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**Barney S. Heath**  
Director

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**PUBLIC HEARING/WORKING SESSION MEMORANDUM**

**DATE:** February 22, 2019  
**MEETING DATE:** February 26, 2019  
**TO:** Land Use Committee of the City Council  
**FROM:** Barney S. Heath, Director of Planning and Development  
Jennifer Caira, Chief Planner for Current Planning  
Neil Cronin, Senior Planner  
**CC:** Petitioner

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

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**PETITION #566-18**

**424-432 Cherry Street**

Special Permit/Site Plan Approval to allow two three-story, multi-family structures with ground floor units, one of which is 34.5 feet in height, to reduce the parking requirement from two stalls per unit to 1.25 stalls per unit, to allow parking within five feet of a structure containing dwelling units, to waive the minimum stall dimensions, to waive the minimum drive aisle width, and to waive the perimeter landscape screening and lighting requirements of parking facilities containing more than five stalls

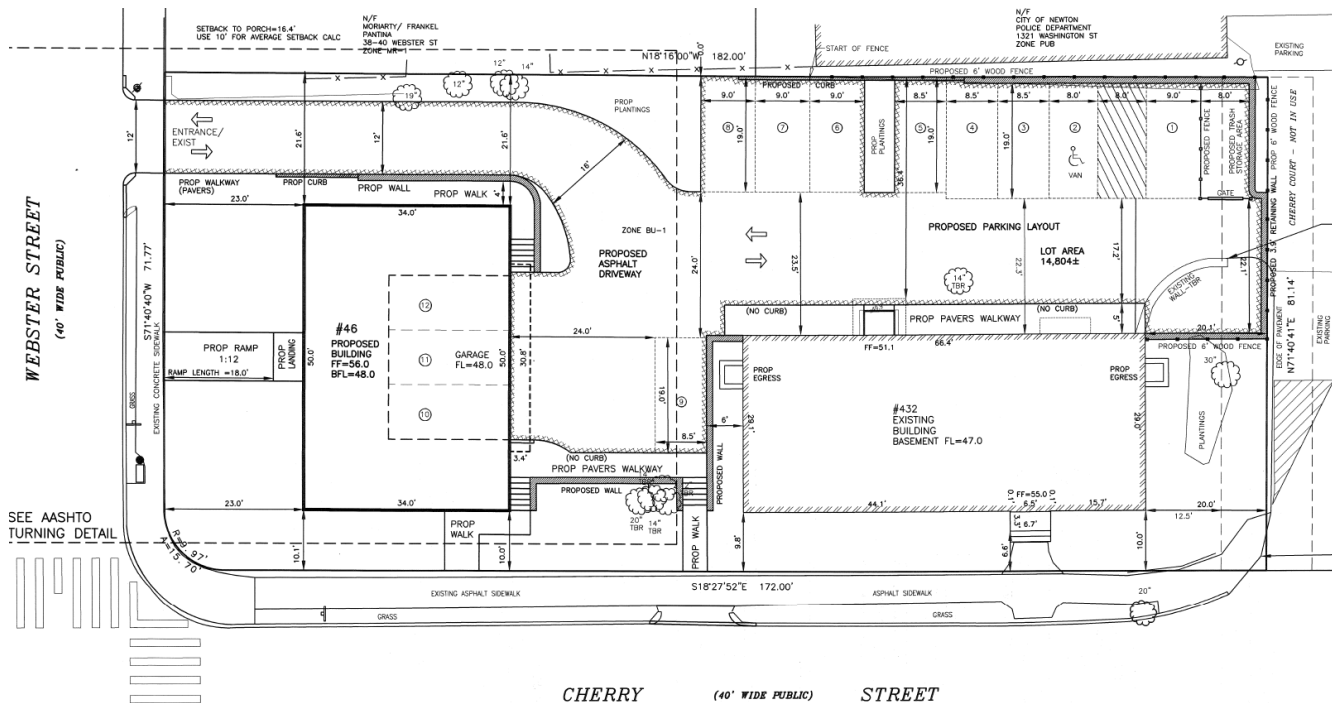
The Land Use Committee (The "Committee") opened a public hearing on this petition on Tuesday, January 8, 2019 which was held open, for the petitioner to respond to questions and concerns raised in the Planning Department's Memorandum, at the public hearing by the Committee as well as by members of the public. This memo reflects those issues and concerns, as well as revised materials submitted by the petitioner as of February 12, 2019.

