

Listed below are key characters (in bold) for searching within this file.

Hold down the control key and select the “f” key. Enter either a key character from the list below or document name and select enter for a list of documents containing the search word you entered.

**APL** – all documents behind this target sheet pertain to the original application submitted by the Applicant.

**REVIEW** – all documents behind this target sheet pertain to those documents submitted to and from staff as part of the project review.

**PBM1** – all documents behind this target sheet are any Planning Board memos with attachments that went to the Board.

**PBR1** - all documents behind this target sheet are any Planning Board reports with attachments that went to the Board.

**CC1** - all documents behind this target sheet are any City Council memos/reports that went to the City Council.

**DRC1** - all documents behind this target sheet are those pertaining to the post review of the project by the Development Review Coordinator.

**MISC1** - all documents behind this target sheet are those that may not be included in any of the categories above.

**APL**

City of Portland  
Development Review Application  
Planning Division Transmittal form

**Application Number:** 10-97900001      **Application Date:** 5-26-10

**Project Name:** PLACES OF ASSEMBLY  
**Address:** 978 Washington Ave      **CBL:** 161 - E-003-001

**Project Description:** Washington Avenue - 978; Places Of Assembly Cond. Use; Zachary Heiden, Applicant.  
**Zoning:** R5

**Other Reviews Required:**  
**Review Type:** CONDITIONAL USE

**Applicant:**  
Zachary Heiden  
401 Cumberland Avenue  
Portland Me 04101

**Distribution List:**

<input checked="" type="checkbox"/> Planner	Barbara Barhydt	<input type="checkbox"/> Parking	John Peverada
<input type="checkbox"/> Zoning Administrator	Marge Schmuckal	<input type="checkbox"/> Design Review	Alex Jaegerman
<input type="checkbox"/> Traffic	Tom Errico	<input type="checkbox"/> Corporation Counsel	Danielle West-Chuhta
<input type="checkbox"/> Stormwater	Dan Goyette	<input type="checkbox"/> Sanitary Sewer	John Emerson
<input type="checkbox"/> Fire Department	Keith Gautreau	<input type="checkbox"/> Inspections	Tammy Munson
<input type="checkbox"/> City Arborist	Jeff Tarling	<input type="checkbox"/> Historic Preservation	Deb Andrews
<input type="checkbox"/> Engineering	David Margolis-Pineo	<input type="checkbox"/> Outside Agency	
		<input type="checkbox"/> DRC Coordinator	Phil DiPierro

**Preliminary Comments needed by: Wednesday, June 2<sup>nd</sup>, 2010**

**Final Comments needed by:**



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 current use.

EXISTING USE: Describe the 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, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1" = 100')

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

STANDARDS – CRITERIA FOR CONDITIONAL USE APPEAL

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:

- 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.



CONTACT INFORMATION:

APPLICANT

Name: ZACHARY HEIDEN  
Address: 401 CUMBERLAND AVE  
STE 105  
Zip Code: 04101  
Work #: (207) 774-5444  
Cell #: \_\_\_\_\_  
Fax #: (207) 774-1103  
Home: \_\_\_\_\_  
E-mail: heiden@mclw.org

PROPERTY OWNER

Name: SADRI SHIR  
Address: 41 OCEAN HOUSE ROAD  
CAPE ELIZABETH, ME  
Zip Code: 04107  
Work #: \_\_\_\_\_  
Cell #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Home: (207) 228-5040  
E-mail: \_\_\_\_\_

BILLING ADDRESS

Name: MAINE CIVIL LIBERTIES UNION FOUNDATION  
Address: 401 CUMBERLAND AVE.  
STE. 105  
Zip: 04101  
Work #: (207) 774-5444  
Cell #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Home: \_\_\_\_\_  
E-mail: heiden@mclw.org  
info@mclw.org

~As applicable, please include additional contact information on the next page~

N/A

AGENT/REPRESENTATIVE

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Zip Code: \_\_\_\_\_  
Work #: \_\_\_\_\_  
Cell #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Home: \_\_\_\_\_  
E-mail: \_\_\_\_\_

ENGINEER

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Zip Code: \_\_\_\_\_  
Work #: \_\_\_\_\_  
Cell #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Home: \_\_\_\_\_  
E-mail: \_\_\_\_\_

ARCHITECT

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Zip Code: \_\_\_\_\_  
Work #: \_\_\_\_\_  
Cell #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Home: \_\_\_\_\_  
E-mail: \_\_\_\_\_

CONSULTANT

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Zip Code: \_\_\_\_\_  
Work #: \_\_\_\_\_  
Cell #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Home: \_\_\_\_\_  
E-mail: \_\_\_\_\_

SURVEYOR

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Zip Code: \_\_\_\_\_  
Work #: \_\_\_\_\_  
Cell #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Home: \_\_\_\_\_  
E-mail: \_\_\_\_\_

ATTORNEY

Name: ZACHARY HEIDEN  
Address: 401 CUMBERLAND AVE  
STE 105  
Zip Code: 04101  
Work #: (207) 771-8444  
Cell #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Home: \_\_\_\_\_  
E-mail: heiden@mclu.org

# PROJECT DATA

The following information is required where applicable, in order complete the application

Total Site Area 14,400 # sq. ft.  
 Proposed Total Disturbed Area of the Site \_\_\_\_\_ sq. ft.  
 (If the proposed disturbance is greater than one acre, then the applicant shall apply for a Maine Construction General Permit (MCGP) with DEP and a Stormwater Management Permit, Chapter 500, with the City of Portland)

**IMPERVIOUS SURFACE AREA**

Proposed Total Paved Area N/A sq. ft.  
 Existing Total Impervious Area ~4224 # sq. ft.  
 Proposed Total Impervious Area SAME sq. ft.  
 Proposed Impervious Net Change 0 sq. ft.

