

Ann Machado - Bay Street

From: "Tom Jewell" <tjewell@jewellandboutin.com>
To: "Ann Machado" <AMACHADO@portlandmaine.gov>
Date: 12/9/2010 2:44 PM
Subject: Bay Street

On behalf of Bay Street Realty Trust, I withdraw the two pending appeals to the ZBA. The issues those sought to address are moot do to the acquisition of the neighboring property from the City and the issuance of the building permit.

Thomas F. Jewell, Esq.
Jewell & Boutin, P.A.
477 Congress Street
Suite 1104
Portland, ME 04101
Tel: (207) 774-6665
Fax: (207) 774-1626

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Ann Machado - 34 Bay Street

From: "Tom Jewell" <tjewell@jewellandboutin.com>
To: <amachado@portlandmaine.gov>
Date: 5/4/2010 12:18 PM
Subject: 34 Bay Street

Per our conversation, until we get an answer on our effort to buy a portion of the adjoining property from the City, please do not place the interpretation appeal or variance on the ZBA agenda. I will let you know as soon as we receive an answer to our purchase request.

Please confirm that you received this email.

Thomas F. Jewell, Esq.
Jewell & Boutin, P.A.
477 Congress Street, Suite 1104
Portland, Maine 04101
Tel: (207) 774-6665
Fax: (207) 774-1626
tjewell@jewellandboutin.com

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MAY - 4 2010

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



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

Applicant Information:

Bay Street Realty Trust

Name

c/o Jewell & Boutin, P.A.

Business Name

477 Congress Street, Suite 1104

Address

Portland, Maine 04101

(207) 774-6665

Telephone

Fax

Applicant's Right, Title or Interest in Subject Property Owner

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

Current Zoning Designation: R-3

Existing Use of Property:

vacant

WITHDRAW

Subject Property Information:

34 Bay Street

Property Address

156-B-14

Assessor's Reference (Chart-Block-Lot)

Property Owner (if different):

Name

Address

Telephone

Fax

Disputed Provisions from Section 14 - 433

Order, decision, determination, or interpretation under dispute:

March 4, 2010 letter denying

building permit

RECEIVED

APR - 2 2010

Dept. of Building Inspections
 City of Portland Maine

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

The undersigned hereby makes application for the relief 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.


 Signature of Applicant

4/2/10
 Date

JEWELL & BOUTIN, P. A.
Attorneys at Law
477 Congress Street
Suite 1104
Portland, ME 04101-3427

www.jewellandboutin.com

Thomas F. Jewell
Daniel W. Boutin

E-mail: tjewell@jewellandboutin.com
E-mail: dboutin@jewellandboutin.com

Telephone: 207-774-6665
Fax: 207-774-1626

April 2, 2010

HAND DELIVERED

City of Portland
Attn: Ann Machado, Zoning Specialist
389 Congress Street, Room 315
Portland, Maine 04101

Re: 34 Bay Street; Map 156-B-14

Dear Ann:

Enclosed please find an Interpretation Appeal of the building permit denial for Bay Street Realty Trust at 34 Bay Street pursuant to your letter dated March 4, 2010. A separate request for a Variance is also being filed.

We do not take issue with the interpretation of the parking requirements, and will submit a revised plan showing compliance with the provisions of Sec. 14-336(a).

However, we submit that this particular property is a grandfathered "lot of record" pursuant to Sec. 14-433 and therefore the "lot width" requirement of Sec. 14-90(f) does not apply. In addition to the parking, failure to meet the lot width was the only reason that the building permit was denied.

Under Section 14-433:

Any lot of record as of June 5, 1957, and held under separate and distinct ownership from adjacent lots and having a street frontage of forty (40) feet, or to which a means of access has been previously approved by the city council as provided elsewhere in this article, may be considered a buildable lot in any residential zone except as provided below for island residential zones, with a minimum lot size of five thousand (5,000) square feet, provided that the applicable yard dimensions can be met.

Under Section 14-433, a parcel is a "lot of record" and buildable as long as: (1) it was in existence as of 1957; (2) it has been held under separate, distinct ownership from adjacent lots since 1957; (3) it has a minimum street frontage of 40 feet; and (4) it meets the applicable yard dimensions. The lot in question meets all of these standards.

