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#39-23 and #40-23

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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: February 14, 2023

DATE: February 10, 2023

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning
Cat Kemmett, Senior Planner

Subject: **Petition #39-23** for SPECIAL PERMIT/SITE PLAN APPROVAL for a change of zone to Multi Residence 3 for a parcel of land located at 29 Hunter Street (currently zoned Multi Residence 2), also identified as Section 32, Block 06, Lot 05.

Petition #40-23 for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a multi-family dwelling, to extend a nonconforming side setback, to waive two parking stalls, to allow parking in the front and side setbacks, and to reduce stall width and depth

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.



29 Hunter Street

EXECUTIVE SUMMARY

The subject property consists of a 5,185 square foot lot and is improved with a single-family dwelling built circa 1893 in the MR-2 zoning district. The petitioner seeks to rezone the parcel to MR-3 and convert the existing dwelling into a three-unit multi-family dwelling. As proposed, this project requires rezoning the parcel. It also requires special permit relief to allow a multi-family dwelling, to further extend a nonconforming side setback, to waive two parking stalls, to allow parking in the front and side setback, to reduce stall width and depth. The proposed change in use, a three-unit multi-family dwelling, would require a special permit under the current zoning (MR-2) for the site as well as in the proposed new zoning district (MR-3). It is the Planning Department's understanding that the petitioner seeks to rezone the lot to MR-3 in part because the dimensional standards in MR-3, which have more generous dimensional standards, are more appropriate for the location than the existing zoning.

Staff will note that the petitioner did not include a request for necessary relief to allow the proposed retaining wall of four feet or more in height within a setback, and consequently that relief was not included in the public noticing language. The Zoning Review memorandum associated with this project has been updated to reflect this needed relief, but Planning requests that the petitioner clarify if they plan to apply for relief for this retaining wall or submit a revised plan with a compliant by-right design for the wall.

The Planning Department is supportive of the proposed change in use but has concerns about the location of the proposed deck on the site, the increase in impervious paving on the site, and the parking stall located in the front setback.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the proposed multi-family dwelling which requires relief to further extend a nonconforming side setback, waive two parking stalls, allow parking in the front and side setback, reduce stall width and depth, and to allow a retaining wall of four feet or more in height within a setback. (§7.3.3.C.1)
- The proposed multi-family dwelling which requires relief to further extend a nonconforming side setback, waive two parking stalls, allow parking in the front and side setback, reduce stall width and depth, and to allow a retaining wall of four feet or more in height within a setback will adversely affect the neighborhood. (§7.3.3.C.2)
- The proposed multi-family dwelling which requires relief to further extend a nonconforming side setback, waive two parking stalls, allow parking in the front and

- side setback, reduce stall width and depth, and to allow a retaining wall of four feet or more in height within a setback will create a nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
 - Literal compliance with the parking requirements of the Newton Zoning Ordinance 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).

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

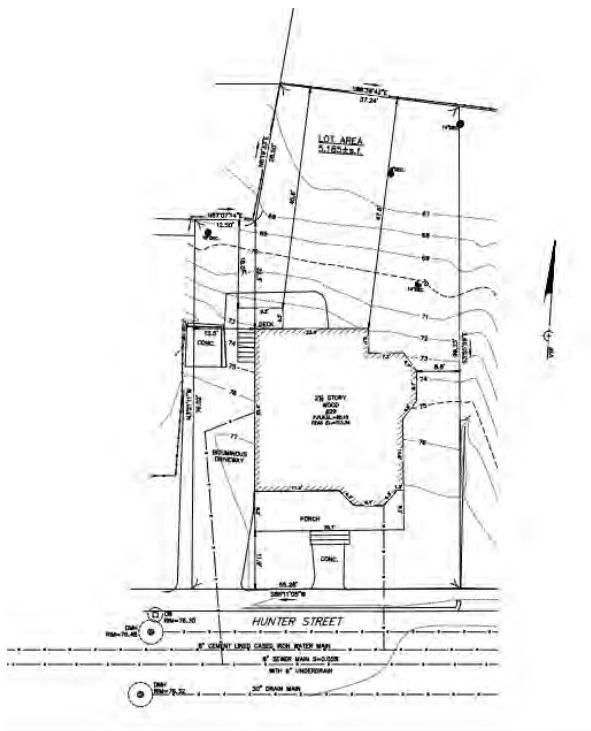
A. Neighborhood and Zoning

The property is located at 29 Hunter Street in West Newton in the MR-2 district and consists of a 5,185 square foot lot improved with a single-family dwelling constructed circa 1893. The property's current land use is single-family residential. The properties on the north side of Hunter Street are all zoned MR-2 while those on the south are zoned SR-2. North of the Mass Pike the zoning is a mix of BU-1, MR-1, manufacturing, and public use. The surrounding neighborhood is mostly residential, except for a religious institution to the east and the Massachusetts Turnpike to the north.

