

**Lamoine, Maine, Zoning Board of Appeals**

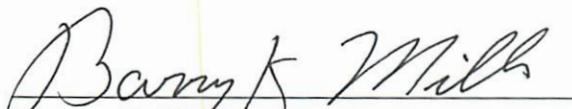
In the Matter of Frank M. Young and Wendy J. Young  
Application for Building and Shoreland Permit No. 15-37

I, Stephen R. Salsbury, being duly sworn upon oath depose and say of my own knowledge that the attached report is accurate and the statements made therein are true to be best of my knowledge and belief.

Dated: November 24, 2015

  
\_\_\_\_\_  
Stephen R. Salsbury, P.L.S.

Subscribed and sworn to before me  
This 24<sup>th</sup> day of November, 2015

  
\_\_\_\_\_  
Notary Public / Attorney at Law

Report  
Stephen R. Salsbury, P.L.S.  
Herrick & Salsbury

1. I have been a duly licensed land surveyor with Herrick & Salsbury, Inc., in Ellsworth, Maine, since February 1, 1991. My license number is P.L.S. 2207. I am also a municipality-employed shoreland zoning certified code enforcement officer in the State of Maine.

2. I have been retained by the appellants, William and Carol Shubert, to determine the percent of coverage on adjoining property (Tax Map 12, Lot 21) owned by Frank M. Young and Wendy J. Young located on Frenchman Bay in Lamoine and other characteristics of their property that may be relevant to the pending appeal of Young Permit 15-37.

3. In preparing this report I have been assisted by the following documents, copies of which are affixed:

- A. Boundary Agreement by Dorothea B. Kelley and Joseph B. Kelley with William M. Shubert and Carol D. Shubert dated August 9, 2011, recorded in Book 5663, Page 259 (Exhibit 1);
- B. Deed from Dorothea B. Kelley and Joseph B. Kelley to Frank M. Young and Wendy J. Young, dated August 18, 2011, recorded in Book 5669, Page 48 (Exhibit 2);
- C. Google Earth aerial photographs depicting the Young property, dated July 16, 2015, and August 31, 2011 (Exhibits 3 and 4);
- D. Survey of the Shubert property made by Herrick & Salsbury, Inc., dated November 18, 2002 (Reduced copy, Exhibit 5).

In addition I have reviewed the materials submitted to the Lamoine Zoning Board of Appeals by the Code Enforcement Officer with his report dated November 23, 2015. I have also reviewed a survey of other adjoining property owned by David Newton dated September 24, 2014, made by Herrick & Salsbury, Inc.

4. According to their deed (Exhibit 2), the easterly and westerly sidelines of the Young lot are parallel lines. The deed states that the westerly line is 20 rods (330 feet) long above mean high water line. According to the boundary agreement (Exhibit 1) the easterly sideline is 337.12 feet in length. The northerly sideline is perpendicular to the sidelines and is 8 rods, 9 feet wide (141 feet) long. The property contains about 47,500 square feet or about 1.09 acres.

5. The Shoreland Zoning Ordinance applies to that portion of the Young property within 250 feet from the coastal wetland boundary. The Young property contains 35,244 square feet of land within the Shoreland Zone.

6. Section 15.B.5. of the Shoreland Zoning Ordinance reads, in relevant part: “The total area of all structures, parking lots and other non-vegetative surfaces within the shoreland zone shall not exceed ten (10) percent of the lot or a portion thereof located within the shoreland zone, including land area previously developed.” Driveways and roads are non-vegetative surfaces. Also, the ordinance (page 42) expressly includes “driveways and roads” within the definition of the word “Structure.”

7. The following is a summary of measurements by the Code Enforcement Officer of “structures” (excluding roads and driveways) located within the shoreland zone, i.e., within 250 feet from the coastal wetland boundary:

House	1,414.00 sq ft
New Breezeway	350.80 sq ft
Garage	1,364.37 sq ft
Shed	<u>120.00 sq ft</u>
Total Coverage	3,249.17 sq ft

8. The CEO’s measurements, summarized in paragraph 7, above are consistent with my measurements scaled from the aerial photograph. However, the CEO did not include driveways and roads within his computation of coverage as required under the ordinance. Based on my measurements of the area of driveways and roads within the shoreland zone, scaled from the recent aerial photograph, Exhibit 3, the total coverage, including the proposed breezeway, is 7,375 square feet.

