



#20-18

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## City of Newton, Massachusetts

### Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

Ruthanne Fuller  
Mayor

Barney Heath  
Director

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## PUBLIC HEARING MEMORANDUM

Public Hearing Date:	January 9, 2018
Land Use Action Date:	March 27, 2018
City Council Action Date:	April 2, 2018
90-Day Expiration Date:	April 9, 2018

DATE: January 5, 2018

TO: City Council

FROM: Barney Heath, Director of Planning and Development  
Jennifer Caira, Chief Planner for Current Planning  
Neil Cronin, Senior Planner

SUBJECT: **Petition #20-18**, for SPECIAL PERMIT/SITE PLAN APPROVAL to further extend the existing nonconforming commercial use, vertically extend the nonconforming front, rear, and side setbacks, and exceed the floor area ratio at **203 Elliot Street**, Ward 5, Upper Falls, on land known as SBL 51, 18, 04 containing approximately 4,164 sq. ft. of land in a district zoned Multi Residence 1. Ref. §3.4.1, §3.2.3, §7.3.3, and §7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis which may be useful in the special permit decision making process of the City Council. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the City Council will want to consider in its discussion at a subsequent Working Session.



**203 Elliot Street**

### **EXECUTIVE SUMMARY**

The property located at 203 Elliot Street consists of a 4,164 square foot lot in the Multi Residence 1 (MR-1) zone in Upper Falls. The lot is improved with a one-story commercial structure which has operated as a retail use since its construction circa 1926. Commercial uses are not an allowed use in the MR-1 zone; therefore the structure is classified as a nonconforming commercial use. Additionally, the structure itself has nonconforming front, and rear setbacks. The petitioners are proposing to construct a 1.5-story addition on the same footprint as the existing structure to create a residential unit. The addition will add approximately 1,561 square feet to the structure which will exceed the allowed floor area ratio (FAR) of an old lot in the MR-1 zone. The petitioners are seeking to maintain the commercial use on the ground floor, but as an art studio instead of a convenience store. As a result, the petitioners require special permits to extend the nonconforming commercial use, exceed the FAR, and extend the nonconforming front and rear setbacks.

The Planning Department is supportive of this petition due to its potential to serve the residents of the immediate area, preserve a historic structure, and increase the diversity of the City's housing stock. However, more information is needed as to the intensity of the commercial use and any potential impacts on the neighborhood. In addition, due to an error, the request to extend the nonconforming rear setback was not properly advertised. Staff will consult with the Law Department to determine whether a supplemental notice will be required. Staff looks forward to working with the petitioners to resolve the outstanding items presented in this memorandum as well as any concerns presented at the public hearing.

#### **SIGNIFICANT ISSUES FOR CONSIDERATION:**

When reviewing this request, the City Council should consider whether:

- The proposed extension in the nonconforming commercial use will not be substantially more detrimental than the existing nonconforming use is to the neighborhood (§3.4.1 and §7.8.2.C.2).
- The proposed extension in the nonconforming front setbacks will not be substantially more detrimental than the existing nonconforming setbacks are to the neighborhood (§3.2.3 and §7.8.2.C.2).
- The proposed extension in the nonconforming rear setback will not be substantially more detrimental than the existing nonconforming setback is to the neighborhood (§3.2.3 and §7.8.2.C.2).
- The proposed increase in FAR from .26 to .63, where .58 is the maximum allowed by right, is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood (§3.2.3, §3.2.11 and §7.3.3).

I. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on Elliot Street in the MR-1 zone in Upper Falls. The properties on the northern side of the street are within the MR-1 zone, while the properties on the southern side are located in the MR-2 zone which continues onto Mechanic Street. The subject property is the lone commercial land use in the neighborhood as the area consists primarily of single as well as multi-family residential uses (**Attachments A & B**).

B. Site

The site is a corner lot with frontages on Elliot and Cottage streets totaling 4,164 square feet of land. The site is improved with a one-story, twelve foot tall nonconforming commercial retail use. The existing structure is located at the southern portion of the lot and is oriented such that parts of the structure occupy both frontages. The structure features paneled-brick facades with open quoining where the facades meet. There is a small yard to the east (right of the structure) separated from the sidewalk by a two foot tall brick retaining wall. This yard is partially screened from the abutter to the east at 191 Elliot Street by several mature evergreens. At the northwest corner of the site, an approximately 18 foot wide curb cut provides access to the lot from Cottage Street. This driveway is shared with the abutter to the northwest at 74 Cottage Street via a recorded easement.

