

1. Agenda

Documents: [03-19-15 AGENDA.PDF](#)

2. 49 Hancock St - Interpretation Appeal

Documents: [INTERPRETATION APPEAL 03-19-15.PDF](#)

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

APPEAL AGENDA

The Board of Appeals will hold a Public Hearing on Thursday, March 19, 2015, at 6:30 p.m. on the Second Floor in Room 209, Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following appeal:

1. New Business:

A. Interpretation Appeal:

49-51 Hancock Street, Investment Core, LLC, Federal Street Phoenix, LLC & Sunny Time Solar, LLC, owners, Tax Map 020, Block B, Lot 013, B2b Community Business Zone: The applicants are challenging the Acting Zoning Administrator's determination in an email dated January 29, 2015 that the proposed structure is an addition and not an accessory structure and therefore needs to meet the required ten foot rear setback (section 14-185). Representing the appeal are the owners.

B. Adjournment

Department of Planning & Urban Development

Marge Schmuckal
Zoning Administrator

Jeff Levine
Director Planning & Urban Development

RECEIVED



FEB 27 2015

CITY OF PORTLAND

Dept. of Building Inspections
City of Portland, Maine

ZONING BOARD OF APPEALS

Interpretation Appeal Application

APPLICANT INFORMATION:

Liv Chase & Brent Adler
NAME

Sunny Time Solar LLC &
BUSINESS NAME Investment Core LLC

PO Box 15372
ADDRESS

Portland, ME 04112

207-522-4345
TELEPHONE #

owner
APPLICANT'S RIGHT, TITLE OR INTEREST
(eg: owner, purchaser, etc)

B2-b
CURRENT ZONING DESIGNATION

EXISTING USE OF PROPERTY:
6-unit multi-family

TYPE OF RELIEF REQUESTED:

Approval to build an accessory structure based on
the plans and elevations submitted.

SUBJECT PROPERTY INFO:

49-51 Hancock St.
PROPERTY ADDRESS

20/B/13
CHART/BLOCK/LOT (CBL)

PROPERTY OWNER INFO (If Different):

NAME

ADDRESS

Disputed Provisions from Section 14:

See Exhibit C
(only applicable text)
Order, decision, determination or
interpretation under dispute:

An accessory structure can
have a driveway to a
primary structure and
still be considered an accessory
structure.

NOTE: If site plan approval is required, attach preliminary or final site plan.

The undersigned hereby makes application for an appeal as described above, and certifies that the information herein is true and correct to the best of his OR her knowledge and belief.

Liv Chase Brent Adler
SIGNATURE OF APPLICANT

2/27/2015
DATE

Zoning Board of Appeals: Interpretation Appeal

The reason that we are appearing before the ZBA today is because the term “accessory structure” is not clearly defined in Chapter 14 (the Land Use Code) in relation to the B2-b Zone.

- 1) The City of Portland Zoning Department is confused as to the guidelines of an accessory structure in the B2-b Zone. This confusion has lead to inconsistency between different employees who work or have worked for this department. See Exhibit A, a timeline of events that have occurred in our process and Exhibit B, the letter from Ann Machado stating the final denial.
- 2) There is no written text in Land Use Code, which the proposed structure does not meet. See Exhibit C, all text that applies to accessory structures.
- 3) The main argument that the Zoning Department has made in regards to the proposed structure is that an accessory structure can't have direct access from the accessory structure to the main structure. The Zoning Department has given no supporting evidence to provide a reason behind this statement. A good example of an accessory structure that would need a doorway leading into the main structure would be a large walk-in cooler in a commercial application.
- 4) The term accessory structure is more specifically defined in all residential zones and we are aware of this fact. We do not believe that it was an oversight in the writing the B2-b code that the term accessory structure is more loosely defined. The reason for this belief is because unlike the large parcels contained in any Residential Zone, *“The B-2b zone is appropriate in areas where a more compact urban development pattern exists”*
- 5) We would agree that our interpretation of an accessory structure is not the most typical, but in our compact urban neighborhood where land is scarce, we believe that our interpretation is legitimate and our interpretation meets the Land Use Code.

Project Narrative

49-51 Hancock St. Portland, ME 04101

The construction of an accessory structure, which is subordinate and separate from the existing residential building at 49-51 Hancock St. Portland, ME.

The purpose of this accessory structure is to replace the existing parking spot off of Federal St. with a parking spot in a garage, to replace the existing outdoor staircase with a code compliant fire rated stair, and to provide ample storage for the tenants and the owner.

-The proposed building is detached. It is composed of a separate foundation, walls, and roof.

-The proposed building does not share a wall or roofline with the existing structure.

-All intended uses within the proposed structure are subordinate to the uses in the existing structure.

-The proposed structure does not add any additional units or any additional living space, therefore it is not a building addition.

