



PORTLAND MAINE

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Lee Urban - Director of Planning and Development
Jeanie Bourke - Inspections Division Director

*Reinspection
Billing
Letter*

July 9, 2007

PORT HOLE
16 CUSTOM HOUSE WHARF
PORTLAND, ME 04101

CBL: 030 A001001 /029 K001001
Located at 20 CUSTOM HSE WHF

Certified Mail 7003 3110 0002 6063 7469

Dear Proprietors Of Custom House,

The City Council passed the following amendment on May 17, 1999:

Sec 11-37. Inspection Performance Requirements:

All licensed Food Service Establishments shall be inspected annually on forms approved by the State of Maine Dept. of Health Engineering. Establishments which obtain a score between 77 and 84 may be inspected monthly until the establishment has achieved a score of 85 or above. Establishments with a score of 78 on two consecutive inspections shall be referred to the City Clerk for action pursuant to Chapter 15; provided, however, the foregoing shall not be construed to be a limitation on the authority of the City to refer violations to the City Clerk for action pursuant to Chapter 15.

COPY

Re-inspection fee for FSE: \$75.00 per re-inspection.

Since that date, the City of Portland Inspection Services Team has inspected the above Food Service Establishment on the following dates with the following results:

02/19/2004	83	06/07/2005	84	07/19/2005	81
08/19/2005	82	07/06/2007	66		

Based on this standard your establishment has been re-inspected. You now owe the City of Portland re-inspection fees. This fee must be paid within 30 days. Failure to pay the re-inspection fee will cause this office to notify the City Clerk for action pursuant to Chapter 15, including withholding future License renewals. Please feel free to contact me at 874-8703, if you wish to discuss.

Sincerely,

Suzanne Hunt @ (207) 874-8707
Building Inspector

030- A001 -

**Cogee Entertainment
16 Custom House Wharf
Portland , Maine 04101**

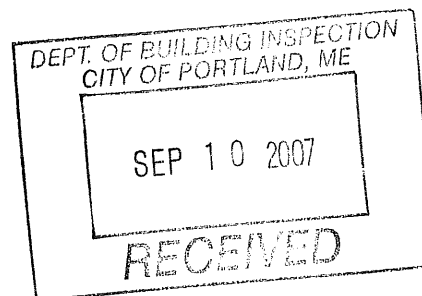
9/9/2007

Porthole Work Timeline

1. Clean, paint & fix holes in ceiling in kitchen by 9/30 / 07
2. Install new wall covers in kitchen by 10 / 15 / 07
3. fix floor tiles in kitchen by 10 / 15 / 07
4. Install 2nd layer of sheet rock (tape,mud,paint) by 1 / 17/ 08

Thank you,

Oliver Keithly



6-202.112 Living or Sleeping Quarters, Separation.

Living or sleeping quarters located on the PREMISES of a FOOD ESTABLISHMENT such as those provided for lodging registration clerks or resident managers shall be separated from rooms and areas used for FOOD ESTABLISHMENT operations by complete partitioning and solid self-closing doors.

6-3 NUMBERS AND CAPACITIES

6-301 Handwashing Facilities

6-301.10 Minimum Number.

Handwashing facilities shall be provided as specified under §5-203.11.

6-301.11 Handwashing Cleanser, Availability.

Each handwashing lavatory or group of 2 adjacent lavatories shall be provided with a supply of hand cleaning liquid, powder, or bar soap.

6-301.12 Hand Drying Provision.

Each handwashing lavatory or group of adjacent lavatories shall be provided with:

- (A) Individual, disposable towels;
- (B) A continuous towel system that supplies the user with a clean towel; or
- (C) A heated-air hand drying device.

6-301.13 Handwashing Aids and Devices, Use Restrictions.

A sink used for FOOD preparation or UTENSIL washing, or a service sink or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the handwashing aids and devices required for a handwashing lavatory as specified under §§6-301.11 and 6-301.12 and ¶ 5-501.16(C).

6-301.14 Handwashing Signage.

A sign or poster that notifies FOOD EMPLOYEES to wash their hands shall be provided at all handwashing lavatories used by FOOD EMPLOYEES and shall be clearly visible to FOOD EMPLOYEES.

