

Department of Planning & Urban Development

Marge Schmuckal
Zoning Administrator

Jeff Levine
Director, Planning & Urban Development



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MAR 31 2014

CITY OF PORTLAND
ZONING BOARD OF APPEALS
Practical Difficulty Variance Application

Dept. of Building Inspections
City of Portland Maine

Applicant Information:

Wayne H. & Mary M. Franklin
NAME

3 Hidden Brook Drive
BUSINESS NAME
ADDRESS

Gorham ME 04038 (207) 415-4804
TELEPHONE #

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

R-3
CURRENT ZONING DESIGNINATION

one family house
EXISTING USE OF PROPERTY:

Subject Property Information

32 Iffley Street, Portland
PROPERTY ADDRESS

301 F 7/8/9
CHART/BLOCK/LOT (CBL)

PROPERTY OWNER (if different)
NAME
ADDRESS

(207) 415-4804
TELEPHONE #

PRACTICAL DIFFICULTY VARIANCE
FROM SECTION 14- 90(d)(1)

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.

Wayne H. Franklin
SIGNATURE OF APPLICANT

3-31-14
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.

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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:

We own a two-story house on a 9900 square foot lot. The house is 2000+ square feet. The front setback for the City of Portland, R-3 zone, is 25 feet. We have a front farmers porch that is 21 feet from the property line and 34 feet from the street pavement. In 2002, we hired a professional contractor to build a garage and porch, relying on him to obtain the necessary permit and verify the construction was within the setback requirements. The contractor apparently did not secure a permit to build the porch part of the construction and we were never told that the porch violated the setback requirement. We had no reason to question the building procedures as the company we hired was a professional contractor. Further, the city later posted the dimensions of the porch on the assessor’s website, validating our belief that the porch was in compliance. We have a need for a practical difficulty variance.

- 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:

Practical difficulty - the porch is currently in place providing access to the front door and to the mudroom door. The porch is necessary to access the home without entering through an overhead garage door. The porch and steps are necessary for the sale of the house as we are unable to sell the house without a variance. Use of this property is permitted within the R-3 zone.

Significant economic injury- we have a buyers contract but we are unable to complete the sale because of the setback issue. Eliminating the porch would decrease the current value of the house and adversely impact the pending contract for sale, which includes the front porch. While this issue is pending, we are maintaining two houses, paying for expenses at both.

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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 house requires a front porch which accesses the front door and mudroom doors. The porch has no physical impact to any neighbor's homes. The porch is an asset to the neighborhood as it improves the general view of Iffley Street.

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 front porch is nicely built and is attractive to the house and for the neighborhood. Keeping the porch "as is" would continue to enhance the attractiveness of the neighborhood.

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:

In 2002, we hired a professional contractor to build the garage and the front porch at the same time. We were not aware of the fact that he did not obtain a permit for the porch portion of the construction or that the dimensions of the porch violated the front set-back requirement. We hired a professional contractor and we expected him to be mindful of the setback requirements and permitting process. We would not have built the porch with these dimensions knowing that it violated the setback requirement.

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

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

The only solution to this issue without a variance is to deconstruct the porch at considerable cost and to rebuild another one. A buyers contract is in place at this time to purchase the home and the buyers contract may be negated if the porch is altered/removed. The buyers are waiting to close on our house and we are maintaining two houses at considerable cost to us.

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 a variance and leaving the porch in its current state would have no adverse impact or effect on the natural environment. The porch is in a front yard of a free standing house. The front porch is 34 feet from the road edge.

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:

32 Iffley Street, Portland, ME is not located, whole or in part, within a shoreland area. This is a residential area in R-3.

Wayne H. Franklin / Mary M. Franklin
3 Hidden Brook Drive
Gorham, Maine 04038
(207) 415-4804

March 31, 2014

City of Portland
Zoning Board of Appeals
389 Congress Street
Portland, Maine 04101

Members of the board,

In 2000, we purchased our home at 32 Iffley Street, Portland, ME, which was identified as 3 Iffley Street at the time. The house had an existing side entry porch and concrete steps to the front door. In 2002, we contracted with a builder, who is no longer in business, to build a garage and farmers front porch. The decision to build the front porch was made while the garage was in progress. Due to our inexperience with the building process, we relied upon the contractor to obtain the appropriate permit and ensure setback parameters were met. We later saw that the assessor's website reflected the front porch and its current dimensions, validating to us that all was in order.

