 7.4, 3.1.3, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

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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.



**28 East Boulevard Road**

### EXECUTIVE SUMMARY

The property at 28 East Boulevard Road is an 11,301 square foot lot in a Single Residence 2 (SR2) zoning district improved with a single-family residence constructed circa 1963. As much of the basement level is above grade, especially in the rear of the sloping lot, it is considered to be the first story of the dwelling, rendering the dwelling a three-story structure per the Newton Zoning Ordinance. A City of Newton drain easement runs along the northern side of the property, with an existing deck built slightly into it.

The petitioners propose to raze some existing single-story first floor space and an adjoining deck on the right (north) side of the dwelling and construct a three-story addition and a new deck, all largely within the footprint of the existing dwelling and deck. As this would extend the nonconforming three-story structure, a special permit is required per sections 3.1.3 and 7.8.2.C.2.

As designed, the proposed would meet all setback and height requirements and not be higher than the existing home. The addition is consistent with the size and scale of the homes in this neighborhood and the new bulk will be focused towards the side of the house at the end of a dead-end street that is well screened by existing landscaping. Due to these factors, the Planning Department is generally unconcerned with the proposed addition.

#### I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Council should consider whether:

- The proposed extension of the non-conforming three-story structure is substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§3.1.3, and §7.8.2.C.2)

#### II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD:

##### A. Neighborhood and Zoning

The subject property is located on the west side, and north end, of East Boulevard Road, a dead-end street that has its southern terminus off West Boulevard Road just north of Ward Street. The land use of the surrounding neighborhood is almost uniformly single family, with exceptions including a religious use about 200 feet to the southwest and a few two-family dwellings south of Ward Street. There are also several vacant parcels that abut the subject parcel, including those just to the west and northeast of the site (**Attachment A**). The immediate neighborhood is uniformly zoned Single Residence 2 (SR2) (**Attachment B**).

B. Site

The site is an 11,301 square foot lot improved with a single-family residence with a basement-level attached garage that is accessed via a curb cut off East Boulevard Road. The parcel has frontage of 141 feet, well above the required 80 feet. A City of Newton drain easement runs along the northern side of the property within which an existing raised deck extends slightly. The site slopes downward approximately 10 feet from its front-left to its rear-right and it features mature vegetation, including trees, shrubbery and lawn area.

III. PROJECT DESCRIPTION AND ANALYSIS:

A. Land Use

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

B. Building Design

The petitioners propose to construct a three-story side addition, further extending the nonconforming three-story structure. The proposed construction would add floor space to all three floors, enlarging the existing basement and adding living space to the two floors above it, largely within the existing footprint of the house and in the general location of existing first floor space. The deck would be reconstructed, extending partially into the City drain easement along the northern side of the property, but less so than the existing deck.

Regarding setbacks, the proposed addition would reduce the existing front setback of 32.2 feet slightly to 29.8 but remain in excess of the required 25 feet. The addition would be on the right (north) side of the structure where the existing setback is 34.1 feet at the location of the existing deck; as proposed, this setback would be slightly increased to 37.3 given the design of the proposed new deck. The addition itself would be even further than the deck from that side lot line at all points along its side and be considerably more than the required 7.5 feet. Both the conforming existing left (south) setback (22.6 feet) and rear (west) setback (20.4 feet) would remain unchanged.

As the addition would be lower than the existing ridgeline it would not increase the dwelling's measured height of 28.9 feet, nor would it increase the number of stories. The property's lot coverage would be 13.3%, slightly higher than the current 12% that currently exists and well below the maximum 30% allowed by right. Open space on the lot would remain approximately 81%, considerably above the required 50%. As designed, the resulting structure would contain 3,832 square feet of floor area, increasing the Floor Area Ratio (FAR) to 0.34, but it would remain well below the 0.46 allowed by right.

The Planning Department is generally unconcerned with the addition as it would be subordinate to existing structure in terms of roof line and scale and that the resulting structure would conform with relevant dimensional regulations. Also, given its location at the end of a dead-end street and existing vegetation it would have limited visual impact on adjacent public ways and properties.

