



Planning and Development Department
Zoning Board of Appeals
Practical Difficulty Variance Application

Applicant Information:

PME I, L.P.

Name

Business Name

1140 RESERVOIR AVE

Address

CRANSTON RI 02920 6032

401 946 4600 401 942 9689

Telephone

Fax

Applicant's Right, Title or Interest in Subject Property:

OWNER

(e.g. owner, purchaser, etc.):

Current Zoning Designation: MIXED USE

SEE ATTACHED

Existing Use of Property:

VACANT FLOOR

MEAT PACKING FACILITY

Subject Property Information:

38 INDIA ST, PORTLAND ME

Property Address

029 L003001

Assessor's Reference (Chart-Block-Lot)

Property Owner (if different):

Name

Address

Telephone

Fax

Practical Difficulty Variance from Section 14 - 2.14 (3)(c)(A)

JAN 1 2009

WITHDRAW

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

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

Signature of Applicant

Date

1/9/09

Michael A. Voccola, Esq.
Corporate Vice President
401 946 4600 Extension 136
mvoccola@procgroup.com
Licensed in State of Connecticut

February 2, 2009

Marge Schmuckal - Zoning Administrator
City of Portland Zoning Board of Appeals
389 Congress Street Room 315
Portland, Maine 04101-3571
Via Hand Delivery

Re: **Request for Withdrawal Without Prejudice of Application for
Dimensional Variance
38 India Street, Portland, Maine
PME I, L.P.**

Dear Ms. Schmuckal and Members of the City of Portland Zoning Board of Appeals:

I write on behalf of The Procaccianti Group, LLC, a manager of PMEGP, LLC, the general partner of PME I, Limited Partnership, the owner of the property located at 38 India Street, Portland, Maine (Assessor's Reference 029 L003001 and formerly known as the Jordan's Meat Plant).

As you know, we filed an Application for Dimensional Variance and we are scheduled for a public hearing on Thursday, February 5, 2009. I write to request a withdrawal without prejudice of this Application. We hope to re-submit this application at some future date.

Thank you in advance for your cooperation.

Respectfully,
THE PROCACCIANTEI GROUP, LLC

Michael A. Voccola, Esq.

MAV/wp

cc: Bonnie L. Martinolich, Esq.

Corporate Headquarters
1140 Reservoir Avenue ■ Cranston, RI 02920
Telephone: 401.946.4600 ■ Fax: 401.943.6320
www.procgroup.com

FEB 1 2009



MEMO
Planning and Urban Development
Planning Division

To: Chair Saucier and Members of the Zoning Board of Appeals
From: Alexander Jaegerman, Planning Division Director *AS*
Date: January 28, 2009
Re: PME Practical Difficulties Variance Request
CC: Penny St. Louis Littell, Director of Planning & Urban Development

Under New Business on your agenda for February 5, 2009, there is a Practical Difficulty Variance Request re: 38 India Street, PME LLP, Applicant. While we do not generally comment on items before the Zoning Board of Appeals, we do want to provide some background information for the Board's consideration. In concert with the Director of Planning & Urban Development, we recommend that the Board not approve this request for a variance from the requirement that parking be set back 35 feet from the street in the B-3 zone.

Section 14-218(b)(5) of the Portland Land Use Code, limiting the location of surface parking lots, was enacted by the City Council on June 4, 2007, with an effective date of February 13, 2007, the date of the Planning Board's public hearing on the proposed amendment. (See attached Order 205-06/07) The policy for placing restrictions on surface parking was designed to both recognize and address the significant obstacle these parking lots placed upon the realization of the high density mixed use development. The 35 foot setback requirement was created in order to reserves sufficient depth at the street for potential building development in accordance with higher density, mixed use planning and zoning provisions.

The B-3 regulation requiring a 35 foot setback for surface parking lots, and other limitations on surface parking as a conditional use is patterned after the B-7 provisions. Attached please find the Planning Board Report #7-07 (minus attachments), which further explains the rationale for the amendments. Simply put, the consumption of land for surface parking has dominated large parts of our urban neighborhoods, limiting opportunities for high density mixed use development serviced by structured parking facilities and alternative travel modes, as envisioned in Portland's Comprehensive Plan, specifically as stated in Bayside Vision, Eastern Waterfront Master Plan and Downtown Vision. We have seen such parking lots persist for decades.

The City's policies to encourage dense, pedestrian-oriented and mixed-use development are critical elements for Portland's urban center. The setback for parking is an important tool in implementing the City's vision and there are recent projects that have successfully developed sites under these regulations. Recently the Portland Museum of Art developed a surface lot in the B-3 zone that complies with the 35 foot setback provision. In the B-7 zone, the Whole Foods market has respected the setback with respect to an undeveloped corner parcel originally slated for an office building, but currently undeveloped. They cannot expand their surface lot, which is otherwise grandfathered, into this corner at Pearl and Somerset. There are occasional inquiries that have sought to create surface parking at the street edge. If the policy is to be altered, that decision should rest with the City Council and not be superseded by the grant of a variance. A variance in this case could set a troublesome precedent.

Practical Difficulty Variance can be a very useful mechanism to grant relief to certain projects that generally meet the intent of the zoning ordinance, but need minor adjustment to the dimensional requirements. This tool should not be used to undermine the very policy that the setback is put in place to promote. That would be the effect in this case. We therefore respectfully request the Zoning Board not to grant the Practical Difficulty Variance in the subject case.

Attachments:

1. Order 205-06/07
2. Planning Board Report #7-07

Order 205-06/07 – 4/30/07

Given 1st reading & postponed: 4/30/07

Public Hearing, Amended & Passed 6/4/07 7-0 (Mavodones, Leeman absent)

NICHOLAS M. MAVODONES (MAYOR)

KEVIN J. DONOGHUE (1)

DAVID A. MARSHALL (2)

DONNA J. CARR (3)

CHERYL A. LEEMAN (4)

CITY OF PORTLAND

IN THE CITY COUNCIL

JAMES I. COHEN (5)

JAMES F. CLOUTIER (A/L)

JILL C. DUSON (A/L)

EDWARD J. SUSLOVIC (A/L)

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14, ARTICLE III, ZONING:
DIVISION 12. B-3, B-3b AND B-3c DOWNTOWN BUSINESS ZONES
§§14-217, 218, 220**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN THE CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. **That Chapter 14 of the Land Use Code, §14-217 (Permitted uses), be amended as follows:**

Sec. 14-217. Permitted uses.

- (a) The following uses are permitted in the B-3 and B-3b zones:

....

- (2) *Business:*

....

- p. ~~Parking garages and surface parking lots;~~

2. **That Chapter 14 of the Land Use Code, §14-218 (Conditional uses), be amended as follows:**

Sec. 14-218. Conditional uses.

....

- (b) The following uses are permitted as provided in section 14-474 (conditional uses), provided that, notwithstanding section 14-474(a) or any

other provision of this Code, the Planning Board shall be substituted for the board of appeals as the reviewing authority:

....

(5) Surface parking provided that:

- a. In the case of lot undergoing minor site plan review, no new surface parking spaces, parking aisles, or vehicle lanes shall be allowed within thirty-five (35) feet of any street, except for driveway(s) located perpendicular to the street and providing access to the site;
- b. In the case of a lot undergoing major site plan review, no new or existing surface parking spaces, parking aisles, or vehicle lanes shall be allowed within thirty-five (35) feet of any street, except for driveway(s) located perpendicular to the street and providing access to the site; and
- c. No surface parking spaces shall be encumbered by lease or other use commitment exceeding twenty-four (24) month term.

3. **That Chapter 14 of the Land Use Code, §14-220 (Dimensional requirements), be amended as follows:**

Sec. 14-220. Dimensional requirements.

- (h) ~~Minimum building height: No new construction of any building shall be less than thirty-five (35) feet in height within fifty (50) feet of any street frontage, except for parking attendant booths or bank remote teller facilities.~~

No new construction of any building shall be less than thirty-five (35) feet in height within fifty (50) feet of any street frontage, except that this provision shall not apply to:

1. Accessory building components and structures such as truck loading docks covered parking, mechanical equipment enclosures and refrigeration units.
2. Information kiosks and ticketing booths.
3. Public transportation facilities of less than 10,000 square feet, or additions of less than 5000 square feet to existing public

transportation facilities provided that the cumulative additions as of (date of adoption) do not exceed 10,000 square feet.

4. Additions to buildings existing as of (date of adoption) provided that the cumulative additions since (date of adoption) do not exceed ten percent (10%) of the building footprint on (date of adoption), except building additions on those portions of the lot located closer to the street line than the building footprint existing as of (date of adoption) shall not be included in this 10% limitation.
5. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures.
6. Additions to and/or relocation of designated historic structures or structures determined by the historic preservation committee to be eligible for such designation.
7. Parking attendant booths or bank remote teller facilities.
8. Structures accessory to parks and plazas.
9. Buildings or building additions of less than 2,500 square feet footprint, on lots or available building sites of less than 3,000 square feet.

BE IT FURTHER ORDAINED, that Section 14-218(b)(5), subparagraphs a-d shall apply to all applications filed on or after February 13, 2007.

CITY COUNCIL REPORT #16-07

**PROPOSED B-3 ZONE TEXT AMENDMENTS
VICINITY OF
B-3 DOWNTOWN BUSINESS ZONE
CITY OF PORTLAND, APPLICANT**

Submitted to:
City Council
Portland, Maine

Submitted by:
Bill Needelman, Senior Planner
April 12, 2007

1. INTRODUCTION

The Planning Division is proposing and the Planning Board is recommending two amendments to the B-3 Downtown Business Zone. The Council is asked to consider these amendments as reasonable incremental changes in two sections of the zone language: surface parking and minimum building heights. The parking changes would tighten restrictions on surface parking for the Downtown. The building height amendment would relax requirements for minimum building heights for certain smaller projects. Both amendments would make the B-3 more consistent with recent urban rezoning for the Bayside and the Eastern Waterfront districts.

The Planning Board held a Public Hearing and two workshops on these issues and the proposed text amendments to reflect Board comments and amendments to the original suggestions.

Surface Parking

In our urban peninsula mixed use districts, we have increasingly limited the extent of land use for surface parking lots. Surface parking is a use that involves minimum investment, provides a quick economic return, and consumes land for a use accessory to urban development, inhibiting the growth and development of the district with the mix of uses and density contemplated in the comprehensive plan. When surface lots are dedicated or encumbered with long term contractual obligations, the use can become quite permanent and thwart higher and better uses that may become otherwise economically viable.

The most comprehensive regulations of surface lots is found in the B-7 zone, in which surface lots are subject to setback requirements and lease term restrictions under the conditional use provisions. We are recommending that similar provisions be added to the B-3 zone to protect the downtown from increased land consumption by surface lots. The issue has some urgency as some redevelopment plans are on hold, and are under transfer of ownership and use that could result in demolitions and use for surface parking. The proliferation of surface lots like Top of the Old Port, an important development site that has not moved forward, and Portland Square properties, demonstrates the durability of the surface parking use when the market for large scale development is not sufficiently robust to overcome the economics of surface parking. It would be undesirable to tie up additional large and prominent parcels with surface lots without the types of controls crafted for the B-7 zone.

We are therefore recommending that the essential provisions of the B-7 be adapted, in simpler form, for the B-3 zone. We are anticipating an effective date provision of the date of this workshop, to avoid any new pending proceedings becoming grandfathered.

Minimum Building Height

About once or twice a year, we field proposals in the B-3 zones for building additions or accessory structures that do not meet the *minimum* 35 foot height requirement. Some examples are projects that could enhance the urban condition, or, at least, are innocuous additions that add value to the project site and use. There are few exceptions in the zoning for the minimum height. Later zones, like the B-7, have addressed this issue with a variety of exceptions. We are recommending similar treatment for the B-3 zone.

2. ZONE TEXT COMPARISONS:

During the course of their review, the Planning Board asked to have comparative zoning information to aid in review of the B-3 proposals. This report provides the following: (Attachments 1 and 2) a comparison of various zone texts for both parking and building height; (Attachment 3), a mapped sampling of downtown parcels to evaluate the building height language; and (Attachment 4) a map of the B-3 zone boundaries.

The tables in Attachments 1 and 2 provide comparable zone text from three mixed use urban zones found on the Portland peninsula – the B-3 Downtown Business Zone (the subject zone), the B-6 Eastern Waterfront Mixed Use Zone, and the B-7 Mixed Development District Zone. A review of these tables is illustrative both of an evolution in the City's thinking on parking and minimum building heights, and of different goals for the individual districts impacted.

B-3 Zone: The B-3 covers the established Downtown and Old Port areas. While vacant land exists in these areas, there is no question that an urban density has already been achieved for these areas in aggregate and the B-3 zone text encourages a continuation of development with an urban form. In the current language, surface parking is a permitted use, and all building heights must be 35 feet tall within 50 feet of the street.

