

Department of Planning & Urban Development

Marge Schmuckal
Zoning Administrator

Jeff Levine
Director, Planning & Urban Development



RECEIVED

MAR 27 2015

CITY OF PORTLAND ZONING BOARD OF APPEALS Practical Difficulty Variance Application

Dept. of Building Inspections
City of Portland Maine

Applicant Information:

Mark A. Brooks & Laurie Fortin Brooks

NAME

N/A

BUSINESS NAME

N/A

ADDRESS

N/A

TELEPHONE #

Owner

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

CURRENT ZONING DESIGNATION R-5

EXISTING USE OF PROPERTY:

Residential two-family with two-car garage.

Subject Property Information

14-16 Orkney Street Portland, ME 041

PROPERTY ADDRESS

Tax Map 132, Block E, Lot 7

CHART/BLOCK/LOT (CBL)

PROPERTY OWNER (if different)

NAME Same as applicant

ADDRESS Same as property

207-828-3754

TELEPHONE #

PRACTICAL DIFFICULTY VARIANCE
FROM SECTION 14- 120(a)(4)(b)

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

The undersigned hereby makes application for a Practical Difficulty Variance as described above, and certifies that the information supplied herein is true and correct to the best of his OR her knowledge and belief.



SIGNATURE OF APPLICANT

3/27/15
3/27/15
DATE

The following words have the meanings set forth below:

1. **Dimensional Standards**: Those provisions of the article which relate to lot area, lot coverage, frontage and setback requirements
2. **Practical Difficulty**: A case where strict application of the dimensional standards of the Ordinance to the property for which a variance is sought, would BOTH preclude a use of the property which is permitted in the zone in which it is located AND also result in significant economic injury to the applicant.
3. **Significant Economic Injury**: The value of the property, if the variance were denied, would be substantially lower than its value if the variance were granted. To satisfy this standard, the applicant need not prove that the denial of the variance would mean the practical loss of all beneficial use of the land.

A Practical Difficulty Variance may not be used to grant relief from the provisions of Section 14-449 (Land Use Standards) to increase either volume or floor area, not to permit the location of a structure, including, but not limited to, single-component manufactured homes, to be situated on a lot in a way which is contrary to the provisions of this article.

Department of Planning & Urban Development

Marge Schmuckal
Zoning Administrator

Jeff Levine
Director, Planning & Urban Development

Notwithstanding the provisions of subsections 14-473(c)(1) and (2) of this section, the Zoning Board of Appeals (ZBA) 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:

"Practical Difficulty" variance standards pursuant to Portland City Code §14-473(c)(3):

1. The need for the variance is from dimensional standards of the Land Use Zoning Ordinance (lot area, lot coverage, frontage, or setback requirements).

Satisfied NOT Satisfied (deny the appeal)

Reason and supporting facts:

The need for the variance is for the dimensional standards dealing with the rear setback as it relates to the Owner's proposed relocation of the existing garage structure.

Preclusion of use: The garage is currently situated upon the lot in close proximity to the residential dwelling (please see site plan). This arrangement prevents the year-round use of the garage for vehicle parking, its intended use. Additionally, a good portion of the driveway is made unavailable for parking during winter months (times of snow cover) as snow cannot be effectively cleared by a plow since the area between the dwelling and garage prevents a plow truck from maneuvering between them. Relocating the existing garage, no closer than 5' from the back property line, would allow a snowplow to maneuver between the structures thereby restoring the intended functionality of the garage on a year-round basis.

Significant Economic Injury: The inability to utilize the garage and driveway for off-street parking in winter months, and specifically during City-wide parking bans, negatively affects the value of the property.

2. Strict application of the provisions of the ordinance would create a *Practical Difficulty*, meaning it would both (1) preclude a use of the property which is permitted in the zone in which it is located, and also (2) would result in significant economic injury to the applicant. (*"Significant Economic Injury" means the value of the property, if the variance was denied, would be substantially lower than its value if the variance were granted.*) To satisfy this standard, the applicant need not prove that denial of the variance would mean the practical loss of all beneficial use of the land.

Satisfied NOT Satisfied (deny the appeal)

Reason and supporting facts:

As to (1): The existing placement of the garage and its proximity to the house prevents the proper clearing and removal of snow each winter. The clearance between the two structures prevents a vehicle with a plow from clearing snow from the driveway to the rear-yard. Snow accumulates on the driveway in front of the garage thereby making the existing structure unusable. (See photos)

As to (2): The inability to utilize the garage and driveway for off-street parking during winter months and during City-wide parking bans has a substantial negative effect on the value of the property as off-street parking is considered a valuable asset in Portland.

