Form # P 04	DISPLAY	THIS	CARD	ON	PRINCIPAL	L FROM	ITAGE	OF V	VORK	
Please Read Application An Notes, If Any, Attached	nd	C	BU		ERMIT	TION		it Number	: 081362	
This is to certif	y thatPROP	RIETORS (	OF CUSTON	ous	E TTN	ĢEI C				
has permission	toChang	ge of use to I	larbors Edg	omed	y mectio Re	emode ba	throoms,_life	e safety &	accessibility	
AT86_COM	MERCIAL ST					<b>C</b> 03	<b>30-A00100</b> 1			
	ruction, main				d of the final side of the fin					
	ublic Works for if nature of wor nation.		Not give befo lath HOl	this b or o	itte permission puis ng or panar	procurec nereof i d-in. 2	procur	ed by ow	occupancy m ner before this eof is occupied	s build-
OTHE	R REQUIRED APP	ROVALS						43 5° <b>M</b>		
-										
							j j an			
Appeal Board								V I L		
Other	Department Name						Director	- Building & Inst	pection Services	
	Dopartment Harrie						חר			

PENALTY FOR REMOVING THIS CARD

.

Cit	y of Portland, Maine	- Building or Use ]	Permi	t Application	1 Per	mit No:	Issue Date:		CBL:	
	Congress Street, 04101					08-1362			030 A0	01001
Location of Construction:		Owner Name:	Owner Name:		Owner	r Address:			Phone:	
86	COMMERCIAL ST	PROPRIETO	RS OF C	CUSTOM HO	5 EA	STERN PRC	MENADE			
Busi	ness Name:	Contractor Name	:		Contr	actor Address:			Phone	
ļ		Oliver Kiethly			96 Crestview Dr So Portland			2078313521		
Less	ee/Buyer's Name	Phone:	Phone:		Permit Type:				Zone:	
Ĺ					Cha	nge of Use - (	Commercial			WCT
Past	Use:	Proposed Use:			Perm	it Fee:	Cost of Work	: CI	EO District:	1
Co	nmercial - Vacant Space	Commercial -	Harbors	s Edge,		\$1,845.00	\$175,00	0.00	1	
Come bathr			bathrooms, life safety &				INSPECT Use Group	PECTION: e Group: Type:		
Proposed Project Description: Change of use to Harbors Edge, Comed bathrooms, life safety & accessibility					PEDESTRIAN ACTIVITIES DISTRICT		roved w/Co	<b>F (P.A.D.)</b> w/Conditions Denied		
<b> </b> -		·	·		Signa	ture:		D	ate:	
	nit Taken By: obson	Date Applied For: 10/24/2008				Zoning	Approva	I		
1.	This permit application do	bes not preclude the	Spe	cial Zone or Revie	ws	Zonin	g Appeal		Historic Pres	ervation
Applicant(s) from meeting applicable Sta Federal Rules.			🗍 Sh	oreland		🗌 Variance	:		] Not in Distric	ct or Landmark
2. Building permits do not include plumbing, septic or electrical work.		clude plumbing,	[] w	etland	Miscellaneous			Does Not Require Review		
<ol> <li>Building permits are void if work is not started within six (6) months of the date of issuance. False information may invalidate a building permit and stop all work</li> </ol>						Conditio	nal Use		] Requires Rev	iew
		alidate a building	🗌 Su	bdivision		Interpreta	ation		Approved	
		🗌 🗌 Sit	te Plan		Approve	d		Approved w/	Conditions	
			Maj [	] Minor [] MM		Denied			Denied	
			Date:			Date:		Date:		

# DENIED

### CERTIFICATION

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

SIGNATURE OF APPLICANT	ADDRESS	DATE	PHONE
RESPONSIBLE PERSON IN CHARGE OF WORK, TITLE		DATE	PHONE



## **General Building Permit Application**

property within the City, payment arrangements must be made before permits of any kind are accepted.

Location/Address of Construction: 6 C.	uston Have whant
Total Square Footage of Proposed Structure/A	Area Square Footage of Lot Number of Stories
Tax Assessor's Chart, Block & Lot Chart# Block# Lot# 30 A I	Applicant *must be owner, Lessee or Buyer*Telephone:Name Oliver Keithir207-831-3521Address 96 Crestine DaneCity, State & Zip 5. Portude Ne on or
Lessee/DBA (If Applicable) #1770 75 - 760	Owner (if different from Applicant)Cost OfName Roghest of Cuch HenewhordWork: \$ 175,000Address 16 Cush Hene whend.C of O Fee: \$ 75City, State & ZipTotal Fee: \$ 1845Partne Me04101
If vacant, what was the previous use? Proposed Specific use: Is property part of a subdivision? No	<u>Harbers</u> Pronto 12 Number of Residential Units <u>Harbers edge / Congede Caller Tient</u> Por Marge If yes, please name <u>Port hole</u> bathloom, lefe onfety, accession
Contractor's name: Olw 2 Ken Address: <u>96 Clesting</u> Dr City, State & Zip <u>5. Porth 2</u> Who should we contact when the permit is read Mailing address:	mare 0407 phone 2007 - 831-352)

Please submit all of the information outlined on the applicable Checklist. Failure to do so will result in the automatic denial of your permit.

