



# PORTLAND, MAINE

*Strengthening a Remarkable City, Building a Community for Life*  
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Planning and Urban Development  
Penny St. Louis Littell, Director

Planning Division  
Alexander Jaegerman, Director

July 28, 2008

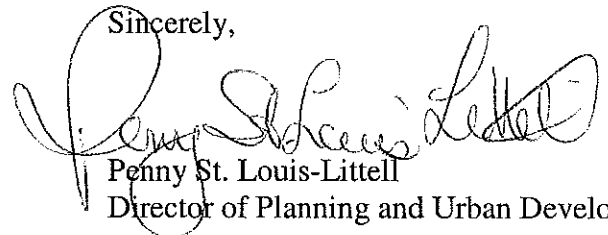
**TO:** Chairman Dore and Members of the Board of Appeals

**RE:** **Request for Reconsideration/The Richmond Company/Walgreen's/330 Allen Ave**

Please find attached for the Board to review a request for reconsideration for the above-captioned matter.

Thank you for your attention in this matter.

Sincerely,



Penny St. Louis-Littell  
Director of Planning and Urban Development

PL/tlb  
Attachment

Cc: Chris Vaniotis, Esq.

**CITY OF PORTLAND'S  
REQUEST FOR RECONSIDERATION  
OF  
ZONING BOARD OF APPEALS  
JULY 17, 2008 DECISION  
RE: THE RICHMOND COMPANY/WALGREEN'S  
330 ALLEN AVENUE**

The City of Portland respectfully requests the Zoning Board of Appeals reconsider its decision of July 17, 2007. In support of its motion, the City states as follows:

(1) According to 30A-M.R.S.A. § 2691 3(F), the Zoning Board of Appeals may reconsider its decision so long as any Motion to Reconsider and action on that Motion is taken within the 45 days provided for appeal to Superior Court.

(2) Reconsideration is accomplished through a Motion made by one of the six members who voted to grant the applicant's appeal of the zoning administrator's written determination dated June 26, 2008 (attached) in which the zoning administrator determined that proposed new building was set back further than allowed and should be setback no further than 38.5 feet from the property line. Any member of the Board may second the Motion.

(3) The Motion to Reconsider must be passed by a majority of the members present and voting once a quorum has been established.

(4) The City makes this request for reconsideration because it believes that the Board was not provided with all relevant evidence and testimony regarding the interpretation of Portland Land Use Code § 14-185(c)(1)(a). Indeed, the City, through its Zoning Administrator, was never provided the opportunity to present oral or written testimony at the hearing regarding the legislative history surrounding § 14-185(c)(1)(a) and other information relevant to the Board's deliberation on the interpretation of this section.

(5) 30-A MRSA §2691(3)(D) governing the procedure to be employed by Zoning


Boards of Appeals mandates as follows:

**Every party has the right to present the party's case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct any cross-examination that is required for a full and true disclosure of the facts.**

The City was not afforded this right at the June 26, 2008 hearing.

(6) For the above stated reasons, the City respectfully requests the Board to reconsider its decision at the meeting on August 7, 2008.

Dated this 28<sup>th</sup> day of July, 2008.



Penny St. Louis-Littell  
Director of Planning and Urban Development



# PORTLAND MAINE

*Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov*

Lee Urban- Director of Planning and Development  
Marge Schmuckal, Zoning Administrator

June 26, 2008

Christopher L. Vaniotis  
Bernstein Shur Counselors at law  
100 Middle Street  
PO Box 9729  
Portland, ME 04104-5029

RE: 340 Allen Avenue – 344-E-036 – B-2 Zone – Site Plan Application #2007-0189

Dear Chris,

This department is in receipt of a site plan submittal concerning the redevelopment of a site on the corner of Washington and Allen Avenues. During an initial zoning analysis, it has come to my attention that the required front yard setback is not being met as historically interpreted by this division.

It is understood that the front of this corner lot is along Washington Avenue. Therefore Allen Avenue is a side yard on a side street. 14-185(c)1.a. states:

“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.
- b. *Maximum front yard in the B-2b zone (On-peninsula):* The maximum front yard setback shall either be: (i) ten feet; or (ii) in cases where the average depth of the front yard of the nearest developed lots on either side of the lot in question is less than ten feet, the front yard setback of the lot in question shall not exceed such average depth. A “developed lot” means a lot on which a principal structure has been erected.

Building additions are not required to meet this maximum setback.

- c. *Maximum front yard in B-2b zone (Off-peninsula):* 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.”

The property being redeveloped is within the B-2 Zone. Therefore the front yard requirements would be controlled by 1.a which regulates the front yard requirements for the B-2 and B-2c zones. The B-2b zone is regulated under 1.b. and 1.c.

The submitted plans show a front yard setback of approximately 134 feet from the front property line off Washington Avenue back to the front of the building. These same plans are showing the average setback of buildings on adjacent parcels as 38.5 feet. My interpretation of the minimum front yard setback clearly shows the new building is setback further than what is allowed under the ordinance. The new building should be setback no further than the 38.5 feet from the front property line.

I understand the applicant’s reasoning concerning this section of the ordinance. However, I disagree with that reasoning. I understand that the title heading of the ordinance does read “Minimum” and not “Maximum”. Court cases have previously determined that headings and/or titles of paragraph do not rule an interpretation. It is the wording of the regulations that guide an interpretation. I have determined that the wording of 1.a. does limit the projection of a structure into the site from the front property line. In essence there is a maximum setback that a building can be placed extending into a lot from the front property line, even though the heading may classify this requirement as a “minimum”.

Much of my interpretation is guided by the plain meaning of the words such as “exceed”, which means go beyond, or to surpass. Even the word “setback” is referring to the act of setting back or away from the property line (in this case the front property line). The setback of the new building shall not be placed further back from the front property line or beyond the average setback of the buildings on the adjacent parcels. I do not believe that “exceed” refers to placing the building closer to the front property line from the average setback line.

My interpretation of the ordinance is reinforced by Planning Board Staff memos to the City Council in 1999 when the B-2 zones were revised. The amendments at that time were characterized to “promote pedestrian oriented design and access”. Orientation close to the street is one of the methods used for this goal.

