



**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459  
617-796-1120

Ruthanne Fuller  
Mayor

Barney Heath  
Director

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## PUBLIC HEARING MEMORANDUM

**DATE:** December 13, 2024

**TO:** City Council

**FROM:** Barney S. Heath, Director of Planning and Development  
Jennifer Caira, Deputy Director of Planning and Development  
Katie Whewell, Chief Planner for Current Planning  
Cat Kemmett, Senior Planner

**SUBJECT:** **Petition #480-24** for SPECIAL PERMIT/SITE PLAN APPROVAL to rezone 1 parcel as follows: 386-394 Watertown Street from BUSINESS USE 1 to MIXED USE 4.

**Petition #481-24** for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a four-story mixed use building with 13 residential units and 14 at grade parking stalls with relief relative to parking and the overall site and building plans at 386-394 Watertown Street

APPLICATION RECORD: <https://newtonma.viewpointcloud.com/records/848329>

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The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis which may be useful in the special permit decision making process of the City Council. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the City Council will want to consider in its discussion at a subsequent Working Session.



**386-394 Watertown Street**

## I. Project Description

### **Background**

The subject property is located on Watertown Street in the BU-1 zone in Nonantum. Watertown Street is lined with commercial buildings zoned in the Business Use 1 and 2 districts, with a diverse array of uses including retail, restaurants, and offices that are part of the Nonantum village center. Multi-Residence 2 zoning districts extend out to the north and south of Watertown Street, which contains single and multifamily dwellings. The subject property consists of two lots that are currently vacant totaling 9,542 square feet. The property has one twelve-foot-wide curb cut providing access to Watertown Street. The front portion of the site slopes down from the street, while the rear portion is predominantly flat.

The subject parcel has four existing special permits that govern the site, summarized as follows:

- #201-17 in 2017 allowed for a three-story, mixed-use structure with ground floor retail and nine residential units
- #134-18 in 2018 to restructure the conditions pertaining to inclusionary zoning
- #302-21 in 2021 to increase residential units from nine to ten and waive parking and other associated relief
- #342-24 in 2024 to reconfigure parking

### **Special Permit**

The petitioner seeks to rezone the property from BU-1 to MU-4. They also request to amend their existing special permit to add an additional story to what was previously proposed, resulting in a four-story building with three additional units, including one new affordable unit. The new project will include one commercial space, 13 residential units (three of which are affordable), and 14 surface parking spaces. Under the rezoning of the property from BU-1 to MU-4, a variety of zoning relief is required. As proposed under the zoning of MU-4, the project requires dimensional relief for the building, a waiver of seven parking stalls, and other relief for the proposed parking configuration.

### **Analysis**

The most significant changes proposed in this amendment are a rezoning from BU-1 to MU-4, and the dimensional relief associated with the creation of three additional units. The MU-4 district is unmapped, with parcels only opting into MU-4 voluntarily via special permit approved by the City Council, so there are not existing sites nearby zoned for MU-4. However, according to the ordinance the intent of the district includes encouraging development that allows for sufficient density and intensity of uses to facilitate compact, pedestrian oriented neighborhoods with a diverse mix of residences, shops, and other amenities, and encourages a diversity of housing options. In this respect, Planning staff are generally not concerned with the requested rezoning from BU-1 to MU-4. This section of Watertown Street is located in the heart of Nonantum village center, one of the most vibrant and walkable commercial areas of the city. The proposed multi-use building supports

the intent of MU-4 to facilitate walkable streets and encourage new businesses to serve the community.

Staff believe this amendment, which includes three additional dwelling units including one new deed-restricted affordable unit, supports several goals outlined in the city’s Comprehensive Plan, as well as the City’s Housing and Transportation Strategies. The three new units will all be less than 1,200 square feet each, contributing to the diversity of the City’s housing stock by providing smaller residential units, locating larger developments within village centers close amenities and public transportation, and retaining commercial space. The inclusion of a new affordable unit also supports the City’s goal of addressing the substantial shortage of housing in Newton that is available to households earning low to moderate incomes.

II. Zoning Relief Requested:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
	Rezone parcels from BU1 to MU4	
§4.2.2.B.1	Site Plan Review	§7.4
§4.2.2.A.2 §4.2.5.A.3	Waive minimum lot area per unit requirement	S.P. per §7.3.3
§4.2.2.B.3 §4.2.5.A.2	To allow four stories	S.P. per §7.3.3
§4.2.3 §4.2.5.A.2	To allow a building height of 45.5 feet and an FAR of 1.92	S.P. per §7.3.3
§4.2.5.A.4.a 4.2.5.A.4	To allow a front setback greater than 10 feet	S.P. per §7.3.3
§4.2.5.A.4.b §4.2.5.A.4	To reduce the side setback requirement	S.P. per §7.3.3
§4.2.5.A.4.c 4.2.5.A.4	To waive additional setback requirement for portions of the building greater than 40 feet in height	S.P. per §7.3.3
§5.1.4 §5.1.4.A	To allow 1.25 parking stalls per residential unit	S.P. per §7.3.3
§5.1.4 §5.1.13	To waive 7 parking stalls	S.P. per §7.3.3
§5.1.8.B.6 §5.1.13	To allow restricted end stalls	S.P. per §7.3.3
§5.1.8.D.1 §5.1.13	To allow reduced driveway width	S.P. per §7.3.3
§5.1.9.A §5.1.13	To waive perimeter screening requirements	S.P. per §7.3.3
§5.1.10 §5.1.13	To waive lighting requirements	S.P. per §7.3.3

For more details around the zoning analysis please refer to **Attachment A**.

