



Planning &amp; Urban Development Department

*Jeff Levine, AICP, Director*  
*Marge Schmuckal, Zoning Administrator*

August 6, 2014

Carol J. De Tine AIA  
144 Vaughan Street  
Portland, Maine 04102

RE: 190 Pine Street – 069-D-012 (the “Property”) – R-4 Zone with a Historic Overlay

Dear Ms. De Tine,

I am in receipt of your request concerning the Property. The Property is located within the R-4 residential zone with a Historic overlay zone. The last and current recognized use of the Property is for one doctor’s office on the first floor; one apartment on the second floor; and one apartment on the third floor as evidenced by a certificate of occupancy issued on March 14, 1969. It is further noted that the doctor’s office use on the first floor was granted by a conditional use appeal by the Zoning Board of Appeals on March 13, 1969. It is further noted that the doctor’s office is considered a legally nonconforming use since the R-4 zone no longer lists doctor’s offices as a conditional use allowance.

You have requested a letter determining the availability to change the use of the doctor’s office on the first floor to a residential dwelling unit as provided under Section 14-384, Change of Nonconforming Use. The ordinance reads:

“A lawful nonconforming use in a structure not designed for a use permitted in the zone in which it is located shall not be changed to any use other than a use permitted in the zone in which the use is located or to any use other than a nonconforming use of a more restricted zone, as set forth in the following schedule, provided that in no such case shall any structural alterations be made in any building except those required by law, ordinance or other regulations:”

The permitted use of the doctor’s office is located in a building designed for residential and not for doctor’s offices. I further determined that paragraph (c) would be appropriate to use to change the doctor’s office to a residential dwelling unit.

“(c) In a residence zone, from any use permitted in a B-2 zone to any use permitted in a B-1 zone.”

The Property is located in a residential zone. A doctor’s office is a use permitted in the B-2 zone, and residential uses are allowed in the B-1 zone.

Therefore, I have determined that Section 14-384 would allow the conversion of the nonconforming doctor’s office into one dwelling unit with the conditions stated in the Ordinance. It is necessary to



Planning & Urban Development Department

*Jeff Levine, AICP, Director*

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apply for a permit to validate the conversion. The Ordinance does not require any further dimensional requirements of the underlying zone for such conversion.

Please note that once the conversion to a third dwelling unit on the Property is completed, the nonconforming use right will be extinguished and there will be no right to permit the previous use in the future. The underlying zone requirements will prevail.

If you have any questions regarding this matter, please do not hesitate to contact me at 874-8695. You also have the right to appeal this determination within thirty (30) days of the receipt of this letter. Please contact this office for the required paperwork to file an appeal.

Very truly yours,

A handwritten signature in black ink that reads "Marge Schmuckal".

Marge Schmuckal  
Zoning Administrator  
City of Portland, Maine

(3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than fifty (50%) percent of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

b. Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

4. Buildings in existence on January 1, 1989, and located in shoreland zones may be expanded once during the lifetime of the structure up to twenty-five (25) feet toward a freshwater wetland or tributary stream, provided that a minimum setback of forty (40) feet is maintained and that the existing floor area or volume is not increased by more than thirty (30%) percent, and shall not create any undue environmental impact or flood prone condition.

(Code 1968, § 602.17.B; Ord. No. 271-89, 2-22-89; Ord. No. 96-89, § 2, 9-18-89; Ord. No. 15-92, § 26, 6-15-92; Ord. No. 284-99, §1, 5-17-99, enacted as an emergency; Ord. No. 296-08/09, 6-15-09; Ord. No. 139-12/13, 2-4-13)

**Sec. 14-383. Extension of nonconforming use of land prohibited.**

A lawful nonconforming use existing on premises outside of a building shall not be extended to or allowed to occupy any part or parts of such premises outside of the building.

(Code 1968, § 602.17.C; Ord. No. 354-85, § 3, 1-7-85)

**Sec. 14-384. Change of nonconforming use.**

A lawful nonconforming use in a structure designed for a use permitted in the zone in which it is located shall not be changed to any use other than a use permitted in the zone in which the structure is located. When a nonconforming use in such a structure

has been changed to a permitted use, it shall not thereafter be changed back to any non-permitted use. For purposes of this section, a use shall be deemed to have been so changed when an existing nonconforming use shall have been terminated and a permitted use shall have commenced and continued for a period of seven (7) days. Any change of use in violation of this division shall be deemed to be an abandonment of the lawfully existing nonconforming use. A lawful nonconforming use in a structure not designed for a use permitted in the zone in which it is located shall not be changed to any use other than a use permitted in the zone in which the use is located or to any use other than a nonconforming use of a more restricted zone, as set forth in the following schedule, provided that in no such case shall any structural alterations be made in any building except those required by law, ordinance or other regulations:

- (a) In a business zone, from any use permitted in an industrial zone to any use permitted in a business zone.
  - (b) In a B-1 zone, from any use permitted in a B-3 zone to any use permitted in a B-2 zone.
  - (c) In a residence zone, from any use permitted in a B-2 zone to any use permitted in a B-1 zone.
  - (d) In a residence zone, from any use permitted in any other residence zone to any use permitted in a more restricted residence zone. For the purpose of this subsection, an R-6 zone shall be deemed the least restricted and an R-2 zone shall be deemed the most restricted, with the intervening zones restricted in order of zone number.
- (Code 1968, § 602.17.D; Ord. No. 499-74, § 8, 8-19-74)

**Sec. 14-385. Restoration or reconstruction within an existing footprint of damaged nonconforming structure.**

*NON CONFORMING DIMENSIONAL STANDARDS (NOT USE)*  
A nonconforming structure damaged by fire, explosion, flood, riot, act of the public enemy, accident of any kind, decay or otherwise may be restored or rebuilt only where:

- (a) The restoration or reconstruction is of a building which is nonconforming only as to land area, setbacks or any other dimensional requirements; and
- (b) Where the restoration or reconstruction will occur

# Carriage House Studio architects

July 22, 2014

Marge Schmuckal, Zoning Administrator  
Department of Planning and Urban Development  
Portland City Hall, Room 315  
389 Congress Street  
Portland, Maine 04101

Re: Request for a Determination Letter  
Potential Change of Use at 190 Pine Street  
Assessor's Reference: 069 - D - 12

*R.A. & Kristine Aruldas*

Dear Ms. Schmuckal,

Thank you for meeting with me this morning to discuss the possibility of a change of use in the building at 190 Pine Street. I am writing to request a Determination Letter regarding a change in use of the first floor unit from a legal non-conforming professional office space to a residential unit, under Section 14-384.

In addition to the professional office space on the first floor, the building currently has one apartment on the second floor and another on the third floor. They will remain in their current use.

A check for the \$150 fee for the Determination Letter is enclosed. I look forward to hearing from you.

Sincerely,

Carol J. De Tine AIA

RECEIVED  
JUL 22 2014  
Dept. of Building Inspections  
City of Portland Maine

144 Vaughan Street . Portland Maine 04102 . CHStudio@maine.rr.com .  
207.318.0731

[www.carriagehousestudio.com](http://www.carriagehousestudio.com)

**Marge Schmuckal - 190 Pine Street**

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**From:** Carol De Tine <carol@carriagehousestudio.com>  
**To:** Marge Schmuckal <MES@portlandmaine.gov>  
**Date:** 8/4/2014 3:37 PM  
**Subject:** 190 Pine Street

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Dear Marge,

Following up on our conversation July 22nd and my request for a determination letter on 190 Pine Street, I have been re-reading Section 14-384. Change of nonconforming use.

It seems to address two categories of structures:  
One, structures designed for a use permitted in the zone, and  
Two, structures not designed for a use permitted in the zone.

Wouldn't 190 Pine fall in the first category, since it was designed as a residential structure, which is a permitted use in the R4. The first floor was later converted to a doctor's office as a legal nonconforming use.

If 190 Pine is in the first category, it appears that simply terminating the nonconforming use and occupying the first floor as a residence (doable since it has a full bath and habitable rooms) for 7 days would revert the use back to residential. The doctor has already moved out so the use has been terminated already.

This would eliminate the limitation on structural changes.

*Don't Agree - interpret differently*

Thanks so much. I look forward to seeing the Letter of Determination in the next day or two.

Carol  
Carol J. De Tine AIA  
Maine Licensed Architect

Carriage House Studio Architects LLC  
144 Vaughan Street  
Portland, Maine 04102  
207.318.0731

[www.carriagehousestudio.com](http://www.carriagehousestudio.com)

**Marge Schmuckal - 190 Pine Street**

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**From:** Carol De Tine <carol@carriagehousestudio.com>  
**To:** Marge Schmuckal <MES@portlandmaine.gov>  
**Date:** 7/21/2014 10:35 AM  
**Subject:** 190 Pine Street

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Dear Marge,

I hope you are having a good summer. Temperatures have been pretty comfortable this past week.

I am working on the property at 190 Pine St. It was originally single-family but was converted to 2 apartments (1 on the 2nd floor, 1 on the third) and a doctor's office on the first floor. A conditional use variance was granted in 1969 to allow the doctor's office for a non-resident doctor.