Department of Planning & Urban Development

Marge Schmuckal
Zoning Administrator

Jeff Levine
Director, Planning & Urban Development

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

Satisfied Not Satisfied (deny the appeal)
Reason and supporting facts:

The placement of the two structures on the property are unique to this property and not a general condition in the neighborhood.

4. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use, or fair market value, of abutting properties.

Satisfied Not Satisfied (deny the appeal)
Reason and supporting facts:

The existing garage is currently located approximately 15' from the rear property line (South) and about and about 1' from the side property line (West). The existing structure will not be placed any closer to the side property line than it currently is so no unreasonable detrimental effect will occur. The variance requested is to the rear setback, and as the Owner is requesting a variance to relocate the structure no nearer than 5' from the rear property line, no unreasonable detrimental effect on the use or fair market value of the abutting properties will occur.

General conditions in the neighborhood typically feature garage structures within 5' of the rear setback so no undesirable change in the character of the neighborhood will occur.

5. The practical difficulty is not the result of action taken by the applicant or a prior owner.

Satisfied Not Satisfied (deny the appeal)
Reason and supporting facts:

The practical difficulty is not the result of action taken by the Owner or prior owner. To the best knowledge of the Owner, the garage structure dates to the original construction of the dwelling, that being circa 1911.

6. No other feasible alternative is available to the applicant, except the variance.

Satisfied Not Satisfied (deny the appeal)
Reason and supporting facts:

No other feasible alternative is available to the applicant. The Owner intends to replace the existing failing slab in the garage and the only way to create the required space to eliminate the practical difficulty is to relocate the new slab, which will accommodate the existing garage, in a new location no nearer than 5' from the rear property line. (See proposed location on amended site map)

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

Satisfied Not Satisfied (deny the appeal)
Reason and supporting facts:

The granting of the variance will have no unreasonable adverse effect on the natural environment. In fact, the natural environment will benefit as a reduced amount of storm water from melting snow will enter the City storm water system. The snow plowed to the grassy area behind the dwelling and to the east side of the relocated garage will naturally percolate on site.

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

Satisfied Not Satisfied (deny the appeal)
Reason and supporting facts:

The property is not located in whole or in part within a shore land area.

March 25, 2015

Department of Planning and Urban Development
389 Congress St., Room 315
Portland, ME 04101

Attention: Zoning Board of Appeals

RE: Practical Difficulty Variance Application for 14-16 Orkney St. Portland, ME 04103 (the "Property")

Dear Zoning Board of Appeals Members:

Laurie Brooks and Mark Brooks (the "Owners"), are requesting the Zoning Board of Appeals approve a Practical Difficulty Variance ("Variance") to permit an existing garage on the structure be relocated no nearer than 5 feet from the rear property line of the Property and in line with the current side-yard setback, which is a grandfathered nonconforming distance from the Western property line. The Owners wish to replace the slab/foundation at this time as some cracking is evident in the existing slab.

The justification for the approval of the Variance is set forth in the Practical Difficulty Variance Application and other required materials accompanying this cover letter.

The Owners request that this matter come before the Zoning Board of Appeals at its May 7th meeting.

Please feel free to call or email me if any additional information is required.