6-301.20 Disposable Towels, Waste Receptacle.

A handwashing lavatory or group of adjacent lavatories that is provided with disposable towels shall be provided with a waste receptacle as specified under ¶ 5-501.16(C).

6-302 Toilets and Urinals

6-302.10 Minimum Number.

Toilets and urinals shall be provided as specified under §5-203.12 and as follows.

- (A) All licensed FOOD Establishments which have more than 12 seats shall provide at least one customer restroom. *Note: This includes food establishments licensed by the Department of Agriculture.*
- (B) FOOD Establishments licensed by the Department of Human Services which serve liquor shall provide facilities according to the following chart (Fixture count based on total number of persons, not number of males or number of females):

(C)

# persons	Male			Female	
	# toilets	# urinals	# lavatories	# toilets	# lavatories
1-50	1	1	1	1	1
51-150	2	1	1	2	1
151-300	3	2	2	4	2
Over 300	Add 1 for each additional 200 persons	Add 1 for each additional 150 persons	Add 1 for each additional 300 persons	Add 1 for each additional 200 persons	Add 1 for each additional 300 persons

COM. CONT. =
 women = 2 wc, 2 sink no floor drain
 men = 1 wc, 2 urinals, 1 sink w floor drain
 Pout hole =
 women = 2 wc & 1 hand sink
 men = 1 wc 2 urinals 1 hand sink

