

Department of Planning & Urban Development

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Marge Schmuckal
Zoning Administrator

Jeff Levine
Director Planning & Urban Development

APR 29 2013



Dept. of Building Inspections
City of Portland Maine

CITY OF PORTLAND
ZONING BOARD OF APPEALS

Interpretation Appeal Application

APPLICANT INFORMATION:
Mark McCain

SUBJECT PROPERTY INFO:
45 Summer Street

NAME

PROPERTY ADDRESS

58-A-32

BUSINESS NAME

CHART/BLOCK/LOT (CBL)

49 Summer St

PROPERTY OWNER INFO (if Different):

ADDRESS
Portland 04102

NAME

699-4066
TELEPHONE #

ADDRESS

owner

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

Disputed Provisions from Section 14:

R-6

14-139 (4a) Dimensional requirements

CURRENT ZONING DESIGNATION

EXISTING USE OF PROPERTY:

Order, decision, determination or
interpretation under dispute:

vacant

A front yard need not exceed the average

depth of front yards on either side of the lot.

TYPE OF RELIEF REQUESTED:

The owner seeks a front-yard depth of 2'6", approximately the same as the closest front yards on both sides of 45 Summer Street. City staff considers an abutting empty lot to have a 10' deep front yard, and therefore requires a minimum setback of 6.1 feet.

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 OF APPLICANT

4/29/13

DATE

April 29, 2013

To the Zoning Board of Appeals:

I have filed a building-permit application for a single-family house on a vacant lot at 45 Summer Street. To help maintain a consistent streetscape, I would like to set the house back 2'6" from the lot line. That is the approximate setback of the block's only three houses, and the house that stood on this site for many years - along with many more houses nearby.

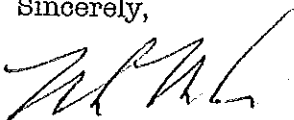
Section 14-139 (4a) states for the R-6 zone: "A front yard need not exceed the average depth of front yards on either side of the lot." Another vacant lot abuts the proposed building lot. The city zoning staff considers that lot to have a 10-foot front yard and has ruled the new house cannot exceed an "averaged" setback of 6+ feet.

This interpretation of 14-139 (4a) works against sensible development and streetscape consistency in Portland. If a row of townhouses, all with zero front setbacks, is broken by three vacant lots, a 10-foot setback would be required for a house on the middle empty lot. A house on either of the other lots would need a 5-foot setback. If the owner of the middle lot waited until one or both of the other lots were built on, that house would be allowed a setback of 5' or 7'5".

