



PORTLAND MAINE

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Jeff Levine, AICP, Director
Marge Schmuckal, Zoning Administrator

March 7, 2013

Jewell & Boutin, P.A.
477 Congress Street
Suite 1104
Portland, ME 04101-3453

SCANNED

Attn: Thomas F. Jewell, Esq.

RE: 372-374 Park Avenue – 067-C-003 (the “Property”) – R-6 Zone

Dear Attorney Jewell,

I am in receipt of your request for a determination concerning the Property and a functional division of land. The Law Court upheld a concept of “functional division” in its ruling of Keith v. Saco River Corridor Commission.

The Law Court outlined criteria that are described at 464 A.2d 152 as follows:

(i) *The structures were in existence prior to the zoning ordinance:* The basis of the Land Use Zoning Ordinance currently in use is June 5, 1957. Both structures on the Property were in existence prior to June 5, 1957 as evidenced by the pre-1957 Assessor’s records.

(ii) *From that time to the present they were separately use and occupied:* Nothing has been submitted to show that either structure was consistently and separately used and occupied since they were constructed. My research of Inspection Services files indicates that the two structures have been consistently used and occupied separately.

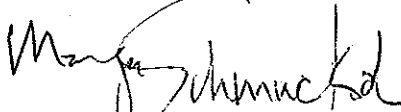
(iii) *Each dwelling is served by its own utility and sewage disposal system:* I translate “each dwelling” from the Law Court Case into “each structure” in the case of multiple structures on a single piece of land, and not each dwelling within each structure on the land in question. In the scenario submitted to me for consideration, there are two structures on the Property. The front structure along the street is a legal two residential family building. The rear building is a legal three residential family building. Although electricity and gas have been shown to be independent for both structures on the Property, it is an important distinction that both structures share the common water and sewer to the Property. It is my interpretation of the Law Court decision that the lack of independent water and sewer for each structure moots the ability of the structures to remain functionally separate from each other if the

Property was divided. My reading of *Keith* is that the independence of water and sewer is a prime indication of each structure to function with autonomy. This vital criterion is not being met.

Because the required criteria of *Keith* is not being met, I have determined that the request to divide the Property is not allowable. Section 14-422 of the Land Use Zoning Ordinance states: "No lot shall be so reduced that yards, lot width, lot frontage, lot area, area per dwelling unit, and space for off-street parking and / or off-street loading shall be less than the minimum required under this article." I have not been afforded any information that indicates the proposed division of land can meet the underlying R-6 Zone requirements. Therefore the Property shall not be divided as proposed.

You have the right to appeal my decision concerning this matter. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

Very truly yours,

A handwritten signature in black ink, appearing to read "Marge Schmuckal". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

Marge Schmuckal
Zoning Administrator

JEWELL & BOUTIN, P. A.
Attorneys at Law
477 Congress Street
Suite 1104
Portland, ME 04101-3453

www.jewellandboutin.com

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Daniel W. Boutin

Email: tjewell@jewellandboutin.com
Email: dboutin@jewellandboutin.com

Telephone: 207-774-6665
Fax: 207-774-1626

February 22, 2013

Marge Schmuckal, Zoning Administrator
City of Portland
357 Congress Street
Portland, ME 04101

RECEIVED

FEB 22 2013

Re: 372-374 Park Avenue; Map 67-C-3
Functional Division request

Dept. of Building Inspections
City of Portland

Dear Marge:

I write on behalf of my client, Hill Street Apartments, LLC, which is the current owner of the property at 372-374 Park Avenue, requesting approval for the division of this property as a functional division. Together with this application, I enclose a check for \$150.00 for the cost of your determination.

The property currently has upon it two separate buildings, with two dwelling units in the front building and three dwelling units in the rear building. Each structure has been in existence and separately used since at least the 1920s according to the attached assessor information sheet. The owners propose to split the lot pursuant to the attached survey. The division would result in two lots which would share the driveway and would share the common water and sewer.

Except as noted above, these two residential structures at this location are separate structures independent from each other. They each have their own electric service (copies attached) and separate gas service (gas service to the property is directly billed to the tenants so we do not presently have copies of separate invoices from the two buildings), and each building has been functionally independent from the adjoining property since their construction in the 1920s. The proposed division would not change the current use or resulting impact of the property. Either one of the buildings could be destroyed and the remaining building could continue functioning.

*not really
they share
common water
& sewer*

There is one common water and sewer service for the property which runs through the front building and continues to the rear building. Although somewhat rare, we have seen several separately owned properties in Portland that share a common water and sewer lines. Typically such properties are in settings such as present appeal, where one building is behind the other. We submit that two separate buildings that share a water and sewer line are still functionally divided, as each could function without the other just as is the case when they share a driveway. As with many candidates for functional division that have been approved in the past, this present application would require a shared driveway.

Marge Schmuckal, Zoning Administrator
February 22, 2013

Separate water and sewer lines could possibly be installed, and the Applicant has researched that possibility, but the price is prohibitive. At a minimum, easements will be created that would allow for the eventual separation of the water and sewer. The attached site plan from the Portland Water District shows the existing public water line on the far side of Park Avenue.

We would respectfully suggest that the Applicants' proposal is in harmony with the Maine Supreme Judicial Court decision, which set the precedent for "functional division" review, in *Keith v. Saco River Corridor Commission*, 464 A.2d 150 (Me. 1983,) a copy of which is enclosed. In that case, the owner sought to divide her property upon which was located several camps built prior to the adoption of the zoning ordinance. Her camps were lawfully non-conforming uses.

We do appreciate that although the Court in *Keith* did state, in its summary of facts, that the buildings in that case each had its own utility and sewage disposal system, there is nothing the following analysis by the Court that mentions anything further about the utilities or suggests that completely separated utility services are required to qualify for functional division approval. Instead, the focus of the inquiry in *Keith* was whether the proposed lot division "would be an extension, expansion or enlargement of existing buildings, structures or of nonconforming uses" *Keith*, at page 151, which would have required a permit. Similar to the Saco River Corridor Commission Ordinance, the grandfathering provisions of Portland Land Use Ordinance, Section 14-381, generally prohibit the extension, expansion or enlargement of preexisting nonconforming uses.

The Court in *Keith* concluded that the "mere" change of dividing the existing one large lot with three buildings into three separately owned parcels did not create such an extension, expansion or enlargement because it would not result in any change of the grandfathered use of the property. Therefore, the central question in the present application is whether dividing the lot of a property that is already functionally divided is an extension, expansion or enlargement of the lawfully preexisting nonconforming use so that it would be prohibited under Section 14-381 of the Portland Land Use Ordinance.

We submit that the result in *Keith* would likely have been the same if a couple of the camps shared a septic system. This assertion is based on the fact that the focus of the analysis of the Court in that case was on the issue of change of use, not on the details of the existing properties. The important finding of the Court in this respect was that "the property in question had been 'functionally divided' as separate lots by tenant occupation since before the enactment of the Act." *Keith* at Page 152. Similarly, our buildings have been used by different tenants since the 1920s, and dividing the parcel into two lots will have not change the ongoing use. *non conforming Section*
not change the use

¹⁴⁻⁴²
As a general rule of zoning law, one cannot create non-conforming lots. However, the proposed division in *Keith* resulted in the creation of three new lots that did not meet the minimum space and bulk zoning requirements for frontage, and setback requirements. Nonetheless, the Court determined that the Commission was compelled to approve the landowner's request to divide the property.

In *Keith*, at page 154, the Court stated as follows:

The post-sale fragmented title in no way would modify the nature or purpose of the pre-existing nonconformity of the respective buildings on the land, nor would it reflect any alteration in the land use itself prevailing at the time the Saco River Corridor Act [the applicable zoning ordinance] took effect, nor would it under any view of the factual situation create a new use different in quality, character or degree, from the original use; no change in intensity of use would result. Had the Keith holdings as functionally divided been owned by three different individuals at the time of the Act and each of them desired to convey his separate lot, there would be no zoning impediment to the sale. We cannot see wherein a different result should obtain simply because all the already functionally divided lots are owned by only one person. *[Bracketed text added.]*

Again, the Court focused largely on the effect of the division on the resulting grandfathered use of the property and found that the proposed division of the existing non-conforming lot into three new nonconforming lots would not result in any particular change in use. With no change in the use, the Court found there would be no public purpose served by denying the Applicant her request to divide the lot. *use*

The Applicants' lot already hosts grandfathered lawfully non-conforming uses of two buildings with five dwelling units between them. The proposed division does not extend, expand or enlarge the units within the structures or the existing uses of the building footprint, driveways, yards or appurtenances. Splitting that one parcel into two will not result in any change to the land use effects associated with those two buildings, it will just create an invisible property boundary between the existing houses.

We submit that the Applicant's "mere change" from one lot with two structures, to two lots each with one structure meets the legal requirements for a permissible functional subdivision of the property as set forth by the Maine Supreme Judicial Court in *Keith* and request approval to create two lots at the subject property.

Respectfully submitted,



Thomas F. Jewell, Esq.