Maine Food Code 2001

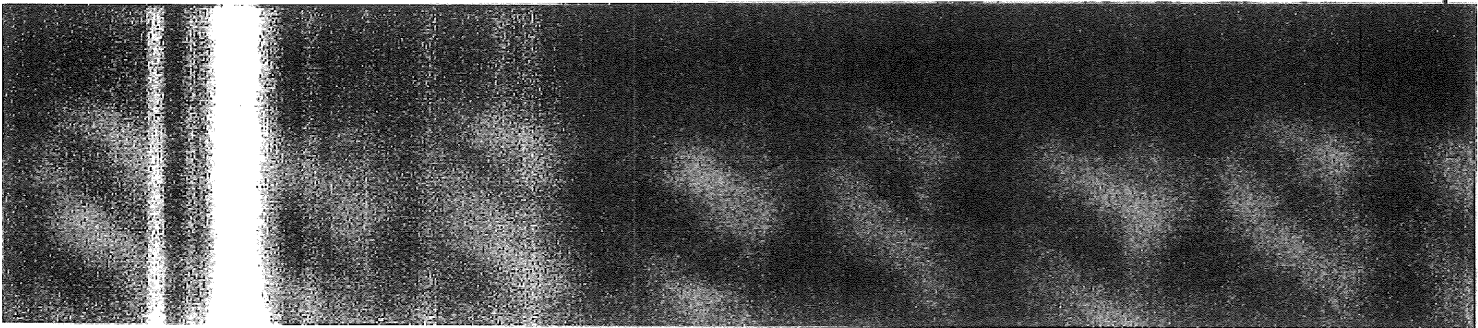
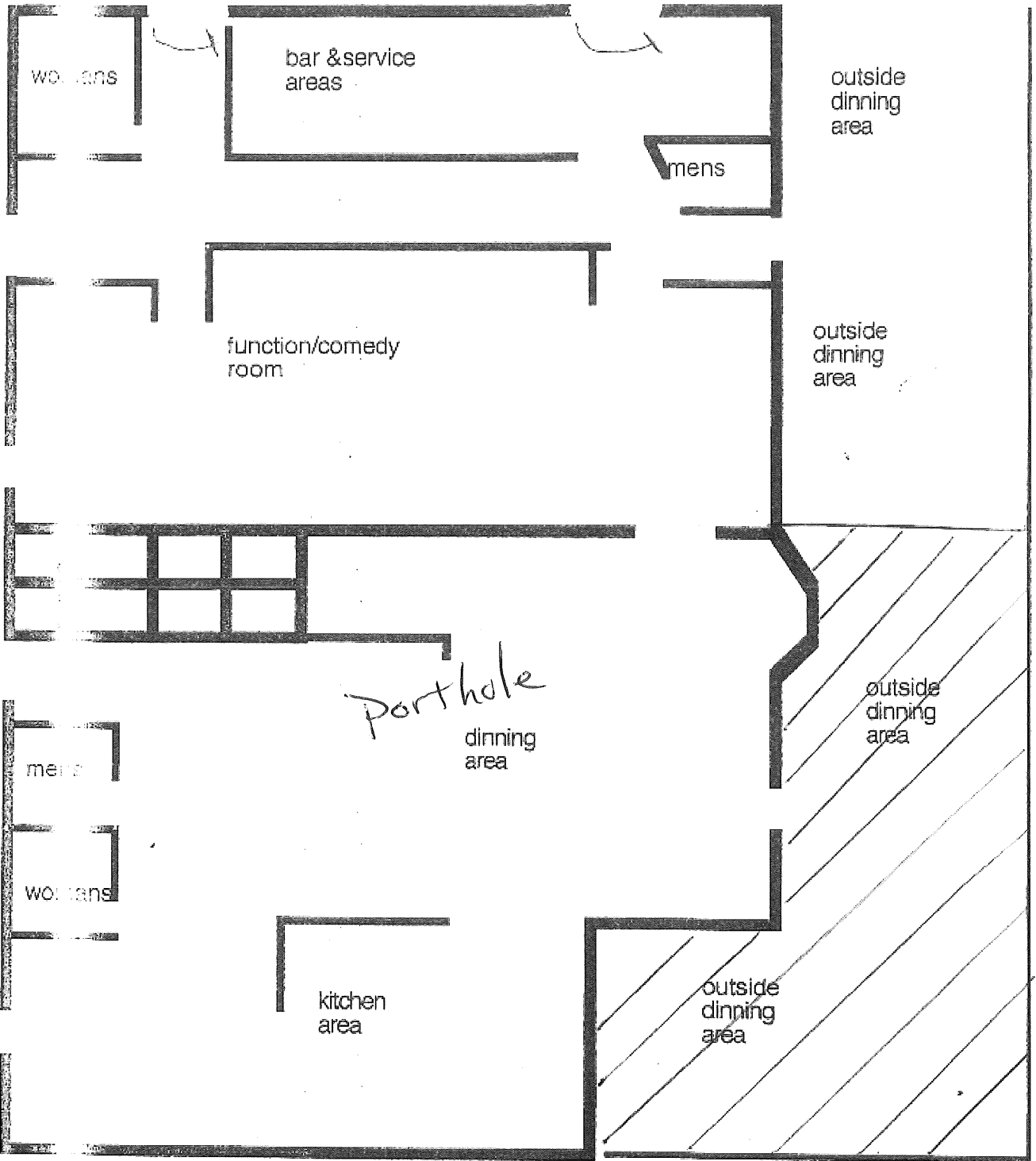
City State License = Col Restaurant
 157 Comedy
 SAM ? (4) M.

Attachment 1

1 Custom house wharf
Portland, Maine 04101

New Door

New Door



(2) **Grant the entertainment use for inside the buildings only.**

Outside entertainment uses are not allowed by the City's zoning in this area.

These recommendations and some of the background for them are stated in more detail in the April 10, 2008 letter (attached) that Penny and I sent to Mr. Oliver Keithly the owner of Cogee Entertainment, Inc. which owns, manages and operates the Comedy Connection and the Porthole Restaurant.

There is a lot more background and data available should the Council wish to review it but none of it supports either Mr. Keithly or Mr. Macgowan's claim that the uses are permitted or grandfathered in the areas outside of the buildings. In fact, the legal background and facts include formal denials of applications to permit these uses as far back as 1989 by the City's Board of Appeals and the denial of a contract zone application by the Planning Board in 2001.


As noted in our April 10, 2008 letter, staff does not oppose these particular uses in these locations; as a matter of law it is simply not up to staff to decide that issue. That is a decision that falls only within the jurisdiction of the Council under its zoning authority and the DEP under its statewide shoreland zoning authority. If and when the general zoning in this area is changed or a contract zone is approved, the applicant can reapply to use the outside area shown in this application.