**Plan Modifications**

The petitioner submitted revised plans which increase the front setback of the proposed multi-family dwelling from Webster Street from 12 feet to 23 feet. The side and the rear setbacks of this structure remain unchanged from the initial design as well as the dimensional standards of the existing historic structure. The increased front setback allows for increased open space and an accessible ramp serving Unit 7, which is a flat-type unit. The increased front setback also results in the loss of one surface parking stall between the two structures. Additionally, the plans show a reduced driveway width from 16 feet to 12 feet which allows for a landscape buffer and the retention of some mature trees along

the eastern boundary. The decreased width of the driveway results in the loss of two additional surface parking stalls along this boundary due to a turn in the driveway. Overall, the redesign results in the loss of three parking stalls to a total of 15 stalls for a ratio of 1.25 stalls per unit. The petitioner has met with the Newton Fire Department which approved the site changes.

### Proposed Site Plan



### Dimensional Standards

In Business Use (BU) zones, the maximum front setback is ten feet, while the side and rear yard setbacks can be based on several different factors such as the structure's height, the setbacks of adjacent structures, and whether the structure abuts a residential zoning district. Business Use zones often contain commercial structures and commercial uses which should be located closer to the street and closely grouped together to encourage compact design for pedestrians. However, these dimensional standards are typically increased in residential districts and when BU zones directly abut residentially zoned districts to ensure sufficient light, air, and privacy between a commercial structure and a residential structure. For instance, in the case of commercial structures abutting residential districts, the required setback is based on the structure's height.

The table below compares the proposed multi-family dwelling (30 feet tall) in the Business 1 zone with the requirements of a similar structure in the Multi-Residence 2 and Multi-Residence 3 Zones. A multi-family dwelling is not allowed in the Multi-Residence 1 zone and the table does not include the Multi-Residence 4 zone because the dimensional standards of that zone pertain to a different type of development and the zone is therefore not applicable. The "Petition" column only pertains to the proposed three-unit multi-family structure fronting on Webster Street, except as noted below.

**Table I: Dimensional Comparison**

<b><u>Dimensional Standards</u></b>	<b><u>Business Use 1</u></b>	<b><u>Multi Residence 2</u></b>	<b><u>Multi Residence 3</u></b>	<b><u>Petition</u></b>
<b><u>Lot Size</u></b>	10, 000	10, 000	10, 000	14, 804
<b><u>Lot Area Per Unit</u></b>	1, 200	3, 000	1, 200	1, 645*
<b><u>Front Setback</u></b>	10 feet	25 feet	15 feet	23 feet (Webster) 10.1 (Cherry)
<b><u>Side Setback</u></b>	15 feet (½ building height)	7.5 feet	10 feet (1/3 building height)	21.6
<b><u>Rear Setback</u></b>	18 feet (Greater of either ½ building height or 15 feet)	15 feet	18 feet (½ building height)	116 feet
<b><u>Lot Coverage</u></b>	N/A**	30%	45%	25.7%
<b><u>Open Space</u></b>	N/A**	50%	30%	37%

\*Lot Area Per Unit includes the proposed six units in the existing historic structure too

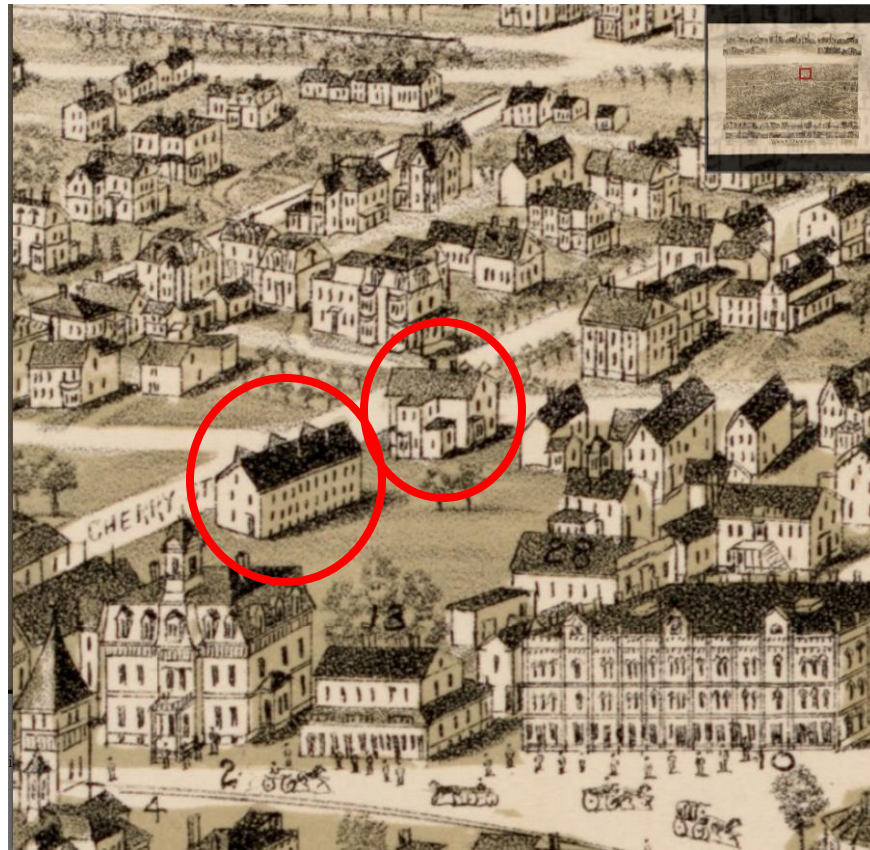
\*\*Lot Coverage and Open Space are not dimensional standards in the Business Use districts

