



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

*ORIGINAL*

**Applicant Information:**

General Marine Construction Corp.  
Name

**Business Name**

450 Commercial St., 04101  
Address  
207-772-5354

**Telephone**

**Fax**

**Applicant's Right, Title or Interest in Subject Property:**

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

Current Zoning Designation: WCZ

**Existing Use of Property:**

Marine industrial with single  
watchman's residence, and fish  
processing.

**Type of Relief Requested:**

Interpretation that existing  
watchman's quarters is permitted  
as (1) grandfathered and (2) incidental  
and subordinate to operation of a commercial wharf.

**Subject Property Information:**

450 Commercial St. 043-K-01  
Property Address (042-F-001)

**Assessor's Reference (Chart-Block-Lot)**

**Property Owner (if different):**

**Name**

**Address**

**Telephone**

**Fax**

Disputed Provisions from Section 14 - 314 (A)(2)

**Order, decision, determination, or interpretation under dispute:**

City's letter of March 10, 2003,  
copy attached

**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

*NWA*  
Nicholas H. Walsh  
for General Marine Construction Corp.

Date

*7/16/03*

NICHOLAS H. WALSH  
ATTORNEY AT LAW  
111 COMMERCIAL STREET  
PORTLAND, MAINE 04101-4719

207-772-2191  
TELEFAX: 207-774-3940  
CABLE: SEALAW  
E-MAIL: nwalsh@gwi.net

July 17, 2003

City of Portland,  
Zoning Board of Appeals  
389 Congress Street, Room 315  
Portland ME 04101

Re: 042-f-001 (Deakes Wharf)

Dear sir or madam:

The owner, General Marine Construction, has filed an appeal to the ZBA of a land use determination (see my letter of June 4). We added certain material to the application with my letter of June 5.

I am advised that I need to forward the enclosed Application for Interpretation. I enclose the original and ten copies.

Please set this matter for the next hearing date.

Very truly yours,



Nicholas H. Walsh

NHW/ecj

Enclosure

cc: General Marine Construction Corporation





City of Portland, Maine  
 Planning and Development Department  
 Zoning Board of Appeals  
 Conditional Use Appeal Application

— ORIGINAL —

**Applicant Information:**

Name  
 General Marine Construction Corp.

Business Name  
 Same

Address  
 450 Commercial St. 04101

772-5354

Telephone Fax

Applicant's Right, Title or Interest in Subject Property:  
 Owner

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

Current Zoning Designation: WCZ

Existing Use of Property:  
 Marine industrial with single

watchman's residence, and fish processing.

**Subject Property Information:**

Property Address  
 450 Commercial St. (042-f-001)

Assessor's Reference (Chart-Block-Lot)

**Property Owner (if different):**

Name

Address

Telephone

Fax

Conditional Use Authorized by Section 14 - ~~314(F)~~  
 314(F)(2)

Type of Conditional Use Proposed:

Statement

originally filed as  
 Conditional Use Appeal  
 in error; would have  
 to go to Planning Bd.  
 Re-filed as Interpretation.

conditional use under this article, a conditional use permit shall be  
 characteristics or effects associated with the proposed conditional use;  
 the health, safety, or welfare of the public or the surrounding area; and  
 the impact which would normally occur from such a use in that zone.

required, attach preliminary or final site plan.

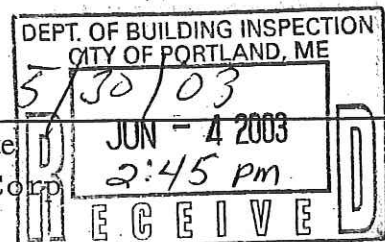
conditional use permit as above described, and certified that  
 and correct to the best of his/her knowledge and belief.

The  
 all in

NH

Signature of Applicant Nicholas H. Walsh  
 for General Marine Construction Corp.

