

Meeting of January 4, 2017

South Portland City Council
Position Paper of the Interim City Manager
and Legal Counsel

Subject:

ORDER #88-16/17 – Approving Administrative Consent Agreement with Wei Zhang and Lesley C. Mo; Donald and Pamela Brunmier; WG Enterprises, LLC; AMG Properties, LLC; Dye Custom Builders; and Devin Deane regarding land use issues at 79 Thirlmere Avenue (Map 53, Lot 288B) and 69 Thirlmere Avenue (Map 53, Lot 288). Passage requires majority vote.

Position:

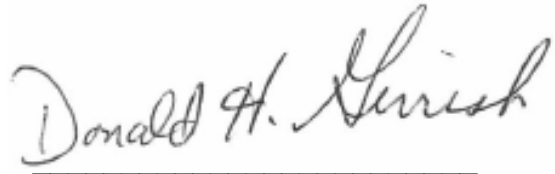
This item is brought forward to resolve an outstanding land use dispute regarding property owned by Wei Zhang and Lesley C. Mo at 79 Thirlmere Avenue. In 2014, AMG Properties, LLC purchased property at 69 Thirlmere Avenue consisting of a house on three nonconforming lots in a 1915 subdivision. WG Enterprises, LLC purchased the two unbuilt lots and contracted with Dye Custom Builders to build a house on this property. Zhang and Mo purchased this new house and property at 79 Thirlmere Avenue, and Donald and Pamela Brunmier purchased the remainder of the original lot at 69 Thirlmere Avenue with the existing house. Devin Deane, abutter to the 79 Thirlmere property, appealed the issuance of a building permit for that property to the Board of Appeals and then to the Maine Superior Court. The Superior Court remanded the matter to the City, holding that the City had not followed the requirements of Section 27-304(g) of the South Portland code of Ordinances, which includes Planning Board review and additional standards.

Mr. Deane, WG Enterprises, LLC, AMG Properties, LLC, Dye Custom Builders, and the owners of 79 and 69 Thirlmere Avenue all have reached agreement on their issues, and the Superior Court has approved a settlement of the land use concerns with the City of South Portland, contingent upon City Council approval of the attached Administrative Consent Order. A copy of the Court's Order also is attached.

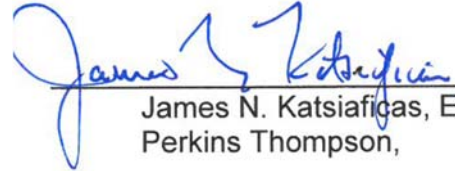
The 79 Thirlmere Avenue property is in compliance with the Residential A District space and bulk standards other than net residential density and minimum area per family, and the parties have released the City from any claims arising under this matter. In return, the City will not take any enforcement action against Ms. Zhang and Mr. Mo, the Brunmiers, WG Enterprises, LLC, AMG Properties, LLC, or Dye Custom Builders regarding the construction of the home.

Requested Action:

Council passage of ORDER #88-16/17.



Interim City Manager



James N. Katsiaficas, Esq.
Perkins Thompson,

STATE OF MAINE
CUMBERLAND, SS:

SUPERIOR COURT
CIVIL ACTION
DOCKET No. AP-2014-49

DEVIN DEANE,

Plaintiff

v.

WG ENTERPRISES, LLC, *et al.*,

Defendants

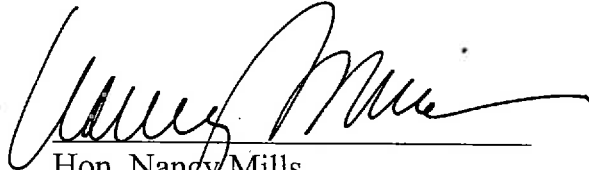
**ORDER ON JOINT MOTION FOR
RELIEF PURSUANT TO M. R.
Civ. P. 60(b)(6)**

Upon consideration of the parties' joint motion and ~~WITH~~ WITHOUT HEARING], the motion for relief made pursuant to M.R. Civ. P. 60(b)(6) is GRANTED. The Defendants are hereby granted relief from any and all portions and requirements of the Court's Decision and Order dated February 6, 2016, as may be applicable to them. Further, the Court acknowledges that Defendant City of South Portland, with the consent of all other parties and in furtherance of the administrative consent order described in the parties' motion, agrees to not enforce any violation or claimed violation of the South Portland Code as discussed in the February 6, 2016 Decision and Order.

Pursuant to M. R. Civ. P. 79(e) the Clerk is directed and instructed to enter the following in the Docket: "Joint Motion for Relief pursuant to M. R. Civ. P. 60(b)(6) is GRANTED. Defendant City of South Portland, in accordance with its agreement and upon the remaining parties' consent, agrees not to enforce any violation or claimed violation of the South Portland Code as discussed in the Court's Judgment of February 6, 2016."

