



#316-19

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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:	October 10, 2019
Land Use Action Date:	December 10, 2019
City Council Action Date:	December 16, 2019
90-Day Expiration Date:	January 8, 2019

DATE: October 4, 2019

TO: City Council

FROM: Barney Heath, Director of Planning and Development  
Jennifer Caira, Chief Planner for Current Planning  
Katie Whewell, Planning Associate

SUBJECT: **Petition #316-19**, for SPECIAL PERMIT/SITE PLAN APPROVAL to construct front and rear additions and a detached shed structure, altering a nonconforming three-family dwelling use and nonconforming lot coverage and creating an FAR of .72 where .45 is required and .59 exists at 969/969F Chestnut Street, Ward 5, Upper Falls, on land known as Section 51 Block 2 Lots 7 and 19, containing approximately 8,780 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 3.2.3, 3.2.11, 7.8.2.C.2, 3.4.1 of the City of Newton Revised Zoning Ord, 2017.

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



969 Chestnut Street

### **EXECUTIVE SUMMARY**

The property located at 969 Chestnut Street consists of a 7,189 square foot back lot in the Multi Residence 1 (MR-1) zone in the Upper Falls Historic District. The property is unique in that it is comprised of two lots that are bisected by the Sudbury Aqueduct. In addition to the back lot, there is a separate 1,591 square foot lot that is part of the property with frontage on Chestnut Street.

The lot is improved with a 2.5-story, three-family residence constructed circa 1825. The petitioners are seeking to construct a front and rear addition, as well as a 192 square foot shed. The proposed addition adds approximately 900 square feet, increasing the nonconforming floor area ratio (FAR) from .59 to .72, where .45 is allowed, requiring a special permit. Due to the alteration to the nonconforming three family dwelling, a special permit is required to extend that use, as well as increase the nonconforming lot coverage

The Planning Department is unconcerned with the request to further increase nonconforming FAR, extension of the nonconforming three family use and lot coverage. Due to the unique circumstances of the aqueduct dividing the lot, the FAR and lot coverage can only be calculated using the parcel west of the aqueduct, rendering it a smaller area, even though the aqueduct property and the triangular parcel to the front of the site are not built upon but appear to be part of the property. The rear addition and proposed shed are to the rear of the property and will not be visible from the street. The front addition is 32 square feet, relatively minimal in terms of impact and visibility from the street. For these reasons, the Planning Department is supportive of the petition.

#### **I. SIGNIFICANT ISSUES FOR CONSIDERATION:**

When reviewing this request, the

Council should consider whether:

- The proposed increase in the nonconforming FAR from .59 to .72, where .45 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 §7.8.2.C.2)
- The proposed increase in nonconforming FAR is not substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§3.2.3, §3.2.11, and §7.8.2.C.2)
- The proposed increase in nonconforming lot coverage is not substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§3.2.3 and §7.8.2.C.2)
- The proposed extension of the nonconforming three family use is not substantially

more detrimental than the existing nonconforming three family use is to the neighborhood. (§3.4.1 and §7.8.2.C.2)

## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The subject property is located on Chestnut Street in the Upper Falls Historic District in the MR-1 zone. The surrounding area is comprised of MR-1, Business 1 and Public Use districts (**Attachment A**). The immediate area surrounding the property is largely single and multi-family residential uses, while south of the property contains a mix of commercial, residential, nonprofit, and open space uses (**Attachment B**).

The subject property is located in a dense, historic neighborhood where structures are set close to the street. There are several other early nineteenth century multifamily structures in the neighborhood with similar style and bulk on similarly sized lots.

