

Department of Planning and Zoning

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MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner
Date: October 16, 2018 continued hearing.
RE: ZP18-0894LL / AP 14 Peru Street and
ZP18-0895LL / AP 16 Peru Street

Note: These are staff comments only. Decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

File: ZP18-0894LL and ZP18-0895LL

Address: 14 and 16 Peru Street

Zone: RM **Ward:** 3C

Date application accepted: April 13, 2018; Application administratively denied April 30, 2018.

Appeal filed May 14, 2018 within 15-day appeal period.

Appeal first scheduled for Public Hearing July 5, 2018; Applicant formally requested a later hearing date to accommodate prescheduled vacation plans.

Deferred at applicant request to July 17, 2018. Hearing re-opened September 4, 2018; deferred to September 17, 2018; continued to October 16, 2018.

Applicant submitted email request October 5, 2018 to have hearing continued to a November or December agenda. See attached.

Applicant/ Owner: Matthew Daly, on behalf of Bill Bissonette dba. PBGC LLC (14 Peru Street) and BPJS Management, LLC (16 Peru Street.)

Request: Appeal of an administrative denial of a boundary line adjustment between 14 and 16 Peru Street.

DRB By-Laws, Section VIII: Proceedings and Order of Business.

N. The proceeding for any application shall be deemed to start the first time it appears on the DRB's agenda and if a public hearing has been warned it shall also be open at that particular DRB meeting.

In no event shall a proceeding (i.e. public hearing or not) extend for a period of more than six (6) months. In case of extenuating circumstances, the DRB may grant up to two (2) extensions of up to three (3) months each. If an initial extension is granted and the application lies dormant (no revised plans, information submitted) for the three (3) month duration of the extension, the DRB shall not grant another extension.

The appeal was first published as a public hearing for the July 5, 2018 DRB agenda date. (Original permits were denied April 30, 2018.) A requested December hearing date would put the review at the five-month mark of the required 6-month maximum for DRB review.

Staff does not support the requested continuance, and asks the DRB to take action on the appeals.

Background:

14 Peru Street

- **Zoning Permit 09-257CA;** close in the porch, adding 2 windows to match existing ones and vinyl siding to match. October 2008.

16 Peru Street

- **Zoning Permit 18-0495CA;** Renovation of existing single family house including removal of rear porch and construction of 2 story addition; new siding, new windows and doors; convert garage to storage. No change in use. (After the fact permit application.) **Denied** March 8, 2018 due to encroachment into a required setback.
- **Zoning Permit 09-896CA;** replace 15 double hung and 2 awning windows. June 2009.
- **Zoning Permit (n.n),** demolish existing rear porch and rebuild 10’x 14’ porch with concrete floor and six aluminum windows. March 1976.

Overview: The owner of 16 Peru Street (Bissonette) conducted a major renovation at 16 Peru Street (raised roof, demolished rear porch and erected a new two story addition; new siding, windows, roofing, lighting. Graveled rear yard, converted two car garage to storage) without any building or zoning permits (although a building permit for a kitchen remodel was issued.) In an after-the-fact zoning permit application for the completed work, it was determined that the new addition encroached into a required side yard setback on the west; in fact, mechanical equipment was installed outside the property boundaries.

The applicant had the property surveyed to ascertain accurate property lines; purchased the abutting property at 14 Peru Street, and made dual applications to relocate the common boundary line in an attempt to bring 16 Peru Street into compliance.

The applicant, through his attorney, has filed two appeals relative to the administrative denial of those applications to adjust the common boundary line.

Recommended motion: Deny appeals and uphold the administrative denials of a boundary line adjustment of the common boundary of 14 and 16 Peru Street.