**BUILDING AREA**

Existing Building Footprint 1323 sq. ft.  
 Proposed Building Footprint SAME sq. ft.  
 Proposed Building Footprint Net change 0 sq. ft.  
 Existing Total Building Floor Area 2646 sq. ft.  
 Proposed Total Building Floor Area SAME sq. ft.  
 Proposed Building Floor Area Net Change 0 sq. ft.  
 New Building SAME (yes or no)

**ZONING**

Existing \_\_\_\_\_  
 Proposed, if applicable R-5  
SAME, R-5

**LAND USE**

Existing \_\_\_\_\_  
 Proposed RESIDENTIAL (1 D.U.)  
PLACE OF ASSEMBLY + 1 D.U. (2nd Floor)

**RESIDENTIAL, IF APPLICABLE**

Proposed Number of Affordable Housing Units 0  
 Proposed Number of Residential Units to be Demolished 0  
 Existing Number of Residential Units 1  
 Proposed Number of Residential Units 1  
 Subdivision, Proposed Number of Lots N/A

**PARKING SPACES**

Existing Number of Parking Spaces 7  
 Proposed Number of Parking Spaces 7  
 Number of Handicapped Parking Spaces 0  
 Proposed Total Parking Spaces 7

**BICYCLE PARKING SPACES**

Existing Number of Bicycle Parking Spaces 0 (UNDER 10)  
 Proposed Number of Bicycle Parking Spaces 0  
 Total Bicycle Parking Spaces 0

**ESTIMATED COST OF PROJECT**

NO COST / NO INTERIOR CHANGES

Please answer the following with a Yes/No response on all that apply to the proposed development

Institutional _____	Change of Use <u>✓</u>	<u>FROM TV REPAIR &amp; RETAIL</u>
Parking Lot _____	Design Review _____	
Manufacturing _____	Flood Plain Review _____	
Office _____	Historic Preservation _____	
Residential _____	Housing Replacement _____	
Retail/Business _____	14-403 Street Review _____	
Warehouse _____	Shoreland _____	
Single Family Dwelling _____	Site Location _____	
2 Family Dwelling _____	Stormwater Quality _____	
Multi-Family Dwelling _____	Traffic Movement _____	
B-3 Ped Activity Review _____	Zoning Variance _____ (or date)	
	Historic Dist./Landmark _____	
	Off Site Parking _____	

**APPLICATION FEE:**

Check all reviews that apply. Payment may be made in cash or check to the City of Portland.

<p><b>Major Development (more than 10,000 sq. ft.)</b></p> <p><input type="checkbox"/> Under 50,000 sq. ft. (\$500.00)</p> <p><input type="checkbox"/> 50,000 - 100,000 sq. ft. (\$1,000.00)</p> <p><input type="checkbox"/> Parking Lots over 100 spaces (\$1,000.00)</p> <p><input type="checkbox"/> 100,000 - 200,000 sq. ft. (\$2,000.00)</p> <p><input type="checkbox"/> 200,000 - 300,000 sq. ft. (\$3,000.00)</p> <p><input type="checkbox"/> Over 300,000 sq. ft. (\$5,000.00)</p> <p><input type="checkbox"/> After-the-fact Review (\$1,000.00 plus applicable application fee)</p>	<p><b>Plan Amendments</b></p> <p><input type="checkbox"/> Planning Staff Review (\$250.00)</p> <p><input type="checkbox"/> Planning Board Review (\$500.00)</p> <p><b>Subdivision</b></p> <p><input type="checkbox"/> Subdivision (\$500.00) + amount of lots _____ (\$25.00 per lot) \$ _____ (applicable Major site plan fee)</p>
<p><b>Minor Site Plan Review</b></p> <p><input type="checkbox"/> Less than 10,000 sq. ft. (\$400.00)</p> <p><input type="checkbox"/> After-the-fact Review (\$1,000.00 plus applicable application fee)</p> <p><b>Zoning</b> <input checked="" type="checkbox"/></p> <p><input type="checkbox"/> Conditional Use (\$100.00)</p>	<p><b>Other Reviews</b></p> <p><input type="checkbox"/> Site Location of Development (\$3,000.00) (except for residential projects which shall be \$200.00 per lot _____)</p> <p><input type="checkbox"/> Traffic Movement (\$1,000.00)</p> <p><input type="checkbox"/> Stormwater Quality (\$250.00)</p> <p><input type="checkbox"/> Section 14-403 Review (\$400.00 + \$25.00 per lot)</p> <p><input type="checkbox"/> Other _____</p>

Application Fees

- Each application must be submitted with the applicable fees as listed in the fee structure above. The fees cover general administrative processing costs.
- Application fees may be paid in cash or by check (addressed to the City of Portland).
- An application will not be processed without the required application fees.

Noticing/Advertisements for Planning Board Review

- Legal Advertisement: Percent of total bill
- Notices: .75 cents each
- Public notices must be sent to property owners with 300 feet for all proposals at the time an application is received. Industrial project require notices to be sent to property owners with 1,000 feet.
- Prior to any workshop or public hearing meetings, notices will be sent to property owners. The item will also appear on a legal ad that is published in the Portland Press Herald and on the City's web site.
- The applicant will be billed for actual or apportioned costs for advertising and sending of meeting notices.

Applicants are encouraged to include a letter or narrative to accompany the conditional use application which can provide additional background or contextual information, and describe the proposed conditional use and reasons for the request in a manner that best suits the situation.

<p>Signature of Applicant:</p> <p><i>Zachary Hecker / CFC</i>  <i>(Claire Cooper)</i></p>	<p>Date: 5/19/2010</p>
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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:

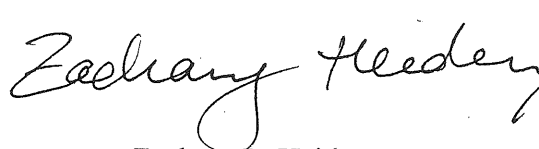

Enclosed, please find a completed Conditional Use Appeal Application along with accompanying material, to authorize the use of 978 Washington Avenue (161-E-3) as a Place of Assembly.

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

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

### 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 35

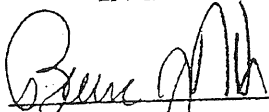
See Schedule A attached hereto and made a part hereof.

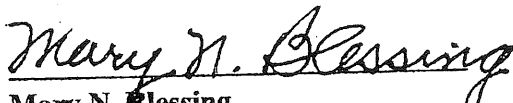
TO HAVE AND TO HOLD the same, together with all the privileges and appurtenances thereunto belonging, to the said Sadri Shair, her heirs, her successors and assigns forever. We do covenant with the said Grantee, her heirs, her successors and assigns, that we are lawfully seized in fee of the premises, 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.

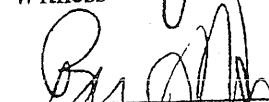
IN WITNESS WHEREOF, we, the said Mary N. Blessing, Justina Ives, Jeannette A. Breggia, John DiMillo, and Adelia C. Jackson have caused these presents to be signed this 30<sup>th</sup> day of November, 2005.

