

11/5/17

RE: 38 Portland Street Legalization of 1 Residential Unit

Good day Zoning Board of Appeals,

I recently purchased 38 Portland Street on Oct 13th of this year.

During the purchase process the application for the legalization of a dwelling unit on the 2nd floor was going through the approval process under the previous owners David and Janet Perkins.

My hope and intent is to complete this process & create 1 residential dwelling unit on the 2nd floor & leave the 1st floor zoned retail/commercial with its current b2b zoning. This space is currently vacant.

STANDARDS FOR CONDITIONAL USE

- 1) The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement and the number of parking spaces required are not substantially greater than would normally occur at surround used or other allowable used in the same zone
 - a) **There will be no additional traffic as a residential dwelling unit already exists**
- 2) The proposed use will not create unsanitary or harmful conditions by reason or noise, glare, dust, sewage disposal, emissions to the air, odor, lighting or litter
 - a) **The conditions will improve with the building being brought up to city code**
- 3) The design and operation of the proposed use, including but not limited to landscaping, screenings, signs, loading, deliveries, trash or waste generation, arrangement of structures and materials will not have a substantially greater effect/impact on the surrounding properties.
 - a) **There will be no change to any of these effects**

Please find enclosed:

- Copy of appeal application.
- Plot plan showing the site and location of all structures, existing and proposed, in relation to the lot
- A floor plan
- Copy of the tax map with the property highlighted.
- Photos of the property
- New Deed
- Affidavits and supporting documentation of the unit being used for residential purposes
- Legalization Inspection Form - *property has been re-inspected by Chuck.. Need to complete a few items on fire code then will have property re-inspected*

All the best,

Scot Herrigel



PS: At our hearing either myself and/or my brother John Herrigel will be present and will serve as my proxy.



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

Ann Machado
Zoning Administrator

CITY OF PORTLAND ZONING BOARD OF APPEALS

Conditional Use Appeal Application

Applicant Information:

Scot Herrigel
NAME

BUSINESS NAME

BUSINESS ADDRESS

BUSINESS TELEPHONE & E-MAIL

APPLICANT'S RIGHT/TITLE/INTEREST

Retail + Personal Service
CURRENT ZONING DESIGNATION

Subject Property Information:

38 Portland Street
PROPERTY ADDRESS

33-J-11
CHART/BLOCK/LOT (CBL)

PROPERTY OWNER (If Different)

34 Oliver St Bath, ME 04530
ADDRESS (If Different)

207-330-5458
PHONE # AND E-MAIL

CONDITIONAL USE AUTHORIZED BY
SECTION 14- 391(f)

EXISTING USE OF THE PROPERTY: Commercial/retail 1st floor, Residential 2nd floor

TYPE OF CONDITIONAL USE PROPOSED:
Legalization of residential unit on the 2nd floor

STANDARDS: Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the Board determines that:

1. The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone; and
2. The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter; and
3. The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses of other allowable uses in the zone.

NOTE: If site plan approval is required, attach preliminary or final site plan.

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

[Signature]
SIGNATURE OF APPLICANT

10/26/2017
DATE

LETTER OF OPPOSITION

City of Portland
Zoning Administration – Room 315
389 Congress Street
Portland, Maine 04101

October 12, 2017

*In the Matter of **38 Portland Street** (application to legalize one existing non-conforming dwelling unit)*

To Whom It May Concern:

I own and reside at 28 Hanover Street.

Based on the available record, I am presently opposed to the legalization request for the above mentioned property.

I was unaware that the dwelling unit in question was non-conforming. It has been inhabited, perhaps since the current owner's purchase of the building in April 2012, by Edgar Gatto, who had an affiliation with the evangelical church next-door run by the applicants, Mr. and Mrs. Perkins.

Mr. Gatto permanently re-located out-of-state in late summer 2017 and the entire building was put up for sale roughly concurrently with his departure. Current real estate listings indicate a sale of the property is pending.