Exhibit A: Timeline

Pre-construction Meeting with City of Portland		10/29/2014
Follow up Meeting with Marge Schmuckal <i>Marge agrees that the proposed structure is an accessory Structure.</i>		11/3/2014
Marge Schmuckal retires as city employee		11/14/2014
Bild Architecture and Casco Bay Engineering start work		11/9/2014
Bild Architecture submits application for permit		1/9/2015
Barbara Barnhydt to Bild Architecture <i>Sent e-mail: Application was submitted as level 1, but is level 2 Because footprint of structure is over 500sf because it is 540sf</i>		1/20/2015
Liv Chase meets with Barbara Barnhydt <i>Liv agrees to reduce building footprint to 499sf so that it qualifies for administrative authorization instead of level 2 review. Barbara tells Liv that this is the only issue that she has seen in regards to the application submittal and she is all set on her end.</i>		1/21/2015
Liv Chase meets with Ann Machado <i>The meeting was 1.5 hours. The discussion was over the structure being accessory vs. a building addition. Ann asked for evidence to show that Marge Schmuckal approved the building as an accessory. Liv said that she could provide e-mail correspondence with Marge for the day after she met with her(11/3/2014). Ann said that she didn't necessarily agree with Marge's opinion but if Liv provided e-mail correspondence and a project narrative explaining why the structure was accessory, then she would move the permit application forward.</i>		1/22/2015
Bild Architecture submits the revised architectural plans <i>Plans show the reduced footprint of 499sf, with 41sf removed on the west side of the structure.</i>		1/27/2015
E-mail from Lannie Dobson to Liv Chase <i>Liv Chase receives invoice and confirmation from Lannie Dobson that the application was entered into the system</i>	1pm	1/29/2014
Payment Made from Liv Chase to City of Portland <i>Paid the City of Portland for building permit/application</i>	2pm	1/29/2014
Ann Machado to Liv Chase <i>E-mail stating that the proposed structure was not an accessory structure, permit was placed on hold, and Liv had 30 days</i>	4pm	1/29/2014

Exhibit B: E-mail from Ann Machado on 1/29/2015

Liv -

Thank you for meeting with me on January 22, 2015.

I have reviewed the information that was submitted with the building permit application (#2015-00151). I have also thought about our conversation at our meeting on January 22, 2015 about the proposed structure. Since then I have talked with Alex Jaegerman, Barbara Barhydt and Jeff Levine.

The consensus is that the proposed structure is an addition to the principal structure and not an accessory structure. **This decision is based on the fact that there is direct access from the existing structure to the proposed structure through a door on the second floor.** An accessory structure is a detached structure. Since there is direct access between the existing building and the proposed building, the proposed building is attached and therefore it is not accessory structure. Also since an accessory structure is detached, it should not share a common wall with a principal structure even if the wall is fire rated.

Since the proposed structure is attached, it is an addition to the principal structure and therefore must meet the required ten foot rear setback (section 14-185). The permit will be on hold we receive revised plans to meet the setback.

You have the right to appeal my decision. If you choose to exercise your right to appeal, you have thirty days from the date of this email in which to file an appeal. If you fail to do so my decision is binding and no longer subject to appeal.

Please contact me with any questions.

Ann Machado

Exhibit C: Chapter 14 (Land Use Code) text

14-47

Accessory uses: Uses which are customarily incidental and **subordinate to the** location, function and operation of permitted uses.

