

1. 03/01/18 - Agenda

Documents:

03-01-18 AGENDA.PDF

1.I. ZBA Application - 7 Kensington Street

Documents:

7 KENSINGTON ST - CONDITIONAL USE APPEAL.PDF  
7 KENSINGTON ST - ZONING MAP.PDF

1.II. ZBA Application - 15 Morningstar Lane

Documents:

15 MORNINGSTAR - CONDITIONAL USE.PDF  
15 MORNINGSTAR - ZONING MAP.PDF

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

Eric Larsson, Chair  
Donna Katsiaficas, Secretary  
Kent Avery  
Robert Bartels  
Benjamin McCall  
Joseph Zamboni

### APPEAL AGENDA

The Board of Appeals will hold a Public Hearing on Thursday, March 1, 2018, at 6:30 p.m. in Room 209 on the Second Floor at Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following appeals:

#### 1. New Business:

- A. Conditional Use Appeal:** 7 Kensington Street, Erin Campbell, tenant, Susan Campbell, owner, Tax Map 431, Block H, Lot 001, R-5 Residential Zone: The applicant is seeking a Conditional Use approval under Section 14-410(c) for a home occupation as a permanent makeup artist. The home occupation would be in her residence, which is one unit of a two-family dwelling. Representing the appeal is the tenant.
- B. Conditional Use Appeal:** 15 Morningstar Lane, Dianne and Matt Watters, buyers, Frederick and Colleen Writt, owners, Tax Map 385A, Block A, Lot 032, R-2 Residential Zone: The applicants are seeking a Conditional Use Appeal under Section 14-78(a)(2) to create an accessory dwelling unit within a partially-completed single-family home. Representing the appeal are the buyers.

#### 2. Adjournment

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**Erin Campbell**

7 Kensington St.  
Portland, ME. 04103  
(207) 318-6374  
greengal78@gmail.com

29th January 2018

**Zoning Board of Appeals**

389 Congress St.  
Portland, ME., 04101

Dear Zoning administrator,

I am a licensed permanent makeup artist and Esthetician, and am interested in doing microblading (semi permanent eyebrow makeup) out of my spare bedroom at home.

My home occupation would occupy approximately 115 square feet (9 %) of floor area of residence.

I would be taking one to two clients per day at most, four days per week.

There is off street parking available for the apartment, with approximately four spaces.

My mother lives next door and is the owner of the property..

All Storage will be contained to that room only, in the closet area.

If I am allowed a home occupancy permit, I will be registering with the Maine Department of Environmental Protection. Appropriate waste will be disposed of in provided containers by a medical waste disposal company, then mailed back to the company when full. Therefore, minimal additional trash would be added to curbside pickup.

I believe my business would be similar to and no more objectionable than a hairdresser (item 14 of section 2 of the Portland Zoning Ordinance), as it is a beauty and personal care business.

Sincerely,

Erin Campbell



Michael A. Russell, MS, Director  
Permitting and Inspections Department

Ann Machad  
Zoning Administrator

### CITY OF PORTLAND ZONING BOARD OF APPEALS Conditional Use Appeal Application

**Applicant Information:**

**Subject Property Information:**

NAME

PROPERTY ADDRESS

Enn Campbell

7 Kensington St Portland 04103

BUSINESS NAME

CHART/BLOCK/LOT (CBL)

Fawn Artistry

431-H-001-001

BUSINESS ADDRESS

PROPERTY OWNER (If Different)

BUSINESS TELEPHONE & E-MAIL

Susan Campbell

207 318-6374 greengal78@gmail.com

ADDRESS (If Different)

APPLICANT'S RIGHT/TITLE/INTEREST

9 Kensington St

PHONE # AND E-MAIL  
(207) 313-9468 Campbell@erloch@hotmail.com  
Susan J. Campbell

CURRENT ZONING DESIGNATION

CONDITIONAL USE AUTHORIZED BY

R-S

SECTION 14- \_\_\_\_\_

EXISTING USE OF THE PROPERTY: I live in one half of the duplex and my mother (owner) lives next door. No lease

TYPE OF CONDITIONAL USE PROPOSED: I am a permanent makeup artist and would like to do microblading from home.

STANDARDS: Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the Board determines that:

- 1. The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone; and
- 2. The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter; and
- 3. The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses of other allowable uses in the zone.

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

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

SIGNATURE OF APPLICANT

1.31.18  
DATE



12/17/08 ~~AK~~

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MORTGAGE INSPECTION OF: DEED BOOK 20108 PAGE 204 COUNTY Cumberland  
PLAN BOOK --- PAGE --- LOT p/o 1

ADDRESS: 7-9 Kensington Street, Portland, Maine

Job Number: 309-25-R

Inspection Date: 12-15-08

Buyers: Gerald K. & Susan J. Campbell

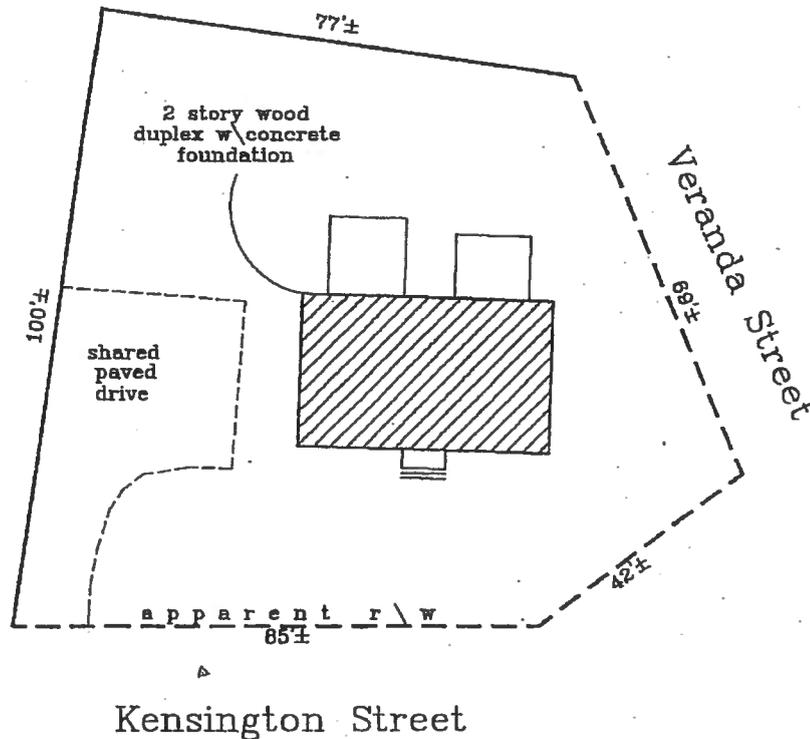
Scale: 1" = 30'

Client File #: 80550

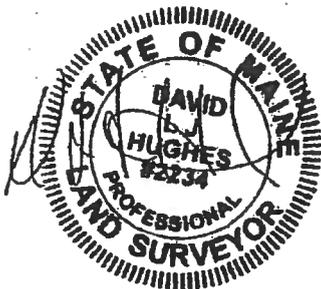
Seller: New Stream R E Funding 20, LLC



LC  
pu



LC



I HEREBY CERTIFY TO: Bay Area Title Services; Gerald K. & Susan J. Campbell, and its title insurer.

APPARENT EASEMENTS AND RIGHTS OF WAY ARE SHOWN. OTHER ENCUMBRANCES, RECORDED OR NOT, MAY EXIST. THIS SKETCH WILL NOT REVEAL ABUTTING DEED CONFLICTS, IF ANY.

Monuments found did not conflict with the deed description.

The dwelling setbacks do not violate town zoning requirements.

