

DISPLAY THIS CARD ON PRINCIPAL FRONTAGE OF WORK

# CITY OF PORTLAND

BUILDING DEPARTMENT

## PERMIT

PERMIT ISSUED

Permit Number: 030483

MAY 12 2003

Please Read Application And Notes, If Any, Attached

This is to certify that Oja Angela & /self

has permission to Remove non-conforming portions of deck of deck reinforce install compliant gate barrier

AT 96 Pennell Ave 344 D023001

provided that the person or persons, firm or corporation accepting this permit shall comply with all of the provisions of the Statutes of Maine and of the ordinances of the City of Portland regulating the construction, maintenance and use of buildings and structures, and of the application on file in this department.

Apply to Public Works for street line and grade if nature of work requires such information.

Notification of inspection must be given and when permission is procured before this building or part thereof is altered or closed-in. 24 HOUR NOTICE IS REQUIRED.

A certificate of occupancy must be procured by owner before this building or part thereof is occupied.

**OTHER REQUIRED APPROVALS**

Fire Dept. \_\_\_\_\_  
Health Dept. \_\_\_\_\_  
Appeal Board \_\_\_\_\_  
Other \_\_\_\_\_  
Department Name

*Jeanie Bonke* 5/12/03  
Director - Building & Inspection Services

**PENALTY FOR REMOVING THIS CARD**

PERMIT ISSUED

City of Portland, Maine - Building or Use Permit Application

389 Congress Street, 04101 Tel: (207) 874-8703, Fax: (207) 874-8716

Permit No: 03-0483	Issue Date: MAY 12 2003	CBL: 344 D023001
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Location of Construction: 96 Pennell Ave	Owner Name: Oja Angela &	Owner Address: 96 Pennell Ave CITY OF PORTLAND	Phone: 878-9986
Business Name:	Contractor Name: self	Contractor Address: Portland	Phone:
Lessee/Buyer's Name	Phone:	Permit Type: Alterations - Dwellings	Zone: R3

Past Use: Single Family	Proposed Use: Single Family	Permit Fee:	Cost of Work: \$0.00	CEO District: 2	<i>[Handwritten Signature]</i>
		FIRE DEPT: <input type="checkbox"/> Approved <input type="checkbox"/> Denied	INSPECTION: Use Group: R3 Type: 2B BECA 1999 Signature: <i>[Handwritten Signature]</i> 5/12/03		

**Proposed Project Description:**  
Remove non-conforming portion of deck & reinforce, install code compliant gate & barrier

Signature: \_\_\_\_\_  
PEDESTRIAN ACTIVITIES DISTRICT (P.A.D.)  
Action:  Approved  Approved w/Conditions  Denied  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Permit Taken By: jmb	Date Applied For: 05/12/2003	<b>Zoning Approval</b>	
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<ol style="list-style-type: none"> <li>This permit application does not preclude the Applicant(s) from meeting applicable State and Federal Rules.</li> <li>Building permits do not include plumbing, septic or electrical work.</li> <li>Building permits are void if work is not started within six (6) months of the date of issuance. False information may invalidate a building permit and stop all work..</li> </ol>	<b>Special Zone or Reviews</b> <input type="checkbox"/> Shoreland <input type="checkbox"/> Wetland <i>approved</i> <input type="checkbox"/> Flood Zone <input type="checkbox"/> Subdivision <input type="checkbox"/> Site Plan Maj <input type="checkbox"/> Minor <input type="checkbox"/> MM <input type="checkbox"/> Date: <i>5/12/03</i>	<b>Zoning Appeal</b> <input type="checkbox"/> Variance <input type="checkbox"/> Miscellaneous <input type="checkbox"/> Conditional Use <input type="checkbox"/> Interpretation <input type="checkbox"/> Approved <input type="checkbox"/> Denied Date: _____	<b>Historic Preservation</b> <input checked="" type="checkbox"/> Not in District or Landmark <input type="checkbox"/> Does Not Require Review <input type="checkbox"/> Requires Review <input type="checkbox"/> Approved <input type="checkbox"/> Approved w/Conditions <input type="checkbox"/> Denied Date: <i>[Handwritten Signature]</i>
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CERTIFICATION

I hereby certify that I am the owner of record of the named property, or that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his authorized agent and I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in the application is issued, I certify that the code official's authorized representative shall have the authority to enter all areas covered by such permit at any reasonable hour to enforce the provision of the code(s) applicable to such permit.

SIGNATURE OF APPLICANT ADDRESS DATE PHONE

RESPONSIBLE PERSON IN CHARGE OF WORK, TITLE DATE PHONE

6/12/03 Inspected 7 Footings @ 48" ok to pour.  
Will check deck to setback @ Framing insp JB

7/17/03 Inspected deck location @ 26+ ft. to rear  
property line and ok on sides.

Pool Barriers @ Deck (level of pool) - Spring hinge ok  
but latch works less than 50% of tries - also  
latch ~~is~~ is  $\leq 54"$  from bottom of Gate. The  
Barrier w/ Lattice needs screening to prevent climb  
hazard & the baluster extension has spaces  $> 4"$ .

Also Lattice Rail adjacent to Pool Barrier needs  
Screen as This could be a climbing access to the  
pool JB

DEC 11 2002

STATE OF MAINE  
CUMBERLAND, ss.

DISTRICT COURT  
DIVISION OF SO. CUMBERLAND  
Docket No. PORDC-CV-2002-01018

CITY OF PORTLAND, a body politic )  
and corporate, located in the County )  
of Cumberland and the State of Maine )

Plaintiff )

V. )

CONSENT DECREE

ANGELA SWEETSER f/k/a )  
ANGELA OJA and ALLAN )  
SWEETSER, )  
Defendants )

1. Description of Property.

This Consent Decree relates to property owned by the Defendants and situated at 96 Pennell Avenue in Portland.

2. Code Violations.

The City of Portland charged the Defendants with violations of the BOCA National Building Code and the National Electric Code, as adopted by the City of Portland in its Municipal Code, which are more fully described in the Rule 80K complaint which forms the basis for this action.

3. Answer to Complaint.

The Defendants neither admit nor deny any of the alleged violations. They agree to pay the City \$100.00 for filing fees.

4. Correction of Violations.

The Defendants will obtain permits for and will correct all the violations relating to the erection of the swimming pool, deck and the electrical appurtenances serving them on or before July 15, 2003 (the "Deadline"). The work will include the following:

**A. The Pool Barrier and Access.**

- a. The barrier to the pool shall be renovated, as necessary, to be 48 inches above deck level, measured in accordance with the requirements of 421.10.1(1) of the BOCA

National Building Code, all as more fully depicted on a plan to be submitted forthwith and approved by the City's Building Inspections Department.

