

31-J-3

2002-0027

184 Commercial St.
Restaurant Expansion
Bayview Seafood

on spreadsheet

**CITY OF PORTLAND, MAINE
DEVELOPMENT REVIEW APPLICATION
PLANNING DEPARTMENT PROCESSING FORM
DRC Copy**

2002-0027
Application I. D. Number

2/1/02
Application Date

Gef Lic
Applicant
Po Box 2808, South Portland, ME 04116
Applicant's Mailing Address
Bill Nemmers
Consultant/Agent
Agent Ph: 774-3683 Agent Fax: 761-2836
Applicant or Agent Daytime Telephone, Fax

Bayview Seafood
Project Name/Description
184 - 184 Commercial St, Portland, Maine
Address of Proposed Site
031 J030001
Assessor's Reference: Chart-Block-Lot

Proposed Development (check all that apply): New Building Building Addition Change Of Use Residential Office Retail
 Manufacturing Warehouse/Distribution Parking Lot Other (specify) expansion of restaurant

1250 sq ft
Proposed Building square Feet or # of Units Acreage of Site Zoning

Check Review Required:

- | | | | |
|--|---|--|--|
| <input checked="" type="checkbox"/> Site Plan
(major/minor) | <input type="checkbox"/> Subdivision
of lots _____ | <input type="checkbox"/> PAD Review | <input type="checkbox"/> 14-403 Streets Review |
| <input type="checkbox"/> Flood Hazard | <input type="checkbox"/> Shoreland | <input type="checkbox"/> Historic Preservation | <input type="checkbox"/> DEP Local Certification |
| <input type="checkbox"/> Zoning Conditional
Use (ZBA/PB) | <input type="checkbox"/> Zoning Variance | | <input type="checkbox"/> Other _____ |

Fees Paid: Site Plan \$400.00 Subdivision _____ Engineer Review _____ Date 2/1/02

DRC Approval Status:

Reviewer _____

- Approved Approved w/Conditions
See Attached Denied

Approval Date _____ Approval Expiration _____ Extension to _____ Additional Sheets
Attached

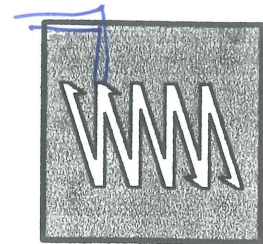
Condition Compliance _____ _____
signature date

Performance Guarantee Required* Not Required

* No building permit may be issued until a performance guarantee has been submitted as indicated below

- | | | | |
|---|----------------|--|-----------------|
| <input type="checkbox"/> Performance Guarantee Accepted | _____ | _____ | _____ |
| | date | amount | expiration date |
| <input type="checkbox"/> Inspection Fee Paid | _____ | _____ | |
| | date | amount | |
| <input type="checkbox"/> Building Permit Issue | _____ | | |
| | date | | |
| <input type="checkbox"/> Performance Guarantee Reduced | _____ | _____ | _____ |
| | date | remaining balance | signature |
| <input type="checkbox"/> Temporary Certificate of Occupancy | _____ | <input type="checkbox"/> Conditions (See Attached) | _____ |
| | date | | expiration date |
| <input type="checkbox"/> Final Inspection | _____ | _____ | |
| | date | signature | |
| <input type="checkbox"/> Certificate Of Occupancy | _____ | | |
| | date | | |
| <input type="checkbox"/> Performance Guarantee Released | _____ | _____ | |
| | date | signature | |
| <input type="checkbox"/> Defect Guarantee Submitted | _____ | _____ | _____ |
| | submitted date | amount | expiration date |
| <input type="checkbox"/> Defect Guarantee Released | _____ | _____ | |
| | date | signature | |

William Nemmers & Associates, Architects
368 Brighton Avenue
Portland, Maine 04102



February 2, 2002

Mr. Bill Needleman, Portland Planning Office
389 Congress Street
Portland, Maine 04101

Re: 184 Commercial Street - Fisherman's Wharf
CBL - 031-J-030

Dear Bill:

With this letter I am submitting the Site Plan Application for the Proposed development of this property. Included are (9) copies of the Application Packet which includes:

- a) the Application Form
- b) a Site Plan Application Cover letter from the Applicant
- c) a Conditional Use cover letter from the Applicant
- d) Exhibit #1 (page of 9 photos)
- e) Exhibit #2 (page of 4 photos)
- f) Exhibit #3 (photos of proposed front and rear doors)
- g) Exhibit #4 (copy of relevant ordinance)
- h) Letter from Maine Bank and Trust regarding financial capability
- i) a copy of the signed Letter of Intent for the rights to develop the property
- j) the required Written Statement
- k) the proposed Site Plan
- l) boundary survey

The purpose of both the Site Plan Review and the Change of Use applications is to gain the right to use the 1,250 square feet of existing deck space for exterior dining. These applications are required by Section 14-315 of the Code which governs the use of exterior decks in the Waterfront Central Zone. The site, including the deck area requested under this application, was developed for use as a dining deck in the past and has been used as such for several years before its status was questioned. This Application, along with the recent council action regarding the wording of Section 14-315, is designed to make this site compliant with the Code.

Sincerely,



William Nemmers

City of Portland Site Plan Application

If you or the property owner owes real estate or personal property taxes or user charges on any property within the City, payment arrangements must be made before permits of any kind are accepted.

Location/Address of Construction: <u>184 COMMERCIAL STREET</u>			
Total Square Footage of Proposed Structure <u>1250</u> (EXPANSION)		Square Footage of Lot	
Tax Assessor's Chart, Block & Lot Chart# Block# Lot# <u>031</u> <u>J</u> <u>030</u>		Property owner, mailing address: <u>G.E.F. LLC</u> <u>P.O. Box 2808</u> <u>S. PORTLAND, ME. 04116</u>	Telephone: <u>828-5136</u>
Consultant/Agent, mailing address, phone & contact person <u>BILL NEMERS (ARCHITECT)</u> <u>329-2048</u> <u>TIM BRYANT (ATTORNEY)</u> <u>791-3236</u>		Applicant name, mailing address & telephone: <u>THOMAS DANA</u> <u>P.O. Box 169</u> <u>PORTLAND, ME. 04112</u>	Project name: <u>BAYVIEW SEAFOOD</u>
Proposed Development (check all that applies) <input type="checkbox"/> New Building <input type="checkbox"/> Building Addition <input type="checkbox"/> Change of Use <input type="checkbox"/> Residential <input type="checkbox"/> Office <input checked="" type="checkbox"/> Retail <input type="checkbox"/> Manufacturing <input type="checkbox"/> Warehouse/Distribution <input type="checkbox"/> Parking lot <input type="checkbox"/> Subdivision, amount of lots _____ <input checked="" type="checkbox"/> Other: <u>EXPANSION OF RESTAURANT USE/RENOVATIONS</u> <u>"CONDITIONAL USE" - SECTION 14-315</u>			
Major Development _____ \$500.00		Minor Development <input checked="" type="checkbox"/> \$400.00	
Who billing will be sent to: Mailing address: <u>P.O. Box 169</u> State and Zip: <u>PORTLAND, ME. 04112</u> Contact person: <u>T. DANA</u> Phone: <u>671-5566</u>			

Nine (9) separate packets must include the following:

- a. copy of application
- b. cover letter stating the nature of the project
- c. site plan containing the information found in the attached sample plans check list

All plans must be folded neatly and in packet form

Section 14-522 of the Zoning Ordinance outlines the process, copies are available at the counter at .25 per page, you may also visit the web site: ci.portland.me.us chapter 14

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 of applicant: <u>Tom H. Dana</u>	Date: <u>1/30/02</u>
--	----------------------

This application is for site review ONLY, a building Permit application and associated fees will be required prior to construct

Thomas Dana

*P.O. Box 169 * Portland, Maine 04112
Tel: 207-775-2228 * Fax: 207-761-8280
Email: asiawest@aol.com*

Portland Planning Board
City of Portland
389 Congress Street
Portland, Maine 04101

January 30, 2001

Dear Members of the Planning Board,

As part of my "Site Plan" application, the following is a comprehensive explanation of our proposed renovation of Bayview Seafood:

- ◆ We propose to remove the sliding glass doors from the Commercial Street side and waterfront side of the building and replace them with commercial grade, vinyl windows to match the existing windows on the east side of the building (see exhibit 1 picture F). Because the new windows are smaller than the sliding doors presently on the building, a continuation of the existing cedar-shingle siding will be extended to fill the difference.
- ◆ We propose to remove the aluminum door which was recently added to the Commercial Street side of the building and replace it with a heavy, commercial grade, wooden door, which will be in keeping with the rustic feel of the building. (see exhibit 3).
- ◆ We propose to remove the window on the SW corner of the building (see exhibit 1 photo B) and replace it with the same commercial grade wooden door used in the front of the building.
- ◆ We propose to install a 12 inch, naturally-finished, wood (fir) counter along the railing which wraps the perimeter of the building. The counter will sit flush against the railing, 4 inches below the top. The counter will be similar to the one in existence already (see exhibit 1 photo H), except it will be smaller in depth, more sturdy, and more in keeping with the rustic feel of the building.

Thank you for your consideration.

Sincerely,



Tod Dana

Thomas Dana

*P.O. Box 169 * Portland, Maine 04112*

*Tel: 207-775-2228 * Fax: 207-761-8280*

Email: asiawest@aol.com

Portland Planning Board
City of Portland
389 Congress Street
Portland, Maine 04101

January 30, 2001

Dear Members of the Planning Board,

I am applying for expansion of my business at 184 Commercial Street (Bayview Seafood) under the "Conditional Uses" provision of city ordinance 14-315 section (C), which addresses "expansion of a non-water dependent, non-marine related use" (see exhibit 4). The following points relate directly to the four requirements of the aforementioned ordinance:

- ◆ With respect to the requirement in sub-section (1), Bayview Seafood is located less than 10 feet from the southerly side of Commercial Street.
- ◆ With respect to the requirement in subsection (2), our proposed expanded use will occupy exactly 1250 square feet.
- ◆ With respect to the requirements in sub-section (3), our present building size exceeds 500 square feet.
- ◆ With respect to the requirements in sub-section (4), I firmly believe that Bayview Seafood is in compliance with the requirements of the WCZ zone and this code.

As part of my "Conditional Use" appeal, the following is a comprehensive explanation of our proposed expansion of Bayview Seafood:

We propose to use 1250 square feet of the existing deck space in front of the restaurant for outdoor seating. We propose to use picnic tables, smaller than the ones in existence, laid out in what we believe to be a comfortable arrangement, designed with the idea of comfortable two-way flow of patrons. The enclosed drawing details the proposed layout of the tables and the parameters of the expanded deck (see exhibit 5). Instead of starting the

expansion directly in front of the restaurant, we propose to start our deck seating 25 feet beyond the front of the restaurant in order to provide a comfortable "right of way" for passengers moving on and off the tour boat, which has berthing in front of the deck (see exhibit 2 photos J,K,L,M).

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Tod Dana", written in a cursive style.

Tod Dana

Exhibit 1

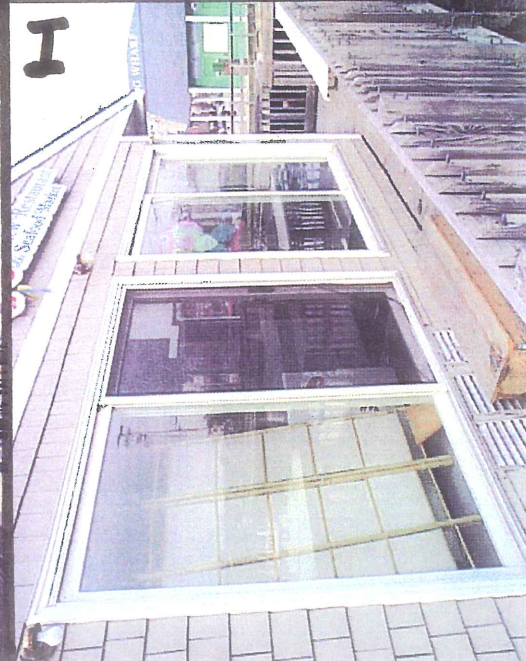
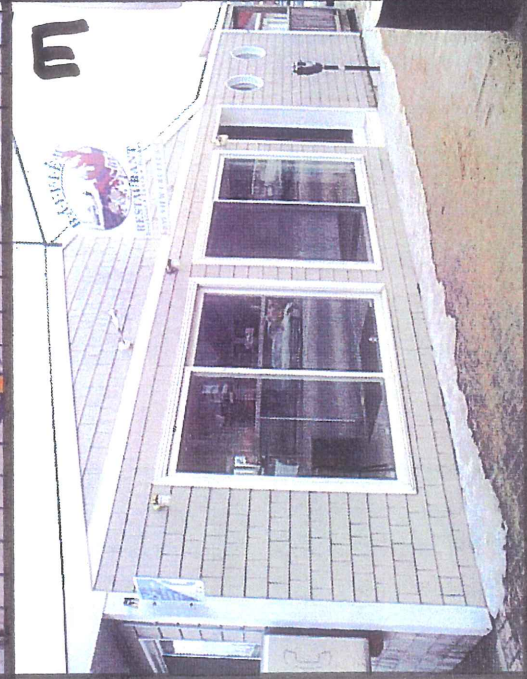
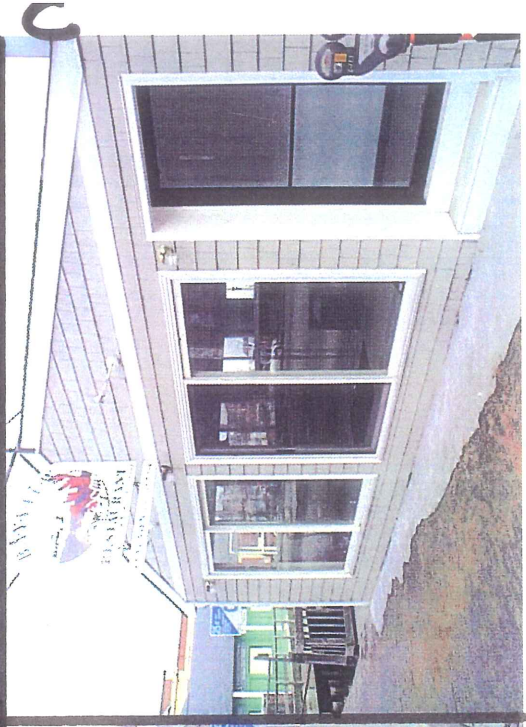




Exhibit 3



Exhibit 4

City of Portland
Code of Ordinances
Sec. 14-315

Land Use
Chapter 14
Rev. 12-3-01

valid rendering facility license under chapter 12; and

- b. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.

- (3) Boat rack storage facilities, provided that:

Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.

- (c) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier.) into contiguous and newly created building space of no more than 2000 sq. ft., total, shall be allowed only as follows:

- (1) the use may occupy ground floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or
- (2) the use may occupy a ground floor area of no more than 1250 square feet beyond 35 feet from the southerly sideline of Commercial Street; and
- (3) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and
- (4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

MAINE BANK & TRUST

January 31, 2002

Portland Planning Department
389 Congress Street
Portland, ME 04101

RE: Thomas H. Dana

Dear Sir/Maddam:

I am writing this letter as it relates to the above individuals application to the City of Portland Planning Department for a project on Commercial Street. Mr. Dana has been a customer of Maine Bank & Trust since March of 1992. During that time he has maintained an extensive borrowing and deposit relationship. It has been a pleasure working with Mr. Dana over the past ten years and we look forward to working with him on any new projects and developments that may arise now or in the future.

If you have any questions or need a credit reference, please feel free to call me at (207) 828-3150. Thank you.

Sincerely,



Stephen F. Oertel
Commercial Lender

cc: Thomas H. Dana

The Salty Lobster Company
P.O. Box 169
Portland, ME 04112

H.S.B.
T.D.
~~June 27, 2001~~
July 18, 2001

Hwa Sun Bae
29 Exchange Street
Portland, ME 04101

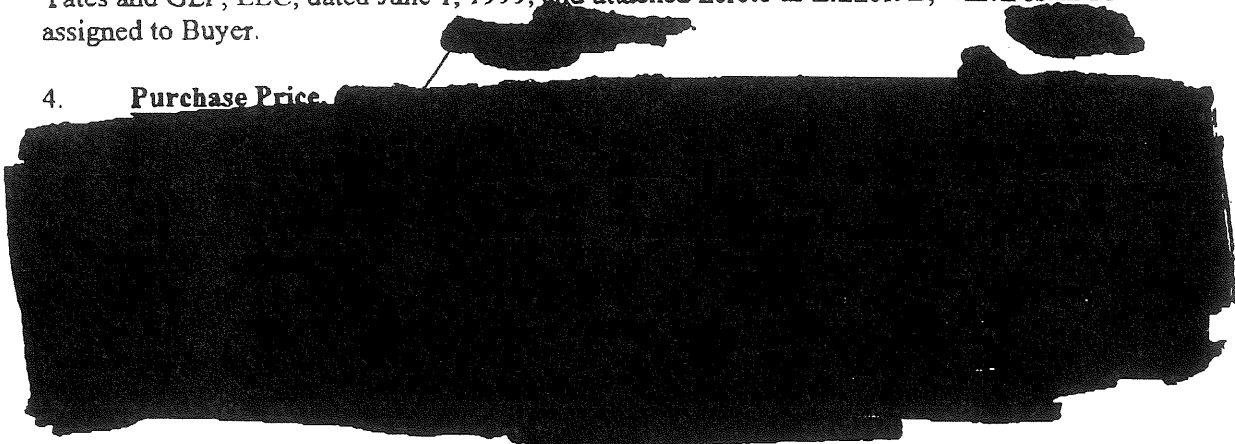
Re: Letter of Intent

Dear Ms. Bae:

The partnership doing business as The Salty Lobster Company ("Company") is pleased to offer to purchase your Assets defined in Paragraph 2 on the following revised terms and conditions:

1. **Buyer.** Buyer will be a company formed by Company.
2. **Seller.** Seller will be Hwa Sun Bae of Portland, Maine.
3. **Purchased Assets.** Company will purchase all of the tangible and intangible assets obtained by Seller from Richard Yates related to the Bayview Restaurant, located on 180 Commercial Street in Portland, Maine ("Premises"), and memorialized in an asset purchase agreement dated, November 20, 2000 and attached hereto as Exhibit A. Buyer shall not purchase or assume any of Seller's liabilities, with the exception of the Lease Agreement between Richard Yates and GEF, LLC, dated June 1, 1999, and attached hereto as Exhibit B, which shall be assigned to Buyer.

4. **Purchase Price.**



5. **Closing.** Buyer and Seller agree to use their best efforts to close the acquisition within sixty (60) days of the date of receipt, by the Buyer, of its outdoor seating application by all the applicable City of Portland authorities.

6. **Conditions.**

- a. Completion by ABC of a satisfactory due diligence investigation of the Acquired Assets and the aforementioned Lease Agreement, within 45 days after approval of outdoor seating permit;
- b. Landlord approval of Assignment of the aforementioned Lease Agreement to ABC;
- c. Approval by the City of Portland and the City of Portland Planning Board of Buyer's Applications/Petitions for, among other things, a permit for outdoor seating;
- d. Negotiation of an Asset Purchase Agreement satisfactory to both parties, containing, among other things, representations and warranties, covenants, indemnities and other terms and conditions customary in corporate acquisition, including, without limitation, a non-competition agreement, hold harmless agreement, within 45 days after completion of subsection c;
- e. The absence of any material adverse change between June 19, 2001 and the Closing in the Purchased Assets;
- f. The obtainment of sufficient financing by Buyers to fund the Asset Purchase Agreement and to operate the newly created company, within 45 days after completion of subsection c;
- g. The furnishment of all existing utility agreements and insurance policies on the Premises within 45 days after completion of subsection c;
- h. The filing of Buyer's application for outdoor seating with the City of Portland within forty five (45) days of the date of this Letter of Intent; and
- i. Approval by the City of Portland of a building permit and outdoor signage within 45 days after completion of subsection c.

7. **Access to Information.** Immediately following acceptance of this Letter of Intent, Seller will provide Buyer and its representative's access to any and all documentation and/or information to enable Buyer to complete its due diligence investigation.

8. **Expenses.** Each party will pay its own expenses and costs incidental to the completion of the acquisition, including legal and accounting fees.

9. **Brokerage.** It is understanding of both parties that there are no brokers involved in this transaction. Nevertheless, the parties agree to indemnify each other against any claims for brokerage commissions asserted as a result of any action by the indemnifying party.

10. **Cooperation and Exclusive Dealing.** Parties agree to cooperate in good faith and move expeditiously in the preparation of the documents and the taking of other actions necessary to carry out the acquisition. Seller agrees not to offer to sell its stock, assets or business to any other person or entity and not to negotiate or accept any agreement for the sale of all or any part of its stock, assets or any part of Seller's assets or business on or before Closing or such earlier date as the parties mutually agree that a definitive Asset Purchase Agreement cannot be reached and/or if Buyer's application for outdoor seating is denied by the City of Portland.

11. **Non-Disclosure: Publicity.** Each party agrees that it will not, without the prior written consent of the other party, disclose publicly or to any third party, the terms and conditions of this offer or the subsequent negotiations between the parties, except to the extent required by law or as may be required by the Company in connection with its financing arrangements, for the acquisition.

12. **Non-Binding Agreement.** The Letter of Intent is intended to provide a basis for the preparation of a definitive asset purchase agreement. Until such agreement has been prepared and duly authorized, executed and delivered by each of the parties, none of the provisions of this letter shall be binding on either party with the exception of the agreements and obligations contained in paragraphs 7 through 12.

T.D.
August 1, 2001 H.S.B

13. **Acceptance.** This offer may be accepted in writing by Seller until ~~June 22, 2001~~, but will terminate if not accepted by the close of business on that date.

14. **Counterparts.** This Letter of Intent may be executed in one or more counterparts, including execution by facsimile transmission, each of which shall be deemed to be an original copy of this Letter of Intent and all of which, when taken together, will be deemed to constitute one and the same agreement.

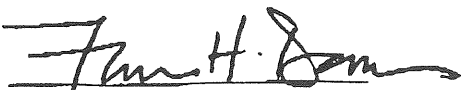
15. **Plans.** If Buyer fails to receive approval of the required permits and/or decides not to Close, then a copy of all architectural drawings and sites plans used to apply for the permits referenced in this Letter of Intent shall be given to Seller.

If the foregoing is satisfactory to you, please evidence your acceptance of this offer by signing and returning to us the enclosed copy of this Letter of Intent. It is understood that upon your acceptance, this letter will constitute a Letter of Intent to negotiate in good faith to complete a definitive Asset Purchase Agreement and a Closing on the terms set forth above.

Sincerely,

Buyer:

Seller:



Thomas H. Dana
(d/b/a The Salty Lobster Company)

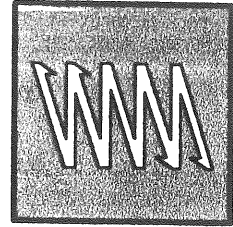


Hwa Sun Bae

Dated: 6/27/01

Dated: 7-18-01

**Bayview Seafood - Fisherman's Wharf
Minor Site Plan Review
Written Statement**



February 2, 2002

Name of Property Owner: The Property Owner is G.E.F. LLC; P.O. Box 2808, Portland, 04116

Name of Applicant: The Applicant is Thomas Dana, P.O. Box 169, Portland, 04112

Estimated Cost of Development: \$40,000 including equipment, and renovation

Item #1: Description of Proposed Uses: The Applicant is proposing to use the Property as a seafood restaurant. The current and past use was the same - a seafood restaurant. No major changes or constructions are proposed. Door and window replacement, material upgrades, and painting are the major areas of work involved. A Change-of-Use is required for the existing 1,250 square foot exterior deck area as per Section 14-315.

Item #2: Areas: The Applicant will be leasing a certain portion of the overall Fisherman's Wharf property. The leased areas will include a 945sf restaurant building, (2) storage buildings of approximately 90sf each, 1,250 sf of exterior dining area and additional walkways and decks, as shown on the Plan.

Item #3: Easements: The area leased to the Applicant includes certain undetermined areas that the Property Owner will utilize to access the ramp/gangplank to service the existing tour boat business. The lease permits the Property Owner to utilize these portions of the site.

Item #4: Solid Waste: Solid waste will be temporarily stored in the existing enclosed area designed for that purpose.

Item #5: Off-site Utilities: All utilities are existing and will not be changed. The sewer and water services were designed for a restaurant operating with the deck and have been operating as such for the last several years.

Item #6: Surface drainage: No changes in the surface drainage are being proposed. Currently any rainwater drains directly into the harbor.

Item #7: Construction sequence: No construction is proposed other than cosmetic work. This work is anticipated to start in the spring so as to be ready for the summer season.

Item #8: State & Federal approvals: No State or Federal approvals are required for the development of this project.

Item #9: Evidence of financial capacity: A letter indicating the financial capacity of the Applicant is included in the packet.

Item #10: Right Title or Interest: The Applicant and the Property Owner have negotiated a letter-of-intent to lease the Space subject to the approval of the Planning Board.

Item #11: Unusual site characteristics: The unusual characteristic of this site is that it is an existing facility which has been operating precisely as the Applicant is proposing. The use of the 1,250sf exterior deck area must be legitimized by this Approval.

Item #12: Drawings: Appropriate site drawings are included in the Application Packet. The development plan is available in electronic form, however the boundary survey is not.

Item #13: Recyclable description: The existing enclosed area for refuse is 6ft by 14ft and includes areas for cardboard and oil, as well as normal trash dumpster.

From: Marge Schmuckal
To: Barbara Barhydt
Date: 11/1/2006 2:17:56 PM
Subject: 184 Commercial St - Walk-up ATM

Barbara,

This memo is in regards to our site plan completeness check concerning 184 Commercial Street. The WCZ Zone does not allow a new structure for a bank/walk-up ATM as proposed. Since this zoning use is not allowed in the WCZ Zone, I have denied this proposal.

The applicant always has the right to appeal my decision (within 30 days). However, a use variance would be a very, very difficult appeal to have granted.

Marge Schmuckal
Zoning Administrator

Justin Flannery

- gave check + plans back on
11/7/06

From: Barbara Barhydt
To: Steve Bushey
Date: 11/1/2006 3:22:17 PM
Subject: Fwd: 184 Commercial St - Walk-up ATM

Hi Steve:

I am forwarding Marge Schmuckal's e-mail to you. The proposed ATM is not permitted in the WCZ zone, so we cannot process the site plan application and we will refund the application fees. As Marge states in her e-mail, your client can seek an appeal within 30 days.

Please contact us with any questions.

Thank you.

Barbara

Barbara Barhydt, Acting Development Review Manager
Department of Planning and Development
389 Congress St.
Portland, ME 04101

207-874-8699
bab@portlandmaine.gov

>>> Marge Schmuckal 11/1/2006 2:17:56 PM >>>
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Marge Schmuckal
Zoning Administrator

CC: Alex Jaegerman ; Lee Urban; Marge Schmuckal; Penny Littell

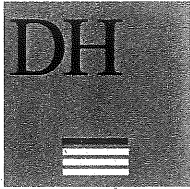
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Marge Schmuckal
Zoning Administrator



DeLUCA-HOFFMAN ASSOCIATES, INC.
CONSULTING ENGINEERS

778 MAIN STREET
SUITE 8
SOUTH PORTLAND, MAINE 04106
TEL. 207 775 1121
FAX 207 879 0896

- SITE PLANNING AND DESIGN
- ROADWAY DESIGN
- ENVIRONMENTAL ENGINEERING
- PERMITTING
- AIRPORT ENGINEERING
- CONSTRUCTION ADMINISTRATION
- TRAFFIC STUDIES AND MANAGEMENT

October 20, 2006

Ms. Sarah Hopkins
Development Review Coordinator
City of Portland Planning Authority
Portland City Hall
389 Congress Street
Portland, Maine 04103

Subject: Application for Site Plan Review
184 Commercial Street – Walk up ATM
Owner – GEF LLC
Applicant – Justin Flannery - A&T Investments

Dear Sarah:

DeLuca-Hoffman Associates, Inc. has prepared a submission package for a minor Site Plan Review on behalf of Justin Flannery of A&T Investments. Mr. Flannery and the property owner, GEF LLC owner of the property, have entered into an agreement with Tri-State ATM to place a walk up ATM machine kiosk along the Commercial street frontage. The ATM is intended to provide walk up ATM services only and will not be accessible to vehicular traffic.

The proposed project will be located on the 2.30-acre parcel (Tax Map 31 Block J Lot 31) off Commercial Street. The project site is located in the WCZ, Waterfront Central Zone. The proposal currently involves no exterior site modifications or improvements other than the placement of the ATM structure within an area currently paved and seasonally occupied by a street vendor. The location will require only a simple power feed off the existing overhead power passing over the location. The accompanying photographs depict the site location.

The ATM location is situated conveniently near a crosswalk and sidewalk on Commercial Street thus allowing easy access for pedestrians walking in the area. The location will not allow any vehicular access due to the location of existing guardrails etc.

The ATM specifications are currently contemplated to follow the attached figures. The applicant will be teaming with Tri-State ATM of Windham for the placement of an enclosed ATM structure. The structure will include a glass paneled exterior housing with a security entry door access to the ATM inside the space. The applicant is proposing an enclosed ATM to address weather and security issues associated with the location. A small canopy overhangs the structures exterior wall and will contain security lighting for ATM users.

Ms. Sarah Hopkins
October 20, 2006
Page 2

The following statements are provided in accordance with Section 14-525 (c):

- (1) The proposed use will be for a free standing ATM enclosure providing walk up service only along Commercial Street in the vicinity of Chandler's Wharf and Widgery Wharf. The enclosure will occupy a little over a 60 SF area.
- (2) The project parcel size is 2.30 acres and the ATM is expected to occupy approximately 60 SF.
- (3) The accompanying plan depicts multiple right of ways and existing easements associated with the property. The proposed ATM will occupy a small corner of an existing paved area. No further easements are proposed as part of this application.
- (4) The project will generate a very minor amount of solid waste. This will consist primarily of paper waste that will be regularly collected and disposed of by the owner as normal household type waste.
- (5) The ATM will not require water or sewer service. A single phase power service will be extended into the structure from a nearby service line.
- (6) The project will maintain the existing drainage patterns that currently exist on site. The site area is currently entirely paved, therefore there will be no increase in stormwater runoff. There is an existing collection system of pipes and catch basins within Commercial Street serving the general site area.
- (7) An Erosion Control Plan has not been prepared since no major exterior modifications to the site are proposed. The ATM will be a prefabricated enclosure that will require only minor disturbance to the existing ground surface.
- (8) The project is subject to a minor Site Plan review by the Portland Planning Authority and a Building Permit(s) by the Code Enforcement Office. No other permits are required.
- (9) A copy of the property deed as recorded at the CCRD Book 11,357, Page 244 will be provided for the Planning Authority records.
- (10) The site contains no unusual natural areas, wildlife or fisheries habitats or archaeological sites.
- (11) DeLuca-Hoffman Associates, Inc. can provide CADD.DXF files to the department upon final approval of the plan.
- (12) The proposed project will generate little to no amount of recyclable materials.

Ms. Sarah Hopkins
October 20, 2006
Page 3

We trust these statements and the supporting application plans and materials satisfy the City's requirements and we look forward to Planning Authority review and approval of the project. Please contact this office with any staff questions and concerns.

Sincerely,

DeLUCA-HOFFMAN ASSOCIATES, INC.



Stephen R. Bushey, PE
Senior Engineer

SRB/JN2704/Hopkins-10-20-06

Enclosures

c: Justin Flannery



City of Portland Site Plan Application

If you or the property owner owes real estate taxes, personal property taxes or user charges on any property within the City, payment arrangements must be made before permit applications can be received by the Inspections Division.

Address of Proposed Development: 184 Commercial Street		Zone: WCZ
Existing Building Size: N/A sq. ft.	Proposed Building Size: 60 sq. ft.	
Existing Acreage of Site: 2.30 AC. sq. ft.	Proposed Acreage of Site: 2.30 AC. sq. ft.	
Tax Assessor's Chart, Block & Lot: Chart# 31 Block# J Lot# 31	Property owner's mailing address: GEF LLC P.O. Box 2808 Portland, ME 04116	Telephone #:
Consultant/Agent, mailing address, phone # & contact person: Deluca-Ihffman Associates 778 MAIN STREET SOUTH PORTLAND, ME 04106 207-775-1121 ATTN: STEVE BUSHBY	Applicant's name, mailing address, telephone #/Fax#/Pager#: JUSTIN FLANNERY STOP & SHOPPE FOOD MART 270 RIVERSIDE ST. PORTLAND, ME 04103 TEL# 207-415-0078	Project name: ATM

Fee For Service Deposit (all applications) X (\$200.00)

Proposed Development (check all that apply)

New Building Building Addition Change of Use Residential Office Retail

Manufacturing Warehouse/Distribution Parking lot

Subdivision (\$500.00) + amount of lots (\$25.00 per lot) \$ + major site plan fee if applicable

Site Location of Development (\$3,000.00)
(except for residential projects which shall be \$200.00 per lot)

Traffic Movement (\$1,000.00) Storm water Quality (\$250.00)

Section 14-403 Review (\$400.00 + \$25.00 per lot)

Other

Major Development (more than 10,000 sq. ft.)

Under 50,000 sq. ft. (\$500.00)

50,000 - 100,000 sq. ft. (\$1,000.00)

Parking Lots over 100 spaces (\$1,000.00)

100,000 - 200,000 sq. ft. (\$2,000.00)

200,000 - 300,000 sq. ft. (\$3,000.00)

Over 300,000 sq. ft. (\$5,000.00)

After-the-fact Review (\$1,000.00 + applicable application fee)

Minor Site Plan Review

Less than 10,000 sq. ft. (\$400.00)

After-the-fact Review (\$1,000.00 + applicable application fee)

Plan Amendments

Planning Staff Review (\$250.00)

Planning Board Review (\$500.00)

~ Please see next page ~

Who billing will be sent to: (Company, Contact Person, Address, Phone #)

Justin Flannery
Stop & Shoppe Food MART
270 Riverside Street
Portland, ME 04103
Tel. 207-415-0048

Submittals shall include (9) separate **folded** packets of the following:

- a. copy of application
- b. cover letter stating the nature of the project
- c. site plan containing the information found in the attached sample plans checklist
- d. 1 set of 11 x 17 plans

Amendment to Plans: **Amendment applications should include 9 separate packets of the above (a, b, & c)**

ALL PLANS MUST BE FOLDED NEATLY AND IN PACKET FORM

Section 14-522 of the Zoning Ordinance outlines the process which is available on our web site: portlandmaine.gov

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 of applicant:

Steph Bury agent

Date:

10/20/06

This application is for site review ONLY; a building Permit application and associated fees will be required prior to construction.



City of Portland, Maine Site Plan Checklist

ATM- 184 Commercial Street
 Project Name, Address of Project
 Number

Application

Submitted () & Date (b,c)	Item	Required Information	Section 14-525
_____	(1)	Standard boundary survey (stamped by a registered surveyor, at a scale of not less than 1 inch to 100 feet and including:	1
_____	(2)	Name and address of applicant and name of proposed development	a
_____	(3)	Scale and north points	b
_____	(4)	Boundaries of the site	c
_____	(5)	Total land area of site	d
_____	(6)	Topography - existing and proposed (2 feet intervals or less)	e
_____	(7)	Plans based on the boundary survey including:	2
_____	(8)	Existing soil conditions	a
_____	(9)	Location of water courses, marshes, rock outcroppings and wooded areas	b
_____	(10)	Location, ground floor area and grade elevations of building and other structures existing and proposed, elevation drawings of exterior facades, and materials to be used	c
_____	(11)	Approx location of buildings or other structures on parcels abutting the site	d
_____	(12)	Location of on-site waste receptacles	e
_____	(13)	Public utilities	e
_____	(14)	Water and sewer mains	e
_____	(15)	Culverts, drains, existing and proposed, showing size and directions of flows	e
_____	(16)	Location and dimensions, and ownership of easements, public or private rights-of-way, both existing and proposed	f
_____	(17)	Location and dimensions of on-site pedestrian and vehicular access ways	g
_____	(18)	Parking areas	g
_____	(19)	Loading facilities	g
_____	(20)	Design of ingress and egress of vehicles to and from the site onto public streets	g
_____	(21)	Curb and sidewalks	g
_____	(22)	Landscape plan showing:	h
_____	(23)	Location of existing proposed vegetation	h
_____	(24)	Type of vegetation	h
_____	(25)	Quantity of plantings	h
_____	(26)	Size of proposed landscaping	h
_____	(27)	Existing areas to be preserved	h
_____	(28)	Preservation measures to be employed	h
_____	(29)	Details of planting and preservation specifications	h
_____	(30)	Location and dimensions of all fencing and screening	i
_____	(31)	Location and intensity of outdoor lighting system	j
_____	(32)	Location of fire hydrants, existing and proposed	k
_____	(33)	Written statement	c
_____	(34)	Description of proposed uses to be located on site	1
_____	(35)	Quantity and type of residential, if any	1
_____	(36)	Total land area of the site	b2
_____	(37)	Total floor area and ground coverage of each proposed building and structure	b2
_____	(38)	General summary of existing and proposed easements or other burdens	c3
_____	(39)	Method of handling solid waste disposal	4
_____	(40)	Applicant's evaluation of availability of off-site public facilities, including sewer, water and streets	5
_____	(41)	Description of any problems of drainage or topography, or a representation that there are none	6
_____	(42)	An estimate of the time period required for completion of the development	7
_____	(43)	A list of all state and federal regulatory approvals to which the development may be subject to. **	8

_____	(44)	The status of any pending applications	8
_____	(45)	Anticipated timeframe for obtaining such permits	h8
_____	(46)	A letter of non jurisdiction	h8
_____	(47)	Evidence of financial and technical capability to undertake and complete the development including a letter from a responsible financial institution stating that it has reviewed the planned development and would seriously consider financing it when approved.	

**** If project consists of soil disturbance of over one acre, a Maine Construction General Permit is required from the Maine Department of Environmental Protection.**

Note: Depending on the size and scope of the proposed development, the Planning Board or Planning Authority may request additional information, including (but not limited to):

- drainage patterns and facilities;
 - erosion and sedimentation controls to be used during construction;
 - a parking and/or traffic study;
 - emissions; and
 - a wind impact analysis.
- an environmental impact study;
 - a sun shadow study;
 - a study of particulates and any other noxious
 - a noise study;

Other comments:

**CITY OF PORTLAND, MAINE
SITE PLAN CHECKLIST**

If a provision is not applicable, put "NA"

Section 1. Development Description

- 1.0 A. Narrative
 - 1. Objectives and details
 - 2. Total land area
 - 3. Total floor area
- 1.1 B. Easements/Right-of-Way Statement
 - 1. Location of existing
 - 2. Location of proposed
- N/A C. Natural Resources
 - 1. NRPA setbacks
- 1.3 D. Subsurface Conditions
 - 1. USDA Medium Intensity Soils Statement
 - 2. National Wetland Inventory Statement
- 1.4 E. Infrastructure
 - 1. Sewer Availability
 - 2. Water Availability
 - 3. Right-of-Way
- 1.5 F. Construction Plan
 - 1. Outline of construction sequence
 - 2. Dates
- 1.6 G. Figures, Plates and Drawings

Section 2. Title, Right or Interest (copy of document)

Section 3. Financial Capacity

- N/A A. Estimated costs
- B. Financing
 - 1. Letter of commitment to fund
 - 2. Self-financing
 - a. Annual report
 - 3. Bank statement

Section 4. Technical Ability (description)

- 4.0 A. Prior experience (statement)
- B. Personnel (documents)

5.0 **Section 5. Unusual Natural Areas, Wildlife and Fisheries and Archaeological Sites**

6.0 **Section 6. Review Criteria for Site Plan Approval**

Section 7. Solid Waste

- 7.0 A. Narrative
- 7.1 B. Solid wastes during construction
- 7.2 C. Solid wastes during operation of development
- N/A D. Computations

Section 8. Surface Drainage and Runoff

- 8.0 A. Introduction
 - 1. Existing conditions
 - 2. Proposed conditions
 - 3. Stormwater runoff analysis
 - 4. Conclusion

B. Maps

- _____ 1. DeLorme location map with site boundaries
- _____ 2. SCS soils map with site boundaries
- _____ 3. NWI map with site boundaries
- _____ 4. Aquifer map with site boundaries
- _____ D. Postdevelopment drainage plan
- _____ E. Runoff analysis (predevelopment and postdevelopment)
 - _____ 1. Curve number computations
 - _____ 2. Time of concentration calculations
 - _____ 3. Travel time calculations
 - _____ 4. Peak discharge calculations
 - _____ 5. Reservoir routing calculations

N/A **Section 9. Temporary and Permanent Erosion and Sediment Control**

N/A **Section 10. Landscape Plan**

SECTION 1

DEVELOPMENT DESCRIPTION

1.0 Overview

The property owner, GEF LLC along with Justin Flannery of A&T Investments propose to install and operate a self enclosed walk up ATM machine at the corner of the existing Fisherman's Wharf Parking lot off Commercial Street. The existing development consists of public parking for the Commercial Street area. The proposed development consists solely of the placement of a new ATM enclosure for pedestrian use along the street. No other exterior site development activities are currently proposed. The site location is currently a paved area that has been seasonally used by a street vendor as evidenced in the accompanying photographs.

1.1 Existing and Proposed Easements/Rights-of-Way

No new easements are anticipated as part of this proposed project. The City's assessing maps indicate the presence of several right-of-ways into the site along the Commercial Street frontage.

1.2 Natural Resources

There are no known natural resource areas within the project vicinity.

1.3 Subsurface Conditions

According to the Medium Intensity Soil Survey for Cumberland County, the development site consists of the following soil(s):

Cu – Cut and Fill Land

Based on the existing development activity we assume that the proposed use can be satisfactorily supported by the underlying soils. Rock removal is not required for the current proposal.

1.4 Infrastructure

The proposed development requires the following infrastructure measures:

- Single Phase power and a telephone line connection.

1.5 Construction Plan

Table 1.1 – The proposed schedule developed for this project is as follows:	
Item	Buildings
Local Site Plan	November 2006
Building Occupancy	December 2006

1.6 **Figures, Plates and Drawings**

Figure	Description
1	USGS Location Map
2	Zoning Map
3	Tax Assessor's Map

Plan Sheets	Description
1	Existing Conditions/Site Layout Plan

SECTION 2

TITLE, RIGHT AND INTEREST

2.0 Overview

GEF LLC owns the property. GEF LLC and T&A Investments have entered into an agreement with Tri-State ATM for the placement and operation of the ATM machine. Evidence of these conditions accompanies this application in attachment A.

SECTION 3

FINANCIAL CAPACITY

3.0 Overview

The project does not involve significant funding needs as the property has been previously purchased and the infrastructure will remain as it currently exists. No further evidence for financial capacity appears warranted.

SECTION 4

TECHNICAL ABILITY

4.0 Overview

GEF LLC currently owns the property and manages its operation and maintenance. Maintenance is routinely performed on the buildings and exterior areas are plowed or maintained as necessary. Maintenance of the proposed ATM building will be performed by GEF and Tri-State ATM.

SECTION 5

UNUSUAL NATURAL AREAS, WILDLIFE AND FISHERIES HABITATS OR ARCHAEOLOGICAL SITES

5.0 Overview

The existing development has been in existence for a substantial period of time; hence, no impacts to unusual natural areas, habitats or historic sites will result from the proposed project.

SECTION 6

REVIEW CRITERIA

City of Portland, Maine Standards Requirements for Site Approval

6.1 Provisions for Traffic and Pedestrian Circulation Both On and Off The Site

The development proposal includes the installation of the walk up ATM machine for specific use by pedestrian traffic along Commercial Street. The ATM will not be accessible by vehicular traffic therefore no significant impacts to traffic along Commercial Street is anticipated. There are existing sidewalks in the project vicinity.

6.2 Construction of New Structures and Parking Requirements

The ATM use requires no additional parking.

6.3 Impact of Bulk, Location or Height of Proposed Buildings and Structures on the Neighbors

The proposed building will be located along Commercial Street frontage. Surrounding development includes marine related wharf uses, public parking, industrial and office uses. The proposed building will be styled to have an exterior elevation that matches the character of the surrounding properties and is not considered excessively large in size or height.

6.4 Impact on Value of Neighboring Property Due to Proposed Buildings

The existing building is similar in character to the surrounding properties and should not affect the values of abutting structures.

6.5 Effect of Proposed Project on Public Utilities

The proposed project will not adversely affect the public utilities of the City of Portland. The proposed project will not introduce additional flows to the sewer and storm drain systems. It is anticipated that all other utilities to the site will not be adversely affected by the proposed project.

6.6 On-site Landscaping To Provide A Buffer With Neighboring Uses

The development site is currently fully developed with parking or buildings.

6.7 The Site Plan Minimizes, To The Extent Feasible, Any Disturbance or Destruction of Significant Vegetation

The development site is fully paved at this time and there is no landscaping in the vicinity.

6.8 Site Plan Does Not Create Any Significant Soil or Drainage Problems

DeLuca-Hoffman Associates, Inc. has reviewed the development site and found no evidence of existing drainage or erosion problems.

6.9 Provision of Appropriate Exterior Lighting

The proposed exterior lighting will not be hazardous to motorists traveling on adjacent streets, due to the setback of the development from these streets. The lighting is adequate for users of the ATM and does not spill over or glare onto abutting properties.

6.10 The Development Will Not Create Fire or Other Safety Hazards and Provides Adequate Access to the Site and to the Buildings on the Site for Emergency Vehicles

The ATM location is directly off Commercial Street and will be fully accessible by emergency services vehicles and equipment.

6.11 The Proposed Development is Designed So As To Be Consistent with Off-Premises Infrastructure, Existing or Planned by the City of Portland

The project will not generate any increase to stormwater runoff as no exterior site modifications are proposed. Downstream conditions to the existing infrastructure in Commercial Street are sufficient to carry runoff generated from the currently fully paved site.

6.12 Pertaining to Industrial Development

No adverse environmental consequences are anticipated with the proposed development activity. Surface conditions will remain the same.

6.13 Pertaining to Development in R-P Zone

N/A

6.14 Pertaining to Planned Unit Developments

N/A

6.15 Pertaining to Multi-Family Developments

N/A

6.16 Pertaining to Development in B-3 Zone

N/A

6.17 The Applicant Has Submitted All Information Required By This Article and the Development Complies with all Applicable Provisions of this Code

The application complies with all provisions noted in this code to the best of our knowledge.

6.18 Proximity To Any Landmark, Historic District or Historic Landscape District

The proposed structure is not within 100' of any landmark, historic district or historic landscape district to the best of our knowledge.

6.19 Pertaining to View Corridors

N/A

6.20 No Adverse Effect on Existing Natural Resources

No adverse effect on existing natural resources is anticipated from the proposed development. There are no wetlands or other natural resources on the development site.

6.21 Pertaining to Discharge to a Significant Groundwater Aquifer

According to the Portland quadrangle map of the Maine Geological Survey, there is no significant aquifer in the vicinity of the project location.

6.22 Pertaining to Signs

No free-standing signage is proposed at this time. Any building mounted signage will comply with the City's signage ordinance if proposed.

6.23 Pertaining to Denial of Sign Under Section 14-369.5

N/A

6.24 Pertaining to Major or Minor Businesses

N/A

6.25 Pertaining to Development in Industrial Zones

N/A.

6.26 Pertaining to Development in B-5 and B-5b Zones

N/A

SECTION 7

SOLID WASTE

7.0 Overview

Minimal solid wastes are anticipated during construction of the proposed building renovations and additions.

The contractor will be provided the following option for waste disposal if necessary:

- Transport to Riverside Transfer Station in Portland, Maine or another licensed facility.

SECTION 8

SURFACE DRAINAGE AND RUNOFF

8.0 Existing Conditions

The 2.30-acre site is located off of Commercial Street in Portland, Maine and consists of a public parking lot and various buildings and wharf activities. The area within which the ATM will be placed is entirely paved. Surface runoff currently flows towards Commercial Street and will continue to do so in the future.

8.1 Conclusions

No modifications to the site's exterior conditions are proposed; therefore no changes to the stormwater flow regime are expected as a result of the proposed change of use.

SECTION 9

TEMPORARY AND PERMANENT EROSION AND SEDIMENTATION CONTROL

9.0 Overview

No modifications to the site's exterior conditions are proposed; therefore measures for erosion control are not warranted. The site's existing conditions consist of permanently stabilized pavement or landscaped areas that are satisfactorily maintained.

SECTION 10
LANDSCAPE PLAN

10.0 Overview

The current site consists of existing paved public parking area. It is the intention of the owner to maintain the existing environment around the existing building as much as possible.



Tri-State ATM 3 Roosevelt Trail Windham, ME 04062

Office: 207-892-5058 Fax: 207-221-1775

Model #: 101

Building Type: Kiosk

Manufacturer: Any Diebold, Fujitsu, NCR, Qualtex, Tranax, Triton

ATM Model: Most front load lobby ATM's

Compatibility: Walk-In (7' x 8'8" x 8')

Description: A walk-in kiosk provides a secure area for customers to complete their transactions. Optional "Lighted Sign Cap" available. Accommodates most front load lobby ATMs.

←
Selected
MODEL



Model #: 102

Building Type: Kiosk

Manufacturer: Any Diebold, Fujitsu, NCR, Qualtex, Tranax, Triton

ATM Model: Most ATM's

Compatibility: Walk-In (7' x 12" x 8'6")

Description: A walk-in kiosk provides a secure area for customers to complete their transactions. Optional "Lighted Sign Cap" available. Accommodates most rear load ATMs.



Model #: 347

Building Type: Kiosk

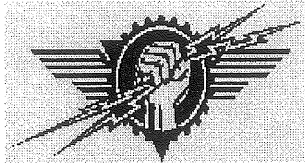
Manufacturer: NCR

ATM Model: NCR p-86, (Short sleeve, No CPM, Drive Up)

Compatibility: NCR p-86 Slimline (42" x 9'6" x 8'6")

Description:





TRI-STATE ATM

A Division of Tri-State Lock & Safe Co., Inc.

Your Complete ATM Sales & Service Company

Stephen J. Vasapolli
3 Roosevelt Trail
Windham, ME 04062

Phone:207-892-5058 Fax:207-221-1775
www.Tristateatm.com

FULL ATM PLACEMENT AGREEMENT

This agreement, entered into this 6 day of September, 2006 (the "Agreement") between TRI-STATE ATM, a division of Tri-State Lock & Safe Co., Inc, a Maine-based company (hereinafter referred to as TS-ATM) and _____, an independent organization ("Merchant"), describes all of the terms and conditions under which Merchant agrees and allows TS-ATM to place and operate at its location certain products specified in "Exhibit A". In consideration of the natural covenants, agreements, and terms herein contained, the parties agree as follows:

I. Term and Termination

This agreement shall take effect on the date of the last signature affixed hereto and shall remain in uninterrupted effect for the period of sixty (60) consecutive months thereafter. This agreement shall thereafter automatically renew for successive three (3) year periods in perpetuity, unless terminated in writing by either party and received by the non-terminating party no less than one hundred twenty (120) days prior to the expiration of the term. TS-ATM is expressly accorded the unilateral right to suspend operation of this agreement upon Merchant's breach of this agreement at any time. The bankruptcy or insolvency of Merchant is cause for the immediate termination of this agreement at the discretion of TS-ATM. If this agreement is terminated for any reason, TS-ATM is specifically authorized to remove all products attendant to this agreement without further notice.

II. Product Installation

TS-ATM, at its expense, shall install the ATM product (the "ATM") as soon as practical after the effective date of this agreement. If TS-ATM is required to remove or relocate the product due to actions taken by the Merchant including, but not limited to, closing or remodeling the location, Merchant shall reimburse TS-ATM for the costs of removing or relocating the product. In the event the product is removed, TS-ATM is authorized to use the last month's surcharge revenues otherwise due to Merchant to defray the cost of removing the equipment and storage.

III. Obligations and Responsibility of TS-ATM

- (1) TS-ATM shall provide paper for transaction receipts and printer ribbons for the product, free of charge.
- (2) TS-ATM will provide customer service for dispute reconciliation.

IV. Obligations and Responsibility of Merchant

- (1) Merchant shall make available sufficient space to locate the ATM. Such space shall have an unimpeded, unrestricted field of view from the main entrance to the product location.
- (2) Merchant shall allow TS-ATM and its servicing agent access to the ATM for purposes of servicing during normal business hours, and pre-opening or post-closing hours as mutually agreed.
- (3) Merchant shall allow agents of TS-ATM ingress and egress to the location at no cost upon their identification as an agent of TS-ATM.
- (4) Merchant shall not allow or permit any third party ATM cash dispensing or receipt dispensing equipment, or any third party ATM processors of any type to be installed or used at the location during the term of this agreement.
- (5) Merchant shall provide custodial service including cleaning the exterior of the ATM on a schedule normally available within the location.
- (6) Merchant shall maintain the space around the ATM in a safe, neat, and orderly fashion, and shall take all due care and caution to prevent any employees, representatives, and customers from damaging the TS-ATM products.
- (7) Merchant shall provide heat and air-conditioning for the space occupied by the ATM at a level consistent with the remainder of the building.
- (8) Merchant shall maintain a dedicated phone line complete with an RJ11 jack strictly for the exclusive use of the ATM.
- (9) Merchant shall provide electrical power to the ATM by making available a 110V grounded 10A circuit within three (3) feet of the machine.
- (10) Merchant is financially responsible for the replacement or repair of the ATM, in part or in whole, that is damaged as a result of neglect, vandalism or any other cause not associated with normal operation of the ATM.

V. Title and Risk of Loss

- (1) All products delivered to Merchant remain the sole and exclusive property of TS-ATM.
- (2) A UCC-1 may be filed with the applicable state or country so that any creditors of Merchant or other owners of Merchant's premises shall not obstruct or interfere with the removal of TS-ATM products by TS-ATM upon termination of this agreement.
- (3) Merchant recognizes that the ATM is bolted or secured to the floor and will not hold TS-ATM responsible for any damages to the floor or carpeting or incidental areas from installations or removal.
- (4) Cost of repairs to the ATM necessary due to the negligence of Merchant or by actions of customers of Merchant may, at the sole discretion of TS-ATM, be deducted from any surcharge revenue payable to Merchant.
- (5) Merchant shall not allow any third party access to the ATM cabinet or CPU, and shall take reasonable steps to ensure the security of the product.
- (6) Should TS-ATM desire to remove the product for any reason, merchant shall not obstruct nor impede its removal. In the event that the Merchant violates this provision, the merchant shall pay as liquidated damages \$100.00 per day that the machine is not in the possession of TS-ATM due to actions of the merchant. This remedy shall not interfere with, and may be in conjunction with other remedies or relief as allowed in law or equity.

VI. Limitations of Liability

- (1) Merchant expressly agrees to indemnify, hold harmless, and defend, at its sole cost and expense, TS-ATM against and from any and all claims, suits, actions, or proceedings for damages, liability, losses, fines, penalties, or expenses relating to normal operation of the ATM.
- (2) Merchant expressly agrees to waive claim to and hold harmless TS-ATM for any and all loss of commission, loss of income, or other damages due to the reasonable termination of this agreement between TS-ATM and Merchant, down time of the equipment, Networks or communications, or circumstances beyond the reasonable control of TS-ATM.
- (3) Merchant expressly acknowledges and agrees that no representations regarding actual revenues which may be received either by Merchant, TS-ATM, or its representatives have been made other than as illustrations of potential revenues.

VII. Compensation

- (1) TS-ATM shall receive all revenues generated by the terminal through the processing of transactions or otherwise.
- (2) Merchant shall receive fees or revenues from TS-ATM as set forth in Exhibit A. Merchant acknowledges and grants TS-ATM unilateral rights and authority to change, increase, or decrease the surcharge schedule and fee so long as such change does not affect Merchant's proportionate share of the surcharge fee per transaction.
- (3) Merchant expressly acknowledges that not all card issuers allow surcharges on their instruments and that the total number of transactions may therefore be greater than the number of qualifying transactions for which Merchant will receive revenues.
- (4) The fees shall be paid to Merchant by the Twenty-ninth (29th) day of the month succeeding that month in which fees were generated, unless delayed by necessary journal reconciliation or circumstances beyond immediate control of TS-ATM (I.e. revenue generated by transactions processed in July will be paid by August 29th unless otherwise delayed).
- (5) Merchant agrees to respond to audit requests referencing customer transaction disputes within 48 hours of those requests. If Merchant fails to respond to such requests within 48 hours, the adjustments for such requests will be deducted from any compensation due to Merchant.
- (6) If said placement location makes less than _____ qualifying transactions in total surcharge revenue in any one month, no surcharge will be paid to the Merchant for that month.

VIII. Trade Secrets

This product consists of proprietary computer programs, brochures, forms, concepts, and related materials, which have been developed by TS-ATM or a third party on behalf of TS-ATM at substantial expense to TS-ATM. Merchant acknowledges that these trade secrets and confidential business materials are of great value. The disclosure to others of any said information would result in substantial and irreparable harm to TS-ATM and third parties. Merchant therefore expressly agrees not to disclose to others, or allow to be disclosed to others, any information relating or pertaining to or regarding such computer programs, procedures, forms, concepts, or related materials. Merchant further acknowledges and agrees that all information or materials contemplated by this agreement are confidential trade secrets of TS-ATM or third parties, and that Merchant shall not reconfigure or reverse engineer any such information or materials in any manner whatsoever. Merchant expressly agrees not to contact any suppliers, programmers, or processors utilized by TS-ATM without the prior written consent of TS-ATM for a period of not less than one (1) year following the termination of this agreement.

IX. Failure to Replenish Cash (if applicable)

For each day that the Automated Teller Machine is out of cash due to the failure of Merchant to replace cash, Merchant shall pay to TS-ATM an equal amount to the revenue TS-ATM realized on the busiest day to date for that terminal as recorded in past transaction activity. Such amount may, at the discretion of TS-ATM, be withheld from the fees payable to Merchant.

Initial only if applicable TS-ATM initial _____ Merchant owner initial _____

X. Right to Match

In the event of the termination of this agreement by either party for any reason, Merchant and its successors grant to TS-ATM the prior right to match the terms and conditions of any bona fide third party offer in connection with the use and/or operation of an Automated Teller Machine and thereby continue the placement of TS-ATM products at Merchant's location. Such right shall be in effect for the period of time that otherwise would have been the remaining term of this agreement had termination not occurred, plus one (1) calendar year.

XI. Signage

Merchant shall permit TS-ATM to place signage as permitted by local ordinance around the product as described in Exhibit "A". Merchant shall maintain signage and bear all responsibility for the cost of damage to or loss of signage caused by customers or employees of Merchant.

XII. Scope of Relationship

Both parties expressly recognize the Agreement is in no way intended to create a partnership, nor shall this agreement be constructed as a partnership, or joint venture, nor shall Merchant represent it as such.

XIII. General

- (1) Both parties agree to perform all their obligations under this agreement in full compliance with all applicable Federal, State, and Local rules, regulations, and laws, and agrees to indemnify and hold harmless the other party associated with any breach thereof.
- (2) All disputes, disagreements, or discrepancies regarding the terms, clauses, articles, rights, or obligations under this agreement shall be governed and resolved in accordance with the laws of the State of Maine, and shall fall under the sole and exclusive jurisdiction and venue of Cumberland County, Maine.
- (3) In the event of any dispute, the prevailing party has the right to an award of all cost, including reasonable attorney fees.
- (4) If any part of this agreement is construed as unconstitutional, illegal, or otherwise invalid by a court of competent jurisdiction, that invalid part shall in no way invalidate or effect the remainder of this agreement.
- (5) This writing, consisting of thirteen (3) numbered sections and attached Exhibit A, is the entire intended agreement between TS-ATM and Merchant relating to the subject matter hereof, and all prior, contemporaneous, or subsequent representations, negotiations, understandings, or agreements, whether oral or written, relating to the placement of an Automated Teller Machine are hereby superseded. The separate Confidentiality and Non-Disclosure Agreement between the parties heretofore executed (if any) is hereby valid or effective unless set forth in writing and signed by both parties.
- (6) Merchants shall permit TS-ATM to place third party advertisement on ATM advertising screens at TS-ATM's expense while supplying no residual income to said merchant. It is understood that any and all advertisement shall be done in good taste and compliment the décor and atmosphere of the Merchant's establishment.
- (7) TS-ATM shall provide maintenance for the ATM including paper replacement, ribbon replacement, and correction of paper or ribbon jams, including bill jams.
- (8) Notice to parties and payments due shall be sent, subject to change by written notification, to:

(Transaction Processing Co.,)

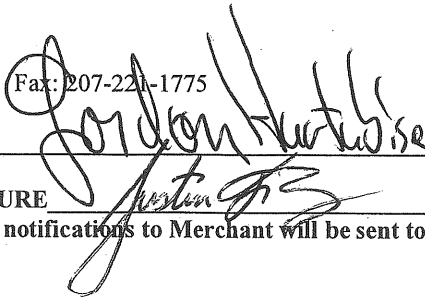
WTF ATM Services
2 Seaview Blvd., Suite 101
Port Washington, NY 11050

Merchant Name: _____
Merchant Address: _____
City, State, Zip _____
Phone _____ Fax _____

Tri-State ATM
3 Roosevelt Trail
Windham, ME 04062
Phone: (207) 892-5058

Fax: 207-221-1775

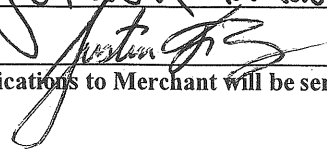
OWNER SIGNATURE



PRINT NAME

Gordon Hurtubise

MERCHANT SIGNATURE



PRINT NAME

Justin Flannery

Note: All payments and notifications to Merchant will be sent to the above address unless TS-ATM is otherwise notified in writing.



Photo 1



Photo 2

DH

DeLUCA-HOFFMAN ASSOCIATES, INC.
 CONSULTING ENGINEERS
 778 MAIN STREET, SUITE 8
 SOUTH PORTLAND, MAINE 04106
 TEL. 207-775-1121
 FAX: 207-879-0896
 E-MAIL: dhai@delucahoffman.com

ATM - Portland, Maine

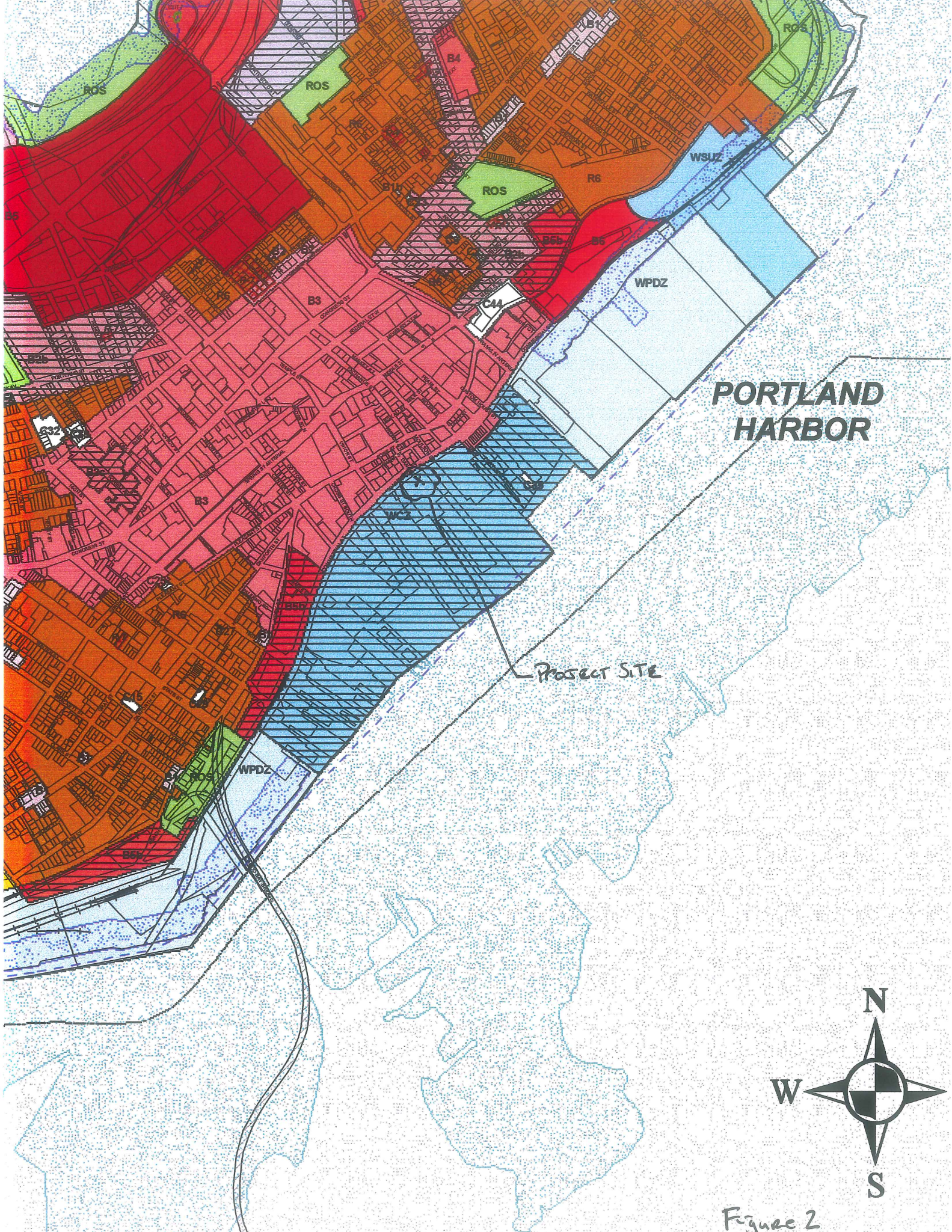


Photo 3

DH

DeLUCA-HOFFMAN ASSOCIATES, INC.
CONSULTING ENGINEERS
778 MAIN STREET, SUITE 8
SOUTH PORTLAND, MAINE 04106
TEL. 207-775-1121
FAX: 207-879-0896
E-MAIL: dhai@delucahoffman.com

ATM - Portland, Maine



**PORTLAND
HARBOR**

PROJECT SITE

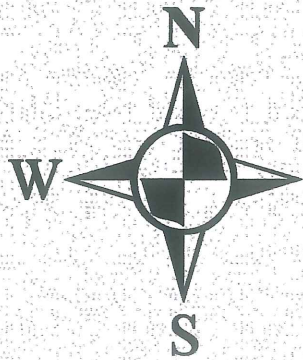


Figure 2

WBL
me/notes

PLANNING REPORT #60-01

**TEXT CHANGE TO
WATERFRONT CENTRAL ZONE**

THOMAS DANA, APPLICANT

Submitted to:

Portland Planning Board
Portland, Maine

November 27, 2001

I. INTRODUCTION

Thomas Dana, prospective owner of the Bayview Restaurant at 184 Commercial Street, requests a Workshop to discuss a proposal to change the text of the Waterfront Central Zone.

Robbie Hardin
The result of the text change would expand the provision within the permitted use section that allows non-marine uses in buildings that were both in existence as of January 4, 1993 and within 35 feet of Commercial Street. The applicant requests that the non-marine use provision be applied to buildings that were "existing on **or having received site plan approval prior to**" the January 1993 date.

The applicant has a letter of intent to buy the business at 184 Commercial Street, but wishes to change the status of the business from a grandfathered non-conforming use to a permitted use. If approved, the applicant would then come back before the Planning Board to expand the use to legitimize existing exterior seating as a conditional use expansion under the "Sapporo amendment."

II. BACKGROUND

The Bayview Restaurant site plan had been approved as a permitted use in December 22, 1992, under the old zoning regulations. The current zoning was adopted on January 4, 1993, and this date became the eligibility date for all buildings within 35 feet of Commercial Street to be able to house non-marine uses as a permitted use. The building permit for the Bayview Restaurant was issued in December of 1993, as a grandfathered non-conforming use, as allowed under the zoning in place during the site plan review. The applicant's goal is to allow restaurant use as a permitted use. Staff knows of no other building to which this text change would apply.

In summer of 2000, the City Council adopted a text change to the Waterfront Central Zone to allow the expansion of permitted non-marine uses as allowed under 14-314(5): uses in buildings located wholly or partially within 35 feet of the southerly sideline of Commercial Street: the "Sapporo amendment." As a second step, should the City Council adopt this text change, the applicant will apply for a conditional use appeal to the Planning Board to expand the restaurant use. Currently, exterior seating exists in the area adjacent to the restaurant, but City zoning and legal staff have determined that this use is non-conforming and not grandfathered. A direct result of this text change will be a consideration of whether the exterior seating creates an adverse impact on potential marine use on the pier. While the Board may wait until the applications for site plan and conditional use are before them to apply the standards of No Averse Impact, the issues are implicit within the discussion of this Text Change.

III. CURRENT ZONING

Code 14-314(5) allows non-marine uses in the entirety of buildings located wholly or partially within 35 feet of the southerly sideline of Commercial Street, conditioned that the buildings existed prior to January 4, 1993. See current WCZ language, Attachment 3.

The intention and purpose of the WCZ zone recognizes that the rents provided by non-marine related uses help to maintain the marine related infrastructure located on the waterside of the pier

properties. The text change proposed intends to expand non-marine use (and the potential for expansion) to the Bayview Restaurant building, while retaining all other requirements and limitations found in the WCZ language. While compatible non-marine uses are encouraged, any non-marine use must adhere to the No Adverse Impact section of the WCZ, 14-313.5. No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. Please see the Policy Consideration section below.

IV. PROPOSED TEXT CHANGE

The intention of this provision is to allow permitted non-marine uses as allowed under 14-314(5), uses in buildings located wholly or partially within 35 feet of the southerly sideline of Commercial Street, to be applied to buildings approved but not constructed prior to January 4, 1993.

Draft Text Language: To be inserted into Permitted Use for the WCZ, 14-315 (3)

“Commercial uses in any area of a building existing on *or having received site plan approved prior to* January 4, 1993, and located with thirty-five feet off the southerly edge of Commercial Street between Maine Wharf and the city fish pier:...”

V. COMPREHENSIVE PLAN AND LAND USE POLICY

The applicant requests this text change to convert legal nonconforming use into a permitted use. The distinction is important to the applicant since only permitted uses can be legally expanded. The Board will need to find that the proposal is compatible with the current Comprehensive Plan. Should the text change be implemented by the City Council, the Board will then apply Conditional Use Standards listed under 14-315 (WCZ Conditional Uses) at such time that the applicant seeks to expand the restaurant use.

Waterfront Alliance Recommendations and Current Zoning

In April of 1992, the Waterfront Alliance produced a policy document titled “Waterfront Alliance Recommendations to the City of Portland.” This report outlines the position that properties with direct water access should be limited to water dependent and marine related uses, but that other portions of the waterfront (upper stories, and areas well away from water access) can and should accommodate “marine compatible” uses to help support the maintenance of pier infrastructure. As stated in the report’s preamble,

“Water-dependent users are the lifeblood of Portland’s waterfront and their interests must be protected above all others. We further recognize that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long term growth.”

The City Council used this document as the policy basis for the current waterfront zoning, as enacted on January 4, 1993. Simultaneously adopting the Council Report as part of the Comprehensive Plan in Council Order 168-93, the 1993 zoning amendments followed the Waterfront Alliance report by putting a priority on the preservation of berthing and working pier deck space for existing and potential marine uses. The Purpose and No Adverse Impact sections of the WCZ text, included below, fully express the intent of the zone and the underlying policy.

Waterfront Central Purpose

Sec. 14-313. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

(Ord. No. 168-93, § 2, 1-4-93)

No Adverse Impacts

Sec. 14-313.5. No adverse impact on marine uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

VI. SUMMARY

The conversion of 184 Commercial Street from a legal non-conforming use to a permitted use completes a “grandfathering” process that began when the building permit was issued under the pre-Jan.1993 zoning. The impacts of this text change are discrete and staff has no knowledge of other structures or uses to which the amendment would apply. The greater question will arise when Mr. Dana applies to expand the restaurant use under the “Sapporo Amendment.” At that time, the Board will need to evaluate the physical layout of the existing exterior seating and its proximity to the working edge of the pier as it relates to the “No Adverse Impact” clause of the zoning language. While the issue of legitimizing exterior seating is not spelled out in the language change contemplated here, the Board should consider the issue as integral to the current application.

Attachments:

- 1. Written Statements
- 2. Application
- 3. Current WCZ Zone Text
- 4. Zoning Correspondence
- 5. Letter from Corporation Council
- 6. Letter of Intent
- 7. Letter of Support
- 8. Photos
- 9. Site Sketch
- 10. Context Sketch
- 11. Property Survey

Att 1.1

Tod Dana

*P.O. Box 169 * Portland, Maine 04112
Tel: 207-775-2228 * Fax: 207-761-8280
Email: asiawest@aol.com*

Portland Planning Board
City of Portland
389 Congress Street
Portland, Maine 04101

August 22, 2001

Dear Members of the Planning Board,

As an addendum to my application for a text change in city ordinance section 14-314 (e) in the WCZ zone, I want to explain why I am seeking the text change.

I first entered into a Letter of Intent with the owners of the "Bayview Seafood Restaurant" this past March. As part of my due diligence, I discovered that the twelve picnic tables on the premises (which have been in use for the 7 years the restaurant has been operating), were not included in the initial zoning application back in 1993. As a result, it appears that the seating for this establishment is not recognized by the city as "legal" despite the fact that permits for liquor were issued by the city each year for these outdoor seats.

In an effort to "legitimize" the aforementioned seating and conclude my purchase of the restaurant, I am seeking a text change, which will make this restaurant eligible for outdoor seating under the "conditional uses" section of the ordinance (sec. 14-315).

As a result of my discovering the "illegitimate" status of the outdoor seating, the restaurant sat vacant this summer. This seems very unfortunate given that this seasonal restaurant has been a very popular tourist destination for the last 7 summers. It is my sincere hope that the planning board and city council will approve our text change, so we can re-open "Bayview Seafood Restaurant" next season.

Thank you for your consideration.

Sincerely,



Tod Dana

Text Change Amendment

Requested Text Change: The applicant requests that WCZ zone Section 14-314(e) be amended to state, in part:

Commercial uses in any area of a building existing on *or having received site plan approval prior to* January 4, 1993, and located with thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier: Subject to section 14-314(f)(1) and 14-315(a), the following uses shall be permitted

Section 14-314(e).

Background

In 1994, the Bayview Seafood Restaurant and Retail Operation, located at 180 Commercial Street, opened for business. It was founded by Captain Dick Yates, who also owns and still operates the adjoining Bayview Sea Cruises. Since 1994, the restaurant has served breakfast and primarily seafood fair for lunch and dinner. Since 1994, the restaurant has operated as a retail store by selling seafood to the general public. Since 1994, the restaurant has also had outdoor seating, in the form of a deck and picnic tables and a corresponding liquor license.

The Applicant, Salty Lobster Company, recently obtained an option to purchase the restaurant. The Applicant intends to operate a lunch and dinner lobster shack somewhat similar to the Lobster Shack in Cape Elizabeth and/or the Lobster Cooker in Freeport. The Applicant also plans to obtain its commercial wholesale lobster license; buy lobsters and seafood directly from local lobsterman; incorporate the delivery of the lobsters to into the theme of the restaurant; and continue the 7 year tradition of operating as a retail seafood outlet by selling seafood to the general public.

In performing its due diligence on this business, the Applicant was informed by City Officials that the restaurant was not properly permitted to have outdoor seating, in spite of the fact that it had a valid liquor license. Needless to say the Applicants were quite surprised by this development, given the fact that the deck has been in existence and use since on or around 1994; the restaurant has a valid liquor license for the deck; there are outdoor lights on the deck; and a large sign on the side of the restaurant that says "Deck Seating." In an effort to salvage the deal, the parties agreed to condition the sale of the business upon the approval of a text change to the WCZ zone that would permit the Applicant to use the existing deck for outdoor seating, as has been done for the past 7 years of operation.

Text Change Overview

As you know, City Ordinance §14-315.2(3), permits certain businesses in the WCZ Zone that were in existence prior to January 4, 1993, to qualify for a conditional use permit for outdoor seating.

The Bayview Seafood Restaurant did not exist as of January 4, 1993. However, the site plan for a restaurant to be located at 180 Commercial Street was approved on December 22, 1992. The Building Permit for 180 Commercial Street was issued on December 7, 1993. The building now located at 180 Commercial Street was completed shortly thereafter. Our discussions with City Officials and Attorneys have revealed that this set of circumstances does not fall under the grandfather clause set forth in §14-315.2(3). Accordingly, the Applicant is seeking a narrowly tailored text change to permit the Bayview Seafood Restaurant and its successor business to continue using the aforementioned outdoor seating. This request is quite similar to the narrowly tailored text change sought and received by Sapporo to expand the size of its Commercial Street restaurant.

It is the Applicant’s understanding that in order to prevail in its request, the Applicant must demonstrate the text change does not run contrary in anyway to the “Purpose” of the WCZ zone. It is obvious from the circumstances of this case that the requested text change does not run contrary in anyway to the “Purpose” of the WCZ zone. In fact, the text change is a narrowly tailored request designed to effect only one business, which actually supports the Purpose of the WCZ zone.

The Purpose of the Waterfront Central Zone is set forth in detail in WCZ Section 14-313 as follows:

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;
- (b) The second priority is to encourage other marine and marine related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible with first and second priority uses; and

- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

Section 14-313.

The operation of a lobster shack and/or seafood restaurant, with outdoor seating, on 180 Commercial Street, is in and of itself a water-dependent and marine-related support use of the premises. By its very nature, the restaurant is/would be reliant upon local fisherman to supply the product sold on the premises. The restaurant would aesthetically compliment its current environment. The Applicant's plan to directly purchase and wholesale lobsters is an even stronger link to water-dependent and marine-related support uses.

As depicted on the attached map and supporting photographs, the Applicant's operation of a lobster shack and use of outdoor seating is quite consistent with and supported by the lots, businesses and slips in the immediate area of the outdoor seating. (See for example: New Meadows Lobsterhouse, DiMillos, Sightseeing Tour Boats, Long Wharf Cruises, Bayview Cruises, Fish Houses, etc. . . .) This map and these photographs are the best evidence as to why this narrowly tailored exception harms no one, aids the parties in this transaction and is consistent with the Purpose of the WCZ zone.

December 22, 1992

CITY OF PORTLAND

Mr. Josef Chalac
Architect
48 Union Wharf
Portland, ME 04101
Re: The Fish Store

Dear Josef:

On December 22, 1992, the Portland Planning Authority granted minor site plan approval for a fish retail/restaurant building to be located at 180 Commercial Street with the following conditions:

1. That construction plans shall be signed and stamped by a State of Maine registered professional engineer to conform with the Division 26.5 Flood Plain Management Regulations of the Land Use Code.

The app. GVAL is based on the submitted site plan. If you need to make any modifications to the approved site plan, you must submit a revised site plan for staff review and approval. The site plan approval will be deemed to have expired unless work in the development has commenced within one (1) year of the approval or within a time period agreed upon in writing by the City and the applicant. A performance guarantee in a form acceptable to the City of Portland and an inspection fee equal to 1.7% of the performance guarantee will have to be posted before a building permit can be issued. A defect bond, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.

