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Mayor

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#357-22 & #358-22

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Barney S. Heath
Director

PUBLIC HEARING/WORKING SESSION III MEMORANDUM

DATE: December 9, 2022
MEETING DATE: December 13, 2022
TO: Land Use Committee of the City Council
FROM: Barney S. Heath, Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning
Michael Gleba, Senior Planner
CC: Petitioner

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

PETITIONS #357-22 & #358-22 1314 Washington St., 31 Davis St. and 33 Davis St.

Petition #357-22 for SPECIAL PERMIT/SITE PLAN APPROVAL to rezone 3 parcels as follows: **1314 Washington Street** (Section 33 Block 10 Lot 01), **31 Davis Street** (Section 33 Block 10 Lot 11) and **33 Davis Street** (Section 33 Block 10 Lot 12) from BUSINESS 1 TO MIXED USE 4.

Petition #358-22 for a SPECIAL PERMIT/SITE PLAN APPROVAL to allow a building in excess of 20,000 sq. ft., to allow a mixed-use residential building with five stories and 60 feet in height, to allow reduced lot area per unit, to exceed the maximum front setback, to allow a FAR of 2.45 in a five-story building, to waive the setback requirement for the portions of the building exceeding 40 ft. in height, to waive entrance and façade transparency requirements, to allow a restaurant with more than 50 seats with extended hours of operation, to allow ground floor residential use, to waive the requirement of using the A+B+C parking formula, to waive 97 parking stalls, to allow assigned parking, to allow reduced parking stall width and depth, to allow reduced accessible stall depth, to waive end stall maneuvering space requirements, to allow reduced aisle width at **1314 Washington Street** and **31, 33 Davis Street**, Ward 3, Newton, on land known as Section 33 Block 10 Lots 01, 11, 12 containing approximately 30,031 sq. ft. of land in a district zoned BUSINESS USE 1 (rezone to MIXED USE 4 proposed). Ref: Sec. 7.3.3, 7.4, 4.2.2.A.2, 4.2.5.A.3, 4.2.2.B.1, 4.2.3, 4.2.5.A.4, 4.2.2.B.3, 4.2.5.A.2, 4.2.5.A.4.c, 4.2.5.A.6.a, 4.2.5.A.6.b, 4.4.1, 6.4.29.B.1, 6.4.29.C.6, 6.2.4, 5.1.3.B, 5.1.13, 5.1.4, 5.1.3.E, 5.1.8.B.1, 5.1.8.B.2, 5.1.8.B.4, 5.1.8.B.6, 5.1.8.C.1, 5.1.8.C.2 of the City of Newton Rev Zoning Ord, 2017.

The Land Use Committee (the “Committee”) held public hearings on July 19, 2022 and October 8, 2022, November 22, 2022, on this petition. This memo reflects additional information addressed to the Planning Department as of December 7, 2022.

BACKGROUND

The subject property is comprised of three lots, 1314 Washington Street, 31 Davis Street, and 33 Davis Street, totaling 30,031 square feet in a Business 1 (BU1) zoning district currently improved with a bank building constructed circa 1915 and a surface parking lot with 60 stalls and many dimensional parking nonconformities. The petitioner proposes to construct a five-story rear addition containing 50 residential units to the south side of the existing building and convert the existing bank space into a restaurant and lobby area.

The petitioner is seeking to have the three parcels’ zoning designation changed from BU1 to Mixed Use (MU4) and this memo assumes the parcels are zoned as such. As proposed the project also requires relief from several aspects of the Zoning Ordinance. The required relief pertains to certain dimensional and design standards, proposed uses, and required parking and parking stall and facilities dimensions.

The proposed 50-unit multi-family dwelling would be subject to the inclusionary zoning provisions of the Newton Zoning Ordinance (NZO). Should this project be approved, the petitioner would be required to provide eight (15%) of the dwelling units to households earning 50%-80% of the Area Median Income (AMI) and one (2.5%) of the units to households earning up to 110% of the AMI for a total of nine required inclusionary units. The petitioner would also be required to provide a fractional cash payment equivalent to 0.3 units.

As the proposed development would include construction or substantial reconstruction of one or more buildings totaling 20,000 square feet or more of gross floor area and also requires a special permit, it would be subject to the sustainable development requirements provided Sec. 5.13.3.A.

Due to the size of the project, plans can be found here by searching the project address at <https://newtonma.viewpointcloud.com/records/745458>.

