



Ruthanne Fuller  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

**#311-22**

Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

Barney S. Heath  
Director

**PUBLIC HEARING MEMORANDUM**

Public Hearing Date: July 12, 2022  
Land Use Action Date: September 27, 2022  
City Council Action Date: October 3, 2022  
90-Day Expiration Date: October 10, 2022

DATE: July 8, 2022

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development  
Katie Whewell, Chief Planner for Current Planning  
Michael Gleba, Senior Planner

SUBJECT: **Petition #311-22** for SPECIAL PERMIT/SITE PLAN APPROVAL to allow retaining walls greater than 4’ within side and rear setbacks at **10 Elberta Terrace**, Ward 4, Newton, on land known as Section 41 Block 17 Lot 19, containing approximately 15,787 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 7.3.3, 7.4, 5.4.2.B of Chapter 30 of the City of Newton Rev Zoning Ord, 2017

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis conducted by the Planning Department. The Planning Department's intention is to provide a balanced review of the proposed project based on information it has at the time of the public hearing. Additional information about the project may be presented at or after the public hearing for consideration at a subsequent working session by the Land Use Committee of the City Council.



**10 Elberta Terrace**

## EXECUTIVE SUMMARY

The subject property at 10 Elberta Terrace consists of a 10,637 square foot lot in a Single Residence 3 (SR3) zoning district improved with a single-family dwelling constructed in 2018 that includes an attached two-car garage.

The petitioner is seeking a special permit per Section 5.4.2.B of the Newton Zoning Ordinance (NZO) to allow retaining walls exceeding four feet within the setbacks at the side and rear of the property. As designed the proposed walls would have a combined length of approximately 90 feet and reach a maximum height of 7 feet in the west setback and 4.7 feet within the northern setback.

### I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The specific site in a Single Residence 3 (SR3) district is an appropriate location for the proposed retaining walls in excess of four feet in height within a side and the rear setbacks (§7.3.3.C.1)
- The proposed retaining walls in excess of four feet in height within the side and the rear setbacks will adversely affect the neighborhood (§7.3.3.C.2)
- The proposed retaining walls in excess of four feet in height within a side and the rear setbacks will create a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4)

### II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

#### A. Neighborhood and Zoning

The subject property is located on the west side of Elberta Terrace just north of Commonwealth Avenue. The surrounding neighborhood north of Commonwealth Avenue is a largely a mix of single- and two- family dwellings; with an exception being a commercial property located just to the southeast, at the northwest corner of Commonwealth and Lexington Street. Parcels to the south across Commonwealth Avenue are occupied by a mix of two-family dwelling and commercial uses (**Attachment A**). The site and immediate vicinity north of Commonwealth Avenue are in a Single Residence 3 (SR3) district, an exception being the above-referenced parcel to the southeast of the subject property which is zoned Business 2 (BU2); to the south across Commonwealth Avenue are several Multi Residence (MR1) and Business 1 (BU1) zoned properties (**Attachment B**).

#### B. Site

The subject property consists of a 10,637 square foot lot improved with a single-family dwelling constructed in 2018. The parcel's grade slopes upward toward the northwest portion of the site, with an approximately 16-foot difference across site's expanse. Vehicular access is provided by a paved driveway off Elberta Terrace, near the property's

southeastern corner that serves a two-car garage. The property is currently under construction, and the remainder of the site features some lawn area, shrubs and trees.

