

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 #134-18, which allowed a three-story, mixed-use structure, to increase the number of dwelling units from nine to ten, and to waive certain requirements of parking facilities containing more than five stalls, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee, through its Chairman, Councilor Richard Lipof.

1. The specific site is an appropriate location for the amendments to Council Order #134-18 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 amendments to Council Order #134-18as developed and operated will not adversely affect the surrounding neighborhood because the footprint of the structure is not increasing. (§7.3.3.C.2)
3. The amendments to Council Order #134-18 will not create a nuisance or serious hazard to vehicles or pedestrians because the existing driveway location will be maintained. (§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. Waivers to the parking requirements, specifically the drive aisle width, maneuvering space, and parking facility lighting is in the public interest because they will allow all parking to be accommodated on site (§5.1.8.B.6, §5.1.8.C.1, §5.1.8.C.2, §5.1.10, and §5.1.13).
6. In accordance with Chapter 29, §167-174 of the Revised Ordinances, the Council finds there is good cause based to waive 75% of the infiltration/inflow calculation for the Project. Therefore, the infiltration/inflow fee shall be \$18,777.75.

PETITION NUMBER: #302-21

PETITIONER: JLM Realty Trust

LOCATION: 386-394 Watertown Street
Newton, MA 02458

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 containing three stories, incorporating ten dwelling units and 757 square feet of ground-floor commercial space, and 16 parking stalls (the "Project")

CONSTRUCTION: Masonry structure over a wood frame

EXPLANATORY NOTES: Amend Council Order #134-18; §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 1.25 parking stalls per dwelling unit; §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; §5.1.8.B.6 and §5.1.13 to allow restricted end stalls; §5.1.8.C.1, §5.1.8.C.2, and §5.1.13 to reduce the maneuvering aisle width; and §5.1.10 and §5.1.13 to waive the lighting requirement of parking facilities; and §5.11.4.C and to allow the lot area per unit to be decreased in conjunction with an additional inclusionary zoning unit

ZONING: Business 1

The prior Special Permit/Site Plan Approval governing this property is #134-18. This Special Permit/Site Plan Approval supersedes #134-18. As such, #134-18 is 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 four (4) sheets:
 - i. Existing Conditions Site Plan signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated February 22, 2016, Revised February 1, 2021.
 - ii. Proposed Conditions Site Plan signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated June 9, 2021.
 - iii. Zoning Plan signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated June 10, 2021.
 - iv. Detail Sheet, signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated June 9, 2021.
- b. Architectural Plans, entitled "Park View Residences" 386-394 Watertown Street, signed and stamped by Ronald F. Jarek, Registered Architect, consisting of the following nine (9) sheets, dated March 4, 2021:
 - i. Sheet SP.00 Cover Page
 - ii. Sheet SP.03 Parking Schedule
 - iii. Sheet SP.101 Basement and First Floor Plan
 - iv. Sheet SP.102 Second and Third Floor Plan
 - v. Sheet SP.103 Roof Plan and Building Section
 - vi. Sheet SP.201 Front and Right Elevations
 - vii. Sheet SP.202 Left and Rear Elevations
 - viii. Sheet SP.301 3D Views
 - ix. Sheet SP.302 3D Views

- 2. The Petitioner, the Project, and the Inclusionary Units shall comply with all applicable provisions of the City's Inclusionary Zoning Ordinance, §5.11, in effect as of the date of this Special Permit/Site Plan Approval, regardless of whether such requirements are set forth herein.
- 3. The bedroom mix of the Inclusionary Units shall be equal to the bedroom mix of the market-rate units in the Project. The proposed mix of the Inclusionary Units is:

	1BR	2 BR
Inclusionary Units	1	1

The final bedroom mix shall be reviewed and approved by the Director of Planning and Development prior to the issuance of a building permit for the Project.

- 4. The Petitioner shall provide a fractional cash payment in accordance with the City's Inclusionary Zoning Ordinance, §5.11, prior to the issuance of any certificate of occupancy.

5. Monthly housing costs (inclusive of rent, utility costs for heat, water, hot water, and electricity, 1 parking space and access to all amenities offered to tenants in the building), must not exceed 30% of the applicable household income limit for that Inclusionary Unit and shall be consistent with Zoning Ordinance, § 5.11.4.D.1.
6. Prior to commencing any pre-sale or pre-marketing activities, the Petitioner must submit an Affirmative Fair Housing Marketing & Resident Selection Plan (AFHMP) for review and approval by the Director of Planning and Development. The Affirmative Fair Housing 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 §5.11.8. of the Inclusionary Zoning Ordinance. The units will be affirmatively marketed and leased through a lottery. The nature and extent of the local preference scheme included in any final AFHMP submitted to DHCD for its review and approval shall be in accordance with the applicable provisions of the City's Revised Ordinances and/or Zoning Ordinance governing the percentage of local preferences for Inclusionary Units in a project in effect at the time of such submission to DHCD.
7. Prior to the issuance of any building permits for the Project, the Petitioner shall provide a final Inclusionary Housing Plan for review and approval by the Director of Planning and Development in accordance with §5.11.8 of the Inclusionary Zoning Ordinance.
8. Prior to the issuance of any temporary or final occupancy certificates for the Project, the Petitioner, the City, and if applicable DHCD will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Inclusionary Units in perpetuity.
9. 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.
10. The Inclusionary Units shall be designed and constructed subject to the provisions of the Inclusionary Zoning Ordinance, §5.11.7.
11. Inclusionary Units, and their associated parking spaces, shall be proportionally distributed throughout the Project and be sited in no less desirable locations than the market-rate units, and the locations of such units and parking spaces shall be reviewed and approved by the Director of Planning and Development prior to the issuance of a building permit for the Project.
12. No residential unit shall be constructed to contain or be marketed and/or sold as containing more bedrooms than the number of bedrooms indicated for said unit in the Project Master Plans referenced in Condition #1.
13. Any room that meets the minimum dimensional and egress requirements to be considered a bedroom under the state building code and Title 5 regulations shall be counted as a bedroom for purposes of determining the required bedroom mix of the Inclusionary Units in accordance with the Inclusionary Zoning Ordinance.