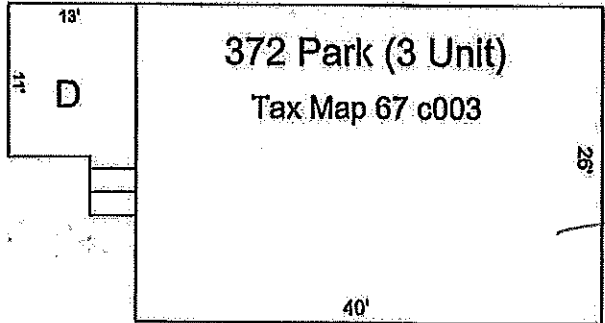
Attorney for Applicant Hill Street Apartments, LLC

Tax Map 67 c012

63' (Deed)

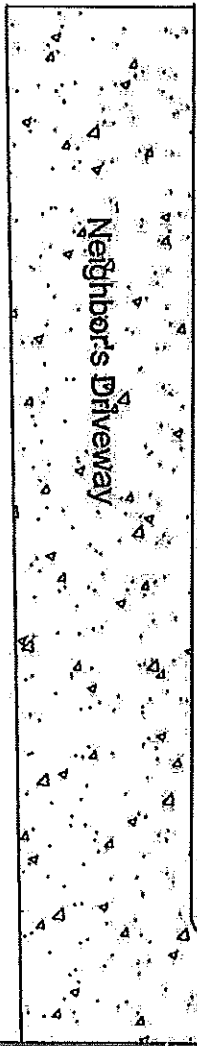
Tax Map 67 c008

Tax Map 67 c004

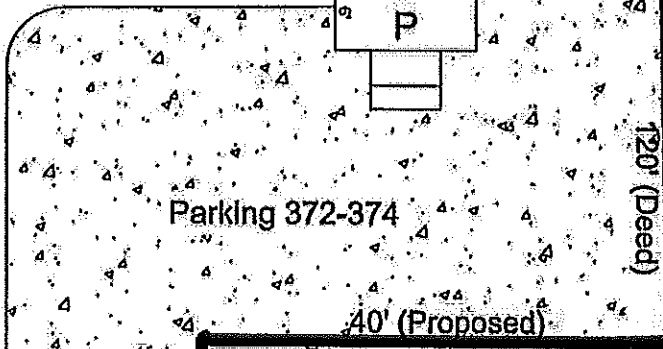


6-Fam in pre 57 Code

Tax Map 67 c015



120' (Deed)



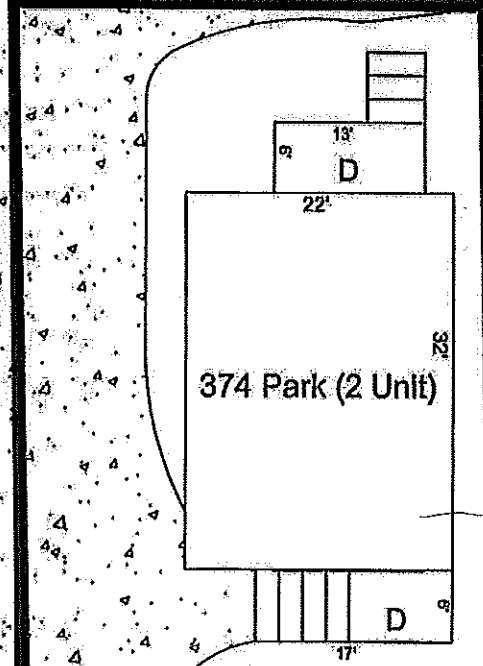
120' (Deed)

40' (Proposed)

57' (Tax Map)

Tax Map 67 c002

60' (Proposed)



Singer Family pre 57 Code

Utility Pole 63' (Deed)

Park Avenue

QUITCLAIM DEED WITH COVENANT
(Special Warranty Deed)

U.S. Bank National Association, As Successor Trustee To Bank Of America,
National Association As Successor By Merger To LaSalle Bank National
Association, As Trustee Under The Pooling And Servicing Agreement Dated As Of
March 1, 2007, GSAMP Trust 2007-HE2 with its principal place of business at 1661
Worthington Road, Suite 100, West Palm Beach, FL 33409, for consideration paid,
Grants to Hill Street Apartments LLC with QUITCLAIM COVENANT, the following
described land in Portland, County of Cumberland, and State of Maine:

A certain lot or parcel of land situated in in the town of Portland, County of Cumberland,
and State of Maine, being known as 372 374 Park Avenue, Portland, ME 04102, bounded
and described as follows:

See Exhibit A attached hereto and made a part hereof

Being the same premises conveyed to the Grantor herein by instrument dated October 24,
2011 and recorded in Book 29056 Page 147, Cumberland County Registry of Deeds.

Grantor covenants that it is seized and possessed of the said land and has a right to
convey it, and warrants the title against the lawful claims of all persons claiming by,
through and under it, but not further otherwise.

MAINE REAL ESTATE TAX PAID

IN WITNESS WHEREOF, U.S. Bank National Association, As Successor Trustee To Bank Of America, National Association As Successor By Merger To LaSalle Bank National Association, As Trustee Under The Pooling And Servicing Agreement Dated As Of March 1, 2007, GSAMP Trust 2007-HE2, has caused this instrument to be executed by Benjamin Z. Karp as **Contract Management Coordinator**, thereunto duly authorized, this 6 day of August, 2012.

Received
Recorded Register of Deeds
Aug 27, 2012 01:16:20P
Cumberland County
Pamela E. Lovley

U.S. Bank National Association, As Successor Trustee To Bank Of America, National Association As Successor By Merger To LaSalle Bank National Association, As Trustee Under The Pooling And Servicing Agreement Dated As Of March 1, 2007, GSAMP Trust 2007-HE2 By Ocwen Loan Servicing, LLC its attorney-in-fact

Marlene Saunders
Witness **Marlene Saunders**

Benjamin Z. Karp
Name: **Benjamin Z. Karp**
Title: **Contract Management Coordinator**
Company: Ocwen Loan Servicing, LLC

STATE OF Florida
COUNTY OF Wm Beach

August 8, 2012

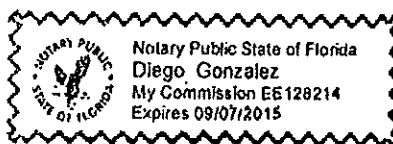
On 8/6/2012, before me, Diego Gonzalez, Notary Public, personally appeared (Name) Benjamin Z. Karp, the (title) **Contract Management Coordinator** (Company) Ocwen Loan Servicing, LLC as attorney-in-fact for U.S. Bank National Association, As Successor Trustee To Bank Of America, National Association As Successor By Merger To LaSalle Bank National Association, As Trustee Under The Pooling And Servicing Agreement Dated As Of March 1, 2007, GSAMP Trust 2007-HE2 who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and of his/her free act and deed in said capacity and the free act and deed of Ocwen Loan Servicing, LLC as attorney-in-fact for U.S. Bank National Association, As Successor Trustee To Bank Of America, National Association As Successor By Merger To LaSalle Bank National Association, As Trustee Under The Pooling And Servicing Agreement Dated As Of March 1, 2007, GSAMP Trust 2007-HE2 and that his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Florida that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Diego Gonzalez
Notary Public

(Print Name and Affix Seal)





Your CMP account number:
441-185-9278-001



customer assistance line
1-800-750-4000
To report a power outage: 1-800-696-1000



374 PARK AVE HSE/MTR
PORTLAND ME
Service location

Billing date: 10/30/12

Read cycle: 19

Page 001 of 003

Customer Meter Summary

| Meter Number | Read Date | Prior Read Date | Number of Days | Meter Reading | Prior Meter Reading | Total KWH |
|--------------|-----------|-----------------|----------------|---------------|---------------------|-----------|
| G053048757 | 10/29/12 | 09/28/12 | 31 | 0 | 0 | 0 |

Account Summary

| | | | | | | |
|--|--|--|--|--|----------|----------------|
| Prior balance | | | | | | \$0.00 |
| Payments received through 10/30/12 | | | | | \$0.00+ | |
| Balance forward | | | | | | \$0.00 |
| New charges | | | | | | |
| Electricity Delivery: Central Maine Power (see detail below) | | | | | \$32.41+ | |
| Electricity Supply: Standard Offer Service | | | | | \$0.00+ | |
| Total new charges | | | | | | \$32.41 |

Current Account Balance: Please pay before 11/26/12 **\$32.41**

Central Maine Power Delivery Service Account Detail

| | | | | | | |
|--|-----------|---------|--|--|----------|----------------|
| Prior balance for Central Maine Power delivery | | | | | | \$0.00 |
| Payments received | | | | | \$0.00+ | |
| Balance forward | | | | | | \$0.00 |
| Current delivery charges | | | | | | |
| Delivery Charges: Residential | | | | | | |
| Delivery Service: | 0 KWH | | | | \$9.41+ | |
| Up to | 100 KWH @ | \$9.41 | | | | |
| Over | 100 KWH @ | .065831 | | | | |
| Establish service charge | | | | | \$23.00+ | |
| Total current delivery charges | | | | | | \$32.41 |
| Central Maine Power account balance | | | | | | \$32.41 |

Messages about your Central Maine Power delivery account

We'll go to any height to provide reliable service! We inspect our transmission lines via helicopter to look for potential problems before they cause an outage. This preventative maintenance helps provide reliable service.

Please see back page for important information

Your electricity usage (in kilowatt hours)

| | 10/12 |
|---------|-------|
| Daily | 0 |
| Monthly | 0 |

Please return this stub with payment to CMP. If applicable, supply payments are forwarded to the appropriate energy provider. Do not send cash or coins, and do not return with staples or paper clips. Refer to back to fill in information for mail address changes or to sign up for the Automatic Payment Option plan.



Your CMP account number:
441-185-9278-001



Central Maine Power
PO Box 11752
Newark, NJ 07101-4752

Please pay this amount
\$32.41
before 11/26/12 so you
can avoid late charges

AV 01 005526 61409B 25 A**5DGT.
HILL STREET APTS LLC
212 SAINT JOHN ST
PORTLAND ME 04102-3041

Please write
amount paid:



\$ _____

Thank you!