- b. The lattice work comprising the barrier shall be either replaced in such a way that the maximum openings are not more than 1 ¾ inches or a layer of other material, such as wire, shall be overlaid on the inside of the lattice work, to reduce the maximum openings, consistent with 421.10.1(7) of the BOCA National Building Code.
- c. The access gate to the pool from the side of the house shall be replaced, and shall meet the requirements of numbers 1-7 of §421.10.1 of the BOCA Code. Specifically, any openings, including any lattice work, shall not exceed more than 1 ¾ inch; the gate shall not have any indentations or protrusions that would create a ladder effect; the gate shall open outwards away from the pool and shall be self-closing and self-latching; and the gate shall be equipped to accommodate a locking device.
- d. The self-latching device for the access gate to the pool from the side of the house shall either be at least 54 inches from the bottom of the gate or: (i) the release mechanism shall be located on the pool side of the gate, at least 3 inches from the top of the gate; and (ii) the gate and barrier will not have any opening greater than ½ inch within 18 inches of the release mechanism. (Section 421.10.1(8) of the BOCA Code).
- e. The access gate at the side of the pool and the set of stairs serving it shall be removed and replaced with a guard rail which complies with the BOCA Code.

#### **B. Electrical Work.**

The Defendants will bring all the electrical appurtenances serving the pool and the deck into compliance with the requirements of the Electric Code in effect in the City of Portland at the time the permit required by this Consent Decree is issued.

#### **C. Zoning.**

In addition to the building and electric code issues alleged in the Complaint, the parties have discussed that the pool and new section of the deck may fail to conform to the City's Land Use Code.

Deviations from the Code, if any, will become apparent when the defendants submit the plan required by Paragraph 4(A)(a) and apply for the requisite permits.

The defendants understand that, in such an event, they may seek relief under the applicable provisions of Portland's Land Use Code; and if they should decide to seek such

Decree for a period commencing with the issuance of the Order and extending to the time when the premises are in full compliance with its terms and conditions. Except in the case of an emergency, the Defendants will be given advance notice of such inspections.

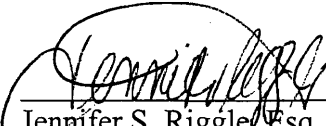
10. Submission to Court.

This Consent Decree is submitted to the Court by the parties jointly so that the Court may adopt it as its own order.

11. Payment.

The Defendants shall pay the City the One Hundred Dollars (\$100.00) filing fee within thirty days from the date of this Consent Decree, pursuant to Paragraph 3 above.

Dated this 9<sup>th</sup> day of December, 2002

  
\_\_\_\_\_  
Jennifer S. Riggle, Esq.,  
Attorney for the Defendants  
Bar No. 3633

  
\_\_\_\_\_  
Charles A. Lane, Esq., Bar No 1040  
Associate Corporation Counsel  
Attorney for Plaintiff

The Clerk is specifically directed pursuant to District Court  
Rule 79 (a) to enter this Order/Judgment in the Civil  
Docket by a notation incorporating it by reference.

9<sup>th</sup> The foregoing Consent Decree is hereby adopted as the Order of the Court this  
day of December, 2002.

  
\_\_\_\_\_  
Judge, Ninth District Court

relief, they will file completed applications with the Zoning Administrator on or before January 31, 2003.

If the premises are not in conformity with the Land Use Code and the defendants do seek not relief from its provisions, then they agree to bring the premises into conformity on or before the Deadline.

If the Defendants should appeal an adverse decision of the Board of Appeals, than the Deadline, in regard only to the Land Use Violations, will be extended to a date which is sixty (60) days after final adjudication of the matter (the "Extended Deadline").

5. "Old" Deck Grandfathered.

Part of the deck was erected prior to the summer of 2000 and is grandfathered in regard to the requirements of the Building Code. The deck was expanded in the summer of 2000. The old deck will be delineated on the plan required by Paragraph 4(A)(a).

The defendants agree to either remove the new deck by the Deadline, or to obtain the appropriate permits and bring the new deck into compliance with the building regulations in effect at the time the permit for the work is issued.

The work required by this section will be completed by the Deadline.

6. Violations Existing After Deadline.

For each violation of the Building Code, Electrical Code or Land Use Code or any of them which should exist after the Deadline, or the Extended Deadline, if applicable, the Defendants will be required to pay a civil penalty in the amount of One Hundred Dollars (\$100.00) per day for each day each such violation exists.

7. Contempt.

In addition to the imposition of civil penalties referred to above, the Defendants may be found in contempt for any violation of this Order.

8. Attorney's Fees and Costs.

If the City is the prevailing party in any action to enforce this Consent Decree, the Defendants will also be liable to pay attorney's fees and costs, in accordance with the terms and subject to the limitations of 30-A M.R.S.A. §4452(3)(D).

9. Access to Property.

The Defendants will provide City Inspectors with full and free access, at reasonable times during normal business hours, to the property which is the subject of this Consent

