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PUBLIC HEARING/WORKING SESSION MEMORANDUM

DATE: April 9, 2021
MEETING DATE: April 13, 2021
TO: Land Use Committee of the City Council
FROM: Barney S. Heath, Director of Planning and Development
Neil Cronin, Chief Planner for Current Planning
Michael Gleba, Senior Planner
CC: Petitioner

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

PETITION #427-20

41 Washington Street

Petition #427-20, for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a rear lot subdivision to create two lots, abandon the two-family use in the existing structure and construct a single-family on the rear 12,000 sq. ft. lot, extending the existing non-conforming side setback at **41 Washington Street**, Ward 1, Newton, on land known as Section 71 Block 29 Lot 07, containing approximately 25,902 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: 7.3, 7.4, 3.1.5, 3.1.10, 3.1.3, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

The Land Use Committee (the "Committee") held a public hearing on December 1, 2020, on this petition. This memo reflects additional information addressed to the Planning Department as of April 7, 2021.

Background

The property at 41 Washington Street consists of 25,964 square foot lot in a Single Residence 3 (SR3) zoning district improved with a 5,167 square foot, 2 ½ story, two-family dwelling constructed circa 1891. The dwelling is nonconforming in two aspects: (1) the use is a two-family use in a SR3 district; and (2) the structure has a side setback of 4.8 feet on the northern property boundary, where 7.5 feet is the minimum allowed.

The applicant proposes to create a rear lot subdivision. A new front lot measuring 13,964 square feet would be created for the existing dwelling which would be converted back to a single-family use. A new 12,000 square foot lot intended for the construction of a 2,880 square foot, 2 ½ story single-family dwelling would be created in the rear.

Per the Newton Zoning Ordinance (NZO) rear lot subdivisions are only allowed via special permit. Further, as the subdivision would alter the dimensions of the property as well as impose “new lot” dimensional requirements on the resulting lots, the existing dwelling’s nonconforming side setback would be extended, also requiring a special permit.

UPDATE

Area Plan:

As requested by the Planning Department in its previous memorandum on the petition, the petitioner submitted a revised area plan with relevant data specifically required of rear lot subdivisions per the Newton Zoning Ordinance (e.g., the proposed development’s distance from, and comparative heights with, abutting residential properties). (The petitioner has also submitted perspective/ “3D” plans as well.)

The Planning Department notes that at approximately 50 feet from two Grasmere Street homes, the rear dwelling’s carport would be the portion of the project would be the closest to abutting residential properties. Distances to the homes range, approximately, between 83 to 110 feet.

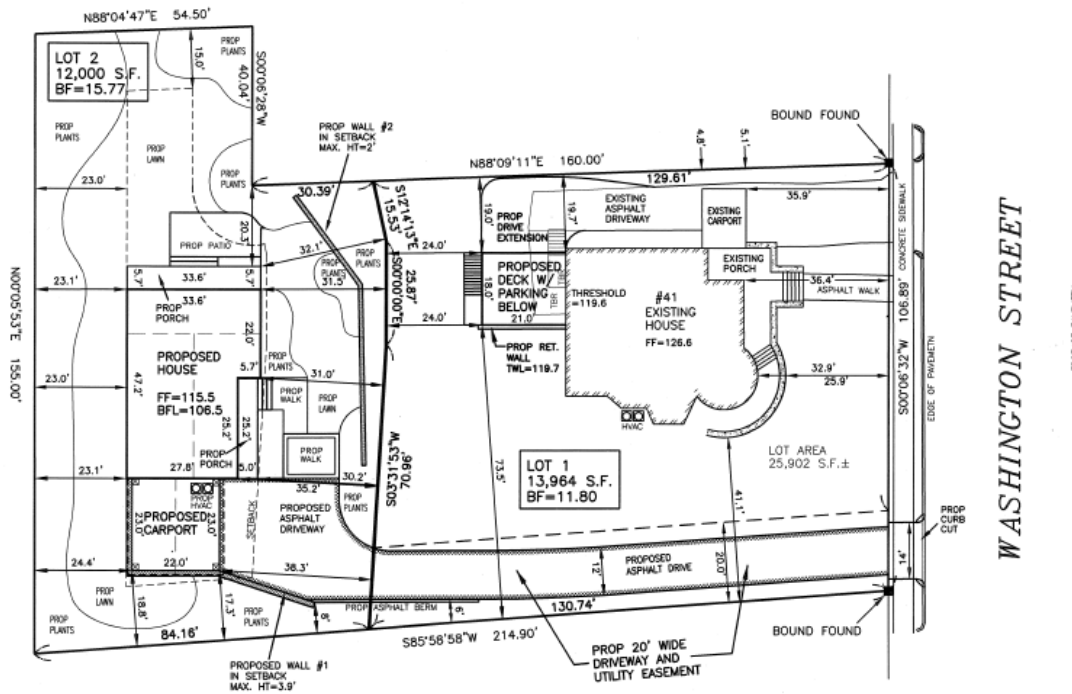
Also of importance regarding rear lot subdivisions is the relative height of rear lot dwellings and those on abutting parcels. As indicated on the area plan, the proposed rear dwelling’s height would be roughly the same or lower than those of abutting properties to the north, east and south and approximately 14-19 feet higher than two Merton Street-facing dwellings abutting directly to the west.

