

**CITY OF PORTLAND, MAINE**

BOARD OF APPEALS



January 13, 1997

James and Denise Shea  
33 Arthur Street  
Portland, Maine 04103

**RE: 33 Arthur Street**

Dear James and Denise,

As you know, at its January 9, 1997, the Board of Appeals voted 7-0 to deny your Miscellaneous Appeal to grant relief from Section 14-426. A copy of the Board's decision is enclosed for your records.

Please notify this office no later than close of business on Friday, January 24, 1997 to inform us as to how you intend to remedy this situation by either reducing the height of the fence or removing it all together.

Should you have any questions regarding this matter, please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Marge Schmuckal / mad".

Marge Schmuckal  
Asst. Chief, Inspection Services Division

cc: Joseph E. Gray, Dir, PUD  
P. Samuel Hoffses, C, Insp Svcs Div  
C. Lane, Assoc. Corp Counsel  
K. Carroll, CEO



# CITY OF PORTLAND

## MISCELLANEOUS APPEAL

### DECISION

#### For The Record

Names and addresses of witnesses (proponents, opponents and others):

James Shea, 33 Arthur St  
Denise Shea

Robert Furbush Esq.  
Martin Lyden

Exhibits admitted (e.g. renderings, reports, etc.):

in file photos, letter from Lucie J. Cote dated 11/26/96  
Lyden photos + plot plan

#### Findings of Fact

1. The Board finds as fact that: Sec. 14-426 require fences to be  
4 feet in height

2. The finding(s) of fact above-stated is (are) based on the following reasons: Sec. 14-426 requires fences to be 4 feet in height  
within 25 feet of a street line, subject to the provisions  
of section 14-434.

#### Determination of Law

1. The Board concludes that: The fence is higher than the  
required 4 feet. and ~~must be brought up to code~~

2. The conclusion (s) above-stated is (are) based on the following reasons:  
Evidence presented that the fence is higher  
than 4 feet.

Motion to grant the applicants request for permission to allow the fence on 33 Arthur St.

Conclusion

After public hearing on 1/9, 1997, and for the reasons above-stated, the accompanying application is hereby (check one)

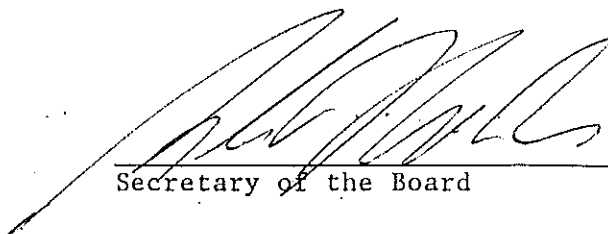
           granted.

           granted subject to the following condition(s):

\_\_\_\_\_  
\_\_\_\_\_

denied.

Dated: 1/9, 1997

  
\_\_\_\_\_  
Secretary of the Board



CITY OF PORTLAND  
Planning and Urban Development Department

MEMORANDUM

TO: Nadeen Daniels, City Clerk

FROM: Marge Schmuckal, Asst. Chief, Inspection Services Division <sup>MS</sup>

SUBJECT: Actions taken by the Board of Appeals on January 9, 1997

DATE: January 10, 1997

The meeting was called to order at 7:01 p.m. All members were present to hear the following appeals:

1. Unfinished Business: None
2. New Business:

**Conditional Use Appeal:**

1364 Washington Avenue, Donna Pennoyer, lessee, the Board voted 7-0 to grant the change of use to allow the operation of a daycare center for up to 26 children. RP ZONE

**Miscellaneous Appeal:**

33 Arthur Street, James Shea, owner, the Board voted 7-0 to deny relief from the fence requirements stated in Section 14-426. R-3 ZONE

**Interpretation Appeal:**

4 Island Street, Alan Wolf, attorney on behalf of Geraldine G. Wolf, owner, the Board voted 7-0 to remand back to the Zoning Administrator for recalculation in determining the original square footage and volume of the structure. Findings will be presented at an afternoon session of the next scheduled Board of Appeals meeting. R-3 ZONE

**Variance Appeal:**

4 Island Street, Alan Wolf, attorney on behalf of Geraldine G. Wolf, owner, the Board voted 7-0 to carry this appeal over to the afternoon session of the next scheduled board meeting R-3 ZONE

**Variance Appeal (cont'd)**

8 Campbell Road, Albert Bresette, owner, due to the late hour, the Board decided to carry this appeal over the next regularly scheduled evening board meeting. B-4 ZONE

12 Alder Street, Michael J. Rokowski, owner, due to the late hour, the Board decided to carry this appeal over to the next regularly scheduled evening board meeting. R-6 ZONE

**3. Adjournment at 12:01 a.m., January 10, 1997!**

Enclosure: Agenda for January 9, 1997 meeting  
Copy of the Board's decisions  
Tape of meeting

cc: Joseph E. Gray, Dir, PUD  
P. Samuel Hoffses, C, Insp Div  
Charles A. Lane, Assoc Corp Counsel  
Matthew D. Manahan, Chairman, ZBA



MISCELLANEOUS APPEAL APPLICATION

Applicant's name and address: James & Denise Shea  
33 Arthur Street Portland, Maine 04103

Applicant's interest in property (e.g., owner, purchaser, etc.):  
owner

Owner's name and address (if different): \_\_\_\_\_

Address of property and Assessor's chart, block and lot number:  
33 Arthur St. Portland, Maine

Zone: R-3 Present Use: single family  
Past Use \_\_\_\_\_  
(if different) \_\_\_\_\_

Appeal pertains to: Section 14- 426

Basis for Appeal and relief requested: requesting permission  
to keep 6ft. stockade fence therefore appealing  
LAND USE ORDINANCE, SECTION 14-424

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

The undersigned hereby makes application for an appeal as above described, and certifies that all information herein supplied by him/her is true and correct to the best of his/her knowledge.