III. Criteria for Consideration per §7.3.3 and §7.8.2.C.2:

- The specific site is an appropriate location for the proposed project. (§7.3.3.C.1)
- The project will not adversely affect the neighborhood. (§7.3.3.C.2)
- There will be no nuisance or serious hazard to vehicles or pedestrians created by the project. (§7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
- Literal compliance with the parking requirements is impractical due to the nature of the use, or the location, size, frontage, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features (§5.1.13)

**Additional standards in an MU4 zoning district:**

- By allowing reduced lot area per unit, the proposed density creates a beneficial living environment for the residents, does not adversely affect the traffic on roads in the vicinity, and better achieves the purposes of this district than strict compliance with these standards (§4.2.2.A.2, §4.2.5.A.3).
- The development that exceeds the maximum front setback of 10 feet with a reduced side setback does not create shadows or blocked views that have material and adverse effects on its surroundings, supports pedestrian vitality, and advances the purposes of the MU-4 district (§4.2.3, §4.2.5.A.4)
- The proposed building with four stories and 45.5 feet in height is compatible in visual scale to its surroundings, does not create shadows or blocked views that have material and adverse effects on its surroundings, and advances the purposes of the MU-4 district (§4.2.3, §4.2.2.B.3, §4.2.5.A.2)
- The requested waiver of the setback requirement for the portions of the building exceeding 40 feet in height does not create shadows or blocked views that have material and adverse effects on its surroundings, supports pedestrian vitality, and advances the purposes of the MU-4 district (§4.2.5.A.4.c)

IV. Project Proposal and Site Characteristics

A. Building and Site Design

The petitioner intends to rezone the parcel from BU-1 to MU-4 and amend the existing special permit to create a larger structure than the initial proposal. Relief is required to rezone the lot, and the following analysis assumes the parcel will be held to the applicable standards for the MU-4 district.

Many elements of the initial design and subsequent amendments are reflected in the revised project proposal. The overall orientation and site layout is similar, with a roughly “L” shaped mixed-use building containing both residential and retail uses and an elevator. The most significant difference proposed to the structure is an increase from three floors to four, and corresponding increase from ten residential units to thirteen, with three new units on the top floor. Buildings in the MU-4 district may be two stories by-right and up to 60 feet tall and up to five floors by special permit. Because the petitioner proposes a four-story structure that is 45.5 feet tall, relief is needed for the height. The project also requires relief for having portions of the building over 40 feet in height in the MU-4 district without an additional 5.5 foot setback from the side and rear. The fourth story is set back from the front façade along Watertown Street so the building presents as three stories from the street and four stories in the rear. The nearby buildings range from two to three stories.

Site plan review is required for projects between 10,000 and 19,999 square feet. The project includes 18,274 square feet within the proposed structure, requiring relief. A floor area ratio (FAR) of up to 2.00 is allowed in the MU-4 district with four stories by special permit. Because an FAR of 1.92 is proposed, the project requires relief. With a lot size of 9,542 square feet and 13 units, the project has a lot area per unit of 734 square feet where a minimum of 1,000 square feet is required, which may be waived by special permit in the MU-4 district.

The petitioner has submitted a solar study for the summer and winter (which generally have the shortest and longest shadows, respectively.) This study shows that the impact of the shadow will be more significant than the existing condition since the site is currently vacant but will not be significantly more impactful than the buildings on either side of the site on Watertown Street. The tallest parts of the building are set back far enough that the additional height does not have a strong impact on the shadows cast. The largest impact from shadows will be at 8 AM on the Winter Solstice.

Based on the elevations and floor plans provided, the ten previously approved units on the second and third floor will remain largely unchanged, with similar sizes and orientation shown in the previous two special permit amendments. Three additional units are included on the new fourth floor, with one unit proposed at approximately 903 square feet and the other two at approximately 1,050 square feet each. Some roof deck area will be added as well.

B. Parking and Circulation

The curb cut location and driveway design will remain the same in this amendment, with vehicular access to the right of the building. A total of 14 parking stalls are proposed for the project. All of the parking provided consists of at-grade surface stalls on the first floor under the building, with one accessible stall located adjacent to the commercial space and shared residential common space. This matches the number of stalls and general parking layout approved in September 2024 in SP #342-24. The parking area requires several elements of relief similar to what was previously granted in the initial design and/or subsequent amendments. The revised parking configuration requires relief in the form of a waiver of perimeter screening requirements and lighting for outdoor parking facilities. Relief is also required for a reduced driveway width and several restricted end stalls.

There are 13 dwelling units included in the revised project which would require 26 stalls for the residential use. The ordinance allows for multifamily residential projects to reduce the parking ratio required from two stalls per unit to 1.25 stalls per unit by special permit. This reduced ratio brings the number of stalls needed for the residential use down to 17 stalls. The design also includes 890 square feet of commercial space. A tenant has not yet been secured for the ground floor commercial space, but the petitioner anticipates that the space will be utilized by a retail or personal service use, which would require 4 stalls for the retail space assuming there could be up to three employees on site at the busiest shift. Because the residential and commercial uses require a total of 21 stalls and only 14 are proposed, a waiver of seven parking stalls is needed.