With the imminent sale of 38 Portland Street, it is not clear what will happen next. The “Good News Bargains” consignment shop run by Mr. Gatto out of the street level of 38 Portland Street was a very small operation that probably generated little income (its hours were usually limited to portions of weekdays only). It appeared to be an arm of the church run by the applicants for the benefit of the church although this may not be correct (whose financial responsibility it was remains unknown to me) and it is not even clear what lease arrangements for the store or the dwelling, if any, existed between Mr. Gatto and the applicants/church (some kind of barter agreement may have operated among them).

The concern is that for some time the church property (formerly the “Lost Coin Cafe”) and 38 Portland Street were effectively managed as one property. Mr. Gatto (whose precise relationship with the church was not clear – he probably was an active church member but he also served as the on-site caretaker/property manager for both buildings) was a neighborhood fixture and asset.

Mr. Gatto living above his shop and next door to the church to which he was connected seemed to work well for everyone including the neighborhood. He would often keep a close and friendly watch on the goings-on around him, report criminal activity, and he effectively coordinated with his nearby neighbors on Hanover Street to address the often disheveled exterior areas of the church property (no one else in the church community appeared to have much interest in this upkeep responsibility other than Mr. Gatto although he occasionally would enlist the help of church members for some larger tasks like putting up holiday decorations).

The possibility of a new owner makes myself and my neighbors wonder whether the present building is too small to be effectively bifurcated between a retail shop below and a dwelling unit above. In the event the occupants of each are different parties, neither side may find the arrangement at all satisfactory. The retail level is likely too small to attract a robust commercial tenant without having access to the storage and office space on the second story and/or basement. Alternatively, a good residential tenant may be put off by having a regular retail presence underneath them, without having some kind of assurances of what activities and hours such a business might have over time. In short, the neighborhood is at risk of having a substandard occupant of each level with animosity perhaps between them being generated over time to no one's benefit.

There is certainly precedent for owner-occupants of businesses in Bayside – in the 19th century, that was probably the norm around here. Even now, for example, the owner-operators of local restaurants Isa Bistro and Schulte & Herr live above their establishments. The distinguishing feature from 38 Portland Street, however, is that those two businesses have structures that can fully and robustly (and legally) accommodate both the first-floor business use and the upper-story residential occupancy. That is not so clear in the 38 Portland Street context and we have no way of knowing if the pending buyer is considering an owner-occupancy arrangement of any kind which would be ideal.

The current owners could have addressed the illegal dwelling unit when they applied for new signage permits soon after taking possession of 38 Portland Street, but for whatever reason, did not do so at that time. Now it appears likely they wish to resolve it so that the party to whom they are selling does not have to undertake this legalization petition post-closing.

West Bayside is a great neighborhood and functionally is not a stand-alone neighborhood at all, but simply a part of Portland's downtown district. The central post office building on Forest Avenue, the Public Market parking structure (and other surface parking) as well as 55 Portland Street (which serves as a City Hall annex of sorts for various municipal functions) to name a few locations, all connect the area with a constant stream of downtown users. However, due to the heavy concentration of social services like Preble Street (thrice-daily homeless food service operation/resource center/health clinic) and the Oxford Street Shelter, West Bayside residents and property-owners have to be extra vigilant about neglect and blight. Often the challenges generated by those who depend on vital social services provided in the neighborhood are used as an excuse by some owners and residents to turn a blind eye to the routine chores of responsible property maintenance and cooperation among their urban neighbors.

I am certainly willing to consider removing my opposition in the event the applicant is able, at a Zoning Board of Appeals public hearing, to provide satisfactory responses to the above-noted concerns and how a future owner may take account of them as well.

Thank you in advance for your attention to this matter.