Site and Building Design:

The information shown on the modified area plan is reflective of the revised plans for the project (dated February 2, 2021) submitted by petitioner subsequent to the previous public hearing. The petitioner has indicated that the changes represent its response to questions and concerns about drainage and other matters raised at that public hearing.

As noted in the revised Zoning Review Memorandum (**Attachment A**), the revised plans do not require any additional or modified zoning relief.

The most prominent change with the revised plans is the “shifting” of the rear dwelling and its associated carport approximately six feet to the south. This change reduces the distance between the rear dwelling and the lot line shared with several Grasmere Street-fronting properties (to the left (south)) from about 24 feet to 17.3 (above the required 15 feet). This, in turn, increases the distance of the dwelling from outside corner formed by the parcel’s “L” shape shared with the adjoining Washington Street- fronting property to the right (north) by approximately five feet (the size and shape of the proposed patio in this area was also altered). The proposed rear lot dwelling would be approximately 30 feet from the rear lot line of the front lot, roughly the same as under the previous design.



PROPOSED LAYOUT
 SCALE: 1 IN. = 20 FT.

Revised site plan

Other changes include the placement of a low (approx. two-foot-high) retaining wall on the proposed rear lot, roughly parallel to the proposed lot line separating that lot from the front lot.

Moving the proposed rear structure’s carport closer to the driveway/access easement slated for the left (south) side of the property reduces the amount of paving on the rear lot by approximately 42 square feet as compared with the previous site design. Site plans submitted by the petitioner also indicate that the amount of driveway area on the front lot has been reduced by approximately 1,400 square feet. As the extent and location(s) of such a reduction is unclear based on the plans, the Planning Department suggests that the petitioner identify this change in advance of or at the upcoming public hearing.

As now designed, both lots continue to have the required minimum frontage per Section 3.1.10.B.2 (note: the rear lot gains its frontage from the front lot’s rear lot line). the front lot continues to have a floor area ratio (FAR) of 0.37, where 0.39 is the maximum allowed for a 13,964 square foot lot. The dwelling on the rear lot continues to have a proposed FAR of 0.24, the maximum allowed.

Landscaping:

Replacing and supplementing a previously submitted a “preliminary” landscaping plan, the petitioner has submitted additional information about the proposed landscaping- a landscape plans, a Tree Mitigation Plan and Tree Protection Plan. As planned, of the trees currently existing on the site 15 trees would be preserved and nine would be removed, with the latter measuring 137.5 caliper inches in aggregate. According to the plan, 30 new trees (including 16 arborvitae) totaling 124.5 caliper

inches would be installed. As indicated by the plan the majority of the new plantings would be installed along, and would screen, much of the perimeter of the rear lot , including along the left (south driveway and the proposed shared lot line that would separate the front and rear lots.

Engineering:

Since the previous hearing the petitioner submitted an updated drainage and utility plans to the Engineering Division. The petitioner and Engineering have coordinated review of the project and earlier this week Engineering forwarded the petitioner a few comments/“housekeeping items” to address concerns previously expressed by members of the public and the Land Use Committee. These comments are related to the installation of a backup generator for the pump system, some detail regarding the drainage report, and the petitioner’s intention to install an interceptor drain. The Planning Department has reached out to Engineering and will be able to provide any necessary update at the upcoming hearing.

