

To: Members of the Zoning Board of Appeals
From: Danielle P. West-Chuhta, Associate Corporation Counsel
Date: May 28, 2009
Re: Sadri Shir Appeal

Position of the City of Portland in Support of the Zoning Administrator's Determination that the Proposed Place of Worship at 978 Washington Avenue Does not Meet the Minimum Lot Size and Parking Requirements of the Portland Land Use Code and Does not Meet the Requirements for the Granting of the Requested Variances.

Facts

The lot identified by the City of Portland (the "City") as 978 Washington Avenue (the "Property") is located in the R-5 zone. It measures 14,400 square feet (.331 acres) in size. The City's records indicate that the building located on the Property housed a television repair shop (on the first floor) and a residential unit (on the second floor). The records also indicate that there is a paved parking lot on the Property which can house up to twenty (20) vehicles.

On March 3, 2009, Sadri Shir (the current owner of 978 Washington Avenue) with the assistance of Richard Jordan filed a general building permit application seeking to change the use of the first floor of the building on the Property from a commercial use - television repair shop to an assembly hall - place of gathering with an occupant load of forty-five (45) people. See General Building Permit Application and attached materials, attached hereto as Exhibit A. This application was later amended by the applicant to indicate that the proposed use for the first floor was to be as a place of worship. See id.

On April 13, 2009, the Zoning Administrator denied the permit application "because it did not meet all of the zoning requirements for the R-5 zone." See Decision of Zoning Administrator attached hereto as Exhibit B. More specifically, the Zoning Administrator determined that the applicant failed to meet the Portland Land Use Code's one (1) acre minimum lot size for the R-5 zone and the minimum parking requirements or forty (40) parking spaces for the proposed place of worship and second floor dwelling unit. Id.; see also Zoning Administrator Memorandum (containing the parking and occupant load calculations) attached here to as Exhibit C.¹

The applicant now appeals the Zoning Administrator's decision by filing a variance appeal application with regard to the parking requirement and a practical difficulty variance application to address the lot size issue. See Sadri Shir's Variance Applications.²

¹ See § 14-332(a)(2) and (k), attached hereto as Exhibit D.

² It should be noted that for several reasons this case is factually and legally distinct from the Wilansky case which the Board reviewed in 2008. First, unlike Wilansky the primary use of 978 Washington Avenue is not as a single family residence. Next, the applicant in this case is not challenging the City's designation of the use of the property as a place of worship. In fact, the

Legal Argument

There is no dispute that the applicant is seeking approval from the City to change the use of 978 Washington Avenue from a television repair shop to a place of worship. Given the requirements of the R-5 zone, the only way for the proposed change of use to be approved is by obtaining parking and lot size variances from this Board. For the following reasons these variance requests must fail. See Barnard v. Town of Yarmouth, 313 A.2d 741, 749 (Me. 1974) (citations and quotations omitted) (holding that “The hardship of which appellant complains falls far short of that required to assure that variances not be easily or lightly granted and that they be the exception and not the rule.”)

I. Parking Variance Request

In order for the Board to grant a variance from the parking requirement it is necessary for the owner to establish that “strict application of the ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship.” Portland Land Use Code, § 14-473(c)(1), attached hereto as Exhibit D. Under the Land Use Code “undue hardship” is defined as follows:

- a. That the land in question cannot yield a reasonable return unless a variance is granted;
- b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- c. That the granting of a variance will not alter the essential character of the locality; **and**
- d. That the hardship is not the result of action taken by the applicant or a prior owner.

Id (emphasis added).

a. The Property can Yield a Reasonable Return

First, it is essential for the applicant to establish that the Property cannot yield a reasonable return unless a variance is granted. This requirement is impossible for the applicant to meet in this case.

The Maine Law Court has held that a reasonable return does not mean the landowner is entitled to a maximum return on the property. See Barnard, 313 A.2d at 748-49. Instead the Court has made clear that undue hardship only exists where strict

applicant chose to amend the building permit application to indicate that this is exactly the use that is being proposed for the property. See Exhibit A. As the Board may recall the central dispute in the Wilansky case, however, was the designation of the use of the property as a place of worship. Obviously, therefore, the Board’s holding in the Wilansky case should not control the review and outcome of this case.

application of the ordinance would result in the practical loss of all beneficial use of the property. See Thornton v. Lothridge, 447 A.2d 473, 475 (Me. 1982) (citations omitted); Twigg v. Town of Kennebunk, 662 A.2d 914 (Me. 1995).

Clearly, the Property can be used in other ways (i.e. by adding an additional dwelling unit to the first floor and as retail space) and so all beneficial use of the Property has not been lost. Even though the applicant may want to use the Property in a specific manner (i.e. as a place of worship) and may only see value in the Property when it is being used in that manner, the Law Court has repeatedly made clear that a variance is unwarranted if it will merely increase the value or convenience of the property or if the alleged hardship is due to the circumstances of the applicant (i.e. that s/he wants to have a place of worship) and not the property. See Brooks v. Cumberland Farms, Inc., 1997 ME 203, 703 A.2d 844, 848-49 (overturning a variance needed to modernize a convenience store's gasoline sales area, even though, without it, the business would be unprofitable, where the evidence showed that there were numerous other lawful uses available without the need for a variance); Forester v. City of Westbrook, 604 A.2d 31 (Me. 1992); Goldstein v. City of South Portland, 1999 ME 66, 728 A.2d 165; Lippoth v. Zoning Board of Appeals, City of South Portland, 311 A.2d 552 (Me. 1973).

b. Issue not Unique to the Property

With regard to the second prong of the aforementioned test, an undue hardship exists only if the problem is unique to the Property of the applicant. A problem, however, is not unique if it is shared by other land in the zone. In Sibley v. Inhabitants of Town of Wells, 462 A.2d 27 (Me. 1983), the Law Court held that "the mere fact that the lot was substandard was not a unique circumstance justifying grant of a zoning variance, where all undeveloped lots in the neighborhood were of substandard size." The Sibleys had contended that because the lot was small and subject to a deed restriction requiring any structure built upon it to be of a certain size, the circumstances of the lot were unique. Id. The Law Court, however, found that the Sibleys did not show that the deed restriction was unique to their property and in fact many parcels in their subdivision were burdened in the same way. Id. In other words, a claimed hardship which is not peculiar to the applicant's land but is shared by a neighborhood or an entire area will not support the granting of a variance to relieve it.

Here, the hardship suffered by the applicant is no greater than that suffered by nearby property owners or those who own property in the R-5 zone, and the applicant fails to meet the second prong of the test. As a result, the more appropriate remedy would be for to seek a change in the zoning ordinance rather than seeking a variance from the Board.³ See Waltman v. Town of Yarmouth, 592 A.2d 1079, 1080 (Me. 1991)

³ In their submittals to the Board, the applicant claims that there is no additional parking within a reasonable distance from the Property that is available for lease. The applicant, however, has not presented any evidence of the efforts made to obtain any such additional parking. Given the fact that there are several available parking lots in the surrounding neighborhood (including a florist,

(holding that the if the “difficulty is one imposed by the zoning ordinance on the neighborhood generally, relief must come by way of legislative action -- that is, amendment of the zoning ordinance by the town council -- and not by variance.”)

c. Use Inconsistent With Essential Character of the Locality

Next, the applicant’s variance request must be denied since the proposed use would alter the essential character of the neighborhood it is located. The Portland Land Use Code indicates that the purpose of the R-5 zone is “[t]o provide appropriate areas of the city for medium-density residential development characterized by single-family and low-intensity multifamily dwellings on individual lots; to ensure the stability of established medium-density neighborhoods by controlling residential conversions . . .” Portland Land Use Code, § 14-116, attached hereto as Exhibit D. Moreover, as the applicant admits, the Property directly abuts a residential neighborhood. As such, the placement of a place of worship that does not meet the underlying zone requirements is clearly inconsistent with the essential character of the neighborhood.

d. Hardship the Result of Actions Taken by the Applicant

Finally, the applicant’s variance request should be denied because the alleged hardship is self created given the fact that the Property was purchased with the presumed knowledge (actual or constructive) of the City’s zoning restrictions and the fact that there are several other reasonable uses for the first floor of the building on the Property. See Twigg, 662 A. 2d at 914 (holding that even though actual or presumed knowledge of the municipality’s existing zoning requirements does not mean that the board must deny the variance application, it is part of the evidence which the Board must consider in deciding whether there is self-created hardship); Your Home, Inc. v. Town of Windham, 528 A.2d 468, 471 (citations omitted) (holding that a variance should be denied when a landowner had knowledge of zoning restrictions prior to the purchase of property and applied for a variance for a prohibited use when a permitted use could be developed on the property).

In sum, the applicant is unable to meet its burden of establishing each and every part of the aforementioned four-part test. See Sibley, 462 A.2d at 30 (holding that “The burden was on the Sibleys to prove at the agency level that they met all of these statutory requirements.”) The Board must therefore deny the variance appeal application with regard to the parking standards.

II. Lot Size Practical Difficulty Variance Request

Next, in order for the Board to grant a practical difficulty variance from the one (1) acre lot size requirement it is necessary for the owner to establish all of the following:

school sports field(s) and the Rainbow Mall (where Andover College was located)), such a claim needs to be substantiated before it can be relied upon by the Board.

1. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
2. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use or fair market value of abutting properties;
3. The practical difficulty is not the result of action taken by the applicant or a prior owner;
4. No other feasible alternative is available to the applicant, except a variance;
5. The granting of a variance will not have an unreasonably adverse effect on the natural environment; **and**
6. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. § 435, nor within a shoreland zone or flood hazard zone, as defined in this article.

Portland Land Use Code, § 14-473(c)(3) (emphasis added), attached hereto as Exhibit D.

The elements of the aforementioned practical difficulty variance test are almost identical to the parts of the undue hardship test outlined above. As a result, even though the Property is not located in the shoreland zone and the granting of the variance may not have an unreasonable adverse effect on the natural environment, the applicant has clearly failed to meet its burden and is unable to establish the remaining items of the practical difficulty test. More specifically, as established in the variance analysis above, the applicant has failed to establish that the need for a variance is due to the unique circumstances of the Property, that it will not produce an undesirable change in the character of the neighborhood, that the difficulty is not the result of action taken by the applicant, and that there is no other feasible alternative available to the applicant, its practical difficulty variance application should be denied.

