



# PORTLAND MAINE

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

March 16, 2010

Thomas F. Jewell, Esq.  
Jewell & Boutin, P.A.  
Suite 1104  
477 Congress Street  
Portland, ME 04101-3427

SCANNED

RE: 15-17 Hemlock Street – 065-A-17 – R-6 Residential Zone

Dear Attorney <sup>T6w</sup>Jewell,

I am in receipt of your request for a determination letter concerning 15-17 Hemlock Street and whether the property meets the test and requirements of a functional division of land as outlined by the State Law Court under Keith v. Saco River Corridor Commission.

#### Preliminary Criteria:

- 1. Were the structures in existence prior to adoption of the Zoning Ordinance?**  
The records indicate that #15 or the rear single family structure was built prior to or around 1900. #17 Hemlock with three families was built in 1922. The basis of the current Land Use Zoning Ordinance is June 5, 1957. Therefore both structures were in existence prior to the adoption of the current Zoning Ordinance. This criterion is being met.
- 2. From that time to the present, the buildings have been separately used and occupied.** Yes. Documentation in our microfiche shows separate building permit activities for each address. This criterion is being met
- 3. Each structure is served by its own utilities and sewerage disposal systems.**  
Information has been submitted for each structure showing separate bills and separate meter numbers for the utilities of water, electric and gas. The applicant has also stated that there are two separate waste lines, one for each building. The wastewater fee on each Portland Water District bill supports this. The third criterion is being met.

#### Further Tests:

- 1. The use reflects the “nature and purpose” of the use prevailing when the zoning legislation took effect.** The use of the property has not changed since the Land Use Zoning Ordinance went into effect in 1957. The City’s microfiche indicates that #15 Hemlock Street was a single family dwelling prior to 1957 and remains a single family dwelling. The City’s microfiche also has evidence that

#17 Hemlock Street was a residential three unit prior to 1957 and remains a residential three unit. The uses meet this test.

2. **The use created will not be different in quality or character, as well as in degree, from the original use.** As stated above, the uses of the two structures have remained constant. There are no newly created uses involved with this request. Therefore the applicant meets this test.
3. **The current use is not different in kind, in its effect on the neighborhood from the original use.** The neighborhood is residential. The past and current uses are the same and have no different effect on the neighborhood. The applicant meets this test.

Based upon the submitted information and further research of the property, the applicant is meeting the burden of a functional division of land. The applicant has submitted a sketch of how the property would be divided. There is a common drive that both properties use. It is recommended that the applicant place cross easements upon the land to allow the two lots to use the driveway and any parking spots as needed.

If you have any questions regarding this determination, please do not hesitate to contact me at 874-8695.

Very truly yours,



Marge Schmuckal  
Zoning Administrator

Cc: File