

9-11 BOLTON STREET

CITY OF PORTLAND, MAINE
IN THE BOARD OF APPEALS

USE VARIANCE

Findings of Fact

The applicant is Antonio Fournier and he is interested in
the property located at 9-11 Bolton St. as donut bakery.
The owner of the property is same and his address is
1227 Congress St. The property is located in a B-2 Zone.
The present use of the property is vacant

The applicant respectfully petitions the Board of Appeals for a variance
from the provision of Section 602.24.C of the Ordinance to permit
Construction of a 30'x50' building (donut bakery) which is not issuable under the
Zoning Ordinance because such a use is not permitted under Sec. 602.9.a of the
Ordinance applying to the B-2 Business Zone where property is located.

Further Findings of Fact

Appearances

The names and addresses of those appearing in support of the application
are: Richard Fournier - 596 Washington Ave
Ron Russo -

and the names and addresses of those appearing in opposition to the application are:
Garth DeVoe - (impartial) Bolton St.

Exhibits

The documentary evidence presented to the Board, including, but not by way
of limitation, plans, specification, photographs, etc. consisted of the following:

Letter from Thelma Devanore

congestion in the public streets due to traffic or parking, increase the danger of flood or fire, unduly tax public utilities and facilities in the area or endanger the public health or safety all as demonstrated by the following facts: _____

3 - bldg + use exist in B1 now - wouldn't increase congestion

3 - would increase traffic, concern about odor

There (is/is not) means other than the requested variance by which the hardship can be avoided or remedied to a degree sufficient to permit the economic use of the subject lot or parcel, because of the following: _____

No effort has been made to develop

another use

SPECIFIC RELIEF GRANTED

After public hearing held on Sept 3, 1981, the Board of Appeals find that all of the conditions required by the Ordinance (~~do~~/do not) exist with respect to this property and that a use variance should _____ be granted in this case.

It is therefore determined that a variance from the provisions of the Zoning Ordinance should _____ be granted in this case.

Gail D. Taylor

Jacqueline Cohen

James E. [unclear]

Merrill A. Seltzer

Michael E. [unclear]

Eugene S. Martin

CITY OF PORTLAND, MAINE
SITE PLAN REVIEW
 Processing Form

256

Applicant Antonio Fournier
 Mailing Address 1227 Congress St.
 Proposed Use of Site donut bakery
 Acreage of Site 7,200 sq. ft. / Ground Floor Coverage 1500 sq. ft.
 Site Location Review (DEP) Required: () Yes () No
 Board of Appeals Action Required: (x) Yes () No
 Planning Board Action Required: () Yes () No
 Other Comments: _____
 Date Dept. Review Due: _____

9-11 Bolton St. 8-5-81
 Address of Proposed Site Date
186-D-56
 Site Identifier(s) from Assessors Maps
B-2
 Zoning of Proposed Site
 Proposed Number of Floors 1
 Total Floor Area 1500 sq. ft.

BUILDING DEPARTMENT SITE PLAN REVIEW
 (Does not include review of construction plans)

- Use does NOT comply with Zoning Ordinance
- Requires Board of Appeals Action
- Requires Planning Board/City Council Action

Explanation _____
 Use complies with Zoning Ordinance — Staff Review Below


Zoning: SPACE & BULK, as applicable

COMPLIES
 COMPLIES CONDITIONALLY
 DOES NOT COMPLY

DATE	ZONE LOCATION	INTERIOR OR CORNER LOT	40 FT. SETBACK AREA (SEC. 21)	USE	SEWAGE DISPOSAL	REAR YARDS	SIDE YARDS	FRONT YARDS	PROJECTIONS	HEIGHT	LOT AREA	BUILDING AREA	AREA PER FAMILY	WIDTH OF LOT	LOT FRONTAGE	OFF-STREET PARKING	LOADING BAYS

REASONS: USE NOT PERMITTED

CONDITIONS SPECIFIED BELOW
 REASONS SPECIFIED BELOW


 SIGNATURE OF REVIEWING STAFF/DATE 8/5/81
 BUILDING DEPARTMENT - ORIGINAL

CITY OF PORTLAND, MAINE
SITE PLAN REVIEW
 Processing Form

256

Applicant Antonio Fournier
 Mailing Address 1227 Congress St.
 Proposed Use of Site donut bakery
 Acreage of Site 7,200 sq. ft. / Ground Floor Coverage 1500 sq. ft.

Date 8-5-81
 Address of Proposed Site 9-11 Bolton St.
 Site Identifi.(e)s from Assessors Maps 122-2-1
 Zoning of Proposed Site R-2

Site Location Review (DEP) Required: () Yes () No
 Board of Appeals Action Required: (x) Yes () No
 Planning Board Action Required: () Yes () No

Proposed Number of Floors 1
 Total Floor Area 1500 sq. ft.

