Marge Schmuckal
Zoning Administrator

Jeff Lev
Director, Planning & Urban Developm

Reviewed for Code Compliance
Inspections Division
Approved with Conditions
Date: 01/27/16

CITY OF PORTLAND

Application for Legalization of Nonconforming Dwelling Units

Section 14-391 – In effect March 24, 2004

Location/Address of Legalization: 94 Pleasant Avenue, Portland, ME	
Tax Assessor's Chart/Block/Lot: 131 / K / 011	
Owner Name: Howard and Stacy Rutherford	**Cost of Work: $**
Address (if different than above): 92 Middle Jam Road, Gorham, ME 04038	
	Fee: $
	($300 per legalized unit & $75 per C of O)
Telephone: 207-329-4011	
E-Mail: Rutherfordandsons@gmail.com	**Total DUE:**
Requested # of Units to be legalized: 2	**Total bldg. units:** 4
	07/29/2013
Current # of Legal D.U.: 2	
Attach evidence that each requested unit to be legalized existed as of 04/01/95.	
LIST evidence that you are submitting:	
Attached Tax Card from 1990 shows 4 units. Attached 1980's card also notes 3rd apt added in 1975 under remodeling section.	
Mortgagee Deed showing we purchased April 2005.	
Attach evidence that the current owner/applicant neither constructed NOR established the non-conforming dwelling units to be legalized.	
LIST evidence that you are submitting:	
This would be the same as above evidence. All four units existed and were occupied upon our purchase of this property.	

I hereby certify that I am the Owner of Record of the above property, or that the Owner of Record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Code Official's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

Signature of Applicant: Howard Rutherford **Date:** 07/29/2013

This is NOT a permit; you may NOT commence ANY work until the permit is issued.

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PORTLAND MAINE

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Jeff Levine, AICP, Director
Director of Planning and Urban Development

Tammy Munson
Director, Inspections Division

Electronic Signature and Fee Payment Confirmation

Notice: Your electronic signature is considered a legal signature per state law.

By digitally signing the attached document(s), you are signifying your understanding this is a legal document and your electronic signature is considered a ***legal signature*** per Maine state law. You are also signifying your intent on paying your fees by the opportunities below.

I, the undersigned, intend and acknowledge that no permit application can be reviewed until payment of appropriate permit fees are ***paid in full*** to the Inspections Office, City of Portland Maine by method noted below:

☐ Within 24-48 hours, once my complete permit application and corresponding paperwork has been electronically delivered, I intend to **call the Inspections Office** at 207-874-8703 and speak to an administrative representative and provide a credit/debit card over the phone.

☐ Within 24-48 hours, once my permit application and corresponding paperwork has been electronically delivered, I intend to **hand deliver** a payment method to the Inspections Office, Room 315, Portland City Hall.

☐ I intend to deliver a payment method through the U.S. Postal Service mail once my permit paperwork has been electronically delivered.

Applicant Signature: Howard Rutherford Date: 07/29/2013

I have provided digital copies and sent them on: Date: 07/29/2013

NOTE: All electronic paperwork must be delivered to buildinginspections@portlandmaine.gov or by physical means ie; a thumb drive or CD to the office.

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APPLIES TO: Dwelling units (NOT rooming units) that are currently recognized by the City as illegal or nonconforming, and located within the following zones:
R-3, R-4, R-5, R-6, or R-7; or the B-1, B-1(b), B-2, B-2(b), or B-3 Zones.

FEE: $300 for each dwelling unit to be legalized by the applicant. When a permit is able to be issued, there is a requirement for a fee of $75 for each Certificate of Occupancy (C of O) required for each unit to be legalized.

