



#315-19

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City of Newton, Massachusetts

Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

Ruthanne Fuller
Mayor

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date:	October 29, 2019
Land Use Action Date:	December 10, 2019
City Council Action Date:	December 16, 2019
90-Day Expiration Date:	January 27, 2020

DATE: October 25, 2019

TO: City Council

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

SUBJECT: **Petition #315-19**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to exceed the floor area ratio, to further extend the nonconforming front setback, and to allow parking within five feet of a street at **73 Falmouth Road**, Ward 3, West Newton, on land known as SBL 34, 46, 08 containing approximately 4,254 sf of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. §1.5.3, §3.1.9, §5.1.7.A, §5.1.13, §7.8.2.C.2 and §7.4, 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 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 that the Land Use Committee of the City Council can consider at a subsequent working session.



73 Falmouth Road

EXECUTIVE SUMMARY

The subject property located at 73 Falmouth Road consists of a 4,254 square foot lot improved with a single-family dwelling constructed circa 1937. The property is located within the Single Residence 3 (the "SR-3") zone in West Newton. The petitioner is seeking to construct a two-story addition to the rear of the dwelling to contain a garage and an accessory apartment. The addition increases the floor area ratio (the "FAR") beyond what is allowed as of right, requiring a special permit, and locates a parking stall within five feet of a street, also requiring special permit. Therefore, the petitioner requires special permits to exceed the FAR from .38 to .54, where .48 is the maximum allowed as of right, and to allow a parking stall within five feet of a street. The addition also reduces the rear yard setback to 7.5 feet, where 15 feet is the minimum allowed, requiring a variance from the Zoning Board of Appeals. If approved, the dwelling would contain 2,302 square feet, where 2,042 square feet is the maximum allowed, a difference of 260 square feet.

The subject property is located in a compact, walkable neighborhood containing one and two-story structures on uniformly sized lots. The addition will strengthen the existing street wall along the northern side of Elsworth Street, and it is designed to complement the architecture of the principal structure and to be subordinate in height to the principal structure as well. For these reasons, staff does not believe that the increase in FAR will be in derogation of the size, scale, and design of other structures in the neighborhood.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

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

- The proposed increase in FAR from .38 to .54, where .48 is the maximum allowed as of right is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood. (§3.1.9 and §7.3.3)
- Literal compliance with the parking 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. (§5.1.7.A and §5.1.13)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

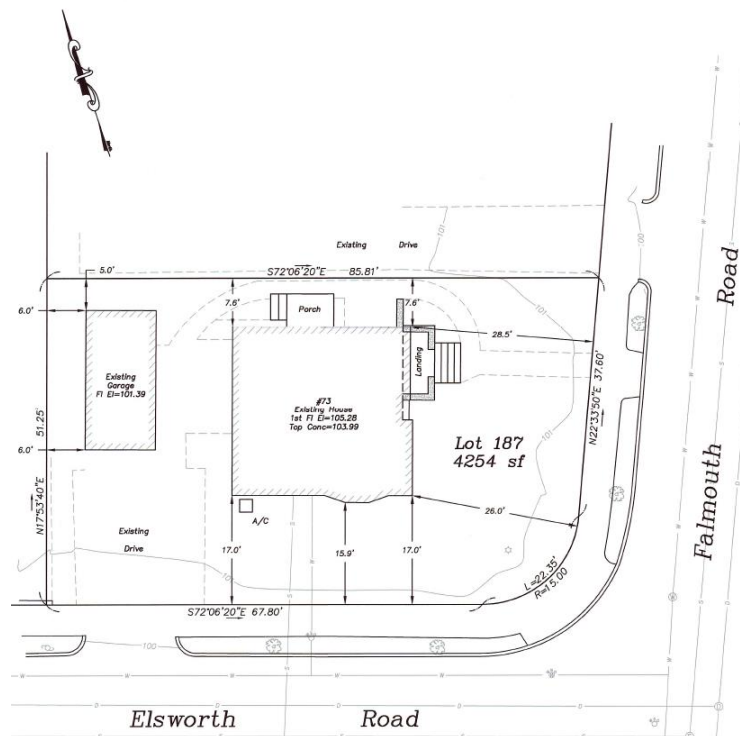
A. Neighborhood and Zoning

The subject property is a corner lot with frontages on Falmouth and Elsworth Roads in the SR-3 zone in West Newton. The immediate area and surrounding neighborhood are located entirely within the SR-3 zone (**Attachment A**). As such, the neighborhood consists predominantly of single-family uses, except a few nonconforming multi-family uses and one nonprofit organization (**Attachment B**).