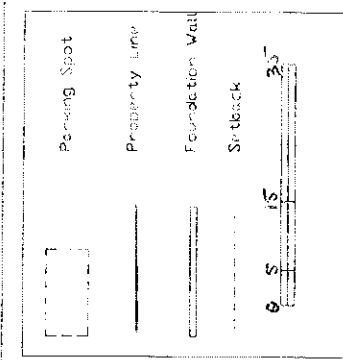
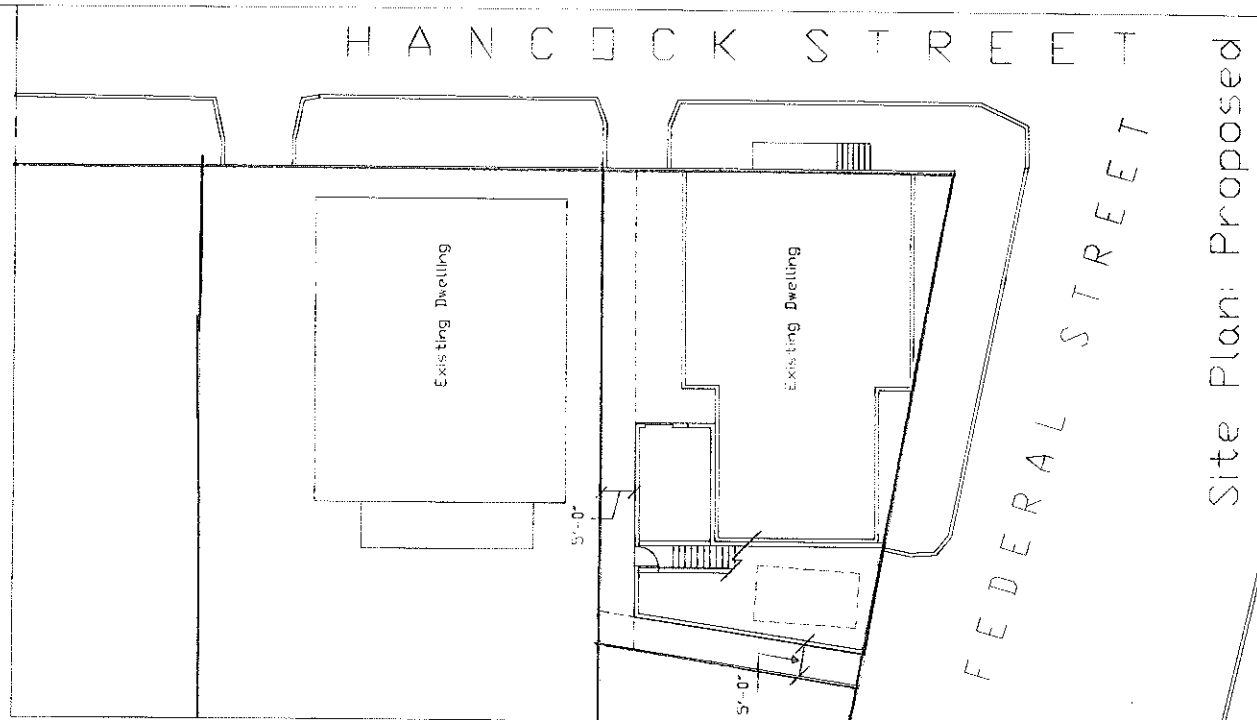
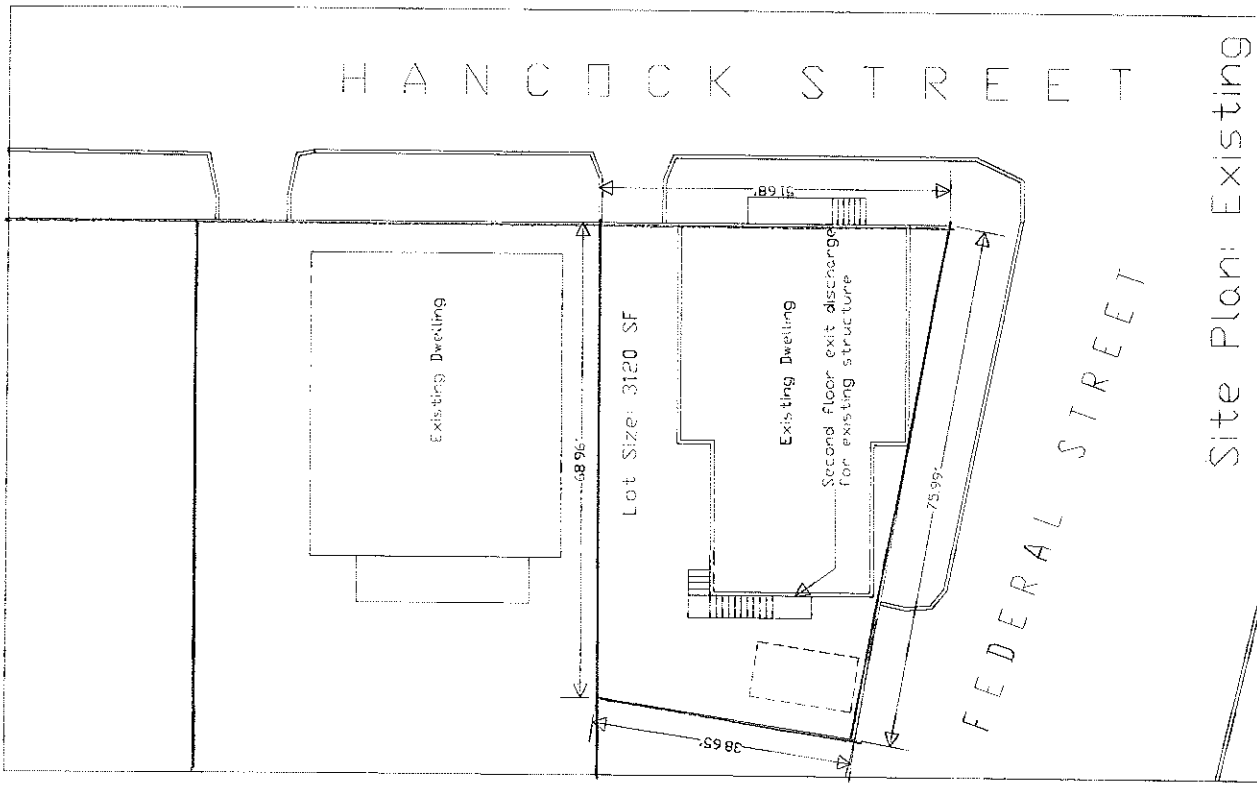
Principal building: The building occupied by the chief or principal use on the premises. When a garage is attached to the principal building in a substantial manner **as by a roof or common wall**, it shall be considered as a part of the principal building.

14-181

(b) B-2b Community Business Zone The B-2b zone is intended to provide neighborhood and community retail, business and service establishments that are oriented to and built close to the street. **The B-2b zone is appropriate in areas where a more compact urban development pattern exists** such as on-peninsula or in areas off-peninsula where a neighborhood compatible commercial district is established which exhibits a pedestrian scale and character. Such locations may include the peninsula and other arterials and intersections with an existing urban or neighborhood oriented building pattern.

14-522

Building addition: Any attached structure which increases the total floor area of the structure.



Zone: B2-b
Schools
Front Yard: None
Side Yard: None except 5' for an accessory structure
Side Yard on Side Street: None
Rear Yard: 10' except 5' for an accessory structure
Maximum Impervious Surface Ratio: None

Site Plan Review Notes:
Objective:
 To construct an accessory structure that will provide the following:
 -An updated/life protected second means of egress for the existing structure (The current egress is an outdoor staircase)
 -A garage for parking (The current parking spot is outdoors)
 -Additional storage space

Transportation Standards
 Chapter 14-332 Off Street Parking Requirements
 Note: This is an accessory building.
 There is 1 existing off street parking spot located off of Federal St. This parking spot is to be replaced by a garage containing 1 parking spot.
 City of Portland Technical Manual Chapter 1.7
 Existing driveway and curb cut to remain

Environmental Quality Standards
 City of Portland Technical Manual Chapter 4
 There are no significant site features or existing site vegetation.
 City of Portland Technical Manual Chapter 6
 Storm Water Management Plan
 Proposed structure will incorporate the use of rain gutters to collect roof water run off. Rain gutters will drain into a 50 gallon rain barrel located on the east side of the building

Grading
 Grading will remain the same as existing.

