

**City of Portland, Maine – Building or Use Permit Application** 389 Congress Street, 04101, Tel: (207) 874-8703, FAX: 874-8716

Location of Construction: 699-707 Congress St		Owner: Koutsivitis, Nicholas		Phone:		Permit No:	
Owner Address:		Lessee/Buyer's Name:		Phone:		BusinessName:	
Contractor Name: Indus Engineering		Address: 417 U.S. Rt 1 Falmouth, ME 04105		Phone: 781-5379		Permit Issued:	
Past Use: Parking Lot		Proposed Use: Same		COST OF WORK: \$ 90,000.00		PERMIT FEE: \$ 470.00	
				FIRE DEPT. <input type="checkbox"/> Approved <input type="checkbox"/> Denied		INSPECTION: Use Group: Type:	
				Signature:		Signature:	
Proposed Project Description: Construct Retaining Wall				PEDESTRIAN ACTIVITIES DISTRICT (P.A.D.) Action: Approved <input type="checkbox"/> Approved with Conditions: <input type="checkbox"/> Denied <input type="checkbox"/>			
Permit Taken By: Mary Gresik				Date Applied For: 12 December 1997			

Zone: CBL: 047-C-021/022

Zoning Approval:

**Special Zone or Reviews:**

Shoreland  
 Wetland  
 Flood Zone  
 Subdivision  
 Site Plan maj  minor  mm

**Zoning Appeal**

Variance  
 Miscellaneous  
 Conditional Use  
 Interpretation  
 Approved  
 Denied

**Historic Preservation**

Not in District or Landmark  
 Does Not Require Review  
 Requires Review

**Action:**

Approved  
 Approved with Conditions  
 Denied

Date: \_\_\_\_\_

1. This permit application does not preclude the Applicant(s) from meeting applicable State and Federal rules.
2. Building permits do not include plumbing, septic or electrical work.
3. Building permits are void if work is not started within six (6) months of the date of issuance. False information may invalidate a building permit and stop all work..

*Permit never Issued - Never Build -  
Permit Expired*

**CERTIFICATION**

I hereby certify that I am the owner of record of the named property, or that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his authorized agent and I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in the application is issued, I certify that the code official's authorized representative shall have the authority to enter all areas covered by such permit at any reasonable hour to enforce the provisions of the code(s) applicable to such permit

*Karl Kluge*  
SIGNATURE OF APPLICANT Karl Kluge ADDRESS: \_\_\_\_\_ DATE: 12 December 1997 PHONE: \_\_\_\_\_  
INDUS ENGINEERING.

RESPONSIBLE PERSON IN CHARGE OF WORK, TITLE \_\_\_\_\_ PHONE: \_\_\_\_\_

White-Permit Desk Green-Assessor's Canary-D.P.W. Pink-Public File Ivory Card-Inspector

CEO DISTRICT

699-701 Congress St 12/18/97



699-701 Congress St 12/18/97

12/18/97 S Saabner 102-669



699-701 Congress St 12/18/97

never issued

Zoning Division  
Marge Schmuckal  
Zoning Administrator



Department of Urban Development  
Joseph E. Gray, Jr.  
Director

## CITY OF PORTLAND

Nicholas and Dorothy Koutsivitis  
148 Summit Park Avenue  
Portland, Maine 04103

December 23, 1997

RE: 699-701 Forest Avenue - B-2 Zone

Dear Mr. & Mrs Koutsivitis,

I am in receipt of your application to install a rear retaining wall. I believe that you will need to apply for a site plan review for this work. I know that you have copies of the site plan ordinance that I have given to you previously. I believe that two items trigger the requirement for site plan review. You are increasing the actual parking area beyond where the curbing presently exists. You will also be changing the watercourse for which a site plan review is also required.

