

CITY OF PORTLAND, MAINE  
ZONING BOARD OF APPEALS

20 2  
215

Elizabeth Bordowitz, Chair  
Catherine Decker, Secretary  
William Hall  
Julie Brady  
Nan Sawyer  
Joseph Lewis  
Patric Santerre

July 5, 2002

Ms. Heather Thompson & Harvey Johnson  
6 Grant Street  
Portland, Maine 04101

RE: 9 Adams Street  
CBL: 084-F-012  
ZONE: IR-2 Zone

Dear Ms. Thompson & Mr. Johnson;

As you know, at its June 6, 2002 meeting, **the Board of Appeals voted 5-0 to deny** one of your Interpretational Appeal (change of use). The Board also voted **5-0 to accept the withdrawal** of the second Interpretational Appeal (non-conformity expansion.)

Enclosed please find the billing for the Zoning Board of Appeals legal ad and abutters notification along with a copy of the Boards decision.

Should you have any questions I may be reached at 207-874-8701.

Sincerely,

Jodine Adams  
Office Manager

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

**To:** City Clerk  
**From:** Marge Schmuckal, Zoning Administrator  
**Date:** July 5, 2002  
**RE:** Action taken by the Zoning Board of Appeals on June 6, 2002.

**The meeting came to order at 7:05**

**Roll Call as follows:**

**Members Present:** Julie Brady, Joseph Lewis Patric Santerre, William Hall and Nan Sawyer  
Nan Sawyer acted as Chair and Julie Brady acted as Secretary  
**Members Absent:** Elizabeth Bordowitz and Catherine Decker

### APPEAL AGENDA

**The Board of Appeals held a public hearing on Thursday, June 6, 2002 at 7:00 p.m. on the second floor in Room 209 at the Portland City Hall 389 Congress Street, Portland, Maine to hear the following appeals:**

**1. Unfinished Business:**

**A. Tabled Interpretational Appeal**

Heather Thompson & Harvey Johnson of 9 Adams Street, Peaks Island, Chart #084, Block F, Lot # 012 in the IR-2 Zone is requesting an Interpretational Appeal from section 14-145.11 (dimensional requirements) of the Portland Zoning Ordinance. The applicant is requesting to change the use of a detached existing garage into an attached living space. The garage does not meet current setback requirements. The owner is the applicant. The Board voted 5-0 to deny the Interpretational Appeal and affirm the Zoning Administrators determination.

**B. Tabled Interpretation Appeal**

Heather Thompson & Harvey Johnson of 9 Adams Street, Peaks Island, Chart #084, Block F, Lot # 012 in the IR-2 Zone is requesting an Interpretational Appeal from section 14-436 (building extensions) of the Portland Zoning Ordinance. The applicant is requesting to add a second story along with a third story tower to the existing structure. The Zoning Administrator questions the amount of expansion in relation to the non-conformity with existing setbacks. The owner is the applicant. The Board voted 5-0 to accept the applicants withdrawal of Interpretational Appeal without prejudice.

**2. New Business:** There was no new business

**3. Adjournment:** The meeting adjourned at 8:30 p.m.

**Enclosure:** Agenda of June 6, 2002  
Copy of Board's Decisions  
1 standard size tapes

**CC:** Joseph Gray, City Manager  
Mark Adelson, Housing & Community Services  
Alex Jaegerman, Planning Department  
Lee Urban, Planning & Development Director

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

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**2. New Business:**

**3. Adjournment:**



2C

# CITY OF PORTLAND

## INTERPRETATION APPEAL

### DECISION

Applicant's name and address: HEATHER THOMPSON / HARVEY JOHNSON  
9 ADAMS STREET PEAKS ISLAND, ME. 04108

Applicant's interest in property (e.g. owner, purchaser, etc.): OWNER

Owner's name and address if different SAME

Address of property: SAME

### For the Record

Names of witnesses (proponents, opponents and others):