C. Parking and Circulation

The petitioners are not proposing any changes to either the parking or circulation. The Planning Department recommends that the petitioner make all reasonable efforts to retaining the existing mature tree in the front of the home near the location of the proposed addition.

D. Landscaping

A landscape plan was not submitted with this petition.

IV. TECHNICAL REVIEW:

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

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

- S.P. per §7.3.3 to further extend nonconforming three-story structure (§3.1.3, §7.8.2.C.2)

B. Engineering Review

This petition does not meet the minimum threshold for Engineering Review at this time. The Planning Department notes that the petitioner should coordinate with the Engineering Division (and any other relevant city agencies) as to any requirements related to any work to be performed within the city drainage easement on the property.

C. Historic Preservation Review

On May 30, 2019 the Newton Historic Commission found the existing structure “preferably Preserved” and approved the proposed project based on submitted materials, requiring only its review of final plans.

V. PETITIONER’S RESPONSIBILITIES

The petition is considered complete at this time.

**ATTACHMENTS:**

- Attachment A:** Zoning Map
- Attachment B:** Land Use Map
- Attachment C:** Zoning Review Memorandum
- Attachment D:** DRAFT Council Order

# ATTACHMENT A

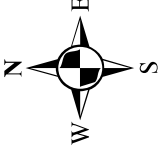
## Land Use

### 28 East Boulevard Rd.

City of Newton,  
Massachusetts

#### Land Use

- Single Family Residential
- Multi-Family Residential
- Commercial
- Mixed Use
- Nonprofit Organizations
- Vacant Land

