

Department of Planning & Urban Development

Marge Schmuckai
Zoning Administrator

Jeff Levine
Director Planning & Urban Development



RECEIVED

MAY 19 2015

Dept. of Building Inspections
City of Portland Maine

CITY OF PORTLAND ZONING BOARD OF APPEALS
Conditional Use Appeal Application

Applicant Information:

Congress 127 Apartments, LLC

NAME

% Murray, Plumb & Murray

BUSINESS NAME

75 Pearl Street

ADDRESS

Portland, Maine 04101

(207)773-5651

TELEPHONE #

owner

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

R-6 and B-1 District

CURRENT ZONING DESIGNATION

EXISTING USE OF PROPERTY:

Multi-family dwelling

Subject Property Information

147 Congress Street

PROPERTY ADDRESS

Tax Map 013, Block L, Lot 19

CHART/BLOCK/LOT (CBL)

PROPERTY OWNER (if different)

NAME

ADDRESS

CONDITIONAL USE AUTHORIZED BY

SECTION 14 - 137(c)(5)

TYPE OF CONDITIONAL USE
PROPOSED:

See attached letter

STANDARDS: Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the Board determines that:

1. The volume and type of vehicle traffic to be generated, hours of operation, expense of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone; and
2. The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter; and
3. The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses of other allowable uses in the zone.

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

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

SIGNATURE OF APPLICANT

DATE

388 Congress St., Room 315, Portland, Maine 04101: (207) 874-8703 : FAX: 874-8936: TTY 874-8936

For Congress 127 Apartments, LLC

May 19, 2015

Sara Moppin, Chair, Zoning Board of Appeals
City of Portland
City Hall
Inspections Office, Room 315
389 Congress Street
Portland, Maine 04101

RECEIVED

MAY 19 2015

Dept. of Building Inspections
City of Portland Maine

Re: 147 Congress Street, parking project

Dear Chair Moppin and the Zoning Board of Appeals:

This firm represents Congress 127 Apartments, LLC, which is proposing changes (the "Project") to property it recently purchased at 147 Congress Street (the "Property"). Although the Project is not large, one aspect of it – the creation of three parking spaces in the rear of the Property for the use of a condominium down the street – requires conditional use approval from this Board.¹ As discussed in more detail below, the Project meets all three of the standards that apply to conditional uses. Accordingly, we request that the Board grant the enclosed conditional use application.

In addition to this letter and the completed application, we have also enclosed:

- a check in the amount of \$150.00 for the applicable fees;
- a full sized site plan, showing the proposed project;
- a copy of Tax Map 13 with the Property highlighted on that map;
- the deed showing Congress 127 Apartments, LLC's ownership of the Property;
and
- a series of pictures, labeled Exhibits A through F, showing the current conditions on the Property.

¹ The Applicant will also be applying for Site Plan approval and has already received a Certificate of Appropriateness from the Historic Preservation Board. The Applicant will also apply for all necessary building and demolition permits.

I. OVERVIEW OF THE CURRENT CONDITIONS AT THE PROPERTY.

The Property is currently used as multifamily housing. Although the brick house on the Property was originally a single-family structure, its more recent use has been as multi-family housing, including as a boarding house. As of today, the house is home to four tenants.

Off street parking for the house is located within a small gravel area to the left of the brick house.² Exhibit A and B shows the existing gravel parking area. As you can see from Exhibit A, although the gravel area is not particularly large, it sees heavy use. Up to four cars use the gravel parking area, often stacking behind each other in order for all the cars to fit. Due to the space constraints, cars in the gravel parking area must back out of the gravel parking area onto Congress Street.

The rear of the Property is currently un-landscaped grounds with a shed in the back corner. Just in front of the shed is a wooden stairway and addition that was added to the brick house relatively recently. The back yard, shed, and stairway are visible in Exhibits C through F.

II. THE WORK PROPOSED AS PART OF THE PROJECT

The Applicant ultimately intends to change the use of the Property back to a single-family residence. At the same time, though, the Applicant wishes to provide two off street parking spaces for the residence and three off street parking spaces for the condominium located at 137 Congress Street. The condominium at 137 Congress Street is approximately 115 feet away from the Property. Under Portland's Land Use Ordinance (the "Ordinance"), returning the house to a single-family residence with parking is a permitted use. However, and as discussed in more detail below, the creation of parking for the condos requires conditional use approval and is therefore the subject of this Application.

