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#s 318-19 & 319-19

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Barney Heath
Director

MEMORANDUM

DATE: December 6, 2019
MEETING DATE: December 10, 2019
TO: Land Use Committee of the City Council
FROM: Barney Heath, Director of Planning and Development
Jennifer Caira, Chief Planner for Current Planning
Michael Gleba, Senior Planner
CC: Petitioner

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

PETITIONS #s 318-19 & 319-19

15-21 Lexington Street

Petition #318-19, for a change of zone to Multi-Residence 3 for portions of land located at **15-21 Lexington Street** (currently zoned Single-Residence 3), also identified as Section 41, Block 35, Lots 2, 3, 4 and 5.

Petition #426-18- #319-19, for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a 24-unit multi-family dwelling with a below grade parking garage and surface stalls, to reduce the parking stall depth, to allow restricted end stalls in the garage parking facility, to waive the perimeter screening requirements for the outdoor parking facility, to waive interior landscaping requirements for the outdoor parking facility and to waive the minimum intensity of outdoor lighting of the parking facility on 51,870 sq. ft. of land at 15-21 Lexington Street, Ward 4, West Newton, on land known as Section 41 Block 35 Lots 2-5 in a district zoned SINGLE RESIDENCE 3 (to be rezoned to MU3). Ref: Sec. 7.3.3, 7.4, 3.4.1, 5.1.8.B.2, 5.1.13, 5.1.8.B.6, 5.1.9.A, 5.1.9.B, 5.1.10.A.1 of the City of Newton Revised Zoning Ord, 2017.

The Land Use Committee (the "Committee") held a public hearing on October 4, 2019 on these petitions. This memo reflects additional information addressed to the Planning Department as of November 13, 2019.

Background

The subject site is comprised of four parcels located along the west side of Lexington Street just south of the Newton-Waltham line. The petitioners propose to construct a 24-unit multi-family dwelling with below-grade garaged parking stalls and surface parking stalls on the assembled site. To do so, the petitioners are seeking to have the subject parcels rezoned to Multi Residence 3 (MR3) and to be granted a special permit under MR3 zoning to allow for the proposed development.

Update

Sustainability

Provisions pertaining to sustainability and stormwater management have been modified in Conditions 22, 23, and 24 of the attached draft Council Order to address additional issues (**Attachment A**).

Rear Landscaping Issue

The draft Order previously presented to the City Council contained a condition regarding the preservation of vegetative screening, including mature trees, located directly adjacent to rear of the subject property's surface parking facility but on the so-called Packard Cove office park property (see Condition 17 in **Attachment A**).

Citing provisions included in the special permits that govern that adjacent office park property (e.g., SP #194-99- Condition 13; SP #19-06- Finding 1; Conditions 2, 3 and 12 (c)), as well as a restrictive covenant included in the deed by which that property was conveyed out of City ownership, the petitioner now suggests the above-cited condition is not required in the proposed Order for the present petition as the continued existence and maintenance of the vegetative screening is secured by such provisions of the office park's special permits and deed.

As the petition seeks a waiver of perimeter screening requirements, the petitioner has suggested that such a change be supported with additional Order finding regarding the provisions of the adjacent property's special permits and deed and has suggested the following language for such a finding:

"The council finds that the requested waivers from parking facility perimeter landscape requirements to the south and rear of the site are appropriate to protect the abutting properties in light of the fact that the property immediately abutting the site in those locations is heavily landscaped with substantial and/or mature plantings which were installed pursuant to B.O. # 19-06 (the second office park special permit) and under the terms of that special permit, as incorporated from B.O.# 194-99 (the first office park special permit) the owners of the office park property, or their successors and assigns, are responsible for maintenance of all landscaping in good condition and, at least annually, are required to replace plant material that dies, is damaged or is diseased."

The Planning Department will continue to work with the petitioner and the Law Office to determine the appropriateness of this approach.

