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## PUBLIC HEARING MEMORANDUM

Public Hearing Date:	June 25, 2019
Land Use Action Date:	September 10, 2019
City Council Action Date:	September 16, 2019
90-Day Expiration Date:	September 23, 2019

DATE: June 21, 2019

TO: City Council

FROM: Barney Heath, Director of Planning and Development  
Jennifer Caira, Chief Planner for Current Planning  
Neil Cronin, Senior Planner

SUBJECT: **Petition #179-19**, for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Council Order #96-17 to remove a condition prohibiting commercial banks on site at **845 Washington Street**, Ward 2, Newtonville, on land known as Section 201, Block 29, Lots 10, 11, 12, 13, 14, 16, 19, 20, 21, 22, containing approximately 123,956 sq. ft. of land in a district zoned Business 1 and Business 2. Ref: §7.3.3, and §7.4, of Chapter 30 of the Newton Revised Zoning Ordinance, 2015.

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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 Public Hearing/Working Session.



**845 Washington Street**

### **EXECUTIVE SUMMARY**

The subject property consists of approximately 123,956 square feet (2.85 acres) of land in the Mixed Use 4 (the “MU-4”) and Business Use 2 zones in Newtonville. The City Council approved a request to rezone a portion of the site to the MU-4 zone (Council Order #95-17) and a special permit to construct a mixed use development consisting of three interconnected buildings incorporating 140 dwelling units and approximately 47,000 square feet of commercial space known as Washington Place (Council Order #96-17). The special permit prohibited the petitioner from leasing commercial space within the development to commercial banks. The petitioner is seeking to lease to a bank use; therefore, the petitioner requires a special permit to amend Council Order #96-17.

The petitioner is offering a new condition requiring that at least 10,000 square feet of rentable space be reserved for non-formula businesses. The Planning Department is supportive of this effort but suggests that the petitioner be required to adopt staff’s approach to formula businesses. Additionally, staff suggests that the proposed condition be revised to include non-formula restaurant uses, and that the 10,000 square feet be reserved to the ground floor only, i.e. no basement space.

#### I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the amendments to Council Order #96-17. (§7.3.3.C.1.)
- The site, due to the amendments to Council Order #96-17), as developed and operated will adversely affect the neighborhood. (§7.3.3.C.2.)
- There will be no nuisance or serious hazard to vehicles or pedestrians because of the amendments to Council Orders #96-17. (§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.)

#### II. PROJECT DESCRIPTION AND ANALYSIS

##### A. Land Use

The principal use on site is and will remain a mixed use development incorporating commercial space and dwelling units.

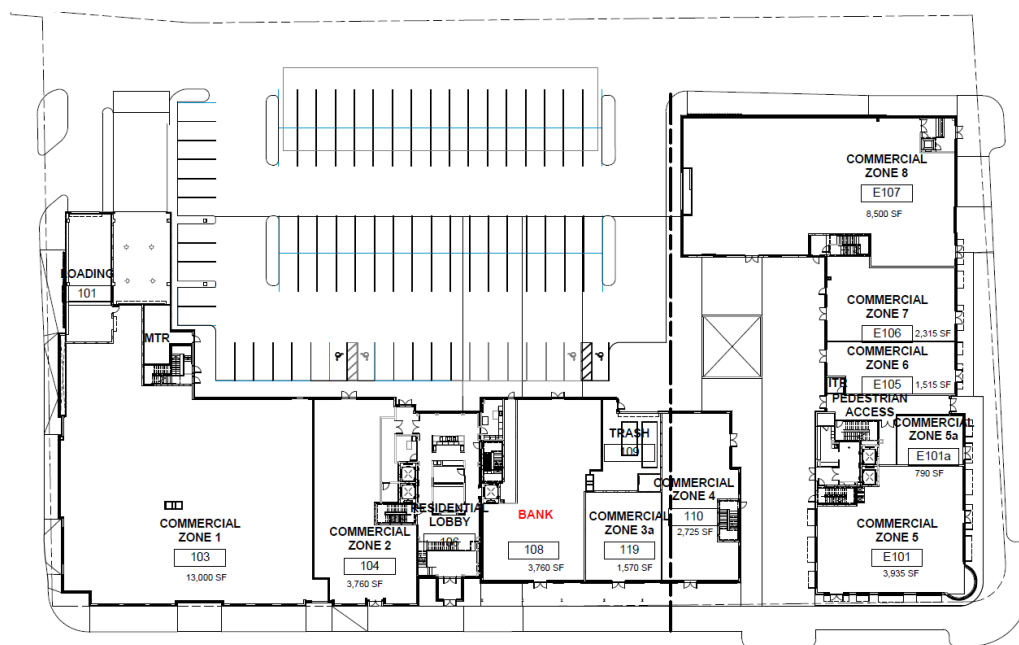
B. Site and Building Design

This petition affects neither the site nor the building design.

C. Bank Condition

Council Order #96-17 prohibits the petitioner from leasing space to commercial banks. 28 Austin Street has a similar condition that also includes a prohibition on nail salons. The petitioner is proposing to allow a bank use in Tenant Space 108 totaling 3,760 square feet as shown on the plan below.

**Ground Floor Plan**



The petitioner is offering a new condition requiring that at least 10,000 square feet of rentable retail space be reserved for “non-formula” retail uses. The petitioner has defined formula retail as a “retailer with ten or more locations in Massachusetts or 20 or more locations worldwide and that share two of the following three characteristics:

- Trademark, service mark or logo, defined as a word, phrase, symbol, or design or combination thereof that identifies and distinguishes the source of goods or services from others;
- Standardized building architecture, including but not limited to façade design and signage; or
- Standardized color scheme used throughout the exterior of the establishment, including colors associated with signs and logos.”

