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**Response to Memo from Ann Machado dated March 11, 2015**

Dept. of Building Inspections  
City of Portland Maine

### **INTRODUCTION**

**The zoning administration has denied permit application #2015-00151 based on evidence derived from outside of Chapter 14 Land Use Code. It is the applicant's belief that Chapter 14 Land Use Code, section 14-168-14-180 adopted in 1988, should be the primary source used in the examination of this permit application. The following documentation will clarify all terms that are pertinent to the permit application. The applicant's proposed structure qualifies as an accessory structure under the B2-b zone and under section 14-185 as an accessory structure, it is allowed to have a 5' rear setback.**

### **STATEMENTS MADE BY APPLICANTS**

We challenge you to examine the following questions and definitions.

How is a piece of architecture defined? A principal structure, a building addition, a detached accessory structure, or an attached accessory structure. All of these terms imply different designations. Is architecture defined by the use inside the structure? Or is it defined based on the shape, size, or location?

**STATEMENT: A structure is defined as principal or accessory, but in no case can it be described as both.**

### **Principal vs Accessory**

Principal: primary in use

Accessory: subordinate or incidental in use

Both principal and accessory are terms that are related to the use of something. These terms in relation to architecture describe the order of importance of one building to the next, based on the use and the amount of time of that use. Habitation mainly exists in principal buildings, while uses outside of habitation are more clearly characterized by accessory structures. A principal structure is seen as a necessity for habitation, while an accessory structure is not essential, but may enhance the use. A garage would likely be subordinate to a house as a person spends less time in a garage than in a house.

If two separate buildings exist on a lot, one with a 5000sf footprint that is a garage and one with only 1000sf footprint with a residence, which one is the principal structure? Which one is the accessory structure?

Most people would conclude that the 1000sf building is the principal structure and the 5000sf building is the accessory structure because we formulate an opinion of these buildings based on their use. Additionally, we would not say that both buildings are accessory and we would not say that both buildings are the principal structure, because the fact is, they are not the same.

**STATEMENT: An accessory structure can be detached or attached, but it is still an accessory structure.**

### **Detached vs Attached**

Detached: not joined to each other on either side.

Attached: joined or fastened to something.

The terms attached and detach are terms used to define the relationship and location of one object to another. A building is attached to another building if it is in some way physically connected to another building. A building is detached from another building if it is not physically connected to another building. The term attached implies that two objects touch one another. The term detach implies a space in between. While the term attach implies a distance of separation of zero, the term detach makes no note of a specified distance of separation.

Now, let's take our two clearly defined uses (the 5000sf garage and the 1000sf residence) and attach the 2 buildings together. Does the garage become a principal space that is essential for habitation just because it is attached to the residence? Has the garage become more important in ranking and do we spend the majority of our time occupying the garage just because it is now attached?

The obvious answer is, no, nothing about the use of the garage has changed. The only change that was made was the location of the garage in proximity to the house (detached vs attached)

**STATEMENT: A building addition is something added to what existed before. A building addition can be attached or detached.**

### **Addition: the act of adding something new**

In the world of architecture and building, an addition is equal to new construction. We commonly equate building additions as attached structures but building additions can also be detached structures. Building addition only implies that we are building a new space.

A principal structure can be a building addition to a vacant lot. An attached greenhouse can be a building addition to a principal home. Both of these examples are adding something new to what existed before.

### **CONCLUSION**

In conclusion, based on the defined terms, a building can be either attached or detached as determined by a relative location. A building can also be described as principal or accessory based on the use. Lastly, anything new, which is added, is considered an addition.

The proposed structure located at 49-51 Hancock St. is design for the use of vehicle storage and personal storage. The existing structure has a use of 6 residential apartments. The existing structure is defined as the principal structure, while the proposed structure is defined as the accessory structure because it is subordinate in use.

The proposed structure is drawn and described in a set of architecture drawings as detached because it does not touch the existing structure (see 2<sup>nd</sup> floor detail drawing for more information).

In the event that the proposed structure was attached to the existing structure, the proposed structure would still be described as accessory because the use of the proposed structure does not change.

The proposed structure is an addition as it will be new construction.

Whether the proposed structure is attached or detached, or described as a building addition, it does not change the fact that it is an accessory structure. As an accessory structure, in the B2-b zone, as stated in Chapter 14 Land Use Code section 14-185, a rear setback of 5' is allowed.

