



Planning & Urban Development Department

Jeff Levine, AICP, Director

Marge Schmuckal, Zoning Administrator

June 25, 2014

Todd M. Alexander

RE REVISED: 1 & 2 Joy Place - #45-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) that uses permitted in the residential zone abutting the lot (in question) is permitted. The abutting residential zone is an R-6 residential zone. Residential uses are allowed in the R-6 zone. The dimensional requirements for this property is explained under 14-165 which states that "Residential uses in on-peninsula locations, as defined in section 14-47, and nonresidential uses in the B-1 and B-1b zone shall meet the following minimum requirements:"

Residential uses have non minimum lot size

Maximum front yard: either 10 feet or apply exception – No minimum setback listed

Minimum Rear yard: this lot abuts a residential zone therefore a twenty (20) foot rear yard is required

Side yard: No setback required for principal and accessory structures (not abutting residential zone or 1<sup>st</sup> Floor residential use.

The minimum street frontage is fifty (50) feet (with exceptions)

Minimum lot width: - none

Maximum structure height: on-peninsula: forty-five (45) feet

Maximum impervious surface ratio: ninety (90) percent

Floor area: for a single tenant building there shall be no greater than 5,000 square feet on the 1<sup>st</sup> floor

For a multi-tenant building there shall be no greater than 10,000 square feet on the 1<sup>st</sup> floor

Minimum lot area per dwelling unit: on-peninsula a minimum of 435 square feet of land area per dwelling unit.

According to Assessor's records, these properties were built in 1840 & 1900 and are legally nonconforming for space and bulk requirements of the B-1 zone. The use is conforming to the B-1 (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



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determined that the Ordinance allowance to rebuild would also relate to 14-403, minimum street requirements. The nonconforming rebuild without a change of use or footprint enlargement or enlargement of the building envelope would not trigger conformance with 14-403 to be met.

Generally, any enlargement of the existing structures would need to meet current B-1 zone requirements. The Ordinance does not allow the expansion of any nonconformity such as footprint or volume.

You are correct that the property owner must first show right title and interest in Joy Place for it to be included in the calculations determining lot size. Because I have not been provided such information, I cannot allow Joy Place to be considered to be part of the land area calculations at this time. 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. Please also note that the removed barn was not in residential use. The right to rebuild under the nonconforming rights section of the Ordinance would apply for an accessory building and not for a change of use. That building would have rights to be rebuilt in the same footprint based upon its use and date of demolition.

I am not aware that there are any conditions with regard to the property which would deem the property ineligible for consideration for an R-7 zone change. Please be aware that I have no authorities on the approval or disapproval for an R-7 overlay zone change. This area was recently changed from R-6 to B-1 through the Planning Division. The process is through the planning staff and Planning Board and then ultimately to the City Counsel. 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 the applicable B-1 zone requirements. There are many factors in making a determination of this sort that would encompass the legal departments, 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 conforming 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,

A handwritten signature in black ink that reads "Marge Schmuckal".

Marge Schmuckal  
Zoning Administrator

**Marge Schmuckal - RE: Copy of determination letter attached**

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**From:** Todd Alexander <TAlexander@RenewalHousing.com>  
**To:** Todd Alexander <TAlexander@RenewalHousing.com>, Marge Schmuckal <MES@por...>  
**Date:** 6/23/2014 11:21 AM  
**Subject:** RE: Copy of determination letter attached

Good Morning, Marge: I'm just checking in on the status of these follow up questions on Joy Place and whether you've had a chance to get to my zoning determination request for the Tate Street lots. Best, Todd

**From:** Todd Alexander  
**Sent:** Wednesday, June 11, 2014 2:10 PM  
**To:** 'Marge Schmuckal'  
**Subject:** RE: Copy of determination letter attached

Hi Marge: I have two clarifying questions for you in response to your letter regarding Joy Place:

Section 14-165 reads: **Dimensional requirements.** In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, residential uses permitted under section 14-162(a) shall meet the requirements of such abutting or nearest residential zone except as noted in Sec. 14-165(h) (minimum lot area per dwelling unit). Residential uses in on-peninsula locations, as defined in Section 14-47, and nonresidential uses in the B-1 and B1-b zone shall meet the following minimum requirements:

The section then goes on to describe the minimum lot size, street frontage and setbacks. The language in the second sentence suggests that the applicable space and bulk requirements for Joy Place would not be those under the R6 zone, but rather those described in 14-165. Do you agree? If so, how does that impact your initial letter and, specifically, can you confirm what the applicable setbacks would be in the event of an enlargement of an existing structure. →

The foundation and basement of the barn that once occupied the easterly end of the site has been maintained. Can that structure be rebuilt and used for residential purposes?

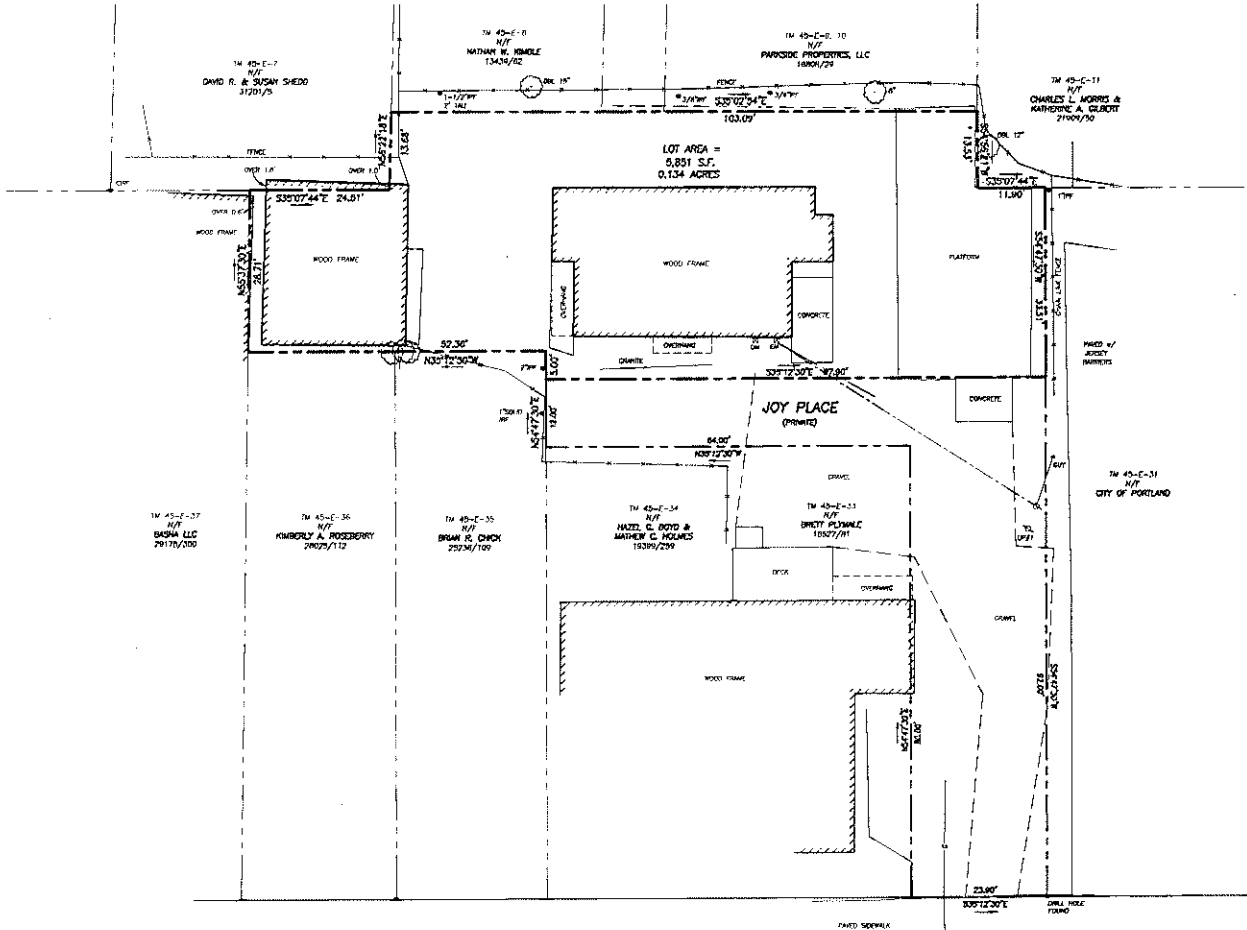
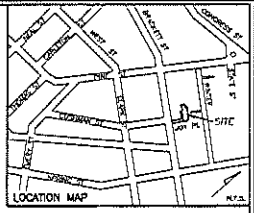
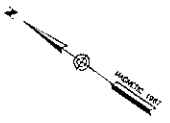
I've provided a copy of a recently completed boundary survey to assist with your review of these questions and help evaluate the redevelopment options for the property.

