

LAW OFFICES OF DAVID A. LOURIE
189 Spurwink Avenue
Cape Elizabeth ME 04107
(207) 799-4922
Cell (207) 749-3642 * fax (207) 221-1688
david@lourielaw.com

Via e-mail
August 7, 2017

Ann Machado, Zoning Administrator
Portland City Hall
389 Congress Street
Portland ME 04101

Re: City of Portland Bldg Permit for 47-49 Chapel St. (Federal Street Phoenix, LLC, and Brent Adler)

Dear Ann:

This will advise that I represent Brent Adler, and Federal Street Phoenix, LLC with regard to their application for a building permit for 47-49 Chapel Street, Portland Maine.

The issue of the applicability of §403 to rebuilding a home an accepted city street is an issue without precedent in the many years of my legal practice, fifteen of which was spent working for the City.

This lot can only be used for residential purposes. I am writing to submit that the §403 prohibition on erecting a structure for habitation on an accepted but less than 35' wide street is not applicable to 47-49 Chapel St. (There was a two-family home on this lot when the 1958 zoning ordinance was adopted, that structure was destroyed and not rebuilt in 1970.) There is good reason why the lot should be deemed buildable under §433.

Your attention is directed to §14-433 which says that "lots of record" *are buildable* if they meet the minimum standards provided in that section. This provision was intended to apply to all such properties. Although the Chapel

Ann Machado, Zoning Administrator

Re: City of Portland Bldg Permit for 47-49 Chapel St. (Federal Street Phoenix, LLC, and Brent Adler)

August 7, 2017

Page 2

Street property is not located in one of the City's retarded subdivisions, 47-49 Chapel Street is a lot of record, which *shall be considered buildable* despite any other provision of the zoning ordinance because it meets all of the requirements of §433. (The vacant lot is (1) in a residential zone; (2) meets the applicable yard dimensions; (3) exceeds the minimum street frontage of forty (40) feet; (4) meets the applicable minimum lot size and frontage in the zone. It is also a lot in the R-1, R-2, R-3, R-4, R-5, R-5A or R-6 zones that conformed to the applicable lot size requirement, lot width and street frontage as of June 5, 1984.

Where both provisions apply only to the same residential uses on substandard streets, any conflict between §§433 and 403 must be resolved, in the context of the ordinance as a whole. In resolving the matter, you should bear in mind that §403 is in derogation of the common law rights of the property owner and must be read narrowly in any conflict between the two provisions. Weighing in favor of that result is also the fact that §433 is the more recent ordinance, and attempts to correct problems arising out of the 1958 enactment. The Law Court has held that the single most important imperative in statutory construction is the avoidance of absurd results, in this case that a lot which had a house in existence when the ordinance was enacted in 1958 must remain vacant because of the "plain language" of §403(a.) This result would confuse plain language with literal interpretation, without regard to §433 and the Ordinance as a whole, or the consequences of the interpretation that it adopted. *See, Dickau v. Vermont Mut. Ins. Co.*, 2014 ME 158, ¶¶22-23, 107 A.3d 621, 628, holding that a court must reject any construction that is "inimical to the public interest", or creates absurd, illogical, unreasonable, inconsistent, or anomalous results if an alternative

Ann Machado, Zoning Administrator

Re: City of Portland Bldg Permit for 47-49 Chapel St. (Federal Street Phoenix, LLC, and Brent Adler)

August 7, 2017

Page 3

interpretation avoids such results.”

I conclude, as should you, that the provisions of §433 take precedence over the general prohibition in §403. You should grant the permit. To do otherwise would yield an absurd result. It also result in a “regulatory taking” of this property, if §403 is determined to control, and a variance denied.

Please feel free to call me if you want to discuss this further.

Sincerely,

A handwritten signature in blue ink that reads "David A. Lourie". The signature is written in a cursive, flowing style.

David A. Lourie

cc: Anne Torregrossa, Esq.
Brent Adler