

**MELROSE PLANNING BOARD
ZONING SUBCOMMITTEE
MEETING MINUTES**

Thursday, March 14, 2013

8:30 AM

Mayor's Conference Room, 2nd Floor, City Hall, 562 Main Street

PRESENT: Anne DeSouza-Ward, Carla Morelli, and Sharon Petrillo

ABSENT: Paul King

Denise Gaffey, Director and City Planner, and Adam Duchesneau, Assistant Planning Director, were present.

The meeting was called to order at 8:40 AM by Ms. DeSouza-Ward.

“Story” and “Half Story” Definition Zoning Amendments

The Subcommittee began with a discussion about potentially modifying the definitions of “Story” and “Half Story” in the Melrose Zoning Ordinance. Ms. Gaffey provided a brief history of this particular initiative, which had originally started in mid-2012 per an order from the Board of Aldermen. That order, which was issued in June of 2012, was tabled after that as the more pressing Medical Marijuana issue arose and the topic has not been revisited since then. This time around, Planning Staff would like the Planning Board to initiate the proposed zoning change as opposed to having an order sent down from the Board of Aldermen. Ms. Gaffey pointed out that one of the goals for the Zoning Subcommittee for this topic would be to identify what the problems are with the existing definitions. Currently, the Building Commissioner is interpreting the ordinance very literally and is not permitting any human occupancy as of right in attic space located in a half story in residential districts. Ms. DeSouza-Ward stated that the biggest issue seems to be that people who are finishing their existing attic space are required to go before the Board of Appeals to seek a Variance from the Zoning Ordinance, even if they are not making any alterations to the exterior of the structure.

Ms. Morelli pointed out that in many instances homeowners need to add a dormer on the exterior of their structure to get the head room needed to have usable finished space on the third floor. She stated that she has a finished attic space that was existing when she acquired her dwelling and approximately 80% of the floor area is usable space. Ms. Gaffey stated that she felt there were two issues that needed to be addressed; one regarding the amount of usable space in the story and the other being the size of the dormer on the exterior. Ms. Gaffey referenced Board of Appeals Case # 10-020, 173 Grove Street, as the first time this issue came up. The Applicant decided to appeal the decision of the Building Commissioner to the Board of Appeals and sought a Variance from the definition of “Half Story”. In this particular instance the Applicant was awarded the Variance. The Subcommittee should also consider that there are a number of existing larger dwellings in the City where dormers do not need to be constructed for residents to create habitable space on their third floor in residential districts.

Ms. Morelli indicated that she thought it would be preferable to allow people to finish the existing space inside their own dwelling units. Ms. DeSouza-Ward indicated that she did not see a problem if people are using existing space inside their dwellings, without constructing dormers, as livable space because they would not be altering the exterior of the existing structure. Ms. Morelli pointed out the 42 Sylvan Street case that recently was before the Planning Board. The Applicant designed a project that is counting on getting relief from the Board of Appeals to have a habitable third story to make the financial numbers of the project feasible. He is proposing to have three bedrooms and two full bathrooms in each unit, but if he

cannot get relief to have a habitable third floor, he may only create two bedroom-one bathroom units. It seems that the current regulations put Applicants in a somewhat awkward position.

Ms. Gaffey raised the question if a distinction needed to be made between new construction and existing construction. Ms. DeSouza-Ward asked what makes a half story a half story, the knee wall? This was confirmed as being correct and she went on to indicate that she was comfortable with new construction also only being 2½ stories in height. Ms. Morelli noted that it is physically possible to have a building that is three stories in height and under 35 feet. Ms. DeSouza-Ward then asked if having a 2 foot knee wall was enough height or if a higher knee wall was needed to allow for usable space. Mr. Duchesneau then explained, using some sketches, the effects of having a higher or lower knee wall on existing housing stock, as well as new construction. Ms. Morelli indicated that new construction is something that needs to be thought about because on existing structures it is more feasible to simply add dormers to the exterior of a building. Mr. Duchesneau also pointed out an email from June of 2012 from Building Commissioner Paul Johnson which indicated that simply deleting the last sentence of the definition of “Story” might remedy a number of issues with the current definition. Mr. Duchesneau then pointed out that simply removing this wording could open up the possibility for Applicants to use dormers on over 90% of their existing rooflines. Ms. Morelli noted that putting dormers over this much of any 2½ story structure would make the building appear as if it was three stories from the exterior.