<u>PROponents</u>	<u>HEATHER THOMPSON</u>	<u>OPPONENTS</u>	<u>NONE</u>
	<u>HARVEY JOHNSON</u>		

Tax APPLICATION

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

OWNER'S APPLICATION; 2 LETTERS FROM NEIGHBORS SUPPORTING

### Findings of Fact

(1) KATHLEEN MC CARTHY  
(2) BROTHA DENIERE

neither objected;  
both supported

1. The Board finds as fact that: FINDING ORALLY WERE MADE  
AND ARE ON THE TAPED RECORD. the applicati

2. The finding(s) of fact above-stated is(are) based on the following reasons:

SEE TAPED RECORD

Motion: TO ~~REPEAL~~ DENY THE APPLICATION

Determinations

The Board determines that: THE APPLICATION IS DENIED

5 VOTES TO DENY APPEAL

0 VOTES TO FAVOR APPEAL

Dated: 06/06/02, 19 02

John A. Brady  
Secretary of the Board



25

# CITY OF PORTLAND

## INTERPRETATION APPEAL

### DECISION

Applicant's name and address: HEATHER THOMPSON / HARVEY JOHNSON  
9 ADAMS STREET PEAKS ISLAND, ME 04103

Applicant's interest in property (e.g. owner, purchaser, etc.): OWNER

Owner's name and address if different SAME

Address of property: SAME

### For the Record

Names of witnesses (proponents, opponents and others):

HEATHER THOMPSON                      NO OPPONENTS  
HARVEY JOHNSON

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

OWNER'S APPLICATION

### Findings of Fact

1. The Board finds as fact that: N/A
- 
- 
- 
- 
- 
- 
- 
- 
- 
-

2. The finding(s) of fact above-stated is(are) based on the following reasons:

N/A

Motion:

APPLICANT WITHDREW APPEAL

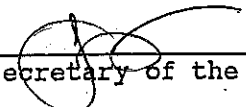
MOTION MADE TO WITHDRAW APPEAL

Determinations

The Board determines that:

MOTION TO WITHDRAWAL GRANTED

Dated: 06/05, 19 02

  
Secretary of the Board



**CITY OF PORTLAND**

TO: ZONING CHAIR AND BOARD OF APPEALS

FROM: MARGE SCHMUCKAL, ZONING ADMINISTRATOR

SUBJECT: INTERPRETATION APPEAL TO ALLOW THE CHANGE OF USE FROM A GARAGE (NONCONFORMING AS TO SETBACKS) INTO A LIVING SPACE 9 ADAMS STREET – PEAKS ISLAND – O84-F-012 – IR-2 ZONE

DATE: MAY 13, 2002

Currently, this property has a detached accessory garage/storage structure. The owners have proposed to reconfigure their house to include attaching the garage and turning it into living space. I have used the precedence of a previous appeal (January, 1990) at 48 Pitt Street to make an interpretation that any structure which is legally nonconforming as to setbacks, may continue its nonconformity under the same circumstances. However, when the use of the structure changes, it shall be made to conform to the current setbacks under the Zoning Ordinance.

I have included copies of the past appeal at 48 Pitt Street. Briefly, the owners of that property wished only to change the use of the detached structure from a carriage house to a new dwelling unit. The total number of units within the principal structure would be decreased by one unit so that the carriage house could accommodate that unit. The total number of dwelling units on the property would not change. This appeal was originally scheduled to be a setback variance appeal, but was later switched to an interpretation appeal. The Zoning Board of Appeals eventually denied this appeal.

I believe that the dynamics of this proposal is similar to the Pitt Street appeal. A detached, accessory structure such as a garage or storage area is fairly benign in nature. To change the use of the garage to be part of a living unit expands the principal use and makes it more nonconforming as to setbacks. It also imposes a greater impact upon the neighbors. I believe that section 14-382 (c) & (d) would apply to this proposal and its denial.