B-6 Zone: The B-6 zone covers a limited portion of the Eastern Waterfront area south of Fore Street. This area is almost entirely given to parking uses now, but is encouraged to transition to active mixed uses in an urban form. The recently approved Longfellow Residence and Retail project is the first project to be reviewed under the B-6 language and this project follows the goals of the zone by replacing surface parking with high density mixed use development. The B-6 text treats surface parking as conditional use, requiring limits on leases and requirements that parking be designed to transition to a higher density use in the future. B-6 text also requires at least three “habitable” floors for all development unless specifically exempted.

B-7 Zone: The B-7 zone covers much of the western Bayside area. The Bayside neighborhood has seen challenges achieving developments that exhibit urban form (with buildings built at the street line and that encourage pedestrian activity) and urban density (buildings over two stories tall.) B-7 language is the most restrictive of surface parking,

street line than the building footprint existing as of (date of adoption) shall not be included in this 10% limitation.

***** See Note*****

5. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures.
10. Additions to and/or relocation of designated historic structures or structures determined by the historic preservation committee to be eligible for such designation.
11. Parking attendant booths or bank remote teller facilities.
12. Structures accessory to parks and plazas.
13. Buildings or building additions of less than 2,500 square feet footprint, on lots or available building sites of less than 3,000 square feet.

Notes on New Language

*** Provision 4 above would allow lower building additions to be constructed on the front of existing buildings currently set back from the street.

3. COMPREHENSIVE PLAN

The primary component of the City's Comprehensive Plan underlying the B-3 Zone is the 1991 *Downtown Vision Plan*. Additional policies informing land uses Downtown are found in the *Plan for the Portland Arts District* and the 1999 *Downtown Traffic and Streetscape Study*. Elements of these Downtown planning efforts were updated and included into *Comprehensive Plan, Goals and Policies*, document adopted by the City Council in 2005. The applicable sections from the *Goals and Policies* of the Comprehensive Plan are included with this report in Attachment B.

The policies of the *Downtown Vision Plan* are succinctly summarized in the purpose statement of the B-3 Downtown Business Zone provided below.

Sec. 14-216. B-3 Purpose.

- (a) *The purposes of the B-3 and B-3b downtown business zones are to:*
 - (1) *Maintain and enhance the role of the downtown as the business and commercial center of the region;*

- (2) *Enhance and promote the orderly expansion of retail and service businesses downtown, satisfying the related needs of the city's resident, working and visitor populations;*
 - (3) *Encourage increased housing opportunity downtown for a diverse residential population;*
 - (4) *Enhance the pedestrian environment through the encouragement of intensive mixed-use activities, through the enhancement and maintenance of public and private open space, and through the enlivenment and increased attractiveness of the street environment;*
 - (5) *Encourage excellence in urban design;*
 - (6) *Preserve and capitalize on the unique character and historic fabric of the downtown through the encouragement of reuse of significant existing structures;*
 - (7) *Provide opportunity for an enhanced presence and integration of the arts and cultural activities downtown;*
 - (8) *Reinforce the role of the downtown as a meeting place for community residents and visitors alike from all walks of life and all socio-economic groups;*
 - (9) *Provide adequate parking and transportation facilities which promote accessibility, enhance and encourage development opportunity, and enhance and protect the pedestrian environment;*
 - (10) *In the pedestrian activities district (PAD) overlay zone, create continuity of pedestrian-oriented uses along streets where such uses predominate and along streets which, over time, will establish and maintain a strong retail and pedestrian-oriented use pattern; and*
 - (11) *Provide for the relocation of residents who are displaced by development.*
- (b) *The B-3c downtown business zone recognizes that the business uses appropriate in this zone are constrained by the proximity of multi-unit elderly housing. In addition to the purposes of the B-3 and B-3b zones, the purpose of the B-3c zone is to promote the safety, quiet enjoyment, and general welfare of citizens residing in a dense urban neighborhood by decreasing the conflicts between residential uses and loud, uncontrolled late night activities.*

4. RECOMMENDATIONS

The Planning Board voted 6-1 (Lowry opposed) to recommend the proposed text amendments as reasonable adjustments to the land use code that are consistent with the City's policies for the Downtown district and the Comprehensive Plan.

The parking restrictions prevent the construction of new parking at the critical street edge where buildings and active uses are clearly promoted by the policies of the City and the purposes of the B-3 Zone.

The relaxation of the 35 foot building height requirement for certain development will promote healthy adaptation and reuse of existing buildings and allow smaller scale buildings where no buildings would be developed under the current restriction.

In opposing the amendments, Mr. Lowry expressed his general agreement on the proposed changes but he was concerned with the lack of "grandfathering" for surface parking lots subject to major site plan review. As written, the proposed language would allow existing surface lots to remain while subject to minor development review (structures of 10,000 square feet or less). Major development (10,000 square feet or greater) would require removal of existing surface lots within 35 feet of street right of way.

Attachments:

- A. Current B-3 Zone Text
- B. Comprehensive Plan Excerpts

- 1. Surface Parking Comparison Table
- 2. Minimum Building Height Comparison Table
- 3. B-3 Height Amendment "Sample Parcel" Map
- 4. B-3 Zone Boundary Map



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*Penny St. Louis Littell- Director of Planning and Development
Marge Schmuckal, Zoning Administrator*

TO: CHAIR AND ZONING BOARD OF APPEALS
FROM: MARGE SCHIMUCKAL, ZONING ADMINISTRATOR
SUBJECT: 38 INDIA STREET – 29-L-001 – B-3/ CONDITIONAL CONTRACT ZONE
DATE: JANUARY 29, 2009

This property is wholly within a B-3 Downtown Business Zone. There is also a conditional contract zone #C44 that affects the site which would allow a specific development for a hotel, residential condominium units with restaurants, bars and retail commercial space as well as underground parking. Prior to development, the property is governed by the zoning provisions, as such may be amended from time to time, applicable in the underlying B-3 Zone.

The B-3 zone lists “parking garages” and not “surface parking” under permitted uses, section 14-217. “Surface parking” is specifically listed under conditional uses that go to the Planning Board, section 14-218(b)(5), for approval. The City Council approved the addition of this section of the ordinance to the B-3 on June 4, 2007. According to City Councilor Kevin Donoghue, this particular site was one of the parcels for case studies when the amendment was discussed and approved.

This variance appeal is before the Zoning Board of Appeals because the appellant requests a variance of the required setback of thirty-five (35) feet from any street line. The appellant has submitted plans showing that the allowed permitted use for surface parking can be met for ninety-nine (99) parking spaces. However, the appellant can fit 174 surface parking spaces within the lot if the thirty-five foot setback variance is granted. There are varying amounts of setbacks. The closest setback is shown at 6 feet. The next step would be for the Planning Board to hear the conditional use appeal after the decision of the Zoning Board.

Please note that under section 14- 473(c)(4)(d), “Specific Variances Prohibited” it states that, “No variance shall be granted which would be greater than the minimum variance necessary to relieve the undue hardship or the hardship of the applicant.” I believe part of the Board’s responsibility is to determine that the final proposal is the minimum variance necessary to meet all the criteria necessary to be met under State and City requirements.

It is also my understanding that the Zoning Board of Appeal's role is to interpret the Zoning Ordinance as it is written. There is also a responsibility to properly interpret the practical difficulty requirements as written. Generally speaking, a severe economic downturn would not normally affect the Board's decision unless the practical difficulty requirements can be interpreted to apply. The responsibility for final policy decisions as it relates to ordinance requirements, belong solely with the City Council. It would be the City Council's responsibility to amend the City's ordinances if it was felt that the current requirements were too harsh during economic down times.

From: Kevin Donoghue
To: MES@portlandmaine.gov
Date: 1/26/2009 5:48:37 PM
Subject: Re: Jordan's Meats

Yes.

>>> Marge Schmuckal 01/26/09 9:24 AM >>>

Kevin,

Thank you for the input. This is good history to know. Can I use your e-mail to me as part of the packet to the ZBA? I will also be preparing a memo to the Board outlining history of this section of the ordinance etc.

Marge

>>> Kevin Donoghue <kjdonoghue@portlandmaine.gov> 1/25/2009 10:20:48 PM >>>

Hi Marge, Councilor Marshall let me know about Jordan's Meats. I seem to remember that this parcel was one of the case studies when we considered passage of the thirty-five foot rule, which, it must be said, had a very positive impact on the former YWCA. I am not supportive of granting this waiver as one of the desirable side effects of this urban design rule is that it discourages land banking by reducing its incentives. I want to see them go through with demolition, but not at the price of a permanent surface lot that covers the entire parcel.

Thanks,
Kevin

--
Kevin Donoghue - Portland City Council
kevindonoghue.blogspot.com
calendar and media

CC: AQJ@portlandmaine.gov

determination of need by the director of the department of health and human services.

- b. The facility shall be registered with the city of Portland department of health and human services.

➔ (5) Surface parking provided that:

- a. In the case of lot undergoing minor site plan review, no new surface parking spaces, parking aisles, or vehicle lanes shall be allowed within thirty-five (35) feet of any street, except for driveway(s) located perpendicular to the street and providing access to the site;
- b. In the case of a lot undergoing major site plan review, no new or existing surface parking spaces, parking aisles, or vehicle lanes shall be allowed within thirty-five (35) feet of any street, except for driveway(s) located perpendicular to the street and providing access to the site; and
- c. No surface parking spaces shall be encumbered by lease or other use commitment exceeding twenty-four (24) month term.

(Ord. No. 241-91, 3-11-91; Ord. No. 36-93, 7-7-93; Ord. No. 46-97, § 4, 8-4-97; Ord. No. 51-00, § 3, 8-7-00; Ord. No. 205-06/07, 6-4-07)

*Editor's Note: Section 14-218(b)(5), subparagraphs a-c shall apply to all applications filed on-or after February 13, 2007.

Sec. 14-219. Prohibited uses.

Uses not enumerated in sections 14-217 and 14-218 as either permitted uses or conditional uses are prohibited.
(Ord. No. 241-91, 3-11-91)

Sec. 14-220. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, lots in the B-3, B-3b and B-3c zones shall meet the following requirements:

- (a) *Minimum lot size:* None.
- (b) *Minimum street frontage:* Fifteen (15) feet.

subsection I(1) of this section, the board may grant a variance to a property owner for the purpose of making that property accessible to a person with a disability who is living on the property. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the property by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives on the property. For the purpose of this subsection, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A. Section 4553.

→ (3) *Practical difficulty variance:*

a. Notwithstanding the provisions of subsections 14-473I(1) and (2) of this section, the board of appeals may grant a variance from the dimensional standards of this article when strict application of the provisions of the ordinance would create a practical difficulty, as defined herein, and when all the following conditions are found to exist:

1. The need for a variance is due to the unique circumstances of the property, and not to the general conditions in the neighborhood;
2. 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;
3. The practical difficulty is not the result of action taken by the applicant or a prior owner;
4. No other feasible alternative is available to the applicant, except a variance;
5. The granting of a variance will not have an unreasonably adverse effect on the natural environment; and

6. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. § 435, nor within a shoreland zone or flood hazard zone, as defined in this article.
- b. The following words have the meanings set forth below:
1. *Dimensional standards*: Those provisions of this 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 would 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 denial of the variance would mean the practical loss of all beneficial use of the land.
- c. Except as modified above, the other provisions of section 14-473 will apply to practical difficulty variances, including, but not limited to, the provisions of section 14-473(b)(2) (public hearing), and section 14-473(d) (specified variances prohibited).
- d. 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, nor to permit the location of a structure, including, but not limited to,

Order 58 -05/06
Given first reading on 9/7/05
Amended & Emergency Passage
9/19/05 7-0 (Carr, Geraghty absent)

JILL C. DUSON (MAYOR)(A/L)
PETER O'DONNELL (A/L)
JAMES F. CLOUTIER(A/L)
NICHOLAS M. MAVODONES (A/L)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
DONNA J. CARR (3)
CHERYL A. LEEMAN (4)
JAMES I. COHEN (5)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

**ORDER AUTHORIZING AMENDMENT OF CITY CODE
RE: CONDITIONAL REZONING AT 38 INDIA STREET**

ORDERED, that the Zoning Map of the City of Portland, dated December 2000 as amended and on file in the Department of Planning & Development, and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, is hereby amended to reflect the conditional rezoning as detailed below.

**CONDITIONAL ZONE AGREEMENT
PME I, LIMITED PARTNERSHIP**

This Agreement made this _____ day of _____ 2005 by **PME I, LIMITED PARTNERSHIP**, a Delaware limited partnership with an office in South Portland, Maine (hereinafter "PME").

