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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: November 15, 2022
Land Use Action Date: January 24, 2022
City Council Action Date: February 6, 2023
90-Day Expiration Date: February 13, 2023

DATE: November 10, 2022

TO: City Council

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

SUBJECT: **Petition #488-22**, petition for SPECIAL PERMIT/SITE PLAN APPROVAL to convert an office unit into a fourteenth residential unit at 429 Cherry St, Newton, Ward 3, on land known as Section 33 Block 12 Lot 12, containing approximately 13,617 sq. ft. of land in a district zoned BUSINESS 1. Ref: 7.3.3, 7.4 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis conducted by the Planning Department. The Planning Department's intention is to provide a balanced review of the proposed project based on information it has at the time of the public hearing. Additional information about the project may be presented at or after the public hearing for consideration at a subsequent working session by the Land Use Committee of the City Council.



429 Cherry Street

EXECUTIVE SUMMARY

The property located at 429 Cherry Street consists of a 13,617 square foot lot improved with a three-story building with 13 residential units and one 904 square foot office unit. The petitioner obtained a special permit in 2013 (Special Permit #190-12) to construct the mixed-use building. In 2018, the special permit was amended to restructure conditions relating to the Inclusionary Zoning aspects of the project to be more in line with best practices of various submittals and deadlines to City Staff and the Department of Housing and Community Development (DHCD). Special Permit #135-18 restructured the provisions around Inclusionary Zoning and restated conditions from the prior Council Order. In 2022, the project received its certificate of occupancy for the building with thirteen residential units and one commercial unit following a consistency ruling around fencing and landscaping. The petitioner is now seeking to amend Special Permit #135-18 to allow the conversion of the office unit on the first floor to a two-bedroom residential unit.

The conversion of the office unit to residential maintains compliance with the Inclusionary Zoning Ordinance and does not require any additional relief from the Zoning Ordinance. The proposed 14th residential unit will be able to utilize one of the parking stalls that was previously assigned to the office unit. Staff in the Current Planning and Housing Divisions have worked with the Petitioner on ensuring the conversion was compliant with the Zoning Ordinance and have no concerns around this petition.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the proposed amendment to Council Order 135-18 to allow the conversion of the office unit to a fourteenth residential unit. (§7.3.3.C.1.)
- The proposed amendment to Council Order 135-18 to allow the conversion of the office unit to a fourteenth residential unit will adversely affect the neighborhood. (§7.3.3.C.2.)
- The proposed amendment to Council Order 135-18 to allow the conversion of the office unit to a fourteenth residential unit will create a nuisance or serious hazard to vehicles or pedestrians. (§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. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on Cherry Street between Washington and Webster Streets near West Newton Square and is located less than one half mile from the West Newton Commuter Rail station. The site is within the BU-1 zone and the surrounding area is comprised of a mix of zones including a Multi Residence Zone 1 that abuts the property to the north. The area south of the site to Washington Street is primarily zoned BU-1 with a public use zone (Newton Police Station). There are a variety of land uses from single-and multi-family residences to commercial, as well as public use and nonprofit uses (**Attachments A and B**).

B. Site

The site consists of 13,617 square feet of land and is improved with a three-story mixed-use building granted under Special Permit 135-18. The relief granted under Special Permit #135-18 includes relief for the use, retaining wall greater than four feet within a setback, height and number of stories, floor area ratio, a waiver of 11 parking stalls, parking dimensional waivers, and to allow the density incentive for lot area per unit to allow for an additional market rate unit for providing an additional inclusionary unit. The building contains 13 residential units across all three floors and one office unit on the first floor.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

If approved, the land use of the site would change from mixed use to residential use with fourteen residential dwelling units.

B. Building and Site Design

The petitioner is not proposing any external changes to the mixed use building or the parking facilities. As proposed, the office unit will undergo internal renovation/construction to be converted to a two-bedroom residential unit, consisting of 904 square feet.

C. Parking and Circulation

The site has nineteen parking stalls. The parking garage contains 18 parking stalls, and there is one surface level, van accessible stall at the front of the site. The AAB granted a variance in 2021 for the surface stall aisle width due to the transformer placement required by the utility company.

The petitioner stated that two stalls were assigned to the office use and will assign one of those stalls to the 14th residential unit. The petitioner stated ten of the units

are assigned one parking stall each, while three of the larger units have two stalls per unit.

IV. TECHNICAL REVIEW

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

The Zoning Review Memorandum provides an analysis of the proposal regarding zoning (**ATTACHMENT D**). Based on the completed Zoning Review Memorandum, the petitioner is seeking the following relief:

Zoning Relief Required		
Ordinance		Action Required
	Request to amend Special Permit #135-18 to convert an office unit into a residential unit	S.P. per §7.3.3

B. Historic Preservation Review

The project does not require historic preservation review.

C. Engineering Review

Engineering Review is not required.

