

STATE OF MAINE
CUMBERLAND, ss.

MAINE DISTRICT COURT
DISTRICT NINE
DIVISION OF SO. CUMBERLAND
DOCKET NO.

253 E 012

CITY OF PORTLAND, a body politic)
and corporate, located in the)
County of Cumberland and State of)
Maine,)
Plaintiff)
v.)
Leo Caouette, of Portland, County)
of Cumberland and State of Maine,)
Defendant)

LAND USE CITATION
AND COMPLAINT

To Alleged Violator:

Name Caouette Leo
(Last) (First) (Middle)

Mailing Address:
Street 305 Palmer Avenue

City/Town Portland Zip Code 04103

COMPLAINT

You are charged with the following:

VIOLATION

Date of Violation, or When First Observed by Complaining
Official

Month January Day 2 Year 2001 Time _____

Location of Violation 305 Palmer Avenue, Portland
Street City/Town

Description of Violation Erection of a deck and hot
tub without a building permit and in violation of setback
requirements.

Legal Basis of Complaint:*

X Violation of State Law, Title 30-A Section 4452
or State Agency Rule No.

X Violation of Municipal Ordinance or Regulation

Title BOCA National Building Code /1999

Section(s) 107.1

Page(s) _____

X Violation of Municipal Ordinance or Regulation

Title Portland Municipal Code

Section(s) §6-16

Page(s) 6-4

X Violation of Municipal Ordinance or Regulation

Title Portland Municipal Code

Section(s) §14-463

Page(s) 14-494 to 14-495

X Violation of Municipal Ordinance or Regulation

Title Portland Municipal Code

Section(s) §14-80(d)(3)

Page(s) 14-64 to 14-65

Summary of law, ordinance or regulation allegedly violated:
The Defendant erected a deck and hot tub without a building permit and in violation of setback requirements.

Penalty Provision Section 30-A M.R.S.A. §4452(3) Page(s) 90

Penalty Amount \$100 to \$2,500 per day

*If violation is of State agency rule, or municipal ordinance or regulation, attach certified copy to original of this form for service and filing.

Relief Sought from Court

 Temporary Restraining Order (complete Affidavit and Certificate below)

 Preliminary Injunction

X Permanent Injunction

X Civil Penalty

X Removal of Violation

X Other attorney's fees (30-A M.R.S.A. §4452(3)(d))

CERTIFICATE

I certify that I have made the following efforts to give notice to the alleged violator and that notice is not required for the following reasons: _____

CITATION

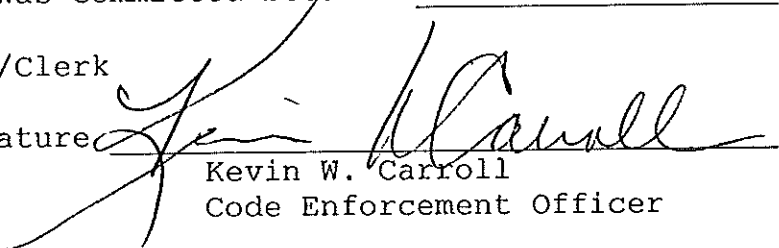
You are hereby summoned to appear in District Court at the location and date indicated below to answer to the above Complaint. In the event of your failure to appear and state your defense on the court date specified, a judgment by default may be rendered against you. You are advised to call the District Court to verify the date and time of your appearance.

District Court 9th Date May 25 Time 9:00 a.m. Tel. 822-4200

I (have) (~~find~~) reasonable grounds to believe that the above-complained of violation was committed because I observed it.

Signature of Complainant/Clerk

*Signature


Kevin W. Carroll
Code Enforcement Officer

Name of complainant if signed by clerk: _____
State Agency: _____ Title: _____
City/Town: _____ Title: _____ Date: _____

*If applicable, attach copy of certification from Department of Human Services.