In 10/2013, we moved from the house as we purchased another home and we put the house at 32 Iffley Street for sale. We have been maintaining two households and the associated expenses of both since then. We recently entered into a contract to sell the house at 32 Iffley Street and during a survey, we learned that the front porch exceeded the frontal setback requirement by four feet. We subsequently learned that the contractor did not obtain a permit for the porch part of the construction.

The buyer wants the house and porch in its current state and may not continue with the purchase if we have to modify it. To lose the sale of the house and remove the porch or reconstruct it would be an economic hardship due to the expenses of a rebuild and a decrease in house value.

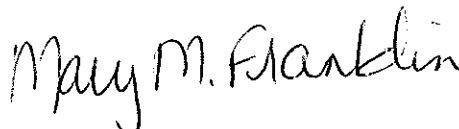
We are unable to sell the house with the current status and so we are requesting a Practical Difficulty Variance to allow for the existing porch to remain as is.

Thank you very much for your consideration on this request.

Sincerely,

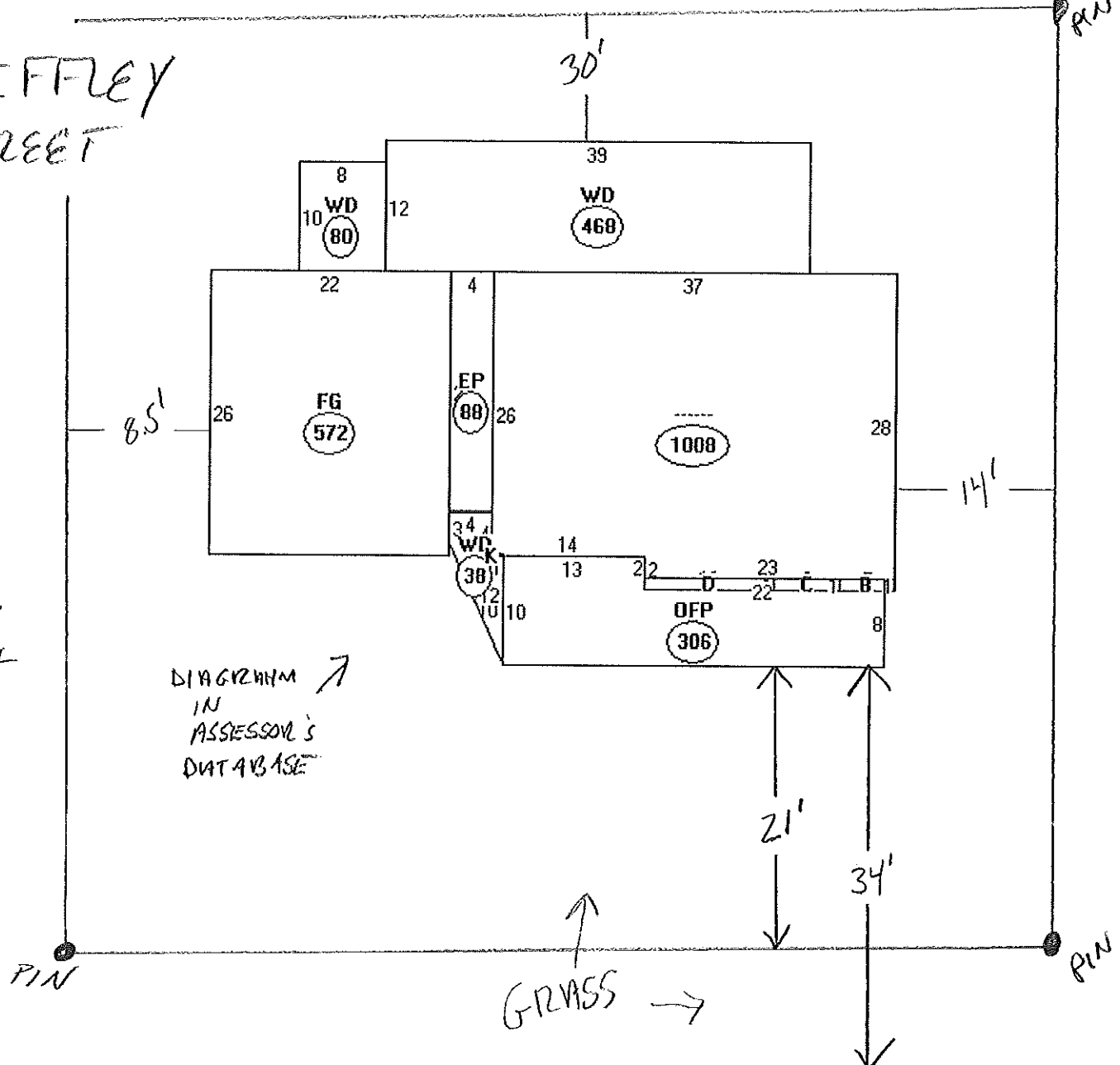


Wayne H. Franklin



Mary M. Franklin