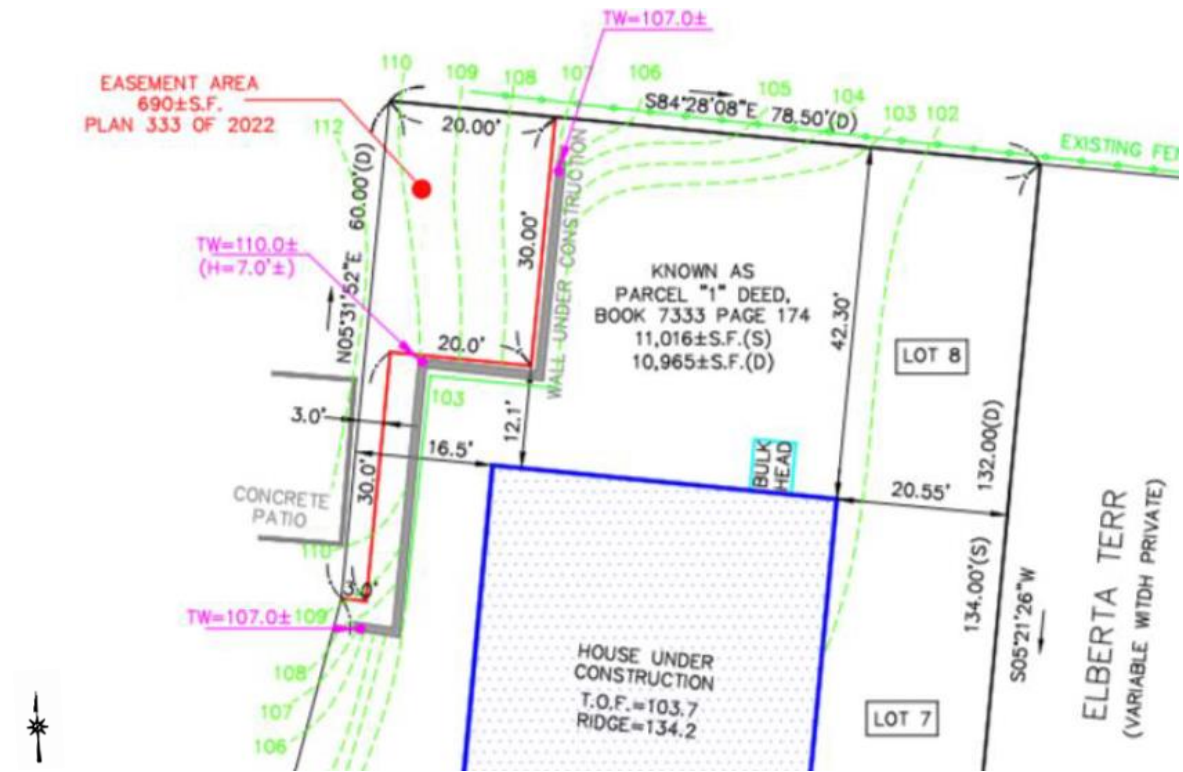
### III. PROJECT DESCRIPTION AND ANALYSIS

#### A. Land Use

The principal use of the site will be a single-family dwelling.

#### B. Building and Site Design

The petitioner seeks approval to complete the construction of approximately 90 linear feet of retaining walls within the rear and side setbacks that will allow the retention of soil from portions of the site and adjacent higher properties.



**Site Plan detail showing location of proposed retaining walls**

One wall segment located perpendicular to the rear northern property line would measure approximately 4.7 feet in height. That section would also be within the west setback, as would a connected wall that would be approximately seven feet high and run perpendicular to it and the west property line. Another segment of wall would be perpendicular to the previous described wall and parallel to, and three feet from, the western property line. A short segment

of wall would then run a few feet westward.

The Planning Department notes the proposed walls would likely need safety fencing in some sections given their height.

C. Parking and Circulation

No changes to the site's parking or circulation are contemplated by the present petition.

D. Landscaping

No changes to the site's parking or circulation are contemplated by the present petition.

IV. TECHNICAL REVIEW

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

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

- Special Permit per §7.3.3 to allow a retaining wall exceeding four feet within the setback (§5.4.2)

B. Engineering Review

The Planning Department recommends that in the event this petition is granted a condition be included requiring review and approval of a final site plan by the Engineering Division before a building permit is issued. Also, the Planning Department notes that, as with all retaining walls, a structural analysis will be required by the Inspectional Services Department prior to the issuance of any building permit for the proposed wall.

C. Historic Review

Review of this project by the Newton Historic Commission is not required.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

