



# PORTLAND MAINE

*Strengthening a Remarkable City. Building a Community for Life • [www.portlandmaine.gov](http://www.portlandmaine.gov)*

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

August 30, 2010

Dana Fisher LLC  
P.O. Box 169  
Portland, ME 04102  
Attn: Tod Dana

RE: 231 York Street – 044-E-003 – B-1 Zone

Dear Tod,

Thank you for the quick response and all the information that you have supplied to me in order to answer my query as to how you are meeting the requirements set forth in the Ordinance regarding the diligent pursuit of construction to completion.

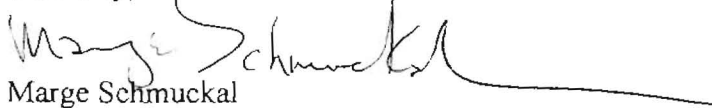
In addition to the information that you provided, I am also aware that on August 25, 2010 you applied for a foundation permit amendment. That permit amendment was issued by this office on August 26, 2010.

There has been no site work since I began monitoring the property on August 16, 2010. However, further information indicates that work behind the scene is progressing.

As of this date, I have determined that you are diligently pursuing the project to completion.

I am advising you that I will be monitoring the progress on site and your project to assure that the requirements of the Land Use Zoning Ordinance are met. Please do not hold up any work based upon any misunderstandings. I am encouraging you to go immediately forward to diligently pursue the project to completion as reviewed and approved.

Sincerely,

  
Marge Schmuckal  
Zoning Administrator



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Sincerely,

Marge Schmuckal  
Zoning Administrator

# FAX



To: Tod Dana

Fax Number: 275-0022

From: Marge Schmuckel

Fax Number:

Date: 8/31/10

Regarding: 231 York St

Total Number Of Pages Including Cover: 2

Phone Number For Follow-Up:

## Comments:

Tod,  
I will put the original in the Mail.

Marge

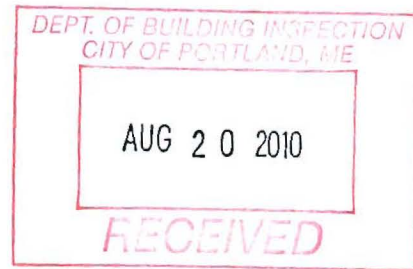
## **Dana Fisher, LLC**

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

*Email: [asiawest@aol.com](mailto:asiawest@aol.com)*

August 20, 2010

Marge Schmuckal  
Zoning Administrator  
City Of Portland  
389 Congress Street  
Portland, Maine 04101



Dear Marge,

I am responding to your letter dated August 18, 2010. I want to assure you that we are unequivocally meeting the requirements of the ordinance (as it relates to my off-street parking variance).

As you detail in your letter, we were issued a "foundation-only" building permit on August 5<sup>th</sup>, 2010 and started construction in earnest the following day. The sewer was capped, the site was fenced, the sidewalk torn up and excavation began. I took extensive video footage of the contractors engaging in this construction on August 6<sup>th</sup>, which I would be happy to share with you.

As it relates to "diligently pursuing completion", I understand your concern given the fact that the site has been inactive for the last week. However, I assure you once again that there is significant progress being made off-site.

The company contracted to pour the foundation indicated to us last week that a slight revision of the foundation depth would save several thousand dollars. Upon learning this news, we met with Larry Wichroski of Allied Engineering and instructed him to make the requisite changes in the foundation plan. The attached email correspondence between Steve Keltonic of The Thaxter Co. (General Contractors) and Larry Wichroski (Allied Engineering) provides evidence that this work is being completed Monday and has been on Larry's desk for more than a week.

Chris Wilson of "Les Wilson Excavation" was planning to install the water line this week, but was told by the Thaxter Co. to wait until issues with the City were resolved. I initiated this directive after receiving a call Monday August 16<sup>th</sup> from your assistant Anne Machado, who told me that "I had not met the requirements of the ordinance and that I would need to reapply for my variance". When I challenged Anne's interpretation, she said she would speak with you and one of you would get back to me promptly.



The rationale for holding Chris Wilson back is obvious. I did not want to incur any additional construction expense until I had heard back from you and Anne that we did not have an issue.

As you can see by the attached email correspondence, Allied engineering should have revised structural plans for us Monday, which we will promptly present to The City as a revision. We have scheduled "Wilson" for Wednesday to commence excavation and install the water line.