Date



NICHOLAS H. WALSH  
ATTORNEY AT LAW  
111 COMMERCIAL STREET  
PORTLAND, MAINE 04101-4719

207-772-2191  
TELEFAX: 207-774-3940  
CABLE: SEALAW  
E-MAIL: nwalsh@gwi.net

June 4, 2003

City of Portland,  
Zoning Board of Appeals  
389 Congress Street, Room 315  
Portland ME 04101

Re: 042-f-001 (Deakes Wharf)

Dear sir or madam:

For the owner, General Marine Construction, please find the original Land Use Determination appeal, ten additional copies, and the \$100.00 filing fee. Please set the matter for the next Zoning Board of Appeals hearing date.

Very truly yours,



Nicholas H. Walsh

NHW/ecj

Enclosure

cc: General Marine Construction Corporation



NICHOLAS H. WALSH  
ATTORNEY AT LAW  
111 COMMERCIAL STREET  
PORTLAND, MAINE 04101-4719

207-772-2191  
TELEFAX: 207-774-3940  
E-MAIL: sealaw@gwi.net

June 2, 2003

City of Portland,  
Zoning Board of Appeals  
389 Congress Street, Room 315  
Portland ME 04101

Re: 042-f-001 (Deakes Wharf)

Dear sir or madam:

General Marine Construction Corporation, owner of the above property, has asked me to appeal the City's determination that the watchman's apartment on the wharf represents an illegal use under the zoning ordinance. Under §14-315.5(A) of the City's ordinance, the apartment may represent an illegal use unless it can be shown that the use existed as of May 5, 1987. We believe the use is many decades old and is therefore grandfathered. We contend as well that a watchman's apartment is an accessory use customarily incidental and subordinate to the location, function and operation of a commercial wharf, see §14-314(F)(2), and is thus permitted without regard to when the use first existed.

The City's determination is set forth in its letter of March 10, 2003, attached. We preserved our appeal by letter of March 20, 2003, again attached.

The premises in question are a very small ground floor apartment on the north side of the most southerly building on Deakes Wharf. As may be seen from the floor plan, one enters into a tiny vestibule. Ahead is a bathroom with hot water heater and shower. To the left is a hallway containing an oil furnace. One passes by the furnace into a snug kitchen (8' by 11') with room for a table seating two. Adjacent to the kitchen is a somewhat larger bedroom, and adjacent to that a very small room customarily used for storage. The ceilings are low. Although small, the apartment is well maintained, correctly wired, fully sprinklered and presents no life safety concerns, according to the City's recent inspection.

The apartment is by no means luxurious. It has a view not of the ship channel, but of the containers on the International Marine Terminal, of fishing

boats a few feet away at Gowen Marine, and of the oil trucks parked on Deakes Wharf. There is no deck or verandah. Its most recent occupant, until the City required his eviction, was an aged pensioner who watched over the wharf, fished for mackerel, and in season grew tomatoes in fish totes outside his door.

In support of the appeal I attach eleven copies of the following:

1. Copy of Interpretation Appeal Application.
2. Plot plan.
3. Copy of tax map.
4. Photos of property.
5. Deed to General Marine Construction Corporation.
6. Letter authorizing my representation.
7. \$100.00 as the appeal fee.
8. Floor plan for the property.

I also include three additional items. The first is an article entitled "Big Wharf Fire", from the Daily Eastern Argus for Monday morning, July 1, 1912. The article concerns a fire on Deakes Wharf, and contains several references to Edward E. Powers, the watchman who called in the fire at 2:00 a.m.

We also provide the affidavit of Edward Austin. Mr. Austin was watchman for General Marine Construction on Deakes Wharf from 1988 to 1997. He resided in the watchman's apartment here in issue.

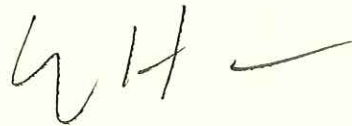
Finally, we provide the affidavit of Roger P. Hale, president of General Marine Construction Corporation. General Marine Construction bought Deakes Wharf in 1967. Mr. Hale bought General Marine Construction in 1976, in a stock sale. When Mr. Hale bought the business the apartment was in place and used by a watchman. General Marine Construction maintained the apartment over the years and it was lived in by a series of watchmen. On May 5, 1987, the apartment was in use, lived in. Although the lease for the occupant who preceded Edward Austin cannot be found, Mr. Hale knows the apartment has never been empty for more than a few weeks.