Sincerely,



Mark Brooks

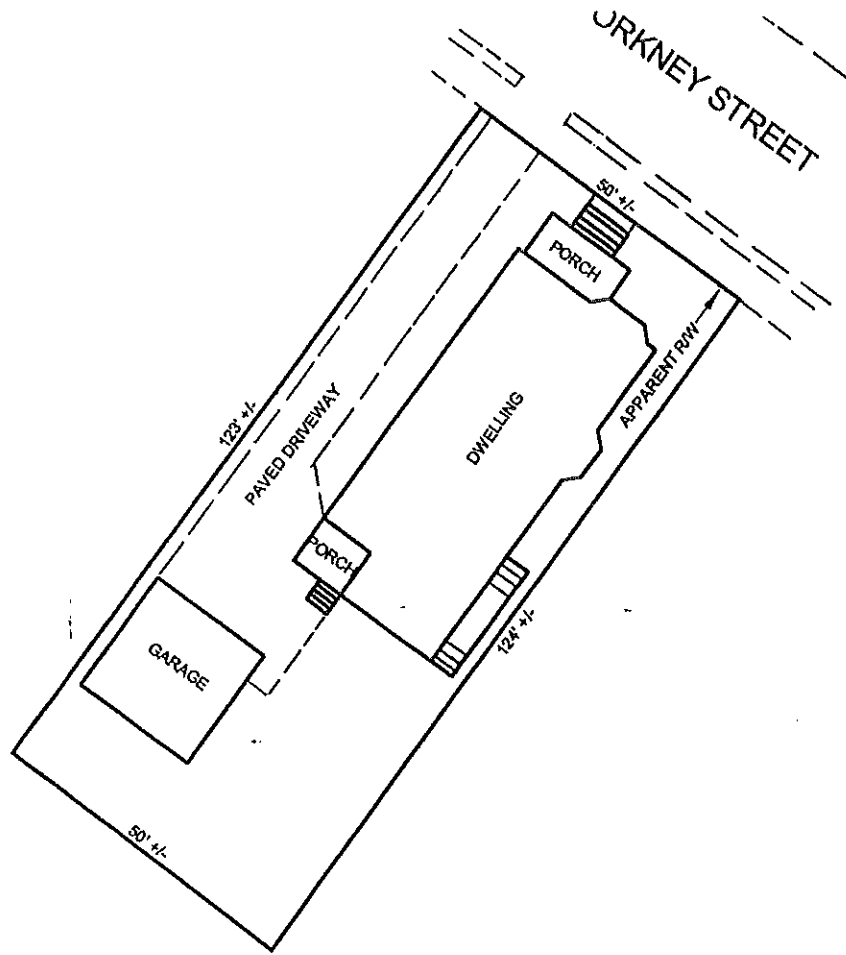


Laurie Brooks

Contact email and phone

Mark.brooks@wishrockgroup.com

207-828-3754



MORTGAGE LOAN INSPECTION PLAN

The dwelling does conform to local zoning building setbacks at the time of construction.

The dwelling is not in a special flood zone as defined by flood insurance rate maps.

THIS IS NOT A STANDARD BOUNDARY SURVEY. Information shown on this plan is for mortgage purposes only. Property lines shown on this plan are based on current lines of occupation, current deed information (referenced below), and tax map information. A **STANDARD BOUNDARY SURVEY IS SUGGESTED TO CONFIRM ALL BOUNDARY LINES SHOWN ON THIS PLAN.** This plan may not be recorded or used for any land divisions. Anyone who uses this plan for anything other than for mortgage purposes does so at their own risk. The property shown on this plan may be subject to easements, covenants, and restrictions of record which may or may not be shown on this plan.

This inspection conforms to the standards of the Maine Board of Licensure for Professional Land Surveyors, standards of practice for a mortgage loan inspection.

