

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

Philip Saucier-chair
Sara Moppin
Matthew Morgan
Gordan Smith-secretary
Mark Bower
William Getz
Elyse Wilkinson

July 15, 2011

Stephen B. Burke
19 Olde Colony Lane
Cape Elizabeth, ME 04107

RE: Anderson Avenue, Little Diamond Island
CBL: 105 G007
ZONE: IR-2

Dear Mr. Burke:

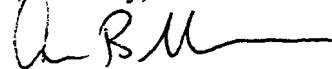
At the July 14, 2011 meeting, the Zoning Board of Appeals voted 6-0 to deny your variance appeal to reduce the side setback to twelve (12) feet. I am enclosing a copy of the Board's decision.

You will also find an invoice for \$134.40 for the fees that are still owed on the appeal for the cost of the legal ad, the cost of the noticing and the processing fee. Please submit your payment on receipt of the invoice.

Appeals from decisions of the Board may be filed in Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

Should you have any questions please feel free to contact me at 207-874-8709.

Yours truly,



Ann B. Machado
Zoning Specialist

Cc. file

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

ZONING BOARD APPEAL DECISION

To: City Clerk

From: Marge Schmuckal, Zoning Administrator

Date: July 15, 2011

RE: Action taken by the Zoning Board of Appeals on July 14, 2011.

Members Present: Gordon Smith (acting chair), Elyse Wilkinson (acting secretary), Mark Bower, Matthew Morgan, William Getz and Sara Moppin

Members Absent: Phil Saucier

1. New Business:

A. Variance Appeal:

Anderson Avenue, Little Diamond Island, Little Diamond Island Realty Trust, owner, Tax Map 105, Block G, Lot 007, IR-2 Island Residential Zone: The applicant is proposing to build a new single family home on a vacant lot. The appellant is requesting a variance for the right side setback from the required twenty feet to twelve feet [section 14-145.11(c)(3)]. Representing the appeal is Stephen B. Burke, a beneficiary of the Little Diamond Island Realty Trust and Lee Holtz, architect. **The Board voted 6-0 to deny the variance appeal to reduce the right side setback to twelve (12) feet.**

B. Interpretation Appeal:

202-222 Kennebec Street, Bayside Ventures II, LLC, owner, Tax Map 034, Block A, Lot 011, B-2b Community Business Zone: The applicant is challenging the Zoning Specialist's determination that the nonconforming use of the property has been discontinued for a period of twelve months and therefore the nonconforming use has been abandoned [section 14-387]. Representing the appeal is Greg Shinberg, the owner's agent and Jim Hanley, owner. **The Board voted 6-0 to deny the interpretation appeal and upheld the City's Zoning Administrator's determination that the nonconforming use of the property has been abandoned.**

C. Variance Appeal:

202-222 Kennebec Street, Bayside Ventures II, LLC, owner, Tax Map 034, Block A, Lot 011, B-2b Community Business Zone: The applicant is requesting a variance to allow the property to be used as a warehouse which is not a permitted use in the zone [section 14-182]. Representing the appeal is Greg Shinberg, the owner's agent and Jim Hanley, owner. **The Board voted 4-2 to grant the variance appeal to allow the property to be used as a warehouse.**

D. Conditional Use Appeal:

18-22 Haskell Street, Mary & Robert Burkhardt, owners, Tax Map 335, Block G, Lots 011, 012,013 & 017, R-3 Residential Zone: The appellants are seeking a Conditional Use Appeal under section 14-88(d)(3) to have a daycare for up to twelve children in their home. Representing the appeal are the owners. **The board voted 5-0 (one member recused self) to grant the conditional use appeal to allow a daycare in the home for up to twelve children with the condition that adequate off-street parking for customers must be maintained to limit traffic on the street and the use of on-street parking.**

Enclosure:

Decision for Agenda from July 14, 2011

Original Zoning Board Decisions

One dvd

CC: Patricia Finnigan, Acting City Manager

Penny St. Louis, Director, Planning & Urban Development

Alex Jaegerman, Planning Division

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

"Undue Hardship" Variance Appeal

DECISION

Date of public hearing: July 14, 2011

Name and address of applicant: Stephen Burke
Little Diamond Island Realty Trust
19 Olde Colony Lane
Cape Elizabeth, ME 04107

Location of property under appeal: Anderson Ave., Little Diamond Island

For the Record:

Names and addresses of witnesses (proponents, opponents and others):

- Stephen Burke, Applicant
- Lee Hulst, Architect
- Sus Hagey, Island Resident
- Ben Trout

Exhibits admitted (e.g. renderings, reports, etc.):

- Letter dated 5/27/11 of re: Burke Property
- Lot maps
- Tax map
- Burke Site Plan Schematic
- 4 photos of property
- Burke Cottage Little Diamond First Floor Plan Schematic
- Deed to property
- Letter dated 6/2/11 from Stephen Burke
- Letter dated 10/12/06 from City of Portland
- Zoning Map

Findings of Fact and Conclusions of Law:

The applicant is requesting an "undue hardship" variance from section 14-145.11(c)(3) of the Portland Land Use Code. That section sets forth the dimensional requirements of property located within the IR-2 Island Residential Zone. The applicant intends to build a new single family home on a vacant lot and is requesting a variance from the required twenty foot side yard setback to a twelve foot setback.

"Undue Hardship" Variance standard pursuant to Portland City Code §14-473(c)(1):

1. The land in question cannot yield a reasonable return unless a variance is granted. (Note: "Failure to yield a 'reasonable return' means 'the practical loss of all beneficial use of the land.' . . . Reasonable return does not mean maximum return." *Rowe v. City of South Portland*, 730 A.2d 673, 675 (Me. 1999) (citations omitted).)

Satisfied 2 Not Satisfied 4

Reason and supporting facts:

- ~~Site location~~
- lot remains buildable - just a smaller house.
- other alternatives remain available to owner.

2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

Satisfied 2 Not Satisfied 4

Reason and supporting facts:

- lot is long & narrow - similar to others on tax map.

3. The granting of a variance will not alter the essential character of the locality.

Satisfied 6 Not Satisfied 0

Reason and supporting facts:

- proposed house will look ~~the~~ like
others in neighborhood.

4. The hardship is not the result of action taken by the applicant or a prior owner.

Satisfied 6 Not Satisfied 0

Reason and supporting facts:

- change in zoning setbacks is
reason for need for variance — not
action by owner.

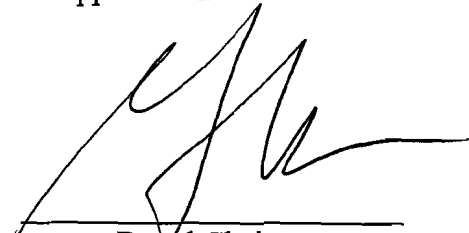
Conclusion: (check one)

Option 1: The Board finds that the standards described above (1 through 4) have been satisfied and therefore GRANTS the application.

Option 2: The Board finds that while the standards described above (1 through 4) have been satisfied, certain additional conditions must be imposed to minimize adverse effects on other property in the neighborhood, and therefore GRANTS the application SUBJECT TO THE FOLLOWING CONDITIONS:

Option 3: The Board finds that the standards described above (1 through 4) have NOT all been satisfied and therefore DENIES the application.

Dated: 7/14/11



Board Chair

MEMBERS PRESENT Carolyn Smith (Acting Chair) Matthew Maysan - Elyse Wilkerson - Sarah Mappin - Mark Bower - William Gertz
CITY OF PORTLAND, MAINE

Acting Sec. ZONING BOARD OF APPEALS

MEMBERS ABSENT: Philip Szwed
APPEAL AGENDA

The Board of Appeals will hold a public hearing on Thursday, July 14, 2011 at 6:30 p.m. on the second floor in room 209 at Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following Appeals:

1. New Business

Denied
6-0

A. Variance Appeal:

Anderson Avenue, Little Diamond Island, Little Diamond Island Realty Trust, owner, Tax Map 105, Block G, Lot 007, IR-2 Island Residential Zone: The applicant is proposing to build a new single family home on a vacant lot. The appellant is requesting a variance for the right side setback from the required twenty feet to twelve feet [section 14-145.11(c)(3)]. Representing the appeal is Stephen B. Burke, a beneficiary of the Little Diamond Island Realty Trust. *Elex Holtz, A.V. H. (note: Amend forms)*

Denied
6-0

B. Interpretation Appeal:

202-222 Kennebec Street, Bayside Ventures II, LLC, owner, Tax Map 034, Block A, Lot 011, B-2b Community Business Zone: The applicant is challenging the Zoning Specialist's determination that the nonconforming use of the property has been discontinued for a period of twelve months and therefore the nonconforming use has been abandoned [section 14-387]. Representing the appeal is Greg Shinberg, the owner's agent. *Jim Hamley, owner*

