

City of Portland, Maine – Building or Use Permit Application 389 Congress Street, 04101, Tel: (207) 874-8703, FAX: 874-8716

| | | | | | | | | |
|---|--|---|--|--|--|---|--|--|
| Location of Construction: <i>442-444 Fore St</i> | | Owner: <i>Soley, Joseph</i> | | Phone: | | Permit No: 961069 | | |
| Owner Address: | | Leasee/Buyer's Name: <i>Cadillac Jacks 442 Fore St Fald, ME 04101</i> | | Phone: | | | Permit Issued: PERMIT ISSUED OCT 25 1996 32-R-8 | |
| Contractor Name: <i>Vester Development</i> | | Address: | | Phone: | | | | Zone: <i>CB</i> CITY OF PORTLAND |
| Past Use: <i>Bar/Restaurant</i> | | Proposed Use: <i>Same w/retail sales</i> | | COST OF WORK: \$ <i>3,500.00</i> FIRE DEPT. <input type="checkbox"/> Approved <input type="checkbox"/> Denied Signature: <i>[Signature]</i> | | | | |
| Proposed Project Description: <i>Change Use Make interior renovations Divide space</i> | | PERMIT FEE: \$ <i>65-</i> INSPECTION: Use Group: <i>M</i> Type: <i>3B</i> Signature: <i>[Signature]</i> | | PEDESTRIAN ACTIVITIES DISTRICT (P.U.D.) Action: Approved <input type="checkbox"/> Approved with Conditions: <input type="checkbox"/> Denied: <input type="checkbox"/> Signature: _____ Date: _____ | | Zoning Approval: Special Zone or Reviews: <input type="checkbox"/> Shoreland <input type="checkbox"/> Wetland <input type="checkbox"/> Flood Zone <input type="checkbox"/> Subdivision <input type="checkbox"/> Site Plan <input type="checkbox"/> maj <input type="checkbox"/> minor <input type="checkbox"/> mm <input type="checkbox"/> | | |
| Permit Taken By: <i>Mary Gresik</i> | | Date Applied For: <i>16 October 1996</i> | | | | | Zoning Appeal <input type="checkbox"/> Variance <input type="checkbox"/> Miscellaneous <input type="checkbox"/> Conditional Use <input type="checkbox"/> Interpretation <input type="checkbox"/> Approved <input type="checkbox"/> Denied Historic Preservation <input type="checkbox"/> Not in District or Landmark <input type="checkbox"/> Does Not Require Review <input type="checkbox"/> Requires Review Action: <input type="checkbox"/> Approved <input type="checkbox"/> Approved with Conditions <input type="checkbox"/> Denied Date: _____ | |

1. This permit application doesn't preclude the Applicant(s) from meeting applicable State and Federal rules.
2. Building permits do not include plumbing, septic or electrical work.
3. Building permits are void if work is not started within six (6) months of the date of issuance. False information may invalidate a building permit and stop all work..

*442 Fore St - Retail Space
444 Fore St - Bar/Restaurant - Cadillac Jacks*

PERMIT ISSUED WITH REQUIREMENTS

CERTIFICATION

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

| | | | |
|--|----------|---------------------------------|---------------------------|
| SIGNATURE OF APPLICANT <i>Michael Iosua</i> | ADDRESS: | DATE: <i>16 October 1996</i> | PHONE: |
| RESPONSIBLE PERSON IN CHARGE OF WORK, TITLE | | | PHONE: <i>750-8501</i> |