### B. Site

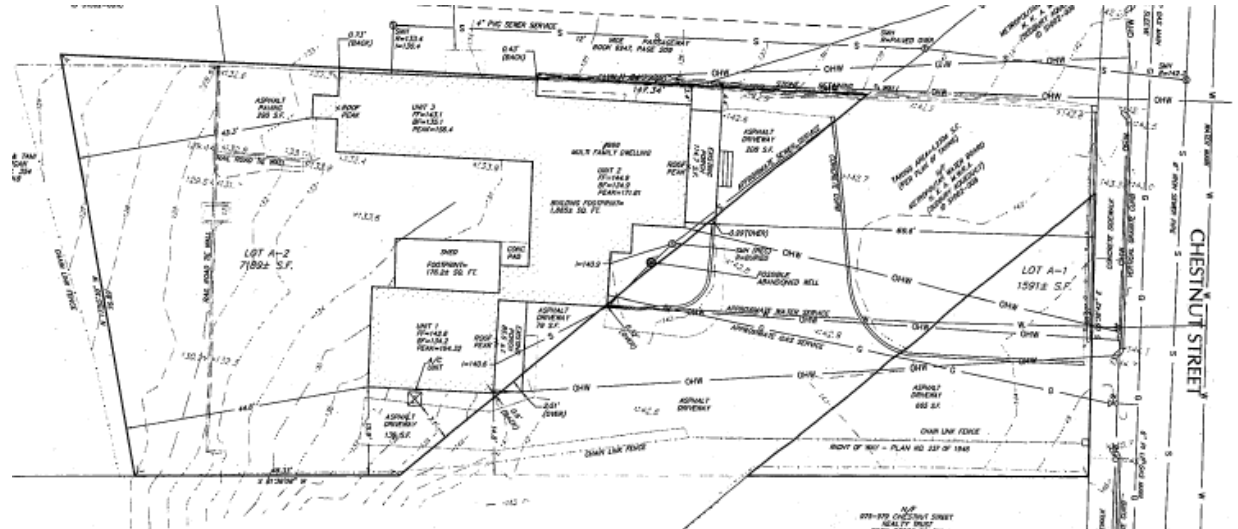
The site consists of 7,189 square feet of land and is improved with 2.5 story multi family home. The site is unique in that the Sudbury Aqueduct bisects the property. As a result of a taking in 1898, the site was split into three parcels, the 7,189 square foot lot with the multifamily dwelling, the Aqueduct parcel, and a 1,591 square foot triangular parcel at the southeastern corner of the site along Chestnut Street. The rear parcel with the multifamily dwelling has permanent access to the front parcel and Chestnut Street.

The site is relatively flat with a moderate step down at the rear of the property, separated by a rail road tie wall. The site is served by one curb cut off Chestnut Street that provides access to the rear lot via a paved driveway to Unit 1, as marked on the site plan. The driveway is a sideways T shape, providing direct access to Units 1 and 2. There are three connected units on the property. Unit 1 is at the end of the driveway, to the right of that is Unit 2 which connects to Unit 3, located to the rear of Unit 2 and separated by yard space from Unit 1. Units 1 and 2 have front porches. There is an existing 176 square foot shed adjacent to Unit 1. The site features a sizable front lawn at the northeast corner of the site due to the Aqueduct, and mature landscaping at the rear and south west corner of the site, screening the property from Echo Bridge.

Section 1.5.2.A of the Newton Zoning Ordinance states that the line between the Sudbury Aqueduct and private property is not considered a lot line, in this case it

applies to the front setback of the site, which is 18.5 feet where 0 is required. The site features a side setback of .43 feet between Unit 3 and the property line.

*Site Plan:*



### III. PROJECT DESCRIPTION AND ANALYSIS

#### A. Land Use

The principal use of the site is and will remain three-family.