Granted
4-2

C. Variance Appeal:

202-222 Kennebec Street, Bayside Ventures II, LLC, owner, Tax Map 034, Block A, Lot 011, B-2b Community Business Zone: The applicant is requesting a variance to allow the property to be used as a warehouse which is not a permitted use in the zone [section 14-182]. Representing the appeal is Greg Shinberg, the owner's agent. *Jim Hamley, owner*

Granted
5-0

D. Conditional Use Appeal:

18-22 Haskell Street, Mary & Robert Burkhardt, owners, Tax Map 335, Block G, Lots 011, 012, 013 & 017, R-3 Residential Zone: The appellants are seeking a Conditional Use Appeal under section 14-88(d)(3) to have a daycare for up to twelve children in their home. Representing the appeal are the owners. *SARA Mappin refused herself with that condition; The appellants shall maintain adequate off-street parking. (Conflict from Her Fair)*

2. Adjournment:

8:20 pm



**City of Portland, Maine
 Department of Planning and Urban Development
 Zoning Board of Appeals
 Variance Appeal Application**

Applicant Information:

STEPHEN B BURKE
 Name

LITTLE DIAMOND ISLAND REALTY TRUST
 Business Name

19 OLDE COLONY LANE
 Address

CAPE ELIZABETH, ME 04107

207-767-1818 Telephone Fax

Applicant's Right, Title or Interest in Subject Property

BENEFICIARY
 (e.g. owner, purchaser, etc.):

Current Zoning Designation: IR-2

Existing Use of Property:

VACANT LOT

Subject Property Information:

ANDERSON AVE (LDI) PORTLAND, MAINE
 Property Address

105-G-007
 Assessor's Reference (Chart-Block-Lot)

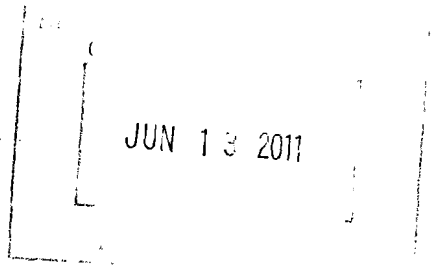
Property Owner (if different):

Name

Address

Telephone Fax

Variance from Section 14 - 145.1(c)(3)



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 certified that all information herein supplied by his/her is true and correct to the best of his/her knowledge and belief.

Stephen B Burke
 Signature of Applicant

5-27-11
 Date

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 _____

Reasons SIDE SETBACKS OF 20' LIMIT CONSTRUCTION WIDTH TO 17' OR LESS, ONLY ONE ROOM WIDE. THAT DOES NOT YIELD A REASONABLE RETURN.

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 _____ No _____ (deny the appeal)

Reasons LOT BOUNDARIES FROM OVER 100 YRS. AGO ARE NOT PARALLEL, CHOKING THE BUILDABLE AREA. THAT IS A FACTOR UNIQUE TO THE PROPERTY.

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

Yes _____ (deny the appeal) No _____

Reasons NEW COTTAGE CONSTRUCTION COMPATIBLE WITH HISTORIC DESIGN WILL REINFORCE CHARACTER. ARCHITECT HAS SUCCESSFUL HISTORY OF SUCH WORK.

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

Yes _____ (deny the appeal) No _____

Reasons MODERN ZONING CHANGES TO HISTORIC LOT LAYOUT HAVE IMPOSED UNBUILDABLE RESTRICTIONS. PROPERTY OWNED FOR 60 YRS.

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

JUN 13 2011

27 May 2011

Burke Property, Little Diamond Island

By applying modern setback standards to an irregular lot created at the Turn of the Nineteenth Century, the Burke property at Lot 105-G-7 has been unduly restricted for construction of a new cottage. With side setbacks of twenty feet each, and boundaries which are not parallel, the building footprint permitted varies from nineteen to less than seventeen feet in width. Though the lot is large enough to handle a septic system for a three bedroom cottage, the permitted width does not allow a conventional second floor plan with two rooms across. Such rooms would have less than eight feet of width, far below minimum standards for any sort of housing.

The request for variance is to reduce the setback on the northwest boundary to twelve feet from twenty, only an eight foot reduction. The adjoining parcel is also a fifteen foot paper street, unused. The desired construction size for the cottage is a modest twenty-four feet wide by thirty-six feet long, with porches off the front and back sides. The proposed cottage is purposely sited ahead of the closest neighbor to the northwest, toward the water, and would be no less than thirty feet away from that building at the closest point. That would also be twenty-eight feet from their property line. Naturally, standards of waterfront setback in the Shoreland Zoning Ordinance have also been included in the survey drawing by Owen Haskell, Inc.

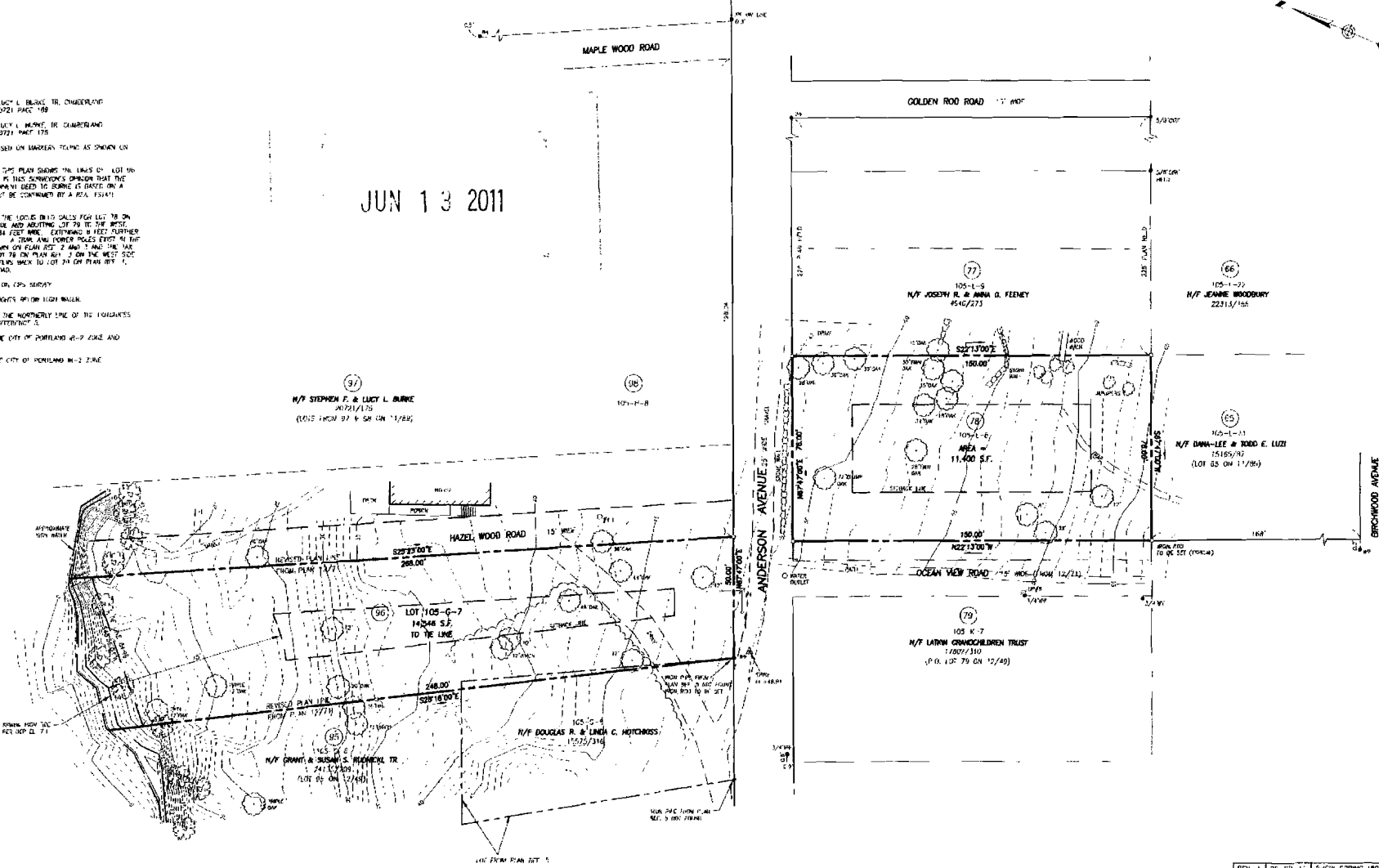
With my previous successful design of about a dozen cottage buildings in the past thirty years on Little Diamond, I am very conscious of proper siting and proportion for this sort of construction. The ability to construct a traditional cottage design which suits the island is of particular interest here, and we look forward to your favorable consideration of this request.