#### **STATEMENTS MADE BY ANN MACHADO and COUNTER ARGUMENT BY APPLICANTS**

##### **STATEMENT: (1) Accessory structures are not specifically defined in the Land Use Ordinance.**

1. Accessory structure is not defined in the Land Use Ordinance but accessory use is defined. Since the terms principal and accessory are related to the use of a space, it should go without saying that the term accessory use and accessory structure are one in the same. It is understandable that during a review there may be terms that are undefined and using outside sources to better understand these terms can be applicable.

The argument that we present to you today is that there are some parts of the Land Use Code that are not specifically defined. The absence of information in the code should not be treated as an opportunity for Zoning Administration to formulate an oppositional opinion toward a permit application. If some information is not stated in the code and the applicant is in compliance with all written guidelines of the code, any interpretation appeal presented before this zoning board should rule in favor of the applicant.

##### **STATEMENT: (1) Since one can go from one building to the other within the enclosed area, the buildings are attached. (2) Therefore the proposed structure is not an accessory structure.**

1. If a person exits their home through a doorway, walks 6' outside, and then goes through another doorway to enter a garage, did they walk within an enclosed space?  
The obvious answer is no. Now, take the same example and make the distance walked outside 3". Didn't the person still walk outside?
2. As previously stated, the term attached is used to describe a relative location not an intended use. Just because a structure is attached it doesn't mean that it can't be described as accessory.

**STATEMENT: (1) 14-47 states that when a garage is attached to the principal building in a substantial manner as by roof or common wall, it shall be considered as a part of the principal building.**

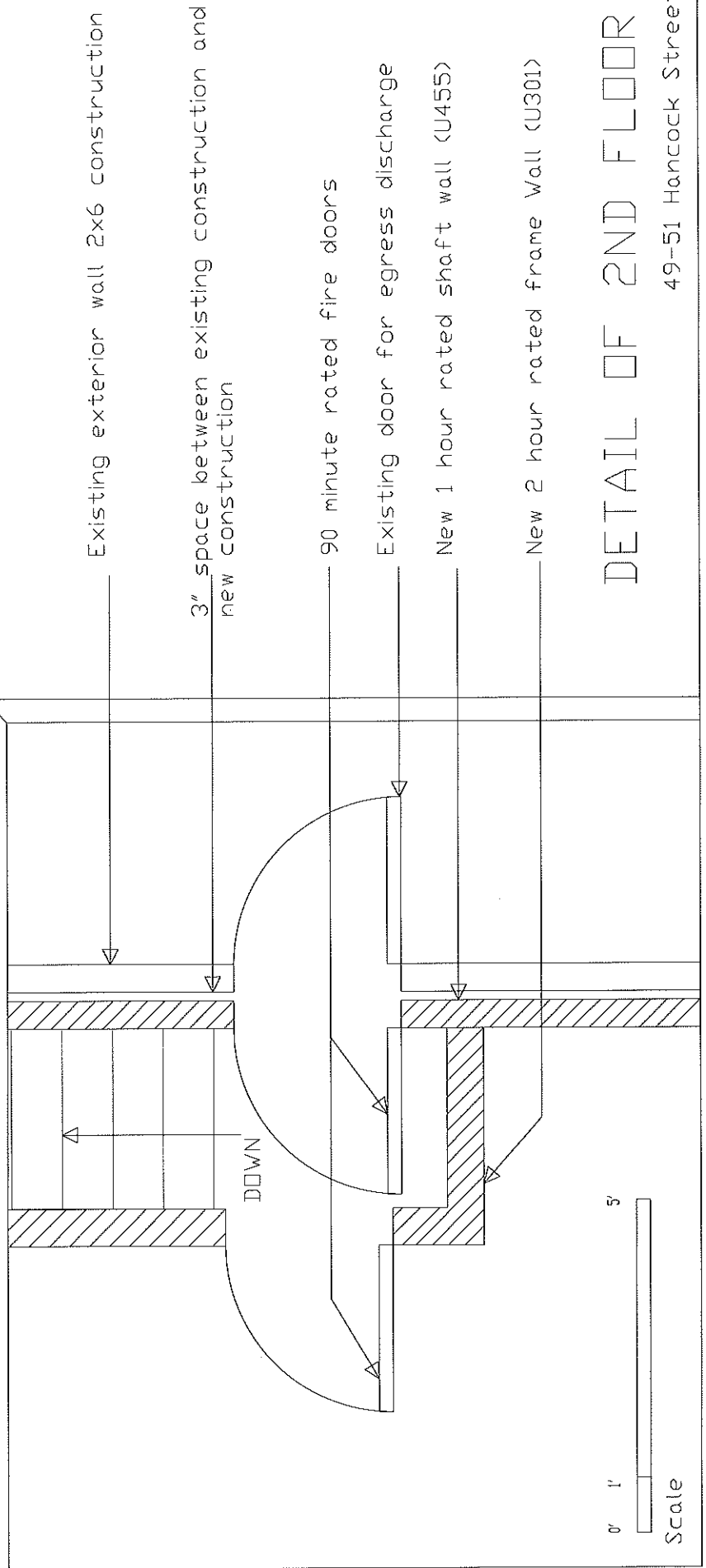
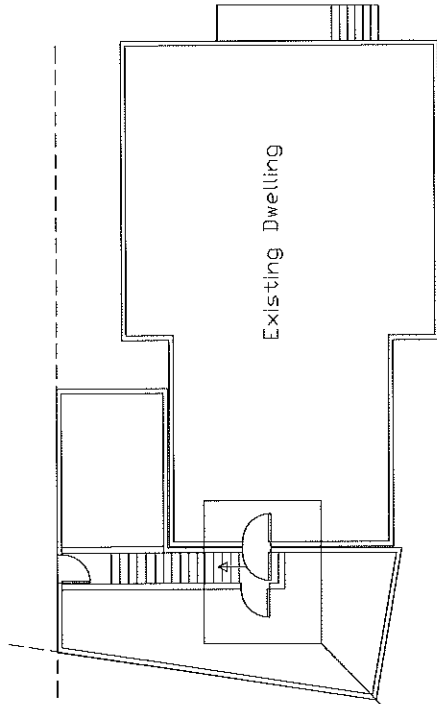
1. The area defined as the garage is located on the ground/1<sup>st</sup> floor of the proposed structure. The only doors in the garage are 2 exterior doors and 1 garage door, all of which lead to the outside. The only doorway that leads from the existing structure to the proposed structure is a double doorway (see detail) on the second floor, which goes from the stairwell in the existing structure to a 2 hour rated stairwell enclosure in the proposed structure.