In order to accommodate the parking needs of the house on the Property and to create the three condominium parking spaces, the Project will eliminate the current gravel parking area and a lattice work fence at the rear of that parking area. After the gravel is removed, a new driveway will be added to provide access to the rear of the property.³ As

² The current gravel parking area extends beyond the boundaries of the Property pursuant to a recorded reciprocal Easement. The Project will take the parking area off of the neighboring property.

³ The shed and stairway/addition at the rear of the property will also be removed in order to accommodate the Project.

the attached site plan shows, a portion of the rear of the property will be paved to create five parking spaces. Two of those spaces will be close to the brick house and will be designated for the exclusive use of the occupants of the house.

The remaining three spaces will be at the rear of the Property. These spaces will be for the exclusive use of the condos.⁴ As a result, all of the parking on the Property will be for residential uses only.

III. THE CONDITIONAL USE PERMIT AND STANDARDS

The Property is bisected by two zones, the R-6 Residential Zone and the B-1 Neighborhood Business Zone. The overwhelming majority of the Project will occur within that portion of the Property within the R-6 Residential Zone. Only the portion of the Project that will be located under the old stairway/addition will fall within the B-1 Neighborhood Business Zone. This portion is approximately 97 square feet and 8.4 feet wide at its greatest width. Under § 14-51 of the Land Use Ordinance, the less restrictive zone may extend 30 feet into the more restrictive one in certain circumstances, all of which are met here. Ordinance, § 14-51. As a result, the provisions in the R-6 Residential Zone apply to the entirety of the Project.

The Project is a mixture of permitted and conditional uses. The creation of two parking spaces in the rear of the Property to serve the house is an accessory use and therefore is permitted within the R-6 Residential Zone. Ordinance, § 14-136(b)(4).

The Project also proposes a change of use to create a three space off-street parking lot for the condominium at 137 Congress Street. This three-space lot is designed solely for passenger cars. The R-6 Residential Zone defines “[o]ff-street parking for passenger cars for uses permitted in the R-6 zone” as a conditional use. Ordinance § 14-127(c)(5). Condominiums are a permitted use within the R-6 zone. As a result, the three space off-street parking lot proposed as part of the Project requires conditional use approval. By designating off-street parking as a conditional use, the City has made a “legislative determination that such use will not ordinarily be detrimental or injurious to the neighborhood within the zone.” *Cope v. Inhabitants of Town of Brunswick*, 464 A.2d 223, 226-27 (Me. 1983).

Under the Ordinance, the Applicant needs to meet three standards in order to qualify for a conditional use permit:

⁴ The condominium will also be responsible for the maintenance, snow removal, and repair of the entire parking area, including the two spaces reserved for the occupants of the house on the Property.

- a. The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone; and
- b. The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter; and
- c. The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading, deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses or other allowable uses in the zone.

Land Use Ordinance, § 14-474(c)(2). The Project meets each of those standards.

- A. Traffic Generated by the Project will not be “Substantially Greater than Would Normally Occur at Surrounding Uses or other Allowable Uses in the Same Zone”

This standard depends upon a comparison of the effects of the Project with the surrounding uses as well as with the uses that are allowable within the R-6 Residential Zone. The Property is surrounded by a variety of existing uses. Some of those uses are residential and range from single-family houses to multi-family dwellings (both rental and condominium). In addition, there are a number of non-residential uses in close proximity to the Project. For instance, the Portland Observatory is across the street, a municipal fire station is also in close proximity, as are a number of stores and restaurants.

In keeping with the current state of development, the R-6 Residential Zone allows a large variety of uses. All types of residential uses, including single family, two family, and multi-family uses, are allowed within the zone. Ordinance, § 14-136(a). A number of non-residential uses are also allowed, including municipal uses, hostels with up to 10 guests, lodging houses, and bed and breakfasts with up to four rooms. Ordinance, § 14-136(b). Finally, schools, places of assembly, hospitals, professional offices, nursery schools and kindergartens, day care facilities, and hostels with up to 20 guests are all allowed as conditional uses within the R-6 Zone.

