

CITY OF NEWTON  
LAW DEPARTMENT  
INTEROFFICE MEMORANDUM

DATE: November 12, 2021  
TO: Rick Lipof, Chairman, Land Use Committee  
All Members, City Council  
FROM: Jonah M. Temple, Assistant City Solicitor  
RE: Special Permit #71-20  
1114 Beacon Street

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Attached is an updated redline draft of the Council order for this petition. This draft includes minors revisions to the findings, the accessibility condition (#16), the payment conditions (#19-20), and undergrounding condition (#30), all as discussed by the Land Use Committee. Please note that this draft also includes a new set of comprehensive vibration control conditions (#26) that were not reviewed by the Committee. City staff from various departments have spent considerable time analyzing issues related to construction vibration and this form condition is the product of that process. Staff anticipate recommending inclusion of these vibration control conditions for projects that are likely to cause vibration due to the nature of the project and anticipated construction methods.

Please let me know if you have any questions. Thank you.

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 construct a 34-unit four story multi-family dwelling with over 20,000 square feet of gross floor area, to allow residential units on the ground floor and in the upper stories, with a floor area ratio (FAR) of 1.08, to reduce the minimum stall width dimensions, and to allow 1.25 parking stalls per dwelling unit, 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 multi-family dwelling exceeding 20,000 square feet due to its location in a Business zone surrounded by a mix of uses, including multifamily residential uses. (§7.3.3.C.1.)
2. The proposed multi-family dwelling exceeding 20,000 square feet as developed and operated will not adversely affect the neighborhood because the petitioner is improving upon the existing site design by locating parking underground, providing landscaping, and proposed transportation mitigation measures. (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians because the project is utilizing an existing driveway location and removing one curb cut. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved because the Petitioner's Traffic Engineer anticipates the traffic generated by the change in use is not expected to have a significant impact on traffic during the weekday peak hours which was confirmed by the City's peer review consultant. (§7.3.3.C.4)
5. The proposed floor area ratio of 1.08 in a four-story structure is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood because [there are other four story structures in the neighborhood at 1087 Beacon Street and 1180 Beacon Street](#). (§4.1.2.B.3, §4.1.3 and §7.3.3)
6. The site and buildings as designed, constructed, and operated will contribute significantly to the efficient use and conservation of natural resources and energy, including through some or all of the following: (a) minimizing operating energy; (b) minimizing the use of fossil fuels; (c) implementing a transportation plan that will minimize carbon footprint

because the Petitioner is designing the project to be LEED Gold certifiable the project is located on Beacon Street with access to bike lanes ~~and the project's location approximately one mile from light rail public transit.~~ (§7.3.3.C.5)

7. Literal compliance with the parking stall dimensions is in the public interest to accommodate all resident parking in the underground garage. (§5.1.13)
8. Literal compliance with the required number of parking stalls is in the public interest due to the site's location near transit and neighborhood amenities. (§5.1.13)
9. In accordance with Chapter 29, §167-174 of the Revised Ordinances, the Council finds there is good cause based in part on other mitigation and community benefits offered by the Petitioner, to waive 75% of the infiltration/inflow calculation for the Project. Therefore, the infiltration/inflow fee shall be \$59,505.55.

PETITION NUMBER: #71-20

PETITIONER: 1114 Beacon Street LLC

ADDRESS OF PETITIONER: 220 North Main Street  
Suite 105  
Natick, MA 01760

LOCATION: 1114 Beacon Street

OWNER: 1114 Beacon Street LLC

ADDRESS OF OWNER: 220 North Main Street  
Suite 105  
Natick, MA 01760

TO BE USED FOR: A multi-family development consisting of 34 dwelling units, including ground-floor units, and a below grade garage (hereinafter the "Project")

EXPLANATORY NOTES: Special permit per §7.3.3: To allow a 34-unit multi-family structure with 20,000 square feet or more of new gross floor area with four stories (§4.1.2.B.1, §4.1.2.B.3), and ground-floor units (§4.4.1); to allow an FAR of 1.08 in a four story structure (4.1.2.B.3, §4.1.3); to waive the minimum parking stall width requirements (§5.1.8.B.1, and §5.1.13); To allow 1.25 parking stalls per unit (§5.1.4.A, and §5.1.13)

