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Barney Heath
Director

PUBLIC HEARING/WORKING SESSION MEMORANDUM

DATE: September 1, 2017
MEETING DATE: September 7, 2017
TO: Land Use Committee of the City Council
FROM: Barney S. Heath, Director of Planning and Development
Neil Cronin, Senior Planner
CC: Petitioner

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

PETITION #201-17

386-394 Watertown Street

Request for Special Permit/Site Plan Approval to construct a three-story, 36 feet in height mixed use building with a floor area ratio of 1.49, allow waivers to the lot area per unit, allow parking in a setback as well as other waivers to the parking requirements at 386-394 Watertown Street.

The Land Use Committee (the "Committee") held a public hearing on this petition on August 8, 2017 which was held open so that the petitioner could respond to questions and concerns raised by the Committee and the public. At the hearing, staff noted that due to an interpretation by the Commissioner of Inspectional Services, the proposed parking facility beneath the building would have to meet the requirements in the Newton Zoning Ordinance for "Design of Parking Facilities Over Five Stalls". As a result the petitioner filed an amendment to the special permit application seeking relief to allow parking within a side setback, allow parking within five feet of a building containing dwelling units, and a waiver of the landscaping requirements. These reliefs were added to the docket and have been advertised. Staff notes, the petitioner did not request relief from the lighting requirements of the facility. As a result, staff suggests a condition requiring the petitioner to submit a lighting plan to the Director of Planning and Development for review and approval prior to the issuance of a building permit.

The Planning Department is not concerned with the waivers to allow the parking facility as proposed. The parking facility is located below the building at the rear of the lot which is a condition that exists at other sites in the area, including the immediate abutters. The petitioner is also proposing some landscaping in addition to a fence to help screen the vehicles from the abutters. Lastly, the proposed

retaining walls at the southern and eastern boundaries are eight inches and 1.25' respectively and therefore do not require relief.

In addition to those requested reliefs regarding the proposed parking facility, the petitioner is seeking a special permit to decrease the parking requirement from two stalls per unit to 1.25. If approved, the parking requirement will be 12 stalls for the residential portion of the building. The Committee asked whether this request had been granted by the Council before and how it related to other communities' ordinances. Staff found that Turtle Lane at 283 Melrose Street and Washington Place both utilized this provision. With respect to other communities, Boston, Somerville, and Cambridge are reducing parking minimums associated with developments; instead these communities are seeking to dedicate land to more housing, community space, or other amenities.

The petitioner has also submitted revised plans which provide a different passageway from the street to the rear of the building and into the elevator (**Attachment A**). The initial plans showed a path through the parking facility to access the elevator, but this revised path is separated from the parking facility and will be Americans with Disabilities Act (ADA) compliant. In addition, Unit 7 has been enlarged from its initial size of 807 square feet to 917 square feet. This unit will be built as a fully accessible unit and comply with ADA and Massachusetts Architectural Access Board (MAAB) regulations.

The petitioner has also provided more information to a question raised by the Committee regarding energy efficiency of the proposed building. The petitioner stated the design will include a solar ready roof, landscaping fed by drip irrigation, electronic vehicle charging stations in the parking facility, and the structure will meet or exceed the 2015 Stretch Code requirements, including lighting.

In response to a concern regarding trucks and traffic, the petitioner has also submitted a memorandum summarizing the history of the light industrial building at the rear of the lot (**Attachment B**). The petitioner states that this rear structure and its associated vehicles will no longer occupy the site; therefore, vehicles trips generated by the project will more closely align with residential patterns. The Planning Department agrees with the assumption that removing large vehicles will increase traffic flow in the area, but will consult with the Engineering and Transportation Divisions prior to the Working Session regarding egress from the site.