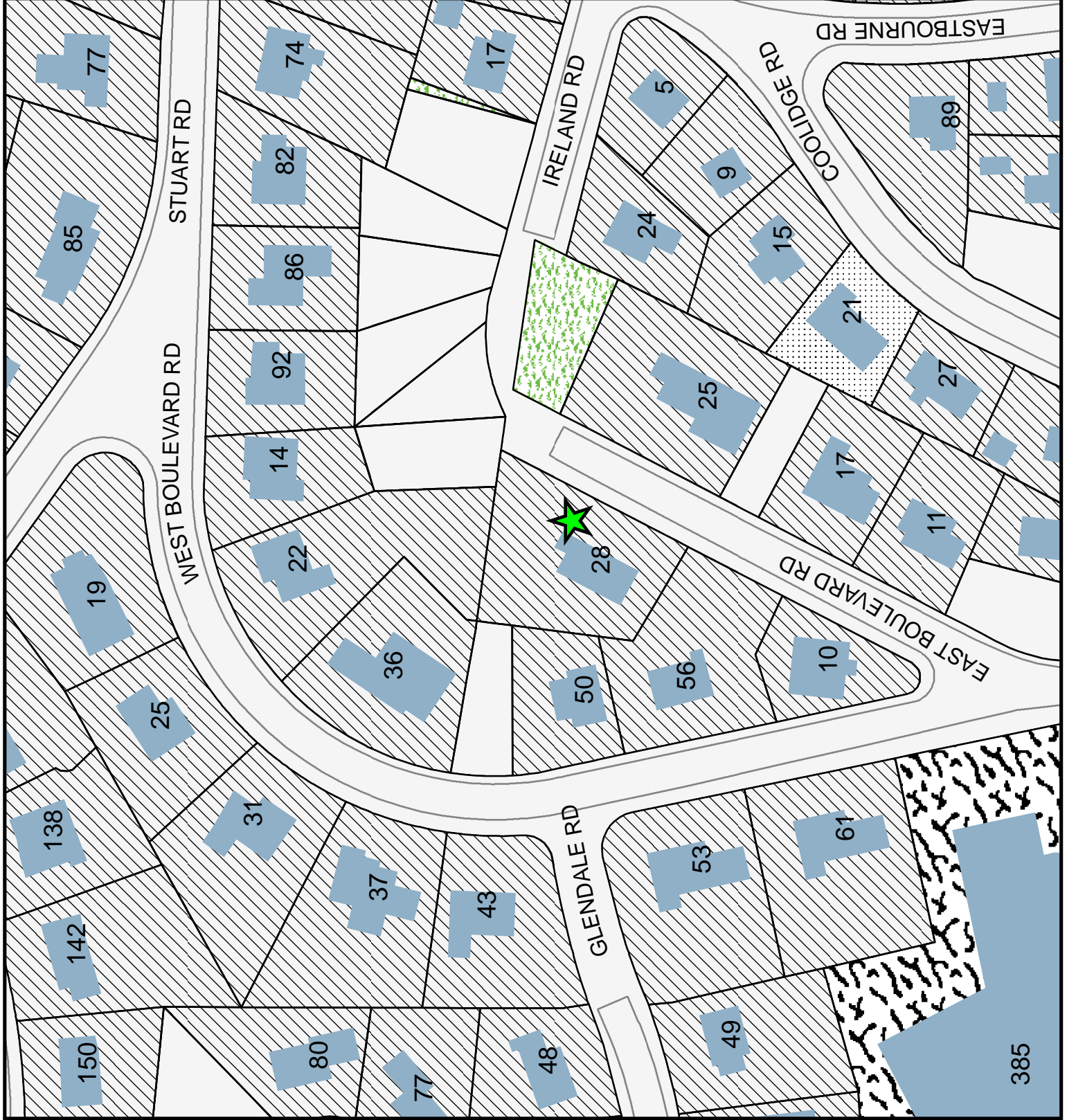


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

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



Map Date: September 03, 2019




# ATTACHMENT B

## Zoning

### 28 East Boulevard Rd.

City of Newton,  
Massachusetts

### Legend

 Single Residence 2



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CITY OF NEWTON, MASSACHUSETTS  
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Ruthanne Fuller  
Mayor

# ATTACHMENT C

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Barney S. Heath  
Director

## ZONING REVIEW MEMORANDUM

Date: July 16, 2019

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Michael and Shira Fishman, Applicants  
Alan J. Mayer, Architect  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Assistant City Solicitor

RE: Request to further extend a nonconforming three-story dwelling

Applicant: Michael and Shira Fishman	
Site: 28 East Boulevard Road	SBL: 73033 0032
Zoning: SR2	Lot Area: 11,301 square feet
Current use: Single-family dwelling	Proposed use: No change

### BACKGROUND:

The property at 28 East Boulevard Road consists of an 11,301 square foot lot improved with a single-family residence constructed circa 1963. The property is sloped such that it renders the existing dwelling three stories, as most of the basement level is exposed and is the first story as defined by the ordinance. A City of Newton drain easement runs along the northern side of the property, with an existing deck built slightly into it. The petitioners propose to construct a three-story side addition, further extending the nonconforming three-story structure.

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

- Zoning Review Application, prepared by Alan J. Mayer, architect, dated 5/29/2019
- FAR Worksheet, submitted 5/29/2019
- Plan of Land – Existing Conditions, signed and stamped by Bruce Bradford, surveyor, dated 4/4/2019
- Plan of Land – Proposed Conditions, signed and stamped by Bruce Bradford, surveyor, dated 5/20/2019
- Architectural Plans and Elevations, signed and stamped by Alan J. Mayer, architect, dated 5/29/2019



**ADMINISTRATIVE DETERMINATIONS:**

1. The existing single-family dwelling is considered to have three stories, as the topography is such that the slope exposes the majority of the basement level, rendering it the first story. Per section 3.1.3, a three-story structure requires a special permit in the Single Residence 2 zoning district. The petitioners intend to raze the existing deck, and construct a three-story addition at the northeast corner, enlarging an existing first floor basement, sunroom and building a level on top of it. The petitioners also intend to reconstruct the deck over the drain easement. To construct the proposed addition further extends the nonconforming three-story structure, requiring a special permit per sections 3.1.3 and 7.8.2.C.2.

