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James Freas
Acting Director

PUBLIC HEARING/WORKING SESSION MEMORANDUM

DATE: April 29, 2016

MEETING DATE: May 3, 2016

TO: Land Use Committee of the City Council

FROM: James Freas, Acting Director of Planning and Development
Alexandra Ananth, Chief Planner for Current Planning

CC: Petitioner

In response to questions raised at the Land Use Committee public hearing, and/or staff technical reviews, the Planning Department is providing the following information for the upcoming continued public hearing/working session. This information is supplemental to staff analysis previously provided at the public hearing.

PETITION #97-16 **27 Waverly Avenue**

Request for Special Permit/Site Plan Approval to allow an association of persons in a common dwelling where inhabitants will share common living spaces, and to allow for waivers to the parking requirements.

The Land Use Committee (the "Committee") held a public hearing on April 12, 2016, which was held open so that the petitioner could respond to questions/concerns that were raised in the Planning Department's memorandum and at the public hearing by the City Council and the public. This memo reflects additional information submitted by the petitioner and additional analysis completed by the Planning Department.

Existing Use

The existing structure is classified as a two-family use by the City's Assessing Department. One unit consists of a two bedroom garden apartment with its own kitchen facilities although in practice those residents generally use the common area in the other unit. Two people currently live in this unit. The second unit is much larger and currently consist of a family of four (two adults and two children) and four other residents, which exceeds the zoning requirements by one resident. The residents in this unit all share common areas on the main floor.

The applicant is seeking to allow for a two unit association of persons which effectively encompasses the entire property. An association of person is defined in the City's zoning ordinance as a group of 5

or more persons 18 years of age or older, who are unrelated by blood, marriage or adoption; provided that an association of persons shall not be deemed to constitute a "family." A lodger is a person who occupies space for living and sleeping purposes without separate cooking facilities, paying rent, which may include an allowance for meals, and who is not a member of the housekeeping unit. Although associations of persons are distinguished as a defined use in the Newton Zoning Ordinance it appears that they are treated no differently under the building code than a single-family residential use as there is only one kitchen.

Organization

The cooperative living association (aka Enso) is organizing as a not-for-profit corporation and submitted their draft Articles of Organization and Mission Statement **(Attachment A)**. They also submitted drafts of their Membership Criteria and Occupancy Agreement **(Attachment B).**

Inspections

There are no State or local building code requirements that require periodic inspections of associations of persons or group homes, which are considered similar to a single family use under building code. Multi-family structures with more than three units, lodging houses and SRO's do require periodic inspections by the Building and Fire Departments. The Planning Department did spend a limited time researching how other municipalities regulate such uses but our search did not provide any particularly helpful information. The Planning Department would suggest that should the City Council choose to approve this special permit the permit be limited to an association of persons which have an ownership stake in the not-for-profit entity, with a maximum occupancy cap, in order to differentiate this project from a lodging house where residents pay rent but are not part of a legally recognized organization. Because associations of persons require a special permit the Planning Department is confident that future associations will be thoroughly considered on a case by case basis so as not to be detrimental to the surrounding neighborhood. It may also be possible to condition the special permit on the existence of this association of persons at the site, so that if the organization is dissolved the special permit does not run with the land and the house would revert back to a two-family residence.

Parking

In the Planning Department's April 8th Public Hearing Memorandum we raised concerns with the number of parking stalls in the front setback. The petitioner has since agreed to abandon their proposal to add a parking area on the south side of the house and will extend the driveway on the north side of the house into the rear yard and add parking for up to two additional vehicles.

ATTACHMENTS:

Attachment A: Draft Articles of Organization and Mission Statement
Attachment B: Draft Membership Criteria and Occupancy Agreement
Attachment C: Draft Board Order

Filing Fee: $35.00

Attachment A

Examiner

The Commonwealth of Massachusetts

William Francis Galvin
Secretary of the Commonwealth
One Ashburton Place, Room 1717, Boston, Massachusetts 02108-1512

ARTICLES OF ORGANIZATION

(General Laws, Chapter 180)

Name Approved

ARTICLE I

The exact name of the corporation is:

ENSO COOPERATIVE, INC.

ARTICLE II

The purpose of the corporation is to engage in the following activities:

THE CORPORATION SHALL BE A PUBLIC INTEREST NOT-FOR-PROFIT CORPORATION. THIS SHALL BE A CORPORATION WITH MEMBERS. ALL MEMBERS IN GOOD STANDING (AS DEFINED IN THE BY-LAWS) SHALL BE ELIGIBLE TO VOTE UPON ANY MATTER.

