

# CITY OF PORTLAND, MAINE

---

## ZONING BOARD OF APPEALS

Peter Coyne  
Philip Saucier-chair  
Sara Moppin  
Jill E. Hunter  
Gordan Smith-secretary  
William Getz

September 22, 2009

Michael & Marleen Denney  
8 Arlington Street  
Portland, ME 04101

RE: 8 Arlington Street  
CBL: 126 F008  
ZONE: R-3

Dear Mr. & Ms. Denney:

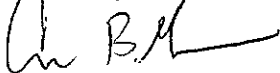
As you know, at the September 17, 2009 meeting, the Board voted 5-1 to grant your Interpretation Appeal to allow you to expand your laundry room and add a rear deck. They also voted 6-0 to accept the withdrawal of the Practical Difficulty Appeal.

Enclosed please find a copy of the board's decision. Your permit application (#09-0817) has been approved by zoning and is moving forward in the review process.

Appeals from decisions of the Board may be filed in Superior Court, pursuant to 30-A M.R.S.A. section 2691 (2) (G).

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

Yours truly,



Ann B. Machado  
Zoning Specialist

Cc. file

COPIED



# CITY OF PORTLAND, MAINE

---

# ZONING BOARD OF APPEALS

## ZONING BOARD APPEAL DECISION

To: City Clerk  
From: Marge Schmuckal, Zoning Administrator  
Date: September 21, 2009  
RE: Action taken by the Zoning Board of Appeals on September 17, 2009.

**Members Present:** Phil Saucier (chair), Gordon Smith (secretary), Jill Hunter, Sara Moppin, Peter Coyne and William Getz.

### 1. New Business:

#### A. Interpretation Appeal:

8 Arlington Street, Michael & Marleen Denney, owners, Tax Map 126, Block F, Lot 008, R-3 Residential Zone: The appellants are seeking an interpretation of sections 14-90(b) and 14-388 of the land use ordinance as they relate to their permit application to expand their laundry room and add a rear deck. Representing the appeal are the owners. **The Board voted 5-1 to grant the interpretation appeal.**

#### B. Practical Difficulty Variance Appeal:

8 Arlington Street, Michael & Marleen Denney, owners, Tax Map 126, Block F, Lot 008, R-3 Residential Zone: The appellants are seeking a variance from section 14-388 which states that “a building nonconforming as to the regulations governing area per dwelling unit shall not be enlarged unless such building, including such addition or enlargement, is made to conform to all the area per dwelling regulations of the zone in which it is located.” Section 14-90(a) requires a minimum lot area per dwelling unit of 6,500 square feet. The lot is 5665 square feet. Representing the appeal are the owners. **The Board voted 6-0 to accept the withdrawal of the appeal.**

#### Enclosure:

Agenda of September 17, 2009  
Original Zoning Board Decision  
One dvd  
CC: Joseph Gray, City Manager  
Penny St. Louis Littell, Director, Planning & Urban Development  
Alex Jaegerman, Planning Division  
T.J. Martzial, Housing & Neighborhood Services Division



# CITY OF PORTLAND, MAINE

---

## ZONING BOARD OF APPEALS

Denial of Building Permit in R-3 Zone:

### Interpretation Appeal

### DECISION

Date of public hearing: September 17, 2009

Name and address of applicant: Michael & Marleen Denney  
8 Arlington Street  
Portland, ME 04101

Location of property under appeal: 8 Arlington St.

#### For the Record:

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

Michael Denney, Applicant  
Ben Weigel, Applicant's contractor  
Ruth Jurgelovich, 7 ~~Arlington~~ St. (proponent)

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



Findings of Fact and Conclusions of Law:

The Board's authority to review an interpretation of the building authority is pursuant to Section 14-472 of the zoning ordinance.

