

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

Philip Saucier-chair
Sara Moppin
Matthew Morgan
Gordan Smith-secretary
Mark Bower
William Getz
Elyse Wilkinson

July 15, 2011

Shinberg Consulting, LLC
477 Congress Street, Suite 1012
Portland, ME 04101

RE: 202 Kennebec Street
CBL: 034 A011
ZONE: B-2b

Dear Mr. Shinberg:

You had an interpretation appeal and a variance appeal for the same property on the agenda at the July 14, 2011 Zoning Board of Appeals meeting. The Zoning Board of Appeals voted 6-0 to deny your interpretation appeal to overturn the Zoning Administrator's determination that the nonconforming use of the property had been abandoned. The Board of voted 4-2 to grant the variance appeal to allow the property to be used as a warehouse. I am enclosing copies of the Board's decisions.

I am also enclosing the Certificate of Variance Approval. **The original must be recorded in the Cumberland County Registry of Deeds within 90 days of July 14, 2011, when it was signed.** Failure to record the Certificate will result in it being voided. Our office must be provided with a copy of the recorded Certificate of Variance showing the recorded book and page.

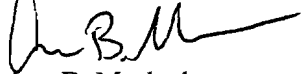
You will also find two invoices, one for \$117.15 and one for \$67.15 for the fees that are still owed on the appeals for the cost of the legal ads, the cost of the noticing and the processing fee. Please submit your payment on receipt of the invoices.

Now that the variance appeal has been approved, you need to apply for a demolition permit to demolish the existing warehouse. You have already applied for a building permit (#2011-04-815) to rebuild the warehouse on the existing footprint. If you need to submit any revisions or additional information for the permit please do so. The permit will not be issued until we receive a copy of the recorded Certificate of Variance. The building permit must be issued and construction begun within six months of the date of the hearing, July 14, 2011 referenced under section 14-473(e), or the Zoning Board approval will expire. You also need to contact Barbara Barhydt in the Planning Division at 874-8699 to discuss which Site Plan Application you will have to apply for to rebuild the warehouse.

Appeals from decisions of the Board may be filed in Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

Should you have any questions please feel free to contact me at 207-874-8709.

Yours truly,

A handwritten signature in black ink, appearing to read 'Ann B. Machado', with a long horizontal flourish extending to the right.

Ann B. Machado
Zoning Specialist

Cc. file

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

ZONING BOARD APPEAL DECISION

To: City Clerk

From: Marge Schmuckal, Zoning Administrator

Date: July 15, 2011

RE: Action taken by the Zoning Board of Appeals on July 14, 2011.

Members Present: Gordon Smith (acting chair), Elyse Wilkinson (acting secretary), Mark Bower, Matthew Morgan, William Getz and Sara Moppin

Members Absent: Phil Saucier

1. New Business:

A. Variance Appeal:

Anderson Avenue, Little Diamond Island, Little Diamond Island Realty Trust, owner, Tax Map 105, Block G, Lot 007, IR-2 Island Residential Zone: The applicant is proposing to build a new single family home on a vacant lot. The appellant is requesting a variance for the right side setback from the required twenty feet to twelve feet [section 14-145.11(c)(3)]. Representing the appeal is Stephen B. Burke, a beneficiary of the Little Diamond Island Realty Trust and Lee Holtz, architect. **The Board voted 6-0 to deny the variance appeal to reduce the right side setback to twelve (12) feet.**

B. Interpretation Appeal:

202-222 Kennebec Street, Bayside Ventures II, LLC, owner, Tax Map 034, Block A, Lot 011, B-2b Community Business Zone: The applicant is challenging the Zoning Specialist's determination that the nonconforming use of the property has been discontinued for a period of twelve months and therefore the nonconforming use has been abandoned [section 14-387]. Representing the appeal is Greg Shinberg, the owner's agent and Jim Hanley, owner. **The Board voted 6-0 to deny the interpretation appeal and upheld the City's Zoning Administrator's determination that the nonconforming use of the property has been abandoned.**

C. Variance Appeal:

202-222 Kennebec Street, Bayside Ventures II, LLC, owner, Tax Map 034, Block A, Lot 011, B-2b Community Business Zone: The applicant is requesting a variance to allow the property to be used as a warehouse which is not a permitted use in the zone [section 14-182]. Representing the appeal is Greg Shinberg, the owner's agent and Jim Hanley, owner. **The Board voted 4-2 to grant the variance appeal to allow the property to be used as a warehouse.**

D. Conditional Use Appeal:

18-22 Haskell Street, Mary & Robert Burkhardt, owners, Tax Map 335, Block G, Lots 011, 012,013 & 017, R-3 Residential Zone: The appellants are seeking a Conditional Use Appeal under section 14-88(d)(3) to have a daycare for up to twelve children in their home. Representing the appeal are the owners. **The board voted 5-0 (one member recused self) to grant the conditional use appeal to allow a daycare in the home for up to twelve children with the condition that adequate off-street parking for customers must be maintained to limit traffic on the street and the use of on-street parking.**

Enclosure:

Decision for Agenda from July 14, 2011

Original Zoning Board Decisions

One dvd

CC: Patricia Finnigan, Acting City Manager

Penny St. Louis, Director, Planning & Urban Development

Alex Jaegerman, Planning Division

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

Non-conforming Use in B-2b Zone

Interpretation Appeal

DECISION

Date of public hearing: July 14, 2011

Name and address of applicant: Bayside Ventures II, LLC
50 Portland Pier, Suite 400
Portland, ME 04101

Location of property under appeal: 202 Kennebec St.

For the Record:

Names and addresses of witnesses (proponents, opponents and others):

- Greg Shinberg, Owner's Representative
- Jim Hanley, CFO of Bayside Ventures

Exhibits admitted (e.g. renderings, reports, etc.):

- floor plan of proposed warehouse
- Enlarged photos of property (2)
- Enlarged street map, enlarged satellite map of streets
- letter dated 6/20/11 from Greg Shinberg
- City Assessor's Plan
- Photos of property (2)
- Deed
- Zoning maps (2)
- Satellite map
- letter dated 5/23/11 from James Hanley

Findings of Fact and Conclusions of Law:

The Board's authority to review an interpretation of the building authority is pursuant to Section 14-472 of the land use code.

The Applicant owns a building located in the B-2b Zone. The building was previously used as a warehouse, but has been vacant for 2-3 years. The applicant now wishes to use the building as a warehouse, which is not a permitted use in the zone.