REQUIRED SUBMISSIONS:

1. A plot plan, drawn to scale, showing buildings(s), parking, easements, dumpsters, fencing, public ways and any other significant feature.
2. A dimensioned floor plan for every unit in the dwelling, whether or not it is the subject of the application.
3. The applicant shall supply competent evidence, such as assessor's records, purchase and sale agreements, affidavits, other public records and such that:
   a. The nonconforming dwelling unit(s) existed as of 04/01/95
   b. The structure was originally designed and built to accommodate more than the number of units presently in use.
   c. The applicant neither constructed NOR established the nonconforming dwelling unit(s).
4. The nonconforming dwelling unit(s) must comply or be able to comply with the National Fire Protection Association Life Safety Code – Fire Prevention Code PRIOR to the issuance of the requested permit.
5. The nonconforming dwelling unit(s) must comply or be able to comply with the City's Housing Code PRIOR to the issuance of the requested permit.

NOTIFICATION REQUIREMENTS: Every application is subject to notifications to owners of abutting properties, as well as owners of properties situated within 300 feet of the structure, with the request to legalize nonconforming dwelling units(s). Any objection must be submitted in writing to the Zoning Administrator (ZA) within ten (10) days of the notice sent to them.

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The Zoning Administrator may only approve such an application if:

1. The evidence presented by the application satisfies all of the requirements, AND
2. Both the Office of Inspection Services and the Fire Prevention Bureau have certified that the nonconforming unit(s) conform with the applicable codes, AND
3. No abutter or person entitled to notice has requested that the application be referred to the Zoning Board of Appeals (ZBA) for approval as a substitute in place of the ZA.

Action required by the Zoning Board of Appeals:

1. When the ZA cannot approve an application based on submitted, or lack of submitted evidence.
2. When a timely objection is filed by a qualified person.
3. When either of the above occurs, the applicant/owner of the submitted legalization request has thirty (30) days from the decision of the ZA or objection to file a Conditional Use Appeal to the ZBA. All current fees for an appeal application and ZBA notifications will apply in addition to all other fees. The ZB fees shall be paid by the applicant/owner of the submitted legalization request.

Neither the Zoning Administrator NOR the ZBA shall apply the dimensional or parking requirements while making a final decision on such an application.

When, and IF, a permit is approved and issued for legalization of dwelling unit(s), the FINAL STEP of approval is the issuance of a Certification of Occupancy (C of O). ***This is a separate fee of $75 per requested unit to be legalized.*** Before a C of O is issued, all housing and fire code, and/or ZB requirements shall be met in full.

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City of Portland Land Use, Code of Ordinances Chapter 14
Sec. 14-391. Nonconformity as to number of dwelling units.

(a) Purpose. The purpose of this provision is to establish a process whereby certain dwellings which contain more dwelling units than the number permitted by the applicable provisions of the Land Use Code may be recognized as legal, nonconforming uses. This provision shall not apply to rooming units.

(b) Approval by Zoning Administrator.

1. Application. Application for validation of such non- conforming dwelling units shall be on a form provided by the Division of Housing and Neighborhood Services, Inspection Services Office. The application fee will be $300.00 for each dwelling unit which is the subject of the application, and will be accompanied by: (i) a plan, drawn to scale, which shows the location of the building(s) on the lot, parking, easements, dumpsters, fencing, public ways and any other significant feature and (ii) a floor plan for each unit in the dwelling, whether or not it is the subject of the application.

(c) Eligibility. In order for a nonconforming dwelling unit to be validated by administrative action of the Zoning Administrator as authorized herein, the Zoning Administrator must find, based on competent evidence, supported by public records, that:

1. The nonconforming dwelling units were either in existence April 1, 1995, or the structure in which they are located was originally designed to accommodate more than the number of such units presently in use.

2. The applicant neither constructed nor established the non-conforming dwelling units.

3. The nonconforming dwelling units comply with or can be made to comply with current standards of the National Fire Protection Association Life Safety Code (§16-1) and the National Fire Protection Association 1: Fire Prevention Code (§10-16), as amended.

4. Each of the nonconforming dwelling units complies with provisions of the City's Housing Code or can be made to conform with, as amended, including, but not limited to, the requirements of §6-110, Minimum Standards for Space and Occupancy and §6-111, Minimum Plumbing Standards, and §6-112 Minimum Ventilation Standards.