It is my understanding that the owners would also like to temporarily occupy the garage as a living space during reconstruction of their home. I believe that could be allowed on a temporary



basis with the understanding that **all** kitchen facilities and living features be removed prior to occupancy of the principal structure. There would need to be a memo of understanding with the owners so that when the time came make the change-over, it would be a smooth transition. Both the City and owners would have the same understanding and expectations of how that would be accomplished. In this scenario, the garage/storage area would revert back to its original accessory use.

Cc: Owners  
Charlie Lane, Corporation Counsel  
File

ADAMS ST.  
30°45'59" E

REBAR  
FLUSH.

50.00'

S 59°14'01" E

1 STORY WOOD

N 59°14'01" W

1 STORY WOOD

GARAGE

DECK

123

126

125

124

100.00'

100.00'

~ 30.5' scaled

Thompson Johnson

30°45'59" W

50.00'

123

123

122

123

RE: 48 Pitt St

RECEIVED

DEC 11 1989

DEPT. OF BUILDING INSPECTIONS  
CITY OF PORTLAND

46 Howard St.  
Portland, ME 04101  
December 10, 1989

Board of Appeals  
Zoning Office  
Room 31C  
City Hall  
Portland, ME

Dear Sirs:

We request a variance permitting improvements at 48 Pitt St., which is currently a 4-unit apartment building with a detached carriage house. We propose to repair and renovate the existing carriage house into a detached two-bedroom apartment which would replace the grandfathered fourth unit currently located in the basement of the principal structure.

We feel that the carriage house is of notable architectural character and should be preserved and utilized in a manner that both enhances its character and that of the property as a whole. The unit currently located in the basement of the principal structure is extremely unattractive; it is located almost 4 feet below grade, has very little natural light and low ceilings. As such this unit can only attract tenants who are unconcerned with the character of their living space and we feel that it is in the best interests of the community to replace it with a more desirable unit. The creation of a more attractive unit suitable for single family occupancy (which would also make the property more desirable to an owner/occupier) in the carriage house would contribute to the betterment of both this individual property and the neighborhood.

Such a conversion would have the advantage of decreasing the density of the main house, thereby resulting in less wear and tear on that building (and in the process making it a more attractive place to live) while not significantly increasing the population density of the property as a whole.

While it can be argued that such a conversion would result in more of the property being dedicated to living space, we feel that because the carriage house is already standing, the impact on the neighborhood in terms of views, building density and setbacks would not be in any way worsened.

While it is desirable to preserve the carriage house, to do so while maintaining the 4th unit in the basement is unfeasible; the income produced by the building is insufficient to justify the investment in a renovation which

would then produce no additional income. The carriage house is in need of significant repairs -- sill work is needed, the doors and windows are in poor repair or in most cases missing all together, the upper floor needs to be supported before any significant loads can be placed on it, and the exterior is badly in need of painting and cosmetic repair. The cost of these improvements simply cannot be supported given the current arrangement of the living units.

The granting of a variance for this project can be viewed as an isolated circumstance; while there are accessory structures on the adjacent properties as well as many of the other lots in the neighborhood, few have the architectural detail and charm that the carriage house at 48 Pitt possesses. Because of the varied roof lines, cornice details, cupola and large arched windows, the carriage house at 48 Pitt St. is a notably more attractive building than the nearby accessory structures. Additionally, of the four structures which are located near the east corner of this lot, the one at 48 Pitt St. has the best setbacks, the other three impinging upon the lot lines on at least one of their sides.

In conclusion, we feel that the granting of a variance in order to facilitate this project will have notable benefits for this property and to a lesser but still significant extent for the neighborhood and the city as a whole. It will allow for the improvement and preservation of a desirable structure, it will replace a marginal and undesirable basement unit (which under current zoning would not be allowed) with a much more attractive detached single family unit, and will have no significant adverse effects upon either the individual property or the surrounding area.