Many of the current uses surrounding the Property and the allowed uses within the R-6 Residential Zone create substantially more traffic and parking needs than will be created by the Project. The Project is creating only three parking spaces, all of which will be dedicated to serve residential condominium units. As a result, the actual use of the parking spaces will be fairly limited, particularly in comparison to some of the

surrounding and allowable uses. For instance, stores and restaurants, professional offices, schools and the like can be expected to generate a relatively steady stream of visitors throughout their hours of operation as customers, clients, students etc. come, do their business in a relatively short amount of time, and then leave.

The residential use proposed here will be a much less intensive use, since only a maximum of three cars will have access to the parking on the Project. Because those cars are owned by residents, there will be much less traffic flow into and out of the Property. Finally, much of the off-street parking in the surrounding area is similar to the parking currently on the Property. In those cases, cars pull in to the parking spaces, but then must back out into traffic to exit the off-street parking area. The design of the Project completely eliminates that maneuver. Upon completion, all three parking spaces will have sufficient turn radius on the site to eliminate the current need to back out onto Congress Street.⁵

As a result, the Board should find that the Project meets the traffic standard under the conditional use permit standards.

B. The Project will not Create Unsanitary or Harmful Conditions

The Project proposes the creation of three parking spaces in the rear of the Property. Once construction has been completed, we do not anticipate there will be any dust, emissions to the air, odor, noise, litter, or similar problems that would not already be present with any residential parking situation. Likewise, the traffic flow in the rear of the Property will ensure that headlights are predominantly facing the nine-foot tall wall that runs the length of the rear boundary of the Property. Because all of the parking is for residential uses, there will not be a constant flow of traffic through the site as there would be for the more intensive uses allowed within the zone. Instead, traffic flow to the site will match the more intermittent trips typical of residents arriving and leaving their homes.

As a result, the Project will not create any unsanitary or harmful conditions. The Board should find that this standard has also been met.

C. The Design of the Project will not have a “Substantially Greater Effect/Impact on Surrounding Properties than those Associated with Surrounding Uses or other Allowable Uses in the Zone”

⁵ The same is true of the two parking spaces that will be created for use by the owners of the house. In short, approval of the Project will eliminate the current need for cars to back out onto Congress Street.

As already discussed in subsection A above, there are a wide variety of existing uses in close proximity to the Property in addition to a large number of uses allowed within the R-6 Residential Zone. Many of those uses are much more intense than the relatively small parking lot proposed here. Moreover, the Project is designed to shield much of the parking. There is a large existing wall on the rear boundary of the Property that will shield the entire site from view from the rear. The parking will also be pulled back and away from Congress Street towards the rear of the Property. Thus, the Project represents an improvement over the current parking situation where multiple cars are stacked only a few feet away from Congress Street.

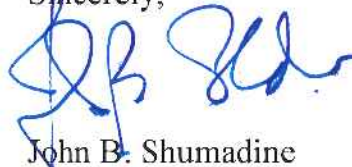
For these reasons, the Project will have little additional impact on the surrounding properties in comparison to its present configuration. The Board should find that the third conditional use standard is met.

IV. CONCLUSION

Because the Project meets all of the requisite standards for a conditional use permit, we respectfully ask that the Board approve the application and issue a conditional use permit for Project.

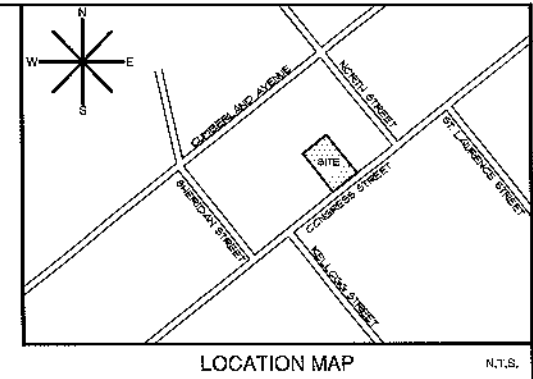
Thank you for your attention. I look forward to hearing from you.