Staff are generally not concerned with the requested parking waivers and relief. The proposed parking design is substantially similar to what was previously approved, and because no additional parking is proposed, it should not adversely affect traffic on the roads in the area. The waiver better achieves the purposes of the MU-4 district than constructing more parking would because an explicit goal of the district is to promote compact and walkable communities.

V. Consistency with Comprehensive Plan, Transportation, and Housing Strategies

Comprehensive Plan

Newton's Comprehensive Plan outlines several specific principals when considering the future of housing in the city in the "Residential Vision and Goals" section. Among these goals is the desire to maintain economically diverse housing, and a diversity of types of housing. The proposed project includes 13 residential units, three of which will be affordable through the Inclusionary Zoning section of the ordinance. Increasing the City's stock of affordable housing and utilizing incentive-based zoning policies such as

Inclusionary Zoning are listed as key strategies to achieve those goals.

The proposed project includes a mixed-use building with ground floor retail. The Comprehensive Plan includes a “Business Vision and Goals” section that underscores the importance of businesses for the economy and vitality of the City. It notes the importance of maintaining land area currently used for businesses and to ensure that land needed for business use is not lost as parcels are redeveloped in the future. It also states that locating housing in mixed use areas strengthens village centers and mixed-use corridors that further those goals.

The Comprehensive Plan also encourages guiding development to be responsive to the existing fabric of village centers. It notes that areas that are already walkable and mixed use lend themselves to more housing and businesses when appropriate. It encourages compact building design, a variety of housing choices, and other amenities in high pedestrian zones. Staff believe the project is consistent with those goals.

#### Housing Strategy

The City’s 2016 Housing Needs Analysis and Strategic Recommendations affirms Newton’s desire to provide diverse housing choices to meet the changing housing needs the City. It recommends locating housing in a way that is responsive to the context of the area, helps those that are cost burdened, and promotes a diverse and varied rental and ownership housing stock. The proposed project meets several of these principles. The project supports diverse housing stock by offering thirteen residential units an area with a mix of different uses. Three of those units are affordable, which represents a modest increase of units in the City available to those burdened by high housing costs. The Housing Needs report notes that rental apartments represent the greatest housing opportunity for affordable housing in the City and this project provides all rental units.

#### Transportation Strategy

The Newton Leads 2040 Transportation Strategy outlines strategies intended to make it easier and safer to utilize alternative modes of transportation such as walking, biking, and public transit. These goals include reducing congestion, reducing vehicular trips, and encouraging development that minimizes new congestion. The report recommends focusing development near existing jobs and amenities to foster an environment where walking and biking and utilizing public transit regularly is possible. This project is located in an area that is walkable and compact and proposes a reduction in the parking on site. There are many amenities nearby, and it is serviced by the MBTA route 59 bus route and proposes covered on-site bicycle storage.

## VI. Rezoning Request

Regarding the proposed rezoning of the site from BU-1 to MU-4, the Planning Department notes some relevant aspects of the proposal. The subject site is located in a village center that features a mix of commercial buildings, parks, and residential structures of varying sizes and MBTA bus access. The zoning is similarly varied, with business districts, public use zones, manufacturing zones, and residential zones all located nearby. Given the diverse mix of residential and commercial uses and the existing built fabric of the neighborhood, staff believe this is an appropriate location for a mixed-use zone and consistent with the intent of the MU-4 zone specifically.

According to the ordinance, the purposes of the Mixed Use 4 district are as follows:

1. **Allow the development of buildings and uses appropriate to Newton's village commercial centers and aligned with the vision of the City's Comprehensive Plan.**

As noted above, the project aligns with the Comprehensive Plan in several aspects including adding to the City's affordable housing stock, encouraging diverse housing options through the provision of smaller units, and adding mixed use developments to areas that have a diversity of uses.

2. **Encourage development that fosters compact, pedestrian-oriented villages with a diverse mix of residences, shops, offices, institutions, and opportunities for entertainment.**

The project is mixed use with both residential space and a ground floor commercial space, which contributes to the already diverse mix of uses on Watertown Street. The project is compact in its footprint, and with a reduced parking ratio, contributes toward the goal of a pedestrian oriented village center.

3. **Allow sufficient density and intensity of uses to promote a lively pedestrian environment, public transit, and variety of businesses that serve the needs of the community.**

If approved, the project will allow for 13 units in a neighborhood that does have a lively pedestrian environment and access to public transit in the form of the MBTA bus. There are a variety of businesses that serve the needs of the area in Nonantum, and the project will maintain and expand the economic impact of the neighborhood by providing commercial space.

4. **Expand the diversity of housing options available in the City.**

In providing thirteen dwelling units of varying sizes, the project will expand the diversity of housing available in the City. Three of the units will be affordable,

further advancing the goal of economic diversity as well.

**5. Promote the health and well-being of residents by encouraging physical activity, use of alternative modes of transportation, and creating a sense of place and community.**

The project proposes a reduced parking ratio and on-site bike parking, which are design elements supportive of alternative modes of transportation. The project contributes to the sense of place and community by maintaining the mixed-use environment that is part of what contributes to the unique character of Nonantum village center.