Sincerely,

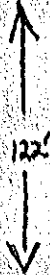
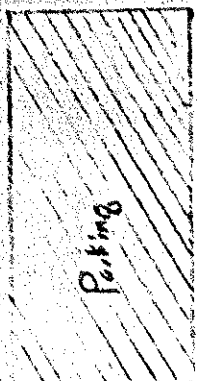
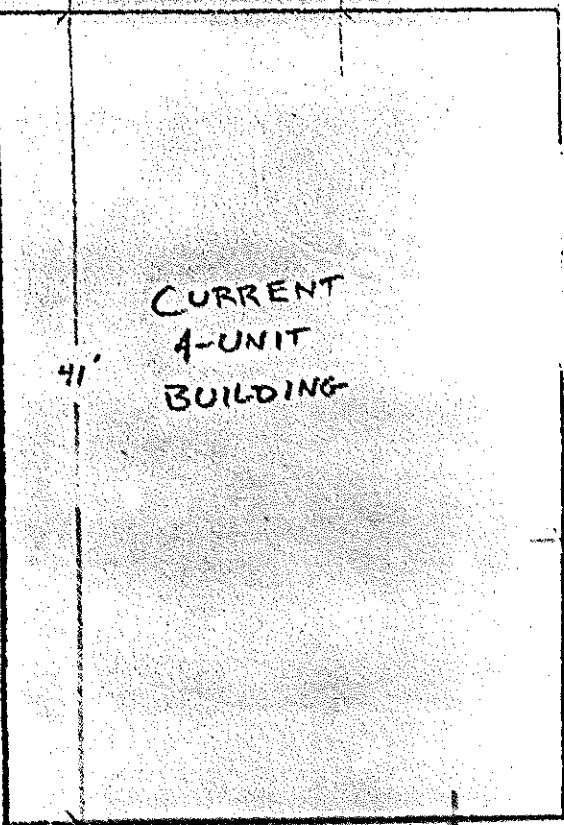
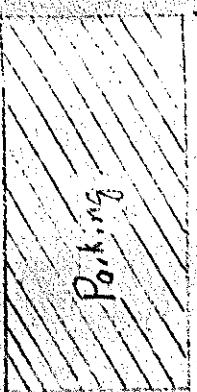
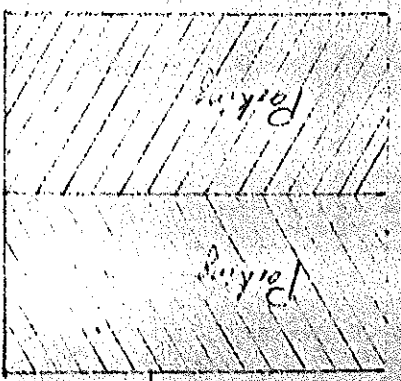
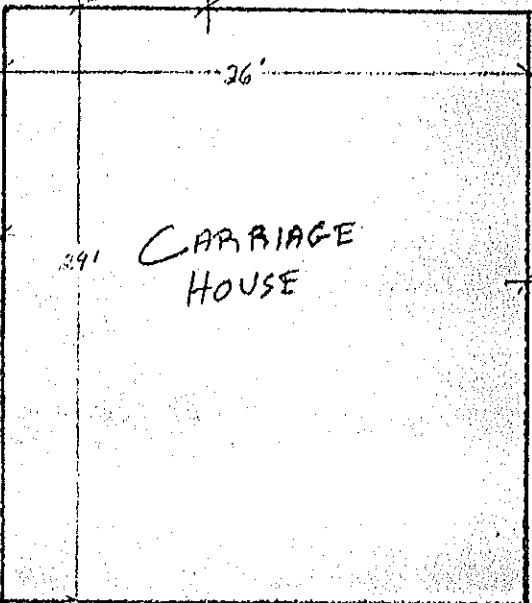
Marie I. Locke  
Marie I. Locke