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

Sincerely,


Joseph E. Gray, Jr.
Director of Planning and Urban Development

cc: Richard Knowland, Senior Planner/Acting Chief Planner

P. Samuel Hottel, Chief of Building Inspections

William Cloux, Zoning Administrator

Melodie Esterberg, Development Review Coordinator

George Flaherty, Director of Parks and Public Works

William Bray, Traffic Engineer/Deputy Director of Parks and Public Works

Jeff Tarling, City Arborist

Natalie Burns, Associate Corporation Counsel

Lt. Wallace Garroway, Fire Prevention

Paul Niehoff, Materials Engineer

✓ Louise Chase, Secretary, Building Permits
Maine Maritime Activities/Gulf of Maine, Inc., P.O. Box 808,
South Portland, ME 04116



APPLICATION FOR ZONING AMENDMENT
City of Portland, Maine
Department of Planning and Urban Development
Portland Planning Board

AH 2.1

1. Applicant Information:

THOMAS DANA
Name

P.O. BOX 169
Address

PORTLAND, ME. 04112

207-671-5566 Phone 207-761-8280 Fax

2. Subject Property:

184 COMMERCIAL STREET
Address

PORTLAND, ME. 04101

031-J-030
Assessor's Reference (Chart-Block-Lot)

3. Property Owner: Applicant Other

G.E.F. LLC (FRED FORSLEY)
Name

P.O. BOX 2808
Address

S. PORTLAND, ME. 04116

828-5136
Phone Fax

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

TENANT (PENDING TEXT CHANGE)

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

*I will be unavailable by phone between 8/28/01 - 9/21/01
I am reachable by email though: asiswest@aol.com
In my absence please call 701-222-1111*

Describe the existing use of the subject property: _____ AH 2.2

Seafood RESTAURANT / RETAIL SEAFOOD

7. Current Zoning Designation(s): _____ WCZ

8. Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

SEAFOOD RESTAURANT / RETAIL SEAFOOD

9. Sketch Plan: On a separate sheet please provide a sketch plan of the property, showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1"=10' to 1"=100'.)

10. Proposed Zoning: Please check all that apply:

- A. Zoning Map Amendment, from _____ to _____
- B. Zoning Text Amendment to Section 14-314(e) _____

For Zoning Text Amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (example), and language to be added is depicted with underline (example).

C. Conditional or Contract Zone

A conditional or contract rezoning may be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan and compatible with the surrounding neighborhood. (Please refer to Division 1.5, Sections 14-60 to 62.)

of Portland in accordance with Section 14-24 of the Municipal Code (see below). The applicant also agrees to pay all costs of publication (or advertising) of the Public Hearing Notice as required for this application. Such amount will be billed to the applicant following the appearance of the advertisement.

	<u>1-25 Units</u>	<u>26-50 Units</u>	<u>51-75 Units</u>	<u>75 & Over</u>
Residential Zones	\$350.00	\$400.00	\$450.00	\$500.00
Nonresidential Zones	\$350.00	\$400.00	\$450.00	\$500.00
	0-15,000 sq. ft. or 0-5 acres (whichever is less)	15,000-30,000 sq. ft. or 6-10 acres (whichever is less)	30,000-45,000 sq. ft. or 10-15 acres (whichever is less)	45,000-60,000 sq. ft. or 15-20 acres (whichever is less)

AH-2.3

- Legal Advertisements (one for workshop and one for public hearing) percent of total bill
- Notices (one for workshop and one for public hearing) 40 cents each
- Text Amendments \$300.00

\$ 300. - Amount of Fee

12. Signature: The above information is true and accurate to the best of my knowledge.

8/22/01
Date of Filing

Tom H. Dana
Signature of Applicant

Further Information:

Please contact the Planning Office for further information regarding the rezoning process. Applicants are encouraged to make an appointment to discuss their rezoning requests before filing the application.

Applicants are encouraged to include a letter or narrative to accompany the rezoning application which can provide additional background or context information, and describe the proposed rezoning and reasons for the request in a manner that best suits the situation.

In the event of withdrawal of the zoning amendment application by the applicant in writing prior to the submission of the advertisement copy to the newspaper to announce the public hearing, a refund of two-thirds of the amount of the zone change fee will be made to the applicant by the City of Portland.

Portland Planning Board
Portland, Maine

Effective: July 6, 1998

Sec. 14-314.(e)

Commercial uses in any area of a building existing on, or having received site plan approval prior to January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier: Subject to section 14-314 (f) 1 and 14-315 (a), the following uses shall be permitted:

**The underlined text is the additional wording that I am proposing.*

DIVISION 18. WATERFRONT CENTRAL ZONE*

*Editor's note--Ord. No. 168-93, § 2, adopted Jan. 4, 1993, repealed former Divs. 18, 18.5 and 18.7, §§ 14-306--14-320.2, which pertained to waterfront zones, and enacted new provisions as Divs. 18, 18.5 and 18.7 to read as herein set out. Formerly, such provisions derived from Ord. No. 426-83, § 1, adopted Apr. 25, 1983; Ord. No. 427-83, § 1, adopted Apr. 25, 1983; Ord. No. 355-85, § 1, adopted Jan. 7, 1985; Ord. No. 438-86, § 1, adopted Apr. 7, 1986; Ord. No. 189-87, § 3, adopted Feb. 7, 1987; Ord. No. 174-87, 's; 1, 2, adopted Mar. 4, 1987; Ref. of May 5, 1987; Ord. No. 385-87, adopted Apr. 6, 1987; Ord. No. 36-89, §§ 1, 2, adopted June 28, 1989; and Ord. No. 15-92, §§ 22, 23, adopted June 15, 1992.

Sec. 14-313. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-313.5. No adverse impact on marine uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-314. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-313.5 (no adverse impact on marine uses), the following uses are permitted in the waterfront central zone:

- (a) *Marine:*
 - 1. Marine products, wholesaling, distribution and retailing;
 - 2. Marine repair services and machine shops;
 - 3. Tugboat, fireboat, pilot boat and similar services;
 - 4. Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels;
 - 5. Marine industrial welding and fabricating;
 - 6. Shipbuilding and facilities for construction, maintenance and repair of vessels;
 - 7. Commercial marine transport and excursion services, including ferries, captained charter services, sport fishing and water taxis;
 - 8. Cargo handling facilities, including docking, loading and related storage;

9. Boat repair yards;
10. Boat storage facilities, excluding rack storage facilities;
11. Seafood processing;
12. Seafood packing and packaging;
13. Seafood loading and seafood distribution;
14. Fabrication, storage and repair of fishing equipment;
15. Ice-making services;
16. Facilities for marine construction and salvage;
17. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices;
18. Fabrication of marine-related goods;
19. Fishing and commercial vessel berthing;
20. Noncommercial berthing of less than fifty (50) linear feet per pier;
21. Marine office, including but not limited to offices of owners of wharves or their agents, and naval architects, and seafood brokers;
22. Public landings;
23. Marine research, education, and laboratory facilities.

(b) *Commercial uses above the ground floor level in buildings in existence on January 4, 1993:* Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:

1. Professional, business, and general offices;
2. Business service establishments;
3. Cabinet and carpentry shops and accessory retail sales of only those products that are produced on the premises;

4. Intermodal transportation facilities;
 5. Cold storage facilities.
- (c) *Industrial uses above the ground floor level of buildings in existence on January 4, 1993:* Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:
1. Warehousing and wholesaling;
 2. Industrial uses which meet the performance standards of the I-2 zone.
- (d) *Public:* Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:
1. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures, provided that such structures are located more than one hundred (100) feet from the water;
 2. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces, including without limitation pedestrian bicycle trails;
 3. Municipal office uses located above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building unless approved pursuant to section 14-315. Other municipal uses which need to be located on the ground floor level because of operational necessity may be so located on city-owned property.
- (e) *Commercial uses in any area of a building existing on January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier:* Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:
1. Professional, business, and general offices;
 2. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall not be permitted under this section;
 3. Restaurants, provided that food service and consumption shall be the primary function of the restaurant;

4. Banking services;
5. Laundry and dry cleaning services;
6. Cabinet and carpentry shops and accessory retail sales of products produced on the premises;
7. Intermodal transportation facilities;
8. Cold storage facilities;
9. Museums and art galleries.

(f) *Other:* Accessory uses:

1. Notwithstanding sections 14-331, 14-334, 14-404 or any other provision of this Code, parking for uses other than those set forth in section 14-314(a) shall not be considered a permitted accessory use on-site and shall be subject to the provisions of section 14-315(a).
2. Except as provided in subsection a. above, accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses. Food service establishments, newsstands and other similar retail and service support uses shall only be permitted as accessory uses if they are part of and located within the lot lines of a use set forth in section 14-314(a)1, 7, or 22; that such uses do not exceed two thousand (2,000) square feet in total floor area of the building, or twenty-five (25) percent of the total floor area of the building, whichever is less, and that each individual use does not exceed one thousand (1,000) square feet in total floor area of the building; and further provided that such accessory uses provide goods or services that are supportive of the principal use and its clientele.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-315. Conditional uses.

The following uses shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471(c), section 14-474(a), or any other provision of this Code, the planning board shall be substituted for the board of appeals as the reviewing authority, and further provided that in addition to the provisions of section 14-474(c)(2), section 14-313.5, and any other conditions specified under the particular use below, they shall also meet the following conditions:

- (a) The proposed use shall be compatible with existing and potential marine uses in the vicinity;
 - (b) The proposed use shall not impede access to the water by existing or potential marine uses; and
 - (c) For conditional uses that propose or require twenty (20) or more parking spaces, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development, specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1). For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.
 1. Parking: Notwithstanding sections 14-317(g), 14-331, 14-334 and article V of this chapter, no parking shall be allowed in this zone for conditional uses and uses permitted only above the ground floor level, unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces required for marine uses that are required by section 14-314(a). The remainder of parking required for such uses shall be provided off-site and in other zones where parking is a permitted use.
- (2) Marine:
- a. Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:
 1. Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the planning board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.
 - b. Fish by-products processing, provided that:
 1. Any fish by-products processing facility has a valid rendering facility license under chapter 12; and

2. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.

c. Boat rack storage facilities, provided that:

1. Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.

(3) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier.) into contiguous and newly created building space of no more than 2000 sq. ft., total, shall be allowed only as follows:

(a) the use may occupy ground floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or

(b) the use may occupy a ground floor area of no more than 1250 square feet beyond 35 feet from the southerly sideline of Commercial Street; and

(c) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and

(d) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

(Ord. No. 168-93, § 2, 1-4-93; Substitute Ord. No. 00-42, 8-7-00)

Sec. 14-315.3. Contract or conditional rezoning.

Except as authorized in section 14-314(d), an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993, if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the standards of section 14-313.5 and all of the following standards:

- (a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314(b), (c) or (d).
- (b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314.
- (c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.
- (d) Any physical or legal impediments which preclude functional access from the site of the proposed development to the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.
- (e) The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits protection of existing water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels (either on-site or off-site) and visual and physical access to the waterfront for the general public.
- (f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline.
- (g) The proposed development does not significantly restrict air, light, or water views of other structures located in the vicinity, and does not create significant adverse local climatic effects such as increased winds, shadowing, or less efficient traffic, parking or circulation patterns.
- (h) The proposed development is consistent with the Portland Waterfront Public Access Design Guidelines, a copy of which is on file in the department of planning and urban development.
- (i) The proposed rezoning contains adequate provisions and/or conditions to ensure that the water-dependent use is not abandoned after the project is developed.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-315.5. Prohibited uses.

Uses which are not enumerated in either section 14-314 or 14-315 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

- a. Residential uses (not in existence on May 5, 1987).
- b. Hotels, motels or boatels.

c. Auditoriums, civic centers, convention centers or other meeting facilities.

d. Drinking establishments.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-316. Dimensional requirements.

In addition to the provisions of article III, division 25, of this Code, lots in the waterfront central zone shall be subject to the following requirements:

(a) *Minimum lot size:* None.

(b) *Minimum frontage:* None.

(c) *Minimum yard dimensions:*

Front setback: None.

Side setback: None.

Rear setback: None

Setback from pier line: Notwithstanding the above requirements, a minimum setback of five (5) feet from the edge of any pier, wharf or bulkhead shall be required for any structure. The setback area may be utilized for activities related to the principal uses carried on in the structure, subject to the provisions of sections 14-313 and 14-314, but shall not be utilized for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).

(d) *Maximum lot coverage:* One hundred (100) percent.

(e) *Maximum building height:* Thirty-five (35) feet.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-317. Performance standards.

All uses in the waterfront central zone shall comply with the following standards:

(a) *Outdoor storage of materials:* Outdoor storage of commodities and materials accessory to normal conduct of business, except pilings and/or cranes, shall be permitted to a maximum height of forty-five (45) feet, and such materials shall be entirely contained, including runoff contaminants and residual material, within a designated area within the lot boundaries.

(b) *Noise:* The level of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the

American National Standards Institute, Inc.), inherently and recurrently generated within the waterfront central zone shall not exceed seventy-five (75) decibels on the A scale at the boundaries of any lot, except for sound from construction activities, sound from traffic on public streets, sound from temporary activities such as festivals, and sound created as a result of, or relating to, an emergency, including sound from emergency warning signal devices. In measuring sound levels under this section, sounds with a continuous duration of less than sixty (60) seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of sixty (60) seconds or more shall be measured on the basis of the energy average sound level over a period of sixty (60) seconds (LEQ₁).

- (c) *Vibration:* Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries. This shall not apply to vibration resulting from activities aboard a vessel or from railroad vehicle activities, or from activities on a pile supported pier.
- (d) *Federal and state environmental regulations:* All uses shall comply with federal and state environmental statutes and regulations regarding emissions into the air, except where provisions of this Code are more stringent.
- (e) *Discharges into harbor areas:* No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the department of parks and public works in accordance with chapter 24, article III of this Code. All private sewage disposal or private wastewater treatment facilities shall comply with the provisions of chapter 24, article II of this Code and federal and state environmental statutes and regulations regarding wastewater discharges.
- (f) *Storage of vehicles:* Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.
- (g) *Landfill of docking and berthing areas:* Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. Sections 471 through 478, and permitted only if the landfill does not reduce the amount of linear berthing areas or space, or berthing capacity. If approved, construction shall be undertaken using methods approved by the department of parks and public works and shall be accomplished in accordance with the provisions of division 25 of this article and in a manner so as to ensure that a stable and impermeable wall of acceptable materials will completely contain the fill material and will not permit any fill material to leach into docking areas or navigable waters.

- (h) *Off-street parking:* Except as provided in section 14-315 or as required pursuant to article V (site plan), off-street parking is required at fifty (50) percent of the required number of parking spaces for specified uses as otherwise provided in division 20 of this article.
- (i) *Off-street loading:* Off-street loading is required as provided in division 21 of this article.
- (j) *Shoreland and flood plain management regulations:* Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.
- (k) *Lighting:* All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor nor have an unreasonable adverse impact on adjacent residential zones.
- (l) *Signs:* Signs shall be permitted as set forth in division 22 of this article.
- (m) *Storage of pollutants and oily wastes:* On-premises storage of pollutants and oily wastes shall not be permitted for more than forty-five (45) days.
- (n) *Compatibility of nonmarine uses with marine uses:* Nonmarine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither unreasonably interfere with the existence or operation of marine uses nor significantly impede access to vessel berthing or other access to the water by existing or potential marine uses as set forth in section 14-314(a). Siting of a use not set forth in section 14-314(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.
- (o) *Construction of new structures located within thirty-five feet of the southerly edge of Commercial Street:* Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street shall conform to the guidelines set forth in the Downtown Urban Design Guidelines, unless such structures are also located within one hundred (100) feet of the water. Such structures that are also located within one hundred (100) feet of the water shall conform to the extent practicable to the Downtown Urban Design Guidelines.

(Ord. No. 168-93, § 2, 1-4-93)

AH.4.1

Tod Dana
P.O. Box 169
Portland, ME 04112

April 26, 2001

Hand Delivery
City of Portland
389 Congress Street
Portland, ME 04101

Attention:

✓ Marge Schmuckal – Zoning Administrator
Penny Littell – Associate Corporate Counsel
Sarah Hopkins - Development Review Program
Manager Planning & Urban Development

RE: 180 Commercial Street Property

Dear: Ms. Schmuckal, Ms. Littell & Ms. Hopkins:

I am writing to follow up my discussions with Ms. Schmuckal and Ms. Hopkins regarding the issue of a conditional use permit for outdoor seating at 180 Commercial Street. As I mentioned to Ms. Hopkins, I have an option to purchase the business, now known as the Bayview Seafood Restaurant, located at 180 Commercial Street. As you all know, City Ordinance §14-315.2(3) (a copy of which is attached), permits certain businesses in the WCZ Zone that were in existence prior to January 4, 1993 to qualify for a conditional use permit for outdoor seating. My question for all of you is whether this property qualifies for that conditional use.

To review, the site plan for a restaurant to be located at 180 Commercial Street was approved on December 22, 1992. The Building Permit for 180 Commercial Street was issued on December 7, 1993. The building now located at 180 Commercial Street was completed shortly thereafter. During our discussions, Ms. Schmuckal expressed to me that in her opinion the property's site plan approval prior to 1993 qualifies the property for the aforementioned conditional use under City Ordinance §14-315.2. I am now seeking written confirmation from Ms. Littell, on behalf of the City Attorney's office and from Ms. Schmuckal, to confirm that Ms. Schmuckal's opinion is consistent with that of the City Attorney. Upon receipt of this confirmation, it is my intent to promptly apply for a major site plan review and subsequent conditional use permit.

Given the time constraints involved in this case, your prompt response to my inquiry is greatly appreciated. I look forward to hearing from you very soon. In the interim, should you have any questions, please do not hesitate to call me at 671-5566.

Sincerely,


Tod Dana

section 14-314(a). The remainder of parking required for such uses shall be provided off-site and in other zones where parking is a permitted use.

(2) Marine:

a. Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:


1. Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the planning board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.

b. Fish by-products processing, provided that:

1. Any fish by-products processing facility has a valid rendering facility license under chapter 12; and
2. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.

c. Boat rack storage facilities, provided that:

1. Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.

 (3) Expansion of a non-water dependent, non-marine

related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier.) into contiguous and newly created building space of no more than 2000 sq. ft., total, shall be allowed only as follows:

- (a) the use may occupy ground floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or
- (b) the use may occupy a ground floor area of no more than 1250 square feet beyond 35 feet from the southerly sideline of Commercial Street; and
- (c) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and
- (d) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

(Ord. No. 168-93, § 2, 1-4-93; Substitute Ord. No. 00-42, 8-7-00)

Sec. 14-315.3. Contract or conditional rezoning.

Except as authorized in section 14-314(d), an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993, if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the standards of section 14-313.5 and all of the following standards:

AH 5

Corporation Counsel
Gary C. Wood



Associate Counsel
Charles A. Lane
Elizabeth L. Boynton
Donna M. Katsiaficas
Penny Littell

CITY OF PORTLAND

May 3, 2001

Mr. Tod Dana
P.O. Box 169
Portland, ME 04112

RE: 180 Commercial Street Property

Dear Mr. Dana:

I have received and reviewed your correspondence to Ms. Schmuckal, Ms. Hopkins and myself, dated April 26, 2001, with regard to the property at 180 Commercial Street. The zoning requirements in that area are very clear. If a commercial building was not in existence as of January 4, 1993, then any expansion of a non-marine, non-water dependent use is not allowed. The information you have provided indicates the building at which you would like to place outdoor seating was only built some time after December 7, 1993. As a result, it is my opinion that such outdoor seating would not be allowed.

I have conferred with Marge Schmuckal as to this opinion and she agrees.

I trust this answers your questions.

Sincerely,

Penny Littell
Associate Corporation Counsel

PL:hs

Cc: Marge Schmuckal, Zoning Administrator
Sarah Hopkins, Developmental Regional Services Manager

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The Salty Lobster Company
P.O. Box 169
Portland, ME 04112

H.S.B.
July 18 T.D.
June 27, 2001

Hwa Sun Bae
29 Exchange Street
Portland, ME 04101

Re: Letter of Intent

Dear Ms. Bae:

The partnership doing business as The Salty Lobster Company ("Company") is pleased to offer to purchase your Assets defined in Paragraph 2 on the following revised terms and conditions:

1. Buyer. Buyer will be a company formed by Company.
2. Seller. Seller will be Hwa Sun Bae of Portland, Maine.
3. Purchased Assets. Company will purchase all of the tangible and intangible assets obtained by Seller from Richard Yates related to the Bayview Restaurant, located on 180 Commercial Street in Portland, Maine ("Premises"), and memorialized in an asset purchase agreement dated, November 20, 2000 and attached hereto as Exhibit A. Buyer shall not purchase or assume any of Seller's liabilities, with the exception of the Lease Agreement between Richard Yates and GEF, LLC, dated June 1, 1999, and attached hereto as Exhibit B, which shall be assigned to Buyer.

12,000.00 H.S.B. T.D.
4. Purchase Price. The Purchase Price for the Purchase Assets will be \$80,000.00 made up of: (a) an initial payment of ~~\$10,000.00~~ ⁸⁷ at Closing; (b) payment of \$5,000.00 on or before May 30, 2002; (c) payment of \$5,000.00 on or before June 30, 2002; (d) payment of \$5,000.00 on or before July 30, 2002; (e) payment of \$5,000.00 on or before August 30, 2002; and (f) payment of \$5,000.00 on or before September 30, 2002. (g) payment of \$5,000.00 on or before May 30, 2003; (h) payment of \$5,000.00 on or before June 30, 2003; (i) payment of \$5,000.00 on or before July 30, 2003; (j) payment of \$5,000.00 on or before August 30, 200; and (k) payment of \$5,000.00 on or before September 30, 2003; (l) payment of \$5,000.00 on or before May 30, 2004; (m) payment of \$5,000.00 on or before June 30, 2004; (n) payment of \$5,000.00 on or before July 30, 2004; and (o) payment of ~~\$5,000.00~~ ^{10,000.00} on or before August 30, 2004.

10,000.00 T.D. H.S.B.
5. Closing. Buyer and Seller agree to use their best efforts to close the acquisition within sixty (60) days of the date of receipt, by the Buyer, of its outdoor seating application by all the applicable City of Portland authorities.

6. Conditions.

- a. Completion by ABC of a satisfactory due diligence investigation of the Acquired Assets and the aforementioned Lease Agreement, within 45 days after approval of outdoor seating permit;
- b. Landlord approval of Assignment of the aforementioned Lease Agreement to ABC;
- c. Approval by the City of Portland and the City of Portland Planning Board of Buyer's Applications/Petitions for, among other things, a permit for outdoor seating;
- d. Negotiation of an Asset Purchase Agreement satisfactory to both parties, containing, among other things, representations and warranties, covenants, indemnities and other terms and conditions customary in corporate acquisition, including, without limitation, a non-competition agreement, hold harmless agreement, within 45 days after completion of subsection c;
- e. The absence of any material adverse change between June 19, 2001 and the Closing in the Purchased Assets;
- f. The obtainment of sufficient financing by Buyers to fund the Asset Purchase Agreement and to operate the newly created company, within 45 days after completion of subsection c;
- g. The furnishment of all existing utility agreements and insurance policies on the Premises within 45 days after completion of subsection c;
- h. The filing of Buyer's application for outdoor seating with the City of Portland within forty five (45) days of the date of this Letter of Intent; and
- i. Approval by the City of Portland of a building permit and outdoor signage within 45 days after completion of subsection c.

7. Access to Information. Immediately following acceptance of this Letter of Intent, Seller will provide Buyer and its representative's access to any and all documentation and/or information to enable Buyer to complete its due diligence investigation.

8. Expenses. Each party will pay its own expenses and costs incidental to the completion of the acquisition, including legal and accounting fees.

9. **Brokerage.** It is understanding of both parties that there are no brokers involved in this transaction. Nevertheless, the parties agree to indemnify each other against any claims for brokerage commissions asserted as a result of any action by the indemnifying party.

10. **Cooperation and Exclusive Dealing.** Parties agree to cooperate in good faith and move expeditiously in the preparation of the documents and the taking of other actions necessary to carry out the acquisition. Seller agrees not to offer to sell its stock, assets or business to any other person or entity and not to negotiate or accept any agreement for the sale of all or any part of its stock, assets or any part of Seller's assets or business on or before Closing or such earlier date as the parties mutually agree that a definitive Asset Purchase Agreement cannot be reached and/or if Buyer's application for outdoor seating is denied by the City of Portland.

11. **Non-Disclosure: Publicity.** Each party agrees that it will not, without the prior written consent of the other party, disclose publicly or to any third party, the terms and conditions of this offer or the subsequent negotiations between the parties, except to the extent required by law or as may be required by the Company in connection with its financing arrangements, for the acquisition.

12. **Non-Binding Agreement.** The Letter of Intent is intended to provide a basis for the preparation of a definitive asset purchase agreement. Until such agreement has been prepared and duly authorized, executed and delivered by each of the parties, none of the provisions of this letter shall be binding on either party with the exception of the agreements and obligations contained in paragraphs 7 through 12.

T.D.
August 1, 2001 H.S.B

13. **Acceptance.** This offer may be accepted in writing by Seller until ~~June 22, 2001~~, but will terminate if not accepted by the close of business on that date.

14. **Counterparts.** This Letter of Intent may be executed in one or more counterparts, including execution by facsimile transmission, each of which shall be deemed to be an original copy of this Letter of Intent and all of which, when taken together, will be deemed to constitute one and the same agreement.

15. **Plans.** If Buyer fails to receive approval of the required permits and/or decides not to Close, then a copy of all architectural drawings and sites plans used to apply for the permits referenced in this Letter of Intent shall be given to Seller.

If the foregoing is satisfactory to you, please evidence your acceptance of this offer by signing and returning to us the enclosed copy of this Letter of Intent. It is understood that upon your acceptance, this letter will constitute a Letter of Intent to negotiate in good faith to complete a definitive Asset Purchase Agreement and a Closing on the terms set forth above.

6.4

Sincerely,

Buyer:

A handwritten signature in black ink, appearing to read "Tom H. Dana". The signature is written in a cursive style with a horizontal line underneath the name.

Thomas H. Dana
(d/b/a The Salty Lobster Company)

Dated: 6/27/01

6.5

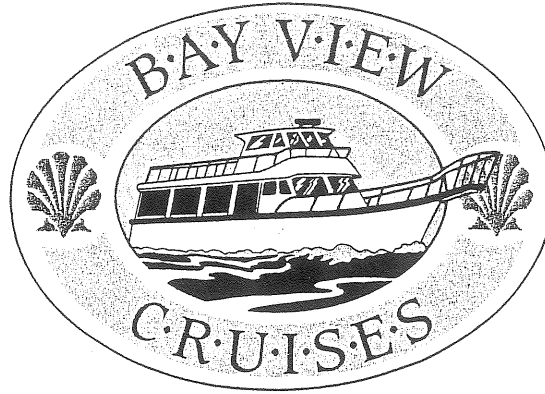
Seller:


Hwa Sun Bae

Dated: 7-18-01

H:\COMMERCIAL\ZTEC\ABC\General\Letters\Letter of Intent II.doc

AA 7



"BAY VIEW LADY"

RICH YATES
Captain

October 2, 2001

Portland Planning Board
Portland City Hall
389 Congress Street
Portland, Maine 04101

Dear Members of the Planning Board:

I have been running a tour boat business called "Bay View Cruises" on the Portland waterfront for the last 14 years. I am writing this letter on behalf of Tod Dana, whom I understand is applying for a text change in a city ordinance, which will allow him to use the outdoor seating at the small seafood restaurant at the base of the pier.

Mr. Dana asked me whether I felt that the picnic tables presently on the wharf compromised the quality of the adjacent berthing. My answer to that question is a very strong "NO". I presently lease the berthing adjacent to the aforementioned picnic tables and I feel very strongly that the tables don't interfere at all with the successful operation of my tour boat business. In fact, I believe that the restaurant and its' waterfront seating have complimented and supported my business over the last 7 years.

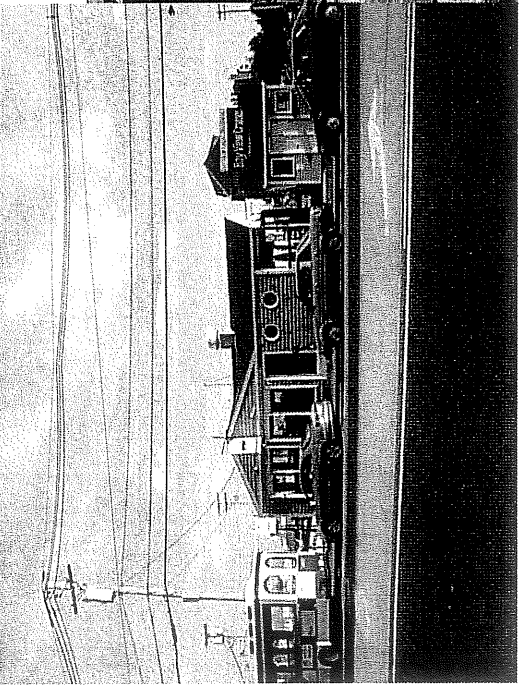
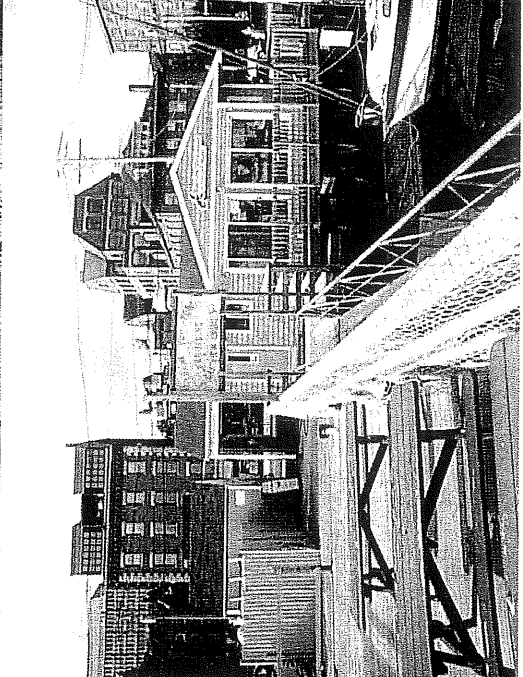
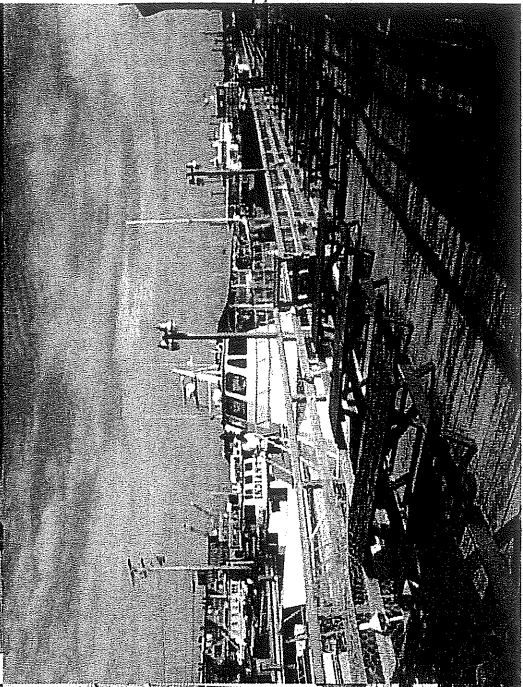
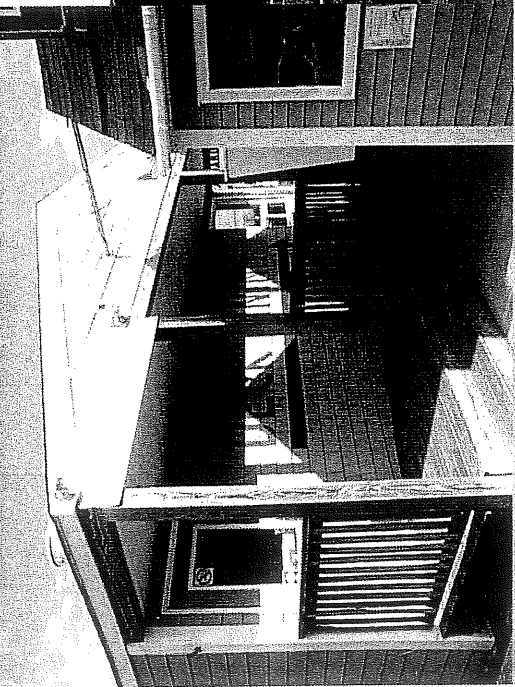
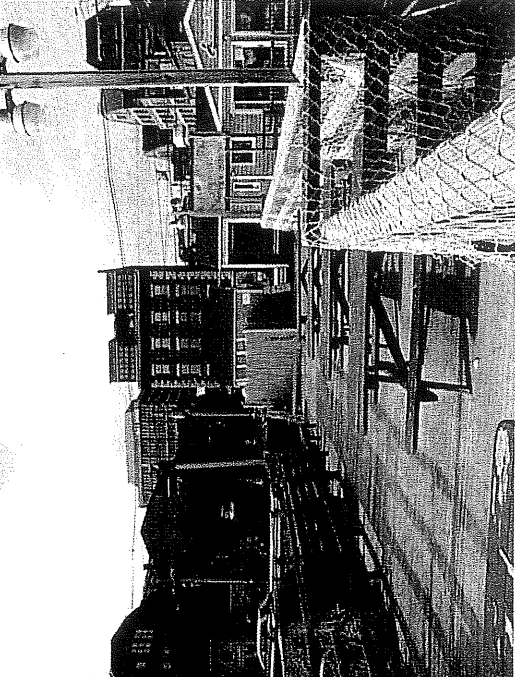
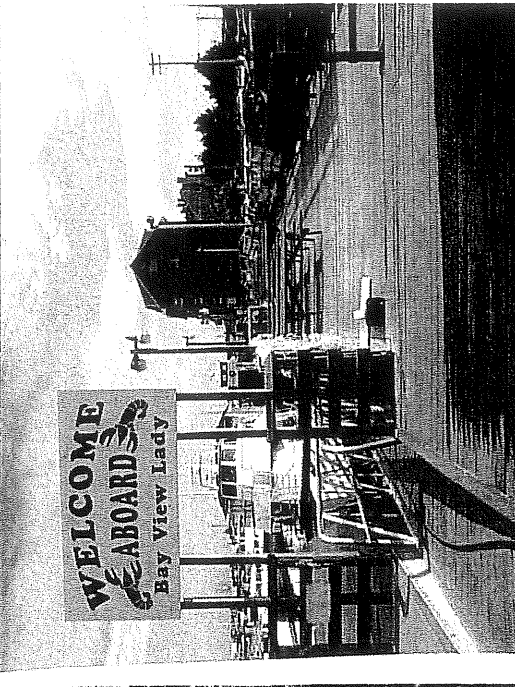
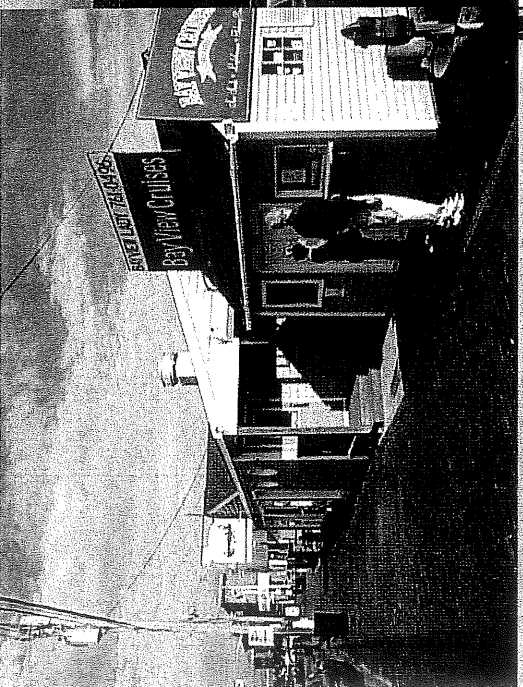
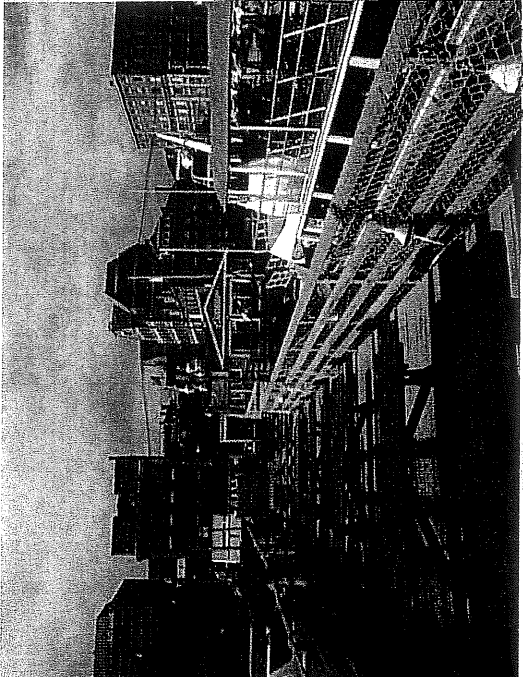
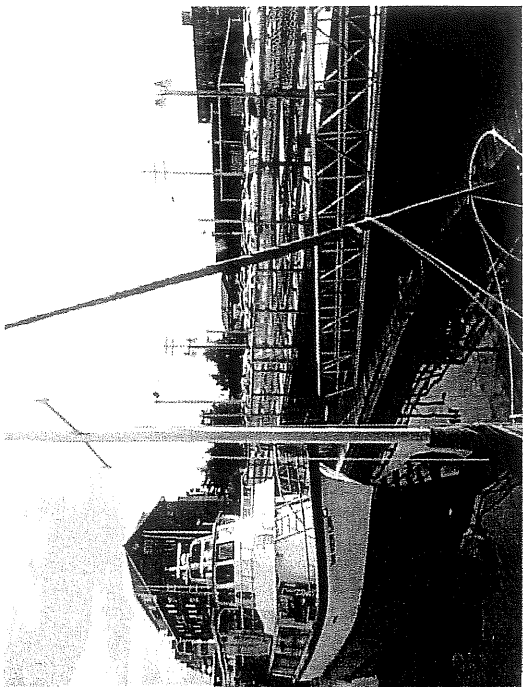
Long Wharf has developed into the focal point of all waterfront tourist traffic. Almost all of the established tour boats in the city are docked at Long Wharf. The picnic tables of "Bayview Seafood" have provided a comfortable and attractive place for tourists to view the boats and wait for the next cruise. I believe all the other tour boat operators share my opinion,

Sincerely,


Captain Dick Yates

LOBSTERBAKES ♣ CRUISES ♣ MEETINGS

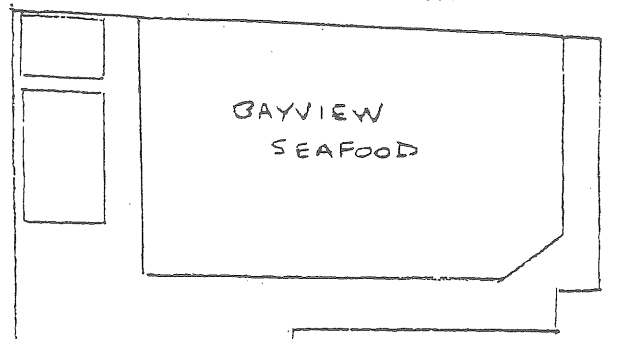
FISHERMAN'S WHARF, 184 COMMERCIAL STREET, PORTLAND, MAINE 04101 (207) 761-0496



AH #9

COMMERCIAL STREET

BRICK SIDEWALK



EXISTING SPACE USED FOR SEATING (1556 Sq. Ft.)

610.5 Sq. Ft.
(33' x 18.5')

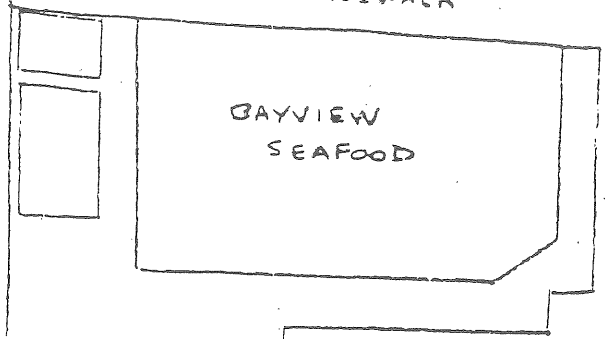
635.5 Sq. Ft.
(41' x 15.5')

310 Sq. Ft.
(20' x 15.5')

17
17
17

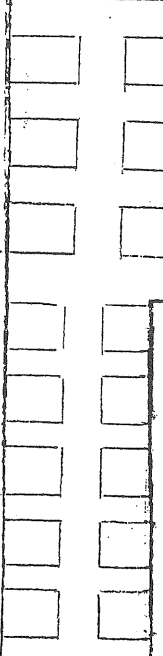
SCALE 1" = 20'

BRICK SIDEWALK



PROPOSED SPACE FOR SEATING (1246 Sq. Ft.)

RAMP



NEW FENCE

EXISTING FENCE

SCALE 1" = 20'

6 8'x4' TABLES

10 6'x4' TABLES

AGENDA
REGULAR CITY COUNCIL MEETING
EVENING SESSION
JANUARY 23, 2002

The Portland City Council will hold a regular City Council meeting at 7:30 p.m. in the City Council Chambers, City Hall. The Honorable Karen A. Geraghty, Mayor, will preside.

ROLL CALL:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 1)

PROCLAMATIONS:

Proc 20-01/02 **Proclamation Honoring Rebecca Olanovich as Employee of the**
(Tab 2) **Month for January 2002 - Sponsored by Karen A. Geraghty,**
 Mayor.

Proc 21-01/02 **Proclamation Honoring Detective Daniel Young as Police**
(Tab 3) **Officer of the Month for December 2002 - Sponsored by Karen**
 A. Geraghty, Mayor.

CONSENT ITEMS:

Order 138-01/02 **Order Approving Lease with Federal Aviation Administration**
(Tab 4) **Re: Lighting System for Runway 29 at Jetport - Sponsored by**
 Joseph E. Gray, Jr., City Manager.

This lease is for the MALSR lighting system for Runway 29 (the approach lights which extend from the end of the runway). The total area being leased is approximately 10.8 acres. Effectively, the lease is from November 1, 2001 to October 30, 2011, with an initial lease from November 1, 2001 to September 30, 2002. Signing of this lease will allow the approach lighting system to remain on the airport.

Five affirmative votes are required for passage after an opportunity for public comment has been given.

Order 139-01/02 **Order Declaring Portland's 2002 Homelessness Marathon Day**
(Tab 5) **at Monument Square - Sponsored by Joseph E. Gray, Jr., City**
 Manager.

APPOINTMENTS:

Order 142-01/02 (Tab 8) Order Appointing Council Committees - Sponsored by Karen A. Geraghty, Mayor.

This order appoints individuals to Council Committees as listed in Attachment A of the agenda backup material. Five affirmative votes are required for passage after an opportunity for public comment has been given.

BUDGET ITEMS:

UNFINISHED BUSINESS:

Order 123-01/02 (Tab 9) Order Authorizing General Obligation Bonds to Finance Site Improvements at Jack Elementary School for the City of Portland, Maine in an Amount Not to Exceed \$700,000 - Sponsored by Councilors James F. Cloutier and Peter E. O'Donnell.

This order authorizes the incurring of indebtedness by the City from the State's School Revolving Renovation Fund for site improvements in preparation for the installation of modular classroom units.

This debt has an interest rate of 0.00%; and 30% of the principal amount, or \$210,000, is forgiven and will not have to be repaid. The balance, or \$490,000, will be repaid over ten years.

This order is accompanied by the order appropriating \$700,000 to spend for this purpose.

This item must be read on two separate days. It was given a first reading on December 3rd. At the December 17th Council meeting, this item was postponed to the January 23rd Council meeting at the request of the School Department. Five affirmative votes are required for passage after an opportunity for public comment has been given.

Order 124-01/02 (Tab 10) Order Appropriating \$700,000 for Jack Elementary School Project - Sponsored by Councilors James F. Cloutier and Peter E. O'Donnell.

As a separate but related issue, the Bayview Restaurant has, since its construction in 1993, utilized outside seating along the pier edge in the area of the Chandler's Wharf parking lot. City zoning and legal staff has determined that this exterior seating is illegal and is not considered a grand fathered use. The applicant would like to legitimize the exterior seating.

If the proposed text change is approved, the applicant would then come back before the Planning Board to expand the restaurant use to include the existing exterior seating as a conditional use expansion under the "Sapporo Amendment".

This item must be read on two separate days. It was given a first reading on December 17th. Because the applicant was unable to attend the January 7th Council meeting he requested that this item be postponed to the January 23rd meeting. Five affirmative votes are required for passage after an opportunity for public comment has been given.

**Order 137-01/02
(Tab 12)**

**Order Re: 2002 Contract with the Animal Refuge
- Sponsored by Joseph E. Gray, Jr., City Manager.**

This order renews the contract for calendar year 2002 with the Animal Refuge League of Westbrook to provide animal control shelter services. The city is required by state law to contract for these services or provide them directly. The proposed contract contains a proposed increase of approximately 30% or just over \$13,000 per year. It is calculated for all member municipalities at a proposed rate of \$.85 per person based on the 2000 census. The total proposed cost of the contract is \$54,612. Between 12/00 and 11/30/01 the shelter took in 1,477 animals from Portland which is approximately 1/3 of the total number taken in by the shelter. The shelter also collected and turned over to the city approximately \$1,600 from the city impoundment fee.

This item must be read on two separate days. It was given a first reading on January 7th. Five affirmative votes are required for passage after an opportunity for public comment has been given.

PUBLIC HEARINGS:

RESOLUTIONS:

COMMUNICATIONS:

In order to facilitate the construction of a 120-room hotel on the corner of Franklin Arterial and Commercial Street, the developer, Olympia Equity Investors (“Developer”), has requested that the slip lane on that corner be converted to a traditional right-turn lane and that ownership of a portion of the former area of the slip lane be transferred to the Developer.

MDOT has reviewed this request and has determined that it would “have little effect on the overall operation of the intersection.” The City has engaged Mr. Tom Gorrill of Gorrill Palmer Engineering to analyze this request, and his findings support MDOT’s opinion.

Further, in the context of the Ocean Gateway development, Mr. Gorrill asserts that the change contemplated by this request could improve the intersection for pedestrian traffic. The Director of Public Works Bill Bray has also stated that the improvements to the intersection merit the slip lane conversion, regardless of the potential hotel development. The CDC has unanimously voted to recommend that a purchase and sale agreement be negotiated with the Developer. Any proposed agreement would be reviewed by the CDC before going to the City Council. The proposed development will be subject to the normal site plan review process by the Planning Board and would be subject to review by the Historic Preservation Committee.

Five affirmative votes are required for passage after an opportunity for public comment has been given.

**Order 145-01/02
(Tab 16)**

Order Authorizing City Manager to Negotiate Sale of Fore Street Garage - Sponsored by the Community Development Committee, Councilor James F. Cloutier, Chair.

Five affirmative votes are required for passage after an opportunity for public comment has been given. Staff is asking that this item be tabled to be taken up after this evening’s Executive Session.

**Order 146-01/02
(Tab 17)**

Order Approving City/State Agreement with MDOT Re: Improvements to Brighton Avenue/Rand Road Intersection - Sponsored by Joseph E. Gray, Jr., City Manager.

This order authorizes the City to proceed with the design and construction of major traffic intersection improvements at the Brighton Avenue/Rand Road/Cabot Street intersection. These improvements will create sufficient capacity at the intersection to accommodate the additional traffic loadings generated from the new Maine Turnpike interchange at Rand Road.

Since Rule 30 states that “no rule of procedure shall be amended or repealed without notice in writing being given at the preceding meeting” the Council has traditionally put proposed amendments on a Council agenda and then postponed the item to the next meeting. Staff is recommending that the Council follow this same practice on this order.

AMENDMENTS:

**Order 149-01/02
(Tab 20)**

Amendment to Portland City Code Chapter 14 (Land Use), Article III, § 14-320 Conditional Uses - Sponsored by Joseph E. Gray, Jr., City Manager.

The Planning Office is recommending a text amendment to clarify the conditional uses in the Waterfront Port Development (WPDZ). Currently, the WPDZ has a list of permitted, conditional, and prohibited uses that are permitted in the I-2 (I-M) Industrial Zone.

Recently, the City Council approved a text amendment to allow professional offices in the IM zone. There was concern raised that the allowance of offices in the IM zone would be construed to allow offices in the WPDZ zone.

The purpose of the Waterfront Port Development Zone is to preserve waterfront land in the WPDZ zone for those uses that are dependent on deep water and contribute to port activity. The allowance of professional offices in the WPDZ zone is not consistent with the purpose of the zone, nor can office uses meet the “no adverse on marine uses” standard of the WPDZ zone. For that reason the proposed amendment eliminates professional offices as a permitted use in the WPDZ zone.

This item must be read on two separate days. This is its first reading.

REQUEST FOR EXECUTIVE SESSION

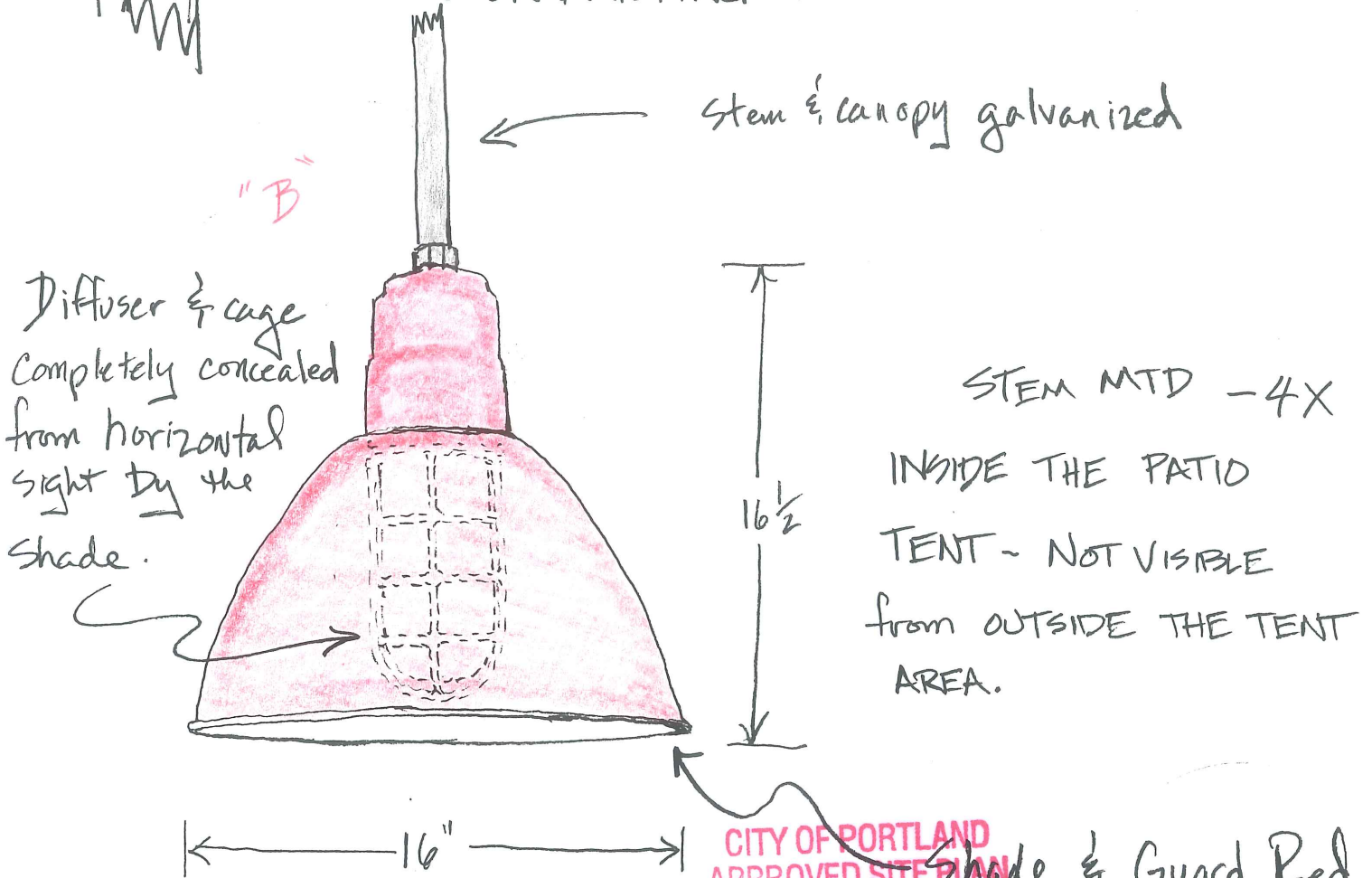
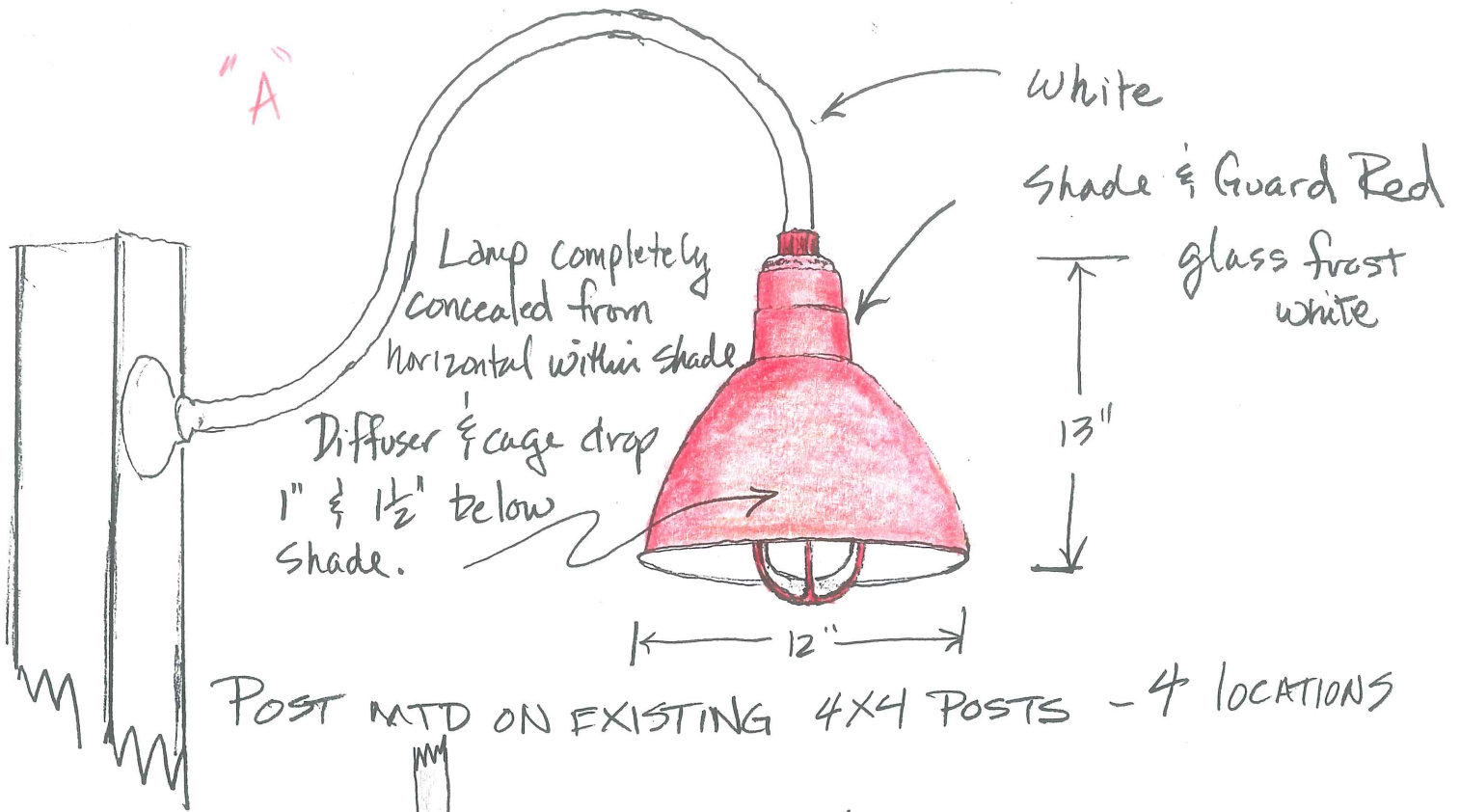
Request for Executive Session RE: Sale of Fore Street Garage - Sponsored by Joseph E. Gray, Jr., City Manager.

To: Bill Needleman 874-8300

LIGHTING Proposal for
PORTLAND LOBSTER Co.
Commercial St. Portland, Me.

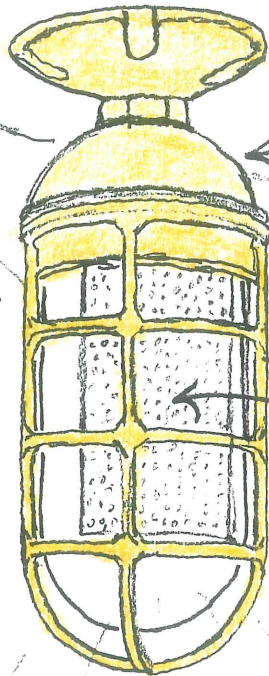
Todd Dana Cell # 671-5566

Kendall Willard 871-7668



CITY OF PORTLAND
APPROVED SITE PLAN
Subject to Dept. Conditions
Date of Approval: Shade & Guard Red
glass frost white

"C"



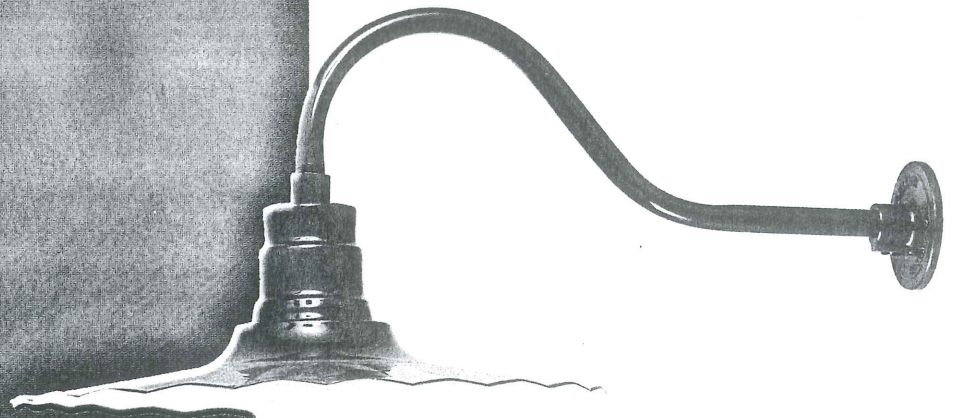
Brass to match existing lights.
Clear globe.

Lamp
concealed behind
Perforated metal
shield.

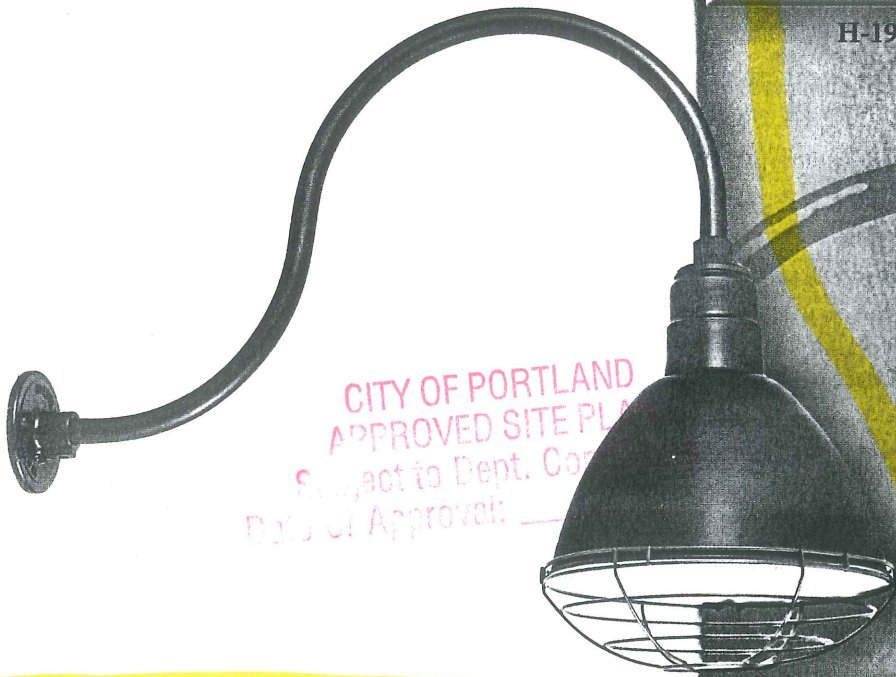
Building wash
light and walkway
light only.

CITY OF PORTLAND
APPROVED SITE PLAN
Subject to Dept. Conditions
Date of Approval: _____

Soffitt mtd. to replace old existing. 4X



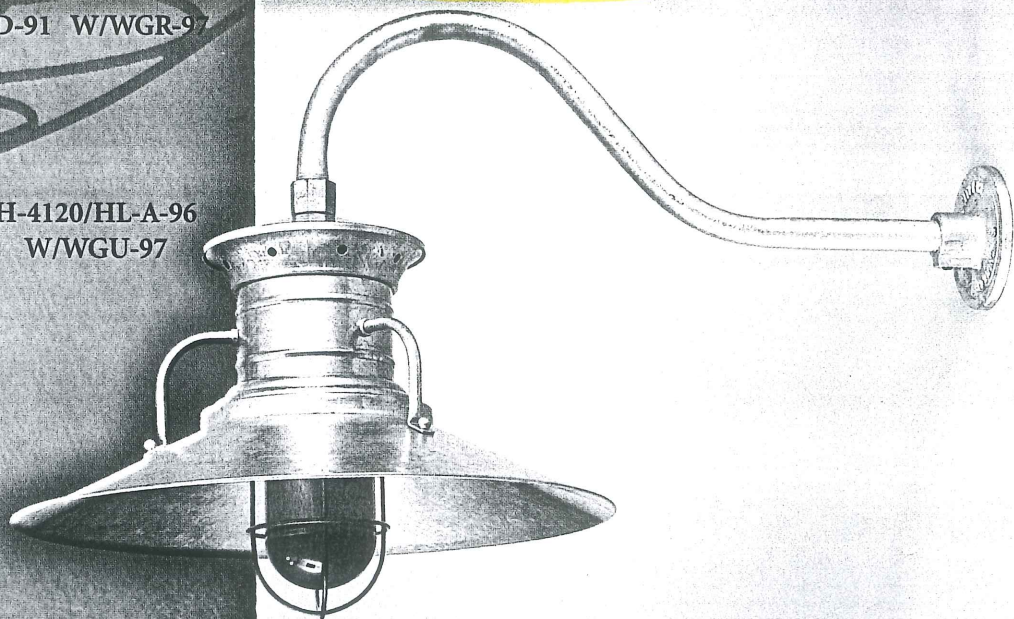
H-19120/HL-A-97



CITY OF PORTLAND
APPROVED SITE PLAN
Subject to Dept. Code
Date of Approval: _____

H-16112/HL-D-91 W/WGR-97

H-4120/HL-A-96
W/WGU-97





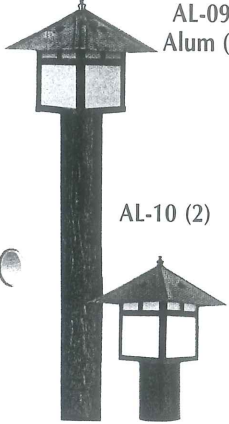

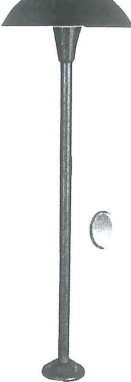
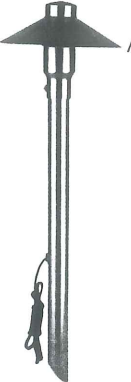
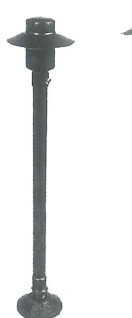


"D" fixture is a small low shielded spotlight to
"just" light restaurant logo on tent.

SNOUT SHIELD provides additional glare control



Not approved
Recommended down lighting
per tent, per sign permit.

AL-07	AL-08/Alum	AL-09/ Alum (1)	AL-11	AL-12	AL-13-Copper (1)	AL-13-DM (3)	AL-13-LG (4)	AL-14
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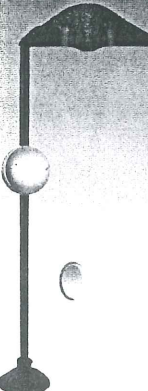

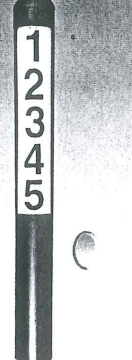



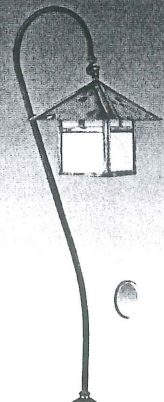
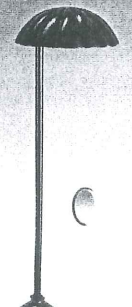

								
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16" H x 7" W S-8, 18W #1141 Cast Aluminum Options: ABCEJKLM	31" H x 3" W S-8, 18W #1141 Extruded PVC/ABS Options: ACEHKLM; Alum., Brass Options: ABCEHKLM	(1) 25.5" H x 7" W (2) 10.5" H x 7" W S-8, 18W #1141; Stamped Brass; Options: ABEHKLM	16" H x 6" W S-8, 18W #1141 Cast Aluminum Options: ABCEJKLM	24" H x 8" W S-8, 18W #1141 Cast Aluminum Options: ABCEHJKLM	(1) 20" H x 6.5" W w/angle cut (18w #1141) No powder coat finishes available; AL-13 comes with angle cut stem only. Options: ABEKLM; (2) 15" H x 3.5" W (20w halogen standard lamp) (3) 16.5" H x 6.5" W (18w #1141) AL-13-DM-Color (20w halogen) (4) 18" H x 9.5" W; (18W #1141); AL-13-LG-Color (20w Halogen) Options (2, 3, 4): ABEKLM, supplied w FA-03 ABS mounting stake.			23" H x 8" W S-8, 18W #1141 Cast Aluminum Options: ABCEJKLM
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and wattage to Catalog #. For 120v T7 or T8 light bulb, consult factory for price and availability.



PL-06	PL-07 /Alum	PL-07- Address /Alum	PL-07-L Address /Alum	PL-07-L Golf-FL /Alum	PL-07 Dock /Alum	PL-09	PL-10	PL-12
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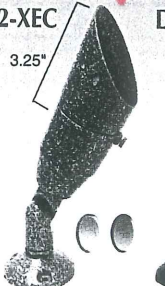


								
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19" H x 7" W S-8, 18W #1141 Cast Aluminum Options: ABCEKLM	31" H x 3" W S-8, 18W #1141 Extruded PVC/ABS Options: ACEHKLM; Alum., Brass Options: ABCEHKLM	36" H x 3" W 2 x 9w, 2 x 7w C.F. 2" Vinyl Numbers, Extruded PVC/ABS Options: ABCEHKLM	48" H x 4.5" W 2 x 9W, 2 x 7w C.F. 3" Vinyl Numbers, Extruded PVC/ABS Options: ABCEHKLM	48" H x 4.5" W 3 x 9w or 2 x 13w C.F.; 3" Vinyl Num- bers, Extruded PVC/ ABS; Options: ABCEHKLM	9" H x 3" W S-8, 18w #1141 2" Vinyl Numbers, Extruded PVC/ABS Options: ABCEKLM	29" H x 10" W S-8, 18W #1141 Stamped Brass Options: ABCEHKLM	19" H x 6" W S-8, 18W #1141 Cast Aluminum Options: ABCEKLM	19" H x 6" W S-8, 18W #1141 Cast Aluminum Options: ABCEKLM
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For 120V T7, T8 Light bulbs, consult factory for price & availability. For vinyl numbers, consult factory for price & availability.

Type "D" in white finish

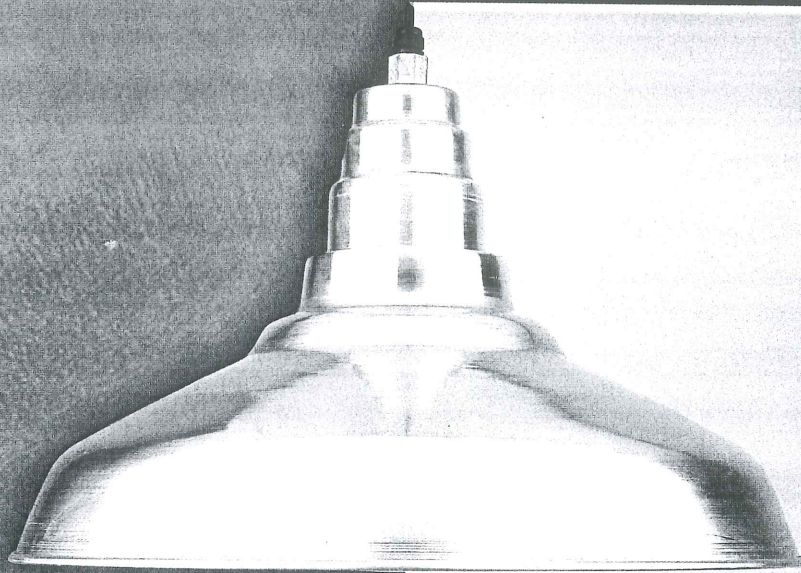
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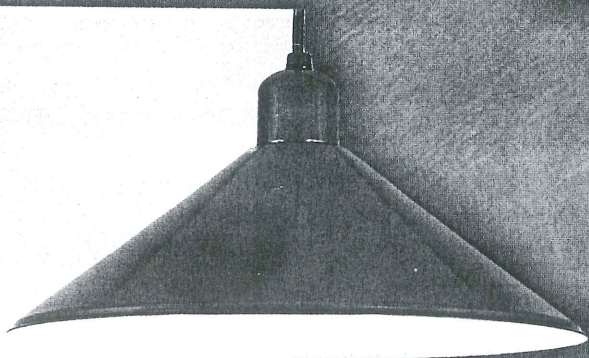
4.5"H x 2" W MR-11 20W FL (FTD) or any MR-11, (35w max.), Cast Alum. Options: BCDEFI	7"H x 5.2"W AR70 50W FL, Any AR70 (50w max.); Cast Alum. Options: BCEFI; Composite Options: EFI	7" H x 5.2" W; MR-16 75W- FL(EYC) or any MR-16 (75W max.); Cast Aluminum Options: BCEFI; Composite Options: EFI	6"H x 4.5" W; MR-16 20W (BAB) or any MR-16, (50w max.); Cast Aluminum Options: BEFI; Composite Options: EFI; (20w max.)	7" H x 2.5" W (DL-22/ 8"H x 3"W (DL- 22-XEC); Cast Aluminum: MR-16 20w FL (BAB) or any MR-16 (50w max.); Options: BCDEFIKLM; Copper and Brass Versions: MR-16 20wFL (BAB) or any MR-16 (35w max.) Options: BCDEFIKLM	4.5" H x 1.5"W, Cast Aluminum, 20w MR-8 (FL) (35 watt max.); DL-23-CSM with Custom Brass Stake. DL-23 supplied w/FA-03 Mounting Spike; Options: BCD		
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Available in Brass Available in Copper

Add -Brass/-Copper to Catalog #.



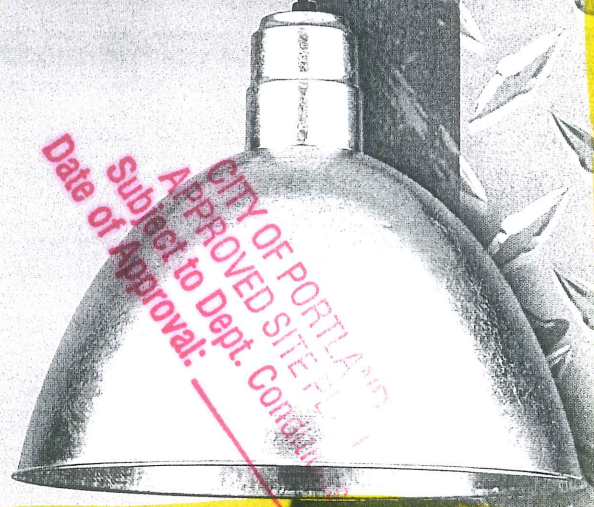
H-15127C-102



H-316C-97

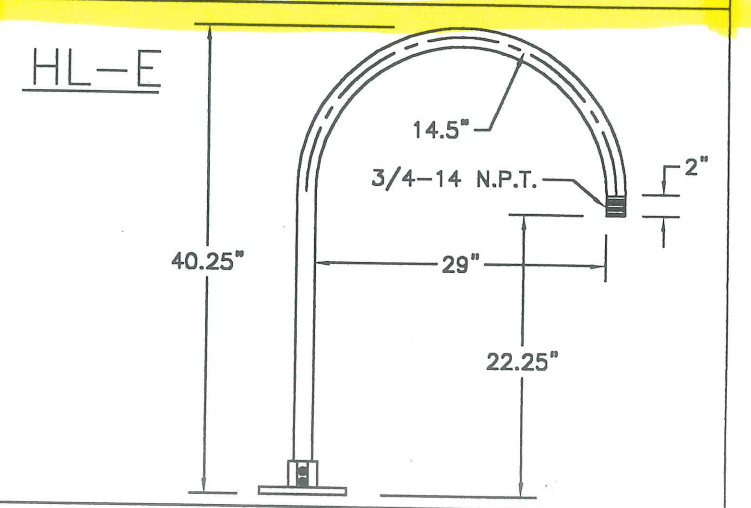
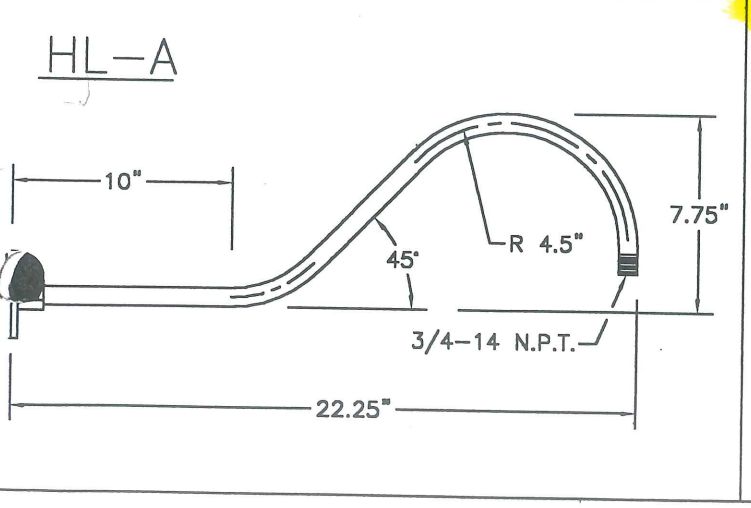
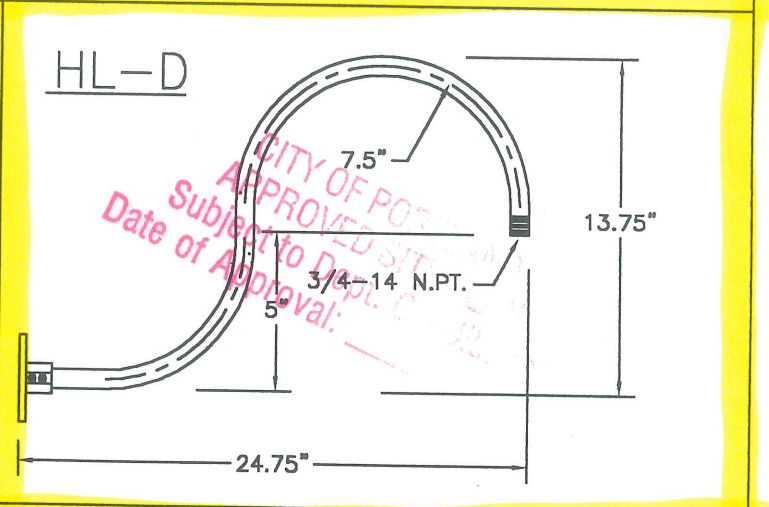
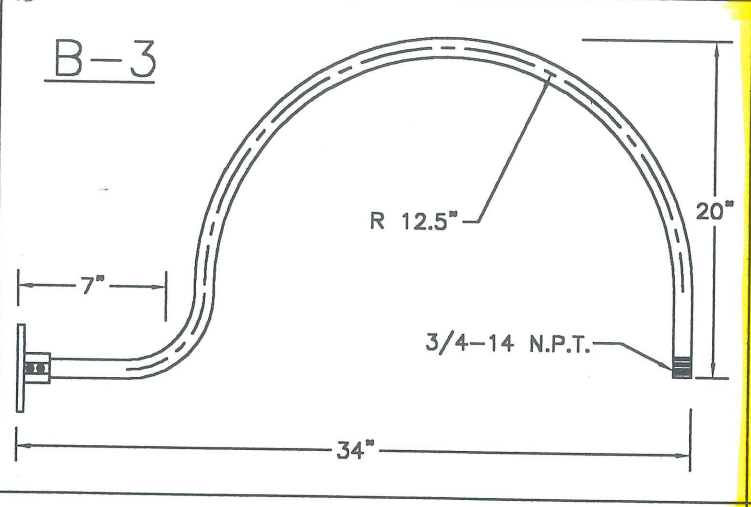
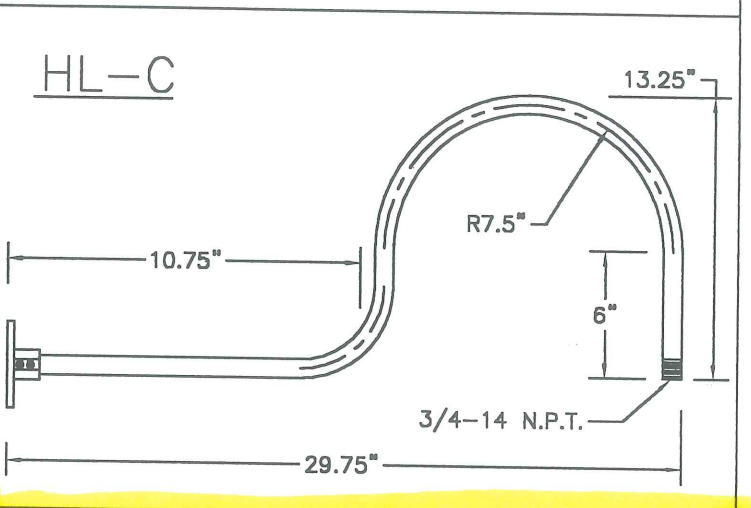
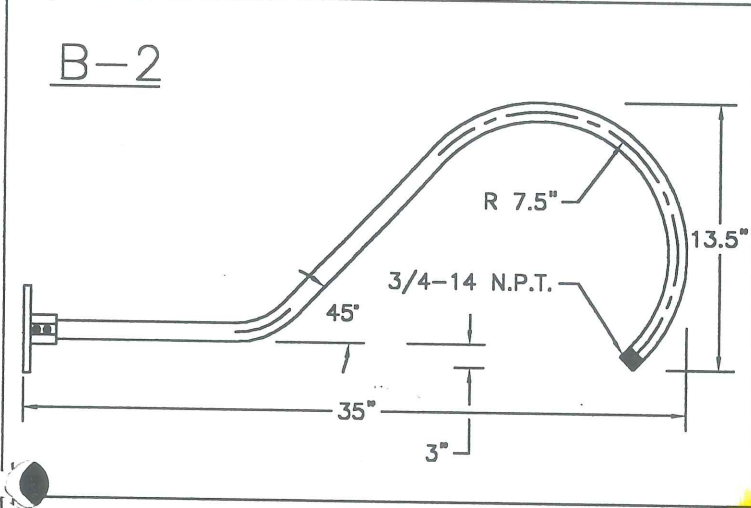
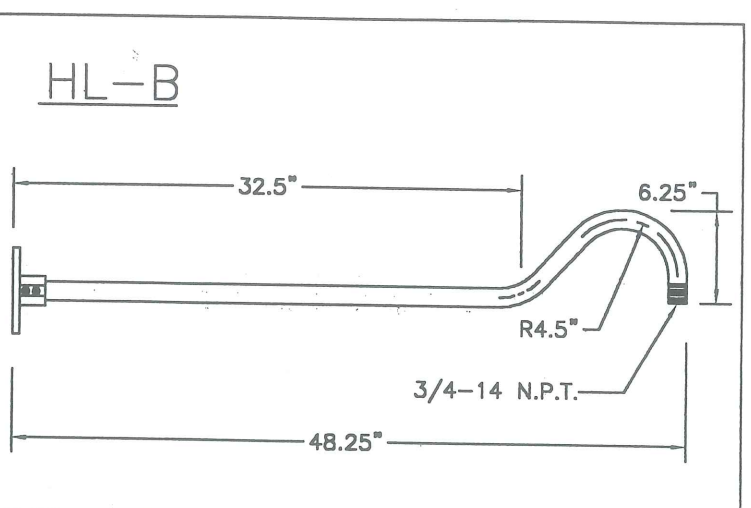
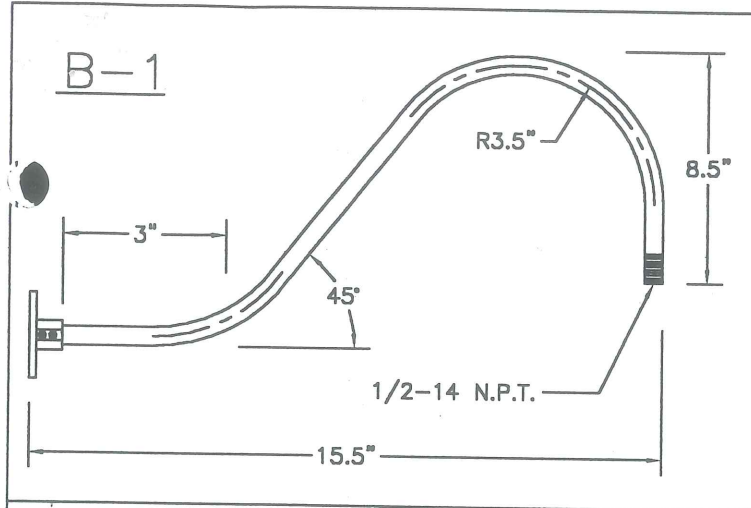


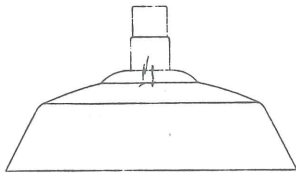
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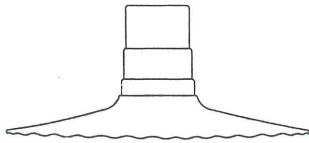
CITY OF PORTLAND
APPROVED SITE PLAN
Subject to Dept. Cons.
Date of Approval:

H-16116C-96

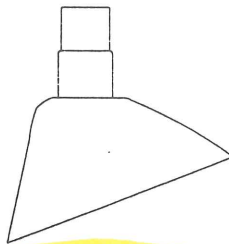




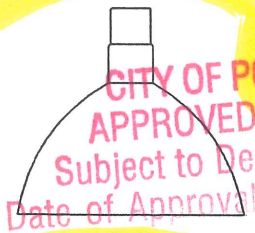
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<u>WAREHOUSE</u>					
15008	8"	7"		1 MED	100W
15010	10"	8"		1 MED	100W
15106	6"	8"	8"	1 MED	100W
15108	8"	12"	10"	1 MED	100W
15109	8"	12"	10"	1 MED	100W
15110	10"	13"	13"	1 MED	100W
15112	12"	8"		1 MED	200W
15114	14"	9"		1 MED	200W
15116	16"	10 1/2"		1 MED	200W
15117	17"	10 1/2"		1 MED	200W
15118	18"	12"		1 MED	200W
15120	20"	15"		1 MED	200W
15124	24"	15 1/2"		1 MED	200W
15127	27"	16"		1 MED	200W



<u>RADIAL SHADE</u>					
19008	8"	7"		1 MED	100W
19108	8"	10"	11"	1 MED	100W
19010	10"	7"		1 MED	100W
19110	10"	12"	10"	1 MED	100W
19116	16"	8"		1 MED	200W
19118	18"	8"		1 MED	200W
19120	20"	8"		1 MED	200W
19124	24"	8"		1 MED	200W



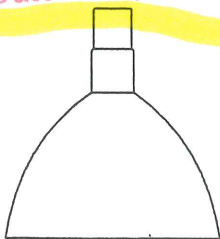
<u>ANGLE SHADE</u>					
18107	7"	8"		1 MED	200W
18110	10"	10 1/2"		1 MED	200W
18112	12"	12"		1 MED	200W
18114	14"	14 1/2"		1 MED	200W



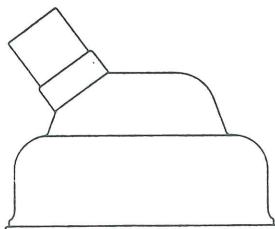
CITY OF PORTLAND
 APPROVED SITE PLAN
 Subject to Dept. of Public Works
 Date of Approval: _____

<u>DEEP BOWL</u>					
16110	10"	11"		1 MED	200W
16112	12"	13"		1 MED	200W
16116	16"	16 1/2"		1 MED	200W

Post mts.
 pendants



<u>LARGE BAY REFLECTOR</u>					
17118	18"	18"		1 MED	200W



<u>EMBLEM SHADE</u>					
HEM-12	12"	14"		1 MED	200W

JH
JC
JD
NM
NS

PLANNING OFFICE
MEMORANDUM

Y/N
|||||

To: Portland City Council
From: William B. Needelman, Senior Planner
Re: WCZ Text Change Summary, Addendum to Council Report 62-01
Date: 1-17-01

Introduction:

The Planning staff provides this memo to answer several of the commonly asked questions regarding the proposed Waterfront Central Zone amendment. For a complete description of the background and policy analysis for this application, please refer to the Council Report 62-01.