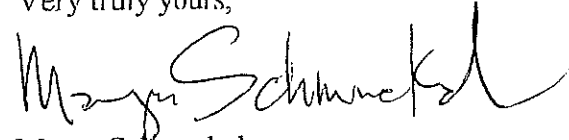
The City of Portland Technical Standards and Design Guidelines also fortify my interpretation. Under the guideline for building location and form, the Technical Standards state that “buildings shall be located near the street so as to create an urban street wall”. It goes on to state that that “Major entries should be adjacent to, or very close to, the street and public sidewalk”. The intent is to bring the building as close to the street line as possible. Section 14-185(c)1.a. does first state that there is no minimum setback required. The requirement in this section is not intended to set the building back further than the buildings on either side.

Instead it is intended to set the building *no further back* than the buildings on either side.

Because this particular issue arose during my zoning review of your initial application, the zoning review has not been finalized. Although, at this time, I am not aware of any other violations of the ordinance, I reserve my right to complete my review and would certainly apprise the applicant immediately of any other zoning issues.

You have the right to appeal my decision concerning use. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

Very truly yours,



Marge Schmuckal  
Zoning Administrator

Cc: Penny Littell, Director of Planning and Development  
Alex Jaegerman, Planning Division Director  
Barbara Barhydt, Planning  
Legal  
David Latulippe, The Richmond Co., 23 Concord Street, Wilmington, MA  
01887

attachments

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

### APPEAL AGENDA

The Board of Appeals will hold a public hearing on Thursday, August 7, 2008 at 6:30 p.m. on the second floor in room 209 at the Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following Appeals:

#### 1. New Business:

##### A. Conditional Use Appeal:

339 Woodford Street, Gregory and Genevieve Trueworthy owners, Tax Map #122, Block F, Lot #011, in the R-5 Residential Zone. The appellant is seeking a Conditional Use Appeal under Section 14-118 (a) (2) of the City of Portland Zoning Ordinance. The appellant is requesting a change of the use from a single family dwelling unit to a substance abuse recovery home for up to 12 people. Representing the appeal is the applicant, Pamela Smith.

##### B. Variance Appeal:

231 York Street, Bernard Orne, owner Tax Map #044 Block E Lots #003 in the B-1 Neighborhood Business Zone. The Appellant is seeking a Variance Appeal under Sections 14-332 (1) and 14-334 of the City of Portland Zoning Ordinance. Section 14-332 (i) requires one (1) parking space for each one hundred (100) square feet of floor area not used for bulk storage or food preparation. The appellant has one thousand (1000) square feet of floor area and would need seven (7) parking spaces. Section 14-334 requires one hundred (100) square feet measured along the principal building or lines of public access. The Appellant is surrounded by a residential zone and is requesting to waive the off street parking requirement, in belief that this will be a neighborhood restaurant and will be in walking distance. Representing the appeal is the applicant, Tod Dana.

##### C. Conditional Use Appeal:

231 York Street, Bernard Orne, owner Tax Map #044 Block E Lots #003 in the B-1 Neighborhood Business Zone. The Appellant is seeking a Conditional Use Appeal under Sections 14-163 of the City of Portland Zoning Ordinance. The Appellant is requesting a change of use from a drinking establishment ("The Icehouse Tavern") to a neighborhood Mexican restaurant. The proposed addition will replace the current outdoor patio. This will give the restaurant a total of 1000 square feet of floor space. Representing the appeal is the applicant, Tod Dana.

#### 2. Old 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-

\*Section 14-234 requires off street parking to be located on the side lot or within one hundred (100) feet measured along lines of public access. If this cannot be met, the Board of Appeals may permit off street parking to be located within a rear lot.

use  
for a restaurant use.  
Since the property is primarily surrounded by a residential zone and

Section 14-334 requires that the parking be located off-street.

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. On July 17, 2008 the Board voted 6-1 and granted the Interpretation Appeal. The City of Portland respectfully request the Zoning Board of Appeals reconsider its decision of July 17, 2008, in support of its motion.

*at the meeting  
August 7, 2008.*

**3. Other Business:**

**4. Adjournment:**



~~City of Portland~~

~~The Appellant is requesting a reconsideration of the July 17, 2008 Zoning Board of Appeals decision regarding an interpretation appeal by the Richmond Company. The interpretation appeal was in regard to the written decision of the Zoning Administrator in a letter dated June 26, 2008 concerning the construction of the proposed pharmacy (Walgreen's) located at 330 Allen Avenue, concerning section 14-185(c)(1)(a) the definition of the front yard setback. On July 17, 2008 the Zoning Board of Appeals voted 6-1 and granted the interpretation appeal. The City of Portland respectfully requests the Zoning Board of Appeals reconsider its decision of July 17, 2008 at its August 7, 2008 meeting since the City believes that the Board was not provided with all the relevant evidence and testimony regarding the interpretation Portland Land Use Code section 14-185(c)(1)(a).~~

~~The basis for the request is~~

~~(Interpretation of section 14-185(c)(1)(a))~~

The City of Portland requests the Zoning Board of Appeals reconsider its decision of July 17, 2008 (interpretation of section 14-185(c)(1)(a)) at its August 7, 2008 meeting. The basis for this request is the City's belief that the Board was not provided with all the relevant evidence and testimony regarding the interpretation of Portland Land Use Code Section 14-185(c)(1)(a).

TEXT AND MAP AMENDMENTS  
for  
B-1 and B-1b NEIGHBORHOOD BUSINESS ZONES  
&  
B-2 and B-2b COMMUNITY BUSINESS ZONES  
AND  
TEXT AMENDMENTS  
for  
SITE PLAN ORDINANCE

Submitted to:

Portland City Council  
Portland, Maine

October 18, 1999

**D. Other requirements Sec. 14-166**

The off-street parking requirements have been modified slightly to clarify that 10% of the required parking may be located between a structure and street in both the B-1 and B-1b zone, where existing structures exceed the minimum or maximum setbacks.

The external storage provisions are revised to require fully enclosed containers for solid waste. Vehicles with or without wheels are prohibited for use as on-site storage. Truckload sales are exempt, provided that the activity does not extend beyond three consecutive days and no more than three times per calendar year.

**E. External Effects Sec. 14-167**

Uses within the B-1 are required to operate within a completely enclosed structure. As a means of encouraging pedestrian activity in neighborhood business zones, an exception to this provision is suggested to allow open-air activities licensed by the City, including but not limited to outdoor seating, sidewalk sales, etc. [Sec. 14-167(1)].

A revision to the materials or wastes section states that no materials or wastes shall be deposited that are clearly visible from neighbors' properties [Sec. 14-167(6)].