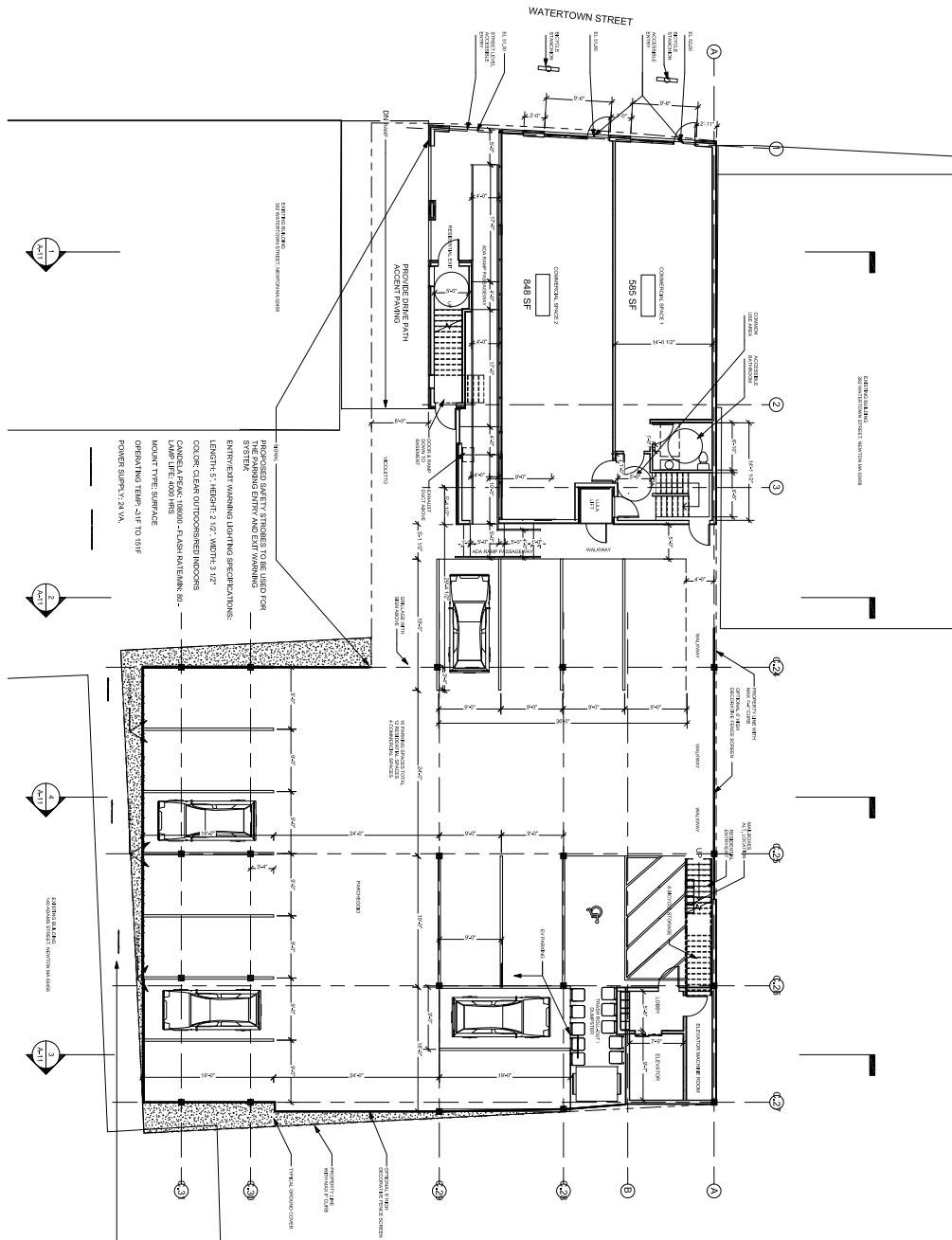
The Planning Department believes the site design and location within the village center will help reduce the reliance on vehicles, thereby mitigating the amount of vehicle trips to and from the site. In conjunction with those efforts, the petitioner is proposing to install two bicycle bollards within the City's right-of-way to accommodate an additional four bicycles on site; these would be available to both the commercial and residential aspects of the site. However, this request is more substantial than a permit to work within the City's right-of-way and must be approved by the Department of Public Works (DPW). The Planning Department suggests the petitioner consult with a member of DPW prior to the Working Session.

Lastly, the petitioner submitted a draft Inclusionary Housing Plan (**Attachment C**). The petition will create two inclusionary units: one available to households earning up to 50% of Area Median Income (AMI) and the other will be available to households earning up to 80% of AMI; this will result in a

blended rate of 65% of AMI. The Planning Department intends for these units to be eligible for listing on the State's Subsidized Housing Inventory (SHI) as Local Action Units through the Department of Housing and Community Development (DHCD) Local Initiative Program. As a result, staff suggests the petitioner submit a final Inclusionary Housing Plan and an Affirmative Marketing and Resident Selection Plan for review by the Director of Planning and Development prior to the issuance of a building permit.

