

PIERCE, ATWOOD, SCRIBNER, ALLEN, SMITH & LANCASTER

ONE MONUMENT SQUARE

PORTLAND, MAINE 04101

TELEPHONE 207/773-6411

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AUGUSTA, MAINE 04330  
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MICHAEL R. CURRIE  
WILLIAM J. KAYATTA, JR.  
DAVID E. HUNT

October 5, 1987

HAND-DELIVERED

Mr. Merrill S. Seltzer, Chairman  
Board of Zoning Appeal  
Portland City Hall  
389 Congress Street  
Portland, ME 04101

(RE: Days Inn at 1150 Brighton Avenue)

Dear Mr. Seltzer:

This law firm represents Regal Development Corporation, which is a general partner of Brighton Travelers Associates, which is the owner of Days Inn on Brighton Avenue. The owners propose to add additional guest rooms to the Days Inn. Enclosed is a survey entitled "Existing Conditions Plat, Portland, Maine for Brighton Travelers Associates" dated September 15, 1987. As you will note, the Days Inn property lies behind the Valle's Restaurant. Access from the Days Inn lot to Brighton Avenue is by virtue of a recorded easement which states in part:

"An easement for driveways of such location as may be reasonably necessary to serve as access ways to and from the motor hotel to adjacent roads and highways. . . ."

Section 14-403(a) of the City of Portland Land Use Code states in part:

"No building shall be erected on a lot, except on the islands in Casco Bay, which does not abut a street meeting the minimum requirements for street improvements set forth in this section [emphasis added]."

Mr. Merrill S. Seltzer, Chairman  
Page 2  
October 5, 1987

By this letter, Regal Development Corporation respectfully requests an interpretive ruling regarding the definition of "abut" as used in Section 14-403.


Assuming that a building is proposed to be erected on the Days Inn lot:

1. Does Section 14-403 require that the Days Inn lot have fee title interest to street frontage sufficient to meet minimum requirements for street improvements;
2. Is Section 14-403 satisfied by the easement language quoted above; or
3. Is Section 14-403 satisfied if the Days Inn lot were to be expanded to include a narrow strip of land owned by Brighton Travelers Associates connecting the back lot with Brighton Avenue combined with a deeded easement to Brighton Avenue abutting that narrow strip of sufficient total width to meet minimum requirements for street improvements?

