

Department of Planning & Urban Development

Marge Schmuckal
Zoning Administrator

Jeff Levine
Director Planning & Urban Development



RECEIVED

NOV - 9 2012

Dept. of Building Inspections
City of Portland Maine

CITY OF PORTLAND
ZONING BOARD OF APPEALS

Interpretation Appeal Application

APPLICANT INFORMATION:

GINA KOSTOPOULOS
NAME

HOME DAYCARE
BUSINESS NAME

5 BRAMBLEWOOD DR
ADDRESS
PORTLAND, ME 04103

207 838 9300
TELEPHONE #

RENTER / LEASEE
APPLICANT'S RIGHT, TITLE OR INTEREST
(eg: owner, purchaser, etc)

R3-RESIDENTIAL
CURRENT ZONING DESIGNATION

EXISTING USE OF PROPERTY:
SINGLE FAMILY
HOME

SUBJECT PROPERTY INFO:

5 BRAMBLEWOOD DR
PROPERTY ADDRESS

377 E 006
CHART/BLOCK/LOT (CBL)

PROPERTY OWNER INFO (If Different):

ANTHONY KOSTOPOULOS
NAME
5 BRAMBLEWOOD DR
ADDRESS

PORTLAND, ME 04103

Disputed Provisions from Section 14:

KEEP 2ND KITCHEN 14-47

Order, decision, determination or interpretation under dispute:

2 KITCHENS DOES NOT
MAKE A HOUSE A
TWO FAMILY.

TYPE OF RELIEF REQUESTED:

TO KEEP THE SECOND KITCHEN IN MY
SINGLE FAMILY HOME FOR BUSINESS
OCCUPANCY PURPOSES.

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

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

Anthony Kostopoulos

Gina Kostopoulos
SIGNATURE OF APPLICANT

08 NOVEMBER 2012
DATE

In the conditional certificate letter that I received from Ann B Machado, she wrote "Section 14-47 defines a dwelling unit as one (1) or more rooms with private bath and kitchen facilities comprising an independent *self-contained* dwelling unit. In other words, a dwelling unit has one kitchen. A second kitchen in a building changes the use of the building from a one dwelling unit to a two dwelling units." Which may be the case in some multi-family homes that meet all criteria, however the definition reads: an independent self contained dwelling unit. That alone is enough to support my argument that having 2 kitchens does not turn a single family home into a 2 family home. The definition of self-contained is the following: 1.) Containing within itself all parts necessary for completeness. a.)not dependent on others; self sufficient. Therefore confirming that just because my home has 2 kitchens, it does not qualify as two separate dwelling units. The basement of my home does not meet all criteria of having all necessary parts for completeness. The basement shares electricity with the upstairs, and the home only has one circuit breaker, the water/sewer is all the same, there is one laundry facility, and the basement has no thermostat. Without access to the upstairs there would be no climate control in the basement, further confirming that the basement of my home is not self sufficient. Also, there are no doors that separate the spaces, each space is open to one another.

My husband purchased our home at the proposed 5 Bramblewood Drive in July as a single family home. The location is perfect for our needs, but the biggest selling point was that there is a perfect space in the basement with its own kitchen, bathroom, playroom and office, for me to run a home daycare. The home was built in 1991, and there was a licensed home childcare with a full kitchen run in the exact same proposed space in 1992. I was under the impression that the second kitchen was a part of the original structure and wouldn't cause such controversy. If indeed the second kitchen was not a part of the original build, I am willing to apply for an after the fact permit. It was unreasonable and concerning to me that Ann made such bold statements as to say "that I did not practice my due diligence when purchasing the home" and jumped to the conclusion of no other options that "the second kitchen is illegal and needs to be removed." There are several home daycares in Portland that have the amenity of a second kitchen, so I know that it is possible. I think it is unfair to grant me a conditional occupancy certificate pending the removal of the second kitchen. This would not only devalue my home, but it would also force me to surrender the most beneficial component of my home childcare.

It is unsafe and undesirable to be asked to parade 6 children up a flight of stairs into a space that is not suitable for that amount of children 2 times a day while I cook them breakfast and lunch and try to juggle 6 children and hot food back down the flight of stairs to their dining space.

Having a second kitchen in a home has nothing to do with primary or secondary use of a property as Ann stated. It is the same space as I would be using if the kitchen was not there, and it is still the secondary use of the home whether there is a kitchen in the space or not. I am not proposing to install a kitchen, it is already there. I am just requesting to let me use it. There are many homes in

Portland (4 on this street alone) that have secondary kitchens to use for convenience during holidays or entertaining. Whatever the purpose for having the second kitchen before, it is unfair to make me remove it solely because I am applying for a home occupancy permit. I have no intention of renting the space. The second kitchen would be used for the business occupancy only.

