David B. Cohen
Mayor

CITY OF NEWTON, MASSACHUSETTS

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Public Hearing Date:	January 28, 2008
Zoning and Planning Action Date:	March 24, 2008
Board of Aldermen Action Date:	April 7, 2008
90-Day Expiration Date:	April 27, 2008

TO: Ald. Brian E. Yates, Chairman, and
Members of the Zoning and Planning Committee
Planning and Development Board

FROM: Michael Kruse, Director of Planning and Development
Juris Alksnitis, Chief Zoning Code Official

SUBJECT: Petition #110-07, ZONING TASK FORCE recommending amendments to *Definitions, Story, half*, referred to as the half-story/dormer policy, by creating an ordinance with provisions: (1) codifying policy that permits a dormer that does not exceed fifty percent of the width of the wall directly below it; (2) permitting the vertical plane of the front wall of a dormer to align with the exterior wall directly below and requiring a roof line overhang between the dormer and the wall directly below; (3) requiring that the vertical plane of the side wall of a dormer be at least two feet from the vertical plane of the vertical plane of the side wall directly below; (4) prohibiting a dormer roof that exceeds the highest point of the ridgeline of the roof of the building; (5) amending the definition of roof height to be the vertical distance between the elevations of (a) the average grade plane and (b) the midpoint between the highest point of the ridgeline of the main roof and the line formed by the intersection of the top of the main building wall plane and the main roof plane; (6) creating a design review committee (DRC) to review and approve dormers not expressly permitted by ordinance, with a right of appeal to the Board of Aldermen by petitioners aggrieved by decisions of the DRC; and (7) specifying that the above policy does not apply to dormers on the second floor of a building.

Petition #126-07, ZONING TASK FORCE recommending the following amendments to Section 30-1 Definitions, "*Story, half*," referred to as the half-story/dormer policy, as follows: (1) remove the definition of *"Story, half"* in its entirety; (2) amend the current definition of *"Dormer"* to "*Dormer* a permanent superstructure projecting from a sloping roof and equipped with a window or a vent. The length of a dormer shall be less than the length of the wall below it by at least 3 feet at each end of the wall."

CC: Board of Aldermen
Mayor David B. Cohen
John Lojek, Commissioner of Inspectional Services

RECOMMENDATIONS: SEE "RECOMMENDATIONS" SECTION WITHIN.

The purpose of this memorandum is to provide the Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Boards. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider in its discussion at a subsequent Working Session.

I. BACKGROUND

Although identified as a "half story" item, the purpose of ***Petition #110-07*** is to define and codify the related matter of dormers. ***Petition #126-07***, although filed by the Task Force, allows a minority position the courtesy of further discussion pertaining to the overall elimination of the half story provision. While Section 30-1, *Definitions,* contains a definition for *"Story, half"*, no definition is provided for dormers at present.

In 1997, the City adopted modifications to the Zoning Ordinance reducing residential dwellings to maximum 30 ft. and 2.5 stories. Concurrently, the City adopted Ordinance V-113, April 23, 1997, which established the definition for "half story" and also instituted several related modifications to *Table 1 – Density & Dimensional Controls In Residence Districts and for Residential Uses* (Table 1). During the same year, the City also adopted limits on Floor Area Ratio for the first time. At the present time, the gross floor area calculation excludes habitable space which qualifies as basement, finished attic, or half-story. In turn, this has the effect of significantly undercounting actual FAR at a particular location. Given recent market trends, developers have sought to maximize building sizes in various ways.

Concerns have been raised by the Commissioner of Inspectional Services that some builders have manipulated the combination of dormers and half stories to in effect achieve a full third story. In some cases, grading has also been set in a manner to qualify otherwise largely exposed finished basement floors as basements, in effect adding yet another story.

Given the above concerns, this item was included in a list of items to be addressed by the Zoning and Planning Committee Task Force. Chaired by Ald. Ted Hess-Mahan, the Task Force convened working subcommittees, which then reported back to the Task Force over time on the designated issues. Thereafter, the Task Force transmitted a set of reports to the Zoning and Planning Committee on the various items. The subject Petition #110-07 reflects the Task Force report with respect to the "Half Story/Dormer Subcommittee" (hereafter Subcommittee), while Petition #126-07 reflects the minority view of one member of the Subcommittee. In addition, the following concurrent Task Force petitions, discussed in companion memoranda prepared by the Planning and Development Department, address certain zoning concerns as follows:

- #108-07 – 50% demolition
- #109-07 – 3 ft. grade change
- #111-07 – De minimis

This memorandum looks at information and suggestions provided by the Subcommittee and also the minority report, to the extent practical.
(SEE ATTACHMENT A – SUMMARY OF RECOMMENDATIONS). A copy of the minority memorandum titled "Newton Zoning Task Force Half-story/Dormer Subcommittee Report" by Anatol Zukerman may be requested from the Clerk of the Board of Aldermen.