Presently your parking lot appears to be legally nonconforming as to use. Today's B-2 zone does not allow parking lots as a commercial use, only as accessory to conforming uses. Your proposal does show an expansion of the legal nonconformity which is not allowed under the City's Zoning Ordinance. If you wish to maintain this design, it will be necessary to obtain a Use Variance from the Zoning Board of Appeals. You will have 30 days in which to request this appeal. I have included information which you will need for that appeal application.

Your permit application will be on hold until these matters of the Zoning Board and site plan review have been resolved.

If you have any questions regarding this matter, please do not hesitate to contact this office.

Very Truly Yours,

Marge Schmuckal  
Zoning Administrator

cc: Joseph Gray, JR., Dir. of Planning & Urban Dev.  
B. Sharan Vijay, PE, Indus Engineering, PO Box 66737, Falmouth, ME 04105  
Peter S. Plumb, c/o Murray, Plumb & Murray, PO Box 9785, Portland, ME 04104-5085

RECEIVED

Inspection Services  
P. Samuel Hoffses  
Chief



Planning and Urban Development  
Joseph E. Gray Jr.  
Director

## CITY OF PORTLAND

Nicholas P. & Dorothy B. Koutsivitis  
148 Summit Park Avenue  
Portland, ME 04103

RE: 699 & 707 Congress Street (Parking lots area)

November 26, 1997

Dear Mr. & Mrs. Koutsivitis,

As I notified you in my November 3, 1997 letter, fencing is required between your parking lot and the adjoining residential zone. So that you could do the proper test borings, I had given an extension of the time to replace that fence which was removed. You had both Tom Gruber, of Mercy Hospital and B. Sharan Vijay, PE., of Indus Engineering contact me promising that the fence would be replaced the day after the test borings were done, or on November 19, 1997. As of today's date that required fence (Sec. 14-339(2)) has still not been properly reinstalled. It is necessary that this fence be replaced immediately.

If this violation is not rectified within ten (10) days from the receipt of this letter, this matter shall be turned over to our Corporation Counsel for legal action without further notice to you.

If you have any questions regarding this matter, please do not hesitate to contact this office.

Very Truly Yours,

Marge Schmuckal  
Zoning Administrator

1574

cc: Joseph Gray, Jr., Dir. of Planning & Urban Dev.  
Mark Adelson, Housing & Community Dev.  
David Jordan, Code Enforcement Officer  
Corporation Counsel  
File

NEVER  
ISSUED

Inspection Services  
P. Samuel Hoffses  
Chief

11/26/97  
no fence



Planning and Urban Development  
Joseph E. Gray Jr.  
Director

## CITY OF PORTLAND

Nicholas P. & Dorothy B. Koutsivitis  
148 Summit Park Avenue  
Portland, ME 04103

RE: 699 & 707 Congress Street (Parking lots area)

November 3, 1997

Dear Mr. & Mrs Koutsivitis,

This letter is due to numerous complaints regarding the removal of required fencing at the boundaries between the parking lot and residential zones at 699 and 707 Congress Street.

This is a violation of the municipal Land Use Code, Section 14-339(2), a copy which is attached. This violation must be rectified within ten (10) days from receipt of this letter. That means that the required fencing shall be reinstalled properly as to City Codes. If the violation is not corrected within this time period, this matter will be forwarded to our Corporation Counsel for legal action.

As a reminder, a site plan review (for which you already have all the requirements for a submittal) is required for your proposed parking lot changes. No work should begin on this site prior to the conclusion and approval of your site plan. The sooner you get your site plan information in for review, the sooner the review can begin and approvals can be given.

If you have any questions regarding this matter, please do not hesitate to contact this office.