ATTACHMENT

Attachment A

DRAFT Council Order

ATTACHMENT A

DRAFT- #319-19
15-21 Lexington Street

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 allow a multi-family dwelling (§3.4.1); grant exceptions to certain parking facility requirements so as to allow reduced parking stall depths (§5.1.8.B.2, §5.1.13) and to waive perimeter screening requirements for the outdoor parking facility (§5.1.9., §5.1.13), interior landscaping requirements for the outdoor parking facility (§5.1.9.B, §5.1.13), and minimum intensity requirements for outdoor lighting of the parking facility (§5.1.10.A.1, §5.1.13), as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Gregory Schwartz:

1. The specific site is an appropriate location for the proposed twenty-four-unit dwelling as it is located on street with a mix of uses and adjacent to commercial uses (§7.3.3.C.1)
2. The proposed twenty-four unit dwelling as developed and operated will not adversely affect the neighborhood as it is located on street with a mix of uses and adjacent to commercial uses (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4)
5. The site planning building design, construction, maintenance or long-term operation of the premises will contribute significantly to the efficient use and conservation of natural resources and energy as it will have features including high efficiency electric heat pumps to handle the heating and cooling of the building, “Energy Star”-rated windows and two electric vehicle (EV) charging stations; further a buffer of mature trees will be maintained pursuant to the project (§7.3.3.C.5)
6. Literal compliance with the parking requirements of the Newton Zoning Ordinance (NZO) is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest or in the interest of safety or protection of environmental features (§5.1.13)

PETITION NUMBER: #319-19

PETITIONER: Dante Capasso

ADDRESS OF PETITIONER: 5 Ionia Street
Newton, MA 02466

LOCATION: 15-21 Lexington Street, Ward 4, West Newton, on land known as
Section 41 Block 35 Lots 2-5, containing approximately 51,870
square feet of land

OWNER: Picariello Realty Trust / DSP Realty Trust

ADDRESS OF OWNER: c/o Dante Capasso
5 Ionia Street
Newton, MA 02466

TO BE USED FOR: A 24-unit multi-family development with associated garage
parking.

EXPLANATORY NOTES: Special permits per §7.3.3:
– to reduce parking stall depth (§5.1.8.B.2, §5.1.13)
– to waive the perimeter screening requirements for the outdoor
parking facility (§5.1.9., §5.1.13)
– to waive the interior landscaping requirements for the outdoor
parking facility (§5.1.9.B, §5.1.13)
– to waive the minimum intensity of outdoor lighting of the parking
facility (§5.1.10.A.1, §5.1.13)

ZONING: Multi-Residence 3 (MR3)

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. A set of engineering plans entitled “Site Plan of Land in Newton MA, 15-21 Lexington Street,” prepared by Everett M. Brooks Co., ,consisting of the following sheets:
 - i. Existing Conditions (Sheet 1 of 4), dated October 30, 2019, signed and stamped by Michael S. Kosmo, Registered Professional Engineer on October 30, 2019 and Bruce Bradford, Professional Land Surveyor on October 30, 2019;

- ii. Proposed Layout (Sheet 2 of 4), dated October 30, 2019, as revised through November 12, 2019, signed and stamped by Michael S. Kosmo, Registered Professional Engineer on November 12, 2019 and Bruce Bradford, Professional Land Surveyor on November 12, 2019;
 - iii. Proposed Utilities and Grading and Drainage Plan (Sheet 3 of 4), dated October 30, 2019, signed and stamped by Michael S. Kosmo, Registered Professional Engineer on October 30, 2019;
 - iv. detail sheet (Sheet 4 of 4), dated October 30, 2019, signed and stamped by Michael S. Kosmo, Registered Professional Engineer on October 30, 2019.
 - b. A set of architectural plans entitled "CityLine, 15 & 21 Lexington, Newton, MA," prepared by Reisen Design Associates, signed and stamped by Erik P. Miller, Registered Architect, dated November 12, 2019, consisting of the following sheets:
 - i. Project Cover Sheet & Drawing List (G-0);
 - ii. Front Elevation (A-1);
 - iii. Left Side Elevation (A-2);
 - iv. Rear Elevation (A-3);
 - v. Right Side Elevation (A-4);
 - vi. Basement Plan (A-5);
 - vii. 1st Floor Plan (A-6);
 - viii. 2nd Floor Plan (A-7);
 - ix. 3rd Floor Plan (A-8);
 - x. Roof Plan (A-9);
 - xi. Site & Parking Plan (L-1).
 - c. A Landscape Plan entitled "Landscape Plan for : 15-21 Lexington Street, Newton MA 02465," prepared by The Garden Artisan Co., Antonio Mariano MCLP, consisting of the following sheets:
 - i. untitled key sheet (P1);
 - ii. A Side Right (East) (P2);
 - iii. A Side Left (East) (P3);
 - iv. B Side (South) (P4);
 - v. C Side (West) (P5);
 - vi. D Side (North) (P6);
 - vii. C Side Rear Boarder (*sic*) (P7).
 - d. A photometric plan entitled "Project: 15-21 Lexington Ave, Location: Newton, MA," prepared by Illuminate, dated August 29, 2019.
2. In accordance with the City's Inclusionary Zoning Ordinance, §5.11.4, the Project shall include five (5) affordable housing units (the "Inclusionary Units"), as follows:
- a. Four (4) of the residential units in the Project shall be made available to households earning at or below 80% of Area Median Income (AMI), as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA ("Tier 1 Units").