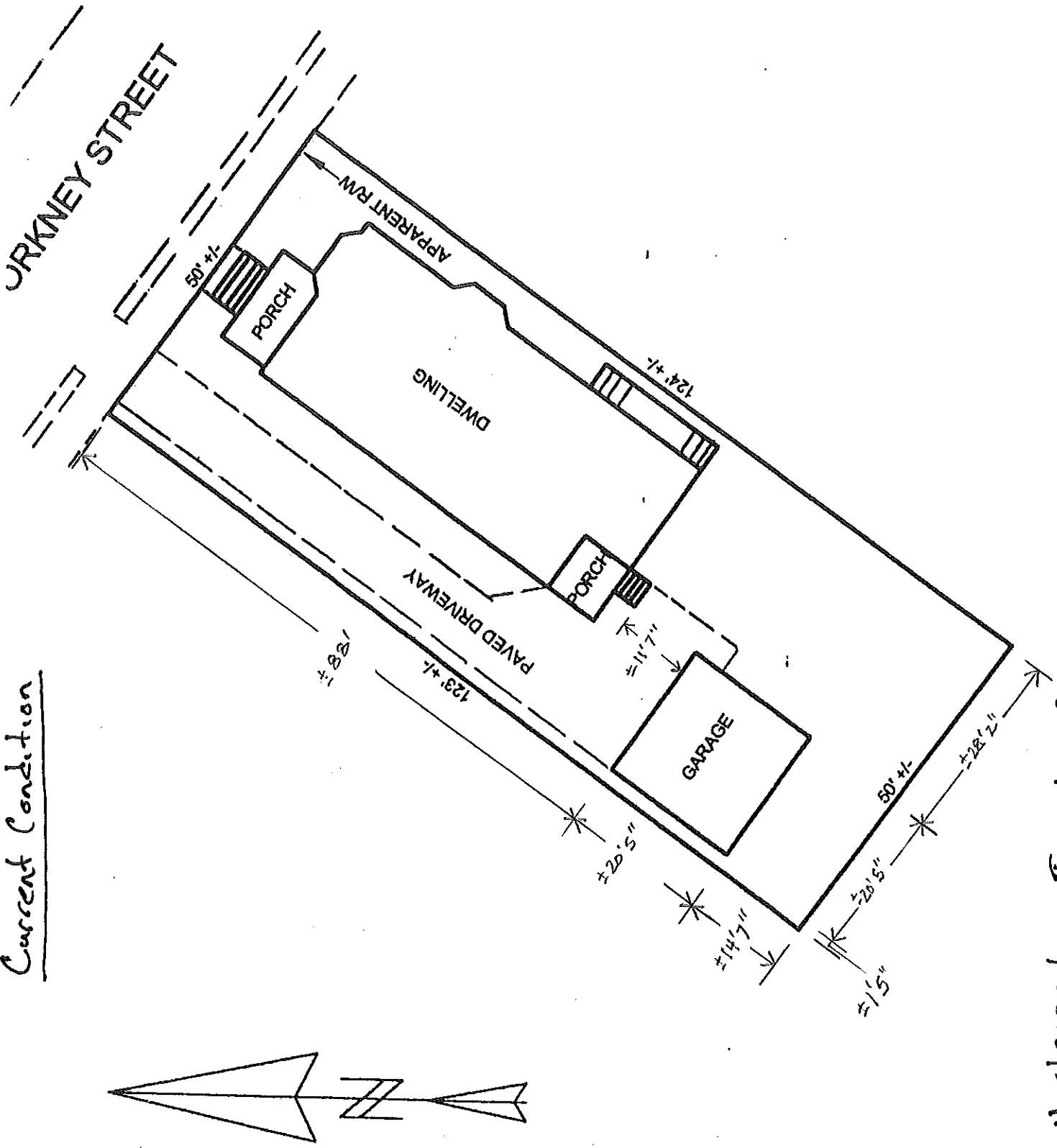
PROPERTY INFORMATION:

Street: 16 ORKNEY STREET City/Town: PORTLAND County: CUMBERLAND , Maine
 Buyer: MARK A. BROOKS & LAURIE FORTIN BROOKS
 Seller: CORNELLA KOHLER
 Deed Reference: book page
 Plan Reference: book page
 Tax Map # 132 Lot 7 Block E
 Lending Institution: BANKNORTH
 Scale: 1 inch = 30 feet Date: JUNE 3, 2002
 ATC file # 02-419