UPDATES

On December 1, the petitioner submitted the attached letter (**Attachment A**), indicating it would be amenable to modify the project plans to preclude the establishment of a restaurant in the approximately 3,800 square feet of commercial space.

The petitioner currently proposes to provide 63 parking stalls on two levels, with 50 below ground spaces for residents (one per dwelling unit) and 13 at ground level for the commercial space.

The proposed 50 dwelling units would require 100 parking stalls. As currently proposed, a 160-seat restaurant use (inclusive of 130 indoor seats and 30 outdoor seats) in the commercial space would require 60 stalls resulting in a total parking requirement of 160 stalls and the requested waiver of 97 stalls. In contrast, a retail use would require only 15 stalls (13 based on the square footage of the space and two for 4-6 employees), resulting in a smaller total parking requirement of 115 stalls, resulting in a reduced waiver of only 52 stalls.

The petitioner has indicated it would also be amenable to the inclusion in a Council Order a condition that would require the petitioner to engage in “good faith efforts” to secure the use of 20 or more off-site parking stalls during peak restaurant hours, perhaps including valet service for those stalls, before a certificate of occupancy could be issued for a restaurant on the subject property.

The Planning Department expects the petitioner to be prepared to discuss this matter in detail at the upcoming public hearing.

ATTACHMENT(S)

Attachment A	Petitioner’s letter to the Land Use committee, dated December 1, 2022
Attachment B	DRAFT Council Order



STEPHEN J. BUCHBINDER
ALAN J. SCHLESINGER
LEONARD M. DAVIDSON
A. MIRIAM JAFFE
SHERMAN H. STARR, JR.
JUDITH L. MELIDEO-PREBLE
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December 1, 2022

BY ELECTRONIC MAIL

Land Use Committee
Newton City Council
1000 Commonwealth Avenue
Newton, MA 02459-1449

Re: Request for Zone Change (RZ-22-2) and Special Permit (SP-22-111)
1314 Washington Street and 31 and 33 Davis Street

Dear Chair Lipof, Vice-Chair Kelley, and Councilors Greenberg, Lucas, Markiewicz, Downs, Bowman, and Laredo:

I am writing to share the Petitioner's thoughts as we prepare to return to the Land Use Committee on December 13th. The Petitioner is anxious to have the requested zone change and special permit approved prior to the close of 2022. There are several reasons why this is important to the Petitioner, including commitments with investors and lenders.

With the foregoing in mind, our first choice for the approximately 3,800 square feet of commercial space in the project would be a restaurant. We believe that would be the optimal use of the historic bank building, and that it would bring needed vitality to a prominent location in West Newton Square. Based on our discussions at Land Use to date, we believe that a restaurant use is also the preference for most of you.

While we are willing to commit to a good faith effort to pursue off-site parking for the restaurant use, we cannot guarantee that we will be able to secure the same, nor is it likely that we would have any final arrangement in place prior to the time that we return to the Land Use Committee. You should also recognize that even if the Petitioner is successful in lining up some offsite parking, the other party is unlikely to enter into a contractual long term arrangement, as the other party will want the flexibility to make improvements to its own property, or to sell the same, at a future date.

If you do not feel comfortable approving this project based upon a good faith commitment to pursue off-site parking for a restaurant use, then we would ask you to approve the project with a retail, rather than restaurant, use. That action, of course, would not prevent us from returning to the City Council sometime in the future to seek an amendment to allow the restaurant use with the provision of offsite parking.

SCHLESINGER AND BUCHBINDER, LLP

Land Use Committee
December 1, 2022

Page 2

We look forward to continuing our dialogue at Land Use.

Sincerely,



Stephen J. Buchbinder

Distribution

Richard A. Lipof, Chair
Andrea W. Kelley, Vice Chair
Maria Scibelli Greenberg
Tarik J. Lucas
Christopher J. Markiewicz
Andreae Downs
Alicia G. Bowman
Marc C. Laredo

cc: Dominic Warren, Clerk, Land Use Committee
Barney Heath, Director of Planning and Development
Jennifer Caira, Deputy Director of Planning and Development
Katie Whewell, Chief of Current Planning
Michael Gleba, Senior Planner
Deputy City Solicitor Jonah Temple
John Sisson, Economic Development Director
Mr. Robert Korff
Mr. Damien Chaviano

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 for a mixed use development consisting of 50 residential units and approximately 3,873 square feet of retail/restaurant space, and 63 parking stalls, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof :

