

Portland, Maine



Yes. Life's good here.

Jeff Levine, AICP
Director, Planning & Urban Development Department

Mike Boissonneau
MZ Properties LLC
via email to mboisso1@maine.rr.com

November 5, 2014

Re: Request to Extend Lawfully Nonconforming Status at 15 Walton Street

Dear Mr. Boissonneau:

You have requested that, as per Section 14-387 of the Land Use Ordinance, I extend the timeframe for which a lawfully nonconforming structure may be rebuilt. The building in question was a three-family dwelling unit at 15 Walton Street that was the site of a devastating fire in March 2011. That building was nonconforming with respect to some setbacks and other dimensional requirements. Under the default circumstances, if that building was not rebuilt by March 2013, those nonconforming setbacks and dimensional requirements would no longer be permitted. You have requested that timeframe be extended under the clause in that section that permits extending the lawfully nonconforming status for up to an additional five years in a case of foreclosure or similar circumstances.

I have reviewed the materials you provided and authorize an extension of the lawfully nonconforming status for one year from the date you acquired the property. The parcel ended up in the hands of a bank that did not offer it for sale until August 7, 2014. You acquired the parcel on October 22, 2014. This extension is therefore good until October 21, 2015. One year from the date you acquired the parcel should be sufficient time for you to develop plans, receive a building permit, and begin construction of a replacement building. That will satisfy the requirement that the extension be the "minimum length necessary." If you should need an additional extension, you will need to provide information as to why this extension was not adequate to resume the legally nonconforming status.

This extension is limited to the existing nonconformities of the previous building. I attach some plans of the previous building that should indicate what nonconformities existed at the time of the fire.

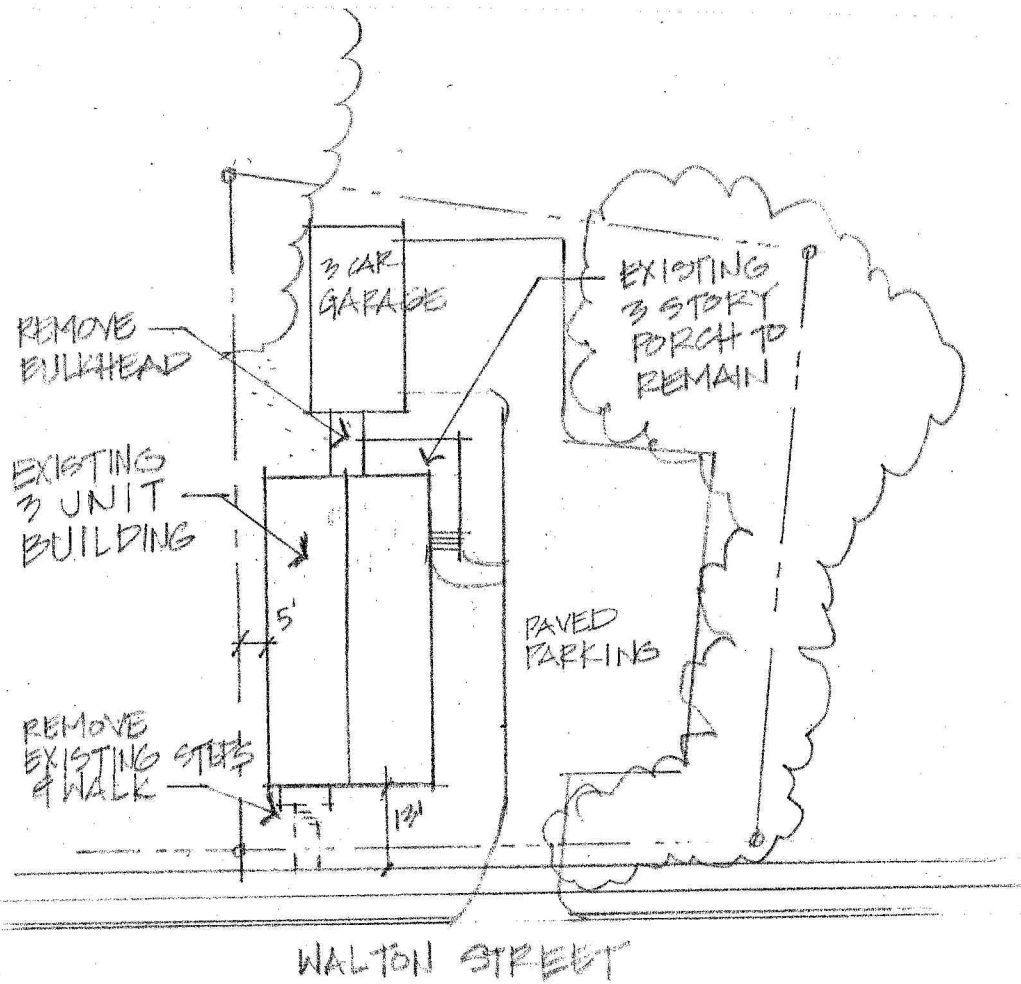
Please let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JML', is positioned below the word 'Sincerely,'.

