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#s 319-20 & 320-20

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Barney S. Heath  
Director

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## PUBLIC HEARING/WORKING SESSION III MEMORANDUM

**DATE:** April 23, 2021  
**MEETING DATE:** April 27, 2021  
**TO:** Land Use Committee of the City Council  
**FROM:** Barney S. Heath, Director of Planning and Development  
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.

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### **PETITIONS #319-20 & #320-20**

**1149-1151 Walnut Street**

**Petition #319-20**, to rezone two parcels; **1149 Walnut Street** (Section 52 Block 08 Lot 13) and **1151 Walnut Street** (Section 52 Block 08 Lot 14) from BUSINESS USE 2 to MIXED USE 4.

**Petition #320-20**, for SPECIAL PERMIT/SITE PLAN APPROVAL to raze the existing buildings and construct a four-story mixed-use building up to 48' in height, containing 25 ~~26~~ units and 23 parking stalls, to waive the minimum lot area per unit, to reduce the side setback requirement, to waive the requirement to use A-B+C formula to determine the parking requirement, to waive 24 parking stalls, to allow 1.25 parking stalls per unit, to allow parking in the side setback, to waive dimensional requirements for parking stalls, to allow restricted end stalls, to allow reduced aisle width, to waive perimeter landscaping requirements, to waive interior landscaping requirements and to waive lighting requirements at **1149-1151 Walnut Street**, Ward 6, Newton Highlands, on land known as Section 52 Block 08 Lots 13 and 14, containing 13,200 sq. ft. in a district to be zoned MIXED USE 4 (currently zoned BUSINESS USE 2). Ref: Sec. 7.3.3, 7.4, 4.2.2.B.1, 4.2.2.A.2, 4.2.5.A.3, 4.2.2.B.3, 4.2.5.A.2, 4.2.5.A.4.b, 4.2.5.A.4, 5.1.3.B, 5.1.13, 5.1.4, 5.1.4.A, 5.1.8.A.1, 5.1.8.B.1, 5.1.8.B.2, 5.1.8.B.6, 5.1.8.C.1, 5.1.9.A, 5.1.9.B, 5.1.10 of the City of Newton Rev Zoning Ord, 2017.

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The Land Use Committee (the "Committee") held a public hearing on January 5, 2021, February 9, and April 6 2021 on this petition. This memo reflects additional information addressed to the Planning Department as of April 23, 2021.

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## **Background**

The subject site is comprised of two parcels, 1149 and 1151 Walnut Street, located along the west side of Walnut Street just north of Lincoln Street. The combined two-lot site consists of 13,200 square feet improved with two multi-tenanted single-story commercial buildings built in the early 1900s with parking in the front and rear.

The petitioner proposes to demolish the existing buildings and construct, as now designed, a 25-unit, four-story, 26,300 square foot mixed-use building with 23 at-grade parking stalls on the assembled site. In order to construct the proposed project, the petitioner is seeking to have the subject parcels rezoned from Business 2 (BU2) to Mixed Use 4 (MU4). As designed, several aspects of the project would also require a special permit under MU4 zoning district requirements under the Newton Zoning Ordinance (NZO).

## **Update**

### ***Transportation***

The petitioner provided the requested turning radii for the parking facilities on the date of the writing of this memorandum. The Planning Department has forwarded this information to the Engineering Division and the Transportation Department and will provide additional information at the public hearing.

Regarding Transportation Demand Management (TDM) efforts, the petitioner has indicated it will subsidize MBTA passes for certain residents who do not occupy parking spaces onsite. The Planning Department will similarly provide additional details on this aspect at the public hearing. It further notes that any such TDM measures should be included as conditions of an Order granted for this petition.

## **ATTACHMENTS:**

**Attachment A:** DRAFT Order

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 a SPECIAL PERMIT/SITE PLAN APPROVAL to

