



Michael Russell, Director  
Permitting and Inspections Department

Ann Machado  
Zoning Administrator

**CITY OF PORTLAND**  
**ZONING BOARD OF APPEALS**  
**Interpretation Appeal Application**

**APPLICANT INFORMATION:**

Margaret E. Gaertner  
NAME

**BUSINESS NAME**

11 Stevens Avenue  
ADDRESS  
Portland, ME 04102

917-476-8156  
TELEPHONE #

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

R - 3  
CURRENT ZONING DESIGNATION

**EXISTING USE OF PROPERTY:**

Single Family

**TYPE OF RELIEF REQUESTED:**

Removal of housing safety violation

**SUBJECT PROPERTY INFO:**

11 Stevens Avenue  
PROPERTY ADDRESS

188 A004001  
CHART/BLOCK/LOT (CBL)

**PROPERTY OWNER INFO (if Different):**

NAME

ADDRESS

**Disputed Provisions from Section 14:**

None

**Order, decision, determination or interpretation under dispute:**

Inspection Violation No. 2 sent with  
letter dated January 17, 2018

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

*The undersigned hereby makes application for an appeal as described above, and certifies that the information herein is true and correct to the best of his OR her knowledge and belief.*

SIGNATURE OF APPLICANT

January 26, 2018  
DATE

Margaret Gaertner  
11 Stevens Avenue  
Portland, ME 04102

January 26, 2018

Zoning Board of Appeals  
City of Portland  
389 Congress Street  
Portland, ME 04101-3509

Dear Members of the Zoning Board of Appeals:

**Reason for Appeal**

I am requesting the violation regarding the escape windows in the Owner's bedroom be removed from my property at 11 Stevens Avenue as a. I believe the Housing Safety Office has misinterpreted the City's ordinances regarding the extent of what they are to inspect and b. replacing the window is unnecessary as the room already has two doors for safe escape and c. replacing this window is a financial hardship made worse by the City through their lack of internal communication.

Attached please find the violation that I am appealing (Attachment One). Please note I am not appealing the first violation and will work with Housing Safety to correct it (although I am frustrated by the conflicting directives). I am only contesting the second violation.

**Background**

I have owned this house since 2010 (please see deed, enclosed as Attachment Nine). The house was very rundown when I bought it and I have been making cosmetic repairs since then, and do most of the work myself. It is a one-story ranch house with 1,456 s.f. of living space on one level. All windows and exterior doors are at thus at grade.

I am the owner of the property and live here full-time. This is my primary residence. There are two large bedrooms, one of which I occupy (the "Owner's Unit" on the enclosed sketch plan) and the second bedroom (the "Rental Unit" on the enclosed sketch plan) I rent intermittently typically for 3-6 months (a "long-term rental"), occasionally as long as a year.

When the City enacted the housing rental regulations, I contacted the City to see if this applied to my situation (an owner-occupant with a roommate) and was surprised to learn that yes, it did, and yes, I needed a license.

I applied for the license, submitted a sample lease and payment in 2016, and the rental license was issued. On September 28, 2016 the house was inspected. At the time, there was a plug-in carbon monoxide detector in the Rental Unit and the inspector said I needed to have a 10 year-sealed battery detector in the Rental Unit and a smoke detector in the Living Room. I installed both as directed. He did not inspect the Owner's Unit and no

other comments or requests were made. On January 31, 2017 I paid the license fee for 2017.

In December 2017 the City conducted a routine inspection of my Rental Unit. As my rental unit was previously inspected and approved by the City and no changes have been made to it, I expected no issues. Thus, I was very surprised when during the inspection the inspector told me the CO detector was in the wrong location, even though I had installed it where directed by the City.

I was more surprised when he said he needed to inspect my own room, as the first inspection only included the rental room. Also, the City's website and ordinances make it very clear that the Owner's Unit is not subject to inspection.

### **City of Portland Code and other City Publications Regarding Inspections**

As stated on the Housing Safety Website (<https://www.portlandmaine.gov/1656/Housing-Safety>) "A residential rental unit can be a rented apartment, house, condominium, or rented individual room." As also defined in the City Code, I have a "Rental Unit" within my Owner-Occupied, single-family dwelling:

"Sec. 6-106. Definitions.

