

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the City Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site 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 allow a nine unit residential dwelling with three stories and 36 feet in height, ground floor residential use with residential above, an FAR of 1.20, assigned parking stalls, outdoor parking within five feet of a residential building, a reduced maneuvering aisle width, a reduced driveway width for two-way traffic, waived perimeter screening, waived lighting, and a waiver of two parking stalls as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The specific site is an appropriate location for the proposed nine unit building with three stories as designed due to its location in the BU 1 zoning district and the project exceeds the required lot area per unit for residential units in the BU-1 zone. (§7.3.3.C.1)
2. The proposed nine unit building with three stories as designed will not adversely affect the neighborhood because the neighborhood has a variety of housing types and uses. (§7.3.3.C.2)
3. The proposed nine unit building with three stories as designed will not create a nuisance or serious hazard to vehicles or pedestrians because proposed design also brings the nonconforming front setbacks into compliance with the ordinance, increasing the site distance of the intersection. (§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. Literal compliance with the parking dimensional standards, including maneuvering aisle width, width for two-way traffic, and perimeter screening is impractical due to the triangular shape of the lot. (§5.1.13)
6. Literal compliance with the required number of parking stalls in the interest of environmental features as the reduction in the number of parking stalls reduces the amount of impervious area. (§6.2.3.B.2)

PETITION NUMBER: #447-22

PETITIONER: Norton Point River Street LLC

LOCATION: 106 River Street, on land known as Section 33 Block 24 Lot 11A, containing approximately 15,802 sq. ft. of land

OWNER: Norton Point River Street LLC

ADDRESS OF OWNER: 12 Morse Lane  
Natick, MA 01760

TO BE USED FOR: 9-unit multifamily dwelling

CONSTRUCTION: Wood Frame

EXPLANATORY NOTE: Special permit per §7.3.3 to allow a 9-unit residential dwelling with three stories and 36 feet in height, ground floor residential use with residential above, an FAR of 1.20, assigned parking stalls, outdoor parking within five feet of a residential building, a reduced maneuvering aisle width, a reduced driveway width for two-way traffic, waived perimeter screening, waived lighting, and two waived parking stalls (§4.4.1, §4.1.2.B.3, §4.1.3, §5.1.3.E, §5.1.13, §5.1.4, §5.1.8.A.2, §5.1.8.C, §5.1.8.D.1, §5.1.9, §5.1.10)

ZONING: Business Use 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. A site plan entitled "Drainage Plan" showing proposed conditions at 106 River Street, signed and stamped by Peter J. Nolan, Professional Land Surveyor, also signed and stamped by Edmond Spruhan, Civil Engineer, dated July 8, 2022, revised October 26, 2022, revised December 15, 2022 Sheet 1
  - b. A set of architectural plans and elevations prepared by Sustainable Comfort, unsigned and unstamped, dated October 26, 2022 consisting of five (5) sheets:
    - i. First floor site plan, A-2.0
    - ii. Basement unit area, SK1.0
    - iii. First floor unit area, SK1.1

- iv. Second floor unit area, SK1.2
      - v. Third floor unit area, SK1.3
    - c. Planting Plan prepared by Ryan Associates, unsigned and unstamped, dated October 24, 2022, L-1.0
  - 2. Prior to the issuance of any building permit, the petitioner shall provide a final site plan for review and approval by the Director of Planning and Development, City of Newton Fire Department, Department of Planning and Development, Department of Engineering, and Department of Inspectional Services.
  - 3. Prior to the issuance of any Building Permit pursuant to this Special Permit/Site Plan Approval, the Petitioner shall provide a final Operations and Maintenance Plan (the "O&M Plan") for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M Plan must be adopted by the Petitioner and recorded at the Middlesex South District Registry of Deeds. A copy of the recorded O&M Plan shall be filed with the Engineering Division of Public Works and submitted with the Building Permit application.
  - 4. The Petitioner shall do the following to remediate pest and rodent activity:
    - a. Prior to issuance of any demolition or building permit, the Petitioner, at its sole cost and expense, 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, and plan for preventing pest migration off-site during demolition and construction.
    - b. A copy of the Pest Control inspection report and the remediation action plan shall be submitted to the Inspectional Services Department for review and approval prior to issuance of any demolition or building permit. A copy of such approval shall be provided to the Department of Planning and Development.
    - 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 the Operator deems necessary to control pest infestation and migration. The Pest Control Operator shall maintain a written record of all pest control measures performed within the subject property and shall provide progress reports to Inspectional Services Department and the Health and Human Services Department upon request.
    - d. Prior to issuance of the certificate of occupancy, the Pest Control Operator shall file a final report with the Department of Planning and Development and Inspectional Services Department summarizing the methods used, whether off-site migration occurred, the frequency and dates of service, and a post-construction site assessment and neighborhood.
    - e. In the event any demolition or construction activity causes off-site pest migration, prior to the issuance of any certificates of occupancy (temporary or final), the petitioner shall offer and provide, at its sole cost and expense, rodent abatement services on an as needed basis for all direct abutters and abutters to direct abutters, subject to owner authorization of such properties and a waiver of liability.

