

1. 04-19-18 - Agenda

Documents:

[04-19-2018 AGENDA.PDF](#)

1.I. ZBA Application - 34 Howard Street

Documents:

[34 HOWARD ST - INTERPRETATION APPEAL APPLICATION.PDF](#)  
[34 HOWARD ST - ZONING MAP.PDF](#)

1.I.i. Memorandum - 34 Howard Street

Documents:

[34 HOWARD ST - MEMORANDUM.PDF](#)

1.II. ZBA Application - 183 Whitney Avenue

Documents:

[183 WHITNEY AVE - CONDITIONAL USE APPLICATION.PDF](#)  
[183 WHITNEY AVE - ZONING MAP.PDF](#)

1.III. ZBA Application - 17 Riverton Drive

Documents:

[17 RIVERTON DRIVE - CONDITIONAL USE APPLICATION.PDF](#)  
[17 RIVERTON DR - ZONING MAP.PDF](#)

1.IV. ZBA Application - 970 Forest Avenue

Documents:

[970 FOREST AVE - CONDITIONAL USE APPLICATION.PDF](#)  
[970 FOREST AVE - ZONING MAP.PDF](#)

# CITY OF PORTLAND, MAINE

---

## ZONING BOARD OF APPEALS

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

### APPEAL AGENDA

The Board of Appeals will hold a Public Hearing on Thursday, April 19, 2018, at 6:30 p.m. in the City Council Chambers at Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following appeals:

#### 1. New Business:

- A. Interpretation Appeal:** 34 Howard Street, Zane Shatzer, owner, Tax Map 014, Block E, Lot 019; R-6 Residential Zone: The applicant is challenging a Notice of Violation and Order to Correct dated March 3, 2018 that cited the property owner for non-compliance with the building setback requirements of Section 14-139. This section states that portions of a building above 35 feet in height shall be no closer than 15 feet from a rear property line. Representing the appeal is Robert Van Wert, contractor for the owner, and Mary Costigan, legal representative for the owner.
- B. Conditional Use Appeal:** 183 Whitney Avenue, Dana French, owner, Tax Map 186A, Block D, Lot 007, R-3 Residential Zone: The applicant is seeking a Conditional Use Appeal under Section 14-391(f) to legalize one non-conforming dwelling unit. The existing building is legally a two-family home, and the applicant has presented evidence showing that a third dwelling unit has existed in the building since before April 1, 1995 and therefore qualifies for a legalization under Section 14-391. The legalization requires a conditional use approval from the Zoning Board of Appeals because objections from abutters were received. Representing the appeal is Mackenzie Simpson, agent for the owner.
- C. Conditional Use Appeal:** 17 Riverton Drive, Portland Housing Authority, owner, Tax Map 327, Block B, Lot 012, R-5 Residential Zone: The applicant is seeking a Conditional Use Appeal under Section 14-118(c)(3) to operate a Head Start nursery school for up to 24 children within an existing apartment building. The two units that would be used for the nursery school were last used as a community center. Representing the appeal is the owner.
- D. Conditional Use Appeal:** 970 Forest Avenue, Alyssa Harvey d/b/a Growing Learners Child Care, potential lessee, Tax Map 143, Block B, Lot 001, R-P Residence-Professional Zone: The applicant is seeking a Conditional Use Appeal under Section 14-147.5(e) to operate a licensed child care center for up to 80 children at an existing commercial building, which was most recently used for medical offices. Representing the appeal is the potential lessee.

#### 2. Adjournment



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

Ann Machado, Zoning Administrator

**Zoning Board of Appeals**  
Interpretation Appeal Application

**Applicant Information:**

Applicant Name: Robert van Wert Phone: (207) 775-2267  
 Business Name (if applicable): Portland Renovations Email: bob@portlandrenovations.com  
 Mailing Address: 107 Anderson St., Portland 04101  
 Is the applicant an agent, representative, or lessee of the property owner/purchaser?  Yes  No  
 Name of Property Owner/Purchaser: Zane Shatzer Phone: (207) 274-9336  
 Business Name (if applicable): \_\_\_\_\_ Email: Kennedy.shatzer@gmail.com  
 Mailing Address: 45 Cumberland Ave, Portland 04101

**Property and Project Information:**

Property Address: 34 Howard Street Zone: R-6  
 Tax Assessor's CBL: 14 E 19 Current Use of Property: Single Family  
Chart # Block # Lot #

Disputed provisions of the Portland Code of Ordinances, Chapter 14 (please cite sections): \_\_\_\_\_

RECEIVED

MAR 23 2018

Type of Relief Requested (example: overturn permit decision):

See attached letter.

Dept. of Building Inspections  
City of Portland Maine

Please attach a copy of the order, decision, determination or interpretation that is under dispute. Please submit all applicable items listed on the **Application Process and Instructions** sheet. You are welcome to submit any additional documents and exhibits that may support your request.

*The undersigned hereby makes application for an interpretation appeal as described above, and certifies that the information herein is true and correct to the best of his or her knowledge and belief.*

Applicant signature:  Date: 3.27.18

Mary Costigan, on behalf of Robert van Wert  
mcostigan@bernsteinshur.com



**Bernstein, Shur,  
Sawyer & Nelson, P.A.**  
100 Middle Street  
PO Box 9729  
Portland, ME 04104-5029

T (207) 774-1200

F (207) 774-1127

Mary E. Costigan  
(207) 228-7147 direct  
mccostigan@bernsteinshur.com

March 27, 2018

Portland Zoning Board of Appeals  
389 Congress Street  
Portland, ME 04101

RE: 34 Howard Street: Appeal of Notice of Violation

Dear ZBA Members:

I am writing on behalf of Zane Shatzer and Meredith Kennedy, the owners of 34 Howard Street and their contractor Bob van Wert of Portland Renovations, to appeal the March 3, 2018 Notice of Violation issued by Jon Rioux regarding new construction of a single family home. Because the house was constructed pursuant to and in compliance with a validly issued building permit, the City cannot enforce the stepback requirement eight months after the building permit was issued. Therefore, we are requesting that the ZBA find that the NOV was issued in error.

The timeline of events leading to the Notice of Violation is as follows:

**January 24, 2017** – Original submission of drawings for 34 Howard Street. These drawings showed a fourth floor roof access room stepped back from the rear property line as required per the R-6 Zoning Ordinance.

**February 15, 2017** – Preliminary Design Review Memo from Caitlin Cameron, Urban Designer stated that the project did not meet all the R-6 Small Infill Development Design Principles and Standards and required that the project go through the Alternative Design Review process.

**April 2017** - Portland Renovations and the Owners hired Richard Renner Architects (“RRA”) to assist in the Alternative Design Review process. RRA revised the exterior design of the building in an effort to bring the building into conformance with the R-6 Design Principles and Standards as interpreted by the Planning Department. The exterior design was revised to reflect the Alternative Design Review comments in the February 15 memo from Caitlin Cameron.

March 27, 2018

Page 2

**May 2017** – A revised exterior design was submitted to Caitlin Cameron. A second review by Caitlin Cameron was received on May 21, 2017. Pursuant to the second review, further design refinements were submitted that moved the fourth floor access room to be flush with the rear of the building, specifically in response to the City's concern that the fourth floor roof access room was too prominent from Howard and Turner Streets. This resulted in the room being located 10 feet from the rear lot line. (see attached elevation drawing and photographs)

**June 13, 2017** - Caitlin Cameron approved the final design revisions, confirming that it passed all the Alternative Design Review Criteria. Caitlin told Richard Renner Architects and Portland Renovations that these drawings would need to be resubmitted to Inspections and Permitting for another review. (see attached)

**June 16, 2017** – Portland Renovations submitted revised Exterior Elevations and the Fourth Floor Plan to Inspections and Permitting to record the design changes made since the initial permit submission. These drawings show the fourth floor roof access room reduced in size and pushed to the rear, in response to the Planning Department's requirement to make it less prominent from Howard and Turner Streets.

**June 19, 2017** - City confirmed that the revised set of drawings were received and uploaded the to the project folder, per standard procedure.

**July 14, 2017** – Building Permit - ID 2017-00115 - was issued for the project. (see attached permit)

**August 3, 2017** – Construction begins, pursuant to the building permit issued for revised, approved plans.

**January 25, 2018** - Doug Morin, Code Enforcement Officer, called Richard Renner Architects and stated that there was a problem with the fourth floor roof access room and that it was in violation of the permit. He was referring to the original drawings submitted on January 24, 2017 and was informed by RRA that revised plans were submitted prior to issuance of the building permit.

**March 3, 2018** – Owners and Contractor received Jon Rioux's Notice of Violation and Order to Correct. (see attached)

This Property is located in the R-6 Zone which requires portions of a structure above 35 feet to be no closer than 10 feet from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone. As you can see on the attached elevation, there is a small section of the fourth floor access room that

is above 35 feet and located 10 feet from the rear property line, along with the rest of the structure (the rear setback below 35 feet is 10 feet). So, we are talking about a 4' 3 7/8" x 5' section of a building that violates the setback provision, but that was built in accordance with a validly-issued building permit. Although the City did eventually discover the error, it was simply too late and the Owners and contractor cannot now be required to remove that section of the building.

The City is estopped from enforcing the zoning setback requirement because (1) the Notice of Violation, when considered as an appeal from a prior decision of the City, was untimely (See attached - *Juliano v. Town of Poland*, 1999 ME 42, 725 A.2d 545); and 2) the owners have vested rights to construct the building as permitted.

Regarding the first point, the Court in *Juliano* found that the Town of Poland could not stop a property owner from constructing additions to his bottling plant, even though the building permit was issued in error. The Court said that the stop work order issued by the town was in essence a challenge to the issuance of the permit and was therefore untimely because it was not brought within 30 days of issuance. The Court noted that **"strict compliance with the appeal procedure of an ordinance is necessary to ensure that once an individual obtains a building permit, he can rely on that permit with confidence that it will not be revoked after he has commenced construction."** That same principle applies here. The Property owners should be able to rely on their permit with confidence that it will not be revoked after they commenced construction.

The extension of that argument is the concept of vested rights. Although typically raised when a change in zoning impacts a permitted project, it is instructive here. In order to demonstrate vested rights to construct a project the following must be met: 1) there must be the actual physical commencement of some significant and visible construction; 2) the commencement must be undertaken in good faith ... with the intention to continue with the construction and to carry it through to completion; and 3) the commencement of construction must be pursuant to a validly issued building permit. (See attached - *Sahl v. Town of York*, 2000 ME 180, ¶ 12, 760 A.2d 266). All three of those prongs are clearly met here: construction has commenced, it was undertaken in good faith and in accordance with a validly issued building permit.

The contractor began construction in August. The building is now approximately 65% complete. To require a reduction in the size of the fourth floor access room this far into the construction process by relocating the rear wall would be a tremendous hardship. The structural design of the floor below is specifically engineered for the current configuration. Changing the shape of the fourth floor introduces new loads at significantly different locations; it would require substantial structural redesign and reworking in the building; that is all assuming that it would continue to meet the design standards.

March 27, 2018  
Page 4

We therefore request that the Board find that the Notice of Violation was issued in error because the Notice of Violation, when considered as an appeal from a prior decision of the City, was untimely and the owners have vested rights to construct the building as permitted.

Thank you for your consideration. Please let us know if you have any questions or need further information.

Sincerely,

Mary E. Costigan

A handwritten signature in black ink, appearing to be 'MEC', written over the printed name 'Mary E. Costigan'.

Cc: Bob van Wert  
Zane Shatzer and Meredith Kennedy  
Richard Renner



Reviewed for Code Compliance  
Inspection Division  
Approved with Conditions  
Date: 07/14/17

MAINE REAL ESTATE TAX-Paid

DLN: 1001640008870

**Warranty Deed  
(Maine Statutory Short Form)**

KNOW ALL PERSONS BY THESE PRESENTS THAT, Group 2, LLC, a Maine Limited Liability Company with a mailing address of 100 Congress Street, Portland, Maine 04101, for valuable consideration paid, by Zane O. Shatzer, having a mailing address of 45 Cumberland Avenue, Portland, Maine 04101, the receipt and sufficiency whereof is hereby acknowledged, do hereby GIVE, GRANT, BARGAIN, SELL AND CONVEY, unto the said Zane O. Shatzer, his heirs and assigns, with **WARRANTY COVENANTS**, a certain lot or parcel of real property situated in the City of Portland, County of Cumberland, State of Maine, bounded and described as follows:

**PROPERTY DESCRIBED IN "EXHIBIT A" ATTACHED HERETO AND  
MADE A PART HEREOF**

Meaning and intending to convey the same premises conveyed to Group 2, LLC, by virtue of a deed from Diane L. Giusti f/k/a Dianne Giusti dated August 15, 2014 and recorded on August 15, 2014 in Book 31713, Page 64 with the Cumberland County Registry of Deeds.

The premises are conveyed together with and subject to any and all easements or appurtenances of record, insofar as the same are in force and applicable.

Witness my hand and seal this 22 day of July, 2016.

Janene Kurta  
WITNESS

Group 2, LLC  
[Signature]  
By: Tom Landry  
Its: Member

STATE OF MAINE  
COUNTY OF CUMBERLAND

Personally appeared before me on this 22 day of July, 2016 the above named Tom Landry as Member of Group 2, LLC and acknowledged the foregoing instrument to be his free act and deed, in said capacity.

Janene Kurta  
State of Maine  
Notary Public

Janene Kurta  
Notary Public/Attorney At Law  
Janene Kurta  
Print Name

My Commission Expires:  
December 24, 2021



**EXHIBIT A**

**A certain lot or parcel of land with the buildings thereon situated on Howard Street in Portland, in the County of Cumberland and State of Maine, bounded and described as follows:**

**Beginning at a point in the westerly corner of Howard and Turner Streets;**

**thence extending northwesterly by the westerly sideline of Howard Street forty (40) feet;**

**thence southwesterly and parallel with Turner Street forty (40) feet to land sold by Moses Gould to one Brown by deed dated February 14, 1865;**

**thence by land now or formerly of said Brown southeasterly forty (40) feet to the northerly side line of Turner Street;**

**thence by line of Turner Street forty (40) feet to the bound of beginning.**

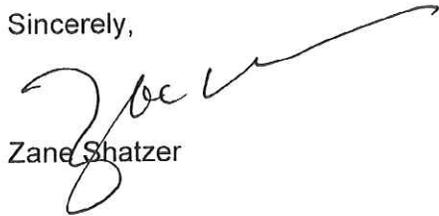
Portland Zoning Board of Appeals  
389 Congress Street  
Portland, ME 04101

RE: 34 Howard Street: Appeal of Notice of Violation

Dear ZBA Members:

I am the owner of 34 Howard Street. I am writing to inform the ZBA that Mary Costigan and Robert van Wert are authorized to represent me in this appeal concerning my property.

Sincerely,

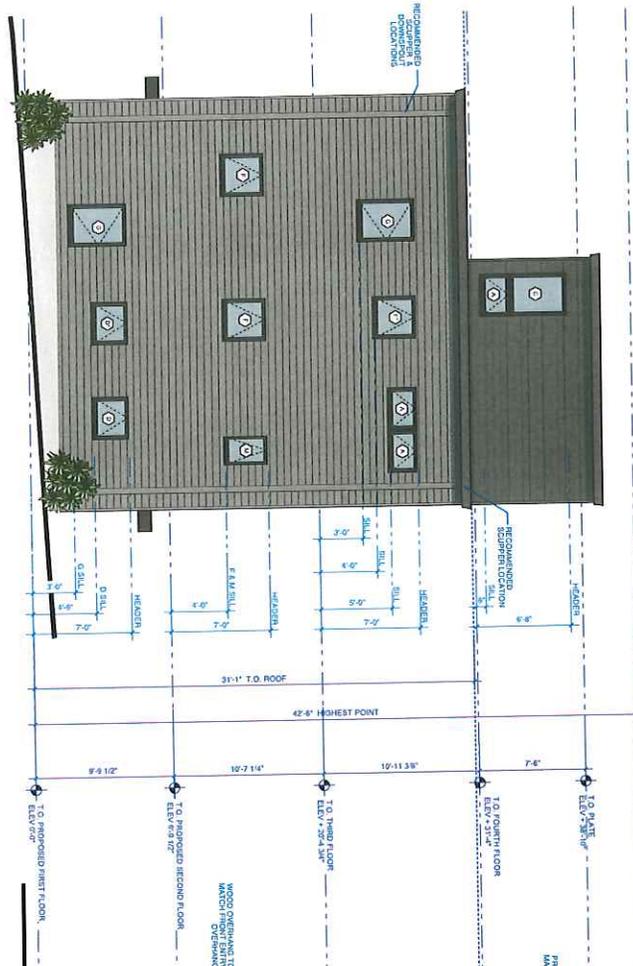
A handwritten signature in black ink, appearing to read 'Zane Shatzer', with a long, sweeping horizontal stroke extending to the right.

Zane Shatzer

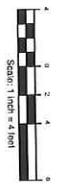
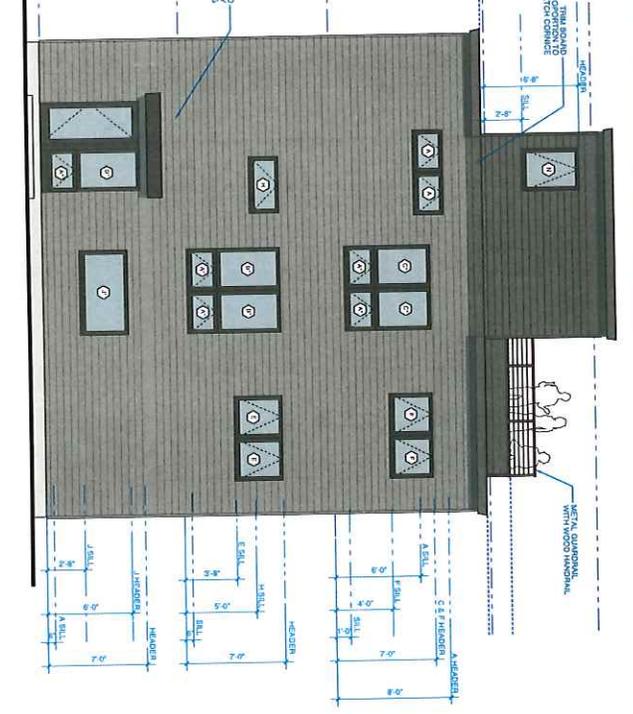




1 WEST ELEVATION  
SCALE: 1/8" = 1'-0"



2 SOUTH ELEVATION  
SCALE: 1/8" = 1'-0"



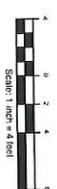
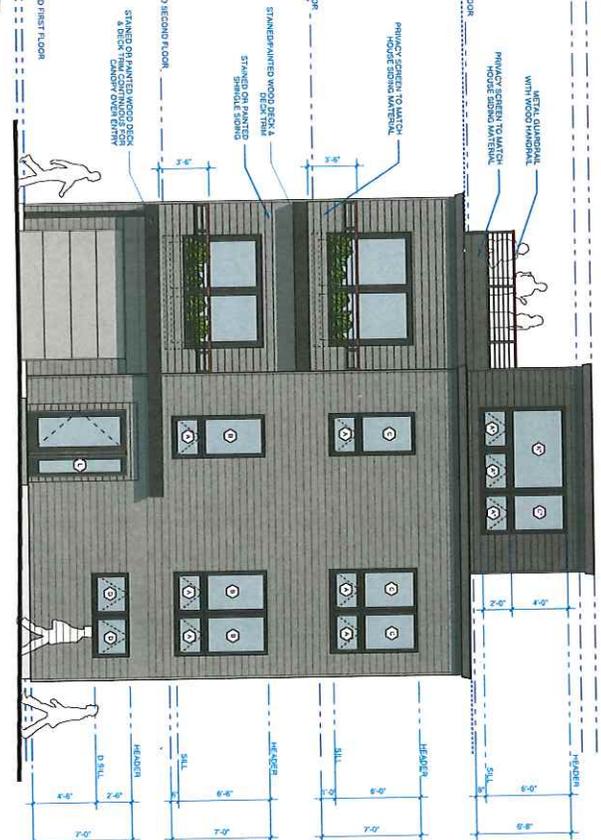
 <b>A2.2</b>	<b>Elevations</b>	<b>Kennedy Shalzer Residence</b>	<b>Consultants:</b>	Copyright 2017 Richard Renner   Architects Richard Renner   Architects Portland, ME 04108 207.773.9699
	Drawn by: RRA Scale: 1/8"=1'-0" Date: 06/15/2017	File Name: Elevations Project No. Revised:	Building Elevations Portland, Maine	Portland Revolutions 800 Main Street 127 Ashton Street Portland, ME 04101 207.773.9987



1 EAST ELEVATION  
SCALE: 1/4" = 1'-0"



2 NORTH ELEVATION  
SCALE: 1/4" = 1'-0"



**A2.1**  
Kennedy Shatzer

**Elevations**  
Drawn by: RRA File Name: Elevations  
Scale: 1/4"=1'-0" Project No.  
Date: 06/15/2017 Revised:

**Kennedy Shatzer Residence**  
Building Elevations  
Portland, Maine

**Consultants:**  
Portland Registered Professional Engineer  
127 Anderson Street  
Portland, Maine 04101  
207.773.2287  
Structural Engineer  
Richard Renner | Architects  
78 York Street  
Portland, ME 04101  
603.873-1833

Copyright 2017 Richard Renner | Architects  
**RRA**  
Richard Renner | Architects  
Portland, ME 207.773.9559  
Sherborn, MA 508.651.2385



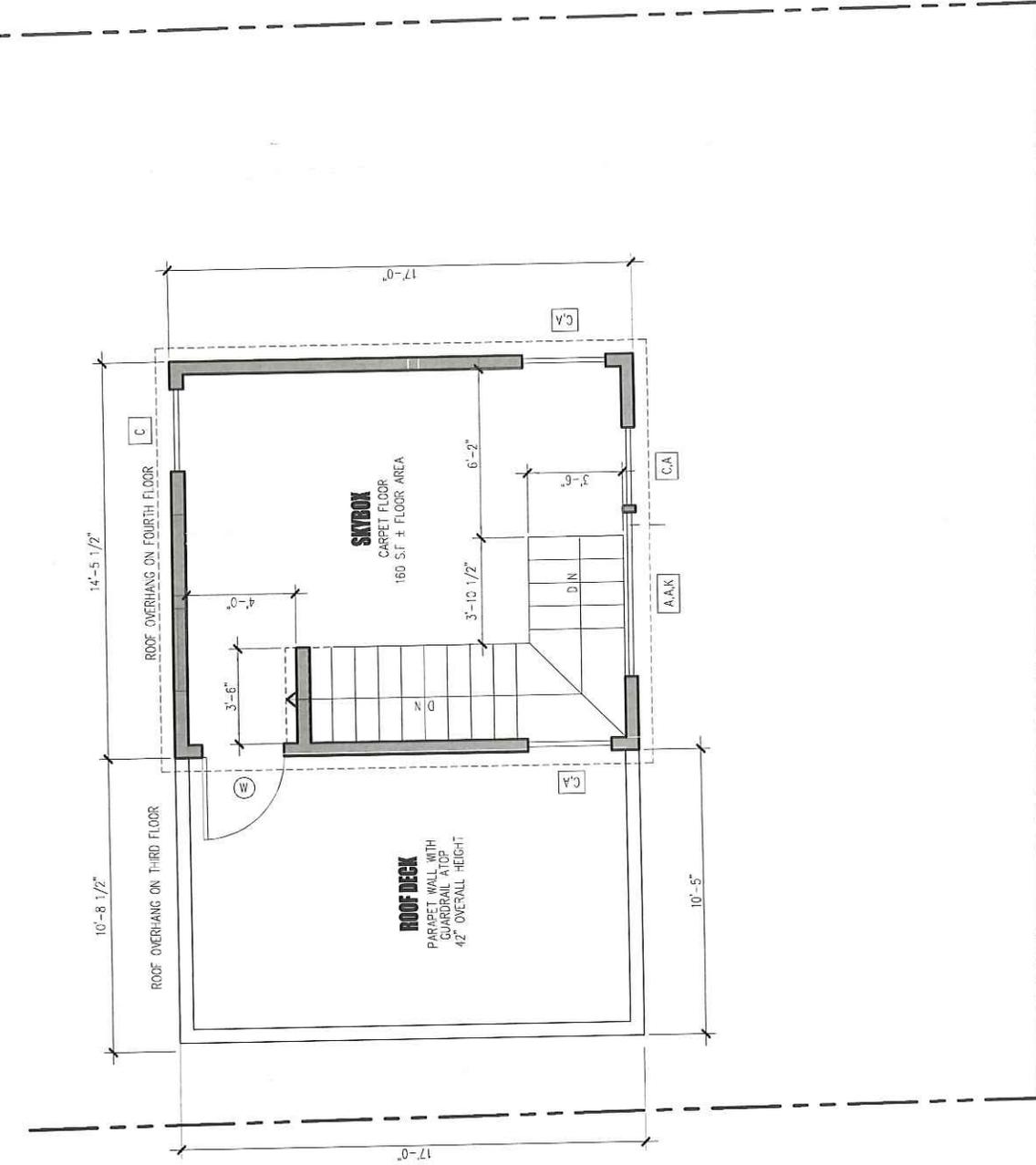
**HOWARD STREET RESIDENCE**  
PORTLAND, MAINE

DATE: 05.16.17  
DESIGNED BY: JAMES W. GIBSON, AIA  
CHECKED BY: JAMES W. GIBSON, AIA  
SCALE: 1/2" = 1'-0"

**FOURTH FLOOR LAYOUT**

DATE: 05.16.17  
SCALE: 1/2" = 1'-0"

**A4.0**





## 34 Howard Street location

Looking north down Turner Street



Looking south on Turner Street



### 34 Howard Street location

Looking east on Howard Street



Looking west on Howard Street







# Planning and Urban Development Department

## Planning Division

---



**Subject:** R-6 Small Infill Design Review – 34 Howard Street

**Written by:** Caitlin Cameron, Urban Designer

**Date of Review:** Tuesday, June 13, 2017

---

A design review according to the *City of Portland Design Manual* Standards was performed for the proposed new construction of a two-family dwelling at 34 Howard Street. The review was performed by Caitlin Cameron, Urban Designer, Shukria Wiar, Planner, and Deb Andrews, Historic Preservation Program Manager, of the Department of Planning & Urban Development. The project was reviewed against the *R-6 Small Infill Development Design Principles & Standards* (Appendix 7 of the Design Manual).

### Findings of the Design Review:

The proposed design passes all the Alternative Design Review criteria. The Planning Authority under an Alternative Design Review may approve a design not meeting one or more of the individual standards provided that all of the conditions listed below are met:

- A. The proposed design is consistent with all of the Principle Statements.
- B. The majority of the Standards within each Principle are met.
- C. The guiding principle for new construction under the alternative design review is to be compatible with the surrounding buildings in a two block radius in terms of size, scale, materials, and siting, as well as the general character of the established neighborhood, thus Standards A-1 through A-3 shall be met.
- D. The design plan is prepared by an architect registered in the State of Maine.

### Design Review Comments (*red text denotes principles or standards that are not met*):

Revisions include:

- Lowered 4<sup>th</sup> floor height by 1'8"
- Flat roof on 4<sup>th</sup> floor
- 4<sup>th</sup> floor mass pushed back 5' away from streets
- Finish color on 4<sup>th</sup> floor darker to de-emphasize from principal mass/form

*Principle A Overall Context* – Met – see below.

- *A-1 Scale and Form*: The basic form proposed is contemporary and does not directly relate to either a front-end gable single-family, a double house, or a triple-decker – the housing types that make up this context. The scale is predominantly three stories with a flat roof, most similar in scale and form to a triple-decker which is found in context – façade composition and roof line with a cornice at the third floor help reinforce that general massing. The proposal includes a fourth floor “pop-up” which has been revised to be more recessive than the principal three-story mass through reduction of height, flat roof, setback from the street, and change in material color.

- *A-2 Composition of Principal Facades:* The composition of the street-facing facades is consistent with context in terms of using symmetrical bays (two or three bays) that are oriented to the street. The façade design emphasizes vertical proportions. Howard Street, the fenestration placement and rhythm are similar to the single family context. The Turner Street façade composition, especially the window type, orientation, and size, is more contemporary but similar to a secondary façade placement.
- *A-3 Relationship to the Street:* The building placement is consistent with the spacing of the residential fabric – slightly setback from sidewalk to allow for stoops and provide privacy.

*Principle B Massing – Met –* The proposed massing creates a vertical proportioned mass at the street of similar to a triple-decker or a gable-end single family.

- *B-1 Massing:* The principal mass is contemporary but provides some variation to mitigate the scale of the building. The three-story massing is most similar to triple-deckers found in the context. Because this is a corner lot, the long views to the building and the fourth floor are more prominent and visible than a mid-block siting – the presence of the less contextual fourth floor has been mitigated through the revisions aforementioned.
- *B-2 Roof Forms:* The dominant roof form is flat with a recessed 4<sup>th</sup> floor = complex roof forms whereas the neighborhood context is typically simple roof forms. Usually a flat roof is found on triple decker and multi-family types, not single and two-family.
- *B-3 Main Roofs and Subsidiary Roofs:* The main roof form is considered to be the flat roof at the third floor. The fourth floor pop-up roof has been revised to become more subsidiary.
- *B-4 Roof Pitch:* Both roof forms are flat.
- *B-5 Façade Articulation:* The project employs two of the required articulation elements – covered entry, recessed entry. Balconies are also used.
- *B-6 Garages:* Garage door is less than 40% building width and is on a plane recessed from front façade.

*Principle C Orientation to the Street – Met –* The project is oriented to the street with a street-facing door.

- *C-1 Entrances:* The entry is street-facing and emphasized with a canopy and recess.
- *C-2 Visual Privacy:* Visual privacy is adequately addressed; ground floor windows are higher than 48" above adjoining sidewalk grade.
- *C-3 Transition Spaces:* The project uses a canopy at the entrance and a recessed entry, the building is slightly set back.

*Principle D Proportion and Scale – Met –* The façades design makes reference to proportions found in the existing building context – material placement and massing emphasize a vertical proportion front façade similar to the traditional vernacular façade proportions.

- *D-1 Windows:* The majority of windows are rectangular and have a vertical proportion; window proportions, sizes, and orientations more contemporary than found in the context.
- *D-2 Fenestration:* The 12% fenestration requirement appears to be met on both street-facing facades.
- *D-3 Porches:* The third floor balcony meets the standard and is at least 6' deep and 48 sf feet. **The second floor balcony is shallower than 6' and is less than 60 sf.**

*Principle E Balance – Met –* The building façade composition creates a sense of balance with good use of overall and local symmetry.

- *E-1 Window and Door Height:* The majority of window and door head heights align along a common horizontal datum.
- *E-2 Window and Door Alignment:* The majority of windows shall stack so that centerlines of windows are in vertical alignment.
- *E-3 Symmetricality:* Primary window compositions are arranged symmetrically around discernable vertical axes.

*Principle F Articulation – Met –* Based on the information given, it appears the project employs visually interesting and well composed facades.

- *F-1 Articulation:* Balcony details, canopy, and fine-textured materials will create shadow lines on front façade.
- *F-2 Window Types:* **More than two window types and sizes are used at both street façades.**
- *F-3 Visual Cohesion:* The visual cohesion of the façade is good.
- *F-4 Delineation between Floors:* The floors are delineated by fenestration patterns, balconies.
- *F-5 Porches, etc.:* The canopy is well integrated into the overall design and highlights the entrance. Balcony railings are used to provide articulation and shadow lines to the front façade.
- *F-6 Main Entries:* The main entry is emphasized with prominent placement facing the street, recessed, and the use of a canopy.
- *F-7 Articulation Elements:* The cornice is pronounced and has an overhang similar to those found in context multi-family buildings; no trim; the façade offset is at least 12”.

*Principle G Materials – Met –* The residential context is predominantly clapboard with occasional shingle or brick.

- *G-1 Materials:* The proposal uses a combination of clapboard and shingle.
- *G-2 Material and Façade Design:* Materials are placed appropriate to their nature.
- *G-3 Chimneys:* Not applicable.
- *G-4 Window Types:* **More than two window types are used on both street-facing facades.**
- *G-5 Patios and Plazas:* Not applicable.

## Mary E. Costigan

---

**From:** Caitlin Cameron <[ccameron@portlandmaine.gov](mailto:ccameron@portlandmaine.gov)>  
**Sent:** Monday, June 19, 2017 4:57 PM  
**To:** DiPierro, Philip  
**Cc:** Robert van Wert  
**Subject:** Re: 34 Howard Street contextual images

Okay, Phil, I am set to sign off on the R-6 design standards for this project.

On Mon, Jun 19, 2017 at 9:51 AM, Robert van Wert <[bob@portlandrenovations.com](mailto:bob@portlandrenovations.com)> wrote:  
I sent them to the inspections email

Robert van Wert  
Portland Renovations  
107 Anderson Street  
Portland, ME 04101.  
[207.775.2267](tel:207.775.2267) (o)  
[207.712.3590](tel:207.712.3590) (m)  
[www.portlandrenovations.com](http://www.portlandrenovations.com)

----- Original message -----

**From:** Caitlin Cameron <[ccameron@portlandmaine.gov](mailto:ccameron@portlandmaine.gov)>  
**Date:** 6/19/17 9:34 AM (GMT-05:00)  
**To:** Robert van Wert <[bob@portlandrenovations.com](mailto:bob@portlandrenovations.com)>  
**Cc:** Sybil Idelkope <[sidelkope@rrennerarchitects.com](mailto:sidelkope@rrennerarchitects.com)>, "DiPierro, Philip" <[pd@portlandmaine.gov](mailto:pd@portlandmaine.gov)>, Meredith <[kennedy.shatzer@gmail.com](mailto:kennedy.shatzer@gmail.com)>  
**Subject:** Re: 34 Howard Street contextual images

Thanks Bob,

for some reason the new files are not showing up in eplan.