Special Permit criteria

- The specific site is an appropriate location for the project as designed with five stories and 60 feet in height, a floor area ratio (FAR) of 2.48, a restaurant with more than 50 seats with extended hours of operation (§4.4.1, §6.4.29.B.1, §6.4.29.C.6), and ground floor residential uses given the adjacent neighborhood's mix of residential and commercial land uses and structures of varying scales and heights (§7.3.3.C.1)
- The use as developed and operated with five stories and 60 feet in height, a floor area ratio (FAR) of 2.48, a restaurant with more than 50 seats with extended hours of operation and ground floor residential uses will not adversely affect the neighborhood given the adjacent neighborhood's mix of residential and commercial land uses and structures of varying scales and heights (§7.3.3.C.2)
- There will be no 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),
- The site and buildings as designed, constructed and operated will contribute significantly to the efficient use and conservation of natural resources and energy, as it would be in compliance with the sustainability requirements established by Sec. 5.13 of the NZO by, among other aspects, being built to LEED Gold certifiable standards, would have all electric HVAC systems for the residential spaces and electric hot water when feasible, and 12 parking stalls that would have electric vehicle (EV) charging stations; the Petitioner will also conduct a Passive House feasibility study.

Additional standards in an MU4 zoning district

- By allowing reduced lot area per unit, 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 (§4.2.2.A.2, §4.2.5.A.3).
- By allowing the development to exceed the maximum front setback, the proposed plan does not create shadows or blocked views that have material and adverse effects on its surroundings, supports pedestrian vitality, and advances the purposes of the MU4 district (§4.2.3, §4.2.5.A.4).
- The proposed building with five stories and 60 feet in height is compatible in visual scale to its surroundings, does not create shadows or blocked views that have material and adverse effects on its surroundings, and advances the purposes of the MU4 district (§4.2.3, §4.2.2.B.3, §4.2.5.A.2).
- With the requested waiver of the setback requirement for the portions of the building exceeding 40 feet in height, the proposed plan does not create shadows or blocked views that have material and adverse effects on its surroundings, supports pedestrian vitality, and advances the purposes of the MU4 district (§4.2.5.A.4.c).
- With the requested waiver of entrance requirements, the proposed design better enables appropriate use of the site, supports pedestrian vitality, and achieves the purposes of this district than strict compliance with that standard (§4.2.5.A.6.a).
- With the requested waiver of façade transparency requirements, the proposed design better enables appropriate use of the site, supports pedestrian vitality, and achieves the purposes of this district than strict compliance with that standard (§4.2.5.A.6.b).

Regarding exceptions to parking requirements:

- Granting exceptions to certain parking facility requirements to waive use of the A-B+C parking formula (§5.1.3.B), waive 97 parking stalls (§5.1.4), allow assigned parking (§5.1.3.E), reduced parking stall width (§5.1.8.B.1), reduced parking stall depth (§5.1.8.B.2), and to allow reduced accessible stall depth (§5.1.8.B.4), is appropriate as literal compliance with said requirements 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).

PETITION NUMBER: #358-22

PETITIONER: HQ, LLC

ADDRESS OF PETITIONER: 275 Grove Street
Suite 2-150

Newton, MA 02466

- LOCATION: 1314 Washington Street, 31 Davis Street, 33 Davis Street, Ward 3, on land known as Section 33, Block 10, Lots 1, 11, and 12, containing approx. 30,301 sq. ft. of land
- OWNER: Madison Queens-Guy Brewer LLC
- ADDRESS OF OWNER: 275 Grove Street
Suite 2-150
Newton, MA 02466
- TO BE USED FOR: Residential and restaurant or retail uses
- EXPLANATORY NOTES: Special permit per §7.3.3 to:
- allow reduced lot area per unit (§4.2.2.A.2, §4.2.5.A.3)
 - allow a building in excess of 20,000 square feet (§4.2.2.B.1)
 - exceed the maximum front setback (§4.2.3, §4.2.5.A.4)
 - allow a mixed-use residential building with five stories and 60 feet in height (§4.2.3, §4.2.2.B.3, §4.2.5.A.2)
 - allow an FAR of 2.48 in a five-story building (§4.2.2.B.3, §4.2.3)
 - waive the setback requirement for the portions of the building exceeding 40 feet in height (§4.2.5.A.4.c)
 - waive entrance requirements (§4.2.5.A.6.a)
 - waive façade transparency requirements (§4.2.5.A.6.b)
 - allow a restaurant with more than 50 seats with extended hours of operation (§4.4.1, §6.4.29.B.1, §6.4.29.C.6)
 - allow ground floor residential use (§4.4.1, §6.2.4)
 - waive the requirement of using the A-B+C parking formula (§5.1.3.B, §5.1.13)
 - waive 97 required parking stalls (§5.1.4, §5.1.13)
 - allow assigned parking (§5.1.3.E, §5.1.13)
 - allow reduced parking stall width (§5.1.8.B.1, §5.1.13)
 - allow reduced parking stall depth (§5.1.8.B.2, §5.1.13)
 - allow reduced accessible stall depth (§5.1.8.B.4, §5.1.13)
 - waive end stall maneuvering space requirements (§5.1.8.B.6, §5.1.13)
 - allow reduced aisle width (§5.1.8.C.1, §5.1.8.C.2, §5.1.13)