PURPOSES:
THE CORPORATION IS FORMED AND SHALL BE OPERATED EXCLUSIVELY FOR THE FOLLOWING PURPOSES:
(A) PROMOTE THE MUTUAL INTERESTS AND NEEDS OF THE RESIDENTS OF THE COOPERATIVE WITH THE GOALS OF AN AFFORDABLE, SAFE, STABLE, AND SECURE ENVIRONMENT IN WHICH TO LIVE AS RESIDENTS.
(B) TO INITIATE, COORDINATE, AND OTHERWISE PARTICIPATE IN EDUCATIONAL EFFORTS AND PROGRAMS FOR THE EDUCATION OF ITS MEMBERS AND OTHERS IN THE PHILOSOPHY, PRINCIPLES, AND PRACTICES OF COOPERATIVES.
(C) TO PROMOTE THE VALUES OF THE ORGANIZATION THROUGH EDUCATIONAL PROGRAMS, PARTNERSHIPS WITH OTHER COOPERATIVES AND OTHER ORGANIZATIONS WITH SIMILAR VALUES.
(D) ACQUIRE, OWN, AND OPERATE SHARED HOUSING IN NEWTON, MA.

THE PUBLIC OR QUASI-PUBLIC OBJECTIVE IS TO CONTROL RENTAL COSTS, AND PRESERVE THE AFFORDABILITY OF THE COMMUNITY FOR INDIVIDUALS AND FAMILIES WITHIN THE PURPOSES ALLOWED UNDER CHAPTER 180. THIS WILL PROMOTE THE SOCIAL WELFARE AND LESSEN THE BURDENS OF GOVERNMENT TO DEVELOP AND FINANCE AFFORDABLE HOUSING.

C ☐
P ☐
M ☐
R.A. ☐

P.C.

Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on one side only of separate 8 1/2 x 11 sheets of paper with a left margin of at least 1 inch. Additions to more than one article may be made on a single sheet so long as each article requiring each addition is clearly indicated.

ARTICLE III

A corporation may have one or more classes of members. If it does, the designation of such classes, the manner of election or appointments, the duration of membership and the qualification and rights, including voting rights, of the members of each class, may be set forth in the by-laws of the corporation or may be set forth below:

THE CORPORATION SHALL HAVE ONE CLASS OF MEMBERS. A PERSON WHO SATISFIES THE FOLLOWING CONDITIONS CONSTITUTES A MEMBER: 1) RESIDES PERMANENTLY IN THE COMMUNITY 2) IS OVER THE AGE OF 18 YEARS; AND 3) PAYS THE MEMBERSHIP FEE ESTABLISHED BY THE MEMBERS IN THE BY-LAWS, WHICH MAY NOT EXCEED FIVE THOUSAND ($5,000.00) DOLLARS; AND 5) SIGNS A MEMBERSHIP OCCUPANCY AGREEMENT IN THE FORM APPROVED BY THE BOARD OF DIRECTORS FOR MEMBERS.

ARTICLE IV

**Other lawful provisions, if any, for the conduct and regulation of the business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or members, or of any class of members, are as follows:

1. THE CORPORATION SHALL HAVE PERPETUAL EXISTENCE. 2. MEMBERS MAY MAKE, AMEND OR REPEAL THE BY-LAWS OF THE CORPORATION, AS LIMITED BY LAW, UNDER PROCEDURES ESTABLISHED IN THE BY-LAWS. 3. A PETITION FOR DISSOLUTION IN ACCORDANCE WITH CHAPTER 180 SECTION 11A SHALL CONSTITUTE THE SOLE METHOD FOR THE VOLUNTARY DISSOLUTION OF A CHARITABLE CORPORATION AND SHALL BE AUTHORIZED BY VOTE OF A 2/3RDS MAJORITY OF THE CORPORATION'S MEMBERS ENTITLED TO VOTE THEREON. IF THE CORPORATION HAS NO REMAINING ASSETS, THE PETITION FOR DISSOLUTION SHALL BE SUBMITTED TO THE DIVISION OF PU[illegible]

II

Articles of Organization.

fice of the corporation *in Massachusetts* is:

officer of the corporation is as follows:

DDRESS	POST OFFICE ADDRESS
on MA	
on MA	
on MA	

ARTICLE V

The information contained in Article VII is not a permanent part of the

a. The street address (post office boxes are not acceptable) of the principal o

27 WAVERLY AVE NEWTON, MA 02458

b. The name, residential address and post office address of each director and

	NAME	RESIDENTIAL A
President:	Alice Schaefer	27 Waverley Ave Newt
Treasurer:	Katherine Fisher	27 Waverley Ave Newt
Clerk:	Frederick Dalzell	27 Waverley Ave Newt
Directors: (or officers having the powers of *directors)*		

THE COMMONWEALTH OF MASSACHUSETTS

ARTICLES OF ORGANIZATION

(General Laws, Chapter 180)

I hereby certify that, upon examination of these Articles of Organization, duly submitted to me, it appears that the provisions of the General Laws relative to the organization of corporations have been complied with, and I hereby approve said articles; and the filing fee in the amount of $_____ having been paid, said articles are deemed to have been filed with me this _____ day of _____ 20 ____ .