As well as being grandfathered, the watchman's apartment is an accessory use customarily incidental and subordinate to the location, function and operation of a commercial wharf, see §14-314(F)(2), and is thus permitted. It is difficult to provide fencing or other physical security for a wharf, for a thief can always come by water. Therefore commercial wharfs have forever used watchkeepers. Typically the watchkeeper resided on the wharf, just as General Marine's watchkeeper did until lately.

Portland has wisely instituted strict waterfront zoning, and these efforts have been rewarded with a healthy working waterfront. A watchmen's residence has existed on Deakes Wharf for a century or more, and the residence is necessary to the operation of the wharf: a watchman's residence is part of a working waterfront.

We ask that the City deem the residence a permitted use, because the use is incidental to the wharf's operation, and because the residence existed before May 5, 1987.

Very truly yours,

A handwritten signature in black ink, appearing to read 'NH' followed by a horizontal flourish.

Nicholas H. Walsh

NHW/ecj

Enclosure

cc: General Marine Construction Corporation



**CITY OF PORTLAND**

March 10, 2003

Roger Hale  
General Marine Construction  
446 Commercial Street  
Portland, ME 04103

RE: Apartment on Deake's Wharf  
CBL: 042-f-001

Dear Mr. Hale:

An evaluation of the above property revealed that an illegal apartment has been placed on the property without benefit of approvals. The property is located in a Commercial Zone where this use is not permitted.

The above, described, condition is in violation of Section 14-52 of the Municipal Zoning Ordinance and Section 6-107.1 of the Building Code. This is a notice of violation pursuant to Section 14-56 of the Municipal Zoning Ordinance and Section 6-116.2 of the Building Code. The property must be returned to the original permitted residential use within 30 days. A reinspection of the premises will occur on 4/14/03 at which time compliance is required.

Failure to comply will 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 Municipal Zoning Ordinance and Section 121.5 of the Building Code. You have the right to appeal this decision. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to apply. Please feel free to contact me at (#), if you wish to discuss the matter or have any questions.

Sincerely,

Jonathan J. Reed  
Code Enforcement Officer


cc: Nicolas H. Walsh



A f f i d a v i t

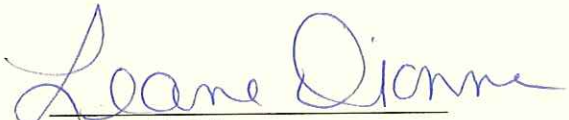
1. My name is Edward B. Austin. From 1988 to 1997 I rented an apartment from General Marine Construction. The apartment was on Deakes Wharf in Portland. The apartment was fully outfitted, with three rooms (including a kitchen) and a bathroom. I was the watchman for the wharf.

Date:

  
Edward B. Austin

State of Maine  
Kennebec, ss.

Personally appeared before me the above-named Edward B. Austin, who swore to the truth of the matters asserted in this affidavit, on affiant's own personal knowledge.

  
Notary Public

LEANE S. DIONNE  
Notary Public, Maine  
My Commission Expires December 11, 2008

A F F I D A V I T


1. My name is Roger P. Hale. I am the president of General Marine Construction Corporation.
2. General Marine Construction bought Deakes Wharf in 1967 (see deed attached). I bought General Marine Construction in 1976, in a stock sale. When I bought the business there was an apartment on the wharf in place and used by a watchman. General Marine Construction maintained the apartment over the years and it was lived in by a series of watchmen. On May 5, 1987, the apartment was in use, lived in. This is the same apartment the City wants to condemn.
3. Although we cannot find the lease for the occupant who preceded Edward Austin, who began renting in 1988, to my personal knowledge the apartment has never been empty for more than a few weeks.
4. Deakes Wharf needs a watchman twenty-four hours a day. At night a wharf is vulnerable to thieves coming by boat, for we can't put a fence around a wharf. On the wharf we have valuable equipment, offices, and vehicles. There is no end to the trouble that can occur if a wharf does not have a watchkeeper.

