



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2015-112

Date: January 14, 2016

Recommendation: Conditional Approval

PLANNING STAFF REPORT

Site: 226 Pearl Street

Applicant Name: John Tagiuri, Trustee of the 226 Pearl Street Realty Trust

Applicant Address: 83 Wachusett Road, Needham, MA 02492

Owner Name: John Tagiuri, Trustee of the 226 Pearl Street Realty Trust

Owner Address: 83 Wachusett Road, Needham, MA 02492

Agent Name: Sarah Like Rhatigan, Esq.

Agent Address: Trilogy Law LLC, 12 Marshall Street, Boston, MA 02108

Alderman: Matthew McLaughlin

Legal Notice: Applicant and Owner, John Tagiuri, Trustee of the 226 Pearl Street Realty Trust, seeks to add 1 residential unit and 3 artist studio spaces to the existing nonconforming building, which requires a Special Permit to alter the nonconforming lot area per dwelling unit and FAR nonconformities under SZO §4.4.1. The basement space would be changing from storage/woodshop to Artist Studio Space under §7.11.6.8, 4.5.1 & 4.5.3. A Special Permit to not provide required parking per §9.5 & 9.13a.

Dates of Public Hearing: January 20, 2016

I. PROJECT DESCRIPTION

1. Subject Property: The subject property is a 18,623 square foot, three-story former manufacturing building that was part of the Kemp Nut factory. The building was built in 1917 and has been used as artist live/work space for some time. One of the units is a woodshop.

From documentation provided to us by the applicant as well as ISD files, this business has been established since at least February of 1991. The Applicant has provided a Business Certificate for Albin



Woodworking and a Certificate of Insurance from 1993. The applicant acquired the property in 1994 and has rented the 6 residential apartments and woodshop to artists who lived and worked on site. Two of the units have two-bedrooms and four units have three-bedrooms. The owner has used the basement space for storage and his workshop. In 1996, the property went through renovations including legalizing the existing use which is described as live/work artist studios. The Applicant has provided his understanding of the history of the use and structure, which is attached to the end of this report.

According to our ordinance §7.11.12.6, the establishment of a woodshop less than 5,000 square feet requires a Special Permit in a BA district. However, this use has been in existence since at least 1991. Under M.G.L. Ch 40A Section 7, the statute of limitations to enforce nonconforming uses when they are authorized by a building permit is six years. This use was referenced on a building permit and is therefore legally protected from termination or removal since it has survived the statute of limitations.

There are nine on-street parking spaces adjacent to the building located on Skilton Street, a private way. There are signs on the building stating that the parking spaces are for exclusive use of the owner and tenants of 226 Pearl Street. Designation of parking spaces on a private way requires documentation that the abutters of the private way agree to the restriction. The agreement must be filed with the Police Department. At this time, it is unclear whether this documentation exists.



2. Proposal: The proposal is to divide one of the residential units into two units. Unit one would be divided up into two units that are 955 and 1,000 square feet each. The total number of residential units

would be seven. The number of bedrooms would change from 2 two-bedroom and 4 three-bedroom units to 4 one-bedrooms, 2 two-bedrooms, and 1 three-bedroom units.

The proposal also includes adding studio spaces in the basement with spaces of 325, 400 and 600 square feet each for a total of 1,325 square feet. They would be rented to local artists who would use the space mainly during daytime hours. The spaces would only be open to the public during Somerville's Open Studios.

No exterior changes to the building are proposed.

3. Green Building Practices: None list on the application form.

4. Comments:

Fire Prevention/Inspectional Services: Fire Prevention and Inspectional Services Departments have done a preliminary review of the proposal. The fire rated assembly and IEBC report will be required with the building permit.

Traffic & Parking: Traffic and Parking requests a parking memo from a professional traffic engineer to study the parking availability in the area.

Wiring Inspection: Detailed electrical plans will be required prior to approval of the building permit.

Ward Alderman: Alderman McLaughlin is supportive of the proposal.

II. FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1, 7.11.6.8, & 9.13):

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the SZO. This section of the report goes through §5.1.4 in detail.

1. Information Supplied:

The Staff finds that the information provided by the Applicant conforms to the requirements of §5.1.2 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permits.