Section 14-387 of the Portland City Code reads as follows:

If a non-conforming use of a building or premises is discontinued for a period of twelve (12) months, such discontinuance shall constitute an abandonment of the use and the building or premises shall not thereafter be occupied or used except in conformity with the provisions of this article.

Finding:

Appellant has demonstrated that the Zoning Administrator's interpretation of Section 14-387 was incorrect or improper for the following reason:

The parking lot adjacent to the warehouse has been continually used for parking cars and therefore the use of the warehouse has not been abandoned.

Satisfied _____ Not Satisfied 6

Reason and supporting facts:

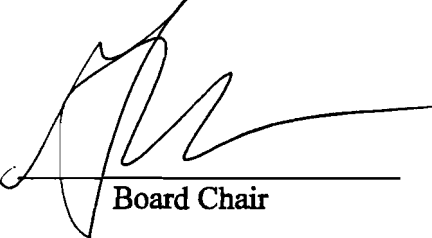
- Building has not been used as a warehouse for more than 12 months (about 5 yrs)
- Parking cars is unrelated to the warehousing use and cannot preserve non-conforming use.
- Parking of cars is not related to any use of the warehouse.

Decision: (check one)

___ Option 1: The Board finds that the Appellant has satisfactorily demonstrated that the Interpretation of the City's Zoning Administrator was incorrect or improper, and therefore GRANTS the application.

☒ Option 2: The Board finds that the Appellant has NOT satisfactorily demonstrated that the Interpretation of the City's Zoning Administrator was incorrect or improper, and therefore DENIES the application.

Dated: 7/14/11


Board Chair

O:\OFFICE\MARYC\ZBA\Interpretation Appeal Bayside Ventures

Members present: Gordon Smith (Acting Chair) Matthew Magan -
Eugene Wilson - Sarah Mappin - Mike Bower - William Gutz
CITY OF PORTLAND, MAINE

Acting Sec. **ZONING BOARD OF APPEALS**

Members Absent: Philip Szwed
APPEAL AGENDA

The Board of Appeals will hold a public hearing on Thursday, July 14, 2011 at 6:30 p.m. on the second floor in room 209 at Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following Appeals:

1. New Business

A. Variance Appeal:

Denied 6-8
Anderson Avenue, Little Diamond Island, Little Diamond Island Realty Trust, owner, Tax Map 105, Block G, Lot 007, IR-2 Island Residential Zone: The applicant is proposing to build a new single family home on a vacant lot. The appellant is requesting a variance for the right side setback from the required twenty feet to twelve feet [section 14-145.11(c)(3)]. Representing the appeal is Stephen B. Burke, a beneficiary of the Little Diamond Island Realty Trust. *E. Lee Holtz, Atty. in L. (note: Amend forms)*

B. Interpretation Appeal:

Denied 6-8
202-222 Kennebec Street, Bayside Ventures II, LLC, owner, Tax Map 034, Block A, Lot 011, B-2b Community Business Zone: The applicant is challenging the Zoning Specialist's determination that the nonconforming use of the property has been discontinued for a period of twelve months and therefore the nonconforming use has been abandoned [section 14-387]. Representing the appeal is Greg Shinberg, the owner's agent. *Jim Hamley, owner*

C. Variance Appeal:

Granted 4-2
202-222 Kennebec Street, Bayside Ventures II, LLC, owner, Tax Map 034, Block A, Lot 011, B-2b Community Business Zone: The applicant is requesting a variance to allow the property to be used as a warehouse which is not a permitted use in the zone [section 14-182]. Representing the appeal is Greg Shinberg, the owner's agent. *Jim Hamley, owner*

D. Conditional Use Appeal:

Granted 5-0
18-22 Haskell Street, Mary & Robert Burkhardt, owners, Tax Map 335, Block G, Lots 011, 012, 013 & 017, R-3 Residential Zone: The appellants are seeking a Conditional Use Appeal under section 14-88(d)(3) to have a daycare for up to twelve children in their home. Representing the appeal are the owners. *SARA Mappin refused herself with condition: The appellants shall maintain adequate off-street parking*

Conflict from Her Farm
2. Adjournment: *see paperwork*

8:20 pm



City of Portland, Maine
Department of Planning and Urban Development
Zoning Board of Appeals
Interpretation Appeal Application

Applicant Information:

Name BAYSIDE VENTURES II LLC

Business Name

Address 50 PORTLAND PIER SUITE 400

PORTLAND, ME 04101

Telephone 207 553 2000 Fax 207 828 1048

Applicant's Right, Title or Interest in Subject Property

OWNER
(e.g. owner, purchaser, etc.):

Current Zoning Designation: B2B

Existing Use of Property:

WAREHOUSE

Subject Property Information:

Property Address 202 Kennebec St., Portland

Assessor's Reference (Chart-Block-Lot) 34-A-11

Property Owner (if different):

Name

Address

Telephone Fax

Disputed Provisions from Section 14 - 387

Order, decision, determination, or interpretation under dispute:

THAT THE BUILDING SHALL
BE DEEMED TO BE
ABANDONED

Type of Relief Requested:

THAT CONTINUOUS USE OF

THE ENTIRE PARCEL INCLUDING

THE ONGOING & CONTINUOUS USE

OF THE PARKING LOT DEMONSTRATES THAT THE PROPERTY
HAS NOT BEEN ABANDONED

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

The undersigned hereby makes application for the relief above described, and certified that all information herein supplied by his/her is true and correct to the best of his/her knowledge and belief.