In addition, it is important to remember that if the Board were to grant the practical difficulty variance of almost 30,000 square feet such an approval would set a precedent that would essentially eliminate the one (1) acre requirement for church and places of worship in the R-5 zone. This is a result that should not be obtained through the approval of a variance request, but rather through an amendment to the zoning ordinance.

Conclusion

Based upon the evidence and arguments presented, and under the applicable laws, the Board should deny the applicant's variance appeal and practical difficulty variance applications because the applicant failed to meet its burden and specifically find as follows:

- 1) The prior use of the first floor of 978 Washington Avenue was as a television repair shop;

- 2) The prior use of the second floor of 978 Washington Avenue was as a residential unit;
- 3) The applicant seeks to change the use of the first floor of 978 Washington Avenue to a place of worship;
- 4) A place of worship is allowed in the R-5 zone as a conditional use if approved by the City of Portland Planning Board;
- 5) The minimum lot size requirement in the R-5 zone for a place of worship is one (1) acre;
- 6) 978 Washington Avenue, being 14,400 sq. feet (or .3333 acres) in size, does not meet the minimum lot size of the R-5 zone as specified in the Portland Land Use Code § 14-120(a)(5);
- 7) 978 Washington Avenue, having only twenty (20) existing off-street parking spaces, does not satisfy the forty (40) off-street parking space requirement (thirty-nine (39) parking spaces for the place of worship and one (1) parking space for the existing dwelling unit) as specified in the Portland Land Use Code §§ 14-332(a)(2) and (k);
- 8) Given the alternative uses available to the applicant for 978 Washington Avenue including, but not limited to, an additional residential unit or retail space, the property can yield a reasonable return;
- 9) The situation at 978 Washington Avenue is not unique since other properties in the R-5 zone are subject to the same requirements;
- 10) The granting of a variance will alter the essential character of the surrounding primary residential neighborhood; and
- 11) The applicant's alleged hardship was self-created given the fact that it was aware of the City's zoning regulations when it purchased 978 Washington Avenue.

In the alternative, if the Board determines that granting the requested variances is appropriate the City requests that it place the following conditions on each variance. See Portland Land Use Code § 14-473(d), attached hereto as Exhibit D.

- 1) With regard to the Parking Variance the City requests that the Board condition the variance by requiring that any and all parking for 978 Washington Avenue be off-street in either the lot on the property or an adjacent lot through a lease or other written agreement with an adjacent property owner; and

- 2) With regard to the Practical Difficulty Variance for the lot size, the City requests that the Board condition the variance by requiring that the footprint of the building not be increased (i.e. no additions to the building be allowed) and that the occupant load of the first floor of the building be limited to forty-five (45) people.



Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov

*Penny St. Louis Littell - Director of Planning and Urban Development
Marge Schmuckal, Zoning Administrator*

April 13, 2009

Sadri Shir
41 Ocean House Road
Cape Elizabeth, ME 04107

Re: 978 Washington Avenue – 161 E003 – R-5 – Change of use to place of worship –
Permit #09-0161

Dear Sadri Shir,

I am in receipt of your application to change the use of the first floor of 978 Washington Avenue from a television repair shop to a religious use/place of worship. At this point I cannot approve your permit because it does not meet all the zoning requirements for the R-5 zone.

One requirement is that you need to meet the minimum lot size. Your lot is 14,400 square feet, and the required minimum lot size for a place of worship or religious use under section 14-120(1)(a)(5) is one acre (43,560 square feet). You need to apply for a Practical Difficulty Variance with the Zoning Board of Appeals since you do not meet the minimum lot size.

The second requirement is that when there is a change of use, you need to meet the minimum parking requirements for the use of the building. Your parking plan shows that you have twenty off street parking spaces. You need a total of forty off-street parking spaces, thirty-nine parking spaces for a place of worship/religious use [section 14-332(k)] and one parking space for the existing dwelling unit on the second floor [section 14-332(a)(2)]. You need to apply for a variance with the Zoning Board of Appeals since you do not have the required number of parking spaces.

If you are granted these two variances, your next step is to apply for a conditional use under section 14-118(b)(3) and your submitted site plan for the expanded parking lot must be revised and completed for review. The Planning Board is the reviewing authority for the conditional use appeal and the site plan. A copy of the site plan ordinance is attached. The submittal requirements for a complete application are found in section 14-525.

Your permit cannot be approved by zoning until you have successfully completed these three steps. I have enclosed the applications for the two variances and a sheet which

outlines the application process for the Zoning Board of Appeals. The contact person in the Planning Division for the conditional use appeal and the site plan for the expanded parking lot is Barbara Barhydt at 874-8699. Remember, you will also need to meet the requirements of the building and life safety codes.

You have the right to appeal my decision concerning use. If you wish to exercise your right to appeal, you have thirty (30) days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

Please feel free to call me at 874-8695 if you have any questions.

Yours truly,

A handwritten signature in cursive script, appearing to read "Marge Schmuckal".

Marge Schmuckal
Zoning Administrator

Cc. Penny St. Louis Littell, Director of Planning and Urban Development
Gary Wood, Corporation Counsel
Barbara Barhydt, Development Review Services Manager
Tammy Munson, Inspections Division Director
Jeanie Bourke, Code Enforcement Officer
Richard Jordan
File

978 Washington Avenue City of Portland, Maine

Application for Change of Use ONLY

COPY

No building changes: Walls or permanent partitions, plumbing or electrical, renovations, windows, doors, insulation or other changes other than the proposed use of the building are planned at this time.

Should they be needed in the future, separate permit application(s) will be submitted when required.

Prior use: First Floor:

**Consumer Electronic Repair Shop
"Dick Waterhouse TV Repair"**

Second Floor:

Rental Single Unit

Proposed Use: First Floor:

Assembly Hall

Second Floor:

No Change

**Attached: Lot and building drawing. Interior first floor layout.
Change of use applications.**

ORIGINAL

Signed & dated

(Signature)

Change of Use application

___/___/2009

978 Washington Avenue City of Portland, Maine

Application for Change of Use ONLY

copy

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Rental Single Unit

Proposed Use: First Floor:

Assembly Hall

Second Floor:

No Change

**Attached: Lot and building drawing. Interior first floor layout.
Change of use applications.**

ORIGINAL
Signed & dated
Change of use application
____/____/2009

Sadri Shir, Owner
41 Ocean House Road
Cape Elizabeth, Maine 04107
(207) 228-5040

2/28/2009

Development Review Application

COPY

Proposed development:

Paved existing, crushed stone parking lot at 978 Washington Avenue. Approximate size: 58' x 121' / 7018 sq. ft.

Chart # 161 Block # E Lot # 3 Page/Book 23454/156
Parcel ID # 161-E003001 R5 Zone

Site Drawings and Pictures Attached.
Separate Change of Use Permit Application also submitted for Assembly Hall. Previous use: Television Repair Shop.

Sadri Shir

ORIGINAL
Signed & dated
Cover letter for site plan review

Date ____/____/2009



General 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>978 Washington Ave.</u>			
Total Square Footage of Proposed Structure/Area <u>N/A</u>		Square Footage of Lot <u>14,400</u>	Number of Stories <u>2</u>
Tax Assessor's Chart, Block & Lot Chart# <u>161</u> Block# <u>E</u> Lot# <u>3</u>		Applicant must be owner, Lessee or Buyer Name <u>Sadri Shir</u> Address <u>41 Ocean House Rd.</u> City, State & Zip <u>Cape Elizabeth ME 04107</u>	
Lessee/DBA (If Applicable)		Owner (if different from Applicant) Name <u>Richard Jordan</u> Address <u>26 Ashswamp Rd.</u> City, State & Zip <u>Scarborough, ME 04074</u>	Telephone: <u>(207) 541-7221-OR-775-6789</u> Cost Of Work: \$ <u>1126.00</u> C of O Fee: \$ <u> </u> Total Fee: \$ <u>40 + 100</u>
Current legal use (i.e. single family) <u>2nd floor/single family</u> Number of Residential Units <u>1</u> If vacant, what was the previous use? <u>1st floor/vacant/Television Repair Shop</u> Proposed Specific use: <u>2nd floor Residential</u> <u>1st floor vacant/future use to be</u> Is property part of a subdivision? <u>No</u> If yes, please name <u>applied for</u> Project description: <u>Replace three existing windows on first floor</u>			
Contractor's name: <u>Richard Jordan / dba / Quality-One</u> Address: <u>26 Ashswamp Rd.</u> City, State & Zip <u>Scarborough Maine 04074</u> Telephone: <u>(207) 831-8102</u> Who should we contact when the permit is ready: <u>Richard Jordan</u> Telephone: <u>831-8102</u> Mailing address: <u>Same as above</u>			

Please submit all of the information outlined on the applicable Checklist. Failure to do so will result in the automatic denial of your permit.

In order to be sure the City fully understands the full scope of the project, the Planning and Development Department may request additional information prior to the issuance of a permit. For further information or to download copies of this form and other applications visit the Inspections Division on-line at www.portlandmaine.gov, or stop by the Inspections Division office, room 315 City Hall or call 874-8703.

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: Richard Jordan

Date: 11/21/2008

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



CITY OF PORTLAND, MAINE

Department of Building Inspections

copy

Original Receipt

March 3 2009

Received from

Sadri Shir

Location of Work

978 Washington

Cost of Construction

\$ Ø

Building Fee:

50.00 Lak Fee

Permit Fee

\$ 30.00

Site Fee:

Certificate of Occupancy Fee:

75.00

Total:

155.00

Building (IL) ☒

Plumbing (IS) ☐

Electrical (I2) ☐

Site Plan (I:2) ☐

Other ☐

CBL:

161-E-003

Check #:

262

Total Collected \$ 155.00

No work is to be started until permit issued.

If permit is Withdrawn or Denied, amount of the Refund is based on \$20.00 or 20% of the fee, (whichever is greater)

In order to receive a refund, you MUST present the Original Receipt.

