

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

Patric Santerre, Chair  
Catherine Alexander, Secretary  
William Hall  
Derek Gamble  
Peter Thornton

January 21, 2005

Paula Coppersmith  
94 Allen Ave.  
Portland, ME 04102

RE: 102 Allen Ave.  
CBL: 342-B-013  
ZONE: R-5 Zone

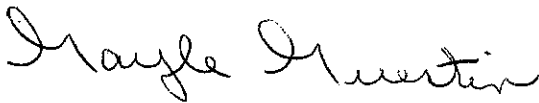
Dear Ms. Coppersmith:

As you know, at its January 20<sup>th</sup>, 2005, meeting **the Board of Appeals voted 2-2 and denied the Practical Difficulty Variance Appeal.**

Enclosed please find the billing for the Zoning Board of Appeals legal ad and abutters notification along with a copy of the Boards decision.

Should you have any questions please feel free to contact me at 207-874-8701.

Sincerely,



Gayle Guertin  
Office Assistant

**CITY OF PORTLAND**  
**DEPARTMENT OF PLANNING & URBAN DEVELOPMENT**

389 Congress Street  
Portland, Maine 04101

**INVOICE FOR FEES**

<b>Application No:</b> 0000-0711	<b>Applicant:</b> Coppersmith Paula
<b>Project Name:</b> 102 Allen Ave	<b>Location:</b> 102 ALLEN AVE
<b>CBL:</b> 342 B013001	<b>Application Type:</b>
<b>Invoice Date:</b> 01/12/2005	

<b>Previous Balance</b>	-	<b>Payment Received</b>	+	<b>Current Fees</b>	=	<b>Total Due</b>		<b>Payment Due Date</b>
\$105.45		\$0.00		\$76.00		\$181.45		On Receipt

**First Billing**

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<b>Previous Balance</b>	<b>\$105.45</b>
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<b>Fee Description</b>	<b>Qty</b>	<b>Fee Charge</b>
Legal Advertisements	1	\$76.00
		<u>\$76.00</u>
<b>Total Current Fees:</b>	+	<b>\$76.00</b>
<b>Amount Due Now:</b>		<b>\$181.45</b>

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Detach and remit with payment

**Bill to:** Coppersmith Paula  
62 Anglers Rd  
Windham, ME 04062

CBL 342 B013001  
**Application No:** 0000-0711  
**Invoice Date:** 01/12/2005  
**Invoice No:** 17324  
**Total Amt Due:** \$181.45  
**Payment Amount:**

---

Make checks payable to the *City of Portland*, ATTN: Karen Dunfey, 3rd Floor, 389 Congress Street, Portland, ME 04101

# CITY OF PORTLAND, MAINE

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# ZONING BOARD OF APPEALS

## APPEAL AGENDA

The Board of Appeals will hold a public hearing on Thursday, January 20, 2005 at 7:00 p.m. on the second floor in Room 209 at the Portland City Hall 389 Congress Street, Portland, Maine to hear the following appeals:

To: City Clerk

From: Marge Schmuckal, Zoning Administrator

Date: January 21, 2005

RE: Action taken by the Zoning Board of Appeals on January 20, 2005

The meeting was called to order at 7:05p.m.

Roll call as follows:

Members present: William Hall, Catherine Alexander, Patric Santerre and Peter Thornton.

Members Absent: Derek Gamble

## APPEAL AGENDA

### 1. Old Business:

#### A. Conditional Use Appeal

13 Dow Street, Onex Company, owners (Tax Map #055, block D, lot-013) located in the R6 residential zone. Applicant requests permission to legalize five non conforming units to be a total of eight units. This appeal is being brought forward under Nonconformity Dwelling Units, section 14-391. (f). Board is requesting evidence for housing and fire compliance. Representing the appeal is Mike Rogers of the Onex Company. Board voted 4-0 to continue on December 16, 2004. Board granted 4-1 for Conditional Use Appeal on December 16, 2004.. Board of Appeals to accept the finding of facts for 13 Dow St. as prepared by Jim Katsiaficas. Board voted 4-0 to continue the Conditional Use Appeal to January 20, 2005. The Quorum was not present for the original voting. **Board voted 4-0 and granted the Conditional Use Appeal.**

#### B. Practical Difficulty Variance Appeal

102 Allen Avenue, Paula Coppersmith, owner Tax Map #342 Block B, Lot #013 in the R5 residential zone. Applicant is seeking a Variance Appeal under section 14-120 (Dimensional requirements) of the Portland Zoning Ordinance, to request a 9'5" west side setback; the existing and required setback is 15'. The development of the applicant's property in the rear, necessitates a side street entrance on the west side of the house. A waiver of this encroachment would allow the existing structure's sun porch to remain intact. Representing the appeal is the owner. Board voted 4-0 and granted the applicant to request a continuation of the Practical Difficulty Variance Appeal, to January 20, 2005. Based on a minimum of Quorum members. **Board voted 2-2 and denied the Practical Difficulty Variance Appeal.**

### 2: New Business:

#### A. Interpretation Appeal

Applicants Domenico and Bonnie Mattozzi, abutters to the City owned Park at 205-219 York Street, corner Tyng Street, tax map #044, block-D, lot-001 located in the Residential R-6 Zone are appealing a determination made by the Zoning Administrator on 11/29/04 stating that playground and recreational equipment do not need to meet required setbacks for structures under section 14-47 (definitions) and section 14-139 (R-6 zone dimensional requirement). The applicant is represented by Attorney Peggy L. McGehee. **Board voted 3-1 and denied the Interpretation Appeal.**