**V. COMMUNITY BUSINESS B-2 and B-2b ZONING TEXT AMENDMENTS**

**1. Intent of B-2 and B-2b Zone**

The B-2 Community Business Zone offers opportunities for larger and more intensive commercial areas serving both adjoining neighborhoods and the community as a whole. To improve the appearance and access of these commercial centers, it is suggested that they be easily accessible by both automobiles and pedestrians. Developments should relate to the surrounding neighborhoods by design, orientation, and circulation patterns.

The B-2b zone is proposed as a new zoning classification, which is designed to preserve the more compact urban development of Portland. The B-2b purpose states it is intended to provide neighborhood and community retail, business and service establishments that are oriented to and built close to the street, in areas where a more compact urban development pattern is established and exhibits a pedestrian scale and character. Such locations may include the peninsula and other arterials and intersections to foster an existing urban commercial development pattern.

**2. Text Amendments**

Text amendments to the Community Business B-2 and B-2b Zones are contained within the included packet of amendments and ordinance citations are noted below for the City Council's reference. The complete text is contained within the draft amendments included in the packet. Attachment 4 and 5 are reduced

and automobile dealerships: there are two standards in the text specific to the auto service stations, car washes and auto dealerships. The first standard requires a five foot wide landscaped buffer along street frontage, except for driveways, and the buffer shall consist of a variety of plantings in accordance with the City's technical and design guidelines. Secondly, car washes shall be designed to avoid the tracking of residual waters into the street. This is not a new standard for car washes, but has been relocated to apply to the auto related facilities.

There are several "other" conditional uses listed in the B-2 zones, which are proposed to be included within the B-2b. The "other" conditional uses are printing and publishing establishments, wholesale distribution, and research and development and related production establishments. As mentioned earlier, the Board of Appeals would serve as the reviewing authority for these uses.

C. Dimensional requirements Sec. 14-185

1. Minimum lot size

Currently, long term and extended care facilities must meet a minimum lot size of 10,000 square feet for the first 9 residents plus 750 square feet for each additional resident provided no more than 2 acres is required. An intermediate care facility must have a minimum of 10,000 square feet. The proposal is to combine intermediate care facilities with the other types of establishments and simply require a minimum lot size of 10,000 square feet.

~~There is no minimum front yard requirement in the B-2 zone, except that the front yard setback shall not exceed the average depth of the closest developed lots on either side of the property.~~ In the B-2b zone a maximum front yard setback of ten (10) feet is proposed or in cases where the average depth of the front yard of adjoining developed lots is closer to the street, then the average will not be exceeded by the pending project. The same maximum setback is proposed for side yards on side streets (corner lots), so buildings will be located at street corners. An exception is proposed to this requirement which states that any new construction on a lot abutting more than two streets, the maximum setback shall not apply beyond the two most major streets. Major streets are defined as streets with the highest traffic volume and the greatest street width. Building additions are exempt from these setback requirements. The maximum setback serves as a "build-to line", one of the suggestions contained in the *Nason's Corner* study and consistent with the intent of the B-2b.

Business representatives have expressed opposition to the maximum front yard setback proposed in the B-2b zone at both public hearings. It was felt that such a requirement would hinder businesses and runs counter to current development trends. An amendment to a motion was proposed to eliminate the maximum front yard setback in the B-2b zone and have the same dimensional requirements for both B-2 and B-2b. The B-2b zone is intended for areas with compact urban development that maintain a strong streetscape along the street line. The amendment failed for lack of a second.

The other dimensional revisions proposed for B-2 and B-2b include the following:

- a) delete the minimum lot width of 50 feet;
- b) the maximum structure height may be exceeded under certain circumstances, provided each of the minimum setbacks are met; and
- c) the maximum impervious ratio is 80% in the B-2 zone and 90% is proposed in the B-2b zone.

D. Other requirements Sec. 14-186

1. Off-street parking and loading

The off-street parking provisions contain an exception which allows parking in the front yard of buildings built before 1996 where a portion of the building is removed and used for parking. It is proposed that this exception be deleted [Sec 14-186(4)a].

Division 20, Sec. 14-332 includes the Board's recommendation to increase the number of parking spaces for office uses in the B-2 to B-2b from 2.5 spaces to 3 spaces per 1,000 square feet of office space. The Board received many citizen complaints regarding inadequate off-street parking for office uses, so the Board is recommending increasing the required number of spaces in B-2 and B-2b zones. One member pointed out that this is not consistent with the City's Transportation Plan.

2. Front yard parking

In the B-2 and B-2b zones, off-street parking is not allowed between the street line and the required minimum or maximum setback lines. The provision is clarified to state where an existing building exceeds the minimum or maximum setbacks, then a maximum of 10% of the parking may be located between the structure and the street.

As in the B-1 amendments, the exterior storage standards are clarified that vehicles or truck trailers with or without wheels may not be used for on-site storage, except for truckload sales (duration of no more than 3 days and no more than 3 times per year). In the B-2 zones, the following exceptions are proposed:

- a) except where such storage is located in a designated loading zone on an approved site plan; or
- b) such storage is not visible from the street or adjacent residences and again such storage is shown on an approved site plan.

E. External Effect Sec. 14-187

Uses shall be operated within a completely enclosed structure. As a means of encouraging pedestrian activity in the community business zones, an exception is suggested to allow specific open-air activities licensed by the City, including but not limited to outdoor seating, sidewalk sales, etc. [Sec. 187(1)].

## VI. PUBLIC COMMENT

The Planning staff has responded to many requests for information regarding the proposed amendments. A summary of public comments is included as Attachment 10. In addition, there is a written request from Mr. Bryant to include his property near Woodfords Corner within the B-2b zone, Attachment 11, and Mr. Maier submitted a request to include self-storage as a permitted use in the B-1 zone, Attachment 12.

## VII. COMPLIANCE WITH COMPREHENSIVE PLAN

Portland's *Transportation Plan* contains the underlying policies for the proposed text amendments. The guiding principle of the *Plan* states, "Provide maximum mobility in a balanced transportation system which encompasses all modes, to support the economic vitality and quality of life of the Portland community." One of the goals is to ensure that future growth does not foster auto dependencies. Relevant land use/transportation policies include the following:

- Vibrant neighborhoods include nearby, small-scale commercial areas that provide both convenient service and natural meeting places. Provide routine, daily services within walking distance or residents of all neighborhoods, as long as the businesses providing the services are small-scale, are designed compatibly with residences, and fit into the fabric of the neighborhood.
- Allow development along transit corridors and near community centers to evolve at a density sufficient to make public transit, walking and biking viable options. Such density should be coupled with policies that encourage or maintain a healthy share of owner-occupancy in these areas as well as compatible site design.

