



PORTLAND MAINE

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Planning & Urban Development Department
Penny St. Louis Littell, Director

Planning Division
Alexander Jaegerman, Director

July 29, 2010

Zachary Heiden, Esq.
Maine Civil Liberties Union
401 Cumberland Avenue
Portland, Maine 04101

Project Name:	Portland Masjid and Islamic Center 978 Washington Avenue, Portland ME Place Of Assembly - Conditional Use 10-97900001
Project ID:	161 - E-003-001
CBL:	Maine Civil Liberties Union. Zachary Heiden Esq.
Applicant	Molly Casto, Senior Planner
Planner	

Dear Mr. Heiden,

On July 27, 2010 the Portland Planning Board considered a proposed Change of Use from a repair shop to a place of assembly for the property at 978 Washington Avenue, encompassing the first floor space. The Planning Board reviewed the proposal for conformance with the standards of Section 14-474 and 14-118 of the City of Portland Land Use Code for a conditional use in the R-5 Residential Zone. The Planning Board voted unanimously (4-0, members Patterson, Hall and Lewis absent) to approve the application with the following condition(s) as presented below.

CONDITIONAL USE

The Planning Board voted 4-0 (Patterson, Hall and Lewis absent) that the proposed conditional use for a place of assembly in the R-5 Residential Zone is in conformance with the standards of Section 14-474 and 14-118 of the Land Use Code, subject to the following condition(s):

- i. The applicant shall obtain all necessary building permits for the change of use through the City of Portland Inspections Division. As part of the building

permit review process, the applicant and property shall comply with applicable requirements for fencing to screen off street parking and shading of exterior light fixtures, as described in Section 14-338 and 14-340 of the Land Use Code.

The approval is based upon the submitted materials and the findings related to applicable conditional use review standards as contained in Planning Report #22-10 for application 10-97900001, which is attached.

STANDARD CONDITIONS OF APPROVAL

Please note the following applicable standard conditions of approval and requirements for all approved applications:

1. The site shall be developed and maintained as depicted in the site plan and the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or the planning authority pursuant to the terms of this article. Any such parcel lawfully altered prior to the enactment date of these revisions shall not be further altered without approval as provided herein. Modification or alteration shall mean and include any deviations from the approved site plan including, but not limited to, topography, vegetation and impervious surfaces shown on the site plan. No action, other than an amendment approved by the planning authority or Planning Board, and field changes approved by the Public Services authority as provided herein, by any authority or department shall authorize any such modification or alteration.
2. The above approvals do not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.

If you have any questions, please contact Molly Casto, Senior Planner at (207) 874-8901 or by email at mpc@portlandmaine.gov.

Sincerely,



Bill Hall, Chair
Portland Planning Board

Attachments:

1. Planning Board Report #22-10

Electronic Distribution:

Penny St. Louis Littell, Director of Planning and Urban Development

Alexander Jaegerman, Planning Division Director

Barbara Barhydt, Development Review Services Manager

Molly Casto, Senior Planner

Philip DiPierro, Development Review Coordinator

Marge Schmuckal, Zoning Administrator

Tammy Munson, Inspections Division Director

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Assessor's Office

Approval Letter File

Hard Copy: Project File



PLANNING BOARD REPORT PORTLAND, MAINE

PORTLAND MASJID AND ISLAMIC CENTER
978 WASHINGTON AVENUE
CONDITIONAL USE
PROJECT ID #97900001
ZACHARY HEIDEN, ESQ. MAINE CIVIL LIBERTIES UNION, APPLICANT

Submitted to: Portland Planning Board Public Hearing Date: JULY 27, 2010	Prepared by: Molly Casto, Senior Planner Date: July 15, 2010
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1. INTRODUCTION

Mr. Zachary Heiden of the Maine Civil Liberties Union Foundation (MCLU), on behalf of the property owner, Mrs. Sadri Shir, requests the Planning Boards review and approval of a proposed change of use from a repair shop to place of assembly for Mrs. Shir's property located at 978 Washington Avenue. The applicant does not propose any development or alteration to the site at this time. The project is being reviewed as a conditional use in the R-5 zone. The City has determined that the application is not subject to site plan review (see attached memorandum from Corporation Counsel – [Attachment 2](#)). The property does not meet the square footage threshold for site plan review of interior site alteration and the site is not proposed to be altered from its existing condition.

