

063 E 001

Gordon D. Simonds

*104 West Street
Portland, Maine 04102
(207) 874-6666
(207) 773-5574 fax*

VIA HAND DELIVERY

September 3, 1997

Ms. Marge Schmuckal
Assistant Chief Inspector
Building Services Division
City of Portland
Room 315
City Hall
389 Congress Street
Portland, Maine 04101

Re: Building Permit, 120 West
Street, Portland, Maine

Dear Ms. Schmuckal:

Yesterday I noticed that construction activity was taking place at 120 West Street, a property owned by the Maine Medical Center (the "MMC"). The property is within an R-4 Zone.

This property abuts my mother's property located at 104 West Street and I act for her in all matters under the authority of a recorded power of attorney.

I immediately obtained a copy of the building permit from your office and noted that it was issued with conditions.

On April 10, 1997 I wrote to you concerning this property (a copy of this letter is enclosed for your reference) and the violations of the variance which was granted to the MMC in 1961 . . . specifically that there were no interns and residents living in the property. In addition I also informed you that there was a business office located on the entire first floor of the property which was approximately 4,000 square feet and in which 5 - 6 people worked each day. I have since learned that 10 - 12 people work there each day.

You may recall our subsequent telephone conversation in which we discussed that "medical students" were not the same as interns and residents because medical students do not treat patients and therefore are not essential to the functioning of the Hospital. You may also recall that I pointed out to you that no permit could be issued because Section 14-461 of the Portland City Code stated that:

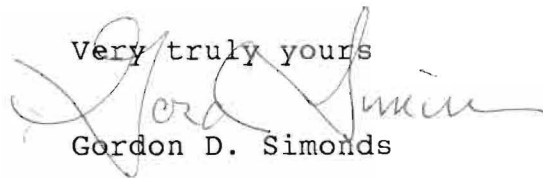
No permit . . . shall be issued . . . for the . . . alteration . . . of any building . . . or part thereof . . . unless the plans . . . indicate that the building . . . is to conform in all respects with the provisions of this article. (emphasis added).

I believe that the building permit which was issued should not have been issued and I hereby request that work under it be halted immediately until the use of the property conforms in all respects with the zoning laws and the variance. This means that the office be removed and the building be occupied by interns and residents.

I also request that your office notify me within three days from today of your decision as if you do not enforce the law, I plan legal action against your office and against the MMC to halt this construction and to compel the MMC to the use the property as its use is approved.

Thank you for your attention to this matter.

Very truly yours



Gordon D. Simonds

063-E-001
Gordon D. Simonds

*104 West Street
Portland, Maine 04102
(207) 874-6666
(207) 773-5574 fax*

VIA HAND DELIVERY

April 28, 1997

Mr. Sam Hoffses
Chief of Inspection Services Division
City of Portland
Room 315
City Hall
389 Congress Street
Portland, Maine 04101

Re: Maine Medical Center - Zoning
Violations at 233 Western Promenade

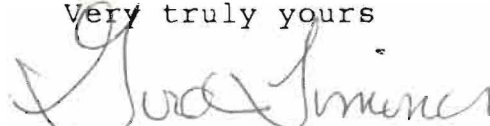
Dear Mr. Hofses:

The Maine Medical Center (the "MMC") has announced plans to apply for permits for alteration of its property located at 112 - 120 West Street, Portland, Maine a property which abuts my mother's house located at 104 West Street.

In a letter of complaint dated April 10, 1997, I complained formally complained of an illegal use of that property.

In a letter to Ms. Marge Schmuckal of even date herewith, I have filed an additional complaint about the improper uses of the above-captioned. I am enclosing herewith a copy of that letter for your reference.

Very truly yours


Gordon D. Simonds

Gordon D. Simonds

*104 West Street
Portland, Maine 04102
(207) 874-6666
(207) 773-5574 fax
April 28, 1997*

Ms. Marge Schmuckal
Assistant Chief Inspector
Building Services Division
City of Portland
Room 315
City Hall
389 Congress Street
Portland, Maine 04101

Re: Zoning violations at 233
Western Promenade, Portland,
Maine

Dear Ms. Schmuckal:

This letter is a complaint about the improper usage and violations of the zoning laws at the property located at 233 Western Promenade which is owned by the Maine Medical Center (the "MMC"). The property is within an R-4 Zone.

This property abuts my mother's property located at 104 West Street and I act for her in all matters under the authority of a recorded power of attorney.