<b>SR2 Zone</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>
Lot Size	10,000 square feet	11,301 square feet	No change
Frontage	80 feet	141 feet	No change
Setbacks			
• Front	25 feet	32.2 feet	29.8
• Side	7.5 feet	22.6 feet	No change
• Rear	15 feet	20.4 feet	No change
Max Number of Stories	2.5	<b>3</b>	<b>No change</b>
Height	36 feet	28.9 feet	No change
FAR	.46	.34	.38
Max Lot Coverage	30%	12%	13.3%
Minimum Open Space	50%	±81%	±81%

1. See “Zoning Relief Summary” below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.3, §7.8.2.C.2	Request to further extend nonconforming three-story structure	S.P. per §7.3.3

# ATTACHMENT D

**DRAFT-** #263-19  
28 East Boulevard Road

CITY OF NEWTON  
IN CITY COUNCIL

ORDERED:

That the City Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to further extend a nonconforming three-story structure as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Gregory Schwartz:

1. The proposed extension of the nonconforming three-story structure will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood because the addition would be subordinate to existing structure's roof line and scale and be located on the side of the house at the end of a dead-end street, and adequately screened by existing landscaping; further the expanded dwelling would meet relevant setback and height requirements and be consistent with the size and scale of the homes in the neighborhood.

PETITION NUMBER: #263-19

PETITIONER(S): Shira and Michael Fishman

LOCATION: 28 East Boulevard Road, on land known as Section 73, Block 33, Lot 32, containing approximately 11,301 square feet of land

OWNER(S): Shira and Michael Fishman

ADDRESS OF OWNER(S): 28 East Boulevard Road  
Newton, MA 02465

TO BE USED FOR: Single-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.9, §7.8.2.C.2, §3.1.3 to further extend a nonconforming three-story structure

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 site plan entitled “Plan of Land in Newton, MA, 28 East Boulevard Road, Existing Conditions,” prepared by Everett M. Brooks Co., dated April 4, 2019, signed and stamped by Bruce Bradford, Professional Land Surveyor May 20, 2019;
  - b. A site plan entitled “Plan of Land in Newton, MA, 28 East Boulevard Road, Proposed Additions,” prepared by Everett M. Brooks Co., dated April 4, 2019, signed and stamped by Bruce Bradford, Professional Land Surveyor May 20, 2019;
  - c. Architectural Plans entitled “Fishman Residence, 28 East Boulevard Road, Newton, MA 02459,” prepared by Mayer + Associates, dated May 29, 2019, signed and stamped by Alan J. Mayer, Registered Architect, consisting of the following sheets:
    - i. Existing Conditions- Basement Plan (A1-0);
    - ii. Existing Conditions- First Floor Plan (A1-1);
    - iii. Existing Conditions- Second Floor Plan (A1-2);
    - iv. Existing Conditions- Existing Elevations (Front Elevation) (A2-1);
    - v. Existing Conditions- Existing Elevations (Side Elevation) (A2-2);
    - vi. Existing Conditions- Existing Elevations (Rear Elevation) (A2-3);
    - vii. Existing Conditions- Existing Elevations (Side Elevation) (A2-4);
    - viii. Proposed Additions- Basement Plan (A3-0);
    - ix. Proposed Additions- First Floor Plan (A3-1);
    - x. Proposed Additions- Second Floor Plan (A3-2);
    - xi. Proposed Additions- Exterior Elevations (Front Elevation) (A4-1);
    - xii. Proposed Additions- Exterior Elevations (Side Elevation) (A4-2);
    - xiii. Proposed Additions- Exterior Elevations (Rear Elevation) (A4-3);
    - xiv. Proposed Additions- Exterior Elevations (Side Elevation) (A4-4).
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 Approval with the Middlesex South Registry of Deeds.

- 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 a copy of such recorded order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
  - d. 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.
  - e. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Newton Historical Commission approving the final plans.
  - f. 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 an architect certifying compliance with Condition #1.
  - b. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services final as-built plans in paper and digital format signed and stamped by a licensed architect.
  - c. Filed with the Clerk of the Council, 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.