**ATTACHMENTS:**

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

# ATTACHMENT A




## Land Use

### 10 Elberta Terrace

*City of Newton,  
Massachusetts*

#### Land Use

#### Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial

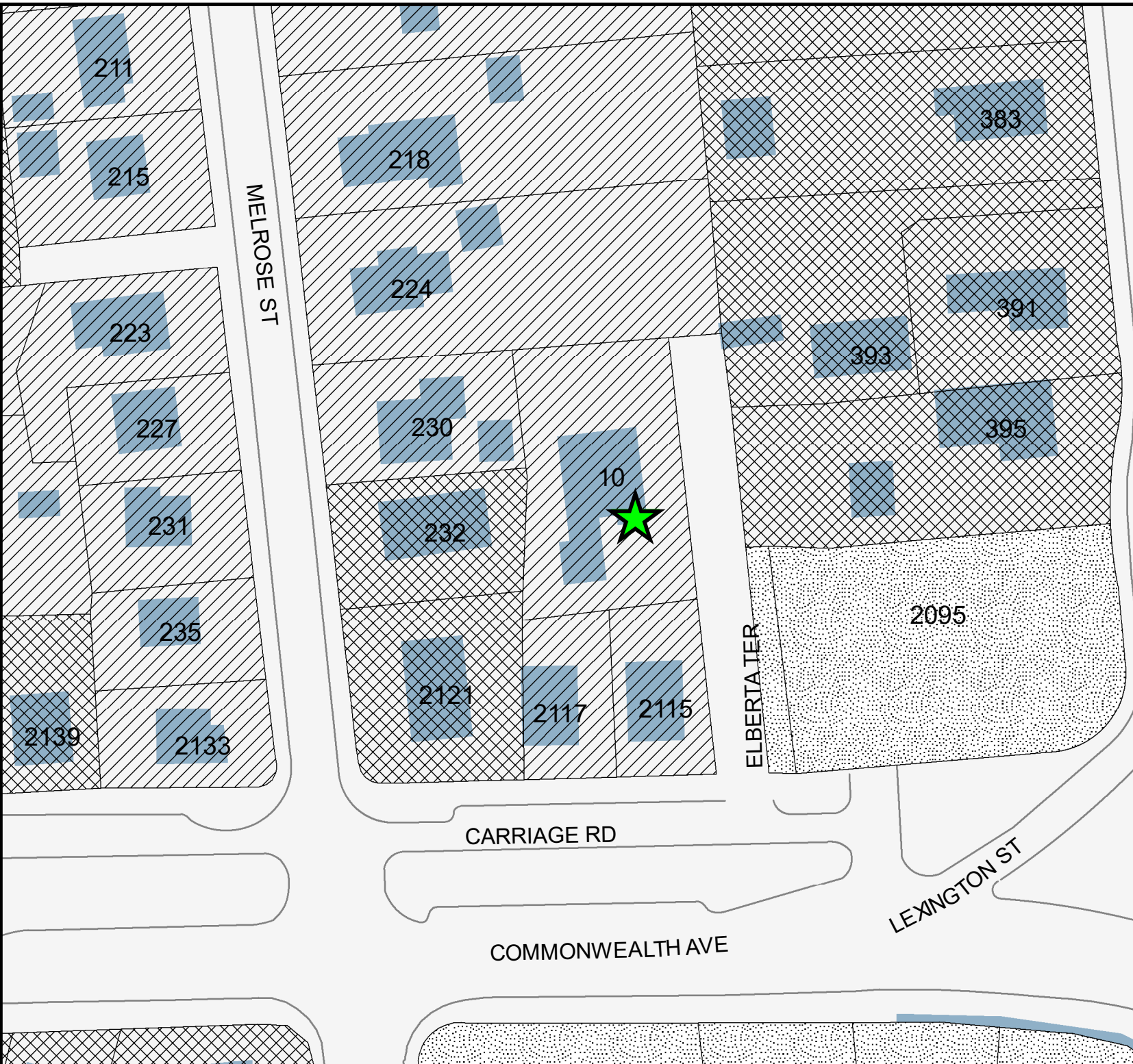


The information on this map is a Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications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

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



Map Date: June 29, 2022






# ATTACHMENT B

## Zoning

### 10 Elberta Terrace

*City of Newton,  
Massachusetts*

-  Single Residence 3
-  Multi-Residence 1
-  Business 1
-  Business 2



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

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



Map Date: June 29, 2022





**Ruthanne Fuller**  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: April 28, 2022

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official

Cc: Pasquale Bruno, Applicant  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Associate City Solicitor

**RE: Request to allow retaining walls exceeding four feet within a setback**

Applicant: Pasquale Bruno	
<b>Site:</b> 10 Elberta Terrace	<b>SBL:</b> 41017 0019
<b>Zoning:</b> SR3	<b>Lot Area:</b> 10,637 square feet
<b>Current use:</b> Single-family dwelling	<b>Proposed use:</b> No change

### **BACKGROUND:**

The property at 10 Elberta Terrace consists of a 10,637 square foot lot improved with a single-family dwelling constructed in 2018. The petitioner proposes to construct retaining walls exceeding four feet within the setbacks at the side and rear of the property, requiring a special permit.

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

- Zoning Review Application, prepared by Pasquale Bruno, applicant, submitted 3/10/2022
- Plan of Land Showing Proposed Walls, prepared by Bibbo Brothers and Associates, surveyor, dated 7/27/2021

**ADMINISTRATIVE DETERMINATIONS:**

- 1. The petitioner is proposing retaining walls along the western side lot line as well as along half of the rear boundary. The walls reach a maximum height of 7 feet in the side setback and 4.7 feet within the rear, exceeding the four feet maximum height allowed within a required setback. Per section 5.4.2.B, the petitioner requires special permits to construct the proposed walls.
  