The *Nason's Corner Study* has not been adopted as part of the City's Comprehensive Plan; however, it does offer specific policy guidance from the neighborhood and builds on the goals of the *Transportation Plan*. The specific recommendations to limit building size, prohibit bottle redemption centers, maintain small-scale development, confirm that drive-throughs are not permitted in the B-1, improve the aesthetics of the neighborhood, and control the external impacts of commercial uses are consistent with the policies of the Transportation Plan.

The proposed amendments are consistent with the goals and policies of the City's Comprehensive Plan. The zoning test revisions are intended to strengthen the concept of neighborhood commercial areas and enhance the attractiveness and compatibility of commercial areas with adjoining residential neighborhoods. Specifically, the amendments seek to promote pedestrian oriented design and access. Residential uses are encouraged above ground floor businesses, which supports the concept of higher density along arterials.

## VIII. RECOMMENDATION FOR THE BOARD TO CONSIDER

On the basis of the information contained within the Planning Board Report # 33-99, the Planning Board finds that the proposed zoning amendments for the Neighborhood Business B-1 and B-1b Zone, the Community Business B-2 and B-2b Zone, and the Site Plan Ordinance Amendments to be consistent with Portland's Comprehensive Plan and recommends adoption of the amendments to the City Council.

GUIDELINES: The following guidelines set forth various land use planning objectives to be achieved in the future in the following zones: B-1, B-1b, B-2, B-2b.

1. Building Location and Form

Guideline: Buildings shall be located near the street so as to create an urban street wall. An urban street wall is created by a pattern of buildings which line the street in a consistent manner, thereby establishing a desirable spatial relationship between the building in the commercial district and the major street. Location is one of several related factors defining the street environment.

The desired condition is to have the building frame and enclose the street, which is achieved by providing building height that is in appropriate proportion to the width of the adjoining major street.

A ratio of building height to street width of one-to-two creates a strong "room-like" street, while a one-to-three ratio provides good street definition and proportion. Shorter buildings of one story facing broad streets will not achieve the desired relationship. By way of example, for a fifty-foot street right-of-way, a minimum building height of 15' is desired, with 25' height preferred. An eighty-foot right-of-way would foster a minimum of a 27' building to achieve the 1:3 proportion, with 40' building height preferred. Obviously, buildings located as close as possible to the street right-of-way will provide better definition and proportion than buildings set further back.

2. Building Function

Guideline: An urban street and business district requires a substantial intensity and variety of uses. It is beneficial to have mixed uses within portions of buildings situated near the street. For example, a retail first floor might have office or residential on the second or third floors. This provides both the scale of building height desired, as well as the economic vitality of the business district.

3. Orientation of Buildings and their Entrances to the Street

Guideline: Major building entries shall be designed and located to provide the primary building access oriented to the public street and sidewalk. Doorways should be prominent and obvious in appearance, so as to attract the users toward the entry. Major entry features should address the street, with entry courts, display windows, signage, lights, walkways, and vestibules, as appropriate. Major entries should be adjacent to, or very close to, the street and public sidewalk.

4. Windows

Guideline: Windows should be located in all building facades visible from the public way, especially on building facades along the major public street.

Retail uses with store fronts are the most desirable feature for locations adjacent to the public sidewalk; and active, transparent, and interesting windows contribute the maximum value. Limitations on transparency, such as dark or reflective glass, or interior coverings, should be avoided. Where uses (such as office) are not conducive to transparent viewing from the public way, windows can still convey a sense of activity and presence along the street. Even these more private windows can convey occupancy and habitation when lighted from within, as during evening hours, even if the interior is screened from view.

5. Building Character, Detail, Scale, and Graphic Qualities

Guideline: Building design should include various architectural and graphic amenities to provide a strong presence along a street and relate a building to its community.

Awnings, canopies, and flags may be utilized to highlight entryways and to further identify the activity and identity of a use. Facade lighting may be used to highlight entryways or to provide visual interest along an otherwise blank façade. Building scale, roof pitch, architectural detail, and fenestration shall be designed to complement and be compatible with surrounding residential and commercial buildings.

6. Signage and Building Entrances

Guideline: Building entrances and building signage in the B-1, B-1b, and B-2b zones should be designed and constructed at the pedestrian scale. (*\*We may need to revise the Sign Ordinance for allowed height and dimension of signs.\**)

7. Development Relationship to Street

Guideline: Building facades and site amenities should form a cohesive wall of enclosure along a street.

Where buildings are not located at the street line, site amenities, including masonry walls, fences, and landscaping, should be placed along the street to provide a sense of enclosure or definition.

8. Parking Lots

Guideline: Parking Lots should be screened from view of the public way.

Landscaping or fencing should be used to screen parking lots from public ways and residential neighbors. Where parking is located within the front yard (or side yard of a corner lot), a landscaped buffer or fence should be placed along the street line to distinguish the private space from the public space and to help define the street wall.

Guideline: Parking lots should be screened from neighboring properties.

A densely planted landscape buffer or fencing should be installed to protect neighboring properties from the impacts associated with the parking lot and the use it serves.

Guideline: Crosswalks should be provided within parking lots and across entrance driveways, directing pedestrians to building entrances.

Guideline: Street trees should be planted along property street frontage 25ft. on center.

9. Transit Connections

Guideline: Development proposed along established transit corridors must design uninterrupted access from the proposed development to the transit stop.

An easement to place a transit shelter may be requested for development located along a transit corridor.