CEO DISTRICT 7

City of Portland, Maine – Building or Use Permit Application 389 Congress Street, 04101, Tel: (207) 874-8703, FAX: 874-8716

| | | | | | |
|--|--|--|--|--|--|
| Location of Construction: 442-444 Fore St | | Owner: Soley, Joseph | | Phone: | |
| Owner Address: ★ | | Leasee/Buyer's Name: Cadillac Jacks 442 Fore St | | Phone: Portland, ME 04101 | |
| Contractor Name: Vester Development | | Address: | | Phone: | |
| Past Use: Bar/Restaurant | | Proposed Use: Same w/retail sales | | COST OF WORK: \$ 3,500.00 | |
| | | | | PERMIT FEE: \$ 40.00 65- | |
| | | | | FIRE DEPT. <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied | |
| | | | | INSPECTION: Use Group: M Type: 3B | |
| Proposed Project Description: Change Use MAKE interior renovations Divide space - | | | | Signature: <i>[Signature]</i> | |
| | | | | Signature: <i>[Signature]</i> | |
| Permit Taken By: Mary Gresik | | Date Applied For: 16 October 1996 | | | |

Permit No. **961069**

PERMIT ISSUED

Permit Issued:

OCT 25 1996

CITY OF PORTLAND

Zone: *B-3* CBL: 032-R-?007.

Zoning Approval: *Separate permit required for signage*

Shoreland *8/10/23/96*

Wetland

Flood Zone

Subdivision

Site Plan maj minor mm 6

1. This permit application doesn't preclude the Applicant(s) from meeting applicable State and Federal rules.
2. Building permits do not include plumbing, septic or electrical work.
3. Building permits are void if work is not started within six (6) months of the date of issuance. False information may invalidate a building permit and stop all work..

442 Fore St - Retail Space
444 Fore St - Bar/Restaurant - Cadillac Jacks

CERTIFICATION

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

| | | | | |
|---|---------------|----------|--------------------------|----------|
| SIGNATURE OF APPLICANT <i>[Signature]</i> | Michael Tosua | ADDRESS: | DATE: 16 October 1996 | PHONE: |
| RESPONSIBLE PERSON IN CHARGE OF WORK, TITLE <i>[Signature]</i> | | | <i>Mike (?)</i> | 750-8501 |

White-Permit Desk Green-Assessor's Canary-D.P.W. Pink-Public File Ivory Card-Inspector

PERMIT ISSUED WITH REQUIREMENTS

No exterior alterations authorized under this permit

- Zoning Appeal**
- Variance
 - Miscellaneous
 - Conditional Use
 - Interpretation
 - Approved
 - Denied

- Historic Preservation**
- Not in District or Landmark
 - Does Not Require Review
 - Requires Review
- Action:
- Approved
 - Approved with Conditions
 - Denied

Date: *10/18/96*

[Signature]

CEO DISTRICT 2

A. Rowe

BUILDING PERMIT REPORT

DATE: 10/24/06 ADDRESS: 442-444 Forest

REASON FOR PERMIT: Change of use

BUILDING OWNER: Joe Soloy

CONTRACTOR: Vester Development

PERMIT APPLICANT: Michael Fosuz APPROVAL: *1/4/06 *1/7/06
DENIED: _____

CONDITION OF APPROVAL OR DENIAL

1. Before concrete for foundation is placed, approvals from the Development Review coordinator and Inspection Services must be obtained. (A24 hour notice is required prior to inspection)
2. Precaution must be taken to protect concrete from freezing.
3. It is strongly recommended that a registered land surveyor check all foundation forms before concrete is placed. This is done to verify that the proper setbacks are maintained.
4. Private garages located beneath habitable rooms in occupancies in Use Group R-1, R-2, R-3 or I-1 shall be separated from adjacent interior spaces by fire partitions and floor/ceiling assembly which are constructed with not less than 1-hour fire resisting rating. Private garages attached side-by-side to rooms in the above occupancies shall be completely separated from the interior spaces and the attic area by means of 1/2 inch gypsum board or the equivalent applied to the garage means of 1/2 inch gypsum board or the equivalent applied to the garage side. (Chapter 4 section 407.0 of the BOCA/1996)
5. Guardrail & Handrails-A guardrail system is a system of building components located near the open sides of elevated walking surfaces for the purpose of minimizing the possibility of an accidental fall from the walking surface to the lower level. Minimum height all Use Groups 42", except Use Group R which is 36". In occupancies in Use Group A,B, H-4, I-1, I-2 M and R and public garages and open parking structures, open guards shall have balusters or be of solid material such that a sphere with a diameter of 4" cannot pass through any opening. Guards shall not have an ornamental pattern that would provide a ladder effect.
6. Headroom in habitable space is a minimum of 7'6".
7. Stair construction in Use Group R-3 & R-4 is a minimum of 10" tread and 7 3/4" maximum rise. All other Use Group minimum 11" tread, 7" maximum rise.
8. The minimum headroom in all parts of a stairway shall not be less than 80 inches.
9. Every sleeping room below the fourth story in buildings of Use Groups R and I-1 shall have at least one operable window or exterior door approved for emergency egress or rescue. The units must be operable from the inside without the use of special knowledge or separate tools. Where windows are provided as means of egress or rescue, they shall