NOTES:

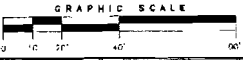
- OWNERS OF RECORD.
- TAX LOT 105-6-7 STEPHEN F. & LUCY L. BURKE TR. CHAMBERLAND COUNTY REGISTERED AS BLDG. BOOK 10721 PAGE 148.
- TAX LOT 105-4-8 STEPHEN F. & LUCY L. BURKE TR. CHAMBERLAND COUNTY REGISTERED AS BLDG. BOOK 10721 PAGE 175.
- BOUNDARIES ARE VARIING 1987 AS BASED ON MARKERS PLACED AS SHOWN ON PLAN REFERENCE 4.
- AS REQUIRED BY TAX LOT 105-6-7 THE PLAN SHOWS THE LINES OF LOT 105 AS SHOWN ON PLAN REF. 2 AND 3. IT IS THE SURVEYOR'S OPINION THAT THE REFERENCE TO PLAN REF. 2 ON THE CHANNELS NEED TO BEING IS BASED ON A SURVEYOR'S ERROR. THIS QUESTION MUST BE CONFIRMED BY A REAL ESTATE ATTORNEY.
- AS REQUIRED BY TAX LOT 105-4-8 THE SURVEYOR HAS CALLED FOR LOT 78 ON PLAN REF. 1. THE DISTANCE BETWEEN THE ADJUTING LOT 78 TO THE WEST PLAN REF. 2 AND 3 SHOWS LOT 78 AS 84 FEET WIDE. EXTENDING 8 FEET FURTHER WEST AND ADJUSTING THE LINE TO 92 FEET. THE PLAN SHOWS THE LOCATION OF OCEAN VIEW ROAD AS SHOWN ON PLAN REF. 2 AND 3 AND THE TAX MAP FOR TAX LOT 105-4-7 CALLS FOR LOT 78 ON PLAN REF. 3 ON THE WEST SIDE OF OCEAN VIEW ROAD. THE LOT 105-4-8 MEASURES BACK TO LOT 78 ON PLAN REF. 2 WHICH WOULD OVERLAP THE EXISTING ROAD.
- BOUNDARIES ARE SHOWN AS BASED ON GPS SURVEY.
- NO INFORMATION IS MADE AS TO RIGHTS OR OTHER EIGHT WALLS.
- IT IS THE SURVEYOR'S OPINION THAT THE NORTHERLY LINE OF THE FORECASTERS IS SHOWN INCORRECTLY ON PLAN REFERENCE 2.
- TAX LOT 105-6-7 IS LOCATED IN THE CITY OF PORTLAND 2-2 ZONE AND THE CHAMBERLAND ZONE.
- TAX LOT 105-4-8 IS LOCATED IN THE CITY OF PORTLAND M-2 ZONE.

JUN 13 2011

OCEAN ATLANTIC



- LEGEND:**
- IRON PIPE OR ROD FOUND
 - UTILITY POLE
 - OBSCURE MARK
 - CONTEMPORARY MARK
 - STONE WALL
 - 1" = 100'
 - 1" = 500'



PLAN REFERENCES:

- PLAN OF THE WEST END OF LITTLE DIAMOND ISLAND MADE FOR MAINE COAST REALTY CO. BY F.C. JOHNSON & CO. JANUARY 1907 RECORDED IN PLAN BOOK 11 PAGE 81.
- PLAN OF THE WEST END OF LITTLE DIAMOND ISLAND MADE FOR MAINE COAST REALTY CO. BY F.C. JOHNSON & CO. JULY 1908 RECORDED IN PLAN BOOK 12 PAGE 71.
- PLAN OF THE WEST END OF LITTLE DIAMOND ISLAND MADE FOR MAINE COAST REALTY CO. BY F.C. JOHNSON & CO. AUGUST 1912 RECORDED IN PLAN BOOK 13 PAGE 49 (PLAN REFERENCES 3 AND 4 ARE THE SAME IN THE AREA OF THE LOTS SHOWN ON THIS PLAN).
- SITE PLAN OF ANDERSON LOT 105-4-7 ANDERSON AVE., LITTLE DIAMOND ISLAND PORTLAND, MAINE FOR CHAS. W. HARRIS & CO. 1907 OWNERS: HARRIS AND WIFE HARRIS.
- STANDARD BOUNDARY SURVEY ANDERSON AVENUE, LITTLE DIAMOND ISLAND, CITY OF PORTLAND, COUNTY OF CHAMBERLAND STATE OF MAINE FOR RECORDS RECORDED FROM PORTLAND CITY SURVEY PLANS & MAPS, INC.

CERTIFICATION:
 OWEN HASKELL, INC. CERTIFIES THIS PLAN IS BASED ON THE BEST OF THE SURVEYOR'S KNOWLEDGE AND THAT THE BEST OF THE AVAILABLE INFORMATION AND RECORDS HAS BEEN USED TO THE BEST OF HIS ABILITY FOR THE PURPOSES OF THIS SURVEY.
 JOHN J. SCHMIDT, P.E. 11272
 6-09-2011

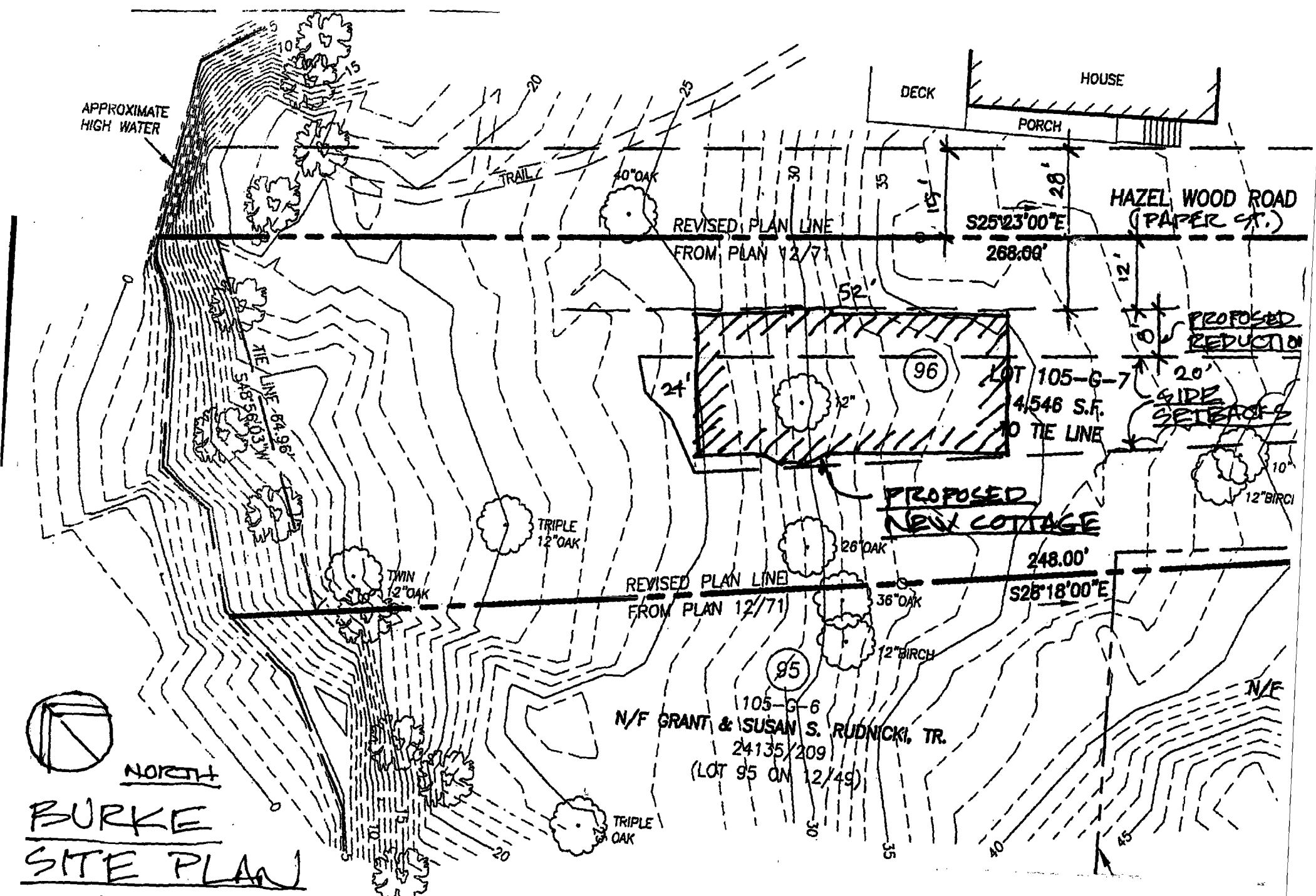


PTV 1 26-09-11 SHOW CORRECTIONS 1, 2, & 26 BACK

BOUNDARY & TOPOGRAPHIC SURVEY
 ON
 ANDERSON AVENUE - LITTLE DIAMOND ISLAND
 PORTLAND, MAINE
 MADE FOR RECORD OWNERS
 STEPHEN F. & LUCY L. BURKE
 41 WAY TO THE RIVER ROAD, WEST NEWBURY, MA

OWEN HASKELL, INC.
 31801 S. ROUTE ONE, PALM BEACH, FL 33410 (202) 774-1424
 PROFESSIONAL LAND SURVEYORS

Drawn By: JES	Date: APR 11, 2011	Job No.:
Trace By: JES	Scale:	2011-1308
Check By: JES	Sheet:	Dreg. No.:
Book No. 1788	1 of 2	1



APPROXIMATE HIGH WATER

TRAIL

DECK

HOUSE

PORCH

HAZEL WOOD ROAD
(PAPER ST.)

