

**City of Portland, Maine – Building or Use Permit Application** 389 Congress Street, 04101, Tel: (207) 874-8703, FAX: 874-8716

Location of Construction: 29 Graystone Ln (Lot #19)		Owner: Donatelli, Faustino & Maria		Phone:		Permit No <b>970830</b>	
Owner Address:		Lessee/Buyer's Name:		Phone:		Business Name:	
Contractor Name: Fitzpatrick Associates, Inc.		Address: 134 Scott Dyer Rd C.R. 04107		Phone: 767-2104		<div style="border: 2px solid black; padding: 5px; text-align: center;"> <b>PERMIT ISSUED</b>                  Permit Issued:  <b>AUG - 4 1997</b>  <b>CITY OF PORTLAND</b> </div>	
Past Use: Vacant Land		Proposed Use: 1-fam		COST OF WORK: \$ 205,000.00 PERMIT FEE: \$ 1,045.00			
Proposed Project Description: Construct Single Family Dwelling Attached 2-car garage 14 x 12 Deck		FIRE DEPT. <input type="checkbox"/> Approved <input type="checkbox"/> Denied Signature:		INSPECTION: Use Group <b>R3</b> Type <b>SB</b> Signature:		Zone: <b>R-3</b> CBL: <b>11-A-019</b>	
						Zoning Approval: <b>OK WS 8/1/97</b> Special Zone or Reviews: <input type="checkbox"/> Shoreland <input type="checkbox"/> Wetland <input type="checkbox"/> Flood Zone <input type="checkbox"/> Subdivision <input checked="" type="checkbox"/> Site Plan maj <input type="checkbox"/> minor <input type="checkbox"/> mm	
PEDESTRIAN ACTIVITIES DISTRICT (P.A.D.) Action: <input type="checkbox"/> Approved <input type="checkbox"/> Approved with Conditions <input type="checkbox"/> Denied Signature: _____ Date: _____							
Permit Taken By: <b>Mary Gresik</b>		Date Applied For: <b>30 July 1997</b>					

- This permit application does not preclude the Applicant(s) from meeting applicable State and Federal rules.
- Building permits do not include plumbing, septic or electrical work.
- 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..

**PERMIT ISSUED WITH LETTER**

**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 provisions of the code(s) applicable to such permit

01 August 1997  
30 July 1997

SIGNATURE OF APPLICANT **Jowl Fitzpatrick** ADDRESS: \_\_\_\_\_ DATE: \_\_\_\_\_ PHONE: \_\_\_\_\_

RESPONSIBLE PERSON IN CHARGE OF WORK, TITLE \_\_\_\_\_ PHONE: \_\_\_\_\_

White-Permit Desk Green-Assessor's Canary-D.P.W. Pink-Public File Ivory Card-Inspector

**Zoning Appeal**

Variance  
 Miscellaneous  
 Conditional Use  
 Interpretation  
 Approved  
 Denied

**Historic Preservation**

Not in District or Landmark  
 Does Not Require Review  
 Requires Review

**Action:**

Approved  
 Approved with Conditions  
 Denied

Date: \_\_\_\_\_

CEO DISTRICT 7

COMMENTS

8/20/97 - checked job site - re-inspected - foundation in  $\Phi$   
backfilled - foundation appears to be OK

10/10/97 - Framing Rough In - plumbing Rough in OK  $\Phi$

12/20/97 - Called contractor - advised that we still need  
design prof. Spec & Stamp on garage beam  $\Phi$

1/6/98 - Called for final - Several items to be done - MAJOR PROBLEM -

① Intern Stairs & balconies - many balusters do not meet 4" Rule - everywhere  
from 4 1/8" to 4 1/2" spacing - MAJOR PROBLEM - advised Builder this must be complied with  $\Phi$

② Wire hole for garage door opener must be caulked

③ Washer drain hole in laundry room floor over 4" dia - must be covered

1/8/98 apt w/ Boulder & Mike Rupert on 1/9/98 re: Item #1 above - Boulder will comply  $\Phi$

2/9/98 Re-Inspect - Items 1/2/3 above Complied with (See attachments)

Issue Temp Coy  $\Phi$  - Expires 5/31/98

Single Family Dwelling w/attached garage deck

Contractor -

Co Per Jim Wendell memo of 2/6/98 (1) Item  
(attached)

10-27-98 Send copy of New CofO to Fitzpatrick ASSO.

