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*Penny St. Louis Littell- Director of Planning and Urban Development
Marge Schmuckal, Zoning Administrator*

TO: CHAIR AND MEMBERS OF THE ZONING BOARD OF APPEALS
FROM: MARGE SCHMUCKAL, ZONING ADMINISTRATOR
SUBJECT: 38 TORRINGTON AVENUE, PEAKS ISLAND, 084-S-006 – IR-2
DATE: JULY 1, 2009

As per instructions after the decision of Superior Court, I have reviewed the existing application for expansion using section 14-436(a) of the Land Use Zoning Ordinance which states:

“For principal structures lawfully nonconforming as to land area per dwelling unit as of July 19, 1988: The floor area of the expansion shall be limited to no more than fifty (50) percent of the first floor footprint. The additional floor area shall be created in the uppermost floor by the use of dormers, turrets or similar structures needed to provide the minimum height required for habitable space while preserving the existing roof configuration to the maximum extent possible.”

I have interpreted this section to provide four basic tasks that must be met for compliance.

There is an expansion limit of no more than fifty (50) percent increase of the first floor footprint. The first floor footprint is 1423 square feet in size which results in an allowable increase of 711.5 square foot in the uppermost floor. The existing square footage prior to renovations in the uppermost floor was 394.55 square feet. The after renovation floor area of the second floor is 858.69 square feet. Thus, the increase of floor area results in 464.14 square feet which is under the 50% allowable of 711.5 square feet. The first task has been met.

The method of construction to allow the 50% increase includes dormers, turrets or similar structures. The original roof was a pitched roof with several types of small dormers. See picture “A”. The new construction essentially became an addition of two full dormers. Therefore, I have determined that the method of construction allowed by 14-436(a) has been met.

Mr. William Childs of Horizon Builders, Inc. also submitted a sketch showing the original roof configuration overlaid upon the new construction (drawing “B”). That sketch shows that the head room of the original and new structure. 14-436(a) allows the permitted expansion to be enough for minimum height for habitable space. The plans

show that the height from unfinished floor to the average ceiling height is 7' 8 3/8". The new space is providing the minimum height required under the building code which is 7'. It is noted that the ordinance regulates the minimum height and not the maximum height. It does not say that the ceiling shall be no more than the minimum required. This third task is being met.

Section 14-436(a) finally states that the expansion limit and method, achieving at least the minimum height for habitable space, must also preserve the existing roof configuration to the maximum extent possible. I have use the submitted sketch to show what the effect of two full dormers without a change to the roof configuration would look like. The structure would essentially become a flat roof building with the original pitch roof configuration gone. See figure "C". This final bar in the ordinance allows for the exiting roof configuration to be maintained. The word "configuration" is a key word. It does not say that the roof must remain flat if there is an addition of two full dormers. Therefore, I believe that it is allowable, and probably encouraged, to add a new roof above the dormers if it matches the existing roof configuration to the maximum extent possible. Looking at both sketch submittal "B" and the before and after pictures "D", I do not believe the new roof line preserved the existing roof configuration to the maximum extent possible. The trusses have a different pitch and a taller depth from the bottom cord to the top of the peak. The roof's final design does not meet the wording of 14-436(a).

Taken in whole, using section 14-436(a) for review, this project does not comply with the ordinance.