

Department of Planning & Urban Development

Marge Schmuckal  
Zoning Administrator

Jeff Levine  
Director, Planning & Urban Development



**CITY OF PORTLAND**  
**ZONING BOARD OF APPEALS**  
**Practical Difficulty Variance Application**

Applicant Information:

Michael + Melanie Desjardins  
NAME

N/A  
BUSINESS NAME

104 Shepherd Ln.  
ADDRESS  
Portland ME 04103

207 415-9474  
TELEPHONE #

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

CURRENT ZONING DESIGNATION R2

EXISTING USE OF PROPERTY:

single family home  
- shed

Subject Property Information

104 Shepherd Ln.  
PROPERTY ADDRESS

351-A-28  
CHART/BLOCK/LOT (CBL)

PROPERTY OWNER (if different) N/A  
NAME

ADDRESS

TELEPHONE #

PRACTICAL DIFFICULTY VARIANCE  
FROM SECTION 14- 8(d)(2) & (3)

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JUL 27 2012

**NOTE:** If site plan approval is required, attach preliminary or final site plan. Dept. of Building Inspections  
City of Portland Maine

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

Melanie Desjardins  
SIGNATURE OF APPLICANT

07/22/12  
DATE

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The following words have the meanings set forth below:

1. **Dimensional Standards**: Those provisions of the article which relate to lot area, lot coverage, frontage and setback requirements
2. **Practical Difficulty**: A case where strict application of the dimensional standards of the Ordinance to the property for which a variance is sought, would BOTH preclude a use of the property which is permitted in the zone in which it is located AND also result in significant economic injury to the applicant.
3. **Significant Economic Injury**: The value of the property, if the variance were denied, would be substantially lower than its value if the variance were granted. To satisfy this standard, the applicant need not prove that the denial of the variance would mean the practical loss of all beneficial use of the land.

A Practical Difficulty Variance may not be used to grant relief from the provisions of Section 14-449 (Land Use Standards) to increase either volume or floor area, not to permit the location of a structure, including, but not limited to, single-component manufactured homes, to be situated on a lot in a way which is contrary to the provisions of this article.

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Notwithstanding the provisions of subsections 14-473(c)(1) and (2) of this section, the Zoning Board of Appeals (ZBA) may grant a variance from the dimensional standards of this article when strict application of the provisions of the Ordinance would create a practical difficulty, as defined herein, and when all the following conditions are found to exist:

“Practical Difficulty” variance standards pursuant to Portland City Code §14-473(c)(3):

- 1. The need for the variance is from dimensional standards of the Land Use Zoning Ordinance (lot area, lot coverage, frontage, or setback requirements).

Satisfied \_\_\_\_\_ NOT Satisfied \_\_\_\_\_ (deny the appeal)  
Reason and supporting facts:

THE NEED FOR THE VARIANCE IS RELATED TO SETBACK REQUIREMENTS FOR THE SHED THAT HAS BEEN IN PLACE FOR TEN OR MORE YEARS. IT DOES NOT CURRENTLY MEET THE REQUIREMENT FOR A 25' SETBACK FROM THE REAR PROPERTY LINE, OR FOR A 12' SETBACK FROM THE SIDE PROPERTY LINE.

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AUG 08 2012  
Dept. of Building Inspections  
City of Portland Maine

- 2. Strict application of the provisions of the ordinance would create a *Practical Difficulty*, meaning it would both (1) preclude a use of the property which is permitted in the zone in which it is located, and also (2) would result in significant economic injury to the applicant. (“*Significant Economic Injury*” means the value of the property, if the variance was denied, would be substantially lower than its value if the variance were granted.) To satisfy this standard, the applicant need not prove that denial of the variance would mean the practical loss of all beneficial use of the land.

Satisfied \_\_\_\_\_ NOT Satisfied \_\_\_\_\_ (deny the appeal)  
Reason and supporting facts:

IN ORDER TO MEET THE SETBACK STANDARDS, THE SHED WOULD NEED TO BE PLACED SO NEAR TO OUR HOME AND PATIO THAT IT WOULD RENDER OUR PATIO AND LAWN NEARLY UNUSABLE. THIS WOULD REDUCE THE VALUE OF OUR PROPERTY AND CAUSE SIGNIFICANT ECONOMIC INJURY.

