

From the Law Office of Terrence P. Morris, Esq.

Memorandum

To: Amanda Berman, Director of Housing & Community Development
From: Terrence P. Morris, Esquire
Cc: Jane Santosuosso, Chief Zoning Code Official
Date: September 9, 2022
Re: 429 Cherry Street: Special Permit Amendment

The subject property is a 14-unit condominium built under special permit, issued in 2016. The project was first approved in 2013. However, it was appealed in Superior Court, and later the Appeals Court. It contains 13 residential units and one office space. It was built under the incentive provisions of the zoning ordinance in place at that time, which permitted an increase in density. Without the incentive the minimum lot area per unit of 1200 square feet would have permitted no more than 11 dwelling units on the site. The development of 11 dwelling units required two inclusionary units under the applicable provisions of the ordinance at that time.

Specifically, section 30-24 (f)(16) allowed a bonus dwelling unit for each additional inclusionary unit provided, as well as a reduced lot area per dwelling unit. The petitioner proposed to provide one additional inclusionary unit (for a total of 3 inclusionary units), and therefore was allowed to construct one additional market-rate dwelling unit (for a total of 10). The overall development with 13 units then had an overall density of 1030 square-foot lot area per unit where minimum of 900 square feet per unit was allowed under the ordinance.

As originally conceived, the owner intended to relocate his business office to the office space (unit 14) in the building. Unfortunately, market conditions made that move unfeasible then and current market conditions make the sale of the office space as a condominium similarly unfeasible now. As a result, the owner is seeking to amend the special permit to convert the office unit to a residential unit giving the project total of 11 market rate condominiums, in addition to the 3 inclusionary units, which have been sold to and occupied by eligible buyers.

A request for zoning review memorandum has been submitted to Jane. I have included a copy of the 2012 Zoning Review memo which explains the applicability of the inclusionary ordinance at that time in paragraph 10. At the end of that paragraph Jane suggested a consultation with the Housing Division to ensure compliance with requirements for inclusionary housing. I believe in situations where a special permit is amended, the approach is to apply the current provisions of the ordinance. Currently, Section 5.11.4.C states in relevant part, *“An Inclusionary Housing Project that includes more than the required number of inclusionary units will be awarded bonus market rate units at a ratio of 2 to 1. For every additional Inclusionary Unit. The applicant agrees to provide, the development will be awarded 2 additional market rate units.”*

Accordingly, if this provision were to be applied retroactively to the project as originally approved, the subject request to convert current office space to a 14th dwelling unit, would not change the project’s compliance with the inclusionary ordinance. Your review and affirmation would be greatly appreciated. Thank you for your time, as always.