B. Site

The site consists of 4,245 square feet of land and it is improved with a 2.5-story single-family residence constructed circa 1937. The site also contains a detached, one-car garage. The dwelling has a nonconforming front setback from Elsworth Road of 15.9 feet, where 21.45 feet is the minimum allowed due to averaging. The site is accessed by an approximately 14-foot-wide driveway from Elsworth Road leading to the one-car garage and a surface parking stall. The site is predominantly flat. In the case of a corner lot, the rear yard is opposite the front door. Because the front door is on Falmouth Road, the rear yard setback is taken from the western (left) boundary while the northern boundary is a side setback.

Existing Condition Site Plan



Currently, the lot contains a principal structure (the single-family dwelling) and an accessory structure (the detached garage). These structures are subject to different setback requirements: the principal structure must be set back at least 15 feet from the rear (west property line) and 7.5 feet from the side (north) lot line, while the accessory structure must be set back five feet from the rear and side lot lines. The setbacks for both the principal structure and the detached structure are conforming. The addition will incorporate the garage into the principal structure; therefore, the addition is required to be at least 15 feet from the rear property line and 7.5 feet from

the side lot line.

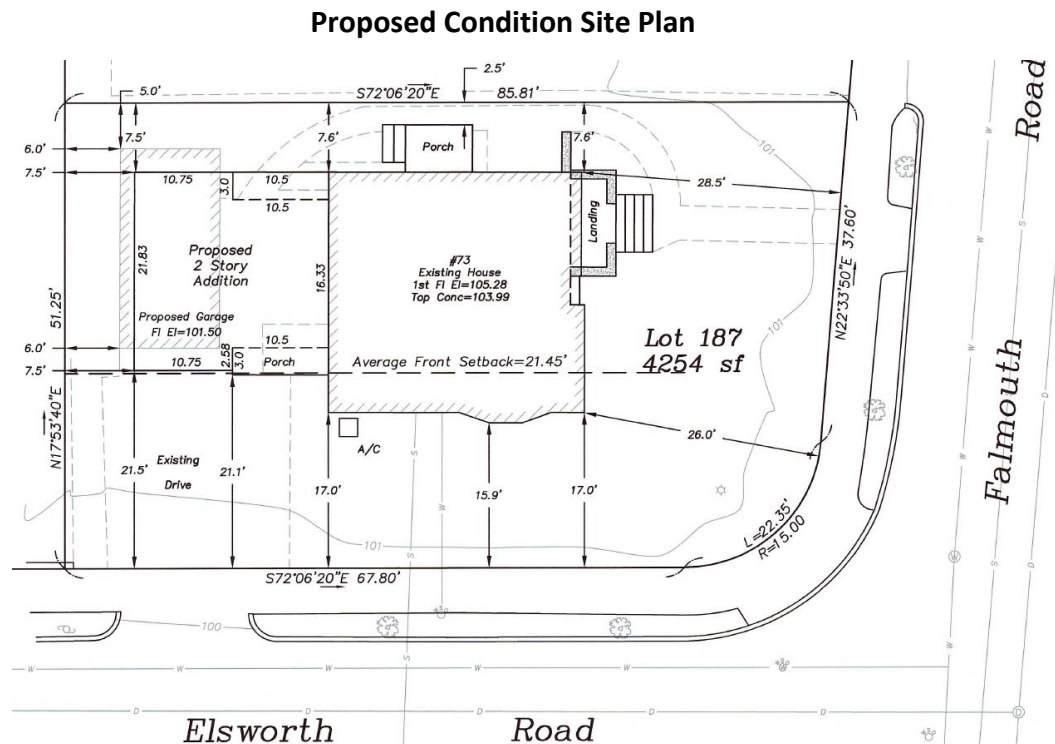
III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site is a single-family residence. If approved, the petitioner will seek to establish an internal accessory apartment.