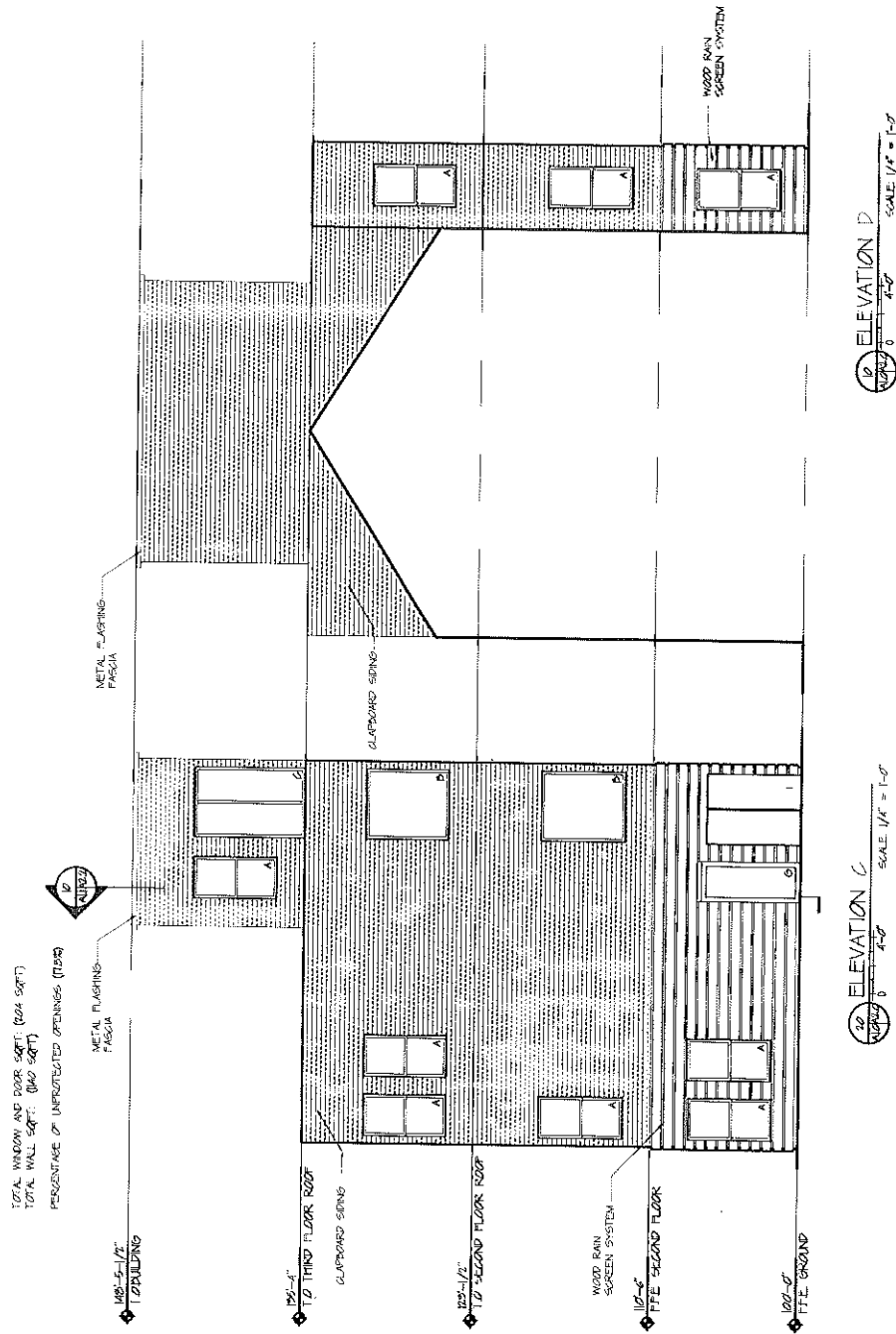
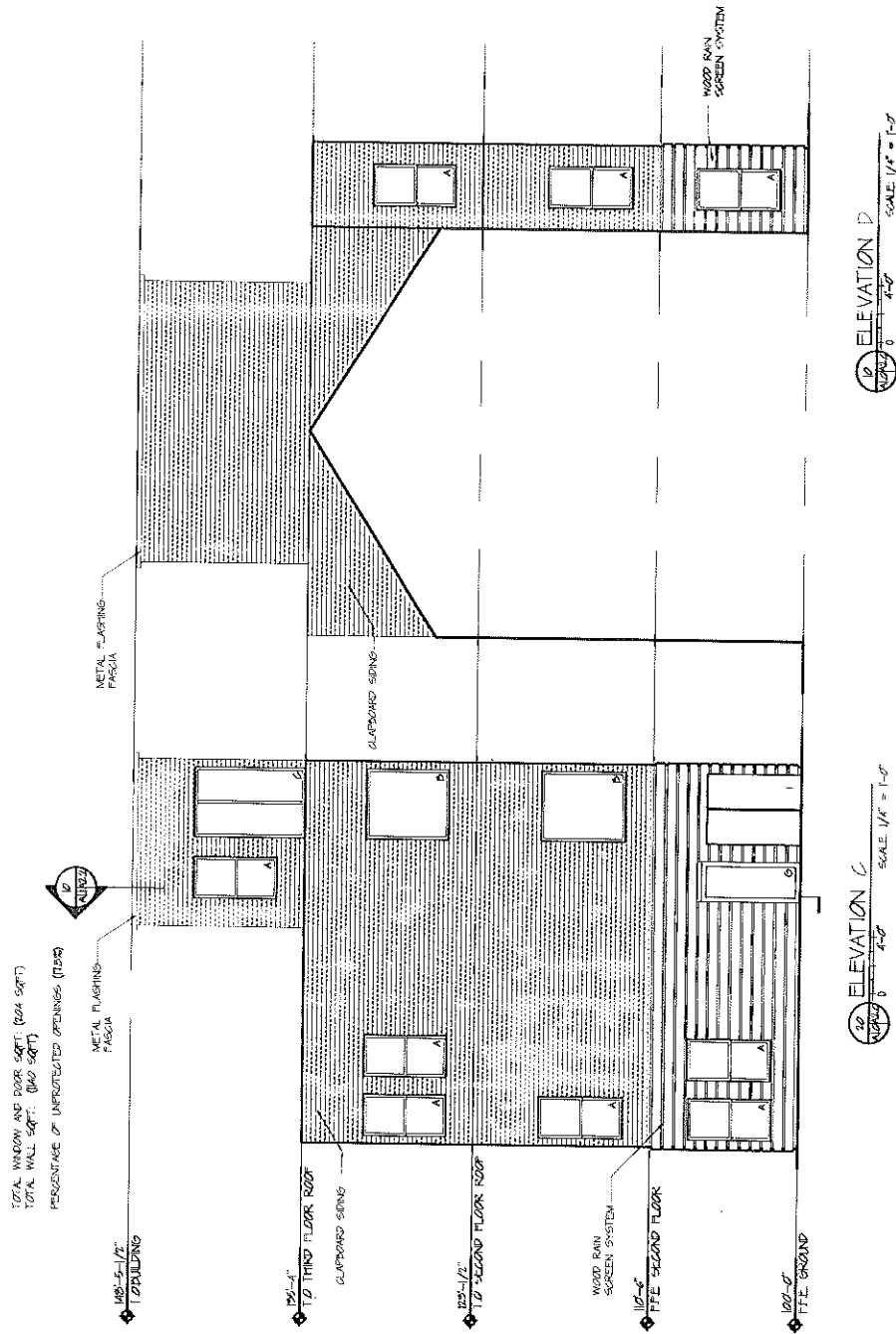
Public Infrastructure and Community Safety Standards
 All utilities are currently in place and operational.
 If existing water line does not meet the requirements for proposed fire suppression system, then new water line is proposed.