On Fri, Jun 16, 2017 at 4:29 PM, Robert van Wert <[bob@portlandrenovations.com](mailto:bob@portlandrenovations.com)> wrote:

Just uploaded all revised documents other than the forthcoming Engineering.

**From:** Caitlin Cameron [mailto:[ccameron@portlandmaine.gov](mailto:ccameron@portlandmaine.gov)]  
**Sent:** Wednesday, June 14, 2017 3:54 PM  
**To:** Sybil Idelkope <[sidelkope@rrennerarchitects.com](mailto:sidelkope@rrennerarchitects.com)>  
**Cc:** Robert van Wert <[bob@portlandrenovations.com](mailto:bob@portlandrenovations.com)>; DiPierro, Philip <[pd@portlandmaine.gov](mailto:pd@portlandmaine.gov)>  
**Subject:** Re: 34 Howard Street contextual images

Please let me know when you have uploaded the revised drawings into eplan so that we can check them and sign off.

On Tue, Jun 13, 2017 at 11:38 AM, Caitlin Cameron <[ccameron@portlandmaine.gov](mailto:ccameron@portlandmaine.gov)> wrote:

We find these changes to be helpful in meeting the design guidelines and find that the project now passes the Alternative Design Review. Please see attached memo - you will need to submit revised elevations/plans reflecting these changes as described in your email.

On Mon, Jun 12, 2017 at 9:53 AM, Sybil Idelkope <[sidelkope@rrennerarchitects.com](mailto:sidelkope@rrennerarchitects.com)> wrote:

Good morning, Caitlin

I hope that you had a nice weekend and enjoyed the long awaited sunshine. Attached are images of the proposed 34 Howard Street residence in its neighborhood context. We hope that our response to reducing the scale and massing of the 4th floor is successful and that the Board will agree to permit the project to move forward.

Changes we made to the project since it was last submitted are visible in these images:

1. We have made the 4th floor roof flat which lowered the height of the roof by 1'-8".
2. We have pushed the 4th floor massing back 5' towards the back of the house to reduce its prominence from the street.
3. We have painted the 4th floor clapboards darker to match the trim and cornice which further reduces its significance.

Please let us know if you have any questions.

Thank you,

Sybil

DISPLAY THIS CARD ON PRINCIPAL FRONTAGE OF WORK



# CITY OF PORTLAND BUILDING PERMIT



This is to certify that

SHATZER ZANE O

Located at

34 HOWARD ST

PERMIT ID: 2017-00115    ISSUE DATE: 07/14/2017    CBL: 014 E019001

has permission to **Construct a new single-family. Construct block retaining wall around rear and right sides.**

provided that the person or persons, firm or corporation accepting this permit shall comply with all of the provisions of the Statues of Maine and of the Ordinances of the City of Portland regulating the construction, maintenance and use of the buildings and structures, and of the application on file in the department.

Notification of inspection and written permission procured before this building or part thereof is lathed or otherwise closed-in. 48 hour notice is required.

A final inspection must be completed before this building or part thereof is occupied. If a certificate of occupancy is required, it must be procured prior to occupancy.

*/s/ Greg Gilbert*

Fire Official

*/s/ Greg Gilbert*

Building Official

**THIS CARD MUST BE POSTED ON THE STREET SIDE OF THE PROPERTY  
THERE IS A PENALTY FOR REMOVING THIS CARD**

*Approved Property Use - Zoning*

Single Family

*Building Inspections*

Use Group:                      Type:

Single Family Reisdence

13 R Sprinkler

ENTIRE

MUBEC 2009 IRC / IBC

*Fire Department*

BUILDING PERMIT INSPECTION PROCEDURES  
Please call 874-8703  
or email: [buildinginspections@portlandmaine.gov](mailto:buildinginspections@portlandmaine.gov)

**Check the Status of Permit or Schedule an Inspection at  
<http://www.portlandmaine.gov/planning/permitstatus.asp>**

With the issuance of this permit, the owner, builder or their designee is required to provide adequate notice to the City of Portland Inspections Division for the inspections listed below. Appointments must be requested 48 to 72 hours in advance. The inspection date will need to be confirmed by this office.

- **Please read the conditions of approval that are attached to this permit.**
- **Permits expire in 6 months if the project is not started or ceases for 6 months.**
- **If the inspection requirements below are not followed, then additional fees may be incurred due to the issuance of a "Stop Work Order" and subsequent release to continue.**
- **Per Section 107.3.1 of the Maine Uniform Building and Energy Code (MUBEC), one set of printed approved stamped construction documents will be kept at the site of work and open to inspection by building officials.**

#### **REQUIRED INSPECTIONS:**

Site VISIT

Final - DRC

Setbacks and Footings Prior to Pouring

Foundation/Backfill

Close-in Plumbing/Framing

Electrical - Residential

Certificate of Occupancy/Final Inspection

The project cannot move to the next phase prior to the required inspection and approval to continue.

If the permit requires a certificate of occupancy, it must be paid and issued to the owner or designee before the space may be occupied.

**City of Portland, Maine - Building or Use Permit**

389 Congress Street, 04101 Tel: (207) 874-8703, Fax: (207) 874-8716

Permit No:

2017-00115

Date Applied For:

01/27/2017

CBL:

014 E019001

**Proposed Use:**

Two-family

**Proposed Project Description:**

Construct a new single-family. Construct block retaining wall around rear and right sides.

**Dept:** Zoning      **Status:** Approved w/Conditions      **Reviewer:** Christina Stacey      **Approval Date:** 03/20/2017**Note:** R-6 zone**Ok to Issue:** 

40" wall including footing - engineered plan not required

Post dev avg grade approx 138.5'

Garage opening limitation of 13' (40% of façade length) - garage door is 9' - OK

**Conditions:**

- 1) This property shall remain a two family dwelling. Any change of use shall require a separate permit application for review and approval.
- 2) The property must be clearly identified prior to pouring concrete and compliance with the required setbacks must be established. Due to the proximity of the setbacks of the proposed addition, it may be required to be located by a surveyor.
- 3) This permit is being approved on the basis of plans submitted. Any deviations shall require a separate approval before starting that work.

**Dept:** Building Inspecti      **Status:** Approved w/Conditions      **Reviewer:** Greg Gilbert      **Approval Date:** 05/24/2017**Note:****Ok to Issue:** **Conditions:**

- 1) This permit is approved based upon information provided by the applicant or design professional. Any deviation from the final approved plans requires separate review and approval prior to work.
- 2) Review and approval by the Authority having Jurisdiction shall not relieve the applicant of the responsibility of compliance with this Code
- 3) The installation must comply with UL, the Manufacturers' Listing, MUBEC (IRC, 2009), and State of Maine Gas Regulations.
- 4) Separate permits are required for any electrical, plumbing, sprinkler, fire alarm, commercial hood exhaust systems and fuel tanks. Separate plans may need to be submitted for approval as a part of this process.
- 5) M1804.2.5 Direct vent terminations. Vent terminals for direct-vent appliances shall be installed in accordance with the manufacturer's installation instructions.
- 6) A Carbon Monoxide (CO) alarm shall be installed in each area within or giving access to bedrooms. That detection must be powered by the electrical service (plug-in or hardwired) in the building and battery.

**Dept:** Fire      **Status:** Approved w/Conditions      **Reviewer:** Greg Gilbert      **Approval Date:** 07/14/2017**Note:****Ok to Issue:** **Conditions:**

- 1) Ventilation of this space is required per ASRAE 62.2 , 2007 edition.  
For conditioned space- insulation shall comply with the IECC, 2009 (Maine State Energy Codes).
- 2) This permit is approved based upon information provided by the applicant or design professional. Any deviation from the final approved plans requires separate review and approval prior to work.
- 3) Review and approval by the Authority having Jurisdiction shall not relieve the applicant of the responsibility of compliance with this Code
- 4) Separate permits are required for any electrical: plumbing, sprinkler, fire alarm, HVAC systems, commercial hood exhaust systems and fuel tanks. Separate plans may need to be submitted for approval as a part of this process. Application requires State Fire Marshal approval.
- 5) Separate permits are required for any electrical: plumbing, sprinkler, fire alarm, HVAC systems, commercial hood exhaust systems and fuel tanks. Separate plans may need to be submitted for approval as a part of this process.

PERMIT ID: 2017-00115

Located at: 34 HOWARD ST

CBL: 014 E019001



Portland, Maine



Yes. Life's good here.

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

Jonathan Rioux, Inspections Director

Amended Date: 03/03/2018

Sent via Regular Mail and Certified Mail: 70141820000140470881

Zane Shatzer  
34 Howard St  
Portland, ME 04101

Re: Permit # 2017-00115  
Located at: 34 Howard St.  
CBL: 014 E019001

### Notice of Violation and Order to Correct

Robert van Wert,

On 01/31/2018, I notified you in writing that your property is in violation of the rear setback requirements as per the City's Land Use Code. I have reviewed your letter dated February 5, 2018, proposing a setback reduction pursuant to Sec. 14-437. As you acknowledged in your letter, that section applies only to buildings that were in existence on November 15, 1993. A setback reduction for this project is not available under that section.

The City of Portland seeks your voluntary compliance with the our Land Use code; enclosed is a copy of Section 14-139 "Structure Setback" requirements. Please submit a plan of correction and revised plans that meet the Setback requirements for the fourth floor, no later than 03/16/2018.

If you do not submit a plan of correction and revised plans that meet the Setback requirements for the fourth floor before 03/10/2018, we will refer this matter to Corporation Counsel for enforcement action. The City may be entitled to an order to correct the violations, civil penalties in the minimum of \$100.00 per violation per day, cost and fees, and other relief, under section 1-15 of the City Code and 30-A.M.R.S. Section 4452.

You have the right to appeal this Notice of Violation and Order to Correct pursuant to section 14-472 within thirty days from the date of this letter. If you do not appeal, you may be barred from challenging my findings in the future. Please contact the Zoning Division ([zoning@portlandmaine.gov](mailto:zoning@portlandmaine.gov)) for the necessary paperwork if you decide to file an appeal.

Please contact me with any questions. Thank you for your prompt attention to this matter.

Portland, Maine



Yes. Life's good here.

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

Jonathan Rioux, Inspections Director

Sincerely,

A handwritten signature in black ink, appearing to be 'JR', is written over the typed name and title of Jonathan Rioux.

Jonathan Rioux,  
Inspections Director

cc: Anne Torregrossa, Associate Corporation Counsel  
Ann Machado, Zoning Administrator  
Zane Shatzer, sent via email [kennedy.shatzer@gmail.com](mailto:kennedy.shatzer@gmail.com)  
Robert van Wert, sent via email [bob@portlandrenovations.com](mailto:bob@portlandrenovations.com)

725 A.2d 545  
Supreme Judicial Court of Maine.

Frank A. JULIANO, Sr.  
v.  
TOWN OF POLAND.

Docket No. And-98-348.

|  
Argued Jan. 6, 1999.

|  
Decided March 2, 1999.

**Synopsis**

Commercial bottling plant owner who obtained building permit for additions to plant sought review of decision of town board of appeals upholding stop work order, issued by new code enforcement officer, directing owner to cease construction at plant. The Superior Court, Androscoggin County, Alexander, J., affirmed. Owner appealed. The Supreme Judicial Court, Wathen, C.J., held that: (1) stop work order, when considered as appeal from prior decision of code enforcement officer, was untimely, and (2) board exceeded its lawful authority in upholding stop work order expressly on basis that permit was invalid.

Judgment of Superior Court vacated and remanded with instructions.

West Headnotes (6)

**[1] Zoning and Planning**

⚡ Time for Proceedings

Good cause exception to appeal period for appeal from decision of town code enforcement officer cannot be implied when ordinance prescribes specific appeal period.

Cases that cite this headnote

**[2] Zoning and Planning**

⚡ Scope and Extent of Review

Supreme Judicial Court would review directly the decision of administrative board with respect to building permit dispute between

landowner and town, examining record developed before board.

Cases that cite this headnote

**[3] Zoning and Planning**

⚡ Questions or errors of law

**Zoning and Planning**

⚡ Matters of discretion

**Zoning and Planning**

⚡ Questions of fact; findings

Supreme Judicial Court reviews decision of town board of appeals for abuse of discretion, error of law, or findings unsupported by substantial evidence in record.

Cases that cite this headnote

**[4] Zoning and Planning**

⚡ Arbitrary, capricious, or unreasonable action

Supreme Judicial Court is bound to affirm decision of town board of appeals unless decision was unlawful, arbitrary, capricious, or unreasonable.

2 Cases that cite this headnote

**[5] Zoning and Planning**

⚡ Time for proceedings

Stop work order issued by town code enforcement officer and directing commercial bottling plant owner, who obtained building permit two years earlier from former code enforcement officer, to cease construction at plant was untimely, when considered as appeal from prior decision of code enforcement officer, given 30-day appeal period specified in land zoning ordinance.

Cases that cite this headnote

**[6] Zoning and Planning**

⚡ Time for proceedings

Town board of appeals exceeded its lawful authority in upholding stop work order expressly on basis that two-year old building

permit issued by former code enforcement officer to commercial bottling plant owner was invalid, where land zoning ordinance provided for 30-day appeal period.

1 Cases that cite this headnote

**Attorneys and Law Firms**

\*546 Bryan M. Dench (orally), Harold N. Skelton, Skelton, Taintor & Abbott, P.A., Auburn, for plaintiff.

Curtis Webber (orally), Linnell, Choate & Webber, Auburn, for defendant.

Before WATHEN, C.J., and CLIFFORD, RUDMAN, DANA, SAUFLEY, and CALKINS, JJ.

**Opinion**

WATHEN, C.J.

[¶ 1] Plaintiff Frank A. Juliano appeals from a judgment entered in the Superior Court (Androscoggin County, *Alexander, J.*) affirming a decision of the Town of Poland Board of Appeals. The Board upheld a stop work order issued by the Poland Code Enforcement Officer directing Juliano to cease construction at his Poland bottling plant. Finding that the Board exceeded its authority, we vacate the judgment.

[¶ 2] The facts presented to the Board can be summarized as follows: Frank Juliano owns a small commercial bottling plant in an area of Poland zoned as Rural Residential. In July 1995, during his final weeks as Poland's Code Enforcement Officer, Ralph Stanley issued a building permit to Juliano for the construction of two forty by sixty foot additions to his existing building. In September 1997, Edward Blow, the new Code Enforcement Officer, ordered Juliano to cease construction at his bottling plant because he "did not have a Building Permit for the activity" he was conducting.<sup>1</sup> Juliano responded by calling attention to his 1995 permit.

[¶ 3] The parties pursued informal negotiations without success and Juliano's attempts to clarify the basis of the stop work order were ineffective. On November 4, Juliano appealed Blow's stop work order to the Board.<sup>2</sup>

At the hearing, the Board discussed \*547 both the possibility that Juliano's 1995 permit had been issued in error (because Juliano's facility did not qualify as "small commerce" and thus required a conditional use permit rather than a building permit) and that Juliano had exceeded the limits of the permit.<sup>3</sup> The Board did not definitively determine which issue was before it. After discussing the matter at length on the record, the Board denied Juliano's appeal in a written decision.

[¶ 4] Pursuant to M.R. Civ. P. 80B, Juliano appealed the decision of the Board to the Superior Court, which upheld the Board's decision. This appeal followed. Juliano contends that the Board's decision was improperly based upon a finding that the 1995 permit was issued in error.

[2] [3] [4] [¶ 5] We review directly the decision of the administrative board, examining the record developed before the board. *See Cobbossee Dev. Group v. Town of Winthrop*, 585 A.2d 190, 192 (Me.1991). We review the decision of a board of appeals for "abuse of discretion, error of law, or findings unsupported by substantial evidence in the record." *Lewis v. Town of Rockport*, 1998 ME 144, ¶ 9, 712 A.2d 1047, 1049. We are bound to affirm the decision of a board of appeals unless it was "unlawful, arbitrary, capricious or unreasonable." *Driscoll v. Gheewalla*, 441 A.2d 1023, 1029 (Me.1982).

[¶ 6] The Board received evidence and argument to the effect that the construction activity exceeded the terms of the 1995 permit. At least three members of the Board voted to deny Juliano's appeal on that basis.<sup>4</sup> The Board's written opinion, however, upholds the stop work order solely on the basis that the 1995 permit was invalidly issued \*548 because Juliano's facility did not fall within the permitted use category of "small commerce" and therefore requires a conditional use permit for any construction. The written opinion states:

*Finding of Fact*

....

4. The applicant proposes to construct additional buildings of which he already has permits for on such property.

....

Other relevant facts are:

....

2) The second permit was granted by the Town in 1995 for two 40x60 sq. ft. additions. Those additions were under construction prior to the stop work order....

*Conclusions*

Based upon the above stated facts and the provisions of the ordinance cited the Board concludes that

1) Mr. Juliano's facility is not a small commerce, commercial and service facility less than 2500 sq. ft. of gross floor space and therefore requires a Conditional Use permit under the Town's zoning ordinance 4.2.4.

[5] [¶ 7] Section 6.8.2(4) of the Poland Land Zoning Ordinance requires that an appeal from a decision of a Code Enforcement Officer be commenced within thirty days of the decision. In this case, the stop work order, if issued because the work permit obtained by Juliano in 1995 was invalidly issued, is in essence a challenge to the former Code Enforcement Officer's decision to issue the building permit. Considered as an appeal from a prior decision of a Code Enforcement Officer, the stop work order was issued nearly two years after the

permit was granted and was not timely due to the thirty day appeal period specified in the ordinance. We have noted that "[s]trict compliance with the appeal procedure of an ordinance is necessary to ensure that once an individual obtains a building permit, he can rely on that permit with confidence that it will not be revoked after he has commenced construction." *Wright v. Town of Kennebunkport*, 1998 ME 184, ¶ 8, 715 A.2d 162, 165.

[6] [¶ 8] The Board was authorized to consider and appears to have considered whether Juliano exceeded the bounds of an otherwise valid permit. Nevertheless, because the Board's written decision upholds the stop work order expressly on the basis that Juliano's permit was invalid, the Board exceeded its lawful authority.

The entry is:

Judgment of the Superior Court vacated.

Remanded with instructions to vacate the decision of the Poland Board of Appeals and remand for further proceedings consistent with this opinion.

**All Citations**

725 A.2d 545, 1999 ME 42

**Footnotes**

- 1 The Poland Land Zoning Ordinance prescribes the duties of the Code Enforcement Officer as follows:  
It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings, or structures, removal of illegal buildings structures, additions, or work being done, or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violation of its provisions.
- 2 The Poland Land Zoning Ordinance gives the Board of Appeals authority to hear administrative appeals from decisions of the code enforcement officer and reverse or modify a decision by the concurring vote of at least four members. The ordinance also dictates a certain period for appeal from the decision of a code enforcement officer: "In all cases, a person aggrieved by a decision of the Code Enforcement Officer shall commence his appeal within 30 days after a decision is made by the Code Enforcement Officer." The Board specifically found that it had jurisdiction over Juliano's appeal despite the 30 day appeal period prescribed by the ordinance. Because neither party raised the issue on appeal, we assume that the Board found jurisdiction on the basis that a "decision," within the meaning of the statute, was not reached until November 3 due to the informal negotiations between the parties and Juliano's attempts to clarify the reason for the stop work order. Nonetheless, we note that the ordinance specifies a definite appeal period and although we have implied a good cause exception in ordinances without definite appeal periods, such a good cause exception cannot be implied when the ordinance prescribes a specific appeal period. See *Wright v. Town of Kennebunkport*, 1998 ME 184, ¶ 8, 715 A.2d 162, 165.
- 3 The stop work order read in its entirety:

According to the records in this Office, you do not have a Building Permit for the activity you are undertaking on your property at 854 Maine Street Poland, Tax Map 6 Lot 24.

My records show that; although you applied for Planning Board approval for an addition in 1993, you did not complete the process.

Therefore: You are Hereby Ordered to cease all construction activity at 854 Maine Street until you have obtained the necessary permits.

If you fail to comply with the action indicated, I will refer this matter to the Municipal Officials for possible legal action in District Court. You may be subject to civil penalty of up to 2500 dollars, if found to be in violation of the Town of Poland, Land Use Ordinance, in addition, you may be required to reimburse the Town for its Attorneys fees.

If you disagree with my interpretation of the Poland Land Use Ordinance, you may take an administrative appeal to the Board of Appeals, if you do so within 30 days of receipt of this notice.

- 4 During a portion of the meeting specifically designated as decision-making, the four members of the Board who were present voted unanimously to uphold the stop work order. Board Member Joe Radziszewski stated that he believed the stop work order, admittedly unclear, was intended to state that Juliano had a building permit but he had exceeded its bounds: "[Code Enforcement Officer Blow] sees it as one building and I think that's the issue that's on the table.... [N]ow they got one roof over it, and from the testimony that I'm hearing, it sounds like it's one building, segregated in different areas to get around a Zoning Ordinance." Radziszewski remarked that given that, the Board should affirm the stop work order because Blow was within his authority in issuing it. Board member Erland Torrey agreed with Radziszewski. Board member John Holloway stated that Juliano had "built outside the parameters" of his permit. Final Board member Mark Hyland was adamant that Juliano's facility contained more than 2500 square feet and thus did not qualify as "small commerce." He argued that Juliano required a conditional use permit rather than a building permit, essentially stating that the 1995 permit had been issued in error. He explained his view as follows:

[T]he floor space clearly exceeds that in small commerce under the Land Zoning Ordinance.... I think that this clearly requires a conditional use permit.... I, there's lots of conflict over whether he's constructed, whether he has a building permit for the activity he's undertaking or whether the second permit or the original permit should be revoked. That's something for the lawyers to deal with, not me. I think that we have really one issue to deal with. That is: was Mr. Blow justified in issuing a stop work order at the facility, and I think he was justified, because the facility clearly doesn't comply with the Land Zoning Ordinance.

Upon questioning by Juliano's attorney as to the exact basis of the Board's decision, Hyland responded:

I'm making two findings, or suggesting two findings here. The first is that under [a 1991] permit a larger building was constructed than was permitted. The second is that although Mr. Juliano has a second permit in his possession, that the facility, or whatever he has at the site doesn't comply with Section 4.2.3 of the Poland Land Zoning Ordinance.

725 A.2d 545  
Supreme Judicial Court of Maine.

Frank A. JULIANO, Sr.

v.

TOWN OF POLAND.

Docket No. And-98-348.

Argued Jan. 6, 1999.

Decided March 2, 1999.

**Synopsis**

Commercial bottling plant owner who obtained building permit for additions to plant sought review of decision of town board of appeals upholding stop work order, issued by new code enforcement officer, directing owner to cease construction at plant. The Superior Court, Androscoggin County, Alexander, J., affirmed. Owner appealed. The Supreme Judicial Court, Wathen, C.J., held that: (1) stop work order, when considered as appeal from prior decision of code enforcement officer, was untimely, and (2) board exceeded its lawful authority in upholding stop work order expressly on basis that permit was invalid.

Judgment of Superior Court vacated and remanded with instructions.

West Headnotes (6)

**[1] Zoning and Planning**

⚙ Time for Proceedings

Good cause exception to appeal period for appeal from decision of town code enforcement officer cannot be implied when ordinance prescribes specific appeal period.

Cases that cite this headnote

**[2] Zoning and Planning**

⚙ Scope and Extent of Review

Supreme Judicial Court would review directly the decision of administrative board with respect to building permit dispute between

landowner and town, examining record developed before board.

Cases that cite this headnote

**[3] Zoning and Planning**

⚙ Questions or errors of law

**Zoning and Planning**

⚙ Matters of discretion

**Zoning and Planning**

⚙ Questions of fact; findings

Supreme Judicial Court reviews decision of town board of appeals for abuse of discretion, error of law, or findings unsupported by substantial evidence in record.

Cases that cite this headnote

**[4] Zoning and Planning**

⚙ Arbitrary, capricious, or unreasonable action

Supreme Judicial Court is bound to affirm decision of town board of appeals unless decision was unlawful, arbitrary, capricious, or unreasonable.

2 Cases that cite this headnote

**[5] Zoning and Planning**

⚙ Time for proceedings

Stop work order issued by town code enforcement officer and directing commercial bottling plant owner, who obtained building permit two years earlier from former code enforcement officer, to cease construction at plant was untimely, when considered as appeal from prior decision of code enforcement officer, given 30-day appeal period specified in land zoning ordinance.

Cases that cite this headnote

**[6] Zoning and Planning**

⚙ Time for proceedings

Town board of appeals exceeded its lawful authority in upholding stop work order expressly on basis that two-year old building

permit issued by former code enforcement officer to commercial bottling plant owner was invalid, where land zoning ordinance provided for 30-day appeal period.

1 Cases that cite this headnote

**Attorneys and Law Firms**

\*546 Bryan M. Dench (orally), Harold N. Skelton, Skelton, Taintor & Abbott, P.A., Auburn, for plaintiff.

Curtis Webber (orally), Linnell, Choate & Webber, Auburn, for defendant.

Before WATHEN, C.J., and CLIFFORD, RUDMAN, DANA, SAUFLEY, and CALKINS, JJ.

**Opinion**

WATHEN, C.J.

[¶ 1] Plaintiff Frank A. Juliano appeals from a judgment entered in the Superior Court (Androscoggin County, *Alexander, J.*) affirming a decision of the Town of Poland Board of Appeals. The Board upheld a stop work order issued by the Poland Code Enforcement Officer directing Juliano to cease construction at his Poland bottling plant. Finding that the Board exceeded its authority, we vacate the judgment.

[¶ 2] The facts presented to the Board can be summarized as follows: Frank Juliano owns a small commercial bottling plant in an area of Poland zoned as Rural Residential. In July 1995, during his final weeks as Poland's Code Enforcement Officer, Ralph Stanley issued a building permit to Juliano for the construction of two forty by sixty foot additions to his existing building. In September 1997, Edward Blow, the new Code Enforcement Officer, ordered Juliano to cease construction at his bottling plant because he "did not have a Building Permit for the activity" he was conducting.<sup>1</sup> Juliano responded by calling attention to his 1995 permit.

[¶ 3] The parties pursued informal negotiations without success and Juliano's attempts to clarify the basis of the stop work order were ineffective. On November 4, Juliano appealed Blow's stop work order to the Board.<sup>2</sup>

At the hearing, the Board discussed \*547 both the possibility that Juliano's 1995 permit had been issued in error (because Juliano's facility did not qualify as "small commerce" and thus required a conditional use permit rather than a building permit) and that Juliano had exceeded the limits of the permit.<sup>3</sup> The Board did not definitively determine which issue was before it. After discussing the matter at length on the record, the Board denied Juliano's appeal in a written decision.

[¶ 4] Pursuant to M.R. Civ. P. 80B, Juliano appealed the decision of the Board to the Superior Court, which upheld the Board's decision. This appeal followed. Juliano contends that the Board's decision was improperly based upon a finding that the 1995 permit was issued in error.

[2] [3] [4] [¶ 5] We review directly the decision of the administrative board, examining the record developed before the board. *See Cobbossee Dev. Group v. Town of Winthrop*, 585 A.2d 190, 192 (Me.1991). We review the decision of a board of appeals for "abuse of discretion, error of law, or findings unsupported by substantial evidence in the record." *Lewis v. Town of Rockport*, 1998 ME 144, ¶ 9, 712 A.2d 1047, 1049. We are bound to affirm the decision of a board of appeals unless it was "unlawful, arbitrary, capricious or unreasonable." *Driscoll v. Gheewalla*, 441 A.2d 1023, 1029 (Me.1982).

[¶ 6] The Board received evidence and argument to the effect that the construction activity exceeded the terms of the 1995 permit. At least three members of the Board voted to deny Juliano's appeal on that basis.<sup>4</sup> The Board's written opinion, however, upholds the stop work order solely on the basis that the 1995 permit was invalidly issued \*548 because Juliano's facility did not fall within the permitted use category of "small commerce" and therefore requires a conditional use permit for any construction. The written opinion states:

*Finding of Fact*

....

4. The applicant proposes to construct additional buildings of which he already has permits for on such property.

....

Other relevant facts are:

....

2) The second permit was granted by the Town in 1995 for two 40x60 sq. ft. additions. Those additions were under construction prior to the stop work order....

*Conclusions*

Based upon the above stated facts and the provisions of the ordinance cited the Board concludes that

1) Mr. Juliano's facility is not a small commerce, commercial and service facility less than 2500 sq. ft. of gross floor space and therefore requires a Conditional Use permit under the Town's zoning ordinance 4.2.4.

[5] [¶ 7] Section 6.8.2(4) of the Poland Land Zoning Ordinance requires that an appeal from a decision of a Code Enforcement Officer be commenced within thirty days of the decision. In this case, the stop work order, if issued because the work permit obtained by Juliano in 1995 was invalidly issued, is in essence a challenge to the former Code Enforcement Officer's decision to issue the building permit. Considered as an appeal from a prior decision of a Code Enforcement Officer, the stop work order was issued nearly two years after the

permit was granted and was not timely due to the thirty day appeal period specified in the ordinance. We have noted that "[s]trict compliance with the appeal procedure of an ordinance is necessary to ensure that once an individual obtains a building permit, he can rely on that permit with confidence that it will not be revoked after he has commenced construction." *Wright v. Town of Kennebunkport*, 1998 ME 184, ¶ 8, 715 A.2d 162, 165.

[6] [¶ 8] The Board was authorized to consider and appears to have considered whether Juliano exceeded the bounds of an otherwise valid permit. Nevertheless, because the Board's written decision upholds the stop work order expressly on the basis that Juliano's permit was invalid, the Board exceeded its lawful authority.

The entry is:

Judgment of the Superior Court vacated.

Remanded with instructions to vacate the decision of the Poland Board of Appeals and remand for further proceedings consistent with this opinion.

**All Citations**

725 A.2d 545, 1999 ME 42

**Footnotes**

- 1 The Poland Land Zoning Ordinance prescribes the duties of the Code Enforcement Officer as follows:  
It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings, or structures, removal of illegal buildings structures, additions, or work being done, or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violation of its provisions.
- 2 The Poland Land Zoning Ordinance gives the Board of Appeals authority to hear administrative appeals from decisions of the code enforcement officer and reverse or modify a decision by the concurring vote of at least four members. The ordinance also dictates a certain period for appeal from the decision of a code enforcement officer: "In all cases, a person aggrieved by a decision of the Code Enforcement Officer shall commence his appeal within 30 days after a decision is made by the Code Enforcement Officer." The Board specifically found that it had jurisdiction over Juliano's appeal despite the 30 day appeal period prescribed by the ordinance. Because neither party raised the issue on appeal, we assume that the Board found jurisdiction on the basis that a "decision," within the meaning of the statute, was not reached until November 3 due to the informal negotiations between the parties and Juliano's attempts to clarify the reason for the stop work order. Nonetheless, we note that the ordinance specifies a definite appeal period and although we have implied a good cause exception in ordinances without definite appeal periods, such a good cause exception cannot be implied when the ordinance prescribes a specific appeal period. See *Wright v. Town of Kennebunkport*, 1998 ME 184, ¶ 8, 715 A.2d 162, 165.
- 3 The stop work order read in its entirety:

According to the records in this Office, you do not have a Building Permit for the activity you are undertaking on your property at 854 Maine Street Poland, Tax Map 6 Lot 24.

My records show that; although you applied for Planning Board approval for an addition in 1993, you did not complete the process.

Therefore: You are Hereby Ordered to cease all construction activity at 854 Maine Street until you have obtained the necessary permits.

If you fail to comply with the action indicated, I will refer this matter to the Municipal Officials for possible legal action in District Court. You may be subject to civil penalty of up to 2500 dollars, if found to be in violation of the Town of Poland, Land Use Ordinance, in addition, you may be required to reimburse the Town for its Attorneys fees.

If you disagree with my interpretation of the Poland Land Use Ordinance, you may take an administrative appeal to the Board of Appeals, if you do so within 30 days of receipt of this notice.

- 4 During a portion of the meeting specifically designated as decision-making, the four members of the Board who were present voted unanimously to uphold the stop work order. Board Member Joe Radziszewski stated that he believed the stop work order, admittedly unclear, was intended to state that Juliano had a building permit but he had exceeded its bounds: "[Code Enforcement Officer Blow] sees it as one building and I think that's the issue that's on the table.... [N]ow they got one roof over it, and from the testimony that I'm hearing, it sounds like it's one building, segregated in different areas to get around a Zoning Ordinance." Radziszewski remarked that given that, the Board should affirm the stop work order because Blow was within his authority in issuing it. Board member Erland Torrey agreed with Radziszewski. Board member John Holloway stated that Juliano had "built outside the parameters" of his permit. Final Board member Mark Hyland was adamant that Juliano's facility contained more than 2500 square feet and thus did not qualify as "small commerce." He argued that Juliano required a conditional use permit rather than a building permit, essentially stating that the 1995 permit had been issued in error. He explained his view as follows:

[T]he floor space clearly exceeds that in small commerce under the Land Zoning Ordinance.... I think that this clearly requires a conditional use permit.... I, there's lots of conflict over whether he's constructed, whether he has a building permit for the activity he's undertaking or whether the second permit or the original permit should be revoked. That's something for the lawyers to deal with, not me. I think that we have really one issue to deal with. That is: was Mr. Blow justified in issuing a stop work order at the facility, and I think he was justified, because the facility clearly doesn't comply with the Land Zoning Ordinance.

Upon questioning by Juliano's attorney as to the exact basis of the Board's decision, Hyland responded:

I'm making two findings, or suggesting two findings here. The first is that under [a 1991] permit a larger building was constructed than was permitted. The second is that although Mr. Juliano has a second permit in his possession, that the facility, or whatever he has at the site doesn't comply with Section 4.2.3 of the Poland Land Zoning Ordinance.

