

CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: May 20, 2016
TO: All Members, Land Use Committee
FROM: Ouida C.M. Young, Associate City Solicitor
RE: Draft Order - #97-16
Association of Persons – 27-29 Waverly Avenue

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Attached for your consideration is a draft Order for the Association of Persons in a Common Dwelling at 27-29 Waverly Avenue. Without trying to dictate too specifically the ownership and operation of the Association of Persons, I have attempted to make clear, both in the findings and more particularly in the conditions, those aspects of this cooperative living arrangement which are relevant to the zoning special permit. The findings also serve as a way of distinguishing this cooperative living arrangement from folks simply living together to split the rent.

I would also note that the request to waive a number of required parking spaces has been changed from 15 spaces to 9 spaces. The reduction is due to the Petitioner's reduction in the maximum number of adults who could reside at 27-29 Waverly Avenue. The Petitioner has agreed to limit the number of adults residing at 27-29 Waverly Avenue to a maximum of 14. Given that a family with minor children may be members of the Association of Persons, more than 14 people may actually reside at 27-29, but no more than 14 persons 18 years of age or older may reside at this location.

CITY OF NEWTON
IN CITY COUNCIL

May 24, 2016

ORDERED:

That the City 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 the following SPECIAL PERMIT/SITE PLAN APPROVAL to allow an association of persons in a common dwelling consisting of two dwelling units where inhabitants of both units will share common living spaces, and to waive parking requirements, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Marc Laredo.

1. Based on the draft Articles of Organization, Mission Statement, Membership Criteria and Occupancy Agreement submitted by the applicant, the proposed association of persons will be organized as a non-profit corporation that will own the common dwelling housing the association of persons. The association of persons will operate as an intergenerational cooperative living association committed to the principles of environmental sustainability and an intentional shared life. Members must make a long-term commitment to reside and to participate in the cooperative as an owner/occupant of the common dwelling house; be 18 years of age or older; commit to environmentally sustainable living; and abide by a Membership Occupancy Agreement.
2. The site is an appropriate location for the proposed two unit association of persons as the common dwelling is already a two unit building with a large number of bedrooms which has occupied by families with lodgers for a number of years. The proposed use, while reconfiguring the two units to increase the shared living spaces and number of bedrooms in one of the units, will not result in any additional dwelling units being added to the common dwelling, and the total number of bedrooms in the two units will not exceed 10. The proposed use will facilitate the repair and maintenance of the existing structure which dates from the early 1900s. (§3.4.1. and §7.3.3.C.1.)
3. The association of persons will have a maximum number of 14 adults residing in the common dwelling which would require 14 parking stalls to be provided on site, when 5 parking stalls are proposed. The waiver of up to 9 parking stalls and to allow such parking stalls to be located within five feet of the street is appropriate as literal

compliance is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features. The waiver as to the number of stalls required is further appropriate given the mass transit options available in the surrounding neighborhood. The association of persons will also require members to car share or to forgo car ownership if the 5 on-site parking spaces are already being utilized as part of a commitment to sustainable living. Three of the stalls that are located in the front setback have existed for many years with no known hazards to vehicles or pedestrians. (§5.1.4., §5.1.7.A., and §5.1.13.)

4. The association of persons in a common dwelling offers a creative way to diversify the housing stock consistent with the City's *Comprehensive Plan*. The use is allowed with a special permit and the Land Use Committee carefully considered this project over the course of three public hearings. An informal shared living association has been operating at the site for a number of years and there was no opposition to this petition.

PETITION NUMBER:

#97-16

PETITIONER:

Alice Schaefer

LOCATION:

27-29 Waverly Avenue, on land known as Section 71, Block 36, Lot 9, containing approximately 10,480 square feet of land.

OWNER:

Alice Schaefer

ADDRESS OF OWNER:

27 Waverly Avenue
Newton, MA

TO BE USED FOR:

An association of persons in a common dwelling consisting of two dwelling units

CONSTRUCTION:

Wood frame

EXPLANATORY NOTES:

§3.4.1, to allow an association of persons in a common dwelling; §5.1.4 and §5.1.13, to waive up to 9 parking stalls; §5.1.7.A and §5.1.13, to allow parking within five feet of the street.

ZONING:

Multi-Residence 1 district

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. Proposed Site Plan, signed and stamped by Frank Iebba, dated 8/31/2014 and Revised 12/20/15
 - b. Architectural Plans, signed and stamped by Ronald F. Jarek, Architect, dated 9/17/2014 and consisting of two sheets
 - i. Plans, A-1
 - ii. Plans A-2
2. No more than 14 adults shall reside in the common dwelling consisting of two dwelling units at any one time.
3. The association of persons shall be organized as a non-profit corporation that shall own the common dwelling and shall operate as an intergenerational cooperative living association incorporating the principles of environmental sustainability and an intentional shared life. All members of the association of persons shall have an ownership stake in the not-for-profit corporation; make a long-term commitment to reside and to participate in the cooperative; be 18 years of age or older; and abide by a Membership Occupancy Agreement.
4. There shall be no more than five parking stalls on the property. The members of the association of persons shall car share or forgo car ownership if the five on-site parking stalls are already being utilized as part of a commitment to sustainable living.
5. The association shall request an annual inspection by the Inspectional Services Department prior to July 1 every year for compliance with applicable state and local building and fire safety codes. Inspections may include all areas occupied, used or controlled by the association. In addition, inspections may be made at other times to investigate complaints or non-compliance issues.
6. This special permit is valid so long as the association of persons as authorized by this special permit exists on this site. If the association of persons as authorized by this special permit is dissolved or ceases to operate at this site, the common dwelling house shall revert to a two-family use consistent with the zoning in place at the time.
7. Prior to the issuance of a building permit the petitioner shall submit a revised parking layout plan and landscape screening plan to the Director of Planning and Development for review and approval. All landscape screening of the parking areas shall be maintained in good condition and replaced on an annual basis as needed.
8. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:
 - a. Recorded a certified copy of this board order for the approved Special Permit/Site plan with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.

- c. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the final site plan.
 - d. Submitted a revised parking layout plan and planting plan to the Director of Planning and Development for review and approval.
 - e. Submitted a copy of the association of persons governing document including its Articles of Organization, By-laws, Membership Selection Criteria, and Member Occupancy Agreement with City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development.
9. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect certifying compliance with Condition #1.
 - b. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.