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ZONING REVIEW MEMORANDUM

Date: September 9, 2015

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Mashour Moukaddem, Carthay Investment LLC
James Freas, Acting Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to change a nonconforming single-family and two-family use to create two two-family structures on two separate lots

Applicant: Carthay Investment LLC	
Site: 5 and 11 Carthay Circle	SBL: 54022 0008A and 54022 0009
Zoning: BU2	Lot Area: 7,130 and 7,870 square feet
Current use: A two- and a single-family dwelling on two separate lots	Proposed use: Two two-family structures on two separate lots

BACKGROUND:

The properties at 5 and 11 Carthay Circle are located in the Business 2 zoning district. 5 Carthay Circle consists of a 7,130 square foot lot improved with a two-family residence constructed in 1959. 11 Carthay Circle consists of 7,870 square feet and is improved with a single-family dwelling constructed in 1954. These two properties are the only two on the street zoned BU2, with the rest of the street zoned MR1, and also used for residential purposes. The properties to the north and east are zoned BU2, and used commercially, while the property to the west is zoned MR2 and is improved with a residential dwelling.

The applicant proposes to raze the existing dwellings, and construct two two-family dwellings structures, one on each lot. The applicant is not proposing to merge the lots and will keep the two separate lots. The existing residential uses are nonconforming in the Business 2 district, and to change the residential use requires a special permit.

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

- Zoning Review Application, Mashhour Moukaddem, applicant, dated 8/31/2015

- Existing Site Plan, prepared by Carlos Ferreira, engineer, dated 8/31/2014
- Proposed Site Plan, prepared by Carlos Ferreira, engineer, dated 8/31/2014
- Floor Plans, prepared by Lucio Trabucco, architect, dated 8/31/2015
- Elevations, prepared by Lucio Trabucco, architect, dated 8/31/2015

ADMINISTRATIVE DETERMINATIONS:

1. The existing two-family dwelling structure at 5 Carthay Circle was built in 1959 in what is now the BU2 district. At the time the dwelling was constructed, the property was zoned "Private Residence". Two-family dwelling uses are not allowed in the BU2 district, rendering the two-family use legally nonconforming.

The single-family dwelling at 11 Carthay Circle is also located in the BU2 district. That lot was zoned "Private Residence" at the time of construction as well. Single-family dwelling uses are not allowed in the BU2 district, rendering the use legally nonconforming.

To extend the existing nonconforming two-family use at 5 Carthay Circle, and to change the existing nonconforming single-family use at 9 Carthay Circle to a two-family use, requires a special permit pursuant to Section 30-21(b).

2. Section 30-15, Tables 1 refers to the dimensional controls for residential uses. To determine the setbacks, building height and number of stories in Business districts, Table 1 refers to Table 3, dimensional requirements for commercial districts.
3. Section 30-15, Table 3 provides the side setback requirement for the Business 2 district. There are two footnotes for the side setback requirement, which are in conflict with each other. Footnote 10 requires the side setback to be one-half the building height (12 feet), or 20 feet, whichever is greater for a property abutting a residential district. Footnote 2 requires a side setback of half the building height (12 feet) or 15 feet, whichever is greater. When the Ordinance is in conflict with itself, the more conservative provision is applied. For the purposes of this project, the side setback requirement is 20 feet for the property at 11 Carthay Circle, as it abuts a residentially zoned property to the left.

The existing setback at 11 Carthay Circle is 13.3 feet, where 20 feet is required. The applicant intends to maintain the pre-existing nonconforming side setback with the new structure. Per Section 30-21(b), a special permit is required to extend a nonconforming side setback.

4. Section 30-15, Table 3 allows two-story structures by right, but requires a special permit for three stories. The applicant proposes each structure with 2.5 stories, which requires a special permit.
5. Section 30-15, Table 3 allows a height of 24 feet by right, but requires a special permit for up to 48 feet. The proposed structures have a height of 37.1 feet, requiring a special permit.

5 Carthay Circle

BU2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	7,130 square feet	No change
Setbacks <ul style="list-style-type: none"> • Front • Side • Rear 	10 feet ½ building height (12 feet) 0 feet	29.7 feet 15.3 feet 14 feet	10 feet No change 10 feet
Building Height	24 (up to 48 ft by SP)	23 feet	37.1 feet
Max # of Stories	2 (3 by special permit)	2	2.5
Lot area per unit	1,200 square feet	7,130 sq ft	3,750 sq ft
FAR	1.0	.25	.88

11 Carthay Circle

BU2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	7,870 square feet	No change
Setbacks <ul style="list-style-type: none"> • Front • Side • Rear 	10 feet 20 feet 20 feet	27.8 feet 13.3 feet 46.3 feet	16.4 feet No change 28.9 feet
Building Height	24	19 feet	37.1 feet
Max # of Stories	2 (3 by special permit)	1.5	2.5
Lot area per unit	1,200 square feet	3,935 sq ft	No change
FAR	1.0	.50	.80

1. See “Zoning Relief Summary” below:

Zoning Relief Required – 5 Carthay Circle		
<i>Ordinance</i>		<i>Action Required</i>
§30-21(b)	To extend a nonconforming use	S.P. per §30-24
§30-15, Table 3	To allow 2.5 stories	S.P. per §30-24
§30-15, Table 3	To allow a height exceeding 24 feet	S.P. per 30-24

Zoning Relief Required – 11 Carthay Circle		
<i>Ordinance</i>		<i>Action Required</i>
§30-21(b)	To change from one nonconforming use to another	S.P. per §30-24
§30-15, Table 3	Extension of the nonconforming side setback	S.P. per §30-24
§30-21(b)		
§30-15, Table 3	To allow 2.5 stories	S.P. per §30-24
§30-15, Table 3	To allow a height exceeding 24 feet	S.P. per 30-24