**STATEMENT: (1) the zoning administration is not denying Ms. Chase the right to build a structure that includes a garage and storage. (2) A project is not officially reviewed and does not receive final approval until a building permit application is submitted and reviewed.**

1. As stated in a meeting with Ann Machado and Jeanie Burke on February 24, 2015 another possible solution exists for new construction. It would be wonderful to think that every developer had an unlimited budget and unlimited amount of time to develop new construction. In reality, that is not every situation. We are fairly new to the world of construction and very much restricted by budget. We want to continue doing business in the City of Portland, but as developers, it is not financially feasible for us to spend close to half a year to get a small project underway.
2. In the initial planning of this project, we meet with Marge Schmuckal (Zoning Administration) and we also presented at a pre-construction meeting. We understand that an initial approval is not a guaranteed permit, but it is an extra step in the process to determine if a proposed building is feasible in relation to the zoning code. After our initial meetings with no opposition, we spent money to hire an architect and engineer to draw a set of detailed drawings, which were in compliance with our initial approval. We have been working on these designs since November 2014. The time it has taken us to even begin the permitting process is now almost 5 months. The financial hardship of hiring our architect and engineer to re-draw all of the drawings and the time it will take for this work to be completed, are undue hardships. These are hardships that are the result of inconsistent opinions from the Zoning Administration.

## **SUMMERY**

In conclusion, we ask that you look at the big picture. We own a small lot in town Portland and we are trying to make the best use of the space that we have. We believe that urban infill is a highly desirable concept as opposed to suburban sprawl. By making this interpretation appeal, we are not asking you to change anything written in the Land Use Code. We're asking that Zoning Administration be held to what is written in the code. We are asking you to uphold a set of standards (the Land Use Code) that is fair for every applicant that submits a building permit application. Lastly, we hope that by bringing this to your attention, future permits will be able to move through the process in a timely fashion. This is important for all developments (large and small) that make Portland a great place to live and for all the developers that spend private funds to improve the city's architecture.



Scale

# DETAIL OF 2ND FLOOR

49-51 Hancock Street