#### B. Building and Site Design

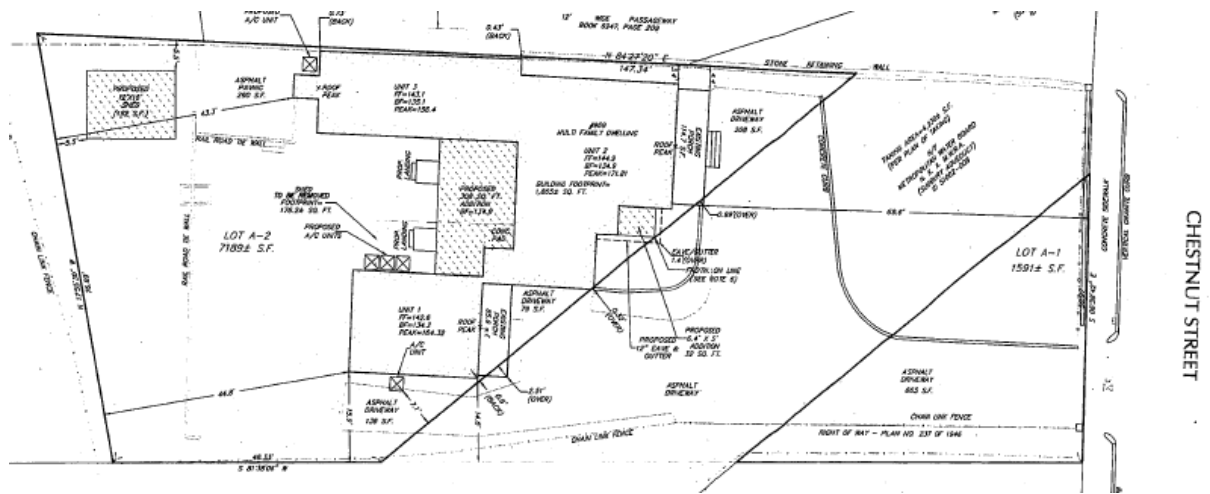
The petitioners are seeking to construct additions to the front and rear of the home, as well as raze the existing shed and construct a new shed at the northwestern corner of the site. The additions add approximately 900 square feet to the existing structure and require a special permit to increase the nonconforming floor area ratio from .59 to .72 where .45 is the maximum required. With the proposed additions, the setbacks will not be changing, as the additions are not closer to the setback than other parts of the existing house.

The additions require a special permit to increase the nonconforming lot coverage. The existing lot coverage is 31.2%, where 30% is the maximum required. The petitioners are seeking relief to increase the nonconforming lot coverage to 36.1%.

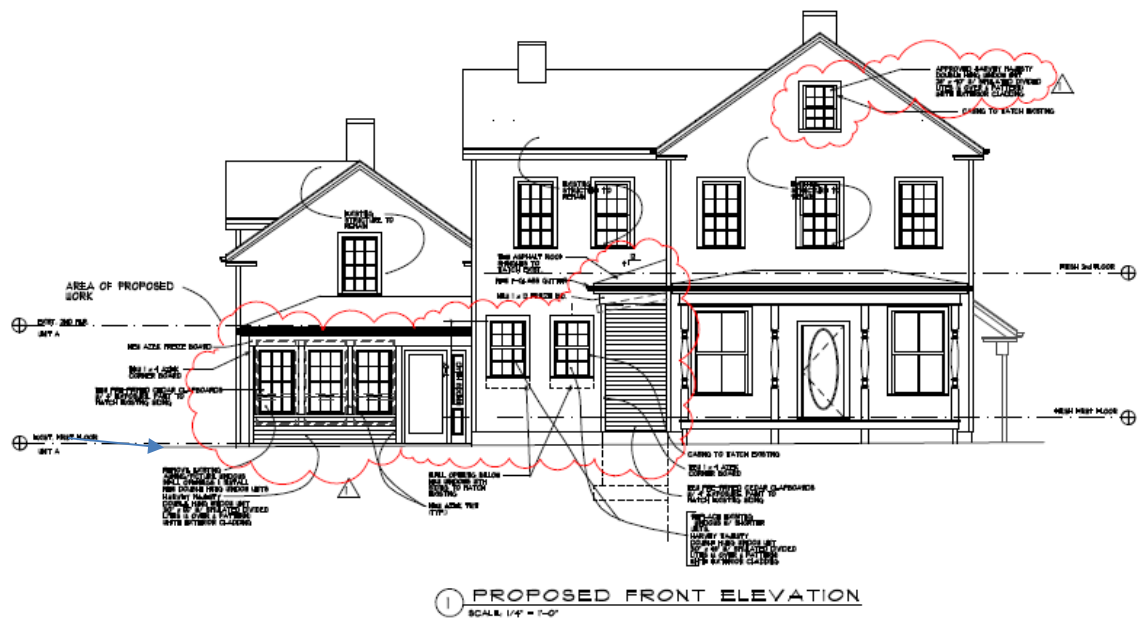
The Planning Department is unconcerned with the petition to increase both the

nonconforming FAR and lot coverage, as well as the extension of the nonconforming use. Due to the uniqueness of the lot in that the aqueduct bisects the two properties, the FAR and lot coverage can only be calculated using the parcel west of the aqueduct, rendering it a smaller area, even though the aqueduct and the small triangular parcel to the front of the site not built upon but appear to be part of the property.

