



City of Portland  
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  
2<sup>nd</sup> floor/Residential apartment

Subject Property Information:

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

Property Owner (if different):

Name Applicant  
Address N/A  
Telephone N/A Fax

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

1/1/1 2009

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

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

Yes the unique circumstance of the property is directly related to the minimum lot size for the proposed use and not related to the conditions in the neighborhood.

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:**

Yes the variance will not have a detrimental effect; the proposed use will actually improvement the site and have less traffic generating compared the commercial use (the TV repair shop).

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

The hardship is in no way caused by the applicant or current owner. This hardship is simply a function of the physical limitation of this residential zoned parcel.

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

The owner has researched other alternatives and no other feasible alternatives are available except a request of variance from the Zoning Board of Appeal.

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

There are no known natural environments that will be adversely affected by this proposal.

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:**

Yes, this use of 'place of worship' is permitted in the zone under conditional use; there are also existing 'place of worship' (Churches) that are in the immediate area.

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

Yes there will be a significant economic injury to the applicant due to the layout of the first floor layout. The organization will be run by a non-profit group and therefore it will be very expensive and difficult to covert this property to another residential unit. Currently the first floor unit layout is ideal for the proposed 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, or within a shoreland of flood hazard zone as defined in this article:**

This property is not located within a shoreland area or within a shoreland of flood hazard zone.

MAY 21 2010

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

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

June 23, 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 Board of Appeals meeting held on Thursday, June 4, 2009, the Board voted 5-0 to deny your request for the change of use from a commercial use to a place of worship on the first floor. The last meeting held on Thursday, June 18, 2009 the Board voted 6-0 to accept the findings of facts for your Practical Difficulty Variance Appeal.

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 is the decision letter for the findings of facts, 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

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## ZONING BOARD OF APPEALS

### ZONING BOARD APPEAL DECISION

**To:** City Clerk

**From:** Marge Schmuckal, Zoning Administrator

**Date:** June 22, 2009

**RE:** Action taken by the Zoning Board of Appeals on June 18, 2009.

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

**Member Absent:** None

#### 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 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. On June 18, 2009 the Board voted on the finding of facts as prepared by Mary Kahl, the Board's attorney in this matter. **The Board voted 6-0 to accept the findings of facts for the Practical Difficulty Variance Appeal. Sara Moppin recused herself.**

#### 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 was 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 was Robert Sanford, Jr. **The Board voted 7-0 to grant the Conditional Use Appeal for one year.**

#### Enclosure:

Agenda of June 18, 2009

Original Zoning Board Decision

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, MAINE

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## ZONING BOARD OF APPEALS

### **“Practical Difficulty” Variance Appeal**

#### **DECISION**

Date of public hearing: June 4, 2009

Date of decision: June 4, 2009

Name and address of applicant: Sadri Shir  
41 Ocean House Road  
Cape Elizabeth, ME 04107

Location of property under appeal: 978 Washington Avenue

#### **For the Record:**

#### **Names and addresses of witnesses (proponents, opponents and others):**

#### **Parties:**

##### **Applicant:**

**Shukria Wiar**, Portland, for the applicant.

Synopsis of testimony: There should never be more than 12 cars at the site; there will not be any weddings, funerals or other large gatherings. 1 acre is not necessary because they will be using the existing building. It is hard to find a 1-acre lot in Portland. The property has been vacant approximately 3 years. Converting to a residential use would be very difficult. Because of language differences, the new owner was not fully aware of the limitations on use of the property.

**Sakhi Khan**, Waterville, for the applicant.

Synopsis of testimony: The Muslim community in the Greater Portland area is small, the biggest crowd he's seen for prayers is 25 people. If the variance is not approved, the first floor will probably remain vacant. The first floor is mostly an open space, there are no shelves. It would require substantial renovations to be used for another purpose. There is no tax exemption as a place of worship.

**Saif Amini**, Waterville, for the applicant.

Synopsis of testimony: The use of the property for prayers is good for the community and for children. Parking available on site is more than they need, their parking could help the neighborhood.

### **City of Portland (Opponent):**

**Marge Semuckal**, City of Portland, opponent.

Synopsis of testimony: The R-5 zone allows a place of worship as a conditional use with the approval of the Planning Board. The property has two deficiencies in terms of compliance with the Zoning Ordinance: 1) lot size and 2) parking. A 1-acre lot is required; the property is .331 acres. Required parking is 40 spaces; the property has 20. Other options are available to the applicant; the lot could be divided into 2 residential lots, a lodging house could be created, or additional residential units could be created. There may be additional parking available at other businesses in the area.

**Gary Wood**, City of Portland, opponent.

Synopsis of testimony: Thanked the applicants for following the laws and the process, explained that the Board's duty is to follow the variance standards as established by the Legislature and adopted by the City Council.

**Danielle West-Chuhta**, City of Portland, opponent.

Synopsis of testimony: Applicants must meet all requirements of the Zoning Ordinance. To get a variance, applicants must meet all criteria of the relevant standard, practical difficulty for the lot size variance requested and undue hardship for parking variance requested. The applicant has not shown significant economic injury; there are other uses for the property.

### **Members of the public:**

#### **In favor:**

**Seth Berner**, Portland, in favor of the application. Wants the use to fit the character of the neighborhood. A 1-acre lot size requirement doesn't make sense. If lot size is to prevent excessive density, then why can the lot be divided into 2 residential lots?

**Malud Sharif**, in favor of the application. The Muslim community using the property is small; the parking lot as is (20 spaces) is more than they will need.

**Zachary Heiden**, MCLU, in favor of the application. This is a religious minority, with a small community. The use should be permitted.

**Richard Jordan**, Scarborough, in favor of the application. The TV repair shop that used to be in the building was open 7 days a week, from 9 a.m. until whenever the owner went home. He tried to sell the business for two years without success.

**Rachel Talbot Ross**, in favor of the application. She has been looking with this community for a couple of years to find property for a mosque this size. Religious minority communities do not fit I the Zoning Ordinance's requirements for a place of worship. She talked to the florist across the street, he might be willing to share parking. She has also left a message with Cheverus and has talked to nearby churches about sharing parking. The neighborhood has stated it supports this use. The community is very small, no more than 10-15 families, including children and elderly who don't have their own vehicles. She can't

imagine 66 people in this space, which is the number used to calculate that 40 parking spaces are needed.

**Mohammed Asima**, in favor of the application. The Muslim community is small – no more than 20-25 people come for worship. He’s never seen the parking lot full of cars. Not everyone who attends has a separate car.

**Ed Deramison**, in favor of the application. Supports the application.

**Opposed:**

**Robert Toffec**, 17 Fallbrook Street, opposes application. Is street abuts the property.

The property has been used as a mosque for a year. Fridays there are a minimum of 25 cars, it’s hard to get out of Fallbrook Street. This is not the right place for this use. Mr. Shir knew he needed a larger lot; he wanted to buy Mr. Toffee’s property.

**Antoinette Troiano Skilling**, daughter of resident at 970 Washington Avenue, opposes application. Her mother lives at 970 Washington Avenue, next door to the property. Mr. Shir made changes to the property that have adversely affected her mother’s enjoyment of her home. Mr. Shir wanted to buy part of their property. He had no permits to make the changes to his property. There are no longer trees, shrubs or other landscaping. Water from the parking lot runs onto her mother’s property.

**John R. Flaherty**, 609 Ocean Avenue, opposes application. There are between 19 and 25 cars on average at the site during a prayer service.

**Exhibits admitted (e.g. renderings, reports, etc.):**

Practical Difficulty Variance Application of Sadri Shir, dated May 4, 2009, received by City of Portland Planning and Development Department May 8, 2009 (15 pages)

Memorandum to Members of the Zoning Board of Appeals from Danielle P. West-Chuhta, Associate Corporation Counsel for the City of Portland, dated May 28, 2009 (7 page with 16 pages of attachments)

Letter dated June 4, 2009 from Marge Schmuckal, Zoning Administrator for the City of Portland (2 pages)

Letter to ZBA dated June 4, 2009 from Elizabeth W. Begin (1 page)

Photos submitted by the applicant: 2 large aerial maps, captioned “Vicinity of 978 Washington Avenue” and “978 Washington Avenue,” and 1 photo board with 6 photos of the building.

Set of photos submitted by Ms. Antoinette Troainao Skilling.

**Findings of Fact and Conclusions of Law:**

The applicant ("Shir") owns the property located at 978 Washington Avenue, also identified as City of Portland Assessor's Reference Chart 161 Block E Lot 3. The property is located in the R-5 zone. The lot size is 14,400 SF (.331 acres). The building was formerly used as a television repair shop on the first floor with a residential apartment on the second floor. Shir seeks to change the use of the first floor to a place of worship. A place of worship is a conditional use in the R-5 zone (Code of Ordinances Sec. 14-118). Shir applied to the City for approval of this change on February 27, 2009.

On April 13, 2009 the City denied the application "because it did not meet all of the zoning requirements for the R-5 zone." The two zoning requirements the application did not meet are 1) the 1 acre minimum lot size for a place of worship in the R-5 zone (Ordinance Sec. 14-120(1)(a)(5)), and 2) the minimum parking requirement of 40 parking spaces (Code of Ordinances Sec. 14-332(a) and (k)).

Shir is now seeking variances for these two ordinance requirements. Because the lot size requirements is dimensional, the Board of Appeals ("Board") heard and decided the application based on the practical difficulty standard, as permitted under Code of Ordinances Sec. 14-473(c)(3).

"Practical Difficulty" Variance standard pursuant to Portland City Code §14-473(c)(3):

1. The application is for a variance from dimensional standards of the zoning ordinance (lot area, lot coverage, frontage, or setback requirements).

Satisfied   X  

Not Satisfied       

Vote was 5-0.

Reasoning: The application is for a lot size variance, which is dimensional. The ZBA therefore heard and decided the request for the lot size variance under the practical difficulty standard pursuant to Portland City Code §14-473(c)(3).



2. Strict application of the provisions of the ordinance would create a practical difficulty, meaning it would both preclude a use of the property which is permitted in the zone in which it is located and also would result in significant economic injury to the applicant. "Significant economic injury" means the value of the property if the variance were denied would be substantially lower than its value if the variance were granted. To satisfy this standard, the applicant need not prove that denial of the variance would mean the practical loss of all beneficial use of the land.

Satisfied \_\_\_\_\_ Not Satisfied   X  

Vote was 2-3.

**Voting that this criterion was satisfied:**

**Peter Coyne.** Reasoning: The testimony regarding the difficulty in selling the property demonstrates that this element is met.

**Gordon Smith.** Reasoning: The inquiries regarding purchase of the property were for commercial uses, not permitted uses.

**Voting that this criterion was not satisfied:**

**William Getz.** Reasoning: The property has value for residential use, and could be subdivided.

**Jill Hunter.** Reasoning: There has been no testimony regarding the values of different uses. The proposed use doesn't really relate to an economic analysis. She is not persuaded that the value of the property would be less if the variance were denied than if it were granted.

**Phil Saucier.** Reasoning: This needs to be an objective test. "Significant economic injury" means the property is worth less. This has not been demonstrated by the applicant.

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

Satisfied \_\_\_\_\_ Not Satisfied   X  

Reason and supporting facts:

Vote was 0-5.

Reasoning: The lot size of the property is similar to others in the neighborhood. All concur.

4. 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.

Satisfied   X   Not Satisfied \_\_\_\_\_

Vote was 5-0.

Reasoning: While there was testimony from neighbors about problems in the neighborhood, any appropriate enforcement regarding these issues is outside the ZBA's jurisdiction and authority. The testimony did not relate to this variance criterion. There would be no change to the building; the character of the neighborhood would not be affected and there is no evidence of unreasonably detrimental effect on use or fair market value of neighboring properties. The applicant presented testimony that the use of the property would be in harmony with the residential neighborhood and would not adversely affect neighboring properties.