32 IFFLEY STREET



IFFLEY STREET

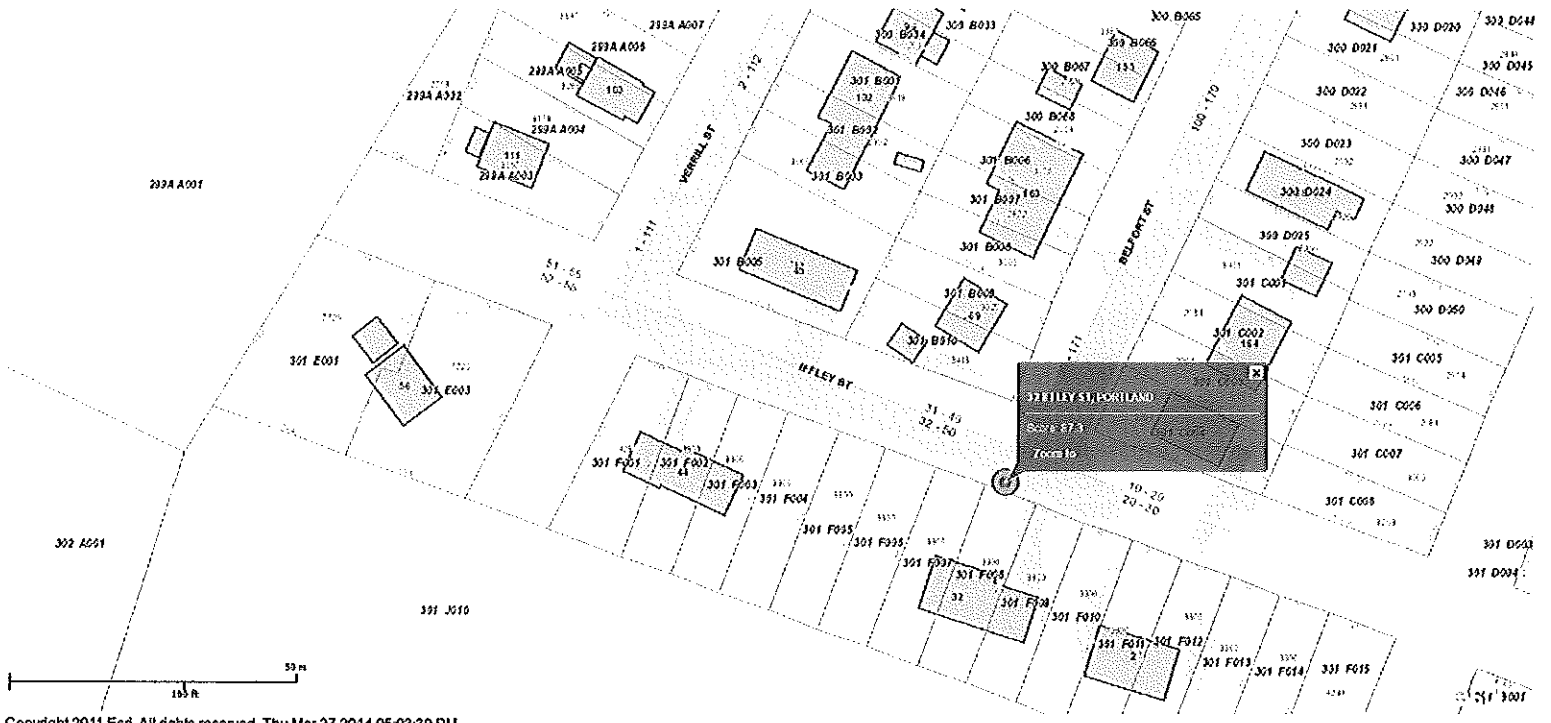
BELFORT STREET

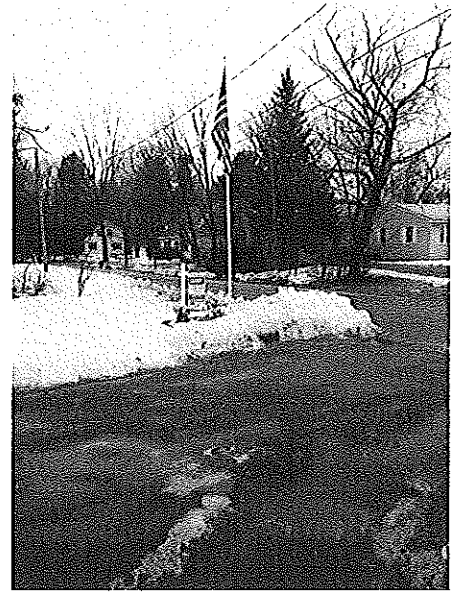
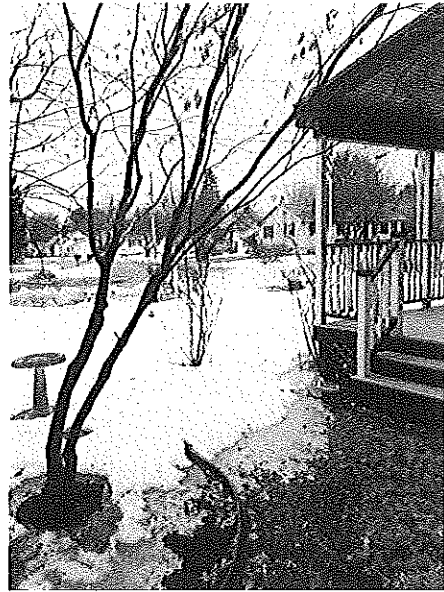
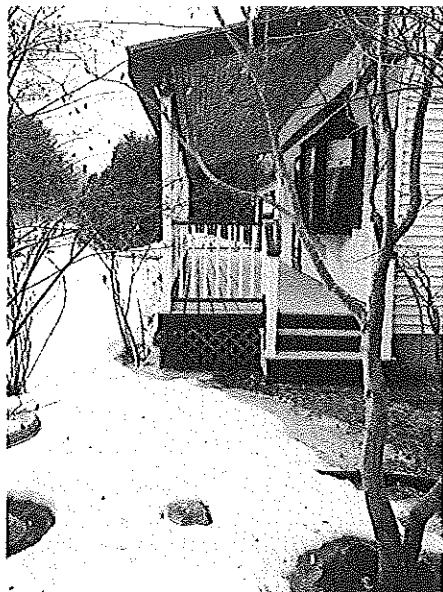
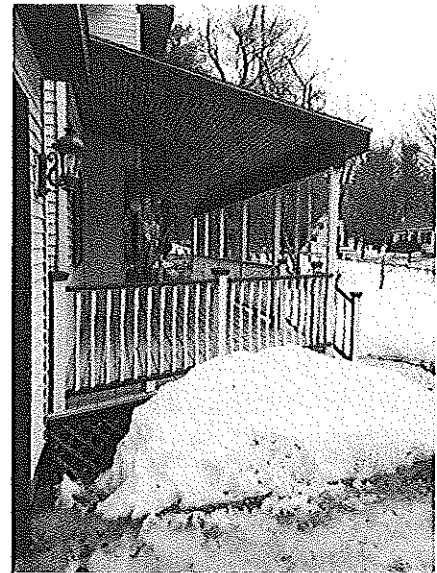
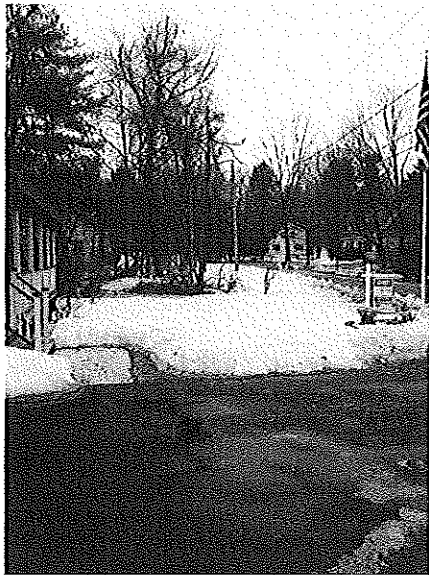
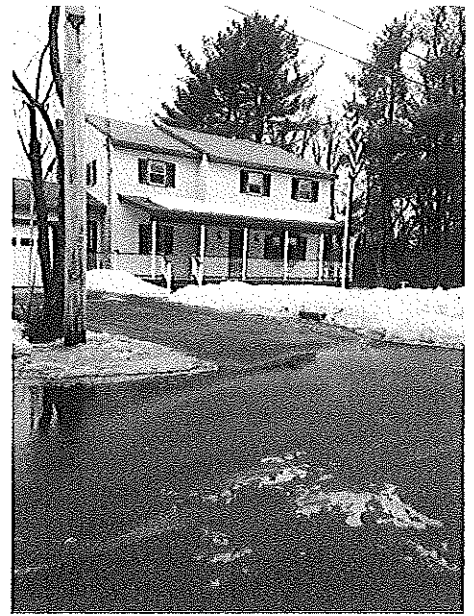
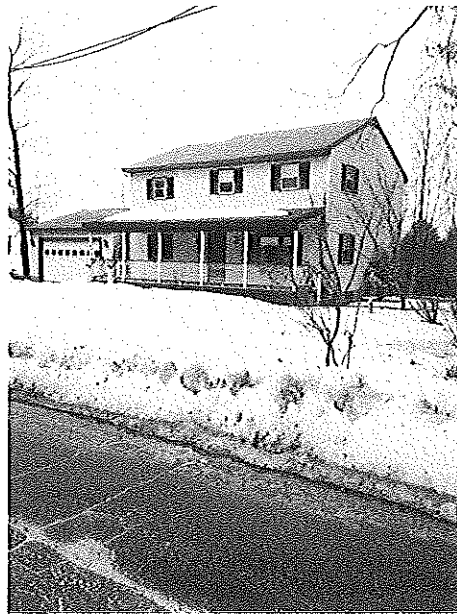