Jeff Levine
Director

cc: Marge Schmuckal, Zoning Administrator
Ann Machado, Zoning Specialist
Lauren Reiter, Reiter Architecture and Design



Site Plan
1"-----30'-0"



ALPHA
architects
17 CHESTNUT STREET
PORTLAND, ME 04101
PHONE: 207.761.9600
FAX: 207.761.9695
design@alpharchitects.com

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Walton Street 3 Unit
15 Walton Street
Portland Maine 04103

JOB: 11024

ISSUE DATE	
PRELIM.	8-25-11
PBoard	Not Req'd
CDs	10-12-11
PRINT	10-12-11

S.1

10-12-11

MZ PROPERTIES LLC

Mike Boissonneau

October 28, 2014

Mr. Jeff Levine, AICP
Director, Planning & Urban development Department
389 Congress Street
Portland, ME 04141

Re: 15 Walton Street, Portland

Dear Mr. Levine:

Thank you very much for meeting me and my architect, Lauren Reiter, this past Monday to discuss 15 Walton Street. This letter is a formal request to allow us to return a three-unit residential building at the property, to replace the three-unit, three-story building that was destroyed by fire in 2011. ***The destroyed building was a legally non-conforming structure.*** (Using current zoning, R5 zoning does of course allow three-unit residential buildings, though land area/unit criteria would not be met.)

As stated in Section 14-387 of Portland's Code of Ordinances: "In cases of foreclosure or similar situations involving a legally nonconforming residential structure, the Planning Authority shall be authorized to extend the aforementioned period up to an additional five (5) years provided that the extension is for good cause and the minimum length considered necessary to resume the legally nonconforming use of the structure."

The three-&one-half year period that lapsed between the fire and our current proposal can be wholly attributed to the abandonment by the past owner, the subsequent assumption of responsibility by the City, and then the mechanics of a federal mortgage program. As we discussed on Monday, we are moving with the greatest possible haste to rebuild the building, and started this process even before closing on the property – less than three months after the property was even available to be purchased. In other words, we feel that there is good cause for the City to extend the rights to rebuild a legally non-conforming structure, per Section 14-387, and we are ready to act promptly in the development of plans and submission to the City for permitting.

Key dates for this property are the following:

- The devastating fire occurred on March 29, 2011, fully destroying the building.
- The city assumed responsibility for the property and issued a demolition permit two years later, on April 12, 2013. We understand that the actual demolition occurred sometime in May 2013.
- The property was first listed for sale on MLS, as a Fannie Mae project, on August 10, 2014 – two and a half months ago.
- My company submitted an offer on September 2, 2014; the offer was accepted on the same day.
- We closed on the property and assumed ownership last week, October 24, 2014.

We thank you for your consideration of this request to allow a three-unit residential building to be re-built at 15 Walton Street. We are confident that the structure we build will be a suitable restoration to a damaged site, and a great asset to the neighborhood. Please let us know if there is any other documentation needed to accompany this request.