ZONING: Mixed Use 4 (MU4)

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 the following plans (collectively, the “Approved Plans”):
 - a. Site/Civil plans, prepared by Bohler Engineering, dated May 2, 2022, revised September 15, 2022, signed and stamped by Joshua G. Swerling, Professional Engineer, consisting of three (3) sheets:
 - Site layout Plan, C1, revised November 17, 2022
 - Grading and Drainage Plan, C2
 - Average Grade Plane Exhibit C3
 - b. Architectural Plans entitled, “1314 Washington Street” prepared by David M. Schwarz Architects, dated August 19, 2022, signed and stamped by David M. Schwarz, Registered Architect, consisting of eleven (11) sheets:
 - P1 Level – A1
 - Level 1 Plan – A2
 - Level 2 Plan – A3
 - Level 3 Plan – A4
 - Level 4 Plan – A5
 - Level 5 Plan – A6
 - Roof Plan – A7
 - Sections – A8
 - Exterior Elevations, showing (i) Davis and Highland Street Corner, (ii) South Elevation – Davis Street, and (iii) West Elevation – Highland Street – A10
 - Exterior Elevations, showing (i) North Elevation – Residential Entrance, (ii) North Elevation @ Residential Building, (iii) South Elevation – Setback, and (iv) East Elevation – A11
 - Signage Elevations – A12
 - c. Landscape Site Materials Plan, prepared by Halvorson / Tighe & Bond Studio, dated November , 2022, signed and stamped by Rob Adams, Registered Landscape Architect

- d. Lighting Plan, prepared by Reflex Lighting, dated August 23, 2022
2. Prior to the issuance of any building permit for the Project, the Petitioner shall provide an Approval Not Required (“ANR”) plan combining the three lots into one lot to the City Engineer for review and approval. Once approved, and prior to the issuance of a certificate of occupancy, the ANR plan must be recorded at the Middlesex South Registry of Deeds or filed with the Middlesex South Registry District of the Land Court. A recorded copy of the ANR plan shall be submitted to the Engineering Division of Public Works prior to issuance of any Certificate of Occupancy.
 3. All residential units shall conform to the Massachusetts Architectural Access Board (MAAB) requirements for “Group 1” units. The design and construction of the site and proposed structure shall comply with MAAB regulations and the Fair Housing Act.
 4. The Petitioner shall retain a qualified accessibility consultant to independently review the building permit plans for compliance with MAAB requirements. The Petitioner shall submit the consultant’s qualifications to the Inspectional Services Department. Prior to the issuance of a building permit, the consultant shall submit a report to the Inspectional Services Department detailing compliance with MAAB and identifying any variances needed.
 5. Prior to the issuance of a certificate of occupancy, the Petitioner’s accessibility consultant shall submit reports certifying that the construction complies with MAAB requirements and identifying any variances granted.
 6. In accordance with the City’s Inclusionary Zoning Ordinance, §5.11, 17.5% of the dwelling units in the Project shall be affordable housing units (the “Inclusionary Units”):
 - a. 15% of the dwelling units in the Project shall be made available to households earning at or below 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.

The breakdown of the Tier 1 Units, based on the Project containing 50 units, will be as follows:

 - i. Two 1-BR units and two 2-BR units will be priced for households having incomes at 50% AMI
 - ii. Two 1-BR units, one 2-BR unit, and one 3-BR-unit will be priced for households having incomes at 80% AMI
 - b. 2.5% of the dwelling units in the Project shall be affordable to households earning greater than 80%, but at or below 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 Units").