Other Comments: _____
 Date Dept. Review Due: _____

PUBLIC WORKS DEPARTMENT REVIEW

8/5/81
 (Date Received)

	TRAFFIC CIRCULATION	ACCESS	CURB CUTS	ROAD WIDTH	PARKING	SIGNALIZATION	TURNING MOVEMENTS	LIGHTING	CONFLICT WITH CITY CONSTRUCTION PROJECT	DRAINAGE	SOIL TYPES	SEWERS	CURBING	SIDEWALKS	OTHER	
APPROVED				✓		✓	✓	✓	✓		✓	✓	✓	✓	✓	CONDITIONS SPECIFIED BELOW
APPROVED CONDITIONALLY	✓	✓	✓		✓					✓		✓				REASONS SPECIFIED BELOW
DISAPPROVED																

REASONS: See attached sketch for parking and access -
sewer to meet plumbing code -
Drainage - see attached sketch
 (Attach Separate Sheet if Necessary)

John P. Rague 8/5/81
 SIGNATURE OF REVIEWING STAFF/DATE

PUBLIC WORKS DEPARTMENT COPY

CITY OF PORTLAND, MAINE

SITE PLAN REVIEW

Processing Form

256

Applicant Antonio Fournier Date 8-5-81
 1227 Congress St.
 Mailing Address donut bakery
 9-11 Bolton St. Address of Proposed Site
 136-1-50
 Proposed Use of Site
 7,200 sq. ft. / 1500 sq. ft. Site Identifier(s) from Assessors Maps
 R-2
 Acreage of Site / Ground Floor Coverage
 Zoning of Proposed Site
 Site Location Review (DEP) Required: () Yes () No
 Board of Appeals Action Required: (x) Yes () No
 Planning Board Action Required: () Yes () No
 Proposed Number of Floors 1
 Total Floor Area 1500 sq. ft.
 Other Comments:
 Date Dept. Review Due:

FIRE DEPARTMENT REVIEW

(Date Received)

	ACCESS TO SITE	ACCESS TO STRUCTURES	SUFFICIENT VEHICLE TURNING ROOM	SAFETY HAZARDS	HYDRANTS	SIAMASE CONNECTIONS	SUFFICIENCY OF WATER SUPPLY	OTHER
APPROVED	✓	✓	✓				✓	
APPROVED CONDITIONALLY								
DISAPPROVED								

CONDITIONS SPECIFIED BELOW
 REASONS SPECIFIED BELOW

REASONS:

 (Attach Separate Sheet if Necessary)

Al James Collins
 FIRE DEPARTMENT COPY SIGNATURE OF REVIEWING STAFF/DATE 8-5-81

CITY OF PORTLAND, MAINE
SITE PLAN REVIEW
 Processing Form

256

Applicant Antonio Fournier
 Mailing Address 1227 Congress St.
 Proposed Use of Site 7,200 sq. ft. 1500 sq. ft.

Date 8-5-81
 Address of Proposed Site 9-11 Bolton St.
 Site Identifier(s) from Assessors Maps 186-D-56
 Zoning of Proposed Site B-2
 Proposed Number of Floors _____
 Total Floor Area _____

Acreeage of Site / Ground Floor Coverage _____
 Site Location Review (DEP) Required: () Yes () No
 Board of Appeals Action Required: (x) Yes () No
 Planning Board Action Required: () Yes () No

Other Comments: _____
 Date Dept. Review Due: _____

PLANNING DEPARTMENT REVIEW
 (Date Received)

- Major Development — Requires Planning Board Approval: Review Initiated
- Minor Development — Staff Review Below

	LOADING AREA	PARKING	CIRCULATION PATTERN	ACCESS	PEDESTRIAN WALKWAYS	SCREENING	LANDSCAPING	SPACE & BULK OF STRUCTURES	LIGHTING	CONFLICT WITH CITY PROJECTS	FINANCIAL CAPACITY	CHANGE IN SITE PLAN
APPROVED						X	X		X			
APPROVED CONDITIONALLY												
DISAPPROVED												

REASONS: ① CURB SHOULD BE INSTALLED ALONG THE SIDEWALK SIDE OF THE PARKING STALLS.
 ② SPECIFIC LANDSCAPING AND SCREENING MUST BE SUBMITTED AND APPROVED BY THE PLANNING DEPARTMENT.
 ③ OUTSIDE STORAGE IF ANY SHOULD BE APPROVED BY THE PLANNING DEPARTMENT.
 ④ EXTERIOR LIGHTING MUST BE NONGLARING AND REFLECTED DOWNWARD.

Richard Kowalski Nov 20, 1981
 SIGNATURE OF REVIEWING STAFF/DATE

PLANNING DEPARTMENT COPY

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS



Gail D. Zayac
Chairman

Michael E. Westort
Secretary

Jacqueline Cohen
Timothy E. Flaherty
Eugene S. Martin
Thomas J. Murphy
Merrill S. Seltzer

All persons interested either for or against this Use Variance Appeal will be heard at a public hearing in Room 209, City Hall, Portland, Maine on Thursday, Dec. 3, 1981 at 3:30 p.m. This notice of required public hearing has been sent to the owners of property within 500 feet of the property in question as required by Ordinance.

Antonio Fournier, owner of property at 9-11 Bolton Street, under the provisions of Section 602.24.C of the Zoning Ordinance of the City of Portland hereby respectfully petitions the Board of Appeals to permit construction of a 30'x50' building at the above named location (donut bakery) which is not issuable under the Zoning Ordinance because such a use is not permitted under Sec.602.9.A of the Ordinance applying to the B-1 Business Zone in which this property is located.

LEGAL BASIS OF APPEAL: Such permit may be granted only if the Board of Appeals finds that the conditions imposed by Section 602.24 C(3) (b) (3) of the Zoning Ordinance have been met.