A state licensing specialist (Julie Andersen) has inspected my home and has deemed it as being a safe space and appropriate for a home child care with the kitchen. She even said that "her providers would kill for a space like mine" she also informed me that a large number of her daycares in Portland have a second kitchen, and has agreed to answer any questions about state licensing. Section 15.1 and 15.2 of the State licensing rules and regulations booklet are dedicated to Kitchen facilities and food storage, yet the city has requested for me to remove the refrigerator, stove, sink and any other device used for cooking and preparation of food. The CCHP Health and Safety Checklist that I am required to follow to state guidelines also has a food preparation/eating/sanitation section that states that refrigerators must have a thermometer and are equal or less than 40 degrees fahrenheit, and that it is mandatory to refrigerate any child's medication that requires refrigeration. This contradicts the city's request for me to remove it from the proposed space.



PORTLAND MAINE

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Jeff Levine, AICP, Director

Marge Schmuckal, Zoning Administrator

October 11, 2012

Gina Kostopoulos
5 Bramblewood Drive
Portland, ME 04103

Re: 5 Bramblewood Drive – 377 E006 – R-3 Residential Zone – Permit #2012-10-5099
–daycare as home occupation

Dear Ms. Kostopoulos,

In reviewing your application to add a daycare as a home occupation, I noticed on your floor plans that there are two kitchens in the home, one on the main floor and one on the lower level. Our records show the legal use of the property as a single family home or a single dwelling unit. Section 14-47 defines a dwelling unit as “one (1) or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit”. In other words a dwelling unit has one kitchen. A second kitchen in a building changes the use of the building from one dwelling unit to two dwelling units. I have researched our records, and there is no record of a second kitchen being added to the building. Since the use of the building is one dwelling unit, the second kitchen is illegal and needs to be removed.

In our telephone conversations about the second kitchen, you have stated that the kitchen was there when you purchased the property, and your intention is to use it for the daycare you have applied for under a home occupation. Section 14-410 of the ordinance states “the purpose of a home occupation is to allow the secondary and incidental use of a residence for the conduct of appropriate occupations whose external activity levels and impacts are so limited as to be compatible with the residential character of the neighborhood”. The key word here is that a home occupation is a secondary use of a residence. A residence is a dwelling unit that has one kitchen. You cannot have a second kitchen for the home occupation because it is not a primary use.

Your application meets all the other criteria for a daycare as a home occupation for six children plus two children after school. I am signing off on the permit for zoning with the condition that the second kitchen needs to be removed before the certificate of occupancy is issued for you to operate a daycare as a home occupation. Section 14-47 of the

ordinance defines kitchen facilities as “facilities used for the preparation of meals, including refrigerators and devices used for the cooking and preparation of food”. In one of our telephone conversations you said that there was a full sized refrigerator and a stove in the lower level. These would have to be removed along with any sink and other device used for cooking and preparation of food.

The permit will now be moved forward in the review process to a plan reviewer who looks at the use under building code requirements. They may also contact you if they have any questions.

You have the right to appeal my decision regarding the second kitchen. If you wish to exercise your right to appeal, you have thirty (30) days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

Please feel free to call me at 874-8709 if you have any questions.

Yours truly,

Ann B. Machado
Zoning Specialist
(207) 874-8709

October 1, 2012

Ms. Marge Schmuckal
Zoning Administrator
Department of Urban Development
City of Portland
389 Congress Street
Portland, Maine 04101

Dear Ms. Schmuckal:

I am requesting a permit to allow me to use my residence (5 Bramblewood Drive) for family daycare purposes. I have applied through the State for a license to provide child care to accommodate no more than six(6) children plus two (2) children after school. They have informed me that I would need to obtain an occupation permit through the City of Portland.

- a.) My home daycare will occupy approximately 450 square feet of the residence.
- b.) No goods will be stored displayed or be visible from outside the residence
- c.) Storage for the material necessary to perform my daycare are minimal and included in the 450 square feet mentioned above.
- d.) There will be no external signage related to my daycare.
- e.) No exterior alterations to the residence are necessary.
- f.) My driveway has 7 spaces to park, and I will not need any additional parking.
- g.) Beyond the normal noises of children, there will be no offensive noise, air pollution, odorous matter, or other objectionable effects. The hours of operation will be 7am-5pm, so there will never be noises associated with the daycare at unreasonable times of the day.
- h.) My husband and I will be working directly with the children.
- i.) We live on a busy street corner. My home daycare will not generate a noticeable difference in the traffic pattern.
- j.) No vehicles even nearing a gross vehicle weight of 6,000 pounds are necessary for my home occupation.