REVISIED PLAN LINE
FROM PLAN 12/71

S25°23'00"E
268.00'

PROPOSED REDUCTION

LOT 105-G-7
4,546 S.F.
TO TIE LINE

20' SIDE SETBACKS

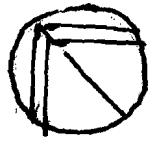
PROPOSED NEW COTTAGE

TRIPLE 12" OAK

REVISIED PLAN LINE
FROM PLAN 12/71

248.00'
S28°18'00"E

N/F GRANT & SUSAN S. RUDNICKI, TR.
24135/209
(LOT 95 ON 12/49)



NORTH

BURKE
SITE PLAN
SCHEMATIC

1" = 20'-0"

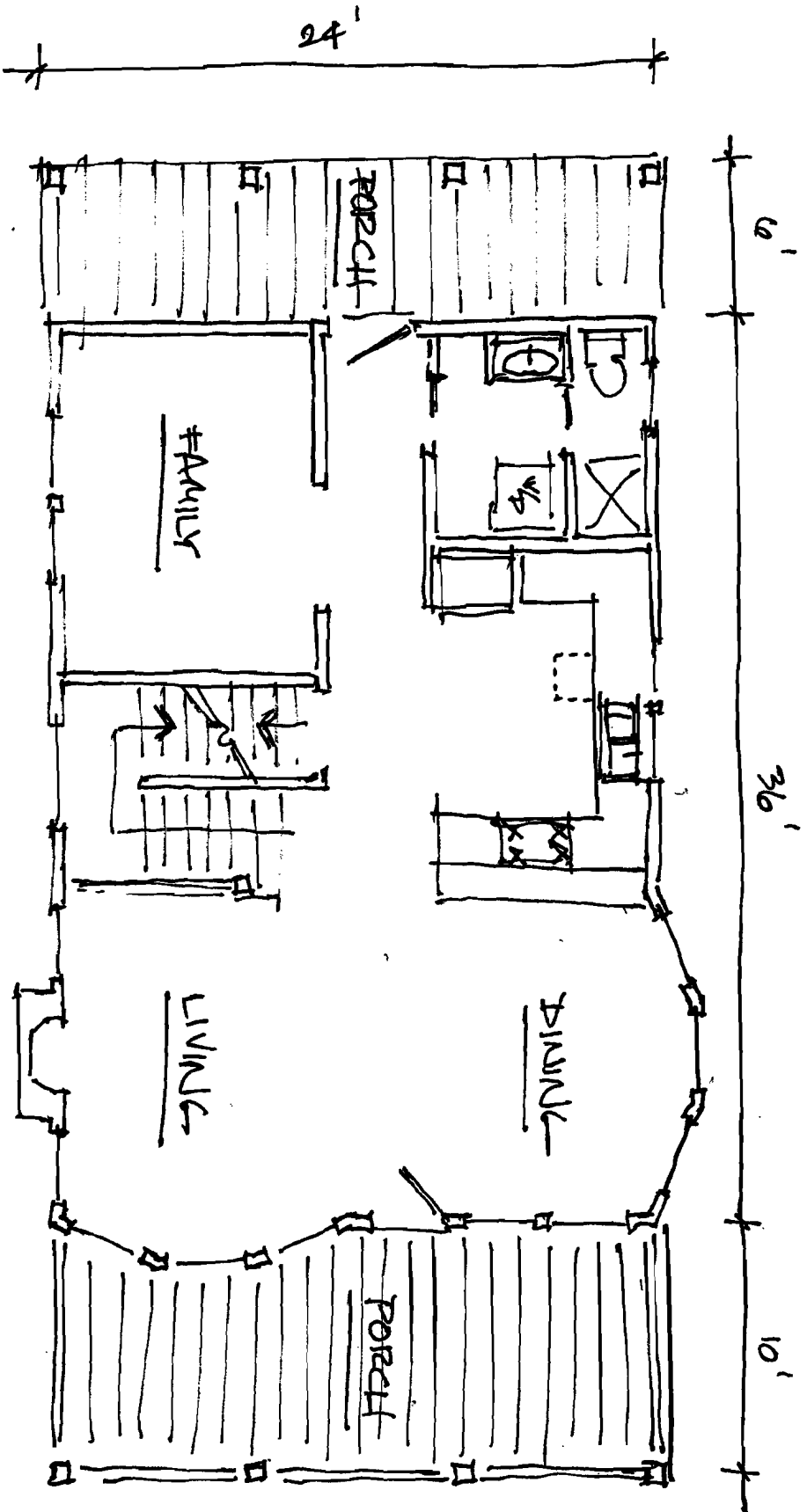
PROPOSAL 5/27/11

LELAND HULST
ARCHITECTURAL SERVICES

278 Spring Street / Portland, Maine 04102 / (207) 773-2843



BURKE COTTAGE LITTLE DIAMOND,
FIRST FLOOR PLAN SCHEMATIC
5/27/11



I E L A N D H U I S T
A R C H I T E C T U R A L S E R V I C E S

378 Spring Street / Portland, Maine 04103 / (207) 773-2243

DEED

STEPHEN F. BURKE, Jr. of 41 Way-to-the-River, West Newbury, Massachusetts for consideration of One Dollar (\$1.00) paid grant to STEPHEN F. BURKE and LUCY L. BURKE as they are Trustees of Little Diamond Island Realty Trust under declaration of trust dated December 10, 2003 and recorded herewith, the following property:

A certain lot or parcel of land situated in the City of Portland in the County of Cumberland and State of Maine on Little Diamond Island and being more particularly described as follows:

Being Lot No. 96 shown on Plan of the Westerly End of Little Diamond Island made by E.C. Jordan & Co., Civil Engineers, recorded in Cumberland County Registry of Deeds in Plan Book 11, Page 89.

Being the same premises conveyed to the Grantor herein by Stephen F. Burke and Ruth M. Burke by Deed dated July 3, 1974, and recorded in said Registry of Deeds in Book 3607, Page 138.

To Have and to Hold the aforegranted and bargained premises, with all the privileges and appurtenances thereof, to the said Stephen F. Burke and Lucy L. Burke, as they are Trustees aforesaid to and in their use and behoof forever. And I do covenant with the said Grantees, their heirs and assigns, that I am lawfully seized in fee of the premises; that they are free of all encumbrances, that I have good right to sell and convey the same to the said Grantees to hold as aforesaid; and that I and my heirs and assigns shall and will warrant and defend the same to the said Grantees, their heirs and assigns forever, against the lawful claims and demands of all persons.

In Witness Whereof, the said Stephen F. Burke, Jr., has hereunto set his hand and seal this 10th day of December, 2003.

Stephen F. Burke
Stephen F. Burke, Jr.

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

December 10, 2003

Then personally appeared before me, STEPHEN F. BURKE, Jr. who did acknowledge that the foregoing instrument was executed by him as his free act and deed, before me.

Malcolm C. McKay
Notary Public Malcolm C. McKay
My Commission expires: June 16, 2006

Recorded Register of Deeds
Dec 30, 2003 12:59:56P
Cumberland County
John B. O'Brien

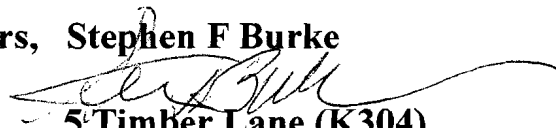
SEAL

6/2/2011

To the Portland Maine Zoning Board of Appeals,

As a Trustee of the Little Diamond Island Realty Trust I am verifying that Stephen B Burke has my permission to represent any interests I have regarding the Burke Family property on Little Diamond Island.