**3: Other Business: None**

**4. Adjournment: 10:00 pm**

**Enclosure:**

Agenda of January 20, 2005  
Copy of Board's Decision  
1 standard size tapes

CC: Joseph Gray, City Manager  
Alex Jaegerman, Planning Department  
Lee Urban, Planning & Development Director  
Aaron Shapiro, Housing & Neighborhood Services

# CITY OF PORTLAND, MAINE

## ZONING BOARD OF APPEALS

members absent: Dan Mitchell, Derek Gamble

### APPEAL AGENDA

meeting called to order 7:05pm → Now moved into New house in Scarborough  
no longer on the Board -

The Board of Appeals will hold a public hearing on Thursday, January 20<sup>th</sup>, 2005, at 7:00 p.m. on the second floor in Room 209 at the Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following Appeal:

#### 1. Old Business:

Accepted  
4-0

##### A. Conditional Use Appeal

13 Dow Street, Onex Company, owners (Tax Map #055, block D, lot-013) located in the R6 residential zone. Applicant requests permission to legalize five non conforming units to be a total of eight units. This appeal is being brought forward under Nonconformity Dwelling Units, section 14-391. (f). Board is requesting evidence for housing and fire compliance. Representing the appeal is Mike Rogers of the Onex Company. Board voted 4-0 to continue on December 16, 2004. Board granted 4-1 for Conditional Use Appeal on December 16, 2004.. Board of Appeals to accept the finding of facts for 13 Dow St. as prepared by Jim Katsiaticas. Board voted 4-0 to continue the Conditional Use Appeal to January 20, 2005. The Quorum was not present for the original voting.

correct the number

##### B. Practical Difficulty Variance Appeal

102 Allen Avenue, Paula Coppersmith, owner Tax Map #342 Block B, Lot #013 in the R5 residential zone. Applicant is seeking a Variance Appeal under section 14-120 (Dimensional requirements) of the Portland Zoning Ordinance, to request a 10'5" west side setback; the existing and required setback is 15'. The development of the applicant's property in the rear, necessitates a side street entrance on the west side of the house. A waiver of this encroachment would allow the existing structure's sun porch to remain intact. Representing the appeal is the owner. Board voted 4-0 and granted the applicant to request a continuation of the Practical Difficulty Variance Appeal, to January 20, 2005. Based on a minimum of Quorum members.

Denied  
2-2  
Bill Patric  
Patric

#### 2: New Business:

##### A. Interpretation Appeal

Applicants Domenico and Bonnie Mattozzi, abutters to the City owned Park at 205-219 York Street, corner Tyng Street, tax map #044, block-D, lot-001 located in the Residential R-6 Zone are appealing a determination made by the Zoning Administrator on 11/29/04 stating that playground and recreational equipment do not need to meet required setbacks for structures under section 14-47 (definitions) and section 14-139 (R-6 zone dimensional requirement). The applicant is represented by Attorney Peggy L. McGehee.

spelling

Denied  
3-1  
Patric

#### 3: Other Business: None

under utilized court  
"run down"  
policy of basketball court  
"common sense tells you"

#### 4: Adjournment:

10:00

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

Patric Santerre, Chair  
Catherine Alexander, Secretary  
William Hall  
Dan Mitchell  
Derek Gamble  
Peter Thornton

January 9, 2004

Paula Coppersmith  
94 Allen Ave.  
Portland, ME 04102

RE: 106 Allen Ave.  
CBL: 342-B-013  
ZONE: R-5 Zone

Dear Ms. Coppersmith:

As you know, at its January 6<sup>th</sup>, 2005, meeting **the Board of Appeals voted 4-0 to grant the applicant to request a continuation of the Practical Difficulty Variance Appeal, to January 20, 2005. Based on a minimum of Quorum members.**

Enclosed please find the billing for the Zoning Board of Appeals legal ad and abutters notification along with a copy of the Boards decision and the next agenda.

Should you have any questions please feel free to contact me at 207-874-8701.

Sincerely,



Gayle Guertin  
Office Assistant

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

### APPEAL AGENDA

The Board of Appeals will hold a public hearing on Thursday, January 20<sup>th</sup>, 2005, at 7:00 p.m. on the second floor in Room 209 at the Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following Appeal:

#### 1. Old Business:

##### A. Conditional Use Appeal

13 Dow Street, Onex Company, owners (Tax Map #055, block D, lot-013) located in the R6 residential zone. Applicant requests permission to legalize five non conforming units to be a total of eight units. This appeal is being brought forward under Nonconformity Dwelling Units, section 14-391. (f). Board is requesting evidence for housing and fire compliance. Representing the appeal is Mike Rogers of the Onex Company. Board voted 4-0 to continue on December 16, 2004. Board granted 4-1 for Conditional Use Appeal on December 16, 2004.. Board of Appeals to accept the finding of facts for 13 Dow St. as prepared by Jim Katsiaficas. Board voted 4-0 to continue the Conditional Use Appeal to January 20, 2005. The Quorum was not present for the original voting.

##### B. Practical Difficulty Variance Appeal

106 Allen Avenue, Paula Coppersmith, owner Tax Map #342 Block B, Lot #013 in the R5 residential zone. Applicant is seeking a Variance Appeal under section 14-120 (Dimensional requirements) of the Portland Zoning Ordinance, to request a 10'5" west side setback; the existing and required setback is 15'. The development of the applicant's property in the rear, necessitates a side street entrance on the west side of the house. A waiver of this encroachment would allow the existing structure's sun porch to remain intact. Representing the appeal is the owner. Board voted 4-0 and granted the applicant to request a continuation of the Practical Difficulty Variance Appeal, to January 20, 2005. Based on a minimum of Quorum members.