5. The practical difficulty is not the result of action taken by the applicant or a prior owner.

Satisfied \_\_\_\_\_ Not Satisfied   X  

Vote was 2-3 (Saucier, Hunter, Getz).

Reasoning: The applicant bought the property knowing that the zoning restrictions existed. Knowledge of restrictions in a zoning ordinance does not automatically preclude the granting of a variance based on failure to meet this criterion, but is a factual matter for the ZBA to decide. Board members voting "not satisfied" felt that in this case the applicant's knowledge of the lot size and parking requirements did mean that the need for a variance is the result of action taken by the applicant.

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

Satisfied   X                        Not Satisfied       

Vote was 3-2.

**Voting that this criterion was satisfied:**

**Peter Coyne.** Reasoning: A place of worship is permitted as a conditional use in the R-5 zone; without the variance the applicant have a place of worship on this property.

**William Getz.** Reasoning: Concurs with Mr. Coyne.

**Jill Hunter.** Reasoning: Concurs with Mr. Coyne ad Mr. Getz.

**Voting that this criterion was not satisfied:**

**Phil Saucier.** Reasoning: There are other uses for the property that do not require a variance, including a lodging house, subdivision of the property into two lots, and creating more residential units.

**Gordon Smith.** Reasoning: Concurs with Mr. Saucier.

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

Satisfied   X                        Not Satisfied       

Vote was 5-0.

Reasoning: The property is in a developed area of the City. The building will not be altered. There is o evidence or testimony demonstrating that the use as a place of worship will have any effect on the natural environment.

8. 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.

Satisfied   X  

Not Satisfied       

Vote was 5-0.

Reasoning: This is an objective standard based on the City's shoreland and flood hazard maps; applicant and the City concur that this standard has been met.

**Notes:**

Subsequent to the ZBA's decision on this variance application, the applicant voluntarily withdrew the application for a parking space variance under the undue hardship standard.

Vote to approve these findings and decision was 6-0. Board member Deborah Rutter, absent from the hearing, had reviewed the record of the hearing and participated. Board member Sara Moppin, absent from the hearing, abstained.

**Conclusion:** (check one)

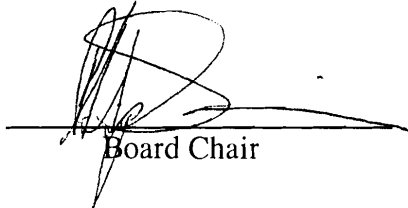
\_\_\_ Option 1: The Board finds that the standards described above (1 through 8) have been satisfied and therefore GRANTS the application.

\_\_\_ Option 2: The Board finds that while the standards described above (1 through 8) have been satisfied, certain additional conditions must be imposed to minimize adverse effects on other property in the neighborhood, and therefore GRANTS the application SUBJECT TO THE FOLLOWING CONDITIONS:

X Option 3: The Board finds that the standards described above (1 through 8) have NOT all been satisfied and therefore DENIES the application.

Vote: 5-0, for the reasons stated above.

Dated: June 18, 2009

  
Board Chair

members present: Philip Sawyer - Gordon Smith - Deborah Fetter -  
Julie Hunter - William Getz - Peter Coyne  
Sara Mappin

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

members absent: none

**APPEAL AGENDA**

meeting called to order 6:30 pm

The Board of Appeals will hold a public hearing on Thursday, June 18, 2009 at 6:30 p.m. on the second floor in room 209 at the Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following Appeals:

**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.

SARA MAPPIN  
6-0  
recused  
findings of fact accepted

**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.

Granted  
7-0  
or one year

**3. Other Business:**

4. Adjournment: 6:50 pm

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

### APPEAL AGENDA

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#### 3. Other Business:

#### 4. Adjournment:



*Strengthening a Remarkable City. Building a Community for Life • [www.portlandmaine.gov](http://www.portlandmaine.gov)*

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

TO: ZONING APPEALS CHAIR AND BOARD  
FROM: MARGE SCHMUCKAL, ZONING ADMINISTRATOR  
SUBJECT: 978 WASHINGTON AVENUE – 161-E-003 – R-5 ZONE  
DATE: MAY 28, 2009

On March 3, 2009 the Inspection Services Office received an application to change the first floor use of 978 Washington Avenue from a legal nonconforming use of a TV sales and service establishment to a place of worship assembly use. This use is allowable under Conditional Uses for approval by the Planning Board in the R-5 Zone. This use was first reviewed for dimensional and other zoning requirements under the R-5 Zone. The review indicated that the existing lot has 14,400 square feet of land area instead of the required minimum lot size of one acre (43,560 square feet) for a place of worship. Also a parking review showed that the proposed use requires 39 parking spaces for the entire first floor as a place of worship and one parking space for the second floor residential unit. This adds up to a total of 40 required parking spaces. It is further noted that the first floor is divided up into two spaces. This office has not received any information on a separate use for the rear room. If the front room is the only area of worship, then the parking requirements for that area would be 28 spaces plus the amount needed for the use of the rear room (360 square feet given) plus the one parking space for the second floor unit. This would result in a required parking of 29 spaces plus the amount for the rear room. The applicant is showing only 20 parking spaces instead of the 40/29 plus parking spaces required under the Land Use Zoning Ordinance.

To figure out maximum occupancy of the given floor areas, a review of the International Building Code (IBC) under Table 1004.1.2 states that assembly areas without fixed seats for standing spaces indicates 5 square feet floor area per occupant. Using the entire given first floor area of 1060 square feet, 212 people would be the maximum occupancy load. However, using the given 700 square feet of floor area as the main place of worship, it results in a maximum occupancy of 140 occupants. Then adding in the 360 square feet of floor area indicated on the submitted plans for the rear room and an assumption of accessory and storage areas (again, no specific use has been given this office), the same table indicates that 300 square feet of floor area would be required, which results in 1 extra occupant. This totals to a maximum occupancy load of the first floor to from 212 to 141 occupants. The applicant states on the submitted paperwork that there is a 45 person maximum occupancy load.

Any further information given for uses will reflect changes with any of the above calculations.



# City of Portland, Maine - Building or Use Permit Application

9 Congress Street, 04101 Tel: (207) 874-8703, Fax: (207) 874-8716

Permit No: 09-0161	Issue Date:	CBL: 161 E003001
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Location of Construction: 78 WASHINGTON AVE	Owner Name: SHIR SADRI	Owner Address: 41 OCEAN HOUSE RD	Phone: 207-228-5040
Business Name:	Contractor Name:	Contractor Address:	Phone:
Applicant/Buyer's Name	Phone:	Permit Type: Change of Use - Commercial	Zone: R-5

Current Use: Commercial- Television Repair Shop(1st Floor), 2nd Floor Residential Apartment	Proposed Use: Commercial- Change of Use, 1st Floor Place of Worship no Construction	Permit Fee: \$155.00	Cost of Work: \$0.00	CEO District: 4
Proposed Project Description: Change of Use, 1st Floor Place of Worship no Construction		FIRE DEPT: <input type="checkbox"/> Approved <input type="checkbox"/> Denied INSPECTION: Use Group: Type:		
		Signature: Signature: PEDESTRIAN ACTIVITIES DISTRICT (P.A.D.) Action: <input type="checkbox"/> Approved <input type="checkbox"/> Approved w/Conditions <input type="checkbox"/> Denied Signature: Date:		

Permit Taken By: [Signature]	Date Applied For: 03/03/2009	<b>Zoning Approval</b>		
This permit application does not preclude the Applicant(s) from meeting applicable State and Federal Rules.  Building permits do not include plumbing, septic or electrical work.  Building permits are void if work is not started within six (6) months of the date of issuance. False information may invalidate a building permit and stop all work..		Special Zone or Reviews <input type="checkbox"/> Shoreland <input type="checkbox"/> Wetland <input type="checkbox"/> Flood Zone <input type="checkbox"/> Subdivision <input type="checkbox"/> Site Plan Maj <input type="checkbox"/> Minor <input type="checkbox"/> MM <input type="checkbox"/> Date:	Zoning Appeal <input type="checkbox"/> Variance <input type="checkbox"/> Miscellaneous <input type="checkbox"/> Conditional Use <input type="checkbox"/> Interpretation <input type="checkbox"/> Approved <input type="checkbox"/> Denied Date:	Historic Preservation <input checked="" type="checkbox"/> Not in District or Landmark <input type="checkbox"/> Does Not Require Review <input type="checkbox"/> Requires Review <input type="checkbox"/> Approved <input type="checkbox"/> Approved w/Conditions <input type="checkbox"/> Denied Date:
		[Signatures and Initials]		

## CERTIFICATION

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

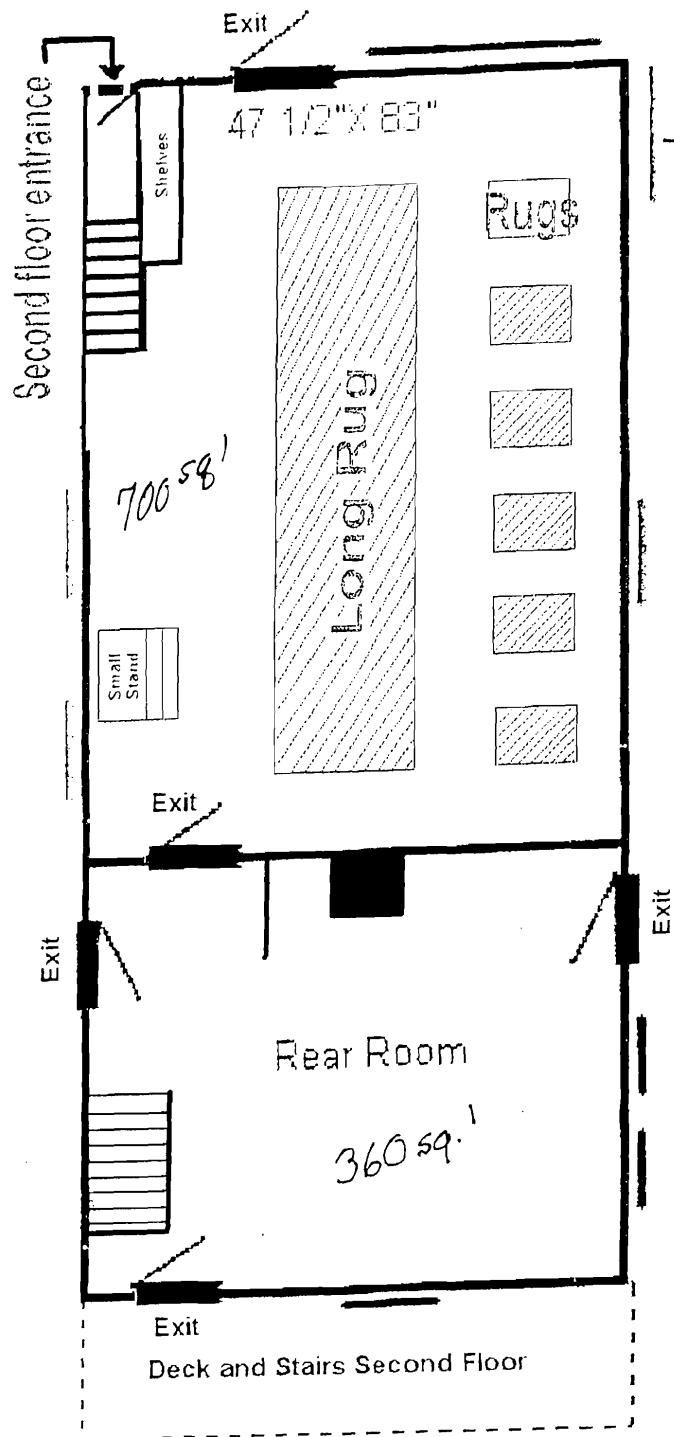
SIGNATURE OF APPLICANT	ADDRESS	DATE	PHONE
RESPONSIBLE PERSON IN CHARGE OF WORK, TITLE		DATE	PHONE

# Washington Avenue Apartments

Interior Furnishings

Proposed  
OCCUPANCY LOAD  
MAXIMUM 45 people

Refer to pictures  
for furnishings  
take 3/1/09



Sadri Shir  
Owner

Quality-One  
2/27/2009

**1003.3.4 Clear width.** Protruding objects shall not reduce the minimum clear width of accessible routes as required in Section 1104.