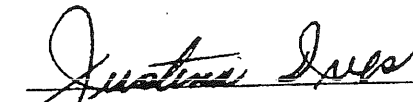
SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF

MAINE REAL ESTATE TAX PAID


  
\_\_\_\_\_  
Witness

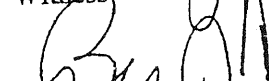
  
\_\_\_\_\_  
Mary N. Blessing

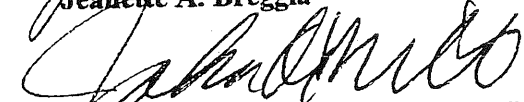
  
\_\_\_\_\_  
Witness

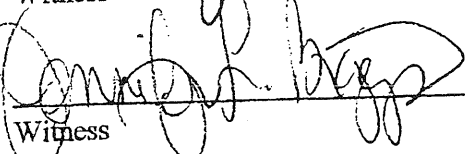
  
\_\_\_\_\_  
Justina Ives

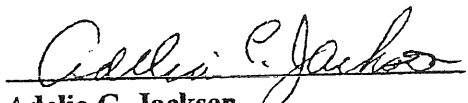
  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Jeanette A. Breggia

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
John DiMillo

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Adelia C. Jackson

STATE OF MAINE  
COUNTY OF Cumberland

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

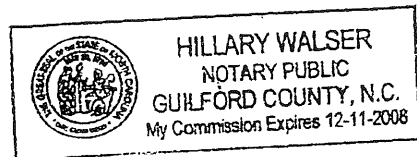
Then personally appeared the above-named Adelia C. Jackson and acknowledged the foregoing instrument to be their free acts and deeds before me,

*Hillary Walser*

Notary Public/Attorney at Law

print name Hillary WALSER

my comm. exp. 12-11-2008





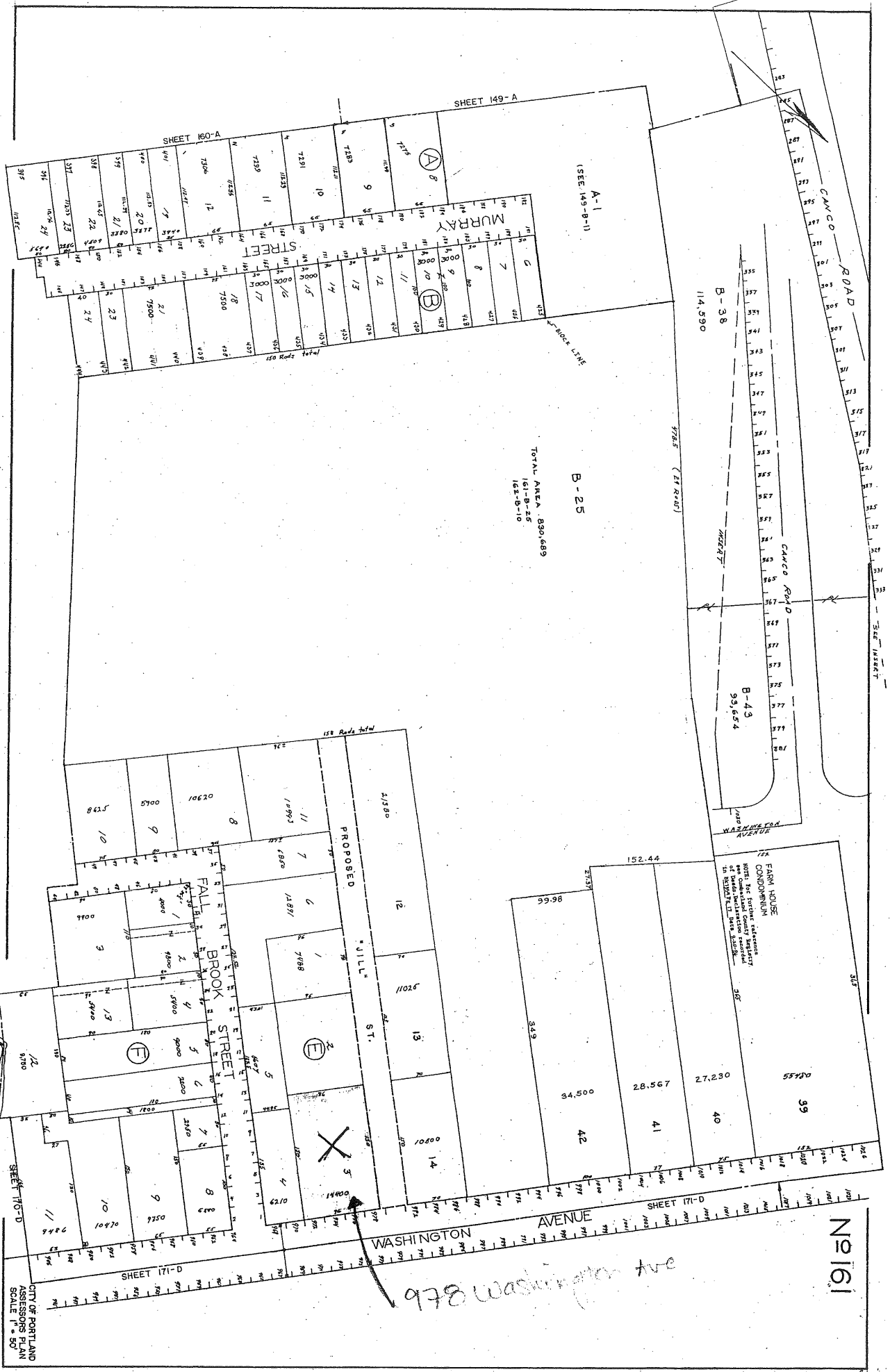
**EXHIBIT A**

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



SHEET 149-A

SHEET 150-A

(SEE 149-B-1)

MURDER

TOTAL AREA: 890,689  
161-B-25  
161-B-10

B-25

B-38  
114,590

B-43  
93,654

EARTH HOUSE  
CONDOMINIUM  
NOTE: For further information  
contact the City Assessor's  
Office at 1000 NE Oregon Street,  
Portland, OR 97232.

156 Road Total

PROPOSED  
"JILL" ST.