The City denied a building permit on August 18, 2009 for an addition to a residence on Arlington St. The addition was denied pursuant to section 14-388 of the City Code. The language of that ordinance states as follows:

**Sec. 14-388. Nonconformity as to area of dwelling.**

A building nonconforming as to the regulations governing area per dwelling unit shall not be enlarged unless such building, including such addition or enlargement, is made to conform to all the area per dwelling regulations of the zone in which it is located.

Section 14-90(b) provides the lot area per dwelling unit required in the R-3 zone as follows:

(b) *Minimum lot area per dwelling unit:*

*PRUD:* Sixty-five hundred (6,500) square feet of net land area as defined in section 14-47 (definitions) of this article. As part of a site plan and subdivision application, the applicant shall provide a calculation of those factors deducted to determine net land area. In addition, such net area factors shall be delineated on a site plan.

*Other uses:* Sixty-five hundred (6,500) square feet.

Whereas applicants' property is not in a Planned Residential Unit Development (PRUD), their single family home falls under "other uses" and they are therefore required to have 6,500 square feet of lot for their single dwelling unit. The applicants' lot is 5,665 square feet.





Appellant has demonstrated that the denial of the building permit was incorrect or improper.

Satisfied  Not Satisfied

Reason and supporting facts:

Applicant's lot is a lot of record pursuant to Sec. 14-90(a) and Sec. 14-433 (paragraph 1) and therefore has a minimum lot size and minimum land area per dwelling unit of 5,000 sq. ft.

Applicants' arguments:

1. 14-90(b) and 14-388 do not apply to single family residences in the R-3.

Both 14-90(b) and 14-90(a) apply to applicant, per ordinance scheme.

2. Section 14-87(a)(1) and 14-90(a)(1) apply to single family residences in the R-3.

yes

3. Under the definitions of chapter 14, 8 Arlington St. is a single family detached residential dwelling, not a dwelling unit.

Applicant's case is both a dwelling and a dwelling unit.

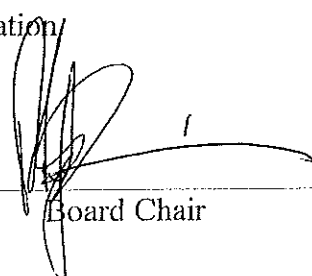


**Decision:** (check one)

Option 1: The Board finds that the Appellant has satisfactorily demonstrated that the Interpretation of the City's Code Enforcement Officer was incorrect or improper, and therefore GRANTS the application.

Option 2: The Board finds that the Appellant has NOT satisfactorily demonstrated that the Interpretation of the City's Code Enforcement Officer was incorrect or improper, and therefore DENIES the application.

Dated: 9.17.09

  
\_\_\_\_\_  
Board Chair



Members Present: Philip Saucier, Jill Hunter, Sara Mappin, Peter Coyne, Bill Getz, Gordon Shiff

CITY OF PORTLAND, MAINE  
ZONING BOARD OF APPEALS

Members Absent: None

APPEAL AGENDA

The Board of Appeals will hold a public hearing on Thursday, September 17, 2009 at 6:30 p.m. on the second floor in room 209 at the Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following Appeals:

Called to Order: 6:35 pm

1. New Business:

5-1  
Granted

A. Interpretation Appeal:

8 Arlington Street, Michael & Marleen Denney, owners, Tax Map 126, Block F, Lot 008, R-3 Residential Zone: The appellants are seeking an interpretation of sections 14-90(b) and 14-388 of the land use ordinance as they relate to their permit application to expand their laundry room and add a rear deck. Representing the appeal are the owners.

6-0  
Withdrawn  
Accepted

B. Practical Difficulty Variance Appeal:

8 Arlington Street, Michael & Marleen Denney, owners, Tax Map 126, Block F, Lot 008, R-3 Residential Zone: The appellants are seeking a variance from section 14-388 which states that "a building nonconforming as to the regulations governing area per dwelling unit shall not be enlarged unless such building, including such addition or enlargement, is made to conform to all the area per dwelling regulations of the zone in which it is located." Section 14-90(a) requires a minimum lot area per dwelling unit of 6,500 square feet. The lot is 5665 square feet. Representing the appeal are the owners.

