

05 February 2018

Jonathan Rioux

Inspections Director, City of Portland
398 Congress Street
Portland, ME 04101
(PDF via email to: jrioux@portlandmaine.gov)

Re: Permit # 2017-00115

Dear Jonathan,

We are in receipt of your January 31, 2018 letter regarding 34 Howard Street. Thank you for your prompt response. As we work toward a solution to the setback of the fourth floor roof access room, it is useful to review the series of events leading up to this point:

1. On January 24, 2017 the builder, Portland Renovations, submitted the following drawings to Inspections and Permitting: A1.0, A2.0, A3.0, A4.0, A5.0, A6.0, A7.0, A8.0, A9.0, A10.0, A11.0, C1.0, D1.0, L1.0, L1.1. These drawings showed a fourth floor roof access room stepped back as required per the R-6 Zoning Ordinance.
2. On February 15, 2017, Caitlin Cameron, Urban Designer from the Planning Department, sent a Preliminary Design Review Memo to Portland Renovations. This memo stated that the project did not meet all the R-6 Small Infill Development Design Principles and Standards (Appendix 7 of the Design Manual). It was determined that if the project were to be constructed as designed it should go through the Alternative Design Review process. (attached)
3. March 20, 2017 (according to Building Permit ID 2017-00115 that was issued on July 14, 2017), Christina Stacey, Zoning specialist in the Permitting and Inspections Department, approved the original drawings from the January 24, 2017 submission. Our understanding is that even though the Planning Department did not approve the design in February, the Zoning Department went ahead and gave their approval of the original permit application drawings. Furthermore, there was also confusion as to whether this was a single family or a 2-family structure. The builder clarified that this project was a single-family residence in an email sent to Gregory Gilbert from the Inspections and Permitting Department on March 22, 2017
4. In response to the Planning Department's concerns, in April 2017, Portland Renovations and the Owner hired Richard Renner Architects (RRA) to assist in the Alternative Design Review process. RRA revised the exterior design of the building in an effort to bring the building into conformance with the R-6 Design Principles and Standards as interpreted by the Planning Department. The exterior design was revised to reflect the Alternative Design Review comments in the February 15 memo from Caitlin Cameron.
5. In May 2017, another exterior design revision was submitted to Caitlin Cameron. A second preliminary review by Caitlin Cameron was received on May 21, 2017. Per the second Alternative Design Review requests, further design refinements were submitted specifically in response to the City's concern that the fourth floor roof access room was too prominent from Howard and Turner Streets. (attached)
6. On June 13, 2017, Caitlin Cameron confirmed that the final design revisions passed all the Alternative Design Review Criteria. Caitlin confirmed to Richard Renner Architects and Portland

Renovations that these drawings would need to be resubmitted to Inspections and Permitting for another review. (attached)

7. On June 16, 2017, Portland Renovations resubmitted Exterior Elevations and the Fourth Floor Plan to Inspections and Permitting to record the design changes made since the initial permit submission. These drawings show the fourth floor roof access room reduced in size and pushed to the rear, in response to the Planning Department's recommendation to make it less prominent from Howard and Turner Streets.
8. On June 19, 2017 Stephanie Hampton, Certified Permit Technician, noted that the City received the revised set of drawings and they were uploaded to the project folder, per standard procedure. We understood this to mean that the revised drawings were re-distributed to all City departments for review, per standard procedure.
9. On July 14, 2017, when we received the approved building permit (ID 2017-00115) for the revised design, we understood that all the departments had approved the revised design and that we were able to start construction. Construction began August 3, 2017.
10. On Thursday, January 25, 2018, Doug Morin, Code Enforcement Officer from the Building Inspections and Permitting department called Richard Renner Architects to explain that there was a problem with the fourth floor roof access room and that it was in violation of the permit. He was referring to the original drawings submitted on January 24, 2017 and did not seem aware that the July 14 permit was based on revised drawings stemming from the Alternative Design Review process. The zoning assessment in the final approved drawings was stamped with the 07/14/17 date and city seal, but appears to be referring to the old January 24 fourth floor plan. It appears that the design was not re-reviewed by Zoning after the design was revised, though the drawings were submitted per City protocols.

As you can see from the chain of events, we in no way intentionally constructed a non-conforming fourth floor for this building. The review process for this project was long and complex. At all times, we worked diligently to interpret and comply with the City's requests. We began construction believing that the revised design had been fully reviewed and accepted by the City.

Reducing the size of the fourth floor access room this far into the construction process by relocating the rear wall creates a tremendous hardship. The structural design of the floor below is specifically engineered for the current configuration. Changing the shape of the fourth floor introduces new loads at significantly different locations; it would require substantial structural redesign and reworking in the building. The loss of the space is not the issue; it is, rather the complexity and the resulting significant cost of making this change.

This is a uniquely complex set of circumstances. All parties worked in good faith but it seems that the process may have let us down. Surely there must be reasonable compromise. One option might be to obtain a setback reduction for the setback requirement on the southwest side of 34 Howard Street per Sec. 14-437. We recognize that the structure was not in existence on November 15, 1993, but given the reasons we are in this situation, we ask that the City consider this as our plan of correction. Our request for a setback reduction is *only* related to the fourth floor setback on the southwest (rear) elevation from 15' to 10'. It consists of 72.5 square feet of the structure that is currently built within the 15' required rear setback.

We are asking for reasonable relief from what would be a substantial cost to the Owner in a situation that occurred not out of malice or disregard for complying with City ordinances, but out of the process that was followed based on the instructions we received.

We look forward to discussing this further in person at your convenience.

A handwritten signature in black ink, appearing to read "Robert van Wert", with a long horizontal flourish extending to the right.

Robert van Wert, Portland Renovations