

City of Portland, Maine - Building or Use Permit Application
 389 Congress Street, 04101 Tel: (207) 874-8703, Fax: (207) 874-8716

PERMIT ISSUED

Permit No: 01-1529	Issue Date: DEC 18 2001	CBL: 432 F003001
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Location of Construction: 244 Veranda St	Owner Name: Higgins Timothy A	Owner Address: 244 Veranda St	Phone: 207-838-5870
Business Name:	Contractor Name: no contractor/self	Contractor Address: n/a n/a	Phone:
Lessee/Buyer's Name	Phone:	Permit Type: Building Miscellaneous	Zone: R-5

Past Use: 2 UNITS	Proposed Use: 3 UNITS	Permit Fee:	Cost of Work: \$0.00	CEO District: 2	9001 #
		FIRE DEPT: <input type="checkbox"/> Approved <input type="checkbox"/> Denied	INSPECTION: Use Group: RZ Type: 5B Boca 44		

Proposed Project Description:
 ADD THIRD UNIT TO 1ST FLOOR PER SUPERIOR COURT

Signature: _____ Signature: _____

PEDESTRIAN ACTIVITIES DISTRICT (P.A.D.)

Action: Approved Approved w/Conditions Denied

Signature: _____ Date: _____

Permit Taken By: gg	Date Applied For: 12/14/2001	Zoning Approval
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1. This permit application does not preclude the Applicant(s) from meeting applicable State and Federal Rules. 2. Building permits do not include plumbing, septic or electrical work. 3. Building permits are void if work is not started within six (6) months of the date of issuance. False information may invalidate a building permit and stop all work..	Special Zone or Reviews <input type="checkbox"/> Shoreland <input checked="" type="checkbox"/> Wetland <i>OK - Allowed Per Superior Judge</i> <input type="checkbox"/> Flood Zone <input type="checkbox"/> Subdivision <i>see attached rule of</i> <input type="checkbox"/> Site Plan <i>All original conditions apply</i> Maj <input type="checkbox"/> Minor <input type="checkbox"/> MM <input type="checkbox"/> Date: <i>12/14/01</i>	Zoning Appeal <input type="checkbox"/> Variance <i>zsa appeal over turned</i> <input type="checkbox"/> Miscellaneous <input type="checkbox"/> Conditional Use <input type="checkbox"/> Interpretation <input type="checkbox"/> Approved <i>m3 met</i> <input type="checkbox"/> Denied Date: _____	Historic Preservation <input checked="" type="checkbox"/> Not in District or Landmark <input type="checkbox"/> Does Not Require Review <input type="checkbox"/> Requires Review <input type="checkbox"/> Approved <input type="checkbox"/> Approved w/Conditions <input type="checkbox"/> Denied Date: _____
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CERTIFICATION

I hereby certify that I am the owner of record of the named property, or that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his authorized agent and I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in the application is issued, I certify that the code official's authorized representative shall have the authority to enter all areas covered by such permit at any reasonable hour to enforce the provision of the code(s) applicable to such permit.

 SIGNATURE OF APPLICANT ADDRESS DATE PHONE

 RESPONSIBLE PERSON IN CHARGE OF WORK, TITLE DATE PHONE

01-1529

All Purpose Building Permit Application

If you or the property owner owes real estate or personal property taxes or user charges on any property within the City, payment arrangements must be made before permits of any kind are accepted.

Location/Address of Construction: <u>244 Veranda Street</u>		
Total Square Footage of Proposed Structure	Square Footage of Lot <u>9001</u>	
Tax Assessor's Chart, Block & Lot Chart# <u>432</u> Block# <u>F</u> Lot# <u>3 & 4</u>	Owner: <u>Timothy Higgins</u> <u>242 Veranda Street</u>	Telephone: <u>838-5870</u>
Lessee/Buyer's Name (If Applicable)	Applicant name, address & telephone: <u>see owner</u>	Cost Of fees & review Work: <u>\$ were previously Done for 3 units, this paper work</u>
Current use: <u>Two units</u> reflects Superior Court		
If the location is currently vacant, what was prior use: <u>N/A (reconstructed with addition)</u>		
Approximately how long has it been vacant: _____		
Proposed use: <u>Three units -</u>		
Project description: <u>ADD Third unit to The 1st floor per Allowance by Superior Court Judge (Attached)</u>		
Contractor's name, address & telephone: <u>owner</u>		
Who should we contact when the permit is ready: <u>See owner Above</u>		
Mailing address: _____		
Phone: _____		