219 notices were sent to area residents and interested parties. Notice also appeared in the July 12th and July 19th, 2010 editions of the *Portland Press Herald*.

2. PROJECT DATA

Total Area of Lot:	14,400 sq. ft. (.331 acres)
Zone:	R-5 Residential
Existing Uses:	Television Repair (currently vacant) and Residential (2 nd floor apartment)
Proposed Use:	Place of Assembly (small) and Residential (retain existing 2 nd floor apartment).
Bldg. Square Footage:	3,465 sf (1,155 sf footprint)
Total Area for Proposed Change of Use:	665 sf

Existing Parking: Gravel Lot (Approx. 7 spaces)
Proposed Parking: 7 spaces

3. PROPOSED DEVELOPMENT

The property encompasses a 14,400 s.f. parcel on Washington Avenue near the corner of Fall Brook Street. The property is in an R-5 Residential Zone, which permits places of assembly as a conditional use, to be reviewed and approved by the Planning Board. Places of Assembly became a permitted conditional use in the R-5 zone and in the other R-zones on January 4, 2010 as a result of ordinance amendments approved by the Planning Board and City Council. The total square footage of the building is 3,465 sf. The applicant proposes to change the use of approx. 665 s.f. of the first floor, the most recent use of which was for television repair and sales, to a mosque (place of assembly). The remaining 490 sf of first floor area has been and will remain as storage space. The second floor will remain as a residential apartment.



VICINITY OF PROJECT SITE

The proposed assembly area measures 20'4" x 35". The applicant proposes to retain 7 existing parking spaces on an existing gravel parking area, defined by large logs placed on the ground (see Feb 11, 2010 sketch plan in the application packet – Attachment 1). The remainder of the site is grassed. There is a dense vegetated buffer along the rear (southerly) property boundary. There is one existing exterior light on the easterly wall of the building to illuminate the parking area. This light appears not to be functional at this time. There are two existing curb cuts accessing the site from Washington Avenue and an existing brick sidewalk and granite curbing along the Washington Avenue frontage. The site is abutted on three sides by single-family residential homes.

4. BACKGROUND AND SCOPE OF REVIEW

The owner illegally paved and expanded the existing gravel parking area without approval from the City. Ultimately, the City and the property owner reached an agreement in December, 2009 where the owners removed all pavement and gravel that had been installed, filled a drainage course that had been created to divert water, re-graded the property to a flat contour and restored the area outside what had been existing gravel parking with loam and seed. The lot has been returned to its original condition (Attachment 3 – Agreement between Sadri Shir, Nawad Shir and Portland Masjid and Islamic Center and City of Portland).

The proposed new use as a place of assembly is subject to the conditional use provisions of the Land Use Code. The proposal is not subject to City site plan requirements because the lot was returned to its original configuration, thus it is no longer subject to the site plan threshold concerning construction of a parking lot. In addition, the site plan ordinance includes exemptions for alterations inside a structure due to a change of use if those changes impact less than 5,000 sf. As previously noted, the proposed change of use is limited to 665 sf. of the first floor. Gary Wood, Corporation Counsel has provided the Board with a memorandum detailing this determination (Attachment 2).

5. RIGHT, TITLE OR INTEREST

The applicant has submitted a Warranty Deed, dated November, 2005 confirming Mrs. Sadri Shir as owner of the property at 978 Washington Avenue (Attachment 1).

6. STAFF REVIEW

The proposed development has been reviewed by staff for conformance with applicable conditional use standards of the Land Use Code. These include Section 14-118, the Conditional Use Standards of the R-5 zone, and Section 14-474, Conditional Use Standards. The proposal is also subject to applicable standards of Division 20, Off-Street Parking.