5. Prior to the issuance of any Building Permit, the Petitioner shall submit a Construction Management Plan (the "CMP") for review and approval to the Commissioner of Inspectional Services, the Director of Planning and Development, the City Engineer, and the Chief of the Fire Department. The CMP shall be in compliance with all applicable policies and ordinances in effect at the time of submission. The Petitioner shall comply in all material respects with the 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.
  - b. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones.
  - 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 construction materials and delivery vehicles and equipment, and location of any security fencing and erosion control.
  - d. A plan showing temporary pedestrian access within work zones in accordance with DPW Policy
  - 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; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site. Include watering
  - f. 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 practical from noise sensitive locations.
  - g. Tree preservation plan to define the proposed method(s) for protection of any existing trees to remain on site.
  - h. The CMP shall also address the following: safety precautions; anticipated dewatering during construction; site safety and stability; and impacts on abutting properties.
  - i. All construction deliveries must be on site and no construction vehicles may park and/or deliver materials from along the frontages of the site.
6. Construction activity shall be limited to 7:00AM-7:00PM Monday through Friday and 8:00AM-7:00PM on Saturdays, excluding federal, state, and local 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.
7. The Petitioner shall underground all lateral utility connections from the right of way to the structure(s).
8. The Petitioner shall implement the following measures 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 hired and paid for by the Petitioner, subject to review and approval by the City Solicitor. Notice shall be provided to such private property owners on how to make a claim for damages. This condition is not intended to limit any claims for damages for any amount through private action
- 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 homes, 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.
9. The Petitioner shall make payments in the aggregate amount of \$11,140 to the City for infrastructure improvements for infiltration and inflow (I&I). Payments shall be made as follows:
    - a. \$5,570 at the issuance of any Building Permit for the Project.
    - b. \$5,570 at the first dwelling unit certificate of occupancy (temporary or final) in the Project.
  10. The Petitioner shall make payments in the aggregate amount of \$33,421 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. \$16,710.50 at the issuance of any Building Permit for the Project.
    - b. \$16,710.50 at the first dwelling unit certificate of occupancy (temporary or final) in the Project.

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.

11. The Project shall contain nine (9) dwelling units. In accordance with the City's Inclusionary Zoning Ordinance, §5.11.4, the Project shall include one (1) affordable housing unit (the "Inclusionary Unit"), as follows:
  - a. One (1) of the residential units in the Project shall be made available to households earning 80% of Area Median Income (AMI), as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA ("Tier 1 Units"). The Inclusionary Unit must be priced for affordability to households having annual gross incomes of not more than 70% of AMI at the time of marketing.
12. The Petitioner shall provide a fractional cash payment of \$260,000 in accordance with the City's Zoning Ordinance, §5.11, prior to the issuance of any certificate of occupancy.
13. Prior to the issuance of any building permits for the vertical construction of the Project, the Petitioner shall provide an updated Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan (AFHMP) for review and approval by the Director of Planning and Development in accordance with §5.11.8 of the City of Newton Zoning Ordinance. The Inclusionary Housing Plan and 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. In accordance with

DHCD's current guidelines, the units will be affirmatively marketed and leased through a lottery.

14. Prior to the issuance of any temporary or final occupancy certificates, the Petitioner, the City, and 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 Tier 1 Inclusionary Units in perpetuity.
15. No dwelling 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 plans referenced in Condition #1.
16. Any guest suites or temporary housing that meet the definition of a dwelling unit under the zoning ordinance shall be counted as a dwelling unit for purposes of calculating the Project's inclusionary zoning requirement.
17. 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.
18. All residential units shall conform to the Massachusetts Architectural Access Board (MAAB) requirements for "Group 1" units. The design and construction of the site and proposed structure shall comply with Massachusetts Architectural Access Board regulations and the Fair Housing Act.
19. The applicant shall retain a qualified accessibility consultant to independently review the building permit plans for compliance with MAAB requirements. The applicant shall submit the consultant's qualifications to the Inspectional Services Department. Prior to the issuance of a building permit, the consultant shall submit a report to the Inspectional Services Department detailing compliance with MAAB and identifying any variances needed.
20. The building shall be designed and constructed to achieve LEED for Homes.
21. Prior to issuance of a building permit, the Petitioner shall submit to the Planning Department the following:
  - a. an updated Rating System Checklist enumerating the criteria set forth in the applicable green building rating system and indicating which technical and design requirements will be met in the green building project design and the resulting rating level of the project.
  - b. an updated Rating System Narrative describing the technical and design elements of the project that will be utilized to achieve compliance with the applicable green building rating system.

