



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

284-16
Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: June 14, 2016

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Alexandra Ananth, Chief Planner for Current Planning

Cc: Terrence P. Morris, attorney
Carmen Fugazzotto, applicant
Barney S. Heath, Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request for variances from the rear and side setback, lot coverage and open space requirements, and for a special permit to further extend nonconforming FAR

Applicant: Carmen Fugazzotto	
Site: 7-9 Arundel Terrace	SBL: 71001 0025
Zoning: MR2	Lot Area: 5,100 square feet
Current use: Two-family dwelling	Proposed use: No change

BACKGROUND:

The property at 7-9 Arundel Terrace consists of a 5,100 square foot lot improved with a two-family residence built in 1899. An attached carport was built at some point more than ten years ago without the benefit of a building permit, likely in the 1960s or '70s. The carport was built directly on the rear and side lot lines attaching to the rear left corner of the dwelling structure. The applicant recently enclosed the carport without a building permit creating a garage. Inspectional Services undertook zoning enforcement after the carport was enclosed by request from an abutter. To maintain the enclosed garage and legitimize the existing conditions, the applicant requires variances from the rear and side setbacks and lot coverage and open space requirements, as well as a special permit (or variance) to extend the already nonconforming FAR.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared by Carmen Fugazzotto, applicant, dated 4/26/2016
- Plot Plans, signed and stamped by Paul E. Pronovost,, surveyor, and James E. McLaoughlin IV, engineer, dated 3/15/2016

- FAR worksheet, submitted 4/26/2016

ADMINISTRATIVE DETERMINATIONS:

1. Section 7 of M.G.L. Chapter 40A provides statutes of limitations for enforcement action on zoning violations. First, where structures have been improved and used in accordance with the terms of a building permit issued in error, a six-year statute of limitations on enforcement applies. Second, where structures have been built or improved in violation of zoning regulations or in violation of the terms of a valid building permit, or without the benefit of a building permit, a ten-year statute of limitations on enforcement applies. The fact that a statute of limitations might prevent an enforcement action does not mean that the structure becomes a valid non-conforming structure. The structure remains non-compliant and cannot be lawfully altered or reconstructed. The applicant states that his father built the attached carport more than twenty years ago. There is no evidence of a building permit having been issued for the construction of the attached carport at any time. The ten year time limit to undertake an enforcement action has clearly lapsed, and the carport could remain as originally built. However, the applicant enclosed the carport, creating a garage, within the last two years. Accordingly, an enforcement action can be undertaken with regard to the garage.
2. Section 3.2.3 requires a side setback of 7.5 feet in the Multi Residence 2 zoning district. The original dwelling was built circa 1899 with a 14 foot side setback on the side where the violation exists. The undocumented carport was built directly on the side lot line connecting to the abutter's existing detached garage which was built in 1924 according to the building permit. Had the applicant maintained the original carport structure, the ten-year statute of limitations would have allowed it to remain as it was built. The applicant must rectify the zoning violations before a building permit can be issued. The applicant requires a variance from the side setback requirement to legitimize the structure as it exists with no setback from the side lot line.
3. Section 3.2.3 requires a rear setback of 15 feet in the Multi Residence 2 district. The original dwelling was built with a 16 foot rear setback. The attached carport was built directly on the rear lot line, and the newly enclosed garage maintained this setback. The applicant requires a variance to legitimize the structure directly on the rear lot line.
4. The property has an existing lot coverage of 35.9%, where the maximum allowed per Section 3.2.3 is 30%. While enclosing the existing carport does not increase the lot coverage, it was not built with the benefit of a building permit and is therefore not protected. To exceed maximum lot coverage requires a variance.
5. The existing open space is 48%, where the minimum required by Section 3.2.3 is 50%. While enclosing the existing carport does not decrease the percentage of open space, it was not built with the benefit of a building permit and is therefore not protected. To legitimize the existing noncompliant percentage of open space requires a variance.
6. The property has a nonconforming FAR of .59, where .58 is the maximum allowed per Section 3.2.11. A carport does not count toward FAR, however a garage does. Enclosing the garage created an FAR of .65. To exceed FAR, or to further extend a nonconforming FAR, as is the case

here, requires a special permit pursuant to Sections 3.2.11 and 7.8.2.C.2. The Zoning Board of Appeals may determine that the violation of FAR may be legitimized by a variance. Without such determination, a special permit from the City Council is required.

MR2 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	5,100 square feet	No change
Frontage	70 feet	60 feet	No change
Setbacks			
• Front	25 feet	24 feet	No change
• Side	7.5 feet	0 feet	No change
• Rear	15 feet	0 feet	No change
Max Lot Coverage	30%	35.9%	No change
Min Open Space	50%	48.%	No change
FAR	.58	.59	.65

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.2.3	To encroach into rear setback	Variance
§3.2.3	To encroach into side setback	Variance
§3.2.3	To exceed maximum lot coverage	Variance
§3.2.3	To be below minimum open space	Variance
§3.2.11 §7.8.2.C.2	To further increase nonconforming FAR	S.P. per §7.3.3 or Variance