The additional architectural plans requested by Genie Bourke are nearly completed and we anticipate that a full building permit will be issued long before we finish the foundation, allowing us to continue our progress without a break in construction.

I have also attached a "Construction Schedule" from The Thaxter Company, which indicates their intention to complete this project in a timely manner.

If you have further questions or concerns, please let me know at your earliest convenience so we can resolve them.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted G. M.", with a stylized flourish at the end.

**From:** Steve Keltonic <[steve@thaxtercompany.com](mailto:steve@thaxtercompany.com)>  
**To:** 'Tod Dana' <[asiawest@aol.com](mailto:asiawest@aol.com)>  
**Subject:** FW: 231 York St - new foundation plans  
**Date:** Fri, Aug 20, 2010 12:05 pm

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**From:** Larry Wichroski [<mailto:LWichroski@allied-eng.com>]  
**Sent:** Friday, August 20, 2010 12:03 PM  
**To:** Steve Keltonic  
**Subject:** 231 York St - new foundation plans

Sorry Steve, things did not work out the way I was hoping this week.  
I will have the changes done on Monday morning and will email you PDF's by that afternoon.  
Sorry for the delay.

**Larry A. Wichroski, P.E.,**  
**Chief Structural Engineer**  
Allied Engineering, Inc.  
160 Veranda Street  
Portland, ME 04103

T 207.221.2260 x115  
F 207.221.2266  
C 207-253-9999  
[www.allied-eng.com](http://www.allied-eng.com)

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**From:** Steve Keltonic [<mailto:steve@thaxtercompany.com>]  
**Sent:** Friday, August 20, 2010 7:25 AM  
**To:** Larry Wichroski  
**Subject:** RE: 231 York St - new foundation plans

Larry – Tod needs to present the city with a foundation construction schedule today. How are things progressing on your end?  
Steve

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**From:** Larry Wichroski [<mailto:LWichroski@allied-eng.com>]  
**Sent:** Tuesday, August 17, 2010 10:50 AM  
**To:** Steve Keltonic  
**Subject:** RE: 231 York St - new foundation plans

Steve, we have a project going out today and then we will get onto the York St project.  
I will contact you tomorrow with a schedule.  
Thanks.

**Larry A. Wichroski, P.E.,**  
**Chief Structural Engineer**  
Allied Engineering, Inc.  
160 Veranda Street  
Portland, ME 04103

T 207.221.2260 x115  
F 207.221.2266  
C 207-253-9999  
[www.allied-eng.com](http://www.allied-eng.com)

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**From:** Steve Keltonic [<mailto:steve@thaxtercompany.com>]  
**Sent:** Tuesday, August 17, 2010 10:23 AM  
**To:** Larry Wichroski  
**Subject:** 231 York St - new foundation plans

Larry, just checking on status of drawings? HarMac did not detail the rebar for production, so if the new drawing could be sent to HarMac it would help with submittal and approval process.  
Thanks,  
Steve



231 YORK STREET PORTLAND MAINE

REVISÉD AUGUST 10, 2010

	AUGUST					SEPTEMBER				OCTOBER				NOVEMBER					DECEMBER				JANUARY				FEBRUARY				MARCH				APRIL				MAY					
	2	9	16	23	30	6	13	20	27	4	11	18	25	1	8	15	22	29	6	13	20	27	3	10	17	24	31	7	14	21	28	7	14	21	28	4	11	18	25	2	9	16	23	30
DEMOLITION																																												
SITE WORK																																												
FOUNDATION																																												
LANDSCAPING																																												
ROUGH CARPENTRY																																												
FINISH CARPENTRY																																												
ROOFING																																												
INSULATION																																												
GWB																																												
FLOORING																																												
PAINTING																																												
PLUMBING																																												
FIRE PROTECTION																																												
HVAC																																												
ELECTRICAL																																												



## Marge Schmuckal - 231 York St

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Tod's #  
671-5564

**From:** Marge Schmuckal  
**To:** asiawest@aol.com  
**Date:** 8/23/2010 4:31 PM  
**Subject:** 231 York St

Tod,

I am in receipt of your reply to my letter dated August 18, 2010. I want to reiterate at this time that the City is not directing you to stop any work on the site at 231 York Street. I will respond to you in writing answering your letter.