NOTICE TO PROPERTY OWNER
(if not alleged violator)

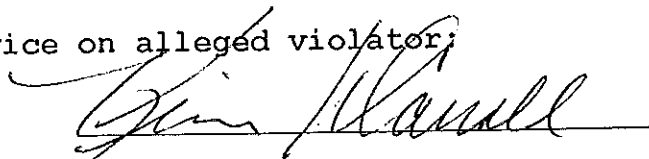
To Property Owner:

Name Caouette Leo
(Last) (First) (Middle)
Mailing Address: 305 Palmer Avenue Portland, ME 4103
Street City/Town State Zip

You are hereby notified that the original of this Citation and Complaint has been or will be served on the (above-named) (clerk of the corporation) and that if you wish to defend your own interest you should appear in District Court at the above indicated time and place. You are advised to call the District Court to verify date and time of the appearance. If you should fail to appear, judgment by default may be entered against you.

Signature of person making service on alleged violator:

Date:



ACKNOWLEDGEMENT OF RECEIPT

I acknowledge receipt of this Citation and Complaint.

[Handwritten Signature]
Signature of alleged violator

Signing this Complaint does not constitute an admission of guilt.

RETURN

On the 16th day of May, 2001, I served this Citation

and Complaint upon Leo Casquette
(alleged violator) (property owner)

by:

delivering it to (him) (her) personally at 701 Forest Ave,
Portland, Me (Rite Side Pharmacy) within this state;

delivering it to Leo Casquette, property owner
(name and title)

personally within this state; and or

(other method) _____

The alleged violator, if served personally has been advised of this violation and (has signed above to acknowledge receipt of this Citation and Complaint) (has refused to sign) (was unable to sign).

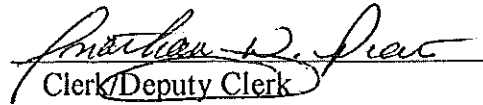
Date: 5/16/01 [Handwritten Signature]
Signature of person serving process

Attorney for the Plaintiff:
Charles A. Lane, Associate Corporation Counsel
Corporation Counsel Office
Portland City Hall
389 Congress Street
Portland, ME 04101
(207) 874-8480

CERTIFICATION OF PORTLAND MUNICIPAL CODE

Pursuant to 30-A M.R.S.A. §3006, the undersigned Clerk / Deputy Clerk of the City of Portland hereby certifies that the attached BOCA National Building Code/1999 §107.1, as adopted by §6-16 of the Portland Municipal Code, is a valid copy of said Code.

Dated: 5/11/2001


Clerk/Deputy Clerk

SECTION 107.0 APPLICATION FOR PERMIT

107.1 Permit application: An application shall be submitted to the code official for the following activities, and these activities shall not commence without a permit being issued in accordance with Section 108.0.

1. Construct or alter a structure.
2. Construct an *addition*.
3. Demolish or move a structure.
4. Make a *change of occupancy*.
5. Install or alter any equipment which is regulated by this code.
6. Move a *lot line* which affects an existing structure.

107.1.1 Repairs: Application or notice to the code official is not required for ordinary repairs to structures. Such repairs shall not include the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or loadbearing support, or the removal or change of any required *means of egress*, or rearrangement of parts of a structure affecting the egress requirements; nor shall ordinary repairs include *addition* to, *alteration* of, replacement or relocation of any *standpipe*, water supply, sewer, drainage, drain leader, gas, soil, waste, vent or similar piping, electric wiring or mechanical or other work affecting public health or general safety.

107.2 Form of application: The application for a permit shall be submitted in such *written* form as the code official prescribes and shall be accompanied by the required fee as prescribed in Section 112.0.

107.3 By whom application is made: Application for a permit shall be made by the *owner* or lessee of the building or structure, or agent of either, or by the *registered design professional* employed in connection with the proposed work. If the application is made by a person other than the *owner* in fee, it shall be accompanied by an affidavit of the *owner* or the qualified applicant or a signed statement of the qualified applicant witnessed by the code official or his designee to the effect that the proposed work is authorized by the *owner* in fee and that the applicant is authorized to make such application. The full names and addresses of the *owner*, lessee, applicant and the responsible officers, if the *owner* or lessee is a corporate body, shall be stated in the application.

107.4 Description of work: The application shall contain a general description of the proposed work, the location of the proposed work, the occupancy of all parts of the building or structure and of all portions of the site or *lot* not covered by the building or structure, provisions for *special inspections* required by Section 1705.0, and such additional information as required by the code official.