Gail D. Zayac
Secretary

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS



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LEGAL BASIS OF APPEAL: Such permit may be granted only if the Board of Appeals finds that the conditions imposed by Section 602.24 C(3) (b) (3) of the Zoning Ordinance have been met.

Gail D. Zayac
Secretary

Dear Sirs:

I still feel the same as I did at the other appeal. I don't want to smell the donuts frying at four o'clock in the morning or listen to the trucks taking them away. As my land backs right up to his I can't believe it won't be offensive.

Sincerely

Thelma G. Lennanore
18 Maple Ave.
Portland 04102

CITY OF PORTLAND, MAINE
IN THE BOARD OF APPEALS

APPLICATION FOR A USE VARIANCE

Antonio Fournier, owner of property at 9-11 Bolton St.
under the provisions of Section 602.24 C of the Zoning Ordinance of the City of

Portland, hereby respectfully petitions the Board of Appeals to permit:
Construction of a 30'x50' building (donut bakery) at above named location which
is not issuable under the Zoning Ordinance because such a use is not permitted
under Sec. 602.9.A of the Ordinance applying to the B-1 Business Zone in which
this property is located.

LEGAL BASIS OF APPEAL: Such permit may be granted only if the Board of Appeals finds
that the conditions imposed by Section 602.24 C(3)(b)(3) of the Zoning Ordinance have
been met. (See reverse side hereof for said conditions.)

Site Plan approval (is/is not) required by the Site Plan Ordinance. If site plan
approval is required, a preliminary or final site plan is attached hereto as Exhibit A.

Antonio Fournier
APPELLANT

602.24C(3)(b)(3). Use Variances.

- (a) No reasonable return: The subject property is not capable of yielding a reasonable return if used for its present use or any use permitted in the zone in which such a lot or parcel is located. Such inability to yield a reasonable return must be shown by specific facts and the unsupported opinion of the owner or those appearing for him shall not be accepted as establishing such inability.
- (b) Unique circumstances: The hardship results from unique circumstances peculiar to the subject lot or parcel which do not generally apply to or affect the general vicinity of the subject property.
- (c) Not self-created: The aforesaid inability to yield a reasonable return is not the result of any action or inaction by the owner or his predecessors in title. Acquisition or improvement of the subject lot or parcel at any time after the enactment of the provision sought to be varied shall raise a rebuttable presumption that the owner's inability to realize a reasonable return is the result of his own actions.
- (d) Essential character of area - general plan: The variance would not result in a use or development of the lot or parcel in question which would be not in harmony with the general purpose and intent of this Chapter or of the Land Development Plan of the City.
- (e) Essential character of area - surrounding uses and facilities: The variance would not result in a use or development of the lot or parcel in question which would be materially detrimental to the public welfare or materially injurious to the enjoyment, use or development of property or improvements permitted in the vicinity or which would materially impair an adequate supply of light and air to properties and improvements in the vicinity, substantially increase congestion in the public streets due to traffic or parking, increase the danger of flood or fire, unduly tax public utilities and facilities in the area or endanger the public health or safety.
- (f) No other remedy: There is no means other than the requested variance by which the hardship can be avoided or remedied to a degree sufficient to permit the economic use of the subject lot or parcel.

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS



Gail D. Zayac
Chairman

Michael E. Westort
Secretary

Jacqueline Cohen
Timothy E. Flaherty
Eugene S. Martin
Thomas J. Murphy
Merrill S. Seltzer

9-11 Bolton St.

Antonio Fournier
1227 Congress St.
Portland, Me.

Nov. 4, 1981

Building permit and certificate of occupancy to construct a 30'x50' building at the above named location (donut bakery) are not issuable under the Zoning Ordinance because such a use is not permitted under Sec. 602.9.A of the Ordinance applying to the B-1 Business Zone in which this property is located. We understand that you would like to exercise your appeal rights in this matter. Accordingly, you or your authorized representative should come to this office, Room 317, City Hall to file the appeal on forms which are available here. A fee of \$25. for a Use Variance Appeal shall be paid at this office at the time the appeal is filed. If fee has been paid and appeal filed prior to this letter, then consider this letter as a matter of formality. Sec. 602.24.C.3.b.3

Very truly yours,

Malcolm G. Ward
Zoning Enforcement Officer

MSW:k

111 Polton St.

Sept. 3, 1983

Antonio Poulter
1227 Congress St.
Portland, Me.

Following is the decision of the Board of Appeals regarding your petition to
construct a 30'x50' building at the above named location (donut bakery).
Please note that your appeal was denied.

Very truly yours,

Malcolm G. Ward
Zoning Enforcement Officer

MGM:k



APPLICATION FOR PERMIT

B.O.C.A. USE GROUP
B.O.C.A. TYPE OF CONSTRUCTION

ZONING LOCATION PORTLAND, MAINE, October 29, 1981

To the DIRECTOR OF BUILDING & INSPECTION SERVICES, PORTLAND, MAINE
The undersigned hereby applies for a permit to erect, alter, repair, demolish, move or install the following building, structure, equipment or change use in accordance with the Laws of the State of Maine, the Portland B.O.C.A. Building Code and Zoning Ordinance of the City of Portland with plans and specifications, if any, submitted herewith and the following specifications:

LOCATION 9-11 Bolton Street Fire District #1 #2
1. Owner's name and address Antonio C. Fournier, Jr. 211 Falmouth St. Telephone 775-1706
2. Lessee's name and address Telephone
3. Contractor's name and address Telephone
4. Architect Specifications Plans No. of sheets
Proposed use of building 50'x30' new building for donut shop No. families
Lot use vacant lot Heat Style of roof Roofing
Material No. stories
Other buildings on same lot no
Estimated construction cost \$ Fee \$