There is a print shop located in the garage or carriage house located to the rear of 233 Western Promenade. I believe that this print shop does printing for the MMC. There are five or six people who work in this building every business day.

In addition, the MMC uses the main house at 233 Western Promenade solely as a dormitory and its use as a housing facility was approved as a school with accessory rooming facilities. The MMC never applied for the conversion of the Chisolm House into a dormitory alone, so in effect no variance has been requested for the present use of this house.

I have been aware of these violations for 18 months, but have not formally complained until now. I believed that it was possible that the zoning violation would be voluntarily and promptly remedied. However, this has not happened.

April 28, 1997

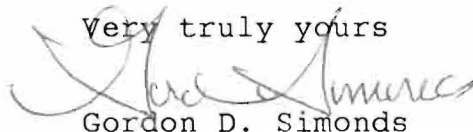
My attempts to work privately with the MMC to remove this zoning violation have been frustrating. The MMC has known of the zoning violation for at least eighteen months and has not remedied it. I have been told that the print shop will be moved to another location sometime this summer, and if that is the case, I believe the violation will be cured, but after 14 months of waiting to no avail, I believe that the only way I can be certain is to file this complaint.

I am also enclosing herewith a summary and my comments of what I found in the City Zoning Microfilm in October, 1995 with respect to the property. This information was orally conveyed by me to the MMC in November, 1995 and submitted to the MMC in writing (along with photocopies of the Microfilm Documents) on January 6, 1996.

In 1995 I was informed that the MMC was unaware that there were any violations of the zoning law and that they were unaware that they could not operate a print shop in an R-4 zone. At the time, I found that very difficult to believe (as the MMC did know enough to apply for annual tent permits). Their inaction since that time does demonstrate a knowing disregard of what they know to be a violation.

Thank you for your attention to this matter.

Very truly yours



Gordon D. Simonds

SUMMARY OF CITY OF PORTLAND ZONING RECORDS

THE CHISOLM HOUSE (233 Western Promenade)

FACTS

On April 24, 1980, Raynold R. Welch wrote a letter to the Building Inspector to provide him with "sufficient information" to issue a building permit for alterations to the Chisolm House to create 10 bedrooms to be used to house student and faculty coming to Portland from the University of Vermont Medical School. It was stated that substantial instruction and teaching would take place within the house. Parking was to be in the Hospital's Bramhall Street parking facilities.

The usage was approved as a school use with accessory rooming facilities.

No application for the use of the rear structure (the Chisolm Garage) as a "print shop" was ever made. However, on June 25, 1995, Edward Herbert, and Sons, a contractor, filed a building permit application to make interior renovations to the Chisolm Garage. This permit was altered by the contractor on June 27, 1995 to reflect only exterior renovations. The permit was granted on June 29, 1995.

UNAPPROVED USAGE OR CONSTRUCTION

It should be noted that the Hospital never applied for the conversion of the Chisolm House into a dormitory alone, so in effect no variance has been requested for the present use of this house.

It should also be noted that the file contained no application for or approval of the creation or paving of a driveway from the Chisolm House to the Thomas House.

It should be noted that the Hospital never applied for the conversion of the entire Chisolm Garage into a print shop or for the addition of parking spaces in front of that garage, so in effect no variance has been requested for the use of the Chisolm Garage as a Print Shop or for any parking by the employees who work in that shop.

Gordon D. Simonds

*104 West Street
Portland, Maine 04102
(207) 874-6666
(207) 773-5574 fax*

VIA HAND DELIVERY

September 3, 1997

Mr. Sam Hoffses
Chief of Inspection Services Division
City of Portland
Room 315
City Hall
389 Congress Street
Portland, Maine 04101

Re: Building Permit, 120 West
Street, Portland, Maine

Dear Mr. Hofses:

Yesterday I noticed that construction activity was taking place a 120 West Street, a property owned by the Maine Medical Center (the "MMC"). The property is within an R-4 Zone.

This property abuts my mother's property located at 104 West Street and I act for her in all matters under the authority of a recorded power of attorney.

I immediately obtained a copy of the building permit from your office and noted that it was issued with conditions. I spoke with you because Ms. Schmuckal was not in the office and you informed me that since she issued the permit, I would have to speak with her.

However on April 10, 1997 I wrote to you concerning this property (a copy of this letter is enclosed for your reference) and the violations of the variance which was granted to the MMC in 1961 . . . specifically that there were no interns and residents living in the property. In addition I also informed you that there was a business office located on the entire first floor of the property which was approximately 4,000 square feet and in which 5 - 6 people worked each day and that no application had ever been made for his use. I have since learned that 10 - 12 people work there each day.