In order to be sure the City fully understands the full scope of the project, the Planning and Development Department may request additional information prior to the issuance of a permit. For further information or to download copies of this form and other applications visit the Inspections Division on-line at <u>www.portlandmaine.gov</u>, or stop by the Inspections Division office, room 315 City Hall or call 874-8703.

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 code applicable to this permit.

-51	h		
Signature:	(V)	Date: 10 - 20 - 0×	

This is not a permit; you may not commence ANY work until the permit is issue

Revised 9-26-08

#### Fire Department requirements.

The following shall be submitted on a separate sheet:

- □ Name, address and phone number of applicant **and** the project architect.
- □ Proposed use of structure (NFPA and IBC classification)
- □ Square footage of proposed structure (total and per story)
- $\Box$  Existing and proposed fire protection of structure.
- $\Box$  Separate plans shall be submitted for
  - a) Suppression system
  - b) Detection System (separate permit is required)
- □ A separate Life Safety Plan must include:
  - a) Fire resistance ratings of all means of egress
  - b) Travel distance from most remote point to exit discharge
  - c) Location of any required fire extinguishers
  - d) Location of emergency lighting
  - e) Location of exit signs
  - f) NFPA 101 code summary
- $\Box$  Elevators shall be sized to fit an 80" x 24" stretcher.

For questions on Fire Department requirements call the Fire Prevention Officer at (207) 874-8405.

## Please submit all of the information outlined in this application checklist. If the application is incomplete, the application may be refused.

In order to be sure the City fully understands the full scope of the project, the Planning and Development Department may request additional information prior to the issuance of a permit. For further information or to download copies of this form and other applications visit the Inspections Division on-line at <u>www.portlandmaine.gov</u>, or stop by the Inspections Division office, room 315 City Hall or call 874-8703.

Permit Fee: \$30.00 for the first \$1000.00 construction cost, \$10.00 per additional \$1000.00 cost

This is not a Permit; you may not commence any work until the Permit is issued.

3



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

October 30, 2008

Oliver Keithly 96 Crestview Drive Sourth Portland, ME 04106

RE: 6 Custom House Wharf – 030-A-001 – WCZ Waterfront Central Zone – permit application #08-1362

Dear Mr. Keithly,

I am in receipt of your request to change the use and make alterations for such use at the previous Boones Restaurant area for the new Harbors Edge banquet function enterprise. Please note that this permit application is denied.

In August, 2008 through your attorney, you requested a zoning determination on the legal status and use of the previous Boones area. On August 15, 2008 I responded with a letter in which I determined that you had lost the restaurant use of the previous Boones restaurant. Again through your attorney, you applied for an appeal of my letter to the Zoning Board of Appeals. However, you requested a hearing date of January 8, 2009.

At the current time my zoning determination letter still stands.

This letter of denial for permit application #08-1362 does not constitute a new window to appeal. The determination letter issued on August 15, 2008 is the basis of any appeal.

Your permit will not be reviewed any further at this time.

Very truly yours

Marge Schmuckal Zoning Administrator

Cc: Penny St. Louis Littell, Director of Planning and Development Gary Wood, Corporation Counsel Chris Hanson, Code Enforcement file

Room 315 – 389 Congress Street – Portland, Maine 04101 (207) 874-8695 – FAX:(207) 874-8716 – TTY:(207) 874-3936



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Penny Littell- Director of Planning and Development Marge Schmuckal, Zoning Administrator

August 15, 2008

James F. Cloutier Cloutier, Barrett, Cloutier & Conley 465 Congress Street Portland, Maine 04101-3528

RE: Boone's Restaurant/Harbor's Edge - 030-A-001 - WCZ Waterfront Central Zone

Dear Attorney Cloutier,

I am in receipt of your determination request concerning the site of the former Boone's Restaurant on Custom House Wharf in Portland.