B. Site

The site consists of a 5,185 square foot lot improved with a single-family dwelling constructed circa 1893. The site slopes from south to north having a high point elevation near Hunter Street at 77-feet and a low point elevation of 67 feet at the back of the site near the Mass Pike. Vehicular access is provided via a curb cut along the western side of the property on Hunter Street leading to a paved driveway.

Existing Site Plan



The existing residence has pre-existing nonconforming elements. The front setback is only 11.9 feet, where 25 feet is required for single family dwellings in the MR-2 zoning district. The building height is also nonconforming, at 38.11 feet, where 36 feet is the maximum allowed by right. The frontage on Hunter Street is also nonconforming, at 55 feet where 70 feet is required.

III. PROJECT DESCRIPTION AND ANALYSIS

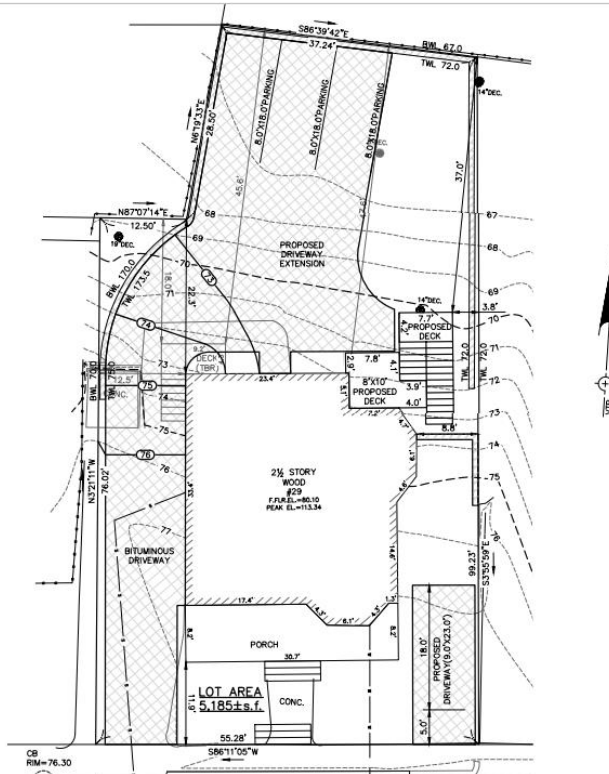
A. Land Use

The principal use of the site will change from single-family use to multi-family with three units.

B. Building and Site Design

The petitioner intends to rezone the parcel from MR-2 to MR-3. Both the MR-2 and MR-3 district allow multi-family dwellings by special permit, but the two districts differ on a number of dimensional controls including by-right required setbacks, buildings heights, maximum coverage, etc. The following analysis assumes that the parcel will be held to the applicable standards for the MR-3 district.

Proposed Site Plan



The petitioner seeks to retain the structure of the existing single-family dwelling and convert it into a three-unit multi-family dwelling. A special permit is required to allow a multi-family dwelling in the MR-3 zoning district. In the MR-3 zone the required side setbacks are one-third the building height, in this case 12.7 feet. By rezoning to MR-3, the parcel would render the existing conforming setbacks with the existing MR-2 zone nonconforming within the proposed MR-3 zone. If the rezoning is approved, the dwelling would have two existing nonconforming side setbacks of 12.5 feet (left) and 8.8 feet (right).

The petitioner is seeking to extend the nonconforming right-side setback by constructing a deck that would be 3.8 feet of the right property line. This would

further reduce the nonconforming side setback to 3.8 feet, requiring a special permit. The series of decks at the rear of the property exacerbates a nonconforming side setback, the applicant should consider reducing the nonconformity and should consider screening from the abutter to the right. No relief is required for the proposed number of stories, lot coverage, open space, or lot area per unit.