I. Findings

Article 4: Zoning Maps and Districts

Section 4.4.5 Residential Districts

Table 4.4.5-1 Minimum Lot Size and Frontage

A single, detached dwelling requires 30’ minimum lot frontage in the RM zoning district. It is assumptive that the lot itself will not diminish below that 30’ threshold established by the frontage. 14 Peru Street currently has 30’ dimension on the street front property line, but is proposed to be narrowed for the purposes of the boundary line adjustment. The parcel at 16 Peru Street is non-conforming at 27’ in width, but will be further constricted by the proposed new westerly boundary line on the proposed northerly terminus. For both lots, the lot width will diminish below the standard of this table, and in the case of 16 Peru Street, increase the level of non-conformity of the lot. **Adverse finding.**

Article 5: Citywide General Regulations

Section 5.2.5 Setbacks

Table 4.4.5-3 Residential District Dimensional Standards

Side setbacks in the RM zoning district are 10% of the lot width, or the average of side yard setbacks of 2 adjacent lots on both sides. Using the 10% method, the side yard setback for 16 Peru Street is 2.3'. The rear addition, as constructed without permit approval, encroaches within that required setback. Although the requested property line adjustment seeks to remedy that setback requirement, the heat pump on the west elevation continues to encroach within the required setback. **Adverse finding.**

Section 5.2.5 Setbacks

(b) Exceptions to Yard Setback Requirements

*4. Accessory Structures and Parking Areas. Accessory structures no more than fifteen feet in height, parking areas, and driveways may project into a required side and rear yard setback provided they are **no less than five (5) feet** from a side or rear property line where such a setback is required.*

The proposed boundary line modification will expand the degree of setback encroachment from the side property line on the 14 Peru Street parcel further below the required 5'. **Adverse finding.**



16 Peru Street (left) and 14 Peru Street (right) as seen from the rear prior to development at 16 Peru Street. Note that the rear porch at 16 Peru Street is one story and narrower than the principal structure. The development expanded the dwelling in width and in floor area.

Section 5.3.5 Non-Conforming Structures

(a) any change or modification to a nonconforming structure, other than to full conformity under this Ordinance, shall only be allowed subject to the following:

1. Such a change or modification may reduce the degree of nonconformity and **shall not increase the nonconformity** except as provided below:

Within residential districts, and subject to Development Review Board approval, existing nonconforming single family homes and community centers (existing enclosed spaces only) that project into a side and/or rear yard setbacks may be vertically expanded so long as the expansion does not encroach further into the setback than the existing structure. Such expansion shall be of the existing nonconformity (i.e. setback) and shall:

i. Be subject to conformance with all dimensional requirements (i.e. height, lot coverage, density and intensity of development);

ii. Not have an undue adverse impact on adjoining properties or any public interest that would be protected by maintaining the existing setbacks; and

iii. Be compatible with the character and scale of surrounding structures.

2. Such a change or modification shall not create any new nonconformity; and

3. Such a change or modification shall be subject to review and approval under the Design Review provisions of Article 3, Part 4.

Vertical structural expansion occurred at 16 Peru Street without zoning application, review or approval. An after-the-fact permit was denied due to encroachment into a required setback and not appealed. Vertical expansion is not within these applications or appeals and therefore not applicable.

The proposal for a boundary line adjustment will increase the level of **non-conformity to a required setback** on the 14 Peru Street parcel relative to the driveway, which currently is approximately 1' from the existing property line.

The property line adjustment would further increase the **non-conformity of the vehicular parking dimension** (9' x 20' minimum parking space; 3 ½ - 4' width proposed) at 14 Peru Street as the property line is proposed to move further west into the existing drive.

Adverse finding.

Section 5.3.6 Nonconforming Lots

Development may occur on a non-conforming lot only in the following manner:

(a) **Existing Small Lots:** See Sec. 5.2.1.

There is no minimum lot size in the RM Zoning District. Not applicable.

(b) **Required Frontage or Access:** See Sec. 5.2.2.

