



Planning & Urban Development Department

*Jeff Levine, AICP, Director**Ann Machado, Acting Zoning Administrator*

TO: Zoning Board of Appeals Chair and Members

FROM: Ann Machado, Acting Zoning Administrator

ABM

SUBJECT: 142 East Kidder Street – 169-E-028 & 029

DATE: January 21, 2015

On January 8, 2015, the Zoning Board of Appeals tabled the Practical Difficulty Appeal for 142 East Kidder Street, in order for the applicant to gather more information to present to the Board before they made their decision. The Practical Difficulty appeal was to reduce the required rear setback from 20 feet to 19 feet four inches for the New Single Family Home that was built under Permit #2013-00160. The Board also asked if the City would be willing to write a no action letter regarding the fact that the structure did not meet the required rear setback. After researching the files, the City has decided not to write a no action letter based on more information that has come to light.

The building permit (2013-00160) was issued on April 17, 2013. The first inspection was a Foundation/Backfill on June 7, 2013. There were numerous final inspections done by Code Enforcement Officer George Froehlich in order to issue the Certificate of Occupancy. Exhibit A includes the inspection outcomes from 10/22/14 and 11/24/14. Both of these outcomes point out that the rear deck does not meet the zoning. On 12/4/14 Ryan Cyr from Lincoln Capital emailed George Froehlich a "Plan with Deck" (Exhibit B). This plan was a Mortgage Loan Inspection Plan dated 11/21/14 signed by James Nadeau of Nadeau Land Surveys. It showed the setback to the rear deck as 13'. A revised first floor plan was also submitted to George Froehlich showing the revised dimensions for the rear deck (Exhibit C) which complies with zoning Section 14-425. With the information provided, George Froehlich issued the Certificate of Occupancy on 12/5/14.

When Lincoln Capital submitted the Practical Difficulty Appeal Application on December 22, 2014, one of the documents submitted was the Mortgage Loan Inspection Plan dated 11/21/2014 signed by James Nadeau of Nadeau Land Surveys (Exhibit D). This plan shows the circled, 19.4 +/- Meas. with an arrow to the corner of the garage. It also shows the 13' +/- Meas. with an arrow to the corner of the deck. This plan is the same plan that was sent to George Froehlich on 12/4/14 but the 19.4 +/- meas. was not shown on the plan that George received (Exhibit B). George Froehlich issued the Certificate of Occupancy based on the Exhibit B plan. He revoked the Certificate of Occupancy on 1/9/15.

I spoke to James Nadeau on January 20, 2014. He confirmed that the Mortgage Loan Inspection Plan that was done on 11/21/14 and signed by him on 11-25-14 had both the 19.4 measurement and the 13' measurement on it. He also said that he had previously done a survey in the area and he is confident in the accuracy of the Plan that he submitted to Preferred Title & Closing. Looking at the dimensions that



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were provided on the Plan, it is 13' to the deck and according to the Revised First Floor Plan for the deck (Exhibit C) the deck is 5'10" deep so the setback to the rear of the house would be 18'10". The required setback is 20' [section 14-(a)(4)(b)].

On January 12, 2014 Allyn Gee emailed me a pdf of a letter (Exhibit E) dated May 7, 2013 from Robert Greenlaw regarding the measurement of the setbacks from the property lines to the footers. This letter appeared to have an electronic signature. It did not include the Mr. Greenlaw's seal or stamp. I asked Allyn Gee to provide a letter from Mr. Greenlaw that had his physical signature and his seal. I received a letter (Exhibit F) from Ryan Cyr on January 16, 2015 which was exactly the same as the letter I received from Allyn Gee, but it included a signature and seal. Jon Rioux, Deputy Director of Inspections, requested an original letter from Mr. Greenlaw. This letter appears to be a copy and not the original.

In conclusion, there are some issues of credibility with the evidence that was submitted. It is for these reasons that the Inspections Division was unwilling to issue a no action letter.