V. 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:** Zoning Map
- ATTACHMENT B:** Land Use Map
- ATTACHMENT C:** Zoning Review Memorandum
- ATTACHMENT D:** Draft Council Order

ATTACHMENT A

Zoning

429 Cherry Street

*City of Newton,
Massachusetts*

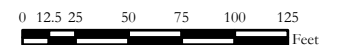
Zoning

-  Multi-Residence 1
-  Business 1
-  Manufacturing
-  Public Use



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield



Map Date: October 28, 2022



ATTACHMENT B

Land Use

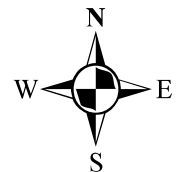
429 Cherry Street

*City of Newton,
Massachusetts*

Land Use

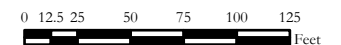
Land Use

- Single Family Residential
- Multi-Family Residential
- Commercial
- Industrial
- Mixed Use
- Open Space
- Nonprofit Organizations



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CITY OF NEWTON, MASSACHUSETTS
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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: October 13, 2022

To: John Lojek, Commissioner of Inspectional Services

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

Cc: 429 Cherry Street LLC, Applicant
Terrence P. Morris, Attorney
Barney S. Heath, Director of Planning and Development
Jonah Temple, Deputy City Solicitor

RE: Request to amend Special Permit #135-18 to convert office space into a dwelling unit

Applicant: 429 Cherry Street LLC

Site: 429 Cherry Street	SBL: 33012 0012M
Zoning: BU1	Lot Area: 13,617 square feet
Current use: 13-unit multi-family dwelling with an office condominium	Proposed use: 14-unit multi-family dwelling

BACKGROUND:

The subject site consists of a 13,617 square foot lot improved with a three-story building with 13 residential dwelling units and one 904 square foot office unit. The project was constructed in 2016 with Special Permit #190-12(3) which was later amended in 2018 (#135-18) to allow compliance with revised provisions for inclusionary units. The petitioner now proposes to convert the office space into a fourteenth residential unit, requiring an amendment to the special permit.

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

- Zoning Review Application, prepared by Terrence P. Morris, attorney, dated 8/9/2022
- The Eliot Condominium Site Plan, signed and stamped by Joseph R. Porter, surveyor, dated 3/18/2021
- Condominium Floor Plans, Garage Level Plan, First Level Plan, signed and stamped by David B. Barsky, architect, dated 9/3/2020 (existing conditions)
- First Floor Plan, signed and stamped by David B. Barsky, architect, dated 7/8/2018, revised 5/22/2019, 4/28/2021

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner was granted a special permit in 2013 to construct a mixed-use building with 13 residential units and one 904 square foot office unit. The petitioner seeks to convert the office space into a residential dwelling unit, requiring an amendment to Special Permit #135-18.
2. The building contains 13 residential dwelling units and one office unit. The project was constructed under the incentive provisions of the zoning ordinance at that time, which allowed for an increase in density of one market rate unit per each affordable unit above what was required, as well as a reduced lot area per unit. The development of 11 dwelling units required two inclusionary units. The bonus allowed for an increase of two units: one affordable unit, and one market rate unit. In total, the project was approved for 13 residential units (10 market rate and three affordable units). The petitioner seeks to convert the existing office space into an additional residential unit, resulting in 14 residential units. Per the current inclusionary provisions of section 5.11.4, 15% of the proposed number of units must meet the affordability requirement, resulting in a requirement of two affordable units. Where there are three affordable units, the property meets the inclusionary housing requirements.
3. Per section 5.11.4.C, where a density bonus is granted, the total number of additional units of any type must not exceed 25% of the number of units otherwise permissible on the lot under the lot area per unit requirement. Per section 4.1.2.A.2 the by right lot area per unit in the BU1 district is 1,200 square feet. A 13,617 square foot lot yields a maximum of 11 by right units. The 25% bonus allows for three additional units, for a total of 14 allowable residential units.

See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
	Request to amend Special Permit #135-18 to convert an office unit into a residential unit	S.P. per §7.3.3

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 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 #185-18 to convert an office unit into a fourteenth residential unit 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 Council Order #135-18 to allow the conversion of the office unit to a fourteenth residential unit due to its location within a mixed-use residential building and multifamily residential uses nearby. (§7.3.3.C.1.)
2. The proposed amendment to Council Order #135-18 to allow the conversion of the office unit to a fourteenth residential unit will not adversely affect the neighborhood because the neighborhood contains a mix of uses and the alterations will be internal to the building. (§7.3.3.C.2.)
3. The proposed amendment to Council Order 135-18 to allow the conversion of the office unit to a fourteenth residential unit 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: #488-22

PETITIONER: 429 Cherry Street LLC

ADDRESS OF PETITIONER: 429 Cherry Street
Newton, MA 02465

LOCATION: 429 Cherry Street
Newton, MA 02465

OWNER: 429 Cherry Street LLC

ADDRESS OF OWNER: 429 Cherry Street
Newton, MA 02465

TO BE USED FOR: Conversion from mixed use to residential building with fourteen residential units

EXPLANATORY NOTES: To amend special permit #185-18 to convert the office unit to a fourteenth residential unit.

ZONING: Business Use 1

The prior Special Permit for this property is Special Permit #185-18 which allowed a mixed use development with associated waivers. This special permit amends Special Permits #185-18 to allow the conversion of the office unit to a fourteenth residential unit. The conditions set forth in Special Permit #185-18 remain in full force and effect except as modified below.

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. Architectural Plans entitled, "429 Cherry Street" signed and stamped by David Barsky Registered Architect, consisting of one (1) sheet as follows:
 - A-101.2 – First Floor Plan, dated July 8, 2018, Revised April 28, 2021