10' REAR YARD SETBACK

*side yard*

RESIDENTIAL  
COMMUNITY BUSINESS

40'

*Front Ave  
Washington*

PROPOSED PHARMACY  
109'x135'  
14,045 S.F.±  
FFE 82.00  
48 PARKING SPACES

LIMIT OF WALGREENS PROPERTY

LIMIT OF WALGREENS PROPERTY

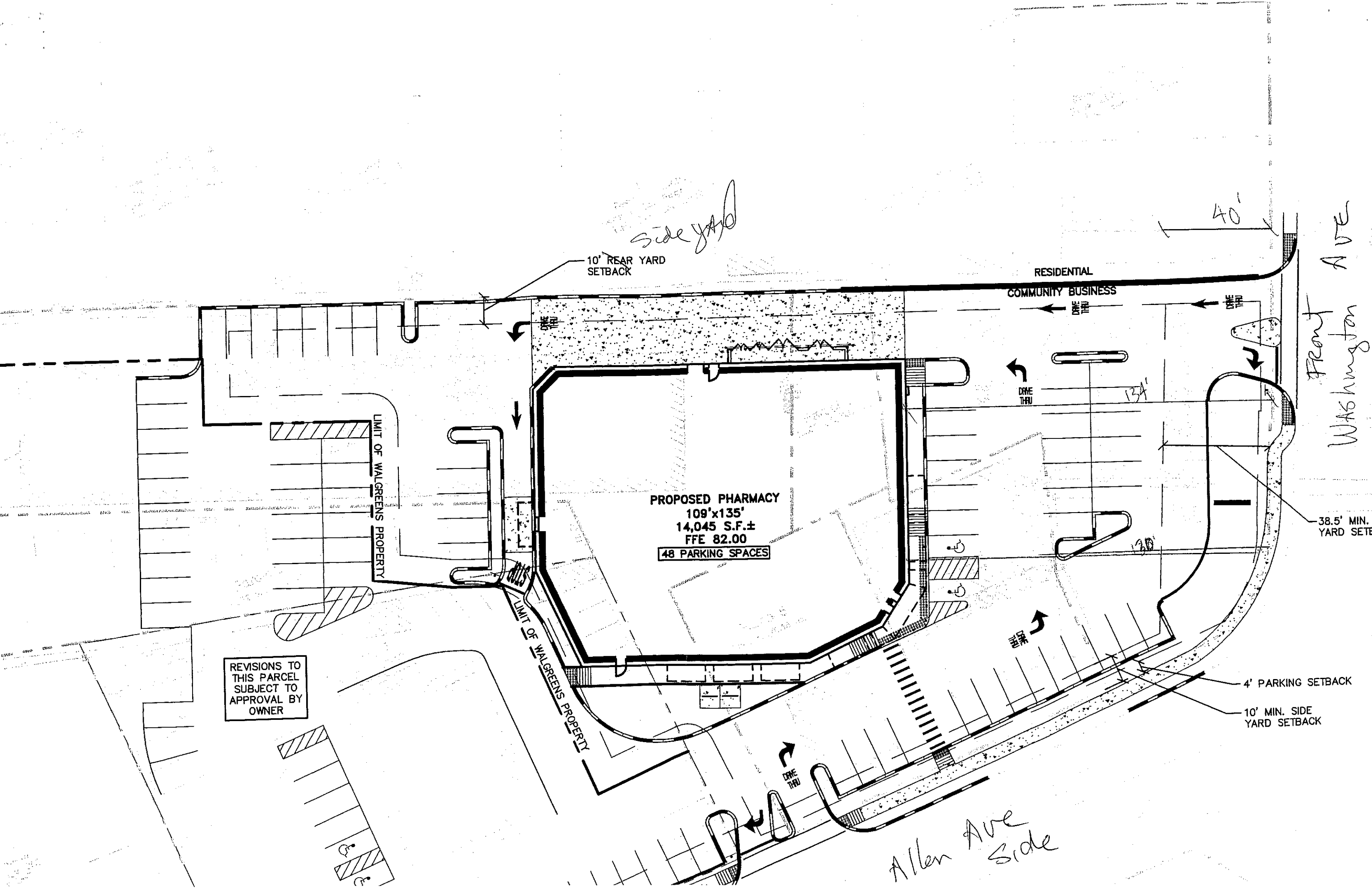
38.5' MIN. YARD SETB

REVISIONS TO THIS PARCEL SUBJECT TO APPROVAL BY OWNER

4' PARKING SETBACK

10' MIN. SIDE YARD SETBACK

*Allen Ave  
Side*





Members Present: DAVID Kase, Philip Sawyer, Peter Coyne, Deborah Kutter, Peter Thanton, Gordon Smith, Jill Hunter

**CITY OF PORTLAND, MAINE**  
**ZONING BOARD OF APPEALS**

Members Absent: None

Called to order: 6:35 pm **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 in room 209 at the Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following Appeals:

Granted  
6-1

**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, 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.

Christopher Varnotis, Attorney

Withdrawn  
7-0

**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.

**2. Other Business:**

**3. Adjournment: 7:40 pm**



# PORTLAND MAINE

*Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov*

Lee Urban- Director of Planning and Development  
Marge Schmuckal, Zoning Administrator

June 26, 2008

Christopher L. Vaniotis  
Bernstein Shur Counselors at law  
100 Middle Street  
PO Box 9729  
Portland, ME 04104-5029

RE: 340 Allen Avenue – 344-E-036 – B-2 Zone – Site Plan Application #2007-0189

Dear Chris,

This department is in receipt of a site plan submittal concerning the redevelopment of a site on the corner of Washington and Allen Avenues. During an initial zoning analysis, it has come to my attention that the required front yard setback is not being met as historically interpreted by this division.

It is understood that the front of this corner lot is along Washington Avenue. Therefore Allen Avenue is a side yard on a side street. 14-185(c)1.a. states:

“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.
- b. *Maximum front yard in the B-2b zone (On-peninsula):* The maximum front yard setback shall either be: (i) ten feet; or (ii) in cases where the average depth of the front yard of the nearest developed lots on either side of the lot in question is less than ten feet, the front yard setback of the lot in question shall not exceed such average depth. A “developed lot” means a lot on which a principal structure has been erected.

Building additions are not required to meet this maximum setback.

- c. *Maximum front yard in B-2b zone (Off-peninsula):* 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.”

The property being redeveloped is within the B-2 Zone. Therefore the front yard requirements would be controlled by 1.a which regulates the front yard requirements for the B-2 and B-2c zones. The B-2b zone is regulated under 1.b. and 1.c.

The submitted plans show a front yard setback of approximately 134 feet from the front property line off Washington Avenue back to the front of the building. These same plans are showing the average setback of buildings on adjacent parcels as 38.5 feet. My interpretation of the minimum front yard setback clearly shows the new building is setback further than what is allowed under the ordinance. The new building should be setback no further than the 38.5 feet from the front property line.

