



Jeff Levine, AICP, Director
Planning & Urban Development Department

Ann Machado
Zoning Administrator

CITY OF PORTLAND ZONING BOARD OF APPEALS Practical Difficulty Variance Application

Applicant Information:

NAME
Patrick DeLong

BUSINESS NAME
N/A

BUSINESS ADDRESS
85 Gray Street

BUSINESS TELEPHONE & EMAIL
749-4098

APPLICANT'S RIGHT/TITLE/INTEREST
Owner

CURRENT ZONING DESIGNATION
R-6

Subject Property Information:

PROPERTY ADDRESS
85 Gray Street, Portland

CHART/BLOCK/LOT (CBL)
059-D-34

PROPERTY OWNER (If Different)

ADDRESS (If Different)

PHONE # AND E-MAIL

PRACTICAL DIFFICULTY VARIANCE FROM
SECTION 14-139(c)

EXISTING USE OF THE PROPERTY:
~~Two Family - Dimensional Variance (rear setback 10' to 4') (§14-139) to permit replacement of existing deck to provide 2nd and 3rd floor legal egress. See 2010 submission.~~

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.

Nurita Ponce *gent for Patrick DeLong* *10/21/15*

SIGNATURE OF APPLICANT DATE

LAW OFFICES OF DAVID A. LOURIE
189 Spurwink Avenue
Cape Elizabeth ME 04107
and
97 India Street, Portland ME 04101
(207) 799-4922 * fax 221-1688
david@lourielaw.com

October 21, 2015

City of Portland Board of Appeals
389 Congress Street
Portland, Maine 04101
c/o Ann Machado, Zoning Administrator

RECEIVED

OCT 21 2015

Re: Dimensional Variance - 85 Gray Street

Dept. of Building Inspections
City of Portland Maine

Dear Chair and Members of the Board:

I represent Patrick DeLong, who purchased abutting property at 85 Gray Street several years ago with the understanding that the property extended in the rear to the fence surrounding Dermott Court's common area. However, when he requested a permit to replace the deteriorated rear porch, he found that there was no record of existing porch being lawfully constructed, and he would need a variance to replace it. When he applied for the variance, he learned that he was not "the record owner" of the fenced area.

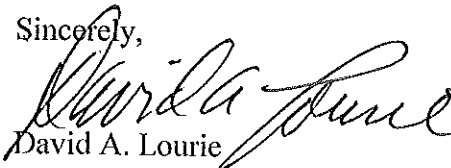
Mr. DeLong's application for a variance to replace the deck (which also serves as a 2nd means of egress from the 2nd and 3rd floors) was put on hold by the City while he proceeded to clear up the title issue, and get a new survey of the entire parcel of the entire lot because the City had enacted a new limit on lot coverage in the zoning district. (A new Application form, copy of the new deed, and survey plan are submitted herewith.

The dimensional variance is justified here, as the illegal deck needs to be replaced. It is a fire escape. In the absence of a variance it will have to be removed. Its removal will render the 2nd and 3rd floors of 85 Gray Street unuseable. Many other properties in the vicinity are of similar construction, and are used similarly.

During the pendency of the appeal the City revised its zoning ordinance reducing the sideline required, so that there is now no need for the sideline variance. During that same time, the City imposed a new lot coverage maximum. As a result of the survey, variance from the 60% lot coverage requirement is not necessary, but a reduction to a 4' rear setback is necessary. The attached submission reflects these conclusions.

Please advise if you have any questions concerning the above.

Sincerely,


David A. Lourie

Plan References:

1. Plan of the "Brickett Tower", City of Portland, ME, dated 10/24/12, in CD20 Book 15, Page 283.
2. Plan of Gray Street Expressions, dated June 5, 2008, in Atlas A, Goodwin, C.C.S., City of Portland file 3617.
3. City of Portland Engineering Street Notes, Gray Street, City of Portland, Vol. 2, No. 184.
4. City of Portland Engineering Street Notes, Brickett Street, City of Portland, Vol. 2, No. 20.
5. City of Portland Engineering Street Notes, Spruce Street, City of Portland, Vol. 2, No. 19.
6. Plan of Gray & Brickett Streets, in Portland, Maine, dated August 1974, by Owen Gibson, Inc., City of Portland file 6415.
7. Plan of Property in Portland, Maine Made for Portland Renewal Authority Application Development Project, SEE A-2, Comprehension Area 17, dated July 17, 1972, in CD20 Plan Book 62, Page 25.
8. Plan of Spring Street & Clark Street, resubdivided October 21, 1986 in CD20 Plan Book 1, Page 30.
9. Plan of Property in Portland, Maine Made for Demot Court Housing Opportunities, Inc., dated March 22, 1972, by L.L.C. & William S. Johnson, dated July 17, 1972, in CD20 Plan Book 62, Page 25.
10. Plan of Spring Street & Clark Street, resubdivided October 21, 1986 in CD20 Plan Book 1, Page 30.

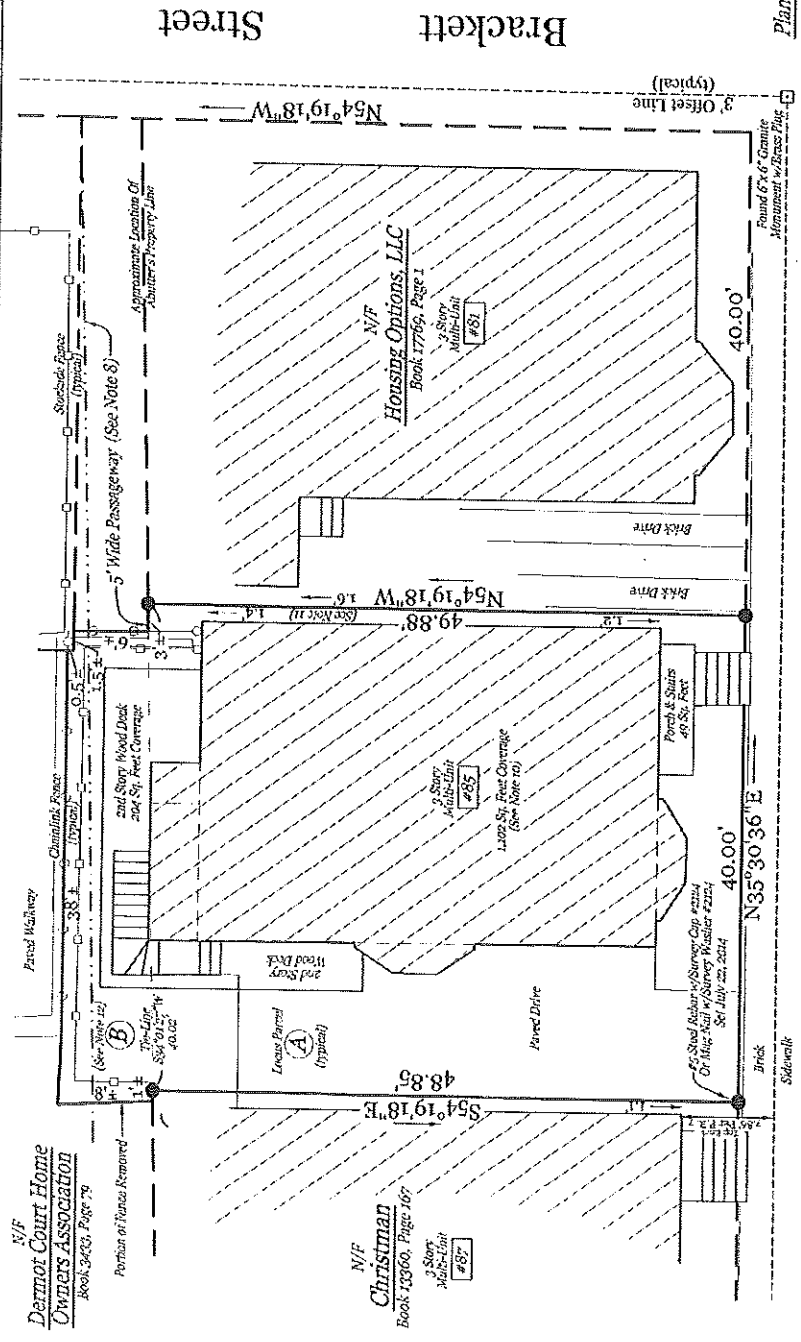
11. City of Portland Engineering Street Notes, Clark Street, City of Portland, Vol. 1, No. 19.
12. Plan of Gray & Brickett Streets, in Portland, Maine, dated August 1974, by Owen Gibson, Inc., City of Portland file 6415.
13. Plan of Property in Portland, Maine Made for Portland Renewal Authority Application Development Project, SEE A-2, Comprehension Area 17, dated July 17, 1972, in CD20 Plan Book 62, Page 25.
14. Plan of Spring Street & Clark Street, resubdivided October 21, 1986 in CD20 Plan Book 1, Page 30.
15. Plan of Property in Portland, Maine Made for Demot Court Housing Opportunities, Inc., dated March 22, 1972, by L.L.C. & William S. Johnson, dated July 17, 1972, in CD20 Plan Book 62, Page 25.
16. Plan of Spring Street & Clark Street, resubdivided October 21, 1986 in CD20 Plan Book 1, Page 30.