KeyCite Yellow Flag - Negative Treatment  
Distinguished by Town of Vassalboro v. Barnett, Me., February 15, 2011  
760 A.2d 266

Supreme Judicial Court of Maine.

Steven SAHL et al.

v.

TOWN OF YORK et al.

Docket No. Yor-00-121.

Submitted on Briefs Sept. 27, 2000.

Decided Oct. 24, 2000.

**Synopsis**

Owners of property across street from proposed motel expansion challenged authorization of expansion by zoning board of appeals. The Superior Court, York County, Fritzsche, J., vacated board's decision. Town appealed. The Supreme Judicial Court, Alexander, J., held that: (1) challengers had standing to challenge expansion, but (2) owners of motel property had vested right to complete motel.

Vacated and remanded.

West Headnotes (10)

[1] **Zoning and Planning**

↳ Right of Review; Standing

To challenge the decision of a municipal zoning board of appeals, a party must (1) have appeared before the board of appeals; and (2) be able to demonstrate a particularized injury as a result of the board's action.

2 Cases that cite this headnote

[2] **Zoning and Planning**

↳ Right of Review; Standing

For abutter to challenge the decision of a municipal zoning board of appeals, the threshold requirements to establish standing are minimal.

2 Cases that cite this headnote

[3] **Adjoining Landowners**

↳ Nature of mutual rights and duties

An "abutting owner" is an owner of land which abuts or adjoins; the term usually implies that the relative parts actually adjoin, but is sometimes loosely used without implying more than close proximity.

2 Cases that cite this headnote

[4] **Zoning and Planning**

↳ Permits, certificates, and approvals

Owners of property across street from proposed motel expansion had standing to challenge approval of expansion by zoning board of appeals; owners' contended that expansion would obstruct their view of ocean and that additional traffic would adversely affect them.

Cases that cite this headnote

[5] **Zoning and Planning**

↳ Scope and Extent of Review

Supreme Judicial Court directly reviews the decision of a municipal zoning board of appeals when the superior court acts as an intermediate appellate court. Rules Civ.Proc., Rule 80B.

Cases that cite this headnote

[6] **Municipal Corporations**

↳ Appeal from decisions

Court's review of municipal decisions is limited to errors of law, abuse of discretion, or findings not supported by substantial evidence in the record.

4 Cases that cite this headnote

[7] **Zoning and Planning**

↳ Record

**Zoning and Planning**

☞ Decisions of boards or officers in general Court examines the record developed before the zoning board of appeals to determine whether the applicable standard has been met, and court may not substitute its own judgment for that of the board.

6 Cases that cite this headnote

[8] **Zoning and Planning**

☞ Change of regulations as affecting right  
In order for a right to proceed with construction under existing ordinance to vest, three requirements must be met: 1) there must be the actual physical commencement of some significant and visible construction; 2) the commencement must be undertaken in good faith with the intention to continue with the construction and to carry it through to completion; and 3) the commencement of construction must be pursuant to a validly issued building permit.

1 Cases that cite this headnote

[9] **Zoning and Planning**

☞ Change of regulations as affecting right  
Right to proceed with construction may not vest solely because a property owner: (1) filed an application for a building permit; (2) was issued a building permit; (3) relied on the language of the existing ordinance; or (4) incurred preliminary expenses in preparing and submitting the application for a permit.

2 Cases that cite this headnote

[10] **Zoning and Planning**

☞ Change of regulations as affecting right

**Zoning and Planning**

☞ Vested or property rights

Property owners' right to complete construction of motel had vested, where owners had valid permit, they made substantial changes by completing first phase and incurred substantial expenses in its completion, construction was undertaken in good faith, and owners relied upon ordinances

in existence at time permit was issued and at time of later agreement to phase project.

2 Cases that cite this headnote

**Attorneys and Law Firms**

\*267 Robert E. Mongue, Kennebunk, for plaintiffs.

Peggy L. McGehee, John S. Upton, Perkins, Thompson, Hinckley & Keddy, P.C., Portland, for E.F.H., Inc. and the Hugheses.

Durward W. Parkinson, Bergen & Parkinson, LLC, Kennebunk, for Town of York.

Panel: WATHEN, C.J., and CLIFFORD, RUDMAN, DANA, SAUFLEY, ALEXANDER, and CALKINS, JJ.

**Opinion**

ALEXANDER, J.

[¶ 1] E.F.H., Inc., Peter and Patrick Hughes (collectively, the Hugheses), and the Town of York appeal from a judgment entered in the Superior Court (York County, *Fritzsche, J.*) vacating the decision of the York Zoning Board of Appeals (ZBA) which had authorized the Hugheses to complete a motel expansion. The Hugheses contend that the Superior Court erred in holding that (i) the Sahl and the Crafts, owners of residential property near the motel, had standing to sue; and (ii) the ZBA erred in determining that the Hugheses' right to complete construction had vested. Because there is sufficient evidence in the record to support the ZBA's determination that the Hugheses' right to complete construction of the motel had vested, we vacate the judgment.

I. CASE HISTORY

[¶ 2] E.F.H., Inc. owns and operates the Cuttysark Motel located on Long Beach Avenue in York. Peter and Patrick Hughes are shareholders in E.F.H., Inc. The Sahl and the Crafts own residential property across the street from the motel. Their properties and the motel do not share a common boundary.

[¶ 3] In 1991, the Town issued a shoreland permit<sup>1</sup> and other permits to allow construction activities at the motel. The shoreland permit contained no expiration date. In 1995, the Town encouraged and approved phased construction of the motel project to minimize the impact of the construction on the Town. The Town Code Enforcement Officer (CEO) testified that phasing the project was “very attractive” to the Town because it allowed more work \*268 space for the project and would entail less soil disturbance than if the project was undertaken in one stage. Phase I of the construction was completed in 1995, and a temporary occupancy permit was issued. Work on Phase II of the project has not started.

[¶ 4] On November 4, 1997, the Town amended its zoning ordinance to require that work on all shoreland permits issued before May 9, 1992 had to be completed by November 5, 1998.<sup>2</sup> The Hugheses determined that they could not start and finish Phase II under the new deadline. In October 1998, the CEO advised the Hugheses to delay work on the project and to seek administrative relief from the ZBA.

[¶ 5] In December 1998, the Hugheses filed an application with the ZBA seeking a determination either that the CEO erroneously interpreted the amended ordinance, or that the ZBA grant them a variance from the ordinance's requirements. In February 1999, the ZBA conducted a public hearing at which the Hugheses' counsel, the CEO, and counsel for the Sahl and Crafts made presentations. The Sahl and Crafts claimed that the expanded motel would obstruct their view of the ocean, and that they would be adversely affected by the additional traffic. The CEO testified that the Hugheses were unaware of the amended ordinance prior to its enactment.

[¶ 6] The ZBA initially voted to affirm the decision of the CEO but to grant the variance. Subsequently, the ZBA reconsidered both decisions. At the reconsideration hearing in March 1999, the ZBA rescinded the variance but granted the appeal, concluding that the CEO erred in requesting that the Hugheses defer building plans. In its findings of fact, the ZBA concluded that the building permit was issued in 1991 and that the permit had no expiration date, that phasing for the construction was approved in 1995 to minimize the impact of the construction on the Town, and that if construction on Phase II had commenced after the amended ordinance

was passed, the Hugheses would not have been able to complete the project within one year. The Sahl and the Crafts appealed the ZBA's decision to the Superior Court pursuant to M.R. Civ. P. 80B.

[¶ 7] In February 2000, the Superior Court entered a judgment vacating the ZBA's decision to grant the Hugheses' appeal. The court concluded that: (1) both the Sahl and the Crafts had standing; (2) under the plain language of the ordinance the shoreland permit had lapsed; and (3) the ordinance would not be superseded by the doctrine of vested rights. This appeal followed.

## II. STANDING

[1] [2] [¶ 8] Pursuant to Maine law governing appeals from municipal boards, “[a]ny party may take an appeal, within 45 days of the vote on the original decision, to Superior Court from any order, relief or denial in accordance with the Maine Rules of Civil Procedure, Rule 80B.” 30-A M.R.S.A. § 2691(3)(G) (1996). To challenge the decision of a municipal zoning board of appeals, a party must “(1) have appeared before the board of appeals; and (2) be able to demonstrate a particularized injury as a result of the board's action.” *Sproul v. Town of Boothbay Harbor*, 2000 ME 30, ¶ 6, 746 A.2d 368, 371–72 (quoting *Rowe v. City of South Portland*, 1999 ME 81, ¶ 4, 730 A.2d 673, 674–75). If the appealing party is an abutter, the threshold requirements to establish standing are minimal. *See Sproul*, 2000 ME 30, ¶ 6, 746 A.2d at 371 (stating that abutters need allege only “a potential for particularized injury to satisfy the standing requirement”); *Pearson v. Town of Kennebunk*, 590 A.2d 535, 537 (Me.1991) (“When the person who has appeared before the board \*269 is an abutter ... a reasonable allegation of a potential for particularized injury is all that is necessary to establish the real controversy required for adjudication in a court.”).

[3] [¶ 9] An abutting owner is “[a]n owner of land which abuts or adjoins. The term usually implies that the relative parts actually adjoin, but is sometimes loosely used without implying more than close proximity.” BLACK'S LAW DICTIONARY 11 (6th ed.1990). We have applied the “close proximity” definition to an abutting landowner in similar cases. *See Brooks v. Cumberland Farms, Inc.*, 1997 ME 203, ¶ 8, 703 A.2d 844, 847 (stating that a landowner directly across the street, although not

sharing a common boundary, is nevertheless an abutter for purposes of standing). Similarly, in *Harrington v. City of Biddeford*, 583 A.2d 695 (Me.1990), a landowner challenged the construction of a new home to be located on the owner's street. *Id.* at 696. The plaintiff's property and the proposed home site were separated by a third lot, and thus were not "abutting" properties. *See id.* Nevertheless, we concluded that "[g]iven the location of the [plaintiff's] house, a decision by the Board of Appeals that entitled [defendant] to build a house closer to the street than their house rose to the level of particularized injury sufficient to confer standing." *Id.*

[4] [¶ 10] The Sahls and the Crafts own property across the street from the proposed motel expansion. They appeared at the ZBA hearing. They contend that the motel expansion would obstruct their view of the ocean, and that additional traffic would adversely affect them. These factors are sufficient to confer standing. *See Forester v. City of Westbrook*, 604 A.2d 31, 32 (Me.1992) (stating that "the proximate location of the abutter's property, together with a relatively minor adverse consequence if the requested variance were granted, such as the threatened obstruction of the abutter's view, sufficiently demonstrates a potential for particularized injury").

### III. VESTED RIGHTS

[5] [6] [7] [¶ 11] We directly review the decision of a municipal zoning board of appeals when the Superior Court acts as an intermediate appellate court pursuant to M.R. Civ. P. 80B. *See DeSomma v. Town of Casco*, 2000 ME 113, ¶ 7, 755 A.2d 485, 487. Our review of municipal decisions is limited to "error[s] of law, abuse of discretion or findings not supported by substantial evidence in the record." *Adelman v. Town of Baldwin*, 2000 ME 91, ¶ 8, 750 A.2d 577, 581–82. Consequently, we examine the record developed before the ZBA to determine whether the standard has been met, and may not substitute our own judgment for that of the ZBA. *See Brooks*, 1997 ME 203, ¶ 12, 703 A.2d at 847–48.

[8] [¶ 12] The Hugheses contend that they have vested rights to complete construction of the motel, and that application of the amended ordinance infringes on those rights. In order for a right to proceed with construction under the existing ordinance to vest, three requirements must be met:

- 1) there must be the actual physical commencement of some significant and visible construction; 2) the commencement must be undertaken in good faith ... with the intention to continue with the construction and to carry it through to completion; and 3) the commencement of construction must be pursuant to a validly issued building permit.

*Town of Sykesville v. West Shore Communications, Inc.*, 110 Md.App. 300, 677 A.2d 102, 104 (1996). *See also Town of Orangetown v. Magee*, 88 N.Y.2d 41, 643 N.Y.S.2d 21, 665 N.E.2d 1061, 1064 (1996) (stating that "a vested right can be acquired when, pursuant to a legally issued permit, the landowner demonstrates a commitment to the purpose for which the permit was granted by effecting substantial changes \*270 and incurring substantial expenses to further the development").

[9] [¶ 13] Maine law is in accord with this view. *See Thomas v. Zoning Bd. of Appeals of City of Bangor*, 381 A.2d 643, 647 (Me.1978) (stating that the rights of a building permit applicant may vest if the applicant makes a "substantial good faith change ... in reliance on the zoning law in effect at the time of the application"). In addition, we recently recognized that the "circumstances when rights vest ... occur when a municipality applies a new ordinance to an existing permit." *Peterson v. Town of Rangeley*, 1998 ME 192, ¶ 12 n. 3, 715 A.2d 930, 933. However, we have also limited the circumstances under which rights to proceed with construction may vest. Such rights may not vest, for instance, solely because a property owner: (1) filed an application for a building permit; (2) was issued a building permit; (3) relied on the language of the existing ordinance; or (4) incurred preliminary expenses in preparing and submitting the application for a permit. *See Thomas*, 381 A.2d at 647; *Waste Disposal Inc. v. Town of Porter*, 563 A.2d 779, 782 (Me.1989); *City of Portland v. Fisherman's Wharf Assocs. II*, 541 A.2d 160, 164 (Me.1988).

[10] [¶ 14] In the present case, there was evidence before the ZBA that: (1) the Hugheses received a shoreland permit, with no expiration date, to allow construction activity at the motel; (2) the Town encouraged and approved phasing of the project in 1995 to minimize the impact of the construction; and (3) the Hugheses

began the construction work and completed Phase I in 1995. In November 1997, the Town enacted the amended ordinance requiring that the entire phased project be completed within one year. The CEO testified that the Hugheses were unaware of the amended ordinance prior to its enactment. Thus, the evidence before the ZBA and all reasonable inferences drawn therefrom support a determination that: (1) the Hugheses had a valid permit; (2) they made substantial changes by completing Phase I and incurred substantial expenses in its completion; (3) the construction was undertaken in good faith as supported by the later phasing agreement; and (4) the Hugheses relied upon both the ordinances in existence at the time the 1991 permit was issued and the 1995 agreement to phase

the project. Because there was sufficient evidence before the ZBA to support its conclusion that the Hugheses' right to complete construction of the motel had vested, the Superior Court erred in vacating the ZBA's decision.

The entry is:

Judgment vacated. Remanded to the Superior Court to affirm the decision of the Town of York Zoning Board of Appeals.

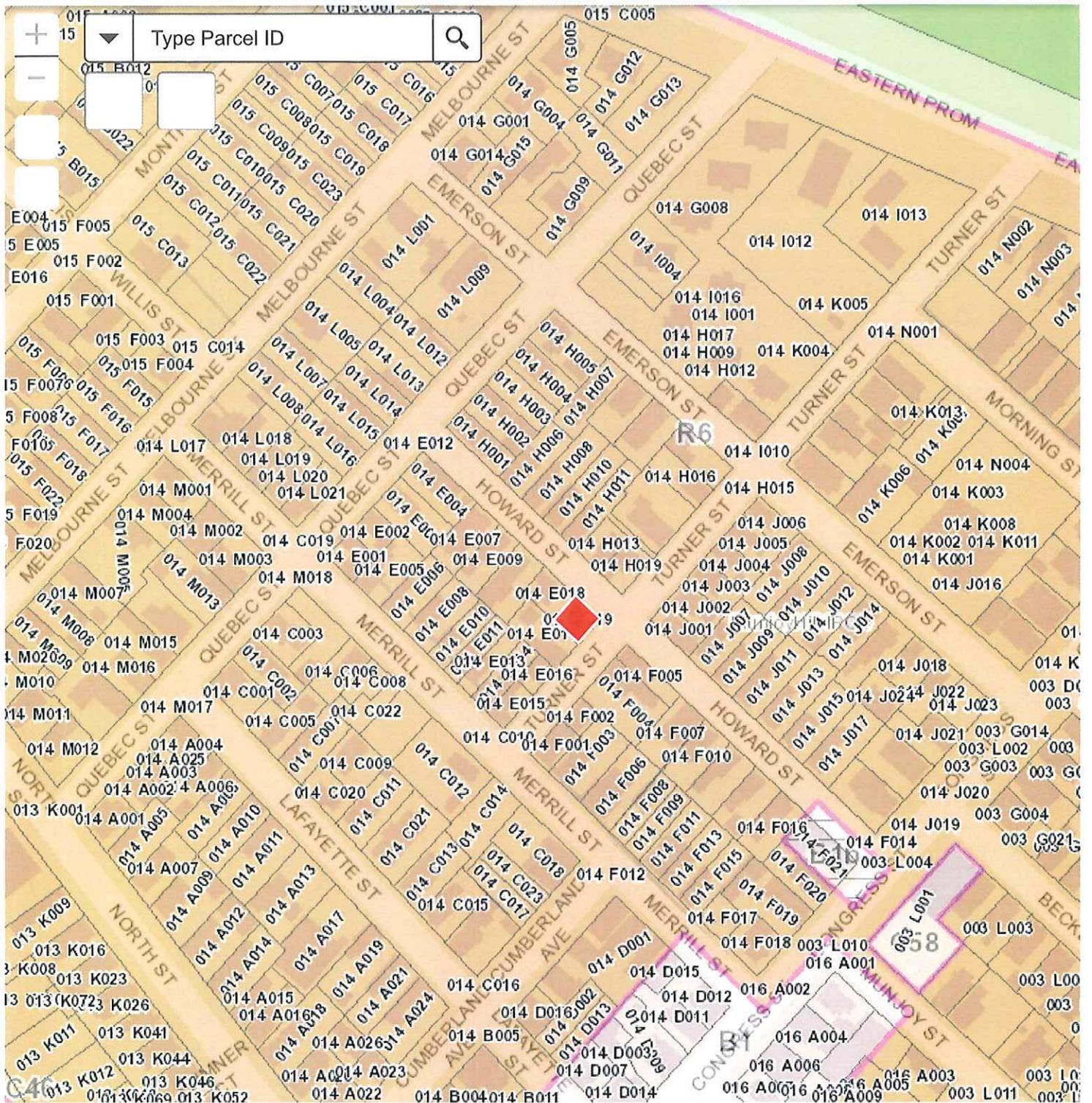
**All Citations**

760 A.2d 266, 2000 ME 180

**Footnotes**

- 1 The record does not contain the 1991 ordinance requiring the issuance of a shoreland permit prior to the commencement of construction activity.
- 2 The amended ordinance provides that "[f]or all Shoreland Permits issued prior to May 9, 1992, all improvements identified in the approved Shoreland Permit must be completed by November 5, 1998 or the Permit shall lapse and become void on November 6, 1998." York, Me., Zoning Ordinance § 18.2.8 (Nov. 4, 1997).

# 34 Howard St - Interpretation Appeal



## MEMORANDUM

**TO:** City of Portland Zoning Board of Appeals  
**FROM:** Anne Torregrossa, Associate Corporation Counsel  
**DATE:** April 12, 2018  
**RE:** Interpretation Appeal for 34 Howard Street

---

### INTRODUCTION

The City recognizes the unfortunate situation that the applicants find themselves in and is sympathetic to that situation. However, it cannot simply look the other way and allow the construction of a building that clearly violates its zoning ordinance. This is particularly true where the applicants hired qualified professionals who were aware of the requirements of the zoning ordinance but – for whatever reason – did not design and construct the building to those standards. Furthermore, the package of documents issued along with the building permit had enough information to put the applicant and his contractors on notice that the plans that they chose to execute were not compliant with code requirements.

That said, the City does acknowledge that staff did not catch the problem with the designs submitted. At the end of the day, however, there was a design professional involved who bears the responsibility for ensuring a compliant design.

### FACTS

The applicant has provided a generally accurate, but incomplete, history of this project. Original drawings for the project were submitted in January of 2017. These original plans included the fourth-floor step back, clearly demonstrating an awareness of the requirement. In May of 2017, revised plans were submitted, this time by Richard Renner Architects, and these plans also showed the building meeting the required step backs. In June, 2017, yet another revision was submitted – by the same architectural firm – but this time the required step backs were not included in the design.

In part, the changes to the original design arose out of the design review process. In that process, staff member Caitlin Cameron identified various concerns with the design and suggested ways of addressing those concerns. The design choices, however, remained the responsibility of the architect, and everyone understood that the design would still need to comply with zoning and other requirements.

Ultimately, in July of 2017, the building permit for 34 Howard Street issued. Along with the building permit, the City electronically transmits a package of documents, including the approved plans bearing the City seal. Also included are any conditions of approval and zoning notes and requirements. A listing of the documents transmitted to the applicant and his contractors is attached as Exhibit A. The documents titled “2017-3.00\_Kennedy Shatzer\_A2.1\_Elevations\_Revised 15June.PC9” and “2017-3.00\_Kennedy Shatzer\_A2.2\_Elevations\_Revised 15June.PC9” are the elevations included in the applicant’s appeal package, that do not show the required step back.

However, also included in the approval package were the documents entitled “A2.1 North & East Elevations” and “A2.2 South and West Elevations.” These elevations are attached to this memo as Exhibit B. Both of these additional elevations do include the required step back and were also stamped by the City as approved.<sup>1</sup> Additionally, the document entitled “Zoning Assessment” was included in the approval package, and is attached as Exhibit C. The Zoning Assessment specifically notes the required step backs. The second set of approved elevations, the Zoning Assessment, and the fact that the designing architect clearly knew about the required step backs, should have put the applicant and his design professionals on notice that the plans they chose to construct violated the zoning ordinance.

The project did get underway in the summer of 2017. However, it appears that the construction did not begin on the fourth floor until late 2017 or early 2018. In January, 2018, it was brought to the City’s attention by an abutter that the fourth floor was being constructed in violation of the required step backs. On January 25, 2018, Code Enforcement Officer Doug Morin notified the architects of record that the partially constructed fourth floor was in violation of the required step backs and the permit, and that work needed to stop on that fourth floor. Contrary to the applicant’s assumption, CEO Morin was not looking at the original drawings, but instead he was looking at the approved drawings dated April 21, 2017 that were stamped as approved by the City. The City followed up this verbal notification with a written notice of violation.

### ARGUMENT

The applicant has raised two arguments as to why he should be allowed to proceed with the project, even though it violates the City zoning ordinance.

First, he argues that the City’s verbal notification and subsequent notice of violation were essentially untimely appeals of a building permit that approved the violation. The applicant is correct in his assertion that *Juliani v. Town of Poland* would prohibit the City from rescinding or interfering with a validly issued permit, even if that permit authorized construction in violation of the City ordinance. However, the permit relied on here did not clearly authorize the applicant to build in violation of the step backs. The permit was issued with two approved sets of plans – one that showed a violation of the step backs and one that complied with them. Further, the permit was issued with a Zoning Assessment that clearly identified the step back requirements. Finally, the architect on the plans clearly understood the step back requirements, as he had designed the initial plans to include those step backs. The situation here is different from the one in *Juliani*, where the permit clearly allowed the ordinance violation that was subsequently challenged.

Even if the limitations in the *Juliani* case do apply, the appeal period should be extended based on the extenuating circumstances in this case. An appeal period – here, the period within which a permit may be revoked or altered – may be extended pursuant to a “good cause exception.” The courts have previously found that a good cause exception may be available where a permit is

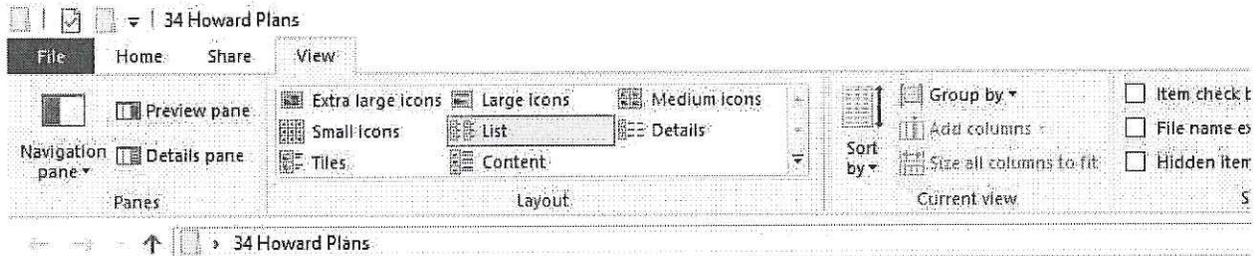
---

<sup>1</sup> Applicants are required to submit any plan revisions with exactly the same name as the original submission, and this instruction is given in writing to applicants and their design professionals. The reason for this is to avoid exactly this scenario where duplicate plans can be saved into the final plans folder. For some reason, the architects on this project did not follow those requirements, and the mistake was not caught by City staff.

issued in violation of an ordinance, the builder violates the terms of the permit, and that action is taken promptly when the violation is discovered. See *Brackett v. Town of Rangeley*, 2003 ME 109, ¶¶ 18-24. A copy of the *Brackett* case is attached.

The applicant's second argument is that he has acquired vested rights in the project, relying on *Sahl v. Town of York*. As an initial matter, it is not clear that the concept of vested rights applies in this situation. The cases in Maine involve a permit that issued before a zoning change, which is not the case here. However, even if the concept did apply here, it is not clear that the commencement of the construction was done in good faith. Although the City is not claiming that the applicant intentionally violated the zoning ordinance, it is clear that the design professionals he retained understood the step back requirements and constructed the fourth floor in violation of those requirements.

# EXHIBIT A



- ★ Quick access
    - Desktop
    - Downloads
    - Documents
    - Pictures
    - 34 Howard Plans
    - Chestnut Street, 41
    - Massachusetts Ave
    - OFFICE
  - OneDrive
  - This PC
  - Network
- 34 HOWARD STREET DEED
  - 34 Howard Street Level I Minor Residential Permit Application
  - 2017-3.00\_Kennedy Shatzer\_A2.1\_Elevations\_Revised 15June.PC9
  - 2017-3.00\_Kennedy Shatzer\_A2.2\_Elevations\_Revised 15June.PC9
  - 2017-3.00\_Kennedy Shatzer\_A2.3\_Window Schedule\_Revised 15 June.PC9
  - A1.0 FIRST FLOOR LAYOUT
  - A2.0 SECOND FLOOR LAYOUT
  - A2.1 NORTH & EAST ELEVATIONS
  - A2.2 SOUTH AND WEST ELEVATIONS
  - A2.3 WINDOW SCHEDULE
  - A3.0 THIRD FLOOR LAYOUT
  - A4.0 FOURTH FLOOR LAYOUT
  - A9.0 RAILING DETAILS
  - A10.0 NOTES
  - A11.0 DETAILS
  - Boundary Survey Rev 3-13-17
  - C1.0 BOUNDARY SURVEY
  - D1.0 DEMOLITION PLAN
  - E-mail dated 01-30-17
  - E-mail RE lot description discrepancy
  - L1.0 SITE PLAN ENLARGED
  - L1.1 SITE PLAN
  - S0.0 General Notes
  - S1.1 Foundation Plan
  - S1.2 2nd Floor Framing Plan
  - S1.3 3rd Floor Framing Plan
  - S1.4 4th Floor Framing Plan
  - S1.5 Projection Roof Framing Plan
  - S2.1 Sections & Details
  - S2.2 North Elevation Shearwall
  - S2.3 East Elevation Shearwalls
  - S2.4 South Elevation Shearwall
  - S2.5 West Elevation Shearwall
  - Zoning Assessment





2 SOUTH ELEVATION  
SCALE 1/4"=1'-0"

1 WEST ELEVATION  
SCALE 1/4"=1'-0"





Reviewed for Code Compliance  
Inspections Division  
Approved with Conditions  
Date: 07/14/17

EXHIBIT C

**Applicant:** SHATZER ZANE O      **Date:**  
**Address:** 34 HOWARD ST      **CBL:** 014 E019001  
**Permit** 2017-00115

	Required	Proposed	Notes	Meets Req.
Lot Size	2,000 sf	1,670 sf	Existing non-conforming	Yes
Area Dwelling Unit	725 sf	835 sf		Yes
Min Street Frontage	20'	80'		Yes
Front Yard Min	0'	2.5'	One abutting house, front setback is 0' - OK to use as avg.	Yes
Front Yard Max				
Rear Yard	10'	10' to foundation	8.5' to nearest roof overhang - OK per §14-425	Yes
Yard Right	5'	5' to foundation	4' to roof overhang - OK per §14-425	Yes
Yard Left				
Side Street Setback	0' (Turner St)	0.9' to foundation	0' to roof overhang - OK	Yes
Accessory Setback				
Max Lot Coverage	60% = 1,002 sf	938 sf		Yes
Min Lot Width	20'	40'		Yes
Max Height	35'/45' with setback	31' low grade to main roof/40' to "skybox"	"Skybox" is set back 15.5' from rear PL and >12' from both side PL's - meets setback req.	Yes
PRUD Standard				
Max Impervious Area				
Pavement Setback				
Floor Area Ratio				
Off Street Parking	0	1 bay garage	First three DU's in R-6 exempt	Yes
Loading Bays				
Other	20% = 334 sf	346 sf	Landscaped open space	Yes



Positive

As of: April 13, 2018 3:45 PM Z

## Brackett v. Town of Rangeley

Supreme Judicial Court of Maine

September 10, 2002, Argued ; August 25, 2003, Decided

Docket: Fra-02-126

### Reporter

2003 ME 109 \*; 831 A.2d 422 \*\*; 2003 Me. LEXIS 121 \*\*\*

GEORGE BRACKETT et al. v. TOWN OF RANGELEY et al.

**Disposition:** Vacated and remanded.

### Core Terms

cottage, Ordinance, good cause, thirty days, appeal period, Appeals, notice, zoning ordinance, non-conforming, violates, permits, feet, zoning board, void, code enforcement officer, notified, miscarriage of justice, circumstances, designated, construct, Lake, public hearing, requirements, flagrant, square

### Case Summary

#### Procedural Posture

Plaintiff landowners appealed from a judgment of the Superior Court, Franklin County (Maine), that affirmed the dismissal, as untimely, of their appeal to the local zoning board of defendant town of the issuance, to their neighbors, of a building permit for a new cottage without requiring that they obtain a variance.

#### Overview

The landowners and the neighbors owned summer cottages on adjoining land. The neighbors' cottage was nonconforming under the Rangeley, Maine, Zoning Ordinance, so that any additional construction that would not render it conforming would require a variance, rather than a simple building permit, yet the local enforcement officer issued a permit, first, for an expansion, and then, later, for a replacement cottage that remained nonconforming, and, in fact, violated the permit issued. Although the ordinance required that an aggrieved person appeal an enforcement officer's action within 30 days, the landowners failed to do so because they did not know of the action until midsummer, months after the permit was issued, when they discovered the completed foundation. At that point, they sought to stop

the building, but representatives of the town were not helpful. The high court held that under such circumstances, where the town disobeyed its own ordinance and the landowners had acted as swiftly as they could, it would infer an equitable good cause exception to the time limit in a zoning ordinance to avoid a flagrant miscarriage of justice.

#### Outcome

The court vacated the judgment and directed the trial court to remand the matter to the zoning board of appeals to allow it to entertain the landowners' appeal.

### LexisNexis® Headnotes

Administrative Law > Judicial Review > Reviewability > Preservation for Review

Governments > Legislation > Statute of Limitations > Time Limitations

Administrative Law > Judicial Review > Reviewability > Standing

Real Property Law > Zoning > Judicial Review

**HNT** **Reviewability, Preservation for Review**

See Rangeley, Me., Zoning Ordinance § 7(A), as amended through June 9, 1998.

Business & Corporate Compliance > ... > Real Property Law > Zoning > Administrative Procedure

Environmental Law > Land Use & Zoning > Conditional Use Permits & Variances

Business & Corporate Compliance > ... > Real Property Law > Zoning > Variances

### [HN2](#) [↓] **Zoning, Administrative Procedure**

If the chief enforcement officer denies a building permit, the property owner can request a variance from the local zoning board of appeals, pursuant to Rangeley, Me., Zoning Ordinance § 8(D).

Business & Corporate Compliance > ... > Real Property Law > Zoning > Ordinances

Real Property Law > Zoning > General Overview

Business & Corporate Compliance > ... > Real Property Law > Zoning > Variances

### [HN3](#) [↓] **Zoning, Ordinances**

See Rangeley, Me., Zoning Ordinance § 7(B)(1).

Civil Procedure > Appeals > Standards of Review > De Novo Review

Environmental Law > Land Use & Zoning > Judicial Review

Real Property Law > Zoning > Judicial Review

Administrative Law > Judicial Review > Standards of Review > De Novo Standard of Review

Governments > Legislation > Interpretation

### [HN4](#) [↓] **Standards of Review, De Novo Review**

Interpretation of the provisions of a zoning ordinance is a question of law for a court. Therefore, the Supreme Judicial Court of Maine reviews such questions de novo.

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

Real Property Law > Zoning > Judicial Review

Administrative Law > Judicial Review > Standards of Review > General Overview

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > General Overview

Environmental Law > Land Use & Zoning > Judicial Review

### [HN5](#) [↓] **Standards of Review, Substantial Evidence**

When a zoning board of appeals acts as the tribunal of original jurisdiction as both fact finder and decision maker, the Supreme Judicial Court of Maine reviews its decision directly for errors of law, abuse of discretion, or findings not supported by substantial evidence in the record.

Governments > Legislation > Interpretation

Governments > Local Governments > Ordinances & Regulations

### [HN6](#) [↓] **Legislation, Interpretation**

The Supreme Judicial Court of Maine construes an ordinance in accordance with its objectives.

Business & Corporate Compliance > ... > Real Property Law > Zoning > Nonconforming Uses

Governments > Legislation > Interpretation

Governments > Local Governments > Ordinances & Regulations

Business & Corporate Compliance > ... > Real Property Law > Zoning > Ordinances

### [HN7](#) [↓] **Zoning, Nonconforming Uses**

The underlying policy of zoning is to gradually eliminate nonconforming structures and uses. The accepted legal standard in Maine has been to strictly construe zoning provisions relating to the extension, expansion, or enlargement of nonconforming buildings. Conversely, zoning regulation provisions limiting nonconforming uses should be liberally construed.