Mary Ann Sondrini  
Mary Ann Sondrini

Michael T. Bush  
Michael T. Bush

Peter W. Taggart  
Peter W. Taggart

48 PINE STREET  
PORTLAND ME



WAY →

RECEIVED



CITY OF PORTLAND

VARIANCE APPEAL

APPLICATION

Applicant's name and address: Marie J. Locke, Mary Ann Sordrini, Michael Bush, Peter Taggart 46 Howard St, Portland ME 04101

Applicant's interest in property (e.g., owner, purchaser, etc.): purchaser

Owner's name and address (if different): FM Realty Perts #5 /o Charles E. Miller 45 Belmont St. Portland ME 04103

Address of property (or Assessor's chart, block and lot number): 48 P.H. St.

Zone: R-5

Present use: 4-unit residence

Variance from: Section 14-120(4) b+c

NOTE: If site plan approval is required, attach preliminary or final site plan.

Request for variances for side and rear yard setback to enable 4th apt unit to be relocated in the carriage house in rear.  
The undersigned hereby makes application for a variance as above-described, and certifies that all information herein supplied by him is true and correct to the best of his knowledge and belief.

Dated: December 10, 1989

**RECEIVED**

DEC 11 1989

DEPT. OF BUILDING INSPECTION  
CITY OF PORTLAND

Marie J. Locke  
Signature of Applicants  
Peter W. Taggart  
Mary Anne Sordrini  
Marie J. Locke

1/18/90  
48 Pitt St.



**CITY OF PORTLAND**  
INTERPRETATION APPEAL

**DECISION**

For the Record

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

Marie Locke

Peter Tuggart

Mary Ann Snelvin

Christine Macklin 44 Pitt St.

Michael Bush

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

\_\_\_\_\_  
\_\_\_\_\_

Findings of Fact

*Motion - to uphold the decision of the Building Inspection Dept.*

1. The Board finds as fact that: \_\_\_\_\_

\_\_\_\_\_

2. The finding(s) of fact above-stated is(are) based on the following reasons: \_\_\_\_\_

\_\_\_\_\_

Determinations of Law

1. The Board determines as a matter of law that: \_\_\_\_\_

\_\_\_\_\_

2. The determination(s) of law above-stated is(are) based on the following reasoning: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Conclusion

After public hearing on Jan. 18, 1990, and for the reasons above-stated, the accompanying application is hereby (check one)

granted. Uphold

granted subject to the following condition(s):

denied.

Dated: Jan. 18, 1990

John C. Knox  
Secretary of the Board

Uphold  
John C. Knox  
Madeline C. Kelly  
Marshall A. DeGuz  
Alvin L. Schiefel  
John C. E.

Deny  
Arthur J. Morelli



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



48 Pitt Street

MERRILL S. SELTZER  
Chairman

JOHN C. KNOX  
Secretary

PETER F. MORELLI  
THOMAS F. JEWELL  
DAVID L. SILVERNAIL  
MICHAEL E. WESTORT  
CHRISTOPHER DINAN

December 11, 1989

Mr. Peter W. Taggart, et als.  
P. O. Box 8401  
Portland, Maine 04104

Dear Mr. Taggart:

Receipt of your application for a space and bulk variance is acknowledged for the property at 48 Pitt Street, which is located in the R-5 Residence Zone. We understand that this property is owned by Charles E. Miller, 45 Belmont Street, Portland, and is under option for purchase by Marie I. Locke, Mary Ann Sandrini, Mildred Bush, and Peter Taggart.

The subject property was approved for four apartment units on August 21, 1985, by the issuance of a certificate of occupancy for four apartments. The applicants wish to obtain space and bulk variances for the carriage house in the rear so that it may be converted to accommodate one dwelling unit, which would be relocated from the principal building.

In order to convert the carriage house in the rear to a dwelling unit, space and bulk variances would be required for the side and rear yard setbacks, which in the R-5 Zone are 12 foot side yard and 20 foot rear yard, according to Section 14-120 (4) b and c of the City Zoning Ordinance.

