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ZONING REVIEW MEMORANDUM

Date: January 25, 2018

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Jennifer Caira, Chief Planner for Current Planning

Cc: Joyce Zakim, Applicant
Laurance Lee, Attorney
Barney S. Heath, Director of Planning and Development
Ouida Young, Acting City Solicitor

RE: Request for a section 6 finding to extend an existing nonconforming front and side setback, and to amend and extend Special Permit #131-16

Applicant: Joyce Zakim	
Site: 37 Westbourne Road	SBL: 73045 0009
Zoning: SR2	Lot Area: 8,090 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 37 Westbourne Road consists of an 8,090 square foot lot improved with a single-family residence constructed in 1896 and a detached garage constructed in 1929. The lot has two frontages; 82 feet on Westbourne Street to the front, and approximately 90 feet on Francis Street to the rear. The existing garage is located 4.8 feet from the front setback on Francis Street and approximately 2.5 feet from the side setback. A building permit was issued in 1985 for the construction of a deck on the property with a notation that it was not to be connected to the garage. The deck was built connected to both the dwelling and the garage, thereby making the detached garage an attached garage. Attaching the garage to the house increased the setback requirements and at that time, rendering the garage non-compliant.

The petitioner sought and was granted Special Permit #131-16 in 2016 to allow for the construction of an attached garage, carport and some living space to provide a handicapped accessible entrance into the dwelling which further increased the already nonconforming FAR. Due to the existing non-compliant front and side setbacks, the proposed setbacks required variances to construct the

addition as proposed. Just prior to the petitioner filing for the variances, a 2016 change to Section 7 of MGL Chapter 40A (The Zoning Act) was adopted allowing for a special permit granting authority to make a finding that a non-compliant structure in existence for ten years without any action being taken for enforcement may be deemed a nonconforming structure and subject instead to a "Section 6" finding rendering it legally nonconforming. As the deck addition that created the noncompliant setbacks for the (now attached) garage was built in 1985, the project is eligible for a special permit with a Section 6 finding that the proposed construction will not be detrimental.

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

- Zoning Review Application, prepared by Laurance Lee, attorney, submitted 1/24/2017

ADMINISTRATIVE DETERMINATIONS:

1. Special permit # 131-16 was granted in 2016 to allow an extension of already nonconforming FAR in the same configuration proposed in this petition. The plans approved by the special permit are the same plans proposed by this application. However, at the time the special permit was granted, the proposed construction required a variance to allow for the legitimization of noncompliant setbacks. The change to MGL 40A, section 7 now allows for those noncompliant setbacks to be legitimized by a Section 6 finding as extension of pre-existing nonconformities. The petitioner is seeking an amendment to the existing special permit to include the Section 6 finding that the proposed front setback of 5.4 feet, and the proposed side setback of 2.1 feet shown on the approved plans is not more detrimental than the existing nonconforming setbacks.
2. Special permit #131-16 was granted on May 16, 2016. Section 7.3.2.E allows the City Council to grant a one-year extension to exercise the rights of a special permit. The extension is valid for the one year after the expiration. As the special permit expired on May 17, 2017, the extension will be valid to May 17, 2018. The petitioner may request one more one-year extension upon the expiration of the initial extension to May 17, 2019.

SR3 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	8,090 square feet	No change
Frontage	80 feet	82 feet	No change
Setbacks for existing structure			
• Front (Westbourne)	25 feet	22 feet	No change
• Front (Francis)	25 feet	4.8 feet	5.4 feet
• Side	7.5 feet	+/- 2.5 feet	2.1 feet
Max. Lot Coverage	30%	23.4%	25.5%
Min. Open Space	50%	57%	58%
FAR	.41	.52	.59

Zoning Relief Required

<i>Ordinance</i>		<i>Action Required</i>
	To amend Special Permit #131-16	
§3.1.3 §7.8.2.C.2	To alter nonconforming front and side setbacks	S.P. per §7.3