

Patterns of Dev.



# PORTLAND MAINE

Planning Division

Scott Hanson, Preservation Compliance Coordinator

*Separate categories*

B-1 - Institutional use *permitted*  
*Sep*

B-2 - Institutional *under conditions*  
*other* → *Some types low impact industrial uses*

*Deb*  
→ *Places of Assembly*

B-3 *permitted*  
Institutional use  
*Other (see Above)*

B-4 *permitted*  
Institutional use

B-5 - Industrial *Sep*  
*From Institutional*

B-6 → *no Institutional*  
*IND Industrial*

B-7 → *Institutional* → *INDUST*  
*under Cond, use*

Section 4962 states that any properly adopted zoning ordinance or provision thereof shall be subject to the following:

It must be pursuant to and consistent with a comprehensive plan.

A zoning map describing each zone shall be adopted as part of the zoning ordinance.

Public service corporations with Public Utilities Commission approval, shall be wholly or partially exempt, for good cause, from the ordinance.

County and municipal governments shall be governed by a zoning ordinance.

Any zoning ordinance shall be advisory with respect to the State.

Any property or use existing in violation of an ordinance is a nuisance.

Persons petitioning for rezoning of an area in accordance with an architect's plan shall post a performance bond equal to 25 percent of the estimated cost of the development.

Zoning is defined as the division of a municipality into districts and the prescription and reasonable application of different regulations in each district. In the preparation of a zoning ordinance, the public shall be given an adequate opportunity to be heard.

Section 4963 provides for the establishment of a Board of Appeals to safeguard an individual's constitutional rights. Pamphlet V discusses the law and the responsibilities of the Board of Appeals.

## The Zoning Ordinance

A zoning ordinance is a tool of community development, providing standards and requirements. It is a document that needs to be clearly written and fully understood by all involved in the development of any given municipality. As the old legal saying goes "ignorance is no excuse in the eyes of the law."

While the zoning ordinance needs to be administered reasonably, a fair but strict interpretation is necessary. If the zoning requirements are applied unevenly, then the purpose of having them becomes questionable. Since zoning is the weighing and balancing of private and public rights, special consideration to a particular individual does little to enhance the desire of a community to improve.

**Historical development.** The idea of regulating the use of land has a long and tumultuous history. Early laws protected the King's right to rule "over the land." But, as the concept of liberty became powerful in the 17th and 18th centuries, the conflict between King and free men created new laws defining authority and its purpose. In America, local government expressed the concerns of its people and a "public" was born with new responsibilities to protect society from the harmful acts of individuals and individuals from the harmful acts of society. To protect their grazing rights, neighboring villages would mutually agree to specified days when their cattle could munch on the common grass. Problems soon arose and disagreements led to the erection of fences. The conflict needed to be resolved and thus a fence ordinance was passed to preserve the common rights of grazing.

In the early 1600's, London was troubled with overcrowding. A Royal proclamation was issued regulating the number of houses around the city, as well as their appearance. Regulations which controlled the use of building materials to prevent fire hazards, protected views and access to light, and required that yards be kept clean were common in urban areas.

The first modern regulation in the United States considered as a zoning ordinance was enacted by New York City in 1916. It established districts and

classified what uses were permitted in each district. In the ensuing years, zoning had shaky beginnings. Courts often found the regulations invalid under the limitations of the police power. But the trend was to protect the public from harmful actions of an individual.

Although the U. S. Supreme Court had heard earlier cases, it put the legal validity of zoning on firm ground in 1926. In the famous case of the *Village of Euclid v. Ambler Realty Company*, the court upheld the validity of comprehensive zoning regulations in general. Two years later in 1928, Maine courts also upheld the constitutionality of zoning in *York Harbor v. Libby*.

In the period following *Euclid*, town after town across the country divided itself into districts and established uses which were either prohibited or permitted in each district. The ordinances were simple, but were an attempt to alleviate the problems of haphazard growth. Today, zoning ordinances have little in common with their early predecessors except for the basic principle of trying to reduce problems and to protect a community.

As everything continued to grow--population, the economy, businesses, industries, the number of automobiles and demand for public services--problems caused by rapid expansion left their mark on town after town. As new businesses located outside of central city areas because of inexpensive and easily accessed land, the downtown sections began to suffer from the loss of retail business. Subdivisions were built and required expensive extensions of public services. To meet the challenge of growth, zoning ordinances began to adopt new techniques of establishing *standards* for each district.

Standards are specific requirements and restrictions that might apply to certain land uses and zones. In the residential zone, minimum lot size, setbacks, and height restrictions are standards that must be met before a building

and plumbing permit can be issued. A commercial zone might require off-street parking or fencing if it is located in a residential area. In industrial zones, special requirements called *performance standards* might also be specified in the zoning ordinance. These standards set limits on the amount of noise and pollution permitted. Extra setbacks and fencing or screening may also be required when the zone is adjacent to a residential area.

