

1. 9-15-16 AGENDA

Documents:

[9-15-16 AGENDA.PDF](#)

2. ZBA APPLICATION - 31 HERSEY ST

Documents:

[ZBA APPLICATION - 31 HERSEY ST..PDF](#)
[ZONING ADMINISTRATOR E-MAIL.PDF](#)

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

Kent Avery, Chair
Donna Katsiaficas, Secretary
Chip Gavin
William Getz
Eric Larsson
Joseph Zamboni

APPEAL AGENDA

The Board of Appeals will hold a Public Hearing on Thursday, September 15, 2016, 6:30 p.m., Room 209, 2nd Floor, City Hall, 389 Congress Street, Portland, Maine, to hear the following appeals:

1. Old Business:

A. Interpretation Appeal:

31 Hersey Street, Stephen E. Mardigan, owner, Tax Map 129, Block F, Lot 014, R-3 Residential Zone: The applicant is challenging the Zoning Administrator's determination in an e-mail dated July 12, 2016 that the two assessing properties at 31 Hersey Street and 34 Vannah Avenue are considered one lot for zoning purposes and that 31 Hersey Street may not be developed separately [section 14-47 and section 14-433(a)(1)]. Representing the appeal is the landowner and Archie Giobbi, the landowner's real estate agent. The appeal was tabled by the board on August 4, 2016 at the request of the applicant.

2. Adjournment



Jeff Levine, AICP, Director
Planning & Urban Development Department

Ann Machado
Zoning Administrator

CITY OF PORTLAND

APPLICATION PROCESS FOR THE ZONING BOARD OF APPEALS

Eleven (11) separate packets of the following MUST be submitted to hold a place on the agenda:

1. A copy of Appeal application.
2. A cover Letter addressed to the *Zoning Board of Appeals* stating what you want to do.
3. A plot plan showing the site and location of all structures, existing and proposed, in relation to the lot lines AND, if applicable, indicating parking. Lot size and setback dimensions must be shown.
4. A floor plan, if applicable, showing dimensions of existing and proposed rooms and/or structures.
5. A copy of the tax map (obtained in the Assessor's Office) with the property highlighted.
6. Photos of the property
7. Deed, sales agreement, lease or intent to lease.
8. Owner, lessee, prospective purchase or legal representation, must sign the application.
9. A letter from the property owner, giving permission to the applicant to represent the property, if applicable.
10. All plans must also be folded neatly with each packet and banded.
11. A complete copy in PDF form

If additional information is needed to complete the packet for the ZBA, you will be notified. Please make sure you include a contact phone number on your cover letter. If we cannot contact you, the item will be tabled until the next regular meeting.

The application fee is \$100.00 to appear before the ZBA. ***This fee is nonrefundable.*** Please note that the applicant is also responsible for the \$50.00 processing fee, the cost of the legal ad in the Portland Press Herald, and the cost of sending abutters notification within 500' of the subject property. ***The City of Portland will bill you for the processing fee, legal ad, and abutter's notification.***

You may apply for an appeal/permit at City Hall, Room 315. If you choose to file on the deadline date, please note that applications are accepted ONLY until noon. ***You will be sent a letter confirming the time and date of the meeting along with an agenda.***

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Portland, Maine



Yes. Life's good here.

Jeff Levine, AICP, Director
Planning & Urban Development Department

Ann Machado
Zoning Administrator

CITY OF PORTLAND
ZONING BOARD OF APPEALS
Interpretation Appeal Application

APPLICANT INFORMATION:

STEPHEN E. MARDIGAN
NAME

N/A
BUSINESS NAME

460 BAXTER BLVD
ADDRESS

207-831-8762
TELEPHONE #

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

R-3
CURRENT ZONING DESIGNATION

EXISTING USE OF PROPERTY:

LAND W/ ILLEGAL
ACCESSORY GARAGE

TYPE OF RELIEF REQUESTED:

SEPARATION OF 31 HERSEY ST FROM 34
VANNAH AVE TO BUILD SINGLE-FAMILY HOUSE

SUBJECT PROPERTY INFO:

31 HERSEY ST
PROPERTY ADDRESS

129-F-14
CHART/BLOCK/LOT (CBL)

PROPERTY OWNER INFO (if Different):

SAME
NAME

ADDRESS

Disputed Provisions from Section 14:

14-47 & 14-433 (A)(1)

**Order, decision, determination or
interpretation under dispute:**

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.

[Signature]
SIGNATURE OF APPLICANT

July 15, 2016
DATE

Zoning Board of Appeals
City of Portland, Maine
Congress Street
Portland, Maine 04101

July 15, 2016

Re: Request for Lot Separation
31 Hersey Street & 34 Vannah Ave.

