

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

Gordon Smith-chair  
Sara Moppin-secretary  
William Getz  
Mark Bower  
Eric Larsson

May 3, 2013

Tom Jewell  
Jewell & Bulgar, PA  
477 Congress Street, Suite 1104  
Portland, ME 04101

RE: 374 Park Avenue  
CBL: 067 C003  
ZONE: R-6

Dear Mr. Jewell,

At the May 3, 2013 meeting, the Zoning Board of Appeals voted 4-0 to grant your Interpretation Appeal to overturn the Zoning Administrator's determination that the lot could not be divided. I am enclosing a copy of the Board's decision.


You will also find an invoice for the fees that are still owed for the processing fee, the legal ad and the notices for the appeal. Please submit your payment on receipt of this invoice.

Now that the Interpretation Appeal has been granted, the lot can be split into two separate properties. The new deeds reflecting this split should be recorded at the Cumberland County Registry of Deeds.

Appeals from decisions of the Board may be filed in Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

Should you have any questions please feel free to contact me at 207-874-8709.

Yours truly,

  
Ann B. Machado  
Zoning Specialist

Cc. file

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

### ZONING BOARD APPEAL DECISION

To: City Clerk  
From: Marge Schmuckal, Zoning Administrator  
Date: May 3, 2013  
RE: Action taken by the Zoning Board of Appeals on May 2, 2013.

**Members Present:** Gordon Smith (chair), Mark Bower, Sara Moppin (secretary) and Eric Larsson

**Members Absent:** William Getz

#### 1. New Business

##### A. Interpretation Appeal:

372-374 Park Avenue, Hill Street Apartments, LLC, owner, Tax Map 067, Block C, Lot 003, R-6 Residential Zone: The appellant is challenging the Zoning Administrator's determination dated March 7, 2013 that the property does not meet the criteria outlined in the case Keith v. Saco River Corridor Commission and therefore cannot be functionally divided into two separate lots. Representing the appeal is Thomas Jewell, Esq. **The Zoning Board of Appeals voted 4-0 to grant the appeal to overturn the Zoning Administrator's determination that the lot could not be divided.**

##### B. Conditional Use Appeal:

23- 25 Caleb Street, Abigail Johnston, owner, Tax Map 187, Block A, Lot 006, R-3 Residential Zone: The appellant is seeking a Conditional Use Appeal under section 14-410 to add a home occupation to use her kitchen to produce gluten free baked goods to be sold to local businesses. Representing the appeal is the owner. **The Zoning Board of Appeals voted 4-0 to grant the appeal to allow the owner's kitchen to be used as a home occupation to bake goods to sell to local businesses.**

##### Enclosure:

Decision for Agenda from May 2, 2013  
One DVD

CC: Mark Rees, City Manager  
Jeff Levine, AICP, Director Planning & Urban Development  
Alex Jaegerman, Planning Division  
Mary Davis, Housing and Neighborhood Services Division

**CITY OF PORTLAND, MAINE**  
**ZONING BOARD OF APPEALS**

Attendance - Board  
Members Present:  
Mark Baver  
Gardie Smith  
Sara Moppin  
Eric Larsson

Application of Minimum Area Per Dwelling Unit in the R-6 Zone

**Interpretation Appeal**

**DECISION**

Date of public hearing: May 2, 2013

Name and address of applicant: Hill Street Apartments, LLC  
c/o Jewell & Bulger, PA  
477 Congress Street, Suite 1104  
Portland, ME 04101

Location of property under appeal: 372-374 Park Avenue

**For the Record:**

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

Tim Leigh  
Tom Jewel

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

May 2, 2013 letter and photo from  
Attorney Jewel

Findings of Fact and Conclusions of Law:

The Board's authority to review an interpretation of the building authority is pursuant to Sections 14-471 & 14-472 of the land use code.

The Applicant owns a lot which contains 2 structures. One structure has 2 dwelling units and the other structure has 3 dwelling units. Currently, the two structures are lawfully nonconforming. Applicant is proposing to divide the lot into two separate lots which would share a driveway and the common water and sewer lines.

Section 14-422 of the Portland City Code provides as follows:

*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.*

The City's Zoning Administrator determined that the Applicant's lot, if divided, would effectively result in two reduced-sized lots that do not meet the minimum space and bulk requirements of Chapter 14, Article III of the Portland's City Code.