Inspection Record		Date
Type		
Foundation:	OK $\Phi$	2/21/98
Framing:		
Plumbing:		
Final:		
Other:		



**CITY OF PORTLAND**  
**Planning and Urban Development Department**

**MEMORANDUM**

**TO:** Code Enforcement

**FROM:** Jim Wendel, Development Review Coordinator

**DATE:** October 28, 1998

**SUBJECT:** Certificate of Occupancy  
29 Graystone Lane (lot 19)

A site visit on 10-28-98 was made to review the completion of the conditions of the site plan approval dated 8-1-97 and previous outstanding issues; my comments are:

It is my opinion that all of the conditions of site plan approval have been satisfactorily completed and a **permanent Certificate of Occupancy could be issued** assuming Code Enforcement has no outstanding issues.

BUILDING PERMIT REPORT

DATE: 4 Aug 97 ADDRESS: 290 Graystone Ln (Lot #9)  
REASON FOR PERMIT: To Construct a single family dwelling with attached garage  
BUILDING OWNER: Faustino + Maria Donatelli  
CONTRACTOR: Fitzpatrick Associates Inc.  
PERMIT APPLICANT: Joe Fitzpatrick APPROVAL: \*1, \*2, \*3, \*6, \*8, \*9, \*10, \*11, \*12, \*16, \*21, \*25, \*26, \*27, \*28 ~~DENIED~~

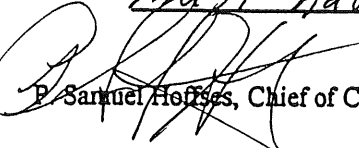
CONDITION(S) OF APPROVAL

- X 1. This permit does not excuse the applicant from meeting applicable State and Federal rules and laws.
- X 2. Before concrete for foundation is placed, approvals from the Development Review Coordinator and Inspection Services must be obtained. (A 24 hour notice is required prior to inspection)
- 3. Precaution must be taken to protect concrete from freezing.
- 4. It is strongly recommended that a registered land surveyor check all foundation forms before concrete is placed. This is done to verify that the proper setbacks are maintained.
- X 5. Private garages located beneath habitable rooms in occupancies in Use Group R-1, R-2, R-3 or I-1 shall be separated from adjacent interior spaces by fire partitions and floor/ceiling assembly which are constructed with not less than 1-hour fire resisting rating. Private garages attached side-by-side to rooms in the above occupancies shall be completely separated from the interior spaces and the attic area by means of 1/2 inch gypsum board or the equivalent applied to the garage means of 1/2 inch gypsum board or the equivalent applied to the garage side. (Chapter 4 Section 407.0 of the BOCA/1996)
- X 6. All chimneys and vents shall be installed and maintained as per Chapter 12 of the City's Mechanical Code. (The BOCA National Mechanical Code/1993) U.L. 103.
- 7. Sound transmission control in residential building shall be done in accordance with Chapter 12 section 1214.0 of the city's building code.
- X 8. Guardrail & Handrails A guardrail system is a system of building components located near the open sides of elevated walking surfaces for the purpose of minimizing the possibility of an accidental fall from the walking surface to the lower level. Minimum height all Use Groups 42" , except Use Group R which is 36". In occupancies in Use Group A, B, H-4, I-1, I-2 M and R and public garages and open parking structures, open guards shall have balusters or be of solid material such that a sphere with a diameter of 4" cannot pass through any opening. Guards shall not have an ornamental pattern that would provide a ladder effect.
- X 9. Headroom in habitable space is a minimum of 7'6".
- X 10. Stair construction in Use Group R-3 & R-4 is a minimum of 10" tread and 7 3/4" maximum rise. All other Use group minimum 11" tread, 7" maximum rise.
- X 11. The minimum headroom in all parts of a stairway shall not be less than 80 inches.
- X 12. Every sleeping room below the fourth story in buildings of use Groups R and I-1 shall have at least one operable window or exterior door approved for emergency egress or rescue. The units must be operable from the inside without the use of special knowledge or separate tools. Where windows are provided as means of egress or rescue they shall have a sill height not more than 44 inches (1118mm) above the floor. All egress or rescue windows from sleeping rooms shall have a minimum net clear opening height dimension of 24 inches (610mm). The minimum net clear opening width dimension shall be 20 inches (508mm), and a minimum net clear opening of 5.7 sq. ft.
- 13. Each apartment shall have access to two (2) separate, remote and approved means of egress. A single exit is acceptable when it exits directly from the apartment to the building exterior with no communications to other apartment units.
- 14. All vertical openings shall be enclosed with construction having a fire rating of at least one (1)hour, including fire doors with self closer's.
- 15. The boiler shall be protected by enclosing with (1) hour fire-rated construction including fire doors and ceiling, or by providing automatic extinguishment.
- X 16. All single and multiple station smoke detectors shall be of an approved type and shall be installed in accordance with the provisions of the City's Building Code Chapter 9, Section 19, 920.3.2 (BOCA National Building Code/1996), and NFPA 101 Chapter 18 & 19. (Smoke detectors shall be installed and maintained at the following locations):
  - In the immediate vicinity of bedrooms
  - In all bedrooms
  - In each story within a dwelling unit, including basements

