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*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
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attachments