The existing driveway will be extended to the rear of the lot with a retaining wall. The retaining wall commences at the property western property line at a height of five feet and curves to the corner of an existing chain link fence, then extends towards the Pike and runs approximately 37 feet. From this point the wall turns 90° and runs parallel to the east property line to meet the existing grade. Along this portion of the wall a set of stairs will provide access from the parking area to a new outdoor deck that will be attached to the existing dwelling. At five feet in height within a setback, the proposed retaining wall requires special permit relief, which the petitioner has not requested. Planning staff have informed the petitioner of this needed relief, and request that the petitioner request the needed relief if they do not intend to revise the design or submit a new plan with a wall at a compliant configuration.

C. Parking and Circulation

Two parking stalls are required per dwelling unit, for a total of six required parking stalls. Because the petitioner proposes only four stalls, a waiver is required for two parking stalls. All four parking stalls are proposed to be eight feet wide, where 9 feet is required, which requires special permit relief. Similarly, the stalls are proposed at a depth of 18 feet where a minimum depth of 19 feet is required, requiring a special permit.

Three parking stalls will be located at the rear of the residence and accessed via the existing curb cut. A second curb cut is proposed on the other side of the home, where the petitioner proposes one parking stall in the front and side setbacks. Two stalls at the rear also lie within the side setback. Because no parking may be located in the front and side setbacks by right, a special permit is required.

Though the lot coverage proposed for this project is compliant at 24.3% where 45% is the maximum allowed, the Planning Department is concerned with the proposed increase in impervious area on the site. The existing impervious area is 2,077 square feet, and is proposed at 3,576 square feet. The majority of this increase is in the driveway paving, which is increasing from 557 square feet to 2,127 square feet. Staff suggest the petitioner consider design alternatives to reduce the amount of impervious driveway paving and eliminate the parking stall within the front setback which results

in two curb cuts for the property.

IV. TECHNICAL REVIEW

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

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

Zoning Relief Required		
<i>Ordinance</i>	<i>Requested Relief</i>	<i>Action Required</i>
	Rezone parcel to MR3	
§3.4.1	To allow a multi-family dwelling	S.P. per §7.3.3
§3.2.6 §7.8.2.C.2	To further extend a nonconforming side setback	S.P. per §7.3.3
§5.1.4 §5.1.13	To waive two parking stalls	S.P. per §7.3.3
§5.1.7.A §5.1.13	To allow parking in the front and side setback	S.P. per §7.3.3
§5.1.7.B.1 §5.1.13	To reduce stall width	S.P. per §7.3.3
§5.1.7.B.2 §5.1.13	To reduce stall depth	S.P. per §7.3.3
§5.4.2.B	To allow a retaining wall of four feet or more in height within a setback	S.P. per §7.3.3

B. Engineering Review

The petitioner has not submitted a stormwater report associated with this petition and has requested this requirement be waived at this stage in the application process. It has been the practice of the Planning Department to allow Engineering Review to take place at the time of the building permit application for single-family home petitions due the expense it places on the applicant to prepare the plans and report, and in the interest of not delaying the special permit process for relatively minor projects. This practice also allows for efficiency amongst City Staff to focus on more substantial projects before the Committee. Due to the nature of this project and amount of paving the petitioner is proposing, the petitioner should work with Engineering to provide the information requested.

Associate City Engineer, John Daghlian, has reviewed this petition for conformance with the City of Newton Engineering Standards. His memo (**Attachment B**) noted

that no drainage report was provided nor did the plan indicate how stormwater runoff would be addressed for all the new paved surfaces and drainage behind the proposed retaining wall. The design will need a stormwater collection and infiltration system, and municipal utilities must be updated to current standards.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:

Attachment A: Zoning Review Memorandum

Attachment B: Engineering memo



Ruthanne Fuller
Mayor

Attachment A

City of Newton, Massachusetts

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: February 3, 2023

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official

Cc: Terrence P. Morris, Attorney
Christopher Noble, Applicant
Barney S. Heath, Director of Planning and Development
Jonah Temple, Deputy City Solicitor

RE: Request to rezone to MR3, and for a special permit to allow a multi-family dwelling, to extend a nonconforming side setback, to waive two parking stalls, dimensional waivers for parking stalls and to allow a retaining wall exceeding four feet in height in a setback.