ATTACHMENTS:

- Attachment A: Revised Ground Floor Plan**
- Attachment B: Memorandum for Attorney Morris, dated September 1, 2017**
- Attachment C: Inclusionary Housing Plan**
- Attachment D: Draft Council Order**



1 1ST FLOOR LEVEL
1/8" = 1'-0"

PROPOSED SAFETY STROBES TO BE USED FOR THE PARKING ENTRY AND EXIT WASHING SYSTEMS. WASHING LIGHTING SPECIFICATIONS: LENGTHS: 5" HEIGHT: 2 1/2", WIDTH: 3 1/2" COLOR: CLEAR OUTDOOR RATED INDOORS: CAMELFLAME 10000-FLASH MATELINE 80-NO. 1 TYPE SURFACE OPERATING TEMP: -31F TO 151F POWER SUPPLY: 24 V.A.

ONE MINIMUM SQUARE BRANCH CIRCUIT SHALL BE PROVIDED TO THE EXTENSION OF THE BUILDING TO THE EXTERIOR TO PROVIDE POWER TO THE EXTERIOR LIGHTING AND WASHING SYSTEMS. THE LOCATION AND NUMBER OF "READY" CONNECTION POINTS AS FOLLOWS: UNIT# ONE TWO FLOOR ONLY.

DATE:	08/08/17
SCALE:	1/8" = 1'-0"
DRAWN BY:	ML
CHECKED BY:	ML
NO:	02
REVISIONS:	02/17/17

A-3

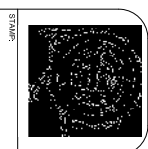
Ronald F. Jarek, Architect
487 Watertown Street
Newtonville, MA 02460

PARK VIEW BUILDING
386-390 WATERTOWN STREET
NEWTON, MA 02458

Owner: JLM REALTY
386-390 WATERTOWN STREET
NEWTON, MA 02458

GROUND FLOOR

386-390 WATERTOWN STREET
NEWTON, MA 02458



From the Law Office of Terrence P. Morris, Esq.

Memorandum

To: Neil Cronin, Sr. Planner
From: Terry Morris
Cc: Land Use Committee
John Mula
Date: September 1, 2017
Re: 386-394 Watertown Street

The purpose of this memorandum is to catalog the historical activity from 1998 to date on that portion of the site which is comprised of the rear lots that were under separate ownership until November 2015, when they were acquired by the petitioner. The rear lots (#392-394), contain the light industrial building erected in 1958 to which the sole vehicular access is by a right-of-way over the lot fronting it on Watertown Street (#386). The point of this information is to demonstrate that the prior commercial activity generated considerable vehicular movement that was substantially different in intensity and frequency from that which will be generated by the proposed mixed-use redevelopment.

From 1998 to date there were 2 separate and distinct businesses operating from the rear lots. The property was owned by the Cutler family from 1972 until 2015. At least from the time of the petitioner's purchase and occupancy of 386 Watertown Street in 1998, he clearly remembers the owner as being a dealer in antiques and other collectibles, as well as recycled scrap metal, which was stored in one of the two garages located in the rear and from which Cutler sold same. These items were routinely delivered to the site on 30' straight-axle, rack-body trucks and taken away in smaller trucks and sedans.

During that same period the Cutlers leased the second garage and yard to Marquense Landscaping Company, which operated from the site until this spring. Their business involved the use of a dump truck, two trailers, 3-4 pick-up trucks and another 30' rack-body truck, all of which were stored on the site when not in use. During the landscaping season which ran from March until November they typically arrived at the site at 6:30 AM from where they would depart to one or more job sites. Periodically during the day there would be drop off and pick up of various vehicles necessary for a particular job(s). Unlike residential use which is typically limited to an exodus in the morning and return at the end of the business day, their commercial activity involved coming to the site and exiting the site at both the morning and late afternoon rush hours as well as throughout the day. Furthermore, as is the case with most landscapers, during the winter months the landscaping operation converted to a snow removal operation with the vehicles outfitted for off-site plowing and loading with comings and goings at any/all hours.