IF THE REQUIRED INFORMATION IS NOT INCLUDED IN THE SUBMISSIONS THE PERMIT WILL BE AUTOMATICALLY DENIED AT THE DISCRETION OF THE BUILDING/PLANNING DEPARTMENT, WE MAY REQUIRE ADDITIONAL INFORMATION IN ORDER TO APPROVE THIS PERMIT.

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Code Official's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

→ Signature of applicant: Timothy Higgins Date: Dec 14-01

This is not a permit, you may not commence ANY work until the permit is issued

Application ID Number: 1-1529

Department: Zoning

Status: Approved with Conditions

Reviewer: Marge Schmuckal

Comments: 244 Veranda St

Approval Date: 12/14/2001

Given On Date: 12/14/2001

OK to Issue Permit Name: Marge Schmuckal Date: 12/14/2001 Date 2:

Conditions Section

All original conditions placed on the first 3 unit building still apply.

Create Date: 12/14/2001 By: mes Update Date: 12/14/2001 By: mes

NOV 28 2001

STATE OF MAINE
CUMBERLAND, ss

STATE OF MAINE
CUMBERLAND, SS
CLERK'S OFFICE

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-01-034

Nov 27 8 45 AM '01

TIMOTHY J. HIGGINS,

Petitioner

v.

DECISION AND ORDER

CITY OF PORTLAND,

Respondent

This matter is before the court on the appeal of the petitioner Timothy Higgins ("Higgins") from an adverse decision of the Zoning Board of Appeals ("ZBA") of the respondent City of Portland ("City").

I. BACKGROUND

Higgins is the owner of premises at 244 Veranda Street, Portland, Maine ("property"), which, since at least 1957, has been comprised of a two-unit apartment building situated on a 9,001 square feet lot. The property is in a R-5 zone, which is a medium-density residential zone. City of Portland Zoning Ordinance ("Ord.") §§ 14-116 & 14-473(c)(4).

Two-family dwellings are permitted in this zone and, under certain circumstances, may be altered or enlarged to add a third unit. Ord. § 14-117(a)(1). The minimum lot area per dwelling unit in a R-5 zone is 3,000 square feet, unless the project is deemed to be a multiplex development. Ord. § 14-120(b).¹ The per unit land area requirement for a multiplex is

¹A multiplex is a "development with three (3) or more horizontally or vertically attached dwelling units [] and the construction of at least one (1) building on a parcel of less than two (2) acres. . . ." Ord. § 14-117(a)(2).

6,000 square feet. Ord. § 14-117(a)(2). The City's Zoning Administrator, Marge Schmuckal, has consistently interpreted the ordinance to mean that a project in which a two-unit building is altered or enlarged to add a third unit is not a multiplex and, therefore, is subject to the smaller land area requirement. Record on Appeal ("R.") at 42.

On January 18, 2001, Higgins applied to the City's Planning Authority and Building Authority to add a third unit to the building on the property. R. at 37. His original plan called for the demolition of the building and the construction of a three-unit structure. R. at 42-43. Ms. Schmuckal viewed that proposal as a multiplex development because it did not involve an alteration or enlargement to an existing structure. *Id.* She rejected the plan because the property did not meet the larger land area requirement of a multiplex. *Id.* Higgins redesigned the plan to add a third unit to his existing building. *Id.* On February 15, 2001, the Planning Authority granted site approval based on the new plan. R. at 38-39.

On March 2, 2001, Higgins applied to the Building Authority for a building permit. R. at 40. On March 9, 2001, a "first" building permit was issued giving Higgins "permission to Build third unit with additions/FOUNDATION ONLY". R. at 41. Higgins posted a performance guarantee and, on March 10, 2001, began construction. He did partial demolition, site work, poured the foundation and made "significant progress" on the building structure. He expended \$8,000 in this effort.