9. With construction of the proposed breezeway, the amount of coverage of land within the shoreland zone will be 20.93% (7,375/35,244). The Young lot is already non-conforming due to (a) its narrow width, (b) the position of the home within the 100-foot setback from the coastal wetland boundary, and (c) current excess coverage. The addition of further construction within the shoreland zone will increase its non-conformity.

10. In my opinion, the CEO erred in at least three respects:

- A. The CEO computed the percent of coverage over a 1.53-acre lot, relying on an inaccurate tax map, rather than the percent of coverage within the shoreland zone. The total size of the lot is not relevant.

- B. The CEO did not include coverage of driveways, roads, and other graveled surfaces within the shoreland zone in his calculation as required by the ordinance.
- C. The CEO computed the percent of coverage over the entire lot, rather than coverage of that part of the lot located within the shoreland zone. It should be noted, however, that if the CEO had applied the correct acreage and if he had included coverage of driveways and roads, the coverage would still greatly exceed the 10% of the total lot.

11. A comparison on the two aerial photographs shows the construction of a new driveway and parking area sometime between August 31, 2011, and July 16, 2015. I understand that the driveway and parking area may have been constructed without a permit as required under Table 1.26 of the Shoreland Zoning Ordinance (page 12). Also, the new driveway that extends along the easterly side of the new garage near the home is located within 8 feet from the Young-Shubert boundary in apparent violation of the 15-foot minimum setback required under Section 5.D (page 12) of the town's Building and Land Use Ordinance. These are enforcement issues that may not bear directly on the permit application, but it could be significant that a part of the existing excess coverage has been created without a permit and contrary to setback requirements.

12. I cannot attend the Zoning Board of Appeals hearing scheduled Wednesday, December 2, due to a previous commitment to appear before the Ellsworth Planning Board on the same evening.

Exhibit 1

**BOUNDARY LINE AGREEMENT**

WHEREAS, we, **DOROTHEA B. KELLEY** and **JOSEPH B. KELLEY**, whose mailing address is 4911 Woodlands Boulevard, Tamarac, Florida 33319, are the owners of certain premises situated at Lamoine, Hancock County, Maine, known as 71 Ice House Lane, Lamoine, ME 04605, shown on the current tax map for the Town of Lamoine as Map 12, Lot 21; and described in a quitclaim deed with covenant from Thomas Kelley, Joseph Kelley and Edward Kelley to Dorothea B. Kelley, dated November 24, 1975, and recorded on February 22, 2011, at the Hancock County, Maine, Registry of Deeds in Book 5579, Page 179 (“Kelley Property”); and

WHEREAS, we, **WILLIAM M. SHUBERT** and **CAROL D. SHUBERT**, husband and wife, whose mailing address is 113 Spring Road, Cherry Hill, New Jersey 08003, are the owners of adjoining premises at said Lamoine, located, in relevant part, on the generally easterly side of the Kelley Property, and known as 72 Ice House Lane, Lamoine, ME 04605, shown on the current tax map for the Town of Lamoine as Map 12, Lot 16; and described in a quitclaim deed with covenant from Machias Savings Bank to Carol D. Shubert and William M. Shubert, dated March 23, 1995, and recorded at the said Registry of Deeds in Book 2373, Page 138 (“Shubert Property”); and

WHEREAS, we, the said Dorothea B. Kelley and Joseph B. Kelley, and William M. Shubert and Carol D. Shubert, have mutually agreed upon the location of the common boundary line between the Kelley Property and the Shubert Property, and that said boundary line will be established as the easterly boundary of the Kelley Property and the westerly boundary of the Shubert Property and this agreement will be referenced in any future deed conveying any interest in the Kelley Property or the Shubert Property;

THEREFORE, for consideration paid, we declare the following to be the boundary line between the Kelley Property and the Shubert Property ("Boundary Line"):