Dwelling shall mean any house, building or part thereof which is occupied or intended to be occupied, in whole or in part, for living and sleeping by one (1) or more occupants. A dwelling may include one (1) or more dwelling units or rooming units or a combination of both.

"Sec. 6-150.1. Definitions.

Rental unit is a portion of any residential structure that is rented or available for rent to any individual or individuals for any length of time. Any **portion** of a Single-Family Home, Condominium, or Apartment that is rented or available to be rented to an individual or individuals who are not the owner or owners shall be considered a rental unit."

"Sec. 6-150.1. Definitions.

Owner-Occupied shall mean a rental unit owned and occupied by the registrant as his or her primary residence."

The City's Code (chapters 6 and 10) and website clearly state the Owner's Unit is not subject to inspection. City Code "Sec. 10-3. Amendments" clearly states that rental units are inspected, but premises covered by Chapter 24 of NFPA 101 are not subject to inspection:

"(n) Inspections. The authority having jurisdiction, upon proper identification, shall have the right to enter at any and all reasonable times for the purpose of inspecting in order to determine compliance with the provision of this Life Safety Code into or upon any of the following premises: any **rental unit** subject to registration under section 6-151; any premises subject to this article, **with the exception of premises**

**subject to Chapter 24 of NFPA 101**; any premises when any governmental agency having jurisdiction over a particular premises should request it to do so; or any premises in response to a complaint regarding conditions governed by this Chapter. It shall be a violation of this article for any person either to interfere with or to prevent such inspection."

**As my home is a one-family dwelling it is a "... premises subject to Chapter 24 of NFPA 101..." and as per the City Code thus exempted from inspection, with the exception of the Rental Unit within it.** The Inspector was beyond his authority when he inspected my unit and ordered me to make this unnecessary and costly repair.

Please see Attachments Two and Three for screen shots of the City of Portland's Housing Safety website which clearly state, in two separate places, "**Note: Owners occupying a unit on their own property are not required to register the unit they occupy, but must register the units that are rented.**" (This paragraph can be found at both <https://www.portlandmaine.gov/1656/Housing-Safety> and <https://www.portlandmaine.gov/1680/Rental-Registration> .)

### **Safe Exits**

Please see the enclosed sketch plans. Please note my roommates are not allowed in the Owner's Unit. The Owner's Unit has **two doors** that provide exits from the room. The doors are standard residential size doors and measure 6'-6" by 2'-6". The Study adjacent to the Owner's Unit is only used by the Owner and is under my exclusive control.

While the windows do not meet the size currently required to serve as an egress window, they were approved when the addition to the house was built and I am easily able to climb through them. On a practical note, should a firefighter need to enter, he/she'd have to break a window as they are locked at night and whenever I am not home. He/she can and logically would break the large picture window and enter that way (see photo in Attachment Eight).

### **Hardship**

I am very frustrated at the lack of consistency displayed by the various inspectors. I installed the co detector and added a smoke detector as directed by one city inspector only to be told by the next inspector that the co detector is in the wrong place. I have made no other changes to the rental unit since the last inspection and changes made to the larger house (demolition of a deck and removal of a exterior door in my living room) were permitted with and approved by the City.

It is not practical for me to install a new window at this time as financially I am already overextended completing the work of removing the deck and filling in the door. I am also now facing additional financial hardship, as this room can't be rented, even though it was previously inspected and licensed and no changes have been made to it, or to the house, without City approval. It is January and the window opening, especially the existing wood sill, requires scraping, preservative application, priming and painting before a window can be installed in it. This requires several days of warm, dry weather. Contractors in the Portland area all very busy and the 30-day time period to correct this is not realistic.

I am extremely frustrated that I went through the process of applying for a permit to remove the deck and infill the door in the living room and at no time was the issue of exits or egress brought up. The City's Permitting and Inspections Office has my rental license(s) on file. I applied for the demo/building permit with the City's Permitting and Inspections Office. I didn't think removing the door in the living room was an issue because I had/have two other exterior doors from the house, one in the kitchen and one in the future dining room, that serve as exits. But in hindsight I wonder, had I left the exterior door in place in the living room would I be in this situation? If I'd known that taking a door out would mean altering my bedroom, I might have made a different plan. I'd at least have had more time to evaluate the financial implications, budget the funds, investigate options and collect bids, and do the work at a seasonally appropriate time.