ZONING: Business Use 2

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. Site/Civil plans, prepared by SGT Associates, signed and stamped by Frederic W. King, Professional Engineer, consisting of the following two (2) sheets:
    1. Proposed Site Layout Plan, C-1, dated August 31, 2021
    2. Proposed Site Grading Plan, C-2, dated August 31, 2021
  - b. Architectural Plans entitled, "The Beacon" prepared by EFNA Architects., dated August 31, 2021, consisting of three (3) sheets:
    1. Preliminary Garage/Basement, First Floor Plan, Page 1
    2. Preliminary Floor Plans, showing second, third, and roof floor plans, Page 2
    3. Building Elevations, Page 3
  - c. 1114 Beacon Street Planting Plan, dated May 22, 2021
2. 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.
3. 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:

	1BR	2 BR	3 BR
Inclusionary Units	3	2	1

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.

4. The Petitioner shall provide a fractional cash payment of \$231,295.50 in accordance with the City's Inclusionary Zoning Ordinance, §5.11, prior to the issuance of any building permit.
5. Monthly housing costs (inclusive of mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, hazard insurance, and 1 parking space) must not exceed 30% of the applicable household income limit for that Inclusionary Unit and shall be consistent with Zoning Ordinance § 5.11.4.D.2.
6. Prior to commencing any pre-sale or pre-marketing activities, the Petitioner must submit an Affirmative Fair Housing Marketing & Resident Selection Plan (AFHMP) for review and approval by the Director of Planning and Development. The 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. The units will be affirmatively marketed and leased through a lottery. The nature and extent of the local preference scheme included in any final AFHMP submitted to DHCD for its review and approval shall be in accordance with the applicable provisions of the City's Revised Ordinances and/or Zoning Ordinance governing the percentage of local preferences for Inclusionary Units in a project in effect at the time of such submission to 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 for review and approval by the Director of Planning and Development in accordance with §5.11.8 of the Inclusionary Zoning Ordinance.
8. Prior to the issuance of any temporary or final occupancy certificates for the Project, the Petitioner, the City, and if applicable 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 Inclusionary Units in perpetuity.
9. To the extent permitted by applicable regulations of DHCD, the 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.
10. The Inclusionary Units shall be designed and constructed subject to the provisions of the Inclusionary Zoning Ordinance, §5.11.7.
11. 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 vertical construction of the Project.
12. 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.
13. 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.
14. The petitioner shall comply with the City's Tree Preservation Ordinance §21-80 et seq.
15. Parking stall(s) shall be sold separately from the cost of a unit, provided, however that the cost of one parking stall shall be included in the price of an Inclusionary Unit. Prior to the issuance of any certificate of occupancy for a market-rate unit (temporary or final), the Petitioner shall provide evidence of such separation to the Director of Planning and Development.

16. All residential units shall conform to the Massachusetts Architectural Access Board (MAAB) requirements for "Group 1" units. ~~In addition, per MAAB guidelines, 5% of the 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.
17. 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.
18. The Petitioner shall comply with all applicable sustainable design provisions of the Revised Ordinances.
19. The Petitioner shall make payments in the aggregate amount of \$59,505.55 to the City for infrastructure improvements for infiltration and inflow (I&I). Payments shall be made as follows:
  - a. \$29,752.78 at the issuance of any Building Permit for the Project.
  - b. \$29,752.77 at the first dwelling unit certificate of occupancy (temporary or final) in the Project
20. The Petitioner shall make payments in the aggregate amount of \$238,022.00 to the City for off-site transportation, pedestrian, or safety improvements or mitigation in the vicinity of the Project. The Petitioner's payments shall be made to a municipal account dedicated for such mitigation and improvements as follows:
  - a. \$89,258.33 at the issuance of any Building Permit for the Project.
  - b. \$89,258.32 at the first dwelling unit certificate of occupancy (temporary or final) in the Project, less the cost and installation of the bus shelter referenced in Condition #21 below.