Dear Sirs / Madams

I am writing to request that you grant the applicant, Stephen Mardigan, a lot separation on the properties that the City claims to be a Single Lot.

The Lots in question are 34 Vannah Ave. and 31 Hersey Street and both lots are taxed as separate lots established in 1917 as Saunders Field Subdivision.

The City claims that these properties were joined by a walkway and roof line but Zoning can not find any Building Permits issued to do the work.

The applicant claims that the roof line joining was never a permanent structure but only to keep the "Rain" off the walkway between the main structure and a garage on the 31 Hersey St. lot. No permanence was ever established.

The Hersey Street lot established by subdivision in 1917 is no different that the other lots on Hersey St. and the applicant desires to build a single family house among other homes on a very desirable street.

The Applicant claims that the Structure on the Hersey St. lot,(a 24'x24' Garage) should not be considered an Accessory to the Vannah St. lot as it should only be an Accessory to the Hersey St. lot that does not have a primary structure, and in essence should not be considered but a mistake and allowed to be torn down. Accessory Units on different lots than that of the Primary structure should not be allowed.

The Board has a grand opportunity to finally settle a long series of questionable attempts to develop the entire property as a business zone. The applicant would like 34 Vannah Ave. to be a free standing building in the Vannah Ave. business zone and 31 Hersey St. to be a residential zone as Hersey st. is now residentially developed.

Your consideration as well as your favorable decision would be appreciated as well as appropriate in lieu that there was never a permanent relationship between these Lots.

Thank You.

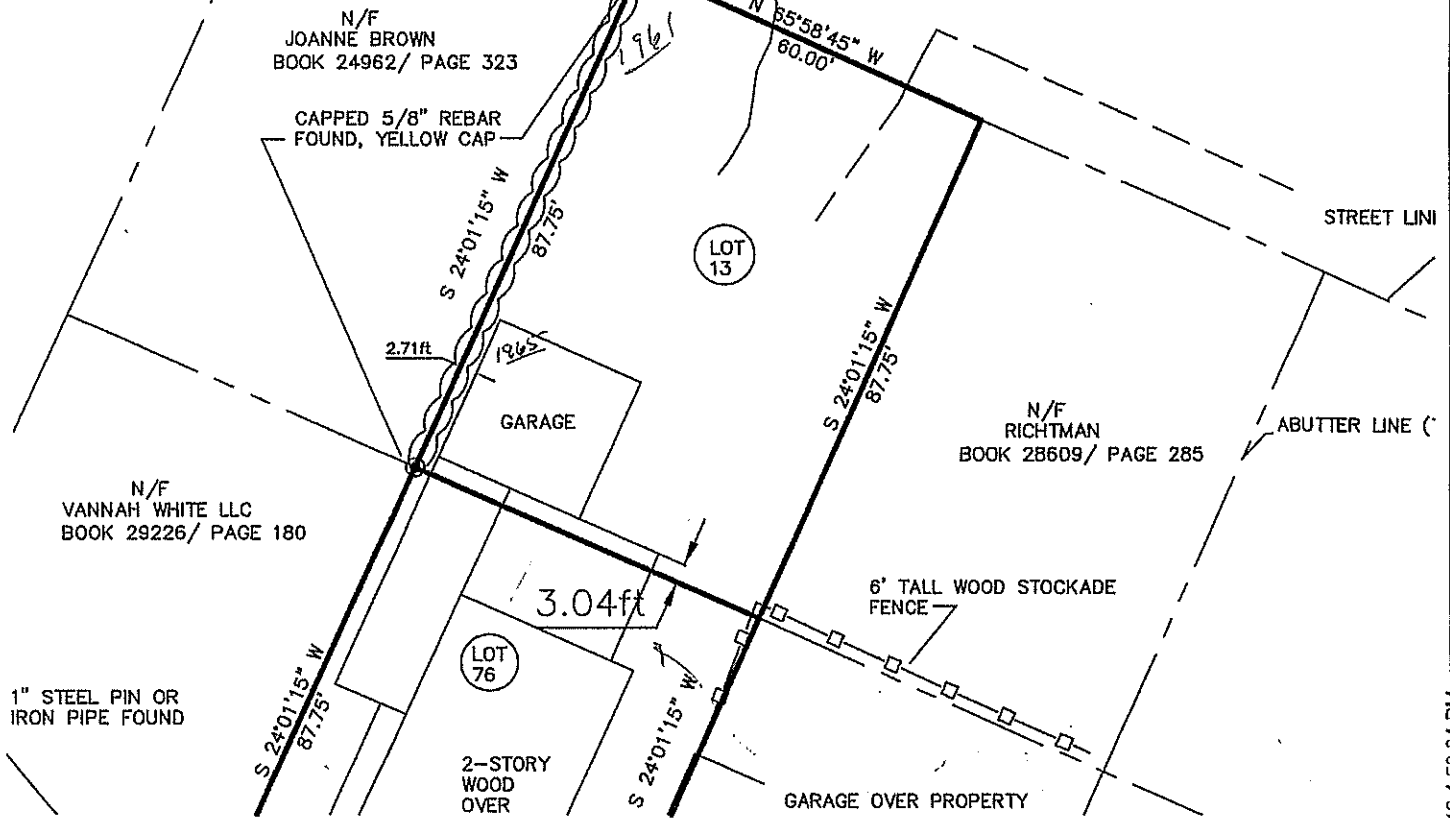
Stephen E. Mardigan
460 Baxter Blvd
Portland, Maine