#### 2: New Business:

##### A. Interpretation Appeal

Applicants Domenico and Bonnie Mattozzi, abutters to the City owned Park at 205-219 York Street, corner Tyng Street, tax map #044, block-D, lot-001 located in the Residential R-6 Zone are appealing a determination made by the Zoning Administrator on 11/29/04 stating that playground and recreational equipment do not need to meet required setbacks for structures under section 14-47 (definitions) and section 14-139 (R-6 zone dimensional requirement). The applicant is represented by Attorney Peggy L. McGehee.

#### 2: Other Business: None

#### 3: Adjournment:

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

### APPEAL AGENDA

The Board of Appeals will hold a public hearing on Thursday, January 06, 2005 at 7:00 p.m. on the second floor in Room 209 at the Portland City Hall 389 Congress Street, Portland, Maine to hear the following appeals:

To: City Clerk

From: Marge Schmuckal, Zoning Administrator

Date: January 10, 2005

RE: Action taken by the Zoning Board of Appeals on January 06, 2005

The meeting was called to order at 7:17 p.m.

Roll call as follows:

Members present: Catherine Alexander, William Hall, Peter Thornton, and Patric Santerre.

Members Absent: Derek Gamble and Dan Mitchell.

### APPEAL AGENDA

#### 1. Old Business:

##### A. Conditional Use Appeal

13 Dow Street, Onex Company, owners (Tax Map #055, block D, lot-013) located in the R6 residential zone. Applicant requests permission to legalize five non conforming units to be a total of eight units. This appeal is being brought forward under Nonconformity Dwelling Units, section 14-391. (f). Board is requesting evidence for housing and fire compliance. Representing the appeal is Mike Rogers of the Onex Company. Board voted 4-0 to continue on December 16, 2004. Board granted 4-1 for Conditional Use Appeal on December 16, 2004.. Board of Appeals to accept the finding of facts for 13 Dow St. as prepared by Jim Katsiaficas. **Board voted 4-0 to continue the Conditional Use Appeal to January 20, 2005. The Quorum was not present for the original voting.**

#### 2. New Business:

##### A. Practical Difficulty Variance Appeal

106 Allen Avenue, Paula Coppersmith, owner Tax Map #342 Block B, Lot #013 in the R5 residential zone. Applicant is seeking a Variance Appeal under section 14-120 (Dimensional requirements) of the Portland Zoning Ordinance, to request a 10'5" west side setback; the existing and required setback is 15'. The development of the applicant's property in the rear, necessitates a side street entrance on the west side of the house. A waiver of this encroachment would allow the existing structure's sun porch to remain intact. Representing the appeal is the owner. **Board voted 4-0 and granted the applicant to request a continuation of the Practical Difficulty Variance Appeal, to January 20, 2005. Based on a minimum of Quorum members.**

#### 3. Other Business: None

#### 4. Adjournment: 7:30 pm

#### Enclosure:

Agenda of December 16, 2004  
Copy of Board's Decision  
1 standard size tapes

CC: Joseph Gray, City Manager  
Alex Jaegerman, Planning Department  
Lee Urban, Planning & Development Director  
Aaron Shapiro, Housing & Neighborhood Services



**PRACTICAL DIFFICULTY VARIANCE**

DECISION

Name and address of applicant: Paula Coppersmith

Location of property under appeal: 102 Allen Avenue

Appearances.

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

Steven Broadstreet

Dana Dresser

Exhibits.

CERTIFICATION BY ZONING ADMINISTRATOR

The Zoning Administer hereby certifies that:

- a. The Practical Difficulty variance applied for is permitted under §14-473(c)(3)(b)(1) (dimensional standards); and is not barred by the exceptions set forth in sections 14-473(c)(3)(a)(6) (shoreland and flood hazard areas); nor §14-473(c)(4) (relief limited to minimum variance required); nor §14-473(c)(3)(c) (specific variances prohibited); nor §14-473(c)(3)(d) (no relief for volume, floor area, nor setting of single-component manufactured homes).
- b. 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 as defined in this article.

The Zoning Administrator has certified/has not certified that the application comports with each of the above requirements.

Cathleen D. Allen  
Secretary

ORDINANCE CRITERIA

Findings of Fact.

Notwithstanding the provisions of §14-473(c)(1) and (2) of this section, the Board of Appeals 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:

1. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood:  
IT IS 4 IT IS NOT 0 (deny application)

Comment: land requires access through existing property

2. The granting of the variance will not have an unreasonably detrimental effect on either the use or fair market value of abutting properties:  
IT WILL NOT 4 IT WILL 0 (deny application)

Comment: \_\_\_\_\_

3. The Practical Difficulty is not the result of action taken by the applicant:  
IT IS NOT 2 IT IS 2 (deny application)

Comment: \_\_\_\_\_

4. No other feasible alternative is available to the applicant, except a variance:  
IT IS NOT 2 IT IS 2 (deny application)

Comment: \_\_\_\_\_  
\_\_\_\_\_

5. The granting of a variance will not have an unreasonably adverse effect on the natural environment:  
IT WILL NOT 4 IT WILL 0 (deny application)

Comment: \_\_\_\_\_  
\_\_\_\_\_

6. Strict application of the dimensional standards of the ordinance to the subject property will preclude a use which is permitted in the zone in which the property is located.  
IT WILL 4 IT WILL NOT 0 (deny application)

Comment: \_\_\_\_\_  
\_\_\_\_\_

7. Strict application of the dimensional standards of the ordinance to the subject property will result in economic injury to the applicant.  
IT WILL 3 IT WILL NOT 1 (deny application)

Comment: \_\_\_\_\_  
\_\_\_\_\_

If the appeal is granted, does the Board wish to impose conditions which will further the intent and purpose of this Ordinance?