### **Types of zoning districts.** *The residential zoning district*

may allow a variety of housing types and densities from single family homes to high rise apartments. Mobile homes, cluster housing, and condominiums are newer additions to residential districts. Certain parts of the town may allow only single family homes, while others might permit apartments; but this type of zoning is usually cumulative. For example, the single family area may only allow individual homes, while the apartment zone allows single family uses, duplexes, fourplexes and apartments. What is usually allowed in the most restrictive zone (single family) is permitted in each progressively permissive zone (multi-family, commercial and industrial), but not in reverse. A house would be allowed in a commercial zone but a business would not be permitted in a residential area.

A residential zone usually allows other uses that are vital to the community; such as, schools, hospitals, churches, day care centers, and in some cases, neighborhood grocery stores. Since these uses are different from the primary purpose of the zone, they are usually classified as conditional uses. A conditional use may be located in the neighborhood if it does not cause additional problems. (Conditional uses will be discussed in detail later in this Pamphlet.)

*The village zoning district* respects the traditional development of the

village center. Historically, homes and businesses were located together in order to support each other. This district includes the downtown or main shopping area of a town and the homes surrounding it on all sides. The purpose of the zone is to preserve the historical character of the community. New construction should "fit in" visually and functionally with the existing structures.

*The commercial zoning district* can allow everything from single family homes to "heavy commercial" uses that come close to manufacturing uses, but usually are retail and wholesale businesses. The commercial zone may be a small area serving a neighborhood, a downtown section serving the community, a highway strip serving the traveling public, or a large shopping center serving a regional area. Each zone has a special need and clientele to serve. Beginning with the most restrictive use, the neighborhood commercial zone may allow uses which can only be supported by the neighborhood it services; such as, a small grocery store, hardware store, or a dry cleaning establishment.

*The industrial zoning district* establishes an area which is best suited for industry. Special requirements for industry, including convenient access for trucks, large tracts of land which may be appraised and taxes for industry, proper protection from conflicting uses, the adequacy of the labor force, and the availability of materials--all make necessary careful consideration of the choice for industrial zones. To make an industrial area viable, care must be taken not to allow a use that will conflict with the industrial operation. In recent times, more and more towns are making their industrial zones exclusive, allowing only manufacturing, storage, and processing activities and prohibiting all other uses.

**Use zones.** After the town has been divided into zoning districts on the map, the written ordinance must specify the uses which are allowed in each

zone. The written document might also define the criteria necessary for each use before it is allowed in a specific zone. Some ordinances use an older technique of prohibiting uses, but the newer trend is to state positively the uses that are allowed. The courts and the public tend to view this approach as a constructive reason for zoning. (Usually, each zone will permit certain uses outright and others only if certain conditions are met.) These are some of the types of uses.

*A permitted use* is the primary use allowed to locate in a zone as a matter of right. Similar uses should be compatible and supportive to each other. Often regulations concerning a permitted use still require that a permit be obtained before building or that specific land use standards be met.

*Conditional uses* are generally uses that may be permitted in a district, subject to special conditions and review and approval by a board of appeals or planning board. The following are examples of the conditions which may have to be met before approval for a proposed use is granted:

1. greater setbacks or screening to reduce noise and visual problems
2. limitation of the number and location of driveways to reduce turning and access problems
3. limitation of hours of operation to avoid disturbance of an adjacent residential area
4. special site design features for benefit of the public, such as sidewalks for safe walking from the parking lot to the entrance of the building
5. special lighting to reduce glare into nearby bedrooms.

Attaching conditions to approval of a project thus allows a use to locate in a zoning district where otherwise it would not be permitted. The purpose of conditional uses is to give an ordinance greater flexibility while assuring that

townspeople are protected from harmful conditions.

*Accessory uses* are supportive to primary uses. The use is necessary only because the principal use is allowed. Usually an accessory use is permitted outright as long as the primary use is also, but occasionally, special standards or permits are required.

*Non-conforming uses* are commonly referred to as "grandfathered" uses. Examples are buildings, parcels of land, and activities that existed *prior* to the adoption of a zoning ordinance. Non-conforming uses and buildings are allowed to stand because immediate abolishment would probably lead to court decisions that property had been "taken" without "just compensation." A building or structure\* that is non-conforming may not be expanded. General repairs and maintenance are usually permitted, however.

Many zoning ordinances stipulate that if the non-conforming use discontinues for a specified and uninterrupted period of time (usually six months to two years) the prior non-conforming use may *not* be permitted to operate again. If a change in a non-conforming use occurs, it must be to a use that conforms to the present zoning ordinance. (The use *cannot* become "less non-conforming.")

Besides structures, a recorded parcel of land existing prior to the adoption of the ordinance is also grandfathered. The lot may be non-conforming because it does not meet the minimum lot size or frontage requirements, or it may have inadequate soil types or acreage to meet the new standards. Any permitted use of the new ordinance will be allowed on the non-conforming lot, as long as the other requirements for the use (setbacks, lot coverage) can be met as far as practical.