Signature of Applicant

GREG SHANBERG, OWNER'S REPRESENTATIVE

Date

6/20/2011

RECEIVED

JUN 27 2011

Dept. of Building Inspections
City of Portland Maine



To: City of Portland Maine ZBA
From: Greg Shinberg, Owner's Representative
Re: 202 Kennebec Street Interpretation Appeal Application
Date: June 20, 2011

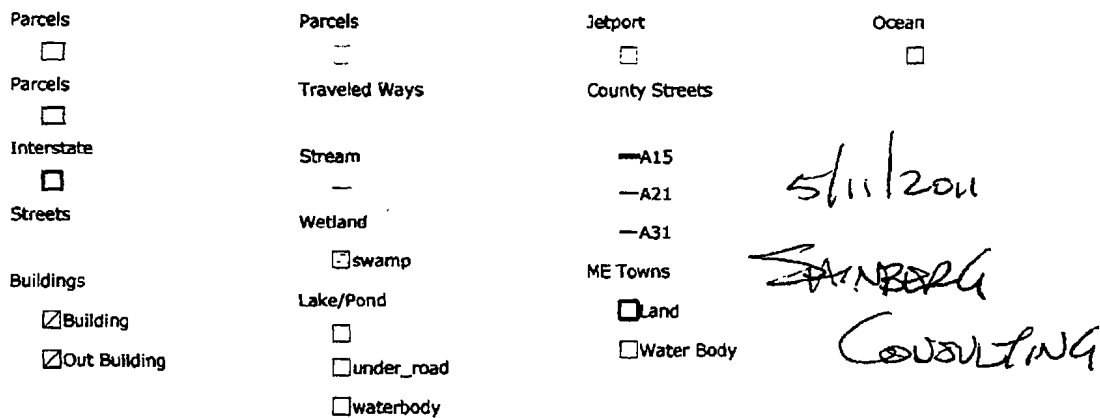
On behalf of the Owner of 202 Kennebec Street we are asking you to consider this application for an Interpretation Appeal Application.

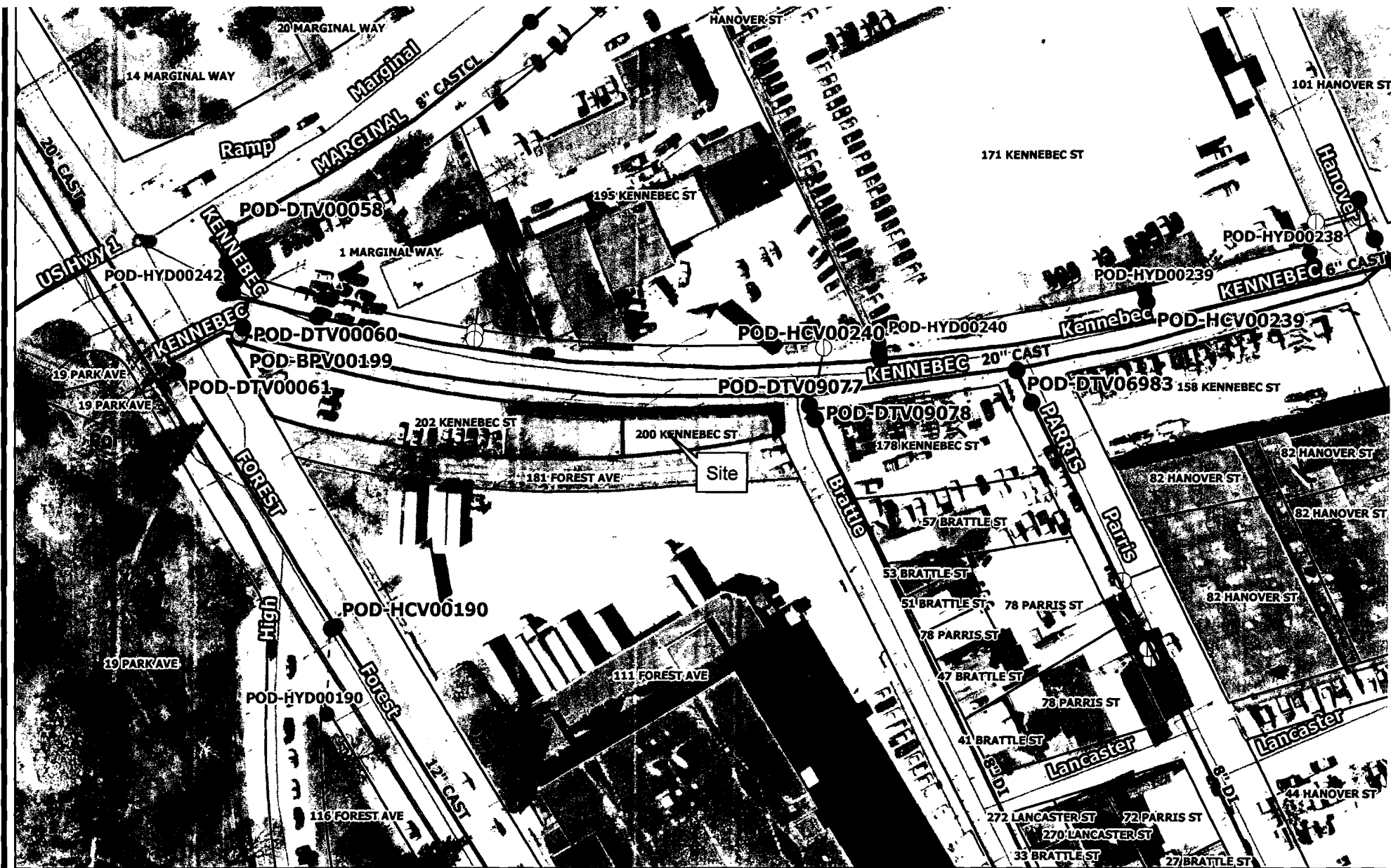
The warehouse located at 202 Kennebec Street was once used as a warehouse to support the building located across Kennebec Street which is now the Enterprise Car Rental facility. The property was purchased by the current owner in 2006. The property is now located in two different zones. The Enterprise building is located in the B5 zone and the warehouse is located in the B2(b) zone.

Section 14-387 states in part that, "If a non conforming use of a building or premises is discontinued for a period of twelve (12) months, such discontinuance shall constitute an abandonment of the use and the building or premises shall not thereafter be occupied or used except in conformity with provisions of this article."

Given the fact that the parking lot adjacent to the warehouse has not been abandoned and has been used for parking cars continually, that is reasonable to assert that the property has not been abandoned and that the warehouse should be allowed to be rebuilt on the same footprint.

Map





202 Kennebec Street

Portland



PORTLAND WATER DISTRICT
225 Douglass Street
Portland, ME 04104

Notes:

Inspector: (Please Return to Thomas Whitney)

Date Inspected: GPS Redlined

Service Associated Assets:

Service Associated Assets:

Domestic Service: SV27#####
SV WO#: #####
Service Valve: XXX-XXX#####
Budget #: #####S

Fire Service: SV#####
SV WO#: #####
Service Valve: XXX-XXX#####
Budget #: #####S

Disclaimer: This map is suitable for preliminary study and analysis and is based on PWD record information. PWD is not liable for any damages whatsoever resulting from inaccurate data or from errors made in the location and marking of its infrastructure.