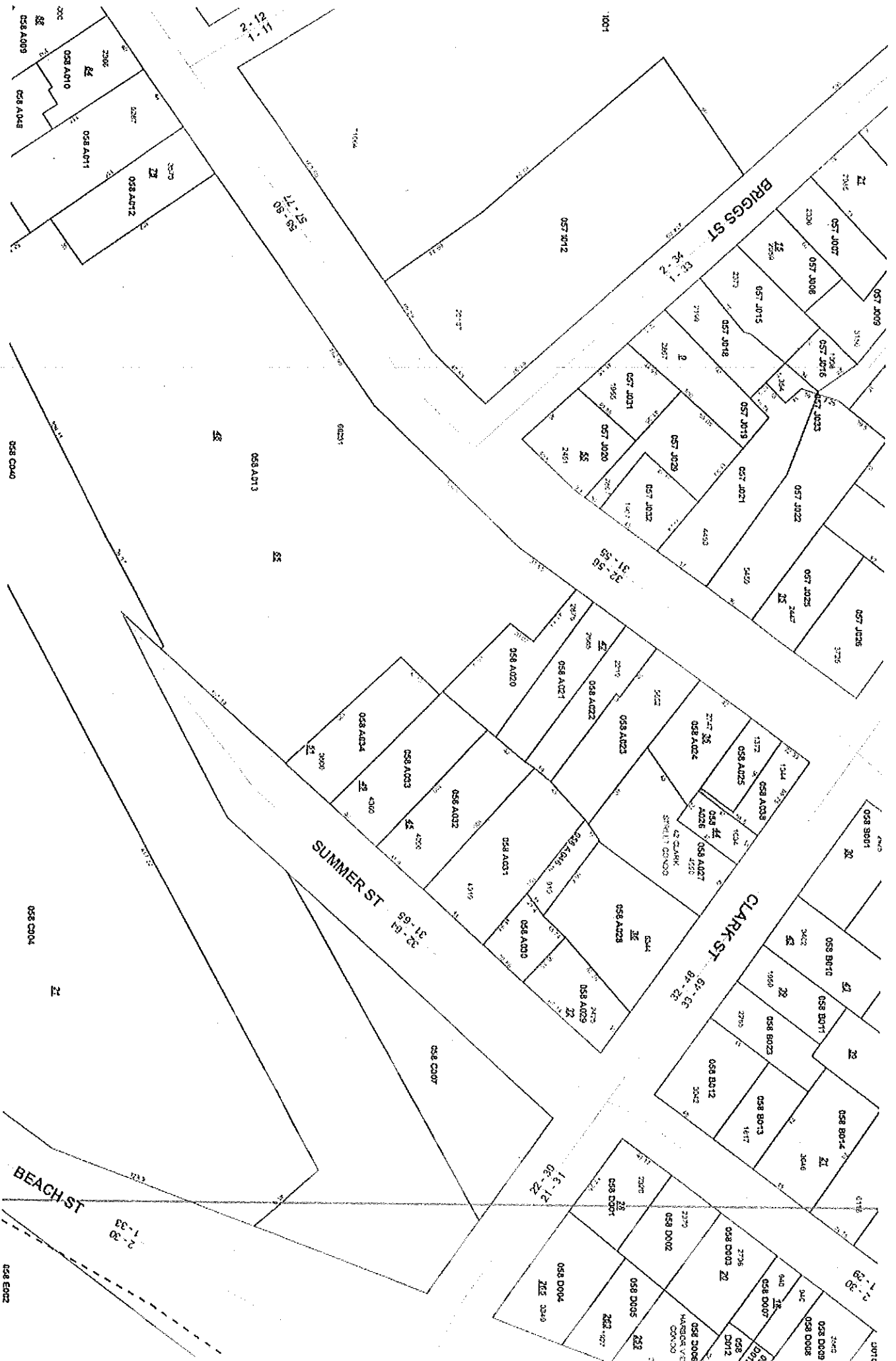
If a front yard "need not exceed the average depth of front yards on either side of the lot," those three lots should be allowed zero front setbacks, like their neighbors up and down the street.

The American Heritage Dictionary defines "front yard" quite simply as: "A yard in front of a house." A vacant lot does not have a front yard, side yard or back yard. Both for better zoning and semantic accuracy, section 14-139 (4a) should be based strictly on real front yards, not imagined ones. On either side of 45 Summer Street, the closest front yard is approximately 2'6" deep, and that would be the best depth for the proposed front yard.