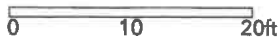
Sincerely,

George J. Rheault

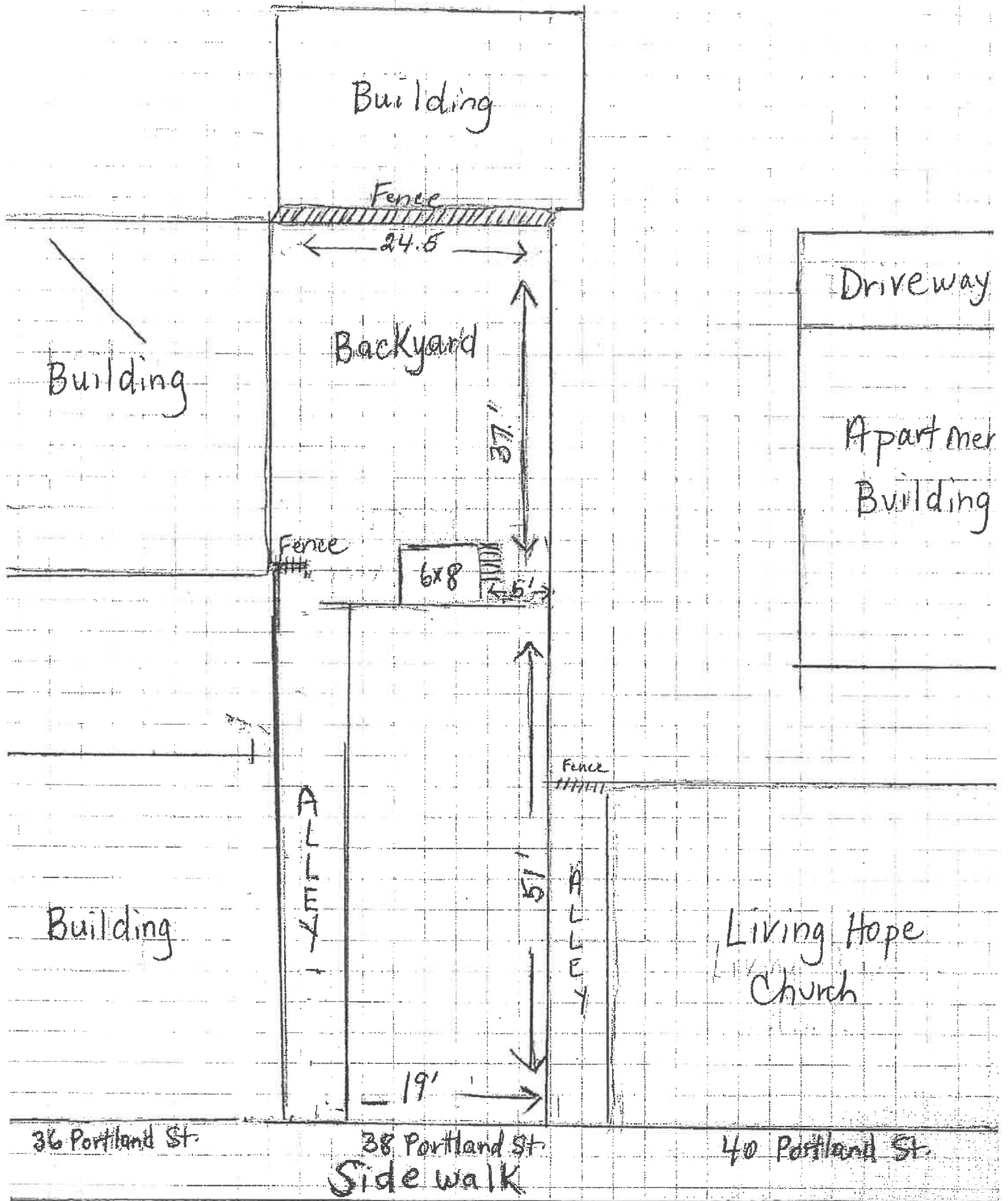
cc: Stephen E. Hirshon & Colette Y. Bouchard, 18 Hanover Street

+ [dropdown] 38 portland X

Show search results for 38 portl...



