

SebagoTechnics
Engineering & Planning for the Future

July 17, 1996
96360

Portland Board of Appeals
389 Congress Street
Portland, Maine 04101

**Request for Building Setback Variance, Map 34, Block H, Lots 1 and 2
Hanover, Kennebec and Alder Street, Ross Furman**

Dear Members of the Board:

On behalf of Ross Furman, we are pleased to submit ten (10) copies of the enclosed application, plans and associated documentation for a variance request from the minimum building setback requirements within the I-2 Zone as specified within the City of Portland Land Use Ordinance, Section 14-248. The subject parcel is located between the intersections of Hanover and Alder Street with Kennebec Street and abuts the existing Skillful Vending building on Alder Street. The applicant purchased this property with the sole intention of allowing for the eventual expansion of his business. To accomplish the required business expansion on this lot, while also providing on-site parking in accordance with ordinance requirements, necessitates the request for a variance from the building setbacks from the abutting City of Portland property from 25 feet to 5 feet, along Hanover Street from 25 feet to 10 feet, and along Kennebec Street from 25 feet to 18 feet.

The variance request will not have any negative impact on the surrounding neighborhood. The majority of the existing buildings on Hanover Street are constructed right to the backs of the sidewalks that abut the street. We have discussed the proposal with the one impacted abutter, the City of Portland Public Works Department, and have received their support for our variance request.

We look forward to meeting with the Board of Appeals at their next regularly scheduled meeting to discuss our proposal in more detail. In the interim, if you have any questions or require additional information, please call. Thank you for your consideration.

Sincerely,

SEBAGO TECHNICS, INC.

Shawn M. Frank, P.E.
Project Manager

SMF:dlf

cc: Ross Furman

CITY OF PORTLAND, MAINE

BOARD OF APPEALS



VARIANCE APPEAL APPLICATION

Applicant's name and address: Ross Y. Furman

P O Box 2 DTS Portland ME 04112

Applicant's interest in property (e.g. owner, purchaser, etc.): _____

Owner

Owner's name and address (if different): same as above

Address of property and Assessor's chart, block, and lot number: _____

81-84 Hanover Str & 76-80 Alder Str Map No. 34 Block H Lots 1 & 2

Zone: I-2

Present Use: Gravel Parking area

Variance from: Section 14- 248

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

The undersigned hereby makes application for a variance as above described, and certifies that all information herein supplied by him/her is true and correct to the best of his/her knowledge and belief.

Dated: 7/17/96

Ross Y. Furman
Signature of applicant

Except as specifically provided by the Ordinance, a variance may be granted by the Board only where strict application of the Ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. In order for the Board to find "undue hardship", the applicant must answer all of the following questions, and provide supporting evidence. The Board will consider this evidence in deciding whether to grant the appeal.

1. Can the land yield a reasonable return (not the highest return) without the granting of a variance?

Yes _____ (deny the appeal)

No X

Reasons please see attached letter

2. Are there factors which are unique to this property, and not to the general conditions of the neighborhood, which create a need for a variance?

Yes X

No _____ (deny the appeal)

Reasons Please see attached letter

3. Will the granting of the variance alter the essential character of the locality?

Yes _____ (deny the appeal)

No X

Reasons please see attached letter

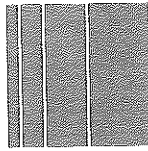
4. Is the hardship a result of action taken by the applicant or a prior owner (self-created hardship)?

Yes _____ (deny the appeal)

No X

Reasons Please see attached letter

It is up to the applicant to decide whether to file an appeal after reviewing the above requirements.



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389 Congress Street
Portland, Maine 04101

Request for Setback Variance, Tax Map No. 34, Block H, Lots 1 and 2, Ross Furman

Dear Members of the Board:

The following information is provided to complete the variance appeal application:

1. Can the land yield a reasonable return without the granting of a variance?

No. The applicant purchased this property for the sole purpose of allowing for the continued expansion of his business, Skillful Vending, which is located on Alder Street. The existing business needs to expand, and the applicant wishes to maintain the business at its present location. Due to the requirement for off-street parking associated with the building expansion to be located on-site, setback variances are required to allow for both the building expansion and the necessary parking.

2. Are there factors which are unique to this property, and not to the general conditions of the neighborhood which creates a need for a variance?

Yes. The property is surrounded on three sides by City streets, limiting the buildable area of the property. Additionally, if the area within the required setbacks is used for the building, no areas for on-site parking are available. As such, to allow for both the expansion of an existing business onto this property and the required on-site parking area, the applicant requires variances from the minimum setbacks.