In addition to the required AC primary power source, required smoke detectors in occupancies in Use Groups R-2, R-3 and

I-1 shall receive power from a battery when the AC primary power source is interrupted. (Interconnection is required)

17. A portable fire extinguisher shall be located as per NFPA #10. They shall bear the label of an approved agency and be of an approved type.
18. The Fire Alarm System shall be maintained to NFPA #72 Standard.
19. The Sprinkler System shall be maintained to NFPA #13 Standard.
20. All exit signs, lights, and means of egress lighting shall be done in accordance with Chapter 10 Section & Subsections 1023. & 1024. Of the City's building code. (The BOCA National Building Code/1996)
- X21. All construction and demolition debris must be disposed at the City's authorized reclamation site. The fee rate is attached. Proof of such disposal must be furnished to the office of Inspection Services before final Certificate of Occupancy is issued or demolition permit is granted.
22. Section 25-135 of the Municipal Code for the City of Portland states, "No person or utility shall be granted a permit to excavate or open any street or sidewalk from the time of November 15 of each year to April 15 of the following year".
23. The builder of a facility to which Section 4594-C of the Maine State Human Rights Act Title 5 MRSA refers, shall obtain a certification from a design professional that the plans commencing construction of the facility, the builder shall submit the certification to the Division of Inspection Services.
24. This permit does not excuse the applicant from obtaining any license which may be needed from the City Clerk's office.
- X25. Ventilation shall meet the requirements of Chapter 12 Sections 1210. of the City's Building Code.
- X26. All electrical and plumbing permits must be obtained by a Master Licensed holders of their trade.
- X27. All conditions of the site plan approval must be met before a certificate of approval can be granted
- X28. Your proposed plan shows a structural steel beam in the garage - your application didn't have a design for this beam. It must be designed by a design engineer - before this is installed this office must have this design information.

  
P. Samuel Heffes, Chief of Code Enforcement

cc: Lt. McDougall, PFD  
Marge Schmuckal

CITY OF PORTLAND, MAINE  
PUBLIC NOTICE

To All Building Permit Applicants and/or Contractors:

Effective immediately all temporary erosion control measures as shown on submitted site plans or as made part of a conditional approval of a site plan shall be installed, maintained, and inspected for proper functioning. Erosion control measures include but are not limited to silt fencing hay bales, stone check dams, earthen berms, stone lined swales, riprap embankments, riprap inlet/outlets of any pipe channel or culvert, sodded or grass strips, hay mulch cover on exposed soils, jute matting or erosion control blanket/matting, geotextile grids or webbing, and any provision approved by the City Engineer or Development Review Coordinator to decrease erosion or sedimentation.