2. Compliance with Standards: *The Applicant must comply "with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit."*

Uses

The proposal to increase the number of residential units requires a Special Permit with Site Plan review. The findings for this permit are in Section III of this report below.

The artist studio space use under §7.11.6.8 is a by-right use if under 5,000 square feet and the proposal is for 1,325 square feet. SZO §2.2.11.a. defines an Artist Studio Space as space used for "the creation, production, rehearsal or teaching of any visual art or craft, including but not limited to painting, drawing, graphic design, photography, video, film, sculpture, and pottery; of written works of fiction or nonfiction;

or of any performing art, whether for live or recorded performance, including music, dance, and theater, and accessory sales of such art. Activities must conform to the following requirements:

1. The use, including storage of materials or products, shall be carried on strictly within an enclosed building.
2. The production of offensive noise, vibration, smoke, dust or other particulate matter, heat, humidity, glare, or other objectionable effect shall be prohibited.
3. Retail sales of art produced on-site that does not take place more than twelve (12) hours per week will be an allowable accessory use.”

Dimensions

The increase in the number of units and net floor area of the building requires a Special Permit to alter the nonconforming dimensions. The structure is currently nonconforming with respect to the following dimensional requirements: lot area per dwelling unit, ground coverage, landscaped area, floor area ratio (FAR), and front and rear yard setbacks.

The proposal will impact the following nonconforming dimensions: lot area per dwelling unit and FAR. The current lot area per dwelling unit is 867, the proposal is 743, and the requirement in the district is 875. The current FAR is 2.43, the proposal is 2.53, and the requirement in the district is 2.0. These alterations to a nonconforming structure requires the Applicant to obtain special permits under §4.4.1 of the Somerville Zoning Ordinance (SZO).

Section 4.4.1 states that “[l]awfully existing nonconforming structures other than one- and two-family dwellings may be enlarged, extended, renovated or altered only by special permit authorized by the SPGA in accordance with the procedures of Article 5. The SPGA must find that such extension, enlargement, renovation or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming building. In making the finding that the enlargement, extension, renovation or alteration will not be substantially more detrimental, the SPGA may consider, without limitation, impacts upon the following: traffic volumes, traffic congestion, adequacy of municipal water supply and sewer capacity, noise, odor, scale, on-street parking, shading, visual effects and neighborhood character.”

In considering a special permit under §4.4 of the SZO, Staff find that the alterations proposed would not be substantially more detrimental to the neighborhood than the existing structure. The exterior of the building and site will not change as a result of the proposal. The units will be sufficient sizes to accommodate a range of household sizes. Unutilized space in the basement will provide space for studio space, which is in demand. The activity in the basement will be during the daytime hours when the Gilman Square area is relatively quiet.

Parking

A Special Permit is also sought to not provide required parking per §9.5 & 9.13a.

The number of required parking spaces for the residential units does not change. The existing number of units and bedrooms are 2 two-bedroom and 4 three-bedroom units that have a parking requirement of 11. The requirement with the reconfigured units to 4 one-bedrooms, 2 two-bedrooms, and 1 three-bedroom units also has a parking requirement of 11. The parking requirement for the visitor parking space (1) and woodshop (1) does not change either.

The artist studio space requirement is 1 space per 400 square feet. The 1,325 square foot proposed space has a requirement of 3 spaces. SZO §9.13 allows for sites with nonconforming parking to apply for a Special Permit to modify parking requirements if the total number of spaces is less than six. In considering a special permit under §9.13 of the SZO the Applicant must be able to demonstrate that granting the requested special permit would not cause detriment to the surrounding neighborhood through any of the criteria as set forth under SZO §9.13, which are as follows:

- 1) increase in traffic volumes;
- 2) increased traffic congestion or queuing of vehicles;
- 3) change in the type(s) of traffic;
- 4) change in traffic patterns and access to the site;
- 5) reduction in on-street parking;
- 6) unsafe conflict of motor vehicle and pedestrian traffic.

The parking relief will not cause detriment to the surrounding area. The artist studio spaces will be primarily used during the day when there is less demand for the residential parking. The owner of the property is seeking to rent the spaces to local artist who will likely have the option to walk, bike or take public transportation to the site.