Sincerely,



EXHIBIT A

HERSEY STREET
PAVED, ACCEPTED CITY STREET



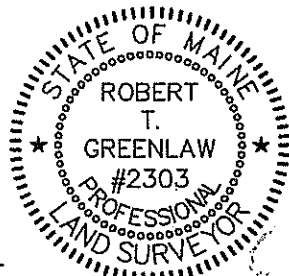
PLAN SHOWING TAX MAP 129 BLOCK F LOTS 013 AND 014.
BEARINGS SHOWN ARE BASED UPON A MAGNETIC OBSERVATION TAKEN IN 2012.
THIS PLAN DEPICTS THE RESULTS OF LAND SURVEY TO RECREATE THE LOTS
DESCRIBED IN A DEED TO THE HEREIN OWENER STEPHEN E. MARDIGAN AS
DESCRIBED IN A DEED RECORDED IN THE CUMBERLAND COUNTY REGISTRY OF
DEEDS IN DEED BOOK 29836, PAGE 44.
AREA OF EACH LOT: 5265, (13) DENOTES LOT NUMBER AS SHOWN ON THE
PLAN OF SAUNDERS FIELD DATED AUGUST 21, 1917 IN PLAN BOOK 13, PAGE
93.

CERTIFICATE:

I HEREBY CERTIFY THAT THIS SURVEY CONFORMS TO THE MAINE BOARD OF LICENSURE
FOR PROFESSIONAL LAND SURVEYORS' STANDARDS OF PRACTICE AS ADOPTED APRIL 01,
2001 WITH THE FOLLOWING EXCEPTIONS:

- a) NO WRITTEN REPORT
- b) NO NEW DESCRIPTION

ROBERT T. GREENLAW P.L.S., #2303
DATE: OCTOBER 15, 2012

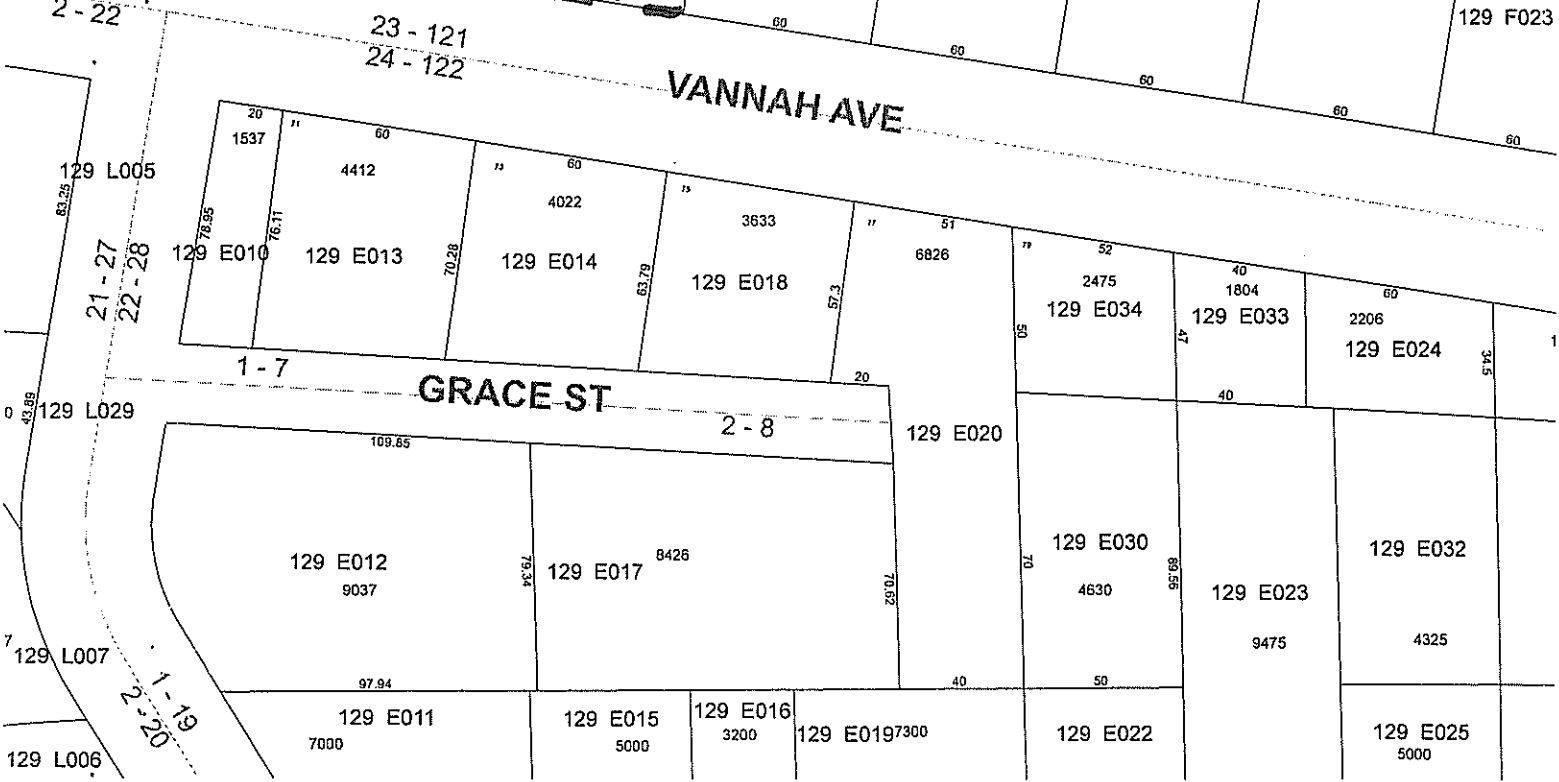
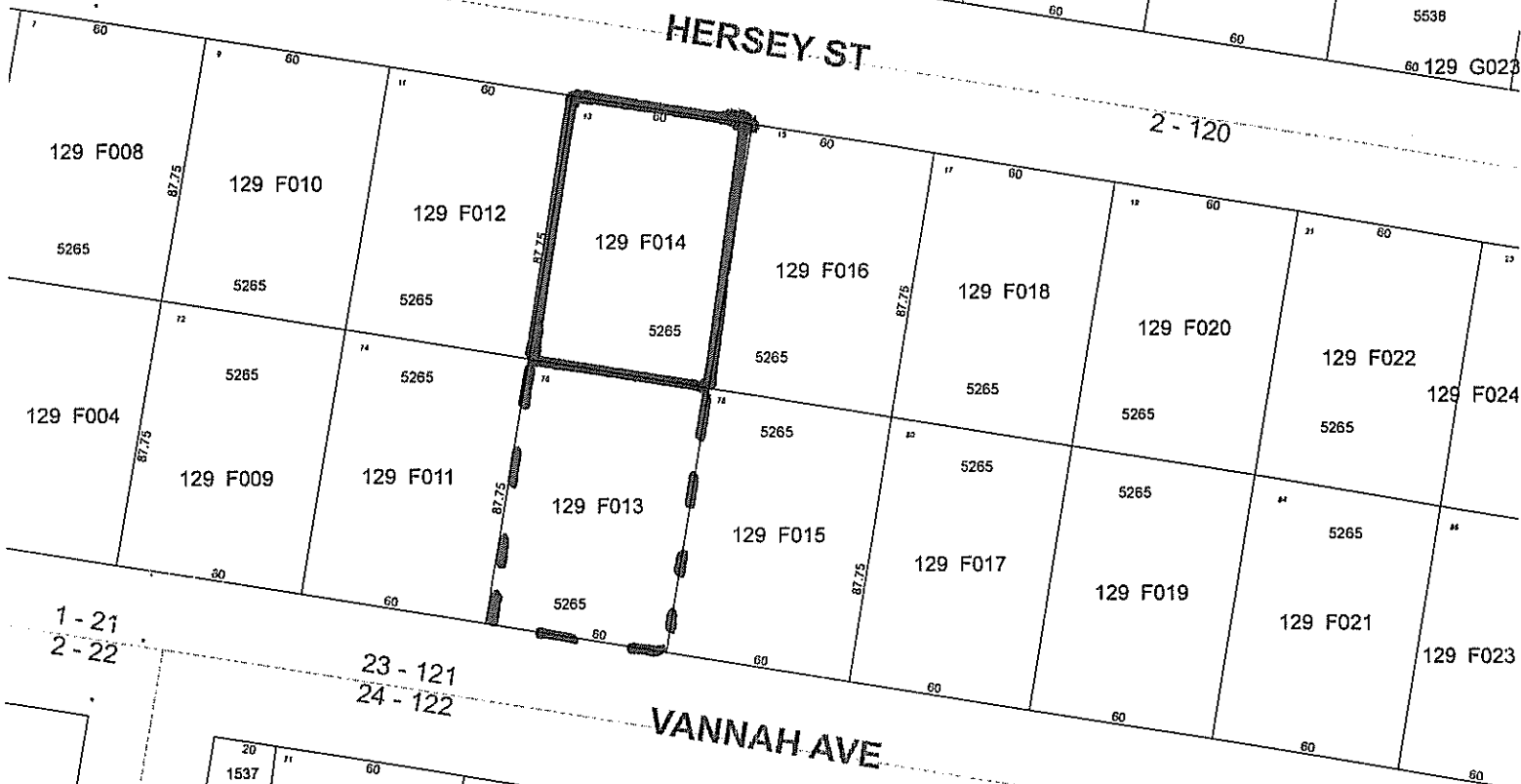
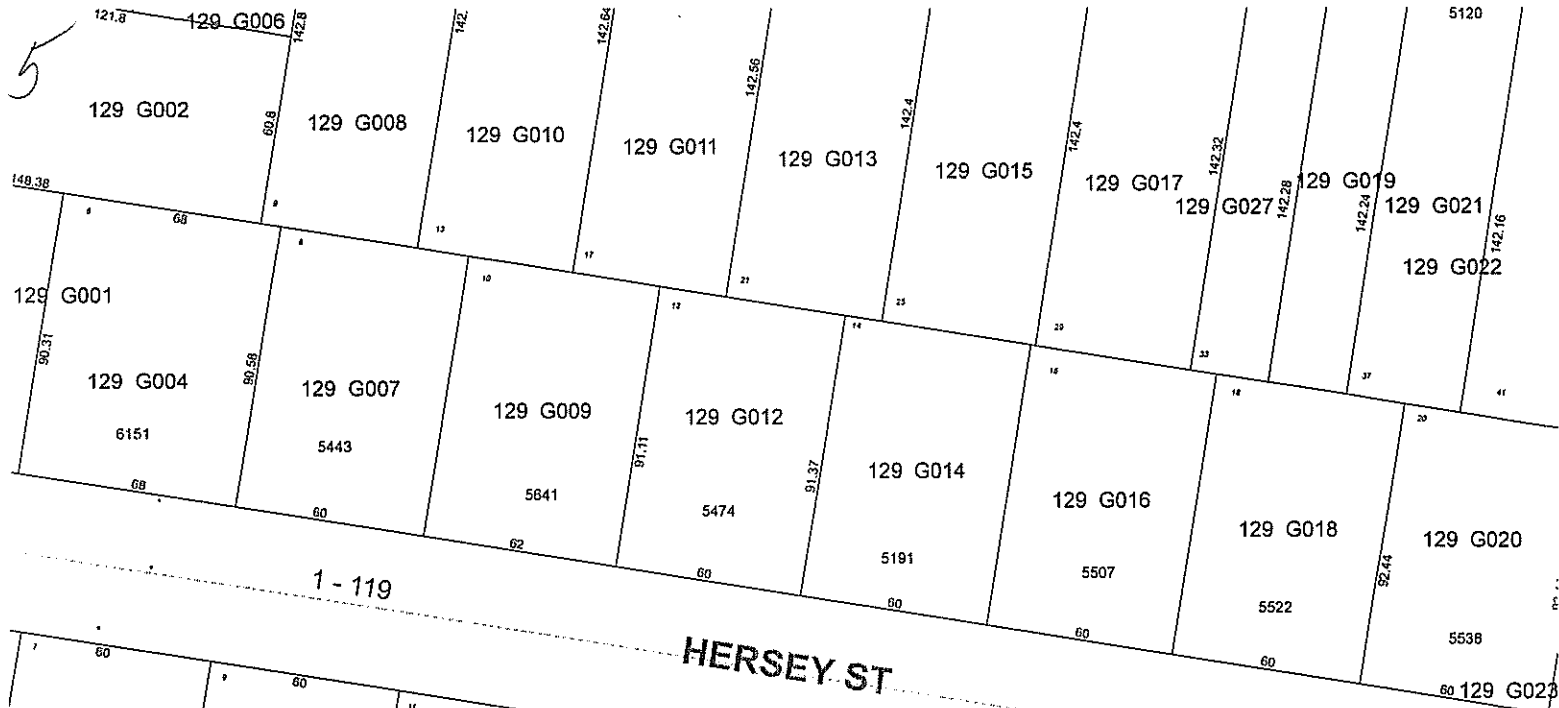