The chart above indicates the petition exceeds the side and the rear yard setback requirements of multi-family dwellings in the Multi-Residence 2 and the Multi-Residence 3 districts. The increased front setback more closely aligns with the requirements of multi-family structures in the Multi-Residence zones, rather than the previous setback of 10 feet. The Planning Department believed the initial setback was appropriate given the increased presence on the street, the corner location which acts as a transition from the village center to the residential neighborhood, and the small front setback of the townhouses to the west along Cherry Street. Upon further review, in addition to increasing the amount of open space on site, the increased setback more closely aligns with the front setback of the property to the east along Cherry Street, and it aligns with the front setback of the previous historic structure.

### **Historic Context**

In the Public Hearing Memorandum, staff stated the proposed multi-family dwelling fronting Webster Street is in the approximate location of a previous historic structure that was razed in the 1960s. To determine how the proposed structure compares with the previous structure, staff found the below drawing in the Norman B. Leventhal Map Center Collection of the Boston Public Library of West Newton; the drawing is a “bird’s eye” view of West Newton from 1899. At the left of the picture is the existing historic structure fronting Cherry Street and to its north is the previous structure that was razed. The drawing indicates the structure is 2.5 stories, with additions at the rear that match the footprint from the City of Newton Engineering plan shown in the Public Hearing Memorandum.

### Historic Drawing



From City of Newton Engineering plan, the historic structure scales to approximately 48 feet long and 20 to 30 feet deep, considering the articulations at the rear. The proposed structure is approximately 50 feet long and 30 feet deep. As such, staff believes the footprints of the two structures are similar. Concerning the height and massing of the structure, the plan shows steps leading to the door fronting Webster Street as well as to the doors on either side (this detail is difficult to discern in the picture above). The steps indicate the first-floor elevation laid above the street, increasing the structure's massing and its height. This style is common in older structures constructed during the period and in the neighborhood. Lastly, the proposed multi-family dwelling contains three stories, while it appears the previous structure contained 2.5 stories. However, the proposed structure contains 1,805 square feet in the second story, while the third story contains 1,134 square feet, revealing that the area at seven feet in the third story is less than two-thirds of the second story (approximately 62%). In residential districts, the Ordinance states that in order to qualify as a half-story, the area at seven feet can be no greater than two-thirds of the floor below, but the definition of half-story does not pertain to BU zones. Therefore, if the structure were located within a residential district, the structure would contain 2.5 stories.

As stated in the Public Hearing Memorandum, the site is one of Newton's 22 designated Local Landmarks and is therefore under the jurisdiction of the Newton Historical Commission. The petitioner reviewed the revised plans with the Chief Preservation Planner who approved of the changes.

### **Inclusionary Zoning**

The petitioner submitted an Inclusionary Housing Plan (IHP) prior to the Public Hearing stating that Unit 8 will be an Inclusionary Unit available to households earning up to 65% of the Area Median Income (AMI). The Housing Division reviewed the IHP and found it acceptable. Since the Public Hearing, the petitioner has changed the nature of the petition from rental units to ownership units, requiring an additional review from the Housing Division because the Ordinance treats ownership units different from rental units. At the time of this writing, the Housing Division is reviewing the revised IHP. Staff will provide the Committee with an update at the Working Session.