**1003.4 Floor surface.** Walking surfaces of the means of egress shall have a slip-resistant surface and be securely attached.

**1003.5 Elevation change.** Where changes in elevation of less than 12 inches (305 mm) exist in the means of egress, sloped surfaces shall be used. Where the slope is greater than one unit vertical in 20 units horizontal (5-percent slope), ramps complying with Section 1010 shall be used. Where the difference in elevation is 6 inches (152 mm) or less, the ramp shall be equipped with either handrails or floor finish materials that contrast with adjacent floor finish materials.

#### Exceptions:

1. A single step with a maximum riser height of 7 inches (178 mm) is permitted for buildings with occupancies in Groups F, H, R-2 and R-3 as applicable in Section 101.2, and Groups S and U at exterior doors not required to be accessible by Chapter 11.
2. A stair with a single riser or with two risers and a tread is permitted at locations not required to be accessible by Chapter 11, provided that the risers and treads comply with Section 1009.3, the minimum depth of the tread is 13 inches (330 mm) and at least one handrail complying with Section 1009.11 is provided within 30 inches (762 mm) of the centerline of the normal path of egress travel on the stair.
3. An aisle serving seating that has a difference in elevation less than 12 inches (305 mm) is permitted at locations not required to be accessible by Chapter 11, provided that the risers and treads comply with Section 1024.11 and the aisle is provided with a handrail complying with Section 1024.13.

Any change in elevation in a corridor serving nonambulatory persons in a Group I-2 occupancy shall be by means of a ramp or sloped walkway.

**1003.6 Means of egress continuity.** The path of egress travel along a means of egress shall not be interrupted by any building element other than a means of egress component as specified in this chapter. Obstructions shall not be placed in the required width of a means of egress except projections permitted by this chapter. The required capacity of a means of egress system shall not be diminished along the path of egress travel.

**1003.7 Elevators, escalators and moving walks.** Elevators, escalators and moving walks shall not be used as a component of a required means of egress from any other part of the building.

**Exception:** Elevators used as an accessible means of egress in accordance with Section 1007.4.

## SECTION 1004 OCCUPANT LOAD

**1004.1 Design occupant load.** In determining means of egress requirements, the number of occupants for whom means of egress facilities shall be provided shall be established by the largest number computed in accordance with Sections 1004.1.1 through 1004.1.3.

**1004.1.1 Actual number.** The actual number of occupants for whom each occupied space, floor or building is designed.

**1004.1.2 Number by Table 1004.1.2.** The number of occupants computed at the rate of one occupant per unit of area as prescribed in Table 1004.1.2.

TABLE 1004.1.2  
MAXIMUM FLOOR AREA ALLOWANCES PER OCCUPANT

OCCUPANCY	FLOOR AREA IN SQ. FT. PER OCCUPANT
Agricultural building	300 gross
Aircraft hangars	500 gross
Airport terminal	
Baggage claim	20 gross
Baggage handling	300 gross
Concourse	100 gross
Waiting areas	15 gross
Assembly	
Gaming floors (keno, slots, etc.)	11 gross
Assembly with fixed seats	See Section 1004.7
Assembly without fixed seats	
Concentrated (chairs only—not fixed)	7 net
Standing space	5 net
Unconcentrated (tables and chairs)	15 net
Bowling centers, allow 5 persons for each lane including 15 feet of runway, and for additional areas	7 net
Business areas	100 gross
Courtrooms—other than fixed seating areas	40 net
Dormitories	50 gross
Educational	
Classroom area	20 net
Shops and other vocational room areas	50 net
Exercise rooms	50 gross
H-5 Fabrication and manufacturing areas	200 gross
Industrial areas	100 gross
Institutional areas	
Inpatient treatment areas	240 gross
Outpatient areas	100 gross
Sleeping areas	120 gross
Kitchens, commercial	200 gross
Library	
Reading rooms	50 net
Stack area	100 gross
Locker rooms	50 gross
Mercantile	
Areas on other floors	60 gross
Basement and grade floor areas	30 gross
Storage, stock, shipping areas	300 gross
Parking garages	200 gross
Residential	200 gross
Skating rinks, swimming pools	
Rink and pool	50 gross
Decks	15 gross
Stages and platforms	15 net
Accessory storage areas, mechanical equipment room	300 gross
Warehouses	500 gross

For SI: 1 square foot = 0.0929 m<sup>2</sup>.

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

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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 of 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 hereto as Exhibit C.<sup>1</sup>

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.<sup>2</sup>

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

<sup>2</sup> 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

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.<sup>3</sup> See Waltman v. Town of Yarmouth, 592 A.2d 1079, 1080 (Me. 1991)

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<sup>3</sup> 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,

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) 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.



# General Building Permit Application

Blumberg No. **A**

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: <b>978 Washington Avenue</b>		
Total Square Footage of Proposed Structure/Area <b>N/A</b>	Square Footage of Lot <b>14418.3 sqft (or) 0.331 ACRES</b>	Number of Stories <b>2</b>
Tax Assessor's Chart, Block & Lot Chart# <b>161</b> Block# <b>E</b> Lot# <b>3</b> Book/Page <b>23454/156</b> Parcel ID # <b>161-E003001</b>	Applicant *must be owner, Lessee or Buyer* Name <b>Sadri Shir</b> Address <b>41 Ocean House Road ME.</b> City, State & Zip <b>Cape Elizabeth 04107</b>	Telephone: <b>(207) 228-5040</b>
Lessee/DBA (If Applicable) <b>N/A</b>	Owner (if different from Applicant) Name <b>N/A</b> Address <b>N/A</b> City, State & Zip <b>N/A</b>	Cost Of Work \$ <b>0</b> process <b>90.00</b> C of O Fee: \$ <b>75.00</b> Total Fee: \$ <b>105.00</b>
Current legal use (i.e. single family) <b>2nd floor rental unit</b> Number of Residential Units <b>1</b> If vacant, what was the previous use? <b>Television Repair Shop - 1st floor</b> Proposed Specific use: <b>Assembly Hall - Place of Gathering - place of worship per Jeanie's conversation w/ Richard Jordan</b> Is property part of a subdivision? <b>No</b> If yes, please name <b>N/A</b> Project description: <b>Change of Use / No other work or renovations.</b> <b>*separate site plan application for parking pavement*</b>		
Contractor's name: <b>N/A</b>		
Address: <b>N/A</b> with assistance by <b>831-8102</b>		
City, State & Zip: <b>N/A</b> <b>Richard Jordan</b> Telephone: <b>N/A</b>		
Who should we contact when the permit is ready: <b>Applicant</b> Telephone: <b>228-5040</b>		
Mailing address: <b>41 Ocean House Road Cape Elizabeth ME 04107</b>		

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](http://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.

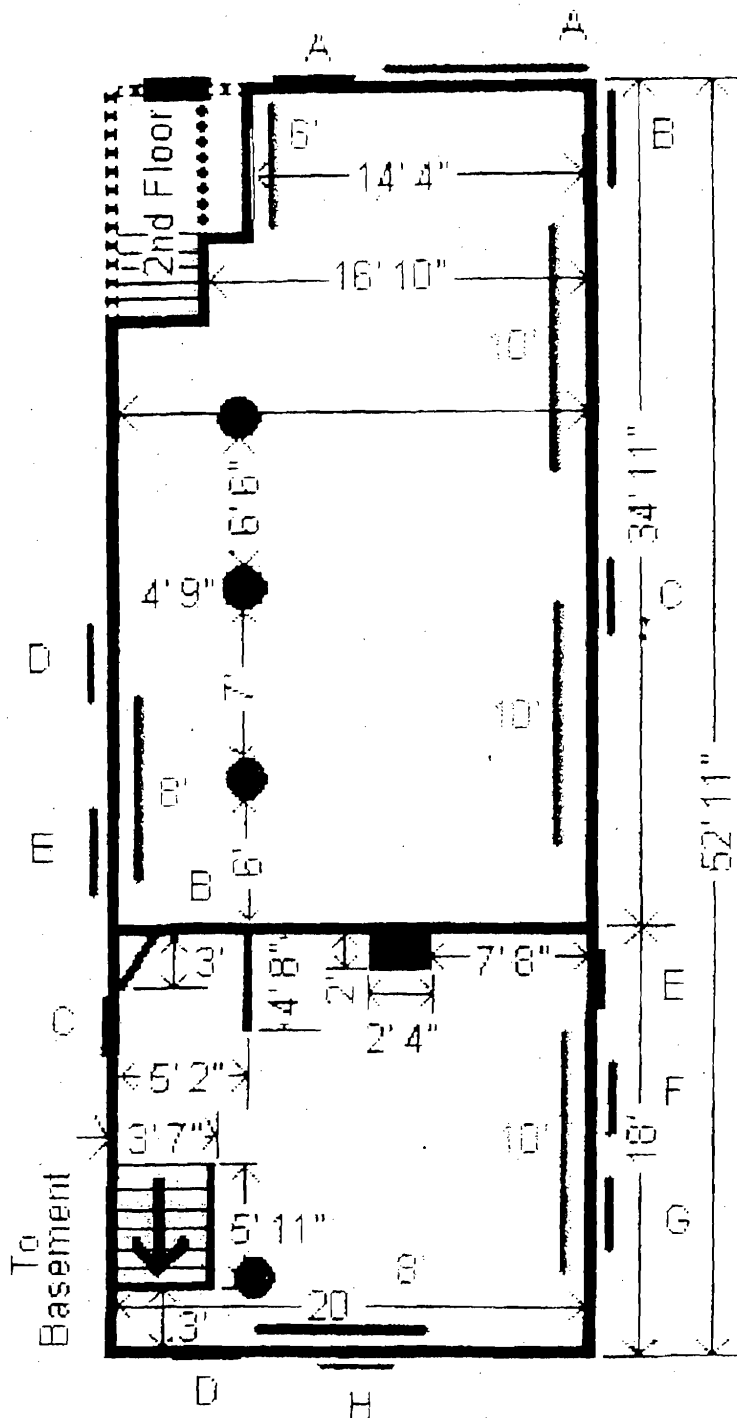
Signature: **Sadri Shir**Date: **2-27-09**

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



Washington Avenue Apartments  
Washington Avenue Front

Basic Floor Layout



Base Board Heaters

Chimney

Support Poles

RO  
Windows

- A 8' 10" X 5' 5" H
- B 3' 9" X 5' 6" H
- C 32" X 61" H
- D 30" X 58" H
- E 31" X 59" H
- F 29" X 56" H
- G 29" X 56" H
- H 36" X 56" H

41 spans.

$$1024.38 \div 25 =$$

$$128.92 \times 20 = 578.4$$

$$16.83 \times$$

$$20 \times$$

$$14.33 \times 6 = 85.98$$

$$20 \times 15 = 360$$

Doors

- A 47 1/2" X 83"
- B 32" X 79"
- C 31" X 79"
- D 32" X 79"
- E 31" X 79"

Sadr Shir Misc. Details

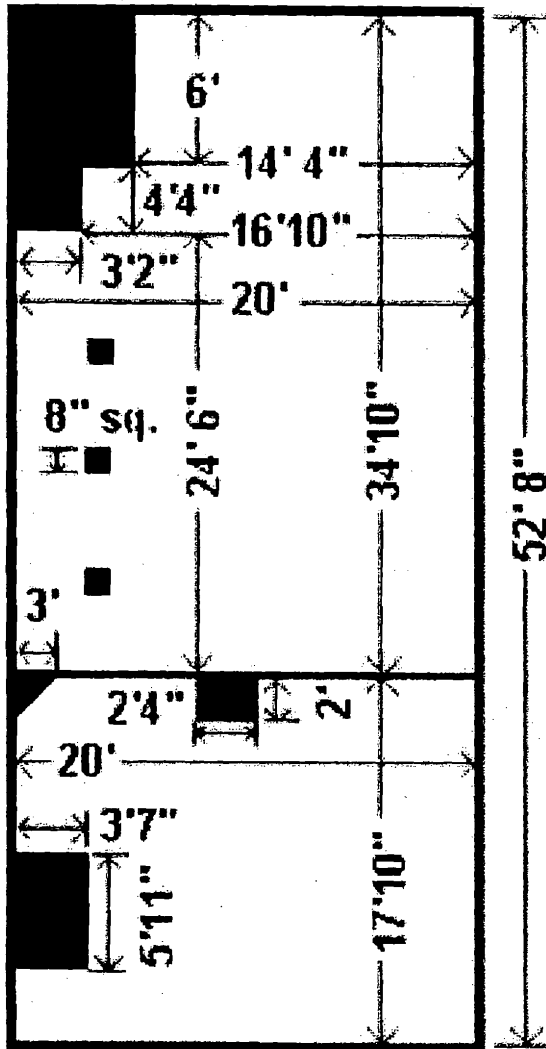
First Floor Ceiling 8' 3"

Stair Case Slope at Right of Entry

36" to 6' 10" on 4' Span / 3' 2" Width

Back Room Ceiling 7' 9"

**Sadri Shir**  
**978 Washington Avenue**  
**First Floor Layout**



**Total Floor Area = 1053.34 sq.ft.**

**Less:**

**Backroom:**

Chimney = 4.67 sq.ft.