Effective date: _____

WILLIAM FRANCIS GALVIN

Secretary of the Commonwealth

TO BE FILLED IN BY CORPORATION

Contact information:

_____

_____

_____

Telephone: _____

Email: _____

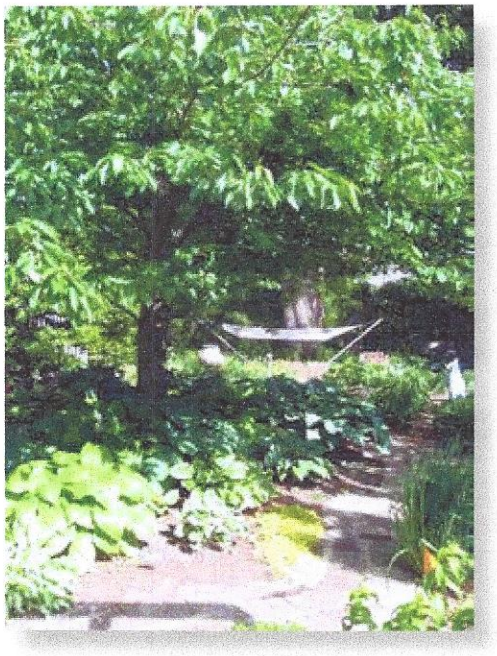
A copy this filing will be available on-line at www.state.ma.us/sec/cor once the document is filed.

OUR MISSION

Enso House is a community dedicated to intentional living and cooperative housing. Our mission is to live together in a multi-family, multi-generational, multi-faith household that gathers the collective wisdom and questing spirits of all ages to enrich the lives of all members. Together we explore projects in sustainable living and examined lives.

OUR VISION

We live with one another family-style, sharing common living facilities, meals, gardening, conversation, ideas, inspiration and fellowship. Believing that multi-generational communities blend the perspective and insight of old and young alike, we gather members ranging in age from youth to senior years – and we hope for young children!



Seeking to provide affordable housing and living for all members, we share our house, its appliances and utilities, common food staples, internet, cars and other forms of transportation.

Seeking to enrich and empower each other, we share insights, joy, sorrow, solace, comfort, understanding, encouragement, humor, perspective and wonder.

We offer affordable community with intergenerational exchange in which the elderly are an integral part of the household.

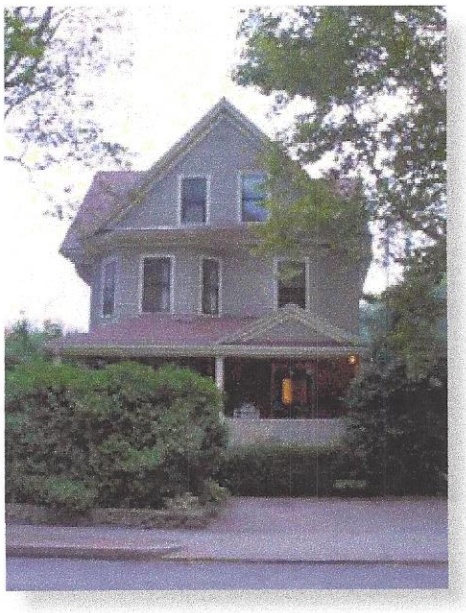
We open our house to offer safe, secure housing and loving belonging for a member with bipolar disorder.

We make choices that reduce our collective impact on the environment and increase the sustainability of our footprint.

Seeking a democratic way of life, every member has a voice.

We cherish the life of the mind and the warmth of the human spirit. We believe in independent ideas and interdependent living.

LIFE IN ENSO HOUSE



Housemates share a ten bedroom Queen Anne style Victorian house in Newton, MA. We have a shared meal once a week and more often as schedules of housemates allow. Our chore chart includes normal cleaning tasks and we have coordinators who facilitate the organization and performance of things like building community; gardening, light maintenance, sustainability, food plans and ideas, beauty and order as well as strategic and long term planning.

We have a house meeting once a week, run by consensus, where we check in with each other, share our joys and struggles and discuss systems of the house. In addition we also have work days to care for our old house three times a year.