Date:

6/3/03

  
Roger P. Hale

Personally appeared before me Roger P. Hale, who swore to the truth of the matters here asserted.

  
Nicholas H. Walsh, Attorney at Law

NICHOLAS H. WALSH  
ATTORNEY AT LAW  
111 COMMERCIAL STREET  
PORTLAND, MAINE 04101-4719

207-772-2191  
TELEFAX: 207-774-3940  
CABLE: SEALAW  
E-MAIL: nwalsh@gwi.net

June 5, 2003

City of Portland,  
Zoning Board of Appeals  
389 Congress Street, Room 315  
Portland ME 04101

Re: 43-H-1  
042-f-001 (Deakes Wharf)

Dear sir or madam:

The owner, General Marine Construction, has filed an appeal to the ZBA of a land use determination (see my letter of June 4).

Please add the enclosed affidavit of Rodney Sirois and letter from William Clark III to the appeal package. I enclose the originals and ten copies. Thank you.

Very truly yours,



Nicholas H. Walsh

NHW/ecj

Enclosure

cc: General Marine Construction Corporation



Affidavit

1. My name is Rodney Sirois. From 1985 to 1987 I rented an apartment from General Marine Construction. The apartment was on Deakes Wharf in Portland. The apartment was fully outfitted, with three rooms (including a kitchen) and a bathroom. I was an employee of one of the business on the wharf.

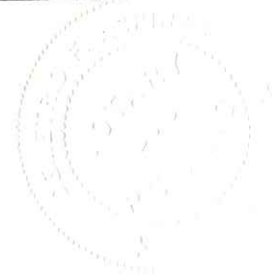
Date: 6/5/03 Rodney Sirois  
Rodney Sirois

Personally appeared before me the above-named Rodney Sirois, who swore to the truth of the matters asserted in this affidavit, on affiant's own personal knowledge

STATE of MAINE  
COUNTY of Cumberland

6/5/03

Demetrios  
DEMETRIOS  
NOTARY PUBLIC, MAINE  
COMMISSION EXPIRES JULY 26, 2005  
Notary Public



FROM: WILLIAM A. CLARK, III  
880 FOREST AVENUE, APT. 311  
PORTLAND, MAINE 04103

BOARD OF APPEALS

PORTLAND, MAINE

To Whom It May Concern:

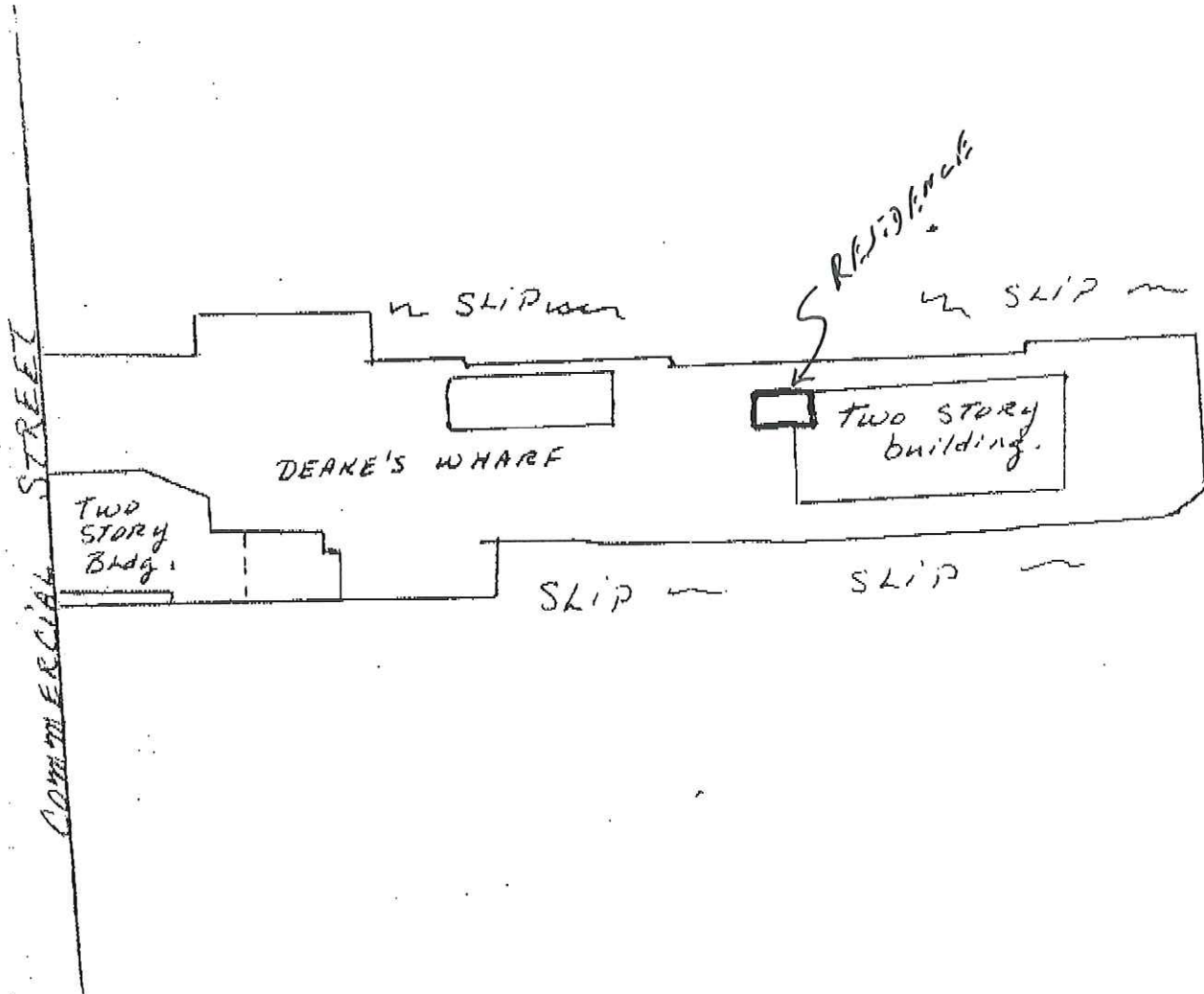
When I purchased Deake's Wharf in 1962, there was a watchman's quarters on the property. The watchman's quarters had been occupied to the best of my knowledge for the previous 80 years. It was occupied intermittently for the next fourteen years as part of General Marine Construction operations until 1976 when I sold General Marine Construction and Deakes Wharf to Mr. Roger P. Hale.