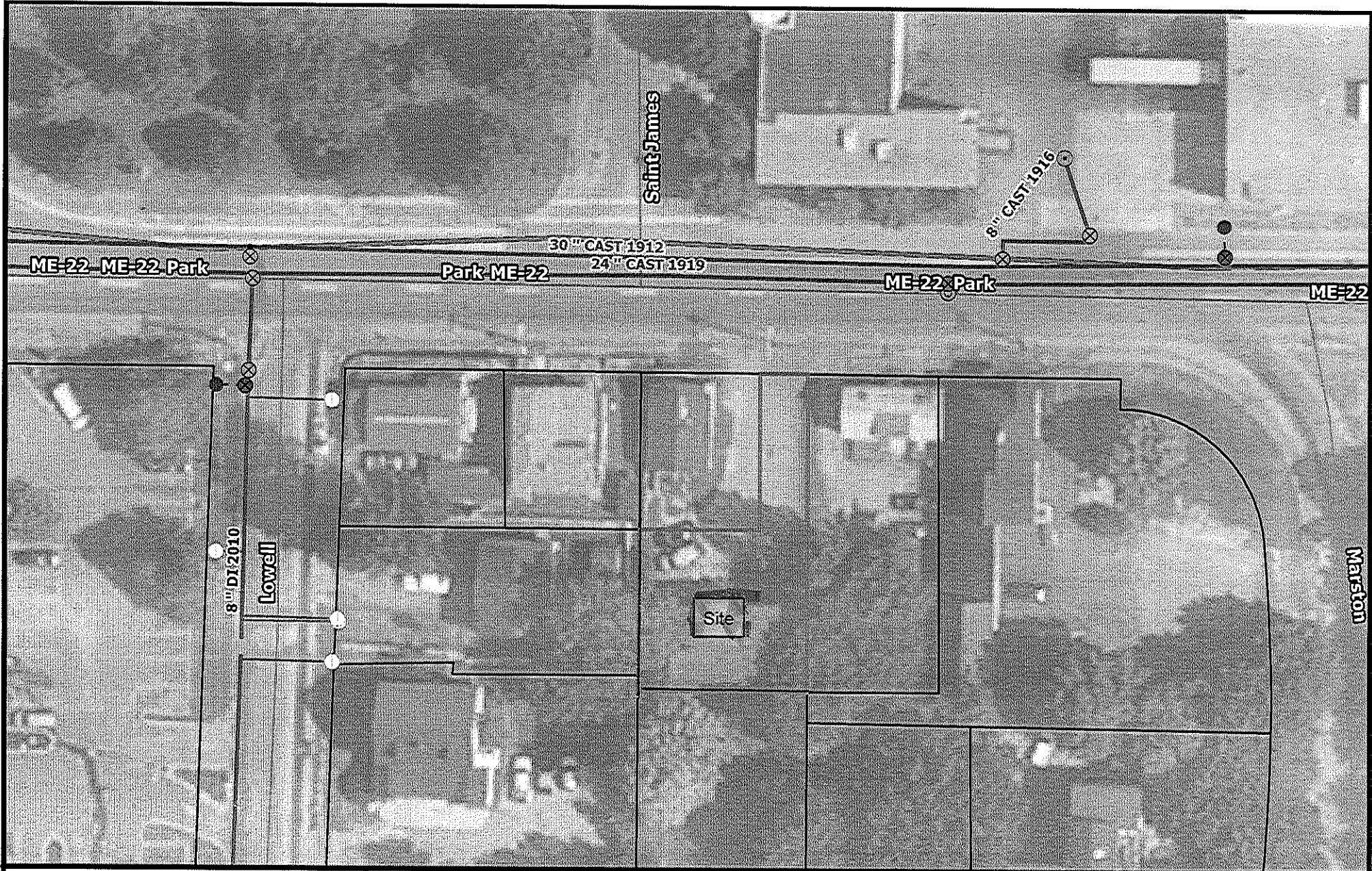
Please do not write below this line

811030124411859278001000003241

005526 1/2

126

THIS STUB IS THE PROPERTY OF CENTRAL MAINE POWER & SHOULD BE RETURNED TO THE OFFICE OF THE ATTORNEY GENERAL



374 Park Avenue

Portland



PORTLAND WATER DISTRICT
 225 Douglass Street
 Portland, ME 04104

Notes:

Inspector: _____ (Please Return to Thomas Whitney)

Date Inspected: _____ GPS _____ Redlined _____



Legend

- ⊙ Air Valve
- ⊙ Blow Off
- ⊙ By Pass
- ⊗ Distribution
- ⊗ Transmission
- Connection
- ⊙ Attribute Change
- ▲ Reducer
- Hydrant
- ⊗ Hydrant Control
- ⊙ Combined Service
- ⊙ Domestic Service
- ⊙ Fire Service
- Private Hydrants
- ⊙ Meter Pits
- Manhole
- CSO
- Gravity
- Force

Disclaimer: This map is suitable for preliminary study and analysis and is based on PWD record information. PWD is not liable for any damages whatsoever resulting from inaccurate data or from errors made in the location and marking of its infrastructure.



| | | |
|-----------------|------------|-------------|
| ACCOUNT NUMBER | AMOUNT DUE | AMOUNT PAID |
| 5236885-5046418 | \$159.82 | |

80052368850050464180000159824

001996 000000776



JILLIAN FACKO
374 PARK AVE APT 2F
PORTLAND ME 04102-2765



UNITIL ME
P.O. BOX 981010
BOSTON MA 02298-1010

NAME AND/OR ADDRESS CHANGES. PLEASE CHECK THIS BOX AND NOTE CHANGES ABOVE.
FOLD ALONG DOTTED LINE, DETACH AND RETURN THIS PART WITH PAYMENT



PLEASE SEE REVERSE SIDE FOR PAYMENT OPTIONS

| YOUR MONTHLY USAGE & AVERAGE DAILY TEMPERATURE (ADT) | | | | SERVICE ADDRESS | FAK | ACCOUNT NUMBER | BILL DATE DUE DATE | | | | | |
|--|-----|-----|----|------------------------------------|--------------------------------|----------------|--------------------|---------------|----------------|--------------------|-----------|-------------------|
| KWH | CCF | ADT | | METER NUMBER | METER READING PREVIOUS PRESENT | NUMBER OF DAYS | METER CONSTANT | METERED USAGE | METERED DEMAND | RATE CODE | | |
| FEB 13 | 0 | 94 | 26 | 374 PARK AVE FRONT 2, PORTLAND | | | 5236885-5046418 | | 2/13/13 | 3/11/13 | | |
| JAN 13 | 0 | 86 | 30 | H62376 | 1139 | 1233 | 33 | 94.00 CCF | | R2 | | |
| DEC 12 | 0 | 72 | 37 | LAST BILL AMOUNT | | | | | | | | |
| NOV 12 | 0 | 37 | 49 | PAYMENTS THROUGH 2/08/13 THANK YOU | | | | | | | 147.53 | |
| OCT 12 | 0 | 0 | 0 | BALANCE FORWARD | | | | | | | -147.53 | |
| SEP 12 | 0 | 0 | 0 | CURRENT CHARGES GAS SERVICE | | | | | | | | \$.00 |
| AUG 12 | 0 | 0 | 0 | METERED USAGE | | | | | | | | |
| JUL 12 | 0 | 0 | 0 | DELIVERY CHARGES | | | | | | | | |
| JUN 12 | 0 | 0 | 0 | CUSTOMER CHARGE | | | | | | | | |
| MAY 12 | 0 | 0 | 0 | DISTRIBUTION CHARGE FIRST | | | | | | | 40.00 CCF | x \$.60940 24.38 |
| APR 12 | 0 | 0 | 0 | DISTRIBUTION CHARGE NEXT | | | | | | | 54.00 CCF | x \$.42900 23.16 |
| MAR 12 | 0 | 0 | 0 | ERA | | | | | | | 94.00 CCF | x \$.01010 .95 |
| FEB 12 | 0 | 0 | 0 | ERC | | | | | | | 94.00 CCF | x \$.00420 .39 |
| TOTAL CURRENT GA CHARGES | | | | | | | | | | \$57.03 | | |
| CURRENT CHARGES GAS SUPPLIER SVC | | | | | | | | | | | | |
| GAS SUPPLY CHARGES AT COST | | | | | | | | | | | | |
| COST OF GAS | | | | | | | | | | | | |
| TOTAL CURRENT GS CHARGES | | | | | | | | | 94.00 CCF | x \$1.09350 102.79 | | |
| TOTAL AMOUNT DUE | | | | | | | | | | \$159.82 | | |

APPROXIMATE NEXT METER READING:
3/13/13

Have you heard about the Unitil Scholarship Fund? Learn all about it and download an application here:
www.unitil.com/scholarship

Lights out? Phones on! Make sure we have your updated phone number & that it ties to your account. If we don't have it - visit
www.unitil.com/sharemynumber or call us.

Unitil offers a Low-income Discount Program to all eligible customers. The program is available to all income eligible heating and non-heating customers identified by the Maine State Housing Authority as income eligible for LIHEAP funds and will provide for a 30% discount of the total billed charges. For additional information, contact our Customer Service Center.

TO AVOID INTEREST CHARGES OF .8920% PER MONTH, EFFECTIVE 1/01/11
PAYMENT MUST BE RECEIVED BY 3 PM ON 3/11/13.

| | | |
|---|-----------------------------|----------------|
| QUESTIONS ABOUT YOUR BILL? | | |
| REMIT PAYMENT TO: UNITIL P.O. Box 981010 Boston, MA 02298-1010 | TELEPHONE 1-866-933-3821 | |
| | | WWW.UNITIL.COM |



Manage My Account

Energy for Residents

Energy Efficiency

Our Community

Outage Center

- My Account Homepage
- Billing and Payment History
- Natural Gas Usage
- Forms
 - Start Service
 - Stop Service
 - Change Your Address
 - Direct Debit Enrollment
 - Paper Bill Request
 - Budget Billing
 - Customer Information List

My Account Home / Billing History

Your billing/payment history is based upon the account number and service address shown below. This information is current as of 2/14/2013. Payments received after that date will not be included in your billing/payment history.

Account



New Payment Options Available - Pay your bill electronically from your checking account, Visa or MasterCard over our secure website or over the phone!