Applicant: Christopher Noble	
Site: 29 Hunter Street	SBL: 32006 0005
Zoning: MR2 (rezone to MR3)	Lot Area: 5,185 square feet
Current use: Single-family dwelling	Proposed use: Three-unit Multi-family dwelling

BACKGROUND:

The property at 29 Hunter Street consists of 5,185 square feet and is improved with a two-family dwelling built circa 1893 in the MR2 zoning district. The property backs up to the Mass Pike. The petitioner seeks to rezone the parcel to MR3 and convert the existing dwelling into a three-unit multi-family dwelling.

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

- Zoning Review Application, prepared by Terrence P. Morris, attorney, submitted 2/22/2022
- Zoning Plan, signed and stamped by Joseph R. Porter, surveyor, dated 11/10/2021, revised 2/22/2022

Attachment A

ADMINISTRATIVE DETERMINATIONS:

1. The current zoning for the parcel is Multi Residence 2. The petitioner proposes a rezoning of the parcel to Multi Residence 3.

For the purposes of this memo, the MR3 requirements will be applied.

2. The petitioner proposes to convert the existing single-family dwelling into a three-unit multi-family dwelling. Per section 3.4.1 a special permit is required for a multi-family dwelling in the MR3 zoning district.
3. Per section 3.2.6, the required side setback in the MR3 district is one-third the building height, in this case 12.7 feet. The dwelling has a nonconforming side setback of 8.8 feet (once rezoned to MR3). The petitioner proposes to construct decks on the rear of the dwelling which further reduce the nonconforming side setback to 3.8 feet, requiring a special permit per section 7.8.2.C.2.
4. Per section 5.1.4, two parking stalls are required per dwelling unit. With three dwelling units proposed, a total of six parking stalls are required, where four are proposed. The petitioner seeks a special permit per section 5.1.13 to waive two required parking stalls.
5. Per section 5.1.7.A, no parking may be located in the front and side setbacks. The petitioner proposes one parking stall in the front and side setbacks and two stalls at the rear within the side setback, requiring a special permit per section 5.1.13.
6. Section 5.1.7.B.1 requires that parking stalls have a minimum width of 9 feet. The petitioner proposes an 8-foot width for all four stalls, requiring a special permit per section 5.1.13.
7. Section 5.1.7.B.2 requires that parking stalls have a minimum depth of 19 feet. The petitioner proposes 18-foot deep stalls, requiring a special permit per section 5.1.13.
8. The petitioner proposes retaining walls along the rear half of the side lot lines and along the rear lot line. The wall reaches a maximum height of 5 feet in the northern corner of the property. Per section 5.4.2.B, a special permit is required to allow a retaining wall of four feet or more in height within a setback.

Attachment A

MR3 Zone	Required	Proposed
Lot Size	5,185 square feet	No change
Frontage	70 feet	55 feet
Setbacks <ul style="list-style-type: none"> • Front • Side (1/3 building height) • Side (1/3 building height) • Rear (1/2 building height) 	15 feet 12.7 feet 12.7 feet 19 feet	11.9 feet 12.5 feet 3.8 feet* 45.6 feet
Building Height	36 feet	38.11 feet
Max Number of Stories	3	2.5
Lot Coverage Max	45%	24.3%
Open Space Min	30%	32.5%
Lot Area Per Unit	1,200 square feet	1,728 square feet

Bold indicates nonconformity

*Requires relief

See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Requested Relief</i>	<i>Action Required</i>
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§5.1.7.B.2 §5.1.13	To reduce stall depth	S.P. per §7.3.3
§5.4.2.B	To allow a retaining wall of four feet or more in height within a setback	S.P. per §7.3.3

Attachment B

CITY OF NEWTON
Department of Public Works
ENGINEERING DIVISION

MEMORANDUM

To: Council Rick Lipof, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – 29 Hunter Street

Date: February 9, 2023

CC: Barney Heath, Director of Planning
Jennifer Caira, Deputy Director
Katie Whewell, Chief Planner
Lou Taverna, PE City Engineer
Dominic Warren, Committee Clerk
Michael Gleba, Sr. Planner

In reference to the above site, I have the following comments for a plan entitled:

Zoning Plan Showing Proposed Conditions at
29 Hunter Street
Newton, MA
Prepared by: VTP Associates Inc.
Dated: Nov. 10, 2021
Revised: Feb. 22, 2022
Sheet 1 of 1

Executive Summary:

The proposed permit entails the construction of three parking stalls in the backyard and one single stall within the front setback. The site has +/- 55 feet of frontage on Hunter Street to the south, residential homes on the east and western property lines and the MassPike to the north. The site slopes from south to north having a high point elevation near Hunter Street at 77-feet and a low point elevation of 67 feet near the MassPike fence.