One bicycle parking space is required as a result of this application.

3. Consistency with Purposes: *The Applicant has to ensure that the project "is consistent with (1) the general purposes of this Ordinance as set forth in Article 1, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles."*

The proposal to reconfigure and use unutilized space is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to providing for and maintaining the uniquely integrated structure of uses in the City and encouraging the most appropriate use of land throughout the City.

The proposal including alteration of a mixed-use building is consistent with the purpose of the BA district, which is, "[t]o establish and preserve business areas bordering main thoroughfares that are attractive to a wide range of uses, including retail business and services, housing, government, professional and medical offices, and places of amusement. While it is anticipated that most users will arrive by motor vehicle, it is intended that the area should be safe for and conducive to pedestrian traffic."

In considering a special permit under §9.13 of the SZO the SPGA may grant such a special permit only when consistent with the purposes set forth in Section 9.1. The existing on-street parking spaces on the private way provide adequate space for the residential and studio spaces uses. They are shared among the users of the building which allows the resource to be used most efficiently. No new hard surfaces or disruption of traffic flows will be caused by continuing to use these existing parking spaces.

4. Site and Area Compatibility: *The Applicant has to ensure that the project "(i)s designed in a manner that is compatible with the characteristics of the built and unbuilt surrounding area, including land uses."*

The proposal does not alter the building or site. The uses proposed are consistent with the type of factory/light industrial uses that have historically existed at this site.

7. Housing Impact: *Will not create adverse impacts on the stock of existing affordable housing.*

The proposal will split one large unit in the building into two smaller units, which presumably will make for less expensive units.

8. SomerVision Plan: *Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville's neighborhoods, transform key opportunity areas, preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups; and, make Somerville a regional employment center with a mix of diverse and high-quality jobs. The areas in the SomerVision map that are designated as enhance and transform should most significantly contribute towards the SomerVision goals that are outlined in the table below. The areas marked as conserve are not expected to greatly increase the figures in the table since these areas are not intended for large scale change.*

The proposal will add modestly to the residential and commercial goals of SomerVision and to the many goals of increasing the amount of space available for artists in the City.

<u>SomerVision Summary</u>	<i>Existing</i>	<i>Proposed</i>
<i>Dwelling Units:</i>	6	7
<i>Commercial Sq. Ft.:</i>	649	1,974

9. Impact on Affordable Housing: *In conjunction with its decision to grant or deny a special permit for a structure of four or more units of housing, the SPGA shall make a finding and determination as to how implementation of the project would increase, decrease, or leave unchanged the number of units of rental and home ownership housing that are affordable to households with low or moderate incomes, as defined by HUD, for different sized households and units.*

The proposal will not impact the majority of the residential units. It will split one large unit in the building into two smaller units, which presumably will make for less expensive units.

III. FINDINGS FOR SPECIAL PERMIT with SITE PLAN REVIEW (SZO §7.11.1.c):

In order to grant a special permit with site plan review, the SPGA must make certain findings and determinations as outlined in §5.2.5 of the SZO. This section of the report goes through §5.2.5 in detail.

Since there are no exterior changes proposed, the following findings do not apply to this application:

- 4. Site and Area Compatibility
- 5. Functional Design
- 9. Preservation of Landform and Open Space
- 10. Relation of Buildings to Environment
- 11. Stormwater Drainage
- 12. Historic or Architectural Significance
- 13. Enhancement of Appearance

14. Lighting
15. Emergency Access
16. Location of Access
17. Utility Service
18. Prevention of Adverse Impacts
19. Signage
20. Screening of Service Facilities
21. Screening of Parking

1. Information Supplied:

The Staff finds that the information provided by the Applicant conforms to the requirements of §5.2.3 of the SZO and allows for a comprehensive analysis of the project.

2. Compliance with Standards: *The Applicant must comply “with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit with site plan review.”*

The proposal to increase the number of residential units from six to seven in the BA district requires a Special Permit with Site Plan Review under §7.11.1.c.

Per §6.1.6, all developments within the BA District that require a special permit with site plan review should comply with the following guidelines to the highest degree practicable.