Taken by:

SMB

WHITE - Applicant's Copy

YELLOW - Office Copy

PINK - Permit Copy



GENERAL RECEIPT

COPY

CITY OF PORTLAND, MAINE

DEPARTMENT

Planning and Development

DATE

3/03/09

RECEIVED FROM

ADDRESS

978 Washington Ave

UNIT	ITEM	REVENUE CODE	DOLLAR AMOUNT
	Site Plan		400.00
	Dev Rev Deposit		200.00
	CK# 263		

☐ CASH ☒ CHECK ☐ OTHER

TOTAL

600.00

RECEIVED BY

M Stone

Notwithstanding the provisions of subsections 14-473(c)(1) and (2) of this section, the Board of Appeals may grant a variance from the dimensional standards of this article when strict application of the provisions of the ordinance would create a practical difficulty, as defined herein, and when all the following conditions are found to exist:

1. The need for the variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood:

Does not conform to minimum lot size
Approximately 1/3 size normally required.

2. The granting of the variance will not have an unreasonably detrimental effect on either the use or fair market value of the abutting properties:

true / No more traffic than prior uses.
Prior use Television repair shop / Open 7 days a week

3. The Practical Difficulty is not the result of action taken by the applicant or a prior owner:

true / change use ~ empty presently
Prior use TV Shop

4. No other feasible alternative is available to the applicant, except a variance:

true / Muslim Community place of worship.

5. The granting of a variance will not have an unreasonably adverse effect on the natural environment:

true / no effect.
No site plot changes

6. Strict application of the dimensional standards of the ordinance to the subject property will preclude a use which is permitted in the zone in which the property is located:

true
Other churches are in the immediate area (place of worship)

7. Strict application of the dimensional standards of the ordinance to the subject property will result in significant economic injury to the applicant:

no economic injury applicable (non-profit use)

8. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. Section 435, nor within a shoreland of flood hazard zone as defined in this article:

true / Refer site maps attached

Zoning Board of Appeals

revised cover letter
received 5/21/09

5/8/2009

**Cover Letter: 978 Washington Avenue
Chart: 161 Block: E Zone: R-5**

RE: Practical Difficulty Variance

First Floor:

**Prior Use: Consumer Electronics Repair Shop
Dick Waterhouse TV Center**

Proposed Use: Place of Worship Permit #09-0161

Second Floor: Residential Rental Unit

Prior Use: Same / No change

Additional Notes:

No structural or renovations proposed or needed. First floor wide open (refer enclosed picture and floor layout). Furnishing is limited to rugs and one small, movable podium (approximately 3'x 3'x 2' high).

Although the total space provided does not meet the one acre requirement, an adjacent, off road, paved parking lot is provided for 20 vehicles. (9'x 19' spaces with 24' aisle). This parking area is more than adequate for the number of people who will be visiting this hall for assembly and prayer (parking includes a separate space for the tenant in the second floor apartment).

The total traffic load is expected to be significantly less than the prior retail electronics shop with only occasional usage during the week by individuals wishing to worship.

The exterior of the building will remain unchanged.

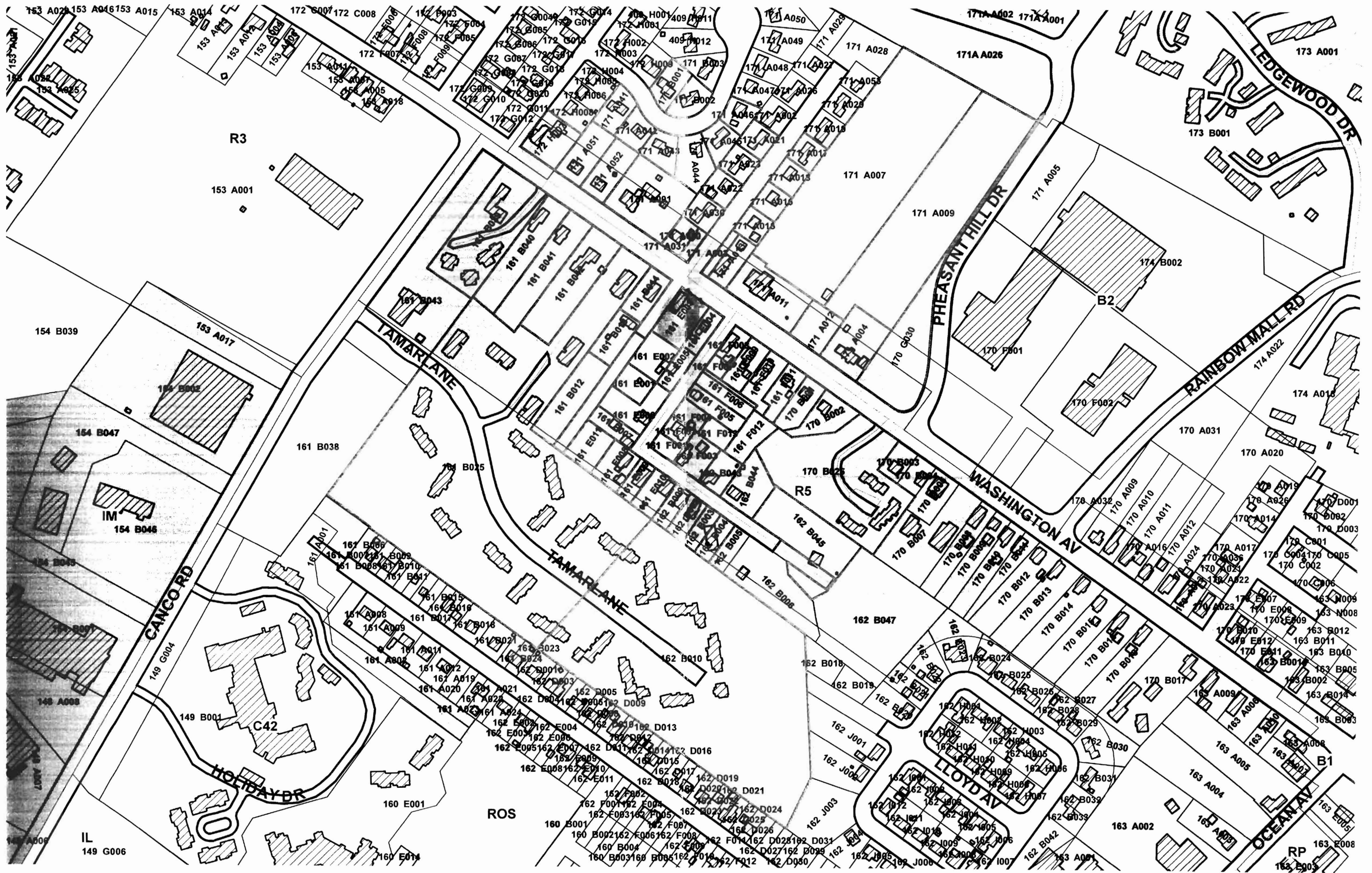
**Sadri Shir, Owner
41 Ocean House Road
Cape Elizabeth, ME 04107**

Phone: 207-228-5040

Thank You.

Sincerely,





CITY OF PORTLAND, MAINE
Zoning Board of Appeals

Zoning Board of Appeals Committee

DATE: 6/18/2009
TIME: 6:30:00 PM
LOCATION: 389 Congress Street

AGENDA

- 1 Old Business: A. Practical Difficulty Variance Appeal: 978 Washington Avenue, Sadri Shir, owner, Tax Map 161, Block E, Lot 003, R-5 Zone: The appellant was seeking to change the use of their property on the first floor from a commercial use to a place of worship. The appellant requested a variance in the minimum required lot size from one acre (43,560 square feet) to 14,400 square feet [section 14-120(1)(a)(5)]. Representing the appeal was Shukria Wiar. The Board voted 5-0 to deny the Practical Difficulty Appeal on Thursday, June 4, 2009. The Board will now be voting on the finding of facts as prepared by Mary Kahl, the Board's attorney in this matter.
- 2 New Business: A. Conditional Use Appeal: 1994-2044 Congress Street, David R. Morgan / Brooklawn Memorial Park, owner, Tax Map 211, Block A, Lot 001; Tax Map 209A, Block A, Lot 015; Tax Map 211, Block A, Lot 004; Tax Map 214, Block A, Lot 001 & Tax Map 214, Block A, Lot 4 in the R-1 & B-4 Zones: The appellant is seeking a Conditional Use Appeal under section 14-68(c)(2) to build a new 60' x 80' maintenance building for the cemetery. The proposed building would be located on Tax Map 211, Block A, Lot 001 in the R-1 zone. Representing the appeal is Robert Sanford, Jr.

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

Peter Coyne
Philip Saucier-chair
Deborah Rutter
Jill E. Hunter
Gordan Smith-secretary
William Getz
Sara Moppin

June 9, 2009

Shukria Wiar
420 Mitchell Road
Cape Elizabeth, ME 04107

RE: 978 Washington Avenue
CBL: 161 E003
ZONE: R5

Dear Mrs. Wiar:

As you know, at the June 4, 2009 meeting, the Board voted 5-0 to deny your Practical Difficulty Variance Appeal for the change of use from a commercial use to a place of worship on the first floor. The Board will be voting on the findings of facts at the next Zoning Board of Appeals meeting on Thursday, June 18, 2009.

The City of Portland will be pleased to work with you concerning an allowable use now that there is no approved use of the first floor of your building.

Enclosed please find the billing for the Zoning Board Appeals legal ad and abutter's notification and also a copy of the Zoning Board Appeal decision from the agenda.

Appeals from decisions of the Board may be filed in Superior Court, pursuant to 30-A M.R.S.A. section 2691 (2) (G).

Should you have any questions please feel free to contact me at 207-874-8701.

Sincerely,



Gayle Guertin
Office Assistant

CC: Sadri Shir, owner
file

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

ZONING BOARD APPEAL DECISION

To: City Clerk
From: Marge Schmuckal, Zoning Administrator
Date: June 8, 2009
RE: Action taken by the Zoning Board of Appeals on June 4, 2009.

Members Present: Philip Saucier (chair), Gordon Smith (secretary), Jill Hunter, William Getz, and Peter Coyne.