Living in an intentional community is a powerful way to support one another as we each move through different stages of life.

HOW WE OPERATE

ENSO HOUSE RESIDENT RESPONSIBILITIES

- Attend house meetings, workdays, and annual membership meeting
- Pay rent and other expenses punctually
- Respect the rules and agreements of the Cooperative
- Practice direct and open communication
- Contribute weekly to house-related chores and activities
- Play a role in supporting and building our extended family of neighbors and fellow co-opers

ENSO HOUSE MEMBERSHIP

The current residents of the house will form the membership for Enso House upon the purchase of the house by Enso Cooperative. We have a written policy for the application process and the decision-making process when seeking replacement members. This policy entails a written application, a visit to the house, with a shared meal, and an interview with members of the household. This process will be employed to fill future vacancies as housemates transition in and out of Enso House.

MEMBERSHIP STATUS

Current Membership refers to everyone who enters into a Terms and Conditions Agreement with Enso Cooperative, lives in Enso House, is approved by a vote of the Current Members at a Membership Meeting, and pays a membership fee along with first and last months' rent. When a member leaves the membership fee is refundable pending in inspection of their room(s). Powers of Current Membership include:

- Election of the Board of Directors
- By-Law Amendments
- The Power to Call Referenda
- Evaluation of the Board of Directors
- Control over Significant Property Decisions

GOVERNANCE

The Board of Directors of Enso Cooperative will consist of between seven and eleven members. Up to [four] board members will be community trustees. These board members will not live in the house, but provide expertise not necessarily available from among the membership of Enso House. The board will be elected by the membership of Enso Cooperative at the annual Meeting to hold office for a period of one year. Detailed criteria relating to the powers and processes of the board are outlined in the by-laws of Enso Cooperative, which are attached at Appendix C.

Attachment B

ENSO HOUSE MEMBERSHIP
(DRAFT)

SELECTION PROCESS

A group of 3-5 current members will be responsible for updating and implementing the process of member selection. This group determines the timeline for outreach, applications/interviews, and decision-making. New members are eventually chosen solely by consensus of the current members.

Outreach and Advertising:Advertisements or flyers for new members shall be distributed to the following:

- Boston Co-op Network Listserv
- Craigslist, Facebook
- Flyers to partner organizations
- Flyers to area churches and neighborhood groups

Applicants will be asked to give a statement of interest answering why they are interested in living in the Enso House Co-op. The goal will be to interview as many applicants as possible. Interviews last 30-45 minutes. Applicants will be also asked to visit the house for a dinner or other community event.

CRITERIA

Enso seeks members who will be actively engaged in the Co-op and its mission. Each member becomes an owner/occupant of the house. Therefore, we are looking for members who will participate enthusiastically in Cooperative living. Applicants must be willing and able to share the house's common spaces and join in the group life of the house, including committing to house obligations such as cleaning and maintenance, and joining co-op activities.

Applicants prepared to make long-term commitments to membership and active participation in the Co-op will be favored over those who are not.

Applicants who are able to demonstrate a special interest in living in the Co-op, the neighborhood and the larger Newton community may be favored over those who are not.

Applicants prepared to commit to environmentally sustainable living and to minimizing the carbon footprint of the house (e.g., through measures such as car sharing, cycling, public transportation) will be favored over those who are not.

Applicants who hold previous experience with co-ops or other forms of resident self-management may be favored over applicants who do not.

Only those applicants specifically, expressly approved by the Co-op are permitted to live in the house.

Current co-op member residents in good standing will be given preference over outside applicants for relocation to an open unit.

The co-op will try to match family size to unit size within the house's rooms. Applicants who make the best use of available space will be favored over those who do not.

The co-op will not invite any undergraduate college students to become members unless they are joining the co-op as part of a family unit.

Applicants with an established, documented history of paying rent and other financial obligations on time may be favored over those who do not. Applicants are required to disclose any prior evictions from living situations. The co-op reserves the right to deny application on these grounds.

Applicants are required to disclose illegal drug use, conviction of any felony, and any history of violent behavior. The Co-op reserves the right to deny application on these grounds.

In choosing between two similarly qualified applicants, the Co-op may give preference to applicants whose skills would particularly benefit the Co-op.

Enso House does not discriminate on the basis of race, sex, gender/sexual orientation, faith, national origin, belief system or ages and stages of life. Enso House seeks to create a diverse, multigenerational, tolerant living community.

ENSO COOPERATIVE, INC.

