



# Land Use Committee Report

## City of Newton In City Council

**Tuesday, November 15, 2022**

**Present:** Councilors Lipof (Chair), Kelley, Bowman, Downs, Laredo, Lucas, and Markiewicz

**Also Present:** Councilor Wright

**Absent:** Councilor Greenberg

**City Staff Present:** Senior Planner Michael Gleba, Chief Planner Katie Whewell, and Assistant City Solicitor Jonah Temple

All Special Permit Plans, Plan Memoranda and Application Materials can be found at the following link <https://www.newtonma.gov/government/city-clerk/city-council/special-permits/-folder-1058>.

Presentations for each project can be found within this report via hyperlink.

**#486-22**      **Request for Extension of Time to Exercise Special Permit #33-21(3) at 275 Grove Street**  
**ALEXANDRIA REAL ESTATE EQUITIES, INC.** petition for an EXTENSION OF TIME to November 15, 2024 to EXERCISE Special Permit Council Order #33-21(3) to amend Special Permit Council Orders #40-97, #40-97(2) and #33-21 to amend the site plan, to allow a lab and research facility use and to allow height up to 96' and 8 stories at 275 Grove Street, Ward 4, Auburndale, on land known as Section 43 Block 29 Lot 24, containing approximately 487,578 sq. ft. of land in a district zoned BUSINESS USE 4. Ref: Sec. 7.3.3, 7.4, 4.4.1, 6.5.9.A, 4.1.3, 4.1.2.B.3 of the City of Newton Rev Zoning Ord, 2017.

**Action:**      **Land Use Approved 7-0**

**Note:**          Attorney Kathy Winters of the Law Offices of Schlesinger & Buchbinder, LLP, with offices at 1200 Walnut Street, Newton represented the petitioner Alexandria Real Estate Equities, and provided contextual information as to why the petitioner was requesting an extension of time to exercise the previously approved Special Permit.

Atty. Winters briefed that the previous Special Permit was approved by the City Council on November 15, 2021, that allowed the petitioner laboratory research and development use at 275 Grove Street, Building #3.

Atty. Winters noted that the petitioner was requesting an extension of two years to November 15, 2024, to exercise the permit. She additionally stated that the reason for this extension is that the petitioner requires additional time to manage construction costs and supply chain dynamics before commencing construction.

Public Comment

There was no Public Hearing regarding this petition.

Committee Comments

No Committee Members made any comments of note pertaining to this petition

Councilor Markiewicz motioned to approve the petition. The Committee voted in favor of approval 7-0.

**#487-22      Request to allow for-profit educational use at 49-51 Winchester Street**  
DAVE CARROLL, THE CONSERVATORY AT HIGHLANDS petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to allow a for-profit education use at 49-51 Winchester Street, Ward 5, Newton, on land known as Section 51 Block 28 lot 30, containing approximately 79,500 sq. ft. in a district zoned MIXED USE 1. Ref: 7.3.3, 7.4, 4.4.1, 6.3.14.B.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

**Action:      Land Use Approved 7-0; Public Hearing Closed 11/15/22**

Note:            The petitioner, Mr. Dave Carroll was present. Mr. Carroll did not have a multimedia presentation and deferred to the Planning Department's presentation.

Chief Planner Katie Whewell presented an orientation of the property as well as the proposed plans, and general site information in addition to the requested relief, criteria for consideration, land use, and zoning which can be found at the following link:

<https://www.newtonma.gov/home/showdocument?id=93225&isPublished=False&t=638042775793486677>

The petitioner is seeking locate a locate a music school within 2,881 sq. ft. of tenant space at 49-51 Winchester Street. Due to the music school being classified as a for profit educational use, use requires a Special Permit.

The school, known as the Conservatory at Highlands, is a music school that provides one on one instruction and tutoring.

The petitioner is proposing to hold classes on weekday afternoons and evening, as well as weekend mornings and afternoons. There will be a maximum of eight employees on site at one time.

Based on the number of staff members, the use requires one parking stall per employee and the site complies with the parking requirement.

### Public Comment

PEDRO LENZA of 55 Bowen Street #55, Newton, stated his support for the petition. Mr. Lenza noted that he was the father of a current student of the Conservatory and was extremely proud of the development his child has exhibited since becoming a student of the Conservatory.

Mr. Lenza additionally praised the teachers for their musical knowledge and talents as well as the safe space they cultivate for students.

### Committee Comments

Committee Members voiced support for the petition citing ease of access to the site as well as an abundance of parking.

Councilor Downs motioned to close the Public Hearing which carried 7-0. Councilor Downs motioned to approve the petition. Committee members reviewed the draft findings and conditions as is shown in the attached presentation. The Committee voted in favor of approval 7-0.

### **#488-22 Request to amend Special Permit #135-18 to convert office space into a dwelling unit at 429 Cherry St**

429 CHERRY STREET, LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to convert office space 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.

**Action:** Land Use Approved 7-0; Public Hearing Closed 11/15/22

**Note:** Attorney Terrance Morris of the Law Offices of Terrence P. Morris, LLP, with offices at 57 Elm Road, Newton represented the petitioner. Atty. Morris did not have a multimedia presentation for this petition and deferred to the Planning Department.