The structure has nonconforming front setbacks on Elliot and Cottage Streets of five feet and 4.2 feet, where 10 feet and 16.1 feet are required, respectively. In the case of a corner lot, the rear yard is determined by the side opposite the front door. Since the front door of the structure is at the intersection of Elliot and Cottage Streets, the rear yard is the boundary shared with the abutter to the northwest at 74 Cottage Street. This rear yard setback is also nonconforming at 4.6 feet, where 15 feet is required.

II. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

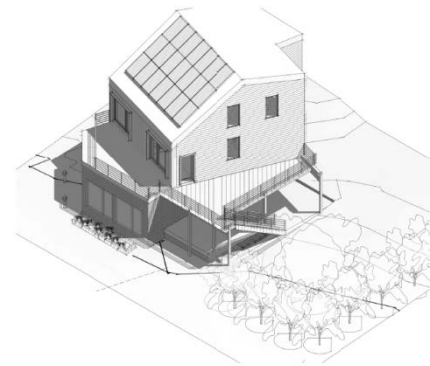
The principal use of the site will change from a commercial use, to a mixed use structure with a residential unit above commercial space.

B. Building Design

The petitioners are seeking to construct a 1.5-story addition largely on the same footprint of the existing structure to create a residential unit. The residential unit will total approximately 1,561 square feet on the second and third levels. The structure's height will increase from 12 feet to approximately 35.5 feet tall. The wall plane of the structure along the Cottage Street frontage will be extended vertically as part of the design; the same is true for much of the rear wall plane as well. However, the addition will be set back from the edge of the first story along the Elliot Street frontage by approximately eight feet. This step back will create a terracing effect which will add depth to the façade and help diminish the massing of the addition while also providing some deck space for the residential unit. Lastly, deck space will be extended approximately 16 feet to the east to create an attached shelter for the two parking stalls associated with the residential unit. Since this shelter is open, it does not count towards the FAR calculation.



Proposed Elliot Street Elevation



Rendering From the Southeast

The design features modern clapboard siding for the walls of the addition, with a gray standing seam roof which will support 39 photovoltaic panels. This difference in materials from brick to siding will help break up the appearance of a continual wall plane, and the pitch of the roof will also reduce the massing of the structure as well. The plans indicate the addition is to be constructed to "Passive House" standards with a net-zero or energy positive building. The Planning Department has asked the petitioners for more information regarding this goal and expects the petitioner to provide an update at the public hearing or prior to being scheduled for a Working Session.

The Planning Department is not concerned with the addition as proposed. Staff believes the design utilizes features such as terracing, pitch, and different materials to break up the massing of the structure. In addition, the addition will preserve the historic portion of the building, and by creating a 1,561 square foot residential unit,

increase the City's diversity of housing stock.

C. Site Design

The petitioners are not proposing major changes to the site. The side yard will be slightly regraded and screening is proposed to provide some privacy. The existing retaining wall along the Elliot Street frontage will be increased from approximately two feet to three-feet, eleven inches. This detail is not shown on the site plan, which should be updated. Additionally, portions of concrete will be removed along the frontages to allow for raised landscape beds. Lastly, the petitioners are proposing to install bollards at the entrance to the art studio which will serve to delineate the sidewalk from the entrance to the studio as well as to provide parking for up to four bicycles.

D. Intensity of Commercial Use

The petitioners are proposing to establish an art studio offering classes and occasional events to view artwork. Due to the fact that there is no on-site parking for the art studio, parking for students and those attending events will be accommodated via neighborhood streets. As a result, staff has asked the petitioners for more information as to the intensity of use for the art studio and a draft parking management plan. The Planning Department is supportive of the petitioners' efforts to maintain the commercial use on site given its potential as a neighborhood gathering place. However, more information is needed as to the intensity of use to ensure the commercial use does not have an adverse impact on the immediate area. At the time of this writing, the petitioners are currently working to determine what Americans with Disabilities Act (ADA) requirements are applicable. If those requirements are infeasible, the operation and intensity of use of the art studio may be affected. Staff will provide the Committee with an update at the public hearing.

E. Parking and Circulation

The petitioners are proposing to locate two parking stalls associated with the residential unit under the proposed deck of the addition. Access to these stalls will be via the curb cut and shared easement from Cottage Street. These stalls are tandem and are visible from the Elliot Street frontage, so staff suggested the petitioners consider screening the vehicles with a decorative element or landscaping; to which the petitioners have agreed. Regarding the parking calculation for the proposed art studio, an art studio has the same parking calculation as the existing retail space (one stall per three employees plus one stall per 300 square feet). As a result, the credit for the retail space is transferred to the art studio and no waiver is required.