WITNESSETH:

WHEREAS, PME wishes to develop the property commonly referred to 38 India Street, Portland, Maine, consisting of parcels shown on City of Portland Tax Map 29, Block L, Lots 001, 002 and 003 (the "**PROPERTY**"); and

WHEREAS, the **PROPERTY** consists of approximately 1.75 acres, being the site of the former Jordan's Meat plant and is bounded by India Street, Middle Street, Franklin Arterial and Fore Street, occupying nearly an entire City block; and

WHEREAS, the **PROPERTY** is uniquely located in downtown Portland, close to the waterfront, in an area that has received extensive investigation in which mixed-use projects such as the Project (as defined below) are encouraged; and

WHEREAS, the topography of the **PROPERTY** is such that it is almost rectangular, with a narrow "waist", and a significant slope of approximately thirteen (13)

- the **PROJECT**'s compatibility with the **CITY**'s planned development of the Downtown waterfront area, including the Ocean Gateway project,
- the unique location and topography of the **PROPERTY**, and
- the quality of the design and uses of the **PROJECT**

it is necessary and appropriate to have imposed the following conditions and restrictions in order to ensure that the rezoning is consistent with the **CITY**'s Comprehensive Plan; and

WHEREAS, **PME** has agreed to enter into this contract, with its concomitant terms and conditions, which shall hereinafter bind **PME**, its successors and assigns;

WHEREAS, on September 19, 2005, the **CITY** authorized an amendment to its Zoning Map based upon the terms and conditions contained within this Agreement, which terms and conditions become part of the zoning requirements for the **PROPERTY**;

NOW, THEREFORE, in consideration of the rezoning of the **PROPERTY**, **PME** contracts to be bound by the following terms and conditions:

1. The **CITY** shall amend the Zoning Map of the City of Portland, dated December 2000, as amended from time to time and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by Portland City Code §14-49, by adopting the map change amendment below.

Street, provided that the Entrance shall not be further back from Middle Street than as shown on the attached Plans, but may become narrower, wider or relocated no more than five (5) feet as may be approved by the Planning Board in its discretion; and

(2) create other entrances to the building as shown on the Plans, provided, however, that the location and/or dimensions of entrances to the building may be further modified as may be approved by the Planning Board in its discretion.

(c) Height Limits.

(1) The minimum structure height (measured according to the definition of “building, height of” in Section 14-47 but not less than 25.72 feet as shown on the Plan) shall be fifteen (15) feet for a portion of the building’s frontage on Fore Street and seventeen (17) feet for a portion of the building frontage on India Street as shown on the Plan.

(2) The maximum structure height (as measured according to the definition of “building, height of” in Section 14-47 but not less than 25.72 feet as shown on the Plan) shall be as follows:

(i) ninety-eight (98) feet for the westerly wing of the building with frontage on Franklin Arterial and Fore Street as shown on the Plan;

(ii) seventy-eight (78) feet for the easterly wing of the building with frontage on Middle Street as shown on the Plan; and

(iii) eighty-eight (88) feet for the easterly wing of the building with frontage on India Street as shown on the Plan.

(d) Parking Requirements: A minimum of three hundred and twenty four (324) on site parking spaces shall be provided to service the needs of the **PROJECT** and the total number of parking spaces required to service the project (including any off-site parking requirements) shall be determined by the Planning Board during site plan and subdivision review.

4. The **PROPERTY** will be developed and operated substantially in accordance with the Plans upon site plan and subdivision approval by Portland Planning Board in compliance with the requirements of Chapter 14 of the **CITY**’s Land Use Ordinance, provided that the uses between residential and hotel room portions of the building (and specifically excluding any retail spaces shown on the Plan) may change without requiring a modification to this Agreement by the City Council.

any part thereof, and shall inure to the benefit and be enforceable by the **CITY**, by and through its duly authorized representatives.

8. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed as a separate, distinct and independent provision and such determinations shall not affect the validity of the remaining portions thereof.

9. Except as expressly modified herein, the development, use, and occupancy of the **PROPERTY** shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

10. In the event of **PME's** breach of any condition(s) set forth in this Agreement which differs from the provisions of Portland Land Use Code that would otherwise be applicable to **PROPERTY** situated in the B-3 zone, the **CITY** may prosecute such violations in accordance with 30-A M.R.S.A. § 4452, M.R.Civ.P. 80K, or in any other manner available by law. In addition, if such an enforcement action should result in a finding that **PME** has breached the Agreement, then either the Portland Planning Board on its own initiative, or at the request of the Planning Authority, may make a recommendation to the City Council that the Conditional Rezoning be modified or the **PROPERTY** rezoned.

11. **PME** shall file a counterpart original of this Agreement in the Cumberland County Registry of Deeds within sixty (60) days of City Council approval.

WITNESS:

PME I, LIMITED PARTNERSHIP
By PMEGP, LLC, its General Partner

By: _____

Name:

Title:

STATE OF _____

COUNTY OF _____ ss _____, 2005

Then personally appeared before me the above-named _____,
_____ of PMEGP, LLC, a _____, General Partner of PME I, Limited
Partnership, a Delaware limited partnership, and acknowledged the forgoing instrument
to be his free act in deed in said capacity and the free act and deed of PMEGP, LLC,
general partner of PME I, Limited Partnership.

PME I, LP

Practical Difficulty Variance from Section 14-218 (b) (5) (a)

Copy of Appeal Application

(SEE ATTACHED)

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

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

2. The granting of the variance will not have an unreasonably detrimental effect on either the use or fair market value of the abutting properties:

3. The Practical Difficulty is not the result of action taken by the applicant or a prior owner:

4. No other feasible alternative is available to the applicant, except a variance:

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

6. Strict application of the dimensional standards of the ordinance to the subject property will preclude a use which is permitted in the zone in which the property is located:

7. Strict application of the dimensional standards of the ordinance to the subject property will result in significant economic injury to the applicant:

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

The following words have the meanings set forth below:

- a.) Dimensional Standards: Those provisions of this article which relate to lot area, lot coverage, frontage and setback requirements.
- b.) 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 would result in significant economic injury to the applicant.
- c.) 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 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, nor 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.

PRACTICAL DIFFICULTY VARIANCE APPLICATION
PME I LIMITED PARTNERSHIP

SUBJECT PROPERTY: 38 India Street, Portland, Maine

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

Correct. The Subject Property is the former Jordan's Meat plant and is bounded on all four sides by a public street. The total square footage of the Subject Property is 76,290 square feet; applying the 35-foot set-back to the Subject Property results in the loss of use of 36,714 square feet; in other words, 48% of the Subject Property becomes unavailable for parking. The general conditions of the neighborhood do not impact the need for a variance.

The granting of the variance will not have an unreasonably detrimental effect on either the use or the fair market value of the abutting properties.

Correct. If the Board grants the variance requested, the Applicant will pursue an interim Conditional Use permit for a surface parking facility which will require the demolition of the existing former Jordan's Meat plant building. If you were to visit the Subject Property, you will observe that it is need of, among other things, painting, landscaping and pavement repair. The Applicant believes that granting the variance will enhance the appeal of the Subject Property and the surrounding properties, including, without limitation, the abutting properties. If the variance is granted and the Applicant obtains the other required City approvals, the Applicant will demolish and remove the former Jordan's Meat plant building, provide for an attractive landscaped buffer and repair the pavement. The overall appearance of the Subject Property will be greatly improved, benefitting the abutting properties.

The Practical Difficulty is not the result of action taken by the applicant or a prior owner.

Correct, the Practical Difficulty is not the result of action taken by the applicant or a prior owner.

No other feasible alternative is available to the Applicant, except a variance.

Correct. The Applicant acquired the Subject Property for the purpose of redevelopment as a mixed use hotel, retail and residential development. Due to the market conditions nationally, regionally and locally, development of the type contemplated and

subsequently approved by the City of Portland is not presently feasible. The long term goal of the Applicant is to develop the Subject Property in accordance with the already approved contract zone. The Applicant must, however, mitigate its holdings costs for the Subject Property pending changes in the general economic conditions, which changes will allow the Subject Property to be developed for its highest and best use. The only presently feasible alternative to the Applicant is to use the Subject Property for surface parking, but the number of parking spaces on the lot must be maximized to make this use feasible. Further, the former Jordans Meat plant building was designed, constructed and used exclusively for meat packing purposes and is not designed to accommodate any other use.

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

Correct, the granting of the variance will not have an unreasonably adverse effect on the natural environment. No additional impervious area will be created as the entire lot is covered either by buildings or pavement.

Strict application of the dimensional standards of the ordinance to the Subject Property will preclude a use which is permitted in the zone in which the property is located.

Correct, strict application of the dimensional standards of the ordinance to the Subject Property will preclude the Applicant from using the Subject Property as is permitted in the zone in which the property is located. As described in this application, the Applicant needs to maximize the number of parking spaces on the Subject Property to make the demolition of the former Jordans Meat plant building feasible and, without the variance, Applicant loses the use of at least 75 parking spaces – a use which is permitted in the zone.

Strict application of the dimensional standards of the ordinance to the Subject Property will result in significant economic injury to the Applicant.

Correct, strict application of the dimensional standards of the ordinance to the Subject Property will result in significant economic injury to the Applicant. Without the variance, the number of parking spaces the Applicant can site on the Subject Property is almost one-half the number of parking spaces the Applicant can achieve with the variance. At a proposed monthly rate of \$95.00/month for each parking space, the potential annual revenue loss attributable to the additional 75 parking spaces is approximately \$85,500, evidencing a significant economic injury to the Applicant. The cost of demolition of the former Jordans Meat plant building and holding the Subject

Property in anticipation of the return of a reasonable marketing environment is excessive and the Applicant seeks to mitigate its holding costs by developing an efficient surface parking facility on an interim basis (subject to a Conditional Use permit and other required City approvals, which will be applied for subsequent to the granting of this variance). If the Applicant is denied the requested variance, the Applicant will need to abandon the proposed demolition of the former Jordan's Meat plant and other improvements to the Subject Property because the development of the Subject Property for surface parking will not be economically feasible, forcing the Applicant to leave the vacant Jordan's Meat plant in its current state.

The Property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. Section 435, nor within a shoreland off flood hazard zone as defined in this article.

Correct, the Subject Property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. Section 435, nor within a shoreland off flood hazard zone as defined in this article.

PME I, LP

Practical Difficulty Variance from Section 14-218 (b) (5) (a)

Cover Letter to Zoning Board with Explanation



*Michael A. Voccola, Esq.
Corporate Vice President
401 946 4600 Extension 136
mvoccola@procgroup.com
Licensed in State of Connecticut*

January 10, 2009

City of Portland Zoning Board of Appeals
389 Congress Street Room 315
Portland, Maine 04101-3571
Via Hand Delivery

Re: ***Request for Dimensional Variance
38 India Street, Portland, Maine
PME I, L.P.***

Dear Members of the City of Portland Zoning Board of Appeals:

I write on behalf of The Procaccianti Group, LLC, a manager of PMEGP, LLC, the general partner of PME I, Limited Partnership (referred to herein as "Owner" or "Applicant"), the owner of the property located at 38 India Street, Portland, Maine (Assessor's Reference 029 L003001 and formerly known as the Jordans Meat Plant; the "Subject Property"). Accompanying this letter is an application requesting a practical difficulty variance from the City of Portland Zoning Ordinance Section 14-218(b) (5) (a) ("Requested Relief").

On November 9, 2005, Applicant was granted a contract zone for the Subject Property to allow the development of a mixed-use project of which the major components include a hotel, retail space, residences and associated parking. Subsequent to obtaining the contract zone, the economic environment changed significantly and required that Applicant delay the development plans pending improvement of the general economy.

While Applicant will eventually develop the Subject Property in compliance with the contract zone approval of November 5, 2005, Applicant cannot sustain its holding costs and expenses in the interim. Applicant has conducted a number of feasibility studies for interim uses for the Subject Property and has determined that a surface parking facility accommodating the maximum number of parking spaces, which is not less than 175 spaces, is Applicant's only feasible alternative.

The overall plan is for Applicant to demolish the Jordans Meat Plant building, grade the site, landscape and light the site and use the Subject Property as a public surface parking facility. Such a use will augment the current parking facilities in the Downtown area, provide for controlled off-street parking for patrons, visitors and employees in the

Corporate Headquarters

1140 Reservoir Avenue ■ Cranston, RI 02920
Telephone: 401.946.4600 ■ Fax: 401.943.6320
www.procgroup.com



Downtown, remove the existing eye-sore of the vacant Jordans Meat Plant building, create additional landscaped areas along the waterfront and provide another parking facility for the cruise terminal.

Applicant engaged a site planner to conduct parking layout studies for the Subject Property. Two plans were generated – one which comports with the existing zoning ordinance requirements, including Section 14-218(b) (5) (a), and another which assumes relief from this Section.

Section 14-218 (b)(5)(a) in effect states that “no new surface parking spaces, parking aisles, or vehicle lanes shall be allowed within thirty-five (35) feet of any street ...”.

The plan prepared which comports with this Section results in no appreciable net gain of parking spaces after demolition of the Jordans Meat Plant. The plan prepared which assumes relief from this Section results in a sufficient gain of parking spaces to make demolition of the Jordans Meat Plant and the subsequent development of the Subject Property for public surface parking feasible. If the variance is approved, Applicant intends that there will be an area of land between the street and the parking area providing a landscaped buffer when the Subject Property is viewed from the streets.

Accordingly, Applicant is faced with two choices: One – seek relief from Section 14-218(b)(5)(a) and, if granted, apply for the other City approvals necessary for a parking facility and, if granted, demolish the existing Jordans Meat Plant building and redevelop the Subject Property into an attractive, landscaped public surface parking facility that will serve the Downtown while Applicant awaits the return of a conducive economic environment for ultimate development in accordance with the contract zone granted in November, 2005; or, Two – keep the vacant and boarded up Jordans Meat Plant building and the Subject Property as it currently exists, make no significant investment in the Subject Property and await the return of better economic times.