2. Adjournment: 8:45

We need to define "lot of record"

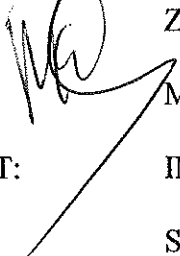




# PORTLAND MAINE

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

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

TO:  ZONING CHAIR AND BOARD MEMBERS  
FROM: MARGE SCHMUCKAL, ZONING ADMINISTRATOR  
SUBJECT: INTERPRETATION APPEAL AT 8 ARLINGTON STREET  
DATE: SEPTEMBER 11, 2009

This memo is in response to the applicant's memo to the Board.

I disagree on the first point given that "Minimum lot area per dwelling unit" and 14-388 do not apply to single family detached residential dwellings in the R-3 Zone, but apply only to Planned Residential Unit Development(or PRUDs). It is interesting that latter on in the applicant's argument it is stated that the R-3 Zone purpose is characterized as "to provide for two distinct types of housing: (1) single-family homes on individual lots, and (2) planned residential unit developments on substantially sized parcels." I will point out that the wording of section 14-90(b) are for PRUDs and other uses. A single family dwelling is considered an "other use" by this section of the Ordinance. I would also point out that the Courts have ruled that minimum lot area per dwelling unit does apply to single family dwelling units as determined recently in the 38 Torrington, Peaks Island case, Alfred L. Aydelott, et al v. Zoning Board of Appeals, City of Portland, et al.

The second point that is raised by the applicant introduces Section 14-433 in regard to minimum lot size and the reduction allowance for setbacks. I would like to point out that minimum lot size and minimum lot area per dwelling unit are two different concepts and entities within the Land Use Ordinance. As far as I am aware, the applicant is not requesting a reduction in building setbacks for the proposed addition. I believe that this section of the ordinance which refers to a lot on which a principal structure existed as of July 19, 1998, allows an addition to be built closer to property lines if certain conditions existed. There is an assumption by the applicant this section refers to buildings placed upon a lot that is not meeting the minimum lot size or the minimum lot size per dwelling unit. There are many lots within Portland which meet the minimum lot size and the minimum area per dwelling unit. And yet, the existing structure does not meet current setbacks. Such lots are challenged in meeting the current setbacks now in force. I interpret this section of the Ordinance to apply to such lots.





I would also point out that the applicant is trying to somehow apply the allowances for a “lot of record” to a lot which is already developed. The way to apply the “lot of record” allowance is when an existing vacant lot is proposed to be developed and is less than the minimum land area lot size as required under section 14- 90(a). At that point, section 14- 90(a) specifically allows section 14-433 as an avenue to build upon a smaller lot if the rest of the listed conditions are met.

The applicant goes on to the definition section of the Land Use Ordinance to bifurcate the definition of a single family detached residential dwelling from a dwelling unit. He proposes that the two definitions are mutually exclusive. I interpret the two definitions as being supportive and not in opposition to each other.

I understand that most folks are not aware of the complexities within the Land Use Ordinance, but I can not support “pretzel” logic to bypass the Ordinance.

Section 14-388 clearly states that “A building nonconforming as to the regulations governing area per dwelling unit shall not be enlarged unless such building, including such addition or enlargement is made to conform to all the area per dwelling regulations of the zone in which it is located”. This office has disagreed with this section of the Ordinance for several years. I have wanted the City to either eliminate or revise this section of the Ordinance. Section 14-388 of the Ordinance along with a couple other sections is currently advancing through the Courts. The City is not anxious to change the Ordinance at this time because of that action. As soon as there is a final resolution from the Law Court, I will be asking for a revision of this section. It seems to me that single family lots that are legally nonconforming to either lot size or land area per dwelling unit should be allowed to expand as long as all other dimensional requirements are being met.