2,927,286.815 300,682.203 Feet

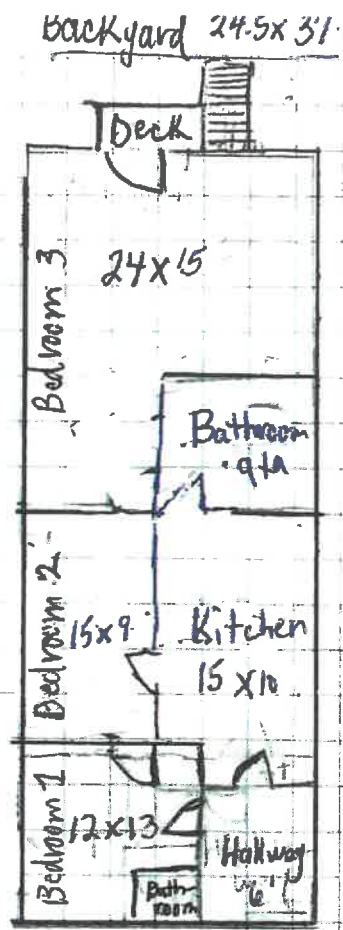


Plot Plan

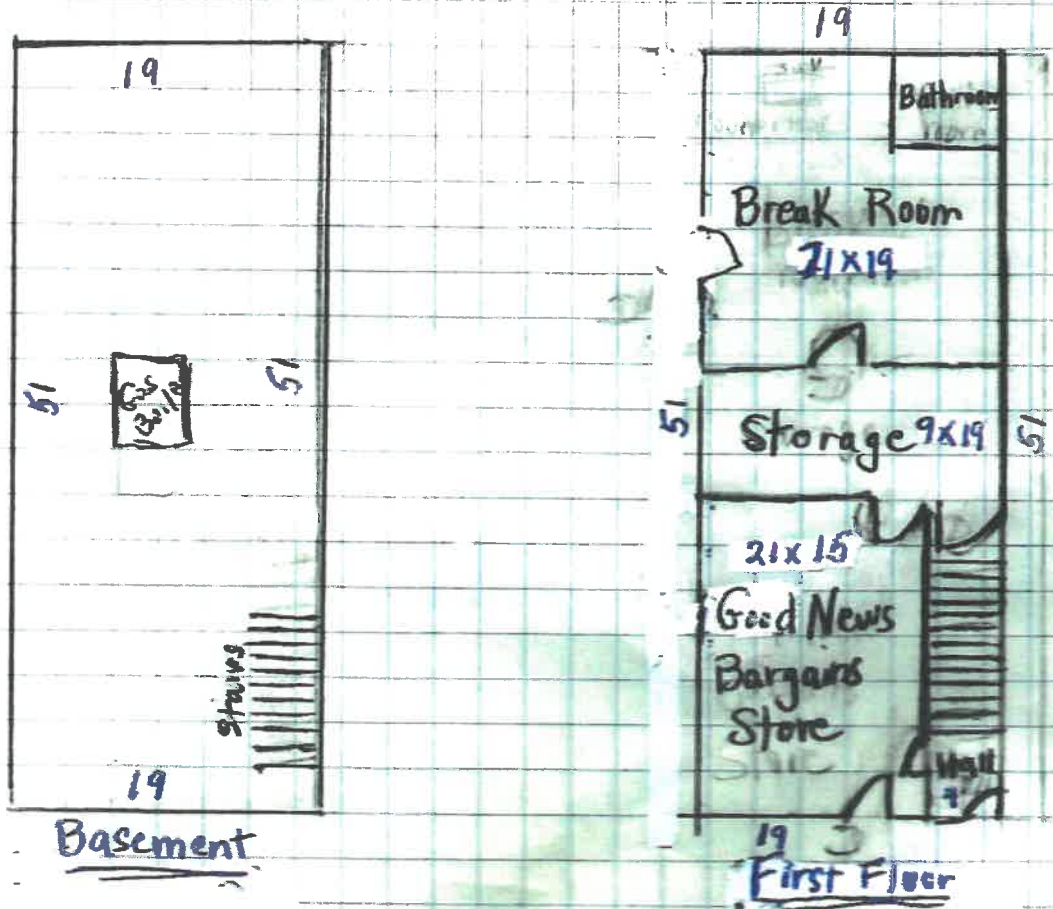
Portland Street

Scale - 1 inch = 3'

38 Portland St.
 FLOOR PLAN
 Scale - 1 block = 3 feet



Second Floor Exit to first floor



Basement

First Floor

Exterior Photo of 38 Portland Street

Interior photos in Affidavits and Supporting Documentation section



WARRANTY DEED

KNOW ALL MEN BY THESE PRESENT: That David H. Perkins and Janet L. Perkins of 225 Flag Pond Road, Saco, ME 04072, for consideration paid grant(s) to Scot P. Herrigel, 40 Hanover Street, Portland, ME 04101, as Joint Tenants with Rights of Survivorship, with WARRANTY COVENANTS:

A certain lot or parcel of land with the buildings thereon, situated in said Portland on the southerly side of Portland Street, bounded and described as follows:

Beginning on the southerly side of Portland Street at a point eighty-eight (88) feet and three (3) inches easterly from the corner formed by the intersection of the southerly side line of Portland Street with the easterly side line of Hanover Street, said point being the northeasterly corner of land now or formerly belonging to E.L. Gould; thence running easterly by said Portland Street twenty-one (21) feet and six (6) inches to a point one (1) foot and six (6) inches from the brick base of the house; and thence southerly parallel with the house forty-four (44) feet and two (2) inches to a point opposite the corner of the house; thence easterly at right angles five (5) feet more or less to land formerly owned by Eliza Ann Bolton; thence southerly along the Bolton land forty-five (45) feet, more or less to land formerly owned by David Shaw; thence westerly by David Shaw's land twenty-five (25) feet more or less, to land now or formerly owned by John W. Libby; thence northerly by said Libby land and land now or formerly of Rhoda C. Thompson, to a line of land, now or formerly of E.L. Gould; thence westerly fifteen (15) inches; thence northerly by said Gould land forty-six (46) feet, more or less, to the point of beginning.

Also the use of the passageway between the house hereby conveyed and the house occupied by E. C. Bolton in December 1873, about seven (7) feet wide and forty-four (44) feet in length.

ALSO another lot or parcel of land with the buildings thereon, adjoining the premises above-described, bounded and described as follows:

Beginning at the southerly corner of land formerly belonging to Rhoda C. Thompson, said land fronting on the easterly side of Hanover Street and running thence northerly by the lot first above described thirty-nine (39) feet, more or less, to the line of land formerly of E.L. Gould; thence westerly by Gould land one (1) foot, thence southerly and parallel with the first course thirty-nine (3) feet, more or less, to land formerly of John W. Libby; thence easterly by said Libby land one (1) foot to the point of beginning.

MAINE REAL ESTATE TAX PAID

Executed this 13th day of October, 2017.

David H Perkins

David H. Perkins

Janet L Perkins

Janet L. Perkins

State of Maine

County of Cumberland

October 13, 2017

Then personally appeared before me on this 13th day of October, 2017, the said David H. Perkins and Janet L. Perkins and acknowledged the foregoing to be his/her/their voluntary act and deed.

[Signature]

Notary Public/Justice of the Peace
Commission expiration:

M.E. Attorney-at-Law
Brian C. Browne

Received
Recorded Register of Deeds
Oct 13, 2017 11:15:08A
Cumberland County
Nancy A. Lane

Explanation of documents submitted /supporting documents that the apartment existed before April 1, 1995.

Affidavit from Edgar Gatto

Affidavit from Karen Norberg

Affidavit from David Norberg

Affidavit and phone records from David Perkins

Been Verified document showing that Michael Delaney was a tenant at 38 Portland St.

White pages document showing that Michael Delaney was a tenant at 38 Portland St for a period of time beginning August 1986.

Photos of the interior of apartment showing building materials that date before 1995.

AFFIDAVIT OF DAVID H. Perkins

My name is David H. Perkins and I own the building at 38 Portland St., Portland, ME 04101. I had two telephone conversations with Marie Delaney, 14 University St., Portland, ME 04103, who previously owned 38 Portland St. with her now deceased husband, Robert, who died in 2013. The first conversation took place on January 7, 2017, at 9:57 am. I asked her to confirm that there was an existing apartment in the building at 38 Portland St. when she and her husband owned it. She confirmed that there was an existing apartment upstairs and that her son, Michael Delaney, lived there. I asked if she would be willing to sign an affidavit and she was reluctant. She said, "Why should I sign anything and implicate myself?" I explained to her that she would not be implicating herself in anything but would help to prove that the apartment existed when my wife and I purchased the building in 2013. She said she would talk to her son, Michael, asking him if he was willing to sign an affidavit.

I waited to hear back from her, but she did not call me back. I called Marie Delaney back on January 16, 2017, at 11:57 am and asked if she and her son had discussed signing an affidavit stating that the apartment at 38 Portland St. existed when she was owner and that her son lived there. She stated that both she and her son refused to sign any documents and did not want to implicate themselves in any way.