have a sill height not more than 44 inches (1118mm) above the floor. All egress or rescue windows from sleeping rooms shall have a minimum net clear opening height dimension of 24 inches (610mm). The minimum net clear opening width dimension shall be 20 inches (508mm), and a minimum net clear opening of 5.7 sq. feet.

10. Each apartment shall have access to two (2) separate, remote and approved means of egress. A single exit is acceptable when it exits directly from the apartment to the building exterior with no communications to other apartment units.
11. All vertical openings shall be enclosed with construction having a fire rating of at least one (1) hour, including fire doors with selfclosers.
12. The boiler shall be protected by enclosing with one (1) hour fire-rated construction including fire doors and ceiling, or by providing automatic extinguishment.
13. All single and multiple station smoke detectors shall be of an approved type and shall be installed in accordance with the provisions of the City's building code Chapter 9, Section 19, 919.3.2 (BOCA National Building Code/1996), and NFPA 101 Chapter 18 & 19. (Smoke detectors shall be installed and maintained at the following locations):
 1. In the immediate vicinity of bedrooms
 2. In all bedrooms
 3. In each story within a dwelling unit, including basements

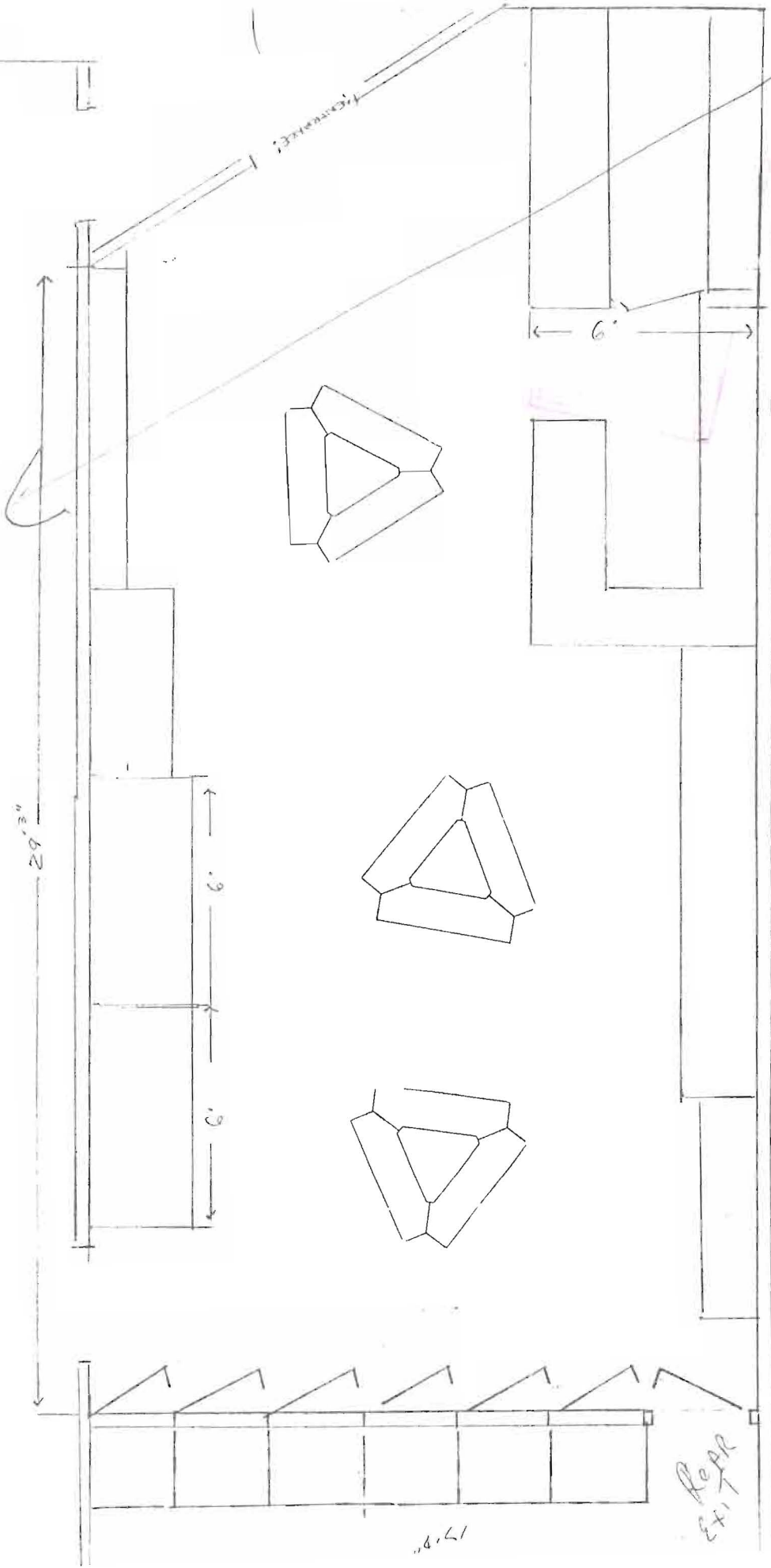
In addition to the required AC primary power source, required smoke detectors in occupancies in Use Groups R-2, R-3 and I-1 shall receive power from a battery when the AC primary power source is interrupted. (Interconnection is required)

14. A portable fire extinguisher shall be located as per NFPA #10. They shall bear the label of an approved agency and be of an approved type.
15. The Fire Alarm System shall be maintained to NFPA #72 Standard.
16. The Sprinkler System shall be maintained to NFPA #13 Standard.