Administrative Law > Judicial Review > Standards of Review > General Overview

### [HN8](#) **Judicial Review, Standards of Review**

Although the Supreme Judicial Court of Maine reviews most factual determinations of an administrative body deferentially, it has decided that the application of the good cause exception is a decision to be made judicially, rather than administratively, to prevent local arbitrariness.

Administrative Law > Judicial Review > Reviewability > Standing

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Adverse Determinations

Administrative Law > Judicial Review > Reviewability > General Overview

Administrative Law > Judicial Review > Reviewability > Jurisdiction & Venue

Administrative Law > Judicial Review > Standards of Review > General Overview

Civil Procedure > ... > Pleadings > Time Limitations > General Overview

Civil Procedure > ... > Pleadings > Time Limitations > Extension of Time

### [HN9](#) **Reviewability, Standing**

Maine case law allows a good cause exception to periods for appeal from local administrative decisions in those special situations in which a court of competent jurisdiction finds special circumstances that would result in a flagrant miscarriage of justice unless, within a narrowly extended range, a time longer than the general norm is held reasonable. To ameliorate the predicament of potentially aggrieved persons who lack notice, the Supreme Judicial Court of Maine has carved out the narrow flagrant miscarriage of justice exception and left application of that exception to be decided judicially, rather than administratively, to prevent local arbitrariness.

Administrative Law > Judicial

Review > Reviewability > General Overview

Governments > Local Governments > Licenses

Real Property Law > Zoning > Judicial Review

Business & Corporate Compliance > ... > Real Property Law > Zoning > Variances

### [HN10](#) **Judicial Review, Reviewability**

The Supreme Judicial Court of Maine holds that when a town violates its own ordinance as to process and on the merits, equity will infer a good cause exception to an ordinance that requires a party to appeal within a particular period of time after the issuance of a building permit. In the ordinary case, it remains important for people who are about to invest substantial sums to know that they will not be sued after they expend their money. The time for litigating in ordinary cases remains prior to the start of construction. When the town violates its ordinance and the permit holder violates its permit and the abutter acts reasonably promptly, however, courts will recognize a good cause exception to a town's fixed appeal period.

**Counsel:** [\*\*\*1] Attorney for plaintiffs: David C. Pierson, Esq. (orally), Hark-Andrucki, Lewiston, ME.

Attorneys for defendants: Stephen E.F. Langsdorf, Esq. (orally), Preti Flaherty Beliveau Pachios & Haley, LLC, Portland, ME, (for Town of Rangeley), Peter Clifford, Esq. (orally), Hodsdon & Clifford, LLC, Kennebunk, ME, (for William Sears).

**Judges:** Panel: SAUFLEY, C.J., and RUDMAN, DANA, ALEXANDER, CALKINS, and LEVY, JJ. Majority: SAUFLEY, C.J., and RUDMAN, DANA, CALKINS, and LEVY, JJ. Concurring: ALEXANDER, J.

**Opinion by:** DANA

## **Opinion**

---

[\*\*423] DANA, J.

[\*P1] George and Roselyn Brackett (the Bracketts) are, as we say in Maine, "from away." When, on the Fourth of July weekend in 1999, they returned to their summer camp on Rangeley Lake for the first time that year, they discovered that [\*\*424] their next-door neighbor, William Sears, had, in multiple violation of the

Town's Zoning Ordinance and without the required hearing with notice to his neighbors but with the blessing of the Town's Code Enforcement Officer, replaced his non-conforming cottage with a substantially larger but even more non-conforming dwelling. Although the Bracketts filed an appeal to the Zoning Board of Appeals within thirty days of their actual [\*\*\*2] notice of Sears's construction, the Board ultimately concluded that the Bracketts' appeal was untimely and that under the circumstances, they were not entitled to relief from the Ordinance's thirty day appeal period. <sup>1</sup> We disagree, vacate the judgment of the Superior Court (Franklin County, *Gorman, J.*) affirming the Board's finding, and direct that the court remand this matter to the Board to entertain the Bracketts' appeal.

### [\*\*\*3] I. BACKGROUND

[\*P2] The Bracketts and Sears own cottages on abutting land on Rangeley Lake in the Town of Rangeley. New Hampshire residents, the Bracketts use their cottage on Rangeley Lake only during the summer.

[\*P3] In 1997, when Sears purchased his property, it included an old cottage (original cottage), a "nonconforming structure" within the Rangeley Shoreland District. See Rangeley, Me., Zoning Ordinance §§ 9(B)(51), 9(B)(70) (May 28, 1987, amended Jan. 5, 1998, and June 9, 1998). Being about forty feet back from the lake's high water mark and six feet from the Bracketts' property line, Sears's original cottage violated two zoning requirements: it was situated less than 100 feet from the lake's high water mark, see *id.* §§ 9(B)(53), 9(B)(69), and it did not meet the twenty-foot side setback requirement from the property line with the Bracketts. See *id.* § 4(G).

<sup>1</sup> The Town of Rangeley's Zoning Ordinance provides:

**HN1** [↑] In all appeals cases, a person aggrieved by a decision of the Code Enforcement Officer shall commence his appeal within 30 days after a decision is made by the Code Enforcement Officer. The appeal shall be filed with the Board of Appeals on forms approved by the Board, and the aggrieved person shall specifically set forth on the form the grounds for the appeal.

Rangeley, Me., Zoning Ordinance § 7(A) (May 28, 1987, amended Jan. 5, 1998, and June 9, 1998). The Bracketts appealed on the approved form on July 30, 1999, approximately nine months after the November 3, 1998 permit was issued.

[\*P4] During 1998, Peter Farnsworth, the Town's Code Enforcement Officer (CEO), granted Sears three building permits for work on the original cottage:

& # 8226; On May 28, 1998, a permit to construct a deck;

& # 8226; On September 29, 1998, a permit to demolish and reconstruct the part [\*\*\*4] of the original cottage nearest the lake; and

& # 8226; On November 3, 1998, a permit to demolish the original cottage and replace it with an entirely new cottage (new cottage). <sup>2</sup>

[\*\*\*5] [\*\*425] The Bracketts received no notice of any of these permits. If Sears's application for the November 3 permit had been processed properly, however, it would have gone before the Town's Planning Board and the Bracketts would have been notified of Sears's application for the permit. See *id.* §§ 7(C), (D).

<sup>2</sup> Looking at Sears's permitting history, the Superior Court (Franklin County, *Gorman, J.*) determined:

The copy of the November 1998 permit included in the Record did not have the required site plan attached to it. The site plan Mr. Sears provided with his application for the first permit gave the dimensions of the old cottage as 16.5' x 48.5'. *It is not entirely clear that those measurements are accurate.*

The proposal submitted by Mr. Sears in his November request contemplated the demolition of the existing building, and the construction of a new building with 1,036 square feet of living area. *As presented, the request was not within the jurisdiction of the CEO. The proposed expansion exceeded the 30% limit.* **HN2** [↑] *If the CEO had denied the permit, as he should have, Mr. Sears could have requested a variance from Zoning Board of Appeals (ZBA), pursuant to Section 8(D) of the Ordinance.* In addition, the proposed reconstruction included a lateral expansion that required review by the Planning Board. Finally, there is at least an argument that the project should have been deemed "new construction" because it included a complete removal of the old structure. New structures may only be approved if they conform to all setback requirements.

Before making a decision on Mr. Sears's requests, either the Planning Board or the ZBA would have been required to hold a public hearing. *These Boards must also notify those citizens who might be interested, including the property owner making the request, and all abutters [sic, that the proposal will be discussed at a public hearing.* Ordinances §§ 7(C) and (D).

No such notice is required for permits that are within the jurisdiction of the CEO.

(emphasis added).

**[\*P5]** In October 1998, Sears began work pursuant to the September 29 permit. The Bracketts closed their cottage for the winter on October 18, 1998. They testified that they were unaware of any construction at all on the Sears property that fall.

**[\*P6]** After Sears began work pursuant to the second permit, he concluded that the extent of the floor timber rot in the original cottage precluded renovation and he decided to build a new cottage instead. Sears demolished the original cottage in April 1999 and began building the new cottage in mid-May. By July 2, the new cottage foundation was complete and by July 30, the walls were framed and sheathed. The Bracketts observed these changes for the first time when they returned to Rangeley on July 3, 1999. Until then, they had been unaware of the November 3 permit and Sears's plan to replace the original cottage.

**[\*P7]** As soon **[\*\*\*6]** as they saw Sears's construction, the Bracketts met with Robert Griscom, the Town's new CEO, and complained about the new cottage, asking him to halt construction and to revoke the November 3 permit. He refused and did not tell them they needed to file an appeal on any particular form.

**[\*P8]** On July 8, George Brackett wrote a detailed letter to the Town's Board of Selectmen (with a copy to Griscom but not Sears) asking the Board to revoke the November 3 permit and stop construction because the new cottage violated the requirements of the Town's Zoning Ordinance for Shoreland District construction. Although it was not on the required form, Brackett's letter contained all the information necessary for filing an appeal. There is no indication, however, that the Town informed Sears of Brackett's request. The CEO still did not notify the Bracketts that they needed to file an appeal with the Zoning Board of Appeals or that the appeal needed to be on a particular form. Receiving no response to this letter, the Bracketts went to the Town Office on July 27 and learned that the selectmen had not considered George Brackett's letter because they had not met since receiving it. The person **[\*\*\*7]** with whom the Bracketts spoke suggested that they raise their concerns with the selectmen directly at their scheduled meeting that night. Upon doing so, the Bracketts were told for the first time to file an appeal on the Zoning Board of Appeals's approved form. They did so on July 30, challenging Sears's November 3, 1998, permit.

**[\*P9]** On August 27, 1999, the Board held a public hearing on the Bracketts' appeal **[\*\*426]** and,

according to the minutes, voted to "send this back to the Planning Board for their approval, and to have the square footage be brought into the 30% expansion rule." On September 9, however, the Board met again, reconsidered its August 27 decision,<sup>3</sup> and voted instead to dismiss the Bracketts' appeal.

**[\*P10]** **[\*\*\*8]** In its letter to the Bracketts, the Board stated that the building authorized by the November 3 permit exceeded the allowable 30% expansion by 100 square feet and that "the lateral expansion of the building, a non-conforming structure, was not approved by the Planning Board as required by sect. 3(C)1b of the Zoning Ordinance." Nevertheless, the letter stated that Board dismissed the Bracketts' appeal because:

1. The appeal was not filed in a timely manner.<sup>4</sup> The

<sup>3</sup> Section 7(B)(1) of the Rangeley Zoning Ordinance provides: **HN3**  "A Board member who voted on the prevailing side of the decision may move to reconsider at any time within the 30-day period." Rangeley, Me., Zoning Ordinance § 7(B)(1) (May 28, 1987, amended Jan. 5, 1998, and June 9, 1998).

<sup>4</sup> The Board itself, however, appears unclear as to when the thirty day appeal period actually begins. For example, at the September 9, 1999 Board Meeting, Chairman Jani stated:

I really don't think that the appeal was filed in a timely manner. The Ordinance says thirty days . . . Then it says, an appeal is timely when an adjacent landowner appeals from the granting of a permit *within thirty days after he learns of the issuance through commencement of construction*. Mr. Sears started construction in April. I don't think you can come in two or three months later.

(emphasis added). The meeting transcript also contains this exchange between Jani and Board member Emory:

Emory: The thirty days, to me, is debatable.

Jani: Well, it is. I think if he were to come in in April, if he would've come in by the end of April, and said, hey stop the construction and then, I think he would have had a case. But to come in at the end of July, or even the beginning of July, after it's been in construction for two to three months, I think that's not timely.

Emory: Well, I agree if he was notified. But see he was not.

Jani: He was notified through the commencement of construction.

Emory: Was he? I don't know.

Jani: By the construction, he should have been notified.

and this statement by Board member Mrs. Hodge:

permit was issued to Mr. Sears on Nov. 3, 1998. Construction commenced in April, 1999 and Mr. Brackett filed his appeal on July 30, 1999.

2. Mr. Sears has a vested interest in the permit.
3. Mr. Sears acted in good faith in accordance with the permit.

**[\*P11] [\*\*\*9]** Pursuant to M.R. Civ. P. 80B, the Bracketts appealed from the Board's decision, asking the Superior Court (*Marden, J.*) to decide whether the Board had acted legally at its September 9, 1999, meeting and whether Sears's November 3 permit was consistent with the Town's Ordinance. In March 2001, the court vacated the Board's September 9 decision and remanded the matter to the Board "to find facts necessary to determine whether a good cause exception to the thirty day appeal period is applicable. . . ."

**[\*P12]** In May 2001, the Board concluded that the Bracketts did not satisfy the good **[\*\*427]** cause exception to the thirty day rule because "there were no facts which indicated that there were 'special circumstances which would result in a miscarriage of justice' unless the time limit was extended." The Board explained,

1. Before they left for New Hampshire in October, the Bracketts were on actual or constructive notice of the work described in the November permit;
2. Sears had vested rights in the November permit; and
3. The Bracketts' twenty-seven day delay before filing their appeal was too long.

**[\*P13]** In January 2002, the court, while rejecting the first two **[\*\*\*10]** arguments, <sup>5</sup> found merit in the third

---

I'll make a motion to deny (Mr.) George E. Brackett's appeal due to the time limit, thirty days from the, *four months actually, it was.*

(emphasis added). Moreover, among the Board's Legal Conclusions in its May 23, 2001 order denying the Bracketts' appeal is this:

Since the Bracketts were in possession of the current ordinance which sets forth a 30-day appeals period as of July 8, 1999, it was unreasonable for them to have waited until July 30, 1999 to file an appeal with the ZBA. This delay alone justifies a finding of no good cause to exceed the 30-day period.

and affirmed the Board's decision. This appeal followed.

## II. DISCUSSION

**[\*P14]** The Bracketts contend first that, in light of the special circumstances of their **[\*\*\*11]** case and consistent with the principles established in *Keating v. Zoning Board of Appeals of Saco*, 325 A.2d 521, 524 (Me. 1974) and *Gagne v. Cianbro Corp.*, 431 A.2d 1313 (Me. 1981), a "flagrant miscarriage of justice" will result unless they are granted a "good cause exception." They assert, further, that the presence of a designated appeal period in the Rangeley Ordinance should not preclude an application of the good cause exception. We agree with both propositions.

### A. The Standard of Review

**[\*P15]** **HN4**<sup>↑</sup> "Interpretation of the provisions of a zoning ordinance is a question of law for the court. Therefore, we review such questions de novo." *DeSomma v. Town of Casco*, 2000 ME 113, P8, 755 A.2d 485, 487 (citation and quotation omitted). **HN5**<sup>↑</sup> When a zoning board of appeals acts as the tribunal of original jurisdiction as both fact finder and decision maker, we review its decision directly for errors of law, abuse of discretion, or findings not supported by substantial evidence in the record. *Yates v. Town of Southwest Harbor*, 2001 ME 2, P10, 763 A.2d 1168, 1171. Thus, we review directly the May 23, 2001 decision of the Rangeley **[\*\*\*12]** Zoning Board of Appeals.

**[\*P16]** **HN6**<sup>↑</sup> We construe an ordinance in accordance with its objectives. *Griffin v. Town of Dedham*, 2002 ME 105, P10, 799 A.2d 1239, 1243.

---

<sup>5</sup>The Superior Court found the first argument "seriously flawed" and rejected it, stating:

The information presented by this record can *only* support a finding that the Bracketts had no actual or constructive notice of the November 3, 1998 permit until their arrival in Rangeley on July 3, 1999. Nothing that happened before the issuance of a permit may be construed to give notice of that permit.

*Id.*

The court also rejected the Board's second argument, because, as the Board had explained in its September 1999 letter, "the ZBA had already determined that Mr. Sears' house, as constructed, violated the Town's Ordinance in several ways. Therefore, the ZBA erred in 2001 when it determined that Mr. Sears had 'vested rights' in the nonconforming structure pursuant to Section 3(G) of its Ordinance." *Id.*

[HN7](#) [↑] "The underlying policy of zoning is to gradually eliminate nonconforming structures and uses. . . . The accepted legal standard has been to strictly construe zoning provisions relating to the extension, expansion or enlargement of nonconforming buildings. . . ." [Lewis v. Me. Coast Artists, 2001 ME 75, P26, 770 A.2d 644, 653](#) (citations and quotation omitted). Conversely, zoning regulation "provisions limiting nonconforming uses should be liberally construed." [Oliver v. City of Rockland, 1998 ME 88, P9, 710 A.2d 905, 908](#) (citation and quotation omitted).

[\*P17] [HN8](#) [↑] [\*\*428] Although we review most factual determinations of an administrative body deferentially, [Imagineering, Inc. v. Superintendent of Ins., 593 A.2d 1050, 1053 \(Me. 1991\)](#), we have decided that the application of the good cause exception is a decision to be made "judicially, rather than administratively, to prevent local arbitrariness," [Gagne v. Lewiston Crushed Stone Co., Inc., 367 A.2d 613, 619 \(Me. 1976\)](#). [\*\*\*13]

B. Whether there would be a "flagrant miscarriage of justice" if the Bracketts are not entitled to a good cause exception.

[\*P18] Because the Town violated its own ordinance in its approval of Sears's permit, Sears violated the terms of the permit he received, and the Bracketts acted in a timely and appropriate fashion upon discovering these violations, it would be a "flagrant miscarriage of justice" to deny on timeliness grounds their appeal.

#### 1. The Town's violation of its own Ordinance

[\*P19] Sears's original cottage was a non-conforming structure within the Rangeley Shoreland District: it was closer than twenty feet from a sideline and closer than 100 feet from the shore. See Rangeley, Me., Zoning Ordinance §§ 4(G), 9(B)(51) (May 28, 1987, amended Jan. 5, 1998, and June 9, 1998). As a proposed expansion of a non-conforming structure, Sears's application required Planning Board review and approval. See *id.* § 3(C)(1)(b), 3(C)(1)(c). It received neither. Before granting the permit, the Planning Board would have had to give the Bracketts notice before it held a hearing. See *id.* § 7(C)(D). The Board gave no notice and held no public hearing on Sears' application.

[\*\*\*14] The Board itself acknowledged at its September 9, 1999, meeting that if Sears's application for the November 3 permit had been properly processed, it would have gone before the Town's Planning Board, the Planning Board would have had a public hearing, and the Bracketts would have been

notified.

#### 2. Sears's new cottage violations

[\*P20] The cottage Sears built violated even the terms of the improperly granted November 3 permit. First, while the permit expressly requires Sears to construct the new cottage forty-eight-plus feet from the shore, he knowingly constructed it thirty-eight to forty feet from the high water mark. Further, the new cottage violated the 30% rule even more than the unauthorized permit allowed. The new cottage had a 348 square foot deck, which was not accurately described on the November 3 application or in the attached sketch. Sears did not include the deck in his own calculations of the floor area; furthermore, the new cottage has a full basement, which adds to the square footage and volume.

#### 3. Timeliness of the Bracketts' appeal

[\*P21] The Bracketts appealed within thirty days their of actual knowledge. Contrary to the Board's finding, the Bracketts [\*\*\*15] did not spend this period simply deciding whether to appeal and they *did* make their objections known to the Town almost immediately. While the uncontroverted evidence shows that the Town and CEO Griscom did nothing between July 3 and 30, 1999, the Bracketts acted diligently and reasonably to perfect their appeal:

& # 8226; On July 3, when they discovered the foundation for the new cottage, the Bracketts immediately met CEO Griscom, asking him to stop the construction and revoke the November 3 permit. Griscom declined to take any action and failed to tell the Bracketts how to file an appeal.

& # 8226; [\*\*429] On July 8, George Brackett wrote to the Town's Selectmen (with a copy to CEO Griscom), outlining Sears's violations of the Ordinance and requesting them to revoke the permit and stop construction. Neither the Selectmen nor Griscom responded. While the letter was not on the required appeal form, it included all information necessary for an appeal. Thus, the Town was on notice within a week of actual notice.

& # 8226; Continuing to pursue the matter, on July 27, the Bracketts went to the Town Office. They were told that they could attend the Board of Appeals meeting that night to [\*\*\*16] raise their concerns directly with the Board.

& # 8226; When they did so, the Board told them to file

their appeal on its designated form.

& # 8226; They filed their appeal on the designated form on July 30, 1999.

Thus, the Bracketts would have filed their appeal on the correct form weeks earlier but for the fact that the CEO and the Town ignored their repeated efforts to appeal the matter.

D. Whether on the facts of this case, the Bracketts are entitled to the good cause exception despite the existence of a designated appeal period.

**[\*P22]** We next consider whether on these facts, there is a good cause exception to the thirty day appeal period set forth in a town's ordinance.

**[\*P23]** In *Keating*, when the town's ordinance did not specify a time period for an appeal, we fixed a sixty day period [HN9](#) and allowed a good cause exception to that period "in those special situations in which a Court of competent jurisdiction finds special circumstances which would result in a flagrant miscarriage of justice unless, within a narrowly extended range, a time longer than the general norm is held 'reasonable.'" [Keating, 325 A.2d at 524](#). "To ameliorate the predicament **[\*\*\*17]** of potentially aggrieved persons who lack notice, we carved out the narrow 'flagrant miscarriage of justice' exception and left application of that exception to be decided judicially, rather than administratively, to prevent local arbitrariness." [Gagne v. Lewiston Crushed Stone Co., Inc., 367 A.2d at 618-19](#). Subsequently, in *Wright v. Town of Kennebunkport*, [1998 ME 184, 715 A.2d 162](#), we reserved for a case with different facts the question of whether a court can grant an extension of time within which to appeal to an aggrieved party who does not have knowledge of the issuance of a permit until after the appeal period has expired in those situations in which the applicable ordinance designates an appeal period but does not provide for a waiver of the limitations period upon a showing of good cause.

[Id., 1998 ME 184 at P8 n.3, 715 A.2d at 165 n.3](#).

**[\*P24]** This is that case. [HN10](#) When a town violates its own ordinance as to process and on the merits, equity will infer a good cause exception to an ordinance that requires a party to appeal within thirty days of the issuance of a building permit. Equity and the facts of the instant case compel us to grant a good cause **[\*\*\*18]** exception even though the Town has a designated appeal period. In *Keating*, we created a

good cause exception to ensure that justice is done when there are extenuating circumstances. In the instant case, because there are extenuating circumstances, the Board clearly erred in denying the Bracketts the good cause exception. Though the Town's Ordinance does provide for a thirty day appeal period, the Town's error precluded the use of that period, effectively rescinding it. Thus, while the appeal period existed on the books, it did not exist for the Bracketts.

**[\*P25] [\*\*430]** We are not unmindful of the fact that in the ordinary case, it is important for people who are about to invest substantial sums to know that they will not be sued after they expend their money. The time for litigating in ordinary cases remains prior to the start of construction. When the town violates its ordinance and the permit holder violates its permit and the abutter acts reasonably promptly, courts will recognize a "good cause exception" to a town's fixed appeal period.

The entry is:

Judgment of the Superior Court is vacated. Remanded to the Superior Court with instructions to remand to the Rangeley Zoning **[\*\*\*19]** Board of Appeals for determination of whether Sears's new cottage violates the Town's Ordinance.

Concur by: ALEXANDER

**Concur**

---

ALEXANDER, J., concurring.

**[\*P26]** I concur in the result, however, I would not apply the good cause exception to extend the time period for the Bracketts to file their appeal. Consideration of the good cause exception would be appropriate only if the permits were facially valid, having been issued by the proper permitting authority, the Planning Board. The permits here were *ultra vires* acts of a person with no more authority to issue the permits than possessed by the local dog catcher.

**[\*P27]** When a public officer or agency exceeds its statutory authority or proceeds in a manner not authorized by law, its resulting orders, decrees or judgments are null and void and may be attacked collaterally. See [Small v. Gartley, 363 A.2d 724, 729](#)

(*Me. 1976*).<sup>6</sup> Such a void action may be attacked even after the time for appeal has expired. *Clough v. Newton*, 160 Me. 301, 307, 203 A.2d 690, 693 (1965).

**[\*P28] [\*\*\*20]** All citizens, including permit applicants and local code enforcement officers, are charged with knowledge of the law, including local ordinances. See *City of Auburn v. Mandarelli*, 320 A.2d 22, 30 (Me. 1974). The construction permits, not issued by the proper authority, the Planning Board, were void the day they were issued and do not gain any validity with the passage of time. Such a void permit is subject to challenge at any time by an objecting abutter or by the town in an enforcement or a cease and desist action. See *Shackford & Gooch, Inc. v. The Town of Kennebunk*, 486 A.2d 102, 106 (Me. 1984) (the unauthorized approval of a local building inspector cannot be grounds for estopping a municipality from enforcing violations of its zoning ordinance).

**[\*P29]** Keeping illegal building activity from neighborly or public scrutiny, even where it may occur with the complicity of a code enforcement officer, does not grant the illegal activity immunity from appeal or enforcement as soon as some appeal period--for permits issued by another municipal body--runs. Neither the Bracketts nor the Town, nor any other individual with standing needs **[\*\*\*21]** a good cause exception to the time for appeal to bring their challenge to these void permits.

**[\*P30]** A person with a void permit issued as a result of an *ultra vires* act by a municipal official, if he or she is essentially blameless and has acted in detrimental **[\*\*431]** reliance on the permit, may assert a defense of equitable estoppel to any enforcement or removal action. See *City of Auburn v. Desgrosseilliers*, 578 A.2d 712, 714-16 (Me. 1990). However, such a defense may not apply here if Sears was aware that he was violating the law, or if, as the record appears to indicate, Sears built in violation of the invalid permit issued to him by the code enforcement officer.

---

<sup>6</sup> In *Small*, we stated:

We agree that, if a public agency exceeds its statutory powers or, even in matters over which it has jurisdiction, proceeds in a manner unauthorized by law, its orders, decrees and judgments may be attacked collaterally as null and void, but, if within the periphery delimited by the legislative power grant, such orders, decrees and judgments, when unreversed or unmodified *in the manner provided by the pertinent legislation*, have the effect of final judgments, and they cannot be attacked before a judicial forum . . . .

**[\*P31]** Accordingly, I would vacate the judgment of the Superior Court and remand to the Superior Court with direction to declare the permits at issue void.

---

End of Document



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:**

NAME Mackenzie Simpson

BUSINESS NAME Simpson Real Estate Services, LLC

BUSINESS ADDRESS PO Box 11583  
Portland, Maine 04104

BUSINESS TELEPHONE & E-MAIL 207-310-0221  
macpsimpson@gmail.com

APPLICANT'S RIGHT/TITLE/INTEREST  
Owner's Agent/Representative

CURRENT ZONING DESIGNATION  
Residential 3 (R3)

EXISTING USE OF THE PROPERTY: 2 - Family

**Subject Property Information:**

PROPERTY ADDRESS 183-185 Whitney Avenue,  
Portland, Maine 04102

CHART/BLOCK/LOT (CBL) 186A/D007/001

PROPERTY OWNER (If Different) Dana French

ADDRESS (If Different) 63 Mortimer St. SE,  
Atlanta, Georgia 30317

PHONE # AND E-MAIL 207-838-3428  
danajfrench@yahoo.com

CONDITIONAL USE AUTHORIZED BY  
SECTION 14- 391(f)

TYPE OF CONDITIONAL USE PROPOSED: 3 - Family

RECEIVED

MAR 29 2018

Dept. of Building Inspections  
City of Portland Maine

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

March 19, 2018  
DATE

# Simpson Real Estate Services, LLC

Mackenzie Simpson, Esq.

P.O. Box 11583

Portland, ME 04104

March 18, 2017

Michael A. Russell, MS, Director  
Permitting and Inspections Department  
City Hall  
389 Congress Street  
Portland, ME 04101

Ann Machado  
Zoning Administrator  
City Hall  
389 Congress Street  
Portland, ME 04101

RE: 183-185 Whitney Ave., Portland, ME  
Legalization of 3<sup>rd</sup> Unit

Dear Zoning Board of Appeals,

We have applied to legalize a third unit in a two-family apartment building located at the above address. The 3<sup>rd</sup> unit has been rented by the owner for many years and the current tenant would like to remain in the unit. The owner is being proactive and following the City's process to legalize the 3<sup>rd</sup> unit. The last step before reinspection of the 3<sup>rd</sup> unit was to upgrade the fire escape attached to the rear of the building. The owner has paid for full set of engineering plans, submitted and received a permit to build a new wooden fire escape located behind the building within the old fire escape's footprint.

We were recently notified that there were two objections to legalizing the 3<sup>rd</sup> unit. Both complaints are based on lowering property values, increased traffic and the appearance of the property.

The reason for this appeal is that the objections to this project do not apply here. First, having a legally operating three-family building is more valuable than a two-family or an illegally operating three-family. Therefore, neighboring property values will not be impacted negatively. Second, there are already three tenants living in the building. Traffic, noise, parking, and living conditions on and around the property will not change from granting legalization. Third, the property's appearance is not being altered. The fire escape is located behind the building. The existing fire escape is being torn down and a new one will be built that is within the existing footprint of the current fire escape and it will meet current code.

We believe this appeal meets the goals of the City of Portland to provide more quality housing to residents. Portland does not have enough housing to meet current housing demand. Whitney Avenue currently has numerous multi-family dwellings, so this would not be the only one. If the board does not grant the appeal, the tenant, a resident of Portland will lose their home. Also, the owner, who was a longtime Portland resident, is elderly and relying on this property for her retirement. She will be negatively impacted for following the rules and being proactive with her property. Therefore, we respectfully appeal the objections to the Zoning Board of Appeals and request a vote in favor of the applicant to legalize the existing third unit.

Thank you for your time and consideration. If you have any questions, or need further information, please don't hesitate to contact us.