PLAN SHOWING BOUNDARY LINES

AT 34 VANNAH AVENUE
PORTLAND, MAINE
FOR: STEPHEN E. MARDIGAN

Prepared by
Robert T. Greenlaw
Professional Land Surveyor
PLS #2303
134 Portland Ave
Old Orchard Beach, ME 04064

Scale: 1"=30'	Date: 10/12/12	LT:
Drawn: RTG	Checked: KGG	Job: 2012042



QUITCLAIM DEED WITHOUT COVENANT
(Release Deed)

Bangor Savings Bank, a banking entity having place of business in the City of Portland, State of Maine, for consideration paid, RELEASES to Stephen E. Mardigan of 460 Baxter Blvd., Portland, Maine 04103, the land situated in Portland, County of Cumberland and State of Maine, and being more particularly described as follows:

A certain lot or parcel of land, with the buildings thereon, situated on the northeasterly side of Vannah Avenue in the City of Portland, County of Cumberland and State of Maine, being Lot No. 76 as shown on Plan of Saunders Field, recorded in Cumberland County Registry of Deeds in Plan Book 13, Page 93, to which plan reference is made for a more particular description.

Also a certain lot or parcel of land situated on the southwesterly side of Hersey Street in said Portland, being No. 31 on said street and described as Lot No. 13 on the Saunders Field Plan recorded in the Cumberland County Registry of Deeds in Plan Book 13, Page 93, to which plan reference is hereby made for a more particular description.

This deed is given pursuant to the Judgment of Foreclosure and Sale entered in the Cumberland County Superior Court, on March 13, 2012, in an action entitled Bangor Savings Bank v. Louis A. Geller a/k/a/ Louis A. Geller, Sr., Docket No. PORSC-RE-11-426, for the foreclosure of a mortgage recorded in the Cumberland County Registry of Deeds in Book 23957, Page 199. Pursuant to said Judgment, the period of redemption having expired, a Notice of Public Sale was published in the Maine Sunday Telegram, a newspaper of general circulation in Cumberland County, Maine, on June 17, June 24 and July 1, 2012. Pursuant to said Notice of Public Sale, the foreclosure sale was conducted on July 18, 2012, at which sale Stephen E. Mardigan was the highest bidder.

IN WITNESS WHEREOF, Bangor Savings Bank has caused this instrument to be executed by Scott Woodward, its Vice President, of thereunto duly authorized, this 13th day of August, 2012.

WITNESS:



Bangor Savings Bank

By: 

Its: V. P.

MAINE REAL ESTATE TAX PAID

State of Maine
County of Cumberland, ss.

August 13, 2012

Personally appeared the above-named Scott Woodward, Vice President of Bangor Savings Bank and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation.

Nancy A. Davis
Notary Public
Typed Name:

NANCY DAVIS
Notary Public, Maine
My Commission Expires February 23, 2014

SEAL

Received
Recorded Register of Deeds
Aug 14, 2012 01:19:29P
Cumberland County
Pamela E. Lovley

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Zoning Board of Appeals

July 15, 2016

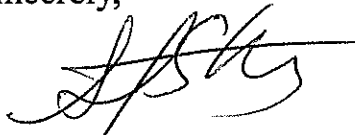
Re: 31 Hersey St.

Sirs / Madams,

I, Stephen Mardigan, give permission to Archie Giobbi, to represent me
before the Zoning Board, in my application for lot separation at 31
Hersey Street.

Thank You.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Mardigan', with a long horizontal flourish extending to the right.

Stephen E. Mardigan
460 Baxter Blvd.
Portland, Maine 04103

Know all Men by these Presents, That

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Fernald Park Corp., a Corporation organized and existing under the laws of the State of Maine, and located at Portland, in the County of Cumberland and State of Maine, in consideration of one dollar and other valuable considerations, paid by William K. Buck, of said Portland,

See
Book 2630
Page 114

the receipt whereof it does do hereby acknowledge, does hereby, give, grant, bargain, sell and convey unto the said William K. Buck, his heirs and assigns forever, a certain lot or parcel of land situated on the southwesterly side of Hersey Street, in said City of Portland, being lot numbered 13, on a plan of Sanders Field, recorded in Cumberland County Registry of Deeds in Plan Book 13, Page 93, to which plan reference is made for a more particular description.

Being a part of the premises conveyed to Fernald Park Corp. by Ina Saunders Knight, et als, by deed dated February 25, 1946 and recorded in said Registry of Deeds, Book 1813, Page 28.

This conveyance is made subject to taxes for 1946 which the Grantee assumes and agrees to pay.