This property meets the requirements, as a licensed daycare had been run here previously. The daycare will be a secondary use of the residence. The external activity level and impact is negligible and in keeping the residential character of the neighborhood.

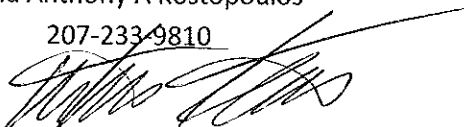
Attached you will find a copy of a floor plan showing my entire dwelling and area of the home daycare.

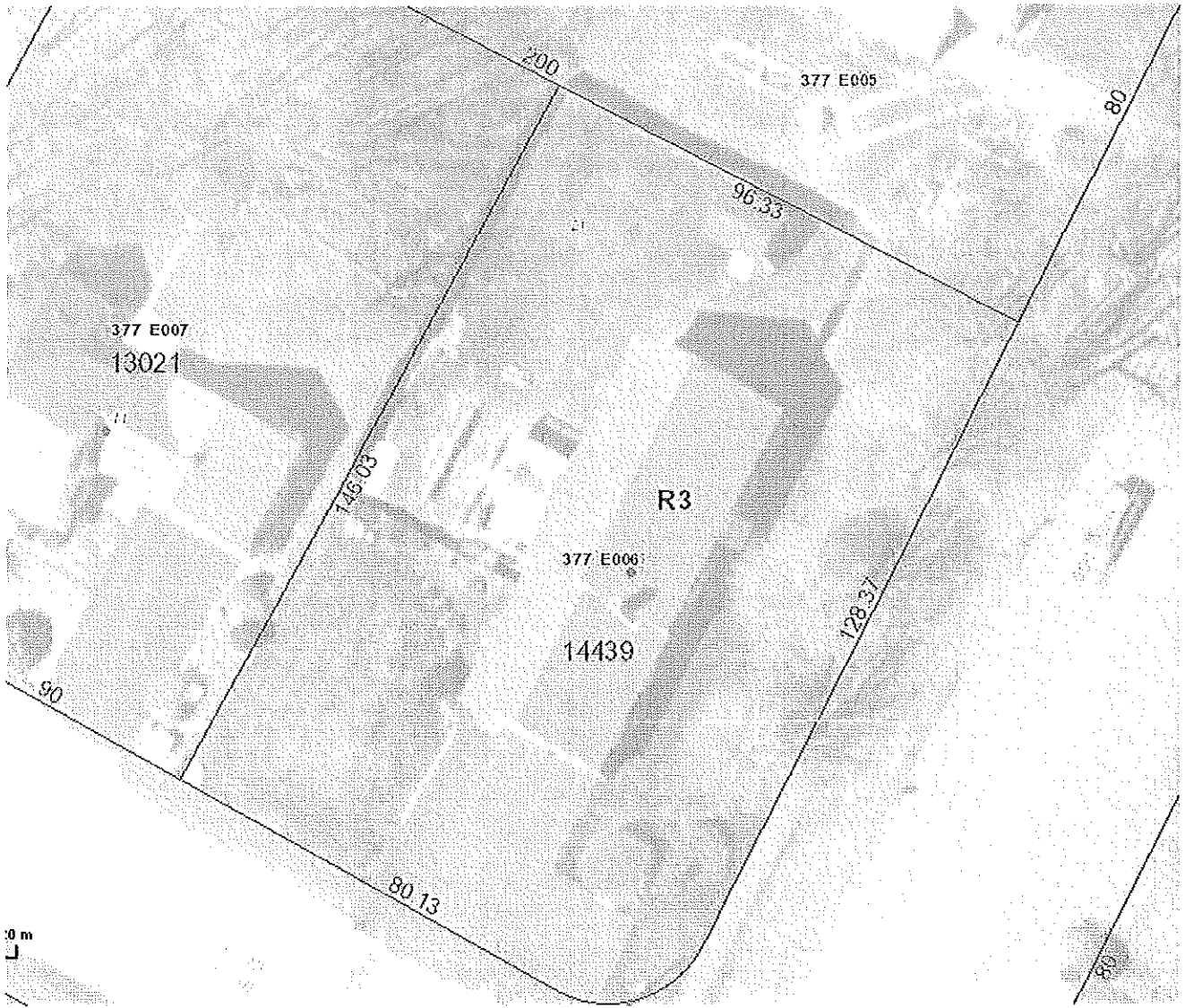
Thank you for your prompt assistance in this matter,