Atlantic Title Company
 76 Atlantic Place
 South Portland, Maine 04106

WILLIAM G. AUSTIN
 STATE OF MAINE
 PROFESSIONAL LAND SURVEYOR # 2174

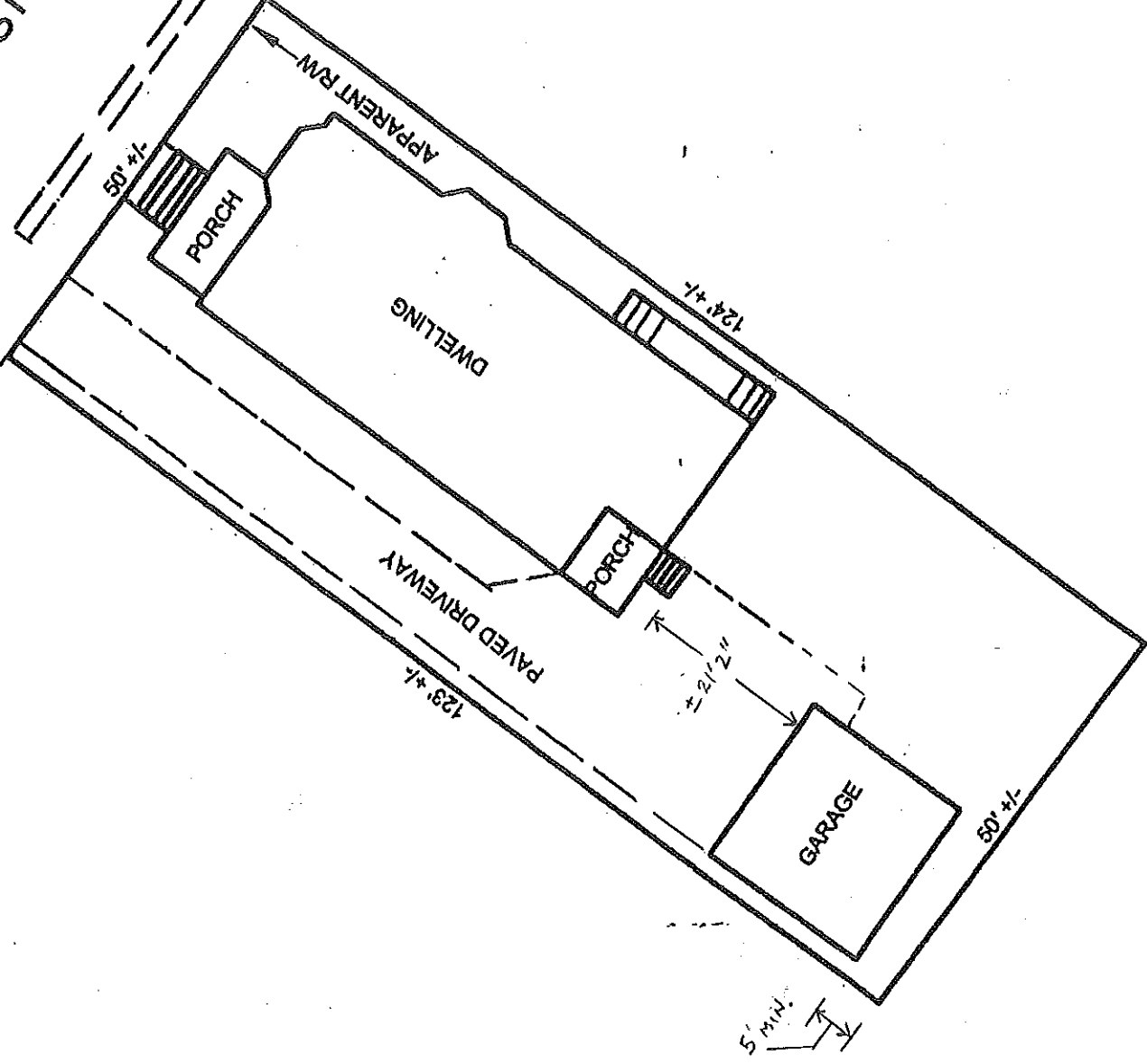
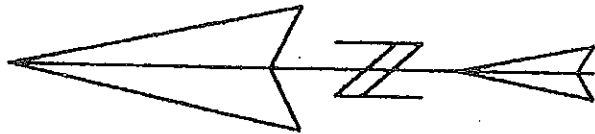
Current Condition