FIELD INSPECTOR—Mr. GENERAL DESCRIPTION Appeal Fee paid \$25.00
This application is for: @ 775-5451 To construct new building, 50'x30', for donut shop.
Ext. 234

- Dwelling
- Garage
- Masonry Bldg.
- Metal Bldg.
- Alterations
- Demolitions
- Change of Use
- Other

Appeal Denied 12-3-81

Stamp of Special Conditions

NOTE TO APPLICANT: Separate permits are required by the installers and subcontractors of heating, plumbing, electrical and mechanical.
PERMIT IS TO BE ISSUED TO 1 2 3 4
Other:

DETAILS OF NEW WORK

Is any plumbing involved in this work? Is any electrical work involved in this work?
Is connection to be made to public sewer? If not, what is proposed for sewage?
Has septic tank notice been sent? Form notice sent?
Height average grade to top of plate Height average grade to highest point of roof
Site, front depth No. stories solid or filled land? earth or rock?
Material of foundation Thickness, top bottom cellar
Kind of roof Rise per foot Roof covering Kind of heat fuel
No. of chimneys Material of chimneys of lining Corner posts Sills
Framing Lumber—Kind Dressed or full size? Size Max. on centers
Studs (outside walls and carrying partitions) 2x4-16" O. C. Bridging in every floor and flat roof span over 8 feet.
Joists and rafters: 1st floor 2nd 3rd roof
On centers: 1st floor 2nd 3rd roof
Maximum span: 1st floor 2nd 3rd roof height?
If no story building with masonry walls, thickness of walls?

IF A GARAGE

No. cars now accommodated on same lot to be accommodated number commercial cars to be accommodated
Will automobile repairing be done other than minor repairs to cars habitually stored in the proposed building?

MISCELLANEOUS

APPROVALS BY: DATE Will work require disturbing of any tree on a public street? ..
BUILDING INSPECTION—PLAN EXAMINER Will there be in charge of the above work a person competent
ZONING: to see that the State and City requirements pertaining thereto
BUILDING CODE: are observed?
Fire Dept.
Health Dept.
Others:

Signature of Applicant Antonio C. Fournier, Jr. Phone #
Type Name of above Antonio C. Fournier, Jr. 1 2 3 4
Other
and Address

FIELD INSPECTOR'S COPY

9-11 Polton St.

December 8, 1981

Mr. Antonio Fournier
1227 Congress St.
Portland, Me. 04102

At the December 3rd meeting of the Board of Appeals, the Board voted to deny your application for a Use Variance to permit construction of a 30'x50' building for a doughnut bakery at 9-11 Polton Street in the B-1 Business Zone.

The Board felt that allowing such a use to locate within the B-1 Business Zone would set an undesirable precedent for such uses in other B-1 Business Zones and that authority for such zoning amendments more properly belongs to the City Planning Board.

It appears, therefore, that you may wish to pursue either a text amendment or zoning map change through the Planning Department.

Sincerely,

Warren J. Turner
Zoning Specialist

c.c. Samuel Hoffses, Chief of Insp. Services
Patricia Harrington, Chief Planner

WJT:k

CITY OF PORTLAND, MAINE
IN THE BOARD OF APPEALS

USE VARIANCE

Findings of Fact

The applicant is Antonio Fournier and he is interested in
the property located at 9-11 Bolton St. as _____
The owner of the property is same and his address is
1227 Congress St. The property is located in a B-1 Zone.
The present use of the property is vacant

The applicant respectfully petitions the Board of Appeals for a variance
from the provision of Section 602.9.A of the Ordinance to permit
construction of a 30'x50 bldg (donut bakery)

Further Findings of Fact

Appearances

The names and addresses of those appearing in support of the application
are: ANTHONY FOURNIER, RON RASSO, OWNER C. BULLIER

and the names and addresses of those appearing in opposition to the application are:
GARTH DEVOE - BOWDO ST.

Exhibits

The documentary evidence presented to the Board, including, but not by way
of limitation, plans, specification, photographs, etc. consisted of the following:
NEW PLANS WITH EXHAUST TO STREET

REASONS FOR DECISIONS

The subject property ⁵¹ (is/is not) capable of yielding a reasonable return if used for its present use or any other use permitted in the zone in which such a lot or parcel is located as demonstrated by the following: NO INFORMATION TO THE CONTRARY

(Such inability to yield a reasonable return must be shown by specific facts and the unsupported opinion of the owner or those appearing for him shall not be accepted as establishing such inability.)

The hardship (does/does not) result from unique circumstances peculiar to the subject lot or parcel which generally apply to or effect the general vicinity of the subject property, as evidenced by: _____

The aforesaid inability to yield a reasonable return (is/is not) the result of any action or inaction by the owner or his predecessors in title as demonstrated by: NO PROOF THAT HE TRIED ANY OTHER USES.

(Acquisition or improvement of the subject lot or parcel at any time after the enactment of the provision sought to be varied shall raise a rebuttable presumption that the owner's inability to realize a reasonable return is the result of his own actions.)