Stairway = 21.2 sq.ft.

Wire way = 4.5 sq.ft.

**Frontroom:**

Stairway = 47.73 sq.ft.

Support Posts = 1.5 sq.ft.

(8" square 0.5 sq.ft. X 3)

**Total Obstruction to Floor Space = 79.6 sq.ft.**

**First Floor Area = 973.74 sq.ft.**

MAR 10 2009

$$20 \times 17.83 = 356.6 \text{ sf}$$

$$3.55 \times 5.92 = 21.19$$

$$335.41$$

$$24.5 \times 20 = 490$$

$$16.83 \times 4.33 = 72.87$$

$$6 \times 14.33 = 85.98$$

$$984.26 \text{ sf}$$

$$- 25$$

$$39.37 \text{ spans}$$

$$39 \text{ parking spaces}$$

**Q-1 3/9/2007**



Blumberg No. 5

6

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

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

April 13, 2009

COPY

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



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Penny St. Louis Littell- Director of Planning and Urban Development

Marge Schmuckal, Zoning Administrator

TO: ZONING APPEALS CHAIR AND BOARD  
FROM: MARGE SCHMUCKAL, ZONING ADMINISTRATOR  
SUBJECT: 978 WASHINGTON AVENUE - 161-E-003 - R-5 ZONE  
DATE: MAY 28, 2009

On March 3, 2009 the Inspection Services Office received an application to change the first floor use of 978 Washington Avenue from a legal nonconforming use of a TV sales and service establishment to a place of worship assembly use. This use is allowable under Conditional Uses for approval by the Planning Board in the R-5 Zone. This use was first reviewed for dimensional and other zoning requirements under the R-5 Zone. The review indicated that the existing lot has 14,400 square feet of land area instead of the required minimum lot size of one acre (43,560 square feet) for a place of worship. Also a parking review showed that the proposed use requires 39 parking spaces for the entire first floor as a place of worship and one parking space for the second floor residential unit. This adds up to a total of 40 required parking spaces. It is further noted that the first floor is divided up into two spaces. This office has not received any information on a separate use for the rear room. If the front room is the only area of worship, then the parking requirements for that area would be 28 spaces plus the amount needed for the use of the rear room (360 square feet given) plus the one parking space for the second floor unit. This would result in a required parking of 29 spaces plus the amount for the rear room. The applicant is showing only 20 parking spaces instead of the 40/29 plus parking spaces required under the Land Use Zoning Ordinance.

To figure out maximum occupancy of the given floor areas, a review of the International Building Code (IBC) under Table 1004.1.2 states that assembly areas without fixed seats for standing spaces indicates 5 square feet floor area per occupant. Using the entire given first floor area of 1060 square feet, 212 people would be the maximum occupancy load. However, using the given 700 square feet of floor area as the main place of worship, it results in a maximum occupancy of 140 occupants. Then adding in the 360 square feet of floor area indicated on the submitted plans for the rear room and an assumption of accessory and storage areas (again, no specific use has been given this office), the same table indicates that 300 square feet of floor area would be required, which results in 1 extra occupant. This totals to a maximum occupancy load of the first floor to from 212 to 141 occupants. The applicant states on the submitted paperwork that there is a 45 person maximum occupancy load.

Any further information given for uses will reflect changes with any of the above calculations.

D

- (e) Maximum lot coverage: Thirty (30) percent of lot area.
- (f) Minimum width of lot: Sixty (60) feet.
- (g) Maximum structure height:

Principal structure: Thirty-five (35) feet.

Accessory detached structure: Eighteen (18) feet.

(Ord. No. 535-84, 5-7-84; Ord. No. 82-88, § 4, 7-19-88; Ord. No. 235-91, § 9, 2-4-91; Ord. No. 33A-91, § 3, 4-17-91; Ord. No. 118-93, § 8, 10-18-93; Ord. No. 154-96, § 8, 12-16-96; Ord. No. 131-08/09, 12-15-08)

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\*Editor's note--Ord. No. 82-88, § 4, adopted July 19, 1988, amended § 14-105 to read as herein set out. See also the editor's note to Art. III of this chapter for additional provisions relative to Ord. No. 82-88.  
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#### Sec. 14-106. Other requirements.

[Other requirements are as follows:]

- (a) Offstreet parking: Off-street parking is required as provided in division 20 (off-street parking) of this article.
- (b) Shoreland and flood plain management regulations: Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.
- (c) Storage of vehicles: Only one (1) unregistered motor vehicle may be stored outside on the premises for a period not exceeding thirty (30) days.

(Ord. No. 535-84, 5-7-84; Ord. No. 15-92, § 8, 6-15-92)

- Sec. 14-107. Reserved.
- Sec. 14-108. Reserved.
- Sec. 14-109. Reserved.
- Sec. 14-110. Reserved.
- Sec. 14-111. Reserved.

Sec. 14-112. Reserved.  
Sec. 14-113. Reserved.  
Sec. 14-114. Reserved.  
Sec. 14-115. Reserved.

DIVISION 6. R-5 RESIDENTIAL ZONE\*

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\*Editor's note--Ord. No. 536-84, adopted May 7, 1984, repealed former Div. 6, §§ 14-116--14-119, and enacted in lieu thereof a new Div. 7, §§ 14-116--14-121. However, in order to avoid duplication of subsequent division numbers and in consultation with the city, the provisions have been retained as Div. 6. Sections 14-116--14-119 were formerly derived from Code 1968, § 602.5.A--D, and Ord. Nos. 207-72, 499-74, 193-82, 92-83, 422-83.  
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Sec. 14-116. Purpose.

The purpose of the R-5 residential zone is:

To 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; and to provide for planned residential unit development on substantially sized parcels. Such PRUD development shall respond to the physical qualities of a site and complement the scale, character and style of the surrounding neighborhood.

(Ord. No. 536-84, 5-7-84; Ord. No. 83-88, § 1, 7-19-88)

-----  
\*Editor's note--Ord. No. 83-88, § 1, adopted July 19, 1988, amended § 14-116 to read as herein set out. See also the editor's note to Art. III of this chapter for additional provisions relative to Ord. No. 83-88.  
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Sec. 14-117. Permitted uses.

The following uses are permitted in the R-5 residential zone:

(a) Residential:

1. Single- and two-family dwellings; except that development of two (2) or more two-family dwellings on contiguous lots within any two-year period shall

entertainment overlay zone that operates between 1:00 a.m. and 4:00 a.m., following a written recommendation from the Portland police department that such conditions are necessary.

(b) The clerk's decision may be appealed to the city manager pursuant to section 15-9 of this code.

(c) Nothing in this section shall be construed to limit the clerk's authority in chapter 15 to deny, suspend or revoke any license pursuant to the standards and process in that chapter.  
(Ord. No. 164-06/07, 4-4-07)

## DIVISION 20. OFF-STREET PARKING

### Sec. 14-331. Defined.

Off-street parking, either by means of open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical and Design Standards and Guidelines, as hereafter amended, in addition to being a permitted use in certain zones, shall be considered as an accessory use when required or provided to serve conforming uses in any zone.

(Code 1968, § 602.14.A; Ord. No. 272-77, 5-16-77; Ord. No. 389-89, § 1, 4-3-89)

**Cross reference(s)**—Definitions and rules of construction generally, § 1-2.

### Sec. 14-332. Uses requiring off-street parking.

In all zones where off-street parking is required, the following minimum off-street parking requirements shall be provided and maintained in the case of new construction, alterations which increase the number of units, and changes of use:

#### (a) Residential structures:

1. For new construction, two, (2) parking spaces for each dwelling unit, plus one (1) additional parking space for every six (6) units or fraction thereof.
2. For alterations or changes of use in existing structures, which create new or additional dwelling units in such structures, and for accessory units pursuant to §§14-68,78,88, one (1) additional parking spaces for each such unit. Existing parking spaces shall not be used to meet the parking requirements of this paragraph, unless the existing parking spaces exceed one (1) space for each dwelling unit.

3. For residential development on the peninsula (area defined as southerly of I-295).

- a. One (1) space per unit;
- b. The required parking for multi-unit residential buildings may be partially met through provision of shared-use vehicles, which are vehicles owned and maintained by the owner/manager of the building and available for use on a fee basis to the residents of the building. One shared use vehicle shall be deemed to satisfy eight (8) required car spaces, but in no case shall more than 50% of the parking requirement be satisfied by shared vehicle use.
- c. The planning board may establish a parking requirement that is less than the normally required number of spaces upon a finding of unique conditions that result in a lesser parking demand, such as housing for persons who cannot drive, housing that participates in a travel demand management program, availability of transit, or housing which includes permanent restrictions on automobile usage, and which is permanently restricted from utilizing resident on-street parking stickers.

(b) Motel: One (1) parking space for each sleeping room.



- (c) *Hotels*: One (1) parking space for each four (4) guest rooms.
- (d) *Schools providing instruction for students up to and including those fifteen (15) years of age*: One (1) parking space for each room used for purposes of instruction.
- (e) *Schools providing instruction for students sixteen (16) years of age and over*: One (1) parking space for each ten (10) seats or major fraction thereof, used for purposes of instruction; if no fixed seats, one (1) parking space for each one hundred (100) square feet or major fraction thereof used for purposes of instruction.
- (f) *Hospitals*: One (1) parking space for each five hundred (500) square feet or major fraction thereof, of floor area, exclusive of cellar.
- (g) *Auditoriums, theaters, assembly halls, funeral homes*: One (1) parking space for each five (5) seats or for each one hundred (100) square feet, or major fraction thereof, of assemblage space if no fixed seats.
- (h) *Retail stores*: One (1) parking space for each two hundred (200) square feet of first floor area in excess of two thousand (2,000) square feet not used for bulk storage and one (1) parking space for each seven hundred (700) square feet, or major fraction thereof, for each floor above the first floor not used for bulk storage.
- (i) *Restaurants or establishments constructed and intended for the dispensing of food and drink as the principal activity*: One (1) parking space for each one hundred fifty (150) square feet, or major fraction thereof, of floor area not used for bulk storage or food preparation.
- (j) *Offices; professional and public buildings*: One (1) parking space for each four hundred (400) square feet, or major fraction thereof, of floor area exclusive of cellar not used for bulk storage; except that in the B-2 and B-2b zones one (1) parking space for each three hundred and thirty four (334) square feet or major fraction thereof, of floor area exclusive of cellar not used for bulk

storage shall be required.