Account Information

TIM LY
Account Number: 5033481-5020392
Current Balance: \$0.00

Note: The current balance above does not apply to Budget Billing Customers, where the balance is a pre-established budget payment.

Service Address
372 PARK AVE #1
PORTLAND, ME 04102-2785

Billing Address
212 SAINT JOHN ST
PORTLAND, ME 04102-3041

| | Date | Description | Bill Days | Bill Due | Amount |
|---------|------------|-------------|-----------|------------|----------|
| | 01/25/2013 | PAYMENT | | | \$137.29 |
| Details | 01/08/2013 | BILL | 27 | 02/07/2013 | \$139.13 |
| | 12/20/2012 | PAYMENT | | | \$93.27 |
| Details | 12/11/2012 | BILL | 30 | 01/07/2013 | \$38.62 |
| Details | 11/09/2012 | BILL | 33 | 12/04/2012 | \$51.66 |

If you have any questions, please call our Customer Service Center at one of the toll-free numbers below. Our normal business hours are 7:00 AM to 9:00 PM Monday through Friday, and 8:00 AM to 8:00 PM on Saturday. Our automated services are available 24 hours a day, 7 days a week for your convenience.

Massachusetts gas and electric customers: 888-301-7700
New Hampshire electric customers: 800-852-3339 (Capital area) or 600-582-7276 (Seacoast area)
New Hampshire gas customers: 866-933-3820
Maine: 866-933-3821



- My Account Homepage
- Billing and Payment History
- Natural Gas Usage
- Forms
 - Start Service
 - Stop Service
 - Change Your Address
 - Direct Debit Enrollment
 - Paper Bill Request
 - Budget Billing
 - Customer Information List

My Account Home / Billing History

Your billing/payment history is based upon the account number and service address shown below. This information is current as of 2/14/2013. Payments received after that date will not be included in your billing/payment history.

Account 5033481-5071366



New Payment Options Available - Pay your bill electronically from your checking account, Visa or MasterCard over our secure website or over the phone!

Account Information

TIM LY
Account Number: 5033481-5071366
Current Balance: (\$65.99)

Note: The current balance above does not apply to Budget Billing Customers, where the balance is a pre-established budget payment.

Service Address
372 PARK AVE #2
PORTLAND, ME 04102-2765

Billing Address
212 SAINT JOHN ST
PORTLAND, ME 04102-3041

| | Date | Description | Bill Days | Bill Due | Amount |
|---------|------------|-------------|-----------|------------|----------|
| Details | 02/13/2013 | BILL | 33 | 03/11/2013 | \$73.95 |
| | 01/28/2013 | PAYMENT | | | \$139.84 |
| | 01/25/2013 | PAYMENT | | | \$139.84 |
| Details | 01/11/2013 | BILL | 33 | 02/05/2013 | \$139.94 |
| | 12/20/2012 | PAYMENT | | | \$70.42 |
| Details | 12/11/2012 | BILL | 30 | 01/07/2013 | \$26.66 |
| Details | 11/09/2012 | BILL | 33 | 12/04/2012 | \$43.76 |

If you have any questions, please call our Customer Service Center at one of the toll-free numbers below. Our normal business hours are 7:00 AM to 9:00 PM Monday through Friday, and 8:00 AM to 8:00 PM on Saturday. Our automated services are available 24 hours a day, 7 days a week for your convenience.

Massachusetts gas and electric customers: 888-301-7700
New Hampshire electric customers: 800-852-3339 (Capital area) or 800-582-7276 (Seacoast area)
New Hampshire gas customers: 866-933-3820
Maine: 866-933-3821

- [My Account Homepage](#)
- [Billing and Payment History](#)
- [Natural Gas Usage](#)
- Forms**
 - [Start Service](#)
 - [Stop Service](#)
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 - [Paper Bill Request](#)
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 - [Customer Information List](#)

My Account Home / Billing History

Your billing/payment history is based upon the account number and service address shown below. This information is current as of 2/14/2013. Payments received after that date will not be included in your billing/payment history.

Account



New Payment Options Available - Pay your bill electronically from your checking account, Visa or MasterCard over our secure website or over the phone!

Account Information

TIM LY
Account Number: 6033481-5020624
Current Balance: \$0.00

Note: The current balance above does not apply to Budget Billing Customers, where the balance is a pre-established budget payment.

Service Address
372 PARK AVE #3
PORTLAND, ME 04102-2765

Billing Address
212 SAINT JOHN ST
PORTLAND, ME 04102-3041

| | Date | Description | Bill Days | Bill Due | Amount |
|---------|------------|---------------|-----------|------------|---------|
| | 01/25/2013 | PAYMENT | | | \$20.31 |
| Details | 12/21/2012 | BILL | 12 | 01/21/2013 | \$30.48 |
| | 12/14/2012 | PAYMENT | | | \$48.36 |
| Details | 12/11/2012 | BILL | 30 | 01/07/2013 | \$24.45 |
| Details | 11/09/2012 | BILL | 29 | 12/04/2012 | \$20.91 |
| | 10/31/2012 | PAYMENT | | | \$26.52 |
| Details | 10/15/2012 | RE-BILL | 18 | 11/09/2012 | \$26.52 |
| | 10/12/2012 | CANCELED BILL | 22 | 11/05/2012 | \$32.40 |

If you have any questions, please call our Customer Service Center at one of the toll-free numbers below. Our normal business hours are 7:00 AM to 9:00 PM Monday through Friday, and 8:00 AM to 8:00 PM on Saturday. Our automated services are available 24 hours a day, 7 days a week for your convenience.

Massachusetts gas and electric customers: 888-301-7700
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New Hampshire gas customers: 866-933-3820
Maine: 866-933-3821

Carolyn Smart KEITH
v.
SACO RIVER CORRIDOR
COMMISSION.

Supreme Judicial Court of Maine.

Argued March 8, 1983.

Decided Aug. 8, 1983.

Property owner appealed from decision of the Saco River Corridor Commission denying her request for determination that her property was "grandfathered" and as such was not subject to restrictive provisions of Saco River Corridor Act. The Superior Court, York County, granted summary judgment to property owner, and Commission appealed. The Supreme Judicial Court, Dufresne, A.R.J., held that: (1) no legislative intent could be inferred from any of the provisions of Saco River Corridor legislation which would prohibit separate conveyance of parcels of land on which nonconforming buildings and structures have previously and continuously been factually treated separately simply because they happen to exist in common ownership at time zoning law was enacted, and (2) mere change from tenant occupancy to owner occupancy in proposed sale and division of three separate nonconforming lots and buildings thereon was not an extension, expansion or enlargement of previously existing nonconforming buildings, structures or use within meaning of restrictive provision of the Act, and thus property owner could as a matter of law convey dwellings with lots without being in violation of Act.

Judgment affirmed.

1. Zoning and Planning ⇌747

Where superior court justice, in deciding motion for summary judgment in appeal from Saco River Corridor Commission decision, did not take or receive any additional evidence, but made his decision entirely from record developed before Com-

mission, Supreme Judicial Court would review administrative record directly, same as superior court did, and determine whether Commission abused its discretion, committed an error of law, or made findings not supported by substantial evidence in the record. 38 M.R.S.A. §§ 951-968.

2. Zoning and Planning ⇌327

Proposed division and sale of three functionally divided nonconforming lots and buildings thereon continuously rented to tenants as separate lots for dwelling purposes was not prohibited by Saco River Corridor Act and property owner did not have to satisfy legal standards for variances from frontage and setback requirements of Act before she could obtain Saco River Corridor Commission's approval of proposed division and sale of lots. 38 M.R.S.A. §§ 951-968.

3. Zoning and Planning ⇌321

Policy of zoning is to gradually or eventually eliminate nonconforming uses as speedily as justice will permit; but implementation of goal must be carried out within legislative intent.

4. Zoning and Planning ⇌335

Saco River Corridor Act does not contemplate complete adherence to goal of gradually or eventually eliminating nonconforming uses, since Act expressly authorizes repair, maintenance and improvement of existing nonconforming buildings or structures and permits, without a permit from Saco River Corridor Commission, reconstruction of such buildings or structures in substantially the same location and in the same size when decreased in value less than 75% by flood, fire or other casualty. 38 M.R.S.A. § 958.

5. Zoning and Planning ⇌321

Central point to be kept in mind when dealing with nonconforming buildings or uses is that it is building or land that is "grandfathered" and not the owner.

6. Zoning and Planning ⇌323

Once a nonconforming use or building is shown to exist, neither is affected by

Cite as 464 A.2d 150 (Me. 1983)

user's title or possessory right in relation to owner of land.

7. Zoning and Planning ⇔323

Where a nonconformity legally exists, it is a vested right which adheres to the land or building itself and right is not forfeited by a purchaser who takes with knowledge of regulations which are inconsistent with existing use.

8. Zoning and Planning ⇔336

Property owner who sought determination by Saco River Corridor Commission that her property was "grandfathered" and as such was not subject to requirements of Saco River Corridor Act did not, by merely invoking Commission's power to decide whether proposed division and sale of her three nonconforming lots were permissible, thereby relinquish her rights to existing nonconforming uses. 38 M.R.S.A. §§ 951-968.

9. Zoning and Planning ⇔10

Supreme Judicial Court could not infer legislative intent from any provisions of Saco River Corridor legislation which would prohibit separate conveyance of parcels of land on which nonconforming buildings or structures have previously and continuously been factually treated separately, simply because they happened to exist in common ownership at time zoning law was enacted. 38 M.R.S.A. §§ 951-968.

10. Zoning and Planning ⇔327

Test to be used to determine whether questioned use of property fits within "grandfathered" or exempted use granted to nonconforming uses is whether use reflects nature and purpose of use prevailing when zoning legislation took effect, whether there is created a use different in quality or character, as well as in degree, from

* Carter, J., sat at oral argument and participated in the initial conference but resigned before this opinion was adopted.