This plan is intended to supersede a previously prepared plan entitled "Plan Depicting The Results Of A Boundary Survey For 85 Gray Street, Portland, Maine", dated July 30, 2012 by Nadeau Land Surveys, Portland, Maine.

N/F
Demot Court Home
Owners Association
 Book 3469, Page 79

N/F
Christman
 Book 13360, Page 167

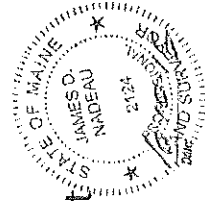
N/F
Housing Options, LLC
 Book 17709, Page 1



Graphic Scale: 1"=10'

Gray

Street
 (See Note 7)



Surveyor's Statement:
 Nadeau Land Surveys hereby certifies exclusively to the client listed herein that this plan is based on, and for, records of, as on the information, and is a true and correct representation of the same. This plan is not valid without the signature and stamp of the surveyor. Nadeau Land Surveys, while preparing this plan, as it may contain uncorrected information, disclaims any liability.

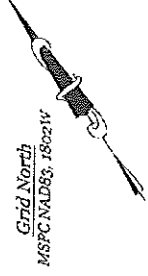
Nadeau Land Surveys
 Patrick DeLong
 918 Brighton Avenue
 Portland, Maine 04102
 PH: (207) 878-7870 FAX: (207) 878-7871

Locust Deed References:

1. **Locust N. Parker**
 Patrick DeLong
 dated August 20, 2010 and recorded September 2, 2011 at the Cumberland County Register of Deeds in Book 28612, Page 221.
2. **Demot Court Homeowners Association**
 Patrick DeLong
 dated May 17, 2012 and recorded June 5, 2012 at the Cumberland County Register of Deeds in Book 3469, Page 201.

General Notes:

1. This plan is not intended to depict, limit or extend of fee title ownership. An opinion of title should be rendered by a title attorney.
2. This owner reserves the right to be held harmless by all party claims.
3. Reference is made to "Conditions For Land Surveying Services" between Nadeau Land Surveys and the above listed clients, which shall be considered an integral part of this survey.
4. This office does not accept any liability for errors in Plan References listed herein.
5. Locust Parcel is shown on the City of Portland Assessors Map 57, Book D as Lot 31.
6. All building corner offsets to boundary lines are from corner marks and not building foundations, unless noted.
7. Gray Street was accepted as 3 feet (0.9148) August 5, 1954 per City records.
8. Reference is made to a right in common with others to the association, in favor of the Locust Parcel. Reference is made to CD20 Book 275, Page 41, dated February 5, 1991 for further description of passageway. It appears in CD20 Book 275, Page 41 that the association is a "Right in Common" and not a "Right in Severalty". This office recommends consultation with a title attorney regarding said passageway.
9. Area of Locust Parcel is 2,203 square feet, more or less.
10. Present the survey is being handled from north, south, and west.
11. Locust Parcel is 1,100 feet (335.30) by 200 feet (61.04) in area.
12. See above noted Locust Deed Reference CD20 Book 28612, Page 221 for applicable parties rights.
13. This plan was revised to add Locust Parcel site improvements and complaint of coverage as requested by the client. This office has only performed a boundary survey on Parcel A.