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3. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

Satisfied \_\_\_\_\_ Not Satisfied \_\_\_\_\_ (deny the appeal)

Reason and supporting facts:

- THE NEED FOR THE VARIANCE IS DUE TO THE SIZE, SHAPE, AND USE OF THE PROPERTY
- THE EQUIPMENT REQUIRED TO MOVE OR RAZE THE SHED WOULD CAUSE DAMAGE TO NEIGHBORING LAWNS WHILE ACCESSING THE AREA.

4. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use, or fair market value, of abutting properties.

Satisfied \_\_\_\_\_ Not Satisfied \_\_\_\_\_ (deny the appeal)

Reason and supporting facts:

THE SHED HAS BEEN IN PLACE FOR TEN OR MORE YEARS. OUR PROPERTY, AND BOTH ABUTTING PROPERTIES, HAVE BEEN SOLD AT LEAST ONCE DURING THIS TIME. NO HOMEOWNER OR POTENTIAL HOMEOWNER HAS EXPRESSED ANY CONCERN ABOUT THE SHED PLACEMENT AND IT HAS HAD NO APPARENT IMPACT ON PROPERTY VALUES. WE HAVE CONSULTED WITH THE ABUTTING HOMEOWNERS AND THEY'VE EXPRESSED THEIR SUPPORT OF OUR REQUEST. THE REAR ABUTTING PROPERTY IS JOINTLY OWNED BY 31 HOMEOWNERS AND THE VARIANCE WILL NOT IMPACT IT.

5. The practical difficulty is not the result of action taken by the applicant or a prior owner.

Satisfied \_\_\_\_\_ Not Satisfied \_\_\_\_\_ (deny the appeal)

Reason and supporting facts:

THE PRACTICAL DIFFICULTY IS RELATED TO THE DIMENSIONS OF THE PROPERTY, ON WHICH SITS AN AVERAGE-SIZED SINGLE FAMILY HOME, AND IS NOT THE RESULT OF ACTIONS OF THE APPLICANT OR PRIOR OWNERS.

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

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

BECAUSE MOVING THE SHED WOULD CREATE SIGNIFICANT ECONOMIC INJURY, AND BECAUSE MOVING OR RAZING THE SHED IS LIKELY TO HARM NEIGHBORING LAWNS, THE REQUEST FOR A VARIANCE FROM THE SETBACK STANDARDS IS THE ONLY FEASIBLE SOLUTION.

7. The granting of a variance will not have an unreasonably adverse effect on the natural environment.

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

AS THE SHED HAS BEEN IN PLACE FOR TEN OR MORE YEARS, IT IS LIKELY THAT MOVING OR RAZING THE SHED WILL HAVE A MORE DETRIMENTAL IMPACT ON THE NATURAL ENVIRONMENT THAN ALLOWING THE VARIANCE.

8. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. §435, nor within a shoreland zone or flood hazard zone.

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

THE PROPERTY DOES NOT MEET ANY OF THE FOREMENTIONED CRITERIA.

Michael and Melanie Desjardins  
104 Shepherd Lane  
Portland, ME 04103  
207-415-9474

City of Portland Zoning Board of Appeals  
389 Congress St. Room 315  
Portland, ME 04101

July 22, 2012

Dear Sirs and Madams,

We are writing to appeal conditions placed on a permit for a shed at our address as listed above. There is a 12'x16' shed that was in place on our property when we purchased the property in 2006. It was there in 2002 per the Portland Tax Assessor. The fact that there was never a permit for the shed was noticed when we recently received a permit for an unrelated project. The conditions of the permit for the shed state that the shed must be re-located further from our property lines. Doing so would be impractical, financially unfeasible, and would greatly hinder use of our property.

In order to meet the setback standards, the shed, which we use for storage, would need to be placed so near to our home and patio it would render our patio and lawn nearly unusable. This would greatly reduce the value of our property and cause significant economic injury. Getting the equipment into our back yard needed to move it is likely to cause damage to our neighbor's lawn and require removal of our raised garden beds and simply is impractical.