17. All exit signs, lights, and means of egress lighting shall be done in accordance with Chapter 10 Section & Subsections 1023. & 1024. of the City's building code. (The BOCA National Building Code/1996)
18. All construction and demolition debris must be disposed at the City's authorized reclamation site. The fee rate is attached. Proof of such disposal must be furnished to the office of Inspection Services before final Certificate of Occupancy is issued or demolition permit is granted.
19. Section 25-135 of the Municipal Code for the City of Portland states, "No person or utility shall be granted a permit to excavate or open any street or sidewalk from the time of November 15 of each year to April 15 of the following year".
20. The builder of a facility to which Section 4594-C of the Maine State Human Rights Act, Title 5 MRSA refers, shall obtain a certification from a design professional that the plans of the facility meet the standards of construction required by this section. Prior to commencing construction of the facility, the builder shall submit the certification to the Division of Inspection Services.
21. This permit does not excuse the applicant from obtaining any license which may be needed from the City Clerk's Office.


P. Samuel Hoffes, Chief of Inspection Services

c.c. Lt. McDougall P. F. D.

CADILLAC JACKS



WALL to Be
 Constructed
 of 2x8's
 Insulated
 w/ 5/8 sheet Rock
 (Fire shield)
 on Both sides

REAR
 EXIT

17'4"

REAR
 EXIT



Inspection Services
Michael J. Nugent
Manager

Department of Urban Development
Joseph E. Gray, Jr.
Director

CITY OF PORTLAND
NOTICE OF VIOLATION

July 16, 1998

Scot Orchow
233 Valley St.
Portland, ME 04102

RE: The Bitter End, 442 Fore St.(032-R-007)

Hand Delivery

Dear Mr Orchow,

An evaluation of the above location revealed that the improvements to the structure pursuant to building permit # 980685 can not be used as space for the "bar" as the expansion fails to comply with Section 14-217.5.8. of the Land Use Ordinance of the City of Portland.