### **Parking**

The revised plans decrease the amount of parking on site from 15 stalls to 12 stalls, resulting in a ratio of 1.25 stalls per unit. The Planning Department is supportive of the parking ratio given the site's location within West Newton Square, the proximity to transit, and the allowance for increased landscaping. The Inclusionary Housing Plan states that the units will be for sale rather than for rent and that the parking will be "unbundled". Staff suggests the cost of a parking space be separate from the cost of a unit, except for the Inclusionary Unit. This distinction has the potential to allow the market to dictate the cost of a parking stall.

### **Landscaping**

The petitioner initially proposed to remove a number of trees from the site to construct the development. A few of these trees are preserved in the redesign, but the project will result in the loss of 74 caliper inches. The petitioner is proposing to replace 30 caliper inches between five honey locust trees and two birch trees, resulting in a deficit of 44 caliper inches. The petitioner is prepared to pay into the fund for the deficit of the caliper inches, resulting in a payment of \$7,392. That payment will be made prior to the issuance of a building permit, should this petition be approved.

### **ATTACHMENTS:**

**Attachment A:** DRAFT Council Order

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 convert office space into six residential units, including ground floor units and to allow three stories, to construct a second multi-family dwelling on site containing three stories and 30 feet in height, to reduce the parking requirement from two stalls per unit to 1.25 stalls per unit, to reduce the minimum stall dimensions, to waive the dimensional and design controls for parking facilities containing more than five stalls, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Gregory Schwartz:

- 1) The site is an appropriate location for the multi-family dwellings given the presence of other multi-family structures in the neighborhood and the site's location within West Newton Square. (§7.3.3.C.1)
- 2) The proposed project as developed and operated will not adversely affect the neighborhood because the project's density is compatible with other multi-family developments in the neighborhood. (§7.3.3.C.2)
- 3) There will be no nuisance or serious hazard to vehicles or pedestrians because the petitioner will remove a landscape hedge, thereby increasing sight distances and will update the sidewalks along the property's frontage to be compliant with City Standards and Massachusetts Architectural Access Board regulations. (§7.3.3.C.3)
- 4) Access to the site over streets is appropriate for the types and numbers of vehicles involved due to the site's location within West newton Square. (§7.3.3.C.4)
- 5) Exceptions to the parking requirements, including reducing the parking requirement to 1.25 stalls per unit, waving the dimensional standards of parking stalls, reducing the minimum aisle width, reducing the minimum driveway width, and waiving the dimensional and design controls for parking facilities containing more than five stalls are in the public interest for the following reasons:

- a. Reducing the parking requirement to 1.25 stalls per unit is appropriate given the project's location within West Newton Square and its proximity to transit options.
  - b. Reducing the minimum parking stall dimensions, the minimum width of maneuvering aisles, and the minimum driveway width, makes for the most efficient layout of the parking lot and helps to maximize the number of stalls that will be available.
  - c. Fencing and a retaining wall with landscaping will screen the surface parking facility from abutting properties. Additionally, lighting will be minimized to mitigate trespass onto neighboring properties and to ensure the site's lighting is consistent with the adjacent residences while still lighting the facility to promote safety.
- (§5.1.4.A, §5.1.8.B.1, §5.1.8.C, §5.1.8.D.1, §5.1.9.A, §5.1.10.A and §5.1.13)

PETITION NUMBER: #566-18

PETITIONER: CRM Management, LLC C/O Dennis Cameron

ADDRESS OF PETITIONER: 432 Cherry Street  
Newton, MA 02465

LOCATION: 424-432 Cherry Street

OWNER: CRM Management, LLC C/O Dennis Cameron

ADDRESS OF OWNER: 432 Cherry Street  
Newton, MA 02465

TO BE USED FOR: A multi-family development consisting of nine units, including ground-floor units, in two separate structures, and a surface parking facility containing nine stalls, hereinafter the "Project."

EXPLANATORY NOTES: Special permits per §7.3.3: To allow a nine-unit multi-family development with ground-floor units of three-stories and 30 feet in height (§4.4.1, §4.1.2.B.3, §4.1.3); To reduce the parking requirement to 1.25 stalls per unit (§5.1.4.A and §5.1.13); To waive the parking stall dimensional requirements (§5.1.8.B.1, and §5.1.13); To waive the minimum width of maneuvering aisles (§5.1.8.C, and §5.1.13); To waive the minimum driveway width (§5.1.8.D.1, and §5.1.13); To waive the perimeter screening requirements of parking facilities containing more than five stalls (§5.1.9.A and §5.1.13); To waive the lighting and surfacing

requirements of parking facilities containing more than five stalls (§5.1.10.A and §5.1.13).

