

CITY OF NEWTONIN 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 12-unit three story multi-family dwelling with over 20,000 square feet of gross floor area and 36 feet in height, to allow residential units on the ground floor and in the upper stories, with a floor area ratio (FAR) of 1.43, to alter and extend a nonconforming side setback, to waive six parking stalls, to reduce the minimum stall width dimension, to reduce the driveway width for two-way traffic, to allow a loading facility which may impede traffic, and to allow a retaining wall greater than four feet in height within a setback, 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 as designed due to its location in a Business 1 zoning district and proximity to amenities. (§7.3.3.C.1.)
2. The specific site is an appropriate location for the proposed retaining wall greater than four feet in height within the setback because it will accommodate a driveway that serves as an access point for vehicles and pedestrians. (§7.3.3.C.1.)
3. The proposed multi-family dwelling as developed and operated will not adversely affect the neighborhood because the neighborhood is comprised of a mix of uses and complies with the lot area per unit dimensional standard. (§7.3.3.C.2)
4. There will not be a nuisance or serious hazard to vehicles or pedestrians because there will be sufficient sight distance for vehicles exiting the driveway. (§7.3.3.C.3)
5. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
6. The proposed floor area ratio of 1.43 in a three-story structure is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood because of its proximity to a commercial area and there are similarly sized structures nearby on Langley Road. (§4.1.2.B.3, §4.1.3 and §7.3.3)
7. The site and buildings as designed, constructed, and operated will contribute significantly to the efficient use and conservation of natural resources and energy because the

petitioner is designing the project to be LEED Silver certifiable, the project is providing 1.5 bicycle spaces per unit, and electric vehicle charging stations. (§7.3.3.C.5)

8. Reducing the parking stall width is in the public interest to accommodate resident parking in the garage. (§5.1.13)
9. Reducing the driveway width for two-way traffic and to allow a loading facility which may impede traffic is in the public interest as it will allow deliveries to be made on site. (§5.1.13)
10. Waiving six parking stalls is in the public interest as additional bicycle parking is being offered to offer alternate modes of transportation and the cost of parking will be separate from the cost of a dwelling unit. (§5.1.13)
11. The proposed extension of a nonconforming side setback is not substantially more detrimental than the existing nonconforming structure is to the neighborhood because the setback is increasing from four feet to eight feet. (§7.8.2.C.2)

PETITION NUMBER: #28-22

PETITIONER: Barbara and Gerald Baratz Revocable Trusts

ADDRESS OF PETITIONER: 383-387 Boylston Street/50 Jackson Street
Newton, MA 02459

LOCATION: 383-387 Boylston Street/50 Jackson Street
Newton, MA 02459

OWNER: Barbara and Gerald Baratz Revocable Trusts

ADDRESS OF OWNER: 383-387 Boylston Street/50 Jackson Street
Newton, MA 02459

TO BE USED FOR: A multi-family development consisting of 12 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 12-unit multi-family structure with 20,000 square feet or more of new gross floor area with three stories and 36 feet in height (§4.1.2.B.1, §4.1.2.B.3), and ground-floor units (§4.4.1); to allow an FAR of 1.43 (§4.1.3); to waive six parking stalls (§5.1.4, and §5.1.13), to waive the minimum parking stall width requirements (§5.1.8.B.1); to reduce the driveway width for two way traffic (§5.1.8.D.1); to allow a loading facility

(§5.1.12.D.5) and to allow a retaining wall greater than four feet in height within a setback (§5.4.2)

ZONING: Business Use 1

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 Spruhan Engineering, Professional Engineer, consisting of the following five (5) sheets:
 1. Proposed Grading Plan, Sheet 2, dated March 15, 2021, revised December 10, 2021
 2. Proposed Drainage and Utilities Plan, Sheet 3, dated March 15, 2021, revised December 10, 2021
 3. Details, Sheet 4, dated March 15, 2021, revised November 3, 2021
 4. Details, Sheet 5, dated March 15, 2021, revised November 3, 2021
 5. Details, Sheet 6, dated March 15, 2021, revised November 3, 2021
 - b. Architectural Plans, prepared by Dooling and Company Architects., dated November 11, 2020, revised December 3, 2021, and revised through January 19, 2022, consisting of seven (7) sheets:
 1. Basement, A-10
 2. First Floor, A-11
 3. Second Floor, A-12
 4. Third Floor, A-13
 5. Roof Plan, A-14
 6. Building Elevations, A-15 showing West Elevation and Boylston Street Elevation
 7. Building Elevations, A-16, showing West Elevation and Jackson Street Elevation
 - c. Site Plan/Landscape Plan, A-7, prepared by Dooling and Company Architects, dated November 11, 2020, revised December 3, 2021
 - d. Sustainability Strategy document, on file with the Planning Department and City Clerk, prepared by Green Building Consulting, dated December 14, 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:

	3 BR
Inclusionary Units	2

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. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. The Inclusionary Units shall be designed and constructed subject to the provisions of the Inclusionary Zoning Ordinance, §5.11.7.