60 seating capacity
1250 sq max
reduce
to 45

Intended Result:

The result of the text change would expand the provision within the Waterfront Central Zone that allows non-marine uses in older buildings close to Commercial Street. The amendment would allow certain non-marine uses "in buildings existing on or having received site plan approval prior to" January 4, 1993. Currently, to be eligible for non-marine uses, buildings had to be in existence prior to the January '93 date. The Bayview restaurant was not constructed as of the date, but had a valid (less than one year old) site plan approval under the old zoning and was able to legally construct the building for restaurant use. The restaurant became a new building with grandfathered (legal-nonconforming) status for non-marine use. Approval of this amendment would change the status of the restaurant use from legal-nonconforming to permitted use.

Applicability:

While the amendment language is not specific to 184 Commercial Street, there are no other properties that had both (1) an un-expired site plan approval and (2) had not yet been built. The Planning Board asked our legal staff if old projects from the 1980's that had been approved but had failed prior to construction could resurface through this provision. The answer was no, because the site plans would have expired, and therefore would be void. To add clarity to the language, City Corporation Counsel suggests that the Council Order be specifically amended to exempt *expired* site plans from the expanded non-marine use provision.

Exterior Seating:

Exterior seating has existed adjacent to the restaurant for several years, but City Zoning and Legal staff have determined that the seating was illegal for restaurant use. When originally developed, the seating was used by both the Bayview Tours excursion boat and the Bayview Restaurant, which at that time were under the same ownership. The illegal exterior restaurant use was discovered during the sale of the Bayview Restaurant (separate from the tour boat) and the exterior seating was not used during the 2001 season.

If approved, the applicant intends to apply for an expansion of the restaurant use to legally include a portion of the exterior seating. Limited expansion of a permitted non-marine uses is allowed as a conditional use (reviewable by the Planning Board.)

"Supportive
amendment"

Robert P. & Carolyn B. Scholl
29 Imperial Avenue
Westport, CT 06880
January 11, 2002

William Needleman
Senior Planner
Planning Department
Portland City Hall
389 Congress Street
Portland, ME 04101

Re: Application of Thomas Dana, contract purchaser of
Bayview Restaurant – hearing of January 23, 2002

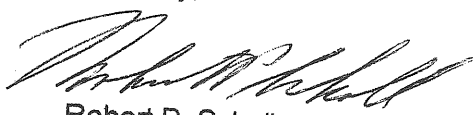
Dear Mr. Needleman:

Thank you for forwarding us this notice of hearing. We have owned a condominium in the brick building at Chandler's Wharf since it was built, the closest residential structure to the applicant's proposed business location. Although we currently lease our premises, we anticipate making it our second home in the near future.

We have been receiving requests to change or vary zoning regulations in this historic Old Port area for a number of years. As a zoning lawyer, and a 5-year veteran of a Planning and Zoning Commission, 3 of them as chairman, we are very concerned with the failure of zoning to reduce non-conformity in this commercially valuable and quaint area of Portland. The ambiance of the area consists in the ability of people to approach and enjoy the docks, the floating restaurant, and the view from Commercial Street. Any use, such as the one proposed, which puts people between the street scene and the water, or even allows that kind of application, will spoil this ambiance. Also, it can only lead to more bold ventures in trying to milk the last commercial dollar out of restaurants by encouraging outside dining and drinking.

Those of us at Chandlers Wharf who have outside terraces along the water would be ill-served by any future or present decision of the City Council which would allow this kind of use to proliferate. While we enjoy the summers in Portland and the streetscape with residents and visitors alike, the City must work diligently to preserve the pedestrian friendly quiet atmosphere and views. Please understand it is not just this application, but the overall feeling that more and more businesses are seeking to expand in an area which could eventually become a string of honky-tonk outside dining decks. We believe that the time has come to say "enough" and give notice that further encroachment on the public enjoyment spaces will not be tolerated. We are opposed to this application.

Sincerely,


Robert P. Scholl


Carolyn B. Scholl

**PLANNING OFFICE
MEMORANDUM**

To: Portland City Council
From: William B. Needelman, Senior Planner
Re: WCZ Text Change Summary, Addendum to Council Report 62-01
Date: 1-17-01

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Robert P. & Carolyn B. Scholl
29 Imperial Avenue
Westport, CT 06880
January 11, 2002

William Needleman
Senior Planner
Planning Department
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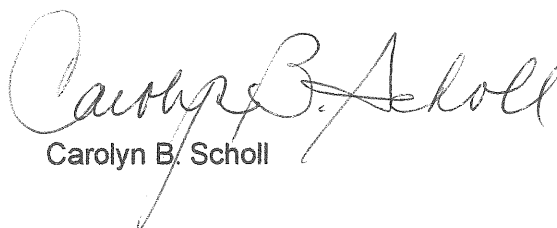
We have been receiving requests to change or vary zoning regulations in this historic Old Port area for a number of years. As a zoning lawyer, and a 5-year veteran of a Planning and Zoning Commission, 3 of them as chairman, we are very concerned with the failure of zoning to reduce non-conformity in this commercially valuable and quaint area of Portland. The ambiance of the area consists in the ability of people to approach and enjoy the docks, the floating restaurant, and the view from Commercial Street. Any use, such as the one proposed, which puts people between the street scene and the water, or even allows that kind of application, will spoil the this ambiance. Also, it can only lead to more bold ventures in trying to milk the last commercial dollar out of restaurants by encouraging outside dining and drinking.

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Sincerely,



Robert P. Scholl



Carolyn B. Scholl

City of Portland, Maine
IN THE CITY COUNCIL

Order 131-01/02
Tab 13 12-17-01

AMENDMENT TO PORTLAND CITY CODE CHAPTER 14 (LAND USE)
ARTICLE III, DIVISION 18 (WATERFRONT)
SECS. 14-314(e) and 14-315(c)

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE IN
CITY COUNCIL ASSEMBLED AS FOLLOWS:

1. That Chapter 14 (Land Use), Article III (Zoning), Division
18 (Waterfront), Section 14-314 (Permitted Uses) is hereby
amended to read as follows:

Sec. 14-314. Permitted uses.

....

(e) Commercial uses in any area of a building existing on
or having received site plan approval prior to January
4, 1993, and located within thirty-five feet of the
southerly edge of Commercial Street between Maine
Wharf and the city fish pier: Subject to section
14-314(f)1 and 14-315(a), the following uses shall be
permitted:

....

2. That Chapter 14 (Land Use), Article III (Zoning), Division
18 (Waterfront), Section 14-315 (Conditional Uses) is hereby
amended to read as follows:

Sec. 14-315. Conditional uses.

....

(c) Expansion of a non-water dependent, non-marine related
use permitted under 14-314(e) (Commercial uses in
buildings existing on or having received site plan
approval prior to January 4, 1993 and located within
thirty-five feet of the southerly edge of Commercial
Street between Maine Wharf and the city fish pier.)
into contiguous and newly created building space of no
more than 2000 sq. ft., total, shall be allowed only
as follows:

....

**CITY OF PORTLAND, MAINE
CITY COUNCIL AGENDA REQUEST FORM**

TO: Linda Cohen, City Clerk
FROM: Alexander Jaegerman, Chief Planner
DATE: December 5, 2001
SUBJECT: Agenda Request

- 1) Council Meeting at which action is requested: January 7, 2001
2) Can action be taken at a later date? YES NO

I. SUMMARY OF ISSUE

Thomas Dana, prospective owner of the Bayview Restaurant at 184 Commercial Street, requests a Public Hearing regarding a proposal to change the text of the Waterfront Central Zone.

The result of the text change would expand the provision within the permitted use section that allows non-marine uses in buildings that were both in existence as of January 4, 1993 and within 35 feet of Commercial Street. The applicant requests that the non-marine use provision be applied to buildings that were "existing on or having received site plan approval prior to" the January 1993 date.

II. REASON FOR SUBMISSION (What issue/problem will this address?)

The existing building housing the Bayview Restaurant has legal non-conforming status for operation of a non-marine use in the Waterfront Central Zone. The applicant has a letter of intent to buy the business at 184 Commercial Street, but wishes to change the status of the business from a grand fathered non-conforming use to a permitted use. As a non-conforming use, the applicant cannot legally expand the business as a non-marine related use in the Waterfront Central Zone.

As a separate but related issue, the Bayview Restaurant has, since its construction in 1993, utilized outside seating along the pier edge in the area of the Chandler's Wharf parking lot. City Zoning and Legal staff have determined that this exterior seating is illegal and is not considered a grand fathered use. The applicant would like to legitimize the exterior seating

*Return to
Bill
Needleman*

WATERFRONT CENTRAL ZONE

THOMAS DANA, APPLICANT

Submitted to:

Portland City Council
Portland, Maine

December 5, 2001

I. INTRODUCTION

Thomas Dana, prospective owner of the Bayview Restaurant at 184 Commercial Street, requests a Public Hearing to discuss a proposal to change the text of the Waterfront Central Zone.

The result of the text change would expand the provision within the permitted use section that allows non-marine uses in buildings that were both in existence as of January 4, 1993 and within 35 feet of Commercial Street. The applicant requests that the non-marine use provision be applied to buildings that were "existing on or having received site plan approval prior to" the January 1993 date.

The applicant has a letter of intent to buy the business at 184 Commercial Street, but wishes to change the status of the business from a grandfathered non-conforming use to a permitted use. If approved, the applicant would then come back before the Planning Board to expand the use to legitimize existing exterior seating as a conditional use expansion under the recently approved "Sapporo amendment."

II. BACKGROUND

The Bayview Restaurant site plan had been approved as a permitted use in December 22, 1992, under the old zoning regulations. The current zoning was adopted on January 4, 1993, and this date became the eligibility date for all buildings within 35 feet of Commercial Street to be able to house non-marine uses as a permitted use. The building permit for the Bayview Restaurant was issued in December of 1993, as a grandfathered non-conforming use, as allowed under the zoning in place during the site plan review. The applicant's goal is to allow restaurant use as a permitted use. Staff knows of no other building to which this text change would apply.

In summer of 2000, the City Council adopted a text change to the Waterfront Central Zone to allow the expansion of permitted non-marine uses as allowed under 14-314(5): uses in buildings located wholly or partially within 35 feet of the southerly sideline of Commercial Street: the "Sapporo amendment." As a second step, should the City Council adopt this text change, the applicant will apply for a conditional use appeal to the Planning Board to expand the restaurant use. Currently, exterior seating exists in the area adjacent to the restaurant, but City zoning and legal staff have determined that this use is non-conforming and not grandfathered. A direct result of this text change will be a consideration of whether the exterior seating creates an adverse impact on potential marine use on the pier.

While the status of the exterior seating is not currently before the Council, the issues are implicit within the discussion of this Text Change. If the text change is approved, the Planning Board will then review applications for site plan and conditional use to expand the Bayview Restaurant to include the exterior seating. In reviewing any expansion of a non-marine use, the Board will apply the standards of No Averse Impact and the Conditional Use Standards of the Waterfront Central Zone

III. CURRENT ZONING

Code 14-314(5) allows non-marine uses in the entirety of buildings located wholly or partially within 35 feet of the southerly sideline of Commercial Street, conditioned that the buildings existed prior to January 4, 1993. See current WCZ language, Attachment 3.

The intention and purpose of the WCZ zone recognizes that the rents provided by non-marine related uses help to maintain the marine related infrastructure located on the waterside of the pier properties. The text change proposed intends to expand non-marine use (and the potential for expansion) to the Bayview Restaurant building, while retaining all other requirements and limitations found in the WCZ language. While compatible non-marine uses are encouraged, any non-marine use must adhere to the No Adverse Impact section of the WCZ, 14-313.5. No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. Please see the Policy Consideration section below.

IV. PROPOSED TEXT CHANGE

The intention of this provision is to allow permitted non-marine uses as allowed under 14-314(5), uses in buildings located wholly or partially within 35 feet of the southerly sideline of Commercial Street, to be applied to buildings approved but not constructed prior to January 4, 1993.

Draft Text Language: To be inserted into Permitted Use for the WCZ, 14-315 (3)

“Commercial uses in any area of a building existing on or having received site plan approved prior to January 4, 1993, and located with thirty-five feet off the southerly edge of Commercial Street between Maine Wharf and the city fish pier:...”

V. COMPREHENSIVE PLAN AND LAND USE POLICY

The applicant requests this text change to convert legal nonconforming use into a permitted use. The distinction is important to the applicant since only permitted uses can be legally expanded. The Board has found that the proposal is compatible with the current Comprehensive Plan. Should the text change be implemented by the City Council, the Planning Board will then apply Conditional Use Standards listed under 14-315 (WCZ Conditional Uses) at such time that the applicant seeks to expand the restaurant use.

Waterfront Alliance Recommendations and Current Zoning

In April of 1992, the Waterfront Alliance produced a policy document titled “Waterfront Alliance Recommendations to the City of Portland.” This report outlines the position that properties with direct water access should be limited to water dependent and marine related uses, but that other portions of the waterfront (upper stories, and areas well away from water access) can and should accommodate “marine compatible” uses to help support the maintenance of pier infrastructure. As stated in the report’s preamble,

"Water-dependent users are the lifeblood of Portland's waterfront and their interests must be protected above all others. We further recognize that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long term growth."

The City Council used this document as the policy basis for the current waterfront zoning, as enacted on January 4, 1993. Simultaneously adopting the Council Report as part of the Comprehensive Plan in Council Order 168-93, the 1993 zoning amendments followed the Waterfront Alliance report by putting a priority on the preservation of berthing and working pier deck space for existing and potential marine uses. The Purpose and No Adverse Impact sections of the WCZ text, included below, fully express the intent of the zone and the underlying policy.

Waterfront Central Purpose

Sec. 14-313. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the

trade.
(Ord. No. 168-93, § 2, 1-4-93)

No Adverse Impacts

Sec. 14-313.5. No adverse impact on marine uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

VI. SUMMARY

The conversion of 184 Commercial Street from a legal non-conforming use to a permitted use completes a "grandfathering" process that began when the building permit was issued under the pre-Jan.1993 zoning. The impacts of this text change are discrete and staff has no knowledge of other structures or uses to which the amendment would apply. The greater question will arise when Mr. Dana applies to expand the restaurant use under the "Sapporo Amendment." At that time, the Planning Board will need to evaluate the physical layout of the existing exterior seating and its proximity to the working edge of the pier as it relates to the "No Adverse Impact" clause of the zoning language. While the issue of legitimizing exterior seating is not spelled out in the language change contemplated here, the City Council should consider the issue as integral to the current application.

Attachments:

1. Written Statements
2. Application
3. Current WCZ Zone Text
4. Zoning Correspondence
5. Letter from Corporation Council
6. Letter of Intent
7. Letter of Support
8. Photos
9. Site Sketch
10. Context Sketch
11. Property Survey

Att 1.1

Tod Dana

P.O. Box 169 * Portland, Maine 04112
Tel: 207-775-2228 * Fax: 207-761-8280
Email: asiawest@aol.com

Portland Planning Board
City of Portland
389 Congress Street
Portland, Maine 04101

August 22, 2001

Dear Members of the Planning Board,

As an addendum to my application for a text change in city ordinance section 14-314 (e) in the WCZ zone, I want to explain why I am seeking the text change.

I first entered into a Letter of Intent with the owners of the "Bayview Seafood Restaurant" this past March. As part of my due diligence, I discovered that the twelve picnic tables on the premises (which have been in use for the 7 years the restaurant has been operating), were not included in the initial zoning application back in 1993. As a result, it appears that the seating for this establishment is not recognized by the city as "legal" despite the fact that permits for liquor were issued by the city each year for these outdoor seats.

In an effort to "legitimize" the aforementioned seating and conclude my purchase of the restaurant, I am seeking a text change, which will make this restaurant eligible for outdoor seating under the "conditional uses" section of the ordinance (sec. 14-315).

As a result of my discovering the "illegitimate" status of the outdoor seating, the restaurant sat vacant this summer. This seems very unfortunate given that this seasonal restaurant has been a very popular tourist destination for the last 7 summers. It is my sincere hope that the planning board and city council will approve our text change, so we can re-open "Bayview Seafood Restaurant" next season.

Thank you for your consideration.

Sincerely,



Tod Dana

Text Change Amendment

Requested Text Change: The applicant requests that WCZ zone Section 14-314(e) be amended to state, in part:

Commercial uses in any area of a building existing on *or having received site plan approval prior to* January 4, 1993, and located with thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier: Subject to section 14-314(f)(1) and 14-315(a), the following uses shall be permitted

Section 14-314(e).

Background

In 1994, the Bayview Seafood Restaurant and Retail Operation, located at 180 Commercial Street, opened for business. It was founded by Captain Dick Yates, who also owns and still operates the adjoining Bayview Sea Cruises. Since 1994, the restaurant has served breakfast and primarily seafood fair for lunch and dinner. Since 1994, the restaurant has operated as a retail store by selling seafood to the general public. Since 1994, the restaurant has also had outdoor seating, in the form of a deck and picnic tables and a corresponding liquor license.

The Applicant, Salty Lobster Company, recently obtained an option to purchase the restaurant. The Applicant intends to operate a lunch and dinner lobster shack somewhat similar to the Lobster Shack in Cape Elizabeth and/or the Lobster Cooker in Freeport. The Applicant also plans to obtain its commercial wholesale lobster license; buy lobsters and seafood directly from local lobsterman; incorporate the delivery of the lobsters to into the theme of the restaurant; and continue the 7 year tradition of operating as a retail seafood outlet by selling seafood to the general public.

In performing its due diligence on this business, the Applicant was informed by City Officials that the restaurant was not properly permitted to have outdoor seating, in spite of the fact that it had a valid liquor license. Needless to say the Applicants were quite surprised by this development, given the fact that the deck has been in existence and use since on or around 1994; the restaurant has a valid liquor license for the deck; there are outdoor lights on the deck; and a large sign on the side of the restaurant that says "Deck Seating." In an effort to salvage the deal, the parties agreed to condition the sale of the business upon the approval of a text change to the WCZ zone that would permit the Applicant to use the existing deck for outdoor seating, as has been done for the past 7 years of operation.

Text Change Overview

As you know, City Ordinance §14-315.2(3), permits certain businesses in the WCZ Zone that were in existence prior to January 4, 1993, to qualify for a conditional use permit for outdoor seating.

The Bayview Seafood Restaurant did not exist as of January 4, 1993. However, the site plan for a restaurant to be located at 180 Commercial Street was approved on December 22, 1992. The Building Permit for 180 Commercial Street was issued on December 7, 1993. The building now located at 180 Commercial Street was completed shortly thereafter. Our discussions with City Officials and Attorneys have revealed that this set of circumstances does not fall under the grandfather clause set forth in §14-315.2(3). Accordingly, the Applicant is seeking a narrowly tailored text change to permit the Bayview Seafood Restaurant and its successor business to continue using the aforementioned outdoor seating. This request is quite similar to the narrowly tailored text change sought and received by Sapporo to expand the size of its Commercial Street restaurant.

It is the Applicant's understanding that in order to prevail in its request, the Applicant must demonstrate the text change does not run contrary in anyway to the "Purpose" of the WCZ zone. It is obvious from the circumstances of this case that the requested text change does not run contrary in anyway to the "Purpose" of the WCZ zone. In fact, the text change is a narrowly tailored request designed to effect only one business, which actually supports the Purpose of the WCZ zone.

The Purpose of the Waterfront Central Zone is set forth in detail in WCZ Section 14-313 as follows:

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;
- (b) The second priority is to encourage other marine and marine related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible with first and second priority uses; and

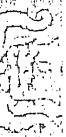
- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

Section 14-313.

The operation of a lobster shack and/or seafood restaurant, with outdoor seating, on 180 Commercial Street, is in and of itself a water-dependent and marine-related support use of the premises. By its very nature, the restaurant is/would be reliant upon local fisherman to supply the product sold on the premises. The restaurant would aesthetically compliment its current environment. The Applicant's plan to directly purchase and wholesale lobsters is an even stronger link to water-dependent and marine-related support uses.

As depicted on the attached map and supporting photographs, the Applicant's operation of a lobster shack and use of outdoor seating is quite consistent with and supported by the lots, businesses and slips in the immediate area of the outdoor seating. (See for example: New Meadows Lobsterhouse, DiMillos, Sightseeing Tour Boats, Long Wharf Cruises, Bayview Cruises, Fish Houses, etc. . . .) This map and these photographs are the best evidence as to why this narrowly tailored exception harms no one, aids the parties in this transaction and is consistent with the Purpose of the WCZ zone.



December 22, 1992

CITY OF PORTLAND

Mr. Josef Chalac
Architect
48 Union Wharf
Portland, ME 04101
Re: The Fish Store

Dear Josef:

On December 22, 1992, the Portland Planning Authority granted minor site plan approval for a fish retail/restaurant building to be located at 180 Commercial Street with the following condition:

1. That construction plans shall be signed and stamped by a State of Maine Registered Professional Engineer to conform with the Division 26-5 Flood Plain Management Regulations of the Land Use Code.

The approval is based on the submitted site plan. If you need to make any modifications to the approved site plan, you must submit a revised site plan for plan review and approval. The site plan approval will be deemed to have expired unless work in the development has commenced within one (1) year of the approval or within a time period agreed upon in writing by the City and the applicant. A performance guarantee in a form acceptable to the City of Portland and an inspection fee equal to 1.7% of the performance guarantee will have to be posted before a building permit can be issued. A defect bond, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.

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

Sincerely,

Joseph E. Gray Jr.
JOSEPH E. GRAY, JR.
Director of Planning and Urban Development

cc: Richard Knowland, Senior Planner/Acting Chief Planner
P. Samuel Hoffsee, Chief of Building Inspections
William Cloux, Zoning Administrator

Melodie Esterberg, Development Review Coordinator
George Flaherty, Director of Parks and Public Works
William Bray, Traffic Engineer/Deputy Director of Parks and Public Works
Jeff Tarling, City Arborist
Natalie Burns, Associate Corporation Counsel
Lt. Wallace Carroway, Fire Prevention
Paul Mehoff, Materials Engineer

✓ Louise Chase, Secretary, Building Permits
Maine Maritime Activities/Gulf of Maine, Inc., P.O. 808,
South Portland, ME 04116



APPLICATION FOR ZONING AMENDMENT
 City of Portland, Maine
 Department of Planning and Urban Development
 Portland Planning Board

AH 2.1

1. Applicant Information:

THOMAS DANA
 Name
P.O. BOX 169
 Address
PORTLAND, ME. 04112
207.671.5566 207.761.8280
 Phone Fax

2. Subject Property:

184 COMMERCIAL STREET
 Address
PORTLAND, ME. 04101
031-J-030
 Assessor's Reference (Chart-Block-Lot)

3. Property Owner: Applicant Other

G.E.F. LLC (FRED FORSLEY)
 Name
P.O. BOX 2808
 Address
S. PORTLAND, ME. 04116
828-5136
 Phone Fax

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

TENANT (PENDING TEXT CHANGE)

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

I will be unavailable by phone between 8/28/01 - 9/21/01
 I am reachable by email though: asisquest@ad.com

Describe the existing use of the subject property: _____

Att 2.2

Seafood RESTAURANT / RETAIL SEAFOOD

7. Current Zoning Designation(s): WCZ

8. Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

SEAFOOD RESTAURANT / RETAIL SEAFOOD

9. Sketch Plan: On a separate sheet please provide a sketch plan of the property, showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1"=10' to 1"=100')

10. Proposed Zoning: Please check all that apply:

A. Zoning Map Amendment, from _____ to _____

B. Zoning Text Amendment to Section 14- 314(e)

For Zoning Text Amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (~~example~~), and language to be added is depicted with underline (example).

C. Conditional or Contract Zone

A conditional or contract rezoning may be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan and compatible with the surrounding neighborhood. (Please refer to Division 1.5, Sections 14-60 to 62)

of Portland in accordance with Section 14-54 of the Municipal Code (see below). The applicant also agrees to pay all costs of publication (or advertising) of the Public Hearing Notice as required for this application. Such amount will be billed to the applicant following the appearance of the advertisement.

	<u>1-25 Units</u>	<u>26-50 Units</u>	<u>51-75 Units</u>	<u>75 & Over</u>
Residential Zones	\$350.00	\$400.00	\$450.00	\$500.00
Nonresidential Zones	\$350.00	\$400.00	\$450.00	\$500.00
	0-15,000 sq. ft. or 0-5 acres (whichever is less)	15,000-30,000 sq. ft. or 6-10 acres (whichever is less)	30,000-45,000 sq. ft. or 10-15 acres (whichever is less)	45,000-60,000 sq. ft. or 15-20 acres (whichever is less)

AH-23

- Legal Advertisements (one for workshop and one for public hearing) percent of total bill
- Notices (one for workshop and one for public hearing) 40 cents each
- Text Amendments \$300.00

\$ 300.- Amount of Fee

12. Signature: The above information is true and accurate to the best of my knowledge.

8/22/01
Date of Filing

Tom H. Dana
Signature of Applicant

Further Information:

Please contact the Planning Office for further information regarding the rezoning process. Applicants are encouraged to make an appointment to discuss their rezoning requests before filing the application.

Applicants are encouraged to include a letter or narrative to accompany the rezoning application which can provide additional background or context information, and describe the proposed rezoning and reasons for the request in a manner that best suits the situation.

In the event of withdrawal of the zoning amendment application by the applicant in writing prior to the submission of the advertisement copy to the newspaper to announce the public hearing, a refund of two-thirds of the amount of the zone change fee will be made to the applicant by the City of Portland.

Portland Planning Board
Portland, Maine

Effective: July 6, 1998

Sec. 14-314.(e)

Commercial uses in any area of a building existing on, or having received site plan approval prior to January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier: Subject to section 14-314 (f) 1 and 14-315 (a), the following uses shall be permitted:

**The underlined text is the additional wording that I am proposing.*

DIVISION 18. WATERFRONT CENTRAL ZONE*

*Editor's note--Ord. No. 168-93, § 2, adopted Jan. 4, 1993, repealed former Divs. 18, 18.5 and 18.7, §§ 14-306--14-320.2, which pertained to waterfront zones, and enacted new provisions as Divs. 18, 18.5 and 18.7 to read as herein set out. Formerly, such provisions derived from Ord. No. 426-83, § 1, adopted Apr. 25, 1983; Ord. No. 427-83, § 1, adopted Apr. 25, 1983; Ord. No. 355-85, § 1, adopted Jan. 7, 1985; Ord. No. 438-86, § 1, adopted Apr. 7, 1986; Ord. No. 189-87, § 3, adopted Feb. 7, 1987; Ord. No. 174-87, 's; 1, 2, adopted Mar. 4, 1987; Ref. of May 5, 1987; Ord. No. 385-87, adopted Apr. 6, 1987; Ord. No. 36-89, §§ 1, 2, adopted June 28, 1989; and Ord. No. 15-92, §§ 22, 23, adopted June 15, 1992.

Sec. 14-313. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-313.5. No adverse impact on marine uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-314. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-313.5 (no adverse impact on marine uses), the following uses are permitted in the waterfront central zone:

- (a) *Marine:*
 1. Marine products, wholesaling, distribution and retailing;
 2. Marine repair services and machine shops;
 3. Tugboat, fireboat, pilot boat and similar services;
 4. Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels;
 5. Marine industrial welding and fabricating;
 6. Shipbuilding and facilities for construction, maintenance and repair of vessels;
 7. Commercial marine transport and excursion services, including ferries, captained charter services, sport fishing and water taxis;
 8. Cargo handling facilities, including docking, loading and related storage;

9. Boat repair yards;
10. Boat storage facilities, excluding rack storage facilities;
11. Seafood processing;
12. Seafood packing and packaging;
13. Seafood loading and seafood distribution;
14. Fabrication, storage and repair of fishing equipment;
15. Ice-making services;
16. Facilities for marine construction and salvage;
17. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices;
18. Fabrication of marine-related goods;
19. Fishing and commercial vessel berthing;
20. Noncommercial berthing of less than fifty (50) linear feet per pier;
21. Marine office, including but not limited to offices of owners of wharves or their agents, and naval architects, and seafood brokers;
22. Public landings;
23. Marine research, education, and laboratory facilities.

(b) *Commercial uses above the ground floor level in buildings in existence on January 4, 1993:* Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:

1. Professional, business, and general offices;
2. Business service establishments;
3. Cabinet and carpentry shops and accessory retail sales of only those products that are produced on the premises;

4. Intermodal transportation facilities;
 5. Cold storage facilities.
- (c) *Industrial uses above the ground floor level of buildings in existence on January 4, 1993:* Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:
1. Warehousing and wholesaling;
 2. Industrial uses which meet the performance standards of the I-2 zone.
- (d) *Public:* Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:
1. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures, provided that such structures are located more than one hundred (100) feet from the water;
 2. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces, including without limitation pedestrian bicycle trails;
 3. Municipal office uses located above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building unless approved pursuant to section 14-315. Other municipal uses which need to be located on the ground floor level because of operational necessity may be so located on city-owned property.
- (e) *Commercial uses in any area of a building existing on January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier:* Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:
1. Professional, business, and general offices;
 2. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall not be permitted under this section;
 3. Restaurants, provided that food service and consumption shall be the primary function of the restaurant;

- 4. Banking services;
- 5. Laundry and dry cleaning services;
- 6. Cabinet and carpentry shops and accessory retail sales of products produced on the premises;
- 7. Intermodal transportation facilities;
- 8. Cold storage facilities;
- 9. Museums and art galleries.

(f) *Other:* Accessory uses:

- 1. Notwithstanding sections 14-331, 14-334, 14-404 or any other provision of this Code, parking for uses other than those set forth in section 14-314(a) shall not be considered a permitted accessory use on-site and shall be subject to the provisions of section 14-315(a).
- 2. Except as provided in subsection a. above, accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses. Food service establishments, newsstands and other similar retail and service support uses shall only be permitted as accessory uses if they are part of and located within the lot lines of a use set forth in section 14-314(a)1, 7, or 22; that such uses do not exceed two thousand (2,000) square feet in total floor area of the building, or twenty-five (25) percent of the total floor area of the building, whichever is less, and that each individual use does not exceed one thousand (1,000) square feet in total floor area of the building; and further provided that such accessory uses provide goods or services that are supportive of the principal use and its clientele.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-315. Conditional uses.

The following uses shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471(c), section 14-474(a), or any other provision of this Code, the planning board shall be substituted for the board of appeals as the reviewing authority, and further provided that in addition to the provisions of section 14-474(c)(2), section 14-313.5, and any other conditions specified under the particular use below, they shall also meet the following conditions:

- (a) The proposed use shall be compatible with existing and potential marine uses in the vicinity;
- (b) The proposed use shall not impede access to the water by existing or potential marine uses; and
- (c) For conditional uses that propose or require twenty (20) or more parking spaces, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development, specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1). For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.

1. Parking: Notwithstanding sections 14-317(g), 14-331, 14-334 and article V of this chapter, no parking shall be allowed in this zone for conditional uses and uses permitted only above the ground floor level, unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces required for marine uses that are required by section 14-314(a). The remainder of parking required for such uses shall be provided off-site and in other zones where parking is a permitted use.

(2) Marine:

a. Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:

- 1. Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the planning board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.

b. Fish by-products processing, provided that:

- 1. Any fish by-products processing facility has a valid rendering facility license under chapter 12; and

2. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.
- c. Boat rack storage facilities, provided that:
1. Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.
- (3) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier.) into contiguous and newly created building space of no more than 2000 sq. ft., total, shall be allowed only as follows:
- (a) the use may occupy ground floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or
 - (b) the use may occupy a ground floor area of no more than 1250 square feet beyond 35 feet from the southerly sideline of Commercial Street; and
 - (c) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and
 - (d) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

(Ord. No. 168-93, § 2, 1-4-93; Substitute Ord. No. 00-42, 8-7-00)

Sec. 14-315.3. Contract or conditional rezoning.

Except as authorized in section 14-314(d), an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993, if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the standards of section 14-313.5 and all of the following standards:

- (a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314(b), (c) or (d).
 - (b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314.
 - (c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.
 - (d) Any physical or legal impediments which preclude functional access from the site of the proposed development to the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.
 - (e) The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits protection of existing water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels (either on-site or off-site) and visual and physical access to the waterfront for the general public.
 - (f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline.
 - (g) The proposed development does not significantly restrict air, light, or water views of other structures located in the vicinity, and does not create significant adverse local climatic effects such as increased winds, shadowing, or less efficient traffic, parking or circulation patterns.
 - (h) The proposed development is consistent with the Portland Waterfront Public Access Design Guidelines, a copy of which is on file in the department of planning and urban development.
 - (i) The proposed rezoning contains adequate provisions and/or conditions to ensure that the water-dependent use is not abandoned after the project is developed.
- (Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-315.5. Prohibited uses.

Uses which are not enumerated in either section 14-314 or 14-315 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

- a. Residential uses (not in existence on May 5, 1987).
- b. Hotels, motels or boatels.

- c. Auditoriums, civic centers, convention centers or other meeting facilities.
 - d. Drinking establishments.
- (Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-316. Dimensional requirements.

In addition to the provisions of article III, division 25, of this Code, lots in the waterfront central zone shall be subject to the following requirements:

- (a) *Minimum lot size:* None.
- (b) *Minimum frontage:* None.
- (c) *Minimum yard dimensions:*

Front setback: None.

Side setback: None.

Rear setback: None

Setback from pier line: Notwithstanding the above requirements, a minimum setback of five (5) feet from the edge of any pier, wharf or bulkhead shall be required for any structure. The setback area may be utilized for activities related to the principal uses carried on in the structure, subject to the provisions of sections 14-313 and 14-314, but shall not be utilized for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).

- (d) *Maximum lot coverage:* One hundred (100) percent.
 - (e) *Maximum building height:* Thirty-five (35) feet.
- (Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-317. Performance standards.

All uses in the waterfront central zone shall comply with the following standards:

- (a) *Outdoor storage of materials:* Outdoor storage of commodities and materials accessory to normal conduct of business, except pilings and/or cranes, shall be permitted to a maximum height of forty-five (45) feet, and such materials shall be entirely contained, including runoff contaminants and residual material, within a designated area within the lot boundaries.
- (b) *Noise:* The level of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the

American National Standards Institute, Inc.), inherently and recurrently generated within the waterfront central zone shall not exceed seventy-five (75) decibels on the A scale at the boundaries of any lot, except for sound from construction activities, sound from traffic on public streets, sound from temporary activities such as festivals, and sound created as a result of, or relating to, an emergency, including sound from emergency warning signal devices. In measuring sound levels under this section, sounds with a continuous duration of less than sixty (60) seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of sixty (60) seconds or more shall be measured on the basis of the energy average sound level over a period of sixty (60) seconds (LEQ₁).

- (c) *Vibration:* Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries. This shall not apply to vibration resulting from activities aboard a vessel or from railroad vehicle activities, or from activities on a pile supported pier.
- (d) *Federal and state environmental regulations:* All uses shall comply with federal and state environmental statutes and regulations regarding emissions into the air, except where provisions of this Code are more stringent.
- (e) *Discharges into harbor areas:* No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the department of parks and public works in accordance with chapter 24, article III of this Code. All private sewage disposal or private wastewater treatment facilities shall comply with the provisions of chapter 24, article II of this Code and federal and state environmental statutes and regulations regarding wastewater discharges.
- (f) *Storage of vehicles:* Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.
- (g) *Landfill of docking and berthing areas:* Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. Sections 471 through 478, and permitted only if the landfill does not reduce the amount of linear berthing areas or space, or berthing capacity. If approved, construction shall be undertaken using methods approved by the department of parks and public works and shall be accomplished in accordance with the provisions of division 25 of this article and in a manner so as to ensure that a stable and impermeable wall of acceptable materials will completely contain the fill material and will not permit any fill material to leach into docking areas or navigable waters.

- (h) *Off-street parking:* Except as provided in section 14-315 or as required pursuant to article V (site plan), off-street parking is required at fifty (50) percent of the required number of parking spaces for specified uses as otherwise provided in division 20 of this article.
- (i) *Off-street loading:* Off-street loading is required as provided in division 21 of this article.
- (j) *Shoreland and flood plain management regulations:* Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.
- (k) *Lighting:* All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor nor have an unreasonable adverse impact on adjacent residential zones.
- (l) *Signs:* Signs shall be permitted as set forth in division 22 of this article.
- (m) *Storage of pollutants and oily wastes:* On-premises storage of pollutants and oily wastes shall not be permitted for more than forty-five (45) days.
- (n) *Compatibility of nonmarine uses with marine uses:* Nonmarine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither unreasonably interfere with the existence or operation of marine uses nor significantly impede access to vessel berthing or other access to the water by existing or potential marine uses as set forth in section 14-314(a). Siting of a use not set forth in section 14-314(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.
- (o) *Construction of new structures located within thirty-five feet of the southerly edge of Commercial Street:* Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street shall conform to the guidelines set forth in the Downtown Urban Design Guidelines, unless such structures are also located within one hundred (100) feet of the water. Such structures that are also located within one hundred (100) feet of the water shall conform to the extent practicable to the Downtown Urban Design Guidelines.

(Ord. No. 168-93, § 2, 1-4-93)

AH 4.1

Tod Dana
P.O. Box 169
Portland, ME 04112

April 26, 2001

Hand Delivery
City of Portland
389 Congress Street
Portland, ME 04101

Attention:

✓ Marge Schmuckal - Zoning Administrator
Penny Littell - Associate Corporate Counsel
Sarah Hopkins - Development Review Program
Manager Planning & Urban Development

RE: 180 Commercial Street Property

Dear: Ms. Schmuckal, Ms. Littell & Ms. Hopkins:

I am writing to follow up my discussions with Ms. Schmuckal and Ms. Hopkins regarding the issue of a conditional use permit for outdoor seating at 180 Commercial Street. As I mentioned to Ms. Hopkins, I have an option to purchase the business, now known as the Bayview Seafood Restaurant, located at 180 Commercial Street. As you all know, City Ordinance §14-315.2(3) (a copy of which is attached), permits certain businesses in the WCZ Zone that were in existence prior to January 4, 1993 to qualify for a conditional use permit for outdoor seating. My question for all of you is whether this property qualifies for that conditional use.

To review, the site plan for a restaurant to be located at 180 Commercial Street was approved on December 22, 1992. The Building Permit for 180 Commercial Street was issued on December 7, 1993. The building now located at 180 Commercial Street was completed shortly thereafter. During our discussions, Ms. Schmuckal expressed to me that in her opinion the property's site plan approval prior to 1993 qualifies the property for the aforementioned conditional use under City Ordinance §14-315.2. I am now seeking written confirmation from Ms. Littell, on behalf of the City Attorney's office and from Ms. Schmuckal, to confirm that Ms. Schmuckal's opinion is consistent with that of the City Attorney. Upon receipt of this confirmation, it is my intent to promptly apply for a major site plan review and subsequent conditional use permit.

Given the time constraints involved in this case, your prompt response to my inquiry is greatly appreciated. I look forward to hearing from you very soon. In the interim, should you have any questions, please do not hesitate to call me at 671-5566.


Sincerely,


Tod Dana

section 14-314(a). The remainder of parking required for such uses shall be provided off-site and in other zones where parking is a permitted use.

(2) Marine:

- a. Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:
 1. Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the planning board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.
- b. Fish by-products processing, provided that:
 1. Any fish by-products processing facility has a valid rendering facility license under chapter 12; and
 2. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.
- c. Boat rack storage facilities, provided that:
 1. Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.

 (3) Expansion of a non-water dependent, non-marine

related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier.) into contiguous and newly created building space of no more than 2000 sq. ft., total, shall be allowed only as follows:

- (a) the use may occupy ground floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or
- (b) the use may occupy a ground floor area of no more than 1250 square feet beyond 35 feet from the southerly sideline of Commercial Street; and
- (c) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and
- (d) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

(Ord. No. 168-93, § 2, 1-4-93; Substitute Ord. No. 00-42, 8-7-00)

Sec. 14-315.3. Contract or conditional rezoning.

Except as authorized in section 14-314(d), an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993, if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the standards of section 14-313.5 and all of the following standards:

AH 5

Corporation Counsel
Gary C. Wood



Associate Counsel
Charles A. Lane
Elizabeth L. Boynton
Donna M. Katsiaficas
Penny Littell

CITY OF PORTLAND

May 3, 2001

Mr. Tod Dana
P.O. Box 169
Portland, ME 04112

RE: 180 Commercial Street Property

Dear Mr. Dana:

I have received and reviewed your correspondence to Ms. Schmuckal, Ms. Hopkins and myself, dated April 26, 2001, with regard to the property at 180 Commercial Street. The zoning requirements in that area are very clear. If a commercial building was not in existence as of January 4, 1993, then any expansion of a non-marine, non-water dependent use is not allowed. The information you have provided indicates the building at which you would like to place outdoor seating was only built some time after December 7, 1993. As a result, it is my opinion that such outdoor seating would not be allowed.

I have conferred with Marge Schmuckal as to this opinion and she agrees.

I trust this answers your questions.

Sincerely,

Penny Littell

Associate Corporation Counsel

PL:hs

Cc: Marge Schmuckal, Zoning Administrator
Sarah Hopkins, Developmental Regional Services Manager

O:\OFFICE\PENNY\LTRS\dana.doc

The Salty Lobster Company
P.O. Box 169
Portland, ME 04112

H.S.B
July 18 T.D.
~~June 27, 2001~~

Hwa Sun Bae
29 Exchange Street
Portland, ME 04101

Re: Letter of Intent

Dear Ms. Bae:

The partnership doing business as The Salty Lobster Company ("Company") is pleased to offer to purchase your Assets defined in Paragraph 2 on the following revised terms and conditions:

1. Buyer. Buyer will be a company formed by Company.
2. Seller. Seller will be Hwa Sun Bae of Portland, Maine.
3. Purchased Assets. Company will purchase all of the tangible and intangible assets obtained by Seller from Richard Yates related to the Bayview Restaurant, located on 180 Commercial Street in Portland, Maine ("Premises"), and memorialized in an asset purchase agreement dated, November 20, 2000 and attached hereto as Exhibit A. Buyer shall not purchase or assume any of Seller's liabilities, with the exception of the Lease Agreement between Richard Yates and GEF, LLC, dated June 1, 1999, and attached hereto as Exhibit B, which shall be assigned to Buyer.
4. Purchase Price. The Purchase Price for the Purchase Assets will be \$80,000.00 made up of: (a) an initial payment of ~~\$10,000.00~~ ^{\$12,000.00} at Closing; (b) payment of \$5,000.00 on or before May 30, 2002; (c) payment of \$5,000.00 on or before June 30, 2002; (d) payment of \$5,000.00 on or before July 30, 2002; (e) payment of \$5,000.00 on or before August 30, 2002; and (f) payment of \$5,000.00 on or before September 30, 2002. (g) payment of \$5,000.00 on or before May 30, 2003; (h) payment of \$5,000.00 on or before June 30, 2003; (i) payment of \$5,000.00 on or before July 30, 2003; (j) payment of \$5,000.00 on or before August 30, 200; and (k) payment of \$5,000.00 on or before September 30, 2003; (l) payment of \$5,000.00 on or before May 30, 2004; (m) payment of \$5,000.00 on or before June 30, 2004; (n) payment of \$5,000.00 on or before July 30, 2004; and (o) payment of ~~\$5,000.00~~ ^{\$10,000.00} on or before August 30, 2004.
5. Closing. Buyer and Seller agree to use their best efforts to close the acquisition within sixty (60) days of the date of receipt, by the Buyer, of its outdoor seating application by all the applicable City of Portland authorities.

6. Conditions.

- a. Completion by ABC of a satisfactory due diligence investigation of the Acquired Assets and the aforementioned Lease Agreement, within 45 days after approval of outdoor seating permit;
- b. Landlord approval of Assignment of the aforementioned Lease Agreement to ABC;
- c. Approval by the City of Portland and the City of Portland Planning Board of Buyer's Applications/Petitions for, among other things, a permit for outdoor seating;
- d. Negotiation of an Asset Purchase Agreement satisfactory to both parties, containing, among other things, representations and warranties, covenants, indemnities and other terms and conditions customary in corporate acquisition, including, without limitation, a non-competition agreement, hold harmless agreement, within 45 days after completion of subsection c;
- e. The absence of any material adverse change between June 19, 2001 and the Closing in the Purchased Assets;
- f. The obtainment of sufficient financing by Buyers to fund the Asset Purchase Agreement and to operate the newly created company, within 45 days after completion of subsection c;
- g. The furnishment of all existing utility agreements and insurance policies on the Premises within 45 days after completion of subsection c;
- h. The filing of Buyer's application for outdoor seating with the City of Portland within forty five (45) days of the date of this Letter of Intent; and
- i. Approval by the City of Portland of a building permit and outdoor signage within 45 days after completion of subsection c.

7. Access to Information. Immediately following acceptance of this Letter of Intent, Seller will provide Buyer and its representative's access to any and all documentation and/or information to enable Buyer to complete its due diligence investigation.

8. Expenses. Each party will pay its own expenses and costs incidental to the completion of the acquisition, including legal and accounting fees.

- 9. **Brokerage.** It is understanding of both parties that there are no brokers involved in this transaction. Nevertheless, the parties agree to indemnify each other against any claims for brokerage commissions asserted as a result of any action by the indemnifying party.
- 10. **Cooperation and Exclusive Dealing.** Parties agree to cooperate in good faith and move expeditiously in the preparation of the documents and the taking of other actions necessary to carry out the acquisition. Seller agrees not to offer to sell its stock, assets or business to any other person or entity and not to negotiate or accept any agreement for the sale of all or any part of its stock, assets or any part of Seller's assets or business on or before Closing or such earlier date as the parties mutually agree that a definitive Asset Purchase Agreement cannot be reached and/or if Buyer's application for outdoor seating is denied by the City of Portland.
- 11. **Non-Disclosure: Publicity.** Each party agrees that it will not, without the prior written consent of the other party, disclose publicly or to any third party, the terms and conditions of this offer or the subsequent negotiations between the parties, except to the extent required by law or as may be required by the Company in connection with its financing arrangements, for the acquisition.
- 12. **Non-Binding Agreement.** The Letter of Intent is intended to provide a basis for the preparation of a definitive asset purchase agreement. Until such agreement has been prepared and duly authorized, executed and delivered by each of the parties, none of the provisions of this letter shall be binding on either party with the exception of the agreements and obligations contained in paragraphs 7 through 12.
- 13. **Acceptance.** This offer may be accepted in writing by Seller until ~~June 22, 2001~~, but will terminate if not accepted by the close of business on that date. T.D.
August 1, 2001 H.S.B
- 14. **Counterparts.** This Letter of Intent may be executed in one or more counterparts, including execution by facsimile transmission, each of which shall be deemed to be an original copy of this Letter of Intent and all of which, when taken together, will be deemed to constitute one and the same agreement.
- 15. **Plans.** If Buyer fails to receive approval of the required permits and/or decides not to Close, then a copy of all architectural drawings and sites plans used to apply for the permits referenced in this Letter of Intent shall be given to Seller.

If the foregoing is satisfactory to you, please evidence your acceptance of this offer by signing and returning to us the enclosed copy of this Letter of Intent. It is understood that upon your acceptance, this letter will constitute a Letter of Intent to negotiate in good faith to complete a definitive Asset Purchase Agreement and a Closing on the terms set forth above.

Sincerely,

Buyer:



Thomas H. Dana
(d/b/a The Salty Lobster Company)

Dated: 6/27/01

6.5

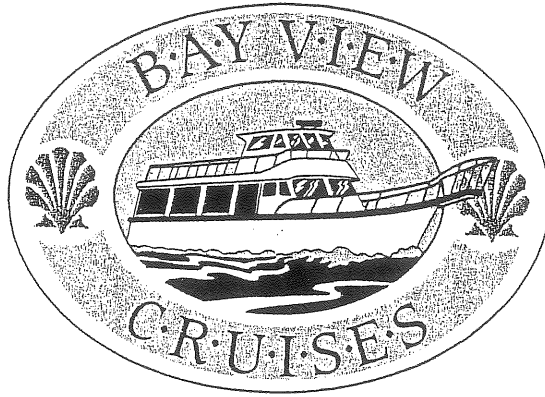
Seller:


Hwa Sun Bae

Dated: 7-18-01

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AV /



"BAY VIEW LADY"

RICH YATES
Captain

October 2, 2001

Portland Planning Board
Portland City Hall
389 Congress Street
Portland, Maine 04101

Dear Members of the Planning Board:

I have been running a tour boat business called "Bay View Cruises" on the Portland waterfront for the last 14 years. I am writing this letter on behalf of Tod Dana, whom I understand is applying for a text change in a city ordinance, which will allow him to use the outdoor seating at the small seafood restaurant at the base of the pier.

Mr. Dana asked me whether I felt that the picnic tables presently on the wharf compromised the quality of the adjacent berthing. My answer to that question is a very strong "NO". I presently lease the berthing adjacent to the aforementioned picnic tables and I feel very strongly that the tables don't interfere at all with the successful operation of my tour boat business. In fact, I believe that the restaurant and its' waterfront seating have complimented and supported my business over the last 7 years.

Long Wharf has developed into the focal point of all waterfront tourist traffic. Almost all of the established tour boats in the city are docked at Long Wharf. The picnic tables of "Bayview Seafood" have provided a comfortable and attractive place for tourists to view the boats and wait for the next cruise. I believe all the other tour boat operators share my opinion,

Sincerely,

Capt. Dick Yates
Captain Dick Yates

LOBSTERBAKES ♣ CRUISES ♣ MEETINGS

FISHERMAN'S WHARF, 184 COMMERCIAL STREET, PORTLAND, MAINE 04101 (207) 761-0496

SCALE 1" = 20'



**PLANNING OFFICE
MEMORANDUM**

To: Portland City Council
From: William B. Needelman, Senior Planner
Re: WCZ Text Change Summary, Addendum to Council Report 62-01
Date: 1-17-01

Introduction:

The Planning staff provides this memo to answer several of the commonly asked questions regarding the proposed Waterfront Central Zone amendment. For a complete description of the background and policy analysis for this application, please refer to the Council Report 62-01.

Intended Result:

The result of the text change would expand the provision within the Waterfront Central Zone that allows non-marine uses in older buildings close to Commercial Street. The amendment would allow certain non-marine uses "in buildings existing on **or having received site plan approval prior to**" January 4, 1993. Currently, to be eligible for non-marine uses, buildings had to be in existence prior to the January '93 date. The Bayview restaurant was not constructed as of the date, but had a valid (less than one year old) site plan approval under the old zoning and was able to legally construct the building for restaurant use. The restaurant became a new building with grandfathered (legal-nonconforming) status for non-marine use. Approval of this amendment would change the status of the restaurant use from legal-nonconforming to permitted use.

Applicability:

While the amendment language is not specific to 184 Commercial Street, there are no other properties that had both (1) an un-expired site plan approval and (2) had not yet been built. The Planning Board asked our legal staff if old projects from the 1980's that had been approved but had failed prior to construction could resurface through this provision. The answer was no, because the site plans would have expired, and therefore would be void. To add clarity to the language, City Corporation Counsel suggests that the Council Order be specifically amended to exempt *expired* site plans from the expanded non-marine use provision.

Exterior Seating:

Exterior seating has existed adjacent to the restaurant for several years, but City Zoning and Legal staff have determined that the seating was illegal for restaurant use. When originally developed, the seating was used by both the Bayview Tours excursion boat and the Bayview Restaurant, which at that time were under the same ownership. The illegal exterior restaurant use was discovered during the sale of the Bayview Restaurant (separate from the tour boat) and the exterior seating was not used during the 2001 season.

If approved, the applicant intends to apply for an expansion of the restaurant use to legally include a portion of the exterior seating. Limited expansion of a permitted non-marine uses is allowed as a conditional use (reviewable by the Planning Board.)

Robert P. & Carolyn B. Scholl
29 Imperial Avenue
Westport, CT 06880
January 11, 2002

William Needleman
Senior Planner
Planning Department
Portland City Hall
389 Congress Street
Portland, ME 04101

Re: Application of Thomas Dana, contract purchaser of
Bayview Restaurant – hearing of January 23, 2002

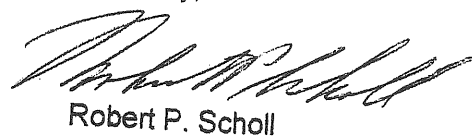
Dear Mr. Needleman:

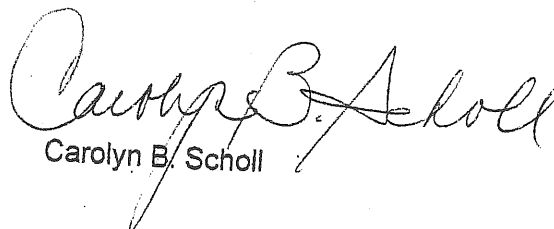
Thank you for forwarding us this notice of hearing. We have owned a condominium in the brick building at Chandler's Wharf since it was built, the closest residential structure to the applicant's proposed business location. Although we currently lease our premises, we anticipate making it our second home in the near future.

We have been receiving requests to change or vary zoning regulations in this historic Old Port area for a number of years. As a zoning lawyer, and a 5-year veteran of a Planning and Zoning Commission, 3 of them as chairman, we are very concerned with the failure of zoning to reduce non-conformity in this commercially valuable and quaint area of Portland. The ambiance of the area consists in the ability of people to approach and enjoy the docks, the floating restaurant, and the view from Commercial Street. Any use, such as the one proposed, which puts people between the street scene and the water, or even allows that kind of application, will spoil this ambiance. Also, it can only lead to more bold ventures in trying to milk the last commercial dollar out of restaurants by encouraging outside dining and drinking.

Those of us at Chandlers Wharf who have outside terraces along the water would be ill-served by any future or present decision of the City Council which would allow this kind of use to proliferate. While we enjoy the summers in Portland and the streetscape with residents and visitors alike, the City must work diligently to preserve the pedestrian friendly quiet atmosphere and views. Please understand it is not just this application, but the overall feeling that more and more businesses are seeking to expand in an area which could eventually become a string of honky-tonk outside dining decks. We believe that the time has come to say "enough" and give notice that further encroachment on the public enjoyment spaces will not be tolerated. We are opposed to this application.

Sincerely,


Robert P. Scholl


Carolyn B. Scholl

From: Jill Duson <jduson@perkinsthompson.com>
To: 'William Needleman' <WBN@ci.portland.me.us>
Date: Fri, Jan 11, 2002 12:07 PM
Subject: RE: Councilor Jill Duson

Thank you, Bill.

I like the belt, suspenders and staples approach.

Thank you for providing an additional copy of the original memo to council. When I read it the first time, I made a note in the margin "make sure something is said on the record regarding applicability to any other project".

As a recovered attorney I can't help but be little nervous about the creative minds of those who might be motivated to work hard to stretch this to apply to just one more scenario.

I did not feel that this particular nuance of the matter was clearly spoken to in the discussion so I raised the question. Members of the public who observe the meetings, generally do not have the opportunity to review the detailed memoranda related to each issue.

CC: Portland.CityHall(AQJ,GARY,PL)

From: William Needleman
To: jduson@nasource.com
Date: Fri, Jan 11, 2002 10:24 AM
Subject: To: Councilor Jill Duson

To: Councilor Jill Duson
From: Bill Needelman, Senior Planner
Re: Waterfront Central Zone, Text Change Proposal
Date: January 11, 2002

Councilor Duson:

Chief Planner, Alex Jaegerman asked that I provide you with information regarding the WCZ text change proposal by Todd Dana at the Bayview Restaurant. I believe that your specific question was how many properties could take advantage of the non-marine use expansion. My research and the collective memory of the Planning Office have uncovered no other businesses or properties that could house non-marine uses as a permitted use through this text change.

While the language is not specific to 184 Commercial Street, there are no other buildings that had an un-expired site plan approval but had not yet been built. The Planning Board asked our legal staff if old projects from the 1980's that had been approved but had failed prior to construction could resurface through this provision. The answer was no, because the site plans would have expired, and therefore would be void.

Having discussed this with Penny Littell, from City Corporation Counsel, she suggests that the wording of the order be specifically amended to exempt *expired* site plans from the expanded non-marine use provision. This would be a "belts and suspenders" approach and would add clarity to the language.

I have included a summary memo extracted from your Council Report as an attachment to this memo for additional information. If you have any questions, please call or email any time.

Bill Needelman, Senior Planner
874-8722

CC: Alex Jaegerman ; Gary Wood; Penny Littell

MEMO

To: Alex Jaegerman
From: William B. Needelman
Re: WCZ Text Change Summary
Date: 1-7-01

Thomas Dana, prospective owner of the Bayview Restaurant at 184 Commercial Street, has a proposal to change the text of the Waterfront Central Zone.

The result of the text change would expand the provision within the permitted use section that allows non-marine uses in buildings that were both in existence as of January 4, 1993 and within 35 feet of Commercial Street. The applicant requests that the non-marine use provision be applied to buildings that were "existing on or having received site plan approval prior to" the January 1993 date.

The applicant has a letter of intent to buy the business at 184 Commercial Street, but wishes to change the status of the business from a grandfathered non-conforming use to a permitted use. If approved, the applicant would then come back before the Planning Board to expand the use to legitimize existing exterior seating as a conditional use expansion under the recently approved "Sapporo amendment."

The Bayview Restaurant site plan had been approved as a permitted use in December 22, 1992, under the old zoning regulations. The current zoning was adopted on January 4, 1993, and this date became the eligibility date for all buildings within 35 feet of Commercial Street to be able to house non-marine uses as a permitted use. The building permit for the Bayview Restaurant was issued in December of 1993, as a grandfathered non-conforming use, as allowed under the zoning in place during the site plan review. The applicant's goal is to allow restaurant use as a permitted use. **Staff knows of no other building to which this text change would apply.**

In summer of 2000, the City Council adopted a text change to the Waterfront Central Zone to allow the expansion of permitted non-marine uses as allowed under 14-314(5): uses in buildings located wholly or partially within 35 feet of the southerly sideline of Commercial Street: the "Sapporo amendment." As a second step, should the City Council adopt this text change, the applicant will apply for a conditional use appeal to the Planning Board to expand the restaurant use. Currently, **exterior seating exists** in the area adjacent to the restaurant, but City zoning and legal staff have determined that this use is **non-conforming and not grandfathered**. A direct result of this text change will be a consideration of whether the exterior seating creates an adverse impact on potential marine use on the pier.

While the status of the exterior seating is not currently before the Council, the issues are implicit within the discussion of this Text Change. If the text change is approved, the Planning Board will then review applications for site plan and conditional use to expand the Bayview Restaurant to include the exterior seating. In reviewing any expansion of a non-marine use, the Board will apply the standards of No Averse Impact and the Conditional Use Standards of the Waterfront Central Zone.

Planning Board Recommendation:

The Planning Board recommended the text change on the basis of two considerations: (1) that as an approved project under the old zoning, the project had grandfathered status and the text change was a natural outgrowth of that status. (2) that exterior seating , while not legal, was a longstanding existing conditions that did not appear to interfere with the existing marine uses on the pier. The Bayview Tours had previously used the seating and has supplied a letter of support.

MEMO

To: Alex Jaegerman
From: William B. Needelman
Re: WCZ Text Change Summary
Date: 1-7-01

Thomas Dana, prospective owner of the Bayview Restaurant at 184 Commercial Street, has a proposal to change the text of the Waterfront Central Zone.

The result of the text change would expand the provision within the permitted use section that allows non-marine uses in buildings that were both in existence as of January 4, 1993 and within 35 feet of Commercial Street. The applicant requests that the non-marine use provision be applied to buildings that were "existing on or having received site plan approval prior to" the January 1993 date.

The applicant has a letter of intent to buy the business at 184 Commercial Street, but wishes to change the status of the business from a grandfathered non-conforming use to a permitted use. If approved, the applicant would then come back before the Planning Board to expand the use to legitimize existing exterior seating as a conditional use expansion under the recently approved "Sapporo amendment."

The Bayview Restaurant site plan had been approved as a permitted use in December 22, 1992, under the old zoning regulations. The current zoning was adopted on January 4, 1993, and this date became the eligibility date for all buildings within 35 feet of Commercial Street to be able to house non-marine uses as a permitted use. The building permit for the Bayview Restaurant was issued in December of 1993, as a grandfathered non-conforming use, as allowed under the zoning in place during the site plan review. The applicant's goal is to allow restaurant use as a permitted use. **Staff knows of no other building to which this text change would apply.**

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While the status of the exterior seating is not currently before the Council, the issues are implicit within the discussion of this Text Change. If the text change is approved, the Planning Board will then review applications for site plan and conditional use to expand the Bayview Restaurant to include the exterior seating. In reviewing any expansion of a non-marine use, the Board will apply the standards of No Averse Impact and the Conditional Use Standards of the Waterfront Central Zone.

Planning Board Recommendation:

The Planning Board recommended the text change on the basis of two considerations: (1) that as an approved project under the old zoning, the project had grandfathered status and the text change was a natural outgrowth of that status. (2) that exterior seating , while not legal, was a longstanding existing conditions that did not appear to interfere with the existing marine uses on the pier. The Bayview Tours had previously used the seating and has supplied a letter of support.

AN IMPORTANT LEGAL NOTICE FROM THE CITY OF PORTLAND PLANNING OFFICE

WHAT: *WCZ* The City Council will hold a public hearing to consider a text amendment by *Thomas Dana* the City of Portland to amend language in the ~~WPDZ~~ zone to clarify what specific industrial uses are allowed in the Waterfront Port Development Zone. This amendment is needed because of an earlier amendment in fall of 2001 that permits general offices in the IM Industrial Zone. The Waterfront Port Development Zone references uses in the industrial zone. The City Council will consider an amendment to list specifically "Low Impact Industrial Uses" and "Warehousing and Distribution Facilities" as the industrial conditional uses of the WPDZ.

WHEN: January 23, 2001
7:30 p.m.
City Hall, Council Chambers, 2nd Floor

FOR MORE INFORMATION:

If you wish to submit written comments, address them to Sarah Hopkins, Development Review Services Manager, Planning Department, City Hall, 4th Floor, 389 Congress Street, Portland, Maine 04101, contact by phone at 874-8720 or e-mail at sh@ci.portland.me.us.

From: William Needleman
To: Gary Wood
Date: Mon, Dec 17, 2001 10:32 AM
Subject: WCZ text Change

Gary:

The WCZ text change that is going for 1st reading tonight is listed for the 1st Jan Public Hearing. The applicant, Todd Dana, informs me that he will be out of town in early Jan. and would like to be scheduled for the 2nd Jan meeting (23rd?) Please let me know what I should do to secure this meeting agenda date. Please call or reply with any questions. Thanks.
Bill

→ Bill Needleman in planning
12/18/01

Bill / I spaced out on this
change / I + will show up on
the 7th but I will get it
tabled to the 23rd —
the applicant doesn't have to
come on the 7th

Gary

Copy + put in to my agenda book

**TEXT CHANGE TO
WATERFRONT CENTRAL ZONE**

THOMAS DANA, APPLICANT

Submitted to:

Portland Planning Board
Portland, Maine

November 27, 2001

I. INTRODUCTION

Thomas Dana, prospective owner of the Bayview Restaurant at 184 Commercial Street, requests a Workshop to discuss a proposal to change the text of the Waterfront Central Zone.

The result of the text change would expand the provision within the permitted use section that allows non-marine uses in buildings that were both in existence as of January 4, 1993 and within 35 feet of Commercial Street. The applicant requests that the non-marine use provision be applied to buildings that were "existing on **or having received site plan approval prior to**" the January 1993 date.

The applicant has a letter of intent to buy the business at 184 Commercial Street, but wishes to change the status of the business from a grandfathered non-conforming use to a permitted use. If approved, the applicant would then come back before the Planning Board to expand the use to legitimize existing exterior seating as a conditional use expansion under the "Sapporo amendment."

II. BACKGROUND

The Bayview Restaurant site plan had been approved as a permitted use in December 22, 1992, under the old zoning regulations. The current zoning was adopted on January 4, 1993, and this date became the eligibility date for all buildings within 35 feet of Commercial Street to be able to house non-marine uses as a permitted use. The building permit for the Bayview Restaurant was issued in December of 1993, as a grandfathered non-conforming use, as allowed under the zoning in place during the site plan review. The applicant's goal is to allow restaurant use as a permitted use. Staff knows of no other building to which this text change would apply.

In summer of 2000, the City Council adopted a text change to the Waterfront Central Zone to allow the expansion of permitted non-marine uses as allowed under 14-314(5): uses in buildings located wholly or partially within 35 feet of the southerly sideline of Commercial Street: the "Sapporo amendment." As a second step, should the City Council adopt this text change, the applicant will apply for a conditional use appeal to the Planning Board to expand the restaurant use. Currently, exterior seating exists in the area adjacent to the restaurant, but City zoning and legal staff have determined that this use is non-conforming and not grandfathered. A direct result of this text change will be a consideration of whether the exterior seating creates an adverse impact on potential marine use on the pier. While the Board may wait until the applications for site plan and conditional use are before them to apply the standards of No Averse Impact, the issues are implicit within the discussion of this Text Change.

III. CURRENT ZONING

Code 14-314(5) allows non-marine uses in the entirety of buildings located wholly or partially within 35 feet of the southerly sideline of Commercial Street, conditioned that the buildings existed prior to January 4, 1993. See current WCZ language, Attachment 3.

The intention and purpose of the WCZ zone recognizes that the rents provided by non-marine related uses help to maintain the marine related infrastructure located on the waterside of the pier

properties. The text change proposed intends to expand non-marine use (and the potential for expansion) to the Bayview Restaurant building, while retaining all other requirements and limitations found in the WCZ language. While compatible non-marine uses are encouraged, any non-marine use must adhere to the No Adverse Impact section of the WCZ, 14-313.5. No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. Please see the Policy Consideration section below.

IV. PROPOSED TEXT CHANGE

The intention of this provision is to allow permitted non-marine uses as allowed under 14-314(5), uses in buildings located wholly or partially within 35 feet of the southerly sideline of Commercial Street, to be applied to buildings approved but not constructed prior to January 4, 1993.

Draft Text Language: To be inserted into Permitted Use for the WCZ, 14-315 (3)

“Commercial uses in any area of a building existing on or having received site plan approved prior to January 4, 1993, and located with thirty-five feet off the southerly edge of Commercial Street between Maine Wharf and the city fish pier:...”

V. COMPREHENSIVE PLAN AND LAND USE POLICY

The applicant requests this text change to convert legal nonconforming use into a permitted use. The distinction is important to the applicant since only permitted uses can be legally expanded. The Board will need to find that the proposal is compatible with the current Comprehensive Plan. Should the text change be implemented by the City Council, the Board will then apply Conditional Use Standards listed under 14-315 (WCZ Conditional Uses) at such time that the applicant seeks to expand the restaurant use.

Waterfront Alliance Recommendations and Current Zoning

In April of 1992, the Waterfront Alliance produced a policy document titled “Waterfront Alliance Recommendations to the City of Portland.” This report outlines the position that properties with direct water access should be limited to water dependent and marine related uses, but that other portions of the waterfront (upper stories, and areas well away from water access) can and should accommodate “marine compatible” uses to help support the maintenance of pier infrastructure. As stated in the report’s preamble,

“Water-dependent users are the lifeblood of Portland’s waterfront and their interests must be protected above all others. We further recognize that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long term growth.”

The City Council used this document as the policy basis for the current waterfront zoning, as enacted on January 4, 1993. Simultaneously adopting the Council Report as part of the Comprehensive Plan in Council Order 168-93, the 1993 zoning amendments followed the Waterfront Alliance report by putting a priority on the preservation of berthing and working pier deck space for existing and potential marine uses. The Purpose and No Adverse Impact sections of the WCZ text, included below, fully express the intent of the zone and the underlying policy.

Waterfront Central Purpose

Sec. 14-313. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

(Ord. No. 168-93, § 2, 1-4-93)

No Adverse Impacts

Sec. 14-313.5. No adverse impact on marine uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

VI. SUMMARY

The conversion of 184 Commercial Street from a legal non-conforming use to a permitted use completes a “grandfathering” process that began when the building permit was issued under the pre-Jan. 1993 zoning. The impacts of this text change are discrete and staff has no knowledge of other structures or uses to which the amendment would apply. The greater question will arise when Mr. Dana applies to expand the restaurant use under the “Sapporo Amendment.” At that time, the Board will need to evaluate the physical layout of the existing exterior seating and its proximity to the working edge of the pier as it relates to the “No Adverse Impact” clause of the zoning language. While the issue of legitimizing exterior seating is not spelled out in the language change contemplated here, the Board should consider the issue as integral to the current application.

Attachments:

- 1. Written Statements
- 2. Application
- 3. Current WCZ Zone Text
- 4. Zoning Correspondence
- 5. Letter from Corporation Council
- 6. Letter of Intent
- 7. Letter of Support
- 8. Photos
- 9. Site Sketch
- 10. Context Sketch
- 11. Property Survey

Addendum to Planning Board Report #60-01, 11-27-01

MOTIONS FOR THE BOARD TO CONSIDER

On the basis of plans and materials submitted by the applicant, the policies of the comprehensive plan and the information provided in Planning Report # 60-01, and/or other findings:

The Board finds that:

1. The proposed zone change is or is not consistent with the policies of the comprehensive plan.
2. *and* The Planning Board therefore recommends or does not recommend to the City Council approval for the proposed text change.

5-1, Deacon opposed

**CITY OF PORTLAND, MAINE
MEMORANDUM**

TO: Chair Caron and Members of the Portland Planning Board

FROM: William Needelman, Senior Planner

DATE: October 23, 2001

SUBJECT: Text Change: Waterfront Central Zone, 14-314(5) permitted uses.

An amendment is proposed to extend the allowance of certain non-marine uses within any area of a building within 35 feet of the southerly right of way line of Commercial Street to buildings approved but not built prior to January 4, 1993.

Applicant: Thomas Dana

Introduction:

Thomas Dana, prospective owner of the Bayview Restaurant at 184 Commercial Street, requests a Workshop to discuss a proposal to change the text of the Waterfront Central Zone.

The result of the text change would expand the provision within the permitted use section that allows non-marine uses in buildings that were both in existence as of January 4, 1993 and within 35 feet of Commercial Street. The applicant requests that the non-marine use provision be applied to buildings that were "existing on or having received site plan approval prior to" the January 1993 date.

The applicant has a letter of intent to buy the business at 184 Commercial Street, but wishes to change the status of the business from a grandfathered non-conforming use to a permitted use. If approved, the applicant would then come back before the Board to expand the use to legitimize existing exterior seating as a conditional use expansion under the "Sapporo amendment."

Background:

The Bayview Restaurant site plan had been approved as a permitted use in December 22, 1992, under the old zoning regulations. The current zoning was adopted on January 4, 1993, and this date became the eligibility date for all buildings within 35 feet of Commercial Street to be able to house non-marine uses as a permitted use. The building permit for the Bayview Restaurant was issued in December of 1993, as a grandfathered non-conforming use, as allowed under the zoning in place during the site plan review. The applicant's goal is to allow restaurant use as a permitted use. Staff knows of no other building to which this text change would apply.

In summer of 2000, the City Council adopted a text change to the Waterfront Central Zone to allow the expansion of permitted non-marine uses as allowed under 14-314(5): uses in buildings

located wholly or partially within 35 feet of the southerly sideline of Commercial Street: the “Sapporo amendment.” As a second step, should the City Council adopt this text change, the applicant will apply for a conditional use appeal to the Planning Board to expand the restaurant use. Currently, exterior seating exists in the area adjacent to the restaurant, but City zoning and legal staff have determined that this use is non-conforming and not grandfathered. A direct result of this text change will be a consideration of whether the exterior seating creates an adverse impact on potential marine use on the pier. While the Board may wait until the applications for site plan and conditional use are before them to apply the standards of No Adverse Impact, the issues are implicit within the discussion of this Text Change.

Current Zoning:

Code 14-314(5) allows non-marine uses in the entirety of buildings located wholly or partially within 35 feet of the southerly sideline of Commercial Street, conditioned that the buildings existed prior to January 4, 1993. See current WCZ language, Attachment 3.

The intention and purpose of the WCZ zone recognizes that the rents provided by non-marine related uses help to maintain the marine related infrastructure located on the waterside of the pier properties. The text change proposed intends to expand non-marine use (and the potential for expansion) to the Bayview Restaurant building, while retaining all other requirements and limitations found in the WCZ language. While compatible non-marine uses are encouraged, any non-marine use must adhere to the No Adverse Impact section of the WCZ, 14-313.5. No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. Please see the Policy Consideration section below.

Draft Text Language: To be inserted into Permitted Use for the WCZ, 14-315 (3)

Purpose: The intention of this provision is to allow permitted non-marine uses as allowed under 14-314(5), uses in buildings located wholly or partially within 35 feet of the southerly sideline of Commercial Street, to be applied to buildings approved but not constructed prior to January 4, 1993.

Text: “Commercial uses in any area of a building existing on or having received site plan approved prior to January 4, 1993, and located with thirty-five feet off the southerly edge of Commercial Street between Maine Wharf and the city fish pier:...”

Comprehensive Plan and Policy Considerations:

The applicant is requesting this contract zone to allow a seasonal expansion of a legal nonconforming use. The Board will need to find that the proposal is compatible with both the current Comprehensive Plan and the Conditional and Contract rezoning provisions of the Waterfront Central Zone.

Waterfront Alliance Recommendations and Current Zoning

In April of 1992, the Waterfront Alliance produced a policy document titled "Waterfront Alliance Recommendations to the City of Portland." This report outlines the position that properties with direct water access should be limited to water dependent and marine related uses, but that other portions of the waterfront (upper stories, and areas well away from water access) can and should accommodate "marine compatible" uses to help support the maintenance of pier infrastructure. As stated in the report's preamble,

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The City Council used this document as the policy basis for the current waterfront zoning, as enacted on January 4, 1993. Simultaneously adopting the Council Report as part of the Comprehensive Plan in Council Order 168-93, the 1993 zoning amendments followed the Waterfront Alliance report by putting a priority on the preservation of berthing and working pier deck space for existing and potential marine uses. The Purpose and No Adverse Impact sections of the WCZ text, included below, fully express the intent of the zone and the underlying policy.

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- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone,

provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

(Ord. No. 168-93, § 2, 1-4-93)

No Adverse Impacts

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W. H. Hode

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Draft Text Language: To be inserted into Permitted Use for the WCZ, 14-315 (3)

Purpose: The intention of this provision is to allow permitted non-marine uses as allowed under 14-314(5), uses in buildings located wholly or partially within 35 feet of the southerly sideline of Commercial Street, to be applied to buildings approved but not constructed prior to January 4, 1993.

Text: "Commercial uses in any area of a building existing on or having received site plan approved prior to January 4, 1993, and located with thirty-five feet off the southerly edge of Commercial Street between Maine Wharf and the city fish pier:..."

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The applicant is requesting this ~~contract zone~~ to allow a seasonal expansion of a legal nonconforming use. The Board will need to find that the proposal is compatible with both the ~~current Comprehensive Plan and the Conditional and Contract rezoning provisions of the Waterfront Central Zone.~~

TEXT CHANGES

Purpose of text

Waterfront Alliance Recommendations and Current Zoning

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(Ord. No. 168-93, § 2, 1-4-93)

No Adverse Impacts

Sec. 14-313.5. No adverse impact on marine uses.