- waive minimum lot area per unit requirement (§4.2.2.A.2, §4.2.5.A.3)
- allow four stories (§4.2.2.B.3 §4.2.5.A.2)
- allow a building height of 48 feet and a FAR of 2.00 (§4.2.3, §4.2.5.A.2)
- ~~- allow a front setback greater than 10 feet (§4.2.5.A.4.a, 4.2.5.A.4)~~
- reduce the side setback requirement §4.2.5.A.4.b, §4.2.5.A.4)
- waive additional setback requirement for portions of the building greater than 40 feet in height (§4.2.5.A.4.c, 4.2.5.A.4)
- waive the requirement to use A-B+C formula to determine the parking requirement (§5.1.3.B, §5.1.13)
- allow 1.25 parking stalls per residential unit (§5.1.4, §5.1.4.A)
- waive 19 parking stalls (§5.1.4, §5.1.13)
- allow parking in the side setback (§5.1.8.A.1, §5.1.13)
- waive the minimum dimensions for parking stalls (§5.1.8.B.1, §5.1.8.B.2, §5.1.13)
- allow restricted end stalls (§5.1.8.B.6, §5.1.13, §5.1.8.C.1)
- allow reduced aisle width (§5.1.13, §5.1.9.A)
- waive perimeter screening requirements (§5.1.13, §5.1.9.B)
- waive interior landscaping requirements (§5.1.13, §5.1.10)

as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

1. The specific site is an appropriate location for the proposed twenty-five unit mixed use building as designed as it is located in a village center with a mix of uses (§7.3.3.C.1)

2. The proposed twenty-five-unit mixed use building as developed and operated will adversely affect the neighborhood as it is located in a village center with a mix of uses (§7.3.3.C.2)
3. There will not be a 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. The site planning building design, construction, maintenance or long-term operation of the premises will contribute significantly to the efficient use and conservation of natural resources and energy as it will have features including high efficiency electric heat pumps to handle the heating and cooling of the building, and two electric vehicle (EV) charging stations; (§7.3.3.C.5)
6. Literal compliance with the parking requirements of the Newton Zoning Ordinance (NZO) is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest or in the interest of safety or protection of environmental features (§5.1.13)

In reference to the requested Mixed Use 4 (MU4) special permit:

7. The proposed structure with 4 stories and 44 feet of building height is compatible in visual scale to its surroundings, does not adversely affect its surroundings by creating shadows or blocking views, and advances the purposes of this district (§4.2.5.1)
8. to waive the lot area per dwelling unit requirement of Sec. 4.2.3, the proposed density creates a beneficial living environment for the residents, does not adversely affect the traffic on roads in the vicinity, and better achieves the purposes of this district than strict compliance with these standards (§4.2.5.3)
9. waiving certain of the applicable setback requirements for the proposed plan can better protect the surrounding community from shadows and blocked views, support pedestrian vitality, and encourage the purposes of this district than strict compliance with such standards:

PETITION NUMBER: #320-20

PETITIONER: Newton Walnut LLC

ADDRESS OF PETITIONER: 137 Newbury Street  
Boston, MA 02116

LOCATION: 1149-1151-Walnut Street, on land known as Section 52 Block 08  
Lots 13 and 14, containing 13,200 sq. ft.

OWNER: Newton Walnut LLC

ADDRESS OF OWNER: 137 Newbury Street  
Boston, MA 02116

TO BE USED FOR: A 24-unit mixed use development with associated parking.

EXPLANATORY NOTES: Special permits per §7.3.3:

- To waive minimum lot area per unit requirement (§4.2.2.A.2, §4.2.5.A.3)
- To allow four stories (§4.2.2.B.3 §4.2.5.A.2)
- To allow a building height of 48 feet and a FAR of 2.00 (§4.2.3, §4.2.5.A.2)
- ~~- To allow a front setback greater than 10 feet (§4.2.5.A.4.a, 4.2.5.A.4)~~
- To reduce the side setback requirement §4.2.5.A.4.b, §4.2.5.A.4)
- To waive additional setback requirement for portions of the building greater than 40 feet in height (§4.2.5.A.4.c, 4.2.5.A.4)
- Waive the requirement to use A-B+C formula to determine the parking requirement (§5.1.3.B, §5.1.13)
- To allow 1.25 parking stalls per residential unit (§5.1.4, §5.1.4.A)
- To waive 19 parking stalls (§5.1.4, §5.1.13)
- To allow parking in the side setback (§5.1.8.A.1, §5.1.13)
- To waive the minimum dimensions for parking stalls (§5.1.8.B.1, §5.1.8.B.2, §5.1.13)
- To allow restricted end stalls (§5.1.8.B.6, §5.1.13, §5.1.8.C.1)
- To allow reduced aisle width (§5.1.13, §5.1.9.A)
- To waive perimeter screening requirements (§5.1.13, §5.1.9.B)
- To waive interior landscaping requirements (§5.1.13, §5.1.10)