II. CURRENT ORDINANCE

Section 30-1, *Definitions* states as follows:

"Attic: The space in a building between the ceiling joists of the top full story and the roof rafters."

"Basement: Any story in a building in which two-thirds (2/3rds) or more of the distance between the floor and the ceiling next above it is below the average grade plane adjacent to the building. However, in the case of one- and two-family residential uses, any story in a building in which one-half (1/2) or more of the distance between the floor and the ceiling next above it is below the average grade plane adjacent to the building.

"Story: That portion of a building, any part of which is above the ground elevation, excluding basements, contained between any floor and the floor or roof next above it."

"Story, half: A story directly under a sloping roof where the area with a ceiling height of 7'3" or greater is less than 2/3rds the area of the story next below. "

When in 1997 the City adopted amendments to the Zoning Ordinance reducing residential dwellings largely to 2.5 stories, it was necessary to also define and make provision for half stories in the Zoning Ordinance. Although reducing allowed stories, the City did not wish to penalize that portion of its housing stock that had potentially habitable space on a third floor within the existing building envelope. As a result, a "half story" definition was crafted which allowed the completion of unfinished space meeting certain "half story" criteria. This space was also granted and added benefit – it was excluded from the calculation of FAR.

III. PROPOSED AMENDMENT

Petition #110-07. Although new language is not proposed at this time, the public hearing Notice for this petition contains the following elements codifying the current dormer policy as implemented by the Inspectional Services Department and also proposing a dormer design review committee:

(1) Allows dormer not exceeding 50% of the width of wall directly below it.

(2) Allows a dormer front wall vertical plane to be aligned and located directly above the exterior wall directly below, provided there is a roof line overhang between the two walls.

(3) Requires the vertical plane of a dormer side wall to be set back at least two feet from the vertical plane of the side wall directly below.

(4) Prohibits a dormer roof, which exceeds the highest point of the ridgeline of the existing roof of the building.

(5) Amends the definition *height* in Sec. 30-1 to specify that the top elevation measuring point is located midway between the highest point of the main roof ridgeline and the plane at the intersection of the top of the main building wall and main roof plane.

(6) Creates a "design review committee" (DRC) to review and approve dormers not expressly permitted by ordinance, with a right of appeal to the Board of Aldermen by petitioners aggrieved by the decisions of the DRC.

(7) Specifies that dormer provisions do not apply to dormers on the second floor of a building.

It is noted that the Subcommittee Report recommends that the existing "half story" definition be retained.

Petition #126-07. The public hearing notice for this petition contains the following elements:

(1) Amend Section 30-1, *Definitions,* by deleting the definition of *"Story, half"* in its entirety.

(2) Amend the current definition of "Dormer" to *"Dormer – a permanent superstructure projecting from a sloping roof and equipped with a window or a vent. The length of a dormer shall be less than the length of the wall below it by at least 3 feet at each end of the wall."* Note: As at present Section 30-1 does not contain a definition of "dormer", it is assumed that the petitioner seeks to establish a new definition as above.

Should the Zoning and Planning Committee concur with the above elements contained within the respective petitions, specific language amending the Zoning Ordinance will be needed for review and adoption by the Board of Aldermen.

IV. ANALYSIS

Dormers in Newton. A drive down most any Newton street will find houses with dormers of many different kinds. These might include: shed, gable, vault, hipped, eyebrow, half turret, gambrel, ornamental, or other types, and also combination dormers. Of these, shed and gable dormers seem to occur more frequently. Dormers are useful in creating additional living space while not increasing a building footprint and are typically used to enhance bedroom space and provide stairwell headroom. However, as discussed above, various builders have sought to maximize building space utilizing combinations of half stories and dormers that in effect create a full story and result in dormers of excess mass and bulk. ***In response, the Inspectional Services Department has adopted a policy, which regulates dormers and seeks to maintain an appropriate scale while still allowing construction of dormers.*** The Subcommittee noted in its Report that it is important to retain and enhance the unique character of Newton's housing stock while simultaneously providing for existing

and future residents to best utilize their homes. Dormers also facilitate the conversion of attic space into a livable half story.