YES \_\_\_\_\_  
NO \_\_\_\_\_

Specific Conditions: \_\_\_\_\_  
\_\_\_\_\_

Reasons: \_\_\_\_\_

Date of Public Hearing: 11 \_\_\_\_\_

Motion: to grant the practical difficulty variance

(including conditions and findings of fact) \_\_\_\_\_

2  
Votes in favor

*[Handwritten signatures]*

2  
Votes Opposed

*[Handwritten signatures]*

members present: DUK THIN, Catherine Akayonni, Patricia Santerre, Peter Thornton

# CITY OF PORTLAND, MAINE

## ZONING BOARD OF APPEALS

members absent: Dan Mitchell, Derek Gamble

### APPEAL AGENDA

meeting called to order 7:05 pm → Now moved into New house in Scarborough  
no longer on the Board -

The Board of Appeals will hold a public hearing on Thursday, January 20<sup>th</sup>, 2005, at 7:00 p.m. on the second floor in Room 209 at the Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following Appeal:

#### 1. Old Business:

Accepted  
4-0

##### A. Conditional Use Appeal

13 Dow Street, Onex Company, owners (Tax Map #055, block D, lot-013) located in the R6 residential zone. Applicant requests permission to legalize five non conforming units to be a total of eight units. This appeal is being brought forward under Nonconformity Dwelling Units, section 14-391. (f). Board is requesting evidence for housing and fire compliance. Representing the appeal is Mike Rogers of the Onex Company. Board voted 4-0 to continue on December 16, 2004. Board granted 4-1 for Conditional Use Appeal on December 16, 2004.. Board of Appeals to accept the finding of facts for 13 Dow St. as prepared by Jim Katsiaficas. Board voted 4-0 to continue the Conditional Use Appeal to January 20, 2005. The Quorum was not present for the original voting.

correct the number

##### B. Practical Difficulty Variance Appeal

102 Allen Avenue, Paula Coppersmith, owner Tax Map #342 Block B, Lot #013 in the R5 residential zone. Applicant is seeking a Variance Appeal under section 14-120 (Dimensional requirements) of the Portland Zoning Ordinance, to request a 10'5" west side setback; the existing and required setback is 15'. The development of the applicant's property in the rear, necessitates a side street entrance on the west side of the house. A waiver of this encroachment would allow the existing structure's sun porch to remain intact. Representing the appeal is the owner. Board voted 4-0 and granted the applicant to request a continuation of the Practical Difficulty Variance Appeal, to January 20, 2005. Based on a minimum of Quorum members.

Denied  
2-2  
Bill  
Peter  
Catherine  
Patricia

#### 2: New Business:

##### A. Interpretation Appeal

Applicants Domenico and Bonnie Mattozzi, abutters to the City owned Park at 205-219 York Street, corner Tyng Street, tax map #044, block-D, lot-001 located in the Residential R-6 Zone are appealing a determination made by the Zoning Administrator on 11/29/04 stating that playground and recreational equipment do not need to meet required setbacks for structures under section 14-47 (definitions) and section 14-139 (R-6 zone dimensional requirement). The applicant is represented by Attorney Peggy L. McGehee.

Denied  
3-1  
Patricia

under utilized court  
- policy of basketball courts  
Sally McGehee

#### 3: Other Business: None "run down"

↑  
NAP policy - "Common sense tells you"

#### 4: Adjournment:

10:00

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

### APPEAL AGENDA

The Board of Appeals will hold a public hearing on Thursday, January 20, 2005 at 7:00 p.m. on the second floor in Room 209 at the Portland City Hall 389 Congress Street, Portland, Maine to hear the following appeals:

To: City Clerk

From: Marge Schmuckal, Zoning Administrator

Date: January 21, 2005

RE: Action taken by the Zoning Board of Appeals on January 20, 2005

The meeting was called to order at 7:05p.m.

Roll call as follows:

Members present: William Hall, Catherine Alexander, Patric Santerre and Peter Thornton.

Members Absent: Derek Gamble

### APPEAL AGENDA

#### 1. Old Business:

##### **A. Conditional Use Appeal**

13 Dow Street, Onex Company, owners (Tax Map #055, block D, lot-013) located in the R6 residential zone. Applicant requests permission to legalize five non conforming units to be a total of eight units. This appeal is being brought forward under Nonconformity Dwelling Units, section 14-391. (f). Board is requesting evidence for housing and fire compliance. Representing the appeal is Mike Rogers of the Onex Company. Board voted 4-0 to continue on December 16, 2004. Board granted 4-1 for Conditional Use Appeal on December 16, 2004.. Board of Appeals to accept the finding of facts for 13 Dow St. as prepared by Jim Katsiaficas. Board voted 4-0 to continue the Conditional Use Appeal to January 20, 2005. The Quorum was not present for the original voting. **Board voted 4-0 and granted the Conditional Use Appeal.**

##### **B. Practical Difficulty Variance Appeal**

102 Allen Avenue, Paula Coppersmith, owner Tax Map #342 Block B, Lot #013 in the R5 residential zone. Applicant is seeking a Variance Appeal under section 14-120 (Dimensional requirements) of the Portland Zoning Ordinance, to request a 9'5" west side setback; the existing and required setback is 15'. The development of the applicant's property in the rear, necessitates a side street entrance on the west side of the house. A waiver of this encroachment would allow the existing structure's sun porch to remain intact. Representing the appeal is the owner. Board voted 4-0 and granted the applicant to request a continuation of the Practical Difficulty Variance Appeal, to January 20, 2005. Based on a minimum of Quorum members. **Board voted 2-2 and denied the Practical Difficulty Variance Appeal.**

#### 2: New Business:

##### **A. Interpretation Appeal**

Applicants Domenico and Bonnie Mattozzi, abutters to the City owned Park at 205-219 York Street, corner Tyng Street, tax map #044, block-D, lot-001 located in the Residential R-6 Zone are appealing a determination made by the Zoning Administrator on 11/29/04 stating that playground and recreational equipment do not need to meet required setbacks for structures under section 14-47 (definitions) and section 14-139 (R-6 zone dimensional requirement). The applicant is represented by Attorney Peggy L. McGehee. **Board voted 3-1 and denied the Interpretation Appeal.**