Sincerely,



Mike Boissonneau
MZ Properties LLC

Attachment: October 6, 2014 Zoning Analysis by Reiter Architecture & Design

15 Walton Street – PRELIMINARY ZONING REVIEW

October 6, 2014

A. Existing Zoning, Use & CBL

- Zoning: R5, Residential use
- CBL: 140 C021001

B. Existing Lot Size & Setbacks

- Lot Size, estimated per Assessor's Map: 7,664 SF +/-
- Street Frontage: 74'

C. Analysis of Chapter 14 Sections for R5 and Non-Conforming Use (reference sections are below). **Note: this analysis is based on a reasonable reading of the code, but in no way guarantees that the Planning and Zoning authorities will interpret similarly.**

1. R5 zoning, as of right, allows new multi-unit buildings, known as "multiplexes". What would not meet compliance for a new multiplex, is the requirement for 6,000 SF per unit; based on the site size of approx. 7,664 SF, only a 2-unit building would be allowed. However, based on Section 14-120.1., if the existing non-conforming use pre-dated June 1, 1983, the minimum lot area would not apply.
Provide verification that existing three-unit building existed before 6/1/83. See attached MLS listings and 1924 picture.
2. Date of the fire was Tuesday, March 29, 2011 – i.e. 3-1/2 years ago. Per Section 14-385, an existing non-conforming building could be re-built in the same footprint within two years of a catastrophic event such as a fire. This presumes that the use is only non-conforming in land area, setbacks or other dimensional matters; this requirement would be met since R5 zoning allows multiplexes. However, per Section 14-387, in the case of discontinuous use, the Planning Authority may elect to extend the allowance for non-conforming use from 24 months to 5 years.
Could you commit to building in the same footprint? See attached PDH article re date of fire.
3. Section 14-391 allows a non-conformity with regard to number of dwelling units to become a legal, approved use -- provided that the non-conforming units existed before April 1, 1995, that the Applicant did not establish the original units, that current building standards can be met, and that the building occurs within a R3 – R7 zone. All of these conditions would be met in this case, though the discontinuous use would have to be allowed/extended as noted above.
Again, provide proof that existing non-conforming use existed prior to 4/1/95.

Relevant Zoning Chapter 14 LAND USE Sections for R5 Zoning (*note sections highlighted in blue*)

Sec. 14-117. Permitted uses.

The following uses are permitted in the R-5 residential zone:

(a) *Residential:*

1. Single- and two-family dwellings; except that development of two (2) or more two-family dwellings on contiguous lots within any two-year period shall be subject to review as specified under the provisions of 14-117(a)2e if such lots were under single ownership at any time within the two-year period immediately prior to development of the first such lot. No building reviewed as a two-family dwelling in accordance with article V

(site plan) of this chapter or not reviewed under article V shall be altered or enlarged to include any additional dwelling unit within five (5) years from the date of issuance of the building permit. Any building reviewed as a two-family dwelling in accordance with article V (site plan) which is altered or enlarged to include any additional dwelling unit after this five-year period shall be reviewed as a level I site plan pursuant to article V of this chapter.

2. Multiplex development with three (3) or more horizontally or vertically attached dwelling units or a series of such attached dwelling units and the construction of at least one (1) building on a parcel of less than two (2) acres, provided that:

a. The land area requirement for a multiplex shall be six thousand (6,000) square feet of land area per dwelling unit; except that a multiplex with two hundred fifty (250) feet or more of street frontage needs only forty-five hundred (4,500) square feet of land area per dwelling unit;

b. No dwelling unit shall have less than six hundred (600) square feet of floor area, exclusive of common hallways and storage in basement and attic;

c. No open outside stairways or fire escapes above the ground floor shall be constructed;

d. No habitable space in a dwelling unit shall be below grade, except basements that are a part of and below aboveground units;

e. Such development shall be subject to article V (site plan) of this chapter for site plan review approval and shall conform to the R-5 Design Standards.

3. Planned residential unit development (PRUD) consisting of horizontally or vertically attached dwelling units, or a series of such dwelling units. No dimensional requirements contained in section 14-120 shall apply with respect to such development, except for those requirements specifically denoted for PRUD. There shall be no open outside stairways or fire escapes above the ground floor. All land shall be owned and used in common and shall be governed and maintained as set forth in section 14-498(i)(3) of this chapter. Such development shall be subject to review and approval by the Planning Board with respect to the requirements of article V (site plan) and article IV (subdivisions) of this chapter, whether or not such development is a subdivision within the meaning of article IV of this chapter, as now enacted or as hereafter amended

Sec. 14-118. Conditional uses.