1. The Saco River Corridor Act, 38 M.R.S.A. §§ 951-968, provides as follows:
§ 957-B. *Limited Residential District*

original use, or whether current use is different in kind in its effect on the neighborhood.

11. Zoning and Planning ⇔329

Mere change from tenant occupancy to owner occupancy in proposed division and sale of three nonconforming lots and buildings thereon was not an "extension, expansion or enlargement" of the previously existing nonconforming buildings, structures or use within meaning of restrictive provision of section of Saco River Corridor Act. 38 M.R.S.A. § 958.

See publication Words and Phrases for other judicial constructions and definitions.

Smith & Elliott, Roger S. Elliott (orally), Karen B. Lovell, Saco, for plaintiff.

Hugh Calkins, Dover-Foxcroft (orally), for defendant.

Before McKUSICK, C.J., GODFREY, NICHOLS, CARTER * and WATHEN, JJ., and DUFRESNE, A.R.J.

DUFRESNE, Active Retired Justice.

The defendant-appellant, Saco River Corridor Commission (the Commission), appeals from the order of the Superior Court, York County, granting summary judgment to the plaintiff-appellee, Carolyn Smart Keith, in her appeal from a Commission decision denying Keith's request for a determination by the Commission that the premises located at 520-524 Ferry Road, in the City of Saco, were grandfathered and as such were not subject to the requirements of 38 M.R.S.A. § 957-B.3.E(3) and (5), or, in the alternative, for the grant of a variance from the requirements of the Act.¹ The Superior

3. *Uses allowed by permit.* Uses within the Limited Residential District which may be allowed by permit shall include:

E. Single family residences and accessory structures meeting all of the following performance standards:

(3) The combined river frontage and setback of any building shall be not less than 500 feet;

Court found that the property in question had been "functionally divided" as separate lots by tenant occupation since before the enactment of the Act and concluded that, as such, the premises were lawful existing nonconforming uses under 38 M.R.S.A. § 958 and that the proposed shift from tenant-occupation to owner-occupation of the delineated lots did not constitute an extension, expansion or enlargement of the existing nonconforming use so as to defeat the grandfathered status of the property. The Superior Court did not reach the issue respecting Keith's entitlement *vel non* to a variance. We agree with the Superior Court's decision and affirm the judgment below.

Facts

Carolyn Smart Keith is the owner of land on the Ferry Road in Saco which she purchased in the early 1950's as one lot. From that time to the present, the structures thereon, together with appropriate curtilage, were separately occupied and used by tenants. The plot contained a duplex residence, and two detached single-family houses with garage, each dwelling being served by its own utility and sewage disposal system. The parties concede that the three dwelling houses and other structures on the land were lawful as such and in their use on March 19, 1974,² and thus, if the land remains undivided, "may continue although such use of structure does not conform to this chapter," etc. 38 M.R.S.A. § 958.

Keith proposes to divide the land into four separate lots with fixed delineated boundaries; each one of the three lots closest to the Ferry Road will have one of the dwelling-houses thereon. These three lots, she proposes to sell, while the fourth lot

situated in the rear and vacant, she would keep for herself. Situated on their separate smaller lots which Keith proposes to sell, none of the dwellings would conform to the aggregate frontage and setback requirements of the Act, nor would they ever be able to conform in the future; the vacant lot could be built on without problem.

Faced with this situation, Keith sought from the Commission a determination that her proposed division and sale of the three separate lots and buildings thereon were not subject to the restrictions of the Act on the ground that, prior to the enactment of the Act and continuously thereafter, the three lots were treated as functionally divided and used as such under separate tenanted occupancies. As alternative relief, Keith requested variances under the Act which would permit the project to go through. The Commission rejected Keith's contention that her land was exempt from the strictures of the Act and denied her relief by way of granting her the variances she was requesting. On appeal, the Superior Court reviewed the administrative record before the Commission, the pleadings and argument of counsel, which resulted in a decision in favor of the plaintiff-appellee on her contention that the strictures of the Act did not apply to her nonconforming property.

The issue raised by the Commission's appeal is, whether the mere change from tenant occupancy of the three separate lots to owner occupancy under Keith's lot division and sale proposal would be an extension, expansion or enlargement of existing buildings, structures or of nonconforming uses

(5) Where there is an accepted road or public right of way, as of March 19, 1974, within 500 feet of the normal or mean high water mark of the river with different land ownership on either side of the road or public right of way, the landowner on the far side of the road or public right of way from the river shall have an aggregate of setback from the river and frontage on the far side of the road or public right of way equal to 500 feet.

2. The Saco River Corridor, enacted in 1979, c. 459, § 1, effective September 14, 1979, was a re-enactment of previous private and special legislation which became effective originally October 3, 1973. (See P & SL 1973, c. 150, as amended by P & SL 1973, c. 208, and by PL 1977, c. 276).

prohibited by 38 M.R.S.A. § 958 except on permit from the Commission.³

Preliminary considerations

[1, 2] Initially, we note that the Superior Court justice, in deciding the motion for summary judgment, did not take or receive any additional evidence, but made his decision entirely from the record developed before the Commission. Under such circumstances, we review the administrative record directly, the same as the Superior Court did, and determine whether the Commission abused its discretion, committed an error of law, or made findings not supported by substantial evidence in the record. *Driscoll v. Gheewalla*, 441 A.2d 1023, 1026 (Me.1982). See *Thornton v. Lothridge*, 447 A.2d 473 (Me.1982). Here, we say that the Commission committed error of law when it ruled against the plaintiff-appellee's contention. The proposed division and sale of the three functionally divided nonconforming lots and buildings thereon continuously rented to tenants as separate lots for dwelling purposes was not prohibited by the Act and the plaintiff-appellee did not have to satisfy the legal standards for variances from the frontage and setback requirements of the

Act before she could obtain Commission approval of the proposed division and sale of the lots. The Commission ruling to the contrary was based largely on the stated reason that

"Division of the parcel as proposed would eliminate any future possibilities for conformance to the requirements of the Act."

Having ruled that it had authority to approve or disapprove Keith's project *only* on the basis of variances legally allowable from the setback and frontage requirements of the Act, the Commission denied the relief sought by the plaintiff-appellee. We do not reach the variance issue on this appeal.

We further note that the Saco River Corridor legislation was expressly stated to be a comprehensive chart regulating the use of land and water in the area of the so-called Corridor.⁴ Although one of the purposes of the Act is said to be—to prevent overcrowding—nowhere in the Act is the Commission given express authority to regulate subdivisions of land as such. As a matter of fact, the Act contemplates full compliance with

3. 38 M.R.S.A. § 958 provides in pertinent part as follows:

§ 958. *Existing uses*

Any existing building or structure or use of building or structure lawful March 19, 1974, or of any subsequent amendment of this chapter or of any regulation adopted hereunder, may continue although such use of structure does not conform to this chapter or the regulations adopted hereunder. Any existing building or structure may be repaired, maintained and improved, *but an existing building, structure or nonconforming use may be extended, expanded or enlarged only by permit from the commission.* A nonconforming use, other than a single family residential use, which is discontinued for any reason for a period of one year shall be deemed abandoned and may not be resumed thereafter except on compliance with the requirements of this chapter.

If, as a result of flood, fire or other casualty, the value of a nonconforming building or structure is reduced by more than 75%, it may be rebuilt and the nonconforming use housed therein may be continued only by permit from the commission. If a nonconforming building or structure is decreased in value less than 75% by flood, fire or other casualty, it may be

Me.Rep. 459-466 A.2d-13

rebuilt in substantially the same location and in the same size without a permit from the commission, even though it would otherwise violate the requirements of this chapter, provided that the rebuilding shall be commenced within 12 months of the casualty. (Emphasis supplied).

4. The purposes as listed in 38 M.R.S.A. § 951 are enumerated as follows:

In view of the dangers of intensive and poorly planned development, it is the purpose of this chapter to preserve existing water quality, prevent the diminution of water supplies, to control erosion, to protect fish and wildlife populations, to prevent undue extremes of flood and drought, to limit the loss of life and damage to property from periodic floods; to preserve the scenic, rural and unspoiled character of the lands adjacent to these rivers; to prevent obstructions to navigation; to prevent overcrowding; to avoid the mixture of incompatible uses; to protect those areas of exceptional scenic, historic, archaeological, scientific and educational importance; and to protect the public health, safety and general welfare by establishing the Saco River Corridor and by regulating the use of land and water within this area. (Emphasis added).

all federal, state and municipal regulations. See 88 M.R.S.A. §§ 959 and 961. The parties agree that the instant proposed division was not subject to control by the Board of Environmental Protection which is given authority over large subdivisions of land in excess of 20 acres. Also, the Planning Board of the City of Saco has determined that Keith's proposed division of land is exempt from subdivision review under the provisions of 80 M.R.S.A. § 4956.

[3, 4] True, as relied on by the Commission, the policy of zoning is to gradually or eventually eliminate nonconforming uses as speedily as justice will permit. *Inhabitants of Town of Windham v. Sprague*, 219 A.2d 548, 552-53 (Me.1966); *Vermont Brick v. Village of Essex Junction*, 185 Vt. 481, 380 A.2d 67, 69 (1977); *Taylor v. Metropolitan Development Commission*, 436 N.E.2d 1157, 1159 (Ind.App.1982). But the implementation of this goal must be carried out within legislative intentment. Here, the Act does not contemplate complete adherence to such objective, since the Act expressly authorizes the repair, maintenance and improvement of existing nonconforming buildings or structures and permits the reconstruction of such buildings or structures in substantially the same location and in the same size when decreased in value less than 75% by flood, fire or other casualty, and this, without a permit from the Commission.