ATTACHMENT(S)

Attachment A	Revised Zoning Review Memorandum (dated March 17, 2021)
Attachment B	DRAFT Council Order



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Director

ZONING REVIEW MEMORANDUM

Date: March 17, 2021

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Neil Cronin, Chief Planner for Current Planning

Cc: Terrence P. Morris, Attorney
Joseph and Sheila Keegan, Applicants
Barney S. Heath, Director of Planning and Development
Jonah Temple, Associate City Solicitor

RE: Request to allow a rear-lot subdivision

Applicant: Joseph & Sheila Keegan	
Site: 41 Washington Street	SBL: 71029 0007
Zoning: SR3	Lot Area: 25,902 square feet
Current use: Two-family dwelling	Proposed use: Two single-family dwellings on two separate lots

BACKGROUND:

The property at 41 Washington Street consists of 25,902 square feet and is improved with a two-dwelling built in 1891 in the SR3 zoning district, originally as a single-family and converted into two units in 1925. The applicant proposes to subdivide the lot to create a 12,000 square foot rear lot intended for the construction of a single-family dwelling, while maintaining the existing structure on the front lot which will be converted back to a single-family dwelling.

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

- Zoning Review Application, prepared by Terrence Morris, Attorney, dated 7/28/2020
- Civil Plan Set, prepared by Everett M Brooks, surveyor, dated 7/16/2020, revised 7/23/2020
- Architectural Plans and Elevations, signed and stamped by Phillip H. Bakalchuk, architect, dated 7/24/2020
- FAR worksheet

ADMINISTRATIVE DETERMINATIONS:

1. The applicant proposes to create a rear lot subdivision per Sections 3.1.5 and 3.1.10. To subdivide the land as proposed, the applicant must obtain a special permit from the City Council per Section 3.1.10.A.
2. Section 3.1.10.B.1 requires that a 20-foot wide vehicular access, or access easement, be provided. The rear lot will be accessed by a 20-foot wide easement with a 14-foot wide paved street opening, which narrows to a 12-foot wide driveway to the rear lot.
3. Section 3.1.10.B.2 requires both the front and rear lots to meet the frontage requirements for new lots in the zoning district. The front lot has 107 feet of frontage, where 80 feet is required. The rear lot gains its frontage from the rear lot line of 41 Washington Street. The frontage for the rear lot is the width of the property, or 112.43 feet, which meets the requirements of the Ordinance.
4. The proposed dwelling on the rear lot is situated 30.2 feet from the rear lot line of the front lot (41 Washington Street), which meets the requirements of Section 3.1.10.B.3.a
5. The proposed structure meets the required rear and side setbacks set forth in Section 3.1.5.
6. The existing dwelling at 41 Washington Street has an existing nonconforming side setback of 4.8 feet on the northern property boundary, where 7.5 feet is currently required per section 3.1.3 for an old lot in the SR3 zoning district. The division of land renders the lot a “new lot”, which requires a side setback of 10 feet. A special permit per section 7.8.2.C.2 is required to allow for the extended nonconforming setback, although the structure will not be altered.
7. The proposed dwelling has a maximum height of 35.9 feet, where 36 feet is the maximum allowed. No relief is required for the proposed heights of the structures.
8. After the reduction in lot size, the existing single-family dwelling on the front lot will have an FAR of .37, where .39 is the maximum allowed for a 13,964 square foot lot. The dwelling on the rear lot will have an FAR of .24, where .24 is the maximum allowed. Neither structure requires FAR relief.

Front Lot (Lot 1) per Section 3.1.3

SR3 Zone	Required/Allowed	Proposed
Lot Size	10,000 square feet	13,964 square feet
Frontage	80 feet	107 feet
Setbacks <ul style="list-style-type: none"> • Front • Side • Rear 	25 feet* 10 feet 15 feet	26.5 feet 4.8 feet 45 feet
FAR	.39	.37
Maximum Stories	2.5	2.5
Max. Lot Coverage	20%	16.4%
Min. Open Space	50%	62%

*Average front setback per section 1.5.3.B

Proposed Rear Lot (Lot 2), per Section 3.1.5

SR3 Zone	Required/Allowed	Proposed
Lot Size	12,000 square feet	12,000 square feet
Frontage	100 feet	121.37 feet
Vehicle Access	20 feet	20 feet
Setbacks <ul style="list-style-type: none"> • Front • Side • Rear 	30 feet 15 feet 23 feet	30.5 feet 17.5 feet 23 feet
FAR	0.24	0.24
Building Height	36 feet	35.9 feet
Maximum Stories	2.5	2.5
Max. Lot Coverage	25%	18.7%
Min. Open Space	50%	69.5%

9. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Site</i>	<i>Action Required</i>
§3.1.5 §3.1.10	Request to allow a rear lot subdivision	S.P. per §7.3.3
§3.1.3 §7.8.2.C.2	Request to extend a nonconforming side setback	S.P. per §7.3.3