Thank you,

Marge Schmuckal  
Zoning Administrator

## Marge Schmuckal - 231 York Street

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**From:** Barbara Barhydt  
**To:** Schmuckal, Marge  
**Date:** 8/24/2010 3:05 PM  
**Subject:** 231 York Street

Hi Marge:

Jean and Phil shared the letter you sent regarding the restaurant at 231 York. I know you are asking him to respond to you about the status of the project. You may want to give Todd Dana a call just in case he is on vacation. I am concerned he may not get back to you in time.

From our end, the chronology of the project so far is as follows:

July 30, 2010 Preconstruction meeting.

August 10, 2010 Routine inspection. Demo complete. Building corners set, side and rear appear to meet setbacks, Brackett Street and northwest corners questionable - appear close. Sewer Dept. needs to check grease trap installation.

On August 17, 2010, Phil believes he called Chris Wilson, the contractor to make sure he contacted Steve Harris for the grease trap inspection. He hasn't heard anything since.

Hope this helps.

Barbara



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

**COPY**

August 18, 2010

Dana Fisher LLC  
P.O. Box 169  
Portland, ME 04112

**Certified Mail: 7008 0500 0001 4582 1856**

Attn: Tod Dana

RE: 231 York Street – 044-E-003 – B-1 Zone

Dear Tod,

I am writing you regarding your restaurant project located at 231 York Street. As you know the Zoning Board of Appeals granted a variance from the off-street parking requirements on August 7, 2008. That variance was extended to the full two (2) year term allowed by Ordinance. Your variance expired on August 7, 2010. The Ordinance [section 14-473(e)] states, "No variance permitting the erection or alteration of a building shall be valid for a period longer than six (6) months, or such other time as may be fixed at the time granted not to exceed two (2) years, *unless a building permit for such erection or alteration is issued and construction is actually begun within that period and is thereafter diligently pursued to completion.*"

I am concerned that you are not meeting the requirements of the Ordinance relating to beginning construction and diligently pursuing the project to completion. Recent inspections show no activity on the site.

On August 2, 2010 a demolition permit for the existing building was issued (#10-0773). On August 5, 2010 a foundation-only permit for the new restaurant was issued (#10-0943). As of a site visit on August 16, 2010, an excavation for the new foundation has not been completed. A footing has not been formed. Concrete for the foundation has not been placed or poured. Construction activity on the site appears to have ceased.

Please respond in writing explaining as to how you are meeting the requirements set forth in the Ordinance regarding the diligent pursuit of construction to completion. You must respond within 1 week of the receipt of this letter.

Sincerely,

Marge Schmuckal  
Zoning Administrator

15-1042  
Foundation Permit  
renewed 8/25/10  
8/26/10  
Issued

FAX



To: Tod Dana

Fax Number: 775-0022

From: MARGE Schmuckel

Fax Number:

Date: 8/19/10

Regarding: 231 York St

Total Number Of Pages Including Cover: 2

Phone Number For Follow-Up: 874-8695

Comments:

TOD  
Here is a copy of the letter that went out  
Marge






## CITY OF PORTLAND

### CERTIFICATE OF VARIANCE APPROVAL 2<sup>ND</sup> UPDATE

I, Philip Saucier, the duly appointed Chair of the Board of Appeals for the City of Portland, Cumberland County and State of Maine, hereby certify that on the 18th day of February, 2010, the following variance extension was granted pursuant to the provisions of 30-A M.R.S.A. Section 4353(5) and the City of Portland's Code of Ordinances.

1. **Current Property Owner:** Dana Fisher LLC
2. **Property:** 231 York Street, Portland, ME **CBL:** 044-E-3  
Cumberland County Registry of Deeds, Book 26271 Page 194  
Last recorded deed in chain of Title: 08/13/2008
3. **Variance and Conditions of Variance:**  
To grant relief from section 14-166(c) and 14-332(i) of the Zoning Ordinance to allow no off-street parking spaces for a proposed restaurant instead of the seven (7) off-street parking required.  
To grant a six month extension of the original variance which was originally approved for one year on August 7, 2008 with another six month extension granted on May 21, 2009. This extension will expire on August 7, 2010 which results in a full two year variance approval from the Zoning Board.

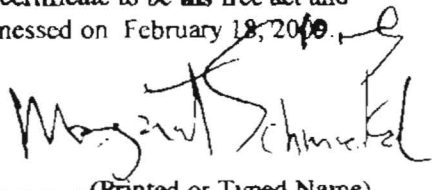
IN WITNESS WHEREOF, I have hereto set my hand and seal this 18th day of February, 2010

  
Chair of  
City of Portland Zoning Board  
Philip Saucier  
(Printed or Typed Name)

STATE OF MAINE  
Cumberland, ss.