City of Portland
Ann Machado, Zoning Specialist
April 1, 2010
Page 2

The R-3 Zone in Sec. 14-90(a)(1) requires a minimum lot size of 6,500 square feet, "except as provided for lots of record is (*sic.*) section 14-433." As I understand the denial of the permit in issue, the Zoning Administrator has determined that since the lot in question *does* meet the minimum lot size of the R-3 zone, that relief under Sec. 14-433 is not available. I find no support in the Ordinance that states that relief under Sec. 14-433 is only applicable if the lot in question fails to meet the minimum lot size requirement of 6,500 square feet.

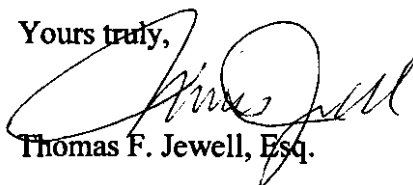
The above interpretation of the Zoning Administrator leads to the incongruous result that if the applicant had a smaller lot with about 100 feet of depth and 5,800 square feet, rather than the lot in question's 150 feet of depth and 8,700 square feet, with each lot the being same width, that the smaller lot would be grandfathered and buildable but the larger lot would not be.

I am enclosing copies of deeds back to the 1930's showing the separate ownership of this lot, and a copy of the recorded plan from the Cumberland County Registry of Deeds, Plan Book 8, Page 99, circa 1895, showing the same lot.

"Yard dimensions," that must still be met under Sec. 14-433, are the yard set-back requirements under Sec. 14-90(d) for front, rear and side yards. It is clear under the Ordinance that "lot width" as required under Sec. 14-90(f) is not a "yard dimension" and therefore not applicable to a lot of record as defined by Sec. 14-433. The definition section of the Ordinance, Sec. 14-47 defines "yard" as unoccupied space, whereas the "lot width" is a dimension that includes occupied space where the building is located.

The applicant is attempting to buy some adjoining vacant land, which is owned by the City. If successful, there would be no necessity to hear this appeal. Therefore, I would request this matter not be scheduled for public hearing until that effort is resolved, or in the alternative, if this must be scheduled for public hearing, we would request a postponement in the event our efforts to purchase the adjoining land have not been finalized.

Yours truly,



Thomas F. Jewell, Esq.

TFJ/maj
Enclosures
Cc: Bay Street Realty Trust



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*

March 4, 2010

Bay Street Realty Trust
C/O Thomas Jewell
477 Congress Street, Suite 1104
Portland, ME 04101

Re: 34 Bay Street – 156 B014 – R-3 – new single family home – permit #10-0196

Dear Mr. Jewell,

I have reviewed the permit application to build a new single family home at 34 Bay Street. At this point I must deny the permit.

34 Bay Street is located in the R-3 residential zone. The required minimum lot width is sixty-five (65) feet [section 14-90(f)]. In other words, the lot needs to be a minimum of sixty-five feet wide where the house is located on the lot (section 14-47). The siteplan shows the lot to be 58.35' wide at the building, so the required minimum lot width is not being met.

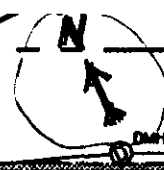
The parking requirement is also not being met. Section 14-332(a)(1) states that for construction of a new residential unit, two off street parking spaces are required. According to section 14-336(a), the parking spaces cannot be located in the required front yard setback and they cannot be located within five feet of the side setback for the first fifty feet back from the street line. Right now the two parking spaces shown on the siteplan are within the twenty-five foot front yard setback.

You have the right to appeal my decision. If you wish to exercise your right to appeal, you have thirty days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

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

Yours truly,

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



BAY STREET

PROPOSED
SEWER SERVICE

RWCE
(T)

S61°50'01"E
58.35'

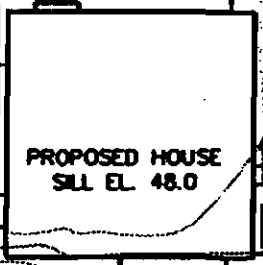


PROPOSED
BIT. DRIVE

SILT FENCE

PROPOSED 4'
BIT. WALK

N/F
City of
Portland
Blk. 23507, Pg. 120
Map 156, Blk. B, Lot 12 & 13



15.17'