3. Will the granting of the variance alter the essential character of the locality?

No. The character of the existing neighborhood is predominated by buildings constructed to the backs of the sidewalks which abut the City streets without esplanades. Minimal to no building setbacks from the property lines have been maintained in the past for this particular neighborhood. Additionally, we have

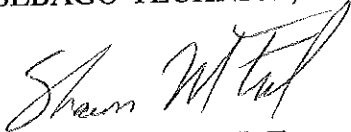
discussed the variance request with the one affected abutter, the City of Portland Public Works Department, and have received their support of our proposal.

4. Is the hardship a result of actions taken by the applicant or a prior owner?

No. As previously stated, during the original development of this neighborhood, no setbacks were required. Today, ordinances require both building setbacks and on-site parking. Due to the geometry of the property parcel relating to the original development, it can be difficult for current property owners to satisfy both ordinance requirements. As such, the applicant seeks relief in setback requirements which is in keeping with the existing neighborhood development, while providing the required on-site parking.

Sincerely,

SEBAGO TECHNICS, INC.



Shawn M. Frank, P.E.
Project Manager

SMF:dlf

46097

RELEASE DEED

MAINE REAL ESTATE TAX PND

PORTLAND TERMINAL COMPANY, a corporation duly organized and existing under the laws of the State of Maine, with offices at Iron Horse Park, North Billerica, Middlesex County, Massachusetts (the "Grantor") in consideration of FIFTY-SIX THOUSAND THREE HUNDRED EIGHTY-EIGHT XXXXXXXXXXXXXXXXXXXXXXXXXXXX DOLLARS (\$ 56,388.00 -----) Dollars paid to it by ROSS Y. FURMAN, ----- Inc. ----- with a mailing address of 58-88 Alder Street, Portland, Maine 04101 ----- (the "Grantee") hereby grants to the Grantee all the Grantor's right, title and interest, without any warranties or covenants of title whatsoever, in a certain parcel of land, and the buildings, bridges, structures, crossings, fixtures and improvements thereon, if any, situated in the City Portland, Cumberland County, State of Maine ----- (the "Premises") described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF BY THIS REFERENCE.

This conveyance is subject to the following reservations, conditions, covenants and agreements:

1. This conveyance is made without granting any right of way, either by necessity or otherwise, over any remaining land or location of the Grantor.
2. ~~The Grantor hereby reserves a permanent, exclusive right of way and easement in, on, over, under, across and through the Premises for the purpose of accessing, constructing, installing, operating, maintaining, modifying, repairing, replacing, relocating and removing a telecommunications system or other system for transmission of intelligence or information by any means, whether now existing or hereafter revised, including such poles, pipes, wires, fibers, fiber optic cables, repeater stations, attachments, appurtenances, structures or other equipment and property of any description necessary or useful for the same (the "Telecommunications Easement"). The Grantor further reserves the right to freely lease, license, mortgage, assign, pledge and otherwise alienate the Telecommunications Easement. The Grantee hereby covenants with the Grantor to recognize the Telecommunications Easement and, without the payment of further consideration, to execute, acknowledge and~~

~~deliver such instruments suitable for recording with the registry of deeds as the Grantor may reasonably require to acknowledge title to the Telecommunications Easement in the Grantor. The Grantor covenants to reasonably repair and restore the surface of the easement area after any work.~~

3. The Grantor excepts from this conveyance any and all railroad tracks, railroad track materials (including, but not limited to, ties, connections, switches and ballast) and/or related equipment of any description located in whole or in part within the Premises (the "Trackage") and this conveyance is subject to the right of the Grantor to enter the Premises from time to time and at any and all times within the ninety (90) day period commencing with and subsequent to the date of delivery of this deed, with such men, equipment and materials as, in the reasonable opinion of the Principal Engineering Officer of the Grantor, are necessary for the removal of the Trackage. Days during the months of December, January, February and March shall not be included in the aforesaid ninety (90) day period. If the Trackage is not removed from the Premises by the expiration of said ninety (90) day period, the Trackage shall be deemed abandoned by the Grantor and shall then become the property of the Grantee.
4. ~~The Grantor excepts from this conveyance any and all advertising signs and/or billboards located upon the Premises which are not owned by the Grantor. Furthermore, this conveyance is subject to the right of the owners of said signs and/or billboards to go upon the Premises and remove them within ninety (90) days from the date of delivery of this deed.~~
5. By the acceptance of this deed and as part consideration therefor, the Grantee hereby assumes any and all agreements, covenants, obligations and liabilities of the Grantor in respect to any underground facilities, drainage culverts, walls, crossings and/or other structures of any nature and description located in whole or in part within the Premises.
6. By the acceptance of this deed and as part consideration therefor, the Grantee agrees to irrevocably waive, give up and renounce any and all claims or causes of action against the Grantor in respect of claims, suits and/or enforcement actions (including any administrative or

judicial proceedings and any remedial, removal or or substances of any description on, upon or into the response actions) ever asserted, threatened, instituted or requested by any person and/or governmental agency on account of: (a) any release of oil or hazardous materials Premises in contravention of any ordinance, law or statute (including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, et seq., as amended); and (b) any and all damage to real or personal property, natural resources and/or harm or injury to persons alleged to have resulted from such release of oil or hazardous materials or substances.