David H. Perkins
David H. Perkins

STATE OF MAINE
COUNTY OF Cumberland

On Jan 23rd 2017 before me, Samantha Wadhams personally appeared David H. Perkins, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within Affidavit and acknowledged to me that he executed the same in his authorized capacity, and who, being first duly sworn on oath according to law, deposes and says that he has read the foregoing Affidavit subscribed by him, and that the matters stated herein are true to the best of his information, knowledge and belief.

I certify under PENALTY OF PERJURY under the laws of the State of Maine that the foregoing paragraph is true and correct.

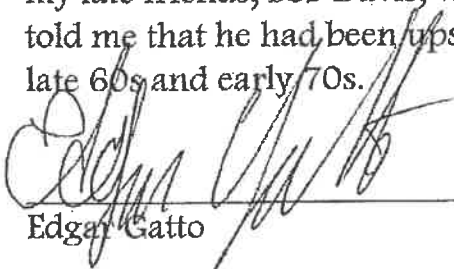
WITNESS my hand and official seal.

Samantha A. Wadhams 1/23/17
Signature of Notary Public

SAMANTHA A. WADHAMS
Notary Public - Maine
My Commission Expires
April 8, 2021

AFFIDAVIT OF EDGAR GATTO

My name is Edgar Gatto, manager of Good News Bargains, 38 Portland St., Portland, ME . I know and talk with a lot of people in the neighborhood. One of my late friends, Bob Davis, who worked at Dyer's Variety until his death in 2016, told me that he had been upstairs in the apartment at 38 Portland Street in the late 60s and early 70s.



Edgar Gatto

STATE OF MAINE
COUNTY OF Cumberland

On January 19, 2017 before me, Karina Tripp personally appeared Edgar Gatto, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within Affidavit and acknowledged to me that he executed the same in his authorized capacity, and who, being first duly sworn on oath according to law, deposes and says that he has read the foregoing Affidavit subscribed by him, and that the matters stated herein are true to the best of his information, knowledge and belief.

I certify under PENALTY OF PERJURY under the laws of the State of Maine that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature of Notary Public (Notary Seal)



Karina Tripp
Notary Public
State Of Maine
My Commission Expires
February 15, 2019

AFFIDAVIT OF KAREN NORBERG

My name is Karen Norberg. I have worked at my father's store, Dyer's Variety, at 19 Portland St. in Portland for many years. I have known Michael Delaney for over 20 years and have been a friend of his. I hung around with him when his father, Robert Delaney, owned M & W Tool Service and the building at 38 Portland St., Portland, ME in the early 90's. There was an apartment located on the second floor of that building at that time, and Michael Delaney lived there.

Karen Norberg
Karen Norberg

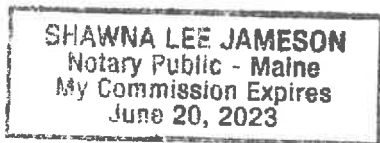
STATE OF MAINE
COUNTY OF Cumberland

On February 7th 2017 before me, Karen Norberg personally appeared in person, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within Affidavit and acknowledged to me that he executed the same in his authorized capacity, and who, being first duly sworn on oath according to law, deposes and says that he has read the foregoing Affidavit subscribed by him, and that the matters stated herein are true to the best of his information, knowledge and belief.

I certify under PENALTY OF PERJURY under the laws of the State of Maine that the foregoing paragraph is true and correct.

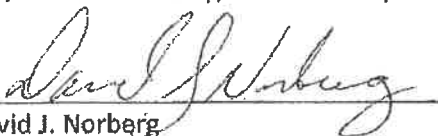
WITNESS my hand and official seal.

Shawna Lee Jameson (Notary Seal)
Signature of Notary Public



AFFIDAVIT OF DAVID NORBERG

My name is David J. Norberg and I have owned Dyer's Variety, 45 Portland St., Portland, ME, since 1971. I also own the apartment building located at 19 Portland Street. My store, Dyer's Variety, is located across the street from 38 Portland St. and I knew the previous owner of the building, Robert Delaney. During the time that Robert owned the building, there was a second floor apartment in the building. His son, Michael Delaney, lived in the upstairs apartment.