Mr. Sam Hofses

Page Two

September 3, 1997

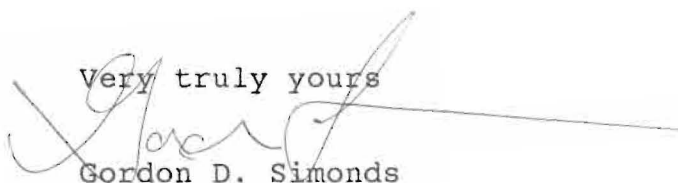
I wrote the April 10 letter to you because I thought that as the Chief of Inspection Services Division it was your job to enforce the zoning law and to make certain that there were no violations and that no permits would be issued until the violations had been remedied.

Therefore, I cannot understand your failure to respond to that letter or your response yesterday that I would have to speak with Ms. Schmuckal because she issued the permit and you had no knowledge of it . . . and nothing to do with it.

I am enclosing herewith a copy of my correspondence today with Ms. Schmuckal just on the "off-chance" that you may have some role in the decision making process.

Thank you for your attention to this matter.

Very truly yours

A handwritten signature in cursive script, appearing to read "Gordon D. Simonds", with a long horizontal line extending to the right.

Gordon D. Simonds

INTEROFFICE MEMORANDUM

63-F-001

To: Chairman and Members of the Board of Appeals
CC: Charlie Lane, Corporation Counsel
From: Marge Schmuckal, Zoning Administrator
Date: October 6, 1997
Subject: 120 West Street - Maine Medical Center - Gordon Simonds Appeals

I have been in discussions with Mr. Simonds and the Maine Medical Center for probably well over a year now. There have been several uses that Maine Med. has created in several of their buildings that do not comply with the City's Zoning Ordinances. They readily admit that, and have been trying to correct those situations.

1) There was a an illegal use of a garage located at the rear of Thomas House at 98-102 Chadwick Street. It was being used for repair of their vehicles. They have already discontinued this use.

2) There is an illegal use of a garage at the rear of Chisolm House which is located at 231-237 Western Promenade. Maine Med. is using this as a print shop for the hospital. They are aware of the illegal use and are in the process of removing that use from this site. From what I have been told the contract has been awarded to prepare another site for this print shop to be relocated. I have been told that it would be the end of October, or the beginning of November that this would happen. I believe they are moving in the right direction to correct the illegal use and that this will soon be a moot point.

3) Another concern that Mr. Simonds has is that the Thomas House was approved by the Board of Appeals in June, 1961 for the housing of medical interns (up to 45). Somewhere down the line, unrelated office use for the hospital was created on the first floor of this building. This is not a legal use in this zone. Maine Med. is aware

of that and is trying to relocate these offices. They have not given me a date or site yet for their relocation. **Although those offices must be removed, I do believe that dorm related offices (accessory use) could be located in this building.**

4) I do disagree with Mr Simonds as to medical students being able to occupy these dorms. I do not see any significant difference between

FROM THE DESK OF...

MARGE SCHMUCKAL
ASSISTANT CHIEF OF CODES/ ZONING ADMINIS
CITY OF PORTLAND, MAINE
389 CONGRESS STREET - CITY HALL, ROOM 315
PORTLAND, MAINE 04101

(207) 874-8300 EXT. 8695
Fax: 874-8716

doctors, interns, and/or students that would impact the approved use. I also do not see in the record that the past Board of Appeals thought there was any difference. Although we do not have transcripts from that meeting, there were no conditions deleting medical students. Maine Med. is a teaching hospital. Although medical students are not officially doctors, usually during their junior and senior years they are part of an academic team with an attending physician doing rounds and tending to patients in all areas of the hospital on a regular basis. They do not have the ability to prescribe medicines or act without the guidance of the attending physician. As I understand the hierarchy, an intern is a first year doctor, and a resident physician is a second year doctor. These doctors traditionally still train and study at the hospital just as the medical students do. It is very rare that a doctor stops his/her learning, and opens up a practice immediately after graduation. I do not interpret that medical students living in this Thomas House dormitory to be a violation of the Board's past approval. I believe the main use to be a dormitory that is not conditioned by what kind of medical student or doctor is living there (see Albert Sears letter dated October 16, 1961 which only refers to a dormitory and not limiting the type of occupant). Along with that past approval, the five car garage (that used to be vehicle maintenance) is available for dormitory parking as required by the Board. I am not sure if it is being regularly used by the dorm occupants, or even if many of them have cars available. Other than the 1st floor office uses, which I am confident Maine Med will relocate as they have the other illegal uses, I believe that the 1961 Board of Appeals requirements have been met.