Applicant recognizes its obligation to mitigate its costs and expenses, as well as the significance of the Subject Property to the City of Portland, and Applicant much prefers its first alternative above.

Thus, Applicant respectfully requests relief from Section 14-218(b)(5)(a) and, following such granting of relief, will forthrightly apply for the other requisite City approvals, including an interim Conditional Use permit as detailed herein. Applicant is confident that this is the best first step towards the ultimate development of the Subject Property.



Applicant thanks the honorable Board for its time and consideration.

Respectfully,
THE PROCACCIANTI GROUP, LLC

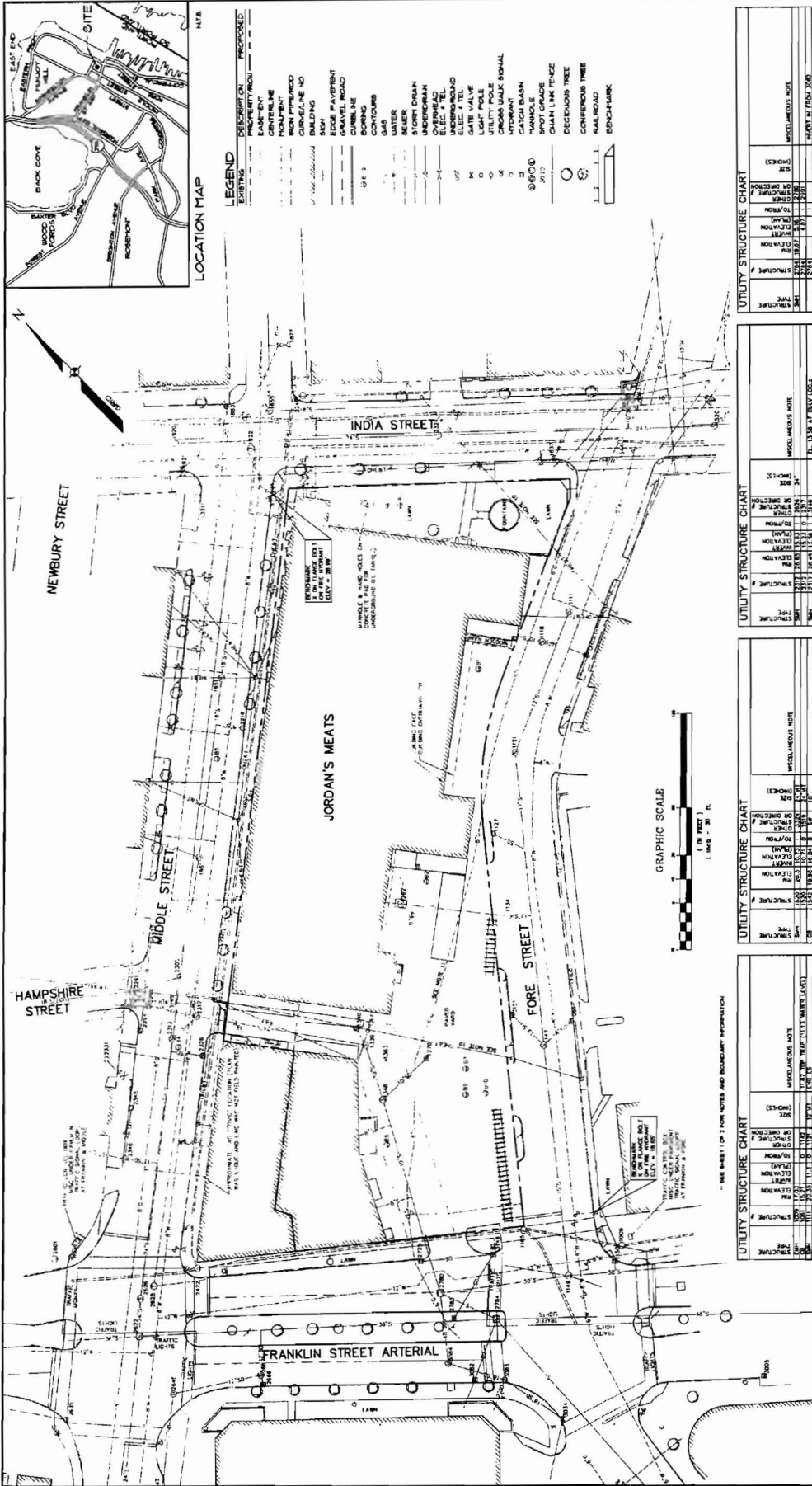
Michael A. Voccola, Esq.

MAV/wp
Enclosures

PME I, LP

Practical Difficulty Variance from Section 14-218 (b) (5) (a)

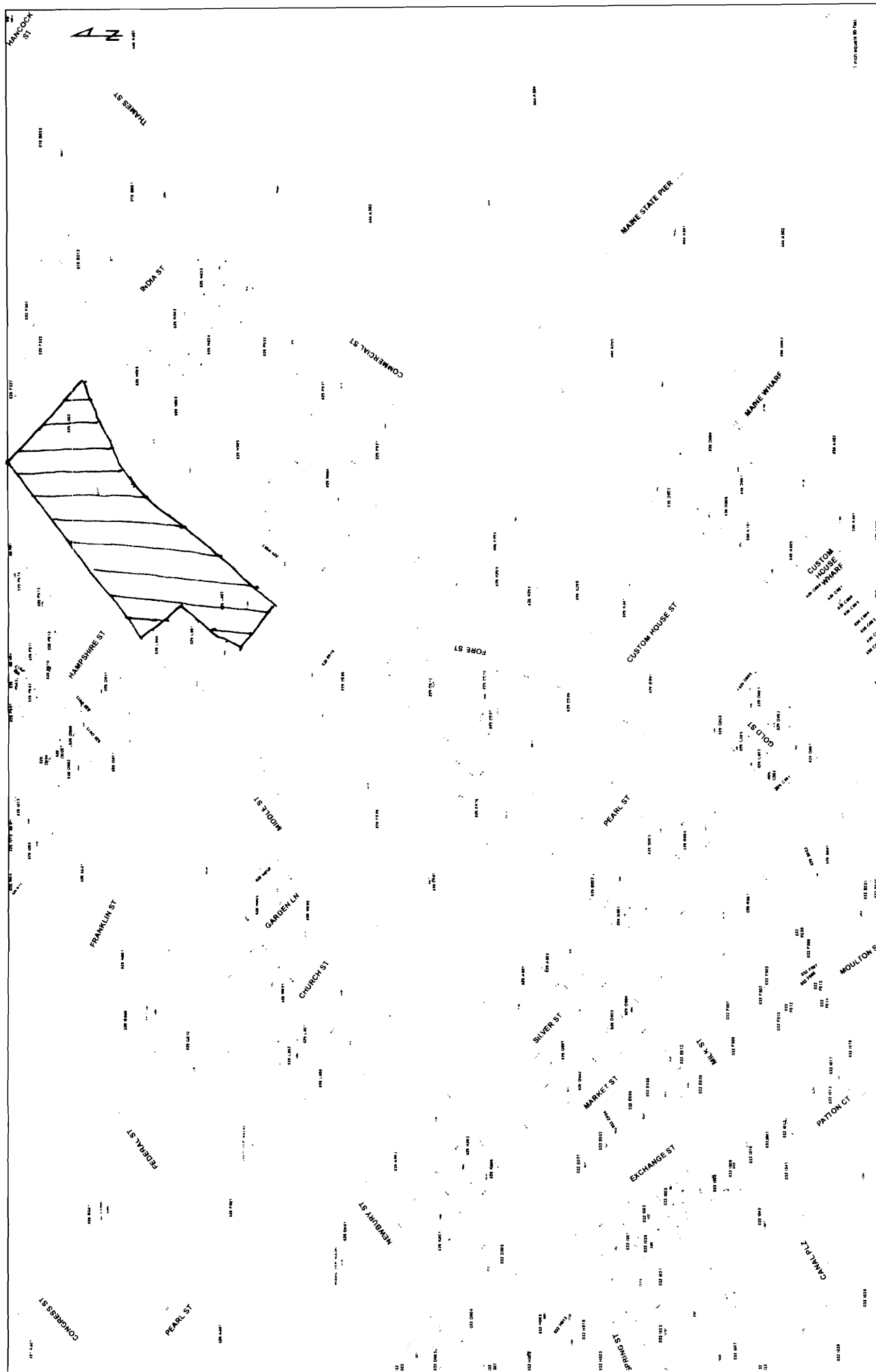
Plat Plan in the form of a Survey



PME I, LP

Practical Difficulty Variance from Section 14-218 (b) (5) (a)