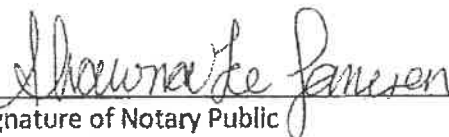

David J. Norberg

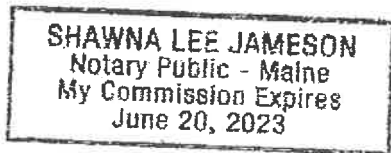
STATE OF MAINE
COUNTY OF Cumberland

On February 7th 2017 before me, David Norberg personally appeared in person, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within Affidavit and acknowledged to me that he executed the same in his authorized capacity, and who, being first duly sworn on oath according to law, deposes and says that he has read the foregoing Affidavit subscribed by him, and that the matters stated herein are true to the best of his information, knowledge and belief.

I certify under PENALTY OF PERJURY under the laws of the State of Maine that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

 _____ (Notary Seal)
Signature of Notary Public



AFFIDAVIT OF MICHAEL S. DELANEY

My name is Michael S. Delaney of Portland, Maine. I lived in the upstairs apartment at 38 Portland Street and can affirm that it existed before April 1, 1995.

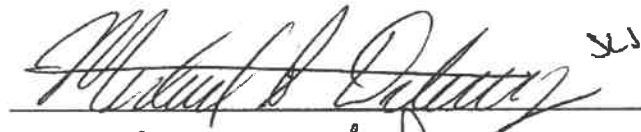
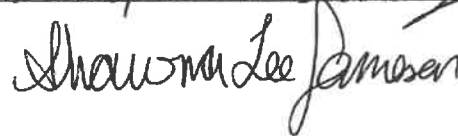

Michael S. Delaney

STATE OF MAINE
COUNTY OF Cumberland

On July 15th 2017 before me, Shawna Lee Jameson personally appeared Michael S. Delaney, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within Affidavit and acknowledged to me that he executed the same in his authorized capacity, and who, being first duly sworn on oath according to law, deposes and says that he has read the foregoing Affidavit subscribed by him and that matters stated herein are true to the best of his information, knowledge and belief.

I certify, under penalty of perjury under the laws of the State of Maine that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

 (Notary Seal)


SHAWNA LEE JAMESON
Notary Public - Maine
My Commission Expires
June 20, 2023

Michael S Delaney

Portland, ME / Age 48

Personal Overview

Name: Michael S Delaney
Age: 48
Address: 111 WOODLAWN AVE PORTLAND, ME 04103
Aliases: Michael Delaney
 Michael S Delaney

Contact Info

2 | Contact Info Found

**Phone Numbers**
 1 207-797-2248

**Email Addresses**
 1 mdelaneypainting@yahoo.com

Address History

5 | Addresses Found

#	Address	Last Seen Date
1	111 WOODLAWN AVE PORTLAND, ME 04103	07/2007
2	38 PORTLAND ST PORTLAND, ME 04101	01/2003
3	74 UNIVERSITY ST PORTLAND, ME 04103	08/1986
4	79 ALDWORTH ST PORTLAND, ME 04103	N/A
5	14 UNIVERSITY ST PORTLAND, ME 04103	N/A

Relatives

3 | Relatives Found

1st Degree

#	Name	Age	Address
1	ROBERT W DELANEY	79	14 UNIVERSITY ST PORTLAND, ME 04103 First seen: 06/1993, Last seen: 01/2017
			14 FOREST AVE PORTLAND, ME 04101 First seen: N/A, Last seen: N/A
2	MARIE E DELANEY	75	14 UNIVERSITY ST PORTLAND, ME 04103 First seen: 02/1993, Last seen: 11/2016