FALL BROOK STREET

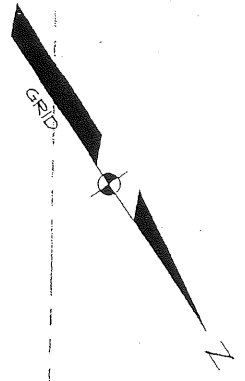
CITY OF PORTLAND  
ASSESSORS PLAN  
SCALE 1" = 50'

No 161

978 Washington Ave

7 of 3

Q-1  
2/28/09



978 Washington Ave  
161-E-003

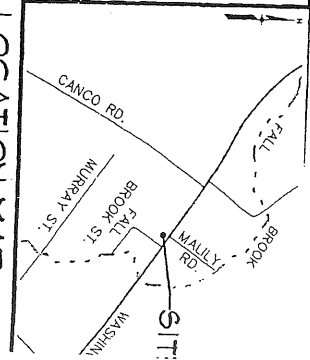
N/F HOPE, SETH R

UNNAMED STREET  
(A.K.A. JILL STREET)

Plg Space 15  
9' x 19'  
1" = 20'

2/11/10  
MEASURE

LOCATION MAP



MALLY

BENCHMARK  
HORIZ. SPK IN UTILITY  
POLE 133  
ELEV. = 61.25 FT

REMOVE BITUMINOUS  
PAVEMENT, GRAVEL BASE  
TO REMAIN SHOWN AS  
NEEDED TO MATCH  
BRICK SIDEWALK AND  
PROPOSED GRADES  
SHOWN

MATCH EXISTING  
GRADES (TYP)  
EXISTING DITCH TO  
REMAIN

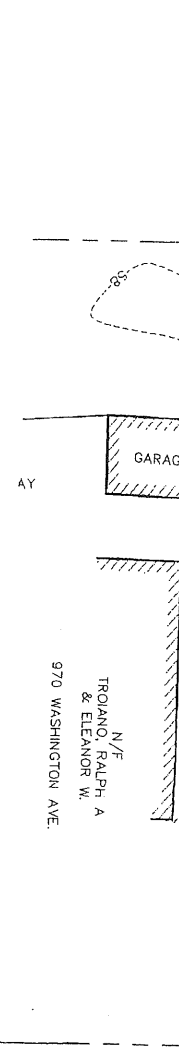
APPROX. ORIGINAL EDGE  
OF GRAVEL PAVEMENT  
BASED ON 1926 AERIAL  
IMAGERY, SEE NOTE 3B.  
LIMIT OF RESTORED  
GRAVEL PARKING AREA

REMOVE BITUMINOUS  
PAVEMENT AND GRAVEL  
BASE TO NATIVE SOIL.  
INSTALL 4" OF LOAM AND  
SEED. TULCH SHALL BE  
INSTALLED IN  
ACCORDANCE WITH  
EROSION CONTROL  
MEASURES.

FILL IN EXISTING  
DITCH

N/F  
TOPPI, ROCCO III  
& MARY M.  
17 FALL BROOK ST.

FILTER BARRIER/  
SILT FENCE (TYP)



N/F  
TROIANO, RALPH A  
& ELEANOR W.  
970 WASHINGTON AVE.

WASHINGTON AVENUE

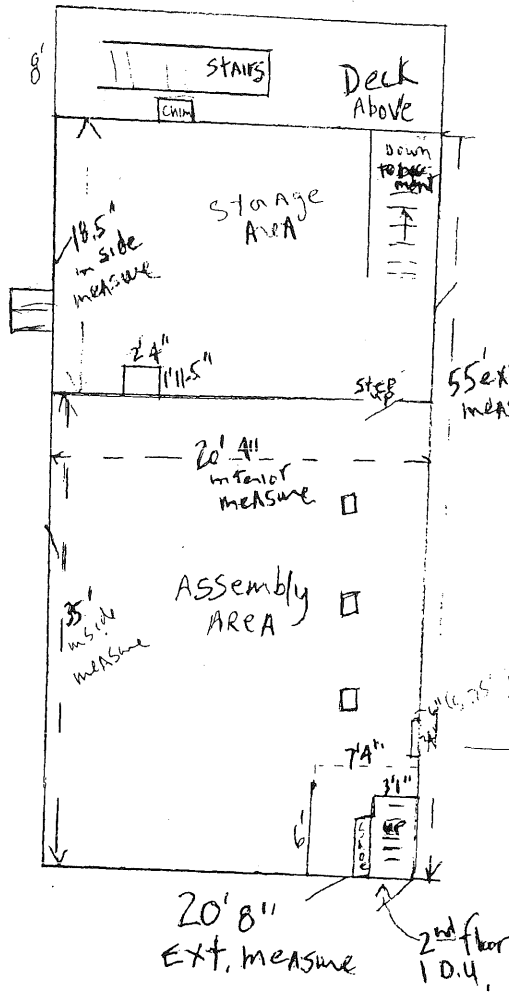
2/11/10  
3:00 PM

Gary Wood  
Zach Heiden  
Tammy  
Maggie  
Cpt Keith G.  
RAMAD Habibzai

**Parking CARCS**

$664,921 \text{ ft}^2 \div 125 = 5.32 \text{ or}$

6 pkg spaces  
rounded up



$20' 4" \times 35' = 711.55 \text{ ft}^2$   
 $20.33 \times 35 = 711.55 \text{ ft}^2$   
 $- 1,164 \text{ ft}^2$   
 $- 1,465 \text{ ft}^2$   
 $- 44 \text{ ft}^2$

**Total Assembly Area = 664,921 ft<sup>2</sup>**

Enclosed support columns - each 1.66 ft<sup>2</sup> @ 7" x 8"  
 $3(1.583 \times .666) = 1,164 \text{ ft}^2$   
 .388

$.5 \times 2.833 = 1,465 \text{ ft}^2$   
 (Fire box)

1" = 10'

161-E-003  
978 W. ... on Ave

$6 \times 7' 4" = 43.98 \text{ ft}^2$   
 or  
 44 ft<sup>2</sup>



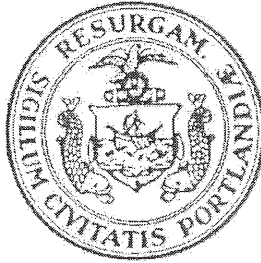






# CITY OF PORTLAND WASTEWATER CAPACITY APPLICATION

Department of Public Services,  
55 Portland Street,  
Portland, Maine 04101-2991



Mr. Frank J. Brancey,  
Senior Engineering Technician,  
Phone #: (207) 874-8832,  
Fax #: (207) 874-8852,  
E-mail: fjb@portlandmaine.gov

Date: 5/19/2010

### 1. Please, Submit Utility, Site, and Locust Plans.

Site Address: 978 WASHINGTON AVE.  
*(Regarding addressing, please contact Leslie Kaynor, either at 756-8346, or via LMK@portlandmaine.gov)* Chart Block Lot Number: 161-E-3