Sincerely,



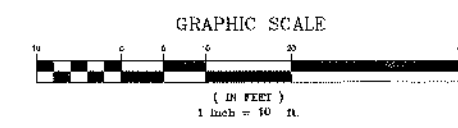
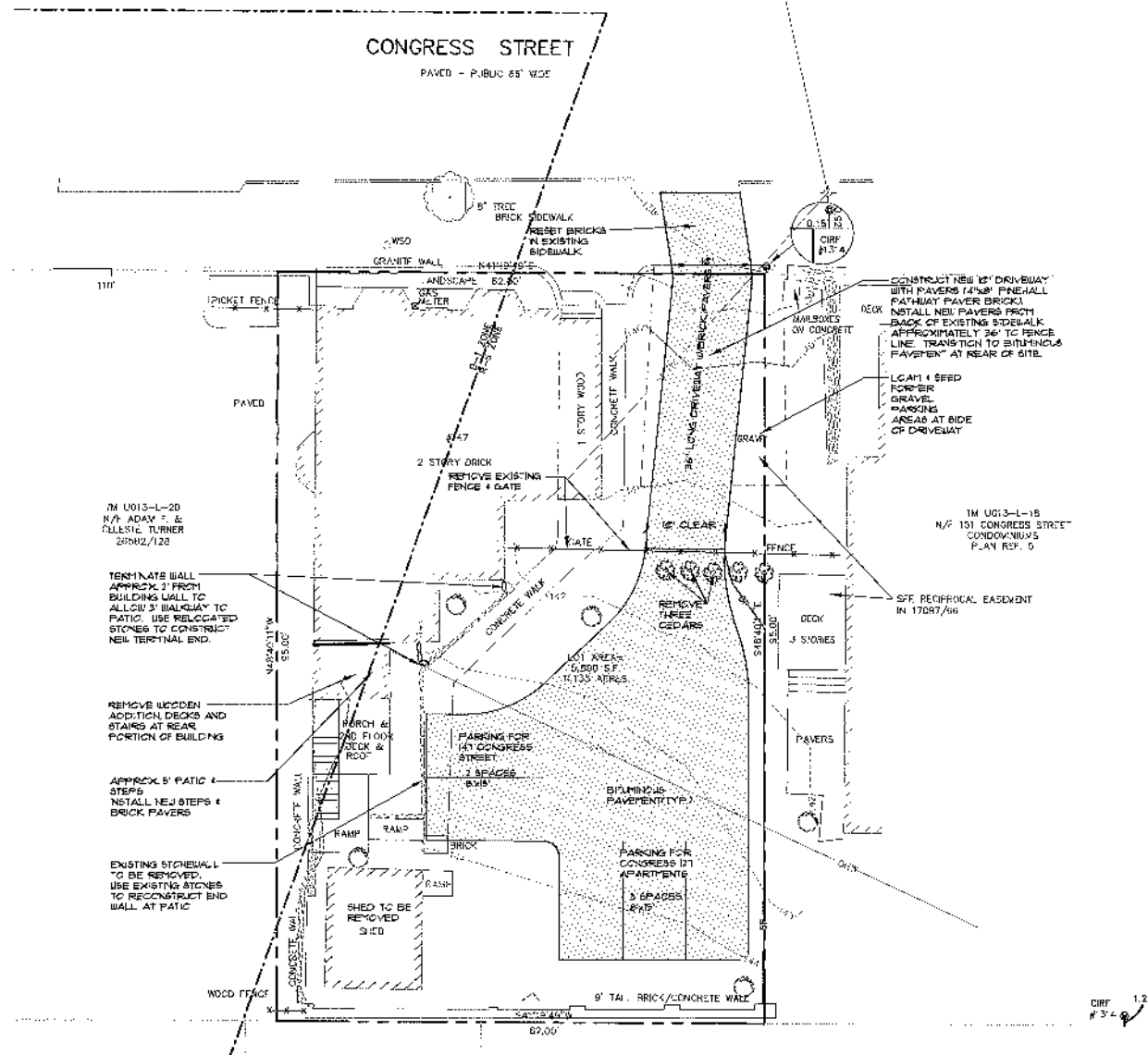
John B. Shumadine

