

Appeal
163 Danforth

Buell Heminway and Associates
ARCHITECTURE . PLANNING

Ms. Barbara Hathaway
163 Danforth Street
Portland, ME 04102

March 4, 1994

Subject: 163 Danforth Street
Proposed Lodging House

Dear Ms. Hathaway,

At your request I have calculated the entire approximate gross area for the subject project, including the recently approved additions, which will comprise the proposed use of the building. This calculation does not include mechanical spaces, crawl spaces, basement or attic spaces not used for habitation.

Basement Finished Room	594 sq.ft.
First Floor	3,729 sq.ft.
Second Floor	3,190 sq.ft.
Third Floor	1,814 sq.ft.
TOTAL	9,327 sq.ft.

As you are aware, the actual area being modified and added to accommodate the Lodging House use is less than the above total.

Sincerely,



Buell Heminway

Copy to : Mr. William Giroux
Zoning Enforcement Officer
City of Portland



CITY OF PORTLAND
INTERPRETATION APPEAL

DECISION

Applicant's name and address: David J. Garrity - Edward A. Hobler - Thomas W. Thomse
Property Owners of 174 Danforth Street and 188 Danforth Street

Applicant's interest in property (e.g. owner, purchaser, etc.): Neighbors

Owner's name and address if different Roman Catholic Process, 510 Ocean Ave, Portland, Me.

Address of property: 163 Danforth St, Assessor's Chart 44 Block 11
Lot 3

For the Record

Names of witnesses (proponents, opponents and others):

Law Butterfield (P) David Garrity (P) Pat Phillip (O) Monsieur Ward (O)
Peter Willey (O), Barbara Hathaway (O) Ann Scanlin (O) Gerard J. Conall (P)
Clare Andrews (O) Father Frank Moore (O)

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

Findings of Fact

1. The Board finds as fact that:

Uphold the interpretation of the decision
of the building inspector. (Mr. Giroux)

Conclusion

After public hearing on 3/10, 1994, and for the reasons above-stated, the accompanying application is hereby (check one)

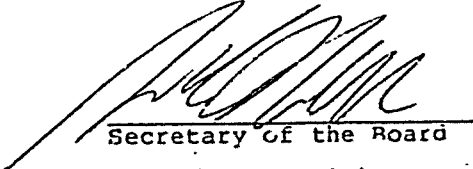
granted.

granted subject to the following condition(s):

No decision

denied.

Dated: _____, 19__


Secretary of the Board

- Move to uphold decision of administrator to authorize the use of 163 Danforth St. as a lodging house in the R-C zone.

- Seconded

$\frac{Yes}{3}$

$\frac{No}{2}$

No decision

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS



THOMAS F. JEWELL

RAY M. JOHNSON
JOHN C. KNOX
MATTHEW D. MANAHAN
DEWEY A. MARTIN, JR.
REBECCA SARGENT
MICHAEL E. WESTORT

INTERPRETATION APPEAL APPLICATION

Applicant's name and address: David J. Garrity & Edward A. Hobler

174 Danforth Street, Portland, Maine; Thomas W. Thomsen, 188 Danforth Street,
Portland, Maine.

Applicant's interest in property (e.g., owner, purchaser, etc.):

Applicants are interested persons whose property is affected by decision
of Building Authority against which this appeal is sought.

Owner's name and address (if different):

Roman Catholic Diocese, 510 Ocean Ave., Portland, Maine

Address of property and Assessor's chart, block and lot number:

163 Danforth Street; Assessor's Chart 44, Block H, Lot 3

Zone: R-6 Present Use: Rectory (single-family dwelling)
N.B. Classification of present use

Order, decision, determination, or interpretation under dispute: is in dispute.

Zoning approval as set forth in letter from Mr. William Giroux, Zoning Administrator,
to Ms. Barbara Hathaway dated January 10, 1994.

Disputed provision: Section 14- See attached Exhibit A (Issues Presented On Appeal)

Type of relief requested: Reversal of zoning approval for conversion of subject
property to lodging house. Order developer to comply
with requirements of major development site plan.

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

Date: Feb 8, 1994

2/8/94

02-08-94

David J. Garrity
Signature of Applicant

E. A. Hobler

Thomas W. Thomsen

ROBINSON, KRIGER, McCALLUM & GREENE, P.A.

ATTORNEYS AT LAW
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JAMES C. KUNITZ
CLAIRE GALLAGAN ANDREWS
THOMAS QUARTARARO
JENNIFER A. HOLBROOK
ELIZABETH CONNELLAN

March 24, 1994

John C. Knox
Chairman
Board of Appeals
City of Portland
389 Congress Street
Portland, Maine 04101

RE: 163 Danforth Street
Appeal of David Garrity and Edward A. Holber

Dear Chairman Knox:

As you know I represent the Roman Catholic Bishop of Portland in this matter. I am in receipt of the notice of hearing for Thursday, April 7, 1994 and will be in attendance on behalf of my client.

I have received a copy of Attorney Wiley's letter dated March 24, 1994 to you with regard to his client's position concerning a number of matters, including the legal effect of the vote which took place on March 10, 1994, the request for the two prong vote on April 7, 1994 and the grandfathering of the use of 163 Danforth Street.

I concur with Attorney Wiley's interpretations and, on behalf of my client, join with Attorney Wiley and his client Barbara Hathaway in their assertion of these positions.

Thank you for your consideration of this matter.

Very truly yours,

Claire Gallagan Andrews
Claire Gallagan Andrews

cc: Patricia Phillips
Robert C. Robinson, Esq.
Peter J. Wiley, Esq.

Exhibit A

OUTLINE OF ISSUES PRESENTED ON APPEAL

Mr. William Giroux, by letter to Ms. Barbara Hathaway dated January 10, 1994, granted zoning approval for conversion of 163 Danforth Street from its current use to a lodging house. Mr. David Garrity and Mr. Edward Hobler, who own 174 Danforth Street, and Mr. Thomas W. Thomsen, who owns 188 Danforth Street, are adversely affected by the Zoning Administrator's determination and appeal against it on the following grounds:

I. The current use of 163 Danforth Street, a building known as the "Rectory," is properly classified as a single-family dwelling and, as such, may not be converted to a lodging house.

A. Records of the Building Department and the Assessor's Office of the City of Portland confirm that both the City and the owner of the Rectory, the Roman Catholic Diocese, have classified the property as a single-family dwelling.

B. Neither the current owner of the Rectory nor any past owner of the property has ever applied for a change in use of the Rectory from its designated status of a single-family dwelling to an institutional use. The current owner of the Rectory cannot now benefit by its failure to seek and to obtain a permit for change in use.

C. The Zoning Administrator incorrectly determined that the current use of the Rectory is institutional in nature.

D. Portland Code § 14-526(a)(15)(b) provides, in pertinent part, as follows: "In no event shall any single-family dwelling in the R-5 or R-6 zone be converted in whole or in part to a lodging house."

E. Conversion of the Rectory to a lodging house is prohibited under Portland Code § 14-526(a)(15)(b), and the Board of Appeals, therefore, must overturn the Zoning Administrator's determination as set forth in his letter to Ms. Hathaway dated January 10, 1994.

II. Ms. Hathaway's intended use of the Rectory falls within the definition of "inn," not "lodging house," and an "inn" is a prohibited use in zone R-6.

A. The Portland Code defines "Inn" as follows: "A building used for *more or less temporary occupancy* of individuals, who are lodged with or without meals, having ten (10) but no more than (50) *rooms*. Guest rooms shall not contain separate kitchen facilities." Portland Code § 14-47 (emphasis added).

B. The Portland Code defines "Lodging house" as follows: "A house, building or portion thereof containing two (2) or more *rooming units* and providing such

units, with or without meals, to individuals *on a weekly or monthly basis* for compensation. A lodging house, except for lodging houses located in the IR-2, IR-3 and I-B zones, shall contain common areas for use by all residents, including a kitchen. A kitchen need not be available as part of the common areas where all meals are provided on a daily basis." Portland Code § 14-47 (emphasis added).

C. The distinctions between the definition of "inn" and the definition of "lodging house" demonstrate that Ms. Hathaway intends to convert the Rectory to an "inn."

1. The definition of "inn" refers to "rooms," whereas the definition of "lodging house" refers to "rooming units."

a. The Portland Code defines "Rooming unit:" as "[a] room or suite of rooms in a house, building, or portion thereof rented as living and sleeping quarters, but without full kitchens or bathroom. In a suite or rooms, each room which provides sleeping accommodation shall be counted as one (1) rooming unit for the purpose of this article. Each rooming unit in a lodging house shall have kitchen privileges unless all meals are provided on a daily basis. There shall be no more than two (2) persons residing in each rooming unit." Portland Code § 14-47 (emphasis added).

b. Under the Portland Code, some "rooms" fall within the definition of "rooming units" and some do not. These two terms, as used in the Portland Code, have separate and distinct connotations. A "room" is not a "rooming unit" unless it is rented as sleeping quarters. The drafters of the Portland Code obviously were aware of the term "rooming unit" and just as obviously chose *not* to apply it to define an "inn."

c. The Rectory, as Ms. Hathaway proposes to modify it, would contain between ten (10) and fifty (50) "rooms" including nine (9) that fall within the definition of "rooming unit."

d. The development plan for the Rectory is properly defined as an "inn" based upon the number of rooms in the building.

2. The definition of "inn" refers to providing "*more or less temporary occupancy of individuals*," while the definition of "lodging house" refers to providing occupancy "*on a weekly or monthly basis for compensation*."

a. The development plan for the Rectory can be properly classified as a "lodging house" only in the event that Ms. Hathaway intends to accept occupants for no period of time other than on a weekly

or a monthly basis.

b. In the event that Ms. Hathaway intends to accept occupants for any period of time other than on a weekly or a monthly basis, *e.g.*, a weekend, then the proposed use *must* be classified as an "inn."

c. The Zoning Administrator's letter to Ms. Hathaway dated January 10, 1994, acknowledges that Ms. Hathaway intends to offer rooming units on a daily basis.

d. The development plan for the Rectory is properly defined as an "inn," not as a "lodging house," based upon Ms. Hathaway's intent to offer occupancy for periods of time other than on a weekly or a monthly basis.

3. A "lodging house" must provide its occupants access to a common-area kitchen unless *all* meals are provided on a daily basis, whereas no such requirement exists for an "inn," and the developer's most recent plans do *not* show a common-area kitchen.

a. Attachment 14A of the development plans for the Rectory received by the City of Portland, Department of Building Inspections, on January 5, 1994 (for discussion at a January 19, 1994 meeting of the Historic Preservation Committee), depict a kitchen as part of the owner's quarters separate from and exclusive of the common areas.

b. Ms. Hathaway has indicated an intent to provide some, but not all, meals to guests.

c. The development plan for the Rectory is properly defined as an "inn," not as a "lodging house," based upon the lack of a common-area kitchen and Ms. Hathaway's intent to offer only some meals.