As delineated on the Federal Emergency Management Agency Community Panel 230051-0007B:

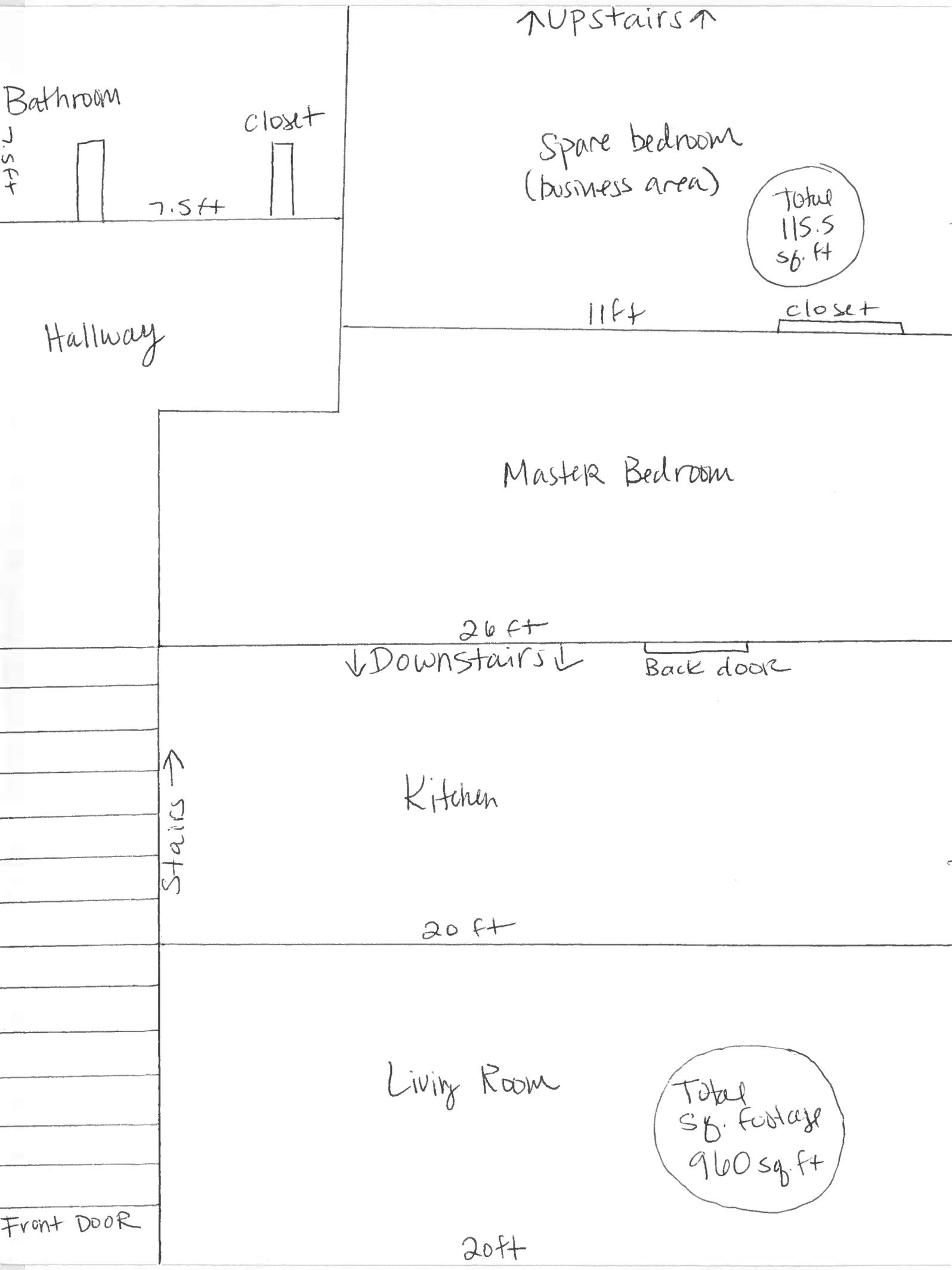
The structure does not fall within the special flood hazard zone.

The land does not fall within the special flood hazard zone.

A wetlands study has not been performed.

Livingston - Hughes  
 Professional Land Surveyors & Foresters  
 88 Guinea Road  
 Kennebunkport - Maine 04046  
 207-967-9761 phone 207-967-4831 fax

THIS SKETCH IS FOR MORTGAGE PURPOSES ONLY



↑UPstairs↑

Bathroom

7.5ft

closet

7.5ft

Spare bedroom  
(business area)

Total  
115.5  
sq. ft

11ft

closet

Hallway

Master Bedroom

26ft

↓Downstairs↓

Back door

Kitchen

Stairs →

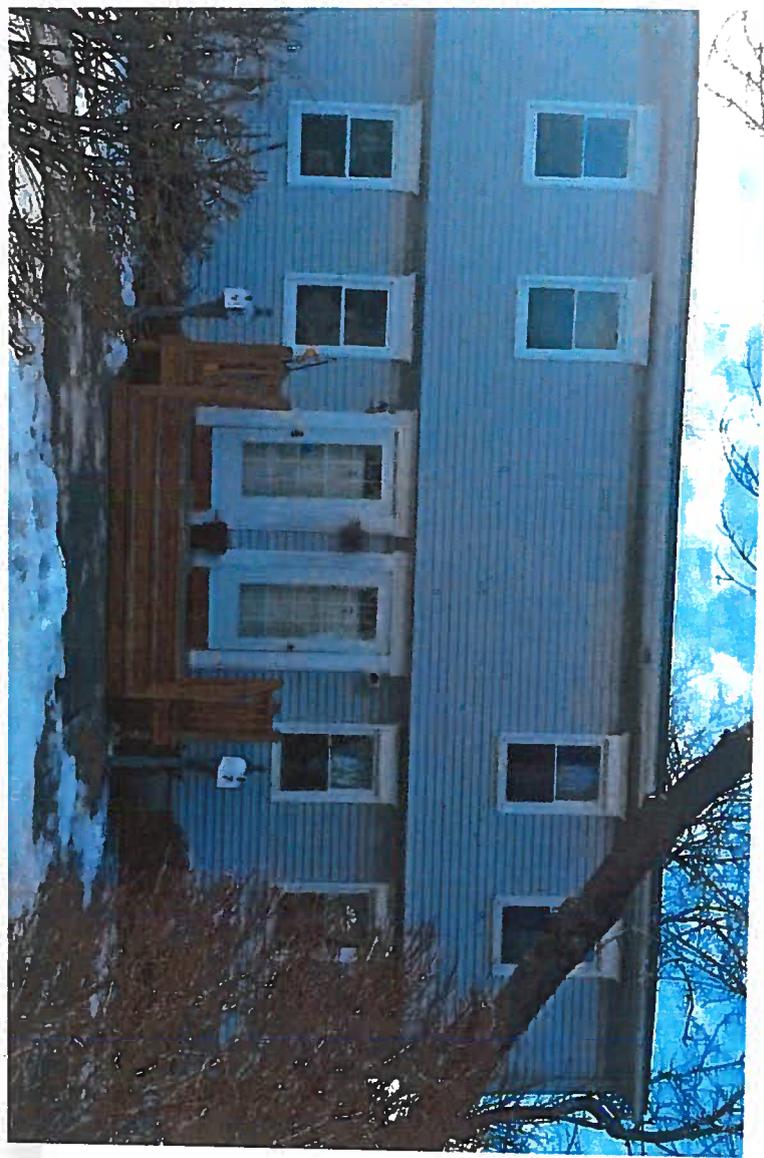
20ft

Living Room

Total  
sq. footage  
960 sq. ft

Front door

20ft







Michael A. Russell, MS, Director  
Permitting and Inspections Department

Ann Machado  
Zoning Administrator

### CITY OF PORTLAND ZONING BOARD OF APPEALS Conditional Use Appeal Application

Applicant Information: Dianne + Matt Watters

Subject Property Information: 15 Morningstar Ln.