JBS/kpm
Enclosures
cc: Congress 127 Apartments, LLC



GENERAL NOTES

- 1) THE RECORD OWNER OF THE PROPERTY IS CONGRESS 127 APARTMENTS, LLC AS DESCRIBED IN A DEED OF KAREN E. RASHTUSSEN & MANUEL PERA DATED DECEMBER 2, 2014 AND RECORDED AT THE CUMBERLAND COUNTY REGISTRY OF DEEDS IN BOOK 31846 PAGE 152.
- 2) THE PROPERTY IS LOCATED ON THE CITY OF PORTLAND TAX MAP 13, BLOCK L BEING SHOWN AS LOT 13-24.
- 3) THE BEARINGS SHOWN HEREON ARE BASED UPON GRID NORTH, NORTH AMERICAN DATUM OF 1983 (NAD 83) MAINE WEST ZONE.
- CONTOURS AND ELEVATION DATA SHOWN HEREON ARE BASED UPON A FIELD SURVEY COMPLETED BY ST. CLAIR ASSOCIATES DURING NOVEMBER OF 2014. TOPOGRAPHIC DATA IS REFERENCED TO THE NATIONAL GEODETIC VERTICAL DATUM OF 1929 (NGVD 29).
- HORIZONTAL AND VERTICAL CONTROL WAS ESTABLISHED UTILIZING A TOPCON GPS-1 DUAL-FREQUENCY GPS RECEIVER CAPABLE OF CENTIMETER ACCURACY AND WAS TIED TO HORIZONTAL AND VERTICAL CONTROL PROVIDED BY THE CITY OF PORTLAND DEPARTMENT OF PUBLIC WORKS ENGINEERING OFFICE.
- 4) PLAN REFERENCES:
 - a) BOUNDARY SURVEY AT 147 CONGRESS STREET, PORTLAND, MAINE MADE FOR CONGRESS 138 MARKET, LLC, DATED SEPTEMBER 30, 2014 BY CLEN HASKELL, INC.
 - b) THE PROPERTY LINE INFORMATION SHOWN HEREON IS BASED SOLELY UPON PLAN REFERENCE 4A ABOVE AND HAS BEEN ROTATED INTO NAD 83 AS REQUIRED BY THE CITY OF PORTLAND FOR SITE PLAN REVIEW. THE BASIS OF BEARING SHOWN ON PLAN 4A IS MAGNETIC NORTH. ST. CLAIR ASSOCIATES HAS NOT COMPLETED ANY BOUNDARY SURVEY WORK ON THIS SITE.
 - c) CONTRACTOR IS HEREBY ADVISED THAT EXISTING WALLS ALONG THE NORTHERLY AND EASTERLY PROPERTY LINES SHALL REMAIN. THE CONTRACTOR SHALL EXERCISE CAUTION, INCLUDING THE PROPER INSTALLATION OF SHORINGS AND BRACINGS DURING EARTHWORK OPERATIONS TO MINIMIZE POTENTIAL DISTURBANCE TO THESE FEATURES, INCLUDING ANY BELOW GRADE FOOTINGS OR FOUNDATIONS. SHORINGS AND BRACINGS SHALL NOT BE REMOVED UNTIL DISTURBED AREAS ARE COMPACTED, BROUGHT TO FINAL GRADE AND THE WALL AND SURROUNDING SITE AREA ARE STABILIZED.
 - d) DURING CONSTRUCTION THE CONTRACTOR SHALL INCORPORATE TREE PRESERVATION MEASURES AS OUTLINED IN SECTION 4 OF PORTLAND'S TECHNICAL DESIGN STANDARDS TO AVOID UNDUE DISTURBANCE OF THE EXISTING MATURE TREES ON THE SITE.
- 5) THE PROPERTY DOES NOT FALL WITHIN A SPECIAL FLOOD HAZARD AREA SHOWN ON THE FLOOD INSURANCE RATE MAP (FIRM) FOR CITY OF PORTLAND COMMUNITY PANEL NUMBER 230251 2014 B HAVING AN EFFECTIVE DATE OF JULY 11, 1996.
- 6) THE LOCATION OF THE ZONE LINE SHOWN HEREON IS BASED UPON INFORMATION IN THE CITY OF PORTLAND GIS ONLINE DATABASE.