D. The Zoning Administrator incorrectly determined that the proposed use of the Rectory is a "lodging house" rather than an "inn."

E. Portland Code § 14-138 prohibits inns within the R-6 zone by virtue of the fact that inns are neither a permitted use under § 14-136 nor a conditional use under § 14-137.

F. Conversion of the Rectory to an "inn," which is the proper classification of the intended use of the Rectory, is prohibited under Portland Code § 14-138, and the Board of Appeals, therefore, must overturn the Zoning Administrator's determination as

set forth in his letter to Ms. Hathaway dated January 10, 1994.

III. Zoning approval for development of the Rectory as a lodging house is premature based upon the information provided by Ms. Hathaway.

A. The information available on file for review suggests that Ms. Hathaway has not provided evidence of compliance with the following provisions of the Portland Code:

1. *“Minimum rooming unit areas for lodging houses: Two hundred (200) square feet of combined rooming unit and common area for each rooming unit. Each individual rooming unit shall be a minimum of eighty square feet.”* Portland Code § 14-139(7)(b).

2. *“Open space ratio: Twenty (20) percent for those lots which contain fewer than twenty (20) dwelling units. . . . This area shall not include parking areas or other impervious surfaces as defined in section 14-47.”* Portland Code § 14-139(8).

B. The Zoning Administrator's letter of zoning approval does not make any express determination on other applicable zoning provisions, *i.e.*, Portland Code § 14-139(1)(k) (minimum lot size for lodging house); § 14-139(2)(c) (minimum land area per lodging house rooming unit); § 14-139(4) (maximum lot coverage); and § 14-145(1) (off-street parking).

C. The Board of Appeals should remand the question of conformance to zoning requirements to the Zoning Administrator for consideration of these provisions prior to issuing his determination of zoning approval.

IV. The determination granting zoning approval wrongly disregards the stated purpose of the R-6 residential zone.

A. The purpose of the R-6 residential zone is “[t]o set aside areas on the peninsula for housing characterized primarily by *multi-family dwellings* at a high density providing a wide range of housing, including differing types of *households*; and to conserve the existing housing stock and *residential character of neighborhoods* by controlling the scale and external impacts of professional offices and other nonresidential uses. Portland Code § 14-135(1) (emphasis added).

B. The area of the peninsula in which the developer proposes to convert a dwelling into a lodging house already is losing much of its residential character to institutional and commercial uses. Taken in context of the overarching principle of R-6 zoning, and given the unfortunate erosion in residential character of the affected area, the Board of Appeals should overturn the determination of zoning approval.

V. The determination granting zoning approval was based upon information supplied as part of a "minor development" site plan even though the proposed change in use of the Rectory is a "major development."

A. Ms. Hathaway apparently has not provided a statement of the square footage of the current Rectory floor plan plus the addition that she intends to construct. The total floor area of the Rectory, upon information and belief, is more than ten thousand (10,000) square feet.

B. "Major development," as defined in the Portland Code "means and includes . . . [a] change in the use of a total floor area of ten thousand (10,000) square feet or more in any existing building cumulatively within any three-year period." Portland Code § 14-522.

1. "Floor area: A floor space enclosed by exterior or standard fire walls, exclusive of vent shafts and courts." Portland Code § 14-47.

C. The developer, as stated in a Memorandum from Ms. Deborah Andrews, Senior Planner, to the Planning Board dated January 11, 1994, currently is seeking minor site plan approval. The Portland Code, however, requires major site plan approval. Portland Code § 14-523.

D. The developer must adhere to provisions of the zoning ordinance pertaining to provision of a site plan for a major development and does not satisfy the requirements by meeting the lesser standards for a minor development.

JENSEN BAIRD GARDNER & HENRY

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PETER J. WILEY
BARRY P. FERNALD
BERNADETTE A. BOLDUC
KAREN MCGEE HURLEY
SALLY J. DAGGETT
MATTHEW A. GOODWARD

March 23, 1984

John C. Knox,
Chairman
Board of Appeals
City of Portland
Portland, ME 04101

Dear Chairman Knox:

As you are aware, I represent Barbara Hathaway whose permit for converting the church rectory at 163 Danforth Street is being appealed by David Garrity and Edward Hobler. The item is scheduled to be heard again by the Board on April 7th and we will be in attendance to once again defend the decision of Code Enforcement Officer Bill Giroux that the proposed project is the conversion of an institutional use to the permitted use of a lodging house in the R-6 Zone.

First, however, we would once again reiterate that from our perspective the Board has already properly acted on this matter, did reject the appeal and thus upheld Mr. Giroux's decision by virtue of the fact that the appellants could only muster two votes to reject the CEO's decision at the Board's meeting on March 10. As the Board was acting with a legal quorum that night, in our opinion the matter has been decided.

The language of the Portland ordinances at §§14-548 indicates that, "No business shall be transacted by the board of appeals without a quorum, consisting of four (4) members being present," and "The board shall be clearly satisfied at the first Board meeting on the 7th. The ordinance goes on to then say that, "the board shall be composed of at least four (4) members of the Board shall be authorized to authorize any action, to grant any request or to sustain any appeal," (emphasis added). Ordinance sets forth the range of actions

JENSEN BAIRD GARDNER & HENRY

John C. Knox
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March 23, 1994

the board is authorized to take and states that whichever category it falls into, four (4) votes are required to obtain the objective, in this case to grant the appeal. Failing to achieve four votes at a lawfully constituted meeting of the Board, the action is not granted and the appeal fails. There are no specific Maine cases dealing with the underlying tenets of this issue of which I am aware, but a variety of other states have ruled on cases that uphold these principles.

In a 1954 New York state case, Steers Sand & Gravel Corp. v. Village Board of Village of Northport, 129 N.Y.S. 2d 403, four of the five members of the Board convened a meeting to hear a Zone change request. One member abstained and the vote was 2 to 1 against the change. The unsuccessful company challenged that this was not a legal vote as by the Village Law, "A majority of the Board shall constitute a quorum for the transaction of business," the company arguing that the requisite majority had not denied their petition. The court upheld the Board's action stating that, "Lawfully to consider the petition, a majority of the Board's authorized membership, i.e., at least three members, were required to be present at the hearing and to grant it, the concurrence of a similar majority was necessary. Such a concurrence was not required to deny the petition. The vote of less than a majority of the authorized membership in favor of the petition, was sufficient to defeat it." Id. at 129 NYS 2d 405 (emphasis added by the Court.)

Similarly in Hare v. Mayor and City Council of Baltimore, 90 A2d 217, (1952) the Zoning Board heard an appeal from a business that had been denied use of seven garages on its property as the Zoning Commissioner had determined that it was a non-conforming use. Three members voted for the applicant's proposal and two agreed with the Zoning Commissioner. On appeal the Court stated that, "Since the Zoning Ordinance requires a vote of four members to reverse an action of the Zoning Commissioner, the application for the seven garages was denied." Id. at 90 A2d 218.

Finally, in a 1925 Rhode Island case, Richard v. Zoning Board of Review, 130 Atlantic 803, a neighbor brought to the Zoning Board of Woonsocket R.I., an appeal of the building inspector's decision to grant a building permit to an adjacent lot owner. The Board voted 2-2 on the Appeal and, "The appeal

JENSEN BAIRD GARDNER & HENRY

John C. Knox
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of the abutters was not sustained." The Court affirmed the action stating, "The statutory power of a Board of Review is to hear and decide appeals; the concurring vote of three members of the Board is required to reverse any decision made by an administrative officer in the enforcement of the enforcement of the statute. But, as there was a quorum of the Board at the hearing, and as there was not a concurring vote of three members to reverse the decision of the building inspector, the legal effect of the vote was denial of the appeal." *Id.* at 130 A. 803.

Finally, we would also point out that to rehear this case with a new member added is not an administratively efficient proceeding in that five of the six members have heard the case already. When it is put on again for the benefit of the new member, it will have the potential of being a different hearing depending on the interaction of the full Board that has already heard this matter, asked several questions of the parties and fully engaged in internal discussion before coming to its legal vote on March 10th. The law, economy and fairness all indicate that this Board has acted and by the appellant's inability to achieve four votes on March 10th at a quorum achieved legal meeting, the appeal was denied.

In the event that the Board rejects this view and a new hearing is held and a new vote taken on April 7, we would like to respectfully request that for the sake of clarity for all parties, the Board separately vote on each prong of the matter. First, are there four votes to overturn Mr. Giroux's decision that the present use is institutional? Second, are there four votes to overturn Mr. Giroux's decision that the proposed use is that of a lodging house? By this process, the Board will make clear its views and its findings for all parties and for future applicants which is in the best interest of everyone.

Additionally, I enclose a compilation of the relevant sections of the 1960 ordinances of the City of Portland showing that "Church and parish house" was an allowed use in the R-2 Zone and that use tracked through to be an allowed use in the R-6 Zone. When the ordinances changed to make this a conditional use, the Church-parish house was already

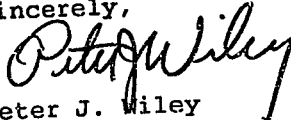
JENSEN BAIRD GARDNER & HENRY

John C. Knox
Page Four
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grandfathered as a permitted use, and, as we related on March 10th, there was thus no need for the Church to have ever sought a change of use approval.

Thank you for your consideration on these matters and we will be present to further expound on these views at the April 7th meeting.

Sincerely,



Peter J. Wiley

PJW/jb
Enclosure

cc: Claire G. Andrews, Esq.

R-6 RESIDENCE ZONE

Section 7

Use

A. No building shall be erected, altered, enlarged, rebuilt, or used, and no premises shall be used, except for the following uses:

1. Any use permitted in the R-5 Residence Zone.

R-5 RESIDENCE ZONE

Section 6

Use

A. No building shall be erected, altered, enlarged, rebuilt, or used, and no premises shall be used, except for the following uses:

1. Any use permitted in the R-3 Residence Zone.

R-3 RESIDENCE ZONE

Section 4

Use

A. No building shall be erected, altered, enlarged, rebuilt, or used, and no premises shall be used, except for the following uses:

1. Any use permitted in the R-2 Residence Zone.

R-2 RESIDENCE ZONE

Section 3

Use

A. No building shall be erected, altered, enlarged, rebuilt, or used, and no premises shall be used, except for the following uses:

1. One-family dwelling in detached building.
2. Church and parish house.
3. Public or private non-profit school other than nursery school, when located on a lot of not less than 1/2 acre, exclusive of private business college and trade school.
4. Municipal use.
5. Shed or storehouse for fisherman's gear, provided it is within 200 feet of mean high water.
6. Accessory buildings and uses customarily subordinate or incidental to a conforming principal building or use.

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HAN
WELL
ALD
Jr.
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CITY OF PORTLAND, MAINE

BOARD OF APPEALS



JOHN C. KNOX

MATTHEW D. MANAHAN
THOMAS F. JEWELL
EARL R. MacDONALD
WILLIAM E. NELESKI, Jr.

