

TEN FREE STREET  
P.O. BOX 4510  
PORTLAND, MAINE 04112-4510  
www.jbgh.com

Leslie E. Lowry III  
e-mail: llowry@jbgh.com

(207) 775-7271 (Phone)  
(207) 775-7935 (Fax)

June 3, 2015

Ann Machado, Zoning Administrator (via email: amachado@portlandmaine.gov)  
City of Portland--City Hall  
389 Congress Street  
Portland, Maine

Re: Property of Capone-Newton  
368-374 Island Avenue, Peaks Island, Portland  
Tax Map 90-B-5 & 4

Dear Ann:

We represent some neighbors to the Capone-Newton property. Our clients' property is on "Ocean Street".

The Capone-Newton property was the subject of a zoning analysis done by Jim Nadeau and Marge Schmuckal in March and April of 2014. I am enclosing Jim's letter of March and Marge's letter of April for your convenience. Based on a review last week, no permits have been subsequently issued or applied for regarding that property, as far as we know.

Our clients only recently (Memorial Day weekend) learned of some possible activity because of the placement of some new wooden stakes on the Capone-Newton property. Our clients have tried reaching the owners but the phone number provided was not correct. My client stopped in to my office last week with some information, and I did some further review and obtained materials in the City files regarding the 2014 discussions.

I have a call in to Jim Nadeau to discuss the situation.

**I am also asking to be notified if any further activity takes place on this property at your office.**

After looking at the Land Use Ordinance, I want to gain clarification of some points. As you will see from the enclosed, the owner is seeking to have the property treated as a "corner

June 3, 2015

Page 2

lot.” Based upon that treatment, the owner is then seeking to define the yard along Ocean Street as the “front yard.” I have two concerns regarding that approach.

The City Land Use Ordinance, §145.11(b) provides that a lot in the IR-2 zone must have 70 feet of “street frontage.” A “street” is a “public way established by or maintained under public authority, or a way dedicated to the use of the public and appearing on the official map of the city.” It is my understanding that Ocean Street does not meet this definition. According to City Engineering it is not an accepted street and it is indicated on the Survey as a private right of way, without confirmation of rights in it by the surveyor.

That Ordinance section provides an exception that “. . . a lot of record as described in section 14-433 . . . and which [is] not part of a subdivision need not provide street frontage ***if access is available*** by means of a permanent easement or right-of-way which existed as of July 15, 1985. . . . Such easement or right-of-way shall have a minimum width of sixteen (16) feet and a minimum travel width of eight (8) feet ***except that an easement or right-of-way providing access for three (3) or more lots*** or providing the only means of access to a parcel or parcels of three (3) acres or more, ***shall be a minimum thirty-two (32) feet wide and meet the construction requirements of article III of chapter 25 (street acceptances) of this Code.*** Such easement or right-of-way shall permit municipal service delivery.” (emphasis/underlining added).

The access to the Capone-Newton under the proposed development is from “Ocean Street.” Ocean Street is shown on the survey done by James Nadeau.

At present, Ocean Street provides the only means of access to 3 improved parcels of land: property of Clements/Heselton, Tax Map 90-B-003; property of Peddle, Tax Map 090-C-001; and property of Edwards, Tax Map 90-C-014. Each of those properties is improved with existing homes or cottages, each has no other street access and each is identified by an Ocean Street address. The use of Ocean Street to satisfy the street frontage requirement and to provide access to the proposed Capone-Newton lot would create a 4<sup>th</sup> lot being provided access via Ocean Street.

As shown on the Nadeau survey, Ocean Street appears to have a scaled width of no more than 30.5 feet, at least 1.5 feet ***less than*** the minimum required for the 3 existing houses using it for access. There is no specific proposal from Newton-Capone regarding the development, so it is not certain how the “design” of the lot development will depict access. However, Ocean Street cannot be considered as the “front yard” if Ocean Street does not qualify as the applicable “street frontage.” If so, then for purposes of determining front, side and rear setbacks, I believe Island Avenue must be considered the front yard.

If, for some reason, the City determines that the front yard can be considered to be along Ocean Street, then Ocean Street must be improved to municipal standards to qualify as street frontage and access, as set forth in the Ordinance sections above. Under the Ordinance, there must be at least 70 feet of improved frontage along Ocean Street. Moreover, under the Site Plan

Jensen Baird  
Gardner Henry

June 3, 2015  
Page 3

standards, it is my understanding that the entire length of an unimproved street needs to be constructed to applicable standards when “development” is being undertaken. In this case, that would be over 160 of Ocean Street extending from Island Avenue.

Finally, it is not clear to me that the Ordinance provision which provides for an exemption from street frontage requirements is applicable to this lot, which already has street frontage available on Island Avenue. The section appears, rather, to allow for development of lots lacking acceptable frontage but which are already served by a right of way meeting the criteria set forth.

I would be happy to discuss this further, and if it is necessary to pay for a formal review of this issue, then please let me know as soon as possible.

Again, I am **asking to be notified if any further activity takes place on this property at your office.**

I look forward to hearing from you with regard to these points.

Very truly yours,

Leslie E. Lowry