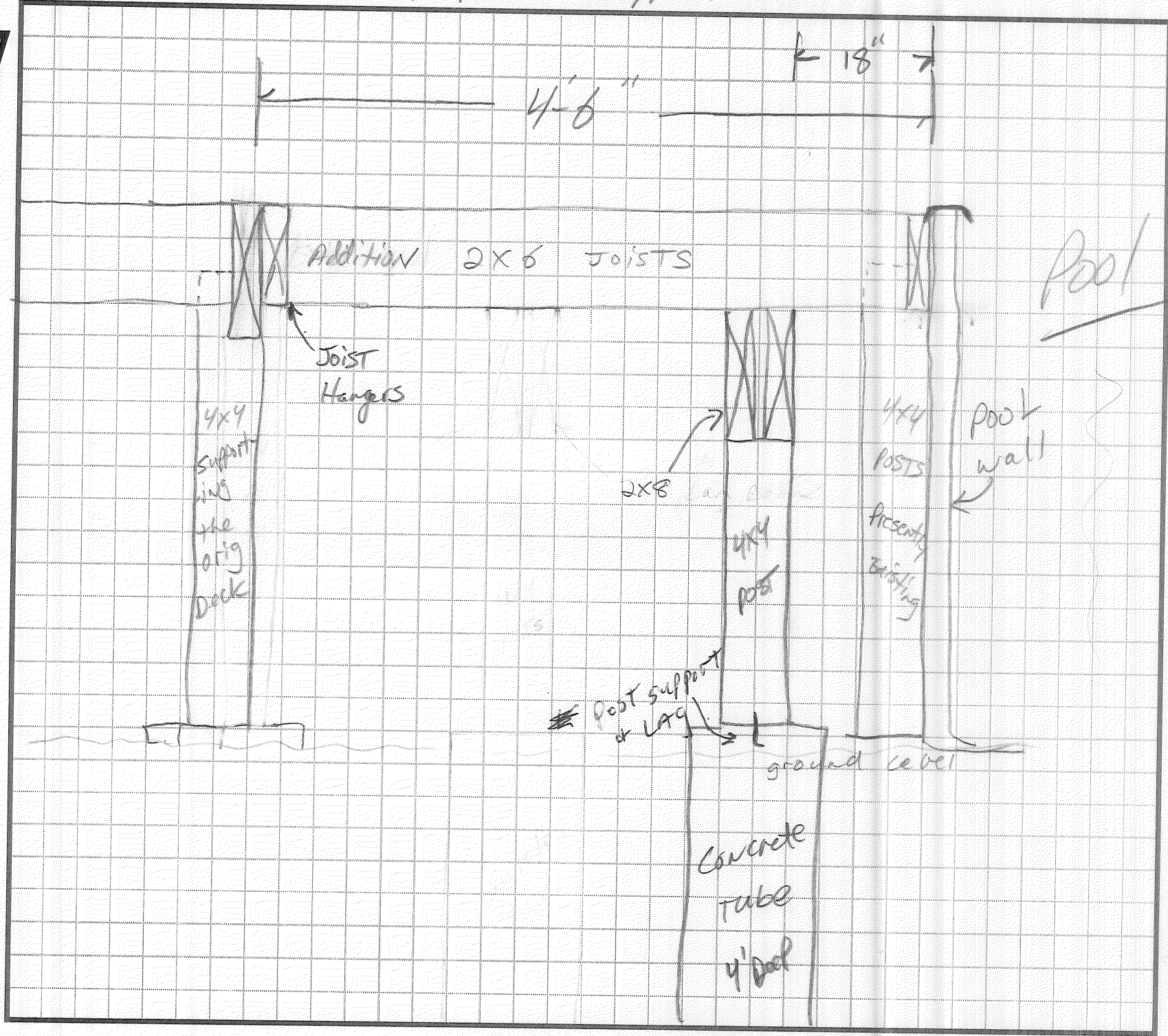


**Brockway-Smith Company**

www.brosco.com



PROPOSED Support Beam



**ANDOVER, MA 01810**  
146 Dascorb Road  
1-800-222-7981  
Fax: 1-800-242-4533

**COXSACKIE, NY 12051**  
Hudson Valley Commercial Park  
1-800-222-7303  
Fax: 1-800-222-7304

**HATFIELD, MA 01038**  
125 Chestnut Street  
1-800-922-0191  
Fax: 1-800-922-0296

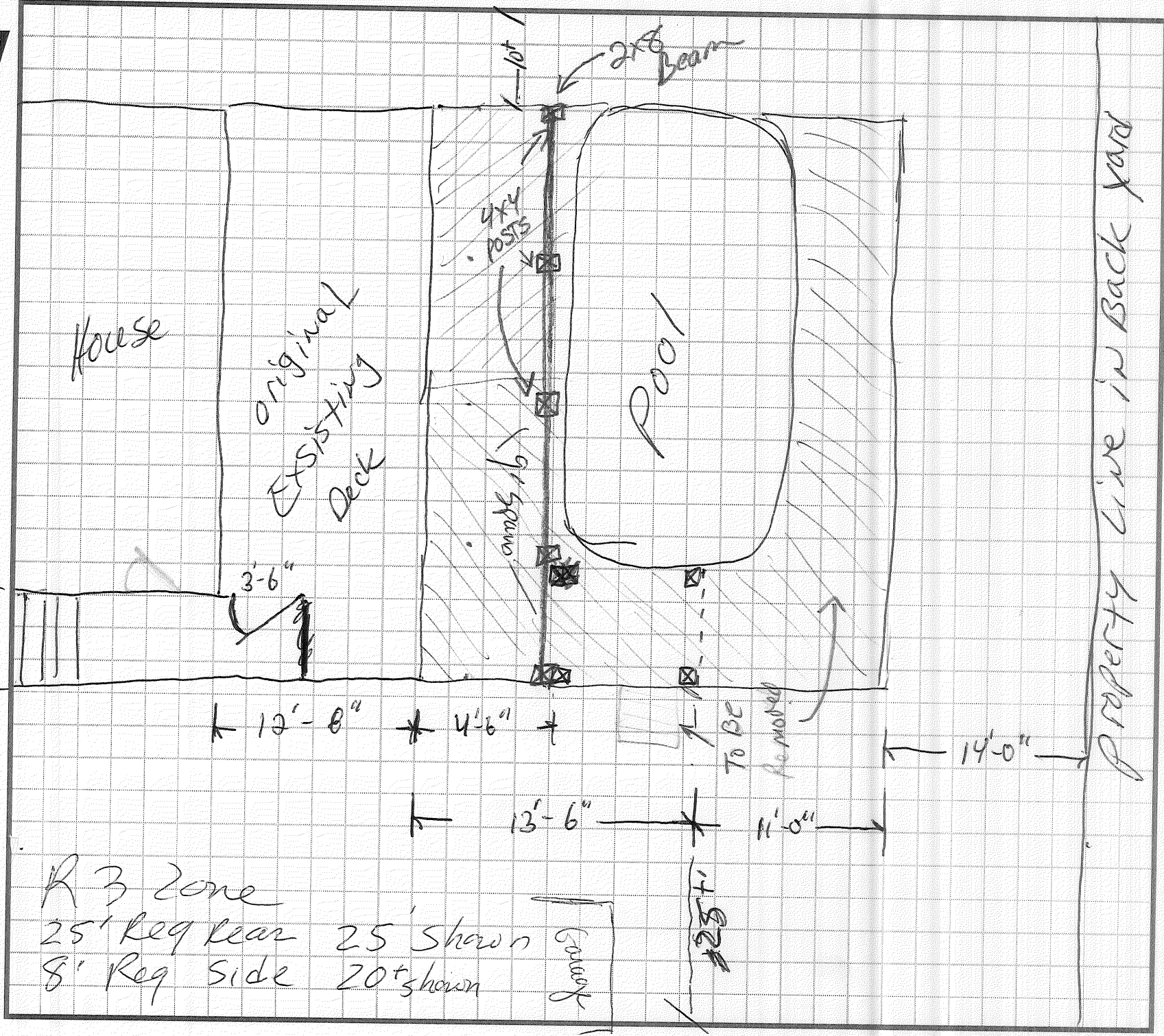
**PORTLAND, ME 04103**  
203 Read Street  
1-800-442-6734  
Fax: 1-800-443-0331