MICHAEL E. WESTORT

March 17, 1994

RE: 163 Danforth St.

Mr. David J. Garrity
Mr. Edward A. Hobbler
174 Danforth St.
Portland, ME 04102

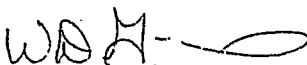
Dear Sirs:

As you know, the Board of Appeals will once again hear your interpretation appeal regarding the proposed Bed and Breakfast at 163 Danforth Street.

The appeal will be scheduled for review before the Board of Appeals on Thursday evening, April 7, 1994, at 7:00 PM in Room 209, City Hall, Portland, Maine. You must plan to attend to answer any questions which the Board members may have concerning this appeal.

We will send you a copy of the April 7th agenda as soon as copies become available for distribution.

Sincerely,


William D. Giroux
Zoning Administrator

/el

cc: John D. Knox, Chairman Board of Appeals
Joseph E. Gray, Director of Planning and Urban Development
P. Samuel Hoffses, Chief of Inspection Services
Charles A. Lane, Associate Corporation Counsel
Kathy Lowe, Code Enforcement Officer
Mr. Thomas W. Thomsen, 188 Danforth St., Portland, Me 04102

R-6 RESIDENCE ZONE

Section 7

Use

A. No building shall be erected, altered, enlarged, rebuilt, or used, and no premises shall be used, except for the following uses:

1. Any use permitted in the R-5 Residence Zone.

R-5 RESIDENCE ZONE

Section 6.

Use

A. No building shall be erected, altered, enlarged, rebuilt, or used, and no premises shall be used, except for the following uses:

1. Any use permitted in the R-3 Residence Zone.

R-3 RESIDENCE ZONE

Section 4.

Use

A. No building shall be erected, altered, enlarged, rebuilt, or used, and no premises shall be used, except for the following uses:

1. Any use permitted in the R-2 Residence Zone.

R-2 RESIDENCE ZONE

Section 3.

Use

A. No building shall be erected, altered, enlarged, rebuilt, or used, and no premises shall be used, except for the following uses:

1. One-family dwelling in detached building.
2. Church and parish house.
3. Public or private non-profit school other than nursery school, when located on a lot of not less than 1/2 acre, exclusive of private business college and trade school.
4. Municipal use.
5. Shed or storehouse for fisherman's gear, provided it is within 200 feet of mean high water.
6. Accessory buildings and uses customarily subordinate or incidental to a conforming principal building or use.

Inspection Services
Samuel P. Hoffses
Chief



Planning and Urban Development
Joseph E. Gray Jr.
Director

CITY OF PORTLAND

November 19, 1993

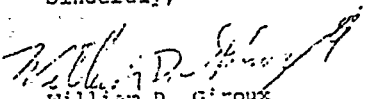
Barbara E. Hathaway
163 Danforth St
Portland, ME 04102

Re: 163 Danforth St

Dear Ms. Hathaway,

This letter is in reference to your application to convert property at 163 Danforth Street into a lodging house-inn-residence as noted in your application. In your written statement submitted with your site plans the proposed use is referred to as a "fourteen (14) guest room Inn plus owners' quarters." An Inn is not a permitted use in the R6 zone where this property is located. On page 2 of your written statement it is clear you are addressing the requirements for a lodging house. This would be consistent with our preliminary discussions regarding this project. The fact that your intentions are to have as much as 14 rooms could fall under the definition of Inn. It is necessary at this early stage for you to address the issue in detail. This will allow me to make a determination as to which use this is. Needless to say, this is an important issue. You may wish to consult an attorney regarding this matter. I will be happy to answer any questions you may have.

Sincerely,


William D. Giroux
Zoning Administrator

cc: Joseph E. Gray, Director of Planning and Urban Development
P. Samuel Hoffses, Chief of Inspection Services
Natalie Burns, Associate Corporation Counsel
Deb Andrews, Senior Planner

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

TO: Chairman and Members of the Board of Appeals
FROM: Charles A. Lane, Associate Corporation Counsel
Ext. 8480
DATE: March 28, 1994
RE: Saint Dominic's Rectory - Interpretation Appeal

Attached hereto for your information is the case of Goldman v. Town of Lovell which I think is particularly helpful in regard to the issues raised in the above case.


Charles A. Lane
Associate Corporation Counsel

CAL:rlj
ENCL.

Charlie

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. 5831
Law Docket No. OXF-90-613

KENNETH GOLDMAN

v.

TOWN OF LOVELL et al.¹

Submitted on briefs April 30, 1991
Decided May 31, 1991

Before McKUSICK, C.J., and ROBERTS, WATHEN, GLASSMAN,
CLIFFORD, and COLLINS, JJ.

COLLINS, J.

Kenneth Goldman appeals from the denial in the Superior Court (Oxford County, Browne, A.R.J.) of his M.k. Civ. P. 80B appeal from the ruling of the Lovell Board of Appeals ("Board") denying his administrative appeal from the Lovell Planning Board's denial of his after-the-fact application for a conditional use permit. The Board found his structure to be a "dwelling unit" and therefore ineligible for permit approval under Lovell's zoning ordinance. Because the Board's finding of fact as to the character of the structure was adequately supported by the record, we affirm.

¹We take this occasion to reconcile our formerly inconsistent practices in captioning cases where both the municipality and the enforcing officer have been named as defendants. Compare Cushing v. Smith, 457 A.2d 816, 816 n. 2 (Me. 1983) (municipality deleted from caption) with Cope v. Inhabitants of Brunswick, 464 A.2d 223, 223 n. 1 (Me. 1983) (municipality is proper defendant). We find no continuing validity in our dictum, in Thornton v. Lothridge, 447 A.2d 473, 474 n. 2 (Me. 1982), to the effect that the municipality must be dropped from the caption of an appeal where the enforcing officer has been named as a defendant. The municipality is the real party in interest, and using its name in the caption better identifies the case.

In 1987, Goldman applied to the Lovell Planning Board for a permit for a structure on his lot on Kezar Pond, in an area zoned as a limited residential-recreational district. He was granted a conditional use permit to construct a "garage with a sleeping area for 1 bedroom plus a sitting room." The permit contained the explicit condition, "No bathroom or kitchen will be installed."

Goldman then constructed a garage with an upstairs apartment that contained a bathroom and kitchen. The structure contained its own water pump and water heater. In 1989, the Town of Lovell ("Town") filed a complaint for land use violations in the District Court pursuant to M.R. Civ. P. 80K.

While the Rule 80K action was pending, Goldman filed after-the-fact applications for a building permit and plumbing permit for a "garage with year round sleeping quarters and bathroom." The Town's Code Enforcement Officer (defendant Ronald McAllister) and Licensed Plumbing Inspector (McAllister's predecessor, Prentice Kimball) refused to process his applications during the pendency of the Rule 80K proceeding in the District Court. Goldman then filed a complaint in the Superior Court pursuant to M.R. Civ. P. 80B, seeking an order in the nature of mandamus requiring Kimball and McAllister to process his applications. Ultimately, the Superior Court (Oxford County, Browne, A.R.J.) ordered the defendants in that proceeding to process the permit applications. That order was not issued until after the disposition of the Rule 80K case.

In the Rule 80K proceeding, the District Court (Bridgton, Donovan, A.R.J.) found the Goldmans and their building contractor in violation of the terms of the permit and of the Lovell Zoning Ordinance. The court assessed fines and attorney fees against them, and ordered the water supply pipe, the waste drain pipe, and the water pump's electrical supply physically disconnected immediately. The court further ordered:

3. All plumbing pipes and fixtures shall be removed from the garage building not later than thirty (30) days after the final disposition of Defendants Goldman' [sic] pending Rule 80B action in the Oxford County Superior Court (bearing docket no. CV-89-78) or not later than the final disposition of any municipal board and/or Court proceedings, if any, resulting from said Superior Court action.

That order was not appealed.

Following the Superior Court's Rule 80B mandamus order, McAllister, who had become Licensed Plumbing Inspector as well as Code Enforcement Officer, denied Goldman's plumbing permit application, on the basis that as an application for a "single family dwelling" it did not contain a provision for subsurface wastewater disposal, and if viewed in the alternative as an application for plumbing in an accessory structure it did not meet the requirements for a seasonal conversion permit.² Goldman subsequently filed an amended plumbing permit application, which has never been acted on.

With regard to the building permit, McAllister, in his capacity as Code Enforcement Officer, determined that the application did not meet the requirements for a building permit, absent a conditional use permit issued

²Additionally, McAllister noted that the application falsely stated that Goldman had done the work himself, whereas in the Rule 80K proceeding he had testified that the work was done by a licensed master plumber whose name he was unable to recall.

by the Planning Board, because it was for a dwelling unit within the limited residential-recreational district and also did not meet Lovell's minimum lot size requirements.³ He therefore referred the application to the Lovell Planning Board for consideration of a conditional use permit.

Goldman presented the Planning Board with extensive information intended to address the deficiencies in his earlier application. Following a public hearing, the Planning Board denied the conditional use permit on the basis that the structure was a dwelling unit, and that the application therefore was for a second dwelling unit on a lot of substandard size.

Goldman appealed the Planning Board's decision to the Lovell Board of Appeals. Following a public hearing and a view of the premises, the Board decided that the structure was a dwelling, and therefore denied Goldman's appeal.

Goldman then filed another Rule 80B complaint in the Superior Court. Count I of the complaint requested relief in the nature of mandamus against McAllister, in his capacity as Licensed Plumbing Inspector, in the form of an order that he "fully and fairly consider" Goldman's amended application for a plumbing permit.⁴ Count II appealed the decision of the Board of Appeals on the basis that the structure is not a dwelling unit.

³The Lovell zoning ordinance defines "residential dwelling unit" as "a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for one family."

⁴Although the parties apparently stipulated to the dismissal of Count I, no dismissal was ever entered on the docket. However, we conclude that the Superior Court's order adequately disposed of all the issues before the court, including Count I, and accordingly treat it as an appealable final judgment.

The Superior Court (Browne, A.R.J.) affirmed the decision of the Board of Appeals. The court's order, after reciting the history of the case, stated:

1. It appearing from the record that the decision of the Lovell Board of Appeals on June 23, 1990 was based on substantial evidence and was not arbitrary, capricious or unreasonable, its decision is hereby Upheld and Affirmed.
2. Plaintiff's appeal and request for relief under MRCP 80B is hereby Denied.

Goldman now appeals.

I.

On appeal from the Superior Court's decision in a Rule 80B appeal of a zoning board's action, we review directly the action of the zoning board. Leadbetter v. Ferris, 485 A.2d 225, 227 (Me. 1984). Our review is limited to determining whether the Board's findings of fact were adequately supported by the record before it, and whether the Board erred in its application of the law. Id. See also Your Home, Inc. v. Town of Windham, 528 A.2d 468, 470 (Me. 1987).

