

# PORTLAND MAINE

*Strengthening a Remarkable City, Building a Community for Life - [www.portlandmaine.gov](http://www.portlandmaine.gov)*

*Penny St. Louis Littell- Director of Planning and Urban Development  
Marge Schmuckal, Zoning Administrator*

May 19, 2010

Drummond Woodsum  
84 Marginal Way, Suite 600  
Portland, ME 04101-2480  
Attrn: Joanna B. Tourangeau

RE: 1191-1201 Congress Street, cor. 1-5 Massachusetts Ave – 78-A-001, 002, 003  
(the "Property") – B-1 Zone

Dear Ms. Tourangeau,

I am in receipt of your request for a written determination regarding the Property. The Property is located within a B-1 Neighborhood Business Zone. By definition the entire use (gasoline dispensing and retail) is considered a single use for zoning purposes as a minor auto service station. There are currently two pump islands with three pumps. The Property use of a minor auto service station is legally nonconforming use in the B-1 Zone.

A research of our files indicates that the gasoline dispensing use has been in existence since at least 1933. The basis of our current Land Use Zoning Ordinance is June 5, 1957. There is no certificate of occupancy on file. The lack of a certificate of occupancy because of the original time period is not an issue of concern or a violation.

Because the use is legally nonconforming, there can be no expansion of the use, pumps or retail store, without variances.

Very truly yours,

Marge Schmuckal  
Zoning Administrator

# DrummondWoodsum

Joanna B. Tourangeau

(207) 772-1941

jbt@dwmlaw.com

(207) 772-3627 Fax

(800) 727-1941

84 Marginal Way, Suite 600  
Portland, ME 04101-2480

Admitted in ME, NH and MA  
[www.dwmlaw.com](http://www.dwmlaw.com)

Catherine D. Alexander\*  
Daniel Amory\*  
David J. Becker\*  
S. Campbell Badger\*  
Melissa L. Ciley†  
Jerrold A. Crozier\*  
George T. Oliphant\*  
Jessica M. Emmons\*  
Peter C. Felmy\*  
Jonathan M. Goodman\*  
Sara S. Hallstedt\*  
Eric R. Herler\*†  
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Jeanne M. Kincaid\*†  
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Diana J. Nathanson\*  
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Christopher G. Stevenson\*  
E. William Stockmeyer\*  
Amy K. Tchoa\*†  
Joanna B. Tourangeau\*†  
M. Thomas Trenholm\*  
Matthew H. Upton†  
Amy J. Visenun\*  
Gary D. Vogel\*  
Ronald N. Ward\*  
Brian D. Willing\*  
Gerald M. Zelint

#### Consultants

Ann S. Chapman  
Policy & Labor Relations

Roger P. Kelley  
Labor Relations &  
Conflict Management

Christopher P. O'Neil  
Governmental Affairs

Michael J. Dpuda Ph.D.  
Special Education

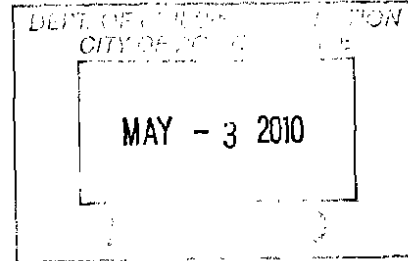
#### Of Counsel

Joseph L. Delehaid III\*  
Robert L. Gipe\*  
Donald A. Kopp\*  
Hugh G. E. MacMahon\*  
Harold E. Woodsum, Jr.\*

\* Admitted in Maine  
† Admitted in New Hampshire

April 30, 2010

Marge Schmuckal, Zoning Administrator  
City of Portland  
389 Congress Street, Rm 308  
Portland, ME 04101



RE: 1199 Congress Street 78-A-1

Dear Ms. Schmuckal:

Pursuant to Section 14-465 of the City of Portland Code of Ordinance, I am requesting a written determination regarding the compliance of the above-referenced property with the Ordinance.

I have enclosed our firm check in the amount of \$150 to cover the determination fee. Thank you for your assistance, and please do not hesitate to contact me with any questions or concerns.

Sincerely,

  
Joanna B. Tourangeau

JBT/al

Enclosure

goes back to 1933

Alluvial	Medomak
Charles	Ondawa
Cornish	Podunk
Fryeburg	Rumney
Hadley	Saco
Limerick	Suncook
Lovewell	Winooski

*Recreation facilities:* Any establishment designed or equipped for the conduct of sports or indoor leisure-time recreational activities.