Thank you in advance for your consideration of my appeal. I have followed the City's regulations and directives regarding this license and am committed to providing a safe environment to my roommates, many of whom are still my friends to this day.

Sincerely,



Margaret Gaertner  
11 Stevens Avenue

**Attachments**

- |                  |                                                                                                                                                       |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| Attachment One   | Violation issued by City of Portland Housing Safety Office                                                                                            |
| Attachment Two   | Screenshot of City of Portland Housing Safety Office's website stating the owner's unit is not subject to registration                                |
| Attachment Three | Second Screenshot of City of Portland Housing Safety Office's website showing second instance stating the Owner's Unit is not subject to registration |
| Attachment Four  | Sketch Floor Plan of Residence showing "Rental Unit" and "Owner's Unit"                                                                               |
| Attachment Five  | Sketch Floor Plan of Residence showing existing exits                                                                                                 |
| Attachment Six   | Plot plan, with setbacks noted.                                                                                                                       |
| Attachment Seven | City tax map with my property highlighted                                                                                                             |
| Attachment Eight | Photograph of property                                                                                                                                |
| Attachment Nine  | Deed for property                                                                                                                                     |

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**CITY OF PORTLAND  
HOUSING SAFETY OFFICE**

389 Congress Street  
Portland, Maine 04101

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**Inspection Violations**

<b>Owner/Manager</b> GAERTNER MARGARET E		<b>Inspector</b> Matthew Sarapas	<b>Inspection Date</b> 12/29/2017
<b>Location</b> 11 STEVENS AVE	<b>CBL</b> 188 A004001	<b>Status</b> Violations Exist	<b>Inspection Type</b> Housing Safety Inspection

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Code	Int/Ext	Floor	Unit No.	Area	Compliance Date
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1) 207

**Violation:** CARBON MONOXIDE ALARMS / LEVEL; Carbon Monoxide Alarms - One and Two-Family Dwellings: Single-station or multiple-station (interconnected) Carbon Monoxide alarms must be powered by the (A) building electrical system, or (B) 10-year non-replaceable battery and shall be positioned correctly on walls or ceilings: (1) on each level of the dwelling unit, and (2) including the basement.

NFPA 720 (2009) 9.5.1, 9.5.3, amended by State Law Title 25, Chapter 317 § 2468

**Notes:** First floor, per NFPA 720 alarm must be installed outside sleeping rooms. Current co alarm is installed in bedroom that is periodically rented.

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2) 210

**Violation:** ESCAPE WINDOWS; Escape Windows - One and Two-Family Dwellings: Escape windows shall be a free and clear outside window or door operable from the inside without the use of tools, keys, or special effort. Windows shall be within 20 feet of the finished ground level or accessible by rescue apparatus (if approved), or opening onto an exterior balcony and when below ground level shall be provided with an accessible, free and clear, window well.

NFPA 101 (2009) 24.2.2.3.3

**Notes:** Owner's bedroom window does not meet code requirements for secondary means of escape/egress

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**Comments:**

**RENTAL HOUSING RIGHTS**  
389 Congress Street  
Portland, ME 04101

## NEWS FLASH

**SHORT-TERM RENTAL REGISTRATION DEADLINE APPROACHING**  
The City is currently accepting registrations for short-term rentals. Current operators of all short-term rentals can come and register at City Hall. The City Council approved an ordinance in April that requires short-term rental units to

**GUIDANCE ON RENTAL UNITS**  
A residential rental unit can be a rented apartment, house, condominium, or rented individual room. A rental can be for any length of time including:

- Written leased residential rentals or month-to-month residential rentals; or
- Short-term rentals such as:
  - Summer vacation rentals or winter rentals; or
  - Overnight lodging and casual rentals such as AirBNB and irregular room or apartment rentals.
- Overnight lodging where the State has issued a food service license and as a result has inspected the property for life-safety is exempt from registering.