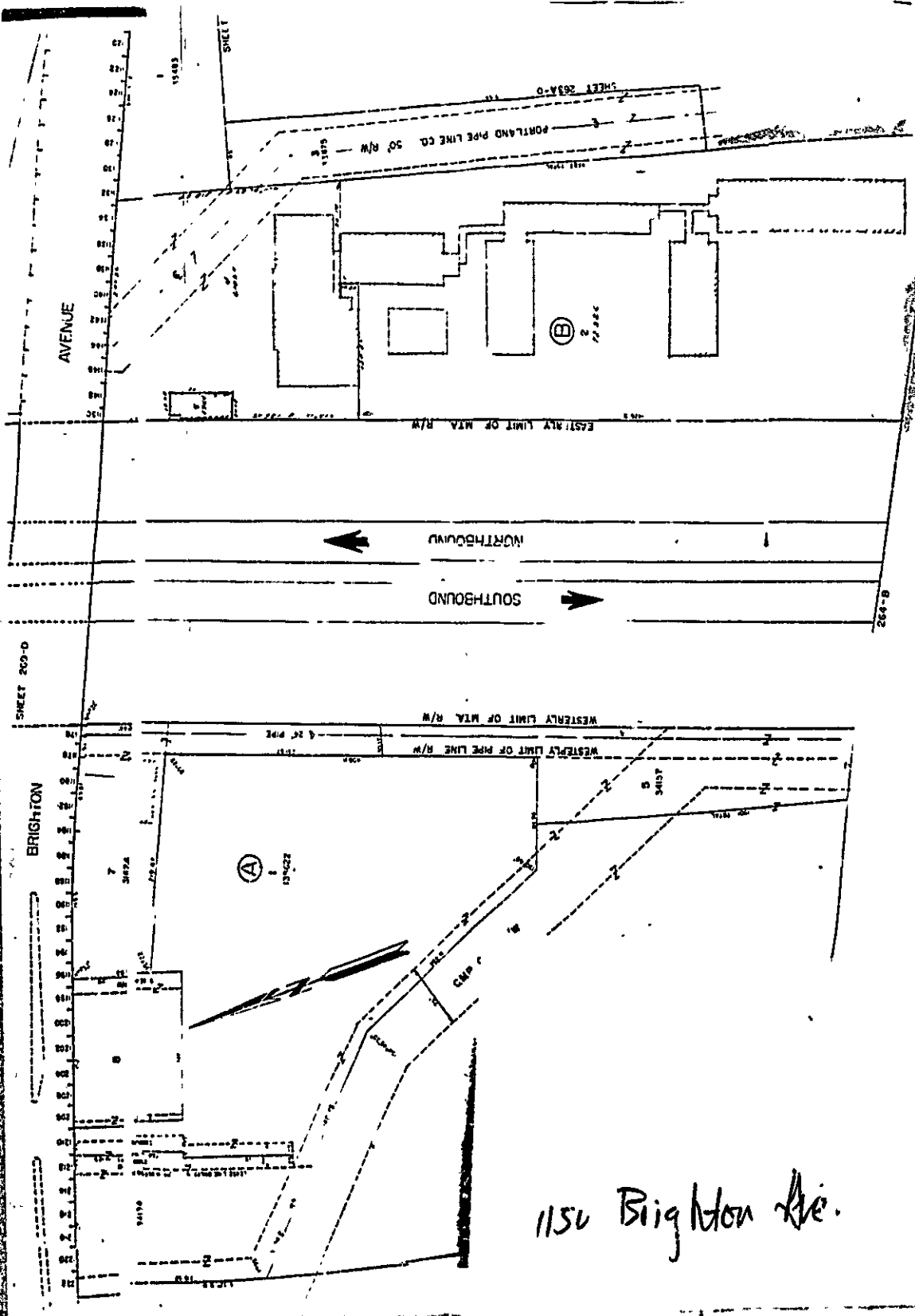
The Land Use Ordinance does not define the term "abut". Section 14-403 does not specifically require frontage of any designated width along a street. The specific frontage requirements are found elsewhere in the Land Use Ordinance and vary from zone to zone. Section 14-403 is open to the interpretation that a lot will "abut" a street if the lot touches the street in any manner. If this touching is then supplemented by street frontage of adequate width to meet the access requirements found elsewhere in the Land Use Ordinance, one could reasonably interpret Section 14-403 to have been satisfied. Regal Development Corporation believes that this interpretation is appropriate in the circumstances with respect to the Days Inn property.

We thank you in advance for your willingness to interpret Section 14-403 for Brighton Travelers Associates. If you need any further information, please do not hesitate to contact me.

Respectfully,

  
Lee D. Urban

LDU/bh  
cc: David Klenk  
Warren Turner  
Sam Hoffses  
Natalie L. Burns, Esquire  
Regal Development Corporation  
Elaine S. Falender, Esquire



AVENUE

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SHEET V

SHEET 263A-D

PORTLAND PIPE LINE CO. 30" R/W

EAST: RLY LIMIT OF MTA R/W

NORTHBOUND

SOUTHBOUND

B-292

SHEET 203-D

WESTERNLY LIMIT OF MTA R/W

WESTERLY LIMIT OF PIPE LINE R/W

BRIGHTON

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134222

1150 Brighton Ave.

**CITY OF PORTLAND, MAINE**  
ZONING BOARD OF APPEALS



MERRILL S. SELTZER  
Chairman

JOHN C. KNOX  
Secretary

PETER F. MORELLI  
THOMAS F. JEWELL  
DAVID L. SILVERNAIL  
MICHAEL E. WESTORT  
CHRISTOPHER DINAN

1150 Brighton Avenue

All persons interested either for or against this Interpretation Appeal will be heard at a public hearing in Room 209, City Hall, Portland, Maine, on Thursday evening, October 22, 1987 at 7:30 P.M. This notice of required public hearing has been sent to the owners of property directly abutting and directly across a street or alley from the subject property as required by the Ordinance.

Lee Urban of Pierce, Atwood, Scribner, Allen, Smith & Lancaster, Attorneys, representing Regal Development Corporation, a general partner of Brighton Travelers Associates, owners of the Days Inn on Brighton Avenue, under the provisions of Section 14-472 of the Zoning Ordinance of the City of Portland, hereby respectfully petitions the Board of Appeals to allow the owners to add additional buildings and guest rooms to the Days Inn.