Sincerely,



Mark McCain
49 Summer Street
Portland, Maine 04102



058 A009

058 A010

058 A011

058 A012

058 A013

058 A014

058 A015

058 A016

058 A017

058 A018

058 A019

058 A020

058 A021

058 A022

058 A023

058 A024

058 A025

058 A026

058 A027

058 A028

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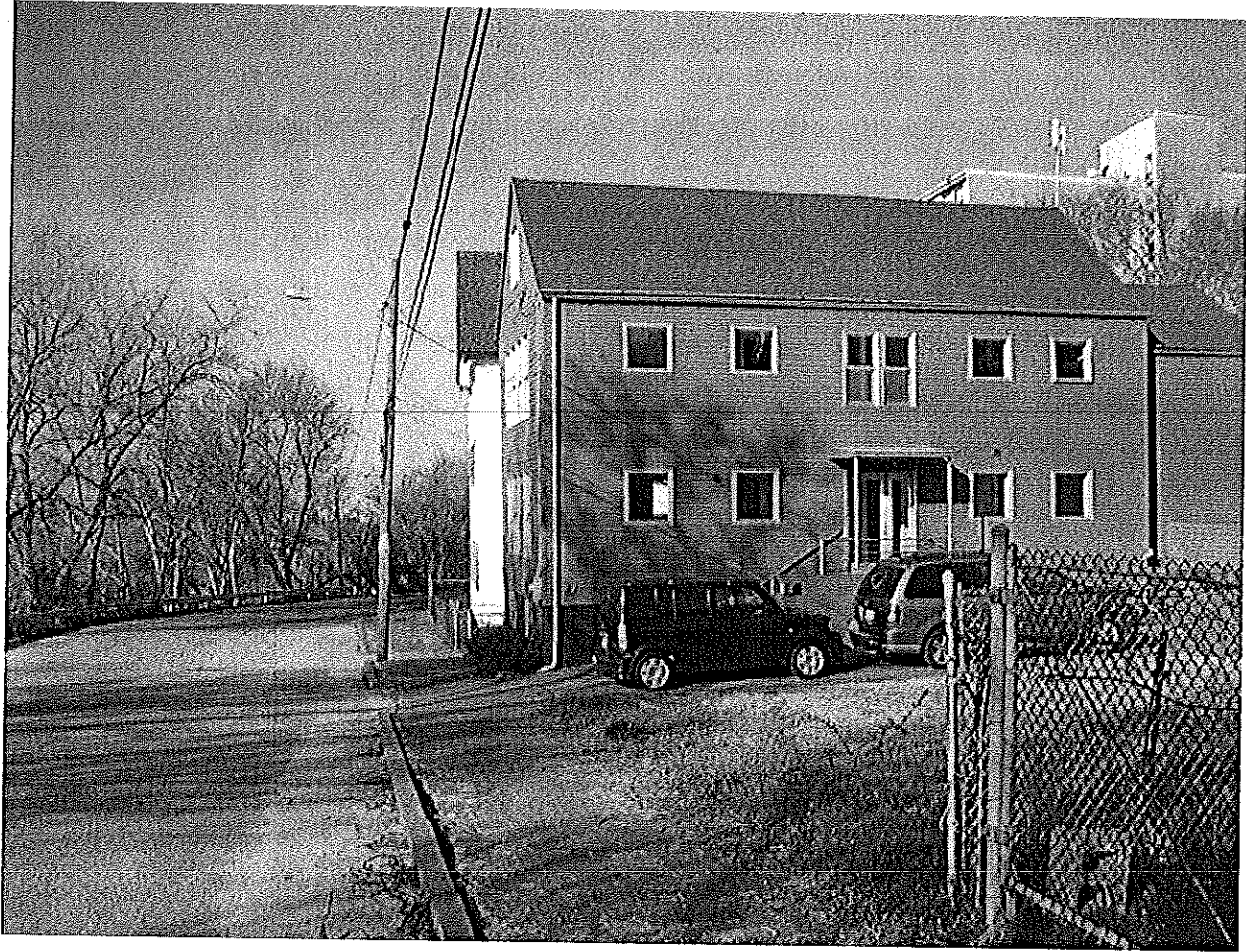
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058 E018