NAME  
NA

PROPERTY ADDRESS  
385 AA 032

BUSINESS NAME  
120 Douglas St. Portland ME

CHART/BLOCK/LOT (CBL)  
Frederick + Colleen Writt

BUSINESS ADDRESS  
04102

PROPERTY OWNER (If Different)

BUSINESS TELEPHONE & E-MAIL  
207-691-9600 dianne.watters@tylertech.com

ADDRESS (If Different)  
93 Mast Rd. Falmouth, ME

APPLICANT'S RIGHT/TITLE/INTEREST  
Purchaser

PHONE # AND E-MAIL  
207-653-5317

CURRENT ZONING DESIGNATION  
R-2

CONDITIONAL USE AUTHORIZED BY SECTION 14- 78(a)(2)

EXISTING USE OF THE PROPERTY:  
partially completed barn conversion to single family with A.D.U.

TYPE OF CONDITIONAL USE PROPOSED:  
Complete single family residence with A.D.U.

STANDARDS: Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the Board determines that:

1. The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone; and
2. The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter; and
3. The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses of other allowable uses in the zone.

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

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

[Signature]

2/8/18

SIGNATURE OF APPLICANT

DATE

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

February 12, 2018

To the City of Portland Zoning Board of Appeals:

We ask that you consider our conditional use request to complete an Accessory Dwelling Unit (ADU) at 15 Morningstar Lane. This beautiful unfinished property is awaiting completion, and offers a great space for a large, energy efficient, family size main dwelling with a private spacious accessory dwelling. We plan to owner occupy this home and are excited about the opportunity to move to this family friendly part of the city while offering a high quality rental option in Portland's limited market.

This is a re-approval as the current owners, The Writts, had intended to complete the property with an ADU. They have worked successfully with the city to obtain approval and satisfy ZBA and code requirements several years ago. They worked with city landscaping and accommodated screening to maintain a single-family appeal for the neighborhood. Unfortunately, a debilitating accident left the project unable to be completed. We hope to revive the project and build on the vision they had for the property.

The plans proposed conform to all zoning requirements as detailed under the R-2 Zoning Rules without exception. If approved, we request a 2-year period to implement the project, as allowed by code. We have enclosed all of the details to support this request, but please don't hesitate to reach out for further information if needed.

Thank you,

Dianne and Matt Watters

A handwritten signature in blue ink, appearing to read "Dianne and Matt Watters", is written over the typed name.

**Requesting conditional use of an ADU under R-2 Zone as specified in 14-78 (a)(2); see below:**

STANDARDS: Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the Board determines that:

1. ***The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone;*** Not substantially greater as Morningstar Lane is a very small 10 lot subdivision ending in a cul-de-sac, the daily traffic count will be low. Due to the nature and location of the property, addition of the accessory dwelling unit will cause no visual obstruction to vehicular and pedestrian traffic. The ADU will provide quality housing for one or two residents in addition to improving the efficiency of using the existing structure and property. The two car garage and two car paved driveway will accommodate both units' vehicles without exceeding the lot size of a traditional single family home.
  
2. ***The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter;*** None. This is accommodation of a clean and safe additional dwelling in a residential neighborhood, not deviating from the surrounding use. Contrary to having an adverse impact, the addition of an accessory dwelling improves the public welfare by adding a desirable, modern, private rental dwelling to an area of the city in which such rental dwellings are difficult to come by.
  
3. ***The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses of other allowable uses in the zone.*** The ADU will not deviate from surrounding use; the proposed plans and existing structure accomplish a private ADU with hardscaping and screening in place to maintain privacy and the façade of a single family residence. The ADU does not differ substantially from the impact of any other accessory dwelling in the zone that has been designed to house one or two residents. No significant increase of trash or waste generation, no commercial signage or deliveries would result from the intended use.

**NOTE: If site plan approval is required, attach preliminary or final site plan** Enclosed, see supporting documentation.

**Sec. 14-78. Conditional use. The following uses shall be permitted only upon the issuance of a conditional use permit, subject to the provisions of section 14-474 (conditional uses) of this article and any special provisions, standards or requirements specified below:**

**(a) Residential:**

...

...

**2. Alteration or construction of a single-family detached dwelling to accommodate an accessory dwelling unit within the building and clearly subordinate to the principal dwelling for the benefit of homeowners or tenants provided that:**

**a. The accessory unit shall be no more than thirty (30) percent of the gross floor area of the principal building and shall have a minimum floor area of four hundred (400) square feet; gross floor area shall exclude any floor area that has less than two-thirds of its floor-to-ceiling City of Portland Land Use Code of Ordinances Chapter 14 Sec. 14-78 Rev. 3-19-2012 14-66 height above the average adjoining ground level; gross floor area may include attic space if such space shall be included as habitable space within either dwelling unit;**

Gross floor area of principal building\*: 3,276 sq.ft.  
Proposed ADU: 835 sq.ft. (400 sq. ft. minimum)  
% of gross floor area: 25% (30% maximum)

\*Gross floor area includes approx: (1276 sq. ft. Main Floor)+(805 sq. ft. Second Floor-reduced to count only 8' head room due to knee walls)+(1195 sq.ft. daylight basement which is confirmed to exceed 2/3 floor-to-ceiling height above average surrounding grade.) See enclosed documentation.

**b. Lot area shall be eight thousand (8,000) square feet for single-family dwellings in existence as of May 1, 1984, and lot area shall be ten thousand (10,000) square feet for single-family dwellings constructed after May 1, 1984;**

Total lot area: 13,341 sq.ft. (10,000 minimum)

**c. There shall be no open, outside stairways or fire escapes above the ground floor; d. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building;**

None. Exterior largely complete and no plans for significant modifications.

**e. The project shall be subject to article V (site plan) of this chapter for site plan review and approval and the following additional standards: i. Any additions or exterior alterations, such as facade materials, building form and roof pitch shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. ii. The scale and surface area of parking, driveways and paved areas shall be arranged and landscaped to properly screen vehicles from adjacent properties and streets.**

Site plan enclosed. Exterior largely complete with no significant alterations or additions planned.

**f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bona fide temporary absences; and g. Parking shall be provided as required by division 20 of this article.**

Main dwelling will be owner occupied.

Site Plan

Scale: 1"=20'