Sincerely yours, **Stephen F Burke**



5 Timber Lane (K304)

Exeter, N.H. 03833

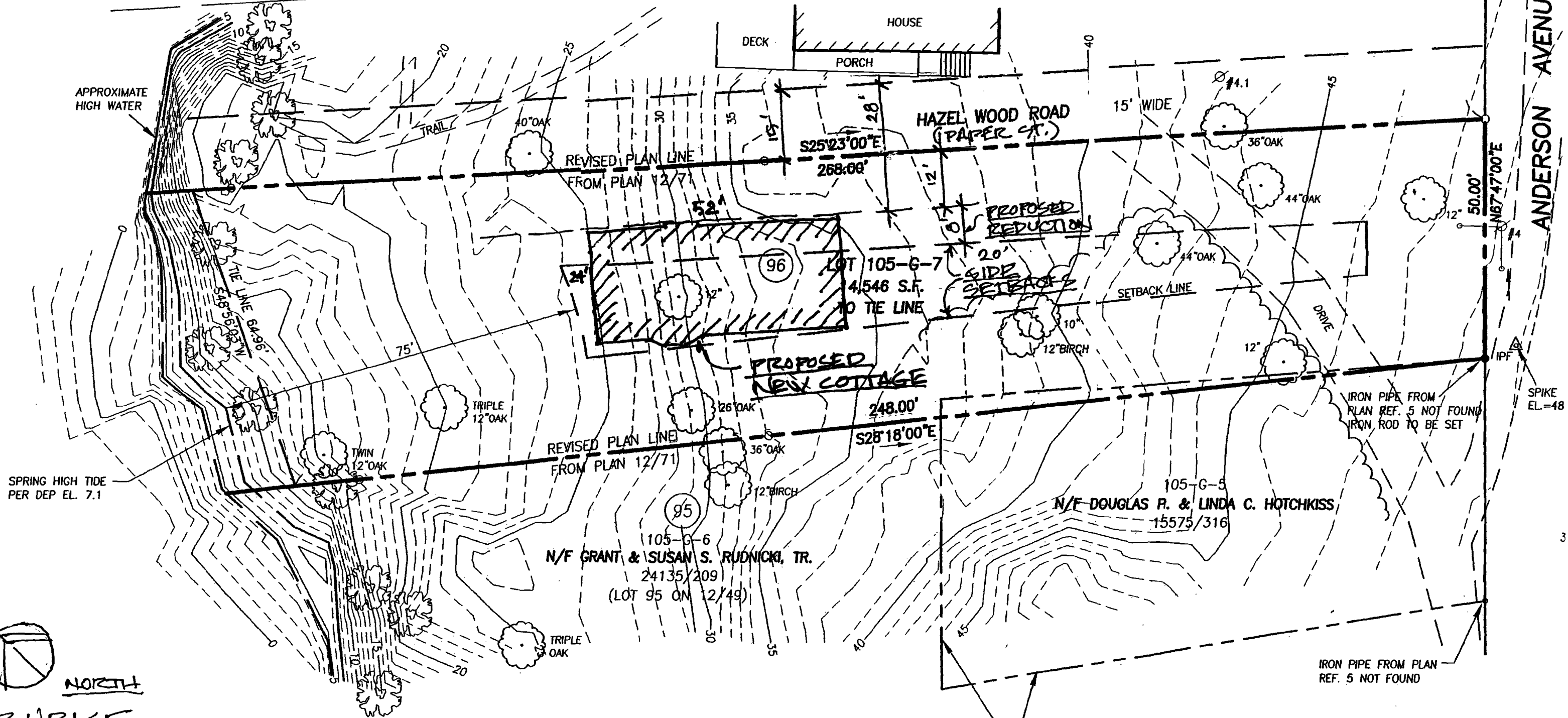
Tel: 603 658 7088

JUN 13 2011

N/F STEPHEN F. & LUCY L. BURKE
20721/175
(LOTS FROM 97 & 98 ON 11/89)

105-H-8

JUN 13 2011



BURKE
SITE PLAN
SCHEMATIC
1" = 20'-0" PROPOSAL

6/13/11

LELAND HULST
ARCHITECTURAL SERVICES
278 Spring Street / Portland, Maine 04102 / (207) 773-2843