Sincerely yours,



---

Mackenzie Simpson, Esq.  
Simpson Real Estate Services, LLC  
P.O. Box 11583  
Portland, ME 04101  
207-310-0221

CC: Dana French via email (danajfrench@yahoo.com)  
Encl: \$100.00 Appeal Fee Check



Reviewed for Code Compliance  
Inspections Division  
Approved for Construction

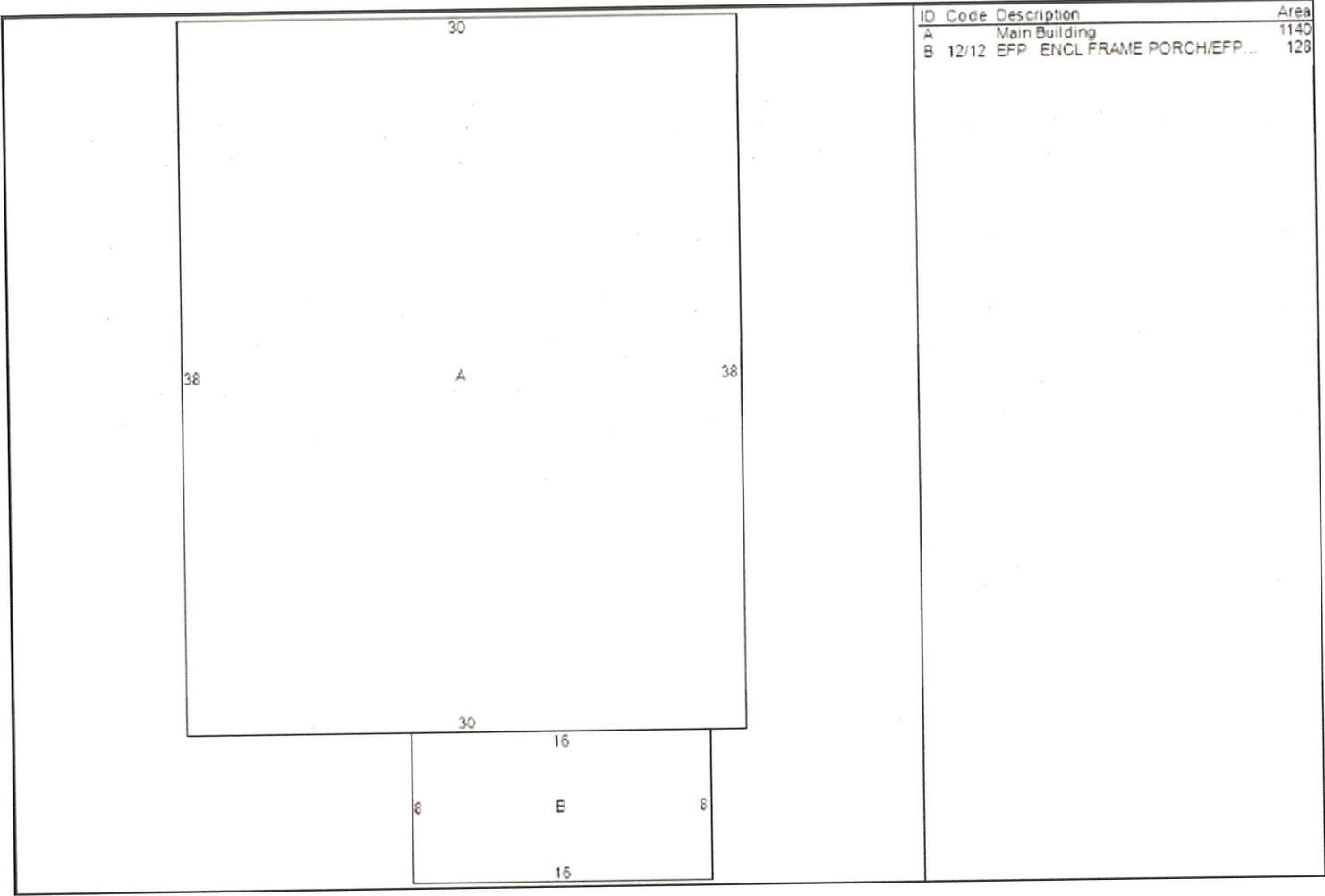
Date: 02/27/18



Lot Size:  
5812SF  
0.1334AC

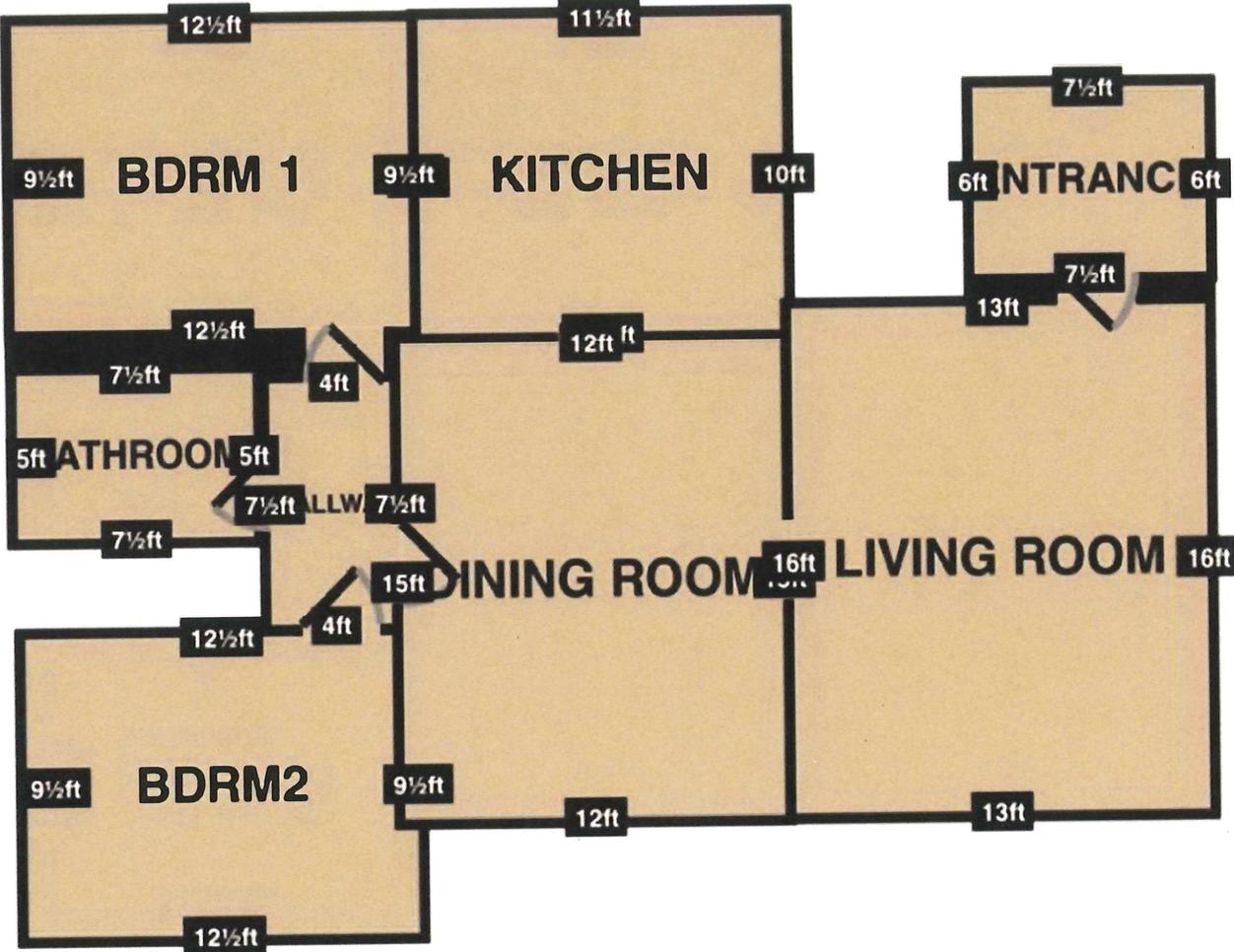


2,920,644.378 302,671.479 Feet

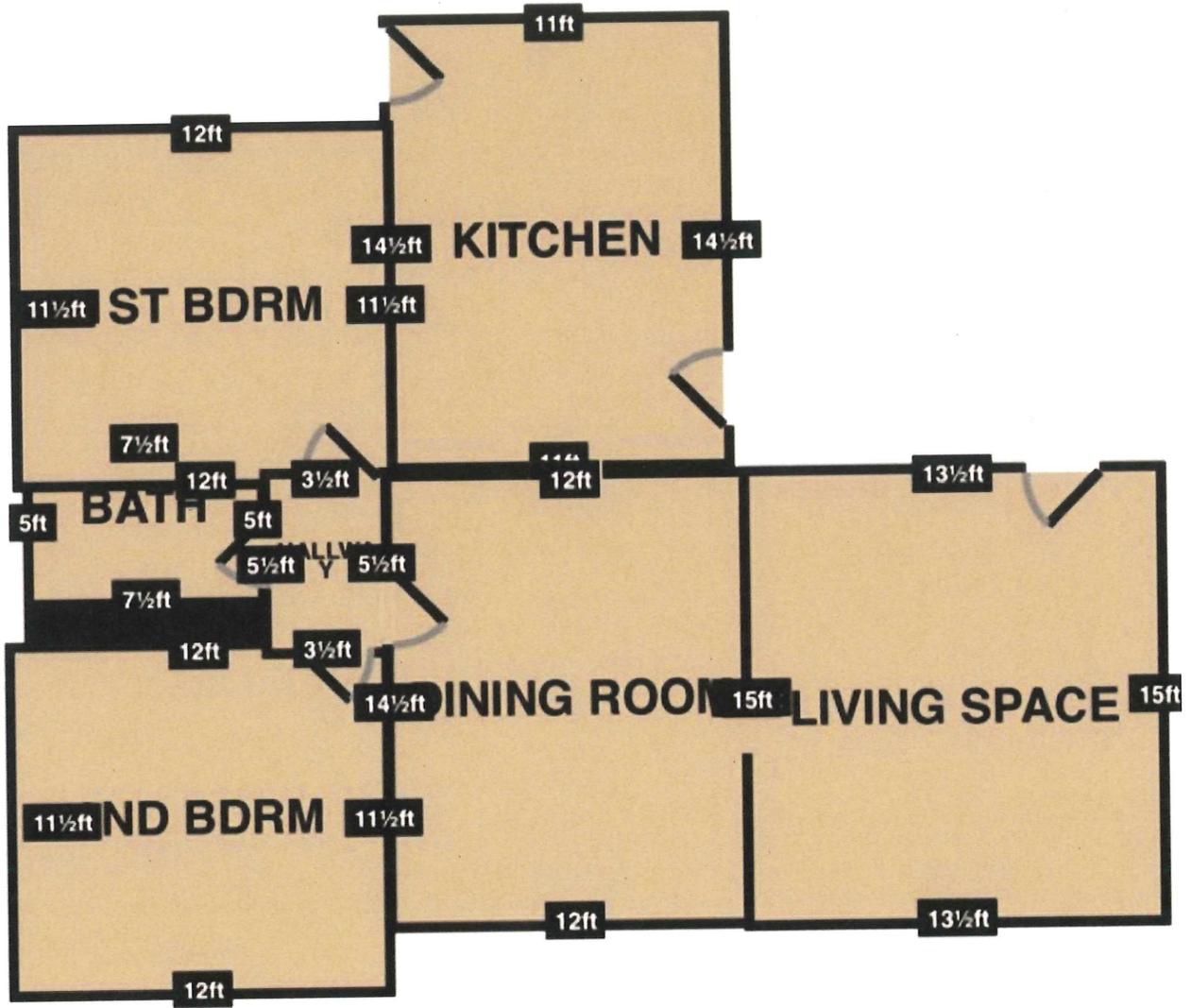


ID	Code	Description	Area
A		Main Building	1140
B	12/12	EFP ENCL FRAME PORCH/EFP...	128

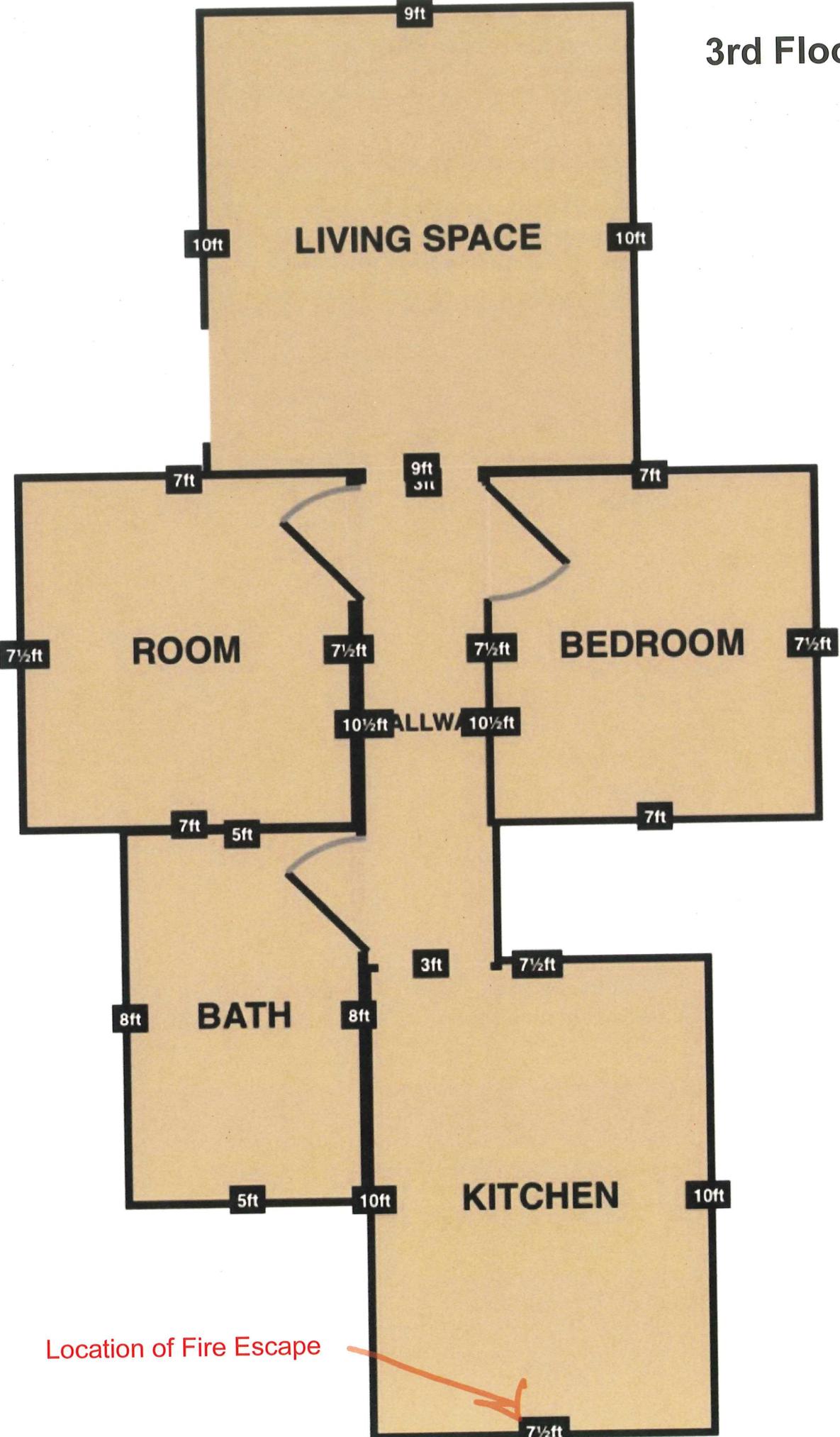
# 1st Floor



# 2nd Floor



3rd Floor



Location of Fire Escape





Index Number - G7SW

Tax Map Index: <http://www.portlandassessors.com/taxmaps.htm>

April 1 2012 by 2013

ONE

ONE

ONE

FIVE

FIVE

FIVE

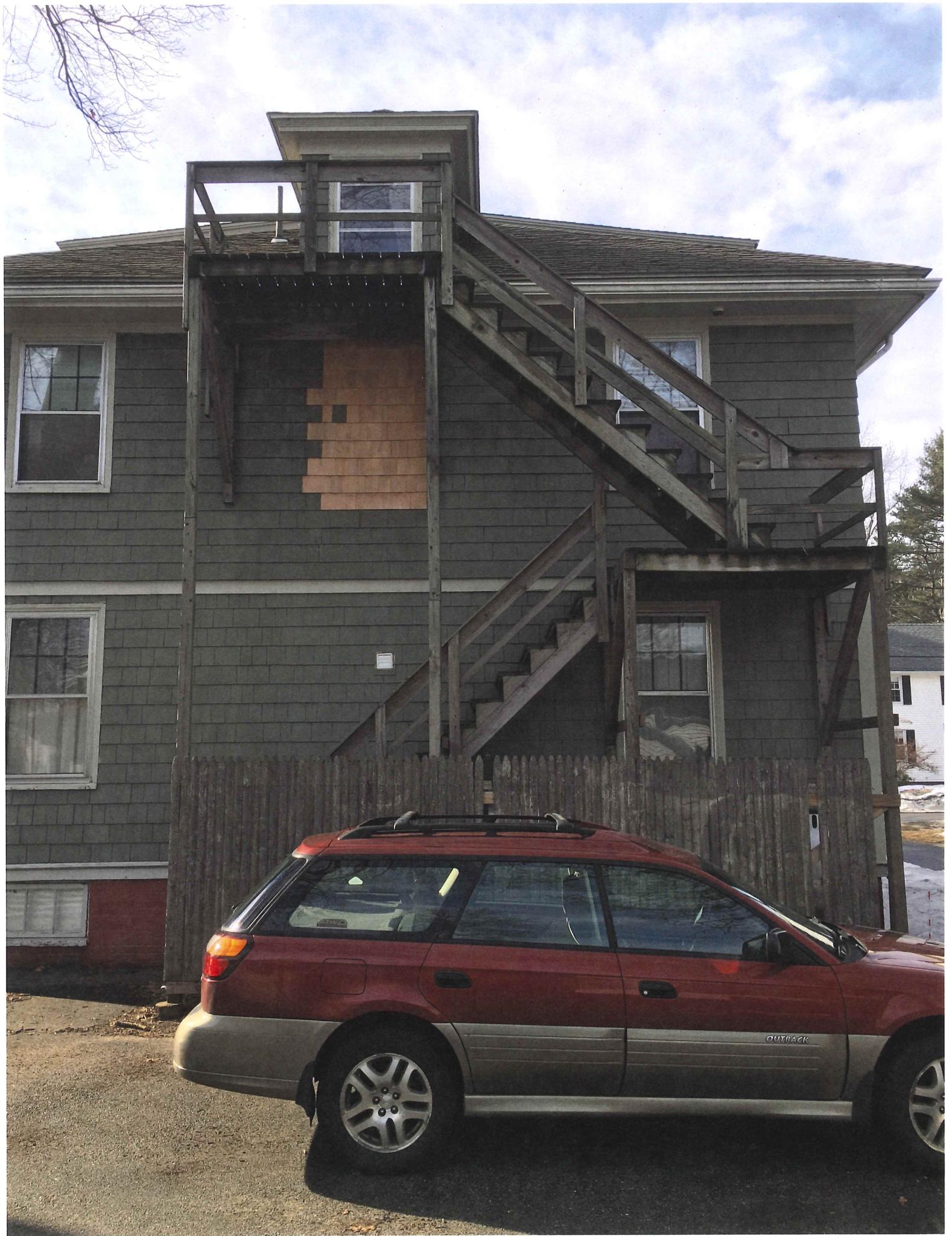
ONE

ONE



04/29/2011





OUTBACK









0082444

BK15165PG3T6

**WARRANTY DEED**  
Maine Statutory Short Form

**Know all Persons by these Presents,**

That we, Mikel R. deAngelis and Dana J. French, of Cumberland, County of Cumberland, State of Maine, for consideration paid, grant to:

**Sharon S. Suydam**

of Cumberland, County of Cumberland, and State of Maine, whose mailing address is: 28 Pinewood Drive, Cumberland, Maine 04021, with warranty covenants, the land in Cumberland, County of Cumberland, and State of Maine, described as follows:

See attached Exhibit A for legal description.

Being the same premises conveyed to the Grantors herein by virtue of a warranty deed from Anthony J. Lisa and Sheila A. Lisa dated October 29, 1992 and recorded in the Cumberland County Registry of Deeds in Book 10370, Page 242.

Witness our hands and seals this 12th day of November, 1999.

Signed, Sealed and Delivered  
in the presence of

*Rachel L. Bouchard*  
to wit

*Mikel R. deAngelis*  
Mikel R. deAngelis  
*Dana J. French*  
Dana J. French

State of Maine, County of Cumberland ss.

November 12, 1999

Then personally appeared before me the above named Mikel R. deAngelis and Dana J. French and acknowledged the foregoing instrument to be their free act and deed.

*Rachel L. Bouchard*  
Attorney at Law  
Printed Name: Rachel L. Bouchard

MAINE REAL ESTATE TAX PAID

0079316

BK15139PG208

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS

THAT, Katherine L. Connolly of 183-185 Whitney Ave, Portland, County of Cumberland, State of Maine for consideration paid, grants to Mikel De Angelis and Dana French of 28 Pinewood Drive, Cumberland, County of Cumberland, State of Maine, with WARRANTY COVENANTS as joint tenants, the land in Portland, County of Cumberland, State of Maine, described as follows:

See Exhibit A attached hereto and made a part hereof

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of October, 1999.

MAINE REAL ESTATE TAX PAID

Witness [Signature]  
to both

Katherine L. Connolly  
Katherine L. Connolly

STATE OF Maine  
COUNTY OF Cumberland

On this 29th day of October, 1999, personally appeared before me the above-named Katherine L. Connolly, and acknowledged the foregoing to be his/her free act and deed.

[Signature]  
Notary Public/Attorney at Law

My Commission Expires:

March 16, 2018

RE: 183-185 Whitney Ave., Portland, ME  
Legalization of 3<sup>rd</sup> Unit

Dear Zoning Board of Appeals,

This letter shall serve as my permission for Mackenzie Simpson to represent me and the above-mentioned property for purposes of legalizing an existing 3<sup>rd</sup> dwelling unit before City of Portland Zoning Board of Appeals.

I was a long-time resident of Portland and lived in the property for many years before moving to Georgia to be with my son and grandsons. I now rely on the property for income for my retirement. I respect the law and the rules, which is why I have been proactive in taking necessary measures to legalize the existing 3<sup>rd</sup> unit. I respectfully request that the Zoning Board of Appeals allow us to legalize the existing 3<sup>rd</sup> unit.

Thank you very much,

DocuSigned by:

*Dana J. French*

Dana French



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

## Application for Legalization of Nonconforming Dwelling Unit

Project Address: 183-185 Whitney Avenue, Portland, ME

Tax Assessor's CBL: 186A D 7  
Chart # Block # Lot #

Number of legal dwelling units: 2

Requested number of units to be legalized: 1

Total number of units: 3

Applicant Name: Mackenzie Simpson Phone: (207)-310-0221

Address: PO Box 11583, Portland, ME 04104 Email: macpsimpson@gmail.com

Owner Name (if different): Dana French Phone: (207)-838-3428

Address: 1315 Willow Place SE, Atlanta, GA 30316 Email: Danajfrench@yahoo.com

*I hereby certify that I am the owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Code Official's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.*

Signature: \_\_\_\_\_

Date: 08/08/17

*This is a legal document and your electronic signature is considered a legal signature per Maine state law.*

**Review of this application will not begin until the permit payment is received. This is not a permit. Work may not commence until the permit is issued.**

### Review Process:

1. The application is reviewed to determine if the application is complete and the submitted materials sufficiently meet all requirements.
2. An inspection appointment is scheduled with the applicant. The inspection will determine if the nonconforming dwelling units and common areas comply or can be brought into compliance with the City Housing Code and the NFPA Life Safety Code – Fire Prevention Code. The applicant will be provided with a list of items to bring the building into compliance, this may require an additional permit application if construction alterations are needed. The building must be brought into compliance before a Certificate of Occupancy will be issued.
3. Abutting property owners and those within 300 feet of the structure are sent a notification of the application to legalize the dwelling units. Any objection from a qualified person must be submitted in writing to the Zoning Administrator within ten (10) business days of notification.
4. If a timely and formal objection is received from a qualified person, or if the Zoning Administrator determines that the submitted application does not sufficiently satisfy all requirements, then the Zoning Board of Appeals (ZBA) is required to act on the application. The applicant has 30 days to file a Conditional Use Appeal with the ZBA from the date the objection is received or the date of the Zoning Administrator's decision. All ZBA appeal application, processing, and notification fees apply and shall be paid by the applicant.
5. After the permit is approved, and prior to the issuance of the Certificate of Occupancy, final inspections may need to be scheduled to ensure that the building is in compliance with all housing and fire codes.



Mac Simpson <macpsimpson@gmail.com>

---

**Fwd: Meter info**

10 messages

Mon, Jun 12, 2017 at 2:31 PM

**Dana French** <danajfrench@yahoo.com>  
To: Mac Simpson <macpsimpson@gmail.com>

Sent from my iPhone

Begin forwarded message:

**From:** "Perkins, Rhonda" <Rhonda.Perkins@cmpco.com>  
**Date:** June 12, 2017 at 10:41:00 AM EDT  
**To:** "danajfrench@yahoo.com" <danajfrench@yahoo.com>  
**Subject:** Meter info

4410063434 183 Whitney Ave. 2<sup>nd</sup> floor – service start date 6/5/67

4411851761 183 Whitney Ave APT C - service start date 6/5/67

4410063420 185 Whitney Ave - service start date 9/30/85

---

**From:** Perkins, Rhonda  
**Sent:** Wednesday, June 07, 2017 8:15 AM  
**To:** 'pksimpson@maine.rr.com'  
**Subject:** Meter info

Good Morning Paul,

I have reviewed the meter installation dates of 183 Whitney Street. I have information that the meter there was installed 6/5/67. It could have been earlier than that back those records are no longer available.

At 185 Whitney Avenue the service start date was 9/30/85. Again the original meter could have been installed much earlier however this is the information I had at hand.

I hope this information answers your questions.



**CENTRAL MAINE  
POWER**

**Rhonda Perkins**

Lead Key Account Manager

20 Industrial Park Road Skowhegan Maine 04976

Telephone 207.629.6114

Cell 207.242.5878

Fax 207.629.4975

[rhonda.perkins@cmpco.com](mailto:rhonda.perkins@cmpco.com)



In the interest of the environment,  
please print only if necessary and recycle.

=====

Please consider the environment before printing this email.

If you have received this message in error, please notify the sender and immediately delete this message and any attachment hereto and/or copy hereof, as such message contains confidential information intended solely for the individual or entity to whom it is addressed. The use or disclosure of such information to third parties is prohibited by law and may give rise to civil or criminal liability.

The views presented in this message are solely those of the author(s) and do not necessarily represent the opinion of Avangrid Networks, Inc. or any company of its group. Neither Avangrid Networks, Inc. nor any company of its group guarantees the integrity, security or proper receipt of this message. Likewise, neither Avangrid Networks, Inc. nor any company of its group accepts any liability whatsoever for any possible damages arising from, or in connection with, data interception, software viruses or manipulation by third parties.

=====

---

**Mac Simpson** <[macpsimpson@gmail.com](mailto:macpsimpson@gmail.com)>  
To: Dana French <[danajfrench@yahoo.com](mailto:danajfrench@yahoo.com)>

Mon, Jun 12, 2017 at 3:02 PM

This is precisely what we are looking for I believe. Doesn't that mean the 3rd unit is 185 Whitney and it's installed prior to 1995.

[Quoted text hidden]

--

**Mackenzie P. Simpson, Esq.**  
**Simpson Real Estate Services, LLC**  
P.O. Box 11583  
Portland, ME 04104  
[\(207\) 310-0221](tel:(207)310-0221)

**Legalization Inspection Form**

Date: 11/6/2017

Address: 183 Whitney Avenue

Legal Use: Two Family

Proposed Use: Three Family

**Common Areas** Exposure of ceiling on second floor landing hallway will need to be fixed.

Entry way to apartments will need to be numbered on both interior and exterior doors.

**Basement**

- o Fire Door: \_\_\_\_\_
- o Detection: a hard wired photo electric combo smoke/carbon detector needs to be installed.
- o Sprinkler Head: \_\_\_\_\_
- o Electrical/panel: a 3 foot clearance around the electrical panels will need to be maintained.

Notes: All electrical boxes will need to have a cover, 2 were noted as missing during the inspection. \_\_\_\_\_

**Unit 1**

- o Fire Door: \_\_\_\_\_
- o Detection: See below which applies to each unit
- o Egress: \_\_\_\_\_

Notes: A hard wired photo electric smoke detector will need to be installed in each bedroom. A hard wired photo electric combination smoke/carbon monoxide detector will need to be installed in each unit in an area outside of the bedrooms.

**Unit 2**

- o Fire Door: Fire door will need to be adjusted to self-close.
- o Detection: See notes in Unit 1.
- o Egress: \_\_\_\_\_

Notes: \_\_\_\_\_

\_\_\_\_\_

**Unit 3**

- Fire Door: Fire door will need to be adjusted to self-close.
- Detection: See notes in Unit 1.
- Egress: An egress window will need to be installed in the entry way of the rear means of egress. Additionally, the rear fire escape is most likely at the end of its life span and does not meet code. We are requiring that a design professional be consulted on the state and structural safety of the structure.

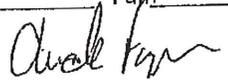
Notes: \_\_\_\_\_  
\_\_\_\_\_

**Unit** \_\_\_\_\_

- Fire Door: \_\_\_\_\_
- Detection: \_\_\_\_\_
- Egress: \_\_\_\_\_

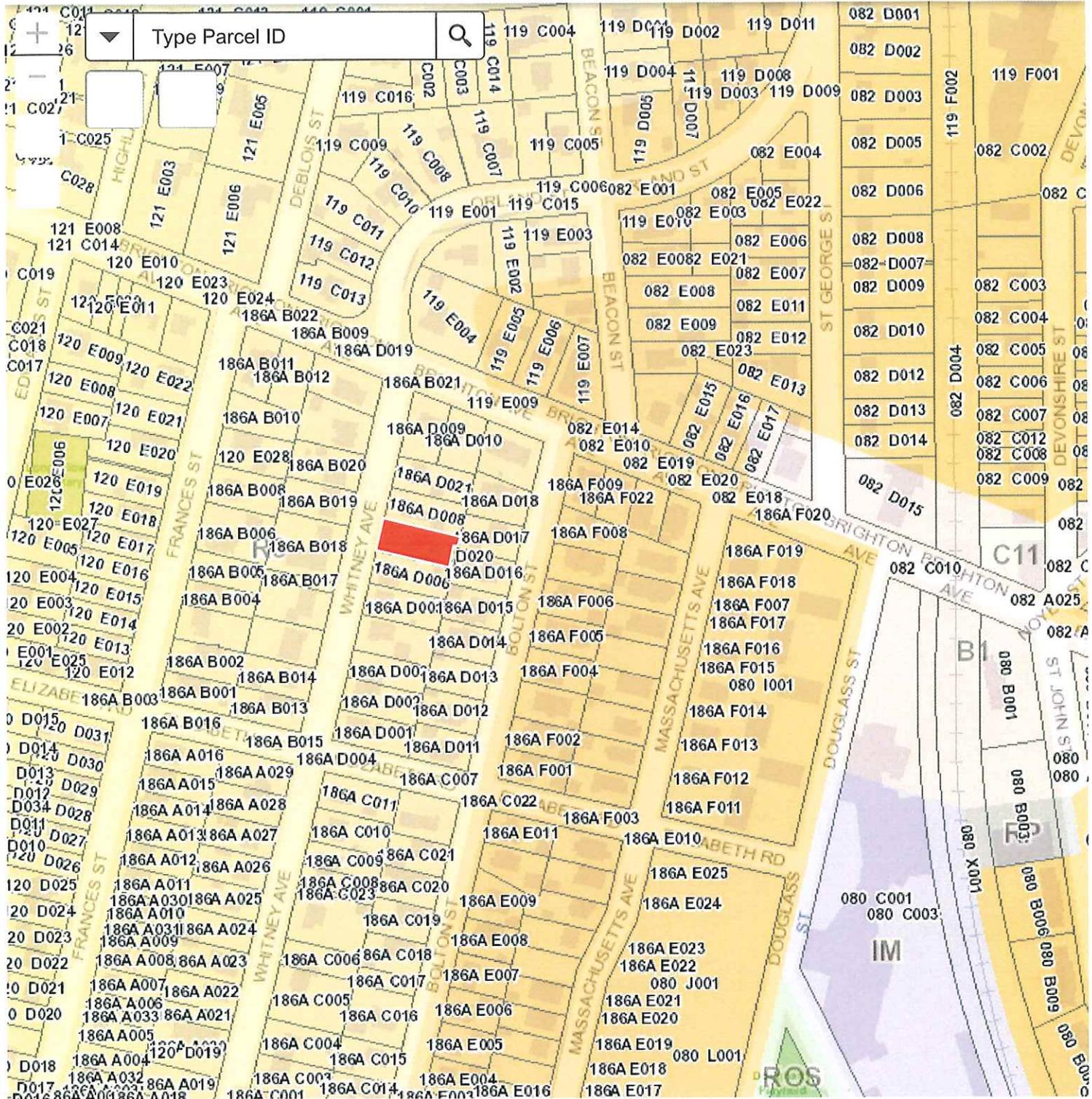
Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Overall**      Pass \_\_\_\_\_      Fail \_\_\_\_\_      Follow up Required   X  

**Inspector:** Chuck Fagone 

**Fire Prevention:** John Brennan 

# 183 Whitney Ave - Conditional Use





## COMMISSIONERS

Shirley Peterson, Chair  
Mariar Balow, Vice Chair  
Kristin Blum, Commissioner  
Faith McLean, Commissioner  
Christian MilNeil, Commissioner  
Robyn Tucker, Commissioner  
Thomas Valteau, Commissioner

**Mark B. Adelson**  
Executive Director

14 Baxter Blvd.  
Portland, Maine 04101  
Office: 207-773-4753  
Fax: 207-761-5886  
www.porthouse.org

April 5, 2018

Chris Stacey - Zoning Specialist  
Permitting & Inspections Department  
City of Portland  
389 Congress St.  
Portland, ME 04101

Re: ZBA approval-Head Start returns to Riverton Park

Dear Ms. Stacey;

As per your request, this is to submit our application to the Zoning Board of Appeals, for approval for a "conditional use" within R-5 Zone at Riverton Park. This is to allow the return to units 102 & 104 in Building 14, of a "Head Start" program. This program will be run by The Opportunity Alliance of South Portland.

Please see attached copy of the deed of this property to the Portland Housing Authority. Further, in support of our Appeal, please accept the following.

**Pursuant to Section 14-116(c)(3) - letters a through e and numerals i through vi.**

**A nursery schools and kindergarten is subject to the following conditions:**

- **The facility shall be located in a structure in which there is one (1) or more occupied residential units or in an existing accessory structure, unless the facility is located in a principal structure that has not been used as a residence in whole or in part within the five (5) years immediately preceding the application for a day care or home babysitting use or in a nonresidential structure accessory to the principal nonresidential use.**

The Head Start Facility will be in Building 14 at Riverton in units 102 and 104. Other residential units are present within the principle structure (see plan), units 106, 108, 110 and 112.

- **The maximum capacity shall be twelve (12) children for facilities located in residential or existing structures accessory thereto, unless the additional standards in subsection v. are**

- **met. There shall be no maximum limit on the number of children in a facility located in a principal structure that has not been used as a residence in whole or in part within the five (5) years immediately preceding the application for a day care use, home babysitting use, nursery school, or kindergarten, or in a nonresidential structure accessory thereto, provided**
- **that any such structure that serves more than twelve (12) children shall be subject to review under article V of this chapter.**

The Head Start meets the following criteria for a capacity 13 to 24, as follows:

- **Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts.**

The Head Start program located within an existing structure, Building 14, on Riverton's 19-acre community. The play yard is close to the entrance of a circle, in the center of the Riverton community, not near any side lines or other residences not part of the Riverton Community or any other Riverton Buildings.

- **Solid waste shall be stored in covered containers. Such containers shall be screened on all four (4) sides.**

All solid waste for the facility will be in containers that will be screened off from view in the rear of the building, near a tree line. Waste will be removed to community dumpster facilities on a regular basis.

- **Day care facilities, nursery schools and kindergartens located either in structures that have been in residential use within the past five (5) years or in existing accessory structures and that serve between thirteen (13) and twenty-four (24) children shall meet the following additional standards:**

The structure of Building 14 is that units 102 & 104 have been a Head Start facility and continue to be used as community space but the remainder of the principle structure contains 4 residential units.

- **The facility shall provide a minimum of seventy-five (75) square feet of outdoor play area per child;**
- **The play area shall be located in the side and rear yards only and shall not be located in front yards;**
- **Outside play areas shall be separated from abutting properties by a fence at least forty-eight (48) inches in height;**
- **A ten-foot wide landscaped buffer shall be required outside of the fenced play area, and shall be established in accordance with the landscaping standards of the City's Technical Standards and Guidelines;**

The play yard exceeds seventy-five (75) square yards and is close to the entrance of a circle, in the center of the Riverton community, not near any side lines or other residences not part of the Riverton Community or any other Riverton Buildings.

The rear and side yard play areas remain, enclosed by a 4-ft., chain link fence. There is currently an opening in the front fence which will again be closed to create the necessary buffered side and rear yards, as indicated on the attached plans and drawings.

- **The minimum lot size for a day care facility, home babysitting service, nursery school, or kindergarten located in a residential or existing accessory structure and serving more than twelve (12) children shall be twenty thousand (20,000) square feet;**

The Riverton Lot is 19 Acres or 760,000 square feet.