The AMI used for establishing rent and income limits for the Tier 1 Units must average no more than 65% AMI. Alternatively, at least 50% of the Tier 1 Units may be priced for households having incomes at 50% of AMI and the remaining Tier 1 Units priced for households at 80% of AMI.

- b. One (1) of the residential units in the Project shall be affordable to households earning greater than 80%, but at or below 110% of AMI, as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA ("Tier 2 Unit").
3. The Petitioner, the Project, and the Inclusionary Units shall comply with all applicable provisions of the City's Inclusionary Zoning Ordinance, §5.11, in effect as of the date of this Special Permit/Site Plan Approval, regardless of whether such requirements are set forth herein.
4. The bedroom mix of the Inclusionary Units shall be equal to the bedroom mix of the market-rate units in the Project. The proposed mix of the Inclusionary Units is:

	Studio	1BR	2BR
Tier 1 Units	1	2	1
Inclusionary Units			
Tier 2	0	1	0
Inclusionary Units			

The final bedroom mix shall be reviewed and approved by the Director of Planning and Development prior to the issuance of a building permit for the Project.

5. Monthly housing costs (inclusive of rent, utility costs for heat, water, hot water and electricity, 1 parking space and access to all amenities offered to tenants in the building), must not exceed 30% of the applicable household income limit for that Inclusionary Unit and shall be consistent with Inclusionary Zoning Ordinance, § 5.11.4.D.1.
6. 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).
7. Prior to the issuance of any building permits for the vertical construction of the Project, the Petitioner shall provide an updated Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan (AFHMP) for review and approval by the Director of Planning and Development in accordance with §5.11.8 of the Inclusionary Zoning Ordinance. The Inclusionary Housing Plan and Affirmative Fair Housing 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 §5.11.8. of the Inclusionary Zoning Ordinance. In accordance with DHCD's current guidelines, the units will be affirmatively marketed and leased through a lottery.

8. Prior to the issuance of any temporary or final occupancy certificates for the Project, the Petitioner, the 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 Tier 1 Inclusionary Units in perpetuity.
9. Prior to the issuance of any temporary or final occupancy certificates for the Project, the Petitioner and the City 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 Tier 2 Inclusionary Unit in perpetuity.
10. To the extent permitted by applicable regulations of DHCD, the Tier 1 Inclusionary Units shall be eligible for inclusion on the State's Subsidized Housing Inventory (SHI) as Local Action Units through DHCD's Local Initiative Program.
11. The Inclusionary Units shall be designed and constructed subject to the provisions of the Inclusionary Zoning Ordinance, §5.11.7.
12. Inclusionary Units, and their associated parking spaces, shall be proportionally distributed throughout the Project and be sited in no less desirable locations than the market-rate units, and the locations of such units and parking spaces shall be reviewed and approved by the Director of Planning and Development prior to the issuance of a building permit for the Project.
13. No residential unit or building shall be constructed to contain or be marketed and/or sold as containing more bedrooms than the number of bedrooms indicated for said unit in the Project Master Plans referenced in Condition #1.
14. Any room that meets the minimum dimensional and egress requirements to be considered a bedroom under the state building code and Title 5 regulations shall be counted as a bedroom for purposes of determining the required bedroom mix of the Inclusionary Units in accordance with the Inclusionary Zoning Ordinance.
15. The petitioner shall comply with the City's Tree Preservation Ordinance.
16. With the exception of those spaces associated with the Inclusionary Units, charges for parking stalls shall be separate and in addition to ("unbundled") from rent and other charges for residential tenants.
17. The Petitioner is required to plant and maintain the plantings and vegetation shown on Sheet P7 of the Landscape Plan referenced in Condition #1 that are located on an abutting property. Prior to the issuance of any building permit pursuant to this special permit, the petitioner shall submit to the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a certified copy of an easement recorded at the Registry of Deeds for the Southern District of Middlesex County providing the petitioner with all necessary property rights to enter and use the abutting land for this purpose.
18. Prior to the issuance of any building permit pursuant to this special permit, the petitioner shall submit to the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a certified copy of an easement agreement or similar

agreement recorded at the Registry of Deeds for the Southern District of Middlesex County requiring and providing for the continuous maintenance by the petitioner of the plantings and vegetation shown on Sheet P7 of the Landscape Plan referenced in Condition #1 that are located on an abutting property.

