

#89-21
432 Cherry Street

CITY OF NEWTON

IN CITY COUNCIL

December 20, 2021

RECEIVED
2021 DEC 22 AM 11:30
CITY CLERK
NEWTON, MA, 02459

ORDERED:

That the 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 a SPECIAL PERMIT/SITE PLAN APPROVAL to amend Council Order #566-18 to maintain the office use in the existing structure, construct the previously approved three-unit multi-family building, and to waive four parking stalls, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

1. The specific site is an appropriate location for the proposed amendment to the special permit which would allow a mix of office and residential uses and waiver of four parking stalls due to its location near West Newton Village Center. (§7.3.3.C.1)
2. The proposed amendment to the special permit which would allow a mix of office and residential uses and waiver of four parking stalls will not adversely affect the neighborhood because the office use is existing on site and its proximity to the West Newton Village Center. (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians because sole vehicular access to the site will be from Webster Street with two access points being closed. (§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 required number of parking stalls of the Newton Zoning Ordinance is in the public interest due to its location near the West Newton Village Center and the flexible parking arrangement between uses. (§5.1.13)

PETITION NUMBER: #89-21

PETITIONER: CRM Management, LLC C/O Dennis Cameron

ADDRESS OF PETITIONER: 432 Cherry Street
Newton, MA 02465

LOCATION: 424-432 Cherry Street

OWNER: CRM Management, LLC C/O Dennis Cameron

ADDRESS OF OWNER: 432 Cherry Street
Newton, MA 02465

TO BE USED FOR: Mixed Use consisting of office use and 3 unit residential building and 15 parking stalls, hereinafter the "Project."

EXPLANATORY NOTES: To amend special permit #566-18 to maintain the office use in the existing structure and to waive four parking stalls. Relief as set forth in Special Permit #566-18: To allow a three unit, three story building with ground-floor units (§4.4.1, §4.1.2.B.3, §4.1.3); To reduce the parking requirement to 1.25 stalls per unit (§5.1.4.A and §5.1.13); To waive the parking stall dimensional requirements (§5.1.8.B.1, and §5.1.13); To waive the minimum width of maneuvering aisles (§5.1.8.C, and §5.1.13); To waive the minimum driveway width (§5.1.8.D.1, and §5.1.13); To waive the perimeter screening requirements of parking facilities containing more than five stalls (§5.1.9.A and §5.1.13); To waive the lighting and surfacing requirements of parking facilities containing more than five stalls (§5.1.10.A and §5.1.13).

ZONING: Business Use 1

The prior Special Permit for this property is Special Permit #566-18 which allowed a nine unit residential development in two buildings with dimensional waivers for parking facilities over five stalls. This special permit supersedes Special Permits #566-18 and consolidates and incorporates herein those conditions and provisions from the prior special permit that remain applicable and are set forth in this special permit.