WARRANTY DEED
(Maine Statutory Short Form)

ONE MARGINAL WAY LLC, a Maine limited liability company with a place of business in Portland, Maine, whose mailing address is P. O. Box 4894, Portland, Maine 04112 (the "Grantor"), for consideration paid, grants to BAYSIDE VENTURES II LLC, a Maine limited liability company with a place of business in Portland, Maine, whose mailing address is 50 Portland Pier, Suite 400, Portland, Maine 04101, WITH WARRANTY COVENANTS, certain lots or parcels of land, with all buildings and improvements thereon, and all rights and easements appurtenant thereto, located on Marginal Way and Kennebec Street in Portland, Cumberland County, Maine, being more particularly described as follows:

PARCEL 1

A certain lot or parcel of land with the buildings thereon, situated in Portland, in the County of Cumberland and State of Maine, and bounded and described as follows: Beginning at a stone monument on the Northerly side of Kennebec Street on the dividing line between land sold by the Portland Railroad Co. to Sidney W. Thaxter and William B. Thaxter by its deed dated February 1, 1904, recorded in Cumberland County Registry of Deeds in Book 744, Page 366, and land which W.W. Thomas conveyed to George P. Westcott and others by his deed dated November 3, 1881, recorded in said Registry of Deeds in Book 481, Page 340; thence about North nine (9) degrees ten (10) minutes West, by said dividing line, one hundred seven and two-tenths (107.2) feet to an iron stake and to land now or formerly of the Boston & Maine Railroad Co.; thence Easterly by said Railroad Company's land sixty and forty-five one-hundredths (60.45) feet to an iron stake; thence about South nine (9) degrees ten (10) minutes East, one hundred thirty-six (136) feet to Kennebec Street; thence Westerly by said Kennebec Street seventy and six-tenths (70.6) feet to the point of beginning.

PARCEL 2

A certain triangular lot of land with the buildings thereon situated on the Northerly side of Kennebec Street in Portland, in the County of Cumberland and State of Maine, bounded and described as follows: Beginning at a point on said Northerly side of Kennebec Street at the intersection of the Westerly side line of the lot conveyed by Celia A. Thaxter to said Warren Tire Stores Company by her deed dated June 27, 1923, and the lot herein conveyed; thence Westerly by said Kennebec Street one hundred eighty-one (181) feet, more or less, to the intersection of the said Northerly side line of said Kennebec Street with the Southerly side line of the Marginal Way; thence Easterly by said Southerly side line of said Marginal Way one hundred ten (110) feet to a point where said Southerly side line of the Marginal Way intersects the Southerly side line of the location of the Portland & Rochester Railway Co.; thence Easterly by said Southerly side line of the location of the Portland and Rochester Railroad Co. thirty-three (33) feet, more or less, to the said Celia A. Thaxter lot; thence Southerly by said Celia A. Thaxter lot one hundred nineteen (119) feet, more or less, to the point begun at.

Being the same premises conveyed to C.E. Noyes Company by deed from Herbert W. Noyes, Trustee, dated September 24, 1949 and recorded in the Cumberland County Registry of

MAINE REAL ESTATE TAX PAID

Deeds in Book 1971, Page 428 and the same premises described in deed from Herbert W. Noyes to C.E. Noyes Company dated September 24, 1949 and recorded in said Registry of Deeds in Book 1971, Page 430.

Also being a portion of the premises conveyed by C.E. Noyes Company to Noyes Tire Co. by deed dated March 1, 1965 and recorded in said Registry of Deeds in Book 2885, Page 267.

Subject to easement granted to Portland Water District by deed from C.E. Noyes Company dated April 24, 1963, recorded in said Registry in Book 2744, Page 136.

Together with all of the Grantor's right, title and interest in and to the premises heretofor used and occupied by Noyes Tire Co., its successors and assigns and its predecessors in title within the premises described in two certain deeds, one from Portland Terminal Company to Bertha Silverman dated July 6, 1945 and recorded in said Registry in Book 1794, Page 144 and the other from the Portland Water District to Joseph D. Silverman dated February 19, 1943, recorded in said Registry of deeds in Book 1704, Page 354.

PARCEL 3 22 Kennebec

A certain lot or parcel of land with the buildings thereon situated on Forest Avenue and Kennebec Street in Portland, County of Cumberland and State of Maine, bounded and described as follows:

Beginning at a point on the easterly side of Forest Avenue, said point being ten (10) feet northerly, measured normal to the center or base line of location of the Portland Terminal Company as established by the Federal Valuation Survey dated June 30, 1916; thence northwesterly along said Forest Avenue a distance of fifty-three (53) feet, more or less, to the most southerly corner of land conveyed by said Portland Terminal Company to the City of Portland by deed dated April 8, 1930, recorded in Cumberland County Registry of Deeds in Book 1340, Page 175, thence northeasterly along the southeasterly line of said land conveyed as aforesaid to the City of Portland, a distance of eighteen and two hundredths (18.02) feet, to the southerly line of Kennebec Street; thence easterly along said southerly line of Kennebec Street a distance of four hundred (400) feet, more or less, to the westerly line of Brattle Street; thence southeasterly along said line of Brattle Street a distance of eighteen (18) feet, more or less, to a point ten (10) feet northerly measured normal to the center or base line of location of said Portland Terminal Company; thence westerly and always ten (10) feet northerly measured normal to said base line a distance of three hundred seventy-five (375) feet, more or less to the point of beginning.

Being the same premises conveyed to the Noyes Tire Co. by warranty deed dated August 24, 1967, from Chevron Oil Company recorded in said Registry of Deeds in Book 3010, Page 307.

Subject to the fence covenant as set forth in deed from Portland Terminal Company to

Community Oil Company, Inc., dated May 23, 1944, and recorded in said Registry in Book 1756, Page 36.

The above described three parcels are the same premises conveyed to Depositors Corporation by deed of Noyes Tire Co. dated April 12, 1972 and recorded in the Cumberland County Registry of Deeds in Book 3224, Page 277.

The above described third parcel is subject to the rights, if any, under a certain lease granted by Bertha Silverman to Century Tire Company dated November 20, 1967 and recorded in Book 3022, Page 509 as amended by instrument dated December 15, 1972 and recorded in the Cumberland County Registry of Deeds in Book 3339, Page 176.