Date: Nov. 25, 1996

Denise M. Shea  
Signature of Applicant

**CITY OF PORTLAND, MAINE**

BOARD OF APPEALS



December 19, 1996

James and Denise Shea  
33 Arthur Street  
Portland, Maine 04103

RE: 33 Arthur Street  
Miscellaneous Appeal

Dear James and Denise,

Receipt of your application for a Miscellaneous Appeal for the property located at 33 Arthur Street is acknowledged.

This appeal is scheduled for review before the Board of Appeals on Thursday, January 9, 1997 at 7:00 p.m., Room 209, City Hall, Portland, Maine. You must plan to attend to answer any questions which the Board may have concerning this appeal.

A copy of the January 9, 1997 agenda will be mailed to you as soon as they become available.

Sincerely,

Marge Schmuckal  
Asst. Chief, Inspection Services Division

cc: P. Samuel Hoffses, C, Insp Svcs Div

# CITY OF PORTLAND, MAINE

BOARD OF APPEALS



## APPEAL AGENDA

The Board of Appeals will hold a public hearing in Room 209, City Hall, Portland, Maine on Thursday, January 9, 1997 at 7:00 p.m. to hear the following appeals:

### 1. Unfinished Business: None

### 2. New Business:

#### Conditional Use Appeal:

1364 Washington Avenue, Donna Pennoyer, lessee, request the Board permit a change of use to allow the operation of a daycare center for up to 26 children. RP Zone

#### Miscellaneous Appeal:

33 Arthur Street, James Shea, owner, request the Board grant relief from the requirements of Section 14-424, Fences. R-3 Zone

#### Interpretation Appeal:

4 Island Street, Alan Wolf, attorney on behalf of Geraldine G. Wolf, owner, request the Board reconsider the interpretation of the Zoning Administrator in determining the original square footage of the structure. R-3 Zone

#### Variance Appeal:

4 Island Street, Alan Wolf, attorney on behalf of Geraldine G. Wolf, owner, request the Board grant relief from the maximum allowable expansion of 30 percent of either floor area or volume. R-3 Zone

8 Campbell Road, Albert Bresette, owner, requests the Board allow the construction of a garage without meeting the 10,000 square foot minimum lot size requirement. B-4 Zone

12 Alder Street, Michael J. Rokowski, owner, requests the Board grant relief from the requirements of Sections 14-387 and 14-139(2) of the Zoning Ordinance of the City of Portland, Maine. R-6 Zone

### 3. Adjournment



TO: Marge Schmuckal Inspections  
FROM: Lucie J. Cote Associate Engineer PW Traffic Section  
DATE: November 26, 1996  
SUBJECT: Arthur St @ Homestead Av

As you requested, here is in writing, my opinion that to appropriately come to a stop on Arthur St. @ Homestead Ave. that there are no sight line issues for exiting vehicles with the new installation of a wooden fence on the northeast corner area of the intersection.

Thank You.

TYLIN INTERNATIONAL

JUN 26 1997 10:34AM FBI  
ATTN: MARCE S.

To: William J. Bray, Deputy Director of Public Works  
From: Thomas A. Errico, P.E., Senior Traffic Engineer  
Date: June 4, 1997  
Subject: Fence Issue at the Corner of Homestead Avenue and Arthur Street  
Copy: Lucie Cote, Associate Engineer

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MEMORANDUM

In response to a request from Lucie Cote, I have performed an evaluation relative to an existing fence located on the property of 33 Arthur Street. Specifically, my evaluation assessed the impact of the fence on traffic conditions at the Homestead Avenue/Arthur Street intersection and at the driveway servicing 33 Homestead Avenue. The results are summarized below.

- The primary issue related to whether the fence is a traffic hazard at the Homestead Avenue/Arthur Street intersection is the possible restriction of sight distance for vehicles turning from Arthur Street onto Homestead Avenue. A field survey was performed, assuming a vehicle stops on Arthur Street 10-15 feet from the edge of travel way, and the height of eye of the driver is approximately 3.5 feet above the road surface. Based upon the survey, over 300 feet of sight is available in the direction of the fence. Standards contained in the publication Access Management Improving the Efficiency of Maine Arterials, Maine Department of Transportation, indicates the minimum acceptable sight distance for a road with speeds of 25 mph is 250 feet. Accordingly, the existing fence at 33 Arthur Street does not appear to contribute to a safety hazard at the Homestead Avenue/Arthur Street intersection.
- A second issue is related to sight obstruction, caused by the fence at 33 Arthur Street, for vehicles backing out of the driveway servicing 33 Homestead Avenue. Measurements were taken in the field indicating the fence on 33 Arthur Street is located approximately 12 feet from the pavement edge on Homestead Avenue. Based upon national standards, for a vehicle that is 19 feet long, the drivers sight is approximately 12 feet from the rear end of the vehicle. Based upon this data, the rear of the vehicle will be located approximately at the edge of pavement on Homestead Avenue, at the point when sight is no longer obstructed by the fence. Considering the street is 30 feet wide (6 feet wider than the City's residential standard), and the volume of traffic on Homestead Avenue is low, no significant traffic impact appears to exist as a result of the fence.