**LEGAL BASIS OF APPEAL:** The Board of Appeals may reverse said action of the Building Inspector only if it finds that said action is based on an erroneous interpretation of said Ordinance.

John C. Knox  
Secretary

/e1  
10/7/87

CITY OF PORTLAND, MAINE  
MEMORANDUM

TO: Alexander Jaegerman, Chief Planner

FROM: Warren J. Turner, Zoning Enforcement Inspector

DATE:

December 17, 1987

SUBJECT Brighton Travelers Inn at 1150 Brighton Avenue in the Rear of Valle's

Today I received a telephone inquiry concerning the propose addition of 58 additional units for Brighton Travelers Inn at the rear of Valle's on 1150 Brighton Avenue.

At a recent meeting of the Board of Appeals, the Board considered an interpretation appeal for a definition of the word "abuts" and then determined that in order for the project to meet the requirement of the Ordinance, Brighton Inn should show a deed for a strip of land to accompany the easement which it has across the Valle's parking lot, thereby providing some 28 feet of actual frontage on Brighton Avenue.

Brighton Travelers Inc. called this morning and inquired if we had received a plan for site plan review, which they indicated as having been delivered to City Hall for such a purpose. This office does not seem to have a copy of such a plan for 58 additional units to be constructed in the rear of the existing motel development.

Have you received in your office such a plan? If so, was the site plan review fee paid in this office for it? I don't seem to have a record of it in our site plan review files.

cc: Joseph E. Gray, Jr., Director, Planning & Urban Development  
P. Samuel Hoffses, Chief, Inspection Services  
Kevin Carroll, Code Enforcement Officer

**CITY OF PORTLAND, MAINE**

**ZONING BOARD OF APPEALS**



MERRILL S. SELTZER  
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PETER F. MORELLI  
THOMAS F. JEWELL  
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MICHAEL E. WESTORT  
CHRISTOPHER DINAN

1150 Brighton Avenue

October 28, 1987

Mr. Lee D. Urban, Attorney  
Pierce, Atwood, Scribner, Allen, Smith & Lancaster  
One Monument Square  
Portland, Maine 04101

Dear Mr. Urban:

At the meeting of the Board of Appeals on Thursday evening, October 22nd, the Board voted by a vote of 4 to 3 opposed to uphold the decision of the Building Inspector for the Interpretation Appeal. However, on the question of a definition for "abuts", the Board also voted by a vote of six to one in favor of the following definition: "Based on Section 14-403 (a) of the City Zoning Ordinance, "abut" means ownership adjacent to a public way or street of land meeting the City's requirements."

As an example, you showed the Board a sketch which contained a 28.04 foot strip of land which the owners of the Days Inn might acquire giving the motel fee in a strip of land on the westerly side of the parking lot extending to the side line of Brighton Avenue. This in conjunction with the recorded easement to traverse the Valle's parking lot would give sufficient access to the main street from the Days Inn or Brighton Inn Motel.

Sincerely,

Warren J. Turner  
Zoning Enforcement Inspector

Enclosure: Copy of Decision

cc: Merrill S. Seltzer, Chairman, Board of Appeals  
Joseph E. Gray, Jr., Director, Planning & Urban Development  
Alexander Jaegerman, Chief Planner  
P. Samuel Hoffses, Chief, Inspection Services  
Kevin Carroll, Code Enforcement Officer

**CITY OF PORTLAND, MAINE**

**PLANNING BOARD OF APPEALS**



**MERRILL S. SELTZER**  
Chairman

**JOHN C. KNOX**  
Secretary

**PETER F. MORELLI**  
**THOMAS F. JEWELL**  
**DAVID L. SILVERNAIL**  
**MICHAEL E. WESTORT**  
**CHRISTOPHER DINAVI**

October 13, 1987

RE: 1150 Brighton Avenue

Mr. Lee D. Urban, Attorney  
Pierces, Atwood, Scribner, Allen, Smith & Lancaster  
One Monument Square  
Portland, Maine 04101

Dear Mr. Urban:

This will acknowledge receipt of your application for an interpretation appeal on behalf of Regal Development Corporation, a general partner of Brighton Travelers Associates, which is the owner of Day's Inn on Brighton Avenue. When the motel was conveyed to Days Inn, it appears that an easement for access was granted to Brighton Travelers Associates to cross the land belonging to Valle's Restaurant and parking lot. Such an easement was described as follows:

"An easement for driveways of such location as may be reasonably necessary to serve as access ways to and from the motor hotel to adjacent roads and highways. . . ."