All temporary and permanent erosion control measures shall be in conformance with the Maine Erosion and Sediment Control Handbook for construction: Best Management Practices as published by Cumberland County SWCD and the Maine Department of Environmental Protection. Consistent failure to install, maintain, or construct in an acceptable manner will result in a stop work order on the building permit. All erosion control measures shall be established in proposed areas of disturbed soils resulting from construction activities prior to actual construction unless a specific deadline has been made a condition of approval or agreed to by a Public Works Engineer or the Development Review Coordinator.

Effective immediately any request for Certificate of Occupancy will be denied if the above measures have not been addressed or completed. Only under extreme conditions, due to weather, shall the omission of the erosion control standards be included on the conditions for a Certificate of Occupancy, otherwise the request for a Certificate will be refused.

The City of Portland Planning Department and Public Works Department consider Erosion and Sediment Control Planning to be an absolutely necessary initial construction activity that requires as much attention and enforcement as building construction. For the protection of sensitive waterbodies, undisturbed lands, neighboring properties, established vegetated areas, and municipal drainage systems please pay careful attention to erosion and sediment control measures and conform to the notes, details, and conditions of approval as noted on your approved site plan. These controls must be installed and maintained continuously throughout the construction period. The City may inspect the site at any time to ensure compliance, and violations could result in work stoppage orders as indicated above.

We appreciate your prompt compliance with these requirements.



CITY OF PORTLAND  
Planning and Urban Development Department

MEMORANDUM

TO: Joseph E. Gray, Jr., Director of Planning and Urban Development  
Alexander Jaegerman, Chief Planner

FROM: James Seymour, Acting Development Review Coordinator

DATE: April 5, 1995

SUBJECT: Disclaimer Statement of Existing Poorly Drained Areas

It is the responsibility of the lot owner/homebuilder to assess drainage and provide for appropriate stormwater management design and engineering in an area which has evidence of poor hydrologic soil conditions, and/or a history of poor drainage, ponding, or soils saturation due to topography, fluctuation of seasonal ground water tables creating surface flooding, or as a result from rainfall events or snow/ice melts. The City of Portland is not responsible for resolving the drainage of land areas which could be described in any one of the above conditions.

The City of Portland Development Review Coordinator reviews lot grading for all single family homes to assure that field elevations will conform to the grades which exist at the abutting property line or to the grades which have been previously approved at the abutting property lines. The construction standards require that final foundation elevations be provided on site plans which are a minimum of 2 1/2 feet higher than street grades established at the frontage of the lot and provide positive drainage away from the entire foundation perimeter, including garage, and all basement accesses (ie. bulkheads, doorways and windows). As long as these standards are strictly enforced, most water problems on single family lots will be avoided. However, in locations with clear evidence of hydric soils, the following note shall be placed on all approved site plans:

"The City of Portland Development Review Coordinator has reviewed and approved this plan. The lot is located in an areas that is subject to seasonal conditions of saturation by surface or groundwater. Approval of this plan does not constitute a guarantee that no water problems will be experienced by the homeowners in this vicinity. Homeowners are advised to exercise care and diligence to ensure that their home and yard is adequately constructed and graded for localized drainage conditions."







**CITY OF PORTLAND, MAINE  
DEVELOPMENT REVIEW APPLICATION  
PLANNING DEPARTMENT PROCESSING FORM  
ADDENDUM**

19970044

I. D. Number

**Donatelli, Faustino & Marie**

Applicant

**, Portland, ME**

Applicant's Mailing Address

**Fitzpatrick Assoc./Joel**

Consultant/Agent

**767-2104**

**741-2421**

Applicant or Agent Daytime Telephone, Fax

**7/30/97**

Application Date

**Graystone Ln, 29, Lot #19**

Project Name/Description

**29 Graystone Ln**

Address of Proposed Site

**411-A-019**

Assessor's Reference: Chart-Block-Lot

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**Inspections Conditions for Approval**

1. Separate permits shall be required for future decks and/or pools.

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CITY OF PORTLAND, MAINE  
DEVELOPMENT REVIEW APPLICATION  
PLANNING DEPARTMENT PROCESSING FORM  
ADDENDUM

