



PORTLAND MAINE

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Penny St. Louis - Director of Planning and Urban Development

Marge Schmuckal, Zoning Administrator

June 21, 2011

Lewis McDonald
145 Auburn Street
Portland, ME 04103

RE: 145 Auburn Street – 374-B-8 & 13 – R-3 Zone

Dear Mr. McDonald,

Ann Machado and I met with you on June 16, 2011 to discuss your property. You have expressed an interest to divide your property.

Your current property consists of two described parcels under the same ownership, making up one lot. Over the years you have characterized your property as one lot when you applied for and were allowed to have a home occupation in 1988. It was also considered to be one lot when you constructed an addition in 1994. In 2004 the Zoning Board of Appeals granted the allowance of an accessory dwelling unit where your previous home occupation was located. In 2010 the Zoning Board of Appeals denied a variance request to waive the accessory unit criteria which would permit you to be an absentee landlord of the property (i.e. an owner not living in either one of the permitted units).

You have recently stated that you believe that the two separately described parcels are legally nonconforming and are two separate lots that can be sold separately. As the Zoning Administrator, I disagree. You have one lot, and that one lot can only be divided into two lots if all the underlying R-3 Zone requirements are being met. State and City definitions confirm this determination. State statute 30-A M.R.S.A. §4401(6) defines a tract or parcel of land as “all contiguous land in the same ownership”. Section 14-47 defines a lot as a “single tract of land located within a single block which at the time of filing for a building permit or certificate of occupancy is designated by the owner or developer as a tract to be used, developed, or built upon a unit under single ownership or control”. Your property is one lot for all zoning purposes.

If you choose to divide your existing lot, section 14-422 of the City’s Land Use Zoning Ordinance states that “no lot shall be so reduced that yards, lot width, lot frontage, lot area, area per dwelling unit and space for off-street parking and /or off-street loading shall be less than the minimum required under this article”. Your lot is located in the R-3 Residential Zone. If you choose to divide your single lot into two lots as you suggested, both lots shall meet the requirements of the underlying R-3 Zone.

You have the right to appeal my decision concerning this matter. 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.

If you have any questions regarding this matter, please do not hesitate to contact me at 874-8695. As always, this office will be glad to sit down with you before you finalize a survey dividing the lot.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Marge Schmuckal". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Marge Schmuckal
Zoning Administrator

CC: Ann B. Machado, Zoning Specialist
File

Enclosures
Sent certified

1/13/06 -
Down -
2/1/06

Appendix A – State of Maine, Subdivision Law (as of 2005)
30-A M.R.S.A. § 4401 Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

- 1. **Densely developed area.** "Densely developed area" means any commercial, industrial or compact residential area of 10 or more acres with an existing density of at least one principal structure per 2 acres.
- 2. **Dwelling unit.** "Dwelling unit" means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, apartments and time-share units.
- 2-A. **Freshwater wetland.** "Freshwater wetland" means freshwater swamps, marshes, bogs and similar areas which are:
 - A. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and
 - B. Not considered part of a great pond, coastal wetland, river, stream or brook.


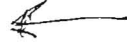
These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

- 3. **Principal structure.** "Principal structure" means any building or structure in which the main use of the premises takes place.
- 4. **Subdivision.** "Subdivision" means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term "subdivision" also includes the division of a new structure or structures, on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.
 - A. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3rd lot, unless:

Defined
Pg 4 ←

see pg 4 for
Definition

filing required under this paragraph must be collected and indexed in a separate book in the registry of deeds for the county in which the municipality is located.

- I. The grant of a bona fide security interest in an entire lot that has been exempted from the definition of subdivision under paragraphs D-1 to D-6, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.
5. **New structure or structures.** "New structure or structures" includes any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this subchapter. 
6. **Tract or parcel of land.** "Tract or parcel of land" means all contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road. 
7. **Outstanding river segments.** Intentionally left blank.

