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ZONING REVIEW MEMORANDUM

Date: August 7, 2014

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Peter Harrington, Attorney for the applicant
Leopoldo Butera, Applicant
Candace Havens, Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request for Variances from maximum height of an accessory building, maximum lot coverage, minimum open space, and special permits to allow for a detached garage with a ground floor area greater than 700 square feet

Applicant: Leopoldo Butera	
Site: 26 Elm Street	SBL: 33024 0010
Zoning: MR-1	Lot Area: 8,250 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 26 Elm Street consists of a 8,250 square foot lot improved with a single-family residence constructed in 1955. The applicant received a building permit in 1999 to raze a detached garage structure and construct a new 1½-story detached garage. The garage appears to not have been built according to the approved building permit, and several zoning violations exist. The owner constructed a carport on the right side of the garage structure without the benefit of a building permit some time after 1999. This application seeks to legitimize the structures as they currently exist.

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

- Zoning Review Application, prepared by Peter Harrington, attorney, submitted 5/14/2014
- Existing Site Plan, prepared by Frank Iebba, Essex Engineering and Survey, dated 7/20/2014

ADMINISTRATIVE DETERMINATIONS:

1. MGL Chapter 40A, section 7 provides statutes of limitations for enforcement action on zoning violations. First, where property has been improved and used in accordance with the terms of the original building permit, 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, a ten year statute of limitation on enforcement applies.
2. A building permit was issued in 1999 for the demolition of an existing detached garage and construction of a new detached garage structure. Plans attached to the permit show a building height of 26.17 feet, which violated the height limitation of 22 feet found in Section 30-15(m)(2) of the Newton Zoning Ordinance. The building however, was built to a height of 29 feet, not in accordance with the building permit. The 10-year statute of limitations on enforcement of a violation built with the benefit of a building permit, though not in accordance with that which the permit allowed is applicable in this case. The structure was constructed 15 years ago, and therefore may remain noncompliant, but the new addition of the carport does not have the benefit of that protection, as it was never issued a building permit, and must be removed. Should the applicant wish to maintain the carport, a variance from Section 30-15(m)(2) is required to legalize the current height.
3. The 1999 building permit required that the accessory structure be 1½ stories, in accordance with Section 30-15(m)(3) of the Newton Zoning Ordinance. The structure was built with two stories, not in accordance with the building permit. The ten-year statute of limitations in MGL Chapter 40A, section 7 applies to the number of stories as well as the height. The structure was constructed 15 years ago, and therefore may remain noncompliant, but the new addition of the carport does not have the benefit of that protection and must be removed. Should the applicant wish to maintain the carport, a variance from Section 30-15(m)(3) is required to legalize the current number of stories.
4. A garage with a ground floor area in excess of 700 square feet requires a special permit pursuant to Newton Zoning Ordinance Section 30-15(m)(5)c). The 1999 building permit has a notation requiring that garage not exceed 700 square feet in accordance with the local provision, however the plans submitted for the garage showed a ground floor area of 1060 square feet. The garage was not built in accordance with the building permit with regard to the ground floor area, and therefore is protected under the ten-year statute of limitations found in MGL Chapter 40A, section 7. The structure was constructed 15 years ago, and therefore may remain noncompliant, but the new addition of the carport does not have the benefit of that protection and must be removed. However, should the applicant wish to maintain the carport, a special permit per Section 30-15(m)(5)c) is required to legalize the current ground floor area.
5. The maximum lot coverage allowed in the MR1 district is 30%. As permitted by the 1999 building permit, the property had a compliant lot coverage of 29%. The addition of the carport creates a lot coverage of 36%, which is in violation of the building permit and Section 30-15, Table 1 of the Newton Zoning Ordinance. Removal of the carport would put the property back in compliance. Should the applicant wish to maintain the carport, a variance from Section 30-15, Table 1 is required to legalize the current lot coverage.

6. The minimum open space allowed in the MR1 district is 50%. As permitted by the 1999 building permit, the property had a non-compliant open space of 44%. The addition of the carport left 32% open space, which is further in violation. The garage was not built in accordance with the building permit, but is protected under the ten-year statute of limitations found in MGL Chapter 40A, section 7. The structure was constructed 15 years ago, and therefore may remain noncompliant, but the new addition of the carport does not have the benefit of that protection and must be removed. However, should the applicant wish to maintain the carport, a variance from Section 30-15, Table 1 is required to legalize the current open space.

MR1 Zone	Required	Per 1999 Building Permit	Existing
Lot Size	10,000 square feet	8,250 square feet	No change
Frontage	80 feet	55 feet	No change
Setbacks for the accessory structure			
• Front	30 feet	115 feet	No change
• Side	5 feet	5 feet (left)	No change
	5 feet	21.4 feet (right)	6.4 feet
• Rear	5 feet	5.9 feet	No change
Height	22 feet	26.17 feet	29 feet
Number of Stories	1½	1½	2
FAR	.51		.294*
Max Lot Coverage	30%	29%	36%
Min. Open Space	50%	44%	32%

*The surveyor calculated the FAR using only the ground floor areas of the structures on the site and did not include the space in the second floor of the garage, or any basement space which may be included in the main dwelling. Because a correct calculation is not likely to reach the .51 limit, I have completed the review while waiting for an accurate calculation.

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§30-15(m)(2)	To exceed maximum allowed height for an accessory structure	Variance
§30-15(m)(3)	To exceed maximum allowed stories for an accessory structure	Variance
§30-15(m)(c)5), 30-24	To exceed 700 square feet of ground floor area in a garage	S.P. per §30-24
§30-15, Table 1	To exceed maximum lot coverage	Variance
§30-15, Table 1	To further decrease minimum open space	Variance