2nd Degree



Michael Shaun Delaney
Age: In their 40's

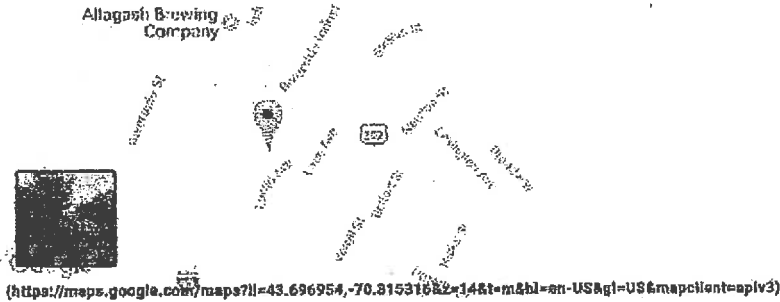
Monitor Report

Get full details

 (207) 797-2248
LANDLINE PHONE

 79 Aldworth St
Portland, ME 04103

Born April, 1968



Map data ©2017 Google

PHONE NUMBERS


 (207) 332-2936
MOBILE, SPRINT SPECTRUM LP
Full phone details (/details/phone/?phone_number=2073322936&type=person_phone_query)

MOBILE, SPRINT SPECTRUM LP

 (207) 772-2058
UNKNOWN, NORTHERN NEW ENGLAND TELEPHONE OPERATIONS LLC DBA FAIRPOINT COMM - ME (FAIRPOINT COMMUNICATIONS)
Full phone details (/details/phone/?phone_number=2077722058&type=person_phone_query)

UNKNOWN, NORTHERN NEW ENGLAND TELEPHONE OPERATIONS LLC DBA FAIRPOINT COMM - ME (FAIRPOINT COMMUNICATIONS)

PREVIOUS ADDRESSES

 111 Woodlawn Ave
Portland, ME 04103
MAR 1992 - MAR 2017
Show map

Full address details (/results/address/?type=person_address_query&address=111+Woodlawn+Ave+Portland%2C+Me)



14 University St
 Portland, ME 04103
 DEC 1986 - MAR 2017
 Show map

Full address details (/results/address/?
 type=person_address_query&address=14+University+St+Portland%2C+Me)



38 Portland St
 Portland, ME 04101
 AUG 1986 - OCT 2007
 Show map

Full address details (/results/address/?
 type=person_address_query&address=38+Portland+St+Portland%2C+Me)

FAMILY MEMBERS



Robert William Delaney

In their 70's

View details (/details/contact_report/NibAgWQirNKD6WXZNpI8d1X8y2jJLf20vpgy4ZV6-Vs%3D)



Marie E Delaney

In their 70's

View details (/details/contact_report/ZmojeJ50y9mb1gQRZ-7sbvmtqaz6m5JA3WtsG6aYw%3D)



Marie Delaney

RELATIONSHIPS

CONTACTS

REFERENCES



shows 1995 materials
kitchen sink and
cabinet, as well as the
flooring.



shows kitchen cabinets and the old blue laminate countertop and backsplash. The old cabinets, laminate countertop and flooring material is further proof of the apartment dating back before 1995.

Legalization Inspection Form

Date: 10/4/17

Address: 38 Portland Street

Legal Use: First floor Retail, Second floor one dwelling unit

Proposed Use: _____

Fixing
by Dec 1st →

Common Areas Units need to be numbered or identified
Fire extinguishers need to be inspected and tagged

Basement

Fixing → Fire Door: Needs to close securely -

o Detection: _____

DONE → Sprinkler Head: Boiler protection needed

DONE → Electrical/panel: Terminated wires need to be removed

Notes: _____

Unit 1 (commercial space)

Fixing
by
Dec 1st →

o Fire Door: 60 minute fire door needs to be installed

o Detection: _____

o Egress: _____

Notes: False or terminated stairway needs to be enclosed
or eliminated

Unit 2

o Fire Door: _____

o Detection: _____

o Egress: _____

DONE

Notes: Sink and stove in bedroom unit need to be removed

Unit _____

- Fire Door: _____
- Detection: _____
- Egress: _____

Notes: _____

Unit _____

- Fire Door: _____
- Detection: _____
- Egress: _____

Notes: _____

Unit _____

- Fire Door: _____
- Detection: _____
- Egress: _____

Notes: _____

Unit _____

- Fire Door: _____
- Detection: _____
- Egress: _____

Notes: _____

Overall Pass _____ Fail Follow up Required

Inspector: Chuck Taylor

Fire Prevention: David Felumcell