The variance (would/would not) result in a use or development of the lot or parcel in question which would be contrary to the general purpose and intent either of Section 602.24 or of the Land Development Plan of the City as evidenced by: VSEB IS EXPRESSLY PROHIBITED.

The variance (would/would not) result in a use or development on the lot or parcel in question which would be materially detrimental to the public welfare or materially injurious to the enjoyment, use or development of property or improvements permitted in the vicinity or which would materially impair an adequate supply of light and air to properties and improvements in the vicinity, substantially increase

congestion in the public streets due to traffic or parking, increase the danger of flood or fire, unduly tax public utilities and facilities in the area or endanger the public health or safety all as demonstrated by the following facts: NO

EVIDENCE

There (is/~~is not~~) means other than the requested variance by which the hardship can be avoided or remedied to a degree sufficient to permit the economic use of the subject lot or parcel, because of the following: USE FOR

PROVIDED USES

SPECIFIC RELIEF GRANTED

After public hearing held on 12/3/81, the Board of Appeals find that all of the conditions required by the Ordinance (~~do~~do not) exist with respect to this property and that a use variance should NOT be granted in this case.

It is therefore determined that a variance from the provisions of the Zoning Ordinance should NOT be granted in this case.

AGAINST

Paul D. Zaryac
Richard E. West
Eugene J. Martin
Marcell Arthur
Joseph J. Cahill
Thomas J. Murphy

Warren

CITY OF PORTLAND, MAINE
MEMORANDUM

TO: Chairman Zayac and Members of the Portland Zoning Board of Appeals
FROM: Patricia Harrington, Chief Planner
SUBJECT: Donut Shop Request

DATE: 12/1/81

The Zoning Board of Appeals has received a request from Mr. Antonio Fournier for a use variance at 9-11 Bolton Street to allow the construction of a 30'X50' donut bakery not issueable under the Zoning Ordinance because the use is not permitted under Section 602.9.A of the ordinance applying to the B-1 Business Zone in which the property is located. Chairman Zayac of the Board of Appeals has asked the Planning staff to outline possible zoning alternatives which could potentially allow such a use on the subject property.

The alternatives available to Mr. Fournier are as follows:

1. Zoning text change

The applicant could pursue a zoning text change that would explicitly permit donut shops of an appropriate size in the B-1 zone. This text change could be written in such a manner that large bakeries would continue to be prohibited. In order to initiate a zone change, an application must be filed in the Planning Department. The Planning Board will hold a public hearing and send recommendations to the City Council for final action.

2. Zone change request to B-2

A B-2 business zone is located across Congress Street from the subject location. The applicant could request a zone change to B-2 and simultaneously modify the business to a "restaurant or refreshment stand". This use is allowable in the B-2 zone and would be permitted. As with the text change option above, the applicant must file an application with the Planning staff and follow the public hearing process through the Planning Board and the City Council. Because the subject property is also adjacent to the R-5 residence zone it is unlikely the request would be approved.

3. Modify the use and Request Use Variance

The applicant could modify the proposed use so that it would be construed as a "restaurant or refreshment stand." While such a use is prohibited in the B-1 zone, it is permitted in the B-2 zone and the applicant could then

file an appeal for a use variance. This would appear to be quite similar to the appeal before the Board at the present time and would be a decision of the 7th Board of Appeals.

4. Challenge of interpretation

The applicant could challenge the interpretation of a small donut shop as a "bakery", which is permitted only in the B-3 zone. A lunch counter is a permitted use in the B-1 zone, provided there are no tables and chairs. This decision would be before the Board of Appeals.

I hope this information is helpful to the Board.

Patricia Flawingh

Antonio Fournier
1227 Congress Street
Portland, Maine
October 2, 1981

Board of Appeals
City Hall
Portland, Maine

Attention: Mr. Thomas Murphy, Board Chairman

Dear Board Members:

We respectfully petition the Board of Appeals for a variance from the provisions of Section 602.24.C of the ordinance to permit us to construct a 30' x 50' building to be used as a donut shop, which is not permitted under Section 602.9.2 of the ordinance applying to the B-1 Business Zone where property is located.

When this project was first presented to the Building Inspection Department, it was uncertain as to the necessity to appear before the Board of Appeals. Our project meets all of the requirements of a B-1 Business Zone with the exception of the work "incidental." The relief sought does not defeat the purpose of the Portland Zoning Ordinance as set forth in Section 602.9.a or its general intent.

The subject property is not capable of yielding a reasonable return because the lot size is too small to permit the construction of a project large enough to realize any return on investment. The permitted uses are very limited as you can see from the copy of the Ordinance attached. More importantly, we have been in this business all our lives and have worked very hard to establish a location and a reputation for ourselves. Any change in either would cause a real hardship on our lives.

We bought the land because it was zoned business, and we were operating a donut shop within that zone. Why then would we think we could not operate our own shop within the same zone we were already in?

744-6138

Board of Appeals
October 2, 1981
Page 2

We are not at a point that makes it economically feasible and necessary to build our own shop. We need the extra space to improve our interior lay and production which we can not do in our present rented narrow strip space. Secondly, our present rent is now up in an area that would be equal to having a mortgage of our own. A mortgage would remain relatively constant while our rent continues to grow.

The concern at to the aroma generated by a donut shop is simply not justified because there are three restaurants (Sams, Bonanza, and Ramada) existing now in this area besides Anania's Variety Store, which prepares cooked foods. We are only talking about moving our operation approximately 100' from its present location. We also would revise our interior layout so that our venting would be on the business side and not toward the residential zone.