The prospective buyer wants to convert the first floor to a residential apartment.

Am I right in thinking that this is allowable without any need for zoning board review, since the 3-unit apartment scheme is a permitted use in the R-4? It's a change of use under the Building Code but not a significant change under the zoning (or a change in the preferred direction, adding a residential unit on the peninsula). Parking may be an issue for review?

Thanks,

Carol  
Carol J. De Tine AIA  
Maine Licensed Architect

Carriage House Studio Architects LLC  
144 Vaughan Street  
Portland, Maine 04102  
207.318.0731

[www.carriagehousestudio.com](http://www.carriagehousestudio.com)

R-4 - 069-D-12 3600#

H 150cc. 2/18/69  
Granted 3/13/69  
69/15

CITY OF PORTLAND, MAINE  
IN THE BOARD OF APPEALS

CONDITIONAL USE APPEAL

Dorothy Humphries, owner of property at 188 Pine Street (Called 190)  
under the provisions of Section 24 of the Zoning Ordinance of the City of Portland,  
hereby respectfully petitions the Board of Appeals to: change use of building from  
a 2-family dwelling and a doctor's office (first floor) as a home occupation to a  
2-family dwelling and a doctor's office not a resident of the building. This permit  
is presently not issuable under the Zoning Ordinance because the office use is not  
allowable in the R-4 Residence Zone in which the property is located unless authorized  
by the Board of Appeals, as provided by Sec. 602.5A.4.d. of the Ordinance.

LEGAL BASIS OF APPEAL: Such permit may be granted only if the Board of Appeals  
finds that such use of the premises will not adversely affect property in the  
same zone or neighborhood and will not be contrary to the intent and purpose of  
the Ordinance.

Dorothy Humphries  
APPELLANT

DECISION

After public hearing held March 13, 1969, the Board of Appeals finds that  
such use of the premises will not adversely affect property in the same zone or  
neighborhood and will not be contrary to the intent and purpose of the Ordinance.

It is, therefore, determined that permit should            be issued in this case.

Franklin G. Hinckley  
Harry M. [unclear]  
[unclear]  
BOARD OF APPEALS



(COPY)

CITY OF PORTLAND, MAINE  
Department of Building Inspection



# Certificate of Occupancy

LOCATION #190 Pine St.

Issued to **Dorothy Humphries**  
**90 Birney Road No. Portland Me.**

Date of Issue **March 11, 1969**

This is to certify that the building, premises, or part thereof, at the above location, built--altered--changed as to use under Building Permit No. **69/177**, has had final inspection, has been found to conform substantially to requirements of Zoning Ordinance and Building Code of the City, and is hereby approved for occupancy or use, limited or otherwise, as indicated below.

PORTION OF BUILDING OR PREMISES

**Entire**

Limiting Conditions:

APPROVED OCCUPANCY

**One Doctor's office, first floor**  
**One apartment, second floor**  
**One apartment, third floor.**

This certificate supersedes  
certificate issued

Approved:

(Date)

Inspector

Inspector of Buildings

Note: This certificate identifies lawful use of building or premises, and ought to be transferred from owner to owner when property changes hands. Copy will be furnished to owner or lessee for one dollar.

# 190 Pine St



**CITY OF PORTLAND**  
**DEPARTMENT OF PLANNING & URBAN DEVELOPMENT**

389 Congress Street  
 Portland, Maine 04101

**INVOICE OF FEES**

<b>Application No:</b> 0000-1988	<b>Applicant:</b> 190 PINE LLC
<b>Project Name:</b> 190 PINE ST	<b>Location:</b> 190 PINE ST
<b>CBL:</b> 069 D012001	<b>Application Type:</b> Determination Letter
<b>Invoice Date:</b> 07/22/2014	

<b>Previous Balance</b>	-	<b>Payment Received</b>	+	<b>Current Fees</b>	-	<b>Current Payment</b>	=	<b>Total Due</b>	<b>Payment Due Date</b>
\$0.00		\$0.00		\$150.00		\$150.00		\$0.00	On Receipt

**Previous Balance** **\$0.00**

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

**CBL** 069 D012001  
**Bill To:** 190 PINE LLC  
 190 PINE ST  
 PORTLAND , ME 04102

**Application No:** 0000-1988  
**Invoice Date:** 07/22/2014  
**Invoice No:** 45877  
**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.  
 Check the status of your permit or schedule an inspection on-line at <http://www.portlandmaine.gov/792/Permit-Status>

**[Click Here to Pay On Line](#)**