A. Zoning Assessment

Marge Schmuckal, Zoning Administrator submitted the following review comments on June 3, 2010. She has no additional comments for the Planning Board since the workshop:

This property is located in an R-5 Residential Zone which allows Places of Assembly as a Conditional Use before the Planning Board. This is a change of use from a TV service repair and sales on the first floor and a single family on the second floor, to a Place of Assembly on the first floor and a single family dwelling on the second floor. This is considered to be a "Small" Place of Assembly which requires a minimum lot size of 10, 890 square feet. The current lot size is 14, 400 square feet. The required minimum lot size for the Place of Assembly use is being met.

The exterior and interior of the building was inspected on February 11, 2010. Under the parking requirements for Places of Assembly, one (1) parking space for each one hundred and twenty five (125) square feet of floor area used for assembly area not including bathrooms, bulk storage, stairways, closets or other non-assembly areas, it was determined that six parking spaces are required for the Place of Assembly use plus one parking space for the existing dwelling unit is required for a total of seven (7) parking spaces. Seven parking spaces are being shown on the submitted plot plan and meets the minimum requirements.

Section 14-337 requires parking for more than six vehicles to be no closer than 25 feet to any residential structure on an adjoining lot. The scaled drawings show the parking area to be at least 30 feet away from the closest residential structure.

During a building permit review and approval, the application will be conditioned with compliance with Section 14-338 which states that "Where off-street parking shall about a lot in residential use or an un occupied lot which is located in a residence zone, a fence no less than forty-eight (48) inches shall be provided and maintained between such off-street parking and that part of the lot line involved."

Also during the building permit review and approval, the application will be conditioned with compliance with Section 14-340 which states, "where artificial lighting is provided, it shall be shaded or screened so that no light source shall be visible from outside the area and its access driveways.

B. Conditional Use Standards

The Board is asked to review the proposal for conformance with the following relevant Conditional Use standards. The standards, along with Planning staff discussion, are provided below:

DIVISION 6. R-5 RESIDENTIAL ZONE

Sec. 14-118 (b) 3: Conditional uses for places of assembly.

(a) In the case of expansion of existing such uses onto land other than the lot on which the principal use is located, it shall be demonstrated that the proposed use cannot reasonably be accommodated on the existing site through more efficient utilization of land or buildings, and will not cause significant physical encroachment into established residential areas.

The proposed use is confined to the existing site and does not propose to expand onto land other than the lot in which the principal use is located.

(b) The proposed use will not cause significant displacement or conversion of residential uses existing as of June 1, 1983, or thereafter.

The use is proposed in a former television repair and retail shop, thus it is not displacing a residential use. The existing residential apartment on the second floor will remain residential.

(c) In the case of a use or use expansion which constitutes a combination of the above listed uses [elementary, middle, and secondary school; long-term and extended care facilities; Intermediate care facility for thirteen (13) or more persons; Places of assembly; Hospital; College, university, trade school] with capacity for concurrent operations, the applicable minimum lot sizes shall be cumulative.

The proposal does not constitute a combination of the uses listed in Section 14-118 and above.

(d) In the case of places of assembly (including places of religious assembly, community halls and private club or fraternal organizations) the proposed use shall be subject to the requirements of article V (site plan) of this chapter.

The City has determined, in this case, that the proposed change of use is not subject to site plan review because it does not meet the site plan review thresholds and, after previously being modified, the site has since been brought back to its previously existing, original condition (see Attachment 2 – memorandum from Corporation Counsel).

At the June workshop, the Planning Board questioned Corporation Counsel's interpretation of Section 14-118(b). Corporation Counsel was present at the workshop and responded that the language of Section 14-118(b) 3 (d) would need to be amended to that that Places of Assembly are subject to the requirements of Article V notwithstanding exceptions listed in Section 14-523. Planning Board member, Lee Lowry asked that Corporation Counsel initiate such an amendment to this section. Gary Wood, Corporation Counsel agreed but noted the importance of carefully reviewing the type and scale of uses that would be subject to this provision to be sure that costs associated with site plan review would not be onerous for smaller applications.

DIVISION 28. JURISDICTION OF BOARD OF APPEALS

Sec. 14-474. Conditional uses.