# Brockway-Smith Company

www.brosco.com



R 3 zone  
 25' Req Rear 25' shown  
 8' Req Side 20'± shown

**ANDOVER, MA 01810**  
 146 Dascomb Road  
 1-800-222-7981  
 Fax: 1-800-242-4533

**COXSACKIE, NY 12051**  
 Hudson Valley Commercial Park  
 1-800-222-7303  
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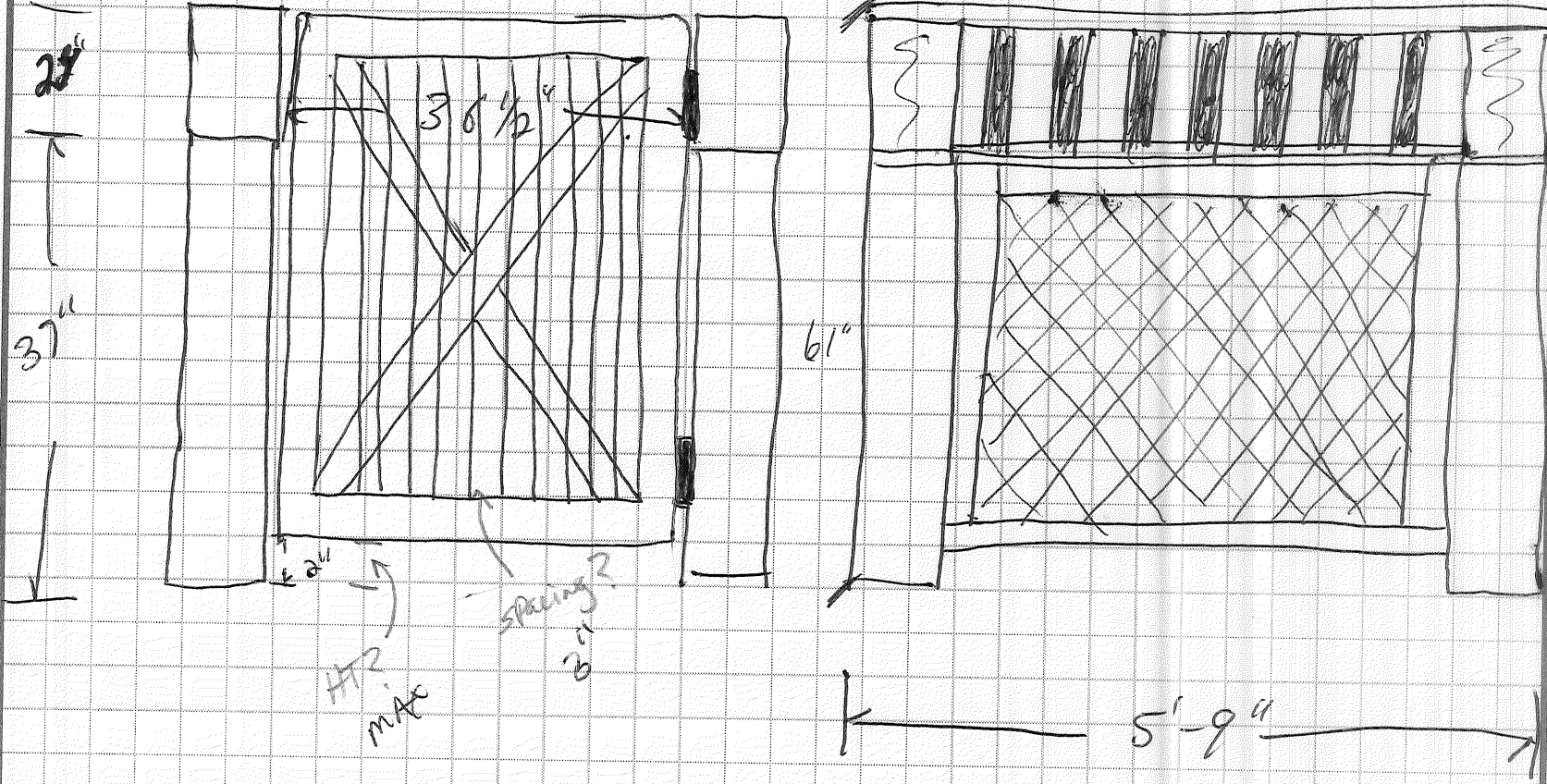


**Brockway-Smith Company**

www.brosco.com



# GATE Entrance from side of House



36"  
Deck to  
LATCH

Self closing  
Self Latching  
Swing away from pool

**ANDOVER, MA 01810**  
146 Dascomb Road  
1-800-222-7981  
Fax: 1-800-242-4533

**COXSACKIE, NY 12051**  
Hudson Valley Commercial Park  
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**PORTLAND, ME 04103**  
203 Read Street  
1-800-442-6734  
Fax: 1-800-443-0331

# All Purpose Building Permit Application

If you or the property owner owes real estate or personal property taxes or user charges on any property within the City, payment arrangements must be made before permits of any kind are accepted.

Location/Address of Construction: <u>96 PENNELL AVE 1st and 2nd</u>		
Total Square Footage of Proposed Structure <u>180</u>	Square Footage of Lot <u>9,500</u>	
Tax Assessor's Chart, Block & Lot Chart# <u>344</u> Block# <u>D</u> Lot# <u>23</u>	Owner: <u>Allan Sweetzer</u>	Telephone: <u>878-9986</u>
Lessee/Buyer's Name (If Applicable)	Applicant name, address & telephone:	Cost Of Work: \$ <u>1,000.</u> Fee: \$ <u>30.00</u>
Current use: <u>Residential - single family</u>		
If the location is currently vacant, what was prior use: _____		
Approximately how long has it been vacant: _____		
Proposed use: _____		
Project description: <u>REMOVE non-conforming portion of deck, retiling portion of deck. 36X 5'</u>		
Contractor's name, address & telephone:		
Who should we contact when the permit is ready: <u>Allan Sweetzer</u>		
Mailing address:		
We will contact you by phone when the permit is ready. You must come in and pick up the permit and review the requirements before starting any work, with a Plan Reviewer. A stop work order will be issued and a \$100.00 fee if any work starts before the permit is picked up.      PHONE: <u>878-9986</u>		

**IF THE REQUIRED INFORMATION IS NOT INCLUDED IN THE SUBMISSIONS THE PERMIT WILL BE AUTOMATICALLY DENIED AT THE DISCRETION OF THE BUILDING/PLANNING DEPARTMENT, WE MAY REQUIRE ADDITIONAL INFORMATION IN ORDER TO APPROVE THIS PERMIT.**

*I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Code Official's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.*

Signature of applicant: <u>Allan Sweetzer</u>	Date:
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**This is NOT a permit, you may not commence ANY work until the permit is issued.  
If you are in a Historic District you may be subject to additional permitting and fees with the  
Planning Department on the 4<sup>th</sup> floor of City Hall**

call Team 874-8715

# BUILDING PERMIT INSPECTION PROCEDURES

Please call 874-8703 or 874-8693 to schedule your inspections as agreed upon

Permits expire in 6 months, if the project is not started or ceases for 6 months.