Proposed Use: 1 D.U. + PLACE OF ASSEMBLY  
Previous Use: 1 D.U. + TV REPAIR/RETAIL  
Existing Sanitary Flows: MAX 344 GPD  
Existing Process Flows: N/A GPD

Description and location of City sewer, at proposed building sewer lateral connection:

PLEASE SEE ATTACHED

Site Category	Commercial	_____
	Industrial (complete part 4 below)	_____
	Governmental	_____
	Residential	✓
	Other (specify): <u>PLACE OF ASSEMBLY</u>	✓

see attached math ←

*Clearly, indicate the proposed connection, on the submitted plans.*

### 2. Please, Submit Domestic Wastewater Design Flow Calculations.

Estimated Domestic Wastewater Flow Generated: (work attached) 50 GPD  
Peaking Factor/ Peak Times: FRIDAYS 11:30-1:30 PM  
Specify the source of design guidelines: *f.i.e.* "Handbook of Subsurface Wastewater Disposal in Maine," "Plumbers and Pipe Fitters Calculation Manual," Portland Water District Records, Other (specify)

Note: Please submit calculations showing the derivation of your design flows, either on the following page, in the space provided, or attached, as a separate sheet.

### 3. Please, Submit Contact Information.

Owner/Developer Name: SADRI SHIR  
Owner/Developer Address: 41 OCEAN HOUSE ROAD CAPE ELIZABETH, ME 04107  
Phone: (207) 228-5040 Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_  
Engineering Consultant Name: N/A  
Engineering Consultant Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_  
City Planner's Name: BARBARA BARNYDT Phone: 874-8699  
or MARGE SCHWUCKAL Phone: 874-8695

Note: Consultants and Developers should allow +/- 15 days, for capacity status, prior to Planning Board Review.

#### 4. Please, Submit Industrial Process Wastewater Flow Calculations

Estimated Industrial Process Wastewater Flows Generated: \_\_\_\_\_ GPD

Do you currently hold Federal or State discharge permits? Yes \_\_\_\_\_ No \_\_\_\_\_

Is the process wastewater termed categorical under CFR 40? Yes \_\_\_\_\_ No \_\_\_\_\_

OSHA Standard Industrial Code (SIC): \_\_\_\_\_

(<http://www.osha.gov/shstats/sic/sic.html>)

Peaking Factor/Peak Process Times: \_\_\_\_\_

**FACTOR N/A ; TIME - FRIDAYS 11:30 AM - 1:30 PM**

Note: On the submitted plans, please show the locations, where the building's sanitary, and process water sewer laterals, exit the facility, where they enter the city's sewer, the location of any control manholes, wet wells, or other access points, and the locations of any filters, strainers, or grease traps.

Notes, Comments, or Calculations:

ESTIMATED DOMESTIC WASTEWATER FLOW:

2 x 25 people (max) = 50 GPD  
 (GPD per seat - # from Frank Biancely)

EXISTING SANITARY FLOWS  
 (FROM FORELAND WATER DISTRICT)

AVG MONTHLY USE: 1800 cubic ft/month  
 ↓  
 AVG DAILY USE: .500 cubic ft/day  
 x 748 GPD (WATER DISTRICT RATE)  
344 AVG. GPD (HIGHER END OF RANGE)

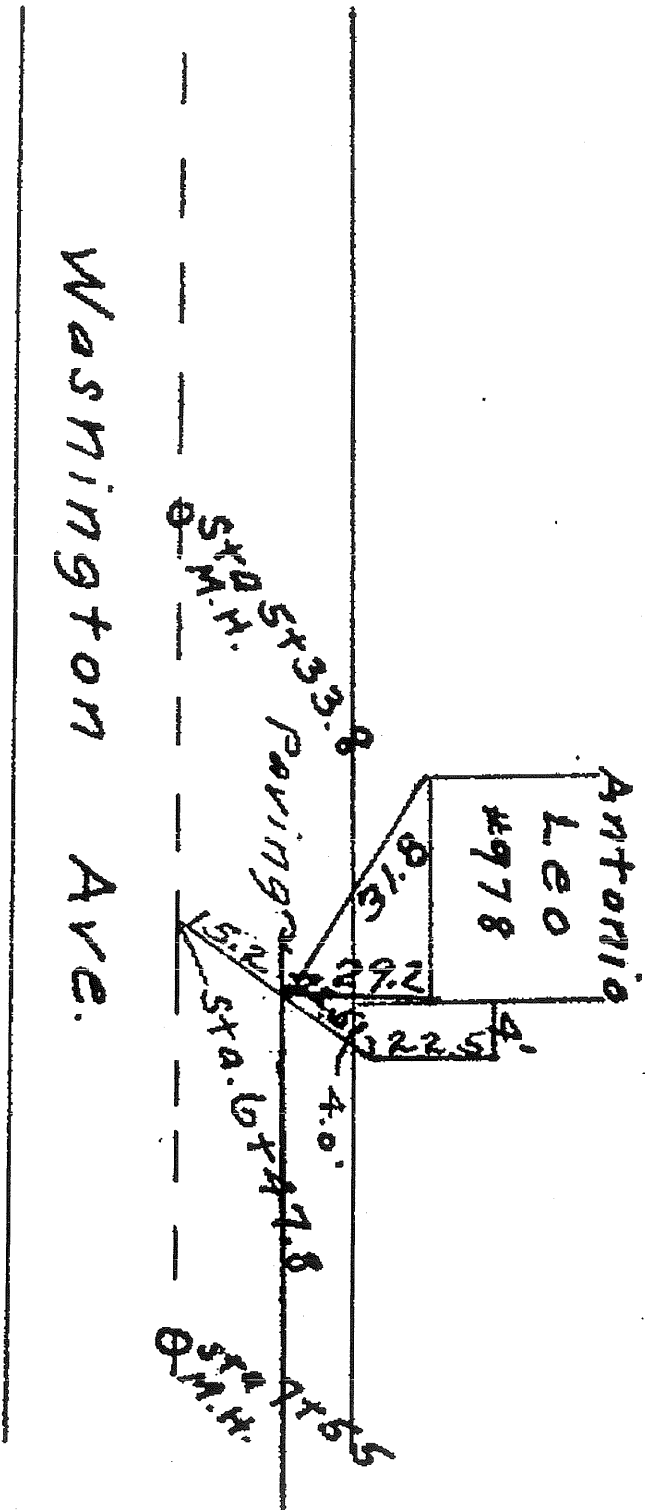


Date of Entrance May 17, 1921.