**3: Other Business: None**

**4. Adjournment: 10:00 pm**

**Enclosure:**

Agenda of January 20, 2005  
Copy of Board's Decision  
1 standard size tapes

CC: Joseph Gray, City Manager  
Alex Jaegerman, Planning Department  
Lee Urban, Planning & Development Director  
Aaron Shapiro, Housing & Neighborhood Services

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

### APPEAL AGENDA

The Board of Appeals will hold a public hearing on Thursday, January 6, 2005 at 7:00 p.m. on the second floor in Room 209 at the Portland City Hall 389 Congress Street, Portland, Maine to hear the following appeals:

#### 1. Old Business:

##### A. Conditional Use Appeal

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#### 2. New Business:

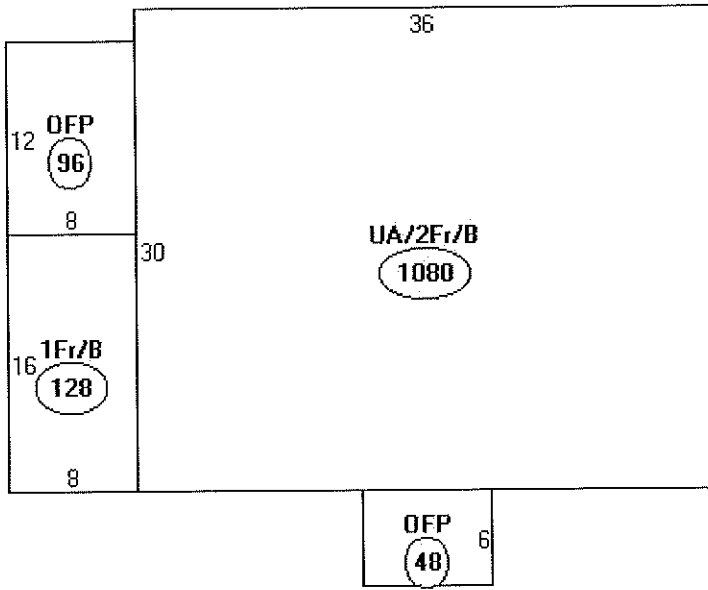
##### A. Practical Difficulty Variance Appeal

106 Allen Avenue, Paula Coppersmith, owner Tax Map #342 Block B, Lot #013 in the R5 residential zone. Applicant is seeking a Variance Appeal under section 14-120 (Dimensional requirements) of the Portland Zoning Ordinance, to request a 10'5" west side setback; the existing and required setback is 15'. The development of the applicant's property in the rear, necessitates a side street entrance on the west side of the house. A waiver of this encroachment would allow the existing structure's sun porch to remain intact. Representing the appeal is the owner.

#### 3. Other Business: None

#### 4. Adjournment:





Descriptor/Area

A: UA/2Fr/B  
1080 sqft

B: 1Fr/B  
128 sqft

C: OFP  
96 sqft

D: OFP  
48 sqft





## City of Portland Zoning Board of Appeals

December 27, 2004

Dear Appellant,

Your Practical Difficulty Variance Appeal has been scheduled to appear before The Zoning Board of Appeals on **January 6, 2005 at 7:00 p.m.** on the second floor of City Hall in Room 209.

Please remember to bring a copy of the packet with you to the meeting to answer any questions the Board may have.

I have included an agenda with your appeal highlighted, as well as the procedures of the meeting for you to familiarize yourself with.

I have also included the bill for the legal ad and abutters notices. The check should be written as follows:

MAKE CHECK OUT TO: City of Portland  
MAILING ADDRESS: Room 315  
389 Congress Street  
Portland, Maine 04101

Please feel free to contact me at 207-874-8701 if you have any questions.

Sincerely,

Gayle Guertin  
Office Assistant

# CITY OF PORTLAND, MAINE

---

## ZONING BOARD OF APPEALS

### APPEAL AGENDA

The Board of Appeals will hold a public hearing on Thursday, January 6, 2005 at 7:00 p.m. on the second floor in Room 209 at the Portland City Hall 389 Congress Street, Portland, Maine to hear the following appeals:

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##### A. Practical Difficulty Variance Appeal

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#### 3. Other Business: None

#### 4. Adjournment:



## Zoning Board of Appeals Meeting Process

You or your representative must attend the Zoning Board meeting in order to present your case and to answer any questions the Board may have concerning your Appeal. Have a copy of your Appeal with you.

First, the Chairperson will call the meeting to order and read the Board procedures. Next, the Secretary will call the roll of Board members present. The meeting will then open to the first Appeal on the Agenda.

The first Applicant will come forward to the small front table and give a verbal summary of what it is that they are appealing to the Board. The Board will have already received your written application packet. You then may need to answer questions from the Board.

The Public will have a chance to respond when the Chair first asks the public as to who would like to respond in favor of the Appeal application. The Applicant will be able to respond after all the public comments.

When the Board is satisfied that they have all the information they need to make a decision, the Chairperson will close the meeting to public comment and will begin their deliberations.

The Board will make a motion (usually in the affirmative) and then further discuss the issues involved. On rare occasions the Board may open the public portion again temporarily to ask another question to the applicant. After all the deliberations, the Board will take an official vote and thus make an official decision.

The Board will then ask the next applicant to come forward. The process continues until all appeals are heard and decisions rendered.

The Chairperson will then adjourn the meeting.

A copy of the Board's decision will be mailed to you, along with a bill for abutter's notices and legal ads. We will also include a building permit application if deemed necessary.