[5-7] Also, the central point to be kept in mind when dealing with nonconforming buildings or uses is, that it is the building or the land that is "grandfathered" and not the owner. *Stewart v. Inhabitants of Town of Durham*, 451 A.2d 308, 310 (Me.1982); *Appeal of E & G Auto Parts*, 22 Pa.Cmwlt. 171, 348 A.2d 438, 440 (1975); *State ex rel. Keeven v. City of Hazelwood*, 585 S.W.2d 557 (Mo.App.1979). Once a nonconforming use or building is shown to exist, neither is affected by the user's title or possessory rights in relation to the owner of the land. *Your Home, Inc. v. City of Portland*, 432 A.2d 1250, 1260 (Me.1981); *County of Fayette v. Cossell*, 60 Pa.Cmwlt. 202, 430 A.2d 1226, 1229 (1981); *Graham Court As-*

sociates v. Town Council, 53 N.C.App. 543, 281 S.E.2d 418, 420 (1981). Where a nonconformity legally exists, it is a vested right which adheres to the land or building itself and the right is not forfeited by a purchaser who takes with knowledge of the regulations which are inconsistent with the existing use. *Johnny Cake, Inc. v. Zoning Board of Appeals*, 180 Conn. 296, 429 A.2d 883, 885 (1980); *Petruzzi v. Zoning Board of Appeals*, 176 Conn. 479, 408 A.2d 243, 246 (1979); *People v. Smith*, 38 Ill.App.3d 798, 349 N.E.2d 91, 92 (1976).

[8] The plaintiff-appellee acted reasonably in seeking Commission approval of her proposed plan to divide and sell her property. In so doing, she sought an official determination of the legality of her proposal from the agency whose duty it is to enforce the Act. She merely invoked the Commission's power to decide whether the proposed division and sale of the three nonconforming lots were permissible. She thereby did not relinquish her rights to the existing nonconforming uses. *Abbadessa v. Board of Zoning Appeals*, 134 Conn. 23, 54 A.2d 675, 678 (1947). See also *Watts v. City of Helena*, 151 Mont. 138, 439 P.2d 767, 769 (1968). The plaintiff-appellee's initial application to the Commission followed the directive of this Court in *State ex rel. Brennan v. R.D. Realty Corporation*, 349 A.2d 201, 206 (Me.1975), which suggested a determination first by the administrative agency, whether a project is subject to regulation by the pertinent authority or exempt therefrom by the "grandfather clause."

Merits

[9] The only real difference in the change contemplated by the division and sale of the three reference lots is a change in ownership. Without clear language to the contrary, we cannot infer a legislative intentment from any of the provisions of the Saco River Corridor legislation which would prohibit the separate conveyance of parcels of land on which nonconforming buildings or structures have previously and continuously been factually treated sepa-

rately, as in the instant case, simply because they happened to exist in common ownership at the time the zoning law was enacted. See *LaPointe v. City of Saco*, 419 A.2d 1013, 1016 (Me.1980). This is consistent with our holding in *Wickenden v. Luboshutz*, 401 A.2d 995 (Me.1979). This case is distinguishable from *Barnard v. Zoning Board of Appeals of Town of Yarmouth*, 318 A.2d 741 (Me.1974), where the alleged functional division of a large lot into two separate lots was found to exist only in the owner's subjective plan to erect a second dwelling on the land in order to maximize the potential return of her land holdings. In the instant case, the three nonconforming buildings preexisted the legislation.

Section 958 of title 38 provides that an existing [nonconforming] building, structure or nonconforming use may be extended, expanded or enlarged *only* by permit from the commission. The issue is whether Keith's planned separate conveyances of her three separate nonconforming dwellings with suitable curtilages of land as continuously functionally used by tenants prior to and since the enactment of the Saco River Corridor legislation, without resulting compliance with aggregate of setback and frontage requirements of 38 M.R.S.A. § 957-B.3.E.5, constitutes an unlawful extension, expansion or enlargement of a previously existing nonconforming use. We are aware that, in construing legislation dealing with nonconforming uses recognized as a valid means of preserving particular uses of property existing prior to the enactment of a zoning law, the accepted legal standard has been to strictly construe zoning provisions relating to the extension, expansion or enlargement of nonconforming buildings or uses. See *Abbot v. Commonwealth*, 56 Pa.Cmwlth. 482, 425 A.2d 856, 858 (1981). But the plaintiff's proposed conveyance of three separate lots with their respective nonconforming buildings thereon in the instant case does not come into conflict with the stated principle.

[10] Indeed, the test to be used to determine whether the questioned use of proper-

ty fits within the "grandfathered" or exempted use granted to nonconforming uses is: (1) whether the use reflects the "nature and purpose" of the use prevailing when the zoning legislation took effect; (2) whether there is created a use different in quality or character, as well as in degree, from the original use, or (3) whether the current use is different in kind in its effect on the neighborhood. *Town of Bridgewater v. Chuckran*, 351 Mass. 20, 217 N.E.2d 726, 727 (1966). Examples of unlawful extensions, expansions or enlargements of nonconforming uses will be seen in cases such as *Appeal of Veltri*, 355 Pa. 135, 49 A.2d 369 (1946); *Fulford v. Board of Zoning Adjustment*, 256 Ala. 336, 54 So.2d 580 (1951); *Salerni v. Scheuy*, 140 Conn. 566, 102 A.2d 523, 530-31 (1954); *Council of the Town of Los Gatos v. State Board of Equalization*, 141 Cal.App.2d 344, 296 P.2d 909 (1956); *Jasper v. Michael A. Dolan, Inc.*, 355 Mass. 17, 242 N.E.2d 540 (1968); *New Castle County v. Harvey*, 315 A.2d 616 (Del.Ch., 1974); *Hooper v. Delaware Alcoholic Beverage Control Commission*, 409 A.2d 1046 (Del.Supr., 1979). But see *Schneider v. Board of Appeals*, 402 Ill. 536, 84 N.E.2d 428 (1949); *Keller v. City of Bellingham*, 92 Wash.2d 726, 600 P.2d 1276 (1979).

[11] The mere change from tenant occupancy to owner occupancy in the instant case is not an extension, expansion or enlargement of the previously existing nonconforming buildings, structures or use within the meaning of the restrictive provision of section 958. *Beers v. Board of Adjustment of Township of Wayne*, 75 N.J.Super. 305, 183 A.2d 130 (1962); *Town of Seabrook v. Tra-Sea Corporation*, 119 N.H. 937, 410 A.2d 240, 244 (1979); *Town of Coventry v. Glickman*, 429 A.2d 440, 442 (R.I.1981). See also *Graham Court Associates v. Town Council*, 53 N.C.App. 543, 281 S.E.2d 418 (1981) (conversion to condominium style of ownership). The case of *Isabelle v. Town of Newbury*, 114 N.H. 399, 321 A.2d 570 (1974), is distinguishable from the instant case, since in *Isabelle* the town had specific subdivision regulations properly

enacted under enabling legislation, whereas the Saco River Corridor Act does not purport to regulate land subdivisions. The post-sale fragmented title in no way would modify the nature or purpose of the preexisting nonconformity of the respective buildings on the land, nor would it reflect any alteration in the land use itself prevailing at the time the Saco River Corridor Act took effect, nor would it under any view of the factual situation create a new use different in quality, character or degree, from the original use; no change in intensity of use would result. Had the Keith holdings as functionally divided been owned by three different individuals at the time of the Act and each of them desired to convey his separate lot, there would be no zoning impediment to the sale. We cannot see wherein a different result should obtain simply because all the already functionally divided lots are owned by only one person. See *Goldstein v. Lincoln Park Planning Board*, 52 N.J.Super. 44, 144 A.2d 724, 727 (1958). See also *Appeal of E & G Auto Parts*, 22 Pa.Cmwlth. 171, 348 A.2d 438, 440 (1975).

For the reasons stated, we conclude and hold that the plaintiff-appellee may as a matter of law convey the reference dwellings with the proposed suitable delineated lots without being in violation of the Saco River Corridor Act and do affirm the judgment of the Superior Court, to the extent that it declares the rights of the plaintiff-appellee as the following entry indicates:

Judgment affirmed.

The proposed change of occupancy from tenant-occupation to owner-occupation is not a change of use, nor does it constitute an extension, expansion or enlargement of the existing lawful nonconforming use in violation of 38 M.R.S.A. § 957-B.3.E(3) and (5) or § 958.

All concurring.



The HANOVER INSURANCE
COMPANY

v.

Clinton R. HAYWARD, Jr.

Supreme Judicial Court of Maine.

Argued May 9, 1988.

Decided Aug. 8, 1988.

Appeal was taken from a judgment of the Superior Court, Washington County, denying insurer punitive damages in action to recover insurance it paid defendant convicted of arson relative to fire for which he was paid insurance. The Supreme Judicial Court, Nichols, J., held that: (1) trial court did not abuse its discretion in refusing to award insurer punitive damages in light of defendant's lack of assets and deterrent effect served by defendant's three-year sentence for arson, and (2) for purposes of civil action, prior criminal action for arson was conclusive proof of all facts necessarily adjudicated in earlier criminal conviction.

Appeal and cross appeal denied; judgment affirmed.

1. Damages ⇐91(1)

Award of punitive damages, when available, is within sound discretion of fact finder after weighing all relevant aggravating and mitigating factors; aggravating factors may include whether defendant's conduct was intentional, wanton, malicious, reckless or grossly negligent, while mitigating factors may include defendant's good faith, defendant's lack of assets to satisfy award of punitive damages, or any other factor indicating that award of punitive damages would not serve deterrent function beneficial to society.

2. Damages ⇐181

Fact finder may consider defendant's wealth in making award of punitive damages.

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER AND ORIGINAL DOCUMENT SECURITY SCREEN ON BACK WITH PADLOCK SECURITY ICON.

JEWELL & BOUTIN, P.A.
ATTORNEYS AT LAW
477 CONGRESS STREET, SUITE 1104
PORTLAND, MAINE 04101-3453
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Portland, ME 04112-0544

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included.
Details on back.