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\*A structure is usually defined as a man-made object attached to the ground (e.g., fence, antenna, porch, etc.) whereas a building *encloses* and protects animals, humans, and personal property; therefore, a building is a structure but a structure is not a building.

**Variations.** Often, the adoption or amendment of a zoning ordinance creates a hardship as new standards are applied to pre-existing uses, buildings, or lots. A properly applied administrative procedure can provide equitable solutions for the property owners and still achieve the purpose of the zoning ordinance. The most common relief sought by a property owner is a *variance* from the standards.

The Board of Appeals has jurisdiction in determining the appropriateness of the variance request and whether or not a hardship exists. Its authority to review variances and the standards used for review are discussed thoroughly in Pamphlet V.

### **Limitations Of Zoning**

The most frequently asked question about zoning is, "How far can a municipality go in controlling the use of private land?" This question can be answered only by a thorough review of past and present court case history. There is a fine line drawn between a zoning provision in the best interest of the public and one which deprives an individual of his Constitutional rights. Sometimes the distinction can only be determined by examining the prudence of a specific regulation as it affects a particular piece of property.

Some remarkable changes in zoning law have already occurred because of population growth and unchecked community development. Recent court cases have upheld zoning ordinances specifically designed to check growth according to the ability of the municipality to provide basic services. The environmental movement has also resulted in numerous changes in the concept of zoning. These changes are designed to protect and to preserve the dwindling natural resources.

10/16/14

**JEWELL & BULGER, P.A.**

*Attorneys at Law*

477 Congress Street, Suite 1104  
Portland, ME 04101-3453

T: (207) 774-6665

F: (207) 774-1626

**Thomas F. Jewell, Esq.**

tjewell@jewellandbulger.com

**Paul S. Bulger, Esq.**

pbulger@jewellandbulger.com

October 16, 2014

City of Portland Planning Department

389 Congress Street

Portland, ME 04101

Re: contract zone for 102 Hutchins Drive

*text Amendment*

Dear Sirs:

Our office represents East Point Christian Church, the Applicant for this zone request. The property in question is located at 102 Hutchins Drive, is currently owned by UNUM, and is identified as Assessor Map 240-A Lots 2 and 3. The land comprises almost 5.4 acres and the building is almost 2 acres of square footage, at 82,522 square feet, according to the Portland Assessor. The deed to the property is recorded in the Cumberland County Registry of Deeds in Book 10466, Page 181. The Applicant has this property under contract pursuant to Purchase & Sale Agreement, dated August 6, 2014, a copy of which is submitted with some confidential information redacted.

**Section 14-248**

We would add that places of assembly are neither specifically approved nor prohibited in the I-M zone, and therefore, we submit that this church might qualify for use of the property under Sec. 14-248, as a "performance based use." As mentioned above, we contend that this use is quite compatible with the neighbor and since transportation to and from the facility are an integral part of the church service, this would qualify as a "transportation-related use" and therefore be consistent with the purposes of the zone in Section 12-246. More importantly, a church of this size would have a significant traffic impact in a residential zone. One of the purposes of the I-M zone is protect residential neighborhoods from excessive traffic.

Most of the uses that will be occurring within this 82,000 square foot building are actually conforming uses under the I-M zone. We are submitting floor plans, which show an auditorium, where church services will be conducted, comprising only 19,000 square feet, or less than one-quarter of the building. The rest of the facility, with the exception of the café, will be used for offices, food pantry, educational and recreational uses which are all permitted uses in the I-M zone. In this context, the Place of Assembly and the café may properly be viewed as permitted incidental accessory uses.

### Conditional Zoning Request

East Point is a church that has been blessed with a burgeoning parish, and has outgrown its current space at 58 City Line Drive, Portland, near the Time Warner offices on outer Congress Street. Its leaders have been looking for a new church facility for almost two years. Their problem has been that they are looking for a very large facility. Their history and search for a new facility is further detailed in the letter that they have submitted.

As a conditional zone request pursuant to Portland Land Use Ordinance, Sec. 14-60, *et seq*, we submit that the Applicants use is very unique and not well accommodated by the existing provisions of the Land Use Ordinance. We would also submit that encouraging free religious worship is consistent with the Comprehensive Plan, which provides for ample (in most cases) siting for church facilities as part of the communities moral fabric.

I have heard "Have they looked at the Elks Club" more than once in meetings regarding this subject. And the answer is "Yes they have, and many other properties." The problem is that the Elks Club, which is a pretty big building at around 20,000 square feet, is only about one quarter of the size that East Point requires to accommodate its needs. Also, to give a sense of scale, the First Baptist Church at the corner of Canco Road and Washington Avenue, is certainly considered to be a large local church, probably the largest around Portland right now. That building is also only about 20,000 square feet, according to assessor records.