- **Off-street parking: Off-street parking is required as provided in division 20 (off street parking) of this article.**

Any parking for Employees and program participants shall be off-street and adequately addressed by existing parking at Building 14's parking lot. Not all community residents have cars and excess capacity exists.

**The following standards for the grant of conditional are satisfied:**

1. **The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and number of parking spaces are not substantially greater than what would normally occur at surrounding uses or other allowable uses with in the same zone, and**
2. **The proposed use will not present unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting or liter, and**
3. **The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading, deliveries, trash and 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 the other allowable uses in the zone.**

The impact of the Head Start facility on Riverton and surrounding uses will be extremely minimal. This facility will primarily, if not almost exclusively, serve the children of the Riverton Park and most children and parents are expected to walk to the facility from units in the community. Vehicles entering the community because of this addition will be the two or three Head Start Workers serving the Riverton Head Start. The hours of operation are typical nursery school hours, Monday through Friday 6AM to 6PM.

There is not anticipated to be any additional unsanitary conditions or odors, noise, lighting, or signage structures. No additional landscaping or re-arrangement of any structures on the exterior are need, except to replace a small section of fence at the front of the building at the side yard to include a gate. The effects will not be seen at all from outside Riverton Park.

Thank you for your consideration of this Appeal.

Sincerely,



Cheryl A. Sessions  
Deputy Executive Director

# Know all Men by these Presents

That F. D. RICH HOUSING CORP., formerly known as F. D. Rich Modular Housing Corp., a corporation organized and existing under the laws of the State of Delaware with an office ~~xxx~~ located at Stamford - - - - - in the County of Fairfield and State of Connecticut in consideration of one dollar and other valuable considerations,

paid by the PORTLAND HOUSING AUTHORITY, a public body duly created and organized pursuant to the laws of the State of Maine, with an office at 211 Cumberland Avenue, Portland, Maine, the receipt whereof, it does hereby acknowledge, does hereby give, grant, bargain, sell and convey unto the said PORTLAND HOUSING AUTHORITY, its successors - - - - - ~~xxx~~ and assigns forever,

a certain lot or parcel of land, with the buildings thereon, situated on the southwesterly side of Forest Avenue in the City of Portland, County of Cumberland and State of Maine, being bounded and described as follows:

Beginning at a point on the southwesterly side of said Forest Avenue, which point is 386.56 feet southeasterly, on a course of S 39°-06'-30" E, from the intersection of the southwesterly side line of Forest Avenue with the southeasterly side line of Riverside Street and 50.21 feet northwesterly along Forest Avenue from an iron pin at the most northerly corner of land of the Cornerstone Masonic Corporation; thence S 45°-35' W, along land of this Grantor 188.75 feet to a point; thence S 11°-35' W, 230 feet to a point; thence S 47° W, 360 feet to a point; thence S 43° E, 242 feet to a point; thence S 56°-07'-30" W, 413.61 feet to a point; and land conveyed by Neal D. Lunt to Mary J. Field, et al, by deed dated October 30, 1905 and recorded in the Cumberland County Registry of Deeds, Book 776, Page 165; thence S 30°-53'-30" E, along said Field land, part of which is now or formerly owned by Charles Kaatz, 885.13 feet to a monument at the westerly corner of land conveyed by Ellie K. Hawes to Maine Turnpike Authority by deed dated October 5, 1954 and recorded in said Registry of Deeds, in Book 2195, Page 453; thence northeasterly along said Maine Turnpike Authority land 750.40 feet to a monument; thence N 42°-41'-30" E, along said Turnpike land, 226.06 feet to an iron pin and the southwesterly side line of land conveyed by Joseph Hawkes to Alexander Bailey by deed dated February 26, 1868, recorded in said Registry of Deeds, in Book 360, Page 337, and now or formerly owned by Walter F. Hawkes; thence N 31°-13'-30" W, along said Hawkes land 656.92 feet to a monument; thence N 47°-52' E, along said Hawkes land 108.53 feet to an iron pin and land of Cornerstone Masonic Corporation; thence N 66°-56'-30" W, along said corporation land 75.27 feet to an iron pin; thence N 47°-17'-30" W, 295.21 feet to a monument at the northwesterly corner of said corporation land; thence N 45°-35' E, along said corporation land 168.81 feet to the said iron pin on the southwesterly side of Forest Avenue at the most northerly corner of said corporation land; thence northwesterly along said Forest Avenue 50.21 feet to the point of beginning.

The above described parcel contains 19.86 acres of land and is part of the premises conveyed to F. D. Rich Construction Co., Inc. by Arthur A. Sorumian, Jr., by a Warranty Deed, dated November 28, 1969, as recorded in said Registry of Deeds in Book 3112, Page 252.

3280/329

330

Said premises are hereby conveyed subject to a covenant set forth in a deed from Arthur A. Serunian, Jr., to Shell Oil Co., dated September 15, 1967, as recorded in said Registry of Deeds, in Book 3012, Page 817, insofar as it may be applicable to the premises herein conveyed, in which deed the said Arthur A. Serunian, Jr., as Grantor, covenanted with the Grantee, its successors and assigns, that no gasoline, lubricants or other petroleum products for motor vehicles shall be advertised, stored, sold, or distributed on or from any other property then owned by the Grantor within a radius of 1,000 feet of the premises therein conveyed, to which deed reference is hereby made for the full particulars thereof.

Said premises are also conveyed subject to a power line easement as conveyed by this Grantor to Central Maine Power Co., et al, dated September 2, 1971 as recorded in said Registry of Deeds, in Book 3199, Page 607.

Also hereby conveying all rights, easements, privileges, and appurtenances belonging to the premises hereinabove described, together with a permanent drainage easement for the drainage of surface water from the premises herein conveyed across the adjoining land of this Grantor through and along a gully that runs northwesterly from the northwesterly side line of said premises to a 48" road culvert across Riverside Street that is located about 100 feet northwesterly along Riverside Street from a monument at the northwesterly corner of this Grantor's property and about 950 feet along Riverside Street from the southwesterly side line of Forest Avenue. Provided, however, that the Grantor reserves the right to change the course of said drainage easement, in whole or in part through conduits or otherwise, so long as such change in course shall adequately provide for the drainage of surface water from the premises herein conveyed across this Grantor's adjoining land to Riverside Street.

The premises herein conveyed being the same premises as conveyed to this Grantor by F. D. Rich Construction Co., Inc., by a Warranty Deed, dated April 1, 1971, as recorded in said Registry of Deeds in Book 3163, Page 785.

AU  
REG:  
R...  
Cup

To Have and to Hold the aforegranted and bargained premises with <sup>337</sup>  
all the privileges and appurtenances thereof to the said PORTLAND HOUSING  
AUTHORITY, its successors

~~and~~ and assigns, to it and their use and behoof forever.

And ~~do~~ COVENANT with the said Grantee, its successors ~~and~~  
and assigns, that it is lawfully seized in fee of the premises that they  
are free of all encumbrances: except as aforesaid,

that it has ~~now~~ good right to sell and convey the same to the said Grantee to  
hold as aforesaid; and that it and its successors and assigns will  
WARRANT and DEFEND the same to the said Grantee, its <sup>successors</sup> ~~and~~  
assigns forever, against the lawful claims and demands of all persons, except  
as aforesaid

In Witness Whereof, the said F. D. RICH HOUSING CORP.  
has caused this instrument to be sealed with its corporate seal and signed  
in its corporate name by EUGENE A. SATELLI, JR.  
its Vice-Pres.

thereunto duly authorized, this 9th day of AUGUST  
in the year one thousand nine hundred and seventy-two.

Signed, Sealed and Delivered  
in presence of

*[Signature]*

F. D. RICH HOUSING CORP.

By

*[Signature]*  
(Title)



State of Maine,  
Cumberland

} on AUGUST 9th 1972

Then personally appeared the above named EUGENE A. SATELLI  
VICE-PRESIDENT of said Grantor  
Corporation as aforesaid, and acknowledged the foregoing instrument to be his free  
act and deed in his said capacity, and the free act and deed of said corporation.

Before me,

*[Signature]*  
Justice of the Peace

~~Notary Public~~

*[Signature]* Registrar

AUG 9 1972  
REGISTRY OF DEEDS, CUMBERLAND COUNTY, MAINE  
3:55 P.  
Book 3280 Page 329

## Cheryl Sessions

---

**From:** Cheryl Sessions  
**Sent:** Tuesday, April 10, 2018 10:15 AM  
**To:** 'Christina Stacey'  
**Cc:** Lourdes Alvarez  
**Subject:** RE: Application for Building Permit--Zoning Board of Adjustment

Hi Stacey,

Sorry. I was out of town at meetings yesterday and this morning. I just called our architect to confirm exact numbers. She reports 4, 360 square feet of fenced in yard. Will you need her to provide us with her calculations?  
Thank you.

Cheryl

**From:** Christina Stacey [mailto:cstacey@portlandmaine.gov]  
**Sent:** Tuesday, April 10, 2018 10:05 AM  
**To:** Cheryl Sessions <csessions@porthouse.org>  
**Cc:** Lourdes Alvarez <lalvarez@porthouse.org>  
**Subject:** Re: Application for Building Permit--Zoning Board of Adjustment

Would you answer my question about what the square footage of the play area will be?

Thanks,  
Chris

On Mon, Apr 9, 2018 at 6:52 PM, Cheryl Sessions <csessions@porthouse.org> wrote:

They told me they are anticipating 18. A representative will be at hearing as well.

Cheryl

Sent from my U.S. Cellular® Smartphone

----- Original message -----

**From:** Christina Stacey <cstacey@portlandmaine.gov>  
**Date:** 4/9/18 1:22 PM (GMT-05:00)  
**To:** Cheryl Sessions <csessions@porthouse.org>  
**Cc:** Lourdes Alvarez <lalvarez@porthouse.org>  
**Subject:** Re: Application for Building Permit--Zoning Board of Adjustment

Hi Cheryl,

I got the paper items you dropped off. Can you please let me know ASAP how many children this Head Start will have? This is important for the board to know.

Thank you,



Chris

On Fri, Apr 6, 2018 at 3:20 PM, Christina Stacey <[cstacey@portlandmaine.gov](mailto:cstacey@portlandmaine.gov)> wrote:

Hi Cheryl,

Thanks for sending this and I will await the paper copies as well.

I am not really sure what to tell you about the language around the number of children. How many children does the Head Start anticipate serving? I couldn't find that number anywhere clearly in the application, maybe I'm missing it.

Anyway, the part of the language I find troubling is that the wording says "There shall be no maximum limit on the number of children in a facility located in a principal structure that has not been used as a residence in whole or **in part** within the 5 years immediately preceding the application..." Are there apartments in the rest of the building? I am concerned that the board might consider this to be a building that is "in part" residential, which might create a problem. In the end it's up to the board to decide how to interpret and apply the language so all I can say is keep going with the application and see what they bring up at the meeting.

Sorry I'm not able to provide a clear answer on this one.

Best,  
Chris

On Thu, Apr 5, 2018 at 4:20 PM, Cheryl Sessions <[csessions@porthouse.org](mailto:csessions@porthouse.org)> wrote:

Christina,

Thank you for letting us know what you needed. I hope you will find this sufficient. I will send over the original.

Cheryl

**From:** Christina Stacey [mailto:[cstacey@portlandmaine.gov](mailto:cstacey@portlandmaine.gov)]

**Sent:** Thursday, April 5, 2018 1:54 PM

**To:** Cheryl Sessions <[csessions@porthouse.org](mailto:csessions@porthouse.org)>

**Cc:** Mark B. Adelson <[madelson@porthouse.org](mailto:madelson@porthouse.org)>; Heather Kaufman <[hkaufman@porthouse.org](mailto:hkaufman@porthouse.org)>; Lourdes Alvarez <[lalvarez@porthouse.org](mailto:lalvarez@porthouse.org)>

**Subject:** Re: Application for Building Permit--Zoning Board of Adjustment

Hi Cheryl,









## COMMISSIONERS

Shirley Peterson, Chair  
Mariar Balow, Vice Chair  
Kristin Blum, Commissioner  
Faith McLean, Commissioner  
Christian MilNeil, Commissioner  
Robyn Tucker, Commissioner  
Thomas Valteau, Commissioner

**Mark B. Adelson**  
Executive Director

14 Baxter Blvd.  
Portland, Maine 04101  
Office: 207-773-4753  
Fax: 207-761-5886  
[www.porthouse.org](http://www.porthouse.org)

March 30, 2018

Chris Stacey - Zoning Specialist  
Permitting & Inspections Department  
City of Portland  
389 Congress St.  
Portland, ME 04101

Re: ZBA approval-Head Start returns to Riverton Park

Dear Ms. Stacey;

As per your request, this is to submit our application to the Zoning Board of Appeals, for approval for a "conditional use" within R-5 Zone at Riverton Park. This is to allow the return to units 102 & 104 in Building 14, of a "Head Start" program. This program will be run by The Opportunity Alliance of South Portland.

Please see attached:

1. Our fully completed application signed by Mark Adelson, Executive Director;
2. A check in the amount of \$100.00 for the application fees;
3. A site plan of the Riverton Community indicating the location of building 14 and Units 102 & 104 within that building;
4. 3 Photographs of building, which show entries and side and rear yards with a buffered fence which is to be enclosed in the front;
5. Plans and drawings by Colby Company which reflect upgrades to be made for Head Starts return.

We are excited to once again have a Head Start program located within an existing structure on Riverton's 19-acre community.

This is a re-establishment of a prior use. The premises in question were occupied and used by Head Start up until 2008. Since their departure in 2008, it has been used for sundry community use, such as study center and meetings, but not for any residential purposes. The facility will have off-street parking on-site.

The rear and side yard play areas remain, enclosed by a 4-ft., chain link fence. There is currently an opening in the front fence which will again be closed to create the necessary buffered side and rear yards, as indicated on the attached plans and drawings. This play yard exceeds seventy-five (75) square yards and is close to the entrance of a circle, in the center of the Riverton community, not near any side lines or

close to other buildings on site.

All solid waste for the facility will be in containers that will be screened off from view.

This is a conditional use that has been in the community in the past, it is very much needed at Riverton Park and we are very excited to bring it back. We hope that this letter and attachments provide you all that you need. If not, we will bring forth additional information on request. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cheryl A. Sessions", with a long horizontal flourish extending to the right.

Cheryl A. Sessions  
Deputy Executive Director

Portland, Maine



Yes. Life's good here.

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

Ann Machado, Zoning Administrator

**Zoning Board of Appeals**  
**Conditional Use Application**

**Applicant Information:**

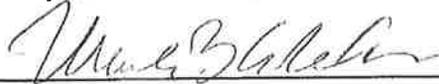
Applicant Name: Portland Housing Authority Phone: (207) 773 - 4753  
 Business Name (if applicable): \_\_\_\_\_ Email: csessions@porthouse.org  
 Mailing Address: 14 Baxter Blv. Portland ME 04101  
 Is the applicant an agent, representative, or lessee of the property owner/purchaser?  Yes  No  
 Name of Property Owner/Purchaser: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
 Business Name (if applicable): \_\_\_\_\_ Email: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_

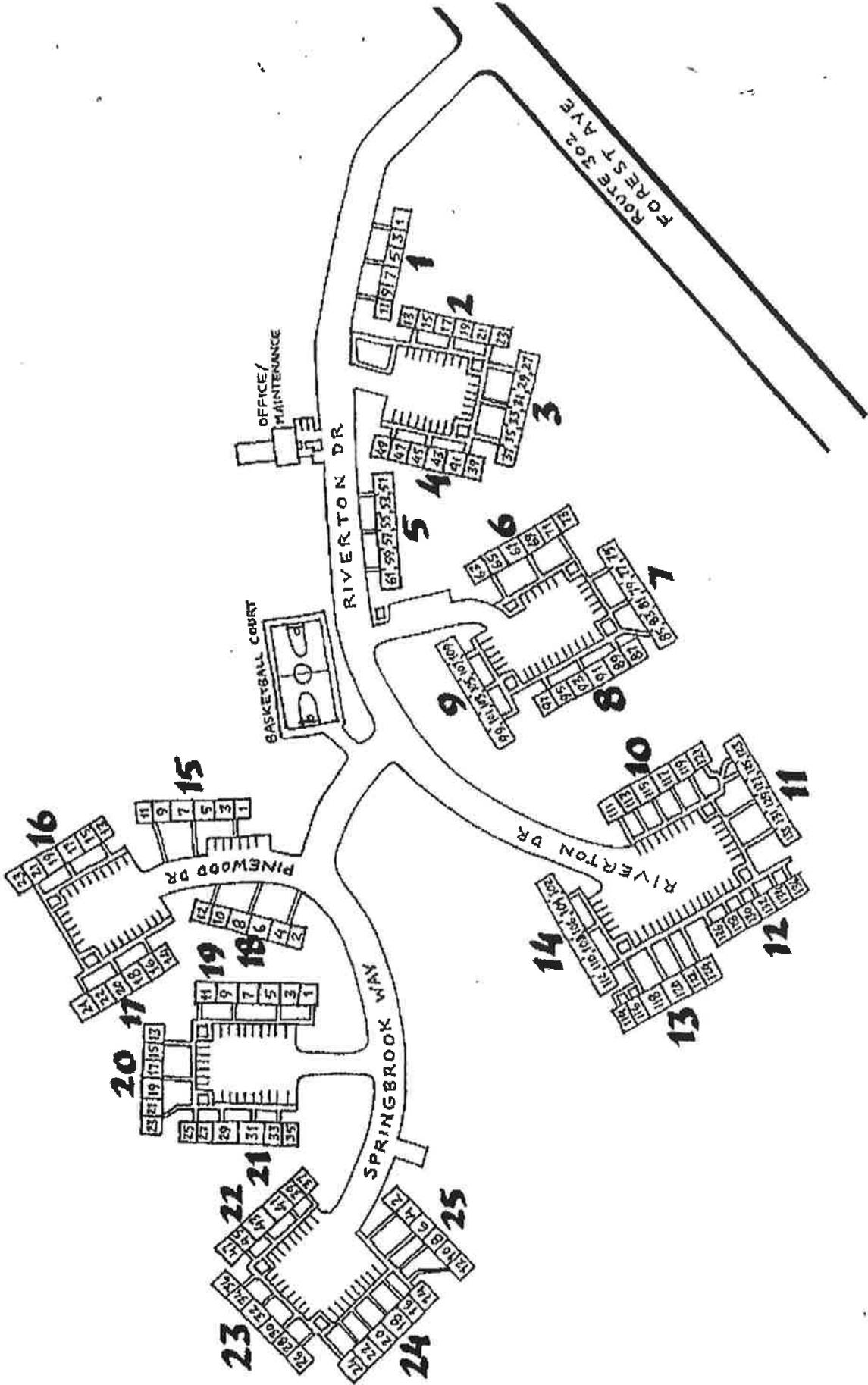
**Property and Project Information:** Building # 14, former unit 102 & 104  
 Property Address: 14 Riverton Drive Zone: R-5  
 Tax Assessor's CBL: 327 B01 2001 Current Use of Property: HeadStart/Community Rm  
Chart # Block # Lot #  
 Applying for a Conditional Use authorized by Portland Code of Ordinances, Section 14 - 116  
 Description of Proposed Project: Head Start Program by The  
Opportunity Alliance of South Portland

STANDARDS: Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall not 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 what 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.

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

Applicant signature:  Date: 3/30/2018



SIDEWALK AREA = 21,600  
 PARKING AREA = 53,500 sq ft

# RIVERTON PARK ME 3-8

Google Maps 112 Riverton Dr

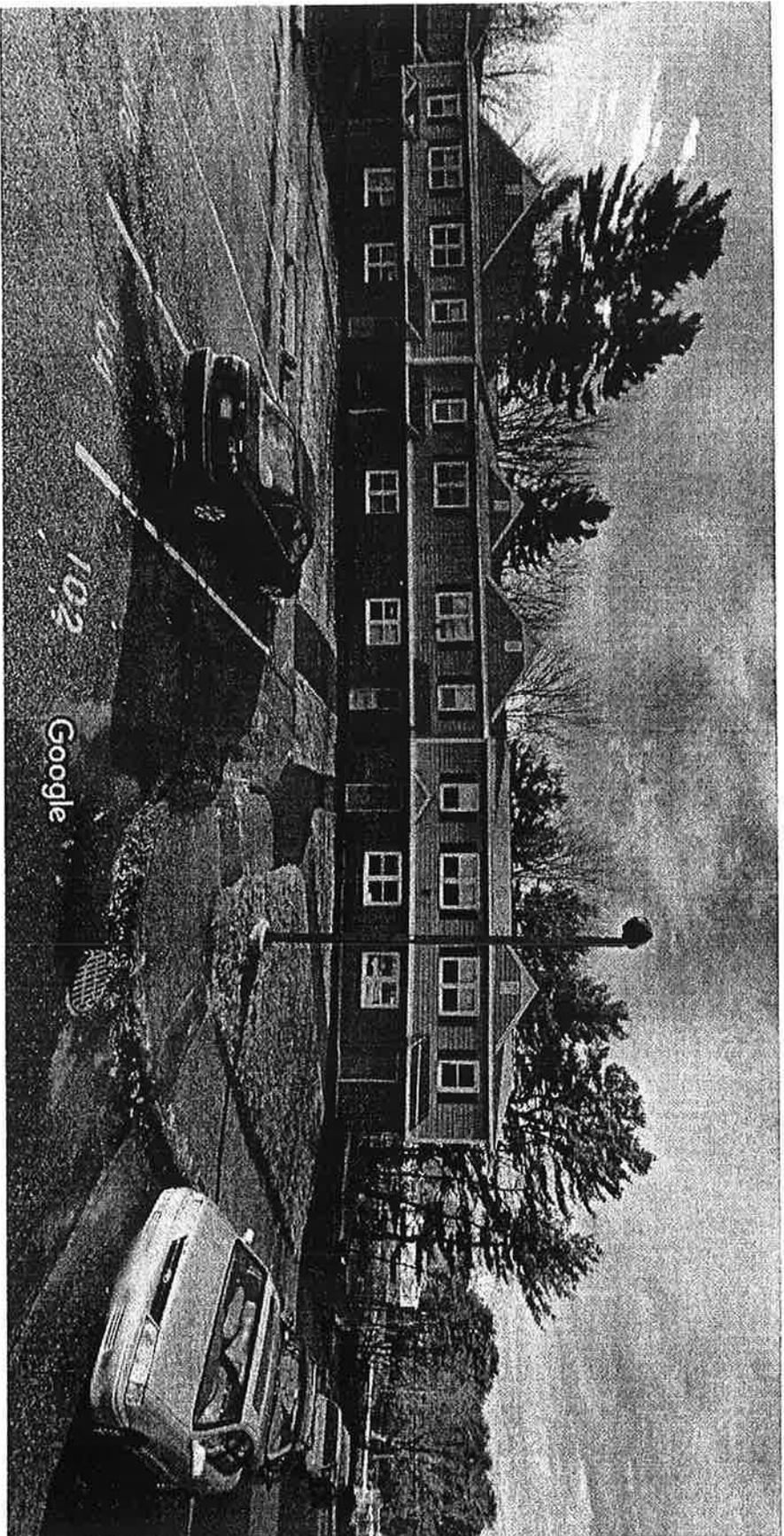


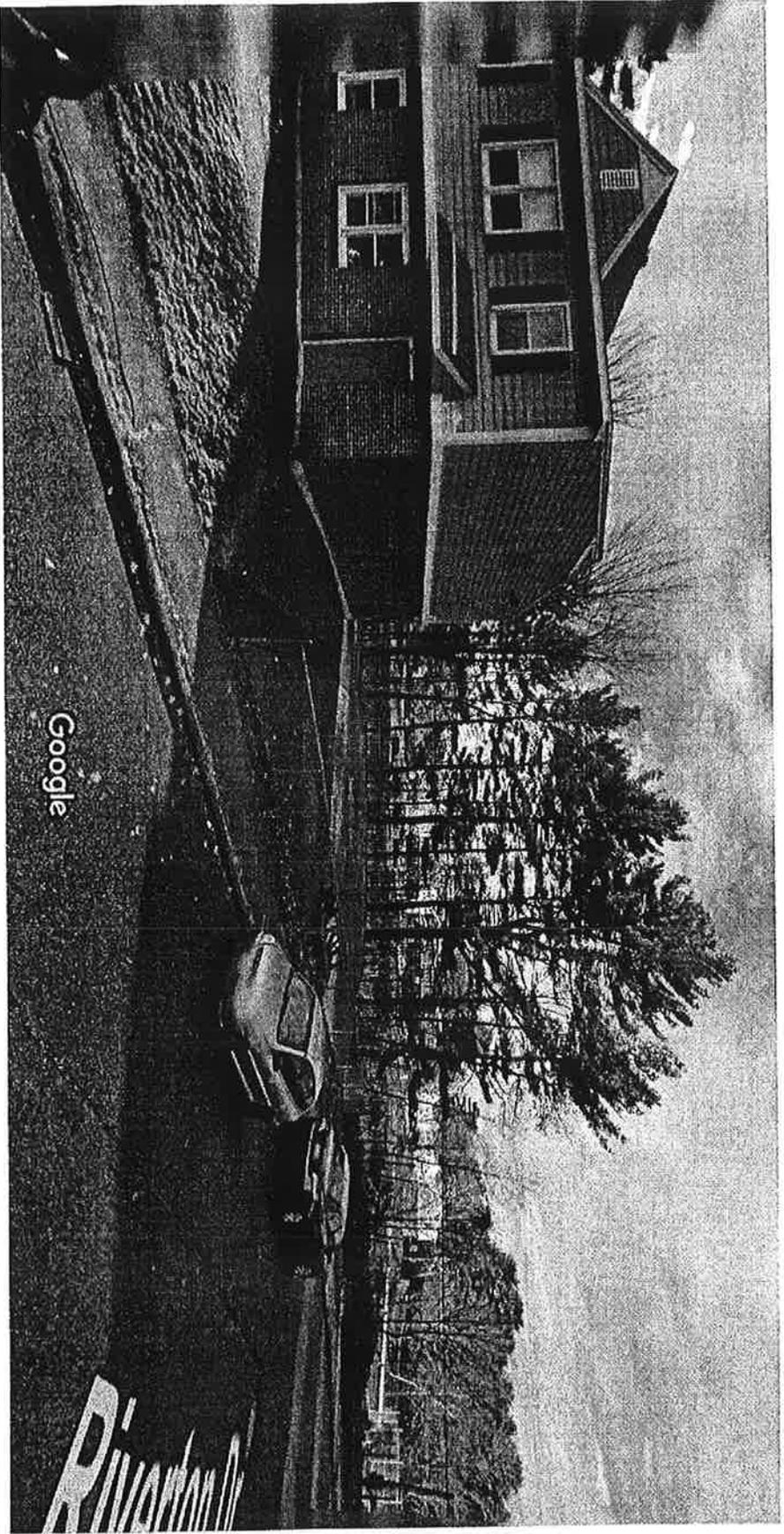
Image capture: Nov 2015 © 2018 Google

Portland, Maine

Google, Inc.

Street View - Nov 2015

Google Maps 102 Riverton Dr



Google

Portland, Maine

Google, Inc.

Street View - Nov 2015

Image capture: Nov 2015 © 2018 Google

Google Maps 102 Riverton Dr

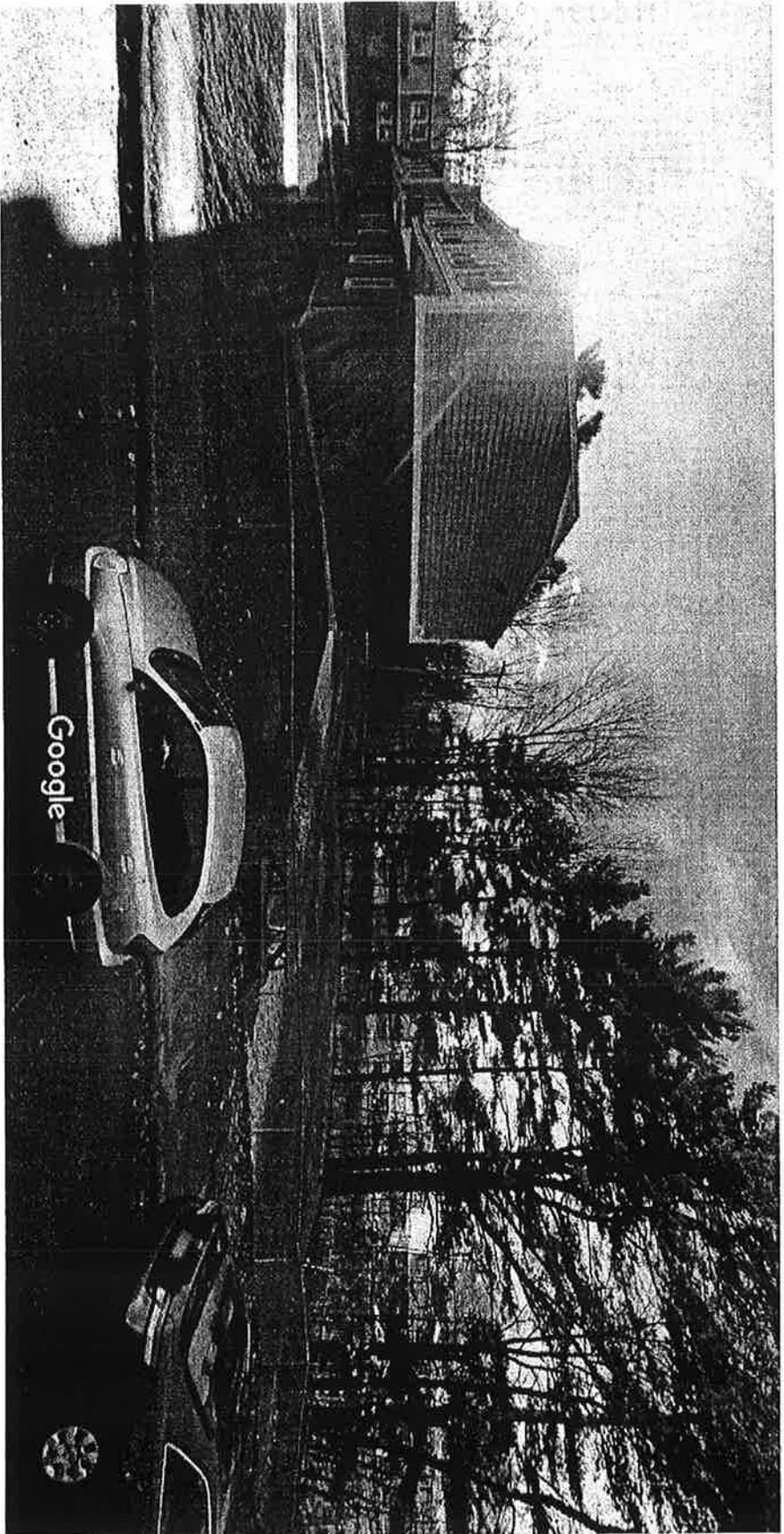


Image capture: Nov 2015 © 2018 Google

Portland, Maine

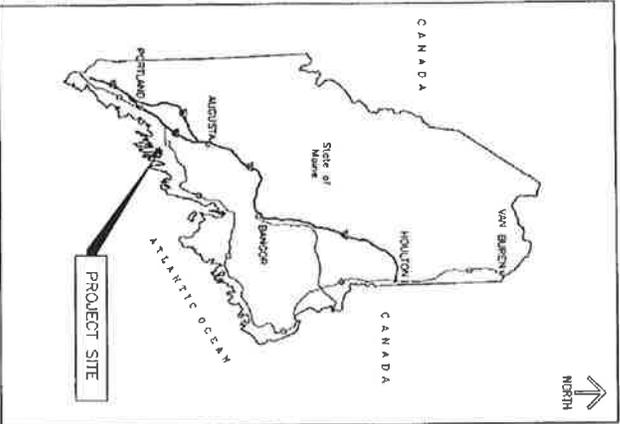
Google, Inc.

Street View - Nov 2015

# PORTLAND HOUSING AUTHORITY

Portland, Maine  
ISSUE FOR BID

## RIVERTON HEAD START BUILDING NO. 14



VICINITY MAP  
SCALE: N/A

DRAWING	TITLE	SHEET NUMBER
G-001	COVER SHEET	1 OF 15
G-101	GENERAL SITE LAYOUT	2 OF 16
LG-101	LANDSCAPE PLAN	3 OF 16
S-001	STRUCTURAL GENERAL NOTES	4 OF 16
S-101	STRUCTURAL FLOOR PLANS	5 OF 16
S-201	STRUCTURAL DETAILS	6 OF 16
A-001	NOTES, LEGEND, ABREVIATIONS AND SPECIFICATIONS	7 OF 16
A-002	TYPICAL ACCESSIBLE CLEARANCES	8 OF 16
A-101	ARCHITECTURAL ELEVATION PLANS	9 OF 16
A-201	ARCHITECTURAL FLOOR PLANS	10 OF 16
A-301	ARCHITECTURAL DETAILS	11 OF 16
M-001	MECHANICAL LEGEND NOTES, ABREVIATIONS	12 OF 16
M-101	MECHANICAL ELEVATION FLOOR PLANS	13 OF 16
M-201	MECHANICAL FLOOR PLANS	14 OF 16
E-001	ELECTRICAL LEGEND, NOTES, ABREVIATIONS	15 OF 16
E-101	ELECTRICAL FLOOR PLANS	16 OF 16

### BID ALTERNATE LIST

- DEDUCTIVE ALTERNATE NO.1: REMOVE WASHER & DRYER
- DEDUCTIVE ALTERNATE NO.2: REMOVE LED LIGHTING UPGRADE
- DEDUCTIVE ALTERNATE NO.3: REMOVE FIRST FLOOR BATHROOM EXPANSION



LOCATION MAP  
SCALE: N/A

PLEASE NOTE: THIS DOCUMENT IS AN INFORMATIONAL ONLY. IT IS NOT A CONTRACT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING ALL INFORMATION PROVIDED BY THE ARCHITECT, AND FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.