She further rejected the Applicant's contention that the property had long ago been "functionally divided" into separate lots under the analysis outlined in *Keith v. Saco River Corridor Comm'n*, 464 A.2d 150 (Me. 1983) such that the division is grandfathered and not subject to the ordinance.

According to the Zoning Administrator, the Applicant has not met the criteria outlined in *Keith* for finding the lot has already been functionally divided. The Zoning Administrator's determination in that regard is based on her conclusion that the shared water and sewer lines prevent the two structures from functioning separately from one another if divided.

Finding:

Appellant has demonstrated that the Zoning Administrator's interpretation of Section 14-139(1)(b)(1) was incorrect or improper for the following reason:

1. The proposed division of the current lot into two separate lots would not result in the reduction of any lot such 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 Chapter 14, Article III of the Portland City Code.

Satisfied

Not Satisfied

As stipulated by all parties that

Reason and supporting facts:

~~Proposed division would result in dimension less than minimum required by Chapter 14~~

proposed division would result in dimension less than minimum required by Chapter 14

All structures have been in existence since before enactment of zoning ordinance and have always been occupied separately.

2. The Applicant has adequately demonstrated that the lot has previously been "functionally divided" such that each of the functionally divided lots are lawfully nonconforming.

~~Proposed use will not result in a use that is different in quality or character from the current use.~~  
Proposed use will not result in a use that is different in quality or character from the current use. Structures do not share entrances or exits.

Satisfied  Not Satisfied

Reason and supporting facts:

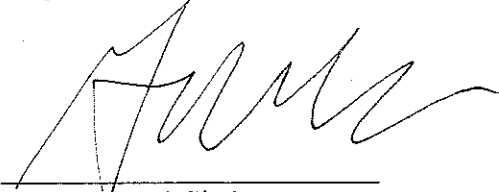
Shared utilities is not a criterion ~~under~~ under Keith. It is a factor to consider. This factor alone does not defeat <sup>our conclusion that property has</sup> functionally been divided. Key to our analysis is the fact that the ~~property~~ buildings have historically been separately used. Neither structure is ~~now~~ <sup>now</sup> or <sup>has</sup> historically <sup>been</sup> necessary to

**Decision:** (check one)

Option 1: The Board finds that the Appellant has satisfactorily demonstrated that the Interpretation of the City's Zoning Administrator was incorrect or improper, and therefore GRANTS the application.

Option 2: The Board finds that the Appellant has NOT satisfactorily demonstrated that the Interpretation of the City's Zoning Administrator was incorrect or improper, and therefore DENIES the application.

Dated:

  
\_\_\_\_\_  
Board Chair

members present: Gordon Smith - Sara Moppin - Mark Bower - Eric Larsson

# CITY OF PORTLAND, MAINE

## ZONING BOARD OF APPEALS

member Absent; William Getz

Meeting called to order at 6:30 pm -

### APPEAL AGENDA

The Board of Appeals will hold a public hearing on Thursday, May 2, 2013 at 6:30 p.m. on the second floor in room 209 at Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following appeals:

→ Rescheduled to City Council Chambers

#### 1. New Business

##### A. Interpretation Appeal:

4-0  
Granted  
overturns  
the zoning  
Administrators  
determination

372-374 Park Avenue, Hill Street Apartments, LLC, owner, Tax Map 067, Block C, Lot 003, R-6 Residential Zone: The appellant is challenging the Zoning Administrator's determination dated March 7, 2013 that the property does not meet the criteria outlined in the case Keith v. Saco River Corridor Commission and therefore cannot be functionally divided into two separate lots. Representing the appeal is Thomas Jewell, Esq.

##### B. Conditional Use Appeal:

4-0  
Granted

23-25 Caleb Street, Abigail Johnston, owner, Tax Map 187, Block A, Lot 006, R-3 Residential Zone: The appellant is seeking a Conditional Use Appeal under section 14-

410 to add a home occupation to use her kitchen to produce gluten free baked goods to be sold to local businesses. Representing the appeal is the owner. Mark Bower disclosed that he lived down the block, but it didn't restrict him from making an impartial decision - There was no opposition to him hearing the appeal

#### 2. Adjournment

8:20 pm

Note - Did we check to be sure the 2 res. units were legal?