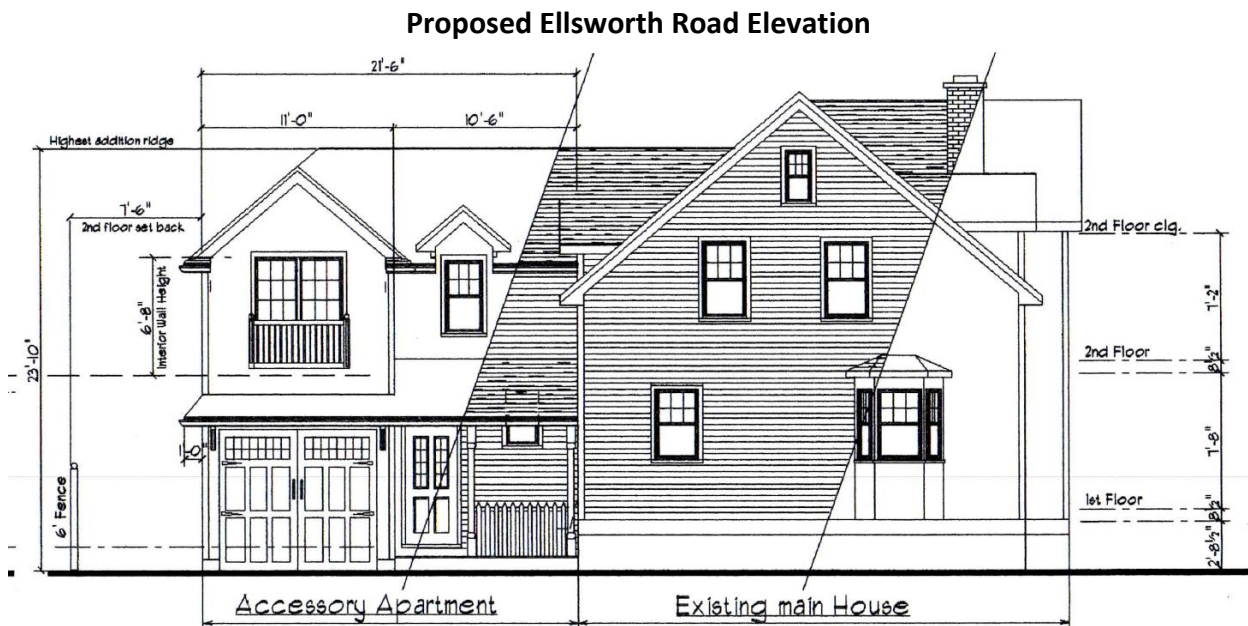
B. Site Design

The petitioner is proposing to construct a two-story addition to the rear of the dwelling; the existing detached garage will be razed in conjunction with the addition. The addition will extend the footprint of the dwelling approximately 21.5 feet to the west, reducing the rear yard setback from 28.8 feet, to 7.5 feet. This reduction requires a variance from the Zoning Board of Appeals. The addition will also extend the nonconforming front setback from 15.9 feet to 21.1 feet. The petition was advertised to include this extension as requiring a special permit. However, the Newton Zoning Ordinance (the "Ordinance") allows additions within the front setback provided that the addition be limited to 75 square feet. The addition complies with this provision and therefore does not require relief. As such the petitioner, should withdraw this request.



C. Building Design

The two-story addition will contain a one-car garage in the first story and additional living space in the form of an accessory apartment in the second story. The addition will feature a Juliette balcony and an oversized, gable dormer to match the existing dormer on the Falmouth Road façade. The proposed addition will measure approximately 26.34 feet tall, while the existing structure measures 29.45 feet tall. The as of right FAR for the lot is .48 which translates to approximately 2,042 square feet. The proposed dwelling would total 2,302 square feet, 260 feet above the as of right FAR.



The petitioner is proposing to establish an accessory apartment within the second story of the addition. The Ordinance allows internal accessory apartments as of right if they are no greater than 1000 square feet or 33% of the total habitable space of the principal dwelling, whichever is less. The proposed apartment is 450 square feet which is 28% of the total habitable space of the principal dwelling. As such, the petitioner can establish the accessory apartment as of right, provided that a special permit to exceed the FAR and a variance to reduce the rear yard setback are obtained. Should the special permit and the variance not be obtained, the petitioner could still choose to establish an accessory apartment within an as of right addition. Staff conferred with Inspectional Services and believes that the accessory apartment does not have two means of egress per the building code. At the public hearing, the petitioner should be prepared to indicate whether an additional egress is required and where such egress would be

located.