Connected by Antonio Leo.

Size and kind of pipe 6" Vit.

Inspected by L.B. Anderson.



Assessor's Office | 350 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** 161 E003001  
**Land Use Type** MULTI-USE COMMERCIAL  
**Property Location** 978 WASHINGTON AVE  
**Owner Information** SHIR SADRI  
 41 OCEAN HOUSE RD  
 CAPE ELIZABETH ME 04107  
**Book and Page** 23454/156  
**Legal Description** 161-E-3  
 WASHINGTON AVE 972-978  
 HILL ST  
**Acres** 14400 SF ← TOTAL SITE AREA  
 0.331

**Current Assessed Valuation:**

**TAX ACCT NO.** 22676 **OWNER OF RECORD AS OF APRIL 2009**  
 SHIR SADRI  
**LAND VALUE** \$170,800.00 **41 OCEAN HOUSE RD**  
**BUILDING VALUE** \$59,200.00 **CAPE ELIZABETH ME 04107**  
**NET TAXABLE - REAL ESTATE** \$230,000.00  
**TAX AMOUNT** \$4,080.20

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



Best viewed at 800x600, with Internet Explorer

**Building Information:**

**Card 1 of 1**  
**Year Built** 1920  
**Style/Structure Type** MIXED RES/COMM  
**# Units** 1  
**Building Num/Name** 1 - WATERHOUSE TV CENTER  
**Square Feet** 3465

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

[View Picture](#)



**Exterior/Interior Information:**

**Card 1**  
**Levels** B1/B1  
**Size** 1155  
**Use** SUPPORT AREA  
**Height** 6  
**Heating** NONE  
**A/C** NONE

**Card 1**  
**Levels** 01/01  
**Size** 1155  
**Use** MULTI-USE SALES  
**Height** 10  
**Walls** FRAME  
**Heating** HW/STEAM  
**A/C** NONE

**Card 1**  
**Levels** 02/02  
**Size** 1155  
**Use** APARTMENT  
**Height** 8  
**Walls** FRAME  
**Heating** HW/STEAM  
**A/C** NONE

**Other Features:**

**Card 1**  
**Structure** STORE FRONT - WD  
**Size** 29X1

# REVIEW



Portland Planning Authority, 1000 Commercial Street, Portland, Maine 04101-3000

Planning & Urban Development Department  
Penny St. Eugene Pitts, Director

Planning Division  
Averydon, Christopher, Director  
January 13, 2010

John W. Stumagin, Esq.  
Murray Plumb & Murray  
75 Pearl Street  
Post Office Box 9785  
Portland, ME 04101-5085

Christopher DiMatteo  
Sebago Technics  
600 Commercial Street  
Westbrook, ME 04098-1339

**Project Name:** Restoration of a Site  
**Address:** 075 Washington Avenue  
**Applicant:** Sachin Shro

Dear Mr. Stumagin:

On January 13, 2010, the Portland Planning Authority approved with conditions the restoration plan for contouring a parking lot and restoring the site to its original topography at 075 Washington Avenue as shown on the restoration plan submitted by Sebago Technics dated 12-26-09 and revised 1-08-10. The conditions of approval are as follows:

1. A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount must be submitted to and approved by the Planning Division and Public Services Dept. prior to the release of a building permit. The sample letters of credit or escrow account forms are contained within the attached Performance Guarantee packet. The building permit application is attached and must be submitted to Portland's Inspection Division along with a copy of the Site Restoration Plan.
2. Prior to construction, a pre-construction meeting shall be held at the project site with the contractor, development review coordinator, Public Services representative and owner to review the construction schedule and critical aspects of the site work. At that time, the site building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.
3. The site preparation shall include the removal of snow and installation of erosion control measures as shown on the restoration plan prior to the start of construction.
4. The applicant's consulting engineer shall certify in writing that the final grades of the site are in conformance with the approved restoration plan.
5. The performance guarantee shall not be released or reduced until after the City has conducted final inspections of the site in the spring in order to confirm that the site work completed in January meets the stormwater management objectives of the approved plan.

The approval is based on the submitted restoration plan. If you need to make any modifications to the approved site plan, you must submit a revised site plan for staff review and approval.

#### STANDARD CONDITIONS OF APPROVAL

Please note the following standard conditions of approval and requirements for all approved site plans:

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. A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
3. If work will occur within the public right-of-way such as utilities, curbs, sidewalk and driveway construction, a street opening permit(s) is required for your site. (Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)

The Development Review Coordinator must be notified five (5) working days prior to date required for final site inspection. The Development Review Coordinator can be reached at the Planning Division at 874-8632. Please make allowances for completion of site plan requirements determined to be incomplete or defective during the inspection. This is essential as all site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact Barbara Barhydt, Development Review Services Manager at 874-6699.

Sincerely,



Alexander Jaegerman  
Planning Division Director

Attachments:

1. Performance Guarantee Packet
2. Building Permit Application

### **Electronic Distribution**

Gregory S. Lewis, Chief, Division of Planning and Urban Development

Alexander Jaggenma, Planning Director, Director

Barbara Barnhill, Development Review Services Manager

Paula Wilson, Development Review Technician

Mary Scarsella, Zoning Administrator

Jimmy Mahoney, Deputy Director

Yvonne Bennett, Planning Services Director

John F. Hines, Public Works

John F. Hines, Public Works

David Murphy, Public Works Engineering

Gene Ward, Public Works

South County Fair

East Hastings City, Victoria

City of Surrey, Waste Services

City of Surrey, Office

City of Surrey, Office

Hard Copy - 10/1/11

## MARGE SCHMUCKAL, ZONING ADMINISTRATOR

**JUNE 3, 2010**

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 a such off-street parking shall abut 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.



**PBM1**

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).

## RIGHT, TITLE OR INTEREST

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

## 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

Initial Zoning Comments from Zoning Administrator, Marge Schmuckal, June 3, 2010.

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# Memorandum

## Department of Planning and Urban Development

### Planning Division

**To:** Bill Hall, Chair, and Members of the Portland Planning Board

**From:** Molly Casto, Senior Planner

**Date:** June 28, 2010 <sup>28th</sup>

**Re:** CONDITIONAL USE REVIEW. PLACE OF ASSEMBLY.  
PORTLAND MASJID AND ISLAMIC CENTER

**Address:** 978 WASHINGTON AVENUE CBL: 161-E-003-001

**Project ID:** 10-97900001

**Applicant:** ZACHARY L. HEIDEN. MAINE CIVIL LIBERTIES UNION

#### INTRODUCTION

Mr. Zachary Heiden of the Maine Civil Liberties Union Foundation (MCLU), on behalf of the property owner, Sadri Shir, requests a workshop with the Planning Board to review a proposed change of use from a repair shop to place of assembly for the 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).