The expansion, as constructed, is set up as a "bar" as defined and exceeds the 10% of the former Bitter End floor area. There are no additional entertainment licenses available at this time. Because of these circumstances, this office cannot allow a certificate of occupancy to be issued for the area in question and the area cannot be used without said certificate.

This notice is to advise you of these circumstances and to require you to install a partition to separate the area from the existing bar. No use of the area can occur and the partition must be installed within 7 days of the date of this notice. Failure to comply will constitute a violation of the land Use Ordinance and result in this office referring the matter to the City of Portland Corporation Counsel for legal action and possible civil penalties, as provided for in Section 1-15 of the Code and in Title 30-A M.R.S.A. ss 4452.

This constitutes an appealable decision pursuant to Section 14-472 of the Code. Please feel free to contact me at 874-8700 , if you wish to discuss the matter or have any questions.

Sincerely

Mike Nugent
Inspection Services Manager

Marge Schmuckal
Zoning Administrator

cc/Central File/Joe Soley

ground floor retail use in its effect on the continuity of pedestrian-oriented use and that the proposal establishes a ground floor use that generates pedestrian interest and activity.

For those buildings which have frontage on more than one (1) street located within the PAD overlay zone, the street level area of each such frontage shall meet the above requirements.

- b. For those buildings which have forty (40) feet or less of frontage on a street within the PAD overlay zone, the above restrictions shall be reduced to fifty (50) percent of the frontage where required to accommodate a service entrance. For buildings which have frontage on more than one (1) street located within a PAD overlay zone, only one (1) such frontage shall be permitted to reduce the required retail area to fifty (50) percent of the frontage.
- c. In no event shall any required retail frontage area be used for any of the following:
 - i. Storage;
 - ii. Service entrances, including loading docks, dumpsters and compactors, except as provided in subsection b; or
 - iii. Food preparation areas, unless such preparation areas are visually oriented toward pedestrians on streets located within a PAD overlay zone.

(Ord. No. 241-91, 3-11-91; Ord. No. 200-95, § 1, 3-20-95; Ord. No. 126-97, § 7, 3-3-97)

Sec. 14-217.5. Old Port overlay zone.

The following additional restrictions shall apply in the Old Port overlay zone, as delineated on the Old Port overlay zone map, a copy of which is on file in the department of planning and urban development and attached to this ordinance as Attachment 7:

- (1) *Definitions:*
 - a. *Bar:* Any establishment that derives more than fifty (50) percent of its income during a license year from the sale of liquor.
 - b. *Entertainment uses:* Bars, coffee houses, pool halls, dance halls, and amusement arcades are defined as entertainment uses for purposes of this section.
 - c. *Related entity:* An individual, corporation or partnership that is the same as or has the same controlling partners, members or shareholders as an existing entertainment licensee.
- (2) *License required:* Any entertainment use located within the Old Port overlay zone shall require an entertainment license. The city shall issue an entertainment license to any entertainment use that is legally located within the Old Port overlay zone on the effective date of this section.
- (3) *Limitation on number of licenses:* The total number of entertainment licenses available in the Old Port overlay zone shall be forty (40). Twenty-eight (28) of the licenses shall

- b. Where the area of expansion exceeds ten (10) percent of the total floor area of the licensed facility, the establishment may expand if it can acquire another entertainment license. In such a circumstance, the dispersal requirements set forth in subsection (4) of this section shall not apply;
- c. The board of appeals may grant a variance from this subsection in accordance with the requirements of section 14-473(c); or
- d. Expansion of a licensed establishment into an adjacent area that has a separate entertainment license shall be permitted; provided that, in the event that one (1) establishment has an entertainment license that is grandfathered pursuant to subsection (5) of this section, then that grandfathered establishment shall surrender its entertainment license, and the combined establishment shall operate under the other entertainment license. In the case where an establishment expands into an adjacent premises and both establishments hold an entertainment license that is grandfathered pursuant to subsection (5) of this section, then one (1) of the grandfathered licenses shall be surrendered. For purposes of calculating the number of entertainment licenses issued to bars, any bar license surrendered pursuant to this subsection (8)d. shall continue to be counted as an existing license.