On this day and in full the aforegranted and bargained premises, with all the privileges and appurtenances thereof, to the said William K. Buck, his heirs and assigns, to his and

U.S.I.R.
\$1.10
F.P.C. by
C.W.B.Tr.

their use and behoof forever. And the said Grantor Corporation does hereby said Grantee, his heirs and assigns, that it is except as aforesaid; lawfully seized in fee of the premises; that they are free of all incumbrances;

that it has have good right to sell and convey the same to the said Grantee to hold as aforesaid; and that it and its successors heirs, shall and will warrant and defend the same to the said Grantee, his

except as aforesaid; heirs and assigns forever, against the lawful claims and demands of all persons.

In Witness Whereof, the said Fernald Park Corp., has caused this instrument to be sealed with its corporate seal and signed in its corporate name by Clinton W. Benson, its Treasurer, thereunto duly authorized

one thousand nine hundred and forty-six. day of April in the year of our Lord

Signed, Sealed and Delivered in presence of

D. W. Philbrick

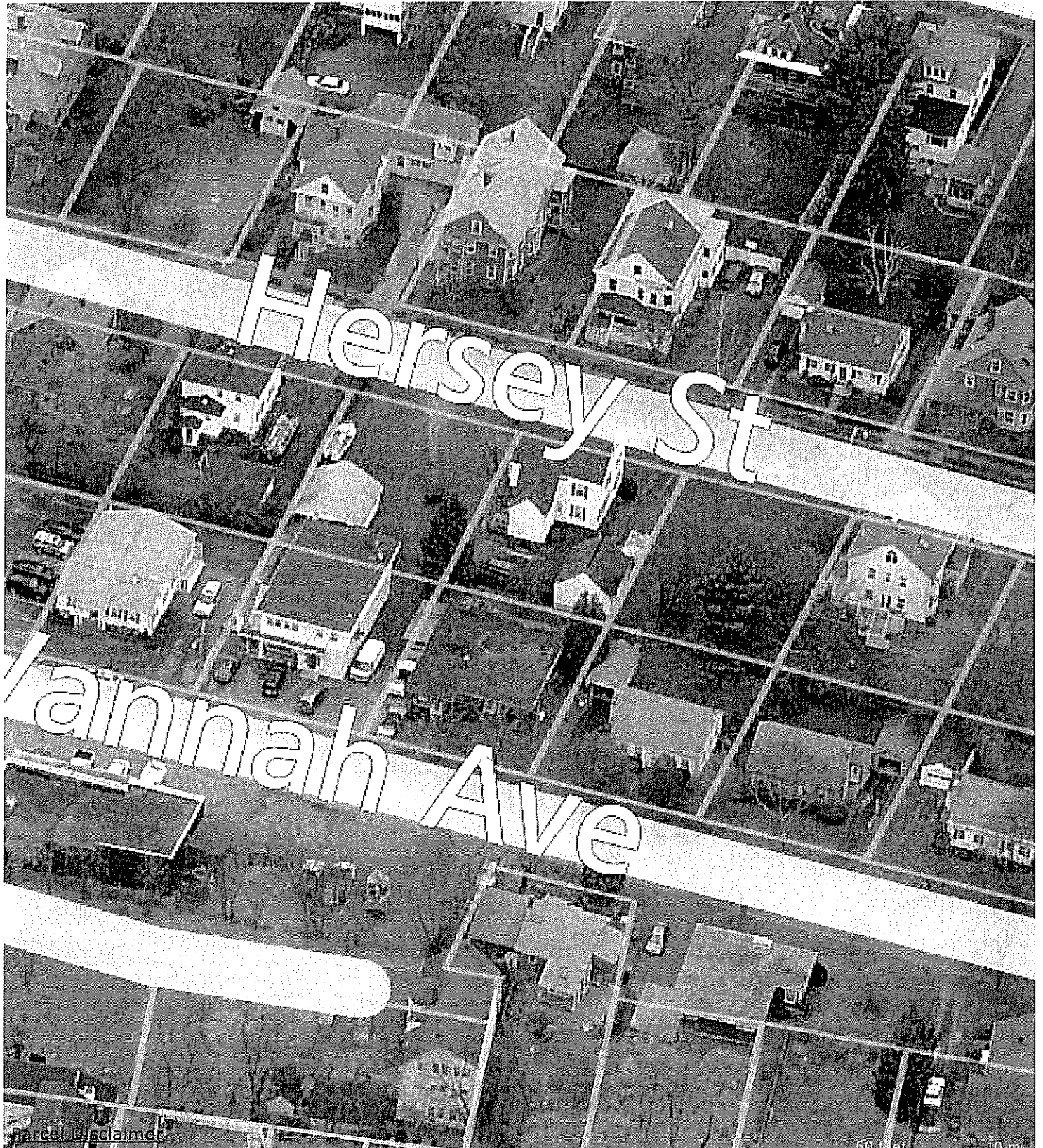
FERNALD PARK CORP. CORPORATE SEAL

By: Clinton W. Benson Treasurer

County of Cumberland, ss. April 10, 1946 Then Personally appeared the above named Clinton W. Benson, Treasurer of said Grantor Corporation as aforesaid;

and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said corporation, Before me, Donald W. Philbrick Justice of the Peace

Received April 11, 1946, at 2 o'clock 10 m. P. M., and recorded according to the original.