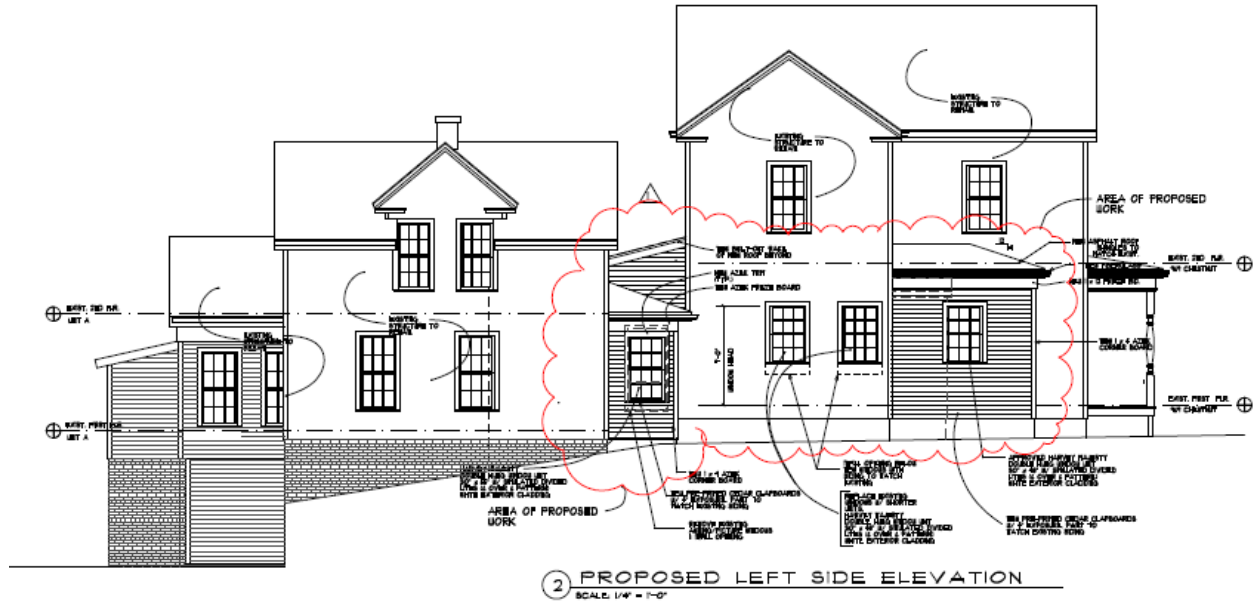
*Proposed Site Plan:*



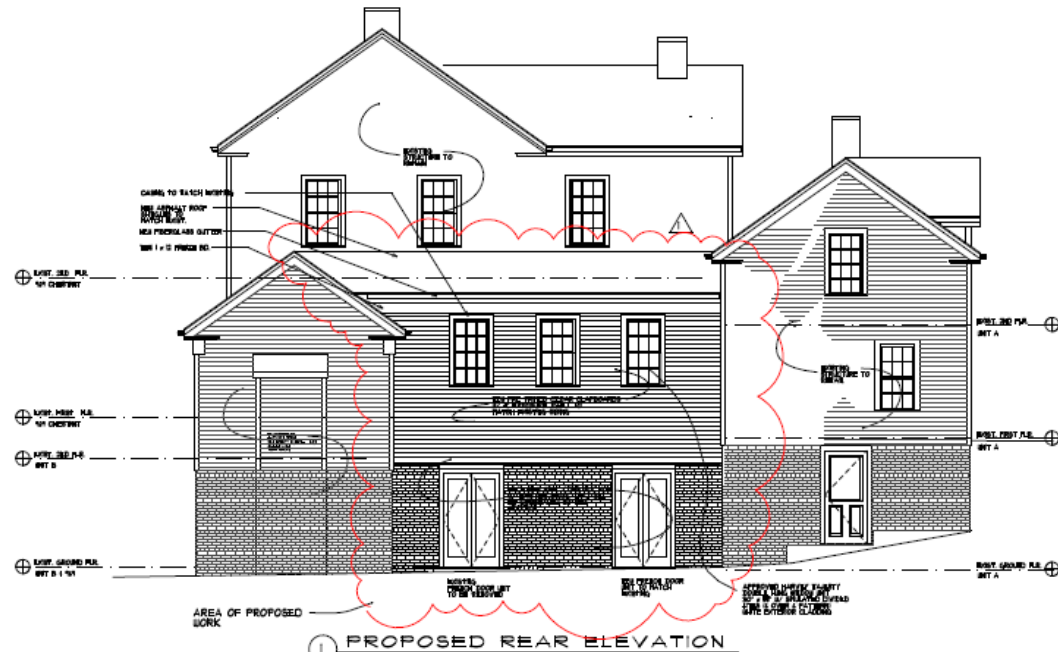
*Front Elevation:*



*Side Elevation:*



*Rear Elevation:*



C. Parking and Circulation

The petitioners are not proposing any changes to either the parking on circulation.

D. Landscaping

A landscape plan is not required with this petition.

#### IV. TECHNICAL REVIEW

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

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

- §3.1.9 and §7.8.2.C.2 of Section 30, to further increase the nonconforming FAR.
- §3.2.3 and §7.8.2.C.2 of Section 30, to further increase the nonconforming three family dwelling use.
- §3.2.3 and §7.8.2.C.2 of Section 30, to further increase the nonconforming lot coverage.

##### B. Engineering Review

On July 18, 2019, Associate City Engineer John Daghlion and City Engineer Louis Taverna reviewed the petition and due to the unique circumstances of the site are not requiring the new stormwater policy to govern the site. However, Engineering will require a rain barrel to be installed from the new shed with the collected water to be used to irrigate any landscaping on the property.

##### C. Historic Preservation Review

The structure was found to be historically significant, and the project was approved administratively with final review of construction plans as required.

#### V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.








#### **ATTACHMENTS:**

- |                      |                          |
|----------------------|--------------------------|
| <b>Attachment A:</b> | Zoning Map               |
| <b>Attachment B:</b> | Land Use Map             |
| <b>Attachment C:</b> | Zoning Review Memorandum |
| <b>Attachment D:</b> | DRAFT Council Order      |