2 00 Kennebec Excepting from the above described third parcel the following parcel conveyed by Depositors Corporation to Bertha Silverman by deed dated December 15, 1972 and recorded in the Cumberland County Registry of Deeds in Book 3339, Page 181 and described as follows:

A certain lot or parcel of land with the building thereon, situated on the Southerly side of Kennebec Street in the City of Portland, County of Cumberland and State of Maine, being bounded and described as follows:

Beginning at an iron marking the intersection of the Westerly line of Brattle Street and Southerly line of said Kennebec Street;

Thence Westerly by the Southerly line of said Kennebec Street along a curve to the right whose radius is 1161.71 feet a distance, measured along the arc, of 108.92 feet to an iron;

Thence through land now or formerly of Depositors Corporation and through an existing building along the Westerly face of said building wall on a course of S 17 degrees 30' W a distance of 35.21 feet to an iron on the Northerly line of land of Portland Terminal Co., said iron being located 10 feet Northerly and measured normal to the center or base line of Portland Terminal Co. as established by the Federal Valuation Survey dated June 30, 1916;

Thence Easterly along a curve to the left and maintaining a distance of 10 feet Northerly and normal to said Portland Terminal Co. base line a distance of 122.57 feet measured along the arc of said curve to an iron on the Westerly line of said Brattle Street;

Thence by said Westerly line of Brattle Street on a course of N 12 degrees 12' 20" W a distance of 24.64 feet to the point of beginning.

Above courses are magnetic.

Together with a right of entry to enter at reasonable times and with reasonable notice to Depositors Corporation on a certain parcel of land one foot in width immediately adjacent to the Westerly side of the property herein described; commencing at an iron pin on the southerly sideline of Kennebec Street, which iron marks the Northwestern corner of the property herein

described; thence southeasterly 17 degrees 30' N 35.21 feet along the Westerly sideline of the property herein described to an iron pin; thence Westerly along the southerly boundary of property now or formerly of Depositors Corporation one foot to a point; thence 35 feet more or less generally Northeasterly maintaining a one foot distance from the first course described herein to a point on the southerly sideline of Kennebec Street; thence generally easterly along the southerly sideline of Kennebec Street one foot to the point of beginning; said right of entry solely and exclusively for the purposes of maintaining and repairing the westerly wall of property herein described and specifically reserving to Depositors Corporation the right to tear down and remove all portions of the building westerly of the westerly sideline of the property herein described.

Depositors Corporation specifically disclaims any responsibility for the maintenance of said westerly wall.

PARCEL 4 — *1 Marginal Way*

A certain lot or parcel of land located in the City of Portland, County of Cumberland and State of Maine, and being more particularly bounded and described as follows:

Beginning at an iron on the Northerly line of Kennebec Street at the Southeasterly corner of Parcel #1 of land conveyed by Noyes Tire Co. to Depositors Corporation by deed dated April 12, 1972, and recorded in the Cumberland County Registry of Deeds in Book 3224, Page 277; said point of beginning being located on a curve to the left whose radius is 1111.71' a distance of 243.29 feet Easterly of the intersection of the Northerly line of Kennebec Street and the Southerly line of Marginal Way;

Thence by land now or formerly of Bertha Silverman on a course of N 9 degrees 10' W a distance of 133.65 feet to an iron on the Southerly line of land conveyed by Portland Terminal Co. to Bertha Silverman by deed dated July 6, 1945 and recorded in said Registry of Deeds in Book 1794, Page 144;

Thence Westerly by said Silverman land along a curve to the right whose radius is 850.00 feet a distance, measured along the arc, of 124.32 feet to a point marking the Southerly line of said Marginal Way;

Thence Easterly by the Southerly line of said Marginal Way along a curve to the left whose radius is 1005.37 feet a distance, measured along the arc, of 128.68 feet to an iron;

Thence through land now or formerly of Bertha Silverman on a course of S 9 degrees 04' E a distance of 118.23 feet to an iron;

Thence continuing through land now or formerly of Bertha Silverman on a course of S 7 degrees 19' 35" E a distance of 47.64 feet to an iron on the Northerly line of said Kennebec Street;

Thence Westerly by said Northerly line of Kennebec Street on a curve to the right, whose

radius is 1111.71 feet, a distance of 2.12 feet, measured along the arc thereof, to the point of beginning.

Being a small strip of the premises conveyed to Bertha Silverman by Harry Baker as recorded in said Registry of Deeds in Book 1767, Page 347, and a triangular portion of the premises conveyed to Bertha Silverman by Portland Terminal Co. as recorded in said Registry of Deeds in Book 1794, Page 144.

Above described courses are magnetic.

Being the same premises conveyed to Key Bank of Southern Maine, now known as Key Bank of Maine, by Key Bancshares of Maine, Inc., formerly known as Depositors Corporation, by deed dated April 29, 1986 and recorded in the Cumberland County Registry of Deeds in Book 7154, Page 288.

This conveyance is conveyed subject to the following, to the extent applicable:

- (a) Liens for municipal taxes and assessments which are not yet due and payable.
- (b) Rights and easements granted to Portland Water District in an instrument dated April 24, 1963, and recorded in Book 2744, Page 136.
- (c) Rights and easements granted to Central Maine Power Company in an instrument dated March 16, 1949, and recorded in Book 1951, Page 71.
- (d) Covenant set forth in a deed from Portland Terminal Company to Community Oil Company, Inc. dated May 23, 1944, recorded in Book 1756, Page 36.
- (e) Rights and easements granted to Bertha Silverman in an instrument dated December 15, 1972, and recorded in Book 3339, Page 181.
- (f) Subject to conditions, liabilities and restrictions set forth in unrecorded railroad sidetrack agreement made by and between the Portland Terminal Company and Warren Realty Company dated June 2, 1925, as set forth in deeds to C.E. Noyes Company dated September 24, 1949, recorded in Book 1971, Page 428 and Book 1971, Page 430, to the extent it may apply.
- (g) Covenant as set forth in a deed to Bertha Silverman dated July 6, 1945, recorded in Book 1794, Page 144.
- (h) Rights and easements granted to New England Telephone and Telegraph and Central Maine Power Company in an instrument dated October 7, 1955, and recorded in Book 2276, Page 291.

(i) Rights and easements granted to New England Telephone and Telegraph and Central Maine Power Company in an instrument dated March 4, 1964, and recorded in Book 2834, Page 385.

(k) Rights of Pure Movement Portland, LLC and Enterprise Rent-A-Car Company of Boston, LLC as tenants under unrecorded leases.