The rear property line abuts a wooded area that has shared ownership with us and a few other area properties. As this land is not developable, the proximity of our shed to this rear property line has not and cannot in the future cause any difficulties for other property owners. The neighbors to either side of us purchased their homes after we did and have not expressed to us any concern about the shed's location.

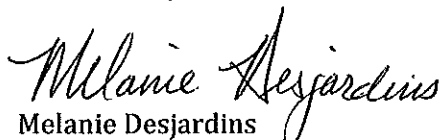
Given that the shed has been in it's current location for at least 10 years without any concern by any of the area home owners, and given that moving the shed to another location on our property would be detrimental to the use of our property and would be impractical and cause significant economic injury, we hope that you will authorize a variance and approve our post-construction permit without any conditions.

We sincerely appreciate your time and concern.

Respectfully,



Michael Desjardins

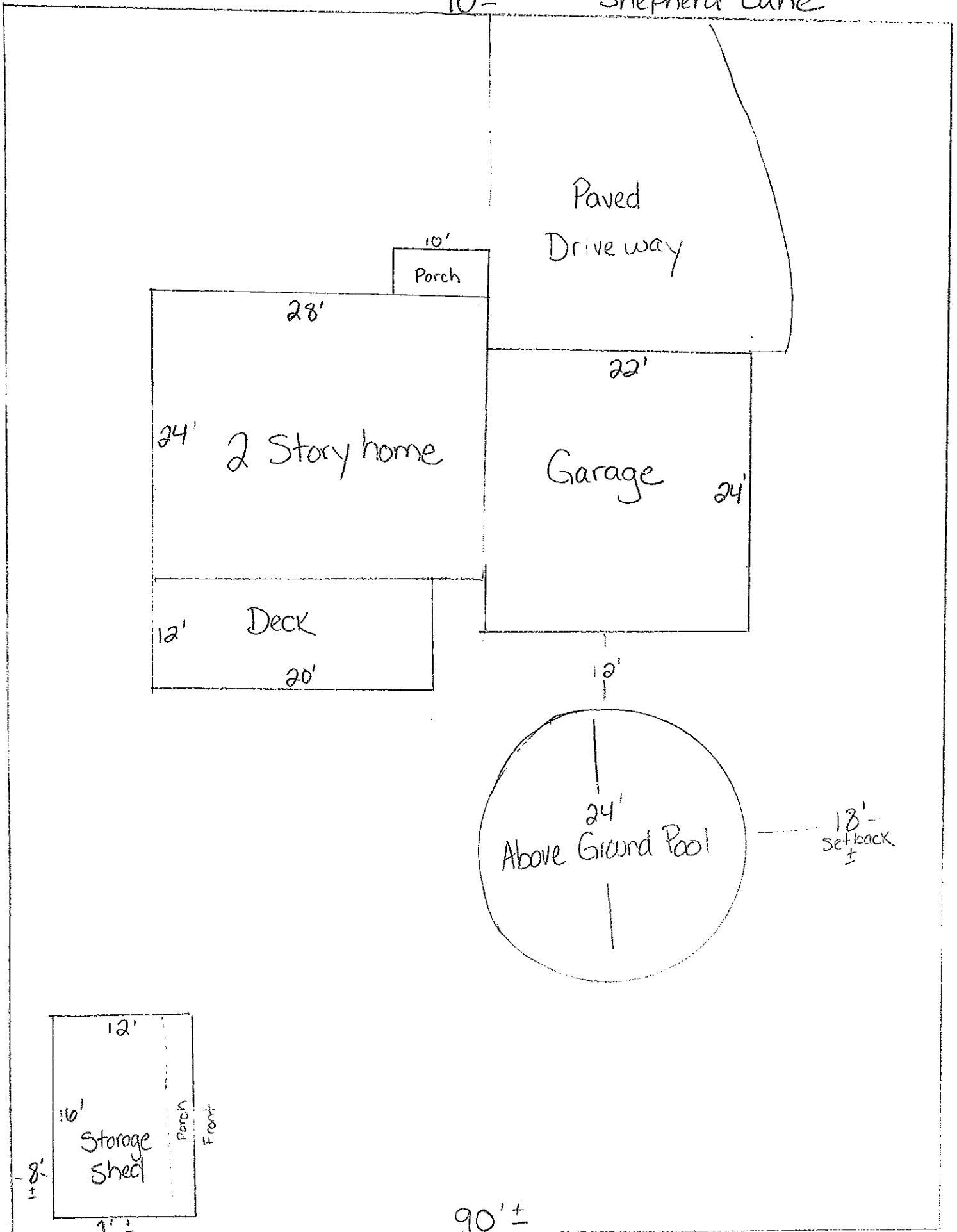


Melanie Desjardins

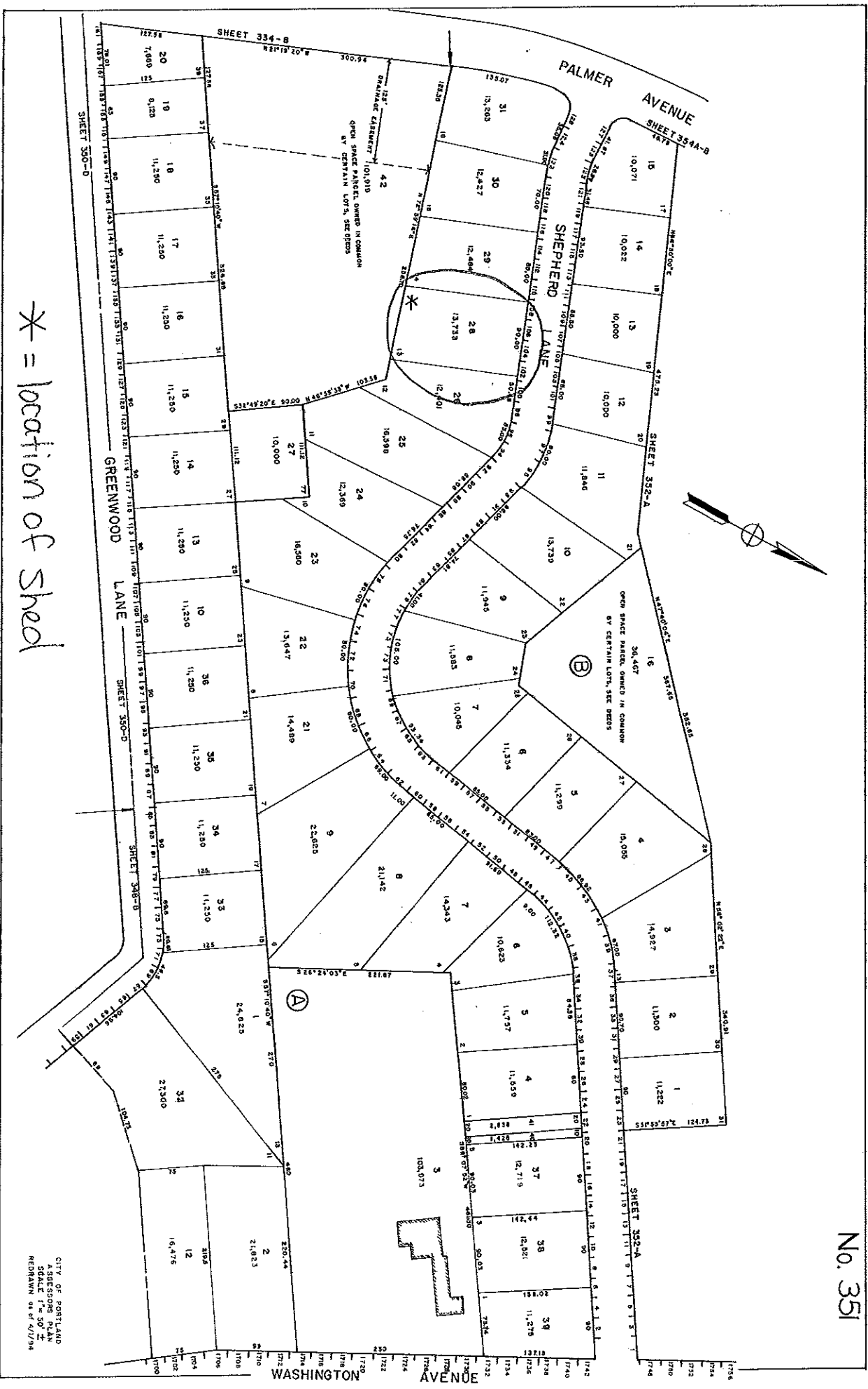
104 Shepherd Lane Plot Plan  
• 302 acres