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. Site/Civil plans, prepared by Everett M. Brooks Co., signed and stamped by Bruce R. Bradford, Professional Land Surveyor, and Mike S. Kosmo, Professional Engineer, consisting of the following four (4) sheets:
 - Existing Conditions Plan, dated April 3, 2018, most recently revised December 3, 2021.
 - Proposed Layout Plan, dated April 3, 2018, most recently revised December 3, 2021.
 - Utility Plan, dated April 3, 2018, most recently revised December 3, 2021.
 - Detail Sheet, dated April 3, 2018, most recently revised December 3, 2021.
 - b. Architectural Plans entitled, "432 Cherry Street and 46 Webster Street" signed and stamped by Ronald P. Jarek, Registered Architect, consisting of nine (9) sheets as follows:
 - SD.03 - Proposed Basement Plan, dated December 7, 2020, Revised April 5, 2021
 - SD.04 – Proposed First Floor Plan, dated December 7, 2020, Revised April 5, 2021
 - SD.05 – Proposed Second Floor Plan, dated December 7, 2020, Revised April 5, 2021
 - SD.06 – Proposed Attic Plan, dated December 7, 2020, Revised April 5, 2021
 - SD.07 – Proposed Front Elevation from Webster Street, dated December 7, 2020, Revised April 5, 2021
 - SD.08 – Proposed Left Elevation, dated December 7, 2020, Revised April 5, 2021
 - SD.09 – Proposed Rear Elevation, dated December 7, 2020, Revised April 5, 2021
 - SD.10 – Proposed Right Elevation, dated December 7, 2020, Revised April 5, 2021
 - SD.14 – Webster St. and Cherry St. Buildings, dated December 7, 2020, Revised July 8, 2021
 - c. Landscape Plan, entitled, "432 Cherry Street and 46 Webster Street" signed and stamped by Ronald P. Jarek, Registered Architect, dated December 20, 2020
 - d. Lighting Plan, entitled, "432 Cherry Street and 46 Webster Street" signed and stamped by Ronald P. Jarek, Registered, dated February 1, 2019.
2. The Petitioner shall preserve the existing proportions, substrate and architectural details that contribute to the historic significance of the existing structure including but not limited to all exterior walls, roof structure, and window openings. Any replacement in kind or deviation shall be by prior approval only by Preservation Planning and ISD staff.
3. The cost of parking stall(s) shall be sold separately from the cost of a unit.

4. The Petitioner shall provide space for not less than ten bicycles in the below grade garage of the proposed three-unit structure. Additionally, the petitioner shall provide five electric vehicle (EV) charging stations on site.
5. 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 and shall comply with the City's Noise Control Ordinance.
6. The Petitioner shall remove all snow from site.
7. The Petitioner shall comply with the City's Tree Preservation Ordinance.
8. All on-site landscaping associated with this Special Permit/Site Plan Approval shall be installed and maintained in good condition. Any plant material that becomes diseased or dies shall be replaced on an annual basis with similar material.
9. At the Petitioner's sole expense, the petitioner shall locate all utility service lines on site underground from the right of way into the site.
10. The Petitioner shall be responsible for securing and paying for any and all police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
11. The Petitioner shall update all sidewalks along the Project's frontage on Cherry and Webster streets to comply with City Design Standards and Massachusetts Architectural Access Board Standards. This work shall be completed to the satisfaction of the Engineering Division of Public Works prior to the issuance of a temporary Certificate of Occupancy for the Project. The petitioner shall also be responsible for repairing all damage to public ways and property by any construction vehicles.
12. The Petitioner shall do the following to remediate pest and rodent activity:
 - a. Prior to issuance of any demolition or building permit, the petitioner, at its sole cost and expense, shall hire a licensed Pest Control Operator to assess the property for pest and rodent activity and develop and implement a pest remediation action plan to eliminate the activity and prevent off-site migration. The plan shall include the target pest, the methods for eliminating activity, and plan for preventing pest migration off-site during demolition and construction.
 - b. A copy of the Pest Control inspection report and the remediation action plan shall be submitted to the Inspectional Services Department and the Health and Human Services Department for review and approval prior to issuance of any demolition or building permit. Copies of such approvals shall be provided to the Department of Planning and Development.
 - c. The Pest Control Operator shall implement the approved remediation action plan, monitor the site for the duration of the project, and take whatever action the Operator deems necessary to control pest infestation and migration. The Pest Control Operator shall maintain a written record of all pest control measures performed within the subject property and shall provide progress reports to Inspectional Services Department and the Health and Human Services Department upon request.