Both 14 and 16 Peru Street have frontage on a public road. **Affirmative finding.**

(c) **Changes to a Nonconforming Lot:**

No change shall be permitted to any nonconforming lot which would have the effect of increasing the density at which the property is being used, or increasing the structure located upon such lot, if the dimensional requirements and standards, including parking, of the underlying zoning district are not met as a result thereof. Allowance of adaptive reuse and residential conversion bonuses shall be an exception to the foregoing standards. A lot shall be

considered nonconforming if there is not sufficient parking, as determined by the standards provided in Article 8. In such cases where a parking waiver or waivers may be or have been legally granted, such a waiver shall not be considered to increase the degree of non-conformity.

16 Peru Street is a non-conforming lot as it does not meet the minimum frontage of 30', as defined in Table 4.4.5-1. The application does not propose to increase the current street frontage to 30' and therefore, the proposed changes do not meet the dimensional requirements and standards of the underlying zoning district.

14 Peru Street is a non-conforming lot as the parking area does not conform to the standards of Article 8, Table 8.1.11-1. (Standard Cars 9' x 20', compact cars 8' x 18'.) By the submitted proposed site plan, there is currently only 5' of width in which to park vehicles at 14 Peru Street; with the boundary line adjustment narrowing that width to 3 ½ - 4 feet on that parcel; insufficient to meet the minimum parking standard. The proposed boundary line adjustment decreases the parking area on 14 Peru Street, rendering it further non-conforming to the parking standards. Under this section the application is required to meet parking standards or obtain (or have obtained) a parking waiver. The application does not meet parking standards and no parking waivers have been granted to either parcel.

The application(s) do not propose to increase the density on either lot, but increased structure has been developed at 16 Peru Street; spurring the boundary line adjustment and introduction of new non-conformity to 14 Peru Street as a result.

The applicant's attorney made an offer to accommodate parking off-site, and submitted a draft Parking Easement Deed July 20, 2018. The non-conforming frontage for 16 Peru, however would still remain and thus, the dimensional requirements and standards of the underlying district would still be unmet.

Adverse finding.

Article 6: Development Review Standards

Part 1: Land Division Design Standards

Section 6.1.2 Review Standards

(c) Arrangement of Lots

*The size and arrangement of new lots shall **reflect and perpetuate the existing development pattern** of the surrounding neighborhood. Lots shall be created in such a way as to enable their development pursuant to the requirements of this ordinance, and ensure a clear transfer of title. Interior lot lines extending from a street should be **perpendicular or radial to the street right of way line** to the greatest extent feasible. Flag lots and through lots are discouraged, and shall be allowed only to the extent where topography and existing block and lot arrangement allow no suitable alternatives. In such cases, a minimum frontage for access of 20 feet shall be required.*

The proposed boundary line adjustment does not create a flag lot or through lot.

The new lot lines do not, however, extend from the street right-of-way in a perpendicular or radial manner; nor do they perpetuate the regular arrangement of lots in the neighborhood, which are platted in a manner reflecting lot lines perpendicular to the street right-of-way creating rectangular parcels. The proposed new boundary line arcs first to the west in an attempt to meet

the minimum setback of 2.3' from 16 Peru Street; then veers easterly to recapture the same amount of area to reconcile existing lot sizes. The proposed lot line is incongruous with this standard by its irregularity and inconsistency with existing patterns of development.

Adverse finding.

Article 8: Parking

Table 8.1.8-1 Minimum Off-Street Parking Requirements

Single family residences in the Neighborhood Parking District require 2 parking spaces per unit. The proposed lot line adjustment encroaches into the required parking area at 14 Peru Street; either eliminating a second parking space or further reducing the (non-conforming) size of the existing parking area.

Adverse finding.