On April 5, 2001, Elizabeth Holton, a neighbor, met with the Zoning Administrator to discuss a challenge to Higgins' project. The Administrator

told Ms. Holton that she still had some appeal rights and would let Ms. Holton know when a structural permit was issued to Higgins.

On April 9, 2001, Higgins applied to the Building Authority for a second permit. R. at 46. On May 2, 2001 a "second" permit was issued for "Proposed Project Description: Additions to Multi Family To Change from 2 to 3 Units with Garages Per Plans". R. at 47. On May 3, 2001, Higgins began construction.

On May 17, 2001, Ms. Holton filed an Interpretation Appeal Application with the ZBA disputing the Building Authority's "[i]nterpretation allowing conversion to 3-family" contrary to § 14-117(a)(2) of the ordinance.² R. at 48. On June 7, 2001, following a public hearing, the ZBA voted to grant the appeal thereby disallowing construction of the third unit.

Higgins challenges the ZBA's decision and argues that (i) Ms. Holton's appeal was not timely, (ii) his rights to add and construct a third unit had vested, and (iii) the ZBA erroneously interpreted the zoning ordinance when it concluded that Higgins' project was a multiplex within the meaning of § 14-117(a)(2) and subject to the larger 6,000 square feet requirement.

II. DISCUSSION

Appeals from interpretations of the zoning ordinance by the Building Authority are made to the ZBA and must "be taken within thirty (30) days of the action complained of." Ord. §§ 14-472(a) & (b)(1) (emphasis added).

²Although the Planning Authority and the Building Authority both interpreted the ordinance to allow Higgins to add a third unit, Ms. Holton's appeal was only directed to the decision of the Building Authority. An appeal from a decision of the Planning Authority must be made "to the planning board within ten (10) days of the decision being rendered." Ord. § 14-527(a).

The specific action of which Ms. Holton complains is the Building Authority's decision to interpret the ordinance as allowing Higgins to add a third unit without being subject to the land area requirement of a multiplex development. Thus, the appeal period began when that decision was made and the timeliness of the appeal turns on whether the decision was made upon the issuance of the "first" permit, in which case it was untimely, or the "second" permit, in which case it was timely.

The court does not agree with the City's argument that the "first" permit issued by the Building Authority did not give Higgins the right to add a third unit and merely allowed him "to enlarge the foundation in order to accommodate his proposed new structure." Brief of City of Portland at 8. The more reasonable conclusion is that the "first" permit approved the project while limiting the scope of the work allowed at that stage of the project. The "first" permit included language which made clear that the Building Authority granted Higgins "permission to Build third unit with additions", but limited the work at that point to putting in the foundation. R. at 41. The decision of the Building Authority to issue the permit to construct a foundation for the addition was necessarily predicated upon a decision to allow the addition which in turn was necessarily based on an interpretation of the ordinance that the addition was allowable under the circumstances. To conclude otherwise would mean that the permit merely and illogically authorized the construction of a foundation that served no identifiable project or purpose.

Ms. Holton's appeal was directed specifically to the Building

Authority's action leading to and resulting in the "first" permit. That permit was issued on March 9, 2001, and the time for taking an appeal to the ZBA expired on April 9, 2001.³ Ms. Holton's appeal was filed on May 17, 2001. Therefore, it is time-barred.

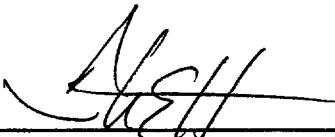
That conclusion is not inconsistent with the Zoning Administrator's words to Ms. Holton on April 5, 2001 that she still had "some appeal rights." R. at 44. Although the "first" permit gave Higgins permission to add a third unit to his property, he still needed design and structural approval from the Building Authority. The "second" permit gave him that approval and allowed him to construct the addition pursuant to his approved plans. Interested parties, such as Ms. Holton, had to the right to appeal the Building Authority's decisions relating to that permit. R. at 47.

III. DECISION

Based upon the foregoing, the decision of the City of Portland Zoning Board of Appeals is VACATED and the matter is remanded for proceedings consistent with this Decision and Order.