Petition #110-07. This petition reflects the recommendations of the Subcommittee and largely seeks to codify the currently existing Inspectional Services Department dormer policy as described in III. Proposed Amendment, above. While the Planning Department and the Commissioner of Inspectional Services concur in principle with the Subcommittee regarding the reasonable utilization of dormers and also with the listed dormer parameters, certain clarifications are needed. For example, a basic definition of "dormer" is needed. The initial portion of the definition proposed in Petition #126-07 would be a good start as follows: "a permanent superstructure projecting from a sloping roof and equipped with a window." Additional language would be needed to incorporate the listed parameters in an appropriate manner. In addition, further thought is needed to determine how to treat multiple dormers on the same roof side, and whether to apply the 50% measurement to individual dormers or in the aggregate.

The subject petition also proposes to amend the basic total building "height" definition in Section 30-1 so as to eliminate potential confusion in measuring methodology where dormer rooflines are involved. The proposed amendment would specify that the top elevation measuring point is located midway between the highest point of the main roof ridge line and the plane at the intersection of the top of the main building wall and main roof plane. In effect, this would omit consideration of any dormer roof. The Planning Department and the Commissioner of Inspectional Services concur with this recommendation, provided the dormer conforms to required parameters. For example, when a shed dormer exceeds the 50% length rule raising the roofline, this has the effect of also raising the main roof elevation. Such a scenario is likely where large dormers are built on the second floor rather than on the top half story. In such cases it would be necessary to take the midpoint on the dormer roof.

Although the intent of the Subcommittee is to provide a simpler path (for proposed dormers) utilizing a Design Review Committee, the Commissioner of Inspectional Services is not prepared to staff and support an additional administrative review body and appeal process at this time. Another option would be to provide a special permit mechanism utilizing the Zoning Board of Appeals solely in the case of dormer exceptions. A similar approach was discussed with respect to Petition #109-07 [retaining walls in setbacks] and #111-07 [certain de minimis type situations]. In cases involving multiple reliefs as well as dormer exceptions, the existing special permit process involving the Board of Aldermen should apply.

Second story clarifications-main dwelling. The Planning Department and the Commissioner of Inspectional Services concur with the suggestion that zoning based dormer parameters and restrictions would not apply in cases where a dormer is built on the second story. This is consistent with the right to build a full second story constructed above the first story, subject to Table 1 requirements. While building code requirements still apply, such dormers would be free from zoning considerations.

The Commissioner of Inspectional Services also points out that half stories should be considered half stories only if above the second story. This would resolve confusion among applicants trying to understand whether one can qualify building space as a half story regardless of the story involved. With such clarification, all second story construction, whether above an attached garage or above the main house first story also would be automatically be subject to FAR, precluding FAR avoidance on the part of builders.

The above clarifications would necessitate further revision both to the definition of "half story" and also of "dormer" as initially proposed. It is also noted that accessory buildings are separately regulated subject to Section 30-15(m), which limits such buildings to 1.5 stories. In such case, a half story is allowed above the first story, and the proposed dormer provisions would apply.

Petition #126-07. This petition reflects the minority view of one member of the Subcommittee, who believes that the current building height and story limitations in Table 1 should be revoked in favor standards existing prior to 1997 allowing three stories. As a result, the petition proposes elimination of the current definition of "half story". However, no other amendments were included addressing corresponding revisions of Table 1 dimensional controls. ***Neither the Planning Department nor the Commissioner of Inspectional Services agree with this proposal.***

The other suggestion to consider a basic definition for "dormer" is discussed above with respect to Petition #110-07. While the Planning Department and the Commissioner of Inspectional Services agree with the need to establish a basic definition for "dormer," we do not support the parameters in the definition offered in Petition #126-07, and prefer the parameters associated with Petition #110-07.

V. SUMMARY

Concerns have been raised by the Commissioner of Inspectional Services that some builders seeking to maximize building size have manipulated the combination of dormers and half stories to in effect achieve a full third story, not currently allowed under Table 1. This has resulted in dormers of excessive size and mass. Another approach some developers utilize is to design large half stories above attached garages and first floors, thereby expanding the building envelope while avoiding inclusion of such spaces in FAR. However, as discussed above, the main intent of half stories was to enable a homeowner to complete unfinished space located on a third floor within the existing building envelope. The above concerns as discussed in greater detail within IV. Analysis, above, point to the need for appropriate remedies within the Zoning Ordinance.

The Planning Department and the Commissioner of Inspectional Services concur largely with the recommendations of the Subcommittee Report and Petition #110-07, outlined above, subject to further clarifications and modifications as discussed. We also concur with the need for a basic definition of "dormer" proposed within the minority view and contained within Petition #126-07, subject to further modifications. However, ***the Planning Department and the Commissioner of Inspectional Services do not agree with the proposal to eliminate half stories and return to pre-1997 building height and story parameters.***

A next step would be to develop specific text amendments reflecting the considerations discussed above. It is suggested that the Planning Department, Commissioner of Inspectional Services and Law Department work together to craft the necessary language which may be referred to the Zoning and Planning Committee for review and action by the full Board of Aldermen.