GCW:tlb

Cc: Joe Gray
Linda Cohen
Tim Burton
Penny Littell
Jeannie Bourke
Chris Hanson
Alexandra Murphy
Oliver Keithly
James Cloutier, Esq.
Ken McGowen

CITY OF PORTLAND
MEMORANDUM

TO: Mayor and Council

FROM: Gary Wood 

DATE: June 5, 2008

RE: **Staff Recommendations Re: Application for Liquor, Food Service and Entertainment Licenses for Harbor's Edge, d/b/a The Comedy Connection and the Porthole Restaurant/Request for Outside Seating and Entertainment Use**

NB: The Council must act on the liquor license renewal application at the June 16th meeting or it will automatically be renewed under state law.

Staff recommends that the Council take the following action on this application:

- (1) **Grant the liquor license renewal application for inside the buildings and for outside service in a limited area for not more than 40 people as shown in the cross-lined section on Attachment 1, if the applicant has resolved two public safety issues.**

The public safety issues are the need for better fire separation and an additional toilet in the Porthole. The structures are otherwise safe for this use and there have been no issues raised by the Police Department.

Food and beverage service and consumption outside the building is not a permitted use under the current zoning nor has this applicant ever presented any clear facts to support its claim that these uses are grandfathered in the outside area sought to be licensed. Anecdotal evidence in the form of statements from various individuals is that when this area was used many years ago by the Casco Bay Island Transit some people did consume small amounts of food served through a window while waiting for one of the ferries. It was based upon that evidence that staff forged what it thought was a more than reasonable comprised agreement several years ago allowing the limited food and beverage consumption recommended for the outside area in this memo.

The area recommended by staff does not include a long raised deck next to the Comedy Connection (see Attachments 2 and 3) that has been used, apparently for several years for the service and consumption of alcohol served through beer taps that run through the wall of the building (Attachment 4).

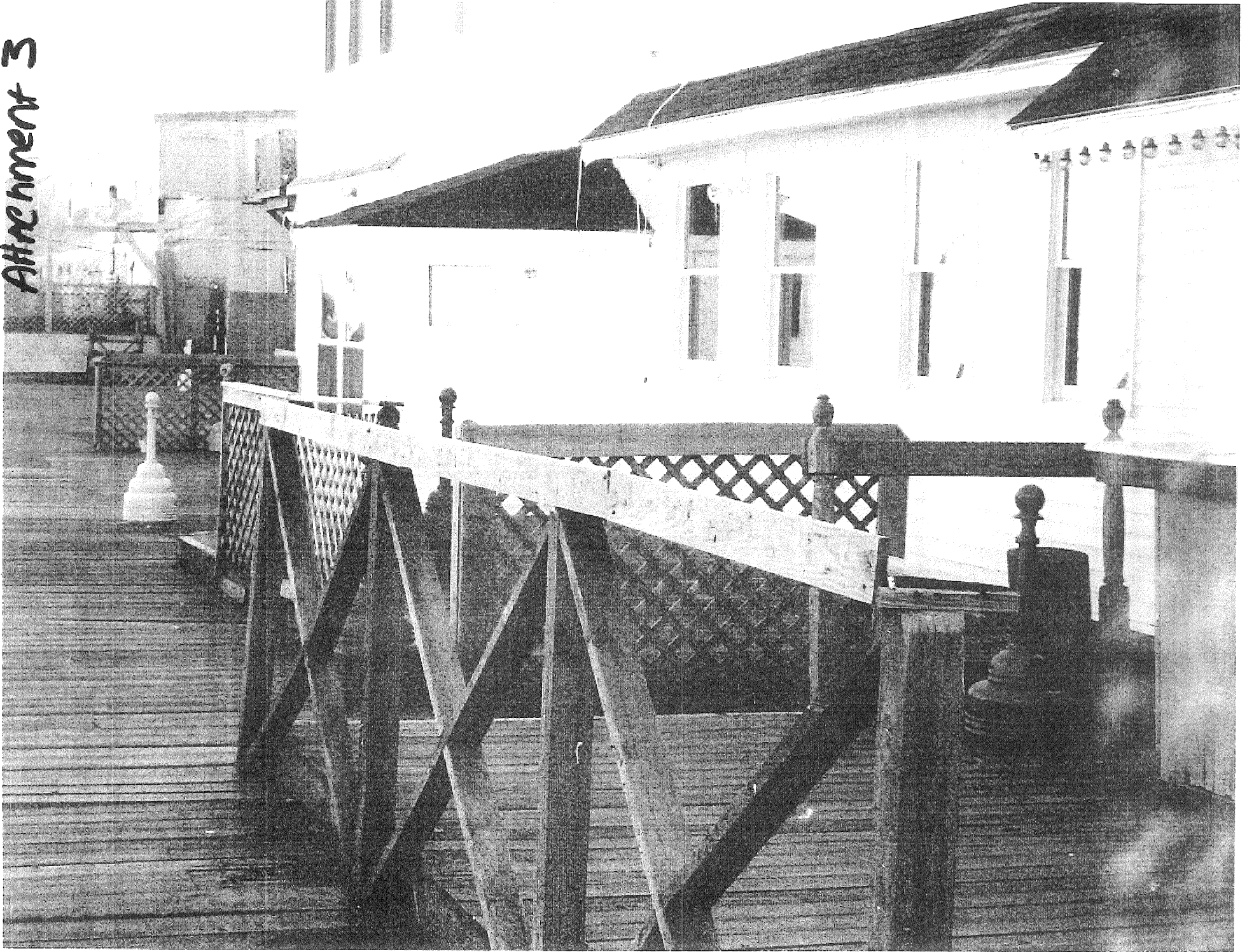
That use apparently started after Mr. Keithly submitted a liquor license application that included the outside area that was not part of the compromise and staff did not pick up the differences thus leading to the approval of the liquor license.

