

ITEM 17-052

To consider and act on authorizing the Code Enforcement Officer
to execute a Consent Agreement with the owners of
80 Foreside Road

CONSENT AGREEMENT

This Consent Agreement is entered into on the _____ day of _____, 2017 by and between GERALD K. GIORDANO and GLORIA L. GIORDANO, who owned property located at 80 Foreside Road, Cumberland, Maine ("Giordano") and the TOWN OF CUMBERLAND, a municipal corporation located in the County of Cumberland and State of Maine (the "Town").

WHEREAS, the Town of Cumberland (the "Town") is a municipal corporation duly organized under the laws of the State of Maine; and

WHEREAS, William Longley is the duly authorized Codes Enforcement Officer of the Town and Building Inspector (collectively the "CEO") of the Town authorized under state law to administer and enforce provisions of the Zoning Ordinance of the Town of Cumberland (the "Zoning Ordinance"); and

WHEREAS, since June 28, 2002, Gerald K. Giordano and Gloria L. Giordano (the "Landowners") have been the owners of real property located at 80 Foreside Road, Cumberland, Maine, described in a deed from Claudia C. Dodds, recorded at the Cumberland County Registry of Deeds in Book 17797, Page 1, and currently shown on Assessors Map U04 as Lot 2 (the "Premises"); and

WHEREAS, the currently existing single family home and attached garage were constructed prior to 1989 (the "Improvements"), and that a setback variance for the improvements was granted by the Town on June 15, 1989, as evidenced by the Certificate of Zoning Variance Appeal, recorded in the Cumberland County Registry of Deeds in Book 8793, Page 168, a copy of which is attached hereto; and

WHEREAS, it was determined in 2002 that an inconsistency may exist between the setback variance granted as aforesaid and that which is indicated by a mortgage inspection and then available building records; and,

WHEREAS, on June 21, 2002, a letter of non-action was issued by Barbara E. McPheters, Codes Enforcement Officer of the Town of Cumberland, noting the discrepancy and assuring the then owner, Claudia Dodds, that the Town would take no action against her with respect to the violation, a copy of which letter is attached; and

WHEREAS, the CEO has investigated this case and has determined that the apparent inconsistencies between the 1989 setback variance and the current location of the Improvements does not result in any significant health, safety or welfare problems; and those portions of the Improvements that may be encroaching into the setback are so integral to the Premises that removal of the Improvements, without harming the integrity of the remaining Improvements, is not feasible

Giordano and the Town agree as follows:

1. The Improvements shall be allowed to remain, and be repaired and replaced, in their current locations, but those portions of the Improvements that encroach into any setback shall

not be expanded in height, length or width from the now-current configuration.

- 2. All future improvements to the Premises must be in compliance with the setback requirements of the Town of Cumberland, and all other applicable requirements of the Zoning Ordinance.

- 3. Giordano agrees to pay the Town's attorney's fees and costs associated in the amount of Five Hundred Dollars (\$500.00). Such payment shall be made payable to the Town of Cumberland.

- 4. The Town agrees to relinquish its rights to prosecute Giordano, their successors in real property interest, assigns and heirs, for any alleged violation arising from the setback or building permit disputes arising from the construction or location of the deck.

- 5. This Consent Agreement shall be binding upon Giordano, their successors in real property interest, assigns and heirs and it shall be duly recorded by Giordano in the Cumberland County Registry of Deeds within thirty (30) days, with a copy of the recorded instrument to be provided to the CEO.

- 6. At a meeting of the Town Council on April 10, 2017, the Town approved this resolution of the alleged zoning violation based upon the terms and conditions set forth in this Agreement and authorizes the CEO to sign this Consent Agreement on behalf of the Town.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date appearing beside their names below.

Date: _____
Gerald K. Giordano

Date: _____
Gloria L. Giordano

TOWN OF CUMBERLAND

Date: _____
By: _____
William Longley, Its Duly Authorized
Code Enforcement Officer

STATE OF _____
COUNTY OF _____, 2017

Then personally appeared before me the above-named GERALD K. GIORDANO and GLORIA L. GIORDANO and acknowledged the foregoing instrument to be their free act and deed.