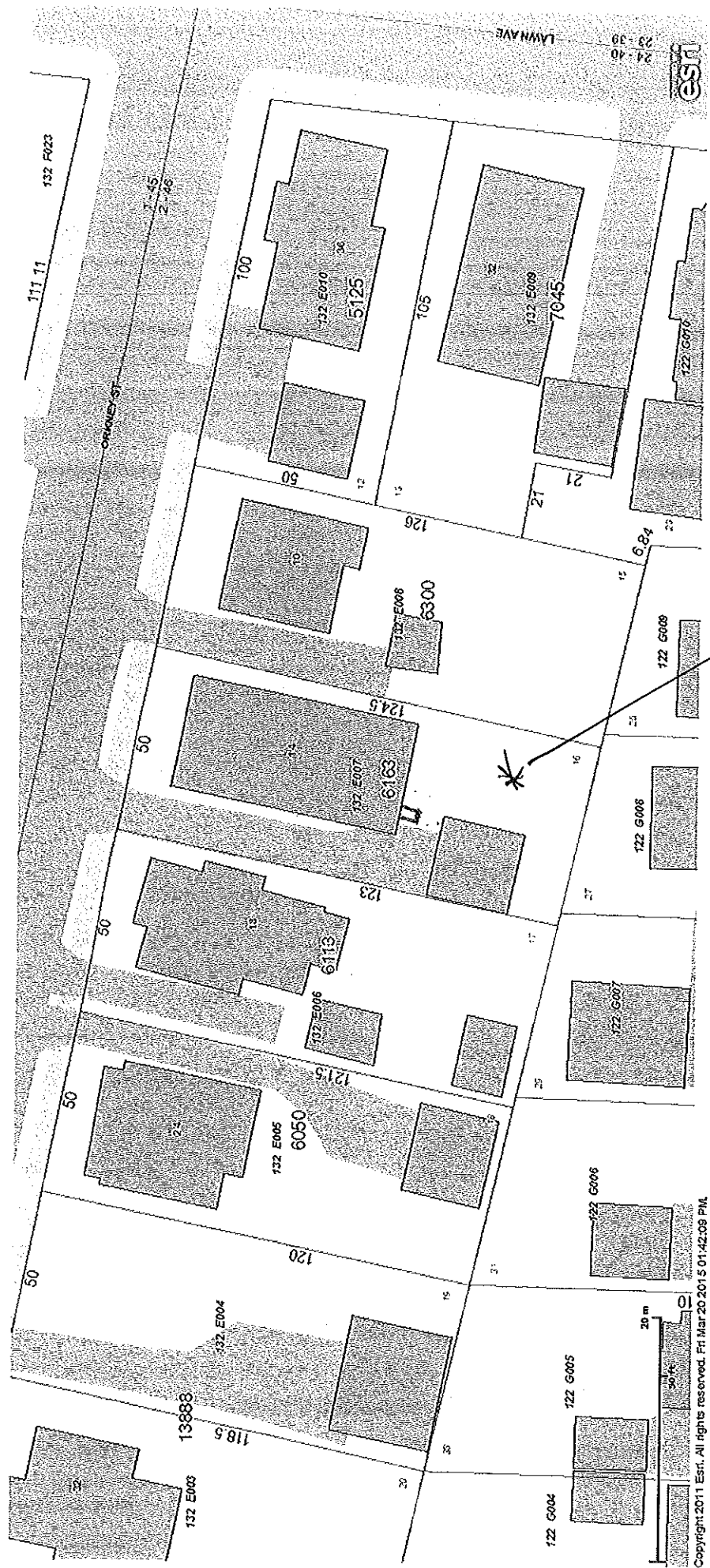
Enlarged version of the Mortgage Loan Inspection Plan provided.