There has been some discussion about limiting turns from the site at various times of the day. The petitioner strongly believes this to be counterproductive and unnecessary. As one who is present on the site each and every business day for long periods of time he is perhaps the most keen observer of traffic flow. He reports from his own personal experience when leaving the site during times when one might expect heavy volume on Watertown Street. In particular, he has observed that the presence of a traffic signal at the intersection of Watertown Street and Adams Street often provides an opportunity for a break in the traffic flow to allow him to make that left-hand turn easily albeit with the courtesy of the west-bound drivers. To the contrary, forcing one to make a right-hand (east) turn for people who desire to travel west results in one of two options: (a) their attempting to take a left-hand turn onto Bridge Street across the flow of westbound traffic on Watertown Street, which contributes to eastbound backup or (b) taking a right onto West Street and routing traffic through the neighborhood down to Middle Street to get to Adams Street. In summary a prohibition on left hand turns to address a nonexistent problem would create actual problems in the neighborhood.

NEWTON HOUSING PARTNERSHIP
INCLUSIONARY HOUSING PLAN

For 386-394 Watertown Street

August 1, 2017

By JLM Realty trust

OVERVIEW

The 386-394 Watertown Street project is located on a 9,542 square foot lot in Nonantum and consists of a single, 3-story, mixed-use, building containing 2,700 square feet of commercial space on the ground floor and a multi-family dwelling with nine (9) apartment-style units on the 2nd and 3rd floors above (the "Project"). The apartments will consist of a mix of unit sizes ranging from 752 to 1,992 square feet with an average size of 955 square feet. There will be one three-bedroom unit and eight two-bedroom units. All of the 2-BR units will be flat units. Parking for 16 cars, including one HP space will be provided in a garage beneath the building and accessible by elevator. The property is to be developed and built by the current owner, John L. Mula, Trustee of the JLM Realty Trust. Mr. Mula is also the owner and operator of Salvi's barbershop which occupies one of the two ground floor commercial units. It is Mr. Mula's intent to return his shop to the space after the construction hiatus.

In marketing the inclusionary units to prospective tenants, the owner/developer ("JLM"), agrees to be responsible for the procedures and marketing tools developed in this Marketing & Resident Selection Plan. The provisions of the Newton Inclusionary Housing Program, the Guidelines for Inclusionary Housing Plans and Section 5.11 of the Newton Zoning Ordinance shall guide this Inclusionary Housing Plan and its covenants. The Newton Department of Planning and Development ("NPD") shall oversee and insure this plan's compliance with the applicable section(s) of the Newton Zoning Ordinance. The NPD under Section 5.11.9 agrees to make available a listing of all Eligible Households to be used by JLM in the selection process. JLM agrees to develop, advertise, and provide a supplemental listing of Eligible Households to be used to the extent that Inclusionary Units are not fully subscribed from the Newton Housing Authority or the Planning and Development Department listings of Eligible Households.

JLM or its agent shall establish minimum eligibility criteria, prepare application packages, establish and create program guidelines, assign a priority ranking system following Section 5.11.9.C and review applications to determine eligibility for the unit selection and award of the units. All interested tenants will be asked to complete an application prepared by JLM which will take information including household size, income, and authorizations for credit, landlord, and reference checks.

The NPD shall have the responsibility of monitoring JLM's compliance with all aspects of the

Marketing and Resident Selection Plan and its implementation under Section 5.11.9. This review would include, but would not be limited to, review of application guidelines, the application package, verification of prospective applicant's income levels, the extent and nature of outreach and marketing materials, and the criteria for the priority point system. The NPD shall have the right to require from JLM any information or materials that would facilitate the monitoring process and insure compliance with the terms of this agreement and the ordinance. In addition, the NPD may require JLM to submit periodic progress reports for review at any step in the process.