Member Absent: Sara Moppin and Deborah Rutter

1. New Business:

A. Practical Difficulty Variance Appeal:

978 Washington Avenue, Sadri Shir, owner, Tax Map 161, Block E, Lot 003, R-5 Zone: The appellant was seeking a change the use of their property from a commercial use to a place of worship on the first floor. The appellant requested a variance in the minimum required lot size from one acre (43,560 square feet) to 14,400 square feet [section 14-120(1)(a)(5)]. Representing the appeal was Shukria Wiar. **The Board voted 5-0 to deny denied the Practical Difficulty Appeal. The Board will be voting on the finding of facts at the next Zoning Board of Appeals meeting on Thursday, June 18, 2009.**

B. Variance Appeal:

978 Washington Avenue, Sadri Shir, owner, Tax Map 161, Block E, Lot 003, R-5 Zone: The appellant was seeking a Variance Appeal under section 14-332 requesting that the off-street parking requirements be waived for the proposed change of use to a place of worship on the first floor. Section 14-332 (k) requires one off-street parking space for each 25 square feet of floor area (no fixed seats) in the principal place of assemblage for worship. The place of worship has approximately 974 square feet of floor area which requires thirty-nine parking spaces. Section 14-332(a) requires one parking space for the dwelling unit on the second floor. The total number of spaces required for the two uses is forty spaces, instead of the twenty parking spaces shown. Representing the appeal was Shukria Wiar. **The Variance Appeal was withdrawn by the applicant and the withdrawal was accepted by the Board.**

Enclosure:

Agenda of June 04, 2009
Original Zoning Board Decision
Two audio tapes and one dvd
CC: Joseph Gray, City Manager
Penny St. Louis Littell, Director, Planning & Urban Development
Alex Jaegerman, Planning Division
T.J. Martzial, Housing & Neighborhood Services Division

CITY OF PORTLAND
DEPARTMENT OF PLANNING & URBAN DEVELOPMENT
389 Congress Street
Portland, Maine 04101

INVOICE FOR FEES

Application No: 0000-1525	Applicant: Shir Sadri
Project Name: 978 Washington Ave	Location: 978 WASHINGTON AVE
CBL: 161 E003001	Application Type: Practical Difficulty Variance Appeal
Invoice Date: 05/28/2009	

Previous Balance	-	Payment Received	+	Current Fees \$177.79	-	Current Payment	=	Total Due	Payment Due Date On Receipt
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First Billing

Divison/Board: -

Previous Balance

-

Fee Description	Qty	Fee/Deposit Charge
Legal Advertisements	1	\$117.04
Notices	81	\$60.75
		<u>\$177.79</u>
Total Current Fees:		+ <u>\$177.79</u>
Total Current Payments:		- <u> </u>
Amount Due Now:		

Detach and remit with payment

Bill to: Shir Sadri
41 Ocean House Rd
Cape Elizabeth , ME 04107

CBL 161 E003001
Application No: 0000-1525
Invoice Date: 05/28/2009
Invoice No: 34621
Total Amt Due:
Payment Amount:

Make checks payable to the *City of Portland*, ATTN: Inspections, 3rd Floor, 389 Congress Street, Portland, ME 04101.

members present: Philip Sanchez (Chair) (Gordon Smith, Jill Hunter,
William Getz, Peter Coyne (secretary))

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

members absent: SARA Mappin, Deborah Rutter

APPEAL AGENDA

The Board of Appeals will hold a public hearing on Thursday, June 04, 2009 at 6:30 p.m. on the second floor in the Council Chambers at the Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following Appeals:

called to order at 6:40 pm

1. New Business:

A. Practical Difficulty Variance Appeal:

978 Washington Avenue, Sadri Shir, owner, Tax Map 161, Block E, Lot 003, R-5 Zone:

The appellant is seeking to change the use of their property from a commercial use to a place of worship. The appellant is requesting a variance in the minimum required lot size from one acre (43,560 square feet) to 14,400 square feet [section 14-120(1)(a)(5)].

Representing the appeal is Shukria Wiar.

The Board will be voting on the finding of facts at the next Zoning Board of Appeals meeting

B. Variance Appeal:

978 Washington Avenue, Sadri Shir, owner, Tax Map 161, Block E, Lot 003, R-5 Zone:

The appellant is seeking a Variance Appeal under section 14-332 requesting that the off-street parking requirement be waived for the proposed change of use to a place of worship. Section 14-332 (k) requires one off-street parking space for each 25 square feet of floor area (no fixed seats) in the principal place of assemblage for worship. The place of worship has approximately 974 square feet of floor area which requires thirty-nine parking spaces. Section 14-332(a) requires one parking space for the dwelling unit on the second floor. The total number of spaces required for the two uses is forty spaces, instead of the twenty parking spaces shown. Representing the appeal is Shukria Wiar.

2. Other Business:

3. Adjournment: 9:10 pm

Denied
S-C

Withdrawn
by the
applicant
and the withdrawal
was accepted
by the Board



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*Penny St. Louis Littell- Director of Planning and Urban Development
Marge Schmuckal, Zoning Administrator*

June 4, 2009

I just want to start out by saying that a Place of Worship use is allowed within the R-5 underlying zone. The use is not a point of contention in these matters. This is not about religious matters, it is about dimensional requirements and parking requirements.

As I outlined in my memo to the Board, Inspection Services received a permit application on March 3, 2009 to change the use of the property at 978 Washington Avenue from a TV repair shop on the first floor and one dwelling unit on the second floor to a place of worship/assembly use on the first floor with the one dwelling unit on the second floor to remain unchanged.

978 Washington Avenue is located within an R-5 Residential Zone. The R-5 Zone allows a place of worship with a the granting of a Conditional Use appeal before the Planning Board. Prior to the Planning Board receiving a conditional use application, Zoning performs a zoning review of the proposal. The zoning review indicated two deficiencies of the requirements: 1) The minimum lot size and 2) the minimum parking requirements.

The R-5 Zone requires a minimum lot size of one acre or 43,560 square feet of land for a place of worship. The property has only 14,400 square feet of land area, or only about 1/3 of what is required.

The parking requirements state that places of worship require 1 parking space for each 25 square feet of sanctuary area. It is now my understanding that the "rear room" shown on the floor plans is a worship area for women and children separated from the other area of worship. Using the entire first floor as a sanctuary results in a requirement of 39 required spaces along with one parking space required for the upstairs residential use, for a total of 40 required parking spaces. 20 parking spaces or only 50 percent of the required number of spaces are to be provided. The application submittals state that there is a maximum occupancy load of 45.

The prior use of the first floor was a TV repair shop with some sales of repaired TVs. The use was existing prior to the current Land Use Ordinance. It was considered to be legally nonconforming. This property was for sale for several years prior to its purchase. Our office had many inquiries concerning the property. As far as its nonconforming use, a similar use could replace it, such as service & sales of computers, or service and repair of lawn mowers. It could not be turned into a retail grocery store. It could not be turned into a restaurant.

There are other use options available to the applicant. Other uses allowed and available to the applicant in the R-5 Zone based on the current lot size would be to add one additional dwelling unit to the building. Another use allowable in the R-5 Zone based on the current lot size would be for a lodging house. Based only on current lot size, this lot may be dividable into two lots. The minimum lot size in the R-5 Zone is 6,000 square feet. There maybe other limiting factors regarding a potential lot split. I have not seen a survey with all the necessary dimensions listed.

In regards to the parking issue, the Land Use Ordinance states in 14-333 that parking shall be located on the same lot or within 300 feet of the lot. There are a few options available to the applicant, within 300 feet, or a “reasonable” distance away to supplement the deficient number of spaces. Most notable is the Chevrus parking lot for their ball fields and tennis courts “kitty-corner” across the street. There are 35 parking spaces available there. There is also a florist (a legal nonconforming use) almost directly across the street. There are less available spaces there, but some. Not too far away, but could still be considered a reasonable distance is the Grace Baptist Church on the corner of Washington and Canco Road. Perhaps a form of shuttling can be made available. The applicant has not submitted information that they have tried to search out any of these options.

The neighborhood in the vicinity of the property is mostly residential in nature. There are a couple other places of worship and some offices located at the old Rainbow Mall which is perhaps 1200 feet away. There are some small businesses going down Washington Avenue the opposite way. This is not a unique lot within the neighborhood. Again the R-5 Residential Zone allows places of worship, regardless of religion.

There are two types of Variances before the Zoning Board of Appeals. The Practical Difficulty Variance is limited to relief of **lot area**, lot coverage, frontage and setback requirements. A Practical Difficulty Variance concerning the deficient lot area is before the Board. The other type of variance is for the required number of parking spaces. It is considered to be a full Variance. The criteria that the Zoning Board review and vote on for each Variance have been handed down by the State Legislature and incorporated within the City of Portland’s Land Use Zoning Ordinance. There are different criteria for each type of Variance. Each criterion for each type of Variance must be met in full or the Variance must be denied.

Reviewing the applicant’s submittal, it is my opinion that the criteria are not being met.

Marge Schmuckal
Zoning Administrator

From: Elizabeth Begin <ewb_52@hotmail.com>
To: Marge Schmuckal <mes@portlandmaine.gov>
Date: 6/4/2009 10:26:28 AM
Subject: ZBA Comment Letter

Hi Marge, Attached is a letter of comment for the ZBA agenda item concerning the conversion of the former Portland Appliance to a place of worship. Please include it as a public comment.

I can be reached at 773-3750 if there are any questions!

Best,

Elizabeth

Windows Live™: Keep your life in sync.
http://windowslive.com/explore?ocid=TXT_TAGLM_WL_BR_life_in_synch_062009

CC: Anne Pringle <oldmayor@maine.rr.com>

THE WESTERN PROMENADE NEIGHBORHOOD ASSOCIATION

June 4, 2009

Zoning Board of Appeal
City of Portland
389 Congress Street
Portland, ME 04101

Dear Members of the Zoning Board of Appeals:

I am writing on behalf of the Western Promenade Neighborhood Association to encourage the Board to deny the request of Mr. Sadri Shir for a variance in minimum lot size and parking requirements to allow use of his property at 978 Washington Avenue as a place of worship.

While this property is not located within our neighborhood, we are concerned that allowing this variance would create a precedent that could potentially affect all residential neighborhoods in the city. For WPNA, the issue is not the type of use proposed, which is allowed as a conditional use, but rather the potential precedent of allowing conditional uses to vary so dramatically from the requirements of the underlying zoning, which requirements are reasonable and intended to protect the residential character of the City's neighborhoods.