Pursuant to Rule 79(a) M.R.Civ.P., the Clerk is directed to enter this Decision and Order on the Civil Docket by a notation incorporating it by reference.

Dated: November 25, 2001



Justice, Superior Court

³The meeting between Ms. Holton and Zoning Administrator Schmuckal on April 5, 2001, did not constitute the taking of an appeal.

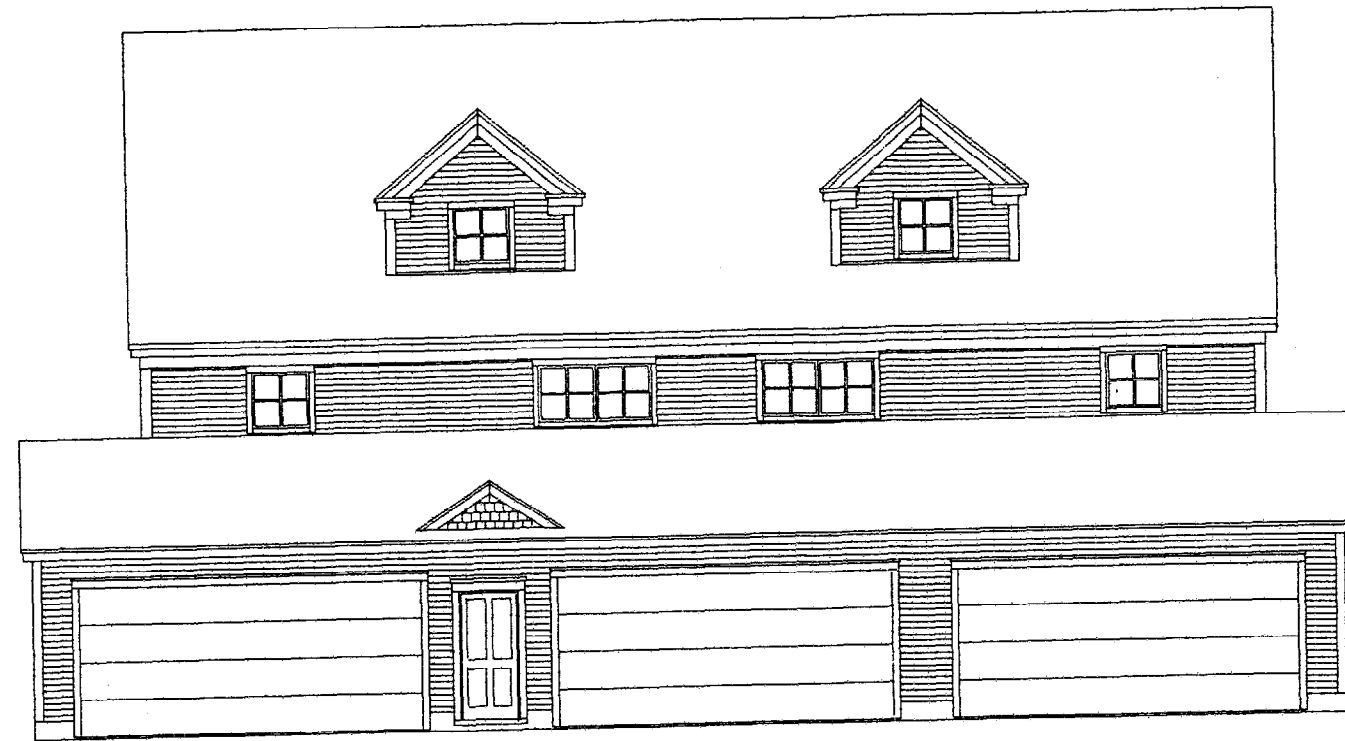


VERANDA STREET ELEVATION

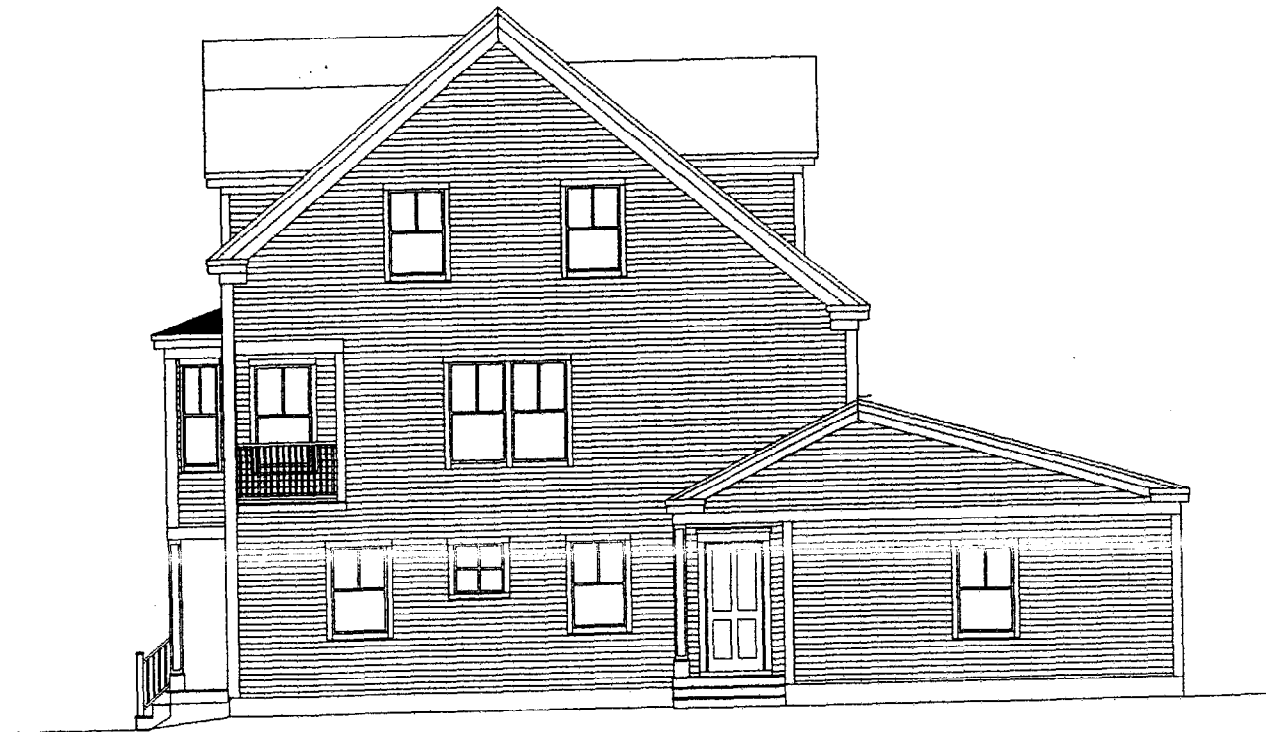
838-5870
773-8362

Tim Higgins
242 VERANDA ST
PORTLAND ME
04102

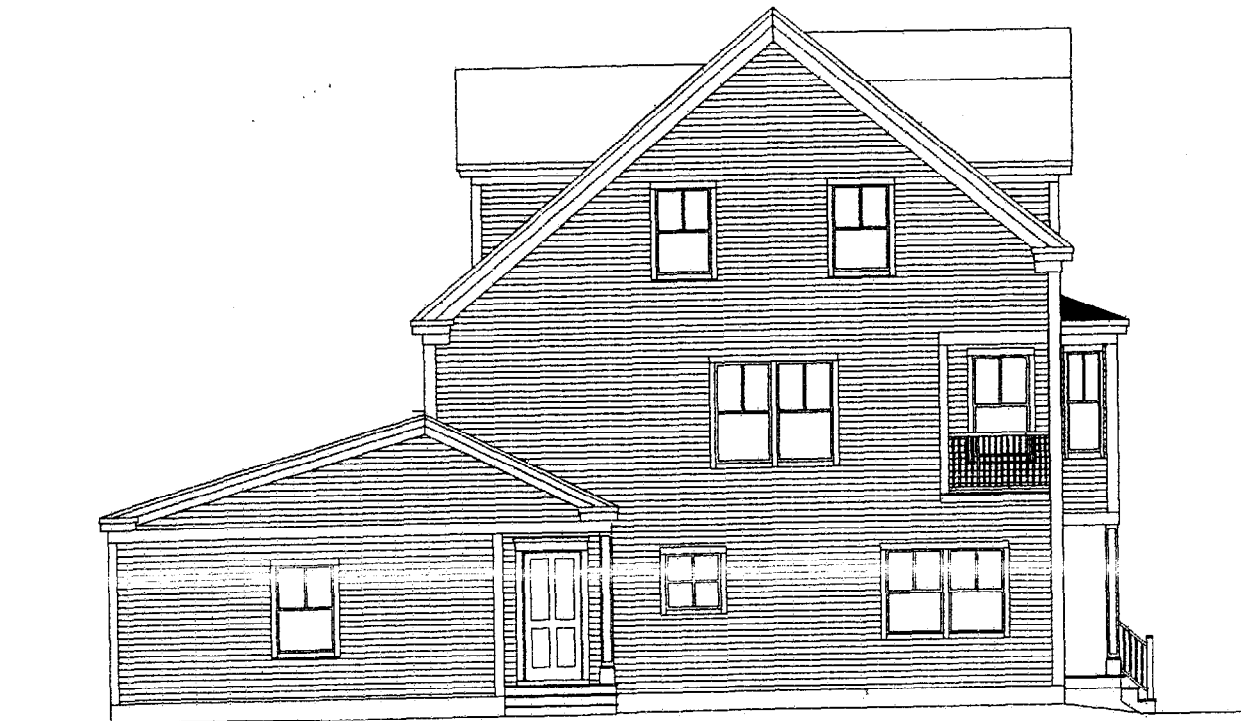
Owner:		HIGGINS CONSTRUCTION PORTLAND, MAINE	
Professional:		Stephen W. Tibbetts, P.E. Professional Civil Engineer 15 Oak Ridge Road Brunswick, Maine 04011 (207) 725-2687 Fax (207) 725-6188	
Project:		BUILDING ADDITION AND ALTERATIONS 244 VERANDA STREET, PORTLAND, MAINE	
Date:	Scale:	AS NOTED	
MARCH 26, 2000			
Revisions:			
ELEVATIONS			
A-1			