Plan Depicting The Results Of A Partial Boundary Survey

Made For
Patrick DeLong
 85 Gray Street, Portland, Maine
 July 30, 2012 Revised: Oct. 10, 2015 JMNW120318R
Nadeau Land Surveys
 Professional Land Surveyors
 Portland, Maine 04102
 PH: (207) 878-7870 FAX: (207) 878-7871

QUITCLAIM DEED
(Release Deed)

Maine Statutory Short Form

KNOW ALL BY THESE PRESENTS that **Dermot Court Homeowners Association** of PORTLAND, State of Maine for consideration paid, releases to **Patrick DeLong**, of Portland, Maine, whose mailing address is 85 Gray Street, Portland ME 04102 the land in Portland, Cumberland County, State of Maine being bounded and described as follows:

A certain lot or parcel of land, with the structures thereon, situated northwesterly of, but not adjacent to, the northwesterly sideline of Gray Street and the southwesterly sideline of Brackett Street, in the City of Portland, County of Cumberland, and State of Maine, being more particularly bounded and described as follows:

Commencing at a #5 steel rebar with survey cap #2124 or drill hole, to be set, at the northerly corner of land described in a deed to the grantee herein, Patrick DeLong, recorded at the Cumberland County Registry of Deeds (the Cumberland County Registry of Deeds) in Book 28045, Page 221, marking the westerly corner of land described in a deed to Housing Options, LLC, recorded in Cumberland County Registry of Deeds Book 17769, Page 1, located on the southeasterly sideline of land described in a deed to the grantor herein, Dermot Court Home Owners Association, recorded in Cumberland County Registry of Deeds Book 3433, Page 79, depicted as "Common Land" on a plan entitled "*Plan Of Property In Portland, Maine Made For Dermot Court Housing Opportunities, Inc.*", dated March 27, 1972, by H.I. & E.C. Jordan-Surveyors, recorded in Cumberland County Registry of Deeds Plan Book 91, Page 23; Thence, southwesterly along said land of the grantee herein, a distance of three (3') feet, more or less, to the **Point of Beginning** marking the easterly corner of the herein described parcel at the intersection of an existing chain-link fence with the northwesterly sideline of said land of the grantee herein;

MAINE REAL ESTATE TAX PAID

Thence, continuing southwesterly along said land of the grantee herein, a distance of thirty-seven (37') feet, more or less, to a #5 steel rebar with survey cap #2124 or drill hole, to be set, marking the westerly corner of said land of the grantee herein and the northerly corner of land described in a deed to Fredrick Christman, recorded in Cumberland County Registry of Deeds Book 13360, Page 167;

Thence, continuing southwesterly along said land of Christman, a distance of one (1') foot, more or less, to a point marking the southerly corner of the herein described parcel at the intersection of an existing chain-link fence with the northwesterly sideline of said land of Christman;

Thence, northwesterly through land of the grantor herein and following said chain-link fence, a distance of eight (8') feet, more or less, to a point marking the westerly corner of the herein described parcel;

Thence, northeasterly continuing through land of the grantor herein and following said chain-link fence, a distance of thirty-eight (38') feet, more or less, to a point marking the intersection of said chain-link fence with the southwesterly sideline of Unit 9 as depicted on said plan;

Thence, southeasterly and northeasterly along said Unit 9 as depicted on said plan, a total distance of two (2') feet, more or less, to a point marking the northerly corner of the herein described parcel at the intersection of said chain-link fence with the southeasterly sideline of said Unit 9;

Thence, southeasterly through land of the grantor herein and following said chain-link fence, a distance of six (6') feet, more or less, to the point of beginning.

Total area of the herein described parcel equals 277 square feet, more or less. The directions in this description are Grid North per Maine State Plane Coordinates, NAD 83, and Maine West Zone 1802.

Said premises are conveyed subject to any rights in common with others to the passageway along the southeasterly sideline of said premises described above.

Reference to said passageway is described in a deed to the grantee herein, recorded in Cumberland County Registry of Deeds Book 28045, Page 221. Grantor reserves the right to maintain, repair, replace, or improve the said passageway.