F. Landscape Screening

The petitioners are seeking to install some landscaping along the Elliot Street frontage to create some privacy for the yard. As a result staff has asked for more information as to the number and type(s) of proposed plantings. Staff's only concern is that proposed landscaping may create a wall which may affect the pedestrian experience along the northern side of Elliot Street; otherwise, staff has no concerns regarding landscaping and applauds of the petitioners' efforts to remove portions of concrete to allow for raised landscape beds.

III. 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 Memorandum, the petitioner is seeking the following relief:

- §3.4.1 and §7.8.2.C.2 of Section 30, to further extend the nonconforming commercial use to allow a residential unit above.
- §3.4.1 and §7.8.2.C.2 of Section 30, to further extend the nonconforming front setbacks.
- §3.4.1 and §7.8.2.C.2 of Section 30, to further extend the nonconforming rear setback.
- §3.2.3 and §3.2.11 of Section 30, to exceed the FAR.

B. Engineering Review

Associate City Engineer, John Daghljan, provided a brief analysis of the petition (**Attachment D**). The Engineering Division of Public Works will review this project again for conformance with the City of Newton Engineering Standards prior to the issuance of a building permit, should the petition be approved.

C. Historic Review

As the petition requires the partial demolition of a structure greater than fifty years old, approval was required from the Newton Historical Commission (NHC). At its February 23, 2017 meeting, NHC found the structure "Preferably Preserved" due to the structure's massing, form, and historic materials. NHC waived the demolition delay based on the submitted plans.

#### IV. PETITIONERS' RESPONSIBILITIES

The petitioners should respond to the issues raised in this memorandum and other questions raised at the public hearing as necessary. Additionally, the petition may require a supplemental advertisement for the extension of the rear yard setback. Lastly, the petitioners should determine their ADA obligations prior to be scheduled for a Working Session as the intensity of the art studio is dependent upon these obligations.








#### **ATTACHMENTS:**

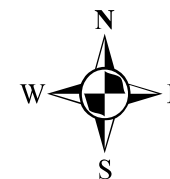
- Attachment A:** Zoning Map
- Attachment B:** Land Use Map
- Attachment C:** Zoning Review Memorandum, dated November 27, 2017
- Attachment D:** Engineering Review Memorandum, dated December 13, 2017

# Attachment A Zoning Map Elliot St., 203

*City of Newton,  
Massachusetts*

## Legend

-  Multi-Residence 1
-  Multi-Residence 2
-  Mixed Use 1
-  Public Use
-  Building Outlines
-  Surface Water
-  Property Boundaries



The information on this map is from the Newton 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 - Setti D. Warren  
GIS Administrator - Douglas Greenfield

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Feet

Map Date: December 15, 2017





# Attachment B Land Use Map Elliot St., 203

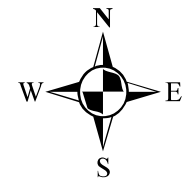
*City of Newton,  
Massachusetts*

## Legend

### Land Use

### Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Open Space
-  Nonprofit Organizations
-  Vacant Land
-  Building Outlines
-  Surface Water
-  Property Boundaries



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CITY OF NEWTON, MASSACHUSETTS  
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Map Date: December 15, 2017



Setti D. Warren  
Mayor

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Barney S. Heath  
Director

## ZONING REVIEW MEMORANDUM

Date: November 27, 2017

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Jennifer Caira, Chief Planner for Current Planning

Cc: Brice Ben Hobbs and Rebecca Bella Wangh, Petitioners  
Barney S. Heath, Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Request to further extend an existing nonconforming commercial use, to vertically extend nonconforming setbacks and to exceed maximum FAR**

Applicant: Brice Ben Hobbs & Rebecca Bella Wangh	
<b>Site:</b> 203 Elliot Street	<b>SBL:</b> 51018 0004
<b>Zoning:</b> MR1	<b>Lot Area:</b> 4,164 square feet
<b>Current use:</b> One-story retail	<b>Proposed use:</b> First floor retail with residential above

### BACKGROUND:

The property located at 203 Elliot Street consists of a 4,164 square foot lot at the corner of Cottage and Elliot Streets improved with a nonconforming retail store constructed in 1926. The single-story structure has been used as retail continuously since the time of construction. The petitioners propose to repurpose the existing commercial space from retail to an art studio and to construct a residential unit above for their personal residence.