- (k) *Church and accessory uses located on same or contiguous lots:* One (1) parking space for each five (5) fixed seats; or if no fixed seats, one (1) parking space for each twenty-five (25) square feet, or major fraction thereof, of area in sanctuary or principal place of assemblage for worship in the church.
- (l) *For that part of every business, manufacturing, and industrial building not catering to retail trade and with floor area over three thousand (3,000) square feet:* One (1) parking space for each one thousand (1,000) square feet of floor area, or major fraction thereof.
- (m) *Beds:* One (1) parking space for each eight (8) beds, or major fraction thereof.
- (n) *Longterm, extended care and intermediate care facilities:* One (1) parking space for each five (5) beds, or major fraction thereof, plus one (1) parking space per each employee normally present during one (1) weekday morning shift.
- (o) *Lodging houses:* One (1) parking space for each five (5) rooming units, except in the R-5 zone; in the R-5 zone, one (1) parking space for every two (2) rooming units.
- (p) *Sheltered care group homes and emergency shelters:* One (1) parking space for every two (2) employees.
- (q) *Congregate care facilities:* One (1) parking space for every three (3) living units.
- (r) *Special needs independent living units:* One (1) parking space per every four (4) living units, plus one (1) parking space for each staff member, if any, normally present at any one time.
- (s) *Bed and breakfast:*
  - 1. *Except in the I-B zone:* One (1) parking space for each two (2) guest rooms or fraction thereof for the first four (4) guest rooms; one (1) parking

space for each additional guest room in excess of four (4).

2. In the I-B zone: No off-street parking required.

(t) [Exception:] Notwithstanding the preceding provisions of this section, the parking requirement for any new structure in excess of fifty thousand (50,000) square feet shall be as established by the Planning Board pursuant to section 14-526(a)(2).

(u) Exception for historic structures. No parking in excess of that existing on or servicing the lot as of March 15, 1999 shall be required for any structure under Article IX of this Chapter, as a contributing structure in a local or National Register historical district, or as a locally designated or National Register landmark building; however, parking may not be decreased from that existing on or servicing the lot on March 15, 1999 except to the extent necessary to meet the requirements of the Americans with Disabilities Act.

(v) Private clubs: One (1) parking space for each one hundred fifty (150) square feet, or major fraction thereof, of floor area.

(w) Community Centers: One (1) parking space for each 150 square feet, or major fraction thereof, of floor area, except for community centers which serve primarily clientele from the surrounding neighborhood, the parking requirement shall be one (1) parking space per 1,000 square feet, or major fraction thereof, of floor area.

(Code 1968, § 602.14.B; Ord. No. 268-77, 5-16-77; Ord. No. 431-82, § 2, 2-22-82; Ord. No. 575-86, §§ 1, 2, 5-19-86; Ord. No. 65-87, 11-2-87; Ord. No. 230-90, § 2, 3-5-90; Ord. No. 33-91, § 14, 1-23-91; Ord. No. 243-91, § 1, 3-11-91; Ord. No. 33A-91, § 8, 4-17-91; Ord. No. 125-97, § 10, 3-3-97; Ord. No. 232, §4, 3-15-99; Ord. No. 94-99, 11-15-99; Ord. No. 77-02/03, § 1, 10-21-02; Ord. No. 199-04/05, 4-4-05; Ord. No. 84-08/09, 10-20-08)

#### **Sec. 14-332.1. Uses requiring off-street bicycle parking.**

In all zones where off-street motor vehicle parking is required, minimum off-street bicycle parking requirements shall be provided and maintained in the case of new construction, alterations and changes of use as specified in Section 14-526(a)(2) (Site Plan Standards).

(Ord. NO. 134-07/08, 2-4-08)

Supplement 2008-4

**Sec. 14-333. To be located on lot with principal use in residential zones; exceptions.**

Required off-street parking in all residential zones and accessory off-street parking in R-1 through R-5 zones shall be located on the same lot with the principal building or use, except that the Board of Appeals may permit such off-street parking to be located at a distance of not more than three hundred (300) feet from the principal building or use, measured along lines of public access where it cannot reasonably be provided on the same lot if the premises to be used for parking are held under the same ownership or lease as the building or use served and if said premises are located in the same or a less restricted zone as the building or use served. Evidence of such control, either deed or lease, shall be required. The Planning Board may be substituted for the Board of Appeals only where an applicant is otherwise before the Planning Board for site plan approval.

Whenever any exception to the parking requirements under this section has been finally denied on its merits by either the Zoning Board of Appeals or the Planning Board, a second request for an exception seeking essentially the same relief, whether or not in the same form or on the same theory, shall not be brought before either body within one (1) year of such denial unless, in the opinion of the board before which it was initially brought, substantial new evidence is available or a mistake of law or fact significantly affected the prior denial.  
(Code 1968, § 602.14.C; Ord. No. 94-99, 11-15-99)

**Sec. 14-334. To be located on lot with principal use in nonresidential zones; exceptions.**

Required off-street parking in all nonresidential zones shall be located on the same lot with the principal building or use, or within one hundred (100) feet measured along lines of public access, except that where off-street parking cannot be provided within these limits, the Board of Appeals may permit such off-street parking to be located a reasonable distance from the principal building or use measured along lines of public

grant or deny applications for variances from the terms of this article;

- (c) Subject to the provisions of section 14-474, to hear and grant or deny applications for conditional uses, as specified in this article;

- (d) To initiate changes and amendments to this article.

(Code 1968, § 602.24.A; Ord. No. 437-74, 7-1-74; Ord. No. 354-85, § 5, 1-7-85)

#### **Sec. 14-472. Appeals.**

(a) *Authority.* The board of appeals shall hear and decide appeals from and review orders, decisions, determinations or interpretations or the failure to act of the building authority.

- (b) *Procedure:*

- (1) *Notice of appeal.* An appeal may be taken to the board of appeals by any person affected by a decision of the building authority. Such appeal shall be taken within thirty (30) days of the action complained of by filing with the building authority a notice of appeal specifying the grounds thereof. A payment of a nonrefundable filing fee, as established from time to time by the city council to cover administrative costs and costs of hearing, shall accompany notice of appeal. The building authority shall forthwith transmit to the board of appeals all of the papers constituting the record upon which the action appealed from was taken.

- (2) *Public hearing.* A public hearing shall be set, advertised and conducted by the board of appeals in accordance with article VI of this chapter.

- (3) *Action by the board of appeals.* Within thirty (30) days following the close of the public hearing, the board of appeals shall render a decision on the appeal in the manner and form specified in article VI of this chapter. The failure of the board to act within thirty (30) days shall be deemed an approval of the appeal unless mutually extended in writing by the appellant and the board.

~~Within five (5) days of such decision or failure to act notice thereof shall be mailed by the secretary to each~~

party.

(4) *Right to grant variance in deciding appeals.* In any case where the notice is accompanied by an application for variance in accordance with section 14-473(b)(1), the board of appeals shall have the authority to grant, as part of the relief, a variance, but only in strict compliance with each provision of section 14-473 hereof.

(5) *Conditions and limitations on rights granted by appeal.* Any right granted by the board of appeals on appeal shall be subject to the same conditions and limitations as if secured without the necessity of an appeal.

(Code 1968, § 602.24.B; Ord. No. 437-74, 7-1-74)

#### **Sec. 14-473. Variances.**

(a) *Authority.* Except as otherwise expressly provided in subsection (c)(3), the board of appeals may authorize variances from the provisions of this article as meet the requirements of this division including but not limited to use variance, dwelling unit conversion, space and bulk such as lot size, density and side yard, parking, loading and signs.

(b) *Procedure:*

(1) *Application.* Application for a variance shall be submitted to the building authority. A payment of a nonrefundable application fee, as established from time to time by the city council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form as prescribed by the building authority and contain at least the following information and documentation:

- a. The name and address of the applicant and his or her interest in the subject property;
- b. The name and address of the owner, if different from the applicant;
- c. The address or location of the subject property;
- d. The present use and zoning classification of the

subject property;

e. Where the site plan approval is required by article V of this chapter, a preliminary or final site plan as defined by article V of this chapter;

f. The relief sought from the board of appeals.

(2) *Public hearing.* A public hearing shall be set, advertised and conducted by the board of appeals in accordance with article VI of this chapter.

(3) *Action by board of appeals.* Within thirty (30) days following the close of the public hearing, the board of appeals shall render its decision granting or denying the variance, in the manner and form specified by article VI of this chapter. The failure of the board to act within thirty (30) days shall be deemed an approval of the variance unless mutually extended in writing by the applicant and the board. Within seven (7) days of such decision or the expiration of such period, the secretary shall mail notice of such decision or failure to act to the applicant.

(c) *Conditions for variances:*

(1) *Undue hardship required; defined.* Except as provided in subsection (2) below, a variance may be granted by the board only where strict application of the ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. The words "undue hardship" as used in this subsection mean:

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.

- (2) *Disability variance:* Notwithstanding the provisions of subsection (c)(1) of this section, the board may grant a variance to a property owner for the purpose of making that property accessible to a person with a disability who is living on the property. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the property by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives on the property. For the purpose of this subsection, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A. Section 4553.

- (3) *Practical difficulty variance:*

a. 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 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.
- b. The following words have the meanings set forth below:
1. *Dimensional standards*: Those provisions of this article which relate to lot area, lot coverage, frontage, and setback requirements.
  2. *Practical difficulty*: A case where strict application of the dimensional standards of the ordinance to the property for which a variance is sought would both preclude a use of the property which is permitted in the zone in which it is located and also would result in significant economic injury to the applicant.
  3. *Significant economic injury*: The value of the property if the variance were denied would be substantially lower than its value if the variance were granted. To satisfy this standard, the applicant need not prove that denial of the variance would mean the practical loss of all beneficial use of the land.
- c. Except as modified above, the other provisions of section 14-473 will apply to practical difficulty variances, including, but not limited to, the provisions of section 14-473(b)(2) (public hearing), and section 14-473(d) (specified variances prohibited).
- d. A practical difficulty variance may not be used to grant relief from the provisions of section 14-449 (land use standards), to increase either volume or floor area, nor to permit the location of a structure, including, but not limited to, single-component manufactured homes, to be situated on a lot in a way which is contrary to the provisions of this article.

(4) *Specified variances prohibited:*

- a. No use permitted in medium and high density residential districts shall be permitted in

low-density residential districts. No use permitted in business districts shall be permitted in any residential district. No use permitted in industrial districts shall be permitted in any business or residential district. No use permitted in residential districts shall be permitted in any industrial district. The general use categories are listed below:

1. Low-density residential: IR-1, IR-2, IR-3, R-1, R-2, R-3.
2. Medium- and high-density residential: R-4, R-5, R-6.
3. Business: R-P, B-1, B-2, B-3, A-B, B-4, B-5, I-B.
4. Industrial: I-L, I-Lb, I-M, I-Ma, I-Mb, I-H, I-Hb.

- b. No variance shall be granted which would permit the creation of a lot or parcel that cannot be developed in compliance with the zoning, subdivision and other regulations applicable thereto.
- c. No variance shall be granted which would result in a use or development of the lot or parcel in question which would not be in harmony with the general purpose and intent of this article or the land development plan of the city; which would be materially detrimental to the public welfare or materially injurious to the enjoyment, use or development of property or improvement 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, increase the danger of flood or fire, or endanger the public safety.
- d. No variance shall be granted which would be greater than the minimum variance necessary to relieve the

undue hardship or the hardship of the applicant.