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- 11. Property Survey

Att 1.1

Tod Dana

*P.O. Box 169 * Portland, Maine 04112
Tel: 207-775-2228 * Fax: 207-761-8280
Email: asiawest@aol.com*

Portland Planning Board
City of Portland
389 Congress Street
Portland, Maine 04101

August 22, 2001

Dear Members of the Planning Board,

As an addendum to my application for a text change in city ordinance section 14-314 (e) in the WCZ zone, I want to explain why I am seeking the text change.

I first entered into a Letter of Intent with the owners of the "Bayview Seafood Restaurant" this past March. As part of my due diligence, I discovered that the twelve picnic tables on the premises (which have been in use for the 7 years the restaurant has been operating), were not included in the initial zoning application back in 1993. As a result, it appears that the seating for this establishment is not recognized by the city as "legal" despite the fact that permits for liquor were issued by the city each year for these outdoor seats.

In an effort to "legitimize" the aforementioned seating and conclude my purchase of the restaurant, I am seeking a text change, which will make this restaurant eligible for outdoor seating under the "conditional uses" section of the ordinance (sec. 14-315).

As a result of my discovering the "illegitimate" status of the outdoor seating, the restaurant sat vacant this summer. This seems very unfortunate given that this seasonal restaurant has been a very popular tourist destination for the last 7 summers. It is my sincere hope that the planning board and city council will approve our text change, so we can re-open "Bayview Seafood Restaurant" next season.

Thank you for your consideration.

Sincerely,



Tod Dana

Text Change Amendment

Requested Text Change: The applicant requests that WCZ zone Section 14-314(e) be amended to state, in part:

Commercial uses in any area of a building existing on *or having received site plan approval prior to* January 4, 1993, and located with thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier: Subject to section 14-314(f)(1) and 14-315(a), the following uses shall be permitted

Section 14-314(e).

Background

In 1994, the Bayview Seafood Restaurant and Retail Operation, located at 180 Commercial Street, opened for business. It was founded by Captain Dick Yates, who also owns and still operates the adjoining Bayview Sea Cruises. Since 1994, the restaurant has served breakfast and primarily seafood fair for lunch and dinner. Since 1994, the restaurant has operated as a retail store by selling seafood to the general public. Since 1994, the restaurant has also had outdoor seating, in the form of a deck and picnic tables and a corresponding liquor license.

The Applicant, Salty Lobster Company, recently obtained an option to purchase the restaurant. The Applicant intends to operate a lunch and dinner lobster shack somewhat similar to the Lobster Shack in Cape Elizabeth and/or the Lobster Cooker in Freeport. The Applicant also plans to obtain its commercial wholesale lobster license; buy lobsters and seafood directly from local lobsterman; incorporate the delivery of the lobsters to into the theme of the restaurant; and continue the 7 year tradition of operating as a retail seafood outlet by selling seafood to the general public.

In performing its due diligence on this business, the Applicant was informed by City Officials that the restaurant was not properly permitted to have outdoor seating, in spite of the fact that it had a valid liquor license. Needless to say the Applicants were quite surprised by this development, given the fact that the deck has been in existence and use since on or around 1994; the restaurant has a valid liquor license for the deck; there are outdoor lights on the deck; and a large sign on the side of the restaurant that says "Deck Seating." In an effort to salvage the deal, the parties agreed to condition the sale of the business upon the approval of a text change to the WCZ zone that would permit the Applicant to use the existing deck for outdoor seating, as has been done for the past 7 years of operation.

Text Change Overview

As you know, City Ordinance §14-315.2(3), permits certain businesses in the WCZ Zone that were in existence prior to January 4, 1993, to qualify for a conditional use permit for outdoor seating.

The Bayview Seafood Restaurant did not exist as of January 4, 1993. However, the site plan for a restaurant to be located at 180 Commercial Street was approved on December 22, 1992. The Building Permit for 180 Commercial Street was issued on December 7, 1993. The building now located at 180 Commercial Street was completed shortly thereafter. Our discussions with City Officials and Attorneys have revealed that this set of circumstances does not fall under the grandfather clause set forth in §14-315.2(3). Accordingly, the Applicant is seeking a narrowly tailored text change to permit the Bayview Seafood Restaurant and its successor business to continue using the aforementioned outdoor seating. This request is quite similar to the narrowly tailored text change sought and received by Sapporo to expand the size of its Commercial Street restaurant.

It is the Applicant's understanding that in order to prevail in its request, the Applicant must demonstrate the text change does not run contrary in anyway to the "Purpose" of the WCZ zone. It is obvious from the circumstances of this case that the requested text change does not run contrary in anyway to the "Purpose" of the WCZ zone. In fact, the text change is a narrowly tailored request designed to effect only one business, which actually supports the Purpose of the WCZ zone.

The Purpose of the Waterfront Central Zone is set forth in detail in WCZ Section 14-313 as follows:

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;
- (b) The second priority is to encourage other marine and marine related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible with first and second priority uses; and

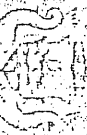
- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

Section 14-313.

The operation of a lobster shack and/or seafood restaurant, with outdoor seating, on 180 Commercial Street, is in and of itself a water-dependent and marine-related support use of the premises. By its very nature, the restaurant is/would be reliant upon local fisherman to supply the product sold on the premises. The restaurant would aesthetically compliment its current environment. The Applicant's plan to directly purchase and wholesale lobsters is an even stronger link to water-dependent and marine-related support uses.

As depicted on the attached map and supporting photographs, the Applicant's operation of a lobster shack and use of outdoor seating is quite consistent with and supported by the lots, businesses and slips in the immediate area of the outdoor seating. (See for example: New Meadows Lobsterhouse, DiMillos, Sightseeing Tour Boats, Long Wharf Cruises, Bayview Cruises, Fish Houses, etc. . . .) This map and these photographs are the best evidence as to why this narrowly tailored exception harms no one, aids the parties in this transaction and is consistent with the Purpose of the WCZ zone.



Joseph E. Gray Jr.
Director

December 22, 1992

CITY OF PORTLAND

Mr. Josef Chlart
Archelleic
48 Union Wharf
Portland, ME 04101

Re: The Fish Store

Dear Josef:

On December 22, 1992, the Portland Planning Authority granted minor site plan approval for a fish retail/restaurant building to be located at 180 Commercial Street with the following condition:

1. That construction plans shall be signed and stamped by a State of Maine registered professional engineer to conform with the Division 26.5 Flood Plain Management Regulations of the Land Use Code.

The approval is based on the submitted site plan. If you need to make any modifications to the approved site plan, you must submit a revised site plan for prior review and approval. The site plan approval will be deemed to have expired unless work in the development has commenced within one (1) year of the approval or within a time period agreed upon in writing by the City and the applicant. A performance guarantee in a form acceptable to the City of Portland and an inspection fee equal to 1.7% of the performance guarantee will have to be posted before a building permit can be issued. A defect bond, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.

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

Sincerely,


Joseph E. Gray, Jr.
Director of Planning and Urban Development

cc: Richard Knowland, Senior Planner/Acting Chief Planner

P. Samuel Hofises, Chief of Building Inspections

William Cloux, Zoning Administrator

Melodie Esterberg, Development Review Coordinator

George Flaherty, Director of Parks and Public Works

William Bray, Traffic Engineer/Deputy Director of Parks and Public Works

Jeff Tarling, City Arborist

Natalie Burns, Associate Corporation Counsel

Lt. Wallace Garroway, Fire Prevention

Paul Niehoff, Materials Engineer

Louise Chase, Secretary, Building Permits

Maine Maritime Activities/Gulf of Maine, Inc., P.O. Box 808,

South Portland, ME 04116



APPLICATION FOR ZONING AMENDMENT
City of Portland, Maine
Department of Planning and Urban Development
Portland Planning Board

AH 2.1

1. Applicant Information:

THOMAS DANA
Name

P.O. BOX 169
Address

PORTLAND, ME. 04112

207.671.5566 207.761.8280
Phone Fax

2. Subject Property:

184 COMMERCIAL STREET
Address

PORTLAND, ME. 04101

031-J-030
Assessor's Reference (Chart-Block-Lot)

3. Property Owner: Applicant Other

G.E.F. LLC (FRED FORSLEY)
Name

P.O. BOX 2808
Address

S. PORTLAND, ME. 04116

828-5136
Phone Fax

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

TENANT (PENDING TEXT CHANGE)

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property (For example, a deed, option or contract to purchase or lease the subject property.)

Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

I will be unavailable by phone between 8/28/01 - 9/21/01
I am reachable by email though: asigwest@aol.com
In my absence please call Tim B... t 791.2071

Describe the existing use of the subject property: _____

HH 2.2

Seafood RESTAURANT / RETAIL SEAFOOD

7. Current Zoning Designation(s): WCZ

8. Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

SEAFOOD RESTAURANT / RETAIL SEAFOOD

9. Sketch Plan: On a separate sheet please provide a sketch plan of the property, showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1"=10' to 1"=100')

10. Proposed Zoning: Please check all that apply:

A. Zoning Map Amendment, from _____ to _____

B. Zoning Text Amendment to Section 14- 314(e)

For Zoning Text Amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (example), and language to be added is depicted with underline (example).

C. Conditional or Contract Zone

A conditional or contract rezoning may be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan and compatible with the surrounding neighborhood. (Please refer to Division 1.5, Sections 14-60 to 62)

of Portland in accordance with Section 14-24 of the Municipal Code (see below). The applicant also agrees to pay all costs of publication (or advertising) of the Public Hearing Notice as required for this application. Such amount will be billed to the applicant following the appearance of the advertisement.

	<u>1-25 Units</u>	<u>26-50 Units</u>	<u>51-75 Units</u>	<u>75 & Over</u>
Residential Zones	\$350.00	\$400.00	\$450.00	\$500.00
Nonresidential Zones	\$350.00	\$400.00	\$450.00	\$500.00
	0-15,000 sq. ft. or 0-5 acres (whichever is less)	15,000-30,000 sq. ft. or 6-10 acres (whichever is less)	30,000-45,000 sq. ft. or 10-15 acres (whichever is less)	45,000-60,000 sq. ft. or 15-20 acres (whichever is less)
• Legal Advertisements (one for workshop and one for public hearing)	percent of total bill			
• Notices (one for workshop and one for public hearing)	40 cents each			
• Text Amendments	\$300.00			

AH-2.3

\$ 300.- Amount of Fee

12. Signature: The above information is true and accurate to the best of my knowledge.

8/22/01
Date of Filing

[Signature]
Signature of Applicant

Further Information:

Please contact the Planning Office for further information regarding the rezoning process. Applicants are encouraged to make an appointment to discuss their rezoning requests before filing the application.

Applicants are encouraged to include a letter or narrative to accompany the rezoning application which can provide additional background or context information, and describe the proposed rezoning and reasons for the request in a manner that best suits the situation.

In the event of withdrawal of the zoning amendment application by the applicant in writing prior to the submission of the advertisement copy to the newspaper to announce the public hearing, a refund of two-thirds of the amount of the zone change fee will be made to the applicant by the City of Portland.

Portland Planning Board
Portland, Maine

Effective: July 6, 1998

Sec. 14-314.(e)

Commercial uses in any area of a building existing on, or having received site plan approval prior to January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier: Subject to section 14-314 (f) 1 and 14-315 (a), the following uses shall be permitted:

**The underlined text is the additional wording that I am proposing.*

DIVISION 18. WATERFRONT CENTRAL ZONE*

*Editor's note--Ord. No. 168-93, § 2, adopted Jan. 4, 1993, repealed former Divs. 18, 18.5 and 18.7, §§ 14-306--14-320.2, which pertained to waterfront zones, and enacted new provisions as Divs. 18, 18.5 and 18.7 to read as herein set out. Formerly, such provisions derived from Ord. No. 426-83, § 1, adopted Apr. 25, 1983; Ord. No. 427-83, § 1, adopted Apr. 25, 1983; Ord. No. 355-85, § 1, adopted Jan. 7, 1985; Ord. No. 438-86, § 1, adopted Apr. 7, 1986; Ord. No. 189-87, § 3, adopted Feb. 7, 1987; Ord. No. 174-87, 's; 1, 2, adopted Mar. 4, 1987; Ref. of May 5, 1987; Ord. No. 385-87, adopted Apr. 6, 1987; Ord. No. 36-89, §§ 1, 2, adopted June 28, 1989; and Ord. No. 15-92, §§ 22, 23, adopted June 15, 1992.

Sec. 14-313. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-313.5. No adverse impact on marine uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-314. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-313.5 (no adverse impact on marine uses), the following uses are permitted in the waterfront central zone:

- (a) *Marine:*
 - 1. Marine products, wholesaling, distribution and retailing;
 - 2. Marine repair services and machine shops;
 - 3. Tugboat, fireboat, pilot boat and similar services;
 - 4. Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels;
 - 5. Marine industrial welding and fabricating;
 - 6. Shipbuilding and facilities for construction, maintenance and repair of vessels;
 - 7. Commercial marine transport and excursion services, including ferries, captained charter services, sport fishing and water taxis;
 - 8. Cargo handling facilities, including docking, loading and related storage;

9. Boat repair yards;
10. Boat storage facilities, excluding rack storage facilities;
11. Seafood processing;
12. Seafood packing and packaging;
13. Seafood loading and seafood distribution;
14. Fabrication, storage and repair of fishing equipment;
15. Ice-making services;
16. Facilities for marine construction and salvage;
17. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices;
18. Fabrication of marine-related goods;
19. Fishing and commercial vessel berthing;
20. Noncommercial berthing of less than fifty (50) linear feet per pier;
21. Marine office, including but not limited to offices of owners of wharves or their agents, and naval architects, and seafood brokers;
22. Public landings;
23. Marine research, education, and laboratory facilities.

(b) *Commercial uses above the ground floor level in buildings in existence on January 4, 1993:* Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:

1. Professional, business, and general offices;
2. Business service establishments;
3. Cabinet and carpentry shops and accessory retail sales of only those products that are produced on the premises;

4. Intermodal transportation facilities;
 5. Cold storage facilities.
- (c) *Industrial uses above the ground floor level of buildings in existence on January 4, 1993:* Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:
1. Warehousing and wholesaling;
 2. Industrial uses which meet the performance standards of the I-2 zone.
- (d) *Public:* Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:
1. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures, provided that such structures are located more than one hundred (100) feet from the water;
 2. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces, including without limitation pedestrian bicycle trails;
 3. Municipal office uses located above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building unless approved pursuant to section 14-315. Other municipal uses which need to be located on the ground floor level because of operational necessity may be so located on city-owned property.
- (e) *Commercial uses in any area of a building existing on January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier:* Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:
1. Professional, business, and general offices;
 2. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall not be permitted under this section;
 3. Restaurants, provided that food service and consumption shall be the primary function of the restaurant;

- 4. Banking services;
- 5. Laundry and dry cleaning services;
- 6. Cabinet and carpentry shops and accessory retail sales of products produced on the premises;
- 7. Intermodal transportation facilities;
- 8. Cold storage facilities;
- 9. Museums and art galleries.

(f) *Other: Accessory uses:*

- 1. Notwithstanding sections 14-331, 14-334, 14-404 or any other provision of this Code, parking for uses other than those set forth in section 14-314(a) shall not be considered a permitted accessory use on-site and shall be subject to the provisions of section 14-315(a).
- 2. Except as provided in subsection a. above, accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses. Food service establishments, newsstands and other similar retail and service support uses shall only be permitted as accessory uses if they are part of and located within the lot lines of a use set forth in section 14-314(a)1, 7, or 22; that such uses do not exceed two thousand (2,000) square feet in total floor area of the building, or twenty-five (25) percent of the total floor area of the building, whichever is less, and that each individual use does not exceed one thousand (1,000) square feet in total floor area of the building; and further provided that such accessory uses provide goods or services that are supportive of the principal use and its clientele.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-315. Conditional uses.

The following uses shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471(c), section 14-474(a), or any other provision of this Code, the planning board shall be substituted for the board of appeals as the reviewing authority, and further provided that in addition to the provisions of section 14-474(c)(2), section 14-313.5, and any other conditions specified under the particular use below, they shall also meet the following conditions:

- (a) The proposed use shall be compatible with existing and potential marine uses in the vicinity;
 - (b) The proposed use shall not impede access to the water by existing or potential marine uses; and
 - (c) For conditional uses that propose or require twenty (20) or more parking spaces, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development, specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1). For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.
 - 1. Parking: Notwithstanding sections 14-317(g), 14-331, 14-334 and article V of this chapter, no parking shall be allowed in this zone for conditional uses and uses permitted only above the ground floor level, unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces required for marine uses that are required by section 14-314(a). The remainder of parking required for such uses shall be provided off-site and in other zones where parking is a permitted use.
- (2) Marine:
- a. Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:
 - 1. Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the planning board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.
 - b. Fish by-products processing, provided that:
 - 1. Any fish by-products processing facility has a valid rendering facility license under chapter 12; and

2. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.
- c. Boat rack storage facilities, provided that:
1. Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.
- (3) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier.) into contiguous and newly created building space of no more than 2000 sq. ft., total, shall be allowed only as follows:
- (a) the use may occupy ground floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or
 - (b) the use may occupy a ground floor area of no more than 1250 square feet beyond 35 feet from the southerly sideline of Commercial Street; and
 - (c) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and
 - (d) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

(Ord. No. 168-93, § 2, 1-4-93; Substitute Ord. No. 00-42, 8-7-00)

Sec. 14-315.3. Contract or conditional rezoning.

Except as authorized in section 14-314(d), an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993, if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the standards of section 14-313.5 and all of the following standards:

- (a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314(b), (c) or (d).
- (b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314.
- (c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.
- (d) Any physical or legal impediments which preclude functional access from the site of the proposed development to the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.
- (e) The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits protection of existing water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels (either on-site or off-site) and visual and physical access to the waterfront for the general public.
- (f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline.
- (g) The proposed development does not significantly restrict air, light, or water views of other structures located in the vicinity, and does not create significant adverse local climatic effects such as increased winds, shadowing, or less efficient traffic, parking or circulation patterns.
- (h) The proposed development is consistent with the Portland Waterfront Public Access Design Guidelines, a copy of which is on file in the department of planning and urban development.
- (i) The proposed rezoning contains adequate provisions and/or conditions to ensure that the water-dependent use is not abandoned after the project is developed.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-315.5. Prohibited uses.

Uses which are not enumerated in either section 14-314 or 14-315 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

- a. Residential uses (not in existence on May 5, 1987).
- b. Hotels, motels or boatels.

c. Auditoriums, civic centers, convention centers or other meeting facilities.

d. Drinking establishments.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-316. Dimensional requirements.

In addition to the provisions of article III, division 25, of this Code, lots in the waterfront central zone shall be subject to the following requirements:

(a) *Minimum lot size:* None.

(b) *Minimum frontage:* None.

(c) *Minimum yard dimensions:*

Front setback: None.

Side setback: None.

Rear setback: None

Setback from pier line: Notwithstanding the above requirements, a minimum setback of five (5) feet from the edge of any pier, wharf or bulkhead shall be required for any structure. The setback area may be utilized for activities related to the principal uses carried on in the structure, subject to the provisions of sections 14-313 and 14-314, but shall not be utilized for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).

(d) *Maximum lot coverage:* One hundred (100) percent.

(e) *Maximum building height:* Thirty-five (35) feet.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-317. Performance standards.

All uses in the waterfront central zone shall comply with the following standards:

(a) *Outdoor storage of materials:* Outdoor storage of commodities and materials accessory to normal conduct of business, except pilings and/or cranes, shall be permitted to a maximum height of forty-five (45) feet, and such materials shall be entirely contained, including runoff contaminants and residual material, within a designated area within the lot boundaries.

(b) *Noise:* The level of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the

American National Standards Institute, Inc.), inherently and recurrently generated within the waterfront central zone shall not exceed seventy-five (75) decibels on the A scale at the boundaries of any lot, except for sound from construction activities, sound from traffic on public streets, sound from temporary activities such as festivals, and sound created as a result of, or relating to, an emergency, including sound from emergency warning signal devices. In measuring sound levels under this section, sounds with a continuous duration of less than sixty (60) seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of sixty (60) seconds or more shall be measured on the basis of the energy average sound level over a period of sixty (60) seconds (LEQ₁).

- (c) *Vibration*: Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries. This shall not apply to vibration resulting from activities aboard a vessel or from railroad vehicle activities, or from activities on a pile supported pier.
- (d) *Federal and state environmental regulations*: All uses shall comply with federal and state environmental statutes and regulations regarding emissions into the air, except where provisions of this Code are more stringent.
- (e) *Discharges into harbor areas*: No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the department of parks and public works in accordance with chapter 24, article III of this Code. All private sewage disposal or private wastewater treatment facilities shall comply with the provisions of chapter 24, article II of this Code and federal and state environmental statutes and regulations regarding wastewater discharges.
- (f) *Storage of vehicles*: Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.
- (g) *Landfill of docking and berthing areas*: Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. Sections 471 through 478, and permitted only if the landfill does not reduce the amount of linear berthing areas or space, or berthing capacity. If approved, construction shall be undertaken using methods approved by the department of parks and public works and shall be accomplished in accordance with the provisions of division 25 of this article and in a manner so as to ensure that a stable and impermeable wall of acceptable materials will completely contain the fill material and will not permit any fill material to leach into docking areas or navigable waters.

- (h) *Off-street parking:* Except as provided in section 14-315 or as required pursuant to article V (site plan), off-street parking is required at fifty (50) percent of the required number of parking spaces for specified uses as otherwise provided in division 20 of this article.
- (i) *Off-street loading:* Off-street loading is required as provided in division 21 of this article.
- (j) *Shoreland and flood plain management regulations:* Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.
- (k) *Lighting:* All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor nor have an unreasonable adverse impact on adjacent residential zones.
- (l) *Signs:* Signs shall be permitted as set forth in division 22 of this article.
- (m) *Storage of pollutants and oily wastes:* On-premises storage of pollutants and oily wastes shall not be permitted for more than forty-five (45) days.
- (n) *Compatibility of nonmarine uses with marine uses:* Nonmarine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither unreasonably interfere with the existence or operation of marine uses nor significantly impede access to vessel berthing or other access to the water by existing or potential marine uses as set forth in section 14-314(a). Siting of a use not set forth in section 14-314(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.
- (o) *Construction of new structures located within thirty-five feet of the southerly edge of Commercial Street:* Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street shall conform to the guidelines set forth in the Downtown Urban Design Guidelines, unless such structures are also located within one hundred (100) feet of the water. Such structures that are also located within one hundred (100) feet of the water shall conform to the extent practicable to the Downtown Urban Design Guidelines.

(Ord. No. 168-93, § 2, 1-4-93)

AH.4.1

Tod Dana
P.O. Box 169
Portland, ME 04112

April 26, 2001

Hand Delivery
City of Portland
389 Congress Street
Portland, ME 04101

Attention:

✓ Marge Schmuckal – Zoning Administrator
Penny Littell – Associate Corporate Counsel
Sarah Hopkins - Development Review Program
Manager Planning & Urban Development

RE: 180 Commercial Street Property

Dear: Ms. Schmuckal, Ms. Littell & Ms. Hopkins:

I am writing to follow up my discussions with Ms. Schmuckal and Ms. Hopkins regarding the issue of a conditional use permit for outdoor seating at 180 Commercial Street. As I mentioned to Ms. Hopkins, I have an option to purchase the business, now known as the Bayview Seafood Restaurant, located at 180 Commercial Street. As you all know, City Ordinance §14-315.2(3) (a copy of which is attached), permits certain businesses in the WCZ Zone that were in existence prior to January 4, 1993 to qualify for a conditional use permit for outdoor seating. My question for all of you is whether this property qualifies for that conditional use.

To review, the site plan for a restaurant to be located at 180 Commercial Street was approved on December 22, 1992. The Building Permit for 180 Commercial Street was issued on December 7, 1993. The building now located at 180 Commercial Street was completed shortly thereafter. During our discussions, Ms. Schmuckal expressed to me that in her opinion the property's site plan approval prior to 1993 qualifies the property for the aforementioned conditional use under City Ordinance §14-315.2. I am now seeking written confirmation from Ms. Littell, on behalf of the City Attorney's office and from Ms. Schmuckal, to confirm that Ms. Schmuckal's opinion is consistent with that of the City Attorney. Upon receipt of this confirmation, it is my intent to promptly apply for a major site plan review and subsequent conditional use permit.

Given the time constraints involved in this case, your prompt response to my inquiry is greatly appreciated. I look forward to hearing from you very soon. In the interim, should you have any questions, please do not hesitate to call me at 671-5566.

Sincerely,


Tod Dana

section 14-314(a). The remainder of parking required for such uses shall be provided off-site and in other zones where parking is a permitted use.

(2) Marine:

a. Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:


1. Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the planning board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.

b. Fish by-products processing, provided that:

- 1. Any fish by-products processing facility has a valid rendering facility license under chapter 12; and
- 2. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.

c. Boat rack storage facilities, provided that:

1. Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.

 (3) Expansion of a non-water dependent, non-marine

related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier.) into contiguous and newly created building space of no more than 2000 sq. ft., total, shall be allowed only as follows:

- (a) the use may occupy ground floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or
- (b) the use may occupy a ground floor area of no more than 1250 square feet beyond 35 feet from the southerly sideline of Commercial Street; and
- (c) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and
- (d) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

(Ord. No. 168-93, § 2, 1-4-93; Substitute Ord. No. 00-42, 8-7-00)

Sec. 14-315.3. Contract or conditional rezoning.

Except as authorized in section 14-314(d), an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993, if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the standards of section 14-313.5 and all of the following standards:

AH 5

Corporation Counsel
Gary C. Wood



Associate Counsel
Charles A. Lane
Elizabeth L. Boynton
Donna M. Katsialikas
Penny Littell

CITY OF PORTLAND

May 3, 2001

Mr. Tod Dana
P.O. Box 169
Portland, ME 04112

RE: 180 Commercial Street Property

Dear Mr. Dana:

I have received and reviewed your correspondence to Ms. Schmuckal, Ms. Hopkins and myself, dated April 26, 2001, with regard to the property at 180 Commercial Street. The zoning requirements in that area are very clear. If a commercial building was not in existence as of January 4, 1993, then any expansion of a non-marine, non-water dependent use is not allowed. The information you have provided indicates the building at which you would like to place outdoor seating was only built some time after December 7, 1993. As a result, it is my opinion that such outdoor seating would not be allowed.

I have conferred with Marge Schmuckal as to this opinion and she agrees.

I trust this answers your questions.

Sincerely,

Penny Littell
Associate Corporation Counsel

PL:hs

Cc: Marge Schmuckal, Zoning Administrator
Sarah Hopkins, Developmental Regional Services Manager

O:\OFFICE\PENNY\LTRS\dana.doc

The Salty Lobster Company

P.O. Box 169

Portland, ME 04112

H.S.B
July 18 T.D.
June 27, 2001

Hwa Sun Bae
29 Exchange Street
Portland, ME 04101

Re: Letter of Intent

Dear Ms. Bae:

The partnership doing business as The Salty Lobster Company ("Company") is pleased to offer to purchase your Assets defined in Paragraph 2 on the following revised terms and conditions:

1. Buyer. Buyer will be a company formed by Company.
2. Seller. Seller will be Hwa Sun Bae of Portland, Maine.
3. Purchased Assets. Company will purchase all of the tangible and intangible assets obtained by Seller from Richard Yates related to the Bayview Restaurant, located on 180 Commercial Street in Portland, Maine ("Premises"), and memorialized in an asset purchase agreement dated, November 20, 2000 and attached hereto as Exhibit A. Buyer shall not purchase or assume any of Seller's liabilities, with the exception of the Lease Agreement between Richard Yates and GEF, LLC, dated June 1, 1999, and attached hereto as Exhibit B, which shall be assigned to Buyer.
4. Purchase Price. The Purchase Price for the Purchase Assets will be \$80,000.00 made up of: (a) an initial payment of ~~\$10,000.00~~ ^{\$12,000.00} at Closing; (b) payment of \$5,000.00 on or before May 30, 2002; (c) payment of \$5,000.00 on or before June 30, 2002; (d) payment of \$5,000.00 on or before July 30, 2002; (e) payment of \$5,000.00 on or before August 30, 2002; and (f) payment of \$5,000.00 on or before September 30, 2002. (g) payment of \$5,000.00 on or before May 30, 2003; (h) payment of \$5,000.00 on or before June 30, 2003; (i) payment of \$5,000.00 on or before July 30, 2003; (j) payment of \$5,000.00 on or before August 30, 2003; (k) payment of \$5,000.00 on or before September 30, 2003; (l) payment of \$5,000.00 on or before May 30, 2004; (m) payment of \$5,000.00 on or before June 30, 2004; (n) payment of \$5,000.00 on or before July 30, 2004; and (o) payment of ~~\$10,000.00~~ ^{\$10,000.00} on or before August 30, 2004.
5. Closing. Buyer and Seller agree to use their best efforts to close the acquisition within sixty (60) days of the date of receipt, by the Buyer, of its outdoor seating application by all the applicable City of Portland authorities.

6. Conditions.

- a. Completion by ABC of a satisfactory due diligence investigation of the Acquired Assets and the aforementioned Lease Agreement, within 45 days after approval of outdoor seating permit;
- b. Landlord approval of Assignment of the aforementioned Lease Agreement to ABC;
- c. Approval by the City of Portland and the City of Portland Planning Board of Buyer's Applications/Petitions for, among other things, a permit for outdoor seating;
- d. Negotiation of an Asset Purchase Agreement satisfactory to both parties, containing, among other things, representations and warranties, covenants, indemnities and other terms and conditions customary in corporate acquisition, including, without limitation, a non-competition agreement, hold harmless agreement, within 45 days after completion of subsection c;
- e. The absence of any material adverse change between June 19, 2001 and the Closing in the Purchased Assets;
- f. The obtainment of sufficient financing by Buyers to fund the Asset Purchase Agreement and to operate the newly created company, within 45 days after completion of subsection c;
- g. The furnishment of all existing utility agreements and insurance policies on the Premises within 45 days after completion of subsection c;
- h. The filing of Buyer's application for outdoor seating with the City of Portland within forty five (45) days of the date of this Letter of Intent; and
- i. Approval by the City of Portland of a building permit and outdoor signage within 45 days after completion of subsection c.

7. Access to Information. Immediately following acceptance of this Letter of Intent, Seller will provide Buyer and its representative's access to any and all documentation and/or information to enable Buyer to complete its due diligence investigation.

8. Expenses. Each party will pay its own expenses and costs incidental to the completion of the acquisition, including legal and accounting fees.

9. **Brokerage.** It is understanding of both parties that there are no brokers involved in this transaction. Nevertheless, the parties agree to indemnify each other against any claims for brokerage commissions asserted as a result of any action by the indemnifying party.

10. **Cooperation and Exclusive Dealing.** Parties agree to cooperate in good faith and move expeditiously in the preparation of the documents and the taking of other actions necessary to carry out the acquisition. Seller agrees not to offer to sell its stock, assets or business to any other person or entity and not to negotiate or accept any agreement for the sale of all or any part of its stock, assets or any part of Seller's assets or business on or before Closing or such earlier date as the parties mutually agree that a definitive Asset Purchase Agreement cannot be reached and/or if Buyer's application for outdoor seating is denied by the City of Portland.

11. **Non-Disclosure: Publicity.** Each party agrees that it will not, without the prior written consent of the other party, disclose publicly or to any third party, the terms and conditions of this offer or the subsequent negotiations between the parties, except to the extent required by law or as may be required by the Company in connection with its financing arrangements, for the acquisition.

12. **Non-Binding Agreement.** The Letter of Intent is intended to provide a basis for the preparation of a definitive asset purchase agreement. Until such agreement has been prepared and duly authorized, executed and delivered by each of the parties, none of the provisions of this letter shall be binding on either party with the exception of the agreements and obligations contained in paragraphs 7 through 12.

T.D.
August 1, 2001 H.S.B.

13. **Acceptance.** This offer may be accepted in writing by Seller until ~~June 22, 2001~~, but will terminate if not accepted by the close of business on that date.

14. **Counterparts.** This Letter of Intent may be executed in one or more counterparts, including execution by facsimile transmission, each of which shall be deemed to be an original copy of this Letter of Intent and all of which, when taken together, will be deemed to constitute one and the same agreement.

15. **Plans.** If Buyer fails to receive approval of the required permits and/or decides not to Close, then a copy of all architectural drawings and sites plans used to apply for the permits referenced in this Letter of Intent shall be given to Seller.

If the foregoing is satisfactory to you, please evidence your acceptance of this offer by signing and returning to us the enclosed copy of this Letter of Intent. It is understood that upon your acceptance, this letter will constitute a Letter of Intent to negotiate in good faith to complete a definitive Asset Purchase Agreement and a Closing on the terms set forth above.

6.4

Sincerely,

Buyer:

A handwritten signature in cursive script, appearing to read "Tom H. Dana". The signature is written in dark ink and is positioned above a horizontal line.

Thomas H. Dana
(d/b/a The Salty Lobster Company)

Dated: 6/27/01

6.5

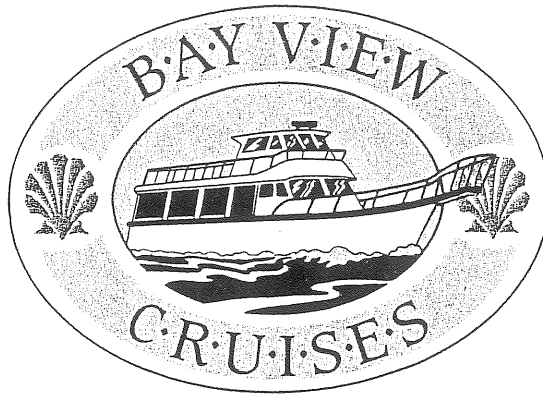
Seller:


Hwa Sun Bae

Dated: 7-18-01

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AH 7



"BAY VIEW LADY"

RICH YATES
Captain

October 2, 2001

Portland Planning Board
Portland City Hall
389 Congress Street
Portland, Maine 04101

Dear Members of the Planning Board:

I have been running a tour boat business called "Bay View Cruises" on the Portland waterfront for the last 14 years. I am writing this letter on behalf of Tod Dana, whom I understand is applying for a text change in a city ordinance, which will allow him to use the outdoor seating at the small seafood restaurant at the base of the pier.

Mr. Dana asked me whether I felt that the picnic tables presently on the wharf compromised the quality of the adjacent berthing. My answer to that question is a very strong "NO". I presently lease the berthing adjacent to the aforementioned picnic tables and I feel very strongly that the tables don't interfere at all with the successful operation of my tour boat business. In fact, I believe that the restaurant and its' waterfront seating have complimented and supported my business over the last 7 years.

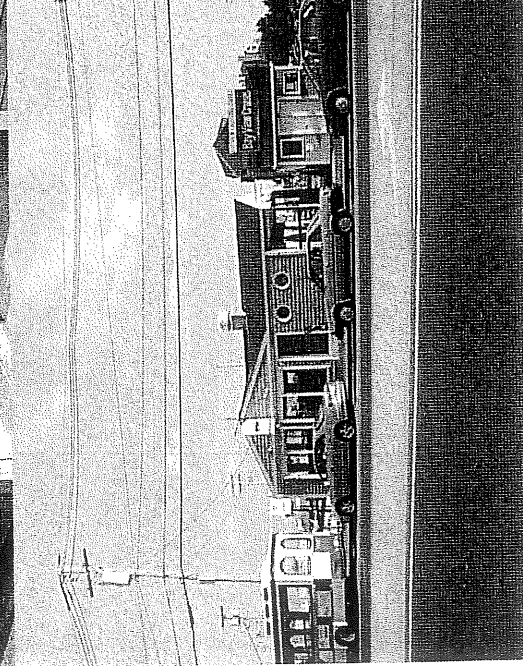
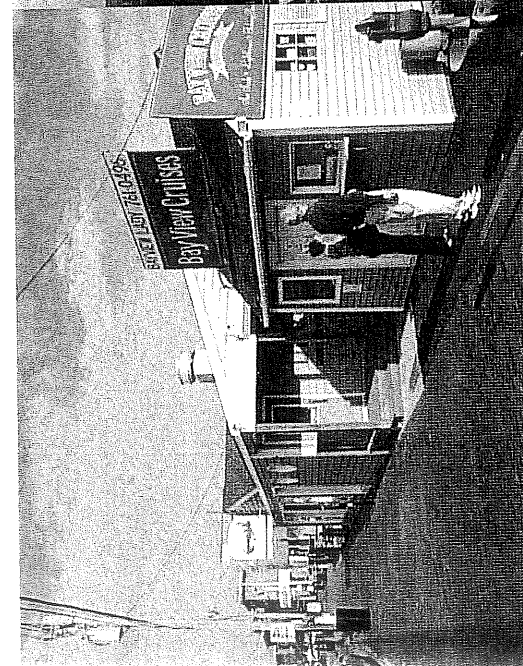
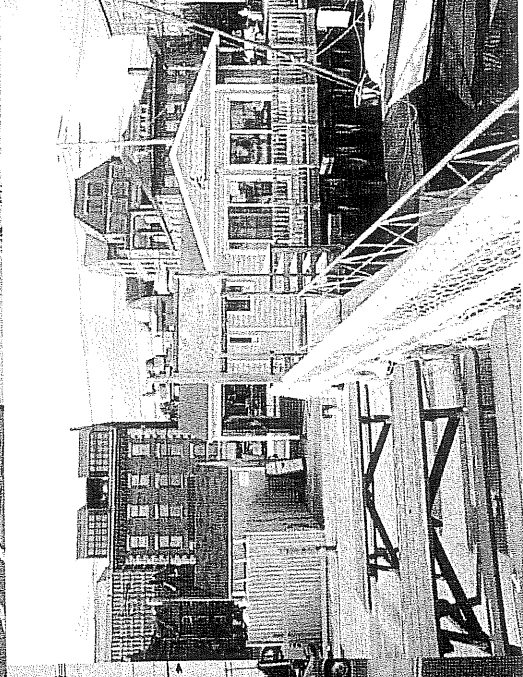
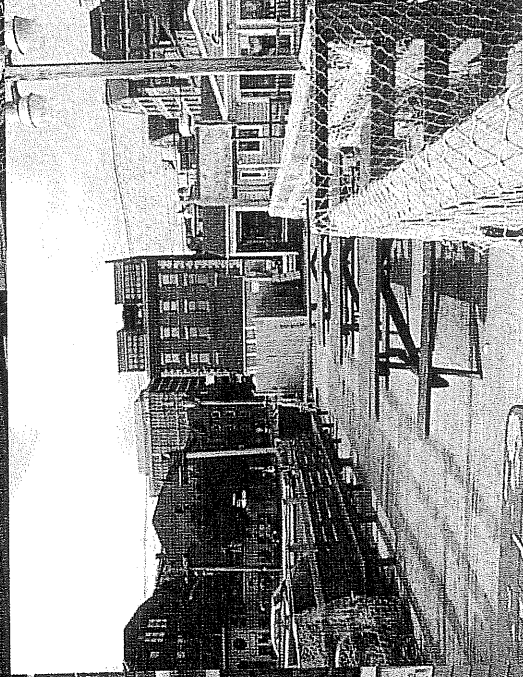
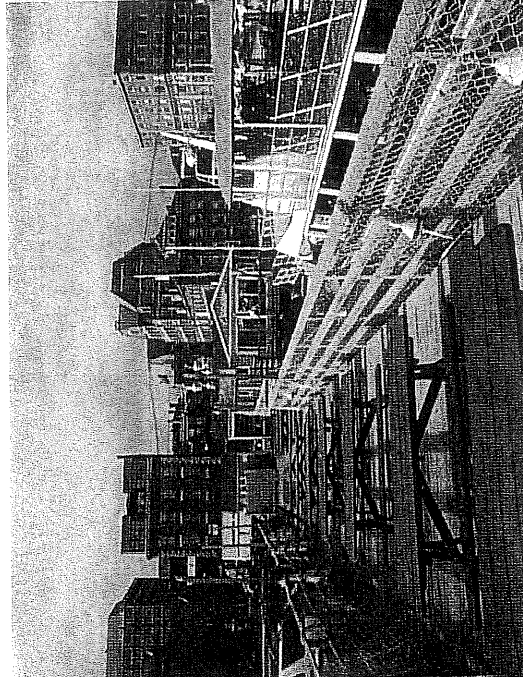
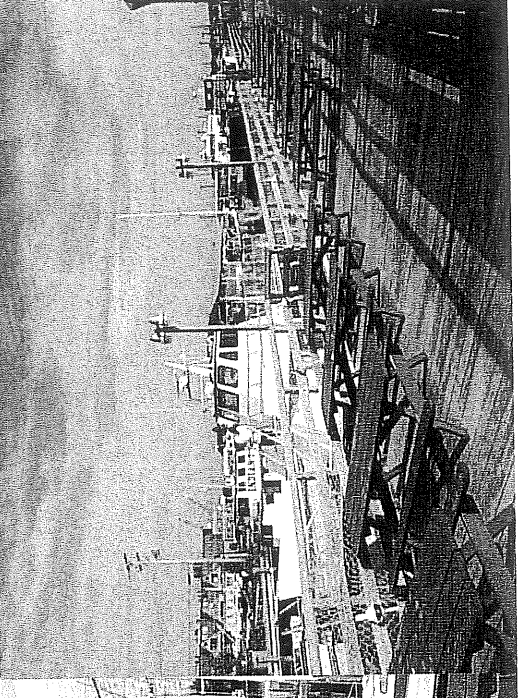
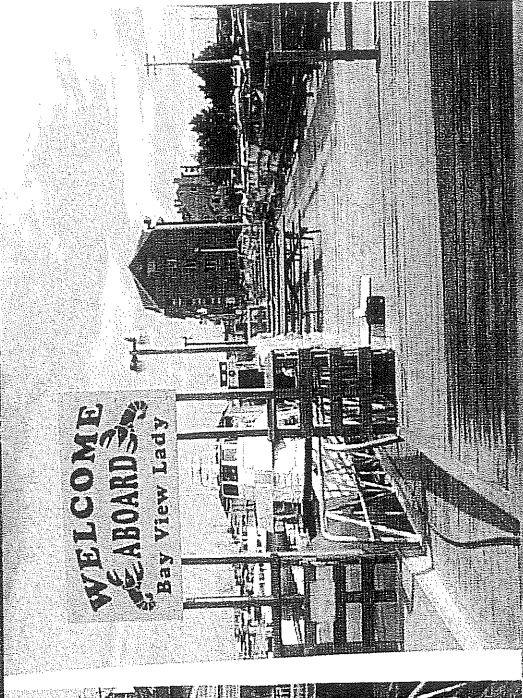
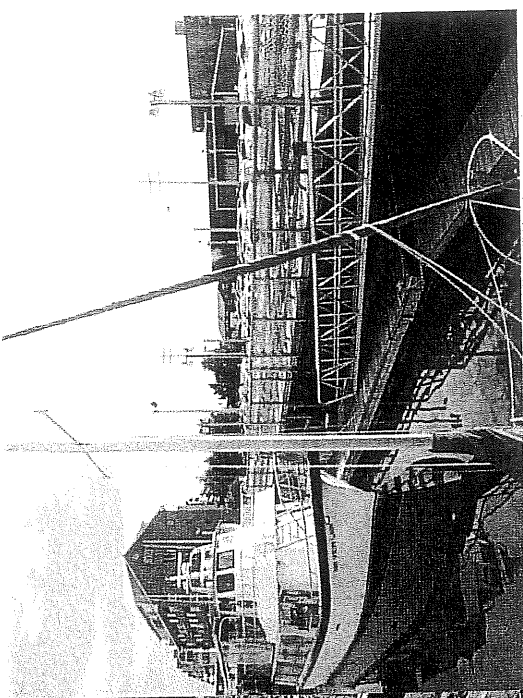
Long Wharf has developed into the focal point of all waterfront tourist traffic. Almost all of the established tour boats in the city are docked at Long Wharf. The picnic tables of "Bayview Seafood" have provided a comfortable and attractive place for tourists to view the boats and wait for the next cruise. I believe all the other tour boat operators share my opinion,

Sincerely,


Captain Dick Yates

LOBSTERBAKES ♣ CRUISES ♣ MEETINGS

FISHERMAN'S WHARF, 184 COMMERCIAL STREET, PORTLAND, MAINE 04101 (207) 761-0496



From: Penny Littell
To: William Needleman
Date: Mon, Aug 20, 2001 2:49 PM
Subject: WCZ

Bill: Please take a look at the proposed language and let me know if you have any ideas for further restrictions. Thanks for your time.

Sec. 14-315. Conditional uses.

The following uses shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471(c), section 14-474(a), or any other provision of this Code, the planning board shall be substituted for the board of appeals as the reviewing authority, and further provided that in addition to the provisions of section 14-474(c)(2), section 14-313.5, and any other conditions specified under the particular use below, they shall also meet the following conditions:

(a) The proposed use shall be compatible with existing and potential marine uses in the vicinity;

(b) The proposed use shall not impede access to the water by existing or potential marine uses; and

(c) For conditional uses that propose or require twenty (20) or more parking spaces, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development, specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1). For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.

1. Parking: Notwithstanding sections 14-317(g), 14-331, 14-334 and article V of this chapter, no parking shall be allowed in this zone for conditional uses and uses permitted only above the ground floor level, unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces required for marine uses that are required by section 14-314(a). The remainder of parking required for such uses shall be provided off-site and in other zones where parking is a permitted use.

(2) Marine:

a. Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:

1. Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the planning board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.

b. Fish by-products processing, provided that:

1. Any fish by-products processing facility has a valid rendering facility license under chapter 12; and

2. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.

c. Boat rack storage facilities, provided that:

1. Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.

(3) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier.) into contiguous and newly created building space of no more than 2000 sq. ft., total, shall be allowed only as follows:

(a) the use may occupy ground floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or

(b) the use may occupy a ground floor area of no more than 1250 square feet beyond 35 feet from the southerly sideline of Commercial Street; and

(c) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and

(d) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

(4) Residential: The owner of a marine related business may occupy space within the upper story of a building in existence on January 4, 1993: provided the following conditions are met:

- a. the residential living space shall not exceed 600 square feet;
- b. the occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy by other than the primary owner of the marine related business;
- c. the residential use shall be limited to one unit per wharf and
- d. upon the vacancy in excess of three (3) months of the residential living space by the primary owner of the marine related business, the resident use shall automatically terminate and shall not be continued without new conditional use approval under this subsection.

For purposes of this subsection, "primary owner of the marine related business" shall mean a person who legally owns 50% or more of the marine related business.

Sec. 14-315.5. Prohibited uses.

Uses which are not enumerated in either section 14-314 or 14-315 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

- a. Except as provided in section 14-315, residential uses (not in existence on May 5, 1987).
- b. Hotels, motels or boatels.
- c. Auditoriums, civic centers, convention centers or other meeting facilities.
- d. Drinking establishments.

City of Portland, Maine
IN THE CITY COUNCIL

Order 73-01/82
Tab 22 9-19-01

AMENDMENT TO PORTLAND CITY CODE CHAPTER 14 (LAND USE)
ARTICLE III, DIVISION 18 (WATERFRONT CENTRAL ZONE)
SECTIONS 14-315 AND 315.5 (CONDITIONAL & PROHIBITED USES)

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

1. That Chapter 14 (Land Use), Article III (Zoning),
Division 18 (Waterfront Central Zone), Section 14-315
(Conditional uses), is hereby amended to read as follows:

Sec. 14-315. Conditional uses.

The following uses shall be permitted as conditional
uses in the waterfront central zone, provided that,
notwithstanding section 14-471(c), section 14-474(a), or
any other provision of this Code, the planning board shall
be substituted for the board of appeals as the reviewing
authority, and further provided that in addition to the
provisions of section 14-474(c)(2), section 14-313.5, and
any other conditions specified under the particular use
below, they shall also meet the following conditions:

- i. the proposed use shall be compatible with
existing and potential marine uses in the
vicinity;
- ii. the proposed use shall not impede access to
the water by existing or potential marine
uses; and
- iii. for conditional uses that propose or require
twenty (20) or more parking spaces, the
proposed conditional use, when considered in
conjunction with past, present and
reasonably foreseeable future development,
specifically including but not limited to
development and uses occurring in this
district in structures within thirty-five
(35) feet of the southerly edge of
Commercial Street, shall meet the standards
of section 14-526(a)(1). For purposes of
application of this standard only, in

evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.

(a) Parking: Notwithstanding sections 14-317(g), 14-331, 14-334 and article V of this chapter, no parking shall be allowed in this zone for conditional uses and uses permitted only above the ground floor level, unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces required for marine uses that are required by section 14-314(a). The remainder of parking required for such uses shall be provided off-site and in other zones where parking is a permitted use.

(b) Marine:

(1) Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:

Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the planning board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.

(2) Fish by-products processing, provided that:

- a. Any fish by-products processing facility has a valid rendering facility license under chapter 12; and
- b. The processing of other material wastes or by-products shall not be deemed a

lawful accessory use under any other provision of this article.

- (3) Boat rack storage facilities, provided that:

Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.

(c) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier.) into contiguous and newly created building space of no more than 2000 sq. ft., total, shall be allowed only as follows:

- (1) the use may occupy ground floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or
- (2) the use may occupy a ground floor area of no more than 1250 square feet beyond 35 feet from the southerly sideline of Commercial Street; and
- (3) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and
- (4) the expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

(d) Residential: The owner of a marine related business may occupy space within the upper story of a

building in existence on January 4, 1993, provided the following conditions are met:

- (1) the residential living space shall not exceed six hundred (600) square feet;
- (2) the occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy by other than the primary owner of the marine related business;
- (3) the residential use shall be limited to one unit per wharf; and
- (4) upon the vacancy in excess of three (3) months of the residential living space by the primary owner of the marine related business, the residential use shall automatically terminate and shall not be continued without new conditional use approval under this subsection.

For purposes of this subsection, "primary owner of the marine related business" shall mean a person who legally owns fifty percent (50%) or more of the marine related business.

Ord. No. 168-93, § 2, 1-4-93; Substitute Ord. No. 00-42, 8-7-00)

2. That Chapter 2, (Land use) Article III (Zoning), Division 18 (Waterfront Central Zone), Section 313.5 (Prohibited uses), is hereby amended to read as follows:

Sec. 14-315.5. Prohibited uses.

Uses which are not enumerated in either section 14-314 or 14-315 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

(a) Except as provided in section 14-315,
rResidential uses (not in existence on May 5,
1987).

(b) Hotels, motels or boatels.

(c) Auditoriums, civic centers, convention centers or
other meeting facilities.

(d) Drinking establishments.

(Ord. No. 168-93, § 2, 1-4-93)

office:\amend\14-315 & 315.5 wtrfrt central zone

**CITY OF PORTLAND, MAINE
CITY COUNCIL AGENDA REQUEST FORM**

TO: Linda Cohen, City Clerk
FROM: Alexander Jaegerman, Chief Planner
DATE: September 11, 2001
SUBJECT: Agenda Request

- 1) Council Meeting at which action is requested (Date): September 19, 2001 (First Reading)
Oct. 1, 2001 (Public Hearing)
- 2) Can action be taken at a later date? YES NO

I. SUMMARY OF ISSUE

Councilor O'Donnell has requested an amendment to the Waterfront Central Zone to allow the owner of a marine related business to maintain a residence within the upper story space of the business. .

II. REASON FOR SUBMISSION (What issue/problem will this address?)

This amendment is intended to resolve a problem experienced by Mr. Peter McAleney of New Meadows Lobster on Portland Pier to provide better security for his business by allowing an apartment to be on the premises

III. INTENDED RESULT (How does it resolve the issue/problem?)

The amendment allows a conditional use of a single dwelling unit not to exceed 600 sq. ft. for the primary owner of the marine related business. Only one dwelling unit per wharf is allowed under this proposal.

IV. FINANCIAL IMPACT

None.

V. STAFF ANALYSIS & RECOMMENDATION

This amendment is narrowly crafted to avoid introducing a large residential presence that would contradict the policy against housing on the waterfront.

CITY OF PORTLAND, MAINE

PLANNING BOARD

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

March 20, 2002

Mr. Thomas Dana, GEF, LLC
P.O. Box 169
Portland, Maine 14112

RE: 184 Commercial Street, Bayview Restaurant Site Plan and Conditional Use Approval

CBL: 031 J030001

Dear Mr. Dana:

On March 12, 2002, the Portland Planning Board voted 5-0 (Delogu absent) to approve a site plan and conditional use appeal at 184 Commercial Street. The approval was granted for the project with the following condition:

- i. That the applicant provides any future revised lighting changes for Planning Staff review and approval.

The approval includes a rehabilitation and occupation of the existing Bayview Restaurant and a 1600 +/- square foot expansion of exterior restaurant use onto the existing pier deck.

The approval is based on the submitted site plan and the findings related to site plan review standards as contained in Planning Report # 20-02, which is attached.

Please note the following provisions and requirements for all site plan approvals:

1. A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and 7 final sets of plans must be submitted to and approved by the Planning Division and Public Works prior to the release of the building permit. If you need to make any modifications to the approved site plan, you must submit a revised site plan for staff review and approval.
2. The site plan approval will be deemed to have expired unless work in the development has commenced within one (1) year of the approval or within a time period agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the expiration date.
3. A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the

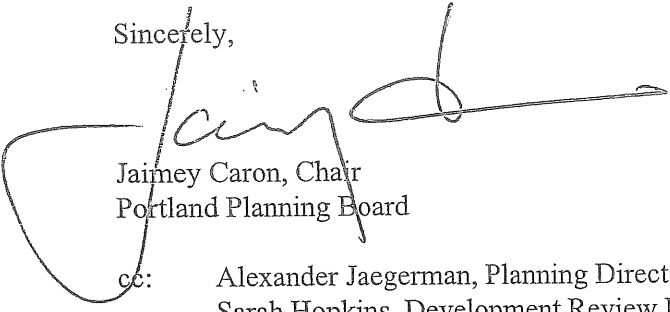
performance guarantee will be released.

4. Prior to construction, a preconstruction meeting shall be held at the project site with the contractor, development review coordinator, Public Work's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the preconstruction meeting.
5. If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)

The Development Review Coordinator must be notified five (5) working days prior to date required for final site inspection. The Development Review Coordinator can be reached at the Planning Department at 874-8632. Please make allowances for completion of site plan requirements determined to be incomplete or defective during the inspection. This is essential as all site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact William B. Needelman at 874-8722

Sincerely,



Jaimey Caron, Chair
Portland Planning Board

cc: Alexander Jaegerman, Planning Director
Sarah Hopkins, Development Review Program Manager
~~William B. Needelman, Senior Planner~~
Jay Reynolds, Development Review Coordinator
Marge Schmuckal, Zoning Administrator
Jodine Adams, Inspections
William Bray, Director of Public Works
Larry Ash, Traffic Engineer
Tony Lombardo, Project Engineer
Eric Labelle, City Engineer
Jeff Tarling, City Arborist
Penny Littell, Associate Corporation Counsel
Lee Urban, Director of Economic Development
Lt. Gaylen McDougall, Fire Prevention
Don Hall, Appraiser, Assessor's Office
Susan Doughty, Assessor's Office
Approval Letter File
Correspondence File

prior or subsequent date, a proportionate share of the reimbursement on account of taxes for the period in which such expiration or termination occurs shall immediately become due and payable by Tenant to Landlord. Such proportionate share shall be based upon the length of time this Lease shall have been in effect during such tax period. Within thirty (30) days after receipt of the tax bill for such tax period, Landlord and Tenant shall make appropriate adjustments.

ARTICLE VIII

USE

The Premises shall be used and occupied by Tenant solely for operating a seafood restaurant provided that said use complies with all governmental and environmental laws and regulations. The Tenant shall obtain all licenses necessary to operate the premises as a restaurant. The premises may not be used for any other purposes absent written consent of Landlord which shall not be unreasonably withheld.

ARTICLE IX

UTILITIES

The Landlord shall not be under any responsibility or liability for interruption or inability to obtain electricity, fuel or water by reason of breakdown or accident or by any reason or any other cause beyond the reasonable control of the Landlord, nor in any event shall the Landlord be responsible for indirect and/or consequential damages.

The Tenant agrees to pay when due all bills for all utilities and services furnished to the Premises including but not limited to water and sewer, heating, electrical, trash removal and interior/exterior maintenance.

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ARTICLE X

TENANT'S COVENANTS

Tenant covenants with Landlord that during the term and for such further time as Tenant or anyone claiming by, through or under it, shall hold the Premises or any part thereof

- A Tenant will promptly pay the rent, reimbursement of taxes and any and all other charges payable by Tenant to Landlord at the address from time to time designated for the sending of notices to Landlord at the time and in the manner aforesaid.

- B If Tenant shall install any type of mechanical equipment, such installation shall be at Tenant's sole expense. The moving and installation of such machines and equipment shall be at the sole risk and hazard of the Tenant and Tenant agrees to indemnify and save Landlord harmless against and from all damage, liability, loss, injury, claim or suit resulting directly or indirectly from the installation or maintenance of such machines and equipment.

Tenant will not make any structural change in, or structural addition to the Premises without first obtaining, on each occasion, Landlord's consent in writing, which consent shall not be unreasonably withheld, and then only Tenant's expense, and in a lawful manner and upon such reasonable terms and conditions as Landlord shall by such writing approve. Any such alteration or addition shall be consistent in appearance with the rest of the Premises. At

7-11

Tenant's expense. Tenant's alterations and additions must comply with any and all governmental and environmental rules and regulations. Landlord shall, upon expiration of the term, retain as its property, without cost to it, any such structural alterations so made. Tenant will, upon the reasonable request of Landlord, deliver to Landlord in writing a schedule and plans setting forth the details and location of all such alterations or additions. In accordance with Section G of this Article, Tenant will be responsible for obtaining all permits necessary for occupancy and the use of the Premises by the Tenant under the terms of this lease, and Tenant will bear all expenses in connection therewith, including any building, plumbing and/or electrical work required. The Tenant hereby accepts the Premises in its present condition. Notwithstanding the foregoing, Landlord warrants and represents the use desired by the Tenant is lawful.

C Tenant will not permit any hole to be drilled or made in the exterior facade of any building or any sign or placard to be placed on any building without first obtaining on each occasion the Landlord's written consent, which shall not be unreasonably withheld; and will erect and maintain any sign only after obtaining approval in writing by the Landlord and only in accordance with all laws, rules and regulations and requirements of all public and other authorities having jurisdiction over the same; and, in addition, will repair all damage that may be caused to any building in the affixation, maintenance or removal of the sign to or from any building, and will also hold and save the Landlord harmless and indemnified of and from all claims for injury or damage to person (including death) and/or property damage caused by the Tenant, and will restore that portion of the Premises and any building thereon from which the Tenant shall have removed any sign to a condition at least as good as that in which said portion of the Premises and any building thereon was just prior to the

7.12

installation or affixation thereof, damage by fire or other casualty eminent domain, damage due to the fault or negligence of the Landlord or its agents and repairs for which the Landlord is responsible under the terms of this Lease and reasonable wear and tear excepted;

D Tenant shall, at the end of the term or sooner termination, peaceably surrender and deliver up the Premises and all erections, alterations and additions made to or upon the Premises (unless Tenant desires to remove any of them, in which event Tenant shall repair all damage caused thereby), to Landlord, broom clean and in the same repair and condition, in all respects, as the Premises were in on the Commencement Date and as such erections, alterations and additions were when completed, reasonable wear and tear and damage by fire or other casualty, eminent domain, and damage due to the fault or negligence of the Landlord or its agents and repairs for which the Landlord is responsible under the terms of this Lease, only excepted, and (except as elsewhere provided herein), will remove all personal property, goods and effects belonging to the Tenant or to anyone claiming through or under Tenant, including, without limitation, all of its trade fixtures and signs and also will remove all lettering, if any, painted by Tenant in or on the Premises with or without the Landlord's consent. Tenant shall be responsible for all damage or injury to the Premises caused by the installation or removal of the Tenant's furniture, fixtures or equipment.

E Tenant shall not assign, mortgage, pledge or encumber this Lease nor underlet any part of the Premises, without, on each occasion, obtaining the prior written consent of the Landlord which shall not be unreasonably withheld. In the event Tenant requests Landlord's consent to any assignment, sublease or transfer of this Lease Tenant shall

7.13

submit to Landlord in writing the terms and conditions of the proposed assignment or subletting and the name of the proposed assignee or sublessee, together with a statement of the nature and character of its business and the type of business to be operated at the Premises.

The consent by Landlord to any assignment, mortgage, pledge, or subletting shall not constitute a waiver of the necessity of such consent to any subsequent assignment or subletting. In the event of the assignment or subletting by the Tenant, Tenant shall remain liable for the payment of any and all rent which may become due by the terms of this Lease and for the performance of all covenants, agreements, and conditions on the part of Tenant to be performed hereunder. No such assignment shall be valid or effective unless the assignee shall covenant in writing to be bound directly to the Landlord. No modification of the terms of this Lease or any course of dealing between Landlord and any assignee of the Tenant's interest herein shall operate to release or impair Tenant's obligations hereunder. The Tenant agrees to pay the Landlord's reasonable attorney's fees incurred in connection with any assignment or subletting.

F Tenant, at its sole expense, shall comply with all laws, orders, and regulations of Federal, state, county and city authorities and with any direction of any public officer, pursuant to law, which shall impose any violation order or duty upon Landlord or Tenant with respect to the Premises, or the use or occupation thereof. Tenant shall not do or permit to be done any act or thing upon the Premises which will invalidate, or be in conflict with, fire insurance policies covering the Premises, and fixtures and property therein, and shall not do or permit to be done, any act or thing upon the

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Premises which shall or might subject Landlord to any liability or responsibility for injury to any person or persons or to property by reason of any business or operation being carried on upon the Premises or for any other reason.

G Except as modified by statute, all merchandise, furniture, fixtures and property of any kind which may be on or about the Premises shall be at the sole risk and hazard of Tenant, and if the whole or any part thereof, shall be destroyed or damaged by fire, water or otherwise by the use or abuse of water or by the leaking or bursting of water pipes, or in any other way or manner, no part of such loss or damage shall be charged to Landlord in any case whatever.

H The Tenant will save Landlord harmless, and will exonerate and indemnify Landlord, from and against any and all claims, liabilities, or penalties assessed by or on behalf of any person, firm, corporation, public authority or any other legal entity

(i) on account of, or based upon, any injury to any person or loss of, or damage to, property sustained or occurring in or upon the Premises because of, or based upon, the act of omission, fault, negligence, or misconduct of any person except Landlord:

(ii) on account of, or based upon, any injury to any person or loss of, or damage to, property sustained in or about the Premises (and, in particular, without limiting the generality of the foregoing, on or about the stairways, sidewalks, parking areas, concourses, arcades, approaches, areaways, roof, or other appurtenances and facilities used in connection with the Premises) arising out of the use or occupancy of the Premises by the Tenant or by any person claiming by, through or under Tenant.

and in addition to and not in limitation of either of the foregoing subdivisions (i) and (ii):

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(iii) on account of or based upon (including money due on account of) any work or thing whatsoever done (other than by Landlord or its contractors, or agents or employees or either) on the Premises;

and, in respect of any of the foregoing, from and against all costs, expenses (including reasonable attorney's fees), and liabilities incurred in or in connection with any such claim, or any action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, shall, at Tenant's expense, resist or defend such action or proceeding and employ counsel therefor reasonably satisfactory to Landlord, it being agreed that such counsel as may act for insurance underwriters of Tenant shall be deemed satisfactory.

The Tenant, at its own expense, will maintain and keep in force public liability, liquor liability and property damage insurance insuring both Tenant and Landlord against claims for personal injury, death, or property damage occurring in or about the Premises, if Tenant is liable therefor as herein provided, with limits of not less than \$1,000,000 for injury to or death of one person; \$2,000,000 for injury to or death of more than one person in a single accident, and \$200,000 for damage to property. Upon Landlord's request, Tenant shall furnish Landlord with evidence of such coverage, such evidence to be satisfactory to Landlord. At Landlord's option, Landlord may obtain the aforescribed insurance and Tenant shall promptly (but in any event within fifteen (15) days of receipt of a statement for same), pay for said insurance.

Upon reasonable notice to Tenant and subject to Tenant's reasonable security requirements, Landlord or its representatives shall have the right without charge to it

7.17

and without reduction in rent, at reasonable times and in such manner as not to unreasonably interfere with Tenant's business, to enter to view the Premises, and Landlord or its representatives may enter the Premises (forcibly if necessary), at any time to take such measures as may be needed to cope with an emergency. Landlord may during the nine months next preceding the expiration of the term or any extension thereof, show the Premises to persons wishing to lease or purchase same, such showing not to interfere unreasonably with Tenant's business.

I Tenant shall not permit mechanics', laborers', or materialmen's liens to stand against the Premises or any building thereof for any labor or materials furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed in or on the Premises by or at the direction or sufferance of the Tenant; provided, however, that Tenant shall have the right to diligently contest the validity or amount of any such lien or claimed lien, if the Tenant shall give Landlord, upon demand, reasonable security to insure payment therefor. On final determination of the lien or claim for lien, Tenant shall immediately pay any adverse judgement with all proper costs and charges and shall have the lien released or judgement satisfied at Tenant's expense, and Landlord shall promptly return any security which Tenant may have furnished to the Landlord.

K Tenant shall not overload, damage or deface the Premises nor suffer or permit the same to be done, nor commit waste.

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ARTICLE XI

SUBORDINATION TO MORTGAGES

Tenant agrees that, upon request of Landlord, Tenant will subordinate this Lease and the lien hereof to the lien of any present or future mortgage or mortgages upon the Premises, irrespective of the time of execution or time of recording of any such mortgage or mortgages. Tenant agrees that it will, upon request of Landlord, execute, acknowledge and deliver any and all instruments deemed necessary or desirable by Landlord to give effect to, or notice of, such subordination, provided only that said mortgagee enters into an agreement with Tenant which provides that said mortgagee will not disturb the possession and other rights of Tenant so long as Tenant performs its obligation hereunder and that said mortgagee will accept Tenant as Tenant of the Premises under the terms and conditions of this Lease in the event of acquisition of title by said mortgagee through foreclosure proceedings or otherwise, and which further provides that Tenant shall agree to recognize the holder of such mortgage as the Landlord in such event, said agreement to be expressly binding upon the successors and assigns of the Tenant and of the mortgagee and upon anyone purchasing such building at a foreclosure sale. Tenant and Landlord agree to promptly execute and deliver any appropriate instruments necessary to carry out the agreements contained in this Paragraph.

ARTICLE XII

EMINENT DOMAIN

If the Premises or any part thereof shall be taken for any public use by action of the municipal or other authorities for which Landlord or Tenant shall be entitled to compensation by reason of anything lawfully done in pursuance of any public authority after the execution

7.17

hereof and before the expiration of the same term, and such taking makes the Premises no longer feasible for use by Tenant, then this Lease and said term shall terminate at the election of the Landlord or Tenant and such election may be made in case of any such taking notwithstanding the entire interest of Landlord may have been divested by such taking; and if either party shall not so elect, then in case of any such taking of the Premises rendering the same or any part thereof unfit for use and occupation, a just proportion of the rent hereinbefore reserved according to the nature and extent of such taking, shall be suspended or abated until the Premises, or what may remain thereof, shall have been put in proper condition for use and occupation. The Landlord need not put the Premises in condition for use and occupation. Landlord shall not be liable for any inconvenience or annoyance or any other damages to Tenant or injury to the business of Tenant resulting from delays in repairing such damage. Any election to terminate by either party shall be made no later than ninety (90) days after it receives formal notice of such taking. If, after the taking, the Premises remain feasible for use by Tenant, the Tenant shall promptly place the Premises in proper condition for use and occupation and this Lease shall not be terminated.

Landlord reserves and excepts from this Lease all rights to damages to the Premises or any part thereof, or the Leasehold hereby created, heretofore accrued or hereafter to accrue by reason of any taking for public use of said Premises or any portion thereof or right appurtenant thereto or privilege or easement in, through, or over the same and by way of confirmation of the foregoing the Tenant hereby assigns all rights to such damages heretofore accrued or hereafter accruing during the term or any extension thereto to the Landlord. However, the Tenant reserves its rights to its Leasehold improvements and fixtures and relocation expenses. Tenant agrees to promptly execute such other instruments as may be necessary or desirable to confirm the Landlord's rights to such damages

7.18

ARTICLE XIII

FIRE AND OTHER DAMAGE

The Tenant shall, at all times, keep the rented premises and all improvements thereon insured against loss and/or damage by casualties to its replacement value. The Landlord, and Landlord's mortgagee shall be named the loss payees on said insurance policies as their interests may appear. The Tenant shall be responsible for all insurance premiums related to the leased property.

In case any part of the leased premises shall be destroyed or damaged by fire or other cause, after the execution and before the termination hereof then such destruction or damage shall not operate to terminate this agreement but this agreement shall continue in full force and effect. Tenant shall promptly thereafter restore and rebuild or repair said buildings, structures or improvements to a condition at least equal in value to the value immediately prior to such damage or destruction to the extent insurance proceeds are available. During the period of damage to said structures, rent shall not abate. All insurance proceeds shall be held in Landlord's attorney's escrow account to be used for reconstruction. Any insurance proceeds remaining after reconstruction shall be returned to Tenant.

Within a sixty day period, Tenant must provide Landlord with insurance proceeds for lost rents for period during reconstruction.

ARTICLE XIV

DEFAULT

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This Lease is upon the condition that, if Tenant shall neglect or fail to pay when due any installment of rent or reimbursement of taxes or any other charges payable by Tenant, and such neglect or failure shall continue for five (5) days after receipt of written notice thereof, or if Tenant shall neglect or fail to perform or observe any of the other covenants or undertakings herein on its part to be performed or observed and such neglect or failure shall continue for thirty (30) days after written notice to it from Landlord, or if the default is such that it cannot be cured within thirty (30) days, and Tenant shall not within said period commence to cure such default, and continue to do so diligently, or if the estate hereby created shall be taken by execution or by other process of law and not redeemed by Tenant within fourteen (14) days thereafter, or if proceedings for corporate reorganization or arrangement under the Bankruptcy laws of the United States or any laws amendatory thereof or supplemental thereto shall be filed by or against Tenant and not be dismissed within ninety (90) days, or if the Tenant shall execute an assignment of its property for the benefit of its creditors, or if a receiver for Tenant or other similar officer shall be appointed and not be discharged within thirty (30) days, Landlord may, immediately or at any time thereafter, (notwithstanding any license or waiver of any former instance) and without demand or notice, in person or by agent or attorney, enter the Premises or any part thereof and repossess the same as of its former estate, or terminate this Lease by written notice to Tenant, and in either event, expel Tenant and those claiming through or under it and remove their effects (forcibly, if necessary), without being deemed guilty of any manner of trespass and without prejudice to any remedy which otherwise might be used for arrears of rent or breach of covenant, and upon entry or notice as aforesaid, this Lease shall terminate and the Landlord, in addition to all other remedies which it may have at law, shall have the remedies provided in Article XIV and elsewhere in this Lease.

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ARTICLE XV

CLEANLINESS OF LEASED UNIT

It is agreed that Tenant will ensure that the Leased Premises remain clean and free of any and all insects or other infestations. Tenant shall, at Tenant's sole expense, utilize the services of an Extermination Company on a regular, as-needed, basis to ensure that such insect/animal infestations do not occur.

Tenant agrees that all trash will be removed from the facility on a daily basis and stored inside the waste receptacles located outside of the building. Waste is only to be transferred into the receptacles and is not to be stored in any other locations.

ARTICLE XVI

QUIET ENJOYMENT

Tenant shall, upon paying the rent and other charges reserved hereunder and observing and performing all of the terms, covenants and conditions on Tenant's part to be observed and performed, peacefully and quietly hold and enjoy the Premises, without hindrance or molestation by any person or persons whatsoever, subject, however, to the terms of this lease.

ARTICLE XVII

NOTICES

All notices shall be given by certified mail, return receipt requested, and all notices for the landlord shall be addressed to the Landlord, GEF LLC, 33 RIGBY ROAD, SOUTH

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PORTLAND, MAINE 04106 or to such other place as may be designated by written notice to the Tenant; and to the Tenant BAY VIEW CRUISES, INC. Attn Dick Yates, 184 Commercial Street Portland, Maine 04101 or to such other place as may be designated by written notice to the Landlord.

ARTICLE XVIII

RIGHT TO PERFORM COVENANTS

Tenant covenants and agrees that if it shall at any time fail to make any payment or perform any other act on its part to be made or performed as in this Lease provided. Landlord, in its sole discretion may, after due notice to or demand upon Tenant, and after the expiration of any grace periods in this Lease, make any payment or perform any other act on the part of the Tenant to be made and performed as in this Lease provided, in such manner and to such extent as Landlord may reasonably deem desirable, and in exercising any such rights, Landlord may pay necessary and incidental costs and expenses, employ counsel, and incur and pay reasonable attorney's fees. The making of any such payment or the performing of any other act by the Landlord pursuant to this Article shall not waive or release the Tenant from any obligations of the Tenant in this Lease contained. All sums so paid by Landlord and all reasonably necessary and incidental costs and expenses in connection with the performance of any such act by Landlord, including reasonable attorney fees incurred in collection of rents, shall, except as otherwise in this Lease expressly provided, be payable to Landlord on demand, and Tenant covenants to pay any such sum or sums promptly, and Landlord shall have (in addition to any other right or remedy of Landlord), the same rights and remedies in the event of the nonpayment thereby by Tenant as in the case of default by Tenant in the payment of the basic rent. Whenever practicable, Landlord, before proceeding

7.23

as provided in this Article, shall give Tenant notice in writing of the failure of Tenant which Landlord proposes to remedy, and shall allow Tenant such length of time as may be reasonable in the circumstances, not exceeding thirty (30) days from the giving of notice (unless said remedy takes more than thirty (30) days to accomplish and Tenant diligently works to complete such remedy as soon as reasonably possible), to remedy the failure itself and, if Tenant shall not remedy the failure in the time so allowed, Landlord may proceed as provided in this Article; provided, however, that nothing in this sentence shall prevent Landlord from acting without notice to Tenant in case of an emergency.

In addition to any other right or remedy of the Tenant hereinbefore provided, if the Landlord shall fail to perform or observe any covenant or condition contained in this Lease, Tenant may, after ten (10) days' written notice to Landlord, perform the same for the account of the Landlord and the amount of any reasonable sums paid by the Tenant for such purpose shall be immediately paid by the Landlord to the Tenant, but if Landlord shall fail to immediately pay the same, Tenant may deduct the amount of such sum paid in curing Landlord's default from the rent due on the next or any succeeding rent day.

ARTICLE XIX

ESTOPPEL CERTIFICATE BY TENANT

Tenant agrees at any time and from time to time, upon not less than ten (10) days prior written request by Landlord, to execute, acknowledge, and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications), and the dates to which the basic rent and other charges have been paid in advance, if any, it being intended that any such statement delivered pursuant to this Article

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may be relied upon by any prospective purchaser or mortgagee of, or assignee of any mortgage upon the fee of the Premises.

ARTICLE XX

LIMITATION OF LANDLORD'S LIABILITY

The Landlord reserves the right to assign or transfer any and all of its right, title and interest under this Lease, including but not limited to the benefit of all covenants of the Tenant hereunder. Notwithstanding anything contained in this Lease to the contrary, it is specifically understood and agreed that the obligations imposed upon the Landlord hereunder shall be binding upon the Landlord and Landlord's successors in interest.

ARTICLE XXI

CUMULATIVE REMEDIES

The specified remedies to which Landlord or Tenant may resort under the terms of this Lease are cumulative and not intended to be exclusive of any other remedies or means of redress to which either party may be lawfully entitled in case of breach or threatened breach of any provisions of this Lease. The failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this Lease or to exercise any option contained herein shall not be construed as a waiver or a relinquishment for the future of such covenant or option. Receipt by Landlord of rent with knowledge of the breach of any covenants hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by said party. In addition to the other remedies provided in this Lease, either party shall be entitled to restraint by injunction of any violation or attempt or threatened violation of any of the covenants, conditions, or provisions of this Lease

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Except where contrary to any provision of this Lease, no right or remedy herein conferred upon or reserved to either party is intended to be exclusive of any other right or remedy, and each right or remedy given hereunder is in addition to any now or hereafter existing at law, in equity or by statute.

ARTICLE XXII

TERMINATION CLAUSE

The Lessor shall have the right to terminate this lease on one year's notice to the Tenant provided that the Landlord pay to the Tenant Seventy Thousand Dollars (\$70,000.00) at the time the Tenant vacates the premises. If Landlord exercises its right to terminate during the renewal term, it shall pay the Tenant Ninety Thousand Dollars (\$90,000.00) as provided herein. Should the Landlord desire to exercise its rights under this agreement, it shall provide notice by registered mail, return receipt requested to Tenant as provided in Paragraph XVII hereafter and Tenant shall vacate the premises within one year from the date the notice is deposited in the U.S. Mail, registered mail, postage pre-paid.

Failure of Tenant to vacate the premises within said one year period shall be considered a breach and default pursuant to the terms of Paragraph XIV hereof.

ARTICLE XXIII

FORCE MAJEURE

In the event that Landlord or Tenant shall be delayed, hindered in or prevented from the performance of any act required hereunder by reasons of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, the act, failure to act or default of the other party, war or other reason

7.25

beyond their control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Article shall not operate to excuse the Tenant from payment of rent or any other payments required by this Lease

ARTICLE XXIV

CONSTRUCTION OF LEASE

The invalidity of one or more phrases, sentences, clauses or Articles contained in this Lease shall not affect the remaining portion of this Lease or any part thereof, and if any one or more of the phrases, sentences, clauses or Articles contained in this Lease should be declared invalid by the final order, decree or judgement of a court of competent jurisdiction, this Lease shall be construed as if such invalid phrase, sentence, clause or Article had not been inserted in this Lease

ARTICLE XXV

ENTIRE AGREEMENT

This Lease sets forth the entire agreement made between the parties hereto and cannot be orally modified or amended, except in writing duly executed by the respective parties.

ARTICLE XXVI

HOLDOVER

If the Tenant remains in the Premises beyond the expiration of this Lease, such holding over shall not be deemed to create any tenancy but the Tenant shall be a Tenant at Sufferance only at a daily rate equal to the rent and other charges under this Lease.

7.26

ARTICLE XXVII

SUCCESSORS OR ASSIGNS

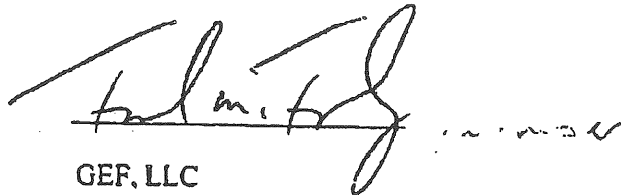
The covenants and agreements herein contained shall, subject to the provisions of this Lease, bind and insure to the benefit of the Landlord, its successors and assigns and Tenant, its successors and assigns, except as otherwise provided herein.

ARTICLE XXVIII

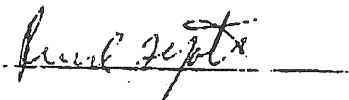
EXECUTION

This Lease is executed in triplicate, all copies of which are identical, and any one of which is deemed to be complete in itself and may be introduced in evidence or used for any purpose without the production of the other copy. The headnotes and margin notes throughout this Lease are for convenience and reference only, and shall in no way be held or deemed to define, limit, explain, describe, modify or add to the interpretation, construction, or meaning of any provision of this Lease.

WITNESS the execution hereof as a sealed instrument.