view of building site from above



building site seen from the water

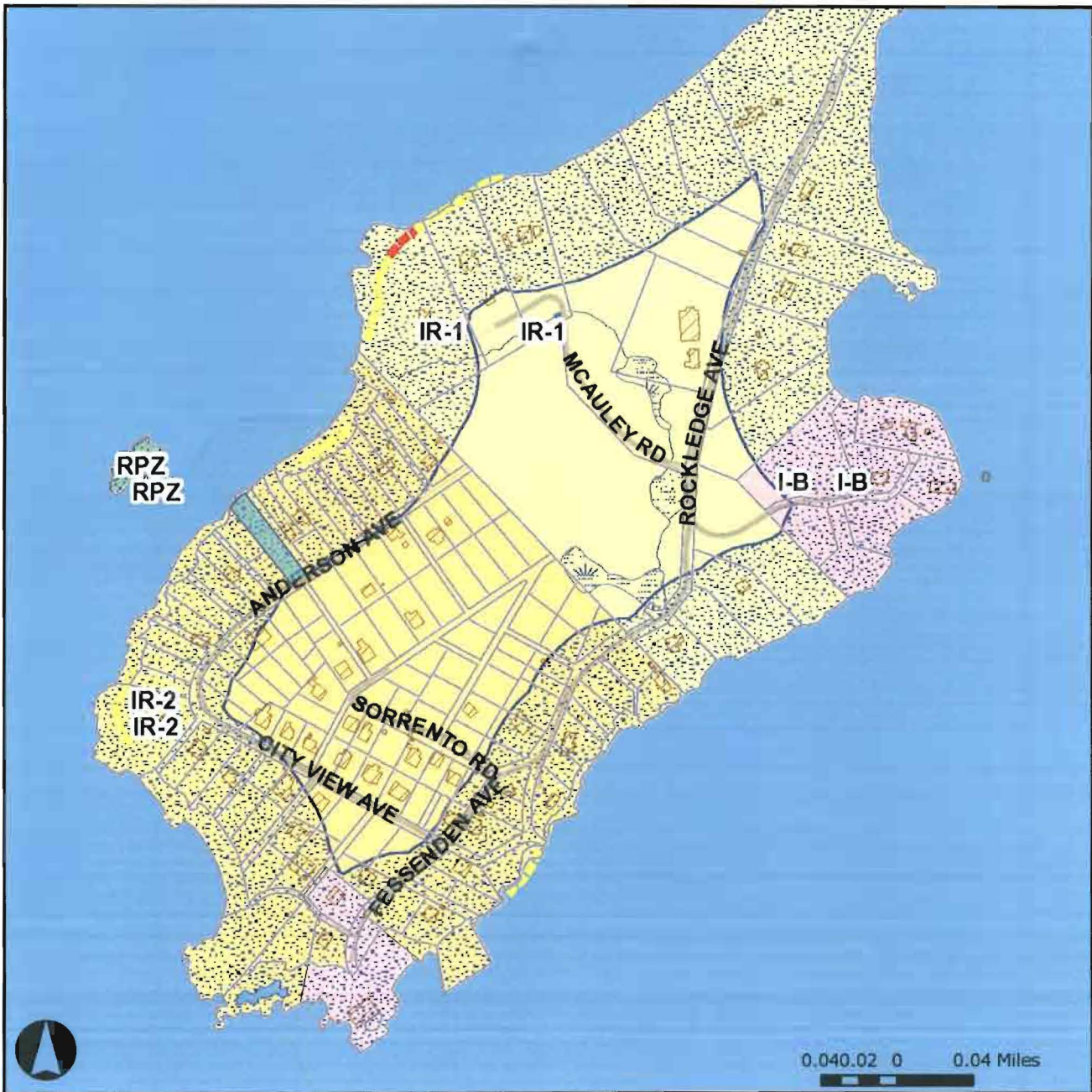


view of paper street and neighbor from above



view of neighbors to northwest

Map



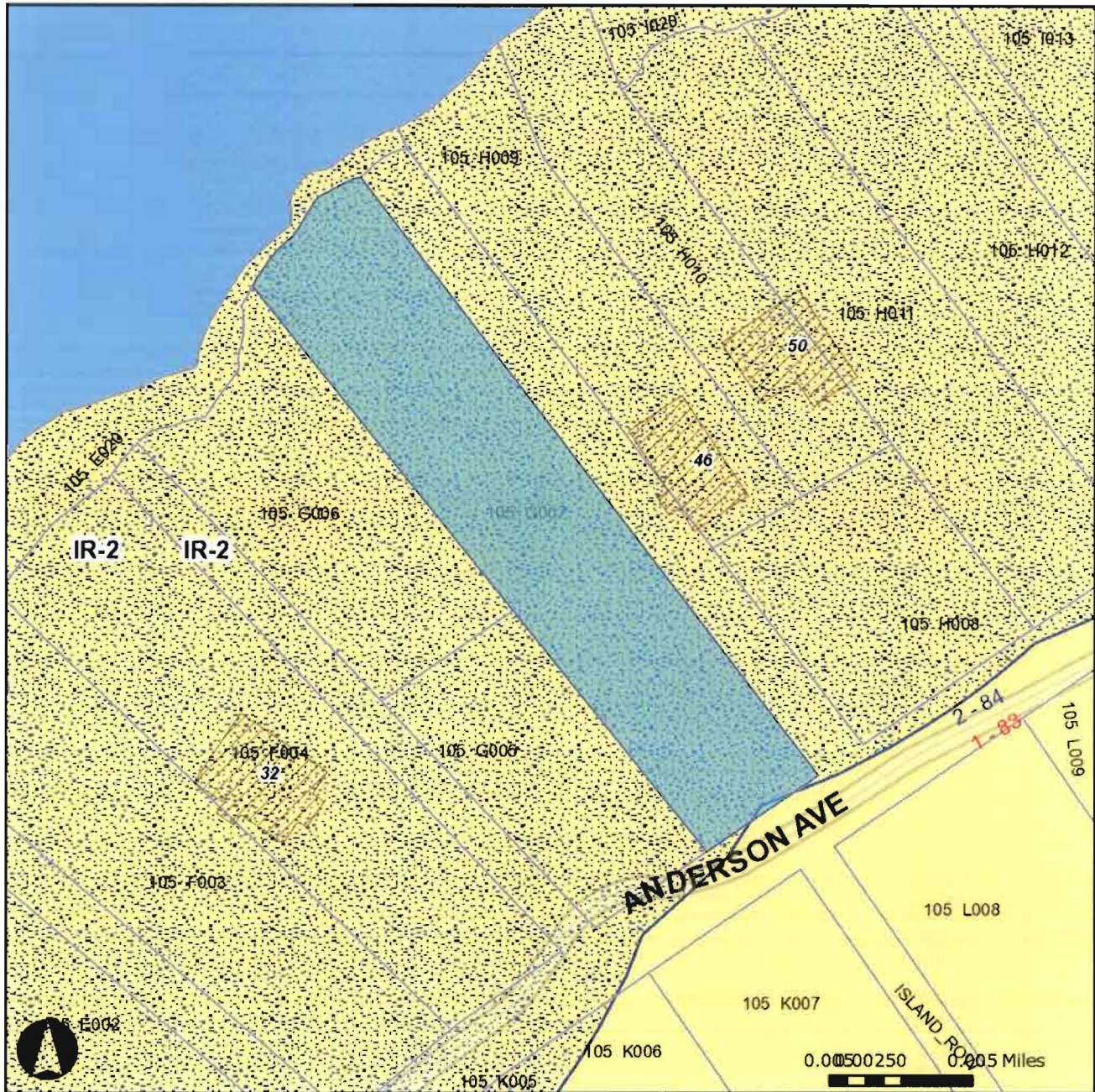
<p>Parcels</p> <p>Interstate</p> <p>Streets</p> <p>Buildings</p> <p>Building</p> <p>Out Building</p>	<p>Stream Overlay Zone</p> <p>Stream_protection</p> <p>Island Zoning</p> <p>C43</p> <p>I-B</p> <p>I-TS</p> <p>I-R1</p> <p>I-R2</p>	<p>Zoning (continued)</p> <p>R2 Residential</p> <p>R3 Residential</p> <p>R4 Residential</p> <p>R5 Residential</p> <p>R6 Residential</p> <p>ROS Recreation Open Space</p>	<p>Zoning (continued)</p> <p>C25</p> <p>C26</p> <p>C27</p> <p>C28</p> <p>C29</p> <p>C30</p> <p>C31</p>
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Map

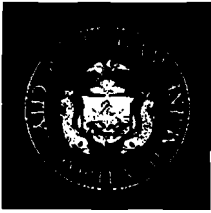


Interstate	Stream	County Streets	ME Towns
		A15	Land
Streets	Wetland	A21	Water Body
	swamp	A31	Ocean
Buildings	Lake/Pond	Photos 2006 (islands)	
Building	under_road	Red: Band_1	
Out Building	waterbody	Green: Band_2	
Parcels			

Map



<p>Parcels</p> <ul style="list-style-type: none"> <p>Interstate</p> <ul style="list-style-type: none"> <p>Streets</p> <ul style="list-style-type: none"> <p>Buildings</p> <ul style="list-style-type: none"> Building Out Building 	<p>Stream Overlay Zone</p> <ul style="list-style-type: none"> Stream_protection <p>Island Zoning</p> <ul style="list-style-type: none"> C43 I-B I-TS I-R1 I-R2 	<p>Zoning (continued)</p> <ul style="list-style-type: none"> R2 Residential R3 Residential R4 Residential R5 Residential R6 Residential ROS Recreation Open Space 	<p>Zoning (continued)</p> <ul style="list-style-type: none"> C25 C26 C27 C28 C29 C30 C31
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PORTLAND MAINE

Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov

*Lee Urban- Director of Planning and Development
Marge Schmuckal, Zoning Administrator*

October 12, 2006

Stephen B. Burke
19 Olde Colony Lane
Cape Elizabeth, ME 04107

RE: Anderson Ave., cor. Of Hazelwood Rd., Little Diamond Island – 105-G-007 –
IR-2 Zone

Dear Mr. Burke,

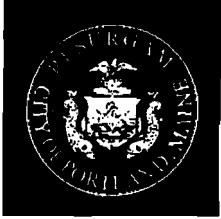
I am in receipt of your request to determine whether the lot located at 105-G-007 on Anderson Avenue on Little Diamond Island meets the requirements of the Lot of Record provisions under section 14-433.

On 9/28/06 we meet together to review the chain of title information that you had researched. This lot is a lot of record that has been described prior to July 15, 1985. The chain of titles for the lot in question and adjacent lots showed that it has been held under separate and distinct ownership from those adjacent lots since July 15, 1985. The lot in question, #105-G-007 also meets the applicable street frontage requirements of 50 feet for that time. This lot is approximately 15,132 square feet in size which is more than the minimum of 6,500 square feet required under 14-433.

This is considered to be a buildable lot under 14-433 as described at this time.

Please note that this letter is not an allowance to start construction. There is a requirement to go through a building permit and site plan review process for any new construction. It will be necessary to apply with all the required paperwork at that time. It will be necessary to include this letter with your submittal at that time.

You have asked for further information on the Lot of Record requirements and the potential sale of your property to a member outside of your family. Please note that the Lot of Record requirements under section 14-433 do not require ownership of a lot to remain in one family name. It does require that the lot be held under separate and distinct ownership from adjoining lots. If this lot was sold to one of the current or previous owners since July 15, 1985 of the adjoining lots, you would lose your ability to meet the requirements of 14-433 and it would no longer be considered a buildable lot.



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*Penny St. Louis - Director of Planning and Urban Development
Marge Schmuckal, Zoning Administrator*

June 16, 2011

Mike Morse
Department of Environmental Protection
312 Canco Road
Portland, ME 04103

Dear Mike,

Enclosed is a Variance Appeal Application that we received on June 13, 2011 which is scheduled to go before the Zoning Board of Appeals on Thursday, July 16, 2011. The lot is located on Anderson Avenue on Little Diamond Island. The applicant is asking for a reduction in the side setback requirement in order to build a new single family home on a vacant lot of record. The lot is located completely within the Shoreland Zone.

Please feel free to call me at 874-8709 if you have any questions or concerns.

Yours truly,

A handwritten signature in black ink, appearing to read "A. B. Machado".

Ann B. Machado
Zoning Specialist
(207) 874-8709



**City of Portland, Maine
 Department of Planning and Urban Development
 Zoning Board of Appeals
 Variance Appeal Application**

Applicant Information:

STEPHEN B BURKE
 Name

STEPHEN + LUCY BURKE TRUSTEES
 Business Name Little Diamond Island Realty Trust.