301 J010

578362

My Map





0047602

08115675P6154

WARRANTY DEED

We, Peter P. Ames and Alice D. Ames

of 3 Ifley Street, Portland, Maine 04103, for consideration paid, grant to

Wayne H. Franklin and Mary M. Franklin


of 10003 Presnell Pl., Fort Belvoir, VA 22060 as joint tenants and not as tenants in common, with WARRANTY COVENANTS, the following described real property in Portland, County of Cumberland, and State of Maine:

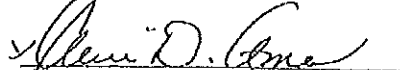
MAINE REAL ESTATE TAX PAID


See Exhibit A attached hereto and made a part hereof

Also hereby conveying all rights, easements, privileges, and appurtenances, belonging to the premises hereinabove described.

WITNESS my/our hand(s) and seal(s) this 21st day of August, 2000.


Peter P. Ames

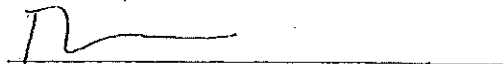

Alice D. Ames


Richard E. Clarke
Witness

State of Maine,
County of Cumberland,

Personally appeared before me the above-named Peter P. Ames and Alice D. Ames and acknowledged the foregoing instrument to be their free act and deed.

Before me,


Richard E. Clarke, Attorney at law

DK 115675 PG 1551

EXHIBIT A - PROPERTY DESCRIPTION

Closing date: 08/21/2000
Borrower(s): Wayne H. Franklin and Mary M. Franklin
Property Address: 3 Illey Street, Portland, Maine 04103

A certain lot or parcel of land with the buildings thereon situated in the City of Portland, County of Cumberland and State of Maine, and being Lots 228, 229 and 230, according to City of Portland Tax Assessor's Map, Book 301, Block F, Lots 7 through 9. Each lot being 30 feet x 110 feet, more or less. Also being described as lots 228, 229 and 230 as shown on Plan of Portland Villa Site, recorded in Cumberland County Registry of Deeds in Plan Book 14, Page 7.

For title reference see deed of Ronald A. Mackenzie and Diane M. Mackenzie to Peter P. Ames and Alice D. Ames dated August 28, 1986 and recorded in the Cumberland County Registry of Deeds in Book 7348, Page 309.

RECEIVED
RECORDED REGISTRY OF DEEDS
2000 AUG 22 PM 3:47
CUMBERLAND COUNTY
John B. Quinn

DocuSign Envelope ID: 0AD7F8A8-5093-4FAB-B848-C2C401A0C2D2

PURCHASE AND SALE AGREEMENT

("days" means business days unless otherwise noted, see paragraph 23)

Offer Date February 18, 2014

February 20, 2014 Effective Date
Effective Date is defined in Paragraph 23 of this Agreement

1. PARTIES: This Agreement is made between John Chaisson, Kelly Brogan ("Buyer") and Wayna H. Franklin, Mary M. Franklin ("Seller").

2. DESCRIPTION: Subject to the terms and conditions hereinafter set forth, Seller agrees to sell and Buyer agrees to buy all part of; If "part of" see para. 26 for explanation) the property situated in municipality of Portland County of Cumberland, State of Maine, located at 32 Ifley described in deed(s) recorded at said County's Registry of Deeds Book(s) 15675 and Page(s) 154

3. FIXTURES: The Buyer and Seller agree that all fixtures, including but not limited to existing storm and screen windows, shades and/or blinds, shutters, curtain rods, built-in appliances, heating sources/systems including gas and/or kerosene-fired heaters and wood pellet stoves, sump pump and electrical fixtures are included with the sale except for the following: no exceptions. Seller represents that all mechanical components of fixtures will be operational at the time of closing except: no exceptions

4. PERSONAL PROPERTY: The following items of personal property as viewed on February 17, 2014 are included with the sale at no additional cost, in "as is" condition with no warranties: Dishwasher, Microwave, Range-Blender, Refrigerator, Bar Stools

5. PURCHASE PRICE/EARNEST MONEY: For such Deed and conveyance Buyer agrees to pay the total purchase price of \$220,000.00. Buyer has delivered; or will deliver to the Agency within 2 days of the Effective Date, a deposit or earnest money in the amount of \$22,000.00. Buyer agrees that an additional deposit of earnest money in the amount of n/a will be delivered n/a. If Buyer fails to deliver the initial or additional deposit in compliance with the above terms Seller may terminate this Agreement. The remainder of the purchase price shall be paid by wire, certified, cashier's or trust account check upon delivery of the Deed. This Purchase and Sale Agreement is subject to the following conditions:

6. ESCROW AGENT/ACCEPTANCE: Better Homes & Gardens TRS ("Agency") shall hold said earnest money and act as escrow agent until closing; this offer shall be valid until February 20, 2014 (date) 5:00 AM PM and, in the event of non-acceptance, this earnest money shall be returned promptly to Buyer.

7. TITLE AND CLOSING: A deed, conveying good and merchantable title in accordance with the Standards of Title adopted by the Maine Bar Association shall be delivered to Buyer and this transaction shall be closed and Buyer shall pay the balance due and execute all necessary papers on March 20, 2014 (closing date) or before, if agreed in writing by both parties. If Seller is unable to convey in accordance with the provisions of this paragraph, then Seller shall have a reasonable time period, not to exceed 30 calendar days, from the time Seller is notified of the defect, unless otherwise agreed to in writing by both Buyer and Seller, to remedy the title. Seller hereby agrees to make a good-faith effort to cure any title defect during such period. If, at the later of the closing date set forth above or the expiration of such reasonable time period, Seller is unable to remedy the title, Buyer may close and accept the deed with the title defect or this Agreement shall become null and void in which case the parties shall be relieved of any further obligations hereunder and any earnest money shall be returned to the Buyer.