The Owner or their designee is required to notify the inspections office for the following inspections and provide adequate notice. Notice must be called in 48-72 hours in advance in order to schedule an inspection:

By initializing at each inspection time, you are agreeing that you understand the inspection procedure and additional fees from a "Stop Work Order" and "Stop Work Order Release" will be incurred if the procedure is not followed as stated below

JB **Pre-construction Meeting:** Must be scheduled with your inspection team upon receipt of this permit. Jay Reynolds, Development Review Coordinator at 874-8632 must also be contacted at this time, before any site work begins on any project other than single family additions or alterations.

✓ **Footing/Building Location Inspection:** Prior to pouring concrete

NA **Re-Bar Schedule Inspection:** Prior to pouring concrete

NA **Foundation Inspection:** Prior to placing ANY backfill

NA **Framing/Rough Plumbing/Electrical:** Prior to any insulating or drywalling

✓ **Final/Certificate of Occupancy:** Prior to any occupancy of the structure or use. NOTE: ~~There is a \$75.00 fee per inspection at this point.~~

Certificate of Occupancy is not required for certain projects. Your inspector can advise you if your project requires a Certificate of Occupancy. All projects DO require a final inspection

✓ **If any of the inspections do not occur, the project cannot go on to the next phase, REGARDLESS OF THE NOTICE OR CIRCUMSTANCES.**

NA **CERIFICATE OF OCCUPANICES MUST BE ISSUED AND PAID FOR, BEFORE THE SPACE MAY BE OCCUPIED**

X Allan Sweetser  
Signature of applicant/designee

\_\_\_\_\_  
Date 5/12/03

Jamie Burke  
Signature of Inspections Official

\_\_\_\_\_  
Date

CBL: 344-D-23 Building Permit #: 03-0483

**From:** Charlie Lane  
**To:** "JRiggle@gr-law.com"@Portland.gwgwia; Jeanie Bour...  
**Date:** Fri, Nov 22, 2002 11:31 AM  
**Subject:** Re: City of Portland v. Sweetser

Good morning:

I have read the proposed Settlement Agreement and have several comments;

1. I will have to defer to Janine on the technical requirements.
2. There can be no variance by agreement. If a variance is required, the Sweeters will have to file an application and have their case heard by the Board of Appeals. It is not clear to me whether they will require a hardship variance (almost impossible to obtain) or a practical difficulty variance.
3. The City will expect to recover its filing fees, costs and a civil penalty. I will discuss with Janine and Mike Nugent the amount or a civil penalty which is deemed appropriate.
4. The usual form for settlement for an 80K case is a Consent Decree, not a release. Following the meeting on Tuesday, I will draft such a document.

Charlie

**From:** Jennifer Riggle <JRiggle@gr-law.com>  
**To:** 'Charlie Lane' <CHARLIE@ci.portland.me.us>, Jennif...  
**Date:** Mon, Nov 25, 2002 8:01 AM  
**Subject:** RE: City of Portland v. Sweetser

Charlie:

Thanks for your prompt reply. I have one problem with your comments. It has been my understanding that no civil penalty or costs would be pursued, in light of the fact that these problems were not caused by the Sweetsters. It is my view that as a matter of law, the City would not be entitled to either with respect to the alleged violations regarding the failure (of the previous owner) to obtain a permit, or to comply with any other building or land use codes.

Also, I certainly understand the legal constraints associated with the variance issue; but I'd like to discuss it further.

-----Original Message-----

From: Charlie Lane [mailto:CHARLIE@ci.portland.me.us]  
Sent: Friday, November 22, 2002 11:31 AM  
To: JMB@ci.portland.me.us; JRiggle@gr-law.com  
Subject: Re: City of Portland v. Sweetser

Good morning:

I have read the proposed Settlement Agreement and have several comments;

1. I will have to defer to Janine on the technical requirements.
  2. There can be no variance by agreement. If a variance is required, the Sweetsters will have to file an application and have their case heard by the Board of Appeals. It is not clear to me whether they will require a hardship variance (almost impossible to obtain) or a practical difficulty variance.
  3. The City will expect to recover its filing fees, costs and a civil penalty. I will discuss with Janine and Mike Nugent the amount or a civil penalty which is deemed appropriate.
  4. The usual form for settlement for an 80K case is a Consent Decree, not a release. Following the meeting on Tuesday, I will draft such a document.
- Charlie

**From:** Jennifer Riggle <JRiggle@gr-law.com>  
**To:** "jmb@ci.portland.me.us" <jmb@ci.portland.me.us>  
**Date:** Fri, Nov 22, 2002 11:20 AM  
**Subject:** City of Portland v. Sweetser

You will find attached a proposed, draft settlement agreement in the above matter. I do want to point out a couple of things. First, the Complaint contains certain specific allegations, but you and I have discussed issues, including alleged violations, that I do not believe fall within the scope of the Complaint. However, in the interest of addressing and resolving any and all claims that the City could possibly assert at this time, the Sweetser's are willing to include in this document even issues that exceed what would be included in a trial, if this case were to go to trial. For example, you and I have discussed issues regarding the new deck, including zoning issues and structural issues. This is outside of the scope of the Complaint, as I read it.

Nevertheless, the settlement agreement broadly addresses the remediation of virtually every aspect of the construction of the pool. There are some questions that I hope the City will be able to answer:

1. The Complaint contains allegations regarding the Electrical Code of 1999. I have only the 2002 version of the Code. If the 1999 Code is the one that is pertinent in this case, it would be greatly appreciated if that could be provided. This office has been unable to find a 1999 copy, either in hard copy or on-line. Also, I'd like to discuss what pertinent differences, if any, exist between the two documents.

2. Issues have been raised regarding the structure of the new deck. You will see that I have referenced the obligation to install footings, and to ensure that the structure meets the BOCA Code provisions. We would like to address specifically what is contemplated with respect to those items (i.e., size of beams, etc.). Also, It would be greatly appreciated if the City would specify the specific additional provisions, if any, with which it has concerns, to help narrow the focus and help save time, money, and resources.

3. You mentioned a concern that the pool deck exceeds a certain allowable size. I have addressed this in the form of an agreed variance, with the hope that any formal procedures for filing request with the City can be circumvented. By copy of this e-mail to Charlie Lane, I am seeking his legal opinion on this as well as the other legal issues triggered by the proposed settlement agreement.

Please do not hesitate to call me prior to the meeting scheduled for Tuesday at 10:00. Although I had initially thought Charlie's presence might not be necessary, I do believe that he will be critical in addressing some of the legal aspects of this, and hope that he will be able to attend.