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Graystone Ln, 29, Lot #19

Project Name/Description

29 Graystone Ln

Address of Proposed Site

411-A-019

Assessor's Reference: Chart-Block-Lot

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**DRC Conditions for Approval**

- Site Plan Review (Addendum) Conditions of Approval #'s 1, 2, 3, (29 Graystone Lane) 4, 5, 6, 8, 9, 10, 11, and 12.
  - Eroded soil shall be contained on site. Graystone Lane shall be kept clean of tracked soil from vehicles.
-

CITY OF PORTLAND, MAINE  
SITE PLAN REVIEW (ADDENDUM)  
CONDITIONS OF APPROVAL

APPLICANT: FAUSTINO & MARIE DONATELLI  
 ADDRESS: PORTLAND, ME.  
 SITE ADDRESS/LOCATION: 29 GRAYSTONE LANE (LOT 19)  
 DATE: 8/1/97

Review by the Development Review Coordinator is for General Conformance with ordinances and standards only and does not relieve the applicant, his contractors or agents from the responsibility to provide a completely finished site, including but not limited to: increasing or concentrating of all surface runoff onto adjacent or downstream properties, issues regarding vehicle sight distance, location of public utilities and foundation elevations.

CONDITIONS CHECKED OFF BELOW WILL BE ENFORCED FOR YOUR SITE PLAN

1.  All damage to sidewalk, curb, street, or public utilities shall be repaired to City of Portland Standards prior to issuance of a Certificate of Occupancy.
2.  Two (2) City of Portland approved species and size trees must be planted on your street frontage prior to issuance of a Certificate of Occupancy.
3.  Your new street address is now 29 GRAYSTONE LANE, the number must be displayed on the street frontage of your house prior to issuance of Certificate of Occupancy.
4.  The Development Review Coordinator (874-8300 ext. 8722) must be notified five (5) working days prior to date required for final site inspection. Please make allowances for completion of site plan requirements determined to be incomplete or defective during the inspection. This is essential as all site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.
5.  Show all utility connections: water, sanitary sewer, storm drain, electric, telephone, cable.
6.  A sewer permit is required for your project. Please contact Carol Merritt at 874-8300, ext. 8828. The Wastewater and Drainage section of Public Works must be notified five (5) working days prior to sewer connection to schedule an inspector for your site.
7.  A street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)

8.  As-built record information for sewer and stormwater service connections must be submitted to Parks and Public Works Engineering Section (55 Portland Street) and approved prior to issuance of a Certificate of Occupancy.
9.  The building contractor shall check the subdivision recording plat for pre-determined first floor elevation and establish the first floor elevation (FFE) and sill elevation (SE) to be set above the finish street/curb elevation to allow for positive drainage away from entire footprint of building.
10.  The site contractor shall establish finish grades at the building foundation, bulkhead and basement windows to be in conformance with the first floor elevation (FFE) and sill elevation (SE) set by the building contractor to provide for positive drainage away from entire footprint of building.
11.  A drainage plan shall be submitted to and approved by Development Review Coordinator showing first floor elevation (FEE), sill elevation (SE), finish street/curb elevation, lot grading, existing and proposed contours, drainage patterns and paths, drainage swales, grades at or near abutting property lines, erosion control devices and locations and outlets for the drainage from the property.
12.  The Development Review Coordinator reserves the right to require additional lot grading or other drainage improvements as necessary due to field conditions.
13.  ERODED SOIL SHALL BE CONTAINED ON SITE.  
GRAY STONE LANE SHALL BE KEPT CLEAN OF  
TRACKED SOIL FROM VEHICLES.

cc: Katherine Staples, P.E., City Engineer

14.  FINAL GRADING SHALL NOT PREVENT THE 4" FOUNDATION DRAIN FROM LOT 20 FROM FUNCTIONING PROPERLY AS GRAVITY FLOW.

Applicant: Joel Fitzpatrick  
Address: 29 Graystone Lane (lot # 19)  
Pheasant Hill C-B-L: 411-A-19