(2) Standards. Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the board determines that:

(a) There are unique or distinctive characteristics or effects associated with the proposed conditional use;

The proposed use as a place of assembly would not result in unique or distinctive characteristics. There are no changes proposed to the exterior of the building or the site. The mosque remains open during the day but sees the majority of the congregation for Friday services at noon. These typically last for ½ hour. The number of cars arriving at the mosque for these Friday serves has traditionally not exceeded ten. The site accommodates the majority of these vehicles and there is on-street parking available on adjacent side streets.

(b) There will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area;

It does not appear that there will be any adverse impacts associated with the proposed project. The proposed use will be limited to worship and study.

(c) Such impact differs substantially from the impact which would normally occur from such a use in that zone.

The impacts of this site will not differ from those normally expected from such a use in the R-5 Residential zone.

(d) Conditions on conditional use permits. The board of appeals may impose such reasonable conditions upon the premises benefited by a conditional use as may be necessary to prevent or minimize adverse effects therefrom upon other property in the neighborhood. Such conditions shall be expressly set forth in the resolution authorizing the conditional use permit and in the permit. Violation of such conditions shall be a violation of this article.

7. STAFF RECCOMENDATION

Planning staff recommends that the Planning Board approve the applicant's conditional use application with a condition of approval requiring the applicant to obtain all necessary building permits for change of use and to comply with corresponding building permit standards of Section 14-338 and 14-340 addressing screening of the parking area and exterior lighting.

8. MOTIONS

Conditional Use:

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report for application #979 000 01 relevant to Portland's Conditional Use Standards and other regulations, and the testimony presented at the Planning Board hearing:

The Planning Board finds the proposed conditional use for a Place of Assembly in the R-6 Zone (**does or does not**) meet the standards of Sections 14-474 and 14-118, subject to the following conditions of approval:

- (1) The applicant shall obtain all necessary building permits for the change of use. As part of the building permit review process, the applicant shall comply with applicable requirements for fencing to screen off street parking and shading of exterior light fixtures, as described in Section 14-338 and 14-340 of the Land Use Code.

9. ATTACHMENTS

(1) Application

- a. Cover Letter from Zachary L. Heiden, Counsel for Plaintiffs
- b. Conditional Use Application
- c. Warranty Deed
- d. Tax Map
- e. Site Plan sketch
- f. Floor Plan sketch
- g. Aerial photo
- h. Site photos
- i. Wastewater flow calculations
- j. Assessor's database information

(2) Memorandum from Gary Wood, Corporation Counsel, June 10, 2010

(3) Copy of December, 2009 agreement between Portland Masjid and Islamic Center and the City of Portland.

Att. 1



MAINE CIVIL LIBERTIES UNION FOUNDATION

May 17, 2010

VIA REGULAR MAIL

Zoning Board of Appeals
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Conditional Use Application (Place of Assembly) for 978 Washington Avenue (161-E-3)

To the Board:

Enclosed, please find a completed Conditional Use Appeal Application along with accompanying material, to authorize the use of 978 Washington Avenue (161-E-3) as a Place of Assembly.

A conditional use permit for the proposed use as a place of assembly (religious) is authorized by Section 14-118(b)(3) of the City of Portland Code of Ordinances, and the property fulfills the dimensional requirements set forth in Section 14-120(1)(a)(5) and the parking qualification set fourth in Section 14-332(k). Specifically, the lot size of 978 Washington Avenue is 14,418 square feet, which is less than 21,780 square feet; and the lot contains at least seven off-street parking spots—six spots for the place of assembly plus an additional one spot for the upstairs residential area—for the approximately 665 square feet of assembly area, which is at least one spot per 125 square feet of assembly area.

There are no unique or distinctive characteristics or effects associated with the proposed use. There will not be an adverse impact upon the health, safety, or welfare of the public or the surrounding area by the proposed use. There are no dumpsters on site that require screening or buffering, as there will be no trash generated by the downstairs place of assembly and the 1 dwelling unit on the second floor of the property will take out their own trash. And, the impact of the proposed use does not differ substantially from the impact which would normally occur from such use in that zone.

Please let me know if I can be of further assistance.

Very truly yours,


Zachary L. Heiden,
Counsel for Plaintiffs


Claire Cooper

CC: Mary E. Costigan, Esq.
Danielle P. West-Chuhta, Esq.