Please reject this appeal, based on the very persuasive case made by the City's Corporation Counsel in support of the Zoning Administrator's determination.

Very truly yours,

Elizabeth W. Begin
President

From: Mary Kahl <mkahl@kahllaw.com>
To: Danielle West -Chuhta <DWCHUHTA@portlandmaine.gov>, Gary Wood <GARY@portlandmaine.gov>, Marge Schmuckal <MES@portlandmaine.gov>, Shukria Wiar <SHUKRIAW@portlandmaine.gov>
Date: 6/4/2009 1:40:03 PM
Subject: Re: ZBA Variances re: 978 Washingont Avenue

Danielle and Shukria -

My opinion is that the Board does not have authority to determine whether or not an ordinance is valid. Ordinances are presumed to be valid, and the Board must apply the ordinance as written. Any challenge to the validity of the ordinance, whether based on a constitutional or other argument, would have to be decided by the court.

Mary

Mary Kahl LLC
87A Ocean Street
South Portland, Maine 04106
tel. (207) 799-8008
fax (207) 767-3573
www.kahllaw.com

From: Danielle West -Chuhta <DWCHUHTA@portlandmaine.gov>
To: mkahl@kahllaw.com; Gary Wood <GARY@portlandmaine.gov>; Marge Schmuckal <MES@portlandmaine.gov>; Shukria Wiar <SHUKRIAW@portlandmaine.gov>
Sent: Thursday, June 4, 2009 11:37:19 AM
Subject: ZBA Variances re: 978 Washingont Avenue

Mary/Shukria:

Good afternoon. Given the fact that these variance requests may involve analysis of constitutional issues, I wanted to let you know that it is the City's position that the Board cannot resolve such alleged issues with an ordinance when deciding a variance application. See MMA's Board of Appeals Manual at Chapter 3, p. 15; see also *Minster v. Town of Gray*, 584 A.2d 646 (Me. 1990).

Thanks for your time,

Danielle

Danielle P. West-Chuhta
Associate Corporation Counsel
City of Portland, Maine

From: Danielle West -Chuhta
To: mkahl@kahllaw.com; Schmuckal, Marge; Wiar, Shukria; Wood, Gary
Date: 6/4/2009 12:37:19 PM
Subject: ZBA Variances re: 978 Washingont Avenue

Mary/Shukria:

Good afternoon. Given the fact that these variance requests may involve analysis of constitutional issues, I wanted to let you know that it is the City's position that the Board cannot resolve such alleged issues with an ordinance when deciding a variance application. See MMA's Board of Appeals Manual at Chapter 3, p. 15; see also *Minster v. Town of Gray*, 584 A.2d 646 (Me. 1990).

Thanks for your time,

Danielle

Danielle P. West-Chuhta
Associate Corporation Counsel
City of Portland, Maine

BL	OWNER	OWNER MAILING ADDRESS	PROPERTY LOCATION	UNITS
61 B011001	HOPE SETH R	PO BOX 6823 SCARBOROUGH, ME 04070	173 MURRAY ST	1
61 B025001	RRE TAMARLANE HOLDINGS LLC	ONE CRESCENT DR STE 203 PHILADELPHIA, PA 19112	988 WASHINGTON AVE	91
61 B039001	BROCHU ROBERT J & ANNE L BROCHU JTS	1024 WASHINGTON AVE #1 PORTLAND, ME 04103	1024 WASHINGTON AVE	1
61 B039002	HEBOLD DAREN & ERICA HEBOLD JTS	411 CHANDLERS WHARF PORTLAND, ME 04101	1024 WASHINGTON AVE	1
61 B039003	KERR CATHERINE W	1024 WASHINGTON AVE # 3 PORTLAND, ME 04103	1024 WASHINGTON AVE	1
61 B039004	MARTIN CATHERINE A	1024 WASHINGTON AVE #4 PORTLAND, ME 04103	1024 WASHINGTON AVE	1
61 B039005	CRANE THOMAS M	20 BELMONT ST PORTLAND, ME 04101	1024 WASHINGTON AVE	1
61 B039006	GULLICK GEORGE	1024 WASHINGTON AVE # 6 PORTLAND, ME 04103	1024 WASHINGTON AVE	1
61 B039007	STARRETT ALAN N & DARCY W	1024 WASHINGTON AVE UNIT #7 PORTLAND, ME 04103	1024 WASHINGTON AVE	1
61 B039008	HALSEY LEAH	1024 WASHINGTON AVE # 8 PORTLAND, ME 04103	1024 WASHINGTON AVE	1
61 B039009	LEVINE ELLEN E	1024 WASHINGTON AVE #9 PORTLAND, ME 04103	1024 WASHINGTON AVE	1
61 B039010	PALMACCI-JOHNSON JO ANN	1024 WASHINGTON AVE # 10 PORTLAND, ME 04103	1024 WASHINGTON AVE	1
61 B040001	HATT YUN OK	3 HOWARD ST APT 3 PORTLAND, ME 04101	1014 WASHINGTON AVE	3
61 B041001	PORT RESOURCES INC	P O BOX 2832 SO PORTLAND, ME 04106	1008 WASHINGTON AVE	2
61 B042001	HUBER FREDERICK G & JENNIFER L JTS	1000 WASHINGTON AVE PORTLAND, ME 04103	1000 WASHINGTON AVE	1
61 E001001	TOPPI ROCCO III & MARY M JTS	17 FALLBROOK ST PORTLAND, ME 04103	17 FALL BROOK ST	1
61 E003001	SHIR SADRI	41 OCEAN HOUSE RD CAPE ELIZABETH, ME 04107	978 WASHINGTON AVE	1
61 E004001	TROIANO ELEANOR W WID WWII	970 WASHINGTON AVE PORTLAND, ME 04103	970 WASHINGTON AVE	1
61 E006001	CARIGNAN ROGER P	29 FALL BROOK ST PORTLAND, ME 04103	29 FALL BROOK ST	2
61 E007001	DYER GLEN D & JANE M DYER JTS	35 FALL BROOK ST PORTLAND, ME 04103	35 FALL BROOK ST	1
61 E008001	SIMPSON WILLIAM P	PO BOX 641 FREEPORT, ME 04032	37 FALL BROOK ST	2
61 E009001	VASSALLO MICHAEL J & NANCY A JTS	43 FALL BROOK ST PORTLAND, ME 04103	43 FALL BROOK ST	2
61 E010001	CHITTICK DAVID B & PATRICIA S JTS	74 FROST HILL RD PORTLAND, ME 04103	47 FALL BROOK ST	2
61 E011001	SIMPSON WILLIAM P	PO BOX 641 FREEPORT, ME 04032	37 FALL BROOK ST	1
61 F001001	PYNE LUCINDA J	28 FALL BROOK ST PORTLAND, ME 04103	32 FALL BROOK ST	1
61 F002001	PYNE LUCINDA J	28 FALLBROOK ST PORTLAND, ME 04103	28 FALL BROOK ST	2
61 F003001	DOWNES ELEANOR L	48 FALL BROOK ST PORTLAND, ME 04103	48 FALL BROOK ST	1
61 F005001	DUNKERLEY ELIZABETH	16 OLD SALT RD OLD ORCHARD BEACH, ME 04064	20 FALL BROOK ST	1
61 F007001	WETMORE DENNIS B & ROBERTA A COATES &	962 WASHINGTON AVE PORTLAND, ME 04103	10 FALL BROOK ST	1

SL	OWNER	OWNER MAILING ADDRESS	PROPERTY LOCATION	UNITS
1 F008001	WETMORE DENNIS B & ROBERTA A COATES &	962 WASHINGTON AVE PORTLAND, ME 04103	962 WASHINGTON AVE	1
1 F009001	HARBAUGH BETTY ANN	958 WASHINGTON AVE PORTLAND, ME 04103	958 WASHINGTON AVE	1
1 F010001	ANDERSON RACHEL	201 FALMOUTH RD FALMOUTH, ME 04105	956 WASHINGTON AVE	3
1 F011001	CHAU TIEN TAN & NU NGOC DAO	948 WASHINGTON AVE PORTLAND, ME 04103	948 WASHINGTON AVE	1
1 F014001	WETMORE DENNIS B & ROBERTA A COATES &	962 WASHINGTON AVE PORTLAND, ME 04103	14 FALL BROOK ST	1
1 B002001	YOUNG CHARLES T & DARLENE A	57 FALL BROOK ST PORTLAND, ME 04103	57 FALL BROOK ST	1
1 B004001	LORANGER ROBERT J & DEBORAH A JTS	10 ROBIN LN FALMOUTH, ME 04105	63 FALL BROOK ST	3
1 B009001	BURKHART LESLIE T	53 FALL BROOK ST PORTLAND, ME 04103	53 FALL BROOK ST	1
1 B043001	LYDEN JOHN F & IOLA JTS	56 FALL BROOK ST PORTLAND, ME 04103	56 FALL BROOK ST	1
1 B044001	MARINO SANDRA J	62 FALL BROOK ST PORTLAND, ME 04103	62 FALL BROOK ST	1
1 B045001	CICCOMANCINI TOMASSO & SUZANNE I JIMENEZ	80 FALL BROOK ST PORTLAND, ME 04103	80 FALL BROOK ST	1
1 B001001	BITHER DOUGLAS N	942 WASHINGTON AVE PORTLAND, ME 04103	942 WASHINGTON AVE	1
1 B002001	ACEDO LAURA J & LISE J WILCOX JTS	936 WASHINGTON AVE PORTLAND, ME 04103	936 WASHINGTON AVE	1
1 B025001	MENGES JOYCE A	1 PINE LEDGE TER PORTLAND, ME 04103	9 PINE LEDGE TER	1
1 B025002	WILBUR PATRICIA A	2 PINE LEDGE TER PORTLAND, ME 04103	2 PINE LEDGE TER	1
1 B025003	RIOUX ANNETTE M	3 PINE LEDGE TERR PORTLAND, ME 04103	3 PINE LEDGE TER	1
1 B025004	BERGERON ROBERT L KW VET	4 PINE LEDGE TER PORTLAND, ME 04103	4 PINE LEDGE TER	1
1 B025005	COFFIN CHERYLL L	918 WASHINGTON AVE # 5 PORTLAND, ME 04103	5 PINE LEDGE TER	1
1 B025006	PRUNEAU PAULETTE R	6 PINE LEDGE TER PORTLAND, ME 04103	6 PINE LEDGE TER	1
1 B025007	CALHOUN SUSAN M	7 PINELEDGE TER PORTLAND, ME 04103	7 PINE LEDGE TER	1
1 B025008	PUTNEY RUTH E WID WWII VET	PINELEDGE TER # 8 PORTLAND, ME 04103	8 PINE LEDGE TER	1
1 B025009	DAVIS CHRISTINA M	9 PINE LEDGE TER PORTLAND, ME 04103	9 PINE LEDGE TER	1
1 B025010	PAPKEE PATRICIA A & CHRISTOPHER PAPKEE JTS	10 PINE LEDGE TER PORTLAND, ME 04103	10 PINE LEDGE TER	1
1 B025011	DEMIREI FILIZ	11 PINE LEDGE TER PORTLAND, ME 04103	11 PINE LEDGE TER	1
1 B025012	NEKOIE BAHMAN & CATHERINE E BOYD JTS	40 COTTAGE PARK RD PORTLAND, ME 04103	12 PINE LEDGE TER	1
1 B025013	GUTMANN JEAN E	918 WASHINGTON AVE # 13 PORTLAND, ME 04103	13 PINE LEDGE TER	1
1 G030001	BROWN J B & SONS	PO BOX 207 PORTLAND, ME 04112	923 WASHINGTON AVE	1
1 A001001	SCARKS MICHAEL	120 EXCHANGE ST PORTLAND, ME 04101	997 WASHINGTON AVE	13
1 A003001	HOEUNG HENG & VANNY POV JTS	973 WASHINGTON AVE PORTLAND, ME 04103	973 WASHINGTON AVE	1