MEMBER OCCUPANCY AGREEMENT

DATE:_____

This membership Agreement (the "Agreement") is a lease of room number _____(the "Room"), located _____ in a building numbered 27-29 Waverley Ave., Newton Massachusetts (the "House"), together with the right to use, in common with other members, the common spaces of the House. The owner of the House is Enso Cooperative, Inc. ("ENSO"), whose address is 27 Waverley Ave., Newton Massachusetts 02458.

The Member(s) is/are _____

Enso and the Member agree that each of them has various rights and duties, and that this Agreement is subject to certain conditions, as follows:

1. **TERM**: Upon payment of the rental herein, and upon compliance with the other terms of this agreement, the Bylaws of the Corporation, and the Community Rules established by the Members, all as they may be amended from time to time, the Member shall have a perpetual right to occupy said room. If Member intends to terminate the Agreement and Membership, Member shall provide two months written notice to the Corporation.
2. **RENT**: On or before the first day of every month, in advance, the Member must pay the monthly rent which is $_____. The room rent may be increased according to the Bylaws, with a thirty (30) day written advance notice.
3. **HEAT, UTILITIES, AND FOOD COSTS**: ENSO will furnish all required heat, hot water, gas and electricity to the House, in quantities as reasonably determined by ENSO. The Member will share utility payments and food costs pro rata with other members of the House, as mutually decided by the House members. Utility payments and food costs shall be billed the Member by ENSO monthly and shall be payable by the Member within five (5) days of the Member's receipt of the bill. The Member shall not suffer the gas, water, or utility service furnished by ENSO to be wasted.
4. **MEMBER INTERESTS**: As a member of ENSO and occupant of the House, the Member owns a membership share in ENSO and ENSO shall own corporately the House. The Member shall acquire and hold a member share in ENSO under the following terms and conditions:
   (1) The shall pay for a member share in the amount of five thousand dollars ($5,000) upon move-in or earlier in agreement with ENSO.
   (2) The Member agrees that the member share is not a security deposit, last month's rent, or prepayment of rent, and may be used by ENSO in order to conduct the business of ENSO for purpose in accordance with its Bylaws.
   (3) In the event of financial hardship, the Member may request a payment plan option with a maximum of two years to pay the full member share.
   (4) Upon the termination of this Membership Agreement ENSO shall reimburse the Member the full amount of the member share less any amount due from the Member to ENSO for any reason, including unpaid rent or any repair or other extraordinary maintenance expenses that ENSO has incurred as a result of the Member's residence during the TERM.

(5) The Member may not transfer their member share, and such share may not be bought or sold by persons not a member of ENSO.

5. **MEMBERSHIP RIGHTS & RESPONSIBILITIES**: The Member recognizes and agrees that each member shares the responsibility with other members of ENSO to maintain and oversee the functioning of the House. Every current member of ENSO has the same rights and obligations, and special provisions will not be made for any individual member under this Agreement.

Membership rights and privileges shall include, but not be limited to, the following:

(1) The Member shall participate directly in the operation of the House and directly participate in the decision-making process for ENSO in accordance with the Bylaws.
(2) The Member shall comply with all rules and decisions made by the members of the House and rules and decisions of ENSO.
(3) The Member shall do their share of whatever work is needed to keep the House clean, in good repair, and operating efficiently.
(4) The Member shall work with other members in making decisions and shall use their best efforts to create a pleasant living environment in the House.
(5) The Member shall not keep in the House any item of a dangerous, flammable, or explosive character that might unreasonably increase the danger of fire or explosion at the House or that might be considered hazardous or extra hazardous by any insurance company of the City of Newton.

6. **ALTERATIONS AND INSTALLATIONS**: The Member is permitted to arrange furniture in the Room as the Member wishes. At no time may the Member install anything that may not be easily removed without lasting damage. No washing machine, air-conditioning unit, space heater, clothes dryer, antenna, cooking apparatuses, or similar type of equipment can be installed or operated in the Room without ENSO's written permission. Waterbeds are likewise prohibited. The Member may not place any object on an outside windowsill or hang or shake anything outside the Room.
7. **CLEANLINESS**: The Member must keep the Room and shared spaces in the House in a clean and sanitary condition.
8. **DELAYS**: It is possible that ENSO may not be able to let the Member move into the Room when scheduled. The scheduled date for the Member to move into the Room is _____. If the Member is not permitted to move into the Room on said date, the Member will not owe rent or utility charges for the Room for the period prior to the date when ENSO lets the Member move into the Room, and the Member will have no claim against ENSO by reason of such delay. If the Member has not been permitted to move into the Room by the date that is thirty (30) days after the date stated above, either party may terminate this Agreement by notifying the other party in writing seven (7) days in advance, notwithstanding the provisions of Section 19.