**Note: Owners occupying a unit on their own property are not required to register the unit they occupy, but must register the units that are rented.**

## REGISTRATION STEPS

Completing a registration for residential rental property includes:

1. Providing contact information so that the Housing Safety Office and Fire Department can:
  - Communicate with an owner or property manager to resolve an issue with a registered building;
  - Contact the owner or property manager in an emergency; or

**ONLINE PAYMENTS**  
**NOTIFY ME@ALERTS**  
**CONTACT US**  
**EMPLOYMENT**

Sched\_Values.pdf resanbornfireinsuranc...zip  
Select Language Show All

Chrome File Edit View History Bookmarks People Window Help

Margaret

Citywide Parking Ban Declared Wednesday, January 17 at 10:00 PM  
6:00 AM Thursday, January 18

City Council Meeting Cancelled Tonight & City Hall Closing at 3PM  
Read On...

Citywide Parking Ban

PORTLAND | me

PAY & APPLY GOVERNMENT SERVICES BUSINESS COMMUNITY

Search our site...

*Note: Owners and property managers that would like to register multiple properties should contact the housing safety office for detailed instructions on how to do so.*

### GUIDANCE ON RENTAL UNITS

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- Written leased residential rentals or month-to-month residential rentals; or
  - Short-term rentals such as:
    - Summer vacation rentals or winter rentals; or
    - Overnight lodging and casual rentals such as AirBNB and irregular room or apartment rentals.
- Overnight lodging where the State has issued a food service license and as a result has inspected the property for life-safety is exempt from registering.

**Note: Owners occupying a unit on their own property are not required to register the unit they occupy, but must register the units that are rented.**