# Attachment A Zoning Map Chestnut St., 969 *City of Newton, Massachusetts*

## Legend

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

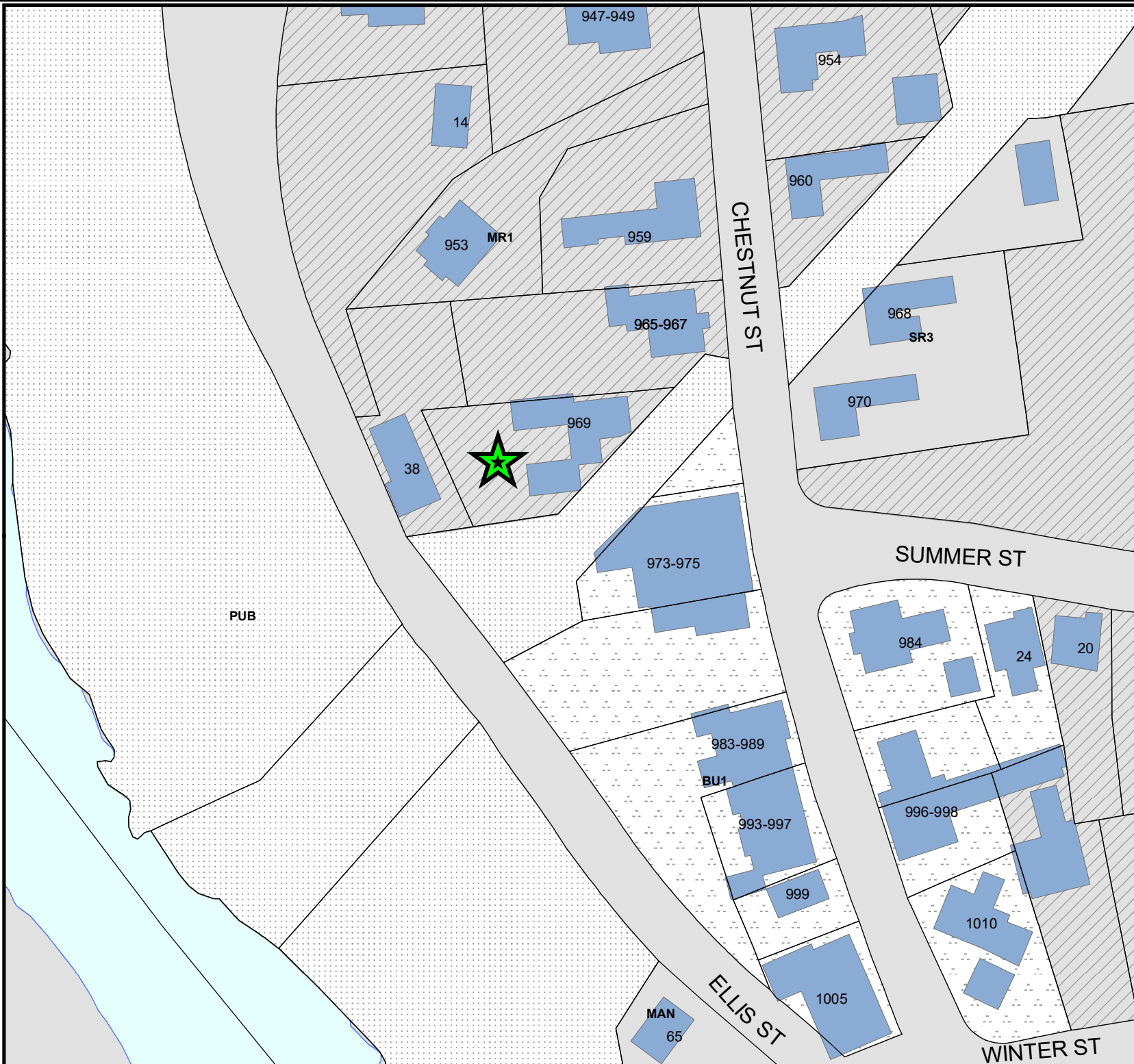


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

CITY OF NEWTON, MASSACHUSETTS  
Mayor - Ruthanne Fuller

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Feet

Map Date: October 02, 2019












# Attachment B Land Use Map Chestnut St., 969 *City of Newton, Massachusetts*

## Legend

### Land Use

#### Land Use

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

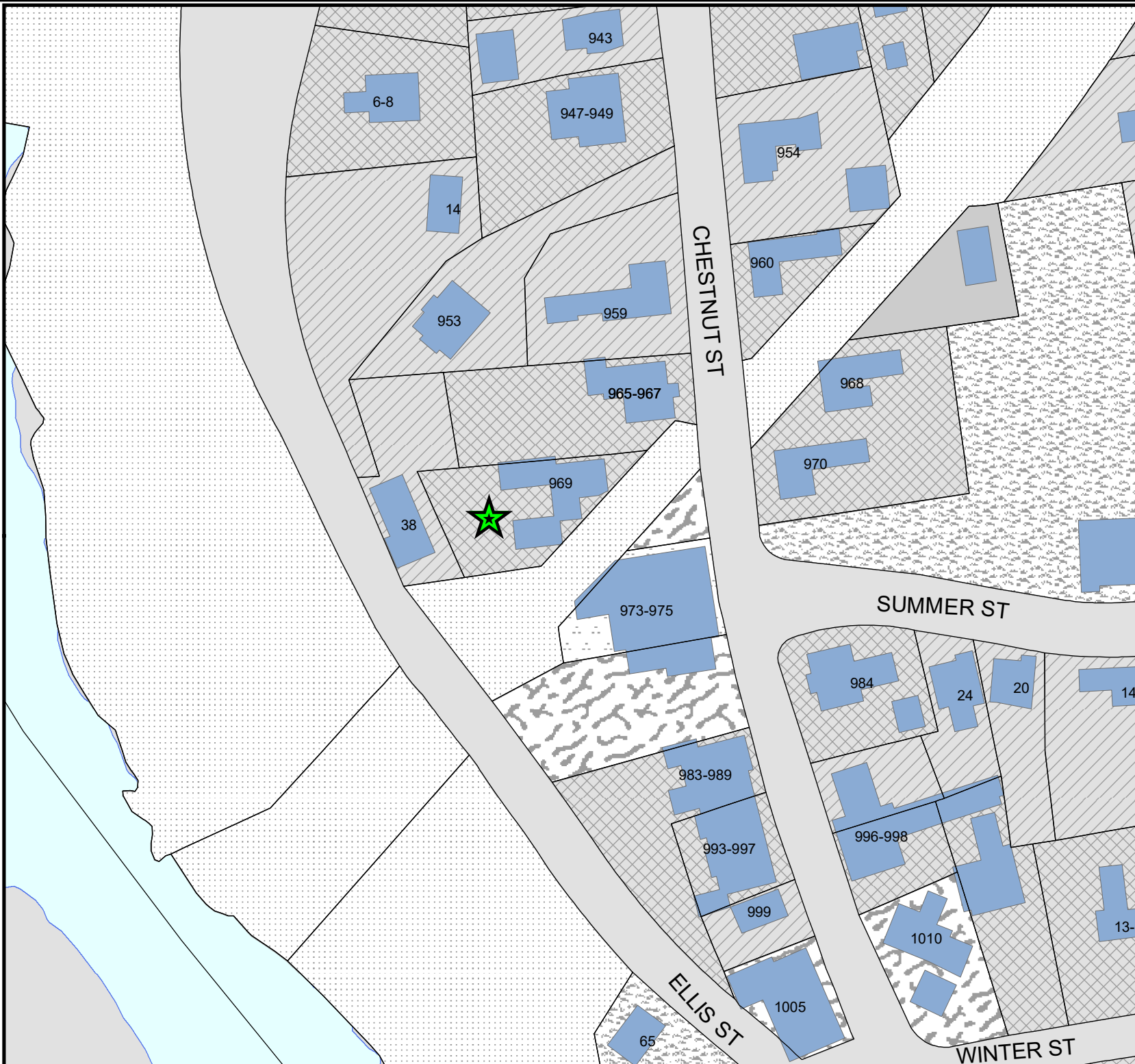


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Ruthanne Fuller

0 50 100  
Feet

Map Date: October 01, 2019





Ruthanne Fuller  
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Barney S. Heath  
Director

## ZONING REVIEW MEMORANDUM

Date: August 13, 2019

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Judith Cimetta, Applicant  
Laurance Lee, Attorney  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Associate City Solicitor