The property at 102 Hutchins would provide East Point plenty of room for their current operations and worship services, and room to grow, which they anticipate. Their leaders have toured other churches that have taken the leap to acquire large facilities, and their parishes almost invariably grew to a large extent, often doubling in congregation, after the acquisition.

The parking for such a use are governed by 14-332(k) and require one parking spaces for each 125 square feet of assembly space. The assembly space is anticipated to be about 19,000 square feet, which would require 152 parking spaces. The property has about 250 spaces on site. There are additional parking calculations for the offices associated with the church, which would add the need for a few more parking spaces and a fairly large "indoor recreation space" which would add the need for more spaces. However, when church services are being conducted, there is little or no use of the offices and recreation areas, which would entitle the Applicant to reuest joint use per Section 14-0343. For good measure, the Applicant does anticipate approaching neighboring properties in order to obtain additional parking, and there have been indications on cooperation in that regard.

The UNUM building has been for sale for about a year and there has not been much demand, suggesting that at least this type of "industrial" space is not in great demand. The building has been used for warehousing and storage, back office operations and computer facilities.

The property is in the middle of the I-M zone. At first blush, one might expect only industrial activities in the middle intensity industrial zone. But the Portland I-M zone allows a variety of uses that bear no relationship to traditional industrial activities. Business offices, fitness centers and day care operations, apparently even doggy day care, are all permitted in the I-M zone. So when Economic Development tries to make the case to preserve the integrity of the limited industrial space in Portland, it is belied by the list of permitted activities allowed in the zone.

Admittedly, many of the City of Portland zones allow places of assembly as permitted uses, and the Applicant has focused its search in areas where a church would be a allowed under the ordinance. The problem is that the Applicant has found no available properties to fit its needs in zones where places of assembly are permitted. The Applicant would suggest that a church of the size of East Point might not be a very compatible neighbor in a residential zone where places of assembly are generally permitted even though it would be permitted pursuant to the zoning ordinance.

On the other hand, we submit that the East Point Christian Church would fit in nicely with its prospective neighbors in the I-M zone. Particularly, Hutchins Drive is very quiet on a Sunday, when the churches' main activities are in full swing. There would be little conflict with traffic or parking. During the regular work week, there would be light traffic and parking associated with church offices and ministry services.

If the project proceeds, the Applicant's activities would make the property tax exempt. The Applicant is willing to make a contribution in lieu of taxes, although the fair amount of such dispensation has not been fully addressed. We would expect that would become part of the contract zone agreement.

The Applicant, besides being willing to pay a fee in lieu of taxes, would also anticipate employing Portland Police officers, or private security, to direct traffic at the intersection of Congress Street and Hutchins Drive when church services are finished, in order to avoid prolonged traffic congestion on Hutchins Drive. We do not believe that such an accommodation is necessary for arrival to the church service.

As shown the accompanying letter from East Point, they have a great desire to remain a parish located within the City of Portland, and they offer a robust menu of social services and other activities of benefit to the community.

In summary, we submit that the application of East Point Christian Church for the approval of a conditional zoning request for the property at 102 Hutchins Drive is in compliance with the requirements of the Portland Land Use Ordinance and should be recommended by the Planning Board and approved by the City Council.