Very Truly Yours,

Marge Schmuckal  
Zoning Administrator

cc: Joseph Gray, Jr., Dir. of Planning & Urban Dev.  
Mark Adelson, Housing & Community Dev.  
David Jordan, Code Enforcement Officer  
File

Received  
11/15/97

is located, the following requirements shall be met:

- (1) A continuous curb guard, rectangular in cross-section, at least six (6) inches in height and permanently anchored, shall be provided and maintained at least five (5) feet from the street or lot line between such off-street parking and that part of the street or lot line involved; <sup>(or)</sup> a continuous bumper guard of adequate strength, the top of which shall be at least twenty (20) inches in height, shall be provided and maintained between such off-street parking and that part of the street or lot line involved so that bumpers of vehicles cannot project beyond its face toward the street or lot line involved, either above or below the impact surface.
- (2) Where such off-street parking shall abut a lot in residential use or an unoccupied lot which is located in a residence zone, a chain link, picket or sapling fence, not less than forty-eight (48) inches in height, shall be provided and maintained between such off-street parking and that part of the lot line involved.

(b) Notwithstanding the provisions of subsection (a) of this section, parking shall be prohibited in the front yard of lots containing two (2) or more dwelling units, except within one (1) driveway on the lot. "Driveway," as used in this paragraph, shall not include any turnaround area.

(Code 1968, § 602.14.H; Ord. No. 231-90, § 2, 3-5-90)

**Sec. 14-339. When located adjacent to a street or a residential use.** > 6

Where off-street parking for more than six (6) vehicles is required or provided on a lot in any business zone, the following requirements shall be met:

- (1) Where vehicles are to be or may be parked within ten (10) feet of any street line, a continuous curb guard, rectangular in cross-section, at least six (6) inches in height

LAND USE

§ 14-342

and permanently anchored, shall be provided and maintained at least five (5) feet from the street line between such off-street parking and that part of the street line involved; or a continuous bumper guard of adequate strength, the top of which shall be at least twenty (20) inches in height, shall be provided and maintained between such off-street parking and that part of the street line involved so that bumpers of vehicles cannot project beyond its face toward the street line involved either above or below the impact surface.

- (2) Where such off-street parking shall abut a lot in a residence zone or a lot in residential use, a chain link, picket or sapling fence, not less than forty-eight (48) inches in height, shall be provided and maintained between such off-street parking and that part of the lot line involved.

(Code 1968, § 602.14.1)

**Sec. 14-340. Construction requirements when more than six vehicles parked.** > 6 SF

Where off-street parking for more than six (6) vehicles is required or provided, the following construction requirements shall apply:

- (1) Appropriate driveways from streets or alleys, as well as maneuvering areas, shall be provided. Location and width of approaches over public sidewalks shall be approved by the traffic engineer.
- (2) The surface of driveways, maneuvering areas and parking areas shall be uniformly graded with a subgrade consisting of gravel or equivalent materials at least six (6)

September 27, 1997

Charles Koutsivitis  
Pierre Koutsivitis  
148 Summit Park Ave.  
Portland, ME

Dear Mr. Koutsivitis:

We the undersigned are concerned about your proposal to construct a retaining wall on our south-facing property lines. We are not in support of this project, and want you to stop cutting any vegetation behind our properties.

We are currently in communication with the Planning Department and the Historical Preservation Committee and they are keeping us apprised of your proposal.

Furthermore, the removal of the existing fence has created safety and security hazards as well as trash on our properties and we wish you to address the problem immediately.

Sincerely,

Concerned Deering Street Property Owners

*Andrea J. Little*  
*Paul [unclear]*  
*Gene [unclear]*  
*Arline Wacker*  
*Zhao [unclear]*

cc. Deb Andrews, Historic Preservation Committee  
Joe Gray, Planning Dept., City of Portland  
Karen Geraghty, City Councilor  
Mercy Hospital

*never issued*



Attorneys At Law

December 15, 1997

needed  
passed

received  
12/16/97

HAND DELIVERY

Mr. Sam Hoffses  
Code Enforcement Officer  
City of Portland Building Inspection Department  
City Hall  
389 Congress Street  
Portland, Maine 04101