I understand the applicant’s reasoning concerning this section of the ordinance. However, I disagree with that reasoning. I understand that the title heading of the ordinance does read “Minimum” and not “Maximum”. Court cases have previously determined that headings and/or titles of paragraph do not rule an interpretation. It is the wording of the regulations that guide an interpretation. I have determined that the wording of 1.a. does limit the projection of a structure into the site from the front property line. In essence there is a maximum setback that a building can be placed extending into a lot from the front property line, even though the heading may classify this requirement as a “minimum”.

Much of my interpretation is guided by the plain meaning of the words such as “exceed”, which means go beyond, or to surpass. Even the word “setback” is referring to the act of setting back or away from the property line (in this case the front property line). The setback of the new building shall not be placed further back from the front property line or beyond the average setback of the buildings on the adjacent parcels. I do not believe that “exceed” refers to placing the building closer to the front property line from the average setback line.

My interpretation of the ordinance is reinforced by Planning Board Staff memos to the City Council in 1999 when the B-2 zones were revised. The amendments at that time were characterized to “promote pedestrian oriented design and access”. Orientation close to the street is one of the methods used for this goal.

The City of Portland Technical Standards and Design Guidelines also fortify my interpretation. Under the guideline for building location and form, the Technical Standards state that “buildings shall be located near the street so as to create an urban street wall”. It goes on to state that that “Major entries should be adjacent to, or very close to, the street and public sidewalk”. The intent is to bring the building as close to the street line as possible. Section 14-185(c)1.a. does first state that there is no minimum setback required. The requirement in this section is not intended to set the building back further than the buildings on either side.

Instead it is intended to set the building *no further back* than the buildings on either side.

Because this particular issue arose during my zoning review of your initial application, the zoning review has not been finalized. Although, at this time, I am not aware of any other violations of the ordinance, I reserve my right to complete my review and would certainly apprise the applicant immediately of any other zoning issues.

You have the right to appeal my decision concerning use. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

Very truly yours,

Marge Schmuckal  
Zoning Administrator

Cc: Penny Littell, Director of Planning and Development  
Alex Jaegerman, Planning Division Director  
Barbara Barhydt, Planning  
Legal  
David Latulippe, The Richmond Co., 23 Concord Street, Wilmington, MA  
01887

attachments

# Interpretation Appeal

Washington Ave is the front

Allen Ave is the side

11.9.1 front yard (Washington) shall not ~~meet~~ <sup>exceed</sup> the average depth of the front yards of the closest developed lots on either side of lot

Submitted plans front yard setback 134 feet from property line off Washington Ave.

38.5' adjacent parcels

185(C) 1.9.