30-A M.R.S.A. § 4402 Exceptions

This subchapter does not apply to:

1. **Previously approved subdivisions.** Proposed subdivisions approved by the planning board or the municipal officials before September 23, 1971 in accordance with laws then in effect;
2. **Previously existing subdivisions.** Subdivisions in actual existence on September 23, 1971 that did not require approval under prior law;
3. **Previously recorded subdivisions.** A subdivision, a plan of which had been legally recorded in the proper registry of deeds before September 23, 1971;
4. **Airports with an approved airport layout plan.** Any airport with an airport layout plan that has received final approval from the airport sponsor, the Department of Transportation and the Federal Aviation Administration; or
5. **Subdivisions in existence for at least 20 years.** A subdivision in violation of this subchapter that has been in existence for 20 years or more, except a subdivision:
 - A. That has been enjoined pursuant to section 4406;

Light manufacturing use: The fully enclosed assembly or fabrication of materials but excluding basic processes such as smelting, refining, distilling, forging, brewing, and similar processes involving converting raw materials to a finished or semi-finished product.

Lodging house: A house, building or portion thereof containing two (2) or more rooming units and providing such units, with or without meals, to individuals on not less than a weekly or monthly basis for compensation. A lodging house, except for lodging houses located in the IR-2, IR-3 and I-B zones, shall contain common areas for use by all residents, including a kitchen. A kitchen need not be available as part of the common areas where all meals are provided on a daily basis. No owner, operator, director, employee, shareholder, partner, corporate officer or agent of a bed and breakfast facility, hotel, inn, lodging house, motel, or tourist home (as defined in this code) may, for direct or indirect economic remuneration, arrange for or provide any housing accommodations including but not limited to long term, short term or overnight accommodations for an actual or potential guest, customer, or patron of the business at any off-premises site in the City, unless such a facility is authorized, under the applicable provisions of Portland's Land Use Code, to offer such accommodations as a bed and breakfast, hotel, inn, lodging house, motel or tourist home.

Long term or extended care facility: An institution or a distinct part of an institution that is licensed or approved to provide full-time convalescent or chronic care, or health care under medical supervision for twenty-four (24) or more consecutive hours, to nine (9) or more individuals who, by reason of advanced age, illness, or infirmity are unable to care for themselves, and who are not related to the governing authority by marriage, blood, or adoption.

Lot: Except when reference is made herein to a lot of record, a lot is a single tract of land located within a single block which at the time of filing for a building permit or certificate of occupancy is designated by its owner or developer as a tract to be used, developed, or built upon as a unit under single ownership or control.

Lot area: The area of land enclosed within the boundary lines of a lot.

Lot width: The distance parallel to the front of the building measured between side lot lines through that part of the principal building where the lot is narrowest.

- Sec. 14-417. Reserved.
- Sec. 14-418. Reserved.
- Sec. 14-419. Reserved.
- Sec. 14-420. Reserved.

DIVISION 25. SPACE AND BULK REGULATIONS AND EXCEPTIONS

Sec. 14-421. Generally.

The requirements of this article shall be subject to the space and bulk regulations and exceptions of this division.
(Code 1968, § 602.19.A)

Sec. 14-422. Reduction of lot area prohibited.

No lot shall be so reduced that yards, lot width, lot frontage, lot area, area per dwelling unit, and space for off-street parking and/or off-street loading shall be less than the minimum required under this article.
(Code 1968, § 602.19.A)

Sec. 14-423. Reserved.

*Editor's Note: Pursuant to Council Order No. 240-09/10, passed on June 21, 2010, Section 14-423 (Joint occupancy) was repealed in it's entirety.

Sec. 14-424. Required open space.

No part of a yard or other open space required about any building under this article shall be included as a part of a yard or other open space required for another building.
(Code 1968, § 602.19.C)

Sec. 14-425. Projections in required yard areas.

Any yard may be occupied by a one-story entrance porch not enclosed, with or without a roof, if the area of the porch does not exceed fifty (50) square feet nor the projection from the building exceed six (6) feet. A basement bulkhead of similar size, but not more than twenty four (24) inches in height, is also permitted. A cornice eave, sill, canopy, chimney, or other similar architectural feature, but not including a bay window, may project into any

PERMIT # 000502 CITY OF Portland BUILDING PERMIT APPLICATION

MAP # _____ LOT# _____

Please fill out any part which applies to job. Proper plans must accompany form.