I. DESCRIPTION OF INCLUSIONARY UNITS

JLM has agreed to include the following units in the Proposed Project as Inclusionary Units in accordance with the requirements of applicable laws, policies, guidelines and procedures for Inclusionary Units in the City of Newton. The Inclusionary Units (sometimes referred to as Affordable Units) are identified on the Floor Plans submitted to the City Council for the Proposed Project. A detailed description of the Inclusionary Unit follows:

Location & Size of Units:

1. Unit 2: 807+- sq. ft. 2nd Floor: LR-Dining Area, Kitchen, 2 BR, 2.5 Baths, Laundry.
2. Unit 6: 915+ sq. ft. 3rd Floor: LR-Dining Area, Kitchen, 2 BR, 2.5 Baths, Laundry.

Construction Standards

All product and material designations are intended to establish minimum design and quality standards for construction of Affordable Unit. The unit shall conform to the following standards set forth in Appendix A attached hereto.

II. GENERAL INFORMATION ON THE AFFORDABLE UNITS

1. The average square footage of the Affordable Units (861sf) exceeds 87% of the average square footage of the Market Rate Units (984 sf).
2. The habitable space of the inclusionary units is 20.0 % of the total habitable space in the proposed development (1722/8612 sf), which exceeds the requirement in Section 5.11.8.
3. The inclusionary units shall be completed no later than completion of the developer's market rate units. If the Inclusionary Unit is not completed when all market rate units are completed, the City shall withhold the temporary and final occupancy permit for one of the market rate units until the Inclusionary Unit is completed and ready for occupancy.
4. The units are to be individually metered for consumption of water, electric and gas. Therefore the basic monthly rent does not include these services, which are the responsibility of each tenant. Parking, snow removal and landscape maintenance are included in the rent. Accordingly there are no other monthly fees assessed to any unit.

III. DETERMINATION OF ELIGIBLE HOUSEHOLDS AND INCOME ELIGIBILITY/APPLICATION PROCESSING

A. Eligible Households Allocation

Section 5.11.3 requires that developments that need a special permit must provide 15% of the proposed units as Inclusionary Units. However, since this project is seeking a density bonus under section 5.11.15.A, JLM will provide two (2) Inclusionary Units representing 22% of the proposed units.

B. Application Processing and Eligibility Determination

All applicants must meet the following minimum eligibility requirements to be considered for IH units:

1. **Income and Asset Eligibility:** The total income of the applicant and all other members of the applicant's household over the age of eighteen (18) may not exceed 65% of the area median income that includes Newton for the affordable unit, adjusted for household size, as such median income is determined by the U.S. Department of Housing and Urban Development ("HUD"). Based on HUD's 2012 median income figures, an applicant's total household income cannot exceed the following limits:
2. **Household Size Eligibility:** Applicant household size must be appropriate for the unit and is defined as the number of bedrooms. In this case the Inclusionary Units have two (2) bedrooms resulting in a minimum household size of three (3). The maximum household size is that allowed by Health Codes.
3. **Principal Residence:** The applicant must agree that, if selected to lease a unit, the applicant and his or her household will occupy the unit as their principal residence, during their term of tenancy.
4. **Misrepresentation on Application:** JLM reserves the right to reject any applicant who misrepresents any information or makes false statements on the application or in the application process.

Certification of income eligibility will be made by the JLM, who will review documentation (e.g., recent tax returns, pay stubs, affidavits, etc) to certify such eligibility. JLM may contact the Newton Planning and Development Department ("NPD") to request technical assistance in reviewing the eligibility of prospective tenants. Information on an application shall be verified by the NPD. Any post-occupancy change in a household must be reported to the property owner and NPD immediately.

IV. RENT SCHEDULE OF INCLUSIONARY UNITS AND MARKET RATE UNITS

The projected rents, which do not include utilities, for the 9 units are as follows:

<u>Rent</u>	<u>Units</u>	<u>Annual Rent</u>
3_BR @\$3,750 (market)	1	\$ 45,000
2-BR @ \$2,750 (market)	6	\$198,000
2-BR @\$996.75 (inclusionary 50% AMI)	1	\$ 11,961
2-BR @\$1,591.75 (inclusionary 80% AMI)	1	\$ 19,101

V. MARKETING AND RESIDENTIAL SELECTION PLAN

A. MARKETING

JLM will prepare marketing materials with information on the available units. The marketing information shall include, at a minimum:

- Information about the unit, such as size, amenities, location, rent, fees, parking, etc.
- Summary of the tenant selection process;

All marketing information will comply with state and federal fair housing laws.