14. The cost of residential tenant parking for market-rate units shall be charged separately from residential tenant rents, and the rental period cannot commence prior to, nor extend past the end of, the rental period of the unit. At all times, the designated residential parking stalls shall only be rented to current residential tenants. Prior to the issuance of any certificate of occupancy for a market rate unit (temporary or final), the Applicant shall provide evidence of such separation to the Director of Planning and Development.
15. One (1) parking stall shall be available for each Affordable Unit without charge to the tenant of such unit.
16. The Petitioner shall make payments in the aggregate amount of \$18,777.75 to the City for infrastructure improvements for infiltration and inflow (I&I). Payments shall be made as follows:
 - a. \$9,388.88 at the issuance of any Building Permit for the Project.
 - b. \$9,388.87 at the first dwelling unit certificate of occupancy (temporary or final) in the Project
17. The Petitioner shall make payments in the aggregate amount of \$56,333.25 to the City for off-site transportation, pedestrian, or safety improvements or mitigation in the vicinity of the Project. The Petitioner's payments shall be made to a municipal account dedicated for such mitigation and improvements as follows:
 - a. \$28,166.63 at the issuance of any Building Permit for the Project.
 - b. \$28,166.62 at the first dwelling unit certificate of occupancy (temporary or final).

Funds from the account in which these payments will be held shall be appropriated only with the approval of the City Council and the Mayor in accordance with municipal finance law. The Director of Planning and Development, after consultation with the Commissioner of Public Works, shall recommend improvements for funding to the City Council.
18. 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.
19. 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.
20. 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.

21. 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.
22. The Petitioner shall communicate regular construction updates to the Ward 1 City Councilors, to the Nonantum Neighborhood Association, and to all immediate abutters during construction, as appropriate.
23. The Petitioner shall do the following to remediate pest and rodent activity:
 - a. Prior to issuance of any building permit, the petitioner 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 prior to construction, and plan for preventing pest migration off-site during construction.
 - b. A copy of the Pest Control inspection report and the remediation action plan shall be submitted to the Planning and Development Department, Inspectional Services Department, and the Health and Human Services Department for review and approval prior to issuance of any building permit.
 - 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 necessary to control pest infestation and migration. The Pest Control Operator shall maintain a written record of all pest control measures performed and shall provide progress reports to Inspectional Services Department and the Health and Human Services Department upon request.
 - d. Prior to issuance of any temporary certificate of occupancy, the Pest Control Operator shall file a final report with the Inspectional Services Department and the Health and Human Services Department summarizing the methods used, whether off-site migration occurred, the frequency and dates of service, and a post-construction site and neighborhood assessment.
 - e. In the event any construction activity causes off-site pest migration, prior to the issuance of any certificates of occupancy (temporary or final) the petitioner shall offer rodent abatement services on an as needed basis for all immediate abutters and a waiver of liability.
24. The Petitioner shall implement the following measures in order 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 approved by the City Solicitor. Notice shall be provided to such private property owners on how to make a claim for damages.
- 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 structures, 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.
25. All construction activity shall be limited to 7:00AM-7:00PM Monday through Friday and 8:00AM-7:00PM on Saturdays, excluding holidays, unless waived by the Mayor in accordance with Revised Ordinances, §20-13. Interior work may occur at times outside of the hours specified above, but only after the building is fully enclosed.
26. Prior to the issuance of any building permit for the Project, the Petitioner shall submit a Construction Management Plan (“CMP”) for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, the Commissioner of Public Works, the City Engineer, and the Chief of the Fire Department. The CMP shall comply with all applicable policies and ordinances in effect at the time of submission. The Petitioner shall comply in all material respects with the final 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 of the Project
 - b. The proposed schedule of the project, including the general phasing of the construction activities and anticipated milestones and completion dates.
 - c. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging area(s) for construction and delivery vehicles, and location of any security fencing.
 - d. 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 trucks and construction vehicles before exiting the site.

- e. 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 practicable from noise sensitive locations.
 - f. Tree preservation plan to define the proposed method(s) for protection of any existing trees to remain on site.
 - g. The CMP shall also address the following: safety precautions; anticipated dewatering during construction; site safety and stability; and impacts on abutting properties.
27. 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.
 28. 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.
 29. Snow shall not be stored on site.
 30. 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.
 31. No building permit for 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 copy of the pest and rodent remediation action plan in accordance with Condition #12.
 - g. Submitted a final Construction Management Plan (CMP) for review and approval in accordance with Condition #14.
 - h. Submitted a copy of the pest and rodent remediation action plan in accordance with Condition #12.
32. 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 statements by a registered architect and a professional land surveyor 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 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. Provided a fractional payment in accordance with Section 5.11.5.B.

- i. Completed the outstanding items listed in Condition #19 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.