



## Planning &amp; Urban Development Department

*Jeff Levine, AICP, Director*

*Marge Schmuckal, Zoning Administrator*

June 5, 2014

Todd M. Alexander

RE: 1 & 2 Joy Place - #045-E-048 (also known as R 173 Brackett St) & 045-E-049

Dear Mr. Alexander,

I am in receipt of your request for a determination letter concerning the properties located at 1 & 2 Joy Place.

I am confirming that the properties are located in the B-1 zone with a Historic Overlay.

The Portland Public Services Department - Engineering division, has submitted information to me concerning the status of Joy Place. They state: "Joy Place is considered by the City of Portland DPS Engineering Archives to be a Private Way."

The B-1 zone states under uses (14-162) and under dimensional requirements (14-165) that the closest residential zone shall be used for meeting the allowable residential uses and the required space and bulk requirements. The abutting residential zone is the R-6 zone. The R-6 zone requires forty (40) foot of street frontage.

According to Assessor's record, these properties were built in 1840 & 1900 and are legally nonconforming for space and bulk requirements of the R-6 zone. The use is conforming to the R-6 zone. Division 23 "Nonconforming Use and Nonconforming Buildings" gives existing developed lots rights to be maintained, repaired, or reconstructed within two (2) years [section 14-382(a)]. I have determined that the Ordinance allowance to rebuild also would also relate to 14-403, minimum street requirements. The nonconforming rebuild would not trigger conformance with 14-403 to be met.

Generally, any enlargement of the existing structures would need to meet current R-6 zone requirements. The R-6 zone currently requires a minimum ten (10) foot front setback from the front property line. Section 14-139(a)4(a) goes on to allow reductions of the required front setback based on specified situations. Section 14-139(a)4(b) requires a twenty (20) foot rear setback for principal structures. Section 14-139(a)4(c) requires a side yard to be ten (10) feet for a structure up to three (3) stories and twelve (12) feet for four (4) stories and fifteen (15) feet for five (5) stories.

As stated above, currently the properties as one lot, and meet the land area per dwelling unit requirement. Please note that section 14-165 directs residential properties to use the nearest residential zone for dimensional requirement but for an exception, as noted in section 14-165(h), minimum lot area per dwelling unit. The above properties are located on-peninsula and allowed to use a minimum of four hundred and thirty-five (435) square feet of land area per dwelling unit.



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You are correct that the property owner must first show right title and interest to Joy Place for it to be included in the calculations determining right title and interest. Because I have not been provided such information, I cannot allow Joy Place to be considered at this time. It is premature to state otherwise. Please also note that our legal department would be confirming such submittals. I am somewhat concerned that this scenario may restrict some of your legal nonconforming rights with the changes that may be proposed.

I am not aware that there are any conditions with regard to the property which would deem the property ineligible for consideration for a R-7 zone change. Please be aware that I have no authority on the approval or disapproval for a R-7 overlay zone change. The process is through the planning staff and Planning Board and then ultimately to the City Council. Then, as Zoning Administrator, I would enforce the requirements of the passed zone.

At this time I cannot confirm that the existing width of the private way, Joy Place – believed to be 24 feet - would or would not restrict the property for a higher density residential use that otherwise meets applicable R-6 & B-1 zone requirements. There are many factors in making a determination of this sort that would encompass the legal department, public services, planning and fire department. It is not only a zoning determination. However, as stated previously, there are rights to maintain, repair, or reconstruct existing nonconforming buildings in kind. As soon as you have more information on development you may want to do on this property, we can discuss it further with all departments that need to be present.

If you have any questions regarding this matter, please feel free to contact me at (207) 874-8695.

Very truly yours,

Marge Schmuckal  
Zoning Administrator