5/1/09



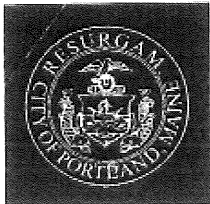
Attachment 2

Attachment 3



Attachment 4





PORTLAND MAINE

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Corporation Counsel
Gary C. Wace

07-185

Associate Counsel
Elizabeth L. Boynton
Penny Littell
James R. Adoff
Mary E. Costigan

April 10, 2008

Oliver Keithly
Cogee Entertainment, Inc.
96 Crestview Drive
South Portland, Maine 04106

RE: Application for Liquor, Food Service and Entertainment Licenses for Harbor's Edge, the Comedy Connection and the Port Hole Restaurant/ Request for Outside Seating and Entertainment Use

Dear Oliver:

The City's License Administrator, Alexandra Murphy, brought it to my attention that you recently filed a renewal application seeking a license that would allow both outside seating and entertainment on the walkway and deck area next to the Comedy Connection and the Porthole Restaurant (Class XI Restaurant/Lounge, Entertainment with Dance). She said that when she pointed out to you that outside seating was not going to be allowed for those uses that you were upset and somewhat angry.

I am at this point confused about your reaction and the application that you filed with Ms. Murphy. When you and your attorneys, and Mr. Macgowan and his attorney, met with me and City Attorney Gary Wood about two weeks ago I thought that the following points were very clear:

- (1) Outside entertainment uses are not allowed by the City's zoning in that area;
- (2) The outside use of a limited amount of area for a limited amount of food service may be permitted under a grandfathering concept once the City has reviewed the additional information that you and your attorney are putting together for us to review;
- (3) No outside use of those areas other than use for normal ingress and egress from the Comedy Connection and the Porthole Restaurant are to be allowed unless and until an engineering plan is created to render that area safe for such a use.

In that regard I have attached the letter dated January 2, 2008 from Wayne Duffett, P.E. to Mr. Ken Macgowan which clearly implies that without the creation and implementation of an engineering plan that the area in question could not possibly be safe for any other use because of the weight of people, tables, equipment, etc., engaged in outside dining or entertainment.