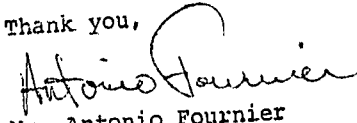
We also would put up the necessary fencing and screening between our property and the residential zone which was the concern of Mr. Devou.

We are only one small business located in the City of Portland trying to survive these trying times of high inflation and sky rocketing cost for doing business. We can not afford to take our case beyond reappealing to you for reconsideration.

After reviewing Section 602.24.F we are reapplying based on the contents of this letter. Because we thought our request would be granted and that appearing before the Board was a simple routine, we just were not prepared as we should have been. We would make every effort to satisfy the concerns of our neighbors and the Board of Appeals should you favor us with an approval.

We thank you in advance for your serious consideration on this matter.

Thank you,


Mr. Antonio Fournier

B-1 BUSINESS ZONE

Use
602.8 A.

Section 602.8

A. No building shall be erected, altered, enlarged, or used, and no premises shall be used, except for the following uses:

1. Any use permitted in the R-6 Residence Zone
2. Tourist Home
3. Business, professional, or governmental office
4. Non-profit private club
5. Lodge or fraternal organization
6. Nursery, day care center
7. Clinic, hospital
8. Any retail business or service establishment, excluding those listed below, provided that there is no manufacturing

on the premises, except such as is clearly incidental to such business or service; that not more than four persons are employed in direct manufacturing; and that the major portion of the product so manufactured shall be sold at retail on the premises.

- Automobile accessory and equipment store
 - Automobile sales
 - Automobile washing as a principal use
 - Battery sales and repair
 - Blueprinting and photostating
 - Boat showroom
 - Feed and seed store
 - Filling station and garages except minor garages
 - Hotel or Motel
 - Job printing
 - Laundry or dry-cleaning, except pick-up and delivery agency
 - Lock and gunsmith
 - Motorcycle sales, repair and rental
 - Plant nursery and greenhouse
 - Office equipment sales and servicing
 - Orthopedic and medical appliance store
 - Package liquor sales
 - Pawn shop
 - Petshop, veterinary hospital, kennels
 - Radio and television studio
 - Restaurant or refreshment stand
 - Sales and servicing of internal combustion engine
 - Second hand store or rummage shop
 - Sign painting
 - Storage of contractor's equipment and supplies
 - Taxidermist
 - Theatres
 - Any use prohibited in the B-2 Business Zone
 - Trailer and Mobile Home Sales and Service
9. Signs as specified in Section 602.16
 10. Off-street parking as specified in Section 602.14
 11. Accessory buildings and uses customarily subordinate or incidental to a conforming principal building or use
 12. The following conditional uses if and as authorized by the Board of Appeals:
 - a. Water pumping station, reservoir and standpipe, electrical power substation, transformer station, and electrical switching yard, and telephone

602.24.F

Successive Applications.

Whenever any application, appeal or other request filed pursuant to this Ordinance has been finally denied on its merits, a second application, appeal or other request seeking essentially the same relief, whether or not in the same form or on the same theory, shall not be brought within one year of such denial unless in the opinion of the Officer or Board before which it is brought, substantial new evidence is available or a mistake of law or fact significantly affected the prior denial.

602.24.G

Violations.

In addition to any other remedies available, the Board, after notice and hearing, may revoke any variance or other relief granted under this Chapter when the provisions of this Chapter or the conditions under which the relief was granted have not been complied with.

Antonio Fournier
1227 Congress Street
Portland, Maine
October 2, 1981

Board of Appeals
City Hall
Portland, Maine

Attention: Mr. Thomas Murphy, Board Chairman

Dear Board Members:

We respectfully petition the Board of Appeals for a variance from the provisions of Section 602.24.C of the ordinance to permit us to construct a 30' x 50' building to be used as a donut shop, which is not permitted under Section 602.9.2 of the ordinance applying to the B-1 Business Zone where property is located.

When this project was first presented to the Building Inspection Department, it was uncertain as to the necessity to appear before the Board of Appeals. Our project meets all of the requirements of a B-1 Business Zone with the exception of the work "incidental." The relief sought does not defeat the purpose of the Portland Zoning Ordinance as set forth in Section 602.9.a or its general intent.

The subject property is not capable of yielding a reasonable return because the lot size is too small to permit the construction of a project large enough to realize any return on investment. The permitted uses are very limited as you can see from the copy of the Ordinance attached. More importantly, we have been in this business all our lives and have worked very hard to establish a location and a reputation for ourselves. Any change in either would cause a real hardship on our lives.

We bought the land because it was zoned business, and we were operating a donut shop within that zone. Why then would we think we could not operate our own shop within the same zone we were already in?

444-6138

Section 602.8

B-1 BUSINESS ZONE

Use
602.8 A.

A. No building shall be erected, altered, enlarged, or used, and no premises shall be used, except for the following uses:

1. Any use permitted in the R-6 Residence Zone
2. Tourist Home
3. Business, professional, or governmental office
4. Non-profit private club
5. Lodge or fraternal organization
6. Nursery, day care center
7. Clinic, hospital
8. Any retail business or service establishment, excluding those listed below, provided that there is no manufacturing

on the premises, except such as is clearly incidental to such business or service; that not more than four persons are employed in direct manufacturing; and that the major portion of the product so manufactured shall be sold at retail on the premises.