ZONING: Mixed Use 4 (MU3)

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 engineering plans entitled "Permit Site Plan for 1149-1151 Walnut Street Residential Development," prepared by H.W. Moore Associates, signed and stamped by Anthony Donato, Registered Professional Engineer, dated October 12, 2021, as revised through February 23, 2021, consisting of the following sheets:
    - i. Sheet C-1- Cover Sheet
    - ii. Sheet C-2- Site Preparation & Demolition Plan

- iii. Sheet C-3-Layout Plan
  - iv. Sheet C-4-Grading and Utility Plan
  - v. Sheet C-5- Details
  - vi. Sheet C-6- Details
- b. A set of architectural plans entitled “1149-1151 Walnut Street, Newton, MA,” prepared by The Architectural Team, Inc. dated February 22, 2021, consisting of the following sheets:
- i. Site Plan
  - ii. Landscape Plan
  - iii. Parking and Basement Plan
  - iv. Second Floor Plan
  - v. Third Floor Plan
  - vi. Fourth Floor Plan
  - vii. Building Elevations (East, South, North and West Elevations)
  - viii. Building Elevations (Walnut Street and East)
  - ix. Aerial Perspective Looking West- Proposed Conditions
2. In accordance with the City’s Inclusionary Zoning Ordinance, §5.11.4, the Project shall include five (5) affordable housing units (the “Inclusionary Units”), as follows:
- a. Four (4) of the residential units in the Project shall be made available to households earning 50%-80% of Area Median Income (AMI), as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA (“Tier 1 Units”). The AMI used for establishing rent and income limits for the Tier 1 Units must average no more than 65% AMI. Alternatively, at least 50% of the Tier 1 Units may be priced for households having incomes at 50% of AMI and the remaining Tier 1 Units priced for households at 80% of AMI.
  - b. One (1) of the residential units in the Project shall be affordable to households earning up to 110% of AMI, as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA (“Tier 2 Unit”).
3. The Petitioner, the Project, and the Inclusionary Units shall comply with all applicable provisions of the City’s Inclusionary Zoning Ordinance, §5.11, in effect as of the date of this Special Permit/Site Plan Approval, regardless of whether such requirements are set forth herein.
4. The bedroom mix of the Inclusionary Units shall be equal to the bedroom mix of the market-rate units in the Project. The proposed mix of the Inclusionary Units is:

	Studio	1BR	2BR
Tier 1 Units Inclusionary Units	1	2	1
Tier 2 Inclusionary Units	0	1	0

The final bedroom mix shall be reviewed and approved by the Director of Planning and Development prior to the issuance of a building permit for the Project.

5. Monthly housing costs (inclusive of rent, utility costs for heat, water, hot water and electricity, 1 parking space and access to all amenities offered to tenants in the building), must not exceed 30% of the applicable household income limit for that Inclusionary Unit and shall be consistent with Inclusionary Zoning Ordinance, § 5.11.4.D.1.
6. For the initial lottery, 70% of the Inclusionary Units shall be designated as Local Preference units, as permitted and defined by the Massachusetts Department of Housing and Community Development (DHCD).
7. Prior to the issuance of any building permits for the vertical construction of the Project, the Petitioner shall provide an updated Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan (AFHMP) for review and approval by the Director of Planning and Development in accordance with §5.11.8 of the Inclusionary Zoning Ordinance. The Inclusionary Housing Plan and Affirmative Fair Housing Marketing and Resident Selection Plan must meet the requirements of DHCD’s guidelines for Affirmative Fair Housing Marketing and Resident Selection and be consistent with §5.11.8. of the Inclusionary Zoning Ordinance. In accordance with DHCD’s current guidelines, the units will be affirmatively marketed and leased through a lottery.
8. Prior to the issuance of any temporary or final occupancy certificates for the Project, the Petitioner, the City, and DHCD will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Tier 1 Inclusionary Units in perpetuity.
9. Prior to the issuance of any temporary or final occupancy certificates for the Project, the Petitioner and the City will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Tier 2 Inclusionary Unit in perpetuity.
10. To the extent permitted by applicable regulations of DHCD, the Tier 1 Inclusionary Units shall be eligible for inclusion on the State’s Subsidized Housing Inventory (SHI) as Local Action Units through DHCD’s Local Initiative Program.
11. The Inclusionary Units shall be designed and constructed subject to the provisions of the Inclusionary Zoning Ordinance, §5.11.7.
12. Inclusionary Units, and their associated parking spaces, shall be proportionally distributed throughout the Project and be sited in no less desirable locations than the market-rate units,

and the locations of such units and parking spaces shall be reviewed and approved by the Director of Planning and Development prior to the issuance of a building permit for the Project.