219 notices were sent to area residents and interested parties. Notice also appeared in the June 14<sup>th</sup> and June 15<sup>th</sup>, 2010 editions of the *Portland Press Herald*.

→ does not meet threshold for interior alteration → and the site is not altered from its existing condition

#### 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<sup>nd</sup> floor apartment)

Proposed Use: Place of Assembly (small) and Residential (retain existing 2<sup>nd</sup> floor apartment).

Bldg. Square Footage: 3,465 sf (1,155 sf footprint) - photo of site (aerial) & of building in applic - att # 1

Total Area for Proposed Change of Use: 665 sf

Existing Parking: Gravel Lot (Approx. 7 spaces)

Proposed Parking: 7 spaces

turn over to applicant

ZH-

Purpose = mosque (Pakistan & Afghani)

Change of use from TV repair to Religious Assembly

Predom. used for Friday prayer but for study & other prayer too.

Ramadan - more freq. gatherings & communal meals.

No adverse effects - solely benefit.

S. Shin - need space for religious teaching. Very important.

(summarized religious persecution under Russian rule in Afghanistan)

Struggled to get space. 1st masjid in Maine (to serve a few families). Costly but important for identity.

Asking PB to help by supporting application.

(cited texts that support respect of religion, neighbors, religious freedom...)

## 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.

## BACKGROUND AND SCOPE OF REVIEW

① 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

Not having mosque has led to  
loss of identity -

Card M.

fence & light? in our purview.

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Botanage area: ~~is~~ part  
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## 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 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.

*not applicable*  
(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.*

Recd.

\* ( 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).

2

**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;*

Recd.

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.*

**NEXT STEPS**

(

According to Section 14-32, the applicant is not required to host a neighborhood meeting for this application. Planning staff recommends that this item be scheduled for a public hearing, pending Planning Board review and discussion at the workshop.

## **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.**

**PBR1**



# 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 12<sup>th</sup> and July 19<sup>th</sup>, 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<sup>nd</sup> floor apartment)  
 Proposed Use: Place of Assembly (small) and Residential (retain existing 2<sup>nd</sup> 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).

*- Pass at last mtg - Board requested that staff amend this log. for clarity. just reading @ Council.*

## 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. → motions include .

## 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 RECOMMENDATION

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

(Carol, Lee, David, Jonica) - unanimous

(Patterson, Hall, Lewis absent)

### 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-5 Zone ~~(does)~~ (does or does not) meet the standards of Sections 14-474 and 14-118, subject to the following conditions of approval:

for entire first floor (1,155 sf)

- (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.

and property

## **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.**



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:

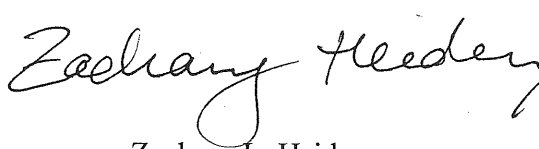
Enclosed, please find a completed Conditional Use Appeal Application along with accompanying material, to authorize the use of 978 Washington Avenue (161-E-3) as a Place of Assembly.


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 current use.

EXISTING USE: Describe the 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, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1" = 100')

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

STANDARDS - CRITERIA FOR CONDITIONAL USE APPEAL

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:

- 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:

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 30<sup>th</sup> day of November, 2005.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF

[Signature]  
Witness

Mary N. Blessing  
Mary N. Blessing

[Signature]  
Witness

Justina Ives  
Justina Ives

[Signature]  
Witness

Jeanette A. Breggia  
Jeanette A. Breggia

[Signature]  
Witness

John DiMillo  
John DiMillo

[Signature]  
Witness

Adelia C. Jackson  
Adelia C. Jackson

MAINE REAL ESTATE TAX PAID

STATE OF MAINE  
COUNTY OF Camden

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 Walsler*

Notary Public/Attorney at Law

print name Hillary WALSER

my comm. exp. 12-11-2008

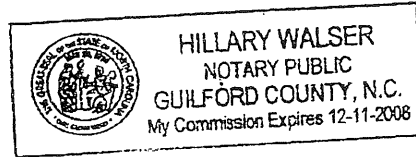


EXHIBIT A

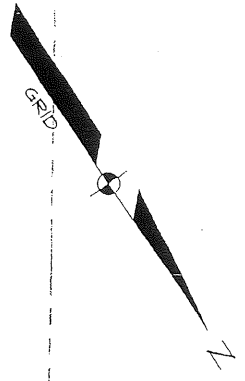
A certain lot or parcel of land with the building thereon, situated on the Southwesterly side of Washington Avenue, formerly called Main Street, in said Portland, and bounded and described as follows:

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





978 Washington Ave  
161-E-003

N/E HOPE, SETH R

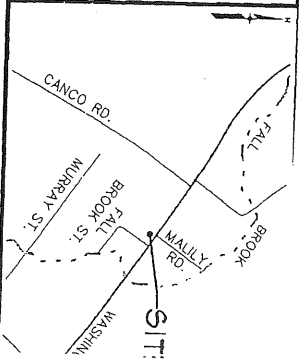
UNNAMED STREET  
(A.K.A. JILL STREET)

Pkg Space is 9' x 19'

1" = 20'

2/11/10  
MEASURE

LOCATION MAP



MALLY

BENCHMARK  
HORIZ. SPK IN UTIL.  
POLE 133  
ELEV. = 61.25 FT

UP 133

REMOVE BITUMINOUS PAVEMENT TO REMAIN

REMOVE BITUMINOUS PAVEMENT AND GRAVEL BASE TO NATIVE SOIL. INSTALL 4" OF LOAM AND SEED. MULCH SHALL BE INSTALLED IN ACCORDANCE WITH EROSION CONTROL MEASURES.