Gina M Kostopoulos and Anthony A Kostopoulos

207-838-9300

207-233-9810





FHA Case#231-1191507
File No. 3613

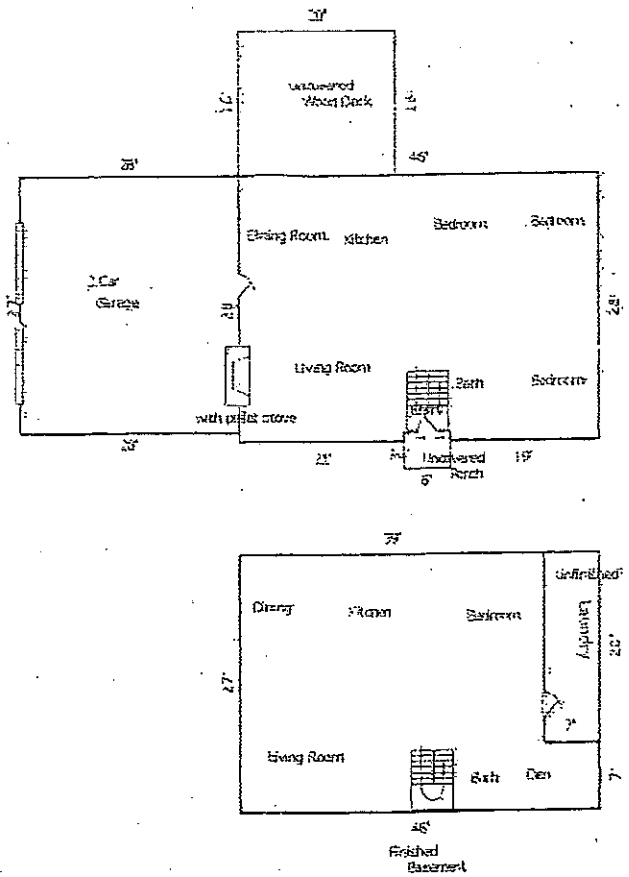
SKETCH ADDENDUM

City Cumberland

State ME

Zip Code 04103

Company



SKETCH ADDENDUM

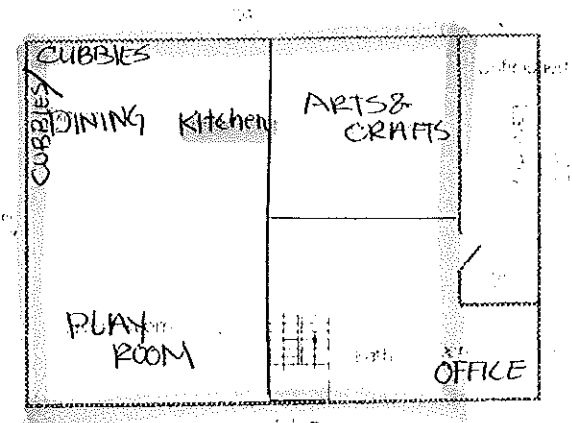
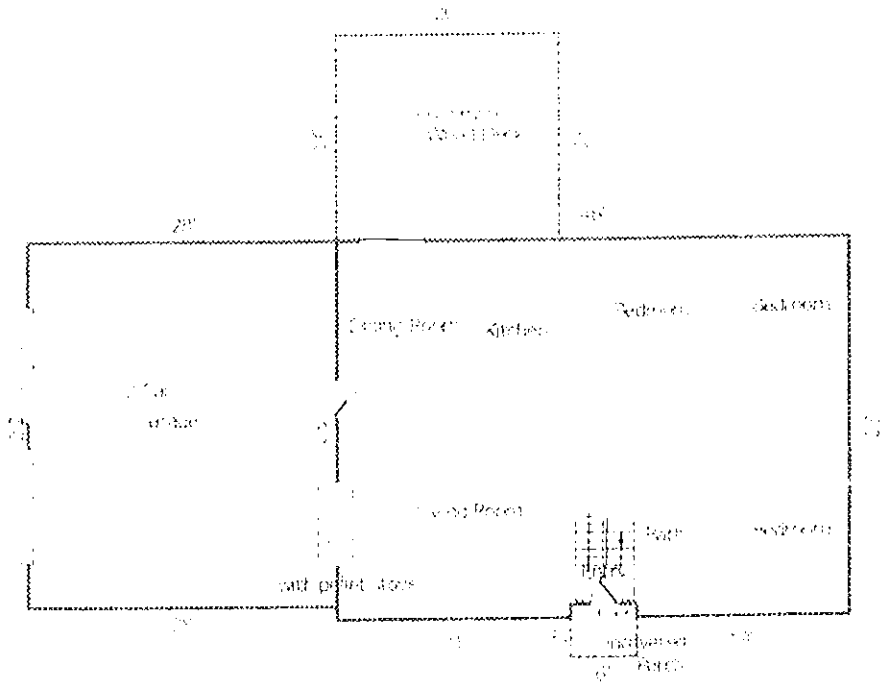
Name: KOSTOPOULOS