Thank you for your consideration, and I look forward to working out a reasonable resolution.

<<Agreement.doc>>

STATE OF MAINE  
CUMBERLAND, SS.

DISTRICT COURT  
DIVISION OF SO. CUMBERLAND  
DOCKET NO. PORDC- CV-2002-01018

CITY OF PORTLAND, )  
 )  
Plaintiff )  
 )  
v. )  
 )  
ANGELA SWEETSER, f/k/a )  
ANGELA OJA and ALLAN )  
SWEETSER, )  
 )  
Defendants )

SETTLEMENT AGREEMENT  
AND RELEASE

WHEREAS, the City of Portland, through the Code Enforcement Officer, has issued a Citation alleging the violation of certain land use and zoning laws and regulations (“the Action”);

WHEREAS, the parties have agreed to settle the Action, as follows:

I. Summary and Disposition of Allegations.

A. Section 6-16 of the City of Portland Ordinance pages 6-4 regarding adoption of the BOCA Code does not assert any affirmative duties, and Defendants have not violated that section of the Ordinance.

B. Section 6-32 of the Portland Municipal Ordinance pages 6-16 through 17 regarding adoption of the National Electrical Code does not assert any affirmative duties, and Defendants have not violated that section of the Ordinance.

C. The allegations set forth in the citation with respect to BOCA National Building Code 1999 §107.1 relate to a prior owner’s permit, which was obtained but not properly subjected to final inspection by the City.

D. The Defendants shall address the alleged violations of BOCA National Building Code 1999 §421.10.1 (1), (7) and (9) as set forth under Paragraphs II(A)(1)-(5) herein, with respect to the gate, barriers and access to the pool. The parties recognize and agree that the construction of the pool in issue was undertaken by a prior owner, but the Defendants agree to undertake to make reasonable necessary repairs and revisions to the structure to bring it into conformity with the cited BOCA Code provisions.





E. The Defendants shall obtain a permit from the City of Portland, consistent with the requirements of §6-51 (page 6-22) of the Electrical Code, prior to repairing and bringing up to Code, the electrical wiring for the subject pool.

II. Repairs and Renovations.

A. **The Pool Barrier and Access.**

(1) the ~~top~~<sup>TOP</sup> of the barrier around the pool on the new portion of the deck, added in or around the summer of 2000, shall be renovated as necessary to be 48 inches above ~~ground~~<sup>ground</sup> level, measured in accordance with the requirements of 421.10.1(1) of the BOCA National Building Code.

*walking surface*

*Access to the pool (see the plan attached to the pool)*

(2) The lattice work comprising the barrier shall either be replaced such that the maximum openings are not more than  $1\frac{3}{4}$  inches, OR a layer of other material such as wire shall be overlaid on the lattice work, to effectively reduce the maximum openings, consistent with 421.10.1(7) of the BOCA National Building Code.

(3) The access gate to the pool from the side of the house shall be replaced, and shall meet the requirements of numbers 1 -7 of §421.10.1 of the BOCA Code. Specifically, any openings, including any lattice work, shall not exceed more than  $1\frac{3}{4}$  inch; the gate shall not have any indentations or protrusions that would create a ladder effect; the gate shall open outwards away from the pool and shall be self-closing and self-latching; and the gate shall be equipped to accommodate a locking device. ~~#~~

(4) The self-latching device for the access gate to the pool from the side of the house shall EITHER be at least 54 inches from the bottom of the gate OR (i) the release mechanism shall be located on the pool side of the gate at least 3 inches from the top of the gate and (ii) the gate and barrier will not have an opening greater than  $\frac{1}{2}$  inch within 18 inches of the release mechanism. (Section 421.10.1(8) of the BOCA Code).

(5) The access gate at the side of the pool and the accompanying set of stairs shall be removed. *& Replaced w/ a code compliant Guard*

B. **The Electrical Wiring.**

(1) Defendants shall obtain an electrical permit from the City, in compliance with Section 6-51 of the Portland Municipal Ordinance, to allow the alteration of wiring already installed in connection with the subject pool.

*? Pump at back of Garage*

- (2) The electrical wiring for the pool shall be altered so that it conforms in all respects to the requirements of the National Electrical Code of 1999 (**discuss 2002 edition and other details**) :

**C. The New Deck.**

Although no citation has issued with respect to the deck around the pool, the City has suggested that there may be violations of the BOCA Code as a result of certain new construction of the deck. The parties agree that the old deck need not be renovated, as it is grandfathered from any current legal requirements. However, the new portion of the deck, added in or around the summer of 2000, shall be renovated. In so doing, the Defendants shall:

- (1) Obtain a building permit from the City of Portland, consistent with the requirements of §107.1 of the BOCA Code.
- (2) Renovate the new portion of the deck to ensure that it is structurally sound, in accordance with the minimum requirements set forth in the 1999 BOCA Code. This shall include:
  - The installation of appropriate footings; and
  - The additional of such wooden beams or supports to meet pertinent load and measurement criteria.

III. Timing. Any renovations or repairs contemplated by this Agreement shall occur on or before July 15, 2003. -

IV. Zoning Issues.

- A. **Variance.** To the extent the City is of the view that there may be zoning issues triggered by virtue of the location and size of the new deck, the City agrees that any such violation shall be waived, and the Defendants shall be deemed to have a variance in that regard. This grant of a variance is attributable to the particular facts and circumstances in this matter, including (i) that a previous owner performed and was otherwise responsible for the construction, and the Defendants did not create the situation; (ii) the lack of any detriment to abutting land owners as a result of a variance; and (iii) the lack of any damage, loss, detriment or infringement of any kind to any third party.
- B. **Waiver.** In the event the Defendants move, dismantle, or renovate the new deck in any manner and at any time, except for the construction contemplated by this Agreement, the variance shall be dissolved, and the new deck of the subject pool shall be required to comply in all respects with all applicable laws, regulations and ordinances.

V. Release of Claims.

Plaintiff, including any agents, representatives, employees, subsidiaries or affiliated entities ("Releasor"), hereby releases and discharges Defendants and any heirs, agents, representatives, employers, successors, insurers, assigns, and attorneys (hereinafter referred to as "Releasees"), of and from ANY AND ALL CLAIMS OF ANY KIND WHATSOEVER which Releasor now has or ever had against the Releasees including but not limited to the circumstances, actions, conduct and events alleged or which might have been alleged in the Action.

VI. Dismissal of Action.

The parties agree that a Notice or Stipulation of Dismissal, as necessary and appropriate under the Rules of Civil Procedure shall be filed by the Plaintiff on or before December 9, 2002.