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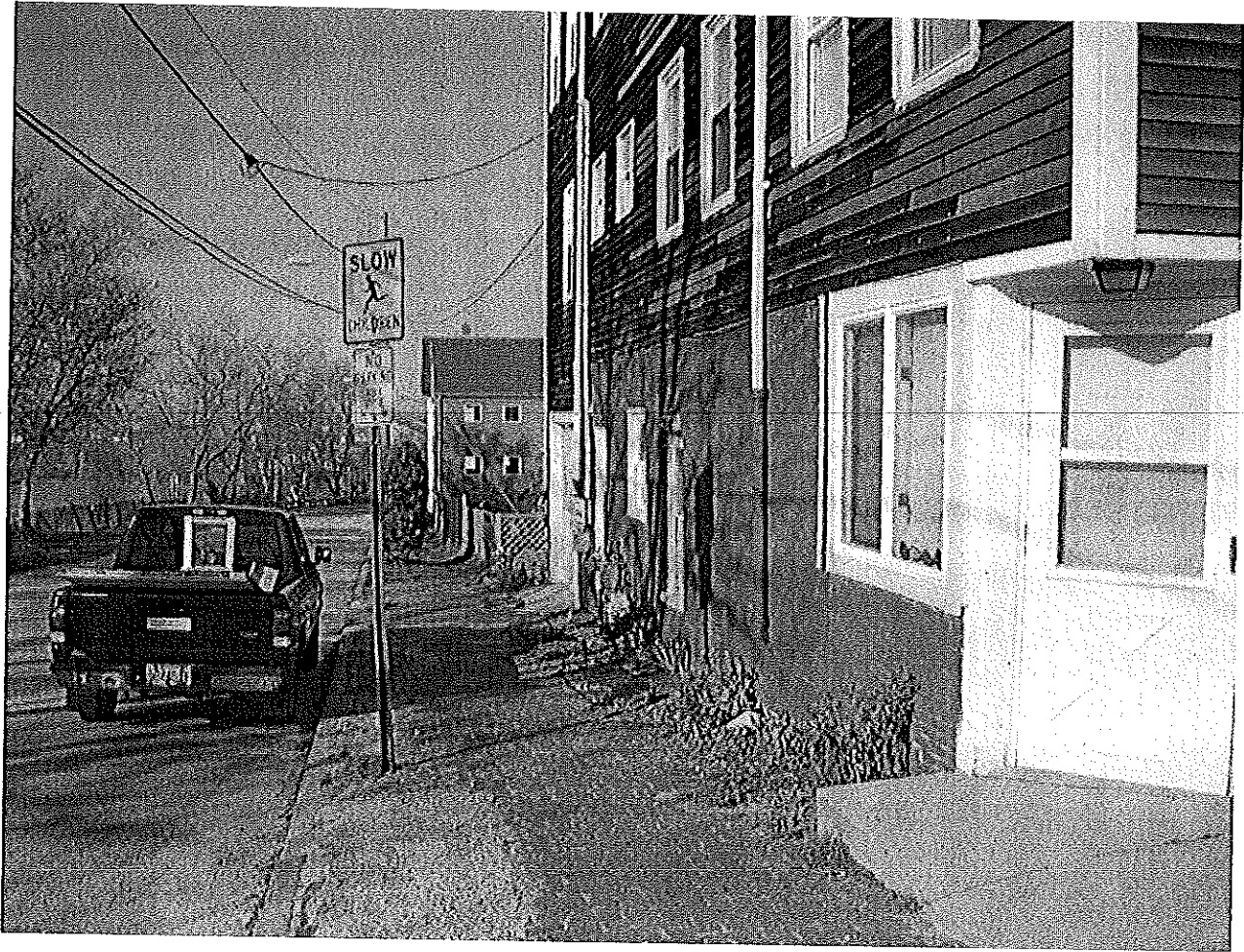
058 E020