Meaning and intending to convey and hereby conveying the same premises conveyed to the Grantor by deed of Marginal Way Associates Limited Liability Company dated May 13, 2004 and recorded in said Registry of Deeds in Book 21281, Page 131.

Also granting without warranty or covenant the following described parcels:

PARCEL A: A certain parcel of land situated on the easterly side of Forest Avenue and the southwesterly side of Kennebec Street in the City of Portland, County of Cumberland, State of Maine being bounded and described as follows:

Beginning on the easterly sideline of Forest Avenue at the intersection with the southwesterly sideline of Kennebec Street;

Thence N 50°50'23" E along said sideline of Kennebec Street a distance of 18.02 feet;

Thence southeasterly along said sideline and along a curve concave to the left having a radius of 1161.71 feet an arc distance of 276.64 feet to land now or formerly of Adele Aronson and Richard LeBlanc by deed recorded in said Registry of Deeds in Book 20970, Page 111, said curve having a chord which bears S 67°39'16" E a distance of 275.99 feet;

Thence S 16°52'03" W along said Aronson and LeBlanc land a distance of 35.14 feet to land now or formerly of the State of Maine by deed recorded in said Registry of Deeds in Book 16707, Page 206;

Thence northwesterly and along a curve concave to the right having a radius of 987.90 feet an arc distance of 254.81 feet to said easterly sideline of Forest Avenue, said curve having a chord which bears N 72°33'51" W a distance of 254.11 feet;

Thence N 18°01'44" W along said sideline a distance of 53.67 feet to the point of beginning.

PARCEL B: A certain parcel of land situated on the easterly side of Forest Avenue and the southerly side of Marginal Way in the City of Portland, County of Cumberland, State of Maine being bounded and described as follows:

Beginning on the easterly sideline of Forest Avenue at the intersection with the southerly sideline of Marginal Way;

Thence easterly along said sideline of Marginal Way and along a curve concave to the left having a radius of 1005.37 feet an arc distance of 200.37 feet to land now or formerly of Adele Aronson and Richard LeBlanc by deed recorded in said Registry of Deeds in Book 20970, Page 111, said curve having a chord which bears N 72°39'22" E a distance of 200.04 feet;

Thence S 10°41'21"E along said Aronson and LeBlanc land a distance of 118.23 feet;

Thence S 06°38'53" E along said Aronson and LeBlanc land a distance of 46.57 feet the northeasterly sideline of Kennebec Street;

Thence northwesterly and along a curve concave to the right having a radius of 1111.71 feet an arc distance of 241.74 feet to said easterly sideline of Forest Avenue and the point of beginning, and curve having a chord which bears N 64°46'46" W a distance of 241.27 feet.

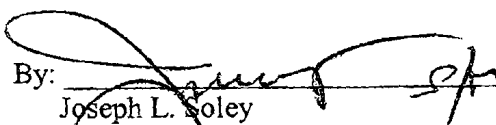
Also granting and conveying all right, title and interest in the bed of the railroad that is southwest of Parcel A above and all right, title and interest the land within the right of way of Kennebec Street, if any.

IN WITNESS WHEREOF, ONE MARGINAL WAY LLC has caused this instrument to be executed by Joseph L. Soley, its Member, thereunto duly authorized, this 8th day of September, 2006.

WITNESS:



ONE MARGINAL WAY LLC


By: 
Joseph L. Soley
its Member

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

September 8, 2006

Then personally appeared the above-named Joseph L. Soley, Member of One Marginal Way LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said limited liability company.

Before me,


Notary Public
Attorney at Law

Robert E. Stevens
Print name

Received
Recorded Register of Deeds
Sep 08:2006 12:18:28P
Cumberland County
John B O'Brien



BY HAND

May 23, 2011

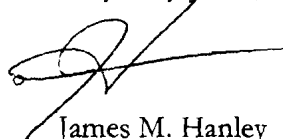
City of Portland
Congress Street
Portland, ME 04101

RE: Bayside Ventures II, LLC

On behalf of Bayside Ventures, II, LLC the owner of One Marginal Way, Portland, Maine, I authorize Greg Shinberg to act on the company's behalf in pursuit of all zoning appeals, zoning applications, and building permit applications.

Please contact me directly at 207 553-2000 x 208 if you have any questions.

Very truly yours,



James M. Hanley
Manager

No 34

WAY

SHEET 34A-B

MARGINAL

SHEET 25-C

PREBLE STREET

SOMERSET STREET

ELM ST.