VII. Reservation of Rights.

Plaintiff reserves its right to bring an action to enforce the terms of this Settlement Agreement, and to bring any action arising out of the future violation of any land use or other laws of this City or State, or any other laws, rules or codes that may be incorporated therein. Defendant reserves their rights to contest or challenge any future action that might be brought by Plaintiff.

Dated and effective this \_\_\_ day of \_\_\_\_\_, 2002.

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Charles Lane, Esq.  
Attorney for Plaintiff City of Portland  
Maine Bar No. \_\_\_\_

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Jennifer S. Riggle, Esq.  
Attorney for Defendant Angela Sweetser  
Maine Bar No. 3633

GERMANI & RIGGLE, LLC  
93 Exchange Street  
Portland, ME 04101  
(207) 773-7455

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STATE OF MAINE  
CUMBERLAND, SS.

DISTRICT COURT  
DIVISION OF SO. CUMBERLAND  
DOCKET NO. PORDC- CV-2002-01018

CITY OF PORTLAND, )  
 )  
Plaintiff )  
 )  
v. )  
 )  
ANGELA SWEETSER, f/k/a )  
ANGELA OJA and ALLAN )  
SWEETSER, )  
 )  
Defendants )

MEMORANDUM OF  
UNDERSTANDING

WHEREAS, the City of Portland, through the Code Enforcement Officer, has issued a Citation alleging the violation of certain land use and zoning laws and regulations (“the Action”);

WHEREAS, the parties have agreed to settle the Action, as follows; and

WHEREAS, the parties agree that the following terms and conditions shall be included in a Consent Decree to be prepared by the City;

I. Summary and Disposition of Allegations.

A. Section 6-16 of the City of Portland Ordinance pages 6-4 regarding adoption of the BOCA Code does not assert any affirmative duties, and Defendants have not violated that section of the Ordinance.

B. Section 6-32 of the Portland Municipal Ordinance pages 6-16 through 17 regarding adoption of the National Electrical Code does not assert any affirmative duties, and Defendants have not violated that section of the Ordinance.

C. The allegations set forth in the citation with respect to BOCA National Building Code 1999 §107.1 relate to a prior owner’s permit, which was obtained but not properly subjected to final inspection by the City.

D. The Defendants shall address the alleged violations of BOCA National Building Code 1999 §421.10.1 (1), (7) and (9) as set forth under Paragraphs II(A)(1)-(5) herein, with respect to the gate, barriers and access to the pool. The parties recognize and agree that the construction of the pool in issue was undertaken by a prior owner, but the

Defendants agree to undertake to make reasonable necessary repairs and revisions to the structure to bring it into conformity with the cited BOCA Code provisions.

E. The Defendants shall obtain a permit from the City of Portland, consistent with the requirements of §6-51 (page 6-22) of the Electrical Code, prior to repairing and bringing up to Code, the electrical wiring for the subject pool.

II. Repairs and Renovations.

A. **The Pool Barrier and Access.**

- (1) the top of the barrier around the pool on the new portion of the deck, added in or around the summer of 2000, shall be renovated as necessary to be 48 inches above ground level, measured in accordance with the requirements of 421.10.1(1) of the BOCA National Building Code.
- (2) The lattice work comprising the barrier shall either be replaced such that the maximum openings are not more than 1 ¾ inches, OR a layer of other material such as wire shall be overlaid on the lattice work, to effectively reduce the maximum openings, consistent with 421.10.1(7) of the BOCA National Building Code.
- (3) The access gate to the pool from the side of the house shall be replaced, and shall meet the requirements of numbers 1 –7 of §421.10.1 of the BOCA Code. Specifically, any openings, including any lattice work, shall not exceed more than 1 ¾ inch; the gate shall not have any indentations or protrusions that would create a ladder effect; the gate shall open outwards away from the pool and shall be self-closing and self-latching; and the gate shall be equipped to accommodate a locking device.
- (4) The self-latching device for the access gate to the pool from the side of the house shall EITHER be at least 54 inches from the bottom of the gate OR (i) the release mechanism shall be located on the pool side of the gate at least 3 inches from the top of the gate and (ii) the gate and barrier will not have an opening greater than ½ inch within 18 inches of the release mechanism. (Section 421.10.1(8) of the BOCA Code).
- (5) The access gate at the side of the pool and the accompanying set of stairs shall be removed.

B. **The Electrical Wiring.**

- (1) Defendants shall obtain an electrical permit from the City, in compliance with Section 6-51 of the Portland Municipal Ordinance, to allow the alteration of wiring already installed in connection with the subject pool.

- (2) The electrical wiring for the pool shall be altered so that it conforms in all respects to the requirements of the National Electrical Code of 1999 (**discuss 2002 edition and other details**) :

**C. The New Deck.**

Although no citation has issued with respect to the deck around the pool, the City has suggested that there may be violations of the BOCA Code as a result of certain new construction of the deck. The parties agree that the old deck need not be renovated, as it is grandfathered from any current legal requirements. However, the new portion of the deck, added in or around the summer of 2000, shall be renovated. In so doing, the Defendants shall:

- (1) Obtain a building permit from the City of Portland, consistent with the requirements of §107.1 of the BOCA Code.
- (2) Renovate the new portion of the deck to ensure that it is structurally sound, in accordance with the minimum requirements set forth in the 1999 BOCA Code. This shall include:
  - The installation of appropriate footings; and
  - The addition of such wooden beams or supports to meet pertinent load and measurement criteria.

III. Timing. Any renovations or repairs contemplated by this Agreement shall occur on or before July 15, 2003.

IV. Release of Claims.

The Parties agree that the Consent Decree shall contain a Release in which Plaintiff, including any agents, representatives, employees, subsidiaries or affiliated entities releases and discharges Defendants and any heirs, agents, representatives, employers, successors, insurers, assigns, and attorneys of and from ANY AND ALL CLAIMS OF ANY KIND WHATSOEVER which Releasor now has or ever had against the Releasees including but not limited to the circumstances, actions, conduct and events alleged or which might have been alleged in this action.

The Consent Decree shall include reservation of rights language whereby:

- (a) Plaintiff reserves its right to bring an action to enforce the terms of this Settlement Agreement, and to bring any action arising out of the future violation of any land use or other laws of this City or State, or any other laws, rules or codes that may be incorporated therein; and

(b) Defendant reserves their rights to contest or challenge any future action that might be brought by Plaintiff.

V. Dismissal of Action.

The parties agree that a Notice or Stipulation of Dismissal, as necessary and appropriate under the Rules of Civil Procedure shall be filed by the Plaintiff on or before December 9, 2002.

Dated and effective this \_\_\_ day of \_\_\_\_\_, 2002.