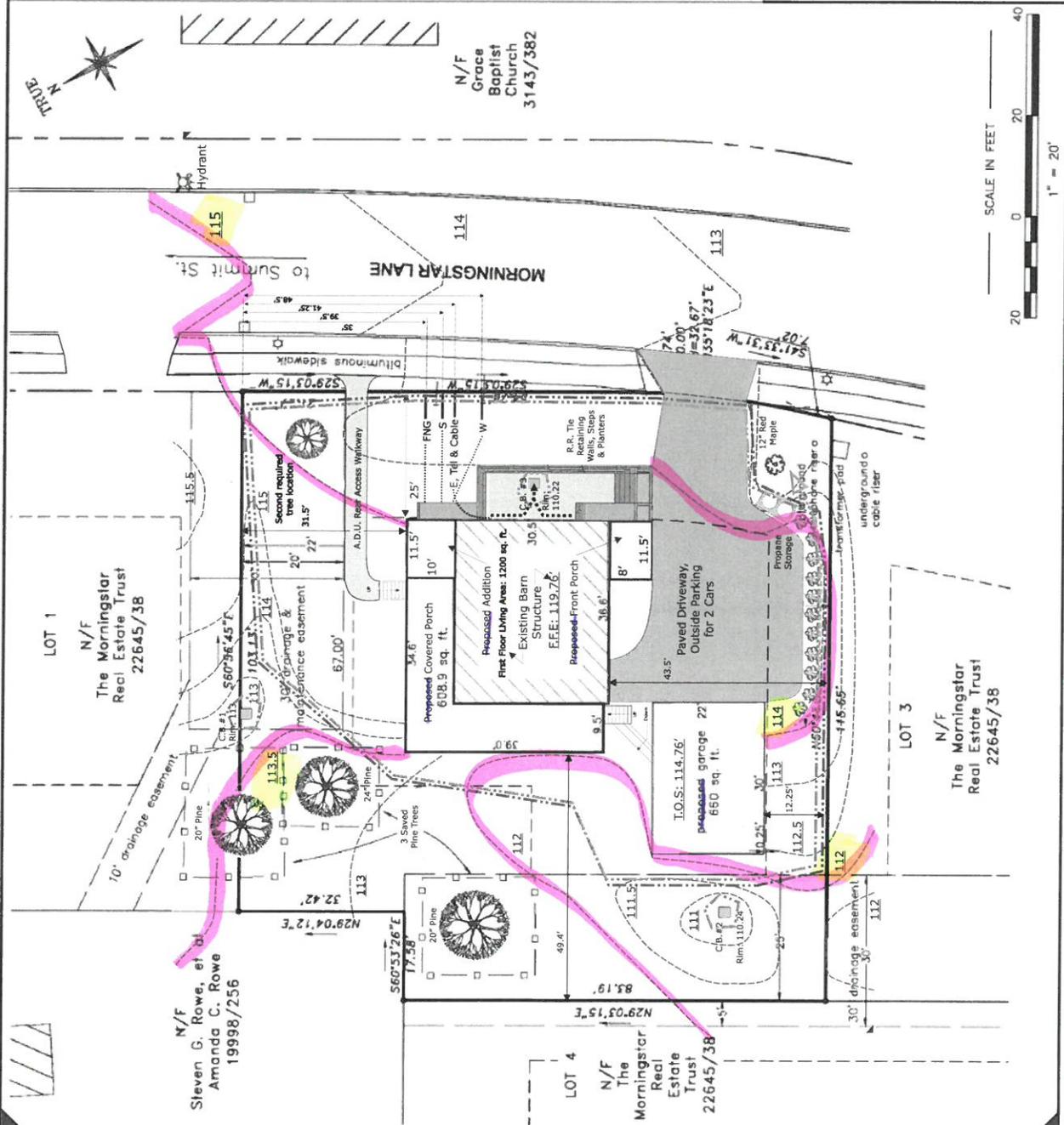
- 1) Plan References: 3rd Amended PLAT of the "Morningstar Lane" Subdivision, dated: 5.7.2007 CCRD Book: 213, Page: 466
- 2) Lot: As described in deed, referenced in CCRD Doc. # 31143, Book: 30702, Pgs: 82, 83
- 3) Private Drainage Easements: As described in deed referenced as "Exhibit A" in CCRD Doc. # 31143, Book: 30702, Pgs: 84, 95 (See pgs 16, 17 for text)
- 4) Elevations: Dimensions reference city datum.
- 5) Zoning: R-2
- 6) Soil Type: From NRCS chart: "Bub"-- gravelly clay loam-- woodland
- 7) Parcel Area: 13,341 sq. ft.

Legend:

- Parking Screening-- White Cedar
- Catch Basins, Private, with Rim Elevations
- Grades
- Paved with Pervious Pavers
- Paved with Bituminous Concrete
- Limits of Building Envelope
- Erosion Control
- Limits of soil disturbance
- Soil berm to redirect stormwater runoff
- Foundation underdrain

Revisions

Date	Description
4/24/14	Added exterior stairways, moved propane storage location, changed basement access from rip-rap to railroad ties.
4/30/14	Zoning, soil type, distances from structures to property lines, foundation drain outlet, diversion swale on parking area, ground floor area, erosion control, second tree, limits of site disturbance, total land area, exact utility locations w/ dimensions
5/23/14	Added perimeter erosion control measures, added utility connection paths to structure.



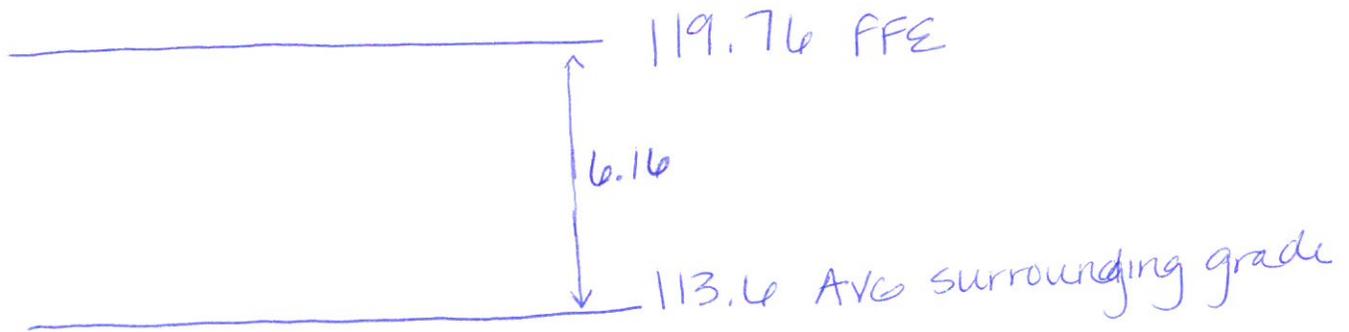




Daylight basement, surrounding grade

Avg grade from 4 corners (seen on site plan)

$$(113.5 + 115 + 112 + 114) / 4 = 113.4$$

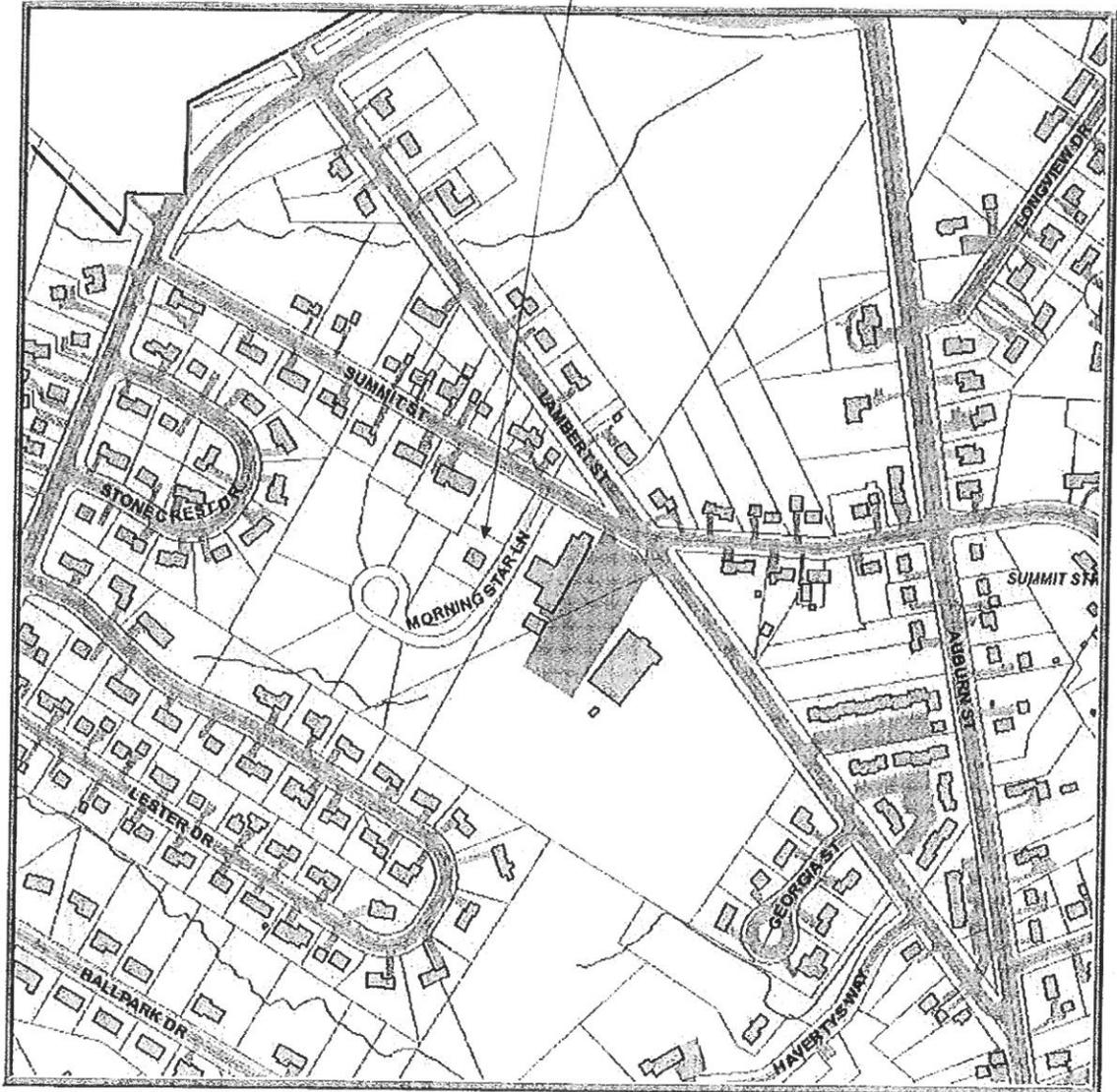


ceiling height = 9'

Locus Map of:

15 Morningstar Lane  
Portland, ME 04103

CBL: 385A A032



**Front:** proposed ADU entrance with privacy screens to shield neighbors and maintain single family aesthetics



Main dwelling entrance on porch.