19 OLDE COLONY LANE
 Address

CAPE ELIZABETH, ME 04107

207-767-1818
 Telephone Fax

Applicant's Right, Title or Interest in Subject Property

BENEFICIARY
 (e.g. owner, purchaser, etc.):

Current Zoning Designation: IR-2

Existing Use of Property:

VACANT LOT

Subject Property Information:

ANDERSON AVE (LDI) PORTLAND, MAINE
 Property Address

105-G-007
 Assessor's Reference (Chart-Block-Lot)

Property Owner (if different):

Name

Address

Telephone Fax

Variance from Section 14 - 473

RECEIVED

MAY 31 2011

Dept. of Building Inspections
 City of Portland Maine

* original application submitted
 - 2nd page was practical difficulty
 questions not variance.
 - owner's name - not quite correct.

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 certified that all information herein supplied by his/her is true and correct to the best of his/her knowledge and belief.

Stephen B. Burke
 Signature of Applicant

5-27-11
 Date

Notwithstanding the provisions of subsections 14-473(c)(1) and (2) of this section, the Board of Appeals may grant a variance from the dimensional standards of this article when strict application of the provisions of the ordinance would create a practical difficulty, as defined herein, and when all the following conditions are found to exist:

1. The need for the variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood:

THE SIDE SETBACKS OF 20' EXCEED THE 17' OF BUILDABLE WIDTH OF A NEW COTTAGE.

2. The granting of the variance will not have an unreasonably detrimental effect on either the use or fair market value of the abutting properties:

THE NEW COTTAGE IS SET AHEAD OF THE NEIGHBOR TOWARDS THE WATER, 28' FT. FROM THE BOUNDARY. THEIR PROPERTY WILL IMPROVE IN VALUE.

3. The Practical Difficulty is not the result of action taken by the applicant or a prior owner:

IT IS NOT.

4. No other feasible alternative is available to the applicant, except a variance:

THE RESTRICTED WIDTH MAKES CONSTRUCTION UNREASONABLE.

5. The granting of a variance will not have an unreasonably adverse effect on the natural environment:

CONSTRUCTION ON PLOTS AND PRESERVATION OF EXISTING TREES AND DRAINAGE IS ASSURED.

6. Strict application of the dimensional standards of the ordinance to the subject property will preclude a use which is permitted in the zone in which the property is located:

SEPTIC DESIGN PERMITS 3-BEDROOM CONSTRUCTION, BUT TWO BEDROOMS ACROSS RESTRICTS THEM TO LESS THAN 8 FT. EACH.

7. Strict application of the dimensional standards of the ordinance to the subject property will result in significant economic injury to the applicant:

ENGINEERING & DESIGN EXPENSES HAVE BEEN INCURRED BASED ON CITY OPINION AS "BUILDABLE."

8. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. Section 435, nor within a shoreland of flood hazard zone as defined in this article:

FRONT SETBACKS FROM THE WATER ARE IN ACCORDANCE WITH SHORELAND ZONING ORDINANCE. SURVEY BY OWEN HASKELL SHOWS NO WETLANDS OR FLOOD HAZARD.

Ann Machado - Zoning Board of Appeals

From: "Brad Burke" <sburke1@maine.rr.com>
To: <amachado@portlandmaine.gov>
Date: 6/1/2011 5:28 PM
Subject: Zoning Board of Appeals

Hello Ann,

We talked the other day (5/31) when I came in with the paperwork for a Variance on Little Diamond Island.

I'm not sure if it's necessary to change but under the applicants information I wrote Stephen and Lucy Burke Trust when in fact, they are the Trustee's on the "Little Diamond Island Trust" of which as I indicated on the application I am a beneficiary. I have talked with my father and he's sending a statement indicating that he has no problem with me representing the Burke family interests on LDI. My concern at this time is the Business name on the application which reads Stephen and Lucy Burke Trust and probably should read Little Diamond Island Trust. I'll try calling tomorrow.

- Stephen B Burke (sburke1@maine.rr.com)

or

(sburke2@maine.rr.com)

RECEIVED

JUN - 2 2011

**Dept. of Building Inspections
City of Portland Maine**

Assessor's Office | 389 Congress Street | Portland, Maine 04101 | Room 115 | (207) 874-8486

[City](#) [Home](#) [Departments](#) [City Council](#) [E-Services](#) [Calendar](#) [Jobs](#)

This page contains a detailed description of the Parcel ID you selected. Press the **New Search** button at the bottom of the screen to submit a new query.

Current Owner Information:

Services

Applications

Doing Business

Maps

Tax Relief

Tax Roll

Q & A

[browse city services a-z](#)

[browse facts and links a-z](#)

CBL	105 G007001
Land Use Type	VACANT LAND
Property Location	0 ANDERSON AVE
Owner Information	BURKE STEPHEN F & LUCY L BURKE TRUSTEES
	19 OLDE COLONY LN
	CAPE ELIZABETH ME 04107
Book and Page	20721/169
Legal Description	105-G-7
	ANDERSON AVE HAZELWOOD RD
	LITTLE DIAMOND ISLAND
	15132 SF
Acres	0.347

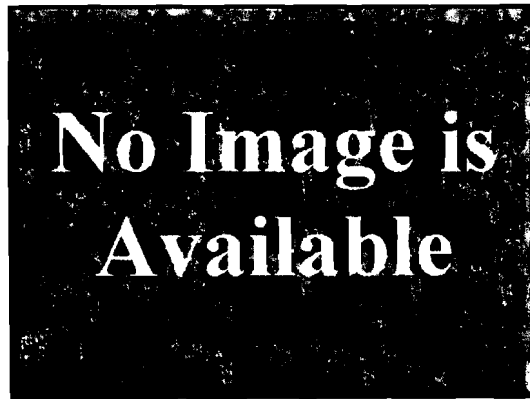
Current Assessed Valuation:

TAX ACCT NO.	15130	OWNER OF RECORD AS OF APRIL 2010
		BURKE STEPHEN F &
		LUCY L BURKE TRUSTEES
LAND VALUE	\$84,100.00	41 WAY TO THE RIVER RD
BUILDING VALUE	\$0.00	WEST NEWBURY MA 01985
NET TAXABLE - REAL ESTATE	\$84,100.00	
TAX AMOUNT	\$1,507.08	

Any information concerning tax payments should be directed to the Treasury office at 874-8490 or [e-mailed](#).



Best viewed at 800x600, with Internet Explorer



[View Map](#)

Sales Information:

Sale Date	Type	Price	Book/Page
12/30/2003	LAND	\$0.00	20721/169

[New Search!](#)



City of Portland Zoning Board of Appeals

July 6, 2011

Stephen B. Burke
19 Olde Colony Lane
Cape Elizabeth, ME 04107

Dear Mr. Burke,

Your Variance Appeal has been scheduled to be heard before the Zoning Board of Appeals on **Thursday, July 14, 2011 at 6:30 p.m.** in Room 209, located on the second floor of City Hall.

Please remember to bring a copy of your application packet with you to the meeting to answer any questions the Board may have.

I have included an agenda with your appeal highlighted, as well as a handout outlining the meeting process for the Zoning Board of Appeals.

I have also included the bill for the processing fee, legal ad and the notices for the appeal. The check should be written as follows:

MAKE CHECK OUT TO: City of Portland
MAILING ADDRESS: Room 315
389 Congress Street
Portland, ME 04101

Please feel free to contact me at 207-874-8709 if you have any questions.

Sincerely,

Ann B. Machado
Zoning Specialist

Cc: File

CITY OF PORTLAND
DEPARTMENT OF PLANNING & DEVELOPMENT

389 Congress Street
Portland, Maine 04101

INVOICE FOR FEES

Application No: 2011-265 **Applicant:** Stephen B. Burke
CBL: 105 G007 **Application Type:** Variance Appeal
Location: Anderson Avenue, LDI **Invoice Date:** 7/6/11 - 2nd invoice 7/15/11

<u>Fee Description</u>	<u>QTY</u>	<u>Fee/Deposit Charge</u>
Legal Advertisements	1	\$60.40
Notices	32	\$24.00
Processing Fee	1	\$50.00
Zoning Practical Difficulty	1	\$100.00

Total Current Fees: \$234.40
Total Current Payments: -\$100.00
Amount Due Now: \$134.40

*PA # 1024
7/21/11*

Bill to: **CBL: 105 G007** **Application No: 2011-265**
Stephen B. Burke **Invoice Date: 7/6/11** **Total Amount Due: \$134.40**
19 Olde Colony Lane (due on receipt)
Cape Elizabeth, ME 04107



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Receipts Details:

Tender Information: Check , Check Number: 2426
Tender Amount: 100.00

Receipt Header:

Cashier Id: amachado
Receipt Date: 5/31/2011
Receipt Number: 3927

Receipt Details:

Referance ID:	1047	Fee Type:	PZ-Z1
Receipt Number:	0	Payment Date:	
Transaction Amount:	100.00	Charge Amount:	100.00
Job ID: Project ID: 2011-265 - Anderson Avenue L.D.I. - Variance Appeal			
Additional Comments:			

Thank You for your Payment!