5) In reference to the recently issued building permit (July 31, 1997), I do not believe that it was issued in violation of the ordinances. The issuance was conditioned. They were told that no work could be done that would increase the illegal, nonconformity. Mr Simonds is very aware of the work involved since this permit was first reviewed by the Historic Board for compliance and he was attending those meetings. A lot of work is exterior landscaping. The interior work is mostly on doors and bathrooms in order to make them ADA accessible. The prints are very large, and in an effort to reduce your paperwork, I did not duplicate them for you to review with this memo, but I will have them available at the meeting on October 9th for your review. I do not see anything specific on the prints that would increase the illegal nonconformity of the first floor. These doors and bathrooms are being altered on each of the floors. The changes would easily be usable for when the illegal use is removed and restored to its original approval.

6) 233 Western Promenade: Again, I believe that the print shop in the garage is in the process of being removed and is a moot point. The letter dated April 24, 1980 referring to a permit of the same date, explains the use of this property. The use is described fairly openly, as stated: "the exact proportion of time spent in either area (meaning Chisolm House or Maine Medical Center) will have to depend upon the requirements of the particular subject matter under instruction." Again, Maine Med. is a teaching school with a hands on approach teaching on a regular basis in the

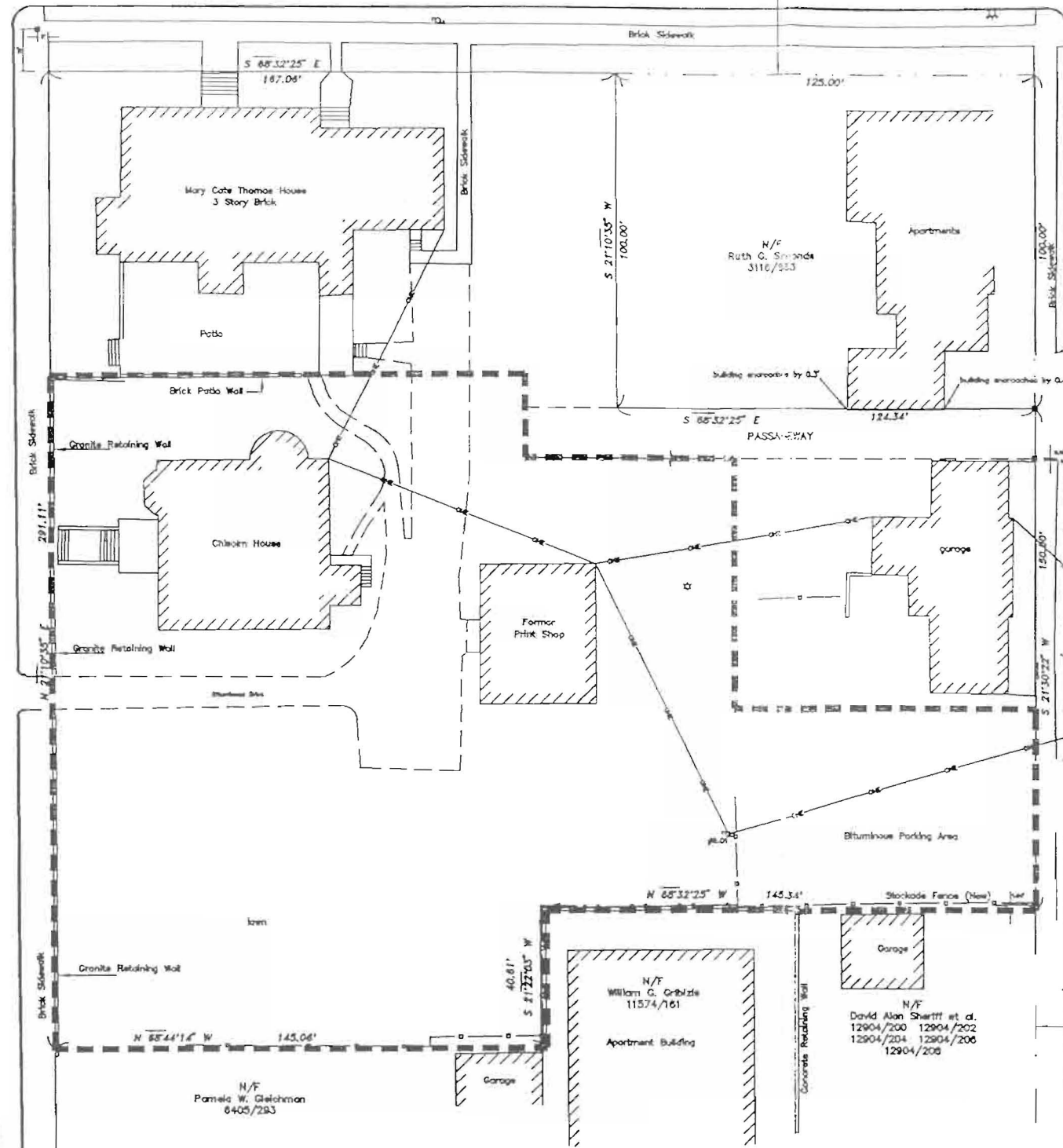
hospital. I am not aware of how much teaching is being performed at this particular location and how much is being performed at the hospital. Even if it is a very small amount, I believe that issue was already addressed in the original letter, and was approved at that time. Although there might be outside faculty members, the doctors at Maine Med. are also the faculty in a teaching hospital. Because no faculty actually may dorm in this building, does not take away from the approved use. I am not convinced that the uses in Chisolm House are illegal.