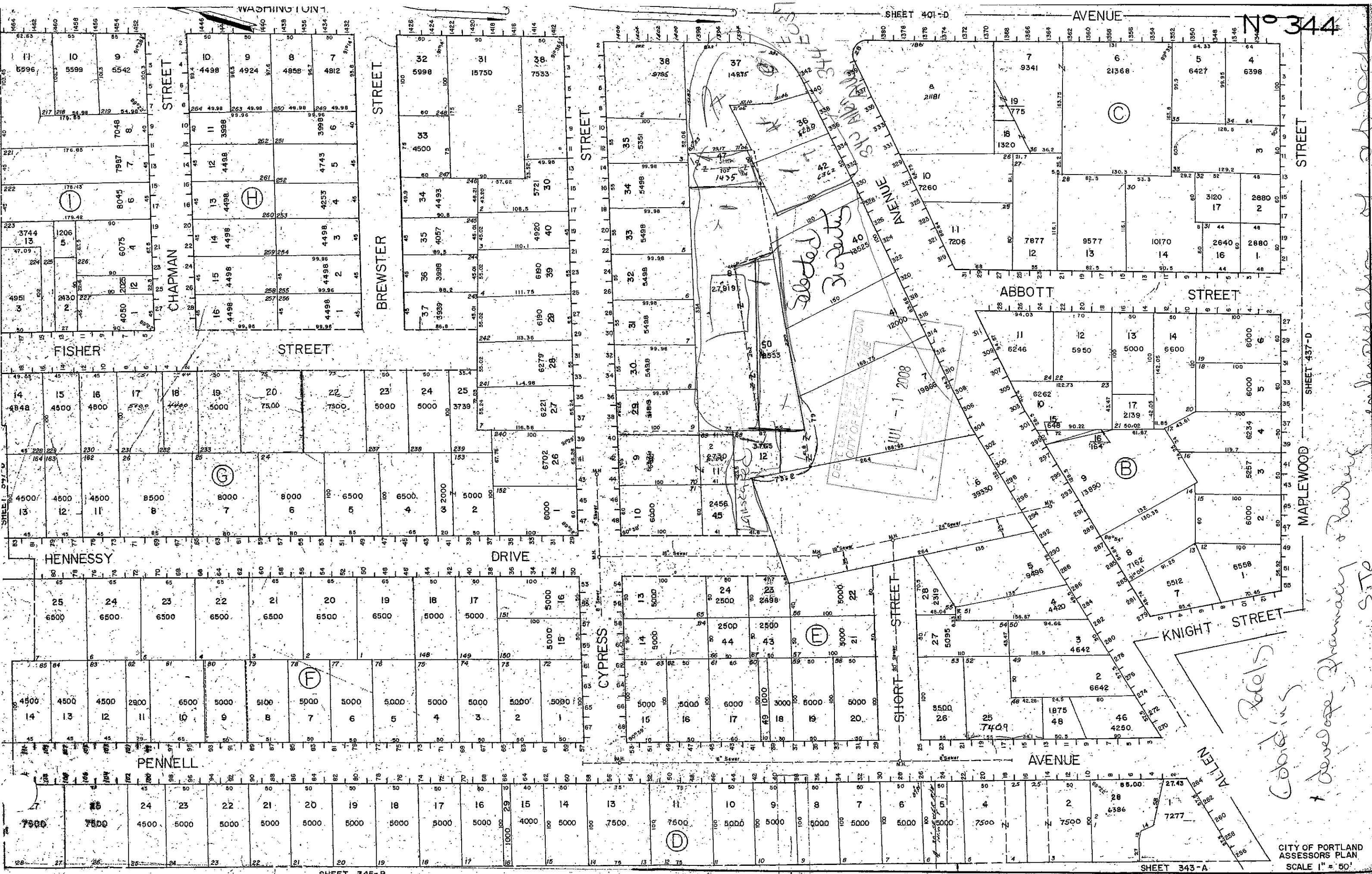
Cathy Elms  
outlet





1 inch equals 288 feet





WASHINGTON AVENUE

SHEET 401-D

AVENUE

N<sup>o</sup> 344

STREET

STREET

STREET

STREET

CHAPMAN STREET

BREWSTER STREET

FISHER STREET

STREET

ABBOTT STREET

STREET

HENNESSY DRIVE

DRIVE

CYPRESS STREET

SHORT STREET

KNIGHT STREET

PENNELL AVENUE

AVENUE

ALLEN AVENUE

SHEET 437-D

MAPLEWOOD

SHEET 345-B

SHEET 343-A

CITY OF PORTLAND ASSESSORS PLAN SCALE 1" = 50' Revised 8/04

*Selected Properties*

*City of Portland*

*Coburn's Planning & Rating - Suburban S.T.P.*

*Maplewood*

*Developed, Planned & Rated - Suburban S.T.P.*

**CITY OF PORTLAND, MAINE**  
Zoning Board of Appeals

**Zoning Board of Appeals Committee**

**DATE:** 7/17/2008  
**TIME:** 6:30:00 PM  
**LOCATION:** 389 Congress Street

**AGENDA**

- 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.
- 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.

FAX



To: Peter Thornton  
Fax Number: 207 770 2293  
From: Gayle Gueffin  
Fax Number: 207-874-8716  
Date: 7/14/08  
Regarding: 2 Cover letter + Agenda  
Total Number Of Pages Including Cover: 4  
Phone Number For Follow-Up: 874-8701

Comments:

Attached is a cover letter the  
Interpretation and Practical Difficulty,  
also the agenda.

Thank you  
Gayle @ 874 8701  
gg@Portlandmaine.gov

City Of Portland, Maine  
Inspections Division Services  
389 Congress St Room 315 Portland Me 04101-3509  
Phone: (207) 874-8703 or (207)874-8693  
Fax: (207) 874-8716  
<http://www.portlandmaine.gov/>

THE  
RICHMOND  
COMPANY, INC.  
23 Concord Street  
Wilmington, MA 01887  
(978) 988-3900 • Fax (978) 988-3950

Interpretation

June 27, 2008

Board of Appeals  
City of Portland  
389 Congress Street  
Portland, Maine 04101

Re: Appeal of the Richmond Company, Inc

Dear Members of the Board:

Please find enclosed an appeal, under Section 14-472 of the Zoning Ordinance, from an interpretation made by the Zoning Administrator. The reasons for our appeal are described in the enclosed statement of appeal from Christopher L. Vaniotis, Esquire.

While we are optimistic that the Board will agree with our analysis and grant this appeal, we have also filed a separate request for a practical difficulties variance, as a second means to achieve our goal of redeveloping what is currently a blighted collection of properties at the corner of Washington and Allen Avenues

We look forward to meeting with the Board on July 17<sup>th</sup>.

Sincerely,



David Latulippe  
Vice President

Cc Philip Pastan - via interoffice mail  
Kathryn Fossa - via interoffice mail  
Christopher Vaniotis, Esq. - Bernstein & Shur

THE  
RICHMOND  
COMPANY, INC.  
23 Concord Street  
Wilmington, MA 01887  
(978) 988-3900 • Fax (978) 988-3950

Practical Difficulty

June 27, 2008

Board of Appeals  
City of Portland  
389 Congress Street  
Portland, Maine 04101

Re: Practical Difficulties Variance Request of the Richmond Company, Inc

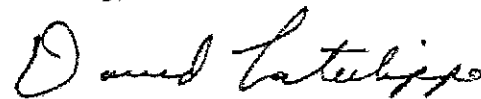
Dear Members of the Board:

Pleased find enclosed a request for a practical difficulties variance, which will enable The Richmond Company, Inc to redevelop a collection of small, underutilized properties which right now present a blighted face to the corner of Washington and Allen Avenues. The justifications for our appeal are described in the enclosed statement of practical difficulty.

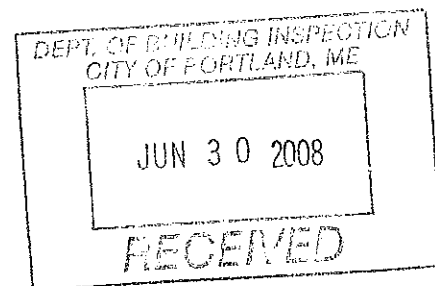
We have also filed an interpretation appeal, in which we explain why we think our proposal complies with the setback regulations for the B-2 zone. However, should the Board choose not to grant that interpretation appeal, we are confident that the Board will find that a practical difficulties variance is appropriate under the standards of Section 14-473.

We look forward to meeting with the Board on July 17<sup>th</sup>

Sincerely,



David Latulippe  
Vice President



Cc Philip Pastan - via interoffice mail  
Kathryn Fossa - via interoffice mail  
Christopher Vaniotis, Esq - Bernstein & Shur

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

### 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 in room 209 at the Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following Appeals:

**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, 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.

**B. Practical Difficulty Variance Appeal:**

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**2. Other Business:**

**3. Adjournment:**

**From:** Peter Thornton <pthornton@legacysir.com>  
**To:** Marge Schmuckal <MES@portlandmaine.gov>  
**Date:** 7/14/2008 11:19:29 AM  
**Subject:** Re: ZBA meeting

Yes, Fax is 207- 770-2293 Tks Peter

----- Original Message -----

From: "Marge Schmuckal" <MES@portlandmaine.gov>  
To: pthornton@legacysir.com  
Cc: "Gayle Guertin" <GG@portlandmaine.gov>  
Sent: Monday, July 14, 2008 11:07:54 AM GMT -05:00 US/Canada Eastern  
Subject: Re: ZBA meeting

I will let Gayle know. Do you have a fax # that Gayle could fax it to?

Thanks,

Marge

>>> Peter Thornton <pthornton@legacysir.com> 7/14/2008 10:55:17 AM >>>

Marge : I am available. There was no cover letter in the package. Can you e-mail me one ? Tks Peter

----- Original Message -----

From: "Marge Schmuckal" <MES@portlandmaine.gov>  
To: "david p dore" <david.p.dore@citi.com>, philsaucier@gmail.com, pthornton@legacysir.com, jhunter@maine.rr.com, gsmith@verrilldana.com, deborahrutter@yahoo.com, petermcoyne@yahoo.com  
Cc: "James Adolf" <JRA@portlandmaine.gov>  
Sent: Monday, July 14, 2008 9:57:31 AM GMT -05:00 US/Canada Eastern  
Subject: ZBA meeting

Yes we have a ZBA meeting this Thursday - Please let me know your availability for this meeting for quorum purposes.