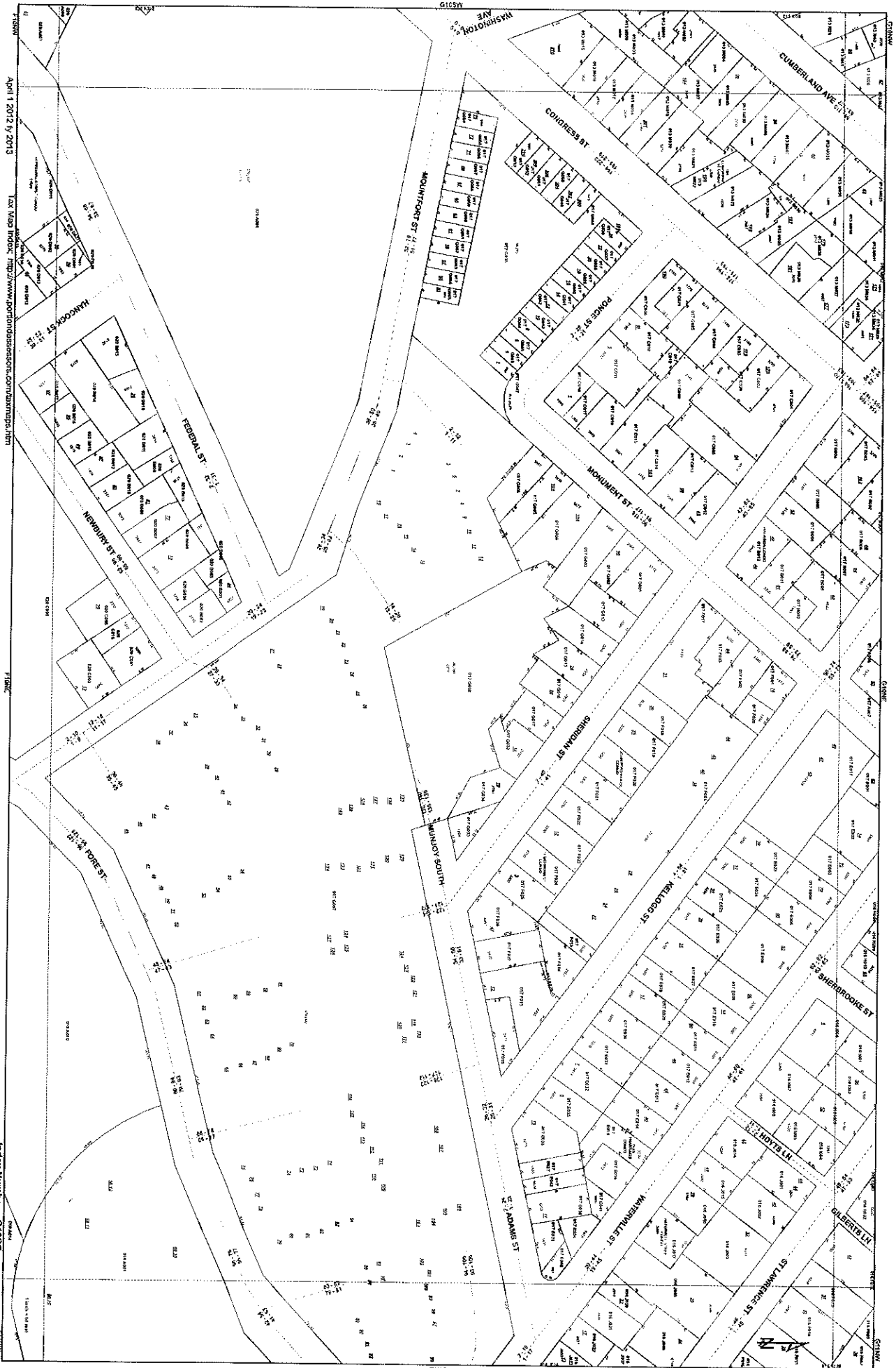
Site Design Standards
 All foundation and site work will be contained within the boundaries of the site.
 All construction equipment to be stored on site.

