

Terrence P. Morris, Esquire
Law Offices of Terrence P Morris LLC
57 Elm Road
Newton, MA 02460
617 202-9132

November 28, 2016

By Electronic transmission: jsantosuosso@newtonma.gov

Jane Santosuosso, Chief Zoning Code Official
Newton Inspectional Services Department
1000 Commonwealth Avenue
Newton, MA 02459

Re: 7-9 Arundel Terrace
Council Order #284-16
Request for Amendment: Zoning Review

Dear Jane:

On October 4, 2016 the City Council passed the above-referenced council order, which contained a condition 2.c requiring that variances be obtained from the Board of appeals “for waivers of the rear and side setback, lot coverage and open space.” This condition arose out of certain administrative determinations that were made in your zoning review memorandum dated June 24, 2016. In your memo you cite the fact that the 10-year statute of limitations prevented an enforcement action to have a structure removed. However you also stated that structure remains noncompliant and cannot be lawfully altered or reconstructed. It was that determination that was the predicate for the special permit application to seek relief for increased FAR to re-enclose structure¹.

It is acknowledged that when originally constructed the “carport was built directly on the rear and side lot lines and attaching to the rear left corner of the dwelling structure”. It is also true that these conditions violated certain dimensional standards (setback, lot coverage and open space) in the zoning ordinance at the time for which no relief was available absent a variance. Consequently, your memo stated that the applicant required variances from the rear and side setbacks, lot coverage and open space requirements to legitimize existing conditions.

¹ The structure in this case refers to a carport. However it should be noted that there is one important fact that was not included in the chronology of events laid out in your memo. While the carport was constructed in the 1960s, shortly thereafter it was fully enclosed to become a garage and had remained that way until 2003. Nonetheless for purposes of this letter the distinction between the carport and garage is largely irrelevant.

On August 4, 2016 the Legislature enacted Chapter 184 of the Acts of 2016 relative to nonconforming structures. The act amended Section 7 of Chapter 40A of the General Laws by inserting the following language in relevant part:

“If real property has been approved by the erection or alteration of 1 or more structures and the structures or alterations have been in existence for a period of at least 10 years and no notice of an action, suit or proceeding as to an alleged violation of this chapter or of an ordinance or bylaw adopted under this chapter has been recorded in the registry of deeds ...then the structures shall be deemed for zoning purpose is to be legally nonconforming structures subject to section 6 and any local ordinance or by-law relating to nonconforming structures.”

It is clear from the language in the newly adopted amendment to chapter 40A, which took effect on November 2, 2016, that the structure in this case has been legitimized by action of the Legislature and that the variances cited in the Council Order are no longer required from the Board of Appeals. It would also appear that since the Council order contains a specific finding that the *“proposed increase in the nonconforming structure will not be significantly more detrimental than the existing nonconforming structure is to the neighborhood”*, the Section 6 standard has also been met. Accordingly, the purpose of this letter is to request the reissuance of an updated zoning review memorandum in anticipation of filing for an amendment to the Council Order requesting deletion of Condition 2.d.

Thank you for your attention to this matter.

Sincerely,

Terrence P. Morris

Terrence P. Morris, Esquire

Attachments (2)

Cc: Ouida Young, Associate City Solicitor
Anthony Ciccariello, Deputy Commissioner
Scott F. Lennon, Councilor at Large, Ward 1
Carmen Fugazzotto