To facilitate the construction of the three parking stalls the existing driveway near the western abutter will be extended to the rear of the lot with a retaining wall (material not specified); the

Attachment B

retaining wall commences at the property line along the west & opposite the rear corner of the dwelling at a height of 5 feet and curves to the corner of an existing chain link fence, then extends towards the Pike and runs approximately 37 feet long, still 5 feet high. From this point the wall turns 90° and runs parallel to the east property line to elevation 72 feet to meet the existing grade. Along this last portion of the wall a set of stairs will provide access from the parking area to a new outdoor deck that will be attached to the existing dwelling.

At the time of this writing no drainage report was provided nor did the plan indicate how stormwater runoff would be addressed for all the new paved surfaces and drainage behind the proposed retaining wall. The design will need a stormwater collection and infiltration system to be designed in accordance with the DEP & DPW Stormwater Regulations.

Based on a site visit yesterday it appears that it will be gutted therefore all municipal utilities shall be updated to current standards.

Construction Management:

1. A construction management plan is needed for this project. At a minimum, it must address the following: staging site for construction materials and equipment, parking for construction workers vehicles, phasing of the project with anticipated completion dates and milestones, safety precautions, emergency contact personnel of the general contractor. It shall also address anticipated dewatering during construction, site safety & stability, siltation & dust control and noise impact to abutters.
2. Stabilized driveway construction entrance(s) will be required for the duration of the construction which will provide a truck wash to prevent tracking of mud and silt onto City streets.
3. Catch basins within and downstream of the construction zone will be required to have siltation control installed for the duration of the project and must be identified on the site plan.

Drainage:

1. A Pre & Post Construction drainage analysis is required. All stormwater runoff from the site shall be captured on-site and infiltrated in accordance with the Massachusetts Department of Environmental Protection standards and the City of Newton Department of Public Works policy. This policy states that stormwater runoff shall be retained from the 100-year storm event of 8.78-iches over a 24-hour period and shall be infiltrated to the maximum practicable extent. Pre & Post watershed maps (at a proper scale that is legible) are required that delineate control points and limits of the sub-basins. On-site

Attachment B

soil evaluation is required to determine the seasonal high groundwater elevation, soil types and to identify any and all unsuitable soils (such as ledge, clay, peat, fill and others). On site soil testing that will include test pit(s) within 25 -feet of each proposed system and percolation test(s) must be schedule and witnessed by a representative of the Engineering Division. Soil logs shall be submitted on the site plan or drainage report and shall be certified by a Massachusetts Licensed Soil Evaluator and/or Professional Civil Engineer.

2. An Operations and Maintenance (O&M) plan for the long-term maintenance of the proposed stormwater management facilities needs to be drafted and submitted for review. Once approved the O&M must be adopted by the applicant/property owner, incorporated into the deeds; and recorded at the Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.
3. It is imperative to note that the ownership, operation, and maintenance of the proposed drainage system and all appurtenances including but not limited to the drywells, catch basins, trench drains, and pipe(s) are the sole responsibility of the property owner(s).

Environmental:

1. Has a 21E Investigation and report been performed on the site, if so, copies of the report should be submitted to the Newton Board of Health and Engineering Division.
2. Are there any existing underground oil or fuel tanks? Have they been removed, if they have been, evidence of the proper removal should be submitted to the Newton Fire Department and the Board of Health.

Sanitary Sewer & Domestic Water Service(s):

1. Existing water and sewer services to building(s) shall cut and capped at the respective mains and completely removed from the main(s) and its entire length and properly backfilled. The Engineering Division must inspect and approve this work, failure to having this work inspected will result in delay of issuance of the new Utility Connection or issuance of a Certificate of Occupancy.