VII. Interdepartmental Review

A. Inclusionary Zoning:

The revised project includes one new affordable unit in addition to the two approved in the initial special permit, for a total of three deed restricted affordable units. Per the zoning ordinance, at least 15% percent of units in new developments with up to 20 units must be made affordable to tenants making 50-80% of the Area Median Income (AMI). Though the petitioners have indicated three specific units as affordable in the architectural plans submitted, the final bedroom mix and location must be reviewed and approved by Planning. Prior to obtaining a Building Permit, the petitioners will be required to submit an Inclusionary Housing Plan for review and approval by Planning for compliance with the Inclusionary Zoning Ordinance.

B. Engineering:

Prior to submitting for a building permit, the petitioners must apply for Engineering Site Plan Review. Planning staff have requested the Engineering Department to review the revised bedroom count to determine the new sewer Inflow & Infiltration calculation, and the condition for that payment will be updated accordingly in the conditions for the project should this petition be approved.

VIII. Petitioner's Responsibilities

The petition is complete.

**ATTACHMENTS:**

- ATTACHMENT A:** Zoning Review Memorandum
- ATTACHMENT B:** Special Permit # 324-24
- ATTACHMENT C:** DRAFT Council Order



Ruthanne Fuller  
Mayor

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**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: October 18, 2024

To: Anthony Ciccariello, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Katie Whewell, Chief Planner for Current Planning

Cc: Matt Eckel, Attorney  
John Mula, JLM Realty Trust, Applicant  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Deputy City Solicitor

**RE: Request to rezone to MU4 to construct a four story mixed use building with 13 residential units**

Applicant: John L. Mula	
Site: 386-394 Watertown Street	SBL: 14014 0035, 14014 0037, 14014 0038
Zoning: BU1	Lot Area: 9,542 square feet
Current use: Vacant	Proposed use: Mixed use

### BACKGROUND:

The subject site is comprised of 9,542 square feet in the BU1 zoning district and is currently vacant, having formerly been improved with a one-story commercial building razed in 2018. A special permit was granted in 2017 for a three-story mixed-use development with nine dwelling units and parking for 16 vehicles. The special permit was amended in 2021 to add an additional dwelling unit and to reconfigure the parking onto two levels. It was amended again in 2024 to revise the parking, eliminate below grade parking, and a reduction in parking to 14 stalls. The petitioner now seeks to rezone the parcel to MU4 to construct a four story mixed use building with 13 residential units and 14 at grade parking stalls.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared by Matt Eckel, attorney, dated 9/13/2024
- MU4 Memo, prepared by Trevor O'Leary, Project Manager, dated
- Site Plan, signed and stamped by Marc Besik, engineer and Joseph R. Porter, surveyor, dated 5/24/2024, revised 7/8/2024
- Floor plans and elevations, signed and stamped by Ronald Jarek, architect, dated 5/24/2024
- FAR Worksheet, signed and stamped by Ronald F. Jarek, architect, dated 9/13/2024

- Parking Plan, prepared by Ronald F. Jarek, architect, dated 5/24/2024
- Photometric Plan, dated 6/15/2021
- Front Façade Calculation, prepared by Ronald F. Jarek, architect, dated 5/24/2024

## **ADMINISTRATIVE DETERMINATIONS:**

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1. The current zoning for the parcels included in the project site is BU1. The petitioner proposes a rezoning of the parcel to Mixed Use 4. For the purposes of this memo, the MU4 provisions will be applied.
2. The petitioner is proposing 18,274 square feet of gross floor area within the proposed structure. Section 4.2.2.B.1 requires site plan review for proposed buildings which contain between 10,000 and 19,999 square feet of gross floor area in a mixed-use district.
3. The petitioner proposes to construct a 13-unit mixed use building on the 9,542 square foot parcel, resulting in a lot area per unit of 734 square feet. Per section 4.2.2.A.2, a minimum of 1,000 square feet of lot area is required per unit, however per section 4.2.5.A.3 the City Council may waive the lot area per unit requirement if it is found that the proposed density is beneficial. The petitioner requests a waiver from the lot area per unit requirements of section 4.2.2.A.2 per section 4.2.5.A.3.
4. Sections 4.2.2.B.3 and 4.2.5.A.2 require a special permit for a building with four or more stories in the MU 4 district. The petitioner proposes a four-story structure with an FAR of 1.92, requiring a special permit.
5. Sections 4.2.3 and 4.2.5.A.2 allow the City Council to grant a special permit to allow for up to 60 feet of height in an MU4 district by special permit. The petitioner proposes a height of 45.5 feet, requiring a special permit.
6. Per section 4.2.5.A.4.c, any portion of a building greater than 40 feet in height must be set back one foot from the adjacent lot line for each additional foot of height. The petitioner proposes a 45.5-foot-tall building, requiring an additional 5.5-foot setback from the sides and rear for those portions of the building greater than 40 feet in height. The petitioner is maintaining the same setback for the entire height of the building, with no step back for the additional height. A special permit is required to waive the additional height within the setbacks.
7. The petitioner proposes to construct 14 at-grade covered parking stalls. There are 13 residential units proposed, as well as 890 square feet of commercial space. While no commercial tenants have been confirmed, the petitioner anticipates a retail or personal service use. Per section 5.1.4, the anticipated parking requirement follows:

<b>Use</b>	<b>Parking Regulation</b>	<b>Parking Required</b>
13 Residential units	2 stalls per unit required	26 stalls
Retail/Personal service 890 square feet 3 employees	1 stall per 300 square feet 1 stall per 3 employees	3 stalls 1 stall
<b>TOTAL</b>		<b>30 stalls</b>

The residential units and commercial space require a combined total of 30 stalls. With a total of 14 stalls proposed, a waiver of 16 stalls is required.