The following uses shall be permitted only upon the issuance of a conditional use permit, subject to the provisions of section 14-474 (conditional uses) and any special provisions, standards or requirements specified below:

(a) *Residential:*

3. Alteration of a structure existing and not in residential use as of January 1, 1984, to three (3) or more dwelling units, provided that:

a. No dwelling unit shall have less than six hundred (600) square feet of floor area, exclusive of common hallways and storage in basement and attic;

b. No open outside stairways or fire escapes above the ground floor shall be constructed or have been constructed in the immediately preceding five (5) years;

c. A lower level dwelling unit shall have a minimum of one-half of its floor-to-ceiling height above the average adjoining ground level;

d. Three thousand (3,000) square feet of land area per dwelling unit shall be required;

e. On-site parking shall be required as specified in division 20 (off-street parking) of this article, for the combined uses of the site;

f. The project shall be subject to article V (site plan) of this chapter for site plan review and approval and the following additional standards:

1. Any addition or exterior alterations such as facade materials, building form, and roof pitch shall be designed to be compatible with the architectural style of the structure;

2. The scale and surface area of parking, driveways, and paved areas shall be arranged and landscaped to be compatible in size and scale with neighboring properties in the area and to properly screen vehicles from adjacent properties and streets.

Sec. 14-120. Dimensional requirements.

(a) In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the R-5 zone shall meet the following minimum requirements:

1. *Minimum lot size:*

a. Residential: Six thousand (6,000) square feet except as provided for lots of record in section 14-433 (lots of record and accessory structure setbacks for existing buildings) of this article.

Provided that for uses specified in section 14-120 (1)(c) through (i) above, no minimum lot area shall be required in the following cases:

i. Uses existing as of June 1, 1983;

Relevant Zoning Chapter 14 LAND USE Sections for Non-Conforming Use *(note sections highlighted in red)*

DIVISION 23. NONCONFORMING USE AND NONCONFORMING BUILDINGS

Sec. 14-381. Continuation.

Any lawful use of buildings, structures, premises or parts thereof, existing on June 5, 1957, and made nonconforming by the provisions of this article or any amendment thereto may be continued although such use does not conform with the provisions of this article or amendment thereto. (Code 1968, § 602.17.A)

Sec. 14-385. Restoration or reconstruction within an existing footprint of damaged non-conforming structure.

A nonconforming structure damaged by fire, explosion, flood, riot, act of the public enemy, accident of any kind, decay or otherwise may be restored or rebuilt only where:

(a) The restoration or reconstruction is of a building which is nonconforming only as to land area, setbacks or any other dimensional requirements; and

(b) Where the restoration or reconstruction will occur entirely within the existing footprint and previous shell of the building and will not create a new nonconformity; and

(c) Restoration or reconstruction occurs within one (1) year for a nonconforming non-residential structure, or two (2) years for a nonconforming residential structure, of the initial damage where such damage is sudden and accidental. Note that for buildings in SHoreland zones, site regulations may also govern and provide for a shorter period for restoration or reconstruction of nonconforming structures; and

(d) Restoration or reconstruction necessitated by decay must be completed within one (1) year of the demolition of the building or the commencement of the restoration or reconstruction, whichever occurs first; and

Sec. 14-386. Discontinuance of use of land for ninety days.

A nonconforming use of land where no buildings or only incidental or accessory buildings are employed together with such use shall not be changed to any other nonconforming use, and if such use is discontinued for a period of ninety (90) days, it shall not be reestablished.

Sec. 14-387. Discontinuance of use of property.

If a legally nonconforming non-residential use is discontinued for a period of twelve (12) months or if a legally nonconforming residential use is discontinued for a period of twenty-four (24) months, such discontinuance shall constitute an abandonment of the use and the property shall not thereafter be occupied or used except in conformity with the provisions of this article. In cases of foreclosure or similar situations involving a legally nonconforming residential structure, the Planning Authority shall be authorized to extend the aforementioned period up to an additional five (5) years provided that the extension is for good cause and the minimum length considered necessary to resume the legally nonconforming use of the structure. A nonconforming use of land which is incidental or accessory to such nonconforming structure shall be considered as being discontinued at the same time as the nonconforming use of the structure. Note that for buildings in SHoreland zones, state regulations may also govern and provide for a shorter period of time for nonconforming properties. (Code 1968, § 602.17.F; Ord. No. 499-74, § 9, 8-19-74; Ord. No. 139-12/13, 2-4-13)

Sec. 14-391. Nonconformity as to number of dwelling units.