Beginning at a one (1) inch iron bolt set in the ground in the year 2002 at the northwest corner of a twenty (20) foot right of way as shown on a plan entitled "Kelley Property" dated August 1938 and prepared by Prentiss & Carlisle Co., Inc., Bangor, Maine, said bolt being South 63 degrees 45 minutes 45 seconds East one hundred forty and seventy-nine hundredths (140.79) feet from a one (1) inch iron bolt found set in the ground at the northwesterly corner of land of said Dorothea B. Kelley; said bolt also being North 4 degrees 23 minutes 45 seconds West three hundred six and seventy-four hundredths (306.74) feet from a one (1) inch galvanized pipe found set in the ground near the shore of Eastern Bay on the easterly line of land of said Shubert; Thence South 26 degrees 14 minutes 15 seconds West passing three (3) feet easterly of a utility pole serving the Kelley and Shubert cottages three hundred one and twelve hundredths (301.12) feet to a one (1) inch iron bolt set in the ground in the year 2002; said bolt being North 77 degrees 08 minutes 45 seconds West one hundred sixty and sixty-six hundredths (160.66) feet from the one (1) inch galvanized pipe on the easterly line of land of said Shubert; Thence continuing the same course (South 26 degrees 14 minutes 15 seconds West) thirty-six (36) feet, more or less, to the mean high water line of Eastern Bay; Thence continuing the same course (South 26 degrees 14 minutes 15 seconds West) to the low water mark of Eastern Bay. Bearings of the above described are oriented to Magnetic North 1979. Said boundary line also being shown as the generally westerly boundary line of the land marked "20' Right of Way" on the survey plan of Herrick and Salsbury, Inc., dated November 18, 2002, entitled "Plan of Survey for Carol D. Shubert and William M. Shubert, Jr." attached hereto as Exhibit A and incorporated herein by reference.

We, Dorothea B. Kelley and Joseph B. Kelley, release to William M. Shubert and Carol D. Shubert, all of our interest in the property located easterly and northerly of the Boundary Line within the Town of Lamoine but reserve any easement rights referred to in a deed from John L. Kelley and Charles L. Kelley, Jr. to Thomas Kelley, Joseph Kelley and Edward Kelley, dated May 3, 1974, and recorded at the said Registry of Deeds in Book 1202, Page 590.

We, William M. Shubert and Carol D. Shubert, release to Dorothea B. Kelley and Joseph B. Kelley, all of our interest in the property located westerly and southerly of the Boundary Line within the Town of Lamoine but reserve any existing utility easements and the access easement

as described in the said deed from Machias Savings Bank to Carol D. Shubert and William M. Shubert, and recorded at the said Registry of Deeds in Book 2373, Page 138.

This agreement shall be recorded in the Registry of Deeds and shall run with the lands known as the Kelley Property and Shubert Property and shall be binding upon the parties, their heirs, representatives, successors and assigns, as their interests may appear.

IN WITNESS WHEREOF, we, the said Dorothea B. Kelley and Joseph B. Kelley, and, we, the said William M. Shubert and Carol D. Shubert, have hereunto set our hands and seals, executing this instrument, as of this 9<sup>th</sup> day of August, 2011.

Joseph B. Kelley  
By: Joseph B. Kelley, individually and as attorney in fact for Dorothea B. Kelley

STATE OF FLORIDA  
BROWARD County

August 9, 2011

Personally appeared the above-named Joseph B. Kelley, in his individual capacity and as attorney in fact for Dorothea B. Kelley pursuant to the Power of Attorney recorded substantially herewith, and acknowledged the foregoing instrument to be his free act and deed in his said individual capacity and in his said agent capacity.

Janet Beaudry  
Notary Public  
JANET BEAUDRY  
Type or print name of official



JANET BEAUDRY  
MY COMMISSION # DD 791880  
EXPIRES: December 30, 2011  
Bonded Thru Budget Notary Services

  
WILLIAM M. SHUBERT

  
CAROL D. SHUBERT

August 9, 2011

STATE OF NEW JERSEY  
CAMDEN COUNTY, ss.

Personally appeared the above-named William M. Shubert and Carol D. Shubert, and severally acknowledged the foregoing instrument to be their free act and deed.