Western Promenade
(with various)

West Street

Chadwick Street



LEGEND

- Iron Pin Found
- ⊙ Iron Pin Set (capped 5/8" rebar)
- Granite Monument Found
- ⊕ Utility Pole
- N/F None or Formerly
- Sign
- Deciduous Tree
- Conifer Tree
- ▨ Existing Building
- Edge of Pavement
- Loose Property Line
- Dusk (granite or bituminous)
- Chain Link Fence
- Wood Fence

NOTES

- (1) Bearings are referenced to magnetic north 1985.
- (2) Book and Page references are to the Cumberland County Registry of Deeds.
- (3) Map and Lot references are to the City of Portland.
- (4) Utility easement: Maine Medical Center to Central Maine Power Company and New England Telephone and Telegraph Company, ... pole @ Chadwick Street to pole @ S.D.L., Book 3108, Page 96.
- (5) Passaway: "...reserving to myself, my heirs and assigns as long as I or they own and before adjoining said passaway, and to owners of all property abutting on or adjoining said passaway, the right to use the same in connection with Thomas, his heirs and assigns, and the further right to enter and use any ditch or sewer therein or thereunder upon payment of a fair proportional cost of the expense of building and maintaining the same... Arthur C. Hunt to Elizabeth Thomas (Book 882, Page 306; March 3, 1905). See also Book 884, Page 327, and Book 887, Page 238, and Book 893, Page 24.

REFERENCES

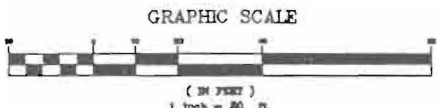
- (1) Plan of Property made for Maine Medical Center by H.L. & E.C. Jordan dated December 16, 1981 and revised August 3, 1982.
- (2) Existing Conditions and Standard Boundary Survey made for Maine Medical Center by Thomas Associates dated 05/01/86.
- (3) Portland Water District Plan Showing Bramhall Reservoir Lot dated March 1917.
- (4) City of Portland Right of Way plan.
- (5) Plan of Arthur K. Hunt land (2 pages). Recorded in Plan Book 8, Page 43.
- (6) Plan of land west of the Bracket line dated 1833. Recorded in Plan Book 1, Page 1.