Owner: Lewis McDonald
 Address: 145 Auburn Street 04103 797-7446

LOCATION OF CONSTRUCTION: 145 Auburn

CONTRACTOR: _____ SUBCONTRACTORS: _____

ADDRESS: _____

Est. Construction Cost: _____ Type of Use: Single Family

Post Use: _____

Building Dimensions L _____ W _____ Sq. Ft. _____ # Stories: _____ Lot Size: _____

In Proposed Use: _____ Seasonal _____ Condominium _____ Apartment _____

Conversion - Explain Change of use from single family to single _____

COMPLETE ONLY IF THE NUMBER OF UNITS WILL CHANGE w/above occupatio
 Residential Buildings Only: _____ renovations

Of Dwelling Units _____ # Of New Dwelling Units _____

Foundations:

1. Type of Soil: _____
2. Set Backs - Front _____ Rear _____ Side(s) _____
3. Footings Size: _____
4. Foundation Size: _____
5. Other: _____

Floor:

1. Sills Size: _____ Sills must be anchored.
2. Girder Size: _____
3. Lally Column Spacing: _____ Size: _____
4. Joists Size: _____ Spacing 16" O.C.
5. Bridging Type: _____ Size: _____
6. Floor Sheathing Type: _____ Size: _____
7. Other Material: _____

Exterior Walls:

1. Studding Size _____ Spacing _____
2. No. windows _____
3. No. Doors _____
4. Header Sizes _____ Span(s) _____
5. Bracing: Yes _____ No _____
6. Corner Posts Size _____
7. Insulation Type _____ Size _____
8. Sheathing Type _____ Size _____
9. Siding Type _____ Weather Exposure _____
10. Masonry Materials _____
11. Metal Materials _____

Interior Walls:

1. Studding Size _____ Spacing _____
2. Header Sizes _____ Span(s) _____
3. Wall Covering Type _____
4. Fire Wall if required _____
5. Other Materials _____

For Official Use Only	
Date: <u>MAY 9, 1988</u>	Subdivision: Yes / No _____
Inside Fire Liable _____	Name _____
Blkg Code _____	Lot _____
Time Limit _____	Block _____
Permitted Cost _____	Parent Expiration: _____
Value/Structure _____	Ownership: _____ Public _____ Private _____
Fee: <u>5</u>	

PERMIT ISSUED

Ceiling:

1. Ceiling Joists Size: _____
2. Ceiling Strapping Size _____ Spacing MAY 19, 1988
3. Type Ceiling: _____
4. Insulation Type _____ Size _____
5. Ceiling Height: _____

Roof:

1. Truss or Rafter Size _____ Span _____
2. Sheathing Type _____ Size _____
3. Roof Covering Type _____
4. Other: _____

Chimneys:

Type: _____ Number of Fire Places _____

Heating:

Type of Heat: _____

Electrical:

Service Entrance Size: _____ Smoke Detector Required Yes _____ No _____

Plumbing:

1. Approval of soil test if required Yes _____ No _____
2. No. of Tubs or Showers _____
3. No. of Flushes _____
4. No. of Lavatories _____
5. No. of Other Fixtures _____

Swimming Pools:

1. Type: _____
2. Pool Size: _____ x _____ Square Footage _____
3. Must conform to National Electrical Code and State Law.

Zoning:

District R3 Street Frontage Req.: _____ Provided _____
 Required Setbacks: Front _____ Back _____ Side _____

Review Required:

Zoning Board Approval: Yes _____ No _____ Date: _____
 Planning Board Approval: Yes _____ No _____ Date: _____
 Conditional Use: _____ Variance _____ Site Plan _____ Subdivision _____
 Shore and Floodplain Mgm. _____ Special Exception _____
 Other (Explain) _____
 Date Approved May 9, 1988

Permit Received By _____

Signature of Applicant _____ Date 5/10/88

Signature of CEO FAB _____ Date 5/10/88

Inspection Dates _____

Handwritten notes: 1417 Mrs Taylor

940019

Permit # _____ City of Portland **BUILDING PERMIT APPLICATION** Fee 120.00 Zone _____ Map # _____ Lot# _____

Please fill out any part which applies to job. Proper plans must accompany form.