*Restaurant:* Any food service establishment, as defined by section 11-16 of this Code, with indoor seating capacity for ten (10) or more patrons.

*Retail:* Sale to the ultimate consumer for direct consumption and not for resale; however, retail, combined with gasoline, diesel or propane fuel sales shall be considered a single use for zoning purposes and shall constitute a major or minor auto service station.

*Retail establishment:* Means (1) any food service establishment as defined by section 11-16 of this Code, with indoor seating capacity for nine (9) or fewer patrons; or (2) any shop or store offering goods or merchandise to the general public for direct consumption and not for resale, but does not include temporary freestanding stands in either case; however, retail establishments combined with gasoline, diesel or propane fuel sales shall be considered a single use for zoning purposes and shall constitute a major or minor auto service station.

*Rooming unit:* A room or suite of rooms in a house, building or portion thereof rented as living and sleeping quarters, but without full kitchens or bathrooms. In a suite of rooms, each room which provides sleeping accommodations shall be counted as one (1) rooming

*Low impact industrial uses:* Industrial activity involving the manufacturing, packaging, assembly, or distribution of finished products from previously prepared material, including but not limited to the following: bakeries, breweries, bottling, printing and publishing, pharmaceuticals, machine shops, precision instruments, watchmakers, musical instruments, toys and sporting goods, pottery and ceramics using only previously pulverized clay, wood products, jewelry, assembly of electrical components, canteen services, tool and die shops, and the packaging of foods. Low impact industrial uses do not include the processing of raw materials or salvaging operations. Low impact industrial uses are compatible, due to their size and nature of impact, with residential, commercial and other low impact industrial uses because of the level of traffic generated, emissions levels, lighting and odors generated.

*Major auto service station:* A business selling gasoline, diesel or propane fuel, with more than two (2) pump islands or with a capacity to fuel more than eight (8) vehicles simultaneously or providing repair services including, but not limited to, tune-ups, engine repair, brake work, muffler replacement, tire repair or similar activities.

*Minor auto service stations:* A business selling gasoline, diesel or propane fuel with not more than two (2) pump islands provided that no more than a total of eight (8) vehicles may be fueled simultaneously. Repair services including but not limited to tune-ups, engine repair, brake work, muffler replacement, tire repair or similar activities shall be permitted provided that there shall be no more than two (2) service bays. Such businesses shall not include car washes or vacuums.

*Manufactured housing:* A structural unit or units designed for residential occupancy, and constructed in a manufacturing facility and then transported by the use of its own chassis or placement on an independent chassis to a building site. The term includes any type of building which is constructed at a manufacturing facility and then transported to a building site where it is utilized for housing and may be purchased or sold by a dealer in the interim. For purposes of this article, two (2) types of manufactured housing are included. They are:

- (a) Those units constructed after June 15, 1976, which the manufacturer certifies are constructed in compliance with the standards required by the United States Government Department of Housing and Urban Development, as such standards are from time to time revised or amended, meaning structures, transportable in one (1) or more

Assessor's Office | 389 Congress Street | Portland, Maine 04101 | Room 115 | (207) 874-8486

City Home Departments City Council E-Services Calendar Jobs

This page contains a detailed description of the Parcel ID you selected. Press the **New Search** button at the bottom of the screen to submit a new query.

**Current Owner Information:**

**Services**

**Applications**

**Doing Business**

**Maps**

**Tax Relief**

**Tax Roll**

**Q & A**

[browse city services a-z](#)

[browse facts and links a-z](#)

**CBL** 078 A001001  
**Land Use Type** RETAIL & PERSONAL SERVICE  
**Property Location** 1199 CONGRESS ST  
**Owner Information** M W SEWALL & CO  
 259 FRONT ST  
 BATH ME 04530  
**Book and Page** 13926/218  
**Legal Description** 78-A-1-2-3  
 CONGRESS ST 1191-1201  
 MASS AVE 1-5  
 18905 SF  
**Acres** 0.434

**Current Assessed Valuation:**

**TAX ACCT NO.** 11350 **OWNER OF RECORD AS OF APRIL 2009**  
 M W SEWALL & CO  
**LAND VALUE** \$463,100.00 **259 FRONT ST**  
**BUILDING VALUE** \$280,900.00 **BATH ME 04530**  
**NET TAXABLE - REAL ESTATE** \$744,000.00  
**TAX AMOUNT** \$13,198.56