Accordingly, a fundamental question here is whether the Board's characterization of Goldman's structure as a "dwelling unit" was a finding of fact or a conclusion of law. We note that the Superior Court treated the issue as one of fact, as its order stated that it was based on a review for substantial evidence in the record.

Goldman contends on appeal that the meaning of "dwelling unit" is a question of law. He cites various cases in which we have treated the determination of the meaning of terms in an ordinance as a matter of statutory construction. E.g., City of Portland v. Grace Baptist Church, 552

A.2d 533, 536 (Me. 1988) (construing "development"); Lapointe v. City of Saco, 419 A.2d 1013, 1015-16 (Me. 1980) (construing "continuous frontage"); Moyer v. Board of Zoning Appeals, 233 A.2d 311, 317-19 (Me. 1967) (construing "hotel").⁵

However, "in certain factual situations, even though the terms of the zoning ordinance are to be defined by the Court as a matter of law, whether or not the proposed structure or use meets the definition in the application thereof may be a matter of fact for initial Board determination." Moyer, 233 A.2d at 318. This is such a situation. See Wickenden v. Liboshutz, 401 A.2d 995, 996 (Me. 1979) (board's finding that structure was "dwelling unit" was supported by substantial evidence, where building had independent water supply, septic system, electricity, refrigeration, and parking). Accord, Langbein v. Board of Zoning Appeals, 135 Conn. 575, 67 A.2d 5 (1949) (whether particular institution was "school" within meaning of ordinance was question of fact).

Concluding that the Board's characterization of Goldman's structure as a "dwelling unit" was a finding of fact, we therefore review it only to determine whether it was adequately supported by evidence in the record.⁶

⁵Goldman also points to a case in which we reviewed a zoning board's refusal to characterize old rental cabins as "dwelling units" for error of law. See St. Julian v. Town of Lincolnville, 567 A.2d 1347, 1348 (Me. 1990). The question in that case, however, was whether the term "dwelling unit" was elastic enough to include rental cabins serving a transient population, and was not the actual character of the cabins themselves, which was not in dispute.

II.

The Board had ample evidence before it as to the character of the particular structure in question. The unit was completely separate from the Goldmans' existing house. It had its own water pump and water heater. The permit application for the proposed septic system stated that the system was designed to meet State Plumbing Code subsurface wastewater disposal design criteria for a two-bedroom dwelling. The interior plumbing permit application described the unit as a dwelling. The unit contained a full bathroom, a kitchen sink with a dish sprayer, and a built-in refrigerator. Moreover, the Board had taken a view of the premises, and the Board members were therefore "entitled to give due consideration to whatever knowledge they thus acquired." Lippoth v. Zoning Board of Appeals, City of South Portland, 311 A.2d 552, 557 (Me. 1973). Thus, substantial evidence in the record supported the Board's finding of fact that the structure was a "dwelling unit."

The entry is:

Judgment affirmed.

All concurring.

Attorney for the Appellant:

Norman J. Rattey, Esq.
SKELTON, TAINTOR & ABBOTT
P.O. Box 3200
95 Main st.
Auburn, Maine 04212

Attorney for the Appellee:

A. Kingman Pratt, Jr., Esq.
10 Smith St.
Fryeburg, Maine 04037

NOTICE: Readers are requested to notify the Reporter of Decisions, Box 36C, Portland, Maine 04112, of any typographical or other formal errors in this opinion.

NOTES

9/14/62 - ~~Acute~~ O.K. ~~Allen~~
 10-5-62 Footings OK
 to pour
 10-18-62 Masonry
 work starting
 11-19-62 Completed

[Handwritten signature]

Permit No. 62/1233

157-1430-1-14

Owner: *[Handwritten name]*

Date of permit: 9/27/62

Not. checked: *[Handwritten mark]*

Inspection: *[Handwritten mark]*

Final Ins.:

City of Oklahoma/land

Building Code Dept.

Form Code Book

10-3

Rept. CVD-1

November 4, 1941

Security Oil Company,
512 Cumberland Avenue,
Portland, Maine

Subject: Oil burning equipment
to be installed at 153-155
Denforth Street

Gentlemen:

In connection with the above equipment I note that two-
275 gallon storage tanks for fuel oil are to be connected to the burner.
In such a case if the supply line for oil from tanks to burner
leaves the tanks from the bottoms of them or so arranged that oil
from the tanks can reach the burner assembly by gravity, the tanks
are required to be connected to the feed pipe to the burner assembly
through a manually operated, three-way valve in such a way that only
one tank can discharge its contents at a time.

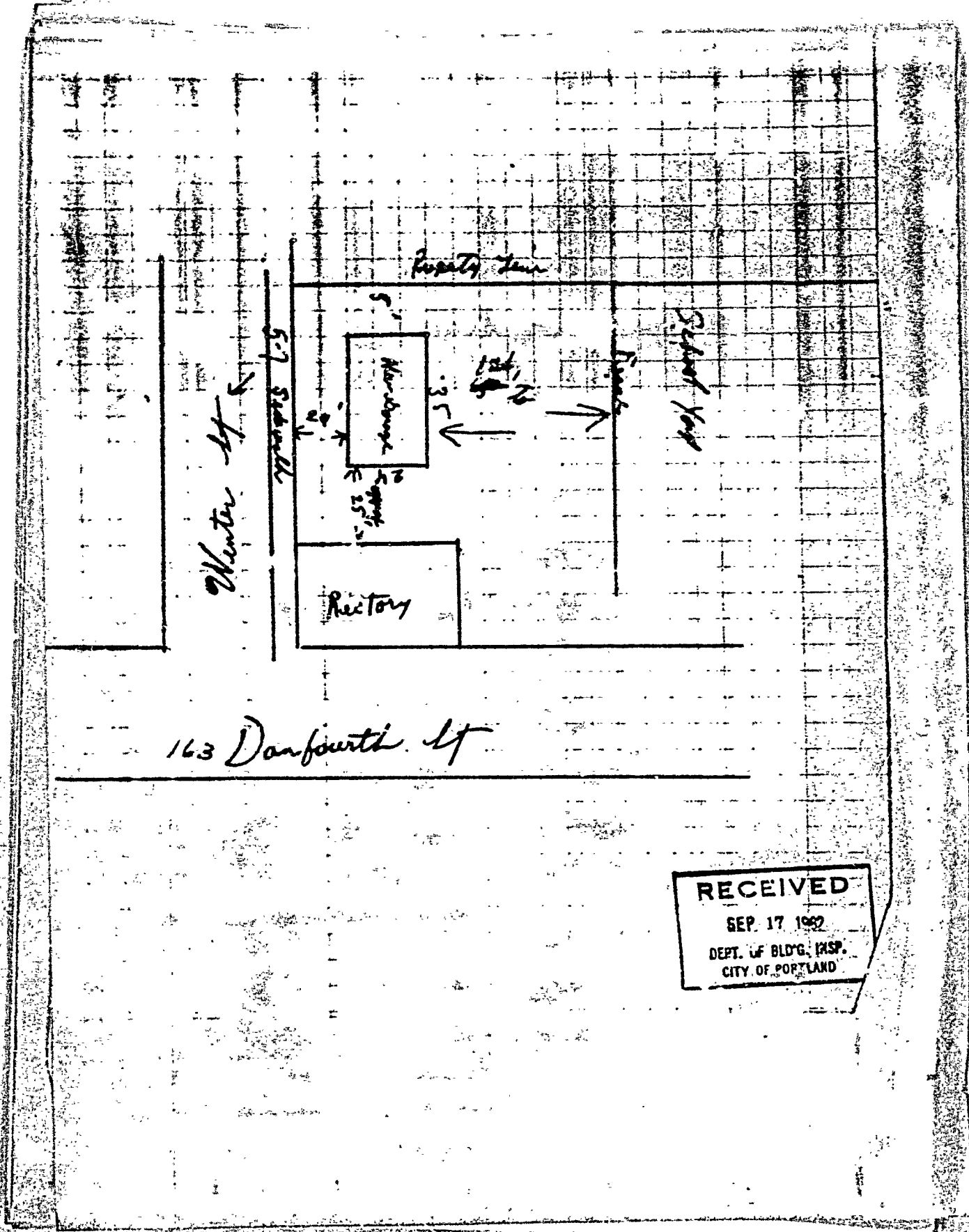
Please be governed accordingly.

Very truly yours,

WED/H

Inspector of Buildings

CC: Most Rev. Joseph M. McCarthy
Bishop of Portland
199 Western Freeway



163 Danforth St

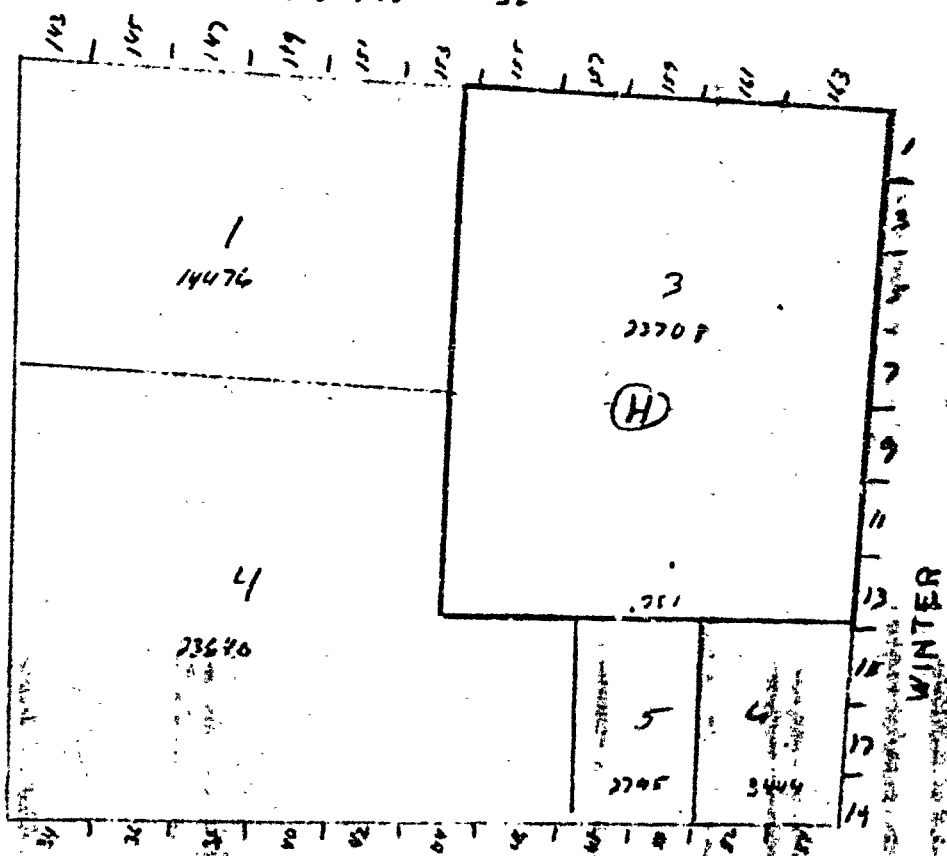
RECEIVED
SEP. 17 1932
DEPT. OF BLD'G. INSP.
CITY OF PORTLAND

5-7 Winter St

9/18/62 - Allen

44-N

Danforth St



STATE ST.