As part of our meeting, Gary and I agreed that in relation to grandfathering we will review the facts that you present along with whatever legal arguments and sources are provided. However, I thought that we all agreed that you need to address and get a decision from the Zoning Administrator, Marge Schmuckal, on what uses are permitted by the City's current zoning and our grandfathering clause before it makes sense for either you or the property owner to invest substantial sums of money in making the area outside of the Comedy Connection and the Porthole Restaurant safe for the uses that you are proposing. In that regard it seems to us that your best legal avenue for ultimate success is to approach both the Planning Board and the City Council for a contract zone, but if you do that please keep in mind that the current zoning restrictions in that area are also within the jurisdiction of the Department of Environmental Protection under the State's Shoreland Zoning law. DEP would therefore, in our opinion, have to also sign onto whatever proposed changes and use are part of the contract rezoning proposal.

William Needelman of our Planning Department is extremely well versed and familiar with the zoning in that area and the reasons for it in terms of both the DEP role and that of the City Council should you or Jim Cloutier have any questions.

I am sending this to you now because I do not want you to undertake activities that are clearly illegal under current zoning as that will result in prosecution by our office.

As we also said at the meeting, it is not within the authority of either our office or the Planning Department to allow the uses that have gone on illegally to continue nor do we have authority to approve them, even though we as individuals might have no personal objections or concerns about those uses. The approval that you need can only come from the City's legislative body which is the City Council, following a review and recommendation from the City's Planning Board.

My recommendation to you at this time is that you file an amended application with the License Administrator seeking a liquor license, food service license, entertainment license and any other licenses that you need for just the inside of the premises currently occupied by the Porthole Restaurant and the Comedy Connection. To the extent that we are able to resolve both the use issues and the safety issues related to the outside area, you can then file an application to add those areas to your existing licenses and we will bring them to the Council as quickly as possible for action.

Sincerely,



Penny Littell

Associate Corporation Counsel

Cc: Joe Gray, City Manager
Gary Wood, Corporation Counsel
Alexandra Murphy, License Administrator
Fred Lamontagne, Fire Chief
William Needelman, Planning
Chris Hanson, Inspections
James Cloutier, Esq.
Ed MacColl, Esq.

2 January 2008

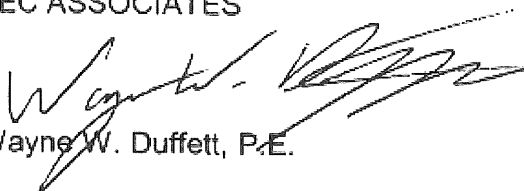
Mr. Ken Macgowan
18 Custom House Wharf
Portland, ME 04101

Re: Exterior Decks

Dear Ken:

This letter is to clarify my position on use of the east side exterior decks from bent 13 to bent 40 adjacent to Harbor's Edge, the Comedy Connection, and the Porthole Restaurant. This deck is presently adequate for normal ingress and egress from these businesses provided the entire area is kept free of snow load. This area does have a few poor piles that need to be addressed as part of normal maintenance prior to next summer.

Very truly yours,
TEC ASSOCIATES



Wayne W. Duffett, P.E.

DRAFT 6/21/00

030-A-001

Port Hole Restaurant Expansion Sequence of Events

Wharf Deck Repair

- April 14 Ken Macgowen, owner, applies for building permit for wharf deck repair
- April 16 Building and zoning review, approved, no expansion of deck
- April 19 Building permit issued
- April 20 -25 Inspections of work in progress, Sam Hoffses and Lt. MacDougall

Business License

- April 20 Oliver Keithly, owner of Port Hole, applies for new business license for Class XI FSE, Restaurant, Lounge, Entertainment w/Dance and outside seating
- April 21 City Clerks Office forwards application to Fire Department and Inspections
- April 25 Fire Department approval, sign-off
- April __ Inspections Office verbal approval to Clerks Office
- May 15 City Council Approves, Class XI FSE, Restaurant, Lounge, Entertainment w/ Dance - Covers both the Port Hole and Comedy Connection

Interior Pass-thru

- May 4 Oliver Keithly applies for building permit for interior pass-thru Comedy Connection to Port Hole.
- May 5 Building review, approved Sam Hoffses
- May 16 Zoning review of interior pass-thru, approved Marge Schmuckal
- May 16 Permit issued for pass-thru

Outside Dining Permit

- April 13 Oliver Keithly met with marge Schmuckal at City Hall to discuss what's allowed for outside dining.
- June 1 Oliver Keithly applies for outside dining permit, 3,500sf. (no bar or entertainment)
- June 2 Building, Zoning, Fire Department review and approval
- June 5 Permit issued
- June 16 Inspections Office orders Port Hole to stop functions on expanded outside function area.