Address: 5 Bramblewood Drive

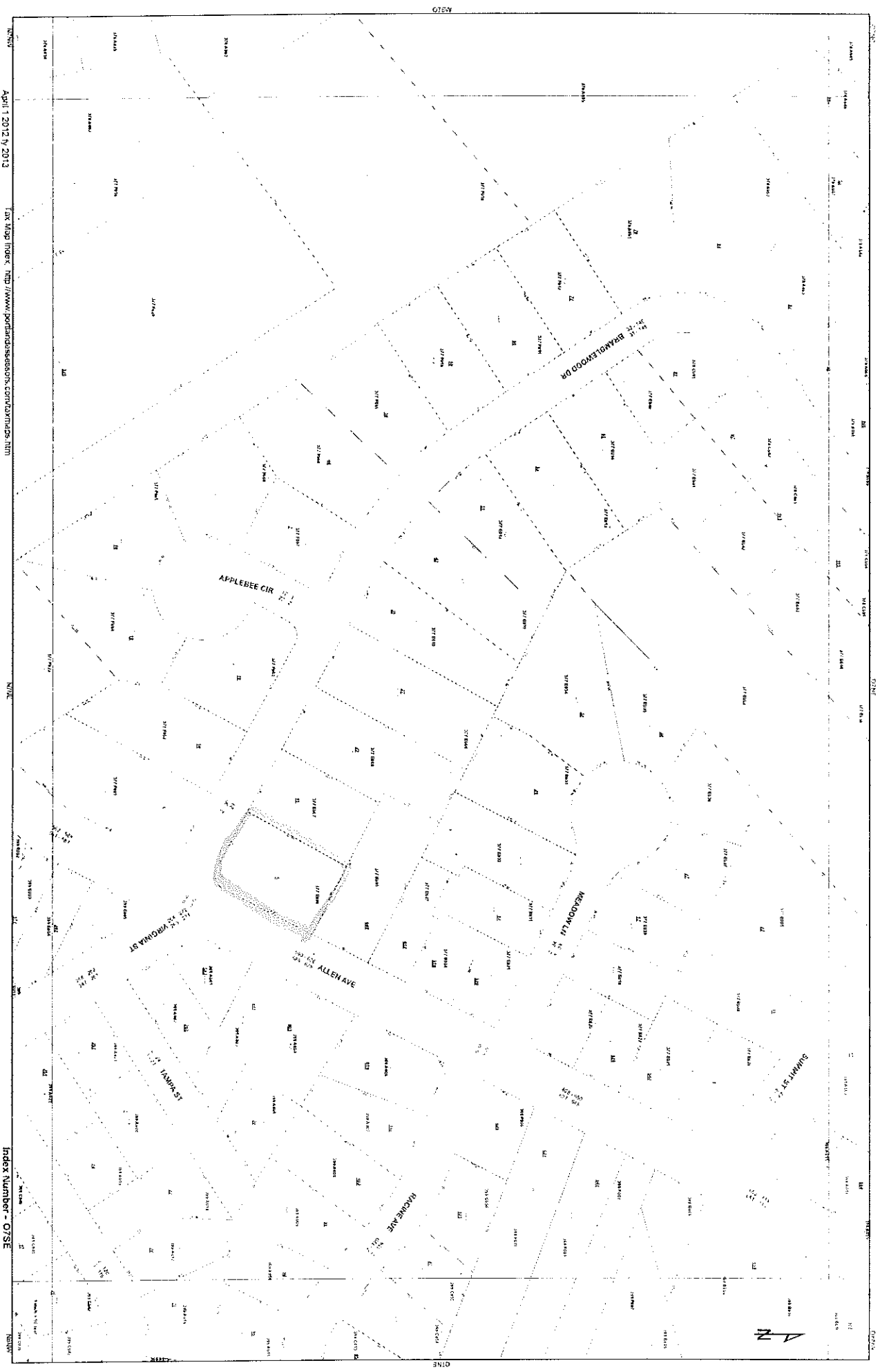
City: Portland County: Cumberland

State: ME

Company: Franklin American Mortgage Company



NO SEPARATION DOOR



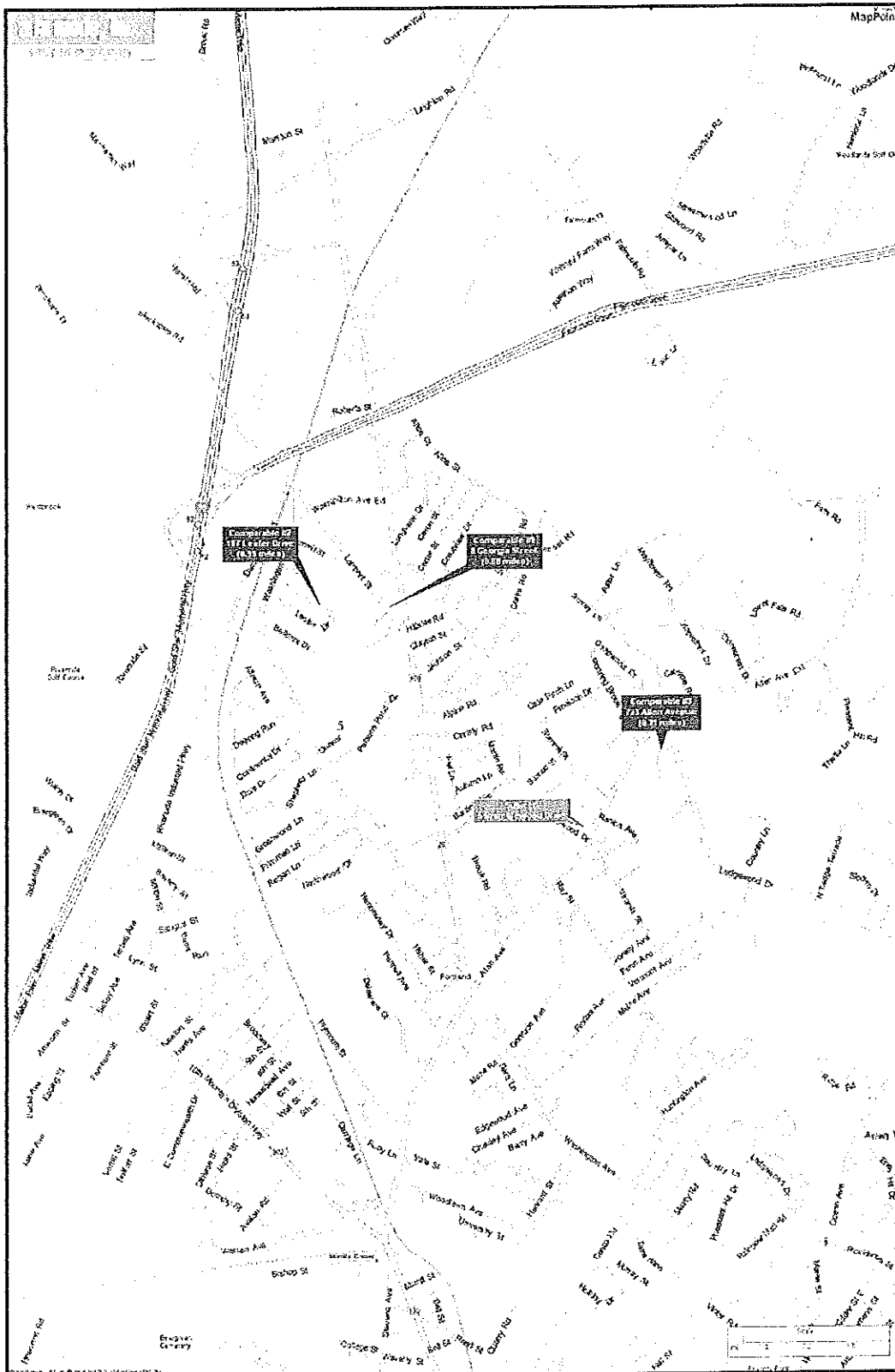
April 1 2012 14:20:13

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Index Number - 075E

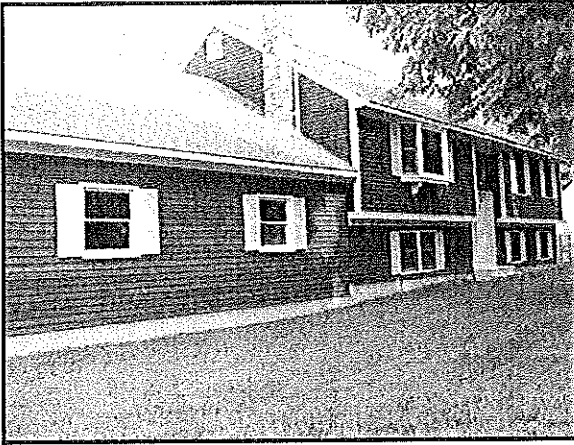
Location Map

Borrower/Client AXELSEN, Mark A			
Property Address 5 Bramblewood Drive			
City Portland	County Cumberland	State ME	Zip Code 04103-3792
Lender Bangor Savings Bank			

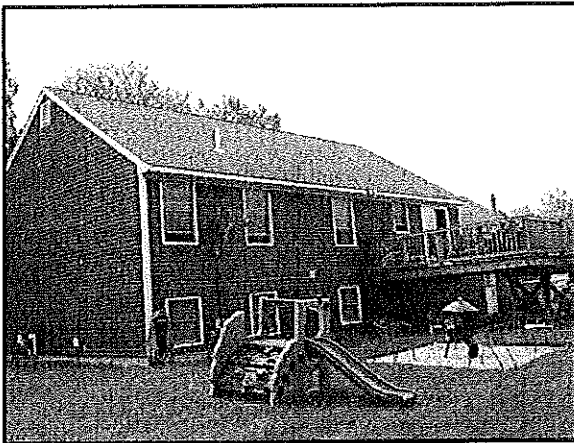


Subject Photo Page

Borrower/Client AXELSEN, Mark A			
Property Address 5 Bramblewood Drive			
City Portland	County Cumberland	State ME	Zip Code 04103-3792
Lender Bangor Savings Bank			

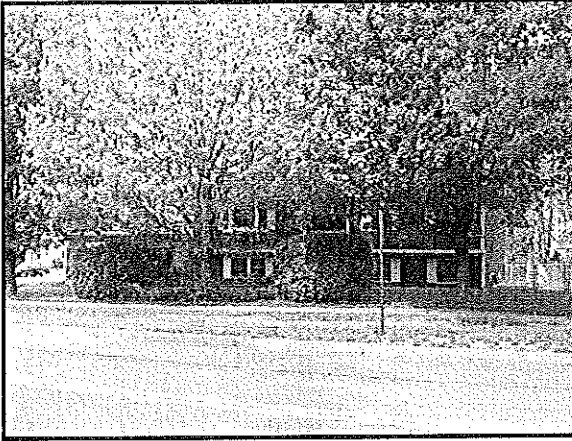