Section 14-403(a) of the Portland Land Use Code states in part:

"No building shall be erected on a lot, except on the islands in Casco Bay, which does not abut a street meeting the minimum requirements for street improvements set forth in this section."

In the event that no other access is available, it has been the policy of the City to require a variance for access from the Board of Appeals. In the case of the professional building at North Gate Shopping Center, the owner obtained a variance from the Board of Appeals to use a sewer right-of-way across the parking lot for access onto Auburn Street. Such a variance was granted by vote of the Board of Appeals.

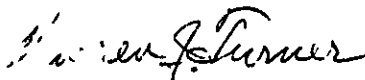
Urban

2

10/13/87

Do you wish to apply for a variance for access on behalf of your client? If so, the necessary forms are enclosed for filing such a variance request.

Sincerely,



W. J. Turner  
Zoning Enforcement Inspector

/el

Enclosure

cc: Merrill Seltzer, Chairman, Board of Appeals  
Joseph E. Gray, Jr., Director of Planning and Urban Development  
Alexander Jaegerman, Chief Planner  
P. Samuel Hoffses, Chief of Inspection Services  
Kevin Carroll, Code Enforcement Officer



FINDINGS OF FACT  
ALL APPEALS

TYPE OF APPEAL Interpretation

1. Name of Applicant Brighton Travelers Associates

2. Address of Applicant 1150 Brighton Avenue

3. Right of applicant to appeal.  
Owner Part Owners

Option to Purchase \_\_\_\_\_

4. Location of property under appeal 1150 Brighton Avenue

5. Zone in which the property is located B-2

6. Present use of property Motel

7. Proposed use if the appeal is granted.  
Motel with additional

8. Names and addresses of those appearing in support of the application:

Lee Urban, Atty

Larry Zerner, Royal Legation

9. Names and addresses of those appearing in opposition to the application:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

10. Listing of the documentary evidence presented to the Board (e.g., plans, photos, maps, etc.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1156 Brighton Ave.

If the appeal is granted, does the Board wish to impose condition. which will further the intent and purpose of this Ordinance?

Yes \_\_\_\_\_  
No \_\_\_\_\_

Specific Conditions \_\_\_\_\_  
\_\_\_\_\_

Reasons \_\_\_\_\_  
\_\_\_\_\_

Date of Public Hearing 10/22/87

Motion Uphold the decision of the building inspector -  
(including conditions and findings of fact) that the property  
looks frontage on a public way as  
required by 14-413(a)

4  
Votes in Favor

William C. Jones  
Marshall A. Smith  
Richard E. Smith  
David L. Smith

3  
Votes Opposed

Thomas J. Dell  
Christopher C. Lina  
Beth Morelli

and motion - but motion 14-413(a) that  
"about" to interpret the ordinance of land  
on public way use V-1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

Christopher C. Lina  
David L. Smith  
Beth Morelli

Thomas J. Dell

PERMIT # _____	<b>PORTLAND BUILDING PERMIT APPLICATION</b>	DATE <u>10/5/87</u>
<b>I GENERAL INFORMATION</b>		
Location address of construction <u>1150 Brighton Avenue</u>		
1 Owner's name <u>Brighton Traveler Assoc.</u>	Tel _____	
Address <u>same</u>		
2 Lessee's name _____	Tel _____	
Address _____		
3 Contractor's name _____	Tel _____	
Address _____		
4 Is this a legally recorded lot? yes _____ no _____		

**II DESCRIPTION OF WORK**  
 application for interpretation for Section 14-403(a)

<b>III. BUILDING DIMENSIONS.</b> length _____ width _____ square footage _____ height _____ #stories _____	
<b>IV ZONE</b> _____	Street frontage _____ Zoning board approval no <input type="checkbox"/> yes <input type="checkbox"/> date _____
Setbacks front _____ back _____ side _____ side _____	Planning board approval no <input type="checkbox"/> yes <input type="checkbox"/> date _____
<b>V. REVIEW REQUIRED:</b> variance <input checked="" type="checkbox"/> other _____	
site plan _____ subdivision _____ shore _____ floodplain mgmt _____	Number of off-street parking spaces: enclosed _____ outdoors _____
<b>VI. FEES:</b>	
base fee _____	other fees <u>interpretation \$50.00</u>
subdivision fee _____	late fee _____
site plan review fee _____	TOTAL _____