WINTER

25-14-60

CITY OF PORTLAND, MAINE
DEPARTMENT OF BUILDING INSPECTION

Room 21, City Hall

Gentlemen:

In connection with the installation of oil burning equipment as indicated in statement below, please sign this statement and return to this office as promptly as possible so that the permit may be issued if everything else is found in order, retaining the copy for your file.

Very truly yours,

(Signed) Warren McDonald
Inspector of Buildings.

1. This statement is to become as much a part of the application for a permit to cover installation of oil burning equipment for Roman Catholic Bishop at 155-163 Danforth St. , as though written on the application form.

2. A switch or other manual control capable of completely stopping flow of oil to the burner will be provided, such device to be so located as to be conveniently reached and operated without being exposed to danger that may exist at or near the burner. If feasible this switch or similar device will be located at or near the top of the cellar stairs. In case the burner is of a type without electrical controls, a quick-closing valve will be provided in the oil supply line so located and arranged that the valve may be manually closed from the top of the cellar stairs, or outside of the room where the burner is located or from outside the building.

3. A quick action, self-closing valve designed to close at 160 to 165 degrees Fahrenheit will be provided in oil supply line.

4. Readily accessible shut-off valves, one of which may be the self-closing valve indicated in No. 3 if capable of manual operation, will be installed in oil supply line near each burner and close to supply tank. Shut-off valves will be installed on each side of oil strainers which are not a part of the oil burner unit or which are connected to oil burner unit without intervening piping or tubing. Shut-off valves will be provided both on the discharge side and the suction side of oil pumps, if any, which pump directly to the burner but which are not a part of the burner unit.

5. If there is to be a shut-off valve in the discharge line of an oil pump, a suitable pressure relief valve will be connected into the discharge line between pump and shut-off valve and arranged to return surplus oil to the storage tank or to by-pass it around the pump.

Community Oil Co.
Installer

(Date) 11-3-41

By J. A. Mitchell

CITY OF BOSTON
Department of Building Inspection

Certificate of Occupancy

LOCATION: 163 Bedford Street

Issued to: Roman Catholic Church

Date of issue: November 2, 1948

This is to certify that the building, portion, or part thereof, at the above location, has been changed to use under Building Permit No. 68/854, but has not been inspected, but has been found to conform substantially to requirements of Zoning Ordinance and Building Code of the City, and is hereby approved for occupancy as use, limited or otherwise, as indicated below.

PERMITTED USES OR PURPOSES

Kitchen, vestibule and chapel

APPROVED OCCUPANCY

Church

Listing Conditions:
None

The applicant represents
and certifies that:

Approved by: *William M. Seary*
Inspector

Approved by: *Mary Schmitt*
Asst. Inspector of Building

Notice: This certificate does not constitute a warranty of building or equipment and shall not be construed as such. It is issued only upon the basis of the information furnished by the applicant and is subject to the provisions of the Building Code of the City of Boston.

October 8, 1944.

F. W. Cunningham & Sons,
181 State Street,
Portland, Maine

Subject: Building permit for alterations
in the rectory at 103 Conforth St.,
corner Winter Street

Gentlemen:

With relation to the above job, I am unable to discover anything in the application or in the plans which describes the details of the framing of the proposed porch enclosures. The enclosure of the side porch on Winter Street appears to be in the nature of a permanent enclosure making the rear porch really a part of the building while the enclosure of the front porch, while no doubt permanent, is more in the nature of a storm enclosure only. If these are the intentions, no doubt the Building Code allows the enclosure of the front porch to be less than the usual requirement for the outside wall of a building, more in the order of the usual storm enclosure. The enclosure of the side porch, however, ought to comply with Building Code requirements in such the same manner as any exterior wall of a frame building is expected to comply, as to the size, spacing and bracing of studs, plates, etc. In the absence of further information, I am assuming that the construction will comply with Building Code requirements in this manner.

I assume from the plans that the foundations of both porches are all in place and are adequate to support the new loads, if any, and that the existing floor of what is to be a front porch and passageway is of such a type of construction as to satisfy Building Code requirements for a capacity of no less than 20 pounds per square foot live load.

The use of a building as a rectory is not one classified in the Building Code, but I am tentatively classifying the building as a rectory's dwelling house and assuming that there is to be nothing in the way of a dormitory or school or other assembly hall in connection with this use.

Assuming this building to be classified as a dwelling house, the Building Code does not intend to regulate the means of egress. At the risk of sounding too stray beyond my field of duty, I feel that I ought to call attention to the fact that the four bedrooms on the third floor appear to have only one definite means of egress to the ground. If this third floor were to be used for any purpose similar to a dormitory, the Building Code would require separate and distinct alternate means of egress to the ground. It occurs to me that whether the users of these bedrooms are living in a dormitory or in a private home, the hazard in case of fire or smoke traveling the one flight of stairs is the same.

The building permit is enclosed in the above boxes.

Very truly yours,

Inspector of Buildings

CC: Francis Sullivan, attorney
Roman Catholic Bishop of Maine
477 Congress Street

Mr. Harold McDonald,
Inspector of Buildings,
City Hall,
Portland, Maine.

September 29, 1938.

RECEIVED
SEP 29 1938
DEPT. OF BUILDINGS
CITY OF PORTLAND

FILE - Sept. 29-1938

Dear Sir:

This will acknowledge your letter of September 19th re
a permit for the erection of a poultry house on the property at
182 Danforth Street.

The writer has been authorized to notify you that
insofar as Mr. Thomas control or ownership in the property sur-
rounding 182 Danforth Street is concerned with relation to this
permit the entire matter has been referred to the Trustees of the
Estate of Elias Thomas, namely: Mrs. Elias Thomas, Mr. Elias
Thomas, Jr., and Charles L. Hutchison, Esq. ANY decision
which they may make will be acceptable to Mr. Thomas.

They have been notified by letter that the matter is referred
to them and a copy of the Building Inspector's letter was enclosed.

Yours very truly,

Andrew McDonald

SAINT DOMINIC'S CHURCH
163 Danforth Street
Portland, ME 04102

It is my concern:

This will serve to give official notice that the Maine
Theater Company is a part of St. Dominic's summer school
program and has my full authorization to use the facilities
in this regard. Please render them any assistance
that you may in making this school program possible.

Sincerely,

Richard C. Lonsdale
(Rev.) Richard C. Lonsdale,
pastor.

FIG 163
163 DANFORTH ST.

RECEIVED
JUN 11 1984
OFF. OF BUS. DEV.
CITY OF PORTLAND

Sept. 29, 1938

City of Portland
Sept. 29, 1938

Mr. Andrew McDonald
184 1/2 Middle Street
Portland, Maine

RECEIVED
SEP 29 1938
DEPT. OF CLY'S. Insp.
CITY OF PORTLAND

Dear Mr. McDonald -

I have absolutely no objection to David building a home on our property at 163 Danforth Street. David has no other land, will keep it sanitary. The situation David has chosen to erect his home to have the sun, does not seem to meet with Elias, Jr.'s approval. If Jarbo lives at 163 Danforth Street, do not object, it seems as though David should have the consent to build it. Of course, it would finally be decided by the Building Inspector.

Respectfully
Dorothea F. Thomas

Mrs. Elias Thomas

January 7, 1933

Mr. Frank Thomas,
123 Benford Street,
Portland, Maine

Dear Sir:

In the poultry house which you have built at 123 Benford Street, it seems that you have framed the roof with 2x4's laid flat, 24 inches from center to center and on a ten foot span. Your application called for 2x4 roof joists 16 inches on centers. The normal way and the best way to set roof joists is with their largest cross-sectional dimension upright, and that is always assumed to be the case in an application for a permit such as you have filed.

It will be necessary for you to introduce additional 2x4's set with the four inches upright midway between each pair of these 2x4 roof joists laid flat, getting a good bearing for the new joists at the plates. Please have this done at least by January 15, 1933.

Very truly yours,

Inspector of Buildings

STATEMENT ACCOMPANYING APPLICATION FOR BUILDING PERMIT

for Poultry house
at 153 Dearborn Street

Date Sept. 14, 1938

1. Is the name in the title of the property now recorded Mrs. Eliza Thomas?
2. Are the boundaries of the property in the vicinity of the proposed work shown clearly on the ground, and how? *Yes*
3. Is the outline of the proposed work now staked out upon the ground? *Yes* If not, will you notify the Inspection Office when the work is staked out and before any of the work is commenced?
4. What is to be maximum projection or overhang of eaves or drip? *6"*
5. Do you assume full responsibility for the correctness of the location plan or statement of location filed with this application, and does it show the complete outline of the proposed work on the ground, including bay windows, porches, and other projections? *Yes*
6. Do you assume full responsibility for the correctness of all statements in the Application concerning the sizes, design and use of the proposed building? *Yes*
7. Do you understand that in case changes are proposed in the location of the work or in any of the details specified in the application that a revised plan and application must be submitted to this office before the changes are made? *Yes*

Eliza Thomas
153 Dearborn St.

P. 22/1852-I

2-2-1852

May 16, 1933

Mr. David Thomas,
183 Danforth Street,
Portland, Maine

Dear David:

I want to reproach you a little bit.

You surely have not forgotten that we took a great deal of time in this office last fall to finally make it possible for you to build a poultry house at 183 Danforth Street, which you now have partially completed. On January 7, 1933, I wrote to you and suggested that you adjust the framing of the roof by January 28th to comply with the Building Code and to comply with the framing that you agreed to when you signed the application for the permit. Nothing has been done. I find that my letter of January 7th was somewhat in error. Due to a misunderstanding of our inspector's notation I said that the 2x4 roof joists were laid flat. It appears that they are laid properly with the four inch dimension upright, but you have spaced them 24" from center to center instead of 12" from center to center as you agreed, and as the strength rules of the Building Code require.

Then in your application for the permit you agreed to cover the side walls with cedar shingles or asphalt roofing, and we find that part of the walls have not been covered with anything as yet.

Irrespective of compliance with law, will you not cooperate with us, who really did try to cooperate with you, and make good your statements in the application for the permit, at least by June 1, 1933? If you cannot see your way clear to do this, will you not drop into my office some afternoon other than Saturday between the one o'clock and three o'clock and talk the matter over with me?

Very truly yours,

WCB/11

Inspector of buildings

STATEMENT ACCOMPANYING APPLICATION FOR BUILDING PERMIT

for 3-car garage Date Sept. 17, 1962
at 5-7 Winter St.

