

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS

DONNA K.
WILLIAM G.
ERIC L.
SARA M.
KENT A.
CHIP G.

B2b—Community Business Zone
Residential addition/alteration Building Permit Application
Interpretation Appeal

DECISION

Date of public hearing: March 19, 2015

Name and address of Appellant: Sunny Time Solar, LLC
P.O. Box 15372
Portland, Maine 04112

Location of property under appeal: 49-51 Hancock Street
Portland, Maine 04101

For the Record:

Names and addresses of witnesses (proponents, opponents and others):

PROponents

LIV CHASE
BRENT ADLER

NO PUBLIC IN PERSON
TESTIMONY

OPponents

FRANK REALI - BY E-MAIL DATED 3/19/15

Exhibits admitted (e.g. renderings, reports, etc.):

- 1) E-MAIL FROM FRANK REALI DATED 3/19/15
- 2) MATERIAL DISCUSSED W/ MARCE SCHUCKAL

Findings of Fact and Conclusions of Law:

The Board derives authority to review an interpretation of the building authority pursuant to Section 14-472 of the land use code.

The Appellant owns property at 49-51 Hancock Street in Portland. On January 27, 2015, Appellant filed with the Building Authority a Residential Addition/Alteration building permit for "construction of an accessory structure which will contain a garage and storage for current occupants." The Zoning Administrator placed the application in "info needed" status and e-mailed her decision to the applicant that the proposed structure was an addition to the principal structure and not an accessory structure. Basing the decision "on the fact that there is direct access from the existing structure to the proposed structure through a door on the second floor." As a result of the determination that the building is attached to the principal structure, the Zoning Administrator determined that it was required to meet the ten foot rear setback requirement of Section 14-185.

Applicable Ordinance, Statute and Building Code Sections bearing upon this determination are:

Sec. 14-185. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the B-2, B-2b, and B-2c zones shall meet the following dimensional requirements:

Minimum Lot Size	None
Minimum Street Frontage	20 feet
Front Yard Setback Minimum	None
Rear Yard Setback Minimum	10 feet, except as provided for below: a. 5 feet for accessory structures
Side Yard Setback Minimum	None required, except as provided for below: a. 5 feet for accessory structures
Side Yard on Side Street Setback Minimum	None
Front Yard Maximum ¹	No more than 10 feet, except that the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable. ²

Structure Stepbacks	Portions of a structure above 35 feet shall be no closer than 5 feet from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.
Height maximum	45 feet except as provided for below: a. 50 feet if first floor is partially or wholly occupied by a commercial use. b. 65 feet in B-2 and B-2c zones on lots >5 acres provided that all setbacks, except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet. c. 65 feet within 65 feet of Franklin St.
Maximum Impervious Surface Ratio	a. For residential uses: None b. For all other permitted uses: 80% in B-2 and B-2c c. For all other permitted uses: 90% in B-2b
Minimum Lot Area per Dwelling Unit	a. Off-peninsula locations, as defined in section 14-47: 1,500 square feet, except as provided for in (b) below. b. On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188, below: 435 square feet.

¹ Building additions do not have to meet this section.

² If lot has less than 40 feet of frontage and is more than 100 feet deep then no maximum setback is required. If existing structures are within 20 feet of the street or meet the front yard maximum, and remainder of lot has less than 40 feet of frontage, then no maximum setback is required. Where setbacks exceed 10 feet, a continuous, attractive, and pedestrian-scaled edge treatment shall be constructed along the street, consisting of street trees spaced at no more than 15 feet on center, approved by City arborist, and a combinations of landscaping no less than 4 feet deep, ornamental brick or stone walls or ornamental fencing.

(Ord. No. 293-88, 4-4-88; Ord. No. 52-96, § 2, 7-15-96; Ord. No. 94-99, 11-15-99; Ord. No. (Substitute)189-00, §3, 4-24-00; Ord. No. 151-03/04, 02/23/04; Ord. No. 244-09/10, 6-21-10; Ord. No. 41-12/13, 9-5-12; Ord. No. 163-13/14, 6-16-14; Ord. 90-14/15, 11-17-2014)

Sec. 14-47. Definitions.

The following words shall be defined as set forth below for use in this article. Definitions set forth in the building code of the city shall apply to words not herein defined:

Accessory uses: Uses which are customarily incidental and subordinate to the location, function and operation of permitted uses...

Sec. 6-16. Maine Uniform Building and Energy Code.

The construction, alteration, addition, repair, removal, demolition, use, location, occupancy and maintenance of all buildings and structures, shall comply with the Maine Uniform Building and Energy Code ("MUBEC")

10 M.R.S. § 9721 (MUBEC)

... **1-A. Building code.** "Building code" means any part or portion of any edition of a code that regulates the construction of a building, including codes published by the International Code Council or Building Officials and Code Administrators International, Inc. or the International Existing Building Code adopted pursuant to former section 9702, but does not include the fire and life safety codes in Title 25, section 2452...

The International Residential Code (a publication of the International Code Council) provides the following definitions at Section R202

ACCESSORY STRUCTURE. A structure not greater than 3,000 square feet (279 m2) in floor area, and not over two stories in height, the use of which is customarily accessory to and incidental to that of the dwelling(s) and which is located on the same lot...

ADDITION. An extension or increase in floor area or height of a building or structure.

ALTERATION. Any construction or renovation to an existing structure other than repair or addition that requires a permit. Also, a change in a mechanical system that involves an extension, addition or change to the arrangement, type or purpose of the original installation that requires a permit.

The International Building Code (a publication of the International Code Council) provides the following definitions at Section 202:

ADDITION. An extension or increase in floor area or height of a building or structure.

ALTERATION. Any construction or renovation to an existing structure other than a repair or addition.

Finding:

Appellant has demonstrated that the Interpretation of the Zoning Administrator was incorrect or improper.

Satisfied _____

Not Satisfied X

NOTE 6-0
~~5-0~~

Reason and supporting facts:

SEE BELOW.

Decisions: (check one for each item)

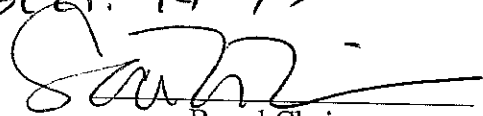
ITEM 1

___ Option 1: The Board finds that the Appellant has satisfactorily demonstrated that the Interpretation of the City's Zoning Administrator was incorrect or improper, and therefore GRANTS the application.

___ Option 2: The Board finds that the Appellant has NOT satisfactorily demonstrated that the Interpretation of the City's Zoning Administrator was incorrect or improper, and therefore DENIES the application.

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X OPTION 3 - THE BOARD FINDS THAT THE PROPOSED CONSTRUCTION IS PART OF THE PRINCIPAL BLDG BECAUSE IT IS ATTACHED IN A SUBSTANTIAL MANNER PURSUANT TO SECT. 14-47


Board Chair

THE PROPOSED CONSTRUCTION IS A BUILDING ADDITION. PURS. TO 14-500 + THEREFORE SUBJECT TO 10' SETBACK REQUIREMENT IN 14-185

THEREFORE THE BOARD DENY THE APPEAL.

THE DOOR IS AN INTEGRAL PART OF DESIGN OF PRINC. BLDG BECAUSE IT PROVIDES A SECOND MEANS OF EGRESS