Section 5.1.4.A allows the multi-family residential parking requirement to be reduced, by special permit, from two stalls per unit to 1.25 stalls per unit. Applying this reduction would result in a requirement of 17 stalls, with the overall site requirement reduced to 21. A waiver of seven stalls would be required.

8. Section 5.1.8.B.6 requires that end stalls restricted on one or both sides by curbs, walls, fences or other obstructions must have maneuvering space at the aisle end of the stall at least 5 feet in depth and 9 feet in width. Multiple stalls are restricted by walls, requiring a special permit per section 5.1.13.
9. Per section 5.1.8.D.1, entrance and exit driveways for two-way travel must be a minimum of 20-foot wide. The proposed two-way entrance drive is 13 feet-wide, of which 8.5 feet are on the subject property and the remaining 4.5 feet are part of an easement on the abutting parcel. The petitioner requires a special permit per section 5.1.13 to allow for a reduced two-way entrance and exit drive width.
10. The petitioner proposes to have at-grade parking under the building in an open parking facility. As such, the parking is treated as “outdoor parking” and must meet those design standards. Per section 5.1.9.A, outdoor parking facilities must provide perimeter screening. None is proposed, requiring a waiver per section 5.1.13.
11. Per section 5.1.10, outdoor parking facilities with more than five stalls must provide security lighting with a minimum intensity of one-foot candle on the entire surface. Per section 5.1.13, the petitioner seeks a waiver from this provision.
12. Section 5.11 of the Zoning Ordinance provides requirements for providing inclusionary units for private residential developments. Rental projects with up to 20 units must designate 15% of the units as available to 50-80% of the Area Median Income (AMI). With 13 residential units proposed, two units must be provided at 50-80% AMI.

<b>MU4 Zone</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>
Lot Size	10,000 square feet	<b>9,542 square feet</b>	<b>No change</b>
Setbacks		Vacant	
• Front	0 feet		0.2 feet
• Side (left)	0 feet		0.4 feet
• Side (right)	0 feet		8.5 feet
• Rear	0 feet		No change
Lot Area Per Unit	1,000 square feet	N/A	<b>734 square feet</b>
Building Height	60 feet (by SP)	N/A	<b>45.5 feet*</b>
Max Number of Stories	5 (by SP)	N/A	<b>4*</b>
FAR	2.00	<b>N/A</b>	<b>1.92*</b>

<b>Zoning Relief Required</b>		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
	Rezone parcels from BU2 to MU4	
§4.2.2.B.1	Site Plan Review	§7.4
§4.2.2.A.2 §4.2.5.A.3	Waive minimum lot area per unit requirement	S.P. per §7.3.3
§4.2.2.B.3 §4.2.5.A.2	To allow four stories	S.P. per §7.3.3
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§5.1.10 §5.1.13	To waive lighting requirements	S.P. per §7.3.3



## City of Newton, Massachusetts

Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

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Ruthanne Fuller  
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Barney Heath  
Director

### PUBLIC HEARING MEMORANDUM

**DATE:** September 13, 2024

**TO:** City Council

**FROM:** Barney S. Heath, Director of Planning and Development  
Jennifer Caira, Deputy Director of Planning and Development  
Katie Whewell, Chief Planner for Current Planning  
Joseph Iadonisi, Senior Planner

**SUBJECT:** **Petition #342-24** for SPECIAL PERMIT/SITE PLAN APPROVAL to amend special permit #302-21 to reconfigure the parking facility and reduce the number of stalls at 386-394 Watertown Street, Ward 1, Newton, on land known as Section 14 Block 14 Lots 35, 37, and 38, containing approximately 9,542 sq. ft. of land in a district zoned Business1. Ref: Sec. 7.3.3 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

APPLICATION RECORD: <https://newtonma.viewpointcloud.com/records/832554>

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis which may be useful in the special permit decision making process of the City Council. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the City Council will want to consider in its discussion at a subsequent Working Session.



**386-394 Watertown Street**

## I. Project Description

### *Background*

The subject property has three special permits governing this site. Special Permit #201-17 was granted for the subject property and allowed for a three-story, mixed-use structure with up to 14,313 square feet in gross floor area. Special Permit #134-18 required the restructuring of the required steps to certify compliance with inclusionary zoning prior to the issuance of a building permit. The most recent special permit, Special Permit #302-21 was granted on December 6, 2021 to increase residential units from nine to ten and waive some requirements of Section 5.1.8 of the Zoning Ordinance, including restricted end stalls, maneuvering aisle width, and lighting requirements as well as waiving one parking stall. In summer of 2024, the petitioner was granted an extension of time to exercise Special Permit #302-21 which will expire December 6, 2024.

### *Analysis*

The petitioner is seeking an amendment to previously approved special permits. The amendment includes eliminating the previously approved below grade parking and reconfiguring the surface parking facility from the previously approved plans which results in a total loss of two parking stalls. Sixteen parking stalls, with eight on each level, were previously approved. With the elimination of the below grade parking and associated ramps and maneuvering areas, the site can accommodate seven additional parking stalls within the surface parking facility, for a total of fourteen stalls.