PROPOSED HOUSE
SILL EL. 48.0

SILT FENCE

Ex. 6" Underdrain

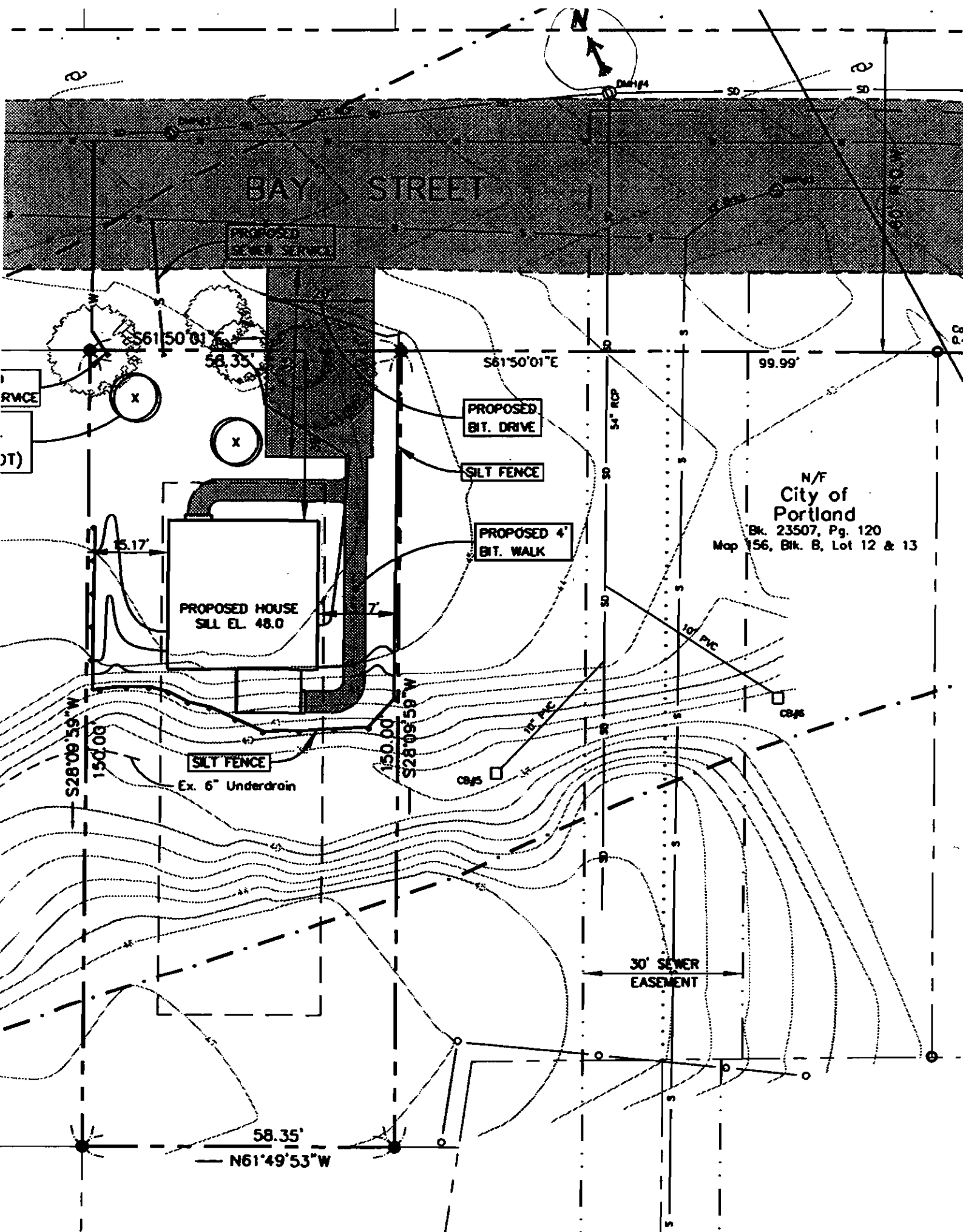
S28°09'59"W
150.00'

150.00'
S28°09'59"W

30' SEWER
EASEMENT

58.35'

N61°49'53"W



TRUSTEE'S DEED
Maine Short Form Deeds Act

JOHN S. CAMPBELL, Trustee under the Trust of John E. Coyne, by the power conferred by law, and every other power, and for consideration paid, grants to the **BAY STREET REALTY TRUST**, having its principal place of business at Portland, Cumberland County, Maine, its successors and assigns, the land in Portland, Cumberland County, Maine, bounded and described as follows: A certain lot or parcel of land situated in the Deering District of the City of Portland and State of Maine, and being Lot numbered eight (8) on Bay Street on plan of land recorded in the Cumberland County Registry of Deeds in Plan Book 8, Page 99.