FOURTH FLOOR PLAN
SCALE 1/8" = 1'-0"

20 SECOND FLOOR PLAN

Residential Group 2 (Apartment House, more than 2 units)	
406.1.1	Utility and Multifunction Group 1 (Private garage/shed/barn)
406.1.2	Vehicle wash area must be closed
406.1.3	Separation of ramp (must come into play because of setback separation)
406.1.4	50% Type X GWP ceiling
V	GWA walls must be 1-hour fire-rated steel doors with swing space
	Garage door opening by UL 325
406.1.5	
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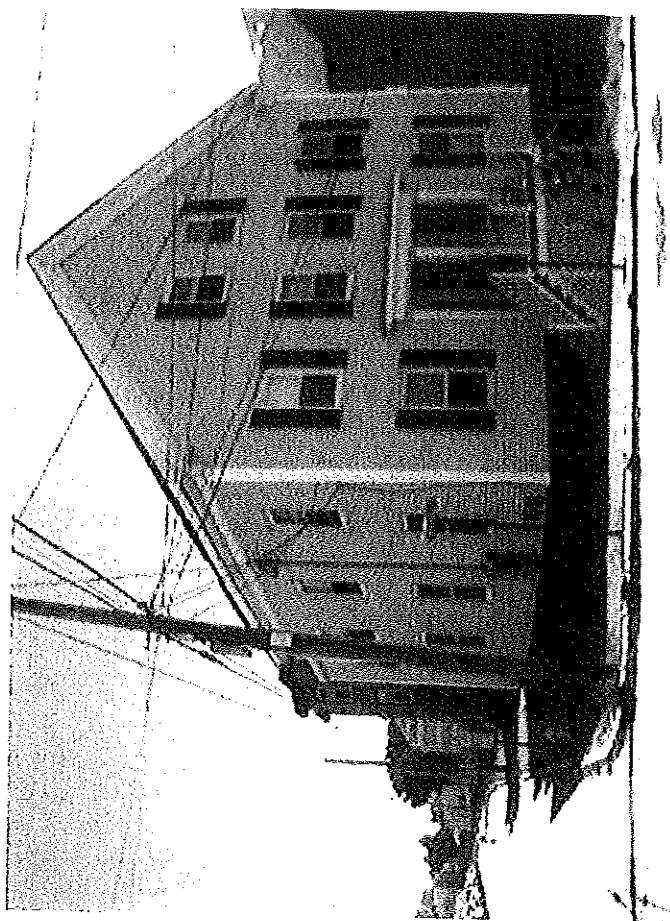
April 1, 2012 by 2013

1:25,000 Map Prod. <http://www.portlandoregon.com/maps.htm>

INDEX

Index Number - G-105E

1/4 MILE



WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that Federal Street Phoenix LLC, a Maine limited liability company with a mailing address of P.O. Box 15372, Portland, ME 04112, for consideration paid, grant an eighty percent (80%) interest to Investment Core LLC, a Maine limited liability company with a mailing address of P.O. Box 15341, Portland, ME 04112, with WARRANTY COVENANTS, the following:

A certain lot or parcel of land, with the buildings thereon situated on the southerly side of Federal Street, being located seventy-five and ninety-nine hundredths (75.99) feet as measured along said southerly sideline of Federal Street from its intersection with the said easterly sideline of Hancock Street; thence South 14° 48' 55" East, along a line located ten (10) feet westerly of and parallel with the brick wall line of the building standing on other land now or formerly of Donato D'Alfonso, a distance of thirty-eight and sixty-five hundredths (38.65) feet to land described in the deed of Vencencea Romagno to Charles J., Joseph D., and John J. D'Alfonso recorded in the Cumberland County Registry of Deeds in Book 3032, Page 742; thence South 69° 3' 25" West along said land now or formerly of D'Alfonso and more or less along the southerly face of a stone retaining wall sixty-eight and ninety-six hundredths (68.96) feet to the said easterly sideline of Hancock Street; thence in a northwesterly direction fifty-one and sixty-eight hundredths (51.68) feet to the said southerly sideline of Federal Street; thence North 79° 4' 50" East along the said southerly sideline of Federal Street seventy-five and ninety-nine hundredths (75.99) feet to the point of the beginning.