The Building Permit Application will have to be filled out and returned to Inspection Services on the third floor of City Hall, along with the appropriate fees as indicated on the permit application, along with the specifications of that particular permit application. Please note that all those specifications are your responsibility to bring with you, not for the City to copy and add into your submissions. Any submissions that were in your Appeal packet and are necessary for the building permit, but are missing, will be copied from the Appeal packet and billed to you at \$0.50 per page.

The Building Permit Application will then be processed. It takes approximately 15 business days to approve the permit. At the time of issuance of the permit, all fees incurred during the Appeal process must be paid.

You must then call and schedule an inspection as stated in your permit application packet. If a Certificate of Occupancy is necessary, you must call and schedule with us at 874-8703. Once the Inspector is satisfied you have complied with all State and Local regulations, a Certificate of Occupancy will be issued, the fee for which is \$75.00.



## Zoning Board of Appeals Meeting Process

You or your representative must attend the Zoning Board meeting in order to present your case and to answer any questions the Board may have concerning your Appeal. Have a copy of your Appeal with you.

First, the Chairperson will call the meeting to order and read the Board procedures. Next, the Secretary will call the roll of Board members present. The meeting will then open to the first Appeal on the Agenda.

The first Applicant will come forward to the small front table and give a verbal summary of what it is that they are appealing to the Board. The Board will have already received your written application packet. You then may need to answer questions from the Board.

The Public will have a chance to respond when the Chair first asks the public as to who would like to respond in favor of the Appeal application. The Applicant will be able to respond after all the public comments.

When the Board is satisfied that they have all the information they need to make a decision, the Chairperson will close the meeting to public comment and will begin their deliberations.

The Board will make a motion (usually in the affirmative) and then further discuss the issues involved. On rare occasions the Board may open the public portion again temporarily to ask another question to the applicant. After all the deliberations, the Board will take an official vote and thus make an official decision.

The Board will then ask the next applicant to come forward. The process continues until all appeals are heard and decisions rendered.

The Chairperson will then adjourn the meeting.

A copy of the Board's decision will be mailed to you, along with a bill for abutter's notices and legal ads. We will also include a building permit application if deemed necessary.

The Building Permit Application will have to be filled out and returned to Inspection Services on the third floor of City Hall, along with the appropriate fees as indicated on the permit application, along with the specifications of that particular permit application. Please note that all those specifications are your responsibility to bring with you, not for the City to copy and add into your submissions. Any submissions that were in your Appeal packet and are necessary for the building permit, but are missing, will be copied from the Appeal packet and billed to you at \$0.50 per page.

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# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

### APPEAL AGENDA

The Board of Appeals will hold a public hearing on Thursday, January 6, 2005 at 7:00 p.m. on the second floor in Room 209 at the Portland City Hall 389 Congress Street, Portland, Maine to hear the following appeals:

#### 1. Old Business:

##### A. Conditional Use Appeal

13 Dow Street, Onex Company, owners (Tax Map #055, block D, lot-003) located in the R6 residential zone. Applicant requests permission to legalize five non conforming units to be a total of eight units. This appeal is being brought forward under Nonconformity Dwelling Units, section 14-391. (f). Board is requesting evidence for housing and fire compliance. Representing the appeal is Mike Rogers of the Onex Company. Board voted 4-0 to continue on December 16, 2004. Board granted 4-1 for Conditional Use Appeal on December 16, 2004.. Board of Appeals to accept the finding of facts for 13 Dow St. as prepared by Jim Katsiaficas.

#### 2. New Business:

##### A. Practical Difficulty Variance Appeal

106 Allen Avenue, Paula Coppersmith, owner Tax Map #342 Block B, Lot #013 in the R5 residential zone. Applicant is seeking a Variance Appeal under section 14-120 (Dimensional requirements) of the Portland Zoning Ordinance, to request a 10'5" west side setback; the existing and required setback is 15'. The development of the applicant's property in the rear, necessitates a side street entrance on the west side of the house. A waiver of this encroachment would allow the existing structure's sun porch to remain intact. Representing the appeal is the owner.

#### 3. Other Business: None

#### 4. Adjournment:

# ITEM 1A





## CITY OF PORTLAND, MAINE

### Board of Appeals

## CONDITIONAL USE/NONCONFORMING DWELLING APPEAL

### DECISION

Name and address of applicant: Onex Corporation, Suzanne Parks, 100 Dartmouth Street, Portland, ME 04103

Location of property under appeal: 13 Dow Street, Tax Map #055, block D, Lot-003

#### For the Record

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

1. Suzanne D. Parks, 100 Dartmouth Street, Portland, ME 04103
2. Michael C. Rogers, Onex Company, 440 Forest Avenue, Portland, ME 04101
3. Connie Suarez, 13 Dow Street
4. Melissa Clifford,
5. Gerhardt Sass,
6. Fleming Overgaard,
7. Dennis Martin,
8. Annette Rogers,
9. Judy George (Broker for Suzanne Parks), Remax by the Bay, Portland

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

1. Conditional Use Application of Suzanne D. Parks, November 1, 2004, with letters from Suzanne D. Parks and Michael C. Rogers to the Board of Appeals;
2. Application for Legalization of Nonconforming Dwelling Units dated August 13, 2004, along with: property assessment card for 13 Dow Street, copy of Tax Map 55, mortgage inspection plan for 13 Dow Street, 5 pages of floor plans for 13 Dow Street, 2005 City of Portland Property Tax Statement for 13 Dow Street, 3-page copy of assessment card for 13 Dow Street, copy of September 22, 1980 building permit for work to 8-family dwelling structure at 13 Dow Street (2 pages), July 13, 2004 Purchase and Sale Agreement for 13 Dow Street (6 pages), corporate resolution of Onyx Co. dated August 15, 2004, seller's property disclosure (3 pages) and City Assessor website results of August 12, 2004 for 13 Dow Street;
3. Page 2 of Application for Legalization of Nonconforming Dwelling Units dated August 13, 2004, along with: NFPA Life Safety Code –Fire Prevention Code Dwelling Unit Compliance form and City of Portland Housing Code Dwelling Unit Compliance form;