BL	OWNER	OWNER MAILING ADDRESS	PROPERTY LOCATION	UNITS
71 A004001	ROAK LEIGH A	937 WASHINGTON AVE PORTLAND, ME 04103	937 WASHINGTON AVE	2
71 A007001	CHEVERUS HIGH SCHOOL	267 OCEAN AVE PORTLAND, ME 04103	951 WASHINGTON AVE	1
71 A010001	POMERLEAU RAYMOND E & RENA M OR SURV	985 WASHINGTON AVE PORTLAND, ME 04103	985 WASHINGTON AVE	1
71 A011001	MELOON GEORGE H INC	963 WASHINGTON AVE PORTLAND, ME 04103	963 WASHINGTON AVE	2
71 A015001	BLAYNE KATHRYN L	15 MALILLY RD PORTLAND, ME 04103	15 MALILLY RD	1
171 A016001	SMITH GREGORY A & DEBORAH L JTS	21 MALILLY RD PORTLAND, ME 04101	21 MALILLY RD	1
171 A017001	LEWIS WAYNE A & KRISTIN M HODGSON JTS	37 MALILLY RD PORTLAND, ME 04103	37 MALILLY RD	1
171 A018001	PRICE PHYLLIS M & RICHARD E JTS	29 MALILLY RD PORTLAND, ME 04103	29 MALILLY RD	1
171 A021001	MACDONALD ROBERT WWII VET DOROTHY JTS	34 MALILLY RD PORTLAND, ME 04103	34 MALILLY RD	1
171 A022001	JACKSON VICKI L	20 MALILLY RD PORTLAND, ME 04103	20 MALILLY RD	1
171 A023001	RICHARDS WAYNE E & CONCETTA JTS	26 MALILLY RD PORTLAND, ME 04103	26 MALILLY RD	1
171 A030001	ZUB PATRICIA A	4 QUAKER LN PORTLAND, ME 04103	10 MALILLY RD	1
171 A031001	POMERLEAU RAYMOND E & RENA JTS	985 WASHINGTON AVE PORTLAND, ME 04103	981 WASHINGTON AVE	1
171 A041001	MACDONALD DARREN D	15 FELICIA LN PORTLAND, ME 04103	15 FELICIA LN	1
171 A042001	SMITH J DAVID W & JENNIFER A JTS	21 FELICIA LN PORTLAND, ME 04103	21 FELICIA LN	1
171 A043001	RODNEY ROBERT J II &	27 FELICIA LN PORTLAND, ME 04103	27 FELICIA LN	1
171 A044001	TAYLOR JENNIFER & SHAWN M	33 FELICIA LN PORTLAND, ME 04103	33 FELICIA LN	1
171 A045001	MCBRIERTY LINDA J	37 FELICIA LN PORTLAND, ME 04103	37 FELICIA LN	1
171 A046001	THUOTTE SUSAN H	43 FELICIA LN PORTLAND, ME 04103	43 FELICIA LN	1
171 A051001	TSENG RICHARD W & LI-FANG YING JTS	343 BLACKSTRAP RD FALMOUTH, ME 04105	1009 WASHINGTON AVE	2
171 A052001	EMMONS SCOTT A	28 WALKER ST SOUTH PORTLAND, ME 04106	1003 WASHINGTON AVE	2
171 B001001	JOHNS PATRICK T & HEIDI R JOHNS JTS	20 FELICIA LN PORTLAND, ME 04103	20 FELICIA LN	1
171 B002001	ST PIERRE MARC & LORI L BIRKEMOSE JTS	36 FELICIA LN PORTLAND, ME 04103	36 FELICIA LN	1
172 H007001	MURPHY JAMES R & JANE M MURPHY JTS	1 SAWYER RD WESTBROOK, ME 04092	1023 WASHINGTON AVE	1
172 H007002	MURPHY JANICE E	1023 WASHINGTON AVE # 2 PORTLAND, ME 04103	1023 WASHINGTON AVE	1
172 H007003	MURPHY JAMES R & JANE M MURPHY JTS	1 SAWYER ST WESTBROOK, ME 04092	1023 WASHINGTON AVE	1

BL	OWNER	OWNER MAILING ADDRESS	PROPERTY LOCATION	UNITS
Total Listed	84	UNITS	202	



City of Portland, Oregon
Planning and Development Department
Zoning Board of Appeals
Practical Difficulty Variance Application

Applicant Information:

Name Sadri Shir
Business Name N/A
Address 41 Ocean House Road
Cape Elizabeth ME 04107
Telephone 207-228-5040 Fax

Applicant's Right, Title or Interest in Subject Property:

Owner
(e.g. owner, purchaser, etc.):

Current Zoning Designation: R-5

Existing Use of Property:

First floor / Empty - no use
2nd floor / Residential apartment

Subject Property Information:

Property Address 278 Washington Avenue
Assessor's Reference (Chart-Block-Lot) 161-E-3

Property Owner (if different):

Name Applicant
Address N/A
Telephone N/A Fax N/A

Practical Difficulty Variance from Section 14 - 120(1)(3)(5)

NOTE: If site plan approval is required, attach preliminary or final site plan.

The undersigned hereby makes application for a Practical Difficulty Variance as above described, and certified that all information herein supplied by his/her is true and correct to the best of his/her knowledge and belief.

X Sadri Shir

Signature of Applicant

X 5/4/2009

Date

CITY OF PORTLAND, MAINE
Zoning Board of Appeals

Zoning Board of Appeals Committee

DATE: 6/4/2009
TIME: 6:30:00 PM
LOCATION: 389 Congress Street

AGENDA

- 1 New Business: A. Practical Difficulty Variance Appeal: 978 Washington Avenue, Sadri Shir, owner, Tax Map 161, Block E, Lot 003, R-5 Zone: The appellant is seeking to change the use of their property from a commercial use to a place of worship. The appellant is requesting a variance in the minimum required lot size from one acre (43,560 square feet) to 14,400 square feet [section 14-120(1)(a)(5)]. Representing the appeal is Shukria Wiar.
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Gayle Guertin - zoning board of appeals legal ad

From: Gayle Guertin
To: classified@pressherald.com
Date: 5/27/2009 10:32 AM
Subject: zoning board of appeals legal ad
CC: Ann Machado; Gayle Guertin; Marge Schmuckal

Good Morning Joan,

Attached is the Zoning Board of Appeals legal ad for Friday, May 29, 2009.

Thank You
Gayle Guertin @ 874-8701



City of Portland Zoning Board of Appeals

May 28, 2009

Sadri Shir
41 Ocean House Road
Cape Elizabeth, Maine 04107

Dear Appellant,

Your Practical Difficulty Variance Appeal has been scheduled to appear before the Zoning Board of Appeals on **Thursday, June 4, 2009 at 6:30 p.m.** on the second floor Council Chambers of City Hall.

Please remember to bring a copy of the packet with you to the meeting to answer any questions the Board may have.

I have included an agenda with your appeal highlighted, as well as the procedures of the meeting for you to familiarize yourself.

I have also included the bill for the legal ad and notices. The check should be written as follows:

MAKE CHECK OUT TO: City of Portland
MAILING ADDRESS: Room 315
389 Congress Street
Portland, ME 04101

Please feel free to contact me at 207-874-8701 if you have any questions.

Sincerely,

Gayle Guertin
Office Assistant

Cc: Shukria Wiar, representing appeal
File



Zoning Board of Appeals Meeting Process

You or your representative must attend the Zoning Board meeting in order to present your case and to answer any questions the Board may have concerning your Appeal. Have a copy of your Appeal with you.

First, the Chairperson will call the meeting to order and read the Board procedures. Next, the Secretary will call the roll of Board members present. The meeting will then open to the first Appeal on the Agenda.

The first Applicant will come forward to the small front table and give a verbal summary of what it is that they are appealing to the Board. The Board will have already received your written application packet. You then may need to answer questions from the Board.

The Public will have a chance to respond when the Chair first asks the public as to who would like to respond in favor or against of the Appeal application. The Applicant will be able to respond after all the public comments.

When the Board is satisfied that they have all the information they need to make a decision, the Chairperson will close the meeting to public comment and will begin their deliberations.

The Board will make a motion (usually in the affirmative) and then further discuss the issues involved. On rare occasions the Board may open the public portion again temporarily to ask another question to the applicant. After the deliberations, the Board will take an official vote and thus make an official decision.