The premises are conveyed together with and subject to all rights, easements, privileges, and appurtenances of record, insofar as the same are in force and applicable.

IN WITNESS WHEREOF, my hand and seal this 31 day of December, 2014.

Federal Street Phoenix LLC

Witness

By: Brent Adler
Its: Managing Member

Received
Recorded Register of Deeds
Jan 13, 2015 11:29:33A
Cumberland County
Nancy A. Lane

STATE OF MAINE
COUNTY OF CUMBERLAND

December 31, 2014

The personally appeared before me, Brent Adler, duly authorized Managing Member of Federal Street Phoenix LLC and acknowledged that he executed the same as his free act and deed in his capacity on behalf of the limited liability company.


Notary-Public/ Attorney at Law
Thomas Jewell

MAINE REAL ESTATE TAX PAID

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS That HARDWORKING JACK, LLC, a Maine Limited Liability Company, whose mailing address is P.O. Box 146 South Windham, Maine 04082, for one dollar (\$1.00) and other valuable considerations paid by SUNNY TIME SOLAR LLC, a Maine limited liability company with an office address of c/o Liv R. Chase, Member, P.O. Box 15372, Portland, Maine 04112, and BRENT L. ADLER, of Brunswick, Cumberland County, Maine, c/o P.O. Box 15372, Portland, Maine 04112, does hereby remise, grant, bargain, sell and convey, **with warranty covenants** unto the said **SUNNY TIME SOLAR LLC, AND BRENT L. ADLER**, as tenants- in- common the land and buildings located in Portland, Cumberland County, Maine, described as follows:

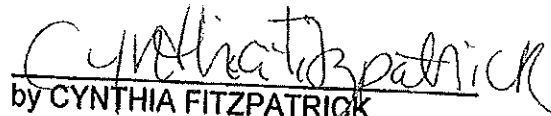
See Schedule "A"

Being the same premises conveyed to the Grantor herein by deed dated September 13, 2012, and recorded in Cumberland County Registry of Deeds in Book 29934, Page 172.

Witness my hand this 13th day of June, 2013.

HARDWORKING JACK, LLC


Witness


by CYNTHIA FITZPATRICK,
Sole Member

Sunny Time
Solar, LLC
Shall own
1 (one)% and
Brent L.
Adler shall
own 99%,
(C)

STATE OF MAINE
CUMBERLAND, SS.

June 13, 2013

Then personally appeared the above-named CYNTHIA FITZPATRICK, Sole Member of Hardworking Jack, LLC, and acknowledged the foregoing instrument to be her free act and deed and the free act and deed of Hardworking Jack, LLC.

Before me,


Dawn D. Dyer
Maine Attorney at Law
Bar No. 4691

MAINE REAL ESTATE TAX PAID

SCHEDULE A

A certain lot or parcel of land, with the buildings thereon situated on the southerly side of Federal Street and the easterly side of Hancock Street, and being numbered 49 and 51 Hancock Street, in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Beginning at an iron rod with survey cap driven into the ground on the said southerly sideline of Federal Street, being located seventy-five and ninety-nine hundredths (75.99) feet as measured along said southerly sideline of Federal Street from its intersection with the said easterly sideline of Hancock Street; thence S14° 48' 55"E, alone a line located ten (10) feet westerly of and parallel with the brick wall line of the building standing on other land now or formerly of Danato D'Alfonso, a distance of thirty-eight and sixty-five hundredths (38.65) feet to land described in the deed of Vencencea Romagno to Charles J. Joseph D. and John J. D'Alfonso recorded in the Cumberland County Registry of Deeds in Book 3032, Page 742; thence S 69° 3' 25"W along said land now or formerly of D'Alfonso and more or less along the southerly face of a stone retaining wall sixty-eight and ninety-six hundredths (68.96) feet to the said easterly sideline of Hancock Street; Thence in a northwesterly direction fifty-one and sixty-eight hundredths (51.68) feet to the said southerly sideline of Federal Street; thence N79° 04' 50"E along the said southerly sideline of Federal Street Seventy-five and ninety-nine hundredths (75.99) feet to the point of beginning.

The premises are conveyed together with and subject to any and all easements or appurtenances of record, insofar as the same are in force and applicable.

Please note: That the underlined portion of the above description contains an addition to a missing course to correct for a Scrivener's error in earlier deed descriptions describing the property.

Received
Recorded Register of Deeds
Jun 17, 2013 01:52:20P
Cumberland County
Pamela E. Lovley



Return Document to:

Law Office Dawn D. Dyer
P. O. Box 1964
Windham ME 04062-1964

mailbox@dawndyerlaw.com
(207) 893-8100

Warranty Deed

Statutory Short Forms Deeds Act
33 M.R.S.A. §761 et seq.

