



## Planning &amp; Urban Development Department

Jeff Levine, AICP, Director

Ann Machado, Acting Zoning Administrator

TO: Zoning Board of Appeals Chair and Members

FROM: Ann Machado, Acting Zoning Administrator *AM*

SUBJECT: 49 Hancock Street – 020-B-013

DATE: March 11, 2015

The original application that was submitted for the project at 49 Hancock Street in mid-January 2015 was a Level I Minor Residential Site Plan Application. This application is for new single or two family dwellings. The front staff member who was handling the intake of the permit was confused because the project description was not for a new dwelling unit. She asked me to look at the application. On January 14, 2015, I looked at what was submitted by email. My initial determination was that the proposed structure was an addition and not an accessory structure. I also determined that the correct application was a Residential Additions/ Alterations building permit. I called the applicant, Liv Chase, around January 16, 2015 and informed her of this. She asked to meet with me. We met on January 22, 2015. I expressed my thoughts that this was an addition and not an accessory structure. She said that she had met with Marge Schmuckal the week of November 3<sup>rd</sup>, 2014 and talked about it being an accessory structure. I asked her to submit the proper application, so it could be put into the system. I told her I would review it again at that time.

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Sunny Time Solar, LLC (Liv Chase) submitted a Residential Addition/Alteration building permit application (#2015-00151) for "construction of an accessory structure which will contain a garage and storage for current occupants" on January 27, 2015. I started my official review on January 29, 2014. At this point, I put the permit status to "info needed" and sent Ms. Chase the email stating that the proposed structure is an addition and not an accessory structure and has to meet the ten foot rear setback as required in section 14-185 (Exhibit A). I told her that she had the right to appeal my decision. Ms. Chase submitted the Interpretation Appeal on February 27, 2015.

Before I address the main issue of the Appeal, I want to clarify a point that Ms Chase brings up in the beginning of the timeline as part of her appeal. The first two items are the pre-application meeting and the meeting with Marge Schmuckal. The purpose of these meetings is to answer questions and give a preliminary review of a proposed project. It is not an approval of the project. A project is not officially reviewed and does not receive final approval until a building permit application is submitted and reviewed.

Ms. Chase's main argument is that an accessory structure is not "clearly defined in Chapter 14 (the Land Use Code) in relation to the B2-b Zone". The Land Use Ordinance, Chapter 14 of the City Code, does not



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specifically define all terms that are used in Chapter 14. Of the terms that are defined, most definitions can be found in section 14-47 while some are found in other sections of the ordinance. At times, the meaning is inferred from the text but not explicitly stated. As Ms. Chase states, section 14-47 does define accessory uses as "uses which are customarily incidental and subordinate to the location, function and operation of permitted uses". The proposed uses (garage and storage) for the new structure are accessory. Accessory uses can be located in principal structures or in separate, accessory structures.

Accessory structures are not specifically defined in the Land Use Ordinance. As I told Ms. Chase in an email dated February 6, 2015, when a term is not specifically defined, it is the practice to look at other sources for the definition. For zoning terms, I turn to books that are published or compiled by Planning Associations. For instance, I use A Glossary of Zoning, Development and Planning Terms (Exhibit B) which uses definitions from municipalities around the country. Exhibit C gives the definition of an accessory structure. It defines it as a subordinate, detached structure. It goes on to give some examples of accessory structures such as a garage, deck or fence. The key word here is that an accessory structure is detached. Ms. Chase states that the proposed structure has a separate foundation, walls and roof. This may be the case, but the two structures are touching and there is a doorway that connects the interior of both structures on the second floor providing direct access between the two. Since one can go from one building to the other within the enclosed area, the buildings are attached and therefore the proposed structure is not accessory structure.

As Ms. Chase points out, section 14-47 of the ordinance does define "Principal Building". It defines it as, "The building occupied by the chief or principal use on the premises. When a garage is attached to the principal building in a substantial manner as by a roof or common wall, it shall be considered as a part of the principal building". This definition does not say that being attached in a substantial manner is only by a roof or common wall. These are just examples. The fact that there is a doorway that connects the interior of both structures and provides direct access between the two on the second floor is also an example of being attached in a substantial manner.

In conclusion, the Zoning Division is not denying Ms. Chase the right to build a structure that includes a garage and storage. The Zoning Division is saying that the structure as proposed in Permit #2015-00151 is attached, and therefore has to meet the ten foot rear setback as required in Section 14-185.

# Exhibit A

City of Portland  
Code of Ordinances  
Sec. 14-184

Land Use  
Chapter 14  
Rev.11-17-2014

permitted uses or conditional uses are prohibited.  
(Ord. No. 293-88, 4-4-88)

## 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:

<b>Minimum Lot Size</b>	None
<b>Minimum Street Frontage</b>	20 feet
<b>Front Yard Setback Minimum</b>	None
<b>Rear Yard Setback Minimum</b>	10 feet, except as provided for below: a. 5 feet for accessory structures
<b>Side Yard Setback Minimum</b>	None required, except as provided for below: a. 5 feet for accessory structures
<b>Side Yard on Side Street Setback Minimum</b>	None
<b>Front Yard Maximum<sup>1</sup></b>	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. <sup>2</sup>
<b>Structure Stepbacks</b>	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.
<b>Height maximum</b>	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.
<b>Maximum Impervious Surface Ratio</b>	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

<b>Minimum Lot Area per Dwelling Unit</b>	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.
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<sup>1</sup> Building additions do not have to meet this section.