GEF, LLC
LANDLORD



BAY VIEW SEAFOOD, INC
TENANT

Mar 08 01 05:05p

Prudential Akers Real Est 207-774-8347

p.26

11.07.06 10.48 FAX 207 773 0788

Law Offices

24

7.27

Dick Yates

DICK YATES, PERSONALLY

7.28

p.27

25

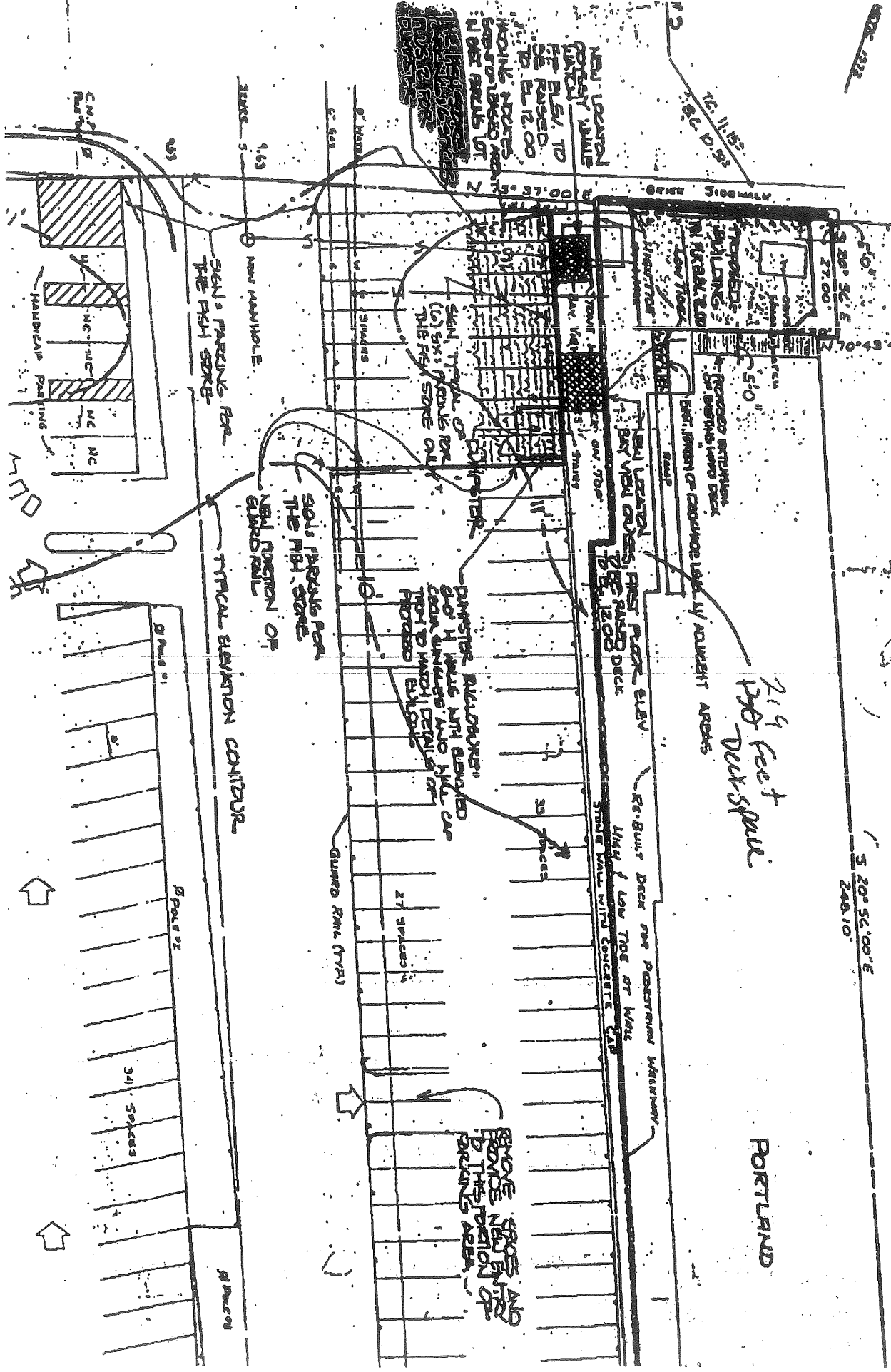
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Prudential Akers Real Est 207-774-8347

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Law Offices



21 1/2 FEET DECK SPACE

BAY VIEW SURVEY
EXHIBIT A
INDICATES LOCATION

AH 8

City of Portland, Maine

IN THE CITY COUNCIL

AMENDMENT TO PORTLAND CITY CODE CHAPTER 14 (LAND USE)
ARTICLE III, DIVISION 18 (WATERFRONT)
SECS. 14-314(e) and 14-315(c)

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

1. That Chapter 14 (Land Use), Article III (Zoning), Division 18 (Waterfront), Section 14-314 (Permitted Uses) is hereby amended to read as follows:

Sec. 14-314. Permitted uses.

(e) *Commercial uses in any area of a building existing on January 4, 1993 or having a valid, unexpired site plan on received site plan approval prior to January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier: Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:*

2. That Chapter 14 (Land Use), Article III (Zoning), Division 18 (Waterfront), Section 14-315 (Conditional Uses) is hereby amended to read as follows:

Sec. 14-315. Conditional uses.

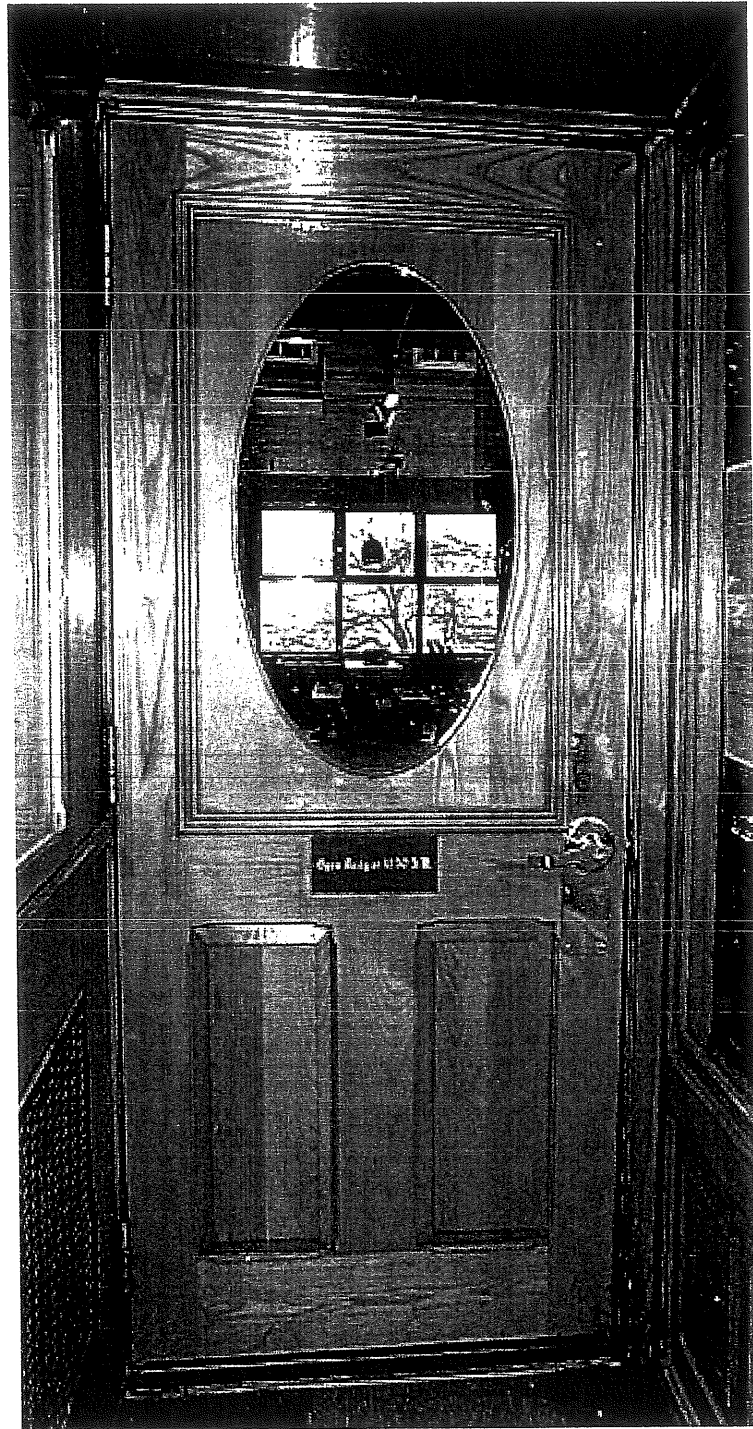
(c) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 or having a valid, unexpired site plan on received site plan approval prior to January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier.)

Att 81

into contiguous and newly created building space of no more than 2000 sq. ft., total, shall be allowed only as follows:

• • •

|



City of Portland
Code of Ordinances
Sec. 14-315

Land Use
Chapter 14
Rev. 12-3-01

valid rendering facility license under chapter 12; and

b. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.

(3) Boat rack storage facilities, provided that:

Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.

(c) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier.) into contiguous and newly created building space of no more than 2000 sq. ft., total, shall be allowed only as follows:

See Revised Language A# 0

(1) the use may occupy ground floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or

(2) the use may occupy a ground floor area of no more than 1250 square feet beyond 35 feet from the southerly sideline of Commercial Street; and

(3) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and

(4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

MAINE BANK & TRUST

AH 4.1

January 31, 2002

Portland Planning Department
389 Congress Street
Portland, ME 04101

RE: Thomas H. Dana

Dear Sir/Maddam:

I am writing this letter as it relates to the above individuals application to the City of Portland Planning Department for a project on Commercial Street. Mr. Dana has been a customer of Maine Bank & Trust since March of 1992. During that time he has maintained an extensive borrowing and deposit relationship. It has been a pleasure working with Mr. Dana over the past ten years and we look forward to working with him on any new projects and developments that may arise now or in the future.

If you have any questions or need a credit reference, please feel free to call me at (207) 828-3150. Thank you.

Sincerely,



Stephen F. Oertel
Commercial Lender

cc: Thomas H. Dana

Att 5.1

The Salty Lobster Company
P.O. Box 169
Portland, ME 04112

H.S.B
July 18 T.D.
~~June 27, 2001~~

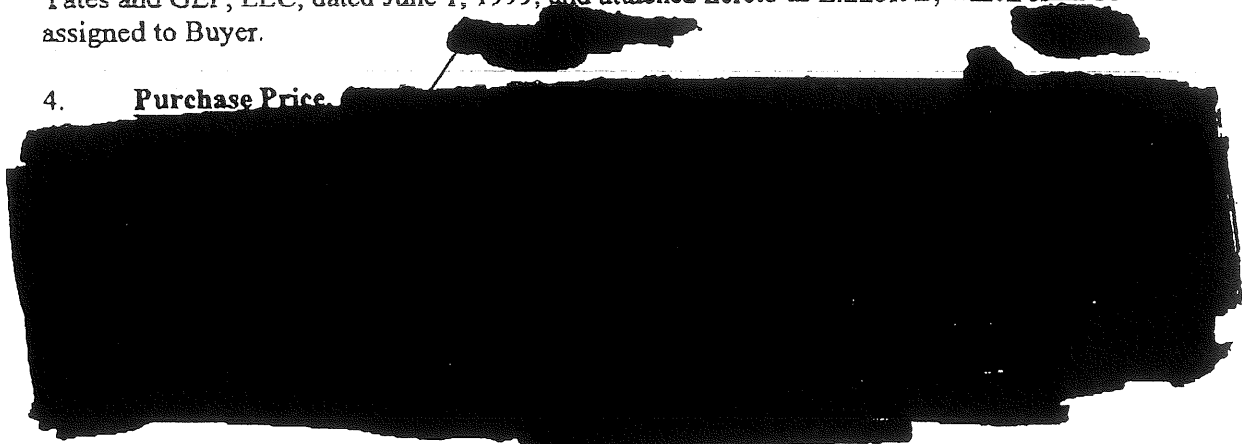
Hwa Sun Bae
29 Exchange Street
Portland, ME 04101

Re: Letter of Intent

Dear Ms. Bae:

The partnership doing business as The Salty Lobster Company ("Company") is pleased to offer to purchase your Assets defined in Paragraph 2 on the following revised terms and conditions:

- 1. **Buyer.** Buyer will be a company formed by Company.
- 2. **Seller.** Seller will be Hwa Sun Bae of Portland, Maine.
- 3. **Purchased Assets.** Company will purchase all of the tangible and intangible assets obtained by Seller from Richard Yates related to the Bayview Restaurant, located on 180 Commercial Street in Portland, Maine ("Premises"), and memorialized in an asset purchase agreement dated, November 20, 2000 and attached hereto as Exhibit A. Buyer shall not purchase or assume any of Seller's liabilities, with the exception of the Lease Agreement between Richard Yates and GEF, LLC, dated June 1, 1999, and attached hereto as Exhibit B, which shall be assigned to Buyer.



4. **Purchase Price.**

- 5. **Closing.** Buyer and Seller agree to use their best efforts to close the acquisition within sixty (60) days of the date of receipt, by the Buyer, of its outdoor seating application by all the applicable City of Portland authorities.

AH 5.2

6. **Conditions.**

- a. Completion by ABC of a satisfactory due diligence investigation of the Acquired Assets and the aforementioned Lease Agreement, within 45 days after approval of outdoor seating permit;
- b. Landlord approval of Assignment of the aforementioned Lease Agreement to ABC;
- c. Approval by the City of Portland and the City of Portland Planning Board of Buyer's Applications/Petitions for, among other things, a permit for outdoor seating;
- d. Negotiation of an Asset Purchase Agreement satisfactory to both parties, containing, among other things, representations and warranties, covenants, indemnities and other terms and conditions customary in corporate acquisition, including, without limitation, a non-competition agreement, hold harmless agreement, within 45 days after completion of subsection c;
- e. The absence of any material adverse change between June 19, 2001 and the Closing in the Purchased Assets;
- f. The obtainment of sufficient financing by Buyers to fund the Asset Purchase Agreement and to operate the newly created company, within 45 days after completion of subsection c;
- g. The furnishment of all existing utility agreements and insurance policies on the Premises within 45 days after completion of subsection c;
- h. The filing of Buyer's application for outdoor seating with the City of Portland within forty five (45) days of the date of this Letter of Intent; and
- i. Approval by the City of Portland of a building permit and outdoor signage within 45 days after completion of subsection c.

7. **Access to Information.** Immediately following acceptance of this Letter of Intent, Seller will provide Buyer and its representative's access to any and all documentation and/or information to enable Buyer to complete its due diligence investigation.

8. **Expenses.** Each party will pay its own expenses and costs incidental to the completion of the acquisition, including legal and accounting fees.

Att 5.3

9. **Brokerage.** It is understanding of both parties that there are no brokers involved in this transaction. Nevertheless, the parties agree to indemnify each other against any claims for brokerage commissions asserted as a result of any action by the indemnifying party.

10. **Cooperation and Exclusive Dealing.** Parties agree to cooperate in good faith and move expeditiously in the preparation of the documents and the taking of other actions necessary to carry out the acquisition. Seller agrees not to offer to sell its stock, assets or business to any other person or entity and not to negotiate or accept any agreement for the sale of all or any part of its stock, assets or any part of Seller's assets or business on or before Closing or such earlier date as the parties mutually agree that a definitive Asset Purchase Agreement cannot be reached and/or if Buyer's application for outdoor seating is denied by the City of Portland.

11. **Non-Disclosure: Publicity.** Each party agrees that it will not, without the prior written consent of the other party, disclose publicly or to any third party, the terms and conditions of this offer or the subsequent negotiations between the parties, except to the extent required by law or as may be required by the Company in connection with its financing arrangements, for the acquisition.

12. **Non-Binding Agreement.** The Letter of Intent is intended to provide a basis for the preparation of a definitive asset purchase agreement. Until such agreement has been prepared and duly authorized, executed and delivered by each of the parties, none of the provisions of this letter shall be binding on either party with the exception of the agreements and obligations contained in paragraphs 7 through 12.

August 1, 2001 H.S.B. T.D.

13. **Acceptance.** This offer may be accepted in writing by Seller until ~~June 22, 2001~~, but will terminate if not accepted by the close of business on that date.

14. **Counterparts.** This Letter of Intent may be executed in one or more counterparts, including execution by facsimile transmission, each of which shall be deemed to be an original copy of this Letter of Intent and all of which, when taken together, will be deemed to constitute one and the same agreement.

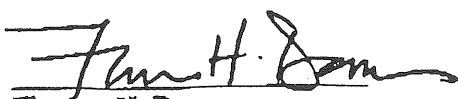
15. **Plans.** If Buyer fails to receive approval of the required permits and/or decides not to Close, then a copy of all architectural drawings and sites plans used to apply for the permits referenced in this Letter of Intent shall be given to Seller.

If the foregoing is satisfactory to you, please evidence your acceptance of this offer by signing and returning to us the enclosed copy of this Letter of Intent. It is understood that upon your acceptance, this letter will constitute a Letter of Intent to negotiate in good faith to complete a definitive Asset Purchase Agreement and a Closing on the terms set forth above.

Sincerely,

Buyer:

Seller:



Thomas H. Dana
(d/b/a The Salty Lobster Company)

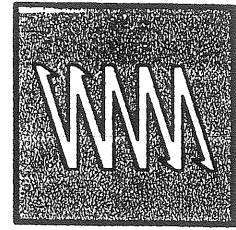


Hwa Sun Bae

Dated: 6/27/01

Dated: 7-18-01

XH, 6



**Bayview Seafood - Fisherman's Wharf
Minor Site Plan Review
Written Statement**

February 2, 2002

Name of Property Owner: The Property Owner is G.E.F. LLC; P.O. Box 2808, Portland, 04116

Name of Applicant: The Applicant is Thomas Dana, P.O. Box 169, Portland, 04112

Estimated Cost of Development: \$40,000 including equipment, and renovation

Item #1: Description of Proposed Uses: The Applicant is proposing to use the Property as a seafood restaurant. The current and past use was the same - a seafood restaurant. No major changes or constructions are proposed. Door and window replacement, material upgrades, and painting are the major areas of work involved. A Change-of-Use is required for the existing 1,250 square foot exterior deck area as per Section 14-315.

Item #2: Areas: The Applicant will be leasing a certain portion of the overall Fisherman's Wharf property. The leased areas will include a 945sf restaurant building, (2) storage buildings of approximately 90sf each, 1,250 sf of exterior dining area and additional walkways and decks, as shown on the Plan.

Item #3: Easements: The area leased to the Applicant includes certain undetermined areas that the Property Owner will utilize to access the ramp/gangplank to service the existing tour boat business. The lease permits the Property Owner to utilize these portions of the site.

Item #4: Solid Waste: Solid waste will be temporarily stored in the existing enclosed area designed for that purpose.

Item #5: Off-site Utilities: All utilities are existing and will not be changed. The sewer and water services were designed for a restaurant operating with the deck and have been operating as such for the last several years.

Item #6: Surface drainage: No changes in the surface drainage are being proposed. Currently any rainwater drains directly into the harbor.

Item #7: Construction sequence: No construction is proposed other than cosmetic work. This work is anticipated to start in the spring so as to be ready for the summer season.

Item #8: State & Federal approvals: No State or Federal approvals are required for the development of this project.

Item #9: Evidence of financial capacity: A letter indicating the financial capacity of the Applicant is included in the packet.

Item #10: Right Title or Interest: The Applicant and the Property Owner have negotiated a letter-of-intent to lease the Space subject to the approval of the Planning Board.

Item #11: Unusual site characteristics: The unusual characteristic of this site is that it is an existing facility which has been operating precisely as the Applicant is proposing. The use of the 1,250sf exterior deck area must be legitimized by this Approval.

Item #12: Drawings: Appropriate site drawings are included in the Application Packet. The development plan is available in electronic form, however the boundary survey is not.

Item #13: Recyclable description: The existing enclosed area for refuse is 6ft by 14ft and includes areas for cardboard and oil, as well as normal trash dumpster.

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PAGE 01

AH 7.1

Bayview Cruises

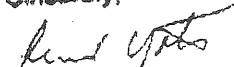
Fisherman's Wharf
184 Commercial Street
Portland, Maine 04101
207-761-0496

March 6, 2002

To Whom It May Concern,

Notwithstanding the language contained in paragraph 4D of the Assignment of Lease between Bayview Seafoods, Inc, Richard Yates, and Hwa Sun Bae d/b/a Bayview Barbecue, which Thomas Dana will be assuming in conjunction with his purchase of Bayview Seafood restaurant, Bayview Seafoods, Inc. and Richard Yates hereby relinquish any and all rights to use the six parking spaces identified as exhibit A in the lease between GEF, Inc. and Richard Yates dated June 1, 1999.

Sincerely,


Richard Yates

Att 7.2

ASSIGNMENT OF LEASE

KNOW ALL MEN BY THESE PRESENTS that Bayview Seafoods, Inc. and Richard Yates with a mailing address of 180 Commercial Street, Portland, Maine 04101 (hereinafter called "Assignor"), in consideration of One Dollar (\$1.00) and other valuable consideration paid to it by Hwa Sun Bae, d/b/a Bayview Barbeque, with a mailing address of _____ (hereinafter called "Assignee"), the receipt of which is hereby acknowledged, does hereby give, grant transfer, set over and convey to Assignee, its successors and assigns, with full right of reassignment, the following rights and premises, viz:

1. All Assignor's interest in and to that certain lease (the "Lease") a copy of which is attached hereto and made a part hereof, and all easements and leasehold rights appurtenant thereto with respect to the premises described therein (the "Leased Premise") including any and all extensions or renewals of the Leases, or substitutions or replacements thereof,

2. All rights, privileges and benefits now existing or hereafter arising under the Lease, including, without limitation, all rights to exercise options to extend or renew the Lease or to purchase the Leased Premises and appurtenances thereto, and all rights to insurance proceeds, eminent domain awards or payments in lieu thereof,

3. All rights of the Assignor in and to fixtures, improvements, alterations, or additions now or hereafter erected on the Leased Premises; and

4. The Assignor REPRESENTS TO, AND COVENANTS AND AGREES WITH, the Assignee as follows:

a. The Lease is in full force and effect in accordance with its respective terms, and it has not been modified or amended.

b. All rents and payments under the Lease have been paid to the Landlord thereof, to the extent payable to date.

c. No defaults under the Lease and no event has occurred or is occurring which, with the passage of time or service of notice, or both, would constitute and event of default thereunder.

d. The Lease is subject to no liens or encumbrances, and Assignor has not previously transferred in any manner any of its interests in or under the Lease. Lease is subject to Assignor's right to use parking spaces and to access the vessel ramp as set forth in ~~Attachment A~~ of Lease between Bayview Cruises and Landlord.

e. Assignor is fully authorized to assign the Lease as provided herein, and the execution of the Lease and this Agreement does not violate the terms and conditions of any other agreement or instrument to which the Assignor is a party or by which it is bound or affected.

AH 7.3

5. The Assignee shall be deemed by the execution of this Assignment to have assumed liability and become liable in any manner whatsoever for the performance of any of the terms and conditions of said Lease and hereby agrees to indemnify and hold harmless the Assignor with regards to any such liabilities.

6. The obligations of the Assignor (as Seller) and the Assignee (as Buyer) under the terms of a Purchase and Sale agreement accepted November 12, 2000 and attached hereto as Exhibit A shall survive this Lease Assignment and this Lease Assignment is made expressly subject thereto.

This Agreement shall (i) bind the Assignor and the heirs, personal representatives, successors and assigns of the Assignor and (ii) inure to the benefits of the Assignee, its shareholders, its affiliates, its successors and assigns.

DATE:

Bayview Seafoods, Inc.

C. J. Basley
Witness

By: Richard Yates
Its President

C. J. Basley
Witness

Richard Yates
Richard Yates

Seen and agreed:

Michael A. Kealey
Witness

Hwa Sun Bae
Hwa Sun Bae, d/b/a Bayview Barbeque

P.02 AH 7.3

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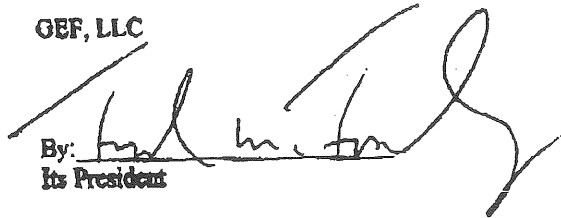
AMERITECH

LANDLORD'S CONSENT TO SUBLETTING OF A PORTION OF LEASE

GEF, LLC ("Landlord") being the Landlord pursuant to that certain lease by and between Landlord and Bayview Cruises, Inc. and Richard Yates ("Tenant") as Tenant dated June 1, 1999, relating to certain premises located at 180 Commercial Street, Portland, Maine, do hereby consent to the subletting of a portion of the Leased premises, specifically being that portion under the storage shed as described and delineated in the attached Exhibit A

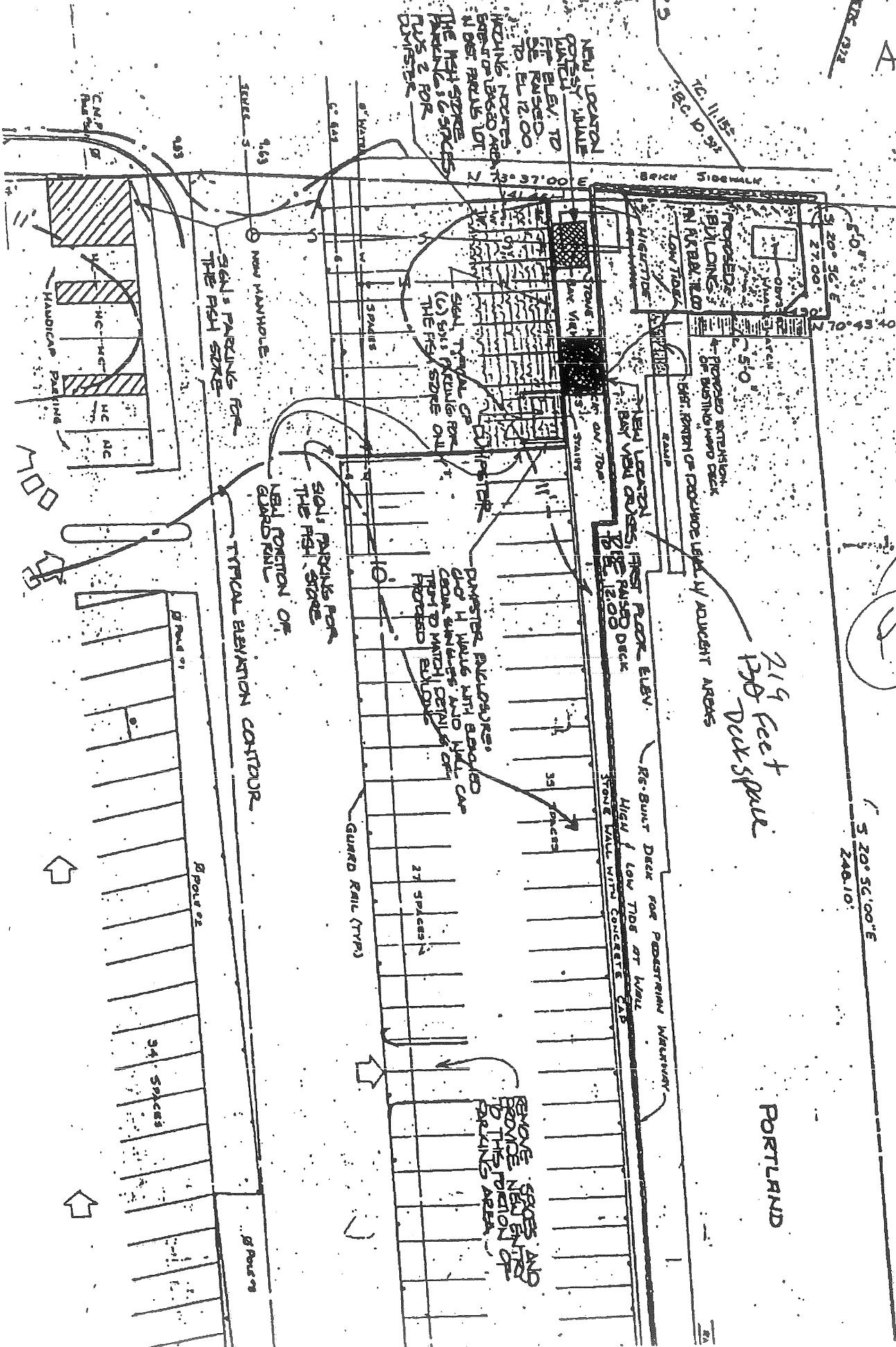
Dated:

GEF, LLC

By: 
Its President

AT 7.4

VER. 032



Handwritten circled 'H' or similar symbol.

EXHIBIT A
Indicates location

Att 7.5

SUBLEASE

KNOW ALL MEN BY THESE PRESENTS that Bayview Cruises, Inc. and Richard Yates with a mailing address of 180 Commercial Street, Portland, Maine 04101 (hereinafter called "Lessee"), in consideration of One Dollar (\$1.00) and other valuable consideration paid to it by Hwa Sun Bae d/b/a Bayview Barbecue, with a mailing address of 180 Commercial Street, Portland, Maine (hereinafter called "Sublessee"), the receipt of which is hereby acknowledged, does hereby sublet a portion of premises currently Leased to Lessee pursuant to a lease by and between Landlord and Lessee dated June 1, 1999. This sublease is pursuant to and subject to the terms and conditions of that Lease. The sublet portion of the Leased Premises ~~is that parcel of land directly under the storage shed which is more specifically described and delineated on attached Exhibit A.~~

Dated: 12/4/00

Bay View Cruises, Inc..

By: [Signature]
Its President

[Signature]
Richard Yates/Individually

Seen and agreed:

Hwa Sun Bae, d/b/a Bayview Barbecue

Att 7.6

LEASE

THIS LEASE made as of this 1st day of June 1999, between GEF LLC located at 33 RIGBY ROAD, SOUTH PORTLAND, MAINE 04106 (Landlord) and BAY VIEW SEAFOODS, INC. AND RICHARD YATES. (Tenant) (both said Landlord and said Tenant being hereafter referred to by singular pronoun of the neuter gender regardless of the number and gender of the person or corporation involved).

WITNESSETH

ARTICLE I

LEASED PREMISES

In consideration of the rents and covenants herein reserved and contained on the part of the Tenant to be paid, performed and observed, the Landlord hereby leases to Tenant that property located on the premises known as Fisherman's Wharf portrayed on the attached ~~Exhibit A~~ which includes the buildings indicated plus a deck.

Tenant shall have the right of ingress and egress over the land owned by Landlord for access to the premises together with six parking spaces portrayed on the attached Exhibit A. In exercising this right of access to the leased premises, the Tenant agrees that it and its agents, invitees and employees shall use due care to protect the property and businesses of the Landlord and Landlord's other Tenants on the premises, and the Tenant further agrees to warrant, defend, hold harmless and indemnify the Landlord for any and all damages caused

What other
things on the
premises?

Att 7.7

by Tenant and its employees, agents or invitees in connection with exercising the right of access to the leased premises.

ARTICLE II

TERM

TO HAVE AND TO HOLD for a term beginning June 1, 1999 ("the Commencement Date") and ending May 31, 2004, ("the Lease Expiration Date") except as extended in accordance with Article VI.

ARTICLE III

RENT

Tenant covenants and agrees to pay basic triple net rent on a monthly basis to the Landlord for the Premises as follows:

	<u>ANNUALLY</u>	<u>MONTHLY</u>
YEAR 1	\$28,350.00	\$2,362.50
YEAR 2	\$29,767.50	\$2,480.63
YEAR 3	\$31,255.88	\$2,604.66
YEAR 4	\$32,818.67	\$2,734.89
YEAR 5	\$34,459.60	\$2,871.63

11,812.50
 12,403.15

 24,215.65

In the event that any Lease payment is not received by the fifth day of the month the Lessee will be charged a five per cent (5%) late fee for each late payment. All payments will first go to satisfy late fees and then rent. Tenant agrees that it will be responsible for all costs associated with the collection of rent including, but not limited to, reasonable attorney fees incurred as part of the collection process.

AA 7.7

All payments shall be at such place as Landlord may from time to time designate.

ARTICLE IV

PERSONAL GUARANTEE OF LEASE

*Yates
pers. guar.*

The provisions of this lease and the payments required herein are personally guaranteed by Mr. Dick Yates.

ARTICLE V.

SECURITY DEPOSIT

No security deposit is required.

ARTICLE VI

OPTION TO RENEW LEASE

Provided that Tenant has complied with all material covenants, terms and conditions of this Lease, including the payment of rent, or that any default shall have been duly waived, Tenant shall have the option to Lease the Premises for two extended periods of five (5) years each upon the terms, covenants, and provisions set forth herein. Said provisions may be exercised by written notice of such exercise sent by registered or certified mail, postmarked thirty (30) days before the expiration of the previous term or extended term to Landlord at its address designated for notices as herein provided. For the first renewal term, rent shall be \$36,182.58 for the first year of the renewal term and escalate 5% per year for every subsequent year of the first renewal term. The rent for each year in the second renewal option shall be market rent. Market rent shall be negotiated and agreed upon by both parties in writing and will be

AA 7.8

payable on a monthly basis due on the first day of each month. If the rental amount for the second renewal option cannot be agreed upon by both parties then the lease will terminate at the end of the first renewal term.

ARTICLE VII

TRIPLE NET CHARGES

pays taxes

The Tenant shall pay its pro-rata share of all taxes and assessments levied, assessed or imposed at any time by any governmental authority upon or against the Premises or taxes in lieu thereof during the term of this Lease. In the event that there are any additional taxes or assessments of any type levied on the dockage or waterfront areas such assessments will be the direct responsibility of the Tenant.

Upon receipt thereof, Landlord shall furnish to Tenant a copy of the tax bill and a statement of the taxes payable during any tax period during the term of this Lease. Tenant's share of said tax bill shall be payable by Tenant to Landlord not later than fifteen (15) days after Tenant's receipt. It is estimated that Tenant's pro-rata share of the tax bill will be approximately 3% of the land tax assessment and 80% of the building tax assessment.

Nothing herein contained shall be construed to mean that the Landlord has an obligation to apply for an abatement of taxes, but Landlord agrees to do so at Tenant's expense if requested by Tenant. In the event of an abatement, the pro-rata proceeds of any abatement shall belong to the Tenant, less any reasonable costs (adjusted on a Pro-Rata basis) to Landlord in obtaining the Abatement. The provisions of this paragraph shall not survive the termination of this Lease.

Upon the date of the expiration or termination of this Lease, whether the same be the date herein above set forth for the expiration of the term (the "Lease Expiration Date") or any

My Notes

PLANNING BOARD REPORT #20-02

BAYVIEW RESTAURANT EXPANSION

184 COMMERCIAL STREET

SITE PLAN AND CONDITIONAL USE APPEAL, WATERFRONT CENTRAL ZONE

THOMAS DANA, APPLICANT

Submitted to:

Portland Planning Board
Portland, Maine
March 13, 2002

I. INTRODUCTION

Thomas Dana, prospective owner of the Bayview Restaurant, requests a public hearing to discuss a proposal to expand an existing restaurant use to include 1500 sq ft of exterior seating at 184 Commercial Street. The property is in the Waterfront Central Zone and the expansion will be reviewed as a conditional use and site plan. The Board will remember that Mr. Dana recently received a zone change to make this property available for non-marine expansion under the “Saporro Amendment.”

II. BACKGROUND

The area of the expansion has for several years been used for exterior seating by the previous owners. Mr. Dana wishes to legitimize the seating prior to taking ownership. The resulting +/- 1500 square feet of expansion would provide stand up counter space adjacent to the restaurant and room for +/- 11 picnic tables adjacent to the Bayview Tours excursion boat berthing. Restrictions under Conditional Use 14-315 (c), the Saporro Amendment, limit the expansion to an area smaller than was occupied by the existing illegal seating.

No workshop was held for this project in light of the recent review of this property. Other than legitimizing a portion of the existing exterior seating, there are no site plan changes associated with this project.

II. FINDINGS

Zoning:	WCZ
Land Area:	100,285 sq. ft. for entire pier
Existing Building gross sq. ft:	900+/- sq. ft.
Proposed Building Footprint:	Unchanged
Proposed Exterior Seating:	1,500+/- sq. ft. total (1248 sq. ft. more than 35ft from Commercial Street)
Permitted Expansion under zoning:	2000 sq. ft. total 1250 sq. ft. maximum more than 35ft from Commercial Street
Adjacent Uses:	Existing marine excursion craft, and existing non-marine parking.
Parking:	6 spaces existing 6 spaces required under zoning
Notice:	286 neighbors and interested parties were noticed for this

hearing.

III. STAFF REVIEW

The proposal has been reviewed for compliance with the WCZ Zone, and Conditional Use, and Site Plan Standards of the Land Use Code.

IV. CONDITIONAL USE REVIEW, WCZ: 14-315

The conditions specified under Waterfront Central Zone Conditional Use section 14-315 (c) are as follows:

The expansion must be less than 2000 sq ft and meet the following provision:

- i. The use may occupy the ground floor of newly created and contiguous building space of buildings located within 35 feet of the southerly sideline of Commercial Street; and/or*
- ii. The use may occupy a ground floor area of no more than 1250 sq ft beyond 35 feet from the southerly sideline of Commercial Street;*
- iii. The qualifying building must be greater than 500 sq ft as of the date of enactment; and,*
- iv. The expansion of use shall be reviewed by the Planning Board under the Site Plan standards.*

The area and location of the expansion comply with the dimensional requirements for expansions and the subject building is over 500 sq ft. Please see the site plan review below.

3. WCZ Conditional Use Standards

The following general standards apply for conditional uses in the WCZ

- a. The proposed use shall be compatible with existing and potential marine uses in the vicinity.*

The area proposed for non-marine expansion includes the deck area directly surrounding the existing building to the east and a section of the deck space adjacent to the Bayview Tours excursion boat to the south.

There are no other marine related use adjacent to or impacted by the property. The pier edge east of the restaurant is too shallow for commercial berthing and commercial parking constrains the site to the west.

Staff encourages the applicant to find marine related uses for the seating area not permissible under the 14-135(c) and to allow marine related storage for the area in the off-season.

b. *Access to the water*

Access to the commercial berthing is provided directly from Commercial Street and from steps leading from the Fisherman's Wharf parking lot. Please see the proposed expansion plan, Attachment #11. The seating as shown does not interrupt or block the berthing access. The Bayview Tours owner, Capt. Bill Yates, holds the master lease for the property and provided a letter of support for the enabling zone change. The applicant indicates that all floats in this area will be accessible through the property in the future and the site will operate in exactly the same condition as it has for the past several years. As stated above, exterior seating and other restaurant uses as shown do not encroach upon access routes to the commercial berthing.

c. *Conditional uses requiring 20 or more parking spaces.*

N/A

4. **The following standards apply for all conditional uses: Section 14-474(2)**

i. *There are unique or distinctive characteristics or effects associated with the proposed conditional use.*

There are no known unique or distinctive characteristics associated with the proposed use.

ii. *There will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area; and*

It does not appear that there will be any adverse impacts with the proposed project.

- iii. *Such impact differs substantially from the impact which would normally occur from such a use in that zone.*

The impacts of this proposed expansion are similar to those normally expected from restaurant use in this zone.

V. SITE PLAN REVIEW

This project will result in no changes to the traffic circulation, drainage patterns, or public or private utility infrastructure, which currently exists on site, and were reviewed during the 1993 approval for this site.

1/2. Traffic/Parking

There are no anticipated traffic impacts from the expansion. The required six parking spaces are provided adjacent to the restaurant in the Fisherman's Wharf lot.

3/4. Building Impact

The proposed deck expansion will not unduly impact adjacent structures.

5. Utility Capacity

The expansion requires no additional utility connections and the deck area used for restaurant use will actually be reduced from the area used in the past

6. Landscaping

No landscape changes are proposed.

7. Drainage

No additional impervious surface will be added as result of this development and no drainage problems are apparent.

8. Lighting

No additional exterior lighting is proposed. The applicant should be aware that all changes to the site lighting are reviewable under the site plan ordinance. Staff has provided a suggested condition of approval that any future lighting changes should be submitted to the Planning Office for staff review and approval.

9. Fire

City Fire Safety had approved this proposal in its previous form.

10. Off Premises Infrastructure

The proposal is consistent with off premises infrastructure

11. Environmental Impact

None anticipated

VI. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of plans and materials submitted by the applicant and on the basis of information provided in Planning Board Report #20-02 relevant to standards for conditional use and site plan review, the Board finds:

- i. That the Bayview Restaurant exterior seating expansion plan is/is not in conformance with the Conditional Use Standards for Waterfront Central Zone and Section 14-474 of the Land Use Code; and,

5-0 D absent

- ii. That the restaurant site improvements meets/fails to meet the Site Plan Standards of the City Land Use Code;

5-0 D absent

Subject to the following Condition(s) of approval:

- a. That the applicant provide any future revised lighting changes for Planning Staff review and approval.

Attachments:

1. Conditional use application with written statements
2. Photos
3. Prior Zoning text
4. Letter of Financial Capacity
5. Letter of Intent to Purchase Bayview Restaurant
6. Site Plan Requirements statement
7. Lease information
8. Amended Zoning language permitting the expansion
9. Site Sketch, existing conditions

10. Boundary Survey
11. Proposed Expansion and Seating Plan

CITY OF PORTLAND, MAINE
 DEVELOPMENT REVIEW APPLICATION
 PLANNING DEPARTMENT PROCESSING FORM
 Planning Copy

AH 1.1

2002-0027
 Application I. D. Number
 2/1/02
 Application Date
 Bayview Seafood
 Project Name/Description

Gef Lic
 Applicant
 Po Box 2808, South Portland, ME 04116
 Applicant's Mailing Address
 Bill Nemmers
 Consultant/Agent
 Agent Ph: 774-3683 Agent Fax: 761-2836
 Applicant or Agent Daytime Telephone, Fax

184 - 184 Commercial St, Portland, Maine
 Address of Proposed Site
 031 J030001
 Assessor's Reference: Chart-Block-Lot

Proposed Development (check all that apply):
 New Building Building Addition Change Of Use Residential Office Retail
 Manufacturing Warehouse/Distribution Parking Lot Other (specify) expansion of restaurant

1250 sq ft
 Proposed Building square Feet or # of Units Acreage of Site Zoning

Check Review Required:

Site Plan (major/minor) Subdivision # of lots _____ PAD Review 14-403 Streets Review
 Flood Hazard Shoreland Historic Preservation DEP Local Certification
 Zoning Conditional Use (ZBA/PB) Zoning Variance Other _____

Fees Paid: Site Plan \$400.00 Subdivision _____ Engineer Review _____ Date 2/1/02

Planning Approval Status:

Reviewer _____

Approved Approved w/Conditions See Attached Denied
 Approval Date _____ Approval Expiration _____ Extension to _____ Additional Sheets Attached
 OK to Issue Building Permit _____ signature _____ date

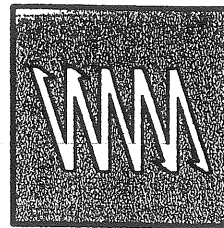
Performance Guarantee Required* Not Required

* No building permit may be issued until a performance guarantee has been submitted as indicated below

<input type="checkbox"/> Performance Guarantee Accepted	_____ date _____	_____ amount _____	_____ expiration date _____
<input type="checkbox"/> Inspection Fee Paid	_____ date _____	_____ amount _____	
<input type="checkbox"/> Building Permit Issue	_____ date _____		
<input type="checkbox"/> Performance Guarantee Reduced	_____ date _____	_____ remaining balance _____	_____ signature _____
<input type="checkbox"/> Temporary Certificate of Occupancy	_____ date _____	<input type="checkbox"/> Conditions (See Attached)	_____ expiration date _____
<input type="checkbox"/> Final Inspection	_____ date _____	_____ signature _____	
<input type="checkbox"/> Certificate Of Occupancy	_____ date _____		
<input type="checkbox"/> Performance Guarantee Released	_____ date _____	_____ signature _____	
<input type="checkbox"/> Defect Guarantee Submitted	_____ submitted date _____	_____ amount _____	_____ expiration date _____
<input type="checkbox"/> Defect Guarantee Released	_____ date _____	_____ signature _____	

AA 1-2

William Nemmers & Associates, Architects
368 Brighton Avenue
Portland, Maine 04102



February 2, 2002

Mr. Bill Needleman, Portland Planning Office
389 Congress Street
Portland, Maine 04101

Re: 184 Commercial Street - Fisherman's Wharf
CBL - 031-J-030

Dear Bill:

With this letter I am submitting the Site Plan Application for the Proposed development of this property. Included are (9) copies of the Application Packet which includes:

- a) the Application Form
- b) a Site Plan Application Cover letter from the Applicant
- c) a Conditional Use cover letter from the Applicant
- d) Exhibit #1 (page of 9 photos)
- e) Exhibit #2 (page of 4 photos)
- f) Exhibit #3 (photos of proposed front and rear doors)
- g) Exhibit #4 (copy of relevant ordinance)
- h) Letter from Maine Bank and Trust regarding financial capability
- i) a copy of the signed Letter of Intent for the rights to develop the property
- j) the required Written Statement
- k) the proposed Site Plan
- l) boundary survey

The purpose of both the Site Plan Review and the Change of Use applications is to gain the right to use the 1,250 square feet of existing deck space for exterior dining. These applications are required by Section 14-315 of the Code which governs the use of exterior decks in the Waterfront Central Zone. The site, including the deck area requested under this application, was developed for use as a dining deck in the past and has been used as such for several years before its status was questioned. This Application, along with the recent council action regarding the wording of Section 14-315, is designed to make this site compliant with the Code.

Sincerely,


William Nemmers

City of Portland Site Plan Application

If you or the property owner owes real estate or personal property taxes or user charges on any property within the City, payment arrangements must be made before permits of any kind are accepted.

Location/Address of Construction: 184 COMMERCIAL STREET		
Total Square Footage of Proposed Structure 1250 (EXPANSION)	Square Footage of Lot	
Tax Assessor's Chart, Block & Lot Chart# 031 Block# J Lot# 030	Property owner, mailing address: G.E.F. LLC P.O. BOX 2808 S. PORTLAND, ME. 04116	Telephone: 828-5136
Consultant/Agent, mailing address, phone & contact person BILL NEMERS (ARCHITECT) 329-2048 TIM BRYANT (ATTORNEY) 791-3236	Applicant name, mailing address & telephone: THOMAS DANA P.O. BOX 169 PORTLAND, ME. 04112	Project name: BAYVIEW SEAFOOD
Proposed Development (check all that applies) <input type="checkbox"/> New Building <input type="checkbox"/> Building Addition <input type="checkbox"/> Change of Use <input type="checkbox"/> Residential <input type="checkbox"/> Office <input checked="" type="checkbox"/> Retail <input type="checkbox"/> Manufacturing <input type="checkbox"/> Warehouse/Distribution <input type="checkbox"/> Parking lot <input type="checkbox"/> Subdivision, amount of lots _____ <input checked="" type="checkbox"/> Other: EXPANSION OF RESTAURANT USE/RENOVATIONS "CONDITIONAL USE" - SECTION 14-315		
Major Development _____ \$500.00 Minor Development <input checked="" type="checkbox"/> \$400.00		
Who billing will be sent to: Mailing address: P.O. Box 169 State and Zip: PORTLAND, ME. 04112 Contact person: T. DANA Phone: 671-5566		

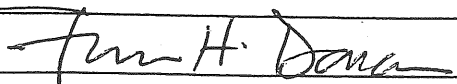
Nine (9) separate packets must include the following:

- a. copy of application
- b. cover letter stating the nature of the project
- c. site plan containing the information found in the attached sample plans check list

All plans must be folded neatly and in packet form

Section 14-522 of the Zoning Ordinance outlines the process, copies are available at the counter at .25 per page, you may also visit the web site: ci.portland.me.us chapter 14

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 of applicant: 	Date: 1/30/02
---	---------------

This application is for site review ONLY, a building Permit application and associated fees will be required prior to construct

Thomas Dana

*P.O. Box 169 * Portland, Maine 04112
Tel: 207-775-2228 * Fax: 207-761-8280
Email: asiawest@aol.com*

Portland Planning Board
City of Portland
389 Congress Street
Portland, Maine 04101

January 30, 2001

Dear Members of the Planning Board,

As part of my "Site Plan" application, the following is a comprehensive explanation of our proposed renovation of Bayview Seafood:

- ◆ We propose to remove the sliding glass doors from the Commercial Street side and waterfront side of the building and replace them with commercial grade, vinyl windows to match the existing windows on the east side of the building (see exhibit 1 picture F). Because the new windows are smaller than the sliding doors presently on the building, a continuation of the existing cedar-shingle siding will be extended to fill the difference.
- ◆ We propose to remove the aluminum door which was recently added to the Commercial Street side of the building and replace it with a heavy, commercial grade, wooden door, which will be in keeping with the rustic feel of the building. (see exhibit 3).
- ◆ We propose to remove the window on the SW corner of the building (see exhibit 1 photo B) and replace it with the same commercial grade wooden door used in the front of the building.
- ◆ We propose to install a 12 inch, naturally-finished, wood (fir) counter along the railing which wraps the perimeter of the building. The counter will sit flush against the railing, 4 inches below the top. The counter will be similar to the one in existence already (see exhibit 1 photo H), except it will be smaller in depth, more sturdy, and more in keeping with the rustic feel of the building.

Thank you for your consideration.

Sincerely,



Tod Dana

Thomas Dana

*P.O. Box 169 * Portland, Maine 04112
Tel: 207-775-2228 * Fax: 207-761-8280
Email: asiawest@aol.com*

Portland Planning Board
City of Portland
389 Congress Street
Portland, Maine 04101

January 30, 2001

Dear Members of the Planning Board,

I am applying for expansion of my business at 184 Commercial Street (Bayview Seafood) under the "Conditional Uses" provision of city ordinance 14-315 section (C), which addresses "expansion of a non-water dependent, non-marine related use" (see exhibit 4). The following points relate directly to the four requirements of the aforementioned ordinance:

- ◆ With respect to the requirement in sub-section (1), Bayview Seafood is located less than 10 feet from the southerly side of Commercial Street.
- ◆ With respect to the requirement in subsection (2), our proposed expanded use will occupy exactly 1250 square feet.
- ◆ With respect to the requirements in sub-section (3), our present building size exceeds 500 square feet.
- ◆ With respect to the requirements in sub-section (4), I firmly believe that Bayview Seafood is in compliance with the requirements of the WCZ zone and this code.

As part of my "Conditional Use" appeal, the following is a comprehensive explanation of our proposed expansion of Bayview Seafood:

We propose to use 1250 square feet of the existing deck space in front of the restaurant for outdoor seating. We propose to use picnic tables, smaller than the ones in existence, laid out in what we believe to be a comfortable arrangement, designed with the idea of comfortable two-way flow of patrons. The enclosed drawing details the proposed layout of the tables and the parameters of the expanded deck (see exhibit 5). Instead of starting the

AH 1.6

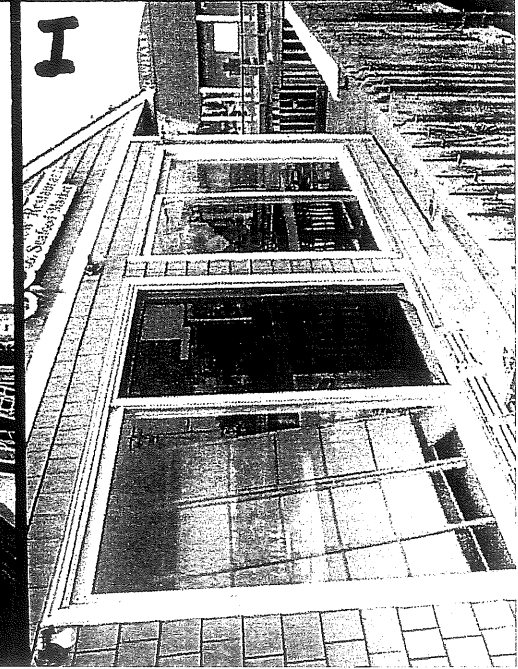
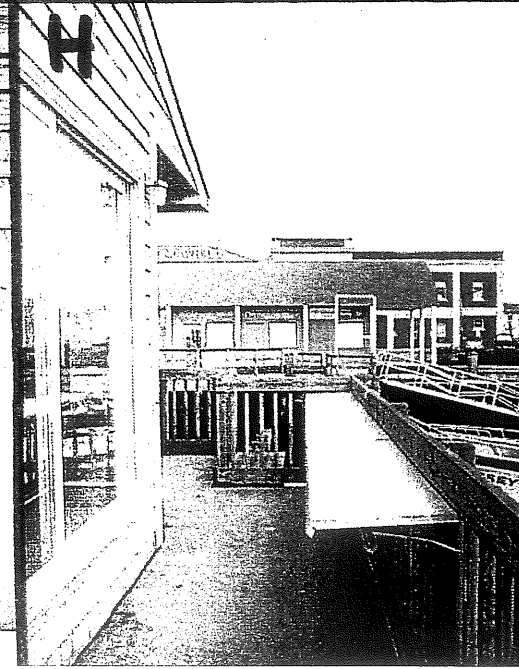
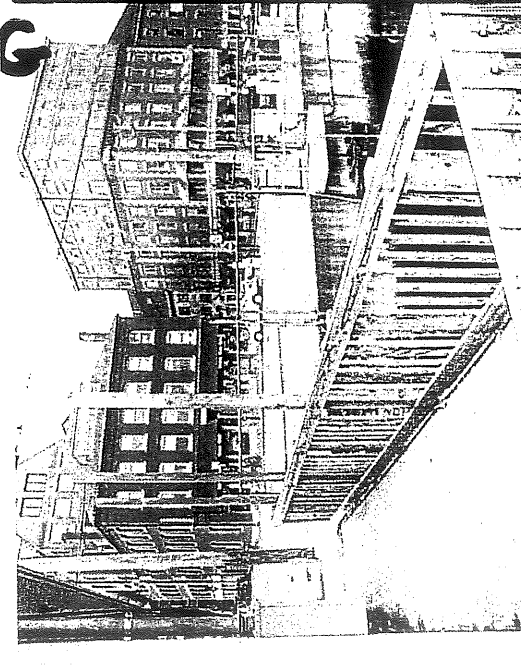
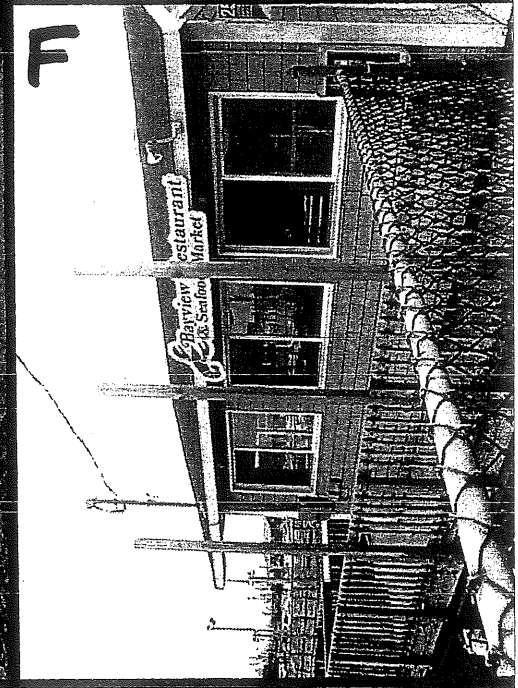
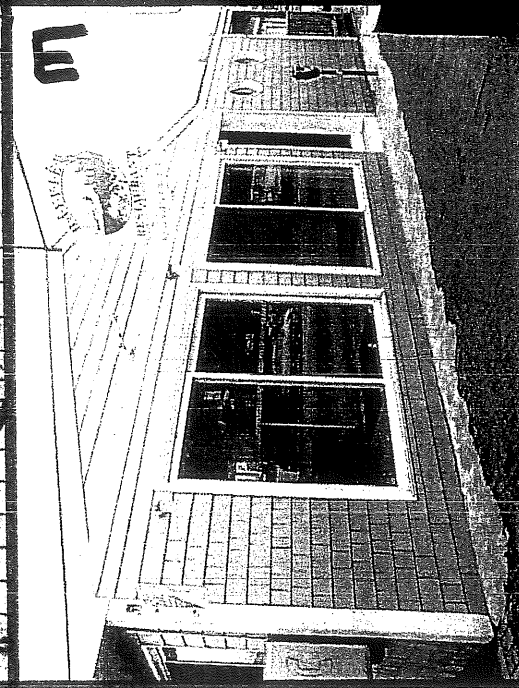
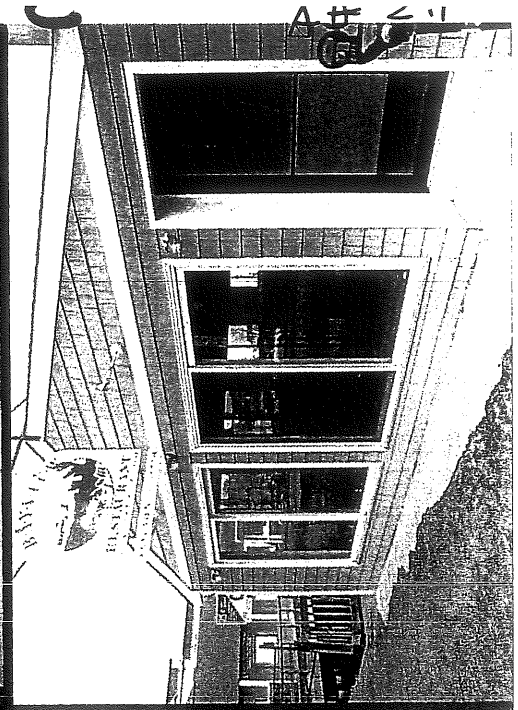
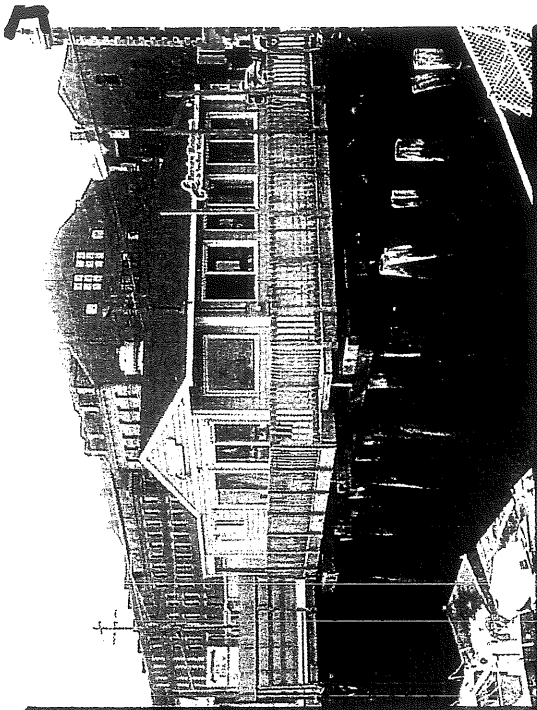
expansion directly in front of the restaurant, we propose to start our deck seating 25 feet beyond the front of the restaurant in order to provide a comfortable "right of way" for passengers moving on and off the tour boat, which has berthing in front of the deck (see exhibit 2 photos J,K,L,M).

Thank you for your consideration.

Sincerely,

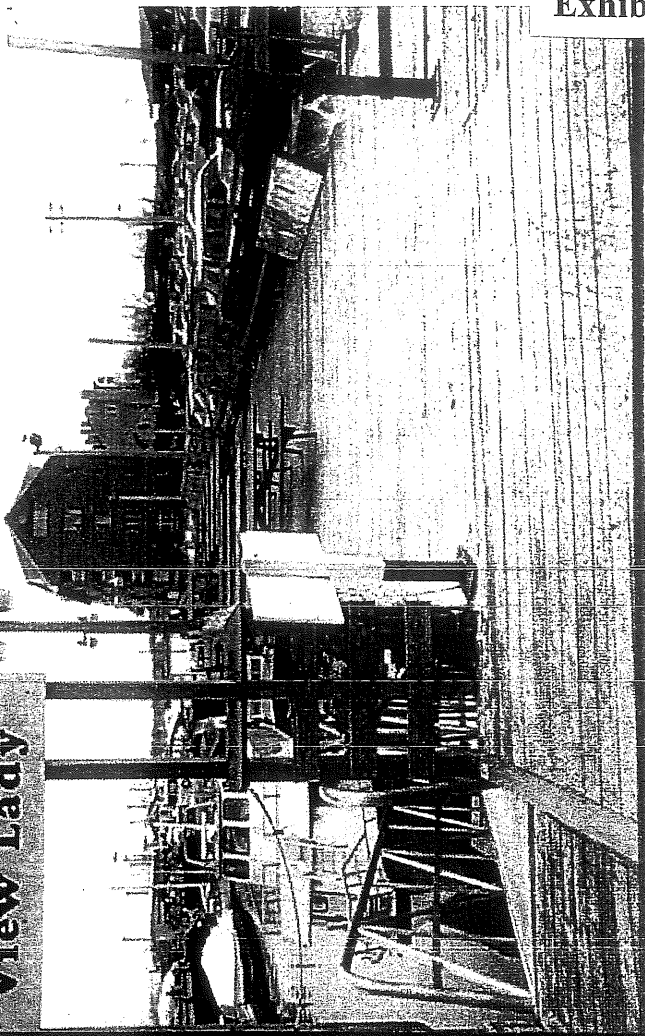

Tod Dana

Exhibit 1



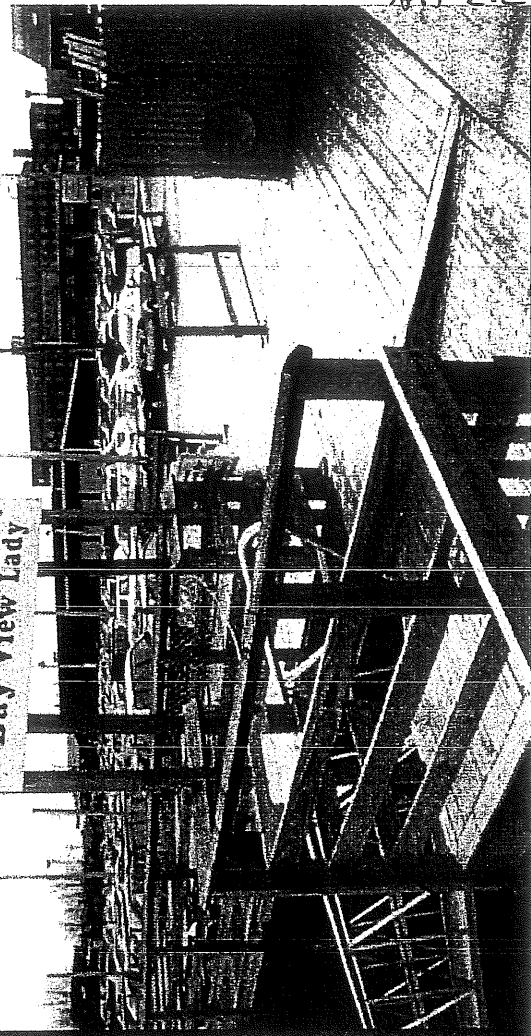
K

WELCOME ABOARD
View Lady

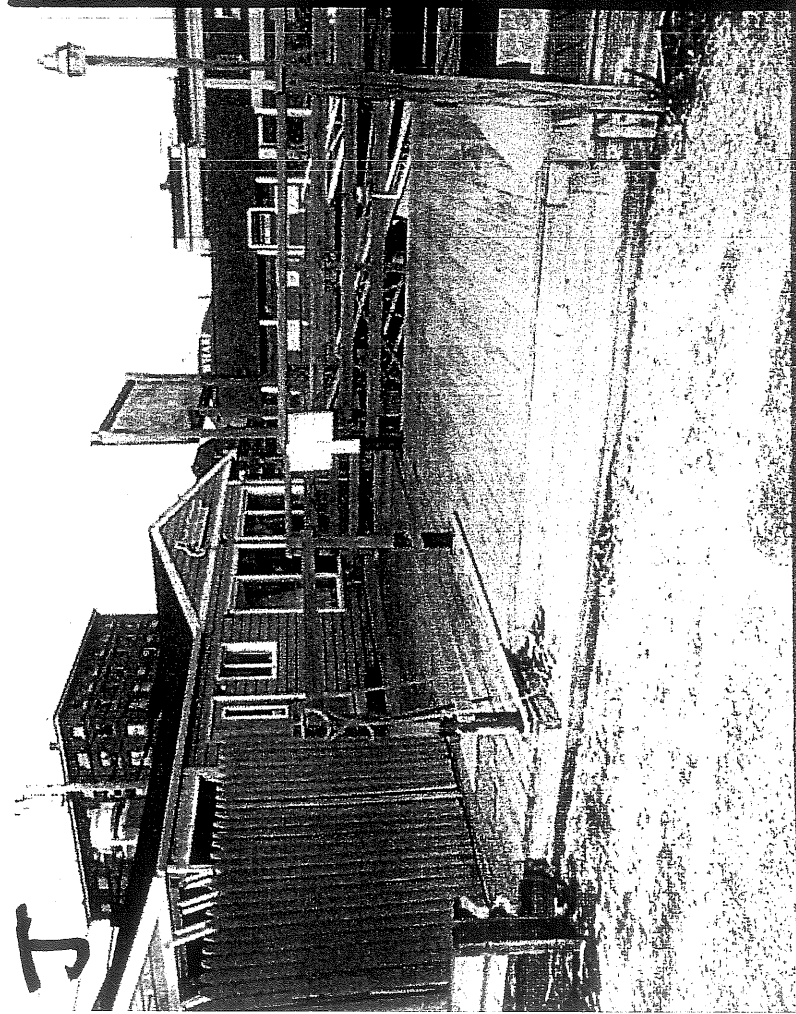


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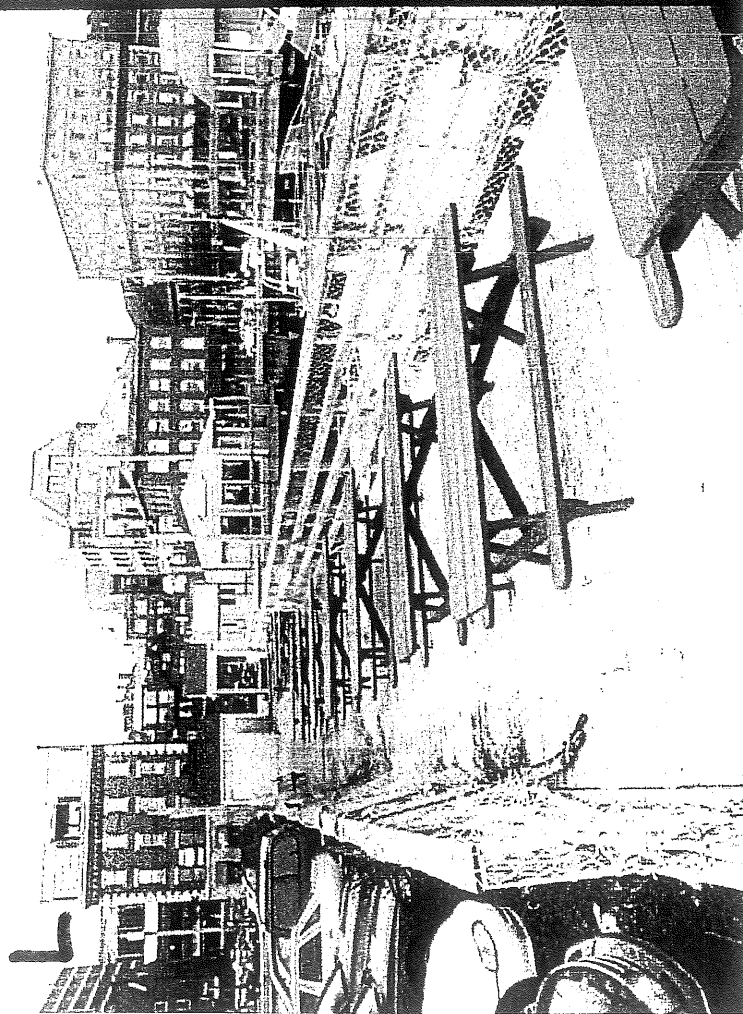
WELCOME ABOARD
Bay View Lady



J



L



Bayview Cruises
Fisherman's Wharf
184 Commercial Street
Portland, Maine 04101
207-761-0496


MAR 07 2002

March 6, 2002

To Whom It May Concern,

Notwithstanding the language contained in paragraph 4D of the Assignment of Lease between Bayview Seafoods, Inc, Richard Yates, and Hwai Sun Bae d/b/a Bayview Barbecue, which Thomas Dana will be assuming in conjunction with his purchase of Bayview Seafood restaurant, Bayview Seafoods, Inc, and Richard Yates hereby relinquish any and all rights to use the six parking spaces identified as exhibit A in the lease between GEF, Inc, and Richard Yates dated June 1, 1999.

Sincerely,


Richard Yates

ASSIGNMENT OF LEASE

KNOW ALL MEN BY THESE PRESENTS that Bayview Seafoods, Inc. and Richard Yates with a mailing address of 180 Commercial Street, Portland, Maine 04101 (hereinafter called "Assignor"), in consideration of One Dollar (\$1.00) and other valuable consideration paid to it by Hwa Sun Bae, d/b/a Bayview Barbeque, with a mailing address of _____ (hereinafter called "Assignee"), the receipt of which is hereby acknowledged, does hereby give, grant transfer, set over and convey to Assignee, its successors and assigns, with full right of reassignment, the following rights and premises, viz:

1. All Assignor's interest in and to that certain lease (the "Lease") a copy of which is attached hereto and made a part hereof, and all easements and leasehold rights appurtenant thereto with respect to the premises described therein (the "Leased Premise") including any and all extensions or renewals of the Leases, or substitutions or replacements thereof;
2. All rights, privileges and benefits now existing or hereafter arising under the Lease, including, without limitation, all rights to exercise options to extend or renew the Lease or to purchase the Leased Premises and appurtenances thereto, and all rights to insurance proceeds, eminent domain awards or payments in lieu thereof;
3. All rights of the Assignor in and to fixtures, improvements, alterations, or additions now or hereafter erected on the Leased Premises; and
4. The Assignor REPRESENTS TO, AND COVENANTS AND AGREES WITH, the Assignee as follows:
 - a. The Lease is in full force and effect in accordance with its respective terms, and it has not been modified or amended.
 - b. All rents and payments under the Lease have been paid to the Landlord thereof, to the extent payable to date.
 - c. No defaults under the Lease and no event has occurred or is occurring which, with the passage of time or service of notice, or both, would constitute an event of default thereunder.
 - d. The Lease is subject to no liens or encumbrances, and Assignor has not previously transferred in any manner any of its interests in or under the Lease. Lease is subject to Assignor's right to use parking spaces and to access the vessel ramp as set forth in Attachment A of Lease between Bayview Cruises and Landlord.
 - e. Assignor is fully authorized to assign the Lease as provided herein, and the execution of the Lease and this Agreement does not violate the terms and conditions of any other agreement or instrument to which the Assignor is a party or by which it is bound or affected.

5. The Assignee shall be deemed by the execution of this Assignment to have assumed liability and become liable in any manner whatsoever for the performance of any of the terms and conditions of said Lease and hereby agrees to indemnify and hold harmless the Assignor with regards to any such liabilities.

6. The obligations of the Assignor (as Seller) and the Assignee (as Buyer) under the terms of a Purchase and Sale agreement accepted November 12, 2000 and attached hereto as Exhibit A shall survive this Lease Assignment and this Lease Assignment is made expressly subject thereto.

This Agreement shall (i) bind the Assignor and the heirs, personal representatives, successors and assigns of the Assignor and (ii) inure to the benefits of the Assignee, its shareholders, its affiliates, its successors and assigns.

DATE:

Bayview Seafoods, Inc.

C. J. Bosley
Witness

By: *Richard Yates*
Its President

C. J. Bosley
Witness

Richard Yates
Richard Yates

Seen and agreed:

Alvin C. Kealey
Witness

Hwa Sun Bae
Hwa Sun Bae, d/b/a Bayview Barbeque

DEC-01-2000 15:43

AMERITECH

P.02

LANDLORD'S CONSENT TO SUBLETTING OF A PORTION OF LEASE

GEF, LLC ("Landlord") being the Landlord pursuant to that certain lease by and between Landlord and Bayview Cruises, Inc. and Richard Yates ("Tenant") as Tenant dated June 1, 1999, relating to certain premises located at 180 Commercial Street, Portland, Maine, do hereby consent to the subletting of a portion of the Leased premises, specifically being that portion under the storage shed as described and delineated in the attached Exhibit A

Dated:

GEF, LLC


By: 
Its President

SUBLEASE

KNOW ALL MEN BY THESE PRESENTS that Bayview Cruises, Inc. and Richard Yates with a mailing address of 180 Commercial Street, Portland, Maine 04101 (hereinafter called "Lessee"), in consideration of One Dollar (\$1.00) and other valuable consideration paid to it by Hwa Sun Bae d/b/a Bayview Barbecue, with a mailing address of 180 Commercial Street, Portland, Maine (hereinafter called "Sublessee"), the receipt of which is hereby acknowledged, does hereby sublet a portion of premises currently Leased to Lessee pursuant to a lease by and between Landlord and Lessee dated June 1, 1999. This sublease is pursuant to and subject to the terms and conditions of that Lease. The sublet portion of the Leased Premises is that parcel of land directly under the storage shed which is more specifically described and delineated on attached Exhibit A.

Dated: 12/4/00

Bay View Cruises, Inc..

By: 
Its President


Richard Yates/Individually

Seen and agreed:

Hwa Sun Bae, d/b/a Bayview Barbecue

LEASE

THIS LEASE made as of this 1st day of June 1999, between GEF LLC located at 33 RIGBY ROAD, SOUTH PORTLAND, MAINE 04106 (Landlord) and BAY VIEW SEAFOODS, INC. AND RICHARD YATES. (Tenant) (both said Landlord and said Tenant being hereafter referred to by singular pronoun of the neuter gender regardless of the number and gender of the person or corporation involved).

WITNESSETH

ARTICLE I

LEASED PREMISES

In consideration of the rents and covenants herein reserved and contained on the part of the Tenant to be paid, performed and observed, the Landlord hereby leases to Tenant that property located on the premises known as Fisherman's Wharf portrayed on the attached **Exhibit A**, which includes the buildings indicated plus a deck.

Tenant shall have the right of ingress and egress over the land owned by Landlord for access to the premises together with six parking spaces portrayed on the attached Exhibit A. In exercising this right of access to the leased premises, the Tenant agrees that it and its agents, invitees and employees shall use due care to protect the property and businesses of the Landlord and Landlord's other Tenants on the premises, and the Tenant further agrees to warrant, defend, hold harmless and indemnify the Landlord for any and all damages caused

*What other
things on the
premises?*

by Tenant and its employees, agents or invitees in connection with exercising the right of access to the leased premises.

ARTICLE II

TERM

TO HAVE AND TO HOLD for a term beginning June 1, 1999 ("the Commencement Date") and ending May 31, 2004. ("the Lease Expiration Date") except as extended in accordance with Article VI.

ARTICLE III

RENT

Tenant covenants and agrees to pay basic triple net rent on a monthly basis to the Landlord for the Premises as follows:

	<u>ANNUALLY</u>	<u>MONTHLY</u>
YEAR 1	\$28,350.00	\$2,362.50
YEAR 2	\$29,767.50	\$2,480.63
YEAR 3	\$31,255.88	\$2,604.66
YEAR 4	\$32,818.67	\$2,734.89
YEAR 5	\$34,459.60	\$2,871.63

11812.50
 12403.15

 24215.65

In the event that any Lease payment is not received by the fifth day of the month the Lessee will be charged a five per cent (5%) late fee for each late payment. All payments will first go to satisfy late fees and then rent. Tenant agrees that it will be responsible for all costs associated with the collection of rent including, but not limited to, reasonable attorney fees incurred as part of the collection process.

All payments shall be at such place as Landlord may from time to time designate.

ARTICLE IV

PERSONAL GUARANTEE OF LEASE

The provisions of this lease and the payments required herein are personally guaranteed by Mr. Dick Yates.

*Yates
pers. guar.*

ARTICLE V.

SECURITY DEPOSIT

No security deposit is required.

ARTICLE VI

OPTION TO RENEW LEASE

Provided that Tenant has complied with all material covenants, terms and conditions of this Lease, including the payment of rent, or that any default shall have been duly waived, Tenant shall have the option to Lease the Premises for two extended periods of five (5) years each upon the terms, covenants, and provisions set forth herein. Said provisions may be exercised by written notice of such exercise sent by registered or certified mail, postmarked thirty (30) days before the expiration of the previous term or extended term to Landlord at its address designated for notices as herein provided. For the first renewal term, rent shall be \$36,182.58 for the first year of the renewal term and escalate 5% per year for every subsequent year of the first renewal term. The rent for each year in the second renewal option shall be market rent. Market rent shall be negotiated and agreed upon by both parties in writing and will be

payable on a monthly basis due on the first day of each month. If the rental amount for the second renewal option cannot be agreed upon by both parties then the lease will terminate at the end of the first renewal term.

ARTICLE VII

TRIPLE NET CHARGES

The Tenant shall pay its pro-rata share of all taxes and assessments levied, assessed or imposed at any time by any governmental authority upon or against the Premises or taxes in lieu thereof during the term of this Lease. In the event that there are any additional taxes or assessments of any type levied on the dockage or waterfront areas such assessments will be the direct responsibility of the Tenant.

Upon receipt thereof, Landlord shall furnish to Tenant a copy of the tax bill and a statement of the taxes payable during any tax period during the term of this Lease. Tenant's share of said tax bill shall be payable by Tenant to Landlord not later than fifteen (15) days after Tenant's receipt. It is estimated that Tenant's pro-rata share of the tax bill will be approximately 3% of the land tax assessment and 80% of the building tax assessment.

Nothing herein contained shall be construed to mean that the Landlord has an obligation to apply for an abatement of taxes, but Landlord agrees to do so at Tenant's expense if requested by Tenant. In the event of an abatement, the pro-rata proceeds of any abatement shall belong to the Tenant, less any reasonable costs (adjusted on a Pro-Rata basis) to Landlord in obtaining the Abatement. The provisions of this paragraph shall not survive the termination of this Lease.

Upon the date of the expiration or termination of this Lease, whether the same be the date herein above set forth for the expiration of the term (the "Lease Expiration Date") or any

pays taxes

prior or subsequent date, a proportionate share of the reimbursement on account of taxes for the period in which such expiration or termination occurs shall immediately become due and payable by Tenant to Landlord. Such proportionate share shall be based upon the length of time this Lease shall have been in effect during such tax period. Within thirty (30) days after receipt of the tax bill for such tax period, Landlord and Tenant shall make appropriate adjustments.

ARTICLE VIII

USE

The Premises shall be used and occupied by Tenant solely for operating a seafood restaurant provided that said use complies with all governmental and environmental laws and regulations. The Tenant shall obtain all licenses necessary to operate the premises as a restaurant. The premises may not be used for any other purposes absent written consent of Landlord which shall not be unreasonably withheld.

ARTICLE IX

UTILITIES

The Landlord shall not be under any responsibility or liability for interruption or inability to obtain electricity, fuel or water by reason of breakdown or accident or by any reason or any other cause beyond the reasonable control of the Landlord, nor in any event shall the Landlord be responsible for indirect and/or consequential damages.

The Tenant agrees to pay when due all bills for all utilities and services furnished to the Premises including but not limited to water and sewer, heating, electrical, trash removal and interior/exterior maintenance.

ARTICLE X

TENANT'S COVENANTS

Tenant covenants with Landlord that during the term and for such further time as Tenant or anyone claiming by, through or under it, shall hold the Premises or any part thereof

A Tenant will promptly pay the rent, reimbursement of taxes and any and all other charges payable by Tenant to Landlord at the address from time to time designated for the sending of notices to Landlord at the time and in the manner aforesaid.

B If Tenant shall install any type of mechanical equipment, such installation shall be at Tenant's sole expense. The moving and installation of such machines and equipment shall be at the sole risk and hazard of the Tenant and Tenant agrees to indemnify and save Landlord harmless against and from all damage, liability, loss, injury, claim or suit resulting directly or indirectly from the installation or maintenance of such machines and equipment.

Tenant will not make any structural change in, or structural addition to the Premises without first obtaining, on each occasion, Landlord's consent in writing, which consent shall not be unreasonably withheld, and then only Tenant's expense, and in a lawful manner and upon such reasonable terms and conditions as Landlord shall by such writing approve. Any such alteration or addition shall be consistent in appearance with the rest of the Premises. At

Tenant's expense. Tenant's alterations and additions must comply with any and all governmental and environmental rules and regulations. Landlord shall, upon expiration of the term, retain as its property, without cost to it, any such structural alterations so made. Tenant will, upon the reasonable request of Landlord, deliver to Landlord in writing a schedule and plans setting forth the details and location of all such alterations or additions. In accordance with Section G of this Article, Tenant will be responsible for obtaining all permits necessary for occupancy and the use of the Premises by the Tenant under the terms of this lease, and Tenant will bear all expenses in connection therewith, including any building, plumbing and/or electrical work required. The Tenant hereby accepts the Premises in its present condition. Notwithstanding the foregoing, Landlord warrants and represents the use desired by the Tenant is lawful.