Funds from the account in which these payments will be held shall be appropriated only with the approval of the City Council and the Mayor in accordance with municipal finance law. The Director of Planning and Development, after consultation with the Commissioner of Public Works, shall recommend improvements for funding to the City Council.
- ~~18. In accordance with Section 29-169 of the Revised Ordinances, the Petitioner shall contribute the following monies, for an aggregate amount of \$238,022.20:~~
  - ~~a. \$178,516.65 toward transportation mitigation in the form of a bus shelter as identified in Condition #20 below as well as for other transportation mitigation but not limited to bike share or the City's commuter service ("Newmo"), as determined by the Director of Planning and Development in consultation with the Commissioner of Public Works.~~
  - ~~a. \$89,258.33 at the issuance of any Building Permit for the Project.~~

~~b. \$89,258.32 at the first dwelling unit certificate of occupancy (temporary or final) in the Project, less the cost and installation of the bus shelter referenced in Condition #20 below.~~

~~b. \$59,505.55 for sewer mitigation ("Infiltration and Inflow").~~

~~a. \$29,752.78 at the issuance of any Building Permit for the Project.~~

~~b. \$29,752.77 at the first dwelling unit certificate of occupancy (temporary or final) in the Project~~

~~c. All funds shall be appropriated only with the approval of the City Council and the Mayor in accordance with municipal finance law.~~

~~19.~~21. The Petitioner shall purchase and install a bus shelter on the eastern side of Walnut Street adjacent to 916 Walnut Street at its sole cost and expense. Prior to the issuance of any Building Permit, the Petitioner shall meet with the Director of Planning and Development and the Commissioner of Public Works to agree on the final design, type, and the location of the shelter. Prior to the issuance of a certificate of occupancy (temporary or final) for the final dwelling unit, the Petitioner shall install the shelter and receive approval from the Commissioner of Public Works. The cost and installation of the shelter shall be credited toward the payment referenced in Condition #~~20~~19 above, subject to review and approval from the Commissioner of Public Works.

~~20.~~22. 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. 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.

~~21.~~23. The Petitioner shall do the following to remediate pest and rodent activity:

- a. Prior to issuance of any demolition permit, the petitioner shall hire a licensed Pest Control Operator to assess the property for pest and rodent activity and develop and implement a pest remediation action plan to eliminate the activity and prevent off-site migration. The plan shall include the target pest, the methods for eliminating activity prior to demolition, and plan for preventing pest migration off-site during demolition and construction.
- b. A copy of the Pest Control inspection report and the remediation action plan shall be submitted to the Planning and Development Department, Inspectional Services Department, and the Health and Human Services Department for review and approval prior to issuance of any demolition or building permit.
- c. The Pest Control Operator shall implement the approved remediation action plan, monitor the site for the duration of the project, and take whatever action necessary

- to control pest infestation and migration. The Pest Control Operator shall maintain a written record of all pest control measures performed and shall provide progress reports to Inspectional Services Department and the Health and Human Services Department upon request.
- d. Prior to issuance of any temporary certificate of occupancy, the Pest Control Operator shall file a final report with the Inspectional Services Department and the Health and Human Services Department summarizing the methods used, whether off-site migration occurred, the frequency and dates of service, and a post-construction site and neighborhood assessment.
  - e. In the event any demolition or construction activity causes off-site pest migration, prior to the issuance of any certificates of occupancy (temporary or final) ,the petitioner shall offer rodent abatement services on an as needed basis for all direct abutters, subject to owner authorization of such properties and a waiver of liability.
- ~~22-24.~~ 23-24. All construction activity shall be limited to 7:00AM-7:00PM Monday through Friday and 8:00AM-7:00PM on Saturdays, excluding holidays, unless waived by the Mayor in accordance with Revised Ordinances, §20-13. Interior work may occur at times outside of the hours specified above, but only after the building is fully enclosed.
- ~~23-25.~~ 23-25. 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, the Commissioner of Public Works, the City Engineer, and the Chief of the Fire Department. The CMP shall be in compliance with all applicable policies and ordinances in effect at the time of submission. The Petitioner shall comply in all material respects with the Construction Management Plan, which shall be consistent with 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. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones.
  - c. 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 delivery vehicles and equipment, and location of any security fencing.
  - d. Proposed methods for dust control including, but not limited to: covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
  - e. Proposed methods of noise control, in accordance with the Revised Ordinances, §20-13. Staging activities should be conducted in a manner that will minimize off-site