Rear additional exit for ADU and Main dwelling entry on porch:



**TRUSTEE'S DEED**

KNOW ALL BY THESE PRESENTS, that **RONALD J. DORLER, TRUSTEE OF THE MORNINGSTAR REAL ESTATE TRUST**, a trust under the laws of the State of Maine with a mailing address of 220 Riverside Industrial Parkway, Portland, Maine ("Grantor"), for consideration paid, **GRANTS to FREDERICK A. WRITT and COLLEEN R. WRITT** as joint tenants and not as tenants-in-common, certain real estate located in the City of Portland, Cumberland County, Maine, which is more particularly described in Exhibit A attached hereto and made a part hereof.

This conveyance is made **SUBJECT, HOWEVER**, to real estate taxes which are not yet due and payable, which, by acceptance hereof, Grantee assumes and agrees to pay.

This conveyance is also made **SUBJECT** to and with the benefit of the covenants, conditions, restrictions and easements, set forth in that certain General Declaration of Covenants, Restrictions and Easements dated July 7, 2008, and recorded in the Cumberland County Registry of Deeds in Book 26193, Page 1, as the same may be further amended and/or supplemented from time to time (the "Declaration").

This conveyance is also made **SUBJECT** to and with the benefit of the terms and conditions of the Bylaws of the Morningstar Lane Property Owners Association, so long as they shall be in effect, as the same may be amended from time to time.

This conveyance is also made **SUBJECT** to and with the benefit of such state of facts, notes and conditions as are shown on that certain plan attached hereto as Exhibit B and made a part hereof and on that certain amended plan entitled "Final Subdivision Plan: Morningstar Lane: Summit Street, Portland, Maine: Prepared for Morningstar Real Estate Trust: 9 Craigie Street, Portland, Maine 04102," prepared by Stantec Consulting Services, Inc., dated May, 2007, last revised March 31<sup>st</sup>, 2008, and recorded in the Cumberland County Registry of Deeds in Plan Book 209, Page 104 (the "Plan"), and any accompanying plans submitted to the City of Portland in connection with the approval for the Morningstar Lane Subdivision, as the same may be amended from time to time. Without limiting the foregoing, Grantor expressly reserves title to "Morningstar Lane" as shown on said Plan.

This conveyance is also made **SUBJECT** to any and all rights, restrictions and encumbrances of record.

MAINE REAL ESTATE TAX PAID



**Exhibit A**

A certain lot or parcel of land, with any buildings thereon, situated on a proposed public way known as Morningstar Lane in the City of Portland, County of Cumberland and State of Maine, being Lot 2 as depicted upon plan entitled "Morningstar Land, Summit Street, Portland, Maine" prepared for Morningstar Real Estate Trust, 9 Caraigie Street, Portland, Maine 04012" dated June 6<sup>th</sup>, 2008, recorded July 13<sup>th</sup>, 2009, Cumberland County Registry of Deeds, Plan Book 209, Page 204.

EXCEPTING AND RESERVING to the Grantor herein, however, the fee interest in and to the road depicted on the Plan as Morningstar Lane, which it dedicates and offers and intends to convey to the City of Portland.

The above-described premises are conveyed subject to the rights, easements, covenants, conditions, restrictions and obligations set forth in the following instruments recorded in the Cumberland County Registry of Deeds:

1. For Lot 1: A Drainage Easement over Lots 1 and 2 from Virginia D. Elliott, Trustee of The Morningstar Real Estate Trust to the Morningstar Lane Property Owners Association recorded in the Cumberland County Registry of Deeds and a Drainage Easement from Virginia D. Elliott, Trustee of The Morningstar Real Estate Trust to G. Steven and Amanda C. Rowe, dated July 7, 2008 and recorded in the Cumberland County Registry of Deeds in Book 26193, Page 24.
2. For Lot 2: A Drainage Easement over Lots 1 and 2 from Virginia D. Elliott, Trustee of The Morningstar Real Estate Trust to the Morningstar Lane Property Owners Association recorded in the Cumberland County Registry of Deeds; a Drainage Easement from Virginia D. Elliott, Trustee of The Morningstar Real Estate Trust to G. Steven and Amanda C. Rowe, dated July 7, 2008 and recorded in the Cumberland County Registry of Deeds in Book 26193, Page 24; and a Drainage Easement over Lots 2, 3 and 4 from Virginia D. Elliott, Trustee of The Morningstar Real Estate Trust to the Morningstar Lane Property Owners Association recorded in the Cumberland County Registry of Deeds.
3. For Lot 3: A Drainage Easement over Lots 2, 3 and 4 from Virginia D. Elliott, Trustee of The Morningstar Real Estate Trust to the Morningstar Lane Property Owners Association recorded in the Cumberland County Registry of Deeds.
4. For Lot 4: A Drainage Easement over Lots 2, 3 and 4 from Virginia D. Elliott, Trustee of The Morningstar Real Estate Trust to the Morningstar Lane Property Owners Association recorded in the Cumberland County Registry of Deeds.
5. For Lots 5 and 6: A Drainage Easement over Lots 5 and 6 from Virginia D. Elliott, Trustee of The Morningstar Real Estate Trust to the Morningstar Lane Property Owners Association recorded in the Cumberland County Registry of Deeds; and a Sewer Easement over Lots 5 and 6 from Virginia D. Elliott, Trustee



of The Morningstar Real Estate Trust to the City of Portland, dated recorded in Date: the Cumberland County Registry of Deeds.

6. For Lots 7 and 8: A Drainage Easement over Lots 7 and 8 from Virginia D. Elliott, Trustee of The Morningstar Real Estate to the City of Portland recorded in the Cumberland County Registry of Deeds.
7. For Lot 10: An Easement Deed for a pedestrian easement from Virginia D. Elliott, Trustee of The Morningstar Real Estate Trust to Portland Trails, dated July 7, 2008 and recorded in the Cumberland County Registry of Deeds in Book 26193, Page 19.
8. For all Lots 1 through 10: A Stormwater Drainage System Maintenance Agreement between Virginia D. Elliott, Trustee of The Morningstar Real Estate Trust and the City of Portland; and an Easement and Easement Consent Agreement dated July 7, 2008 and recorded in the Cumberland County Registry of Deeds in Book 26192, Page 307, by and among: Lawrence I. Wing and Carol A. Wing, Robert H. Laing and Julie P. Grant, the City of Portland, and the Declarant, to construct, install, use, operate, maintain, repair and replace a stormwater and drainage management system within the City of Portland's Drainage Easement located on the Wings and Laing and Grant parcels to benefit the Morningstar Lane Subdivision as shown on the Plan.
9. Drainage Easement Deed granted to Morningstar Lane Property Owners Association to be recorded in the Cumberland County Registry of Deeds.

Doc# 31143 Bk#30702 Pg# 83

IN WITNESS WHEREOF, Ronald J. Dorler has caused this instrument to be executed in his capacity as Trustee on this 12 day of May, 2013.