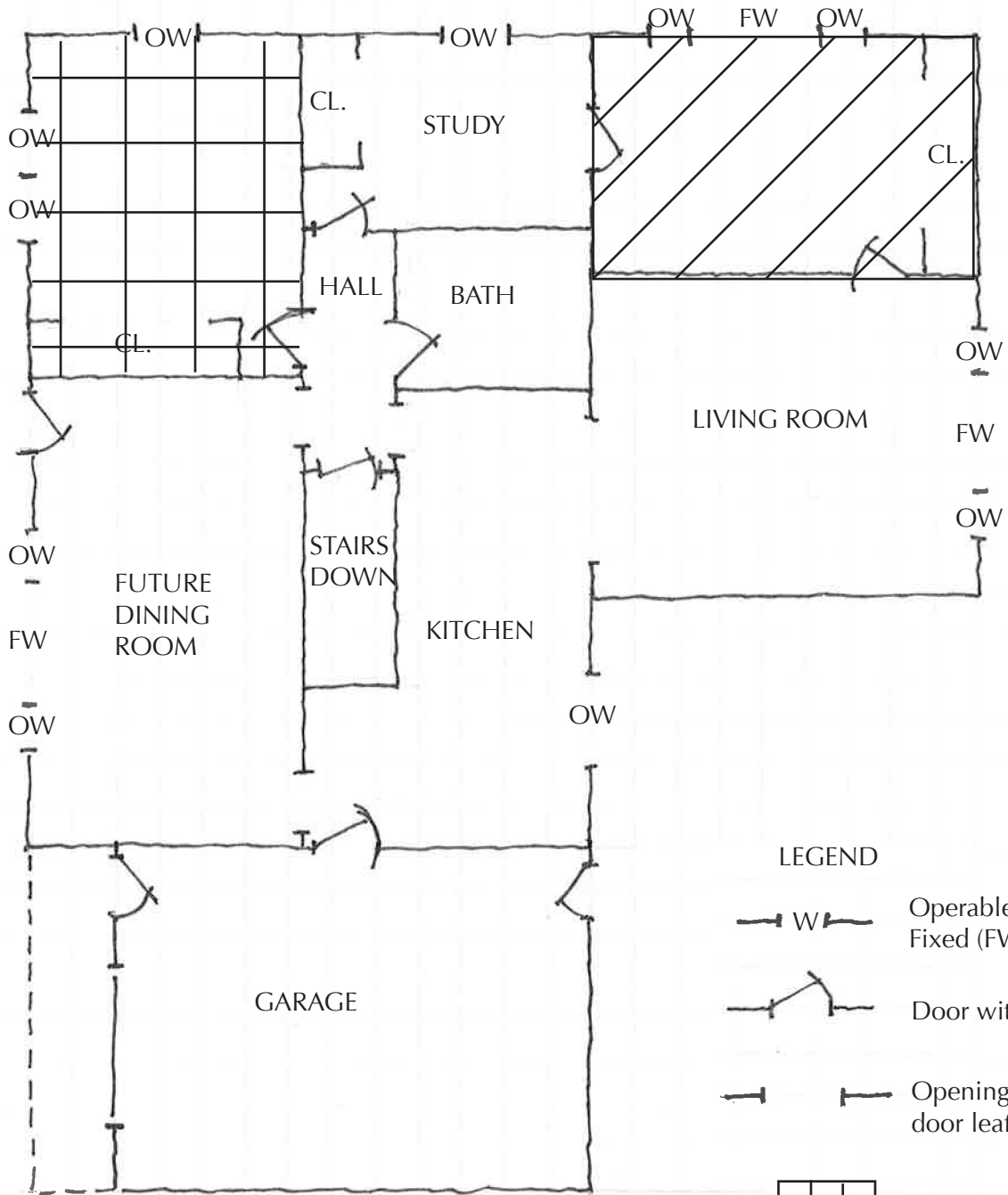
Select Language | Show All

20180117110812364....pdf 20180117110812364....pdf 20180117110812364....pdf 20180117110812364....pdf 20180117110812364....pdf




Icons: @, 17, W, ID, X, PDF, Mail, Calendar, etc.

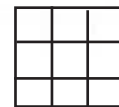


STEVENS AVENUE

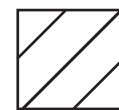


LEGEND

-  Operable (OW) or Fixed (FW) Window
-  Door with leaf
-  Opening w/o a door leaf