RE: Development Proposals By The Koutsivitis Family Between  
Congress and Deering Streets

- E. Stephen Murray
- Peter S. Plumb
- John C. Lightbody
- Linda A. Monica
- Thomas C. Newman
- John C. Bannon
- Susan D. Thomas
- Drew A. Anderson
- Richard L. O'Meara
- Barbara T. Schneider
- Christopher B. Branson
- Charles P. Piacentini, Jr.
- Michael D. Traister
- Rita S. Saliba

Dear Sam:

This office represents Andrea Zimble-Farrar and Paul Farrar of 46 Deering Street and Arline Waecker of 48 Deering Street in Portland. I write to express their concern over development activities that are apparently in the process of being undertaken by their abutter(s) Nicholas Koutsivitis, and various members of the Koutsivitis family, who own a large existing commercial parking lot entering on Congress Street. It appears that the Koutsivitis' have filed with the Building Inspection Department a plan for the construction of a large retaining wall near the bottom of an existing steeply wooded and vegetated slope which currently defines the boundary between the Koutsivitis' commercial parking lot and the residential uses along Deering Street. While the ultimate plans of the developer are not yet clear, the most current proposal appears to be the construction of a cantilevered platform out over the slope, with gravel fill over the existing grass, shrubs and trees. The result will be a grotesque addition to this historic neighborhood.

Counsel:  
Peter L. Murray  
Charlton S. Smith

75 Pearl Street  
Post Office Box 9785  
Portland, Maine  
04104-5085

Telephone:  
207.773.5651

Facsimile:  
207.773.8023

E-Mail:  
info@mpmlaw.com

WWW:  
mpmlaw.com

The Farrar and Waecker residences, and all of the adjacent residences which abut the Koutsivitis parking lot, are in an R-6 zone and are also in an Historic District Area. The Koutsivitis parking lot is in a B-2 zone. Since the retaining wall in and of itself is of no use to anyone, it would appear that the Koutsivitis owners are attempting to accomplish by indirection what they cannot otherwise accomplish by direction: the substantial expansion of an existing non-conforming commercial parking lot. Copies of the plans supplied by the proposed developers to the Building Inspection Department are attached as Exhibit A.

In the summer of 1997, Nicholas Koutsivitis, who although apparently not the owner of record of the property apparently, controls the situation,



December 15, 1997

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never issued

wrote to his abutting neighbors requesting their permission to construct a large retaining wall to abut their various properties. A copy of this letter is attached as Exhibit B. The retaining wall proposed is in excess of ten feet high. The plan at that time was to fill the area between the existing parking lot and the constructed retaining wall to expand the parking lot, most of which is now leased to Mercy Hospital for employee parking. (Most of the time the lot is plowed by Mercy Hospital subcontractors). The expansion would exceed 1,000 square feet, which automatically places the proposed development within the Site Plan requirements of Section 14-522 of the Portland Land Use Ordinance. Since commercial parking lots are not a permitted use in the B-2 zone, we do not understand how the expansion could be approved in any event, under Section 14-383. Further, and in any event, any expansion of the existing parking area would be in violation of 80% coverage requirements set forth in Section 14-195(6).

The Farrars, Ms. Waecker and their neighbors did not consent to the construction of the retaining wall and so notified the developer by letter dated September 27, 1997 (copy attached as Exhibit C). At the time the Koutsivitis' sought their neighbors' approval to do the development project, there was an aging chain link fence at the edge of the parking lot at the top of the embankment leading down to the homes on Deering Street. When it became apparent that the neighbors were not happy about his proposal, the developer removed this fence and began clearing the embankment, much of which is in the developer's ownership. The developer has also now also sawed off limbs of my clients' and neighbors' trees which protruded out over the embankment.

As we understand it, the Building Inspection Department notified the developer that the fence must be replaced, but the developer asked for additional time to do so in order to conduct soils tests in the embankment area. The developer was apparently given until mid-October to replace the fence. To date, this has not been done, and it should be done immediately.