10. 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.
11. No dwelling unit 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 plans referenced in Condition #1.
12. 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.
13. The petitioner shall comply with the City's Tree Preservation Ordinance §21-80 et seq.
14. The Bike room in the garage shall include space for the storage of at least 18 bicycles.
15. Parking stall(s) shall be sold or rented separately from the cost of a dwelling 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 dwelling units shall conform to the Massachusetts Architectural Access Board (MAAB) requirements for "Group 1" units. In addition, per MAAB guidelines, 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 \$44,985.75 to the City for infrastructure improvements for Infiltration and Inflow (I&I). Payments shall be made as follows:
 - a. \$22,492.87 at the issuance of any Building Permit for the Project.
 - b. \$22,492.88 at the first dwelling unit certificate of occupancy (temporary or final) in the Project
20. The Petitioner shall, at its sole cost and expense, survey, design, and construct pedestrian and safety improvements at the intersection of Langley Road and Jackson Street in the form of curb extensions, Americans with Disability Act compliant pedestrian ramps, and tactile

warning strips, as determined by the Director of Planning and Development in consultation with the Commissioner of Public Works. Within 180 days of the issuance of any Building Permit for vertical construction, the Petitioner shall submit engineering plans for the off-site improvements to the Commissioner of Public Works for review and approval. Upon the City's approval of the plans, the Petitioner shall construct and install the improvements and have the work inspected and approved by the Commissioner of Public Works prior to the issuance of a certificate of occupancy (temporary or final) for the sixth dwelling unit.

21. 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.
22. The Petitioner shall implement the following measures 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 hired and paid for by the Petitioner, subject to approval by the City Solicitor. Notice shall be provided to such private property owners on how to make a claim for damages. This condition is not intended to limit any claims for damages for any amount through private action.
 - 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 demolition or 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) above static ground vibration measured under section i above.
 - iii. Planned demolition and construction methods to ensure vibration levels will not exceed the identified limit.

- iv. Specific measures to be taken during demolition and 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. Monitoring may no longer be required after completion of all vibration-related activity, subject to approval by the Commissioner of Inspectional Services.
 - f. All work shall be performed within the vibration level limits established by the vibration control plan. If the vibration limit is exceeded, the work 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.
- 23. The Petitioner shall do the following to remediate pest and rodent activity:
 - a. Prior to issuance of any demolition or building permit, the petitioner, at its sole cost and expense, 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, 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 Inspectional Services Department for review and approval prior to issuance of any demolition or building permit. Copies of such approvals shall be provided to the Department of Planning and Development.

- 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 the Operator deems necessary to control pest infestation and migration. The Pest Control Operator shall maintain a written record of all pest control measures performed within the subject property and shall provide progress reports to Inspectional Services Department and the Health and Human Services Department upon request.
 - d. Prior to issuance of the certificate of occupancy, the Pest Control Operator shall file a final report with the Department of Planning and Development, 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 assessment of the neighborhood and the site.
 - 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 and provide, at its sole cost and expense, rodent abatement services on an as needed basis for all direct abutters and abutters to direct abutters, subject to owner authorization of such properties and a waiver of liability.
24. All construction activity shall be limited to 7:00AM-7:00PM Monday through Friday and 8:00AM-5:00PM 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.
25. Prior to the issuance of any building permit for the Project, the Petitioner shall meet with the Ward Six Councilors to create a contractor parking plan that minimizes parking on Jackson Street to the greatest extent possible.
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, 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;
27. 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.
28. 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.
29. 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.
30. The Petitioner, at its sole cost and expense, shall locate all utility service lines servicing the Project from the right-of-way to the multi-family dwelling underground and shall also locate all utility service lines within the property underground.
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.
32. The petitioner shall install an outdoor bicycle rack for not more than 5 bikes. The location of the bicycle rack shall be reviewed and approved by the Director of Planning prior to the issuance of any building permit.
33. No building permit (other than a demolition permit) shall be issued by the City pursuant to this Special Permit/Site Plan Approval until the petitioner has submitted a statement certified by an registered architect that the initiatives included in the Sustainability Narrative

referenced on Condition #1 have been incorporated into the building permit plan set. These include but are not limited to:

- a. All-electric mechanical systems and appliances.
 - b. High performance building envelope with measures to minimize thermal bridging, resulting in reduced heating and cooling loads and thus energy consumption and cost.
 - c. Air barrier, insulation, and air sealing inspections & testing of exterior enclosure assemblies to identify leaks
34. 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 payments required in accordance with Condition #18.
 - c. Submitted design plans to the City Engineer, Director of Planning and Development, and Commissioner of Public Works in accordance with Condition #19.
 - d. Submitted a 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.
 - e. 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 #20.
 - f. 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 #2-14, and §5.11.8 of the Zoning Ordinance.
 - g. 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 Silver certifiability.
 - h. Submitted a statement prepared and certified by a registered architect to the Director of Planning and Development, certifying compliance with the Sustainability Narrative in accordance with Condition #1.
 - i. Complied with all applicable tree preservation provisions in accordance with Chapter 21 of the Revised Ordinances.

35. No Certificate of Occupancy (temporary or final) 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. 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 Condition #19.
 - d. Completed and received final inspection for the work outlined in Condition #20 prior to the issuance of a certificate of occupancy (temporary or final) for the sixth dwelling unit.
 - e. Applied to the City's Traffic Council for a parking restriction along the Jackson Street frontage.
 - f. Submitted to the Law Department copies of a fully executed Regulatory Agreement and Affordable Housing Restriction in accordance with Conditions #2-14.
 - g. Provided evidence satisfactory to the Law Department that the Regulatory Agreements have been recorded at the Southern Middlesex District Registry of Deeds.
 - h. Inclusionary Units shall be completed and occupied no later than the completion and occupancy of the market-rate units. 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.
 - i. 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 have been constructed to standards of the City of Newton Public Works Department.
 - j. 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.
 - k. Filed with the Department of Inspectional Services and the Department of Planning and Development a certificate from a registered architect certifying that all dwelling units

in the Project have been constructed and conform with MAAB requirements for “Group 1” units.

- l. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that utilities have been located underground, or submitted evidence that best efforts have been made to underground the utilities.
 - m. 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.
 - n. Filed with Inspectional Services and the Planning Department, a statement or certificate from a registered architect certifying the Project has been constructed in accordance with the sustainability narrative referenced in Condition #1.
36. 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.