

Zoning Division
Marge Schmuckal
Zoning Administrator

Department of Planning & Development
Lee Urban, Director



CITY OF PORTLAND

August 11, 2003

TO: PATRIC SANTERRE, CHAIR AND ZONING BOARD OF APPEALS

FROM: MARGE SCHMUCKAL, ZONING ADMINISTRATOR

SUBJECT: 124 PLYMOUTH STREET, CORINNE BROWN, OWNER, 345-A-016 & 017 –
R-3 ZONE

Section 14-437 of the Land Use Zoning Ordinance allows the zoning administrator to grant a setback reduction to validate the situs of mislocated, single-family, owner-occupied residential structures and those structures accessory thereto. There is a process described within this section that outlines the permit procedure. Through this permit process, the current garage and its setbacks could be corrected so that there would be no cloud on this property. A recordable instrument is generated by this procedure. The existing property and structures, as they currently are located, could be sold without future problems to the owner or prospective buyer(s). I have included a copy of section 14-437 for your convenience.

The real heart of the matter is that the owner would like to increase the illegal nonconformity by moving the garage six feet closer to the rear property line and to add an eight foot addition to the rear of the garage. This would result in a ten foot rear setback instead of the twenty-four foot existing rear setback as shown. There is no other mechanism under the Zoning Ordinance that would cure the increase of the nonconformity that would be created. This is the basis of this practical difficulty variance that is before the Zoning Board of Appeals.

6. 133 11-1-1

City of Portland, Maine

IN THE CITY COUNCIL

AMENDMENT TO PORTLAND CITY CODE
§14-437 (ZONING ORDINANCE)
RE: SETBACK REDUCTIONS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE
IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

That Section 14-437 of the Portland City Code is hereby enacted,
said section to read as follows:

Sec. 14-437. Setback reductions.

(a) *Authority.* The zoning administrator may grant setback reductions to the extent provided by this section.

(b) *Procedure.* Application for a setback reduction shall be submitted to the building inspections division. A payment of a nonrefundable application fee, as established from time to time by order of the City Council to cover administrative costs, shall accompany each application. The application shall be in such form as prescribed by the zoning administrator and shall contain at least the following information and documentation:

- (1) The name and address of the applicant and his or her interest in the subject property;
- (2) The name and address of the owner, if different from the applicant;
- (3) The address or location and the city assessor's chart, block and lot number of the subject property;
- (4) The present use and zoning classification of the subject property;
- (5) Plot plan showing sufficient monumentation to indicate the location of all structures existing and proposed in relation to the lot lines. Such a plan must be prepared by a State of Maine Registered Land Surveyor. If, in the opinion of the surveyor, sufficient monumentation is not available, then a standard boundary survey will be necessary to meet the requirements of this section.

(c) *Purpose.* The purpose of setback reductions is to validate the situs of mislocated single-family, owner-occupied residential structures and those structures accessory thereto,

which are not otherwise legally sited and which were in existence on (date of passage). *November 15, 1993*

(d) *Conditions for setback reductions.* Setback reductions which may be granted by the zoning administrator are subject to the following conditions:

- (1) The sole use of the property is (and, if the application should be granted, will remain) as a single-family detached dwelling.
- (2) The property is located in R-1, R-2, R-3, R-4, R-5, R-6, IR-1, IR-2, IR-3 or RP zones.
- (3) The reduction sought can not be reduced by more than the following:

IR-1, IR-2, IR-3, R-3, RP, R-1 R-2, R-4 and R-5 zones:

Front yard: Ten (10) feet

Rear yard: Ten (10) feet

Side yard: Five (5) feet

R-6 zone:

Front yard: Five (5) feet

Rear yard: Ten (10) feet

Side yard: Five (5) feet

- (4) No relief may be granted under this section in cases where the building authority determines that the setback violation was the result of a willful act by either the applicant or a prior owner.
- (5) This section shall only apply to the inadvertent misplacement of a structure.
- (6) *Recording of setback reduction.* The zoning administrator shall provide a signed instrument in recordable form, indicating any setback reduction granted under the terms of this section. The applicant for such reduction shall be responsible for recording this instrument in the Cumberland County Registry of Deeds. The abutter's affidavit will also be recorded.