CITY OF NEWTON

IN CITY COUNCIL

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 to allow the extension of a nonconforming side setback, a rear lot subdivision by allowing the frontage of the rear lot to be measured along the rear lot line of the lot in front, and the construction of a single family dwelling on the rear lot, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

1. The site is an appropriate location for the proposed use and structures as the proposed new front and rear lots will be used as single-family dwellings in a Single Residence 3 (SR3) district. (§7.3.3.C.1)
2. As single-family dwellings in a Single Residence 3 (SR3) district, the proposed residential use as will not adversely affect the neighborhood. (§7.3.3.C.2)
3. The proposed shared 20-foot-wide driveway will provide adequate sight lines and there will be no nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
5. At 35.9 feet the height of the proposed rear dwelling will be comparable to the respective average height of abutting residential buildings and any structures used for accessory purposes. (§7.3.4.B.1)
6. The two proposed single-family dwellings are designed in such a manner that their massing and scale will be in character and consistent with adjacent existing and allowed residential structures in the surrounding Single Residence 3 (SR3) zoning district. (§7.3.4.B.2)
7. Differences in the relative dwelling heights between the proposed rear dwelling and structures on abutting properties are largely reflect the neighborhood's topography. (§7.3.4.B.3)
8. The proposed landscape plan includes the extensive installation of trees and other

vegetation which will largely screen the new dwellings from abutting properties.
(§7.3.4.B.4)

9. The common driveway along the south east property line is adequate for vehicular access.
(§7.3.4.B.5)
10. The location of structures used for accessory purposes or mechanical equipment, including but not limited to free-standing air conditioning units or compressors, on the new rear lot or on abutting lots will not negatively impact either the proposed rear lot development or abutting property (§7.3.4.B.7);
11. The siting of the existing front dwelling, and that of the proposed rear dwelling structure, are appropriate given the scales and locations of abutting residential structures.
(§7.3.4.B.8)
12. The proposed lighting will be residential in character and will not impact abutting properties. (§7.3.4.B.9)
13. The proposed extension of the nonconforming side setback is not substantially more detrimental than the existing setback is to the neighborhood (§3.1.3 and §7.8.2.C.2).

PETITION NUMBER: #427-20

PETITIONERS: Joseph & Sheila Keegan

LOCATION: 67 Dunboy Street, Brighton, MA 02134, on land known as Section 79 Block 29 Lot 7, containing approximately 25,964 square feet of land

OWNER: Joseph & Sheila Keegan

ADDRESS OF OWNER: 67 Dunboy Street
Brighton, MA 02134

TO BE USED FOR: Rear lot subdivision and construction of two new single-family dwellings, one on the resulting 13,964 square foot front lot, the other on the resulting 12,000 square foot rear lot.

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: Special Permit per §7.3.3 to:

- allow a rear-lot subdivision (§3.1.5, §3.1.10)
- extend a nonconforming side setback (§3.1.3, §7.8.2.C.2)

ZONING: Single Residence 3 (SR3) 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 plan entitled “Area Wide Plan of Land in Newton, MA, 41 Washington Street, to accompany the petition of Joseph A. & Shiela (*sic*) A. Keegan,” prepared by Everett M. Brooks Co., signed and stamped by Bruce Bradford, Professional Land Surveyor dated February 4, 2021
 - b. A set of plans plan entitled “Site Plan of Land in Newton, MA, 41 Washington Street,” prepared by Everett M. Brooks Co., signed and stamped by Michael S. Kosmo, Registered Professional Engineer and Bruce Bradford, Professional Land Surveyor, dated July 16, 2020 as revised through February 4, 2021, including the following sheets:
 - i. Existing conditions and proposed layout (Sheet 1 of 3)
 - ii. Proposed utilities & grading (Sheet 2 of 3)
 - iii. Details (Sheet 3 of 3).
 - c. A set of architectural plans entitled “41 Washington St, Newton MA 02458,” prepared by SB Architects, signed and stamped by Phillip H. Bakalchuk, Registered Architect, dated February 5, 2021, including the following sheets:
 - i. “Cover Page/Drawing List” (Sheet A0);
 - ii. Site Plan (Sheet C1)
 - iii. Floor Plans - New House (Sheet A1)
 - iv. Elevations - New House (Sheet A2)
 - v. Floor Plan + Elevations - New Deck W/ Parking Below (Sheet A3)
 - vi. Zoning Area Plans / FAR - New House (Sheet A4)
 - d. A landscape plan entitled “41 Washington Street, Newton, Massachusetts,” prepared by Verdant Landscape Architecture, signed and stamped by Blair C. Hines, Registered Landscape Architect, dated November 12, 2020 (L1)
 - e. A plan entitled “41 Washington Street, Newton, MA, Tree Preservation Plan,” prepared by Verdant Landscape Architecture, signed and stamped by Blair C. Hines, Registered Landscape Architect, dated November 2020 (L2)
 - f. A document entitled “Tree Mitigation Plan,” prepared by Verdant Landscape Architects, Inc., signed by Blair Hines, Principal, Registered Landscape Architect, dated November 5, 2020
2. All utilities shall be located underground from the property line.
3. All lighting fixtures shall be residential in scale.
4. Prior to the issuance of any Building Permit, the petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be adopted by