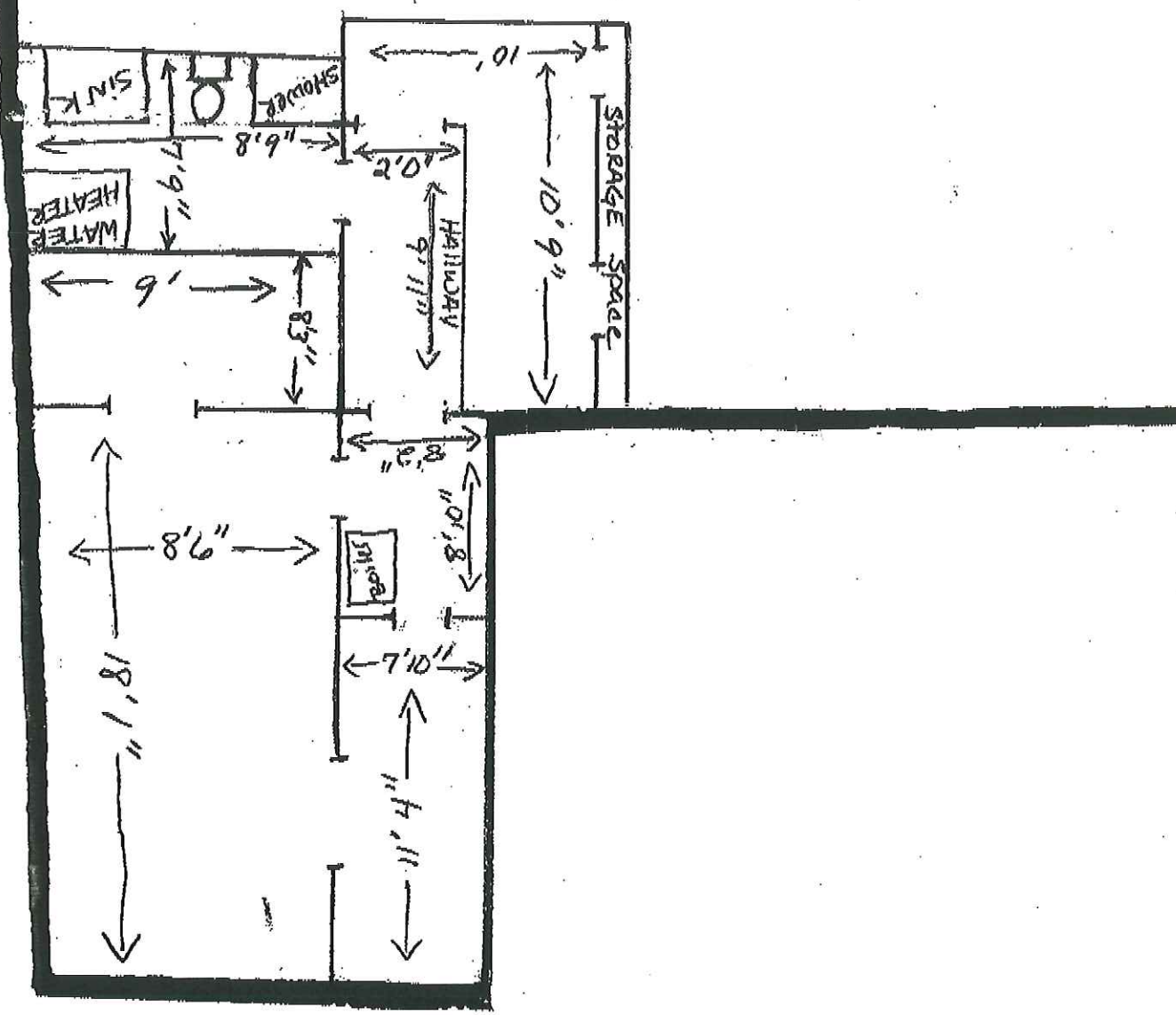
Thank you very much for your time in this matter.

Sincerely,

  
William A. Clark, III







Not  
to SCALE





Know All Men by These Presents.

That It, Cheney Realty Co.

a Corporation organized and existing under the laws of the State of Maine and located at Portland in the County of Cumberland and State of Maine in consideration of One dollar and other valuable considerations

paid by General Marine Construction Corporation, a corporation organized and existing under the laws of the State of Maine and located at Portland in the County of Cumberland and State of Maine the receipt whereof it does hereby acknowledge, does hereby give, grant, bargain, sell and convey unto the said General Marine Construction Corporation, its successors

and assigns forever, ~~acertain to the property of said~~

All that property, with the buildings thereon, known as Deake's Wharf, and lying and being on the Southeasterly side of Commercial Street, in said Portland, and shown upon Plan No. 43 of the Revaluation Plans of said Portland of 1882, said wharf being thereon numbered 442-452, both inclusive, on Commercial Street, and bounded and described as follows, viz:

Commencing on the Southerly side of Commercial Street at the Easterly corner of land now or formerly of one Dyer; thence running Easterly by the Southerly side of Commercial Street one hundred and forty three (143) feet to a stake; thence Southerly and parallel with said Dyer's east line eighty five and eight tenths (85.8) feet; thence Easterly on the outer edge of the stone wall as built in 1860; twenty three and one half (23 1/2) feet to an iron bolt, thence Southerly and parallel with said Dyer's east line five hundred and eighty (580) feet to the Harbor Commissioners' line; thence Westerly by said Harbor Commissioners' line one hundred and sixty five and sixty seven hundredths (165.67) feet to said Dyer's line; thence Northerly by said Dyer's line to the place of beginning on Commercial Street.