As always, thanks for your help. Todd

**From:** Marge Schmuckal [<mailto:MES@portlandmaine.gov>]  
**Sent:** Thursday, June 05, 2014 3:52 PM  
**To:** Todd Alexander  
**Subject:** Copy of determination letter attached

Please find attached copy. Do you want the original sent some where?  
I hope this helps you,  
Marge

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.



**LEGEND**

- IRON PIPE OR ROD FOUND
- UTILITY POLE
- DECIDUOUS TREE
- FENCE
- CURB
- OVERHEAD WIRES
- WATER LINE
- GAS LINE

**GRAPHIC SCALE**

**PLAN REFERENCES**

- STANDARD BOUNDARY SURVEY ON BRACKETT STREET, PORTLAND, MAINE MADE FOR PORTLAND WEST, INC. DATED DECEMBER 14, 2000 BY OWEN HASKELL, INC.
- CITY OF PORTLAND STREET SHAPES.
- PLAN OF PROPERTY IN PORTLAND, MAINE MADE FOR CITY OF PORTLAND SCHOOL DEPARTMENT DATED FEB. 6, 1970 BY H.S. & L.C. JORDAN SURVEYORS.

**NOTES**

- OWNER OF RECORDED ALIBUY MESSITTE, CUMBERLAND COUNTY REGISTRY OF DEEDS BOOK 13349 PAGE 103.
- PARCEL AS SHOWN AS LOT 48 & 49 BLOCK E ON CITY OF PORTLAND'S ASSESSORS MAP 45.
- RASH OF BEARINGS ARE MAGNETIC 1987 PER PLAN REFERENCED 1.

**BRACKETT STREET**  
PAVED - PUBLIC

**CERTIFICATE**

OWEN HASKELL, INC. CERTIFIES THAT THIS PLAN IS BASED ON, AND THE RESULT OF, AN ON THE GROUND FIELD SURVEY AND THAT TO THE BEST OF OUR KNOWLEDGE, INFORMATION AND BELIEF, IT CONFORMS TO THE STANDARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS CURRENT STANDARDS OF PRACTICE, WITH THE EXCEPTION OF ERRORS NOT SET AT ALL CORNERS.