C Tenant will not permit any hole to be drilled or made in the exterior façade of any building or any sign or placard to be placed on any building without first obtaining on each occasion the Landlord's written consent, which shall not be unreasonably withheld; and will erect and maintain any sign only after obtaining approval in writing by the Landlord and only in accordance with all laws, rules and regulations and requirements of all public and other authorities having jurisdiction over the same; and, in addition, will repair all damage that may be caused to any building in the affixation, maintenance or removal of the sign to or from any building, and will also hold and save the Landlord harmless and indemnified of and from all claims for injury or damage to person (including death) and/or property damage caused by the Tenant, and will restore that portion of the Premises and any building thereon from which the Tenant shall have removed any sign to a condition at least as good as that in which said portion of the Premises and any building thereon was just prior to the

installation or affixation thereof, damage by fire or other casualty, eminent domain, damage due to the fault or negligence of the Landlord or its agents and repairs for which the Landlord is responsible under the terms of this Lease and reasonable wear and tear excepted;

- D Tenant shall, at the end of the term or sooner termination, peaceably surrender and deliver up the Premises and all erections, alterations and additions made to or upon the Premises (unless Tenant desires to remove any of them, in which event Tenant shall repair all damage caused thereby), to Landlord, broom clean and in the same repair and condition, in all respects, as the Premises were in on the Commencement Date and as such erections, alterations and additions were when completed, reasonable wear and tear and damage by fire or other casualty, eminent domain, and damage due to the fault or negligence of the Landlord or its agents and repairs for which the Landlord is responsible under the terms of this Lease, only excepted, and (except as elsewhere provided herein), will remove all personal property, goods and effects belonging to the Tenant or to anyone claiming through or under Tenant, including, without limitation, all of its trade fixtures and signs and also will remove all lettering, if any, painted by Tenant in or on the Premises with or without the Landlord's consent. Tenant shall be responsible for all damage or injury to the Premises caused by the installation or removal of the Tenant's furniture, fixtures or equipment.

- E Tenant shall not assign, mortgage, pledge or encumber this Lease nor underlet any part of the Premises, without, on each occasion, obtaining the prior written consent of the Landlord which shall not be unreasonably withheld. In the event Tenant requests Landlord's consent to any assignment, sublease or transfer of this Lease Tenant shall

submit to Landlord in writing the terms and conditions of the proposed assignment or subletting and the name of the proposed assignee or sublessee, together with a statement of the nature and character of its business and the type of business to be operated at the Premises.

The consent by Landlord to any assignment, mortgage, pledge, or subletting shall not constitute a waiver of the necessity of such consent to any subsequent assignment or subletting. In the event of the assignment or subletting by the Tenant, Tenant shall remain liable for the payment of any and all rent which may become due by the terms of this Lease and for the performance of all covenants, agreements, and conditions on the part of Tenant to be performed hereunder. No such assignment shall be valid or effective unless the assignee shall covenant in writing to be bound directly to the Landlord. No modification of the terms of this Lease or any course of dealing between Landlord and any assignee of the Tenant's interest herein shall operate to release or impair Tenant's obligations hereunder. The Tenant agrees to pay the Landlord's reasonable attorney's fees incurred in connection with any assignment or subletting.

F Tenant, at its sole expense, shall comply with all laws, orders, and regulations of Federal, state, county and city authorities and with any direction of any public officer, pursuant to law, which shall impose any violation order or duty upon Landlord or Tenant with respect to the Premises, or the use or occupation thereof. Tenant shall not do or permit to be done any act or thing upon the Premises which will invalidate, or be in conflict with, fire insurance policies covering the Premises, and fixtures and property therein, and shall not do or permit to be done, any act or thing upon the

Premises which shall or might subject Landlord to any liability or responsibility for injury to any person or persons or to property by reason of any business or operation being carried on upon the Premises or for any other reason.

G Except as modified by statute, all merchandise, furniture, fixtures and property of any kind which may be on or about the Premises shall be at the sole risk and hazard of Tenant, and if the whole or any part thereof, shall be destroyed or damaged by fire, water or otherwise by the use or abuse of water or by the leaking or bursting of water pipes, or in any other way or manner, no part of such loss or damage shall be charged to Landlord in any case whatever.

H The Tenant will save Landlord harmless, and will exonerate and indemnify Landlord, from and against any and all claims, liabilities, or penalties assessed by or on behalf of any person, firm, corporation, public authority or any other legal entity

(i) on account of, or based upon, any injury to any person or loss of, or damage to, property sustained or occurring in or upon the Premises because of, or based upon, the act of omission, fault, negligence, or misconduct of any person except Landlord:

(ii) on account of, or based upon, any injury to any person or loss of, or damage to, property sustained in or about the Premises (and, in particular, without limiting the generality of the foregoing, on or about the stairways, sidewalks, parking areas, concourses, arcades, approaches, areaways, roof, or other appurtenances and facilities used in connection with the Premises) arising out of the use or occupancy of the Premises by the Tenant or by any person claiming by, through or under Tenant.

and in addition to and not in limitation of either of the foregoing subdivisions (i) and (ii):

(iii) on account of or based upon (including money due on account of) any work or thing whatsoever done (other than by Landlord or its contractors, or agents or employees or either) on the Premises;

and, in respect of any of the foregoing, from and against all costs, expenses (including reasonable attorney's fees), and liabilities incurred in or in connection with any such claim, or any action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, shall, at Tenant's expense, resist or defend such action or proceeding and employ counsel therefor reasonably satisfactory to Landlord, it being agreed that such counsel as may act for insurance underwriters of Tenant shall be deemed satisfactory.

The Tenant, at its own expense, will maintain and keep in force public liability, liquor liability and property damage insurance insuring both Tenant and Landlord against claims for personal injury, death, or property damage occurring in or about the Premises, if Tenant is liable therefor as herein provided, with limits of not less than \$1,000,000 for injury to or death of one person; \$2,000,000 for injury to or death of more than one person in a single accident, and \$200,000 for damage to property. Upon Landlord's request, Tenant shall furnish Landlord with evidence of such coverage, such evidence to be satisfactory to Landlord. At Landlord's option, Landlord may obtain the aforescribed insurance and Tenant shall promptly (but in any event within fifteen (15) days of receipt of a statement for same), pay for said insurance.

Upon reasonable notice to Tenant and subject to Tenant's reasonable security requirements, Landlord or its representatives shall have the right without charge to it

and without reduction in rent, at reasonable times and in such manner as not to unreasonably interfere with Tenant's business, to enter to view the Premises, and Landlord or its representatives may enter the Premises (forcibly if necessary), at any time to take such measures as may be needed to cope with an emergency. Landlord may during the nine months next preceding the expiration of the term or any extension thereof, show the Premises to persons wishing to Lease or purchase same, such showing not to interfere unreasonably with Tenant's business

I Tenant shall not permit and mechanics', laborers', or materialmen's liens to stand against the Premises or any building thereof for any labor or materials furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed in or on the Premises by or at the direction or sufferance of the Tenant; provided, however, that Tenant shall have the right to diligently contest the validity or amount of any such lien or claimed lien, if the Tenant shall give Landlord, upon demand, reasonable security to insure payment therefor. On final determination of the lien or claim for lien, Tenant shall immediately pay any adverse judgement with all proper costs and charges and shall have the lien released or judgement satisfied at Tenant's expense, and Landlord shall promptly return any security which Tenant may have furnished to the Landlord.

K Tenant shall not overload, damage or deface the Premises nor suffer or permit the same to be done, nor commit waste.

ARTICLE XI

SUBORDINATION TO MORTGAGES

Tenant agrees that, upon request of Landlord, Tenant will subordinate this Lease and the lien hereof to the lien of any present or future mortgage or mortgages upon the Premises, irrespective of the time of execution or time of recording of any such mortgage or mortgages. Tenant agrees that it will, upon request of Landlord, execute, acknowledge and deliver any and all instruments deemed necessary or desirable by Landlord to give effect to, or notice of, such subordination, provided only that said mortgagee enters into an agreement with Tenant which provides that said mortgagee will not disturb the possession and other rights of Tenant so long as Tenant performs its obligation hereunder and that said mortgagee will accept Tenant as Tenant of the Premises under the terms and conditions of this Lease in the event of acquisition of title by said mortgagee through foreclosure proceedings or otherwise, and which further provides that Tenant shall agree to recognize the holder of such mortgage as the Landlord in such event, said agreement to be expressly binding upon the successors and assigns of the Tenant and of the mortgagee and upon anyone purchasing such building at a foreclosure sale. Tenant and Landlord agree to promptly execute and deliver any appropriate instruments necessary to carry out the agreements contained in this Paragraph.

ARTICLE XII

EMINENT DOMAIN

If the Premises or any part thereof shall be taken for any public use by action of the municipal or other authorities for which Landlord or Tenant shall be entitled to compensation by reason of anything lawfully done in pursuance of any public authority after the execution

hereof and before the expiration of the same term, and such taking makes the Premises no longer feasible for use by Tenant, then this Lease and said term shall terminate at the election of the Landlord or Tenant and such election may be made in case of any such taking notwithstanding the entire interest of Landlord may have been divested by such taking; and if either party shall not so elect, then in case of any such taking of the Premises rendering the same or any part thereof unfit for use and occupation, a just proportion of the rent hereinbefore reserved according to the nature and extent of such taking, shall be suspended or abated until the Premises, or what may remain thereof, shall have been put in proper condition for use and occupation. The Landlord need not put the Premises in condition for use and occupation. Landlord shall not be liable for any inconvenience or annoyance or any other damages to Tenant or injury to the business of Tenant resulting from delays in repairing such damage. Any election to terminate by either party shall be made no later than ninety (90) days after it receives formal notice of such taking. If, after the taking, the Premises remain feasible for use by Tenant, the Tenant shall promptly place the Premises in proper condition for use and occupation and this Lease shall not be terminated.

Landlord reserves and excepts from this Lease all rights to damages to the Premises or any part thereof, or the Leasehold hereby created, heretofore accrued or hereafter to accrue by reason of any taking for public use of said Premises or any portion thereof or right appurtenant thereto or privilege or easement in, through, or over the same and by way of confirmation of the foregoing the Tenant hereby assigns all rights to such damages theretofore accrued or hereafter accruing during the term or any extension thereto to the Landlord. However, the Tenant reserves its rights to its Leasehold improvements and fixtures and relocation expenses. Tenant agrees to promptly execute such other instruments as may be necessary or desirable to confirm the Landlord's rights to such damages

ARTICLE XIII

FIRE AND OTHER DAMAGE

The Tenant shall, at all times, keep the rented premises and all improvements thereon insured against loss and/or damage by casualties to its replacement value. The Landlord, and Landlord's mortgagee shall be named the loss payees on said insurance policies as their interests may appear. The Tenant shall be responsible for all insurance premiums related to the leased property.

In case any part of the leased premises shall be destroyed or damaged by fire or other cause, after the execution and before the termination hereof then such destruction or damage shall not operate to terminate this agreement but this agreement shall continue in full force and effect. Tenant shall promptly thereafter restore and rebuild or repair said buildings, structures or improvements to a condition at least equal in value to the value immediately prior to such damage or destruction to the extent insurance proceeds are available. During the period of damage to said structures, rent shall not abate. All insurance proceeds shall be held in Landlord's attorney's escrow account to be used for reconstruction. Any insurance proceeds remaining after reconstruction shall be returned to Tenant.

Within a sixty day period, Tenant must provide Landlord with insurance proceeds for lost rents for period during reconstruction.

ARTICLE XIV

DEFAULT

This Lease is upon the condition that, if Tenant shall neglect or fail to pay when due any installment of rent or reimbursement of taxes or any other charges payable by Tenant, and such neglect or failure shall continue for five (5) days after receipt of written notice thereof, or if Tenant shall neglect or fail to perform or observe any of the other covenants or undertakings herein on its part to be performed or observed and such neglect or failure shall continue for thirty (30) days after written notice to it from Landlord, or if the default is such that it cannot be cured within thirty (30) days, and Tenant shall not within said period commence to cure such default, and continue to do so diligently, or if the estate hereby created shall be taken by execution or by other process of law and not redeemed by Tenant within fourteen (14) days thereafter, or if proceedings for corporate reorganization or arrangement under the Bankruptcy laws of the United States or any laws amendatory thereof or supplemental thereto shall be filed by or against Tenant and not be dismissed within ninety (90) days, or if the Tenant shall execute an assignment of its property for the benefit of its creditors, or if a receiver for Tenant or other similar officer shall be appointed and not be discharged within thirty (30) days, Landlord may, immediately or at any time thereafter, (notwithstanding any license or waiver of any former instance) and without demand or notice, in person or by agent or attorney, enter the Premises or any part thereof and repossess the same as of its former estate, or terminate this Lease by written notice to Tenant, and in either event, expel Tenant and those claiming through or under it and remove their effects (forcibly, if necessary), without being deemed guilty of any manner of trespass and without prejudice to any remedy which otherwise might be used for arrears of rent or breach of covenant, and upon entry or notice as aforesaid, this Lease shall terminate and the Landlord, in addition to all other remedies which it may have at law, shall have the remedies provided in Article XIV and elsewhere in this Lease.

ARTICLE XV

CLEANLINESS OF LEASED UNIT

It is agreed that Tenant will ensure that the Leased Premises remain clean and free of any and all insects or other infestations. Tenant shall, at Tenant's sole expense, utilize the services of an Extermination Company on a regular, as-needed, basis to ensure that such insect/animal infestations do not occur.

Tenant agrees that all trash will be removed from the facility on a daily basis and stored inside the waste receptacles located outside of the building. Waste is only to be transferred into the receptacles and is not to be stored in any other locations.

ARTICLE XVI

QUIET ENJOYMENT

Tenant shall, upon paying the rent and other charges reserved hereunder and observing and performing all of the terms, covenants and conditions on Tenant's part to be observed and performed, peaceably and quietly hold and enjoy the Premises, without hindrance or molestation by any person or persons whatsoever, subject, however, to the terms of this lease.

ARTICLE XVII

NOTICES

All notices shall be given by certified mail, return receipt requested, and all notices for the Landlord shall be addressed to the Landlord, GEF LLC, 33 RIGBY ROAD, SOUTH

PORTLAND, MAINE 04106 or to such other place as may be designated by written notice to the Tenant; and to the Tenant BAY VIEW CRUISES, INC. Attn Dick Yates, 184 Commercial Street Portland, Maine 04101 or to such other place as may be designated by written notice to the Landlord.

ARTICLE XVIII

RIGHT TO PERFORM COVENANTS

Tenant covenants and agrees that if it shall at any time fail to make any payment or perform any other act on its part to be made or performed as in this Lease provided. Landlord, in its sole discretion may, after due notice to or demand upon Tenant, and after the expiration of any grace periods in this Lease, make any payment or perform any other act on the part of the Tenant to be made and performed as in this Lease provided, in such manner and to such extent as Landlord may reasonably deem desirable, and in exercising any such rights, Landlord may pay necessary and incidental costs and expenses, employ counsel, and incur and pay reasonable attorney's fees. The making of any such payment or the performing of any other act by the Landlord pursuant to this Article shall not waive or release the Tenant from any obligations of the Tenant in this Lease contained. All sums so paid by Landlord and all reasonably necessary and incidental costs and expenses in connection with the performance of any such act by Landlord, including reasonable attorney fees incurred in collection of rents, shall, except as otherwise in this Lease expressly provided, be payable to Landlord on demand, and Tenant covenants to pay any such sum or sums promptly, and Landlord shall have (in addition to any other right or remedy of Landlord), the same rights and remedies in the event of the nonpayment thereby by Tenant as in the case of default by Tenant in the payment of the basic rent. Whenever practicable, Landlord, before proceeding

as provided in this Article, shall give Tenant notice in writing of the failure of Tenant which Landlord proposes to remedy, and shall allow Tenant such length of time as may be reasonable in the circumstances, not exceeding thirty (30) days from the giving of notice (unless said remedy takes more than thirty (30) days to accomplish and Tenant diligently works to complete such remedy as soon as reasonably possible), to remedy the failure itself and, if Tenant shall not remedy the failure in the time so allowed, Landlord may proceed as provided in this Article; provided, however, that nothing in this sentence shall prevent Landlord from acting without notice to Tenant in case of an emergency

In addition to any other right or remedy of the Tenant hereinbefore provided, if the Landlord shall fail to perform or observe any covenant or condition contained in this Lease, Tenant may, after ten (10) days' written notice to Landlord, perform the same for the account of the Landlord and the amount of any reasonable sums paid by the Tenant for such purpose shall be immediately paid by the Landlord to the Tenant, but if Landlord shall fail to immediately pay the same, Tenant may deduct the amount of such sum paid in curing Landlord's default from the rent due on the next or any succeeding rent day.

ARTICLE XIX

ESTOPPEL CERTIFICATE BY TENANT

Tenant agrees at any time and from time to time, upon not less than ten (10) days prior written request by Landlord, to execute, acknowledge, and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications), and the dates to which the basic rent and other charges have been paid in advance, if any, it being intended that any such statement delivered pursuant to this Article

may be relied upon by any prospective purchaser or mortgagee of, or assignee of any mortgage upon the fee of the Premises.

ARTICLE XX

LIMITATION OF LANDLORD'S LIABILITY

The Landlord reserves the right to assign or transfer any and all of its right, title and interest under this Lease, including but not limited to the benefit of all covenants of the Tenant hereunder. Notwithstanding anything contained in this Lease to the contrary, it is specifically understood and agreed that the obligations imposed upon the Landlord hereunder shall be binding upon the Landlord and Landlord's successors in interest.

ARTICLE XXI

CUMULATIVE REMEDIES

The specified remedies to which Landlord or Tenant may resort under the terms of this Lease are cumulative and not intended to be exclusive of any other remedies or means of redress to which either party may be lawfully entitled in case of breach or threatened breach of any provisions of this Lease. The failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this Lease or to exercise any option contained herein shall not be construed as a waiver or a relinquishment for the future of such covenant or option. Receipt by Landlord of rent with knowledge of the breach of any covenants hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by said party. In addition to the other remedies provided in this Lease, either party shall be entitled to restraint by injunction of any violation or attempt or threatened violation of any of the covenants, conditions, or provisions of this Lease.

Except where contrary to any provision of this Lease, no right or remedy herein conferred upon or reserved to either party is intended to be exclusive of any other right or remedy, and each right or remedy given hereunder is in addition to any now or hereafter existing at law, in equity or by statute.

ARTICLE XXII

TERMINATION CLAUSE

The Lessor shall have the right to terminate this lease on one year's notice to the Tenant provided that the Landlord pay to the Tenant Seventy Thousand Dollars (\$70,000.00) at the time the Tenant vacates the premises. If Landlord exercises its right to terminate during the renewal term, it shall pay the Tenant Ninety Thousand Dollars (\$90,000.00) as provided herein. Should the Landlord desire to exercise its rights under this agreement, it shall provide notice by registered mail, return receipt requested to Tenant as provided in Paragraph XVII hereafter and Tenant shall vacate the premises within one year from the date the notice is deposited in the U.S. Mail, registered mail, postage pre-paid.

Failure of Tenant to vacate the premises within said one year period shall be considered a breach and default pursuant to the terms of Paragraph XIV hereof.

ARTICLE XXIII

FORCE MAJEURE

In the event that Landlord or Tenant shall be delayed, hindered in or prevented from the performance of any act required hereunder by reasons of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, the act, failure to act or default of the other party, war or other reason

beyond their control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Article shall not operate to excuse the Tenant from payment of rent or any other payments required by this Lease

ARTICLE XXIV

CONSTRUCTION OF LEASE

The invalidity of one or more phrases, sentences, clauses or Articles contained in this Lease shall not affect the remaining portion of this Lease or any part thereof, and if any one or more of the phrases, sentences, clauses or Articles contained in this Lease should be declared invalid by the final order, decree or judgement of a court of competent jurisdiction, this Lease shall be construed as if such invalid phrase, sentence, clause or Article had not been inserted in this Lease

ARTICLE XXV

ENTIRE AGREEMENT

This Lease sets forth the entire agreement made between the parties hereto and cannot be orally modified or amended, except in writing duly executed by the respective parties.

ARTICLE XXVI

HOLDOVER

If the Tenant remains in the Premises beyond the expiration of this Lease, such holding over shall not be deemed to create any tenancy but the Tenant shall be a Tenant at Sufferance only at a daily rate equal to the rent and other charges under this Lease.

ARTICLE XXVII

SUCCESSORS OR ASSIGNS

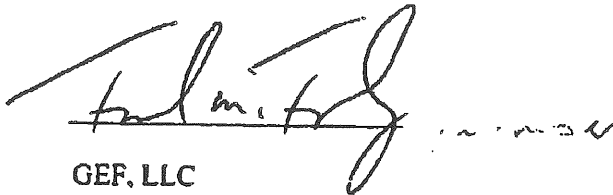
The covenants and agreements herein contained shall, subject to the provisions of this Lease, bind and insure to the benefit of the Landlord, its successors and assigns and Tenant, its successors and assigns, except as otherwise provided herein.

ARTICLE XXVIII

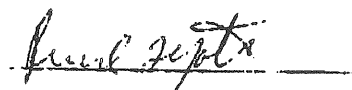
EXECUTION

This Lease is executed in triplicate, all copies of which are identical, and any one of which is deemed to be complete in itself and may be introduced in evidence or used for any purpose without the production of the other copy. The headnotes and margin notes throughout this Lease are for convenience and reference only, and shall in no way be held or deemed to define, limit, explain, describe, modify or add to the interpretation, construction, or meaning of any provision of this Lease.

WITNESS the execution hereof as a sealed instrument.



GEF, LLC
LANDLORD



BAY VIEW SEAFOOD, INC
TENANT

Mar 08 01 05:05p

Prudential Akers Real Est 207-774-8347

p.26

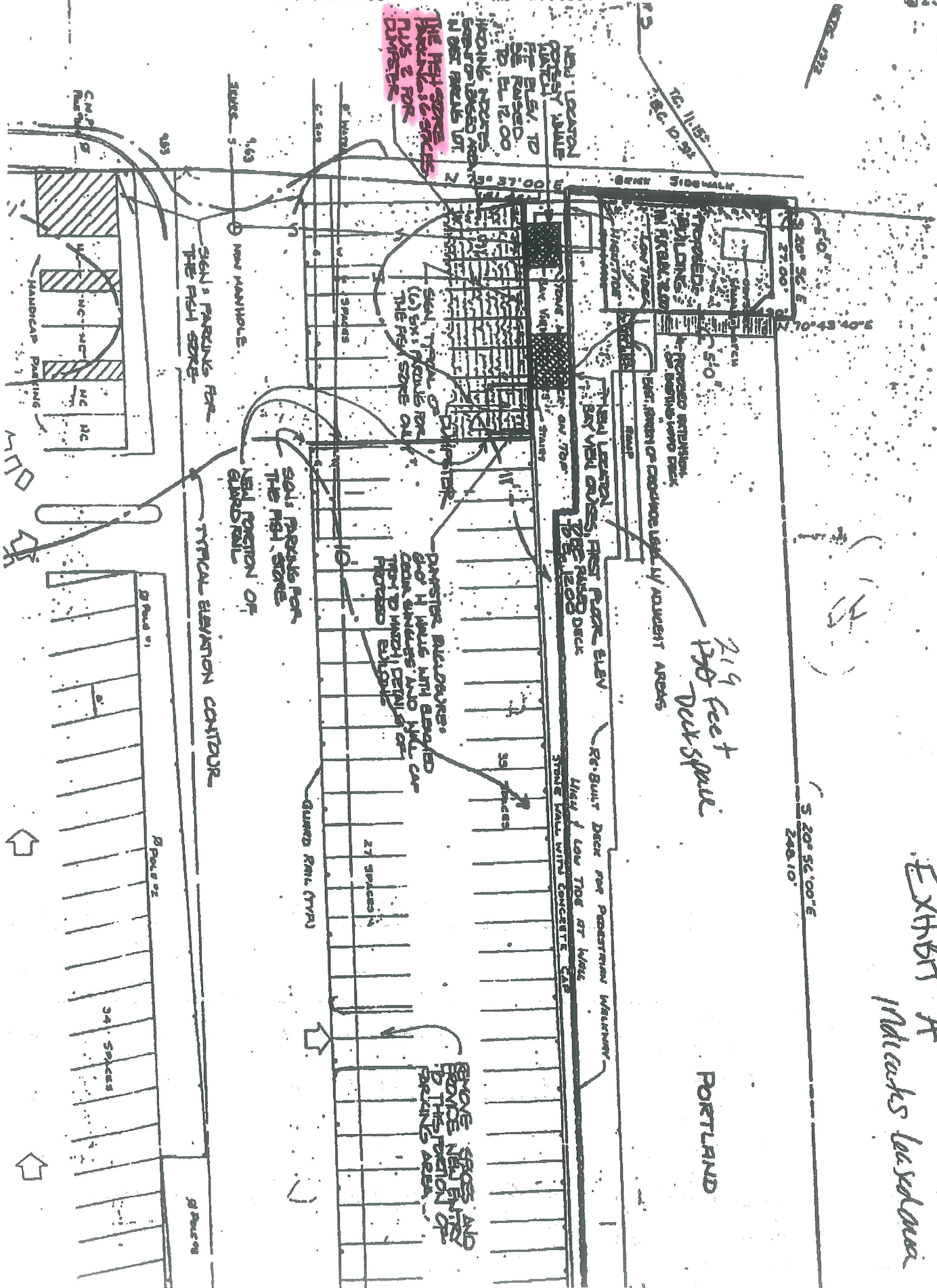
11.07 00 10.46 FAX 207 773 0788

Law Offices

24

Dick Yates

DICK YATES, PERSONALLY



BA-1 VIEW CORNER
 EXHIBIT A
 Indicates location

From: Marge Schmuckal
To: William Needleman
Date: Tue, Mar 12, 2002 9:40 AM
Subject: Fishermans Wharf - Bayview Restaurant Expansion

Bill,

I have reviewed the information submitted for this conditional use appeal to the planning board.

A) Requirement: There shall be no more than 1250 sq. ft. beyond the 35' line.

They are showing a total deck area as 1248 sq. ft.,; including some of which is on the street side of the 35' line (about 50 sq ft). It appears that they are meeting this requirement.

B) Requirement: The total new space on either side of the 35' line should not be more than 2000 sq. ft.

The expanded use area onto the existing decks around the building is just under 300 sq ft. The total is around 1600 sq. ft.

The parking requirements are 5.7 spaces. They are showing 6 spaces. The Planning Board should look at the leases.

Marge Schmuckal
Zoning Administrator 3/12/02

CC: PENNY LITTELL; Sarah Hopkins

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ORIGINAL

PLANNING BOARD REPORT #20-02

BAYVIEW RESTAURANT EXPANSION

**184 COMMERCIAL STREET
SITE PLAN AND CONDITIONAL USE APPEAL, WATERFRONT CENTRAL ZONE
THOMAS DANA, APPLICANT**

Submitted to:

Portland Planning Board
Portland, Maine
March 13, 2002

I. INTRODUCTION

Thomas Dana, prospective owner of the Bayview Restaurant, requests a public hearing to discuss a proposal to expand an existing restaurant use to include 1500 sq ft of exterior seating at 184 Commercial Street. The property is in the Waterfront Central Zone and the expansion will be reviewed as a conditional use and site plan. The Board will remember that Mr. Dana recently received a zone change to make this property available for non-marine expansion under the "Saporro Amendment."

II. BACKGROUND

The area of the expansion has for several years been used for exterior seating by the previous owners. Mr. Dana wishes to legitimize the seating prior to taking ownership. The resulting +/- 1500 square feet of expansion would provide stand up counter space adjacent to the restaurant and room for +/- 11 picnic tables adjacent to the Bayview Tours excursion boat berthing. Restrictions under Conditional Use 14-315 (c), the Saporro Amendment, limit the expansion to an area smaller than was occupied by the existing illegal seating.

No workshop was held for this project in light of the recent review of this property. Other than legitimizing a portion of the existing exterior seating, there are no site plan changes associated with this project.

II. FINDINGS

Zoning:	WCZ
Land Area:	100,285 sq. ft. for entire pier
Existing Building gross sq. ft:	900+/- sq. ft.
Proposed Building Footprint:	Unchanged
Proposed Exterior Seating:	1,500+/- sq. ft. total (1248 sq. ft. more than 35ft from Commercial Street)
Permitted Expansion under zoning:	2000 sq. ft. total 1250 sq. ft. maximum more than 35ft from Commercial Street
Adjacent Uses:	Existing marine excursion craft, and existing non-marine parking.
Parking:	6 spaces existing 6 spaces required under zoning
Notice:	286 neighbors and interested parties were noticed for this

hearing.

III. STAFF REVIEW

The proposal has been reviewed for compliance with the WCZ Zone, and Conditional Use, and Site Plan Standards of the Land Use Code.

IV. CONDITIONAL USE REVIEW, WCZ: 14-315

The conditions specified under Waterfront Central Zone Conditional Use section 14-315 (c) are as follows:

The expansion must be less than 2000 sq ft and meet the following provision:

- i. The use may occupy the ground floor of newly created and contiguous building space of buildings located within 35 feet of the southerly sideline of Commercial Street; and/or*
- ii. The use may occupy a ground floor area of no more than 1250 sq ft beyond 35 feet from the southerly sideline of Commercial Street;*
- iii. The qualifying building must be greater than 500 sq ft as of the date of enactment; and,*
- iv. The expansion of use shall be reviewed by the Planning Board under the Site Plan standards.*

The area and location of the expansion comply with the dimensional requirements for expansions and the subject building is over 500 sq ft. Please see the site plan review below.

3. WCZ Conditional Use Standards

The following general standards apply for conditional uses in the WCZ

- a. The proposed use shall be compatible with existing and potential marine uses in the vicinity.*

The area proposed for non-marine expansion includes the deck area directly surrounding the existing building to the east and a section of the deck space adjacent to the Bayview Tours excursion boat to the south.

There are no other marine related use adjacent to or impacted by the property. The pier edge east of the restaurant is too shallow for commercial berthing and commercial parking constrains the site to the west.

Staff encourages the applicant to find marine related uses for the seating area not permissible under the 14-135(c) and to allow marine related storage for the area in the off-season.

b. *Access to the water*

Access to the commercial berthing is provided directly from Commercial Street and from steps leading from the Fisherman's Wharf parking lot. Please see the proposed expansion plan, Attachment #11. The seating as shown does not interrupt or block the berthing access. The Bayview Tours owner, Capt. Bill Yates, holds the master lease for the property and provided a letter of support for the enabling zone change. The applicant indicates that all floats in this area will be accessible through the property in the future and the site will operate in exactly the same condition as it has for the past several years. As stated above, exterior seating and other restaurant uses as shown do not encroach upon access routes to the commercial berthing.

c. *Conditional uses requiring 20 or more parking spaces.*

N/A

4. **The following standards apply for all conditional uses: Section 14-474(2)**

i. *There are unique or distinctive characteristics or effects associated with the proposed conditional use.*

There are no known unique or distinctive characteristics associated with the proposed use.

ii. *There will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area; and*

It does not appear that there will be any adverse impacts with the proposed project.

- iii. *Such impact differs substantially from the impact which would normally occur from such a use in that zone.*

The impacts of this proposed expansion are similar to those normally expected from restaurant use in this zone.

V. **SITE PLAN REVIEW**

This project will result in no changes to the traffic circulation, drainage patterns, or public or private utility infrastructure, which currently exists on site, and were reviewed during the 1993 approval for this site.

1/2. Traffic/Parking

There are no anticipated traffic impacts from the expansion. The required six parking spaces are provided adjacent to the restaurant in the Fisherman's Wharf lot.

3/4. Building Impact

The proposed deck expansion will not unduly impact adjacent structures.

5. Utility Capacity

The expansion requires no additional utility connections and the deck area used for restaurant use will actually be reduced from the area used in the past

6. Landscaping

No landscape changes are proposed.

7. Drainage

No additional impervious surface will be added as result of this development and no drainage problems are apparent.

8. Lighting

No additional exterior lighting is proposed. The applicant should be aware that all changes to the site lighting are reviewable under the site plan ordinance. Staff has provided a suggested condition of approval that any future lighting changes should be submitted to the Planning Office for staff review and approval.

9. Fire

City Fire Safety had approved this proposal in its previous form.

10. Off Premises Infrastructure

The proposal is consistent with off premises infrastructure

11. Environmental Impact

None anticipated

VI. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of plans and materials submitted by the applicant and on the basis of information provided in Planning Board Report #20-02 relevant to standards for conditional use and site plan review, the Board finds:

- i. That the Bayview Restaurant exterior seating expansion plan **is/is not** in conformance with the Conditional Use Standards for Waterfront Central Zone and Section 14-474 of the Land Use Code; and,
- ii. That the restaurant site improvements **meets/fails to meet** the Site Plan Standards of the City Land Use Code;

Subject to the following Condition(s) of approval:

- a. That the applicant provide any future revised lighting changes for Planning Staff review and approval.

Attachments:

1. Conditional use application with written statements
2. Photos
3. Prior Zoning text
4. Letter of Financial Capacity
5. Letter of Intent to Purchase Bayview Restaurant
6. Site Plan Requirements statement
7. Lease information
8. Amended Zoning language permitting the expansion
9. Site Sketch, existing conditions

10. Boundary Survey
11. Proposed Expansion and Seating Plan

CITY OF PORTLAND, MAINE
DEVELOPMENT REVIEW APPLICATION
PLANNING DEPARTMENT PROCESSING FORM
Planning Copy

Att 1.1

2002-0027
Application I. D. Number

2/1/02
Application Date

Bayview Seafood
Project Name/Description

Gef Llc
Applicant
Po Box 2808, South Portland, ME 04116
Applicant's Mailing Address
Bill Nemmers
Consultant/Agent
Agent Ph: 774-3683 Agent Fax: 761-2836
Applicant or Agent Daytime Telephone, Fax

184 - 184 Commercial St, Portland, Maine
Address of Proposed Site
031 J030001
Assessor's Reference: Chart-Block-Lot

Proposed Development (check all that apply): New Building Building Addition Change Of Use Residential Office Retail
 Manufacturing Warehouse/Distribution Parking Lot Other (specify) expansion of restaurant

1250 sq ft
Proposed Building square Feet or # of Units Acreage of Site Zoning

Check Review Required:

- | | | | |
|---|--|--|--|
| <input checked="" type="checkbox"/> Site Plan (major/minor) | <input type="checkbox"/> Subdivision # of lots _____ | <input type="checkbox"/> PAD Review | <input type="checkbox"/> 14-403 Streets Review |
| <input type="checkbox"/> Flood Hazard | <input type="checkbox"/> Shoreland | <input type="checkbox"/> Historic Preservation | <input type="checkbox"/> DEP Local Certification |
| <input type="checkbox"/> Zoning Conditional Use (ZBA/PB) | <input type="checkbox"/> Zoning Variance | | <input type="checkbox"/> Other _____ |

Fees Paid: Site Plan \$400.00 Subdivision _____ Engineer Review _____ Date 2/1/02

Planning Approval Status:

Reviewer _____

- Approved Approved w/Conditions See Attached Denied

Approval Date _____ Approval Expiration _____ Extension to _____ Additional Sheets Attached

OK to Issue Building Permit _____ signature _____ date

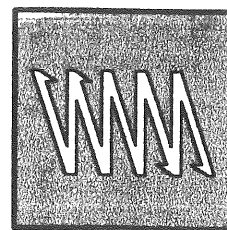
Performance Guarantee Required* Not Required

* No building permit may be issued until a performance guarantee has been submitted as indicated below

- | | | | |
|---|----------------------|--|-----------------------|
| <input type="checkbox"/> Performance Guarantee Accepted | _____ date | _____ amount | _____ expiration date |
| <input type="checkbox"/> Inspection Fee Paid | _____ date | _____ amount | |
| <input type="checkbox"/> Building Permit Issue | _____ date | | |
| <input type="checkbox"/> Performance Guarantee Reduced | _____ date | _____ remaining balance | _____ signature |
| <input type="checkbox"/> Temporary Certificate of Occupancy | _____ date | <input type="checkbox"/> Conditions (See Attached) | _____ expiration date |
| <input type="checkbox"/> Final Inspection | _____ date | _____ signature | |
| <input type="checkbox"/> Certificate Of Occupancy | _____ date | | |
| <input type="checkbox"/> Performance Guarantee Released | _____ date | _____ signature | |
| <input type="checkbox"/> Defect Guarantee Submitted | _____ submitted date | _____ amount | _____ expiration date |
| <input type="checkbox"/> Defect Guarantee Released | _____ date | _____ signature | |

Att 1-2

William Nemmers & Associates, Architects
368 Brighton Avenue
Portland, Maine 04102



February 2, 2002

Mr. Bill Needleman, Portland Planning Office
389 Congress Street
Portland, Maine 04101

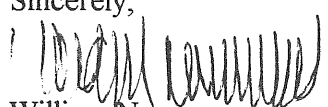
Re: 184 Commercial Street - Fisherman's Wharf
CBL - 031-J-030

Dear Bill:

With this letter I am submitting the Site Plan Application for the Proposed development of this property. Included are (9) copies of the Application Packet which includes:

- a) the Application Form
- b) a Site Plan Application Cover letter from the Applicant
- c) a Conditional Use cover letter from the Applicant
- d) Exhibit #1 (page of 9 photos)
- e) Exhibit #2 (page of 4 photos)
- f) Exhibit #3 (photos of proposed front and rear doors)
- g) Exhibit #4 (copy of relevant ordinance)
- h) Letter from Maine Bank and Trust regarding financial capability
- i) a copy of the signed Letter of Intent for the rights to develop the property
- j) the required Written Statement
- k) the proposed Site Plan
- l) boundary survey

The purpose of both the Site Plan Review and the Change of Use applications is to gain the right to use the 1,250 square feet of existing deck space for exterior dining. These applications are required by Section 14-315 of the Code which governs the use of exterior decks in the Waterfront Central Zone. The site, including the deck area requested under this application, was developed for use as a dining deck in the past and has been used as such for several years before its status was questioned. This Application, along with the recent council action regarding the wording of Section 14-315, is designed to make this site compliant with the Code.

Sincerely,

William Nemmers

City of Portland Site Plan Application

If you or the property owner owes real estate or personal property taxes or user charges on any property within the City, payment arrangements must be made before permits of any kind are accepted.

Location/Address of Construction: 184 COMMERCIAL STREET		
Total Square Footage of Proposed Structure 1250	(EXPANSION)	Square Footage of Lot
Tax Assessor's Chart, Block & Lot Chart# Block# Lot# 031 J 030	Property owner, mailing address: G.E.F. LLC P.O. Box 2808 S. PORTLAND, ME. 04116	Telephone: 828-5136
Consultant/Agent, mailing address, phone & contact person BILL NEMERS (ARCHITECT) 329-2048 TIM BRYANT (ATTORNEY) 791-3236	Applicant name, mailing address & telephone: THOMAS DANA P.O. Box 169 PORTLAND, ME. 04112	Project name: BAYVIEW SEAFOOD
Proposed Development (check all that applies) <input type="checkbox"/> New Building <input type="checkbox"/> Building Addition <input type="checkbox"/> Change of Use <input type="checkbox"/> Residential <input type="checkbox"/> Office <input checked="" type="checkbox"/> Retail <input type="checkbox"/> Manufacturing <input type="checkbox"/> Warehouse/Distribution <input type="checkbox"/> Parking lot <input type="checkbox"/> Subdivision, amount of lots _____ <input checked="" type="checkbox"/> Other: EXPANSION OF RESTAURANT USE/RENOVATIONS "CONDITIONAL USE" - SECTION 14-315		
Major Development _____ \$500.00 Minor Development <input checked="" type="checkbox"/> \$400.00		
Who billing will be sent to: Mailing address: P.O. Box 169 State and Zip: PORTLAND, ME. 04112 Contact person: T. DANA Phone: 671-5566		

Nine (9) separate packets must include the following:

- copy of application
- cover letter stating the nature of the project
- site plan containing the information found in the attached sample plans check list

All plans must be folded neatly and in packet form

Section 14-522 of the Zoning Ordinance outlines the process, copies are available at the counter at .25 per page, you may also visit the web site: ci.portland.me.us chapter 14

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 of applicant: Tom H. Dana	Date: 1/30/02
--	----------------------

This application is for site review ONLY, a building Permit application and associated fees will be required prior to construct

Thomas Dana

*P.O. Box 169 * Portland, Maine 04112
Tel: 207-775-2228 * Fax: 207-761-8280
Email: asiawest@aol.com*

Portland Planning Board
City of Portland
389 Congress Street
Portland, Maine 04101

January 30, 2001

Dear Members of the Planning Board,

As part of my "Site Plan" application, the following is a comprehensive explanation of our proposed renovation of Bayview Seafood:

- ◆ We propose to remove the sliding glass doors from the Commercial Street side and waterfront side of the building and replace them with commercial grade, vinyl windows to match the existing windows on the east side of the building (see exhibit 1 picture F). Because the new windows are smaller than the sliding doors presently on the building, a continuation of the existing cedar-shingle siding will be extended to fill the difference.
- ◆ We propose to remove the aluminum door which was recently added to the Commercial Street side of the building and replace it with a heavy, commercial grade, wooden door, which will be in keeping with the rustic feel of the building. (see exhibit 3).
- ◆ We propose to remove the window on the SW corner of the building (see exhibit 1 photo B) and replace it with the same commercial grade wooden door used in the front of the building.
- ◆ We propose to install a 12 inch, naturally-finished, wood (fir) counter along the railing which wraps the perimeter of the building. The counter will sit flush against the railing, 4 inches below the top. The counter will be similar to the one in existence already (see exhibit 1 photo H), except it will be smaller in depth, more sturdy, and more in keeping with the rustic feel of the building.

Thank you for your consideration.

Sincerely,



Tod Dana

Thomas Dana

*P.O. Box 169 * Portland, Maine 04112
Tel: 207-775-2228 * Fax: 207-761-8280
Email: asiawest@aol.com*

Portland Planning Board
City of Portland
389 Congress Street
Portland, Maine 04101

January 30, 2001

Dear Members of the Planning Board,

I am applying for expansion of my business at 184 Commercial Street (Bayview Seafood) under the "Conditional Uses" provision of city ordinance 14-315 section (C), which addresses "expansion of a non-water dependent, non-marine related use" (see exhibit 4). The following points relate directly to the four requirements of the aforementioned ordinance:

- ◆ With respect to the requirement in sub-section (1), Bayview Seafood is located less than 10 feet from the southerly side of Commercial Street.
- ◆ With respect to the requirement in subsection (2), our proposed expanded use will occupy exactly 1250 square feet.
- ◆ With respect to the requirements in sub-section (3), our present building size exceeds 500 square feet.
- ◆ With respect to the requirements in sub-section (4), I firmly believe that Bayview Seafood is in compliance with the requirements of the WCZ zone and this code.

As part of my "Conditional Use" appeal, the following is a comprehensive explanation of our proposed expansion of Bayview Seafood:

We propose to use 1250 square feet of the existing deck space in front of the restaurant for outdoor seating. We propose to use picnic tables, smaller than the ones in existence, laid out in what we believe to be a comfortable arrangement, designed with the idea of comfortable two-way flow of patrons. The enclosed drawing details the proposed layout of the tables and the parameters of the expanded deck (see exhibit 5). Instead of starting the

AH 1.6

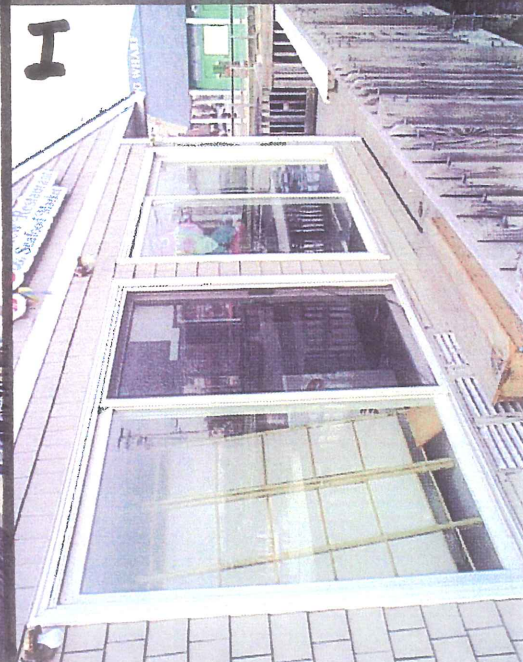
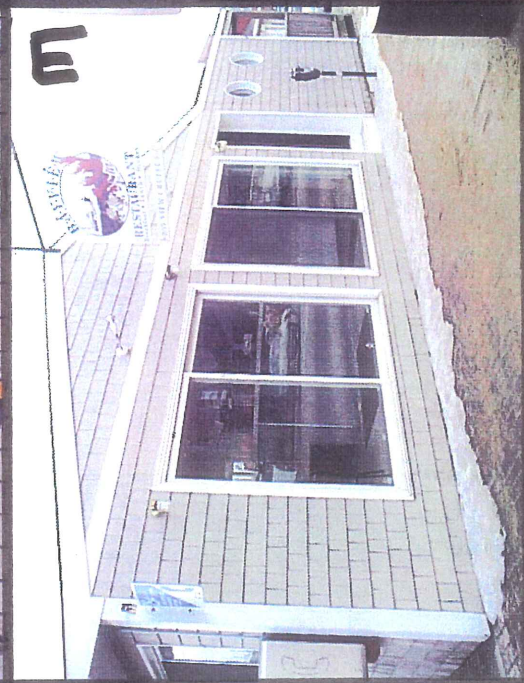
expansion directly in front of the restaurant, we propose to start our deck seating 25 feet beyond the front of the restaurant in order to provide a comfortable "right of way" for passengers moving on and off the tour boat, which has berthing in front of the deck (see exhibit 2 photos J,K,L,M).

Thank you for your consideration.

Sincerely,



Tod Dana







City of Portland
Code of Ordinances
Sec. 14-315

Land Use
Chapter 14
Rev. 12-3-01

valid rendering facility license under chapter 12; and

b. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.

(3) Boat rack storage facilities, provided that:

Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.

(c) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier.) into contiguous and newly created building space of no more than 2000 sq. ft., total, shall be allowed only as follows:

*See Revised
Language
A# 3*

(1) the use may occupy ground floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or

(2) the use may occupy a ground floor area of no more than 1250 square feet beyond 35 feet from the southerly sideline of Commercial Street; and

(3) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and

(4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

ATT 5.1

The Salty Lobster Company
P.O. Box 169
Portland, ME 04112

H.S.B.
T.D.
July 18
June 27, 2001

Hwa Sun Bae
29 Exchange Street
Portland, ME 04101

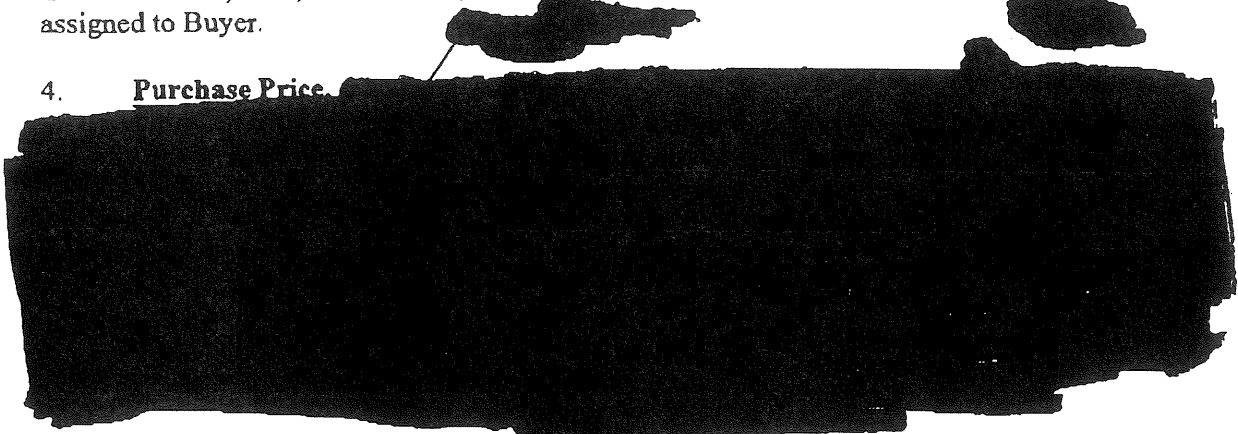
Re: Letter of Intent

Dear Ms. Bae:

The partnership doing business as The Salty Lobster Company ("Company") is pleased to offer to purchase your Assets defined in Paragraph 2 on the following revised terms and conditions:

- 1. **Buyer.** Buyer will be a company formed by Company.
- 2. **Seller.** Seller will be Hwa Sun Bae of Portland, Maine.
- 3. **Purchased Assets.** Company will purchase all of the tangible and intangible assets obtained by Seller from Richard Yates related to the Bayview Restaurant, located on 180 Commercial Street in Portland, Maine ("Premises"), and memorialized in an asset purchase agreement dated, November 20, 2000 and attached hereto as Exhibit A. Buyer shall not purchase or assume any of Seller's liabilities, with the exception of the Lease Agreement between Richard Yates and GEF, LLC, dated June 1, 1999, and attached hereto as Exhibit B, which shall be assigned to Buyer.

4. **Purchase Price.**



- 5. **Closing.** Buyer and Seller agree to use their best efforts to close the acquisition within sixty (60) days of the date of receipt, by the Buyer, of its outdoor seating application by all the applicable City of Portland authorities.

AH 5.2

6. **Conditions.**

- a. Completion by ABC of a satisfactory due diligence investigation of the Acquired Assets and the aforementioned Lease Agreement, within 45 days after approval of outdoor seating permit;
- b. Landlord approval of Assignment of the aforementioned Lease Agreement to ABC;
- c. Approval by the City of Portland and the City of Portland Planning Board of Buyer's Applications/Petitions for, among other things, a permit for outdoor seating;
- d. Negotiation of an Asset Purchase Agreement satisfactory to both parties, containing, among other things, representations and warranties, covenants, indemnities and other terms and conditions customary in corporate acquisition, including, without limitation, a non-competition agreement, hold harmless agreement, within 45 days after completion of subsection c;
- e. The absence of any material adverse change between June 19, 2001 and the Closing in the Purchased Assets;
- f. The obtainment of sufficient financing by Buyers to fund the Asset Purchase Agreement and to operate the newly created company, within 45 days after completion of subsection c;
- g. The furnishment of all existing utility agreements and insurance policies on the Premises within 45 days after completion of subsection c;
- h. The filing of Buyer's application for outdoor seating with the City of Portland within forty five (45) days of the date of this Letter of Intent; and
- i. Approval by the City of Portland of a building permit and outdoor signage within 45 days after completion of subsection c.

7. **Access to Information.** Immediately following acceptance of this Letter of Intent, Seller will provide Buyer and its representative's access to any and all documentation and/or information to enable Buyer to complete its due diligence investigation.

8. **Expenses.** Each party will pay its own expenses and costs incidental to the completion of the acquisition, including legal and accounting fees.

AT 5.3

9. **Brokerage.** It is understanding of both parties that there are no brokers involved in this transaction. Nevertheless, the parties agree to indemnify each other against any claims for brokerage commissions asserted as a result of any action by the indemnifying party.

10. **Cooperation and Exclusive Dealing.** Parties agree to cooperate in good faith and move expeditiously in the preparation of the documents and the taking of other actions necessary to carry out the acquisition. Seller agrees not to offer to sell its stock, assets or business to any other person or entity and not to negotiate or accept any agreement for the sale of all or any part of its stock, assets or any part of Seller's assets or business on or before Closing or such earlier date as the parties mutually agree that a definitive Asset Purchase Agreement cannot be reached and/or if Buyer's application for outdoor seating is denied by the City of Portland.

11. **Non-Disclosure: Publicity.** Each party agrees that it will not, without the prior written consent of the other party, disclose publicly or to any third party, the terms and conditions of this offer or the subsequent negotiations between the parties, except to the extent required by law or as may be required by the Company in connection with its financing arrangements, for the acquisition.

12. **Non-Binding Agreement.** The Letter of Intent is intended to provide a basis for the preparation of a definitive asset purchase agreement. Until such agreement has been prepared and duly authorized, executed and delivered by each of the parties, none of the provisions of this letter shall be binding on either party with the exception of the agreements and obligations contained in paragraphs 7 through 12.

T.D.
August 1, 2001 H.S.B

13. **Acceptance.** This offer may be accepted in writing by Seller until ~~June 22, 2001~~, but will terminate if not accepted by the close of business on that date.

14. **Counterparts.** This Letter of Intent may be executed in one or more counterparts, including execution by facsimile transmission, each of which shall be deemed to be an original copy of this Letter of Intent and all of which, when taken together, will be deemed to constitute one and the same agreement.

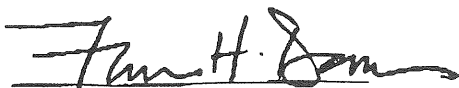
15. **Plans.** If Buyer fails to receive approval of the required permits and/or decides not to Close, then a copy of all architectural drawings and sites plans used to apply for the permits referenced in this Letter of Intent shall be given to Seller.

If the foregoing is satisfactory to you, please evidence your acceptance of this offer by signing and returning to us the enclosed copy of this Letter of Intent. It is understood that upon your acceptance, this letter will constitute a Letter of Intent to negotiate in good faith to complete a definitive Asset Purchase Agreement and a Closing on the terms set forth above.

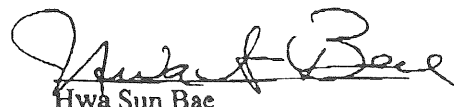
Sincerely,

Buyer:

Seller:



Thomas H. Dana
(d/b/a The Salty Lobster Company)

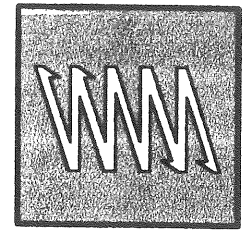


Hwa Sun Bae

Dated: 6/27/01

Dated: 7-18-01

XH, 6



**Bayview Seafood - Fisherman's Wharf
Minor Site Plan Review
Written Statement**

February 2, 2002

Name of Property Owner: The Property Owner is G.E.F. LLC; P.O. Box 2808, Portland, 04116

Name of Applicant: The Applicant is Thomas Dana, P.O. Box 169, Portland, 04112

Estimated Cost of Development: \$40,000 including equipment, and renovation

Item #1: Description of Proposed Uses: The Applicant is proposing to use the Property as a seafood restaurant. The current and past use was the same - a seafood restaurant. No major changes or constructions are proposed. Door and window replacement, material upgrades, and painting are the major areas of work involved. A Change-of-Use is required for the existing 1,250 square foot exterior deck area as per Section 14-315.

Item #2: Areas: The Applicant will be leasing a certain portion of the overall Fisherman's Wharf property. The leased areas will include a 945sf restaurant building, (2) storage buildings of approximately 90sf each, 1,250 sf of exterior dining area and additional walkways and decks, as shown on the Plan.

Item #3: Easements: The area leased to the Applicant includes certain undetermined areas that the Property Owner will utilize to access the ramp/gangplank to service the existing tour boat business. The lease permits the Property Owner to utilize these portions of the site.

Item #4: Solid Waste: Solid waste will be temporarily stored in the existing enclosed area designed for that purpose.

Item #5: Off-site Utilities: All utilities are existing and will not be changed. The sewer and water services were designed for a restaurant operating with the deck and have been operating as such for the last several years.

Item #6: Surface drainage: No changes in the surface drainage are being proposed. Currently any rainwater drains directly into the harbor.

Item #7: Construction sequence: No construction is proposed other than cosmetic work. This work is anticipated to start in the spring so as to be ready for the summer season.

Item #8: State & Federal approvals: No State or Federal approvals are required for the development of this project.

Item #9: Evidence of financial capacity: A letter indicating the financial capacity of the Applicant is included in the packet.

Item #10: Right Title or Interest: The Applicant and the Property Owner have negotiated a letter-of-intent to lease the Space subject to the approval of the Planning Board.

Item #11: Unusual site characteristics: The unusual characteristic of this site is that it is an existing facility which has been operating precisely as the Applicant is proposing. The use of the 1,250sf exterior deck area must be legitimized by this Approval.

Item #12: Drawings: Appropriate site drawings are included in the Application Packet. The development plan is available in electronic form, however the boundary survey is not.

Item #13: Recyclable description: The existing enclosed area for refuse is 6ft by 14ft and includes areas for cardboard and oil, as well as normal trash dumpster.

03/07/2002 10:34 2077618288

PAGE 01

AH 7.1

Bayview Cruises


*Fishermen's Wharf
184 Commercial Street
Portland, Maine 04101
207-761-0496*

March 6, 2002

To Whom It May Concern,

Notwithstanding the language contained in paragraph 4D of the Assignment of Lease between Bayview Seafoods, Inc. Richard Yates, and Hwa Sun Bae d/b/a Bayview Barbecue, which Thomas Dana will be assuming in conjunction with his purchase of Bayview Seafood restaurant, Bayview Seafoods, Inc. and Richard Yates hereby relinquish any and all rights to use the six parking spaces identified as exhibit A in the lease between GEF, Inc. and Richard Yates dated June 1, 1999.

Sincerely,


Richard Yates

AH 7.2

ASSIGNMENT OF LEASE

KNOW ALL MEN BY THESE PRESENTS that Bayview Seafoods, Inc. and Richard Yates with a mailing address of 180 Commercial Street, Portland, Maine 04101 (hereinafter called "Assignor"), in consideration of One Dollar (\$1.00) and other valuable consideration paid to it by Hwa Sun Bae, d/b/a Bayview Barbeque, with a mailing address of _____ (hereinafter called "Assignee"), the receipt of which is hereby acknowledged, does hereby give, grant transfer, set over and convey to Assignee, its successors and assigns, with full right of reassignment, the following rights and premises, viz:

1. All Assignor's interest in and to that certain lease (the "Lease") a copy of which is attached hereto and made a part hereof, and all easements and leasehold rights appurtenant thereto with respect to the premises described therein (the "Leased Premise") including any and all extensions or renewals of the Leases, or substitutions or replacements thereof;

2. All rights, privileges and benefits now existing or hereafter arising under the Lease, including, without limitation, all rights to exercise options to extend or renew the Lease or to purchase the Leased Premises and appurtenances thereto, and all rights to insurance proceeds, eminent domain awards or payments in lieu thereof;

3. All rights of the Assignor in and to fixtures, improvements, alterations, or additions now or hereafter erected on the Leased Premises; and

4. The Assignor REPRESENTS TO, AND COVENANTS AND AGREES WITH, the Assignee as follows:

a. The Lease is in full force and effect in accordance with its respective terms, and it has not been modified or amended.

b. All rents and payments under the Lease have been paid to the Landlord thereof, to the extent payable to date.

c. No defaults under the Lease and no event has occurred or is occurring which, with the passage of time or service of notice, or both, would constitute an event of default thereunder.

d. The Lease is subject to no liens or encumbrances, and Assignor has not previously transferred in any manner any of its interests in or under the Lease. Lease is subject to Assignor's right to use parking spaces and to access the vessel ramp as set forth in Attachment A of Lease between Bayview Cruises and Landlord.

e. Assignor is fully authorized to assign the Lease as provided herein, and the execution of the Lease and this Agreement does not violate the terms and conditions of any other agreement or instrument to which the Assignor is a party or by which it is bound or affected.

A#7.3

5. The Assignee shall be deemed by the execution of this Assignment to have assumed liability and become liable in any manner whatsoever for the performance of any of the terms and conditions of said Lease and hereby agrees to indemnify and hold harmless the Assignor with regards to any such liabilities.

6. The obligations of the Assignor (as Seller) and the Assignee (as Buyer) under the terms of a Purchase and Sale agreement accepted November 12, 2000 and attached hereto as Exhibit A shall survive this Lease Assignment and this Lease Assignment is made expressly subject thereto.

This Agreement shall (i) bind the Assignor and the heirs, personal representatives, successors and assigns of the Assignor and (ii) inure to the benefits of the Assignee, its shareholders, its affiliates, its successors and assigns.

DATE:

Bayview Seafoods, Inc.

C. Basley
Witness

By: Richard Yates
Its President

C. Basley
Witness

Richard Yates
Richard Yates

Seen and agreed:

M. St. Charles
Witness

Hwa Sun Bae
Hwa Sun Bae, d/b/a Bayview Barbeque

P.02 AH 7.3

DEC-01-2000 15:43

AMERITECH

LANDLORD'S CONSENT TO SUBLETTING OF A PORTION OF LEASE

GEF, LLC ("Landlord") being the Landlord pursuant to that certain lease by and between Landlord and Bayview Cruises, Inc. and Richard Yates ("Tenant") as Tenant dated June 1, 1999, relating to certain premises located at 180 Commercial Street, Portland, Maine, do hereby consent to the subletting of a portion of the Leased premises, specifically being that portion under the storage shed as described and delineated in the attached Exhibit A

Dated:

GEF, LLC

By: 
Its President

Att 7.5

SUBLEASE

KNOW ALL MEN BY THESE PRESENTS that Bayview Cruises, Inc. and Richard Yates with a mailing address of 180 Commercial Street, Portland, Maine 04101 (hereinafter called "Lessee"), in consideration of One Dollar (\$1.00) and other valuable consideration paid to it by Hwa Sun Bae d/b/a Bayview Barbecue, with a mailing address of 180 Commercial Street, Portland, Maine (hereinafter called "Sublessee"), the receipt of which is hereby acknowledged, does hereby sublet a portion of premises currently Leased to Lessee pursuant to a lease by and between Landlord and Lessee dated June 1, 1999. This sublease is pursuant to and subject to the terms and conditions of that Lease. The sublet portion of the Leased Premises is that parcel of land directly under the storage shed which is more specifically described and delineated on attached Exhibit A.

Dated: 12/4/00

Bay View Cruises, Inc..

By: [Signature]
Its President

[Signature]
Richard Yates/Individually

Seen and agreed:

Hwa Sun Bae, d/b/a Bayview Barbecue

Att 7.6

LEASE

THIS LEASE made as of this 1st day of June 1999, between GEF LLC located at 33 RIGBY ROAD, SOUTH PORTLAND, MAINE 04106 (Landlord) and BAY VIEW SEAFOODS, INC. AND RICHARD YATES. (Tenant) (both said Landlord and said Tenant being hereafter referred to by singular pronoun of the neuter gender regardless of the number and gender of the person or corporation involved).

WITNESSETH

ARTICLE I

LEASED PREMISES

In consideration of the rents and covenants herein reserved and contained on the part of the Tenant to be paid, performed and observed, the Landlord hereby leases to Tenant that property located on the premises known as Fisherman's Wharf portrayed on the attached ~~Exhibit A~~, which includes the buildings indicated plus a deck.

Tenant shall have the right of ingress and egress over the land owned by Landlord for access to the premises together with six parking spaces portrayed on the attached Exhibit A. In exercising this right of access to the leased premises, the Tenant agrees that it and its agents, invitees and employees shall use due care to protect the property and businesses of the Landlord and Landlord's other Tenants on the premises, and the Tenant further agrees to warrant, defend, hold harmless and indemnify the Landlord for any and all damages caused

*What other
its on the
premises?*

AA 7.7

by Tenant and its employees, agents or invitees in connection with exercising the right of access to the leased premises.

ARTICLE II

TERM

TO HAVE AND TO HOLD for a term beginning June 1, 1999 ("the Commencement Date") and ending May 31, 2004, ("the Lease Expiration Date") except as extended in accordance with Article VI.

ARTICLE III

RENT

Tenant covenants and agrees to pay basic triple net rent on a monthly basis to the Landlord for the Premises as follows:

	<u>ANNUALLY</u>	<u>MONTHLY</u>
YEAR 1	\$28,350.00	\$2,362.50
YEAR 2	\$29,767.50	\$2,480.63
YEAR 3	\$31,255.88	\$2,604.66
YEAR 4	\$32,818.67	\$2,734.89
YEAR 5	\$34,459.60	\$2,871.63

11812.50
 12403.15

 24215.65

In the event that any Lease payment is not received by the fifth day of the month the Lessee will be charged a five per cent (5%) late fee for each late payment. All payments will first go to satisfy late fees and then rent. Tenant agrees that it will be responsible for all costs associated with the collection of rent including, but not limited to, reasonable attorney fees incurred as part of the collection process.

AA 7.7

All payments shall be at such place as Landlord may from time to time designate.

ARTICLE IV

PERSONAL GUARANTEE OF LEASE

*Yates
pers. guar.*

The provisions of this lease and the payments required herein are personally guaranteed by Mr. Dick Yates.

ARTICLE V.

SECURITY DEPOSIT

No security deposit is required.

ARTICLE VI

OPTION TO RENEW LEASE

Provided that Tenant has complied with all material covenants, terms and conditions of this Lease, including the payment of rent, or that any default shall have been duly waived, Tenant shall have the option to Lease the Premises for two extended periods of five (5) years each upon the terms, covenants, and provisions set forth herein. Said provisions may be exercised by written notice of such exercise sent by registered or certified mail, postmarked thirty (30) days before the expiration of the previous term or extended term to Landlord at its address designated for notices as herein provided. For the first renewal term, rent shall be \$36,182.58 for the first year of the renewal term and escalate 5% per year for every subsequent year of the first renewal term. The rent for each year in the second renewal option shall be market rent. Market rent shall be negotiated and agreed upon by both parties in writing and will be

AA 7.8

payable on a monthly basis due on the first day of each month. If the rental amount for the second renewal option cannot be agreed upon by both parties then the lease will terminate at the end of the first renewal term.

ARTICLE VII

TRIPLE NET CHARGES

pays taxes

The Tenant shall pay its pro-rata share of all taxes and assessments levied, assessed or imposed at any time by any governmental authority upon or against the Premises or taxes in lieu thereof during the term of this Lease. In the event that there are any additional taxes or assessments of any type levied on the dockage or waterfront areas such assessments will be the direct responsibility of the Tenant.

Upon receipt thereof, Landlord shall furnish to Tenant a copy of the tax bill and a statement of the taxes payable during any tax period during the term of this Lease. Tenant's share of said tax bill shall be payable by Tenant to Landlord not later than fifteen (15) days after Tenant's receipt. It is estimated that Tenant's pro-rata share of the tax bill will be approximately 3% of the land tax assessment and 80% of the building tax assessment.

Nothing herein contained shall be construed to mean that the Landlord has an obligation to apply for an abatement of taxes, but Landlord agrees to do so at Tenant's expense if requested by Tenant. In the event of an abatement, the pro-rata proceeds of any abatement shall belong to the Tenant, less any reasonable costs (adjusted on a Pro-Rata basis) to Landlord in obtaining the Abatement. The provisions of this paragraph shall not survive the termination of this Lease.

Upon the date of the expiration or termination of this Lease, whether the same be the date herein above set forth for the expiration of the term (the "Lease Expiration Date") or any

prior or subsequent date, a proportionate share of the reimbursement on account of taxes for the period in which such expiration or termination occurs shall immediately become due and payable by Tenant to Landlord. Such proportionate share shall be based upon the length of time this Lease shall have been in effect during such tax period. Within thirty (30) days after receipt of the tax bill for such tax period, Landlord and Tenant shall make appropriate adjustments.

ARTICLE VIII

USE

The Premises shall be used and occupied by Tenant solely for operating a seafood restaurant provided that said use complies with all governmental and environmental laws and regulations. The Tenant shall obtain all licenses necessary to operate the premises as a restaurant. The premises may not be used for any other purposes absent written consent of Landlord which shall not be unreasonably withheld.

ARTICLE IX

UTILITIES

The Landlord shall not be under any responsibility or liability for interruption or inability to obtain electricity, fuel or water by reason of breakdown or accident or by any reason or any other cause beyond the reasonable control of the Landlord, nor in any event shall the Landlord be responsible for indirect and/or consequential damages.

The Tenant agrees to pay when due all bills for all utilities and services furnished to the Premises including but not limited to water and sewer, heating, electrical, trash removal and interior/exterior maintenance.

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ARTICLE X

TENANT'S COVENANTS

Tenant covenants with Landlord that during the term and for such further time as Tenant or anyone claiming by, through or under it, shall hold the Premises or any part thereof

A Tenant will promptly pay the rent, reimbursement of taxes and any and all other charges payable by Tenant to Landlord at the address from time to time designated for the sending of notices to Landlord at the time and in the manner aforesaid.

B If Tenant shall install any type of mechanical equipment, such installation shall be at Tenant's sole expense. The moving and installation of such machines and equipment shall be at the sole risk and hazard of the Tenant and Tenant agrees to indemnify and save Landlord harmless against and from all damage, liability, loss, injury, claim or suit resulting directly or indirectly from the installation or maintenance of such machines and equipment.

Tenant will not make any structural change in, or structural addition to the Premises without first obtaining, on each occasion, Landlord's consent in writing, which consent shall not be unreasonably withheld, and then only Tenant's expense, and in a lawful manner and upon such reasonable terms and conditions as Landlord shall by such writing approve. Any such alteration or addition shall be consistent in appearance with the rest of the Premises. At

7-11

Tenant's expense. Tenant's alterations and additions must comply with any and all governmental and environmental rules and regulations. Landlord shall, upon expiration of the term, retain as its property, without cost to it, any such structural alterations so made. Tenant will, upon the reasonable request of Landlord, deliver to Landlord in writing a schedule and plans setting forth the details and location of all such alterations or additions. In accordance with Section G of this Article, Tenant will be responsible for obtaining all permits necessary for occupancy and the use of the Premises by the Tenant under the terms of this lease, and Tenant will bear all expenses in connection therewith, including any building, plumbing and/or electrical work required. The Tenant hereby accepts the Premises in its present condition. Notwithstanding the foregoing, Landlord warrants and represents the use desired by the Tenant is lawful.

C Tenant will not permit any hole to be drilled or made in the exterior façade of any building or any sign or placard to be placed on any building without first obtaining on each occasion the Landlord's written consent, which shall not be unreasonably withheld; and will erect and maintain any sign only after obtaining approval in writing by the Landlord and only in accordance with all laws, rules and regulations and requirements of all public and other authorities having jurisdiction over the same; and, in addition, will repair all damage that may be caused to any building in the affixation, maintenance or removal of the sign to or from any building, and will also hold and save the Landlord harmless and indemnified of and from all claims for injury or damage to person (including death) and/or property damage caused by the Tenant, and will restore that portion of the Premises and any building thereon from which the Tenant shall have removed any sign to a condition at least as good as that in which said portion of the Premises and any building thereon was just prior to the

7.12

installation or affixation thereof, damage by fire or other casualty, eminent domain, damage due to the fault or negligence of the Landlord or its agents and repairs for which the Landlord is responsible under the terms of this Lease and reasonable wear and tear excepted;

D Tenant shall, at the end of the term or sooner termination, peaceably surrender and deliver up the Premises and all erections, alterations and additions made to or upon the Premises (unless Tenant desires to remove any of them, in which event Tenant shall repair all damage caused thereby), to Landlord, broom clean and in the same repair and condition, in all respects, as the Premises were in on the Commencement Date and as such erections, alterations and additions were when completed, reasonable wear and tear and damage by fire or other casualty, eminent domain, and damage due to the fault or negligence of the Landlord or its agents and repairs for which the Landlord is responsible under the terms of this Lease, only excepted, and (except as elsewhere provided herein), will remove all personal property, goods and effects belonging to the Tenant or to anyone claiming through or under Tenant, including, without limitation, all of its trade fixtures and signs and also will remove all lettering, if any, painted by Tenant in or on the Premises with or without the Landlord's consent. Tenant shall be responsible for all damage or injury to the Premises caused by the installation or removal of the Tenant's furniture, fixtures or equipment.

E Tenant shall not assign, mortgage, pledge or encumber this Lease nor underlet any part of the Premises, without, on each occasion, obtaining the prior written consent of the Landlord which shall not be unreasonably withheld. In the event Tenant requests Landlord's consent to any assignment, sublease or transfer of this Lease, Tenant shall

7.13

submit to Landlord in writing the terms and conditions of the proposed assignment or subletting and the name of the proposed assignee or sublessee, together with a statement of the nature and character of its business and the type of business to be operated at the Premises.

The consent by Landlord to any assignment, mortgage, pledge, or subletting shall not constitute a waiver of the necessity of such consent to any subsequent assignment or subletting. In the event of the assignment or subletting by the Tenant, Tenant shall remain liable for the payment of any and all rent which may become due by the terms of this Lease and for the performance of all covenants, agreements, and conditions on the part of Tenant to be performed hereunder. No such assignment shall be valid or effective unless the assignee shall covenant in writing to be bound directly to the Landlord. No modification of the terms of this Lease or any course of dealing between Landlord and any assignee of the Tenant's interest herein shall operate to release or impair Tenant's obligations hereunder. The Tenant agrees to pay the Landlord's reasonable attorney's fees incurred in connection with any assignment or subletting.

F Tenant, at its sole expense, shall comply with all laws, orders, and regulations of Federal, state, county and city authorities and with any direction of any public officer, pursuant to law, which shall impose any violation order or duty upon Landlord or Tenant with respect to the Premises, or the use or occupation thereof. Tenant shall not do or permit to be done any act or thing upon the Premises which will invalidate, or be in conflict with, fire insurance policies covering the Premises, and fixtures and property therein, and shall not do or permit to be done, any act or thing upon the

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Premises which shall or might subject Landlord to any liability or responsibility for injury to any person or persons or to property by reason of any business or operation being carried on upon the Premises or for any other reason.

G Except as modified by statute, all merchandise, furniture, fixtures and property of any kind which may be on or about the Premises shall be at the sole risk and hazard of Tenant, and if the whole or any part thereof, shall be destroyed or damaged by fire, water or otherwise by the use or abuse of water or by the leaking or bursting of water pipes, or in any other way or manner, no part of such loss or damage shall be charged to Landlord in any case whatever.

H The Tenant will save Landlord harmless, and will exonerate and indemnify Landlord, from and against any and all claims, liabilities, or penalties assessed by or on behalf of any person, firm, corporation, public authority or any other legal entity

(i) on account of, or based upon, any injury to any person or loss of, or damage to, property sustained or occurring in or upon the Premises because of, or based upon, the act of omission, fault, negligence, or misconduct of any person except Landlord:

(ii) on account of, or based upon, any injury to any person or loss of, or damage to, property sustained in or about the Premises (and, in particular, without limiting the generality of the foregoing, on or about the stairways, sidewalks, parking areas, concourses, arcades, approaches, areaways, roof, or other appurtenances and facilities used in connection with the Premises) arising out of the use or occupancy of the Premises by the Tenant or by any person claiming by, through or under Tenant.

and in addition to and not in limitation of either of the foregoing subdivisions (i) and

(ii):

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(iii) on account of or based upon (including money due on account of) any work or thing whatsoever done (other than by Landlord or its contractors, or agents or employees or either) on the Premises;

and, in respect of any of the foregoing, from and against all costs, expenses (including reasonable attorney's fees), and liabilities incurred in or in connection with any such claim, or any action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, shall, at Tenant's expense, resist or defend such action or proceeding and employ counsel therefor reasonably satisfactory to Landlord, it being agreed that such counsel as may act for insurance underwriters of Tenant shall be deemed satisfactory.

The Tenant, at its own expense, will maintain and keep in force public liability, liquor liability and property damage insurance insuring both Tenant and Landlord against claims for personal injury, death, or property damage occurring in or about the Premises, if Tenant is liable therefor as herein provided, with limits of not less than \$1,000,000 for injury to or death of one person; \$2,000,000 for injury to or death of more than one person in a single accident, and \$200,000 for damage to property. Upon Landlord's request, Tenant shall furnish Landlord with evidence of such coverage, such evidence to be satisfactory to Landlord. At Landlord's option, Landlord may obtain the aforescribed Insurance and Tenant shall promptly (but in any event within fifteen (15) days of receipt of a statement for same), pay for said Insurance.

Upon reasonable notice to Tenant and subject to Tenant's reasonable security requirements, Landlord or its representatives shall have the right without charge to it

7.17

and without reduction in rent, at reasonable times and in such manner as not to unreasonably interfere with Tenant's business, to enter to view the Premises, and Landlord or its representatives may enter the Premises (forcibly if necessary), at any time to take such measures as may be needed to cope with an emergency. Landlord may during the nine months next preceding the expiration of the term or any extension thereof, show the Premises to persons wishing to lease or purchase same, such showing not to interfere unreasonably with Tenant's business.

Tenant shall not permit mechanics', laborers', or materialmen's liens to stand against the Premises or any building thereof for any labor or materials furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed in or on the Premises by or at the direction or sufferance of the Tenant; provided, however, that Tenant shall have the right to diligently contest the validity or amount of any such lien or claimed lien, if the Tenant shall give Landlord, upon demand, reasonable security to insure payment therefor. On final determination of the lien or claim for lien, Tenant shall immediately pay any adverse judgement with all proper costs and charges and shall have the lien released or judgement satisfied at Tenant's expense, and Landlord shall promptly return any security which Tenant may have furnished to the Landlord.

K Tenant shall not overload, damage or deface the Premises nor suffer or permit the same to be done, nor commit waste.

7.18

ARTICLE XI

SUBORDINATION TO MORTGAGES

Tenant agrees that, upon request of Landlord, Tenant will subordinate this Lease and the lien hereof to the lien of any present or future mortgage or mortgages upon the Premises, irrespective of the time of execution or time of recording of any such mortgage or mortgages. Tenant agrees that it will, upon request of Landlord, execute, acknowledge and deliver any and all instruments deemed necessary or desirable by Landlord to give effect to, or notice of, such subordination, provided only that said mortgagee enters into an agreement with Tenant which provides that said mortgagee will not disturb the possession and other rights of Tenant so long as Tenant performs its obligation hereunder and that said mortgagee will accept Tenant as Tenant of the Premises under the terms and conditions of this Lease in the event of acquisition of title by said mortgagee through foreclosure proceedings or otherwise, and which further provides that Tenant shall agree to recognize the holder of such mortgage as the Landlord in such event, said agreement to be expressly binding upon the successors and assigns of the Tenant and of the mortgagee and upon anyone purchasing such building at a foreclosure sale. Tenant and Landlord agree to promptly execute and deliver any appropriate instruments necessary to carry out the agreements contained in this Paragraph.

ARTICLE XII

EMINENT DOMAIN

If the Premises or any part thereof shall be taken for any public use by action of the municipal or other authorities for which Landlord or Tenant shall be entitled to compensation by reason of anything lawfully done in pursuance of any public authority after the execution

7.17

hereof and before the expiration of the same term, and such taking makes the Premises no longer feasible for use by Tenant, then this Lease and said term shall terminate at the election of the Landlord or Tenant and such election may be made in case of any such taking notwithstanding the entire interest of Landlord may have been divested by such taking; and if either party shall not so elect, then in case of any such taking of the Premises rendering the same or any part thereof unfit for use and occupation, a just proportion of the rent hereinbefore reserved according to the nature and extent of such taking, shall be suspended or abated until the Premises, or what may remain thereof, shall have been put in proper condition for use and occupation. The Landlord need not put the Premises in condition for use and occupation. Landlord shall not be liable for any inconvenience or annoyance or any other damages to Tenant or injury to the business of Tenant resulting from delays in repairing such damage. Any election to terminate by either party shall be made no later than ninety (90) days after it receives formal notice of such taking. If, after the taking, the Premises remain feasible for use by Tenant, the Tenant shall promptly place the Premises in proper condition for use and occupation and this Lease shall not be terminated.