(a) Purpose. The purpose of this provision is to establish a process whereby certain dwellings which contain more dwelling units than the number permitted by the applicable provisions of the Land Use Code may be recognized as legal, nonconforming uses. This provision shall not apply to rooming units.

(b) Approval by Zoning Administrator.

1. Application. Application for validation of such nonconforming dwelling units shall be on a form provided by the Division of Housing and Neighborhood Services, Inspection Services Office. The application fee will be \$300.00 for each dwelling unit which is the subject of the application, and will be accompanied by:

- (i) a plan, drawn to scale, which shows the location of the building(s) on the lot, parking, easements, dumpsters, fencing, public ways and any other significant feature and (ii) a floor plan for each unit in the dwelling, whether or not it is the subject of the application.

(c) Eligibility. In order for a nonconforming dwelling unit to be validated by administrative action of the Zoning Administrator as authorized herein, the Zoning Administrator must find, based on competent evidence, supported by public records, that:

1. The nonconforming dwelling units were either in existence April 1, 1995, or the structure in which they are located was originally designed to accommodate more than the number of such units presently in use.
2. The applicant neither constructed nor established the non-conforming dwelling units.
3. The nonconforming dwelling units comply with or can be made to comply with current standards of the National Fire Protection Association Life Safety Code (§16-1) and the National Fire Protection Association 1: Fire Prevention Code (§10-16), as amended.
4. Each of the nonconforming dwelling units complies with provisions of the City's Housing Code or can be made to conform with, as amended, including, but not limited to, the requirements of §6-110, Minimum Standards for Space and Occupancy and §6-111, Minimum Plumbing Standards, and §6-112 Minimum Ventilation Standards.
5. The structure containing the nonconforming dwelling units is located in the R-3, R-4, R-5, R-6 or R-7 Zones; or the B-1, B-1(b), B-2, B-2(b) or B-3 Zones.
6. In the absence of legally competent evidence, supported by records, (such as, but not limited to, Assessor's records, purchase and sale agreements, affidavits, deeds, mortgages, as well as reliable secondary sources, such as the Portland Director), that the conditions of subsections c(1), C(2), c(3), c(4), or c(5) can be met, the Zoning Administrator may not approve the application, but shall advise the applicant that the matter may be appealed to the Board of Appeals.





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Posted March 30, 2011

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Fire damages Portland apartment building

PORTLAND — A fire at a three-story apartment building Tuesday forced authorities to close portions of Walton Street and Ocean Avenue. There were no reports of injuries from the fire at 15 Walton St. The fire was reported shortly after 1:30 p.m.

BY ANN S. KIM

PORTLAND — A fire at a three-story apartment building Tuesday forced authorities to close portions of Walton Street and Ocean Avenue.

There were no reports of injuries from the fire at 15 Walton St.

ADDITIONAL PHOTOS



The fire was reported shortly after 1:30 p.m.

Firefighters arrived and found heavy fire on the

floor that extended into the third story and

id Fire Chief Fred LaMontagne.

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Portland firefighters work to extinguish flames on the roof of a three-story apartment building on Walton Street in Portland on Tuesday. ALL



Flames flare from the corner of the roof Tuesday as Portland firefighters work to position a hose for spraying the third floor of an apartment building at 15 Walton St.

He said late Tuesday that it was too soon to know exactly where the fire started, how it started or whether it was suspicious.

It took firefighters about an hour to get the fire under control, LaMontagne said.

The fire left a front corner of the building charred. LaMontagne said that although extensive repairs would be needed, the building remained structurally sound.

Portions of Walton Street and Ocean Avenue were closed because of several large-diameter hoses that were used to put out the fire.

Duncan MacDougall, who owns the building and lives on the first floor, watched the scene from across the street. Firefighters had retrieved his laptop, which was drying in the driveway, and his mail.

“I’m just kind of taking it all in,” MacDougall said. “It’s surreal right now.”

MacDougall, a builder, had been working at a job nearby when a friend came and told him about the fire. MacDougall guessed that the repairs could cost \$50,000 to \$100,000.