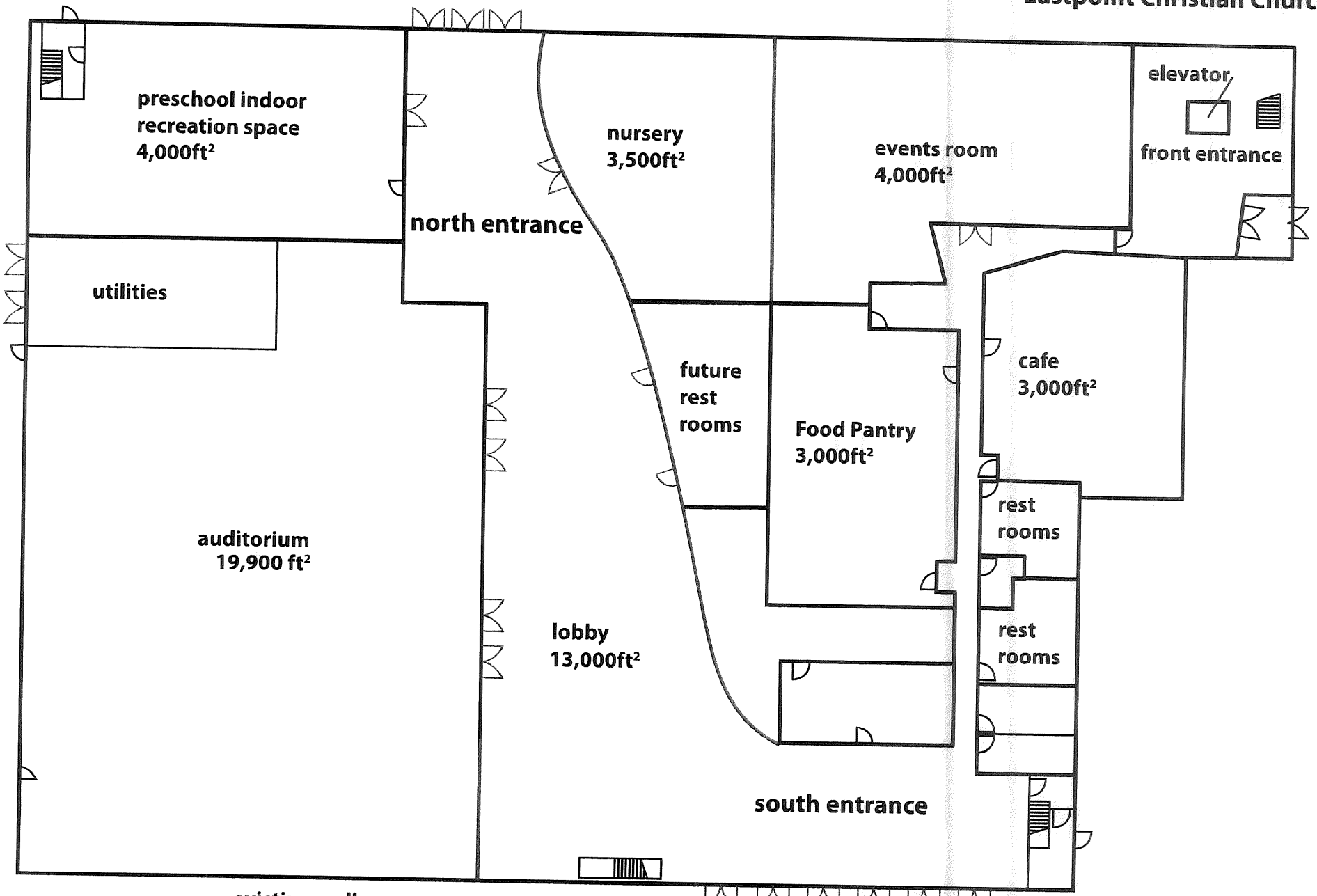
Yours truly,

Thomas F. Jewell, Esq.