## City of Portland Zoning Board of Appeals

September 9, 2009

Michael & Marleen Denney  
8 Arlington Street  
Portland, ME 04101

Dear Appellant,

Your Interpretation Appeal and Practical Difficulty Variance Appeal have been scheduled to be heard before the Zoning Board of Appeals on **Thursday, September 17, 2009 at 6:30 p.m.** in Room 209, located on the second floor of City Hall.

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

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

I have also included the bills for the Legal Ad, Processing Fee and the Notices. 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, MAINE

---

## ZONING BOARD OF APPEALS

### APPEAL AGENDA

The Board of Appeals will hold a public hearing on Thursday, September 17, 2009 at 6:30 p.m. on the second floor in room 209 at the Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following Appeals:

#### 1. New Business:

##### A. Interpretation Appeal:

8 Arlington Street, Michael & Marleen Denney, owners, Tax Map 126, Block F, Lot 008, R-3 Residential Zone: The appellants are seeking an interpretation of sections 14-90(b) and 14-388 of the land use ordinance as they relate to their permit application to expand their laundry room and add a rear deck. Representing the appeal are the owners.

##### B. Practical Difficulty Variance Appeal:

8 Arlington Street, Michael & Marleen Denney, owners, Tax Map 126, Block F, Lot 008, R-3 Residential Zone: The appellants are seeking a variance from section 14-388 which states that "a building nonconforming as to the regulations governing area per dwelling unit shall not be enlarged unless such building, including such addition or enlargement, is made to conform to all the area per dwelling regulations of the zone in which it is located." Section 14-90(a) requires a minimum lot area per dwelling unit of 6,500 square feet. The lot is 5665 square feet. Representing the appeal are the owners.

#### 2. Adjournment:



**CITY OF PORTLAND**  
**DEPARTMENT OF PLANNING & URBAN DEVELOPMENT**

389 Congress Street  
 Portland, Maine 04101

**INVOICE FOR FEES**

<b>Application No:</b> 0000-1549	<b>Applicant:</b> Michael Denney
<b>Project Name:</b> 8 Arlington St	<b>Location:</b> 8 ARLINGTON ST
<b>CBL:</b> 126 F008001	<b>Application Type:</b> Interpretation Appeal
<b>Invoice Date:</b> 09/09/2009	

<b>Previous Balance</b>	-	<b>Payment Received</b>	+	<b>Current Fees</b>	-	<b>Current Payment</b>	=	<b>Total Due</b>	<b>Payment Due Date</b>
\$0.00		\$0.00		\$275.72		\$100.00		\$175.72	On Receipt

**First Billing**

**Previous Balance** **\$0.00**

<b>Fee Description</b>	<b>Qty</b>	<b>Fee/Deposit Charge</b>
Legal Advertisements	1	\$79.22
Notices	62	\$46.50
Legal Ad Processing Fee	1	\$50.00
Appeal Fee	1	\$100.00
		<hr/> \$275.72
<b>Total Current Fees:</b>	<b>+</b>	<b>\$275.72</b>
<b>Total Current Payments:</b>	<b>-</b>	<b>\$100.00</b>
<b>Amount Due Now:</b>		<hr/> <b>\$175.72</b>

Detach and remit with payment

**Bill to:** Michael Denney  
 8 Arlington St  
 Portland, ME 04101

CBL 126 F008001  
**Application No:** 0000-1549  
**Invoice Date:** 09/09/2009  
**Invoice No:** 35475  
**Total Amt Due:** \$175.72  
**Payment Amount:**

Make checks payable to the *City of Portland*, ATTN: Inspections, 3rd Floor, 389 Congress Street, Portland, ME 04101.