LEGEND

EXISTING	DESCRIPTION	PROPOSED
---	BOUNDARY LINE/R.O.W.	---
---	ADJUTER LINE/R.O.W.	---
□	MONUMENT	□
○	IRON PIPE/ROD	○
▭	BUILDING	▭
▬	EDGE PAVEMENT	▬
▬	PAVEMENT PAINT	▬
▬	EDGE OF GRAVEL	▬
122	122	122
30.20	30.20	30.20
○	OVERHEAD ELEC. & TEL.	+
○	UTILITY POLE	+
▬	SILT FENCE	▬
▬	WOOD FENCE	▬
▬	WOOD GATE	▬
---	ZONE LINE	---

ST. CLAIR ASSOCIATES
 LAND SURVEYING AND CIVIL ENGINEERING
 34 Forest Lane
 Portland, Maine
 Tel: (207) 322-8500
 PROJECT NO.: FIELD BOOK DESIGN CHKD DRAWN
 1-1030 OHI NUS NUS DCS

SKETCH PLAN - 14-REVISED
 OF:
 147 CONGRESS STREET
 PORTLAND, MAINE
 FOR:
 CONGRESS 127 APARTMENTS, LLC
 P.O. BOX 596
 CAPE ELIZABETH, ME 04107

DATE	SCALE
11-11-14	1"=10'