(Ord. No. 98-96, 10-7-96)

Sec. 14-218. Conditional uses.

The following uses are permitted as provided in section 14-474 (conditional uses), provided that, notwithstanding 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:

- (1) Ground floor uses in the mandated pedestrian-oriented use area of the PAD overlay zone: Any use permitted in the B-3 and B-3b zone, provided that such uses shall meet the following conditions and standards:
 - a. The applicant can prove that it has been unable to market the space for a permitted use in accordance with section 14-217(b)(1) by providing:
 - i. For existing structures, evidence that the space has been actively marketed for permitted uses for a period of six (6) months and, in the case of new construction, evidence that the space has been actively marketed and available for use for a period of six (6) months; and
 - ii. Evidence of market, advertising, or real estate brokerage efforts to attract permitted uses.
 - b. The approval of any conditional use under this section shall be for the specific tenant proposed for the conditional use approval and shall not run with the space to subsequent tenants. A conditional use approval shall expire at the end of each tenant's use, and a new approval shall be required for new tenants. If the term of a lease is five (5) years or less, the tenant may sublet the area either for the approved conditional use or for any use permitted by section 14-217(b)(1)a.

DIVISION 28. JURISDICTION OF BOARD OF APPEALS*

Sec. 14-471. Jurisdiction and authority.

The board of appeals shall have the following jurisdiction and authority:

- (1) Subject to the provisions of section 14-472, to hear and decide appeals from, and review orders, decisions, determinations or interpretations made by the building authority;
- (2) Subject to the provisions of section 14-473, to hear and grant or deny applications for variances from the terms of this article;
- (3) Subject to the provisions of section 14-474, to hear and grant or deny applications for conditional uses, as specified in this article;
- (4) To initiate changes and amendments to this article.

(Code 1968, § 602.24.A; Ord. No. 437-74, 7-1-74; Ord. No. 354-85, § 5, 1-7-85)

Sec. 14-472. Appeals.

- (a) *Authority.* The board of appeals shall hear and decide appeals from and review orders, decisions, determinations or interpretations or the failure to act of the building authority.
- (b) *Procedure:*
 - (1) *Notice of appeal.* An appeal may be taken to the board of appeals by any person affected by a decision of the building authority. Such appeal shall be taken within thirty (30) days of the action complained of by filing with the building authority a notice of appeal specifying the grounds thereof. A payment of a nonrefundable filing fee, as established from time to time by the city council to cover administrative costs and costs of hearing, shall accompany notice of appeal. The building authority shall forthwith transmit to the board of appeals all of the papers constituting the record upon which the action appealed from was taken.
 - (2) *Public hearing.* A public hearing shall be set, advertised and conducted by the board of appeals in accordance with article VI of this chapter.
 - (3) *Action by the board of appeals.* Within thirty (30) days following the close of the public hearing, the board of appeals shall render a decision on the appeal in the manner and form specified in article VI of this chapter. The failure of the board to act within thirty (30) days shall be deemed an approval of the appeal unless mutually extended in writing by the appellant and the board. Within five (5) days of such decision or failure to act notice thereof shall be mailed by the secretary to each party.