AREA

86,281 square feet / 1.92 acres

OWNER OF RECORD

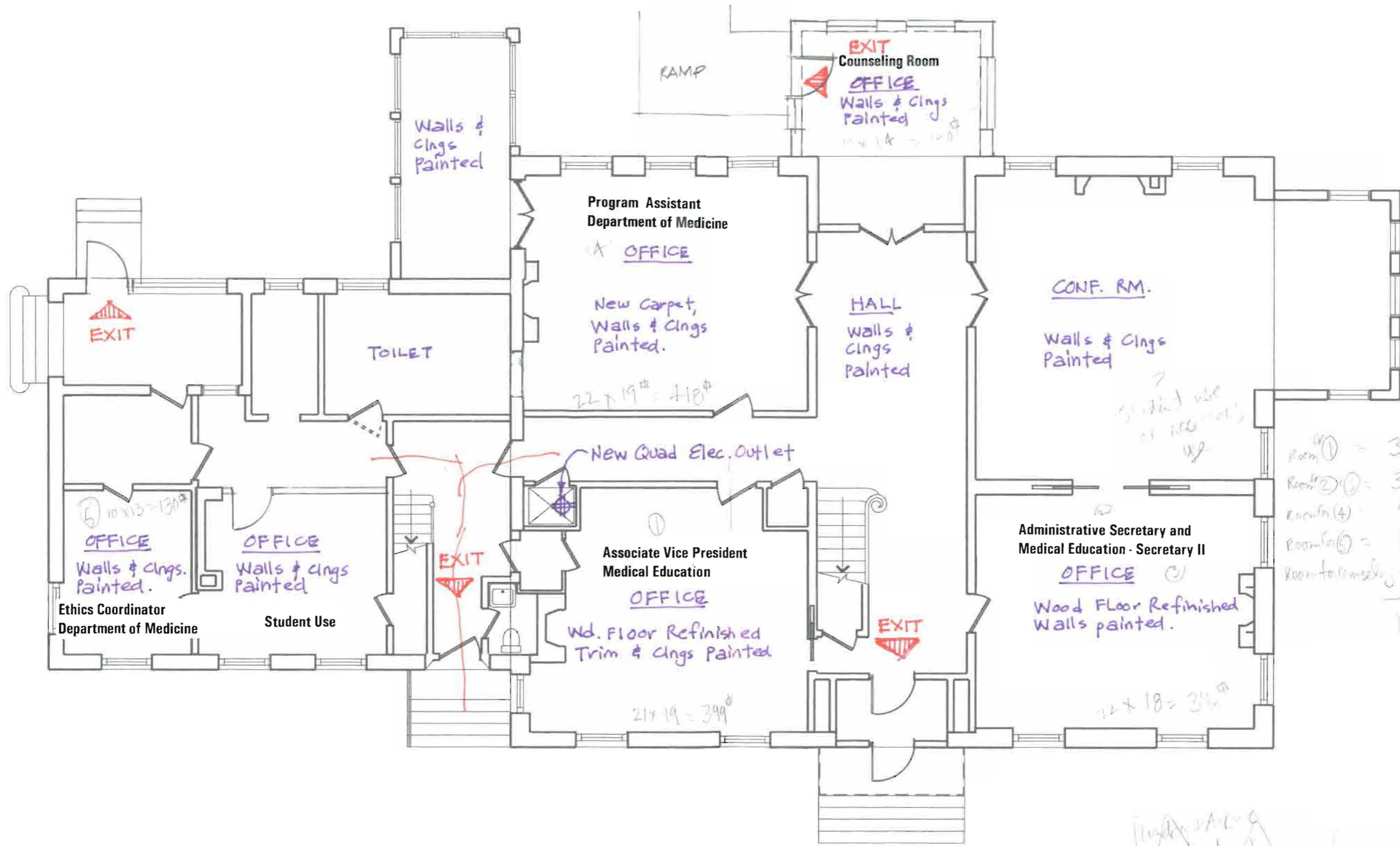
Maine Medical Center 2794/201 2595/211 2586/215



REDUCED COPY

Certification
This survey conforms to the current standards of the Maine State Board of Licensure for Land Surveyors for Category I, Condition II, except as noted:
(1) No written report.
(2) No description prepared.
David E. Titcomb PLS 1273

Maine Medical Center Standard Boundary Survey Western Promenade, West Street, Chadwick Street Portland, Maine		
MADE FOR MAINE MEDICAL CENTER BRAMHALL STREET PORTLAND, MAINE		
JOB# 97118	DATE: 12/08/97	SCALE: 1" = 20'
BOOK# 587C/658	 Titcomb Associates Portland North Business Park Falmouth, Maine 04105	
DISC# 478		
FILE# 7612		



Room ① = 399#
 Room ② = 396#
 Room ④ = 418#
 Room ⑤ = 130#
 Room to remodel = 140#

$1483^{ft} = 400 = 3.7$
 3/mo
 1 + pkg spec
 ref

THOMAS HOUSE **FIRST FLOOR**
 Scale: 1/8" = 1'-0"

Under stairs
 5 off street spaces
 5 off street spaces required
 5 off street spaces required by space

CHECK PLOT	
TITLE:	THOMAS HOUSE
	FIRST FLOOR
SCALE:	1/8" = 1'-0"
PROJECT:	MMC
DATE:	10/24/94
DRAWN:	MR