SHEET 1 OF 1

140305K-14



TAX MAP 13

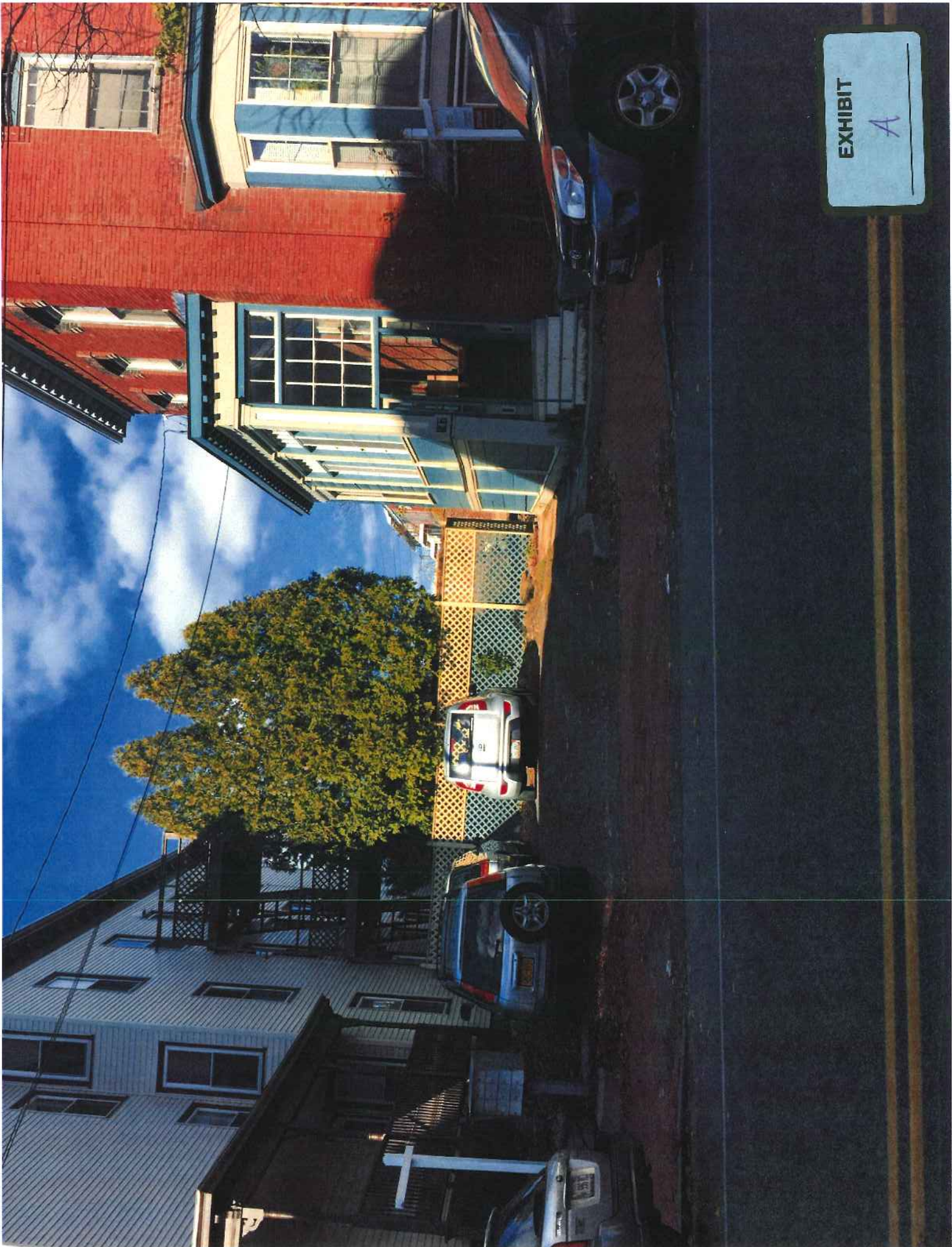


EXHIBIT
A



EXHIBIT
B



EXHIBIT
C



EXHIBIT
D



EXHIBIT
E

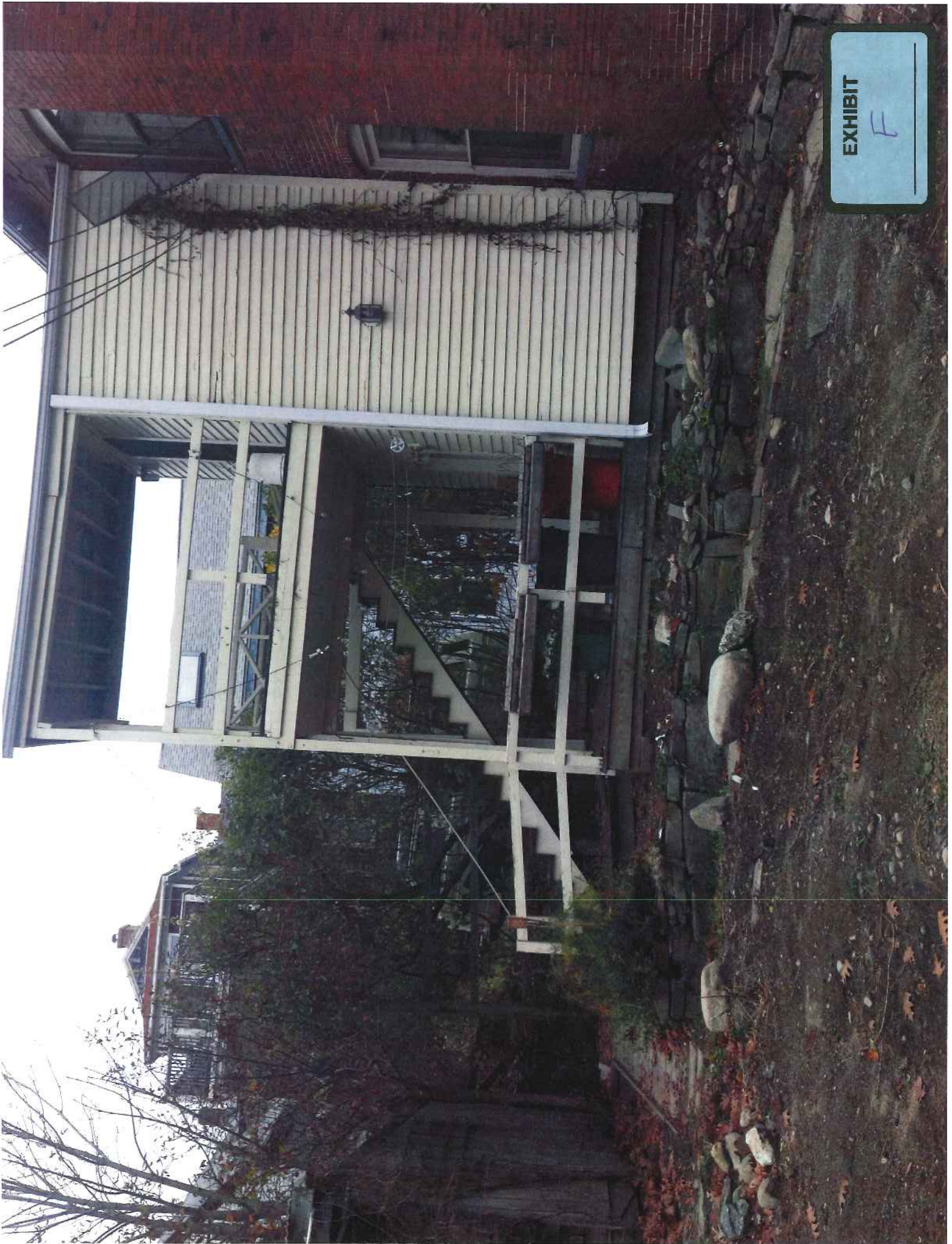



EXHIBIT
F

QUITCLAIM DEED WITH COVENANTS


KNOW ALL PERSONS BY THESE PRESENTS, that **KAREN E. RASMUSSEN and MANUEL PENA**, Joint Tenants, of Portland, County of Cumberland, State of Maine, for consideration paid, grant to **CONGRESS 127 APARTMENTS, LLC**, a Maine limited liability company, with a mailing address of Post Office Box 6285, Cape Elizabeth, ME 04107 with **QUITCLAIM COVENANTS** that certain real property located in **Portland, Maine** more particularly described in Schedule A annexed hereto and incorporated by reference herein.

WITNESS my hand and seal this 24th day of November, 2014.

MAINE REAL ESTATE TAX PAID



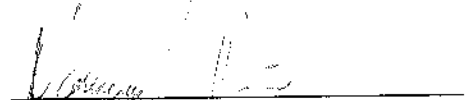
WITNESS



WITNESS



Karen E. Rasmussen

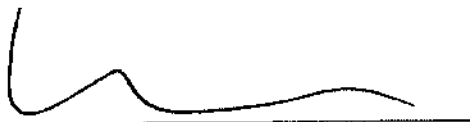


Manuel Pena

STATE OF MAINE
County of Cumberland, SS

November 24, 2014

Personally appeared before me the above-named Karen E. Rasmussen and Manuel Pena and acknowledged the foregoing to be their free act and deed.



Notary Public/Attorney at Law
Printed Name: **ELIZABETH TRAPPE**
My commission expires: **11/11**

Schedule A
145-147 Congress Street, Portland, Maine