- impacts of noise. Noise producing staging activities should be located as far as practical from noise sensitive locations.
- f. Tree preservation plan to define the proposed method(s) for protection of any existing trees to remain on site.
  - g. The CMP shall also address the following: safety precautions; anticipated dewatering during construction; site safety and stability; and impacts on abutting properties;

~~h. The CMP shall include a vibration control plan that includes a study of projected vibration impacts and a monitoring program to be implemented with regular reporting.~~

26. The Petitioner shall implement the following measures in order to mitigate and reduce significant vibration impacts caused by construction equipment:

a. Prior to the issuance of any demolition, foundation or building permit, the Petitioner shall conduct a pre-construction survey of all buildings and structures within 250 feet of the Project, with owner approval and at no charge to the owners. Subject to owner approval, photos must be taken both inside and outside prior to construction to set a baseline of existing conditions.

b. Prior to the issuance of any demolition, foundation or building permit, the Petitioner shall establish a \$100,000 vibration mitigation fund (or other security in a form satisfactory to the City Solicitor) so that the funds are available for payment of valid claims for damage caused by vibration impacts to private property within 250 feet of the project. Claims shall be administered in conjunction with a responsible third party approved by the City Solicitor. Notice shall be provided to such private property owners on how to make a claim for damages.

c. The Petitioner shall engage a qualified professional to develop and prepare a vibration control plan demonstrating the following:

- i. Measurements of static ground vibration prior to construction.
- ii. Vibration level limits for demolition and construction activities based on building conditions and soil conditions. The limit should be determined using industry standards, provided that vibration level limits shall not exceed .50 peak particle velocity (PPV).
- iii. Planned demolition and construction methods to ensure vibration levels will not exceed the identified limit.
- iv. Specific measures to be taken during construction to ensure the specified vibration level limits are not exceeded.
- v. A monitoring plan to be implemented during demolition and construction that must include installation of vibration measuring devices and alarms.

- d. The Petitioner shall submit the vibration control plan to the Commissioner of Inspectional Services for review and approval prior to the issuance of any demolition, foundation or building permit.
  - e. The Petitioner shall implement the approved vibration control plan. Vibration levels shall be regularly monitored during demolition and construction. The Petitioner shall keep a record of all monitoring and shall provide copies to the Commissioner of Inspectional Services upon request.
  - f. All work shall be performed within the vibration level limits established by the vibration control plan. If the vibration limit is exceeded, the construction activity causing the vibration shall cease and not resume until mitigation measures are implemented and notice is provided to the Commissioner of Inspectional Services.
  - g. The Petitioner shall provide written notice to all property owners within 250 feet of the Project 48 hours prior to vibration-related activity that includes an explanation of the proposed activity, address of the site, date and time of the work, and contact information of the contractor overseeing the work.
  - h. Following construction, the Petitioner shall re-inspect all homes, with approval of the owners, subject to the pre-construction survey to determine any damages caused by vibration. The Petitioner shall maintain records of all complaints it receives for vibration-related damages. All claims submitted to the mitigation fund shall be fully administered prior to the issuance of the final certificate of occupancy for the Project. Any monies remaining in the fund upon issuance of the final certificate of occupancy shall be retained by the Petitioner.
- ~~24-26.~~ The Applicant shall be responsible for securing and paying police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
27. The Petitioner shall be responsible for repairing any damage to public ways and public property caused by construction activities or any construction vehicles traveling to or from the Development Parcel. All repair work shall be done prior to the issuance of the final certificate of occupancy for the final dwelling unit in the Project, unless the Commissioner of Public Works determines either: (a) that the damage to the public way is so extensive that it limits the use of the public way; (b) that the damage interferes with traffic flow; or (c) that the damage poses a threat to public safety. In such cases, 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.

~~25-28.~~ 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.