RE: Request to alter a nonconforming three-family dwelling and to further increase nonconforming FAR and lot coverage

Applicant: Judith Cimetta	
Site: 969 and 969F Chestnut Street	SBL: 51002 0019 and 51002 0007
Zoning: MR1	Lot Area: 7,189 and 1,591 square feet
Current use: Three-family dwelling	Proposed use: No change

### BACKGROUND:

The property at 969 Chestnut Street consists of a 7,189 square foot back lot improved with a three-family dwelling constructed circa 1825 in the Upper Falls Historic District, as well as a separate 1,591 square foot lot with frontage on Chestnut Street. The property consists of two lots which are bisected by the Sudbury Aqueduct. The dwelling is located on the rear parcel and is accessed from Chestnut Street via a driveway on the front parcel that extends over the aqueduct. The petitioner proposes to construct additions to the existing structure including a small addition to the front, a 308 square foot rear addition and a 192 square foot detached shed structure. The proposed changes will further increase the nonconforming FAR and alter a nonconforming three-family dwelling use, requiring a special permit.

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

- Zoning Review Application, prepared by Laurance Lee, attorney, submitted 6/31/2019
- FAR Worksheet, signed and stamped by David Sharff, architect, dated 5/7/2019

MR1 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	7,189 square feet	No change
Frontage	70 feet	0 feet	No change
Setbacks - Principal <ul style="list-style-type: none"> <li>• Front</li> <li>• Side</li> <li>• Side</li> <li>• Rear</li> </ul> Setbacks - Accessory <ul style="list-style-type: none"> <li>• Front</li> <li>• Side</li> <li>• Side</li> <li>• Rear</li> </ul>	0 feet* 7.5 feet 7.5 feet 15 feet  0 feet 5 feet 5 feet 5 feet	18.5 feet .43 feet 15.9 feet 43.3 feet  N/A N/A N/A N/A	No change No change No change No change  >120 feet 5.5 feet >50 feet 5.5 feet
Max Number of Stories	2.5	2.5	No change
FAR	.45 (.43 + .02 bonus)	.59	.72
Max Lot Coverage	30%	31.2%	36.1%
Min. Open Space	50%	58.6%	53.3%