Before me,

Notary Public
Print Name:

STATE OF _____
COUNTY OF _____, 2017

Then personally appeared before me the above-named WILLIAM LONGLEY, CODE ENFORCEMENT OFFICER OF THE TOWN OF CUMBERLAND, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the Town of Cumberland.

Before me,

Attorney-at-law/Notary Public
Print Name:

FOR MORTGAGE LENDER USE ONLY

GENERAL NOTES: (1) DISTANCES SHOWN ARE TAKEN FROM PROVIDED TITLE REFERENCES SHOWN BELOW. (2) THE PURPOSE OF THIS INSPECTION IS TO RENDER AN OPINION AS FOLLOWS: A) DWELLING AND ACCESSORY STRUCTURE'S COMPLIANCE WITH RESPECT TO MUNICIPAL ZONING SETBACKS, AND B) FLOOD ZONE DETERMINATION BY HORIZONTAL SCALING ON BELOW REFERENCED FEMA MAP. (3) THIS INSPECTION EXCEPTS OUT ALL TECHNICAL STANDARDS CURRENTLY SET FORTH BY STATE OF MAINE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS. (4) THIS INSPECTION IS TO BE USED ONLY BY THE BELOW LISTED LENDER AND IS NOT TO BE USED BY ANOTHER PARTY FOR BOUNDARY LINE LOCATIONS OR LAND TITLE OPINIONS. (5) TITLE OR OWNERSHIP NOT DETERMINED. (6) A BOUNDARY SURVEY SHOULD BE PERFORMED TO RENDER A PROFESSIONAL OPINION PERTAINING TO BOUNDARY LINE LOCATIONS, EASEMENTS, RIGHTS OF WAY, ENCUMBRANCES, ENCROACHMENTS, AND/OR CONFLICTS WITH ABUTTER'S DEEDS. (7) LOCATION/EXISTENCE OF WETLANDS NOT DETERMINED UNLESS SHOWN ON A RECORDED SUBDIVISION PLAN. (8) THIS OFFICE DOES NOT GRANT AUTHORIZATION TO ANY THIRD PARTY FOR USE OF THIS INSPECTION IN ANY BOUNDARY LINE EVALUATION FOR PERMITTING/PLANNING/APPROVALS. (9) THIS OFFICE ACCEPTS NO LIABILITY AND/OR RESPONSIBILITY FOR THE IMPROPER USE OF THIS MORTGAGE LOAN INSPECTION.

REV. 08/01/2013

THIS SKETCH IS NOT TO BE USED FOR CONSTRUCTION PURPOSES. IMPROVEMENTS SHOWN ARE APPROXIMATE.