Staff Writer Ann S. Kim can be contacted at 791-6383 or at: akim@pressherald.com

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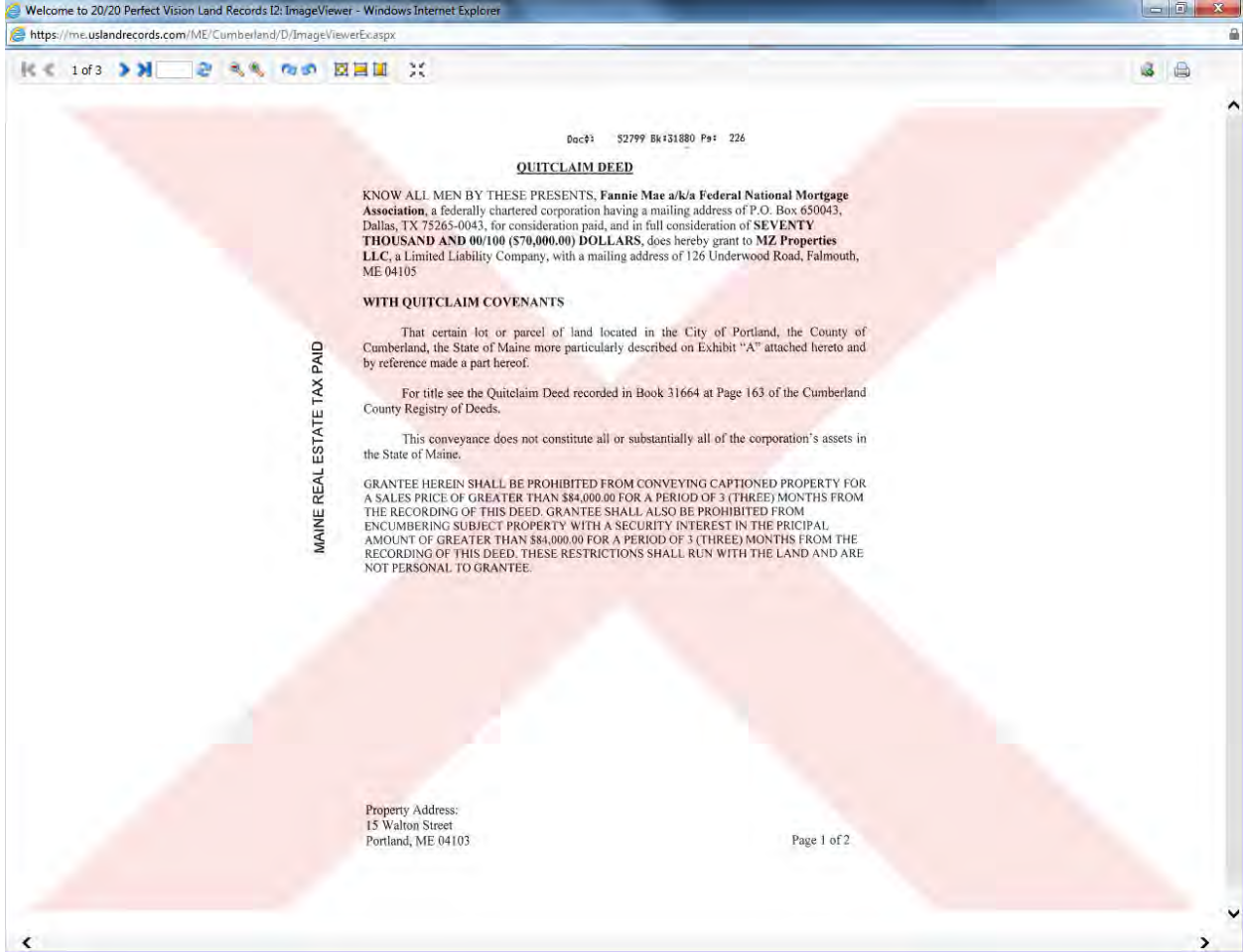
