

CITY OF NEWTON  
IN CITY COUNCIL

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 extend the nonconforming two-family use to allow a three-family use, and reduce the maximum lot area per unit, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Marc Laredo:

1. The site contains a dwelling which was constructed as a single-family structure in a Private Residence district circa 1900. In 1959, the structure was legally converted into a two-family dwelling with the benefit of proper permitting. In 1962, the City of Newton Zoning Ordinance was amended to prohibit two-family uses in a Private Residence district. As a result, the two-family use and structure became a legal nonconforming two-family use and structure. The City's Zoning Ordinance was later amended again and the zoning district was changed from Private Residence to Single Residence 3. The Single Residence 3 district prohibits a two-family use as well.
2. In approximately 1960-1961, the third floor of the two-family structure was converted into a separate residential unit, creating a three-unit structure. As the third unit was created without the benefit of proper permitting, the structure was rendered noncompliant as to the third unit both as to use and lot area per unit (having 7,837 s.f. per unit when 10,000 s.f. per unit is required). The City did not undertake enforcement against the noncompliant three-family use or lot area per unit until 2016 when a Request for Zoning Enforcement was filed with the City's Inspectional Services Department.
3. The City's Zoning Ordinance and Section 6 of M.G.L. 40A permit a legal non-conforming use or structure to be altered, reconstructed, extended or structurally changed with the grant of a special permit if the City Council determines that the resulting change will not be substantially more detrimental to the surrounding neighborhood than the existing legal nonconforming use or structure.
4. Chapter 184 of the Acts of 2016 extended legal nonconforming status to non-compliant structures which have been in existence for a period of at least ten years and which have not been subject to an action, suit, or proceeding as to the alleged violation during that ten year period. Therefore, the subject structure can be considered a legal non-conforming three-unit structure as to the lot area per unit.

5. The Council finds that the legalization of the third unit will insure that the third unit is fully code compliant and will further diversify the City' housing stock by creating three units with an average size of 1,150 square feet which is consistent with goals stated in the *2007 Comprehensive Plan and the City's Housing Strategy*.
6. The Council finds that two units and one accessory apartment could be allowed by right in the existing structure if the size of the third unit were reduced slightly through renovation. However, the structure is not owner-occupied and therefore does not qualify for an accessory apartment.
7. The Council finds the proposed extension of the nonconforming two-family use to allow three units will not be substantially more detrimental than the legal nonconforming two-family use because the petition does not require any alterations to the site or historic dwelling, and parking can be accommodated on site. (§3.4.1 and §7.8.2.C.2).
8. The Council finds the proposed extension of the nonconforming lot area per unit resulting from the legalization of the third unit will not be significantly more detrimental to the neighborhood because the lot area per unit of the structure, with three units, will be consistent with the lot area per unit of dwellings in the surrounding neighborhood (§3.1.3 and §7.8.2.C.2).

PETITION NUMBER:	#228-17
PETITIONER:	Cappadona Cherry Group, LLC
LOCATION:	69-71 Cherry Street, on land known as Section 34, Block 42, Lot 15, containing approximately 23,511 square feet of land
OWNER:	Cappadona Cherry Group, LLC
ADDRESS OF OWNER:	956 Washington Street Franklin, MA 02038
TO BE USED FOR:	Multi-Family Dwelling
CONSTRUCTION:	Wood frame
EXPLANATORY NOTES:	§3.4.1 and §7.8.2.C.2, to extend the non-conforming two-family use to allow three units; §3.1.3 and §7.8.2.C.2, to extend the nonconforming lot area per unit by legalizing the third unit.
ZONING:	Single Residence 3 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. Topographic Site Plan, 69-71 Cherry Street, signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated 5/15/17.
  - b. Architectural Floor Plan, 69-71 Cherry Street, signed and stamped by Steven J. Meyers, Registered Architect, dated May 15, 2017.
2. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
  - 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. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
3. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioner has:
  - a. Filed with the Director of Planning and Development evidence that structure meets all applicable building, fire and life, safety codes.