058 E021

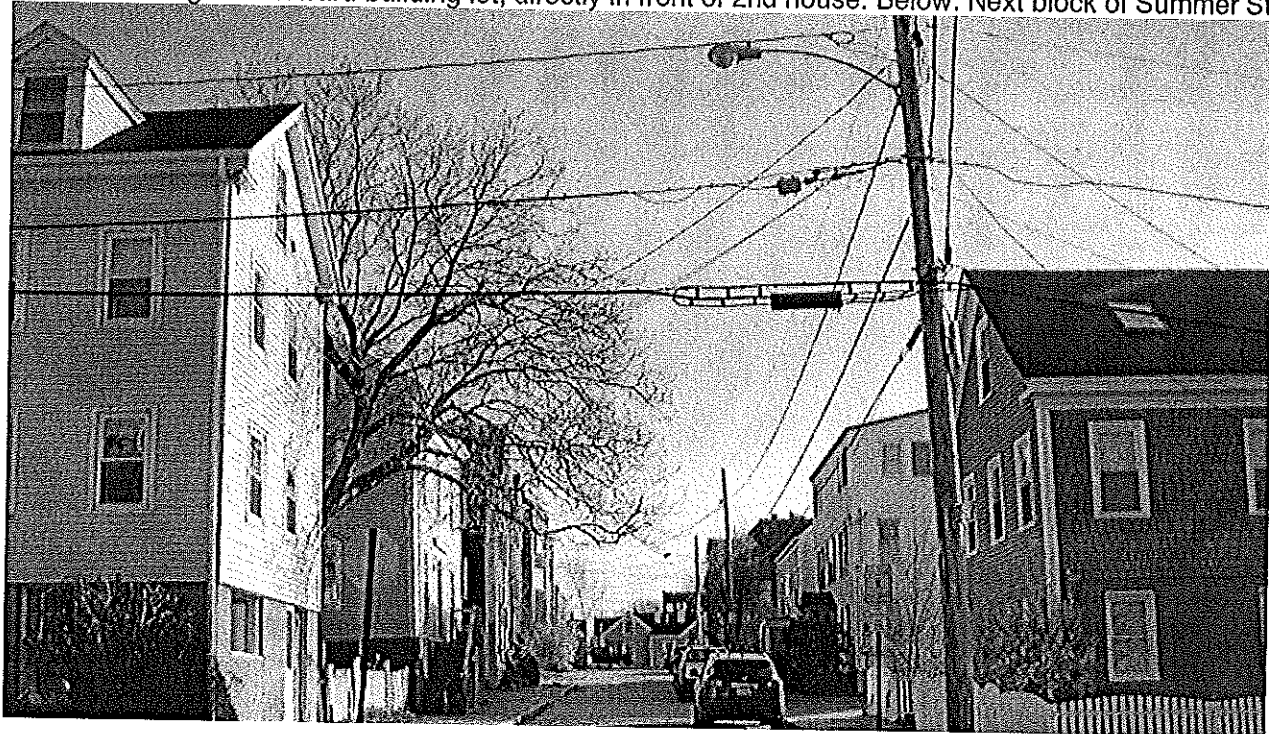


Above: 45 Summer Street, 058-A-032, looking west toward two neighboring houses. Below: Aerial view





Above: Looking west toward building lot, directly in front of 2nd house. Below: Next block of Summer Street



MAINE REAL ESTATE TAX PAID

(space above line reserved for registry use)

REO #4000660987

**QUITCLAIM DEED WITH COVENANT
(Special Warranty Deed)**

Deutsche Bank National Trust Company, as Trustee, in Trust for the Registered Holders of Ameriquest Mortgage Securities, Inc., Asset-Backed Pass Through Certificates, Series 2004-R10, a corporation duly organized and existing and having a place of business c/o American Home Mortgage Servicing, Inc., in the City of Irvine and State of California, for consideration paid, GRANTS to S. Mark McCain, with a mailing address of 31 Mill Street, Yarmouth, Maine 04096, hereinafter called "Grantee", his heirs and assigns forever, and WITH QUITCLAIM COVENANTS, the following described property, with the buildings thereon, and the appurtenances belonging thereto, situated in the City of Portland, in the 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 in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Beginning in the Northerly line of Summer Street at a point distant one hundred fifty-one (151) feet Westerly by said line of Clark Street; thence Northerly at right angles with Summer Street one hundred (100) feet to land of unknown; thence Westerly by said land of unknown forty (40) feet to Lot W on a plan hereinafter referred to; thence Southerly by Lot W one hundred (100) feet to Summer Street; thence Easterly by Summer Street, forty-one and eighty (sic) tenths (41.8) feet to first named bounds; being Lot Marked V on a plan recorded in Cumberland County Registry of Deeds, Plan Book 2, Page 5.

Reference is made to a Judgment of Foreclosure and Sale in an action to foreclose a mortgage recorded in Book 21366, Page 21, brought by **Deutsche Bank National Trust Company, as Trustee, in Trust for the Registered Holders of Ameriquest Mortgage Securities, Inc., Asset-Backed Pass Through Certificates, Series 2004-R10** against Shane McGarvey and Michelle J. McGarvey as filed in the Maine District Court, Division of Portland, Docket No. RE-2008-291 and duly recorded in the Cumberland County Registry of Deeds in Book 27293, Page 23. Being the same premises as conveyed to the grantor herein by virtue of a deed dated June 11, 2009 and recorded in the Cumberland County Registry of Deeds in Book 27036 Page 114.

SHIRLEY
DET
142
021

N/F
ELIZABETH GIESE
DALE
6234/315
058 A 031
PLAN REF. 3-D

LOT 'V'
4,290 SQ. FT.
N/F
S. MARK MCCAIN
27116/219
058 A 032
PLAN REF. 3-A

VACANT

LOT 'U'

N/F
ORNELIA J.
'ALWORTH
29796/40
058 A 033
PLAN REF. 3-A

4,121 SQ. FT.

LOT 'W'

EXISTING HOME

DECK

PAVED DRIVE
BRICK SIDEWALK
DROP INLET
RIM: 49.9'

CHAIN LINK FENCE
S47°39'44"E
105.88'

3-STORY SINGLE FAMILY
RESIDENCE FFE 56.1'
960 SQ. FT. GROUND FLOOR AREA

5'x10' OPEN PORCH
PROPOSED TREE
SEE NOTE 8.

6' ENTR. FENCE
VERTICAL GRANITE CURB

10" VIT PIPE 80 FEET @ 1/2% (0.005)
COMBINED SEWER / STORM WATER PIPE
AMER STREET

DN
E

110/415