A certain lot or parcel of land with the buildings thereon situated on the Northerly side of Congress Street, City of Portland, Cumberland County, Maine, bounded and described as follows: Beginning on said Northerly side of Congress Street at a point one hundred ten (110') feet West from the intersection of said Northerly side of Congress Street with the Westerly side of North Street, and running Westerly by Congress Street sixty-two (62') feet to land now or formerly of Steven D. Waltman, and from these points extending back Northerly a distance of ninety-five (95') feet holding the width of sixty-two (62') feet. Also conveying a parcel two (2') by ten (10') feet on the Northeasterly side of the above described premises as was conveyed to Georgie M. Farnsworth by John F. Hamilton by deed dated July 17, 1903, and recorded in the Cumberland County Registry of Deeds in Book 727, Page 87, to which deed reference may be had for a further description.

Also conveyed herein a Reciprocal Easement by and between Steven D. Mairs and Karen Rasmussen, dated July 17, 2001, and recorded in Book 16540, Page 313 and corrective Reciprocal Easement, dated December 18, 2001, recorded in Book 17097, Page 66.

Being the same premises as conveyed to Karen E. Rasmussen and Manuel Pena as joint tenants by Quitclaim Deed dated June 4, 2009 from Karen Rasmussen and recorded in the Cumberland County Registry of Deeds in Book 27015, Page 137.

Received
Recorded Register of Deeds
Dec 02, 2014 10:53:20A
Cumberland County
Pamela E. Lovley