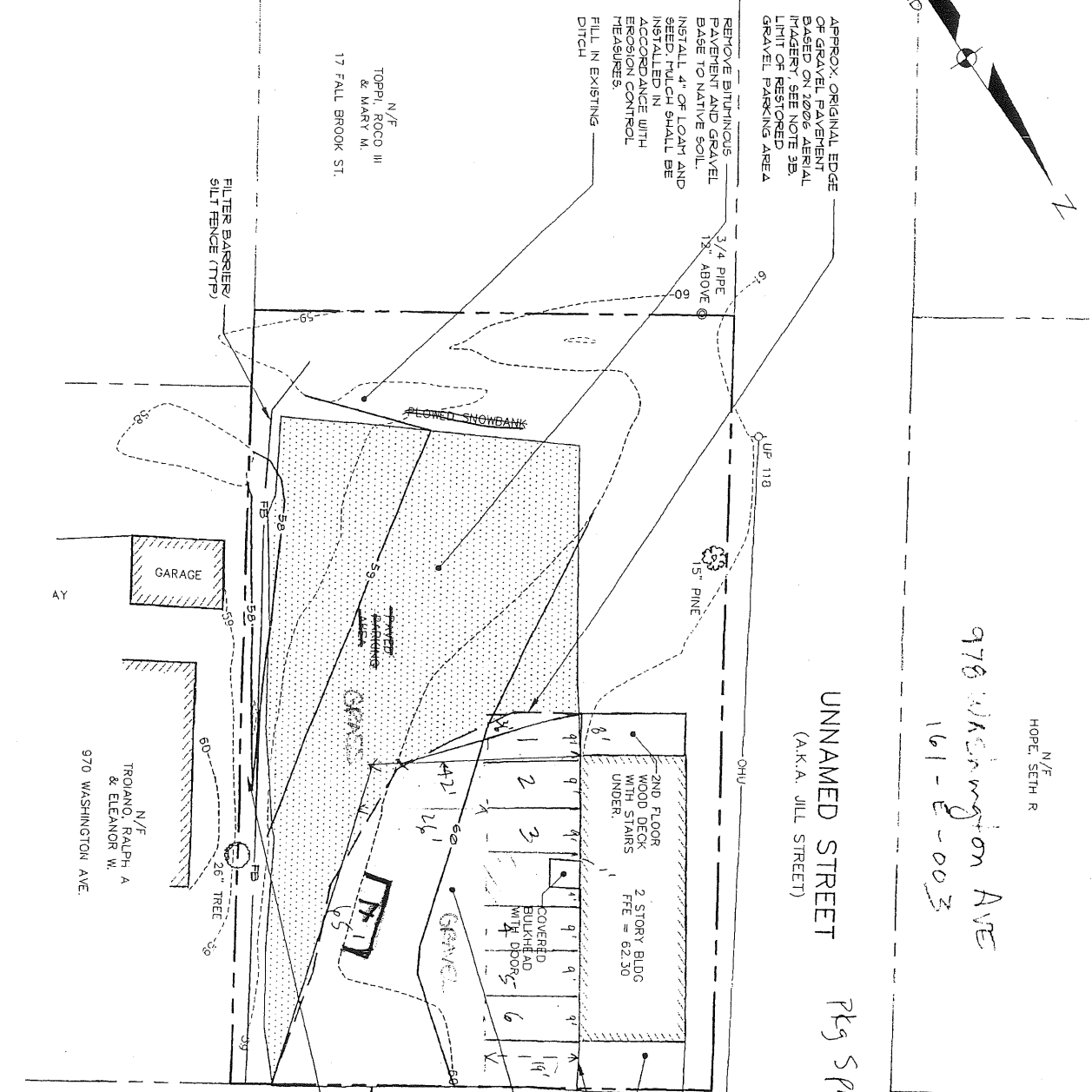
MATCH EXISTING GRADES (TTP) EXISTING DITCH TO REMAIN

N/E  
TOPPI, ROCCO III  
& MARY M.  
17 FALL BROOK ST.

FILTER BARRIER/  
SILT FENCE (TTP)

N/E  
TROIANO, RALPH A  
& ELEANOR W.  
970 WASHINGTON AVE.

WASHINGTON AVENUE



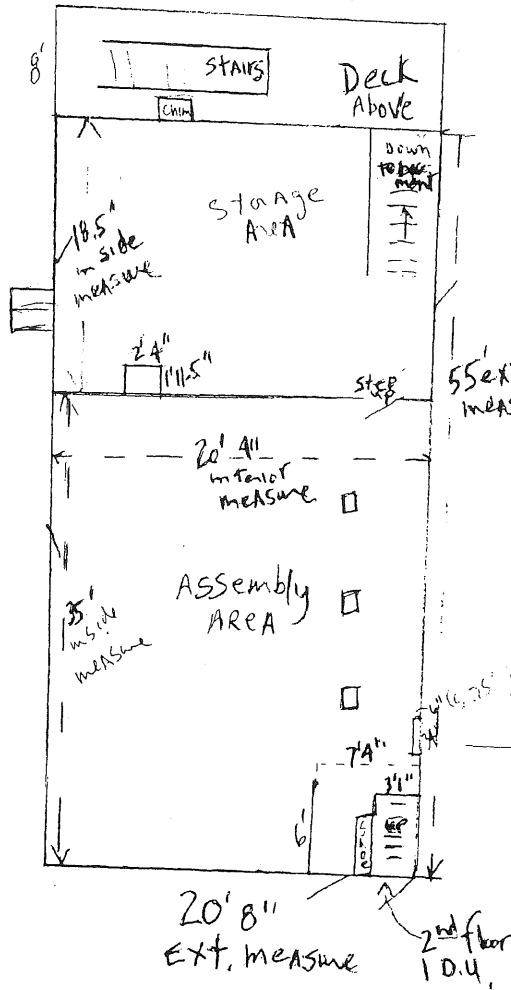
2/11/10  
3:00 PM

Gary Wood  
Zack Heiden  
TAMM  
MAGE  
Cpt Keith G.  
RAMAD Habibzai

**Parking CALCS**

$664.921 \text{ ft}^2 \div 125 = 5.32 \text{ or}$

6 pkg spaces  
rounded up



$20' 4'' \times 35' = 711.55 \text{ ft}^2$   
 $20.33 \times 35 = 711.55 \text{ ft}^2$   
 $- 1.164 \text{ ft}^2$   
 $- 1.465 \text{ ft}^2$   
 $- 44 \text{ ft}^2$   


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 $= 664.921 \text{ ft}^2$

ENCLOSURE SUPPLIES  
 COLUMN S - each  
 1.666 x 10 = 16.66  
 3(1.583 x .666) = 1.164  
 .388

$5 \times 2.833 = 1.465 \text{ ft}^2$   
 (Fire box)

1" = 10'

161-E-003  
978 W. ... on Ave

$6 \times 7' 4'' = 43.98 \text{ ft}^2$   
 or  
 $44 \text{ ft}^2$