19. The Petitioner shall contribute funding towards the City's Inflow and Infiltration Reduction Program to cover improvements to the sanitary sewer system at a 4:1 replacement ratio. The contribution shall be based on a formula of flow rate x number of bedrooms x 4 x \$19.77. The flow rate shall be set by the City Engineer based upon the actual flow rate anticipated due to the proposed fixtures, to be submitted by the petitioner. The payments shall be made as follows:
 - a. Prior to the issuance of any building permit, the first payment shall be submitted. The payment shall be $\frac{1}{2}$ of the total payment calculated above.
 - b. The second and final payment shall be determined by the actual water and wastewater flow into the City's sewer system from the stabilized project, defined as 95% occupancy. This payment will be based on the actual flow per day per bedroom for one month, which may be a number different to that used above to calculate the initial payment. The City Engineer will review and approve the methodology used to measure and calculate the actual flow per day per bedroom. The actual flow per bedroom per day will be applied to the number of bedrooms at \$19.77 per gallon multiplied by a ratio of 4:1.
 - c. The Petitioner shall receive a credit for the initial payment and shall pay the balance, if any within 30 days of the date the City accepts the calculation of the amount of the second payment. The Petitioner shall not be entitled to receive any refund of the first payment in the event that the calculation of the amount of the second payment shows that the petitioner has overpaid its I&I payment.
 - d. The second payment will be due after the project reaches 95% occupancy or within 2 years following the Project's final Certificate of Occupancy, whichever comes first. Once the Project is at 95% occupancy, the Petitioner shall notify the City Engineer and promptly undertake measurement of the actual flow. If the project does not achieve 95% occupancy before two years from the final Certificate of Occupancy, the petitioner shall notify the City Engineer and undertake measurement of the actual flow and the second payment will be prorated to reflect 95% occupancy.
20. All new residential units will conform to the Massachusetts Architectural Access Board (MAAB) requirements for "Group 1" units. In addition, per MAAB guidelines, 5% of the new units shall be designed as "Group 2A" units, which are designed spatially for immediate wheelchair use. The design and construction of the site and proposed structure shall comply with Massachusetts Architectural Access Board regulations and the Fair Housing Act.

21. 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
22. The Petitioner shall consult with an independent sustainability building professional/LEED Associate on the design and construction of the building, and achieve and/or implement the following measures which shall be incorporated into the Project:
 - a. the majority of the exterior façade will be composed of durable low maintenance materials (such as brick and cementitious panels) that will increase the longevity and minimize maintenance in the future;
 - c. only LED lighting will be used throughout the project;
 - d. high efficiency electric air source heat pumps shall be used to handle the heating and cooling of the building in order to reduce fossil fuel use;
 - e. all HVAC and appliances shall be electric, and appliances shall be "Energy Star"-rated (or functional equivalent), (except that domestic hot water equipment may utilize natural gas as an energy source);
 - f. all residential units will be thermally and acoustically separated with individual thermostats;
 - g. Exterior building insulation and air barriers shall be continuous;
 - h. the underground parking garage will be outfitted with two (2) electric vehicle (EV) charging stations. in addition, conduit will be installed to facilitate future installation of EV charging stations for all garage parking stalls;
 - i. drought tolerant and indigenous plants will be the predominant species installed in the landscape;
 - j. roof areas shall be mapped so as to consolidate rooftop HVAC equipment and penetrations to the greatest degree possible to maximize potential for solar PV installation, and, ensure the roof is solar ready;
 - k. a rooftop solar energy system shall be installed that, as a minimum, satisfies the building's common areas' electric demand.
 - l. fundamental commissioning tests shall be performed to assure continuous air, vapor and water barriers;
 - n. all dwelling units shall be sealed and thermally isolated from one another and have separate utility meters.
23. The Petitioner has committed to analyze, review and discuss with the Director of Planning and Development the following sustainability strategies, prior to the issuance of any building permit for the Project, in order to determine their feasibility and the possible return on investment if they were to be implemented:
 - a. installing rooftop solar photovoltaic panels to offset building electrical usage;
 - b. installing parking canopies with solar panels to offset building electrical usage;
 - c. installing additional exterior insulation beyond Stretch Code requirements;