JLM outreach effort will include sending its own marketing materials to the City's active database of Eligible Households interested in affordable homeownership. JLM in accordance with Section 5.11.9.E&F, will prepare and place newspaper advertisements announcing the availability of the unit. In addition, advertisements and outreach of the availability of the IH unit are to be placed in at least one Boston area general circulation paper, a Newton paper, and in media/newspaper sources that are identified and printed in the primary language of the African-American, Asian and Hispanic communities of greater Boston. Distribution of a notice to City employees of the available units will be done through a notice included with weekly payroll distributions to all employees. The City website, Internet sources (in PDF format), and other means may also be used by JLM and the NPD to make available information known to workers and residents of Newton.

JLM and NPD will decide on an application deadline that will be included in the marketing information.

B. TENANT SELECTION PRIORITIES

The selection process will be governed by the City's local preference policy whereby 70% of the units must go to the local preference categories reflected in Section 5.11.9 and stated below. In this case, one (1) unit will be assigned for local preference and one (1) unit will be made available to the general public. This procedure meets Affirmative Action requirements. The

selection process itself and the award of the units shall occur simultaneously. All tenants who are determined eligible according to the above requirements will be given a priority status total according to the following hierarchy (applicant will be required to document priority status) established under Section 5.11.9.C.

Preference Criteria

Preference shall be given for qualified applicants who fall within any of the following equally weighted categories: (1) individuals or families who live in Newton; (2) households with a household member who works in Newton, has been hired to work in Newton, or has a bona fide offer of employment in Newton; (3) and households with a household member who attends a public school in Newton. An IH application package and an application qualification guidelines package prepared by JLM will be used in the selection process. This information shall be made available to all prospective applicants.

Restrictive Covenant

JLM agrees that any special permit issued under section 5.11 shall require the Applicant to execute and record a covenant in the Middlesex Registry of Deeds for Middlesex County as the senior interest in title for each Inclusionary Unit and enduring for the life of the residential development. Since the development is a rental project, the covenant shall be filed prior to grant of an occupancy permit and running in favor of the City of Newton, in a form approved by the city solicitor, which shall limit rental of Inclusionary Units to Eligible Households in accordance with provisions reviewed and approved by the Newton Housing Authority which incorporate sections 5.11.4.B.3-4, (f)(8)b), 5.11.9.E-G;

Annual Compliance

JLM agrees to submit an annual compliance report to the Director of Planning and Development, in a form approved by the city solicitor, certifying compliance with the provisions of section 5.11 of the zoning ordinances; provided that in the event of a dispute over compliance, the costs of enforcement will not be borne by the Newton housing authority.

Sale of Units/ Condominium Conversion

At the owner's discretion and with the agreement of the Newton housing authority, JLM may enter into an agreement, in a form approved by the city solicitor, to convey rental units to the Newton Housing Authority for sale or rental to eligible households. In the event that the owner intends to convert the development from a rental to a condominium form of ownership, JLM shall comply with the requirements of MGL Chapter 527, Acts of 1983.

CITY OF NEWTON
IN CITY COUNCIL

September 11, 2017

ORDERED:

That the Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the Site, as defined below, 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 for a three-story mixed use development with a total gross floor area up to 14,313 square feet which shall incorporate no more than nine residential units (approximately 11,490 square feet), not exceeding 2,714 square feet of commercial space, all in accordance with the recommendation of the Land Use Committee (the "LUC") and the reasons given by the Committee therefore, through its Chairman, Councilor Marc C. Laredo.

1. The specific Site is an appropriate location for the Project as the site plan maximizes the benefits of the Nonantum commercial village center location by expanding needed housing choices, and retaining commercial space. (§7.3.3.C.1)
2. The mixed use building as developed and operated will not adversely affect the neighborhood as the Project is designed to fit within the context of the existing commercial village center, and will contribute to the vitality and walkability of the village. (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians because the project will utilize an existing right-of-way to provide vehicular and pedestrian access to the site will not disrupt vehicles and pedestrians on Watertown Street. (§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. Exceptions to the parking requirements, including reducing the number of stalls from two per unit to 1.25 per unit, to locate parking within a setback, and within five feet of a residential structure, to waive the screening requirements for parking lots, are in the public interest or in the interest of safety, or protection of environmental features for the following reasons:
 - a) The approximately 957 square foot average size of the units will likely attract tenants who have only one automobile per unit and use public transit, making a

parking waiver appropriate at this site. Covered bicycle parking will also be provided in the parking facility to encourage bike use.