Date: 8/1/97

CHECK-LIST AGAINST ZONING ORDINANCE

Date - New

Zone Location - R-5-A PRUD Development

Interior or corner lot -

Proposed Use/Work - New Single Family Home with attached garage & porch

Sewage Disposal - City

Lot Street Frontage - minimum setback from external subdivision property lines (Bldg is 260' in length) - 25' req - 50' shown

Front Yard -

Rear Yard - note there is no min distance from other dwelling units

Side Yard -

Projections - recreational areas shall be located AT LEAST 25' from dwelling units - none shown that close

Width of Lot -

Height - 35' max - At worst case scenario on the rear drop-off, there is 32' to the ridge  
2 story shown

Lot Area - 36,220 sq ft shown

Lot Coverage/ Impervious Surface -

Area per Family -

Off-street Parking - 2 req - 2 shown

Loading Bays - N/A

Site Plan - minor/minor

Shoreland Zoning/ Stream Protection - N/A

Flood Plains - Panel 7 of 17 - Zone C

Inspection Services  
P. Samuel Hoffses  
Chief



Planning and Urban Development  
Joseph E. Gray Jr.  
Director

## CITY OF PORTLAND

July 22 ,1997

Fitzpatrick Associate, Inc.  
134 Scott Dyer Rd.  
Cape Eliz. Me. 04107

RE: 29 Graystone Ln. ( lot # 19 )

Dear Sir,

Your application to construct a single family dwelling with attached two car garage has been reviewed and a permit is herewith issued subject to the following requirements. This permit does not excuse the applicant from meeting applicable State and Federal laws.

**NO CERTIFICATE OF OCCUPANCY WILL BE ISSUED UNTIL ALL REQUIREMENTS OF THIS LETTER ARE MET.**

### Site Plan Review Requirements

**Building Inspection:** Approved : With conditions: ( See attached ) M. Schmuckal  
**Development Review Coordinator:** Approved with conditions : ( See attached ) J. Windel

### Buildng Code Requirements

1. Please read and implement attached building permit report items 1,2,5,6, 8,9,10,11,12,16,21,25,26, 27 & 28 .

Sincerely,

  
P. Samuel Hoffses  
Chief of Code Enforcement

c: M. Schmuckal , S. Wendel



CITY OF PORTLAND  
Planning and Urban Development Department

MEMORANDUM

411-A-19

TO: Code Enforcement

FROM: Jim Wendel, Development Review Coordinator

DATE: February 6, 1998

SUBJECT: Request for Certificate of Occupancy  
29 Graystone Lane (lot 19)

On February 6, 1998 the site was reviewed for compliance with the site plan approval dated 8-1-97; my comments are as follows:

1. Final site grading and landscape work needs to be completed. This work shall be completed by May 31, 1998.

It is my opinion that a temporary Certificate of Occupancy could be issued assuming Code Enforcement has no outstanding issues.



**FitzPatrick Associates, Inc. General Construction and Development**

January 15, 1998

P. Samuel Hoffses, Chief of Code Enforcement  
City of Portland  
Portland, ME 04101

RE: 29 Graystone Lane (Lot #19)

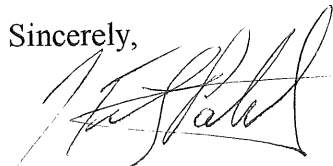
Dear Mr. Hoffses,

This letter is in reference to the guard rail and hand rail system my Company has built at 29 Graystone Lane, Portland, ME. Your office has brought two code issues to my attention. One being that the spindles on the rail system do not meet the 4" minimum spacing requirement, and the second being the hand rail going down the slope of the stairway should be a minimum of 36". I am currently in the process of ordering new spindles and making plans to rebuild the rail system to meet the 4" code spacing requirement.

Regarding the second issue of handrail height: I would ask your office to please reconsider. The guard rail at the balcony is 42", which I believe does meet code requirements, however the sloping handrail going down the stairway is 34", my company has always built these sloping handrails at this height believing that 34" was meeting the code requirements. In reading the information sent to me by your office and other information I have obtained from the code books. It seems to me that different people in different situations could interpret what their reading very differently. There is one sentence in the paper work sent to me from your office that states 34" is the minimum height. Whether the requirement is 34" or 36" I truly believe that the sloped handrail height of 34" at 29 Graystone Lane is a very safe height and does not pose a safety hazard to any person using it. So I am asking that your office please reconsider their decision and let the sloped rail system remain at 34".