Landlord reserves and excepts from this Lease all rights to damages to the Premises or any part thereof, or the Leasehold hereby created, heretofore accrued or hereafter to accrue by reason of any taking for public use of said Premises or any portion thereof or right appurtenant thereto or privilege or easement in, through, or over the same and by way of confirmation of the foregoing the Tenant hereby assigns all rights to such damages theretofore accrued or hereafter accruing during the term or any extension thereto to the Landlord. However, the Tenant reserves its rights to its Leasehold improvements and fixtures and relocation expenses. Tenant agrees to promptly execute such other instruments as may be necessary or desirable to confirm the Landlord's rights to such damages

7.18

ARTICLE XIII

FIRE AND OTHER DAMAGE

The Tenant shall, at all times, keep the rented premises and all improvements thereon insured against loss and/or damage by casualties to its replacement value. The Landlord, and Landlord's mortgagee shall be named the loss payees on said insurance policies as their interests may appear. The Tenant shall be responsible for all insurance premiums related to the leased property.

In case any part of the leased premises shall be destroyed or damaged by fire or other cause, after the execution and before the termination hereof then such destruction or damage shall not operate to terminate this agreement but this agreement shall continue in full force and effect. Tenant shall promptly thereafter restore and rebuild or repair said buildings, structures or improvements to a condition at least equal in value to the value immediately prior to such damage or destruction to the extent insurance proceeds are available. During the period of damage to said structures, rent shall not abate. All insurance proceeds shall be held in Landlord's attorney's escrow account to be used for reconstruction. Any insurance proceeds remaining after reconstruction shall be returned to Tenant.

Within a sixty day period, Tenant must provide Landlord with insurance proceeds for lost rents for period during reconstruction.

ARTICLE XIV

DEFAULT

7.20

This Lease is upon the condition that, if Tenant shall neglect or fail to pay when due any installment of rent or reimbursement of taxes or any other charges payable by Tenant, and such neglect or failure shall continue for five (5) days after receipt of written notice thereof, or if Tenant shall neglect or fail to perform or observe any of the other covenants or undertakings herein on its part to be performed or observed and such neglect or failure shall continue for thirty (30) days after written notice to it from Landlord, or if the default is such that it cannot be cured within thirty (30) days, and Tenant shall not within said period commence to cure such default, and continue to do so diligently, or if the estate hereby created shall be taken by execution or by other process of law and not redeemed by Tenant within fourteen (14) days thereafter, or if proceedings for corporate reorganization or arrangement under the Bankruptcy laws of the United States or any laws amendatory thereof or supplemental thereto shall be filed by or against Tenant and not be dismissed within ninety (90) days, or if the Tenant shall execute an assignment of its property for the benefit of its creditors, or if a receiver for Tenant or other similar officer shall be appointed and not be discharged within thirty (30) days, Landlord may, immediately or at any time thereafter, (notwithstanding any license or waiver of any former instance) and without demand or notice, in person or by agent or attorney, enter the Premises or any part thereof and repossess the same as of its former estate, or terminate this Lease by written notice to Tenant, and in either event, expel Tenant and those claiming through or under it and remove their effects (forcibly, if necessary), without being deemed guilty of any manner of trespass and without prejudice to any remedy which otherwise might be used for arrears of rent or breach of covenant, and upon entry or notice as aforesaid, this Lease shall terminate and the Landlord, in addition to all other remedies which it may have at law, shall have the remedies provided in Article XIV and elsewhere in this Lease.

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ARTICLE XV

CLEANLINESS OF LEASED UNIT

It is agreed that Tenant will ensure that the Leased Premises remain clean and free of any and all insects or other infestations. Tenant shall, at Tenant's sole expense, utilize the services of an Extermination Company on a regular, as-needed, basis to ensure that such insect/animal infestations do not occur.

Tenant agrees that all trash will be removed from the facility on a daily basis and stored inside the waste receptacles located outside of the building. Waste is only to be transferred into the receptacles and is not to be stored in any other locations.

ARTICLE XVI

QUIET ENJOYMENT

Tenant shall, upon paying the rent and other charges reserved hereunder and observing and performing all of the terms, covenants and conditions on Tenant's part to be observed and performed, peaceably and quietly hold and enjoy the Premises, without hindrance or molestation by any person or persons whatsoever, subject, however, to the terms of this lease.

ARTICLE XVII

NOTICES

All notices shall be given by certified mail, return receipt requested, and all notices for the landlord shall be addressed to the Landlord, GEF LLC, 33 RIGBY ROAD, SOUTH

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PORTLAND, MAINE 04106 or to such other place as may be designated by written notice to the Tenant; and to the Tenant BAY VIEW CRUISES, INC. Attn Dick Yates, 184 Commercial Street Portland, Maine 04101 or to such other place as may be designated by written notice to the Landlord.

ARTICLE XVIII

RIGHT TO PERFORM COVENANTS

Tenant covenants and agrees that if it shall at any time fail to make any payment or perform any other act on its part to be made or performed as in this Lease provided. Landlord, in its sole discretion may, after due notice to or demand upon Tenant, and after the expiration of any grace periods in this Lease, make any payment or perform any other act on the part of the Tenant to be made and performed as in this Lease provided, in such manner and to such extent as Landlord may reasonably deem desirable, and in exercising any such rights, Landlord may pay necessary and incidental costs and expenses, employ counsel, and incur and pay reasonable attorney's fees. The making of any such payment or the performing of any other act by the Landlord pursuant to this Article shall not waive or release the Tenant from any obligations of the Tenant in this Lease contained. All sums so paid by Landlord and all reasonably necessary and incidental costs and expenses in connection with the performance of any such act by Landlord, including reasonable attorney fees incurred in collection of rents, shall, except as otherwise in this Lease expressly provided, be payable to Landlord on demand, and Tenant covenants to pay any such sum or sums promptly, and Landlord shall have (in addition to any other right or remedy of Landlord), the same rights and remedies in the event of the nonpayment thereby by Tenant as in the case of default by Tenant in the payment of the basic rent. Whenever practicable, Landlord, before proceeding

7.23

as provided in this Article, shall give Tenant notice in writing of the failure of Tenant which Landlord proposes to remedy, and shall allow Tenant such length of time as may be reasonable in the circumstances, not exceeding thirty (30) days from the giving of notice (unless said remedy takes more than thirty (30) days to accomplish and Tenant diligently works to complete such remedy as soon as reasonably possible), to remedy the failure itself and, if Tenant shall not remedy the failure in the time so allowed, Landlord may proceed as provided in this Article; provided, however, that nothing in this sentence shall prevent Landlord from acting without notice to Tenant in case of an emergency

In addition to any other right or remedy of the Tenant hereinbefore provided, if the Landlord shall fail to perform or observe any covenant or condition contained in this Lease, Tenant may, after ten (10) days' written notice to Landlord, perform the same for the account of the Landlord and the amount of any reasonable sums paid by the Tenant for such purpose shall be immediately paid by the Landlord to the Tenant, but if Landlord shall fail to immediately pay the same, Tenant may deduct the amount of such sum paid in curing Landlord's default from the rent due on the next or any succeeding rent day.

ARTICLE XIX

ESTOPPEL CERTIFICATE BY TENANT

Tenant agrees at any time and from time to time, upon not less than ten (10) days prior written request by Landlord, to execute, acknowledge, and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications), and the dates to which the basic rent and other charges have been paid in advance, if any, it being intended that any such statement delivered pursuant to this Article

7.24

may be relied upon by any prospective purchaser or mortgagee of, or assignee of any mortgage upon the fee of the Premises.

ARTICLE XX

LIMITATION OF LANDLORD'S LIABILITY

The Landlord reserves the right to assign or transfer any and all of its right, title and interest under this Lease, including but not limited to the benefit of all covenants of the Tenant hereunder. Notwithstanding anything contained in this Lease to the contrary, it is specifically understood and agreed that the obligations imposed upon the Landlord hereunder shall be binding upon the Landlord and Landlord's successors in interest.

ARTICLE XXI

CUMULATIVE REMEDIES

The specified remedies to which Landlord or Tenant may resort under the terms of this Lease are cumulative and not intended to be exclusive of any other remedies or means of redress to which either party may be lawfully entitled in case of breach or threatened breach of any provisions of this Lease. The failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this Lease or to exercise any option contained herein shall not be construed as a waiver or a relinquishment for the future of such covenant or option. Receipt by Landlord of rent with knowledge of the breach of any covenants hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by said party. In addition to the other remedies provided in this Lease, either party shall be entitled to restraint by injunction of any violation or attempt or threatened violation of any of the covenants, conditions, or provisions of this Lease.

7.24

Except where contrary to any provision of this Lease, no right or remedy herein conferred upon or reserved to either party is intended to be exclusive of any other right or remedy, and each right or remedy given hereunder is in addition to any now or hereafter existing at law, in equity or by statute.

ARTICLE XXII

TERMINATION CLAUSE

The Lessor shall have the right to terminate this lease on one year's notice to the Tenant provided that the Landlord pay to the Tenant Seventy Thousand Dollars (\$70,000.00) at the time the Tenant vacates the premises. If Landlord exercises its right to terminate during the renewal term, it shall pay the Tenant Ninety Thousand Dollars (\$90,000.00) as provided herein. Should the Landlord desire to exercise its rights under this agreement, it shall provide notice by registered mail, return receipt requested to Tenant as provided in Paragraph XVII hereafter and Tenant shall vacate the premises within one year from the date the notice is deposited in the U.S. Mail, registered mail, postage pre-paid.

Failure of Tenant to vacate the premises within said one year period shall be considered a breach and default pursuant to the terms of Paragraph XIV hereof.

ARTICLE XXIII

FORCE MAJEURE

In the event that Landlord or Tenant shall be delayed, hindered in or prevented from the performance of any act required hereunder by reasons of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, the act, failure to act or default of the other party, war or other reason

7.25

beyond their control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Article shall not operate to excuse the Tenant from payment of rent or any other payments required by this Lease

ARTICLE XXIV

CONSTRUCTION OF LEASE

The invalidity of one or more phrases, sentences, clauses or Articles contained in this Lease shall not affect the remaining portion of this Lease or any part thereof, and if any one or more of the phrases, sentences, clauses or Articles contained in this Lease should be declared invalid by the final order, decree or judgement of a court of competent jurisdiction, this Lease shall be construed as if such invalid phrase, sentence, clause or Article had not been inserted in this lease

ARTICLE XXV

ENTIRE AGREEMENT

This Lease sets forth the entire agreement made between the parties hereto and cannot be orally modified or amended, except in writing duly executed by the respective parties.

ARTICLE XXVI

HOLDOVER

If the Tenant remains in the Premises beyond the expiration of this Lease, such holding over shall not be deemed to create any tenancy but the Tenant shall be a Tenant at Sufferance only at a daily rate equal to the rent and other charges under this Lease.

7.26

ARTICLE XXVII

SUCCESSORS OR ASSIGNS

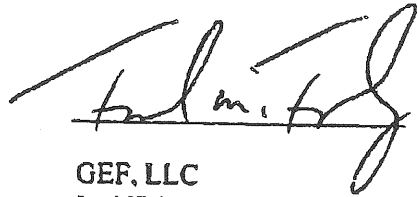
The covenants and agreements herein contained shall, subject to the provisions of this Lease, bind and insure to the benefit of the Landlord, its successors and assigns and Tenant, its successors and assigns, except as otherwise provided herein.

ARTICLE XXVIII

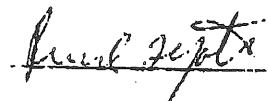
EXECUTION

This Lease is executed in triplicate, all copies of which are identical, and any one of which is deemed to be complete in itself and may be introduced in evidence or used for any purpose without the production of the other copy. The headnotes and margin notes throughout this Lease are for convenience and reference only, and shall in no way be held or deemed to define, limit, explain, describe, modify or add to the interpretation, construction, or meaning of any provision of this Lease.

WITNESS the execution hereof as a sealed instrument.



GEF, LLC
LANDLORD



BAY VIEW SEAFOOD, INC
TENANT

Mar 08 01 05:05p

Prudential Akers Real Est 207-774-8347

p.26

11:07 AM 10.46 FAX 207 773 0788

Law Offices

24

7.27

Dick Yates

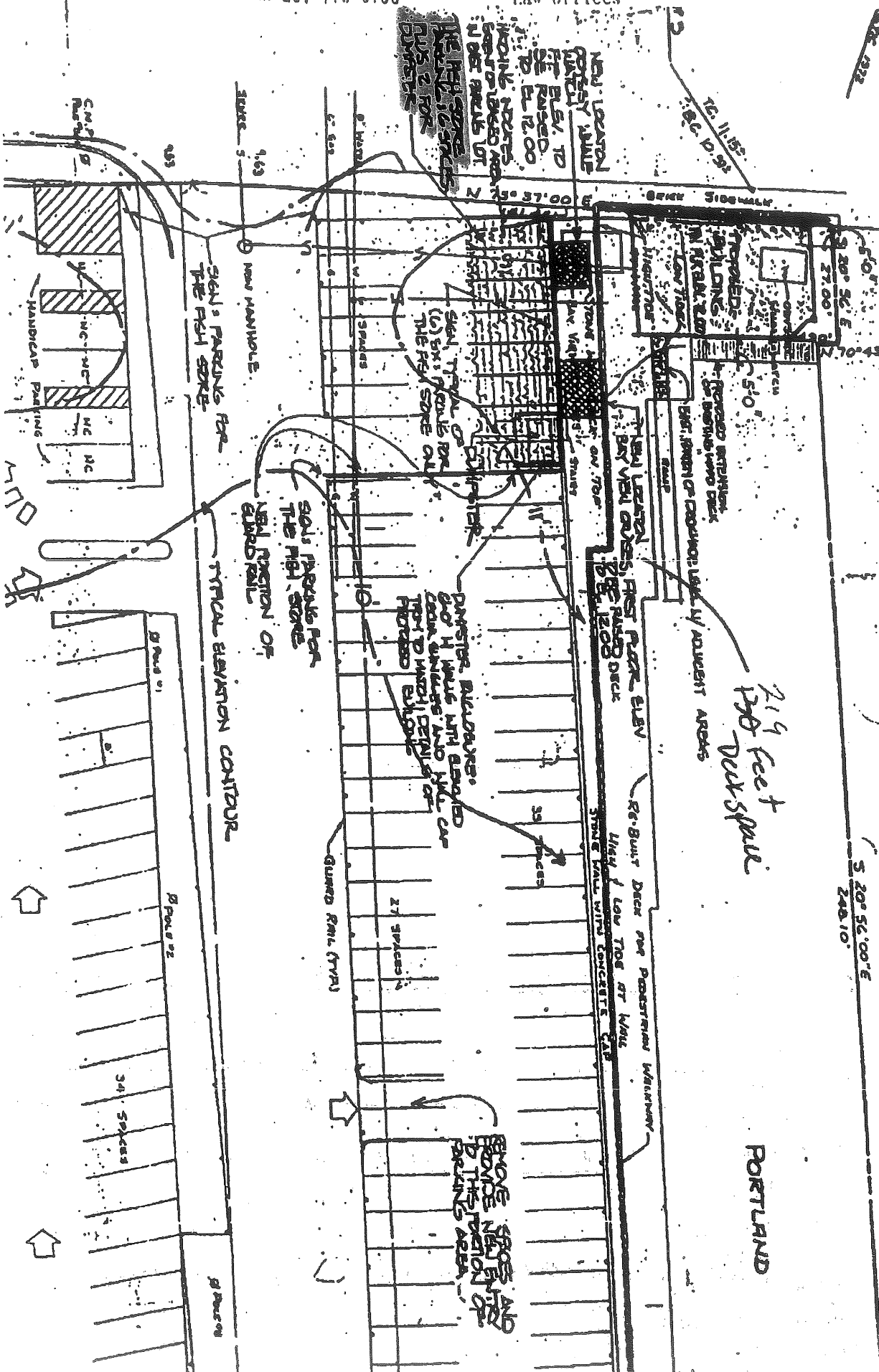
DICK YATES, PERSONALLY

7.28

25

7.28

Law Offices



214 feet
Deck space

PORTLAND

BAY VIEW SURVEY
EXHIBIT A
Indicates location

AH8

City of Portland, Maine
IN THE CITY COUNCIL

AMENDMENT TO PORTLAND CITY CODE CHAPTER 14 (LAND USE)
ARTICLE III, DIVISION 18 (WATERFRONT)
SECS. 14-314(e) and 14-315(c)

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

1. That Chapter 14 (Land Use), Article III (Zoning), Division 18 (Waterfront), Section 14-314 (Permitted Uses) is hereby amended to read as follows:

Sec. 14-314. Permitted uses.

...

(e) *Commercial uses in any area of a building existing on January 4, 1993 or having a valid, unexpired site plan on received site plan approval prior to January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier: Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:*

...

2. That Chapter 14 (Land Use), Article III (Zoning), Division 18 (Waterfront), Section 14-315 (Conditional Uses) is hereby amended to read as follows:

Sec. 14-315. Conditional uses.

...

(c) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 or having a valid, unexpired site plan on received site plan approval prior to January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier.)

Att 8/1

into contiguous and newly created building space of no more than 2000 sq. ft., total, shall be allowed only as follows:

. . .

|

From: Jay Reynolds
To: Jonathan Spence
Date: Wed, Mar 6, 2002 9:01 AM
Subject: Re: Wednesday

>>> Jonathan Spence 03/06 8:51 AM >>>

>>> Jay Reynolds 03/05 12:04 PM >>>

>>> Sarah Hopkins 03/05 11:58 AM >>>

>>> Sarah Hopkins 02/27 11:42 AM >>>

Development Review Interdepartmental Agenda for Wed. March 6/2002, 10:00 to 11:30, @ Planning Office

Wrap up issues/final memos

1. PROP hanover st, public hearing march 12th...rk
2. PROP monroe/greenleaf st., public hearing march 12th...rk
3. Bayview Rest. 184 Commercial Street. Marge issues....bn

New Applications

1. 941 Riverside Street...reapproval....kt
2. Coming Soon to a theatre near YOU .. Boys Club Addition... ms
3. Quarry Hill development...sh
4. Maggie II, Broadway PRUD....js
5. Oakhurst exemption....js
6. new app.s.....everything from slz's to 14-40.....jr

Ongoing Review

1. Aquarium Research lab. new text change language...bn
2. Custom House geothermal wells. piercing the Earth's crust...bn
3. Waterville/Fore Street.....kt
4. Franklin/Commercial Hotel....sidewalk a bit narrow....js
5. 10 Dana Street/Plum Street.....new info.....jr

Post Approval/Revisions/Details

1. Castle in the Park.....bn
2. Holm Ave. condos change.....tony.....jr

Add to the agenda by replying to all recipients (including yourself). Add projects to the end of the list below, your name, and any "heads up" issues for attention. If you wish to be removed from this routing, or if unable to attend, e-mail Sarah Hopkins.

SUBSTITUTE ORDER

**AMENDMENT TO PORTLAND CITY CODE CHAPTER 14 (LAND USE)
ARTICLE III, DIVISION 18 (WATERFRONT)
SECS. 14-314(e) and 14-315(c)**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

1. That Chapter 14 (Land Use), Article III (Zoning), Division 18 (Waterfront), Section 14-314 (Permitted Uses) is hereby amended to read as follows:

Sec. 14-314. Permitted uses.

. . .

(e) *Commercial uses in any area of a building existing on January 4, 1993 or having a valid, un-expired site plan on ~~received site plan approval prior to~~ January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier: Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:*

. . .

2. That Chapter 14 (Land Use), Article III (Zoning), Division 18 (Waterfront), Section 14-315 (Conditional Uses) is hereby amended to read as follows:

Sec. 14-315. Conditional uses.

. . .

(c) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 or having a valid, un-expired site plan on ~~received site plan approval prior to~~ January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier.) into contiguous and newly created building space of no

more than 2000 sq. ft., total, shall be allowed only
as follows:

. . .

O:\OFFICE\Orders\2002\amend WCZ text change (substitute order).doc

O:\Office\Orders\amend WCZ text change (substitute order)

City of Portland, Maine
IN THE CITY COUNCIL

Order 131-01/02
Tab 13 12-17-01

AMENDMENT TO PORTLAND CITY CODE CHAPTER 14 (LAND USE)
ARTICLE III, DIVISION 18 (WATERFRONT)
SECS. 14-314(e) and 14-315(c)

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE IN
CITY COUNCIL ASSEMBLED AS FOLLOWS:

1. That Chapter 14 (Land Use), Article III (Zoning), Division
18 (Waterfront), Section 14-314 (Permitted Uses) is hereby
amended to read as follows:

Sec. 14-314. Permitted uses.

....

(e) Commercial uses in any area of a building existing on
or having received site plan approval prior to January
4, 1993, and located within thirty-five feet of the
southerly edge of Commercial Street between Maine
Wharf and the city fish pier: Subject to section
14-314(f)1 and 14-315(a), the following uses shall be
permitted:

See Revised order bag

....

2. That Chapter 14 (Land Use), Article III (Zoning), Division
18 (Waterfront), Section 14-315 (Conditional Uses) is hereby
amended to read as follows:

Sec. 14-315. Conditional uses.

....

(c) Expansion of a non-water dependent, non-marine related
use permitted under 14-314(e) (Commercial uses in
buildings existing on or having received site plan
approval prior to January 4, 1993 and located within
thirty-five feet of the southerly edge of Commercial
Street between Maine Wharf and the city fish pier.)
into contiguous and newly created building space of no
more than 2000 sq. ft., total, shall be allowed only
as follows:

...

**CITY OF PORTLAND, MAINE
CITY COUNCIL AGENDA REQUEST FORM**

TO: Linda Cohen, City Clerk
FROM: Alexander Jaegerman, Chief Planner
DATE: December 5, 2001
SUBJECT: Agenda Request

- 1) Council Meeting at which action is requested: January 7, 2001
2) Can action be taken at a later date? YES NO

I. SUMMARY OF ISSUE

Thomas Dana, prospective owner of the Bayview Restaurant at 184 Commercial Street, requests a Public Hearing regarding a proposal to change the text of the Waterfront Central Zone.

The result of the text change would expand the provision within the permitted use section that allows non-marine uses in buildings that were both in existence as of January 4, 1993 and within 35 feet of Commercial Street. The applicant requests that the non-marine use provision be applied to buildings that were "existing on or having received site plan approval prior to" the January 1993 date.

II. REASON FOR SUBMISSION (What issue/problem will this address?)

The existing building housing the Bayview Restaurant has legal non-conforming status for operation of a non-marine use in the Waterfront Central Zone. The applicant has a letter of intent to buy the business at 184 Commercial Street, but wishes to change the status of the business from a grand fathered non-conforming use to a permitted use. As a non-conforming use, the applicant cannot legally expand the business as a non-marine related use in the Waterfront Central Zone.

As a separate but related issue, the Bayview Restaurant has, since its construction in 1993, utilized outside seating along the pier edge in the area of the Chandler's Wharf parking lot. City Zoning and Legal staff have determined that this exterior seating is illegal and is not considered a grand fathered use. The applicant would like to legitimize the exterior seating

as an expansion of the restaurant use.

III. **INTENDED RESULT** (How does it resolve the issue/problem?)

If the proposed text change is approved, the applicant would then come back before the Planning Board to expand the restaurant use to include the existing exterior seating as a conditional use expansion under the "Sapporo amendment."

The Planning Staff knows of no other building that could take advantage of this provision if it were approved.

IV. **FINANCIAL IMPACT**

There are no foreseen financial impacts to the City from this text change.

V. **STAFF ANALYSIS & RECOMMENDATION**

The Planning Board voted 5-1 (Delogue opposed) that this text change is in conformance with the Comprehensive Plan and to recommend this Zone Change.

Attachments:

City Council Report #62-01

*Return to
Bill
Needleman*

WATERFRONT CENTRAL ZONE

THOMAS DANA, APPLICANT

Submitted to:

Portland City Council
Portland, Maine

December 5, 2001

I. INTRODUCTION

Thomas Dana, prospective owner of the Bayview Restaurant at 184 Commercial Street, requests a Public Hearing to discuss a proposal to change the text of the Waterfront Central Zone.

The result of the text change would expand the provision within the permitted use section that allows non-marine uses in buildings that were both in existence as of January 4, 1993 and within 35 feet of Commercial Street. The applicant requests that the non-marine use provision be applied to buildings that were "existing on or having received site plan approval prior to" the January 1993 date.

The applicant has a letter of intent to buy the business at 184 Commercial Street, but wishes to change the status of the business from a grandfathered non-conforming use to a permitted use. If approved, the applicant would then come back before the Planning Board to expand the use to legitimize existing exterior seating as a conditional use expansion under the recently approved "Sapporo amendment."

II. BACKGROUND

The Bayview Restaurant site plan had been approved as a permitted use in December 22, 1992, under the old zoning regulations. The current zoning was adopted on January 4, 1993, and this date became the eligibility date for all buildings within 35 feet of Commercial Street to be able to house non-marine uses as a permitted use. The building permit for the Bayview Restaurant was issued in December of 1993, as a grandfathered non-conforming use, as allowed under the zoning in place during the site plan review. The applicant's goal is to allow restaurant use as a permitted use. Staff knows of no other building to which this text change would apply.

In summer of 2000, the City Council adopted a text change to the Waterfront Central Zone to allow the expansion of permitted non-marine uses as allowed under 14-314(5): uses in buildings located wholly or partially within 35 feet of the southerly sideline of Commercial Street: the "Sapporo amendment." As a second step, should the City Council adopt this text change, the applicant will apply for a conditional use appeal to the Planning Board to expand the restaurant use. Currently, exterior seating exists in the area adjacent to the restaurant, but City zoning and legal staff have determined that this use is non-conforming and not grandfathered. A direct result of this text change will be a consideration of whether the exterior seating creates an adverse impact on potential marine use on the pier.

While the status of the exterior seating is not currently before the Council, the issues are implicit within the discussion of this Text Change. If the text change is approved, the Planning Board will then review applications for site plan and conditional use to expand the Bayview Restaurant to include the exterior seating. In reviewing any expansion of a non-marine use, the Board will apply the standards of No Averse Impact and the Conditional Use Standards of the Waterfront Central Zone

III. CURRENT ZONING

Code 14-314(5) allows non-marine uses in the entirety of buildings located wholly or partially within 35 feet of the southerly sideline of Commercial Street, conditioned that the buildings existed prior to January 4, 1993. See current WCZ language, Attachment 3.

The intention and purpose of the WCZ zone recognizes that the rents provided by non-marine related uses help to maintain the marine related infrastructure located on the waterside of the pier properties. The text change proposed intends to expand non-marine use (and the potential for expansion) to the Bayview Restaurant building, while retaining all other requirements and limitations found in the WCZ language. While compatible non-marine uses are encouraged, any non-marine use must adhere to the No Adverse Impact section of the WCZ, 14-313.5. No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. Please see the Policy Consideration section below.

IV. PROPOSED TEXT CHANGE

The intention of this provision is to allow permitted non-marine uses as allowed under 14-314(5), uses in buildings located wholly or partially within 35 feet of the southerly sideline of Commercial Street, to be applied to buildings approved but not constructed prior to January 4, 1993.

Draft Text Language: To be inserted into Permitted Use for the WCZ, 14-315 (3)

“Commercial uses in any area of a building existing on or having received site plan approved prior to January 4, 1993, and located with thirty-five feet off the southerly edge of Commercial Street between Maine Wharf and the city fish pier:...”

V. COMPREHENSIVE PLAN AND LAND USE POLICY

The applicant requests this text change to convert legal nonconforming use into a permitted use. The distinction is important to the applicant since only permitted uses can be legally expanded. The Board has found that the proposal is compatible with the current Comprehensive Plan. Should the text change be implemented by the City Council, the Planning Board will then apply Conditional Use Standards listed under 14-315 (WCZ Conditional Uses) at such time that the applicant seeks to expand the restaurant use.

Waterfront Alliance Recommendations and Current Zoning

In April of 1992, the Waterfront Alliance produced a policy document titled “Waterfront Alliance Recommendations to the City of Portland.” This report outlines the position that properties with direct water access should be limited to water dependent and marine related uses, but that other portions of the waterfront (upper stories, and areas well away from water access) can and should accommodate “marine compatible” uses to help support the maintenance of pier infrastructure. As stated in the report’s preamble,

"Water-dependent users are the lifeblood of Portland's waterfront and their interests must be protected above all others. We further recognize that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long term growth."

The City Council used this document as the policy basis for the current waterfront zoning, as enacted on January 4, 1993. Simultaneously adopting the Council Report as part of the Comprehensive Plan in Council Order 168-93, the 1993 zoning amendments followed the Waterfront Alliance report by putting a priority on the preservation of berthing and working pier deck space for existing and potential marine uses. The Purpose and No Adverse Impact sections of the WCZ text, included below, fully express the intent of the zone and the underlying policy.

Waterfront Central Purpose

Sec. 14-313. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the

trade.

(Ord. No. 168-93, § 2, 1-4-93)

No Adverse Impacts

Sec. 14-313.5. No adverse impact on marine uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

VI. SUMMARY

The conversion of 184 Commercial Street from a legal non-conforming use to a permitted use completes a "grandfathering" process that began when the building permit was issued under the pre-Jan.1993 zoning. The impacts of this text change are discrete and staff has no knowledge of other structures or uses to which the amendment would apply. The greater question will arise when Mr. Dana applies to expand the restaurant use under the "Sapporo Amendment." At that time, the Planning Board will need to evaluate the physical layout of the existing exterior seating and its proximity to the working edge of the pier as it relates to the "No Adverse Impact" clause of the zoning language. While the issue of legitimizing exterior seating is not spelled out in the language change contemplated here, the City Council should consider the issue as integral to the current application.

Attachments:

1. Written Statements
2. Application
3. Current WCZ Zone Text
4. Zoning Correspondence
5. Letter from Corporation Council
6. Letter of Intent
7. Letter of Support
8. Photos
9. Site Sketch
10. Context Sketch
11. Property Survey

Att 1.1

Tod Dana

P.O. Box 169 * Portland, Maine 04112
Tel: 207-775-2228 * Fax: 207-761-8280
Email: asiawest@aol.com

Portland Planning Board
City of Portland
389 Congress Street
Portland, Maine 04101

August 22, 2001

Dear Members of the Planning Board,

As an addendum to my application for a text change in city ordinance section 14-314 (e) in the WCZ zone, I want to explain why I am seeking the text change.

I first entered into a Letter of Intent with the owners of the "Bayview Seafood Restaurant" this past March. As part of my due diligence, I discovered that the twelve picnic tables on the premises (which have been in use for the 7 years the restaurant has been operating), were not included in the initial zoning application back in 1993. As a result, it appears that the seating for this establishment is not recognized by the city as "legal" despite the fact that permits for liquor were issued by the city each year for these outdoor seats.

In an effort to "legitimize" the aforementioned seating and conclude my purchase of the restaurant, I am seeking a text change, which will make this restaurant eligible for outdoor seating under the "conditional uses" section of the ordinance (sec. 14-315).

As a result of my discovering the "illegitimate" status of the outdoor seating, the restaurant sat vacant this summer. This seems very unfortunate given that this seasonal restaurant has been a very popular tourist destination for the last 7 summers. It is my sincere hope that the planning board and city council will approve our text change, so we can re-open "Bayview Seafood Restaurant" next season.

Thank you for your consideration.

Sincerely,



Tod Dana

l.2

Text Change Amendment

Requested Text Change: The applicant requests that WCZ zone Section 14-314(e) be amended to state, in part:

Commercial uses in any area of a building existing on or having received site plan approval prior to January 4, 1993, and located with thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier: Subject to section 14-314(f)(1) and 14-315(a), the following uses shall be permitted

Section 14-314(e).

Background

In 1994, the Bayview Seafood Restaurant and Retail Operation, located at 180 Commercial Street, opened for business. It was founded by Captain Dick Yates, who also owns and still operates the adjoining Bayview Sea Cruises. Since 1994, the restaurant has served breakfast and primarily seafood fair for lunch and dinner. Since 1994, the restaurant has operated as a retail store by selling seafood to the general public. Since 1994, the restaurant has also had outdoor seating, in the form of a deck and picnic tables and a corresponding liquor license.

The Applicant, Salty Lobster Company, recently obtained an option to purchase the restaurant. The Applicant intends to operate a lunch and dinner lobster shack somewhat similar to the Lobster Shack in Cape Elizabeth and/or the Lobster Cooker in Freeport. The Applicant also plans to obtain its commercial wholesale lobster license; buy lobsters and seafood directly from local lobsterman; incorporate the delivery of the lobsters to into the theme of the restaurant; and continue the 7 year tradition of operating as a retail seafood outlet by selling seafood to the general public.

In performing its due diligence on this business, the Applicant was informed by City Officials that the restaurant was not properly permitted to have outdoor seating, in spite of the fact that it had a valid liquor license. Needless to say the Applicants were quite surprised by this development, given the fact that the deck has been in existence and use since on or around 1994; the restaurant has a valid liquor license for the deck; there are outdoor lights on the deck; and a large sign on the side of the restaurant that says "Deck Seating." In an effort to salvage the deal, the parties agreed to condition the sale of the business upon the approval of a text change to the WCZ zone that would permit the Applicant to use the existing deck for outdoor seating, as has been done for the past 7 years of operation.

Text Change Overview

As you know, City Ordinance §14-315.2(3), permits certain businesses in the WCZ Zone that were in existence prior to January 4, 1993, to qualify for a conditional use permit for outdoor seating.

The Bayview Seafood Restaurant did not exist as of January 4, 1993. However, the site plan for a restaurant to be located at 180 Commercial Street was approved on December 22, 1992. The Building Permit for 180 Commercial Street was issued on December 7, 1993. The building now located at 180 Commercial Street was completed shortly thereafter. Our discussions with City Officials and Attorneys have revealed that this set of circumstances does not fall under the grandfather clause set forth in §14-315.2(3). Accordingly, the Applicant is seeking a narrowly tailored text change to permit the Bayview Seafood Restaurant and its successor business to continue using the aforementioned outdoor seating. This request is quite similar to the narrowly tailored text change sought and received by Sapporo to expand the size of its Commercial Street restaurant.

It is the Applicant's understanding that in order to prevail in its request, the Applicant must demonstrate the text change does not run contrary in anyway to the "Purpose" of the WCZ zone. It is obvious from the circumstances of this case that the requested text change does not run contrary in anyway to the "Purpose" of the WCZ zone. In fact, the text change is a narrowly tailored request designed to effect only one business, which actually supports the Purpose of the WCZ zone.

The Purpose of the Waterfront Central Zone is set forth in detail in WCZ Section 14-313 as follows:

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;
- (b) The second priority is to encourage other marine and marine related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible with first and second priority uses; and

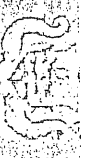
- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

Section 14-313.

The operation of a lobster shack and/or seafood restaurant, with outdoor seating, on 180 Commercial Street, is in and of itself a water-dependent and marine-related support use of the premises. By its very nature, the restaurant is/would be reliant upon local fisherman to supply the product sold on the premises. The restaurant would aesthetically compliment its current environment. The Applicant's plan to directly purchase and wholesale lobsters is an even stronger link to water-dependent and marine-related support uses.

As depicted on the attached map and supporting photographs, the Applicant's operation of a lobster shack and use of outdoor seating is quite consistent with and supported by the lots, businesses and slips in the immediate area of the outdoor seating. (See for example: New Meadows Lobsterhouse, DiMillos, Sightseeing Tour Boats, Long Wharf Cruises, Bayview Cruises, Fish Houses, etc. . . .) This map and these photographs are the best evidence as to why this narrowly tailored exception harms no one, aids the parties in this transaction and is consistent with the Purpose of the WCZ zone.



December 22, 1992

CITY OF PORTLAND

Mr. Josef Chalac
Architect
48 Union Wharf
Portland, ME 04101
Re: The Fish Store

Dear Josef:

On December 22, 1992, the Portland Planning Authority granted minor site plan approval for a fish retail/restaurant building to be located at 180 Commercial Street with the following conditions:

1. That construction plans shall be signed and stamped by a State of Maine registered professional engineer to conform with the Division 26.5 Flood Plain Management Regulations of the Land Use Code.

The approval is based on the submitted site plan. If you need to make any modifications to the approved site plan, you must submit a revised site plan for staff review and approval. The site plan approval will be deemed to have expired unless work in the development has commenced within one (1) year of the approval or within a time period agreed upon in writing by the City and the applicant. A performance guarantee in a form acceptable to the City of Portland and an inspection fee equal to 1.7% of the performance guarantee will have to be posted before a building permit can be issued. A defect bond, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.

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

Sincerely,

Joseph E. Gray, Jr.
Director of Planning and Urban Development

cc: Richard Knowland, Senior Planner/Acting Chief Planner

P. Samuel Hoffses, Chief of Building Inspections

William Clroux, Zoning Administrator

Melodie Esterberg, Development Review Coordinator

George Flaherty, Director of Parks and Public Works

William Bray, Traffic Engineer/Deputy Director of Parks and Public Works

Jeff Farling, City Architect

Natalie Burns, Associate Corporation Counsel
Lt. Wallace Garroway, Fire Prevention
Paul Mehoff, Materials Engineer
Louise Chase, Secretary, Building Permits
Maine Maritime Activities/Golf of Maine, Inc., P.O. 808, South Portland, ME 04116



APPLICATION FOR ZONING AMENDMENT
 City of Portland, Maine
 Department of Planning and Urban Development
 Portland Planning Board

AH 2 v. 1

1. Applicant Information:

THOMAS DANA
 Name

P.O. BOX 169
 Address

PORTLAND, ME. 04112

207.671.5566 207.761.8280
 Phone Fax

2. Subject Property:

184 COMMERCIAL STREET
 Address

PORTLAND, ME. 04101

031-J-030
 Assessor's Reference (Chart-Block-Lot)

3. Property Owner: Applicant Other

G.E.F. LLC (FRED FORSLEY)
 Name

P.O. BOX 2808
 Address

S. PORTLAND, ME. 04116

828-5136
 Phone Fax

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

TENANT (PENDING TEXT CHANGE)

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

I will be unavailable by phone between 8/28/01 - 9/21/01
 I am reachable by email though: asiswest@aol.com

Att 2.2

Describe the existing use of the subject property: _____

Seafood RESTAURANT / RETAIL SEAFOOD

7. Current Zoning Designation(s): WCZ

8. Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

SEAFOOD RESTAURANT / RETAIL SEAFOOD

9. Sketch Plan: On a separate sheet please provide a sketch plan of the property, showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1"=10' to 1"=100')

- 10. Proposed Zoning: Please check all that apply:
 - A. Zoning Map Amendment, from _____ to _____
 - B. Zoning Text Amendment to Section 14- 314(e)

For Zoning Text Amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (example), and language to be added is depicted with underline (example).

C. Conditional or Contract Zone

A conditional or contract rezoning may be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan and compatible with the surrounding neighborhood. (Please refer to Division 1.5, Sections 14-60 to 62)

AH-2.3

	<u>1-25 Units</u>	<u>26-50 Units</u>	<u>51-75 Units</u>	<u>75 & Over</u>
Residential Zones	\$350.00	\$400.00	\$450.00	\$500.00
Nonresidential Zones	\$350.00	\$400.00	\$450.00	\$500.00
	0-15,000 sq. ft. or 0-5 acres (whichever is less)	15,000-30,000 sq. ft. or 6-10 acres (whichever is less)	30,000-45,000 sq. ft. or 10-15 acres (whichever is less)	45,000-60,000 sq. ft. or 15-20 acres (whichever is less)
• Legal Advertisements (one for workshop and one for public hearing)	percent of total bill			
• Notices (one for workshop and one for public hearing)	40 cents each			
• Text Amendments	\$300.00			

\$ 300.- Amount of Fee

12. Signature: The above information is true and accurate to the best of my knowledge.

8/22/01
Date of Filing

Tom H. Dana
Signature of Applicant

Further Information:

Please contact the Planning Office for further information regarding the rezoning process. Applicants are encouraged to make an appointment to discuss their rezoning requests before filing the application.

Applicants are encouraged to include a letter or narrative to accompany the rezoning application which can provide additional background or context information, and describe the proposed rezoning and reasons for the request in a manner that best suits the situation.

In the event of withdrawal of the zoning amendment application by the applicant in writing prior to the submission of the advertisement copy to the newspaper to announce the public hearing, a refund of two-thirds of the amount of the zone change fee will be made to the applicant by the City of Portland.

Portland Planning Board
Portland, Maine

Effective: July 6, 1998

Sec. 14-314.(e)

Commercial uses in any area of a building existing on, or having received site plan approval prior to January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier: Subject to section 14-314 (f) 1 and 14-315 (a), the following uses shall be permitted:

**The underlined text is the additional wording that I am proposing.*

DIVISION 18. WATERFRONT CENTRAL ZONE*

*Editor's note--Ord. No. 168-93, § 2, adopted Jan. 4, 1993, repealed former Divs. 18, 18.5 and 18.7, §§ 14-306--14-320.2, which pertained to waterfront zones, and enacted new provisions as Divs. 18, 18.5 and 18.7 to read as herein set out. Formerly, such provisions derived from Ord. No. 426-83, § 1, adopted Apr. 25, 1983; Ord. No. 427-83, § 1, adopted Apr. 25, 1983; Ord. No. 355-85, § 1, adopted Jan. 7, 1985; Ord. No. 438-86, § 1, adopted Apr. 7, 1986; Ord. No. 189-87, § 3, adopted Feb. 7, 1987; Ord. No. 174-87, 's; 1, 2, adopted Mar. 4, 1987; Ref. of May 5, 1987; Ord. No. 385-87, adopted Apr. 6, 1987; Ord. No. 36-89, §§ 1, 2, adopted June 28, 1989; and Ord. No. 15-92, §§ 22, 23, adopted June 15, 1992.

Sec. 14-313. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-313.5. No adverse impact on marine uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-314. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-313.5 (no adverse impact on marine uses), the following uses are permitted in the waterfront central zone:

- (a) *Marine:*
 1. Marine products, wholesaling, distribution and retailing;
 2. Marine repair services and machine shops;
 3. Tugboat, fireboat, pilot boat and similar services;
 4. Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels;
 5. Marine industrial welding and fabricating;
 6. Shipbuilding and facilities for construction, maintenance and repair of vessels;
 7. Commercial marine transport and excursion services, including ferries, captained charter services, sport fishing and water taxis;
 8. Cargo handling facilities, including docking, loading and related storage;

9. Boat repair yards;
10. Boat storage facilities, excluding rack storage facilities;
11. Seafood processing;
12. Seafood packing and packaging;
13. Seafood loading and seafood distribution;
14. Fabrication, storage and repair of fishing equipment;
15. Ice-making services;
16. Facilities for marine construction and salvage;
17. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices;
18. Fabrication of marine-related goods;
19. Fishing and commercial vessel berthing;
20. Noncommercial berthing of less than fifty (50) linear feet per pier;
21. Marine office, including but not limited to offices of owners of wharves or their agents, and naval architects, and seafood brokers;
22. Public landings;
23. Marine research, education, and laboratory facilities.

(b) *Commercial uses above the ground floor level in buildings in existence on January 4, 1993:* Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:

1. Professional, business, and general offices;
2. Business service establishments;
3. Cabinet and carpentry shops and accessory retail sales of only those products that are produced on the premises;

- 4. Intermodal transportation facilities;
- 5. Cold storage facilities.

(c) *Industrial uses above the ground floor level of buildings in existence on January 4, 1993:* Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:

- 1. Warehousing and wholesaling;
- 2. Industrial uses which meet the performance standards of the I-2 zone.

(d) *Public:* Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:

- 1. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures, provided that such structures are located more than one hundred (100) feet from the water;
- 2. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces, including without limitation pedestrian bicycle trails;
- 3. Municipal office uses located above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building unless approved pursuant to section 14-315. Other municipal uses which need to be located on the ground floor level because of operational necessity may be so located on city-owned property.

(e) *Commercial uses in any area of a building existing on January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier:* Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:

- 1. Professional, business, and general offices;
- 2. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall not be permitted under this section;
- 3. Restaurants, provided that food service and consumption shall be the primary function of the restaurant;

- 4. Banking services;
- 5. Laundry and dry cleaning services;
- 6. Cabinet and carpentry shops and accessory retail sales of products produced on the premises;
- 7. Intermodal transportation facilities;
- 8. Cold storage facilities;
- 9. Museums and art galleries.

(f) *Other:* Accessory uses:

- 1. Notwithstanding sections 14-331, 14-334, 14-404 or any other provision of this Code, parking for uses other than those set forth in section 14-314(a) shall not be considered a permitted accessory use on-site and shall be subject to the provisions of section 14-315(a).
- 2. Except as provided in subsection a. above, accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses. Food service establishments, newsstands and other similar retail and service support uses shall only be permitted as accessory uses if they are part of and located within the lot lines of a use set forth in section 14-314(a)1, 7, or 22; that such uses do not exceed two thousand (2,000) square feet in total floor area of the building, or twenty-five (25) percent of the total floor area of the building, whichever is less, and that each individual use does not exceed one thousand (1,000) square feet in total floor area of the building; and further provided that such accessory uses provide goods or services that are supportive of the principal use and its clientele.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-315. Conditional uses.

The following uses shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471(c), section 14-474(a), or any other provision of this Code, the planning board shall be substituted for the board of appeals as the reviewing authority, and further provided that in addition to the provisions of section 14-474(c)(2), section 14-313.5, and any other conditions specified under the particular use below, they shall also meet the following conditions:

- (a) The proposed use shall be compatible with existing and potential marine uses in the vicinity;
- (b) The proposed use shall not impede access to the water by existing or potential marine uses; and
- (c) For conditional uses that propose or require twenty (20) or more parking spaces, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development, specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1). For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.

1. Parking: Notwithstanding sections 14-317(g), 14-331, 14-334 and article V of this chapter, no parking shall be allowed in this zone for conditional uses and uses permitted only above the ground floor level, unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces required for marine uses that are required by section 14-314(a). The remainder of parking required for such uses shall be provided off-site and in other zones where parking is a permitted use.

(2) Marine:

a. Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:

1. Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the planning board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.

b. Fish by-products processing, provided that:

1. Any fish by-products processing facility has a valid rendering facility license under chapter 12; and

2. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.
- c. Boat rack storage facilities, provided that:
1. Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.
- (3) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier.) into contiguous and newly created building space of no more than 2000 sq. ft., total, shall be allowed only as follows:
- (a) the use may occupy ground floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or
 - (b) the use may occupy a ground floor area of no more than 1250 square feet beyond 35 feet from the southerly sideline of Commercial Street; and
 - (c) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and
 - (d) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

(Ord. No. 168-93, § 2, 1-4-93; Substitute Ord. No. 00-42, 8-7-00)

Sec. 14-315.3. Contract or conditional rezoning.

Except as authorized in section 14-314(d), an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993, if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the standards of section 14-313.5 and all of the following standards:

- (a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314(b), (c) or (d).
- (b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314.
- (c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.
- (d) Any physical or legal impediments which preclude functional access from the site of the proposed development to the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.
- (e) The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits protection of existing water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels (either on-site or off-site) and visual and physical access to the waterfront for the general public.
- (f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline.
- (g) The proposed development does not significantly restrict air, light, or water views of other structures located in the vicinity, and does not create significant adverse local climatic effects such as increased winds, shadowing, or less efficient traffic, parking or circulation patterns.
- (h) The proposed development is consistent with the Portland Waterfront Public Access Design Guidelines, a copy of which is on file in the department of planning and urban development.
- (i) The proposed rezoning contains adequate provisions and/or conditions to ensure that the water-dependent use is not abandoned after the project is developed.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-315.5. Prohibited uses.

Uses which are not enumerated in either section 14-314 or 14-315 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

- a. Residential uses (not in existence on May 5, 1987).
- b. Hotels, motels or boatels.

c. Auditoriums, civic centers, convention centers or other meeting facilities.

d. Drinking establishments.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-316. Dimensional requirements.

In addition to the provisions of article III, division 25, of this Code, lots in the waterfront central zone shall be subject to the following requirements:

(a) *Minimum lot size:* None.

(b) *Minimum frontage:* None.

(c) *Minimum yard dimensions:*

Front setback: None.

Side setback: None.

Rear setback: None

Setback from pier line: Notwithstanding the above requirements, a minimum setback of five (5) feet from the edge of any pier, wharf or bulkhead shall be required for any structure. The setback area may be utilized for activities related to the principal uses carried on in the structure, subject to the provisions of sections 14-313 and 14-314, but shall not be utilized for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).

(d) *Maximum lot coverage:* One hundred (100) percent.

(e) *Maximum building height:* Thirty-five (35) feet.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-317. Performance standards.

All uses in the waterfront central zone shall comply with the following standards:

(a) *Outdoor storage of materials:* Outdoor storage of commodities and materials accessory to normal conduct of business, except pilings and/or cranes, shall be permitted to a maximum height of forty-five (45) feet, and such materials shall be entirely contained, including runoff contaminants and residual material, within a designated area within the lot boundaries.

(b) *Noise:* The level of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the

American National Standards Institute, Inc.), inherently and recurrently generated within the waterfront central zone shall not exceed seventy-five (75) decibels on the A scale at the boundaries of any lot, except for sound from construction activities, sound from traffic on public streets, sound from temporary activities such as festivals, and sound created as a result of, or relating to, an emergency, including sound from emergency warning signal devices. In measuring sound levels under this section, sounds with a continuous duration of less than sixty (60) seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of sixty (60) seconds or more shall be measured on the basis of the energy average sound level over a period of sixty (60) seconds (LEQ₁).

- (c) *Vibration:* Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries. This shall not apply to vibration resulting from activities aboard a vessel or from railroad vehicle activities, or from activities on a pile supported pier.
- (d) *Federal and state environmental regulations:* All uses shall comply with federal and state environmental statutes and regulations regarding emissions into the air, except where provisions of this Code are more stringent.
- (e) *Discharges into harbor areas:* No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the department of parks and public works in accordance with chapter 24, article III of this Code. All private sewage disposal or private wastewater treatment facilities shall comply with the provisions of chapter 24, article II of this Code and federal and state environmental statutes and regulations regarding wastewater discharges.
- (f) *Storage of vehicles:* Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.
- (g) *Landfill of docking and berthing areas:* Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. Sections 471 through 478, and permitted only if the landfill does not reduce the amount of linear berthing areas or space, or berthing capacity. If approved, construction shall be undertaken using methods approved by the department of parks and public works and shall be accomplished in accordance with the provisions of division 25 of this article and in a manner so as to ensure that a stable and impermeable wall of acceptable materials will completely contain the fill material and will not permit any fill material to leach into docking areas or navigable waters.

- (h) *Off-street parking:* Except as provided in section 14-315 or as required pursuant to article V (site plan), off-street parking is required at fifty (50) percent of the required number of parking spaces for specified uses as otherwise provided in division 20 of this article.
- (i) *Off-street loading:* Off-street loading is required as provided in division 21 of this article.
- (j) *Shoreland and flood plain management regulations:* Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.
- (k) *Lighting:* All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor nor have an unreasonable adverse impact on adjacent residential zones.
- (l) *Signs:* Signs shall be permitted as set forth in division 22 of this article.
- (m) *Storage of pollutants and oily wastes:* On-premises storage of pollutants and oily wastes shall not be permitted for more than forty-five (45) days.
- (n) *Compatibility of nonmarine uses with marine uses:* Nonmarine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither unreasonably interfere with the existence or operation of marine uses nor significantly impede access to vessel berthing or other access to the water by existing or potential marine uses as set forth in section 14-314(a). Siting of a use not set forth in section 14-314(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.
- (o) *Construction of new structures located within thirty-five feet of the southerly edge of Commercial Street:* Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street shall conform to the guidelines set forth in the Downtown Urban Design Guidelines, unless such structures are also located within one hundred (100) feet of the water. Such structures that are also located within one hundred (100) feet of the water shall conform to the extent practicable to the Downtown Urban Design Guidelines.

(Ord. No. 168-93, § 2, 1-4-93)

AH 4.1

AH 5

Tod Dana
P.O. Box 169
Portland, ME 04112

April 26, 2001



CITY OF PORTLAND

May 3, 2001

Associate Counsel
Charles A. Lane
Elizabeth L. Boynton
Donna M. Katsiaficas
Penny Littell

Hand Delivery
City of Portland
389 Congress Street
Portland, ME 04101

✓ Attention:
Marge Schmuckal – Zoning Administrator
Penny Littell – Associate Corporate Counsel
Sarah Hopkins - Development Review Program
Manager Planning & Urban Development

RE: 180 Commercial Street Property

Dear: Ms. Schmuckal, Ms. Littell & Ms. Hopkins:

I am writing to follow up my discussions with Ms. Schmuckal and Ms. Hopkins regarding the issue of a conditional use permit for outdoor seating at 180 Commercial Street. As I mentioned to Ms. Hopkins, I have an option to purchase the business, now known as the Bayview Seafood Restaurant, located at 180 Commercial Street. As you all know, City Ordinance §14-315.2(3) (a copy of which is attached), permits certain businesses in the WCZ Zone that were in existence prior to January 4, 1993 to qualify for a conditional use permit for outdoor seating. My question for all of you is whether this property qualifies for that conditional use.

To review, the site plan for a restaurant to be located at 180 Commercial Street was approved on December 22, 1992. The Building Permit for 180 Commercial Street was issued on December 7, 1993. The building now located at 180 Commercial Street was completed shortly thereafter. During our discussions, Ms. Schmuckal expressed to me that in her opinion the property's site plan approval prior to 1993 qualifies the property for the aforementioned conditional use under City Ordinance §14-315.2. I am now seeking written confirmation from Ms. Littell, on behalf of the City Attorney's office and from Ms. Schmuckal, to confirm that Ms. Schmuckal's opinion is consistent with that of the City Attorney. Upon receipt of this confirmation, it is my intent to promptly apply for a major site plan review and subsequent conditional use permit.

Given the time constraints involved in this case, your prompt response to my inquiry is greatly appreciated. I look forward to hearing from you very soon. In the interim, should you have any questions, please do not hesitate to call me at 671-5566.

Sincerely,

Tod Dana
Tod Dana

ial Street Property

d and reviewed your correspondence to Ms. Schmuckal, self, dated April 26, 2001, with regard to the property at 180 Commercial Street. The zoning requirements in that area are very clear. If a building was not in existence as of January 4, 1993, then any marine, non-water dependent use is not allowed. The site plan provided indicates the building at which you would like to use was only built some time after December 7, 1993. As a result, it is my opinion that such outdoor seating would not be allowed.

I discussed this matter with Marge Schmuckal as to this opinion and she agrees.

Please let me know if you have any questions.

Sincerely,

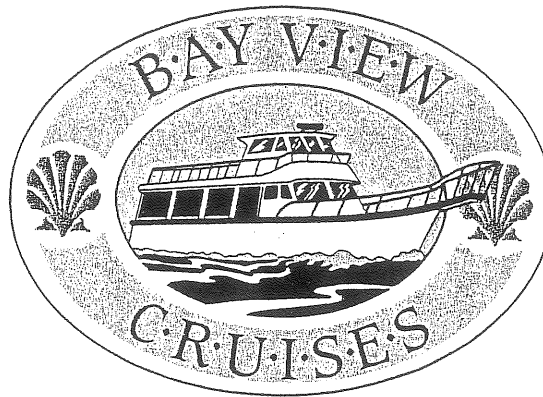
Penny Littell

Penny Littell
Associate Corporation Counsel

Zoning Administrator
Developmental Regional Services Manager

.doc

AA 7



"BAY VIEW LADY"

RICH YATES
Captain

October 2, 2001

Portland Planning Board
Portland City Hall
389 Congress Street
Portland, Maine 04101

Dear Members of the Planning Board:

I have been running a tour boat business called "Bay View Cruises" on the Portland waterfront for the last 14 years. I am writing this letter on behalf of Tod Dana, whom I understand is applying for a text change in a city ordinance, which will allow him to use the outdoor seating at the small seafood restaurant at the base of the pier.

Mr. Dana asked me whether I felt that the picnic tables presently on the wharf compromised the quality of the adjacent berthing. My answer to that question is a very strong "NO". I presently lease the berthing adjacent to the aforementioned picnic tables and I feel very strongly that the tables don't interfere at all with the successful operation of my tour boat business. In fact, I believe that the restaurant and its' waterfront seating have complimented and supported my business over the last 7 years.

Long Wharf has developed into the focal point of all waterfront tourist traffic. Almost all of the established tour boats in the city are docked at Long Wharf. The picnic tables of "Bayview Seafood" have provided a comfortable and attractive place for tourists to view the boats and wait for the next cruise. I believe all the other tour boat operators share my opinion,

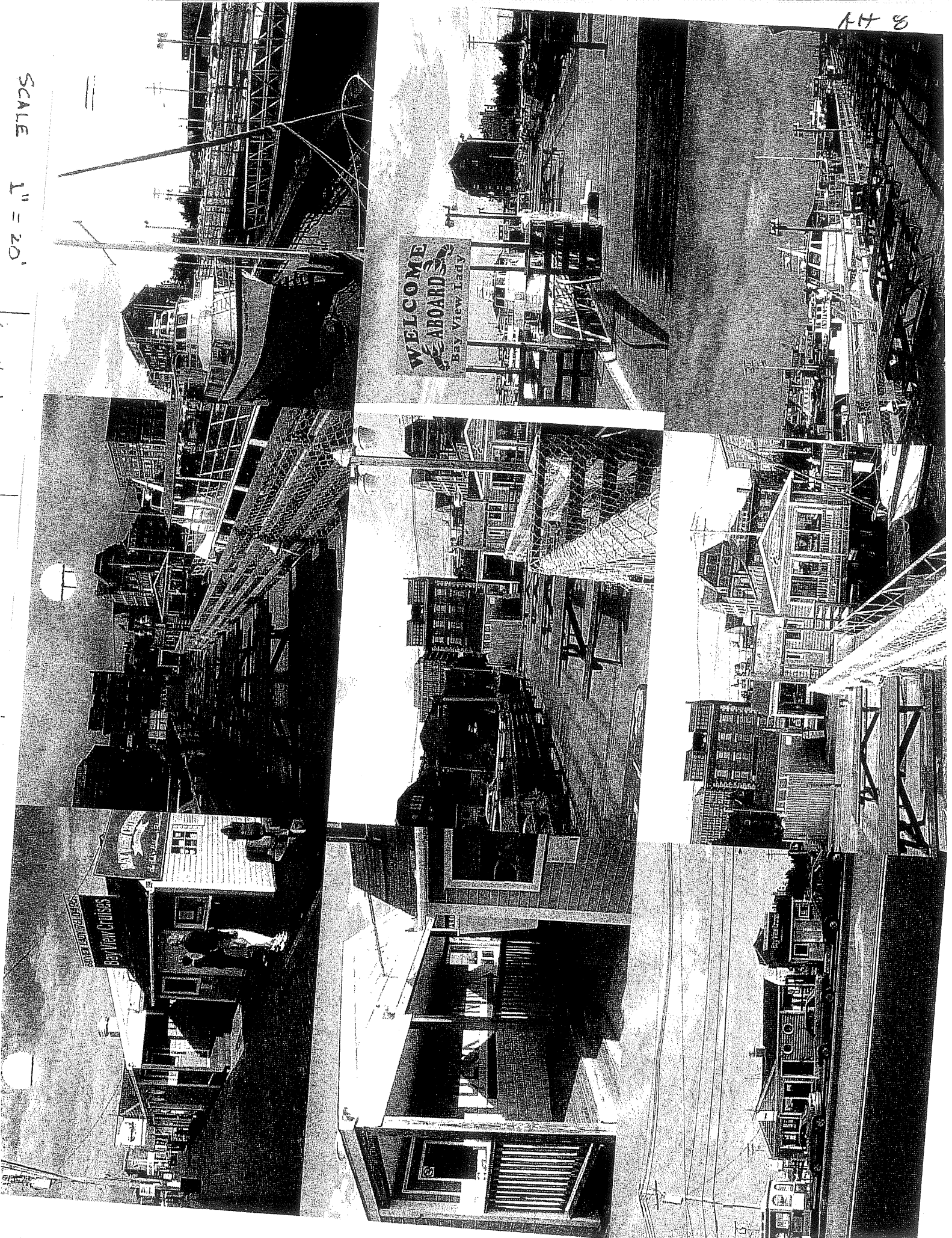
Sincerely,

Capt. Dick Yates
Captain Dick Yates

LOBSTERBAKES ❁ CRUISES ❁ MEETINGS

FISHERMAN'S WHARE, 184 COMMERCIAL STREET, PORTLAND, MAINE 04101 (207) 761-0496

SCALE 1" = 20'



**PLANNING OFFICE
MEMORANDUM**

To: Portland City Council
From: William B. Needelman, Senior Planner
Re: WCZ Text Change Summary, Addendum to Council Report 62-01
Date: 1-17-01

Introduction:

The Planning staff provides this memo to answer several of the commonly asked questions regarding the proposed Waterfront Central Zone amendment. For a complete description of the background and policy analysis for this application, please refer to the Council Report 62-01.

Intended Result:

The result of the text change would expand the provision within the Waterfront Central Zone that allows non-marine uses in older buildings close to Commercial Street. The amendment would allow certain non-marine uses "in buildings existing on **or having received site plan approval prior to**" January 4, 1993. Currently, to be eligible for non-marine uses, buildings had to be in existence prior to the January '93 date. The Bayview restaurant was not constructed as of the date, but had a valid (less than one year old) site plan approval under the old zoning and was able to legally construct the building for restaurant use. The restaurant became a new building with grandfathered (legal-nonconforming) status for non-marine use. Approval of this amendment would change the status of the restaurant use from legal-nonconforming to permitted use.

Applicability:

While the amendment language is not specific to 184 Commercial Street, there are no other properties that had both (1) an un-expired site plan approval and (2) had not yet been built. The Planning Board asked our legal staff if old projects from the 1980's that had been approved but had failed prior to construction could resurface through this provision. The answer was no, because the site plans would have expired, and therefore would be void. To add clarity to the language, City Corporation Counsel suggests that the Council Order be specifically amended to exempt *expired* site plans from the expanded non-marine use provision.

Exterior Seating:

Exterior seating has existed adjacent to the restaurant for several years, but City Zoning and Legal staff have determined that the seating was illegal for restaurant use. When originally developed, the seating was used by both the Bayview Tours excursion boat and the Bayview Restaurant, which at that time were under the same ownership. The illegal exterior restaurant use was discovered during the sale of the Bayview Restaurant (separate from the tour boat) and the exterior seating was not used during the 2001 season.

If approved, the applicant intends to apply for an expansion of the restaurant use to legally include a portion of the exterior seating. Limited expansion of a permitted non-marine uses is allowed as a conditional use (reviewable by the Planning Board.)

MAINE BANK & TRUST

January 31, 2002

Portland Planning Department
389 Congress Street
Portland, ME 04101

RE: Thomas H. Dana

Dear Sir/Maddam:

I am writing this letter as it relates to the above individuals application to the City of Portland Planning Department for a project on Commercial Street. Mr. Dana has been a customer of Maine Bank & Trust since March of 1992. During that time he has maintained an extensive borrowing and deposit relationship. It has been a pleasure working with Mr. Dana over the past ten years and we look forward to working with him on any new projects and developments that may arise now or in the future.

If you have any questions or need a credit reference, please feel free to call me at (207) 828-3150. Thank you.

Sincerely,



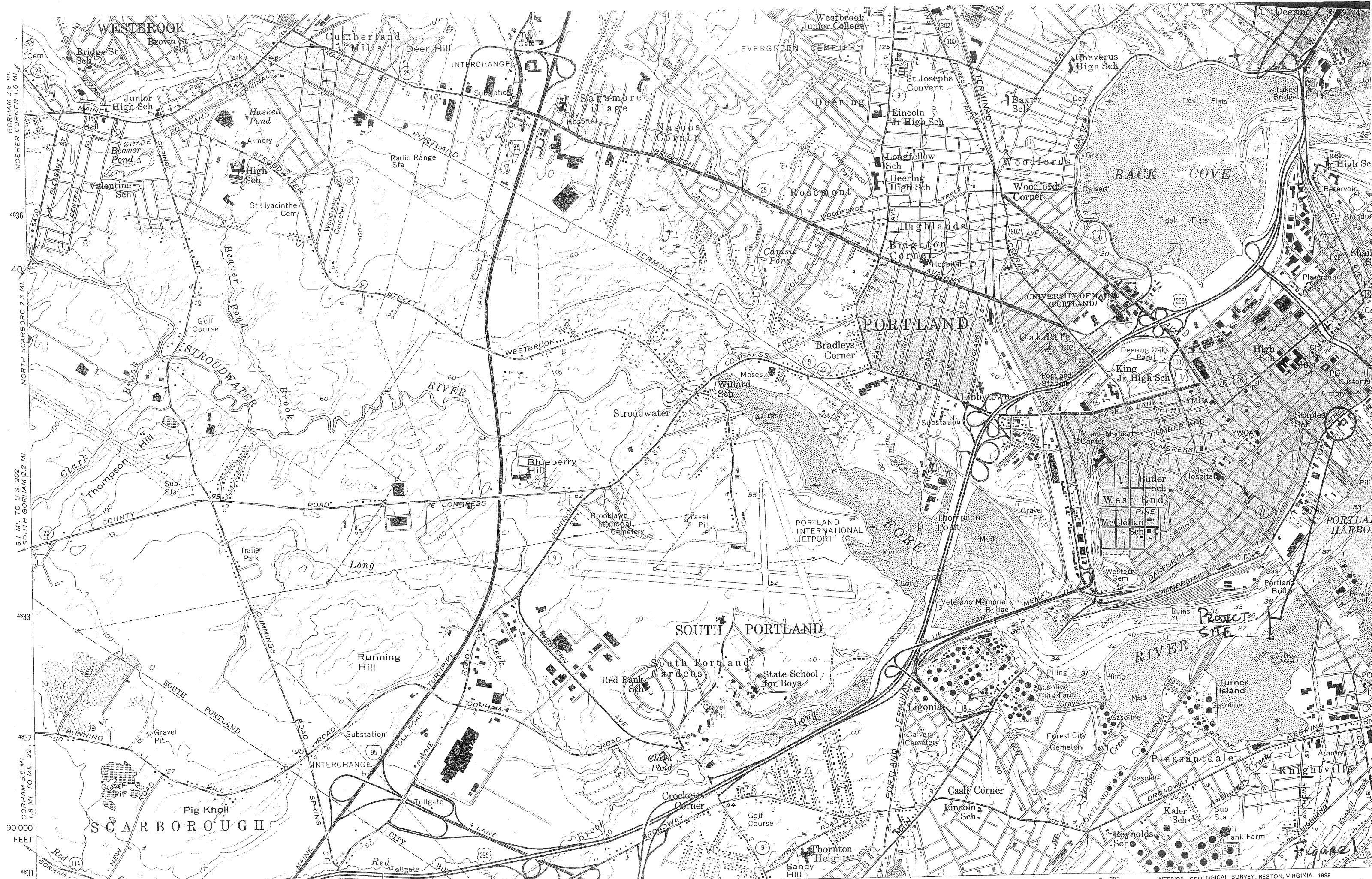
Stephen F. Oertel
Commercial Lender

cc: Thomas H. Dana

WCZ CONDITIONAL USE STANDARDS

3.6

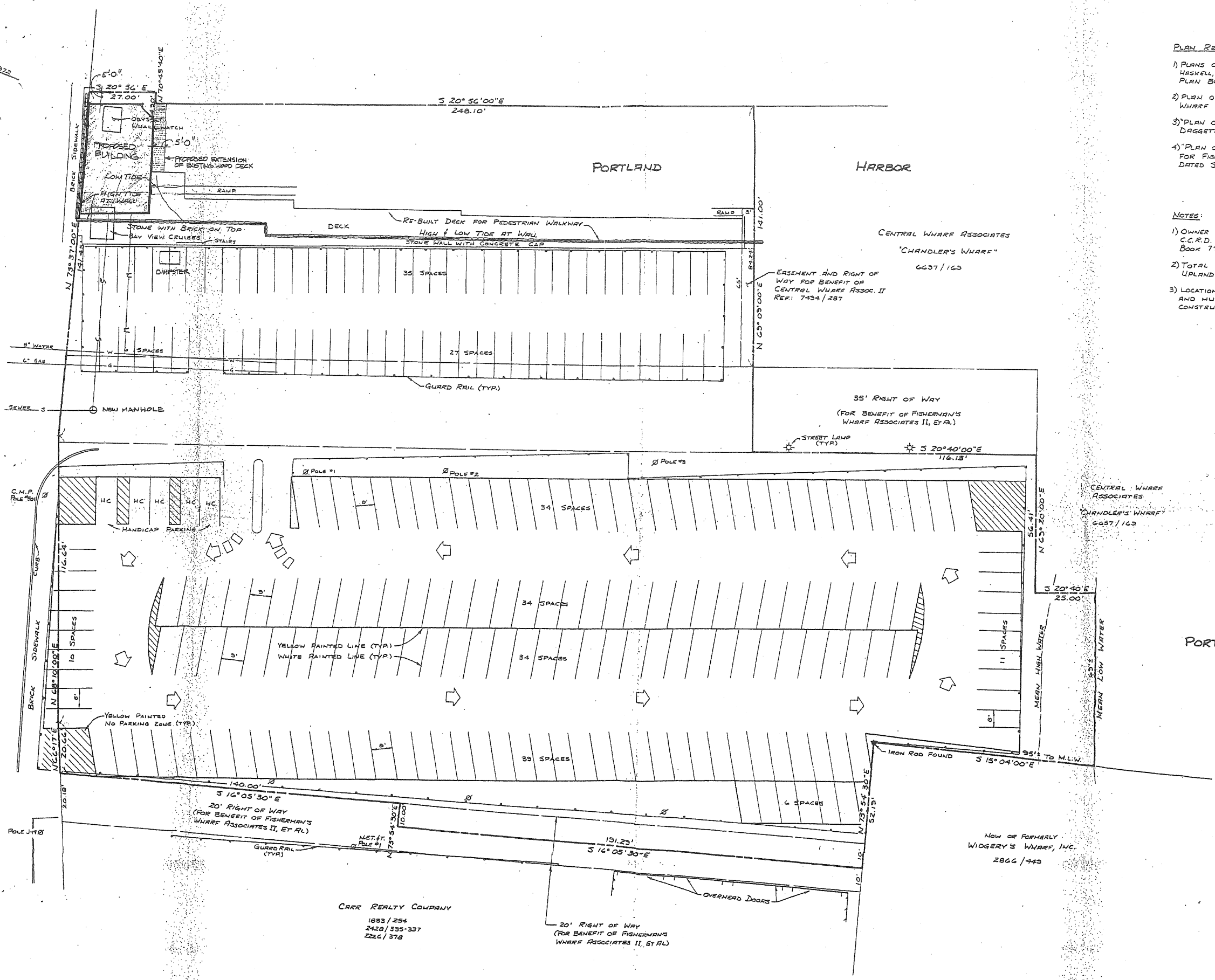
- (a) The proposed use shall be compatible with existing and potential marine uses in the vicinity;
 - (b) The proposed use shall not impede access to the water by existing or potential marine uses; and
 - (c) For conditional uses that propose or require twenty (20) or more parking spaces, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development, specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1). For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.
 1. Parking: Notwithstanding sections 14-317(g), 14-331, 14-334 and article V of this chapter, no parking shall be allowed in this zone for conditional uses and uses permitted only above the ground floor level, unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces required for marine uses that are required by section 14-314(a). The remainder of parking required for such uses shall be provided off-site and in other zones where parking is a permitted use.
- (2) Marine:
- a. Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:
 1. Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the planning board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.
 - b. Fish by-products processing, provided that:
 1. Any fish by-products processing facility has a valid rendering facility license under chapter 12; and



GORHAM 5.6 MI.
MOSHER CORNER 1.6 MI.
4836
40
NORTH SCARBORO 2.3 MI.
8.1 MI. TO U.S. 202
SOUTH GORHAM 2.2 MI.
4833
4832
GORHAM 5.5 MI.
1.8 MI. TO ME. 22
30 000
FEET
4831

Att. 11

COMMERCIAL STREET



- PLAN REFERENCES:**
- 1) PLANS OF CENTRAL WHARF FOR LIBERTY GROUP BY OWEN HASKELL, INC. RECORDED IN THE REGISTRY OF DEEDS IN PLAN BOOK 152, PAGE 39, AND BOOK 154, PAGE 13.
 - 2) PLAN OF "PART OF CENTRAL WHARF MADE FOR CENTRAL WHARF PROPRIETORS" BY H.I. & E.C. JORDAN DATED 1945.
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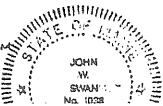
- NOTES:**
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 - 2) TOTAL SITE AREA: 100,283 SQ. FT. UPLAND AREA: 85,000 SQ. FT.
 - 3) LOCATION OF ALL UNDERGROUND UTILITIES IS APPROXIMATE AND MUST BE VERIFIED BY CONTRACTOR PRIOR TO ANY CONSTRUCTION.

CARR REALTY COMPANY
1833 / 254
2428 / 335-337
2226 / 378

NOW OR FORMERLY
WIGERY'S WHARF, INC.
2866 / 443

14 OCTOBER 1992

PLAN OF LAND
ON
COMMERCIAL STREET, PORTLAND, MAINE
FOR
FISHERMAN'S WHARF ASSOC



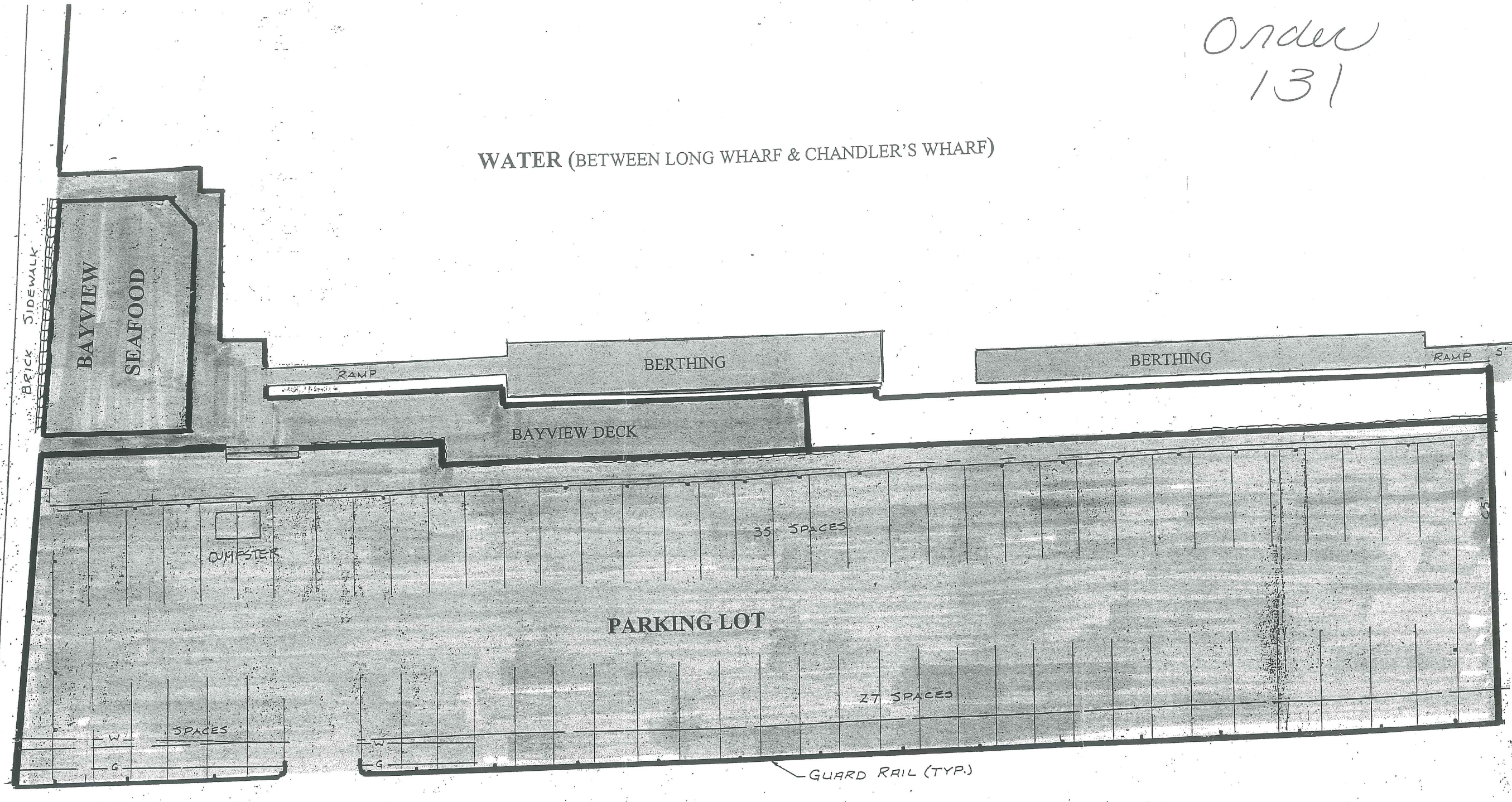
THIS PLAN IS BASED ON PERIMETER SURVEY SHOWN ON PLAN REFERENCE 4. PARKING LAYOUT TAKEN FROM PLAN OF MOHR & SEREDIN, LANDSCAPE ARCHITECTS.