90±

Shepherd Lane



co-owned wooded area



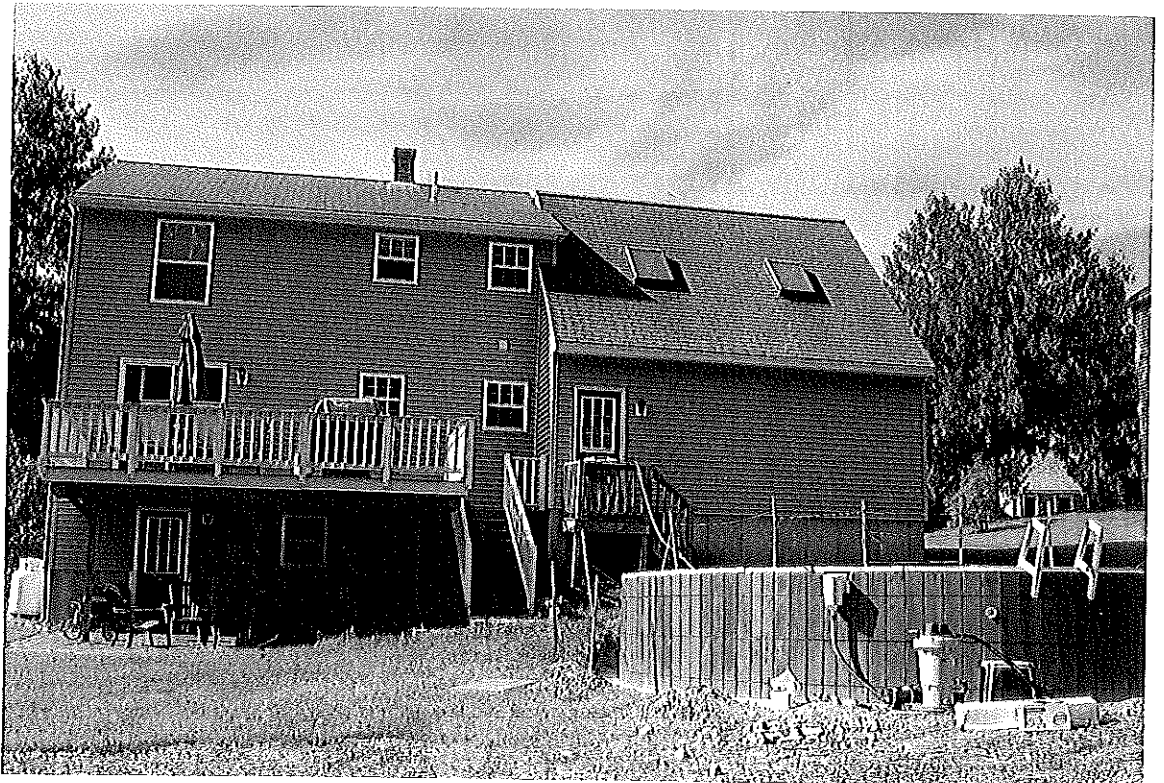
\* = location of shed



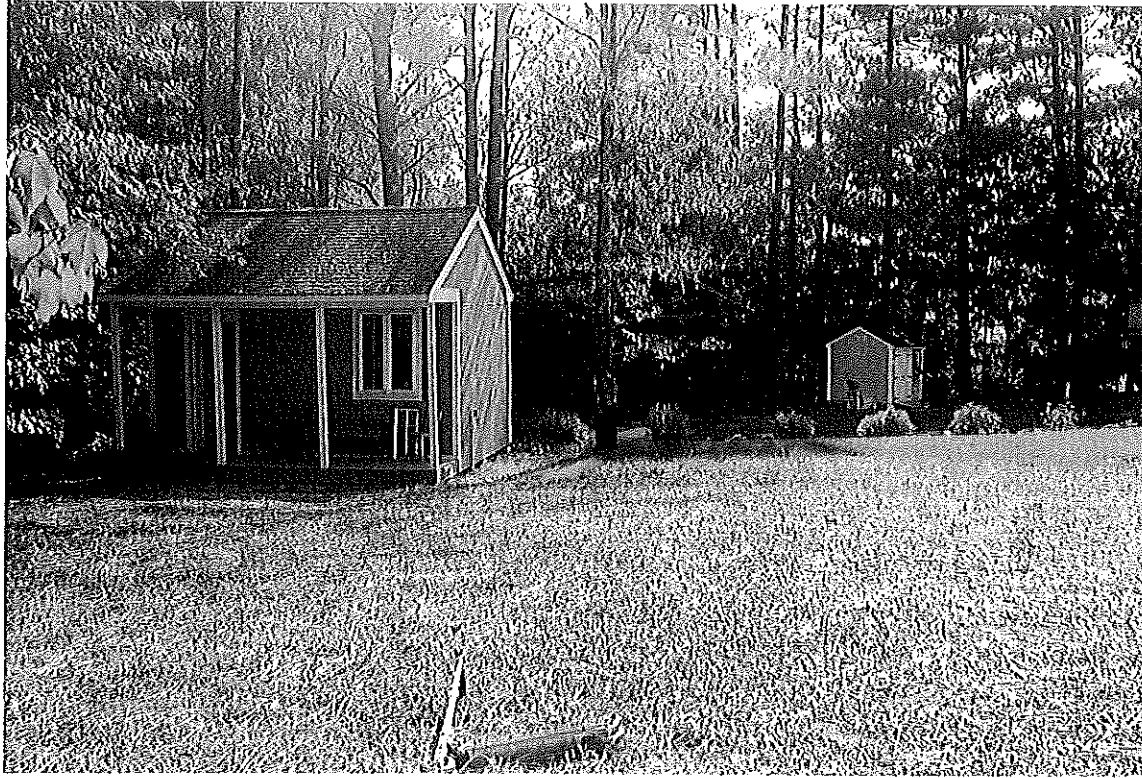


View of  
front of  
property

104 Shepherd Lane



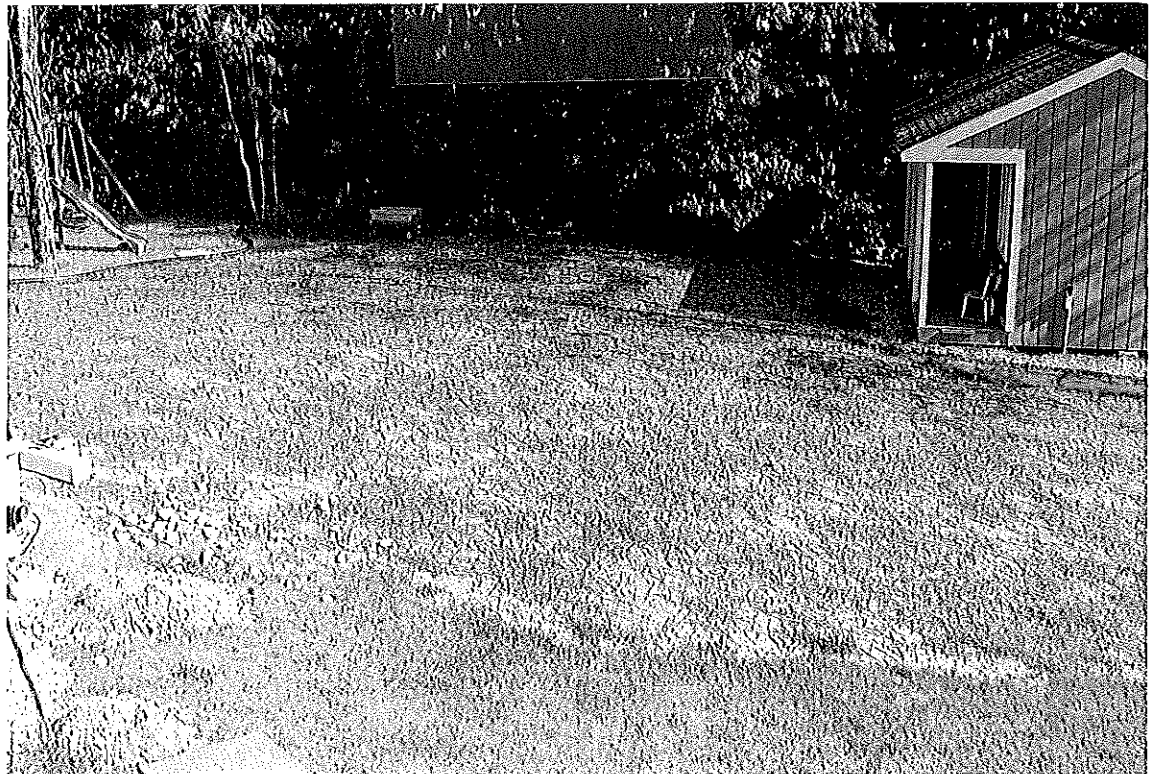
View of  
back of  
property



View of  
Shed from  
property  
edge

104 Shepherd Lane

View of  
Shed from  
patio

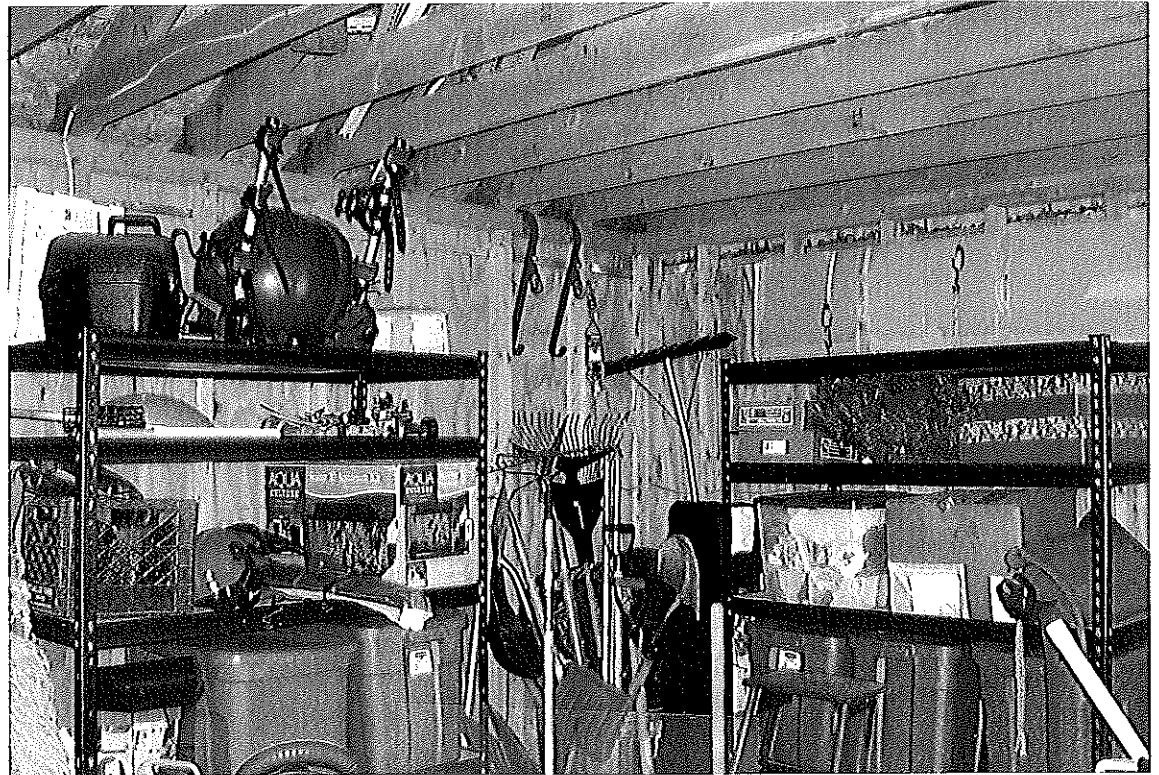




Front  
view of  
shed

104 Shepherd Lane

Inside  
of shed

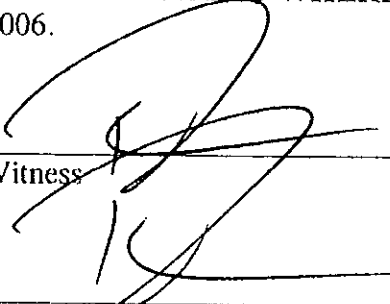




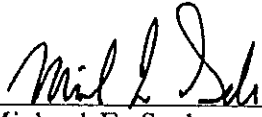
**WARRANTY DEED - SHORT FORM DEEDS ACT**  
**33 M.R.S.A. Section 761 et seq.**

KNOW ALL BY THESE PRESENTS, that We, Michael F. Scala and Tracey L. Scala, of Portland, County of Cumberland and State of Maine, for valuable consideration received, hereby grant to Michael D. Desjardins