1. In whose name is the title of the property now recorded? St. Dominic's Parish
2. Are the boundaries of the property in the vicinity of the proposed work shown clearly on the ground, and how? yes - stakes
3. Is the outline of the proposed work now staked out upon the ground? yes
If not, will you notify the Inspection Office when the work is staked out and before any of the work is commenced?
4. What is to be maximum projection or overhang of eaves or drip? 12"
5. Do you assume full responsibility for the correctness of the location plan or statement of location filed with this application, and does it show the complete outline of the proposed work on the ground, including bay windows, porches and other projections? yes
6. Do you assume full responsibility for the correctness of all statements in the application concerning the sizes, design and use of the proposed building? yes
7. Do you understand in case changes are proposed in the location of the work or in any of the details specified in the application that a revised plan and application must be submitted to this office before the changes are made? yes

Finney Donatelli

1045-3

September 19, 1938

W. W. Thomas, Sgt.
Eli's Thomas, Dev.
164 1/2 Middle Street,
Portland, Maine

Dear Sirs:

A permit has been applied for by David Thomas, son of the late Elias Thomas, to cover construction of a poultry house, 20 feet by 12 feet on the rear of the family property at 163 Danforth Street. This raises a minor problem in this office in which you as owner of or agent of an adjoining property may be interested.

Under the zoning law this property is located in an Apartment House Zone where such a use of a building is possible if it does not prove injurious, noxious or offensive to a neighborhood by reason of the emission of odor, fumes, dust, smoke, vibration or noise.

The usual complaints that come about objectionable poultry houses, are due to odor and noise. When applications for such buildings are received from sparsely settled portions of the city, we usually issue the permits with a warning to the owner as to the provisions of the zoning law. When such applications come from thickly settled parts, we often consult the immediate neighborhood as to their feeling in the matter before issuing the permit.

David Thomas assures me that no cockens will be kept, that all of the birds will be kept in the building, not being allowed to run in the open, and that the building and surroundings will be kept clean. Naturally I much prefer to issue the permit to him, but I want to feel that no objections will arise from the neighborhood either while the building is being built or after it is put to use.

Will you not let me know as soon as convenient how you feel about the proposition?

Very truly yours,

Inspector of buildings

WHD/H

No. D.C-1

September 15, 1938

Mrs. Elias Thomas,
163 North Street,
Portland, Maine

Dear Madam:

Although the project is a small one, your application for a building permit for the construction of a small poultry house, filed by your son, David, raises a difficult question under the zoning law which provides that, in such an Apartment House Zone where your property is located, no use of buildings or premises shall be permitted which is injurious, noxious or offensive to a neighborhood by reason of the emission of odor, fumes, dust, smoke, vibration or noise. The principal objections we have raised to poultry houses have to do with the odor and once in awhile with the noise from crowing of roosters.

I have never felt that my duty required me to be an authority on such matters. When poultry houses in connection with dwelling house property are planned in the outlying districts of the city, places where the land is not thickly settled, I usually issue the permit with the warning of the zoning prohibitions, but when poultry houses are proposed in the thickly settled portions of the city, we take particular pains to make sure that such a poultry house will be unlikely to prove objectionable to the neighborhood before the permit is issued. With a church, school, hospital and various dwellings and apartments fairly close to your property, I have a great deal of hesitation in issuing the permit.

How do you think that we should proceed in such a situation? Would you like to have me sound out the neighborhood with regard to it? People are inclined to be more frank with us than they are with their neighbors, so that I think we could get more truly the real reaction than you could by canvassing the neighborhood.

While I admire very much your son's initiative and industry, there are likely to be some questions arising under the Building Code if he builds it, himself. In order to raise the type of building construction to a reasonably high plane we have been forced to deal fairly rigorously with even small buildings like this, and even if the zoning question is eliminated, I would like to talk with him about the framing of the building before I issue the permit.

I hope you will understand my position in this matter which seems of small consequence, and that I would far rather go up there and help your son build it, than be forced to the position of having to interfere with his project.

Very truly yours,

EMC/H

Inspector of Buildings

U.S. Department of Environmental Protection
 Hazardous Waste & Hazardous Materials Control
 Office of Hazardous Waste Response
 Washington, D.C. 20460
 Telephone: 202-735-2651
 Acts: Tank Removal Notice

RECEIVED

SEP 11 1989

**NOTICE OF INTENT
 TO ABANDON (REMOVE) AN
 UNDERGROUND OIL STORAGE FACILITY**

DEPT OF BUILDING INSPECTIONS
 CITY OF PORTLAND

PLEASE TYPE OR PRINT IN INK:

Name of Facility Owner: Roman Catholic Bishop of Portland, Me
 Mailing Address: 510 Olden Hill Telephone No.: 773-8116
 City: Portland State: ME Zip Code: 04101
 Contact Person (Name, address & telephone no.): Fr. Richard Truscott
163 Danforth St. Portland, ME 04102
 Name of Facility: St. Dominic's Church Registration No.: (not yet assigned)
 Facility Location: 163 Danforth St. Portland, ME

Patrol # 1100
 773-8146

1. Identify the tanks at this location which are to be removed:

Tank Number	Age of Tank (Years)	Tank Size (Gallons)	Type of Product Last Recently Stored
A. 1	25+	6,000g	#601
B.			
C.			
D.			

2. Directions to Facility (be specific):
~~163 Danforth St.~~ 163 Danforth St., Portland, ME

3. Is tank(s) used for the storage of Class I liquids (e.g. gasoline, jet fuel)? Yes No (IF YES, REMOVAL OF THE TANK MUST BE UNDER THE DIRECTION OF A CERTIFIED TANK INSTALLER OR PROFESSIONAL FIREFIGHTER.)

4. Name and telephone number of contractor who will do the tank removal: Clean Harbors of ME, Inc.

Certified Tank Installer Certification Number & Name (if applicable):
N/A

Professional Firefighter: Yes No (Affiliation: _____)

5. Expected date of removal: Sept. 22, 1989

I hereby provide notice that I intend to properly abandon the underground oil storage facility as described above.

Date: Sept 11, 1989

James M. Albert
 Signature of Tank Owner or Operator
James M. Albert
 Tank Removal Coordinator
 Printed Name and Title

THIS FORM MUST BE FILED WITH THE DEPARTMENT AND LOCAL FIRE DEPARTMENT 10 DAYS PRIOR TO REMOVAL.

PLUMBING APPLICATION

Town Of: Portland

Street: 1000 Denning Street

Lot: 1000 Denning Street

Applicant Name: Claude J. Gaudin

Address: 200 West 1st St

City: Portland, Maine

Department of Public Services
Division of Health Engineering
(207) 833-3232

PORTLAND PERMIT # 2,760 TOWN COPY

E 12,688 118

L.R.I. #

Owner's Declaration

I hereby declare that the information furnished is correct and true and that I am the owner of the property described herein and that I am applying for a permit as required by the rules.

Claude J. Gaudin 25/1

Signature of Owner

Inspector's Declaration

I hereby declare that the information furnished above and that I am applying for a permit as required by the rules.

[Signature]

Local Plumbing Inspector Signature

OCT 7 1983

What Application is for:

1. NEW PLUMBING

2. RELOCATED PLUMBING

JUL 7 - 1983

Type Of Structure To Be Served:

1. SINGLE FAMILY DWELLING

2. MODULAR OR MOBILE HOME

3. MULTIPLE FAMILY DWELLING

4. OTHER - SPECIFY Unit

Plumbing To Be Installed By:

1. MASTER PLUMBER

2. OIL BURNER/PLUMBER

3. MFG'D HOUSING INSTALLER/MECHANIC

4. PUBLIC UTILITY EMPLOYEE

5. PROPERTY OWNER

License # 12080

Description	Column 1 Type of Fixture		Column 2 Type of Fixture	
	Number	Type of Fixture	Number	Type of Fixture
<input checked="" type="checkbox"/> HOOK-UP - to public sewer in 1500 sq ft or more the operation is not regulated and inspected by the local Sanitary District OR <input checked="" type="checkbox"/> HOOK-UP - to an existing sewerage system with a water disposal system		Hospital / Stock		Bath (and Shower)
		Floor Drain		Shower (Separate)
<input type="checkbox"/> MOVIE RELOCATION of sanitary pipe, drains, and piping without new fixtures		Urinal	1	Sink - Kitchen
		Drinking Fountain	2	Wash Basin
<input type="checkbox"/> Number of Hook-Ups & Relocations		Indirect Waste	2	Water Closet (Toilet)
		Water Treatment System, Filter, etc.		Cloth Washer
<input type="checkbox"/> Hook-Up & Relocation Fee		Grease/Oil Separator		Dish Washer
		Dental Cuspidor		Garbage Disposal
	Sidet		Laundry Tub	
	Other: <u>100 Sink</u>		Water Heater	
	Fixtures (See above) Column 2			
			5	
			11	
			16	
			8	
			8	
			18	

SEE PERMIT FEE SCHEDULE FOR CALCULATING FEE

CONTRACT FOR THE SALE OF REAL ESTATE

RECEIVED of FRANCIS R. CLOUTIER & CRANDALL K TOOTHAKER MAY 11 19 92
 hereinafter called the purchaser, the sum of (\$ 10,000) in the form of: A BUSINESS CHECK
 ten thousand + no/100 DOLLARS
 as earnest money and in part payment on account of the purchase price of the following described real estate, situated in the
 County of Cumberland and State of ME to wit:

THE RECTORY FOR ST DOMINIC'S CATHEDRAL, consisting of a brick
 residence, brick 3 car garage and approx 23000 sq ft land
 located at 163 DANFORTH ST IN PORTLAND, ME IN CCRD book 1643 PAGE 416,
 The following items to be included in this sale: All existing storms and screen windows, shades and or blinds, shutters, curtain rods, electrical fixtures
 and kitchen stove(s) + refrigerators, dishwasher, trash compactor, gold leaf hall mirror, wood stone cabinet, shutters
 the TOTAL purchase price being \$ 0, dining room table, entry hall sale light fixture

payment to be made as follows: ten thousand dollars with the acceptance of this offer; and additional fourteen thousand at closing; the remainder to be financed as described below
 Said deposit is received and held by the broker, subject to the following conditions:

1. That MCCUE GOETTEL & MCCUE shall hold said earnest money or deposit and act as escrow agent until transfer of title; that 2 (two) days shall be given for obtaining the owner's acceptance; and, in event of the owner's non-acceptance, this deposit shall be promptly returned to the purchaser.
2. That a good and sufficient deed, showing good and merchantable title, shall be delivered to the purchaser, and it is agreed that this transaction shall be closed and the purchaser shall pay the purchase price as provided herein and execute all papers necessary for the completion of his purchase within 21 days from the date hereof. However, should the title prove defective, then the seller shall have a reasonable time after due notice of such defect or defects, to remedy the title; after which time, if such defect or defects are not corrected so that there is a merchantable title, then the purchaser may, at his option, withdraw said deposit and be relieved from all obligations hereunder.
3. That the property shall be conveyed by Warranty deed, and shall be free and clear of all encumbrances except easements and zoning restrictions of record. That full possession will be given AT TRANSFER OF TITLE. and that the following items shall be pro-rated as of transfer of title: Utilities YES, Fuel YES, Rents N/A. Real estate taxes as per the municipality in which the Real Estate is located.
4. The risk of loss or damage to said premises by fire or otherwise, until transfer of title hereunder is assumed by the Seller. The above described property to be delivered in substantially the same condition as of the date of this contract unless otherwise stated.
5. That in case of the failure of the Purchaser to make either of the payments, or any part thereof, or to perform any of the covenants on his part made or entered into, this contract shall, at the option of the Seller, be terminated and the Purchaser shall forfeit said earnest money or deposit; and the same shall be retained by the Seller as liquidated damages with no further recourse to either part, and the escrow agent is hereby authorized by the Purchaser to pay over to the Seller the earnest money or deposit.
6. That time is an essential part of this agreement, and all covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators and assigns of the respective parties.
7. This contract is subject to an approved mortgage of % of the purchase price, at an interest rate not to exceed % and amortized over a period of not less than years. See
8. The purchaser is under a good-faith obligation to actively seek and accept financing of the above described terms. The purchaser acknowledges that a breach of this good-faith obligation to seek and obtain financing will be a breach of this contract.
9. This contract is further subject to the purchaser obtaining preliminary approval for the above mentioned financing from a local lending institution within days of the effective date of this contract. If said preliminary approval is not obtained within said time period, the seller at his option may declare this contract null and void.
10. The Seller agrees to pay up to points, which may be required by mortgage company on the above mortgage.
11. This contract is subject to a general building inspection satisfactory to the purchaser (YES NO), an inspection of any asbestos located in the subject property (YES NO). If yes, any inspection(s) will be done by a qualified inspector, (and in the case of asbestos, an EPA approved inspector), chosen by the purchaser. The cost of inspection(s) will be paid for by the purchaser. The results of any inspection(s) will be reported to the seller within 5 days of the effective date of this contract. If the results of said inspection(s) are unsatisfactory to the purchaser, he may at his option declare the contract null and void and any earnest money deposit(s) shall be returned to the purchaser. It is understood that in the absence of inspection(s) mentioned above, the purchaser is relying completely on his own opinion as to the condition of the property. The purchaser also acknowledges that the broker has recommended that the property be inspected by a qualified inspector(s).
12. The purchaser acknowledges that he has been informed by the broker that the broker is acting as the seller's agent in this transaction and that the broker makes no warranties of any kind regarding the condition or value of the seller's real or personal property.

A COPY OF THE CONTRACT IS TO BE RECEIVED BY ALL PARTIES AND BY SIGNATURE RECEIPT OF A COPY IS HEREBY ACKNOWLEDGED

I hereby agree to purchase the above property at the price and upon the terms and conditions above set forth

Witness Mike Bowler May 11, 92 Francis R. Cloutier 5/11/92
 Witness Francis R. Cloutier 5/11/92
 Date Francis R. Cloutier Purchaser

hereby accept the offer and agree to deliver the above described property at the price and upon the terms and conditions above stated. further agree to pay the broker above named as commission for his services, percent of the sale price. In the event said earnest money or deposit is forfeited by said purchaser, one-half thereof shall go to said broker and the remainder to provided however, that the broker's portion shall not exceed the full amount of the commission specified.

Witness _____ Date _____ Seller
 Witness _____ Date _____ Seller

Broker _____ Effective Date (Final Acceptance Date) _____
 Co-Broker _____
 We accept the offer, and do not feel comfortable presently accepting it until the month of June & receive the Postcard

April 7, 1974

To the Board of Appeals
Attn: John Knox

I would like to register my vote in
support of granting the Bed & Breakfast
license at tonight's meeting.

Thank you.

Rebecca Maguire
105 State Street, Apt. 3
Portland

44-H-3

163 Danforth St
Interpretation

44-H-1 Alliance for the Mentally Ill - Scot Part
12 Cedar St 04101

44-H-4 Roman Catholic Bishop of Ports
P O Box 6750 04101

44-H-5 Stuart & Nancy T. Ross
P O Box 448 Georgetown ME 04548

44-H-6 Stephen W. Wallace
52 Gray St 04102

44-I-1 Caryl Robert Abrams
163 Danforth Ave PO Box 9
Denmark ME 04022

I-6 Michael H. Link
24 Pine Lane Umbagog 04110

I-7 Bethany S. Joan M. Angle
14 Winter St 04102

I-8 Thomas St. Andrew
58 Gray St 04102

44-C-26 Richard & Ceggyann E Harris
35 Genith Rd 04102

C-27 Kellys Associates
RR 1 Box 224A Yarmouth 04096

C-28

D-29 Bay Properties
P O Box 814 Yarmouth 04096

Permit # _____ City of Portland BUILDING PERMIT APPLICATION Fee \$50.00 Int. Appeal Zone _____ Map # _____ Lot# _____
 Please fill out any part which applies to job. Proper plans must accompany form.

Owner: Roman Catholic Diocese Phone # _____
 Address: 510 Ocean Ave. Portland 04103
 LOCATION OF CONSTRUCTION 163 Danforth
 Contractor: Harvey Hobler Sub.: _____
 Address: 174 Danforth Phone # 774-5412
 Est. Construction Cost: _____ Proposed Use: _____
 Past Use: _____
 # of Existing Res. Units _____ # of New Res. Units _____
 Building Dimensions L _____ W _____ Total Sq. Ft. _____
 # Stories: _____ # Bedrooms _____ Lot Size: _____
 Is Proposed Use: Seasonal _____ Condominium _____ Conversion _____
 Explain Conversion Interpretation Appeal

For Official Use Only
 Date: February 8, 1994 Subdivision: _____
 Inside Fire Limits _____ Name _____
 Bidg Code _____ Lot _____
 Time Limit _____ Ownership: _____ Public _____
 Estimated Cost _____ Private _____

Zoning: _____
 Street Frontage Provided: _____
 Provided Setbacks: Front _____ Back _____ Side _____
 Review Required:
 Zoning Board Approval: Yes _____ No _____ Date: _____
 Planning Board Approval: Yes _____ No _____ Date: _____
 Conditional Use: _____ Variance _____ Site Plan _____ Subdivision _____
 Shoreland Zoning Yes _____ No _____ Floodplain Yes _____ No _____
 Special Exception _____
 Other (Explain) _____

Foundation:
 1. Type of Soil: _____
 2. Set Backs - Front _____ Rear _____ Side(s) _____
 3. Footings Size: _____
 4. Foundation Size: _____
 5. Other _____

Floor:
 1. Sills Size: _____ Sills must be anchored
 2. Girder Size: _____
 3. Lally Column Spacing: _____ Size: _____
 4. Joists Size: _____ Spacing 16" O.C.
 5. Bridging Type: _____ Size: _____
 6. Floor Sheathing Type: _____ Size: _____
 7. Other Material: _____

Exterior Walls:
 1. Studding Size _____ Spacing _____
 2. No. windows _____
 3. No. Doors _____
 4. Header _____ Span(s) _____
 5. Bracing: Yes _____ No _____
 6. Corner Posts Size _____
 7. Insulation Type _____ Size _____
 8. Sheathing Type _____ Size _____
 9. Siding Type _____ Weather Exposure _____
 10. Masonry Materials _____
 11. Metal Materials _____

Interior Walls:
 1. Studding Size _____ Spacing _____
 2. Header Sizes _____ Span(s) _____
 3. Wall Covering Type _____
 4. Fire Wall if required _____
 5. Other Materials _____

Ceiling:
 1. Ceiling Joists Size: _____
 2. Ceiling Strapping Size _____ Spacing _____
 3. Type Ceilings: _____
 4. Insulation Type _____ Size _____
 5. Ceiling Height: _____

Roof:
 1. Truss or Rafter Size _____ Span _____
 2. Sheathing Type _____ Size _____
 3. Roof Covering Type _____

Chimneys:
 Type: _____ Number of Fire Places _____

Heating:
 Type of Heat: _____

Electrical:
 Service Entrance Size: _____ Smoke Detector Required Yes _____ No _____

Plumbing:
 1. Approval of soil test if required Yes _____ No _____
 2. No. of Tube or Showers _____
 3. No. of Flushes _____
 4. No. of Lavatories _____
 5. No. of Other Fixtures _____

Swimming Pools:
 1. Type: _____
 2. Pool Size: _____ x _____ Square Footage _____
 3. Must conform to National Electrical Code and State Law.

Permit Received By Latini
 Signature of Applicant Ed. Hubbard Hobler Date 2/8/94
 CEO's District _____

White - Tax Assessor

CONTINUED TO REVERSE SIDE
 Ivory Tag - CEO

PERMIT # 102618

TOWN OF PORTLAND BUILDING PERMIT APPLICATION

MAP #

LOT #

Please fill out any part which applies to job. Proper plans must accompany form.

Owner: Roman Catholic Bishop of Portland of St. Boniface's

Address: 103 Danforth St., Portland, ME

LOCATION OF CONSTRUCTION: 103 Danforth St.

CONTRACTOR: Ches. Harbord & Co. SUBCONTRACTORS: 3 799-8111

ADDRESS: 17 Main St., S. Portland Attn: Diane Albert

Est. Construction Cost: Type of Use: Church

Permit Use:

Building Dimensions: L W Sq. Ft. # Stories: Lot Size:

Is Proposed Use: Seasonal Condominium Apartment

Conversion - Explain: to remove 1 (6,000 gallons) tank (oil).

COMPLETE ONLY IF THE NUMBER OF UNITS WILL CHANGE DEP FORM submitted.