- c. an updated Energy Narrative, describing the energy efficiency, renewable energy, and other technical and design elements of the project that serve to minimize energy use, make use of renewable energy sources, and demonstrate how close the project is to achieving net zero energy use status.
  - d. a document demonstrating the credentials of the project's designated green building professional.
  - e. an affidavit signed by the green building professional stating that they have reviewed all relevant documents and that to the best of their knowledge, the documents provided indicate that the project is being designed to achieve (LEED for Homes).
  - f. The credentials of the project's green commissioning agent.
22. No building permit for the use covered by this special permit/site plan approval shall be issued until the petitioner has:
  - a. Recorded a certified copy of this Special Permit/Site Plan Approval at the Middlesex South Registry of Deeds and filed proof of such recording with the City Clerk and submitted a copy with the building permit application.
  - b. Submitted an Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan for review and approval by the Director of Planning and Development in accordance with this Order, and §5.11.8 of the Zoning Ordinance.
  - c. Submitted final engineering, utility, and drainage plans, and a recorded copy of the O&M Plan with the Middlesex South District Registry of Deeds and provided a copy of the recorded document to the City Engineer in accordance with this Order.
  - d. Submitted a Final 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, and the City Engineer in accordance with this Order.
  - e. Received approval for the Pest Control inspection report and the remediation action plan and submitted a copy of such approval to the Director of Planning and Development in accordance with this Order.
  - f. Received approval for the vibration control plan and submitted a copy of such approval to the Director of Planning and Development in accordance with this Order.
  - g. Submitted a LEED Checklist prepared and certified by a LEED Accredited Professional to the Director of Planning and Development, indicating which points the building intends to realize to demonstrate LEED certifiability at LEED for Homes Level.
23. No certificate of occupancy (temporary or final) shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:
  - a. Filed with the building permit record statements by a registered architect and a professional land surveyor certifying compliance with Condition #1, including the



- as built FAR.
  - b. Submitted final as-built survey plans in digital format, signed and stamped by a registered land surveyor.
  - c. Filed with the building permit record a statement by a registered landscape architect certifying compliance with the landscape plan referenced Condition #1.
  - d. Submitted to the Law Department copies of a fully executed Regulatory Agreement and Affordable Housing Restriction in accordance with this Order.
  - e. Provided evidence satisfactory to the Law Department that the Regulatory Agreements have been recorded at the Southern Middlesex District Registry of Deeds.
  - f. Inclusionary Unit(s) shall be completed and occupied no later than the completion and occupancy of the market-rate units. If the Inclusionary Units are not completed as required within that time, temporary and final certificates of occupancy may not be granted for the number of market-rate units equal to the number of Inclusionary Units that have not been completed.
  - g. Obtained approval from the City Engineer certifying that all engineering details for the portion of the Project for which a certificate of occupancy is requested have been constructed to standards of the City of Newton Public Works Department
  - h. 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, landscape features, fencing and parking areas related to or for the portion of the Project for which a certificate of occupancy is requested.
  - i. Filed with the Department of Inspectional Services and the Department of Planning and Development a certificate from a licensed architect certifying that: (i) all dwelling units in the building for which a certificate of occupancy is requested have been constructed and conform with MAAB requirements for "Group 1" units.
  - j. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that utilities have been located underground for the portions of the Project for which a certificate of occupancy is requested to the extent required by this Order or submit evidence that best efforts have been made to underground the utilities.
  - k. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that the criteria for LEED for Homes level of construction of the subject building have been satisfied.
24. The Petitioner shall submit to the Planning Department any updates to the above referenced documents along with the following:
- a. An affidavit certifying that the pre-construction commissioning process requirements of LEED for Homes have been met and that the post-construction commissioning process requirements of Section 5.13 of the Zoning Ordinance were included in the scope of work and will be met, including a schedule of when each commissioning requirement was or will be met.
  - b. Credentials of the project's accredited Green Building Professional and an

affidavit signed by that professional stating that they have reviewed all relevant documents and that to the best of their knowledge, the documents provided indicate that the project was built to achieve the requirements of LEED for Homes.

25. The Petitioner shall install all landscaping consistent with this Special Permit/Site Plan approval and shall maintain landscaping in good condition. Any plant material that becomes diseased or dies shall be replaced as soon as feasibly possible with similar material.
26. The trash and recycling disposal shall be handled by a private entity and shall comply with the City's Noise Control Ordinance.