Then personally appeared the above-named Philip Saucier and acknowledged the above certificate to be his free act and deed in his capacity as Chairman of the Portland Board of Appeals, with his signature witnessed on February 18, 2010.

Received  
Recorded Register of Deeds  
Mar 15, 2010 11:26:09A  
Cumberland County  
Pasela E. Lovley

  
SEAL (Printed or Typed Name)  
Notary Public  
Margaret Schmuckel

My term expires June 28, 2012

PURSUANT TO 30-A M.R.S.A. SECTION 4353(5), THIS CERTIFICATE MUST BE RECORDED BY THE PROPERTY OWNER IN THE CUMBERLAND COUNTY REGISTRY OF DEEDS WITHIN 90 DAYS FROM FINAL WRITTEN APPROVAL FOR THE VARIANCE TO BE VALID. FURTHERMORE, THIS VARIANCE IS SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 14-474 OF THE CITY OF PORTLAND'S CODE OF ORDINANCES.

(e) *Limitations on variances.* No variance permitting the erection or alteration of a building shall be valid for a period longer than six (6) months, or such other time as may be fixed at the time granted not to exceed two (2) years, unless a building permit for such erection or alteration is issued and construction is actually begun within that period and is thereafter diligently pursued to completion. One (1) or more extensions of said expiration dates may be granted if the facts constituting the basis of the decision have not materially changed and the two-year period is not exceeded thereby. No variance relating to the establishment or maintenance of a use not involving a building or structure shall be valid for a period longer than six (6) months, or such other time as may be fixed at the time granted not to exceed two (2) years, unless an occupancy permit is issued and a use commenced within such period; provided, however, that one (1) or more extensions of said time may be granted if the facts constituting the basis of the decision have not materially changed, and the two-year period is not exceeded thereby.

(f) *Recording of variances.* No variance shall be valid unless, within thirty (30) days of final approval of the variance, a certificate describing the variance has been recorded by the applicant for the variance in the registry of deeds as required by 30 M.R.S.A. Section 4963.

(Code 1968, § 602.24.C; Ord. No. 437-74, 7-1-74; Ord. No. 467-83, § 1, 4-20-83; Ord. No. 563-84, 5-7-84; Ord. No. 357-84, § 1, 12-17-84; Ord. No. 354-85, § 6, 1-7-85; Ord. No. 40-85, § 1, 7-15-85; Ord. No. 67-87, § 5, 11-2-87; Ord. No. 93-88, 7-19-88; Ord. No. 167-89, 12-11-89; Ord. No. 324-92, 4-22-92; Ord. No. 164-97, § 13, 1-6-97; Ord. No. 208-98, §§ 1, 2, 2-2-98; Ord. No. 253-05/06, 7-17-06; Ord. 296-08/09, 6-15-09)

-----  
\*Editor's note--Ord. No. 93-88, adopted July 19, 1988, amended § 14-473 by adding subsection (f) to read as herein set out. See also the editor's note to Art. III of this chapter for additional provisions relative to Ord. No. 93-88.  
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#### Sec. 14-474. Conditional uses.

(a) *Authority.* The board of appeals may, subject to the procedures, standards and limitations set out in this section, approve the issuance of a conditional use permit authorizing development of conditional uses listed in this article.

(b) *Procedure:*

(1) *Application.* Applications for conditional use permits





01/17/18









9/2/8









8/19/13







9/11/18















91  
1  
2  
8



1-3

BL

PERMIT NUMBER 26031

Director of Public Services

*MALE 8/2/10*

DATES 8/9/2010 to 8/13/2010

YORK ST

1 Space

Sidewalk & Incur

THAYER CO

SEAL

1



[illegible]

## Marge Schmuckal - 231 York Street - Demolition and Construction of New Restaurant

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**From:** Philip DiPierro  
**To:** Code Enforcement & Inspections  
**Date:** 7/30/2010 3:26 PM  
**Subject:** 231 York Street - Demolition and Construction of New Restaurant

Hi all, this project, site plan #09-79900017 at 231 York Street, meets minimum DRC site plan requirements for the issuance of both the demolition and building permits. Please contact me with any questions. Thanks.

Phil

231 York St Face  
✓  
2001  
20-G-10  
20 F-17  
142 Federal



8/16/10  
went back 3:15  
698 for purchase