WITNESS:

RONALD J. DORLER, TRUSTEE OF THE MORNINGSTAR REAL ESTATE TRUST

[Signature]

[Signature]  
Ronald J. Dorler, Trustee of the Morningstar Real Estate Trust

State of Maine  
Cumberland, ss:

5/12, 2013

Then personally appeared the above-named Ronald J. Dorler, Trustee of The Morningstar Real Estate Trust, and acknowledged the foregoing instrument to be his free act and deed in his said capacity.

Before me,

[Signature]  
Notary Public/Maine Attorney at Law  
Printed Name: \_\_\_\_\_

James B. Burns  
Notary Public, Maine  
My Commission Expires October 25, 2015

SEAL

Owners: Frederick A. & Colleen R. Writt  
Contact Telephone #: 207-653-5347

Residence & A.D.U. at 15 Morningstar Lane, Portland, ME 04103

# PURCHASE AND SALE AGREEMENT

("days" means business days unless otherwise noted, see paragraph 23)

December 27, 2017  
Offer Date

December 29, 2017 Effective Date  
Effective Date is defined in Paragraph 23 of this Agreement.

1. PARTIES: This Agreement is made between Dianne R Watters, Matthew L Watters ("Buyer") and Frederick A Witt, Colleen R Witt ("Seller").

2. DESCRIPTION: Subject to the terms and conditions hereinafter set forth, Seller agrees to sell and Buyer agrees to buy ( all  part of ; If "part of" see para. 26 for explanation) the property situated in municipality of Portland, County of Cumberland, State of Maine, located at 15 Morningstar Lane and described in deed(s) recorded at said County's Registry of Deeds Book(s) 30702, Page(s) 082 ALL.

3. FIXTURES: The Buyer and Seller agree that all fixtures, including but not limited to existing storm windows, screens, shades and/or blinds, shutters, curtain rods, built-in appliances, heating sources/systems including gas and/or kerosene-fired heaters and wood/pellet stoves, sump pump, electrical fixtures, landscaping, and None are included with the sale except for the following: No Exceptions.  
Seller represents that all mechanical components of fixtures will be operational at the time of closing except: N/A

4. PERSONAL PROPERTY: The following items of personal property as viewed on November 19, 2017 are included with the sale at no additional cost, in "as is" condition with no warranties: All Building Materials onsite

5. PURCHASE PRICE/EARNEST MONEY: For such Deed and conveyance Buyer agrees to pay the total purchase price of [REDACTED]. Buyer  has delivered; or  will deliver to the Agency within 5 days of the Effective Date, a deposit of earnest money in the amount \$ [REDACTED]. Buyer agrees that an additional deposit of earnest money in the amount of \$ N/A will be delivered N/A.  
If Buyer fails to deliver the initial or additional deposit in compliance with the above terms Seller may terminate this Agreement. This right to terminate ends once Buyer has delivered said deposit(s). The remainder of the purchase price shall be paid by wire, certified, cashier's or trust account check upon delivery of the Deed.

This Purchase and Sale Agreement is subject to the following conditions:

6. ESCROW AGENT/ACCEPTANCE: Keller Williams Realty ("Agency") shall hold said earnest money and act as escrow agent until closing; this offer shall be valid until December 30, 2017 (date) 3:00  AM  PM; and, in the event of non-acceptance, this earnest money shall be returned promptly to Buyer.

7. TITLE AND CLOSING: A deed, conveying good and merchantable title in accordance with the Standards of Title adopted by the Maine Bar Association shall be delivered to Buyer and this transaction shall be closed and Buyer shall pay the balance due and execute all necessary papers on See Addendum 1 (closing date) or before, if agreed in writing by both parties. If Seller is unable to convey in accordance with the provisions of this paragraph, then Seller shall have a reasonable time period, not to exceed 30 calendar days, from the time Seller is notified of the defect, unless otherwise agreed to in writing by both Buyer and Seller, to remedy the title. Seller hereby agrees to make a good-faith effort to cure any title defect during such period. If, at the later of the closing date set forth above or the expiration of such reasonable time period, Seller is unable to remedy the title, Buyer may close and accept the deed with the title defect or may terminate this Agreement in which case the parties shall be relieved of any further obligations hereunder and any earnest money shall be returned to the Buyer.

8. DEED: The property shall be conveyed by a Warranty deed, and shall be free and clear of all encumbrances except covenants, conditions, easements and restrictions of record which do not materially and adversely affect the continued current use of the property.

9. POSSESSION, OCCUPANCY, AND CONDITION: Unless otherwise agreed in writing, possession and occupancy of premises, free of tenants and occupants, shall be given to Buyer immediately at closing. Said premises shall then be broom clean, free of all possessions and debris, and in substantially the same condition as at present, excepting reasonable use and wear. Buyer shall have the right to view the property within 24 hours prior to closing.

10. RISK OF LOSS, DAMAGE, DESTRUCTION AND INSURANCE: Prior to closing, risk of loss, damage, or destruction of premises shall be assumed solely by the Seller. Seller shall keep the premises insured against fire and other extended casualty risks prior to closing. If the premises are damaged or destroyed prior to closing, Buyer may either terminate this Agreement and be refunded the earnest money, or close this transaction and accept the premises "as-is" together with an assignment of the insurance proceeds relating thereto.

Revised 2017

Page 1 of 4 - P&S

Buyer(s) Initials

DRW

MW

Seller(s) Initials

FRW

CRW

11. FUEL/UTILITIES/PRORATIONS: Buyer  shall  shall not pay Seller at closing for all fuel in any tanks remaining on the property calculated as of the closing date or such earlier date as required to comply with lender requirements, if any. The amount owed, if any, shall be determined using the most recently available cash price of the company that last delivered the fuel. Metered utilities such as electricity, water and sewer will be paid through the date of closing by Seller. The following items, where applicable, shall be prorated as of the date of closing: collected rent, association fees, (other) None. The day of closing is counted as a Seller day. Real estate taxes shall be prorated as of the date of closing (based on municipality's fiscal year). Seller is responsible for any unpaid taxes for prior years. If the amount of said taxes is not known at the time of closing, they shall be apportioned on the basis of the taxes assessed for the preceding year with a reapportionment as soon as the new tax rate and valuation can be ascertained, which latter provision shall survive closing. Buyer and Seller will each pay their transfer tax as required by State of Maine.

12. DUE DILIGENCE: Neither Seller nor Licensee makes any warranties regarding the condition, permitted use or value of Sellers' real or personal property, or any representations as to compliance with any federal, state or municipal codes, including, but not limited to, fire, life safety, electrical and plumbing. Buyer is encouraged to seek information from professionals regarding any specific issue or concern.

Buyer's obligation to close under this Agreement is not subject to any due diligence investigations. Buyer is relying completely upon Buyer's own opinion as to the condition of the property.

Buyer's obligation to close under this Agreement is subject to Buyer's satisfaction with the results of any due diligence investigations undertaken. Buyer shall have 14 days from the Effective Date of this Agreement to perform such due diligence investigations as Buyer deems necessary which may include, without limitation, any or all of the following:

General Building	Square Footage	Zoning	Survey/MLI	Habitat Review/Waterfowl
Sewage Disposal	Code Conformance	Pests	Lead Paint	Coastal Shoreland Septic
Water Quality	Registered Farmland	Pool	Flood Plain	Energy Audit
Water Quantity	Environmental Scan	Insurance	Chimney	Lot Size/Acreage
Air Quality	Smoke/CO Detectors	Mold	Tax Status*	Arsenic Wood/Water (see par. 13)

All investigations will be done at Buyer's expense by persons chosen by Buyer in Buyer's sole discretion. Seller agrees to cooperate with Buyer and shall give Buyer and Buyer's agents and consultants reasonable access to the property and its systems and fixtures in order to undertake the above investigations. If the result of any investigation is unsatisfactory to Buyer, Buyer may terminate this Agreement by notifying Seller in writing within the specified number of days, and any earnest money shall be returned to Buyer. If the result of any investigation is unsatisfactory to Buyer in Buyer's sole discretion, and Buyer wishes to pursue remedies other than voiding the Agreement, Buyer must do so to full resolution within the time period set forth above; otherwise this contingency is waived. If Buyer does not notify Seller that an investigation is unsatisfactory within the time period set forth above, this contingency is waived by Buyer.