It has been Done AS of 12/10/97

Instead, last week, the developer installed a chain link fence at the bottom of the embankment along the boundary line. Apart from being unsightly and a direct insult to the abutting neighbors, the Farrars, Ms. Waecker and their neighbors have already had the following problems resulting from the developer's actions:

December 15, 1997

Page 3

never  
ISSUED

A. If nothing else, the prior chain link fence at the edge of the parking lot required that snow be plowed away from the embankment. During the snow storms which happened in November, the developer and Mercy Hospital agents simply dumped snow onto the embankment and down onto the abutters' properties. As the winter progresses, this will create horrendous drainage problems for the abutters.

B. Without a fence, cars utilizing the parking lot simply drive up and over the edge of the embankment and get stuck. So far, no one has wound up in my clients' living room, but at least one car has had to be pulled away, having skidded over the top of the embankment.

C. My clients and their neighbors' properties will now become the depository of all plowed trash, junk and debris from the developer's parking lot. Further, the proposed retaining wall shows "weep holes" for all of the drainage to come off of the parking area and embankment - aimed right at the abutters' properties.

D. The aesthetics of the neighborhood will be horribly disfigured by the proposed retaining wall, which effectively will make cellar apartments out of the first floors of all the abutting homes. The loss of value will be substantial, and given the "overhang" nature of the proposed expansion, the area underneath will become a haven for drunks and other problems.

Given the intersection of the two zones, Section 14-339 of the Portland Land Use Code requires that a fence be in place. The fence that should be in place is the one that was removed from the edge of the parking lot, and not the spite fence which has now been erected at the bottom of the hill.

The developers have indicated to our clients that the cost of the proposed retaining wall is somewhere between \$100,000 and \$200,000. There can be no reason to expend that kind of money without a more substantial underlying development proposal in mind, which can only be the expansion of an existing non-conforming use.

We request your review of this situation, and we thank you for your prompt consideration. By their copies of this letter, we do request that both the Planning Department and the Building Inspection Department notify the

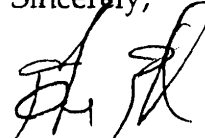
December 15, 1997

Page 4

NEVER  
ISSUED

Farrars, Ms. Waecker and this office of any applications that have been or may be filed in the future, and any proposed actions thereon.

Sincerely,



Peter S. Plumb

psp/nja

Email: [psp@mpmlaw.com](mailto:psp@mpmlaw.com)

cc: Mr. Alex Jeagerman  
Ms. Marge Schmuckal ✓  
Ms. Andrea Zimble-Farrar  
Mr. Paul Farrar  
Ms. Arline Waecker

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never  
1556221

Nicholas and Dorothy Koutsivitis  
148 Summit Park Ave.  
Portland, Maine 04103

September 23, 1997

Andrea J. Zimble  
Paul C. Farrar  
46 Deering Street  
Portland, Maine 04102

Dear Ms. Zimble and Mr. Farrar:

Enclosed is a copy of an unexecuted agreement pertaining to the proposed construction of a retaining wall that would abut your property. The purpose of the agreement, in short, is to secure your permission to enter your property in the course of constructing the wall in exchange for concrete and specific assurances pertaining to such construction. Please consider this proposed agreement a starting point for discussion and negotiations concerning the construction of the retaining wall. If, in fact, the draft agreement is acceptable to you, please sign it and send it back to me in the enclosed self-addressed envelope. If you wish to discuss the proposed agreement or recommend changes to it, please feel free to call me at 797-9328 or write at 148 Summit Park Avenue, Portland, Maine 04103.

The enclosed section of our boundary survey showing contour lines may be of use to you if you have interest in designing a landscape plan which we could implement. Your expertise would be appreciated.

Thank you in advance for your consideration of this matter.