1. *Give preference to locating on-site, off-street parking at the rear of the lot, behind the building or below street level, providing vehicular access from either a side street or alley where possible.*
2. *Give preference to providing landscaping along the primary street edge.*

The proposal does not alter the building or site. There is no on-site parking and no land on which to provide landscaping.

3. Purpose of District: *The Applicant has to ensure that the project “is consistent with the intent of the specific zoning district as specified in Article 6”.*

See finding 3 in the Special Permit section above.

6. Impact on Public Systems: *The project will “not create adverse impacts on the public services and facilities serving the development, such as the sanitary sewer system, the storm drainage system, the public water supply, the recreational system, the street system for vehicular traffic, and the sidewalks and footpaths for pedestrian traffic.”*

There will be a slight increase on the sanitary sewer system due to an additional residential unit and studio space at the site. There will be an increase in the number of usable square feet but a decrease in the total number of bedrooms, which will balance the water usage overall. The proposal will not alter the storm drainage system or the recreational system. There will be a small positive impact on increasing daytime foot traffic in Gilman Square.

7. Environmental Impacts: *“The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding*

area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.”

The residential use will have typical residential impacts that do not involve the impacts in this finding. The artist studio space is limited so that the use, including storage of materials or products, need to be carried on strictly within an enclosed building, and there cannot be production of offensive noise, vibration, smoke, dust or other particulate matter, heat, humidity, glare, or other objectionable effect shall be prohibited.

8. Consistency with Purposes: *“Is consistent with: 1) the purposes of this Ordinance, particularly those set forth in Article 1 and Article 5; and 2) the purposes, provisions, and specific objectives applicable to the requested special permit with site plan review which may be set forth elsewhere in this Ordinance, such as, but not limited to, those at the beginning of the various sections.”*

See finding 3 in the Special Permit section above.

21. Housing Impact: *Will not create adverse impacts on the stock of existing affordable housing.*

See finding 7 in the Special Permit section above.

22. SomerVision Plan: *Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville’s neighborhoods, transform key opportunity areas, preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups; and, make Somerville a regional employment center with a mix of diverse and high-quality jobs. The areas in the SomerVision map that are designated as enhance and transform should most significantly contribute towards the SomerVision goals that are outlined in the table below. The areas marked as conserve are not expected to greatly increase the figures in the table since these areas are not intended for large scale change.*

See finding 8 in the Special Permit section above.

23. Impact on Affordable Housing: *In conjunction with its decision to grant or deny a special permit for a structure of four or more units of housing, the SPGA shall make a finding and determination as to how implementation of the project would increase, decrease, or leave unchanged the number of units of rental and home ownership housing that are affordable to households with low or moderate incomes, as defined by HUD, for different sized households and units.*

See finding 9 in the Special Permit section above.

IV. RECOMMENDATION

Special Permit & Special Permit with Site Plan Approval under §7.11.1.c, 7.11.6.8, 4.4.1 & 9.13