It may be helpful to outline the zoning history regarding the Portland waterfront and Custom House Wharf. The original 1957 zoning on which our current land use zoning ordinance is based originally delineated the waterfront area as an I-3b industrial zone. In April 1983, the land use ordinance was amended to create separate waterfront districts (W-1, W-2, W-3) which allowed marine related uses, residential uses and limited commercial uses such as retail and restaurants. After a City referendum concerning the waterfront and its allowable uses, on May 5, 1987 the voters "stipulated that only marine related uses be permitted within the W-1 waterfront zone" which was the underlying zone for Custom House Wharf at that time. That referendum made many of the existing waterfront uses legally nonconforming, including The Porthole Restaurant and Boones Restaurant. The Portland waterfront was rezoned on January 4, 1993 with new nomenclatures, i.e. WCZ, WPDZ and WSUZ, and with completely revised texts. The current underlying zone for Custom House is currently governed by the WCZ Waterfront Central Zone.

The history of uses for this portion of Custom House Wharf is also an important recognition. Prior to the 1987 referendum there were three (3) distinct uses located in this area on Custom House Wharf: Boones Restaurant, Casco Bay Lines (situated in the middle between the two other uses) and the Porthole Restaurant. This is an important historic fact that has been ignored in your letter which states that only restaurant uses had occupied this area of the wharf. Casco Bay Lines moved to Maine State Pier and vacated their space in November, 1988. Boones Restaurant went out of business in 2005. At that time their kitchen was completely dismantled, with the equipment auctioned off. The area occupied by the Boone's kitchen and the westerly portion of the dining area has been unoccupied since at least 6/12/05. It is my understanding that there are no indication or

plans that the kitchen in this space will be restored now or in the future. On 6/12/05 Boones Restaurant license to operate through the City Clerk's office expired.

It is noted that this office has never received any documentation as to when your client leased this space. Your statement that, "In essence, at all times, the property has been under lease agreement by the owner to others, to operate restaurant facilities on the property. The majority of the property has been continuously open for business for that purpose, other than during portions of 2007 and early 2008 when life safety requirements for the pier structure interrupted business." is not factual. Boones Restaurant which has been the majority area of the space on this portion of the wharf compared to the Casco Bay Lines and the Porthole Restaurant has been continuously unoccupied and dysfunctional since June 2005.

Your reasoning of continued use blurs different City and State authorities and their designated functions as a manner of determining zoning compliance. It is noted that the Assessor's function is that of assessing by State Law. If there is an illegal use in a structure, they will assess that use with no regard to zoning. That is their job. Their assessment of property and use does not legalize any illegal uses. The Land Use Zoning Ordinance is used to determine the legal uses of property. In the same vein, you have asserted that the State Liquor officials have in some manner validated the desired uses your client wants by the combining of liquor license under one domain.

I disagree with your assertion that the area of Boones Restaurant is legally nonconforming and may continue a restaurant use. Under 14-387, I have determined that the restaurant use has been discontinued for more than a period of twelve months. The removal of a restaurant kitchen for more than twelve months renders the restaurant use vacated. The loss of the kitchen under these circumstances is a major determining factor for defining a restaurant. Your client does not wish to restore the former Boones Restaurant kitchen. In fact, it is my understanding your client wishes to use the former Boones Restaurant space, renamed Harbors Edge, not as a "grandfathered" restaurant, but as a different use for a banquet function enterprise. I conclude, therefore, that space shown on attachment #1, labeled "Applicant site plan submittal", has no grandfathered use status and must comply in all respects with current zoning.

You have the right of appeal my decision concerning use. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

Very truly yours,

Marge Schmuckal Zoning Administrator

Cc: Penny St Louis Littell, Director of Planning and Development Gary Wood, Corporation Counsel Joseph Gray, City Manager

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

February 27, 2009

- most current Detammention

James F. Cloutier Cloutier, Barrett, Cloutier & Conley 465 Congress Street Portland, Maine 04101-3528

RE: Boone's Restaurant/Harbor's Edge – 030-A-001 – WCZ Waterfront Central Zone Known as 6 Custom House Wharf

Dear Attorney Cloutier,

I am in receipt of additional documentation concerning the site of the former Boone's Restaurant on Custom House Wharf in Portland. This supplementary information assists me in revising my original determination letter to you dated August 15, 2008.

The additional documentation includes a lease between the proprietors of Custom House Wharf (Kenneth N. Macgowan, Its Treasurer) and Harbors Edge, LLC (Stormy Keithly, Its President) dated November 1, 2005. Supporting documentation includes two affidavits and dated deposit slips signed by Kenneth Magowan. Such affidavits clearly state, "...my consistent understanding has been that this property was grandfathered for restaurant use and the renewed use of the property was to be for restaurant use." He also states, "I, on behalf of the landlord have never consented to anyone seeking a change of use, and my discussions with Mr. Keithly have always been that he intended and sought to use the property for its grandfathered uses."