Chief Planner Katie Whewell presented an orientation of the property as well as the proposed plans, general site information and landscape plans as well as the requested relief, criteria for consideration, land use, zoning which can be found at the following link:

<https://www.newtonma.gov/home/showpublisheddocument/93222/638042773616100003>

The petitioner was granted a special permit in 2013, later amended in 2018, to construct a mixed-use building with 13 residential units and one 904 square foot 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, requiring an amendment to Special Permit #135-18. 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.

Atty. Morris provided some background for the petition stating that the owner of the property initially intended to use the office space on site. The petitioner subsequently secured office space in Watertown, MA and attempted to rent out the office space located at 429 Cherry Street, however there was no market for it.

The petitioner decided to convert the office space into an additional residence citing the need for more housing and smaller units within the city.

#### Public Comment

The Chair opened for Public Comment. No member of the public wished to speak regarding this petition.

#### Committee Comments

Committee Members looked for clarity from the Planning Department and asked if the addition of another residential unit would in any way affect the requirements under the inclusionary zoning ordinance.

Ms. Whewell states that this was extensively scrutinized by Housing Staff as well as the Chief Zoning Code Official and they concluded that the proposed petition satisfies the requirements.

Committee Members additionally questioned if the parking space assigned to the office currently will be transferred to the proposed condo when the project is finished. Atty. Morris answered in the affirmative stating all the units on site have at least one parking space and that the parking space in question was deeded to the office/living space.

Councilor Kelley motioned to close the Public Hearing which carried 7-0. Councilor Kelley motioned to approve the petition. Committee members reviewed the draft findings and conditions as is shown in the attached presentation. The Committee voted in favor of approval 7-0.

#### **#446-22 Request to allow rear-lot subdivision and variance from rear-lot definition at 113 Grove Street**

113 GROVE STREET, LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a rear lot subdivision to construct a single-family dwelling, relocate the existing dwelling forward and waive the definition of "rear-lot" at 113 Grove Street, Ward 4, Newton, on land known as Section 43 Block 31 Lot 15, containing approximately 23,063 sq. ft. of land in a district

zoned SINGLE RESIDENCE 3. Ref: 7.3.3, 7.4, 3.1.5, 3.1.10, 1.5.2.G.1 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

**Action:** **Land Use Approved 7-0; Public Hearing Closed 11/15/22**

**Note:** Attorney Terrance Morris of the Law Offices of Terrence P. Morris, LLP, with offices at 57 Elm Road, Newton represented the petitioner and provided a brief update since Petition #446-22 was last before the Committee on October 18, 2022.

The petitioner is proposing to subdivide the 23,063 sq. ft. lot into a 10,015 sq. ft. lot along Grove Street, moving the existing single-family residence forward and into a 12,866 sq. ft. rear lot where a new single – family home would be constructed.

The existing lot however has 104 feet of frontage on Grove Street at the front of the lot and 30 feet of frontage on Lasell Street at the rear. The petitioner intends to convey out a 31 sq. ft. strip of land along the Lasell Street frontage thereby eliminating the rear frontage, making it a true rear lot in compliance with Section 1.5.2.G.1.

Senior Planner Michael Gleba presented the requested relief, criteria for consideration, land use and zoning which can be found at the following link:

<https://www.newtonma.gov/home/showpublisheddocument/93224/638042775300500000>

Assistant City Solicitor Jonah Temple was consulted regarding the legality of the petition, and he stated that by the petitioner conveying out and selling the 31 sq. ft. of land to a bona fide third-party removing the frontage on Lasell, the petition fits the legal definition of a rear lot and satisfies requirements.

#### Public Comment

The Chair opened for Public Comment. No member of the public wished to speak regarding this petition.

#### Committee Comments

Committee Members questioned to whom the land would be sold to ensure it could not be transferred back to the petitioner once the Special Permit was granted.

Atty. Morris responded that the abutting neighbor would purchase and come into possession of the land in question.

Committee Members also questioned Atty. Morris to agree that there would be no re-transfer of the property back to his client for the duration of the Special Permit.

Atty. Morris agreed and stated that a re-transfer of the property was never a consideration.

Assistant Solicitor Temple again stated that a condition of the Special Permit should be that an unrelated, bona fide third-party purchaser take receipt of the land, and should it be the abutting neighbor, that would be appropriate.

Assistant Solicitor Temple noted there would be three conditions attached to the Special Permit.

- Transfer of land to a bona fide third party
- An easement being granted for the construction of a driveway and possible utilities
- The transferred land remaining in separate ownership and control for the life of the Special Permit

Councilor Markiewicz motioned to close the Public Hearing which carried 7-0. Councilor Markiewicz motioned to approve the petition. Committee members reviewed the draft findings and conditions as is shown in the attached presentation. The Committee voted in favor of approval 7-0.

The Committee adjourned at 8:06 p.m.

**Respectfully Submitted,**

**Richard Lipof, Chair**