107.5 Construction documents: The application for permit shall be accompanied by not less than two sets of *construction documents*. The code official is permitted to waive the requirements for filing *construction documents* when the scope of the work is of a minor nature. When the quality of the materials is essential for conformity to this code, specific information shall be given to establish such quality, and this code shall not be cited, or the term "legal" or its equivalent used as a substitute for specific information.

107.6 Site plan: The application for permit shall be accompanied by a site plan showing to scale the size and location of all new construction and all existing structures on the site, distances from *lot lines*, the established street grades and the proposed finished grades; and it shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show all construction to be demolished and the location and size of all existing structures and construction that are to remain on the site or plot.

107.6.1 Private sewage disposal system: The site plan shall indicate the location of a private sewage disposal system where a public sewer is not available. All technical data and soil data required by the private sewage disposal code listed in Chapter 35 shall be submitted with the site plan.

107.7 Engineering details: The code official shall require to be filed adequate details of structural, mechanical and electrical work, including computations, stress diagrams and other essential technical data. All construction documents and engineering computations shall bear the date issued as well as the signature and seal of the registered design professional responsible for the design as required by Section 114.1.

107.8 Amendments to application: Subject to the limitations of Section 107.9, amendments to a plan, application or other records accompanying the same shall be filed at any time before completion of the work for which the permit is sought or issued. Such amendments shall be deemed part of the original application and shall be filed therewith.

107.9 Time limitation of application: An application for a permit for any proposed work shall be deemed to have been abandoned six months after the date of filing, unless such application has been diligently prosecuted or a permit shall have been issued; except that the code official shall grant one or more extensions of time for additional periods not exceeding 90 days each if there is reasonable cause.

SECTION 108.0 PERMITS

108.1 Action on application: The code official shall examine or cause to be examined all applications for permits and amendments thereto within a reasonable time after filing. If the application or the *construction documents* do not conform to the requirements of all pertinent laws, the code official shall reject such application in *writing*, stating the reasons therefor. If the code official is satisfied that the proposed work conforms to the requirements of this code and all laws and ordinances applicable thereto, the code official shall issue a permit therefor as soon as practicable.

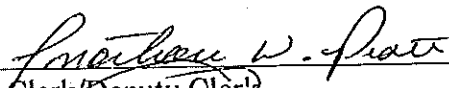
108.2 Suspension of permit: Any permit issued shall become invalid if the authorized work is not commenced within six months after issuance of the permit, or if the authorized work is suspended or abandoned for a period of six months after the time of commencing the work.

108.3 Previous approvals: This code shall not require changes in the *construction documents*, construction or designated use group of a building for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which has been actively prosecuted within 90 days after the effective date of this code and is completed with dispatch.

CERTIFICATION OF PORTLAND MUNICIPAL CODE

Pursuant to 30-A M.R.S.A. §3006, the undersigned Clerk / Deputy Clerk of the City of Portland hereby certifies that the attached §6-16 of the Portland Municipal Code is a valid copy of said Code.

Dated: 5/11/2001


Clerk/Deputy Clerk

and the assessment and lien shall be collected and enforced pursuant to section 1-16.
(Ord. No. 120-97, § 2, 10-20-97)

- Sec. 6-3. Reserved.
- Sec. 6-4. Reserved.
- Sec. 6-5. Reserved.
- Sec. 6-6. Reserved.
- Sec. 6-7. Reserved.
- Sec. 6-8. Reserved.
- Sec. 6-9. Reserved.
- Sec. 6-10. Reserved.
- Sec. 6-11. Reserved.
- Sec. 6-12. Reserved.
- Sec. 6-13. Reserved.
- Sec. 6-14. Reserved.
- Sec. 6-15. Reserved.

ARTICLE II. BUILDING CODE

Sec. 6-16. Adoption of BOCA National Building Code.

There is hereby adopted for the purpose of regulating the construction, alteration, addition, repair, removal, demolition, use, location, occupancy and maintenance of all buildings and structures, the following certain code recommended by the Building Officials and Code Administrators International, Inc., the BOCA National Building Code, 1999 edition, and the whole thereof, except for such portions as are deleted, modified or amended in this article.

(Code 1968, § 301.1; Ord. No. 211-79, 10-22-79; Ord. No. 354-81, 12-21-81; Ord. No. 290-84, § 1, 11-19-84; Ord. No. 540-87, § 1, 6-3-87; Ord. No. 109-90, 10-1-90; Ord. No. 170-93, § 1, 12-20-93; Ord. No. 40-96, § 1, 7-1-96; Ord. No. 137, §1, 1-19-00)

State law reference(s)--Authority to adopt codes by reference, 30-A M.R.S.A. § 3003.