Copy of the Tax Map with Subject Property Highlighted



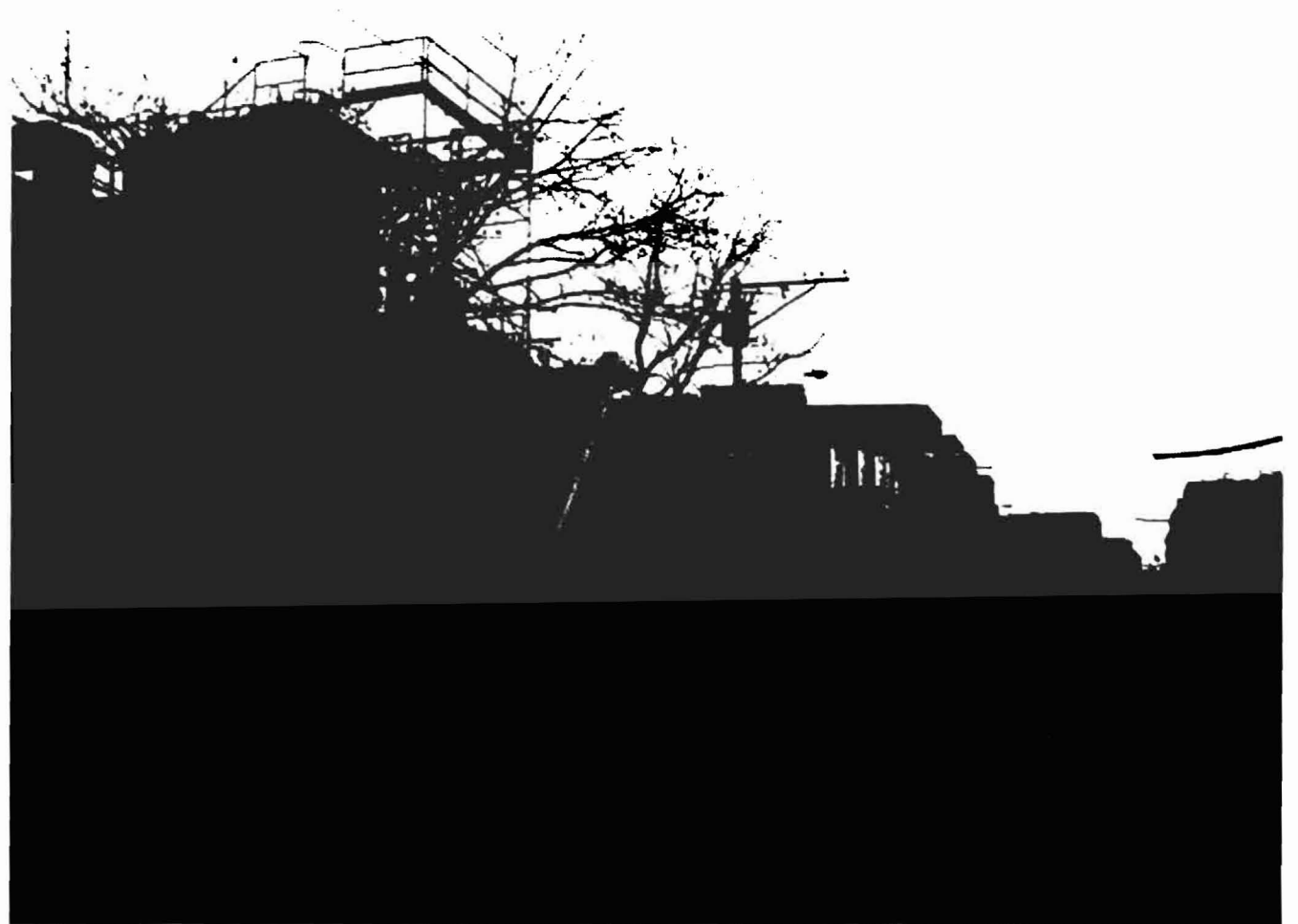
PME I, LP

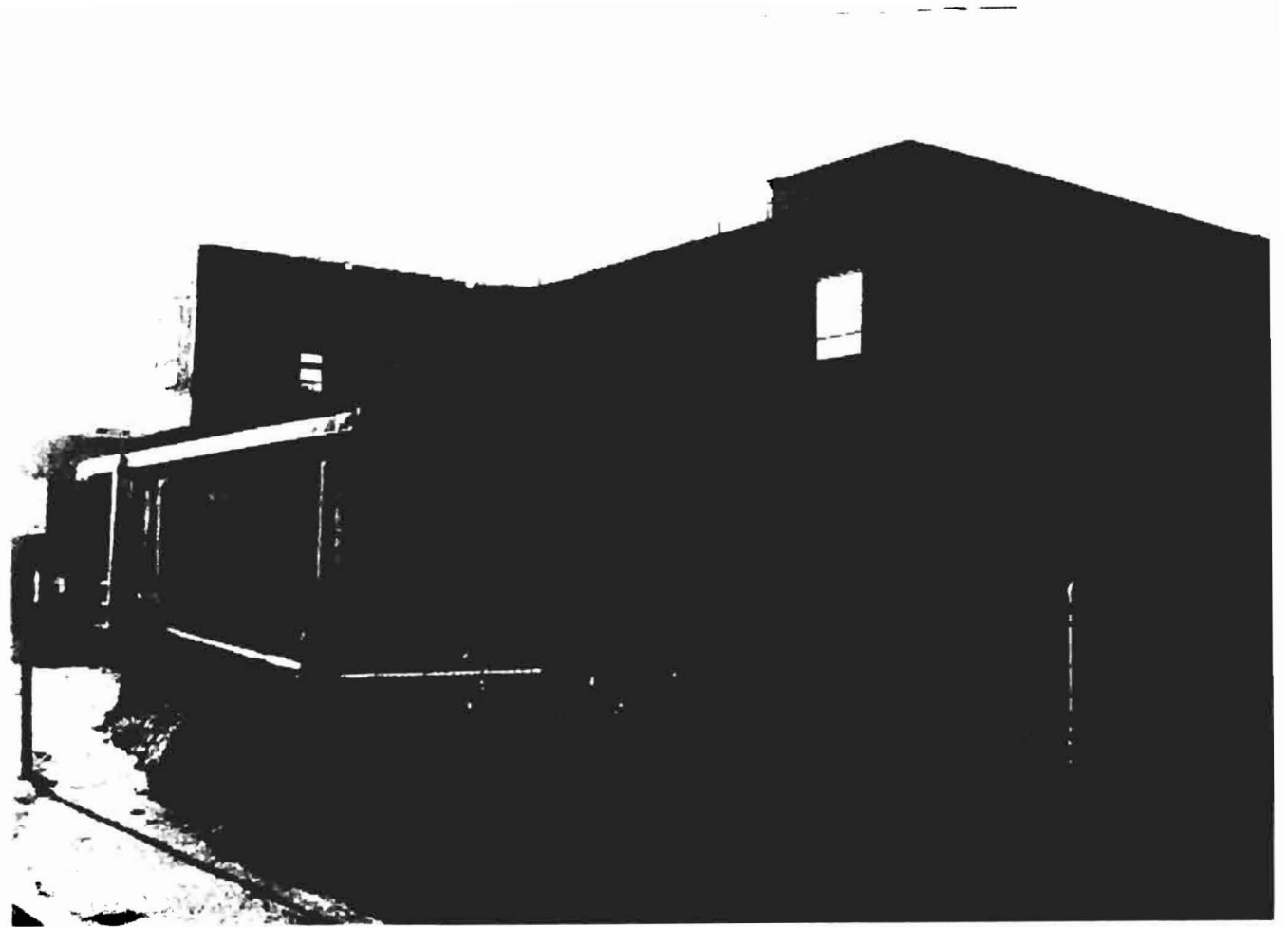
Practical Difficulty Variance from Section 14-218 (b) (5) (a)