Table 8.1.11-1 Minimum Parking Dimensions

90° angle parking requires a width of 9'. By the existing site plan, there is currently only 5' of width in which to park vehicles at 14 Peru Street; with the boundary line adjustment, that width is reduced to 3 ½ - 4 feet on that parcel; insufficient to meet the minimum parking standard and further increasing the level of non-conformity to parking. **Adverse finding.**

Article 10: Subdivision Review

Section 10.1.5 Lot Line Adjustments

(c) Lot Line Adjustment – Administrative Decision

The administrative officer shall have the authority to approve or deny an application for a Lot Line Adjustment as follows:

1. An application may be denied for good cause based upon substantial evidence including but not limited to:

A. Such cases where the proposed adjustment will result in a new lot being created.

No new lot will be created by the proposed lot line adjustment. **Affirmative finding.**

B. Such cases where the proposed adjustment will result in the creation of a non-conforming parcel or non-conforming buildings or structures or yard areas or any non-conforming dimensional standard; and

The proposed lot line adjustment will create new non-conformity to lot width (Section 4.4.5-1) and increase the level of non-conformity to setback on 14 Peru Street (Section 4.4.5-3) and non-conformity to minimum parking standards at 14 Peru Street (Table 8.1.8-1.) **Adverse finding.**

C. Such cases where the proposed adjustment does not adequately address the applicable Land Division Design Standards of Article 6.

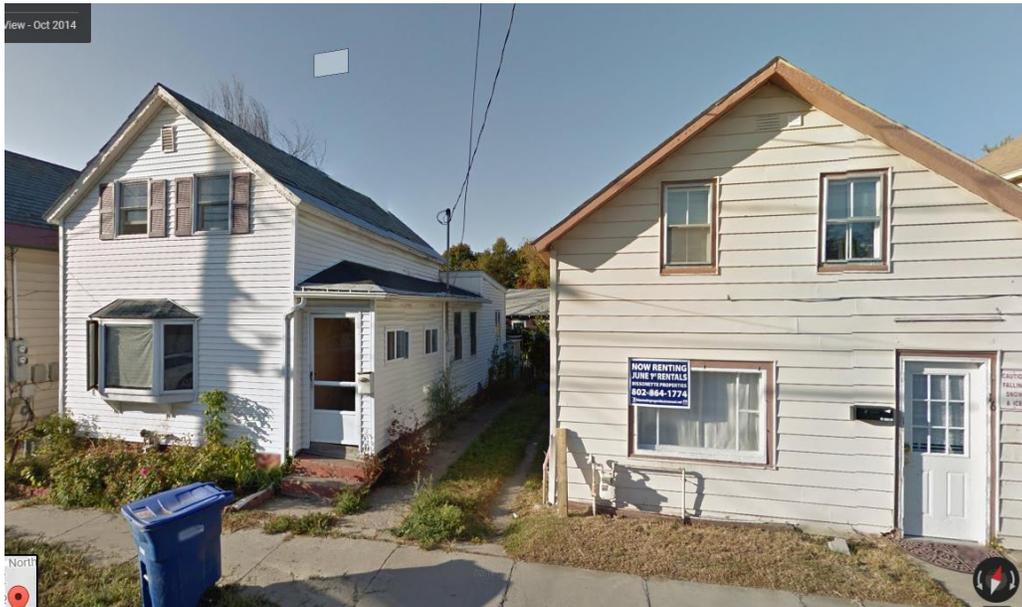
The proposed lot line adjustment conflicts with Section 6.1.2 (c) in that the proposed lot line is not perpendicular or radial to the street right-of-way line, and does not perpetuate the existing development pattern of rectangular parcels. **Adverse finding.**

2. Provided the adjustment does not create a non-conforming parcel, structure or nonconforming yard area or other dimensional non-conformity, or upon the issuance of a

variance by the DRB, and upon submission of a plat per subsection (b) above, the administrative officer shall approve the proposal as presented or as modified.

The proposed lot line adjustment creates or increases several non-conformities (including those of dimensional standards, setback, and minimum parking standards) and conflicts with the noted standards of Articles 4, 5, 6, 8 and 10. No variance has been approved by the DRB. Approval of the proposed boundary line adjustment is therefore not possible.

Adverse finding.



Google Street view, taken October 2014. Note appearance of 16 Peru prior to alterations, and narrow width of 14 Peru Street driveway.

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