13. No residential unit or building shall be constructed to contain or be marketed and/or sold as containing more bedrooms than the number of bedrooms indicated for said unit in the Project Master Plans referenced in Condition #1.
14. Any room that meets the minimum dimensional and egress requirements to be considered a bedroom under the state building code and Title 5 regulations shall be counted as a bedroom for purposes of determining the required bedroom mix of the Inclusionary Units in accordance with the Inclusionary Zoning Ordinance.
15. The petitioner shall comply with the City's Tree Preservation Ordinance.
16. Prior to the issuance of any building permit for the Project, the petitioner shall provide an Approval Not Required ("ANR") plan combining the two lots into one lot to the City Engineer for review and approval. Once approved, the ANR plan must be recorded at the Middlesex South Registry of Deeds. A certified copy of the ANR plan shall be submitted to the Engineering Division of Public Works and the Commissioner of Inspectional Services.
17. With the exception of those spaces associated with the Inclusionary Units, charges for parking stalls shall be separate and in addition to ("unbundled") from rent and other charges for residential tenants.
18. All exterior lighting fixtures shall be residential in scale and not cause light pollution, and shall be subject to review and approval by the Director of Planning and Development before any Building Permit may be issued pursuant to this Special Permit/Site Plan Approval.
19. *The Petitioner shall contribute \$120,493 towards the City's Inflow and Infiltration Reduction Program to cover improvements to the sanitary sewer system. The payments shall be made as follows:*
  - a. *Prior to the issuance of any building permit, the first payment shall be submitted. The payment shall be of ½ of the total payment indicated above.*
  - b. *The second payment of ½ of the total payment indicated above shall be submitted prior to the issuance of the Project's final Certificate of Occupancy.*
20. All residential units will conform to the Massachusetts Architectural Access Board (MAAB) requirements for "Group 1" units. In addition, per MAAB guidelines, 5% of the new units shall be designed as "Group 2A" units, which are designed spatially for immediate wheelchair use. The design and construction of the site and proposed structure shall comply with Massachusetts Architectural Access Board regulations and the Fair Housing Act.
21. The trash and recycling disposal shall be handled by a private entity and collection shall be scheduled at such times to minimize any disruption of the on-site parking and shall comply with the City's Noise Control Ordinance

21. The Petitioner shall consult with an independent sustainability building professional/LEED Associate on the design and construction of the building, and achieve and/or implement the following measures which shall be incorporated into the Project:
  - a. the majority of the exterior façade will be composed of durable low maintenance materials (such as brick and cementitious panels) that will increase the longevity and minimize maintenance in the future;
  - b. only LED lighting will be used throughout the project;
  - c. high efficiency electric air source heat pumps shall be used to handle the heating and cooling of the building in order to reduce fossil fuel use;
  - d. all HVAC and appliances shall be electric, and appliances shall be “Energy Star”-rated (or functional equivalent), (except that domestic hot water equipment may utilize natural gas as an energy source);
  - e. all residential units will be thermally and acoustically separated with individual thermostats and have separate utility meters;
  - f. exterior building insulation and air barriers shall be continuous;
  - g. the parking area will be outfitted with two (2) electric vehicle (EV) charging stations. in addition, conduit will be installed to facilitate future installation of EV charging stations for all garage parking stalls;
  - h. drought tolerant and indigenous plants will be the predominant species installed in the landscape;
  - i. roof areas shall be mapped so as to consolidate rooftop HVAC equipment and penetrations to the greatest degree possible to maximize potential for the solar PV installation;
  - j. a rooftop solar energy system shall be installed that, as a minimum, satisfies the building’s common areas’ electric demand;
  - k. fundamental commissioning tests shall be performed to assure continuous air, vapor and water barriers.
23. The Petitioner has committed to analyze, review and discuss with the Director of Planning and Development the following sustainability strategies, prior to the issuance of any building permit for the Project, in order to determine their feasibility and the possible return on investment if they were to be implemented:
  - a. installing rooftop solar photovoltaic panels to offset building electrical usage;
  - b. installing additional exterior insulation beyond Stretch Code requirements;
  - c. maximizing the use where appropriate for low embodied carbon materials and rapidly renewable materials;
  - d. commissioning HVAC systems at substantial building completion.
24. Prior to the issuance of any Building Permit pursuant to this Special Permit/Site Plan Approval, 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. Said stormwater management system shall be designed to capture 100% of runoff generated in 1% storm condition for all impervious areas of the project. Once approved, the O&M must be adopted by the petitioner and recorded at the Middlesex South District Registry of Deeds. A copy of the recorded O&M shall be filed with the Engineering Division of Public Works, the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.

