

Zoning Division  
Marge Schmuckal

Zoning Administrator



Department of Planning & Development  
Lee Urban, Director

## CITY OF PORTLAND

April 4, 2003

Judy & Dale Sabine  
210 Gray Road  
Gorham, ME 04038

RE: 58 Bailey Avenue – 332-G-29 & 30 – R-3 residential zone

Dear Judy & Dale,

This letter is in response to a request to determine what would be needed for the garage at 58 Bailey Avenue to meet the City's Land Use requirements. The following is a time line of events.

The pre-1957 Assessor's cards show that the original garage on this site was 12' x 18'.

It has been stated to me by the realtor Amy LaFrance that the property in the rear (332-G-13, 14, 15, 16) of 58 Bailey Street was purchased in 1972.

In 1978 it appears that the garage was torn down and rebuilt 12' x 24' as evidenced by an issued building permit. Setbacks would not have been an issue at that time because of the additional rear land that extended 80 feet to Tarbell Avenue. I do not consider the side setback to be a zoning violation. The garage permit was issued legally in 1978. I am not going to question the legality of the side setback at this time.

On or about August 11, 1999 the rear properties (332-G-29 & 30) were sold to an abutter, Llewellyn Smith (332-G-11, 12, 31, & 32) with no regard as to the placement of the garage and the required zoning setbacks. An illegal nonconformity was created by this action.

This illegal nonconformity was realized during the settlement of an estate and prior to any survey. Setback estimates were then based on misplaced property pins. On December 5, 2002 the abutting neighbor, Llewellyn Smith, and I met. He related that it was realized that the garage was partially located on the rear property that he had bought from his neighbor. He wanted to help correct the situation. However, I do not believe he had all the accurate information he needed to pass on to me. Therefore, I did not have the correct information to give him an

accurate answer. Mr. Smith did follow up after our conversation and sold a minimum amount of property (four feet) back to the estate of 58 Bailey Ave. This conveyance has not yet been recorded to the best of my knowledge.

A current survey by Nadeau and Lodge shows that the garage was situated two and a half (2.5) feet onto the rear property, prior to the four foot conveyance. The current setback, including the four foot conveyance, is only approximately 1.5 feet from the rear property line. The current Zoning Ordinance (section 14-433) which was also in effect in 1999 when the rear property was sold, allows a five (5) foot setback under two separate conditions. First the principal structure shall have existed as of July 19, 1988. The principal structure at 58 Bailey was constructed sometime in the early 1900's. It meets that test. Secondly, it must be proven that "the normal applicable yard requirements cannot be met". Under the given circumstances, the normal applicable rear yard setback requirement of 25 feet in the R-3 zone cannot be met.

Therefore, this garage may be considered to have a legal conforming rear setback if it can be shown to have a five (5) foot rear setback.

I strongly suggest that all parties involved work with the surveyor to verify the amount needed to show this required five (5) foot rear setback. I would also request that this office receive any appropriate paperwork, such as an updated survey, to show that this garage is in compliance with the current zoning regulations.

Very truly yours,

Marge Schmuckal  
Zoning Administrator

Cc: Amy LaFrance, Century 21, 72 Auburn Street, Portland, ME 04103  
Llewellyn Smith, 54 Bailey Avenue, Portland, ME 04103  
Richard Regan, Attorney for the William Viney estate  
Nadeau and Lodge, 918 Brighton Ave., Portland, ME 04102  
File

