

Marge Schmuckal - Fwd: Re: Boundary Dispute

From: Barbara Barhydt
To: Levine, Jeff; Schmuckal, Marge; Thompson, Jennifer
Date: 9/24/2014 5:05 PM
Subject: Fwd: Re: Boundary Dispute
CC: Jaegerman, Alex

? 12-H-001
 12-H-017 original
 PLA

this is what I sent to Jonathan regarding the boundary issue. Thank you Jen and Marge for your advice.

>>> Barbara Barhydt Wednesday, September 24, 2014 3:05 PM >>>
 Hi Jonathan:

I have tried to get some advice on your questions. I discussed this with our legal counsel and Marge Schmuckal

As you know this is a private matter between you and your neighbor. I have also received two calls from Laura Ballardur regarding this dispute (she abuts Mr. Rando's property), so I suggested she contact you regarding your survey. I also advised that she may want to consult with an attorney.

In response to your questions:

1. It is my understanding that if you concede the boundary dispute you will then have a zoning setback violation.
2. You could seek a variance or Practical difficulty variance, but Marge felt that the ZBA would most likely determine that you created your hardship if you concede.
3. If a court or legal decision is made that causes the violation, then Marge felt you would have a better chance of getting a variance.
4. As you noted in your e-mail, the pending R-6 text amendments would reduce the side setback and could effectively resolve your issue. A workshop on the R-6 text amendments is scheduled for October 28th.
5. You would need to do an amended subdivision plat, but I think it would be considered a lot line adjustment that could be signed by Jeff or Alex. It does go through review, so the question of the setback would have to be resolved prior to amending the subdivision plat.

The above is my interpretation of my conversations with Marge and Jen, but let Alex or me know if you need more clarification.

Thank you.

Barbara

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>>> "Jonathan Culley" <jonathan@redfernproperties.com> Monday, September 22, 2014 2:58 PM >>>
Alex, Barbara,

I have a tricky question that I wonder if you might have some thoughts to offer. Redfern Munjoy LLC has been sued by an abutter (Phillip J Rando of 196 Sheridan) at Munjoy Heights alleging that our boundary line is off by 2'. He hired Owen Haskell who came to a different conclusion as Nadeau, who I previously hired.

While Nadeau is resolute in his determination and we believe we would prevail in court, we are not really in the mood to fight and would be willing to concede the boundary line so long as it didn't create any hazard for us with the City or other stakeholders. The most obvious impact is that it would reduce our side setback from the currently required 10' to 8'. While this might become moot when the R6 setbacks change, we would like to resolve this matter prior to approval of the R6 changes.

So my specific questions are:

1. Would it create a setback violation if we were to concede the boundary? If so, what type of variance or waiver would be required?
2. Would we be required to submit a new Subdivision Plan? What approval, if any, would this require

I appreciate any thoughts. If this is unclear, feel free to give me a call. Thanks!

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