and Melanie A. Desjardins of Portland, County of Cumberland and State of Maine, as **JOINT TENANTS**, with **WARRANTY COVENANTS**, that certain lot or parcel of land, with any buildings thereon, located at 104 Shepherd Lane, Portland, County of Cumberland and State of Maine, as more fully described in Exhibit A attached hereto and fully incorporated herein by reference.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on January 6, 2006.

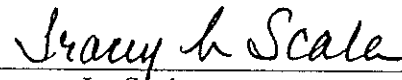
  
\_\_\_\_\_

Witness

  
\_\_\_\_\_

Michael F. Scala

Witness

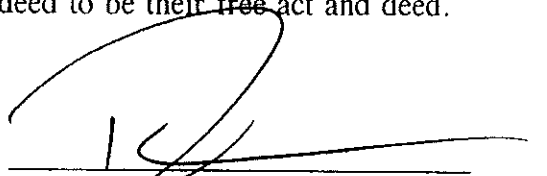
  
\_\_\_\_\_

Tracey L. Scala


STATE OF MAINE  
Cumberland, ss:

On January 6, 2006, personally appeared the above-named Michael F. Scala and Tracey L. Scala and acknowledged the foregoing deed to be their free act and deed.

Before me,

  
\_\_\_\_\_

Notary Public/Attorney At Law

  
\_\_\_\_\_

Type or Print Name

**EXHIBIT A/SCHEDULE A**  
**LEGAL DESCRIPTION OF PROPERTY LOCATED**  
in Cumberland County at  
104 Shepherd Lane, Portland, Maine

A certain lot or parcel of land situated in the City of Portland, County of Cumberland and State of Maine and being Lot 13 as shown on Plan of Orchard Green prepared for Kasprzak, Inc. by Land Use Consultants, Inc. dated June 8, 1993 and duly recorded in Cumberland County Registry of Deeds in Plan Book 193, Page 223, as revised in Plan Book 194, Page 112.

These premises are subject to Declaration of Restrictions dated June 29, 1993, recorded in said Registry of Deeds in Book 10877, Page 119, as amended in Book 11154, Page 255, in Book 11115, Page 50, and in Book 11441, Page 256, and also in Book 11827, Page 115, as well as utility easements of record, a drainage maintenance agreement with the City of Portland and the terms, conditions, restrictions and easements as shown on the recorded Plan of Orchard Green.

Also conveying herewith a one-eighth (1/8th) interest in common with the other abutting lot owners on said Orchard Green Plan in the open space, 36,467 square foot parcel, as shown on said plan, if applicable, and a one thirty first (1/31st) interest in common with said other lot owners in the open space, 101912 square foot parcel, as shown on said plan.

Meaning and intending to convey and hereby conveying the same premises conveyed to Michael F. Scala and Tracey L. Corbeau (now known as Tracy L. Scala) by deed of Kasprzak, Inc. dated August 10, 1995 and recorded in the Cumberland County Registry of Deeds in Book 12054, Page 263.