

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 ground floor residential use with residential above (§4.4.1), allow a three-story structure with 36 feet in height (§4.1.2.B.3, §4.1.3), extend a nonconforming side setback (§4.1.3, §7.8.2.C.2), extend a nonconforming rear setback (§4.1.3, §7.8.2.C.2), allow an FAR of 1.47 (§4.1.3), allow a reduced parking stall width (§5.1.8.A.1, §5.1.13), allow restricted end stalls (§5.1.8.B.6, §5.1.13), reduce the driveway width for two-way traffic (§5.1.8.D.1, §5.1.13), and allow a retaining wall exceeding four feet in height within a setback (§5.4.2.B), as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

1. The site in a Business 1 (BU1) zoning district is an appropriate location for the project as designed with three-stories and 36 feet in height, a floor area ratio (FAR) of 1.47, ground floor residential use with residential above, and a retaining wall exceeding four feet in height within a setback given the mixed-use nature of the neighborhood which includes other multifamily dwellings. (§7.3.3.C.1)
2. The project as designed with three-stories and 36 feet in height, a FAR of 1.47, ground floor residential use with residential above, and a retaining wall exceeding four feet in height within a setback, will not adversely affect the neighborhood given the mixed-use nature of the neighborhood which includes other multifamily dwellings. (§7.3.3.C.2)
3. The project as designed with three-stories and 36 feet in height, a FAR of 1.47, ground floor residential use with residential above, and a retaining wall exceeding four feet in height within a setback, will not create a 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 proposed extension of nonconforming side and rear setbacks would not be substantially more detrimental than the existing nonconforming setbacks to the neighborhood. (§4.1.3, §7.8.2.C.2)
6. Literal compliance with applicable parking facility requirements requiring a minimum driveway

width of twenty feet for two-way traffic, minimum parking stall widths and restricted end stalls, is impracticable due to the nature of the size, width, shape and grade of the lot. (§5.1.13)

PETITION NUMBER: #457-22

PETITIONER: 416-418 Langley Realty LLC

ADDRESS OF PETITIONER: 26 Harvard St.  
Brookline, MA 02446

LOCATION: 416 and 418 Langley Road, Ward 6, Newton, on land known as Section 65 Block 10 Lot 27 and Section 65 Block 10 Lot 28, containing approximately 11,176 sq. ft. of land

OWNER: 416-418 Langley Realty LLC

ADDRESS OF OWNER: 26 Harvard St.  
Brookline, MA 02446

TO BE USED FOR: A 6-unit multi-family development with associated garage parking.

EXPLANATORY NOTES: Special permit per §7.3.3:

- allow ground floor residential use with residential above (§4.4.1)
- allow a three-story structure with 36 feet in height (§4.1.2.B.3, §4.1.3)
- extend a nonconforming side setback (§4.1.3, §7.8.2.C.2)
- extend a nonconforming rear setback (§4.1.3, §7.8.2.C.2)
- allow an FAR of 1.47 (§4.1.3)
- allow a reduced parking stall width (§5.1.8.A.1, §5.1.13)
- allow restricted end stalls (§5.1.8.B.6, §5.1.13)
- reduce the driveway width for two-way traffic (§5.1.8.D.1, §5.1.13)
- allow a retaining wall exceeding four feet in height within a setback (§5.4.2.B)

ZONING: Business 1 (BU1)

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 "416—418 Langley Rd, Newton, Massachusetts," prepared by Spruhan Engineering, P.C., consisting of the following sheets:
    - i. Proposed Plot Plan (Structures Above Grade) (Sheet 1 of 2), dated August 23, 2022
    - ii. Proposed Plot Plan (Structures Below Grade) (Sheet 2 of 2), dated August 23, 2022
    - iii. Civil Plan (1 of 3), dated August 10, 2022, signed and stamped by Edmond Spruhan, Professional Engineer and Christopher C. Charlton, Professional Land Surveyor
    - iv. Details (2 of 3), dated August 10, 2022, signed and stamped by Edmond Spruhan, Professional Engineer
    - v. Details (3 of 3), dated August 10, 2022, signed and stamped by Edmond Spruhan, Professional Engineer
  - b. A set of architectural plans entitled "416-418 Langley Road, Newton, MA 02459," prepared by Context, consisting of the following sheets:
    - i. Cover Sheet With Aerial Location Map
    - ii. Neighbourhood Contextual Plan
    - iii. Floor Plans
    - iv. Floor Plans
    - v. Landscape Plan
    - vi. Building Elevations (Side Elevation and Side Elevation)
    - vii. Building Elevations (Front Elevation and Rear Elevation)
    - viii. Material Selection
    - ix. Project Information
    - x. Aerial Of Proposed Building in Neighbourhood
    - xi. Aerial Of Proposed Building in Neighbourhood
    - xii. Sustainability Strategies
    - xiii. Front View of Proposed Building
    - xiv. Street View of Proposed Building
    - xv. Street View of Proposed Building
  - c. A landscape plan entitled "416-418 Langley Road, Newton, MA," prepared by Verdant Landscape Architecture comprised of three sheets, dated September 8, 2022