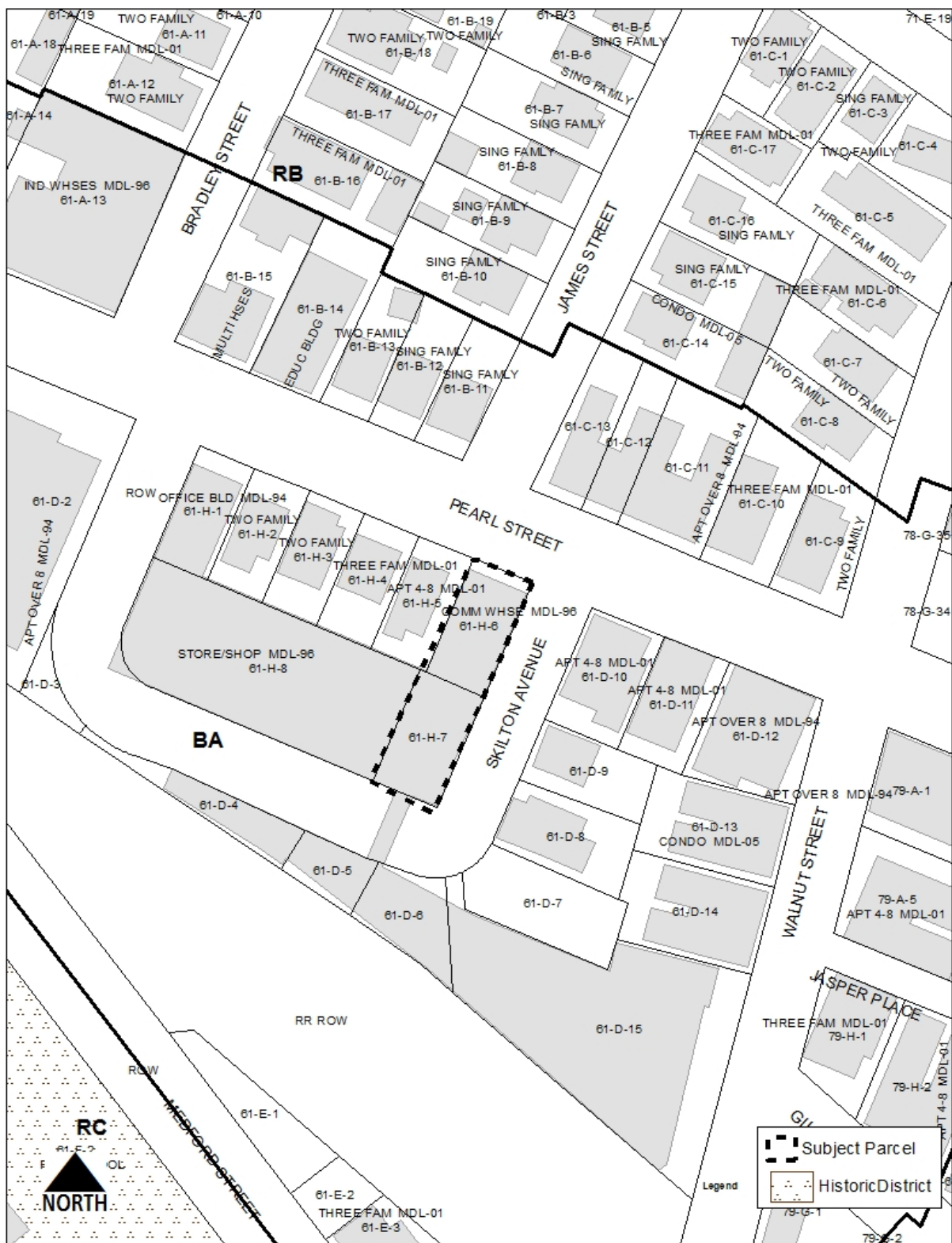
Based on the materials submitted by the Applicant, the above findings and subject to the following conditions, the Planning Staff recommends **CONDITIONAL APPROVAL** of the requested **SPECIAL PERMITS** and **SPECIAL PERMIT WITH SITE PLAN REVIEW**.

The recommendation is based upon a technical analysis by Planning Staff of the application material based upon the required findings of the Somerville Zoning Ordinance, and is based only upon information

submitted prior to the public hearing. This report may be revised or updated with new recommendations, findings and/or conditions based upon additional information provided to the Planning Staff during the public hearing process.

#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	Approval is for the addition of a residential unit to have a total of 7, inc FAR and lot area per dwelling unit nonconformities, 1,325 sf of artist studio space and no additional parking spaces . This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD / Plng.									
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>Dec 14, 2015</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>(Jan 14, 2016)</td><td>Modified plans submitted to OSPCD (A1.0 existing floor plans, A2.0 proposed floor plans, Exterior Elevations)</td></tr><tr><td>Sept 19, 2014</td><td>Modified plans submitted to OSPCD (plot plan)</td></tr></table>				Date (Stamp Date)	Submission	Dec 14, 2015	Initial application submitted to the City Clerk's Office	(Jan 14, 2016)	Modified plans submitted to OSPCD (A1.0 existing floor plans, A2.0 proposed floor plans, Exterior Elevations)	Sept 19, 2014	Modified plans submitted to OSPCD (plot plan)
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Any changes to the approved plans that are not <i>de minimis</i> must receive SPGA approval.												
Pre-Construction												
2	The Applicant will be required to demonstrate that the proposal complies with the accessibility requirements (ADA and MAAB) if the studio spaces are opened to the public.	BP	Eng.									
3	The fire rated assembly and IEBC report will be required to be submitted.	BP	ISD									
4	Electrical plans will be required to be submitted.	BP	Electrical 1									
Construction Impacts												
5	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P									
6	Applicant will supply at least 1 bicycle parking spaces, which can be satisfied with a U- type bicycle rack in the basement or on the sidewalk if approved by City staff.	CO	Plng.									
Miscellaneous												
7	The Applicant, its successors and/or assigns, shall be responsible for maintenance of both the building and all on-site amenities, including landscaping, fencing, lighting, parking areas and storm water systems, ensuring they are clean, well kept and in good and safe working order.	Cont.	ISD									
8	If signage for the artist studio spaces is proposed, it shall be reviewed and approved by Planning Staff.	Cont	Plng.									