- e. Except for appeals concerning nonconforming dwelling units in existence and use prior to April 18, 1984, no variance shall be granted which would permit the alteration of a structure to accommodate any additional dwelling unit as a conditional use without meeting the requirements which would otherwise be a condition precedent to such conditional use treatment.
- f. No variance shall be granted which would permit the alteration of an existing residential structure in an R-4 or an R-5 zone to accommodate more than three (3) dwelling units. No such variance shall be granted unless:
  - 1. No additional unit shall have less than six hundred (600) square feet of floor area, exclusive of common hallways and storage in basement and attic;
  - 2. No open outside stairways or fire escapes above the ground floor shall be or have been constructed in the immediately preceding five (5) years;
  - 3. A lower level dwelling unit shall have a minimum of one-half of its floor-to-ceiling height above the average adjoining ground level;
  - 4. No existing dwelling unit shall be decreased to less than one thousand (1,000) square feet of floor area;
  - 5. The building shall have been in existence prior to January 1, 1984;
  - 6. A minimum of nine thousand (9,000) square feet of land area shall be required;
  - 7. A minimum of four (4) on-site parking spaces shall be required;

8. A minimum of seventy-five (75) feet of street frontage shall be required; provided, further, before a building permit may be issued, site plan approval under article V of this chapter shall be required with the following additional review standards:

(i) Any addition or exterior alterations such as facade materials, building form and roof pitch shall be designed to be compatible with the architectural style of the structure;

(ii) The scale and surface area of parking, driveways, and paved areas shall be arranged and landscaped to be compatible in size and scale with neighboring properties in the area and to properly screen vehicles from adjacent properties and streets;

provided, further, that no variance shall be granted with respect to any of the preceding additional requirements.

g. No variance shall be granted from the minimum lot sizes set forth in section 14-433 for lots in the IR-1, IR-2 and I-B zones.

(d) *Conditions on variances; variances less than requested.* Reasonable conditions and safeguards relating to construction, character, location, landscaping, screening and other matters may be imposed upon the premises benefited by a variance as considered necessary to prevent injurious effects upon other property and improvements in the vicinity or upon public facilities and services. Such conditions shall be expressly set forth in the resolution granting the variance and in the notice informing the applicant thereof. Violation of such conditions and safeguards shall be a violation of this article. A variance less than or different from that requested may be granted when the record supports the applicant's right to some relief but not to the relief requested.

(e) *Limitations on variances.* No variance permitting the erection or alteration of a building shall be valid for a period longer than six (6) months, or such other time as may be fixed at the time granted not to exceed two (2) years, unless a building permit for such erection or alteration is issued and construction is actually begun within that period and is thereafter diligently pursued to completion. One (1) or more extensions of said expiration dates may be granted if the facts constituting the basis of the decision have not materially changed and the two-year period is not exceeded thereby. No variance relating to the establishment or maintenance of a use not involving a building or structure shall be valid for a period longer than six (6) months, or such other time as may be fixed at the time granted not to exceed two (2) years, unless an occupancy permit is issued and a use commenced within such period; provided, however, that one (1) or more extensions of said time may be granted if the facts constituting the basis of the decision have not materially changed, and the two-year period is not exceeded thereby.

(f) *Recording of variances.* No variance shall be valid unless, within thirty (30) days of final approval of the variance, a certificate describing the variance has been recorded by the applicant for the variance in the registry of deeds as required by 30 M.R.S.A. Section 4963.

(Code 1968, § 602.24.C; Ord. No. 437-74, 7-1-74; Ord. No. 467-83, § 1, 4-20-83; Ord. No. 563-84, 5-7-84; Ord. No. 357-84, § 1, 12-17-84; Ord. No. 354-85, § 6, 1-7-85; Ord. No. 40-85, § 1, 7-15-85; Ord. No. 67-87, § 5, 11-2-87; Ord. No. 93-88, 7-19-88; Ord. No. 167-89, 12-11-89; Ord. No. 324-92, 4-22-92; Ord. No. 164-97, § 13, 1-6-97; Ord. No. 208-98, §§ 1, 2, 2-2-98; Ord. No. 253-05/06; 7/17/06)

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**\*Editor's note--**Ord. No. 93-88, adopted July 19, 1988, amended § 14-473 by adding subsection (f) to read as herein set out. See also the editor's note to Art. III of this chapter for additional provisions relative to Ord. No. 93-88.  
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#### **Sec. 14-474. Conditional uses.**

(a) *Authority.* The board of appeals may, subject to the procedures, standards and limitations set out in this section, approve the issuance of a conditional use permit authorizing development of conditional uses listed in this article.

(b) *Procedure:*

(1) *Application.* Applications for conditional use permits

shall be submitted to the building authority. A nonrefundable application fee, as established from time to time by the city council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form and shall contain such information and documentation as shall be prescribed from time to time by the building authority but shall in all instances contain at least the following information and documentation:

- a. The applicant's name and address and his or her interest in the subject property;
- b. The owner's name and address if different than the applicant;
- c. The address, or chart, block and lot number as shown in the records of the office of the assessor of the subject property;
- d. The zoning classification and present use of the subject property;
- e. The particular provision of this article authorizing the proposed conditional use;
- f. A general description of the proposed conditional use;
- g. Where site plan approval is required by article V of this chapter, a preliminary or final site plan as defined by article V of this chapter.

- (2) *Public hearing.* A public hearing shall be set, advertised and conducted by the board of appeals in accordance with article VI of this chapter.
- (3) *Action by the board of appeals.* Within thirty (30) days following the close of the public hearing, the board of appeals shall render its decision, in a manner and form specified by article VI of this chapter, granting the application for a conditional use permit, granting it subject to conditions as specified in subsection (d), or denying it. The failure of the board to act within thirty

May 15, 2009

Portland Zoning Board of Appeals  
398 Congress Street  
Portland, ME 04102

MAY 21 2009

Re: 978 Washington Avenue- Practical Difficulty Variance  
CBL: 161 E1001

To the members of the ZBA,

Please consider my application for an appeal from Section 14-120 (a) (1) (5) that state for any church or place of worship, one (1) acre of land is required. Currently the lot size is 14,418 with an existing building on it. The building has a residential use on the second floor and a commercial use (a television repair shop) on the first floor. Since the repair shop closed down a little over a year ago, the first floor has been vacant. It has been difficult to replace the repair shop with similar use retail and therefore the grandfathering has been lost.

This property had been on the market for over a year and half before the current owner bought it. It was in poor shape and needed extensive amount of money to be put into it for redevelopment (i.e. change of use, improvements on site and as well in the building). There have been some improvements to the building as well as to the site; but to convert the first floor to another residential unit it very expensive. The current layout of the first floor is compatible with the proposed use; the layout will not need to be changed and/or altered. Pictures are included for your viewing. Again, there will be no structural or renovations proposed (or required) for the proposed use of 'place of worship'.

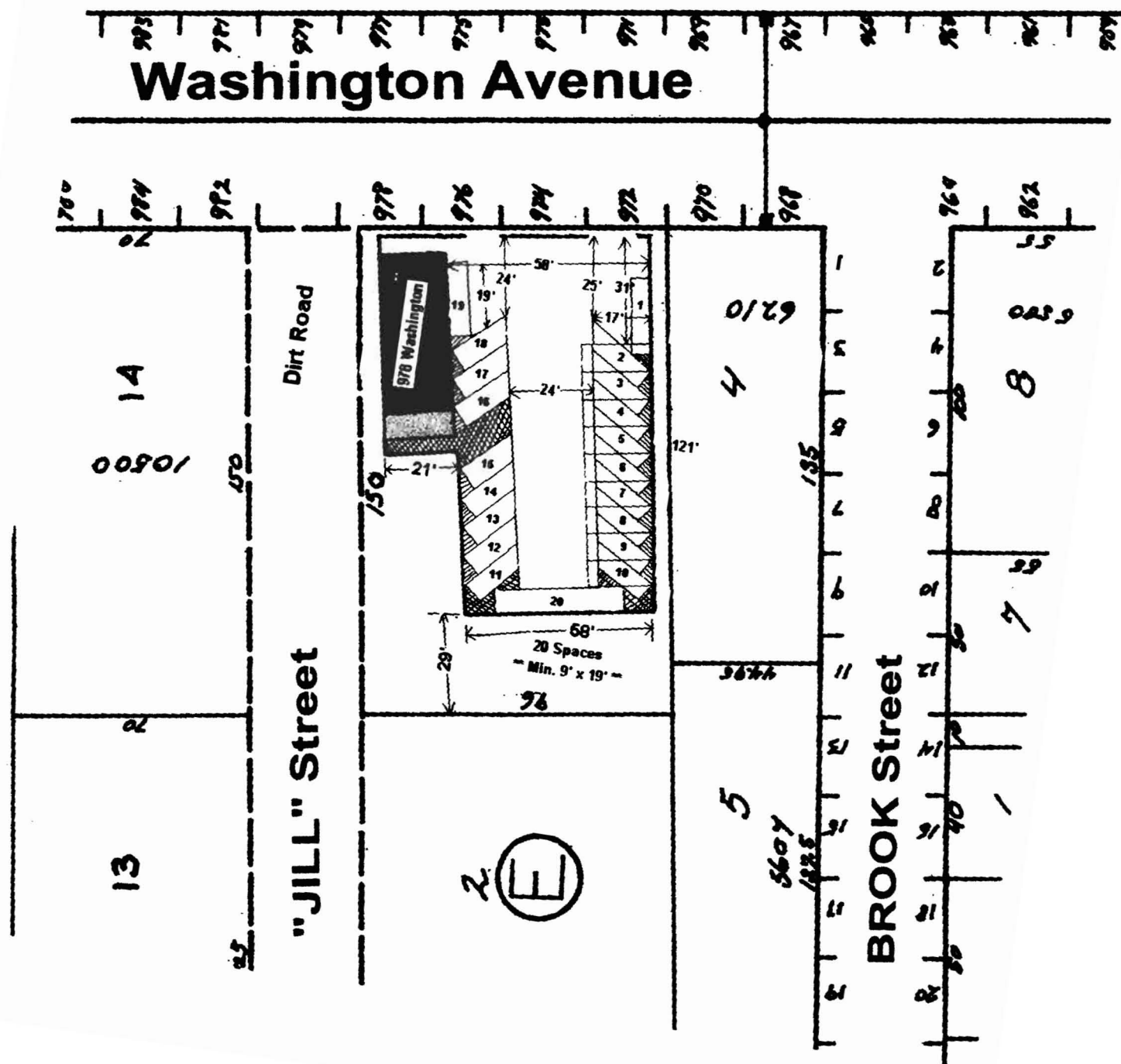
The parcel is located on a busy arterial way and is a great location for the proposed use. The parcel can also handle the traffic capacity of the proposed use since there was a retail use on the first floor of the building. With the proposed use, it will significantly reduce the traffic generation since the place will be open for Friday prayers with times from 12:00 to 2:00 PM and occasionally on the weekends (versus the repair shop that was opened seven days a week). (It is a requirement that Friday (noon) prayers are done in a group setting whereas the other prayers can be done at the individual's preference of place). There will be no marriage ceremonies, funerals or any traffic generating events will occur here. The attendees are specific population and will not have the traffic generation like the repair shop, which is open to the general public. Therefore the existing parking can definitely have the capacity for this limited traffic.

Since the building and the parking lot are presently there and no alternations are proposed, the property, as it currently exists, meets the needs of the proposed use of 'place of worship'. Therefore, the one acre requirement is not necessary with this parcel. The owner has researched other alternatives and no other feasible alternatives are available except a request of variance from the Zoning Board of Appeal. The group that will be using the first floor is non-profit; all the money is charitable contribution from the members. The owner will be providing the space with a fee. The variance will not have a detrimental effect; the proposed use will actually improvement the site and have less traffic generating compared the commercial use (the TV repair shop).

Thank you for your time and patience.