**CITY OF PORTLAND**  
**DEPARTMENT OF PLANNING & URBAN DEVELOPMENT**

389 Congress Street  
 Portland, Maine 04101

**INVOICE FOR FEES**

<b>Application No:</b> 0000-1550	<b>Applicant:</b> Michael Denney
<b>Project Name:</b> 8 Arlington St	<b>Location:</b> 8 ARLINGTON ST
<b>CBL:</b> 126 F008001	<b>Application Type:</b> Practical Difficulty Variance Appeal
<b>Invoice Date:</b> 09/09/2009	

<b>Previous Balance</b>	-	<b>Payment Received</b>	+	<b>Current Fees</b>	-	<b>Current Payment</b>	=	<b>Total Due</b>	<b>Payment Due Date</b>
\$0.00		\$0.00		\$224.97		\$100.00		\$124.97	On Receipt

**First Billing**

**Previous Balance** **\$0.00**

Fee Description	Qty	Fee/Deposit Charge
Legal Advertisements	1	\$79.22
Notices	61	\$45.75
Appeal Fee	1	\$100.00
		\$224.97

<b>Total Current Fees:</b>	+	<b>\$224.97</b>
<b>Total Current Payments:</b>	-	<b>\$100.00</b>
<b>Amount Due Now:</b>		<b>\$124.97</b>

Detach and remit with payment

**Bill to:** Michael Denney  
 8 Arlington St  
 Portland, ME 04101

**CBL 126 F008001**  
**Application No:** 0000-1550  
**Invoice Date:** 09/09/2009  
**Invoice No:** 35476  
**Total Amt Due:** \$124.97  
**Payment Amount:**

Make checks payable to the *City of Portland*, ATTN: Inspections, 3rd Floor, 389 Congress Street, Portland, ME 04101.



**CITY OF PORTLAND**  
**DEPARTMENT OF PLANNING & URBAN DEVELOPMENT**

389 Congress Street  
 Portland, Maine 04101

**INVOICE FOR FEES**

<b>Application No:</b> 0000-1549	<b>Applicant:</b> Michael Denney
<b>Project Name:</b> 8 Arlington St	<b>Location:</b> 8 ARLINGTON ST
<b>CBL:</b> 126 F008001	<b>Application Type:</b> Interpretation Appeal
<b>Invoice Date:</b> 09/09/2009	

<b>Previous Balance</b>	-	<b>Payment Received</b>	+	<b>Current Fees</b>	-	<b>Current Payment</b>	=	<b>Total Due</b>	<b>Payment Due Date</b>
\$0.00		\$0.00		\$275.72		\$275.72		\$0.00	On Receipt

**Previous Balance** **\$0.00**

<b>Fee Description</b>	<b>Qty</b>	<b>Fee/Deposit Charge</b>
Legal Advertisements	1	\$79.22
Notices	62	\$46.50
Legal Ad Processing Fee	1	\$50.00
Appeal Fee	1	\$100.00
		<u>\$275.72</u>
<b>Total Current Fees:</b>	+	<b>\$275.72</b>
<b>Total Current Payments:</b>	-	<b>\$275.72</b>
<b>Amount Due Now:</b>		<b>\$0.00</b>

<b>Bill to:</b> Michael Denney 8 Arlington St Portland, ME 04101	<b>CBL</b> 126 F008001 <b>Application No:</b> 0000-1549 <b>Invoice Date:</b> 09/09/2009 <b>Invoice No:</b> 35475 <b>Total Amt Due:</b> \$0.00 <b>Payment Amount:</b> <span style="border: 1px solid black; padding: 2px;">\$275.72</span>
--	--

Make checks payable to the *City of Portland*, ATTN: Inspections, 3rd Floor, 389 Congress Street, Portland, ME 04101.