DATE: \_\_\_\_\_  
JOHN W. SWAN, P.L.S. NO. 10288

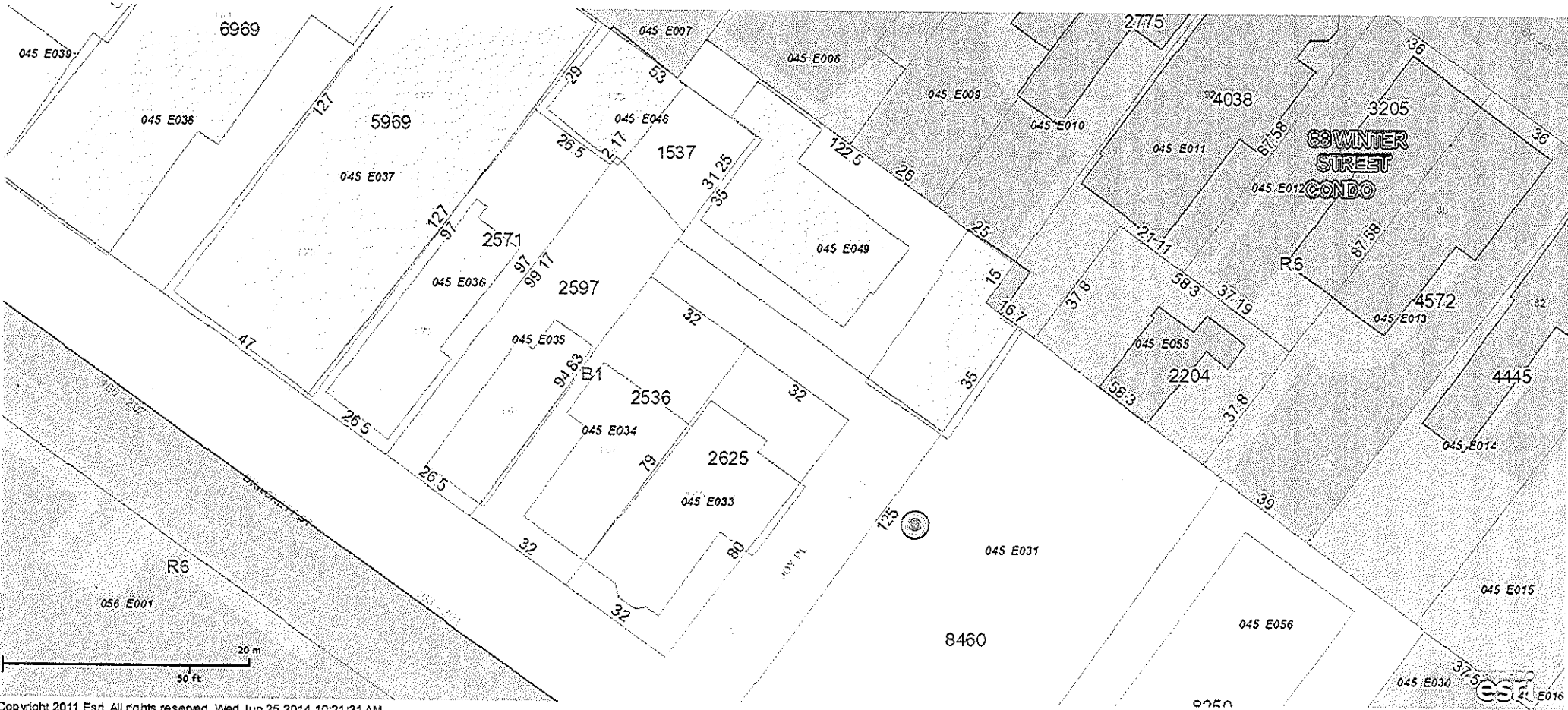
**BOUNDARY SURVEY**  
AT  
1 JOY PLACE, PORTLAND, MAINE  
MADE FOR  
**ALEXANDER TODD**  
3 CARROLL STREET, PORTLAND, MAINE

**OWEN HASKELL, INC.**  
390 U.S. ROUTE ONE, FALMOUTH, ME 04101 (207) 774-0424  
PROFESSIONAL LAND SURVEYORS

Drawn By: RS	Date: JUNE 2, 2014	Job No.: 2014-0987
Traced By: JLM	Scale: _____	Drawn No.:
Checked By: JWP	Sheet: _____	Drawn No.:
Book No.: FILE	1" = 10'	1

RECEIVED BY MAIL ON 6/11/14 10:58 AM. ALL INFORMATION IS SUBJECT TO THE TERMS AND CONDITIONS OF THE SURVEY AGREEMENT.

# Joy Place



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