Conditional Use Application
PORTLAND, MAINE

Department of Planning and Urban Development,
Planning Division and Planning Board

PROJECT NAME AND ADDRESS:

978 WASHINGTON AVE.

CHART/BLOCK/LOT: 161-E-3

RIGHT, TITLE OR INTEREST: Please identify the status of the applicant's right, title, or interest in the subject property.

OWNER

Provide documentary evidence attached to this application, of applicant's right, title, or interest in the subject property. For example, a deed, option or contract to purchase, or lease the subject property.

VICINITY MAP: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or interest.

EXISTING USE: Describe use existing use of the subject property.

RESIDENTIAL

TYPE OF CONDITIONAL USE PROPOSED:

PLACE OF ASSEMBLY

SKETCH PLAN: On a separate sheet please provide a sketch plan of the property, showing existing and proposed improvements, including such features as buildings, parking, drive ways, walls, fences, etc. and a north arrow. It may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant, signed by an appropriate person, dated and titled.

CONDITIONAL USE AUTHORIZED BY: SECTION 14- 118(b)(3)

STANDARDS - CRITERIA FOR CONDITIONAL USE APPEAL

If, on a showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the Board determines that:

- There are unique or distinctive characteristics or effects associated with the proposed conditional use.
- There will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area.
- Such impact differs substantially from the impact which would normally occur from such a use in that zone.

WARRANTY DEED

KNOW ALL BY THESE PRESENTS, that we, MARY N. BLESSING, JUSTINA IVES, JEANNETTE A. BREGGIA, JOHN DIMILLO, all of Portland, Maine and ADELIA JACKSON, of North Carolina, in consideration of One and No/100 Dollars (\$1.00) and other valuable consideration paid by SADRI SHAIR whose mailing address is 41 Ocean House Road, Cape Elizabeth, Maine, the receipt whereof we do hereby acknowledge, do hereby GIVE, GRANT, BARGAIN, SELL AND CONVEY, WITH WARRANTY COVENANTS unto the said Sadri Shair, her heirs, her successors and assigns forever, the following described premises:

Shir 55

See Schedule A attached hereto and made a part hereof.

TO HAVE AND TO HOLD the same, together with all the privileges and appurtenances thereunto belonging, to the said Sadri Shair, her heirs, her successors and assigns forever. We do covenant with the said Grantee, her heirs, her successors and assigns, that we are lawfully seized in fee of the premises, free of all encumbrances and that we do have good right to sell and convey the same to the said Grantees to hold as aforesaid; and that we and our successors shall and will warrant and defend the same to the said Grantee, her heirs, her successors and assigns, forever, against the lawful claims and demands of all persons.

IN WITNESS WHEREOF, we, the said Mary N. Blessing, Justina Ives, Jeannette A. Breggia, John DiMillo, and Adelia C. Jackson have caused these presents to be signed this 30th day of November, 2005.

MAINE REAL ESTATE TAX PAID

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

[Signature] Witness

[Signature] Witness

[Signature] Witness

[Signature] Witness

[Signature] Witness

Mary N. Blessing Mary N. Blessing

Justina Ives Justina Ives

Jeanette A. Breggia Jeanette A. Breggia

John DiMillo John DiMillo

Adelia C. Jackson Adelia C. Jackson

STATE OF MAINE
COUNTY OF Androscoggin

11-30-05, 2005

Then personally appeared the above-named Mary N. Blessing, Justina Ives, Jeannette A. Breggia, John DiMillo and acknowledged the foregoing instrument to be their free acts and deeds before me,

Brenda J. Hall

Notary Public/Attorney at Law

print name _____

my comm. exp. Brenda J. Hall

Notary Public, Maine

My Commission Exp: 3/9/06

STATE OF NORTH CAROLINA
COUNTY OF Guilford

11-29-05, 2005

Then personally appeared the above-named Adelia C. Jackson and acknowledged the foregoing instrument to be their free acts and deeds before me,