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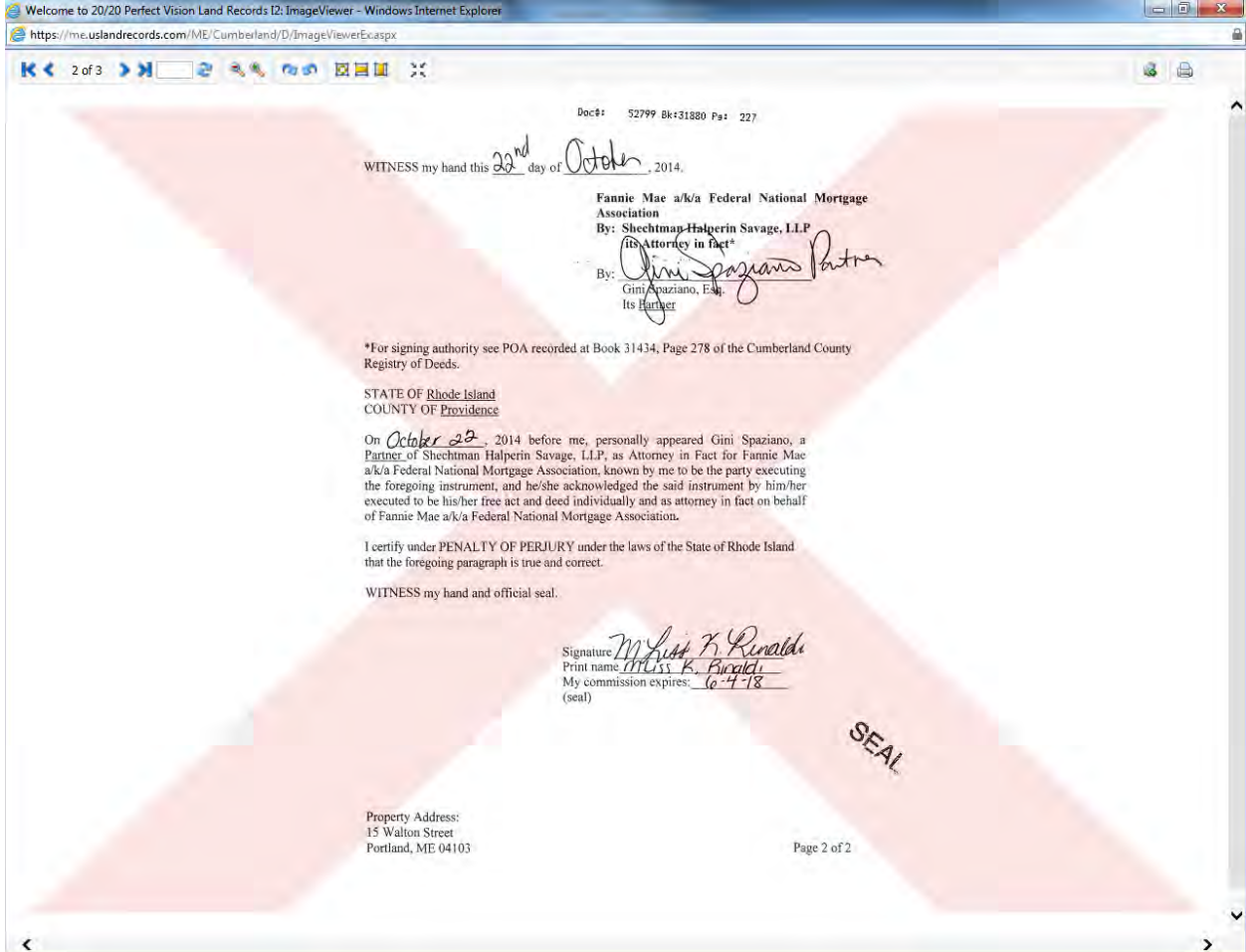
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WITNESS my hand this 22nd day of October, 2014.