4. Letter dated October 15, 2004 from Code Enforcement Officer Jodine Adams to Onex Co. re: 13 Dow Street with list of inspection violations;
5. Letter dated October 26, 2004 from Michael C. Rogers to Code Enforcement Officer Jodine Adams re: 13 Dow Street code violations;
6. 13 Dow Street Building Rules October 2, 2004 Update (2 pages);
7. Memorandum dated November 10, 2004 from Zoning Administrator Marge Schmuckal to Zoning Board of Appeals re: appeal on legalization of nonconforming dwelling units at 13 Dow Street, with copy of application instructions, ordinance (Portland City Code Section 14-391);
8. Letter dated October 8, 2004 from Dennis B. Martin to Zoning Administrator Marge Schmuckal;
9. Letter dated October 8, 2004 from Jennifer E. Thomas to Zoning Administrator Marge Schmuckal (2 pages);
10. Letter dated October 6, 2004 from Constance Clifford to Zoning Administrator Marge Schmuckal (2 pages);
11. City of Portland Housing Code Dwelling Unit Compliance form with note to Mike Nugent and copies of the letter dated October 15, 2004 from Code Enforcement Officer Jodine Adams to Onex Co. re: 13 Dow Street with list of inspection violations and the letter dated October 26, 2004 from Michael C. Rogers to Code Enforcement Officer Jodine Adams re: 13 Dow Street code violations;
12. Copy of e-mail dated November 18, 2004 from Kathryn Devine, owner of 12 Horton Place (1 page).
13. Copy of e-mail dated November 16, 2004 from Connie Clifford (1 page).
14. Sign-off sheet dated 11-24-04 by Marland Wing, indicating that all six outstanding violations at 13 Dow Street have been corrected (1 page).
15. Memorandum dated November 29, 2004 from Legal Counsel Jim Katsiaticas to Zoning Board of Appeals re: Parks appeal (3 pages).
16. Letter dated December 1, 2004 from Michael C. Rogers to Portland Zoning Board of Appeals re: 13 Dow Street Application to Legalize Five Dwelling Units (6 pages).
17. Copies of pleadings in *City of Portland v. Rogers* (Voluntary Dismissal of Action dated December 18, 1986, letter dated October 18, 1984 from Portland Assoc. Corp. Counsel Christine Foster to Peter Rogers, Esq., Stipulation of Parties dated Oct. 19, 1984) (6 pages).
18. Memorandum dated Dec. 16, 2004 from Zoning Administrator Marge Schmuckal to Zoning Board of Appeals (1 page).

19. Document from Annette Rogers dated 12/3/04 entitled "13 Dow Street CFS 5/04-11/04, provided to Zoning Board of Appeals (1 page).

### Findings of Fact

A. Nonconforming Dwelling Unit Standards (Portland City Code § 14-391(c)(1)-(6)) require the Applicant to provide 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 Directory, that the conditions of these subsections can be met.

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 use presently in use.

The applicant states and the City Zoning Administrator agrees that the nonconforming dwelling units were in existence April 1, 1995; these are shown on City of Portland tax assessor's records from the 1980s and on a 1980 building permit, and the existence of eight units, including the five nonconforming dwelling units, in the structure is borne out by the December 18, 1986 Voluntary Dismissal of Action in the case of *City of Portland v. Rogers*.

2. The applicant neither constructed nor established the nonconforming dwelling units.

According to the Purchase and Sale Agreement dated July 13, 2004, the applicant, Suzanne Parks, is seeking to purchase the structure that contains the five nonconforming dwelling units, and so neither constructed nor established the nonconforming 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.

Zoning Administrator Marge Schmuckal's Dec. 16, 2004 Memorandum to Zoning Board of Appeals states that Lt. McDougall signed off on Sept. 30, 2004, indicating that he had found the building to be in compliance with the NFPA Life Safety Code and the Fire Prevention Code.

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.

Zoning Administrator Marge Schmuckal's Dec. 16, 2004 Memorandum to Zoning Board of Appeals states that Marland Wing reinspected 13 Dow Street and on Nov. 24, 2004, signed off to indicate that this building was in compliance with the City's Housing Code.

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.

The property is located in the R-6 Zone.

B. Conditional Use Standards (§ 14-474).

1. The proposed conditional use is permitted under Section 14-136(a)(2) of the Zoning Ordinance, for the following reason(s):

Multi-family dwelling structures are permitted in the R-6 Zone, but the five nonconforming dwelling units are permitted only with Zoning Board of Appeals conditional use approval under Portland City Code § 14-391 because letters of complaint were timely filed with the City Zoning Administrator.

2. The proposed conditional use does meet all special standards, conditions or requirements, if any, applicable thereto, for the following reason(s):

- 3-A. There are not unique or distinctive characteristics or effects associated with the proposed conditional use, for the following reason(s):

By a vote of 5-0 (for, Hall, Santerre, Thornton, Gamble and Mitchell), the Board finds that because 13 Dow Street is a multifamily use in a neighborhood that contains many multifamily dwellings and is in a zoning district that permits multifamily uses in relatively dense condition, the building fits within and is consistent with other uses in that zone. Therefore, the Board concludes that the use and its characteristics are neither unique nor distinctive, so that there are no "unique or distinctive characteristics or effects associated with the proposed conditional use.