[Parcel Disclaimer](#)

[Ruler](#)

[Legend](#)

[Map](#) [Google Street View](#)[Automatic](#)

Click any parcel for parcel details.

[Parcel Disclaimer](#)[Ruler](#)[Legend](#)



Ann Machado <amachado@portlandmaine.gov>

31 Hersey St & 34 Vannah Ave.

1 message

Ann Machado <amachado@portlandmaine.gov>
 To: "agiobbi@maine.rr.com" <agiobbi@maine.rr.com>

Tue, Jul 12, 2016 at 3:26 PM

Archie -

After researching the history of the two assessing properties known as 31 Hersey St (129-F-014) and 34 Vannah Ave. (129-F-013) I have determined that the two assessing lots have merged and are considered one lot for zoning purposes and may not be developed separately.

Section 14-47 of the ordinance defines lot as: 'A parcel of land that is designated as an individual unit for use, development or ownership that is either a) a lot of record, recorded in the Cumberland County Registry of Deeds; or b) a contiguous combination of such lots of record under common ownership,; or c) a newly established parcel meeting all the dimensional requirements of the zone in which it is located.

31 Hersey St is located in the R-3 Residential Zone. It is 5265 sf. The minimum lot size to develop a lot in the R-3 zone is 6500 sf [section 14-90(a)(1)]. This lot by itself cannot be developed because it does not meet the minimum lot size.

Section 14-433(a)(1) states that:

(a) *Lots of Record.*

Lots of record that meet the minimum standards provided below shall be considered buildable lots.

1. Lots of record as of June 5, 1957, may be considered a buildable lot in any residential zone provided the applicable yard dimensions can be met; provided that a minimum street frontage of forty (40) feet can be met, or to which a means of access has been previously approved by the city council as provided elsewhere in this article; and provided such lots have a minimum lot size of five thousand (5,000) square feet, or the applicable minimum lot size and frontage in that zone, whichever is less .

I have not been provided with any evidence that 31 Hersey was a lot of record recorded at the Registry of Deeds as of June 5, 1957. Even if evidence can be provided that this was recorded as a lot in 1957, it has already been developed (24' x 24' garage) and the records show that previous applications have treated the property as one lot.

- 1951 assessor's card shows 31 Hersey St as vacant
- 1956 permit 30' x 50' 1 story building at 34 Vannah
- 1956 permit letter 12' x 14' one story addition at 34 Vannah
- 1958 permit - add second floor - 34 Vannah
- 1960 permit 12' x 24' one story addition
- 1961 Variance appeal to locate off-street parking for 34 Vannah Ave on 31 Hersey St lot was denied - plan shows parking lot on both lots
- 1965 permit to "Construct aluminum shed roof between existing garage and store (unclear if permit was issued)
- 1980's assessor's card - shows 19' x 23' 1 story shed off the rear of the existing building at 34 Vannah & a 24' x 24' garage on the 31 Hersey lot with a note that it was built in 1965

It is my conclusion that the two assessing properties have been treated as one property and musty continue to be treated that way. The 1961 variance appeal for the parking lot showed the use of the property as a store with a proposed parking lot that covered both lots. 31 Hersey Street cannot be split off and developed as a separate lot since it already has a structure on it. A twenty-four foot by twenty-four foot garage appears to have been constructed on the Hersey Street lot around 1965 since it is mentioned in the 1965 permit and it shows up on the 1980's assessor's card. In the R-3 Zone, a garage is an accessory structure. It cannot be built on a lot without the lot having a principal structure that already exists. Since the garage was built, it must have been accessory to the principal building at 34 Vannah Ave. which means the two assessing lots have been developed as one lot. Also the nineteen foot by twenty-three foot addition shown on the 1980's card for 34 Vannah Ave. appears to encroach on 31 Hersey Street and possibly connect the two buildings. The current GIS aerial view of the property shows an addition with a roof that appears to connect the building at 34 Vannah Ave to 31 Hersey St.

7/12/2016

City of Portland Mail - 31 Hersey St & 34 Vannah Ave.

You have the right to appeal my decision. If you wish to exercise your right of appeal, you have thirty days from the date of this email to file the appeal with our office. If you should fail to do so my decision is binding and not subject to appeal.

Please contact me with any questions.

Ann

Ann Machado
Zoning Administrator
Permitting and Inspections Department
City of Portland, Maine
[\(207\) 874-8709](tel:(207)874-8709)