\* If the property is enrolled in the Maine Tree Growth Tax program, Seller agrees to provide Buyer with the current Forest Management and Harvest Plan within --- days.  Yes  No

13. PROPERTY DISCLOSURE FORM: Buyer acknowledges receipt of Seller's Property Disclosure Form and the information developed by the Maine Center for Disease Control and Prevention regarding arsenic in private water supplies and arsenic in treated wood.

14. FINANCING: Buyer's obligation to close:

- is not subject to a financing contingency. Buyer has provided Seller with acceptable proof of the funds.
- is not subject to a financing contingency. Buyer shall provide proof of the funds acceptable to Seller within --- days. If proof of funds is not provided within such time period, or such proof is unacceptable to Seller, Seller may terminate this Agreement no later than --- days from receipt or expiration of such time period in which case the earnest money shall be returned to Buyer.

is subject to financing as follows:

- a. Buyer's obligation to close is subject to Buyer obtaining a Construction loan of 80.000 % of the purchase price, at an interest rate not to exceed prevailing % and amortized over a period of 30 years. Buyer is under a good faith obligation to seek and obtain financing on these terms. If such financing is not available to Buyer as of the closing date, Buyer is not obligated to close and may terminate this Agreement in which case the earnest money shall be returned to Buyer.
- b. Buyer to provide Seller with letter from lender showing that Buyer has made application for loan specified in (a) and, subject to verification of information, is qualified for the loan requested within 5 days from the Effective Date of the Agreement. If Buyer fails to provide Seller with such letter within said time period, Seller may terminate this Agreement and the earnest money shall be returned to Buyer. This right to terminate ends once Buyer's letter is received.
- c. Buyer hereby authorizes, instructs and directs its lender to communicate the status of the Buyer's loan application to Seller, Seller's licensee and Buyer's licensee.
- d. After (b) is met, if the lender notifies Buyer that it is unable or unwilling to provide said financing, Buyer is obligated to provide Seller with written documentation of the loan denial within two days of receipt. After notifying Seller, Buyer shall have 5 days to provide Seller with a letter from another lender showing that Buyer has made application for loan specified in (a) and, subject to verification of information, is qualified for the loan requested. If Buyer fails to provide Seller with such letter within said time period, Seller may terminate this Agreement and the earnest money shall be returned to Buyer. This right to terminate ends once Buyer's letter is received.
- e. Buyer agrees to pay no more than 0 points. Seller agrees to pay up to \$ [REDACTED] toward Buyer's actual pre-pays, points and/or closing costs, but no more than allowable by Buyer's lender.
- f. Buyer's ability to obtain financing  is  is not subject to the sale of another property. See addendum  Yes  No.
- g. Buyer may choose to pay cash instead of obtaining financing. If so, Buyer shall notify Seller in writing including providing proof of funds and the Agreement shall no longer be subject to financing, and Seller's right to terminate pursuant to the provisions of this paragraph shall be void.

DRW DS [Signature] DS FRW DS DRW

15. BROKERAGE DISCLOSURE: Buyer and Seller acknowledge they have been advised of the following relationships:

John Hatcher/Andrew Newman ( 001628 ) of Keller Williams Realty ( 1909 )  
Licensee MLS ID Agency MLS ID  
is a  Seller Agent  Buyer Agent  Disc Dual Agent  Transaction Broker

Bridget King/Jason Miller ( 016817 ) of Portside Real Estate Group ( 2799 )  
Licensee MLS ID Agency MLS ID  
is a  Seller Agent  Buyer Agent  Disc Dual Agent  Transaction Broker

If this transaction involves Disclosed Dual Agency, the Buyer and Seller acknowledge the limited fiduciary duties of the agents and hereby consent to this arrangement. In addition, the Buyer and Seller acknowledge prior receipt and signing of a Disclosed Dual Agency Consent Agreement.

16. DEFAULT/RETURN OF EARNEST MONEY: Buyer's failure to fulfill any of Buyer's obligations hereunder shall constitute a default and Seller may employ all legal and equitable remedies, including without limitation, termination of this Agreement and forfeiture by Buyer of the earnest money. Seller's failure to fulfill any of Seller's obligations hereunder shall constitute a default and Buyer may employ all legal and equitable remedies, including without limitation, termination of this Agreement and return to Buyer of the earnest money. Agency acting as escrow agent has the option to require written releases from both parties prior to disbursing the earnest money to either Buyer or Seller. In the event that the Agency is made a party to any lawsuit by virtue of acting as escrow agent, Agency shall be entitled to recover reasonable attorney's fees and costs which shall be assessed as court costs in favor of the prevailing party.

17. MEDIATION: Earnest money or other disputes within the jurisdictional limit of small claims court will be handled in that forum. All other disputes or claims arising out of or relating to this Agreement or the property addressed in this Agreement (other than requests for injunctive relief) shall be submitted to mediation in accordance with generally accepted mediation practices. Buyer and Seller are bound to mediate in good faith and to each pay half of the mediation fees. If a party fails to submit a dispute or claim to mediation prior to initiating litigation (other than requests for injunctive relief), then that party will be liable for the other party's legal fees in any subsequent litigation regarding that same matter in which the party who failed to first submit the dispute or claim to mediation loses in that subsequent litigation. This clause shall survive the closing of the transaction.

18. PRIOR STATEMENTS: Any representations, statements and agreements are not valid unless contained herein. This Agreement completely expresses the obligations of the parties.

19. HEIRS/ASSIGNS: This Agreement shall extend to and be obligatory upon heirs, personal representatives, successors, and assigns of the Seller and the assigns of the Buyer.

20. COUNTERPARTS: This Agreement may be signed on any number of identical counterparts with the same binding effect as if the signatures were on one instrument. Original or faxed or other electronically transmitted signatures are binding.

21. SHORELAND ZONE SEPTIC SYSTEM: Seller represents that the property  does  does not contain a septic system within the Shoreland Zone. If the property does contain a septic system located in the Shoreland Zone, Seller agrees to provide certification at closing indicating whether the system has/has not malfunctioned within 180 calendar days prior to closing.

22. NOTICE: Any notice, communication or document delivery requirements hereunder may be satisfied by providing the required notice, communication or documentation to or from the parties or their Licensee. Only withdrawals of offers and counteroffers will be effective upon communication, verbally or in writing.

23. EFFECTIVE DATE/BUSINESS DAYS: This Agreement is a binding contract when the last party signing has caused a paper or electronic copy of the fully executed agreement to be delivered to the other party which shall be the Effective Date. Licensee is authorized to fill in the Effective Date on Page 1 hereof. Except as expressly set forth to the contrary, the use of the term "days" in this Agreement, including all addenda made a part hereof, shall mean business days defined as excluding Saturdays, Sundays and any observed Maine State/Federal holidays. Deadlines in this Agreement, including all addenda, expressed as "within x days" shall be counted from the Effective Date, unless another starting date is expressly set forth, beginning with the first day after the Effective Date, or such other established starting date, and ending at 5:00 p.m. Eastern Time on the last day counted. Unless expressly stated to the contrary, deadlines in this Agreement, including all addenda, expressed as a specific date shall end at 5:00 p.m. Eastern Time on such date.

24. CONFIDENTIALITY: Buyer and Seller authorize the disclosure of the information herein to the real estate licensees, attorneys, lenders, appraisers, inspectors, investigators and others involved in the transaction necessary for the purpose of closing this transaction. Buyer and Seller authorize the lender and/or closing agent preparing the closing disclosure and/or settlement statement to release a copy of the closing disclosure and/or settlement statement to the parties and their licensees prior to, at and after the closing.

25. ADDENDA: Lead Paint -  Yes  No ; Other -  Yes  No Explain: Addendum #1, Addendum #2

The Property Disclosure Form is not an addendum and not part of this Agreement.