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

- Zoning Review Application, prepared by Laurence Lee, Attorney, submitted 10/9/2017
- Site Plan, signed and stamped by Shane M. Brenner, surveyor, dated 7/28/2017
- Architectural Plans, prepared by Placetaylor Inc, architects, dated 8/4/2017
  - Zoning and Code Compliance
  - Plot Plan
  - Existing Conditions
  - Floor Plans
  - Elevations

## **ADMINISTRATIVE DETERMINATIONS:**

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1. The 1926 structure is a legal nonconforming commercial use in a Multi Residence 1 zoning district per Section 3.4.1, having been constructed as a retail store in 1926. The petitioners propose to convert the previous retail use to an art studio offering occasional art classes to the public. The petitioners propose to construct a one and a half-story residential dwelling unit above the existing commercial space. While the residential unit is an allowed use in the district, it creates a second use on the site. To allow the extension of the existing nonconforming commercial use to allow for first level commercial with a residential unit above requires a special permit pursuant to section 7.8.2.C.2.
2. The existing single story structure has a 4.2 foot front setback from Cottage Street, where 16.1 feet is required per the averaging provisions of section 1.5.3.B. The petitioner proposes to construct a one and a half- story addition above the existing single story structure, maintaining the 4.2 foot setback. The proposed addition vertically extends the nonconforming front setback, requiring a special permit pursuant to section 7.8.2.C.2.
3. The existing structure has a nonconforming front setback from Elliot Street of 5 feet, where 10 feet is required per the averaging provisions of section 1.5.3.B. The petitioner proposes to construct the one and a half-story addition with a second level deck set back 8 feet from the Elliot Street lot line. The proposed addition further extends the nonconforming front setback, requiring a special permit pursuant to section 7.8.2.C.2.
4. The existing structure has a nonconforming rear setback of 4.6 feet, where 15 feet is required. The petitioner intends to extend the existing structure vertically to create a dwelling unit above the existing commercial space. The proposed addition further extends the existing nonconforming rear setback, requiring a special permit pursuant to section 7.8.2.C.2.
5. The existing structure has an FAR of .26, where .58 is the maximum allowed. The proposed additions add 1,561 square feet to the structure, creating an FAR of .63. To exceed the maximum FAR requires a special permit per sections 3.2.3 and 3.2.11.
6. The petitioners propose to add two parking stalls under a proposed deck to satisfy the parking requirements of section 5.1.4, which requires two parking stalls per dwelling unit. The commercial space has an existing parking credit for the prior retail use, and this credit is maintained for the proposed art studio, which has the same parking requirement of one stall per each 300 square feet, and one stall per three employees at the busiest shift per section 5.1.4. No waiver of parking is required.

<b>MR1 Zone</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>
Lot Size	7,000 square feet	<b>4,164 square feet</b>	<b>No change</b>
Frontage	70 feet	88.77 feet	No change
Setbacks <ul style="list-style-type: none"> <li>• Front (Elliot St)</li> <li>• Front (Cottage St)</li> <li>• Side</li> <li>• Rear</li> </ul>	10 feet 16.1 feet 7.5 feet 15 feet	<b>5.0 feet</b> <b>4.2 feet</b> 52.2 feet <b>4.6 feet</b>	<b>No change</b> <b>No change</b> 40.7 feet <b>No change</b>
Building Height	36	15.9 feet	35.23 feet
FAR	.58	.26	<b>.63</b>
Max Lot Coverage	30%	24.5%	28.7%
Min. Open Space	50%	56%	50%

See “Zoning Relief Summary” below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
§3.4.1 §7.8.2.C.2	Request to extend the existing nonconforming commercial use to a residential unit above	S.P. per §7.3.3
§3.2.3 §7.8.2.C.2	Request to extend existing nonconforming front setbacks	S.P. per §7.3.3
§3.2.3 §7.8.2.C.2	Request to extend existing nonconforming side setback	S.P. per §7.3.3
§3.2.3 §3.2.11	Request to exceed maximum FAR	S.P. per §7.3.3

CITY OF NEWTON  
Department of Public Works  
ENGINEERING DIVISION

MEMORANDUM

To: Council Marc Laredo, Land Use Committee Chairman

From: John Daghljan, Associate City Engineer

Re: Special Permit – 203 Elliot Street

Date: December 13, 2017

CC: Barney Heath, Director of Planning  
Jennifer Caira, Chief Planner  
Lou Taverna, PE City Engineer  
Nadia Khan, Committee Clerk  
Neal Cronin, Sr. Planner

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In reference to the above site, I have the following comments for a plan entitled:

*Site Plan for Addition  
203 Elliot Street  
Assessor's Parcel ID No. 51080004  
Dated: April 19, 2017  
Revised: 7/13/17*

*Executive Summary:*

The existing 3,645 square foot lot has a one-story commercial building and the property owner intends to add a second story addition. The site is relatively flat with a high point at elevation 170.5 feet near the northern property line and residential home. The site slopes towards Elliot Street. The engineer of record has design a stormwater collection and infiltration system to be contained on site.