<sup>2</sup> 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. 14-186. Other requirements.**

All nonresidential uses in the B-2 and B-2b zone shall meet the requirements of division 25 (space and bulk regulations and exceptions) of this article in addition to the following requirements:

- (a) *Landscaping and screening:* The site shall be suitably landscaped for parking, surrounding uses and accessory site elements, including storage and solid waste receptacles where required by article IV (subdivisions) and article V (site plan).
- (b) *Curbs and sidewalks:* Curbs and sidewalks as specified in article VI of chapter 25.
- (c) *Off-street parking and loading:* Off-street parking and loading are required by division 20 and division 21 of this article;
- (d) *Front yard parking:*

# A Glossary of

# Zoning,

# Development

# and

# Planning

# Terms

Exhibit B

*Edited by Michael Davidson and Fay Dolnick*

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**50<sup>th</sup>**  
*Anniversary*



American Planning Association

Planning Advisory Service  
Report Number 491/492



■ **abandoned vehicle** (See *motor vehicle, abandoned*)

■ **abandonment** To stop the use of property intentionally. When the use of a property has ceased and the property has been vacant for 12 months, abandonment of use will be presumed unless the owner can show that a diligent effort has been made to sell, rent, or use the property for a legally permissible use. (*Alexandria, Va.*)

■ **abate** To end a nuisance, emergency, or nonconformance. (*Ames, Iowa*)

■ **abatement** Any action taken to reduce, relieve, or suppress another continuing action. There are two relevant forms: a summary abatement, which is a legal action taken to suppress the continuation of an offensive land use; and a tax abatement, which is a release or forgiving of a certain tax liability for a specific period of time and under certain circumstances. (*Handbook for Planning Commissioners in Missouri*)

■ **abattoir** (See *slaughterhouse, commercial*)

■ **abutting** (See also *adjacent/adjoining; contiguous*) Having a common border with, or being separated from such a common border by a right-of-way, alley, or easement. (*Worcester, Mass.*)

Having property or district lines in common. (*Palo Alto, Calif.*)

■ **abutting owner** A person holding a legal interest in real property in contact with property cited in an application, petition, or request pending before a commission. (*Handbook for Planning Commissioners in Missouri*)

■ **access** The right to cross between public and private property, allowing pedestrians and vehicles to enter and leave property. (*Ames, Iowa*)

A means of vehicular or pedestrian approach, entry to, or exit from property. (*Fairbanks North Star Borough, Alaska*)

■ **access connection** Any driveway, street, turnout, or other means of providing for the movement of vehicles to or from the public roadway system. (*Center for Urban Transportation Research, Tampa, Fla.*)

■ **access management** The process of providing and managing access to land development while preserving the regional flow of traffic in terms of safety, capacity, and speed. (*Woodburn, Ore.*)

■ **access point** 1: A driveway, a local street, or a collector street intersecting an arterial street; 2: A driveway or a local street intersecting a collector street; or 3: A driveway or a local street intersecting a local street. (*Grant County, Ky.*)

*Commentary: If you need terms related to access beyond those we have included here, we recommend that you consult the "Model Land Development & Subdivision Regulations that Support Access Management for Florida Cities and Counties," Center for Urban Transportation Research, University of South Florida, Tampa, Florida, January 1994.*

■ **accessible route** A route that can be used by a disabled person using a wheelchair and that is also safe for and usable by people with other disabilities. (*Portland, Ore.*)

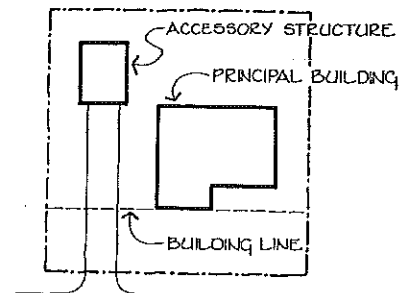
■ **accessory apartment** A secondary dwelling unit established in conjunction with and clearly subordinate to a primary dwelling unit, whether a part of the same structure as the primary dwelling unit or a detached dwelling unit on the same lot. (*Blacksburg, Va.*)

A separate and complete dwelling unit that is contained on the same lot as the structure of a single-family dwelling or business. (*Asheville, N.C.*)

A permitted independent, subordinate dwelling unit contained within a single-family detached dwelling or its accessory detached garage. (*York County, Va.*)

■ **accessory banking** (See also *bank*) A banking service(s) office, which may or may not include automated teller machines, that does not include drive-through services of any kind. (*Miami, Fla.*)

■ **accessory structure** A subordinate structure detached from but located on the same lot as a principal building. The use of an accessory structure must be identical and accessory to the use of the principal building. Accessory structures include garages, decks, and fences. (*Ames, Iowa*)



A detached subordinate structure(s), the use of which is incidental to that of the principal structure and located on the same lot therewith. (*Guilford County, N.C.*)

■ **accessory use** A structure or use that: (1) is subordinate in area, extent, and purpose to the principal use; (2) contributes to the comfort, convenience, or necessity of the principal use; and (3) is located on the same lot and in the same zoning district as the principal use. (*Blue Springs, Mo.*)