TFJ/t



102 Hutchins Drive, Portland  
Eastpoint Christian Church

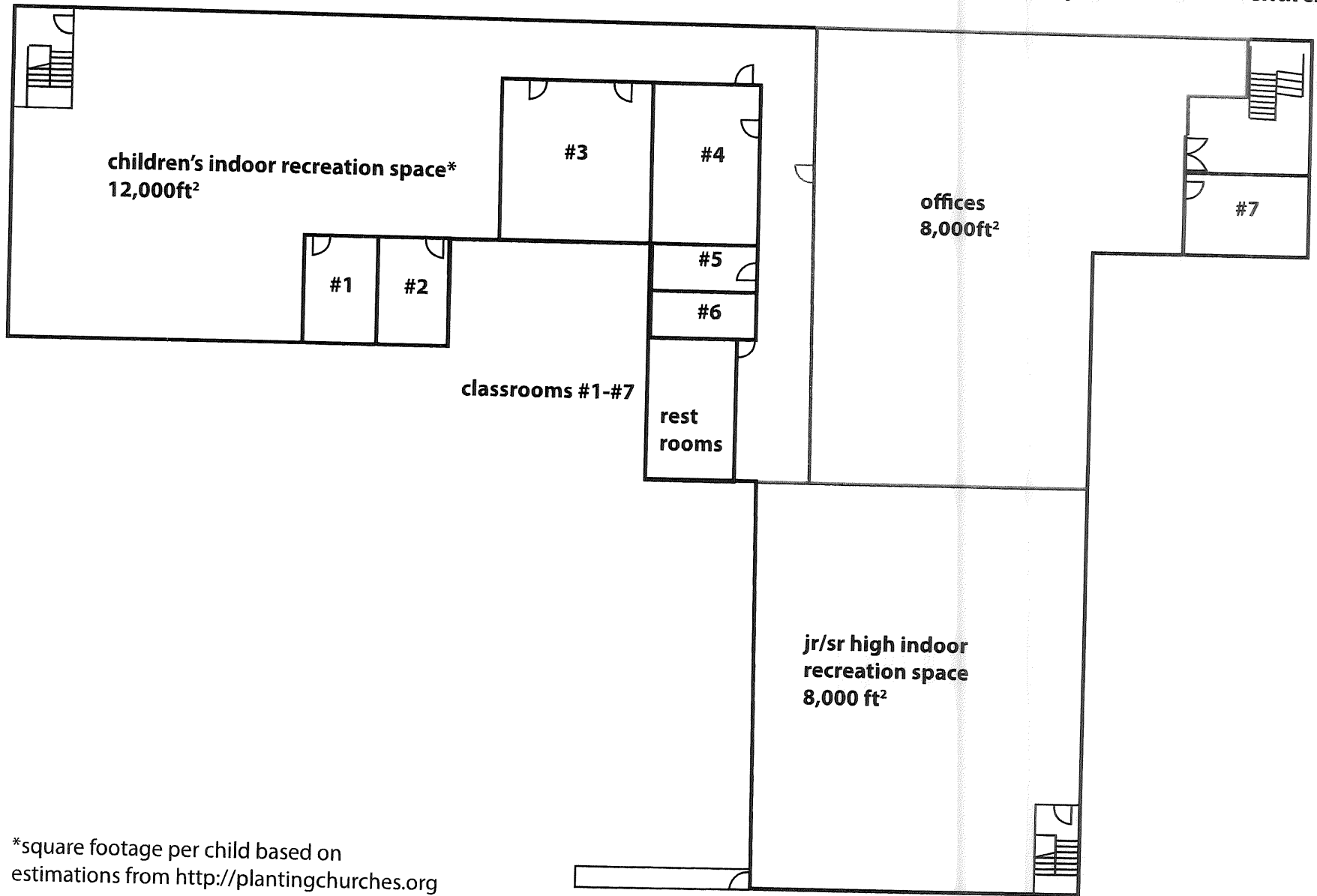


- existing walls
- - - new construction



all square footage is estimated  
this drawing is not to scale

1st Floor

102 Hutchins Drive, Portland  
Eastpoint Christian Church



\*square footage per child based on estimations from <http://plantingchurches.org>

-  existing walls
-  new construction

all square footage is estimated  
this drawing is not to scale

2nd Floor

### **Auditorium**

- Sunday morning weekly events
- Mid-week activities

### **Nursery, Preschool & Children's Indoor Recreation Spaces**

- Sunday morning weekly events including; games, recreation, learning activities, creative arts stations, crafts, and supervised play.
- Mid-week activities, parties, children's holiday events.
- Summer Day Camp.
- Indoor Carinvals
- Mothers of Preschoolers events

### **Junior & Senior High School Indoor Recreation Space**

- Sunday Evening weekly events including; Games, recreation, large & small group studies, & lectures.
- Mid-week small groups and events
- Conferences

### **Classrooms**

- Volunteer training
- Leader's meetings
- Community Groups
- Classes

### **Offices**

- Staff Offices
- Administration space
- Individual & family counseling
- Staff meetings
- Copy & printing
- Project spaces