<b>VII. DETAILS OF WORK</b>		
1 WATER SUPPLY. <input type="checkbox"/> public <input type="checkbox"/> private	7 ELECTRICAL service entrance size _____ # smoke detectors _____	8 CHIMNEY: # flues _____ material _____ # fireplaces _____
2 SEWER <input type="checkbox"/> public <input type="checkbox"/> private, type _____	9 FRAMING: floor joists _____ size _____ max on center _____ ceiling joists _____ rafters _____ studs _____ wall studs _____	
3 HEAT type _____ fuel _____	10 If 1-story building w/masonry walls wall thickness _____ height _____	11. BEDROOM WINDOWS height _____ width _____ sill height _____ egress window? yes <input type="checkbox"/> no <input type="checkbox"/>
4 FOUNDATION type _____ thickness _____ footing _____		
5 ROOF type _____ pitch _____ covering _____ load _____		
6 PLUMBING SPRINKLER SYSTEM? yes <input type="checkbox"/> no <input type="checkbox"/>		
<b>VIII. OFFICE USE:</b>		<b>X. NEW OR PHASED SUBDIVISION REFERENCE</b>
TAX MAP # _____		Name _____
LOT # _____		Lot _____
VALUE/STRUCTURE _____		Block _____
PERMIT EXPIRATION _____		
CODE _____ if other, explain _____	Seasonal _____ Condominium _____ Apartment _____	
X PROPOSED USE: <u>213-hotel</u>		
XI. PAST USE: _____		
XII. OWNERSHIP: _____ PUBLIC _____ PRIVATE _____		
XIII. EST. CONSTRUCTION COST: _____	XIV. GR. SQ. FT. OF LOT _____ BUILDING _____	

<b>COMPLETE XV AND XVI ONLY IF THE NUMBER OF UNITS WILL CHANGE</b>		
<b>XV. RESIDENTIAL BUILDINGS ONLY:</b>		<b>XVI. # RESIDENTIAL UNITS:</b>
# NEW DWELLING UNITS WITH: _____ BEDROOMS _____		# NEW DWELLINGS _____
# EXISTING DWELLING UNITS WITH: _____		# EXISTING DWELLINGS _____
		TOTAL RESIDENTIAL UNITS _____

<b>APPROVALS BY</b>	<b>DATE</b>	<b>MISCELLANEOUS</b>
BUILDING INSPECTION - PLAN EXAMINER _____		Will work require disturbing of any tree on a public street? _____
ZONING _____		Will there be in charge of the above work a person competent to see that the State and City requirements pertaining thereto are observed? _____
C.E.O. _____		
FIRE DEPT _____		

**NOTE TO APPLICANT:** Separate permits are required by the installers and subcontractors of heating, plumbing, electrical, and mechanicals.

District No _____	<b>XVII.</b>
SIGNATURE OF APPLICANT <u>Plaine Falender</u>	PHONE # <u>373-6441</u>
TYPE NAME OF ABOVE <u>Plaine Falender</u>	1 _____ 2 _____ 3 _____ 4 _____

PERMIT # \_\_\_\_\_ PORTLAND BUILDING PERMIT APPLICATION DATE \_\_\_\_\_

**I. GENERAL INFORMATION**

1. Name of constructor \_\_\_\_\_  
 Zone name \_\_\_\_\_ Tel \_\_\_\_\_  
 City \_\_\_\_\_

2. License holder \_\_\_\_\_  
 Address \_\_\_\_\_  
 Contact name \_\_\_\_\_ Tel \_\_\_\_\_  
 Address \_\_\_\_\_

4. Is this application for a?  yes  no

**II. DESCRIPTION OF WORK**

**III. BUILDING DIMENSIONS:** length \_\_\_\_\_ width \_\_\_\_\_ square footage \_\_\_\_\_ height \_\_\_\_\_ # stories \_\_\_\_\_

ZONE \_\_\_\_\_ Street frontage \_\_\_\_\_ Zoning board approval no  yes  date \_\_\_\_\_  
 Setbacks front \_\_\_\_\_ back \_\_\_\_\_ side \_\_\_\_\_ side \_\_\_\_\_ Planning board approval no  yes  date \_\_\_\_\_

