

**From:** <Pikefambily@aol.com>  
**To:** <jf@portlandmaine.gov>  
**Date:** 5/22/2014 4:34 AM  
**Subject:** Proposed building at 97 Cumberland Ave, Portland

May 21, 2014

Ms. Jean Fraser, Planner  
Planning Division  
City Hall  
Portland, ME.

Dear Ms. Fraser,

Thank you very much for allowing me to look over plans and sketches today for the proposed construction at 97 Cumberland Ave. I have several serious concerns that I would like to bring up in regard to the proposal.

1. The proposed plan involves an extensive expansion of a right of way granted by deed to the subject property over my land at 93 Cumberland Ave. The subject property was granted rights in 1946 to "pass over, along, and upon" the side of my lot to provide easy access a small single family residential home located at the rear of what was then all part of 93 Cumberland Ave. The subdivision plan is recorded in the CCRD in Plan Book 32, Page 28, and includes detailed measurements of both the footprints of the existing buildings as well as the conveyed area of land over which the right to pass is granted. This is the same plan which is referenced in the subject property current deed, as well as my own deed.

In the state of Maine, very specific laws govern the creation and the use of right of ways. The property receiving the right of way over another's land does not own the land, and in fact may not use the land for any purpose other than it's originally deeded intent. The deeded right of way is a mere privilege to cross the land in a very particular manner. The Maine Supreme Court has repeatedly upheld this definition. The original intent of this right of way was to provide an easy pathway to the little single family house at the back of the lot without the necessity of doing any elevation work to the front of the lot on the Cumberland Ave side. The current proposal is to change this deeded privilege to cross my land into a commercial development application of providing sole access for 2 separate buildings (per submitted diagrams) with a total of 5 apartments, with foot traffic from the sidewalk over my land, vehicle traffic for more than 5 cars, an accessory parking garage under the north structure, and additional parking behind the building. The plan as it is drawn does not even allow enough space left on my own land for me to park my vehicle alongside my building or near my basement door, and negates the ability of my tenants to park on my land. Mr. Dugas and Mrs. Antonacos were made aware of this legal problem with their current proposal during our brief meeting together on April 14, 2014. To date, they have made no effort to address this issue with us and they have not responded to a letter from our attorney which underscored the same concern.

2. In addition to this proposed illegal change of use in the right of way, the submitted plans to create elevation changes to the right of way across my land are of very great concern. My building at 93 Cumberland Avenue

was built into the side of the hill over 100 years ago. The right of way runs along the downhill foundation side of my building. The currently proposed changes include the creation of a new retaining wall in the 14' wide right of way approximately 2 feet away from the foundation of my building and running the entire length of my building. The proposed plan is to raise the site elevation so much that it even requires the architect to call on the plan for alterations to be done to my building, including the "adjustment for downspout (on my building) to drain through new wall to pavement", as well as to "reset (the) existing concrete steps (to my basement) to grade".

This proposal appears to leave me with a 2 foot wide ditch along the foundation of my building, which the plan offers to "loam and seed". The proposed paved width is 12', taking up the entire remainder of the right of way. Snow plowed along this newly paved way would quickly fill the ditch along my foundation and pile snow up against my basement windows, most likely flooding my basement. Rain water runoff from the newly created elevated pavement could easily do the same. My building has basement windows which would now be put partially underground in a gully in this proposal. My basement steps have always run in the upward direction, not the downward direction.

3. On a different note, while my husband James and I applaud the energy efficiency and modern technology choices of the proposed structure at 97 Cumberland Ave., we do not applaud the industrial theme of the structural design. It is disappointing to us to see new construction in one of the oldest neighborhoods in Portland being modeled after renovated factory buildings. Additionally, the renderings of the proposed building show a very solid wall with few windows on the north side which faces our building at 93 Cumberland Ave. The lack of windows combined with the untraditional choice of siding leaves an impression that, in our opinion, is unfriendly, at best. Munjoy Hill has many beautiful old homes that recall the proud historical past of Portland. We own three buildings near 97 Cumberland Ave that we intend to keep as historically correct as possible, paying homage to the history of Portland, Maine. We are sorry to see that this proposal does not honor the history of Munjoy Hill as one of the first residential areas of our beautiful city.

In closing, I would like to thank you again, Ms. Fraser, for your time and consideration. My husband and I look forward to seeing you at the workshop on May 27, 2014.

Sincerely,

Carol S. Pike

**H & A** Hopkinson & Abbondanza  
A T T O R N E Y S

Please respond to our Bath office

- James A. Hopkinson
- Richard J. Abbondanza
- Caitlin Fullerton DiMillo
- Gerald B. Schofield, Jr.