**Subject Front**

5 Bramblewood Drive
Sales Price N/A
Gross Living Area 1,282
Total Rooms 5
Total Bedrooms 3
Total Bathrooms 1
Location Suburb/Good
View Neighborhood
Site .33 acres per city
Quality Good
Age 18 years

**Subject Rear****Subject Street**

Subject Photo Page

Borrower/Client AXELSEN, Mark A				
Property Address 5 Bramblewood Drive				
City Portland	County Cumberland	State ME	Zip Code 04103-3792	
Lender Bangor Savings Bank				

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View Neighborhood
Site .33 acres per city
Quality Good
Age 18 years

**Subject Rear****Subject Street**

**Warranty Deed
(Maine Statutory Short Form)**

KNOW ALL PERSONS BY THESE PRESENTS, THAT, I, Mark A. Axelsen, with a mailing address of 5 Bramblewood Drive, Portland, Maine 04103, for valuable consideration paid, by Anthony A. Kostopoulos, with a mailing address of 5 Bramblewood Drive, Portland, Maine 04103 the receipt and sufficiency whereof is hereby acknowledged, does hereby GIVE, GRANT, REMISE, BARGAIN, SELL AND CONVEY, unto the said Anthony A. Kostopoulos, his heirs and assigns, with **WARRANTY COVENANTS**, a certain lot or parcel of real property situated in the City of Portland, County of Cumberland, State of Maine, bounded and described as follows:

**PROPERTY DESCRIBED IN "EXHIBIT A" ATTACHED HERETO AND
MADE A PART HEREOF**

Meaning and intending to convey the same premises conveyed to Mark A. Axelsen by virtue of a warranty deed from Albert K. Axelsen, III and Margaret M. Axelsen dated March 24, 2009 and recorded in Book 26743, Page 343 with the Cumberland County Registry of Deeds.