Photographs of the Subject Property

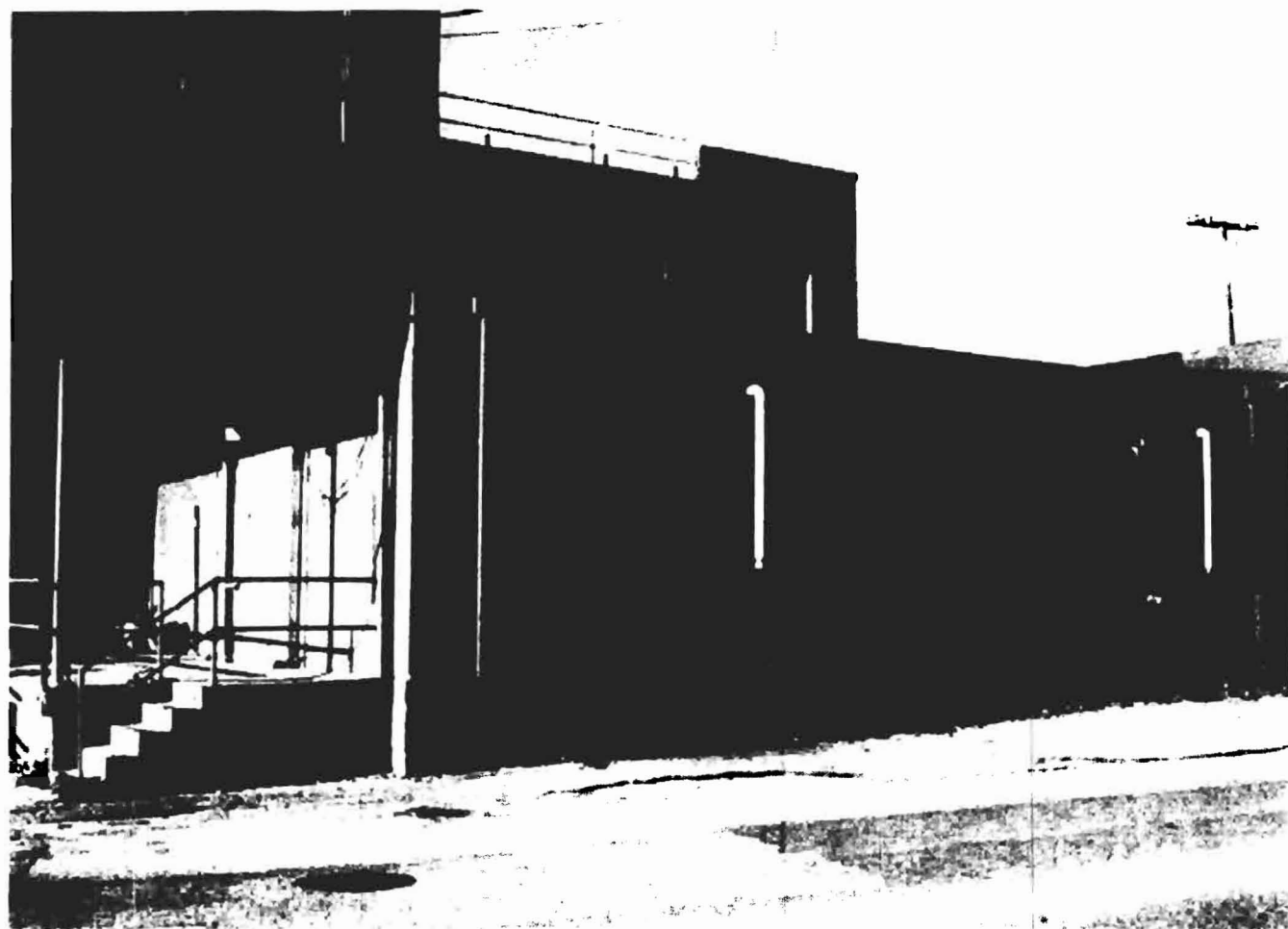




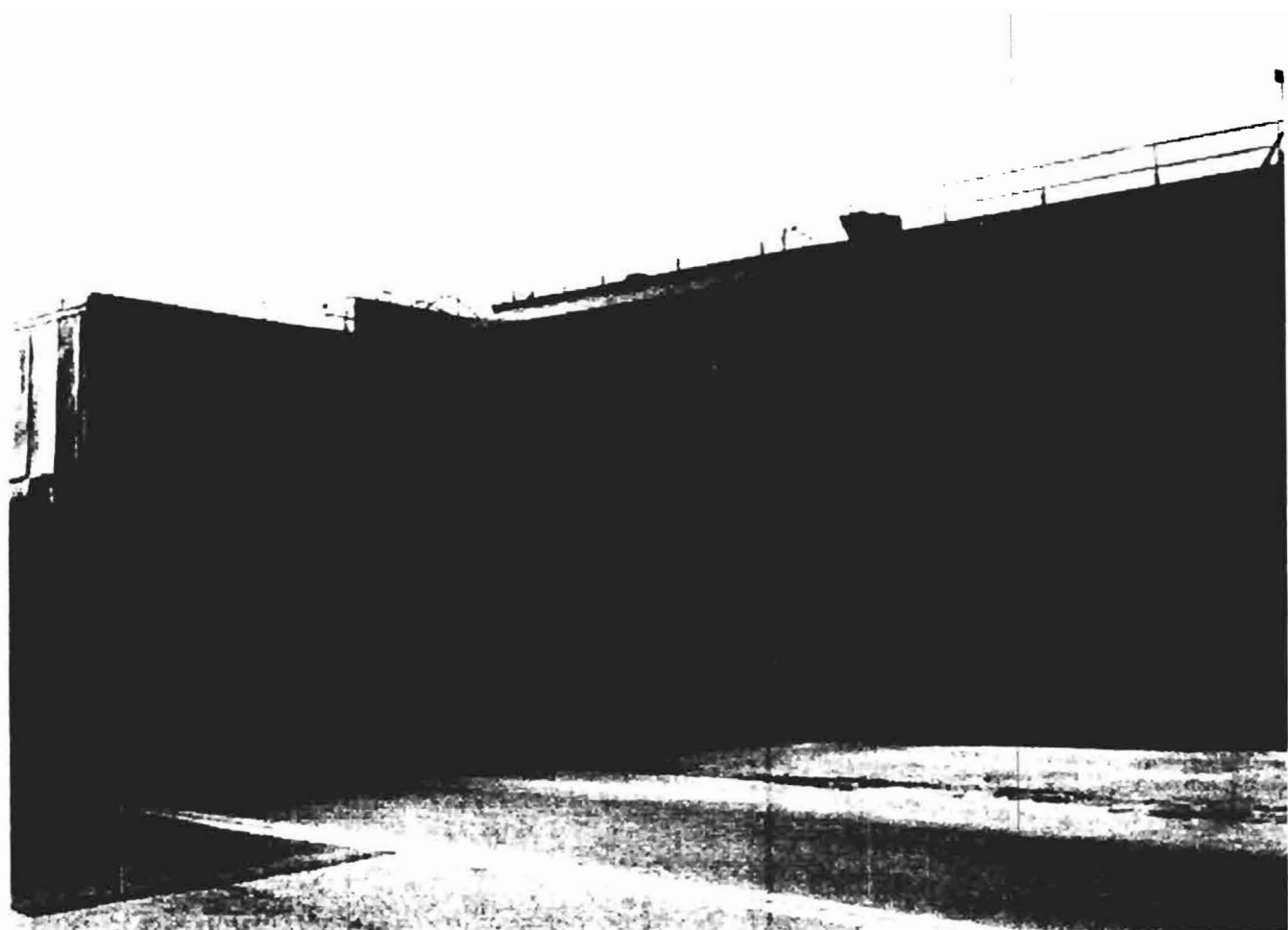


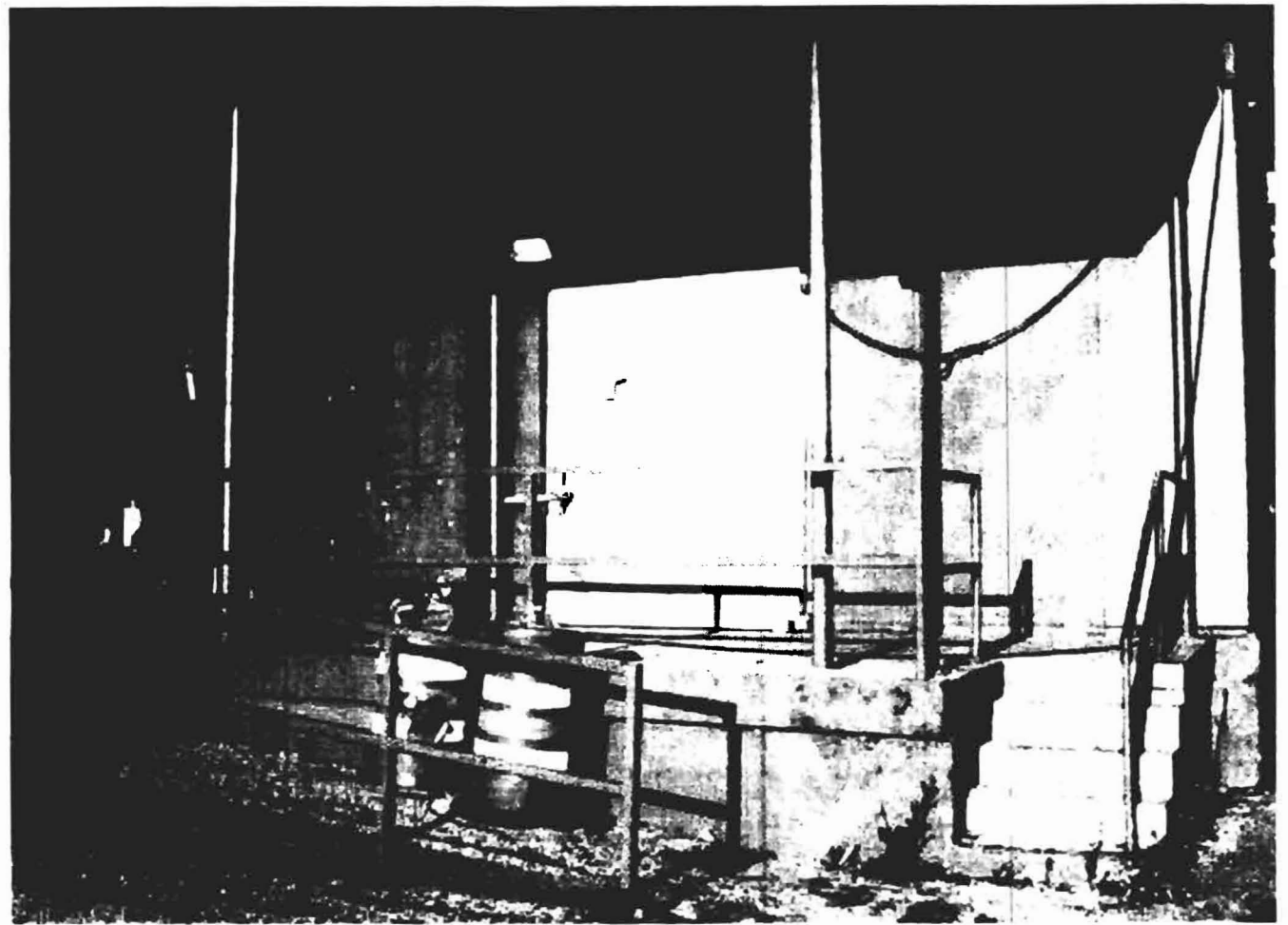


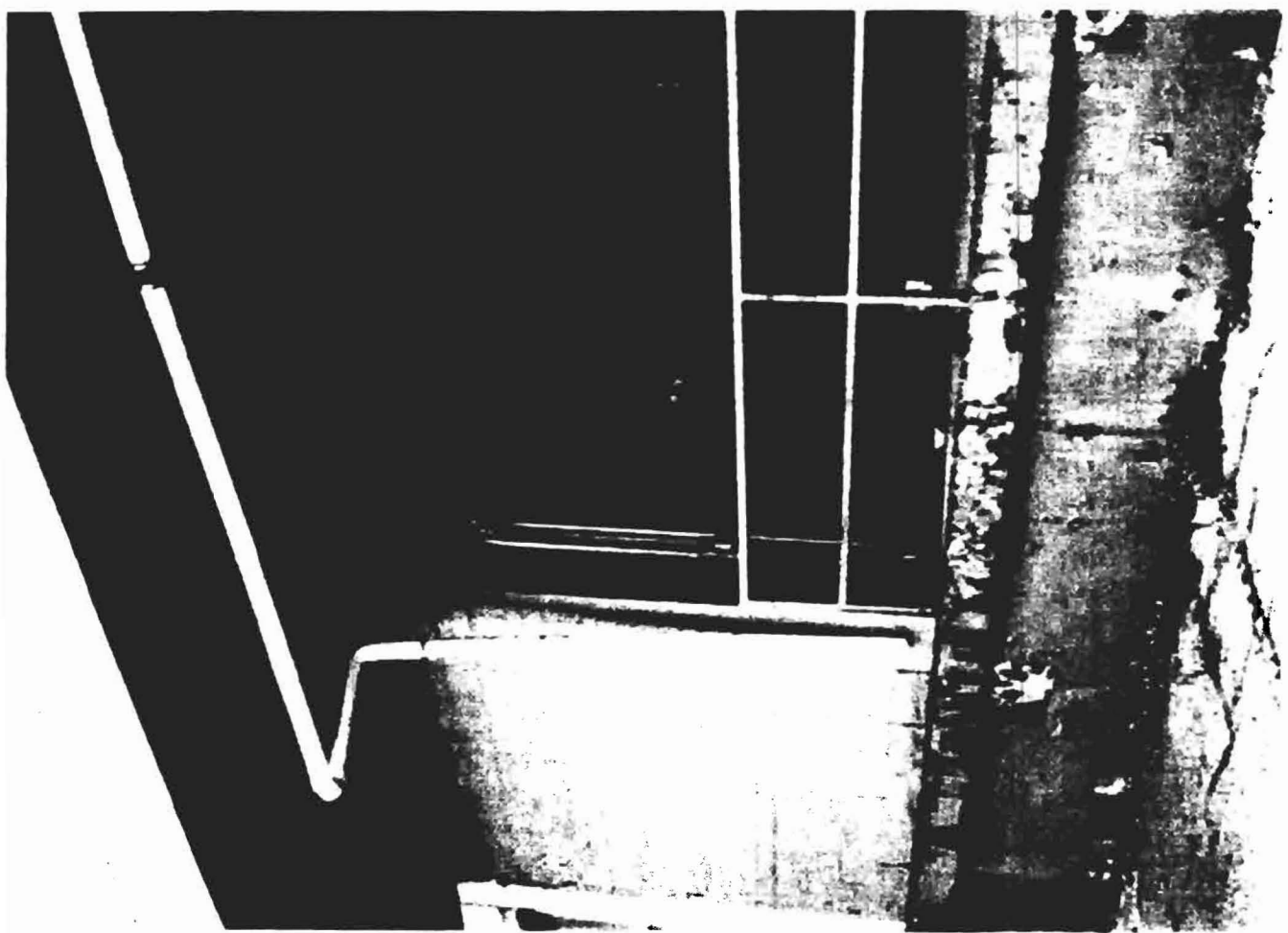
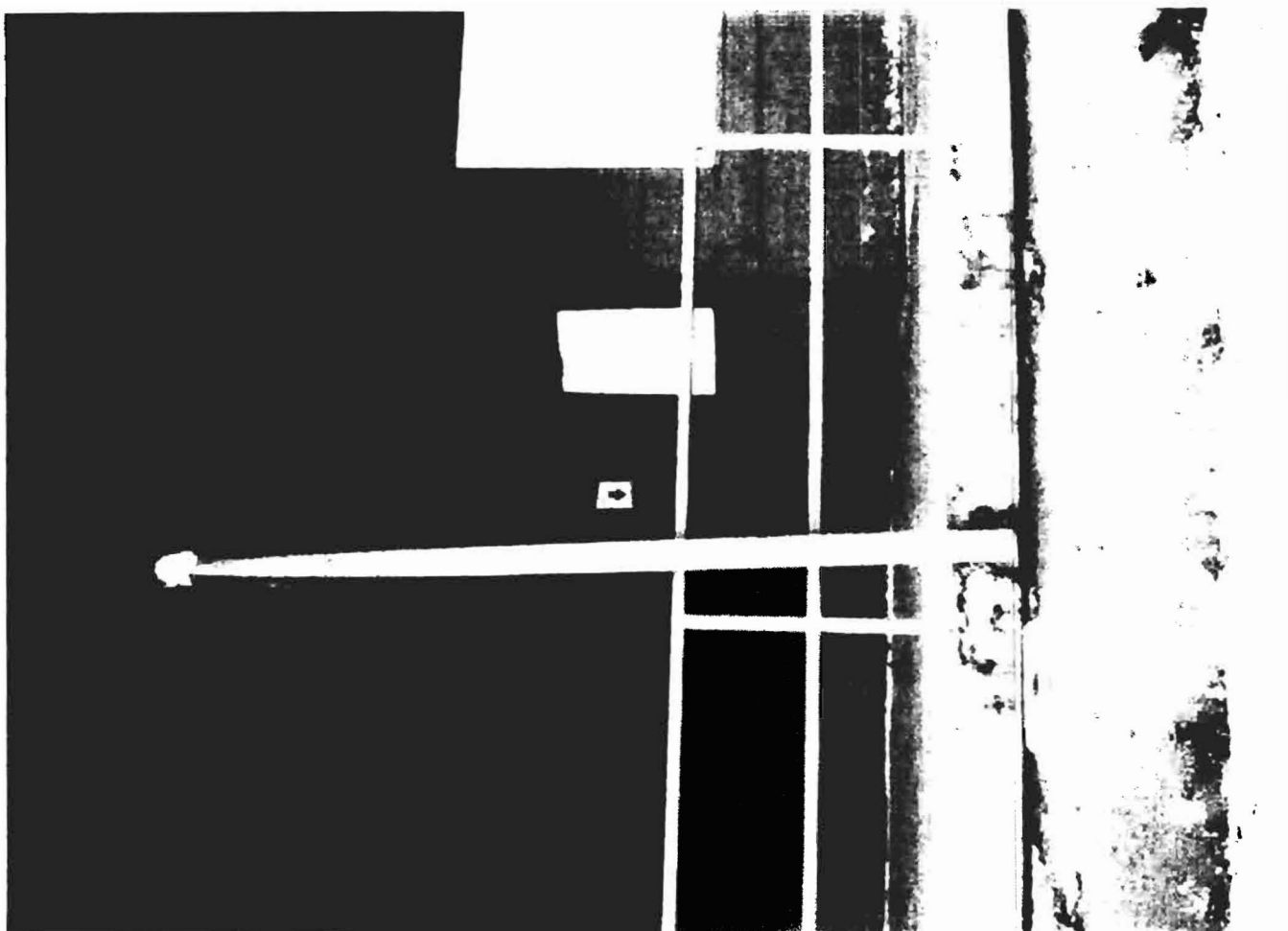