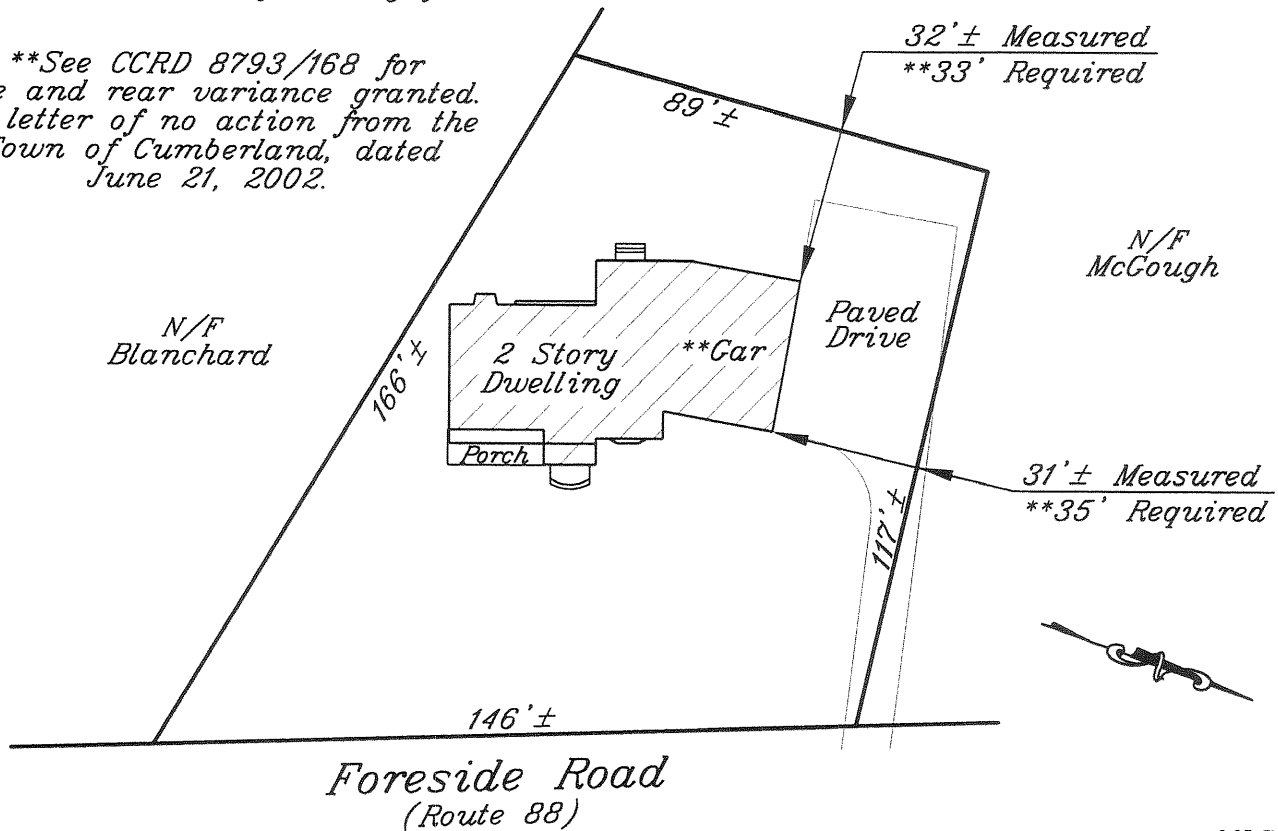
ADDRESS: 80 Foreside Road (Route 88)
Cumberland, Maine

INSP. DATE: 2/9/2017

SCALE: 1" = 40'

Recommend Boundary Survey for accurate location.

**See CCRD 8793/168 for
side and rear variance granted.
See letter of no action from the
Town of Cumberland, dated
June 21, 2002.



SEE PROVIDED TITLE REFERENCES FOR APPURTENANCES, IF ANY.

APPLICANT: Stevenson FILE#: 21730446

OWNER: Gerald & Gloria Giordano CLIENT#: _____

LENDER: Saco & Biddeford Savings Institution

REQ. PARTY: Saco & Biddeford Savings Institution

TITLE REFERENCES: COUNTY: Cumberland

DEED BOOK: 17797 PAGE: 1

PLAN BOOK: _____ PAGE: _____ LOT: _____

MUNICIPAL REFERENCE:

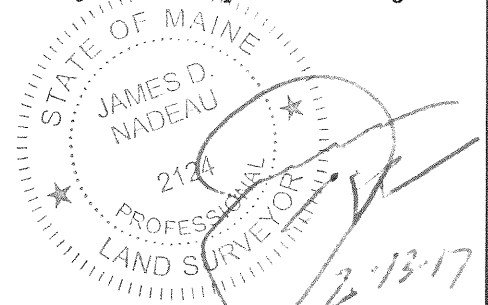
MAP: U04 BLOCK: _____ LOT: 2

THE DWELLING DOES NOT FALL WITHIN A SPECIAL FLOOD HAZARD
AREA PER FEMA COMMUNITY MAP No. 230162 PANEL: 0018C
ZONE: C DATE: 10/15/1985

THE DWELLING WAS ☒ IN COMPLIANCE WITH MUNICIPAL ZONING
SETBACK REQUIREMENTS AT THE TIME OF CONSTRUCTION.