- Automobile accessory and equipment store
 - Automobile sales
 - Automobile washing as a principal use
 - Battery sales and repair
 - Blueprinting and photostating
 - Boat showroom
 - Feed and seed store
 - Filling station and garages except minor garages
 - Hotel or Motel
 - Job printing
 - Laundry or dry-cleaning, except pick-up and delivery agency
 - Lock and gunsmith
 - Motorcycle sales, repair and rental
 - Plant nursery and greenhouse
 - Office equipment sales and servicing
 - Orthopedic and medical appliance store
 - Package liquor sales
 - Pawn shop
 - Petshop, veterinary hospital, kennels
 - Radio and television studio
 - Restaurant or refreshment stand
 - Sales and servicing of internal combustion engine
 - Second hand store or rummage shop
 - Sign painting
 - Storage of contractor's equipment and supplies
 - Taxidermist
 - Theatres
 - Any use prohibited in the B-2 Business Zone
 - Trailer and Mobile Home Sales and Service
9. Signs as specified in Section 602.16
 10. Off-street parking as specified in Section 602.14
 11. Accessory buildings and uses customarily subordinate or incidental to a conforming principal building or use
 12. The following conditional uses if and as authorized by the Board of Appeals:

- a. Water pumping station, reservoir and standpipe, electrical power substation, transformer station,

Board of Appeals
October 2, 1981
Page 2

We are not at a point that makes it economically feasible and necessary to build our own shop. We need the extra space to improve our interior lay and production which we can not do in our present rented narrow strip space. Secondly, our present rent is now up in an area that would be equal to having a mortgage of our own. A mortgage would remain relatively constant while our rent continues to grow.

The concern at to the aroma generated by a donut shop is simply not justified because there are three restaurants (Sams, Bonanza, and Ramada) existing now in this area besides Anania's Variety Store, which prepares cooked foods. We are only talking about moving our operation approximately 100' from its present location. We also would revise our interior layout so that our venting would be on the business side and not toward the residential zone.

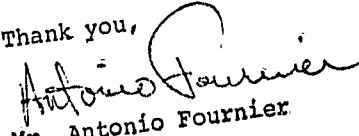
We also would put up the necessary fencing and screening between our property and the residential zone which was the concern of Mr. Devou.

We are only one small business located in the City of Portland trying to survive these trying times of high inflation and skyrocketing cost for doing business. We can not afford to take our case beyond reappealing to you for reconsideration.

After reviewing Section 602.24.F we are reapplying based on the contents of this letter. Because we thought our request would be granted and that appearing before the Board was a simple routine, we just were not prepared as we should have been. We would make every effort to satisfy the concerns of our neighbors and the Board of Appeals should you favor us with an approval.

We thank you in advance for your serious consideration on this matter.

Thank you,


Mr. Antonio Fournier

602.24.F Successive Applications.

Whenever any application, appeal or other request filed pursuant to this Ordinance has been finally denied on its merits, a second application, appeal or other request seeking essentially the same relief whether or not in the same form or on the same theory, shall not be brought within one year of such denial unless in the opinion of the Officer or Board before which it is brought, substantial new evidence is available or a mistake of law or fact significantly affected the prior denial.

602.24.G Violations.

In addition to any other remedies available, the Board, after notice and hearing, may revoke any variance or other relief granted under this Chapter when the provisions of this Chapter or the conditions under which the relief was granted have not been complied with.

02.24C(3)(b)(3). Use Variances.

(a) No reasonable return: The subject property is not capable of yielding a reasonable return if used for its present use or any use permitted in the zone in which such a lot or parcel is located. Such inability to yield a reasonable return must be shown by specific facts and the unsupported opinion of the owner or those appearing for him shall not be accepted as establishing such inability.

(b) Unique circumstances: The hardship results from unique circumstances peculiar to the subject lot or parcel which do not generally apply to or affect the general vicinity of the subject property.

(c) Not self-created: The aforesaid inability to yield a reasonable return is not the result of any action or inaction by the owner or his predecessors in title. Acquisition or improvement of the subject lot or parcel at any time after the enactment of the provision sought to be varied shall raise a rebuttable presumption that the owner's inability to realize a reasonable return is the result of his own actions.

(d) Essential character of area - general plan: The variance would not result in a use or development of the lot or parcel in question which would be not in harmony with the general purpose and intent of this Chapter or of the Land Development Plan of the City.

(e) Essential character of area - surrounding uses and facilities:
The variance would not result in a use or development of the lot or parcel in question which would be materially detrimental to the public welfare or materially injurious to the enjoyment, use or development of property or improvements permitted in the vicinity or which would materially impair an adequate supply of light and air to properties and improvements in the vicinity, substantially increase congestion in the public streets due to traffic or parking, increase the danger of flood or fire, unduly tax public utilities and facilities in the area or endanger the public health or safety.

(f) No other remedy: There is no means other than the requested variance by which the hardship can be avoided or remedied to a degree sufficient to permit the economic use of the subject lot or parcel.

#25, pd - 8-4-81

CITY OF PORTLAND, MAINE
IN THE BOARD OF APPEALS

APPLICATION FOR A USE VARIANCE

Antonio Fournier, owner of property at 9-11 Bolton St.
under the provisions of Section 602.24 C of the Zoning Ordinance of the City of

Portland, hereby respectfully petitions the Board of Appeals to permit:
Construction of a 30'x50' Building at the above named location (donut bakery)
which is not issuable under the Zoning Ordinance because such a use is not
permitted under Sec. 602.9.A of the Ordinance applying to the B-2 Business Zone
in which this property is located.