If the Member has not moved into the House within five days after the start of the Term under this Agreement without notice to ENSO, ENSO has the right, in its sole discretion, to terminate this Agreement. Upon termination of the This Agreement for failure to enter the House in a timely

manner, ENSO shall reimburse the Member's member share in accordance with Section 1(4) above and this Agreement shall be of no further force or effect.

9. **ACCESS:** In order to get to and from the Room, the Member will use passageways, stairways, and hallways in and around the House. These areas cannot be used for any other purpose, including the temporary storage of personal items that block anyone's ability to enter the House or another part thereof.
10. **ANIMALS:** No dogs, cats, birds, or other animals may be kept in the Room or allowed anywhere else in the House without ENSO's permission, such permission to be granted or withheld in ENSO's sole discretion. In the event that permission is granted for a particular animal, ENSO reserves the right to revoke any animal's permission to remain in the House, and upon notice of such revocation of previously granted permission, the Member will have seven (7) days to remove such animal from the House.
11. **PARKING AND CAR SHARING:** No parking is allowed on ENSO's property without ENSO's permission. The House only has parking available for five (5) vehicles and it is available on a first come basis. If five (5) vehicles are currently using the parking spaces at the time of this Agreement then the Member is prohibited from having a car. Car sharing is of course allowed for personal and house use. The current reimbursement is $.50/mile to the owner of the car. For personal use, reimbursement goes directly to the owner. For ENSO use (like grocery shopping) reimbursement is paid by the House to the owner. Any costs incurred in an accident (not covered by insurance) are paid by the driver at the time. The car owners must make their insurance information available. Owner reports the total number of house miles used each month son they can be reimbursed.
12. **CONSIDERATION FOR OTHERS:** The Member must be considerate and respectful of other members living in the House. The Member will take care to conduct all activities in a manner that will not disturb other members of the House. Neither the Member nor the Member's invitees or licensees shall make or suffer any unlawful, noisy, or otherwise offensive use of the Room or the House, nor commit or permit any nuisance to exist thereon, nor cause damage to the Room or the House, nor create any substantial interference with the rights, comfort, safety or enjoyment of other members of the same or any other room.

    The Room can be used only as a residence and no business activity of any nature may take place in the Room or the House.

13. **REPAIR AND MAINTENANCE**: Both ENSO and the Member have responsibility for the repair and maintenance of the House. If ENSO permits the Member to install the Member's own equipment or fixtures, the Member must properly install and maintain them. The Member must exercise reasonable care to make sure that all facilities located in the House outside the Room are properly used and operated. In general, the Member will always be responsible for any repairs resulting from misuse by the Member. Whenever the Member uses the Room or any other part of the House, the Member must exercise reasonable care to avoid damage to the property and fixtures. The Member

will repair any damage caused by the negligence or intentional misconduct of the Member or the Member's invitees or licensees.

14. **ENTRY BY ENSO**: ENSO may enter the Room for the following purposes: (a)to inspect the Room or make repairs, (b) to show the Room to other persons who may be interested in buying the House or making a mortgage loan to ENSO, or renting the Room after the Member has moved out, or (c) any other purpose permitted by law. If ENSO ever notices that the Member is not properly maintaining the Room or is otherwise failing to comply with the Member's obligations under this Agreement, ENSO has the right to correct the problem and charge the Member for any reasonable cost which ENSO incurs in doing so. The Member must reimburse ENSO for these costs within ten (10 day s after ENSO bills the Member for such costs.
15. **LOCKS AND KEYS**: ENSO must maintain any required locks on the main entry door of the House as well as every exterior entry door and exterior window of the House. The Member may not add a lock to the door to the Room without ENSO's consent. The Member may not change or replace any other lock or add any other new locks unless ENSO gives permission. Whenever a lock is changed or replaced, or a new lack is added, a duplicate must promptly be given to ENSO.
16. **OCCUPANCY, TRANSFER, AND SUBLEASES**: The Room may be occupied only by the Member. In addition, the Member cannot transfer any rights under this Agreement to any other person, nor can the Member sublease the Room or any part of it to any other person, without the written permission of ENSO.

    Although the Member is allowed to have guests and other temporary visitors, the Member must in all cases abide by the provision of this Section unless the Member has received permission to the contrary from ENSO. ENSO may revoke the Member's privilege to have guests and temporary visitors at any time and for any reason, including determinations based on the amount of time the visitor has stayed in the House or conduct in violation of this Agreement.

