

*Terrence P. Morris, Esq.*  
*Law Offices of Terrence P. Morris LLC*  
*57 Elm Road*  
*Newton, MA 02460*  
*617 202-9132*

February 12, 2018

***By Hand and Electronic Transmission; nkhan@newtonma.gov***

Nadia Khan, Clerk of Committee  
Land Use Committee  
Newton City Council  
1000 Commonwealth Avenue  
Newton, MA 02459

Re: 386-394 Watertown Street: BO #201-17  
Petition for Amendment

Dear Nadia:

On November 6, 2017, the City Council granted the above-referenced special permit with certain conditions. As is typical in special permit decisions, the order contained conditions that must be satisfied prior to the issuance of a building permit and others that must be satisfied prior to the issuance of an occupancy permit. Attached you will find pages 3, 4, 6 and 7 of the subject order, in which certain building permit requirements are set forth in Conditions #3, #4 & #17 and the occupancy permit requirements are set forth in Condition #18.

Condition #3 requires the petitioner to submit to the Law Department and the Massachusetts Department of Housing and Community Development (DHCD) a fully executed copy of a Regulatory Agreement (RA) with the City of Newton and the DHCD as required by the Local Initiative Program. It is respectfully suggested that this requirement along with the others (#4 and #17) related to inclusionary housing are more properly placed as prerequisites to the issuance of a certificate of occupancy. The responsibility for, and timing of, all of the other prerequisites for a building permit are within the control of the petitioner and are correctly associated with the initiation of construction.

The issuance of a certificate of occupancy, which occurs at the end of construction, is more properly a function of compliance with the inclusionary housing provisions. The reality is that the final arbiter of that compliance is not the municipality but rather a further detached state agency where local initiatives are more likely to experience extraordinary delays in competition for limited state resources. These delays are more easily borne during the construction period than they are at the outset of the project. As a practical matter it is expected that the building permit in this case will be ready to be issued before compliance with the requirement for a fully executed regulatory agreement with the DHCD can be achieved.

For these reasons my client is requesting that the inclusionary housing provisions be removed as building permit requirements and placed as a certificate of occupancy requirements in Condition #18.

Accordingly and to that end, I respectfully request that the matter be placed on the City Council Docket for assignment to the Land Use Committee for the next available public hearing.

As always, thank you for your invaluable assistance in this and other matters.

Sincerely,

*Terrence P. Morris*

Terrence P. Morris, Esq.

Attachment: BO #201-17 (Conditions #3-4 and #17-#18)

Cc: *(via email)*

Councilor Gregory Schwartz, Chairman

Land Use Committee

Neil Cronin, Senior Planner