- d. Prior to issuance of the certificate of occupancy, the Pest Control Operator shall file a final report with the Department of Planning and Development, 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 demolition or construction activity causes off-site pest migration, prior to the issuance of any certificates of occupancy (temporary or final), the petitioner shall offer and provide, at its sole cost and expense, rodent abatement services on an as needed basis for all direct abutters and abutters to direct abutters, subject to owner authorization of such properties and a waiver of liability.
13. A final trash pick-up plan shall be submitted to the Director of Planning and Development for review and approval prior to the issuance of any building permit. In the event the Director of Planning and Development, in consultation with the Commissioner of Public Works, determines trash pickup cannot be done safely, no building permit shall be issued, and the petitioner shall be required to seek an amendment to this special permit. If a plan is approved, the petitioner shall be required to comply with it at all times and any changes to such plan must be approved by the Director of Planning and Development.
14. Prior to the issuance of a building permit, the petitioner shall meet on site with a representative from the City of Newton Engineering Division to determine whether the grass strip along the Webster Street frontage can be removed to allow for the sidewalk to extend from the petitioner's property line to the curb. Should the representative determine such removal is feasible, the petitioner shall incorporate such work as part of this Order. Prior to the issuance of any building permit for the Project, the Petitioner shall provide a Final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works, Fire Department, and Inspectional Services.
15. 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, and the City Engineer. The Construction Management Plan shall be consistent 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. Hours of construction: construction shall be limited to between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and from 8:00 a.m. to 7:00 p.m. on Saturdays. No construction is permitted on Sundays, or holidays except in emergencies, and only with prior approval from the Mayor.
 - c. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones.

- d. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for construction and delivery vehicles, and location of any security fencing.
 - e. Proposed methods for dust control including, but not limited to: covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
 - f. Proposed methods of noise control, in accordance with the City of Newton's Ordinances. Staging activities should be conducted in a manner that will minimize off-site impacts of noise. Noise producing staging activities should be located as far as practical from noise sensitive locations.
 - g. Tree preservation plan to define the proposed method for protection of any existing trees to remain on the site.
 - h. The CMP shall also address the following: safety precautions; anticipated dewatering during construction; site safety and stability; and impacts on abutting properties.
16. Prior to the issuance of any building permit for the Project, 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 recorded by the petitioner at the Middlesex South District Registry of Deeds and implemented. A recorded copy of the O&M shall be submitted to the Engineering Division of Public Works, the Inspectional Services Department, and the Department of Planning and Development.
17. No building permit for the construction of 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. Submitted final engineering, utility, and drainage plans 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.
 - e. Submitted a final Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public

Works, the City Engineer, and the Director of Transportation.

18. Prior to the issuance of any certificates of occupancy (temporary or final), the petitioner shall provide the City with a permanent easement, in a form approved by the Law Department, providing the City with the right to install a foundation for a pole and mast arm for a new traffic signal, as well as the right to maintain the equipment, at the intersection of Cherry and Webster Streets. The petitioner shall be responsible for preparing all necessary documentation and plans. Such easement shall be incorporated in the Master Deed for the property.
19. No occupancy certificate (temporary or final) for the use covered by this Special Permit/Site Plan approval shall be issued until the Petitioner has:
 - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development statements by a registered architect and a professional land surveyor certifying compliance with Condition 1.
 - b. Submitted to the Department of Inspectional Services, the Department of Planning and Development, and the Engineering Division final as-built survey plans in paper and digital format.
 - c. Filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details for the project site 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. The Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for portions of the buildings, prior to installation of required on-site landscaping/ exterior hardscape improvements required per the approved plans as long as all other conditions of this order have been met. Prior, however, to issuance of any temporary certificate of occupancy pursuant to this condition, the Commissioner of Inspectional Services shall require that the Petitioner first file a bond, letter of credit, cash or other security in the form satisfactory to the Law Department in an amount not less than 135% of the value of the aforementioned remaining improvements.

Under Suspension of Rules


Readings Waived and Approved

23 yeas 0 nays 1 absent (Councilor Markiewicz)

The undersigned hereby certifies that the foregoing copy of the decision of the Newton City Council granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the City Clerk on December 22, 2021. The undersigned further


certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:


(SGD) CAROL MOORE, City Clerk
Clerk of the City Council

I, Carol Moore, as the Clerk of the City Council and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that twenty days have elapsed since the filing of the foregoing decision of the Newton City Council in the Office of the City Clerk on December 22, 2021 and that NO APPEAL of said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:


(SGD) CAROL MOORE, City Clerk
Clerk of the City Council