The subject property is located in a compact, walkable neighborhood containing one and two-story structures on uniformly sized lots. The footprints of these structures consume much of the lots' widths, creating a strong street wall. The addition requires a variance to encroach into the rear setback which expands the site's buildable envelope. Although the Ordinance classifies this portion of the lot as a rear setback, the area acts more as a side setback in accordance with the houses to the west on the northern side of Falmouth Street. The addition will strengthen this street wall and it is designed to complement the architecture of the principal structure and to be subordinate in height to the principal structure as well. For these reasons, staff does not believe that the increase in FAR will be in derogation of the size, scale, and design of other structures in the neighborhood.

D. Parking and Circulation

The accessory apartment does not require a parking stall(s), but the single-family dwelling requires two stalls. The addition will contain a one-car garage within the first floor, while the second required parking stall will be a surface stall within the front setback. This stall requires a special permit because it will be located within five feet of the street. Specifically, there will be two feet between the end of the stall and the sidewalk. The Planning Department is not concerned with this extension because the stall is dimensionally compliant at 19-feet long, it is a minor change from the existing condition, and such placement preserves open space.

E. Landscaping and Screening

A landscape plan is not required with this petition.

IV. TECHNICAL REVIEW

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

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

- §3.1.9 and §7.3.3 of Section 30, to exceed the FAR
- §5.1.7.A and §5.1.13 of Section 30, to allow a parking stall within five feet of a street
- §3.1.3 and §7.6 of Section 30, to reduce the rear yard setback requirement via a variance from the Zoning Board of Appeals

B. Engineering Review

Review from the Engineering Division of Public Works is not required at this time. The petition will be reviewed for conformance with the City of Newton Engineering Design

Standards prior to the issuance of a building permit, should this petition be approved.

C. Newton Historical Commission Review

The Newton Historical Commission found the existing structure “Not Historically Significant” on October 11, 2018. As such, a demolition delay was not implemented, and further review is not required.

V. PETITIONER’S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:

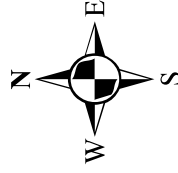
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|----------------------|--------------------------|
| Attachment A: | Zoning Map |
| Attachment B: | Land Use Map |
| Attachment C: | Zoning Review Memorandum |
| Attachment D: | DRAFT Order |

Attachment A Zoning Map Falmouth Rd., 73

City of Newton,
Massachusetts

Legend

- Single Residence 3
- 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



Map Date: September 26, 2019



Attachment B Land Use Map Falmouth Rd., 73

City of Newton,
Massachusetts

Legend

Land Use

Land Use

Single Family Residential

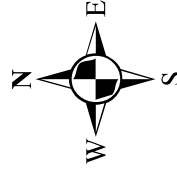
Multi-Family Residential

Nonprofit Organizations

Building Outlines

Surface Water

Property Boundaries



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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller



Map Date: September 26, 2019





Ruthanne Fuller
Mayor

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: June 27, 2019

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Maureen Dowling, Trustee M&D Family Trust
Terrence Morris, Attorney
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: Request for a special permit to exceed FAR and to extend a nonconforming front setback and a variance from the rear setback requirement

Applicant: M&D Family Trust	
Site: 73 Falmouth Road	SBL: 34046 0008
Zoning: SR3	Lot Area: 4,254 square feet
Current use: Single-family dwelling	Proposed use: Single-family dwelling with an accessory apartment

BACKGROUND:

The property at 73 Falmouth Road consists of a 4,254 square foot corner lot improved with a single-family residence constructed in 1937 and a detached garage. The petitioners propose to renovate and expand the existing garage and construct an addition attaching it to the main dwelling. The proposed addition requires a special permit to exceed the allowable FAR.