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

**Building Information:**



Best viewed at 800x600, with Internet Explorer

**Card 1 of 1**  
**Year Built** 2001  
**Style/Structure Type** CONVENIENCE STORE  
**# Units** 1  
**Building Num/Name** 1 - CLIPPER MART  
**Square Feet** 2792

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



**Exterior/Interior Information:**

**Card 1**  
**Levels** 01/01  
**Size** 2792  
**Use** CONVENIENCE STORE  
**Height** 10  
**Walls** CONC. BLOCK  
**Heating** HOT AIR  
**A/C** NONE

**Outbuildings/Yard Improvements:**

**Card 1**  
**Year Built** 2001  
**Structure** ASPHALT PARKING  
**Size** 1X8500  
**Units** 1  
**Grade** C  
**Condition** 3

**Card 1**  
**Year Built** 2001  
**Structure** CANOPY AVG  
**Size** 1X1920  
**Units** 1  
**Grade** C  
**Condition** 3

**Card 1**  
**Year Built** 2001  
**Structure** LIGHT - MERCURY VAPOR, POLE  
**Size** 1X1  
**Units** 1

**CITY OF PORTLAND, MAINE**  
**PLANNING BOARD**

---

John H. Carroll, Chair  
Jaimey Caron, Vice Chair  
Kenneth M. Cole III  
Cyrus Y. Haggge  
Deborah Krichels  
Erin Rodriguez  
Mark Malone

78-A-001

November 10, 1999

Mr. Ned Sewall  
M. W. Sewall Co.  
259 Front Street  
Bath, ME 04530

re: 9 Massachusetts Avenue/1199 Congress Street; Gas Station Redevelopment

Dear Mr. Sewall:

On November 9, 1999 the Portland Planning Board voted 6-0 (Malone absent) to approve your application to redevelop the retail/gas station located at the corner of Congress Street and Massachusetts Avenue. The Board found that the application met the standards of the Site Plan ordinance of the Land Use code.

The approval was granted for the project with the following condition(s):

- i. that the applicant contribute \$4,000 to traffic improvements for the proposed traffic light at the intersection of Congress Street and Massachusetts Avenue
- ii. that a landscaped island be installed at the Congress Street and Massachusetts Avenue corner of the lot with side dimensions of not less than ten (10) feet and should be either submerged in the ground with plantings protected by granite curbing or placed within an elevated retaining wall.
- iii. that the applicant revise the photometric plan for review and approval of the Planning staff.
- iv. that a maintenance plan for the Passive Oaks Skimmer be submitted to staff for review and approval.
- v. that the applicant eliminate one curb cut on Massachusetts Avenue to create one curb cut, not to exceed 35 ft. in width, in consultation with the Planning staff.

The approval is based on the submitted site plan and the findings related to site plan review standards as contained in Planning Report #60-99, which is attached.

Please note the following provisions and requirements for all site plan approvals:

O:\PLANDEVREVW\CONGMASS\APPRVLTR.WPD

cc: Joseph E. Gray, Jr., Director of Planning and Urban Development  
Alexander Jaegerman, Chief Planner  
Kandice Talbot, Planner  
P. Samuel Hoffses, Building Inspector  
Marge Schmuckal, Zoning Administrator  
Tony Lombardo, Project Engineer  
Development Review Coordinator  
William Bray, Director of Public Works  
Jeff Tarling, City Arborist  
Penny Littell, Associate Corporation Counsel  
Lt. Gaylen McDougall, Fire Prevention  
Inspection Department  
Lee Urban, Director of Economic Development  
Don Hall, Appraiser, Assessor's Office  
Susan Doughty, Assessor's Office  
Approval Letter File



(B) LIMITED BUSINESS ZONE  
APPLICATION FOR PERMIT

PERMIT ~~ISSUED~~

Class of Building or Type of Structure Third Class AHC 70

To the INSPECTOR OF BUILDINGS, PORTLAND, ME. Portland, Maine, August 11, 1934  
Supersedes application 7/19/34

The undersigned hereby applies for a permit to erect <sup>and</sup> install the following building <sup>and</sup> ~~structure~~ equipment in accordance with the laws of the State of Maine, the Building Code of the City of Portland, plans and specifications, if any, submitted herewith and the following specifications:

Location 1149 Congress Street (W. 12th) Ward 8 Within Fire Limits? no Dist. No. \_\_\_\_\_

Owner's or lessee's name and address Henry R. Randall, 1145 Congress St., 2-9227 Telephone \_\_\_\_\_

Contractor's name and address Not let Community Oil Co. Telephone \_\_\_\_\_

Architect's name and address W. B. Tuttle

Proposed use of building Filling Station No. families \_\_\_\_\_

Other buildings on same lot \_\_\_\_\_

Plans filed as part of this application? yes No. of sheets 1

Estimated cost \$ 800. Fee \$ 1.00

Description of Present Building to be Altered

Material \_\_\_\_\_ No. stories \_\_\_\_\_ Heat \_\_\_\_\_ Style of roof \_\_\_\_\_ Roofing \_\_\_\_\_

Last use \_\_\_\_\_ No. families \_\_\_\_\_

General Description of New Work

To erect one story frame building 12' x 16' for filling station office as per plan  
To install two 550 gallon tanks and two electric pumps for gasoline, public use, tanks to be buried underground - storage to be applied for

Petition granted conditionally and permit ordered by City Council August 8, 1934

It is understood that this permit does not include installation of heating apparatus which is to be taken out separately by and in the name of the heating contractor.

Height average grade to top of plate 10'  
Size, front \_\_\_\_\_ depth \_\_\_\_\_ No. stories \_\_\_\_\_ Height average grade to highest point of roof 15'

To be erected on solid or filled land? solid earth or rock? earth

Material of foundation cedar posts Thickness, top \_\_\_\_\_ bottom \_\_\_\_\_

Material of underpinning \_\_\_\_\_ Height \_\_\_\_\_ Thickness \_\_\_\_\_

Kind of Roof pitch (3 outside) Rise per foot 8" Roof covering Asphalt roofing Class C Und. Lab.

No. of chimneys 1 Material of chimneys brick of lining tile

Kind of heat stove Type of fuel \_\_\_\_\_ Is gas fitting involved? \_\_\_\_\_

Corner posts 4x4 Sills 6x6 Girt or ledger board? \_\_\_\_\_ Size \_\_\_\_\_

Material columns under girders \_\_\_\_\_ Size \_\_\_\_\_ Max. on centers \_\_\_\_\_

Studs (outside walls and carrying partitions) 2x4-16" O. C. Girders 6x8 or larger. Bridging in every floor and flat roof span over 8 feet. Sills and corner posts all one piece in cross section.

Joists and rafters: 1st floor 2x8, 2nd \_\_\_\_\_, 3rd \_\_\_\_\_, roof 2x8

On centers: 1st floor 16", 2nd \_\_\_\_\_, 3rd \_\_\_\_\_, roof 24"

Maximum span: 1st floor 12', 2nd \_\_\_\_\_, 3rd \_\_\_\_\_, roof \_\_\_\_\_

If one story building with masonry walls, thickness of walls? \_\_\_\_\_ height? \_\_\_\_\_

If a Garage

No. cars now accommodated on same lot \_\_\_\_\_ to be accommodated \_\_\_\_\_

Total number commercial cars to be accommodated \_\_\_\_\_

Will automobile repairing be done other than minor repairs to cars habitually stored in the proposed building? \_\_\_\_\_

Miscellaneous

Will above work require removal or disturbing of any shade tree on a public street? no

Will there be in charge of the above work a person competent to see that the State and City requirements pertaining thereto





# APPLICATION FOR PERMIT

PERMIT ISSUED

00720  
MAY 12 1947

Class of Building or Type of Structure Third

Portland, Maine, Dec. 21, 1947

To the INSPECTOR OF BUILDINGS, PORTLAND, ME. *Dear please 4/20/48*

CITY OF PORTLAND

The undersigned hereby applies for a permit to erect alter repair demolish install the following building structure equipment in accordance with the laws of the State of Maine, the Building Code and Zoning Ordinance of the City of Portland, plans and specifications, if any, submitted herewith and the following specifications:

Location 1199 Congress St. Within Fire Limits? no Dist. No. \_\_\_\_\_  
 Owner's name and address Community Oil Co. 531 Cumberland Ave Telephone \_\_\_\_\_  
 Lessee's name and address \_\_\_\_\_ Telephone \_\_\_\_\_  
 Contractor's name and address Charles Hill, 531 Cumberland Avenue Telephone 2-425A  
 Architect \_\_\_\_\_ Specifications \_\_\_\_\_ Plans yes No. of sheets 1  
 Proposed use of building Service Station No. families \_\_\_\_\_  
 Last use \_\_\_\_\_ No. families \_\_\_\_\_  
 Material \_\_\_\_\_ No. stories \_\_\_\_\_ Heat \_\_\_\_\_ Style of roof \_\_\_\_\_ Roofing \_\_\_\_\_  
 Other buildings on same lot \_\_\_\_\_  
 Estimated cost \$6000.00 Fee \$ 4.00

## General Description of New Work

To construct 1 story frame building 34'x26' for Service Station

This application is preliminary to get settled the question of zoning appeal. In event the appeal is sustained the applicant will furnish complete information, the estimated cost and will pay legal fee.

Permit Issued with Letter

It is understood that this permit does not include installation of heating apparatus which is to be taken out separately by and in the name of the heating contractor. 1/16/48  
 TO Charles Hill

## Details of New Work

Is any plumbing work involved in this work? \_\_\_\_\_ Is any electrical work involved in this work? \_\_\_\_\_  
 Height average grade to top of plate \_\_\_\_\_ Height average grade to highest point of roof \_\_\_\_\_  
 Size, front \_\_\_\_\_ depth \_\_\_\_\_ No. stories \_\_\_\_\_ solid or filled land? \_\_\_\_\_ earth or rock? \_\_\_\_\_  
 Material of foundation \_\_\_\_\_ Thickness, top \_\_\_\_\_ bottom \_\_\_\_\_ cellar \_\_\_\_\_  
 Material of underpinning \_\_\_\_\_ Height \_\_\_\_\_ Thickness \_\_\_\_\_  
 Kind of roof \_\_\_\_\_ Rise per foot \_\_\_\_\_ Roof covering \_\_\_\_\_  
 No. of chimneys \_\_\_\_\_ Material of chimneys \_\_\_\_\_ of lining \_\_\_\_\_ Kind of heat \_\_\_\_\_ fuel \_\_\_\_\_  
 Framing lumber--Kind \_\_\_\_\_ Dressed or full size? \_\_\_\_\_  
 Corner posts \_\_\_\_\_ Sills \_\_\_\_\_ Girt or ledger board? \_\_\_\_\_ Size \_\_\_\_\_  
 Girders \_\_\_\_\_ Size \_\_\_\_\_ Columns under girders \_\_\_\_\_ Size \_\_\_\_\_ Max. on centers \_\_\_\_\_  
 Studs (outside walls and carrying partitions) 2x4-16" O. C. Bridging in every floor and flat roof span over 8 feet.  
 Joists and rafters: 1st floor \_\_\_\_\_, 2nd \_\_\_\_\_, 3rd \_\_\_\_\_, roof \_\_\_\_\_  
 On centers: 1st floor \_\_\_\_\_, 2nd \_\_\_\_\_, 3rd \_\_\_\_\_, roof \_\_\_\_\_  
 Maximum span: 1st floor \_\_\_\_\_, 2nd \_\_\_\_\_, 3rd \_\_\_\_\_, roof \_\_\_\_\_  
 If one story building with masonry walls, thickness of walls? \_\_\_\_\_ height? \_\_\_\_\_

## If a Garage

No. cars now accommodated on same lot \_\_\_\_\_, to be accommodated \_\_\_\_\_ number commercial cars to be accommodated \_\_\_\_\_  
 Will automobile repairing be done other than minor repairs to cars habitually stored in the proposed building? \_\_\_\_\_

## Miscellaneous

APPROVED:

Will work require disturbing of any tree on a public street? no



# CITY OF PORTLAND, MAINE

Department of Building Inspections

## Original Receipt

53 2010

Received from

Location of Work

Cost of Construction

Building Fee

Permit Fee

Site Fee

Certificate of Occupancy Fee

Total

Building (11)

Plumbing (15)

Electrical (12)

Site Plan (12)

Other

CHECK

Check #

Total Collected \$

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

Taken by

WHITE - Applicant's Copy  
YELLOW - Office Copy  
PINK - Permit Copy