MEMO Tim Ly, Hill Street Apartments

[Handwritten Signature]

AUTHORIZED SIGNATURE

MP

⑈014901⑈ ⑆211274450⑆ 7999030205⑈

CITY OF PORTLAND
DEPARTMENT OF PLANNING & URBAN DEVELOPMENT

389 Congress Street
 Portland, Maine 04101

RECEIPT OF FEES

| | |
|-----------------------------------|---|
| Application No: 0000-1643 | Applicant: HILL STREET APARTMENTS LL |
| Project Name: 374 PARK AVE | Location: 374 PARK AVE |
| CBL: 067 C003001 | Application Type: Determination Letter |
| Invoice Date: 02/26/2013 | |

| | | | | | | | | | |
|-------------------------|---|-------------------------|---|---------------------|---|------------------------|---|------------------|-------------------------|
| Previous Balance | - | Payment Received | + | Current Fees | - | Current Payment | = | Total Due | Payment Due Date |
| \$0.00 | | \$0.00 | | \$150.00 | | \$150.00 | | \$0.00 | On Receipt |

Previous Balance **\$0.00**

| Fee Description | Qty | Fee/Deposit Charge |
|-----------------------|--------------------------------|--------------------------|
| Zoning Determinations | 1 | \$150.00 |
| | | <u>\$150.00</u> |
| | Total Current Fees: | + \$150.00 |
| | Total Current Payments: | - \$150.00 |
| | Amount Due Now: | \$0.00 |

CBL 067 C003001
Bill to: HILL STREET APARTMENTS LLC
 374 PARK AVE
 PORTLAND, ME 04102

Application No: 0000-1643
Invoice Date: 02/26/2013
Invoice No: 40230
Total Amt Due: \$0.00
Payment Amount: \$150.00

Make checks payable to the *City of Portland*, ATTN: Inspections, 3rd Floor, 389 Congress Street, Portland, ME 04101.



CITY OF PORTLAND, MAINE

Department of Building Inspections

Original Receipt

February 22 20 13

Received from Jewell & Babin

Location of Work 372-374 Park Ave

Cost of Construction \$ _____ Building Fee: _____

Permit Fee \$ _____ Site Fee: _____

Certificate of Occupancy Fee: _____

Total: _____

Building (IL) ___ Plumbing (I5) ___ Electrical (I2) ___ Site Plan (U2) ___

Other Long Determinations

CBL: 67-C-003

Check #: 14501

Total Collected \$ 150.00

**No work is to be started until permit issued.
Please keep original receipt for your records.**

Taken by: ABN

WHITE - Applicant's Copy

YELLOW - Office Copy

PINK - Permit Copy

Assessor's Office | 359 Congress Street | Portland, Maine 04101 | Room 115 | (207) 874-8466

City Home Departments City Council E-Services Calendar Jobs

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Current Owner Information:

Services

Applications

Doing Business

Haps

Tax Relief

Tax Roll

Q & A

CBL 067 C003001
Land Use Type FIVE TO TEN FAMILY
Property Location 374 PARK AVE
Owner Information HILL STREET APARTMENTS LLC
 374 PARK AVE
 PORTLAND ME 04102
Book and Page 29872/076
Legal Description 67-C-3
 PARK AVE 372-374

Acres 0.1715

Current Assessed Valuation:

TAX ACCT NO. 10972 **OWNER OF RECORD AS OF APRIL 2012**
 BANK OF AMERICA
LAND VALUE \$70,000.00 4828 LOOP CENTRAL DR
BUILDING VALUE \$87,700.00 HOUSTON TX 77081
NET TAXABLE - REAL ESTATE \$157,700.00
TAX AMOUNT \$2,967.92

Any information concerning tax payments should be directed to the Treasury office at 874-8490 or [e-mailed](#).

browse city services a-z

browse facts and links a-z



Best Viewed at 800x600, with Internet Explorer

Building Information:

Building 1

Year Built 1920
Style/Structure Type APARTMENT - GARDEN
Units 2
Square Feet 2112

[View Sketch](#) [View Map](#) [View Picture](#)



Building 2

Year Built 1920
Style/Structure Type APARTMENT - GARDEN
Units 3
Square Feet 3952

[View Sketch](#) [View Map](#) [View Picture](#)



Exterior/Interior Information:

Building 1

Levels B1/B1
Size 704
Use UNFINISHED RES BSMT
Height 6
Heating NONE
A/C NONE

Building 1

Levels 01/01
Size 704
Use APARTMENT
Height 8
Walls FRAME
Heating ELECTRIC
A/C NONE

CITY OF PORTLAND, MAINE
MEMORANDUM

DATE: 10/20/97
CBL: 67-C-3

67-C-003

TO: Marge Schmuckal, Zoning Administrator
FROM: Community Development Office
SUBJECT: Verification of Legal Number of Units

We presently have an application for Loan/Grant for rehabilitation at:

374 Park Ave

(ADDRESS)

The Owner is Howard Williams

(NAME)

The given number of units of the building is 5

3 units
2 units
5 units
Rear Bldg

Please verify whether the number of units given are legal under the Land Use Code.

YES the number of units are legal

NO the number of units are not presently legal.

The present number of units is _____.

Property is a single family dwelling

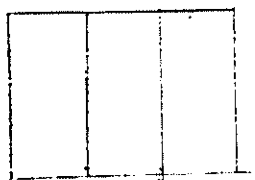
Marge Schmuckal
SIGNED BY VERIFIER

Zoning Admin.
TITLE

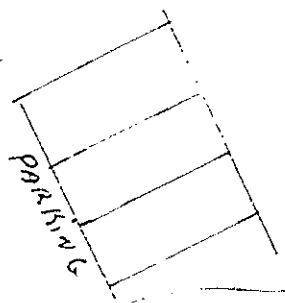
10/20/97

~~52'~~ 60'

3 UNIT



PARKING

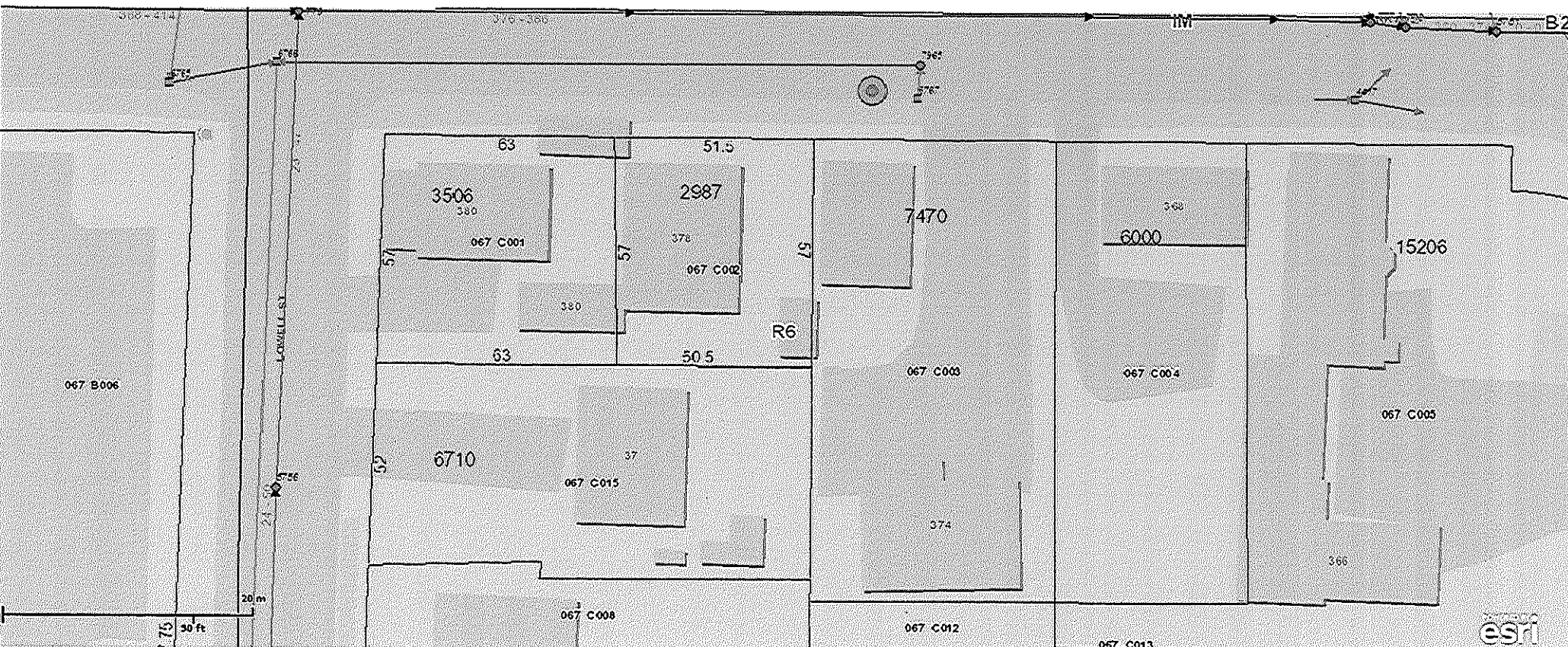


PARKING

125'

FROM 1
TO
2 FAMILY

372-374 Park Ave



Copyright 2011 Esri. All rights reserved. Tue Mar 5 2013 04:12:24 PM.