Reference is hereby made to plan recorded in Cumberland County Registry of Deeds in Plan Book 2, Page 16.

Said property above described being the same conveyed to Henry M. Jones by George C. Deake and Elizabeth D. Deake by deed acknowledged June 7, 1912, and recorded in said Registry of Deeds in Book 893, Page 113 and the same conveyed by William H. Looney and Elizabeth D. Deake, Trustees of the Estate of Charles Deake, to Henry M. Jones by deed dated June 7, 1912, recorded in said Registry of Deeds in Book 896, Page 26.

And being the first parcel described in four deeds to Megquier & Jones Company, all dated May 1, 1953, from Home for Aged Women, Portland Boys Club Association, Maine Home for Boys and Opportunity Farm Association, being recorded in Cumberland County Registry of Deeds Book 2134, at Pages 85, 88, 91 and 94 respectively. The name of Megquier & Jones Company has been duly changed to Cheney Realty Co., the grantor herein.



415 530

210

Do have and in hold the aforegranted and bargained premises with all the privileges and appurtenances thereof, to the said General Marine Construction Corporation, its successors

heirs and assigns, to it <sup>its</sup> and ~~heirs~~ use and behoof forever.

And the said Grantor Corporation does hereby warrant with the said Grantee, its <sup>successors</sup> ~~heirs~~ and assigns, that it is lawfully seized in fee of the premises, that they are free of all incumbrances;

that it has good right to sell and convey the same to the said Grantee to hold as aforesaid; and that it and its successors, shall and will warrant and defend the same to the said Grantee, its successors ~~heirs~~ and assigns forever, against the lawful claims and demands of all persons.

In Witness Whereof, the said Cheney Realty Co.

has caused this instrument to be sealed with its corporate seal and signed in its corporate name by J. Fred Cheney

, its President and Treasurer

thereunto duly authorized, this first day of February in the year one thousand nine hundred and sixty-seven

Signed, Sealed and Delivered in presence of

*Daniel C. Davis*

CHENEY REALTY CO.  
By *J. Fred Cheney*  
President & Treasurer



State of Maine, Cumberland ss.

February 1,

Personally appeared the above named J. Fred Cheney, President and Treasurer

of said Grantor Corporation as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said corporation.

Before me,

FEB 1 1967

*Daniel C. Davis*  
Justice of the Peace  
Notary Public

REGISTRY OF DEEDS, CUMBERLAND COUNTY, MAINE  
Received at 1 H 8 AM, and recorded in

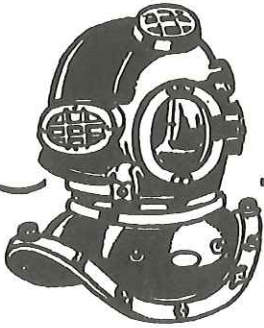
BOOK 2986 PAGE 209 *Edward R. T. Jones* Register

ROGER P. HALE, PRES.  
TEL. 883-4953

OFFICE  
Telephone 772-5354

# General Marine Construction Corp.

446 COMMERCIAL STREET  
PORTLAND, MAINE



**LIGHTER and TOWING    24 Hour Service    DIVING SERVICE**  
Dock Building and Repairs • Full Insurance Coverage • Breakwaters • Dredging

June 2, 2003

City of Portland  
Portland, Maine

General Marine Construction Corp. hereby states that  
Nicholas Walsh will represent us in this land use matter.

Sincerely,

  
Roger P. Hale, Pres.