- d. maximizing the use where appropriate for low embodied carbon materials and rapidly renewable materials;
 - e. commissioning HVAC systems at substantial building completion.
24. Prior to the issuance of any Building Permit pursuant to this Special Permit/Site Plan Approval, the petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management to the Engineering Division of Public Works for review and approval. Said stormwater management system shall be designed to capture 100% of runoff generated in 1% storm condition for all impervious areas of the project. Once approved, the O&M must be adopted by the petitioner and recorded at the Middlesex South District Registry of Deeds. A copy of the recorded O&M shall be filed with the Engineering Division of Public Works, the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.
25. Prior to the issuance of any building permit for the Project, the petitioner shall provide a Final Site Plan (which shall indicate the location of adequate snow storage area(s) or identify a suitable alternative for snow removal) for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
26. 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 6:00 p.m. on weekdays, and between the hours of 8:00 a.m. and 5:00 p.m. on Saturdays. No construction is permitted on Sundays or holidays except in emergencies, and only with prior approval from the Commissioner of Inspectional Services. The petitioner shall consider local traffic and pedestrian activity in determining hours and routes for construction vehicles.
 - 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 materials and construction and delivery vehicles and equipment, 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 during construction.
 - i. The CMP shall also address the following:
 - safety precautions;
 - construction materials,
 - parking of construction workers' vehicles,
 - anticipated dewatering during construction;
 - site safety and stability;
 - impacts on abutting properties;
 - proposed method of noise and vibration control.
27. 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.
28. 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 Council order with the Middlesex South Registry of Deeds.
 - 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. Submitted a final Inclusionary Housing Plan for review and approval by the Director of Planning and Development that is certified as compliant by the Director of Planning and Development with the information required to be included in such Plan pursuant to §5.11.8. of the Zoning Ordinance.
 - e. Submitted final engineering, utility, and drainage plans, and an Operations and Maintenance plan for Stormwater Management, for review and approval by the City Engineer. A statement certifying such approvals shall have been filed with the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.

- f. Submitted a final plan of land, to the Engineering Division of Public Works in accordance with Condition #25.
 - g. 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.
- 29. The Petitioner shall be responsible for repairing any and all damage to public ways and property caused by any construction vehicles. All repair work shall be done prior to the issuance of a final Certificate of Occupancy, unless the Commissioner of Public Works determines that the damage to the public way is so extensive that it limits the use of the public way. In such case the repair work must be initiated within one month of the Commissioner making such determination and shall be conducted consistent with City Construction Standards, and shall be completed within an appropriate time frame, as determined by the Commissioner.
- 30. Prior to the issuance of any Certificate of Occupancy pursuant to this Special Permit/Site Plan Approval, the Petitioner, City, and DHCD will enter into, and record at the Middlesex South Registry of Deeds, a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department and DHCD, which will establish the affordability restriction for the Inclusionary Units in perpetuity.
- 31. No 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 a registered architect and civil engineer 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. 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.
 - d. 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 and fencing consistent with the plans referenced in Condition 1.
 - e. Submitted to the Law Department copies of fully executed Regulatory Agreements and Affordable Housing Restriction for all Inclusionary Units, in accordance with Conditions #8 and #9.
 - f. Provided evidence satisfactory to the Law Department that the Regulatory Agreements for all Inclusionary Units have been recorded at the Southern Middlesex

District Registry of Deeds, as appropriate.

- g. Inclusionary Units shall be completed and occupied no later than the completion and occupancy of the Project's market-rate units. If the Inclusionary Units are not completed as required within that time, temporary and final occupancy permits may not be granted for the number of market-rate units equal to the number of Inclusionary Units that have not been completed. The petitioner shall complete and occupy at least one Inclusionary Unit for every five market rate units completed and occupied.
32. Notwithstanding the provisions of Condition #31d above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the building prior to installation of required on-site landscaping/exterior hardscape improvements required per the approved plans. 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.
33. 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 and/or dies shall be replaced on an annual basis with similar material.