NO.	DESCRIPTION	DATE	BY	REVISIONS
0	ISSUED FOR BID			

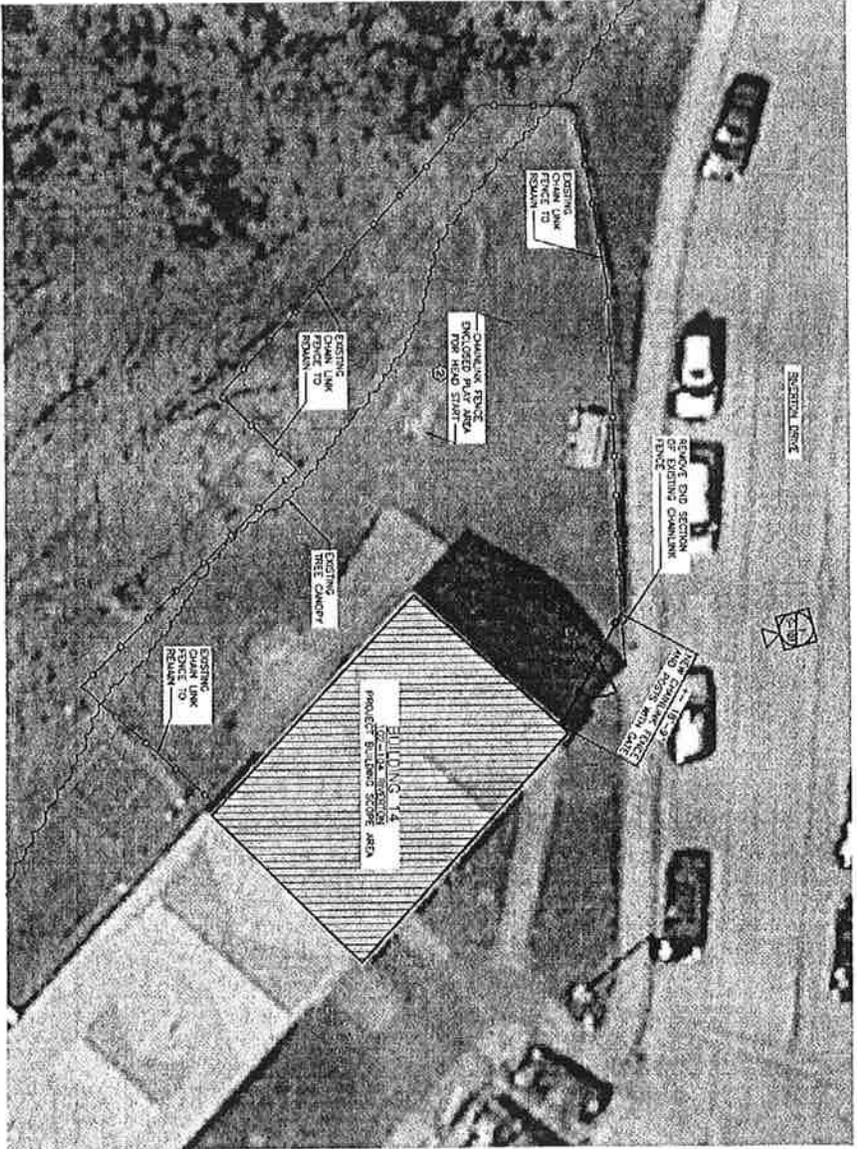
  

PROJECT NO.	278 021 001
PROJECT NAME	PORTLAND HOUSING AUTHORITY P4A RIVERTON HEAD START BUILDING 14, UNITS 102 AND 104
DATE	01 OF 16

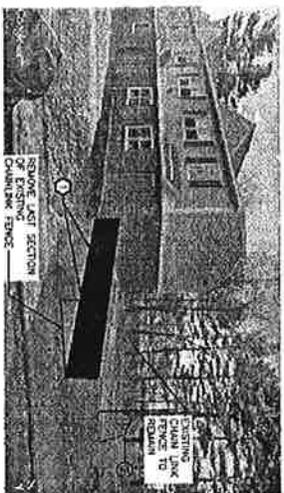
  

PROJECT NO.	278 021 001
PROJECT NAME	PORTLAND HOUSING AUTHORITY P4A RIVERTON HEAD START BUILDING 14, UNITS 102 AND 104
DATE	01 OF 16

COVER SHEET  
**G-001**



SITE PLAN  
SCALE: 1/8" = 1'-0"



RIVERTON DR. STREETVIEW  
SCALE: N/A

- NOTES:
1. NEW SECTION OF CHAINLINK FENCE TO MATCH EXISTING CHAINLINK FENCE.
  2. GATE IN NEW SECTION OF CHAINLINK FENCE TO BE PROVIDED WITH PADLOCK LOCKABLE LATCH PADLOCK PROVIDED BY OWNER.
  3. NEW CHAINLINK FENCE SECTION TO TERMINATE A MINIMUM OF 2' FROM BUILDING FACE OF 102-104 RIVERTON.

- KEYED NOTES:
1. CONTRACTOR TO PROVIDE NEW FENCE POSTS AND CHAINLINK PANELS WITH INTERNAL GATE AND LATCH TO FULLY ENCLOSE FENCED PERIMETER. MATCH IN LINE KIND, ALIGN GATE WITH EXISTING WALKWAY.
  2. CONTRACTOR TO PROVIDE SPOT REPAIRS TO DAMAGED AREAS OF FENCE FOR A SAFE AND SECURE FENCE PERIMETER.

PLANS SUBMITTED TO THE PORTLAND HOUSING AUTHORITY FOR REVIEW AND APPROVAL. THIS DOCUMENT IS THE PROPERTY OF THE OFFICE AND IS NOT TO BE REPRODUCED OR COPIED WITHOUT THE WRITTEN PERMISSION OF THE OFFICE.

NO.	REVISION	DATE
1	ISSUE/ISSUING	05/10/2017

**PORTLAND HOUSING AUTHORITY**  
PORTLAND, OREGON

PHA RIVERTON HEAD STREET  
BUILDING 14, UNITS 102 AND 104

GENERAL SITE LAYOUT

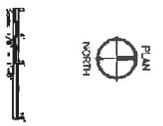
PROJECT NO: 2718 021 004

DATE: 05/10/2017

BY: GARY CANTRELL

CHECKED BY: [Signature]

PROJECT NO: **G-101**







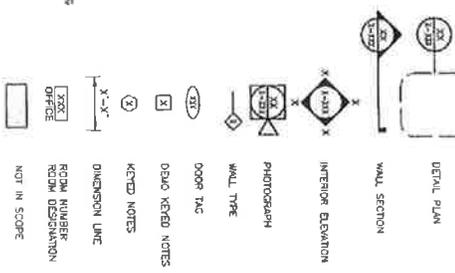




**TYPICAL ABBREVIATIONS**

1	AT	NUMBER	1:10
2	ALU	ALUMINUM	1:10
3	ALU	ALUMINUM WITH ANODIZED FINISH	1:10
4	ALU	ALUMINUM WITH ANODIZED FINISH AND POLISHED	1:10
5	ALU	ALUMINUM WITH ANODIZED FINISH AND POLISHED AND PAINTED	1:10
6	ALU	ALUMINUM WITH ANODIZED FINISH AND POLISHED AND PAINTED AND ENAMELED	1:10
7	ALU	ALUMINUM WITH ANODIZED FINISH AND POLISHED AND PAINTED AND ENAMELED AND POLISHED	1:10
8	ALU	ALUMINUM WITH ANODIZED FINISH AND POLISHED AND PAINTED AND ENAMELED AND POLISHED AND ENAMELED	1:10
9	ALU	ALUMINUM WITH ANODIZED FINISH AND POLISHED AND PAINTED AND ENAMELED AND POLISHED AND ENAMELED AND POLISHED	1:10
10	ALU	ALUMINUM WITH ANODIZED FINISH AND POLISHED AND PAINTED AND ENAMELED AND POLISHED AND ENAMELED AND POLISHED AND ENAMELED	1:10
11	ALU	ALUMINUM WITH ANODIZED FINISH AND POLISHED AND PAINTED AND ENAMELED AND POLISHED AND ENAMELED AND POLISHED AND ENAMELED AND POLISHED	1:10
12	ALU	ALUMINUM WITH ANODIZED FINISH AND POLISHED AND PAINTED AND ENAMELED AND POLISHED AND ENAMELED AND POLISHED AND ENAMELED AND POLISHED AND ENAMELED	1:10
13	ALU	ALUMINUM WITH ANODIZED FINISH AND POLISHED AND PAINTED AND ENAMELED AND POLISHED AND ENAMELED AND POLISHED AND ENAMELED AND POLISHED AND ENAMELED AND POLISHED	1:10
14	ALU	ALUMINUM WITH ANODIZED FINISH AND POLISHED AND PAINTED AND ENAMELED AND POLISHED AND ENAMELED AND POLISHED AND ENAMELED AND POLISHED AND ENAMELED AND POLISHED AND ENAMELED	1:10
15	ALU	ALUMINUM WITH ANODIZED FINISH AND POLISHED AND PAINTED AND ENAMELED AND POLISHED AND ENAMELED AND POLISHED AND ENAMELED AND POLISHED AND ENAMELED AND POLISHED AND ENAMELED	1:10

**PLAN GRAPHIC LEGEND**



**GENERAL NOTES:**

1. ALL WORK IS TO BE PERFORMED IN ACCORDANCE WITH ALL PERTINENT LOCAL BUILDING CODES, UNIFORM CODE BOOKS, AND 2009 ICC REGULATIONS.
2. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND CONDITIONS IN THE FIELD. CONTRACTORS TO REPORT ALL DISCREPANCIES TO THE ARCHITECT IMMEDIATELY UPON DISCOVERY.
3. CONTRACTORS SHALL VERIFY ALL DIMENSIONS AND CONDITIONS IN THE FIELD. CONTRACTORS TO REPORT ALL DISCREPANCIES TO THE ARCHITECT IMMEDIATELY UPON DISCOVERY.
4. CONTRACTORS SHALL VERIFY ALL DIMENSIONS AND CONDITIONS IN THE FIELD. CONTRACTORS TO REPORT ALL DISCREPANCIES TO THE ARCHITECT IMMEDIATELY UPON DISCOVERY.
5. CONTRACTORS SHALL VERIFY ALL DIMENSIONS AND CONDITIONS IN THE FIELD. CONTRACTORS TO REPORT ALL DISCREPANCIES TO THE ARCHITECT IMMEDIATELY UPON DISCOVERY.
6. CONTRACTORS SHALL VERIFY ALL DIMENSIONS AND CONDITIONS IN THE FIELD. CONTRACTORS TO REPORT ALL DISCREPANCIES TO THE ARCHITECT IMMEDIATELY UPON DISCOVERY.
7. CONTRACTORS SHALL VERIFY ALL DIMENSIONS AND CONDITIONS IN THE FIELD. CONTRACTORS TO REPORT ALL DISCREPANCIES TO THE ARCHITECT IMMEDIATELY UPON DISCOVERY.
8. CONTRACTORS SHALL VERIFY ALL DIMENSIONS AND CONDITIONS IN THE FIELD. CONTRACTORS TO REPORT ALL DISCREPANCIES TO THE ARCHITECT IMMEDIATELY UPON DISCOVERY.
9. ALL B.O. DIMENSIONS FROM HANGING SIDE OF DOORS TO CORNER PARTITION TO BE "X" UNLESS OTHERWISE NOTED.
10. ALL B.O. TO CORNER PARTITION SHALL BE UNLESS OTHERWISE NOTED.
11. ALL B.O. TO CORNER PARTITION SHALL BE UNLESS OTHERWISE NOTED.
12. ALL B.O. TO CORNER PARTITION SHALL BE UNLESS OTHERWISE NOTED.
13. CONTRACTOR IS TO PROVIDE SCHEDULE AND FINISHES.
14. CONTRACTOR IS TO PROVIDE SCHEDULE AND FINISHES.
15. THE FINISHED GRADE OF FLOOR SHALL BE AS SHOWN ON ALL INDICATED SURFACES SUCH AS INTERIOR WALLS, CEILING, AND DOOR FRAMES.

**SPECIFICATIONS**

**DIVISION 1. WOOD, GLASS, & GLAZING**  
 SEE SPECIFICATION SECTION 08100 FOR ROUGH CABINETRY. CONTRACTOR TO PROVIDE WOOD FINISHING, ROOMING, SHIMS, AND HANGING STRIPS AS REQUIRED FOR INSTALLATION FOR ALL TEAMS WITHIN THE WORK SCOPE.

**DIVISION 2. METAL & EXPANDED METAL**  
 SEE SPECIFICATION SECTION 08413 FOR PENETRATION PREVENTING SEE SPECIFICATION SECTION 07843 JOINT FINISHING

**DIVISION 3. PAINTS & COATINGS**  
 SEE SPECIFICATION SECTION 09113 FOR PAINTS AND ACCESSORIES. CONTRACTOR TO PROVIDE WOOD FINISHING, ROOMING, SHIMS, AND HANGING STRIPS AS REQUIRED FOR INSTALLATION FOR ALL TEAMS WITHIN THE WORK SCOPE.

**DIVISION 4. FINISHES**  
 SEE SPECIFICATION SECTION 09113 FOR PAINTS AND ACCESSORIES. CONTRACTOR TO PROVIDE WOOD FINISHING, ROOMING, SHIMS, AND HANGING STRIPS AS REQUIRED FOR INSTALLATION FOR ALL TEAMS WITHIN THE WORK SCOPE.

**GENERAL NOTES:**

1. ALL WORK IS TO BE PERFORMED IN ACCORDANCE WITH ALL PERTINENT LOCAL BUILDING CODES, UNIFORM CODE BOOKS, AND 2009 ICC REGULATIONS.
2. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND CONDITIONS IN THE FIELD. CONTRACTORS TO REPORT ALL DISCREPANCIES TO THE ARCHITECT IMMEDIATELY UPON DISCOVERY.
3. CONTRACTORS SHALL VERIFY ALL DIMENSIONS AND CONDITIONS IN THE FIELD. CONTRACTORS TO REPORT ALL DISCREPANCIES TO THE ARCHITECT IMMEDIATELY UPON DISCOVERY.
4. CONTRACTORS SHALL VERIFY ALL DIMENSIONS AND CONDITIONS IN THE FIELD. CONTRACTORS TO REPORT ALL DISCREPANCIES TO THE ARCHITECT IMMEDIATELY UPON DISCOVERY.
5. CONTRACTORS SHALL VERIFY ALL DIMENSIONS AND CONDITIONS IN THE FIELD. CONTRACTORS TO REPORT ALL DISCREPANCIES TO THE ARCHITECT IMMEDIATELY UPON DISCOVERY.
6. CONTRACTORS SHALL VERIFY ALL DIMENSIONS AND CONDITIONS IN THE FIELD. CONTRACTORS TO REPORT ALL DISCREPANCIES TO THE ARCHITECT IMMEDIATELY UPON DISCOVERY.
7. CONTRACTORS SHALL VERIFY ALL DIMENSIONS AND CONDITIONS IN THE FIELD. CONTRACTORS TO REPORT ALL DISCREPANCIES TO THE ARCHITECT IMMEDIATELY UPON DISCOVERY.
8. CONTRACTORS SHALL VERIFY ALL DIMENSIONS AND CONDITIONS IN THE FIELD. CONTRACTORS TO REPORT ALL DISCREPANCIES TO THE ARCHITECT IMMEDIATELY UPON DISCOVERY.
9. ALL B.O. DIMENSIONS FROM HANGING SIDE OF DOORS TO CORNER PARTITION TO BE "X" UNLESS OTHERWISE NOTED.
10. ALL B.O. TO CORNER PARTITION SHALL BE UNLESS OTHERWISE NOTED.
11. ALL B.O. TO CORNER PARTITION SHALL BE UNLESS OTHERWISE NOTED.
12. ALL B.O. TO CORNER PARTITION SHALL BE UNLESS OTHERWISE NOTED.
13. CONTRACTOR IS TO PROVIDE SCHEDULE AND FINISHES.
14. CONTRACTOR IS TO PROVIDE SCHEDULE AND FINISHES.
15. THE FINISHED GRADE OF FLOOR SHALL BE AS SHOWN ON ALL INDICATED SURFACES SUCH AS INTERIOR WALLS, CEILING, AND DOOR FRAMES.

**DIVISION 1. WOOD, GLASS, & GLAZING**

SEE SPECIFICATION SECTION 08100 FOR ROUGH CABINETRY. CONTRACTOR TO PROVIDE WOOD FINISHING, ROOMING, SHIMS, AND HANGING STRIPS AS REQUIRED FOR INSTALLATION FOR ALL TEAMS WITHIN THE WORK SCOPE.

SEE SPECIFICATION SECTION 08413 FOR PENETRATION PREVENTING SEE SPECIFICATION SECTION 07843 JOINT FINISHING

SEE SPECIFICATION SECTION 09113 FOR PAINTS AND ACCESSORIES. CONTRACTOR TO PROVIDE WOOD FINISHING, ROOMING, SHIMS, AND HANGING STRIPS AS REQUIRED FOR INSTALLATION FOR ALL TEAMS WITHIN THE WORK SCOPE.

**DIVISION 2. METAL & EXPANDED METAL**

SEE SPECIFICATION SECTION 08413 FOR PENETRATION PREVENTING SEE SPECIFICATION SECTION 07843 JOINT FINISHING

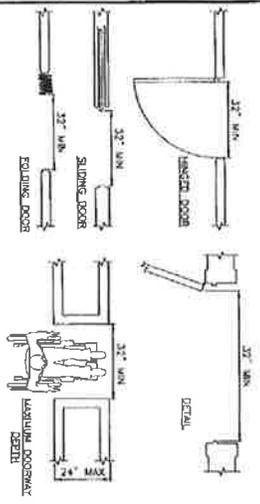
SEE SPECIFICATION SECTION 09113 FOR PAINTS AND ACCESSORIES. CONTRACTOR TO PROVIDE WOOD FINISHING, ROOMING, SHIMS, AND HANGING STRIPS AS REQUIRED FOR INSTALLATION FOR ALL TEAMS WITHIN THE WORK SCOPE.

**PORTLAND HOUSING AUTHORITY**  
 PORTLAND, OREGON  
 PHA RIVERPORT HEAD START  
 BUILDING 14 UNITS 102 AND 104  
 PROJECT NO. 218201101  
 SHEET NO. A-001

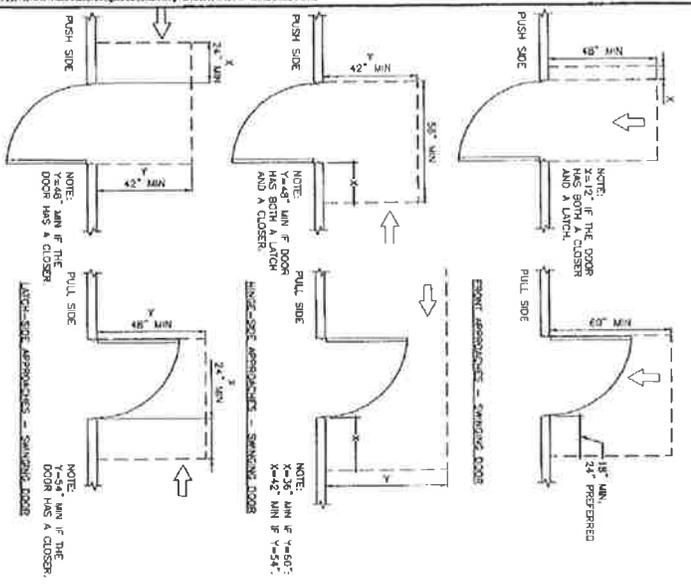
**REVISIONS**

NO.	DATE	DESCRIPTION
1	02/27/18	ISSUED FOR BIDDING
2	03/01/18	ISSUED FOR BIDDING
3	03/01/18	ISSUED FOR BIDDING
4	03/01/18	ISSUED FOR BIDDING
5	03/01/18	ISSUED FOR BIDDING
6	03/01/18	ISSUED FOR BIDDING
7	03/01/18	ISSUED FOR BIDDING
8	03/01/18	ISSUED FOR BIDDING
9	03/01/18	ISSUED FOR BIDDING
10	03/01/18	ISSUED FOR BIDDING
11	03/01/18	ISSUED FOR BIDDING
12	03/01/18	ISSUED FOR BIDDING
13	03/01/18	ISSUED FOR BIDDING
14	03/01/18	ISSUED FOR BIDDING
15	03/01/18	ISSUED FOR BIDDING

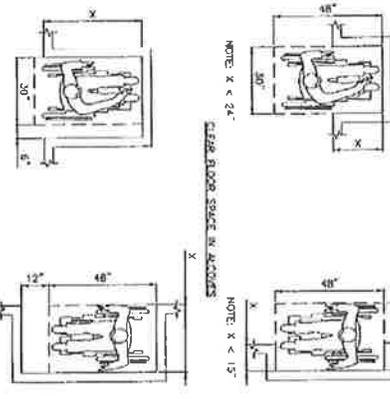
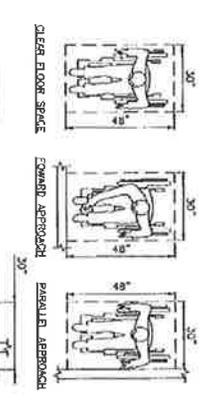
**NOTES:** LEGEND ABBREVIATIONS AND SPECIFICATIONS



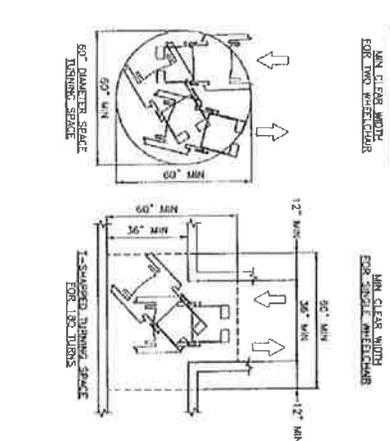
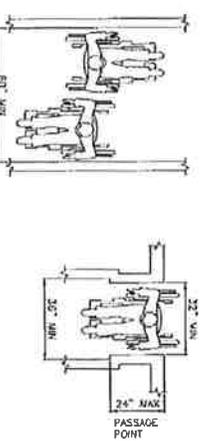
1 CLEAR DOORWAY AND DEPTH



2 DOORWAY APPROACH CLEARANCES

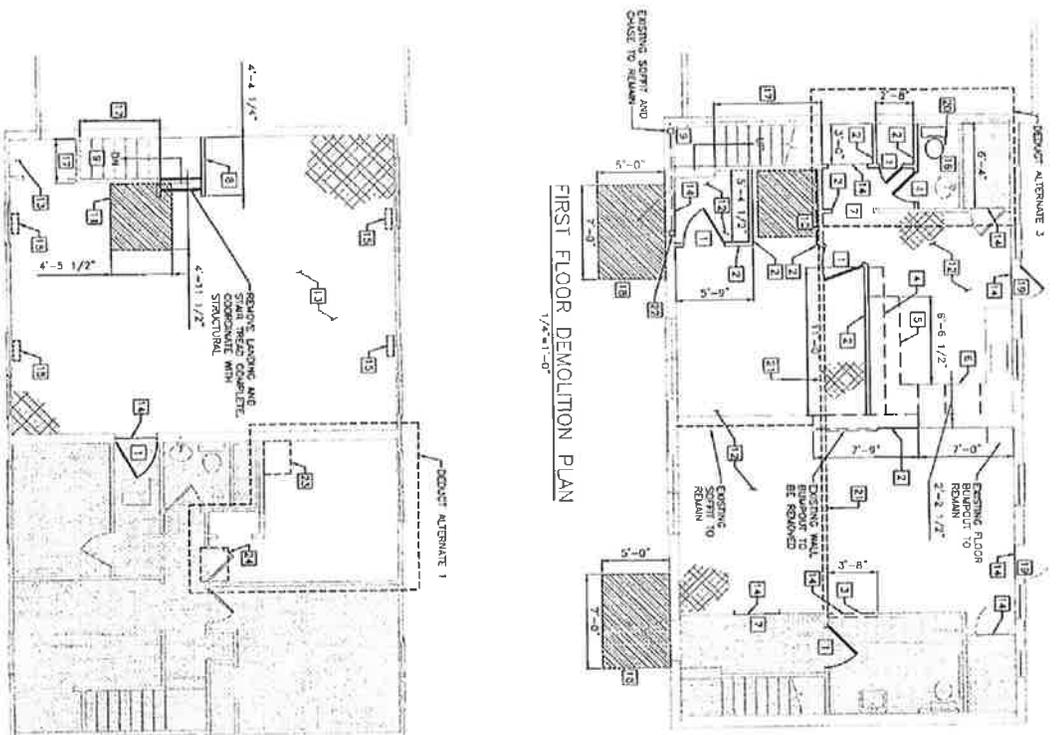


3 WHEELCHAIR ACCESSIBLE REQUIREMENTS



PORTLAND HOUSING AUTHORITY PORTLAND, OREGON	
344 RIVINGTON HEAD START BUILDING 14 UNITS 102 AND 104	
PROJECT NO. 216.025.030	SHEET NO. 06 OF 18
TYPICAL ACCESSIBLE CLEARANCES	
DESIGNER DATE	CHECKED DATE
DRAWN DATE	APPROVED DATE
PROJECT NO. 216.025.030	SHEET NO. 06 OF 18
A-002	

NOTES:  
1. SEE DRAWING A-001 FOR GENERAL NOTES, LEGEND, AND ABBREVIATIONS.



SECOND FLOOR DEMOLITION PLAN  
SCALE: 1/4" = 1'-0"

FIRST FLOOR DEMOLITION PLAN  
1/4" = 1'-0"

- LEGEND:**
- [Symbol] = NOT IN SCOPE OR NO WORK IN THIS AREA
  - [Symbol] = ITEMS TO BE REMOVED
  - [Symbol] = ASBESTOS CONTAINING FLOOR MATERIALS

- NOTES:**
1. SEE LS-101 FOR LIFE SAFETY PLAN.
  2. SEE SHEET A-401 FOR GENERAL NOTES, LEGEND AND ABBREVIATIONS.
  3. SEE DRAWING A-402 FOR TYPICAL ACCESSIBLE CLEARANCES.
  4. SEE A-401 FOR WALL TYPES, FINISH, SCHEDULE AND DOOR SCHEDULE.
  5. CONTRACTOR TO VERIFY ALL EXISTING CONDITIONS PRIOR TO STARTING NEW WORK.
  6. COORDINATE WITH MECHANICAL, ELECTRICAL AND STRUCTURAL DRAWINGS.
  7. CONTRACTOR WILL BE RESPONSIBLE FOR PROTECTING OF EXISTING FINISH FLOORING AS WELL AS ASBESTOS CONTAMINATED TILE AND MASTIC WITHIN THE EXISTING ABANDONED ROOMS. CONTRACTOR TO VERIFY ALL ASBESTOS CONTAMINATED TILE AND MASTIC WITHIN EXISTING ABANDONED ROOMS IN ACCORDANCE WITH ALL LOCAL, STATE AND FEDERAL REGULATIONS.
  8. ALL EXISTING WALLS OR CEILING HUNG ITEMS WITHIN THE AFFECTED AREA OF WORK ARE TO BE REMOVED AND RETURNED TO OWNER FOR REUSE. THESE ITEMS INCLUDE, BUT ARE NOT LIMITED TO, DRY BRICK, GYPSUM BOARD, LATH AND PLASTER, ETC. ALL APPLICABLE ITEMS TO BE VERIFIED BY FIELD WALKTHROUGH.

- DEMOLITION SPECIAL NOTES:**
1. REMOVE EXISTING INTERIOR DOOR, FRAME, AND ASSOCIATED HARDWARE RETURN TO OWNER.
  2. REMOVE EXISTING STUDS, DRYWALL, AND ASSOCIATED INSULATION (IF PRESENT).
  3. REMOVE PORTION OF EXISTING WALL AS REQUIRED FOR INSTALLATION OF NEW DOOR.
  4. REMOVE EXISTING UPPER CABINETS COMPLETE.
  5. REMOVE BASE CABINETS AND COUNTERTOP COMPLETE.
  6. REMOVE STOVE AND RETURN TO OWNER.
  7. REMOVE EXISTING INTERIOR STAINED OPENING AND TRIM COMPLETE.
  8. REMOVE HALF HEIGHT WALL COMPLETE.
  9. REMOVE EXISTING COMBUSTIBLE STAIR TREADS, RISERS, AND HANDRAILS COMPLETE. LEAVE STRINGERS IN PLACE. REMOVE EXISTING STAIR AND RISER CONSTRUCTION. COORDINATE ROOFING REMOVALS WITH RISER CONSTRUCTION.
  10. REMOVE FLOORING AND SUBFLOORING AS REQUIRED TO REACH CONCRETE SLAB FOR LIFT PREPARATION. SEE STRUCTURAL FOR ADDITIONAL INFORMATION. COORDINATE ROOFING REMOVALS WITH ASBESTOS WORK.
  11. REMOVE EXISTING FLOOR FINISH AND SUBFLOOR AS REQUIRED FOR INSTALLATION OF LIFT. SEE STRUCTURAL FOR ADDITIONAL INFORMATION.
  12. REMOVE EXISTING TILE, MASTIC AND ANY SUBFLOORING AND ADHESIVE TO CONCRETE SLAB COMPLETE.
  13. REMOVE EXISTING CARPET AND UNDERLAYING TILE, MASTIC AND ADHESIVE TO FLOOR DECKING COMPLETE.
  14. LIFT OF FLOORING REMOVAL.
  15. REMOVE EXISTING FLOOR LOUVERS COMPLETE.
  16. REMOVE EXISTING TOILET, SKAVAGE AND CLEAN FOR REINSTALLATION.
  17. REMOVE FINISH FACES, BOTH SIDES, TO STUDS FOR PREPARATION OF NEW PARTI WALL TYPE. SEE A-101 AND A-501.
  18. REMOVE AREA OF EXTERIOR GRADE IN PREPARATION FOR NEW RAUPS. SEE STRUCTURAL.
  19. REMOVE EXISTING PAINT HARDWARE FROM DOOR.
  20. REMOVE PORTION OF FLOOR STRUCTURE TO ACCOMMODATE TOILET. SEE S-101.
  21. REMOVE EXISTING AREA OF DRYWALL TO ACCOMMODATE INSTALLATION OF STRUCTURE. SEE S-101.
  22. REMOVE EXISTING VERTICAL CHASE AND ASSOCIATED VERTICAL PIPING. SEE MECHANICAL.
  23. REMOVE PORTION OF CEILING IN PREPARATION FOR NEW DRYER VENT CHASE. COORDINATE WITH MECHANICAL AND ELECTRICAL.
  24. PROVIDE UNDERLIFT AT EXISTING DOOR IN ACCORDANCE WITH FIELD DIMENSIONS.