RECOMMENDATIONS:

Petition #110-07

1. ***Develop ordinance text articulating dormer parameters for inclusion in a definition of "dormer" within Section 30-1.***
2. ***Review and clarify application of 50% parameter in the case of multiple dormers on the same roof side.***
3. ***Clarify final "dormer" definition to indicate that dormer parameters do not apply to dormers on second stories.***
4. ***Approve revision to definition of "height" within Section 30-1, and provide clarification with respect to utilizing mid-point of a dormer roof where such dormer exceeds the 50% rule.***
5. ***Develop ordinance text clarifying the definition of "story, half" within Section 30-1 such that this type of story is understood to be located only above the second floor of main dwellings, and does not apply to accessory buildings regulated by Section 30-15(m).***
6. ***Decline adoption of a Design Review Committee for adjudication of nonstandard dormer situations.***
7. ***Review and discuss concept of special permit mechanism utilizing the Zoning Board of Appeals solely in the case of dormer exceptions in place of 6., above.***

Petition #126-07

1. ***Deny elimination of "story, half" from Section 30-1.***
2. ***Develop ordinance text articulating a basic definition for "dormer" to be inserted in Section 30-1. Coordinate with parameters discussed under Petition #110-07.***

ATTACHMENTS

ATTACHMENT A – DRAFT SUMMARY OF HALF STORY/DORMER SUBCOMMITTEE RECOMMENDATIONS.

ATTACHMENT A

To: Alderman Ted Hess-Mahan

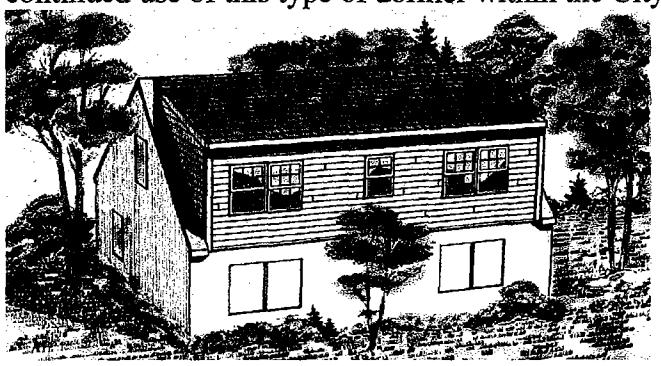
From: Members of the Zoning Task Force; Half Story/Dormer Subcommittee

Date: July 20, 2006

Re: Draft Summary of Half Story/Dormer Subcommittee Recommendations

Statement of Purpose

The City of Newton desires to retain and enhance the unique character of the housing stock while simultaneously providing for existing and future residents to best utilize their homes. Conversion of attic space into a livable half story may be facilitated through the use of dormers. The "shed" dormer has been the primary cause of the limited number of dormer complaints received by the Planning Department. Due to the comparatively low cost and comparatively high functionality of the shed dormer, the Subcommittee assumes continued use of this type of dormer within the City of Newton.



Shed Dormer

The purpose of the recommendations of this Subcommittee is to facilitate a simpler review process through which owners may work to expand their residences while still preserving the character of the City of Newton for existing and future members of the community. The immediate suggestions include a prescriptive criteria for dormers and an optional design review process for dormer issues that fall outside the explicit criteria but which might retain or augment the "character of Newton."

History:

As part of the subcommittee's review of this issue, various members reviewed many of the dormer styles employed throughout the neighborhoods of Newton. The analysis leads to the following conclusions about dormers on the existing housing stock:

1. dormers are widely used at the third level;
2. dormers vary significantly in both in number/frequency, size, and style;
3. more complex roofs often combine several styles, sizes, and numbers, often in an appealing way…or at least a familiar vocabulary;
4. there are many good examples of large dormers that "fit" a house; there are also many examples of dormers that look "out-of-place";

5. many houses have large main roof systems that accomplish many of the objectives of dormers, but often at a larger scale;
6. in situations with large or multiple dormers and/or in large main roof systems with or without dormers, it is not clear whether the space created within the structure would be constrained by the current "story, half" definition;
7. more study of the existing housing stock is needed to determine the parameters for limiting dormers, specifically the relationship between dormer length and the area at the half-story level that might be habitable