Ms. Gaffey noted that this type of situation is similar to the recent Board of Appeals application Case # 13-004, 375 Swains Pond Avenue. Ms. Petrillo stated that she thought it is common for people who are looking to purchase a home in Melrose to find that a larger size home they are looking for is not available, so instead they purchase a smaller dwelling with the intent to expand it. The Subcommittee then went through the information packet that was provided to them which indicated what eight other communities in the surrounding area were using for their definitions of “Story” and “Half Story”.

Ms. DeSouza-Ward posed the question that if the project does not require a dormer and the Applicant was simply finishing the interior of an existing space, should the Subcommittee and Planning Board even be concerned with this type of project? Ms. Morelli pointed out that unless a property owner of a gable roofed dwelling puts dormers on the roof, the only opportunity for windows on the third floor is at the front and rear of the structure. Ms. Gaffey pointed out that Belmont’s Zoning By-Law has a few items that regulate the half story of a structure that include the percentage of usable space on the floor and the length of dormers on the roofline. Ms. DeSouza-Ward indicated that she had a preference for using both the percentage of usable space on the floor and the length of dormers in the definition. She also asked what the ordinance would be accomplishing by limiting human occupancy from the half story. Ms. Morelli indicated that she felt that the ordinance should not prevent Applicants from finishing space, but it should be regulated and the exterior appearance of the building should be controlled if possible as well. Ms. Petrillo indicated that she felt less wording in the definitions was preferable because she felt more wording opens up each of the definitions to further interpretation. Ms. Morelli indicated that if the percentage of usable space is limited in the definition of “Half Story” this would also limit the size or number of dormers that could be constructed on a roofline. Ms. DeSouza-Ward pointed out that there is a fine line between using a zoning ordinance to control items such as the massing of structures in a zoning district and telling people what color or style of architecture their dwelling should be. Ms. DeSouza-Ward indicated four items that the Subcommittee members should think about for the next meeting which were as follows:

- Consider deleting or keeping the last sentence in the definition of “Story”;
- Consider the issue of human habitation in the third floors of buildings and if this should still be limited by the zoning ordinance;
- How can the definition of “Half Story” be altered to address the issues that were discussed; and

- Review the definitions of “Story” and “Half Story” from Belmont and Somerville, which at first glance seem to offer elements that can be used in reworded definitions in the Melrose Zoning Ordinance if items such as the percentage of usable floor area and the total length of dormers were added to them.

Medical Marijuana Zoning Amendment Update

Ms. Gaffey then provided an update to the Zoning Subcommittee on the status of the recently passed Medical Marijuana Zoning Amendment. Earlier in the week the Attorney General’s Office had reviewed a very similar regulation that the Town of Wakefield had passed. The Attorney General’s Office felt that this adopted ban on medical marijuana facilities was contradictory to the state act that was recently passed. Ms. Gaffey pointed out that from a practical standpoint this means that if an Applicant were to challenge the City’s recently passed medical marijuana zoning regulations, the City would lose in the state’s land court. Ms. DeSouza-Ward asked if this means that the zoning ordinance needed to be amended immediately and Ms. Gaffey indicated that this was not the case. However, ultimately the City will at some point have to amend its zoning ordinance to handle the regulation of medical marijuana distribution facilities in another manner.

Ms. DeSouza-Ward stated that she felt that a moratorium on medical marijuana distribution facilities would make more sense at this point in time. Ms. Petrillo asked what the downside of doing nothing to the zoning ordinance at this time would be. Ms. Gaffey indicated that someone could apply for a permit to establish a medical marijuana distribution facility and expose the City to a lawsuit. It would be easier to simply enact a moratorium and then amend the zoning ordinance at a later time. Ms. Gaffey went on to say that this is something the Zoning Subcommittee could look into at their next meeting.

Violations and Penalties Zoning Amendment

Ms. Gaffey also briefed the Zoning Subcommittee on an amendment that the Building Commissioner would like to make to §235-59. Violations and Penalties, of the zoning ordinance. The Building Commissioner would like to add language to give him the authority to issue fines to those who are in violation of the zoning ordinance as opposed to having to go through the Mayor’s Office first. Ms. Petrillo indicated that this may be related to an issue regarding a civil violation versus a criminal violation in the state statutes. She stated that she would look into this matter further and get back to the Subcommittee. Ms. DeSouza-Ward indicated that she thought it would be better to allow the Building Commissioner the ability to issue fines and send out violation letters directly to offenders.

Meeting adjourned at 10:00 AM.