***Cross references**—Administration, Ch. 2; boards generally, § 2-31 et seq.; board of appeals, § 14-541 et seq.

CITY OF PORTLAND, MAINE
M E M O R A N D U M

TO: Mayor Kane and Members of the City Council

FROM: Gary C. Wood, Corporation Counsel
Ext. 8480

DATE: July 23, 1998

RE: **Application of Waycot Inc. d/b/a the Bitter End for a Class A Lounge
Liquor License**

This is the license issue that was raised at the end of the Council meeting on July by Attorney Bill Welch on behalf of Waycot, Inc. Waycot, Inc is a corporation owned by Mr. Scot Orchow and Mr. Wayne Lewis. They own and operate the Bitter End bar located at 442-446 Fore Street.

The precise issue raised by this application (pages 1 to 4) is whether the expansion proposed by Mr. Orchow (see slash-marked section of application diagram on July 13th, 1998 application, p. 4; a more detailed diagram is attached to the building permit issued June 26, 1998, p. 8) is an expansion allowed by the Old Port Overlay Zone Ordinance. In my opinion, the ordinance does not allow such an expansion unless Mr. Orchow obtains an additional Old Port overlay license. I recommend that you deny the application. Denial will only prevent the expansion. The owners will still be able to operate on the first and second floors of 446 Fore Street and in that part of 442 Fore Street into which they expanded in 1997.

I also recommend that the Fire Department recalculate the correct occupancy limit for the existing bar as I believe the current limit (275) exceeds the limit in a way that violates the agreed-upon conditions placed on the Bitter End in 1996 that limited the bar's original two floors to a total of 135 people.

FACTS

Here are the relevant facts based on the attached records and my recollection. I have put together a chronology of events (attached) that shows the expansion of this bar.

In this specific case the original facility and its footprint is the original space occupied by Three Dollar Dewey's before it became the Bitter End. Dewey's moved and the exact same space continued as a bar named Taps. In 1996 Mr. Orchow and his company rented the Taps space and purchased its Old Port permit from Joe Soley and opened the Bitter End. Taps operated on just one floor of the building located at 446 Fore Street on the corner of Fore Street and Temple Street. See Exhibit 15 in backup. Taps'

original space used for the service and consumption of alcohol contained approximately 400 square feet. Mr. Soley and Mr. Orchow wanted to expand the area used for the service and consumption of alcohol to include the second floor. (See Exhibit 16) Mr. Soley started the expansion process six weeks before the first reading of the Old Port Ordinance. I advised the license administrator to reject that application when it was filed on October 25, 1996, (see Exhibit 11) because even though our ordinance hadn't been enacted it had been given a first reading and was going into effect on November 6, 1996. My understanding of the purpose of the ordinance was that it was designed specifically to set a limit on the amount of floor space used in the Old Port for the service and consumption of alcohol in facilities that were located within 100 feet of each other.

The applicant asked the Council to review and rule on my interpretation and on November 18, 1996 the Council overruled me and authorized the expansion because the ordinance had not been in effect at the time the application was filed and because Mr. Orchow and Mr. Lewis specifically stated that they were not asking for an increase in their occupancy limit. Based on that statement (see more general statement on p. 14 of the record) the Council allowed the expansion but placed a condition on the license that limited occupancy to 135 - the same limit previously placed on Taps (p. 17). On August 24, Cadillac Jack's license on the space next to the Bitter End became abandoned and went into the pool for distribution by lottery. At the time the abandonment occurred, Mr. Orchow had the only application on file and he therefore won the "lottery" for that license. He legally used his second license to expand into his current area. That expansion, however, only occupied about 2/3 of the space taken by Cadillac Jack's. The other 1/3 of the space was occupied at that time by a convenience store. The convenience store has closed and Mr. Orchow wants to now turn that space into an area for consuming and serving alcohol and add it to the existing floor space of the Bitter End. This would allow for an increase in the allowed occupancy of this Old Port bar.

ORDINANCE ANALYSIS

§ 14-217.5(8) represents a compromise and balancing act between the interests of businesses that might want to expand and the purpose of the Old Port Overlay Ordinance. The key sections are subparagraph (8)(a) and (b) (attached).