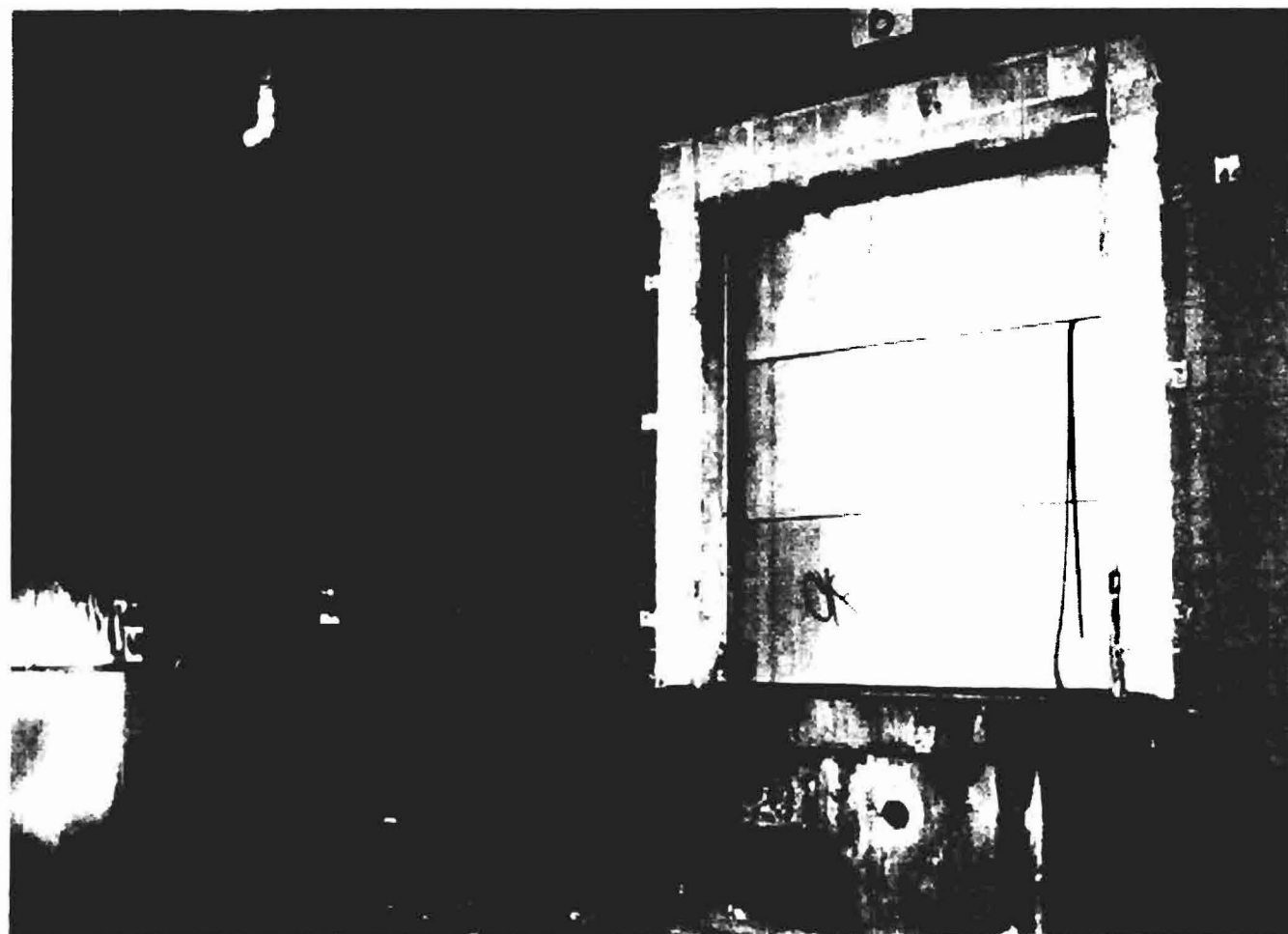


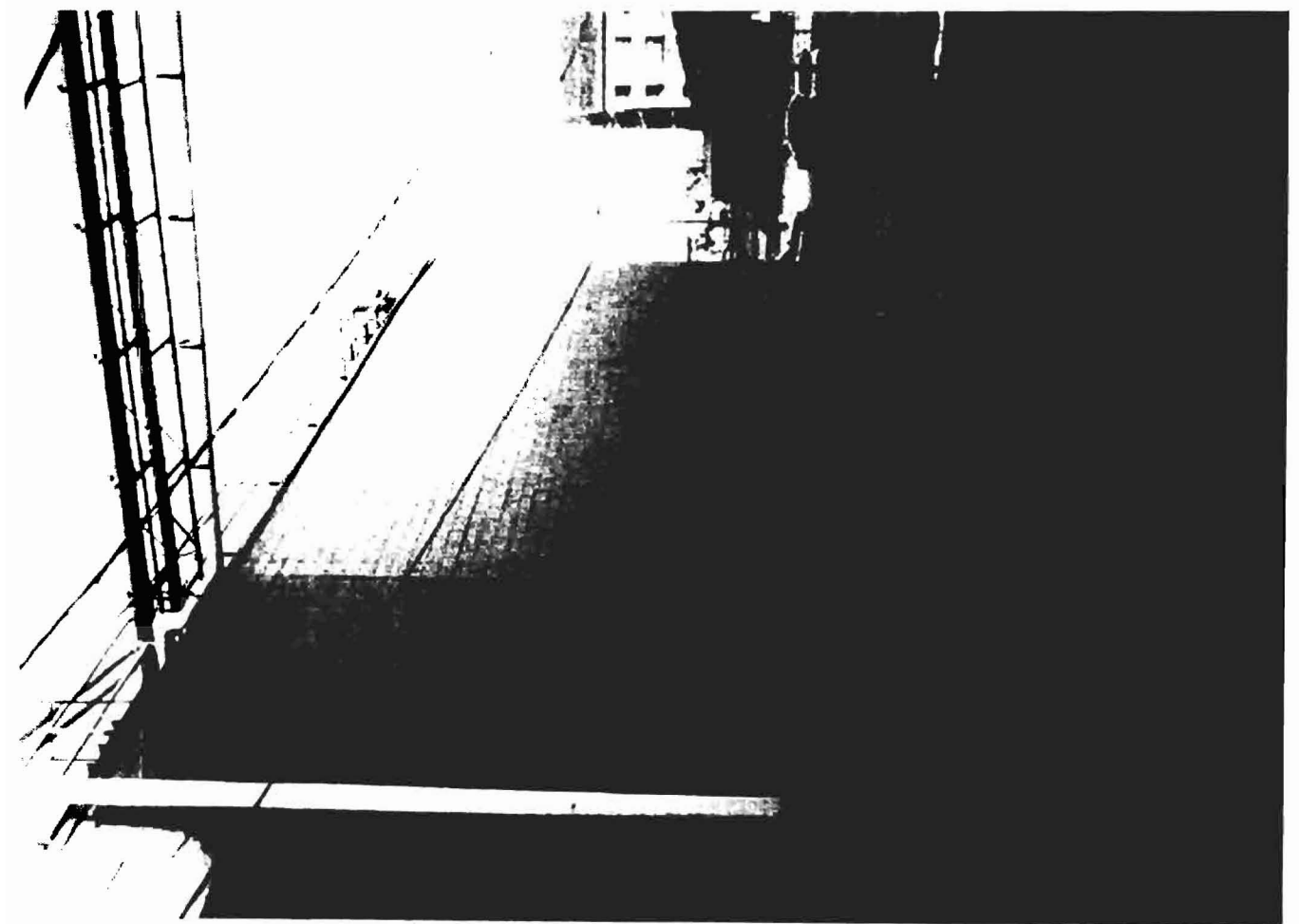
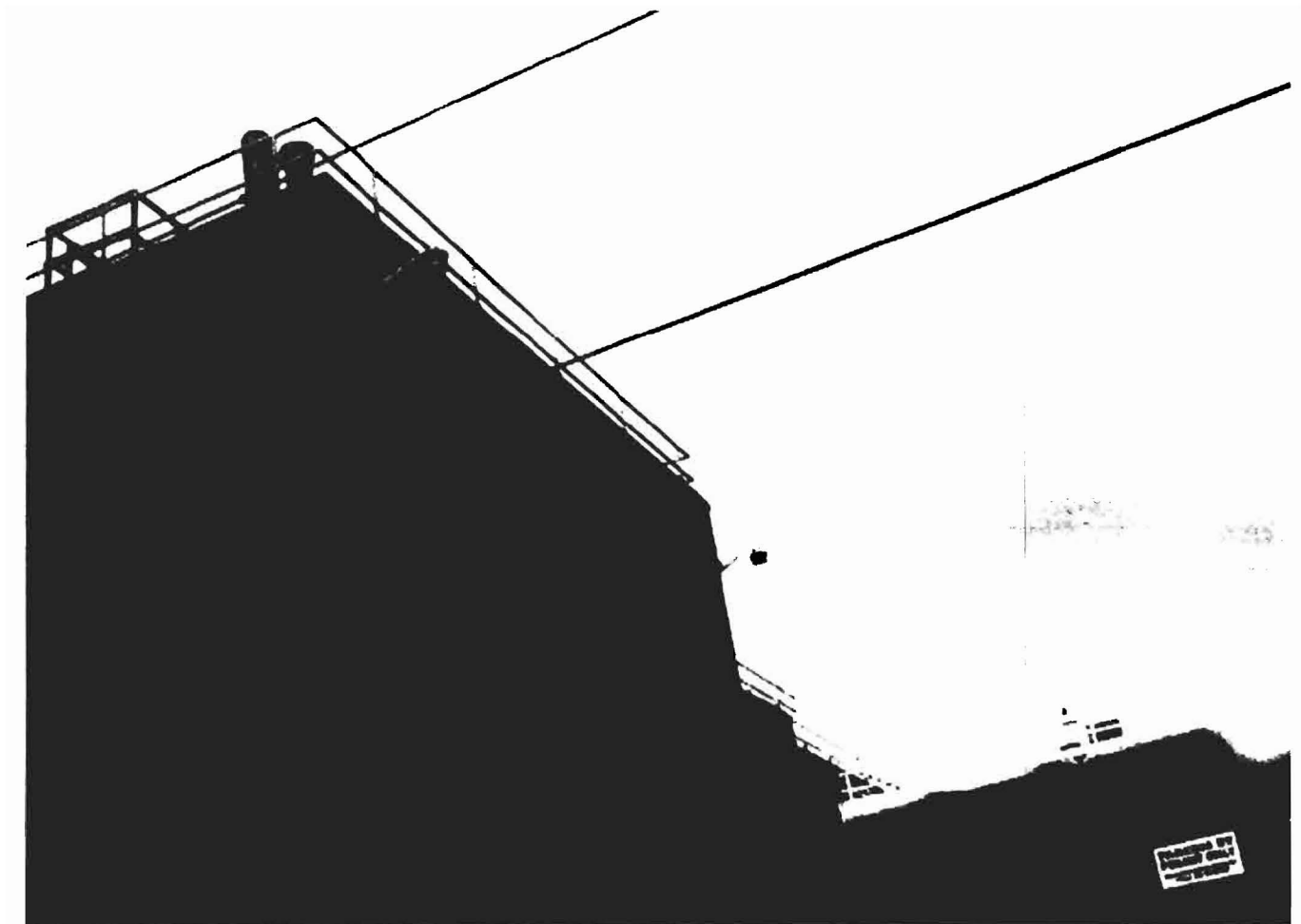












PME I, LP

Practical Difficulty Variance from Section 14-218 (b) (5) (a)

Copy of the Recorded Quit Claim Deed

Return to:
 PretiFlaherty
 Attn: Bonnie L. Martinolich, Esq.
 P.O. Box 9546
 Portland, ME 04112-9546

QUITCLAIM DEED WITH COVENANT
 (Statutory Short Form)

Zemco Industries, Inc., a Delaware corporation (successor by merger to Jordan's Meats, hereinafter the "Grantor"), with a business address of 2210 West Oaklawn Drive, Springdale, County of Washington, Arkansas, for consideration paid, grants to **PME I, Limited Partnership**, a Delaware limited partnership (hereinafter the "Grantee"), with a mailing address of 600 Sable Oaks Drive, South Portland, County of Cumberland, Maine, with quitclaim covenant the land lying, being, and situated in the County of Cumberland, State of Maine, described in Exhibit A attached hereto and made a part hereof.

WITNESS its/his hand and seal this 23rd day of September, 2005.

ATTEST:

By: R. Read Hudson
 R. Read Hudson
 Secretary

ZEMCO INDUSTRIES, INC.

By: David L. Van Bebber
 David L. Van Bebber
 Senior Vice President

MAINE REAL ESTATE TAX PAID

SEAL

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
 COUNTY OF WASHINGTON)

September 23, 2005

Personally appeared before me David L. Van Bebber, Senior Vice President of Zemco Industries, Inc., and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said corporation.

[Signature]
 Notary Public

My Commission Expires:

5-1-2014



EXHIBIT "A"

A certain lot or parcel of land situated on the southeasterly side of Middle Street, southwesterly of India Street, northwesterly of Fore Street and northeasterly of Franklin Street Arterial in the City of Portland, County of Cumberland and State of Maine as shown on an ALTA/ACSM Land Title Survey of Jordan's Meats Property for PME I, Limited Partnership by Sebago Technics, Inc. dated April 29, 2005, and revised September 22, 2005, with reference to Project Number 05090, hereinafter referred to as "the plan" being further bounded and described as follows:

Beginning at the intersection of the southwesterly side of India Street and the northwesterly side of Fore Street witnessed by a 3 foot offset monument;

Thence N 46°-36'-24" W, by and along India Street, a distance of 182.01 feet to the southeasterly side of Middle Street;

Thence S 51°-43'-16" W, by and along Middle Street, a distance of 355.01 feet to the northerly corner of land now or formerly owned by 80-90 Corps as described in a deed recorded at Cumberland County Registry of Deeds in Book 10466, Page 206;

Thence S 37°-12'-40" E, by and along land of said 80-90 Corps, a distance of 45.93 feet;

Thence S 51°-56'-42" W, continuing along land of said 80-90 Corps by and along a partition wall, a distance of 101.27 feet;

Thence S 25°-51'-27" E, continuing along land of said 80-90 Corps by and along a partition wall, a distance of 11.37 feet;

Thence S 38°-37'-43" W, continuing along land of said 80-90 Corps by and along a partition wall, a distance of 23.03 feet to the northeasterly side of Franklin Street Arterial;

Thence S 51°-10'-50" E, by and along Franklin Street Arterial, passing a 5/8" rebar, a distance of 148.56 feet to Fore Street;

Thence N 38°-51'-25" E, by and along Fore Street, a distance of 255.83 feet to a point of curvature witnessed by a 3 foot offset monument;

Thence by and along a curve to the right with a radius of 199.68 feet having a length of 95.17 feet, having a chord of N 52°-30'-40" E, 94.27 feet to a point of tangency;

Thence N 66°-09'-55" E, continuing along Fore Street, a distance of 123.41 feet to an angle point witnessed by a 3 foot offset monument;

Thence N 43°-43'-25" E, continuing along Fore Street, a distance of 12.13 feet to the Point of Beginning.

Meaning and intending to describe 76,290 square feet as shown on said plan.

Said parcel is benefited by an easement from the City of Portland to Jordan Meats granting rights to the existing HVAC and other utilities encroaching into the Middle Street right-of-way, as described in a deed recorded at Cumberland County Registry of Deeds in Book 13982, Page 40.

Said parcel is also subject to an easement granted to the City of Portland as described in a deed recorded at Cumberland County Registry of Deeds in Book 2438, Page 258 and shown as Easements F and E on Plan of Property in Vine-Deer-Chatham Project Area 11-2 made for Slum Clearance and Redevelopment Authority of Portland, Maine by HI & EC Jordan, dated January 11, 1958, recorded at said registry on Plan Book 47, Page 48 (two sheets).

Said parcel may be subject to and or benefited by rights to utilities shown on the plan.

SUBJECT TO THE FOLLOWING:

(a) Grantee covenants that the property conveyed herein shall not be used for or in support of the following: the manufacturing or storage of processed meats. However, the storage of such meats by a bonafide restaurant or grocery or retail store for resale or by an individual for personal use shall not be considered a violation of this restriction.