As outlined in the Zoning Review Memorandum, the parking requirement per zoning is twelve parking stalls considering the parking credit from previous uses and proposed project. Planning notes that the petitioner is still able to meet the required parking with the fourteen proposed parking stalls. Planning does not find the proposed changes to substantially differ from previously approved proposals and would not change how the site is accessed from Watertown Street. Planning believes that the overall impact on the convenience and safety of site circulation and parking is minor, but positive, with a reduction in the overall number of restricted end spaces with the removal of the ramp between levels and the ability to accommodate the parking required per zoning.

Planning recommends the petitioner reconsider the placement of the bicycle parking to be closer or within the building to eliminate potential conflicts between vehicles and bicycle users. The petitioner should also address how trash operations on the site will function, especially with parking stall #8 located in front of the trash area. The petitioner also needs to provide additional information around proposed retaining walls along the left and rear property lines. Top of wall (TOW) measurements are provided but there are no bottom of wall measurements to confirm the heights of these walls. The petitioner should also submit sections that show the change or drop in grade for the parking in comparison with the grade of the abutter. Planning has included

a draft council order for when the time is appropriate for the committee to consider.

II. Zoning Relief Requested:

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
	To amend Special Permit #302-21	S.P. per §7.3.3

For more details around the zoning analysis please refer to **Attachment A**.

III. Criteria for Consideration per §7.3.3 and §7.8.2.C.2:

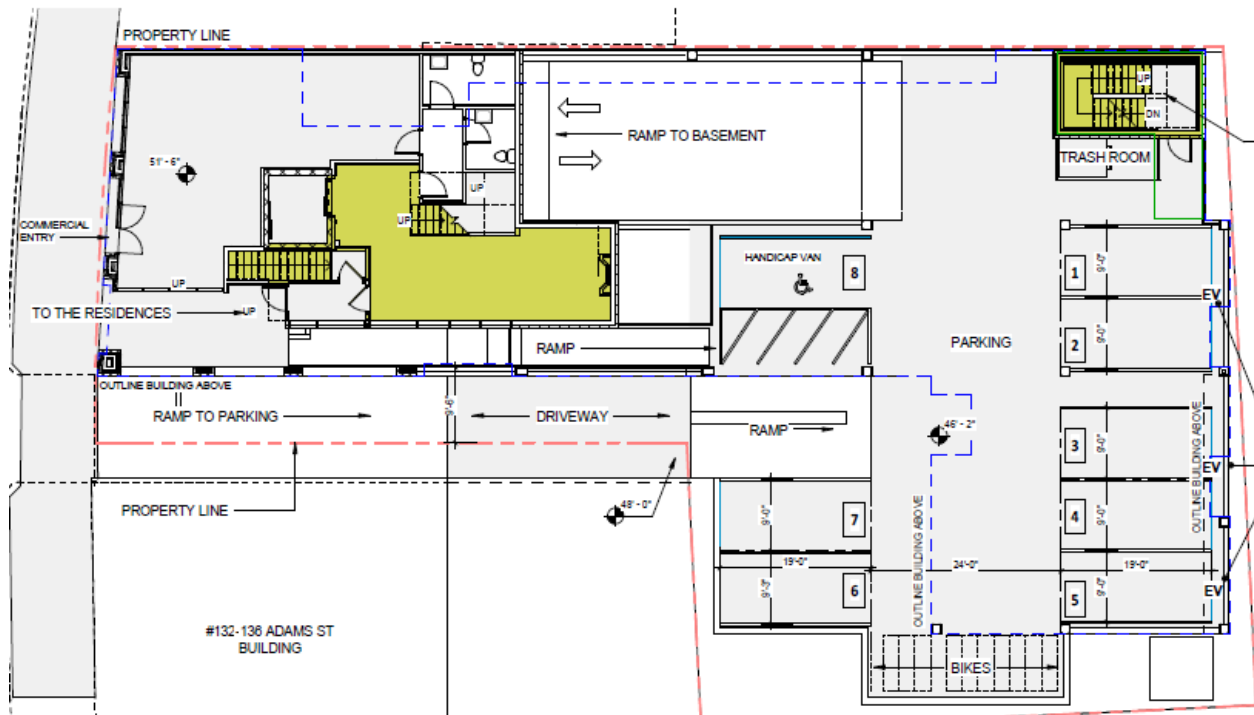
- The specific site is an appropriate location for amendment to Special Permit #302-21 which amends the previously approved site plan's parking configuration. (§7.3.3.C.1)
- The amendment to Special Permit #302-21, which amends the previously approved site plan's parking configuration will not adversely affect the neighborhood. (§7.3.3.C.2)
- There will be no nuisance or serious hazard to vehicles or pedestrians created by the amendment to Special Permit #302-21. (§7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved in the amendment to Special Permit #302-21, which reconfigures the site's parking. (§7.3.3.C.4)

IV. Project Proposal and Site Characteristics

The petitioner is seeking an amendment to previously approved special permit. The amendment includes eliminating the previously approved below grade parking and reconfiguring the surface parking facility from the previously approved plans. The approved plans from 2021 show eight parking stalls within the below grade parking and eight parking stalls within the first floor of the approved mixed-use building for a total of sixteen parking stalls. With the elimination of the below grade parking and associated ramps and maneuvering areas, the site can accommodate fourteen parking stalls within the proposed surface parking facility.