\*The front lot line abuts the aqueduct. Per section 1.5.2.A, no setback is required

1. See "Zoning Relief Summary" below:

Zoning Relief Required		
Ordinance		Action Required
§3.2.3, §3.2.11 §7.8.2.C.2	Request to further increase nonconforming FAR	S.P. per §7.3.3
§3.4.1 §7.8.2.C.2	Request to extend a nonconforming three-family dwelling use	S.P. per §7.3.3
§3.2.3 §7.8.2.C.2	Request to further increase nonconforming lot coverage	S.P. per §7.3.3

CITY OF NEWTON  
IN CITY COUNCIL

ORDERED:

That the City 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 the following SPECIAL PERMIT/SITE PLAN APPROVAL to further increase the nonconforming Floor Area Ratio (FAR) from .59 to .72, where .45 is the maximum allowed by-right, and to further increase the nonconforming lot coverage, and to extend the nonconforming three family use as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Gregory Schwartz:

- The proposed increase in the nonconforming FAR from .59 to .72, where .45 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 as there are other multi family structures with similar style and bulk on similarly sized lots. (§3.2.3, §3.2.11, and §7.8.2.C.2)
- The proposed increase in nonconforming FAR is not substantially more detrimental than the existing nonconforming structure is to the neighborhood as there are other multi-family structures with similar style and bulk on similarly sized lots. (§3.2.3, §3.2.11, and §7.8.2.C.2)
- The proposed increase in nonconforming lot coverage is not substantially more detrimental than the existing nonconforming structure is to the neighborhood due to the unique characteristics of the property due to a taking by the MWRA and Sudbury Aqueduct bifurcating the property. (§3.2.3 and §7.8.2.C.2)
- The proposed extension of the nonconforming three family use is not substantially more detrimental than the existing nonconforming three family use is to the neighborhood as that area of Chestnut Street is comprised of multifamily uses. (§3.4.1 and §7.8.2.C.2)

PETITION NUMBER: #316-19

PETITIONER: Judith Cimetta

LOCATION: 969 Chestnut Street, on land known as Section 51, Block 2, Lots 7 and 19, containing approximately 7,987 square feet of land

OWNER: Judith Cimetta

ADDRESS OF OWNER: 969 Chestnut Street  
Newton, MA 02464

TO BE USED FOR: Multi-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.9 and §7.8.2.C.2 to further increase the nonconforming FAR, §3.4.1 and §7.8.2.C.2 to further extend the nonconforming three family use, §3.2.3 and §7.8.2.C.2 to increase nonconforming lot coverage

ZONING: Multi Residence 1 district

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
  - a. "Proposed Conditions, Plan of Land, 969 Chestnut St., Newton, MA ", signed and stamped by James Burke, Professional Engineer, and Claudio Salam, Professional Land Surveyor, dated January 24, 2017, revised June 17, 2019.
  - b. Architectural Elevations and Floor Plans titled "Cimetta Residence", prepared by David Sharff Architects, consisting of:
    1. Proposed and Existing Basement/Lower Level Plan, A1, dated August 9, 2019
    2. Proposed and Existing First Floor Plan, A2, dated August 9, 2019
    3. Proposed and Existing Second Floor Plan, A3, dated August 9, 2019
    4. Proposed Front and Left Elevations, A4, dated June 28, 2016
    5. Proposed Rear Elevations and Shed, A5, dated June 28, 2016
2. Prior to the issuance of any Building Permit, the petitioners shall provide a final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
3. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:
  - a. Recorded a certified copy of this order for the approved Special Permit/Site plan with the Registry of Deeds for the Southern District of Middlesex County.

- b. Filed a copy of such recorded order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
  - c. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
- 5. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
  - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development statements by a registered architect and professional land surveyor certifying compliance with Condition #1, including the as built FAR of the structure.
  - b. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.
  - c. Provided a recorded copy of the O&M Plan in accordance with Condition #3 above.
  - d. Filed with the Clerk of the Council, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that improvements authorized by this Order have been constructed to the standards of the City of Newton Engineering Department.