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

- Zoning Review Application, prepared Terrence Morris, attorney, dated 4/1/2019
- FAR Worksheet, submitted 4/1/2019, updated 6/6/2019
- Existing Conditions Site Plan, prepared by Verne T. Porter, surveyor, dated 10/18/2018
- Architectural plans and elevations, prepared by C.D. Calhoun, architect, dated 12/19/2018, updated 6/6/2019

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner proposes to expand an existing detached garage structure and attach it to the main dwelling to be used as an accessory apartment. The proposed construction adds 681 square feet to the existing 1,621 square feet. The proposed addition increases the FAR from .38 to .54, which exceeds the maximum of .48 allowed by sections 3.1.3 and 3.1.9, requiring a special permit.
2. Utilizing the averaging provisions for front setbacks per section 1.5.3, the required front setback is 21.45 feet. The existing dwelling has a front setback of 15.9 feet from Elsworth Road. The petitioners intend to extend the house to construct an attached garage off of Elsworth Road, with a proposed setback of 21.1 feet. The petitioner requires a special permit to extend the nonconforming front setback per section 7.8.2.C.2.
3. Per section 1.5.3.A, in the case of a corner lot, the rear lot line is that which is opposite the street on which the main entrance is located, which in this case is Falmouth Road. The petitioners propose to construct an addition resulting in a rear setback of 7.5 feet, where 15 feet is required per section 3.1.3. To allow a reduction of the required rear setback a variance per section 7.6 is required.

SR3 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	4,254 square feet	No change
Frontage	70 feet	50 feet	No change
Setbacks <ul style="list-style-type: none">• Front (Falmouth Rd)• Front (Elsworth Rd)• Side• Rear	25 feet 21.45 feet* 7.5 feet 7.5 feet**	26 feet 15.9 feet 7.5 feet 28.8 feet	No change No change No change 7.5 feet
Max Number of Stories	2.5	2.5	No change
Max Height	36 feet	27.3 feet	No change
FAR	.48	.38	.54
Max Lot Coverage	30%	24%	26.9%
Min. Open Space	50%	62.62%	63%

*per section 1.5.3.B

**per section 3.1.13

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.2.3 §3.2.11	Request to exceed FAR	S.P. per §7.3.3
§1.5.3 §3.2.3 §7.8.2.2	Request to further extend a nonconforming front setback	S.P. per §7.3.3
§3.1.3	Request for a variance from rear setback requirement	Variance per §7.6

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 exceed the floor area ratio (the "FAR") from .38 to .54, where .48 is the maximum allowed by-right, and to allow a parking stall within five feet of a street, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Gregory Schwartz:

1. The proposed increase in FAR from .38 to .54, where .48 is the maximum allowed as of right is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood because the addition will complement the architecture of the principal structure and it will be subordinate in height to the principal structure. (§3.1.9 and §7.3.3)
2. Locating a parking stall within five feet of a street is in the public interest because there is a two-foot buffer between the stall and the street and such placement preserves open space (§5.1.7.A and §5.1.13).

PETITION NUMBER: #315-19

PETITIONER: M&D Family Trust, Maureen Dowling

LOCATION: 73 Falmouth, on land known as Section 34, Block 46, Lot 08, containing approximately 4,254 square feet of land

OWNER: M&D Family Trust, Maureen Dowling

ADDRESS OF OWNER: 73 Falmouth Road
Newton, MA 02465

TO BE USED FOR:	Single-Family Dwelling with an Internal Accessory Apartment
CONSTRUCTION:	Wood frame
EXPLANATORY NOTES:	§3.1.9 and §7.3.3 to exceed the floor area ratio; and §5.1.7.A and §5.1.13 to allow a parking stall within five feet of a street
ZONING:	Single Residence 2 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. Existing Conditions Site Plan, signed and stamped by Verne T. Porter, Professional Land Surveyor, dated August 13, 2019
 - b. Proposed Conditions Site Plan, signed and stamped by Verne T. Porter, Professional Land Surveyor, dated August 13, 2019
 - c. Architectural Plans, unsigned and unstamped, consisting of two (2) sheets:
 - i. Floor Plans
 - ii. Elevations and Cross Section
2. Prior to the issuance of any building permit, the petitioner shall obtain a variance from the Zoning Board of Appeals to reduce the rear yard setback.
3. Prior to the issuance of any building permit, the petitioner 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.
4. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
 - a. Recorded a certified copy of this board order for the approved Special Permit/Site plan with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the final site plan.
 - d. Provided a copy of the recorded variance from the Zoning Board of Appeals to the Commissioner of Inspectional Services and Director of Planning and Development in accordance with Condition #2 above.

- e. 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 petitioner has:
- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by an architect or land surveyor certifying compliance with Condition #1 as well as the as-built floor area ratio 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 professional land surveyor.
 - c. 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.