**PORTLAND HOUSING AUTHORITY**  
PORTLAND, MAINE

**ARCHITECTURAL DEMOLITION PLANS**

PHA RIVERTON HEAD START  
BUILDING 14, UNITS 102 AND 104

210 031 001  
SHEET 28 OF 18  
**AD-101**

DATE	BY	CHKD	APP'D
02/15/11	AD	AD	AD
02/15/11	AD	AD	AD
02/15/11	AD	AD	AD
02/15/11	AD	AD	AD

PORTLAND HOUSING AUTHORITY  
210 031 001  
SHEET 28 OF 18  
**AD-101**









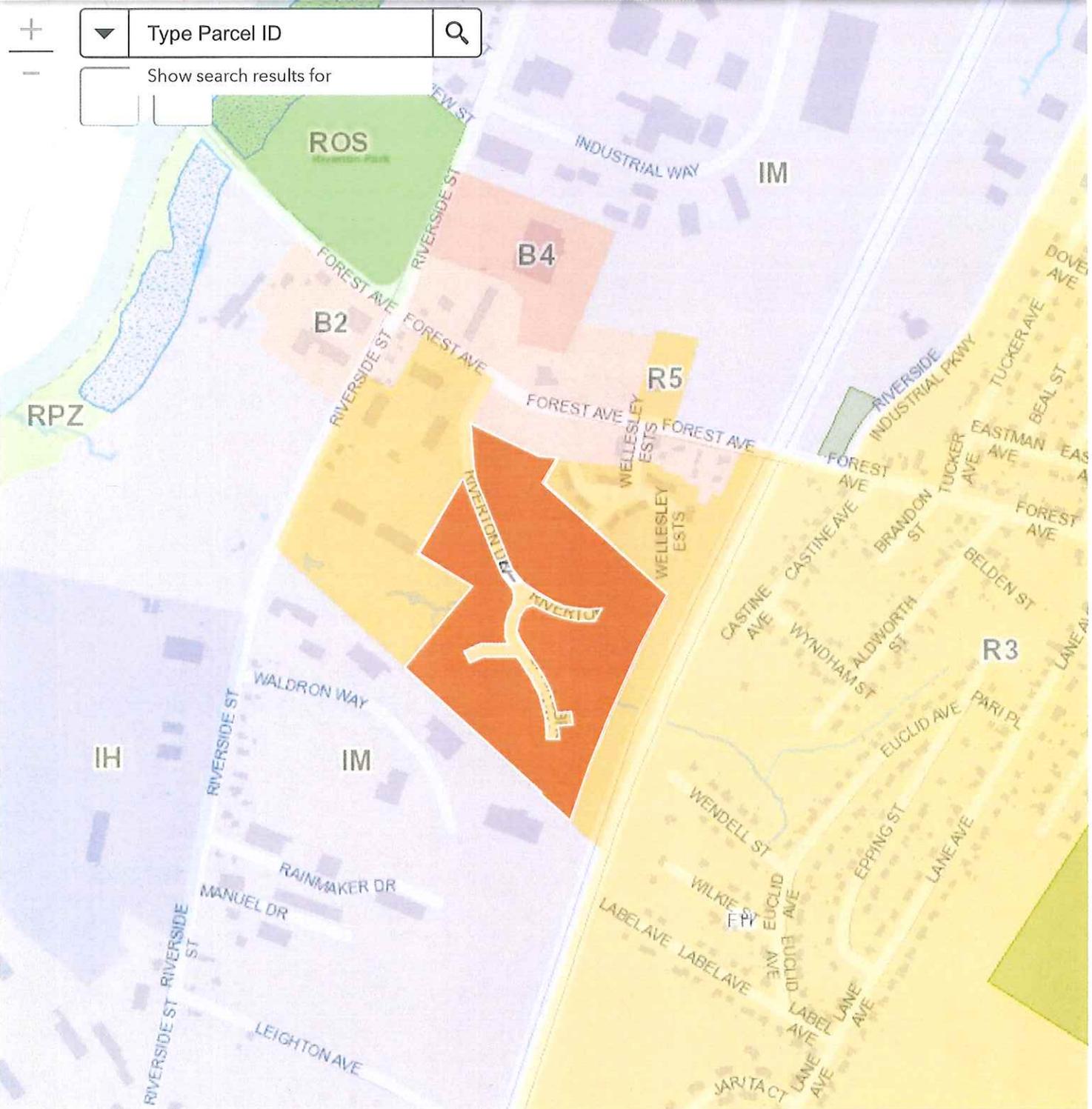








# 17 Riverton Dr - Conditional Use



600ft

2,918,238.038 316,608.433 Feet



Permitting and Inspections Department  
Michael A. Russell, MS, Director  
Ann Machado, Zoning Administrator  
**Zoning Board of Appeals**  
Conditional Use Application

**Applicant Information:**

Applicant Name: Alyssa Harvey Phone: (207) 502-0714

Business Name (if applicable): Growing learners child care Email: Alyssahh20@yahoo.com

Mailing Address: 15 sterling drive Westbrook ME 04092

Is the applicant an agent, representative, or lessee of the property owner/purchaser?  Yes  No

Name of Property Owner/Purchaser: Stephen E. Marchigan Phone: (207) 772-5555

Business Name (if applicable): \_\_\_\_\_ Email: Jay@wrebrokers.com

Mailing Address: 460 Baxter Blvd, Portland, Maine 04103

**Property and Project Information:**

Property Address: 970 Forest Ave. Zone: Professional/Residential

Tax Assessor's CBL: 143 B 1 Current Use of Property: Vacant was office and  
Chart # Block # Lot # former childcare

Applying for a Conditional Use authorized by Portland Code of Ordinances, Section 14 - 147.5(e)

Description of Proposed Project: Using the building as a child care  
licensed for 80 children.

STANDARDS: Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall not 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 what 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.

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

Applicant signature: Alyssa Harvey Date: 3.30.18

Cover Letter  
Conditional Use Permit

City of Portland  
Planning and Urban Development Department

Growing Learners Child Care Center LLC

Alyssa Harvey

15 Sterling Drive

Westbrook, Maine 04092

(207)502-0714

Zoning Board of Appeals,

I am applying for a conditional use permit under section 14-147.5 (e.) of the city of Portland code of ordinances. This application serves the purpose of Growing Learners Child Care Center LLC, to create a new licensed child care center serving children ages 6 weeks to 6 years at 970 Forest Avenue, Portland, Maine. The proposed location has served as a daycare center in the past. (Pleasant Day Nursery School) serving the same ages as I intend to and is currently set up in a way that is conducive to the needs of a child care facility.

After working for nearly a decade in the childcare field I have seen a huge increase in the need for center based child care in Portland, I intend to provide a safe environment for children to grow, learn, and explore. This center will create 80 child care openings in Portland and provide employment opportunities for 12 full time and two part time teachers.

970 Forest Avenue has plenty of indoor and outdoor play space. The play area located to the side of the building has an already existing 6 foot fence. Outdoor play will be monitored by the appropriate amount of staff members to follow child to teacher ratios with concern being safety and noise level for neighboring properties.

The building has six bathrooms and plumbing for a sink in each room for sanitary purposes. The lot size generously exceeds the required 6,000 square feet and has plenty of off street parking. We will not be adding exterior alterations to the building. There will be minimal impact of traffic flow in the area. The most vehicle traffic will be during prime drop of time (8:00-9:00 a.m.) and pick up time (5:00-6:00 pm). Hours of operation will be 7 a.m. to 6 p.m. Signage will follow guidelines and be attached to the pre-existing sign post, and I will obtain all necessary permits to do so.

Thank you for your time and consideration of my conditional use proposal.

Alyssa Harvey

Growing Learners Child Care LLC owner

Conditional Use Standards:

1. The volume and type of vehicle traffic to be generated, hours of operation, expense 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.
  - 1.) There will be minimum impact on the traffic flow in this high traffic area. The most vehicle traffic will be generated from 8 to 9 a.m. and 4 to 5 p.m. which are primary drop off and pick up times. No expanse of pavement needed. We will not need more parking than what is already established for this building.
  - 2.) We will not be creating unsanitary or harmful conditions. Outdoor noise volume will be monitored by teachers but certainly won't be harmful. Glare, dust, sewage disposal, emissions to the air, odor, lighting or litter will not be unsanitary or harmful.
  - 3.) Design and operation will be similar if not the same as when this property was Pleasant day nursery school. WE will apply for a permit to hang appropriate signage on the pre existing sign post. We will have disposal removal and unscheduled package deliveries, the current structure will remain. Material storage will be inside the building or inside the fenced play yard appropriately. There will be no impact on surrounding properties.

Code of Ordinance Standards:

1. Proof of licensing with the state of Maine DHHS submitted to city prior to issuance of certificate of occupancy.
2. The facility shall provide a minimum of seventy-five square feet of outdoor play area per child.
3. The play area shall be located in the side and rear yards only and shall not be located in the front yards.
4. Outside play areas shall be separated from abutting properties by a fence at least forty-eight inches in height.

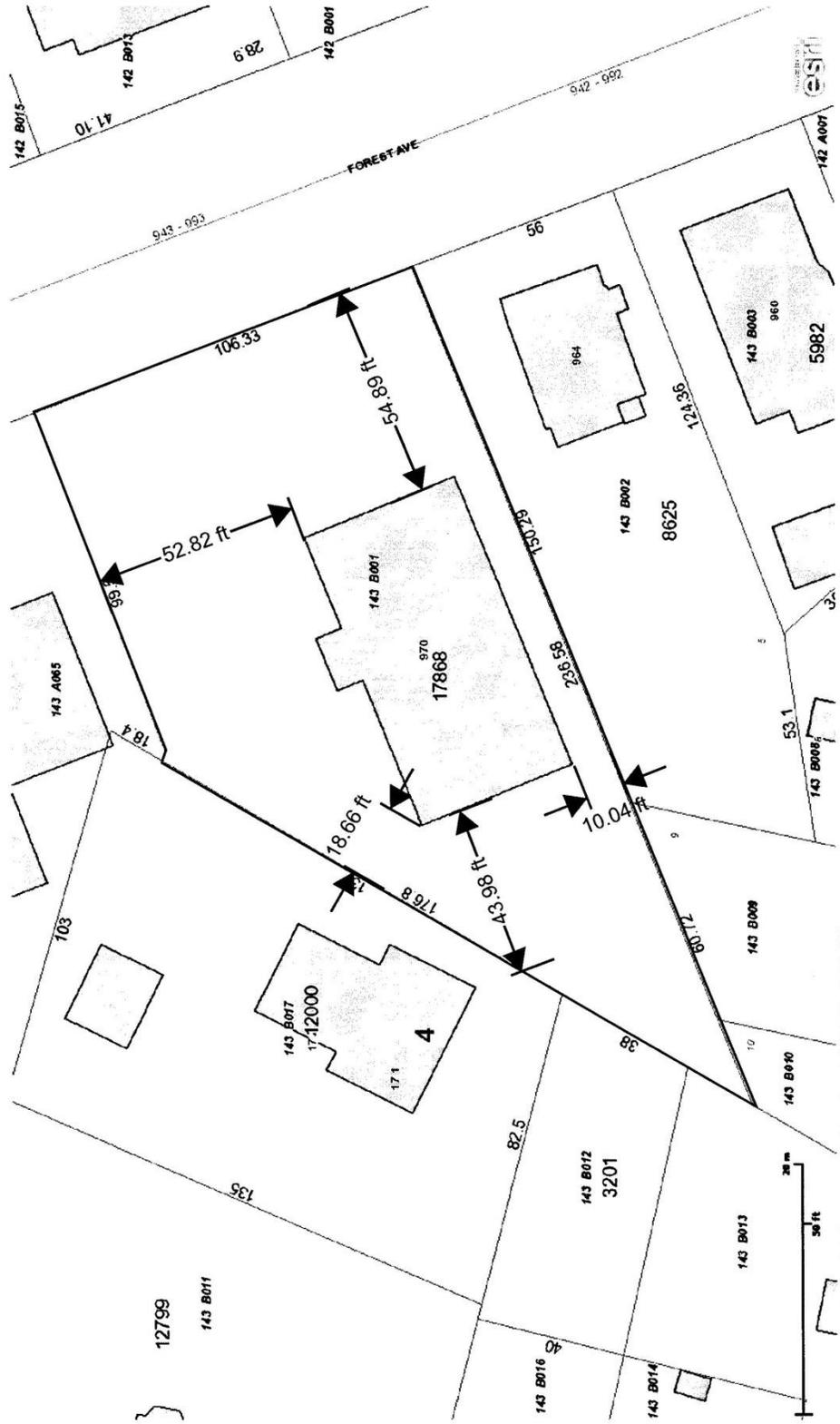
5. A ten-foot wide landscaped buffer shall be required outside of the fenced play area, and shall be established in accordance with the landscaping standards of the city's technical standards and guidelines.
6. The minimum lot size for a daycare facility, home babysitting service, nursery school or kindergarten serving more than twelve children shall be 6,000 square feet.
7. Off-street parking: Off-street parking is required.
8. Any additions or exterior alterations shall be designed to be compatible with the architectural style of the building.

- 1.) I am currently working with the stat to license the space and a license will be obtained and submitted before I am issued a certificate of occupancy.
- 2.) The designated outdoor fenced in play space is currently 5,967 square feet of grass. The playground will be split in two creating a preschool playground of 2,500 square feet which is more than enough space for a class of 20 to use the space together and meet the 75 square foot per child requirement. The toddler/infant playground will be 1,500 square feet which will be utilized by 10 toddlers or 8 infants at one time. The rest of the space will be used to make room the rest of the fence required to close in the area and include proper safety gates and an appropriate fire safety path.
- 3.) The fenced in play space is to the rear and side of the building per plot plan. There will be no play space in the front of the building.
- 4.) The outdoor play space is surrounded by a fence seventy-two inches in height.
- 5.) There is no current landscape buffer between the play yard and abutting properties. This is a change we plan to make prior to opening.
- 6.) The lot size exceeds the six-thousand square feet requirement.
- 7.) On-site, off-street parking is provided for approximately twenty-five cars which would provide enough parking spaces for all 12 of the employees, the director, and with 12 left over for parents dropping off and picking up.
- 8.) There are two changes that will be made outside of the building. A privacy fence in place to secure the outside play space and we need to put a vegetation buffer in. Both will be approved projects and be compatible with the style of the building.



# 970 Forest Ave

17,868 sf(.41 acres)



Copyright 2011 Esri. All rights reserved. Mon Jan 4 2016 07:47:29 AM.



February 25, 2018

Alyssa & James Harvey  
Growing Learners

Re: 970 Forest Ave  
Portland, Maine 04103

Alyssa & James,

On behalf of Stephen E. Mardigan (hereinafter Landlord), I have outlined the parameters of a deal he is prepared to enter into lease negotiations with Alyssa & James Harvey d/b/a/ Growing Learners (hereinafter Tenant) at the above captioned address.

1. Location: Approximately 6,400 sf located at 970 Forest Ave, Portland, Maine 04103.
2. Use: During the term of this lease, the premises shall be used as a typical day care facility.
3. Term: This lease shall commence upon execution and terminate five (5) years after rent commencement. Rent and additional rent to commence the earlier of 30 days after the Landlord delivers the space to Tenant or the day Tenant opens for business to the public.

Renewal Option:

This lease is subject to the following renewal options:  
One (1) five-year renewal with an annual increase of 3% per year.

4. Base Rent: The base rent for the base term shall be as follows:  
Years 1-3—\$10.00 psf payable in monthly installments of \$5,333.33.  
Years 4-5—\$10.30 psf payable in monthly installments of \$5,493.33

5. Utilities / Additional Rent:

The Tenant shall be billed directly for all separately metered utilities (check if applicable), including but not limited to:

- |                  |     |
|------------------|-----|
| a) Electricity   | yes |
| b) Fuel (Gas)    | yes |
| c) Water / Sewer | yes |

NOTE: This is a triple net lease. The Tenant will be responsible for the common area maintenance, taxes and landlord's insurance for the property. The estimated expenses for taxes and insurance are \$1.25 psf payable monthly in the amount of \$667.58.

6. Insurance: The Landlord will maintain: Liability and Fire for the building and parking lot; the Tenant: Liability, Fire and Casualty for the interior premises, its customers, agents and vendors.

7. Tenant's Alterations:

Tenant is allowed to make any non-structural improvements and/or changes, as allowed by code, with the landlord's consent.

8. Landlord's Work:

Landlord will deliver the space as outlined in the attached Specifications.

9. Signage:

Tenant will be able to install its standard signage, as per code, on the front of the building façade and on the property sign pole. All electrical hook ups and permits will be the responsibility of the Tenant.

10. Security Deposit/Guaranty:

Tenant will provide one month's security deposit along with a satisfactory personal financial statement. The lease will be personal guaranteed by the Tenant.

Sincerely,  
*Jay Wise*  
Jay Wise

Accepted by Tenant  
By: *Alyssa Harvey*  
Date: 3.25.18

Accepted by Landlord  
By: *[Signature]*  
Date: 3.25.18

## Landlord's Work

### Interior

- Insulate the walls and ceiling and sheetrock the perimeter walls
- Demise the space per tenant and landlord approved plan
- Build out the classrooms per the approved plan
- Entrance way, main reception and hallways painted per tenant's color. Single color only.
- Classroom and bathroom walls ready for paint
- Wiring to code
- Lights and outlets to code
- Bathrooms per plan
- HVAC in good working order
- Typical commercial grade carpet or allowance to be agreed upon

### Exterior

- Replace/repair rooted window sills

### Tenant's Work/Costs

- Painting the classrooms
- Flooring if different than regular commercial carpet
- All life safety requirements from the City and State
- Any other items specific to Tenant's use
- Viewing Windows into the classrooms
- All exterior playground requirements

AK

795 Roosevelt Trail Ste 200, Windham, Maine 04062  
207-775-3499/207-894-5391(fax)

**Stephen E. Mardigan**

460 Baxter Blvd  
Portland, Maine 04103

March 9, 2018

To: The City of Portland  
From: Stephen E. Mardigan  
Re: 970 Forest Ave  
Planning Board

Alyssa & James Harvey dba Growing Learners and/or their representative have my permission to represent me and my property located at 970 Forest Avenue at the planning board meeting.

If there are any questions or concerns please call me at 207-772-5555.

Thank you.



## 970 Forest Ave

970 Forest Ave, Portland, ME 04103

Listing ID: 28727681  
Status: Active  
Property Type: Office For Lease  
Office Type: Mixed Use  
Contiguous Space: 6,400 SF  
Total Available: 6,400 SF  
Lease Rate: \$10 PSF (Annual)  
Base Monthly Rent: \$5,333  
Lease Type: Net Lease



### Overview/Comments

6,400 sf building in the RP Zone.  
Multiple uses considered

### More Information Online

<http://www.newenglandcommercialproperty.com/listing/28727681>



### QR Code

Scan this image with your mobile device:

### General Information

Tax ID/APN: 970  
Office Type: Mixed Use  
Zoning: RP

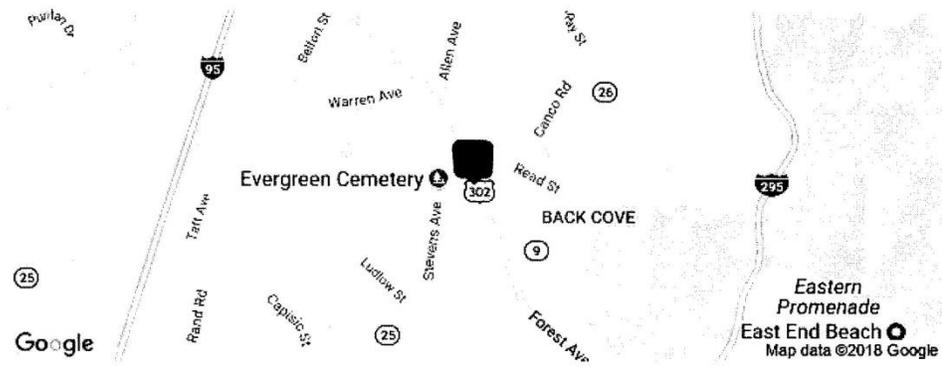
### Available Space

Suite/Unit Number:	1000	Date Available:	02/01/2014
Suite Floor/Level:	1	Lease Rate:	\$10 PSF (Annual)
Space Available:	6,400 SF	Lease Type:	Net Lease
Minimum Divisible:	6,400 SF	Parking Spaces:	0
Maximum Contiguous:	6,400 SF	Real Estate Taxes:	\$0 PSF (Annual)
Space Type:	New		

### Location

Address: 970 Forest Ave, Portland, ME 04103  
County: Cumberland  
MSA: Portland-South Portland

Mar 30, 2018 on NECPE



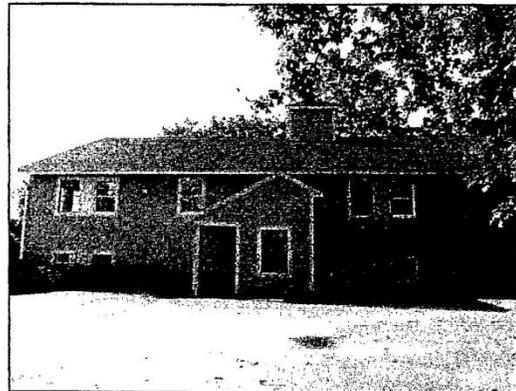
## Property Contacts

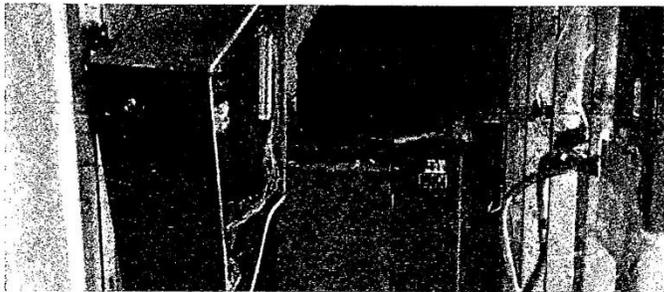
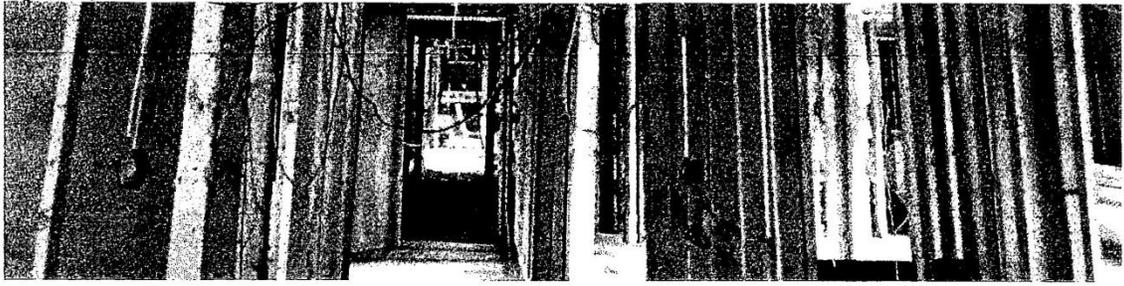
---

**Jay Wise**  
WRE Commercial Brokers  
207-775-3499 (0)  
jay@wrebrokers.com

**FOR SALE** **970** **FOREST AVENUE** **PORTLAND, MAINE**

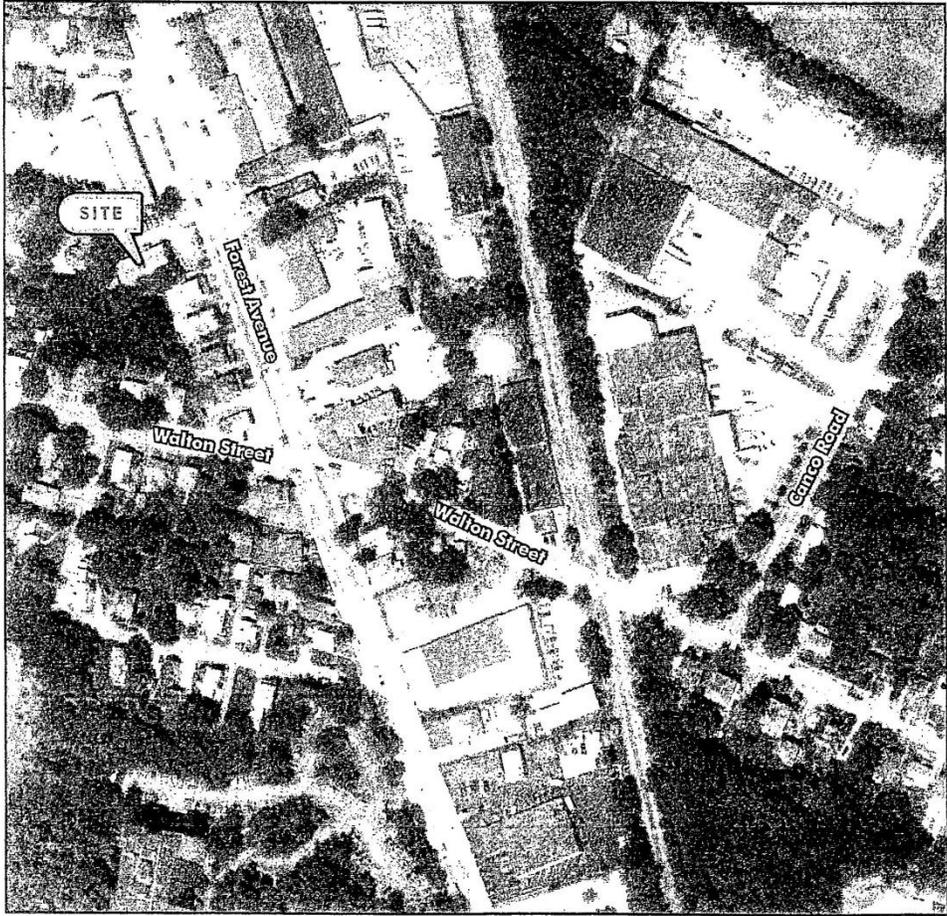
Building Size: 6,400+/- sf  
 Land Area: 0.41 +/- acres  
 Year Built: 1988  
 Assessor's Reference: Map 143, Lot B1  
 Book/Page: 10794-321  
 Assessed Value: Land: \$181,100  
 Bldg: \$430,900  
 Total: \$612,000  
 Elevator: Yes  
 Signage: Roadside pylon sign  
 Zoning: RP - Residential Professional  
 Parking: On-site parking for approximately 25 cars  
 Construction: Wood-framed  
 HVAC: Forced Hot Air, natural gas with central air conditioning  
 Roof: Gabled  
 Flooring: Combination of carpet and tile  
 Lighting: Fluorescent  
 Sprinkler: Full wet system  
 Water/sewer: Municipal  
 Sale Price: \$295,000





**FOR SALE** **970 FOREST AVENUE** PORTLAND, MAINE

Aerial Photograph



FOR MORE INFORMATION CONTACT:

**Joseph Porta**  
**jporta@boulos.com**

CBRE | The Boulos Company | One Canal Plaza | Suite 500 | Portland, ME 04101 | 207.772.1333 | [www.boulos.com](http://www.boulos.com)

©2013, CBRE | The Boulos Company. We obtained the information above from sources we believe to be reliable. However, we have not verified its accuracy and make no guarantee, warranty or representation about it. It is submitted subject to the possibility of errors, omissions, change of price, rental or other conditions, prior sale, lease or financing, or withdrawal without notice. We include projections, opinions, assumptions or estimates for example only, and they may not represent current or future performance of the property. You and your tax and legal advisors should conduct your own investigation of the property and transaction. CBRE | The Boulos Company is representing the Seller/Landlord, and, as such, has a fiduciary duty to disclose to the Seller/Landlord information which is material to the Sale/Lease, acquired from the Buyer/Tenant or any other source, except in cases of disclosed dual agency.

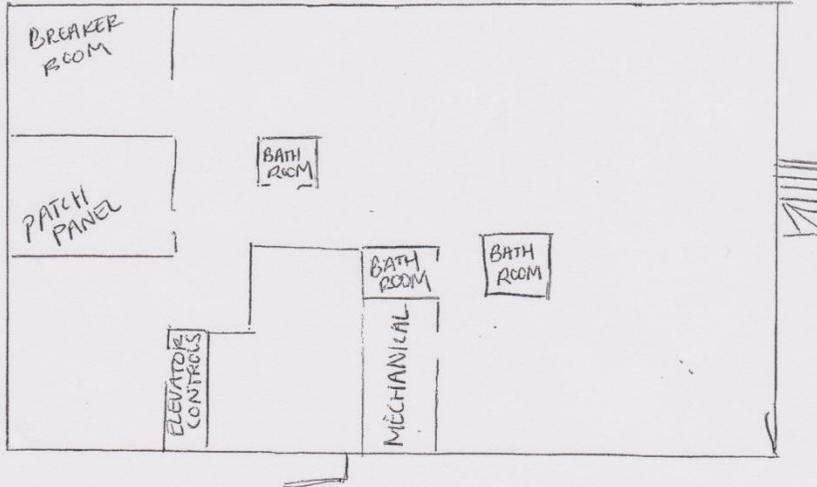




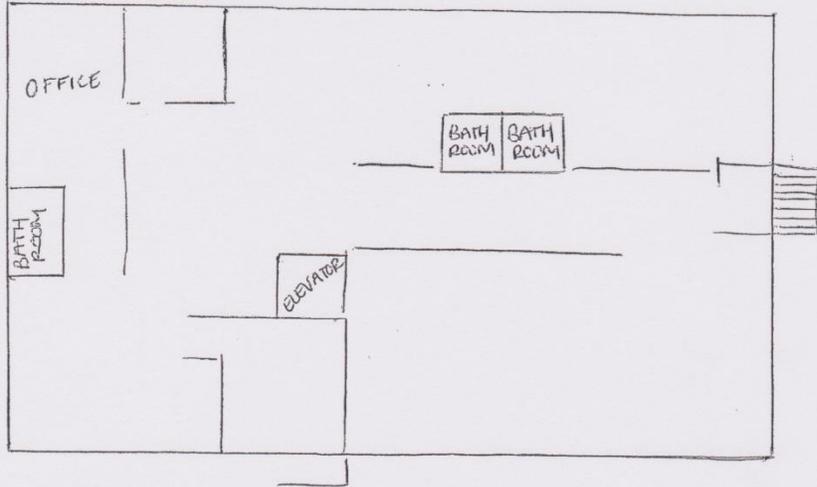


# CURRENT FLOOR PLAN

## FIRST FLOOR



## SECOND FLOOR



Assessor's Office | 389 Congress Street | Portland, Maine 04101 | Room 115 | (207) 874-8486

[City](#) [Home](#) [Departments](#) [City Council](#) [E-Services](#) [Calendar](#) [Jobs](#)

This page contains a detailed description of the Parcel ID you selected.

[New Search](#)

### Current Owner Information:

<b>Services</b>	<b>CBL</b>	143 B001001
<b>Applications</b>	<b>Land Use Type</b>	MULTI-USE COMMERCIAL
<b>Doing Business</b>	Verify legal use with	Inspections Division
<b>Maps</b>	<b>Property Location</b>	970 FOREST AVE
<b>Tax Relief</b>	<b>Owner Information</b>	MARDIGAN STEPHEN E 460 BAXTER BLVD PORTLAND ME 04103
<b>Tax Roll</b>	<b>Book and Page</b>	30715/251
<b>Q &amp; A</b>	<b>Legal Description</b>	143-B-1 FOREST AVE 970-976 MORGANS COURT 17868 SF
<a href="#">browse city services a-z</a>	<b>Acres</b>	0.4102
<a href="#">browse facts and links a-z</a>		



Best viewed at 800x600, with Internet Explorer

### Current Assessed Valuation:

<b>TAX ACCT NO.</b>	21340	<b>OWNER OF RECORD AS OF APRIL 2015</b>
<b>LAND VALUE</b>	\$181,100.00	MARDIGAN STEPHEN E
<b>BUILDING VALUE</b>	\$133,500.00	
<b>NET TAXABLE - REAL ESTATE</b>	\$314,600.00	460 BAXTER BLVD PORTLAND ME 04103
<b>TAX AMOUNT</b>	\$6,490.20	

Any information concerning tax payments should be directed to the Treasury office at 874-8490 or [e-mailed](#).

### Building Information:

#### Building 1

<b>Year Built</b>	1986
<b>Style/Structure Type</b>	DAY CARE CENTER
<b># Units</b>	1
<b>Square Feet</b>	6400

[View Sketch](#)

[View Map](#)

[View Picture](#)

### Exterior/Interior Information:

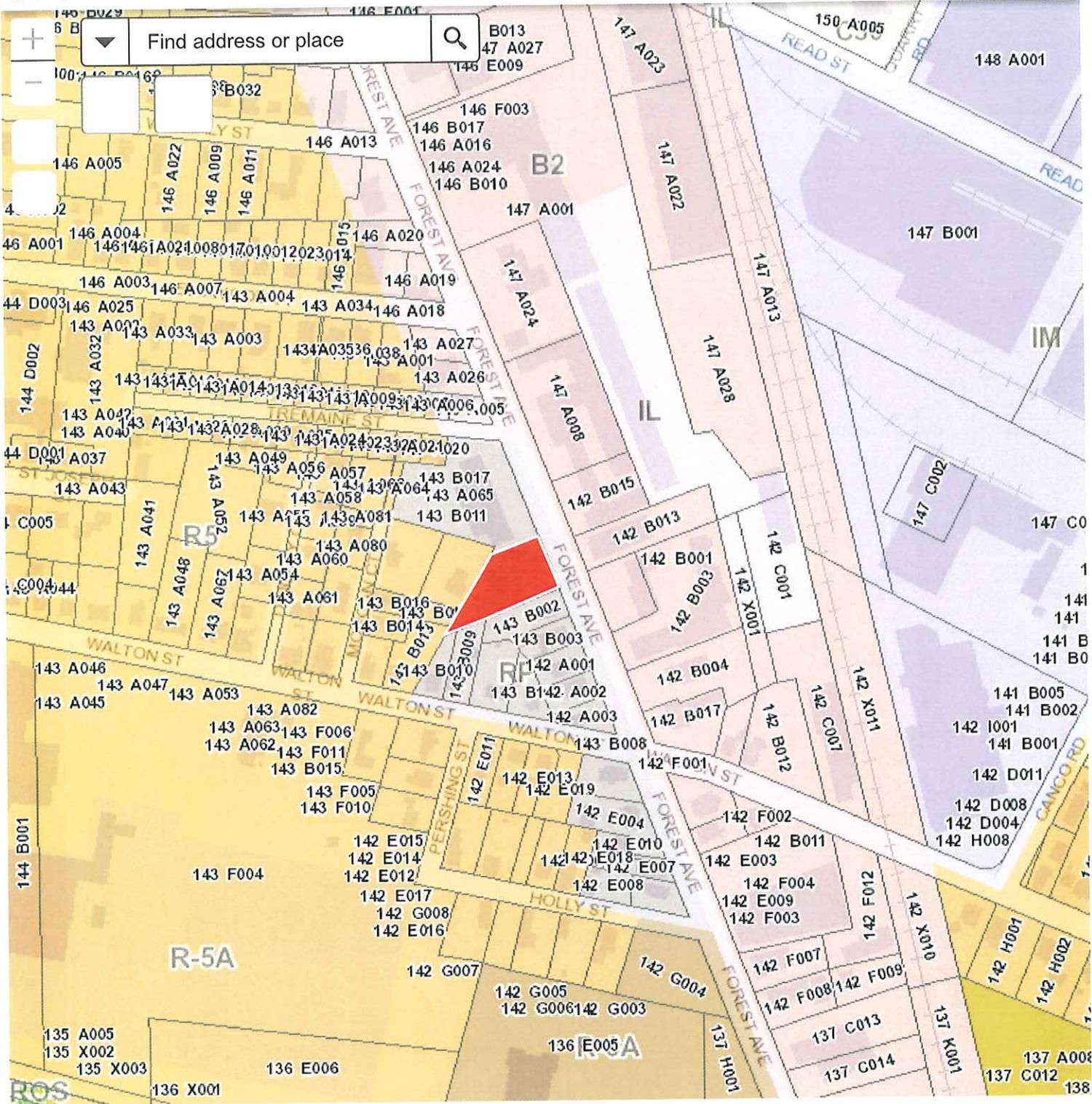
#### Building 1

<b>Levels</b>	B1/B1
<b>Size</b>	3200
<b>Use</b>	MULTI-USE OFFICE
<b>Height</b>	8
<b>Heating</b>	HOT AIR
<b>A/C</b>	NONE





# 970 Forest Ave - Conditional Use



300ft

2,923,041.311 309,530.791 Feet