Proposed Condition

URKNEY STREET

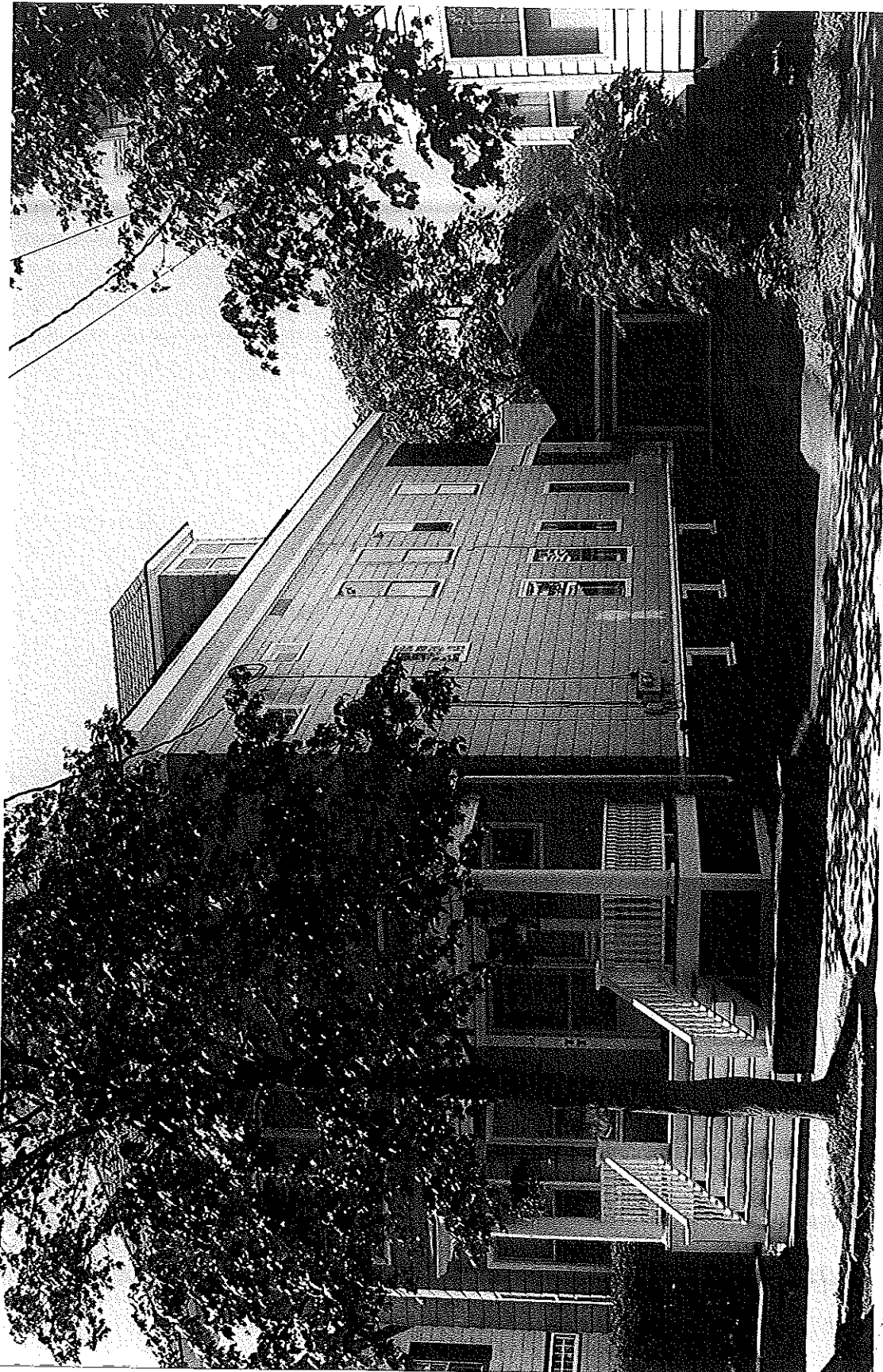


Enlarged version of the Mortgage Loan Inspector Plan provided



14-120(c) (4) (b)
Subject lot

RS. same as X201







WARRANTY DEED
Joint Tenancy
Maine Statutory Short Form

KNOW ALL PERSONS BY THESE PRESENTS, That

Cornelia H. Sawyer formerly known as Cornelia H. Kohler
of Portland, County of Cumberland, State of Maine,

for consideration paid, grant to Mark A. Brooks and Laurie Fortin Brooks
of Portland, County of Cumberland, State of Maine,

whose mailing address is 304 Woodfords Street, Portland, Maine 04103

with warranty covenants, as joint tenants the land in Portland, County of Cumberland, and State of
Maine, described on the attached EXHIBIT A.

WITNESS our/my hand(s) and seal(s) this First day of July, 2002.

*Signed, Sealed and Delivered in
presence of:*

Shawn R. Megathlin

Cornelia H. Sawyer
Cornelia H. Sawyer

MAINE REAL ESTATE TAX PAID

STATE OF MAINE

July 1, 2002

COUNTY OF Cumberland

Then personally appeared the above named Cornelia H. Sawyer and acknowledged the foregoing
instrument to be her free act and deed.

Before me,

Shawn R. Megathlin
Notary Public

Printed Name: _____

My Commission Expires: _____

Shawn R. Megathlin
Attorney at Law

Exhibit A - Property Description

A certain lot or parcel of land, with the buildings thereon, situated in the City of Portland, County of Cumberland and State of Maine on the southwesterly side of Orkney Street, bounded and described as follows: viz: Beginning at a point in the southwesterly side line of said Orkney Street distance westerly from Lawn Avenue, one hundred fifty (150) feet; thence northwesterly on said Orkney Street (50) feet to a point; thence southwesterly on a line at right angles with said Orkney Street, one hundred twenty-three (123) feet to land formerly of the heirs of Elisha Higgins; thence southeasterly by said Higgins land fifty (50) feet; thence northeasterly on a line at right angles with the side line of Orkney Street, one hundred twenty-four (124) feet to Orkney Street at the point of beginning; being lot numbered sixteen (16) on plan showing property of N.E. Redlon, Deering Center, surveyed October 1900, recorded in Cumberland County Registry of Deeds in Plan Book 9, Page 93.

Being the same premises as conveyed to Cornelia H. Kohler from Richard A. Kohler by deed dated August 30, 1982 and recorded in the Cumberland County Registry of Deeds in Book 5023, Page 105.

RECEIVED
RECORDED REGISTRY OF DEEDS

2002 JUL -3 PM 2: 22

CUMBERLAND COUNTY

John B O'Brien