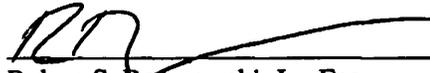
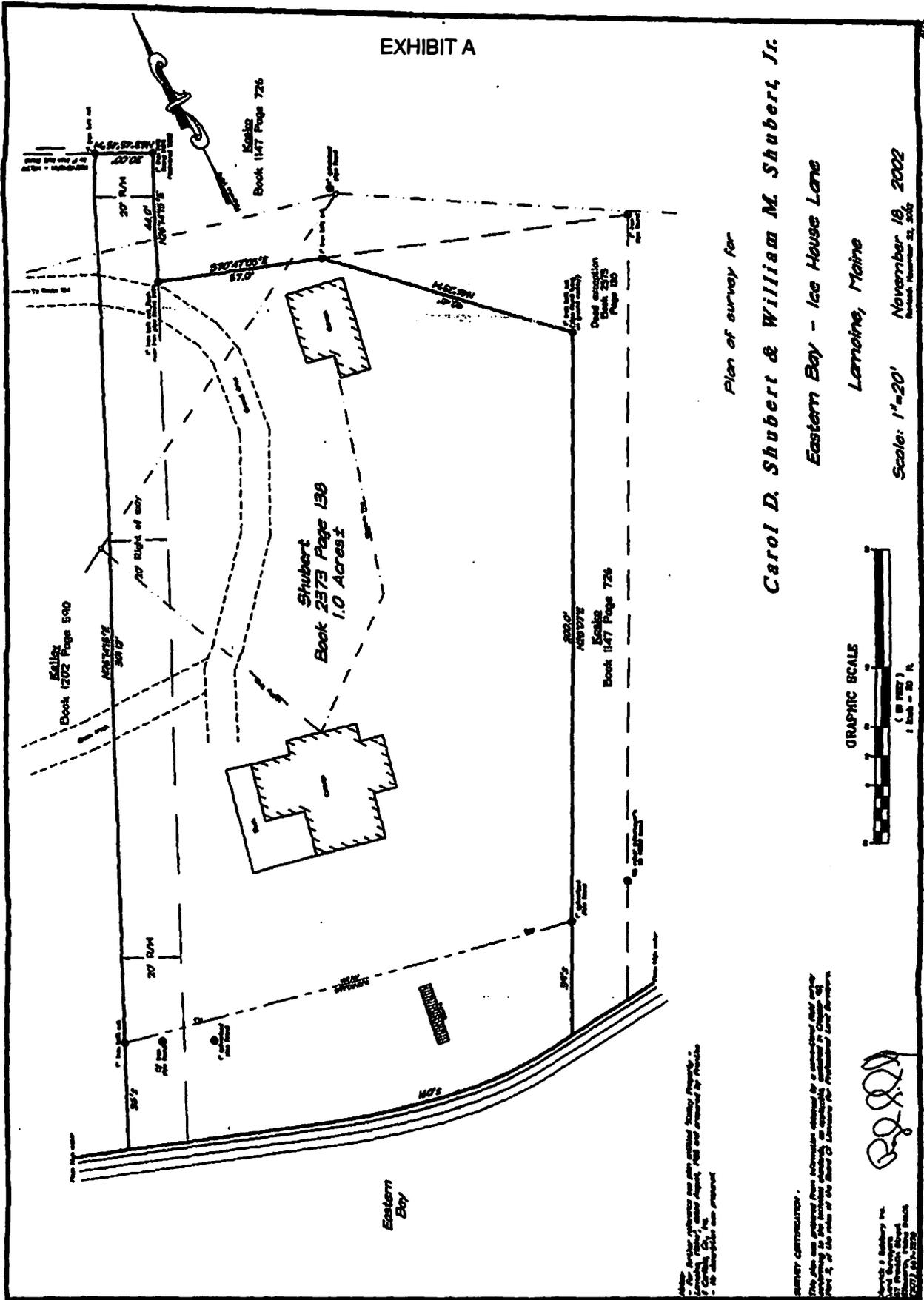
  
Robert S. Rafanowski, Jr., Esq.  
Attorney at Law  
State of New Jersey

EXHIBIT A



Ret: Hale + Hamlin L.O.

Exhibit 2

### QUITCLAIM DEED WITH COVENANT

**DOROTHEA B. KELLEY** of Lauderhill, Florida and **JOSEPH B. KELLEY** of Tamarac, Florida, for consideration paid, grant to **FRANK M. YOUNG** and **WENDY J. YOUNG** both of Ellsworth, Hancock County, Maine and whose mailing address is 113 Bohn Road, Ellsworth, ME 04604, as joint tenants, with quitclaim covenant, a certain lot or parcel of land, together with the buildings thereon, situate in Lamoine, Hancock County, Maine described in the deed from Thomas Kelley, Joseph Kelley and Edward Kelley to Dorothea B. Kelley, dated November 24, 1975 and recorded on February 22, 2011 in the Hancock County Registry of Deeds in Book 5579, Page 179, as more particularly described in the attached Exhibit A.