5. The structure containing the nonconforming dwelling units is located in the R-3, R-4, R-5, R-6 or R-7 Zones; or the B-1, B-1(b), B-2, B-2(b) or B-3 Zones.

City of Portland Land Use, Code of Ordinances Chapter 14

Sec. 14-391. Nonconformity as to number of dwelling units. (continued)

6. In the absence of legally competent evidence, supported by records, (such as, but not limited to, Assessor's records, purchase and sale agreements, affidavits, deeds, mortgages, as well as reliable secondary sources, such as the Portland Director), that the conditions of subsections c(1), C(2), c(3), c(4), or c(5) can be met, the Zoning Administrator may not approve the application, but shall advise the applicant that the matter may be appealed to the Board of Appeals.

(d) Notice to Abutters. Upon receipt of a completed application, the Zoning Administrator will provide both the owners of abutting properties as well as the owners of property situated within 300 feet of the structure of the essential information contained in the application, along with a notice that they may object to the Zoning Administrator's acting on the application and require the applicant to appeal to the Board of Appeals. The notice shall be in conspicuous type and advise the abutters and owners of property within 300 feet that any objection must be submitted in writing to the Zoning Administrator within ten (10) days of the date of the notice

The failure of any property owner to receive the notice described above shall not invalidate any action by the Zoning Administrator. The Zoning Administrator shall promptly notify the applicant of receipt of the objection that the Zoning Administrator is without authority to proceed and advise the applicant that, within 30 days from receipt of the letter, an application may be filed to have the matter reviewed by the Board of Appeals as a conditional use.

(e) Approval of Application.

1. The Zoning Administrator may approve the application, provided: (i) the evidence presented satisfies all of the requirements of this section; (ii) the Office of Inspection Services and Fire Prevention Bureau have certified that the nonconforming units conform with or can be made to conform with the applicable codes; and (iii) no abutter nor person entitled to notice has requested that the application be referred to the Board of Appeals, instead of the Zoning Administrator.

2. Upon approval of the application and receipt of an additional fee in the amount of $75.00 for each nonconforming dwelling unit which has been recognized as a lawful, nonconforming use, the Zoning Administrator will issue a certificate of occupancy.

(f) Disapproval of Application. In the event the application is not approved by the Zoning Administrator or in the event of a timely objection filed by a person qualified herein to file such an objection, the applicant, within (30) days from the decision of the Zoning Administrator or objection, may appeal the matter to the Board of Appeals as a conditional use.

City of Portland Land Use, Code of Ordinances Chapter 14

Sec. 14-391. Nonconformity as to number of dwelling units. (continued)

(g) Action by Board of Appeals. The Board of Appeals shall treat applications filed under this section as an application for a conditional use (§14-474) applying the standards applicable to conditional uses as well as the requirements of this section.

(h) Dimensional and Parking Requirements. In marking decisions under this section neither the Zoning Administrator nor the Board of Appeals shall apply the dimensional or parking requirements which would otherwise apply in the zones where

(i) Exclusions.

1. The provisions of this section shall not apply to rooming units (§14-47), but shall apply to efficiency apartments (§6-110(b)).

2. The Board of Appeals is without jurisdiction to grant any relief (including, but not limited to, variances) which would recognize the particular dwelling units which are the subject of this section as legal, nonconforming uses, except in strict compliance with each requirement of this section.

(j) Prior Judicial and Administrative Action. Decisions of any court or administrative body, including but not limited to, the Zoning Administrator, the Planning Board or the Board of Appeals made prior to the effective date of this section and which addressed the number of nonconforming dwelling units in a particular structure, will not bar relief under this section.
(Ord. No. 153-03/04, 02/23/04)
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*Editor's note—Section 4 of Ord. No. 354-85, adopted Jan. 7, 1985, repealed the pre-2004 version of § 14-391, relative to the Board of Appeals permitting temporary nonconforming uses, which derived from Code 1968, § 602.17.K.