RECORD OF BUILDINGS

GRADE DENOTES QUALITY OF CONSTRUCTION: A—EXCELLENT; B—GOOD; C—AVERAGE; D—CHEAP; E—VERY CHEAP

YEAR 19

YEAR 19

62-427 - 1/4 W Tank

CONSTRUCTION

| FOUNDATION | | FLOOR CONST. | | | PLUMBING | |
|--------------------|---|---------------------|---|-------|--------------------|--------|
| CONCRETE | | WOOD JOIST | | | BATHROOM | |
| CONCRETE BLOCK | | STEEL JOIST | | | TOILET ROOM | |
| BRICK OR STONE | ✓ | MILL TYPE | | | WATER CLOSET | |
| PIERS | | REIN. CONCRETE | | | LAVATORY | |
| CELLAR AREA FULL | ✓ | FLOOR FINISH | | | KITCHEN SINK | ✓ |
| 1/4 1/2 3/4 | | | B | 1 2 3 | STD. WAT. HEAT | ✓ |
| NO. CELLAR | | CEMENT | | | AUTO. WAT. HEAT | |
| EXTERIOR WALLS | | EARTH | ✓ | | ELECT. WAT. SYST. | |
| CLAPBOARDS | | PINE | | ✓ | LAUNDRY TUBS | |
| WIDE SIDING | | HARDWOOD | | | NO PLUMBING | |
| DROP SIDING | | TERRAZZO | | | | |
| NO SHEATHING | | TILE | | | | |
| WOOD SHINGLES | | | | | TILING | |
| ASBES. SHINGLES | | | | | BATH FL. & WCOT. | |
| STUCCO ON FRAME | | ATTIC FLR. & STAIRS | ✓ | | TOILET FL. & WCOT. | |
| STUCCO ON TILE | | INTERIOR FINISH | | | LIGHTING | |
| BRICK VENEER | | | B | 1 2 3 | ELECTRIC | ✓ |
| BRICK ON TILE | | PINE | | ✓ | NO LIGHTING | |
| SOLID BRICK | | HARDWOOD | | | NO. OF ROOMS | |
| STONE VENEER | | PLASTER | | ✓ | BSMT. | 2ND 2 |
| CONC. OR CIND. BL. | | UNFINISHED | ✓ | | 1ST 4 | 3RD |
| Asph shingles | ✓ | METAL CLG. | | | OCCUPANCY | |
| TERRA COTTA | | | | | SINGLE FAMILY | ✓ |
| VITROLITE | | RECREAT. ROOM | | | TWO FAMILY | |
| PLATE GLASS | | FINISHED ATTIC | ✓ | | APARTMENT | |
| INSULATION | | FIREPLACE | | | STORE | |
| WEATHERSTRIP | | HEATING | | | THEATRE | |
| ROOFING | | PIPELESS FURNACE | | | HOTEL | |
| ASPH. SHINGLES | ✓ | HOT AIR FURNACE | | | OFFICES | |
| WOOD SHINGLES | | FORCED AIR FURN. | | | WAREHOUSE | |
| ASBES. SHINGLES | | STEAM | | | COMM. GARAGE | |
| SLATE TILE | | HOT WAT. OR VAPOR | | | GAS STATION | |
| METAL | | NO HEATING | | ✓ | ECONOMIC CLASS | |
| COMPOSITION | | | | | OVER BUILT | |
| ROLL ROOFING | | GAS BURNER | | | UNDER BUILT | |
| INSULATION | | OIL BURNER | | | DT. 7/7/50 | AR. 7 |
| | | STOKER | | | LD. 4 | PD. CS |
| | | | | | MS. | CK. 32 |

COMPUTATIONS

| UNIT | 1951 | | |
|--------------|---------|--|--|
| 704 S. F. | 2110 | | |
| S. F. | | | |
| ADDITIONS | + 320 | | |
| BASEMENT | Fl. 710 | | |
| WALLS | | | |
| ROOF | | | |
| FLOORS | | | |
| ATTIC | | | |
| FINISH ATTIC | + 250 | | |
| FIREPLACE | | | |
| HEATING | - 190 | | |
| PLUMBING | | | |
| TILING | | | |
| TOTAL | 2380 | | |
| FACT. + 10 | 210 | | |
| REP. VAL. | 2590 | | |

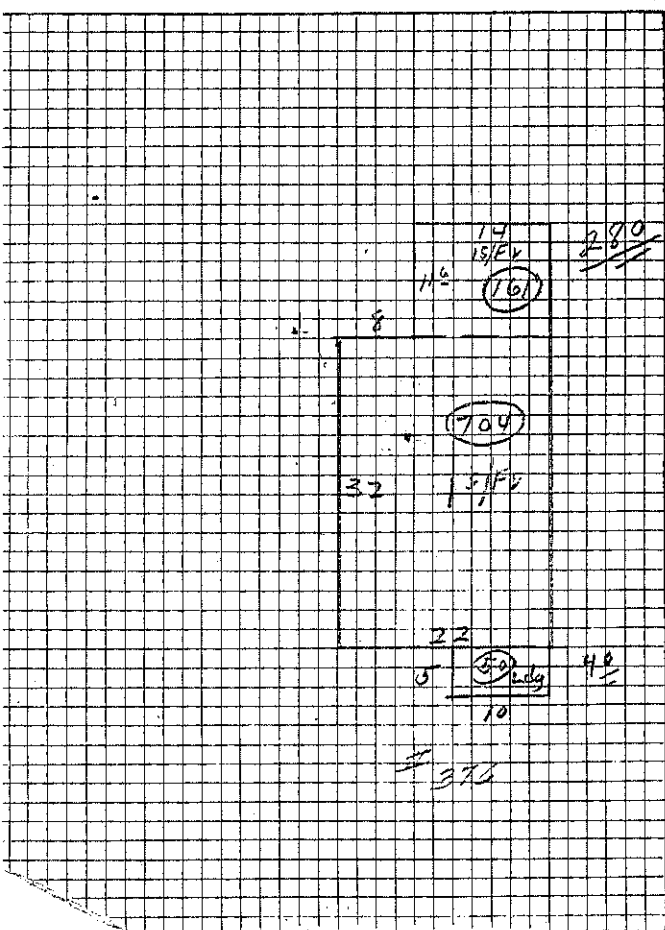
SUMMARY OF BUILDINGS

Econ

| OCC'Y | TYPE | GR. | AGE | REMOD. | COND. | REP. VAL. | P. D. | PHY. VAL. | F. D. | SOUND VAL. | TAX VAL. | YR. |
|-------|------------|-----|-----|--------|-------|-----------|-------|-----------|-------|------------|----------|-----|
| Dug | A 1 3/4 R. | D | 100 | | F | 2590 | 55% | 1160 | 20% | 930 | 550 | 57 |
| | B | | | | | | | | | | | |
| | C | | | | | | | | | 3180 | 1900 | 57 |
| | D | | | | | | | | | 3680 | 2025 | |
| | E | | | | | | | | | | | |
| | F | | | | | | | | | | | |
| | G | | | | | | | | | | | |

CARD 2

| YEAR | 1951 | 1951 TOTAL BLDGS. | |
|----------|-------|-------------------|-----------|
| TAX VAL. | 5775 | 19 | 24 - 7775 |
| OLD VAL. | 4675 | 19 | |
| CHANGE | + 325 | 19 | |



CITY OF PORTLAND, MAINE
MEMORANDUM

To Tom Adolf
874-8497
From
Tom Jewell

TO: Patric Santerre, Chairperson, Board of Appeals
FROM: Charles A. Lane, Associate Corporation Counsel
DATE: June 1, 2004
RE: 13-19 Noyes Street -- Functional Division

City Mgr's Office
7pm Km 209

One of the matters before the Board on Thursday evening, June 3, is Joel Richard's request for approval of a functional division of his property on Noyes Street. The Board has addressed this same issue a number of times in the past, and it will recall that the leading Maine case is Keith v. Saco River Corridor Commission, 464 A.2d 150 (Me. 1983).

The Keith court applied three criteria to enable it to reach a point where it could apply a three part test.

Criteria

The criteria are described at 464 A.2d 152:

- (i) the structures were in existence prior to the zoning ordinance; *yes*
- (ii) from that time to the present they were separately used and occupied; and
- (iii) each dwelling is served by its own utilities and sewerage disposal systems. *yes*

Test

The test which the Court applied to determine whether the property in Keith was grandfathered appears at 464 A.2d 155:

- (i) whether the use reflects the "nature and purpose" of the use prevailing when the zoning legislation took effect; *ours 1957*
- (ii) whether there is created a use different in quality or character, as well as in degree, from the original use; or
- (iii) whether the current use is different in kind in its effect on the neighborhood (citation omitted).

The CRITERIA were rewritten to make them more accessible to the Board. The TEST is a direct quotation from the opinion.

Copies of Keith will be available at the meeting.

Charles A. Lane
Associate Corporation Counsel

CAL:sea

- Cc: Catherine Alexander, Esq.
- Joe Lewis
- Nan Sawyer
- Derek R. Gramble, Esq.
- William Hall
- Peter Thornton

4

APPLICATION TO APPROVE FUNCTIONAL DIVISION OF LAND

DECISION

Name and address of applicant: _____

Location of property under appeal: 372 - 374 Park Ave - 67-03

Appearances. _____

Names and addresses of witnesses (proponents, opponents and others): Tom Jewell

Exhibits. 2 Bldgs - 3 DU. in rear (374) (called)
2 DU in front Bldgs. (372) (called)

KEITH CRITERIA

Keith Preliminary Criteria:

- 1. The structures were in existence prior to adoption of the Zoning Ordinance.
YES _____ NO _____
- 2. From that time to the present, they have been separately used and occupied.
YES _____ NO _____
- 3. Each structure is served by its own utilities and sewage disposal systems.
YES _____ NO _____

Keith Test:

- 1. The use reflects the "nature and purpose" of the use prevailing when the zoning legislation

See Keith v. Saco River Corridor Commission, 464 A.2d 150 (Me. 1983).

took effect.

YES _____ NO _____

2. The use created will not be different in quality or character, as well as in degree, from the original use.

YES _____ NO _____

3. The current use is not different in kind, in its effect on the neighborhood, from the original use.

YES _____ NO _____

Specific Conditions: _____

Reasons: _____

Date of Public Hearing: _____

Motion: _____

(including conditions and findings of fact) _____

Votes in favor

Votes Opposed