Residential Buildings Only:

Of Dwelling Units: # Of New Dwelling Units:

Foundation:

1. Type of Soil:

2. Set Backs: Front Rear Side(s)

3. Footings Size:

4. Foundation Size:

5. Other:

Floors:

1. Sills Size: Sills must be anchored.

2. Girder Size:

3. Lally C. Size Spacing: Size: Spacing 16" O.C.

4. Joists Size: Spacing 16" O.C.

5. Bridging Type: Size: Spacing 16" O.C.

6. Floor Sheathing Type: Size: Spacing 16" O.C.

7. Other Material:

Exterior Walls:

1. Studding Size Spacing

2. No. windows

3. No. Doors

4. Header Size Span(s)

5. Bracing: Yes No

6. Corner Posts Size

7. Insulation Type Size

8. Sheathing Type Size

9. Siding Type Weather Exposure

10. Masonry Materials

11. Metal Materials

Interior Walls:

1. Studding Size Spacing

2. Header Size Span(s)

3. Wall Covering Type

4. Fire Wall if required

5. Other Materials

For Official Use Only

Date: Sept 11, 1989

Subdivision: Yes / No

Inside Fire Limits: _____

Bldg Code: _____

Time Limit: _____

Estimated Cost: _____

Value/Structure: _____

Fee: \$10.00

PERMIT ISSUED

Block: _____

Permit Expires: _____

Ownership: Public / Private

City of Portland

Ceiling:

1. Ceiling Joists Size: _____

2. Ceiling Strapping Size _____ Spacing _____

3. Type Ceilings: _____

4. Insulation Type _____ Size _____

5. Ceiling Height: _____

Roof:

1. Truss or Rafter Size _____ Span _____

2. Sheathing Type _____ Size _____

3. Roof Covering Type _____

4. Other _____

Chimneys:

Type: _____ Number of Fire Places _____

Heating:

Type of Heat: _____

Electrical:

Service Entrance Size: _____

Smoke Detector Required: Yes / No

Plumbing:

1. Approval of soil test if required: _____

2. No. of Tube or Showers: _____

3. No. of Fixtures: _____

4. No. of Lavatories: _____

5. No. of Other Fixtures: _____

Swimming Pools:

1. Type: _____

2. Pool Size: _____

3. Must conform to National Electrical Code and State Law

Landscaping:

District: R-2 Street Frontage Req: _____ Provided: _____

Required Setbacks: Front _____ Side _____

Review Required:

zoning Board Approval: Yes / No Date: _____

Planning Board Approval: Yes / No Date: _____

Conditional Use: Yes / No Special Exc: _____

Shore and Floodplain Mgmt: _____

Other: (Explain) _____

Date Approved: 9-21-89

Permit Received By: Nancy Grossman

Signature of Applicant: _____

Signature of CEO: _____ Date: _____

Inspector Date: _____

White-Tax Assessor: _____

Copyright GPOOD 1987

9/11/88
 Dept of Public Health
 Date: 9/11/88

[Signature]

COMMENTS

Date	Type	Inspection Record

PLAT PLAN

FEES (Breakdown From Form)
 Base Fee \$ 10.00
 Subdivision Fee \$
 Site Plan Review Fee \$
 Other Fees \$
 (Expenses)
 Late Fee \$

PLOT PLAN

N
↑

FEES (Breakdown From Front)
Base Fee \$ 10.00
Subdivision Fee \$ _____
Site Plan Review Fee \$ _____
Other Fees \$ _____
(Explain) _____
Late Fee \$ _____

Type	Inspection Record	Date

COMMENTS

[Handwritten signature]

Signature of Applicant: *[Handwritten Signature]* Date: *2/11/01*

Inspections Services



William D. Giroux
Zoning Administrator

CITY OF PORTLAND

February 11, 1994

RE: 163 Danforth St.

Garrity, Hobler and Thomsen
174 Danforth St.
Portland, ME 04102


Dear Sirs:

Receipt of your application for an Interpretation Appeal regarding the property at 163 Danforth Street, is acknowledged.

This appeal will be scheduled for review before the Board of Appeals on Thursday evening March 10, 1994, at 7:00 p.m. in Room 209, City Hall, Portland, Maine. You must plan to attend to answer any questions which the Board members may have concerning this appeal.

We will send you a copy of the March 10th agenda as soon as copies become available for distribution.

Sincerely,


William D. Giroux, Zoning Administrator

/el

cc: John D. Knox, Chairman Board of Appeals
Joseph E. Gray, Jr., Director of Planning and Urban Development
P. Samuel Hoffses, Chief of Inspection Services
Charles A. Lane, Associate Corporation Counsel
Barbara Hathaway, 163 Danforth St., Portland, 04102
Roman Catholic Bishop of Portland, 510 Ocean Ave., Portland 04103
Kathy Love, Code Enforcement Officer

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS



JOHN C. KNOX

MATTHEW D. MANAHAN
THOMAS F. JEWELL
EARL R. MacDONALD
WILLIAM E. NELESKI, Jr.
REBECCA SARGENT
MICHAEL E. WESTORT

163 Danforth St.

All persons interested either for or against this Interpretation Appeal, will be heard at a public hearing in Room 209, City Hall, Portland, Maine on Thursday evening, March 10, 1994 at 7:00 p.m. This notice of required public hearing has been sent to the owners of property directly abutting and directly across a street or alley from the property as required by the ordinance.

Mr. David J. Garrity and Mr. Edward A. Hobler, of 174 Danforth Street, and Mr. Thomas W. Thomsen, owner of 188 Danforth Street request that the Board of Appeals overturn the decision of the Zoning Administrator who authorized the use of 163 Danforth Street as a lodging house in the R-6 Zone, as well as the level of site plan review required.

For more detailed information, please come to Room 315 at City Hall weekdays from 7:00 a.m. to 4:00 p.m.

LEGAL BASIS OF APPEAL: Such appeal will be granted if the Board of Appeals finds that the conditions imposed by Section 14-472 of the Zoning Ordinance have been met.

John C. Knox
Chairman

/el

Inspection Services
Samuel P. Hoffscs
Chief



CITY OF PORTLAND

Planning and Urban Development
Joseph E. Gray Jr.
Director

February 9, 1994

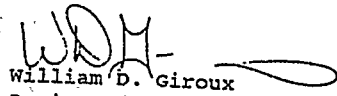
RE: 163 Danforth Street

Barbara E. Hathaway
163 Danforth St.
Portland, Me 04102

Dear Ms. Hathaway:

Enclosed, please find a copy of the documents submitted for interpretation appeal review by the Board of Appeals at their meeting on March 10, 1994.

Sincerely,


William D. Giroux
Zoning Administrator

/el

cc: Roman Catholic Bishop of Portland, 510 Ocean Avenue, Portland, 04103

Permit # _____ City of Portland BUILDING PERMIT APPLICATION Fee \$50.00 Int. Appeal Zone _____ Map # _____ Lot# _____
 Please fill out any part which applies to job. Proper plans must accompany form.

Owner: Roman Catholic Diocese Phone # _____
 Address: 510 Ocean Ave. Portland 04103
 LOCATION OF CONSTRUCTION 163 Danforth
 Contractor: Hobler Sub.: _____
 Address: 174 Danforth Phone # 774-5412
 Est. Construction Cost: _____ Proposed Use: _____
 Past Use: _____
 # of Existing Res. Units _____ # of New Res. Units _____
 Building Dimensions L _____ W _____ Total Sq. Ft. _____
 # Stories: _____ # Bedrooms _____ Lot Size: _____
 Is Proposed Use: Seasonal _____ Condominium _____ Conversion _____
 Explain Conversion Interpretation Appeal

For Official Use Only
 Date February 8, 1994 Subdivision: _____
 Inside Fire Limits _____ Name _____
 Bldg Code _____ Lot _____
 Time Limit _____ Ownership: _____ Public _____ Private _____
 Estimated Cost _____

Zoning: Street Frontage Provided: _____
 Provided Setbacks: Front _____ Back _____ Side _____ Side _____

Review Required: Zoning Board Approval: Yes _____ No _____ Date: _____
 Planning Board Approval: Yes _____ No _____ Date: _____
 Conditional Use: _____ Variance _____ Site Plan _____ Subdivision _____
 Shoreland Zoning Yes _____ No _____ Floodplain Yes _____ No _____
 Special Exception _____
 Other (Explain) _____

Foundation:
 1. Type of Soil: _____
 2. Set Backs - Front _____ Rear _____ Side(s) _____
 3. Footings Size: _____
 4. Foundation Size: _____
 5. Other _____

Floor:
 1. Sills Size: _____ Sills must be anchored.
 2. Girder Size: _____
 3. Lally Column Spacing: _____ Size: _____
 4. Joists Size: _____ Spacing 16" O.C.
 5. Bridging Type: _____ Size: _____
 6. Floor Sheathing Type: _____ Size: _____
 7. Other Material: _____

Exterior Walls:
 1. Studding Size _____ Spacing _____
 2. No. windows _____
 3. No. Doors _____
 4. Header Sizes _____ Span(s) _____
 5. Bracing: Yes _____ No _____
 6. Corner Posts Size _____
 7. Insulation Type _____ Size _____
 8. Sheathing Type _____ Size _____
 9. Siding Type _____ Weather Exposure _____
 10. Masonry Materials _____
 11. Metal Materials _____

Interior Walls:
 1. Studding Size _____ Spacing _____
 2. Header Sizes _____ Span(s) _____
 3. Wall Covering Type _____
 4. Fire Wall if required _____
 5. Other Materials _____

Ceiling:
 1. Ceiling Joists Size: _____ Spacing _____
 2. Ceiling Strapping Size _____
 3. Type Ceilings: _____ Size _____
 4. Insulation Type _____
 5. Ceiling Height: _____

Roof:
 1. Truss or Rafter Size _____ Span _____
 2. Sheathing Type _____ Size _____
 3. Roof Covering Type _____

Chimneys:
 Type: _____ Number of Fire Places _____

Heating:
 Type of Heat: _____

Electrical:
 Service Entrance Size: _____ Smoke Detector Required Yes _____ No _____

Plumbing:
 1. Approval of soil test if required Yes _____ No _____
 2. No. of Tubs or Showers _____
 3. No. of Flushes _____
 4. No. of Lavatories _____
 5. No. of Other Fixtures _____

Swimming Pools:
 1. Type: _____
 2. Pool Size: _____ x _____ Square Footage _____
 3. Must conform to National Electrical Code and State Law.

Permit Received By Latini
 Signature of Applicant [Signature] Date 2/8/94

CEO's District Ed. Hubman Hobler

CONTINUED TO REVERSE SIDE
 Ivory Tag - CEO

White - Tax Assessor

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS



THOMAS F. JEWELL

RAY M. JOHNSON
JOHN C. KNOX
MATTHEW D. MANAHAN
DEWEY A. MARTIN, JR.
REBECCA SARGENT
MICHAEL E. WESTORT

INTERPRETATION APPEAL APPLICATION

Applicant's name and address: David J. Garrity & Edward A. Hobler

174 Danforth Street, Portland, Maine; Thomas W. Thomsen, 188 Danforth Street, Portland, Maine.

Applicant's interest in property (e.g., purchaser, etc.):

Applicants are interested persons whose properties are affected by decision of Building Authority against which this appeal is sought.

Owner's name and address (if different):

Roman Catholic Diocese, 510 Ocean Ave., Portland, Maine

Address of property and Assessor's chart, block and lot number:

163 Danforth Street; Assessor's Chart 44, Block H, Lot 3

Zone: R-6

Present Use: Rectory (single-family dwelling)

N.B. Classification of present use

Order, decision, determination, or interpretation under dispute: is in dispute.

Zoning approval as set forth in letter from Mr. William Giroux, Zoning Administrator, to Ms. Barbara Hathaway dated January 10, 1994.

Disputed provision: Section 14- See attached Exhibit A (Issues Presented On Appeal)

Type of relief requested: Reversal of zoning approval for conversion of subject property to lodging house. Order developer to comply with requirements of major development site plan.

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

Date: Feb 8, 1994

David J. Garrity
Signature of Applicant

2/8/94

E. Hobler

22-08-94

Thomas W. Thomsen