Rental Unit



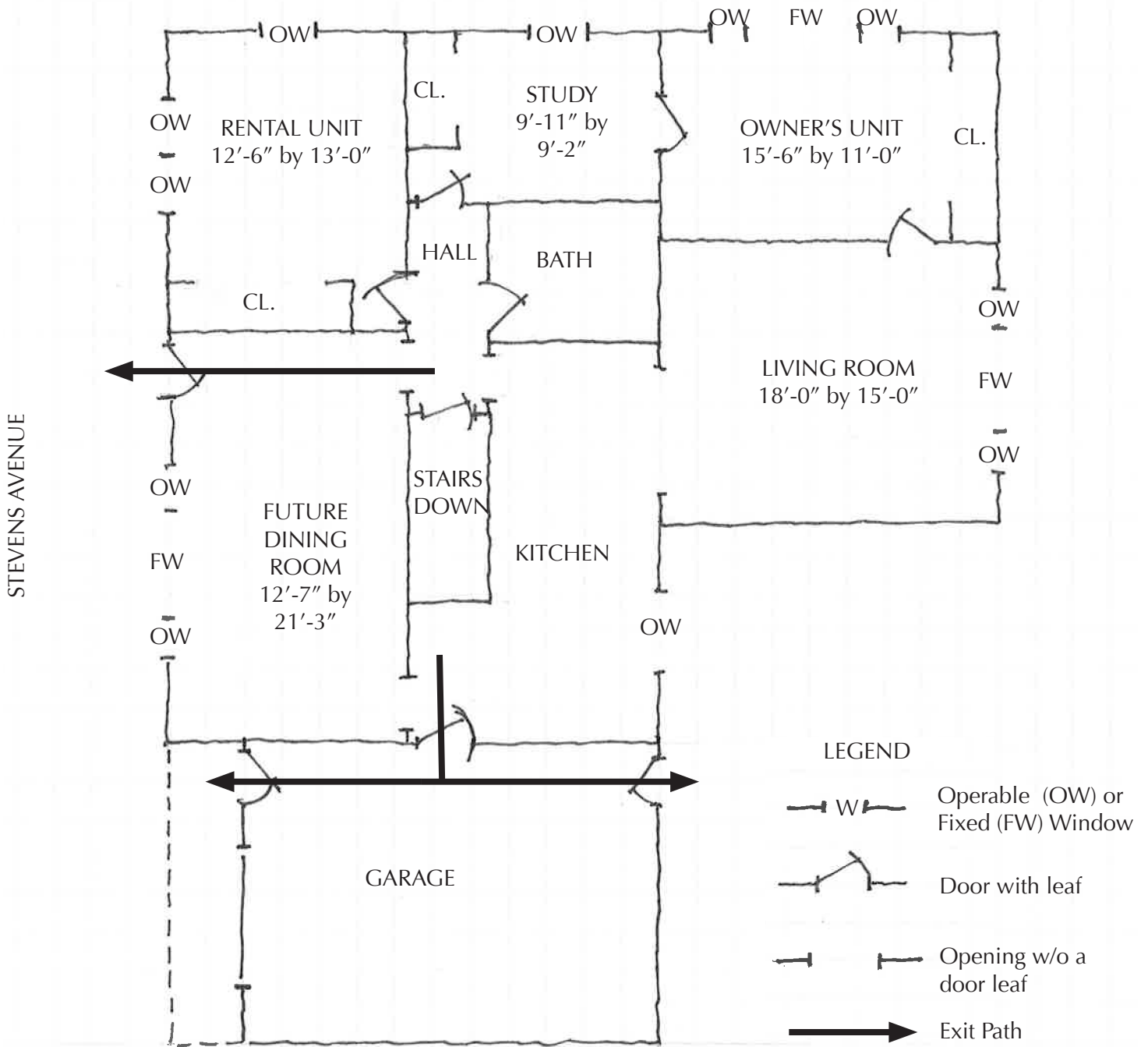
Owner's Unit

**Sketch Floor Plan**

Showing Rental Unit and Owner's Unit  
11 Stevens Avenue  
Not to Scale

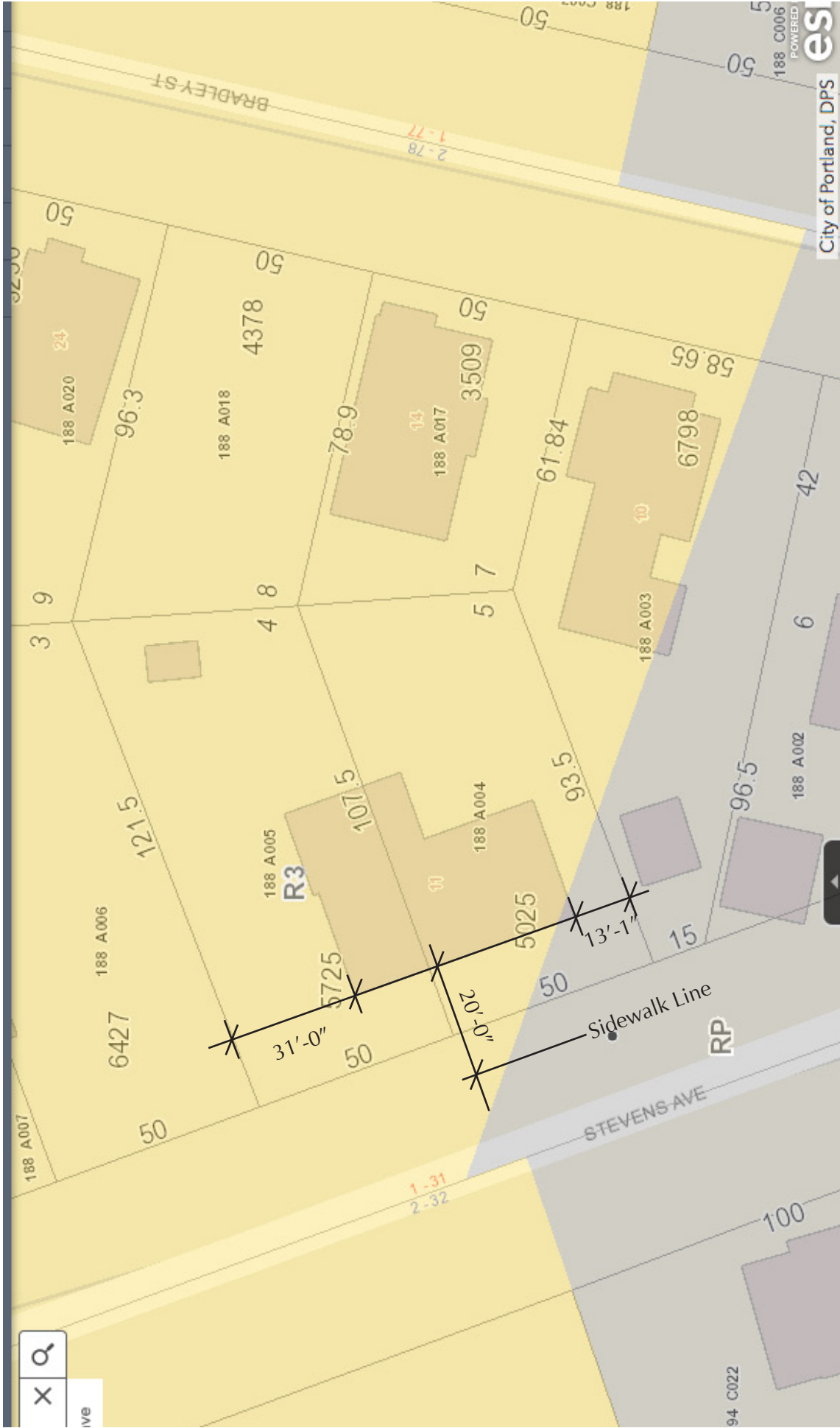
**ATTACHMENT FOUR**

Appeal -- 11 Stevens Avenue



**Sketch Floor Plan Showing Existing Exits**

11 Stevens Avenue  
 Not to Scale  
 Dimensions Approximate



**ATTACHMENT SIX - Plot Plan**  
 Appeal -- 11 Stevens Avenue



APPEAL - 11 STEVENS AVE  
ATTACHMENT SEVEN



Window in Owner's Unit

**DEED OF SALE BY PERSONAL REPRESENTATIVE**  
(Testate Decedent)


**KNOW ALL PERSONS BY THESE PRESENTS**, that, I, Gail Knowles, duly appointed and acting Personal Representative of the Estate of Charles E. Lambert, deceased April 27, 2010, whose will was duly admitted to probate in the Probate Court for Cumberland County, Maine, Docket No. 2010 - 0529 and the (10) day notice to each person succeeding to an interest in the real property described below having been waived, by the power conferred by law, and every other power, for consideration paid, hereby GRANT to **Margaret E. Gaertner**, whose mailing address is 51 Tyng Street, Portland, ME 04102, the land with any buildings thereon situated at 11 Stevens Avenue, City of Portland, County of Cumberland and State of Maine, described as follows:


See Attached Exhibit A

Reference is made to a Deed to Charles E. Lambert from Robert G. Paisley and Margaret M. Paisley to Charles E. Lambert and Arvilla M. Lambert (as Tenants in Common) dated September 9, 1998 and recorded in the Cumberland County Registry of Deeds in Book 14146, Page 8. Arvilla M. Lambert died May 25, 2004, leaving her portion of the property to Charles E. Lambert.