- d. A document entitled "Floor Area Ratio Worksheet- 416-418 Langley Rd, Newton, MA 02459," indicating a Proposed Total Gross Floor Area of 16,465 square feet and a Proposed FAR of 1.47
2. The dwelling unit identified as "Unit 1" in the plans referenced in Condition #1 shall conform to the Massachusetts Architectural Access Board (MAAB) requirements for "Group 2" units. The design and construction of the site and proposed structure shall comply with Massachusetts Architectural Access Board regulations and the Fair Housing Act. The petitioner shall retain a qualified accessibility consultant to independently review the building permit plans for compliance with MAAB requirements. The petitioner shall submit the consultant's qualifications to the Inspectional Services Department. Prior to the issuance of a building permit, the consultant shall submit a report to the Inspectional Services Department detailing compliance with MAAB and identifying any variances needed.
3. The structure shall be "all-electric," including but not limited to: electrification of all heating and cooling, residential appliances, water heating, and laundry; two electric vehicle-ready plugs and panel capacity for future chargers; and a designated "solar ready" area of the roof.
4. Prior to the issuance of any building permit for the Project, the petitioner shall provide an Approval Not Required ("ANR") plan combining the # of lots into one lot to the City Engineer for review and approval. Once approved, the ANR plan must be recorded at the Middlesex South Registry of Deeds. A recorded copy of the ANR plan shall be submitted to the Engineering Division of Public Works and submitted with the building permit application.
5. 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 (the "O&M Plan") for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M Plan must be adopted by the Petitioner and recorded at the Middlesex South District Registry of Deeds. A copy of the recorded O&M Plan shall be filed with the Engineering Division of Public Works and submitted with the Building Permit application.
6. The Petitioner shall do the following to remediate pest and rodent activity:
  - a. Prior to issuance of any demolition or building permit, the Petitioner, at its sole cost and expense, shall hire a licensed Pest Control Operator to assess the property for pest and rodent activity and develop and implement a pest remediation action plan to eliminate the activity and prevent off-site migration. The plan shall include the target pest, the methods for eliminating activity, and plan for preventing pest migration off-site during demolition and construction.
  - b. A copy of the Pest Control inspection report and the remediation action plan shall be submitted to the Inspectional Services Department for review and approval prior to