Hillary Walser

Notary Public/Attorney at Law

print name Hillary WALSER

my comm. exp. 12-11-2008

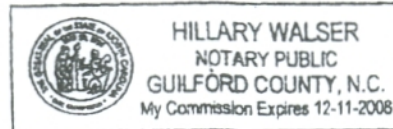


EXHIBIT A

A certain lot or parcel of land with the building thereon, situated on the Southwesterly side of Washington Avenue, formerly called Main Street, in said Portland, and bounded and described as follows:

Beginning at a point in the Southwesterly side line of said Washington Avenue, at the Northwesterly corner of land which Arthur E. Marks conveyed to Charles Murphy, by deed dated April 18, 1894, and recorded in Cumberland County Registry of Deeds, Book 610, Page 284, and now or formerly owned by one Speirs; thence Northwesterly by said Washington Avenue, ninety-six (96) feet to a point two (2) feet Northwesterly of the Northwesterly side line extended of the two story building containing the store and dwelling house on said lot; thence Southwesterly on a line parallel to the Northwesterly side line of said Speirs land one hundred fifty (150) feet to a point; thence Southeasterly by land now or formerly of Antonio Leo and on a line parallel to said Washington Avenue ninety-six (96) feet to the Northwesterly side line of land of one Harris, same being a continuation of the Northwesterly side line of said Speirs land; thence Northeasterly by said Harris and Speirs land, one hundred fifty (150) feet to the point of beginning.

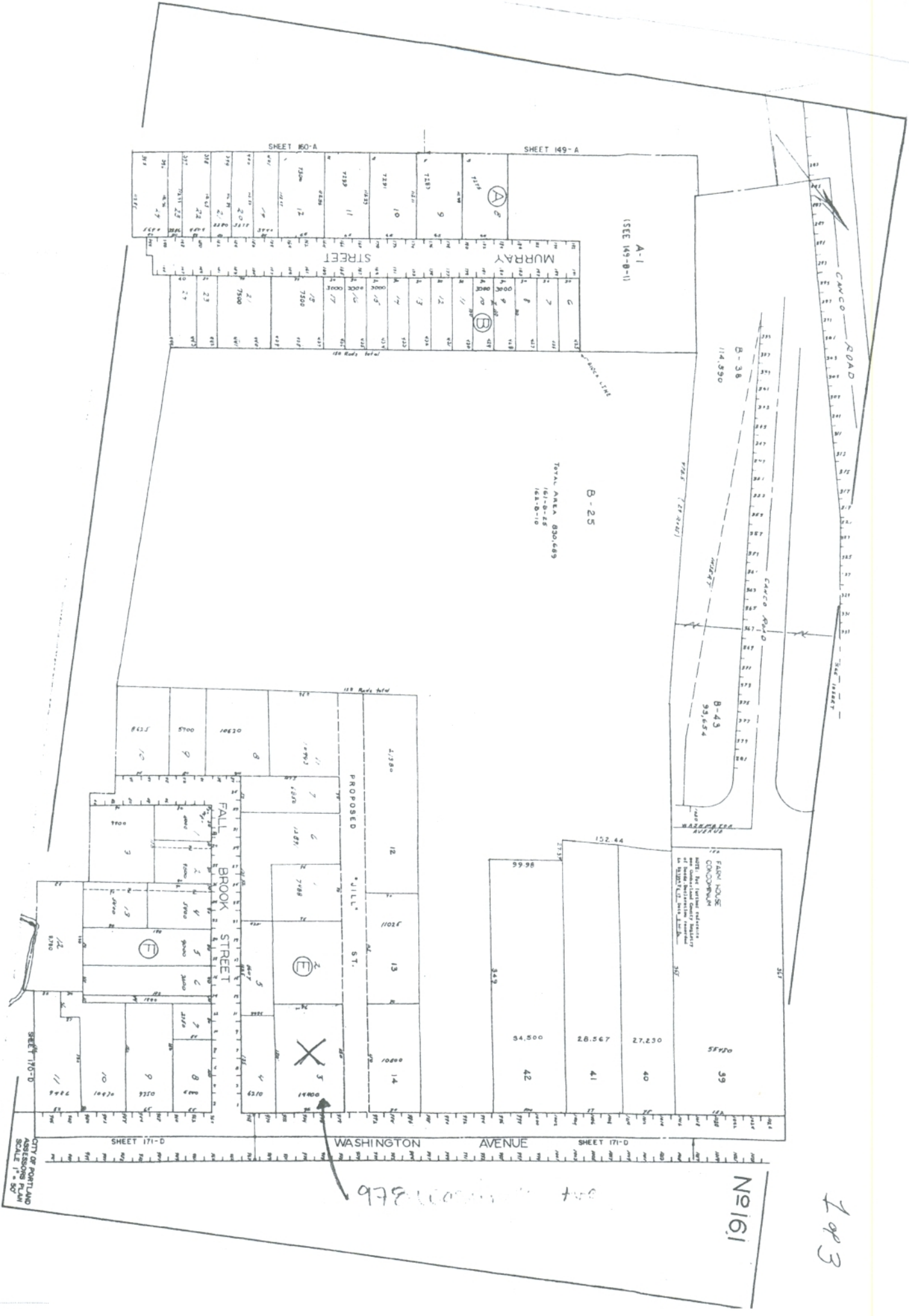
Meaning and intending to convey the same premise conveyed to Mary N. Blessing, Justina Ives, Jeannette A. Breggia, John DiMillo, and Adelia C. Jackson by Mary N. Blessing, Personal Representative for the Estate of Rose DiMillo by Deed of Distribution by Personal Representative dated July 31, 2003, and recorded in said Registry of Deeds, in Book 20508, Page 195.