Witness our hands and seals this 2nd day of June, 2010.

Estate of Charles E. Lambert

  
\_\_\_\_\_  
Witness


By:   
Gail Knowles *of the Estate of Charles E. Lambert*  
Personal Representative

STATE OF MAINE  
COUNTY OF Cumberland

June 2, 2010

Then personally appeared before me the above named Gail Knowles, Personal Representative of the Estate of Charles E. Lambert and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said Estate.

Before me,

  
\_\_\_\_\_  
Notary Public/ Attorney at Law

Printed Name: **Matthew J. McDonald**  
My Comm. Exp: **Maine Attorney at Law**

MAINE REAL ESTATE TAX PAD

**EXHIBIT A**

Two certain lots or parcels of land, with the buildings thereon, situated in the City of Portland, County of Cumberland and State of Maine, on the easterly side of Stevens Avenue and being lots numbered four (4) and five (5) on the plan of Bradley Terrace made by Percy H. Richardson, Civil Engineer, recorded in the Cumberland County Registry of Deeds in Plan Book 9, Page 137.

Said lots have a total frontage of one hundred (100) feet on Stevens Avenue, bounded on the northerly side by the line between lots three (3) and four (4) on said plan one hundred twenty-one and five tenths (121.5) feet, more or less, in length, on the easterly side by the boundary lines of lots seven (7) and eight(8) on said plan, and on the southerly side by a line ninety-three and five tenths (93.5) feet, more or less, in length.

2010 Jun 03 03:38:20P

Received  
Recorded Register of Deeds  
Jun 03, 2010 03:38:20P  
Cumberland County  
Pamela E. Lovley