- issuance of any demolition or building permit. A copy of such approval shall be provided to the Department of Planning and Development.
- c. The Pest Control Operator shall implement the approved remediation action plan, monitor the site for the duration of the project, and take whatever action the Operator deems necessary to control pest infestation and migration.
  - d. Prior to issuance of the certificate of occupancy, the Pest Control Operator shall file a final report with the Department of Planning and Development and Inspectional Services Department summarizing the methods used, whether off-site migration occurred, the frequency and dates of service, and a post-construction site assessment and neighborhood.
  - e. In the event any demolition or construction activity causes off-site pest migration, prior to the issuance of any certificates of occupancy (temporary or final), the petitioner shall offer and provide, at its sole cost and expense, rodent abatement services on an as needed basis for all direct abutters and abutters to direct abutters, subject to owner authorization of such properties and a waiver of liability.
7. Prior to the issuance of any Building Permit pursuant to this Special Permit/Site Plan, the Petitioner shall submit a Construction Management Plan (the "CMP") for review and approval to the Commissioner of Inspectional Services, the Director of Planning and Development, the City Engineer, and the Chief of the Fire Department. The CMP shall be in compliance with all applicable policies and ordinances in effect at the time of submission. The Petitioner shall comply in all material respects with the Construction Management Plan, which shall be consistent with 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.
  - b. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones.
  - c. 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 delivery vehicles and equipment, and location of any security fencing and erosion control.
  - d. A plan showing temporary pedestrian access within work zones in accordance with DPW Policy
  - e. Proposed methods for dust control including, but not limited to: watering, 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 Revised Ordinances, §20-13. 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(s) for protection of any existing trees to remain on site.
  - h. The CMP shall also address the following: safety precautions; anticipated dewatering during construction; site safety and stability; and impacts on abutting properties.
  - i. All construction activity shall be limited to 7:00AM-7:00PM Monday through Friday and 8:00AM-7:00PM on Saturdays, excluding federal, state, and local holidays, unless waived by the Mayor in accordance with Revised Ordinances, § 20-13.
8. 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.
  9. The Petitioner shall be responsible for repairing any damage to public ways and public property caused by construction activities or any construction vehicles traveling to or from the site. All repair work shall be done prior to the issuance of the final certificate of occupancy, unless the Commissioner of Public Works determines either: (a) that the damage to the public way is so extensive that it limits the use of the public way; (b) that the damage interferes with traffic flow; or (c) that the damage poses a threat to public safety. In such cases, 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.
  10. If blasting of on-site ledge is required, the petitioner shall obtain a Blasting Permit from the Newton Fire Department.
  11. Petitioner shall give written notice to abutters and abutters to abutters at least two days prior to work related to the removal or reduction of on-site ledge and/or rock outcropping(s).
  12. The Petitioner shall implement the following measures to mitigate and reduce significant vibration impacts caused by construction equipment:
    - a. Prior to the issuance of any demolition, foundation or building permit, the Petitioner shall conduct a pre-construction survey of all buildings and structures within 250 feet of the Project, with owner approval and at no charge to the owners. Subject to owner approval, photos must be taken both inside and outside prior to construction to set a baseline of existing conditions.
    - b. Prior to the issuance of any demolition, foundation or building permit, the Petitioner shall establish a \$100,000 vibration mitigation fund (or other security in a form satisfactory to the City Solicitor) so that the funds are available for payment of valid claims for damage caused by vibration impacts to private property within 250 feet of the project. Claims shall be administered in conjunction with a responsible third party

- hired and paid for by the Petitioner, subject to review and approval by the City Solicitor. Notice shall be provided to such private property owners on how to make a claim for damages. This condition is not intended to limit any claims for damages for any amount through private action.
- c. The Petitioner shall engage a qualified professional to develop and prepare a vibration control plan demonstrating the following:
    - i. Measurements of static ground vibration prior to construction.
    - ii. Vibration level limits for demolition and construction activities based on building conditions and soil conditions. The limit should be determined using industry standards, provided that vibration level limits shall not exceed .50 peak particle velocity (PPV).
    - iii. Planned demolition and construction methods to ensure vibration levels will not exceed the identified limit.
    - iv. Specific measures to be taken during construction to ensure the specified vibration level limits are not exceeded.
    - v. A monitoring plan to be implemented during demolition and construction that must include installation of vibration measuring devices and alarms.
  - d. The Petitioner shall submit the vibration control plan to the Commissioner of Inspectional Services for review and approval prior to the issuance of any demolition, foundation or building permit.
  - e. The Petitioner shall implement the approved vibration control plan. Vibration levels shall be regularly monitored during demolition and construction. The Petitioner shall keep a record of all monitoring and shall provide copies to the Commissioner of Inspectional Services upon request.
  - f. All work shall be performed within the vibration level limits established by the vibration control plan. If the vibration limit is exceeded, the construction activity causing the vibration shall cease and not resume until mitigation measures are implemented and notice is provided to the Commissioner of Inspectional Services.
  - g. The Petitioner shall provide written notice to all property owners within 250 feet of the Project 48 hours prior to vibration-related activity that includes an explanation of the proposed activity, address of the site, date and time of the work, and contact information of the contractor overseeing the work.
  - h. Following construction, the Petitioner shall re-inspect all homes, with approval of the owners, subject to the pre-construction survey to determine any damages caused by vibration. The Petitioner shall maintain records of all complaints it receives for vibration-related damages. All claims submitted to the mitigation fund shall be fully administered prior to the issuance of the final certificate of occupancy for the Project. Any monies remaining in the fund upon issuance of the final certificate of occupancy shall be retained by the Petitioner.
13. 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 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.
  - e. 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.
14. 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.
15. Notwithstanding the provisions of Condition #14 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.



16. 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.