An affidavit of Oliver Keithly was also submitted at this time. That affidavit states, "My intention is and has been to operate the space formerly used by Boone's Restaurant as an additional area of my restaurant. This includes using the space as a dining area open to the public for walk-in table service when it is open. I expect it will likely have more limited hours in the winter months and to use it most heavily during the seasonal months of May through October."

In regard to the kitchen, Mr. Kenneth Magowan also states, "In addition, however, from the start, Mr. Keithly and I have agreed that the Harbor's Edge must continue to have all of the necessary installations for a free standing bar and kitchen, in case service logistics make that necessary, and in the case of the interest of the Proprietors, in the case that some future user needs to return the space to a separate and fully enclosed facility. The renovations as completed, therefore, include all of the fire and safety and other code requirements to install a kitchen within it...".

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Based upon this supplementary evidence, I have reversed my decision stated in my original determination letter dated August 15, 2008. I have now determined that under section 14-387 there was no abandonment of use nor intent to discontinue the grandfathered restaurant use. The lease indicates that less than one year passed from the expiration of the City's restaurant/liquor license on June 12, 2005 and the signed lease between Mr. Magownan and Mr. Keithly on November 1, 2005.

The kitchen plumbing and electrical has remained prepped for the required kitchen equipment installation. It is expected that the kitchen will be restored as outlined in the submitted affidavits. The use of the Harbor's Edge during the seasonal months of May through October mimics the traditional use of Boone's Restaurant which was open the months of March through December.

In conclusion, the location of the Harbor's Edge within the prior Boone's Restaurant, including a 17' x 78' exterior deck (as denoted within the executed lease) is considered to be a continued nonconforming restaurant use within the Waterfront Central Zone.

You have the right to appeal my decision concerning use. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

Very truly yours

Marge Schmuckal Zoning Administrator

Cc: Joseph Gray, City Manager Penny St. Louis Littell, Director of Planning and Development Gary Wood, Corporation Counsel Alex Jaegerman, Planning Division Head William Needleman, Planner Chris Hanson, Code Enforcement Officer Alexandra Murphy, City Clerk's Office

Room 315 - 389 Congress Street - Portland, Maine 04101 (207) 874-8695 - FAX:(207) 874-8716 - TTY:(207) 874-3936

12/30/08

Section 14-383 is amended to add the following subparagraph (g)

Exception – In non-residential zones, Sections 14-384 through 14-387 shall not operate to extinguish non-conforming, non-industrial uses in the case of partial or full cessation of a non-conforming use during the course of renovation, reconstruction or partial reconstruction of structures provided:

a) the scope of such renovation or reconstruction includes expenditures to install improvements required by health or life safety codes in order to continue the non-conforming uses, and

b) such expenditures exceed \$25,000.00.

In such cases, the non-conforming use shall be deemed continuing and shall only be extinguished upon proper application for, and approval of a change of use and issuance of an occupancy permit for such change of use. Upon the completion of such construction, upon application, an occupancy permit for the non-conforming use shall be issued.

.

This section shall apply to any non-conforming premises where renovations or reconstruction commenced on or after July 1, 2005.

From:	Marge Schmuckal
To:	PENNY LITTELL
Date:	10/28/2008 12:56:47 PM
Subject:	Old Boones/Harbors Edge

Periny,

Incredibly enough, Oliver Keithly recently applied for a permit to change the use of the old Boones restaurant into Harbors Edge along with alterations.

My previous determination letter was issued in August, 2008 which briefly stated that the Boones ononconforming restaurant use had been lost. Attorney Cloutier did get appeal paper work in for an appeal of my letter in a timely manner, but requested a hearing date of January 8, 2009. Therefore, it hasn't been heard. So I believe my determination letter of August 15, 2008 still stands. By the way, is there any court decisions as to how long an appeal that has been applied for can be "strung out" before the ZBA hears it? It seems like there should be some time frame.

I have denied Oliver's permit. I wanted to run the letter by you before it goes out.

Thanks, Marge



Designer:	ARCHMECNELL ASSOC. IUC., POETLAND, ME.
Address of Project:	16 CUSTOM HEUSE WHARF, PORTIAND, ME.
Nature of Project:	INTERIOR RETROFIT ONLY INCUDING
	LIFE SAFETY AND MEANS OF EGRESS
	ory.

