

Zoning Division  
Marge Schmuckal  
Zoning Administrator



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

## CITY OF PORTLAND

December 4, 2000

William Nemmers Associates Architects  
424 Fore Street  
Portland ME 04101

RE: Change of use Application – 104-114 Grant Street – 48-C-008

Dear Bill,

I am in receipt of your letter dated November 30, 2000 in reference to nonconforming uses and the allowance for changes of nonconforming uses. I would like to point out that under Section 14-382 entitled "Increase in nonconforming use of building or alterations to nonconforming buildings limited," both sections (b) and (c) of this section, state that there shall be no increase in the "**degree of nonconformity.**" I interpret "degree of nonconformity" to mean intensity of use. The ordinance does not allow an increase in the intensity of any use. I have determined that a proposal for an increase to several different uses is considered an increase in the degree of nonconformity.

As you pointed out, section 14-384 also states that if a lawful nonconforming use is located in a structure that was not originally designed for a use permitted in the zone in which it is located (R-6 zone in this case) it may be take advantage of subsection (3). That subsection (3) states that if the structure is located in a residential zone, and the lawful nonconforming use is a permitted use within a B-2 zone, then the use may be changed (or reduced) to any use permitted in a B-1 zone.

I would specifically like to point out that the ordinance **does not** state that it can be changed to any use **or uses**. The word "use" is used singularly. And your proposed change includes five (5) distinct different uses listed separately in the B-1 zone. I believe that the ordinance relating to nonconformity is purposely restricting the number of allowable uses to only one because the ordinance has already stated that there shall be no increase in the "degree of nonconformity". Your proposal for the five separate uses would in fact be an increase in the degree of nonconformity and therefore could not be allowed.

As we have discussed previously, under the R-6 conditional uses, the use of a Community Hall would meet the uses that you are requesting. This use requires a Conditional Use appeal with the Planning Board as the reviewing authority.

You have 30 days from the date of this letter in which to exercise your right to appeal my interpretation. I have included copies appeal information for your reference.

Very truly yours,

A handwritten signature in black ink, appearing to read "Marge Schmuckal", with a long horizontal flourish extending to the right.

Marge Schmuckal  
Zoning Administrator

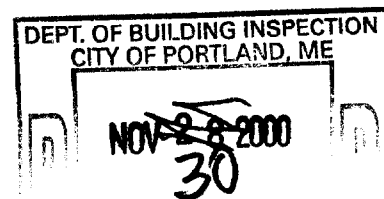
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WILLIAM NEMMERS ASSOCIATES ARCHITECTS  
424 FORE ST. PORTLAND, ME 04101 774-3683.

November 29, 2000

Marge Schmuckal, Zoning Administrator  
City of Portland  
Portland, Maine 04101



Re Change-of use Application  
104 - 114 Grant Street

Dear Marge:

With this letter I am confirming the items we discussed the other day with respect to the specific uses allowed for this project, and I will present you with our thinking on the matter of the "intensity" of the proposed use, as compared with the "intensity" of the previous uses.

I believe that there was agreement with the statement that under Section 14-384 in the Non-conforming uses section of the code that

"In a residential zone, if current use is allowed in the B2 zone, then the use can be changed to any use allowed in the B1 Zone".

Since the previous use was a mixed use containing wholesale sales of building products, office of building tradesmen (architectural salvage company), storage of architectural salvage materials, all uses allowed under the B2 Zone, then the new uses must be limited to those allowed under the B1 Zone.

Uses allowed, without condition, under the B1 Zone are, among others, clinics, Nursery school, municipal office, personal service, daycare, babysitting.

The uses proposed for the structure are:

- 1) A joint YWCA-USM program dealing with Parkside youth Health issues, research into existing conditions and mediation
- 2) A PROP child development program for 8-10 elementary school children to help children at risk in an afterschool program.

3) A PROP office for the Parkside Area Program coordinator.

4) A neighborhood Portland Police center with two offices, an interview room and a conference room.

The intended uses seem to fit nicely with the allowed uses listed above, as you confirmed that this appeared so.

With respect to the issue of not increasing the "intensity of use". The code does not specifically use the words "intensity of use" to define how one use is more or less intense than another, or if a larger number of users, or more trips per hour or such measures should be used to establish such "intensity". There is no mechanism for determining which of two approved uses in a zone is more or less "intensive". They both are less intensive than uses approved for less restrictive zones.

The intensity of use, rather, is considered with regard to the lists of approved uses allowed in each zone, and assigned a number accordingly. Industrial zones are more intensely used and therefore less restrictive than business zones which are less restrictive than residential zones. Similarly within each Letter designated Zone type there are more and less restrictive sub-sections: R6 zones are more intense and therefore less restrictive than R1 Zones.

With respect to this building, the non-conformance statute includes language to prohibit the increase of the physical nature of the non-conformity, i.e. no building additions. We are not proposing any building additions.

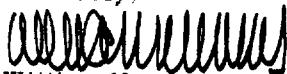
With respect to the use of this building, the non-conformance statute indicates that the degree of "intensity" allowed for a change-of-use in a non-conforming building, built to house a non-conforming use, shall be governed, in this case, according to the list provided (and noted above): That list states that in this R6 Zone, any building housing uses allowed in the B2 Zone can be changed only to uses allowed in the B1 Zone.

By this standard the uses allowed by our change-of-use request cannot be uses allowed only in the B2 Zone, but must be uses allowed only in the B1 Zone. This is a de-facto lowering of the "intensity" of the possible uses by requiring that they meet the more restrictive conditions. If we only allow the more restrictive uses stated, it is a more restrictive standard and therefore a less "intense" use.

It is my contention that, based on the above argument, a change-of-use permit can be issued for this project with no conditional uses, no appeals, no Site plan review and no need to resort to the condominiumizing or Community Hall procedures we discussed the other day.

Thank you for your consideration on this matter. If you have questions please call me at 774-3683.

Sincerely,



William Nemmers

copy, Tom Watson, building owner