**CITY OF PORTLAND**  
**DEPARTMENT OF PLANNING & URBAN DEVELOPMENT**

389 Congress Street  
 Portland, Maine 04101

**INVOICE FOR FEES**

<b>Application No:</b> 0000-1549	<b>Applicant:</b> Michael Denney
<b>Project Name:</b> 8 Arlington St	<b>Location:</b> 8 ARLINGTON ST
<b>CBL:</b> 126 F008001	<b>Application Type:</b> Interpretation Appeal
<b>Invoice Date:</b> 09/09/2009	

<b>Previous Balance</b>	-	<b>Payment Received</b>	+	<b>Current Fees</b>	-	<b>Current Payment</b>	=	<b>Total Due</b>	<b>Payment Due Date</b>
\$0.00		\$0.00		\$275.72		\$100.00		\$175.72	On Receipt

**First Billing**

<b>Previous Balance</b>	<b>\$0.00</b>
-------------------------	---------------

Fee Description	Qty	Fee/Deposit Charge
Legal Advertisements	1	\$79.22
Notices	62	\$46.50
Legal Ad Processing Fee	1	\$50.00
Appeal Fee	1	\$100.00
		\$275.72
<b>Total Current Fees:</b>		<b>+\$275.72</b>
<b>Total Current Payments:</b>		<b>-\$100.00</b>
<b>Amount Due Now:</b>		<b>\$175.72</b>

Detach and remit with payment

**Bill to:** Michael Denney  
 8 Arlington St  
 Portland, ME 04101

CBL 126 F008001  
**Application No:** 0000-1549  
**Invoice Date:** 09/09/2009  
**Invoice No:** 35475  
**Total Amt Due:** \$175.72  
**Payment Amount:** 175.72

Make checks payable to the *City of Portland*, ATTN: Inspections, 3rd Floor, 389 Congress Street, Portland, ME 04101.



**Ann Machado - FW: Zoning Board of Appeals Legal Ad**

---

**From:** Joan Jensen <jjensen@pressherald.com>  
**To:** <AMACHADO@portlandmaine.gov>  
**Date:** 9/9/2009 2:07 PM  
**Subject:** FW: Zoning Board of Appeals Legal Ad  
**CC:** Gayle Guertin <GG@portlandmaine.gov>

---

Hi Ann,

All set to run your ad on Friday, September 11.  
The cost is \$158.44.

If you have any questions, please call or email me.

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

Joan -

Attached is the Zoning Board of Appeals legal ad for Friday, September 11, 2009.

Could you also copy Gayle Guertin on the cost of the ad?

Thank you.  
Ann Machado @874-8709







**CITY OF PORTLAND, MAINE**  
 Department of Building Inspections

**Original Receipt**

Received from Carroll 31 2009

Location of Work 7 Green Street

Cost of Construction \$ \_\_\_\_\_ Building Fee: \_\_\_\_\_  
 Permit Fee \$ \_\_\_\_\_ Site Fee: \_\_\_\_\_  
 Certificate of Occupancy Fee: \_\_\_\_\_  
 Total: 1000

Building (11) \_\_\_\_\_ Plumbing (15) \_\_\_\_\_ Electrical (12) \_\_\_\_\_ Site Plan (12) \_\_\_\_\_  
 Other \_\_\_\_\_  
 CBL: 196 Fees  
 Check #: 11208 Total Collected \$ 1000

**No work is to be started until permit issued.  
 Please keep original receipt for your records.**

Taken by: [Signature]



**CITY OF PORTLAND, MAINE**  
 Department of Building Inspections

**Original Receipt**

Received from Michael 15 2009

Location of Work 7 Green Street

Cost of Construction \$ \_\_\_\_\_ Building Fee: \_\_\_\_\_  
 Permit Fee \$ \_\_\_\_\_ Site Fee: \_\_\_\_\_  
 Certificate of Occupancy Fee: \_\_\_\_\_  
 Total: 1000

Building (11) \_\_\_\_\_ Plumbing (15) \_\_\_\_\_ Electrical (12) \_\_\_\_\_ Site Plan (12) \_\_\_\_\_  
 Other \_\_\_\_\_  
 CBL: 196 Fees  
 Check #: 1217 Total Collected \$ 1000

**No work is to be started until permit issued.  
 Please keep original receipt for your records.**

Taken by: [Signature]