No right or privilege in any of the proposed street delineated on said plan, excepting Bay Street, Ocean Street and Read Street, shall be taken to be hereby granted or dedicated by implication or otherwise to the public use or to the use of any of the owners of lots indicated on said plan by reason of the foregoing reference to said plan.

Being the same premises conveyed to Robert D. Carney and May K. Carney as joint tenants by Harold B. Emery by deed dated January 22, 1963 and recorded in the Cumberland County Registry of Deeds in Book 2729, Page 223. The said May K. Carney having predeceased the said Robert D. Carney.

Being also the same premises conveyed to John S. Campbell, Trustee under the Trust of John E. Coyne, by deed of Robert E. Flaherty, dated December 19, 2002, and recorded in said Registry of Deeds in Book 18591, Page 178.

TO HAVE AND TO HOLD the aforegranted and bargained premises, with all the privileges and appurtenances thereof, to the said Bay Street Realty Trust, its successors and assigns, to her and their use and behoof forever.

IN WITNESS WHEREOF, I the said John S. Campbell, Grantor, have hereunto set my hand and seal this 10th day of the month of November, 2009

SIGNED, SEALED AND DELIVERED
IN PRESENCE OF

Joyce A. Westort
Witness

John S. Campbell, Trustee
John S. Campbell, Trustee
TRUST OF JOHN E COYNE

STATE OF MAINE
CUMBERLAND, ss

November 10, 2009

Then personally appeared the above named John S. Campbell, Trustee under the Trust of John E. Coyne, in his said capacity, and acknowledged the foregoing instrument to be his free act and deed.

Before me,

Joyce A. Westort
Notary Public/Attorney at Law
Joyce A. WESTORT

Printed Name

My Commission expires: 9/21/12

Maine Bar No.:

Received
Recorded Register of Deeds
Nov 10, 2009 10:30:29A
Cumberland County
Pamela E. Lovley

JOYCE A. WESTORT
Notary Public, Maine
My Commission Expires September 21, 2012

DEED OF DISTRIBUTION BY PERSONAL REPRESENTATIVE
(Testate)
Maine Statutory Short Form

KNOW ALL PERSONS BY THESE PRESENTS THAT **ROBERT E. FLAHERTY**, an individual, of Yarmouth, County of Cumberland, State of Maine, duly appointed and acting personal representative of the estate of **JOHN E. COYNE**, deceased, Cumberland County Probate Docket No. 2001-536, by the power conferred by law, and every other power, (in distribution of the estate) grants to **JOHN S. CAMPBELL**, Trustee of the Trust Under the Will of John E. Coyne dated November 22, 2002 **2002**, with a mailing address of P.O. Box 369, Portland, Maine 04112, being the person entitled to distribution, the real property, together with any improvements thereon, situated in Portland, County of Cumberland, State of Maine, and being more particularly described in **Exhibit A** attached hereto and made a part hereof.

IN WITNESS WHEREOF, the said **ROBERT E. FLAHERTY** has signed this instrument this 19 day of December, 2002.

WITNESS:

ESTATE OF JOHN E. COYNE

Susan D. Thomas

By Robert E. Flaherty
Robert E. Flaherty
Personal Representative

STATE OF MAINE
COUNTY OF CUMBERLAND

December 19, 2002

Then personally appeared the above named Robert E. Flaherty in his said capacity and acknowledged the foregoing instrument to be his free act and deed, before me.

Susan D. Thomas
Attorney at Law/Notary Public
Susan D. Thomas
print name

**EXHIBIT A
TO
DEED OF DISTRIBUTION**

PARCEL ONE - 189 YORK STREET, PORTLAND:

A certain lot or parcel of land, together with any improvements thereon, located at 189 York Street in the City of Portland, County of Cumberland and State of Maine, and being more particularly described in Assessor's Plan 44-C-3 on file in the City Assessor's office, Portland, Maine.

Meaning and intending to convey and hereby conveying the same premises described in a deed to John Coyne from Andrew R. Berube and William C. Gardiner, dated February 9, 1988 and recorded in the Cumberland County Registry of Deeds in Book 8183, Page 256.