Access to the surface parking will be maintained via a twelve-foot curb cut and a driveway that reaches its narrowest point at thirteen feet wide. This remains unchanged from the previously approved site plan. The driveway slopes downwards approximately three feet to the fourteen-stall surface parking facility. There will be a slight expansion of the parking area with a previously approved retaining wall at the rear and right property lines relocated closer to those property lines to accommodate the expanded parking area and downwards slope of the ramp leading to the parking.

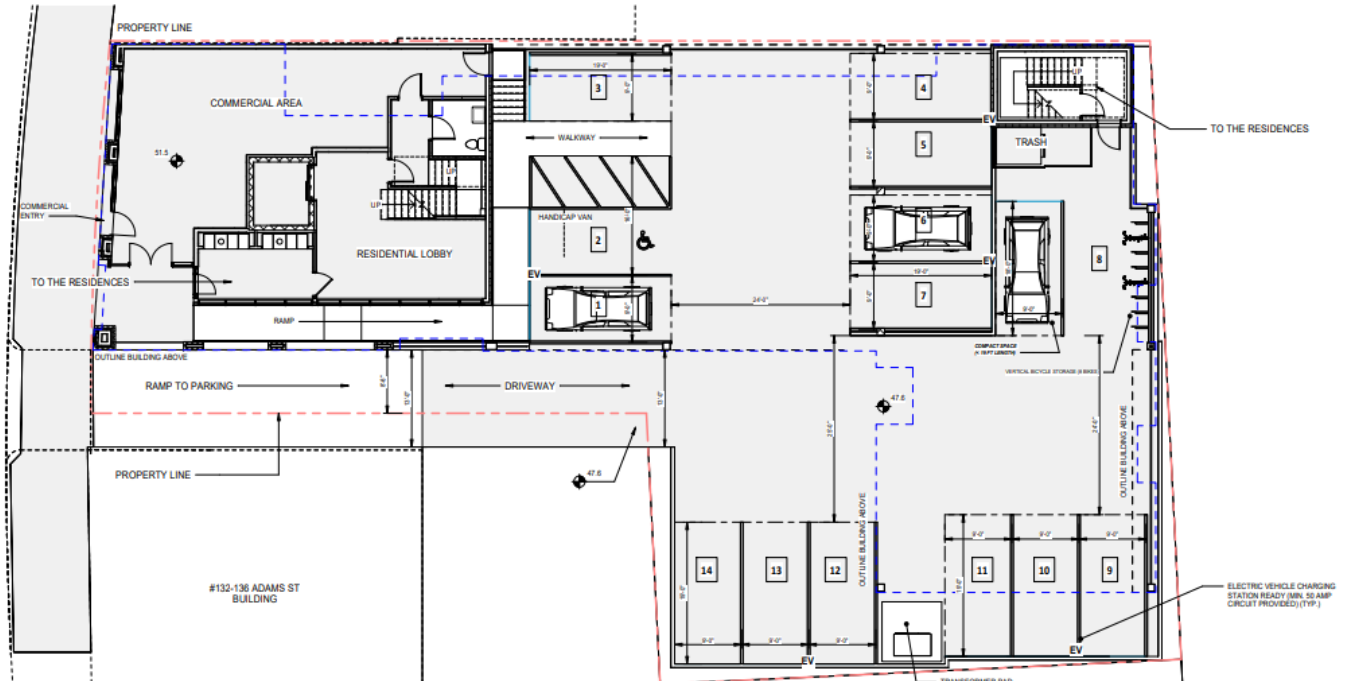
### Previously Approved First Floor Floorplan



Watertown Street

#132-136 ADAMS ST  
BUILDING

Proposed First Floor Floorplan



	Approved	Proposed
Below Grade/Basement (2021)	8	0
First Floor (2021) /Surface Parking (2024)	8	14
<b>Total</b>	<b>16</b>	<b>14</b>

With the proposed changes, the project proposes to reduce the overall parking count from sixteen parking stalls to fourteen parking stalls and retains a similarly sized bicycle storage area. Maneuvering aisle width will be 24 feet, removing the need for the relief granted under Special Permit #302-21 where the ramp from the lower to upper level spanned twenty feet. There will be six restricted end stalls whereas the previously approved plans appeared to contain ten restricted end stalls.

The previously approved plans showed a two-foot-tall retaining wall along the right and rear

property lines. An additional retaining wall is proposed along the left property lines. While top of wall (TOW) measurements were provided, there are no bottom of wall measurements to confirm the heights of these walls. They appear not to exceed two feet in height when taking into account the topographical lines on the survey, but the petitioner needs to confirm the wall heights using top and bottom of wall measurements.

There are no changes to the second or third floor proposed.

I. Interdepartmental Review

- A. Inclusionary Zoning: the petitioners must submit an Inclusionary Housing Plan for review and approval by Planning for compliance with Inclusionary Zoning Ordinance prior to obtaining a Building Permit. As the unit mix has not changed, the conditions from prior special permits will be carried forward accordingly.
- B. Engineering: Prior to the submitting for a building permit, the petitioners must submit an application for Engineering Site Plan Review prior to the issuance of any building permit.
- C. Historical: demolition is complete on the site and no further review is required.

II. Petitioner's Responsibilities

The petition is complete.