Sec. 6-17. Definitions.

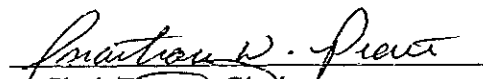
The BOCA National Building Code shall be construed as follows:

- (a) *Name of jurisdiction*: Wherever the phrase "name of jurisdiction" appears in the code, "the City of Portland" shall be substituted.

CERTIFICATION OF PORTLAND MUNICIPAL CODE

Pursuant to 30-A M.R.S.A. §3006, the undersigned Clerk / Deputy Clerk of the City of Portland hereby certifies that the attached §14-80(d)(3) of the Portland Municipal Code is a valid copy of said Code.

Dated: 5/11/2001


Clerk/Deputy Clerk

placed side by side in order to lessen their impact on the residential character of the lot and the neighborhood, and shall not be located closer than five (5) feet from the property line of any abutting residential use or residentially zoned site;

vii. The maximum number of children in a day care facility, home babysitting service, nursery school or kindergarten located in a residential or existing accessory structure shall be twenty-four (24); and

viii. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the residential appearance of the building.

(Ord. No. 533-84, 5-7-84; Ord. No. 261-84, § 2, 12-17-84; Ord. No. 76-85, § 3, 7-1-85; Ord. No. 80-88, § 2, 7-19-88; Ord. No. 235-91, § 3, 2-4-91; Ord. No. 118-93, § 3, 10-18-93; Ord. No. 133-96, § 2, 11-18-96; Ord. No. 154-96, § 3, 12-16-96; Ord. No. 222-99 §2, 3-01-99)

Sec. 14-79. Prohibited uses.

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

(Ord. No. 533-84, 5-7-84)

Sec. 14-80. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations) of this article, lots in the R-2 zone shall meet or exceed the following minimum requirements:

(a) *Minimum lot size:*

1. Residential: Ten thousand (10,000) square feet except as provided for lots of record in section 14-433 (lots of record and accessory structure setbacks for existing buildings) of this article. A lot in an unsewered residential district shall meet

the provisions of the state Minimum Lot Size Law, 12 M.R.S.A. Section 4807, or the applicable zoning lot size, whichever is the larger.

2. Long-term, extended, or intermediate care facility: Three (3) acres.
3. School: Two (2) acres.
4. Church or place of worship: Two (2) acres.
5. Private club or fraternal organization: Five (5) acres.
6. Municipal use: Ten thousand (10,000) square feet.
7. All other uses: Ten thousand (10,000) square feet.

Provided that for uses specified in section 14-80(a)2 through 6 above, no minimum lot area shall be required in the following cases:

- a. Uses existing as of June 1, 1983;
- b. Expansion of uses onto land abutting the lot on which the principal use is located;
- c. Expansion onto land other than the lot on which the principal use is located to the extent that such expansion consists of the reuse of surface parking area or nonresidential structures existing and in nonresidential use as of June 1, 1983, provided that such reuse is contained within the lot of record of such structure or parking area as of June 1, 1983;
- d. Expansion onto land other than the lot on which the principal use is located of no more than fifteen (15) percent of the total contiguous land area of the existing use, or one (1) acre, whichever is less, within any five-year period.

- (b) *Minimum area per dwelling unit:* Ten thousand (10,000) square feet.
- (c) *Minimum street frontage:* Fifty (50) feet.
- (d) *Minimum yard dimensions:*

(Yard dimensions include setbacks of structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum yard of another structure.)

1. *Front yard:*

Principal or accessory structures: Twenty-five (25) feet.

2. *Rear yard:*

- a. Principal or accessory structures with ground coverage greater than one hundred (100) square feet: Twenty-five (25) feet.
- b. Accessory detached structures with a ground coverage of one hundred (100) square feet or less: Five (5) feet.

Setbacks for swimming pools shall be as provided for in section 14-432 (swimming pools) of this article.