PARCEL TWO - 22 STATE STREET, PORTLAND:

A certain lot or parcel of land, with the buildings thereon, situated on the westerly corner of State and York Streets in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows: BEGINNING at a monument standing at the most westerly corner of State and York Streets and running thence northwesterly along the line of State Street twenty (20) feet; thence southwesterly sixty-four (64) feet parallel with said York Street to land conveyed to Samuel H. Colesworthy by deed recorded in the Cumberland County Registry of Deeds in Book 703, Page 401; thence southeasterly by said Colesworthy land twenty (20) feet to said York Street; thence northeasterly along the line of said York Street sixty-four (64) feet to the point of beginning.

Meaning and intending to convey and hereby conveying the same premises conveyed to John E. Coyne by warranty deed of Daniel J. Coyne, dated January 24, 1996 and recorded in said Registry of Deeds in Book 12323, Page 1.

PARCEL THREE - 24 STATE STREET, PORTLAND:

A certain lot or parcel of land located in Portland, County of Cumberland and State of Maine, and more particularly described as follows:

Beginning at the line of land conveyed by Enoch C. Richards to John T. and Margaret E. Curran in August, 1920, and running thence northwesterly on the line of said

State Street twenty-three (23) feet to the land formerly of Charles Rogers; thence southwesterly by said Rogers land sixty-four (64) feet to land conveyed to Samuel H. Colesworthy by deed recorded in said Registry of Deeds in Book 703, Page 401; thence southeasterly by said Colesworthy land twenty-three (23) feet to the line of said Curran's land sixty-four (64) feet to the place of beginning.

Meaning and intending to convey and hereby conveying the same premises described in a warranty deed to John Coyne from Andrew R. Berube and William C. Gardiner, dated February 9, 1988 and recorded in said Registry of Deeds in Book 8186, Page 13.

PARCEL FOUR - 34 BAY STREET, PORTLAND:

A certain lot or parcel of land, together with any improvements thereon, situated in the Deering District of the City of Portland, in the County of Cumberland and State of Maine, and being lot numbered eight (8) on Bay Street on a plan of land recorded in said Registry of Deeds in Plan Book 8, Page 99.

No right or privilege in any of the projected streets delineated on said plan, excepting Bay Street, Ocean Street and Read Street, shall be taken to be hereby granted or dedicated by implication or otherwise to the public use or to the use of any of the owners of the lots indicated on said plan by reason of the foregoing reference to said plan.

Meaning and intending to convey and hereby conveying the premises described in a Personal Representative's Deed of Sale to John E. Coyne from Fleet Bank of Maine, dated December 17, 1998 and recorded in said Registry of Deeds in Book 14410, Page 162.

S:\Coyj06\Deed of Distribution - Peter.doc

Received
Recorded Register of Deeds
Dec 23, 2002 10:07:57A
Cumberland County
John B. O'Brien

91693

BK 14410PG 162

PERSONAL REPRESENTATIVE'S DEED OF SALE

FLEET BANK OF MAINE, successor to New Maine National Bank, duly appointed Personal Representative of the Estate of Robert D. Carney, late of Portland, Maine, Cumberland County Probate Docket No. 91-78, having complied with any and all requirements of the Maine Probate Code and the decedent's will, for full value and consideration paid, hereby grants to JOHN E. COYNE, of Portland, County of Cumberland and State of Maine, the following real estate located in the City of Portland, County of Cumberland and State of Maine:

A certain lot or parcel of land situated in the Deering District of the City of Portland, in the County of Cumberland and State of Maine, and being lot numbered eight (8) on Bay Street on a plan of land recorded in Cumberland County Registry of Deeds, Plan Book 8, Page 99.

No right or privilege in any of the projected streets delineated on said plan, excepting Bay Street, Ocean Street and Read Street, shall be taken to be hereby granted or dedicated by implication or otherwise to the public use or to the use of any of the owners of the lots indicated on said plan by reason of the foregoing reference to said plan.

Being the same premises conveyed to Robert D. Carney and May K. Carney as joint tenants by Harold B. Emery by deed dated January 22, 1963 and recorded in the Cumberland County Registry of Deeds in Book 2729, Page 223. The said May K. Carney having predeceased.

Dated: DECEMBER 17, 1998

Fleet Bank of Maine

By William D. Lucas
its VICE PRESIDENT

Personal Representative of the
Estate of Robert D. Carney

State of Maine
County of Cumberland, ss.

December 17, 1998

Personally appeared the above-named William D. Lucas of Fleet Bank of Maine, Personal Representative of the Estate of Robert D. Carney and acknowledged the foregoing instrument to be his free act and deed in its capacity as Personal Representative.