Nadeau Land Surveys

Professional Land Surveyors
Certified Floodplain Managers



918 BRIGHTON AVE. PH. (207) 878-7870
PORTLAND, ME. 04102 F. (207) 878-7871

THIS INSPECTION IS VALID ONLY WITH A
SURVEYOR'S SEAL AND IS NULL & VOID
90 DAYS AFTER INSPECTION DATE.

THIS IS NOT A BOUNDARY SURVEY - NOT FOR RECORDING

026841

BK8793PG0168

CERTIFICATE OF ZONING VARIANCE APPROVAL

I, Robert C. Robinson, the duly appointed, qualified and acting Chairman of the Zoning Board of Appeals for the Town of Cumberland, Cumberland County and State of Maine, hereby certify that on the 15th day of June, 1989, the following variance was granted pursuant to the provisions of 30 M.R.S.A. § 4963 and the Town of Cumberland's Zoning Ordinance.

1. Property Owner: Royce A. & Susan A. Gould - 80 Foreside Rd.
2. Property: Cumberland County Registry Book 8079, Page 055. (Last recorded Deed in Chain of Title).
3. Variance and Conditions of Variance:
32' from the rear lot line setback requirement and 25' from the combined side lot line setback requirement to construct an addition and attached garage.

IN WITNESS WHEREOF, I have hereto set my hand and seal this 15th day of June, 1989.

Robert C. Robinson
Chairman
Robert C. Robinson
(Printed or Typed Name)

STATE OF MAINE
Cumberland, ss.

June 15, 1989.

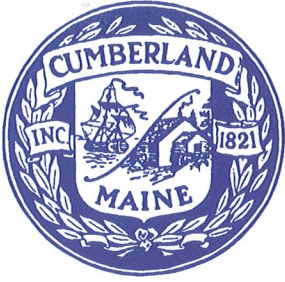
RECEIVED
RECORDED DEEDS
1989 JUN 19 PM 2:21
CUMBERLAND COUNTY

Then personally appeared the above-named Robert C. Robinson and acknowledged the above certificate to be his/her free act and deed in his/her capacity as Chairman of the Cumberland Board of Zoning Appeals.

Paula M. Wight 12/10/85
Paula M. Wight
(Printed or Typed Name)
NOTARY PUBLIC

PURSUANT TO 30 M.R.S.A. § 4963, THIS CERTIFICATE MUST BE RECORDED BY THE PROPERTY OWNER IN THE REGISTRY OF DEEDS WITHIN 30 DAYS OF THE FINAL APPROVAL OF THE VARIANCE; OTHERWISE, THE VARIANCE WILL BE INVALID.

RIGHTS GRANTED BY THE BOARD OF ADJUSTMENT AND APPEALS SHALL EXPIRE IF THE WORK OR CHANGE AUTHORIZED IS NOT BEGUN WITHIN SIX MONTHS OR SUBSTANTIALLY COMPLETED WITHIN ONE YEAR OF THE DATE OF VOTE BY THE BOARD.



TOWN OF CUMBERLAND, MAINE

290 Tuttle Road

Cumberland Center, Maine 04021-9321

Telephone (207) 829-5559 • Fax (207) 829-2214

June 21, 2002

Claudia Dodds
80 Foreside Road
Cumberland Foreside, Maine 04110

Dear Claudia,

SUBJECT: 80 FORESIDE ROAD, MAP U4 LOT 2

With reference to the above property, it has been brought to the attention of this office that an inconsistency may exist between the setback variance dimension as approved by the Board of Adjustment and Appeals on June 15, 1989 and that which is indicated by the mortgage inspection and available building records.

A reasonable amount of research by this office provides sufficient information that clearly demonstrates that any infringement of local zoning was not done intentionally and it appears that the side setback for the addition and attached garage was erroneously determined at the time of construction. The distance was accepted at that time, and considerable time has passed without notice or complaint of the infringement.

Therefore, please be advised that the determination of this office is that the property indicated above substantially conforms to local zoning regulations as a legal existing nonconforming structure, notwithstanding evidence to the contrary, and that the Town of Cumberland will not take any action against the owner to enforce these violations.

If you have any questions please call me at 829-2207.

Sincerely,

Barbara E. McPheters
Code Enforcement Officer

cc: File
Correspondence