Board update: David Dore will be moving to Luxemburg in August (just an example of the extremes that people do to get off the ZBA), so I have already notified the City Clerk's office for a new member. And Jim Adolf will be leaving soon (I don't have a date yet) for another job, so we will need to break in a new Board lawyer soon.

See you Thursday  
Marge

**Gayle Guertin - zoning board of appeal legal ad**

---

**From:** Gayle Guertin  
**To:** classified@pressherald.com  
**Date:** 7/9/2008 9:57 AM  
**Subject:** zoning board of appeal legal ad  
**CC:** Ann Machado; Gayle Guertin; Marge Schmuckal

---

Good Morning Joan!

Attached is the Zoning Board of Appeals legal ad for Friday July 11, 2008.

Thank You  
Gayle Guertin @ 874-8701





## City of Portland Zoning Board of Appeals

July 10, 2008

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

Dear Appellant,

Your Interpretation Appeal has been scheduled to appear before the Zoning Board of Appeals on **Thursday, July 17, 2008 at 6:30 p.m.** on the second floor of City Hall in Room 209. Please remember to bring a copy of the packet with you to the meeting to answer any questions the Board may have. *(Please add the interpretation letter issued on June 26, 2008 to your packet that I have enclosed).*

I have included an agenda with your appeal highlighted, as well as the procedures of the meeting for you to familiarize yourself.

I have also included the bill for the legal ad and notices. The check should be written as follows:

MAKE CHECK OUT TO: City of Portland  
MAILING ADDRESS: Room 315  
389 Congress Street  
Portland, ME 04101

Please feel free to contact me at 207-874-8701 if you have any questions.

Sincerely,

Gayle Guertin  
Office Assistant

Cc: File  
389 Congress St., Portland, Maine 04101 (207) 874-8701 FAX 874-8716 TTY 874-8936

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

### APPEAL AGENDA

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**2. Other Business:**

**3. Adjournment:**



# PORTLAND MAINE

*Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov*

*Dee Urban- Director of Planning and Development  
Margie Schmuckal, Zoning Administrator*

June 26, 2008

Christopher L. Vaniotis  
Bernstein Shur Counselors at law  
100 Middle Street  
PO Box 9729  
Portland, ME 04104-5029

RE: 340 Allen Avenue – 344-E-036 – B-2 Zone – Site Plan Application #2007-0189

Dear Chris,

This department is in receipt of a site plan submittal concerning the redevelopment of a site on the corner of Washington and Allen Avenues. During an initial zoning analysis, it has come to my attention that the required front yard setback is not being met as historically interpreted by this division.

It is understood that the front of this corner lot is along Washington Avenue. Therefore Allen Avenue is a side yard on a side street. 14-185(c)1.a. states:

“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.
- b. *Maximum front yard in the B-2b zone (On-peninsula):* The maximum front yard setback shall either be: (i) ten feet; or (ii) in cases where the average depth of the front yard of the nearest developed lots on either side of the lot in question is less than ten feet, the front yard setback of the lot in question shall not exceed such average depth. A “developed lot” means a lot on which a principal structure has been erected.

Building additions are not required to meet this maximum setback.

- c. *Maximum front yard in B-2b zone (Off-peninsula):* 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.”

The property being redeveloped is within the B-2 Zone. Therefore the front yard requirements would be controlled by 1.a which regulates the front yard requirements for the B-2 and B-2c zones. The B-2b zone is regulated under 1.b. and 1.c.

The submitted plans show a front yard setback of approximately 134 feet from the front property line off Washington Avenue back to the front of the building. These same plans are showing the average setback of buildings on adjacent parcels as 38.5 feet. My interpretation of the minimum front yard setback clearly shows the new building is setback further than what is allowed under the ordinance. The new building should be setback no further than the 38.5 feet from the front property line.

I understand the applicant’s reasoning concerning this section of the ordinance. However, I disagree with that reasoning. I understand that the title heading of the ordinance does read “Minimum” and not “Maximum”. Court cases have previously determined that headings and/or titles of paragraph do not rule an interpretation. It is the wording of the regulations that guide an interpretation. I have determined that the wording of 1.a. does limit the projection of a structure into the site from the front property line. In essence there is a maximum setback that a building can be placed extending into a lot from the front property line, even though the heading may classify this requirement as a “minimum”.

Much of my interpretation is guided by the plain meaning of the words such as “exceed”, which means go beyond, or to surpass. Even the word “setback” is referring to the act of setting back or away from the property line (in this case the front property line). The setback of the new building shall not be placed further back from the front property line or beyond the average setback of the buildings on the adjacent parcels. I do not believe that “exceed” refers to placing the building closer to the front property line from the average setback line.

My interpretation of the ordinance is reinforced by Planning Board Staff memos to the City Council in 1999 when the B-2 zones were revised. The amendments at that time were characterized to “promote pedestrian oriented design and access”. Orientation close to the street is one of the methods used for this goal.

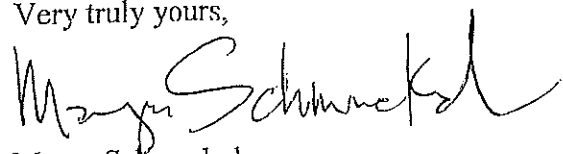
The City of Portland Technical Standards and Design Guidelines also fortify my interpretation. Under the guideline for building location and form, the Technical Standards state that “buildings shall be located near the street so as to create an urban street wall”. It goes on to state that that “Major entries should be adjacent to, or very close to, the street and public sidewalk”. The intent is to bring the building as close to the street line as possible. Section 14-185(c)1.a. does first state that there is no minimum setback required. The requirement in this section is not intended to set the building back further than the buildings on either side.

Instead it is intended to set the building *no further back* than the buildings on either side.

Because this particular issue arose during my zoning review of your initial application, the zoning review has not been finalized. Although, at this time, I am not aware of any other violations of the ordinance, I reserve my right to complete my review and would certainly apprise the applicant immediately of any other zoning issues.

You have the right to appeal my decision concerning use. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

Very truly yours,



Marge Schmuckal  
Zoning Administrator

Cc: Penny Littell, Director of Planning and Development  
Alex Jaegerman, Planning Division Director  
Barbara Barhydt, Planning  
Legal  
David Latulippe, The Richmond Co., 23 Concord Street, Wilmington, MA  
01887

attachments