7. ~~By the acceptance of this deed and as part consideration therefor, the Grantee hereby agrees to build and forever maintain fences (together with any necessary gates), suitable to the Principal Engineering Officer of the Grantor, along the boundaries of the Premises which are common to remaining land or location of the Grantor (the "Fences"), if Fences are ever required in the sole and reasonable opinion of said Principal Engineering Officer. If the Grantee fails to install, maintain, repair or replace the Fences within sixty (60) days after having been requested or ordered to do so by the said Principal Engineering Officer of the Grantor, then the Grantor shall have the right to so install, maintain, repair or replace the Fences. The Grantee further covenants and agrees that, upon the rendering of a bill for the expense of such installation, maintenance, repair or replacement of the Fences, the Grantee shall pay said bill in full within thirty (30) days from the date of receiving it. The Grantee further covenants and agrees that if said bill is not paid within thirty (30) days, it shall become subject to a finance charge computed at a periodic rate of 1.5% per month applied to the previous balance after deducting any current payment. If said finance charge is not lawful, then the finance charge shall then be the highest lawful amount which does not exceed said 1.5% per month charge. If the Grantee, for any reason whatsoever, fails to pay said bill (and finance charges, if applicable) the Grantee shall pay all Grantor's costs of collection, including reasonable attorneys' fees and expenses.~~

8. This conveyance is subject to the following restriction for the benefit of other land or location of the Grantor, to wit: that from the date of delivery of this deed, the

Grantor shall not be liable to the Grantee or any lessee or user of the Premises (or any part thereof) for any damage to any buildings or property upon them caused by fire, whether communicated directly or indirectly by or from locomotive engines of any description upon the railroad operated by the Grantor, or otherwise.

9. ~~By the acceptance of this deed and as part consideration therefor, the Grantee hereby agrees to make no use of the Premises which, in the sole and reasonable opinion of the Principal Engineering Officer of the Grantor, adversely affects, increases or decreases drainage to, from, upon or in any remaining land or location of the Grantor. The Grantee agrees to indemnify and save the Grantor harmless from and against any and all loss, cost, damage or expense including, but not limited to, the cost of defending all claims and/or suits for property damage, personal injury or death arising out of or in any way attributable to any breach of the foregoing covenants.~~
10. ~~The Grantor excepts from this conveyance any and all overhead, surface or underground signal and communication line facilities of the Grantor located within the limits of the Premises and this conveyance is subject to the Grantor's use of any such facilities in their present locations and entry upon the Premises from time to time to maintain, repair, replace, renew, relay or remove such facilities.~~
11. Whenever used in this deed, the term "Grantor" shall not only refer to the PORTLAND TERMINAL COMPANY, but also its successors, assigns and affiliates and the term "Grantee" shall not only refer to the above-named Grantee, but also the Grantee's successors, assigns and grantees, as the case may be.
12. The Grantee hereby further covenants and agrees that no building or structure of any type shall be erected at a distance of closer than twenty (20) feet from centerline of track of the Grantor's trackage located in Kennebec Street the northwesterly corner of the Premises.
13. The several exceptions, reservations, conditions, covenants and agreements contained in this deed shall be deemed to run with the land and be binding upon the Grantee forever. In addition to the acceptance and recording of this deed, the Grantee hereby signifies assent to the said several exceptions, reservations, conditions, covenants and agreements, by joining in its execution.

BK11555PG318

IN WITNESS WHEREOF, the said PORTLAND TERMINAL COMPANY has caused this release deed to be executed in its name and its corporate seal to be hereto affixed by David A. Fink, its President, thereunto duly authorized this 28th day of July, 1994.

GRANTOR:
PORTLAND TERMINAL COMPANY

Philip Tremblay-Jean
Witness

By: David A. Fink
David A. Fink, President

GRANTEE:

[Signature]
Witness

By: Ross Y. Furman
Ross Y. Furman

BK11555PG319

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

July 28, 1994

Then personally appeared the above-named David A. Fink, the President of the PORTLAND TERMINAL COMPANY and acknowledged the foregoing release deed to be his free act and deed and the free act and deed of said PORTLAND TERMINAL COMPANY, before me.


Notary Public
My Commission Expires: 7/6/01


SEAL

STATE OF MAINE

Cumberland, ss.

July 29, 1994

Then personally appeared Ross Y. Furman----- the
----- of -----
----- and acknowledged the foregoing release
deed to be his/his/free act and deed and the free act and deed of
-----, before me.


Notary Public:
My Commission Expires:

SEAL

CHARLES R. OESTREICHER
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES: 9/13/96