(b) All such covenants, conditions, and restrictions described in paragraph (a) above shall remain in effect for a period of Twenty (20) years. The aforesaid covenants, conditions, and restrictions shall run with and bind the property, and shall bind Grantee, or its successors or assigns, and shall inure to the benefit of and be enforceable by Grantor, or an affiliated company, or its successors and assigns, by any appropriate proceedings at law or in equity to prevent such violations of such covenants, conditions, and restrictions and/or to recover damages for such violations.

(c) Sewer easement depicted on a Plan recorded in the Registry in Plan Book 47, Page 48.

(d) Rights and easements granted to City of Portland for sewer purposes as set forth in an instrument recorded in the Registry in Book 2438, Page 258.

(e) Terms and provisions of the Department of Environmental Protection Orders recorded in the Registry in Book 19244, Page 271.

Being the same premises conveyed to Jordan's Meats by David Astor and Esta J. Astor by deed dated April 25, 1979 and recorded at said registry in Book 4410, Page 277, and the premises conveyed to Jordan's Ready to Eat Meats by Area Development Council #1 by deed dated April 3, 1972 and recorded at said registry in Book 3221, Page 206.

Received
Recorded Register of Deeds
Sep 28, 2005 11:48:32A
Cumberland County
John B O'Brien

PME I, LP

Practical Difficulty Variance from Section 14-218 (b) (5) (a)

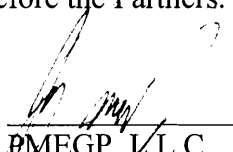
Copy of the Executed and Notarized Certificate of Authority for

Michael A. Voccola

Certificate of Limited Partnership Authority

Special Meeting of the Partners

The Undersigned, being the Authorized Signatory of PMEGP, L.L.C., General Partner of PME I, L.P. hereby waives notice of any required Special Meeting of the Partners to be held at 1140 Reservoir Avenue, Cranston, Rhode Island, at 1:00PM sharp for the transaction of such business as shall come before the Partners.



PMEGP, L.L.C.
JAMES A. PROCACCIANTI
Authorized Signatory

CRANSTON, RHODE ISLAND
January 9, 2009

A Special Meeting of the Partners of PME I, L.P. was held this day at 1140 Reservoir Avenue, Cranston, Rhode Island, at 1:00PM sharp, the Partners being present in person.

The meeting was called to order by JAMES A. PROCACCIANTI, authorized Signatory of PMEGP, L.L.C., General Partner of PME I, L.P., who presided.

JAMES A. PROCACCIANTI stated it was his desire to authorize **MICHAEL A. VOCCOLA** to execute, on behalf of PME I, L.P. any and all letters, correspondence, applications, forms and documents and related materials as may be required to submit for a Request for Variance to the City of Portland, Maine as it pertains solely and exclusively to PME I, L.P.'s desire to secure approval to use its property as a surface parking facility. Further, it is his desire that **MICHAEL A. VOCCOLA** appear and speak at any municipal hearings and meeting to effectuate this process.


On motion, duly made, it was unanimously:

VOTED: **MICHAEL A. VOCCOLA** to execute, on behalf of PME I, L.P. any and all letters, correspondence, applications, forms and documents and related materials as may be required to submit for a Request for Variance to the City of Portland, Maine as it pertains solely and exclusively to PME I, L.P.'s desire to secure approval to use its property as a surface parking facility. Further, it is his desire that **MICHAEL A. VOCCOLA** appear and speak at any municipal hearings and meeting to effectuate this process.

On motion, duly made, it was unanimously:

VOTED: To adjourn.

Adjourned.



Witness

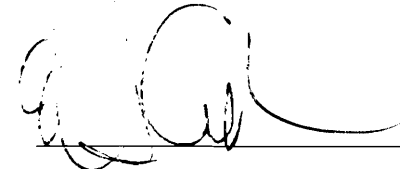
Notary Certificate

STATE OF RHODE ISLAND
County of Providence

In CRANSTON on the 9th day of JANUARY, 2009, before me personally appeared JAMES A. PROCACCIANTI, to me known and known by me to be the Authorized Signatory of PMEGP, L.L.C. and the person executing the foregoing instrument, and he acknowledged the same by his execution herein to be his free act and deed and the free act and deed of PMEGP, L.L.C.

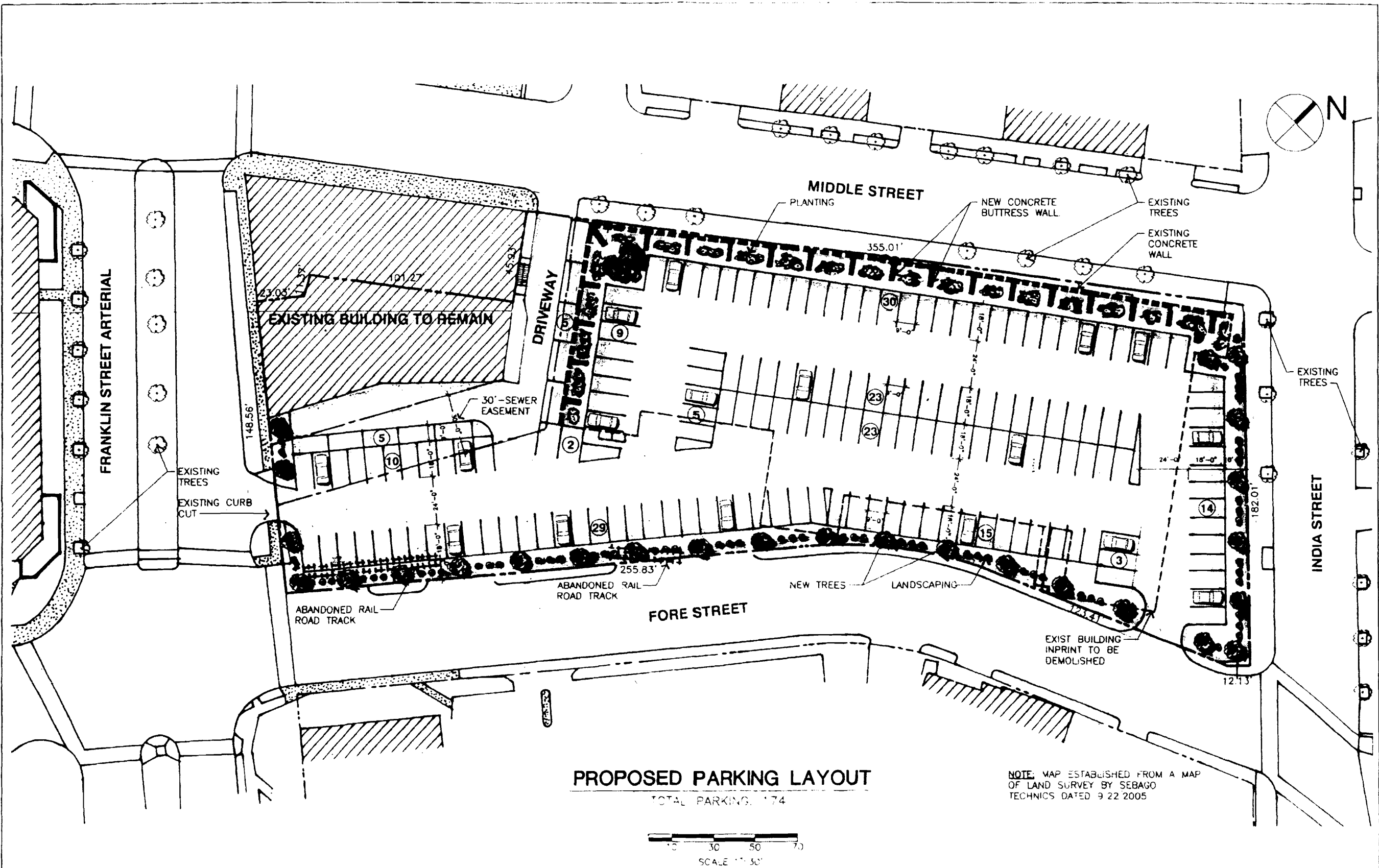
Notary Public

My Commission Expires



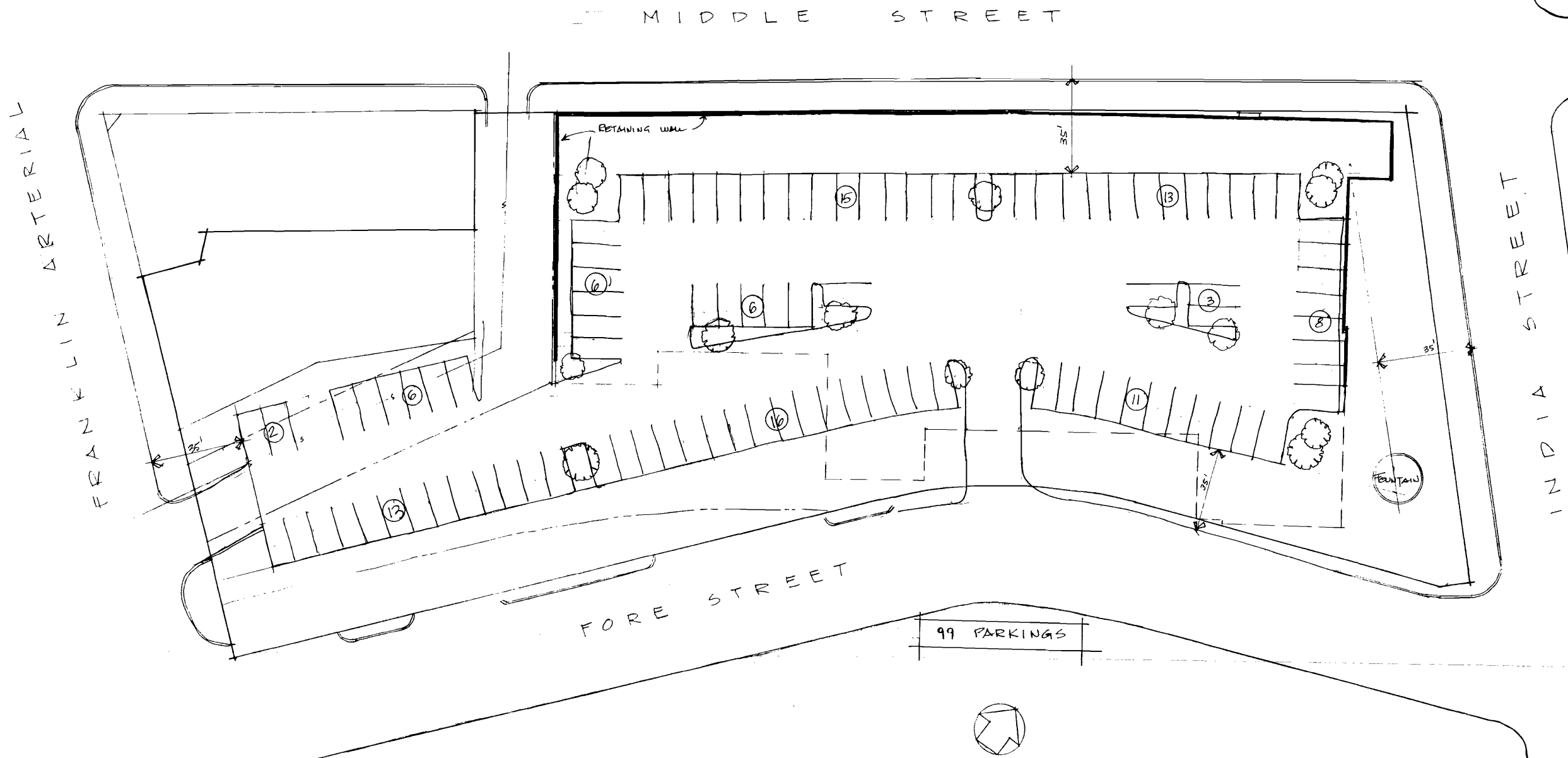
01/2010

Elizabeth L. Comella
Notary Public
State of Rhode Island
Commission Expires 01/12/2010
ID #57335




STUDIOAD, LTD. 16 Dike Street Providence, RI 02909-2615 phone: 401-383-1724 email: studioad@studioad.us	STUDIOAD, LTD.	STUDIOAD, LTD.		PROPOSED PARKING LAYOUT JORDAN'S MEATS PROPERTY FORE ST, INDIA ST, MIDDLE ST FRANKLIN ST ARTERIAL PORTLAND, MAINE	PROPOSED PARKING LAYOUT JORDAN'S MEATS PROPERTY	<table border="1"> <thead> <tr> <th>No.</th> <th>DATE</th> <th>REVISION DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	No.	DATE	REVISION DESCRIPTION										8015 REVIEW 12.12.08 1"=30' CC/FIM CC/CH	SD-1
No.	DATE	REVISION DESCRIPTION																		

Proposed Parking if Variance Request is
Granted



PARKING LAYOUT #1
SCALE 1"=20'

JORDAN'S MEAT
38 INDIA STREET PORTLAND MAINE



StudioAD Ltd.

46 Dike Street,
Providence, RI 02909-2615
phone: 401-383-1724
email: studioAD@studioAD.us

NOVEMBER 25, 2008

Proposed Parking with 35 Foot Setback Applied