### **Food Pantry**

- Storage of food
- Storage of household items

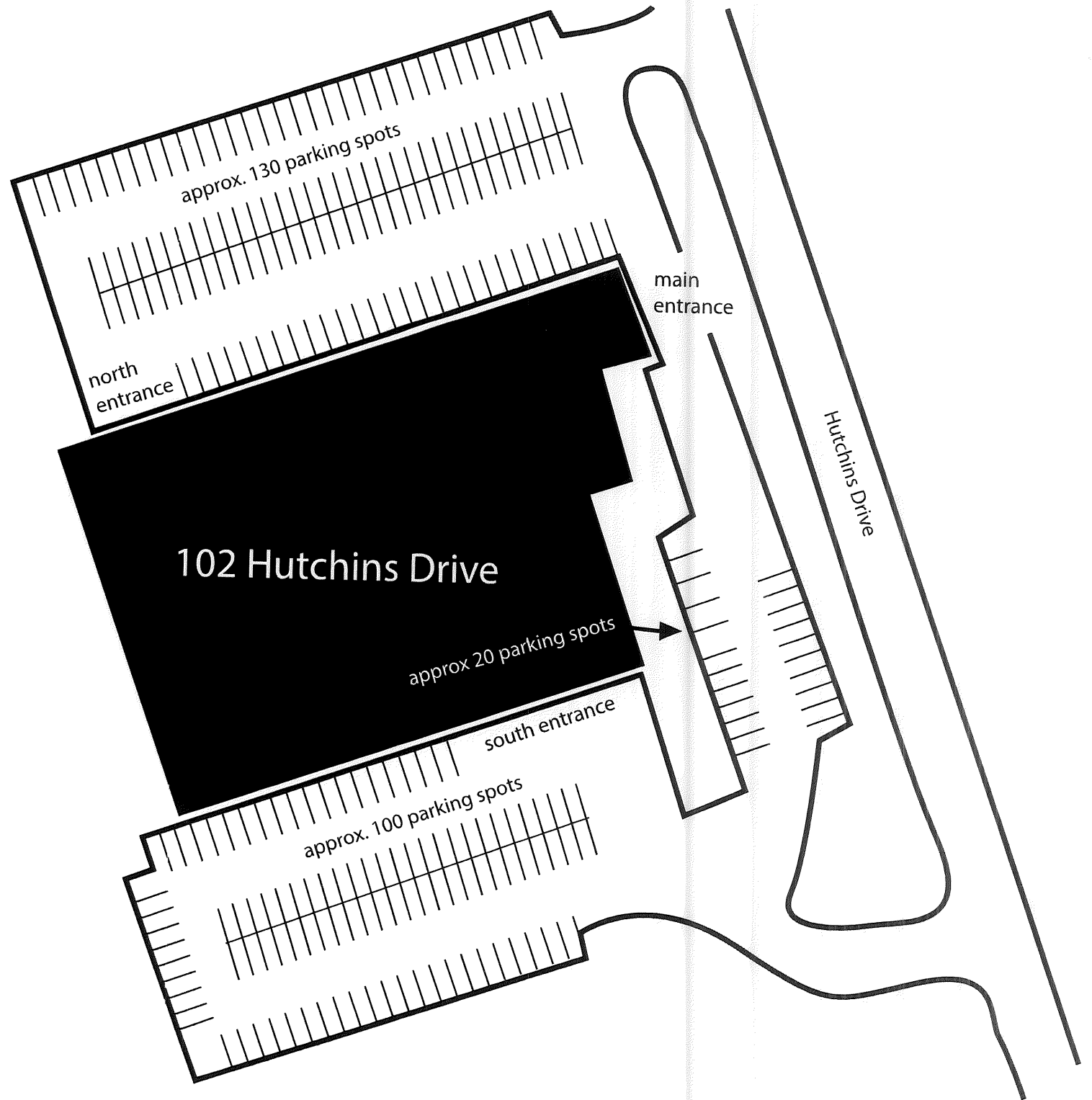
### **Café**

- Staff gathering space
- Luncheons
- Community Group space

### **Lobby**

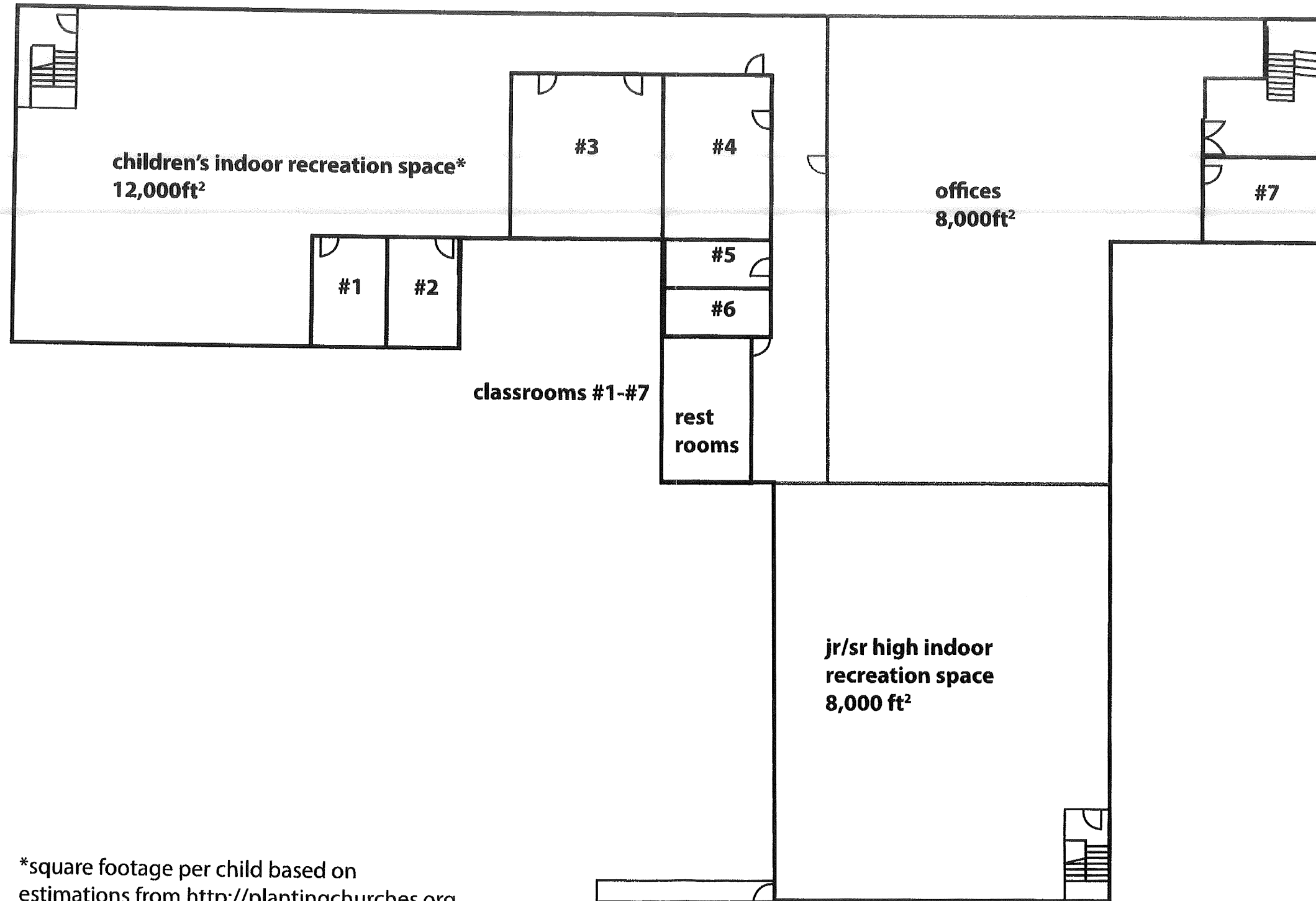
- Information Kiosks
- Seating areas

Estimated parking diagram  
102 Hutchins Drive  
Eastpoint Christian Church



drawing not to scale

102 Hutchins Drive, Portland  