Thank you for considering my request.

Sincerely,



Joel S. FitzPatrick  
FitzPatrick Associates, Inc.

**From:** Natalie Burns  
**To:** Portland.CityHall(GARY), MJN  
**Date:** 1/13/98 8:50am  
**Subject:** Guards/handrails -Reply

Mike, is this requirement from BOCA? There is a provision that allows approval of modifications when there are "practical difficulties" in carrying out the code. The owner or his representative has to apply in writing for this, and the "spirit and the intient of the law" must be observed and "the public health, safety and welfare" assured. The application and the decision of the person making the decision both have to be in writing and have to be recorded with the permit application in your files (this is in sec. 106.2 of BOCA). I don't know whether this application can meet these standards if the openings are wide enough for someone to get a head stuck.

He should understand that the City does not have liability for these things, but he almost certainly will, even if you were to grant him the modification.

**CC:** Portland.CityHall(MBA),

**From:** Gary Wood  
**To:** MJN, Natalie  
**Date:** 1/13/98 11:52am  
**Subject:** Guards/handrails -Reply

I like NLB's answer on this. It provides some room for reasonable flexibility which I'm sure this contractor would appreciate. Make sure he understands that the risk of any variation is on him and the property owner so he and the owner would be well advised to check with BOCA to find out the basis for the spacing requirement: ie if kids start crawling at an age where they could stick their head through a 5" gap they should reduce at least those gaps for their own protection and insurance purposes ie we would disclose this situation if an nsuror ever enquired about code compliance. Also make it clear that the property owner has to be involved in the application for any waiver. ie we don't want to help any contractor cover up a problem.

**From:** Gary Wood  
**To:** MJN, NATALIE  
**Date:** 1/13/98 12:57pm  
**Subject:** Railing spaces

NLB tells me it was Mike's response that I liked. That's ok. I still like it.

**From:** Joe Gray  
**To:** Portland.CityHall(MBA, SPH), MJN  
**Date:** 1/16/98 10:19am  
**Subject:** Guards/handrails -Reply -Forwarded -Reply

Mike, can we get something from the owner acknowledging that these stairs do not meet code and that they, not the city assume any liability?

>>> MICHAEL NUGENT 01/15/98 04:34pm >>>

Joel S.FitzPatrick has constructed a home at 29 Graystone Lane for the Donatelli family. Upon final inspection, Kevin alertly found that the interior guardrailing (handrail) system failed to meet two sections of the BOCA code. The balusters were too far apart and the height going down the stairs was 34" instead of 36". The balcony rail is 42" in height and is compliant at landings. The builder is going to replace the balusters with code compliant stock but has requested in writing a height waiver. It should be noted that we will need a similar request from the new owner as well before we discuss finalize anything.

A side note--Section 315.3 of the CABO 1&2 family Dwelling code allows the 34" height, and Section 310.6 of the BOCA states that "all such (R4) structures shall be designed in accordance with the one- and two-family dwelling code listed in Chapter 35 (1995 CABO) or in accordance with the requirements of this code applicable to Use Group R-3"

The "practical difficulty" that the builder has is that it will cost somewhere more than \$5,000 but less than \$10,000 to replace the whole thing. We believe that this request is within the authority stated in Natalie's attachment but would like the opinion of our supervisory staff prior to entering into final discussions, but we support the solution of replacing the balusters and allowing the 34"height.

**CC:** Portland.CityHall(GARY, NATALIE),

**From:** MARK ADELSON  
**To:** MJN  
**Date:** 1/15/98 5:07pm  
**Subject:** Guards/handrails -Reply -Forwarded -Reply

As long as this is properly documented as per Natalie's memo it ok with me. What do others think? Mark A.

**From:** Gary Wood  
**To:** MJN  
**Date:** 1/16/98 1:27pm  
**Subject:** Guards/handrails -Reply -Forwarded -Reply

I think your solution is a good one.