The technical submissions covering the proposed construction work as described above have been designed in compliance with applicable referenced standards found in the Maine Human Rights Law and Federal Americans with Disability Act. Residential Buildings with 4 units or more must conform to the Federal Fair Housing Accessibility Standards. Please provide proof of compliance if applicable.

	Signature:
	Title: PRESIDENT
(SEAL)	Firm: ARCHITECTURAL ASSOL. INC
NUMBED ARCA	Address: 1344 WASHINGTON AVE
DAVID D. LEASURE	Porting, MAILE 04103
1725	Phone: 207.797.8661
OF MANIN	

For more information or to download this form and other permit applications visit the Inspections Division on our website at www.portlandmaine.gov



Date:

OCTOBER 29, 2008

From:

ARCHITECTURAL ASSOC. INC. 1344 WASHINGTON AVENUE PORTANO, ME. 04103

These plans and / or specifications covering construction work on:

BOONES (HARBOUR'S EDGE) RESTAURANT	
16 CUSTUM HOUSE WHARF	

04(0/ ME

Have been designed and drawn up by the undersigned, a Maine registered Architect / Engineer according to the 2003 International Building Code and local amendments. DESIGN IS LIMITED TO INTERIOR RETROFIT ONLY INCURDING LIFE SAFETY, MEANS OF EGRESS AND ACLESSIBILITY ONLY. Signature: PRESIDENT Title: ARCHITECTURAL ASSOC. INC Firm: Munnunninninn Address: 1344 WASHINGTUN AVE DAVID D.

portiguo, ME. 04103 Phone: 207.797.8661

E OF ME For more information or to download this form and other permit applications visit the Inspections Division on our website at <u>www.portlandmaine.gov</u>

LEASURE

1725

Certificate of De	esign Application
From Designer: Arcuitetouna Assoc	. TUC., 1344 WASHIDGTON AVE, PTLO, ME.
Date: OCTUBER 29, 200	
Job Name: BOODES (HARBON)	R'S EDGE) RESTAURANT
Address of Construction: 16 CUSTOM HOUSE	WHARF, PORTUAND, ME 04101
2003 International Construction project was designed to th	e
Building Code & Year 1BC 2003 Use Group Classification	n (s) A3 - ASSEMBLY W/ OLTERTAIJMEN
Type of Construction TYPE IV (HEAVY TIM B	
Is there a Fire suppression system in Accordance with Section 903.3.1 Supercuised Automatic Sprideren System Is the Structure mixed use? If yes, separated or not sep	
Geotechnical/Soils report required? (See Section 1802.2)/A	(PIER)
Structural Design Calculations	Live load reduction
EXIST. HT Submitted for all structural members (106.1 - 106.11)	Roof live loads (1603.1.2, 1607.11)
	Roof snow loads (1603.7.3, 1608)
<b>Design Loads on Construction Documents</b> (1603) Uniformly distributed floor live loads (7603.11, 1807)	Ground snow load, Pg (1608.2)
Floor Area Use Loads Shown	If $Pg > 10$ psf, flat-roof snow load $_{Pf}$
DESIGNED BY OTHERS	If $P_g > 10$ psf, snow exposure factor, $C_c$
·	If $P_g > 10$ psf, snow load importance factor, $T_r$
	Roof thermal factor, $C(1608.4)$
	Sloped roof snowload, p <sub>t</sub> (1608.4)
Wind loads (1603.1.4, 1609) N/A (EXIST. STRUCTURE)	Seismic design category (1616.3)
Design option utilized (1609.1.1, 1609.6)	Basic seismic force resisting system (1617.6.2)
Basic wind speed (1809.3)	Response modification coefficient, <sub>R</sub> , and
Building category and wind importance Factor,	deflection amplification factor <sub><math>Cd</math> (1617.6.2)</sub>
table 1604.5, 1609.5) The second seco	Analysis procedure (1616.6, 1617.5)
Internal pressure coefficient (ASCE 7)	Design base shear (1617.4, 16175.5.1)
Component and cladding pressures (1609.1.1, 1609.6.2.2)	Flood loads (1803.1.6, 1612) EXIST. (PIER)
Main force wind pressures (7603.1.1, 1609.6.2.1)	Flood Hazard area (1612.3)
Carth design data (1603.1.5, 1614-1623) N/A (PIER)	Elevation of structure
Design option utilized (1614.1)	Other loads
Seismic use group ("Category")	
Spectral response coefficients, SDs & SD1 (1615.1)	Concentrated loads (1607.4)
Site class (1615.1.5)	Partition loads (1607.5)

Building Inspections Division • 389 Congress Street • Portland, Maine 04101 • (207) 874-8703 • FACSIMILE (207) 874-8716 • TTY (207) 874-8936