- i. There will be one Tier 2 Unit, which will be a 2-BR unit.
 - c. Prior to the issuance of any certificate of occupancy, the Petitioner will make a cash payment of \$195,000.00 (calculated for 0.3 of a Tier 2 Unit) to the City in lieu of a fractional unit pursuant to the City's Inclusionary Zoning Ordinance, §5.11.C.
7. Parking stalls for residents of the Project shall be leased separately from the cost of a unit. Prior to the issuance of any certificate of occupancy (temporary or final), the Petitioner shall provide evidence of such separation (such as a lease) to the Director of Planning and Development.
8. The restaurant shall not operate with more than 130 indoor seats and 30 outdoor seats.
9. The Petitioner shall be responsible at its sole cost for trash and recycling disposal for the Project which shall comply with the City's Noise Control Ordinance.
10. The Petitioner shall make payments in the aggregate amount of \$96,435.00 to the City for infrastructure improvements for inflow and infiltration (I&I) (representing 25% of the I&I calculation) in accordance with Section 29-169 of the Revised Ordinances. Payments shall be made as follows:
 - a. \$48,217.50 (50%) prior to the issuance of any building permit for the Project.
 - b. \$48,217.50 (50%) prior to the issuance of any certificate of occupancy (temporary or final) for the Project
11. The Petitioner, at its sole cost and expense not to exceed \$289,000, shall design and construct improvements to Captain Ryan Park as follows:
 - a. The Petitioner shall submit final design plans for review and approval by the Director of Planning and the Commissioner of Parks, Recreation & Culture prior to the issuance of any building permit for the Project (other than a demolition permit). Final design plans shall be consistent with the improvements described in the memorandum from Robert Adams, ASLA to Mark Development dated _____, 2022. Prior to submission of final design plans, the Petitioner shall meet periodically with the Director of Planning and the Commissioner of Parks, Recreation & Culture to review design development, feasibility, and schematics. The Petitioner shall also review plans and seek input from the Ward 3 Councilors prior to submission of final design plans. The Director of Planning and the Commissioner of Parks, Recreation & Culture shall review and respond to the Petitioner's submission of final design plans within sixty days from submission.

Prior to the issuance of a certificate of occupancy (temporary or final) for the final dwelling unit, the Petitioner, at its sole cost and expense, shall complete this work in accordance with the approved plans.

- b. In the event the design and construction work described in this condition is completed

at a cost of less than \$289,000, the Petitioner shall pay the remaining balance of funds to the City to be used for improvements in the immediate vicinity of the Project. Any such funds shall be held by the City in an account and shall be appropriated only with the approval of the City Council and the Mayor in accordance with municipal finance law. To ensure compliance, the Petitioner shall submit a scope of work with associated costs at the building permit stage and submit a final cost affidavit under the pains and penalties of perjury with an initialized accounting of all design and construction costs incurred upon completion of the work.

12. Upon occupancy of the Project, the Petitioner shall institute a Transportation Demand Management Plan ("TDM Plan") to reduce vehicle trips to the site. The TDM Plan shall include, but not be limited to:
 - a. Displaying all transit schedules in a visible location.
 - b. \$70,000 contribution to the City prior to the issuance of a building permit for vertical construction towards City initiated TDM measures such as a bus shelter, transit, infrastructure, biking, or other measures intended to reduce vehicle trips in the immediate vicinity of the Project.
 - c. Provide pre-paid CharlieCard and/or Commuter Rail passes to any employee or resident who can utilize the MBTA system, bikeshare, or similar measure to discourage vehicle trips to the facility, up to a maximum of \$5,000. If the \$5,000 in transit subsidies is not dispensed/expended after a period of five years from any certificate of occupancy, the remainder shall be paid to the City for transportation related improvements or towards funding the City's shuttle system or other public transportation systems. Petitioner/Operator shall provide reports each year, annually on the anniversary of the issuance of the certificate of occupancy, of the number of transit passes issued and funds expended pursuant to this condition.
 - d. Providing indoor and outdoor secure bicycle storage areas on site consistent with the Approved Plans.
 - e. Designating or hiring a TDM coordinator (at the option of the Petitioner, a TDM membership may be substituted for this requirement).

The Petitioner shall be obligated to continue such TDM Plan for the life of the Project and bear any and all costs associated with said plan.