Subparagraph (8)(a) allows an expansion of up to 10% of the "total floor area of the licensed activity." In my opinion such an expansion must be limited to a one-time expansion of the original footprint, otherwise you will face situations where that particular provision could be used over and over again to grossly exceed the original 10% expansion allowed by the ordinance, particularly when a business has already gone through one or more legal expansions that exceeds 10%, as has the Bitter End. Furthermore, the new space sought for expansion (approximately 720 square feet) clearly exceeds 10% of the old Cadillac Jack's space (approximately 1140 square feet) and it also exceeds 10% of both the first and second floor used by Taps.

In my opinion, subparagraph (8)(b) is a very liberal alternative to subparagraph

Mayor Kane & Members of the City Council

July 23, 1998

Page 3

(8)(a). (b) allows an expansion that exceeds 10% even if that expansion takes place in an establishment that doesn't meet the 100 foot separation requirement as long as the establishment acquires another entertainment license. It is under this paragraph that Mr. Orchow was allowed to expand the Bitter End horizontally into the space previously occupied by Cadillac Jack's.

Mr. Orchow applied for and received a Building Permit June 23rd and 26th, respectively) to tear a wall down for the proposed expansion into the space previously used as a convenience store. He also spent money preparing the new area for use, including the installation of a bar. He did not, however, apply for an expansion on his liquor license on June 26th. That is the application that triggers a review under the Old Port ordinance with which he is very familiar. Furthermore he stated on his application for the building permit, that he was "restoring 442 Fore Street to its original size by removing the non-bearing wall in the middle of the building." While that was true for the original Cadillac Jack's space it was inaccurate in relation to the space as it was used after Cadillac Jack's closed because the space became occupied and used for a convenience store - that's the use that existed just before Mr. Orchow filed his application for a building permit. Based on these facts and as I read subparagraph (8)(b), Mr. Orchow can only use the additional space previously used as a convenience store if he obtains a third entertainment license. I agree that he could have originally expanded into that space had it been available at the time he obtained his second license, but it wasn't and he didn't expand into that space. He should not, in my opinion, be allowed at this time to add additional space without getting another Old Port Overlay license.

Mr. Orchow has requested the reasoning behind my advice to the license administrator to deny this liquor application and I have forwarded a copy of this memo to him in response to his request. I have also invited him to submit either personally, or through his attorney, their written analysis of the ordinance and facts of this matter before the Council meets on August 3rd.

At the time that the expansion provision was crafted by the Old Port Committee, I argued strongly against the liberal provisions in (8)(b) because, in my opinion, that section thwarts the original purpose of the ordinance, which was to impose a reasonable limit on the amount of floor space use for the service and consumption of alcohol by bars that are within 100 feet of each other. The Bitter End's expansion into the former Cadillac Jack's space (and the proposed expansion of Squire Morgan's into the old Sabino area) supports my concern and I therefore encourage the Council to interpret this provision in a narrow manner rather than in an expansive manner. I also ask the Council to refer the expansion issue to the Public Safety Committee for consideration in September as it undertakes further review of the other proposed amendments to the Overlay Ordinance.

cc: Scott Orchow

GCW:meg
O:\WP\GARY\BITTREND.CC



CITY OF PORTLAND, MAINE
Department of Building Inspection

32-R-8

Certificate of Occupancy

LOCATION 442 Fore St

Issued to Joseph Soley

Date of Issue 25 June 1998]

This is to certify that the building, premises, or part thereof, at the above location, built — altered — changed as to use under Building Permit No. 961069, has had final inspection, has been found to conform substantially to requirements of Zoning Ordinance and Building Code of the City, and is hereby approved for occupancy or use, limited or otherwise, as indicated below.

PORTION OF BUILDING OR PREMISES

APPROVED OCCUPANCY

Entire

Retail Sales

Limiting Conditions:

This certificate supersedes
certificate issued 29 JAN 97

Approved:

6/25/98

(Date)

Inspector

Inspector of Buildings

Notice: This certificate identifies lawful use of building or premises, and ought to be transferred from owner to owner when property changes hands. Copy will be furnished to owner or lessee for one dollar.

HYM