~~26-29.~~ Any portions of the Project subject to the jurisdiction of the Conservation Commission must receive an Order of Conditions from the Conservation Commission prior to the issuance of any building permit for work on the Project that is subject to such jurisdiction.

~~27-30.~~ The Petitioner shall use best efforts to underground utilities along the frontage of the Project. If the Petitioner is unable to underground the utilities due to not obtaining the utility company's approval/permission, they shall submit evidence or documentation to the Planning Department showing such efforts. Should the Petitioner obtain the approval/permission of the utility, the Petitioner shall pay for the cost of undergrounding the utilities.

~~28-31.~~ The Petitioner shall install all landscaping consistent with this Special Permit/Site Plan approval and shall maintain landscaping in good condition. Any plant material that becomes diseased or dies shall be replaced as soon as feasibly possible with similar material.

~~29-32.~~ No building permit (other than a demolition permit) shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:

- a. Recorded a certified copy of this Special Permit/Site Plan Approval at the Middlesex South Registry of Deeds and filed proof of such recording with the City Clerk, the Inspectional Services Department, and the Department of Planning and Development.
- b. Submitted the cash fractional payment in accordance with Condition #4.
- c. Submitted the payments required in accordance with Conditions ~~#19-20~~.
- d. Determined the location and the type of bus shelter in accordance with Condition ~~#210~~.
- e. Submitted a ~~n~~ Final 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, and the City Engineer.
- f. Submitted final engineering, utility, and drainage plans, and a recorded copy of the O&M Plan with the Middlesex South District Registry of Deeds and provided a copy of the recorded document to the City Engineer in accordance with Condition ~~#211~~.
- g. Submitted an Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan for review and approval by the Director of Planning and Development in accordance with Conditions #2-13, and §5.11.8 of the Zoning Ordinance.

- h. Submitted a LEED Checklist prepared and certified by a LEED Accredited Professional to the Director of Planning and Development, indicating which points the building intends to realize to demonstrate LEED Gold certifiability.
- i. Complied with all applicable tree preservation provisions in accordance with Chapter 21 of the Revised Ordinances.

~~30.33.~~ 33. No certificate of occupancy (temporary or final) shall be issued by the City pursuant to this Amended and Restated Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:

- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development statements by a registered architect and professional land surveyor 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 digital format.
- c. Submitted the payments required in accordance with Conditions #19-20.
- d. Received final approval for the bus shelter in accordance with Condition #21.
- e. Submitted to the Law Department copies of a fully executed Regulatory Agreement and Affordable Housing Restriction in accordance with Conditions #2-13.
- f. Provided evidence satisfactory to the Law Department that the Regulatory Agreements have been recorded at the Southern Middlesex District Registry of Deeds.
- g. Inclusionary Units shall be completed and occupied no later than the completion and occupancy of the market-rate units within such building. If the Inclusionary Units are not completed as required within that time, temporary and final certificates of occupancy may not be granted for the number of market-rate units equal to the number of Inclusionary Units that have not been completed within such building.
- h. 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 portion of the Project for which a certificate of occupancy is requested have been constructed to standards of the City of Newton Public Works Department.
- i. 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, landscape features, fencing and parking areas related to or for the portion of the Project for which a certificate of occupancy is requested.

- j. Filed with the Department of Inspectional Services and the Department of Planning and Development a certificate from a licensed architect certifying that: (i) all dwelling units in the building for which a certificate of occupancy is requested have been constructed and conform with MAAB requirements for "Group 1" units; ~~a minimum of 5% of the dwelling units conform with MAAB requirements for "group 2A" units; and (iii) stating the number of additional "Group 2A" units, if any, above the 5% minimum in the building, in accordance with Condition #48.~~
- k. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that utilities have been located underground for the portions of the Project for which a certificate of occupancy is requested to the extent required by Conditions ~~#3028~~, or submit evidence that best efforts have been made to underground the utilities.
- l. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that the criteria for LEED certifiability of the subject building have been satisfied.

~~31.34.~~ 34. The Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the site prior to installation of final landscaping, fencing, and/or benches provided that the Petitioner shall first have filed with the Director of Planning and Development a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining site work to secure installation of such landscaping, fencing, signage and parking areas.