DATED:

11.3.16



Hon. Nancy Mills
Justice, Maine Superior Court

STATE OF MAINE
Cumberland, ss. Clerk's Office

NOV 03 2016

RECEIVED



CITY OF SOUTH PORTLAND

PATRICIA A. SMITH
Mayor

DON H. GERRISH
Interim City Manager

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

EMILY F. SCULLY
City Clerk

IN CITY COUNCIL

ORDER #88-16/17

District One
CLAUDE V. Z. MORGAN

District Two
PATRICIA A. SMITH

District Three
EBEN C. ROSE

District Four
LINDA C. COHEN

District Five
BRAD FOX

At Large
MAXINE R. BEECHER

At Large
SUSAN J. HENDERSON

ORDERED, that the City Council approves the attached Administrative Consent Agreement with Wei Zhang and Lesley C. Mo; Donald and Pamela Brunmier; WG Enterprises, LLC; AMG Properties, LLC; Dye Custom Builders; and Devin Deane regarding land use issues at 79 Thirlmere Avenue (Map 53, Lot 288B) and 69 Thirlmere Avenue (Map 53, Lot 288).

Fiscal Note: Less than \$1000

January 4, 2017

City Council Order # 88-16/17

Administrative Consent Order

WHEREAS the City of South Portland is a party in a legal action entitled *Devin Deane v. City of South Portland, ___ W.G. Enterprises, LLC and _____*, State of Maine Superior Court, Cumberland County, Docket No. AP-14-049 (the “Litigation”); and

WHEREAS the Litigation concerns a Rule 80B appeal from the South Portland Board of Appeals decision affirming the City of South Portland Code Enforcement Officer (“CEO”) issuance of a building permit dated August 5, 2014 (the “Building Permit”) to W.G. Enterprises, LLC for the construction of a dwelling located at 79 Thirlmere Avenue in South Portland on what are lots 159 and 160 on the recorded Country Club Heights Subdivision Plan (the “Dwelling”); and

WHEREAS the City of South Portland’s CEO issued a certificate of occupancy for the Dwelling dated November 17, 2014 to W.G. Enterprises, LLC (the “Certificate of Occupancy”); and

WHEREAS, Wei Zhang and Lesley Mo purchased said Dwelling at 79 Thirlmere Avenue; and

WHEREAS the Maine Superior Court, by a Decision and Order dated February 5, 2016 in the Litigation vacated the Board of Appeals’ decision and remanded the case for further proceedings consistent with that Decision and Order; and

WHEREAS Petitioner Deane and Respondent W.G. Enterprises, LLC have settled their grievances in the Litigation, and all of the parties to the Litigation wish to clear any cloud on the title and permits on the Dwelling at 79 Thirlmere Avenue owned by Wei Zhang and Lesley Mo; and

WHEREAS the South Portland City Council has the inherent authority to compromise litigation to which the City is a party;

NOW, THEREFORE, the City of South Portland enters into this Administrative Consent Order with the parties as follows:

The City Council of the City of South Portland, recognizing that:

(1) The Maine Superior Court has remanded the case in the Litigation to the City for further proceedings and understanding that the City Council is in the process of reviewing and amending the nonconformance provisions its Zoning Ordinance, and;

(2) The other parties to the Litigation have resolved their grievances, removing the need for further City of South Portland proceedings on remand; and

(3) The Decision and Order has created a potential cloud on the title to the Dwelling at 79 Thirlmere Avenue and upon the validity of the Building Permit and the Certificate of Occupancy issued for the Dwelling;

does hereby state that the Building Permit and Certificate of Occupancy issued by the City of South Portland to W.G. Enterprises, LLC for the Dwelling are and remain valid and in full effect, and that the City of South Portland will not take any enforcement action against the owners of the Dwelling, Wei Zhang and Lesley C. Mo, or their heirs, assigns or subsequent owners of the Dwelling with regard to the validity of the same or any violation or claimed violation as discussed in the Decision and Order, nor will the City of South Portland take any enforcement action against the owners of the neighboring property at 69 Thirlmere Avenue, Donald and Pamela Brunmier, or their heirs, assigns or subsequent owners of the dwelling now located thereon with regard to the validity of their building permit and certificate of occupancy for that property.

The undersigned counsel for the parties consent to this resolution of the Litigation, and all parties agree to present this Administrative Consent Order, with a request for a consent order, to the Maine Superior Court in order to enter this resolution on the Court's docket.

SO ORDERED by the City of South Portland City Council.

Date: January 4, 2017

By:

Patricia Smith

Claude V.Z. Morgan

Eben Rose

Linda C. Cohen

Brad Fox

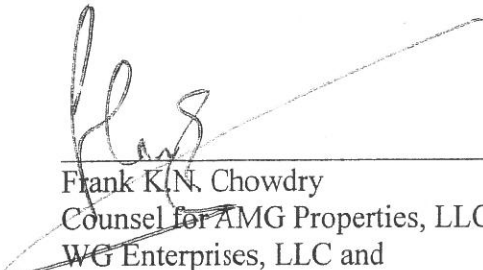
Maxine Beecher

Susan Henderson

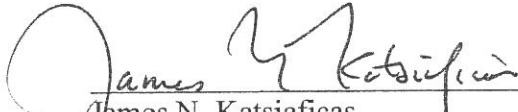
Consented to By:



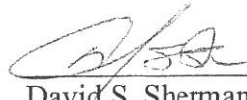
Devin Deane, Petitioner
Pro Se
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South Portland, ME 04106
(207) 553-4708



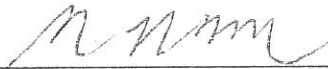
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