Owner: L. McDonald Phone # 773-1040

Address: 145 Auburn St Prld, ME 0410

LOCATION OF CONSTRUCTION 145 Auburn St

Contractor: Vall General Contracting

Address: 177 Main St Cumberland, Mtr., ME 04021 Phone # 829-5353

Est. Construction Cost: 20,000.00 Proposed Use: 1-fam w/home occ + add

Past Use: 1-fam w/home occ

of Existing Res. Units _____ # of New Res. Units _____

Building Dimensions L _____ W _____ Total Sq. Ft. _____

Stories: _____ # Bedrooms _____ Lot Size: _____

Is Proposed Use: Seasonal _____ Condominium _____ Conversion _____

Explain Conversion: Construct Addition as per plans

374-B-008

Foundation:

1. Type of Soil: _____
2. Set Backs - Front _____ Rear _____ Side(s) _____
3. Footings Size: _____
4. Foundation Size: _____
5. Other: _____

Floor:

1. Sills Size: _____ Sills must be anchored.
2. Girder Size: _____
3. Lally Column Spacing: _____ Size: _____
4. Joists Size: _____ Spacing 15" O.C.
5. Bridging Type: _____ Size: _____
6. Floor Sheathing Type: _____ Size: _____
7. Other Material: _____

Exterior Walls:

1. Studding Size _____ Spacing _____
2. No windows _____
3. N.a. Doors _____
4. Header Sizes _____ Span(s) _____
5. Bracing: Yes _____ No _____
6. Corner Posts Size _____
7. Insulation Type _____ Size _____
8. Sheathing Type _____ Size _____
9. Siding Type _____ Weather Exposure _____

10. Masonry Materials

11. Metal Materials

Interior Walls:

1. Studding Size _____ Spacing _____
2. Header Sizes _____ Span(s) _____
3. Wall Covering Type _____
4. Fire Wall if required _____
5. Other Materials _____

For Official Use Only

Date: Sept 30, 1993 Subdivision: _____

Inside Fire Limits: _____ Name: JAN 12 1994

Bldg Code: _____ Lot: _____

Time Limit: _____ Ownership: _____ Public _____ Private _____

Estimated Cost: _____ CITY OF PORTLAND

Street Frontage Provided: _____

Provided Setbacks: Front _____ Back _____ Side _____

Review Required: _____

Zoning Board Approval: Yes _____ No _____ Date: _____

Planning Board Approval: Yes _____ No _____ Date: _____

Conditional Use: _____ Variance _____ Site Plan _____ Subdivision _____

Shoreland Zoning Yes _____ No _____ Floodplain Yes _____ No _____

Special Exception: _____

Other: (Explain) 1-11-94

Ceiling:

1. Ceiling Joists Size: _____
2. Ceiling Strapping Size _____ Spacing _____
3. Type Ceiling: _____
4. Insulation Type _____ Size _____
5. Ceiling Height: _____

Roof:

1. Truss or Rafter Size _____ Span _____
2. Sheathing Type: _____ Size _____
3. Roof Covering Type _____

Chimneys:

Type: _____ Number of Fire Places _____

Heating:

Type of Heat: _____

Electrical:

Service Entrance Size: _____ Smoke Detector of Not a Subpart for Landmark: Yes No

Plumbing:

1. Approval of soil test if required _____
2. No. of Tubs or Showers _____
3. No. of Flushes _____
4. No. of Lavatories _____
5. No. of Other Fixtures _____

Swimming Pools:

1. Type: _____
2. Pool Size: _____
3. Must conform to National Electrical Code and State Law _____

Permit Received By: Mary Gratk

Signature of Applicant: _____

Signature of CEO: Ebert Vall

Inspection Dates: _____

HISTORIC PRESERVATION

Does not require review. Yes No

Approved with conditions: _____

Approved: _____

PERMIT ISSUED WITH LETTER

PERMIT ISSUED WITH REQUIREMENTS

Date: Sept 30, 1993

THIS IS NOT A BOUNDARY SURVEY

INSPECTION OF PREMISES

I HEREBY CERTIFY TO NORTH-EAST
LAND TITLE, TRUST AND ITS
TITLE INSURANCE

147 AUBURN ST
 PORTLAND, MAINE

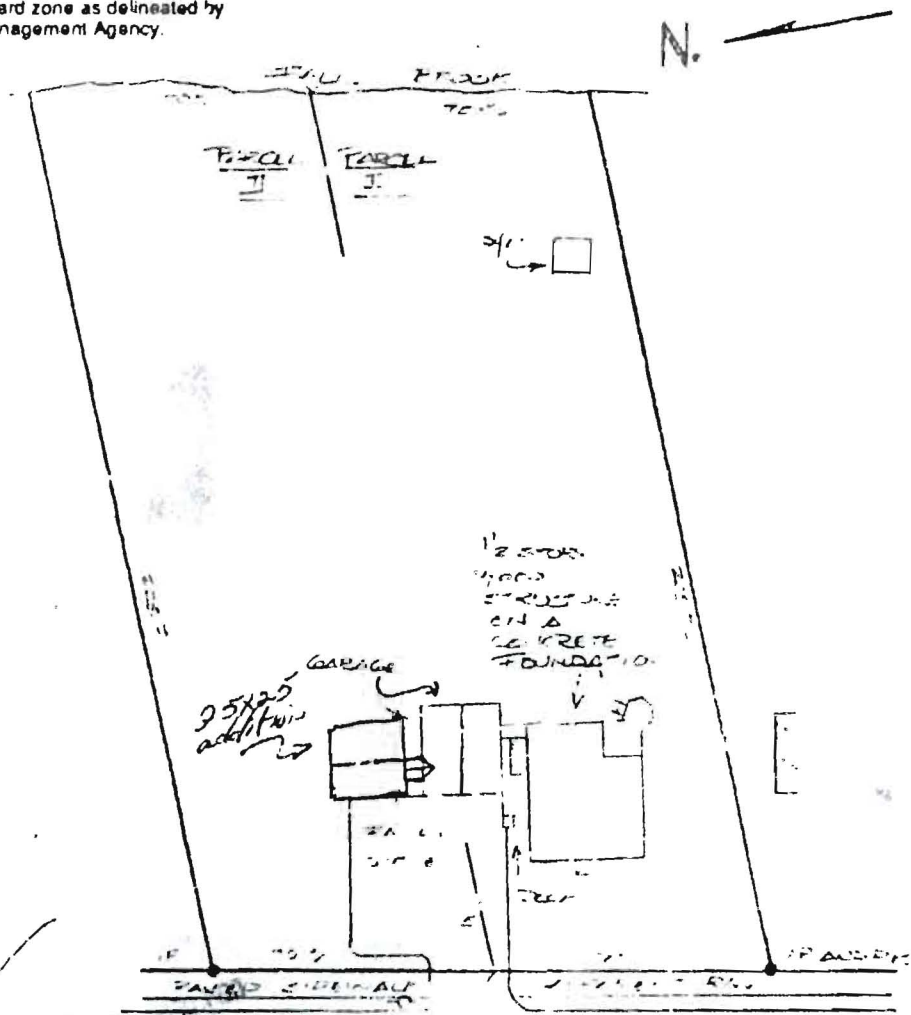
Job Number: 7722
 Inspector: DATE
 Date: 06/18/92
 Scale: 1" = 40'

The monumentation is not in harmony with current deed description.

The building setbacks are not in conformity with town zoning requirements.

The land and not the dwelling do not appear to fall within the special flood hazard zone as delineated by the Federal Emergency Management Agency.

OWNER: LINDA E. McDONALD



RECEIVED
 JUN 22 1992
 PLANNING DEPT.
 TOWN OF PORTLAND

THIS PROPERTY IS SUBJECT TO ALL RIGHTS AND EASEMENTS OF RECORD THOSE THAT ARE EVIDENT ARE SHOWN. THIS PLAN MIGHT NOT REVEAL CONFLICTS WITHIN ABUTTING DEEDS

BRUCE R. BOWMAN, INC.
 48 Mill Road
 Cumberland, Maine 04021
 Phone: (207) 829-3959

PLAN BOOK _____ PAGE _____ LOT _____
 DEED BOOK _____ PAGE _____ COUNTY SUMNER

THIS PLAN IS NOT FOR RECORDING

Drawn by: JML