SHEET 33-A

STREET

ALDER STREET

STREET EAST

HANOVER STREET

LANCASTER STREET

PARRIS STREET

LANCASTER ST. WEST

BRATTLE STREET

FOREST AVENUE

GENUINE TREE

WAREHOUSE

02A A011

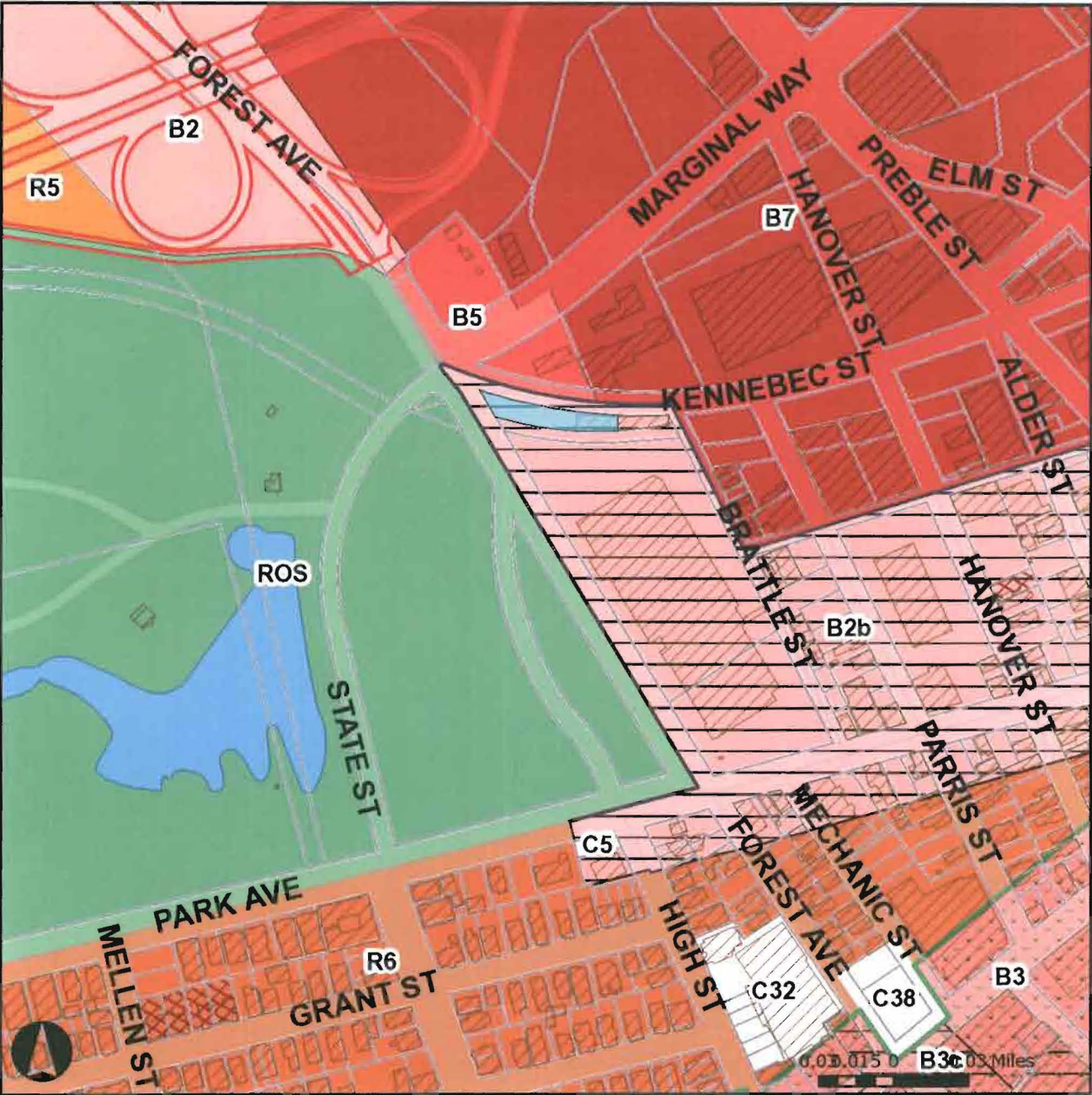
PROPERTY

U.S. POST OFFICE





Map



Parcels	Stream Overlay Zone	Zoning (continued)	Zoning (continued)
Interstate	Stream_protection	R2 Residential	C25
Streets	Island Zoning	R3 Residential	C26
Buildings	C43	R4 Residential	C27
Building	I-B	R5 Residential	C28
Out Building	I-TS	R6 Residential	C29
	I-R1	ROS Recreation Open	C30
	I-R2	Space	C31



PORTLAND MAINE

Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov

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

TO: ZONING CHAIR AND BOARD MEMBERS
FROM: MARGE SCHMUCKAL, ZONING ADMINISTRATOR
RE: 202 KENNEBECK STREET - 034-A-011
DATE: JULY 7, 2011

The property is currently located in a B-2b Zone which does not allow warehousing as a listed, permitted use. The applicant has clearly agreed and has stated in past conversations that the building has been vacant and not used for 2 or three years for any use.

As stated in the applicant's cover letter, Section 14-387 states in part that, "If a non-conforming use of a building or premises is discontinued for a period of twelve (12) months, such discontinuance shall constitute an abandonment of the use and the building or premises shall not thereafter be occupied or used except in conformity with the provisions of this article."

My determination of use concerns the building and not the rest of the lot. I have not researched the parking issue. However, I believe the parking issue is separate and distinct from the use of the building. I also believe that the lot in question is separate from the lot across the street and should be treated independently from it. The current building on the lot has clearly been vacant and not used for more than twelve months. The previous nonconforming warehouse use is considered to have been abandoned by the definition of the Ordinance and therefore cannot be used as such now. All rights to the warehouse use have been extinguished. The underlying B-2b Zone controls what uses can be permitted in the building at this time.

I have done a little research concerning the zoning of the property in question. I have zoning maps that show the building to be within an I-2 Industrial Zone until May, 1984. I also have a zoning map that is valid from August, 1986 through April, 1993 which shows the property and building to be entirely within a B-2 Business Zone. Apparently the zone changed from an I-2 Zone to a B-2 Zone between 1984 and 1986. I have not researched the issue as to when the B-2 zone changed to a B-2b Zone because generally all listed uses are allowed in both Zones.



City of Portland Zoning Board of Appeals

July 6, 2011

Bayside Ventures II, LLC
50 Portland Pier, Suite 400
Portland, ME 041071

Your Interpretation and Variance Appeals have been scheduled to be heard before the Zoning Board of Appeals on **Thursday, July 14, 2011 at 6:30 p.m.** in Room 209, located on the second floor of City Hall.

Please remember to bring copies of your application packets with you to the meeting to answer any questions the Board may have.

I have included an agenda with your appeals highlighted, as well as a handout outlining the meeting process for the Zoning Board of Appeals.

I have also included the bills for the processing fee, legal ad and the notices for the appeals. The check(s) should be written as follows:

MAKE CHECK OUT TO:	City of Portland
MAILING ADDRESS:	Room 315
	389 Congress Street
	Portland, ME 04101

Please feel free to contact me at 207-874-8709 if you have any questions.

Sincerely,

Ann B. Machado
Zoning Specialist

Cc: File

CITY OF PORTLAND
DEPARTMENT OF PLANNING & DEVELOPMENT

389 Congress Street
Portland, Maine 04101

INVOICE FOR FEES

Application No:	2011-294	Applicant:	Bayside Ventures II, LLC
CBL:	034 A011	Application Type:	Interpretation Appeal
Location:	202 Kennebec Street	Invoice Date:	7/6/11

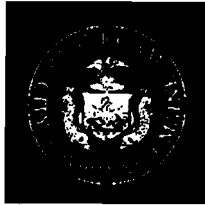
<u>Fee Description</u>	<u>QTY</u>	<u>Fee/Deposit Charge</u>
Legal Advertisements	1	\$60.40
Notices	9	\$6.75
Processing Fee	1	\$50.00
Application Fee	1	\$100.00

Total Current Fees: \$217.15
Total Current Payments: -\$100.00

Amount Due Now: **\$117.15**

pd. 7/30
#1212.