- b) The location of parking within property boundary setbacks and within five feet of a residential structure makes for the most efficient layout of the parking lot and helps to maximize the number of stalls that will be available.
- c) The commercial and residential uses are complementary and will allow for shared usage of the below ground parking facility at different times.

PETITION NUMBER: #201-17

PETITIONER: JLM Realty Trust

LOCATION: 386-394 Watertown Street (the Project Site)

OWNER: JLM Realty Trust

ADDRESS OF OWNER: 386 Watertown Street Newton, MA 02458

TO BE USED FOR: A mixed use development in of 14,313 square feet with a building height of three five stories, incorporating nine residential units, and 2,714 square feet of commercial space, not less than 16 on-site parking stalls located below-grade

CONSTRUCTION: Masonry structure over a wood frame

EXPLANATORY NOTES: §4.1.2.B.3, and §4.1.3 to allow a building of three-stories and 36 feet in height; §4.1.2.B.3, and §4.1.3 to allow an FAR of 1.49; §5.1.4 to allow a reduction in the parking requirement; §5.1.8.Aand §5.1.13 to allow parking within a setback and within five feet of a building containing dwelling units,, §5.1.9.A and §5.1.13 to waive the screening requirements of parking facilities; §5.11. and §5.11.15.A to allow the lot area per unit to be decreased in conjunction with an additional inclusionary unit

ZONING: Business 1

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. Civil Plan Set, prepared by VTP Associates, consisting of three (3) sheets:
 - i. Site Plan, signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated June 12, 2017 Revised August 31, 2017.
 - ii. Grading, Drainage, and Utility Plan, signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated June 12, 2017 Revised August 31, 2017.
 - iii. Detail Sheet, signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated June 12, 2017
 - b. Architectural Plans, entitled "Park View Building" 386-390 Watertown Street, signed and stamped by Ronald F. Jarek, Registered Architect August 7, 2017, consisting of the following fourteen (14) sheets:
 - i. Sheet A-0 Title Sheet
 - ii. Sheet A-1 General Notes and Materials
 - iii. Sheet A-2 Basement Floor Plan
 - iv. Sheet A-3 Ground Floor Plan
 - v. Sheet A.4 Second Floor Plan
 - vi. Sheet A.5 Third Floor Plan
 - vii. Sheet A-6 Roof Plan
 - viii. Sheet A-7 Unit Plans
 - ix. Sheet A-8 Elevations
 - x. Sheet A-9 Elevations
 - xi. Sheet A.10 Detail Sheet
 - xii. Sheet A.11 Exterior Perspectives
 - xiii. Sheet A-12 3D Street View
 - xiv. Sheet LA-1 Landscape Plan
2. In accordance with the City's Inclusionary Zoning Ordinance (§5.11.4), two (2) of the residential units in the Project shall be restricted for Inclusionary Units that shall be made available to households earning up to 80% of Area Median Income (AMI), as designated by the U.S. Department of Housing and Urban Development, adjusted for household size. As proposed in the Preliminary IHP, one (1) of these units shall be made available to households earning up to 80% AMI, and (1) of these units shall be made available to households earning up to 50% AMI. Monthly housing costs (inclusive of heat, hot water, electricity, water and sewer, and one parking space) shall not exceed 30% of the applicable monthly income limit for that unit. The Inclusionary Units shall be designated as Local Preference units, as permitted and defined by the Massachusetts Department of Housing and Community Development (DHCD).