17. **CASUALTY AND EMINENT DOMAIN**: If 33 1/3 % or more of the Room or House is damaged by fire or other casualty, or taken by eminent domain, ENSO may terminate this Agreement within thirty (30) days after the event by giving notification to the Member fifteen (15) days in advance. If the casualty or taking makes the Room or Home substantially unsuitable for human habitation, rent will be equitably adjusted, and if the Room or House is not restored to a condition substantially suitable for human habitation within sixty (60) days following the casualty or taking, the Member may terminate this Agreement within thirty (30) days thereafter by notification to ENSO fifteen (15) days in advance, notwithstanding the provision of Section . In the case of taking, the Member may make a claim against the responsible governmental body in order to collect applicable damage, so long as no amount received by the Member diminishes the amount to which ENSO is entitled. In the case of a fire or other casualty, the Member must look to the Member's own insurance company if the Member's personal property is damaged. ENSO shall have no obligation to reimburse the Member for any damage to the Member's personal property result from a casualty event.
18. **RULES AND REGULATIONS**: ENSO may from time to time issue rules and regulations for the benefit, safety, comfort , and convenience of all occupants (Members) of the House. Such rules and

regulations may deal with matters such as safety, cleanliness, care and orderly conduct, both in the Room and in the House. The Member will be provided with a copy of these rules and regulations. The Member must comply with these rules and regulations as if they were a part of this Agreement.

19. **MEMBER'S RESPONSIBILITY**: The Member is responsible for the conduct of any and all invitees and licensees who are invited or allowed by the Member to be at the House. The Member must make sure that these persons conduct themselves properly and do not violate any provisions of this Agreement.
20. **DEFAULT**: If the Member does not comply with any obligation imposed on the Member under this Agreement, or if the Member files for, admits being, or is declared to be bankrupt or insolvent, or if the Member appears (in ENSO's reasonable judgment) to have abandoned the Room, ENSO may terminate this Agreement by notification to the Member and exercise any other remedies which are authorized by law. The termination will become effective seven (7) days after the notice is given, except where the Member has failed to pay rent, in which case the termination will become effective fourteen (14) days after the notice is given. Any termination under this section shall be without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of any of the said terms, conditions, covenants obligations or agreements.
21. **TERMINATION**: Whenever this Agreement terminate, the Member must immediately move out of the Room and the House and remove all of the Member's personal property. The Member must deliver all key to ENSO and must leave behind all property belonging to ENSO. The Room and all facilities in the House must be clean and sanitary and must be in a condition which conforms to the Member's repair and maintenance responsibilities under this Agreement.
22. **EVICTION**: If this Agreement is terminated, ENSO will be entitled to start a suit in court to have the Member evicted. If this happens and ENSO is successful, a sheriff or constable will be able to forcibly remove all persons and personal property from the Room and House. ENSO will have responsibility for the official actions of the sheriff or constable.
23. **DAMAGES**: If this Agreement terminates because of a default of the Member, ENSO may take advantage of any remedy which is authorized by law, and may combine any and all available remedies in order to make sure that ENSO is fully compensated for the Member's default.
24. **REMOVAL OF GOODS**: The Member covenants and agrees that if ENSO shall remove Member's good or effects, pursuant to the terms hereof or of any Court order, ENSO shall not be liable or responsible for any loss of or damage to the Member's goods or effects and ENSO's act of removing such goods or effects shall be deemed to by the act of and for the account of the Member.
25. **NOTICES**: Whenever this Agreement requires or allows notices to be given by either party to the other the notice must be in writing. If the notice is from ENSO to the Member, the notice will be assumed to have been given if sent by certified or registered mail to the House. Alternatively, notice may be given by leaving it at the House with the Member or nay responsible person living with the Member in the House. ENSO may use any other method of giving notice which permitted by law, including designating an email address for written communication. If the notice is from the Member to ENSO the notice will be assumed to have been give if sent by certified or registered mail to the following address or at such other address as ENSO may designate:

Enso Cooperative, Inc., 27 Waverley Ave., Newton, MA 02458

ENSO may also designate an email address to be used for written communication.

