

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 waiver 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 under lying 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,

Marge Schmuckal Zoning Administrator

CC: Ann B. Machado, Zoning Specialist

File

Enclosures
Sent certified

13/06 - 13/12 = Down 12/12

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.

- 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:

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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;

City of Portland Code of Ordinances Sec. 14-47 Land Use Chapter 14 Rev. 1-5-10

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 semifinished 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 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 quest, 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.

City of Portland Code of Ordinances Sec. 14-417 Land Use Chapter 14 Rev. 7-21-10

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

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Please fill out any part which applies to job. Proper plans must accompany form.	LICATION Fee 120,00 Zone Map Lot
NOTE OF THE PROPERTY OF THE PR	and the state of t
	For Official Use Only
Address: 145 Auburn St Prld, ME 0410	Date Sept 30, 1993 Subdivision:
LOCATION OF CONSTRUCTION 143 Audust St	Inside Fire Limits Nation 12 1994
Contractor Vail General Contractions	Uwner state
177 Nain St Cumberland, Mtr., ME 04021 829-5353	Entire Limit Entire Cont
Bst. Construction Cost; 20,000.06 Proposed Use: 1-fam w/home occ +	
Past Use: 1-fam w/home con	Street Frantage Provided:
# of Existing Res. Units # of New Res. Units	Review Required: Zoning Board Approval: Yes No Date:
Building Dimensions L W Total Sq. Ft.	Planning Board Approval: Yes No Date:
# Stories: # BedroomsLot Size:	Conditional Use: Variance Site Plan Subdivisi
Is Proposed Use: Sessonal Condominium Conversion	Shereland Zoning Yes No Floodplain Yes No
	Special Exception
Explain Conversion Construct Addition as per plans	Other (Explain)
	Coiling
Foundation: 374-8-008	1. Ceiling Joista Size:
1. Type of Soil:	2. Ceiling Strapping Size Spacing
2. Set Backs - Front Rear Side(s)	3. Type Ceilings:
3. Footings Size:	4. Insulation Type Size
4. Foundation Size:	5. Ceiling Height:
5. Other	Roof: 1. Truss or Rafter Size Span
Floer:	2. Sheathing Typo Size
1. Sills Size: Sills must be anchored.	3. Roof Covering Type
2. Girder Size:	Chimneys:
3. Lelly Column Specing: Size:	Type:Number of Fire Places
4. Jointa Size: Spacing 15" O.C.	Heating:
8. Bridging Type: Size:	Heating: Type of Heat: Electrical: Service Entrance Size: Plumbing: 1. Approval of soil test if required 2. No. of Tubs or Showers
6. Floor Sheathing Type: Size: 7. Other Material:	Service Entrance Size: Smoke Detector Robusts / Yes
A. CARRIE MANCHAL.	Plumbing:
Exterior Walls	1. Approval of soil test if required
1. Studding Size Specing	
2. No windows	3. No. of Flushes
3. Na. Doors	4. No. of Lavatories 5. No. of Other Fixtures
4. 'Ieader Sizes Span(s) Span(s)	Swimming Pools:
6. Corner Posts Size	1. Type:
7. Insulation Type Sire	2. Pool Size: x 3422 at the state of the sta
8. Shouthing Type Size	3. Must confirm to National Electrical Code and State Law
9. Siding Type Weather Exp. sure	- Partit Passiy of Poll Navy Crathly PER
10. Nasonry Materials	- Fermit received by That y Grant C.
11. Metal Materia	2. Pool Size 3. Must confirm to National Electrical Code and State Law Permit Received By Mary Gratik Signature of Applicant Electrical Code and State Law Permit Received By Mary Gratik Signature of CEO
Interior Walls: 1. Studding Size Spacing Spacing	Olgranure of Applicant
2. Header Sizes Span(s)	Signature of CEO PERMIT ISSUED

THIS IS NOT A BOUNDARY SURVEY

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BRUCE R. BOWMAN, INC.	PLAN BOOK	PAGE	LOT	
48 Mill Road	DEED ROOK		COUNTY	47.
Cumberland, Maine 04021				C. 400 (C.400)
Phone: (207)829-3959	THIS PLAN	VIS NOT FOR RE	CORDING	Drawn by: TML1
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