At its sole expense and within twelve months of the issuance of a final certificate of occupancy the Petitioner shall conduct a post-occupancy study of on-site parking at the premises. The scope of the study, which shall be determined by the Director of Planning and Development in consultation with the Director of Transportation and the Petitioner, shall include but not be limited to detailing the commuting modes and methods of all persons employed on-site and the usage of the property's on-site parking stalls on several weekday and weekend days and evenings.

If the results of the study suggest the TDM Plan is insufficient and/or elements of the TDM Plan should be modified or expanded in order to encourage increased use of public transportation and/or other alternatives to single occupancy automobile travel, the Director of Planning and Development shall, in consultation with the Director of Transportation and the Petitioner, identify reasonable additional measures to be implemented in a timely fashion by the Petitioner to the satisfaction of the Director of Planning and Development and the Director of Transportation.

In the event the Petitioner is ever required to revise the TDM Plan and/or implement additional measures, the Petitioner shall be required to meet with the Director of Planning and Development and the Director of Transportation (or their designees) 12 months after the implementation of such revisions and/or additional measures to assess the effectiveness of such changes and identify, if necessary, any further TDM Plan revisions or additional measures to be undertaken by the Petitioner to encourage increased use of public transportation and/or other alternatives to single occupancy automobile travel.

13. The Petitioner shall provide the City with an easement for the public sidewalk on the Petitioner's property along Davis Street as shown on the Approved Plans in a form approved by the Law Department prior to the issuance of any certificate of occupancy.
14. 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 (the "O&M Plan") for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M Plan must be adopted by the Petitioner. A copy of the O&M Plan shall be filed with the Engineering Division of Public Works and submitted with the Building Permit application.
15. 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. A copy of such approval 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.
 - 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 and Inspectional

Services Department summarizing the methods used, whether off-site migration occurred, the frequency and dates of service, and a post-construction site assessment 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 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.
16. All construction activity shall be limited to 7:00AM-5:00PM Monday through Friday and 8:00AM-4:00PM on Saturdays, excluding holidays, unless waived by the Mayor in accordance with Revised Ordinances, §20-13.
 17. Prior to the issuance of any Building Permit, the Petitioner shall submit a Construction Management Plan (the "CMP") for review and approval to the Commissioner of Inspectional Services, the Director of Planning and Development, 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.
 - 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 and erosion control.
 - d. A plan showing temporary pedestrian access within work zones in accordance with DPW Policy
 - e. Proposed methods for dust control including, but not limited to: watering, 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 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.
 - g. Tree preservation plan to define the proposed method(s) for protection of any existing trees to remain on site.

- h. The CMP shall also address the following: safety precautions; anticipated dewatering during construction; site safety and stability; and impacts on abutting properties.
18. The Petitioner 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.
 19. 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 site. All repair work shall be done prior to the issuance of the final certificate of occupancy, 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.
 20. 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, the Engineering Division of Public Works and the Fire Department.
 21. The Petitioner shall underground all lateral utility connections from the right of way to the structure(s).
 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 (as measured from the Project's property lines) for which the owner of the building or structure has granted approval at no charge to the owners. The survey must include photos taken both inside and outside prior to construction to set a baseline of existing conditions. Copies of the survey and photos shall be provided to owners.
 - b. Prior to the issuance of any demolition permit, 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).
 - c. If a property owner has consented to a pre- and post- construction survey as set forth in this condition and the property owner believes its buildings or structures have suffered damage due to vibration impacts from the Project, the property owner may make a claim to the vibration mitigation fund by submitting its claim, along with supporting documentation and photographs, to an independent third party hired and paid for by the Petitioner, subject to review and approval by the City Solicitor, for the independent third party's review. Notice shall be provided to such private property owners on how to

make a claim for damages. Only those property owners who consent to a pre-construction survey as set forth above shall be eligible to make a claim to the vibration mitigation fund. If a claim is approved by the independent third party, property owners receiving payment from the mitigation fund must sign a release of claims as a condition to the receipt of such payment. In lieu of seeking payment from the vibration mitigation fund, a property owner may pursue a claim for damages for any amount through private action.