The Board will then ask the next applicant to come forward. The process continues until all appeals are heard and decisions rendered.

The Chairperson will then adjourn the meeting.

A copy of the Board's decision will be mailed to you, along with a bill for abutter's notices and legal ads. We will also include a building permit application if deemed necessary.

The Building Permit Application will have to be filled out and returned to Inspection Services on the third floor of City Hall, along with the appropriate fees as indicated on the permit application, along with the specifications of that particular permit application. Please note that all those specifications are your responsibility to bring with you, not the City to copy and add into your submissions. Any submissions that were in your Appeal packet and are necessary for the building permit, but are missing, will be copied from the Appeal packet and billed to you at \$0.50 per page.

The Building Permit Application will then be processed. It takes approximately 15 business days to approve the permit. At the time of issuance of the permit, all fees incurred during the Appeal process must be paid.

You must then call and schedule an inspection as stated in your permit application packet. If a Certificate of Occupancy is necessary, you must call and schedule with us at 874-8703. Once the Inspector is satisfied you have complied with all State and Local regulations, a Certificate of Occupancy will be issued, the fee for which is \$75.00.

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

APPEAL AGENDA

The Board of Appeals will hold a public hearing on Thursday, June 04, 2009 at 6:30 p.m. on the second floor in the Council Chambers at the Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following Appeals:

1. New Business:

A. Practical Difficulty Variance Appeal:

978 Washington Avenue, Sadri Shir, owner, Tax Map 161, Block E, Lot 003, R-5 Zone:

The appellant is seeking to change the use of their property from a commercial use to a place of worship. The appellant is requesting a variance in the minimum required lot size from one acre (43,560 square feet) to 14,400 square feet [section 14-120(1)(a)(5)].

Representing the appeal is Shukria Wiar.

B. Variance Appeal:

978 Washington Avenue, Sadri Shir, owner, Tax Map 161, Block E, Lot 003, R-5 Zone:

The appellant is seeking a Variance Appeal under section 14-332 requesting that the off-street parking requirement be waived for the proposed change of use to a place of worship. Section 14-332 (k) requires one off-street parking space for each 25 square feet of floor area (no fixed seats) in the principal place of assemblage for worship. The place of worship has approximately 974 square feet of floor area which requires thirty-nine parking spaces. Section 14-332(a) requires one parking space for the dwelling unit on the second floor. The total number of spaces required for the two uses is forty spaces, instead of the twenty parking spaces shown. Representing the appeal is Shukria Wiar.

2. Other Business:

3. Adjournment:

CITY OF PORTLAND
DEPARTMENT OF PLANNING & URBAN DEVELOPMENT

389 Congress Street
Portland, Maine 04101

INVOICE FOR FEES

Application No: 0000-1525	Applicant: Shir Sadri
Project Name: 978 Washington Ave	Location: 978 WASHINGTON AVE
CBL: 161 E003001	Application Type: Practical Difficulty Variance Appeal
Invoice Date: 05/28/2009	

Previous Balance	-	Payment Received	+	Current Fees \$177.79	-	Current Payment	=	Total Due	Payment Due Date On Receipt

First Billing

Divison/Board: -

Previous Balance

Fee Description	Qty	Fee/Deposit Charge
Legal Advertisements	1	\$117.04
Notices	81	\$60.75
		\$177.79

Total Current Fees: + \$177.79

Total Current Payments: -

Amount Due Now:

Detach and remit with payment

CBL 161 E003001

Application No: 0000-1525

Invoice Date: 05/28/2009

Invoice No: 34621

Total Amt Due:

Payment Amount:

Bill to: Shir Sadri
41 Ocean House Rd
Cape Elizabeth , ME 04107

Make checks payable to the *City of Portland*, ATTN: Inspections, 3rd Floor, 389 Congress Street, Portland, ME 04101.

From: Joan Jensen <jjensen@pressherald.com>
To: "dm@portlandmaine.gov" <dm@portlandmaine.gov>
Date: 5/28/2009 10:48:31 AM
Subject: Revised legal ad

Debbie,

The cost is \$184.07 (79 lines).
If you have any questions, please call or email me.

Thank you,
Joan

Joan Jensen
Portland Press Herald/Maine Sunday Telegram
P.O. Box 1460
Portland, ME 04104
Tel. (207) 791-6157
Fax (207) 791-6910
Email classified@pressherald.com

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CC: Gayle Guertin <GG@portlandmaine.gov>

Handwritten calculation:
$$\begin{array}{r} 184.07 \\ 50.00 \\ \hline 134.07 \end{array} \div 2 = 67.035$$

The result 67.035 is circled.

PORTLAND HIGH SCHOOL

Cluster II

~~Zone~~

Dear Planning Board,

I give permission for my daughter,
Antoinette Froiano Skillings, to present
my concerns about the changing zone
request. I do not want this to be
granted, my daughter will explain why
I am not physically able to attend

I am 81 yrs, my husband passed
away last march. I have lived in
this house since 1956. I am very
unhappy as to what has happened to the
property next door, 978 Wash. Ave.

Mrs. Eleanor W. Froiano

970 Wash. Avenue.

Portland, ME 04107

77-46013

From the Desk of:

Toni Skillings

Cluster Coordinator

Good evening members of the Zoning Board of Appeals. My name is Antoinette Troiano Skillings. I am here to speak for my mother, Eleanor Troiano, who resides at 970 Washington Avenue. My father, Ralph Troiano was a veteran of 2 wars. Because of this, my parents were able to purchase my childhood home in 1956 with the aid of the G.I. Bill. My father lived there until he passed away in March of 2008. If it had not been for my father's declining health, my family would have been before the City of Portland more than a year ago asking for relief from the terrible injustice that has been done to my parents and their property. I have a letter from my 81 year old mother asking that you let me speak for her. I will leave this with you tonight. I will also leave photographs that exhibit the extreme conditions my mother's property has been subjected to because of the radical changes made by Mr. Shir to the property at 978 Washington Avenue.

My first point is the fact that Mr. Shir was deceptive from the beginning. He knew he did not have the lot size that could sustain such a use for the property. He only has 33% of the land necessary for a house of worship. He approached both my father and neighbor, Mr. Toppi, to buy land early on. He put in a parking lot which is approximately 115' long and 60' wide when he only had one tenant living in the second floor apartment and a small T.V. Repair shop. He had no site reviews or inspections done and pulled no permits. The driveway he installed is pitched to drain onto my mother's property. From the high point of the driveway's width on Shir's property to the low point next to my mother's property line, there is a drop of approximately 19". I have photos to support this. It is my understanding that ordinances protect abutting property from such damage.

My second point is that the stagnant water is unhealthy and a breeding place for mosquitoes, mold, fungus etc.. Since the property at 978 no longer has trees, shrubs, flowers or a vegetable garden, there is no place for the water drain except onto my mother's property. This stagnant water is now seeping into her cellar, and we have to regularly sweep it out. This was never a problem until the parking lot was put in. During early Spring, the snow plowed up from the parking lot melts onto my mother's lot.

My third point is that the natural drainage system, a gully, can no longer do its job of draining both properties. It has been there since the early

1900's and acted as a natural drainage system. The extreme changes to the land at 978 Washington Avenue have overtaxed the gully, and you will see the impact of this in the photos.

My 4th and final point is that Mr. Shir has not been a good neighbor. He used intimidation and fear in trying to get my father to cut down a tree that is on our land and very close to the gully. My dad was 86 at the time and in failing health, yet Mr. Shir knocked on his door twice and told him he 'd better cut down the tree or he would be responsible if a limb fell on a car in his parking lot. He eventually sent a man to my parent's house telling him he would cut it down for a certain amount of money. This was very upsetting to my parents. I would have addressed it at the time, but my dad, being the gentle soul he was, did not want to make any problems. The tree is still standing.

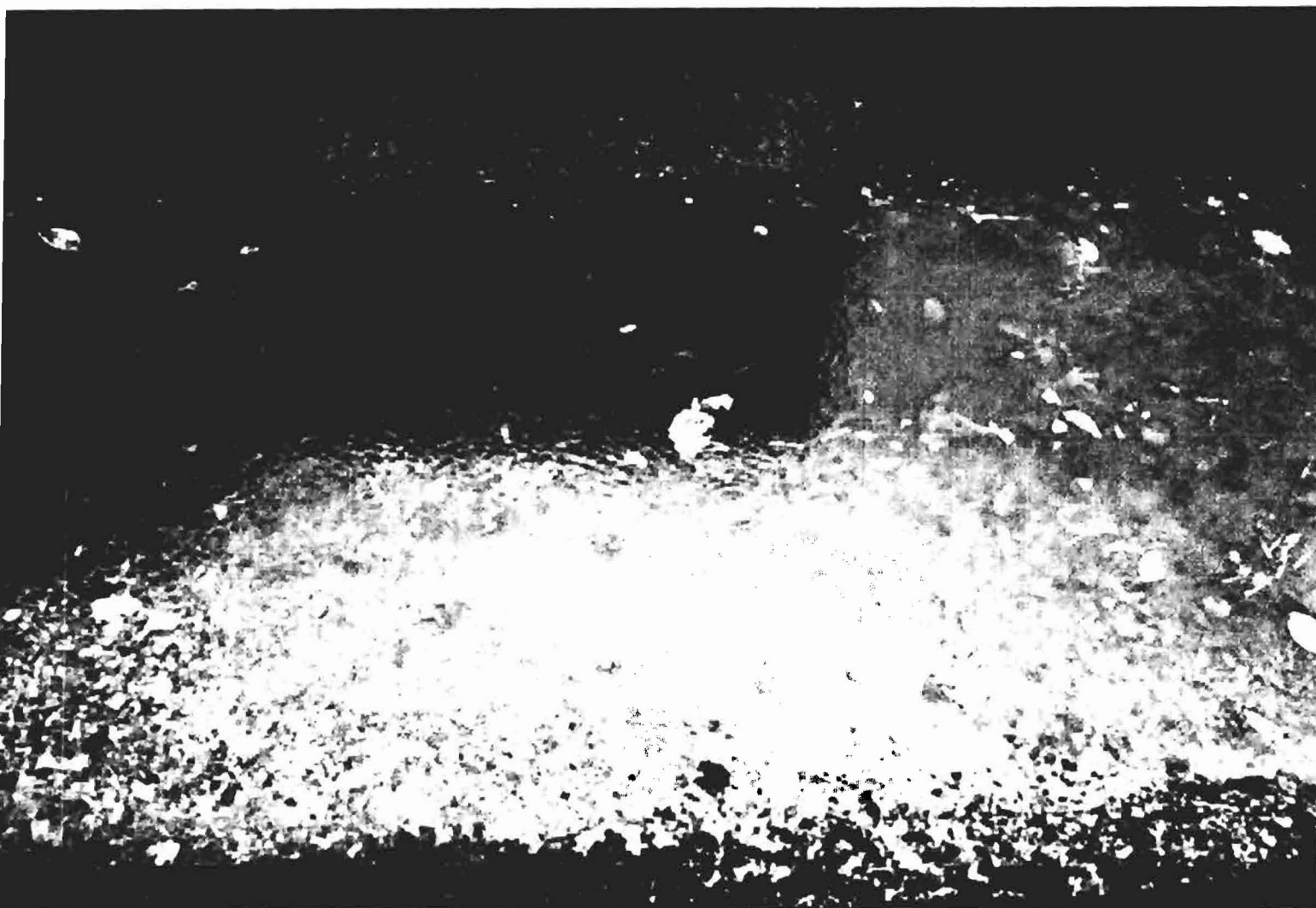
In closing, I respectfully ask the board to deny the request for a variance. If granted, it would set a dangerous precedent for other residential neighborhoods in Portland as well. I further ask, if it is in the board's domain, to require that Mr. Shir be made to comply with all of the local ordinances and remove illegally done work. He has operated with a substantial deviation from the city of Portland's policies and ordinances. I ask that the parking lot size be reduced, and the entire parking lot be re-graded so that it no longer pitches towards my mother's property. I also ask that the DEP take a look at the drainage problems and that Mr. Shir be made to correct it, so that my mother's property is no longer flooded on a regular basis. I further ask that an ordinance directed buffer zone be created along the parking lot border where it abuts my mother's property. My parents, and now just my mother, have suffered physical, monetary and emotional damage from Mr. Shir's actions. Thank you for giving me the opportunity to speak, and please review my photos, for I really do believe a picture is worth a thousands words.