Brent L. Adler, with a mailing address of P. O. Box 15372, Portland ME 04112, and **Sunny Time Solar LLC**, a limited liability company duly organized and existing under the laws of the State of Maine, of the City of Portland, County of Cumberland and State of Maine, with a mailing address of P. O. Box 15372, Portland ME 04112, for consideration paid, grant a ninety-nine percent (99%) undivided interest in common to **Federal Street Phoenix LLC**, a limited liability company duly organized and existing under the laws of the State of Maine, of the City of Portland, County of Cumberland and State of Maine, and a one percent (1%) undivided interest in common to **Sunny Time Solar LLC**, a limited liability company duly organized and existing under the laws of the State of Maine, of the City of Portland, County of Cumberland and State of Maine, both with a mailing address of P. O. Box 15372, Portland ME 04112, with Warranty Covenants, the land in the City of **PORTLAND**, County of Cumberland and State of Maine, bounded and described as follows:

A certain lot or parcel of land, with the buildings thereon situated on the southerly side of Federal Street and the easterly side of **Hancock Street**, and being numbered 49 and 51 Hancock Street, in the City of **PORTLAND**, County of Cumberland and State of Maine, bounded and described as follows:

Beginning at an iron rod with survey cap driven into the ground on the said southerly sideline of Federal Street, being located seventy-five and ninety-nine hundredths (75.99) feet as measured along said southerly sideline of Federal Street from its intersection with the said easterly sideline of Hancock Street; thence South 14° 48' 55" East, along a line located ten (10) feet westerly of and parallel with the brick wall line of the building standing on other land now or formerly of Donato D'Alfonso, a distance of thirty-eight and sixty-five hundredths (38.65) feet to land described in the deed of Vencecea Romagno to Charles J., Joseph D. and John J. D'Alfonso recorded in the Cumberland County Registry of Deeds in Book 3032, Page 742; thence South 69° 3' 25" West along

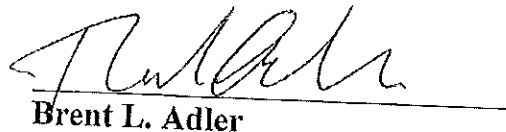
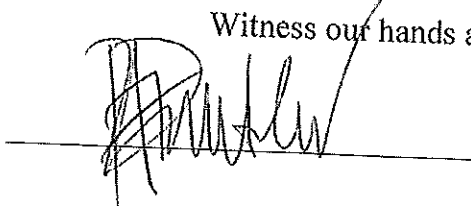
said land now or formerly of D'Alfonso and more or less along the southerly face of a stone retaining wall sixty-eight and ninety-six hundredths (68.96) feet to the said easterly sideline of Hancock Street; thence in a northwesterly direction fifty-one and sixty-eight hundredths (51.68) feet to the said southerly sideline of Federal Street; thence North 79° 04' 50" East along the said southerly sideline of Federal Street seventy-five and ninety-nine hundredths (75.99) feet to the point of beginning.

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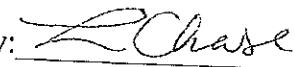
Meaning and intending to describe and convey the same premises conveyed to Sunny Time Solar LLC (1% undivided interest in common) and Brent L. Adler (99% undivided interest in common) by Warranty Deed from Hardworking Jack, LLC, dated June 13, 2013 and recorded in Cumberland County Registry of Deeds in Book 30742, Page 138.

This conveyance is made **subject** to the terms and conditions of a certain Mortgage made and executed by Sunny Time Solar LLC and Brent L. Adler to People's United Bank, dated June 13, 2013 and recorded in said Registry in Book 30742, Page 140. Further **subject** to the terms and conditions of a certain Assignment of Rents as recorded in said Registry in Book 30742, Page 150.

Witness our hands and seals this date: July 19, 2013.


Brent L. Adler

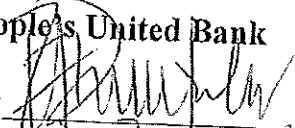
Sunny Time Solar LLC

By: 
Liv R. Chase

Its: Member

The Lender, **People's United Bank**, whose address is 188 U. S. Route 1, Falmouth, ME 04105, hereby joins in this deed and consents to the transfer of the interest of Brent L. Adler hereby.

People's United Bank

By: 
Print Name: Pamela DiPietro Hale
Its: Vice President

State of Maine
Cumberland, ss.

July 19, 2013

Personally appeared the above-named Brent L. Adler and acknowledged the foregoing instrument to be his free act and deed. *Before Me,*

Cardyn McCormick

My Commission Expires
February 12, 2015

SEAL

CARDLYN MCCORMICK
NOTARY PUBLIC

State of Maine
Cumberland, ss.

July 19, 2013

Personally appeared the above-named Liv R. Chase in her capacity as sole Member of Sunny Time Solar LLC, and acknowledged the foregoing instrument to be her free act and deed in said capacity and individually. *Before Me,*

Cardyn McCormick

My Commission Expires
February 12, 2015

SEAL

CARDLYN MCCORMICK
NOTARY PUBLIC

Received
Recorded Register of Deeds
Aug 09, 2013 12:56:21P
Cumberland County
Pamela E. Lovley

State of Maine
Cumberland, ss.

July 26, 2013

Personally appeared the above-named Pamela DiPietro Hale in his/her capacity as Vice President of People's United Bank and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of said Bank. *Before me,*

Melinda J. Higgins

MELINDA J. HIGGINS
Notary Public, Maine
My Commission Expires June 1, 2014

SEAL