**V. REVIEW REQUIRED** variance  other \_\_\_\_\_ Number of off-street parking spaces \_\_\_\_\_  
 site plan \_\_\_\_\_ subdivision \_\_\_\_\_ shore \_\_\_\_\_ local authority \_\_\_\_\_ enclosed \_\_\_\_\_ exterior \_\_\_\_\_

**VI. FEES**

base fee \_\_\_\_\_ other fees \_\_\_\_\_  
 subdivision fee \_\_\_\_\_ late fee \_\_\_\_\_  
 site plan review fee \_\_\_\_\_ TOTAL \_\_\_\_\_

**VII. DETAILS OF WORK**

1. WATER SUPPLY <input type="checkbox"/> public <input type="checkbox"/> private	7. ELECTRICAL service entrance size _____ # smoke detectors _____	8. CHIMNEY # flues _____ material _____ # fireplaces _____
2. SEWER <input type="checkbox"/> public <input type="checkbox"/> private type _____	9. FRAMING: floor joists _____ size _____ mix or center _____ ceiling joists _____ rafters _____ studs _____ wall studs _____	
3. HEAT type _____ fuel _____	10. If 1-story building with masonry wall: wall thickness _____ height _____	11. BEDROOM WINDOWS height _____ width _____ sill height _____ egress window? yes <input type="checkbox"/> no <input type="checkbox"/>
4. FOUNDATION type _____ thickness _____ footing _____		
5. ROOF type _____ pitch _____ covering _____ load _____		
6. PLUMBING SPRINKLER SYSTEM? yes <input type="checkbox"/> no <input type="checkbox"/>		

**VIII. OFFICE USE:** TAX MAP # \_\_\_\_\_  
 LOT # \_\_\_\_\_  
 VALUE/STRUCTURE \_\_\_\_\_  
 PERMIT EXPIRATION \_\_\_\_\_

**IX. NEW OR PHASED SUBDIVISION REFERENCE**  
 Name \_\_\_\_\_  
 Lot \_\_\_\_\_  
 Block \_\_\_\_\_

CODE \_\_\_\_\_ If other, explain \_\_\_\_\_ Seasonal Condominium Apartment

X. PROPOSED USE residential

XI. PAST USE \_\_\_\_\_

XII. OWNERSHIP: PUBLIC PRIVATE

XIII. EST. CONSTRUCTION COST: \_\_\_\_\_ XIV. GR. SQ. FT. OF LOT \_\_\_\_\_  
 BUILDING \_\_\_\_\_

COMPLETE XV AND XVI ONLY IF THE NUMBER OF UNITS WILL CHANGE

<b>XV. RESIDENTIAL BUILDINGS ONLY:</b>	<b>XVI. RESIDENTIAL UNITS:</b>
# NEW DWELLING UNITS WITH 1 BDRM _____ 2 BDRMS _____ 3 BDRMS _____	# NEW DWELLINGS _____
# EXISTING DWELLING UNITS WITH _____	# EXISTING DWELLINGS _____
	TOTAL RESIDENTIAL UNITS _____

<b>APPROVALS BY</b> DATE	<b>MISCELLANEOUS</b>
BUILDING INSPECTOR PLAN EXAMINER _____	Will work require clearing of any trees on public street? _____
ENGINEER _____	Will there be a change of the above work a person's contract to see that the State and City requirements pertaining thereto are observed? _____
PERMITTEE _____	

NOTE TO APPLICANT: Separate permits are required by the installers and subcontractors for heating, plumbing, electrical and mechanical.

**XVII. SIGNATURE OF APPLICANT** Thomas S. [Signature] PHONE 773-6111

**TYPE NAME OF ABOVE** Thomas S. [Signature] 1 2 3 4

White: GFC, DG Green: Applicant Yellow: Assessor Pink: Office File Gold: Field Inspector

265-B-2

1150 Brighton Ave  
Brighton Realtors Associates

265-B-4 Country Cruising Inc.  
1140 Brighton Ave. 04103

265-B-3 } John J. Kane  
c/o Mt. Properties Man.  
535 Boylston St Boston MA 02115  
265-B-1 } Dup

-XXXX Maine Turnpike Authority  
Box 4133 Riverside St 04103  
Portland

265-A-5 Blue Rock Industries  
58 Main St Westbrook ME 04092

A-1 Suisse Chalet Motor Lodge  
of Portland 103086  
Chalet Drive - Wilton, N.H.

264-A-1 - Appel.

264-A-5 City of Portland

264-B-1 Emery Waterhouse  
Rand Road 04103