26. OTHER CONDITIONS: N/A

DRW

WJ

FRW

ORW

27. GENERAL PROVISIONS:

- a. A copy of this Agreement is to be received by all parties and, by signature, receipt of a copy is hereby acknowledged. If not fully understood, contact an attorney. This is a Maine contract and shall be construed according to the laws of Maine.
- b. Seller acknowledges that State of Maine law requires buyers of property owned by non-resident sellers to withhold a prepayment of capital gains tax unless a waiver has been obtained by Seller from the State of Maine Revenue Services.
- c. Buyer and Seller acknowledge that under Maine law payment of property taxes is the legal responsibility of the person who owns the property on April 1, even if the property is sold before payment is due. If any part of the taxes is not paid when due, the lien will be filed in the name of the owner as of April 1 which could have a negative impact on their credit rating. Buyer and Seller shall agree at closing on their respective obligations regarding actual payment of taxes after closing. Buyer and Seller should make sure they understand their obligations agreed to at closing and what may happen if taxes are not paid as agreed.
- d. Buyer acknowledges that Maine law requires continuing interest in the property and any back up offers to be communicated by the listing agent to the Seller.
- e. Whenever this Agreement provides for earnest money to be returned or released, agency acting as escrow agent must comply with the Maine Real Estate Commission rules which may require written notices or obtaining written releases from both parties.

Buyer's Mailing address is 120 Douglass Street, Portland, ME 04102

DocuSigned by:  
*Dianne R Watters*  
 BUYER  
**Dianne R Watters**  
 12/27/2017  
 DATE

DocuSigned by:  
*M-L Watters*  
 BUYER  
**Matthew L Watters**  
 12/27/2017  
 DATE

Seller accepts the offer and agrees to deliver the above-described property at the price and upon the terms and conditions set forth and agrees to pay agency a commission for services as specified in the listing agreement.

Seller's Mailing address is \_\_\_\_\_

DocuSigned by:  
*Frederick A. Writt*  
 SELLER  
**Frederick A Writt**  
 12/28/2017  
 DATE

DocuSigned by:  
*Colleen R Writt*  
 SELLER  
**Colleen R Writt**  
 12/28/2017  
 DATE

**COUNTER-OFFER**

Seller agrees to sell on the terms and conditions as detailed herein with the following changes and/or conditions:

The parties acknowledge that until signed by Buyer, Seller's signature constitutes only an offer to sell on the above terms and the offer will expire unless accepted by Buyer's signature with communication of such signature to Seller by (date) \_\_\_\_\_ (time) \_\_\_\_\_ AM \_\_\_\_\_ PM.

\_\_\_\_\_  
SELLER DATE

\_\_\_\_\_  
SELLER DATE

The Buyer hereby accepts the counter offer set forth above.

\_\_\_\_\_  
BUYER DATE

\_\_\_\_\_  
BUYER DATE

**EXTENSION**

The closing date of this Agreement is extended until \_\_\_\_\_ DATE

\_\_\_\_\_  
SELLER DATE

\_\_\_\_\_  
SELLER DATE

\_\_\_\_\_  
BUYER DATE

\_\_\_\_\_  
BUYER DATE



Fred & Colleen Writt  
93 Mast Rd.  
Falmouth, ME 04105

2/9/2018

To: All members of the City of Portland, ME -- Zoning Board of Appeals  
Cc: Matthew and Diane Watters, appellants  
From: Frederick and Colleen Writt, current owners of the property at 15 Morningstar Lane, Portland, ME 04103  
Re: Permission to request re-configuration of ADU

To all:

We are currently under contract with Matthew and Diane Watters for the purchase of our unfinished residential property on Morningstar Lane. They wish to represent their interests in this property personally before the ZBA, and we agree; permission granted.

They have re-configured the desired floor plan and ADU to their liking, after consulting with Code Enforcement to be sure that they are in compliance with all code requirements. As the property has been granted permission for the ADU in the past on two occasions, I hope that their request will be granted. Doing so will allow the property to finally be finished, enhancing the whole Morningstar Lane neighborhood.

I will attend the meeting to answer any questions that may arise.

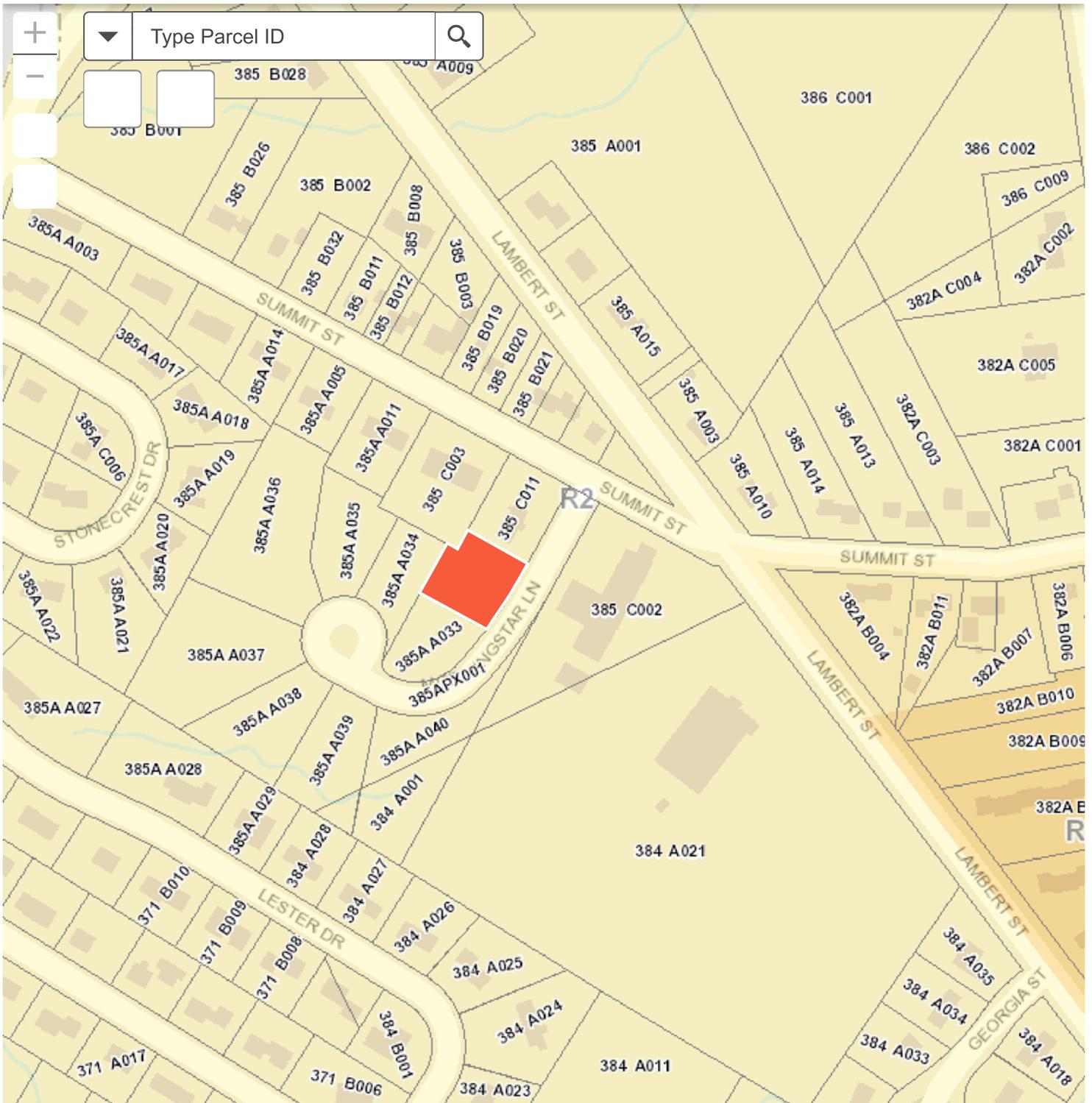
With Best Regards,

A handwritten signature in black ink, appearing to read "F. Writt", written in a cursive style.

Frederick A. Writt

207-653-5347

# 15 Morningstar Ln - Conditional Use



200ft  
2,920,689.981 322,967.414 Feet