Fannie Mae a/k/a Federal National Mortgage Association
By: Shechtman Halperin Savage, LLP
(its Attorney in fact)
By: *Gini Spaziano Partner*
Gini Spaziano, Esq.
Its Partner

*For signing authority see POA recorded at Book 31434, Page 278 of the Cumberland County Registry of Deeds.

STATE OF Rhode Island
COUNTY OF Providence

On October 22, 2014 before me, personally appeared Gini Spaziano, a Partner of Shechtman Halperin Savage, LLP, as Attorney in Fact for Fannie Mae a/k/a Federal National Mortgage Association, known by me to be the party executing the foregoing instrument, and he/she acknowledged the said instrument by him/her executed to be his/her free act and deed individually and as attorney in fact on behalf of Fannie Mae a/k/a Federal National Mortgage Association.

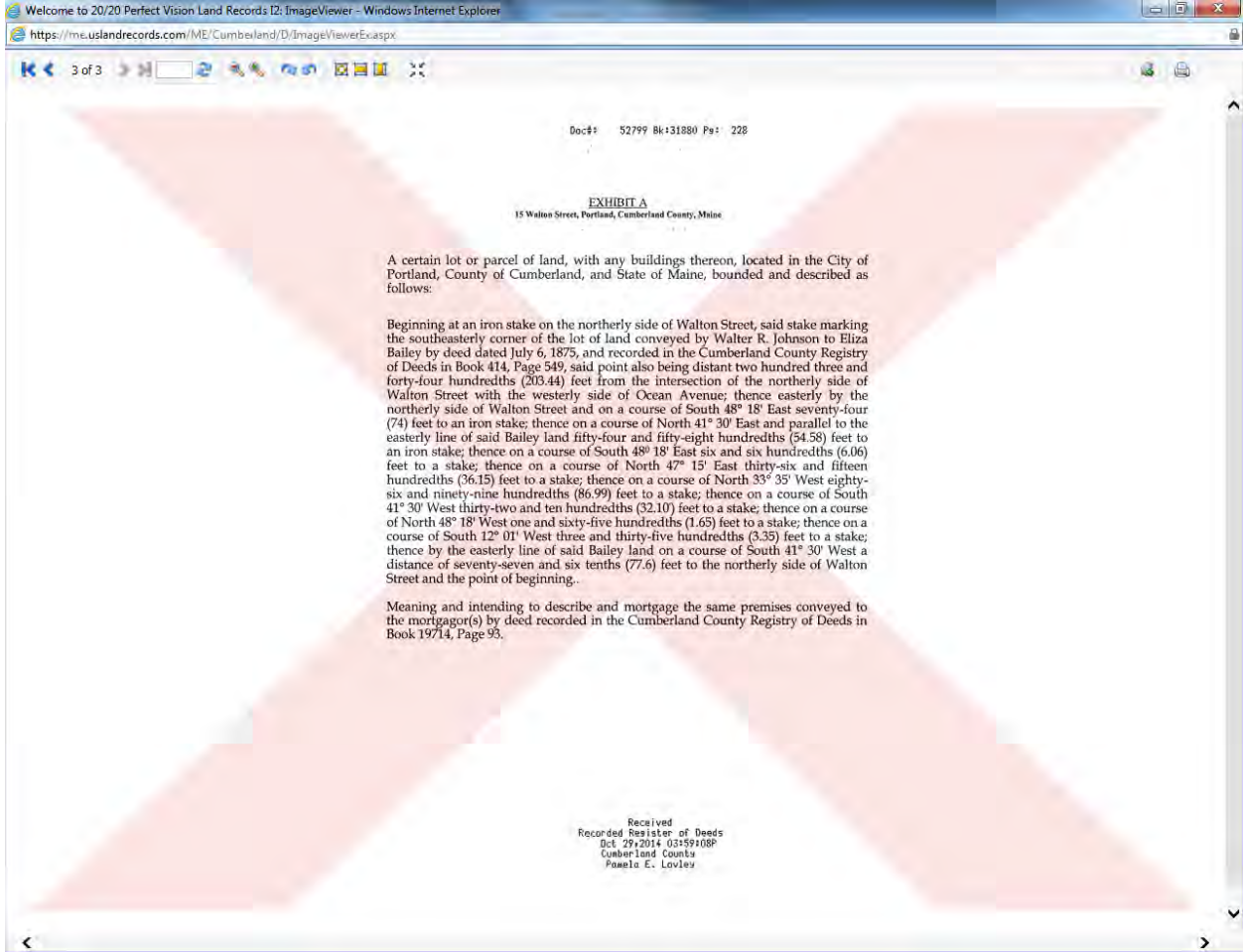
I certify under PENALTY OF PERJURY under the laws of the State of Rhode Island that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: *Melissa B. Bricola*
Print name: Melissa B. Bricola
My commission expires: 6-4-18
(seal)

SEAL

Property Address:
15 Walton Street
Portland, ME 04103



15 Walton St, Portland, Maine 04103 - MLS# 1149673 - OFF MARKET

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Year Built: n/a
Sq. Ft.: n/a
Added: 08/07/2014

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About This Property

Lot Size: 0.18 acres
Utilities: Electric
Sewer Type: Public
Property Tax Roll
Property Tax: \$1,346
Tax Year: 2014
Elementary School: [Portland](#)
Junior High School: [Portland](#)
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For more information take a look at [15 Walton St, Portland, Maine 04103 page](#)

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