8. DEED: The property shall be conveyed by a Warranty deed, and shall be free and clear of all encumbrances except covenants, conditions, easements and restrictions of record which do not materially and adversely affect the continued current use of the property.

9. POSSESSION, OCCUPANCY, AND CONDITION: Unless otherwise agreed in writing, possession and occupancy of premises, free of tenants and occupants, shall be given to Buyer immediately at closing. Said premises shall then be broom clean, free of all possessions and debts, and in substantially the same condition as at present, excepting reasonable use and wear. Buyer shall have the right to view the property within 24 hours prior to closing.

10. RISK OF LOSS, DAMAGE, DESTRUCTION AND INSURANCE: Prior to closing, risk of loss, damage, or destruction of premises shall be assumed solely by the Seller. Seller shall keep the premises insured against fire and other extended casualty risks prior to closing. If the premises are damaged or destroyed prior to closing, Buyer may either terminate this Agreement and be refunded the earnest money, or close this transaction and possess the property "as-is" together with an assignment of the insurance proceeds relating thereto.

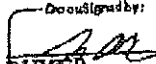
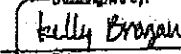
Buyer(s) Initials: [Signature] Seller(s) Initials: [Signature]
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1-800-333-3333 www.21clogic.com

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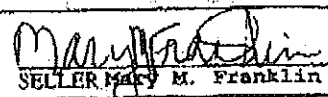
27. GENERAL PROVISIONS:

- a. A copy of this Agreement is to be received by all parties and, by signature, receipt of a copy is hereby acknowledged. If not fully understood, contact an attorney. This is a Maine contract and shall be construed according to the laws of Maine.
- b. Seller acknowledges that State of Maine law requires buyers of property owned by non-resident sellers to withhold a prepayment of capital gains tax unless a waiver has been obtained by Seller from the State of Maine Revenue Services.
- c. Buyer and Seller acknowledge that under Maine law payment of property taxes is the legal responsibility of the person who owns the property on April 1, even if the property is sold before payment is due. If any part of the taxes is not paid when due, the lien will be filed in the name of the owner as of April 1 which could have a negative impact on their credit rating. Buyer and Seller shall agree at closing on their respective obligations regarding actual payment of taxes after closing. Buyer and Seller should make sure they understand their obligations agreed to at closing and what may happen if taxes are not paid as agreed.
- d. Buyer acknowledges that Maine law requires continuing interest in the property and any back up offers to be communicated by the listing agent to the Seller.

Buyer's Mailing address is 255 Dingley Spring, Gorham, ME 04038

DocuSigned by: 	<u>02/19/2014</u> DATE	DocuSigned by: 	<u>02/19/2014</u> DATE
BUYER John Chalison		BUYER Kelly Brogan	

Seller accepts the offer and agrees to deliver the above-described property at the price and upon the terms and conditions set forth and agrees to pay agency a commission for services as specified in the listing agreement.

Seller's Mailing address is 	<u>02/19/2014</u> DATE		<u>2/19/14</u> DATE
SELLER Wayne H. Franklin		SELLER Mary M. Franklin	

COUNTER-OFFER

Seller agrees to sell on the terms and conditions as detailed herein with the following changes and/or conditions:

The parties acknowledge that until signed by Buyer, Seller's signature constitutes only an offer to sell on the above terms and the offer will expire unless accepted by Buyer's signature with communication of such signature to Seller by (date) _____ (time) _____ AM _____ PM.

SELLER _____	DATE _____	SELLER _____	DATE _____
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The Buyer hereby accepts the counter offer set forth above.

BUYER _____	DATE _____	BUYER _____	DATE _____
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EXTENSION

The closing date of this Agreement is extended until _____ DATE _____

SELLER _____	DATE _____	SELLER _____	DATE _____
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BUYER _____	DATE _____	BUYER _____	DATE _____
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John Chalison and