applicant, incorporated into the deeds; and recorded at the Middlesex Registry of Deeds. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.

5. Prior to the issuance of any Building Permit, the petitioner shall provide a final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
6. Prior to the issuance of any Building Permits, the petitioner shall provide a Final Landscape Plan showing all new plantings, for review and approval by the Director of Planning and Development.
7. Prior to the issuance of any Building Permit, the petitioner shall submit a final Construction Management Plan (CMP) to the Commissioner of Inspectional Services, the Director of Urban Forestry, the Engineering Division of Public Works, the Director of the Department of Planning and Development, the Newton Fire Department and Newton Police Department, which plan should shall include at a minimum:
 - a. 24-hour contact information for the general contractor of the project.
 - b. Hours of construction: construction shall be limited to between the hours of 7:00 a.m. and 5:00 p.m. on weekdays, and between the hours of 8:00 a.m. and 5:00 p.m. on Saturdays. No construction is permitted on Sundays or holidays except in emergencies, and only with prior approval from the Commissioner of Inspectional Services.
 - c. 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; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
 - d. A tree preservation plan to define the proposed method for protection of existing trees to remain on the site and on abutting properties during construction.
 - e. A plan for rodent control during construction.
 - f. If blasting of on-site ledge is required, the petitioner shall obtain a Blasting Permit from the Newton Fire Department.
 - g. To ensure emergency vehicle access there shall be no parking in the driveway.
 - h. The CMP shall also address the following:
 - i. location(s) of a staging site for construction equipment and parking for construction workers vehicles;
 - ii. identification of building materials;
 - iii. phasing of the project with anticipated completion dates and milestones;
 - iv. safety precautions;
 - v. anticipated dewatering during construction;
 - vi. site safety and stability;

- vii. impacts on abutting properties, including any on the retaining wall located on the adjacent property to the west.
8. No Building Permit for one or both of the dwellings shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has, as such relates to the dwelling(s) for which the such building permit is requested:
 - a. Received final approval from the Director of Planning and Development for the Construction Management Plan.
 - b. Recorded a certified copy of this Order for the approved Special Permit/Site Plan Approval with the Registry of Deeds for the Southern District of Middlesex County.
 - 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. Obtained a written statement from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1.
 - e. Obtain a written statement from the Engineering Division of Public Works that confirms the receipt of a certified copy of the recorded O&M in accordance with Condition #4.
 - f. Filed a final Landscape Plan to the Director of Planning and Development for review and approval.
 - g. Recorded a certified copy of an Approval Not Required (ANR) plan showing the division of the property consistent with the plans referenced in Condition #1 with the Registry of Deeds for the Southern District of Middlesex County and has filed a copy of such recorded ANR plan with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
9. No Final Inspection and/or Occupancy Permit for one or both of the dwellings constructed pursuant to this Special Permit/Site Plan Approval shall be issued until the petitioner has, as such relates to the dwelling(s) for which the such Final Inspection and/or Occupancy Permit is requested:
 - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect certifying compliance with Condition #1.
 - b. Submitted to the Director of Planning and Development, Commissioner of Inspectional Services and City Engineer, final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.
 - c. Filed with the City Clerk and 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 and fencing.
 - d. 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.

10. No Final Inspection and/or Occupancy Permit for one or both of the dwellings constructed pursuant to this Special Permit/Site Plan Approval shall be issued until the petitioner has, as such it relates to the such dwelling(s) for which the such Final Inspection and/or Occupancy Permit is requested, has 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 the stormwater and drainage improvements identified in the provisions of Condition #1 above have been constructed to the standards of the City of Newton Engineering Department.
11. Notwithstanding the provisions of Condition #10 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.
12. 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.