ZONING: Business Use 1

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this Special Permit/Site Plan Approval shall be located and constructed consistent with
  - a. Site/Civil plans, prepared by Everett M. Brooks Co., signed and stamped by Bruce R. Bradford, Professional Land Surveyor, and Mike S. Kosmo, Professional Engineer, consisting of the following four (4) sheets:
    - Existing Conditions Plan, dated April 3, 2018, revised April 25, 2018, September 26, 2018, and December 19, 2018.
    - Proposed Layout Plan, dated April 3, 2018, revised April 25, 2018, September 26, 2018, December 19, 2018, January 3, 2019, and January 30, 2019.
    - Utility Plan, dated April 3, 2018, revised April 25, 2018, September 26, 2018, December 19, 2018, January 3, 2019, and January 30, 2019.
    - Detail Sheet, dated April 3, 2018, revised April 25, 2018, September 26, 2018, December 19, 2018, January 3, 2019, and January 30, 2019.
  - b. Architectural Plans entitled, “432 Cherry Street and 46 Webster Street” signed and stamped by Ronald P. Jarek, Registered Architect, dated February 1, 2019.
  - c. Landscape Plan, entitled, “432 Cherry Street and 46 Webster Street” signed and stamped by Ronald P. Jarek, Registered Architect, dated September 24, 2018.
  - d. Lighting Plan, entitled, “432 Cherry Street and 46 Webster Street” signed and stamped by Ronald P. Jarek, Registered, dated February 1, 2019.
2. In accordance with the City’s Inclusionary Zoning Ordinance (§5.11.4), one (1) of the residential units in the multi-family structure shall be made available to households earning at or below 65% 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. Monthly housing costs (inclusive of heat, hot water, electricity, domestic water and sewer, and one parking space) shall not exceed 30% of the applicable monthly income limit for that unit. For the initial lottery, 70% of the Inclusionary Units shall be designated as Local Preference units, as permitted and defined by the Massachusetts Department of Housing and Community Development (DHCD).
3. The inclusionary unit shall be a three-bedroom unit, as included in the Inclusionary Housing Plan dated XX XX,XXXX and approved by the Director of Planning and Development.



4. To the extent permitted by applicable regulations of DHCD, the Inclusionary Unit shall be eligible for inclusion on the State's Subsidized Housing Inventory (SHI) as Local Action Units through DHCD's Local Initiative Program. Prior to the issuance of any temporary occupancy certificates, the Petitioner, City, and DHCD will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Inclusionary Units in perpetuity.
5. Prior to the issuance of any building permits for the construction of the Project, the Petitioner shall provide a final Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan for review and approval by the Director of Planning and Development. The Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan must meet the requirements of DHCD's guidelines for Affirmative Fair Housing Marketing and Resident Selection and be consistent with §5.11.9. of the Newton Zoning Ordinance. In accordance with DHCD's current guidelines, the units will be affirmatively marketed and leased through a lottery.
6. The petitioner shall preserve the existing proportions, substrate and architectural details that contribute to the historic significance of the existing structure including but not limited to all exterior walls, roof structure, and window openings. Any replacement in kind or deviation shall be by prior approval only by Preservation Planning and ISD staff.
7. The cost of parking stall(s) shall be charged separately from the cost of a unit, provided, however that the cost of one parking stall shall be included in the price for the Inclusionary Unit.
8. The petitioner shall provide space for not less than ten bicycles in the below grade garage of the proposed three-unit, multi-family structure. Additionally, the petitioner shall provide five electric vehicle (EV) charging stations on site.
9. The trash and recycling disposal shall be handled by a private entity and collection shall be scheduled at such times to minimize any disruption of the on-site parking and shall comply with the City's Noise Control Ordinance.
10. The Petitioner shall remove all snow from site.
11. All on-site landscaping associated with this Special Permit/Site Plan Approval shall be installed and maintained in good condition. Any plant material that becomes diseased or dies shall be replaced on an annual basis with similar material.
12. At the Petitioner's sole expense, the petitioner shall locate all utility service lines on site underground from the right of way into the site.
13. Prior to the issuance of a temporary certificate of occupancy for the Project, the petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be recorded by the petitioner at the Middlesex South District Registry of Deeds and implemented. A recorded copy of the O&M shall be submitted to the Engineering Division of Public Works.