- 2. See “Zoning Relief Summary” below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
§5.4.2.B	Request to allow a retaining wall exceeding four feet within the setback	S.P. per §7.3.3



### **Next Steps**

Please contact a Planner by calling 617.796.1120 to obtain a copy of the Special Permit Application. If there have been any changes made to the plans since receipt of your Zoning Review Memorandum you must inform the Zoning Code Official to ensure additional relief is not required. You will need an appointment with a Planner to file your Special Permit Application. **Incomplete applications will not be accepted.**

### **The following must be included when filing a Special Permit Application:**

1. Two (2) copies of the completed Special Permit Application (signed by property owner)
2. Filing Fee (see Special Permit Application)
3. Two (2) copies of the Zoning Review Memorandum
4. Plans (Thirteen sets signed and stamped by a design professional). Each set shall contain:
  - Site Plans showing existing and proposed conditions (including topography as applicable)
  - Architectural plans showing existing and proposed conditions (including façade materials)
  - Landscape plan (as applicable)
5. One (1) Floor Area Ratio (FAR) Worksheet, (signed and stamped by a design professional)
6. One (1) copy of any previous special permits or variances on the property (as applicable)
7. One (1) copy of any other review/sign-off (Historic, Conservation, Tree Removal, etc. as applicable)
8. Two (2) electronic copies of the application with all above attachments (USB or CD)

Copies of all plans shall either be 8.5 x 11 or 11 x 17, except as requested by staff

Special Permit Sign (\$20 fee)

### **Incomplete applications will delay the intake and review of your project.**

Depending on the complexity of the project additional information may be requested to facilitate a full review of the application.

Has the proposed project been presented to and discussed with abutting property owners?      Y/N

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 allow a retaining wall in excess of 4 feet in height within the rear and side setbacks, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

- 1) The specific site in a Single Residence 3 (SR3) district is an appropriate location for retaining wall in excess of four feet in height within the rear and side setbacks to assist in soil stabilization given the grades of adjacent properties (§7.3.3.C.1)
- 2) The retaining wall in excess of four feet in height within a setback will not adversely affect the neighborhood (§7.3.3.C.2)
- 3) The retaining wall in excess of four feet in height within a setback will not create 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)

PETITION NUMBER: #311-22

PETITIONER: Kenneth Leary

ADDRESS OF PETITIONER: 2115 Commonwealth Avenue  
Newton, MA 02466

LOCATION: 10 Elberta Terrace, on land known as Section 41, Block 17, Lot 19,  
containing approximately 15,787 square feet of land

OWNER: Kenneth Leary

ADDRESS OF OWNER: 2115 Commonwealth Avenue  
Newton, MA 02466

TO BE USED FOR: Single Family Dwelling

EXPLANATORY NOTES: Special permits per §7.3.3:

- to allow a retaining wall exceeding four feet in height within a setback (§3.4.2.B)

ZONING: Single Residence 3 (SR3) district

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this Special Permit/Site Plan Approval shall be located and constructed consistent with:
  - a. A site plan entitled "Plan of Land - Newton, MA, Showing Block Wall Under Construction, #10 Elberta Terrace, prepared by Bibbo Brothers and Associates, dated May 23, 2022, as revised through July 8, 2022
2. Prior to the issuance of any Building Permit issued pursuant to this Special Permit/Site Plan Approval, the Inspectional Services Department shall perform a structural analysis of the proposed retaining walls.
3. No Building Permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:
  - a. Recorded a certified copy of this order for the approved Special Permit/Site plan with the Registry of Deeds for the Southern District of Middlesex County.
  - b. Filed a copy of such recorded board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
  - c. Submitted a Final Site Plan for review and approval by the Engineering Division and the Planning and Development Department. Said plan shall indicate the location of all structures, walls, paved areas and fencing as well as the height of any walls and fencing.
  - d. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
4. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
  - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by an professional engineer or surveyor certifying compliance with Condition #1.

- b. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services final as-built plans in paper and digital format signed and stamped by a licensed architect, engineer or surveyor.
  - c. Filed with the City Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, final landscape features and fencing.
5. The Petitioner shall ensure that any and all safety fencing installed in relation to the retaining walls approved pursuant to this order shall be maintained in good condition.