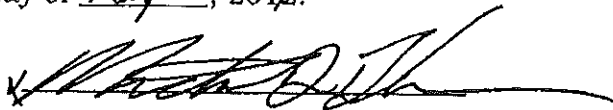
Meaning and intending to describe a portion of the premises described in a deed from Housing Opportunities, Inc. to Dermot Court Home Owners Association, dated July 19, 1973 and recorded in the Cumberland County Registry of Deeds Book 3433, Page 79, and being a portion of the premises depicted as "Common Land" on a plan entitled "*Plan Of Property In Portland, Maine Made For Dermot Court Housing Opportunities, Inc.*", dated March 27, 1972, by H.I. & E.C. Jordan-Surveyors, recorded in the Cumberland County Registry of Deeds Plan Book 91, Page 23;

Further reference is made to a plan entitled "*Plan Depicting The Results Of A Boundary Survey Made For Patrick DeLong 85 Gray Street, Portland, Maine*", dated July 30, 2012, by Nadeau Land Surveys, Portland, Maine.

The purpose of this deed is to convey a fenced area owned by Dermot Court Home Owners Association currently occupied by the grantee herein in order to satisfy legal issues as to the lawfulness of existing structures of Grantee under the Zoning Ordinance of the City of Portland .

WITNESS and sealed this 17 day of May, 201~~2~~³.



Witness


Dermot Court Homeowners Association
By Michael D. Tucker
Its President
Being Duly Authorized

State of Maine
Cumberland, ss.

Personally appeared the above named Michael D. Bunker,
President of Dermot Court Homeowners Association, and acknowledged the
foregoing instrument to be his/her free act and deed in said capacity.

Before me,



Notary Public

Printed Name:

**PATRICK D. THORNTON
MAINE ATTORNEY AT LAW**

Received
Recorded Register of Deeds
Jun 05, 2013 02:37:50P
Cumberland County
Pamela E. Lovley

(a) In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the R-6 and R-6A zones shall meet or exceed the following minimum requirements:

R-6 Dimensional Requirements	
Minimum Lot Size	Residential Uses: 2,000 sf, except that in R-6A the min. residential lot size is four (4) acres.
	Long-term and extended care facilities: Ten thousand (10,000) square feet for the first nine (9) residents plus seven hundred fifty (750) square feet for each additional resident, up to a total of two (2) acres.
	Intermediate care facility: One (1) acre.
	School: Thirty thousand (30,000) square feet.
	Places of assembly: Large, 15,000 sf; Medium, 10,000 sf; Small, 5,000 sf.
	Hospital: Two (2) acres
	All other uses: 2,000 sf
Min. Lot Area/Dwelling Unit	725 s.f.
Minimum Lot Area/Lodging House Rooming Unit	250 s.f
Minimum land area per intermediate care facility resident	250 s.f
Minimum land area per permitted hostel guest when maximum permitted guests is greater than 10	250 s.f
Street Frontage	20 feet
Minimum Front Yard Setback for Principal and Accessory Structures	5 ft, or the average depths of adjacent front yards.

Minimum Rear Yard Setback for Principal and Accessory Structures	10 feet, except that accessory structures with a ground coverage of one hundred and forty-four (144) square feet or less: Five (5) feet.
	All setbacks for swimming pools shall be as provided for in section 14-432, Swimming pools, of this article.
Minimum Side Yard Setback for Principal and Accessory Structures	5 ft, except that a side yard in the R-6 zone may be reduced to zero, provided that the cumulative side yard setbacks are not less than 10 ft. A permanent maintenance easement a minimum of 5 ft. in width shall be provided on the parcel adjacent to the lot line with the reduced side setback.
	Side yards in R-6A shall be 10 ft. for principal structures up to 45 ft. in height and 15 ft. for principal structures greater than 45 ft. in height.
Side Yard on Side Street	None
Structure Stepbacks	Portions of a structure above 35 ft shall be no closer than 10 ft from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone. <i>Does not apply to side yards on side streets.</i>
Maximum Lot Coverage	60%
Minimum Lot Width	20 feet
Maximum Height	Principal and attached accessory structure: 45 ft
	Detached accessory structure: 18 ft
	In R-6A the maximum principal and attached accessory structure height shall be 65 ft.
Landscaped Open Space	20%. This area shall not include parking areas or other impervious surfaces as defined in section 14-47.