25. Prior to the issuance of any building permit for the Project, the petitioner shall provide a Final Site Plan (which shall indicate the location of adequate snow storage area(s) or identify a suitable alternative for snow removal) for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
26. Prior to the issuance of any building permit for the Project the petitioner shall submit a Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, and the City Engineer. The Construction Management Plan shall be consistent and not in conflict with relevant conditions of this Order and shall include, but not be limited to, the following provisions:
  - 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 6:00 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. The petitioner shall consider local traffic and pedestrian activity in determining hours and routes for construction vehicles.
  - c. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones.
  - d. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for construction materials and construction and delivery vehicles and equipment, and location of any security fencing.
  - e. 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.
  - f. Proposed methods of noise control, in accordance with the City of Newton's Ordinances. 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.
  - g. Tree preservation plan to define the proposed method for protection of any existing trees to remain on the site.

- h. A plan for rodent control during construction.
  - i. The CMP shall also address the following:
    - safety precautions;
    - construction materials,
    - parking of construction workers' vehicles,
    - anticipated dewatering during construction;
    - site safety and stability;
    - impacts on abutting properties;
    - proposed method of noise and vibration control.
27. The petitioner shall be responsible for securing and paying for any and all police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
28. 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 Middlesex South Registry of Deeds.
  - 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 and façade elevations are consistent with plans approved in Condition #1.
  - d. Submitted a final Inclusionary Housing Plan for review and approval by the 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 §5.11.8. of the Zoning Ordinance.
  - e. 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 approvals shall have been filed with the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.
  - f. Submitted a final plan of land, to the Engineering Division of Public Works in accordance with Condition #25.
  - 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 Transportation.

29. The Petitioner shall be responsible for repairing any and all damage to public ways and property 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.
30. Prior to the issuance of any Certificate of Occupancy pursuant to this Special Permit/Site Plan Approval, the Petitioner, City, and DHCD will enter into, and record at the Middlesex South Registry of Deeds, a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department and DHCD, which will establish the affordability restriction for the Inclusionary Units in perpetuity.
31. 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 final as-built survey plans in paper and digital format.
  - c. 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 for the project site have been constructed to standards of the City of Newton Public Works Department.
  - d. 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 and fencing consistent with the plans referenced in Condition 1.
  - e. Submitted to the Law Department copies of fully executed Regulatory Agreements and Affordable Housing Restriction for all Inclusionary Units, in accordance with **Conditions #8 and #9**.
  - f. Provided evidence satisfactory to the Law Department that the Regulatory Agreements for all Inclusionary Units have been recorded at the Southern Middlesex District Registry of Deeds, as appropriate.
  - g. Inclusionary Units shall be completed and occupied no later than the completion and occupancy of the Project's market-rate units. If the Inclusionary Units are not completed as required within that time, temporary and final occupancy permits may not be granted for the number of market-rate units equal to the number of Inclusionary Units that have not been completed. The petitioner shall complete and

occupy at least one Inclusionary Unit for every five market rate units completed and occupied.

32. Notwithstanding the provisions of Condition #31d above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the building prior to installation of required on-site landscaping/ exterior hardscape improvements required per the approved plans. Prior, however, to issuance of any temporary certificate of occupancy pursuant to this condition, the Commissioner of Inspectional Services shall require that the Petitioner first file a bond, letter of credit, cash or other security in the form satisfactory to the Law Department in an amount not less than 135% of the value of the aforementioned remaining improvements.
33. All on-site landscaping associated with this Special Permit/Site Plan Approval shall be installed and maintained in good condition. Any plant material that becomes diseased and/or dies shall be replaced on an annual basis with similar material.

DRAFT