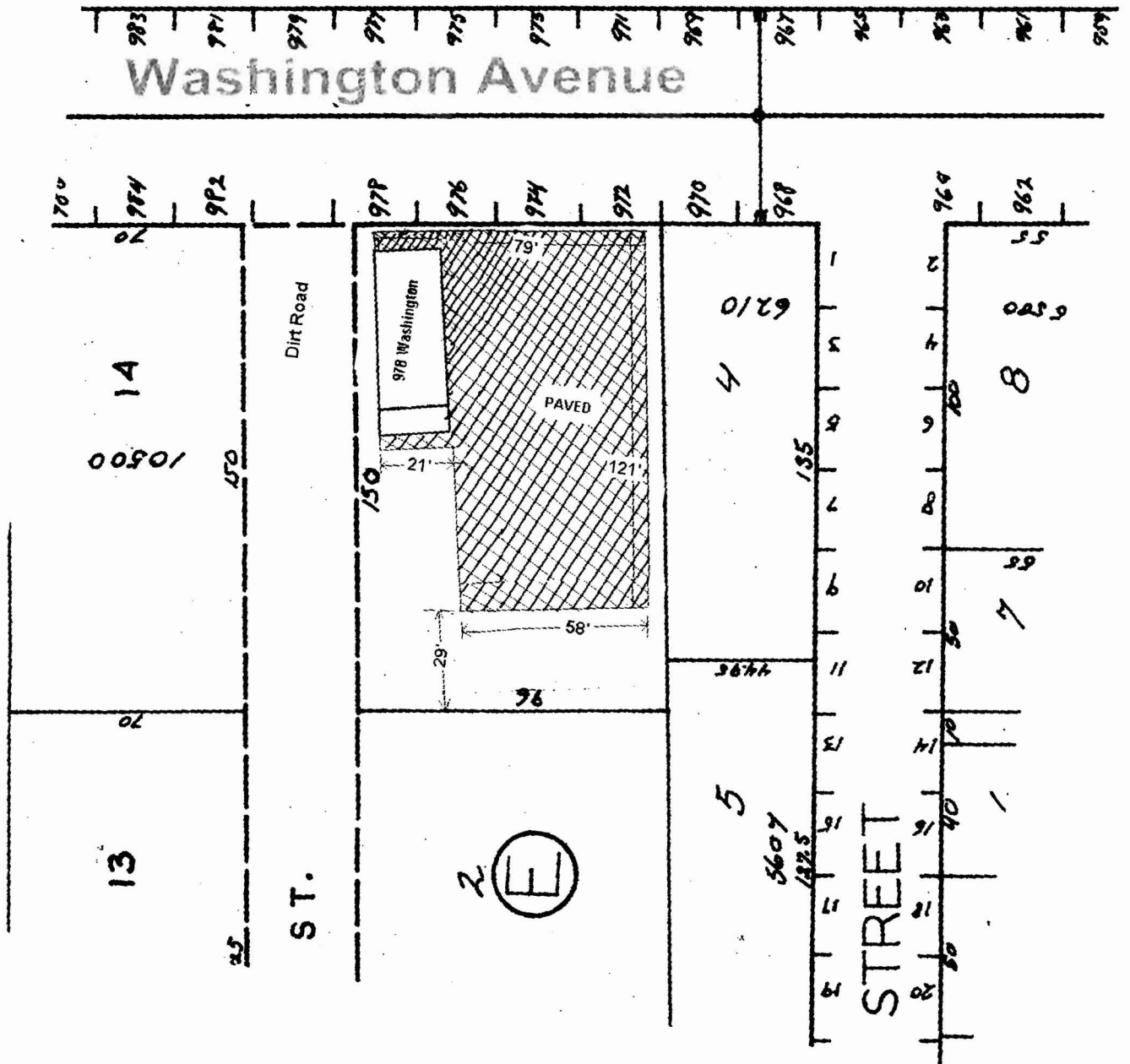
**20 Spaces / 9' x 19' Minimum**

**24' Minimum Aisle and Entrance**

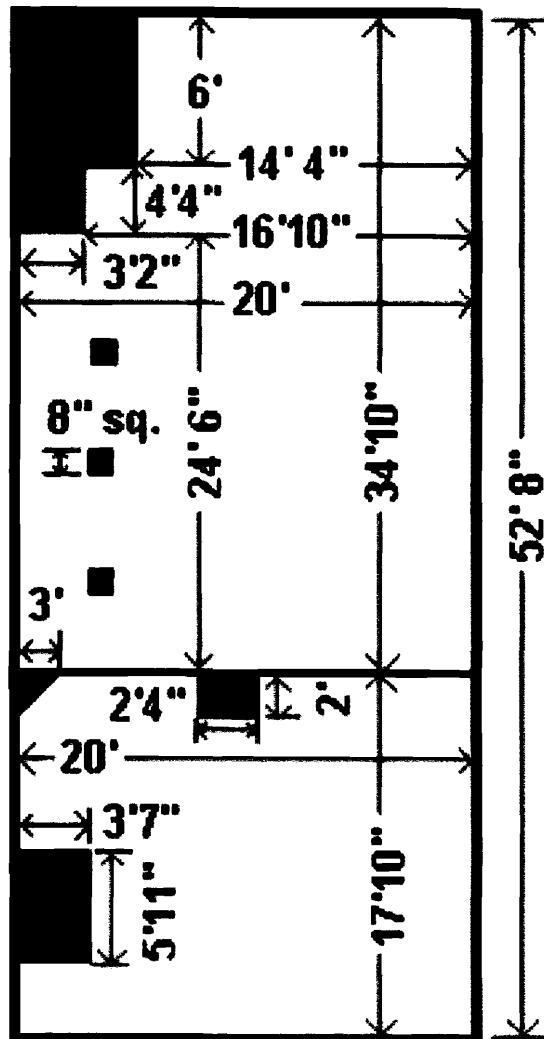


**Q-1**  
**3/9/2009**





**Sadri Shir**  
**978 Washington Avenue**  
**First Floor Layout**



**Total Floor Area = 1053.34 sq.ft.**

**Less:**

**Backroom:**

Chimney = 4.67 sq.ft.

Stairway = 21.2 sq.ft.

Wire way = 4.5 sq.ft.

**Frontroom:**

Stairway = 47.73 sq.ft.

Support Posts = 1.5 sq.ft.

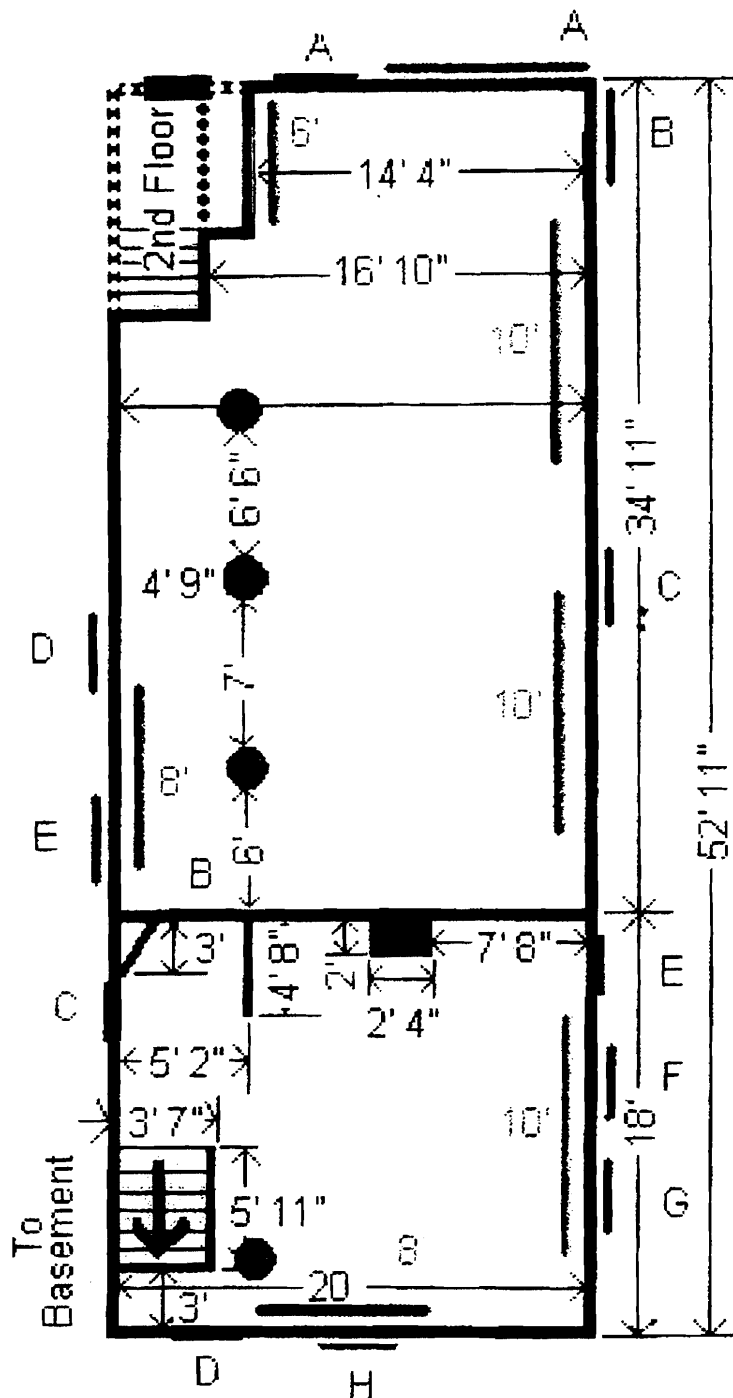
(8" square 0.5 sq.ft. X 3)

**Total Obstruction to Floor Space = 79.6 sq.ft.**

**First Floor Area = 973.74 sq.ft.**

Washington Avenue Apartments  
Washington Avenue Front

Basic Floor Layout



Sadr Shir Misc. Details

First Floor Ceiling 8' 3"

Stair Case Slope at Right of Entry  
36" to 6' 10" on 4' Span / 3' 2" Width  
Back Room Ceiling 7' 9"