26. **PERMISSIONS AND INVAlIDITY**: ENSO's waiver of one breach by the Member of any term, condition, covenant, or obligation of this Agreement shall not be considered to be a waiver by ENSO of that or any other term, condition, covenant or obligation or of any subsequent breach thereof. ENSO will never be assumed to have given permission to the Member under the terms of this Agreement or to have relieved the Member from any the Member's obligations, unless ENSO has made this intention clear in advance and in writing. If any provision of this Agreement is declared to be invalid on a particular occasion, this Agreement will still be in effect to the fullest extent permitted by law.
27. **PERSONAL LIABILITY**: No individual trustee, beneficiary, shareholder, director, partner, or member of ENSO will be personally responsible to pay money damages for failure to comply with any of the obligation of ENSO. The Member will have rights only against the land and building comprising the House in the event of a claim or demand arising out of this Agreement.
28. **ATTACHED FORMS**: If any forms (such as Rent Receipt or Unit Condition Statement) are attached this Agreement, they are to be considered a part of this Agreement for all purposes.
29. **LEGAL EFFECT**: Although this agreement has attempted to express the rights and duties of the parties in simple language understandable to a layperson, the Member understands that this Agreement will be treated as a formal legal instrument under seal and will be binding on all the Member's successors and assigns and all persons having any future dealing with ENSO's property. If more than one copy is signed, all copies will be equally effective. If more than one person is named as a Member, ENSO may hold any such person legally responsible for all the obligations of the Member under this Agreement.
30. **DEFINITIONS**: The words "ENSO" and "Member" as used herein shall include their respective heirs, executors, administrators, successors, representatives and assigns , agents and servants. If more than one party signs as a Member hereunder, the covenants, conditions and agreements herein of the Member shall be the joint and several obligations of each such party.

For ENSO COOPERATIVE, INC.

_____

Signature

_____

Name Date

_____

Title

For the Member

_____

Signature

_____

Name Date

Attachment C

#97-16
27-29 Waverly Ave.

CITY OF NEWTON
IN CITY COUNCIL

May 16, 2016

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 two unit association of persons in a common dwelling where inhabitants of both units will share common living spaces, and to waive parking requirements, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Marc Laredo:

1. The site is an appropriate location for the proposed two unit association of persons in a common dwelling and encompassing the entire property as the proposed use is located in a multi-residence zone and the use will not alter the exterior of the structure which has a large number of existing bedrooms. (§3.4.1. and §7.3.3.C.1.)
2. The proposed waiver of up to 15 parking stalls and to allow parking within five feet of the street is appropriate as literal compliance is impracticable due to the nature of the use, or the location, size, width, 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. The waiver as to the number of stalls required is appropriate as the site is well located with respect to transportation options and the cooperative living association intends to seek residents that choose to live without a car. Three of the stalls that are located in the front setback have existed for many years with no known hazards to vehicles or pedestrians. (§5.1.4., §5.1.7.A., and §5.1.13.)
3. The association of persons at the site is organizing as a not-for-profit corporation and submitted drafts of their Articles of Organization, Mission Statement, Membership Criteria and Occupancy Agreement. The Council finds that the association intends to live together as a family sharing common living and kitchen facilities. Members of the association participate in weekly meetings, contribute to house and property related chores and activities, and share ownership interests in the association.

PETITION NUMBER: #97-16

PETITIONER: Alice Schaefer

DRAFT

LOCATION:	27-29 Waverly Avenue, on land known as Section 71, Block 36, Lot 9, containing approximately 10,480 square feet of land
OWNER:	Alice Schaefer
ADDRESS OF OWNER:	27 Waverly Avenue Newton, MA
TO BE USED FOR:	An association of persons in a common dwelling
CONSTRUCTION:	Wood frame
EXPLANATORY NOTES:	§3.4.1, to allow an association of persons in a common dwelling; §5.1.4 and §5.1.13, to waive up to 15 parking stalls; §5.1.7.A and §5.1.13, to allow parking within five feet of the street.
ZONING:	Multi-Residence 1 district

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 Site Plan, signed and stamped by Frank Iebba, dated 8/31/2014 and Revised 12/20/15
    b. Architectural Plans, signed and stamped by Ronald F. Jarek, Architect, dated 9/17/2014 and consisting of two sheets
        i. Plans, A-1
        ii. Plans A-2
2. No more than 20 residents (including children) shall reside in the structure at any one time.
3. There shall be no more than five parking stalls on the property.
4. All members of the association of persons shall have an ownership stake in the not-for-profit corporation.
5. This special permit is valid so long as the (an?) association of persons, as defined by the Newton Zoning Ordinance, exists on this site. If the not-for-profit association of persons is dissolved the house shall revert to a single- or two-family use consistent with the zoning in place at the time.

6. Prior to the issuance of a building permit the petitioner shall submit a revised parking layout plan and landscape screening plan to the Director of Planning and Development for review and approval. All landscape screening of the parking areas shall be maintained in good condition and replaced on an annual basis as needed.
7. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:
    a. Recorded a certified copy of this board order for the approved Special Permit/Site plan with the Registry of Deeds for the Southern District of Middlesex County.
    b. Filed a copy of such recorded board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
    c. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the final site plan.
    d. Submitted a revised parking layout plan and planting plan to the Director of Planning and Development for review and approval.
8. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
    a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect certifying compliance with Condition #1.
    b. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.