LEGAL BASIS OF APPEAL: Such permit may be granted only if the Board of Appeals finds
that the conditions imposed by Section 602.24 C(3)(b)(3) of the Zoning Ordinance have
been met. (See reverse side hereof for said conditions.)

Site Plan approval (is/is not) required by the Site Plan Ordinance. If site plan
approval is required, a preliminary or final site plan is attached hereto as Exhibit A.

Antonio Fournier
APPELLANT

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS



THOMAS J. MURPHY
Chairman

GAIL D. ZAYAC
Secretary

JACQUELINE COHEN
TIMOTHY E. FLAHERTY
EUGENE S. MARTIN
MERRILL S. SELTZER
MICHAEL E. WESTORT

All persons interested either for or against this Use Variance Appeal will be heard at a public hearing in Room 209, City Hall, Portland, Maine on Thursday, Sept. 3, 1981 at 3:30 p.m. This notice of required public hearing has been sent to the owners of property within 500 feet of the property in question as required by Ordinance.

Antonio Fournier, owner of property at 9-11 Bolton Street, under the provisions of Section 602.24.C of the Zoning Ordinance of the City of Portland hereby respectfully petitions the Board of Appeals to permit construction of a 30'x50' building at the above named location (donut bakery) which is not issuable under the Zoning Ordinance because such a use is not permitted under Sec. 602.9.A of the Ordinance applying to the B-2 Business Zone in which this property is located.

LEGAL BASIS OF APPEAL: Such permit may be granted only if the Board of Appeals finds that the conditions imposed by Section 602.24 C(3) (b) (3) of the Zoning Ordinance have been met.

Gail D. Zayac
Secretary

9-11 Bolton St.

August 5, 1981

Antonio Fournier
1227 Congress St.
Portland, Me.

Building permit and certificate of occupancy to construct a 30'x50' building at the above named location (donut bakery) are not issuable under the Zoning Ordinance because such a use is not permitted under Sec. 602.9.A of the Ordinance applying to the B-2 Business Zone in which this property is located.

We understand that you would like to exercise your appeal rights in this matter. Accordingly, you or your authorized representative should come to this office, Room 317, City Hall to file the appeal on forms which are available here. A fee of \$25. for a Use Variance Appeal shall be paid at this office at the time the appeal is filed. If fee has been paid and appeal filed prior to this letter, then consider this letter as a matter of formality. Sec. 602.24.C.3.b.3

Very truly yours,

Malcolm G. Ward
Zoning Enforcement Officer

MGW:k

From the desk of:

VIRGINIA KANE

Secretary to the City Manager

August 26, 1981

Malcolm:

The original of this I mailed to Don MacWilliams but through the suggestion of Warren Turner in Planning, I am sending you a copy for whatever action is needed.

-Virginia

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS



AUG 26 1981

THOMAS J. MURPHY
Chairman

GAIL D. ZAYAC
Secretary

JACQUELINE COHEN
TIMOTHY E. FLAHERTY
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Antonio Fournier, owner of property at 9-11 Bolton Street, under the provisions of Section 602.24.C of the Zoning Ordinance of the City of Portland hereby respectfully petitions the Board of Appeals to permit construction of a 30'x50' building at the above named location (donut bakery) which is not issuable under the Zoning Ordinance because such a use is not permitted under Sec. 602.9.A of the Ordinance applying to the B-2 Business Zone in which this property is located.

LEGAL BASIS OF APPEAL: Such permit may be granted only if the Board of Appeals finds that the conditions imposed by Section 602.24 C(3) (b) (3) of the Zoning Ordinance have been met.

Gail D. Zayac
Secretary

*I have been sick and am not
sure of being there
T.J.M.*

Dear Mr. MacWilliams:

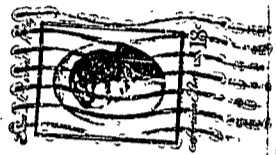
The "donut Bakery" would be connecting
to my back yard & back of my house.

The "frying fat" would give off a bad
odor and the trucks "coming & going" at early
hours of the morning would interfere with
sleep.

I very much would not want a
"donut bakery" almost in my back yard.

Mrs. Thelma J. Densmore

Mrs. Thelma J. Newmore
18 Mass. Ave
Portland 04102
Maine



To
Mr. Donald MacWilliams

Dept. of Planning & Urban Development
Room 315 City Hall

Portland

Maine 04101

Manager
Office

Tony's Donut Shop
1227 Congress Street
Portland, ME 04101
July 20, 1981

City of Portland
Building Inspection Department
City Hall
Portland, ME 04101

Attention: Mr. Malcom Ward, Chief Building Inspector

Gentlemen:

We own and would like to develop our property
at No. 9 to 11 Bolton Street, Portland, Maine.

We have been informed by Mr. Ward that a use
variance is required to construct a building
in a B-1 zone intended to be used as a donut
shop bakery, and retail sales.

We intend to comply with all other codes for
the construction of a building in a B-1 zone.
The building will be similar in appearance to
Anania's Variety Store located at 1227 Congress
Street, Portland which is the corner of Bolton
and Congress Street.

Very truly yours,

Richard Fournier