Base Board Heaters

Chimney

Support Poles

RO  
Windows

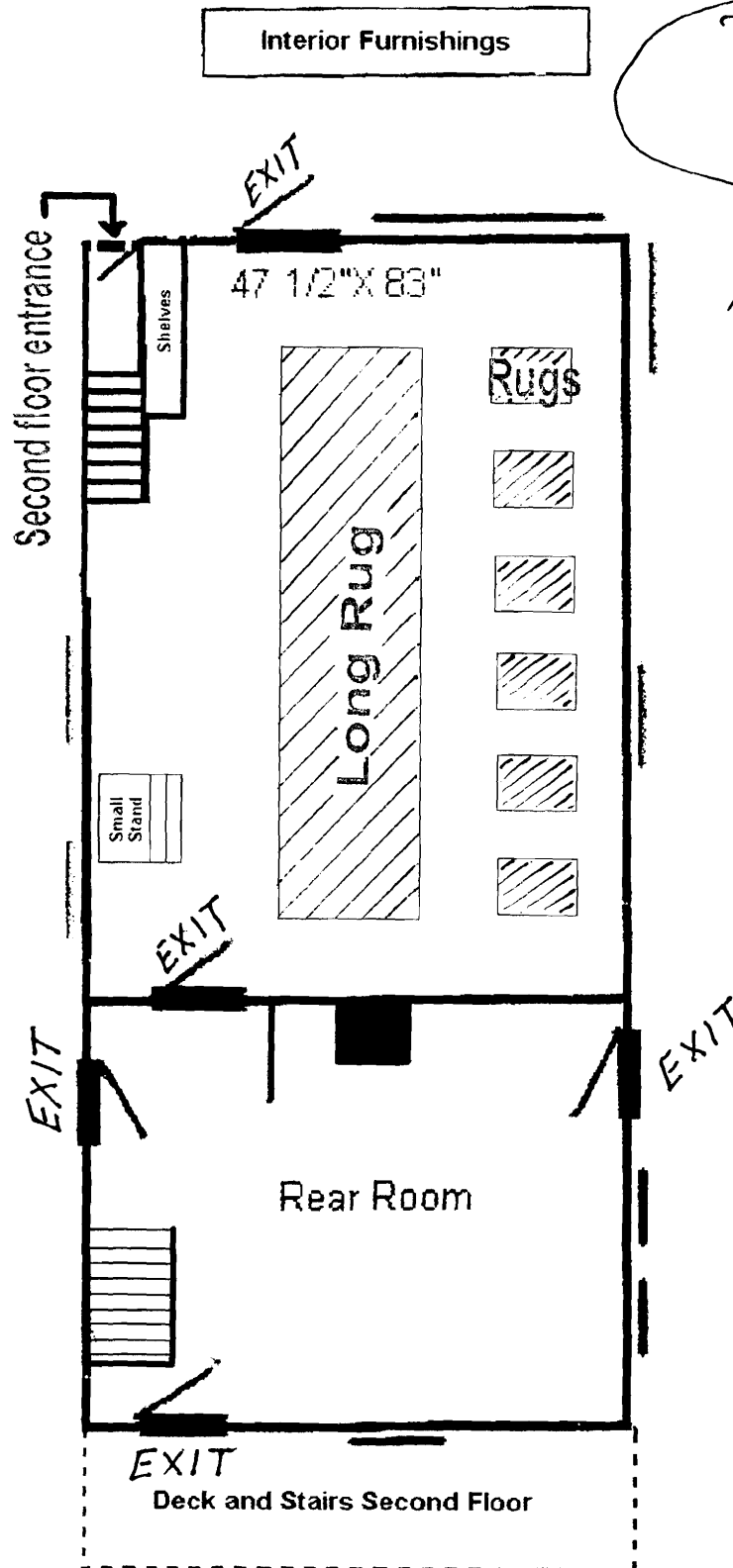
- A 8' 10" X 5' 5" H
- B 3' 9" X 5' 6" H
- C 32" X 61" H
- D 30" X 58" H
- E 31" X 59" H
- F 29" X 56" H
- G 29" X 56" H
- H 36" X 56" H

Doors

- A 47 1/2" X 83"
- B 32" X 79"
- C 31" X 79"
- D 32" X 79"
- E 31" X 79"

Quality-One

Washington Avenue Apartments



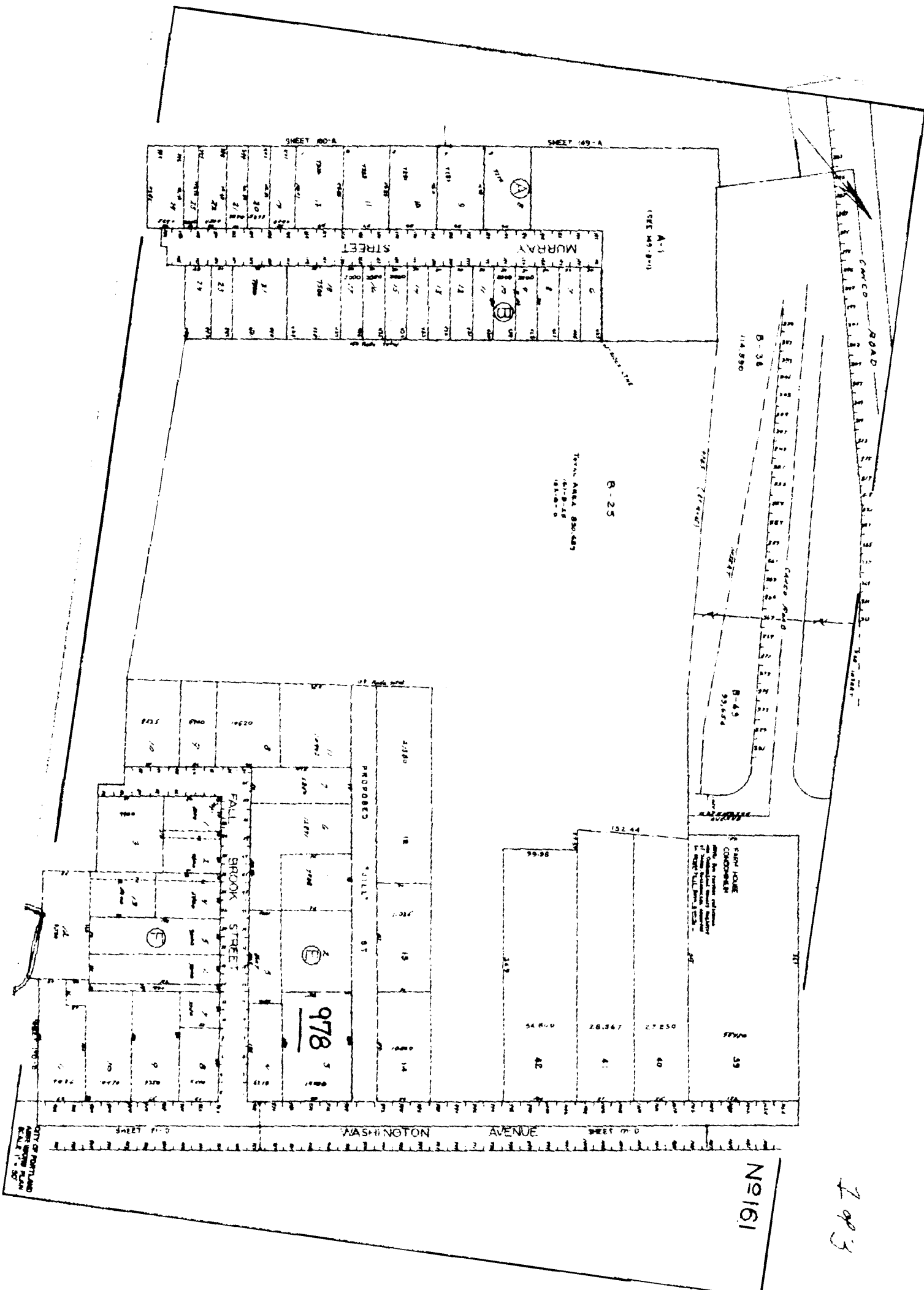
OCCUPANCY LOAD  
MAX. 66 people  
Jeanne B.

per building footprint

Sadri Shir  
Owner

Quality-One  
2/27/2009

No 161





PARKING LOT



FILE PHOTO  
CITY HALL

## WARRANTY DEED

KNOW ALL BY THESE PRESENTS, that we, MARY N. BLESSING, JUSTINA IVES, JEANNETTE A. BREGGIA, JOHN DIMILLO, all of Portland, Maine and ADELIA JACKSON, of North Carolina, in consideration of One and No/100 Dollars (\$1.00) and other valuable consideration paid by SADRI SHAIR whose mailing address is 41 Ocean House Road, Cape Elizabeth, Maine, the receipt whereof we do hereby acknowledge, do hereby GIVE, GRANT, BARGAIN, SELL AND CONVEY, WITH WARRANTY COVENANTS unto the said Sadri Shair, her heirs, her successors and assigns forever, the following described premises:

See Schedule A attached hereto and made a part hereof.

TO HAVE AND TO HOLD the same, together with all the privileges and appurtenances thereunto belonging, to the said Sadri Shair, her heirs, her successors and assigns forever. We do covenant with the said Grantee, her heirs, her successors and assigns, that we are lawfully seized in fee of the premises, free of all encumbrances and that we do have good right to sell and convey the same to the said Grantees to hold as aforesaid; and that we and our successors shall and will warrant and defend the same to the said Grantee, her heirs, her successors and assigns, forever, against the lawful claims and demands of all persons.

IN WITNESS WHEREOF, we, the said Mary N. Blessing, Justina Ives, Jeannette A. Breggia, John DiMillo, and Adelia C. Jackson have caused these presents to be signed this 30<sup>th</sup> day of November, 2005.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF

Blessing  
Witness

Breggia  
Witness

Breggia  
Witness

Breggia  
Witness

Adelia C. Jackson  
Witness

Mary N. Blessing  
Mary N. Blessing

Justina Ives  
Justina Ives

Jeanette A. Breggia  
Jeanette A. Breggia

John DiMillo  
John DiMillo

Adelia C. Jackson  
Adelia C. Jackson

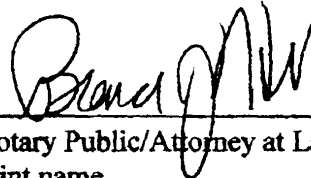
MAINE REAL ESTATE TAX PAID



STATE OF MAINE  
COUNTY OF Camden

11-30-05, 2005

Then personally appeared the above-named Mary N. Blessing, Justina Ives, Jeannette A. Breggia, John DiMillo and acknowledged the foregoing instrument to be their free acts and deeds before me,



Notary Public/Attorney at Law

print name \_\_\_\_\_

my comm. exp. Brenda J. Hall

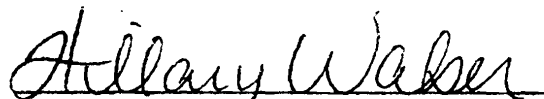
Notary Public, Maine

My Commission Exp: 3/9/06

STATE OF NORTH CAROLINA  
COUNTY OF Guilford

11-29-05, 2005

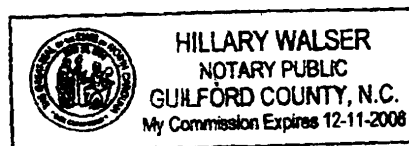
Then personally appeared the above-named Adelia C. Jackson and acknowledged the foregoing instrument to be their free acts and deeds before me,



Notary Public/Attorney at Law

print name HILLARY WALSER

my comm. exp. 12-11-2008



**EXHIBIT A**

A certain lot or parcel of land with the building thereon, situated on the Southwesterly side of Washington Avenue, formerly called Main Street, in said Portland, and bounded and described as follows:

Beginning at a point in the Southwesterly side line of said Washington Avenue, at the Northwesterly corner of land which Arthur E. Marks conveyed to Charles Murphy, by deed dated April 18, 1894, and recorded in Cumberland County Registry of Deeds, Book 610, Page 284, and now or formerly owned by one Speirs; thence Northwesterly by said Washington Avenue, ninety-six (96) feet to a point two (2) feet Northwesterly of the Northwesterly side line extended of the two story building containing the store and dwelling house on said lot; thence Southwesterly on a line parallel to the Northwesterly side line of said Speirs land one hundred fifty (150) feet to a point; thence Southeasterly by land now or formerly of Antonio Leo and on a line parallel to said Washington Avenue ninety-six (96) feet to the Northwesterly side line of land of one Harris, same being a continuation of the Northwesterly side line of said Speirs land; thence Northeasterly by said Harris and Speirs land, one hundred fifty (150) feet to the point of beginning.

Meaning and intending to convey the same premise conveyed to Mary N. Blessing, Justina Ives, Jeannette A. Breggia, John DiMillo, and Adelia C. Jackson by Mary N. Blessing, Personal Representative for the Estate of Rose DiMillo by Deed of Distribution by Personal Representative dated July 31, 2003, and recorded in said Registry of Deeds, in Book 20508, Page 195.

Received  
Recorded Register of Deeds  
Dec 02, 2005 12:32:32P  
Cumberland County  
John B O'Brien

May 19, 2009

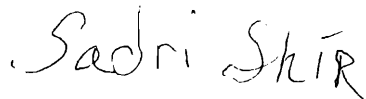
Marge Schmuckal, Zoning Administrator  
Zoning Division  
389 Congress Street  
Portland, ME 04102

Re: Letter of Authorization

To Whom It May Concern:

This letter authorizes Shukria Wiar to act as an agent for all zoning and permitting matters in connection with the 978 Washington Avenue property in Portland, ME.

Sincerely,

A handwritten signature in cursive script that reads "Sadri Shir".

Sadri Shir