- d. 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) at the property line of the Project.
- e. Planned demolition and construction methods to ensure vibration levels will not exceed the identified limit.
- f. Specific measures to be taken during construction to ensure the specified vibration level limits are not exceeded.
- g. A monitoring plan to be implemented during demolition and construction that must include installation of vibration measuring devices and alarms.
- h. 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.
- i. 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.
- j. 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.
- k. 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.
- l. 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 parking facility shall provide a minimum of 12 electric vehicle charging stations. The remaining stalls must be electric vehicle charging station ready, meaning the electrical systems and conduit are prepared to expand the number of charging stations as demand increases.
24. All buildings shall be designed and constructed to achieve LEED v4 Gold Certifiability in accordance with the Sustainable Development Requirements set forth in Section 5.13.4 of the Zoning Ordinance.
25. The Petitioner shall complete Passive House feasibility studies and energy modeling to determine the design and construction approach.
27. Prior to issuance of a building permit, the Petitioner shall submit to the Planning Department the following:
 - a. An updated Rating System Checklist enumerating the criteria set forth in the applicable green building rating system and indicating which technical and design requirements will be met in the green building project design and the resulting rating level of the project.
 - b. An updated Rating System Narrative describing the technical and design elements of the project that will be utilized to achieve compliance with the applicable green building rating system.
 - c. An updated Energy Narrative, describing the energy efficiency, renewable energy, and other technical and design elements of the project that serve to minimize energy use, make use of renewable energy sources, and demonstrate how close the project is to achieving net zero energy use status.
 - d. A document demonstrating the credentials of the project's designated green building professional.
 - e. An affidavit signed by the green building professional stating that he/she/it has reviewed all relevant documents and that to the best of his/her/its knowledge, the documents provided indicate that the project is being designed to achieve LEED v4 Gold Certifiability.
 - f. The credentials of the project's green commissioning agent.
 - g. the credentials of the Passive House rater/verifier who will perform testing and verification and letter of intent stating they have been hired to complete the on-site verification process.
 - h. the credentials of the Certified Passive House Consultant who has provided design, planning, or consulting services.
28. Prior to the issuance of any certificate of occupancy (temporary or final), the Petitioner shall submit to the Planning Department any updates to the above referenced documents along

with the following:

- a. an affidavit certifying that the pre-construction commissioning process requirements of (LEED/Passive Housing/Enterprise Green Communities) have been met and that the post-construction commissioning process requirements of Section 5.13 of the Zoning Ordinance were included in the scope of work and will be met, including a schedule of when each commissioning requirement was or will be met.
 - b. Credentials of the project's accredited Green Building Professional and an affidavit signed by that professional stating that they have reviewed all relevant documents and that to the best of their knowledge, the documents provided indicate that the project was built to achieve the requirements of Section 5.13 of the Zoning Ordinance.
29. 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.
30. 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 or filed the same with the Middlesex South Registry District of the Land Court and filed proof of such recording or filing with the City Clerk and submitted a copy with the building permit application.
 - b. 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 this Order, and §5.11.8 of the Zoning Ordinance.
 - c. Submitted a lot consolidation plan to the City Engineer and included a copy with the building permit in accordance with this Order.
 - d. Submitted final engineering, utility, and drainage plans, and a final O&M Plan to the City Engineer in accordance with this Order.
 - e. 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 in accordance with this Order.
 - f. Received approval for the Pest Control inspection report and the remediation action plan and submitted a copy of such approval to the Director of Planning and Development in accordance with this Order.
 - g. Received approval for the vibration control plan and submitted a copy of such approval to the Director of Planning and Development in accordance with this Order.

- a. Filed with the building permit record statements by a registered architect and a professional land surveyor certifying compliance with Condition #1.
 - b. Submitted final as-built survey plans in digital format.
 - c. Filed with the building permit record a statement by a registered landscape architect certifying compliance with the landscape plan referenced with Condition #1.
 - d. Submitted to the Law Department copies of a fully executed Regulatory Agreement and Affordable Housing Restriction in accordance with this Order.
 - e. Provided evidence satisfactory to the Law Department that the Regulatory Agreements have been recorded at the Middlesex South Registry of Deeds or filed with the Middlesex South Registry District of the Land Court.
 - f. 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.
 - g. Obtained approval from 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.
 - h. 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.
 - i. 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 this Order, or submit evidence that best efforts have been made to underground the utilities.
 - j. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that the criteria for LEED Gold level of construction of the subject building have been satisfied.
 - k. Submitted the payments required in Conditions **7c and 11b.**
 - l. Submitted a copy of the recorded or filed lot consolidation plan to the City Engineer.
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 both onsite and at Captain Ryan Park 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.