TIMELINE FOR BOONE'S/COMEDY CONNECTION/PORHOLE RESTAURANT

Prior to July 1996 - 'Comedy Connection' does not exist at Custom House Wharf. 'Restaurants, Inc. (Thomas D. Stratis, Paul T. Stratis) d/b/a Boone's Restaurant' liquor license includes a 'Room B', otherwise known as 'Harborside Lounge' in the space later to be occupied by 'Comedy Connection'.

July 1996-May 2000 - 'Boone's Restaurant' liquor license includes 'Comedy Connection/Function Room' as part of licensed area.

May 15, 2000 - New Owner/Applicant Cogee Management & Entertainment, Inc. (Oliver Keithly, III) d/b/a Porthole Restaurant (formerly owned by Galco Enterprises, Inc./Don Hunnewell) receives City Council approval to amend 'Porthole Restaurant' liquor license to include 'Comedy Connection/Function Room' (8-0 - Councilor Geraghty out of room).

June 14, 2000 - 'Boone's Restaurant' applies for liquor license renewal. Application does not include 'Comedy Connection/Function Room' on application as being part of licensed premises.

CITY OF PORTLAND, MAINE
PLANNING BOARD

June 14, 2001

Mr. David A. Lourie
189 Spurwink Avenue
Cape Elizabeth, Maine 04107

Jaimy Caron, Chair
Deborah Krichels, Vice Chair
Kenneth M. Cole III
Cyrus Y. Hagge
Erin Rodriguez
Mark Malone
Orlando E. Delogu

RE: Porthole Contract Zone, Custom House Wharf
CBL: 30-A-001

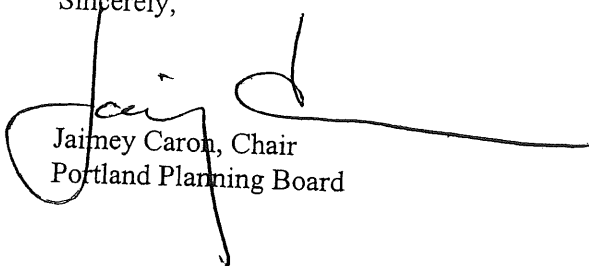
Dear Mr. Lourie:

On June 12, 2001, the Portland Planning Board voted 0-7 to recommend to the City Council a contract zone for a seasonal expansion of exterior seating for the Porthole Restaurant.

The negative recommendation is based on the submitted contract and the findings related to the Comprehensive Plan, the standards of the Waterfront Central Zone, Section 14-313.5 a, b, and c (no adverse impact on Marine Uses), and the standards of 14-315.3 a through i. (contract Rezoning), and as contained in Planning Report #14-01a, which is attached.

If there are any questions, please contact the Planning Staff.

Sincerely,


Jaimy Caron, Chair
Portland Planning Board

cc: Alexander Jaegerman, Chief Planner
William B. Needelman, Senior Planner
P. Samuel Hoffses, Building Inspector
Marge Schmuckal, Zoning Administrator
Penny Littell, Associate Corporation Counsel
Lt. Gaylen McDougall, Fire Prevention
Inspection Department
Lee Urban, Director of Economic Development
Don Hall, Appraiser, Assessor's Office
Susan Doughty, Assessor's Office
Approval Letter File

CC: Richard Knowland, Senior Planner
Mike Nugent, Inspections Service Manager
Marge Schmuckal, Zoning Administrator
Tony Lombardo, Project Engineer
Jay Reynolds, Development Review Coordinator
Larry Ash, City Traffic engineer
Nancy Knauber, Associate Engineer
Jeff Tarling, City Arborist
Penny Littell, Associate Corporation Counsel
Lt. Gaylen McDougall, Fire Prevention
✓ Inspections Department
Lee Urban, Director of Economic Development
Don Hall, Appraiser, Assessor's Office
Susan Doughty, Assessor's Office
Approval Letter