The water and sanitary sewer services date back to 1927 and will be required to be updated to current water & sewer standards.



As a public benefit, the sidewalk along Elliot Street should be updated to current AAB & City of Newton Standards to include the pedestrian curb cuts.

Additionally the brick retaining wall along the back edge of the sidewalk on Elliot Street needs repair or replacement.



*203 Elliot Street ~ Brick retaining wall and sidewalk should be replaced*

Drainage:

1. An Operations and Maintenance (O&M) plan for Stormwater Management Facilities needs to be drafted and submitted for review. Once approved the O&M must be adopted by applicant, incorporated into the deeds; and recorded at the

Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.

2. It is imperative to note that the ownership, operation, and maintenance of the proposed drainage system and all appurtenances including but not limited to the drywells, catch basins, and pipes are the sole responsibility of the property owner(s).

Environmental:

1. Has a 21E investigation & report been performed on the site, if so copies of the report should be submitted the Newton Board of Health and the Engineering Division.
2. Are there any existing underground oil or fuel tanks, are they to be removed, if they have been evidence should be submitted to the Newton Fire Department, and Newton Board of Health.

Sewer:

1. The existing water & sewer services to the building shall be cut and capped at the main and be completely removed from the main and the site then properly back filled. The Engineering Division must inspect this work; failure to having this work inspected may result in the delay of issuance of the Utility Connection Permit.
2. Watertown Street is a concrete roadway, restoration of the utility trenches shall be reinforced concrete as originally designed, with two-way epoxy coated rebar; the slab shall be cut back to either a 1/3 or half of the slab depending upon the alignment of the utility trench in relation with the slab(s).
3. With the exception of natural gas service(s), all utility trenches with the right of way shall be backfilled with Control Density Fill (CDF) Excavatable Type I-E, detail is available in the City of Newton Construction Standards Detail Book.
4. All new sewer service and/or structures shall be pressure tested or videotaped after final installation is complete. Method of final inspection shall be determined solely by the construction inspector from the City Engineering Division. All sewer manholes shall be vacuum tested in accordance to the City's Construction Standards & Specifications. The sewer service will NOT be accepted until one of the two methods stated above is completed. All testing MUST be witnessed by a

representative of the Engineering Division. A Certificate of Occupancy will not be recommended until this test is completed and a written report is received by the City Engineer. *This note must be added to the final approved plans.*

5. All sewer manholes shall be vacuum tested in accordance to the City's Construction Standards & Specifications. The sewer service will NOT be accepted until one of the two methods stated above is completed. All testing MUST be witnessed by a representative of the Engineering Division. A Certificate of Occupancy will not be recommended until this test is completed and a written report is received by the City Engineer.

Water:

1. All water connections shall be chlorinated & pressure tested in accordance to AWWA and the City of Newton Construction Standards and Specifications prior to opening the connection to existing pipes.
2. Approval of the final configuration of the water service(s) shall be determined by the Utilities Division, the engineer of record should submit a plan to the Director of Utilities for approval

General:

1. All trench excavation contractors shall comply with Massachusetts General Laws Chapter 82A, Trench Excavation Safety Requirements, to protect the general public from unauthorized access to unattended trenches. Trench Excavation Permit required. This applies to all trenches on public and private property. *This note shall be incorporated onto the plans*
2. All tree removal shall comply with the City's Tree Ordinance.
3. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of water services, sewer service, and drainage system installation. The utility in question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval. *This note should be incorporated onto the plans*
4. The applicant will have to apply for Street Opening, Sidewalk Crossing, and Utilities Connecting permits with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*
5. The applicant will have to apply for a Building Permits with the Department of Inspectional Service prior to any construction.



6. Prior to Occupancy Permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading, improvements and limits of restoration work. The plan shall also include profiles of the various new utilities, indicating rim & invert elevations, slopes of pipes, pipe material, and swing ties from permanent building corners. ***This note must be incorporated onto the final contract plans.***
7. All site work including trench restoration must be completed before a Certificate of Occupancy is issued. *This note must be incorporated onto the site plan.*

Note: If the plans are updated it is the responsibility of the Applicant to provide all City Departments [Conservation Commission, ISD, and Engineering] involved in the permitting and approval process with complete and consistent plans.

If you have any questions or concerns please feel free to contact me @ 617-796-1023.