Draft Recommendations of the Half Story/Dormer Subcommittee

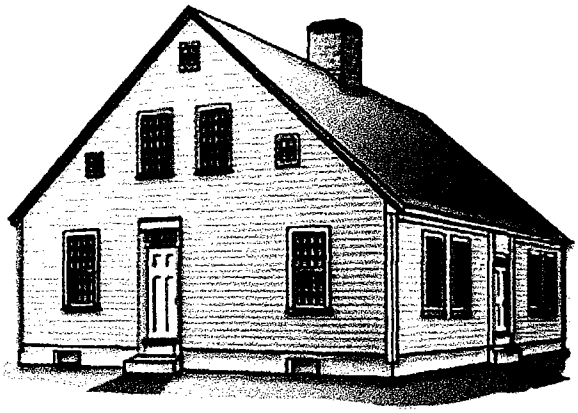
- **Retain existing "Story, half" definition, as follows:** A story directly under a sloping roof where the area with a ceiling height of 7'3" or greater is less than 2/3rds the area of the story directly below.
- **Retain 50 percent rule or expand it to 60 percent:** There is a current "unwritten" dormer rule within the Inspectional Services Department that permits a dormer to be no wider than 50 percent of the width of the wall directly below it. This "rule" needs more study. The size of the dormer must accomplish both aesthetic and functional goals. For example, a dormer may need to absorb a staircase and landing that utilizes 8-10' of dormer length. A dormer is also limited by the type of roof construction and the "story, half" definition noted above. Some members of the committee feel that more latitude above 50 percent, perhaps 60-70 percent, may give owners the ability to add access stairwells and the like, while still retaining a reasonable aesthetic.Other members believe less than 50% is appropriate.
- **Require roof line overhang:** When a dormer is built, a roof line overhang should be continued between the dormer on the third/half story and the second story. Rather than dictating the length of the overhang, it should be consistent with the roofline of the larger residence. There is support among the committee for the zoning provision to allow for the wall of the dormer to align with the wall below, albeit visually separated by the continuation of the roof overhang or other architectural feature that differentiates the story levels. (see image below)

- **The vertical plane of the side wall of any dormer shall not be closer than 2' (or 3') from the vertical plane of the main building wall below the main roof.** The below drawing illustrates this concept with an approximate 5' distance between the side wall of the main building and the side wall of the outside dormer.

- **No dormer roof above the main ridgeline of the building:** This is self explanatory, but complicated by unique (and generally expensive) architectural designs (an example of a Victorian-style residence below). While we believe there should be a provision for allowing some portion of the structure to fall above the existing main ridge line, it should be in the context of a design review process discussed later in this report.

- **Maximum building height of 30 feet should be retained but definition should be clarified to reference "Main Building" and exclude "Dormer".** Presently there is confusion about what points are measured to arrive at total building height. We believe it should be the "vertical distance between the elevations of the following: (a) the average grade plane and the (b) midpoint between the highest point of the ridge of the main building roof and the line formed by the intersection of the top of the main building wall plane and the main roof plane."

- **Expressly state in Zoning Code that there are no dormer restrictions on the second floor:** One and one-half story (Bungalow or Cape Cod) residences in Newton should be expressly exempt from controls of the dormer length as it relates to the length of the first level. For example, if a bungalow-style home has a 30 foot front length, a 25 +/- foot dormer above and along that front length should be permitted provided roof overhangs (soffits of 8 to 24 inches for example) and vertical plane setbacks from side roof lines (2 to 3 feet for example are retained. (See image below).



Design Review Process Alternative

Design Review Committee (DRC):
To allow for dormer situations that are not expressly permitted under the prescriptive criteria noted above, a petitioner may present his/her design proposal to the DRC for prompt review. A set of overriding principles and guidelines (to be developed) would provide the framework for the DRC assessment of submittals. Petitioners not satisfied with the opinions of the DRC might appeal to the Board of Alderman for further review.

The DRC would be made up of design professionals and might include some City of Newton staff as well.

Additional Recommendations

- **Re-examine FAR**: Residents of Newton have expressed concern that expansions to existing half stories through the use of dormers have been too large, and have also expressed concern that new developments or major renovations have included a use of the half story that is too intense in terms of building mass. We believe review of the total above ground building mass in context of FAR could allay some of those concerns.
    - The committee is divided as to whether a recast FAR should include all above ground building area (including visible basement and garage space)

or whether any revised view of FAR should only include the first, second, and half story.

- There was an initial convergence on a "volume" method of FAR, whereby all above grade building area, regardless of height, finished nature, etc. be counted as the way to best level the playing field.
- FAR could also be considered in the context of lot size, not solely underlying zoning.