The premises are conveyed together with and subject to any and all easements or appurtenances of record, insofar as the same are in force and applicable.

Witness our hands and seal this 27th day of July, 2012.

Carly Smith
WITNESS

Mark A. Axelsen
Mark A. Axelsen

STATE OF Maine
COUNTY OF Cumberland, ss.

Personally appeared on this 27th day of July, 2012 the above named Mark A. Axelsen and acknowledged the foregoing instrument to be his free act and deed.

Carly R. Smith
Notary Public/Attorney At Law

Carly R. Smith
Print Name

CARLY R. SMITH
ATTORNEY AT LAW, STATE OF MAINE
AUTHORIZED TO TAKE ACKNOWLEDGEMENTS
PURSUANT TO 4 M.R.S.A. SEC. 1056

October 1, 2012

Ms. Marge Schmuckal
Zoning Administrator
Department of Urban Development
City of Portland
389 Congress Street
Portland, Maine 04101

Dear Ms. Schmuckal:

I am authorizing my wife (Gina Kostopoulos) to run a family child care in our home at 5 Bramblewood Drive, Portland, Maine 04103. Please contact me with questions or concerns.

Thank you for your attention to this matter,

A handwritten signature in black ink, appearing to read 'Anthony A. Kostopoulos', written in a cursive style.

Anthony A Kostopoulos
207-233-9810

PORTLAND MAINE *Assessor's Office*

Assessor's Office | 389 Congress Street | Portland, Maine 04101 | Room 115 | (207) 874-8486

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Parcel ID	Name and Mailing Address	Property Location	Land Use
377 E006001	KOSTOPOULOS ANTHONY A 5 BRAMBLEWOOD DR PORTLAND ME 04103	5 BRAMBLEWOOD DR	SINGLE FAMILY

Assessor's Office | 389 Congress Street | Portland, Maine 04101 | Room 115 | (207) 874-8486

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This page contains a detailed description of the Parcel ID you selected. Press the **New Search** button at the bottom of the screen to submit a new query.

Current Owner Information:

<p>Services</p> <hr/> <p>Applications</p> <p>Doing Business</p> <p>Maps</p> <p>Tax Relief</p> <p>Tax Roll</p> <p>Q & A</p>	<p>CBL 377 E006001</p> <p>Land Use Type SINGLE FAMILY</p> <p>Property Location 5 BRAMBLEWOOD DR</p> <p>Owner Information KOSTOPOULOS ANTHONY A 5 BRAMBLEWOOD DR PORTLAND ME 04103</p> <p>Book and Page 29791/022</p> <p>Legal Description 377-E-6 ALLEN AVE 594-602 BRAMBLEWOOD DR 1-7 14439 SF</p> <p>Acres 0.3315</p>
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Current Assessed Valuation:

[browse city services a-z](#)

[browse facts and links a-z](#)

TAX ACCT NO.	38670	OWNER OF RECORD AS OF APRIL 2012
LAND VALUE	\$75,300.00	KOSTOPOULOS ANTHONY A
BUILDING VALUE	\$133,400.00	5 BRAMBLEWOOD DR
HOMESTEAD EXEMPTION	(\$10,000.00)	PORTLAND ME 04103
NET TAXABLE - REAL ESTATE	\$198,700.00	
TAX AMOUNT	\$3,739.54	



Any information concerning tax payments should be directed to the Treasury office at 874-8490 or [e-mailed](#).

Best viewed at 800x600, with Internet Explorer

Building Information:

Building 1	
Year Built	1991
Style/Structure Type	RAISED RANCH
# Stories	1
# Units	1
Bedrooms	3
Full Baths	1
Total Rooms	6
Attic	NONE
Basement	FULL
Square Feet	1888

[View Sketch](#) [View Map](#) [View Picture](#)

Sales Information:

Sale Date	Type	Price	Book/Page
7/30/2012	LAND + BUILDING	\$260,200.00	29791/022
3/26/2009	LAND + BUILDING	\$0.00	26743/343
12/17/1991	LAND	\$0.00	9834/42

[New Search!](#)