---

Charles Lane, Esq.  
Attorney for Plaintiff City of Portland  
Maine Bar No. \_\_\_\_

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Jennifer S. Riggle, Esq.  
Attorney for Defendant Angela Sweetser  
Maine Bar No. 3633

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STATE OF MAINE  
CUMBERLAND, ss.

DISTRICT COURT  
DIVISION OF SO. CUMBERLAND  
Docket No. PORDC-CV-2002-01018

CITY OF PORTLAND, a body politic )  
and corporate, located in the County )  
of Cumberland and the State of Maine )

Plaintiff )

V. )

CONSENT DECREE

ANGELA SWEETSER f/k/a )  
ANGELA OJA and ALLAN )  
SWEETSER, )  
Defendants )

1. Description of Property.

This Consent Decree relates to property owned by the Defendants and situated at 96 Pennell Avenue in Portland.

2. Code Violations.

The City of Portland charged the Defendants with violations of the BOCA National Building Code and the National Electric Code, as adopted by the City of Portland in its Municipal Code, which are more fully described in the Rule 80K complaint which forms the basis for this action.

3. Answer to Complaint.

The Defendants neither admit nor deny any of the alleged violations. They agree to pay the City \$100.00 for filing fees.

4. Correction of Violations.

The Defendants will obtain permits for and will correct all the violations relating to the erection of the swimming pool, deck and the electrical appurtenances serving them on or before July 15, 2003 (the "Deadline"). The work will include the following:

**A. The Pool Barrier and Access.**

- a. The barrier to the pool shall be renovated, as necessary, to be 48 inches above deck level, measured in accordance with the requirements of 421.10.1(1) of the BOCA



National Building Code, all as more fully depicted on a plan to be submitted forthwith and approved by the City's Building Inspections Department.

- b. The lattice work comprising the barrier shall be either replaced in such a way that the maximum openings are not more than 1 ¾ inches or a layer of other material, such as wire, shall be overlaid on the inside of the lattice work, to reduce the maximum openings, consistent with 421.10.1(7) of the BOCA National Building Code.
- c. The access gate to the pool from the side of the house shall be replaced, and shall meet the requirements of numbers 1-7 of §421.10.1 of the BOCA Code. Specifically, any openings, including any lattice work, shall not exceed more than 1 ¾ inch; the gate shall not have any indentations or protrusions that would create a ladder effect; the gate shall open outwards away from the pool and shall be self-closing and self-latching; and the gate shall be equipped to accommodate a locking device.
- d. The self-latching device for the access gate to the pool from the side of the house shall either be at least 54 inches from the bottom of the gate or: (i) the release mechanism shall be located on the pool side of the gate, at least 3 inches from the top of the gate; and (ii) the gate and barrier will not have any opening greater than ½ inch within 18 inches of the release mechanism. (Section 421.10.1(8) of the BOCA Code).
- e. The access gate at the side of the pool and the set of stairs serving it shall be removed and replaced with a guard rail which complies with the BOCA Code.

#### **B. Electrical Work.**

The Defendants will bring all the electrical appurtenances serving the pool and the deck into compliance with the requirements of the Electric Code in effect in the City of Portland at the time the permit required by this Consent Decree is issued.

#### **C. Zoning.**

In addition to the building and electric code issues alleged in the Complaint, , the parties have discussed that the pool and new section of the deck may fail to conform to the City's Land Use Code.

Deviations from the Code, if any, will become apparent when the defendants submit the plan required by Paragraph 4(A)(a) and apply for the requisite permits.

The defendants understand that, in such an event, they may seek relief under the applicable provisions of Portland's Land Use Code; and if they should decide to seek such

relief, they will file completed applications with the Zoning Administrator on or before January 31, 2003.

If the premises are not in conformity with the Land Use Code and the defendants do seek not relief from its provisions, then they agree to bring the premises into conformity on or before the Deadline.

If the Defendants should appeal an adverse decision of the Board of Appeals, than the Deadline, in regard only to the Land Use Violations, will be extended to a date which is sixty (60) days after final adjudication of the matter (the "Extended Deadline").

5. "Old" Deck Grandfathered.

Part of the deck was erected prior to the summer of 2000 and is grandfathered in regard to the requirements of the Building Code. The deck was expanded in the summer of 2000. The old deck will be delineated on the plan required by Paragraph 4(A)(a).

The defendants agree to either remove the new deck by the Deadline, or to obtain the appropriate permits and bring the new deck into compliance with the building regulations in effect at the time the permit for the work is issued.

The work required by this section will be completed by the Deadline.

6. Violations Existing After Deadline.

For each violation of the Building Code, Electrical Code or Land Use Code or any of them which should exist after the Deadline, or the Extended Deadline, if applicable, the Defendants will be required to pay a civil penalty in the amount of One Hundred Dollars (\$100.00) per day for each day each such violation exists.

7. Contempt.

In addition to the imposition of civil penalties referred to above, the Defendants may be found in contempt for any violation of this Order.

8. Attorney's Fees and Costs.

If the City is the prevailing party in any action to enforce this Consent Decree, the Defendants will also be liable to pay attorney's fees and costs, in accordance with the terms and subject to the limitations of 30-A M.R.S.A. §4452(3)(D).

9. Access to Property.

The Defendants will provide City Inspectors with full and free access, at reasonable times during normal business hours, to the property which is the subject of this Consent

Decree for a period commencing with the issuance of the Order and extending to the time when the premises are in full compliance with its terms and conditions. Except in the case of an emergency, the Defendants will be given advance notice of such inspections.

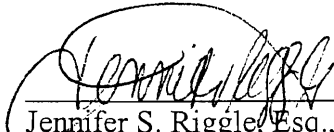
10. Submission to Court.

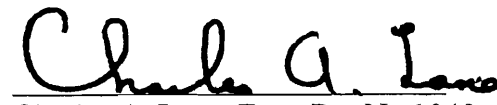
This Consent Decree is submitted to the Court by the parties jointly so that the Court may adopt it as its own order.

11. Payment.

The Defendants shall pay the City the One Hundred Dollars (\$100.00) filing fee within thirty days from the date of this Consent Decree, pursuant to Paragraph 3 above.

Dated this 9<sup>th</sup> day of December, 2002

  
\_\_\_\_\_  
Jennifer S. Riggle, Esq.,  
Attorney for the Defendants  
Bar No. 3633

  
\_\_\_\_\_  
Charles A. Lane, Esq., Bar No 1040  
Associate Corporation Counsel  
Attorney for Plaintiff

The Clerk is specifically directed pursuant to District Court  
Rule 79 (a) to enter this Order/Judgment in the Civil  
Docket by a notation incorporating it by reference.

9<sup>th</sup> The foregoing Consent Decree is hereby adopted as the Order of the Court this  
day of December, 2002.

  
\_\_\_\_\_  
Judge, Ninth District Court