Attachment B

2. All new sewer service(s) shall be pressure tested in accordance with the City Construction Specifications & Standards and inspected via Closed Circuit Television CCTV inspection after installation is completed. A copy of the video inspection and written report shall be submitted to the City Engineer or his representative. The sewer service will NOT be accepted until the two methods of inspection are completed AND witnessed by a representative of the Engineering Division. A Certificate of Occupancy will not be recommended until these tests are completed to the satisfaction of the City Engineer.
3. All sanitary sewer manhole(s) shall be vacuum tested in accordance to the City's Construction Standards & Specifications, the sewer service and manhole will NOT be accepted until the manhole(s) pass the testing requirements. All testing MUST be witnessed by a representative of the Engineering Division. A Certificate of Occupancy will not be recommended until this test is completed to the satisfaction of the City Engineer and a written report of the test results is submitted to the City Engineer.
4. With the exception of natural gas service(s), all utility trenches within the right of way shall be backfilled with Control Density Fill (CDF) Excavatable Type I-E up to within 18-inches of the asphalt binder level, after which Dense Grade Gravel compacted to 95 % Proctor Testing shall be placed over the CDF. Details of this requirement is the Engineering Division website "Standard Construction Details".
5. Fire Flow testing is required for the proposed fire suppression system. The applicant must coordinate the fire flow test with both the Newton Fire Department and the Utilities Division, representative of each department shall witness the testing. Test results shall be submitted in a written report along with hydraulic calculations that demonstrate the required size of the fire suppression system, these calculations shall be submitted to the Newton Fire Department for approval, and copies give to the Engineering Division.
6. All water services shall be chlorinated, and pressure tested in accordance with the AWWA and the City Construction Standards & Specifications prior to coming online. These tests MUST be witnessed by a representative of the Engineering Division.
7. Approval of the final configurations of the water service(s) shall be determined by the Utilities Division, the engineer of record shall submit a plan to the Director of Utilities for approval.

Attachment B

General:

1. 5 Year Moratorium – if at time of construction the roadway is under a 5-year moratorium, the roadway must be milled and paved gutter-to-gutter for a distance of 25 feet in each direction from the outermost trenches.
2. All trench excavation shall comply with Massachusetts General Law Chapter 82A, Trench Excavation Safety Requirements, and OSHA Standards to protect the general public from unauthorized access to unattended trenches or excavations. Trench Excavation Permit is required prior to any construction. This applies to all trenches on public and private property. *This note shall be incorporated onto the final plans.*
3. All tree removal shall comply with the City's Tree Ordinance.
4. The contractor of record is responsible for contacting the Engineering Division and scheduling an appointment 48-hours prior to the date when the utilities will be made available for an inspection of water services, sewer services and drainage system installation. The utility in question shall be fully exposed for the Inspector to view, backfilling shall only take place when the City Engineer's Inspector has given their approval. *This note shall be incorporated onto the final plans.*
5. The applicant shall apply for a Building Permit with the Inspectional Services Department prior to ANY construction.
6. Before requesting a Certificate of Occupancy, an As Built plan shall be submitted to the Engineering Division in both digital and paper format. The plan shall show all utilities and final grades, any easements and improvements and limits of restoration. The plan shall include profiles of the various new utilities including but not limited to rim & invert elevations (City of Newton Datum), slopes of pipes, pipe materials, and swing ties from permanent building corners. The as built shall be stamped by both a Massachusetts Registered Professional Engineer and Registered Professional Land Surveyor. Once the As built plan is received the Engineering Division shall perform a final site inspection and then make a determination to issue a Certificate of Occupancy. *This note shall be incorporated onto the final plans.*
7. All site work including trench restoration, sidewalk, curb, apron, and loam border (where applicable) shall be completed before a Certificate of Occupancy is issued. *This note shall be incorporated onto the final plans.*
8. The contractor of record shall contact the Newton Police Department 48-hours in advanced and arrange for Police Detail to help residents and commuters navigate around the construction zone.

Attachment B

9. If any changes from the final approved design plan that are required due to unforeseen site conditions, the contractor of record shall contact the design engineer of record and submit revised design and stamped full scale plans for review and approval prior to continuing with construction.
10. *The engineer of record shall add the following attestation to the plans when applying for a building permit:*

I certify that the construction so shown was inspected prior to backfill and that all work conforms with the Approved Plan and meets or exceeds the City of Newton Construction Standards.

Signature

Note: If the plans are updated it is the responsibility of the applicant to provide all City Departments [ISD, Conservation Commission, Planning and Engineering] involved in the permitting and approval process with complete and consistent plans.

If you have any questions or concerns, please feel free to contact me at 617-796-1023.