NORTH ELEVATION



EAST ELEVATION



WEST ELEVATION

Owner:
HIGGINS CONSTRUCTION
 PORTLAND, MAINE

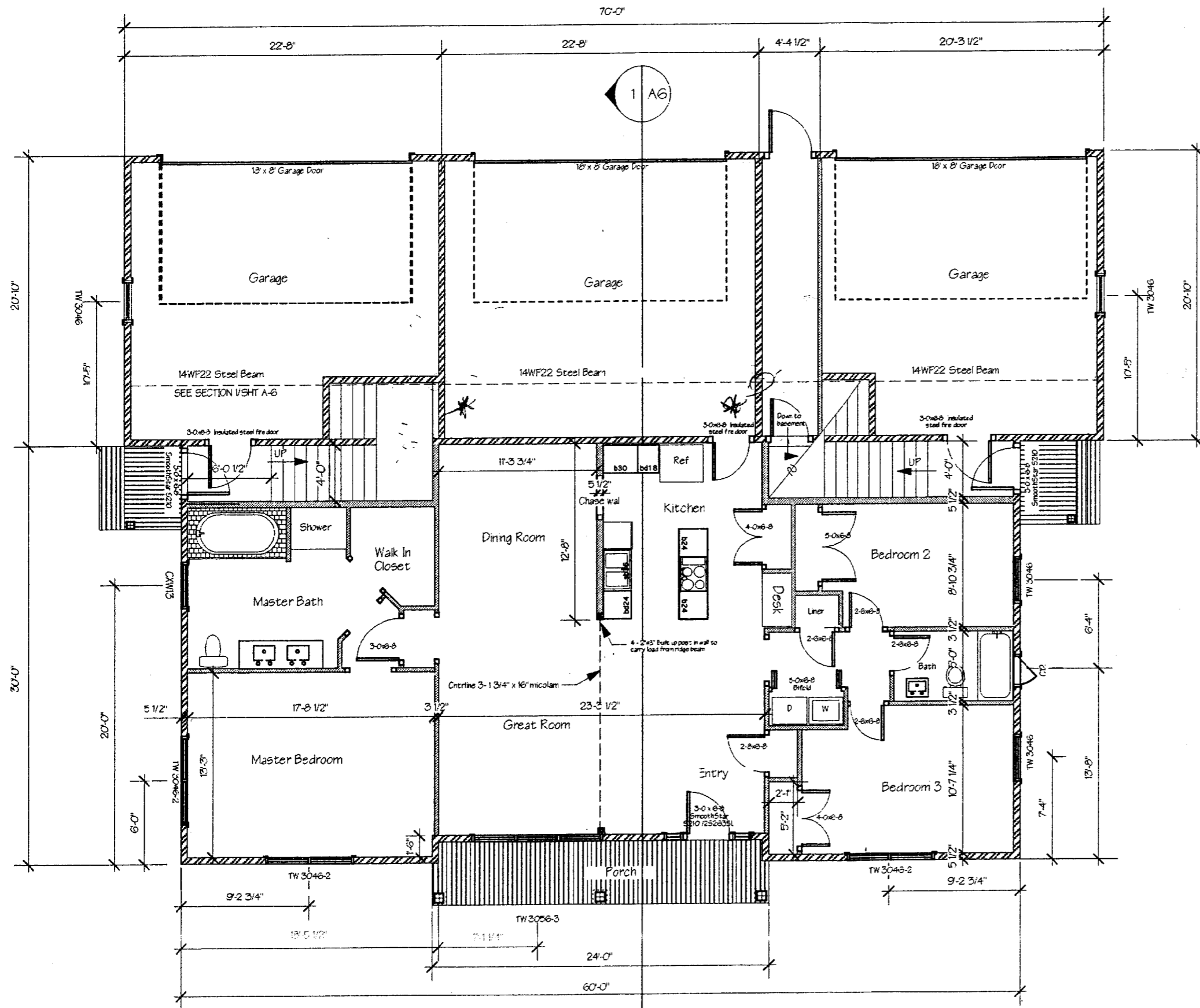
Stephen W. Tibbetts, P.E.
 Professional Civil Engineer
 15 Oak Ridge Road Brunswick, Maine 04011
 (207) 725-2667 Fax (207) 725-6168

Project:
**BUILDING ADDITION
 AND ALTERATIONS**
 341 VERNON STREET, PORTLAND, MAINE

Date: _____
 Scale: AS NOTED
 Revision: _____

ELEVATIONS

A-2



First Floor Plan - Unit 1
1705 sq ft

- NOTES:
- 1.0 All windows to meet egress requirements,
 - 2.0 All windows are Anderson Tilt Wash with screens, grilles per elevations, low E glazing.

Owner:
HIGGINS CONSTRUCTION
PORTLAND, MAINE

Stephen W. Tibbetts, P.E.
Professional Civil Engineer
15 Oak Ridge Road Brunswick, Maine 04011
(207) 725-5667 Fax (207) 725-6168

Project:
**BUILDING ADDITION
AND ALTERATIONS**
24 VEBANDA STREET, PORTLAND, MAINE

Date: MARCH 28, 2000
Revision:

Scale: AS NOTED

FIRST FLOOR PLAN

A-3

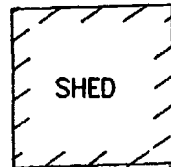
80.06'

100.08'

90.00'

LANDSCAPE EASEMENT TO BUFFER PARKING

N72°00'00"E



SHED

100.08'

20'

20'

90.00'

N20°13'00"W

2 CAR GARAGE

2 CAR GARAGE

2 CAR GARAGE

LOT AREA = 9,000 S.F.

LOT AREA = 9,001 S.F.

EXISTING 2 UNIT HOUSE EXPANDED TO 3 UNITS

2 UNIT HOUSE

DECK

STOCKADE FENCE



90.00'

S20°13'00"E

WOOD RETAINING WALL

SHRUBS

PAVED DRIVE

2 STORY PORCH

PAVED DRIVE

WALK

PORCH

FRONT SETBACK EVEN WITH ADJACENT STRUCTURES

80.06'

N72°00'00"E

PAVED SIDEWALK

13'

IPF

100.08'

N72°00'00"E

IPF