Received
Recorded Register of Deeds
Dec 02, 2005 12:32:32P
Cumberland County
John B O'Brien

1 of 3

N 161

047 000007866



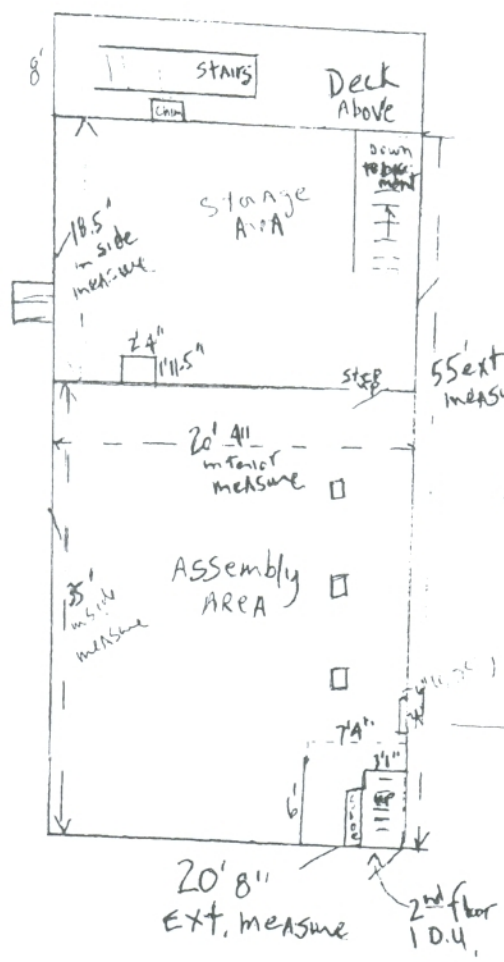
CITY OF PORTLAND
ASSISTING PLANNING
SCALE 1" = 50'

2/11/10
3:00 PM

GARY WOOD
ZACK HEIDEN
TAMM
MAG
GT R. THOR
RAMAD HABIBZAI

Parking CALCS

$664.921 \div 125 = 5.32$ or
6 pkg spaces rounded up



$20' 4'' \times 35' = 711.55 \text{ sq ft}$
 $20' 4'' \times 35' = 711.55 \text{ sq ft}$
 $- 1,164 \text{ sq ft}$
 $- 1,465 \text{ sq ft}$
 $- 44 \text{ sq ft}$

664.921 sq ft

each table 5' each
 (10' x 10' x 7' 4'')

$3(1,033.666) = 1,164 \text{ sq ft}$
 .388

$5 \times 2.933 = 1.465 \text{ sq ft}$
 (Fire Box)

1" = 10'

161-E-003
 978 W. 1st St. or AVE

$6 \times 7' 4'' = 43.98 \text{ sq ft}$
 or
 44 sq ft