Eastpoint Christian Church

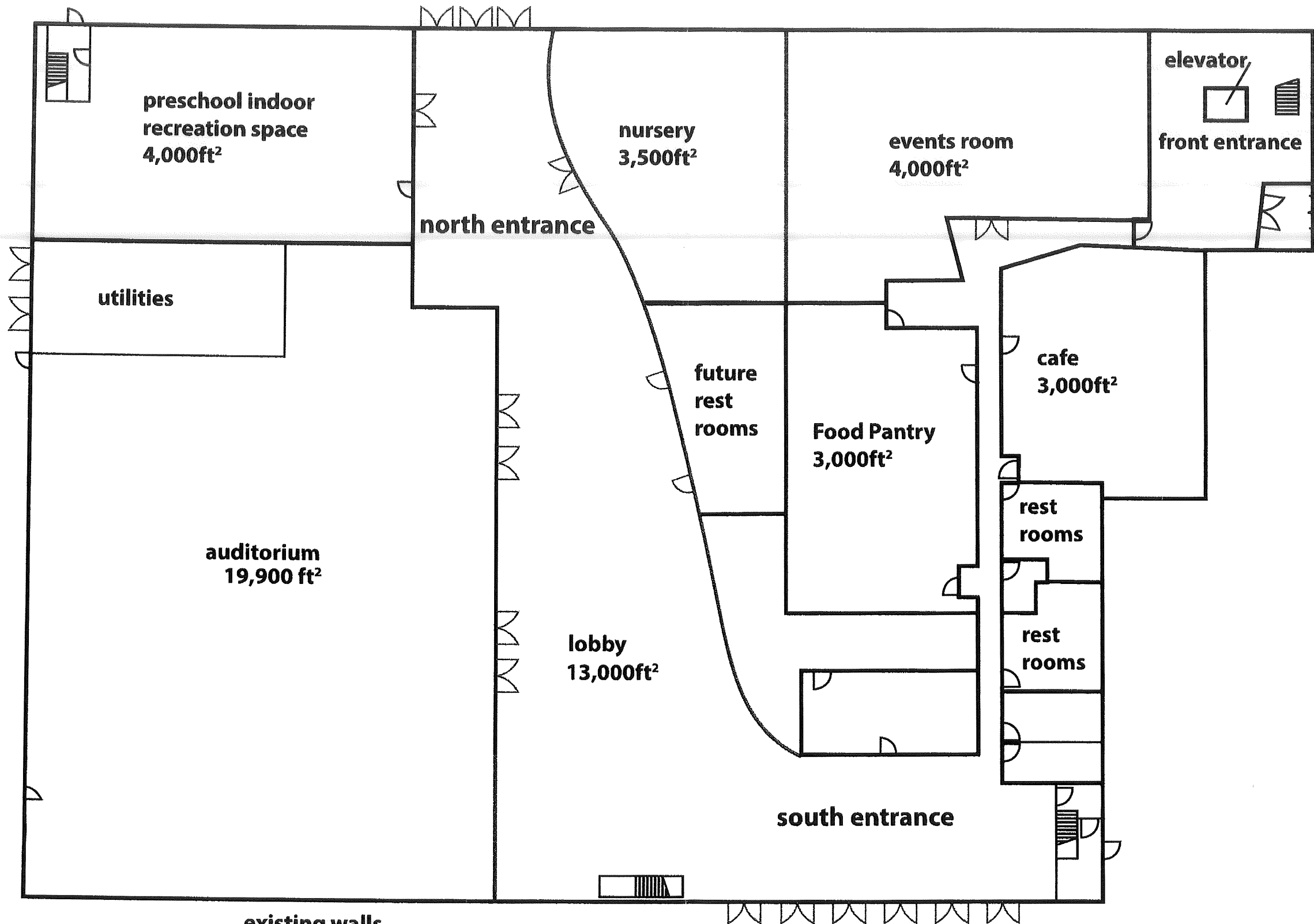


\*square footage per child based on estimations from <http://plantingchurches.org>

—— existing walls  
—— new construction

all square footage is estimated 2nd Floor  
this drawing is not to scale

102 Hutchins Drive, Portland  
Eastpoint Christian Church



all square footage is estimated  
this drawing is not to scale

1st Floor