3. To the extent permitted by applicable regulations of DHCD, the 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. Prior to the issuance of any building permits for the construction of the Project, the Petitioner, City, and DHCD will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the Law Department, which will establish the affordability restriction for the Inclusionary Units in perpetuity.
4. Prior to the issuance of any building permits for the vertical construction of the Project, the Petitioner shall provide a final Inclusionary Housing Plan and Affirmative Marketing and Resident Selection Plan for review by the Director of Planning and Development. The Inclusionary Housing Plan and Affirmative 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 §5.11.9. of the Newton Zoning Ordinance. The Inclusionary Housing Plan and Affirmative Marketing and Resident selection plan should treat the units the same with respect to Affirmative Marketing and advancing Fair Housing in Newton. In accordance with DHCD's current guidelines, the units will be affirmatively marketed and leased through a lottery.
5. Prior to the issuance of any Building Permit, 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. Once approved, the O&M must be adopted by applicant, and recorded at the Middlesex Registry of Deeds. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.
6. Prior to the issuance of any Building Permit, the petitioner shall provide a final Approval Not Required Plan (ANR) to the Engineering Division of Public Works for review and approval separating the office/retail building from the self-storage parcel. Once approved, the ANR Plan must be recorded at the Middlesex Registry of Deeds. A certified copy of the ANR Plan shall be submitted to the Engineering Division of Public Works.
7. All residential units will conform to the Massachusetts Architectural Access Board (MAAB) requirements for "Group 1" units. In addition, per MAAB guidelines, 5% of the units shall be designed as "Group 2A" units, which are designed spatially for immediate wheelchair use.
8. The trash and recycling disposal shall be scheduled at such times to minimize any disruption of the on-site parking.
9. 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 or dies shall be replaced on an annual basis with similar material.
10. All construction activity shall be limited to 7AM-6PM Monday through Friday and 8AM-5PM on Saturdays excluding holidays, unless extended or restricted by the Commissioner of Inspectional Services or the Commissioner of Public Works. Interior work may occur at

times outside of the hours specified above, but only after the building is fully enclosed, and only if the work complies with the provisions of the Noise Control Ordinance of the City of Newton. In addition, access to and egress from the Site for work conducted outside of the hours specified above, shall be from Watertown Street only.

11. The Petitioner shall communicate regular construction updates to the Nonantum Area Council and all immediate abutters during construction as appropriate.
12. The Petitioner shall comply in all material respects with the final Construction Management Plan to be submitted for review and approval to the Commissioner of Inspectional Services, in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public Works, and the City Engineer. The Final Construction Management Plan shall include, but not be limited to, the following provisions:
 - a. 24-hour contact information for the general contractor of the Project. This contact information shall be provided to the Commissioner of Inspectional Services and to the Newton Police Department, shall be posted on a construction activity website to be established by the Petitioner, and shall be posted on the job site.
 - b. The proposed schedule of the Project, including the general phasing of the construction activities.
 - 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 delivery vehicles, and location of any security fencing.
 - d. Proposed truck route(s) that minimize travel on local streets.
 - 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; and 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 Noise Ordinance. Staging activities shall be conducted in a manner that will minimize off-site impacts of noise. Noise producing staging activities shall be located as far as practical from noise sensitive locations.
 - g. A plan for rodent control during construction.
 - h. Offer to provide a pre-construction survey at no charge to the owners of the properties abutting the Site.
13. The Petitioner shall be responsible for securing and paying police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.

14. The Petitioner shall be responsible for repairing any 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.
15. At the Petitioner's sole expense, the Petitioner shall locate all utility service lines on site underground, including any utility service lines along the Project's frontage on Washington and Walnut Streets if such lines are present, subject to necessary approvals from utility companies.
16. No building permit for the vertical construction of the Project 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 Registry of Deeds for the Southern District of Middlesex County.
 - 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 §5.11.9. 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 approval shall have been filed with the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.
 - f. 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.
 - g. Submitted to the Law Department copies of fully executed Regulatory Agreements and Affordable Housing Restriction for all Deed Restricted Units, as described in Conditions 2 through 5.
17. No final 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, fencing, and parking areas.
- e. Provided evidence satisfactory to the Law Department that the Regulatory Agreements for all Deed Restricted Units have been recorded at the Southern Middlesex District Registry of Deeds and/or Southern Middlesex Land Court, as appropriate.
- h. Deed Restricted Units shall be constructed and available for occupancy coincident with market rate units; such that no more than three market rate units may receive occupancy permits until the corresponding affordable unit has received its occupancy permit.
- i. The Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for portions of the buildings, including both the residential and commercial space, 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.