The petitioner’s language is similar to other language found in zoning ordinances in

other parts of the country and in the Commonwealth. The reasoning is that formula retail uses often do not consider elements such as the character of surrounding buildings, or the character of the neighborhood they are located in. To maintain their character and sense of place, municipalities have begun to allow formula retail by special permit, where the Special Permit Granting Authority may consider whether the proposed use strengthens or accounts for these elements.

In the City's latest draft zoning ordinance, the Planning Department adopts the same approach to formula retail, requiring the use only by special permit. The draft ordinance defines formula eating or drinking establishment as "Any eating or drinking establishment, which along with nine or more other businesses regardless of ownership or location worldwide, does or is required as a franchise, by contractual agreement, or by other agreement to maintain two of the following features:

- A standardized menu;
- A standardized façade;
- A standardized décor and/or color scheme;
- A standardized uniform;
- A standardized sign or signage; or
- A standardized trademark or service mark."

The Planning Department is supportive of reserving space for non-formula retailers because they are more likely to contribute to the sense of place and the feel of a village. However, staff recommends that the petitioner adopt the Planning Department's definition, including the limitation on the number of other establishments, allow restaurant uses to be included in the 10,000 feet of space, and apply the 10,000 square feet to ground floor only, i.e. not include basement space.

D. Landscaping

A landscape plan is not required with this petition.

III. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance)

The petition does not require relief from the zoning ordinance.

B. Engineering Review

This petition does not meet the minimum threshold for review from the Engineering Division of Public Works.

IV. PETITIONER'S RESPONSIBILITIES

The petitioner should respond to the issues raised in this memorandum and other questions raised at the public hearing as necessary. Written responses to all significant issues should be provided for analysis by the Planning Department prior to being scheduled for additional public hearings. The Planning Department will prepare an updated memo prior to any future public hearings.

**ATTACHMENTS:**

**Attachment A:** DRAFT Council Order

CITY OF NEWTON  
IN CITY COUNCIL

ORDERED:

That the Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the Site, as defined below, will be in harmony with the conditions, safeguards, and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to amend Council Order #96-17, to remove a condition preventing the petitioner from leasing space to commercial banks, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee, through its Chairman, Councilor Gregory Schwartz.

1. The specific site is an appropriate location for the amendment to Council Order #96-17 given the site is located within a Village Center containing a variety of uses. (§7.3.3.C.1)
2. The amendment to Council Order #96-17 as developed and operated will not adversely affect the surrounding neighborhood. (§7.3.3.C.2)
3. The amendment to Council Order #96-17 will not create a nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)

PETITION NUMBER: #179-19

PETITIONER: Mark Newtonville, LLC

LOCATION: 845 Washington Street and 245 Walnut Street known as  
Section 21, Block 29, Lot 10 (the Project Site)

OWNER: Washington Place Owner, LLC

ADDRESS OF OWNER: 57 River Street, Suite 106, Wellesley, MA 02481

TO BE USED FOR:	A mixed use development in excess of 20,000 square feet consisting of three interconnected buildings with building heights of not more than 60 feet and five stories, total gross floor area not exceeding 236,000 square feet incorporating up to 160 residential units, not exceeding 48,000 square feet of commercial space, not less than 2,000 square feet of community space, not less than 309 on-site parking stalls outside at grade or within a below-grade garage, and related site improvements; to authorize uses including retail of more than 5,000 square feet, personal service of more than 5,000 square feet, restaurants over 50 seats, standalone ATMs, health club establishments at or above ground floor, animal service, and street level medical office
CONSTRUCTION:	Masonry structure over a structural steel and concrete base
EXPLANATORY NOTES:	Amendment to Council Order #96-17 to revise Condition #34 regarding leasing commercial space to banks.
ZONING:	Business Use 2 and Mixed Use 4

Approved subject to the following Conditions.

This Special Permit/Site Plan Approval amends Council Order #96-17 by modifying Condition #34 regarding the prohibition on commercial banks. All other conditions of Council Order #96-17 remain in full force and effect.

1. Condition #34 of Council Order #96-17 is amended by deleting the first sentence in its entirety, and replacing with the following language: "The Petitioner and its successors may lease commercial space in the Project to not more than one commercial bank with a total square footage not to exceed 3,800 square feet." The remainder of Condition #34 shall remain in full force and effect.
2. The petitioner shall reserve 10,000 rentable square feet within the ground floor to non-formula retail and restaurants uses. For the purposes of this condition, formula retail and restaurant uses are defined as "Any establishment, which along with nine or more other businesses regardless of ownership or location worldwide, does or is required as a franchise, by contractual agreement, or by other agreement to maintain two of the following features:

- A standardized menu;
  - A standardized façade;
  - A standardized décor and/or color scheme;
  - A standardized uniform;
  - A standardized sign or signage; or
  - A standardized trademark or service mark.”
3. Prior to the issuance of any Building Permits for the Project, the Petitioner shall provide documentation indicating whether a proposed use is a formula use in accordance with Condition #2 above. The Petitioner and its successors are not entitled to building permits that would otherwise be issued as of right if the building permit would establish a use that would prevent the Project from complying with Condition #2 above.
4. Prior to issuance of any Building Permits for the Project, the Petitioner shall record a certified copy of this Council Order with the Registry of Deeds for the Southern District of Middlesex County and file a copy of such recorded Council Orders with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.