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Candace Havens
Director

ZONING REVIEW MEMORANDUM

Date: February 25, 2012

To: John Lojek, Commissioner of Inspectional Services

From: Seth Zeren, Chief Zoning Code Official
Eve Tapper, Chief Planner for Current Planning *ST*

Cc: Stephen J. Buchbinder, attorney representing applicant
Candace Havens, Director of Planning and Development
Ouida Young, Associate City Solicitor

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2012 FEB 29 PM 1:56
David A. Olson, OMC
Newton, MA 02459

RE: Request to permit a third dwelling unit in an existing two-family dwelling and waive associated parking requirements

Applicant: Peter DiClemente	
Site: 39-41 Jackson Street	SBL: 65019 0067A
Zoning: MR1	Lot Area: 16,700 square feet
Current use: Two-family dwelling	Proposed use: Three-family dwelling

Background:

The property at 39 Jackson Street consists of 16,700 square feet currently improved with a two-family dwelling, a detached garage, and several sheds. The existing structure includes an addition to the rear of the eastern unit built in 1978, adding a family room and second-story master suite. The applicant proposes to convert the 1978 rear addition into a one-bedroom apartment and to modify the site to provide adequate parking.

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

- o Revised existing site plan, signed and stamped by Verne T. Porter, Surveyor, dated 12/13/11
- o Revised proposed site plan, signed and stamped by Verne T. Porter, Surveyor, dated 12/13/11
- o Copy of building permit for two-story addition, dated 11/21/1978
- o Existing site plan, signed and stamped by Verne Porter, Surveyor, dated 11/24/2010
- o Proposed site plan, signed and stamped by Verne Porter, Surveyor, dated 11/24/2010
- o Architectural drawings, by Lucio Design, Architect, dated 10/1/10
 - Existing Conditions
 - Demolition Plans/Elevations
 - Proposed Plans
 - Proposed Elevations

Administrative determinations:

1. The property is located in the MR1 zone and must comply with the dimensional standards of Section 30-15, Table 1 for post-1953 lot (see chart below).

MR1 Zone	Required/Allowed	Existing	Proposed
Lot size	10,000 square feet	16,700 square feet	No change
Lot area per unit	5,000 square feet*	8,350 square feet	5566.7 square feet
Frontage	80 feet**	20 feet**	No change
Setbacks			
• Front	30 feet	26 feet	No change
• Side	10 feet	11.3 feet	No change
• Rear	15 feet	42 feet	No change
FAR	.46	.392	No change
Building Height	36 feet	30.9 feet	No change
Maximum Stories	2.5	3	No change
Max. Lot Coverage	30%	18.31%	17.08%
Min. Open Space	50%	32.91%	50.69%

* As required by Section 30-9(c)(1)a

** The property received a variance for frontage, June 14, 1955.

2. Due to the downward sloping terrain of the lot, the mid-point between the floor and the ceiling of the lowest level is above the average grade plane. Therefore, it does not meet the definition of a basement pursuant to Section 30-1 of the Newton Zoning Ordinance. Instead, it counts as a full story making the building a legally-nonconforming three-story structure.
3. When the dwelling was constructed, the Zoning Ordinance allowed porches of a certain size to extend into the front setback. The ordinance subsequently changed, making the existing front setback legally nonconforming. As no alterations are proposed in the front setback, no relief is required.
4. The existing property is noncompliant with regard to the open space requirement. The applicant proposes to bring the percentage of open space into compliance.
5. The existing building is currently used as a two-family dwelling. The applicant proposes to create a third dwelling unit inside the existing structure. Per Section 30-9(c)(1), as the subject structure has been in existence since before May 7, 1979, the property is eligible for conversion to occupancy by more than two families, provided that there be no exterior alterations of the structure, other than those necessary to comply with applicable health, building, and fire codes. Section 30-9(c)(1) further requires a minimum of 5,000 square feet of lot area and two parking spaces per unit. To renovate and use the structure as proposed, the applicant must obtain a special permit from the Board of Aldermen per Section 30-9(c)(1).
6. The applicant proposes a total of three dwelling units. Two parking stalls are required per dwelling unit, per Section 30-9(c)(1)b). The applicant's site plan shows six parking stalls located to the rear of the structure: two in a garage under the western unit, one in an existing accessory garage to the rear and three outside stalls located behind the proposed one bedroom unit. These six parking

stalls qualify as a parking facility with more than five stalls and must follow the requirements of Sections 30-19(h)-(j).

7. Under 30-19(h), parking stalls are not allowed in the side setback or closer than five feet from the structure containing dwelling units. Two of the three proposed exterior stalls are located within the side setback, and one stall is located closer than five feet from the main building. To locate the parking stalls as proposed, the applicant must obtain a special permit from the Board of Aldermen, per Section 30-19(m) to waive this requirement.
8. Under 30-19(h), one handicap parking stall is required for parking facilities with six parking stalls. The applicant must either provide one stall or obtain a special permit from the Board of Aldermen, per Section 30-19(m) to waive this requirement.
9. Under Section 30-19(i) a parking facility with more than five stalls must be screened from abutting streets and properties. The applicant must meet the requirements of Section 30-19(i) or obtain a special permit from the Board of Aldermen, per Section 30-19(m) to waive this requirement.
10. Under Section 30-19(j) a parking facility with more than five stalls must be lighted, surfaced, and maintained. The applicant's plans show a bituminous paving surface but do not note compliance with other requirements. The applicant must meet all the requirements of Section 30-19(j) or obtain a special permit from the Board of Aldermen, per Section 30-19(m) to waive these requirements.
11. See "Zoning Relief Summary" below:

Zoning Relief Summary		
Ordinance	Use	Action Required
§30-9(c)(1)	Convert a structure in existence before May 7, 1979 to occupancy by three families	S.P. per §30-24
Ordinance	Parking	Action Required
§30-19(h); §30-19(m)	Locate two parking stalls in the side setback and one stall closer than five feet to a building containing dwelling units	S.P. per §30-24
§30-19(h); §30-19(m)	Provide one handicap parking stall, or obtain a waiver	S.P. per §30-24
§30-19(i); §30-19(m)	Provide required screening of parking facility, or obtain a waiver	S.P. per §30-24
§30-19(j); §30-19(m)	Provide required lighting, paving, grading, and maintenance, of parking facility or obtain a waiver	S.P. per §30-24