Before me,

Caroline A. Gates

Notary Public/Attorney at Law
Print Name: CAROLINA A. GATES
NOTARY PUBLIC, MAINE
My Commission Expires APRIL 6, 2004

RECEIVED
1: CROWD Carney, Coyne- deed, 1998
RECORDED IN THE OFFICE OF THE

SEAL

1998 DEC 22 AM 8:43

CUMBERLAND COUNTY

John B. O'Brien

Know All Men by these Presents,

That I, Harold B. Emery, of Limington, in the County of York and State of Maine,

Emery

to

in consideration of one dollar and other valuable consideration,

Carney &

paid by Robert D. Carney and May K. Carney, both of Portland, in the County of Cumberland and State of Maine,

Car

the receipt whereof I do hereby acknowledge, do hereby give, grant, bargain, sell and convey, unto the said Robert D. Carney and May K. Carney, as joint tenants and not as tenants in common, their Heirs and Assigns forever,

the following described property:

A certain lot or parcel of land situated in the Deering District of the City of Portland, in the County of Cumberland and State of Maine, and being lot numbered eight (8) on Bay Street on a plan of land recorded in Cumberland County Registry of Deeds, Plan Book 8, Page 99.

No right or privilege in any of the projected streets delineated on said plan, excepting Bay Street, Ocean Street, and Read Street, shall be taken to be hereby granted or dedicated by implication or otherwise to the public use or to the use of any of the owners of the lots indicated on said plan by reason of the foregoing reference to said plan.

Hereby conveying the same premises conveyed to the Grantor herein by Charles E. Emery by warranty deed dated January 22, 1938 and recorded in said Registry of Deeds in Book 1543, Page 204.

The said Charles E. Emery was my father and was a widower at the time of the delivery of said deed to me, my mother having died in March 1933.



Know all Men by these Presents, That

I, Charles E. Emery of Limington in the County of York and State of Maine,

in consideration of one dollar and other sufficient considerations, paid by Harold B. Emery of said Limington,

the receipt whereof I do hereby acknowledge, do hereby give, grant, bargain, sell and convey unto the said Harold B. Emery, his heirs and assigns forever, a certain lot or parcel of land situated in the Deering District of Portland, and being lot No. 8 on Bay Street on a plan of land recorded in Cumberland County Registry of Deeds, Plan Book 8, Page 99.

No right or privilege in any of the projected streets delineated on said plan, excepting Bay St., Ocean St., and Read St. shall be taken to be hereby granted or dedicated by implication or otherwise to the public use or to the use of any of the owners of the lots indicated on said plan by reason of the foregoing reference to said plan.

It being expressly understood and agreed that the grantor reserves to himself, his heirs and assigns, all the rights and privileges in any of the land plotted or indicated as streets on said plan, excepting Bay St., Ocean St., and Read St.

U.S.I.B.
50 cts.
C.E.E.
1/22/38

do hereby give and sell the aforegranted and bargained premises, with all the privileges and appurtenances thereof, to the said Harold B. Emery, his

heirs and assigns, to his and their use and behoof forever. And I do hereby covenant with the said grantee, his heirs and assigns, that I am lawfully seized in fee of the premises; that they are free of all incumbrances;

that I have good right to sell and convey the same to the said grantee to hold as aforesaid; and that I and my heirs, shall and will warrant and defend the same to the said grantee, his

heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof, I, the said Charles E. Emery

my hand and seal this twenty-second day of January in the year of our Lord one thousand nine hundred and thirty-eight.

Signed, Sealed and Delivered in presence of

Elias Smith

Charles E. Emery

Seal

York
State of Maine, ~~County of York~~, ss. January 22, 1938. Personally appeared
the above named Charles E. Emery

and acknowledged the foregoing instrument to be his free act and deed.
Before me, Elias Smith, Justice of the Peace.

Received February 14, 1938, at 2 o'clock 30 m. P. M., and recorded according to the original.

City of Portland

DATE: 4/05/10

TIME: 13:48:02

PZ CASH RECEIPT

PROJECT #: 10-59700001

PROJECT DESC: INTERPRETATION APPEAL- 34 BAY STREET - I

RECEIVED FROM: Tom Jewell

RECEIPT NUMBER:

FEE	DESCRIPTION	CREDIT	PAYMENT
---	-----	-----	-----
Z1	ZONING BOARD OF APPEALS		100.00
		TOTAL AMOUNT:	100.00

