

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, 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 to amend Council Order #201-17, which allowed a three-story, mixed-use structure, to restructure the conditions pertaining to inclusionary zoning in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee, through its Chairman, Councilor Gregory Schwartz.

1. The specific site is an appropriate location for the amendment to Council Order #201-17 because the site is governed by a special permit allowing the construction of a three-story building containing inclusionary zoning units. (§7.3.3.C.1)
2. The amendment to Council Order #201-17 as developed and operated will not adversely affect the surrounding neighborhood. (§7.3.3.C.2)
3. The amendment to Council Order #201-17 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)

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 of 14,313 square feet with a building height of three stories, incorporating nine

residential units, and 2,714 square feet of commercial space, not more 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.A and §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

This special permit supersedes, consolidates, and restates provisions of prior special permits to the extent that those provisions are still in full force and effect. Any conditions in prior special permits not set forth in this special permit #134-18 are null and void.

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, and October 12, 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 “as may further be revised in accordance with the site plan referenced in Condition #1.1.iii
 - b. Architectural Plans, entitled “Park View Building” 386-390 Watertown Street, signed and stamped by Ronald F. Jarek, Registered Architect, consisting of the following fourteen (14) sheets, last revised October 12, 2017:
 - i. Sheet A-0 Title Sheet, dated revised
 - 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 Front and Rear Elevations
 - x. Sheet A-9 Side 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 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 Inclusionary Housing Plan, 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 Occupancy 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 construction of the Project, the Petitioner shall provide a final Inclusionary Housing Plan and Affirmative Marketing and Resident Selection Plan for review and approval 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 plan showing the combination of the two lots to the Engineering Division of Public Works for review and approval. Once approved, the Plan must be recorded at the Middlesex Registry of Deeds. A certified copy of the Plan shall be submitted to the Engineering Division of Public Works.
7. Prior to the issuance of any Building Permit, the petitioner shall provide a lighting plan for the parking facility showing compliance with Section 5.10.A of the Newton Zoning Ordinance to the Director of Planning and Development and the Commissioner of Inspectional Services for review and approval.
8. 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.
9. The trash and recycling disposal shall be handled by a private entity and collection shall be scheduled at such times to minimize any disruption of the on-site parking.
10. 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.
11. 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.
12. The Petitioner shall communicate regular construction updates to the Nonantum Neighborhood Association and all immediate abutters during construction as appropriate.
13. 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, the City Engineer, and the Director of Transportation. 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 for the purposes of establishing a baseline from which to evaluate the construction impact, if any on the abutting properties.
14. 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.
 15. 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.
 16. 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 Watertown Street if such lines are present, subject to necessary approvals from utility companies.

17. 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. Received approval from Director of Planning and Development for the Inclusionary Housing Plan and Affirmative Fair Housing and Resident Selection Plan which shall be authorized by the Mayor and provided evidence of submission of the Local Action Unit Application to DHCD.
 - 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 plan of land, recorded at the Middlesex Registry of Deeds, to the Engineering Division of Public Works in accordance with Condition #6.
 - g. Submitted a lighting plan of the parking facility to the Commissioner of Inspectional Services and the Director of Planning and Development in accordance with Condition #7.
 - h. 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.

18. No temporary or 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 confirming the marketing, lottery, and resident selection for the Inclusionary Units has been completed to the Director of Planning and Development for review and approval.
- f. Entered into a Regulatory Agreement and Declaration of Restrictive Covenants for each of the Inclusionary Units with the City of Newton and the Department of Housing and Community Development, in a form approved by the Law Department, which will establish the affordability restriction for the Inclusionary Units in perpetuity.
- g. Constructed Inclusionary Units and made them available for occupancy coincident with market rate units; such that no more than four market rate units may receive occupancy permits until the corresponding Inclusionary Unit has received its occupancy permit.
- h. Completed the outstanding items listed in Condition #18 except that The Commissioner of Inspectional Services may issue one or more temporary occupancy permits 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 provided that petitioner has filed 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.