**ATTACHMENTS:**

- ATTACHMENT A:** Zoning Review Memorandum
- ATTACHMENT B:** Special Permit #302-21 Council Order
- ATTACHMENT C:** DRAFT Council Order

#481-24  
386-394 Watertown Street

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 amend Special Permit #342-24 to construct a four story mixed use building with 13 residential units and 14 at grade parking stalls with relief relative to parking and the overall site and building plans for the reasons given by the Committee, through its Chair, Councilor Andrea Kelley:

1. The specific site is an appropriate location for the proposed project and rezoning because it is a mixed-use project located in an area with a variety of uses in a village center. (§7.3.3.C.1)
2. The project as proposed will not adversely affect the neighborhood because it is a mixed-use project in a neighborhood that features a number of buildings that also have ground floor retail with housing above. (§7.3.3.C.2)
3. The project will create no nuisance or serious hazard to vehicles or pedestrians because the curb cut and vehicular access will remain the same as what was previously approved, and no new parking in addition to the 14 stalls previously approved is proposed. (§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 requirements is not in the public interest because the construction of seven additional parking stalls is inconsistent with the intent of the Mixed Use 4 (MU-4) district, which encourages pedestrian-oriented and compact development. (§5.1.13)
6. By allowing reduced lot area per unit, the proposed density creates a beneficial living environment for the residents because it will allow for the creation of three additional units. The project does not adversely affect the traffic on roads in the vicinity, and better achieves the purposes of this district than strict compliance with these standards because it will allow for an increase in residential units without adding further impervious surface or increasing the footprint of the building. (§4.2.2.A.2, §4.2.5.A.3)
7. The development that exceeds the maximum front setback of 10 feet with a reduced side setback does not create shadows or blocked views that have material and adverse effects on its surroundings because the tallest portion of the building is set back from the street, which helps mitigate the impact of shadows. The project supports pedestrian

vitality by allowing for a compact development with a reduced parking ratio and advances the purposes of the MU-4 district by allowing for development that allows for sufficient density and intensity of uses to support a diverse economic neighborhood. (§4.2.3, §4.2.5.A.4)

8. The proposed building with four stories and 45.5 feet in height is compatible in visual scale to its surroundings because the portion closest to the street is of a comparable height to other buildings nearby. It does not create shadows or blocked views that have material and adverse effects on its surroundings because the shadows will have a similar impact to adjacent buildings. It advances the purposes of the MU-4 district by providing a mixed-use building in a commercial area. (§4.2.3, §4.2.2.B.3, §4.2.5.A.2)
9. The requested waiver of the setback requirement for the portions of the building exceeding 40 feet in height does not create shadows or blocked views that have material and adverse effects on its surroundings because those taller portions of the building are set back far enough to not significantly impact shadows cast on the sidewalk and street. The project supports pedestrian vitality and advances the purposes of the MU-4 district by allowing for additional height to accommodate the residential and commercial uses in the building. (§4.2.5.A.4.c)

PETITIONER: JLM Realty Trust

LOCATION: 386-394 Watertown Street

OWNER: JLM Realty Trust

ADDRESS OF OWNER: 386 Watertown Street Newton, MA 02458

TO BE USED FOR: Mixed-Use Development with thirteen dwelling units and 890 square feet of commercial space

RELIEF GRANTED: Amendment of Special Permit #481-24 per §7.3.3 for the following relief:

- Site plan review
- Waive minimum lot area per unit
- Allow four stories
- Allow building height of 45.5 feet and FAR of 1.92
- Allow front setback greater than 10 feet
- Reduce side setback requirement
- Waive setback for portions of building over 40 feet
- Allow ratio of 1.25 parking stalls per unit
- Waive 7 parking stalls
- Allow restricted end stalls
- Allow reduced driveway width
- Waive perimeter screening requirements
- Waiver lighting requirements

ZONING: Mixed Use 4 district

The prior special permits for this property are Special Permits #201-17, #134-18, and #302-21, and 324-24. 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 Special Permit #381-24 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. Proposed Conditions Site Plan signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated 5/24/2024 and revised July 8, 2024.
  - b. Parking Schedule, prepared by Ron Jarek, Registered Architect, dated May 24, 2024.

- c. Architectural Plans, entitled “Park View Residences” 386-394 Watertown Street, signed and stamped by Ronald F. Jarek, Registered Architect, consisting of the following six (6) sheets, dated May 24, 2024 and submitted Oct 28, 2024:
  - i. Sheet SP.104 Roof Plan and Building Section
  - ii. Sheet SP.201 Front and Right Elevations
  - iii. Sheet SP.202 Left and Rear Elevations
- 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	2	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 EOHLC 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 install signalization measures for the residential building's parking garage of highly visible parking warning signs designed to increase awareness of potentially hazardous situations and to alert entering and exiting vehicles of any oncoming vehicle(s).

The petitioner shall provide evidence of signalization measures prior to the issuance of a building permit for this project.

17. 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. **\$9,388.50** at the issuance of any Building Permit for the Project.
  - b. **\$9,388.50** at the first dwelling unit certificate of occupancy (temporary or final) in the Project
18. 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).
19. 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.
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. 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.
22. 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.
23. The Petitioner shall comply with the Vibration Control Ordinance §5-23, as applicable to this project.
24. 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.
25. 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.
26. 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.
27. 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.
28. Snow shall not be stored on site.
29. 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.
30. 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 EOHLA.
  - 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.
31. 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 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.
32. 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.

33. Provided that all other requirements in Condition #31 are satisfied and the project is substantially complete, the Commissioner of Inspectional Services may in their discretion, issue one or more certificates of temporary occupancy for all or portions of the building prior to completion of final landscaping (including hardscape improvements).