GRAPHIC SCALE 1" = 20'

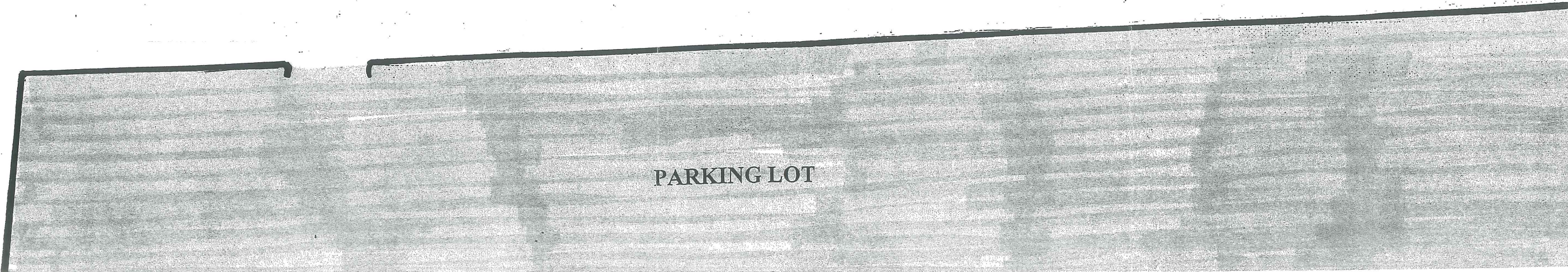
Order
131

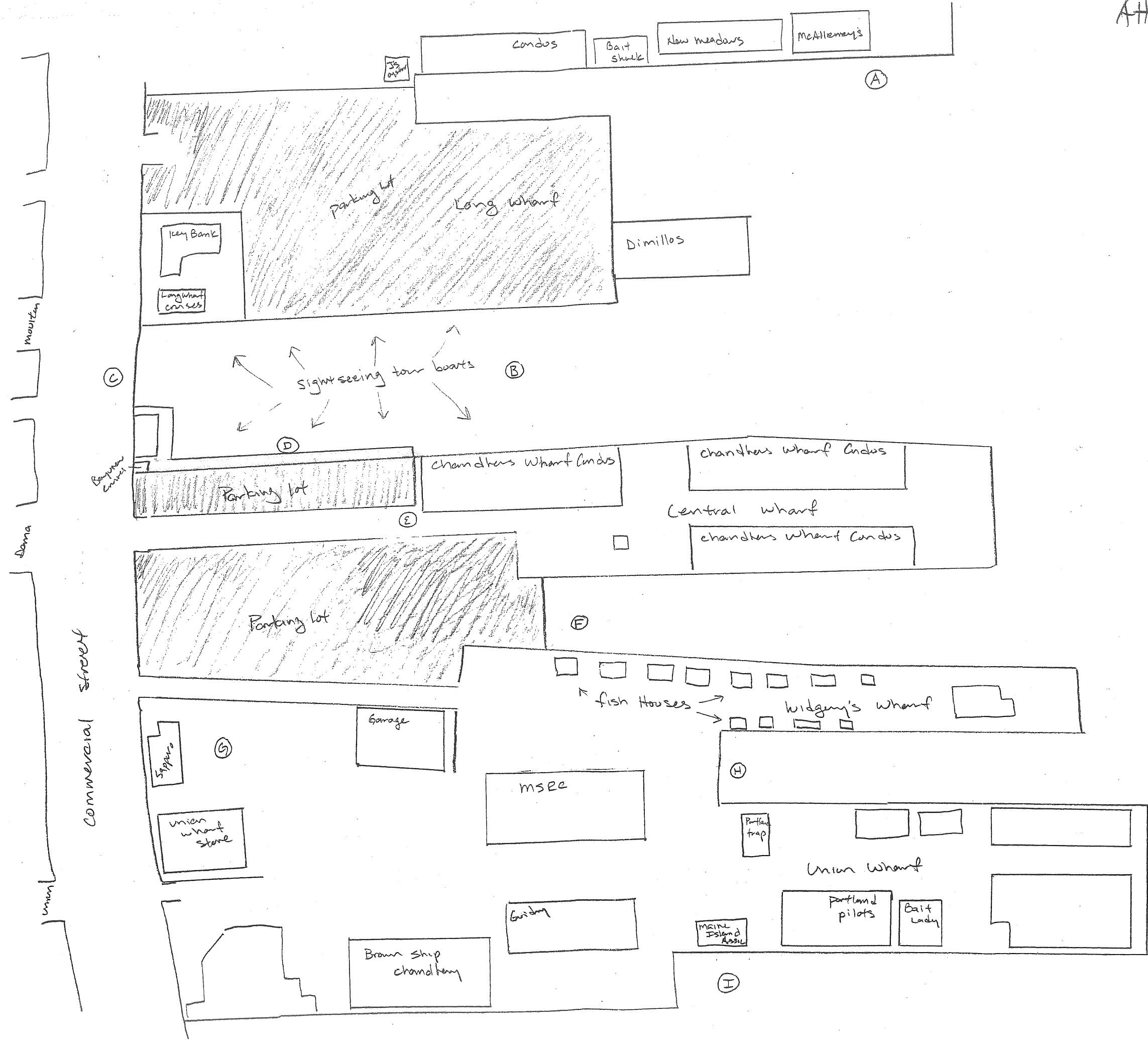
WATER (BETWEEN LONG WHARF & CHANDLER'S WHARF)

COMMERCIAL STREET



CHANDLER'S WHARF (ENTRANCE TO CONDOS>>>)



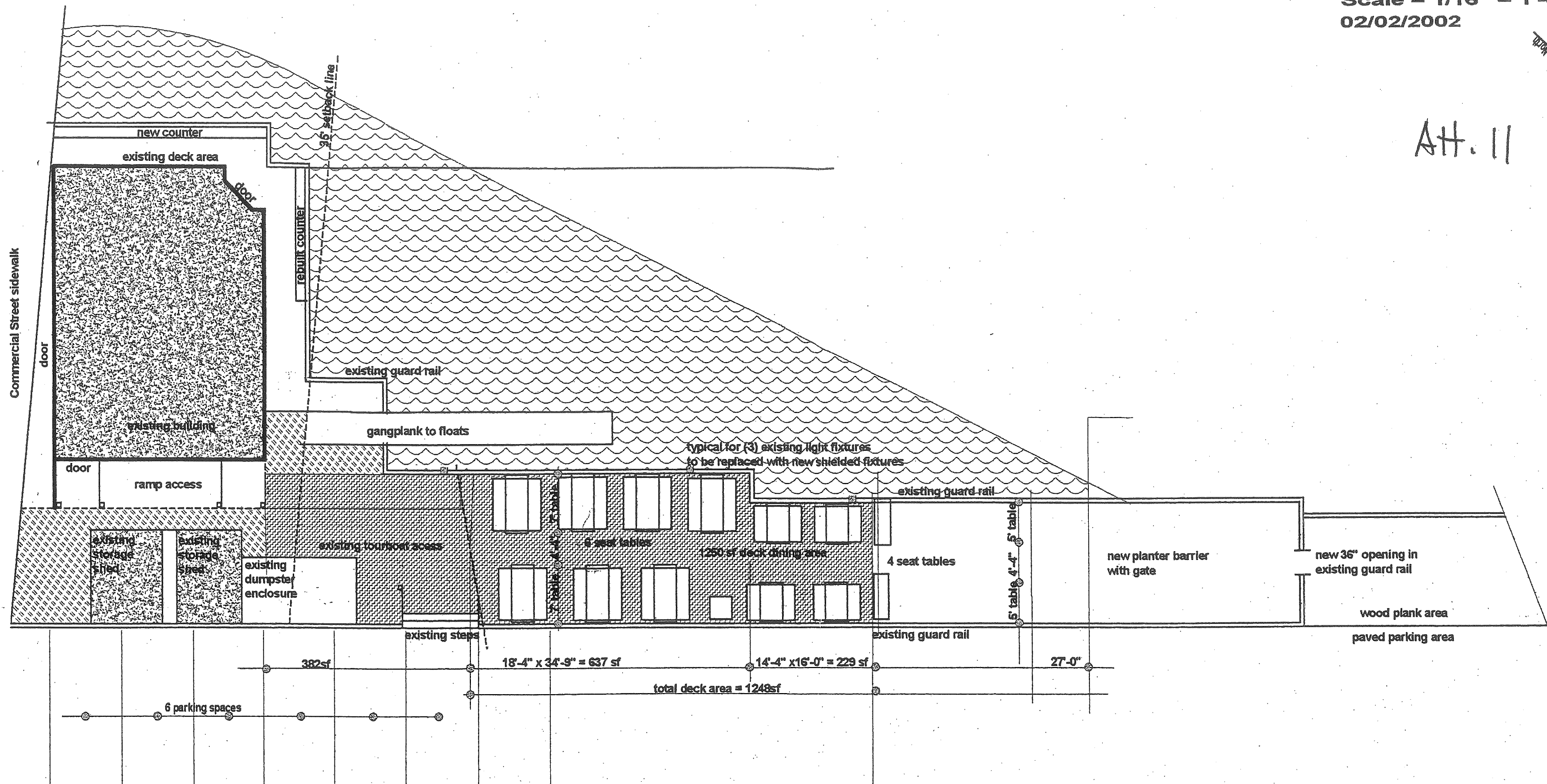


Minor Site Plan Review
 Change of Use
 Fisherman's Wharf - Portland, ME

Scale = 1/16" = 1'-0"
 02/02/2002



Att. 11

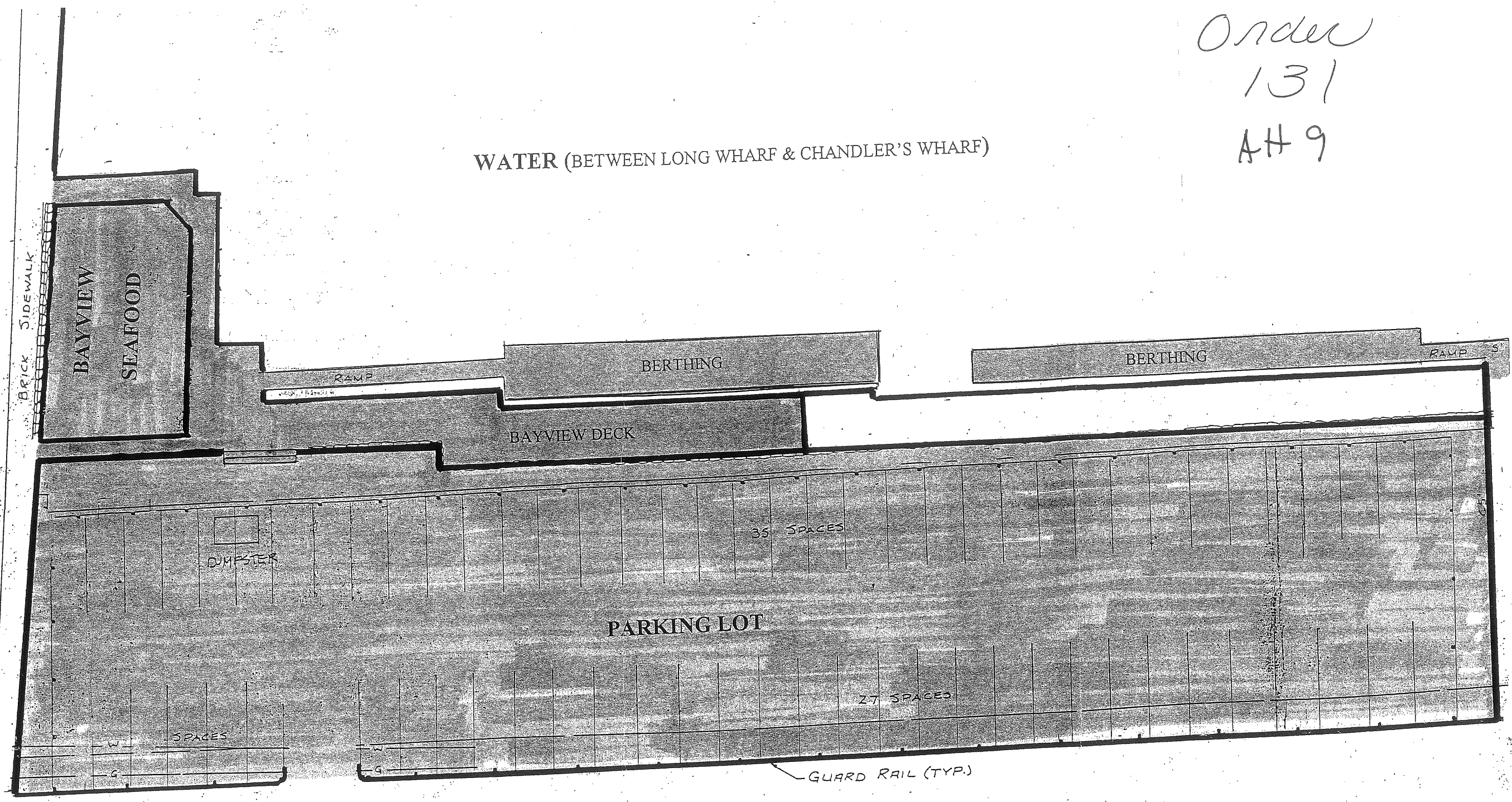


William Nemmers, Architect
 368 Brighton Ave. Portland, ME
 phone 329-2048 / fax 761-2015

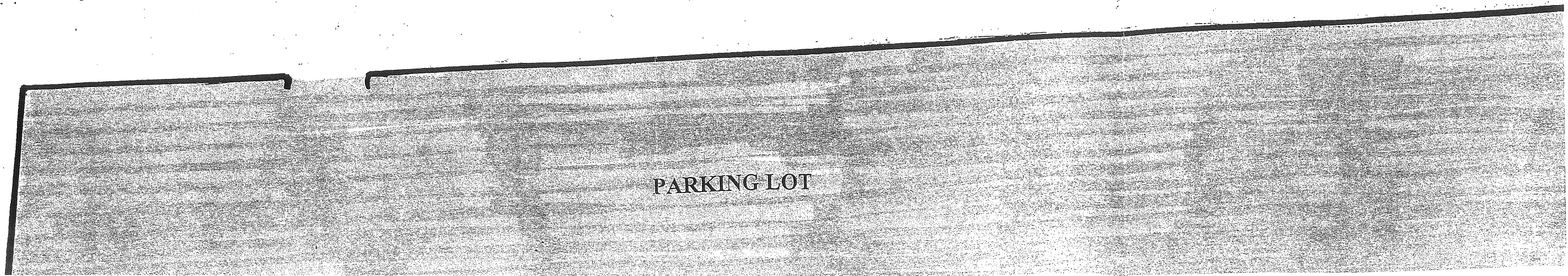
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A49

WATER (BETWEEN LONG WHARF & CHANDLER'S WHARF)

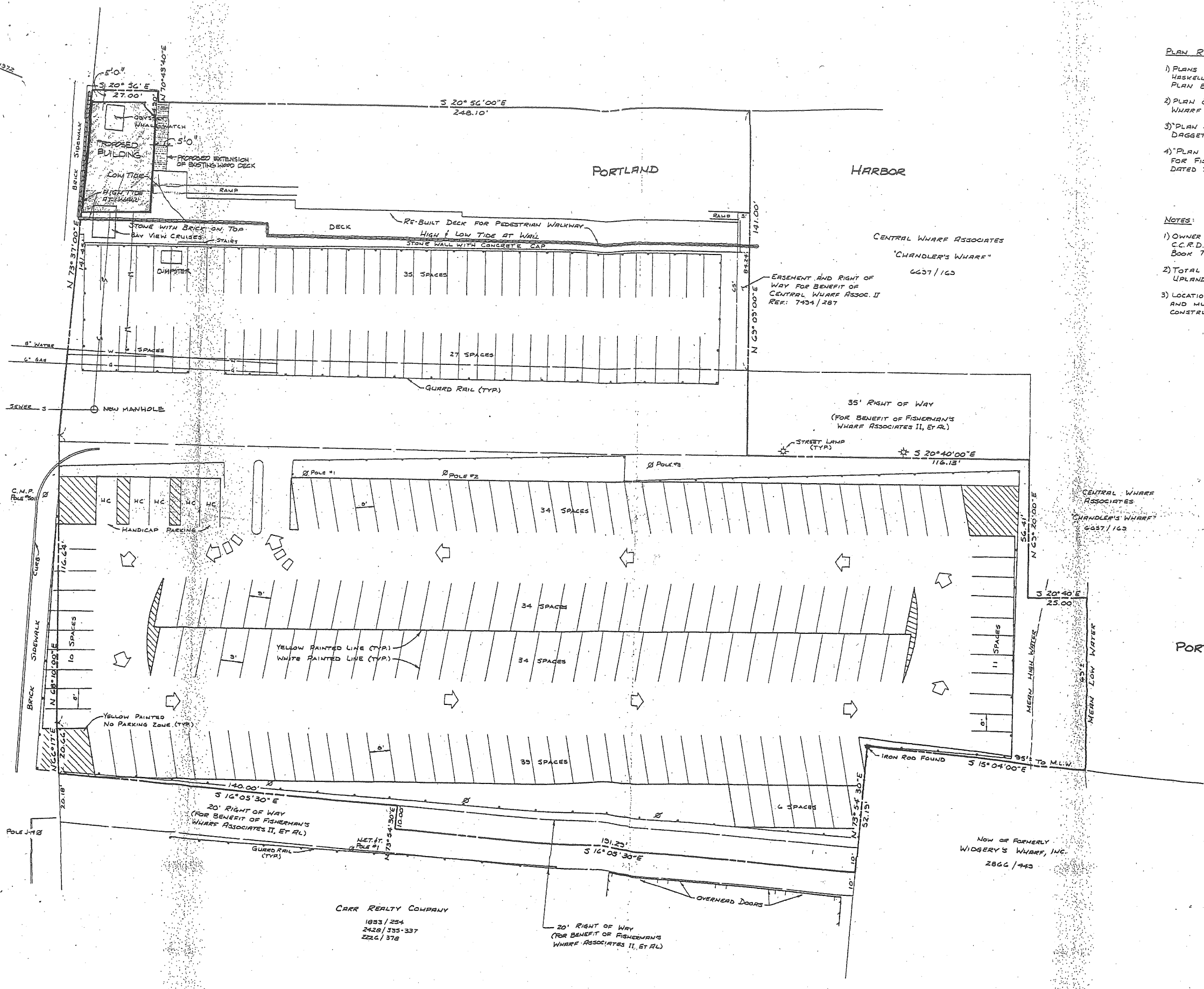
COMMERCIAL STREET



CHANDLER'S WHARF (ENTRANCE TO CONDOS>>>)



COMMERCIAL STREET



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- 2) PLAN OF "PART OF CENTRAL WHARF MADE FOR CENTRAL WHARF PROPRIETORS" BY H.I. & E.C. JORDAN DATED 1945.
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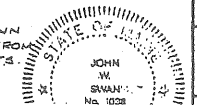
NOTES:

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CARR REALTY COMPANY
1833 / 254
2428 / 335-337
2226 / 378

20' RIGHT OF WAY
(FOR BENEFIT OF FISHERMAN'S
WHARF ASSOCIATES II, ET AL)

THIS PLAN IS BASED ON PERIMETER SURVEY SHOWN ON PLAN REFERENCE 4. PARKING LAYOUT TAKEN FROM PLAN OF MOHR & SEREDIN, LANDSCAPE ARCHITECTS



14 OCTOBER 1992

PLAN OF LAND
ON
COMMERCIAL STREET, PORTLAND, MAINE
FOR
FISHERMAN'S WHARF ASSOC

Owen Haskell, Inc.
Civil Engineers South Portland, Maine Land Surveyors

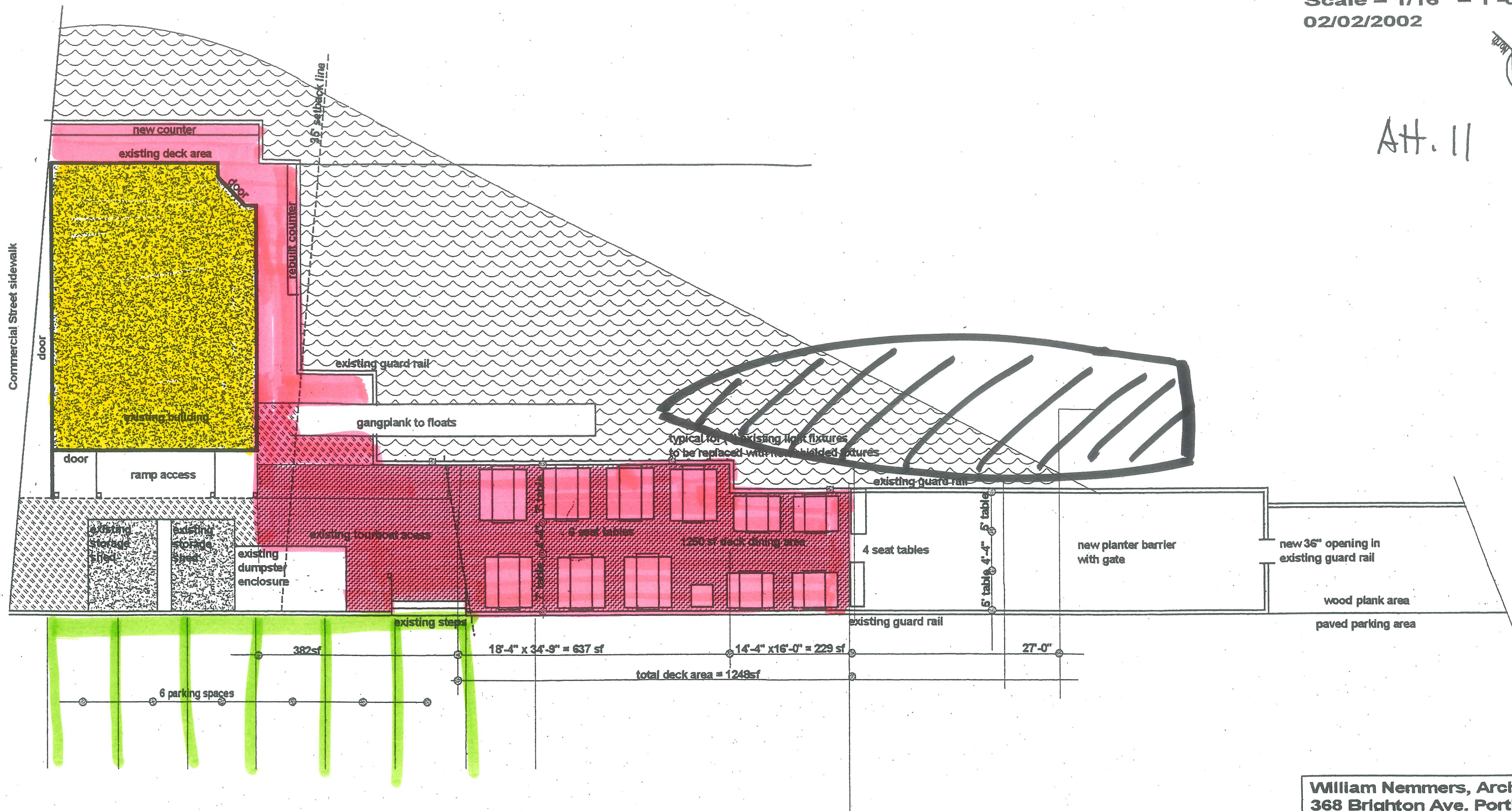
GRAPHIC SCALE 1" = 20'

Minor Site Plan Review
 Change of Use
 Fisherman's Wharf - Portland, ME

Scale = 1/16" = 1'-0"
 02/02/2002



Att. 11



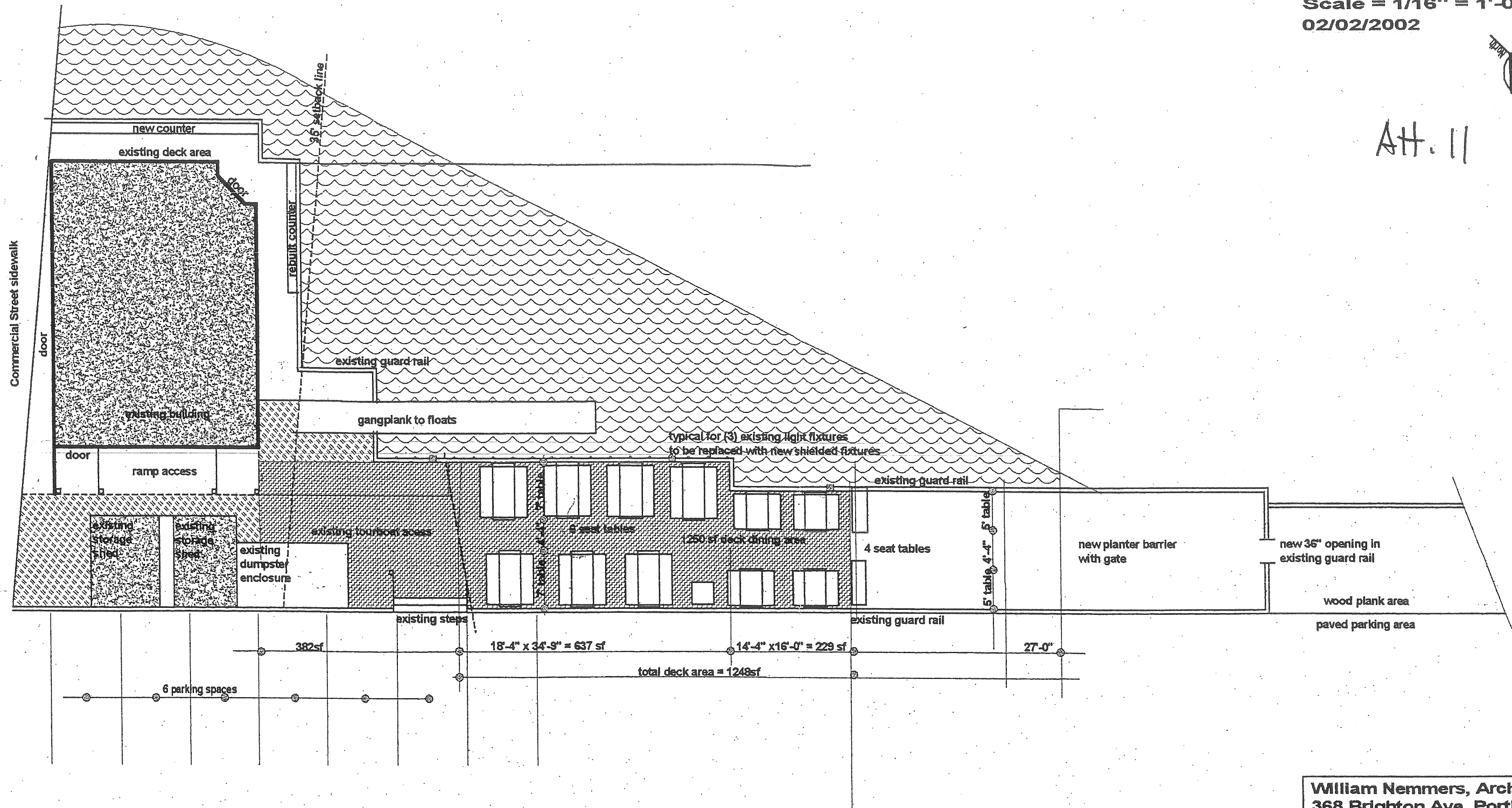
William Nemmers, Architect
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William Nemmers, Architect
 368 Brighton Ave. Portland, ME
 phone 329-2048 / fax 761-2015

Order
131
A49

WATER (BETWEEN LONG WHARF & CHANDLER'S WHARF)

COMMERCIAL STREET

BRICK SIDEWALK

BAYVIEW
SEAFOOD

BERTHING

BERTHING

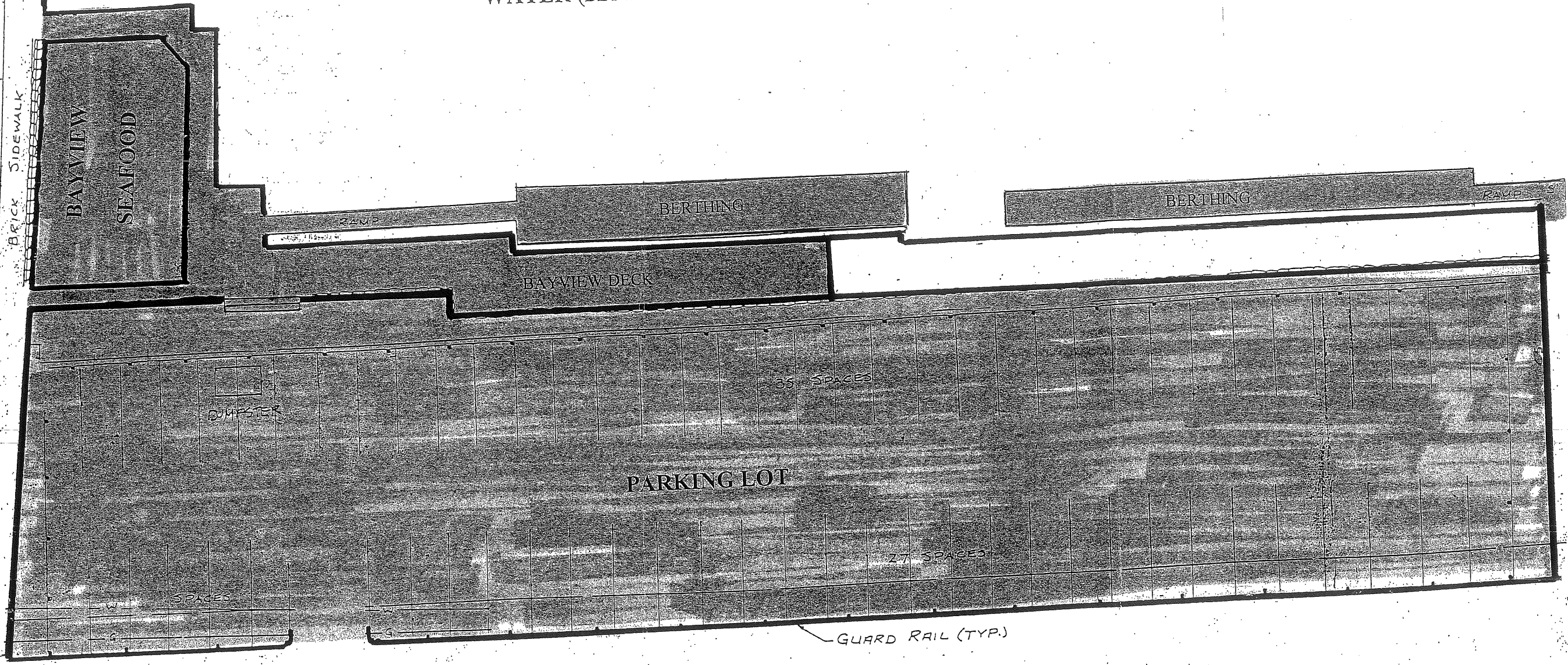
BAYVIEW DECK

PARKING LOT

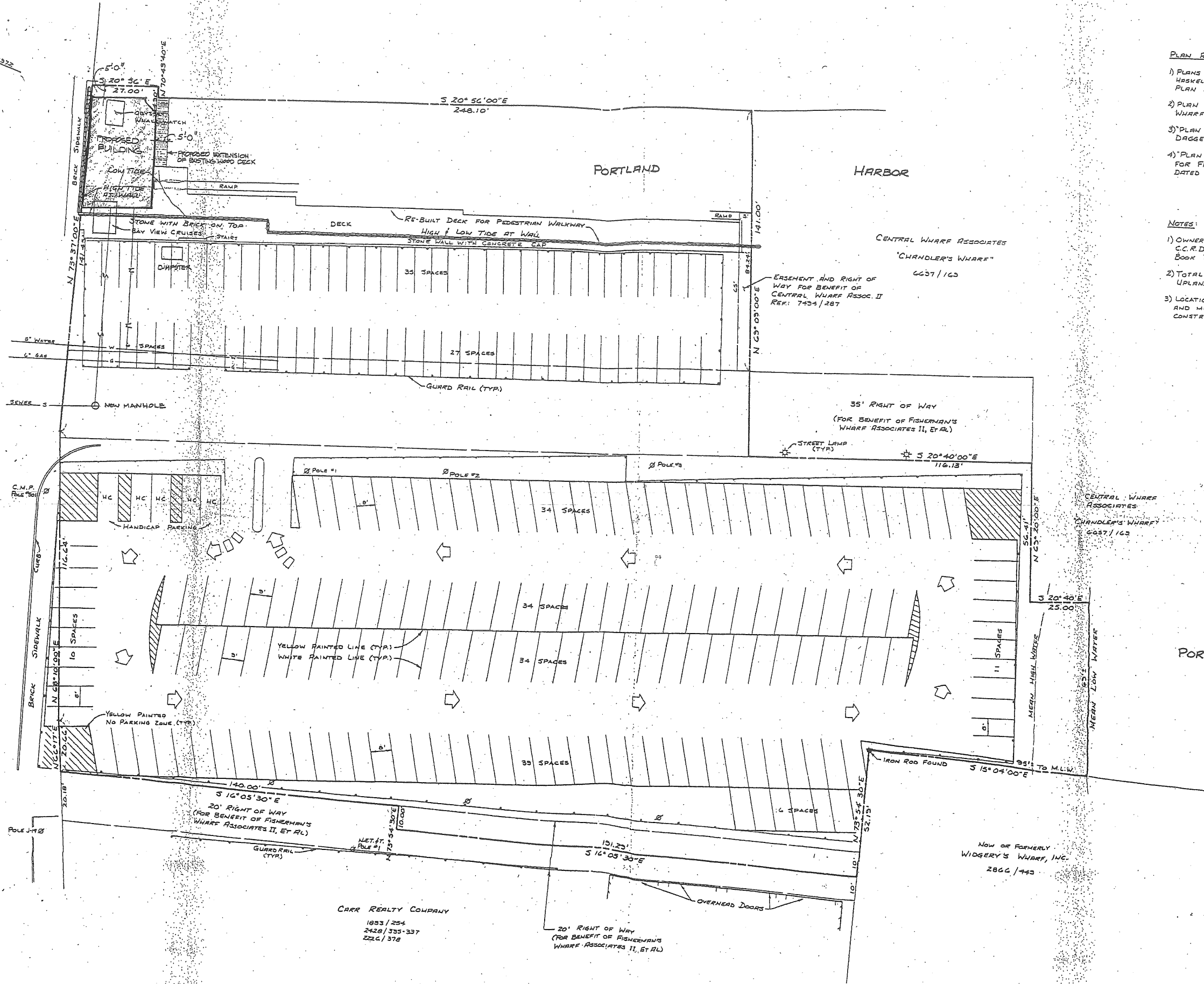
GUARD RAIL (TYP.)

CHANDLER'S WHARF (ENTRANCE TO CONDOS>>)

PARKING LOT



COMMERCIAL STREET



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CARR REALTY COMPANY
1833 / 254
2428 / 335-337
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Now or Formerly
WIDGERY'S WHARF, INC.
2866 / 743

14 OCTOBER 1992

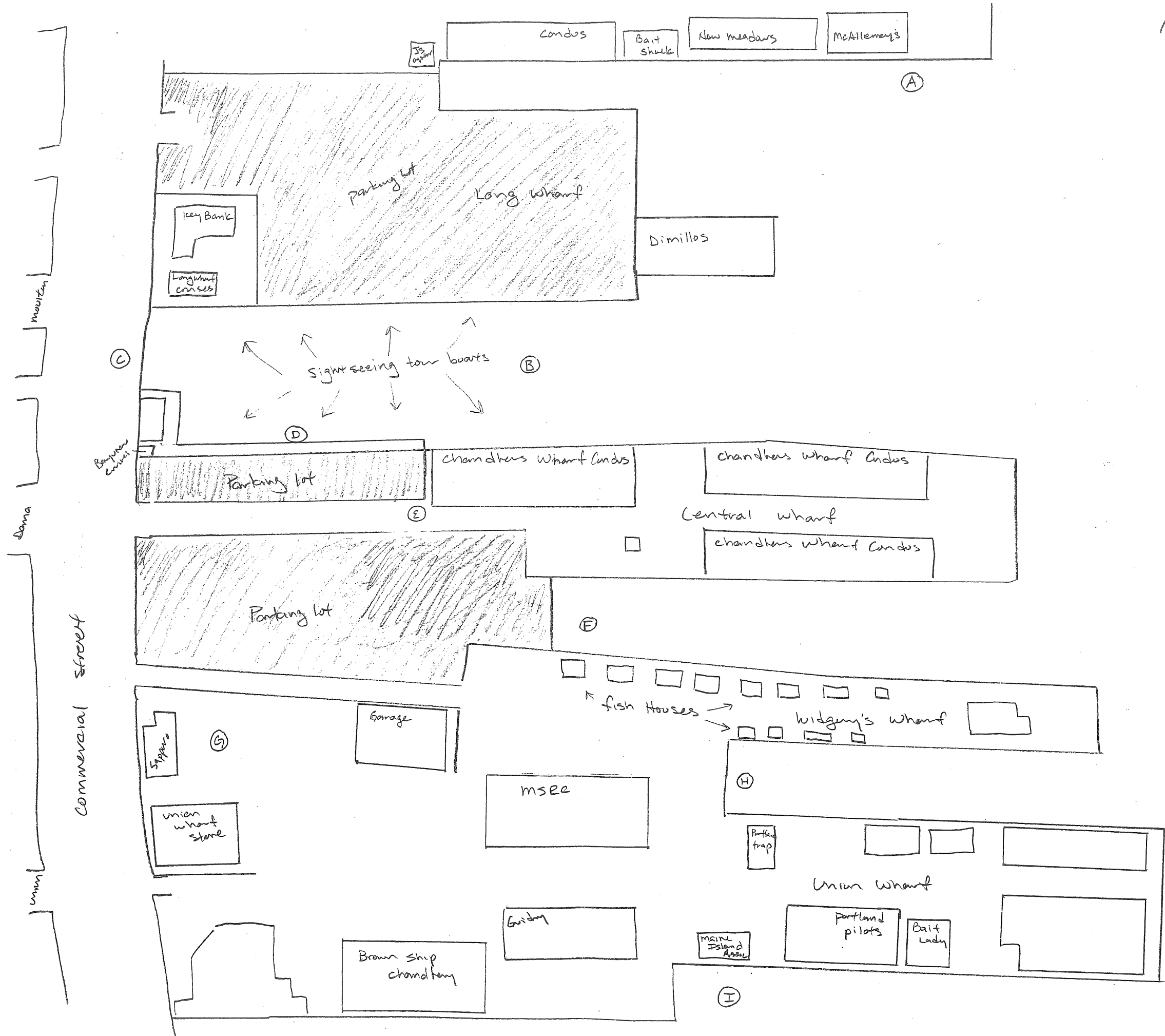
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FISHERMAN'S WHARF ASSOX

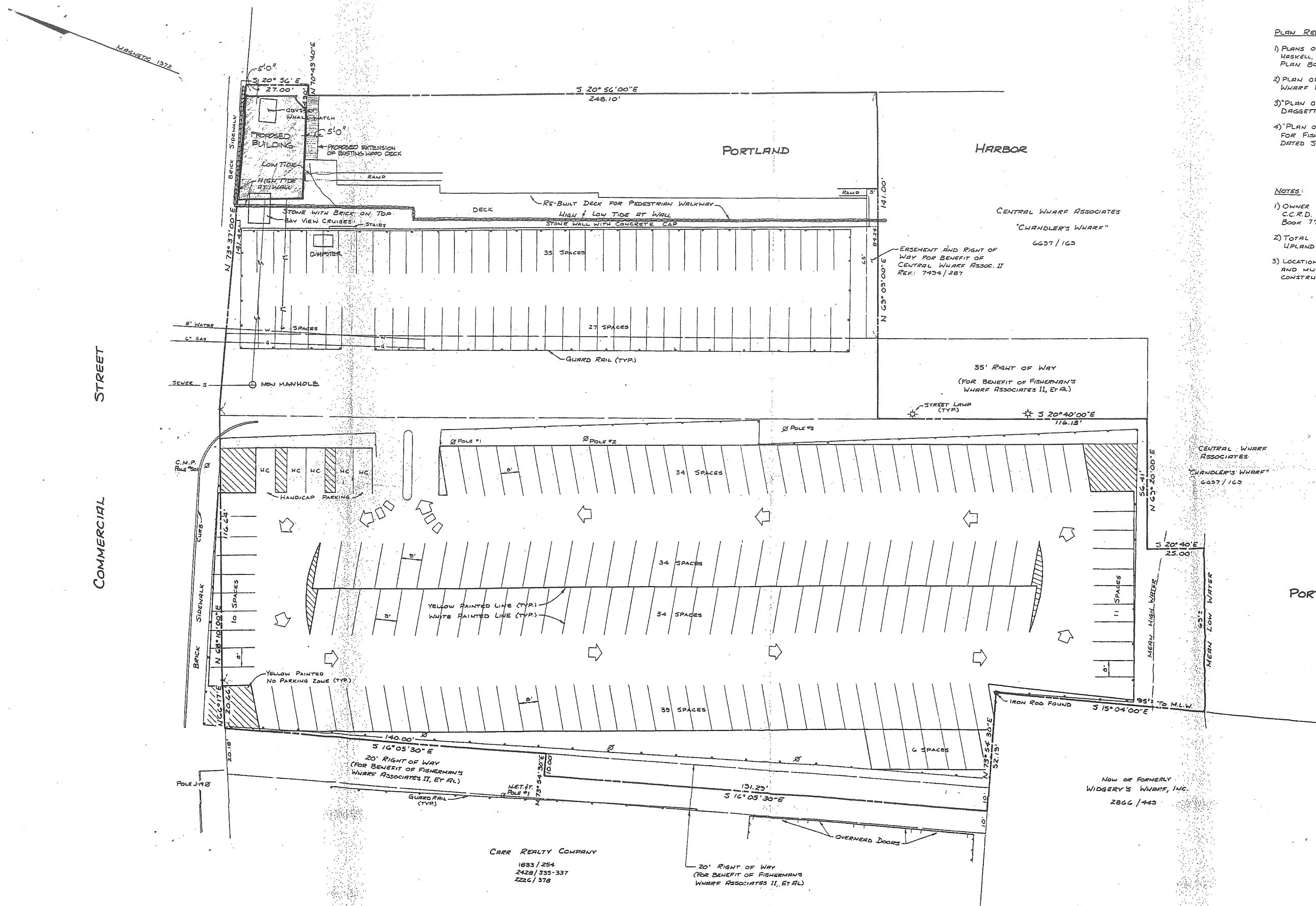
Owen Haskell, Inc.
Civil Engineers
South Portland, Maine

THIS PLAN IS BASED ON PERIMETER SURVEY SHOWN ON PLAN REFERENCE 4. PARKING LAYOUT TAKEN FROM PLAN OF MOHR & SEREDIN, LANDSCAPE ARCHITECTS



GRAPHIC SCALE 1" = 20'





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COMMERCIAL STREET

PORTLAND HARBOR

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CARR REALTY COMPANY
1833 / 254
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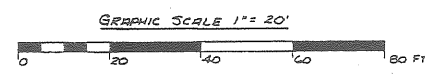
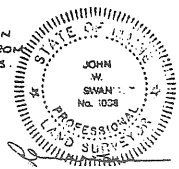
NOW OR FORMERLY
WIGGERS WHARF, INC.
2866 / 443

14 OCTOBER 1992
PLAN OF LAND
ON
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FOR
FISHERMAN'S WHARF ASSOC.

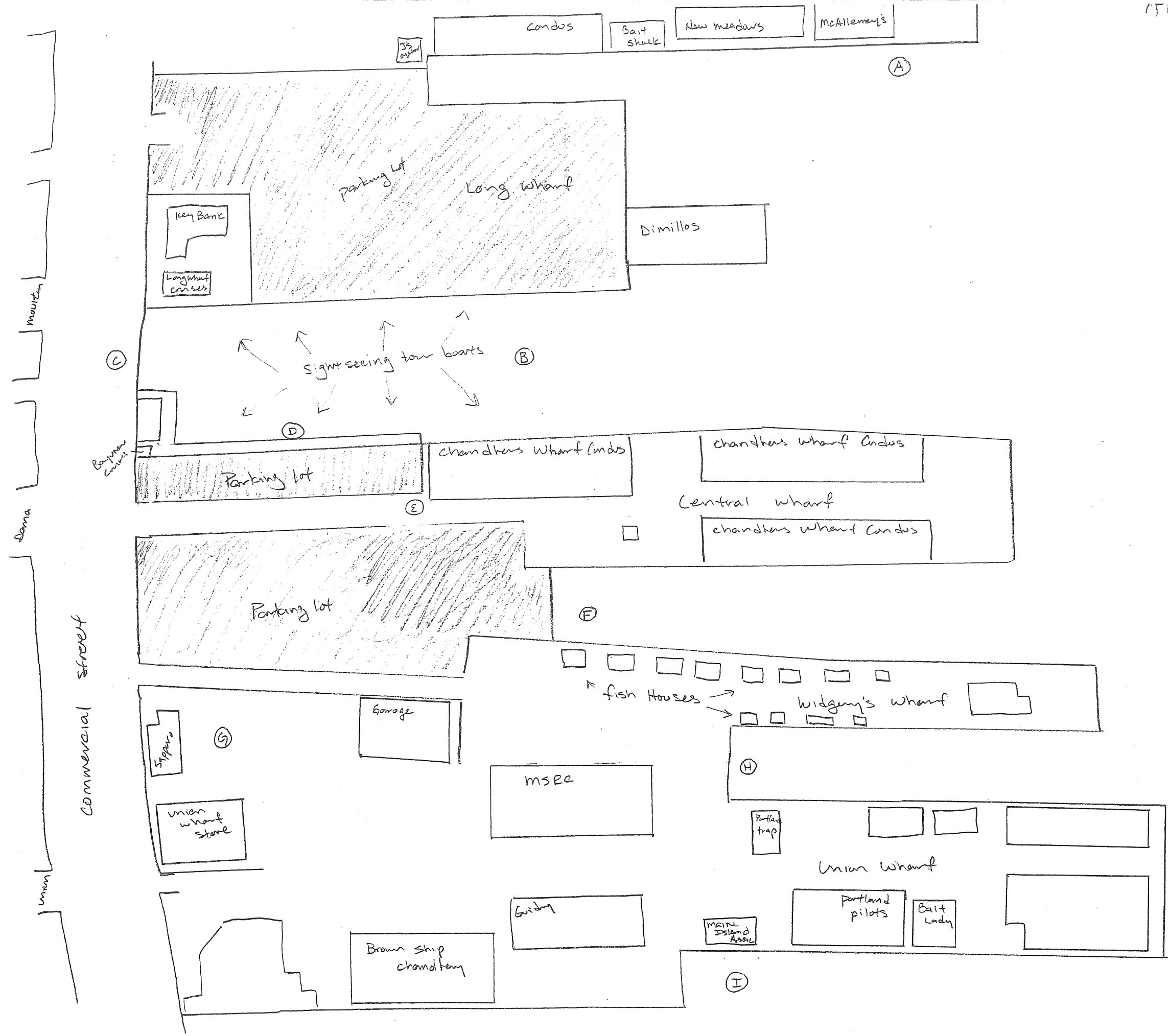
Owen Haskell, Inc.
Civil Engineers South Portland, Maine Land Surveyor

Drawn By SSS	Date OCT. 7, 1992	Job No. 91171P
Trace By JLW	Scale 1" = 20'	Drawn No. 7-C
Check By JWS		

THIS PLAN IS BASED ON PERIMETER SURVEY SHOWN ON PLAN REFERENCE 4. PARKING LAYOUT TAKEN FROM PLAN OF MOHR & SEREDIN, LANDSCAPE ARCHITECTS.



Att. 10

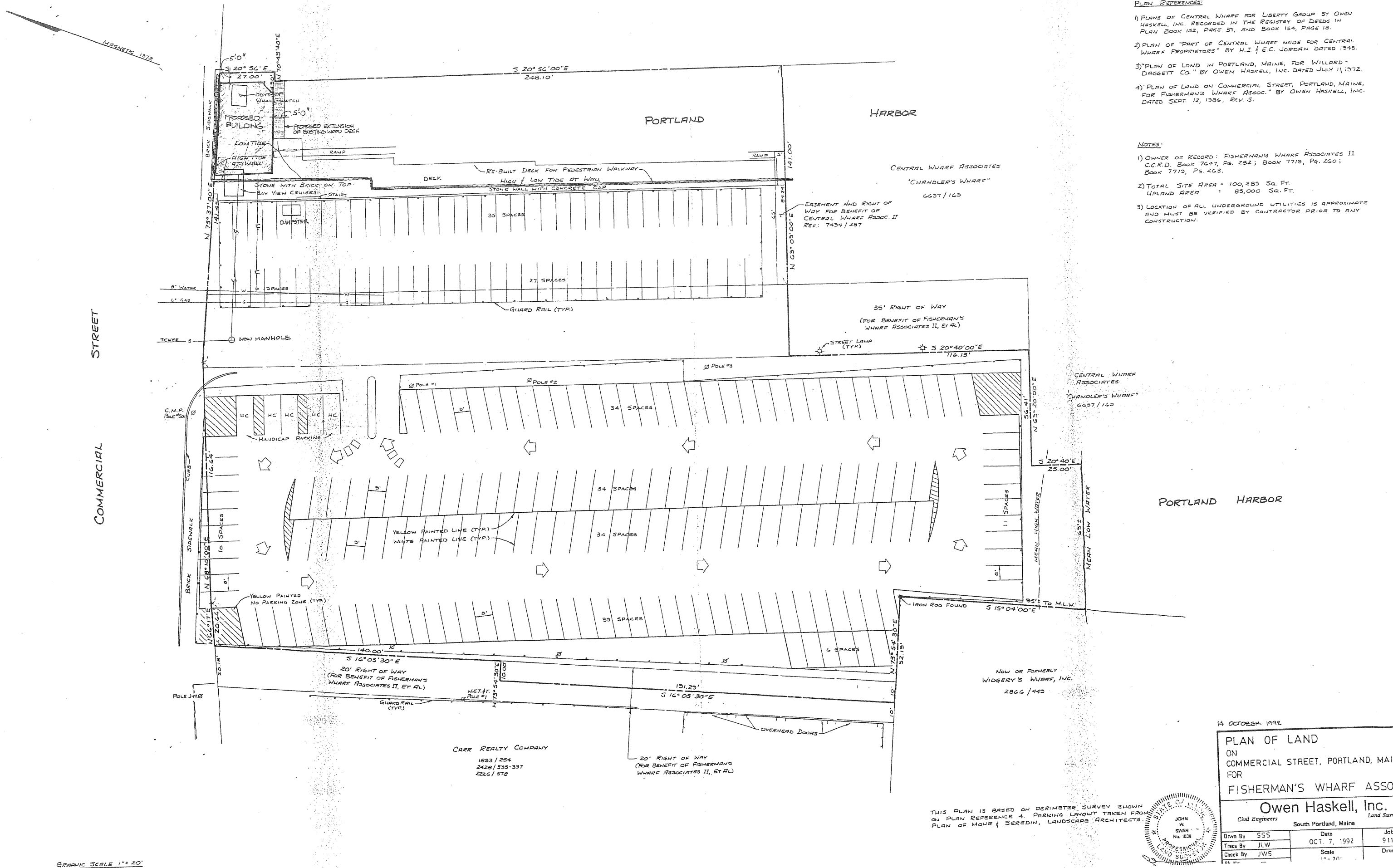


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PORTLAND HARBOR

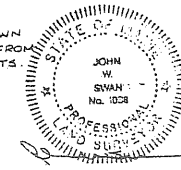
PORTLAND HARBOR

CARR REALTY COMPANY
1833 / 254
2428 / 335-337
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20' RIGHT OF WAY
(FOR BENEFIT OF FISHERMAN'S
WHARF ASSOCIATES II, ET AL)

NOW OR FORMERLY
WIGGERY'S WHARF, INC.
2866 / 445

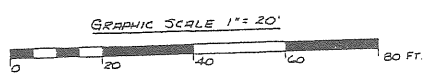
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14 OCTOBER 1992

PLAN OF LAND
ON
COMMERCIAL STREET, PORTLAND, MAINE
FOR
FISHERMAN'S WHARF ASSOC
Owen Haskell, Inc.

Drawn By	SSS	Date	OCT. 7, 1992	Job No.	9117
Trace By	JLW	Scale	1" = 20'	Drawn By	JWS
Check By	JWS				



LONG WHARF

WHARF 116426

DOCK 2 298,453

CHANDLERS WHARF CONDOMINIUM

NOTE: For further reference see Cumberland County Registry of Deeds, Declaration recorded in Bk 7441, Pg 274, Date 2-20-87

CENTRAL WHARF

DOCK PART 2 81780 (TOTAL)

DOCK PART 10 71,280 (TOTAL)

WIDGERY'S WHARF

DOCK PART 10 71,280 (TOTAL)

DOCK PART 36 95,277 (TOTAL)

UNION WHARF

DOCK PART 36 (TOTAL)

STREET

COMMERCIAL

SHEET 38-B

SHEET 41-A

H.C.L. 1920

OLD H.C.L.

ZONED W-1 ZONED W-2

FOURTH ST

ZONED W-1 ZONED W-2

DANA

ACADIA

WALTON

WALTON

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180

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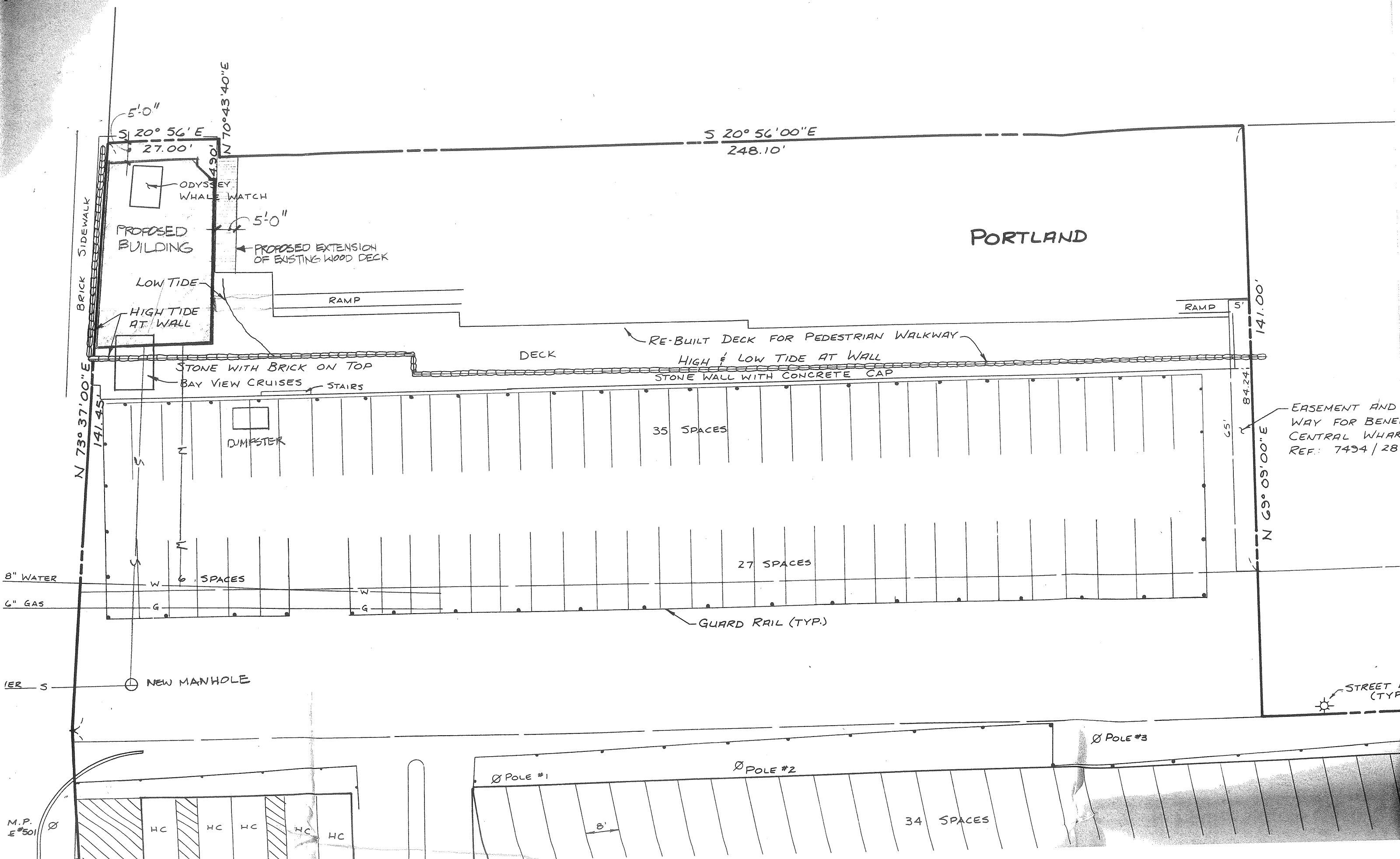
740

742

744

746

748



PORTLAND

EASEMENT AND WAY FOR BENE CENTRAL WHARF REF: 7434/28

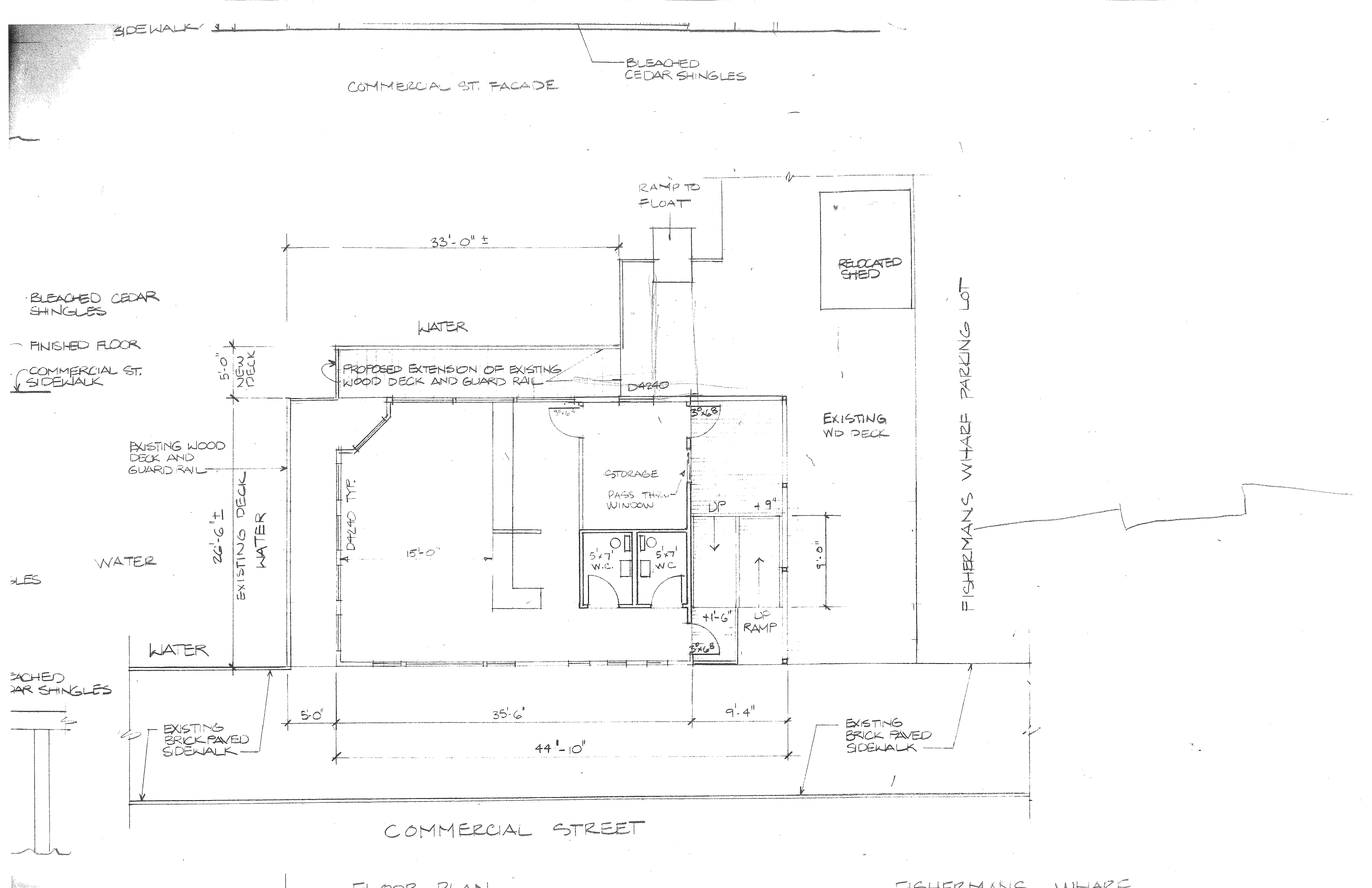
STREET L (TYP.)

M.P. E#501

HC HC HC HC HC

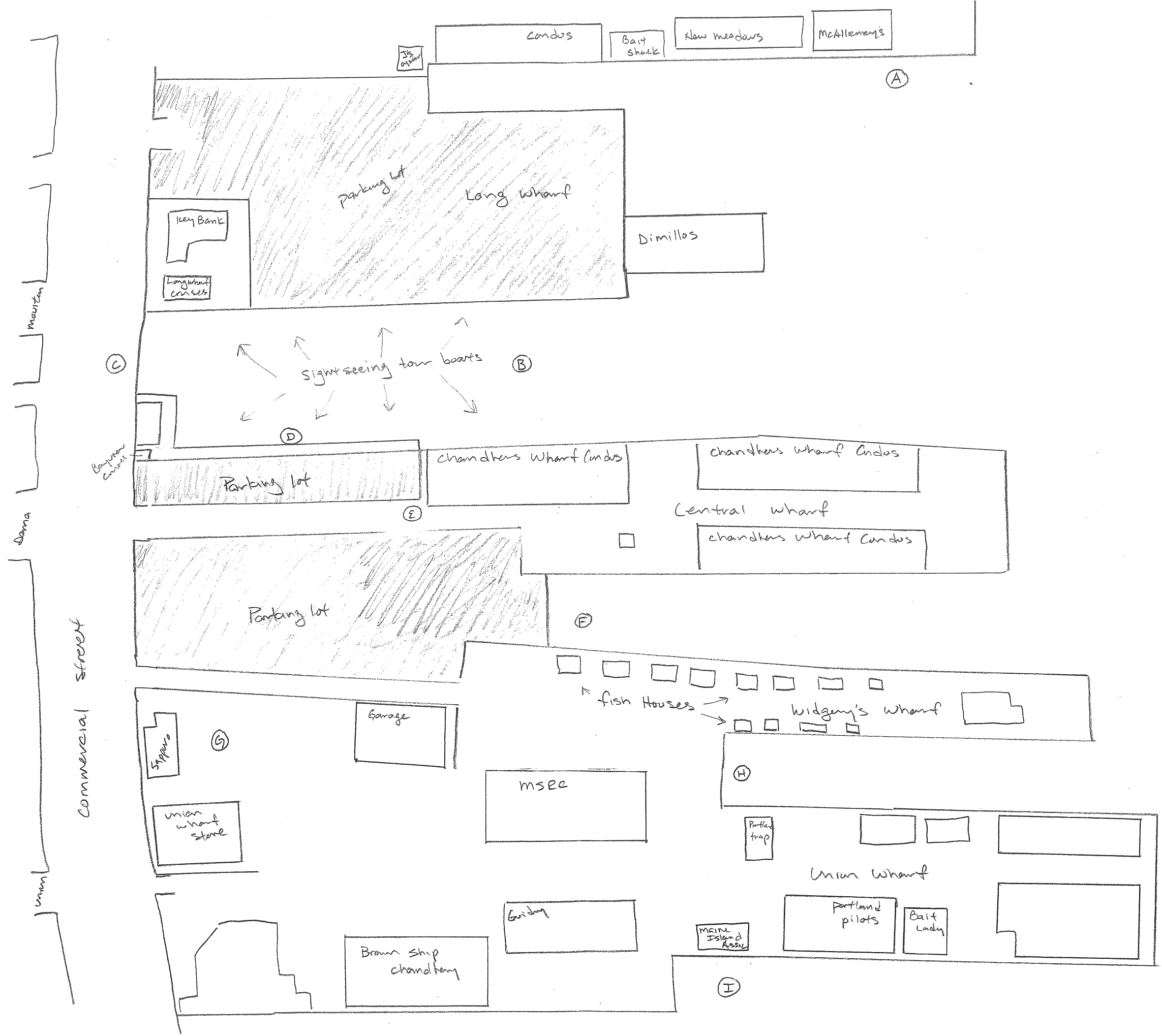
34 SPACES

8'



FLOOR PLAN

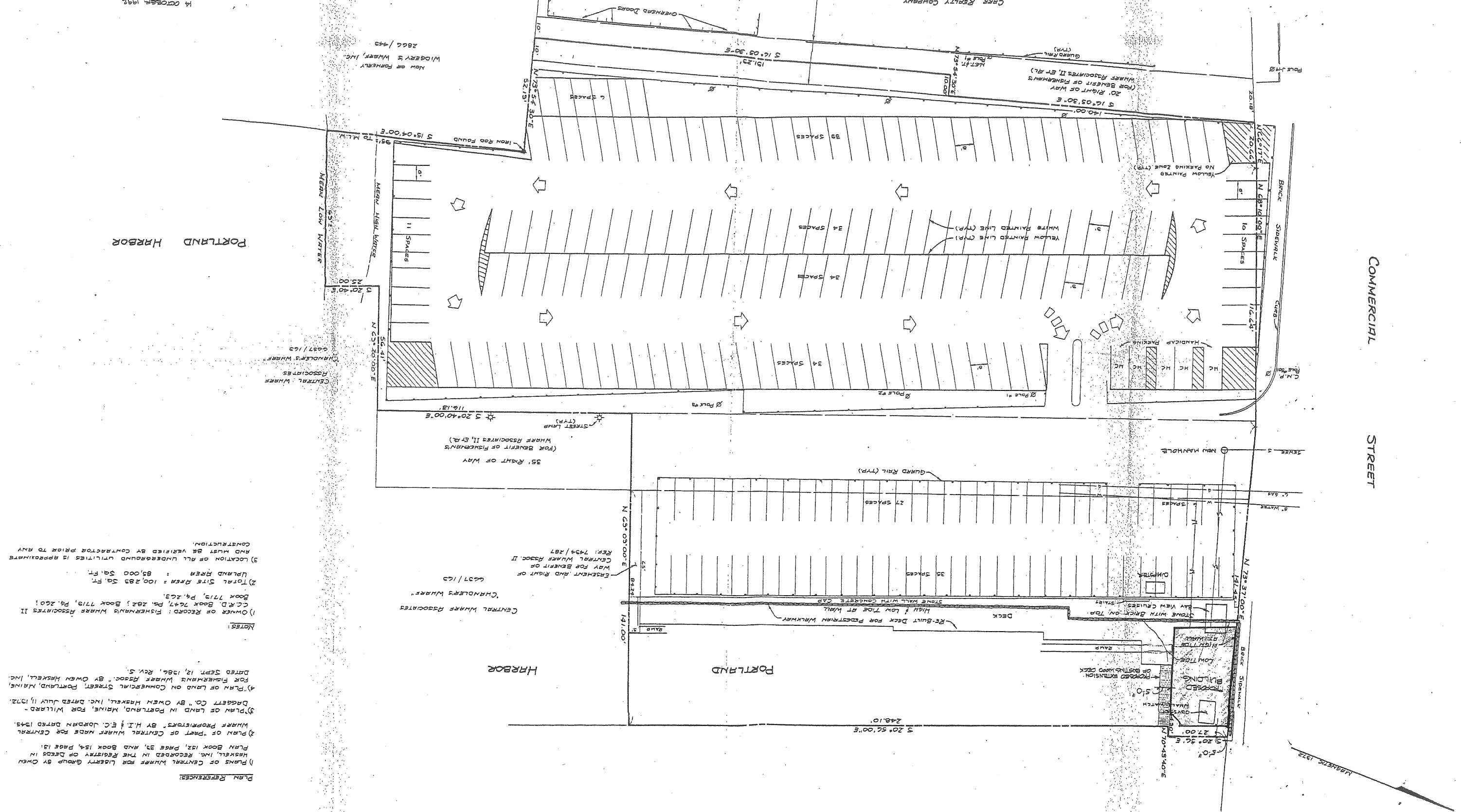
FISHERMANS WHARF



14 OCTOBER 1992
PLAN OF LAND
 ON
 COMMERCIAL STREET, PORTLAND, MAINE
 FOR
 FISHERMAN'S WHARF ASSOC
Owen Haskell, Inc.
 Civil Engineers
 South Portland, Maine
 Land Survey

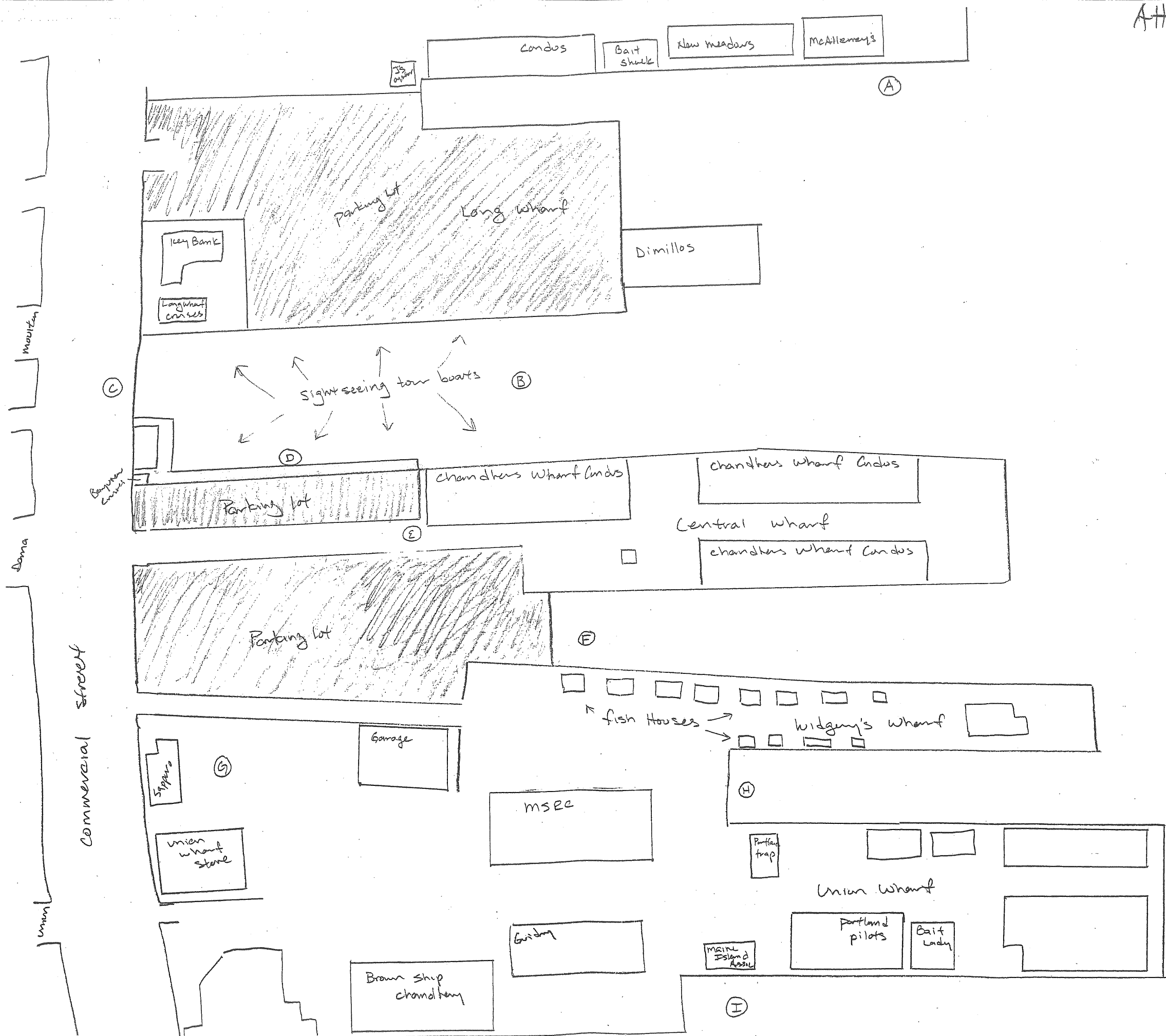
THIS PLAN IS BASED ON PERMETER SURVEY SHOWN
 ON PLAN REFERENCE 4. PARKING LAYOUT TAKEN FROM
 PLAN OF MOOR & SERRIN, LANDSCAPE ARCHITECTS.
 JOHN
 STATE OF MAINE

GRAPHIC SCALE 1" = 20'



PLAN REFERENCES:
 1) PLANS OF CENTRAL WHARF FOR LIBERTY GROUP BY OWEN HASKELL, INC. RECORDED IN THE REGISTRY OF DEEDS IN MAINE, BOOK 152, PAGE 39, AND BOOK 154, PAGE 131.
 2) PLAN OF PART OF CENTRAL WHARF MADE FOR CENTRAL WHARF PROPRIETORS BY H.I. & E.C. JORDAN DATED 1945.
 3) PLAN OF LAND IN PORTLAND, MAINE, FOR WILLARD DAGGETT CO. BY OWEN HASKELL, INC. DATED JULY 11, 1972.
 4) PLAN OF LAND ON COMMERCIAL STREET, PORTLAND, MAINE, FOR FISHERMAN'S WHARF ASSOC. BY OWEN HASKELL, INC. DATED SEPT. 12, 1986, REV. 5.
NOTES:
 1) OWNER OF RECORD: FISHERMAN'S WHARF ASSOCIATES II (FOR BENEFIT OF FISHERMAN'S WHARF ASSOC. II), C.R.D. BOOK 7647, PG. 282; BOOK 7719, PG. 260.
 2) TOTAL SITE AREA: 100,289 SQ. FT.
 UPLAND AREA: 89,000 SQ. FT.
 3) LOCATION OF ALL UNDERGROUND UTILITIES IS APPROXIMATE AND MUST BE VERIFIED BY CONTRACTOR PRIOR TO ANY CONSTRUCTION.

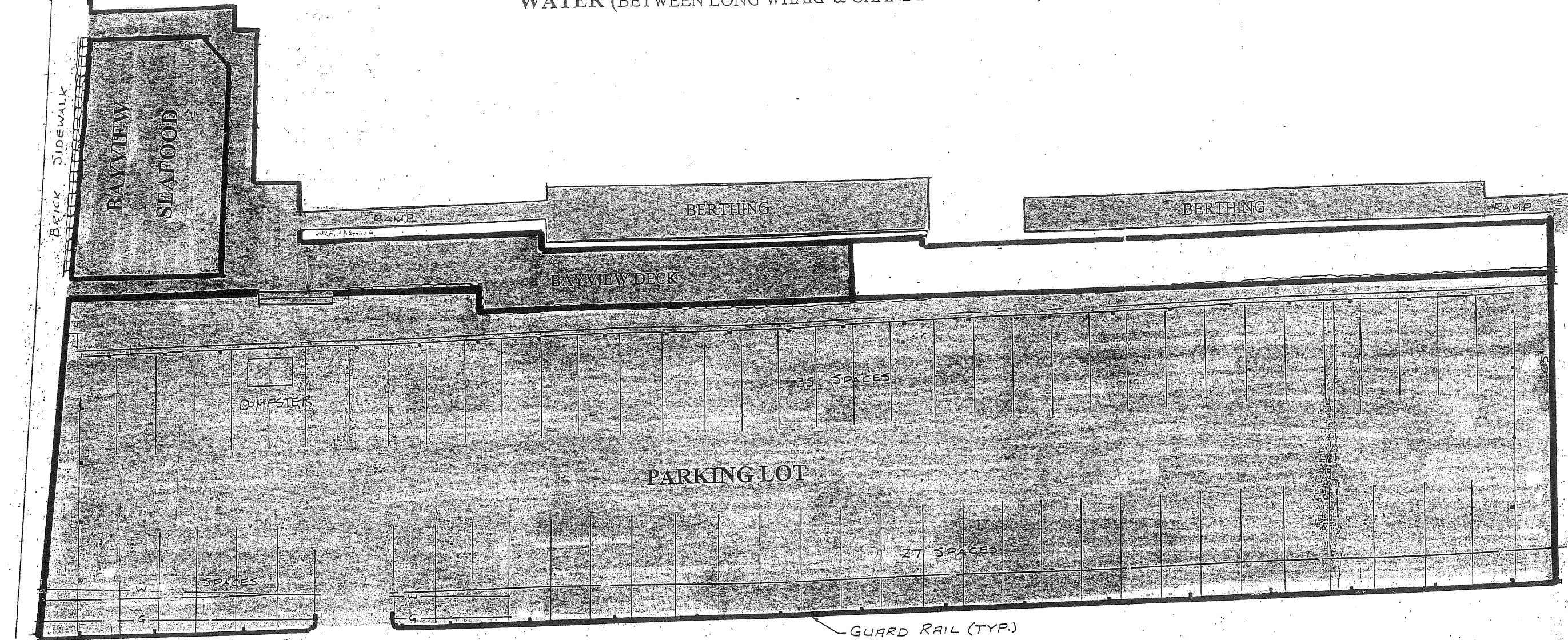
AH 11



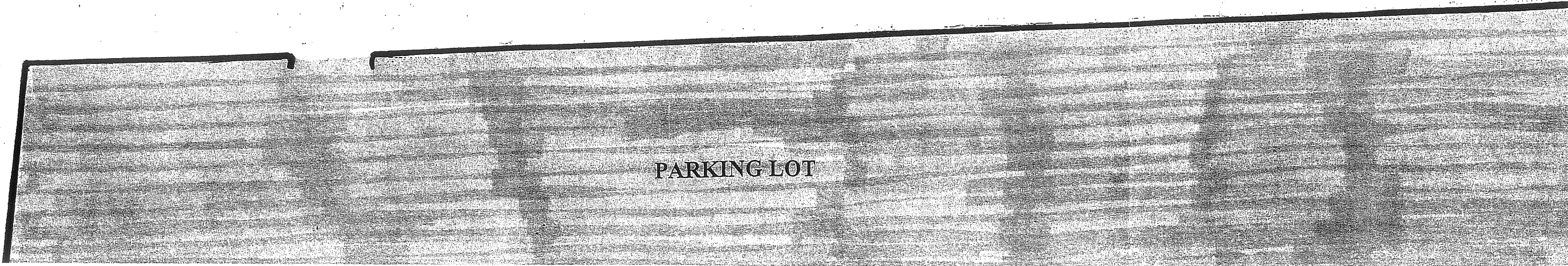
Order
131

WATER (BETWEEN LONG WHARF & CHANDLER'S WHARF)

COMMERCIAL STREET

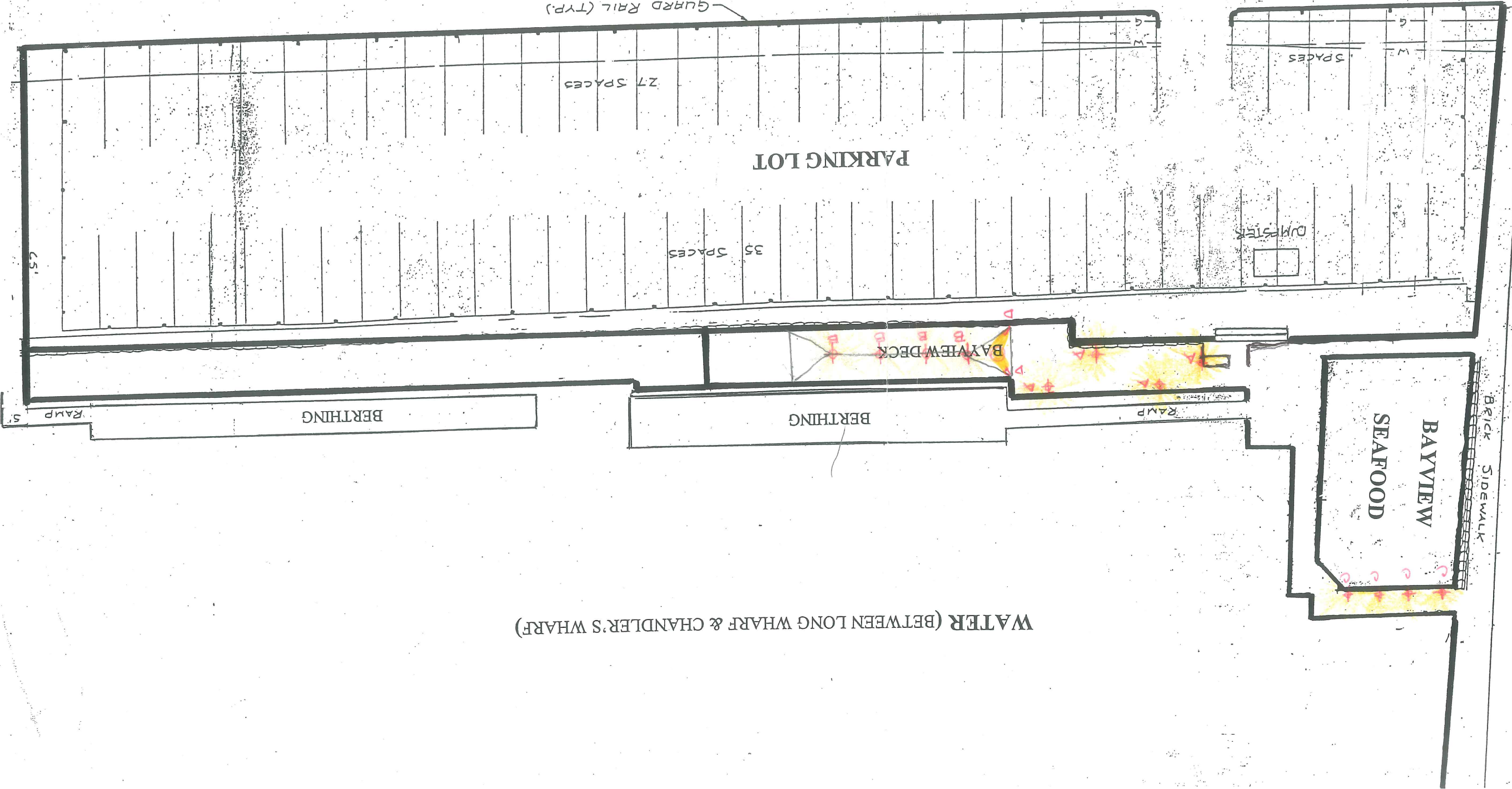


CHANDLER'S WHARF (ENTRANCE TO CONDOS>>>)



COMMERCIAL STREET

WATER (BETWEEN LONG WHARF & CHANDLER'S WHARF)



CHANDLER'S WHARF (ENTRANCE TO CONDOS))

PARKING LOT



227 Commercial Street
 Portland, ME 04101
 Tel. 207.871.7668
 Fax. 207.871.7645
 lighting@maine.rr.com

CITY OF PORTLAND
ASSESSORS PLAN
SCALE 1"=50' ±

Figure 3

SHEET 41-A

SHEET 38-B

COMMERCIAL

SHEET 32-B

STREET

FOURTH ST

PROJECT SITE

DANA

1910

1907

1914

1916

HCL 1920

No 31

