

Building Inspections - Re: augment current boundary line fence permit 2013-01684

From: Marge Schmuckal
To: rory@thesellersplace.com
Date: 11/13/2013 1:25 PM
Subject: Re: augment current boundary line fence permit 2013-01684
CC: Building Inspections; timmi@thesellersplace.com

Rory,

This is a legal question that must be addressed by your lawyer. The survey says that this is a "passageway". Before the City allows anyone requesting a permit, the applicant needs to show right title and interest in the land that is the subject of the application. Normally a passageway implies rights of others to a passage.

If the passageway is removed by legal process, and you can show that you have legal rights to that land, then you have shown your right title and interest. It is not the City's responsibility to determine the rights of the passageway. That is a private matter.

If anyone blocks a passageway, it is a Civil matter and not a City matter. It becomes a City matter when an applicant requests a permit to take action to block or hinder a passageway. The City's only interest is approving a request that shows right title and interest and meets other Municipal Ordinances.

Marge Schmuckal
 Zoning Administrator

>>> <rory@thesellersplace.com> 11/13/2013 11:41 AM >>>
 Hi Marge,

Let's consider Mr. Johnson, who owns the property beyond our property line at "B" in my diagram (see permit application). No passageway exists beyond "B" -- Mr. Johnson has frequently blocked off access to his land at that point with his own massive equipment, such as stacked lobster traps, etc. The question I ask you is, CAN MR. JOHNSON BUILD A FOUR FOOT HIGH FENCE THERE along "B"? Of course he can. The existence of the passageway doesn't provide access onto Mr. Johnson's land, so he has the right to build a fence there. Such a fence is not ON the passageway, so he has the right to build it.

However, our deed (quoted in my application) clearly shows that OUR PROPERTY line lies BETWEEN Mr. Johnson's land and the passageway. Therefore, we ALSO have the right to construct a fence there. In essence, he has the right to build a fence on his property line between his property and the passageway, and we have the right to build a fence on our property line between any fence Mr. Johnson might build and the passageway.

The passageway is ACCESS TO ISLAND AVENUE. If it still existed, no fence could be built preventing access across Pleasant Ave. to Island Ave. (The fact that only three families had to agree in order to remove the passageway from Pleasant Ave. to Island Ave. shows that the passageway was meant for only three landowners, but that is NOT what we are concerned with here.)

Please don't misunderstand our intent. Whoever has the right to drive on the passageway (which we believe

consists of three specific landowners, and does not include Mr. Johnson) will still have that right. Although we have contacted the other two landowners and they fully support other kinds of limitations on the passageway, this application DOES NOT limit travel on the passageway to anyone, whether they be entitled to it or not. But no right to travel BEYOND the passageway exists, as Mr. Johnson has clearly shown by frequently positioning temporary barriers there.

Does the above explanation make it clear the city would be acting properly if it were to grant our request to augment our existing permit?

Thank you.

Rory

On Wed, 13 Nov 2013 08:08:45 -0500, Building Inspections <buildinginspections@portlandmaine.gov> wrote:

Rorick, please see the conversation with Marge below.... It looks like you will need to provide right/title/interest on that portion of the fence.

This is different because they are trying to block a "passage way" that they may not have rights to.
 Marge

>>> Building Inspections 11/12/2013 2:46 PM >>>

The original permit has already been issued...I don't think it was there.

>>> Marge Schmuckal 11/12/2013 2:02 PM >>>

Are they showing right title or interest for the "passage way" ask previously asked?

Marge

>>> Building Inspections 11/12/2013 1:53 PM >>>

This was a fence permit already issued for a fence up to 8' along most of the property. I have added the documents to the G drive and e-plan.

-Brad.

>>> Marge Schmuckal 11/12/2013 9:17 AM >>>

2 questions:

1. Is the fence taller than 6'? If it is less, we do not require a permit.

2. The applicant needs to show right title and interest concerning the fencing off a right of way easement.

>>> Building Inspections 11/12/2013 1:53 PM >>>

Rorick, your documents have been uploaded, you are all set.

>>> <rory@thesellersplace.com> 11/11/2013 11:06 PM >>>

To Whom It May Concern:

I have attached an application to augment my current fence permit (PERMIT ID 2013-01684). I wish to modify a portion of the fence and change the construction from wood to concrete sonotubes for an approximately ten-foot portion as described in the documents attached.

Thank you.

Rorick Sellers

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.