14. Prior to the issuance of any building permit for the Project, the petitioner shall provide a Final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works, Fire Department, and Inspectional Services.
15. The Petitioner shall update all sidewalks along the Project's frontage. This work shall be completed to the satisfaction of the Engineering Division of Public Works prior to the issuance of a temporary Certificate of Occupancy for the Project. The petitioner shall also be responsible for repairing all damage to public ways and property by any construction vehicles.
16. Prior to the issuance of any temporary certificates of occupancy, the petitioner shall provide the City with a permanent easement, in a form approved by the Law Department, providing the City with the right to install a foundation for a pole and mast arm for a new traffic signal, as well as the right to maintain the equipment, at the intersection of Cherry and Webster Streets. Such easement shall be incorporated in the Master Deed for the property.
17. Prior to the issuance of any building permit for the Project the petitioner shall submit a Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, and the City Engineer. The Construction Management Plan shall be consistent and not in conflict with relevant conditions of this Order and shall include, but not be limited to, the following provisions:
  - a. 24-hour contact information for the general contractor of the project.
  - b. Hours of construction: construction shall be limited to between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and from 8:00 a.m. to 7:00 p.m. on Saturdays. No construction is permitted on Sundays, or holidays except in emergencies, and only with prior approval from the Mayor.
  - c. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones.
  - d. 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 and delivery vehicles, and location of any security fencing.
  - e. Proposed methods for dust control including, but not limited to: covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
  - f. Proposed methods of noise control, in accordance with the City of Newton's Ordinances. 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 for protection of any existing trees to remain on the site.

- h. A plan for rodent control prior to demolition, during demolition, and during construction.
  - i. The CMP shall also address the following:
    - safety precautions;
    - anticipated dewatering during construction;
    - site safety and stability;
    - impacts on abutting properties.
18. The petitioner shall be responsible for securing and paying for any and all police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
19. No building permit for the construction of the Project shall be issued pursuant to this Special Permit/Site Plan approval until the Petitioner has:
  - a. Recorded a certified copy of this Council order with the Registry of Deeds for the Southern District of Middlesex County.
  - b. Filed a copy of such recorded Council order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
  - c. Obtained a written statement from the Department of Planning and Development that confirms the final building permit plans and façade elevations are consistent with plans approved in Condition #1.
  - d. Received approval from Director of Planning and Development for the Inclusionary Housing Plan and Affirmative Fair Housing and Resident Selection Plan which shall be authorized by the Mayor and provided evidence of submission of the Local Action Unit Application to DHCD.
  - e. Submitted final engineering, utility, and drainage plans for review and approval by the City Engineer. A statement certifying such approval shall have been filed with the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.
  - f. Submitted a final Construction Management Plan (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, the City Engineer, and the Director of Transportation.
20. No temporary occupancy permit for the use covered by this Special Permit/Site Plan approval shall be issued until the Petitioner has:
  - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development statements by a registered architect and a professional land surveyor certifying compliance with Condition 1.

- b. Submitted to the Department of Inspectional Services, the Department of Planning and Development, and the Engineering Division final as-built survey plans in paper and digital format.
- c. Received approval from the City Engineer for the Operation and Maintenance (O & M) plan for Stormwater Management from the City Engineer. Such plan shall be recorded by the petitioners at the Middlesex South District Registry of Deeds. A recorded copy of the O&M shall be submitted to the Engineering Division of Public Works and the Director of Planning and Development in accordance with Condition #13.
- d. Filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details for the project site have been constructed to standards of the City of Newton Public Works Department.
- e. Filed with the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number, and type of plant materials, final landscape features, fencing, and parking areas.
- f. Provided evidence confirming the marketing, lottery, and resident selection for the Inclusionary Units has been completed to the Director of Planning and Development for review and approval.
- g. Entered into a Regulatory Agreement and Declaration of Restrictive Covenants for the Inclusionary Unit with the City of Newton and the Department of Housing and Community Development, in a form approved by the Law Department, which will establish the affordability restriction for the Inclusionary Unit in perpetuity.
- h. Inclusionary Units shall be constructed and available for occupancy coincident with market rate units such that no more than seven market rate units may receive occupancy permits until the corresponding affordable unit has received its occupancy permit.
- i. The Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for portions of the buildings, prior to installation of required on-site landscaping/ exterior hardscape improvements required per the approved plans as long as all other conditions of this order have been met. Prior, however, to issuance of any temporary certificate of occupancy pursuant to this condition, the Commissioner of Inspectional Services shall require that the Petitioner first file a bond, letter of credit, cash or other security in the form satisfactory to the Law Department in an amount not less than 135% of the value of the aforementioned remaining improvements.