This space and bulk variance will be placed on the agenda for the Board of Appeals for their meeting on Thursday evening, January 4, 1990, at 7 P.M. in Room 209, City Hall, Portland, Maine. A copy of the agenda for that meeting will be mailed to you as soon as copies become available for distribution. Please furnish a copy of the option to purchase.

Sincerely,

*Warren J. Turner*  
Warren J. Turner  
Administrative Assistant

cc: Merrill S. Seltzer, Chairman, Board of Appeals  
Joseph E. Gray, Jr., Director, Planning & Urban Development  
P. Samuel Hoffses, Chief, Inspection Services  
Kevin Carroll, Code Enforcement Officer  
William B. Giroux, Zoning Enforcement Officer  
Charles A. Lane, Associate Corporation Counsel

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



MERRILL S. SELTZER  
Chairman

JOHN C. KNOX  
Secretary

PETER F. MORELLI  
THOMAS F. JEWELL  
DAVID L. SILVERNAIL  
MICHAEL E. WESTORT  
Dewey Martin

48 Pitt Street

January 19, 1990

Mr. Peter W. Taggart, et als  
P. O. Box 8401  
Portland, Maine 04104

Dear Mr. Taggart:

At the meeting of the Board of Appeals on Thursday evening, January 18th, the Board voted by a vote of five to one (opposed) to uphold the decision of the Building Inspection Department to deny this permit for conversion of the carriage house for the relocation of the fourth apartment and its removal from the basement of the main building, which is located in the R-5 Residence (formerly R-6 Residence) Zone.

A copy of the Board's decision is enclosed for your records.

Sincerely,

Warren J. Turner  
Administrative Assistant

Enclosure: Copy of Board's Decision

cc: Merrill S. Seltzer, Chairman, Board of Appeals  
Joseph E. Gray, Jr., Director, Planning & Urban Development  
P. Samuel Hoffses, Chief, Inspection Services  
Arthur Rowe, Code Enforcement Officer  
William D. Giroux, Zoning Enforcement Officer  
Charles A. Lane, Associate Corporation Counsel

*At 2nd meeting  
was switched  
to an intap. Appeal*

# Current Ordinance

City of Portland, Maine  
Code of Ordinances  
Sec 14-381

Land Use  
Chapter 14  
Rev. 12-1-00

## Sec. 14-382. Increase in nonconforming use of building or alterations to nonconforming buildings limited.

(a) A lawful nonconforming building may be maintained, repaired, or reconstructed in kind within a one year period, but no alterations, modifications or additions shall be made to it, except as provided in this division.

(b) A building whose use is wholly nonconforming shall not be altered so as to increase the cubical content or the degree of nonconformity.

(c) No alterations, modifications or additions shall be made so as to increase the cubical content or the degree of nonconforming use, nor shall a nonconforming use be extended to any other part of such building, unless such part was clearly arranged and designed for such nonconforming use prior to June 5, 1957, or such extension of a nonconforming use is solely for the purpose of bringing the use into compliance with health or safety codes, or to correct a condition that may not technically be in violation but which is determined by the board of appeals to constitute a health or safety problem. In either case, the expansion shall be limited to the minimum necessary to accomplish that purpose.

(d) Alteration, modification or addition may be made to a building which is lawfully nonconforming as to space and bulk or any dimensional requirement where the proposed changes in existing exterior walls and/or roofs would be within the space occupied by the existing shell of the building, and would not create any new nonconformity nor increase any existing nonconformity. This subsection shall not apply to buildings located within shoreland zones and existing on June 15, 1992, which are nonconforming only as to setbacks from wetlands, tributary streams or other water bodies, which shall be regulated in accordance with subsection (f)(1)d. of this section.

(e) Except as expressly provided herein, any alteration, modification or addition permitted under this section shall be in compliance with all other applicable sections of this chapter. Nothing within this section shall be construed to permit an