IN WITNESS WHEREOF, Dorothea B. Kelley and Joseph B. Kelley have hereunto set their hands and seals this 18<sup>th</sup> day of Aug, 2011.

MAINE REAL ESTATE  
TRANSFER TAX PAID

Janet Beaudry  
Witness

Joseph B. Kelley  
Dorothea B. Kelley by Joseph B. Kelley pursuant to a power of attorney dated June 4, 2008

Janet Beaudry  
Witness

Joseph B. Kelley  
Joseph B. Kelley

Broward County

STATE OF FLORIDA

Aug 18, 2011

Personally appeared before me the above named Joseph B. Kelley, in his capacity as attorney-in-fact for Dorothea B. Kelley and in his individual capacity, and acknowledged the foregoing instrument to be his free act and deed in his said agent capacity and individual capacity.

Sarah M. Fadyen  
Notary Public

Sarah M. Fadyen  
Print or type name as signed

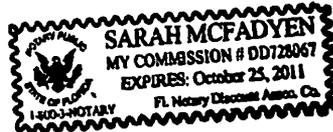


EXHIBIT A

A certain lot or parcel of land, together with the buildings thereon, situate in Lamoine, Hancock County, Maine described as follows:

Beginning on the shore of Frenchmans Bay on the southeasterly side of land formerly owned by Woodbury D. Hodgkins; thence running North twenty eight degrees East twenty rods to a stake; thence Easterly at right angles eight rods to a stake; thence southwesterly at right angles to the shore of Frenchmans Bay; thence along the shore of Frenchmans Bay to the place of beginning and containing one acre, more or less.

Also another certain lot or parcel of land situate in Lamoine aforesaid and bounded and described as follows, to wit: Beginning on the west side of a right of way twenty feet wide running from the main road (leading to Lamoine Point) to the shore of Frenchmans Bay at the shore; thence running along said shore nine feet, more or less to the Easterly line of said lot described above; thence along said line and always parallel with said line twenty rods; thence easterly nine feet, more or less, to the west side of said right of way; thence along the westerly side of said right of way and always parallel with it to the place of beginning and containing eight square rods, more or less, together with the use of said right of way in common with others.

Together with all our right, title and interest in and to the shores and flats abutting the above described property.

ALSO CONVEYING all right, title and interest in the property conveyed by William M. Shubert and Carol D. Shubert to Dorothea B. Kelley and Joseph B. Kelley by the Boundary Line Agreement by and between the parties dated and recorded substantially herewith.

EXCEPTING all right, title and interest conveyed by Dorothea B. Kelley and Joseph B. Kelley to William M. Shubert and Carol D. Shubert by the said Boundary Line Agreement by and between the parties dated August 9, 2011 and recorded in said Registry in Book 5663, Page 259.

For Grantors' source of title, reference may be the following: (1) deed from Dorothea B. Kelley to Dorothea B. Kelley and Joseph B. Kelley, as joint tenants, dated August 4, 2011 and to be recorded in the Hancock County Registry of Deeds; and (2) said Boundary Line Agreement by and between Dorothea B. Kelley and Joseph B. Kelley, and William M. Shubert and Carol D. Shubert, dated August 9, 2011 and recorded in said Registry in Book 5663, Page 259.

Exhibit 3

Ice House Ln

© 2015 Google

Google earth

1991

Imagery Date: 7/16/2015 44°27'30.68" N 68°18'47.36" W elev 31 ft eye alt 491 ft

# Exhibit 4

11/2011

Ice House Ln

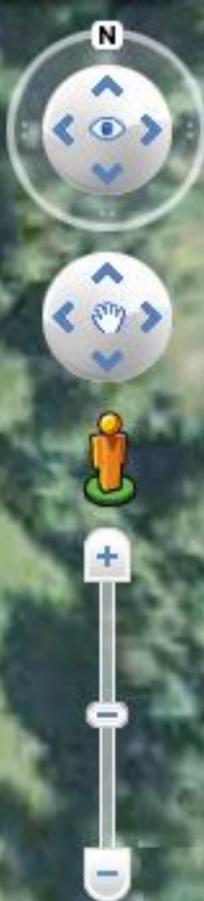


Image USDA Farm Service Agency

Google earth

1991

Imagery Date: 8/31/2011 44°27'30.53" N 68°18'45.60" W elev 25 ft eye alt 1120 ft