9	The use, including storage of materials or products, shall be carried on strictly within an enclosed building.	Cont.	ISD	
10	The production of offensive noise, vibration, smoke, dust or other particulate matter, heat, humidity, glare, or other objectionable effect is prohibited.	Cont.	ISD	
11	Retail sales of art produced on-site that does not take place more than twelve (12) hours per week will be an allowable accessory use. Retail sales beyond this timeframe is not allowed.	Cont.	ISD	
Public Safety				
12	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
Final Sign-Off				
13	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	



Supplemental information re: history of use and structure of the building
provided by the Applicant

226 Pearl Street, Somerville, MA
Special Permit Application

The applicant, John Tagiuri, submits the following information in support of his application for Special Permit to allow the addition of one (1) residential apartment and three (3) artist studio spaces in this mixed residential/commercial building at 226 Pearl Street, Somerville, Massachusetts.

Upon a search of the public records and based in part upon personal knowledge, the applicant has determined the following:

- 1) The original building was constructed in approximately 1917, and a newer portion of the building likely built in approximately 1928. The building was originally the Kemp Nuts Factory and operated for the production of Kemp Nuts until at least 1950.
- 2) Beginning approximately 40 years ago, portions of the building began to be used for residential purposes, rented out to tenants, mainly artists or artisans, who lived and worked in the building.
- 3) By 1994 when Mr. Tagiuri bought the property from Mr. Stanley Childs, the building had been used as a mixed residential/commercial building, with at least six (6) residential apartments, one (1) woodshop at the rear.
- 4) Beginning in 1994 and continuing thereafter, Mr. Tagiuri rented six (6) residential apartments to artists, rented the one (1) wood shop to a local artist/carpenter, and used the basement of the building as his art studio/workshop space.
- 5) In 1995, Mr. Tagiuri applied for a work permit to “legalize the existing use as purchased 7/1/94 – 6 live/work artist’s studios”.
- 6) In 1996, Mr. Tagiuri again applied for a work permit to “construct partitions, door, etc. (fire protection) to legalize existing use.” This permit (no. 8608) was approved and work completed.
- 7) In 2007 and 2012, the City of Somerville issued a Certificate of Inspection pursuant to Massachusetts State Building Code, Section 106.5 in which the Building Inspector certified that he had inspected the six residential units in the building and found them in compliance.
- 8) In 2014, Mr. Tagiuri applied for a work permit to “legalize existing woodshop” which permit was approved and work completed. And in June 2014, the City issued a Certificate of Occupancy for the existing wood shop.

Based upon the above information, the use of the building as mixed residential and commercial is legally pre-existing (commencing 40 years ago, prior to the enactment of the current SZO provisions which would require a Special Permit to allow such use). The use of the building for six (6) dwelling units is a legally pre-existing non-conforming use entitled to protection under MGL c. 40A, sec. 7. More than six years have elapsed since the issuance of

the work permit (1996) to perform work necessary to “legalize the existing use”. The building is a pre-existing, legally non-conforming structure: originally constructed in 1917 and enlarged in 1928 to encompass the entire lot (at a time when the SZO did not include dimensional restrictions), the structure does not meet current requirements as to floor area ratio, setbacks, or lot size per dwelling unit (see SZO Table 8.5), and does not meet the parking requirements of the Ordinance (see SZO Section 9).