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Receipts Details:

Tender Information: Check , Check Number: 1024

Tender Amount: 134.40

Receipt Header:

Cashier Id: amachado

Receipt Date: 7/21/2011

Receipt Number: 5297

Receipt Details:

Referance ID:	1115	Fee Type:	PZ-N1
Receipt Number:	0	Payment Date:	
Transaction Amount:	24.00	Charge Amount:	24.00
Job ID: Project ID: 2011-265 - Anderson Avenue L.D.I. - Variance Appeal			
Additional Comments:			

Referance ID:	1116	Fee Type:	PZ-L2
Receipt Number:	0	Payment Date:	
Transaction Amount:	60.40	Charge Amount:	60.40
Job ID: Project ID: 2011-265 - Anderson Avenue L.D.I. - Variance Appeal			
Additional Comments:			

Referance ID:	1117	Fee Type:	PZ-ZP
Receipt Number:	0	Payment Date:	
Transaction Amount:	50.00	Charge Amount:	50.00
Job ID: Project ID: 2011-265 - Anderson Avenue L.D.I. - Variance Appeal			
Additional Comments:			

Thank You for your Payment!

Ann Machado - Re: Zoning Board of Appeals Legal Ad

From: Joan Jensen <jjensen@pressherald.com>
To: Ann Machado <AMACHADO@portlandmaine.gov>
Date: 7/5/2011 12:18 PM
Subject: Re: Zoning Board of Appeals Legal Ad
Attachments: Portland 7:8.pdf

Hi Ann,

All set to publish your ad on Friday, July 8.
The cost is \$241.58 includes \$2.00 online charge. I included a proof.
Thank you,
Joan

--

Joan Jensen
Legal Advertising
Portland Press Herald/Maine Sunday Telegram
P.O. Box 1460
Portland, ME 04104
Tel. (207) 791-6157
Fax (207) 791-6910
Email jjensen@pressherald.com

On 7/5/11 10:05 AM, Ann Machado wrote:

Joan -
Attached is the Zoning Board of Appeals legal ad for Friday, July 8, 2011.

Thank you.

Ann Machado
@874.8709

CBL	OWNER	OWNER MAILING ADDRESS	PROPERTY LOCATION	UNITS
	BURKE STEPHEN F & LUCY L BURKE TRUSTEES	41 WAY TO THE RIVER RD WEST NEWBURY , MA 01985	ANDERSON AVE	0
	BURKE STEPHEN F & LUCY L BURKE TRUSTEE	41 WAY TO THE RIVER RD WEST NEWBURY , MA 01985	46 ANDERSON AVE	1
	BURKE STEPHEN F JR	41 WAY TO THE RIVER ROAD WEST NEWBURY, MA 01985	ANDERSON AVE	0
	CICUTO KENNETH	365 SPRING ST PORTLAND , ME 04101	62 CITY VIEW AVE	1
	COHEN STEVEN G & NANCY K ANSHELES JTS	186 CRAIGIE ST PORTLAND , ME 04102	73 ANDERSON AVE	1
	CURRIER DENNIS J & MARY ANN JTS	PO BOX 7911 PORTLAND , ME 04112	50 CITY VIEW AVE	1
	DOHERTY LINDA E & WILLIAM J JTS	PO BOX 7911 PORTLAND , ME 04112	SORRENTO RD	0
	DOHERTY LINDA E & WILLIAM J JTS	PO BOX 7911 PORTLAND , ME 04112	34 SORRENTO RD	1
	DOUCETTE DALE A & PRISCILLA B JTS	79 GEORGE ST PORTLAND, ME 04103	51 CITY VIEW AVE	1
	FEENEY ANNA G & JOSEPH R JTS	8214 WOODSONG ROW HUDSON , FL 34667	51 ANDERSON AVE	1
	HAGGE CYRUS Y	225 COMMERCIAL ST PORTLAND , ME 04101	ANDERSON AVE	0
	HARRISON JAMES H	36 STONYBROOK RD CAPE ELIZABETH , ME 04107	ANDERSON AVE	0
	HARRISON JAMES H	36 STONYBROOK RD CAPE ELIZABETH , ME 04107	2 BIRCHWOOD AVE	1
	HOBBS JEFFREY R & SUSAN G HOBBS JTS	4 SMUGGLERS COVE RD CAPE ELIZABETH , ME 04107	SORRENTO RD	0
	HOTCHKISS DOUGLASS P & LINDA C JTS	26 PATRIOTS WAY SOMERSET , NJ 08873	ANDERSON AVE	0
	HOTCHKISS DOUGLASS P & LINDA C JTS	26 PATRIOTS WAY SOMERSET , NJ 08873	25 ANDERSON AVE	1
	INMAN JANE H	12 SHEPARD LN PORTLAND, ME 04103	CITY VIEW AVE	0
	INMAN JANE H	12 SHEPARD LN PORTLAND, ME 04103	45 CITY VIEW AVE	1
	KENNY CAROLE P TRUSTEE	288 ROLLING HILL RD PORTSMOUTH , RI 02871	2 ANDERSON AVE	1
	LATKIN PATRICIA TRUSTEE	33 SOUTH ST YARMOUTH , ME 04096	ANDERSON AVE	0
	LATKIN PATRICIA TRUSTEE	33 SOUTH ST YARMOUTH , ME 04096	4 BIRCHWOOD AVE	1
	LEAHY PETER J IRREVOCABLE REALTY TRUST	4 BLACKSMITH RD MILTON, MA 02186	33 CITY VIEW AVE	1
	LITTLE DIAMOND ISLAND ASSOCIATION	PO BOX 4829 PORTLAND , ME 04112	BIRCHWOOD AVE	0
	LITTLE DIAMOND ISLAND ASSOCIATION	PO BOX 4829 PORTLAND , ME 04112	BIRCHWOOD AVE	0
	LUZI DANA-LEE & TODD E LUZI	139 BARTLETT AVE NORTH WILBRAHAM, MA 01095	10 BIRCHWOOD AVE	1
	LUZI DANA-LEE & TODD E LUZI	139 BARTLETT AVE NORTH WILBRAHAM, MA 01095	25 SORRENTO RD	0

CBL	OWNER	OWNER MAILING ADDRESS	PROPERTY LOCATION	UNITS
	MANOOGIAN ARCHIE & MARLENE JTS	197 MYRTLE ST WESTBROOK, ME 04092	39 CITY VIEW AVE	1
	MASETH WILLIAM E JR & SUSAN R JTS	309 THORNHILL RD BALTIMORE, MD 21212	ANDERSON AVE	0
	MASETH WILLIAM E JR & SUSAN R JTS	309 THORNHILL RD BALTIMORE, MD 21212	ANDERSON AVE	1
	PRINGLE ANNE B	44 NEAL ST PORTLAND , ME 04102	30 SORRENTO RD	1
	RAND AUDREY ETALS	55 CANDLEBROOK LN SOUTH PORTLAND , ME 04106	76 ANDERSON AVE	1
	RUDNICKI S GRANT & SUSAN S RUDNICKI TRUSTEES	256 MT BLUE ST NORWELL , MA 02061	32 ANDERSON AVE	1
	RUDNICKI S GRANT & SUSAN S RUDNICKI TRUSTEES	256 MT BLUE ST NORWELL , MA 02061	ELMWOOD RD	0
	SOTIRION WILLIAM G	2204 E OCEAN VIEW # 12 NORFOLK , VA 23518	BIRCHWOOD AVE	0
	TIERNEY DAVID M & JILL G TIERNEY TRUSTEE	13 ASHLAND ST NEWBURY PORT , MA 01950	ANDERSON AVE	0
	TIERNEY DAVID M & JILL G TIERNEY TRUSTEE	13 ASHLAND ST NEWBURY PORT , MA 01950	63 ANDERSON AVE	1
	TIERNEY MARK F & COLLEEN B JTS	P.O.BOX 7903 PORTLAND , ME 04112	70 ANDERSON AVE	1
	WOODBERRY J DUDLEY ETAL	229 WALNUT ST MANCHESTER, NH 03104	BIRCHWOOD AVE	0
	WOODBERRY J DUDLEY ETALS	229 WALNUT ST MANCHESTER, NH 03104	BIRCHWOOD AVE	0
	WOODBERRY J DUDLEY ETALS	229 WALNUT ST MANCHESTER, NH 03104	24 BIRCHWOOD AVE	1
	WOODRUFF THEOPHANE B	63 PLEASANT ST HARWICH PORT, MA 02646	50 ANDERSON AVE	1