Bill to:	CBL: 034 A011	Application No: 2011-294
Bayside Ventures II, LLC	Invoice Date: 7/6/11	<u>Total Amount Due: \$117.15</u>
50 Portland Pier, Suite 400		(due on receipt)
Portland, ME 04101		



PORTLAND MAINE

Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov

Receipts Details:

Tender Information: Check , Check Number: 1212

Tender Amount: 117.15

Receipt Header:

Cashier Id: amachado

Receipt Date: 9/30/2011

Receipt Number: 9925

Receipt Details:

Reference ID:	1118	Fee Type:	PZ-N1
Receipt Number:	0	Payment Date:	
Transaction Amount:	6.75	Charge Amount:	6.75
Job ID: Project ID: 2011-294 - 202 Kennebec Street - Interpretation Appeal			
Additional Comments:			

Reference ID:	1119	Fee Type:	PZ-L2
Receipt Number:	0	Payment Date:	
Transaction Amount:	60.40	Charge Amount:	60.40
Job ID: Project ID: 2011-294 - 202 Kennebec Street - Interpretation Appeal			

Additional Comments:

Referance ID:	1120	Fee Type:	PZ-ZP
Receipt Number:	0	Payment Date:	
Transaction Amount:	50.00	Charge Amount:	50.00
Job ID: Project ID: 2011-294 - 202 Kennebec Street - Interpretation Appeal			
Additional Comments:			

Thank You for your Payment!



PORTLAND MAINE

Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov

Receipts Details:

Tender Information: Check , Check Number: 1161

Tender Amount: 100.00

Receipt Header:

Cashier Id: amachado

Receipt Date: 6/27/2011

Receipt Number: 4654

Receipt Details:

Reference ID:	1109	Fee Type:	PZ-Z1
Receipt Number:	0	Payment Date:	
Transaction Amount:	100.00	Charge Amount:	100.00
Job ID: Project ID: 2011-294 - 202 Kennebec Street - Interpretation Appeal			
Additional Comments:			

Thank You for your Payment!

Ann Machado - Re: Zoning Board of Appeals Legal Ad

From: Joan Jensen <jjensen@pressherald.com>
To: Ann Machado <AMACHADO@portlandmaine.gov>
Date: 7/5/2011 12:18 PM
Subject: Re: Zoning Board of Appeals Legal Ad
Attachments: Portland 7:8.pdf

Hi Ann,

All set to publish your ad on Friday, July 8.
The cost is \$241.58 includes \$2.00 online charge. I included a proof.
Thank you,
Joan

--

Joan Jensen
Legal Advertising
Portland Press Herald/Maine Sunday Telegram
P.O. Box 1460
Portland, ME 04104
Tel. (207) 791-6157
Fax (207) 791-6910
Email jjensen@pressherald.com

On 7/5/11 10:05 AM, Ann Machado wrote:

Joan -
Attached is the Zoning Board of Appeals legal ad for Friday, July 8, 2011.

Thank you.

Ann Machado
@874.8709

CBL	OWNER	OWNER MAILING ADDRESS	PROPERTY LOCATION	UNITS
	ARONSON ADELE & RICHARD LEBLANC TRUSTEES	17 BIRKDALE RD FALMOUTH, ME 04105	195 KENNEBEC ST	2
	ARONSON ADELE & RICHARD LEBLANC TRUSTEES	17 BIRKDALE RD FALMOUTH, ME 04105	200 KENNEBEC ST	1
	ATLANTIC BAYSIDE HOLDINGS	50 PORTLAND PIER PORTLAND, ME 04101	171 KENNEBEC ST	1
	ATLANTIC BAYSIDE SQUARE LLC	340 FORE ST PORTLAND, ME 04101	HANOVER ST	0
	BAYSIDE VENTURES II LLC	50 PORTLAND PIER STE 400 PORTLAND, ME 04101	202 KENNEBEC ST	1
	BAYSIDE VENTURES II LLC	PO BOX 18169 PORTLAND, ME 04112	1 MARGINAL WAY	1
	BAYSIDE VENTURES LLC	PO BOX 18169 PORTLAND, ME 04112	49 MARGINAL WAY	1
	CENTRAL MAINE POWER CO LAND MANAGEMENT DEPT	70 FARM VIEW DR NEW GLOUCESTER, ME 04260	14 MARGINAL WAY	0
	COLE EDWARD L	33 BRATTLE ST PORTLAND, ME 04101	33 BRATTLE ST	1
	DOYLE VIRGINIA	47 BRATTLE ST PORTLAND, ME 04101	47 BRATTLE ST	1
	FURMAN JENNIFER V	PO BOX 2 PORTLAND, ME 04112	51 BRATTLE ST	1
	FURMAN ROSS Y	PO BOX 2 PORTLAND, ME 04112	53 BRATTLE ST	1
	MBRO LANCASTER LLC	PO BOX 733 SCARBOROUGH, ME 04074	270 LANCASTER ST	1
	MBRO LANCASTER LLC	PO BOX 733 SCARBOROUGH, ME 04074	272 LANCASTER ST	1
	MBRO LANCASTER LLC	PO BOX 733 SCARBOROUGH, ME 04074	72 PARRIS ST	0
	NEW SYSTEMS REALTY LLC	PO BOX 2 PORTLAND, ME 04112	78 PARRIS ST	1
	NORTHERN PRIDE AUTO WASH	PO BOX 2147 SOUTH PORTLAND, ME 04116	20 MARGINAL WAY	1
	QUARRY MICHAEL J WWII VET	1491 FOREST AVE PORTLAND, ME 04103	41 BRATTLE ST	1
	STATE OF MAINE	16 STATE HOUSE STATION AUGUSTA, ME 04330	57 BRATTLE ST	0
	STATE OF MAINE	16 STATE HOUSE STATION AUGUSTA, ME 04330	181 FOREST AVE	0
	STATE OF MAINE	16 STATE HOUSE STATION AUGUSTA, ME 04330	158 KENNEBEC ST	0
	STATE OF MAINE	16 STATE HOUSE STATION AUGUSTA, ME 04330	178 KENNEBEC ST	0
	UNITED STATES	PORTLAND, ME 04101	111 FOREST AVE	0
	UNITED STATES	PORTLAND, ME 04101	26 MARGINAL WAY	0
	UNITED STATES OF AMERICA- ADMINISTRATOR OF GENERAL	PORTLAND, ME 04101	27 BRATTLE ST	0