- 3-B. There will not be an adverse impact on the health, safety or welfare of the public or the surrounding area, for the following reason(s):

By a vote of 4-1 (against, Santerre), the Board finds on the basis of testimony and documentary evidence, including the summary of police responses to 13 Dow Street provided by Annette Rogers, that the multifamily use at 13 Dow Street does not constitute a threat to the public health, safety and welfare. Moreover, this is a multifamily use in a zoning district that permits multifamily uses, so that this use presumably does not create an adverse impact on the public health, safety and welfare. Further, this use is not new, but has been in effect for more than 20 years. Therefore, the Board concludes that "there will not be an adverse impact on the health, safety or welfare of the public or the surrounding area" as a result of conditional use approval of this building.

- 3-C. The impact does not differ substantially from the impact which would normally occur from such a use in the zone, for the following reason(s):

By a vote of 5-0, the Board finds on the basis of testimony and documentary evidence presented that this use has no characteristics or attributes that substantially differ from other buildings and uses in this zone. Like other multifamily buildings and uses in this zone, it has a number of dwelling units and its dwelling units are available for rental. Rental of 8 dwelling units in this building has occurred for more than 20 years. Nothing the appellant has proposed changes the nature of this use or its density. Therefore, the Board concludes that the impact of the multifamily use at 13 Dow Street "does not differ substantially from the impact which would normally occur from such a use in the zone."

Conclusion

After public hearing on November 18, 2004 and on December 16, 2004 and for the reasons above-stated, the accompanying application is hereby granted by a vote of 4-1 (against, Santerre).

Dated: \_\_\_\_\_

\_\_\_\_\_  
William Hall  
Chairman

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**CITY OF PORTLAND**  
**DEPARTMENT OF PLANNING & URBAN DEVELOPMENT**

389 Congress Street  
 Portland, Maine 04101

**INVOICE FOR FEES**

<b>Application No:</b> 0000-0711	<b>Applicant:</b> Coppersmith Paula
<b>Project Name:</b> 102 Allen Ave	<b>Location:</b> 102 ALLEN AVE
<b>CBL:</b> 342 B013001	<b>Application Type:</b>
<b>Invoice Date:</b> 12/27/2004	

<b>Previous Balance</b>	-	<b>Payment Received</b>	+	<b>Current Fees</b>	=	<b>Total Due</b>		<b>Payment Due Date</b>
\$100.00		\$100.00		\$105.45		\$105.45		On Receipt

**First Billing**

<b>Previous Balance</b>		<b>\$100.00</b>
<b>Payment Received 12/8/2004 - Thank you</b>	-	<b>\$100.00</b>

<b>Fee Description</b>	<b>Qty</b>	<b>Fee Charge</b>
Legal Advertisements	1	\$84.00
Notices	39	\$21.45
		<hr/> \$105.45
	<b>Total Current Fees:</b>	<b>+</b> <b>\$105.45</b>
	<b>Amount Due Now:</b>	<b>\$105.45</b>

-----  
 Detach and remit with payment

**Bill to:** Coppersmith Paula  
 62 Anglers Rd  
 Windham, ME 04062

**CBL 342 B013001**  
**Application No:** 0000-0711  
**Invoice Date:** 12/27/2004  
**Invoice No:** 17115  
**Total Amt Due:** \$105.45  
**Payment Amount:**

Make checks payable to the *City of Portland*, ATTN: Karen Dunfey, 3rd Floor, 389 Congress Street, Portland, ME 04101

**CITY OF PORTLAND**  
**DEPARTMENT OF PLANNING & URBAN DEVELOPMENT**

389 Congress Street  
 Portland, Maine 04101

**INVOICE FOR FEES**

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<b>CBL:</b> 342 B013001	<b>Application Type:</b>
<b>Invoice Date:</b> 01/12/2005	

<b>Previous Balance</b>	-	<b>Payment Received</b>	+	<b>Current Fees</b>	=	<b>Total Due</b>		<b>Payment Due Date</b>
\$105.45		\$0.00		\$76.00		\$181.45		On Receipt

**First Billing**

<b>Previous Balance</b>	<b>\$105.45</b>
-------------------------	-----------------

<b>Fee Description</b>	<b>Qty</b>	<b>Fee Charge</b>
Legal Advertisements	1	\$76.00
		<u>\$76.00</u>
	<b>Total Current Fees:</b>	<b>+</b> <u>\$76.00</u>
	<b>Amount Due Now:</b>	<b>\$181.45</b>

-----  
 Detach and remit with payment

**Bill to:** Coppersmith Paula  
 62 Anglers Rd  
 Windham, ME 04062

**CBL** 342 B013001  
**Application No:** 0000-0711  
**Invoice Date:** 01/12/2005  
**Invoice No:** 17324  
**Total Amt Due:** \$181.45  
**Payment Amount:**

Make checks payable to the *City of Portland*, ATTN: Karen Dunfey, 3rd Floor, 389 Congress Street, Portland, ME 04101

# City of Portland INSPECTION SERVICES

Room 315  
389 Congress Street  
Portland, Maine 04101

Telephone: 207-874-8703 or 207-874-8693  
Facsimile: 207-874-8716



## FACSIMILE TRANSMISSION COVER SHEET

TO: <u>Joan, Legal Dept.</u>	FROM: <u>Inspections &amp; Zoning Office</u>
FAX NUMBER: <u>791-6910</u>	NUMBER OF PAGES, WITH COVER: <u>2</u>
TELEPHONE: <u>791-6157</u>	RE: <u>Legal Ad for Zoning Board of Appeals</u>
DATE: <u>12/07/04</u>	

Comments: ZBA ad for 12/31/04

Hi Joan,

Please run this notice on Friday, 31, 2004.

Thanks!

*Maelye Austin*  
874 8761