3. *Side yard:*

- a. Principal or accessory structures with ground coverage greater than one hundred (100) square feet:

<i>Height of Structure</i>	<i>Required Side Yard</i>
1 story	12 feet
1 1/2 stories	12 feet
2 stories	14 feet
2 1/2 stories	16 feet

The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than twelve (12) feet. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent lots, the required side yard may be reduced in order to provide a buildable width of up to twenty-four (24) feet, but in no case shall the resulting side yards be less than twelve (12) feet.

b. Accessory detached structures with ground coverage of one hundred (100) square feet or less: Five (5) feet.

4. *Side yard on side streets:*

Principal or accessory structures: Twenty (20) feet.

(e) *Maximum lot coverage:* Twenty (20) percent of lot area.

(f) *Minimum lot width:* Eighty (80) feet.

(g) *Maximum structure height:*

Principal or accessory attached structure: Thirty-five (35) feet.

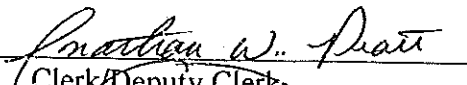
Accessory detached structure: Eighteen (18) feet.

(Ord. No. 533-84, 5-7-84; Ord. No. 80-88, § 3, 7-19-88; Ord. No. 235-91, § 4, 2-4-91; Ord. No. 118-93, § 4, 10-18-93; Ord. No. 154-96, § 3, 12-16-96)

CERTIFICATION OF PORTLAND MUNICIPAL CODE

Pursuant to 30-A M.R.S.A. §3006, the undersigned Clerk / Deputy Clerk of the City of Portland hereby certifies that the attached §14-463 of the Portland Municipal Code is a valid copy of said Code.

Dated: 5/11/2001


Clerk/Deputy Clerk

Sec. 14-461. Building authority to enforce article.

It shall be the duty of the building authority to enforce the provisions of this article. No permit or certificate of occupancy shall be issued for the construction, alteration, enlargement, moving, use or change of use of any building, structure, or part thereof, or for the use or change of use of any premises, unless the plans and intended use indicate that the building, structure or premises is to conform in all respects with the provisions of this article.

(Code 1968, § 602.22.A)

Sec. 14-462. Change to nonconforming use.

The use of any part of any building or structure for a one-family dwelling house, two-family dwelling house, lodging house, hotel, tenement or apartment house, dormitory, educational use, club, church, farm use, hospital, sanitarium, institution, aviation facility, office or bank, place of amusement or assembly, retail business or service other than a filling station or garage, wholesale business, manufacturing or storage facility, warehouse, filling station, stable, minor garage for not more than one (1) commercial motor vehicle, minor garage for more than one (1) commercial motor vehicle, public garage, any use prohibited in an industrial zone, or for any other distinctive use shall not be changed to any other use in this list of uses or to any other distinctive use, whether alterations in the building or structure are involved or not, until a permit and certificate authorizing such change of use has first been secured from the building authority, unless the proposed use conforms with the requirements of this article for the zone in which the building or structure or part thereof is located. Failure to secure such a permit before such a change is made shall be a violation of this article.

(Code 1968, § 602.22.B)

Sec. 14-463. Certificate of occupancy required.

No building or part thereof shall be constructed, altered, enlarged or moved unless a permit for such action has been issued by the building authority. Applications for building permits and certificates of occupancy required by the building code shall also serve as applications for permits required by this article. After the building, structure or part thereof has been completed,

altered, enlarged or moved, a certificate of occupancy shall be obtained for the proposed use before the same may be occupied or used. A certificate of occupancy shall be required for any of the following:

- (a) Any increase in the number of dwelling units in a building;
- (b) Establishment of any home occupation;
- (c) Change in the use of a nonconforming use, whether of land or buildings;
- (d) Occupancy and use, or change of use, of vacant land, except for the raising of crops;
- (e) Change in the use of an existing building, whether or not alterations are involved, from any use in the following list to any of the other uses on the list:
 1. Manufacturing or processing;
 2. Residential;
 3. Retail;
 4. Storage or warehouse;
 5. Transportation;
 6. Other industrial;
 7. Institutional;
 8. office;
 9. Other commercial;
 10. Water-dependent use;
 11. Marine use.

(Code 1968, § 602.22.C; Ord. No. 293-84, § 1, 11-19-84; Ord. No. 168-93, § 4, 1-4-93)