

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS

Peter Coyne
Philip Saucier-sec
Peter Thornton
Deborah Rutter
Jill E. Hunter
David Dove, chair
Gordan Smith

July 21, 2008

David Latulippe
The Richmond Company
23 Concord Street
Wilmington, MA 01887

RE: 330 Allen Avenue
CBL: 344 E008, 012, 036, 042 & 050
ZONE: B2

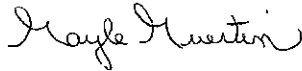
Dear Mr. Latulippe:

As you know, at its July 17, 2008, meeting, the Board voted 6-1 to grant your Interpretation Appeal.

Enclosed please find the billing for the Zoning Board Appeals legal ad and abutters notification; also a copy of the board's decision. Zoning will now move forward on the site plan submittal (permit #2007-0189) for the redevelopment at 330 Allen Avenue.

Should you have any questions please feel free to contact me at 207-874-8701.

Sincerely,



Gayle Guertin
Office Assistant

CC: Christopher L. Vaniotis, Attorney
file

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APPEAL AGENDA

The Board of Appeals will hold a public hearing on Thursday, July 17, 2008 at 6:30 p.m. on the second floor, Room 209, City Hall, 389 Congress Street, Portland, Maine to hear the following appeals:

To: City Clerk
From: Marge Schmuckal, Zoning Administrator
Date: July 18, 2008
RE: Action taken by the Zoning Board of Appeals on July 17, 2008.

The meeting was called to order at 6:35pm.

Roll call as follows: Members Present: David Dore, Philip Saucier, Peter Coyne, Deborah Rutter, Peter Thornton, Gordon Smith and Jill Hunter.
Members Absent: None

1. New Business:

A. Interpretation Appeal:

330 Allen Avenue, The Richmond Company, Prospective Purchaser, Tax Map #344 Block E Lots #008, 012, 036, 037, 042, 047 and 050 in the B-2 Business Community Zone. The Appellant is seeking an Interpretation Appeal regarding the written decision of the Zoning Administrator's letter issued on June 26, 2008, concerning the construction of the proposed new pharmacy (Walgreen's), located at 330 Allen Avenue, concerning section 14-185 (c) 1 (a), the definition of front yard setback. The submitted plans show the proposed new building of approximately 134 feet from the front property line off Washington Avenue. The average set back of buildings on adjacent parcels is 38.5 feet. The new building is set back further than allowed and should be set back no further than 38.5 feet from the property line. Representing the appeal is the applicant / purchaser, David Latulippe and Christopher Vaniotis, Attorney. The Board voted 6-1 and granted the Interpretation Appeal.

B. Practical Difficulty Variance Appeal:

330 Allen Avenue, The Richmond Company, Prospective Purchaser, Tax Map #344 Block E Lots #008, 012, 036, 037, 042, 047 and 050 in the B-2 Business Community Zone. The Appellant is seeking a Practical Difficulty Variance Appeal under Section 14-185 (c) 1 (a) of the City of Portland Zoning Ordinance. The Appellant is requesting a front yard setback variance of 134 feet instead of the required 38.5 feet. Representing the appeal is the applicant / purchaser, David Latulippe. The Board voted 7-0 for the Practical Difficulty Appeal to be withdrawn by the applicant.

2. Other Business: None

3. Adjournment: 7:40pm

Enclosure:

Agenda of July 17, 2008
Original Zoning Board Decision
1 tapes of meeting

CC: Joseph Gray, City Manager
Alex Jaegerman, Planning Department
Penny St. Louis Littell, Director, Planning & Urban Development
T.J. Martzial, Housing & Neighborhood Services

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS

Maximum Front Yard Setback in B-2 Zone:

Interpretation Appeal

DECISION

Date of public hearing:

July 17, 2008

Name and address of applicant:

The Richmond Company, David Latulippe, 23 Concord Street, Wilmington, MA 01887

Location of property under appeal:

330 Allen Avenue, Portland, ME

For the Record:

Names and addresses of witnesses (proponents, opponents and others):

Christopher Vanister, Benjamin Shur, 100 Middle Street, PO Box 9729, Portland, ME 04104-5029

David Latulippe, 35 Primrose Lane, Freeport, ME

Fred Hipp, adjacent owner (proponent)

Steven Cape, Represents Laurie Bernier (proponent)

Exhibits admitted (e.g. renderings, reports, etc.):

Laurie Bernier (proponent), P.O. Box 204, Gray, ME 04039

Robert Esposito, Falmouth, ME (proponent)

Pam Lovely, Portland (proponent)

Mike Rutherford, No. K Beery, Portland (proponent)

Chris Esposito, Falmouth, ME (proponent)

Findings of Fact and Conclusions of Law:

The Board's authority to review an interpretation of the Zoning Administration is pursuant to Section 14-472 of the zoning ordinance.

The City's Zoning Administrator issued an Interpretation on June 26, 2008, stating that pursuant to section 14-185(c)(1)(a) of the zoning ordinance the applicant's proposed new building at 340 Allen Avenue may be set back no more than 38.5 feet from the property line (the maximum front yard setback). The language of that provision of the ordinance states as follows:

"Except as provided in subsection (e) below, the following setbacks are required:

1. Front Yard

- a. Minimum front yard in B-2 and B-2c zone: None, except that the front yard setback shall not exceed the average depth of the front yards of the closest developed lots on either side of the lot. A developed lot means a lot on which a principal structure has been erected."

Appellant has demonstrated that the Interpretation of the Zoning Administrator was incorrect or improper.

Satisfied 6-1 Not Satisfied

Reason: ~~Section~~ Section 14-185(c)(1)(a) speaks to the minimum front yard setback, and does not establish a minimum, unlike the B-2b zone. The reading of the ordinance and the difference between the 2 zones with ordinance is plain, memo lead the Board to believe that the

Decision: (check one)

Option 1: The Board finds that the Appellant has satisfactorily demonstrated that the Interpretation of the City's Code Enforcement Officer was incorrect or improper, and therefore GRANTS the application. Zoning administrator was incorrect.

Option 2: The Board finds that the Appellant has NOT satisfactorily demonstrated that the Interpretation of the City's Code Enforcement Officer was incorrect or improper, and therefore DENIES the application.

Dated: 7/17/08


Board Chair