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*Penny St. Louis Littell- Director of Planning and Urban Development
Marge Schmuckal, Zoning Administrator*

TO: ZONING CHAIR AND BOARD MEMBERS

FROM: MARGE SCHMUCKAL, ZONING ADMINISTRATOR

SUBJECT: INTERPRETATION APPEAL AT 8 ARLINGTON STREET

DATE: SEPTEMBER 11, 2009

This memo is in response to the applicant's memo to the Board.

I disagree on the first point given that "Minimum lot area per dwelling unit" and 14-388 do not apply to single family detached residential dwellings in the R-3 Zone, but apply only to Planned Residential Unit Development(or PRUDs). It is interesting that latter on in the applicant's argument it is stated that the R-3 Zone purpose is characterized as "to provide for two distinct types of housing: (1) single-family homes on individual lots, and (2) planned residential unit developments on substantially sized parcels." I will point out that the wording of section 14-90(b) are for PRUDs and other uses. A single family dwelling is considered an "other use" by this section of the Ordinance. I would also point out that the Courts have ruled that minimum lot area per dwelling unit does apply to single family dwelling units as determined recently in the 38 Torrington, Peaks Island case, Alfred L. Aydelott, et al v. Zoning Board of Appeals, City of Portland, et al.

The second point that is raised by the applicant introduces Section 14-433 in regard to minimum lot size and the reduction allowance for setbacks. I would like to point out that minimum lot size and minimum lot area per dwelling unit are two different concepts and entities within the Land Use Ordinance. As far as I am aware, the applicant is not requesting a reduction in building setbacks for the proposed addition. I believe that this section of the ordinance which refers to a lot on which a principal structure existed as of July 19, 1998, allows an addition to be built closer to property lines if certain conditions existed. There is an assumption by the applicant this section refers to buildings placed upon a lot that is not meeting the minimum lot size or the minimum lot size per dwelling unit. There are many lots within Portland which meet the minimum lot size and the minimum area per dwelling unit. And yet, the existing structure does not meet current setbacks. Such lots are challenged in meeting the current setbacks now in force. I interpret this section of the Ordinance to apply to such lots.

I would also point out that the applicant is trying to somehow apply the allowances for a “lot of record” to a lot which is already developed. The way to apply the “lot of record” allowance is when an existing vacant lot is proposed to be developed and is less than the minimum land area lot size as required under section 14- 90(a). At that point, section 14-90(a) specifically allows section 14-433 as an avenue to build upon a smaller lot if the rest of the listed conditions are met.

The applicant goes on to the definition section of the Land Use Ordinance to bifurcate the definition of a single family detached residential dwelling from a dwelling unit. He proposes that the two definitions are mutually exclusive. I interpret the two definitions as being supportive and not in opposition to each other.

I understand that most folks are not aware of the complexities within the Land Use Ordinance, but I can not support “pretzel” logic to bypass the Ordinance.

Section 14-388 clearly states that “A building nonconforming as to the regulations governing area per dwelling unit shall not be enlarged unless such building, including such addition or enlargement is made to conform to all the area per dwelling regulations of the zone in which it is located”. This office has disagreed with this section of the Ordinance for several years. I have wanted the City to either eliminate or revise this section of the Ordinance. Section 14-388 of the Ordinance along with a couple other sections is currently advancing through the Courts. The City is not anxious to change the Ordinance at this time because of that action. As soon as there is a final resolution from the Law Court, I will be asking for a revision of this section. It seems to me that single family lots that are legally nonconforming to either lot size or land area per dwelling unit should be allowed to expand as long as all other dimensional requirements are being met.