Sincerely,  
*Nicholas Koutsivitis*  
Nicholas Koutsivitis

WE, THE UNDERSIGNED, Nicholas Koutsivitis, Dorothy Koutsivitis, Andrea Zimble and Paul Farrar, hereby enter into the following agreement:

1. Nicholas Koutsivitis and Dorothy Koutsivitis (hereinafter "Mr. and Mrs. Koutsivitis") are owners of real estate at 699-707 Congress Street, Portland, Maine (hereinafter "the Koutsivitis property"). Andrea Zimble and Paul Farrar (hereinafter "Ms. Zimble and Mr. Farrar") are owners of real estate located at 46 Deering Street, Portland, Maine (hereinafter "the Zimble-Farrar property").
2. Ms. Zimble and Mr. Farrar hereby grants permission to Mr. and Mrs. Koutsivitis and their agents to enter the Zimble-Farrar property for the purpose of planning and constructing a retaining wall on the Koutsivitis property. Ms. Zimble and Mr. Farrar further agree to permit Mr. and Mrs. Koutsivitis and their agents to trim and/or remove any vegetation (including, but not limited to, trees, shrubs, bushes, weeds etc.) growing on the Zimble-Farrar property which crosses onto the Koutsivitis property as is necessary for construction of said retaining wall, provided that any such trimmings and/or removal is done in a manner suitable to Ms. Zimble and Mr. Farrar.
3. In consideration for said grant of permission, Mr. and Mrs. Koutsivitis hereby agree to take all steps necessary to restore the Zimble-Farrar property to its condition prior to the construction of said retaining wall to the best extent possible, and further agree to bear the entire cost of such restoration.
4. In further consideration for the grant of permission described in paragraph 2 of this agreement, Mr. and Mrs. Koutsivitis hereby agree to make such improvements and/or enhancements upon the Zimble-Farrar property and Koutsivitis property as shall be reasonably agreed upon by all the parties to this agreement, and to bear the entire cost of any such improvements or enhancements. Said improvements may include, but are not limited to, landscaping, the planting of trees, shrubs, flowers and/or bushes, the construction of fences or aesthetic improvements to the retaining wall itself, and any other improvements or enhancements to which all the parties shall hereinafter agree.
5. Mr. and Mrs. Koutsivitis further hereby agree to take all steps practically

never issued

possible to minimize any disruption to the Zimble-Farrar property, which may be caused by the planning and construction of the retaining wall.

6. Mr. and Mrs. Koutsivitis hereby further agree to continue to apprise Ms. Zimble and Mr. Farrar of the plans and timetable for the construction of the retaining wall as they become available.

*REVISED*  
*ISSUED*

EXECUTED this \_\_\_\_\_ day of September, 1997.

\_\_\_\_\_  
Nicholas Koutsivitis

\_\_\_\_\_  
Dorothy Koutsivitis

\_\_\_\_\_  
Andrea Zimble

\_\_\_\_\_  
Paul Farrar

NEVER  
ISSUED

September 27, 1997

Charles Koutsivitis  
Pierre Koutsivitis  
148 Summit Park Ave.  
Portland, ME

Dear Mr. Koutsivitis:

We the undersigned are concerned about your proposal to construct a retaining wall on our south-facing property lines. We are not in support of this project, and want you to stop cutting any vegetation behind our properties.

We are currently in communication with the Planning Department and the Historical Preservation Committee and they are keeping us apprised of your proposal.

Furthermore, the removal of the existing fence has created safety and security hazards as well as trash on our properties and we wish you to address the problem immediately.

Sincerely,

Concerned Deering Street Property Owners

*Andrea Jumbo*  
*Paul [unclear]*  
*John H. Ford*  
*Robbie Wacker*  
*Chas [unclear]*

cc. Deb Andrews, Historic Preservation Committee  
Joe Gray, Planning Dept., City of Portland  
Karen Geraghty, City Councilor  
Mercy Hospital