A TRUE COPY

May 14, 2014

Peter C. Dugas  
Anastasia Antonacos  
243 State Street  
Portland, Maine 04101

VIA MAIL

**Re: 97 Cumberland Avenue, Portland, Maine ("Lot 3")**

Dear Mr. Dugas and Mrs. Antonacos:

Our office represents James and Carol Pike with respect to their property located at 93 Cumberland Avenue, Portland, Maine. The Pike's own their property by virtue of a deed dated July 31, 2009 and recorded in the Cumberland County Registry of Deeds ("CCRD") in Book 27152, Page 57<sup>1</sup>. Their property consists of a three-unit home, and is subject to a right-of-way ("ROW") over the westerly portion of their property.

You own your property located at 97 Cumberland Avenue, Portland, Maine by virtue of a deed dated March 12, 2013 and recorded in the CCRD in Book 30478, Page 113. Your property used to consist of land plus a one-unit home, but, according to my knowledge, is now just land. Additionally, your property was conveyed to you with certain rights over the ROW existing on the Pikes' property. More particularly, your property was conveyed to you (and to your predecessors in title) "[t]ogether with a right of way over, along and upon said lot numbered one (1) as shown on said plot plan<sup>2</sup>, easterly of and adjacent to the premises herein described." The ROW was originally crafted to provide the owners of Lots 2 and 3 access to their properties. At the time of creation, these lots were residential, consisting of one-unit homes. This is clear on the Plan. Your property has its own road frontage on Cumberland Avenue.

It is our understanding that you wish to create a five-unit building ("Building") on your property, and, additionally, plan to provide access to the occupants, guests, and invitees of that Building by virtue of the ROW existing over my client's property. It is unclear to me what other acts or actions you may plan to take with respect to your property, the Building, and the ROW. To the

<sup>1</sup> This property was formerly held only in Carol Pike's name by virtue of a deed dated July 10, 1996 and recorded in the CCRD in Book 12557, Page 204.

<sup>2</sup> The "plot plan" (hereinafter referred to as the "Plan") is the "Plot Plan Showing Property of Walter A. Gerry at 93 and 97 Cumberland Avenue, Portland, Maine, as drawn by Varney Engineering Company, North Windham, Maine, Dated October 8, 1946" and recorded in the CCRD in Plan Book 32, Page 28. Said Plan refers to the Pikes' lot as Lot 1, your lot as Lot 3, and the third, back lot, as Lot 2 (which also consists of a one-unit home).

Peter C. Dugas and Anastasia Antonacos  
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extent you plan to provide access to the Building by virtue of your own privately-created driveway off of Cumberland Avenue, kindly advise me of the same.

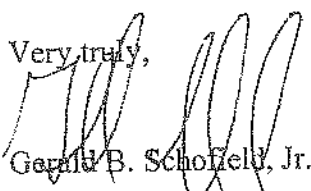
Your ROW over the Pikes' property is not an ownership interest in their land, but, rather, a mere privilege to use their land in a very particular manner. The ROW, by its very nature, involves limited rights to enjoy someone else's property. Your rights in and to the Pikes' property are limited to those rights incidental or necessary to the proper enjoyment of the ROW. The extent and nature of your deeded ROW is determined by the construction of the deeds, and the past use and acts with respect to the ROW. At the time that this ROW was created, Lots 2 and 3 had one-unit homes on them. Your creation of a five-unit Building on your property, to the extent you plan for the inhabitants of the Building to access the Building by virtue of the ROW, will change the very nature of your use of the ROW from residential to commercial. This is use that was not contemplated, nor intended, at the time the ROW was created and deeded.

This letter shall serve as formal notice that the Pikes will consider use of the ROW by the inhabitants, guests, and invitees of the Building to be an overburdening of the ROW, and, as such, a trespass upon their property. If you would like to create a five-unit Building upon your property, that is your prerogative. However, you should arrange for your own driveway access to your property that is not over the ROW. Additionally, you have also told the Pikes' that you are going to pave the ROW. This act will also be considered an overburdening of the ROW, and an unlawful expansion of your rights. To the extent you use the ROW in such an increased capacity, the Pikes' will consider any and all legal and equitable remedies that may be available to them, including, but not limited to, a civil action for trespass and any ensuing damages therefrom. Please refrain from taking any additional action with respect to the ROW until we have had an opportunity to discuss these matters with you and/or your legal counsel.

Finally, the Pike's never received proper notice of the April 14, 2014 neighborhood meeting. The City of Portland Planning and Urban Development Department has been made aware of such failure. It is our hope to resolve this matter amicably now, before any potential issue with respect to the ROW arises after the construction of the proposed Building. Please feel free to contact me at your leisure to let me know your intent with respect to use over and upon the ROW. To the extent that you are represented by counsel, please let me know such that I may contact him or her directly.

Thank you for your anticipated attention and cooperation.

Very truly,

  
Gerald B. Schofield, Jr., Esq.

Cc: James and Carol Pike