Tree I'm
referring to -

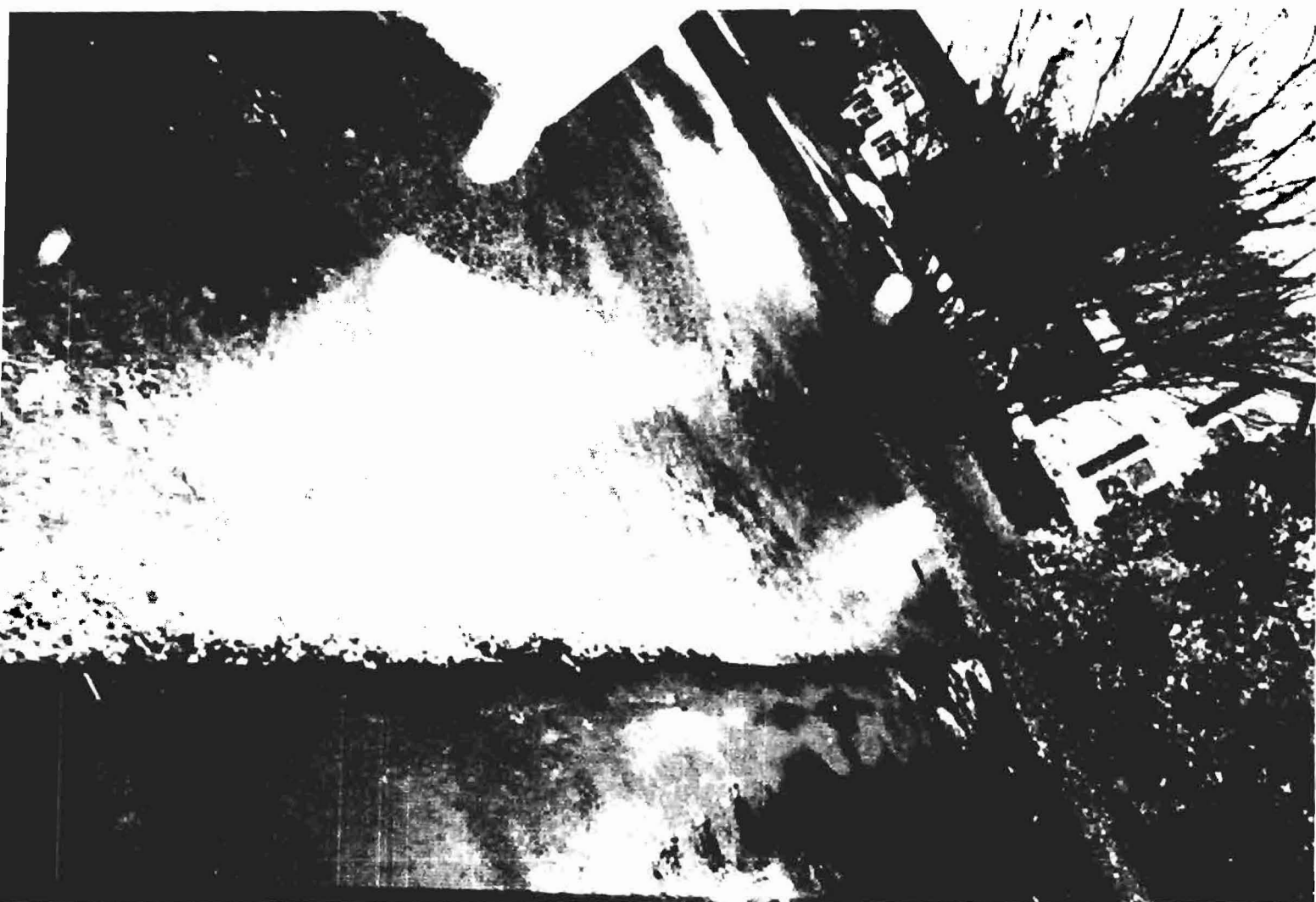


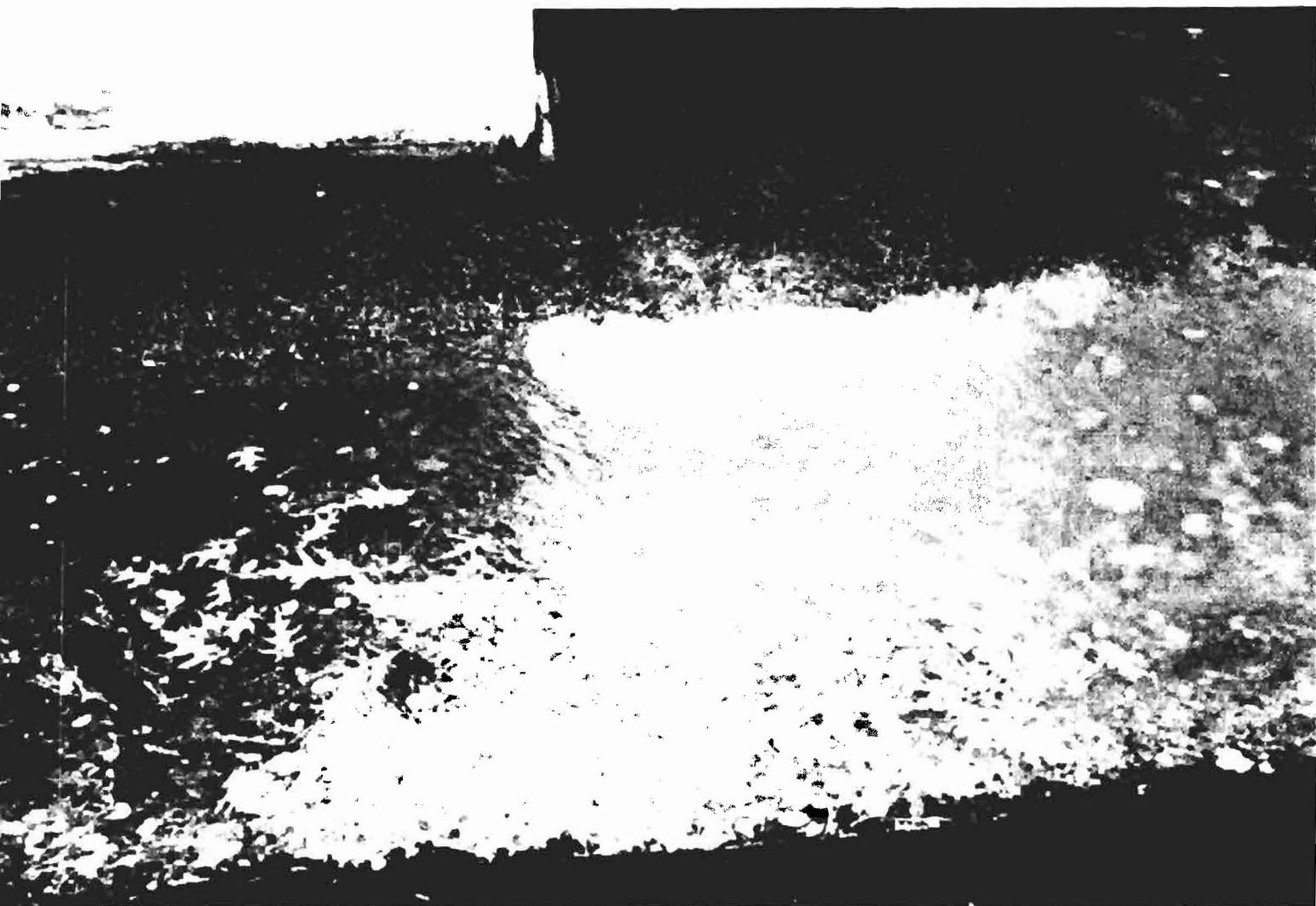


Mr. Rucotepi's property.















My mother's Back yard!





View from Mr. Toppi's
property cot
17 Fallbrook
Street.

Cars parked
From the
Mosque
Services.



My Mother's
Kitchen, Den
And pantry
Windows are
located along
this side.

